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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 536

Grade and Pay Retention

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is adopting an interim rule as a final rule to provide for entitlement to pay retention when a Federal prevailing rate (wage) schedule is reduced as the result of the findings of a wage survey. This change addresses certain anomalies in the statutory wage and survey process for Federal wage employee by providing that wage emplcyees will not have their pay reduced solely because of changes in the local private sector economy over which they have no control.

EFFECTIVE DATE: This final rule becomes effective on January 11, 1990.

FOR FURTHER INFORMATION CONTACT: Jan B. Karicher (202) 632–5056.

SUPPLEMENTARY INFORMATION: On December 8, 1988, the Office of Personnel Management (OPM) published an interim rule (53 FR 49545) to provide pay retention for prevailing rate (wage) employees when a wage schedule is reduced as the result of a wage survey, providing that interested persons could file comments through February 6, 1989. One management association commented favorably on OPM's interim regulations, stating that the interim rule "represents an appropriate measure for reducing the impact of survey anomalies."

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it will affect only Federal employees and agencies.

List of Subjects in 5 CFR Part 536

Administrative practice and procedure, Government employees, Wages.

U.S. Office of Personnel Management.
Constance B. Newman,
Director.

PART 536—GRADE AND PAY RETENTION

Accordingly, OPM is adopting the interim rule amending 5 CFR part 536 published in the **Federal Register** on December 8, 1988 (53 FR 49545), as a final rule without change.

[FR Doc. 89–28973 Filed 12–11–89; 8:45 am]
BILING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 89–207]

Citrus Canker Regulations; Change in Status of Pinellas County, Florida

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are removing the remainder of Pinellas County, Florida, from the list of areas under special restriction because of citrus canker caused by the Asiatic strains. This action is warranted because no infestation caused by an Asiatic strain of canker has been found anywhere in Pinellas County since the last infested plant in the county was destroyed on July 15, 1987. Further, Pinellas County is separated by a large body of water from the only neighboring county where there has been an infestation within the past 2 years. This action relieves some restrictions on the interstate movement of citrus fruit and calamondin and kumquat plants from the portion of Pinellas County previously under special restriction because of citrus canker caused by the Asiatic strains.

EFFECTIVE DATE: December 6, 1989.

FOR FURTHER INFORMATION CONTACT: Eddie W. Elder, Chief Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, Room 661, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 436–6365.

SUPPLEMENTARY INFORMATION:

Background

Citrus canker is a plant disease caused by strains of the bacterium *Xanthomonas campestris* pv. *citri* (Hasse) Dye. The disease is known to affect plants and plant parts, including fruit, of citrus and citrus relatives (Family Rutaceae). It can cause defoliation and other serious damage to the leaves and twigs of susceptible plants. It may also make the fruit of infected plants unmarketable by causing lesions on the fruit. Infected fruit may also drop from trees before reaching maturity. Aggressive strains of *Xanthomonas campestris* pv. *citri* can infect susceptible plants rapidly and lead to extensive economic losses in commercial citrus-producing areas.

In the United States, Florida is the only State where citrus canker exists. Regulations to prevent the interstate spread of citrus canker from Florida are contained in 7 CFR 301.75 through 301.75–16, "Subpart—Citrus Canker." These regulations recognize two types of citrus canker: one type caused by the Florida nursery strains, and a more severe type caused by Asiatic strains of *Xanthomonas campestris* pv. *citri*. Citrus fruit and plants from areas of Florida affected by the Asiatic strains are subject to more stringent restrictions on interstate movement than citrus fruit and plants from other areas of the State.

In a document published in the **Federal Register** on October 26, 1989 (54 FR 43585–43586, Docket Number 89–181), we proposed to relieve some restrictions on the interstate movement of citrus fruit and calamondin and kumquat plants from areas of Pinellas County, Florida, under special restriction because of the Asiatic strains.

Comments on the proposed rule were required to be received on or before November 13, 1989. We did not receive any comments. Based on the rationale set forth in the proposal and in this document, we are adopting the

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provisions of the proposal as a final rule without change.

As a result of this action, under conditions specified in the regulations, regulated fruit from groves of 10 or more trees is now eligible for interstate movement to commercial citrus-producing areas of the United States, and own-root-only calamondin and kumquat plants are eligible for interstate movement to all areas of the United States except commercial citrus-producing areas.

Effective Date

This is a substantive rule which relieves restrictions, and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon signature.

Executive Order 12291 and the Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

As a result of this rule, no portion of Pinellas County, Florida, remains under special restriction because of citrus canker caused by the Asiatic strains. The entire State of Florida, however, remains a quarantined area for citrus canker.

We anticipate that adoption of this rule will have the most impact on private individuals who want to send fruit from their dooryard plantings (groves of fewer than 10 trees) to relatives and friends. Before publication of this document, the regulations allowed individuals to ship the fruit with a limited permit; however few have been doing so because of the cost and inconvenience of having the fruit treated.

The changes pertaining to groves of 10 or more regulated trees will affect two owners of commercial citrus groves, one of three acres and the other of nine acres, which are harvested for fresh fruit. We estimate that the owners could save an estimated $20 per acre per year by no longer having to disinfect personnel, vehicles, and equipment. It does not appear that any of the other changes will result in substantial savings or gain for the owners. The cost of chemically treating fruit appears to be a very small part of the overall costs associated with packing house operations, and there is little difference in price between fruit sold for interstate movement to commercial citrus-producing areas and fruit sold for interstate movement to other areas or for intrastate movement.

We do not know of any nurseries in Pinellas County that raise calamondin or kumquat plants for interstate movement.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 7 CFR Part 301

Agricultural commodities, Citrus canker, Plants (Agriculture), Plant diseases, Plant pests, Quarantine, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, 7 CFR part 301 is amended as follows:

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

§ 301.75–7 [Amended]

2. Section 301.75–7 is amended by removing paragraph (b)(3)(ii), and by redesignating paragraphs (b)(3)(iii) and (b)(3)(iv) as (b)(3)(ii) and (b)(3)(iii), respectively.

Done in Washington, DC, this 6th day of December, 1989.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89–28885 Filed 12–11–89; 8:45 am]

BILLING CODE 3410–34–M

FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Regulation D; Docket No. R–0678]

Reserve Requirements of Depository Institutions; Reserve Requirement Ratios

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending 12 CFR part 204 (Regulation D—Reserve Requirements of Depository Institutions) to decrease the amount of transaction accounts subject to a reserve requirement ratio of three percent, as required by section 19(b)(2)(C) of the Federal Reserve Act (12 U.S.C. 461(b)(2)(C)), from $41.5 million to $40.4 million of net transaction accounts (known as the low reserve tranche adjustment). The Board has left at $3.4 million the amount of reservable liabilities of each depository institution that is subject to a reserve requirement of zero percent (known as the reservable liabilities exemption adjustment), as required by section 19(b)(11)(B) of the Federal Reserve Act (12 U.S.C. 461(b)(11)(B)). The Board has also increased from $42.1 million to $43.4 million the deposit cutoff level that is used in conjunction with the reservable liabilities exemption amount to determine the frequency of deposit reporting.

DATES: *Effective date:* This final rule is effective December 12, 1989. *With compliance as follows:* For depository institutions that report weekly, the low reserve tranche adjustment will be effective starting with the reserve computation period beginning Tuesday, December 26, 1989, and with the corresponding reserve maintenance periods beginning Thursday, December 28, 1989, for net transaction accounts, and Thursday, January 25, 1990, for other reservable liabilities. For

institutions that report quarterly, the low reserve tranche adjustment will be effective with the computation period beginning Tuesday, December 19, 1989, and with the reserve maintenance period beginning Thursday, January 18, 1990. For all depository institutions, the increase in the deposit cutoff level will be used to screen institutions in the second quarter of 1990 to determine reporting frequency beginning September 1990.

FOR FURTHER INFORMATION CONTACT: Patrick J. McDivitt, Attorney (202/452–3818), Legal Division, or June O'Brien, Economist (202/452–3790), Division of Monetary Affairs; for users of the Telecommunications Device for the Deaf (TDD), Earnestine Hill or Dorothea Thompson (202/452–3544); Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Section 19(b)(2) of the Federal Reserve Act requires each depository institution to maintain with the Federal Reserve System reserves against its transaction accounts and nonpersonal time deposits, as prescribed by Board regulations. The initial reserve requirements imposed under section 19(b)(2) were set at three percent for total transaction accounts of $25 million or less and at 12 percent on total transaction accounts above $25 million for each depository institution. Section 19(b)(2) further provides that, before December 31 of each year, the Board shall issue a regulation adjusting for the next calendar year the total dollar amount of the transaction account tranche against which reserves must be maintained at a ratio of three percent. The adjustment in the tranche is to be 80 percent of the percentage change in total transaction accounts for all depository institutions determined as of June 30 of each year, and the statute requires an adjustment resulting from decreases as well as increases in total transaction accounts.

Currently, the low reserve tranche on transaction accounts is $41.5 million. The decline in the total of net transaction accounts of all depository institutions from June 30, 1988, to June 30, 1989, was 3.4 percent (from $604.3 billion to $584.0 billion). In accordance with section 19(b)(2), the Board is amending Regulation D to decrease the low reserve tranche for transaction accounts for 1990 by $1.1 million to $40.4 million.

Section 19(b)(11)(A) of the Federal Reserve Act provides that $2 million of reservable liabilities [1] of each depository institution shall be subject to a zero percent reserve requirement. Section 19(b)(11)(A) permits each depository institution, in accordance with the rules and regulations of the Board, to designate the reservable liabilities to which this reserve requirement exemption is to apply. However, if transaction accounts are designated, only those that would otherwise be subject to a three percent reserve requirement (*i.e.*, transaction accounts within the low reserve requirement tranche) may be so designated.

Section 19(b)(11)(B) of the Federal Reserve Act provides that, before December 31 of each year, the Board shall issue a regulation adjusting for the next calendar year the dollar amount of reservable liabilities exempt from reserve requirements. Unlike the adjustment for transaction accounts, which adjustment can result in a decrease as well as an increase, the change in the exemption amount is to be made only if the total reservable liabilities held at all depository institutions increases from one year to the next. Total reservable liabilities of all depository institutions from June 30, 1988, to June 30, 1989, declined by 0.5 percent (from $1,263.5 billion to $1,256.7 billion). Under section 19(b)(11), the Board's Regulation D will not be changed. Consequently, the reserve requirement exemption for 1990 will remain at the 1989 level of $3.4 million.

The effect of the application section 19(b) of the Federal Reserve Act is to reduce the low reserve tranche to $40.4 million and to continue to apply a zero percent reserve requirement on the first $3.4 million of transaction accounts and to apply a three percent reserve requirement on the remainder of the low reserve tranche. Any portion of this zero percent reserve requirement tranche remaining after the tranche is applied to transaction accounts will be applied to nonpersonal time deposits with maturities of less than 1½ years or to Eurocurrency liabilities, both of which are subject to a reserve requirement ratio of three percent.

The tranche adjustment for weekly reporting institutions will be effective starting with the reserve computation period beginning Tuesday, December 26, 1989, and with the corresponding reserve maintenance periods beginning Thursday, December 28, 1989, for net transaction accounts, and Thursday, January 25, 1990, for other reservable liabilities. For institutions that report quarterly, the tranche adjustment will be effective with the computation period beginning Tuesday, December 19, 1989, and with the reserve maintenance period beginning Thursday, January 18, 1990. In addition, all entities currently submitting Form FR 2900 will continue to submit reports to the Federal Reserve under current reporting procedures.

In order to reduce the reporting burden for small institutions, the Board established a deposit reporting cutoff level to determine deposit reporting frequency. Institutions are screened during the second quarter of each year to determine reporting frequency beginning the following September. In March of 1985, the Board decided to index this reporting cutoff level in an amount equal to 80 percent of the annual rate of increase of total deposits.[2] In July of 1988, in conjunction with approval of the extension of the deposit reporting system, the Board increased the cutoff to $40 million, effective in September 1988, from the $30 million cutoff that would have become effective in September 1988.

From June 30, 1988, to June 30, 1989, total deposits grew 4.0 percent, from $3,513.6 billion to $3,654.6 billion. This results in an increase of $1.3 million in the deposit cutoff level that determines the frequency of reporting from the current $42.1 million to $43.4 million. Based on the indexation of the reserve requirement exemption, the cutoff level for total deposits above which reports of deposits must be filed will remain at $3.4 million. Institutions with total deposits below $3.4 million are excused from reporting if their deposits can be estimated from other sources. The $43.4 million cutoff level for weekly versus quarterly FR 2900 reporting and for quarterly FR 2910q versus annual FR 2910a reporting, and the $3.4 million level threshold for reporting will be used in the second quarter 1990 deposits report screening process, and the adjustments will be made when the new deposit reporting panels are implemented in September 1990.

All U.S. branches and agencies of foreign banks and all Edge and Agreement Corporations, regardless of size, and all other institutions with reservable liabilities in excess of the exemption level amount prescribed by section 19(b)(11) of the Federal Reserve Act (known as "nonexempt institutions") and with total deposits at

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[1] Reservable liabilities include transaction accounts, nonpersonal time deposits, and Eurocurrency liabilities as defined in section 19(b)(5) of the Federal Reserve Act.

[2] In November of 1985, the Board amended the definition of "total deposits" as used in determining the cutoff level to include not only gross transaction deposits, savings accounts, and time deposits but also reservable obligations of affiliates, ineligible acceptance liabilities, and net Eurocurrency liabilities.

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least equal to the deposit cutoff level are required to file weekly the Report of Transaction Accounts, Other Deposits and Vault Cash (FR 2900). Depository institutions that have reservable liabilities in excess of the exemption level, but have total deposits less than the deposit cutoff level, may file the FR 2900 quarterly for the twelve month period starting each September. Institutions that obtain funds from non-U.S. sources or that have foreign branches or international banking facilities are required to file the Report of Certain Eurocurrency Transactions (FR 2950/2951) on the same frequency as they file the FR 2900. The deposit cutoff is also used to determine whether an institution with reservable liabilities at or below the exemption level (known as an "exempt institution") must file one of two reduced deposits reports—the Quarterly Report of Selected Deposits, Vault Cash, and Reservable Liabilities (FR 2910q) or the Annual Report of Total Deposits and Reservable Liabilities (FR 2910a). Exempt institutions (that is, institutions with total deposits less than the exemption amount) are not required to file a deposits report if their deposits can be estimated from other sources.

Finally, the Board may require a depository institution to report on a weekly basis, regardless of the cutoff level, if the institution manipulates its total deposits and other reservable liabilities in order to qualify for quarterly reporting. Similarly, any depository institution that reports quarterly may be required to report weekly and to maintain appropriate reserve balances with its Reserve Bank if, during its computation period, it understates its usual reservable liabilities or it overstates the deductions allowed in computing required reserve balances.

Notice and public participation. The provisions of 5 U.S.C. 553(b) relating to notice and public participation have not been followed in connection with the adoption of these amendments because the amendments involve adjustments prescribed by statute and by an interpretative statement reaffirming the Board's policy concerning reporting practices. The amendments also reduce regulatory burdens on depository institutions. Accordingly, the Board finds that notice and public participation is unnecessary and contrary to the public interest.

Regulatory Flexibility Act analysis. Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 5 U.S.C. 601 *et seq.*), the Board certifies that the proposed amendments will not have a significant economic impact on a substantial number of small entities. The proposed amendments reduce certain regulatory burdens for all depository institutions, reduce certain burdens for small depository institutions, and have no particular effect on other small entities.

List of Subjects in 12 CFR Part 204

Banks, banking; Currency; Federal Reserve System; Penalties and Reporting and recordkeeping requirements.

Pursuant to the Board's authority under section 19 of the Federal Reserve Act, 12 U.S.C. 461 *et seq.*, the Board is amending 12 CFR part 204 as follows:

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS

1. The authority citation for 12 CFR part 204 continues to read as follows:

Authority: Sections 11(a), 11(c), 19, 25, 25(a) of the Federal Reserve Act (12 U.S.C. 248(a), 248(c), 371a, 371b, 461, 601, 611); section 7 of the International Banking Act of 1978 (12 U.S.C. 3105); and section 411 of the Garn St-Germain Depository Institutions Act of 1982 (12 U.S.C. 461).

2. In § 204.9 paragraph (a)(1) is revised to read as follows:

§ 204.9 Reserve requirement ratios.

(a)(1) *Reserve percentages.* The following reserve ratios are prescribed for all depository institutions, Edge and Agreement Corporations, and United States branches and agencies of foreign banks:

Category	Reserve requirement
Net transaction accounts [1]	
$0 to $40.4 million	3 percent of amount.
Over $40.4 million	$1,212,000 plus 12 percent of amount over $40.4 million.
Nonpersonal time deposits by original maturity (or notice period):	
Less that 1½ years.	3 percent.
1½ years or more	0 percent
Eurocurrency liabilities	3 percent.

[1] Dollar amounts do not reflect the adjustment to be made by the next paragraph.

* * * * *

By order of the Board of Governors of the Federal Reserve System, December 6, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-28944 Filed 12-11-89; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 337

RIN 3064-AB00

Unsafe and Unsound Banking Practices

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Interim rule and request for comments.

SUMMARY: Section 224 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") added a new section 29 to the Federal Deposit Insurance Act ("FDIA"). This new section prohibits the acceptance or renewal of brokered deposits by any undercapitalized insured depository institution (bank or thrift) after December 7, 1989 except on specific application to and waiver of the prohibition by the FDIC. The interim rule, new § 337.6 of FDIC regulations, provides guidance and further detail on when an institution is considered undercapitalized, when certain deposits are considered "brokered" for purposes of the prohibition, and the circumstances under which a waiver from the prohibition may be granted. The FDIC is soliciting comment on this interim rule with a view towards possible revision or modification at a later date. The interim rule will "sunset" or terminate automatically in six months unless modified or replaced by a final rule prior to that time.

EFFECTIVE DATE: The interim rule is effective December 12, 1989. Comments must be submitted by February 12, 1990. The interim rule will remain in effect for a period of six months following its publication in the **Federal Register** or until expressly rescinded, amended, modified or replaced by the FDIC following the public comment period, whichever occurs first.

ADDRESSS: Send comments to: Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand delivered to Room 6097 on business days between 8:30 a.m. and 5:00 p.m. Comments may also be inspected in Room 6097 between 8:30 a.m. and 5:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: William G. Hrindac, Examination Specialist, Division of Supervision, (202) 898-6892, or Valerie Best, Senior Attorney, Legal Division, (202) 898-3812, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act. The collection of information contained in this notice of rulemaking, which is entitled "Application for Waiver of Prohibition on Acceptance of Brokered Deposits by Undercapitalized Insured Depository Institutions," has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Comments on the collection of information should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the FDIC, with copies to the Assistant Executive Secretary (Administration), Room 6096, Federal Deposit Insurance Corporation, Washington, DC 20429.

The information will be collected from undercapitalized insured depository institutions applying for a waiver from the prohibition on the acceptance or renewal of brokered deposits contained in section 29 of the Federal Deposit Insurance Act (12 U.S.C. 1831f).

The estimated annual reporting burden for the collection of information in this regulation is summarized as follows:

Number of Respondents: 370.
Number of Responses Per Respondent: 1.
Total Annual Responses: 370.
Hours per Response: 6.
Total Annual Burden Hours: 2220.

Regulatory Flexibility Act. The FDIC's Board of Directors hereby certifies that the interim rule will not have a significant economic impact on a substantial number of small entities because it largely tracks and clarifies strictures previously established by statute and affords a means by which undercapitalized insured depository institutions may avoid the application of those strictures by applying to the FDIC for a waiver. Moreover, it is anticipated that relatively few small entities will be impacted by the regulation since most insured depository institutions are adequately capitalized or, if undercapitalized, do not utilize brokered deposits. Consequently, the provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603 & 604) are not applicable.

Reasons for Interim Rule. The provisions of this rule are designed to give insured depository institutions guidance as to how the FDIC intends to interpret and apply the new statutory prohibition on acceptance or renewal of bokered deposits, how the FDIC will determine whether an institution is "troubled" (undercapitalized) and therefore subject to the prohibition, how such an institution may apply for a waiver of the prohibition, and the circumstances under which the FDIC would consider granting a waiver. Because the statutory prohibition applies to brokered deposits accepted or renewed after December 7, 1989, it is imperative that the FDIC formalize its position on these important matters immediately and that rules and procedures be established to allow the orderly processing of waiver applications.

For these reasons, the FDIC Board of Directors has determined that the notice and public participation that are ordinarily required by the Administrative Procedure Act (5 U.S.C. 553) before a regulation may take effect would, in this case, be impracticable and contrary to the public interest and that good cause exists for waiving the customary 30-day delayed effective date. Therefore, the Board has adopted a temporary rule that is effective immediately and will remain in effect for six months in order to permit the Board the opportunity to review public comment before adoption of a final rule on this subject. Interested persons are invited to submit comments on the interim rule during a 60-day comment period. In adopting a final regulation, the Board will make such revisions in the interim rule as may be appropriate based on the comments received.

Discussion. The new regulation closely tracks the statute and is believed to be largely self-explanatory. It does, however, provide additional guidance on when an institution is considered undercapitalized, when certain deposits should be considered "brokered," and the circumstances under which a waiver may be granted. In general, the regulation takes a broad view of when an institution is considered undercapitalized and a narrow view of when a waiver may be granted with the objective and expectation that undercapitalized institutions normally will not have access to brokered deposits.

Three issues, however, warrant special attention. The first is the relationship between the new capital requirements established by the FIRREA for savings associations and the prohibition on the acceptance of brokered deposits by all undercapitalized institutions. More specifically, the issue posed is whether the existence of a capital plan or approval of that plan by the Office of Thrift Supervision ("OTS") in any way impacts the ability of an institution to accept or renew brokered deposits. The interim rule takes the position that these are separate issues. Consequently, an undercapitalized savings association may not accept or renew brokered deposits without a waiver from the FDIC so long as it remains undercapitalized whether or not it has a capital plan or its plan has been approved by the OTS. The same principle will apply to any plan or forebearance approved by a banking regulator for an insured bank.

For purposes of applying for a waiver, an undercapitalized insured savings association may submit to the FDIC the same documentation regarding its capital plans that it submits to the OTS. The FDIC will make its own judgment as to sufficiency of any plan and its prospects for success in the context of deciding a particular waiver application. In this regard, the FDIC notes that the OTS's capital regulations do not call for submission of capital plans until early next year. If sufficient other information (including tentative capital considerations) is available and safety and soundness concerns are satisfied, the FDIC's Division of Supervision expects to consider granting short-term waivers until the full capital plan can be submitted to both the OTS and the FDIC.

The second issue relates to the definition of brokered deposits in the law. In addition to deposits obtained through the mediation of third-party brokers, the definition of brokered deposits includes deposits on which an institution offers or has agreed to pay rates of interest that are "significantly" higher than the prevailing rates of interest offered by other depository institutions with the same type of charter in its normal market area. The law makes no distinction between deposits obtained locally or out-of-territory through the operation of a so-called "money desk." The interim rule takes the view that more than 50 basis points is "significant" for this purpose and thus establishes what is believed to be a reasonable compromise between the need to permit even undercapitalized institutions to compete on a reasonable basis in their local market and yet prevent such institutions from bidding excessively for an increasing share of local deposits or paying excessive rates to fund themselves through the operation of a "money desk" soliciting deposits throughout the country.

Finally, the interim rule excludes from coverage under the brokered deposits prohibition any insured depository institution for which the FDIC or the Resolution Trust Corporation ("RTC") has been appointed conservator or receiver. Section 29(d) of the Federal

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Deposit Insurance Act, as added by section 224 of the FIRREA, authorizes the FDIC to grant a limited exception from the prohibition for such institutions if it determines that the acceptance of brokered deposits by such institutions "(1) is not an unsafe or unsound practice, and (2) either (A) is necessary to enable the institution to meet the demands of its depositors or pay its obligations in the ordinary course of business; or (B) is consistent with the conservator's fiduciary duty to minimize the losses of the institution." The FDIC Board of Directors is able to make these findings with respect to all insured depository institutions under FDIC or RTC conservatorship or receivership because such institutions are essentially under FDIC or RTC control and management and therefore pose no risk to the deposit insurance funds beyond the FDIC's control, and because the FDIC, in its own capacity and as exclusive manager for the RTC, intends to direct and monitor the brokered deposit activities of the various institutions under FDIC or RTC conservatorship or receivership to ensure that such deposits are used only as necessary to meet essential liquidity needs or to minimize losses to the institution. Accordingly, the FDIC Board has made the requisite findings and has determined to exclude from coverage under the brokered deposits prohibition any insured depository institution for which the FDIC or the RTC has been appointed conservator or receiver. As a result, no such institution will need to apply for a waiver of the prohibition.

In the interest of orderly administration, the FDIC has also provided for a 60-day transition period during which an undercapitalized institution will be permitted to continue to accept brokered deposits provided it does not significantly increase the average maturity and volume of its brokered deposits or, if it does increase its volume of brokered deposits to replace a run-off of other types of existing funding, it promptly notifies the FDIC regional office and files a waiver application within ten days thereafter. In the event an application is filed during this period and denied, the institution will no longer be permitted to accept brokered deposits.

Comment is solicited on the issues mentioned in particular as well as all other aspects of the interim rules.

Accordingly, notice is hereby given that the FDIC Board of Directors has adopted the following interim rule on the acceptance or renewal of brokered deposits after December 7, 1989 by undercapitalized insured depository institutions. The interim rule remains effective for six months following publication in the **Federal Register** or until further action is taken by the Board after the expiration of the official comment period, whichever is first.

List of Subjects in 12 CFR Part 337

Banks, banking; Savings and loan associations, savings associations.

For the reasons set forth in the preamble, the FDIC hereby amends part 337 of title 12 Code of Federal Regulations as follows:

PART 337—UNSAFE AND UNSOUND BANKING PRACTICES

1. The authority citation for part 337 is revised to read as follows:

Authority: 12 U.S.C. 1816, 1818(a), 1818(b), 1819, 1828(j)(2), 1821(f); Pub. L. No. 101–73, § 224, 103 Stat. 183, 273–75 (1989) (to be codified at 12 U.S.C. 1831f).

2. A new section 337.6 is added to read as follows:

§ 337.6 Brokered deposits in undercapitalized depository institutions.

(a) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Brokered deposit.* The term "brokered deposit" means any deposit, as that term is defined in section 3(1) of the Federal Deposit Insurance Act (18 U.S.C. 1813(1)), that is obtained from or through the mediation or assistance of a deposit broker or by offering a rate of interest (with respect to such deposit) which is significantly higher than the prevailing rate of interest on a deposit with similar terms and conditions, including maturity, offered by other insured depository institutions having the same type of charter (bank or thrift) in the institution's normal market area. For this purpose, a rate of interest is deemed "significantly higher" if, when including any fees paid directly or indirectly to any third-party, it is more than 50 basis points higher than the prevailing rate offered or agreed to at the time for deposits of comparable amount, maturity and other terms by other insured depository institutions with the same type of charter (bank or thrift) in the institution's market area. A rate of interest on a deposit with an odd maturity is "significantly higher" if it is more than 50 basis points higher than the rate interpolated between the prevailing rates offered or paid by other depository institutions with the same charter on deposits of the next longer and shorter maturities offered in the market.

(2) *Deposit broker.* (i) The term "deposit broker" means:

(A) Any person engaged in the business of placing deposits, or facilitating the placement of deposits, of third parties with insured depository institutions or the business of placing deposits with insured depository institutions for the purpose of selling interests in those deposits to third parties; and

(B) An agent or trustee who establishes a deposit account to facilitate a business arrangement with an insured depository institution to use the proceeds of the account to fund a prearranged loan.

(ii) The term does not include:

(A) An insured depository institution, with respect to funds placed with that depository institution;

(B) An employee of an insured depository institution, with respect to funds placed with the employing depository institution;

(C) A trust department of an insured depository institution, if the trust in question has not been established for the primary purpose of placing funds with insured depository institutions;

(D) The trustee of a pension or other employee benefit plan, with respect to funds of the plan;

(E) A person acting as a plan administrator or an investment adviser in connection with a pension plan or other employee benefit plan provided that that person is performing managerial functions with respect to the plan;

(F) The trustee of a testamentary account;

(G) The trustee of an irrevocable trust (other than one described in paragraph (a)(2)(i)(B) of this section, as long as the trust in question has not been established for the primary purpose of placing funds with insured depository institutions;

(H) A trustee or custodian of a pension or profit-sharing plan qualified under section 401(d) or 403(a) of the Internal Revenue Code of 1986; or

(I) An agent or nominee whose primary purpose is not the placement of funds with depository institutions.

(3) *Employee.* The term "employee" means any employee:

(i) Who is employed exclusively by the insured depository institution;

(ii) Whose compensation is primarily in the form of a salary;

(iii) Who does not share such employee's compensation with a deposit broker; and

(iv) Whose office space or place of business is used exclusively for the benefit of the insured depository institution which employs such individual.

(4) *Insured depository institution.* The term "insured depository institution" means any bank or savings association insured under the provisions of the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*).

(5) *Undercapitalized insured depository institution.* The term "undercapitalized insured depository institution" means any insured depository institution that fails to meet the minimum capital requirements applicable to it at the time and includes any insured depository institution which—

(i) After giving effect to any charge-offs or other capital reductions directed by its principal federal or state regulator, fails to meet any applicable capital standard (e.g., tangible, core, primary, total, risk-based, or leverage) established by law or regulation promulgated by its principal federal or state regulator, as applicable; or

(ii) Has been directed by a formal administrative order or advised in writing by its principal federal or state regulator as part of the supervisory process to achieve a higher level of capital, for example, to margin additional risk inherent in its activities and assets, balance sheet structure, or off-balance sheet liabilities, and has failed to meet that higher capital level.

For purposes of this section, the determination of whether an insured depository institution is undercapitalized shall be made without regard to whether it has been granted any forbearance or other relief from any statutory, regulatory, or other capital requirements by any federal or state regulator, whether the institution has submitted to any such regulator a plan to meet applicable capital requirements or standards over time, or whether any such capital plan has been approved by a federal or state regulator.

(b) *Prohibition.* No undercapitalized insured depository institution may accept, renew or rollover, whether on the same or differing terms and conditions, any brokered deposit unless it has applied for and been granted a waiver of this prohibition by the FDIC in accordance with the provisions of this section.

(c) *Waiver.* The FDIC may, on a case-by-case basis and upon application by an undercapitalized insured depository institution, waive the prohibition on the acceptance, renewal or rollover of brokered deposits upon a finding that such acceptance, renewal or rollover does not constitute an unsafe or unsound practice with respect to the particular institution. The FDIC may conclude that it is not unsafe and unsound and may grant a waiver when the acceptance, renewal or rollover of brokered deposits is necessary to maintain the institution's short-term liquidity or to facilitate a restructuring of its liabilities to reduce costs with no significant increase in total assets. A waiver will not be granted to permit an institution to grow in size.

(d) *Application.* An undercapitalized insured depository institution wishing to accept, renew or rollover brokered deposits may apply to the appropriate FDIC regional director for supervision for the region in which the head office of the institution is located. The application may be in letter form and shall be accompanied by a resolution of the board of directors or trustees of the institution authorizing the filing of the application. A copy of the application should be submitted to the institution's primary federal regulator and any state regulator, as appropriate. Any application filed shall address the following elements:

(1) The institution's plans to meet applicable capital requirements within a reasonable time period;

(2) The volume, rates and maturities on brokered deposits currently held;

(3) The scope of the waiver sought in terms of the volume and cost of brokered deposits to be obtained or retained and the time period for which a waiver may be needed;

(4) Alternative funding sources available to the institution; and

(5) Reasons the institution believes the acceptance, renewal or rollover of brokered deposits does not constitute an unsafe or unsound practice in its particular circumstances. In this regard, the institution should seek to demonstrate that its acceptance, renewal or rollover of brokered deposits would not likely increase materially the credit, interest-rate or operating risk of the institution.

(e) *Decision.* The FDIC Director, Division of Supervision, and when confirmed in writing by the Director, an associate director or the appropriate regional director or deputy regional director shall have the authority to approve or deny any waiver application properly filed. An application is properly filed when complete and accurate information addressing each of the elements listed in paragraph (d) of this section has been provided to the appropriate regional director. Any waiver granted will be for a fixed period, generally no longer than one year, but may be extended upon re-application.

(f) *Exclusion for institutions in FDIC or RTC conservatorship or receivership.* No insured depository institutions for which the FDIC or the Resolution Trust Corporation has been appointed conservator or receiver shall be subject to this § 337.6 or to section 29 of the Federal Deposit Insurance Act.

(g) *Sunset.* This § 337.6 shall remain in effect until June 12, 1990, unless sooner terminated, amended, modified, or replaced by the FDIC.

(h) *Sixty-day transition period.* Anything in this section to the contrary notwithstanding, an undercapitalized insured depository institution may accept, renew or rollover brokered deposits during the 60-day period commencing on December 8, 1989 and ending on February 5, 1990, provided that such insured undercapitalized depository institution:

(1) Does not extend the average maturity of its brokered deposits by more than three months; and

(2) Either does not significantly increase its total volume of brokered deposits, or if it does significantly increase its total volume of brokered deposits, it does so only to replace existing funding, provides prior notice to the appropriate FDIC regional director for supervision by telephone or letter and, within 10 days after such notification, files a waiver application in accordance with paragraph (d) of this section.

By order of the Board of Directors.

Dated at Washington, DC this 5th day of December, 1989.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 89–28906 Filed 12–11–89; 8:45 am]

BILLING CODE 6714–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89–ANE–35; Amdt. 39–6411]

Airworthiness Directives; General Electric Company (GE) CF6–6 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment amends existing airworthiness directive (AD) 89–20–01 which established ultrasonic inspection requirements for certain Stage 1 fan disks on CF6–6 series turbofan engines installed in McDonnell Douglas DC10–10 aircraft. This amendment is needed to identify and remove from service additional CF6–6 Stage 1 fan disks which may have

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metallurgical defects. Such defects can adversely affect the service life of the disk.

DATES: Effective—December 12, 1989.

Comments for inclusion in the docket must be received on or before January 12, 1990.

Compliance: As indicated in the body of the AD.

ADDRESSES: Comments on the amendment may be mailed in duplicate to Federal Aviation Administration, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 89–ANE–35, 12 New England Executive Park, Burlington, Massachusetts 01803, or delivered in duplicate to Room 311, at the above address.

Comments must be marked: Docket No. 89–ANE–35.

Comments may be inspected at the above location in Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable General Electric Service Bulletin (CF6–6) 72–947, Revision 2, dated November 21, 1989, and General Electric Manufacturing and Field Quality Procedures Nos. 391, 384, 385, and 389 may be obtained from General Electric Company, Technical Publications Department, 1 Neumann Way, Cincinnati, Ohio 45215, or may be examined in the Regional Rules Docket.

FOR FURTHER INFORMATION CONTACT: John E. Golinski, Engine Certification Branch, ANE–142, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273–7097.

SUPPLEMENTARY INFORMATION: This amendment amends Amendment 39–6337 (54 FR 38814; September 21, 1989), AD 89–20–01, which currently requires that certain Stage 1 fan disks installed in GE CF6–6 series engines receive ultrasonic inspections to ensure that metallurgical defects are not present. After issuing Amendment 39–6337, the FAA has determined that 50 additional Stage 1 fan disks have been manufactured utilizing the same processes as that disk which failed during United Airlines Flight 232, at Sioux City, Iowa. Therefore, the FAA is amending Amendment 39–6337 by adding new disk serial numbers to Table 2 and Table 3 categories of the original AD. This amendment presents these serial numbers under new table designations (Tables 2A and 3A) to allow for different compliance schedules.

Since this condition is likely to exist or develop on other engines of the same type design, this AD is being issued to require a contact ultrasonic inspection and an immersion ultrasonic inspection of the Stage 1 fan disk.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Although this action is in the form of a final rule which involves requirements affecting immediate flight safety and, thus, was not preceded by notice and public procedure, comments are invited on the rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above.

All communications received on or before the closing date for comments will be considered by the FAA. This rule may be amended in light of comments received. Comments that provide a factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effectiveness of the AD and determining whether additional rulemaking is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available both before and after the closing date for comments in Room 311, at the Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of this AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this amendment must submit a self-addressed, stamped postcard on which the following statement is made: Comments to Docket No. 89–ANE–35. The postcard will be date/time stamped and returned to the commenter.

The regulations adopted herein do not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, and Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) amends 14 CFR part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39 [AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 (Amended)

2. Section 39.13 is amended by amending Amendment 39–6337 (54 FR 38814; September 21, 1989), AD 89–20–01, by adding paragraphs (d) and (e), adding Tables (2A) and (3A), by reidentifying existing paragraphs, and by making other minor editorial changes as follows:

The AD is restated in its entirety for clarity.

General Electric Company: Applies to General Electric Company (GE) CF6–6 series turbofan engines installed in McDonnell Douglas DC10–10 aircraft.

Compliance is required as indicated, unless already accomplished.

To detect the existence of metallurgical imperfections in Stage 1 fan disks which could adversely affect Step 1 fan disk service life, ultrasonic inspect all Stage 1 fan disks in accordance with the Appendix to this AD, and the following schedule:

(a) All Stage 1 fan disks with those serial numbers listed in Table 3 of this AD, immerson ultrasonic inspect no later than October 27, 1989.

(b) All Stage 1 fan disks identified by those serial numbers listed in Table 2 of this AD, as follows:

(1) Remove fan rotor spinner cone and contact ultrasonic inspect the installed fan disk no later than November 21, 1989.

(2) Immerson ultrasonic inspect within the next 500 cycles in service after accomplishing the contact ultrasonic inspection requirements of paragraph (b)(1) above, or at the next shop visit after October 7, 1989, or no later than April 1, 1990, whichever comes first.

(c) All Stage 1 fan disks identified by serial numbers listed in Table 3 of this AD, as follows:

(1) Remove fan rotor spinner cone and contact ultrasonic inspect the installed fan disk no later than February 4, 1990, and reinspect at intervals not to exceed 500 cycles since the last contact ultrasonic inspection until the immersion ultrasonic requirement of paragraph (c)(2) has been accomplished.

(2) Immerson ultrasonic inspect at the next shop visit after October 7, 1989, but no later than December 31, 1990.

(d) All Stage 1 fan disks identified by those serial numbers listed in Table 2A of this AD, as follows:

(1) Remove fan rotor spinner cone and contact ultrasonic inspect the installed fan disk no later than January 23, 1990.

(2) Immerson ultrasonic inspect within the next 500 cycles in service after accomplishing the contact ultrasonic inspection requirements of paragraph (d)(1) above, or at the next shop visit after December 12, 1989, or no later than June 5, 1990, whichever comes first.

(e) All Stage 1 fan disks identified by serial numbers listed in Table 3A of this AD, as follows:

(1) Remove fan rotor spinner cone and contact ultrasonic inspect the installed fan disk no later than April 10, 1990, and reinspect at intervals not to exceed 500 cycles since the last contact ultrasonic inspection until the immersion ultrasonic requirement of paragraph (e)(2) has been accomplished.

(2) Immerson ultrasonic inspect at the next shop visit after December 12, 1989, but no later than March 5, 1991.

Notes: (1) Disks which have been previously immersion ultrasonic inspected in accordance with GE Commercial Engine Memorandum No. 98, Rev. 2, dated October 5, 1989, are considered to be in compliance with the immersion ultrasonic inspection requirements of paragraphs (a), (b), (c), (d), and (e) above.

(2) For the purpose of this AD, "shop visit" is defined as the induction of the engine into the shop for any reason.

(3) Accomplishment of the immersion ultrasonic inspection requirements of paragraphs (b)(2), (c)(2), (d)(2), and (e)(2) above relieves the requirements for contact ultrasonic inspections of paragraphs (b)(1), (c)(1), (d)(1), and (e)(1) above.

TABLE 1

MPOO0382	MPOO0383	MPOO0384	MPOO0386	MPOO0387	MPOO0388

TABLE 2

MPOO0352	MPOO0363	MPOO0374	MPOO0390	MPOO0407	MPOA0117
MPOO0354	MPOO0364	MPOO0375	MPOO0393	MPOO0411	MPOA0133
MPOO0357	MPOO0365	MPOO0376	MPOO0395	MPOA0108	MPOA0136
MPOO0358	MPOO0368	MPOO0377	MPOO0397	MPOA0109	MPOA0140
MPOO0359	MPOO0370	MPOO0378	MPOO0398	MPOA0110	MPOA0141
MPOO0360	MPOO0371	MPOO0379	MPOO0399	MPOA0111	MPOA0142
MPOO0361	MPOO0372	MPOO0380	MPOO0402	MPOA0112	MPOA0143
MPOO0362	MPOO0373	MPOO0389	MPOO0404	MPOA0113	MPOA0145
				MPOA0115	

TABLE 2A

MPOA0135	MPOA0182

TABLE 3

MPOO0150	MPOO0188	MPOO0222	MPOO0251	MPOO0284	MPOO0319
MPOO0151	MPOO0189	MPOO0223	MPOO0253	MPOO0285	MPOO0320
MPOO0152	MPOO0190	MPOO0224	MPOO0254	MPOO0286	MPOO0321
MPOO0153	MPOO0191	MPOO0225	MPOO0255	MPOO0289	MPOO0322
MPOO0154	MPOO0193	MPOO0226	MPOO0257	MPOO0290	MPOO0323
MPOO0155	MPOO0194	MPOO0228	MPOO0258	MPOO0291	MPOO0325
MPOO0156	MPOO0195	MPOO0229	MPOO0260	MPOO0292	MPOO0326
MPOO0158	MPOO0196	MPOO0230	MPOO0263	MPOO0293	MPOO0331
MPOO0159	MPOO0197	MPOO0231	MPOO0264	MPOO0295	MPOO0334
MPOO0160	MPOO0198	MPOO0232	MPOO0265	MPOO0297	MPOO0336

(f) Remove from service, prior to further flight, fan disks inspected in accordance with paragraphs (a), (b), (c), (d), and (e) which do not meet the acceptance criteria of the Appendix to this AD and replace with a serviceable part. Report all inspection findings in writing within 10 days of the inspection to the Manager, Engine Certification Office, ANE–140, Engine and Propeller Directorate, Aircraft Certification Service, 12 New England Executive Park, Burlington, Massachusetts 01803; Telex No. 949301 FAANE BURL.

Information collection requirements contained in this regulation section 39.13) have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB Control No. 2120–0056.

(g) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(h) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, an alternate method of compliance with the requirements of this AD or adjustments to the compliance schedules specified in this AD may be approved by the Manager, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

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TABLE 3—Continued

MPOO0161	MPOO0199	MPOO0233	MPOO0266	MPOO0298	MPOO0337
MPOO0162	MPOO0200	MPOO0234	MPOO0267	MPOO0299	MPOO0338
MPOO0163	MPOO0204	MPOO0235	MPOO0268	MPOO0300	MPOO0339
MPOO0166	MPOO0205	MPOO0236	MPOO0270	MPOO0302	MPOO0340
MPOO0171	MPOO0206	MPOO0237	MPOO0271	MPOO0303	MPOO0341
MPOO0172	MPOO0207	MPOO0238	MPOO0272	MPOO0304	MPOO0342
MPOO0173	MPOO0208	MPOO0240	MPOO0273	MPOO0305	MPOO0343
MPOO0175	MPOO0209	MPOO0241	MPOO0274	MPOO0308	MPOO0346
MPOO0176	MPOO0210	MPOO0242	MPOO0275	MPOO0309	MPOO0347
MPOO0177	MPOO0212	MPOO0243	MPOO0276	MPOO0311	MPOO0348
MPOO0178	MPOO0213	MPOO0244	MPOO0277	MPOO0312	MPOO0349
MPOO0179	MPOO0214	MPOO0245	MPOO0278	MPOO0313	MPOO0350
MPOO0180	MPOO0215	MPOO0246	MPOO0279	MPOO0314	MPOA0137
MPOO0181	MPOO0216	MPOO0247	MPOO0280	MPOO0315	MPOA0139
MPOO0182	MPOO0217	MPOO0248	MPOO0281	MPOO0316	MPOA0207
MPOO0184	MPOO0218	MPOO0249	MPOO0282	MPOO0317	MPOA0439
MPOO0185	MPOO0219	MPOO0250	MPOO0283	MPOO0318	
MPOO0186	MPOO0220				
MPOO0187	MPOO0221				

TABLE 3A

MPOO0618	MPOO0139	MPOO0103	MPOO0011	MPOC2744	MPOA0376
MPOO0436	MPOO0136	MPOO0102	MPOO0010	MPOC0321	MPOA0291
MPOO0359	MPOO0113	MPOO0078	MPOO0009	MPOA0860	MPOA0284
MPOO0351	MPOO0111	MPOO0016	MPOO0005	MPOA0810	MPOA0206
MPOO0294	MPOO0109	MPOO0015	MPOO0004	MPOA0801	MPOA0200
MPOO0174	MPOO0108	MPOO0014	MPOO0003	MPOA0736	MPOA0139
MPOO0149	MPOO0107	MPOO0013	MPOO0002	MPOA0662	MPOA0136
MPOO0141	MPOO0104	MPOO0012	MPOH3644	MPOA0461	MPOG2753

The ultrasonic inspections shall be done in accordance with the Appendix to this AD.

This amendment becomes effective on December 12, 1989.

This amendment amends Amendment 39–6337 (54 FR 38814; September 21, 1989), AD 89–20–01.

Issued in Burlington, Massachusetts, on November 24, 1989.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

Appendix

Note: This Appendix is not published in the **Federal Register**. It is available from General Electric or from the Federal Aviation Administration, New England Headquarters. See ADDRESSES section. This Appendix contains pertinent portions of GE Service Bulletin (CF6–6) S/B 72–047, Revision 2, dated November 21, 1989, and the following documents:

(A) General Electric Manufacturing and Field Quality Technology Procedure No. 391, issued September 15, 1989, Rev. 1, dated September 28, 1989.

(B) General Electric Manufacturing and Field Quality Technology Procedure No. 384, issued September 15, 1989, Rev. 2, dated October 5, 1989.

(C) General Electric Manufacturing and Field Quality Technology Procedure No. 385, issued September 14, 1989, Rev. 2, dated October 5, 1989.

(D) General Electric Manufacturing and Field Quality Technology Procedure No. 389, issued September 14, 1989, Rev. 2, dated October 3, 1989.

[FR Doc. 89–28933 Filed 12–11–89; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 89–AEA–03]

Establishment of Transition Area; Danville, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a 700-foot transition area to accommodate a new Milton, PA, VHF Omnidirectional Range/Tactical Air Navigation (VORTAC) Copter VHF Omnidirectional Range/Distance Measuring Equipment (VOR/DME) 336 Standard Instrument Approach Procedure to the Geisinger Medical Center, Danville, Pennsylvania. The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

EFFECTIVE DATE: 0901 u.t.c. January 14, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Airspace Specialist, System Management Branch, AEA–530, Federal Aviation Administration, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 917–0857.

SUPPLEMENTARY INFORMATION:

History

On July 7, 1989, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing a 700-foot Transition Area at the Geisinger Hospital Helipad, Danville, PA (54 FR 31703). The proposed action would establish that airspace necessary to contain an Instrument Approach Procedure to the Helipad.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments on this proposal were received. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6E, January 3, 1989.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes a 700-foot Transition Area at Danville, PA. This airspace is required to contain helicopter operations operating to and from the Geisinger Medical Center, Danville, PA under an instrument flight plan. Additionally, this action would separate these aircraft operating under instrument meterological conditions from those operating under visual weather conditions in controlled airspace.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Danville, PA [New]

That airspace extending upward from 700' above the surface within a 5-mile radius of the Geisinger Hospital Helipad (lat. 40°58'05" N., long. 76°36'25" W.); and within 4-miles each side of the 321°(T) 330°(M) bearing from the Geisinger Hospital Helipad to the 5-mile radius.

Issued in Jamaica, New York, on September 25, 1989.

John D. Canoles,

Manager, Air Traffic Division.

[FR Doc. 89–28935 Filed 12–11–89; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 26073; Amdt. No. 1414]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occuring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

EFFECTIVE DATE: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESS: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; 2. The FAA Regional Office of the region in which the affected airport is located; or 3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight procedures Standards Branch (AFS-420), Technical programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, space and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unncessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs

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is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only inolves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard Instrument, Incorporation by reference.

Issued in Washington, DC on November 24, 1989.

Daniel C. Beaudette,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking standard Instrument Approach Procedures, effective at 0901 GMT on the dates specified, as follows:

PART 97—(AMENDED)

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2)).

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective January 11, 1990

Auburn, AL—Auburn-Opelika Robert G. Pitts, VOR RWY 28, Amdt. 9
Fairbanks, AK—Fairbanks Intl, ILS RWY 1L, Amdt. 4
Corning, AR—Corning Muni, VOR/DME-A, Amdt. 1
Denver, CO—Stapleton Intl, ILS RWY 36, Amdt. 3
Peru, IL—Illinois Valley Rgnl-Walter A Duncan Field, LOC RWY 36, Orig.
Iron Mountain/Kingsford, MI—Ford, VOR RWY 1 Amdt. 11
Iron Mountain/Kingsford, MI—Ford, LOC/DME BC RWY 19, Amdt. 11
Iron Mountain/Kingsford, MI—Ford, ILS RWY 1, Amdt. 9
Pellston, MI—Pellston Regional Airport of Emmet County, VOR RWY 23, Amdt. 13
Pellston, MI—Pellston Regional Airport of Emmet County, VOR/DME RWY 5, Amdt. 6
Pellston, MI—Pellston Regional Airport of Emmet County, ILS RWY 32, Amdt. 6
St. Paul, MN—St. Paul Downtown Holman Fld, NDB RWY 30, Amdt. 7
St. Paul, MN—St. Paul Downtown Holman Fld, ILS RWY 32, Amdt. 2
Ocean Springs, MS—Gulfpark, VOR-B, Amdt. 1, CANCELLED
Chadron, NE—Chadron Muni, VOR RWY 20, Amdt. 6
Chadron, NE—Chadron Muni, VOR/DME RWY 02, Amdt. 1
Chadron, NE—Chadron Muni, NDB RWY 02, Amdt. 2
Chadron, NE—Chadron Muni, NDB RWY 20, Amdt. 11
Baytown, TX—Baytown, NDB RWY 31, Orig.
La Porte, TX—La Porte Muni, VOR-A, Amdt. 12
Wallops Island, VA—Wallops Flight Facility, VOR/DME or TACAN RWY 10, Amdt. 2

. . . Effective December 14, 1989

Gunnison, CO—Gunnison County, LOC RWY 6, Amdt. 2
Sanford, ME—Sanford Muni, LOC RWY 07, Orig.
West Point, MS—McCharen Field, VOR/DME-B, Amdt. 4
Nashville, TN—Nashville International, VOR/DME RWY 13, Amdt. 11
Nashville, TN—Nashville International, VOR/DME RWY 20C, Amdt. 3
Nashville, TN—Nashville International, VOR/DME RWY 20R, Amdt. 5
Nashville, TN—Nashville International, NDB RWY 20R, Amdt. 5
Fort Worth, TX—Bourland Field, VOR RWY 35, Amdt. 1, CANCELLED
Fort Worth, TX—Bourland Field, VOR-A, Orig.
Fort Worth, TX—Fort Worth Alliance, ILS RWY 16, Orig.
Junction, TX—Kimble County, VOR-A, Amdt. 11
Junction, TX—Kimble County, RNAV RWY 17, Amdt. 2
Victoria, TX—Victoria Regional, VOR RWY 12L, Amdt. 12
Victoria, TX—Victoria Regional, VOR/DME RWY 30R, Amdt. 4
Victoria, TX—Victoria Regional, ILS RWY 12L, Amdt. 7
Manassas, VA—Manassas Muni/Harry P. Davis Field, ILS RWY 16L, Amdt. 1

. . . Effective November 22, 1989

San Francisco, CA—San Francisco Intl, ILS RWY 28R, Amdt. 9

. . . Effective November 21, 1989

Scottsbluff, NE—William B. Heilig Field, RNAV RWY 12, Amdt. 3

. . . Effective November 20, 1989

Vacaville, CA—Nut Tree, RNAV RWY 20, Amdt. 1

[FR Doc. 89-28936 Filed 12-11-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 524

Animal Drugs, Feeds, and Related Products; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for a new animal drug application (NADA) from Stauffer Chemical Co. to Coopers Animal Health, Inc.

EFFECTIVE DATE: December 12, 1989.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV-130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1414.

SUPPLEMENTARY INFORMATION: Coopers Animal Health, Inc., 2000 South 11th St., Kansas City, KS 66103-1438, advised FDA of the change of sponsor of NADA 44-757 from Stauffer Chemical Co., Westport, CT (formerly 1200 South 47th St., Richmond, CA 94804). ICI Americas, Inc., Wilmington, DE 19897, in lieu of the sponsor of record and as the successor in interest, advised FDA of the change on behalf of Stauffer Chemical Co., the sponsor of record. As a result of this change of sponsor, Stauffer Chemical Co. is no longer the sponsor of any approved NADA. Therefore, FDA is amending 21 CFR 510.600(c) (1) and (2) to remove the sponsor entries for Stauffer Chemical Co. and 21 CFR 524.1742(b) to reflect the sponsor change.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 524

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 524 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376).

§ 510.600 [Amended]

2. Section 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications is amended in the table in paragraph (c)(1) by removing the entry for "Stauffer Chemical Co.," and in the table in paragraph (c)(2) by removing the entry for "017032".

PART 524—OPTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

3. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 524.1742 [Amended]

4. Section 524.1742 *N/(Mercaptomethyl) phthalimide S-(0,0-dimethyl phosphorodithioate) emulsifiable liquid* is amended in paragraph (b) by removing the number "017032" and inserting in its place "017220".

Dated: December 6, 1989.

Robert C. Livingston,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 89-28950 Filed 12-11-89; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 558

Animal Drugs, Feeds, and Related Products; Tylosin, Tylosin/Sulfamethazine, Hygromycin B

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to remove those portions of the regulations reflecting approval of three new animal drug applications (NADA's) held by Cadco, Inc. One NADA provides for use of a tylosin Type A article to make Type C swine, beef cattle, and chicken feeds, the second for use of a tylosin-sulfamethazine Type A article to make Type C swine feeds, and the third for use of a hygromycin B Type A article to make Type C swine feeds. In a notice published elsewhere in this issue of the Federal Register, FDA is withdrawing approval of the NADA's.

EFFECTIVE DATE: December 22, 1989.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the Federal Register, FDA is withdrawing approval of NADA's 91-783, 99-561, and 109-635 held by Cadco, Inc. NADA 91-783 provides for use of tylosin Type A medicated article for making Type C medicated swine, beef cattle, and chicken feeds. NADA 99-561 provides for use of tylosin-sulfamethazine Type A medicated article to make Type C medicated swine feeds. NADA 109-635 provides for use of hygromycin B Type A medicated article to make Type C medicated swine feeds. This document removes the firm's drug labeler code from 21 CFR 558.274 (a)(2) and (c)(1), 558.625(b)(4), and 558.630(b)(10) to reflect withdrawal of the approvals.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

§ 558.274 [Amended]

2. Section 558.274 *Hygromycin B* is amended in paragraph (a)(2) and in the table in paragraph (c)(1) under the "Sponsor" column for entry (ii) by removing "011490,".

§ 558.625 [Amended]

3. Section 558.625 *Tylosin* is amended by removing paragraph (b)(4) and reserving it.

§ 558.630 [Amended]

4. Section 558.630 *Tylosin and sulfamethazine* is amended in paragraph (b)(10) by removing "011490,".

Dated: December 6, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 31, and 602

[T.D. 8276]

RIN 1545-AN98

Employee Business Expenses—Reporting and Withholding on Employee Business Expense Reimbursements and Allowances

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary and final regulations.

SUMMARY: This document contains temporary and final regulations concerning the taxation of and reporting and withholding on payments with respect to employee business expenses under a reimbursement or other expense allowance arrangement. These temporary regulations reflect changes to the law made by the Family Support Act of 1988. These temporary regulations will affect employees who receive payments and payors who make payments under reimbursement or other expense allowance arrangements. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the Federal Register.

EFFECTIVE DATES: The provisions of these temporary regulations under § 1.62-1T are effective for expenses paid or incurred in taxable years beginning before January 1, 1989. The income tax provisions of these temporary regulations under § 1.62-2T are effective for taxable years beginning on or after January 1, 1989, with respect to expenses paid or incurred in taxable years beginning on or after January 1, 1989. The provisions of § 1.162-17(e)(3) of these regulations are effective for taxable years beginning on or after January 1, 1989. The provisions of § 1.274-5T(g) of these regulations are effective upon publication. The provisions of § 1.162-25T of these regulations are effective upon publication. The reporting provisions of these temporary regulations under

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§ 1.6041–3(i) are effective for payments made under reimbursement or other expense allowance arrangements on or after January 1, 1989; however, a transition rule is provided under § 1.6041–3(i) effective for payments made prior to January 1, 1990. The amendments to §§ 31.3121(a)–1(h), 31.3231(e)–1, 31.3306(b)–1, and 31.3401(a)–(1)(b)(2) of these regulations are effective for amounts that are received by an employee on or after July 1, 1990, with respect to expenses paid or incurred on or after July 1, 1990. The provisions of these temporary regulations under §§ 31.3121(a)–2T, 31.3231(e)–3T, 31.3306(b)–2T, and 31.3401(a)–2T regarding withholding and payment of employment taxes are effective for payments made under reimbursement or other expense allowance arrangements on or after July 1, 1990.

FOR FURTHER INFORMATION CONTACT: Richard Pavel at 202–377–9372 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in this regulation has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1545–1148. The estimated average annual burden per recordkeeper is 0.5 hour. This estimate is an approximation of the average time expected to be necessary for a collection of information. It is based on such information as is available to the Internal Revenue Service. Individual recordkeepers may require greater or less time, depending on their particular circumstances.

For further information concerning this collection of information, and where to submit comments on this collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referenced notice of proposed rulemaking published in the Proposed Rules section of this issue of the Federal Register.

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under sections 62, 162, 274 and 6041 of the Internal Revenue Code, and to the Employment Tax Regulations (26 CFR part 31) under sections 3121, 3231, 3306, and 3401 of the Code as a result of the Family Support Act of 1988, Public Law No. 100–485.

Need For Temporary and Final Regulations

Because of the need for immediate guidance regarding the reporting and withholding requirements of these regulations, it is impracticable and contrary to the public interest to issue these temporary and final regulations with notice and public procedure under section 553(b) of title 5 of the United States Code, or subject to the effective date limitation of section 553(d) of title 5.

Explanation of Provisions

Section 62(a) of the Internal Revenue Code generally defines "adjusted gross income" as gross income minus certain deductions. These "above-the-line" deductions are allowed without regard to whether a taxpayer itemizes deductions and are not subject to the two-percent floor of section 67. Among the above-the-line deductions, section 62(a)(2)(A) allows an employee a deduction for expenses (reimbursed employee business expenses) paid by the employee, in connection with the performance of services as an employee, under a reimbursement of other expense allowance arrangement with his or her employer. In addition, the above-the-line deduction is available for reimbursement or other expense allowance arrangements maintained by an agent of the employer or by a third party for whom the employee performs a service as an employee of the employer. Throughout these regulations, such employers, agents, and third parties are referred to as "payors."

As amended, section 62(c) provides that an arrangement will not be treated as a "reimbursement or other expense allowance arrangement" for purposes of section 62(a)(2)(A) unless—

(1) The arrangement requires the employee to substantiate the expenses covered by the arrangement to the payor, and

(2) The arrangement requires the empoyee to return any amount in excess of the substantiated expenses covered under the arrangement.

Reimbursement or Other Expense Allowance Arrangements

1. Defined

For purposes of the temporary regulations, a reimbursement or other expense allowance arrangement is an arrangement that meets three requirements: (1) Business connection, (2) substantiation, and (3) returning amounts in excess of expenses.

2. Business Connection Requirement

An arrangement meets the business connection requirement under the temporary regulations if it provides reimbursements, advances, or allowances (including per diem allowances, allowances for meals and incidental expenses, and mileage allowances) for business expenses that are allowable as deductions for expenses paid or incurred by an employee in connection with the performance of services as an employee. The business connection requirement therefore requires a nexus between an amount denominated an "advance" and the business expenses that it is anticipated the employee will incur. For example, if an employer provides an employee with an "advance" of $3000 at a time when it is not anticipated that the employee will incur travel or other expenses deductible in the trade or business of being an employee, the "advance" does not meet the business connection requirement and will not be treated as paid under an accountable plan.

3. Substantiation

In order to meet the substantiation requirement, the employee must be required to substantiate the expenses covered by the arrangement to the payor. For example, to the extent employee business expenses covered by such arrangements are governed by the substantiation rules of section 274(d), the employee must meet the substantiation requirements of that section, which, for example, with respect to a travel expense, generally require substantiation of the amount, time, place and business purpose of the expense.

Under section 274(d), the Commissioner has the authority to provide simplified methods of substantiation. The Service is publishing several such simplified methods of substantiation. Under these simplified methods, known as "deemed substantiation" methods, employees are deemed to have substantiated an amount of expenses equal to the lesser of the amount of the reimbursement or the amount specified by the Service.

The methods of deemed substantiation available to employers will include methods applicable to lodging, meal and/or incidental expenses, both within and outside the continental United States, and methods applicable to reimbursement of transportation expenses. Such methods will include reimbursements paid under arrangements similar to the methods for reimbursing Federal employees. In addition, deemed substantiation methods will be available for reimbursements paid at a flat rate or under a stated schedule, such as reimbursements for lodging, meals and/or incidental expenses calculated on the basis of hours worked or miles driven.

The Service will, in a separate announcement, request suggestions from taxpayers concerning appropriate additional methods of deemed substantiation.

4. Returning Amounts in Excess of Expenses

In order to meet the requirement of returning amounts in excess of expenses, an arrangement must require the employee to return any amount in excess of the substantiated expenses covered under the arrangement. If an employee receives an advance for anticipated business expenses that exceeds the amount of such expenses actually incurred and substantiated by the employee, but the employee uses such excess to pay expenses incurred for other business expenses, the employee need not return such excess to the payor.

The temporary regulations grant the Commissioner the authority to prescribe rules under which an arrangement providing per diem allowances or mileage allowances will be treated as satisfying the requirement of returning amounts in excess of expenses, even though an employee is not required to return the portion of such an allowance that exceeds the amount of the employee's expenses which is deemed substantiated under rules prescribed under section 274(d), provided the allowance is reasonably calculated not to exceed the amount of the employee's expenses or anticipated expenses and the employee is required to return any portion of such an allowance which relates to days or miles of travel not substantiated. For example, assume a payor provides an employee an advance mileage allowance of $60, based on an anticipated 200 business miles at 30 cents-per-mile (at a time when the applicable standard mileage rate is 28 cents-per-mile), and the employee substantiates 120 business miles. Under these rules, the requirement to return excess amounts will be treated as satisfied if the employee is required to return the amount of the advance allowance that is attributable to the 80 unsubstantiated business miles ($24.00), even though the employee is not required to return the portion of the allowance ($4.80) that exceeds the amount of the employee's expenses deemed substantiated ($31.20) pursuant to rules prescribed under section 274(d).

5. Timeliness

Both the requirements of substantiation and the requirement that excess reimbursements be returned must be met within a reasonable period of time after an expense is paid or incurred. What constitutes a reasonable period of time depends on the facts and circumstances. Thus, for example, it is reasonable that an employee who is on an extended travel assignment would have a longer period to substantiate expenses and return excess amounts than an employee who undertakes a single overnight trip.

The regulations provide two safe harbor methods. Under the first, the requirements will be treated as met within a reasonable period of time if an advance is made within 30 days of when an expense is paid or incurred, an expense is substantiated within 60 days after it is paid or incurred, or an excess amount is returned to the payor within 120 days after the expense is paid or incurred. Under the second, the requirements will be treated as met within a reasonable period of time if an expense is substantiated or an amount is returned within 120 days after the payor provides a periodic statement (no less frequently than quarterly) of the amount paid under the arrangement that exceeds the expenses the employee has substantiated. Both methods are intended solely as safe harbors, and no adverse inference is intended with respect to amounts advanced, substantiated, or returned after such periods. However, for purposes of withholding, a payor may treat amounts substantiated or returned after such periods as not having been substantiated or returned within a reasonable period of time.

Reporting and Employment Taxes

The Conference Report on the Family Support Act of 1988 (H.R. Rep. No. 998, 100th Cong., 2d Sess. 202–206 (1988)) provides that the regulations and rulings regarding the reporting of employee business expense reimbursements and allowances generally are also to be revised to conform to the changes in section 62 and to subject amounts treated as paid pursuant to nonaccountable plans to income tax withholding. In addition, the legislative history provides authority to alter the relevant employment tax rules. Pursuant to the regulatory authority granted by Congress under the Family Support Act, these temporary regulations provide guidance regarding the circumstances under which travel and other expense allowance arrangements are subject to the Federal Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA), the Railroad Retirement Tax Act (RRTA), the Railroad Unemployment Repayment Tax (RURT) and the Collection of Income Tax at Source on Wages ("employment taxes"). These regulations also provide guidance with regard to reporting of such amounts on Form W–2.

Delayed effective dates are provided for the changes in the employment tax regulations. The changes in the employment tax regulations are effective for payments made under reimbursement or other expense allowance arrangements that are received by an employee on or after July 1, 1990, with respect to expenses paid or incurred on or after July 1, 1990. For reimbursements or other expense allowance payments made before July 1, 1990, or made with respect to expenses paid or incurred before July 1, 1990, the rules in existing regulations will apply. Hence, for payments made under reimbursement or other expense allowance arrangements before July 1, 1990, no withholding or employment tax liability will attach with respect to amounts paid specifically—either as advances or reimbursements—for traveling or other bona fide ordinary and necessary expenses incurred or reasonably expected to be incurred in the business of the employer. Of course, as under existing regulations, such expenses must be identified either by making a separate payment or by specifically identifying the separate amounts if both wages and expense allowances are combined in a single payment.

A delayed effective date is not provided for the amendments to the reporting requirements under section 6041. The reporting requirements are effective for payments made under reimbursement or other expense allowance arrangements on or after January 1, 1989, with respect to expenses paid or incurred on or after January 1, 1989. However, for payments made before January 1, 1990, no reporting is required if the payor has made a reasonable, good faith effort to comply with the requirements of section 62(c). In general, compliance with the provisions of prior section 1.6041–3(i) of the Income Tax Regulations will indicate such reasonable good faith effort to comply with the requirements of section 62(c). Under those regulations, reporting on form W–2 was not required if the employee was required to account and did so account to the employer for

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such expenses. See Rev. Rul. 80-62, 1980-1 C.B. 63, as modified, and Rev. Rul. 84-127, 1984-2 C.B. 246. A payor must, however, report payments made before January 1, 1990, if an arrangement (other than a per diem or mileage type arrangement) does not require the employee to substantiate expenses or to return excess amounts.

Payments Under Accountable Plans

If an arrangement meets all the requirements of the regulations, the amounts paid under the arrangement are excluded from the employee's gross income, are not required to be reported on the employee's Form W-2, and are exempt from withholding and payment of employment taxes (FICA, FUTA, RRTA, RURT, and income tax). If an arrangement meets the requirements of the regulations, but an employee fails to return amounts in excess of amounts substantiated, only the amounts not in excess of the substantiated, expenses are excluded from the employee's gross income, are not required to be reported on the employee's Form W-2, and are exempt from withholding and payment of employment taxes (FICA, FUTA, RRTA, RURT, and income tax).

Payments Under Nonaccountable Plans

If an arrangement does not meet one or more of the requirements of the regulations, all payments under the arrangement are included in the employee's gross income, are reported as wages on Form W-2, and are wages for purposes of withholding and payment of employment taxes. If an arrangements meets the requirements of the regulations, but an employee fails to return amounts in excess of amounts substantiated, such excess is included in the employee's gross income, is reported as wages on Form W-2, and is wages for purposes of withholding and payment of employment taxes. Employee business expenses that exceed the amount of the reimbursements that are excluded from the employee's gross income are not allowable as a deduction in computing adjusted gross income. Rather, such employee business expenses are deductible by the employee in computing taxable income only if the employee itemizes deductions, and only to the extent that the total of such expenses and other miscellaneous itemized deductions exceeds two percent of the taxpayer's adjusted gross income.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Prodecure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking for the regulations was submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Richard Pavel, Office of the Assistant Chief Counsel (Employee Benefits and Exempt Organizations), Internal Revenue Service. However, personnel from other offices of the Service and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1.61-1 through 1.281-4

Deductions, Exemptions, Income taxes, Taxable income.

26 CFR Part 31

Employment taxes, Income taxes, Lotteries, Railroad retirement, Social Security, Unemployment tax, Withholding.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 31, and 602 are amended as follows:

PART 1—[AMENDED]

Paragraph 1. The authority for part 1 is amended by adding the following citations:

Authority: 26 U.S.C. 7805 * * * Secs. 1.62-1T and 1.62-2T also issued under 26 U.S.C. 62 * * * Sec. 1.6041-3 also issued under 26 U.S.C. 62.

Par. 2. Section 1.62-1T is amended by revising paragraph (c)(2) and by inserting a new sentence before the first sentence of paragraph (f), to read:

§ 1.62-1T Adjusted gross income (temporary).

* * * * *

(c) *Deductions allowable in computing adjusted gross income.* * * *

(2) Deductions allowable under part VI, subchapter B, chapter 1 of the Code, (section 161 and following) that consist of expenses paid or incurred by the taxpayer in connection with the performance of services as an employee under an express reimbursement or other expense allowance arrangement (as defined in paragraph (f) of this section or § 1.62-2T, whichever is applicable) with his or her employer;

* * * * *

(f) *Reimbursement or other expense allowance arrangement.* This paragraph (f) applies to expenses paid or incurred in taxable years beginning before January 1, 1990. * * *

* * * * *

Par. 3. Section 1.62-2T is added immediately following 1.62-1T to read as follows:

§ 1.62-2T Reimbursements and other expense allowance arrangements (Temporary).

(a) *Table of contents.* The contents of this section are as follows:

(a) Table of contents.
(b) Scope.
(c) Reimbursement or other expense allowance arrangement.
(1) Defined.
(2) Accountable plans.
(i) In general.
(ii) Special rule for failure to return excess.
(3) Nonaccountable plans.
(i) In general.
(ii) Special rule for failure to return excess.
(4) Treatment of payments under accountable plans.
(5) Teatment of payments under nonaccountable plans.
(d) Business connection.
(e) Substantiation.
(1) In general.
(2) Expenses governed by section 274(d).
(3) Expenses not governed by section 274(d).
(f) Returning amounts in excess of expenses.
(1) In general.
(2) Per diem or mileage allowances.
(g) Reasonable period.
(1) In general.
(2) Safe harbors.
(i) Fixed date method.
(ii) Periodic payment method.
(h) Timing of withholding.
(i) Application.
(j) Cross references.
(k) Effective date.

(b) *Scope.* For purposes of determining "adjusted gross income," section 62(a)(2)(A) allows an employee a deduction for expenses allowed by part VI (section 161 and following), subchapter B, chapter 1 of the Code, paid by the employee, in connection with the preformance of services as an employee, under a reimbursement or other expense allowance arrangement with a payor (the employer, its agent, or a third party). Section 62(c) provides that an arrangement will not be treated as a reimbursement or other expense allowance arrangement for purposes of section 62(a)(2)(A) if—

(1) Such arrangement does not require the employee to substantiate the expenses covered by the arrangement to the payor, or (2) Such arrangement provides the employee the right to retain any amount in excess of the substantiated expenses covered under the arrangement.

This section prescribes rules relating to the requirements of section 62(c).

(c) *Reimbursement or to each expense allowance arrangement"*—(1) *Defined.* For purposes of §§ 1.62-1T and 1.62-2T, the phrase "reimbursement or other expense allowance arrangement" means an arrangement that meets the requirements of paragraphs (d) (business connection), (e) (substantiation), and (f) (returning amounts in excess of expenses) of this section. A payor may have more than one arrangement with respect to a particular employee, depending on the facts and circumstances.

(2) *Accountable plans*—(i) *In general.* Except as provided in paragraph (c)(2)(ii) of this section, if an arrangement meets the requirements of paragraphs (d), (e), and (f) of this section, all amounts paid under the arrangement are treated as paid under an "accountable plan."

(ii) *Special rule for failure to return excess.* If an arrangement meets the requirements of paragraphs (d), (e), and (f) of this section, but the employee fails to return, within a reasonable period of time, any amount in excess of the amount of the expenses substantiated in accordance with paragraph (e), only the amounts paid under the arrangement that are not in excess of the substantiated expenses are treated as paid under an accountable plan.

(3) *Nonaccountable plans*—(i) *In general.* If an arrangement does not satisfy one or more of the requirements of paragraph (d), (e), or (f) of this section, all amounts paid under the arrangement are treated as paid under a "nonaccountable plan."

(ii) *Special rule for failure to return excess.* If an arrangement meets the requirements of paragraphs (d), (e), and (f) of this section, but the employee fails to return, within a reasonable period of time, any amount in excess of the amount of the expenses substantiated in accordance with paragraph (e), the amounts paid under the arrangement that are in excess of the substantiated expenses are treated as paid under a nonaccountable plan.

(4) *Treatment of payments under accountable plans.* Amounts treated as paid under an accountable plan are excluded from the employee's gross income, are not required to be reported on the employee's Form W-2, and are exempt from the withholding and payment of employment taxes (Federal Insurance Contributions Act (FICA), Federal Unemployment Tax Act (FUTA), Railroad Retirement Tax Act (RRTA), Railroad Unemployment Repayment Tax (RURT), and income tax). See paragraph (j) of this § 1.62-2T for cross references.

(5) *Treatment of payments under nonaccountable plans.* Amounts treated as paid under a nonaccountable plan are included in the employee's gross income, must be reported to the employee on Form W-2, and are subject to withholding and payment of employment taxes (FICA, FUTA, RRTA, RURT, and income tax). Expenses attributable to amounts included in the employee's gross income may be deducted, provided the employee can substantiate the full amount of his or her expenses (i.e., the amount of the expenses, if any, the reimbursement for which is treated as paid under an accountable plan as well as those for which the employee is claiming the deduction) in accordance with § 1.274-5T or § 1.162-17, but only as a miscellaneous itemized deduction subject to the limitations applicable to such expenses (e.g., the 80-percent limitation on meal and entertainment expenses provided in section 274(n) and the 2-percent floor provided in section 67).

(d) *Business connection.* An arrangement meets the requirements of this paragraph (d) if it provides advances, allowances (including per diem allowances, allowances for meals and incidental expenses, and mileage allowances), or reimbursements for business expenses that are allowable as deductions by part VI (section 161 and the following), subchapter B, chapter 1 of the Code, and that are paid or incurred by the employee in connection with the performance of services as an employee. The payment may be actually received from the employer, its agent, or a third party for whom the employee performs a service as an employee of the employer and may include amounts charged directly or indirectly to the payor through credit card systems or otherwise. In addition, if both wages and the reimbursement or other expense allowance are combined in a single payment, the reimbursement or other expense allowance must be identified either by making a separate payment or by specifically identifying the amount of the reimbursement or other expense allowance.

(e) *Substantiation*—(1) *In general.* An arrangement meets the requirements of this paragraph (e) if it requires each business expense to be substantiated to the payor in accordance with paragraph (e)(2) or (e)(3) of this section, whichever is applicable, within a reasonable period of time. See § 1.274-5T or § 1.162-17.

(2) *Expenses governed by section 274(d).* An arrangement that reimburses travel, entertainment, use of a passenger automobile or other listed property, or other business expenses governed by section 274(d) meets the requirements of this paragraph (e)(2) if information sufficient to satisfy the substantiation requirements of section 274(d) and the regulations thereunder is submitted to the payor. See § 1.274-5T. Under section 274(d), information sufficient to substantiate the requisite elements of each expenditure or use must be submitted to the payor. For example, with respect to travel away from home, § 1.274-5T(b)(2) requires that information sufficient to substantiate the amount, time, place, and business purpose of the expense must be submitted to the payor. Similarly, with respect to use of a passenger automobile or other listed property, § 1.274-5T(b)(6) requires that information sufficient to substantiate the amount, time, use, and business purpose of the expense must be submitted to the payor. See § 1.274-5T(g), however, which grants the Commissioner authority to prescribe rules permitting the amount of certain expenses to be deemed substantiated to the payor (in lieu of substantiating the actual amount of such expenses) where an arrangement provides for a reimbursement, a per diem allowance, or a mileage allowance for travel away from home or transportation expenses. See also § 1.274-5T(j), which grants the Commissioner the authority to establish a method under which a taxpayer may elect to use a specified amount for meals while traveling away from home in lieu of substantiating the actual cost of meals. Substantiation of the amount of a business expense in accordance with rules prescribed pursuant to the authority granted by § 1.274-5T(g) or § 1.274-5T(j) will be treated as substantiation of the amount of such expense for purposes of this section.

(3) *Expenses not governed by section 274(d).* An arrangement that reimburses business expenses not governed by section 274(d) meets the requirements of this paragraph (e)(3) if information is submitted to the payor sufficient to enable the payor to identify the specific nature of each expense and to conclude that the expense is attributable to the payor's business activities. Therefore,

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each of the elements of an expenditure or use must be substantiated to the payor. It is not sufficient if an employee merely aggregates expenses into broad categories (such as "travel") or reports individual expenses through the use of vague, nondescriptive terms (such as "miscellaneous business expenses"). See § 1.162-17(b).

(f) *Returning amounts in excess of expenses*—(1) *In general.* Except as provided in paragraph (f)(2) of this section, an arrangement meets the requirements of this paragraph (f) if it requires the employee to return to the payor within a reasonable period of time any amount paid under the arrangement in excess of the expenses substantiated in accordance with paragraph (e) of this section. The determination of whether an arrangement requires an employee to return amounts in excess of substantiated expenses will depend on the facts and circumstances. An arrangement whereby money is advanced to an employee to defray expenses will be treated as satisfying the requirements of this paragraph (f) only if the amount of money advanced is reasonably calculated not to exceed the amount of anticipated expenditures, the advance of money is made on a day within a reasonable period of the day that the anticipated expenditures are paid or incurred, and any amounts in excess of the expenses substantiated in accordance with paragraph (e) are required to be returned to the payor within a reasonable period of time after the advance is received.

(2) *Per diem or mileage allowances.* The Commissioner may, in his discretion, prescribe rules in pronouncements of general applicability under which a reimbursement or other expense allowance arrangement that provides per diem allowances providing for ordinary and necessary expenses of traveling away from home (exclusive of transportation costs to and from destination) or mileage allowances providing for ordinary and necessary expenses of local travel and transportation while traveling away from home will be treated as satisfying the requirements of this paragraph (f), even though the arrangement does not require the employee to return the portion of such an allowance that exceeds the amount of the employee's expenses deemed substantiated pursuant to rules prescribed under section 274(d), provided the allowance is reasonably calculated not to exceed the amount of the employee's expenses or anticipated expenses and the employee is required to return to the payor within a reasonable period of time any portion of such allowance which relates to days or miles of travel not substantiated in accordance with paragraph (e) of this section.

(g) *Reasonable period*—(1) *In general.* The determination of a reasonable period of time will depend on the facts and circumstances.

(2) *Safe harbors*—(i) *Fixed date method.* An advance made within 30 days of when an expense is paid or incurred, an expense substantiated to the payor within 60 days after it is paid or incurred, or an amount returned to the payor within 120 days after an expense is paid or incurred will be treated as having occurred within a reasonable period of time.

(ii) *Periodic statement method.* If a payor provides employees with periodic statements (no less frequently than quarterly) stating the amount, if any, paid under the arrangement in excess of the expenses the employee has substantiated in accordance with paragraph (e) of this section, and requesting the employee to substantiate any additional business expenses that have not yet been substantiated (whether or not such expenses related to the expenses with respect to which the original advance was paid) and/or to return any amounts remaining unsubstantiated within 120 days of the statement, an expense substantiated or an amount returned within that period will be treated as being substantiated or returned within a reasonable period of time.

(h) *Timing of withholding.* If the expenses covered under an arrangement are not substantiated to the payor in accordance with paragraph (e) of this section within a reasonable period of time or if any amounts in excess of the substantiated expenses are not returned to the payor in accordance with paragraph (f) of this section within a reasonable period of time, the amount which is treated as paid under a nonaccountable plan under paragraph (c)(3) of this section is subject to withholding and payment of employment taxes no later than the first payroll period following the end of the reasonable period. A payor may treat any amount not substantiated or returned within the periods specified in paragraph (g)(2) of this section as not substantiated or returned within a reasonable period of time. See paragraph (j) of this § 1.62-2T for cross references.

(i) *Application.* The requirements of paragraphs (d) (business connection), (e) (substantiation), and (f) (returning amounts in excess of expenses) of this section will be applied on an employee-by-employee basis. Thus, for example, the failure by one employee to substantiate expenses under an arrangement in accordance with paragraph (e) will not cause amounts paid to other employees to be treated as paid under a nonaccountable plan.

(j) *Cross references.* For employment tax regulations relating to reimbursement and expense allowance arrangements, see §§ 31.3121(a)-1(h), 31.3231(e)-1(a)(3)(iv), 31.3306(b)-1(h), and 31.3401(a)-(1)(b)(2), which apply to payments made under reimbursement or other expense allowance arrangements received by an employee on or after July 1, 1990 with respect to expenses paid or incurred on or after July 1, 1990. For reporting requirements, see § 1.6041-3(i), which generally applies to payments made under reimbursement or other expense allowance arrangements received by an employee on or after January 1, 1989 with respect to expenses paid or incurred on or after January 1, 1989.

(k) *Effective date.* This section applies to payments made under reimbursement or other expense allowance arrangements received by an employee in taxable years of the employee beginning on or after January 1, 1989, with respect to expenses paid or incurred in taxable years beginning on or after January 1, 1989.

Par. 4. In § 1.162-17, a new paragraph (e)(3) is added, to read as follows:

§ 1.162-17 Reporting and substantiation of certain business expenses of employees.

* * * * *

(e) *Applicability.* * * *

(3) For taxable years beginning on or after January 1, 1989, the provisions of this section are superseded by the regulations under section 62(c) to the extent this section is inconsistent with those regulations. *See* § 1.62-2T.

Par. 5. Paragraph (b) of § 1.162-25T is amended by removing the first sentence and adding in its place three new sentences to read as follows:

§ 1.162-25T Deductions with respect to noncash fringe benefits (temporary).

* * * * *

(b) *Employee.* If an employer provides the use of a vehicle (as defined in § 1.61-21(e)(2)) to an employee as a noncash fringe benefit and includes the entire value of the benefit in an employee's gross income without taking into account any exclusion for a working condition fringe allowable under section 132 and the regulations thereunder, the employee may deduct that value multiplied by the percentage of the total use of the vehicle that is in connection with the employer's trade or business ("business value"). For taxable years beginning before January 1, 1990, the employee may deduct the business value from gross income in determining adjusted gross income. For taxable years beginning on or after January 1, 1990, the employee may deduct the business value only as a miscellaneous itemized deduction in determining taxable income, subject to the 2-percent floor provided in section 67. * * *

* * * * *

§ 1.274-5T [Amended]

Par. 6. Paragraph (g) of § 1.274-5T is amended by adding the words "in pronouncements of general applicability" immediately following the word "rules" in the first sentence, effective upon publication.

Par. 7. in § 1.6041-3, paragraph (i) is revised to read as follows:

§ 1.6041-3 Payments for which no return of information is required under section 6041.

* * * * *

(i)(1) *In general.* Payments made under reimbursement or other expense allowance arrangements that meet the requirements of section 62(c) of the Code and § 1.62-2T, that do not exceed the amount of the expenses substantiated (i.e., amounts which are treated as paid under an accountable plan), and that are received by an employee on or after January 1, 1989, with respect to expenses paid or incurred on or after January 1, 1989;

(2) *Transition rule.* Payments made under reimbursement or other expense allowance arrangements that are received by an employee on or after January 1, 1989, but prior to January 1, 1990, to the extent that the employee is required to account (within the meaning of the term "account" as set forth in § 1.162-17(b)(4) or § 1.274-5T(f)(4), whichever is applicable) and does so account to the payor for such expenses, provided the payor has made a reasonable, good faith effort to comply with the requirements of section 62(c). In general, compliance with the provisions of this section, as in effect for payments made under reimbursement or other expense allowance arrangements that were received by an employee before January 1, 1989, with respect to expenses paid or incurred before January 1, 1989, will constitute such reasonable good faith compliance. In no event, however, will reasonable good faith compliance exist if a payor fails to report payments made under an arrangement (other than a per diem or mileage allowance type arrangement) under which an employee is not required to substantiate expenses paid or incurred or is not required to return amounts in excess of the substantiated expenses;

* * * * *

PART 31—[AMENDED]

Par. 8. The authority for part 31 is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * * **Secs.** 31.3121(a)-1, 31.3231(e)-1, 31.3306(b)-1, and 31.3401(a)-1 also issued under 26 U.S.C. 62.

Par. 9. In § 31.3121(a)-1, paragraph (h) is amended by adding a sentence at the end to read as follows:

§ 31.3121(a)-1 Wages.

* * * * *

(h) * * * For amounts that are received by an employee on or after July 1, 1990, with respect to expenses paid or incurred on or after July 1, 1990, see § 31.3121(a)-2T.

* * * * *

Par. 10. Section 31.3121(a)-2T is added to read as follows:

§ 31.3121(a)-2T Reimbursement and other expense allowance amounts.

(a) *When excluded from wages.* If a reimbursement or other expense allowance arrangement meets the requirements of section 62(c) of the Code and § 1.62-2T and the expenses are substantiated within a reasonable period of time, payments made under the arrangement that do not exceed the substantiated expenses are treated as paid under an accountable plan and are not wages. In addition, if both wages and the reimbursement or other expense allowance are combined in a single payment, the reimbursement or other expense allowance must be identified either by making a separate payment or by specifically identifying the amount of the reimbursement or other expense allowance.

(b) *When included in wages.* If a reimbursement or other expense allowance arrangement does not satisfy the requirements of section 62(c) and § 1.62-2T (e.g., the arrangement does not require expenses to be substantiated or require amounts in excess of the substantiated expenses to be returned), all amounts paid under the arrangement are treated as paid under a nonaccountable plan, are included in wages, and are subject to withholding and payment of employment taxes when paid. If an arrangement satisfies the requirements of section 62(c) and § 1.62-2T, but the expenses are not substantiated within a reasonable period of time or amounts in excess of the substantiated expenses are not returned within a reasonable period of time, the amount paid under the arrangment in excess of the substantiated expenses is treated as paid under a nonaccountable plan, is included in wages, and is subject to withholding and payment of employment taxes no later then the first payroll period following the end of the reasonable period.

(c) *Effective date.* This section applies to payments made under reimbursement or other expense allowance arrangements received by an employee on or after July 1, 1990, with respect to expenses paid or incurred on or after July 1, 1990.

Par. 11. In § 31.3231(e)-1, paragraph (a)(3)(iv) is amended by adding a sentence at the end to read as follows:

§ 31.3231(e)-1 Compensation.

(a) * * *

(iv) * * * For amounts that are received by an employee on or after July 1, 1990, with respect to expenses paid or incurred on or after July 1, 1990, see § 31.3231(e)-3T.

Par. 12 Section 31.3231(e)-3T is added to read as follows:

§ 31.3231(e)-3T Reimbursement and other expense allowance amounts.

(a) *When excluded from compensation.* If a reimbursement or other expense allowance arrangement meets the requirements of section 62(c) of the Code and § 1.62-2T and the expenses are substantiated within a reasonable period of time, payments made under the arrangement that do not exceed the substantiated expenses are treated as paid under an accountable plan and are not compensation. In addition, if both wages and the reimbursement or other expense allowance are combined in a single payment, the reimbursement or other expense allowance must be identified either by making a separate payment or by specifically identifying the amount of the reimbursement or other expense allowance.

(b) *When included in compensation.* If a reimbursement or other expense allowance arrangement does not satisfy the requirements of section 62(c) and § 1.62-2T (e.g., the arrangement does not require expenses to be substantiated or require amounts in excess of the substantiated expenses to be returned), all amounts paid under the arrangement are treated as paid under a nonaccountable plan, are included in compensation, and are subject to withholding and payment of employment taxes when paid. If an

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arrangement satisfies the requirements of section 62(c) and § 1.62–2T, but the expenses are not substantiated within a reasonable period of time or amounts in excess of the substantiated expenses are not returned within a reasonable period of time, the amount paid under the arrangement in excess of the substantiated expenses is treated as paid under a nonaccountable plan, is included in compensation, and is subject to withholding a payment of employment taxes no later than the first payroll period following the end of the reasonable period.

(c) *Effective date.* This section applies to payments made under reimbursement or other expense allowance arrangements received by an employee on or after July 1, 1990, with respect to expenses paid or incurred on or after July 1, 1990.

Par. 13. In § 31.3306(b)–1, paragraph (h) is amended by adding a sentence at the end to read as follows:

§ 31.3306(b)–1 Wages.

* * * * *

(h) * * * For amounts that are received by an employee on or after July 1, 1990, with respect to expenses paid or incurred on or after July 1, 1990, see § 31.3306(b)–2T.

* * * * *

Par. 14 Section 31.3306(b)–2T is added to read as follows:

§ 31.3306(b)–2T Reimbursement and other expense allowance amounts.

(a) *When excluded from wages.* If a reimbursement or other expense allowance arrangement meets the requirements of section 62(c) of the Code and § 1.62–2T and the expenses are substantiated within a reasonable period of time, payments made under the arrangement that do not exceed the substantiated expenses are treated as paid under an accountable plan and are not wages. In addition, if both wages and the reimbursement or other expense allowance are combined in a single payment, the reimbursement or other expense allowance must be identified either by making a separate payment or by specifically identifying the amount of the reimbursement or other expense allowance.

(b) *When included in wages.* If a reimbursement or other expense allowance arrangement does not satisfy the requirements of section 62(c) and § 1.62–2T (e.g., the arrangement does not require expenses to be substantiated or require amounts in excess of the substantiated expenses to be returned), all amounts paid under the arrangement are treated as paid under a nonaccountable plan, are included in wages, and are subject to withholding and payment of employment taxes when paid. If an arrangement satisfies the requirements of section 62(c) and § 1.62–2T, but the expenses are not substantiated within a reasonable period of time or amounts in excess of the substantiated expenses are not returned within a reasonable period of time, the amount paid under the arrangement in excess of the substantiated expenses is treated as paid under a nonaccountable plan, is included in wages, and is subject to withholding and payment of employment taxes no later than the first payroll period following the end of the reasonable period.

(c) *Effective date.* This section applies to payments made under reimbursement or other expense allowance arrangements received by an employee on or after July 1, 1990, with respect to expenses paid or incurred on or after July 1, 1990.

Par. 15. In § 31.3401(a)–1, paragraph (b)(2) is amended by adding a sentence at the end to read as follows:

§ 31.3401(a)–1 Wages.

(b) * * *

(2) *Traveling and other expenses.* * * * For amounts that are received by an employee on or after July 1, 1990, with respect to expenses paid or incurred on or after July 1, 1990, see § 31.3401(a)–2T.

* * * * *

Par. 16 Section 31.3401(a)–2T is added to read as follows:

§ 31.3121(a)–2T Reimbursements and other expense allowance amounts.

(a) *When excluded from wages.* If a reimbursement or other expense allowance arrangement meets the requirements of section 62(c) of the Code and § 1.62–2T and the expenses are substantiated within a reasonable period of time, payments made under the arrangement that do not exceed the substantiated expenses are treated as paid under an accountable plan and are not wages. In addition, if both wages and the reimbursement or other expense allowance are combined in a single payment, the reimbursement or other expense allowance must be identified either by making a separate payment or by specifically identifying the amount of the reimbursement or other expense allowance.

(b) *When included in wages.* If a reimbursement or other expense allowance arrangement does not satisfy the requirements of section 62(c) and § 1.62–2T (e.g., the arrangement does not require expenses to be substantiated or require amounts in excess of the substantiated expenses to be returned), all amounts paid under the arrangement are treated as paid under a nonaccountable plan, are included in wages, and are subject to withholding and payment of employment taxes when paid. If an arrangement satisfies the requirements of section 62(c) and § 1.62–2T, but the expenses are not substantiated within a reasonable period of time or amounts in excess of the substantiated expenses are not returned within a reasonable period of time, the amount paid under the arrangement in excess of the substantiated expenses is treated as paid under a nonaccountable plan, is included in wages, and is subject to withholding and payment of employment taxes no later than the first payroll period following the end of the reasonable period.

(c) *Withholding rate.* Employers may add any payments made under reimbursement or other expense allowance arrangements that are subject to income tax withholding to the employee's regular wages for a payroll period and compute withholding taxes on the total. Alternatively, the employer may withhold income tax from the reimbursement or other expense allowance at the flat 20-percent rate applicable to supplemental wages, provided the employer withholds income tax from the employee's regular wages and provided the reimbursement or allowance is paid separately (or separately identified if wages and reimbursement amounts are combined in a single payment). See § 31.3402(g)–1 regarding supplemental wage payments.

(d) *Effective date.* This section applies to payments made under reimbursement or other expense allowance arrangements received by an employee on or after July 1, 1990, with respect to expenses paid or incurred on or after July 1, 1990.

PART 602—[AMENDED]

Par. 17. The authority for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101(c) [Amended]

Par. 18. Section 602.101(c) is revised by inserting in the appropriate places in the table "1.62–2 . . . 1545–1148".

Dated: December 4, 1989.

Fred T. Goldberg,

Commissioner of Internal Revenue.

Approved:

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 89–28941 Filed 12–7–89; 12:20 pm]

BILLING CODE 4830–01–M

DEPARTMENT OF EDUCATION

34 CFR Part 255

RIN 1810–AA53

Indian Education; Gifted and Talented Program

AGENCY: Department of Education.

ACTION: Final regulation.

SUMMARY: The Secretary amends 34 CFR part 255 to add an Office of Management and Budget (OMB) control number to a section of the regulations. The section contains information collection requirements approved by OMB. The Secretary takes this action to inform the public that these requirements have been approved.

EFFECTIVE DATE: Section 255.31 and this amendment are effective December 12, 1989.

FOR FURTHER INFORMATION CONTACT: Ms. Julia Lesceux, Indian Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2177 (Mail Stop 6267), Washington, DC, 20202. Telephone: (202) 732–1938.

SUPPLEMENTARY INFORMATION: On May 11, 1989, final regulations governing the Gifted and Talented Program were published as the new 34 CFR part 255 (54 FR 20483). The effective date of § 255.31 was delayed until information collection requirements contained in that section were approved by OMB under the Paperwork Reduction Act of 1980, as amended. OMB has approved the information collection requirements, and § 255.31 is now effective.

Waiver of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the publication of OMB control numbers is purely technical and does not establish substantive policy. Therefore, the Secretary has determined, under 5 U.S.C. 553(b)(B), that proposed rulemaking is unnecessary and contrary to the public interest and that a delayed effective date is not required under 5 U.S.C. 553 (d)(3).

List of Subjects in 34 CFR Part 255

Education, Elementary and secondary education, Grant programs-education, Grant programs-Indians, Indians-education, Reporting and recordkeeping requirements.

Dated: December 6, 1989.

Lauro F. Cavazos,

Secretary of Education.

(Catalog of Federal Domestic Assistance No. 84.061, Indian Education—Special Program and Projects)

The Secretary amends part 255 of title 34 of the Code of Federal Regulations as follows:

PART 255—GIFTED AND TALENTED PROGRAM

1. The authority citation for part 255 continues to read as follows:

Authority: 25 U.S.C. 2624(c), unless otherwise noted.

§ 255.31 [Amended]

2. Section 255.31 is amended by adding "(Approved by the Office of Management and Budget under control number 1810–0021)" following the section.

[FR Doc. 89–28929 Filed 12–11–89; 8:45 am]

BILLING CODE 4000–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3695–4; TN–078]

Approval and Promulgation of Implementation Plans; Tennessee: PM_{10} Revisions for Nashville/Davidson County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On December 14, 1988, the State of Tennessee submitted Board Orders 10–88, 88–11 and 88–15 as revisions to the Nashville/Davidson County portion of its State Implementation Plan (SIP) for particulate matter. The revisions became State-effective on June 8, 1988, and November 16, 1988. The revisions were adopted pursuant to the requirements of section 110 of the Clean Air Act to provide for the attainment of EPA's new particulate matter standards, known as "PM_{10}" standards. EPA proposed approval of these revisions on June 12, 1989 (54 FR 24913) and no comments were received.

DATES: This rule will become effective on January 11, 1990.

ADDRESSES: Copies of the State's submittal are available for review during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Tennessee Department of Health and Environment, Division of Air Pollution Control, 4th Floor, Customs House, 701 Broadway, Nashville, Tennessee 37219–5403.

Metropolitan Health Department, Bureau of Pollution Control, 311–23rd Ave. North, Nashville, Tennessee 37203.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalyn D. Hughes, Air Programs Branch, EPA Region IV, at the above address and telephone number (404) 347–2864.

SUPPLEMENTARY INFORMATION: Pursuant to the 1977 amendments to the Clean Air Act, EPA, on July 1, 1987 (52 FR 24634), promulgated revised primary and secondary National Ambient Air Quality Standards (NAAQS) for particulate matter by replacing the total suspended particulate matter standard with a standard that included only those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers. The particles are referred to as PM_{10}.

The PM_{10} standards cover a size range of particles that is different than the range of particles covered by the former particulate standard for total suspended particulates (TSP). This means that states must develop and implement PM_{10} control programs. The process being used generally follows the basic approach used in the development and implementation of TSP control programs. First, EPA evaluated the probabilities of PM_{10} air quality levels predicted from actual TSP data and concluded that Nashville/Davidson County was a Group III area, which means that the existing particulate matter control strategy is believed to be largely adequate to attain and maintain the PM_{10} standards. However, the Nashville/Davidson County portion of the Tennessee SIP still needs to be revised to address the PM_{10} NAAQS in the following ways:

a. To include ambient air quality standards for PM_{10} at least as stringent as the NAAQS,

b. To trigger preconstruction review for new or modified sources which would emit significant amounts of either PM or PM_{10} emissions,

c. To invoke the emergency episode plan to prevent PM_{10} concentrations from reaching the significant harm level of 600 ug/m^3,

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d. To meet ambient PM_{10} monitoring requirements of 40 CFR Part 58, and

e. To meet the requirements of 40 CFR 51.322 and 51.323 to report actual annual emissions of PM_{10} (beginning with emissions for 1988) for point sources emitting 100 tons per year or more.

In response to the above requirements, Nashville/Davidson County revised their regulations. The State of Tennessee adopted the Nashville/Davidson County regulations in Board Orders 10–88, 88–11, and 88–15 and submitted those Board Orders as revisions to the SIP. EPA proposed approval of these revisions on June 12, 1989 (54 FR 24913) and no comments were received. The definitions for "PM_{10}," "PM_{10} emissions," "particulate matter," and "total suspended particulates" have been added. The old definition for "particulate matter" has been deleted in its entirety and replaced with the federal definition.

In section 4–1–6, Incinerator Regulations, paragraph (f) was added. This paragraph exempts certain incinerators from 4–1–6 if they are covered by another regulation. This revision would allow Nashville to adopt additional regulations for specific classifications of incinerators.

In section 4–1–16, Registration and Permits, several housekeeping revisions have been made. No action will be taken on the deletion of subsection (c)(2) because it deals with operating permit regulations. Subsection (f)(3), has been revised to allow Nashville to adopt additional regulations for specific classifications of incinerators.

Regulation No. 3, New Source Review, has also been revised. Several definitions in section 3–1, Definitions, have been revised. Paragraph (dd), "Secondary Emissions," was revised so that it does not exclude vessel emissions which occur during loading/unloading at the facility or which are dockside emissions. In paragraph (ee), "Significant," subparagraph (1) was revised to add PM_{10} when referencing net emissions increase or a source's potential to emit. Subparagraph (2) limits the emissions impact on a nonattainment area. The limits for particulate matter and carbon monoxide were deleted and replaced with limits for sulfur dioxide, nitrogen dioxide, carbon monoxide and particulate matter. The definition "Volatile Organic Compound (VOC)" was added to section 3–1 as paragraph (gg). This definition has already been approved as part of Regulation No. 7, Regulation for Control of Volatile Organic Compounds, on January 27, 1989, at 54 FR 4020.

Several sentences were added to section 3–2, Registration and Permits, paragraph (b)(2)(ii)(A), to explain if and how emissions from source shutdowns or curtailments in production or operating hours could be used for offsets. Added to paragraph (e) was a brief description of the procedural requirements of 40 CFR 51.102 which is to be used for construction permit applications for new major sources or major modifications.

Paragraph (a)(1) of section 3–3, Prevention of Significant Deterioration (PSD) Review, pertains to the list of sources which have the potential to emit or emit 100 tons per year of any regulated air pollutant that is subject to PSD. The phrase, "any regulated air pollutant," has been deleted and replaced with "any pollutant subject to regulation under the Federal Clean Air Act."

Since EPA has not developed any maximum increase in emissions over the baseline concentration for particulate matter, Nashville revised paragraph (e)(2)(i) of section 3–3. The title of part (i) has been changed from "Particulate Matter" to "Total Suspended Particulate."

Section 3–3(f) has been updated to reference modeling guidance Supplement A (1987).

The de minimis air quality level for PM_{10} has been added to section 3–3(g)(6)(i). Also, the de minimis levels for lead, beryllium, and hydrogen sulfide have been revised to correspond to the federal levels.

Paragraphs g (7) and (8) were added to section 3–3. These paragraphs reference monitoring requirements for PM_{10}.

Emergency episode criteria were not included in this submittal. Nashville is in the process of developing those regulations. Action will be taken on the emergency episode criteria when they are submitted.

Final Action: EPA has reviewed the submitted material and found it to meet the requirements of 40 CFR part 51. Therefore, EPA is today approving the Tennessee PM_{10} revisions for Nashville/Davidson County.

For further information on EPA's analysis, the reader may consult a Technical Support Document which contains a detailed review of the materials submitted. This is available at the EPA address given above.

Under section 307(b)(1) of the Act, petition for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 12, 1990. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

"Nothing in this section should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements."

List of Subjects in 40 CFR Part 52

Air pollution control, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of Tennessee was approved by the Director of the Federal Register on July 1, 1982.

Dated: September 15, 1989.

Joe R. Franzmathes,

Acting Regional Administrator.

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

Subpart RR—Tennessee

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.2220 is amended by adding paragraph (c)(97) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(97) Revisions to the Nashville/Davidson County portion of the Tennessee SIP which included PM_{10} regulations (Board Orders 10–88 and 88–15) submitted on December 14, 1988.

(i) *Incorporation by reference.* (A) Revisions to Nashville/Davidson County Regulation No. 3, "New Source Review" and Board Order 10–88 approved June 8, 1988. The following regulations are approved:

Section 3–1–Definition—(dd), (ee) and (gg)

Section 3–2–Registration and Permits—(b)(2) and (e)

Section 3–3–Prevention of Significant Deterioration (PSD) Review—(a)(1), (e)(2), (f), (g)(6), (g)(7) and (g)(8)

(B) Revisions to Nashville/Davidson County Metropolitan Code Chapter 4 Subchapter 1 "Air Pollution Control" and Board Order 88–15 approved on November 16, 1988. The following regulations are approved:

Section 4–1–1–Definitions—PM_{10} Emissions, Particulate Matter Emissions, Total Suspended Particulate, and Particulate Matter

Section 4–1–6–Incinerator Regulations—(f)

Section 4–1–16–Registration and Permits—(c) and f(3)

Section 4–1–16–Ambient Air Quality Standards

[FR Doc. 89–28963 Filed 12–11–89; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 8360

RIN 1004–AB60

Public Health, Safety and Comfort; Conduct of Visitors on Public Lands; Amendment of Regulations on Rules of Conduct of Visitors to the Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule, correction.

SUMMARY: The Bureau of Land Management is correcting typographical errors made in the Authority Citation in the final rule establishing criminal penalties for illegal cultivation, manufacture, distribution, trafficking, or possession of controlled substances on public lands, which was published in the Federal Register on May 19, 1989 (54 FR 21623).

FOR FURTHER INFORMATION CONTACT: Walter Johnson, (202) 653–8815.

On page 21624, in the Federal Register of May 19, 1989, in the first column, amendatory instruction 1 and the authority citation are corrected to read as follows:

1. The authority citation for 43 CFR part 8360 continues to read as follows:

Authority: 43 U.S.C. 1701 et seq., 43 U.S.C. 315a, 16 U.S.C. 1281c, 16 U.S.C. 670 *et seq.*, 16 U.S.C. 4601–6a, 16 U.S.C. 1241 *et seq.*

Dated: November 28, 1989.

Scott Sewell,

Deputy Assistant Secretary of the Interior.

[FR Doc. 89–28956 Filed 12–11–89; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 172 and 178

[Docket No. HM–189H, Amdt. Nos. 172–120 and 178–95]

Hazardous Materials Regulations; Editorial Corrections and Clarifications

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation (DOT).

ACTION: Final rule; corrections.

SUMMARY: This document makes certain corrections to a final rule issued under Docket HM–189H, which was published in the Federal Register on Friday, September 29, 1989 [54 FR 40066].

EFFECTIVE DATE: September 29, 1989.

FOR FURTHER INFORMATION CONTACT: Beth Romo, Standards Division, DHM–12, Office of Hazardous Materials Transportation, 400 Seventh St. SW., Washington, DC 20590. (202) 366–4488.

SUPPLEMENTARY INFORMATION: This document corrects editorial errors contained in a final rule published under Docket HM–189H on September 29, 1989 [54 FR 40066], and in a corrections document published on October 10, 1989 [54 FR 41447]. The following is a section-by-section summary of the corrections:

Section 172.101

In § 172.101, the Hazardous Materials Table, beginning on page 40068, is amended by adding the wording "Keep dry", in column (7)(c) for the entry "mono-(Trichloro) tetra-(monopotassium dichloro)-penta-s-triazinetrione, dry (containing over 39% available chlorine)". In the correction document, the entry "Sulfur, molten" was corrected by reinstating the alternative spelling, "Sulphur, molten". However, in the entry "Sulfur, molten or Sulphur, molten", the word "or" did not appear in italics to show that either term is acceptable. The entry is corrected to read "Sulfur, molten *or* Sulphur, molten" in this document. Also, in the final rule, the identification number prefix for the entry "Sulfur, molten *or* Sulphur, molten" was inadvertently changed from "UN" to "NA". The prefix is corrected to read "UN" in this document.

Section 178.115–6

The final rule inadvertently cited the table in "paragraph (b) of § 178.115–3". The table is correctly located in paragraph (b) of § 178.115–6. Therefore, in the table in § 178.115–6(b), the third entry under the column entitled "Gauge No." is amended by revising "30" to read "20".

List of Subjects

49 CFR Part 172

Hazardous materials transportation, Hazardous materials table.

49 CFR Part 178

Hazardous materials transportation, Packaging and containers.

In consideration of the foregoing, 49 CFR part parts 172 and 178 are amended as follows:

PART 172—HAZARDOUS MATERIALS TABLES AND HAZARDOUS MATERIALS COMMUNICATIONS REGULATIONS

1. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. App. 1803, 1804, 1808; 49 CFR part 1.

§ 172.101 [Amended]

2. In § 172.101, the Hazardous Materials Table is amended by correctly amending the entries listed below:

a. For the entry "mono-(Trichloro) tetra-(monopotassium dichloro)-penta-s-triazinetrione, dry (containing over 39% available chlorine)", the words "Keep dry" are added in Column (7)(c).

b. The entry "Sulfur, molten or Sulphur, molten" is correctly revised to read "Sulfur, molten *or* Sulphur, molten" in column (2), and the identification prefix is correctly revised to read "UN" in column (3A).

PART 178—SHIPPING CONTAINER SPECIFICATIONS

3. The authority citation for part 178 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1808; 49 CFR part 1, unless otherwise noted.

§ 178.115–6 [Correctly Amended]

4. In amendatory instruction

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paragraph 25, on page 40069, in the Federal Register of September 29, 1989, the words "paragraph (b) of § 178.115–3" are corrected to read "paragraph (b) of § 178.115–6".

Issued in Washington, DC on December 5, 1989 under authority delegated in 49 CFR 1.53.

Travis P. Dungan,

Administrator.

[FR Doc. 89–28606 Filed 12–11–89; 8:45 am]

BILLING CODE 4910-60-M

Proposed Rules

Federal Register
Vol. 54, No. 237
Tuesday, December 12, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 61

Low-Level Radioactive Waste Disposal Facility; Availability of Publication Concerning Application of Quality Assurance for Characterizing a Radioactive Waste Disposal Site

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft for comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing the availability of NUREG–1383 "Guidance on the Application of Quality Assurance for Characterizing a Low-Level Radioactive Waste Disposal Site" which provides guidance to an applicant in meeting the low-level radioactive waste (LLRW) disposal facility quality assurance requirements in 10 CFR Part 61.

DATES: The comment period expires January 31, 1990.

ADDRESSES: Copies of NUREG–1383, may be purchased by calling the U.S. Government Printing Office on (202) 275–2060 or 2171 or by writing to the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082.

FOR FURTHER INFORMATION CONTACT: Clayton L. Pittiglio, Jr., Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 492–3438.

SUPPLEMENTARY INFORMATION: This document provides guidance to an applicant in meeting the quality control (QC) requirements of 10 CFR 61.12(j). The regulation requires that a license application for an LLW disposal facility include a description of the QC program to be applied to determining the proposed characteristics of the disposal site. The regulation also requires a QC program during design, construction, operation, and closure of the land disposal facility and the receipt, handling, and emplacement of waste. Audits and managerial controls must be included in the QC program. The purpose of the managerial controls, audits and QC program required by 10 CFR 61.12(j) is to ensure a planned, organized, and documented approach to meeting the performance objectives and the technical requirements of 10 CFR part 61. The requirements stated in 10 CFR 61.12(j) provide the bases for developing a QA program and the guidance provided.

To ensure that the site meets the regulatory requirements, an applicant should have management controls in place at the beginning of the investigation of the disposal site's characteristics and the analyses to establish a base for its suitability.

Site characterization is one of the initial and most significant activities for determining the suitability of a site and demonstrating performance of an LLRW disposal site. This document provides guidance on developing proper quality assurance procedures for site characterization activities.

Dated at Rockville, Maryland, this 5th day of December, 1989.

For the Nuclear Regulatory Commission

Michael J. Bell,

Chief, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 89–28964 Filed 12–11–89; 8:45 am]

BILLING CODE 7590-01-M

10 CFR Part 71

RIN 3150—AC41

Transportation Regulations; Compatibility With the International Atomic Energy Agency (IAEA); Designation of End of Public Comment Period

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule: Designation of end of comment period.

SUMMARY: On June 8, 1988 (53 FR 21550), the Nuclear Regulatory Commission (NRC) published, for public comment, a proposed rule to make its transportation regulations in 10 CFR part 71 compatible with those of the International Atomic Energy Agency (IAEA) as contained in IAEA Safety Series No. 6, Regulations for the Safe Transport of Radioactive Material, 1985 edition. This rulemaking action, combined with a parallel action by the Department of Transportation (DOT), would make United States regulations for the safe transportation of radioactive material internationally compatible. Because it is important that the public have the opportunity to review and comment on the DOT and NRC proposed rules concurrently, NRC set its initial public comment period to expire on October 6, 1988, expecting the DOT rule to be available for publication by the end of June 1988. Due to delays in publishing the DOT proposed rule, the NRC published a notice on April 4, 1989, (54 FR 13528) in the Federal Register that NRC was extending its comment period to expire 60 days after the DOT proposed rule was published in the Federal Register. Furthermore, it was stated that when the DOT rule was published, the NRC would issue another notice which would include a specific date when the NRC comment period would expire. The DOT proposed rule has now been published in the Federal Register (54 FR 47454; November 14, 1989) with a public comment period expiring on February 9, 1990. To permit the NRC public comment period to run concurrently with that of the DOT, the NRC public comment period will expire on February 9, 1990.

DATES: The public comment period expires on February 9, 1990. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given as to comments received on or before this date.

ADDRESSES: Send comments to the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, ATTN: Docketing and Service Branch. Hand deliver comments to 11555 Rockville Pike, Rockville, MD between 7:30 a.m. and 4:15 p.m. Examine comments received at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Donald R. Hopkins, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3784.

Dated at Rockville, Maryland, this 6th day of December 1989.

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For the Nuclear Regulatory Commission.
James M. Taylor,
Executive Director for Operations.
[FR Doc. 89-28965 Filed 12-11-89; 8:45 am]
BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-ANE-37]

Airworthiness Directives; Air Cruisers Company, TSO-C69a Emergency Evacuation Slide/Rafts System P/N D30659-( )

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt an Airworthiness Directive (AD) that would require relocation of the slide/raft life line on Air Cruisers Company TSO-C69a Emergency Evacuation Slide/Raft System, P/N D30659-( ), installed on Boeing Model 757 series airplanes. The proposed AD is needed to prevent the life line from being ingested into the aspirator during inflation. This could result in damage to the aspirator and prevent complete inflation of the slide/raft which could hinder the emergency evacuation of the airplane.

DATES: Comments must be received on or before January 31, 1990.

ADDRESSES: Comments on the proposal may be mailed in duplicate to Federal Aviation Administration, New England Region, Office of the Assistant Chief Counsel, Attn: Rules Docket No. 89-ANE-37, 12 New England Executive Park, Burlington, Massachusetts 01803, or delivered in duplicate to Room 311 at the above address.

Comments delivered must be marked: "Docket No. 89-ANE-37".

Comments may be inspected at the above location in Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The applicable technical information may be obtained from Air Cruisers Company, P.O. Box 180, Belmar, New Jersey 07719-0180, or may be examined in the Regional Rules Docket.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew Gfrerer, Aerospace Engineer, New York Aircraft Certification Office, Systems and Equipment Branch, ANE-173, Federal Aviation Administration, Engine and Propeller Directorate, Aircraft Certification Service, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791-6427.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the FAA before any final action is taken on the proposed rule. The proposal contained in this notice may be changed in the light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Regional Rules Docket New England Region, Office of the Assistant Chief Council, Room 311, Burlington, Massachusetts 01803, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: Comments to Docket No. 89-ANE-37. The postcard will be date/time stamped and returned to the commenter.

The FAA has determined that the life line on Air Cruisers Company Emergency Evacuation Slide/Raft System, P/N D30659-( ), could be ingested into the lower tube aspirator during the initial inflation stage which could affect proper inflation and hinder the emergency evacuation of the airplane. During two Boeing Commercial Airplane Company slide/raft deployment tests, the slide/raft located on the left hand side at door 4 of a Boeing Model 757 series airplane failed to inflate properly. It was determined that this was caused by the life line webbing located on the lower tube aspirator side of the slide/raft forming an unrestrained loop when the slide/raft is folded. During the initial stages of inflation, the loop can be sucked into the lower tube aspirator. This action can damage the aspirator subsequently preventing the inflation of the lower tube, which could hinder the emergency evacuation of the airplane. Air Cruisers Company has issued Service Bulletin (SB) No. 105-25-30, Rev. 1, dated August 21, 1989, which addresses this problem. Since this condition is likely to exist or develop on other slide/rafts of the same design, the proposed AD would require relocation of the life line, and the re-identification of the slide-raft in accordance with Air Cruisers Company SB No. 105-25-30, Rev. 1, dated August 21, 1989, on Air Cruisers Company TSO-C69a Emergency Evacuation Slide/Raft System, P/N D30659-( ).

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this proposed regulation only involves 241 slide/rafts. One manhour labor is required for the accomplishment of this AD for each slide/raft, at a cost of $40 each. Parts will be supplied by Air Cruisers at no cost. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, and Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 of the Federal Aviation Regulations (FAR) as folows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

Air Cruisers Company: Applies to Air Cruisers Company TSO-C69a Emergency Evacuation Slide/Raft System, P/N D30659-( ), installed on Boeing Model 757 airplanes, as listed below:

Slide/Raft System, P/N D30659-109, having Slide/Raft Assembly P/N D30656-109 (pre Service Bulletin (SB) 105-25-17);

Slide/Raft System, P/N D30659-109 and -112, having Slide/Raft Assemblies P/N D30656-116 and -115 respectively (post SB 105-25-17 and pre SB 105-25-27);

Slide/Raft System, P/N D30659-115 and -116, having Slide/Raft Assemblies P/N D30656-115 and -116 respectively (post SB 105-25-27 and pre SB 105-25-29);

Slide/Raft System, P/N D30659-121 and -124, having Slide/Raft Assemblies P/N D30656-121 and -124 respectively (post SB 105-25-29).

The above listed slide/raft assemblies bear the following serial numbers (S/N): 0001 through 0233, 0160MOD, 0164MOD, 0165MOD, 0205MOD, 0207MOD, 0225MOD, 0226MOD, and 0230MOD.

Compliance with the requirements of AD 89-19-06, Amendment 39-6321, published in the Federal Register on September 15, 1989 (54 FR 38209), is required prior to compliance with the requirements of this AD.

Compliance is required within 18 months after the effective date of this AD, unless already accomplished.

To prevent ingestion of the life line, which could hinder the emergency evacuation of the airplane, accomplish the following:

(a) Modify and re-identify the slide/raft in accordance with Paragraph 2 (Accomplishment Instructions) of Air Cruisers Company SB No. 105-25-30, Rev. 1, dated August 21, 1989.

(b) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(c) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, an alternate method of compliance with the requirements of this AD or adjustment to the compliance schedule specified in this AD may be approved by the Manager, New York Aircraft Certification Office, Federal Aviation Administration, Engine and Propeller Directorate, Aircraft Certification Service, 181 South Franklin Avenue, Valley Stream, New York 11581 may adjust the compliance time specified in this AD.

Issued in Burlington, Massachusetts, on November 27, 1989.

Jack A. Sain,
Manager, Engine and Propeller Directorate Aircraft Certification Service.

[FR Doc. 89-28938 Filed 12-11-89; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 133

Proposed Removal of Customs Regulation on Gray Market Goods

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: A recent decision of the U.S. Supreme Court invalidated a portion of § 133.21(c)(3) of the Customs Regulations (19 CFR 133.21(c)(3)) which denied protection against imported gray market goods where the trademarks or trade name on foreign-made merchandise was applied under authorization received from the U.S. owner. A review of the remaining portion of that provision has caused Customs to propose eliminating the provision in its entirety.

DATE: Comments must be received on or before February 12, 1990.

FOR FURTHER INFORMATION CONTACT: John F. Atwood, Value, Special Programs and Admissibility Branch, Commercial Rulings Division, Office of Regulations, and Rulings, (202-566-8933).

SUPPLEMENTARY INFORMATION:

Background

The U.S. Supreme Court issued a decision May 31, 1988, invalidating in part § 133.21(c)(3) of the Customs Regulations (19 CFR 133.21(c)(3)), relating to importations of foreign-made "gray market" goods. A "gray market" trademark is a genuine one applied to articles which are not authorized for importation by the owner of the trademark registration in the United States. The Court's opinion, cited as *K Mart Corporation* v. *Cartier, et al., 47th Street Photo, Inc.* v. *Coalition to Preserve the Integrity of American Trademarks, et al., United States et al.* v. *Coalition to Preserve the Integrity of American Trademarks, et al.*, 486 U.S. 281 (1988) (COPIAT), obliges Customs to implement changes in 19 CFR 133.21

The COPIAT litigation concerned section 526(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1526(a)), which makes it unlawful (with certain exceptions) to import merchandise bearing a registered trademark "* * * owned by a citizen of, or by a corporation or association created or organized within, the United States" if a copy of the trademark registration is filed with the Secretary of the Treasury. The enforcement of this provision has been delegated to the Customs Service. In the implementation of that statute, the Customs Service, through its regulations, took the position that the seizure of articles bearing genuine trademarks was a remedy reserved to independent American firms. This position was based on the Government's view of the statute's legislative history, Customs long-standing practice and express Congressional recognition of that practice.

Section 133.21(c)(1) of the Customs Regulations denies protection against the importation of "gray market" goods where "[b]oth the foreign and the U.S. trademark or trade name are owned by the same person or business entity". Section 133.21(c)(1) similarly denies protection where "[t]he foreign and domestic trademark or trade name owners are parent and subsidiary companies or are otherwise subject to common ownership and control". Both §§ 133.21(c)(1) and 133.21(c)(2) were upheld by the Supreme Court, and Customs will continue its administration of those sections as in the past.

Section 133.21(c)(3) of the Customs Regulations denied protection against imports where "the articles of foreign manufacture bear a recorded trademark or trade name applied under authorization of the U.S. owner". This section dealt with authorized users or licensees. The Court's opinion concluded that § 133.21(c)(3) is not a permissible construction of 19 U.S.C. 1526(a). However, the Court did not rule on whether the regulation is inconsistent with 15 U.S.C. 1124. Accordingly, although § 133.21(c)(3) is clearly invalidated as to 19 U.S.C. 1526(a), it is not so clear that the regulation is invalidated as to 15 U.S.C. 1124. To resolve any remaining ambiguity, and maintain its longstanding practice of interpreting both statutory provisions in tandem, Customs is soliciting comments on its position that § 133.21(c)(3) is invalid as to 15 U.S.C. 1124 as well, and the proposal, accordingly, to delete § 133.21(c)(3) from the Customs regulations. Import protection would thus be accorded against goods of foreign manufacture bearing recorded trademarks and trade names applied under authorization of the U.S. owner.

Comments

Before adopting this proposal, consideration will be given to any written comments (preferably in

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triplicate) timely submitted. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b) Customs Regulations (19 CFR 103.11(b)), on normal business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, U.S. Customs Service Headquarters, Room 2119, 1301 Constitution Avenue, NW., Washington, DC 20229.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendment will not have a significant impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified by E.O. 12291. Accordingly, no regulatory analysis has been prepared.

Drafting Information

The principal author of this document was Peter T. Lynch, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 133

Trademarks, Trade Names, Importations.

Amendments to the Regulations

It is proposed to amend Part 133, Customs Regulations (19 CFR Part 133) as set forth below.

PART 133—TRADEMARKS, TRADE NAMES, AND COPYRIGHTS

1. The authority citation for part 133 is revised to read as follows:

Authority: 17 U.S.C. 101, 601, 602, 603; 19 U.S.C. 66, 1624; 31 U.S.C. 9701.

Section 133.21 also issued under 15 U.S.C. 1124, 19 U.S.C. 1526.

§ 133.21 [Amended]

2. Section 133.21(c) is amended by removing paragraph (c)(3) and by marking it "Reserved."

Michael H. Lane,

Acting Commissioner of Customs

[FR Doc. 89-28995 Filed 12-11-89; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

RIN 0960-AC46

Reduction for Receipt of Government Pension

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rules.

SUMMARY: In this proposed regulation, we are revising our rules on reducing the Social Security benefits of a worker's spouse who is also receiving a Government pension. Essentially, the revised rules require that an employee of the Federal Government who elects to be covered under Social Security after December 31, 1987, must work in covered Federal employment for at least 5 years after that date in order to avoid the reduction in his or her Social Security benefits as the spouse of a worker. This provision was added to the Social Security Act by section 9007 of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203), and was amended by section 8014 of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100-647).

DATES: To be sure that your comments are considered we must receive them no later than February 12, 1990.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, MD 21235, or delivered to the Office of Regulations, Social Security Administration, 3-B-1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Jack Schanberger, Room 3-B-1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965-8471.

SUPPLEMENTARY INFORMATION: The first half of this section provides information on recent changes in Social Security coverage of Federal Government employees. The last half explains provisions of this proposed rule.

The Social Security Amendments of 1977 (Pub. L. 95-216) amended section 202 of the Social Security Act (the Act) by requiring a dollar-for-dollar reduction of the Social Security benefits of a worker's spouse who is also receiving a Government pension based on work that was not covered by Social Security on the last day of Government employment. That amendment also provided exceptions to the reduction. Subsequent amendments to the Act added other exceptions and changed the rate of the reduction. These provisions are explained in 20 CFR 404.408a.

Before enactment of the Social Security Amendments of 1983 (Pub. L. 98-21), most employees of the Federal Government were not covered by Social Security. The 1983 Amendments extended Social Security coverage beginning January 1, 1984, to Federal employees hired after December 31, 1983, who prior to the Amendments would have been covered only by the Civil Service Retirement System (CSRS) or the Foreign Service Retirement and Disability System; to employees of the legislative branch of the Federal Government who were not participating in CSRS as of December 31, 1983; to Congress, the President, and the Vice President; and to sitting Federal judges and senior executive service employees.

After the Social Security Amendments of 1983 became effective, there were still many Federal employees covered by CSRS and not covered by Social Security. The Federal Employees' Retirement System (FERS) Act of 1986 (Pub. L. 99-335) provides that these employees could elect to transfer to FERS, and thus be covered by Social Security, during the open season period from July 1, 1987, through December 31, 1987. Similarly, foreign service employees could elect to enroll in the Foreign Service Pension System (FSPS) and thus be covered by Social Security. Federal employees who are automatically covered by Social Security and those who elected coverage by transferring to FERS or FSPS were not affected by the reduction requirement of 20 CFR 404.408a, because they would not have been working in noncovered employment on the last day of their employment.

However, section 9007 of the Omnibus Budget Reconciliation Act (OBRA) of 1987 (Pub. L. 100-203) amended section 202 (b), (c), (e), (f), and (g) of the Act to provide that the reduction required because of the receipt of a pension from noncovered employment applies to Federal employees who elected FERS after December 31, 1987. This reduction does not apply if the employee worked in covered Federal employment for a total of at least 60 months during the period from January 1, 1988, through the end of the month in which he or she first became eligible for and applied for Social Security spouse's benefits.

The 1987 OBRA similarly amended section 202 of the Act to provide that legislative branch employees who elected Social Security coverage by withdrawing from CSRS after December 31, 1983, but did not receive a lump-sum payment of their CSRS contributions until after December 31, 1987, would have their Social Security spouse's benefits reduced because of the receipt of a pension from noncovered employment. The reduction does not apply if the employee meets a special condition of the 1987 OBRA. That condition is that a former employee who received the lump-sum payment after December 31, 1987, will not have his or her benefits reduced if he or she worked in covered Federal Employment for a total of at least 60 months during the period from January 1, 1988, through the end of the month in which he or she first became eligible for and applied for Social Security spouse's benefits. Also, employees of the legislative branch whose CSRS coverage had ceased after December 31, 1987 (other than by receipt of a lump-sum payment), but who continued their employment, will not be subjected to the reduction if they meet the same 60 months of covered work requirement.

More recently, the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100-647) (TAMRA) further amended section 202 (b), (c), (e), (f), and (g) of the Social Security Act to provide that the reduction requirement of section 202 of the Social Security Act, as amended by the 1987 OBRA, also applies to Federal employees who elected FSPS after December 31, 1987, unless the 60 months of work requirement is met. In addition, TAMRA also amended section 205(p)(1) of the Social Security Act so that we will no longer look to the person's employer or pension-paying agency for a decision on whether his or her employment was covered and the periods of covered employment. If, however, we determine that the person's Federal employment was covered because the person elected to join FERS or FSPS, we will need to know from the employer or pension-paying agency the date of the election and its effective date.

We are proposing to revise 20 CFR 404.408a by listing the kinds of Federal employment to which the reduction provision of this section applies. In the revised section, we are adding the rules needed to implement section 9007 of Public Law 100-203 and section 8014 of Public Law 100-647, in addition to specifying the kinds of Federal employment that continue to be cause for the reduction. We also state that we will accept the statement of a person's employer or pension-paying agency as to the date the person elected FERS or FSPS.

Regulatory Procedures

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because the regulations do not meet any of the threshold criteria for a major rule. These changes are expected to result in negligible costs or savings. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that these regulations will not, if promulgated, have a significant economic impact on a substantial number of small entities because they affect only the benefit amount payable to individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act, is not needed.

Paperwork Reduction Act

These regulations impose no new reporting/recordkeeping requirements needing Office of Management and Budget clearance.

(Catalog of Federal Domestic Assistance Programs Nos. 13.803 Social Security—Retirement Insurance; 13.805 Social Security—Survivors Insurance)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure; Death benefits; Disability benefits; Old-Age, Survivors, and Disability Insurance.

Dated: October 23, 1989.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: November 16, 1989.

Louis W. Sullivan,

Secretary of Health and Human Services.

For the reasons set out in the preamble, subpart E of part 404 of 20 CFR chapter III is proposed to be amended as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE

1. The authority citation for subpart E continues to read as follows:

Authority: Secs. 202, 203, 204 (a) and (e), 205(a), 222(b), 223(e), 224, 227, and 1102 of the Social Security Act; 42 U.S.C. 402, 403, 404 (a) and (e), 405(a), 422(b), 423(e), 424, 427, and 1302.

2. Section 404.408a is revised to read as follows:

§ 404.408a Reduction where spouse is receiving a Government pension.

(a) *When reduction is required.* Unless you meet one of the exceptions in paragraph (c) of this section, your monthly Social Security benefits as a wife, husband, widow, widower, mother, or father will be reduced each month you are receiving a monthly pension from a Federal, State, or local government agency (Government pension) for which you were employed in work not covered by Social Security on the last day of such employment. Once the reduction is applied, your monthly Social Security benefit as a spouse will continue to be reduced because of your Government pension even if you afterwards return to work for a Government agency and that work is covered by Social Security. If the Government pension is not paid monthly or is paid in a lumpsum, we will determine how much the pension would be if it were paid monthly and then reduce the monthly Social Security benefit accordingly. The number of years covered by a lump-sum payment, and thus the period when the Social Security benefit will be reduced, will generally be clear from the pension plan. If one of the alternatives to a lump-sum payment is a life annuity, and the amount of the monthly benefit for the life annuity can be determined, the reduction will be based on that monthly benefit amount. Where the period or the equivalent monthly pension benefit is not clear, it may be necessary for us to determine the reduction period on an individual basis.

(b) *Federal employment to which the reduction applies.* In determining whether your Federal employment was covered, we will apply the rules in subpart K of this part. If your employment was covered because you elected to join the Federal Employees' Retirement System or the Foreign Service Pension System, we will accept the statement of your employer or pension-paying agency regarding the date of your election and the date it became effective. Your Social Security spouse's benefits may be reduced if on the last day of your employment by the Federal Government:

(1)(i) You were employed by the legislative branch of the Federal Government and either had elected Social Security coverage by receiving a lump-sum payment of your contributions to the Civil Service Retirement System after December 31, 1987, or your Civil Service Retirement System coverage had otherwise ended after December 31, 1987; and

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(ii) You were not employed in covered Federal employment for a total of at least 60 months during the period January 1, 1988, up to the end of the first month in which you became eligible for Social Security spouse's benefits and filed an application;

(2) You were covered by Social Security through the Federal Employees' Retirement System (see chapter 84 of title 5, United States Code and 5 CFR part 846) or through the Foreign Service Pension System (see chapter 22 of title I, United States Code) because you elected this coverage after December 31, 1987, and you were not employed in covered Federal employment for a total of at least 60 months during the period from January 1, 1988, up to the end of the first month in which you became eligible for benefits and filed an application;

(3) Your employment was excluded from Social Security coverage by section 210 of the Act; or

(4) You were covered by Social Security for Medicare purposes only.

(c) *Exceptions.* The reduction does not apply:

(1) If you are receiving a Government pension based on employment for an interstate instrumentality;

(2) If you received or are eligible to receive a Government pension for one or more months in the period December 1977 through November 1982 and you meet the requirements for Social Security benefits that were applied in January 1977, even though you don't claim benefits and you don't actually meet the requirements for receiving benefits until a later month. The January 1977 requirements are, for a man, a one-half support test (see paragraph (e) of this section), and, for a woman claiming benefits as a divorced spouse, marriage for at least 20 years to the insured worker. You are considered eligible for a Government pension for any month in which you meet all the requirements for payment, except that you are working or have not applied; or

(3) If you were receiving or were eligible (as defined in paragraph (c)(2) of this section) to receive a Government pension for one or more months before July 1983, and you meet the dependency test of one-half support that was applied to claimants for husband's and widower's benefits in 1977, even though you don't claim benefits, and you don't actually meet the requirements for receiving benefits until a later month. If you meet the exception in this paragraph, but you do not meet the exception in paragraph (c)(2) of this section, December 1982 is the earliest month for which the reduction will not affect your benefits.

(d) *Delayed eligibility for pension.*—If you would have been eligible for a pension in a given month except for a requirement which delayed eligibility for such pension until the month following the month in which all other requirements were met, we will consider you to be eligible in that given month for the purpose of meeting one of the exceptions in paragraphs (c) (2) and (3) of this section. If you meet an exception solely because of this provision, your benefits will be unreduced for months after November 1984 only.

(e) *The one-half support test.* For a man to meet the January 1977 requirements as provided in the exception in paragraph (c)(2) of this section and for a man or woman to meet the exception in paragraph (c)(3) of this section, he or she must meet a one-half support test. One-half support is defined in § 404.366 of this part. One-half support must be met at one of the following times:

(1) If the insured person had a period of disability which did not end before he or she became entitled to old-age or disability insurance benefits, or died, you must have been receiving at least one-half support from the insured either—

(i) At the beginning of his or her period of disability;

(ii) At the time he or she became entitled to old-age or disability insurance benefits; or

(iii) If deceased, at the time of his or her death.

(2) If the insured did not have a period of disability at the time of his or her entitlement or death, you must have been receiving at least one-half support from the insured either—

(i) At the time he or she became entitled to old-age insurance benefits; or

(ii) If deceased, at the time of his or her death.

(f) *Amount and priority of reduction.* (1) If you became eligible for a Government pension after June 1983, we will reduce (to zero, if necessary) your monthly Social Security benefits as a spouse by two-thirds the amount of your monthly pension. If the reduction is not a multiple of 10 cents, we will round it to the next higher multiple of 10 cents.

(2) If you became eligible for a Government pension before July 1983 and do not meet one of the exceptions in paragraph (c) of this section, we will reduce (to zero, if necessary) your monthly Social Security benefits as a spouse by the full amount of your pension for months before December 1984 and by two-thirds the amounts of your monthly pension for months after November 1984. If the reduction is not a multiple of 10 cents, we will round it to the next higher multiple of 10 cents.

(3) Your benefits as a spouse will be reduced, if necessary, for age and for simultaneous entitlement to other Social Security benefits before it is reduced because you are receiving a Government pension. In addition, this reduction follows the order of priority as stated in § 404.402(b).

(4) If the monthly benefit payable to you after the required reduction(s) is not a multiple of $1.00, we will reduce it to the next lower multiple of $1.00 as required by § 404.304(f).

(g) *When effective.* This reduction was put into the Social Security Act by the Social Security Amendments of 1977. It only applies to applications for benefits filed on or after December 1977 and only to benefits for December 1977 and later. The provisions of paragraphs (b) (1) and (2) of this section are effective for benefits for months after December 1987.

[FR Doc. 89-28903 Filed 12-11-89; 8:45 am]
BILLING CODE 4190-11-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 31, and 602

[EE-8-89]

RIN 1545-AH98

Employee Business Expenses—Reporting and Withholding on Employee Business Expense Reimbursements and Allowances

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the Federal Register, the Internal Revenue Service is issuing temporary regulations relating to the taxation of and reporting and withholding on employee business expense reimbursements and other expense allowance arrangements. The text of those temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATE: Written comments and requests for a public hearing must be delivered or mailed before February 12, 1990. The income tax provisions of these rules are effective for taxable years beginning on or after January 1, 1989. The reporting provisions of these rules are effective for payments made under reimbursement or other expense allowance arrangements on or after January 1, 1989; however, a transition rule is provided for payments made prior to January 1, 1990. The provisions of these rules regarding withholding and payment of employment taxes are effective for payments made under reimbursement or other expense allowance arrangements on or after July 1, 1990.

ADDRESS: Send comments and requests for a public hearing to Internal Revenue Service, Attention: CC:CORP:T:R (EE-8-89), Room 4429, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Richard Pavel at telephone 202-377-9372 (Not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project, (1545-1148), Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer T:FP, Washington, DC 20224.

The collection of information in this regulation is in § 1.62-2T. This information is required by the Internal Revenue Service to comply with section 62(c) of the Internal Revenue Code. This information will be used to determine whether amounts paid under a reimbursement or expense allowance arrangement are treated as paid under an accountable plan. The likely recordkeepers are individual employees. These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual recordkeepers may require greater or less time, depending on their particular circumstances. Estimated total annual burden per recordkeeper is 30 minutes.

Estimated number of recordkeepers: 1,419,458.

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under sections 62, 162, 274, and 6041 of the Internal Revenue Code and to the Employment Tax Regulations (26 CFR part 31) under sections 3121, 3231, 3306, and 3401 of the Internal Revenue Code.

The temporary regulations contain rules concerning the taxation of and reporting and withholding on payments with respect to employee business expenses under a reimbursement or other expense allowance arrangement. For the text of the temporary regulations, see T.D. 8276 published in the Rules and Regulations portion of this issue of the **Federal Register**. The preamble to the temporary regulations explains the regulations.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted, consideration will be given to any written comments that are submitted (preferably eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Internal Revenue Service by any person who also submits written comments. If a public hearing is held, notice of the time and place will be published in the Federal Register.

Drafting Information

The principal author of these regulations is Richard Pavel of the Office of the Assistant Chief Counsel (Employee Benefits and Exempt Organizations), Internal Revenue Service. However, personnel from other offices of the Service and Treasury Department participated in their development.

Fred T. Goldberg,
Commissioner of Internal Revenue

[FR Doc. 89-28942 Filed 12-7-89; 12:02 pm]
BILLING CODE 4830-01-M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 693]

Revision of The Boundary of the Chalk Hill Viticultural Area (88F-283P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF), is considering revising the northern boundary of Chalk Hill viticultural area to include the portion of Chalk Hill Road north of Chalk Hill. The proposed boundary would create a new area of overlap with the Alexander Valley viticultural area. This proposal is the result of a petition submitted by Mr. T. Clifford Melim, Jr., of Chalk Hill Vineyards.

ATF believes that the establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising will help consumers identify the wines they may purchase. the establishment of viticultural areas also allows wineries to further specify the origin of wines they offer for sale to the public. ATF will approve a proposed viticultural area if the area satisfies the criteria of name, historical or current evidence concerning boundaries, and evidence relating to geographical features and climate. When overlapping viticultural areas are proposed, each area must meet the same requirements concerning the area's proposed name and the presence of distinguishing geographical characteristics.

DATE: Written comments must be received by January 26, 1990.

ADDRESS: Send written comments to: Chief, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044-0385 (Notice No. 693). Copies of the petition, the proposed regulations, the appropriate maps, and written comments will be available for public inspection during normal business hours at: ATF Reading Room, Disclosure Branch, Room 4412, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: David W. Brokaw, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20226, (202) 566-7626.

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SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR, part 4. These regulations allow the establishment of definite viticultural areas. On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), title 27, CFR defines an American viticultural area as a delimited grape-growing region distinguished by geographical features, the boundaries of which have been recognized and defined in subpart C of part 9.

Section 4.25a(e)(2), title 27, CFR, outlines the procedure for proposing an American viticultural area. Any interested person may petition AFT to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence realting to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) Maps of the largest applicable scale; and

(e) A copy or copies of the appropriate U.S.G.S. Map(s) with the proposed boundaries prominently marked.

Establishment of the Viticultural Areas

With the issuance of T.D. ATF-155 on October 21, 1983 and T.D. ATF-167 on October 24, 1984, ATF established, respectively, the Chalk Hill and the Alexander Valley viticultural areas in Sonoma County, California. On August 26, 1986, ATF issued T.D. ATF-233 which made several revisions to the boundary of the Alexander Valley viticultural area including the extension of the southern leg of the boundary to include the Digger Bend area east of Healdsburg. On May 13, 1988, ATF issued T.D. ATF-272 which revised the bundary common to the Alexander Valley and Chalk Hill viticultural areas so that vineyards immediately within the north-central leg of the boundary of the Chalk Hill viticultural area would be relocated to the southeastern corner of the Alexander Valley viticultural area.

Petition

The petition submitted by T. Clifford Melim, Jr., of Chalk Hill Vineyards seeks to revise the northern boundary of Chalk Hill viticultural area to include the portion of Chalk Hill Road north of Chalk Hill. It is not the petitioner's intention to remove the area in question from the Alexander Valley Viticultural Area. The proposed boundary would create a new area of overlap with the Alexander Valley viticultural area. This area has been called the "Chalk Hill Area of Alexander Valley." When revised to include this area, the boundary of the Chalk Hill viticultural area would follow the common boundary between Alexander Valley and Knights Valley north to Highway 128, then follow Highway 128 west to its intersection with Chalk Hill Road, then follow a straight line southwest to the point where the current boundary of Chalk Hill leaves the Russian River.

The petitioner provided several letters from vintners and winemakers indicating that the Chalk Hill area of Alexander Valley is a district transitional area of overlap between the Chalk Hill and Alexander Valley viticultural areas. The area in question has features common to both.

The realigned boundary proposed in the petition would add roughly 3,450 acres of territory and 500 acres of vineyards to the Chalk Hill viticultural area.

Evidence Concerning the Name

The southernmost portion of Alexander Valley is known as "the Chalk Hill area of Alexander Valley" due to its proximity to Chalk Hill, its dependence on Chalk Hill Road as its main access, and its physical similarities to the entire region associated with the name Chalk Hill. The Healdsburg Quadrangle of the 7.5 minute series U.S.G.S. maps labels the portion of Chalk Hill Road north of the Chalk Hill area as "Alexander Valley." Cyrus Alexander's first settlement was located in or near this area.

No district of Sonoma County is designated "Chalk Hill" on any local road map or U.S.G.S. Quadrangle. As a place name, the term is used locally to refer to the hilly region east of Windsor and Healdsburg. Each of these post offices serves a portion of the Chalk Hill area. The region is named after the landmark Chalk Hill and the road of the same name which traverses it. The petition for the establishment of the Chalk Hill viticultural area described the general features (elevation, climate, soil) that characterize the region.

The petitioner provided several illustrations of this area's association with the name "Chalk Hill," for example:

A. Popular Name Among Local Residents

One third of the total length of Chalk Hill Road lies north of Chalk Hill and outside of the current Chalk Hill viticultural area. The petitioner states that there seem to be more references to Chalk Hill north of this dividing line than along the more southerly two-thirds. An example of this is a residential subdivision called "Chalk Hill Estates," in the "Chalk Hill area" of Alexander Valley. Other examples are cited as well.

B. Views of The Original Chalk Hill Petitioners

As Mr. Byrd of Balverne winery and vineyards stated in his declaration attached to the petition, the original Chalk Hill appellation committee believed that the natural boundaries of the Chalk Hill viticultural area extended the entire length of Chalk Hill Road. The petitioner states that the portion north of Chalk Hill was not included in their original proposal only because of doubts regarding the acceptability to ATF of a partial overlap with the proposed Alexander Valley viticultural area.

C. Illustrated On Sonoma County Planning Department Map

Attached to the petition is a copy of a map entitled "Franz Valley Study Planning Units," prepared in September 1978 as part of the Franz Valley Specific Plan. This plan was developed and endorsed by a study team of the Sonoma Country Community and Environmental Services, together with a large committee of local citizens. This map clearly shows a "Chalk Hill" planning area that extends along Chalk Hill Road all the way to Highway 128. (The only portion of Chalk Hill Road omitted is the southermost end. Because the focus of the study was the Franz Valley/Knights Valley general area, the map does not extend west of Chalk Hill Road.)

D. Promoted In Real Estate Advertisement

A real estate brochure attached to the petition lists the first notable feature of a ranch adjacent to an Alexander Valley vineyard as, "95 acres of premiere property located in Sonoma County's most prestigous wine country—the Chalk Hill region of Alexander Valley."

Geographical Evidence

Climate

The fact that the climate of the Alexander Valley grows gradually warmer toward the north was one of the conclusions reached during the original Alexander Valley rulemaking process. This recognized phenomenon implies that the coolest, southern end of the Alexander Valley is transitional between the climate of Chalk Hill viticultural area and the increasingly warmer climate of the rest of Alexander Valley. Degree days listed in the petition show the similarity between the temperature of Chalk Hill and of the petitioned overlap area.

Geology

The geology of the area of proposed overlap represents a transitional area between the Chalk Hill viticultural area and the Alexander Valley viticultural area. The map, "Geology of Chalk Hill viticultural area and Southern Alexander Valley Viticultural Area," enclosed with the petition, illustrates this point.

The map shows a patchwork of geological formations in the area depicted. Although many different formations are represented, it is notable that the Huichica formation is by far the most dominant geological feature of Chalk Hill viticultural area. Along small streams and at lower elevations there is also a significant amount of newer alluvial deposits (marked "Alluvium") present.

The Huichica Formation continues to dominate as one crosses into the southern end of Alexander Valley. Along with areas of Alluvium, this formation is prevalent up to Highway 128. Beyond the proposed area of overlap, the Huichica Formation appears only infrequently, and the alluvial formation that characterizes most of the Alexander Valley becomes the outstanding feature.

Topography

The topography of the area of proposed overlap is transitional between the Alexander Valley and Chalk Hill viticultural areas. The terrain of the area in question is characterized by steep to gentle hills of low (up to around 400 feet) elevation set close to modest expanses of relatively flat alluvial lands along the Russian River, Franz Creek, and Maacama Creek.

The topography in large portions of the Chalk Hill viticultural area is quite rugged. There are, however, several places along Chalk Hill Road, south of Chalk Hill, where the terrain briefly levels out and soils become deeper. In the southern and western portions of the Chalk Hill viticultural area, as in the Chalk Hill area of Alexander Valley, the terrain becomes rolling foothills and—below approximately 200 feet elevation—is even more level than the area of proposed overlap.

Soils

The same light colored soils as in the current Chalk Hill viticultural area are visible in the cut banks along Chalk Hill Road to the north beyond Chalk Hill (the northernmost boundary of the current Chalk Hill viticultural area). The same terrain—primarily steep to rolling hills, with occasional relatively flat areas—predominates. These similarities give some indication as to why the southernmost end of Alexander Valley has been described as the "Chalk Hill area of Alexander Valley." The most common soil types found in the Chalk Hill viticultural area are the Arbuckle gravelly sandy loam, Haire gravelly loam, Huichica loam, Spreckels loam, Felta very gravelly loam, Laniger loam and Dibble clay loam. Many of these soils are light colored and/or have light colored subsoils that account for the characteristic appearance of "white" soil in the appellation. The Laniger, Felta, Spreckels, and Huichica soils are volcanic in origin.

The most widespread soils in Alexander Valley viticultural area are Cole clay loam, Cortina very gravelly loam, Pleasanton gravelly loam, Yolo sandy loam, Manzanita gravelly silt loam, and Zamora silty clay loam. In the area of proposed overlap the most prevalent soils are Haire gravelly loam, Laniger loam, and Arbuckle gravelly sandy loam. There are smaller amounts of Yolo, Cortina and other soils. Toward the northern end of the proposed Chalk Hill extension Clough gravelly loam becomes prevalent. This pattern gives way to the more characteristic Alexander Valley soil northwest of highway 128.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required because the proposal, if promulgated as a final rule, is not expected (1) to have secondary, or incidental effects on a substantial number of small entities; or (2) to impose, or otherwise cause a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Executive Order 12291

It has been determined that this document is not a major regulation as defined in E.O. 12291 and a regulatory impact analysis is not required because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographical regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this notice because no requirement to collect information is proposed.

Public Participation—Written Comments

ATF requests comments from all interested persons. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

AFT will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comments. The name of the person submitting a comment is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing on the proposed regulations should submit his or her request, in writing to the Director within the 45-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Drafting Information

The principal author of this document is David W. Brokow, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, Wine.

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Authority and Issuance

27 CFR part 9, American Viticultural Areas, is amended as follows:

PART 9—[AMENDED]

Paragraph 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. Section 9.52(b) is revised to read as follows:

§ 9.52 Chalk Hill.

* * * * *

(b) *Approved maps.* The appropriate maps for determining the boundaries of the "Chalk Hill" viticultural area are 4 U.S.G.S. Quadrangle (7.5 Minute Series) maps titled:

"Mark West Springs Quadrangle, California," 7.5 minute series, 1958 (Photoinspected 1978).

"Mt. St. Helena Quadrangle, California," 7.5 minute series, 1959 (Photoinspected 1973).

"Healdsburg Quadrangle, California-Sonoma Co.," 7.5 minute series, 1955 (Photorevised 1980).

"Jimtown Quadrangle, California-Sonoma Co.," 7.5 minute series, 1955 (Photorevised 1975).

* * * * *

Par. 3. Section 9.52 is amended by removing paragraph (c) (12) through (22), adding new paragraphs (c) (12), (13), and (14), and redesignating paragraphs (c) (23), through (30) as (c) (15) through (22) respectively to read as follows:

* * * * *

(c) *Boundary* * * *

* * * * *

(12) Then northerly along the east line of sections 21, 16, and 9 to the place where Highway 128 crosses the east line of Section 9 on the "Mount St. Helena Quadrangle," map;

(13) Then generally westerly along Highway 128 to its intersection with Chalk Hill Road on the "Jimtown Guadrangle," map;

(14) Then southwesterly in a straight line to the point of intersection of the Russian River with the range line common to R. 8 W. and R. 9 W. in T. 9 N., on the "Healdsburg Quadrangle," map.

(15) Then southwesterly in a straight line to the point of a hill identified as having an elevation of 737 feet;

(16) Then south-southwesterly in a straight line to the point at the easterly terminus of Reiman Road;

(17) Then southwesterly in a straight line to the point at the intersection of the township line common to T. 8 N., and T. N., in R. 9 W., and the frontage road (a.k.a. Los Amigos Road) for U.S. Highway 101;

(18) Then west approximately 3,000 feet along the township line common to T. 8 N., and T. 9 N., in R. 9 W.;

(19) Then southerly for approximately 2,000 feet in a straight line to the point of intersection with an unnamed stream drainage;

(20) Then east in a straight line to the point of intersection with Eastside Road;

(21) Then northeasterly along Eastside road to the point of intersection with Redwood Highway;

(22) Then southeasterly along Redwood Highway to the point of beginning.

* * * * *

Signed: December 1, 1989.

Daniel R. Black,

Acting Director.

[FR Doc. 89-28901 Filed 12-11-89; 8:45 am]

BILLING CODE 4510-31-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672 and 675

[Docket No. 90899-9278]

RIN 0648-AD04

Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NOAA proposes regulations to implement the Observer Plan provided for by amendments 13 and 18 to the Fishery Management Plans for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and Groundfish of the Gulf of Alaska, respectively. This action is necessary to provide the public an opportunity to comment on these provisions. It is intended to further the goals and objectives contained in the fishery management plans that govern these fisheries.

DATE: Comments are invited until December 21, 1989.

ADDRESS: Comments may be sent to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802. Copies of the environmental assessment/regulatory impact review/final regulatory flexibility analysis (EA/RIR/FRFA) that was prepared for Amendments 13 and 18 may be obtained from the same address.

FOR FURTHER INFORMATION CONTACT: Janet Smoker (Fishery Management Biologist, NMFS), 907-586-7230.

SUPPLEMENTARY INFORMATION:

Background

The domestic and foreign groundfish fisheries in the Exclusive Economic Zone (EEZ) of the Gulf of Alaska (GOA) and Bering Sea and Aleutian Islands (BSAI) areas are managed by the Secretary according to FMPs prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMPs are implemented by regulations for the foreign fisheries at 50 CFR 611.92 and 611.93 and for the U.S. fisheries at 50 CFR parts 672 and 675. General regulations that also pertain to the U.S. fisheries are implemented at 50 CFR part 620.

The Secretary of Commerce (Secretary) approved amendments 13 and 18 under section 304(b) of the Magnuson Act. Those amendments contained certain management measures as listed in the final rule published at 54 FR 50386 (December 6, 1989). One of the listed measures authorized a comprehensive domestic observer program. An Observer Plan to implement provisions of this program has been prepared by the Secretary in consultation with the Council.

The preamble prepared for proposed regulations to implement amendments 13 and 18 contained the reasons for the observer program. At the time the proposed regulations were published, the Observer Plan was still being developed. NMFS has now prepared the Observer Plan, copies of which may be obtained from the Regional Director at the above address. It describes the responsibilities that will be imposed on NMFS, vessel operators, and managers of shoreside processing facilities, and NMFS-certified contractors who will act as agents of NMFS in providing observers to groundfish fishing vessels and shoreside processors. Minimum qualifications for observers are also stated in the Observer Plan. Descriptions of major parts of the Observer Plan are as follows:

Responsibilities of NMFS

NMFS is responsible for (1) the overall program administration, (2) training or certification of observers, (3) contractor certification, (4) final trip debriefing of observers, (5) specification of observer coverage for the subject fisheries, (6) logistical monitoring, and (7) management of the data collected by the

observers. Each of the aspects of NMFS responsibilities is further described as follows:

1. *Program administration.* Within this task, general program policy is established; observer duties, sampling methods, and data format are specified, observer qualifications and contractor certifications are specified, NMFS personnel and budgets are administered, and regulations are proposed that pertain to observer work, accommodations on board vessels and at shoreside processing facilities, and safety considerations.

2. *Observer training and certification.* Observers who meet the basic educational and experience qualifications stated in the Observer Plan and who are hired by certified contractors to be placed on board domestic vessels will be required to successfully complete a 2½ week training certification program conducted by NMFS, or its designated agent, prior to being deployed on board a domestic vessel or at a shoreside processing facility. Individuals who have successfully completed either a foreign or domestic groundfish observer deployment administered by NMFS will be only required to attend a 2-4 day briefing. Certification training will be provided at a minimum on a scheduled quarterly basis and more frequently if required. The training of observers is critical to the overall success of the observer program and the quality of information collected. Because observers will act as agents of NMFS to collect fisheries information for Federal management of the Alaska groundfish fisheries, training must be consistent and must respond to changing management and data collection needs. The observer certification may be revoked if the observer fails to perform assigned duties satisfactorily, or does not adhere to standards of conduct prescribed by NMFS.

3. *Contractor certification.* NMFS will certify contractors prior to their providing observers to the industry to assure that the contractors do not have a financial or personal conflict of interest with the fishing vessel or shoreside processing facility owners, and to assure that the contractors understand their responsibilities, which will be defined by NMFS. NMFS will review technical proposals submitted by prospective contractors that describe task performance to ensure that they are able to adequately provide the required services as an agent of NMFS under the mandatory observer program. The costs of providing observers will not be considered in the evaluation. Firms submitting proposals judged adequate to provide services and which do not have a financial or personal conflict of interest will be included in a list of certified contractors from which industry members can obtain their required observers. A contractor could lose certification if the contractor is found to have a financial or personal conflict of interest with either vessel or shoreside processor owners or the contractor is deficient in the performance of the duties prescribed by NMFS.

4. *Observer debriefing.* Debriefing observers will be done by staff of the NMFS observer program and by the Alaska Department of Fish and Game (ADF&G) staff located at debriefing sites. Debriefing sites will be at Dutch Harbor and Kodiak, Alaska, and such other major fishing ports as deemed necessary by NMFS, and at the Alaska Fisheries Science Center in Seattle, Washington. Observers will be debriefed between deployments to make information available for editing, assimilation, and analysis.

5. *Coordination of observer coverage and logistics.* NMFS will coordinate observer coverage with certified contractors to ensure scientifically adequate sampling and to ensure receipt of information from the observers.

6. *Data management.* NMFS is responsible for the entry, editing, and database management of the data collected by observers. Primary data storage of weekly catch data will be located at the NMFS Alaska Regional Office in Juneau with subsequent transmission to the Alaska Fisheries Science Center in Seattle. Primary data storage of trip reports will be at the Alaska Fisheries Science Center.

Responsibilities of Vessel Operators and Managers of Shoreside Processing Facilities

The vessel operators or owners and managers of shoreside processing facilities are responsible for the direct costs of deploying observers on board vessels or at shoreside processing facilities. They are also responsible for coordinating with NMFS-certified contractors to assure that observer coverage meets requirements contained in regulations. Any vessel operator or manager of a shoreside processing facility who is required to accommodate an observer is responsible for obtaining a NMFS-certified observer from any of the certified observer contractors.

The vessel operator or manager of a shoreside processing facility will pay the cost of the observer directly to the contractor. Prior to the vessel beginning fishing, the observer must notify NMFS that he/she is on board the vessel and prepared to perform his/her duties as an observer. Prior to receiving groundfish and commencement of processing operations by a shoreside processing facility, an observer must notify NMFS that he/she is on site and prepared to perform his/her duties.

A vessel operator must maintain safe conditions on the vessel for the protection of the observer during the time the observer is on board the vessel, by adhering to all U.S. Coast Guard and other applicable rules, regulations, or statutes pertaining to safe operation of the vessel and by keeping on board the vessel:

(a) Adequate fire fighting equipment;

(b) A life raft capable of holding all persons on board; and

(c) Any other equipment required by regulations pertaining to safe operation of the vessel.

Responsibilities of Certified Observer Contractors

Contractors must be certified by NMFS. Firms holding a contract with NMFS to provide observer services will be included in the list of certified observers. To obtain certification, a firm must not have a financial or personal conflict of interest with the fishing companies and vessels to which they are providing observers and must agree to provide directly to NMFS all data collected by observers. No limit is placed on the number of contractors which could participate in the observer program and a vessel owner or manager of a shoreside processing facility could choose to work with whichever contractor he chooses. As agents of NMFS, contractors are responsible for the following tasks:

1. Recruiting, evaluating, and hiring of qualified candidates to serve as observers.

2. Ensuring that prospective observers have obtained the required NMFS certification.

3. Providing observer salaries, benefits, and personnel services.

4. Providing workmen's compensation and insurance to cover and protect observers injured in the performance of their duties.

5. Providing all deployment logistics to place and maintain the observers on board the fishing vessels or at shoreside processing facilities.

6. Providing substitute observers in the event an observer has to be removed from, or leaves, a vessel or a shoreside processing facility.

7. Arranging observer debriefings at specified debriefing ports.

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8. Assuring that all observer catch messages and other required transmissions between the observer and NMFS are delivered to NMFS within a time specified by the Regional Director.

9. Assuring that all trip data, reports, and specimens collected by observers are delivered to NMFS within five working days of the completion of each observer trip.

10. Assuring that all gear and equipment issued to observers by NMFS is returned to a storage place designated by NMFS within five working days of the completion of the observer trip.

Vessel Participation

During the development of a plan to implement the observer program, the Secretary considered the numbers of vessels that participate in the fishery and the value of information that an observer on any one vessel may provide. In doing so, the Secretary has considered the levels of observer coverage that will be required relative to the sizes of vessels on which observers will be deployed and the magnitude of their groundfish landings. All vessels would be required to comply with the observer coverage requested by the Regional Director during a fishing year.

For the 1990 fishing year, and possible for subsequent years, the Secretary proposes that operators of all domestic fishing and processing vessels equal to or longer than 125 feet will be required by the Regional Director to carry an observer at all times. Vessels of this size category harvest most of the groundfish off Alaska. For example, 63 vessels of this size harvested 59 percent of all the domestic annual processing (DAP) groundfish landings in 1988 off Alaska. Through September 1989, 61 vessels harvested 68 percent of all the DAP groundfish landings off Alaska. In both years, the numbers of vessels equal to or longer than 125 feet represented 4 percent of all the DAP vessels making groundfish landings. Because these large vessels harvest more than 50 percent of all the groundfish, requiring them to have higher observer coverage relative to smaller vessels and shoreside processing facilities is appropriate. Furthermore, a single observer onboard a vessel will observe less than 100 percent of a vessel's fishing or processing activity, and likely will result in only 25 to 30 percent observer coverage of a vessel's operation. This level of observer coverage is necessary, at least initially, to gather adequate information on variability factors associated with different fisheries, bycatch species, and the experience of vessel operators themselves. Future levels of observer coverage may be modified once adequate information is collected to enable valid sampling within different elements of the groundfish fleet. The 63 vessels 125 feet and longer in length that landed groundfish in 1988 fished an average of 142 days for that year. If similar patterns hold, 8,946 observer days could be required for this segment of the fleet in 1990 at a cost of $2,236,500, based on a cost estimate of $250 per observer day.

The Secretary also proposed for the 1990 fishing year that operators of all domestic fishing and processing vessels that are 50 feet and longer but less than 125 feet carry an observer, upon request by the Regional Director. Vessels must have observer coverage for at least 30 percent of the days they fish for each January-March, April-June, July-September, and October-December period of the fishing year. This level of observer coverage is proposed, because vessels of this size also harvest a singificant amount of the DAP harvest and should participate in the observer program. For example, 352 vessels of this size harvested 38 percent of all the DAP groundfish landings in 1988 off Alaska. Through September 1989, 317 vessels in this size category harvested 23 percent of all the DAP groundfish landings off Alaska. In these two years, the numbers of vessels of this size represented 20 and 23 percent respectively, of all the DAP vessels making groundfish landings. The amount of observer information that would be received from these vessels justifies the costs of carrying an observer during a portion of their fishing effort as determined by the Regional Director. The 352 vessels within this size category that landed groundfish in 1988 fished an average of 34 days per vessel. If similar patterns hold, 3590 observer days could be required for this segment of the fleet in 1990 at a cost of $897,500, based on a cost estimate of $250 per observer day.

The Secretary also proposes for the 1990 fishing year, and possibly subsequent years, that all vessels less than 50 feet in length should not be requested by the Regional Director to carry an observer. The overall groundfish catch by these vessels is small even though their aggregate number is large. For example, 1,314 vessels of this size harvested 3 percent of all the DAP groundfish landings in 1988 off Alaska. Through September 1989, 1,000 vessels of this size harvested only 8 percent of all the DAP groundfish landings off Alaska. In these two years, the numbers of vessels less than 50 feet in length represented 76 and 73 percent, respectively, of all the DAP vessels making groundfish landings. As a practical matter, the amount of observer information that would be received from these small vessels does not justify the costs of carrying an observer that would be imposed on them, nor the costs of program administration that would be imposed on NMFS.

Shoreside Processor Participation

The Secretary proposes that managers of shoreside facilties would be required to have an observer at the facility each day groundfish are received from regulated vessels, if requested to do so by the Regional Director. In 1988, a total of 85 shoreside processors recorded Alaska groundfish landings.

For the 1990 fishing year, and possibly for subsequent years, managers of shoreside facilities that annually receive 10,000 mt or more of groundfish would be requested by the Regional Director to have an observer at each such facility on each day it receives groundfish. Based on 1989 landings to date, an estimated 6 facilities will fall into this category, receiving groundfish an average of 250 days per year. If similar patterns hold, 1,500 observer days could be required for this category of processing facilities in 1990 at a cost of $375,000, based on a cost estimate of $250 per day.

Managers of shoreside facilities that annually receive between 1,000 mt and 10,000 mt of groundfish would be requested by the Regional Director to have an observer for 30 percent of the days they receive groundfish. It is estimated that 14 plants will fall into this category in 1989 and receive groundfish an average of 120 days. If similar patterns hold, 504 observer days could be required for this category of processing facility in 1990 at a cost of $126,000, based on a cost estimate of $250 per observer day.

Shoreside processing facilities that annually receive less than 1,000 mt of groundfish would not be requested by the Regional Director to have an observer.

Secretarial approval of the mandatory domestic observer program set forth in amendments 13 and 18 was based upon his finding that reliable observer information is necessary and appropriate for the conservation and management of the Alaskan groundfish fisheries. He proposes to implement specific provisions of the Observer Plan. The Secretary anticipates working with the industry to develop and refine the domestic observer program to meet the needs of both fishery management agencies and the fishing industry.

Classification

The Assistant Administrator for Fisheries, NOAA, (Assistant Administrator) has determined that this rule is necessary for the conservation and management of the groundfish fisheries off Alaska and that it is consistent with the Magnuson Act and other applicable law.

The Council prepared an environmental assessment (EA) for Amendments 13 and 18. The Assistant Administrator found that no significant impact on the quality of the environment will occur as a result of this rule. A copy of the EA may be obtained from the Regional Director at the address above.

The Under Secretary for Oceans and Atmosphere, NOAA, (Under Secretary) determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the EA/RIR/FRFA prepared by the Council for Amendments 13 and 18. A copy of the EA/RIR/FRFA may be obtained from the Regional Director at the address above.

The Under Secretary concluded that this rule, if adopted, would have significant effects on a substantial number of small entities. Approximately 4 percent of the Alaska groundfish fleet would be required to carry observers full time at a cost of $2.2 million per year. A further 21 percent of the fleet would be required to carry observers for at least 30 percent of the days fished in each quarter at an annual cost of $0.9 million. Seven percent of the processing industry would require full time coverage at an annual cost of $0.4 million, while a further 16 percent would require 30 percent coverage at a cost of $0.1 million per year. The annual cost of observer coverage would represent about 0.66 percent of the projected 1989 exvessel value or 0.35 percent of the processed value of the groundfish fisheries of the EEZ off Alaska. These costs would be offset by a more effective utilization of the groundfish stocks made possible by the improved information base. The ability to safely set allowable harvest levels even 10 percent higher could result in an increase in exvessel revenues of approximately $56 million with a processed product value of over $100 million. These effects have been discussed in the EA/RIR/FRFA, a copy of which may be obtained from the Regional Director at the address above.

This rule does not contain a collection of information requirement subject to the Paperwork Reduction Act.

NOAA has determined that this rule will be implemented in a manner that is consistent to the maximum extend practicable with the approved coastal zone management program of the State of Alaska. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Fishing vessels, Reporting and recordkeeping requirements.

Dated: December 6, 1989.

James E. Douglas, Jr.,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 672 and 675 are proposed to be amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for part 672 reads as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 672.27 is revised to read as follows:

§ 672.27 Observers.

(a) *Observer plan.* The operator of a fishing vessel subject to this part and the manager of a shoreside processing facility that receives groundfish from vessels subject to this part, must comply with the observer plan. The owner of a fishing vessel subject to this part or a shoreside processing facility that received groundfish from vessels subject to this part must ensure that the operator or manager complies with the observer plan and is jointly and severally liable for compliance with that plan. The observer plan has been prepared by the Secretary in consultation with the Council for purposes of providing data useful in management of the groundfish fishery.

(b) *Purpose.* The purpose of this section is to allow observers to collect Alaska fisheries data deemed by the Regional Director to be necessary and appropriate for research, management, and compliance monitoring of the groundfish fisheries, or for other purposes consistent with the Marine Mammal Protection Act, as amended.

(c) *General requirements.* (1) Compliance by vessels. Except when exempted under paragraph (f) of this section, an operator of a vessel subject to this part must carry an observer on board the vessel whenever fishing or processing operations are conducted, if the operator is requested to do so by the Regional Director.

(2) Compliance by shoreside processing facilities. Except as exempted under paragraph (f) of this section, a manager of a shoreside facility that receives groundfish from vessels regulated under this part must have an observer present at the facility whenever groundfish is received, if the manager is requested to do so by the Regional Director.

(d) *Responsibilities.* (1) An operator of a vessel must:

(i) Provide, at no cost to the observer or the United States, accommodations on a participating vessel for the observer which are equivalent to those provided for crew members of the participating vessel;

(ii) Maintain safe conditions on the vessel for the protection of the observer during the time the observer is on board the vessel, by adhering to all U.S. Coast Guard and other applicable rules, regulations, or statutes pertaining to safe operation of the vessel and by keeping on board the vessel:

(A) Adequate fire fighting equipment;

(B) A life raft capable of holding all persons on board; and

(C) Other equipment required by regulations pertaining to safe operation of the vessel.

(iii) Allow the observer to use the vessel's communication equipment and personnel on request for the transmission and receipt of messages;

(iv) Allow the observer access to and the use of the vessel's navigation equipment and personnel on request to determine the vessel's position;

(v) Allow the observer free and unobstructed access to the vessel's bridge, trawl or working decks, holding bins, processing areas, freezer spaces, weight scales, cargo holds and any other space which may be used to hold, process, weigh, or store fish or fish products at any time;

(vi) Notify the observer at least 15 minutes before fish are brought on board or fish and fish products are transferred from the vessel to allow sampling the catch or observing the transfer, unless the observer specifically requests not to be notified;

(vii) Allow the observer to inspect and copy the vessel's daily fishing logbook, daily cumulative production logbook, transfer logbook, and any other logbook or document required by regulations, information from which will be kept confidential by the observer under Federal guidelines;

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(viii) Provide all other reasonable assistance to enable the observer to carry out his or her duties;

(ix) Move the vessel to such places and at such times as may be designated by the contractor, as instructed by the Regional Director, for purposes of embarking and debarking the observer;

(x) Ensure that transfers of observers at sea via small boat or raft are carried out during daylight hours, under safe conditions, and with the agreement of the observer involved;

(xi) Notify the observer at least three hours before an observer is transferred so the observer can collect personal belongings, equipment, and scientific samples;

(xii) Provide a safe pilot ladder and conduct the transfer to ensure the safety of the observer during the transfer; and

(xiii) Provide an experienced crew member to assist the observer in the small boat or raft in which the transfer is made.

(2) A manager of a shoreside processing facility must:

(i) Maintain safe conditions at the processing facility for the protection of the observer by adhering to all applicable rules, regulations, or statutes pertaining to safe operation and maintenance of the processing facility;

(ii) Accept an observer, at no cost to the observer or the United States, for purposes of complying with the observer plan;

(iii) Notify the observer on a daily basis of the planned facility operations and expected receipt of groundfish;

(iv) Allow the observer to use the processing facility's communication equipment and personnel on request for the transmission and receipt of messages;

(v) Allow the observer free and unobstructed access to the processing facility's holding bins, processing areas, freezer spaces, weight scales, warehouses and any other space which may be used to hold, process, weigh, or store fish or fish products at any time;

(vi) Allow the observer to inspect and copy:

(A) The shoreside processing facility's daily cumulative production logbook, transfer logbook, and any other logbook or document required by regulations, information from which will be kept confidential by the observer under Federal guidelines, and

(B) The catcher vessel's daily fishing logbook, transfer logbook, and any other logbook or document required by regulations, information from which will be kept confidential by the observer under Federal guidelines; and

(vii) Provide all other reasonable assistance to enable the observer to carry out his or her duties.

(e) *Prohibited actions.* No person may:

(1) Forcibly assault, resist, oppose, impeded, intimidate, or interfere with an observer;

(2) Interfere with or bias the sampling procedure employed by an observer, including sorting or discarding any catch before sampling; or tamper with, destroy, or discard an observer's collected samples, equipment, records, photographic film, papers, or personal effects without the express consent of the observer;

(3) Prohibit or bar by command, impediment, threat, coercion, or by refusal of reasonable assistance, an observer from collecting samples, conducting product recovery rate determinations, making observations, or otherwise performing the observer's duties; or

(4) Harass an observer by conduct which has sexual connotations, has the purpose or effect of interfering with the observer's work performance, or otherwise creates an intimidating, hostile, or offensive environment. In determining whether conduct constitutes harassment, the totality of the circumstances, including the nature of the conduct and the context in which it occurred, will be considered. The determination of the legality of a particular action will be made from the facts on a case-by-case basis.

(f) *Exemptions.* An operator of a vessel or a manager of a shoreside processing facility who is requested by the Regional Director to have an observer under paragraph (c) of this section, must obtain and accept an observer unless a NMFS observer contractor notifies the Regional Director and the vessel operator or facility manager that an observer is not available at the time of the vessel's scheduled departure or within the time when a shoreside processing plant is scheduled to receive groundfish.

PART 675—GROUNDFISH FISHERY OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

3. The authority citation for part 675 reads as follows:

Authority: 16 U.S.C. 1801 *et seq.*

4. Section 675.25 is revised to read as follows:

§ 675.25 Observers.

(a) *Observer Plan.* The operator of a fishing vessel subject to this part and the manager of a shoreside processing facility that receives groundfish from vessels subject to this part must comply with the observer plan. The owner of a fishing vessel subject to this part or a shoreside processing facility that receives groundfish from vessels subject to this part must ensure that the operator or manager complies with the observer plan and is jointly and severally liable for compliance with that plan. The observer plan has been prepared by the Secretary in consultation with the Council for purposes of providing data useful in management of the groundfish fishery.

(b) *Purpose.* The purpose of this section is to allow observers to collect from Alaska fisheries data deemed by the Regional Director to be necessary and appropriate for research, management, and compliance monitoring of the groundfish fisheries, or for other purposes consistent with the Marine Mammal Protection Act, as amended.

(c) *General requirements.* (1) Compliance by vessels. Except when exempted under paragraph (f) of this section, an operator of a vessel subject to this part must carry an observer on board the vessel whenever fishing or processing operations are conducted, if the operator is requested to do so by the Regional Director.

(2) Compliance by shoreside processing facilities. Except as exempted under paragraph (f) of this section, a manager of a shoreside facility that receives groundfish from vessels regulated under this part must have an observer present at the facility whenever groundfish is received, if the manager is requested to do so by the Regional Director.

(d) *Responsibilities.* (1) An operator of a vessel must:

(i) Provide, at no cost to the observer or the United States, accommodations on a participating vessel for the observer which are equivalent to those provided for crew members of the participating vessel;

(ii) Maintain safe conditions on the vessel for the protection of the observer during the time the observer is on board the vessel, by adhering to all U.S. Coast Guard and other applicable rules, regulations, or statutes pertaining to safe operation of the vessel and by keeping on board the vessel:

(A) Adequate fire fighting equipment;

(B) A life raft capable of holding all persons on board; and

(C) Other equipment required by regulating pertaining to safe operation of the vessel.

(iii) Allow the observer to use the vessel's communication equipment and personnel on request for the transmission and receipt of messages;

(iv) Allow the observer access to and the use of the vessel's navigation equipment and personnel on request to determine the vessel's position;

(v) Allow the observer free and unobstructed access to the vessel's bridge, trawl or working decks, holding bins, processing areas, freezer spaces, weight scales, cargo holds and any other space which may be used to hold, process, weigh or store fish or fish products at any time;

(vi) Notify the observer at least 15 minutes before fish are brought on board or fish products are transferred from the vessel to allow sampling the catch or observing the transfer, unless the observer specifically requests not to be notified;

(vii) Allow the observer to inspect and copy the vessel's daily fishing logbook, daily cumulative production logbook, transfer logbook, and any other logbook or document required by regulations, information from which will be kept confidential by the observer under Federal guidelines;

(viii) Provide all other reasonable assistant to enable the observer to carry out his or her duties;

(ix) Move the vessel to such places and at such times as may be designated by the contractor, as instructed by the Regional Director, for purposes of embarking and debarking the observer;

(x) Ensure that transfers of observers at sea via small boat or raft are carried out during daylight hours, under safe conditions, and with the agreement of the observer involved;

(xi) Notify the observer at least three hours before an observer is transferred so the observer can collect personal belongings, equipment, and scientific samples;

(xii) Provide a safe pilot ladder and conduct the transfer to ensure the safety of the observer during the transfer; and

(xiii) Provide an experience crew member to assist the observer in the small boat or raft in which the transfer is made.

(2) A manger of a shoreside processing facility must:

(i) Maintain safe conditions at the processing facility for the protection of the observer by adhering to all applicable rules, regulations, or statutes pertaining to safe operation and maintenance of the processing facility;

(ii) Accept an observer, at no cost to the observer or the United States, for purposes of complying with the observer plan;

(iii) Notify the observer on a daily basis of the planned facility operations and expected receipt of groundfish;

(iv) Allow the observer to use the processing facility's communication equipment and personnel on request for the transmission and receipt of messages;

(v) Allow the observer free and unobstructed access to the processing facility's holding bins, processing areas, freezer spaces, weight scales, warehouses and any other space which may be used to hold, process, weigh, or store fish or fish products at any time;

(vi) Allow the observer to inspect the copy;

(A) The shoreside processing facility's daily cumulative production logbook, transfer logbook, and any other logbook or document required by regulations, information from which will be kept confidential by the observer under Federal guidelines; and

(B) The catcher vessel's daily fishing logbook, transfer logbook, and any other logbook or document required by regulations, information from which will be kept confidential by the observer under Federal guidelines, and

(vii) Provide all other reasonable assistance to enable the observer to carry out his or her duties.

(e) *Prohibited actions.* No person may:

(1) Forcibly assault, resist, oppose, impede, intimidate, or interfere with an observer;

(2) Interfere with or bias the sampling procedure employed by an observer, including sorting or discarding any catch before sampling; or tamper with, destroy, or discard an observer's collected samples, equipment, records, photographic film, papers, or personal effects without the express consent of the observer;

(3) Prohibit or bar by command, impediment, threat, coercion, or by refusal of reasonable assistance, an observer from collecting samples, conducting product recovery rate determinations, making observations, or otherwise performing the observer's duties; or

(4) Harass an observer by conduct which has sexual connotations, has the purpose or effect of interfering with the observer's work performance or otherwise creates an intimidating, hostile, or offensive environment. In determining whether conduct constitutes harassment, the totality of the circumstances, including the nature of the conduct and the context in which it occurred, will be considered. The determination of the legality of a particular action will be made from the facts on a case-by-case basis.

(f) *Exemptions.* An operator of a vessel or a manager of a shoreside processing facility who is requested by the Regional Director to have an observer under paragraph (c) of this section, must obtain and accept an observer unless a NMFS certified observer contractor notifies the Regional Director and the vessel operator or facility manager that an observer is not available at the time of the vessel's scheduled departure or within the time when a shoreside processing plant is scheduled to receive groundfish.

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Notices

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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket Nos. 9131-01, 9131-02]

ATC Lab Electronic Service

In the matter of: Andrezej Stefan Stanislaw Schmidt, individually and doing business as ATC Lab Electronic Service; Respondents

Summary

Pursuant to the November 7, 1989, recommended Decision and Order of the Administrative Law Judge (ALJ), which Decision and Order is attached hereto and affirmed by me, Andrezej Stefan Stanislaw Schmidt, individually and doing business as ATC Lab Electronic Service (hereafter Respondent), and all successors, assignees, officers, partners, representatives, agents and employees are hereby denied for a period of twenty years from the date hereof all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Export Administration Regulations (15 CFR parts 768–799), but provided, however, that the last ten years of this sanction shall be suspended.

Order

On November 7, 1989, the ALJ entered his Recommended Decision and Order in the above-referenced matter. The Decision and Order, a copy of which is attached hereto and made a part hereof, has been referred to me for final action. Having examined the record and based on the facts in this case, I hereby affirm the Decision and Order of the ALJ.

This constitutes final agency action in this matter.

Dated: December 5, 1989.

Dennis E. Kloske,

Under Secretary for Export Administration.

Decision and Order

In the matter of: Andrezej [1] Stefan Stanislaw Schmidt, individually and doing business as ATC Lab Electronic Service; Respondents.

Appearance for Respondent: Andrezej Stefan Stanislaw Schmidt (pro se), Segelflygagatan 35, 122 52 Enskede, Sweden.

Appearance for Agency: Louis K. Rothberg, Esq., Office of Chief Counsel for Export Administration, U.S. Department of Commerce, Room H–3837, 14th & Constitution Ave., NW., Washington, DC 20230.

Preliminary Statement

The Office of Export Enforcement ("the Agency"), Bureau of Export Administration, U.S. Department of Commerce issued a June 29, 1989 charging letter against Respondent Andrezej Stefan Stanislaw Schmidt, individually and doing business as ATC Lab Electronic Service. The letter was issued under the authority of the Export Administration Act of 1979 (50 U.S.C.A. app 2401-2420), as amended ("the Act"), and under the authority of the Export Administration Regulations ("the Regulations"), promulgated pursuant to the Act.[2]

The charging letter contained two allegations. First, it charged Respondent Schmidt with conspiring with others during 1984–87 to make unauthorized exports from the United States to Poland and Sweden, in violation of § 787.3(b) of the Regulations. Second, it charged him with attempting an unauthorized export to Sweden in 1987, in violation of § 787.3(a).

Respondent Schmidt filed an answer denying the charges, and made no further submission. The Agency made subsequent filings, including a submission that set forth the evidence for its charges against Respondents.

[1] The Office of Export Enforcement ("the Agency"), Bureau of Export Administration, U.S. Department of Commerce in all its filings spelled Respondent Schmidt's first name as "Andrezej." Respondent Schmidt's single filing, and all the judicial documents concerning him filed by the Agency in its September 28, 1989 submission, spelled his first name as "Andrzej." This Decision and Order applies to Respondent Schmidt under either spelling of his first name.

[2] The Act was reauthorized and amended by the Export Administration Amendments Act of 1985, Pub. L. 99–64, 99 Stat. 120 (July 12, 1985), and amended by the Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100–418, 102 Stat. 1107 (August 23, 1988).

The Regulations, formerly codified at 15 CFR parts 368–399, were redesigned as 15 CFR parts 768–799, effective October 1, 1988 (53 F.R. 37751, September 28, 1988).

Discussion

The essence of the Agency's case was that Respondent Schmidt had been convicted, in a 1987 U.S. District Court in California, of two counts of a criminal indictment to which he had pled guilty; and these two counts were substantially the same as the two charges of the charging letter. Therefore, contended the Agency, he is collaterally estopped from denying his commission of the violations described in these two counts of the indictment.

To document its contention, the Agency introduced the indictment, the government's sentencing memorandum, and the judgment and probation/commitment order from this 1987 judicial proceeding (Agency's September 28, 1989 Submission, Exhibits 2–4). According to these documents, Respondent Schmidt was a Canadian citizen who was born in Poland and who owned Respondent ATC Lab Electronic Service, which was located in Sweden.

Count one of the indictment, to which Respondent Schmidt pled guilty, alleged a conspiracy and is, the Agency asserted, like charge 1 of its charging letter. Count one alleged that from about May 14, 1984 through about May 13, 1987 a conspiracy existed among Respondent Schmidt, Marek Cieslak, and others knowingly to export computer microprocessors and integrated circuits from the United States to Sweden and Poland without the required U.S. validated export licenses. Mr. Cieslak was named as a defendant in that same indictment, pled guilty to four counts therein, and in a subsequent administrative proceeding before this Tribunal based on that criminal conviction was subjected to a twenty-year denial of U.S. export privileges (54 FR 30436, July 20, 1989).

Count two of the indictment, the other count to which Respondent Schmidt pled guilty, alleged an attempted export without the required U.S. validated license and is, the Agency claimed, like charge 2 of its charging letter. The alleged attempt occurred on or about May 13, 1987 and involved 270 microprocessors that were intended to go from the United States to Sweden.

In the criminal case, Respondent Schmidt was sentenced to five years of imprisonment, with the term suspended after the first 153 days. In this administrative proceeding, the Agency proposed a twenty-year denial of U.S. export privileges. The Agency noted that Respondent Schmidt's conduct was so serious as to entail a criminal prosecution including a multiple count indictment, that the U.S. commodities involved were controlled for national security reasons, and that Respondent Schmidt entered his guilty plea with retained counsel at his side. As for his answer filed in the instant proceeding, the Agency argued that it was simply a general denial, unsupported by any evidence.

Conclusion

The Agency has sufficiently made its case through the principle of collateral estoppel that it asserted. The two charges of the Agency's charging letter are substantially the same as the two counts of the criminal indictment to which Respondent Schmidt pled guilty and for which he was convicted, and accordingly they are established for purposes of this administrative proceeding. See, e.g., *Spawr Optical Research, Inc.* v. *Baldridge*, 649 F. Supp. 1366, 1369 (D.D.C. 1986)

Respondent Schmidt's answer fails to blunt the force of collateral estoppel, since his filing lacked any challenge to the validity or relevance of his criminal conviction. His answer lacked also any evidence to support its general denial of the charges.

As for a sanction, the Agnecy's proposed twenty-year denial period is severe. Respondent Schmidt's conduct, as established by the criminal conviction, does merit an extended denial period. But twenty years was the sanction that the Agency proposed also, and obtained, for Mr. Cieslak. The documents submitted by the Agency in the instant case from the judicial proceeding, while showing both Mr. Cieslak and Respondent Schmidt as seriously culpable, show Respondent Schmidt as less so. To reflect this difference, Respondent Schmidt will be subjected to a twenty-year denial period that is moderated by a suspension of the last ten years.184Order

I. For a period of twenty years from the date of the final Agency action, Respondent Andrezej Stefan Stanislaw Schmidt, individually and doing business as ATC Lab Electronic Service, Segelflygagatan 35, 122 52 Enskede, Sweden, and all successors, assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

II. Commencing ten years from the date of the final Agency action, the denial of export privileges set forth in Paragraph I above shall be suspended, in accordance with Section 788.16 of the Regulations, for the remaining ten years of the twenty-year period set forth in Paragraph I above, and shall be terminated at the end of such twenty-year period, provided that Respondents have committed no further violations of the Act, the Regulations, or the final order entered in this proceeding. During the ten-year suspension period, Respondents may participate in transactions involving the export of U.S. commodities or technical data from the United States or abroad in accordance with the requirements of the Act and the Regulations. The provisions of Paragraphs V-VI of this Order shall also be suspended during such ten-year period.

III. Participation prohibited in any such transaction, either in the United States or abroad, shall incude, but not be limited to, participation:

(i) As a party or as a representative of a party to a validated or general export license application;

(ii) In preparing or filing any export license application or request for reexport authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data.

Such denial of export privileges shall extend to those commodities and technical data which are subject to the Act and the Regulations.

IV After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which any Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

V. All outstanding individual validated export licenses in which Respondents appear or participate, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Respondents' privileges or participating, in many manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

VI. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Ofice of Export Licensing, shall, with respect to commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any Respondent or any related person, or whereby any Respondent or any related person may obtain any benefit therefrom or have any interest or participating therein, directly or indirectly:

(i) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any Respondent or related person denied export privileges, or (ii) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

VII. This Order as affirmed or modified shall become effective upon entry of the Secretary's final action in this proceeding pursuant to the Act (50 U.S.C.A. app. 2412(c)(1)).

Dated: November 7, 1989.

Thomas W. Hoya,

Administrative Law Judge.

To be considered in the 30 day statutory review process which is mandated by section 13(c) of the Act, submissions must be received in the Office of the Under Secretary for Export Administration, U.S. Department of Commerce, 14th & Constitution Ave., NW., room 3898B, Washington, DC, 20230, within 12 days. Replies to the other party's submission are to be made within the following 8 days. 15 CFR section 388.23(b), 50 FR 53134 (1985). Pursuant to section 13(c) of the Act, the final order of the Under Secretary may be appealed to the U.S. Court of Appeals

for the District of Columbia within 15 days of its issuance.

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International Trade Administration

[C-301-601]

Miniature Carnations From Colombia; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration; Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the agreement suspending the countervailing duty investigation on miniature carnations from Colombia. The review covers the period January 1, 1987 through December 31, 1987 and nine programs. We preliminarily determine that Colombian miniature carnation exporters have complied with the terms of the suspension agreement. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: December 12, 1989.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On January 13, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 1353) an agreement suspending the countervailing duty investigation on miniature carnations from Colombia. On January 28, 1988, the petitioner, the Floral Trade Council, requested an administrative review of the suspension agreement. We initiated the review on March 2, 1988 (53 FR 6681). The Department has now conducted that review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act")

Scope of Review

The United States, under the auspices of the Customs Cooperaton Council, has developed a system of tariff classification based on the international harmonized system of Customs nomenclature On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s)..

Imports covered by this review are shipments of miniature carnations from Colombia. During the period of review, such merchandise was classifiable under item 192.1700 of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under HTS item 0603.10.30. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 13, 1987 through December 31, 1987 and nine programs.

The producers and exporters listed in Appendix I, accounting for more than eighty-five (85) percent of the total exports of miniature carnations from Colombia to the United States, are signatories to the suspension agreement.

Analysis of Programs

(1) Tax Rebate Certificate

On April 1, 1984, the Colombian government pursuant to Law 48/83, established the Tax Rebate Certificate ("CERT") which replaced the Tax Reimbursement certificate Program ("CAT"). According to the Colombian government, the CERT rebates all or part of the indirect taxes paid by exporters. CERT is freely negotiable on the stock market and can be used for paying a variety of taxes.

The Government of Colombia provides payment to exporters of miniature carnations in the form of CERT. Rebates are calculated as a percentage of the value of the exported product attributable to the domestic value-added content.

As a term of the suspension agreement, the Colombian government terminated CERT payments on exports of miniature carnations to the United States. We verified that there were no CERT payments on shipments of miniature carnations to the United States and Puerto Rico during the review period.

(2) Resolutions 59 and 22

Resolution 59/72 provided working capital financing at preferential rates to firms that manufacture, store or sell products destined for export. This program was updated by Resolution 22/84. All industries were eligible, except producers of coffee, petroleum, and petroleum by-products. Resolution 22/84 loans are administered by the Export Promotion Fund ("PROEXPO"), an agency of the Colombian government. The loans are for 180 days and the interest is paid quarterly, in advance.

In the suspension agreement, we established a short-term interest rate benchmark of 22.5 percent, which was the average rate of the Fondo Financiero Agropecuario (FFA) and the Agrarian Fund as of March 31, 1986. The miniature carnation exporters are required not to apply for, or receive, any short-term export financing provided by PROEXPO other than that offered at or above the short-term benchmark interest rate of 22.5 percent. All loans with outstanding balances were to be repaid or refinanced by April 13, 1987, ninety days after notice of the suspension agreement was published in the Federal Register.

Resolution 3/87, which is an update to Resolution 22/84, was passed by PROEXPO on February 26, 1987. Resolution 3/87 changed the short-term interest rate to 22.5 percent, and required the interest rate on all outstanding loans that were taken out under Resolution 22/84 be refinanced at the interest rate benchmark. At the six companies we verified, all PROEXPO short-term loans outstanding were refinanced in March 1987 at the interest rate benchmark, and the adjusted interest differential was paid.

On December 21, 1987, PROEXPO passed Resolutions 11/87, which covers pre-shipment working capital loans, and 14/87, which provides working capital financing to export companies for various products, including miniature carnations. Resolution 11/87 established financing to flower exporters at the highest interest rate between 22.5 percent per year prepaid quarterly and the interest rate paid on certificates of deposit (DTF), payable at the end of each quarter. The certificates of deposit rate is a market-determined rate. Resolution 14/87 established financing to flower exporters by setting as the base rate the highest rate between 25 percent per year prepaid quarterly and the DTF rate. The actual rate charged varies depending on the size of the company. The Colombian government has moved away from the fixed-rate PROEXPO financing to the DTF rate, which more accurately reflects interest rate fluctuations in the market. No loans were taken out under Resolutions 11/87 or 14/87 during the review period. We preliminarily determine that the DTF interest rate is an appropriate market rate indicator for pre-shipment and post-shipment financing, and that miniature carnation exporters have complied with the terms of the suspension agreement.

(3) Resolution 40

Resolution 40/78 was approved under Decree 2366 of 1974. Decree 2366/74 provides exporters with fixed assets financing. During the investigation, miniature carnations exporters received financing at preferential interest rates of 14 and 18 percent. The suspension agreement set at 21 percent benchmark interest rate. On February 26, 1987, PROEXPO passed Resolution 4/87, which changed the interest rate to 21 percent and required the miniature carnations exporters to refinance all outstanding loan balances at the new higher interest rate. We verified that all outstanding long-term loan balances were refinanced in March 1987 at the interest rate benchmark.

Resolution 13/87, passed by PROEXPO on December 21, 1987, sets the base rate at the highest rate between 25 percent per year prepaid quarterly and the DTF rate. The actual rate charged varies depending on the size of the company. There were no loans approved for miniature carnation exporters under Resolution 13/87 during the review period.

We preliminarily determine that the DTF rate is an appropriate market rate indicator for long-term loans and that miniature carnation exporters have complied with the terms of the suspension agreement.

(4) Duty and Tax Exemptions Under Plan Vallejo

Plan Vallejo exempts exporters from import duties on imported raw materials, intermediate products, and capital goods used to produce exported products. The exemption of customs duties and indirect taxes on imported inputs physically incorporate into exports is not countervailable. Exemptions on non-physically incorporated inputs, such as imported capital goods, are countervailable when the exemption is conditional upon exportation.

We verified that miniature carnations exporters paid the applicable duties and taxes on the capital goods imported. Therefore, we preliminarily determine that the signatories did not benefit from this program during the period of review.

(5) Resolution 10

The flower exporters, on a voluntary basis, allowed the Banco de la Republica to withhold a certain percentage of their CAT/CERT rebates earned on non-U.S. exports. As a result of the suspension agreement on roses and other cut flowers, the Banco de la Republica also held all CAT/CERT rebates that would have been paid on exports of the flowers subject to the suspension agreement from January 1983 until November 1985, when the rebate rate on those exports was reduced to zero. PROEXPO issued Resolution 10, effective July 23, 1986, to use these funds for the diversification and development of flowers and vegetables for external markets; transport and control procedures to prevent drug and narcotic traffic in exports of flowers and vegetables; development of new markets; and payment of legal and technical services required in Colombia and abroad. The resolution requires that any funds expended under this program be disbursed in a manner consistent with the suspension agreement.

During the period of review, expenditures from this fund were used for legal fees, narcotics control and security, generic promotion and development of new non-U.S. markets. We found no evidence to indicate that these funds were provided to exporters of miniature carnations to the United States, therefore, we preliminarily determine that exports of miniature carnations to the United States did not receive a countervailable benefit from this program.

(6) Other Programs

We examined the following programs and preliminarily determined that miniature carnation exporters did not use them during the review period;

(A) Fund for Agricultural Financing ("FFA");

(B) Fund for Industrial Financing ("FFI");

(C) Capital Formation Fund ("FCE"); and

(D) Fund for National Economic Development ("FONADE").

Preliminary Results of Review

As a result of our review, we preliminarily determine that the signatories have complied with the terms of the suspension agreement during the period January 13, 1987 through December 31, 1987.

The agreement can remain in force only as long as shipments from the signatories account for at least 85 percent of imports of the subject merchandise into the United States. Our information indicates that the signatories accounted for over 90 percent of imports of this merchandise into the United States during the review period.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 44 days from the date of publication or the first workday thereafter. Rebuttal briefs and rebuttals to written comments, limited to issues in those comments, must be filed not later than 37 days after the date of publication. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.22 of the Commerce Regulations published in the **Federal Register** on December 27, 1988 (53 FR 53254) (to be codified at 19 CFR 355.22).

Dated: December 5, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

Appendix I

Agricola la Maria Ltda.
Agricola Los Arboles
Agrodex Ltda.
Agroindustria del Rio Frio Ltda.
Agrosuba
Claveles Colombianos Ltda.
Daflor Ltda.
Fantasia Flowers Ltda.
Floramerica
Flores Aguila Ltda.
Flores Alfaya Ltda.
Flores Altamira
Flores Colon Ltda.
Flores de Funza S.A.
Flores de Los Amigos Ltda.
Flores del Bosque
Flores del Campo Ltda.
Flores del Potrero Ltda.
Flores el Danubio Ltda.
Flores el Zorro
Flores Generales Ltda.
Flores Sausalito
Flores Tiba Ltda.
Floresa
Florex S.A.
Horticultura de la Sabana
Innovacion Andina
Inversiones Oro Verde
Inversiones Santa Rita Ltda.
Iturrama
Las Amalias S.A.
Pompones Ltda.
Sandra Patricia Rey
Santa Helena S.A.
Santana Flowers Ltda.
Universal de Flores Ltda.

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[C-301-003]

Roses and Other Cut Flowers From Colombia; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the agreement suspending the countervailing duty investigation on roses and other cut flowers from Colombia. The review covers the periods January 1, 1986 through December 31, 1986 and January 1, 1987 through December 31, 1987 and ten programs. We preliminarily determine that Colombian cut flower exporters have complied with the terms of the suspension agreement. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: December 12, 1989.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On December 28, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 48846) the final results of its last administrative review of the agreement suspending the countervailing duty investigation on roses and other cut flowers from Colombia (48 FR 2158; January 18, 1983). On January 30, 1987 and on January 28, 1988, three domestic interested parties, Roses Inc., the California Floral Trade Council, and the Floral Trade Council, requested administrative reviews of the suspension agreement. We initiated the reviews on February 23, 1987 (52 FR 5479) and on March 2, 1988 (53 FR 6681). The Department has now conducted these reviews in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

The United States, under the auspices of the Customs Cooperation Council, has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by these reviews are shipments of roses and other cut flowers from Colombia. During the periods of review, such merchandise was classifiable under items 192.1810 through 192.2192 of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under HTS items 0603.10.60, 0603.10.70, 0603.10.80 and 0603.90.00. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the periods January 1, 1986 through December 31, 1986 and January 1, 1987 through December 31, 1987 and ten programs.

The producers and exporters listed in Appendix I, accounting for more than eighty-five (85) percent of the total exports of roses and other cut flowers (excluding miniature carnations) from Colombia to the United States, are signatories to the suspension agreement.

Analysis of Programs

(1) Tax Rebate Certificate

On April 1, 1984, the Colombian government pursuant to Law 48/83, established the Tax Rebate Certificate ("CERT"), which replaced the Tax Reimbursement Certificate Program ("CAT"). According to the Colombian government, the CERT rebated all or part of the indirect taxes paid by exporters. CERT is freely negotiable on the stock market and can be used for paying a variety of taxes.

The Government of Columbia provides payment to exporters of roses and other cut flowers in the form of CERT. Rebates are calculated as a percentage of the value of the exported product attributable to the domestic value-added content.

As a term of the suspension agreement, the Colombia government terminated CERT payments on exports of cut flowers to the United States. We verified that there were no CERT payments on shipments of cut flowers to the United States and Puerto Rico during the period of review.

(2) Air Freight Rates

The Civil Aeronautics Board (DAAC), an agency of the Colombia government, established in Resolution 5833 air freight rates for a variety of products, including cut flowers. Resolution 6333 of September 25, 1981, which updates Resolution 5833, set a minimum air freight rate of U.S.$0.45 per kilo and a maximum rate of U.S.$0.62 per kilo for flowers exported to the United States. The rates established under Resolution 6333 were in effect during the periods of review.

Section D(3) of the suspension agreement states that the Department may consider rescinding the agreement if the air freight rates paid by cut flower exporters approach government mandated maximum rates set by the DAAC. If we found such rates, we might consider them indicative of government control rather than the result of competitive forces. We found that rates ranged from U.S.$0.53 per kilo to U.S.$0.65 kilo, including a U.S. $0.05 charge for handling and cooling services. Handling and cooling charges are not regulated by DAAC. The rates negotiated between cut flower exporters and air freight companies were competitively priced. Therefore, we preliminarily determine that this program does not provide any benefits to the cut flower exporters.

(3) Resolutions 59 and 22

Resolution 59/72, provided working capital financing at preferential rates to firms that manufacture, store or sell products destined for export. This program was updated by Resolution 22/84. All industries were eligible, except producers of coffee, petroleum, and petroleum by-products. Resolution 22/84 loans are administered by the Export Promotion Fund ("PROEXPO"), an agency of the Colombian government. The loans are for 180 days and the interest is paid quarterly, in advance. In December 1986, the maximum interest rate was 22.0 percent. Colombian cut flower exporters received working capital loans under Resolution 22/84 during 1986.

Since we found this program to be countervailable in the agreement suspending the countervailing duty investigation on certain textile mill products and apparel from Colombia (50 FR 9863, March 12, 1985), we included it in the December 15, 1986 revised suspension agreement. At that time, we established a short-term benchmark interest rate of 22.5 percent, which was the average rate of the Fondo Financiero Agropecuario (FFA) and the Agrarian Fund as of March 31, 1986. The revised suspension agreement required that the cut flower exporters not apply for, or receive, any short-term export financing provided by PROEXPO other than that offered at or above the short-term benchmark interest rate of 22.5 percent. All loans with outstanding balances were to be repaid or refinanced by March 15, 1987, ninety days after notice of the revised suspension agreement was published in the **Federal Register**.

Resolution 3/87, which is an update to Resolution 22/84, was passed by PROEXPO on February 26, 1987. Resolution 3/87 changed the short-term interest rate to 22.5 percent and required the interest rate on all outstanding loans that were taken out under Resolution 22/84 be refinanced at the interest rate benchmark. At the nine companies we verified, all PROEXPO short-term loans outstanding were refinanced in March 1987 at the interest rate benchmark, and the adjusted interest differential was paid.

On December 21, 1987, PROEXPO passed Resolution 11/87, which covers pre-shipment working capital loans, and 14/87, which provides working capital financing to export companies for various products, including cut flowers. Resolution 11/87 established financing to flower exporters at the highest interest rate between 22.5 percent per year prepaid quarterly and the interest rate paid on certificates of deposit (DTF), payable at the end of each quarter. The certificates of deposit rate is a market-determined rate. Resolution 14/87 established financing to flower exporters by setting as the base rate the highest rate between 25 percent per year prepaid quarterly and the DTF rate. The actual rate charged varies depeding on the size of the company. The Colombian government has moved away from the fixed-rate PROEXPO financing to the DTF rate, which more accurately reflects interest rate fluctuations in the market. No loans were taken out under Resolution 11/87 or 14/87 during the review period. We preliminarily determine that the DTF interest rate is an appropriate market rate indicator for pre-shipment and post-shipment financing, and that cut flower exporters have complied with the terms of the suspension agreement.

(4) Resolution 40

Resolution 40/78 was approved under Decree 2366 of 1974. Decree 2366/74 provides exporters with fixed assets financing. During 1986, flower exporters received financing at preferential interest rates of 14 and 16 percent. The revised suspension agreement set a 21 percent benchmark interest rate. On February 26, 1987, PROEXPO passed Resolution 4/87, which changed the interest rate to 21 percent and required the flower exporters to refinance all outstanding loan balance at the new higher interest rate. We verified that all outstanding long-term loan balances were refinanced in March 1987 at the interest rate benchmark.

Resolution 13/87, passed by PROEXPO on December 21, 1987, sets the base rate at the highest rate between 25 percent per year prepaid quarterly and the DTF rate. The actual rate changed varies depending on the size of the company. There were no loans approved for cut flower exporters under Resolution 13/87 during the periods of review.

We preliminarily determine that the DTF is an appropriate market rate indicator for long-term loans and that cut flower exporters have complied with the term of the suspension agreement.

(5) Duty and Tax Exemptions Under Plan Vallejo

Plan Vallejo exempts exports from import duties on imported raw materials, intermediate products, and capital goods used to produce exported products. The exemption of customs duties and indirect taxes on imported inputs physically incorporated into exports is not countervailable. Exemptions on non-physically incorporated inputs, such as imported capital goods, are countervailable when the exemption is conditional upon exportation.

On December 15, 1986, we revised the suspension agreement to include renunciation of duty and tax exemptions for imported capital equipment under Plan Vallejo. Because of an administrative oversight and lack of communication between two Colombian government agencies, ten contracts were approved during the first quarter of 1987. Six signatories to the suspension agreement imported capital goods under Plan Vallejo in 1987.

We verified that the firms that utilized the Plan Vallejo contracts subsequently paid the applicable duties and taxes on the capital goods imported. Therefore, we preliminarily determine that the signatories did not benefit from this program in 1987.

(6) Resolution 10

The flower exporters, on a voluntary basis, allowed the Banco de la Republica to withhold a certain percentage of their CAT/CERT rebates earned on non-U.S. exports. The Banco de la Republica also held all CAT/CERT rebates that would have been paid in exports of roses and other cut flowers to the United States from January 1983, the effective date of the suspension agreement, until November 1985, when the established rebate rate for flowers subject to suspension agreement was reduced to zero. PROEXPO issued Resolution 10, effective July 23, 1986, to use these funds for the diversification and development of flowers and vegetables for external markets; transport and control procedures to prevent drug and narcotic traffic in exports of flowers and vegetables; development of new markets; and payment of logal and technical services required in Colombia and abroad. The resolution requires that any funds expended under this program be disbursed in a manner consistent with the suspension agreement.

During the periods of review, expenditures from this fund were used for legal fees, narcotics control and security, generic promotion and development of new non-U.S. markets. We found no evidence to indicate that these funds were provided to exporters of flowers to the United States, therefore, we preliminarily determine that exports of flowers to the United States did not receive a countervailable benefit from this program.

(7) Other Programs

We examined the following program and preliminarily determine that flower exporters did not use them during the periods of review:

(A) Fund for Agricultural Financing ("FFA");

(B) Fund for Industrial Financing ("FFI");

(C) Capital Formation Fund ("FCE"); and

(D) Fund for National Economic Development ("FONADE")

Preliminary Results of Review

As a result of our review, we preliminarily determine that the signatories have complied with the terms of the suspension agreement during the period January 1, 1986 through December 31, 1987.

The agreement can remain in force only as long as shipments from the signatories account for at least 85 percent of imports of the subject merchandise into the United States. Our information indicates that the signatories accounted for over 90 percent of imports of this merchandise into the United Stated during the period of review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 44 days from the date of publication or the first workday thereafter. Rebuttal briefs and rebuttals to written comments,

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limited to issues in those comments, must be filed not later than 37 days after the date of publication. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1) and § 355.22 of the Commerce Regulations published in the Federal Register on December 27, 1988 (53 FR 53254) (to be codified at 19 CFR 355.22).

Dated: December 5, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

Appendix I

Company

Abaco Tulipanes De Colombia S.A.
Achalay Ltda.
Agricola Ltda.
Agricola Benilda Ltda.
Agricola Bojaca Ltda.
Agricola Bonanza Ltda.
Agricola De La Fontanta y Cia Ltda.
Agricola de los Alisos Ltda.
Agricola de Occidente.
Agricola del Monte Ltda.
Agricola el Cactus S.A.
Agricola el Jardin
Agricola el Mortino Ltda.
Agricola el Redil
Agricola Floral Ltda.
Agricola Guali Ltda.
Agricola la Corsaria Ltda.
Agricola la Floresta Ltda.
Agricola la Maria Ltda.
Agricola los Arboles
Agricola los Gaques Ltda.
Agricola Malqui Ltda.
Agricola Papagayo Ltda.
Agro Koralia Ltda.
Agrodex Ltda.
Agroindustrias De Narino Ltda.
Agromec Ltda.
Agromonte Ltda.
Agroindustria Del Rio Frio Ltda.
Agropecuaria Cuernavaca
Agrorosas S.A.
Agrosuba
Ancas Ltda.
Arboles Azules Ltda.
Astro Ltda.
Astroflores Ltda.
Becerra Castellanos y Cia
Bogota Flowers Ltda.
Cienfuegos Ltda.
Claveles Colombianos Ltda.
Claveles de los Alpes Ltda.
Colinga Ltda.
Conbiflor
Confloresa Ltda.
Crop S.A.
Cult. del Caribe Ltda. "Florcaribe"
Cultivos Buenavista Ltda.
Cultivos el Lago
Cultivos Medellin Ltda.
Daflor Ltda.
De la Pava Guevara e Hijos Ltda.
Del Tropico Ltda.
Dianticola Colombiana Ltda.
Edir Ltda.
El Antelio S.A.
El Rancho Ltda.
El Timbul Ltda.
Exportaciones Bochica S.A.
Flomingo Flowers Ltda.
Flora Bellisma Ltda.
Flora Intercontinental Ltda.
Floral Ltda.
Floralex Ltda.
Floramerica
Florandia Herrera Camacho y Cia
Floreales Ltda.
Florenal Ltda.
Flores Acuarela S.A.
Flores Aguaclara Ltda.
Flores Aguila Ltda.
Flores Alborada S.A.
Flores Alcala Ltda.
Flores Alfaya Ltda.
Flores Andinas Ltda.
Flores Aurora Ltda.
Flores Bachue Ltda.
Flores Catalina Ltda.
Flores Cigarral Ltda.
Flores Colombianas Ltda.
Flores Colon Ltda.
Flores Condor de Colombia Ltda.
Flores Corinto
Flores de Cota Ltda.
Flores de Funza S.A.
Flores de Hunza Ltda.
Flores de la Pradera Ltda.
Flores de la Sabana
Flores Cajibio
Flores Catalina Ltda.
Flores de Hacaritama
Flores de la Vega Ltda. "Vegaflor"
Flores de las Mercedes Ltda.
Flores de los Amigos Ltda.
Flores de los Andes
Flores de los Arrayanes Ltda.
Flores de Nemocon Ltda.
Flores de Oriente Ltda.
Flores de Serrezuela S.A.
Flores de Suba Ltda.
Flores de Suesca
Flores de Tenjo
Flores De Ubate Ltda.
Flores del Bosque
Flores del Campo Ltda.
Flores del Cauca
Flores del Cielo Ltda.
Flores del Cortijo
Flores del Gallinero Ltda.
Flores del Lago Ltda.
Flores del Monte Ltda.
Flores del Pinar Ltda.
Flores del Prado Ltda.
Flores del Pretrero Ltda.
Flores del Rio
Flores del Tambo Leda.
Flores del Vino Ltda.
Flores Depine Ltda.
Flores Dos Hectaresa Ltda.
Flores el Chircal Ltda.
Flores el Danubio Ltda.
Flores el Lobo Ltda.
Flores el Puente Ltda.
Flores el Rosal Ltda.
Flores el Trentino Ltda.
Flores Esmeralda S.A.
Flores Estrella Ltda.
Flores Galia Ltda.
Flores Generales Ltda.
Flores Guaicata Ltda.
Flores Hana Ichi de Col.
Flores Horizonte (Flores Monte Verde)
Flores Internacionales Ltda.
Flores Juananbu Ltda.
Flores Juncalito Ltda.
Flores la Conchita.
Flores la Conejera Ltda.
Flores la Estancia Ltda.
Flores la Fragancia S.A.
Flores la Macarena
Flores la Maria Ltda.
Flores la Pampa Ltda.
Flores la Union S.A.
Flores la Valvanera Ltda.
Flores Lano Grande Ltda.
Flores las Plamas Ltda.
Flores las Caicas-Davila Arbelaez Cia S.S.
Flores los Rosales Ltda.
Flores Marandua Ltda.
Flores Maria Elisa Ltda.
Flores Monserrate Ltda.
Flores Moungar Ltda.
Flores Palimana
Flores Petaluma Ltda.
Flores Ramo Ltda.
Flores Ruizort
Flores San Carlos
Flores Santa Fe Ltda.
Flores Santa Rosa Ltda.
Flores Sausalito
Flores Sindamonoi Vod Ltda.
Flores Tairona Ltda.
Flores Tecnicas
Flores Tejas Verdes Ltda.
Flores Tenerife Ltda.
Flores Tiba Ltda.
Flores Tibati Ltda.
Flores Timana Ltda.
Flores Tocarinda Ltda.
Flores Tokay H.I.S.A.
Flores Tomine Ltda.
Flores Tropicales Ltda.
Floresa
Florex S.A.
Florexpo Ltda.
Floricola la Gaitana
Floricultores Asociados Lorena "Lorena Ltda."
Florinda Ltda.
Hacienda Curubital
Hacienda la Embarreda Ltda.
Happy Candy Ltda.
Happy Flowers
Horticuldura de La Sabana
Industrial Agricola Ltda.
Internacional de Flores Ltda. "Interflores"
Inverpalmas Ltda.
Inversiones Calipso S.A.
Ingro Ltda.
Inv. Cubivan Ltda.
Inv. Mejia Landucci y Cia S.C.
Inv. Rodaz Ltda.
Inverflores Ltda.
Inversiones Agricolas M.T. Ltda.
Inversiones Almer Ltda.
Inversiones Cota Ltda.
Inversiones el Bambu Ltda.
Inversiones Istra
Inversiones Kluar Ltda.
Inversiones Marcote Ltda.
Inversiones Maria Alejandra
Inversiones Miraflores Ltda
Inversiones Nativa Ltda.
Inversiones Patxi Ltda.
Inversiones Penas Blancas Ltda.
Inversiones Santa Rosa S.R.W. Ltda.
Inversiones Targa S.A.
Inversiones la Serena
Inversiones Santa Rita Ltda.
Iturrama S.A.
Jaramillo and Daza Ltda.
Jardines Bacata
Jardines Chuntame
Jardines de Chia Ltda.
Jardines de Colombia Ltda.
Jardines de los Andes
Jardines del Muna.
Jardines Fredonia Ltda.
Jardines la Aurora S.S.
Jardines la Florida Ltda.
Jardines Natalia Ltda.
Kingdom S.A.
La Fleurette de Colombia S.A.
La Nueva Rosa Ltda.
La Plazoleta Ltda.
Las Amalias S.A.
Las Flores Ltda.
Linda Colombia Ltda.
Los Geranios Ltda.
Mac Flowers Ltda.
Nahecha Bustos Humberto
Manrique Fajardo Luciano
Marketing and Trade Company Ltda.
Martinez Zurbachen & Cia
Medellin Ltda.
Mejia Sendoya y Cia Sen C.
M.G. Consultores Ltda.
Microplantas Ltda.
Monserrate Ltda.—Represent. E. Invers.
Monteverde Ltda.
Multiflores Ltda.
Orquideas Acatayma Ltda.
Petalos de Colombia Ltda.
Pineros Putman Enrique
Pisochago Ltda.
Plantaciones Delta Ltda.
Plantas Ornamentales del Col.
Plantas S.A.
Pompones Ltda.
Productos el Rosal Ltda.
Rincon Diaz Olga Paulina
Rocicler Ltda.
Roselandia Ltda.
Rosaflor Ltda.
Rosales de Colombia "Rosalco"
Rosas Colombianas Ltda.
Rosas de Colombia Ltda.
Rosas de Exportacion "Rosex"
Rosas el Juncal Ltda.
Rosas Sabanilla
Rosas Sausalito Ltda.
Rosas y Flores Ltda.
Rosas y Jardines del Tropico Ltda.
Roses Tesalia
Royal Carnation
Sandra Patricia Rey
Sansa Flowers Ltda.
Santa Helena S.A.
Santana Flowers Ltda.
Sociedad Arawac S.A.
Sun Flowers Ltda.
Sunset Farms Ltda.
Super Rosas Ltda.
Taganga Ltda.
Tec. Agricola Ganadera Tag Ltda.
Tecniflores Ltda.
Tegeiro Repres. Internales. "Terinter"
The Beall Company
Tropiflora Ltda.
Tuchany S.A.
Universal de Flores Ltda.
Universal Flowers
Velez de Monchaux e Hijos y Cia S. en C.
Villa Diana Ltda.

[FR Doc. 89-28953 Filed 12-11-89; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Final Approval of Amendments No. 4 and 5 to the Alaska Coastal Management Program

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management.

ACTION: Approval of amendments to the Alaska Coastal Management Program.

Location: Northwest Arctic Borough and Bering Straits Coastal Resource Service Area (CRSA), Alaska.

SUMMARY: The Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service, National Oceanic and Atmospheric Administration (NOAA) received requests from the State of Alaska to incorporate the Northwest Arctic Borough (formerly NANA) Coastal Management Program (NWAB CMP) and the Bering Straits CRSA Coastal Management Program (BSCMP) into the federally-approved Alaska Coastal Management Program (ACMP). The State's requests were made pursuant to section 306(g) of the Coastal Zone Management Act of 1972, as amended (CZMA), 16 U.S.C. 1455(g) and the regulations implementing the CZMA at 15 CFR 923.81. Both the NWAB CMP and BSCMP create new coastal boundaries for the ACMP and establish goals and policies for activities taking place in their respective districts. Both programs follow the guidelines and standards for local program development set forth in the ACMP. The NWAB CMP will be administered by the Borough and the State and the BSCMP will be administered by the CRSA Board and the State.

Notice is hereby given that the Director of OCRM has reviewed the amendment requests and has made a determination that the ACMP as amended by the NWAB CMP and the BSCMP will still constitute an approvable program and that the procedural requirements of section 306(g) of the CZMA have been met.

Notice of intent to approve the amendment was published in the Federal Register on Thursday, August 30, 1989, and interested parties had until September 30, 1989 to comment on the proposed changes. The proposed amendments along with the preliminary Determination of Approvability were distributed to Federal agencies and other interested parties. All comments received have been responded to and the Final Findings of Approvability have been approved by the Director of OCRM. The Federal consistency provisions of section 307 of the CZMA, 16 U.S.C. 1456, shall apply to the NWAB CMP and the BSCMP on the date that the respective programs are filed with the Lieutenant Governor of the State of Alaska.

FOR FURTHER INFORMATION CONTACT: James P. Burgess, Acting Regional Manager, Pacific Region, Office of Ocean and Coastal Resource Management, 1825 Connecticut Avenue, NW., Washington, DC 20235, (202) 673-5158.

Dated: December 5, 1989.

Virginia K. Tippie,

Assistant Administrator for Ocean Services and Coastal Zone Management.

Federal Domestic Assistance Catalog 11.419, Coastal Zone Management Program Administration

[FR Doc. 89-28977 Filed 12-11-89; 8:45 am]

BILLING CODE 3510-08-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Air Force Academy Precandidate Questionnaire; USAFA Form 149; and OMB Control Number 0701–0067.

Type of Request: Extension of the Expiration Date of a Currently Approved Collection.

Average Burden Hours/Minutes Per Response: .4 Hours.

Frequency of Response: Reporting on Occasion.

Number of Respondents: 50,000.

Annual Burden Hours: 20,000.

Annual Responses: 50,000.

Needs and Uses: "Military Service Academies; Military Recruiting." The U.S. Air Force Academy needs this form to collect information from prospective candidates to conduct a preliminary assessment of a candidate's prospects, qualifications, and eligibility status for application and selection for entry into the Air Force Academy.

Affected Public. Individuals or Households.

Frequency: One time only.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Dr. J. Timothy Sprehe. Written comments and recommendations on the proposed information collection should be sent to Dr. J. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison. Written request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302.

Dated: December 6, 1989.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89–28930 Filed 12–11–89; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Professional Qualifications, Medical and Peer Reviewers, CHAMPUS Form 780, and No OMB Control Number.

Type of Request: New collection.

Average Burden Hours/Minutes Per Response: 15 minutes.

Frequency of Response: Once.

Number of Respondents: 60.

Annual Burden Hours: 15.

Annual Responses: 60.

Needs and Uses: The information collection requirement is necessary to obtain and record the professional qualifications of medical and peer reviewers utilized within CHAMPUS. The form is included as an exhibit in an appeal of hearing case file as evidence of the reviewer's professional qualifications to review the medical documentation contained in the case file.

Affected Public: Businesses or other for-profit and small businesses or organizations.

Frequency: Continuing.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Dr. J. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. J. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Peal Rascoe-Harrison.

Written request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302.

Dated: December 7, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89–28993 Filed 12–11–89; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: The 1989 Survey of High School Youth and Parents; No Applicable Form; and No OMB Control Number.

Type of Request: New.

Average Burden Hours/Minutes Per Response: .264 hours.

Frequency of Response: One-time.

Number of Respondents: 21,967.

Annual Burden Hours: 5,799.

Annual Responses: 21,967.

Needs and Uses: Potential impact of extraordinary changes to Army personnel policy and recruiting will be determined through analysis of survey administered to high school juniors, seniors and parents. Respondent attitudes towards enactment of a National Service Act compared to the present and proposed Army incentives will be examined.

Affected Public: Businesses or other for-profit; Small businesses or organizations.

Frequency: One-time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Dr. J. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. J. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

Written request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302.

Dated: December 7, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89–28992 Filed 12–11–89; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ST90–0001–000 through ST90–0344–000]

K N Energy, Inc.; Self-Implementing Transactions

December 1, 1989.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to part 284 of the Commission's regulations, sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA) and section 5 of the Outer Continental Shelf Lands Act.[1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "part 284 subpart" column in the following table indicates the type of transaction.

A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to § 284.102 of the Commission's regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.122 of the Commission's regulations and section 311(a)(2) of the NGPA. In those cases where Commission approval of a transportation rate is sought pursuant to § 284.123(b)(2), the table lists the proposed rate and the expiration date of the 150-day period for staff action. Any person seeking to participate in the proceeding to approve a rate listed in the table should file a motion to intervene with the Secretary of the Commission on or before December 21, 1989.

A "D" indicates a sale by an interstate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(a)(2) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to § 284.163 of the Commission's regulations and section 312 of the NGPA.

A "G" indicates transportation by interstate pipeline on behalf of another interstate pipeline pursuant to § 284.222 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G–S" indicates transportation by an interstate pipelines on behalf of shippers other than interstate pipelines pursuant to § 284.223 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G–LT" or "G–LS" indicates transporation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "G–HT" or "G–HS" indicates transporation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "K" indicates transporation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.303 of the Commission's regulations.

A "K–S" indicates transporation of natural gas on the Outer Continental Shelf by an intrastate pipeline on behalf of shippers other than interstate pipelines pursuant to § 284.303 of the Commission's regulations.

Lois D. Cashell,

Secretary.

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's regulations.

Docket number [1]	Recipient	Date filed	Part 284 subpart	Expiration date [2]	Transportation rate (c/MMBTU)
ST90–0001 K N Energy, Inc.	Associated Intrastate Pipeline Co	10–03–89	B		
ST90–0002 K N Energy, Inc	NGC Intrastate Pipeline Co	10–03–89	B		
ST90–0003 K N Energy, Inc	Northern Gas of Wyoming	10–03–89	B		
ST90–0004 Exxon Gas System, Inc	Longhorn Pipeline Co	10–03–89	C	03–0–90	12.60
ST90–0005 Trunkline Gas Co	Texpar Energy, Inc	10–03–89	G–S		
ST90–0006 Trunkline Gas Co	Bridgeline Gas Distribution Co	10–03–89	B		
ST90–0007 Trunkline Gas Co	Bishop Pipeline Corp	10–03–89	B		
ST90–0008 Trunkline Gas Co	Enron Gas Marketing, Inc	10–03–89	G–S		
ST90–0009 Trunkline Gas Co	Associated Natural Gas Co., Inc	10–03–89	G–S		
ST90–0010 Lone Star Gas Co	Natural Gas Pipeline Co. of America	10–03–89	C		
ST90–0011 Texas Gas Transmission Corp	Entrade Corp	10–03–89	G–S		
ST90–0012 Texas Gas Transmission Corp	Fina Oil and Chemical Co	10–03–89	G–S		
ST90–0013 Texas Gas Transmission Corp	PSI, Inc	10–03–89	G–S		
ST90–0014 Texas Gas Transmission Corp	Brooklyn Interstate Natural Gas Corp	10–03–89	G–S		
ST90–0015 Stingray Pipeline Co	Excel Intrastate Pipeline Co	10–03–89	B		
ST90–0016 Natural Gas Pipeline Co. of America	Rangeline Corp	10–03–89	G–S		
ST90–0017 Stingray Pipeline Co	EP Operating Co	10–03–89	K–S		
ST90–0018 Canyon Creek Compression Co	NGC Transportation, Inc	10–03–89	B		
ST90–0019 Canyon Creek Compression Co	Midcon Marketing Corp	10–03–89	G–S		
ST90–0020 Transcontinental Gas Pipeline Corp	Fina Oil and Chemical Co	10–03–89	G–S		
ST90–0021 Tennessee Gas Pipeline Co	North Atlantic Utilities, Inc	10–03–89	G–S		
ST90–0022 Panhandle Eastern Pipeline Co	Sunnybrook Transmission Inc	10–03–89	G–S		
ST90–0023 Panhandle Eastern Pipeline Co	Bishop Pipeline Corp	10–03–89	B		
ST90–0024 Panhandle Eastern Pipeline Co	Veagas Co	10–03–89	B		
ST90–0025 Transcontinental Gas Pipeline Corp	South Jersey Energy Co	10–03–89	G–S		
ST90–0026 Transcontinental Gas Pipeline Corp	Baltimore Gas and Electric Co	10–03–89	B		
ST90–0027 Williams Natural Gas Co	Coastal Gas Marketing Co	10–03–89	G–S		
ST90–0028 Williams Natural Gas Co	Coastal Gas Marketing Co	10–03–89	G–S		
ST90–0029 Columbia Gas Transmission Corp	Columbia Gas Development Corp	10–03–89	G–S		
ST90–0030 Columbia Gulf Transmission Co	Florida Gas Transmission Co	10–03–89	G		
ST90–0031 Sea Robin Pipeline Co	Enron Gas Marketing, Inc	10–03–89	G–S		

Docket number [1]	Recipient	Date filed	Part 284 subpart	Expiration date [2]	Transportation rate (c/MMBTU)
ST90-0032 United Gas Pipeline Co	Phoenix Gas Pipeline Co	10-03-89	G-S		
ST90-0033 United Gas Pipeline Co	Desoto Pipeline Co., Inc	10-03-89	B		
ST90-0034 United Gas Pipeline Co	Victoria Gas Corp	10-03-89	G-S		
ST90-0035 United Gas Pipeline Co	Delhi Gas Pipeline Corp	10-03-89	B		
ST90-0036 United Gas Pipeline Co	Ames Financial Inc	10-03-89	G-S		
ST90-0037 Columbia Gas Transmission Corp	Riley Natural Gas Co	10-03-89	G-S		
ST90-0038 Tarpon Transmission Co	Enron Gas Marketing, Inc	10-04-89	G-S		
ST90-0039 Tarpon Transmission Co	Unicorp Energy, Inc	10-04-89	G-S		
ST90-0040 Natural Gas Pipeline Co. of America	Phillips Petroleum Co	10-04-89	G-S		
ST90-0041 Texas Eastern Transmission Corp	Orange and Rockland Utilities, Inc	10-04-89	B		
ST90-0042 Texas Eastern Transmission Corp	Tennessee River Transmission Co	10-04-89	B		
ST90-0043 Texas Eastern Transmission Corp	Apollo Gas, Co	10-04-89	B		
ST90-0044 Texas Eastern Transmission Corp	Southeastern Natural Gas Co	10-04-89	B		
ST90-0045 Texas Eastern Transmission Corp	New Jersey Natural Gas Co	10-04-89	B		
ST90-0046 ANR Pipeline Co	Entrade Corp	10-04-89	G-S		
ST90-0047 ANR Pipeline Co	Hunt Petroleum Corp	10-04-89	G-S		
ST90-0048 ANR Pipeline Co	Steelcase, Inc	10-04-89	G-S		
ST90-0049 ANR Pipeline Co	Southern Gas Co	10-04-89	G-S		
ST90-0050 ANR Pipeline Co	Northern Illinois Gas Co	10-04-89	B		
ST90-0051 ANR Pipeline Co	Mobil Vanderbilt-Beaumont Pipeline Co	10-04-89	B		
ST90-0052 ANR Pipeline Co	Santanna Natural Gas Corp	10-04-89	G-S		
ST90-0053 ANR Pipeline Co	Wisconsin Fuel And Light Co	10-04-89	B		
ST90-0054 ANR Pipeline Co	Texas Eastern Gas Services Co	10-04-89	G-S		
ST90-0055 ANR Pipeline Co	Wisconsin Natural Gas Co	10-04-89	B		
ST90-0056 ANR Pipeline Co	St. Joseph Light & Power Co	10-04-89	B		
ST90-0057 ANR Pipeline Co	Tarpon Gas Marketing Ltd	10-04-89	G-S		
ST90-0058 ANR Pipeline Co	Tarpon Gas Marketing Ltd	10-04-89	G-S		
ST90-0059 ANR Pipeline Co	Equitable Resources Marketing Co	10-04-89	G-S		
ST90-0060 ANR Pipeline Co	Northern Illinois Gas Co	10-04-89	B		
ST90-0061 BP Gas Transmission Co	ANR Pipeline Co., et al	10-05-89	C	03-04-90	13.70
ST90-0062 Enogex Inc	Panhandle Eastern Pipeline Co	10-05-89	C	03-04-90	43.57
ST90-0063 Acadian Gas Pipeline System	Transcontinental Gas Pipeline Corp	10-05-89	C		
ST90-0064 Colorado Interstate Gas Co	Continental Natural Gas, Inc	10-05-89	G-S		
ST90-0065 ANR Pipeline Co	Michigan Consolidated Gas Co	10-05-89	B		
ST90-0066 ANR Pipeline Co	Entrade Corp	10-05-89	G-S		
ST90-0067 ANR Pipeline Co	Coastal Gas Marketing Co	10-05-89	G-S		
ST90-0068 Northern Natural Gas Co	NGC Transportation, Inc	10-06-89	B		
ST90-0069 Northern Natural Gas Co	Wisconsin Power and Light Co	10-06-89	B		
ST90-0070 Northern Natural Gas Co	Northern States Power Co	10-06-89	B		
ST90-0071 Williston Basin Interstate P/L Co	MGTC, Inc	10-06-89	B		
ST90-0072 Williston Basin Interstate P/L Co	MGTC, Inc	10-06-89	B		
ST90-0073 Williston Basin Interstate P/L Co	Quivira Gas Co	10-06-89	B		
ST90-0074 Williston Basin Interstate P/L Co	Montana-Dakota Utilities Co	10-06-89	B		
ST90-0075 Williston Basin Interstate P/L Co	Wyoming Gas Co	10-06-89	B		
ST90-0076 Williston Basin Interstate P/L Co	Longhorn Pipeline Co	10-06-89	B		
ST90-0077 Williston Basin Interstate P/L Co	Quivira Gas Co	10-06-89	B		
ST90-0078 Williston Basin Interstate P/L Co	MGTC, Inc	10-06-89	B		
ST90-0079 Williston Basin Interstate P/L Co	Montana-Dakota Utilities Co	10-06-89	B		
ST90-0080 Williston Basin Interstate P/L Co	Wyoming Gas Co	10-06-89	B		
ST90-0081 United Gas Pipeline Co	Ledco, Inc	10-06-89	G-S		
ST90-0082 United Gas Pipeline Co	Louisiana Energy, Inc	10-06-89	G-S		
ST90-0083 ANR Pipeline Co	End Users Supply System	10-06-89	G-S		
ST90-0084 ANR Pipeline Co	Michigan Gas Utilities Co	10-06-89	B		
ST90-0085 ANR Pipeline Co	Consolidated Fuel Corp	10-06-89	G-S		
ST90-0086 Exxon Gas System, Inc	Transcontinental Gas P/L Corp., et al	10-10-89	C	03-09-90	12.80
ST90-0087 Questar Pipeline Co	NGC Transportation, Inc	10-10-89	G-S		
ST90-0088 Northern Border Pipeline Co	Northern Natural Gas Co	10-10-89	G		
ST90-0089 Northern Border Pipeline Co	Northern Natural Gas Co	10-10-89	G		
ST90-0090 Channel Industries Gas Co	Transcontinental Gas Pipe Line Corp	10-10-89	C		
ST90-0091 Channel Industries Gas Co	Amoco Gas Co	10-10-89	C		
ST90-0092 CNG Transmission Corp	O & R Energy Co	10-10-89	G-S		
ST90-0093 CNG Transmission Corp	Koski Construction	10-10-89	G-S		
ST90-0094 CNG Transmission Corp	PSI, Inc	10-10-89	G-S		
ST90-0095 CNG Transmission Corp	Central Allied Enterprises	10-10-89	G-S		
ST90-0096 Texas Gas Transmission Corp	Western Kentucky Gas Co	10-10-89	B		
ST90-0097 Texas Gas Transmission Corp	Columbia Gas Development Corp	10-10-89	G-S		
ST90-0098 Texas Gas Transmission Corp	Western Kentucky Gas Co	10-10-89	B		
ST90-0099 Texas Gas Transmission Corp	Western Kentucky Gas Co	10-10-89	B		
ST90-0100 Texas Gas Transmission Corp	Delhi Gas Pipeline Corp	10-10-89	B		
ST90-0101 Columbia Gulf Transmission Corp	Philadelphia Gas Works, Inc	10-10-89	B		
ST90-0102 Columbia Gulf Transmission Corp	Cincinnati Gas and Electric Co	10-10-89	B		
ST90-0103 Columbia Gulf Transmission Corp	Tennessee, Inc	10-10-89	G-S		
ST90-0104 Arkla Energy Resources	Gulf States Pipeline Corp	10-10-89	B		
ST90-0105 Arkla Energy Resources	Union Natural Gas Pipeline Co	10-10-89	B		
ST90-0106 Texas Eastern Transmission Corp. [3]	Pennsylvania Gas and Water Co	10-11-89	B		
ST90-0108 Texas Eastern Transmission Corp	Apollo Gas, Co	10-11-89	B		
ST90-0109 Texas Eastern Transmission Corp	Yankee Gas Services Co	10-11-89	B		
ST90-0110 Algonquin Gas Transmission Corp	City of Norwich, Dept. of Public Util	10-11-89	G-S		
ST90-0111 United Gas Pipe Line Co	Graham Energy Marketing Co	10-11-89	G-S		
ST90-0112 Transcontinental Gas Pipe Line Corp	Peoples Natural Gas Co	10-12-89	B		

Docket number [1]	Recipient	Date filed	Part 284 subpart	Expiration date [2]	Transportation rate (c/MMBTU)
ST90-0113 Texas Eastern Transmission Corp	Stellar Pipeline Co	10-12-89	B		
ST90-0114 Natural Gas Pipeline Co. of America	Chevron U.S.A., Inc	10-13-89	G-S		
ST90-0115 Transtexas Pipeline	El Paso Natural Gas Co	10-13-89	C		
ST90-0116 Valero Transmission, L.P	El Paso Natural Gas Co	10-13-89	C		
ST90-0117 Valero Transmission, L.P	El Paso Natural Gas Co	10-13-89	C		
ST90-0118 Southern Natural Gas Co	Polaris Corp	10-13-89	G-S		
ST90-0119 Southern Natural Gas Co	Graham Energy Marketing Co	10-13-89	G-S		
ST90-0120 Southern Natural Gas Co	City of Denham Springs	10-13-89	B		
ST90-0121 Southern Natural Gas Co	Heath Petra Resources, Inc	10-13-89	G-S		
ST90-0122 Southern Natural Gas Co	Polaris Corp	10-13-89	G-S		
ST90-0123 Southern Natural Gas Co	Texican Natural Gas Co	10-13-89	G-S		
ST90-0124 Southern Natural Gas Co	SNG Intrastate Pipeline, Inc	10-13-89	B		
ST90-0125 Southern Natural Gas Co	Alabama Power Co	10-13-89	G-S		
ST90-0126 ANR Pipeline Co	Midcon Marketing Corp	10-13-89	G-S		
ST90-0127 ANR Pipeline Co	Coastal Gas Marketing Co	10-13-89	G-S		
ST90-0128 ANR Pipeline Co	Wintershall Energy	10-13-89	G-S		
ST90-0129 ANR Pipeline Co	Bishop Pipeline Corp	10-13-89	B		
ST90-0130 ANR Pipeline Co	Stone Container Corp	10-13-89	G-S		
ST90-0131 ANR Pipeline Co	Santanna Natural Gas Corp	10-13-89	G-S		
ST90-0132 ANR Pipeline Co	Hadson Gas Systems, Inc	10-13-89	G-S		
ST90-0133 ANR Pipeline Co	Northwestern Mutual Life Insurance Co	10-13-89	G-S		
ST90-0134 ANR Pipeline Co	Northwestern Mutual Life Insurance Co	10-13-89	G-S		
ST90-0135 ANR Pipeline Co	Apache Transmission Corp	10-13-89	B		
ST90-0136 ANR Pipeline Co	Northwestern Mutual Life Insurance Co	10-13-89	G-S		
ST90-0137 ANR Pipeline Co	West Michigan Shared Hospital Laundry	10-13-89	G-S		
ST90-0138 East Ohio Gas Co., The	Texas Eastern Transmission Corp	10-13-89	G-HT		
ST90-0139 Panhandle Eastern Pipe Line Co	Energy Pipeline Co	10-13-89	B		
ST90-0140 Tennessee Gas Pipeline Co	Prior Intrastate Corp	10-13-89	B		
ST90-0141 Equitrans, Inc	Columbia Gas of Pennsylvania, Inc	10-16-89	B		
ST90-0142 CNG Transmission Co	Northern Natural Gas Co	10-16-89	C	03-15-90	24.32
ST90-0143 Seagull Shoreline System	Northern Natural Gas Co	10-16-89	C	03-15-90	8.50
ST90-0144 Tennessee Gas Pipeline Co	Delta Natural Gas Co	10-16-89	B		
ST90-0145 United Gas Pipe Line Co	Eagle Natural Gas Co	10-16-89	B		
ST90-0146 United Gas Pipe Line Co	Bishop Pipeline Corp	10-16-89	B		
ST90-0147 United Gas Pipe Line Co	Bishop Pipeline Corp	10-16-89	B		
ST90-0148 United Gas Pipe Line Co	Texaco Gas Marketing, Inc	10-17-89	G-S		
ST90-0149 United Gas Pipe Line Co	Texican Natural Gas Co	10-17-89	G-S		
ST90-0150 United Gas Pipe Line Co	Texaco Gas Marketing, Inc	10-17-89	G-S		
ST90-0151 Valero Transmission, L.P	Transwestern Pipeline Co	10-17-89	C		
ST90-0152 Valero Transmission, L.P	Natural Gas Pipeline Co. of America	10-18-89	C		
ST90-0153 Transtexas Pipeline	Transwestern Pipeline Co	10-17-89	C		
ST90-0154 El Paso Natural Gas Co	Texaco Gas Marketing, Inc	10-18-89	G-S		
ST90-0155 El Paso Natural Gas Co	Bridgegas U.S.A. Inc	10-18-89	G-S		
ST90-0156 Tennessee Gas Pipeline Co	American Central Gas Marketing Co	10-18-89	G-S		
ST90-0157 Natural Gas Pipeline Co. of America	PSI, Inc	10-16-89	G-S		
ST90-0158 ONG Transmission Co	Mississippi River Transmission Co	10-18-89	C	02-17-90	24.32
ST90-0159 Equitrans, Inc	NGC Transportation, Inc	10-18-89	G-S		
ST90-0160 United Gas Pipe Line Co	Transworld Oil USA, Inc	10-18-89	G-S		
ST90-0161 United Gas Pipe Line Co	Texaco Gas Marketing, Inc	10-18-89	G-S		
ST90-0162 United Gas Pipe Line Co	Triumph Natural Gas L.P	10-18-89	G-S		
ST90-0163 Delhi Gas Pipeline Corp	Natural Gas Pipeline Co. of America	10-19-89	C		
ST90-0164 United Texas Transmission Co	Northern Natural Gas Co	10-19-89	C		
ST90-0165 United Texas Transmission Co	Amoco Gas Co	10-19-89	C		
ST90-0166 United Texas Transmission Co	Northern Natural Gas Co	10-19-89	C		
ST90-0167 Texas Gas Transmission Corp	Exton Corp	10-19-89	G-S		
ST90-0168 Northwest Pipeline Corp	Cyanco Co	10-19-89	G-S		
ST90-0169 Texas Gas Transmission Corp	Santa Fe Minerals	10-19-89	G-S		
ST90-0170 Natural Gas Pipeline Co. of America	United Gas Pipe Line Co	10-19-89	G		
ST90-0171 United Gas Pipe Line Co	Mobil Natural Gas, Inc	10-20-89	G-S		
ST90-0172 Panhandle Eastern Pipe Line Co	BP Gas Transmission Co	10-20-89	B		
ST90-0173 Transcontinental Gas Pipe Line Corp	Citizens Gas Supply Corp	10-20-89	G-S		
ST90-0174 El Paso Natural Gas Co	V.H.C. Gas System, L.P	10-20-89	G-S		
ST90-0175 Equitrans, Inc	Consolidated Fuel Corp	10-20-89	G-S		
ST90-0176 Delhi Gas Pipeline Corp	Arkla Energy Resources	10-23-89	C		
ST90-0177 Delhi Gas Pipeline Corp	Natural Gas Pipeline Co. of America	10-23-89	C		
ST90-0178 Delhi Gas Pipeline Corp	Northern Natural Gas Co	10-23-89	C		
ST90-0179 Delhi Gas Pipeline Corp	Arkla Energy Resources	10-23-89	C		
ST90-0180 Delhi Gas Pipeline Corp	Transwestern Pipeline Co	10-23-89	C		
ST90-0181 Northern Natural Gas Co	Sunrise Energy Co	10-19-89	B		
ST90-0182 Northern Natural Gas Co	Arco Natural Gas Marketing, Inc	10-19-89	G-S		
ST90-0183 Canyon Creek Compression Co	Chevron U.S.A., Inc	10-20-89	G-S		
ST90-0184 Northwest Pipeline Corp	Union Pacific Resources Co	10-20-89	G-S		
ST90-0185 Natural Gas Pipeline Co. of America	Midcon Marketing Corp	10-20-89	G-S		
ST90-0186 Panhandle Eastern Pipe Line Co	PSI, Inc	10-23-89	G-S		
ST90-0187 Panhandle Eastern Pipe Line Co	Indiana Gas Co	10-23-89	B		
ST90-0188 Panhandle Eastern Pipe Line Co	Anadarko Trading Co	10-23-89	G-S		
ST90-0189 Panhandle Eastern Pipe Line Co	Anadarko Trading Co	10-23-89	G-S		
ST90-0190 Transtexas Gas Co	NGC Transportation, Inc	10-23-89	G-S		
ST90-0191 Saltgrass Pipeline Co	Unicorp Energy, Inc	10-23-89	K-S		
ST90-0192 Manzano Pipeline Co	Cemetex Co	10-23-89	G-S		

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Docket number [1]	Recipient	Date filed	Part 284 subpart	Expiration date [2]	Transportation rate (c/ MMBTU)
ST90-0193 Moraine Pipeline Co.	BP Gas Marketing Co.	10-23-89	G-S		
ST90-0194 Natural Gas Pipeline Co. of America	Midcon Marketing Corp.	10-23-89	G-S		
ST90-0195 Tennessee Gas Pipeline Co.	Columbia Gas Transmission Corp.	10-23-89	G		
ST90-0196 K N Energy, Inc.	Mountain Fuel Supply Co.	10-23-89	B		
ST90-0197 Northwest Pipeline Corp.	Pacific Western Energy Co.	10-23-89	G-S		
ST90-0198 Texas Eastern Transmission Corp.	New Jersey Natural Gas Co.	10-23-89	B		
ST90-0199 Arkla Energy Resources	AER Intrastate Pipeline	10-23-89	B		
ST90-0200 Tennessee Gas Pipeline Co.	Colonial Gas Company	10-24-89	B		
ST90-0201 Stingray Pipeline Co.	Louisiana Resources Co.	10-24-89	B		
ST90-0202 Transcontinental Gas Pipe Line Corp.	Pentex Pipeline Co., Inc.	10-24-89	B		
ST90-0203 Transcontinental Gas Pipe Line Corp.	South Jersey Gas Co.	10-24-89	B		
ST90-0204 Transcontinental Gas Pipe Line Corp.	Tennessee Gas Pipeline Co.	10-24-89	G		
ST90-0205 Transcontinental Gas Pipe Line Corp.	Union Pacific Resources Co.	10-24-89	G-S		
ST90-0206 Valero Transmission, L.P.	Natural Gas Pipeline Co. of America	10-25-89	C		
ST90-0207 Natural Gas Pipeline Co. of America	Iowa Southern Utilities Co.	10-25-89	B		
ST90-0208 Natural Gas Pipeline Co. of America	Trans-American Gas Transmission Corp.	10-25-89	B		
ST90-0209 Williston Basin Interstate P/L Co.	MGTC, Inc.	10-25-89	B		
ST90-0210 Northern Border Pipeline Co.	Northern Natural Gas Co.	10-25-89	G		
ST90-0211 Williston Basin Interstate P/L Co.	Cody Gas Co.	10-25-89	B		
ST90-0212 Williston Basin Interstate P/L Co.	Montana-Dakota Utilities Co.	10-25-89	B		
ST90-0213 Williston Basin Interstate P/L Co.	Montana-Dakota Utilities Co.	10-25-89	B		
ST90-0214 Williston Basin Interstate P/L Co.	Neches Gas Distribution Co.	10-25-89	B		
ST90-0215 Williston Basin Interstate P/L Co.	Quivira Gas Co.	10-25-89	B		
ST90-0216 Williston Basin Interstate P/L Co.	Montana-Dakota Utilities Co.	10-25-89	B		
ST90-0217 ANR Pipeline Co.	Tejas Power Corp.	10-25-89	G-S		
ST90-0218 ANR Pipeline Co.	Exxon Corp.	10-25-89	G-S		
ST90-0219 ANR Pipeline Co.	City of Morning Sun	10-25-89	B		
ST90-0220 Algonquin Gas Transmission Co.	Citizens Gas Supply Corp.	10-25-89	G-S		
ST90-0221 Algonquin Gas Transmission Co.	Bay State Gas Co.	10-25-89	B		
ST90-0222 Algonquin Gas Transmission Co.	Dolphin Energy, Inc.	10-25-89	G-S		
ST90-0223 Algonquin Gas Transmission Co.	Orange & Rockland Utilities, Inc.	10-25-89	G-S		
ST90-0224 ANR Pipeline Co.	Stellar Gas Co.	10-25-89	B		
ST90-0225 ANR Pipeline Co.	Louisiana Gas System, Inc.	10-25-89	B		
ST90-0226 ANR Pipeline Co.	Michigan Consolidated Gas Co.	10-25-89	B		
ST90-0227 Natural Gas Pipeline Co. of America	Bethlehem Steel Corp.	10-26-89	G-S		
ST90-0228 Natural Gas Pipeline Co. of America	Mobil Natural Gas, Inc.	10-26-89	G-S		
ST90-0229 Natural Gas Pipeline Co. of America	Bethlehem Steel Corp.	10-26-89	G-S		
ST90-0230 Natural Gas Pipeline Co. of America	Quantum Chemical Corp.	10-26-89	G-S		
ST90-0231 Natural Gas Pipeline Co. of America	Bethlehem Steel Corp.	10-26-89	G-S		
ST90-0232 Natural Gas Pipeline Co. of America	Bethlehem Steel Corp.	10-26-89	G-S		
ST90-0233 El Paso Natural Gas Co.	Phillips 66 Natural Gas Co.	10-26-89	G-S		
ST90-0234 El Paso Natural Gas Co.	Mobil Natural Gas Inc.	10-26-89	G-S		
ST90-0235 Tennessee Gas Pipeline Co.	BP Gas Inc.	10-26-89	G-S		
ST90-0236 BP Gas Transmission Co.	Panhandle Eastern Pipe Line Co., et al.	10-26-89	C	03-25-90	28.80
ST90-0237 BP Gas Transmission Co.	Panhandle Eastern Pipe Line Co., et al.	10-26-89	C	03-25-90	28.80
ST90-0238 Transcontinental Gas Pipe Line Corp.	Consolidated Ed. Co. of NY, Inc., et al.	10-26-89	B		
ST90-0239 Northwest Pipeline Corp.	Rocky Mountain Natural Gas Co., Inc.	10-26-89	B		
ST90-0240 Northwest Pipeline Corp.	Union Pacific Resources Co.	10-26-89	G-S		
ST90-0241 Northern Natural Gas Co.	Apache Corp.	10-26-89	G-S		
ST90-0242 Northern Natural Gas Co.	Enron Oil & Gas Co.	10-26-89	G-S		
ST90-0243 Northern Natural Gas Co.	BHP Gas Marketing Co.	10-26-89	G-S		
ST90-0244 Northern Natural Gas Co.	PSI, Inc.	10-26-89	G-S		
ST90-0245 Colorado Interstate Gas Co.	Exxon Corp.	10-26-89	G-S		
ST90-0246 Delhi Gas Pipeline Corp.	K N Energy, Inc.	10-27-89	C		
ST90-0247 Delhi Gas Pipeline Corp.	United Gas Pipe Line Co.	10-27-89	C		
ST90-0248 Delhi Gas Pipeline Corp.	Tennessee Gas Pipeline Co.	10-27-89	C		
ST90-0249 Enogex Inc.	Natural Gas Pipeline Co. of America	10-26-89	C	03-25-90	43.57
ST90-0250 Tejas Gas Corp.	Natural Gas Pipeline Co. of America	10-27-89	C		
ST90-0251 Tennessee Gas Pipeline Co.	Arco Natural Gas Marketing, Inc.	10-27-89	G-S		
ST90-0252 Panhandle Eastern Pipeline Co.	Tarpon Gas Marketing LtD.	10-27-89	G-S		
ST90-0253 Tennessee Gas Pipeline Co.	Kimbell Resources, Inc.	10-27-89	G-S		
ST90-0254 Tennessee Gas Pipeline Co.	Chevron U.S.A., Inc.	10-27-89	G-S		
ST90-0255 Black Marlin Pipeline Co.	Amoco Gas Co.	10-27-89	B		
ST90-0256 Lone Star Gas Co.	El Paso Natural Gas Co., et al.	10-27-89	C		
ST90-0257 Panhandle Eastern Pipe Line Co.	Kansas Power and Light Co.	10-27-89	B		
ST90-0258 Natural Gas Pipeline Co. of America	Mississippi River Transmission Corp.	10-27-89	G		
ST90-0259 Transwestern Pipeline Co.	Coastal Gas Marketing Co.	10-27-89	G-S		
ST90-0260 Transwestern Pipeline Co.	Southern California Gas Co.	10-27-89	B		
ST90-0261 Transwestern Pipeline Co.	Mobil Natural Gas, Inc.	10-27-89	G-S		
ST90-0262 Transwestern Pipeline Co.	Arco Natural Gas Marketing, Inc.	10-27-89	G-S		
ST90-0263 Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	10-27-89	G-S		
ST90-0264 Transwestern Pipeline Co.	Texaco Gas Marketing, Inc.	10-27-89	G-S		
ST90-0265 Gulf States Pipeline Corp.	Mississippi River Trans. Corp., et al.	10-27-89	C	03-26-90	15.00
ST90-0266 Natural Gas Pipeline Co. of America	Texaco Gas Marketing, Inc.	10-27-89	G-S		
ST90-0267 BP Gas Transmission Co.	ANR Pipeline Co., et al.	10-27-89	C	03-26-90	13.70
ST90-0268 Natural Gas Pipeline Co. of America	Triumph Natural Gas L.P.	10-30-89	G-S		
ST90-0269 Natural Gas Pipeline Co. of America	Lone Star Gas Co.	10-30-89	B		
ST90-0270 Midwestern Gas Transmission Co.	People Gas Light & Coke Co.	10-30-89	B		
ST90-0271 Midwestern Gas Transmission Co.	Northern Illinois Gas Co.	10-30-89	B		
ST90-0272 Midwestern Gas Transmission Co.	Bishop Pipeline Corp.	10-30-89	B		

Docket number [1]	Recipient	Date filed	Part 284 subpart	Expiration date [2]	Transportation rate (c/ MMBTU)
ST90-0273 Midwestern Gas Transmission Co.	Northern Illinois Gas Co.	10-30-89	B		
ST90-0274 Midwestern Gas Transmission Co.	Yankee Gas Services Co.	10-30-89	B		
ST90-0275 Midwestern Gas Transmission Co.	Iesco Pipeline, Inc.	10-30-89	B		
ST90-0276 Tennessee Gas Pipeline Co.	Iesco Pipeline, Inc.	10-30-89	B		
ST90-0277 Tennessee Gas Pipeline Co.	Maxus Exploration Co.	10-30-89	G-S		
ST90-0278 Delhi Gas Pipeline Corp.	Northern Gas of Wyoming	10-30-89	C		
ST90-0279 Red River Pipeline	El Paso Natural Gas Co.	10-30-89	C		
ST90-0280 Red River Pipeline	El Paso Natural Gas Co.	10-30-89	C		
*ST90-0281 Delhi Gas Pipeline Corp.	El Paso Natural Gas Co.	10-30-89	C		
ST90-0282 United Gas Pipe Line Co.	Gulf South Pipeline Co.	10-30-89	G-S		
ST90-0283 Columbia Gulf Transmission Co.	Elf Aquitaine, Inc.	10-30-89	G-S		
ST90-0284 Columbia Gulf Transmission Co.	Stellar Gas Co.	10-30-89	G-S		
ST90-0285 Columbia Gas Transmission Co.	South Jersey Energy Co.	10-30-89	G-S		
ST90-0286 Gulf States Pipeline Corp.	Southern Natural Gas Co.	10-27-89	C	03-26-90	15.00
ST90-0287 Natural Gas Pipeline Co. of America	Union Electric Co.	10-30-89	B		
ST90-0288 Delhi Gas Pipeline Corp.	Columbia Gas Transmission Crop.	10-30-89	C		
ST90-0289 Delhi Gas Pipeline Corp.	Northern Natural Gas Co.	10-30-89	C		
ST90-0290 Delhi Gas Pipeline Corp.	San Diego Gas & Electric Co.	10-30-89	D		
ST90-0291 Delhi Gas Pipeline Corp.	Northern Natural Gas Co.	10-31-89	C		
ST90-0292 Delhi Gas Pipeline Corp.	Northern Natural Gas Co.	10-31-89	C		
ST90-0293 Delhi Gas Pipeline Corp.	Natural Gas Pipeline Co. of America	10-31-89	C		
ST90-0294 El Paso Natural Gas Co.	Devon Energy Corp.	10-31-89	G-S		
ST90-0295 Texas Gas Transmission Corp.	Reliance Gas Marketing Co.	10-31-89	G-S		
ST90-0296 Texas Gas Transmission Corp.	Niagara Mohawk Power Corp.	10-31-89	B		
ST90-0297 Natural Gas Pipeline Co. of America	BP Gas Inc.	10-31-89	G-S		
ST90-0298 Moraine Pipeline Co.	Wisconsin Natural Gas Co.	10-31-89	B		
ST90-0299 Natural Gas Pipeline Co. of America	Acacia Gas Corp.	10-31-89	G-S		
ST90-0300 Stingray Pipeline Co.	Transcontinental Gas Pipe Line Corp.	10-31-89	K		
ST90-0301 Stingray Pipeline Co.	United Gas Pipe Line Co.	10-31-89	K		
ST90-0302 Colorado Interstate Gas Co.	Trigen Resources Corp.	10-31-89	G-S		
ST90-0303 Colorado Interstate Gas Co.	Trigen Resources Corp.	10-31-89	G-S		
ST90-0304 United Gas Pipe Line Co.	Laser Marketing Co.	10-31-89	G-S		
ST90-0305 United Gas Pipe Line Co.	Entex, Inc.	10-31-89	B		
ST90-0306 Colorado Interstate Gas Co.	City of Colorado Springs	10-31-89	B		
ST90-0307 Colorado Interstate Gas Co.	City of Colorado Springs	10-31-89	B		
ST90-0308 Colorado Interstate Gas Co.	City of Colorado Springs	10-31-89	B		
ST90-0309 Delhi Gas Pipeline Corp.	El Paso Natural Gas Co.	10-31-89	C		
ST90-0310 Midwestern Gas Transmission Co.	Michigan Consolidated Gas Co.	10-31-89	B		
ST90-0311 Midwestern Gas Transmission Co.	Llano, Inc.	10-31-89	B		
ST90-0312 Midwestern Gas Transmission Co.	SNG Intrastate Pipeline, Inc.	10-31-89	B		
ST90-0313 Tennessee Gas Pipeline Co.	Southern Natural Gas Co.	10-31-89	B		
ST90-0314 Midwestern Gas Transmission Co.	Northern Illinois Gas Co.	10-31-89	B		
ST90-0315 Tennessee Gas Pipeline Co.	Cabot Corp.	10-31-89	B		
ST90-0316 Midwestern Gas Transmission Co.	Northern Illinois Gas Co.	10-31-89	B		
ST90-0317 Panhandle Eastern Pipe Line Co.	Home Petroleum Corp.	10-31-89	G-S		
ST90-0318 Panhandle Eastern Pipe Line Co.	Entrade Corp.	10-31-89	G-S		
ST90-0319 Panhandle Eastern Pipe Line Co.	Columbia Gas of Ohio, Inc.	10-31-89	B		
ST90-0320 South Georgia Natural Gas Co.	City of Valdosta	10-31-89	B		
ST90-0321 Southern Natural Gas Co.	Texican Natural Gas Co.	10-31-89	G-S		
ST90-0322 Southern Natural Gas Co.	Catamount Natural Gas, Inc.	10-31-89	G-S		
ST90-0323 Trunkline Gas Co.	Mountain Iron & Supply Co.	10-30-89	G-S		
ST90-0324 Trunkline Gas Co.	Panhandle Trading Co.	10-30-89	G-S		
ST90-0325 United Gas Pipe Line Co.	Laser Marketing Co.	10-31-89	G-S		
ST90-0326 Midwestern Gas Transmission Co.	Michigan Consolidated Gas Co.	10-31-89	B		
ST90-0327 Midwestern Gas Transmission Co.	NGC Intrastae Pipeline Co.	10-31-89	B		
ST90-0328 Tennessee Gas Pipeline Co.	NGC Intrastate Pipleline Co.	10-31-89	B		
ST90-0329 Tennessee Gas Pipeline Co.	Tenngasco Corp.	10-31-89	G-S		
ST90-0330 Colorado Interstate Gas Co.	Energy Pipeline Co.	10-30-89	B		
ST90-0331 Colorado Interstate Gas Co.	Coastal States Gas Transmission Co.	10-30-89	B		
ST90-0332 Colorado Interstate Gas Co.	Quivira Gas Co.	10-30-89	B		
ST90-0333 Colorado Interstate Gas Co.	Amoco Production Co.	10-30-89	G-S		
ST90-0334 Colorado Interstate Gas Co.	Williams Gas Co.	10-30-89	B		
ST90-0335 Colorado Interstate Gas Co.	Peoples Natural Gas Co.	10-30-89	B		
ST90-0336 Rhone-Poulenc Pipeline Co.	Colorado Interstate Gas Co., et al.	10-31-89	C	03-30-90	19.00
ST90-0337 CNG Transmission Co.	Natural Gas Pipeline Co. of America	10-31-89	C	03-30-90	24.32
ST90-0338 United Gas Pipeline Co.	Gulf South Pipeline Co.	10-31-89	G-S		
ST90-0339 United Gas Pipeline Co.	Gulf South Pipeline Co.	10-31-89	G-S		
ST90-0340 Williams Natural Gas Co.	Phillips 66 Natural Gas Co.	11-01-89	G-S		
ST90-0341 Williams Natural Gas Co.	Midstates Pipeline Co.	11-01-89	G-S		
ST90-0342 Transok, Inc.	Phillips Gas Pipeline Co.	10-31-89	C	03-30-90	32.50
ST90-0343 Enogex Inc.	Arkla Energy Resources	10-30-89	C	03-29-90	43.57
ST90-0344 Transok, Inc.	Arkla Energy Resources	10-31-89	C	03-30-90	32.50

[1] Notice of transactions does not constitute a determination that filings comply with commission regulations in accordance with order No. 436 (Final rule and notice requesting supplemental comments, 50 FR 42,372, 10/19/85).

[2] The intrastate pipeline has sought Commission approval of its transportation rate pursuant to section 284.123(B)(2) of the Commission's regulations (18 CFR 284.123(B)(2)). Such rates are deemed air and equitable if the Commission does not take action by the date indicated.

[3] ST89-107-000 has been withdrawn.

[FR Doc. 89-28642 Filed 12-11-89; 8:45 am]

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[Docket Nos. CP90-296-000, et al.]

United Gas Pipe Line Co., et al.; Natural Gas Certificate Filings

December 5, 1989.

Take notice that the following filings have been made with the Commission:

1. United Gas Pipe Line Co.

[Docket No. CP90-286-000]

Take notice that on November 28, 1989, United Gas Pipe Line Company (United), Post Office Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP90-286-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport gas on an interruptible basis for Laser Marketing Company (Shipper), under its blanket certificate issued in Docket No. CP88-6-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that it proposes to transport for Shipper 618,000 MMBtu on a peak day, 618,000 MMBtu on an average day and 225,570,000 MMBtu on an annual basis. United also states that pursuant to a Transportation Agreement dated October 1, 1988 as amended on September 25, 1989, and September 26, 1989 between United and Shipper (Transportation Agreement) propose to transport natural gas for Shipper from points located in multiple counties in Alabama, Florida, Mississippi, Louisiana and Texas. The points of delivery and ultimate points of delivery are located in multiple counties in Louisiana, Mississippi, Texas, Florida and Alabama.

United further states that it commenced this service on September 25, 1989, as reported in Docket No. CP90-304-000.

Comment date: January 19, 1990, in accordance with Standard Paragraph G at the end of this notice.

2. Southern Natural Gas Co.

[Docket No. CP90-291-000]

Take notice that on November 30, 1989, Southern Natural Gas Company (Southern) P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP90-291-000 a request pursuant to §§ 157.205 and 284.223 (18 CFR 157.205 and 284.223) of the Commission's Regulations under the Natural Gas Act for authority to provide interruptible transportation service for the Polaris Corporation (Polaris), local distribution company, under Southern's blanket transportation certificate which was issued by Commission order on May 5, 1989, in Docket No. CP89-316-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern states that it will receive the gas from various points in, offshore Texas, offshore Louisiana and the states of Texas, Louisiana, Mississippi and Alabama for delivery to Polaris at various delivery points in Georgia.

Southern proposes to transport on an interruptible basis up to 70,000 MMBtu of gas equivalent on a peak day and 25,000 MMBtu on an average day and approximately, 9,125,000 MMBtu of gas annually. Southern states that the transportation service commenced under the 120-day automatic authorization of § 284.223(a) of the Commission's Regulations on September 28, 1989, pursuant to a transportation agreement dated August 31, 1989. Southern notified the Commission of the commencement of the transportation service in Docket No. ST90-118-000.

Comment date: January 19, 1990, in accordance with Standard Paragraph G at the end of this notice.

3. Southern Natural Gas Co.

[Docket No. CP90-293-000]

Take notice that on November 30, 1989, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202-2563, filed a request with the Commission in Docket No. CP90-293-000 pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to provide an interruptible transportation service for Catamount Natural Gas, Inc. (Catamount), a natural gas marketer, under its blanket certificate issued in Docket No. CP88-316-000 pursuant to Section 7 of the NGA, all as more fully set forth in the request which is open to public inspection.

Southern states that it would transport natural gas volumes for Catamount under its Rate Schedule IT from various receipt points on its system in Alabama, Louisiana, offshore Louisiana, Mississippi, Texas, and offshore Texas to various delivery points in Georgia, South Carolina, and Tennessee. Southern would transport up to 150,000 MMBtu equivalent of natural gas on a peak day, 1,100 MMBtu equivalent on an average day, and 27,000,000 MMBtu equivalent on an annual basis. Southern also states that while Catamount has requested 1,100 MMBtu equivalent for average daily transportation service, Catamount anticipates a future average daily transportation quantity request of 73,972 MMBtu equivalent. Southern states that it commenced service for Catamount on October 5, 1989, as reported in Docket No. ST90-322 pursuant to § 284.223(a)(1) of the Regulations.

Comment date: January 19, 1990, in accordance with Standard Paragraph F at the end of this notice.

4. Tennessee Gas Pipeline Co.

[Docket No. CP90-296-000]

Take notice that on November 30, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP90-296-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport gas for Shell Gas Trading Company (Shell Gas) a marketer of natural gas, under Tennessee's blanket certificate issued in Docket No. CP87-115-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee proposes to transport on a firm basis up to 25,000 dekatherm (dt) of natural gas per day on behalf of Shell Gas pursuant to a transportation agreement dated October 23, 1990, between Tennessee and Shell Gas. Tennessee would receive gas at various existing points of receipt on its system in offshore Louisiana and redeliver equivalent volumes, less fuel and lost and unaccounted for volumes, at an existing delivery point in Louisiana.

Tennessee further states that the estimated average daily and annual quantities would be 25,000 dt and 9,125,000 dkt, respectively. Service under § 284.223(a) commenced on November 2, 1989, as reported in Docket No. ST90-557-000, it is stated.

Comment date: January 19, 1990, in accordance with Standard Paragraph G at the end of this notice.

5. Tennessee Gas Pipeline Co.

[Docket No. CP90-297-000]

Take notice that on November 30, 1989, Tennessee Gas Pipeline Company (Tennessee) filed in Docket No. CP90-297-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act, to provide firm transportation service pursuant to its blanket certificate issued in Docket No. CP87-115-000 for Mobil Natural Gas Inc. (Mobil), a marketer, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee estimates that the peak day and average daily volumes transported to be 80,000 dt and 29,200,000 dt on an annual basis. The volumes of natural gas would be transported from receipt points located Offshore Louisiana, and in the state of Louisiana and delivered to a point of interconnect with Transcontinental Gas Pipe Line Corporation at Heidelberg, Jasper County, Mississippi, it is explained. Tennessee also states that the ultimate points of delivery are located in the states of Alabama, Delaware, Georgia, New Jersey, New York, North Carolina, South Carolina, Pennsylvania, Virginia and Washington, DC.

Further, Tennessee indicates further that the transportation service commenced November 1, 1989, as reported in Docket No. ST90-556.

Comment date: January 19, 1990, in accordance with Standard Paragraph G at the end of this notice.

6. United Gas Pipe Line Co.

[Docket No. CP90-300-000]

Take notice that on December 1, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP90-300-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for American Central Gas Companies, Inc. (American Central), a marketer, under the blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

United states that purusant to a transportation agreement dated November 9, 1988, as amended on September 15, 1989, under its Rate Schedule ITS, it proposes to transport up to 185,400 MMBtu per day equivalent of natural gs for American Central. United states that it would transport the gas from multiple receipt points as shown in Exhibit "A" of the transportation agreement and would deliver the gas to multiple delivery points shown in Exhibit "B" of the agreement.

United advises that service under § 284.223(a) commenced September 20, 1989, as reported in Docket No. ST90-702 (filed November 29, 1989). United further advises that it would transport 185,400 MMBtu on an average day and 67,671,000 MMBtu annually.

Comment date: January 19, 1990, in accordance with Standard Paragraph G at the end of this notice.

7. United Gas Pipe Line Co.

[Docket No. CP90-302-000]

Take notice that on December 1, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP90-302-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for LaSER Marketing Company (LaSER), a marketer, under the blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the National Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

United states that pursuant to a transportation agreement dated December 16, 1988, as amended, under its Rate Schedule ITS, it proposes to transport up to 618,000 MMBtu per day equivalent of natural gas for LaSER. United states that it would transport the gas from multiple receipt points as shown in Exhibit "A" of the transportation agreement and would deliver the gas to multiple delivery points shown in Exhibit "B" of the agreement.

United advises that service under § 284.223(a) commenced October 9, 1989, as reported in Docket No. ST90-345-000 (filed November 1, 1989). United further advises that it would transport 618,000 MMBtu on an average day and 225,570,000 MMBtu annually.

Comment date: January 19, 1990, in accordance with Standard Paragraph G at the end of this notice.

8. Columbia Gas Transmission Corp.

[Docket No. CP90-310-000]

Take notice that on December 1, 1989, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP90-310-000, a request pursuant to § 157.205 of the Commission's Regulations (18 CFR 157.205) for authorization to provide a transportation service on behalf of South Jersey Energy Company (South Jersey) under Columbia's blanket certificate issued in Docket No. CP88-240-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Columbia states that it proposes to transport up to 100,000 MMBtu equivalent to natural gas per day, on an interruptible basis, for South Jersey. Columbia further states that projected average day and annual quantities are 80,000 and 36,500,000 MMBtu, respectfively. Columbia indicates that it would receive the natural gas at various receipt points on it system and would redeliver the natural gas for the account of South Jersey at an existing interconnection in the state of New Jersey.

Columbia states that service under § 284.223(a) of the Commission's Regulations (18 CFR 284.223(a)) commenced on October 1, 1989, as reported in Docket No. ST90-285-000.

Comment date: January 19, 1990, in accordance with Standard Paragraph G at the end of this notice.

9. Columbia Gas Transmission Corp.

[Docket No. CP90-312-000]

Take notice that on December 1, 1989, Columbia Gas Transmission Corporation (Columbia), P.O. Box 1273, Charleston, West Virginia 25325-1273, filed in Docket No. CP90-312-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Riley Natural Gas Company (Riley) under its blanket authorization issued in Docket No. CP88-240-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia would perform the proposed interruptible transportation service for Riley, pursuant to an interruptible transportation service agreement dated August 14, 1989. The transportation agreement is effective as of the date of its full execution and shall continue in full force and effect from month-to-month thereafter unless terminated by either party upon thirty days' written notice. Columbia proposes to transport up to a maximum of 20,000 MMBtu equivalent of natural gas per day; 10,000 MMBtu on an average day; and 2,400,000 MMBtu annually. Columbia proposes to receive and deliver the subject gas at various existing points located on its system. Columbia avers that no new facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self-implementing provision of § 284.223(a)(1) of the Commission's Regulations. Columbia commenced such

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self-implementing service on September 6, 1989, as reported in Docket No. ST90–37–000.

Comment date: January 19, 1990, in accordance with Standard Paragraph G at the end of this notice.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89–28909 Filed 12–11–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP88–34–000, RP88–34–001 and RP88–34–003]

ANR Pipeline Co; Proposed Changes in FERC Gas Tariff

December 5, 1989.

Take notice that on December 1, 1989, ANR Pipeline Company ("ANR") tendered for filing with the Federal Energy Regulatory Commission ("Commission") Third Substitute Fourth Revised Sheet No. 570 under Rate Schedule X–64 of Original Volume No. 2 of its FERC Gas Tariff to be effective for refund purposes for the period January 1, 1988, through December 31, 1988.

ANR states that this compliance filing is being made to reduce the rate of return underlying Rate Schedule X–64 to the same rate of return underlying the approved settlement agreement in ANR's Docket No. RP86–160, et al., in accordance with the Commission's Letter Orders dated December 31, 1987 February 19, 1988 and April 14, 1988 in Docket Nos. RP88–34–000, RP88–34–001 and RP88–34–002, respectively.

Any person desiring to be heard or to protest said filing should file a petition to intervene or to protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with Rule 211 or Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before December 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–28910 Filed 12–11–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ90–2–31–000]

Arkla Energy Resources; Filing of Revised Tariff Sheets Reflecting Quarterly PGA Adjustment and Revised Take or Pay Recovery Amounts

December 5, 1989.

Take notice that on December 1, 1989, Arkla Energy Resources (AER), a division of Arkla, Inc., tendered for filing the following tariff sheets to become effective January 1, 1990:

Original Volume No. 3
6th Revised Sheet No. 185.1
First Revised Volume No. 1
53rd Revised Sheet No. 4
First Revised Volume No. 1
6th Revised Sheet No. 7A

These tariff sheets reflect AER's third quarterly PGA filing made subsequent to its annual PGA effective April 1, 1989, under the Commission's Order Nos. 483 and 483–A.

The proposed changes would decrease AER's system cost by $77,455 and its revenue from jurisdictional sales and service by $821 for the PGA period of January, February, and March 1990 as adjusted.

Also included in this filing are six copies of the following tariff sheets which reflect revised amounts previously accrued, that have been paid since June 1988 and allocated to Williams Natural Gas Company to be effective as noted:

Original Volume No. 3: 3rd Substitute 3rd Revised Sheet No. 185.1—Effective April 1, 1989; 3rd Substitute 4th Revised Sheet No. 185.1—Effective July 1, 1989; 1st Substitute 5th Revised Sheet No. 185.1—Effective October 1, 1989.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before December 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Any person wishing to become a party must file a petition to intevene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–28911 Filed 12–11–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ90–33–000 and TM90–2–33–000]

El Paso Natural Gas Co.; Proposed Change in Rates

December 5, 1989.

Take notice that El Paso Natural Gas Company ("El Paso"), on December 1, 1989, tendered for filing pursuant to part 154 of the Federal Energy Regulatory Commission ("Commission") Regulation Under the Natural Gas Act, a notice of:

(i) A Quarterly Adjustment in Rates for jurisdictional gas service rendered to sales customers served by El Paso's interstate gas transmission system under rate schedules affected by and subject to section 19, Purchased Gas Cost Adjustment Provision ("PGA"), of the General Terms and Conditions in El Paso's FERC Gas Tariff, First Revised Volume No. 1; and

(ii) A decrease in the Gas Research Institute ("GRI") funding unit adjustment component of El Paso's rates for certain sales and transportation services subject to sections 20 and 18, Gas Research Institute General Research, Development and Demonstration Funding Unit Adjustment Provision, of the General Terms and Conditions in El Paso's FERC Gas Tariff, First Revised Volume No. 1 and Original Volume No. 1–A, respectively.

El Paso states it is tendering the tariff shares to become effective January 1, 1990.

El Paso states it is tendering certain tariff sheets in compliance with the PGA and GRI Tariff provisions, which reflect a net increase of $0.0094 per dth above those Quarterly PGA rates placed in effect on October 1, 1989 at Docket No. TQ90–1–33–000. Such net increase is comprised of (i) an increase in purchased gas costs of $0.0111 per dth, and (ii) a reduction in the GRI funding unit adjustment component of ($0.0017) per dth.

El Paso also states the rates set forth on the tendered tariff sheets reflect a net increase of $0.1629 per dth above those Interim PGA rates placed in effect on November 1, 1989 at Docket No. TF90–1–33–000, and currently in effect. Such net increase is comprised of (i) a Current Adjustment of $0.1646 per dth, and (ii) a reduction in the GRI funding unit adjustment component of ($0.0017) per dth.

With respect to the Account 191 Surcharge Adjustment, El Paso further states it will continue to suspend collection of its surcharge in accordance with the Commission's September 29, 1989 order accepting and suspending El Paso's quarterly PGA filing at Docket No. TQ90–1–33–000, *et al.*, effective October 1, 1989.

By Opinion No. 334 issued October 10, 1989 at Docket No. RP89–167–000, the Commission amended and approved the GRI's application for advance approval of its 1990 research and development program and related five (5) year plan for 1990–1994. In so doing, the Commission approved the GRI's 1990 funding requirement which is to be raised through a funding unit of 1.26 cents per dth. Accordingly, the tendered revised tariff sheets, when accepted for filing and permitted to become effective, will decrease the GRI funding unit adjustment component of El Paso's rates for certain sales and transportation services from the currently effective 1.43 cents per dth to the 1.26 cents per dth approved by the Commission in Opinion No. 334.

Copies of the filing were served upon all of El Paso's interstate pipeline system sales customers and shippers, and all interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89–28914 Filed 12–11–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA90–1–51–001, TQ90–2–51–001, and TM90–2–51–000]

Great Lakes Gas Transmission Co.; Proposed Changes in FERC Gas Tariff Purchased Gas Adjustment Clause Provisions

December 5, 1989.

Take notice that Great Lakes Gas Transmission Company ("Great Lakes") on December 1, 1989 tendered for filing the following to its FERC Gas Tariff.

First Revised Volume No. 1

Substitute Twenty-Fifth Revised Sheet Nos. 57(i) and 57(ii).
First Revised Substitute Twenty-Fifth Revised Sheet Nos. 57(i) and 57(ii).
Substitute First Revised Twenty-Fifth Revised Sheet Nos. 57(i) and 57(ii).
Second Revised Substitute Twenty-Fifth Revised Sheet Nos. 57(i) and 57(ii).
Substitute Eleventh Revised Sheet No. 57(v).
First Revised Substitute Eleventh Revised Sheet No. 57(v).
Second Revised Substitute Eleventh Revised Sheet No. 57(v).

Substitute Twenty-Fifth Revised Sheet Nos. 57(i) and 57(ii) and Substitute Eleventh Revised Sheet No. 57(v) were filed to reflect the appropriate current purchased gas cost adjustment for its quarterly PGA for the period November 1, 1989 through January 1990.

First Revised Substitute Twenty-Fifth Revised Sheet Nos. 57(i) and 57(ii) and First Revised Substitute Eleventh Revised Sheet No. 57(v) were filed to reflect revised current PGA rates for the months of November and December, 1989 and January, 1990. The tariff sheets were filed as an out-of-cycle PGA to reflect the latest estimated gas cost as provided to Great Lakes by its sole supplier of natural gas, TransCanada Pipelines Limited ("TransCanada"). These pricing arrangements are the result of contract renegotiation between each of Great Lakes' resale customers and the supplier.

Substitute First Revised Twenty-Fifth Revised Sheet Nos. 57(i) and 57(ii) were filed to reflect the addition of a firm transportation service for Northridge Petroleum Marketing, Inc. under Rate Schedule T–27. Initial tariff sheets reflecting Rate Schedule T–27 were filed on November 2, 1989.

Second Revised Substitute Twenty-Fifth Revised Sheet Nos. 57(i) and 57(ii) and Second Revised Substitute Eleventh Revised Sheet No. 57(v), First Revised Volume No. 1, were filed to reflect the Gas Research Institute's 1990 Research and Development Program and GRI funding unit of 1.26 cents approved pursuant to the Commission's Opinion No. 334 issued on October 10, 1989. These tariff sheets were proposed to become effective January 1, 1990.

Great Lakes requested waiver of the notice requirements so as to permit the above tariff sheets to become effective November 1, December 1, 1989 and January 1, 1990, in order to implement the gas pricing agreements between Great Lakes' resale customers and TransCanada on a timely basis.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before December 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89–28915 Filed 12–11–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ90–2–5–000, TM90–3–5–000 and RP88–140–007]

Midwestern Gas Transmission Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

Take notice that on December 1, 1989, Midwestern Gas Transmission Company (Midwestern) filed Third Revised Sheet No. 5 to First Revised Volume No. 1 of its FERC Gas Tariff, to be effective January 1, 1990.

Midwestern states that the current Purchased Gas Cost Rate Adjustments reflected on Third Revised Sheet No. 5 consist of a $.4270 per dekatherm adjustment applicable to the gas component of Midwestern's sales rates, a $1.01 per dekatherm adjustment applicable to the Demand D–1 component, and a $(.0003) per dekatherm adjustment applicable to the Demand D–2 component.

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers on its system

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and affected stated regulatory commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before December 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene; provided, however, that any person who had previously filed a petition to intervene in this proceeding is not required to file a further petition. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-28924 Filed 12-11-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA90-1-16-001, TM90-4-16-000]

National Fuel Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

December 5, 1989.

Take notice that on December 1, 1989, National Fuel Gas Supply Corporation ("National") tendered for filing Substitute Twenty-Fifth Revised Sheet No. 4 as part of its FERC Gas Tariff, First Revised Volume No. 1, proposed to become effective January 1, 1990.

National states that the purpose of this filing is to reflect a revision to the Current Adjustment shown in National's annual Purchased Gas Cost Adjustment ("PGA") filed on October 31, 1989, Docket No. TA90-1-16-001. In addition, the Gas Research Institute (GRI) surcharge has been reduced to reflect the latest Commission-approved rate.

Twenty-Fifth Revised Sheet No. 4 reflects a commodity current adjustment of 30.13 cents per Dth from National's revised October 1989 quarterly PGA, Docket No. TA90-1-16-001. The filing also reflects an average commodity cost of purchased gas of $2.7995 per Dth, and an RQ and DC sales commodity rate of $2.9676 per Dth.

National further states that copies of this filing were served on National's jurisdictional customers and on the Regulatory Commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts and New Jersey.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such motions to intervene or protests should be filed on or before December 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-28912 Filed 12-11-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA90-1-18-000]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

December 5, 1989.

Take notice that Texas Gas Transmission Corporation (Texas Gas), on December 1, 1989, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Twenty-third Revised Sheet No. 10.
Twenty-third Revised Sheet No. 10A.

Texas Gas states that these tariff sheets reflect changes in projected purchased gas costs and the unrecovered purchased gas cost surcharge pursuant to the Annual PGA provision of the Purchased Gas Adjustment clause of its FERC Gas Tariff and are proposed to be effective February 1, 1990. Texas Gas further states that the proposed tariff sheets reflect a commodity rate increase of $.0431 per MMBtu, a D-1 demand rate increase of $.03 per MMBtu, and a D-2 demand rate decrease of $.0022 per MMBtu from the rates set forth in the quarterly PGA filed September 29, 1989 (Docket No. TQ90-1-18).

Copies of the filing were served upon Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests or motions should be filed on or before December 27, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-28913 Filed 12-11-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA90-1-17-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

December 5, 1989.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on December 1, 1989 tendered for filing as part of its FERC Gas Tariff, six copies each of the tariff sheets:

Fifth Revised Volume No. 1

Twentieth Revised Sheet No. 50
Thirteenth Revised Sheet No. 50A
Thirteenth Revised Sheet No. 50B
Thirteenth Revised Sheet No. 50C
Thirteenth Revised Sheet No. 50D
Fourteenth Revised Sheet No. 51
Eighth Revised Sheet No. 51A
Eighth Revised Sheet No. 51B
Eighth Revised Sheet No. 51C
Eighth Revised Sheet No. 51D

Original Volume No. 2

Thirty-sixth Revised Sheet No. 235
Twenty-eighth Revised Sheet No. 241
Thirty-sixth Revised Sheet No. 322

Texas Eastern states that the above tariff sheets are being issued pursuant to section 23, Purchased Gas Cost Adjustment, and section 26, Electric Power Cost (EPC) Adjustment, contained in the General Terms and Conditions of Texas Eastern's FERC Gas Tariff. This filing constitutes Texas Eastern's Regular Annual PGA filing to be effective February 1, 1990 pursuant to 18 CFR 154.305.

Texas Eastern states that in compliance with § 154.305(a)(2) of the Commission's Regulations, a report containing detailed computations which show the derivation of the current adjustments and a surcharge rate to be applied to Texas Eastern's effective rates is attached and enclosed in 9-track computer tape format as prescribed by FERC Form No. 542-PGA (Revised) for formal filing with the Commission.

Texas Eastern states that the PGA changes proposed in this filing consist of Current Adjustments and Surcharge Adjustments as follows for the components of Texas Eastern's sales rates:

Rate component	Current adjustment	Surcharge adjustment
Demand-1	$0.052/dth	$(0.006)/dth
Demand-2	$0.0019/dth	$(0.0216)/dth
Commodity	$0.1096/dth	$(0.0332)/dth

Texas Eastern states that these Current Adjustments represent the change in Texas Eastern's projected quarterly cost of purchased gas from Texas Eastern's last scheduled PGA filing of September 29, 1989 in Docket No. TQ90-1-17. The Surcharge Adjustments are designed to amortize the Current Deferral Subaccount Balance in Account 191 as of September 30, 1989 over the 12-month period beginning on February 1, 1990.

Texas Eastern also states that this filing constitutes Texas Eastern's semiannual adjustment to reflect changes in electric power costs pursuant to section 26. These changes in rates for Sales and Transportation services are based upon the projected annual electric power cost incurred in the operation of transmission compressor stations with electric motor prime movers for the 12 months beginning February 1, 1990 and to also reflect the EPC Surcharge which is designed to clear the balance in the Deferred EPC Account as of October 31, 1989.

The proposed effective date of the above tariff sheets is February 1, 1990.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 27, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-28916 Filed 12-11-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-1-11-000]

United Gas Pipe Line Co.; Filing of Revised Tariff Sheets

December 5, 1989.

Take Notice that on December 1, 1989, United Gas Pipe Line Company (United) tendered for filing the following tariff sheets:

Second Revised Volume No. 1

First Revised Sheet No. 4
First Revised Sheet No. 4A
First Revised Sheet No. 4B
First Revised Sheet No. 4D
First Revised Sheet No. 1

The proposed effective date of the above referenced tariff sheets in this docket is January 1, 1990. The above referenced tariff sheets are being filed pursuant to Section 154.308 of the Commission's regulations to reflect changes in United's purchased gas cost adjustment as provided in Section 19 of United's FERC Gas Tariff, Second Revised Volume No. 1.

United states that it has filed tariff sheets to reflect a 12.95¢ per Mcf increase in gas commodity costs compared to what was filed in Docket No. TA90-1-11-001. In addition, this PGA filing reflects the base tariff rate terms and conditions of the tariff filing made by United on November 27, 1989 in compliance with the Commission's order issued October 27, 1989 in Docket Nos. RP85-209 *et al.* United states that it reserves its rights to reflect such modification to the rates filed herein as may be required to reflect final Commission approval of that filing.

United also states that it will continue to suspend its right to collect an 18¢ per Mcf Settlement Surcharge for the same reasons given in Docket No. TQ89-3-11-000, subject to its right to reinstate the 18¢ per Mcf Settlement Surcharge prospectively upon 30 days written notice.

United states that the revised tariff sheets and supporting data are being mailed to its jurisdictional sales customers and to interested state commissions.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or Protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in such accordance with §§ 385.214 and 385.211 of the Commission's regulations. All such petitions or protests should be filed on or before December 13, 1989.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a Motion to Intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-28917 Filed 12-11-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-1-35-000]

West Texas Gas, Inc.; Filing

December 5, 1989.

Take notice that on December 1, 1989, West Texas Gas, Inc. (WTG) filed Seventeenth Revised Sheet No. 3a to its FERC Gas Tariff, Original Volume No. 1, proposed to be effective January 1, 1990. Seventeenth Revised Sheet No. 3a and the accompanying explanatory schedules constitute WTG's quarterly PGA filing submitted in accordance with the Commission's purchased gas adjustments regulations.

Copies of the filing were served upon WTG's customers and interested state commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214 (1989)). All such motions or protests should be filed on or before December 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lous D. Cashell,

Secretary.

[FR Doc. 89-28925 Filed 12-11-89; 8:45 am]

BILLING CODE 6717-01-M

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Office of Fossil Energy

[FE Docket No. 89-59-NG]

Amoco Energy Trading Corp.; Order Granting Blanket Authorization To Export Natural Gas to Mexico

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of order granting blanket authorization to export natural gas to Mexico.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Amoco Energy Trading Corporation (AETC) blanket authorization in FE Docket No. 89-59-NG to export up to 146 Bcf of natural gas from the United States to Mexico over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 6, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89-28998 Filed 12-11-89; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 89-60-NG]

Dome Petroleum Corp.; Application To Extend Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for extension of blanket authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy DOE) gives notice of receipt on November 13, 1989, of an application filed by Dome Petroleum Corp. (Dome) requesting that blanket authorization previously granted in DOE/ERA Opinion and Order No. 85 (Order 85), issued July 2, 1985 (ERA Docket No. 85-11-NG), and extended in DOE/ERA Opinion and Order No. 204 (Order 204), issued October 30, 1987 (ERA Docket No. 87-30-NG), be further extended for two years beginning on December 1, 1989, the expiration of its current import authorization, through the period ending November 30, 1991. Under the extension requested, Dome would be authorized to import volumes not to exceed, in the aggregate, 200 Bcf of Canadian natural gas over a two-year period. Dome further requests that FE expedite this application because the current authorization expires on December 1, 1989.

The application is filed under Section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed at the address listed below no later than 4:30 p.m., e.s.t., January 11, 1990.

ADDRESS: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Robert Groner, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3H-087, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-1657.

Diane Stubbs, Natural and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION:

Dome is a North Dakota corporation with its registered office in Bismarck, North Dakota, and its principal place of business in Calgary, Alberta. Dome is a wholly-owned subsidiary of Amoco Canada Petroleum Company, Ltd., which is a wholly owned subsidiary of Amoco Corporation, an Indiana corporation. Amoco Corporation is an integrated company engaged in the exploration, production, refining, transportation, and marketing of oil, natural gas, and other hydrocarbons.

Dome states that the imported gas would continue to be supplied by individual producers, producer groups, associations, and pipeline companies, and sold by Dome on a short-term or spot basis to, among others, industrial end users, agricultural users, electric utilities, pipelines, and local distribution companies. Dome expects that the majority of short-term and spot sales of Canadian natural gas sold to U.S. purchasers will be used to displace higher priced energy supplies. Dome asserts that each sale will be market responsive and that imports would be accomplished using existing pipeline capacity and no new construction would be involved. Dome also would continue to file reports with FE within 30 days after the end of each calendar quarter giving the details of the individual transactions. Dome's prior quarterly reports filed with FE indicate that approximately 23.6 Bcf of natural gas was imported under Orders 85 and 204 through September 30, 1989.

So that sales can commence and the authorization can be utilized during the winter heating season, Dome requests that FE expedite the consideration of this application. It is clear that the applicant's November 13 filing did not allow the DOE to publish a notice in the **Federal Register** providing a shortened, much less a full 30-day public comment period and still issue a new decisional order in this docket by the now past November 30 expiration date under Order 204. The DOE hereby reminds Dome and other potential applicants that DOE's procedural regulations, specifically 10 CFR 590.201, state that applications shall be filed a minimum of 60 days in advance of the proposed import or export or other requested action, unless a later date is permitted for good cause shown. Dome, it is noted, furnished no such reason.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement will be competitive and thus in the public interest. Parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The DOE has determined that compliance with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, can be accomplished by means of a categorical exclusion. On March 27, 1989, the DOE published in the **Federal Register** (54 FR 12474) a notice of amendments to its guidelines for compliance with NEPA. In that notice, the DOE added to its list of categorical exlcusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that the DOE's action is not a major Federal action under NEPA. Unless the DOE receives comments indicating that the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written coments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties, written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial questions of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice to all parties will be provided. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Dome's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 6, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89-28999 Filed 12-11-89; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 89-62-NG]

Goetz Energy Corp.; Application To Extend Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for extension of blanket authorization to import natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on November 20, 1989, of an application filed by Goetz Energy Corporation (formally Goetz Oil Corporation) (Goetz) requesting that the blanket authority previously granted in DOE/ERA Opinion and Order No. 196 (Order 196), issued October 19, 1987 (ERA Docket No. 87-41-NG), be extended for two years beginning when its current import authorization expires on January 15, 1990. Under the extension requested, Goetz would be authorized to import up to a maximum of 140 Bcf of Canadian natural gas over a two-year period.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are to be filed at the address listed below no later than 4:30 p.m., e.s.t., January 11, 1990.

ADDRESSES: Office of Fuels Programs, Office of Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Larine A. Moore, Office of Fuels Programs, Office of Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-056, FE-53, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, GC-32, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: Goetz, a New York corporation with its principal place of business in Buffalo, New York, is a marketer of oil and natural gas in the United States. Goetz requests authority to continue to import competitively priced natural gas from reliable Canadian producers for sale to purchasers in the United States on a short-term or spot basis. Goetz proposes to import natural gas for either its own account or as agent for U.S. purchasers and/or Canadian suppliers. Goetz intends to use existing facilities for the transportation of the gas. Goetz also would continue to file reports with FE within 30 days after the end of each calendar quarter giving the details of the individual transactions. Goetz's prior quarterly reports filed with FE indicate that approximately 936 MMcf of natural gas was imported under Order 196 through September 30, 1989.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement will be competitive and thus in the public interest. Parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance:

The DOE has determined that compliance with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et seq.*, can be accomplished by means of a categorical exclusion. On March 27, 1989, the DOE published in the **Federal Register** (54 FR 12474) a notice of amendments to its guidelines for compliance with NEPA. In that notice, the DOE added to its list of

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categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that the DOE's action is not a major Federal action under NEPA. Unless the DOE receives comments indicating that the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts. If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Goetz's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056 at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC., December 6, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89-29000 Filed 12-11-89; 8:45 am]

BILLING CODE 12-11-89

[ERA Docket No. 88-63-NG]

Vector Energy (U.S.A.) Inc.; Order Amending an Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order amending an authorization to import natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued an order amending an authorization granting Vector Energy (U.S.A.) Inc. (Vector) authority to import up to 13.14 Bcf per year of Canadian natural gas over a term beginning December 1, 1989, through November 30, 2009. The order issued in ERA Docket No. 88-63-NG reflects pricing amendments to the gas supply and purchase agreements.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The Docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 2, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89-29001 Filed 12-11-89; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3696-3]

Pollution Prevention Research Awards

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the USEPA has entered into cooperative agreements with six (6) states: California, Connecticut, Illinois, Minnesota, New Jersey, and Washington, to participate in a new pollution prevention research program called Waste Reduction Innovative Technology Evaluation (WRITE). This pilot program provides funding to evaluate innovative pollution prevention technology in these states. This program encompasses cooperative agreements planned to run for a three-year period and evaluate a target of five (5) technologies per state.

DATES: These states entered into cooperative agreements on the following dates.

CA	June 30, 1989
CT	Sept. 1, 1989
IL	June 7, 1989
MN	June 8, 1989
NJ	Aug. 2, 1989
WA	June 2, 1989

ADDRESSES: Copies of the supporting documentation are available for public inspection upon request at the following locations:

Robert Ludwig, State of California, Department of Health Services, 714/744 P Street, P.O. Box 942732, Sacramento, CA 94234-7320, (916/324-2659).

Frederick Kaeser, Connecticut Hazardous Waste Management Service, 900 Asylum Avenue, Suite 360, Hartford, CT 06105-1904, (203/244-2007).

Gary Miller, Illinois Hazardous Waste Research and Information Center, 1808 Woodfield Drive, Savoy, Illinois 61874, (217/333-8942).

Cindy McComas, Minnesota Technical Assistance Program (MnTAP), 420 Delaware Street, SE., P.O. Box 197 Mayo, University of Minnesota, Minneapolis, MN 55455, (612/625-4949).

Kevin Gashlin, New Jersey Department of Environmental Protection, 401 East State Street, 5th Floor West CN-028, Trenton, NJ 08625, (609/292-8341).

Robert C. Burmark, Department of Ecology, State of Washington, Mail Stop PV-11, 4407 Woodview Drive SE., Lacey, WA 98504, (206/438-7370).

FOR FURTHER INFORMATION CONTACT: Ivars J. Licis, U.S. Environmental Protection Agency, Risk Reduction Engineering Laboratory, Waste Minimization, Destruction and Disposal Research Division, Waste Minimization Branch, 26 West Martin Luther King Drive, Cincinnati, OH 45268, Telephone: Comm. 513/569-7718, FTS-684-7718.

E. Timothy Oppelt,

Director, Risk Reduction Engineering Laboratory.

[FR Doc. 89-28975 Filed 12-11-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3696-1]

Superfund Program; Interim Municipal Settlement Policy

AGENCY: Environmental Protection Agency.

ACTION: Request for public comment.

SUMMARY: The Agency is publishing the "Interim Policy on CERCLA Settlements Involving Municipalities or Municipal Wastes" (referred to as the Municipal Settlement Policy) today to inform the public about this interim policy and to solicit public comment. This interim policy focuses on settlements involving municipalities or municipal wastes under section 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA or Superfund) as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA). It also addresses how the treatment of municipalities and municipal wastes affects the treatment of private parties and certain kinds of commercial, institutional, or industrial wastes in the Superfund settlement process as well.

DATE: Comments must be provided no later than February 12, 1990.

ADDRESS: Comments should be addressed to Kathleen MacKinnon, U.S. Environmental Protection Agency, Office of Waste Programs Enforcement, Guidance and Oversight Branch (OS-510), 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Kathleen MacKinnon at the above address or at (202) 475-6771.

SUPPLEMENTARY INFORMATION: The following supplemental information is provided to assist the public in reviewing and commenting on EPA's interim policy:

I. Effective Date of Interim Policy and Role of Public Comment
II. Purpose of Interim Policy
III. Focus of Interim Policy
IV. Why Settlement Involving Municipalities or Municipal Wastes Is An Issue
V. Discussion of Interim Policy
A. Public Input
B. EPA Consideration of Competing Public Interests

I. Effective Date of Interim Policy and Role of Public Comment

This interim policy is effective immediately. However, the Agency emphasizes that this is an interim policy and that there is an important role for public comment. We are providing the public with 60 days to review and submit comments in writing. Based upon public comment or on our experience in implementing the interim policy, the Agency may address additional issues or revise the interim policy accordingly.

II. Purpose of Interim Policy

The primary purpose of this interim policy is to provide interim guidance to EPA Regional offices on how they should exercise their enforcement discretion in dealing with municipalities and municipal wastes in the Superfund settlement process. An additional purpose is to provide municipalities and private parties who may be potentially liable under section 107(a) of CERCLA with information about how EPA will handle them in the settlement process. We believe this interim policy is important for establishing a national framework that will help facilitate our ability to reach settlements and will ensure that sites involving municipalities or municipal wastes are addressed consistently throughout the country.

III. Focus of Interim Policy

The interim policy focuses on how EPA will proceed in attempting to reach settlements at sites involving municipalities or municipal wastes. Focusing on settlements means the interim policy indicates how EPA will attempt to reach voluntary agreements for responsible party financing and/or cleanup of sites involving municipalities or municipal wastes. Nothing in the interim policy affects any party's potential legal liability under CERCLA. Any decision EPA makes in exercising its enforcement discretion under this interim policy does not mean that potential CERCLA legal liability no longer applies. In particular, nothing in the interim policy precludes a third party from initiating a contribution action.

Focusing on settlements involving municipalities or municipal wastes means that the primary intent of the interim policy is to address questions about how EPA should handle municipalities or municipal wastes in the Superfund settlement process. However, in the process of addressing those questions we found it necessary to address other issues relating to private parties and certain kinds of commercial, institutional, or industrial wastes. We have addressed these related issues because private parties sometimes handle municipal wastes, private parties generate some waste streams that are similar in nature to municipal wastes, and municipal and industrial wastes are sometimes co-disposed at the same site (particularly municipal landfills).

Specific questions that have been examined by EPA as part of this interim policy relate to who should be included in the information gathering process, who should be notified as potentially responsible parties, how municipalities should be handled in the settlement process, and how the treatment of municipalities and municipal wastes affects the Agency's treatment of private parties and certain kinds of commercial, institutional, or industrial wastes.

IV. Why Settlement Involving Municipalities or Municipal Wastes Is An Issue

Involving municipalities and municipal wastes in the Superfund settlement process is an issue because questions have been raised about how such parties and wastes should be treated in the settlement process. Until the development of this interim policy, EPA had not addressed these questions from a national perspective. This issue is important because there are a significant number of proposed and final sites on the National Priorities List (NPL) that involve municipalities or municipal wastes, and EPA expects more of these sites to be added to the NPL in the future.

EPA has identified 320 (about 25%) of the 1219 proposed and final NPL sites that may involve municipalities or municipal wastes. Of those sites, 236 (about 20%) have been classified as municipal landfills. EPA defines a municipal landfill as any landfill, either publicly or privately owned, which has received municipal, solid waste. Although it is difficult to accurately predict how many of those sites involving municipalities or municipal wastes may be added to the NPL, historically about 20% of each NPL update has included municipal landfills. Municipal landfills are particularly complex sites to address because they typically involve multiple responsible

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parties (sometimes hundreds of different parties), multiple sources of wastes (often municipal and industrial wastes), as well as diverse waste streams (in terms of amount and toxicity).

V. Discussion of Interim Policy

In the development of this interim policy, EPA has examined a variety of issues and options for addressing these issues. We have also made an effort to provide meaningful opportunities for interested parties to participate in the debate about municipal settlements. EPA has listened to all sides of the debate and has attempted to develop an approach that is both fair and manageable.

A. Public Input

Throughout the development of this interim policy, EPA has established and maintained an extensive dialogue with a full range of interested parties. For example, in March of 1988 EPA sponsored a Municipal Settlement Conference attended by over 100 representatives from State and local governments and organizations; industry, environmental, and other groups; as well as Congressional staff. EPA sought input from all interested parties to facilitate our efforts to develop a fair assessment of the issue, particularly from municipal and industrial representatives who are most directly affected by the interim policy. Both municipalities and private parties are affected by this interim policy because, as mentioned above, both municipalities and private parties handle municipal waste, private parties generate waste streams that have similar characteristics to municipal waste streams, and municipal and industrial waste streams are often co-disposed at individual sites.

As a followup to this conference, EPA established the Municipal Settlement Discussion Group. The discussion group met in June, August, and October of 1988 and was generally comprised of the same groups and interests that participated in the March conference. All discussion group meetings were open to the public and a notice of each meeting was published in the **Federal Register.**

The purpose of this dialogue has been for EPA to inform the public about the issues that the Agency is addressing as part of our effort to develop the Municipal Settlement Policy. At the same time, the Agency has sought to stimulate the public debate about these issues by providing a public forum for the exchange of ideas. The conference and discussion group activities have been conducted as an information exchange and public debate exercise. EPA has not requested recommendations nor attempted to reach a consensus among the various parties. Minutes of all meetings have been prepared and are available to the public upon request.

A final meeting of the discussion group is expected to be held in January 1990, before the close of the 60-day public comment period. The purpose of this meeting will be to discuss the interim policy and to further facilitate public consent. A notice of this meeting will be published in the **Federal Register.** Minutes of this meeting will be kept and made available to the public upon request.

B. EPA Consideration of Competing Public Interests

Input from the public has played an important role in EPA's development of this interim policy. Within the context of CERCLA's statutory language and objectives, EPA has considered the competing interests and objectives of the various parties interested in this issue, especially municipalities and private parties who are directly affected by the interim policy. EPA has developed an interim policy which the Agency believes is appropriate, is in the interest of the public, and is fair to both municipalities and private parties as well as one which can be managed and implemented by EPA's Regional offices. The following examples highlight how EPA considered competing interests on key issues. The discussion below only summarizes (and sometimes paraphases) certain key aspects of the interim policy; readers should refer to the interim policy itself for an indication or clarification of how EPA will proceed.

1. *Treatment of municipalities as owners/operators.* Some interested parties expressed uncertainty about whether potential CERCLA liability should apply to municipal owners/operators of facilities where hazardous substances are present. In addition, there are different views about how municipal owners/operators should be handled in the settlement process. For example, some municipal representatives have suggested that when potential owner/operator liability applies that municipalities should be given "special treatment" (e.g., provided with an early opportunity to meet with EPA to resolve their potential liability). Industry representatives have indicated that municipal owner/operators should be handled the same as other PRPs and should be part of the larger settlement process that may involve other parties, including private parties.

EPA's interim policy clarifies that municipal owners/operators may be potentially liable just like private parties, and that such parties will generally be notified and handled in the same manner during the settlement process as private parties.

2. *Treatment of generators/transporters of municipal wastes and certain kinds of commercial, institutional, or industrial wastes.* There are different views on whether the generators/transporters of municipal wastes (e.g., municipal solid waste and sewage sludge) (usually municipalities) should be notified that they are considered to be potentially responsible parties and brought into the Superfund settlement process. Municipalities and some States do not believe it is appropriate to include the generators/transporters of municipal wastes as potentially responsible parties. Industry representatives have generally taken the opposite view.

EPA's approach to this issue is as follows: when the source of the municipal waste is believed to come from households, regardless of whether household hazardous waste may be present, the general policy is to exclude such municipal wastes from the Superfund settlement process, unless the Region obtains site-specific information that the municipal solid waste or sewage sludge contains a hazardous substance from a commercial, institutional, or industrial process or activity.

The only exception to this general policy is that EPA may consider bringing generators/transporters of municipal solid waste that contains a hazardous substance derived only from households into the settlement process as potentially responsible parties if the total privately generated commercial, institutional, and industrial waste at the site is insignificant compared to the municipal solid waste. EPA expects this exception to be sparingly applied.

When we are dealing with industrial wastes (including low-hazardous industrial wastes), the generator/transporters of the wastes will generally be notified as potentially responsible parties because the source of the waste is a commercial, institutional, or industrial process or activity.

One question raised by the interim policy relates to how EPA will handle trash from a commercial, institutional, or industrial entity which is very similar to municipal solid waste that is derived from households. Although the source of the waste in this situtions is not households, when the generator/transporter shows EPA that its waste is very similar to that generated by households and that it is not the result of a commercial, institutional, or industrial process or activity, the generator/transporter generally will not be notified as a potentially responsible party by EPA and brought into the Superfund settlement process.

In carrying out this approach, EPA is exercising its enforcement discretion in determining whether we will treat generator/transporters as potentially responsible parties for certain categories of wastes. EPA believes this approach is fair and manageable. For example, this approach treats municipalities and private parties that handle the same waste streams in the same manner (e.g., municipal generators/transporters of municipal solid waste are treated the same as private party generators/transporters of such waste.)

This approach also treats different waste streams in a logical and consistent manner. A key factor in determining whether to notify generators/transporters of municipal solid waste, sewage sludge, trash from a commercial, institutional, or industrial entity, or low-hazardous industrial wastes is tied to whether a hazardous substance is present that is derived from a commercial, institutional, or industrial process or activity.

Finally, this approach is one that can be effectively managed and implemented by EPA's Regional offices. For example, based on our experiences at Superfund sites, especially municipal landfills, we believe that it is generally not a cost-effective use of our enforcement resources to pursue those generators/transporters whose only contribution at a Superfund site appears to have been substances that may have been contaminated only with relatively small quantities of household hazardous waste (e.g., municipal solid waste). The resource-intensive nature of obtaining sufficient evidence to demonstrate the presence of household hazardous waste as well as the potentially increased transaction costs of settlement and/or litigation far outweigh the possible benefit the Government may derive from obtaining cleanup costs from such parties. The Agency believes that its enforcement resources are better spent on pursuing other potentially responsible parties to achieve the cleanups needed to effectively implement the Superfund program and to protect human health and the environment.

3. *Role of municipalities in the settlement process.* There are also different views on the appropriate treatment of municipalities vis-a-vis private parties in the settlement process (i.e., whether municipalities should receive "special treatment" because they are governmental entities). Municipalities generally believe they should be treated differently than private potentially reponsible parties while industry generally believes they should not.

EPA believes that municipalities and private parties should generally be handled in the same manner in the settlement process. Handling municipalities and private parties the same means that EPA will seek information in appropriate circumstances from all parties, including municipalities. This also means that all parties who are owners/operators of facilities will generally be notified as potentially responsible parties.

Relating to municipal solid waste or sewage sludge, all parties who are generators/transporters (either municipalities or private parties) are generally exempt from notification unless we obtain site-specific information that the waste contains a hazardous substance from a commercial, institutional, or industrial activity or process. In instances relating to notification as a potentially responsible party, we focus on the nature/source of the waste, not whether the party is a municipality or private party.

The interim policy also handles municipalities and private parties essentially in the same manner once they are notified as potentially responsible parties by attempting to negotiate and settle with such parties as one group, unless separate settlements such as *de minimis* settlements pursuant to section 122 (g) of CERCLA are appropriate. Nevertheless, EPA does recognize that municipalities have unique characteristics as governmental entities which EPA may take into account when designing specific settlements (e.g., by considering delayed payments, delayed payment schedules, or in-kind contributions under appropriate circumstances).

Dated: December 6, 1989.

Don R. Clay,

Assistant Administrator, Office of Solid Waste and Emergency Response.

Memorandum

Subject: Interim Policy of CERCLA Settlements Involving Municipalities or Municipal Wastes

From: Don R. Clay, Assistant Administrator

To: Regional Administrators, Regions I—X

I. Introduction

(A) Focus of Interim Policy

This memorandum establishes EPA's interim policy on settlements involving municipalities or municipal wastes under section 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA or Superfund) as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA). In particular, this interim policy indicates how EPA will exercise its enforcement discretion when pursuing settlements which involve municipalities or municipal wastes.[1] The municipal wastes addressed by this interim policy are municipal solid waste (MSW) and sewage sludge as defined below. This interim policy has been developed to provide a consistent Agency-wide approach for addressing municipalities and municipal wastes in the Superfund settlement process.

Although this interim policy focuses on municipalities and municipal wastes, it addresses how private parties and certain kinds of commercial, institutional, or industrial wastes will be handled in the settlement process as well. It is important to address private parties and certain kinds of commercial, institutional, or industrial wastes in this interim policy because private parties sometimes handle municipal wastes or wastes of a similar nature and because municipal and private party waste streams are sometimes co-disposed at sites, particularly municipal landfills. The kinds of commercial, institutional, or industrial wastes covered by this interim policy include "trash from a commercial, institutional, or industrial entity" and "low-hazardous industrial wastes" as defined below.

There are three fundamental issues addressed by this interim policy. First is whether to notify generators/transporters of MSW or sewage sludge that they are considered to be potentially responsible parties (PRPs) and to include them in the Superfund settlement process. Such parties are usually municipalities, although they may include private parties as well. Second is how municipalities should be handled in the Superfund settlement process when the decision is made to notify them that they are PRPs under section 107(a) of CERCLA. Third is how the treatment of municipalities and muncipal wastes under this interim policy affects the treatment of private parties and certain kinds of commercial, institutional, or industrial wastes in the Superfund settlement process.

Key questions specifically addressed as part of this interim policy include the following:

- *Information Gathering:* Should municipalities be included in the Agency's information gathering process? Should generators/transporters of MSW or sewage sludge be included in the information gathering process?
- *Notification:* Should municipalities be notified that they are PRPs? Should generators/transporters of MSW or sewage sludge be notified as PRPs?
- *Settlements:* How should municipalities be handled in the Superfund settlement

[1] This interim policy does not provide an exemption from potential CERCLA liability for any party; potential liability continues to apply in all situations covered under section 107 of CERCLA.

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process? What settlement process and settlement tools should be used to facilitate settlement involving municipalities or municipal wastes?

• *Private Parties:* How does the treatment of municipalities and municipal wastes affect the Agency's treatment of private parties and certain kinds of commercial, institutional, or industrial wastes?

(B) Key Terms Used in Interim Policy [2]

The following defines the key terms used in this interim policy:

• The term "municipalities" refers to any political subdivision of a State and may include cities, counties, towns, townships, and other local governmental entities.

• The term "municipal solid waste" refers to solid waste generated primarily by households, but may include some contribution of wastes from commercial, institutional and industrial sources as well. As defined under the Resource Conservation and Recovery Act (RCRA), MSW contains only those wastes which are not required to be managed as hazardous wastes under Subtitle C of RCRA (e.g., non-hazardous substances, household hazardous wastes (HHW), or small quantity generator (SQG) wastes). Although the *actual* composition of such wastes varies considerably at individual sites, MSW is *generally* composed of large volumes of non-hazardous substances (e.g., yard waste, food waste, glass, and aluminum) and may contain small quantities of household hazardous wastes (e.g., pesticides and solvents) as well as small quantity generator wastes.[3] Many industrial solid wastes and some commercial and institutional solid wastes are managed separately from household wastes, but may enter the MSW waste stream.

• The term "municipal landfill" refers to any landfill, whether publicly or privately owned, that has received municipal solid waste for disposal.

• The term "sewage sludge" refers to any solid, semi-solid, or liquid residue removed during the treatment of municipal waste water or domestic sewage.[4]

• The term "trash from a commercial, institutional, or industrial entity" refers to waste which is very similar to the MSW that is derived from households. This term covers only those wastes that are essentially the same as what one would expect to find in common household trash. This term does not include hazardous substances that are derived from a commercial, institutional, or industrial process or activity.

• The term "low-hazardous industrial wastes" refers to high volume wastes that contain small quantities of hazardous substances derived from an industrial, commercial, or institutional process or activity. Examples may include certain paint sludges or industrial wastewaters.

II. CERCLA Liability

Important questions have been raised about whether municipalities may be PRPs and whether municipal wastes (i.e., MSW and sewage sludge) may be considered hazardous substances under CERCLA.

(A) Municipalities as PRPs

The statute does not provide an exemption from liability for municipalities. Municipalities may be PRPs like private parties if municipalities fall within the categories of liability specified under section 107(a) of CERCLA. In general, section 107(a) establishes liability for past and present owners or operators of facilities as well as generators or transporters of hazardous substances for the release or threatened release of hazardous substances. Such parties may be liable for the costs of responding to a release or threatened release of hazardous substances as well as for resulting damages to natural resources. The specific categories of liable parties under section 107(a) are:

1. The owner and operator of a vessel or a facility,

2. Any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,

3. Any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances, [commonly referred to as "generators" [5], and

4. Any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels, or sites selected by such person [commonly referred to as "transporters"].

Section 107(a) describes liable parties as "persons" and the definition of "person" under Section 101(21) includes municipalities and political subdivisions of a State. Municipalities may, therefore, be PRPs as part of CERCLA's broad definition of who is potentially liable.

(B) Municipal Wastes as Potential CERCLA Hazardous Substances

Similarly, the statute does not provide an exemption from liability for municipal wastes. Municipal wastes may be considered hazardous substances if they are covered under the definition of hazardous substances in section 101(14) of CERCLA. As indicated under the definitions of MSW and sewage sludge, these municipal wastes are *generally* characterized by large volumes of non-hazardous substances and my contain small quantities of household hazardous or other wastes, although the *actual* composition of the waste streams vary considerably at individual sites. To the extent municipal wastes contain a hazardous substance that is covered under section 101(14) of CERCLA and there is a release or threatened release, such municipal wastes may fall within the CERCLA liability framework.

III. Information Gathering

The Regions should inlcude all municipal and private party owners/operators and generators/transporters in the information gathering process, including the generators/transporters of municipal wastes. This means that municipal owners/operators as well as municipal generators/transporters should generally receive section 104(e) information request letters and should otherwise be fully included in the information gathering process like private parties. Information obtained through such letters or through other means is important for determining (among other things) whether it is appropriate to notify a party as a PRP, including whether to notify a generator/transporter of MSW or sewage sludge as discussed below.[6]

IV. Notification of Potential Responsibility

(A) Owners/Operators

The same approach will be used for both municipalities and private parties when determining whether to notify them as owners/operators. Specifically, such parties will generally be notified where they were past owners or operators of facilities at the time of disposal of hazardous substances, or they are present owners or operators of facilities where hazardous substances have been released or there is a threatened release.

(B) Generators/Transporters [7]

1. Municipal solid waste. Municipalities and private parties will be treated the same when determining whether to notify them as PRPs when they are generators/transporters of MSW. Specifically, such parties will not generally be notified unless:

• The Region obtains site-specific information that the MSW contains a hazardous substance;[8] and

• The Region has reason to believe that the hazardous substance is derived from a commercial, institutional, or industrial process or activity.

This means that EPA will not generally notify municipalities or private parties who are generators/transporters of MSW if only household hazardous wastes (HHW) are present, unless the truly exceptional situation discussed below exists. The general policy of not notifying parties who are generators/transporters of HHW extends to "HHW collection day programs" as well.[9]

This also means that such parties may be notified as PRPs if the MSW contains hazardous substances from non-household sources. Non-household sources include, but are not limited to, small quantity generator (SQG) wastes from commercial or industrial processes or activities, or used oil or spent solvents from private or municipally-owned maintenance shops.

Notwithstanding the above general policy, there may be truly exceptional situations where EPA may consider notifying generators/transporters of MSW which contains a hazardous substance derived only from households. Such notification may be appropriate where the total contribution of commercial, institutional, and industrial hazardous waste by private parties to the site is insignificant when compared to the MWS.[10] In this situation, the Regions should seriously consider notifying the generators/transporters of MSW containing a hazardous substance from households as PRPs and include them in the settlement process where it would promote either settlement or response action at the site.

2. Sewage sludge. Municipalities and private parties will be treated the same when determining whether to notify them as PRPs when they are generators/transporters of sewage sludge. Specifically, such parties will not generally be notified unless:

• The Region obtains site-specific information that the sewage sludge contains a hazardous substance; and

• The Region has reason to believe that the hazardous substance is derived from a commercial, institutional, or industrial process or activity.

3. Trash from a commercial, institutional, or industrial entity. Parties who are generators/transporters of trash from a commercial, institutional, or industrial entity will not generally be notified as PRPs if such parties demonstrate to the Region that:

• None of the hazardous substances contained in the trash are derived from a commercial, institutional, or industrial process or activity; and

• The amount and toxicity of the hazardous substances contained in the trash does not exceed that which one would expect to find in common household trash.

4. Any other hazardous substance, including low-hazardous industrial wastes. Municipalities or private parties who are generators/transporters of "any other hazardous substance" will generally be notified as PRPs if the Region obtains information that the substance is hazardous or that it contains a hazardous substance. This includes notification of private parties who are the generators/transporters of low-hazardous industrial wastes. "Any other hazardous substance" in this category refers to any hazardous substance covered under section 101(14) of CERCLA other than hazardous substance that may be contained in MSW, sewage sludge, or trash from a commercial, institutional, or industrial entity (as discussed under IV.B.1., or IV.B.2., or IV.B.3. above). The generators/transporters of hazardous substances that may be contained as part of the waste streams discussed under IV.B.1., or IV.B.2., or IV.B.3. should be addressed as specified above.

V. Settlements

(A) Settlement Process

Once the notification decision is made, the general goal and overall process for reaching settlement at sites involving municipalities or municipal wastes is the same as for other sites. The general goal remains to negotiate with PRPs to reach one settlement agreement that provides complete resolution of all pending CERCLA claims, and is consistent with both applicable statutory requirements and EPA's Interim CERCLA Settlement Policy.[11] This means that at sites where both municipal and private PRPs exist, EPA will attempt to include both types of parties on one settlement agreement.

Although one settlement agreement is the goal for each site, separate settlement agreements may be used at any site to facilitate settlement, where appropriate. This includes sites involving municipalities or municipal wastes. Separate settlements are not automatically available to municipalities and are generally available to such parties under the same conditions as for private parties. Examples of separate settlements are section 122(g) *de minimis* settlements and cash-outs which may be used when they are consistent with applicable statutory requirements and existing EPA guidance.[12]

(B) Settlement Provisions That May Be Particularly Suitable for Certain Municipalities

As indicated, once parties are notified as PRPs, the overall process and goals for reaching settlement at sites involving municipalities or municipal wates is the same as for other Superfund sites. Nonetheless, there are some settlement provisions (e.g., delayed payments, delayed payment schedules, and in-kind contributions) that may be particularly suitable for facilitating settlement with certain municipal PRPs because they take into account a municipality's status as a governmental entity.[13]

Such settlement provisions are not routinely available to municipalities. As a general rule, they must be considered where a municipality has successfully demonstrated to EPA that they are appropriate (e.g., where valid ability to pay or procedural constraints that affect the timing of payment exist). These settlement provisions may be embodied in separate settlements or they may be folded into a larger settlement that includes private parties. In addition, although these settlement provisions may be particularly suitable for municipalities, they may also be available to private parties, such as certain small businesses, where appropriate.

The following discusses how delayed payments, delayed payment schedules, and in-kind contributions may be used:

1. *Delayed payment.* If a municipality has demonstrated difficulty providing a lump-sum payment upfront for past costs or for cleanup needs, the settlement could be structured to allow the municipality to pay at a specified future date. This would allow the municipality time to raise the money needed

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[2] The definitions provided under this section are for the purpose of this interim policy only. Where possible, this interim policy includes already existing definitions used under other Federal environmental programs (e.g., under the Resource Conservation and Recovery Act or the Clean Water Act). However, nothing in this interim policy affects the regulatory efforts of these other programs.

[3] All household wastes, including household hazardous wastes, are unconditionally exempt from the Federal hazardous waste regulations promulgated under subtitle C of RCRA (See 40 CFR § 261.4(b)(1)). With regard to non-household sources of solid waste, if such waste is not a listed or characteristic hazardous waste accumulated in quantities exceeding the small quantity generator limitations (i.e., less than 100 kg/month of hazardous wastes and less than 1 kg/month for acute hazardous wastes), such waste is not required to be managed in a RCRA subtitle C hazardous waste treatment, storage, or disposal facility (See 40 CFR § 261.5). "Household hazardous wastes" refers to those wastes which are generated by households and would be managed as hazardous wastes under RCRA subtitle C if they were generated by a non-household in quantities exceeding the small quantity generator limitations.

[4] The definition of sewage sludge is contained in the National Pollutant Discharge Elimination System Sewage Sludge Permit Regulations published in the **Federal Register** as a final rule May 2, 1989 (See 40 CFR part 122.2).

[5] Persons who fall into this category are commonly referred to as "generators," although liability under this section extends beyond "true generators" of hazardous substances to include persons who arranged for the disposal or treatment of hazardous substances owned or possessed by such party or another party. The term "generator" is used throughout this document to refer to any party who is potentially liable under section 107(a)(3).

[6] The Regions may accept and consider credible site specific information from any party to supplement their own information gathering efforts as appropriate.

[7] The categories of wastes discussed below, i.e., relating to municipal solid waste, sewage sludge, trash from a commercial, institutional, or industrial entity, and low-hazardous industrial wastes, are defined in the "Introduction" to this interim policy (See I.B.).

[8] The term "site-specific" information refers to information pertaining to a particular Superfund site. "Site-Specific" information does not generally include, for example, "general studies" conducted by EPA or other parties which draw general conclusions about whether MSW or sewage sludge typically contain a certain percentage of hazardous substances, unless the "general study" includes "site-specific" information obtained from the PRP or superfund site in question. "General studies" may nonetheless be used to supplement "site-specific" information.

[9] The term "HHW collection day programs" refers to programs that have generally been sponsored by municipalities or community organizations whereby residents voluntarily remove their HHW from their household waste. The HHW is then typically disposed of in a RCRA Subtitle C hazardous waste facility and the household waste is typically disposed of in a RCRA subtitle D solid waste facility.

[10] The Regions should consider both the volume and the toxicity of the commercial, institutional, and industrial hazardous waste when determining whether it is insignificant when compared to the MSW. In determining whether the volume is insignificant, the Regions should consider the total volume of such waste contributed by all private parties. In determining whether the toxicity is insignificant, the Regions should consider whether such waste is significantly more toxic than the MSW and whether such waste requires a disproportionately high treatment and disposal cost or requires a different or more costly remedial technique than that which otherwise would be technically adequate for the site.

[11] "Interim CERLA Settlement Policy", February 5, 1985, 50 FR 5034.

[12] For example, see "Interim Guidance on Settlements with *De Minimis* Waste Contributors," June 30, 1987, 52 FR 24333.

[13] In some circumstances a municipality's governmental status may impose practical constraints on its ability to carry out its legal obligation as a PRP under CERCLA. For example, a municipality may need to hold a special vote involving its legislative body or its citizens to gain approval to issue a bond or arrange other financing to cover cleanup costs at a Superfund site where it is a PRP. These settlement provisions are designed to take into account these types of unavoidable constraints that may exist.

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to cover its contribution. This may include an interest payment.

2. *Delayed payment schedules (payments over time).* An alternative to a delayed payment is to allow a delayed payment schedule where the settlement is structured to allow the municipality to pay over time based upon a predetermined schedule of payments. The payment schedule would be adjusted in such a way that the discounted present value of the payment would be greater than or equal to the settlement.[14]

3. *In-kind contributions.* The settlement could be structured to allow for an in-kind contribution, especially where a municipality can provide only a portion of its share of costs or is unable to provide a monetary payment. In-kind contributions may be made in conjunction with or in lieu of cash. Factors the Regions may use in considering the appropriateness of an in-kind contribution may include the overall financial health of the municipality, the amount of the municipality's share, the value of the in-kind contribution, and the effect of the in-kind contribution on the overall effort to achieve settlement.

One mechanism for allowing an in-kind contribution could be a "carve-out" order when, for example, the municipal PRP has agreed to provide the operation and maintenance at the facility. Other in-kind contributions could include the use of trucks and equipment to carry out cleanup activities, the installation of fences and the provision of other security measures to control public access to the site, or the use of the municipality's sewage treatment plant.

(C) Contribution Protection

Nothing in this interim policy affects the rights of any party in seeking contribution from another party, unless such party has entered into a settlement with the United States or a State and obtained contribution protection pursuant to section 113(f) of CERCLA.[15]

VI. Disclaimer

This interim policy is intended solely for the guidance of EPA personal. It is not intended and can not be relied upon to create any rights, substantive or procedural, enforceable by any party in litigation with the United States. The Agency reserves the right to act at variance with this policy and to change it at any time without public notice.

VII. For Further Information

For further information or questions about this interim policy, the Regions may contact Kathleen MacKinnon in the Office of Waste Programs Enforcement at FTS-475-9612. Inquires by other persons should be directed to Ms. MacKinnon at 202-475-8771.

[FR Doc. 89-28876 Filed 12-11-89; 8:45 am]

BILLING CODE 6560-50-M

[14] Delayed payment schedules may include "structured settlements" which are settlements paid over time generally through an annuity. EPA is currently developing guidance, titled "Interim Guidance on the Use of Structured Settlements Under CERCLA," which will establish criteria for evaluating whether a particular site is good candidate for a structured settlement. EPA expects to issue this interim guidance in the Spring of 1990.

[15] Under section 113(f), where EPA determines that settlement is in the best interest of the Federal government, CERCLA provides contribution protection to the settling parties for matters covered by the settlement. This may include a party who has not been notified as a PRP by EPA but wishes to settle its potential CERCLA liability.

FEDERAL MARITIME COMMISSION

Agreement(s) Filed MSC/AEL Service Agreement

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203-011265

Title: MSC/AEL Service Agreement.

Parties:

Mediterranean Shipping Company SA ("MSC")

Atlantik Express Linie, Thien & Heyenga Schiffahrts GmbH & Co.

Synopsis: The Agreement authorizes the parties to engage in slot/space charter and sailing rationalization arrangements in the trades between and via North European and United States ports. The parties are also authorized to discuss and exchange information on rates, charges, service contracts and other terms and conditions of transport. The parties have no obligation under this Agreement, other than voluntarily, to adhere to any consensus or agreement reached. The Parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: December 6, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-28907 Filed 12-11-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Barclays Bank PLC, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than December 27, 1989.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Barclays Bank PLC,* London, England; Barclays PLC, London, England; Baybanks, Inc., Boston, Massachusetts; Chemical Banking Corporation, New York, New York; Manufacturers Hanover Corporation, New York, New York; National Westminster Bank, PLC, London, England; Natwest Holdings, Inc., New York, New York; Northeast Bancorp, Inc., New Haven, Connnecticut; The Bank of New York Company, Inc., New York, New York; The Chase Manhattan Corporation, New York, New York; The HongKong and Shanghai Banking Corporation Limited, Hong Kong, B.C.C.; Kellett NV, Curacao, Netherlands Antilles; HSBC Holdings, BV, Amsterdam, The Netherlands; and Marine Midland Banks, Inc., Buffalo, New York, to acquire Key Services Corporation and thereby engage in data processing and related activities pursuant to § 225.25(b)(7) of the Board's Regulation Y.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Springfield Investment Company,* Springfield, Minnesota; to acquire Morgan Insurance Agency, Morgan, Minnesota, and thereby engage in insurance activities pursuant to § 225.25(b)(8)(iv) of the Board's Regulation Y. These activities will be conducted in Springfield, Minnesota, and Morgan, Minnesota.

Board of Governors of the Federal Reserve System, December 6, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-28945 Filed 12-11-89; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 28, 1989.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *C. Ward Braceland,* Exton, Pennsylvania; Robert W. Brandl, Exton, Pennsylvania; Kathleen M. Byrnes, West Chester, Pennsylvania; John E. Difebaugh, Newtown Square, Pennsylvania; Patricia J. Difebaugh, Newton Square, Pennsylvania; James S. Fay, Royersford, Pennsylvania; Christine M. Garchinsky, Clifton Heights, Pennsylvania; Hugh J. Garchinsky, Clifton Heights, Pennsylvania; James E. Greenwood, Pottstown, Pennsylvania; James A. Hinz, Swarthmore, Pennsylvania; Mary H. Hinz, West Chester, Pennsylvania; William J. Jackson, West Chester, Pennsylvania; Donal L. Kimmel, Norristown, Pennsylvania; Thomas L. Kimmel, Mont Clare, Pennsylvania; Frank P. Lemaster, West Chester, Pennsylvania; William J. McCuen Jr., West Chester, Pennsylvania; John P. Niggeman, Jr., Malvern, Pennsylvania; James W. Noyes, Media, Pennsylvania; Susan F. O'Donnell, Chester Springs, Pennsylvania; Lawrence M. O'Donnell, Chester Springs, Pennsylvania; Steve P. Pahides, Media, Pennsylvania; Stephen H. Palmer, Media, Pennsylvania; John L. Smith, Jr., Malvern, Pennsylvania; Walter M. Strine, Jr., Media, Pennsylvania; William B. Strine, Media, Pennsylvania; to acquire 100 percent of the voting shares of Freedom Valley Bank, West Chester, Pennsylvania.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *James E. Blackburn,* Vicksburg, Mississippi; to acquire an additional .80 percent (for a total of 12.17 percent) of the voting shares of Merchants Capital Corporation, Vicksburg, Mississippi, and thereby indirectly acquire Merchants National Bank, Vicksburg, Mississippi.

2. *Howell N. Gage, Jr.,* Vicksburg, Mississippi; to acquire an additional .69 percent (for a total of 10.04 percent) of the voting shares of Merchants Capital Corporation, Vicksburg, Mississippi, and thereby indirectly acquire Merchants National Bank, Vicksburg, Mississippi.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First State Bank of Covington, Tennessee employee Stock Ownership Trust,* Covington, Tennessee, and James O. Edmonds, Covington, Tennessee, Jack C. Sanford, Covington, Tennessee; and Theodore B. Sloan, Covington, Tennessee, as trustees, to acquire up to 24.64 percent of the voting shares of FSB, Inc., Covington, Tennessee, and thereby indirectly acquire First State Bank of Covington, Covington, Tennessee.

D. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Liberty State Bank Employee Stock Ownership Plan,* St. Paul, Minnesota; to acquire 2.15 percent of the voting shares of Liberty Bancshares, Inc., St. Paul, Minnesota, and thereby indirectly acquire Liberty State Bank, St. Paul, Minnesota.

E. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Marvin N. Christensen,* Waubun, Minnesota; to acquire 100 percent of the voting shares of Columbine Valley Bank & Trust Company, Littleton, Colorado.

2. *John E. Kirkpatrick,* Oklahoma City, Oklahoma; Christina K. Keesee, Oklahoma City, Oklahoma, and James K. Hotchkiss, Chicago, Illinois; to acquire 19.6 percent of the voting shares of Banks of MidAmerica, Inc., Oklahoma City, Oklahoma, and thereby indirectly acquire Liberty National Bank & Trust Company, Oklahoma City, Oklahoma, and First National Bank & Trust Company of Tulsa, Tulsa, Oklahoma.

F. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Jack W. Schuler,* Lake Bluff, Illinois; to acquire 9.91 percent of the voting shares of USA Bancshares, Inc., Dallas, Texas, and thereby indirectly acquire The First National Bank of Anna, Anna, Texas, Howe State Bank, Howe, Texas, and Plano East National Bank, Plano, Texas.

2. *Jerry C. Smith,* Azle, Texas; to acquire 3.61 percent of the voting shares of Azle Bancorp. Azle, Texas, and thereby indirectly acquire Azle State Bank, Azle, Texas.

G. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Terry W. Giles,* Santa Ana, California; to acquire 100 percent of the voting shares of Merchant House, Santa Ana, California, and PNB Financial Group, Santa Ana, California, and thereby indirectly acquire Pacific National Bank, Newport Beach, California.

Board of Governors of the Federal Reserve System, December 6, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-28946 Filed 12-11-89; 8:45 am]

BILLING CODE 6210-01-M

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Colonial Banc Corp., et al.; Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 3, 1990.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Colonial Banc Corp.*, Eaton, Ohio; to engage *de novo* through its subsidiary, Financial Services, Inc., Eaton, Ohio, in retail tax preparation services pursuant to section 225.25(b)(21) of the Board's Regulation Y.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostain, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *CB&T Financial Corp.*, Fairmont, West Virginia; to engage *de novo* through its subsidiary CB&T Investor Services, Inc., Fairmont, West Virginia, in the business of effecting transactions in securities for the accounts of others and in connection therewith to engage in all activities and to take all action which are lawful for a corporation organized under the laws of the State of West Viginia whether expressed or implied permitted by statute or otherwise including but not limited to performaing all act coverned generally by the denomination broker, dealer, or broker-dealer pursuant to § 225.25(b)(15) of the Board's Regulations Y.

Board of Governors of the Federal Reserve System, December 6,1989.

Jennifer J. Johnnson,

Associate Secretary of the Board.

[FR Doc. 89-28947 Filed 12-11-89; 8:45 am]

[FR Doc. 89-28947 Filed 12-11-89; 8:45 am]
BILLING CODE 6210-01-M

First Virginia Banks, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 29, 1989.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *First Virginia Banks, Inc.*, Falls Church, Virginia; to acquire 100 percent of the voting shares of Clifton Trust Bank, Cockeysville, Maryland.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 100 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Community National Bancorporation*, Ashburn, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Community National Bank, Ashburn, Georgia, a *de novo* bank.

2. *First National Financial Corporation*, Albany, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of South Georgia, Albany, Georgia, a *de novo* bank.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Union Planters Corporation*, Memphis, Tennessee; to acquire 100 percent of the voting shares of North Arkansas Bancshares, Inc., Jonesboro, Arkansas, and thereby indirectly acquire The Bank of Rector, Rector, Arkansas; Searcy County Bank, Marshall, Arkansas; First State Bank of Newport, Newport, Arkansas; Security National Bank, Sidney, Arkansas; Peoples National Bank, Mammoth Spring, Arkansas; and Mercantile Bank, Jonesboro, Arkansas.

D. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Border Bancshares, Inc.*, Greenbush, Minnesota; to become a bank holding company by acquiring 84.83 percent of the voting shares of Badger State Bank, Badger, Minnesota.

Board of Governors of the Federal Reserve System, December 6, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-28948 Filed 12-11-89; 8:45 am]

BILLING CODE 6210-01-M

First Citizens Banc Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 29, 1989.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *First Citizens Banc Corp.*, Sandusky, Ohio; to acquire 100 percent of the voting shares of The Castalia Banking Company, Sandusky, Ohio.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Bancshares 2000, Inc.*, McLean, Virginia; to acquire 100 percent of the voting shares of Jefferson Bank and Trust Company, Greenbelt, Maryland.

C. Federal Reserve Bank of Chicago, (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Great River Bancshares, Inc.*, Quincy, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of The Hill-Dodge Banking Company, Warsaw, Illinois.

2. *Durand Bancorp, Inc.*, Durand Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Durand State Bank, Durand, Illinois.

D. Federal Reserve Bank of St. Louis, (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Planters & Merchants Bancshares, Inc.*, Gillett, Arkansas; to become a bank holding company by acquiring Planters & Merchants Bank, Gillett, Arkansas.

Board of Governors of the Federal Reserve System, December 6, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-28949 Filed 12-11-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Cadco, Inc.; Withdrawal of Approval of NADA's

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of three new animal drug applications (NADA's) held by Cadco, Inc. One NADA provides for use of a tylosin Type A article for making Type C swine, beef cattle, and chicken feeds, the second for use of a tylosin-sulfamethazine Type A article for making Type C swine feeds, and the third for use of a hygromycin B Type A article for making Type C swine feeds. The firm requested the withdrawal of approval of the NADA's.

EFFECTIVE DATE: December 22, 1989.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: Cadco, Inc., P.O. Box 3599, 10100 Douglas Ave., Des Moines, IA 50322, is the sponsor of the following NADA's:

NADA 91-783, originally approved by letter of December 12, 1972, for use of a tylosin Type A medicated article to make Type C medicated swine, beef cattle, and chicken feeds;

NADA 99-561, originally approved February 9, 1976 (41 FR 5632), for use of a tylosin-sulfamethazine Type A medicated article to make Type C medicated swine feeds;

NADA 109-635, originally approved April 10, 1981 (46 FR 21364), for use of a hygromycin B Type A medicated article to make Type C medicated swine feeds.

By letter of February 29, 1988, the sponsor requested the withdrawal of approval of NADA's 91-783 and 99-561 because it manufactures and markets these medicated articles only at levels which no longer require approved NADA's. By letter of February 4, 1988, the sponsor requested the withdrawal of approval of NADA 109-635 because it is no longer manufacturing or distributing the product.

Therefore, under section 512(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(e)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 Withdrawal of approval of applications (21 CFR 514.115), notice is given that approval of NADA's 91-783, 99-561, and 109-635 and all supplements thereto is hereby withdrawn, effective December 22, 1989.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending 21 CFR 558.274 (a)(2) and (c)(1), 21 CFR 558.625(b)(4), and 21 CFR 558.630(b)(10) to reflect withdrawal of the approvals.

Dated: December 6, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89-28958 Filed 12-11-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 89D-0420]

Langostinos—Frozen, Cooked—Adulteration by Bacteriological Contamination; Compliance Policy Guide; Revocation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of Compliance Policy Guide (CPG) 7108.09 "Langostinos—Frozen, Cooked—Adulteration by Bacteriological Contamination" dated October 1, 1980.

FOR FURTHER INFORMATION CONTACT: Mischelle B. Ledet, Division of Compliance Policy (HFC-230), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1500.

SUPPLEMENTARY INFORMATION: CPG 7108.09 provided guidance to FDA field offices regarding the initiation, without the need for further scientific review by the agency's Center for Food Safety and Applied Nutrition (CFSAN), of regulatory action involving frozen, cooked langostinos contaminated with certain microorganisms at specified levels. Based on a recent review of data, some of the microbiological criteria referenced in the CPG will require revision.

In order to avoid the initiation of regulatory actions based on outdated criteria, FDA has revoked CPG 7108.09. FDA field offices will make recommendations for regulatory actions involving langostinos adulterated by bacterial contamination to CFSAN.

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Dated: December 4, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-28960 Filed 12-11-89; 8:45 am]

BILLING CODE 4160-01-M

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: BOSTON DISTRICT OFFICE, chaired by Edward J. McDonnell, District Director. The topic to be discussed is food labeling.

DATES: Thursday, January 4, 1990, 10 a.m. to 11:30 a.m.

ADDRESSES: Food and Drug Administration, One Montvale Ave., Stoneham, MA 02180.

FOR FURTHER INFORMATION CONTACT: Paula Fairfield, Consumer Affairs Officer, Food and Drug Administration, One Montvale Ave., Stoneham, MA 02180, 617-279-1479.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: December 6, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-28960 Filed 12-11-89; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

Privacy Act of 1974; New System of Records

AGENCY: Public Health Service, HHS.

ACTION: Notification of a new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act, the Public Health Service (PHS) is publishing a notice of a new system of records 09-15-0055, "Organ Procurement and Transplantation Network (OPTN) Data System." Routine uses for this new system also are proposed.

DATE: PHS invites interested parties to submit comments on the proposed routine uses on or before January 11, 1990. PHS has sent a Report of a New System of Records to Congress and the Office of Management and Budget (OMB) on November 30, 1989. The new system of records will be effective 60 days from the date submitted to OMB, unless PHS receives comments which would result in a contrary determination.

ADDRESS: Please address comments to the HRSA Privacy Act Coordinator, Department of Health and Human Services, Parklawn Building, Room 14A-20, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443-3760. This is not a toll-free number. Comments received will be available for public inspection at the above address during normal business hours 8:30 a.m.-5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Remy Aronoff, Chief, Operations and Analysis Branch, Division of Organ Transplantation, Bureau of Maternal and Child Health and Resources Development, Parklawn Building, Room 9-A-22, 5600 Fisher Lane, Rockville, Maryland 20857, telephone (301) 443-7577. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Bureau of Maternal and Child Health and Resources Development (BMCHRD), Health Resources and Services Administration (HRSA), proposes to establish a new system of records for the purpose of: (1) Matching donor organs with recipients; (2) monitoring compliance of member organizations with membership requirements of the Organ Procurement and Transplantation Network (OPTN); (3) reviewing and reporting periodically on the status of organ donation and transplantation in the United States; and (4) assisting the Health Care Financing Administration (HCFA) in evaluating its financial support of organ transplantation.

A. The Department of Health and Human Services (HHS) through a contract with the United Network for Organ Sharing (UNOS) will establish a data bank to collect and disseminate demographic and medical information concerning: (1) Organ donors; (2) transplant candidates; and (3) transplant recipients.

The data bank will be maintained by: United Network for Organ Sharing, Suite 500, 1100 Boulders Parkway, P.O. Box 13770, Richmond, Virginia 23225, (804) 330-8500.

The contractor will be required to maintain Privacy Act safeguards with respect to this records system.

Definitions in this system notice:

The term "donor" includes any person from whom an organ or organs has been taken for the purpose of transplantation.

The term "recipient" includes any person in whom an organ has been transplanted, or a person who is a candidate for organ transplantation.

The term "organ" includes kidneys, livers, pancreas, hearts, heart/lungs and lungs.

The term "transplant center" includes any hospital that transplants kidneys, livers, pancreas, hearts, heart/lungs, or lungs.

B. The Privacy Act permits disclosure of information without the consent of the subject individual for "routine uses," that is, disclosure for a purpose compatible with the purpose for which the data is collected. Accordingly, routine uses for information in this system of records have been established.

The first routine use will permit HRSA, through the contractor, to disclose records regarding organ donors, organ transplant candidates, and organ transplant recipients to transplant centers, histocompatibility laboratories, and organ procurement organizations. These records consist of Social Security numbers, other patient identification information, and pertinent medical information.

The second routine use provides for disclosure to the Department of Justice should the Department become a defendant in litigation to enable the Department to present an effective defense.

The third routine use is proposed to allow subject individuals to obtain assistance from their representative in Congress, should they so desire.

C. Safeguards have been established to insure that no unauthorized personnel have access to this information. The safeguards in the notice have been prepared to reflect the minimum safeguards which HRSA and the contractor will maintain. Safeguards will be periodically reviewed by the Project Officer, ADP System Security Officer, and the Contractor to assure the confidentiality and security of the data is strictly enforced.

This notice is written in the present rather than the future tense to avoid the expenditure of public funds to republish the notice after the system has become effective.

Dated: December 5, 1989.

Wilford J. Forbush,

Deputy Assistant Secretary for Health Operations and Director, Office of Management.

09-15-0055

SYSTEM NAME:

Organ Procurement and Transplantation Network (OPTN) Data System, HHS/HRSA/BMCHRD.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

United Network for Organ Sharing (UNOS), Suite 500, 1100 Boulders Parkway, P.O. Box 13770, Richmond, Virginia 23225.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons from whom organs have been obtained for transplantation, persons who are candidates for organ transplantation, and persons who have been recipients of transplanted organs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Donor registration and histocompatibility forms, transplant recipient registration and histocompatibility forms, and transplant recipient follow-up forms. Data items include: Name, Social Security number (voluntary), identifiers assigned by OPTN contractors, hospital and hospital provider number, city and State, race/ethnicity, date and time of organ recovery and transplantation, name of transplant center, histocompatibility status, patient condition before and after transplantation, immunosuppressive medication, and cause of death (if appropriate).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 274 requires that the Secretary, by contract, provide for the establishment and operation of an OPTN, and 42 U.S.C. 274a requires that the Secretary, by grant or contract, develop and maintain a Scientific Registry of the recipient of organ transplants.

PURPOSE(S):

The purpose of the system is to: (1) Match donor organs with recipients; (2) monitor compliance of member organizations with membership requirements of the OPTN; (3) review and report periodically on the status of organ donation and transplantation in the United States; and (4) assist the Health Care Financing Administration (HCFA) in evaluating their financial support of organ transplantation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

1. The Health Resources and Services Administration, through its contractor, may disclose records regarding organ donors, organ transplant candidates, and organ transplant recipients to transplant centers, histocompatibility laboratories, and organ procurement organizations. These records consist of Social Security numbers, other patient identification information and pertinent medical information.

2. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to effect directly the operation of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Department of Justice has agreed to represent such employee, for example, in defending a claim against the Public Health Service in connection with such individual, disclosure may be made to the Department of Justice to enable the Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

3. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders, magnetic tapes, and disc packs.

RETRIEVABILITY:

The following three identifier levels will be used:

(1) Name; (2) Social Security number (if available), and (3) transplant center and date of transplant.

SAFEGUARDS:

1. Authorized Users: Access is limited to authorized Bureau of Maternal and Child Health and Resources Development and contract personnel responsible for administering the program. Authorized personnel include the System Manager and Project Officer, and the HRSA Automated Information System (AIS) Systems Security Officer; and the contractor's employees and officials, computer personnel, and program managers who have responsibilities for implementing the program. Both HRSA and the contractor shall maintain current lists of authorized users.

2. Physical Safeguards: Magnetic tapes, disc packs, computer equipment, and hard copy files are stored in areas where fire and life safety codes are strictly enforced. All automated and nonautomated documents are protected on a 24-hour basis in locked storage areas. Security guards perform random checks on the physical security of the records storage area. The contractor is required to maintain offsite a complete copy of the system and all necessary files to run the computer organ donor-recipient match and update software.

3. Procedural Safeguards: A password is required to access the terminal and a data set name controls the release of data to only authorized users. All users of personal information in connection with the performance of their jobs protect information from public view and from unauthorized personnel entering an unsupervised office. All authorized users must sign a nondisclosure statement.

Access to records is limited to those staff members trained in accordance with the Privacy Act and Automated Data Processing (ADP) security procedures. The contractor is required to assure that the confidentiality safeguards of these records will be employed and that it complies with all provisions of the Privacy Act. All individuals who have access to these records must have the appropriate ADP security clearances. Privacy Act and ADP system security requirements are included in the contract. The BMCHRD Project Officer and the System Manager oversee compliance with these requirements. The HRSA authorized users will make site visits to the contractor's facilities to assure security and Privacy Act compliance.

RETENTION AND DISPOSAL:

Each record shall be retained for 25 years beyond the known death of the organ recipient.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Operations and Analysis Branch, Division of Organ Transplantation, Bureau of Maternal and Child Health and Resources Development, Room 9-A-31, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

NOTIFICATION PROCEDURES:

1. Request by mail: To determine if a record about you exists, write to the contractor operating the bank (see

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SYSTEM LOCATION). The request should contain the name and address of the individual; the Social Security number if the individual chooses to provide it; the name of his/her transplant center, a written statement that the requester is the person he/she claims to be and that he/she understands that the request or acquisition of records pertaining to another individual under false pretenses is a criminal offense subject to a $5,000 fine.

2. Request in person: The individual must meet all the requirements stated above for a request by mail, providing the information in written form. The individual should recognize that in order to maintain confidentiality, and thus the accuracy of data released through repeated internal verification, securing the information by request in person will be time consuming.

3. Request by telephone: Since positive identification of the caller cannot be established, telephone requests are not honored.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requestors should also provide a reasonable description of the record being sought. Requestors also may request an accounting of disclosures that have been made of their records, if any.

A parent or guardian who requests notification of, or access to, a minor's/incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the minor/incompetent person as well as his/her own identity.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedure above and reasonably identify the record, specify the information being contested, and the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Organ procurement organizations, histocompatibility laboratories, and organ transplant centers.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

None.

[FR Doc. 89-28955 Filed 12-11-89; 8:45 am]
BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-050-00-4212; IDI-20595]

Suspension of Competitive Sale of Public Lands in Blaine County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Sale Suspension Notice—The public land sale scheduled to be held at the BLM Shoshone District Office in Shoshone, Idaho at 10:00 a.m., Friday, December 15, 1989, is hereby suspended until further notice.

SUMMARY: A Notice of Realty Action for the subject sale was published in the **Federal Register**, Vol. 54, No. 202, on Friday, October 20, 1989, page 43144. Based on issues raised in a protest to the sale, a decision has been made to suspend the sale until these issues are resolved.

SUPPLEMENTARY INFORMATION: Contact the Monument Resource Area Manager or the Staff Realty Specialist at: BLM Shoshone District Office, 400 West F Street, P.O. Box 2-B, Shoshone, ID 83352, or telephone at (208) 886-2206.

John H. Ideo,
Associate District Manager.

[FR Doc. 89-29002 Filed 12-11-89; 8:45 am]
BILLING CODE 4310-GG-M

[MTM78516; MT-20-00-4212-13]

Realty Action—Exchange; Montana

AGENCY: Bureau of Land Management, Miles City District Office, Interior.

ACTION: Notice of Realty Action MTM-78516. Exchange of public lands in Big Horn County, Montana, for private land in Powder River and Big Horn Counties, Montana.

SUMMARY: The following described lands have been determined to be suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716.

Principal Meridian, Montana

T. 8 S., R. 43 E.,
Sec. 17, N½SW¼;
Sec. 25, S½N½;
Sec. 26, SE¼NE¼;
Sec. 28, NW¼NE¼; SW¼NW¼, NW¼SW¼;
Sec. 29, N½NE¼, SE¼NE¼;
Sec. 33, SW¼NE¼.
T. 8 S., R. 44 E.,
Sec. 19, Lots 5, and 8;
Sec. 30, Lots 19, and 20;
Sec. 31, Lots 5, 6, 15, and 16;
T. 9 S., R. 44 E.,
Sec. 2, NE¼SE¼;
Sec. 6, Lots 1, 2, and 8 to 18, Incl, W½SE¼;
Sec. 7, Lots 15, 16, 19, and 20, S½SE¼;
Sec. 8, SW¼;
Sec. 9, S½SE¼;
Sec. 18, NE¼NE¼.

Aggregating 1878.12 acres of public land

The United States will exchange these lands with Charles F. Conley and L. C. Fowler to acquire the following described lands from the proponents:

Principal Meridian, Montana

T. 9 S., R. 44 E.,
Sec. 11, W½SW¼;
Sec. 13, W½E½, W½;
Sec. 14, W½SE¼;
Sec. 15, N½, SE¼;
Sec. 22, N½NE¼;
Sec. 23, N½N½;
Sec. 24, NW¼NW¼.

The United States will also acquire an exclusive road easement, 60 feet by 8814.18 feet crossing the following private lands:

Principal Meridian, Montana

T. 9 S., R. 44 E.,
Sec. 12, S½NE¼, E½SW¼, NW¼SE¼.
T. 9 S., R. 45 E.,
Sec. 7, Lot 1, Lot 2, NE¼NW¼.

Aggregating 12.14 acres of private land.

DATES: For a period of 45 days from the date of this notice, interested parties may submit comments to the Bureau of Land Management at the address shown below. Any adverse comments will be evaluated by the BLM Montana State Director who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Information related to the exchange, including the environmental assessment and land report is available for review at the Miles City District, Powder River Resource Area Office, Miles City Plaza, Miles City, Montana 59301.

SUPPLEMENTARY INFORMATION: The publication of this notice segregates the public lands described above from settlement, sale, location, and entry under the public land laws, including the mining laws, but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976 for a period of 2 years from the date of first publication. The exchange will be made subject to:

1. A reservation to the United States of a right-of-way for ditches or canals in accordance with 43 U.S.C. 945.

2. The reservation to the United States of all minerals.

3. All valid existing rights for the following rights-of-way of record:

Sheridan-Johnson REA, MTM-29576, and Big Horn County, MTM-61080.

4. Value equalization by cash payment of $800.00 will be paid to Charles F. Conley by the United States of America.

5. The following reservation in the patents: "By purchase (exchange) of this land, the owner, pursuant to Section 714 of the Surface Mining Control and Reclamation Act, 30 U.S.C. 1304, gives "surface owner" consent to the United States and its lessees to enter and commence surface mining operations to extract the United States reserved coal.

6. The two-year notifications to grazing lessees were received October 3, 1989, and October 11, 1989, in accordance with 43 CFR 4110.4-2(b).

This exchange is consistent with Bureau of Land Management policies and the Powder River RMP/EIS and has been discussed with state and local officials. The estimated intended time of the exchange is March 1990.

The public interest will be served by completion of this exchange because it will enable the Bureau of Land Management to acquire lands with high public values, and will increase management efficiency of public lands in the area.

Dated: December 5, 1989.

Janet L. Edmonds,
Acting District Manager.

[FR Doc. 89-28987 Filed 12-11-89; 8:45 am]
BILLING CODE 4310-GH-M

[NV-930-00-4214-11; Nev-045161, Nev-051663]

Proposed Continuation of Withdrawals; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration proposes that the withdrawals comprising 283 acres for two air navigation sites be continued for an additional 20 years. The lands will remain closed to surface entry and mining. The lands will be opened to mineral leasing.

DATE: Comments should be received by (90 days from publication date).

ADDRESS: Comments should be sent to: Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 12000, Reno, Nevada 89520.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, Nevada State Office, 702-328-6326.

The Federal Aviation Administration proposes that the existing land withdrawals made by Public Land Orders 1905 and 2142 be modified and continued for a period of 20 years pursuant to 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

Mount Diablo Meridian

T. 3 N., R. 43 E.,
Sec. 19, SE¼NE¼, NE¼SE¼;
Sec. 20, SW¼NW¼, NW¼SW¼.
T. 2 N., R. 44 E.,
Sec. 15, NW¼.

The area described aggregates 283 acres in Nye County.

The withdrawals were established for air navigation site facilities and are used for that purpose. The withdrawals segregate the land from operation of the public land laws generally, including the mining and mining leasing laws. A change is proposed to reduce the segregative effect of the withdrawals by opening the lands to application under the mineral leasing laws. Mineral leases will not be approved without the concurrence of the Federal Aviation Administration.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed continuation of the withdrawals may present their views in writing to the Chief, Branch of Lands and Minerals Operations, in the Nevada State Office. The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued and if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Edward F. Spang,
State Director, Nevada.

[FR Doc. 89-28988 Filed 12-11-89; 8:45 am]
BILLING CODE 4310-HC-M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related form may be obained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029-0047), Washington, DC 20503, telephone 202-395-7340.

Title: Permanent Program Performance Standards—Surface Mining Activities, 30 CFR part 816.

OMB approval number: 1029-0047.

Abstract: Section 515 of the Surface Mining Control and Reclamation Act of 1977 provides that permittees conducting surface coal mining operations shall meet all applicable performance standards of the Act. The information collected is used by the regulatory authority in monitoring and inspecting surface coal mining activities to ensure that they are conducted in compliance with the requirements of the Act.

Bureau form number: None.

Frequency: On occasion, quarterly, and annually.

Description of respondents: Surface coal mining operators.

Estimated Completion Time: 1 hour.

Annual Responses: 786,156.

Annual Burden Hours: 666,058.

Bureau clearance officer: Andrew F. DeVito 202-343-5954.

Dated: November 14, 1989.

Annetta L. Cheek,
Chief, Regulatory Development and Issues Management.

[FR Doc. 89-28962 Filed 12-11-89; 8:45 am]
BILLING CODE 4310-05-M

Request for Determination of Valid Existing Rights Within the Monongahela National Forest

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of request for determination and invitation for interested persons to participate.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) has received a request for a determination that Walter D. Helmick has valid existing rights (VER) to surface mine coal on Federal lands within the Monongahela National Forest in Pocahontas County, West Virginia. By this notice, OSM is inviting interested persons to participate in the proceeding

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and to submit relevant factual material on the matter. OSM intends to develop a complete Administrative Record, and will render a final agency decision on whether Walter D. Helmick has VER.

DATES: OSM will accept written materials on this request for a VER determination until 5 p.m. local time January 26, 1990.

ADDRESSES: Hand deliver or mail written materials to Carl C. Close, Assistant Director, Eastern Field Operations at the address listed below. Documents contained in the Administrative Record are available for public review at the locations listed below during normal business hours, Monday through Friday, excluding holidays.

Office of Surface Mining Reclamation and Enforcement, Eastern Field Operations, Room 246, Ten Parkway Center, Pittsburgh, PA 15220, Telephone: (412) 937–2897.

Office of Surface Mining Reclamation and Enforcement, Charleston Field Office, 603 Morris Street, Charleston, WV 25301, Telephone: (304) 347–7158.

SUPPLEMENTARY INFORMATION: Section 522(e) of SMCRA prohibits surface coal mining operations in certain areas, subject to VER and except for those operations which existed on August 3, 1977. Under section 522(e)(2), the prohibition is applied to any Federal lands within the boundaries of any national forest unless the Secretary of the Interior finds that there are no significant recreational, timber, economic or other values that may be incompatible with such surface coal mining operations and the surface operation and impacts are incident to an underground coal mine. National forest land west of the 100th meridian that does not have significant forest cover as determined by the Secretary of Agriculture may be surface coal mined.

The term "VER" is not defined in SMCRA. On September 14, 1983 (48 FR 41312–41356), OSM adopted a regulatory definition of VER at 30 CFR 761.5 which defined VER as those rights, which if affected by the prohibitions in section 522(e), would entitle the owner to payment of just compensation under the fifth and fourteenth amendments to the United States Constitution, the so-called "takings" test.

On March 22, 1985, the United States District Court for the District of Columbia held that the promulgation of the VER definition in 30 CFR 761.5 violated the Administrative Procedure Act and remanded the definition to the Secretary of the Interior ([*In Re: Permanent Surface Mining Regulation Litigation II*, No. 79–1144).

In the November 20, 1986 **Federal Register** (51 FR 41952), OSM suspended the Federal definition of VER insofar as it incorporates a takings test. OSM announced that during the period of suspension it would make VER determinations on Federal lands within the boundaries of national forests using the VER definition contained in the appropriate State regulatory program.

The term VER is defined in section 2.126 of the West Virginia Surface Mining Reclamation Regulations. Section 2.126 provides that VER exists, except for haulroads, in each case in which a person demonstrates that the limitation provided for in section A–3–22(d) of the West Virginia Surface Coal Mining and Reclamation Act would result in the unconstitutional taking of that person's rights.

By letter dated June 24, 1988, Walter D. Helmick requested that OSM make a determination of VER for his planned surface coal mining operation on Federal lands within the Monongahela National Forest in the Little Levels District of Pocahontas County, West Virginia. Mr. Helmick alleges that he owns mineral rights on two adjacent tracts of land, the surface of which is owned by the United States of America and managed by the United States Forest Service. Tract 574 contains 1,045.3 acres and is situated seven miles west of Hillsboro, West Virginia on the waters of Hills Creek and the waters of Robins Run, a tributary of Spring Creek. The second tract, known as the Killingsworth Tract, contains 179 acres and is situated on the headwaters of Spruce Run, a tributary of the Greenbrier River. Both properties are located on Briery Knob.

In order to establish that the requester has VER for surface coal mining on the property in question, OSM must first determine that the requester has demonstrated all necessary rights to mine the coal. OSM particularly invites interested persons to provide factual information as to whether the requester has the property right to mine by the proposed method, and other factual information concerning whether the requester has VER under the applicable standards.

OSM will make a final decision on Walter D. Helmick's VER request as soon as it is practicable following completion of the Administrative Record. If OSM determines that Walter D. Helmick has VER, the West Virginia Department of Energy may issue a permit to Mr. Helmick authorizing the surface mining of coal on the two tracts in question. If it is determined that Mr. Helmick does not have VER, no permit can be issued.

Dated: November 29, 1989.

Carl C. Close,

Assistant Director, Eastern Field Operations.

[FR Doc. 89–28071 Filed 12–11–89; 8:45 am]

BILLING CODE 4310–05–M

National Park Service

National Register of Historic Places: Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 2, 1989. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be fowarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by December 27, 1989.

Carol D. Shull,

Chief of Registration, National Register.

FLORIDA

Brevard County

Pritchard House (Titusville MPS), 424 S. Washington Ave., Titusville, 89002167

Robbins, Judge George, House (Titusville MPS), 703 Indian River Ave., Titusville, 89002168

Spell House (Titusville MPS), 1200 Riverside Dr., Titusville, 89002166

Titusville Commercial District (Titusville MPS), Roughly bounded by Julia St., Hopkins Ave., Main St., and Indian River Ave., Titusville, 89002164

Wager House (Titusville MPS), 631 Indian River Ave., Titusville, 89002165

Hillsborough County

House at 131 West Davis Boulevard (Mediterranean Revival Style Buildings of Davis Islands MPS), 131 W. Davis Blvd., Tampa, 89002161

KANSAS

Anderson County

Spencer's Crossing Bridge (Metal Truss Bridges in Kansas 1861–1939 MPS), Over Pottawatomie Creek, NW of Greeley, Greeley vicinity, 89002177

Barton County

Walnut Creek Bridge (Meta. Truss Bridges in Kansas 1861–1939 MPS), Over Walnut Creek, NW of Heizer, Heizer vicinity, 89002178

Bourbon County

Long Shoals Bridge (Metal Truss Bridges in Kansas 1861–1939 MPS), Over Little Osaga River, E of Fulton, Fulton vicinity, 89002182

Chautauqua County

Otter Creek Bridge (Metal Truss Bridges in Kansas 1861–1939 MPS), FSA 95 over Otter Creek, 3.0 mi. N of Cedar Vale, Cedar Vale vicinity, 89002189

Cloud County

County Line Bowstring (Metal Truss Bridges in Kansas 1861–1939 MPS), Over West Creek, NW of Hollis, Hollis vicinity, 89002192

Pott's Ford Bridge (Metal Truss Bridges in Kansas 1861–1939 MPS), Over Solomon River, SE of Glasco, Glasco vicinity, 89002173

Republican River Pegran Truss (Metal Truss Bridges in Kansas 1861–1939 MPS), Rt. 795 over the Republican River, Concordia vicinity, 89002190

Crawford County

Little Walnut Creek Bowstring (Metal Truss Bridges in Kansas 1861–1939 MPS), Over Little Walnut Creek, NE of Walnut, Walnut vicinity, 89002174

Dickinson County

Asylum Bridge (Metal Truss Bridges in Kansas 1861—1939 MPS), First St. over Marais des Cygnes, Osawatomie vicinity, 89002187

Doniphan County

Doniphan County Waddell (Metal Truss Bridges in Kansas 1861—1939 MPS), FAS 28, 1.7 mi. NE of Doniphan, Doniphan vicinity, 89002185

Ford County

West Sappa Creek Lattice (Metal Truss Bridges in Kansas 1861—1939 MPS), NW of Morton over West Sappa Creek, Norton vicinity, 89002191

Grant County

Jack Creek Kingpost (Metal Truss Bridges in Kansas 1861—1939 MPS), SE of Long Island, Long Island vicinity, 89002168

Jefferson County

Jefferson Old Town Bowstring Truss (Metal Truss Bridges in Kansas 1861—1939 MPS), Off US 59, Oskaloosa vicinity, 89002186

Meriden Rock Creek Bridge (Metal Truss Bridges in Kansas 1861—1939 MPS), KS 4 at jct. with FAS 1328, NE of Meriden, Meriden vicinity, 89002183

Miami County

Carey's Ford Bridge (Metal Truss Bridges in Kansas 1861—1939 MPS), Over Marais des Cygnes River, E of Osawatomie, Osawatomie vicinity, 89002179

Washington County Kingpost (Metal Truss Bridges in Kansas 1861—1939 MPS), SE of Barnes, Barnes vicinity, 89002184

Montgomery County

Independence Bowstring (Metal Truss Bridges in Kansas 1861—1939 MPS), Over the Verdigris River, M of jct. of Burns and Myrtle Sts., Independence, 89002180

Onion Creek Bridge (Metal Truss Bridges in Kansas 1861—1939 MPS), Over Onion Creek, S. of Coffeyville, Coffeyville vicinity, 89002172

Morris County

Four Mile Creek Lattice (Metal Truss Bridges in Kansas 1861—1939 MPS), Over Four Mile Creek, SE of Wilsey, Wilsey vicinity, 89002181

Republic County

East Riley Creek Bridge (Metal Truss Bridges in Kansas 1861—1939 MPS), Over East Riley Creek, S of Belleville, Belleville vicinity, 89002176

Riley Creek Bridge (Metal Truss Bridges in Kansas 1861—1939 MPS), Over Riley Creek, S of Belleville, Belleville vicinity, 89002175

MASSACHUSETTS

Suffolk County

St. Joseph's Roman Catholic Church Complex, Bounded by Circuit, Regent, Hulbert, and Fenwick Sts., Boston, 89002169

MONTANA

Custer County

East Main Street Residential Historic District, 1600—2315 E. Main St., Miles City, 89002171

Wibaux County

Wibaux Commercial Historic District, Roughly bounded by W. Orgain Ave., Wibaux, E. First Ave. S., and E. Wibaux, 89002170

NEBRASKA

Arthur County

First Arthur County Courthouse and Jail (County Courthouses of Nebraska MPS), Marshall St. between Fir and Elm Sts., Arthur, 89002241

Box Butte County

Box Butte County Courthouse (County Courthouses of Nebraska MPS), Box Butte Ave. between E. 5th and 6th Sts., Alliance, 89002212

Burt County

Burt County Courthouse (County Courthouses of Nebraska MPS), 13th St. between M and N Sts., Tekamah, 89002223

Cass County

Cass County Courthouse (County Courthouses of Nebraska MPS), Main St. between 3rd and 4th Sts., Plattsmouth, 89002248

Cedar County

Cedar County Courthouse (County Courthouses of Nebraska MPS), Broadway Ave. between Centre and Franklin Sts., Hartington, 89002214

Chase County

Chase County Courthouse (County Courthouses of Nebraska MPS), Broadway between 9th and 10th Sts., Imperial, 89002222

Cherry County

Cherry County Courthouse (County Courthouses of Nebraska MPS), 4th and Main Sts., Valentine, 89002229

Clay County

Clay County Courthouse (County Courthouses of Nebraska MPS), Fairfield St. between Alexander and Brown Aves., Clay Center, 89002240

Custer County

First Custer County Courthouse (County Courthouses of Nebraska MPS), Pacific St. and Cameron Ave., Callaway, 89002213

Dawson County

Dawson County Courthouse (County Courthouses of Nebraska MPS), Washington St. between 7th and 8th Sts., Lexington, 89002236

Deuel County

Deuel County Courthouse (County Courthouses of Nebraska MPS), 718 3rd St., Chappell, 89002239

Dixon County

Dixon County Courthouse (County Courthouses of Nebraska MPS), 3rd and Iowa Sts., Ponca, 89002247

Dodge County

Dodge County Courthouse (County Courthouses of Nebraska MPS), 435 N. Park Ave., Fremont, 89002208

Dundy County

Dundy County Courthouse (County Courthouses of Nebraska MPS), W. 7th Ave. and Chief St., Benkelman, 89002237

Gage County

Gage County Courthouse (County Courthouses of Nebraska MPS), 612 Grant St., Beatrice, 89002226

Garden County

Garden County Courthouse (County Courthouses of Nebraska MPS), F and Main Sts., Oshkosh, 89002231

Greeley County

Greeley County Courthouse (County Courthouses of Nebraska MPS), Kildare St., Greeley, 89002228

Hooker County

Hooker County Courthouse (County Courthouses of Nebraska MPS), Cleveland Ave. between Railroad and 1st Sts., Mullen, 89002218

Howard County

Howard County Courthouse (County Courthouses of Nebraska MPS), Indiana St. between 6th and 7th Sts., St. Paul, 89002233

Johnson County

Johnson County Courthouse (County Courthouses of Nebraska MPS), Courthouse Sq., Tecumseh, 89002246

Kearney County

Kearney County Courthouse (County Courthouses of Nebraska MPS), 5th St. between Colorado and Minden Aves., Minden, 89002234

Lincoln County

Lincoln County Courthouse (County Courthouses of Nebraska MPS), Dewey St. between 3rd and 4th Sts., North Platte, 89002224

Merrick County

Merrick County Courthouse (County Courthouses of Nebraska MPS), 16th St. between 15th and 16th Aves., Central City, 89002211

Morrill County

Morrill County Courthouse (County Courthouses of Nebraska MPS), M St. between 5th and 6th Sts., Bridgeport, 89002227

Nemaha County

Nemaha County Courthouse (County Courthouses of Nebraska MPS), 1824 N St., Auburn, 89002243

Nuckolls County

Nuckolls County Courthouse (County Courthouses of Nebraska MPS), 150 S. Main St., Nelson, 89002219

Pawnee County

Pawnee County Courthouse (County Courthouses of Nebraska MPS), 625 8th St., Pawnee City, 89002232

Phelps County

Phelps County Courthouse (County Courthouses of Nebraska MPS), 5th Ave. between East and West Aves., Holdrege, 89002242

Platte County

Platte County Courthouse (County Courthouses of Nebraska MPS), 2610 14th St., Columbus, 89002217

Polk County

Polk County Courthouse (County Courthouses of Nebraska MPS), Courthouse Sq., Osceola, 89002238

Saunders County

Saunders County Courthouse (County Courthouses of Nebraska MPS), Chestnut between 4th and 5th Sts., Wahoo, 89002220

Scotts Bluff County

Scotts Bluff County Courthouse (County Courthouses of Nebraska MPS), 10th and Q Sts., Gering, 89002230

Seward County

Seward County Courthouse (County Courthouses of Nebraska MPS), Seward between 5th and 6th Sts., Seward, 89002245

Sheridan County

Sheridan County Courthouse (County Courthouses of Nebraska MPS), 2nd and Sprague Sts., Rushville, 89002216

Sherman County

Sherman County Courthouse (County Courthouses of Nebraska MPS), 630 O St., Loup City, 89002225

Thurston County

First Thurston County Courthouse (County Courthouses of Nebraska MPS), 400–412 Main St., Pender, 89002210

Thurston County Courthouse (County Courthouses of Nebraska MPS), Main St. between 5th and 6th Sts., Pender, 89002209

Valley County

Valley County Courthouse (County Courthouses of Nebraska MPS), 16th St. between L and M Sts., Ord, 89002235

Washington County

Washington County Courthouse (County Courthouses of Nebraska MPS), 16th St. between Colfax and South Sts., Blair, 89002221

Wheeler County

Wheeler County Courthouse, Former (County Courthouses of Nebraska MPS), Maine St. between 2nd and 3rd Sts., Bartlett, 89002215

NEW JERSEY

Mercer County

Penns Neck Baptist Church, U.S. 1 at Princeton—Hightstown Rd., Penns Neck, 89002160

Middlesex County

Kingston Village Historic District, Roughly NJ 27 from Raymond Rd. to Delaware & Raritan Canal, Church st., Laurel Ave., Heathcote Brook Rd., & Academy St., Kingston, 89002163

Monmouth County

Wurts, George, Summer Home, 308 Eighth Ave., Asbury Park, 89002162

OKLAHOMA

Washington County

Civic Center, Johnstone Ave. between 6th St. and Adams Blvd., Bartlesville, 89002122

[FR Doc. 89–28939 Filed 12–11–89; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–290 (Sub-No. 78X)]

Southern Railway Co.—Abandonment Exemption—In Henry County, VA

Applicant has filed a notice of exemption under 49 CFR 1152 subpart F—Exempt Abandonments to abandon its 6.1-mile line of railroad between mileposts 30.0–DW and 36.1–DW, at or near Axton, Henry County, VA.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on the behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on January 11, 1990 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by December 22, 1989.[3] Petitions for reconsideration or requests for public use conditions under 49 CFR 1152.28 must be filed by January 3, 1990, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Roger A. Petersen, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the notice of exemption contains false or misleading information, use of the exemption is *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by December 15, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275–7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: December 6, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–28990 Filed 12–11–89; 8:45 am]

BILLING CODE 7035–01–M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Secretary of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exception. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-23, 172]

Associated Materials, Inc.; Alside Division Cuyahoga Falls, OH; Negative Determination Regarding Application for Reconsideration

By an application dated October 16, 1989, the United Steelworkers requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on September 19, 1989 and published in the Federal Register on October 3, 1989 (54 FR 40755).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previousy considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union claims that imported vinyl siding has increased its market share at the expense of metal siding and indicates that Alside intends to import products that were formerly made at Cuyahoga Falls.

Investigation findings show that Alside does not import metal siding (aluminum and steel) nor does it intend to import such products. All future needs for metal siding will be met by another company with plants in Chicago and New Jersey. Although vinyl siding was not made at Cuyahoga Falls, this product will continue to be made at other plants of the subject firm. The findings further show that the number of housing starts decreased in 1987 compared to 1986 and in 1988 compared to 1987 and is forecasted to decrease even further in 1989 compared to 1988.

With respect to raw materials, within the meaning of the Trade Act of 1974, only increased imports of articles like or directly competitive with the articles produced by the workers' firm can be considered. Accordingly, raw materials used in the production of a finished article cannot be considered as finished articles (metal siding). This issue was addressed in *United Shoe Workers of America, AFL–CIO* v. *Bedell*, 506 F2d 174, (D.C. Cir. 1974). The court held that imported finished women's shoes were not like or directly competitive with shoe components—shoe counters.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 30th day of November 1989.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89–28978 Filed 12–11–89; 8:45 am]

BILLING CODE 4510–30–M

[TA-W-23,230]

Harnischfeger Corp.; Cedar Rapids, IA; Negative Determination Regarding Application for Reconsideration

By an application dated November 1, 1989 Local # 1316 of the United Auto Workers (UAW) requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on October 3, 1989 and published in the Federal Register on October 31, 1989 (54 FR 45812).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The UAW requests that the Department re-instate its earlier certification for the Clear Rapids workers TA–W–17,694. It is also claimed that the Department's negative decision contradicts information on the data collection form submitted by the company.

First, Departmental certifications run for two years unless terminated earlier and the worker group cannot be recertified unless it files a new petition. Two denials have been issued by the Department for the Cedar Rapids worker group since the Department's last certification (TA–W–17,694) which expired on November 20, 1988. Workers at Cedar Rapids were denied eligibility on March 22, 1989 (TA–W–22,451) because no production workers were separated after the expiration of TA–W–17,694. Workers were also denied under (TA–W–23,230) because company imports declined in 1988 compared to 1987 and in the first seven months of 1989 compared to the same period in 1988.

Although the Cedar Rapids plant was sold to another domestic firm on April 30, 1988, the production of cranes continued until July 1989 under an agreement with the new owner. Sales and production of cranes increased in 1988 compared to 1987 and in the first seven months of 1989 compared to the same period in 1988. The sale of the Cedar Rapids plant and the transfer of its production to another domestic firm would not form a basis for certification.

Also, the allegation that the Federal Government forced Harnischfeger to sell its Cedar Rapids plant would not form a basis for certification. In order for a worker group to be certified eligible to apply for adjustment assistance, it must meet all three of the Group Eligibility Requirements of the Trade Act of 1974—a signficiant decline in employment; an absolute decline in production and/or sales and an increase in imports of articles like or directly competitive with those produced by the workers' firm which "contributed importantly" to worker separations.

The data collection form contains no information which would support a worker group certification. Also, personal assurances, in themselves, would not support a certification.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 29th day of November 1989.

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Dated:

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-28979 Filed 12-11-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-23,229]

Honeywell, Inc. Colorado Springs, Co; Negative Determination Regarding Application for Reconsideration

By an application dated October 20, 1989, the petitioners requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on October 3, 1989 and published in the **Federal Register** on October 31, 1989 (54 FR 45812).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances;

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petitioners claim that Honeywell lost production and sales to at least two foreign customers which had semi-conductor component work performed at foreign locations. It is also claimed that packaging facilities in Mexico and Taiwan had an adverse employment effect at Colorado Springs. The petitioners also claim that there was an adverse employment effect when one of Honeywell's customers went out of business, supposedly because of foreign competition.

The Department's denial was based on the fact that the contributed importantly test of the Group Eligibility Requirements of the Trade Act was not met. The Department's survey showed that the major customers who represented a majority of the subject firm's sales decline in 1988 and in the first eight months of 1989 did not import semi-conductors. Also, the findings show a large share of Honeywell's Colorado Springs' semi-conductor production went internally to other Honeywell plants. Workers at Colorado Springs producing components for other company plants can be certified if their separation was caused importantly by a reduced demand for their production from affiliated production facilities whose workers independently meet the statutory criteria for certification. These conditions were not met for workers of Honeywell's Colorado Springs plant since none of Honeywell's other plants had workers certified for adjustment assistance.

Foreign customers shifting a part of their purchases to foreign manufacturers would not form a basis for certification. Only increased U.S. imports adversely affecting employment, production or sales would form such a basis.

The fact that a domestic customer went out of business supposedly because of foreign competition would not form a basis for certification. That customer purchased semi-conductors from Honeywell as components for its super-conductors. However, under the Trade Act of 1974, only increased imports of articles like or directly competitive with the articles produced by the workers' firm can be considered. Semi-conductors are not like or directly competitive with super-computers. The issue of components and finished articles was addressed in *United Shoe Workers of America, AFL-CIO* v. *Bedell*, 506 F2d 174, (D.C. Cir. 1974). The court held that imported finished women's shoes were not like or directly competitive with shoe components—shoe counters. Similarly, semi-conductors are not like or directly competitive with super-computers.

Lastly, investigation findings show that there were no layoffs during the period applicable to the petition as a result of overseas packaging. The Mexican facility packaged items never packed at Colorado Springs. The Taiwan facility was brought in as an outside contractor because the Colorado Springs facility ran out of packaging capacity.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 30th day of November 1989.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-28980 Filed 12-11-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-23, 299]

Miami Extruders, Miami, FL; Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance; Correction

This notice corrects the petition number from TA-W-23,347 to TA-W-23,299 on the negative determination issued on October 31, 1989 for workers of Miami Extruders, Miami, Florida and published in the **Federal Register** on November 15, 1989 on page 47587 of FR Document 89-26806.

Under Negative Determinations, in column 3 line 51 on page 47587 the petition number is corrected to read "TA-W-23, 299" instead of TA-W-23, 347.

Signed at Washington, DC, this 30th day of November 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89-28981 Filed 12-11-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-23, 347]

Pony Industries, Inc., Miami Extruders Division, Miami, FL; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated in response to a worker petition filed on behalf of workers of Miami Extruders Division of Pony Industries, Incorporated, Miami, Florida.

A negative determination applicable to the petitioning group of workers was issued on October 31, 1989 (TA-W-23, 299). No new information is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 30th day of November 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89-28982 Filed 12-11-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-23, 398]

Revelations Shoe Corp., Exeter, PA; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance; Correction

This notice corrects the impact date from September 7, 1988 to June 2, 1989 on the subject certification published on November 28, 1989 in the **Federal Register** on page 48954 of FR Document 89-27671.

Under Affirmative Determinations, in column 3 line 6 on page 48954 the impact date is corrected to read "June 2, 1989" instead of September 7, 1988.

Signed at Washington, DC, this 30th day of November 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89-28983 Filed 12-11-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-21, 145; TA-W-21, 145A; TA-W-21, 145B]

Transit America, Inc.; Philadelphia, PA, Chicago, IL, New York, NY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 18, 1988 applicable to all workers of Transit America, Inc., Philadelphia, Pennsylvania.

Based on new information from the company, several workers were retained for warranty work and retrofit programs on railcars in Chicago, Illinois and New York, New York. The amended notice applicable to TA-W-21, 145 is hereby issued as follows:

"All workers of Transit America, Incorporated, Philadelphia, Pennsylvania, Chicago, Illinois and New York, New York who became totally or partially separated from employment on or after September 19, 1988 are eligible to apply for adjustment assistance under section 222 of the Trade Act of 1974.

Signed at Washington, DC, this 1st day of December 1989.

Barbara Ann Farmer,

Director, Office of Program Management, UIS.

[FR Doc. 89-28984 Filed 12-11-89; 8:45 am]

BILLING CODE 4510-30-M

Occupational Safety and Health Administration

Oregon State Standards; Notice of Approval

1. *Background.* Part 1953 of title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a state plan which has been approved in accordance with section 18(c) of the Act and 29 CFR part 1902. On December 28, 1972, notice was published in the **Federal Register** (37 FR 28628) of the approval of the Oregon plan and the adoption of Subpart D to Part 1952 containing the decision. The Oregon plan provides for adoption of Federal standards as State standards by reference.

In response to Federal standards changes, the state has submitted by letter dated May 3, 1989 from John A. Pompei, Administrator, to James W. Lake, Regional Administrator, and incorporated as part of the plan, state standard amendments comparable to: 29 CFR part 1926, Subpart Q—Concrete and Masonry Construction Safety Standards, Final Rule, as published in the **Federal Register** (53 FR 22643) on June 16, 1988; 29 CFR 1926.550(g). Subsequently, by letter dated September 13, 1989 from John Pompei, Administrator, to James W. Lake, Regional Administrator, the same amendments were resubmitted as permanent standards. The state's temporary rules pertaining to Concrete and Masonry Construction were contained in OAR 437, Division 3. They were adopted by reference on an emergency basis on March 31, 1989 and became effective May 1, 1989 pursuant to ORS 654.025(2), ORS 656.726(3), and ORS 183.335, as ordered and transmitted under Oregon APD Administrative Order 5-1989. Concurrently, state rules contained in Division 83, Construction, were repealed by the same Administrative Order. Subsequently, the state adopted by reference and effective July 7, 1989, permanent rules, pursuant to ORS 654.025(2), ORS 656.726(3), and ORS 183.335, as ordered and transmitted under Oregon APD Administrative Order 8-1989.

On April 18, 1989, the state mailed the Notice of Emergency Adoption of Rules and the Proposed Permanent Amendment of Rules to those on the Department of Insurance and Finance mailing list, established pursuant to OAR 436-01-000 and to those on the Department's distribution list as their interest appeared. A public hearing was not held for the emergency adoption of the state's rules. On April 26, 1989 and May 5, 1989, the state mailed the Notice of the Proposed Permanent Amendment of Rules to those on the Department of Insurance and Finance mailing list as their interest appeared. The state's notifications failed to elicit a request for public hearing.

In response to federal standards changes, the state has submitted by letter dated November 29, 1988 from John A. Pompei, Administrator, to James W. Lake, Regional Administrator, and incorporated as part of the plan, a state standard amendment comparable to 29 CFR 1910.1047, Occupational Exposure to Ethylene Oxide, Final Rule, as published in the **Federal Register** 53 FR 11437 on April 6, 1988. The state's rules pertaining to Ethylene Oxide, contained in OAR 437-02-360(26), were adopted by reference and became effective on November 17, 1988, pursuant to ORS 654.025(2), ORS 656.726(3), and ORS 183.335, as ordered and transmitted under Oregon APD Administrative Order 18-1988. Concurrently, equivalent state rules contained in Division 156, which pertained to Ethylene Oxide, were repealed by the same Administrative Order. On October 5, 1988, the state mailed the Notice of Proposed Rules to those on the Department of Insurance and Finance mailing list, established pursuant to OAR 436-01-000 and to those on the Department's distribution list as their interest appeared. No requests for a public hearing were received.

In response to federal standards changes, the state has submitted by letter dated September 15, 1989 from John A. Pompei, Administrator, to James W. Lake, Regional Administrator, and incorporated as part of the plan, state standard amendments comparable to: 29 CFR 1926.800, Underground Construction, Final Rule, as published in the **Federal Register** (54 FR 23824) on June 2, 1989. The state's rules pertaining to Underground Construction are contained in OAR 437, Division 3. They were adopted by reference and effective September 13, 1989, pursuant to ORS 654.025(2), 656.756(3), and ORS 183.335, as ordered and transmitted under Oregon APD Administrative Order 15-1989. The state's rules replace the Emergency Temporary Standards previously approved in the **Federal Register** at 54 FR 38300 dated September 15, 1989. On August 10, 1989, the state mailed the Notice of the Proposed Permanent Amendment of Rules to those on the Department of Insurance and Finance mailing list as their interest appeared. The state's notifications failed to elicit a request for public hearing.

2. *Decision.* Having reviewed the state's submissions in comparison with the federal standards, it has been determined that the state's standards

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are identical to the federal sta OSHA, therefore, approves these standards.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Washington 98174; Department of Insurance and Finance, Labor and Industries Building, Salem, Oregon 97310; and the Office of State Programs, Occupational Safety and Health Administration, Room N-3476, 200 Constitution Ave NW., Washington DC 20210.

4. *Public participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Oregon State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standard amendments are identical to the federal standards which were promulgated in accordance with federal law including meeting requirements for public participation.

2. The standard amendments were adopted in accordance with the procedural requirements of state law and further participation would be unnecessary.

This decision is effective December 12, 1989.

Authority: Sec. 18, Pub. L. 91-596, 84 STAT. 6108 (29 U.S.C. 667).

Signed at Seattle, Washington this 29th day of September, 1989.

James W. Lake,

Regional Administrator.

[FR Doc. 89-28985 Filed 12-11-89; 8:45 am]

BILLING CODE 4510-26-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: Office of Records Administration, NARA.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments of such schedules, as required by 44 USC 3303a(a).

DATE: Requests for copies must be received in writing on or before January 26, 1990. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESS: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending:

1. Department of the Air Force (N1-AFU-90-9). Routine personnel records relating to Air National Guard Employees.

2. Defense Logistics Agency (N1-361-89-2). Routine records relating to the Defense National Stockpile Center.

3. Department of Commerce, Office of the Secretary (N1-40-89-1). Invitation and appointments records.

4. Department of Commerce, National Oceanic and Atmospheric Administration (N1-370-87-1). Records relating to the creation and administration of the Monitor Marine Sanctuary.

5. Department of State, Bureau of Public Affairs (N1-59-89-29). Miscellaneous routine and facilitative records.

6. Tennessee Valley Authority, Office of the Inspector General (N1-142-89-5). Background records created and used in the drafting of policy directives and semiannual reports to Congress.

7. Tennessee Valley Authority, Purchasing Function (N1-142-89-15). Routine procurement files to be retained for a period other than specified by the General Records Schedules.

8. Tennessee Valley Authority, Power Function (N1-142-89-23). Solar Pond Project test data and photographic print enlargements (transparencies taken of the project have been appraised as having sufficient archival value to warrant permanent retention by the National Archives).

9. Tennessee Valley Authority, Human Resources (N1-142-90-1). Records documenting nuclear safety for activities other than power generation.

Dated: December 6, 1989.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 89-28980 Filed 12-11-89; 8:45 am]

BILLING CODE 7515-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 89-84]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Ad Hoc Review Team on Advanced Cockpit Technology.

DATES: January 8, 1990, 8:30 a.m. to 5 p.m.; January 9, 1990, 8:30 a.m. to 5 p.m.; and January 10, 1990, 8 a.m. to 12 noon.

ADDRESSES: National Aeronautics and Space Administration, Langley Research Center, Building 1218, Room 107, Hampton, VA 23665.

FOR FURTHER INFORMATION CONTACT: Mr. Ray Hood, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2745.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee (AAC) was established to provide overall guidance to the Office of Aeronautics and Space Technology (OAST) on aeronautics research and technology activities. Special ad hoc review teams are formed to address specific topics. The Ad Hoc Review Team on Advanced Cockpit Technology, chaired by Dr. John K. Lauber, is comprised of eight members.

The meeting will be closed to the public from 8:30 a.m. to 5 p.m. on January 9 for discussion of matters which are likely to disclose trade secrets and commercial or financial information obtained from a person, and are privileged or confidential. Since this discussion will be concerned with matters listed in 5 U.S.C. 552b(c)(4), it has been determined that the meeting be closed to the public for this period of time. The remainder of the meeting will be open to the public up to the seating capacity of the room (approximately 20 persons including the team members and other participants).

Type of Meeting: Open—except for a closed session as noted in the agenda below.

Agenda:

January 8, 1990
8:30 a.m.—Opening Remarks.
9 a.m.—Current Langley Research Center Cockpit Technology Thrusts.
11 a.m.—Facility Tour.
1 p.m.—Future Cockpit Technology Research.
2 p.m.—Facility Tour.
3 p.m.—Group Discussion.
5 p.m.—Adjourn.

January 9, 1990
8:30 a.m.—Closed Session.
5 p.m.—Adjourn.

January 10, 1990
8 a.m.—Interim Report Preparation.
12 noon—Adjourn.

Dated: December 4, 1989.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 89-28943 Filed 12-11-89; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee on Containment Systems; Postponed

The ACRS Subcommittee meeting on Containment Systems scheduled for December 12, 1989 has been postponed to January 10, 1990, Room P-110, 7920 Norfolk Avenue, Bethesda, MD. The notice of this meeting was previously published in the **Federal Register** on Tuesday, December 5, 1989 (54 FR 50294).

Dated: December 6, 1989.

Sam Duraiswamy,

Acting Chief, Project Review Branch No. 2.

[FR Doc. 89-28969 Filed 12-11-89; 8:45 am]

BILLING CODE 7590-01-M

NRC Committee To Review the Severe Accident Risks Report; Meeting

The NRC Committee to Review the Severe Accident Risks Report (NUREG-1150) will hold its third meeting on January 18 and 19, 1990 at the Hyatt Regency Hotel, 1 Bethesda Metro Center, Bethesda, Maryland. Notice of the establishment of this Committee was published in the **Federal Register** on June 21, 1989. [54 FR 26124].

The purpose of this Special Committee is to provide the NRC with a technical peer review of the adequacy of the methods, insights, analyses and conclusions set forth in the April 1989 draft of NUREG-1150 and, in addition, to provide answers to particular questions posed by the Commission and set forth in the referenced **Federal Register** notice.

The entire meeting will be open to the public. Any member of the public wishing to file a written statement with the Committee may send the statement to Mr. Charles B. Bartlett, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

The meeting participants will be the Committee members and the NRC and Contractor staff.

The following topics will be discussed:

(1) An in-depth review of the seismic inputs to the study including the two different seismic hazards distributions used and the effects of the use of these two distributions traced through the analysis.

(2) A review of the significant differences (and rationale) between the first and second drafts of NUREG-1150 particularly with respect to the probabilities and characteristics of the modes of early containment failures.

(3) A detailed discussion of the high pressure melt ejection scenario including:

—The conclusions of the individual experts with respect to probabilities
—The data base used to evaluate the major determining features of the early melt scenario
—the method of factoring in key experimental results into the analysis

(4) A discussion of how the probability of early containment failure and related risk estimates could be affected by the inclusion of pressure vessel failure in the analysis.

(5) A review of the modeling uncertainties in Human Reliability Analysis and the significance of the results of the ISPRA benchmark exercise.

(6) An explanation of how the value of $2X10^{-2}$ for failure to initiate the Standby Liquid Control was derived from the BNL analysis of the Peachbottom ATWS sequence, the uncertainty distribution that was used and its derivation.

(7) A review and discussion of the major issues associated with each reactor analyzed as revealed by analysis of dominate accident sequences.

Further information regarding this meeting can be obtained by calling Mr. Charles B. Bartlett (telephone 301-492-3604).

Dated: December 6, 1989.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 89-28950 Filed 12-11-89; 8:45 am]

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[Docket No. 50-293, et al.*]

Boston Edison Co., et al.*; (Pilgrim Nuclear Power Station, et al.)*; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation (NRR), has issued a Director's Decision concerning a Petition dated March 8, 1989, filed by Ms. Anna Harlowe, Issues Coordinator, on behalf of the Ecology Center of Southern California. The Petition asked the Director, NRR, to take action to relieve what the Petitioner alleged to be undue risks to the public health and safety posed by the containment design of boiling water reactors (BWRs), as revealed by various NRC staff members' statements, published studies, and by the 1975 General Electric "Reed Report." The specific relief requested was to order all BWR licensees to "fix" or close all BWR reactors. Ms. Harlowe gave as grounds for the Petition that (1) in 1972, a member of the NRC staff recommended that GE-designed reactors be banned in the United States; (2) in 1975, GE engineers generated the "Reed Report" that detailed dozens of safety and economic problems with GE-designed reactors and recommended that GE stop selling those reactors; (3) in 1986, an NRC official admitted that 24 GE reactors with Mark I containments had a 90 percent chance of failure in a nuclear accident; (4) in 1987, an NRC task force confirmed that Mark I containments were virtually certain to fail in an accident; (5) according to NRC safety studies, Mark II reactors have many possible scenarios for early containment failures; and (6) Mark II designs, on which the Reed Report focused, have dozens of safety and economic problems and have suffered massive cost overruns during construction as a result of design problems.

On June 5, 1989, the Director, NRR, acknowledged receipt of the Petition. He informed Ms. Harlowe that (1) Petition would be treated under 10 CFR 2.206 of the Commission's regulations, and (2) appropriate action would be taken within a reasonable time.

The Director has now determined that Ms. Harlowe's requests should be denied for the reasons set forth in the "Director's Decision Pursuant to 10 CFR 2.206" (DD-89-9). The Decision is available for inspection and copying in the Commission's Public Document Room, Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the Local Public Document Rooms near the facilities listed below. The addresses and hours of operations for the local public document rooms may be obtained by calling the following toll-free number: 1-800-638-8081.

A copy of the Decision has been filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c). As provided in 10 CFR 2.206(c), the Decision will become the final action of the Commission twenty-five (25) days after issuance unless the Commission on its own motion institutes review of the Decision within that time.

Dated at Rockville, Maryland, this 4th of December 1989.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

*Carolina Power & Light Co. (Brunswick Steam Electric Plant, Units 1 and 2, Docket Nos. 50-324 and 50-325)
Cleveland Electric Illuminating Co., et al. (Perry Nuclear Power Plant, Unit 1, Docket No. 50-440)
Commonwealth Edison Co. (Dresden Nuclear Power Station, Units 2 and 3, Docket Nos. 50-237 and 50-249), (Quad Cities Station, Units 1 and 2, Docket Nos. 50-254 and 50-265), (LaSalle County Station, Units 1 and 2, Docket Nos. 50-373 and 50-374)
Consumers Power Co. (Big Rock Point Nuclear Plant, Docket No. 50-155) Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2, Docket No. 50-341)
General Public Utilities (Oyster Creek Nuclear Power Plant, Docket No. 50-219)
Georgia Power Co. (Edwin I. Hatch Nuclear Plant, Units 1 and 2, Docket Nos. 50-321 and 50-366)
Gulf States Utilities Co. (River Bend Station, Docket No. 50-458)
Illinois Power Co. (Clinton Power Station, Docket No. 50-461)
Iowa Electric Light & Power Co. (Duane Arnold Energy Center, Docket No. 50-331)
Long Island Lighting Co. (Shoreham Nuclear Power Station, Docket No. 50-322)
Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Docket No. 50-416)
Nebraska Public Power District (Cooper Nuclear Station, Docket No. 50-298)
Niagara Mohawk Power Corp. (Nine Mile Point Nuclear Station, Units 1 and 2, Docket Nos. 50-220 and 50-410)
Northeast Utilities (Millstone Nuclear Power Station, Docket No. 50-245)
Northern States Power Co. (Monticello Nuclear Generating Plant, Docket No. 50-263
Pennsylvania Power & Light Co. (Susquehanna Steam Electric Station, Units 1 and 2, Docket Nos. 50-387 and 50-388)
Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3, Docket Nos. 50-277 and 50-278), (Limerick Generating Station, Unit 1, Docket No. 50-352)
Power Authority of the State of New York (James A. Fitzpatrick Nuclear Power Plant, Docket No. 50-333)
Public Service Electric & Gas Co. (Hope Creek Nuclear Station, Docket No. 50-354)
Tennessee Valley Authority (Browns Ferry Nuclear Power Station, Units 1, 2, and 3, Docket Nos. 50-259, 50-260, and 50-296)
Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station, Docket No. 50-271)
Washington Public Power Supply System (WNP Unit 2, Docket No. 50-397)*

[FR Doc. 89-28867 Filed 12-11-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-397]

Washington Public Power Supply System; Withdrawal of Application for Amendment to Facility Operating License NPF-21

The United States Nuclear Regulatory Commission (the Commission) has granted the request of the Washington Public Power Supply System (the licensee) to withdraw its March 24, 1989 application to amend the WNP-2 Operating License. The proposed amendment would have revised the License to defer to the end of the fifth refueling outage the implementation of the requirements of Regulatory Guide 1.97, Revision 2 for flux monitoring to "prior to startup following the fifth refueling outage" (Spring 1990). The Commission issued a Notice of Consideration of Issuance of Amendment in the **Federal Register** on April 19, 1989 (54 FR 1580) as corrected in the **Federal Register** on May 16, 1989 (54 FR 21142). By letter dated June 15, 1989 the licensee stated that the March 24, 1989 application for amendment was not needed.

Consequently, the licensee requested that the March 24, 1989 application for amendment be withdrawn.

For further details with respect to this action, see (1) the application for amendment dated March 24, 1989 and (2) the licensee's letter of June 15, 1989 requesting withdrawal of the application. Both of the above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Richland City Library, Swift and Northgate Streets, Richland, Washington 99352.

Dated at Rockville, Maryland, this 4th day of December, 1989.

For the Nuclear Regulatory Commission.

Robert B. Samworth,

Project Manager, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 89-28866 Filed 12-11-89; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Establishment of the Director's Task Force on Executive and Management Development

AGENCY: Office of Personnel Management.

ACTION: Notice.

Establishment of a Task Force: This notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463) and advises of the establishment of the Director's Task Force on Executive and Management Development. The Director of the Office of Personnel Management has determined that establishment of this Task Force is in the public interest.

Designation: Director's Task Force on Executive and Management Development.

Purpose: The purpose of the Task Force is to provide an opportunity for a wide spectrum of knowledgable parties to have significant involvement in discussions on, and development of recommendations to improve, the current Federal executive and management development policies and programs for the Director's consideration.

FOR FURTHER INFORMATION CONTACT: The Director of Policy, OPM, is the sponsor of this Task Force. For additional information, contact Ms. Dona Wolf, Director of Policy, Office of the Director, OMP on (202) 632-6106.

Office of Personnel Management.

Dated: December 1, 1989.

Constance Berry Newman,

Director.

[FR Doc. 89-28900 Filed 12-11-89; 8:45 am]

BILLING CODE 6325-01-M

Director's Task Force on Executive and Management Development; Meetings

AGENCY: Office of Personnel Management.

ACTION: Notice of open meetings.

SUMMARY: OPM is holding open meetings concerning possible changes to the Federal policies and programs related to executive and management development. According to provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that meetings of the Director's Task Force on Executive and Management Development will be held on:

DATES: January 10, 1990, 10 a.m. to 12 noon, Office of Personnel Management, Room 1350, 1900 E Street, NW., Washington, DC.

January 24, 1990, 10 a.m. to 12 noon, Office of Personnel Management, Room 1350, 1900 E Street, NW., Washington, DC.

February 7, 1990, 10 a.m. to 12 noon, Office of Personnel Management, Room 1350, 1900 E Street, NW., Washington, DC.

February 14, 1990, 10 a.m. to 12 noon, Office of Personnel Management, Room 1350, 1900 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dona Wolf, Director of Policy, Office of the Director, Room 5305, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415, (202) 632-6106.

SUPPLEMENTARY INFORMATION: Due to time restrictions, public comment will be limited to five minutes for each person or organization who wishes to testify. Written testimony will be accepted until five calendar days after the final meeting. Those wishing to testify before the Task Force must be registered in advance and must submit eight copies of their testimony to Dona Wolf, at the above address, at least seven days before the requested day of testimony. Thirty minutes will be provided for public input at the end of each meeting.

Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 89-28899 Filed 12-11-89; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-27497; File No. 4-281]

Joint Industry Plan; Notice of Filing of an Amendment to the Consolidated Quotation Plan to Introduce a New, Consolidated Form of Vendor/Computer Input User Agreement

The participants in the Consolidated Quotation ("CQ") plan on October 16, 1989, submitted an amendment to the CQ plan created pursuant to Rule 11Aa3-1(b)(2) and Rule 11Aa3-2(b) under the Securities Exchange Act of 1934 ("Act").[1]

[1] The participants in the restated CTA plan are the American Stock Exchange ("Amex"), Boston Stock Exchange, Cincinnati Stock Exchange, Midwest Stock Exchange, National Association of Securities Dealers, New York Exchange ("NYSE"), Pacific Stock Exchange, and Philadelphia Stock Exchange.

I. Description of the Amendment

The purpose of the amendment is to implement a new, consolidated form of the vendor/computer input user agreements, which restates and consolidates into one form (the "Consolidated Form") the existing vendor agreements to: (1) Reduce paperwork; simplify and accelerate application processing; facilitate the administration of vendor and computer input agreements; and eliminate duplicative effort; and (2) improve the content of existing vendor agreements and addenda by eliminating provisions redundant of other protections afforded by the Consolidated Form or of statutory and common law protections and by substituting generic requirements for detailed specifications and proscriptions; and by reworking the language in general to make the agreement easier to read and understand.

A. Approach of the Consolidated Form

Section VIII of the plan requires the plan participants to enter into contracts with each vendor and computer input user ("Contracting Party" or "Contracting Parties") to govern the receipt of access to, and use of, last sale or quotation information, as appropriate. Since the adoption of the plan, the participants have fulfilled that obligation by evolving two series of agreement forms: one series for (1) the receipt of last sale and quotation information over the high speed line, (2) the receipt of Network A last sale information over the low speed line and (3) the use of Network A last sale and quotation information; the other for (1) the receipt of Network B last sale information over the low speed line and (2) the use of Network B last sale and quotation information. Contracting Parties receive and use last sale and quotation information for the purposes described in section VIII of the plan pursuant to those agreements ("Existing Vendor Agreements").

Historically, the NYSE and the Amex have specifically tailored each Existing Vendor Agreement to meet the specific services and requirements of each Contracting Party. The evolutionary nature of those agreements, and the need to tailor them on a case-by-case basis, were in large part a function of the ever-changing technologies in the market data community. In creating the Consolidated Form, the participants have taken a different approach.

The objectives of the new approach are: (1) to enable each Contracting Party to satisfy the plan's contract

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requirements by entering into only one agreement with the participants for all purposes of the plan and (2) to develop one standard form of agreement that applies for all Contracting Parties, no matter what technologies or means of receipt may be used. As a result, the participants have attempted to create a contract form that addresses all foreseeable contract variables associated with the many aspects of the receipt and use of market data, even though one or more of the Consolidated Form's provisions may not apply in the context of a particular Contracting Party. The participants have used several devices in developing this universal form:

(1) *Exhibit A*—Existing Vendor Agreements already require the Contracting Party to describe the manner in which it receives, uses and safeguards market data in Exhibit A. The Consolidated Form will place greater emphasis on the content of Exhibit A. Contracting Parties will have to include more information and more detailed descriptions so that vendor-specific information will no longer have to be incorporated into the body of the agreement.

(2) *Exhibit B*—The participants recognize that the Consolidated Form cannot anticipate the many new technologies and other developments that are likely to surface. In addition, in the interest of keeping the Consolidated Form to a manageable length, the participants have determined to omit from the body of the Consolidated Form provisions governing certain infrequent uses of market data (*e.g.*, provisions governing public desplays and participant-supplied equipment). Exhibit B affords the participants flexibility by incorporating those unforeseen or less frequently-used provisions into the Consolidated Form on a case-by-case basis.

(3) *Genericization*—The universal nature of the Consolidated Form requires it to take a much more generic approach to the rights and obligations of the Contracting Party. Examples include:

(a) Existing Vendor Agreements allow a wide assortment of third parties to assist Contracting Parties in their receipt and use of market data (*e.g.*, "facilities proprietors," "cablecasters," "switch service suppliers," and "installation contractors"). The Consolidated Form adopts the umbrella concept of a "Service Facilitator" to generically govern the obligations of Contracting Parties in respect of those third parties.

(b) The Consolidated Form moves to Exhibit A all vendor-specific information, such as the services a vendor will provide or the means by which a vendor will receive access to market data (*e.g.*, directly versus indirectly; high speed line versus low speed line). As a result, the body of the Consolidated Form contains only generic references to the manner in which a vendor receives and uses market data.

(c) The Consolidted Form omits specification of the period after which a last sale price becomes a delayed last sale price.

(d) The Consolidated Form governs the receipt and use of multiple types of information. Like its predecessor forms in use over the past few years, the Consolidated Form governs last sale and quotation information disseminated pursuant to the plan, as well as market information furnished by the NYSE and Amex outside of the plan.

(e) The Consolidated Form applies to all types of vendor services: professional subscriber services, nonprofessional subscriber services, limited access services, and, for last sale information, delayed data services. It also applies in a generic way to all other foreseeable permitted uses of market data by a Contracting Party. The information provided in Exhibit A dictates which of the Consolidated Form's provisions governing those services and uses apply in respect of a particular vendor.

B. Administrative Changes

The Consolidated Form also incorporates administrative changes from Existing Vendor Agreements. The use of a generic form necessitates many of these changes. Other changes result from the participants' evaluation of their administrative experiences under Existing Vendor Agreements. The changes include:

(1) *The NYSE as Contract Administrator*—To facilitate the use of a generic form with wide application, to reduce the burden associated with administering market data contracts and to eliminate duplicative efforts, the plans delegate to the NYSE authority to administer contracts on behalf of the Network B participants. Thus, the NYSE will act for the Network B participants in executing the Consolidated Form on behalf of the Network B participants. The delegation of authority is solely ministerial and primarily permits the NYSE to approve one or more uses of market data relating to Network B eligible securities where the NYSE has already approved identical uses of market data relating to Network A eligible securities. In all other respects, Amex continues in its present role as the Network B administrator. The amendments conform the plan to reflect this delegation of authority.

(2) *Recapture of Costs Associated with Non-Compliance*—The Consolidated Form imposes a series of financial consequences relating to the unauthorized or unreported provision or use of market data designed to end subsidy of non-complying recipients by those who comply. The consequences include:

(a) If a Contracting Party makes an unauthorized or unreported provision or use of market data, it must pay any charge payable in respect of that provision or use. In addition, if a professional subscriber, a nonprofessional subscriber and/or any other person receives market data in the chain of dissemination that commenced with the Contracting Party's illicit provision or use, the Contracting Party must pay any charge payable in respect of any unauthorized or unreported provision or use of market data by such subscriber or other person. This provision recasts and replaces a provision found in Existing Vendor Agreements that requires the Contracting Party to indemnify the participants for losses resulting from reporting failures.

(b) The Contracting Party must pay an administrative fee equal to ten percent of the charges described in the preceding paragraph to cover the participants' investigation, processing and collection costs.

(c) The Contracting Party must pay interest on any charge not remitted in a timely manner. The interest rate will be the lesser of (1) one and one-half perccent per month and (2) the maximum rate permitted by law. Existing Vendor Agreements already impose this charge, subject to a maximum for any one year equal to one million dollars, adjusted for inflation since 1983.

The Consolidated Form changes that maximum amount. For each professional subscriber receiving market data as a nonprofessional, the vendor need pay no more than the applicable professional subscriber fees payable for the two preceding years plus the associated administrative and interest charges described above.

(3) *Audit Requirement*—Existing Vendor Agreements require the vendor to provide an audited list of nonprofessional subscribers annually, or more frequently if the participants so request. The Consolidated Form eliminates the mandatory annual audit, but otherwise expands the scope of the audit requirement. Upon request, the Contracting Party must provide an audited list or report containing such information as the participants may request, whether the request concerns nonprofessional subscribers, professional subscribers or other services.

(4) *Service Facilitators*—The Consolidated Form introduces the term Service Facilitator to replace the assortment of third parties that Existing Vendor Agreements permit to assist the Contracting Party in its receipt or use of market data. The Existing Vendor Agreements impose a variety of obligations on the Contracting Party in respect of those third parties and often require the third party to undertake to comply with the applicable terms and conditions of the agreement. To make the Consolidated Form more generic, the participants have determined to adopt a uniform approach to govern all Service Facilitators.

(a) First, the NYSE, as the contract administrator, must determine whether the third party plays the subsidiary role of a Service Facilitator or has more substantive responsibilities in the data dissemination process (*e.g.*, a partner or joint venturer). If the latter, the NYSE may require the third party to enter into the Consolidated Form, independently of the Contracting Party.

(b) If the NYSE determines a third party to be a Service Facilitator, the Service Facilitator need not undertake in writing to comply with the applicable terms and conditions imposed by the Consolidated Form. Instead, the Consolidated Form requires the Contracting Party to guarantee Service Facilitator's compliance. In addition, the NYSE will require the Contracting Party to cause Exhibit A to adequately describe the Service Facilitator and its functions.

(5) *Access to Records*—Existing Vendor Agreements grant participants the right to have access to, and to audit, the Vendor's nonprofessional subscriber records. In order to improve the participants' ability to monitor compliance, the Consolidated Form expands that right of access to include all relevant records of a Contracting Party.

(6) *Reasonableness Standard*—The Consolidated Form, unlike Existing Vendor Agreements, includes a provision that requires the participants to act in a reasonable manner when acting under the Consolidated Form. While the participants have always acted in a reasonable manner under their agreements, they intend for the explicit reasonableness standard to offer added comfort to Contracting Parties.

C. Deleted Provisions

The Consolidated Form omits a number of provisions found in Existing Vendor Agreements. The omitted provisions include:

(1) *Display Requirements*—The restated CQ plan requires Existing Vendor Agreements to contain the following provisions:

(a) For vendors of last sale information interrogation services, the agreement must require that the interrogation devices have the ability to display the most recent last sale price relating to an eligible security.

(b) For vendors retransmitting a ticker display, the agreement must require the vendor to retransmit all last sale prices without deletions and to refrain from retransmitting unless the participants have first approved the retransmission format.

(c) For quotation information vendors, the agreement must require the vendor to display quotation information in a comprehensive, nondiscriminatory manner that complies with the Act and the rules and regulations thereunder.

(d) For quotation information vendors whose services include devices not capable of displaying quotation size and of indicating that bids and offers are not firm, the agreement must require the vendor to cause such devices to have both capabilities.

(e) The vendor's transmissions must comply with all display rules under the Act and the rules and regulations thereunder.

(f) The vendor's retransmitted ticker display devices must comply with all the NYSE requirements for content, format and timeliness.

Because the Consolidated Form and the plans are, by their terms, subject to the Act and the rules thereunder, and because the relevant provisions of the Act and the rules thereunder are enforceable in and of themselves, the practicipants have omitted the above-listed display requirements from the Consolidated Form as either redundant or no longer necessary. To conform to the plan accordingly, the amendments delete from the plan the requirements described above.

(2) *Regulation of Transmissions*—The Consolidated Form omits a provision requiring the Contracting Party to connect and use transmission equipment and to effect transmissions in accordance with the regulations of the participants, common carriers and relevant public authorities. Instead, the Consolidated Form relies upon the requirement that the equipment be arranged and protected so as to preclude unauthorized access. The participants feel that they can omit the provisions because the rules of public authorities are enforceable without reference to the Consolidated Form.

(3) *Regulation of Vendor's Transmission Facility*—The Consolidated Form omits the several provisions relating to the Contracting Party's facilities. The omitted provisions include:

(a) The Contracting Party may only locate its service equipment and software at premises specifically identified in Exhibit A.

(b) The Contracting Party must control those premises and access to them.

(c) The Contracting Party must prohibit all but specifically identified persons from having access to market data at its premises.

(d) The Contracting Party must comply with and enforce the participants' regulations designed to prevent improper access to market data at its premises.

In some instances, equipment components may be located at so many locations, or may be moved from one location to another at such frequent intervals, that Exhibit A identification of those locations is administratively burdensome and generally unnecessary. Instead, the participants feel that other elements of the Consolidated Form adequately protect against abuses at transmission facilities and computer sites. In particular, the participants will rely on the following:

(a) Exhibit A must describe the transmission facilities and computer sites in detail.

(b) The Consolidated Form contains proscriptions against unauthorized access to market data. (See paragraph 13(a) of the Consolidated Form.)

(4) *Device Requirements*—The Consolidated Form omits a provision prohibiting the vendor from attaching any display device to service equipment and software unless Exhibit A describes the device in detail. Because the participants already require Exhibit A to describe all service equipment, the prohibition is redundant.

(5) *Vendor Modification of Nonprofessional Subscriber Agreements*—The Consolidated Form omits a prohibition against the vendor modifying, or vitiating the terms of, any nonprofessional subscriber's application and agreement. The Consolidated Form requires the vendor to have nonprofessional subscribers sign the appropriate application and agreement(s) or an alternate form approved by the NYSE. The omitted provision would be redundant.

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(6) *Competing Data Use*—The Consolidated Form omits a provision specifying that the participants may provide market data to all other parties, including competitors of the Contracting Party. Because the Consolidated Form does not provide for any "exclusive" arrangement, no implication arises that would necessitate that participants reserve the right to provide market data to others. Moreover, the Act makes clear that the participants must provide data to all who seek it and meet the terms of the provision.

(7) *Employee Authority to Act*—The Consolidated Form omits a provision clarifying that an officer, or a person designated by an officer, is authorized to act on behalf of the NYSE or the Amex. By operation of law, an officer would have the authority to act, or to delegate another person to act, on behalf of the NYSE or the Amex for market data contract purposes, even without a specific provision.

D. Provisional Use of Consolidated Form

The participants began provisional use of the Consolidated Form in mid-1988. Since then, the participants have required all new Contracting Parties to enter into it rather than into the Existing Vendor Agreements. Copies of the Consolidated Form executed prior to its final approval contain in Exhibit B a provision specifying that it may be superseded by the ultimate form of agreement.

Since that time, the participants have solicited comments and suggestions from Contacting Parties. In particular, they helped to create, and have participated in, a vendor committee formed by the Information Industry Association's Financial Information Services Division (the "Committee") for the purpose of examining the Consolidated Form. Representatives of the participants and a cross section of the vendor community comprised the Committee. It provided a forum for discussing the concepts underlying the Consolidated From and an opportunity for vendors to offer input. The participants explained the operation and rationale for provisions that vendors questioned and agreed to make several changes to address vendor concerns.

The Consolidated Form as filed contains modifications from the version that the participants have been using provisionally. Those modifications reflect many of the Committee's comments and suggestions as well as a number of other comments and suggestions raised by vendors and securities firms that were not on the Committee.

On August 9, 1989, the participants distributed copies of the Consolidated Form as filed to each member of the Committee. An accompanying letter explained the changes and explained why, in some instances, the participants declined to incorporate vendor comments into the Consolidated Form.

The participants have required, and will hereafter require, a Contracting Party that receives and/or uses market data pursuant to an Existing Vendor Agreement to execute the Consolidated Form in the form filed.

Further, the participants have required, and will hereafter require, a Contracting Party that receives and/or uses market data pursuant to an Existing Vendor Agreement to execute the Consolidated Form (a) if and when it modifies the manner in which it receives or uses last sale or quotation information in a manner that would otherwise require it to execute a supplement or addendum to its Existing Vendor Agreements or (b) in lieu of an assignment of an Existing Vendor Agreement (as when a vendor merges into another corporation). By its terms, the Consolidated Form supersedes a predecessor Existing Vendor Agreement if the Consolidated Form's Exhibit A covers the service(s) that are the subject of the Existing Vendor Agreement. The participants may also ask other current Contracting Parties to execute the Consolidated Form in other instances, such as when doing so would serve administrative efficiency.

II. Implementation of The Amendment

Under section IV(c) of the CQ plan, each of the plan's participants must execute a written amendment to the plan before the amendments can become effective. Each amendment is so executed.

III. Request for Comment

Interested persons are invited to submit written comments on the amendments. Persons submitting comments should file six copies with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549. Copies of the submissions and related items, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. All communications should refer to File No. 4–281 and should be submitted by January 2, 1990.

For the commission, by the Division of Market Regulation, pursuant to delegated authority. 17 CFR 200.30–3(a)(27)

Dated: December 4, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–28921 Filed 12–11–89; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 34–27506; File No. SR–CBOE–89–22]

Self-Regulatory Organization; Chicago Board Options Exchange, Inc.; Order Approving and Granting Accelerated Approval to Proposed Rule Change Relating to Audit Trail Submissions

On October 26, 1989, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish a summary fine system for failure to perform certain audit trail reporting duties.

The proposed rule change was published for comment in Securities Exchange Act Release No. 27417 (November 2, 1989), 54 FR 47001. No comments were received on the proposed rule change.[3]

The proposed rule change establishes a summary fine procedure for a market maker's or floor broker's failure to perform certain reporting duties which are currently required under CBOE Rule 6.51. The fines, intended to ensure accurate audit trail submissions, are for (1) failure to report accurate transaction times, and (2) failure to submit trade information to the Standard & Poor's 100 index option ("OEX") reporter. The purpose of the proposed summary fine procedures is to enable the Exchange to penalize members who are deficient in meeting their reporting duties. The overall objective is to deter such conduct and thereby ensure establishment of the necessary audit trail information.

The proposed rule codifies the informal standards that market makers and floor brokers currently are held to pursuant to CBOE Rule 6.51. In particular, the proposal creates two summary fine schedules, one addressing the submission of inaccurate trade

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1989).

[3] The proposal was amended on November 27, 1989 to: (1) change the test by which transactions are judged to be reported in a timely manner; (2) make the fees associated with filing appeals to fines refundable, if, in fact, the fine is eliminated upon appeal; and (3) clarify that suspensions of the fine system can be extended under appropriate circumstances.

reports and the other addressing the failure to submit trade information to OEX price reporters. With regard to inaccurate trade reports, the proposal provides that a transaction time submitted by a market maker or floor broker is considered inaccurate if not within five minutes of the time submitted by the contra-party to the transaction or the time disseminated by the Exchange's price reporter.[4] Otherwise, with certain specified exceptions, trades will be deemed to be inaccurately reported. Fines for inaccurate trade reports will be assessed monthly based on the number of violations occurring within that month.[5] With regard to OEX transaction reporting, the proposal provides for a fine on CBOE members if they sell OEX contracts and fail to submit required trade information to the OEX price reporter.[6]

In addition, the Exchange proposes to establish several safeguards designed to protect its members from the imposition of improper fines. First, members can request a verification by the Exchange of a fine.[7] Upon receipt of a request, which will be required to deal solely with factual issues or the application of the Rule, Exchange employees will verify the accuracy of the fine and determine whether the fine should be upheld, modified, or eliminated.[8] The Exchange's determination on a request for verification will not be appealable, however, the underlying fine will be.

Second, CBOE members will be able to appeal a fine, provided the protest is filed within thirty days of receipt of the fine or notice of determination on a request for verification of the fine. The review will be based on written evidence unless the member requests a hearing.[9] Appeals will be heard before a Protest Committee comprised of disinterested members of either the CBOE's Equity Floor Procedure Committee or its Index Floor Procedure Committee.[10]

Third, a decision of a Protest Committee may be appealed pursuant to Chapter XIX of CBOE Rules.

Fourth, under unusual circumstances which have affected or will affect the ability of a significant number of market makers and floor brokers to submit accurate transaction times or report OEX trades, the Exchange may suspend temporarily the application of the proposed reporting requirements.

The CBOE believes that a summary fine approach is the most efficient method to encourage better performance of the reporting duties on a floorwide basis. Using objective criteria and computer generated reports, the Exchange believes it will have the ability to impose immediately fines on all market makers and floor brokers who are failing to meet specified levels of compliance. The Exchange does not believe that following its normal disciplinary procedures would be practical because the numerous transaction reporting cases spawned by the proposed Rule would clog the regular disciplinary process, which is geared toward handling more serious rule violations. Moreover, the Exchange believes the imposition of summary fines will yield much speedier results. At the same time, however, the CBOE notes that the conduct of the member involved may be reviewed under normal disciplinary procedures and that members have the right to seek a review of fines imposed.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change is consistent with sections 6(b) (1), (5), (6) and (7) and section 17A(a)(1)(A) of the Act.

The proposed rule change, for the most part, merely codifies the audit trail standards currently applicable to CBOE members and places in violations of these standards under a summary fine procedure. The Commission agrees with the CBOE that the summary fine schedule will serve as a deterrent to Exchange members from reporting transactions in an untimely manner, thereby further enhancing the CBOE's ability to create necessary and reliable audit trail information. Accordingly, the Commission finds that the proposed rule change is consistent with section 6(b)(1) of the Act because it will result in the production of more robust audit trail information that will enable the CBOE to better enforce compliance by its members with the federal securities laws and CBOE Rules. The Commission believes that the CBOE's increased surveillance capabilities will, in turn, prevent fraudulent and manipulative practices, promote just and equitable principles of trade, and protect investors and the public interest, consistent with section 6(b)(5) of the Act. Moreover, the Commission finds that the proposal is consistent with section 17A(a)(1)(A) of the Act because it is designed to promote the prompt and accurate clearance and settlement of securities transactions.

The Commission notes that the summary fine procedures are not altering the standards for adequate transaction reporting, but rather are establishing triggers for use of the summary procedures. The CBOE still could use its regular disciplinary procedures in instances when the summary procedures are not involved or when it determines that harsher sanctions than the schedule of summary fines are warranted.[11]

The Commission does not believe that the imposition of fines in a summary fashion for violations of the Rule will compromise the rights of CBOE members to a fair disciplinary proceeding. The CBOE's summary fine procedures are substantially the same as summary fine procedures of several

[4] In its original filing, the CBOE proposed to evaluate the timeliness of reporting OEX transactions by using a ten-minute window standard. Amendment No. 1 to the filing, however, reduced the standard to five minutes, as this is currently the goal for OEX transactions.

[5] Specifically, members will be assessed a $100 fine if their trades are reported inaccurately 30–40% of the time, $250 if 40–50% of the time, and $500 if 50% of the time. In addition, the fine schedule provides for higher fines in the event of repeat violations. Specifically, if a member receives two fines within a nine-month period, then any subsequent fine imposed in that nine-month period will be equal to the appropriate fine according to the fee schedule plus the amount of the most recent fine. Finally, the fine schedule will only be imposed on those market makers or floor brokers who execute at least five transactions on each of at least ten different trading days during the applicable month.

[6] Specifically, for CBOE members who execute at least 25 OEX sale transactions during a particular month, a fine of $1,000 will be imposed if at least 50% of their short OEX trades are not reported to the OEX price reporter. Unlike the fine schedule for inaccurate transaction reports, however, the proposal does not provide for increased fines in the event of repeat violations. Because buyers of OEX contracts are not required to submit trade reports to price reporters under CBOE Rule 6.51, the fine schedule only applies to sellers of OEX contracts.

[7] Under the proposal, the CBOE is required to provide a period of at least fifteen days in which members can seek verification of their fines.

[8] During the verification process, the Exchange will not be required to take extraordinary steps or spend an unreasonable amount of time in investigating the request and Exchange staff will have the authority to request the member to submit documentary evidence in support of its claim.

[9] For appeals based on written evidence, members will be required to pay a $100 fee. For appeals involving a hearing, a $300 fee will be charged. In either case, however, the fees will be refunded if the fine is eliminated upon appeal.

[10] The appropriate floor procedure committee will be determined by the majority of transactions (*i.e.*, OEX or non-OEX) giving rise to the fine.

[11] For example, the trigger of 30% non-reporting of OEX trade information only relates to the use of summary fine procedures. The CBOE could still use its regular disciplinary procedures to sanction a member that failed to report information for 40% (or even 5%) of its OEX trades, or decide to use regular disciplinary procedures (and thus harsher sanctions) for a member that failed to report trade information for 31% of its OEX trades.

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other exchanges.[13] As with the procedures of the other exchanges, the CBOE's summary fine procedures permit the person charged to contest the fine and seek a full hearing on the charges in accordance with established procedures. In addition, the proposal provides for exceptions to the accuracy test in the event that the contra-side to a transaction or the price reporter does not report the trade accurately. Accordingly, the Commission finds that the proposed rule change is consistent with sections 6(b)(6) and (7) of the Act because it provides for appropriate discipline for failure to report transactions accurately, while at the same time providing a fair procedure for imposing such discipline. The Commission also approves the CBOE's plan to report quarterly the sanctions imposed pursuant to the proposed rule change.[14]

The Commission finds good cause for granting accelerated approval of the proposed rule change. First, the filing codifies existing audit trail standards currently in place, including the summary fines. CBOE members have been receiving notices from the CBOE for several months of the amount of fines they would have paid, based on their inaccurate transaction reports, if the fine schedules had been in place. Second, the proposed rule change had a full comment period, and no comments were received. Third, the acceleration is only for two days, and will put in place more quickly summary fine procedures designed to enhance the CBOE's compliance program.[15]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[16] that the proposed rule change (SR–CBOE–89–22) is approved.

[13] *See e.g.,* Securities Exchange Act Release No. 21668 (January 25, 1985), 50 FR 5025 (order approving New York Stock Exchange ("NYSE") summary fine procedures).

[14] The CBOE's plan is similar to plans adopted by other exchanges pursuant to Rule 19d–1 under the Act and approved by the Commission. Rule 19d–1(c)(2) under the Act allows national securities exchanges to adopt minor rule violation plans for the summary discipline and abbreviated reporting of minor rule violations by exchange members. *See e.g.,* Securities Exchange Act Release No. 22415 (September 17, 1985), 50 FR 38600 (order approving NYSE minor disciplinary rule violation reporting plan).

[15] The Commission also believes the there is good cause for accelerating approval of Amendment No. 1 to the proposed rule change. The amendment makes only minor changes to the proposed rule change. To the extent that the amendment switches the standard for the accurate reporting of OEX trades, it merely is returning the standard to its current level.

[16] 15 U.S.C. 78s(b) (1982).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Dated: December 6, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–28920 Filed 12–11–89; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 34–27501; File No. SR–NASD–89–30]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Amendments to the Examination Specifications and Study Outline for the Financial and Operations Principal ("Series 27") Qualification Examination

The National Association of Securities Dealers, Inc. ("NASD") submitted on July 12, 1989, to the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder.[2] The proposal amends the examination specifications and study outline for the Financial and Operations Principal ("Series 27") qualification examination. The NASD periodically reviews the content of the examination to determine whether amendments are necessary or appropriate in view of changes pertaining to the subject matter covered by the examination.

Notice of the proposed rule change together with the terms of substance of the proposal was provided by the issuance of a Commission release (Securities Exchange Act Release No. 27111, August 9, 1989) and by publication in the **Federal Register** (54 FR 33793, August 16, 1989).

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A [3] and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved, effective January 1, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

[17] 17 CFR 200.30–3(a)(12) (1989).

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1989).

[3] 15 U.S.C. 78o–3 (1982).

[4] 17 CFR 200.30–3(a)(12) (1989).

Dated: December 5, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–28919 Filed 12–11–89; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–27502; File No. SR–NASD–89–45]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Proposed Rule Change Relating to Expedited Remedial Proceedings Under the Code of Procedure

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 5, 1989, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend the NASD Code of Procedure to add a new procedure by which the NASD could take appropriate remedial actions against an NASD member or an associated person if the member or person had engaged and there was a reasonable likelihood that the member or person would again engage in securities law violations.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD has proposed this rule change because it has been confronted on several occasions with instances of members and persons that have violated various Commission and NASD rules and regulations and, when advised to cease such activities, have evidenced an intent to continue and have continued the violative conduct. The NASD, under the present Code of Procedure, has no expeditious method specifically designed to handle such situations.

The proposed amendment would permit the NASD to suspend or condition the membership of a broker-dealer, or suspend or condition a person's association with a broker-dealer if the broker-dealer or person has engaged, and there is a reasonable likelihood the broker-dealer or person will again engage or continue to engage, in acts or practices inconsistent with just and equitable principles of trade. The amendment provides the NASD with a wide range of actions it could take against a member or associated person for ongoing violations, including suspension or imposition of limitations or conditions on the firm's membership or the person's registration. This range of permissible actions would allow the NASD to tailor the action taken to meet the seriousness of the situation. The firm or person that is the subject of such a proceeding would have the right to a hearing prior to the NASD taking any action.

Under the proposed amendment, the NASD Executive Committee would be able to authorize the initiation of such a proceeding only after a finding by that Committee that the proceeding was needed to protect the public interest. In arriving at this decision, the Executive Committee would consider the egregious nature of this conduct and the likelihood of continuing violations. The NASD would notify the member and/or associated person of the time and place of the hearing. The matter would be considered by a District or Market Surveillance Committee hearing panel consisting of at least three Committee persons, and this panel would render its decision within five business days of the hearing.

Any party aggrieved by the decision, or the Executive Committee, could ask that this decision be reviewed by a committee of the Board of Governors ("Board"). Any such request would not operate as a stay of the District or Market Surveillance Committee's decision. Upon any application for review, a hearing before a Hearing Committee of the Board would be held within five business days. Any decision rendered by the Board Hearing Committee would be a final action of the NASD and could be appealed to the SEC. All decisions rendered would be in writing, and any member or person would have the right to appear in person, submit any relevant evidence, and be represented by counsel.

The proposed rule change is consistent with section 15A(b)(6) of the Act which mandates that the rules of a national securities association be designed to promote just and equitable principles of trade and to remove impediments to, and perfect the mechanisms of, a free and open market, because the NASD believes that it must have a procedure to expeditiously handle situations where NASD members or their associated persons have been violating and continue to violate NASD and SEC rules and regulations. The NASD also believes that sections 15A(g)(3) (A) and (B) of the Act authorize the NASD to take such action and that the proposed procedure meets the due process and hearing requirement of section 15A(h)(1) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed amendment imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The proposed rule change was published for comment in NASD Notice to Members 89–40 in May 1989. As a result of this Notice, the NASD received 5 comment letters.[1] Of these, 1 commentator generally favored the proposed amendment, one generally favored the proposal with amendment, 3 were opposed. Those commentators opposed to the proposal raised the following major concerns:

1. There is no time limit for the issuance of the Board's decision thus subjecting the member to the potential of an indefinite duration of the sanctions imposed since the initial hearing panel's decision is not stayed on appeal to the Board;

2. It is unclear who would be responsible for determining if and when the conditions imposed had been fulfilled to eliminate the supervision or restrictions; and

3. It is unclear what standard would be used to determine the kind of misconduct which would cause the initiation of such a proceeding.

[1] The Notice of Members, a list of the commentators, and the comment letters are attached as Exhibits 2 and 3 of the rule filing.

The commentator that was in favor of the proposal subject to amendment believed that the procedure should only be used in situations involving "fraud or manipulation." The Board of Governors did not believe that such a limitation was appropriate in that such action under this section could be appropriate in situations involving serious and ongoing violations of securities rules and regulations which, while not involving fraud or manipulation could pose a serious threat to public customers or other members.

In response to the comments which expressed concern over the absence of a time limit to issue the decision of a matter appealed to the Board, the NASD has added language to Section 5 of the rule which would provide that a written decision shall be issued by the Board hearing panel within 5 business days of the date of the hearing. In response to comments concerning what standard would be used to determine the kind of misconduct which would cause the initiation of such a proceeding, the proposal was amended to provide that the Executive Committee would take into consideration the egregious nature of the violations and the likelihood that they would continue. The proposal was also amended so that any decision conditioning or suspending a member or person associated with it shall not remain in effect longer than six months. With respect to the comment concerning which body would determine whether the member had met any conditions that had been imposed, this matter would be reviewed by the District staff in the District where the alleged misconduct had occurred. This situation would be handled in a manner similar to that in which the District staff reviews compliance with restrictions placed in proceedings under Article III, Section 38 of the Rules of Fair Practice.

One commentator asked who would consider this matter if a hearing were not held. Sections 2 and 4 of the proposed Article state a three person hearing panel will be appointed at the District level and if applicable at the Board level. These three person panels will render the decision in these matters regardless of whether a hearing is held. The same commentator asked what made these hearing panels "special". The panels will be appointed in the same manner as any hearing panels are under the NASD By-Laws and Code of Procedure. It was determined, however, to delete the word "special" as the term did not have any particular meaning and it could cause confusion.

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III. Date of Effectiveness of the Proposed Rule Change and Timing For Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by January 2, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: December 5, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-28922 Filed 12-11-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27507; Filed No. SR-PHLX-89-54]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Narrowing Quotation Spreads for Low-Priced Equity Options

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 27, 1989 the Philadelphia Stock Exchange, Inc. ("PHIX" or "Exchange") filed with the Securities Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Rule 1014(c)(i) to narrow the maximum bid-ask differential applicable to certain equity options traded on the Exchange. The following is the text of the proposed amendment (italics indicate additions; brackets indicate deletions).

Obligations and Restrictions Applicable to Specialists and Registered Options Traders

Rule 1014 (a)—(c) No change.

(c)(i) Options on [Stocks] *Equities.* (A) Bidding and/or offering so as to create differences of no more than ⅛ [¼] of $1 between the bid and offer for each option contract for which the prevailing bid is less than ⅛ *of $1, no more than ¼ of $1 where the prevailing bid is ⅛ of $2 or more but less than $2* no more than ⅜ of $1 where the prevailing bid is [$1] *$2* or more but less than $5, no more than ½ of $1 where the prevailing bid is $5 or more but less than $10, or more than ¾ of $1 where the prevailing bid is $10 or more but less than $20, and no more than $1 where the prevailing bid is $20 or more provided that the Exchange may establish differences other than the above for one more series or classes of options.

(c)(B)—(e)(iii) No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statments concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

The purpose of the proposed rule change is to narrow maximum quotation spread parameters for low-priced equity options. Current Exchange rules provide for a maximum quote spread of ¼ of $1 when the prevailing bid in the options series is less than $1, ⅜ of $1 when the bid is between $1 and $5, and wider spreads for bids $5 and more. The proposal would require no greater than ⅛ of $1 spreads for bids under ½ of $1, no greater than ¼ of $1 spreads for bids ½ of $1 up to but under $2, and no greater than ⅜ of $1 for bids $2 up to $5. No further changes would be made to current spread parameters. The PHLX believes that the proposal reflects the Exchange's continued commitment to making quality markets in the products it trades.

The Exchange believes the proposed rule change is consistent with the requirements of the Act in that it may be expected to promote the maintenance of fair and orderly markets and in particular Section 6(b)(5) of the Act which provides in pertinent part that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of the publication of this ntoice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within January 2, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

Jonathan G. Katz,

Secretary.

Dated: December 6, 1989.

[FR Doc. 89-28923 Filed 12-11-89; 8:45 am]

BILLING CODE 8010-01-M

[File 84-1370; Exchange Act Release No. 27514]

AAA Transfer Corp.; Order Cancelling Registration Pursuant to Section 17A(c)(4)(B) of the Securities Exchange Act of 1934

AAA Transfer Corporation ("AAA Transfer"), hereinafter referred to as the registrant, being registered as a transfer agent pursuant to section 17A(c) of the Securities Exchange Act of 1934; and

The Commission finding that the registrant has ceased doing business as a transfer agent;

Accordingly, *it is ordered,* pursuant to section 17A(c)(4)(B) of the Securities Exchange Act of 1934, that the registration of said registrant be, and the same hereby is, cancelled.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-28986 Filed 12-11-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Air Traffic Procedures Advisory Committee Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Air Traffic Procedures Advisory Committee meeting.

SUMMARY: The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Administration Air Traffic Procedures Advisory Committee (ATPAC) will be held to review present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures.

DATES: The meeting will be held from January 22, at 1 p.m., through January 25, 1990, at 5 p.m.

ADDRESS: The meeting will be held at the MGM Desert Inn Hotel, 3145 Las Vegas Boulevard South, Las Vegas, Nevada.

FOR FURTHER INFORMATION CONTACT: Mr. John Mayrhofer, Executive Director, ATPAC, Air Traffic Operations Service, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-3725.

SUPPLEMENTAL INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the ATPAC to be held from January 22, at 1 p.m., through January 25, 1990, at 5 p.m., at the MGM Desert Inn Hotel, 3145 Las Vegas Boulevard South, Las Vegas, Nevada. The agenda for this meeting is as follows: a continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of minutes.
2. Discussion of agenda items.
3. Discussion of urgent priority items.
4. Report from Executive Director.
5. Old Business.
6. New Business.
7. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to the space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify the person listed above not later than January 19, 1990. The next quarterly meeting of the FAA ATPAC is planned to be held from April 9 through April 12, 1990, in Washington, DC. Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, DC, on December 6, 1989.

John Mayrhofer,

Executive Director, ATPAC.

[FR Doc. 89-28940 Filed 12-11-89; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

[FHWA Docket No. 89-18]

RIN 2125-AC39

Handicapped Parking Regulatory Negotiation Advisory Committee

AGENCY: Federal Highway Administration (FHWA), National Highway Transportation Safety Administration (NHTSA), DOT.

ACTION: Notice of correction of meeting days.

SUMMARY: This notice corrects the meeting days previously published in the **Federal Register** November 30, 1989, 54 FR 49387, FR Doc. 89-28090 for public meetings to be held in Washington, DC. The dates given for the meetings on January 10, 11, and 12 of 1990 are correct, but the days of the week are changed to read as follows:

"Wednesday, January 10, 1990, 1:00 p.m. to 5:00 p.m., Thursday, January 11, 1990, and Friday, January 12, 1990 9:00 a.m. to 5:00 p.m."

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: December 6, 1989.

Larry L. Thompson,

Chief Counsel, Federal Highway Administration.

[FR Doc. 89-28927 Filed 12-11-89; 8:45 am]

BILLING CODE 4910-22-M

Maritime Administration

[Docket No. S-656]

Ocean Technical Services, Inc.; Application for a Waiver of Section 804 of the Merchant Marine Act, 1936, As Amended To Permit the Acquisition of an Interest in, Operate, or Charter of Foreign-Flag Tankers

By application of November 29, 1989, Ocean Technical Services, Inc. (Applicant), requested permission, under the provisions of section 804 of the Act, to acquire an interest in, operate or charter foreign-flag tankers for operation in the foreign commerce. Section 804 approval is required because the Applicant is affiliated with Ocean Carriers, Inc.; Ocean Chemical Carriers, Inc.; and Ocean Chemical Transport, Inc., which companies hold Operating-Differential Subsidy Agreements

[1] 17 CFR 200.30-3(a)(12) (1989).

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(ODSA), Contracts MA/MSB-167, MA/MSB-440, and MA/MSB-442, respectively.

The Applicant specifically requested that a waiver pursuant to section 804(b) of the Act be granted for up to nine foreign-flag tankers for the carriage of crude oil and its products and/or petrochemicals. The waiver is to remain in effect until April 2, 1996, May 26, 2001, and September 19, 2001, the termination dates of the respective ODSAs. Such a waiver, in the Applicant's view, may be granted under special circumstances, and for good cause shown, as enumerated in its instant application.

In support of its instant application, the Applicant points out that the Maritime Administrator (Administrator) has already approved similar applications for the Mormac Maritime Group (Mormac) in Docket S-831 and the Keystone Shipping Company (Keystone) in Docket S-841. The Applicant states that its current situation is identical to that of Mormac and Keystone. Also, it is currently impossible for companies like the Applicant to compete with foreign-flag operators in the worldwide market with U.S.-flag vessels. Such competition, the Applicant contends, would be possible only if the Federal government obligates sufficient funding to expand the operating-differential subsidy (ODS) program to new entrants. The Applicant, however, believes that increased funding for the ODS program is not likely in the foreseeable future due to the budgetary constraints facing the Federal government. Consequently, its options are limited to acquiring an interest in, operating, or chartering foreign-flag vessels if it is to compete in the worldwide tanker market.

In addition, in Dockets S-831 and S-841, the Administrator has determined that granting of a blanket section 804(b) waiver for Mormac and Keystone until the termination of their respective ODSAs would not create a substantial adverse competitive impact on U.S.-flag operators. Such assessment, the Applicant contends, continues to hold true. Furthermore, its entry as the charterer or operator of foreign-flag tankers would do nothing to create an adverse impact on U.S.-flag operators. Moreover, the Applicant adds, its operations would, at best, compete only with foreign-flag operations of Mormac and Keystone, and, in its view, such a competition is not prohibited under section 804.

Finally, the Applicant asserts that granting the requested waiver would serve to promote the U.S. merchant marine. In this connection, it goes on to say that it shares administrative costs with its affiliated companies. Additionally, as has been noted by Mormac in its prior application for a section 804 waiver, the ability to spread out indirect administrative costs strengthens the position of both the Applicant and its affiliated companies that are providing U.S.-flag service. Such an improved financial situation would strengthen existing U.S. operations and preserve jobs for U.S. seamen, advises the Applicant.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such application within the meaning of section 804 of the Act and desiring to submit comments concerning the application, must file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Comments must be received no later than 5:00 p.m. on December 27, 1989.

This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Administration will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 (Operating-Differential Subsidies)).

By order of the Maritime Administration.

Dated: December 7, 1989.

James E. Saari,

Secretary.

[FR Doc. 89-28972 Filed 12-11-89; 8:45 am]

BILLING CODE 4910-81-M

National Highway Traffic Safety Administration

Rulemaking, Research and Enforcement Programs; Meeting

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice.

SUMMARY: This notice announces a public meeting at which NHTSA will answer questions from the public and the automobile industry regarding the agency's rulemaking, research and enforcement programs.

DATE: The agency's regular, quarterly public meeting relating to the agency's rulemaking, research, and enforcement programs will be held on January 18, 1990, beginning at 10:30 a.m. Questions relating to the agency's rulemaking, research, and enforcement programs, must be submitted in writing by January 8, 1990. If sufficient time is available, questions received after the January 8, date may be answered at the meeting. The individual, group or company submitting a question(s) does not have to be present for the question(s) to be answered. A consolidated list of the questions submitted by January 8, 1990, and the issues to be discussed will be mailed to interested persons on January 12, 1990, and will be available at the meeting.

ADDRESS: Questions for the January 18 meeting relating to the agency's rulemaking, research, and enforcement programs should be submitted to Barry Felrice, Associate Administrator for Rulemaking, Room 5401, 400 Seventh Street, SW., Washington, DC 20590. The public meeting will be held in Room 2230, Department of Transportation Headquarters Building, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: NHTSA will hold its regular, quarterly meeting to answer questions from the public and industry regarding the agency's rulemaking, research, and enforcement programs on January 18, 1990. The meeting will begin at 10:30 a.m., and will be held in Room 2230, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. The purpose of the meeting is to focus on those phases of NHTSA activities which are technical, interpretative or procedural in nature. A transcript of the meeting will be available for public inspection in the NHTSA Technical Reference Section in Washington, DC, within four weeks after the meeting. Copies of the transcript will then be available at twenty-five cents for the first page and five cents for each additional page (length has varied from 100 to 150 pages) upon request to NHTSA Technical Reference Section, Room 5108, 400 Seventh Street, SW., Washington, DC 20590.

Issued on December 6, 1989.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 89-28926 Filed 12-11-89; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: December 6, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0990.

Form Number: 8610.

Type of Review: Extension.

Title: Annual Low-Income Housing Credit Agencies Report.

Description: Form 8610 is used as a transmittal form for Forms 8609, Low-Income Housing Credit Allocation Certification. Form 8610 is completed by state and local housing credit agencies.

Respondents: State or local governments.

Estimated Number of Respondents: 300.

Estimated Burden Hours Per Response:

Recording: 2 hours, 23 minutes

Learning about the law or the form: 27 minutes

Preparing and sending the form to IRS: 27 minutes

Frequency of Response: Annually.

Estimated Total Reporting Burden: 972 hours.

OMB Number: 1545-0023.

Form Number: 720.

Type of Review: Revision.

Title: Quarterly Federal Excise Tax Return.

Description: Form 720 is used to report excise taxes due from retailers and manufacturers on the sale or manufacture of various articles, to report taxes on facilities and services, and taxes on certain products and commodities [gasoline and vaccines, etc.). It enables IRS to monitor excise tax liability for various categories on a single form and to collect the tax quarterly in compliance with the law and regulations (Internal Revenue Code section 6011).

Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 92,500.

Estimated Burden Hours Per Response:

Recording: 6 hours, 28 minutes

Learning about the law or the form: 3 hours, 22 minutes

Preparing and sending the form to IRS: 12 hours, 1 minute

Frequency of Response: Quarterly.

Estimated Total Reporting Burden: 8,084,500 hours.

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Connecticut Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Irving W. Wilson, Jr.,

Departmental Reports, Management Officer.

[FR Doc. 89-28928 Filed 12-11-89; 8:45 am]

BILLING CODE 4810-25-M

Customs Service

[T.D. 89-105]

Extension of Analyses for Which SGS Control Services Inc., an Accredited Customs Laboratory, Have Been Accredited To Perform

AGENCY: U.S. Customs Service, Treasury.

ACTION: Notice of additional analyses for which SGS Control Services, Inc., a Customs accredited commercial laboratory, have been accredited to perform.

SUMMARY: SGS Control Services, Inc., of Carteret, New Jersey, a Customs accredited commercial laboratory under § 151.13 of the Customs Regulations (19 CFR 151.13), has been given an extension of their commercial laboratory accreditation to include the following analyses: Reid Vapor Pressure, Saybolt Universal Viscosity, percent by weight sulfur of petroleum products, percent by weight lead in gasoline, xylene isomer content, and percent by weight composition of benzene, toluene and xylene.

SUPPLEMENTARY INFORMATION: Part 151 of the Customs Regulations provides for the acceptance at Customs Districts of laboratory analyses from Customs-accredited commercial laboratories for certain products. SGS Control Services, Inc., which holds Customs accreditation in certain laboratory analyses has applied to Customs to extend its accreditation to the performance of additional analyses. Review of SGS Control Services, Inc., qualifications shows that the extension is warranted and, accordingly, has been granted.

EFFECTIVE DATE: November 30, 1989.

FOR FURTHER INFORMATION CONTACT: Donald A. Cousins, Office of Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229 (202-566-2446).

Dated: December 6, 1989.

John B. O'Loughlin,

Director, Office of Laboratories and Scientific Services.

[FR Doc. 89-28990 Filed 12-11-89; 8:45 am]

BILLING CODE 9820-02-M

Application for Recordation of Trade Name: "Comanche Land Imports"

ACTION: Notice of application for recordation of trade name.

SUMMARY: Application has been filed pursuant to § 133.12, Customs Regulations (19 CFR 133.21), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "COMANCHE LAND IMPORTS", used by George L. Murray, d/b/a Comanche Land Imports, 3819 San Bernardo, Laredo, Texas 78041.

The application states that the trade name is used in connection with original statues which are reproduced in various plants in Mexico and distributed in the United States by Comanche Land Imports. There are no foreign persons or businesses authorized or licensed to use the trade name.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the **Federal Register.**

DATE: Comments must be received on or before February 12, 1990.

ADDRESS: Written comments should be addressed to U.S. Customs Service, Attention: Value, Special Programs and Admissibility Branch, 1301 Constitution Avenue, NW. (Room 2104), Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Bettie Coombs-Spivey, Value, Special Programs and Admissibility Branch, 1301 Constitution Avenue, NW., Washington, DC 20229 (202-566-5765).

Marvin M. Amernick,

Chief, Value, Special Programs and Admissibility Branch.

[FR Doc. 89-28997 Filed 12-11-89; 8:45 am]

BILLING CODE 4820-02-M

UNITED STATES INFORMATION AGENCY

East European Young Leaders Program; Request for Proposals

The International Youth Exchange Staff of the Bureau of Educational and

Cultural Affairs, U.S. Information Agency, announces its intention to fund a series of educational study projects for future leaders from Hungary, Poland, the German Democratic Republic, Bulgaria, and Czechoslovakia in FY 1990 and invites private non-profit organizations to submit written proposals to conduct projects of this type. The number of projects will be subject to the availability of funding. Previous experience indicates that individual grants in the range of $75,000 to $100,000 have generally been favored by Agency grant review panels for these types of projects.

These projects are designed for young people (ages 18 to 30) who have the potential to become the leaders of the future. The project will be a short-term (approximately four weeks) group activity for 10–12 participants identified and selected by USIS posts. The majority of participants will come from Hungary and Poland, but USIS posts in the German Democratic Republic, Bulgaria, and Czechoslovakia may also nominate participants. The project may be for participants from a single country, possibly conducted in the language of the country with the assistance of English language interpreters, or a regional project for participants from two or more East European countries conducted in English.

The purpose of the youth program is interaction and interchange between foreign and American young people. All projects should be an opportunity for the foreign participants to share and present their ideas. Young American counterparts should be included in all aspects of the substantive program and in social and cultural activities. Programs must be balanced and representative of the diversity of American political, social and cultural life. Travel to more than one area of the United States is encouraged. The program should also provide opportunities for homestays and practical, hands-on activities in order for the foreign participants to develop a more profound understanding of the daily life and work of people in the communities visited. Participation in a conference or seminar relating to the project theme may be arranged as part of the program.

Major themes include the following: conservation/protection of the environment, business administration/management, American economic system, community action, American legal/constitutional systems, American political system, university administration, and the media. Programs are authorized under Public Law 87–256, the Mutual Educational and Cultural Exchange Act of 1961, whose "purpose is to increase mutual understanding between the people of the United States and the people of other countries." Programs must be balanced and representative of the diversity of American political, social, and cultural life.

Eligibility

To be eligible for consideration organizations must be incorporated in the U.S., have not-for-profit status as determined by the IRS, and be able to demonstrate expertise in a field relevant to the theme of the project on which they are bidding. Organizations in existence less than four years will only be eligible for grants under $60,000. Experience programming exchange visitors is desirable.

Allowable costs

Grant-funded expenditures will generally be limited to the following categories:
—International travel
—Domestic travel
—Maintenance and per diem
—Orientation and preparation costs; orientation materials
—Cultural enrichment allowance (not to exceed $150 per participant)
—Speaker honoraria, conference or seminar registration fees, rental of meeting facilities. (Speaker honoraria should not exceed $150 per day per speaker.)
—Materials expenses
—Administration—salaries, benefits, other direct and indirect costs

Criteria for Judging Proposals

All proposals will be judged on a competitive basis. The following criteria will be used by USIA to judge proposals:
—Quality of the project activities proposed.
—Cost effectiveness—greatest return for each federal dollar invested; reasonable per capita cost in relation to other proposals submitted; for those proposals which have been most successful in previous competitions, total administrative costs have generally been below thirty percent of the total requested.
—Cost sharing—financial and in-kind support from participating organizations, schools, and communities.
—Organization's qualifications—based both on past track record and on USIA's judgment of the organization's ability to manage the proposed subject and achieve the stated objectives within the time frame indicated.
—Geographic balance of grants and activities.

Review Process

Proposals (original and 12 copies) must be received in USIA no later than January 31, 1990. Proposals are reviewed for legal and budgetary requirements by USIA offices responsible for these functions and for program content and cost-effectiveness by a grant review panel composed of USIA officers. The Associate Director for Educational and Cultural Affairs identifies and approves grant recipients. Final technical authority for grant awards resides with the Agency Contracting Officer. The award of grants will be announced on or about April 30, 1990.

Proposal Format

Organizations must use "Guidelines for Proposals," which may be obtained by writing to: International Youth Exchange Staff, United States Information Agency, 301 4th St. SW.—Rm. 357, Washington, DC 20547.

For more information on this program contact the International Youth Exchange Staff at (202) 485–7299.

Dated: November 29, 1989.

Csaba T. Chikes,

Director, International Youth Exchange Staff.

[FR Doc. 89–28932 Filed 12–11–89; 8:45 am]

BILLING CODE 8230–01–M

Radio Engineering Advisory Committee Meeting

The Radio Engineering Advisory Committee of the United States Information Agency (USIA) will meet in Washington, DC, on Thursday, December 14, 1989, to discuss current operations and future plans of the Voice of America (VOA). The meeting will be held at the Voice of America, 330 Independence Avenue SW., Washington, DC 20547. The meeting will begin at 9 a.m. on December 14 and will continue through 4 p.m. Point of contact for the meeting is Mrs. Helen Giles, telephone (202) 485–8048.

This meeting will include reports from senior members of the VOA management and engineering staff on the progress being made on the overall VOA modernization and enhancement effort. Specific topics of discussion will include the procurement and testing of high frequency broadcasting antennas, the status of negotiations with other governments and major construction projects, and other technical and regulatory issues relating to VOA modernization.

Dated: November 30, 1989.

Joseph B. Bruns,

Acting Director, VOA.

[FR Doc. 89–28730 Filed 12–11–89; 8:45 am]

BILLING CODE 8230–01–M

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Sunshine Act Meetings

Federal Register
Vol. 54, No. 237
Tuesday, December 12, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

INTERNATIONAL TRADE COMMISSION

USITC SE-89-41

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: Tuesday, Dec. 19, 1989 at 3:00 p.m.

PLACE: Room 101, 500 E Street, S.W., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and Complaints.
5. Inv. No. 701-TA-301 (P) (Plastic Tubing Corrugators from Canada)—briefing and vote.
6. Inv. No. 731-TA-432 (F) (Drafting Machines from Japan)—briefing and vote.
7. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252-1000.

Kenneth R. Mason,
Secretary.
Dec. 4, 1989.

[FR Doc. 89-29086 Filed 12-6-89; 12:12 pm]
BILLING CODE 7035-02-M

CONSUMER PRODUCT SAFETY COMMISSION

AGENCY: U.S. Consumer Product Safety Commission, Washington, D.C. 20207.

TIME AND DATE: Commission Meeting, Tuesday, December 12, 1989, 3 p.m.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED: Fiscal Year 1991 Budget.*

The staff will brief the Commission and the Commission will then consider issues concerning the CPSC Budget for Fiscal Year 1991.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301-492-6800.

December 8, 1989,
Sheldon D. Butts,
Deputy Secretary

[FR Doc. 89-29100 Filed 12-8-89; 1:23 pm]
BILLING CODE 6355-01-M

* The Commission by unanimous vote decided that agency business required holding this meeting without the normal seven day advance notice.

Corrections

Federal Register
Vol. 54, No. 237
Tuesday, December 12, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

Foreign Trade Zones Board

[Order No. 454]

Resolution and Order Approving With Restrictions, the Application of Greater Kansas City Foreign-Trade Zone, Inc.

Correction

In notice document 89-28347 beginning on page 50257 in the issue of Tuesday, December 5, 1989, make the following corrections:

1. On page 50257, in the second column, under **Resolution and Order,** in the third complete paragraph, in the fourth and fifth lines, the date should read "October 21, 1988".

2. On the same page, in the third column, under **Grant of Authority To Establish a Foreign-Trade Subzone at the Kawasaki Small Engine Plant in Nodaway County, Missouri, Adjacent to the Kansas City Customs Port of Entry,** in the second complete paragraph, in the second and third lines, "15 U.S.C. 400.304" should read "15 CFR 400.304".

3. On the same page, in the same column, in the third line from the end of the column, the date should read "October 21, 1988".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89N-0490]]

Drug Export; Didronel® (Etidronate Disodium 200 MG Tablets, U.S.P.)

Correction

In notice document 89-27486 beginning on page 48687 in the issue of Friday, November 24, 1989, make the following corrections:

1. On page 48688, in the first column, under **SUPPLEMENTARY INFORMATION,** the 14th and 15th lines are duplicate text and should be removed.

2. On the same page, in the second column, in the third line, "21 U.S.C. 381" should read "21 U.S.C. 382".

BILLING CODE 1505-01-D

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Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

Community Housing Resource Board Program; Funds Availability; Notice

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N-89-2034; FR-2631-N-01]

Community Housing Resource Board Program; Funds Availability

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of funds availability.

SUMMARY: This Notice announces the availability of funds for applications for eligible Community Housing Resource Boards (CHRBs). CHRBs must meet certain eligibility criteria, set out in 24 CFR part 120 and in this Notice, in order to qualify for consideration. The program has two categories of funding: (1) First-time funding for CHRBs that have never obtained previous Federal CHRB funding; and (2) refunding for CHRBs that have obtained previous Federal CHRB funding, except as described in this Notice.

DATE: Applications must be received by March 1, 1990.

FOR FURTHER INFORMATION AND A COPY OF THE APPLICATION KIT CONTACT: Karen Williams, Room 5256, Office of Procurement and Contracts, Office of the Assistant Secretary for Administration, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Application Kits will be sent only upon written request to the Office of Procurement and Contracts at the above address. Telephone requests for Application Kits will not be accepted.

SUPPLEMENTARY INFORMATION: The collection of information requirements for the CHRB program were submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act of 1980 and were approved under OMB control number 2529-0022, expiration date March 31, 1992.

I. Program Background

Section 808(e) of title VIII of the Civil Rights Act of 1968 (the Act) (42 U.S.C. 3608(e)) requires the Secretary to "cooperate with and render technical assistance to Federal, State, local and other public or private agencies, organizations, and institutions which are formulating or carrying on programs to prevent or eliminate discriminatory housing practices" and to "administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of this title." Section 809 of the Act further directs the Secretary to conduct educational and conciliatory activities to further the purposes of the Act, call conferences of persons in the housing industry and others to acquaint them with the provisions of the Act and ways of implementing its provisions, seek their cooperation for programs of voluntary compliance and of enforcement.

In order to achieve the directives cited above, HUD developed the Voluntary Affirmative Marketing Agreement (VAMA) Program. This nationwide program focuses on local efforts to assure nondiscrimination in the sale, rental, and financing of housing and in the provision of services and facilities associated with those activities. The goal of the VAMA program is to assure that individuals of similar income levels in the same housing market have available to them a similar range of choices in housing regardless of their race, color, religion, sex, handicap, familial status, or national origin.

Consistent with its responsibilities under title VIII of the Act, HUD has negotiated voluntary agreements with the National Association of Realtors, the National Association of Real Estate Brokers, the National Association of Real Estate License Law Officials, and the National Association of Home Builders, as well as a model agreement for adoption by local apartment associations. These voluntary agreements, or VAMAs, are intended to promote a broad equal opportunity program designed to assure that housing will be marketed on a nondiscriminatory basis. Signatories to a VAMA agree to conduct certain programs and activities to acquaint communities with equal housing opportunity, to establish office procedures ensuring that there is no denial of equal professional service, and to make available materials that explain the commitment of signatories to the goal of fair housing. The VAMAs, approved by national housing industry associations, are implemented by local member firms of those associations. The model agreement approved by the National Association of Real Estate License Law Officials is implemented by the individual State agencies concerned with real estate licensing.

HUD's commitment under the VAMAs is to provide technical assistance to local housing industry groups that are signatories to the agreements. This assistance is provided through CHRBs, which were established by HUD to assist the local housing industry groups in implementing VAMA commitments. CHRBs are composed of volunteer representatives of community organizations dedicated to equal housing opportunity.

In 1981, Congress appropriated funds to assist CHRBs in carrying out their responsibility to assess the progress of local housing industry groups in implementing the goals of the VAMAs. From 1982 to 1988, 545 one-year grants, ranging from $15,000 to $25,000, were awarded to 366 local CHRBs. CHRBs have used these funds for a variety of activities that assist the local housing industry groups to achieve the goals of the VAMAs. Although most CHRBs carried on activities that were useful to the local industry group signatories and effective in their local communities in advancing equal housing opportunity, not all CHRBs have monitored the requirements of the VAMAs with equal vigor.

In March 1989, HUD's Inspector General released an audit of the funding component of the CHRB program, which revealed significant deficiencies in: (1) assessment of effectiveness of local VAMAs by CHRBs; (2) accountability for grant funds by CHRBs; and (3) monitoring and training for funded CHRBs by HUD staff.

In an effort to address CHRB problems identified in the audit, HUD will be determining, through the 1989 funding, the most effective and efficient way the CHRBs can achieve their objectives. Therefore, the 1989 funding round will contain various program modifications: (1) Increased grant amounts tied to the grantee's proposed activities; (2) longer time for program implementation; (3) selection of grantees conducted by the Headquarters Office of Fair Housing and Equal Opportunity; (4) bonus selection points for applications with matching sources of funds; and (5) improved accounting and contracting procedures. The level of funding in 1989 will be $950,000.

Beginning immediately, HUD will revamp its funding programs in support of title VIII of the Act with the intention of focusing its efforts toward more effective support of the Fair Housing Amendments Act. HUD does not anticipate that CHRBs or other voluntary organizations will receive further funding until this program revision has been accomplished.

II. Eligible Applicants for Funding

In order to participate in the CHRB program for the first time, an applicant must be a CHRB as described in 24 CFR 120.20 and must otherwise meet the criteria contained in part 120, including having been in existence for at least six months before the publication date of this Notice.

A previously funded applicant must meet the first-time eligibility criteria described above, and must submit evidence that it accomplished at least two of the following activities during the grant year for which it received funding:

(1) Completed two activities, described in the Application Kit, that addressed specifically the objectives of the VAMA to provide information and services that will enable all buyers and renters to have a free housing choice;

(2) Assessed local housing industry group performance under the VAMA; and

(3) Engaged in the identification of local problems and issues that impeded equal housing opportunity.

Since one of the purposes of the VAMA/CHRB program is the promotion of cooperation between the housing industry and the public, CHRBs may not sponsor, conduct, or fund programs of real estate testing.

With respect to previously funded CHRBs, HUD will consider only applicants that have successfully completed previous grant work or corrected any events or conditions that resulted in the termination of a prior CHRB grant for cause. CHRBs funded in fiscal years 1982, 1983, 1984, 1985, 1986, and 1987 are eligible for refunding. CHRBs funded in 1988 are not eligible for funding in 1989. In addition, CHRBs that received grants in prior years must ensure that final payment of grant funds for such years has been approved by the application deadline date, or they may be deemed ineligible to compete for funds under this Notice.

III. Application Requirements

Since one of the purposes of the 1989 funding competition is to determine the most effective and efficient ways CHRBs can achieve their objectives, the grant period for projects funded under this Notice will be 18 months. Grant amounts may vary, depending on the activities proposed.

Training is an essential part of the CHRB program. Therefore, all CHRBs selected for funding must set aside at least five percent of the grant funds for training purposes. HUD will provide further instructions on training requirements during the funding period.

To assure that maximum use of CHRB program funds is realized, grantees must use the majority of the funds for program costs rather than for administrative costs. CHRBs selected for funding that have excessive administrative costs in their budgets will be required to make budget adjustments in compliance with program policy. Moreover, grantees are encouraged to seek funds from other sources for continuing projects.

CHRBs applying for 1989 funding must follow the format and content requirements contained in the Application Kit.

IV. Distribution of Funding

Applicants for first-time funding will be evaluated separately from applicants for refunding to avoid any penalty to less experienced CHRBs. Sixty percent of the funds will be designated for applicants for first-time funding, and 40 percent will be designated for applicants for refunding. Any remaining funds will be used to supplement funding in either category. An applicant must identify the category under which it is applying upon submission of the application.

V. Selection Criteria

Applications will be reviewed, scored, and ranked by selected staff personnel from HUD/FHEO Headquarters and Field Offices. Projects will be ranked on the basis of the following five criteria:

1. The relationship of the proposed project to the goals of the VAMA. The principal purpose of the CHRB is to assess progress under the VAMA, provide technical assistance, and recommend and promote solutions to problems associated with the implementation of the VAMA. Accordingly, all applications must contain a project that seeks to assess the level of local VAMA implementation. Applications that do not contain information related to this project will receive a minimum number of points under this criterion. Conversely, eligible projects that can earn the maximum number of points under this first criterion are those that:

(a) Assess the effectiveness of the VAMA on the local community;

(b) Seek cooperative solutions to problems associated with implementation of the VAMA and provide assistance to the local housing industry group;

(c) Work with local VAMA signatories to develop programs that result in the expansion of minority involvement in the industry;

(d) Require participation with HUD in the annual evaluation of the effectiveness of VAMA implementation and development of follow-up evaluation materials;

(e) Translate fair housing brochures and literature into Chinese, Japanese, Vietnamese, Korean, and Khmer.

The following activities are of a lower priority:

(a) Informing the public regarding the goals of fair housing and the VAMA;

(b) Assessing community fair housing needs and problems or successes;

(c) Expanding public awareness of housing opportunities in the community; and

(d) Seeking expanded use of the HUD Fair Housing Publisher's Notice in major newspapers.

Since the VAMA does not permit CHRBs to sponsor, conduct, or fund programs of real estate testing, projects relating to that activity are not acceptable and will not be funded.

2. The extent to which the proposed project(s) will assist local housing industry groups in achieving the goal of the VAMAs.

3. The commitment of the CHRB members, as indicated by the following:

(a) Regular attendance at meetings (attendance must be verified by copies of meeting minutes);

(b) Demonstrated results of activities (verified by correspondence, news reports, editorials, testimonials, etc.); and

(c) Expected results of activities (demonstrated by analysis of problems and goals).

4. The amount of relevant professional or organizational experience available to the CHRB among its membership, its community contacts and working relationships, or staff to implement the proposed projects.

5. The extent to which the proposed project does not duplicate other community fair housing efforts.

RELATIVE WEIGHTS OF THE SELECTION CRITERIA

Funding criteria	Points
Relationship of projects to VAMA goals	30
Extent to which proposed projects will affect the groups the VAMAs are designed to reach	25
Documentation of Resource Board commitment	15
Experience available to implement projects	20
Extent to which projects do not duplicate other community efforts	10
Total	100

VI. Bonus Points

Applicants may earn up to 10 bonus points to add to the selection criteria points by showing budgets that contain matching sources of funds equal to or exceeding 25 percent of the requested grant amount. The matching sources must consist of cash contributions, as opposed to donated services, labor, or other "in-kind" contributions. Documentation of all contributions must be attached to the budget.

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VII. Notification of Applicants

HUD will notify all successful applicants upon selection. Unsuccessful applicants will be notified after the awards have been made. No information will be made available to applicants during the period of HUD review and evaluation, except for notification to those applicants that are declared ineligible or late.

VIII. Other Matters

The collection of information requirements contained in the Application and announced in this Notice were submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980 and approved under control number 2529–0022, expiration date March 31, 1992. Information on the reporting burden is provided as follows:

Description of burden	Number of respondents	Frequency of response	Hours per response	Burden hours
Applications	110	1	180	19,800

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410.

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that the policies announced in this Notice may have a significant impact on the formation, maintenance, and general well-being of families to the extent that the technical assistance provided to local housing industry groups through the CHRB program encourages efforts by those groups to assure nondiscrimination in the sale, rental, and financing of housing. Providing families with a choice in housing regardless of race, color, religion, sex, handicap, familial status, or national origin supports family values by helping families remain together and by enabling them to live in decent, safe, and sanitary housing.

The General Counsel has determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, *Federalism*, that the policies contained in this Notice will not have federalism implications and, thus, are not subject to review under the Order. The CHRB program assists local housing industry groups, which are private businesses, in their efforts to encourage voluntary compliance with Title VIII of the Civil Rights Act of 1968.

This program is listed in the catalog of Federal Domestic Assistance under program number 14.403, Community Housing Resource Program.

Dated: September 28, 1989.

Leonora L. Guarrala,

Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 89–28662 Filed 12–11–89; 8:45 am]

BILLING CODE 4210–30–M

federal register

Tuesday
December 12, 1989

Part III

Environmental Protection Agency

Twenty-fifth Report of the Interagency Committee to the Administrator; Receipt of Report and Request for Comments Regarding Priority List of Chemicals; Notice

40 CFR Parts 712 and 716

Preliminary Assessment Information and Health and Safety; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

[OPTS-41032; FRL 3665-4]

Twenty-fifth Report of the Interagency Testing Committee to the Administrator; Receipt of Report and Request for Comments Regarding Priority List of Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Interagency Testing Committee (ITC), established under section 4(e) of the Toxic Substances Control Act (TSCA), transmitted its Twenty-Fifth Report to the Administrator of EPA on November 1, 1989. This report, which revises and updates the Committee's priority list of chemicals, adds 13 chemicals to the list for priority consideration by EPA in promulgation of test rules under section 4(a) of the Act. This list contains five designated chemicals, one intent-to-designate chemical, and seven recommended without designation chemicals. The Twenty-Fifth Report is included with this notice. The designated chemicals are: pentabromodiphenyl ether (CAS No. 32534-81-9), octabromodiphenyl ether (CAS No. 32536-52-0), decabromodiphenyl ether (CAS No. 1163-19-5), hexabromocyclododecane (CAS No. 3194-55-6), and 1,2-bis(2,4,6-tribromophenoxy)ethane (CAS No. 37853-59-1). These chemicals are designated for response within 12 months. Therefore, in response to ITC's designation, EPA will either initiate rulemaking under section 4(a) of TSCA, or publish a **Federal Register** notice explaining the reasons for not initiating such rulemaking within 12 months.

The chemical 4-Vinylcyclohexene (CAS No. 100-40-3), is recommended with intent-to-designate.

The chemicals recommended without intent-to-designate are: 2,4,6-tribromophenol (CAS No. 118-79-6), tetrabromophthalic anhydride (CAS No. 632-79-1), dibromoneopentyl glycol (CAS No. 3296-90-0), Ethylene Bis-(tetrabromophthalimide) (CAS No. 32588-76-4), ethylene bis(5,6-dibromonorbornane-2,3-dicarboximide) (CAS No. 41291-34-3), tribrominated polystyrene (CAS No. 57137-10-7), and ethylene bis(pentabromophenoxide) (CAS No. 61262-53-1).

The ITC has removed one chemical, 1,6-hexamethylene diisocyanate (CAS No. 822-06-0), from the priority list because the EPA published a Notice of Proposed Rulemaking on May 17, 1989 (54 FR 21240).

EPA invites interested persons to submit written comments on the report, and to attend Focus Meetings to help narrow and focus issues raised by the ITC's recommendations. Additionally, EPA is soliciting interest in public participation in the consent agreement process for 4-vinylcyclohexene.

DATES: Written comments should be submitted by January 12, 1990. Written notice interest in being designated an "interested party" to the development of a consent agreement for 4-vinylcyclohexene should be submitted by January 12, 1990. The procedures for negotiations are described in 40 CFR 790.22. All written submissions should bear the identifying docket number (OPTS 41032; FRL 3665-4).

A Focus Meeting will be held on December 13, 1989.

ADDRESS: Send written submissions to: TSCA Public Docket Office (TS-793), Office of Toxic Substances, Environmental Protection Agency, Rm. NE G-004, 401 M St., SW., Washington, DC 20460.

Submissions should bear the document control number (OPTS-41032; FRL 3665-4).

The public record supporting this action, including comments, is available for public inspection in Rm. NE G-004 at the address noted above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Focus Meeting will be held at EPA Headquarters, Rm. 103 NE Mall, 401 M St., SW., Washington, DC. Persons planning to attend the focus Meeting, and/or seeking to be informed of subsequent public meetings on these chemicals, should notify the Environmental Assistance Division at the address listed below. To ensure seating accommodations at the Focus Meetings, persons interested in attending are asked to notify EPA at least one week ahead of the scheduled date.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Rm. E-543B, Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: EPA has received the TSCA Interagency Testing Committee's Report to the Administrator.

I. Background

TSCA (Pub. L. 94-469, 90 Stat. 2003 et seq; 15 U.S.C. 2601 et seq.) authorizes the Administrator of EPA to promulgate regulations under section 4(a) requiring testing of chemical substances and mixtures in order to develop data relevant to determining the risks that such chemical substances and mixtures may present to health and the environment. Section 4(e) of TSCA established an Interagency Testing Committee to make recommendations to the Administrator of EPA on chemical substances and mixtures to be given priority consideration in proposing test rules under section 4(a). Section 4 (e) directs the ITC to revise its list of recommendations at least every 6 months as necessary. The ITC may "designate" up to 50 substances and mixtures at any one time for priority consideration by the Agency. The ITC's Twenty-Fifth Report was received by the administrator on November 1, 1989, and follows this Notice. The Report adds 13 substances to the TSCA section 4(e) priority list.

II. Written and Oral Comments and Public Meetings

EPA invites interested persons to submit detailed comments on the ITC's new recommendations. The Agency is interested in receiving information concerning additional or ongoing health and safety studies on the subject chemicals as well as information relating to the human and environmental exposure to these chemicals.

A notice is published elsewhere in today's **Federal Register** adding the substances recommended in the ITC's Twenty-Fifth Report to the TSCA section 8(d) Health and Safety Data Reporting Rule (40 CFR part 716), which requires the reporting of unpublished health and safety studies on the listed chemicals. These chemicals also will be added to the TSCA section 8(a) Preliminary Assessment Information Rule (40 CFR part 712) published elsewhere in this issue. The section 8(a) rule requires the reporting of production volume, use, exposure, and release information on the listed chemicals.

Focus Meetings will be held to discuss relevant issues pertaining to these chemicals and to narrow the range of issues/effects which will be the focus of the Agency's subsequent activities in responding to the ITC recommendations. EPA is not planning to hold a separate Focus Meeting on the recommended chemicals because the issues raised on the designated flame retardants should be applicable to the non-designated flame retardants.

The Focus Meetings will be held on December 13, 1989, as follows:

10:00 a.m.

Pentabromodiphenyl ether, octabromodiphenyl ether, decabromodiphenyl ether, tribromophenoxy ethane, hexabromocyclododecane.

1:00 p.m.

vinylcycylohexene.

They will be held at EPA Headquarters, Rm. 103 NE Mall, 401 M St., SW., Washington, DC. These meetings are intended to supplement and expand upon written comments submitted in response to this notice.

Persons wishing to attend these meetings, or subsequent meetings on these chemicals, should call Michael Stahl, Environmental Assistance Division, at the telephone number listed above at least 1 week in advance.

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This notice also serves to invite persons interested in participating in or monitoring negotiations for a consent agreement for 4-vinylcyclohexene to notify EPA no later than [insert date 30 days after date of publication in the **Federal Register**]. The Procedures for negotiations are described in 40 CFR 790.22. All Written submissions should bear the identifying docket number (OPTS–41032; FRL 3665–4).

III. Status of List

In addition to adding the 13 recommendations to the priority list, the ITC's Twenty-Fifth Report notes the removal of one chemical, 1,6-hexamethylene diisocyanate, from the list. The current list contains 6 designated substances, 6 chemicals recommended with intent-to-designate, and 20 recommended without designation substances.

Authority: 15 U.S.C. 2603.

Dated: December 1, 1989.

Charles M. Auer,

Acting Director, Existing Chemical Assessment Division.

Twenty-fifth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency

Summary

Section 4 of the Toxic Substances Control Act of 1976 (TSCA, Pub. L. 94–469) provides for the testing of chemicals commerce that may present an unreasonable risk of injury to health and the environment. It also provides for the establishment of a committee (ITC), composed of representatives from eight designated federal agencies, to recommend chemical substances and mixtures (chemicals) to which the Administrator of the U.S. Environmental Protection Agency (EPA) should give priority consideration for the promulgation of testing rules.

Section 4(e)(1)(A) of TSCA directs the Committee to recommend the EPA Administrator chemicals to which the Administrator should give priority consideration for the promulgation of testing rules pursuant to section 4(a). The Committee is required to designate those chemicals, from among its recommendations, which the Administrator should respond within 12 months by either initiating a rulemaking proceeding under section 4(a) or publishing the Administrator's reason for not initiating such a proceeding. At least every 6 months, the Committee makes those revisions the TSCA section 4(e) Priority List that it determines to be necessary and transmits them to the EPA Administrator.

As a result of its deliberations, the Committee is revising the TSCA section 4(e) Priority List by the addition of one chemical and one group of chemicals.

The Priority List is divided into three parts: Part A contains those recommended chemicals and groups designated for priority consideration and response by the EPA Administrator within 12 months. Part B contains chemicals and groups of chemicals recommended with intent-to-designate. This category was established by the Committee in its seventeenth report (50 FR 47603; November 19, 1985) to take advantage of rules promulgating automatic reporting requirements for non-designated ITC recommendations under the section 8(a) Preliminary Assessment rule and the TSCA section 8(d) Health and Safety Data Reporting rule. Information received following recommendation with intent-to-designate may influence the Committee to either designate or not designate the chemicals or groups of chemicals in a subsequent report to the administrator. Part C contains chemicals and groups of chemicals that have been recommended for priority consideration by EPA without being designated for response within 12 months. The changes to the Priority List are presented, together with the types of testing recommended, in the following Table 1:

TABLE 1—ADDITIONS TO THE SECTION 4(e) PRIORITY LIST NOVEMBER 1989

Chemical/Group	Recommended studies
A. Designated for response within 12 months:	
Brominated flame retardants:	
Brominated diphenyl ethers	
Pentabromodiphenyl ether [1] CAS No. 32534–81–9	Chemical Fate: Water solubility; octanol/water partition coefficient; vapor pressure; sediment and soil adsorption; photolysis; aerobic and anaerobic biodegradation. Health Effects: Pharmaco Kinetics; metabolism; neurotoxicity; reproductive and developmental toxicity; chronic toxicity and oncogenicity testing. Ecological Effects: Acute Toxicity to algae; chronic toxicity to fish and aquatic invertebrates and toxicity to benthic organisms.
Octabromodiphenyl ether [2] CAS No. 32536–52–0	Chemical Fate: Water solubility; octanol/water partition coefficient; vapor pressure; sediment and soil adsorption; photolysis; anaerobic biodegradation rate. Aerobic biodegradation if pentabromodiphenyl ether aerobically biodegrades. Health Effects: Pharmacokinetics; metabolism; neurotoxicity; reproductive toxicity; chronic toxicity and oncogenicity testing. Ecological Effects: Acute toxicity to algae; acute chronic toxicity to fish, and aquatic invertebrates and toxicity to benthic organisms only if penta bromodiphenyl ether causes adverse ecological effects.
Decabromodiphenyl ether [3] CAS No. 1163–19–5	Chemical Fate: Water solubility; octanol/water partition coefficient; vapor pressure; sediment and soil adsorption; photolysis; anaerobic biodegradation. Aerobic biodegradation if pentabromodiphenyl ether aerobically biodegrades. Health Effects: Reproductive toxicity. Ecological Effects: Acute and chronic toxicity to fish and aquatic invertebrates and toxicity to benthic organisms only if pentabromodiphenyl ether causes adverse ecological effects.
1,2-Bis(2,4,6-tribromophenoxy)-ethane [4] CAS No. 37853–59–1	Chemical Fate: Vapor pressure; sediment and soil adsorption; photolysis; aerobic and anaerobic biodegradation. Health Effects: Chronic toxicity with emphasis on hepatotoxicity, neurotoxicity and reproductive effects. Ecological Effects: Acute toxicity to algae, fish and aquatic invertebrates; chronic toxicity to fish and aquatic invertebrates and toxicity to benthic organisms based on results of its acute toxicity testing.
Hexabromocyclododecane [5] CAS No. 3194–55–6	Chemical Fate: Vapor pressure; sediment and soil adsorption; anaerobic biodegradation.

TABLE 1—ADDITIONS TO THE SECTION 4(e) PRIORITY LIST NOVEMBER 1989—Continued

Chemical/Group	Recommended studies
	Health Effects: Pharmacokinetics; metabolism, subchronic toxicity. Ecological Effects: Acute toxicity to fish and aquatic invertebrates; chronic toxicity to fish and aquatic invertebrates and toxicity to benthic organisms based on results of its acute toxicity testing.
B Recommended with Intent-to-Designate:	
4-Vinylcyclohexene [6] CAS No. 100–40–3	Chemical Fate: Aqueous volatilization rate. Health Effects: Pharmacokinetics and oncogenicity by inhalation route of exposure. Ecological Effects: None.
C Recommended Without Being Designated for Response Within 12 Months:	
Brominated flame retardants:	
2,4,6-Tribromophenol [7] CAS No. 118–79–6	Chemical Fate: Chemical properties and persistence. Health Effects: Chronic toxicity, except for dibromoneopentyl glycol. Ecological Effects: Chronic toxicity.
Tetrabromophthalic anhydride [8] CAS No. 632–79–1	Chemical Fate: Chemical properties and persistence. Health Effects: Chronic toxicity, except for dibromoneopentyl glycol. Ecological Effects: Chronic toxicity.
Dibromoneopentyl glycol [9] CAS No. 3296–90–0	Chemical Fate: Chemical properties and persistence. Health Effects: Chronic toxicity, except for dibromoneopentyl glycol. Ecological Effects: Chronic toxicity.
Ethylene bis-(tetrabromophthalimide) [10] CAS No. 32588–76–4	Chemical Fate: Chemical properties and persistence. Health Effects: Chronic toxicity, except for dibromoneopentyl glycol. Ecological Effects: Chronic toxicity.
Ethylene bis(5,6-dibromonorbornane-2,3-dicarboximide) [11] CAS No. 41291–34–3.	Chemical Fate: Chemical properties and persistence. Health Effects: Chronic toxicity, except for dibromoneopentyl glycol. Ecological Effects: Chronic toxicity.
Tribrominated polystyrene [12] CAS No. 57137–10–7	Chemical Fate: Chemical properties and persistence. Health Effects: Chronic toxicity, except for dibromoneopentyl glycol. Ecological Effects: Chronic toxicity.
Ethylene bis(pentabromo phenoxide) [13] CAS No. 61262–53–1	Chemical Fate: Chemical properties and persistence.
Health Effects: Chronic toxicity, except for dibromoneopentyl glycol..	
Ecological Effects Chronic toxicity.	

Notes: CA Index Names (9CI)
[1] Benzene, 1,1'-oxybis-, pentabromo deriv.
[2] Benzene, 1,1'-oxybis-, octabromo deriv.
[3] Benzene, 1,1'-oxybis[2,3,4,5,6]-pentabromo-
[4] Benzene,1,1'-(1,2-ethanediylbis(oxybis)2,4,6-tribromo
[5] Cyclododecane, 1,2.5.6,9,10-hexabromo-
[6] Cyclohexene, 4-ethenyl-
[7] Phenol, 2,4,6-Tribromo-
[8] 1,3-isobenzofurandione, 4.5.6.7-tetrabromo-
[9] 1,3-Propanediol, 2,2-bis(bromomethyl)-
[10] 1H-Isoindole-1,3(2H)-dione, 2,2'-(1,2-ethanediyl)bis[4,5,6,7-tetrabromo-
[11] 4,7-Methano-1H-isoindole-1,3(2H)-dione, 2,2'-(1,2-ethanediyl)bis[5,6-dibromohexahydro-
[12] Benzene, ethenyl-, tribromo deriv., homopolymer
[13] Benzene, 1,1'-[1,2-ethanediylbis(oxy)]bis[2,3,4,5,6-pentabromo-(1,2-bis (pentabromophenoxy)ethane

TSCA Interagency Testing Committee

Statutory Member Agencies and Their Representatives

Council on Environmental Quality
John C. Jess, Member
Department of Commerce
Raimundo Prat, Alternate
Environmental Protection Agency
Letitia Tahan, Member (see Note 1)
Vincent Nabholtz, Alternate
National Cancer Institute
Richard Adamson, Member
Thomas P. Cameron, Alternate
National Institute of Environmental Health Sciences
James K. Selkirk, Member and Chairperson
National Institute for Occupational Safety and Health
Rodger L. Tatken, Alternate
National Science Foundation
Carter Kimsey, Member (see Note 2)
Jarvis L. Moyers, Alternate
Occupational Safety and Health Administration
Loretta Schuman, Member and Vice Chairperson (see Note 3)
Stephen Mallinger, Alternate

Liaison Agencies and Their Representatives

Agency for Toxic Substances and Disease Registry
Deborah Barsotti
Consumer Product Safety Commission
Lakshmi C. Mishra
Department of Agriculture
Richard M. Parry, Jr.
Elise A.B. Brown
Department of Defense
Harry Salem
Melvin E. Anderson
Department of the Interior
Clifford P. Rice (see Note 4)
Barnett A. Rattner
Food and Drug Administration
Arnold Borsetti
National Library of Medicine
Vera Hudson
National Toxicology Program
Dorothy Canter
Committee Staff
Robert H. Brink, Executive Secretary (see Note 5)
Norma Williams, ITC Program Specialist
Support Staff
Alan Carpien—Office of the General Counsel, EPA

Notes:

(1) Appointed on August 17, 1989.
(2) Appointed on September 14, 1989.
(3) Appointed on September 14, 1989.
(4) Appointed on October 2, 1989.
(5) Robert Brink died on July 31, 1989. He served 4 years distinguished and faithful service as the ITC Executive Secretary. The Committee deeply regrets his passing. His dedication and outstanding contributions to the goals of the Committee will long be remembered.

The Committee acknowledges and is grateful for the assistance and support given the ITC by the staff of Syracuse Research Corp. (technical support contractor) and personnel of the EPA Office of Toxic Substances.

Chapter 1—Introduction

1.1 *Background.* The TSCA Interagency Testing Committee (Committee) was established under section 4(e) of the Toxic Substances Control Act of 1976 (TSCA, Pub. L. 94–469). The specific mandate of the Committee is to recommend to the Administrator of the U.S. Environmental

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Protection Agency (EPA) chemical substances and mixtures in commerce that should be given priority consideration for the promulgation of testing rules to determine their potential hazard to human health or the environment. TSCA specifies that the Committee's recommendations shall be in the form of a Priority List, which is to be published in the **Federal Register**. The Committee is directed by section 4(e)(1)(A) of TSCA to designate those chemicals on the Priority List to which the EPA Administrator should respond within 12 months by either initiating a rulemaking proceeding under section 4(a) or publishing the Administrator's reason for not initiating such a proceeding. There is no statutory time limit for EPA response regarding chemicals that ITC has recommended but not designated for response within 12 months.

At least every 6 months, the Committee makes those revisions in the section 4(e) Priority List that it determines to be necessary and transmits them to the EPA Administrator.

The Committee is composed of representatives from eight statutory member agencies and eight liaison agencies. The specific representatives and their affiliations are named in the front of this report. The Committee's chemical review procedures and priority recommendations are described in previous reports (Refs. 1 through 8).

1.2 *Committee's previous reports.* Twenty-four previous reports to the EPA Administrator have been issued by the Committee and published in the **Federal Register** (Refs. 1 through 9). Seventy-seven chemicals and 20 groups of chemicals were recommended for priority consideration by the EPA Administrator and designated for response within 12 months. In addition, 12 chemicals and five groups of chemicals were recommended without being designated. Overall, in the 24 reports to the EPA Administrator, the Committee has recommended testing for 89 chemicals and 25 groups of chemicals. A complete list of recommended chemicals may be obtained by contacting: Dr. John D. Walker, ITC Acting Executive Secretary, U.S. Environmental Protection Agency (TS-792), 401 M St. SW., Washington, DC 20460, (202) 382-3820.

1.3 *Committee's activities during this reporting period.* Between April 21, 1989 and October 26, 1989, the Committee reviewed chemicals from nominations by Member Agencies, Liaison Agencies and State Agencies and from its sixth scoring exercise.

The Committee contacted chemical manufacturers and trade associations to request information that would be of value in its deliberations. Most of those contacted provided unpublished information on current production, exposure, uses, and effects of chemicals under study by the Committee.

During this reporting period, the Committee also reviewed available information on 173 chemicals and three groups of over 175 chemicals. One chemical and one group of chemicals were selected for addition to the section 4(e) Priority List; four chemicals were deferred indefinitely. For one group of chemicals the Committee is requesting that EPA propose TSCA section 8(a) and 8(d) rules. The remaining chemicals are still under study.

During this reporting period, the Committee reviewed several for Your Information (FBI), 8(d) and 8(e) documents that are stored on microfiche in the TSCA Public Docket Office, Office of Toxic Substances, Environmental Protection Agency, Room G-004, NE Mall, 401 M St. SW., Washington, DC 20460. These documents are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161 (1-800-336-4700), and from Chemical Information Systems, Inc., 7215 York Road, Baltimore, Maryland 21212 (1-800-CIS-USER). The Committee referenced several of these documents in Chapter 2 of this report and readers are referred to the above address to obtain further information. Beginning with this report, interested parties can also obtain, from the above address, copies of references and information reviews supporting recommendations of chemicals in this report.

The Committee examined testing information on several brominated flame retardants (BFRs) because of concerns related to potential long-term health and ecological effects. Most of the testing was conducted using technical-grade, commercially-available products. The Committee previously designated the following BFRS in the following numbered reports: #2, 1,2-epoxy-3-bromopropane (CAS No. 3132-64-7); #4, 2,4,6-tribromoaniline (CAS No. 147-82-0); #14, 1,2-dibromo-4-(1,2-dibromomethyl) cyclohexane (CAS No. 3322-93-8); #15, pentabromoethylbenzene (CAS No. 85-22-3); and #16, tetrabromobisphenol A (CAS No. 79-94-7). Subsequently, the EPA published **Federal Register** notices in response to these designations.

A few of the BFRs examined by the Committee were listed in the June 22, 1982, Preliminary Assessment Information TSCA section 8(a) final rule (PAIR) which required submission of data quantities of chemicals manufactured, amounts directed to certain classes and uses and the potential exposures and environmental releases associated with the manufacturers' own and immediate customers' processing of the chemicals (47 FR 26992).

A number of the BFRs examined by the Committee were listed in the June 5, 1987, halogenated dibenzo-p-dioxins (HDDs) and dibenzofurans (HDFs) final rule (52 FR 21412). This rule required analytical testing of certain chemicals for HDD/HDF contamination, submission of existing data on contamination of these chemicals with HDDs/HDFs, submission of health and safety studies on HDDs/HDFs and submission of worker allegations of significant adverse reactions to HDDs/HDFs under TSCA sections 4 and 8.

In a February 24, 1988, **Federal Register** notice (53 FR 5466), the Committee requested information on several BFRs.

The Committee is continuing to review information on the chloroalkyl phosphates, recommended with intent-to-designate in the 23rd Report (53 FR 46262), and has not reached a conclusion whether or not to designate one or more of those chemicals.

1.4 *The TSCA section 4(e) Priority List.* Section 4(e)(1)(B) of TSCA directs the Committee to: "* * * make such revisions in the [priority] list as it determines to be necessary and * * * transmit them to the Administrator together with the Committee's reasons for the revisions." Under this authority, the Committees revising the List by adding one chemical, 4-vinylcyclohexene (CAS No. 100-40-3) and one group of chemicals, brominated flame retardants (BFRs). The BFRs include a subgroup of brominated diphenyl ethers [pentabromodiphenyl ether (CAS No. 32534-81-9), octabromodiphenyl ether (CAS No. 32536-52-0). and decabromodiphenyl ether (CAS No. 1163-19-5)], and several other BFRs, including 1,2-bis[2,4,6-tribromophenoxy) ethane (CAS No. 37853-59-1), hexabromocyclododecane (CAS No. 3194-55-6), 2,4,6-tribromophenol (CAS No. 118-79-6), tetrabromophthalic anhydride (CAS No. 632-79-1), dibromoneopentyl glycol (CAS No. 3296-90-0), ethylene bis(tetrabromophthalimide) (CAS No. 32588-76-4), ethylene bis(5,6-dibromonorbornene-2,3-dicarboximide) (CAS No. 41291-34-3), tribrominated polystyrene (CAS No. 57137-10-7), and ethylene bis(pentabromo phenoxide) (CAS No. 61262-53-1). 1,6-Hexamethylene diisocyanate (CAS No. 822-06-0) was removed from the Priority List because the EPA published a Notice of Proposed Rulemaking on May 17, 1989 (54 FR 21240).

The Priority List is divided in the following Table 2 into three parts; namely, A. Chemicals and Groups of Chemicals Designated for Response Within 12 Months, B. Chemicals and Groups Chemicals Recommended with Intent-to-Designate, and C. Chemicals and Groups of Chemicals Recommended Without Being Designated for Response Within 12 Months. Table 2 follows:

TABLE 2—THE TSCA SECTION 4(e) PRIORITY LIST NOVEMBER 1989

Entry	Date of designation
A. Chemicals and groups of chemicals recommended and designated for response within 12 months:	
Crotonaldehyde	November 1988
Brominated flame retardants	
Brominated diphenyl ethers	
Pentabromodiphenyl ether	November 1989
Octabromodiphenyl ether	November 1989
Decabromodiphenyl ether	November 1989
1,2-Bis(2,4,5-tribromophenoxy)ethane	November 1989
Hexabromocyclododecane	November 1989
B. Chemicals and groups of chemicals recommended with intent-to-designate:	
Chloroalkyl phosphates	
Tris(2-chloroethyl)phosphate	November 1988
Tris(2-chloro-1-propyl)phosphate	November 1988
Tris(1-chloro-2-propyl)phosphate	November 1988
Tris(1,3-dichloro-2-propyl)phosphate	November 1988
Tetrakis(2-chloroethyl)ethylene diphosphate	November 1988
4-Vinylcyclohexene	November 1989
C. Chemicals and groups of chemicals recommended without being designated for response within 12 months:	
C.I. Disperse blue 79	November 1988
N-[5-[bis[2-(acetyloxy)ethyl]amino] -2-[(2-bromo-4,6-dinitrophenyl)azo]- 4-methoxy phenyl]-acetamide	May 1987
N-[5-[bis[2-(acetyloxy)ethyl]amino] -2-[(2-chloro-4,6-dinitrophenyl)azo]- 4-methoxy phenyl]-acetamide	May 1987
N-[5-[bis[2-(acetyloxy)ethyl]amino] -2-[(2-chloro-4,6-dinitrophenyl)azo]- 4-ethoxy phenyl]-acetamide	May 1987
Imidazolium quaternary ammonium compounds:	
4,5-dihydro-1-methyl-2-nortallow alkyl-1-(2-tallow amidoethyl), Me sulfates	May 1988
Ethoxylated quaternary ammonium compounds:	
Ethanaminium, 2-amino- N-(2-aminoethyl) -N-(2-hydroxyethyl)-N-methyl-, N,N-ditallow acyl deriva., Me sulfates (salts)	May 1988
Poly(oxy-1,2-ethanediyl),α-[2-[bis(2-aminoethyl)-methylammonio]-ethyl]-ω-hydroxy-, N,N'-dicoco acyl deriva., Me sulfates (salts)	May 1988
Poly(oxy-1,2-ethanediyl),α-[2-[bis(2-aminoethyl)-methylammonio]-ethyl]-ω-hydroxy-, N,N'-bis (hydrogenated tallow acyl) deriva., Me sulfates (salts).	May 1988
Poly(oxy-1,2-ethanediyl),α-[2-[bis(2-aminoethyl)-methylammonio-ethyl]-ω-hydroxy-, N,N'-ditallow acyl deriva., Me sulfates (salts)	May 1988
Poly[oxy(methyl-1,2-ethanediyl)],α-[2-[bis(2-aminoethyl)-methylammonio]-methylethyl] -ω-hydroxy-, N,N'-,ditallow acyl deriva., Me sulfates (salts).	May 1988
Poly(oxy-1,2-ethanediyl),α-[3-[bis(2-aminoethyl)-methylammonio]-2-hydroxypropyl]-ω-hydroxy-, N-coco acyl deriva., Me sulfates (salts)	May 1988
Poly(oxy-1,2-ethanediyl),α-[2-[bis(2-aminoethyl)-methylammonio]-ethyl]-ω-hydroxy-, N,N'-di-C14-18 acyl deriva., Me sulfates, salts)	May 1988
Butyraldehyde	November 1988
2,4,6-Tribromophenol	November 1989
Tetrabromophthalic anhydride	November 1989
Dibromoneopentyl glycol	November 1989
Ethylene bis(tetrabromophthalimide)	November 1989
Ethylene bis(5,6-dibromonorbornene-2,3-dicarboximide)	November 1989
Tribrominated polystyrene	November 1989
Ethylene bis(pentabromo phenoxide)	November 1989

References

(1) Sixteenth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, May 21, 1985, 50 FR 20930-20939. Includes references to Reports 1 through 15 and an annotated list of removals.

(2) Seventeenth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, November 19, 1985, 50 FR 47603-7612.

(3) Eighteenth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, May 19, 1986, 51 FR 18368-18375.

(4) Nineteenth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, November 14, 1986, 51 FR 41417-41432.

(5) Twentieth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, May 20, 1987, 52 FR 19020-19026.

(6) Twenty-first Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, November 20, 1987, 52 FR 44830-44837.

(7) Twenty-second Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, May 20, 1988, 53 FR 18196-18210.

(8) Twenty-third Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, November 16, 1988, 53 FR 46283-46278.

(9) Twenty-fourth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, July 27, 1989, 54 FR 31248-31249.

Chapter 2—Recommendations of the Committee

2.1 *Chemicals recommended for priority consideration by the EPA Administrator.* As provided by section 4(e)(1)(B) of TSCA, the Committee is adding to the section 4(e) Priority List one chemical substance, 4-vinylcyclohexene (VCH) (CAS No. 100-40-3), and one group of chemical substances, the brominated flame retardants (BFRs). The BFRs consist of a subgroup of brominated diphenylethers

(BDPEs) [pentabromodiphenyl ether (PBDPE) (CAS No. 32534-81-9), octabromodiphenyl ether (OBDPE) (CAS No. 32536-52-0), and decabromodiphenyl ether (DBDPE) (CAS No. 1163-19-5)] and several other BFRs, including 1,2-bis(2,4,6-tribromophenoxy) ethane (BTBPE) (CAS No. 37853-59-1), hexabromocyclododecane (HBCD) (CAS No. 3194-55-6), 2,4,6-tribromophenol (TBrP) (CAS No. 118-79-6), 3,4,5-6-tetrabromophthalic anhydride (TBPA) (CAS No. 632-79-1), dibromoneopentyl glycol (DBNG) (CAS No. 3296-90-0), ethylene bis(tetrabromophthalimide) (EBTBPA) (CAS No. 32588-76-4), ethylene bis(5,6-dibromonorbornane 2,3-dicarboximide) (EBDNDC) (CAS No. 41291-34-3), tribrominated polystyrene (TBPS) (CAS No. 57137-10-7) and ethylene bis(pentabromophenoxide) (EBPBP) (CAS No. 61262-53-1). The recommendation of these chemicals is made after considering the factors identified in section 4(e)(1)(A) and other relevant information, such as the chemical testing information deficiencies of Member Agencies.

2.2 *Chemicals designated for response within 12 months*—2.2.a *Brominated flame retardants.* Five BFRs that are produced in substantial quantities and that have been detected in the environment or have potential to cause adverse effects were designated for testing.

2.2.a *Brominated diphenylethers—Summary of recommended studies.* The chemical fate and environmental effects testing recommendations are summarized in the following table 3:

TABLE 3—CHEMICAL FATE AND ENVIRONMENTAL EFFECTS TESTING RECOMMENDED (R), TRIGGERED IF PBDPE IS BIODEGRADED (B), TRIGGERED IF PBDPE IS TOXIC (T) OR NOT RECOMMENDED (N) FOR BDPEs

Test	PBDPE	OBDPE	DBDPE
Chemical Fate:			
Water solubility.	R	R	R
Log octanol/water partition coefficient (log P).	R	R	
Vapor pressure.	R	R	R
Sediment and soil adsorption.	R	R	R
Photolysis	R	R	R
Aerobic biodegradation.	R	B	B
Anaerobic biodegradation.	R	R	R
Environmental Effects:			
Algal bioassay.	R	T	N
Fish acute	R	T	T
Aquatic invertebrate acute.	R	T	T
Fish chronic	R	T	T
Aquatic invertebrate chronic.	R	T	T
Benthic organism toxicity.	R	T	T

The health effects testing recommendations for the BDPEs are listed below.

1. *Pentabromodiphenyl ether.* Pharmacokinetics and metabolism, neurotoxicity, chronic toxicity, reproductive and developmental toxicity and oncogenicity.

2. *Octabromodiphenyl ether.* Pharmacokinetics and metabolism, neurotoxicity, chronic toxicity, reproductive toxicity and oncogenicity.

3. *Decabromodiphenyl ether.* Reproductive toxicity. The physical-chemical properties of the BDPE isomeric mixtures recommended for testing are listed in the following Table 4.

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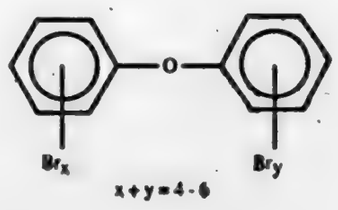
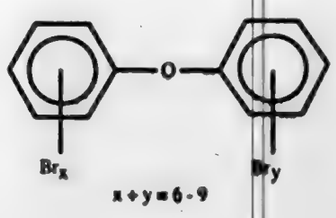
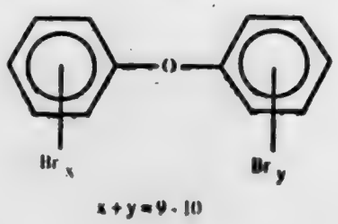
Table 4. Physical-chemical properties of BDPEs recommended for priority testing consideration

Chemical	Pentabromodiphenyl ether	Octabromodiphenyl ether	Decabromodiphenyl ether
CAS No.	32534-81-9	32536-52-0	1163-19-5
Acronym	PBDPE	OBDPE	DBDPE
Synonyms and Trade Names	Pentabromodiphenyl oxide Pentabromophenoxybenzene	Phenyl ether, Octabromo deriv. (8CI) Octabromodiphenyl oxide	Ether, bis (pentabromophenyl) (8CI) Decabromobiphenyl ether Decabromobiphenyl oxide Decabromophenyl ether
Structure			
Molecular Weight	564.72	801.42	959.22
Melting Point (C)	202 (E)[a/]	200-250 (E)	295-310
Solubility in water (mg/L at 20 C)	$9x10^{-7}$ (E)	0.02-0.03[b/]	0.02-0.03[b/]
Log Octanol/Water Partition	7.8 (E)	5.5[b/]	5.24[b/]

[a/] Estimated (E)
[b/] Norris (1974)

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Rationales for Recommendations

I. Exposure Information

A. *Production/use/disposal/exposure.* The BDPEs are all produced in substantial volumes; actual production volumes are confidential business information (CBI). Environmental release and occupational exposure to BDPEs may be anticipated from manufacturing, processing or use in activities associated with filtration, drying, drumming, bagging, compounding or from phase separation or cleaning residues from drums.

PBDPE is recommended for use in acrylonitrile-butadiene-styrene (ABS) resins, flexible polyurethane foams, polyvinyl chloride wired cable insulation, phenolic thermosets and hot-melt adhesives (Ref. 3, Ethyl, 1988). It may also be used as a flame retardant for epoxides, laminates and coatings, and has special application in the preparation of flame retardant wood treatments. When blended with a variety of chlorinated solvents or triethyl phosphate it may be used for dimensional lumber, shakes and shingles (Ref. 6, Great Lakes, 1982).

OBDPE is recommended as a flame retardant for ABS resins nylon, etc. (Ref. 3, Ethyl, 1988 and Ref. 6, Great Lakes, 1982).

DBDPE is a heat-stable additive flame retardant recommended for use in high-impact polystyrene, thermoset and thermoplasticpolyesters, non-drip polypropylene, cross-linked polyethylene and elastomers (Ref. 3, Ethyl, 1988). It is suggested for use in wire and electrical cable insulation of all types. It is also recommended as a flame retardant for epoxy phenolic, polybutyleneterephthalate, and nylon resins (Ref. 6, Great Lakes, 1982).

B. *Evidence for exposure—Environmental exposure.* PBDPE was detected in fish in Sweden (Ref. 1, Anderson and Blomkvist, 1981), and in mussels and river sediment from Japan (Ref. 17, Watanabe, *et al.*, 1986, 1987). It was also detected (as a component of Bromkal 70-5) in marine mammals and birds from Sweden (Ref. 8, Jansson *et al.*, 1987) and in air, soil and sediments near two U.S. production facilities (Ref. 2, DeCarlo, 1979; Ref. 18, Zweidinger *et al.*, 1979). The U.S. EPA Environmental Research Laboratory in Duluth, MN, measured PBDPE in dead Atlantic Bottle Nose dolphins from the U.S. east coast (Ref. 14, USEPA 1989).

DBDPE was detected in air, particulates, soil and sediments in the vicinity of U.S. production facilities (Ref. 2, DeCarlo,1979; Ref. 18, Zweidinger *et al.*, 1979). It was also detected in shell fish and sediments in Japan (Ref. 17, Watnabe, 1987).

DBDPE was one of more than 300 chemicals and chemical categories on an initial list of toxic chemicals (the Toxics Release Inventory) established under section 313 of the Emergency Planning And Community Right-to-Know Act (Pub. L. 99-499, "EPCRA"). Section 313 of EPCRA requires certain facilities that manufacture, process, or otherwise use toxic chemicals to report annually their environmental releases of such chemicals. For DBDPE, 47 exposure and release data forms (Form Rs) were submitted under section 313 of EPCRA during the 1987 reporting year. The reported releases included over 155,000 pounds a year to air (over 120,000 pounds a year from one domestic production facility), over 20,000 pounds a year of water releases and over 16,000 pounds a year of land releases. Since DBDPE is the most highly brominated of the BDPEs, it is anticipated that OBDPE and PBDPE, which should be more volatile and more water soluble, will be released in at least the same percentage of the production volume as DBDPE. The DBDPE release figures only include releases from producers and formulators, not releases from use and disposal of BDPEs.

II. Chemical Fate Information

A. *Transport.* The estimated water solubility and octanol/water partition coefficients (K_{ow}) for PBDPE and the measured water solubility and K_{ow} values for OBDPE and DBDPE relisted in Table 4. Vapor pressures of BDPEs are estimated to below at ambient temperature, i.e., $<10^{-6}$ mm Hg. Based on these estimates and data, BDPEs are likely to partition to sediments and biota.

B. *Persistence.* DBDPE was susceptible to aqueous photolysis, but no rate was reported (Ref. 11, Norris, *et al.*, 1974).

C. *Rationale for chemical fate recommendations.* The Committee recommends testing to obtain measured water solubility and K_{ow} values for PBDPE because there were no data. Water solubility andK_{ow} testing for OBDPE and DBDPE (Table 3) are also recommended because the shake-flask methods used to provide available data may not be appropriate for hydrophobic compounds. The Committee recommends vapor pressure testing for the BDPEs, because there were no data (Table 3). The Committee also recommends sediment and soil adsorption isotherm testing of all BDPEs because there were no data and there is a need to estimate sediment partitioning and soil mobility. The Committee recommends direct and indirect aqueous photolysis because there were no data on photolysis rates and products (Table 3). Rates of aerobic biodegradation may be inversely proportional to the number of bromines on a BDPE. The Committee recommends aerobic biodegradation testing of PBDPE because there were no data and triggering aerobic biodegradation testing of the higher brominated homologs (OBDPE and DBDPE), if PBDPE is biodegraded. The Committee recommends anaerobic biodegradation testing of all BDPEs because there were no data and these chemicals should be susceptible to reductive debromination. Chemical fate testing is recommended because BDPEs have been detected in the environment and there are insufficient data to reasonably determine or predict their environmental persistence.

III. Health Effects Information

A. *Metabolism and pharmacokinetics.* No information was found for OBDPE, or PBDPE.

Decabromodiphenyl ether. In a disposition study using male rats exposed to diets containing 250–50,000 ppm of DBDPE for 9 to 11 days, the feces contained 82- to 100 percent of the ^{14}C-radiolabel (administered on the last day), while the urine contained :0.012 percent (Rex. 13, NTP, 1986). Most of the radio label in the feces was unmetabolized compound, although three unidentified metabolites were detected. All major tissues except the brain contained small but measurable levels of radioactivity. In a single-dose (gavage) disposition study using rats, all tissue samples contained radio label on day 1 following administration, while only the adrenal glands and spleen contained radio label on day 16 (Ref. 11, Norris *et al.*, 1974, 1975). As with the repeated-exposure study, most of the radioactivity (90- >99 percent) was excreted in the feces.

B. *Acute and subchronic (short-term) effects.*

Pentabromodiphenyl ether. The oral LD_{50} values in male and female rats were 7400 and 5800 mg/kg, respectively, with deaths occurring between the second and seventh day post treatment (Ref. 7, Great Lakes Chemical Corp., 1988). Effects included tremors of the forelimb, reduced activity immediately after treatment (4000 mg/kg and above), hepatotoxicity and gastric lesions (all doses). The hepatotoxic effects observed at the lowest dose (2400 mg/kg) persisted for up to 44 days post treatment. In a second acute oral toxicity study, 4 out of 5 rats died when treated by gavage with 5000 mg per kg.

In an inhalation study there were no deaths in male and female rats exposed for 1 hour to PBDPE at concentrations up to 200 mg/L. The only effects were changes in motor activity and irritation observed during the exposure. In a dermal study, PBDPE applied to the abraded skin of rabbits for 24 hours at dose levels up to 2000 mg/kg produced no compound-related systemic toxic effects.

In 28-day studies, male and female rats given diets containing 100, or 1000 ppm of PBDPE showed no gross effects of treatment (Ref. 7, Great Lakes Chemical Corp., 1988). There was an increase in relative and absolute liver weight in males and females in the high-dose group and in females of the low-dose group. Enlargement of the centrilobular and midzonal liver parenchymal cells was reported in the high-dose group, and thyroid hyperplasia was observed in "several" rats at both dose levels. Except for increased bromine levels in the thyroid and liver, no gross or microscopic effects were observed in male and female rats maintained for 30 days on diets which provided PBDPE at doses between 0.01 and 1.0 mg/kg per day. Bromine levels were generally in the normal range following a 6-week recovery period.

In a 90-day study, when rats were given a diet providing doses of PBDPE of 0, 2, or 100 mg/kg/day, absolute and relative liver weight increased in the mid- and high-dose groups and the amount of porphyrins in the liver and urine increased in the high-dose group (Ref. 7, Great Lakes Chemical Corp., 1988). Compound-related microscopic changes characterized as hepatocytomegaly and thyroid hyperplasia were observed in all dose groups. Liver effects were not reversible during the 24-week recovery period; thyroid effects were reversible.

Octabromodiphenyl ether. In acute toxicity studies none of the rats died during the 14-day observation period after a single oral administration of OBDPE at doses between 50 and 5000 mg/kg, or after a 1-hour inhalation exposure at a level of 2 mg/L (Ref. 7, Great Lakes Chemical Corp.,1988). Similarly, none of the rabbits died during the 14-day observation period following a 24-hour dermal application of OBDPE (200 or 2000 mg/kg) to intact or abraded skin. OBDPE was nonirritating to the skin or eyes of rabbits.

Male and female rats given diets containing 100 or 1000 ppm of OBDPE for 28 days showed no gross effects of treatment (Ref. 7, Great Lakes Chemical Corp., 1988). There was a statistically significant increase in relative liver weights in both sexes at both dose levels. Enlargement of the centrilobular and midzonal liver parenchymal cells was reported in both dose groups, and slight to moderate thyroid hyperplasia was observed in rats of the high-dose group. Similar effects on the liver were observed in male and female rats administered diets containing 100, 1000, or 10,000 ppm of OBDPE for 13 weeks. At the two higher levels the effects persisted in a group observed for an additional 6 months post exposure period. Other compound-related effects included kidney and thyroid lesions in the high-dose group; hyperplastic nodules were considered possible compound-related effects in the liver of one mid-dose and two high-dose rats.

In an inhalation study, groups of male and female rats (25/sex) were exposed to 1.2, 12, 120, or 1200 mg/m^3 OBDPE for 8 hours per day for 14 days (Ref. 7, Great Lakes Chemical Corp.1988). Respiratory rate increased during exposure, but returned to normal by the beginning of the next exposure session. Focal or multifocal to diffuse, cytoplasmic enlargements of the hepatocytes as well as focal hepatocellular necrosis and acidophilic degeneration were also observed. These effects were observed in the mid- and high-dose groups; in all dose groups there was correlation between exposure level and the bromine content of the lungs, liver and fat tissues.

Decabromodiphenyl ether. The acute toxicity of DBDPE was low with all rats surviving following single oral doses up to 5000 mg per kg (Ref. 6, Great Lakes, 1982). Following inhalation exposure to DBDPE at 2 or 48.2 mg/L for 1 hour, rats suffered respiratory difficulty and irritation, but were normal by day 13 (Ref. 6, Great Lakes, 1982).

DBDPE fed to male rats at dietary levels of 0.01, 0.1 or 1.0 percent for 30 days resulted in: liver enlargement at the 0.1 and 1.0 percent levels; liver (cytoplasmic enlargement and vacuolation) and kidney (hyaline degenerative cytoplasmic changes) lesions at the 1.0 percent dietary level; and thyroid hyperplasia at the two highest doses (Ref. 12, Norris, 1975). In a 14-day study, no clinical signs or gross pathology were observed in rats or mice maintained on diets containing DBDPE at levels up to 100,000 ppm, while no gross or microscopic pathology were observed in rats and mice maintained for 13 weeks on diets containing DBDPE at levels up to 50,000 ppm (Ref. 13, NTP, 1986).

C. *Genotoxicity.* PBDPE was negative in the Ames/ *Salmonella* test when tested up to the limits of toxicity both with and without metabolic activation (Ref. 7, Great Lakes Chemical Corp., 1988).

OBDPE was negative in the Ames/ *Salmonella* and the *Saccharomyces* assays when tested to the limits of toxicity both with and without metabolic activation. (Ref. 7, Great Lakes Chemical Corp., 1988). Similarly, OBDPE did not increase sister chromatid exchanges in Chinese hamster ovary cells, or the rate of unscheduled DNA synthesis in WI-38 human fibroblast cells, when these tests were conducted in the presence or absence of a metabolic activation system (Ref. 7, Great Lakes Chemical Corp., 1988).

DBDPE was not mutagenic in the Ames/*Salmonella* and the mouse lymphoma L5178Y/TK$^{+/-}$ assay with and without metabolic activation (Ref. 13, NTP, 1986). DBDPE did not cause sister chromatid exchanges or chromosomal aberrations in Chinese hamster ovary cells *in vitro* (Ref. 13, NAP, 1986) or in bone marrow cells following *in vivo* administration (30-100 mg/kg/per day for 90 days prior to mating and through lactation) to male and female rats or their offspring (Rex. 12, Norris et al., 1975).

D. *Oncogenicity.* No information was found on PBDPE or OBDPE.

DBDPE has been tested in male and female rats and mice at dose levels of 25,000 and 50,000 ppm. There was some evidence of carcinogenicity in rats, equivocal evidence in male mice and none in female mice (Rex. 13, NAP, 1986). No neoplastic effects were observed in male and female rats given diets which provided doses of DBDPE of 0.01, 0.1, or 1.0 mg/kg/day for 2 years (Ref. 9, Kociba et al., 1975).

E. *Reproductive and developmental effects.* No information was found on PBDPE.

To study developmental effects, OBDPE was administered by gavage to groups of 10 rats at doses of 2.5, 10, 15, 25, or 50 mg/kg on days 6 through 15 of gestation (Ref. 7, Great Lakes Chemical Corp., 1988). Reduced ossification was observed in the fetuses of the high-dose group and was considered to be related to maternal toxicity. There was also a decrease in mean fetal weight and an increase in post-implantation losses in the high-dose group. Increased serum bromide levels were reported in the 25 and 50 mg/kg groups.

DBDPE did not induce developmental toxic effects in offspring of rats administered DBDPE at doses of 10, 100, or 1000 mg/kg/day on days 6 through 15 of gestation (Ref. 11, Norris et al., 1974; Ref. 12, Norris et al., 1975). There was an

increase in subcutaneous edema and delayed ossification in the fetuses of the high-dose group. In a single-generation reproductive toxicity study using doses of 3, 30, or 100 mg/kg for 90 days prior to mating and through lactation, no treatment-related effects of DBDPE to the offspring rats were reported (Ref. 12, 1975, Norris et al.)

F. *Chronic (long-term) effects.* No information was found on PBDPE or OBDPE.

Lesions of the liver, stomach and spleen were observed in a 103–week feeding study in rats and mice administered diets containing 25,000 or 50,000 ppm of DBDPE (Ref. 13, NTP, 1986). These effects were predominately in the high-dose group. After 2 years of feeding DBDPE to rats at 0.01, 0.1 or 1 percent in the diet, no significant long-term effects were noted (Ref. 9, Kociba et al., 1975).

G. *Observations in humans.* No information was found.

H. *Rationale for health effects recommendations.* The Committee recommends pharmacokinetics, neurotoxicity, reproductive and developmental toxicity, chronic toxicity and oncogenicity testing for PBDPE. The Committee also recommends pharmacokinetics, neurotoxicity, reproductive toxicity, chronic toxicity and oncogenicity testing for OBDPE. These health-effects tests are recommended for PBDPE and OBDPE because there were no data and because acute and subchronic studies indicate not only that effects may be only slowly reversible but that the compounds may accumulate with extended exposure. The Committee recommends reproductive toxicity testing for DBDPE because the available data were developed using a single-generation study in which the effects of DBDPE on male rats were not reported and the high dose was too low to produce toxic effects. Health effects testing is recommended because DBDPEs have been detected in the environment and there are insufficient data to reasonably determine or predict their health effects.

IV. Ecological Effects Information

A. *Acute and subchronic (short-term) effects.* DBDPE EC_{50} values for marine and freshwater algae were >1 mg/L, but concentrations tested were 100 times water solubility levels and exposures were too short (3 days) to permit uptake (Ref. 16, Walsh et al., 1987).

B. *Chronic (long-term) effects.* No information was found.

C. *Other ecological effects (biological, behavioral, or ecosystem process).* No information was found.

D. *Bioconcentration and food-chain transport.* PBDPE bioconcentration data submitted under TSCA section 8(d) (EPA document #86-890000045) indicated that after 8 weeks of exposing carp to 105 and 9.7 ug/L PBDPE, the maximum bioconcentration factors (BCF) were 5,380 and 11,700 respectively. For OBDPE, bioconcentration data submitted under the same 8(d) document, using the same test organism and method suggested BCFs of :3.8 for any OBDPE concentration. These data suggest that there may have been less membrane permeation and lower-uptake by carp for OBDPE than for PBDPE.

E. *Rationale for ecological effects testing recommendation.* The Committee recommends that an algal bioassay, an aquatic invertebrate acute toxicity test and an extended (14–day) fish acute toxicity test be conducted for PBDPE, because there were no data. The Committee recognizes that membrane permeation may be difficult for large chemicals and is requesting molecular cross-sectional area data for PBDPE, OBDPE and DBDPE. The Committee recommends triggering (T) short-term tests for OBDPE and DBDPE if PBDPE is toxic (Table 3). The Committee recommends that aquatic invertebrate and fish chronic toxicity tests as well as a benthic organism toxicity test be conducted for PBDPE (because there were no data) and that testing of OBDPE and DBDPE be triggered if PBDPE is toxic (Table 3). Based on PBDPE and OBDPE bioconcentration data the Committee is not recommending bioconcentration testing for DBDPE. Ecological effects testing is recommended because BDPEs have been detected in the environment and there are insufficient data to reasonably determine or predict their ecological effects.

2.2.a.2 *1,2-Bis(2,4,6-tribromophenoxy) ethane—Summary of recommended studies.* It is recommended that BTBPE be tested for the following:

1. *Chemical fate.* Vapor pressure; sediment and soil adsorption; photolysis; aerobic and anaerobic biodegradation.

2. *Health effects.* Chronic toxicity with emphasis on hepatotoxicity, neurotoxicity and reproductive effects.

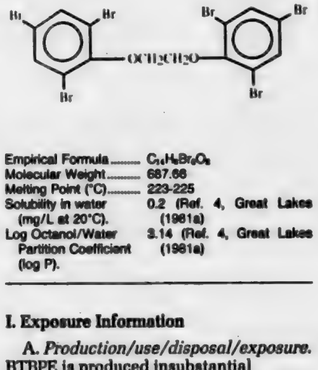
3. *Ecological effects.* Acute toxicity to algae, fish and aquatic invertebrates; chronic toxicity to fish and aquatic invertebrates and toxicity to benthic organisms based on results of its acute toxicity testing.

PHYSICAL AND CHEMICAL INFORMATION

CAS No.: 37853–59–1

Acronym	BTBPE
Synonyms and Trade Names.	Benzene,1,1'-(1,2-ethanediylbis-(oxy)bis)2,4,6 tribromo (9Cl)Bis-1,2-(2,4,6-tribromophenoxy)-ethane1,1'-(1,2-Ethanediylbis(oxy)bis-(2,4,6-tribromobenzene) Fire Master 680 Great Lakes FF680

Structural Formula:



Empirical Formula	$C_{14}H_8Br_6O_2$
Molecular Weight	687.66
Melting Point (°C)	223-225
Solubility in water (mg/L at 20°C).	0.2 (Ref. 4, Great Lakes (1981a)
Log Octanol/Water Partition Coefficient (log P).	3.14 (Ref. 4, Great Lakes (1981a)

I. Exposure Information

A. *Production/use/disposal/exposure.* BTBPE is produced insubstantial volumes; actual production volumes are CBI. BTBPE is used as a flame retardant in ABS polymers and in applications where thermal stability at high processing temperatures is important (Rex. 4, Great Lakes, 1981a). Environmental release may be anticipated from cleaning residues in drums and subsequent release to waste treatment facilities.

B. *Evidence for exposure—Environmental exposure.* BTBPE was detected in air and soil near two U.S. production facilities (Ref. 2, DeCarlo, 1979).

II. Chemical Fate Information

A. *Transport.* Water solubility and Kow data suggest that BTBPE may migrate through soil and desorb from sediment.

B. *Persistence.* BTBPE applied to silica gel and irradiated with UV light was degraded (Ref. 4, Great Lakes, 1981a). Shake-flask biodegradation studies of BTBPE suggested slow degradation, but test concentrations exceeded BTBPE water solubility and recoveries of ^{14}C-BTBPE were <2 percent (Ref. 4, Great Lakes, 1981a).

C. *Rationale for chemical fate recommendations.* The Committee recommends sediment and soil adsorption isotherm testing and vapor pressure testing at ambient temperature, because there were no data. The Committee recommends direct and indirect photolysis testing because there were no data on photolysis and rates products. The Committee recommends that BTBPE water solubility and vapor pressure data be carefully examined and that an aerobic biodegradation test be designed to adequately measure BTBPE's biodegradation rate. The Committee also recommends anaerobic biodegradation testing because there were no data and because BTBPE should be susceptible to reductive debromination. Chemical fate testing is recommended because BTBPE has been detected in the environment and there are insufficient data to reasonably determine or predict its environmental persistence.

III. Health Effects Information

A. *Metabolism and pharmacokinetics.* Within 4 days of administering radioactive BTBPE to rats, 80 percent and 5 percent of the radioactivity was recovered in the feces and the urine, respectively, indicating likely poor absorption from the gut (Ref. 7, Great Lakes Chemical Corp., 1988).

B. *Acute and Subchronic (Short-Term) Effects.* The acute toxicity of BTBPE was studied by Great Lakes Chemical Corp., (Ref.7, 1988). The oral LD_{50} of BTBPE in male rats, and male and female dogs is >10 g/kg. BTBPE is non-irritating for both abraded and non-abraded skin in rabbits. Acute inhalation, 36.68 mg/L per 4 hours, caused no treatment-related pathology as observed on necropsy at 24 hours post exposure.

Subacute and subchronic toxicity studies also have been reported by Great Lakes Chemical Corp. (Ref. 7, 1988). No compound-related pathology was reported in a 14–day study at the highest concentration tested (10 percent in the diet). Male weaning rats given diets containing 100, or 1000 ppm of BTBPE for 28 days showed no compound-related pathology 6, 12, or 18 days after cessation of treatment. In a 90–day study, albino rats given a diet containing 10 percent BTBPE showed liver changes in most of the animals. The lesions consisted of focal or multifocal enlargement of the hepatocytes located within the centrilobular to midzonal regions of the affected liver lobules. The liver lesion incidence was higher in males than in females. No treatment-related changes were reported in the animals fed diets containing 0.1, or 1.0 percent BTBPE in this study, or in the animals exposed via inhalation to 20 mg BTBPE/L, 4 hours per day, 5 days per week for 21 days in another study.

C. *Genotoxicity.* Negative results were reported in the Ames/*Salmonella* test with or without metabolic activation (Ref. 7, Great Lakes Chemical Corp., 1988).

D. *Oncogenicity.* No information was found.

E. *Reproductive and Developmental Effects.* BTBPE was negative in a teratology study in rats. The doses ranged from 30 mg/kg to 10,000 mg/kg (Ref. 7, Great Lakes Chemical Corp., 1988).

F. *Chronic (long-term) effects.* No information was found.

G. *Observations in humans.* No information was found.

H. *Rationale for health effects recommendations.* The Committee recommends chronic toxicity studies with emphasis on hepatotoxicity, neurotoxicity and reproductive effects because there were no data. Health effects testing is recommended because BTBPE has been detected in the environment and there are insufficient data to reasonably determine or predict its health effects.

IV. Ecological Effects Information

A. *Acute and subchronic (short-term) effects.* BTBPE LC_{50} values for bluegill, rainbow trout and killifish were 1531, 1410 and 230 mg/L, respectively (Ref. 4, Great Lakes, 1981a).

B. *Chronic (long-term) effects.* No information was found.

C. *Other ecological effects (biological, behavioral, or ecosystem process).* No information was found.

D. *Bioconcentration and food-chain transport.* BTBPE bioconcentration data submitted under TSCA section 8(d) (document #86–890000045) indicated that after 8 weeks of exposing carp to 0.27 and 0.026 mg/L BTBPE; the maximum BCFs were 27 and 43, respectively.

E. *Rationale for ecological effects testing recommendation.* The Committee recommends algal and aquatic invertebrate acute toxicity testing because there were no data and fish acute toxicity testing because available LC_{50} values are >1000 times higher than BTBPE's water solubility. The Committee recommends that BTBPE chronic toxicity testing and benthic organism toxicity testing be triggered (T) based on results of its acute toxicity testing. Bioconcentration testing is not recommended because available BCFs are similar to a predicted BCF of 13 (based on a log K_{ow} of 3.14). Ecological effects testing is recommended because BTBPE has been detected in the environment and there are insufficient data to reasonably determine or predict its ecological effects.

2.2.a.3 *Hexabromocyclododecane—Summary of recommended studies.* It is recommended that HBCD be tested for the following:

1. *Chemical fate.* Vapor pressure; sediment and soil adsorption; anaerobic biodegradation.

2. *Health effects.* Pharmacokinetics; metabolism; subchronic toxicity.

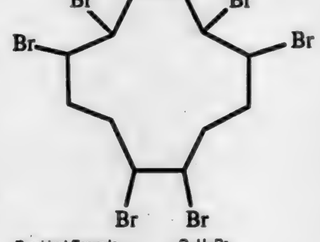
3. *Ecological effects.* Acute toxicity to fish and aquatic invertebrates; chronic toxicity to fish and aquatic invertebrates and toxicity to benthic organism based on results of its acute toxicity testing.

PHYSICAL AND CHEMICAL INFORMATION

CAS No.: 3194–55–60

Acronym	HBCD
Synonyms and Trade Names.	Cyclododecane, 1,2,5,6,9,10-hexaoromo-(8Cl, 9Cl) CD-75P Saytex HBCD

Structural Formula:



Empirical Formula	$C_{12}H_{18}Br_6$
Molecular Weight	641.70
Melting Point (°C)	185-195
Solubility in Water (mg/L).	0.008 (Ref. 5, Great Lakes, 1981b)
Log Octanol/Water Partition Coefficient (log P).	5.81 (Ref. 5, Great Lakes, 1981b)

I. Exposure Information

Production/use/disposal/exposure. HBCD is produced in substantial volumes; actual production volumes are CBI. It is used as a flame retardant in textile coatings, adhesives, latex binders, unsaturated polyesters, expanded polystyrene foams, and other styrene resins (Ref. 5, Great Lakes, 1981b). It is also used as a flame retardant in polyvinyl chloride wire, cable, polystyrene, and polypropylene (Ref. 3, Ethyl, 1988). Environmental release and occupational exposure data are scarce but some releases and exposures may occur based on processing or use.

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II. Chemical Fate Information

A. *Transport.* Water solubility and K_{ow} data suggest that HBCD may partition to sediments and biota.

B. *Persistence.* An HBCD aerobic biodegradation study suggested that HBCD was susceptible to degradation (Ref. 5, Great Lakes, 1981b).

C. *Rationale for chemical fate recommendations.* The Committee recommends sediment and soil adsorption, vapor pressure, and direct and indirect aqueous photolysis testing because there were no data. The Committee recommends anaerobic biodegradation testing because there were no data and because HBCD should be susceptible to reductive debromination. Chemical fate testing is recommended because there is potential for environmental release of HBCD from use and processing and there are insufficient data to reasonably determine or predict environmental persistence.

III. Health Effects Information

A. *Metabolism and pharmacokinetics.* No information was found.

B. *Acute and subchronic (short-term) effects.* The acute toxicity of HBCD when administered to rats by inhalation or oral route was low (Ref. 3, Ethyl Corp., 1988; Ref. 5, Great Lakes, 1981b). When applied to rabbit eyes, HBCD was a mild irritant (Ref. 3, Ethyl Corp., 1988, Ref. 5, Great Lakes, 1981b). HBCD was minimally irritating to rabbit skin (Ref. 5, Great Lakes, 1981b). No subchronic toxicity studies were found in the literature.

C. *Genotoxicity.* HBCD was not mutagenic in the Ames/*Salmonella* assay with and without metabolic activation (Ref. 5, Great Lakes, 1981b).

D. *Oncogenicity.* No information was found.

E. *Reproductive and developmental effects.* No information on reproductive effects was found. HBCD did not induce developmental toxic effects in offspring of rats fed diets containing HBCD at levels of 0.01, 0.1, or 1 percent during days 0 to 20 of gestation (Ref. 10, Murai et al., 1985).

F. *Chronic (long-term) effects.* No information was found.

G. *Observations in humans.* No information was found.

H. *Rationale for health effects recommendations.* The Committee recommends pharmacokinetics, metabolism and subchronic toxicity studies because there were no data. Health effects testing is recommended because there is a potential for exposure to HBCD from use and processing and there are insufficient data to reasonably determine or predict its health effects.

IV. Ecological Effects Information

A. *Acute and subchronic (short-term) effects.* HBCD algal EC_{50} values ranged from 0.01–0.14 mg/L (Ref. 16, Walsh et al., 1987). These data indicate that HBCD is highly toxic to algae, even though these EC_{50} values exceeded HBCD's water solubility.

B. *Chronic (long-term) effects.* No information was found.

C. *Other ecological effects (biological, behavioral, or ecosystem process).* No information was found.

D. *Bioconcentration and food-chain transport.* Veith, et al., Ref. 15, 1979, estimated HBCD's BCF would be 18,100.

E. *Rationale for ecological effects testing recommendation.* Based on the algal toxicity data the Committee recommends acute aquatic invertebrate and extended acute fish toxicity testing for HBCD. The Committee recommends that HBCD chronic toxicity testing and benthic organism toxicity testing be triggered based on results of its acute toxicity testing. Ecological effects testing is recommended because HBCD is highly toxic to algae and there are insufficient data to reasonably determine or predict its ecological effects.

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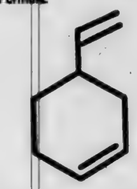
2.3 *Chemicals recommended with intent-to-designate* 2.3.a 4-*Vinylcyclohexene—Summary of recommended studies.* It is recommended that 4-vinylcyclohexene (VCH) be tested for the following:

1. *Chemical Fate.* Aqueous volatilization rate.

2. *Health Effects.* Pharmacokinetics and oncogenicity by inhalation route of exposure.

3. *Ecological Effects.* None.

PHYSICAL AND CHEMICAL INFORMATION

CAS Number: 100-40-3	
Synonyms:	Cyclohexene, 4-ethenyl- (9 CI) Cyclohexene, 4-vinyl- (8CI) Butadiene dimer 4-Ethenyl-1-cyclohexene 1,2,3,4 tetrahydrostyrene 1-vinyl-3-cyclohexene 1-vinylcyclohex-3-ene 1-vinylcyclohexene-3 4-vinyl-1-cyclohexene 4-vinylcyclohexene-1
Acronym:	VCH
Structural Formula:	
Empirical Formula:	C_8H_{12}
Molecular Weight:	108.2
Physical State at 25 °C:	Liquid (Ref. 21, Sax and Lewis, 1987)
Description of Chemical:	Colorless liquid (Ref. 21, Sax and Lewis, 1987)
Melting Point:	-108.9 °C (Ref. 21, Sax and Lewis, 1987)
Boiling Point:	128 °C (Ref. 21, Sax and Lewis, 1987)
Vapor Pressure:	25.8 mmHg @ 38 °C (Ref. 20, Sandmeyer, 1981) 10.2 mmHg @ 25 °C (Estimated; CHEMBASE)
Specific Gravity:	0.8303 @ 20/4oC (Ref. 21, Sax and Lewis, 1987)
Log Octanol/Water Partition Coefficient:	3.38 (Ref. 10, ISHOW, 1988) 3.314 (estimated; CLOGP3)
Water Solubility at 20 °C:	50 ppm (Ref. 25, USEPA, 1985)
Log K_{ow}:	2.70 (calculated; Ref. 12, Lyman, 1982)
Henry's Constant:	0.218 atm m3/mole (estimated from structure; Ref. 7, Hine and Mookerjee, 1975) 0.0295 atm m3/mole (estimated from water solubility and vapor pressure)

Rationale for Recommendations

I. Exposure Information

A. *Production/use/disposal/exposure/release.* VCH is produced in substantial volumes; actual production volumes are CBI.

VCH is used as an intermediate in the manufacture of 4-vinylcyclohexene mono- and diepoxides, which are used to make epoxy resins, polyesters, coatings, and plastics. VCH also is used in the manufacture of flame retardants, insecticides, plasticizers, and antioxidants (Refs. 8 and 9, IARC, 1976, 1986). Additionally, VCH may have the following uses: as a general chemical intermediate and in the manufacture of flame retardants, flavors and fragrances, and copolymers (Ref. 3, Chemcyclopedia, 1989). VCH may be inadvertently produced by the spontaneous dimerization of butadiene as well as during the manufacture of polymers made from butadiene (e.g., styrene-butadiene rubbers (SBR) and latexes, acrylonitrile-butadiene-styrene (ABS) polymers, and polybutadienes) (Ref. 9, IARC, 1986). The Committee has reviewed the CBI production and exposure information for VCH that was submitted in response to the March 31, 1988 Preliminary Assessment Information Rule (53 FR 10387).

B. *Evidence for exposure—Human Exposure.* Inhalation is the most probable route of worker exposure due to the high vapor pressure of VCH. At locations where VCH is drummed, the air levels typically may be 11 ppm (Ref. 13, Matthiessen, 1986). Dermal exposures may be as high as 4,000 mg/day if protective clothing is not worn (Ref. 26, USEPA, 1985). About 20–25 percent of the chemical produced is isolated, stored in tanks and used at the site of manufacture (Ref. 26, USEPA, 1985).

The air levels of VCH in three manufacturing plants in Italy were: 30–210 $\mu g/m^3$ in a shoe factory (highest levels in the vulcanization area), up to 3 $\mu g/^3$ in a tire retreading factory (highest levels in the extrusion areas), and up to 10 $\mu g/^3$ in an electrical cable insulation plant (Ref. 4, Cocheo, et al., 1983). All three plants used a styrene-butadiene copolymer as the starting material, although natural rubber and cis-polybutadiene polymers also may have emitted some VCH during processing. VCH concentrations of 240–430 $\mu g/^3$ were reported in a room where tires were cured (Ref. 19, Rappaport and Fraser, 1977). The probable source was a cis-polybutadiene elastomer. VCH was found in measurable quantities in the air of two SBR processing plants in Cincinnati, OH (Ref. 15, NIOSH, 1983).

No information was available on consumer exposure to VCH; however, VCH was found at concentrations ranging from 14–210 ppm in ABS plastics used in products such as ladles and food trays. No migration of VCH from these plastics into food simulants (including water, 4 percent acetic acid, 20 percent ethanol) was observed, while some migration into *n*-heptane (a fat simulant) was reported (Ref. 25, Tan and Okada, 1981). The Food and Drug Administration (FDA) refers to VCH as an unregulated additive; a search of FDA information did not reveal any toxicity information that the Committee had not previously retrieved from other sources.

Environmental exposure. In a comprehensive survey sponsored by the Effluent Guidelines Division of the U.S. EPA, VCH was detected at waste water facilities of the following categories (occurrence frequency; median, and maximum concentration in $\mu g/L$): organics and plastics (2; 227, 446.7), rubber processing (6; 78.8, 681.7), publicly owned treatment works (7; 4.9, 8.5).

II. Chemical Fate Information

A. *Transport.* No data were found. The estimated Henry's Law constant suggest that VCH will volatilize from water.

B. *Persistence.* No data were found. In the atmosphere, VCH is likely to react with photochemically-produced hydroxyl radicals and ozone. The estimated half-lives were 4 hr and 1.3 hr, respectively, assuming a hydroxyl radical concentration of 5×10^{-5} per cm^3 and an ozone concentration of 7×10^{11} molecules/cm^3 (Ref. 1, Atkinson, 1987).

C. *Rationale for chemical fate recommendations.* The Committee recommends aqueous volatilization rate testing, because there were no data. Chemical fate testing is recommended because VCH has been detected in the environment and there are insufficient data to reasonably determine or predict its environmental persistence.

III. Health Effects Information

A. *Metabolism and pharmacokinetics.* Metabolism of VCH studied *in vitro* indicated that it was oxidized at either of its two double bonds to produce the corresponding diol compounds via intermediate epoxides (Ref. 6, Gervasi et al., 1981; Ref. 29, Watabe et al., 1981).

Under NTP sponsorship, VCH has been tested for chemical disposition in rats (Ref. 22, Sipes et al., 1989).

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No inhalation pharmacokinetics data were found.

B. *Acute and subchronic effects.* Acute effects have been reported by Striegel and Carpenter (Ref. 24, 1961), Bykov (Ref. 2,1968) and Smyth et al. (Ref. 23, 1969). Prechronic (14-day) and subchronic (13-week) studies on VCH were conducted in rats and mice by NTP (Ref. 5, Collins and Manus, 1987). In the 14-day study, NTP reported that:

*** all the mice that received 2,500 or 5,000 mg/kg and 3/5 males that received 1,250 mg/kg 4-vinylcyclohexene died before the end of the studies. Tremors and inactivity were observed in the animals that died. Both vehicle control groups and all dosed groups, except the 300 mg/kg group of females, lost weight (4.0 percent-11.5 percent) during the studies. No compound-related gross changes were noted at necropsy. Histologic examination was limited to the stomach, as it was previously identified as the target organ; no microscopic lesions were detected in this organ.

In the 13-week study, NTP reported that:

*** 9 of 10 male and 5/10 female mice that received 1,200 mg/kg and 2/10 female mice that received 300 mg/kg 4-vinylcyclohexene died before the end of the studies. All other deaths and one of the deaths in the female 1,200 mg/ kg group were considered to be due to gavage error based on tissue injury in the trachea and/or suppurative inflammation in the mediastinum. The sole surviving male receiving 1,200 mg/kg weighed 6 percent less than the vehicle controls, and females receiving 600 mg/kg weighed 5 percent less than the vehicle controls. The final body weights of the other dosed groups were not markedly different from those of the vehicle controls.

Mild, acute inflammation of the stomach was seen in the 1,200 mg/kg groups in three males that died before the end of the study and in one female that lived to the end of the study. In addition, histologic reexamination of the ovaries of the high dose female mice revealed that in all 10 animals, whether they died before or at the end of the study, there was a reduction in the number of primary follicles and mature graafian follicles (the ovaries of female mice receiving lower doses were not similarly examined). No other compound-related clinical signs or histopathologic effects were observed in mice that died or were killed (moribund) during the studies or in mice killed at the end of the studies.

Administration of VCH by inhalation (1 g/m^3 for 6 hours/day, over a period of 4 months), inhibited body weight increase and caused leucocytosis, leucopenia and impairment of hemodynamics in rats and mice (Ref. 2, Bykov, 1968).

C. *Genotoxicity.* VCH was non-mutagenic in *Salmonella typhimurium* strains TA98, TA100, TA1535, and TA1537 with or without metabolic activation (Ref. 30, Zeiger et al., 1987). VCH gave a negative response in the cytogenetic (chromosomal aberration/ sister chromatid exchange) assays and a positive response in the mouse lymphoma assay (Ref. 17, NTP, 1988).

D. *Oncogenicity.* NTP studied the carcinogenic effect of VCH in rats and mice and found clear evidence of carcinogenicity in female mice, based on a significant increase in the incidence of uncommon ovarian neoplasms. The results were inconclusive in male mice and both sexes of rats because of extensive early mortality (Ref. 17, NTP, 1988). Van Duuren et al. (Ref. 27, 1963) observed carcinogenic effects of VCH in a skin painting study in mice using a commercial grade sample of VCH that was purified by removal of auto-oxidation products with ferrous sulfate, followed by distillation in a nitrogen atmosphere. The carcinogenic effect of VCH in a repeat study could not be confirmed (Ref. 27, Van Duuren, 1965).

E. *Reproductive and developmental effects.* As mentioned in the subchronic section above, VCH caused reduction in the number of primary follicles and mature graafian follicles in the ovary. VCH has been selected for a continuous breeding study by the NTP (Ref. 17, NTP, 1989).

F. *Chronic (long-term) effects.* No information was found.

G. *Observations in humans.* Workers exposed to VCH (unspecified levels) at a manufacturing site reportedly suffered from keratitis, rhinitis, headache, hypotonia, leucopenia, neutrophilia, lymphocytosis, and unspecified impairment of carbohydrate metabolism (Ref. 2, Bykov, 1968).

A clinical and immunological evaluation was conducted for 31 workers who complained of eye, chest, skin, or nose/throat symptoms at a chemical plant (Ref. 18, Patterson et al., 1988). The presence of symptoms correlated with the degree of exposure to VCH, but the presence or absence of antibodies did not correlate with the presence or absence of the symptoms.

H. *Rationale for health effects recommendation.* The Committee recommends inhalation pharmacokinetic and oncogenicity testing because inhalation is likely to be the major route of human exposure. Health effects testing is recommended because VCH has been detected in the environment and there are insufficient data to reasonably determine or predict its health effects.

IV. Ecological Effects Information

A. *Acute and subchronic (short-term) effects.* VCH's 48-hour EC_{50} for *Daphnia magna* was greater than 100 mg/l. (EPA document #FYI-OTS-0785-0397). This EC_{50} was based on a nominal VCH concentration. The 48-hour VCH concentration (and the 48-hour EC_{50} value) is likely to be substantially less than 100 mg/L, because of VCH's propensity to volatilize.

B. *Chronic (long-term) effects.* No information was found.

C. *Other ecological effects (biological, behavioral, or ecosystem process).* When sewage microorganisms were incubated in the presence of VCH for 16 hours at 23°C, an EC_{50} >200 mg/L was estimated based on turbidity (FYI-OTS-0785-0397). VCH had an LC_{50} of 34.4×10^{-4} M (about 37 mg/L) to the bean plant, *Phaseolus multiflorus* (Ref. 11, Ivens, 1952).

D. *Bioconcentration and food-chain transport.* Based on an estimated log K_{ow} of 3.3, an estimated BCF would be about 250.

E. *Rationale for ecological effects testing recommendation.* Based on results of the disposition study of VCH in mice, the Committee is concerned that fish (if exposed to VCH) might also metabolize VCH to the diepoxide and subsequently develop cancer. The Committee recognizes that while there are no readily-available test guidelines to conduct pharmacokinetic fish studies, that the EPA's Duluth, MN Environmental Research Laboratory has an excellent pharmacokinetics research program. The Committee is not recommending ecological effects testing at this time, but does recommend that if volatilization rate and readily-available monitoring data substantiate the presence of VCH in surface waters, that some fish pharmacokinetic testing be considered.

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2.4 *Chemicals recommended without being designated for response within 12 months*—2.4.a *Brominated flame retardants* (BFRs continued)—*Summary of recommended studies.* Seven BFRs that are produced in substantial quantities, but for which there are few exposure, persistence and effects data, are recommended for testing. With the exceptions noted below, it is recommended that 2,4,6-tribromophenol (TBrP) (CAS No. 118–79–6), 3,4,5,6-tetrabromophthalic anhydride(TBPA) (CAS No. 632–79–1), dibromoneopentyl glycol (DBNG) (CAS No. 3296–90–0), ethylene bis(tetrabromophthalimide) (EBTBPA) (CAS No. 32588–76–4), ethylene bis(5,6-dibromonorbornane 2,3-dicarboximide)(EDBNDC) (CAS No. 41291–34–3), tribrominated polystyrene (TBPS) (CAS No. 57137–10–7) and ethylene bis(pentabromophenoxide) (EBPBP) (CAS No. 61262–53–1) be tested for:

1. *Chemical fate.* Chemical properties and persistence data.

2. *Health effects.* Chronic toxicity.

3. *Ecological effects.* Chronic toxicity.

At this time, based on available TSCA 8(d) submissions, the Committee is not recommending water solubility testing for TBrP and TBPA and octanol-water partition coefficient testing for TBrP, TBPA and DBNG (TSCA 8(d) documents #88–870001215, 870002279, 878216116, 878216117). At this time, the Committee is also not recommending chronic toxicity studies for DBNG, because NTP is conducting carcinogenesis studies.

Physical and Chemical Information

Except for information on water solubility (mg/L) of TBrP (969), TBPA (241) and DBNG (21000) at 25 °C and octanol-water partition coefficients of TBrP (2,198), TBPA (96) and DBNG (12.8), the Committee has no information on physical and chemical properties of the other BFRs at ambient temperatures.

Rationale for Recommendation

I. Exposure Information

A. *Production/use/disposal/ exposure/release.* The seven BFRs listed above are all produced in substantial volumes; actual production volumes are CBI.

Three of the BFRs (TBrP, TBPA and DBNG) are reactive flame retardants. In principle, reactive flame retardants should combine with the basic polymer or become part of the basic polymer (as in flame resistant copolymers). However, polymerization processes and other chemical reactions are often not complete and residues of fire-resistant monomers or reactive flame retardants may be entrained in the polymer. Since reactive flame retardants are designed to be retained in the polymer by chemical bonds rather than slow diffusion and slow vaporization, the unreacted residues may be rather mobile. While the Committee is concerned about potential exposures to unreacted residues, it does recognize that there are data for DBNG that suggest that after 2 days of aqueous extraction, a roofing/siding panel resin

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released only 0.003 percent of DBNG (#86–870001215). The remaining four BFRs are used to impart flame retardant qualities to polymers, i.e., they are additive flame retardants. The Committee is concerned about potential exposures during manufacturing, processing, use or disposal.

B. *Evidence for exposure—Human exposure.* For TBPA and EBTBPA, the EPA received a FYI submission regarding complaints from employees concerning respiratory problems possibly related to processing (FYI–OTS–0787–0559).

Environmental exposure. TBrP has been detected in the environment. However, the Committee is uncertain of the source of TBrP that is environmentally detected, e.g., from chlorinating waste water, release from polymers, etc.

II. Chemical Fate Information

Few data were found, except those discussed above and the data that suggest DBNG is chemically not microbiologically degraded (#86–870001215). The Committee recommends testing to generate chemical properties and persistence data at ambient temperatures, because there were no data. Chemical fate testing is recommended for the seven BFRs because there is potential for environmental release from manufacturing, processing, use or disposal and there are insufficient data to reasonably determine or predict environmental persistence.

III. Health Effects Information

A number of short-term health effects tests have been conducted for TBrP and DBNG. The NTP is conducting a carcinogenesis study of DBNG (Ref. 1, NTP, 1989); long-term toxicity tests are recommended for the remaining six BFRs, because there were no data. Health effects testing is recommended for six BFRs because there is potential for exposure during manufacturing, processing, use or disposal and because there are insufficient data to reasonably determine or predict health effects.

IV. Ecological Effects Information

Minimal information was available. A TSCA 8(d) submission suggested a DBNG LC_{50} of 97 mg/L for fathead minnows (#86–870002279). Indexing information for another TSCA 8(d) submission indicated that it contained acute toxicity data for a mixture containing TBrP. Closer inspection of this submission revealed that these data were developed using a mother liquor containing only 2 percent tribromophenol (#86–7800184). Long-term ecological effects testing is recommended because there were no data. Ecological effects testing is recommended for the seven BFRs because there is potential for environmental release from manufacturing, processing, use or disposal and there are insufficient data to reasonably determine or predict ecological effects.

Reference

NTP. National Toxicology Program. "NTP CHEMTRACK. [data base]." Research Triangle Park, NC: National Toxicology Program/National Institute of Environmental Health Sciences. U.S. Department of Health and Human Services. Results report as of 10–30–89 (1989).

[FR Doc. 89–28728 Filed 12–11–89; 8:45 am]
BILLING CODE: 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 712 and 716

[OPTS–82034; FRL–3666–9]

Preliminary Assessment Information and Health and Safety

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Interagency Testing Committee (ITC) in its Twenty-fifth Report to EPA recommended that EPA give priority consideration to thirteen chemical substances in proposing chemical test rules. To assist EPA in its determination of which, if any, tests are needed for these chemical substances, EPA is adding twelve of the chemical substances to two model information-gathering rules: the Toxic Substances Control Act (TSCA) section 8(a) Preliminary Assessment Information Rule (PAIR) and the TSCA section 8(d) Health and Safety Data Reporting Rule. These model rules will require manufacturers, importers, and processors of these chemical substances to report production, use, exposure-related, and unpublished health and safety data to EPA. One chemical substance, (CAS. No. 3296–90–0), was added to the 8(d) Health and Safety Data Reporting Rule on May 1, 1987 (52 FR 16022), and manufacturers, importers, and processors are required to submit lists and copies of studies under that rule. Another substance (CAS No. 100–40–3), was added to the PAIR on March 31, 1988 (53 FR 10387). It is being revised because updated reporting is needed.

DATE: This rule shall become effective on January 11, 1990.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Environmental Assistance Division (TS–799), Office of Toxic Substances, Environmental Protection Agency, 401 M St. SW., Rm. E–543, Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: This rule adds thirteen chemical substances to the PAIR and twelve to the section 8(d) Health and Safety Data Reporting Rule. Manufacturers, processors, and importers of these chemicals will be required to report unpublished health and safety data and/or end use, exposure, and volume data to the Agency.

I. Background

Section 4(e) of TSCA established the ITC and authorized it to recommend to EPA chemical substances and mixtures to be given priority consideration in proposing chemical test rules. For some of these chemical substances, the ITC may designate that EPA must respond to its recommendations within 12 months. In this time, EPA must either initiate a rulemaking to test the chemical substance or publish in the **Federal Register** its reasons for not doing so.

Elsewhere in today's issue of the **Federal Register**, EPA is announcing the receipt of the Twenty-fifth Report of the ITC, which was transmitted to EPA on November 1, 1989. The Twenty-fifth Report revises and updates the Committee's priority list of chemicals and adds thirteen chemical substances to the section 4(e) priority list. This rule adds thirteen chemical substances to the PAIR and twelve to the section 8(d) Health and Safety Data Reporting Rule which will require manufacturers, importers, and processors to report unpublished health and safety data and/or volume, end use, and exposure data to EPA.

To assist EPA in responding to the ITC recommendations, EPA has developed two model information-gathering rules (PAIR and the section 8(d) Health and Safety Data Reporting Rule) which provide for the automatic addition of ITC priority list chemical substances. Whenever EPA announces the receipt of an ITC report, EPA may, at the same time without further notice and comment, amend the two model information-gathering rules by adding the recommended chemical substances. The amendment adding these substances to the PAIR and the Health and Safety Data Reporting Rule becomes effective 30 days after publication.

EPA issued PAIR under section 8(a) of TSCA (15 U.S.C. 2607(a)), and it is codified at 40 CFR part 712. This model section 8(a) rule established standard reporting requirements for manufacturers and importers of the chemical substances listed in the rule. These manufacturers and importers are required to submit a one-time report on general volume, end use, and exposure-related information using the Preliminary Assessment Information Manufacturer's Report (EPA Form 7710–35). EPA uses this model section 8(a) rule to gather current information on chemical substances of concern quickly.

EPA issued the model Health and Safety Data Reporting Rule under section 8(d) of TSCA (15 U.S.C. 2607(d)), and it is codified at 40 CFR part 716. The section 8(d) model rule requires past, current, and prospective manufacturers, importers, and processors of listed chemical substances and mixtures to submit, to EPA, copies and lists of unpublished health and safety studies on the listed chemical substances that they manufacture, import, or process. These studies provide EPA with useful information and have provided significant support for EPA's decisionmaking under TSCA sections 4, 5, 6, 8, and 9.

II. Chemicals to be Added

The ITC priority list chemical substances for which reporting is required under 40 CFR parts 712 and 716 are listed by ITC designation in ascending Chemical Abstract Service (CAS) Registry Number order as follows:

A. Designated for Response within 12 Months

CAS No.	Name
1163–19–5	Decabromodiphenyl ether
3194–55–6	Hexabromocyclododecane
32534–81–9	Pentabromodiphenyl ether
32536–52–0	Octabromodiphenyl ether
37853–59–1	1,2-bis(2,4,6-Tribromophenoxy)ethane

B. Recommended with Intent-to-Designate

CAS No.	Name
100–40–3	4-Vinylcyclohexene

C. Recommended without Being Designated for Response within 12 Months

CAS No.	Name
118–79–6	2,4,6-Tribromophenol
632–79–1	Tetrabromophthalic anhydride
32588–76–4	Ethylene bis-(tetrabromophthalimide)
41291–34–3	Ethylene (5,6-dibromonorbornane-2,3-dicarboximide)
57137–10–7	Tribrominated polystyrene
61262–53–1	Ethylene bis(pentabromophenoxide)

III. Reporting Requirements

A. Preliminary Assessment Information Rule

All persons who manufactured or imported the chemical substances named in this rule during their latest complete corporate fiscal year must submit a Preliminary Assessment Information Manufacturer's Report (EPA Form No. 7710–35) for each manufacturing or importing site at which they manufactured or imported a named chemical substance. A separate form must be completed for each chemical

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substance and submitted to the Agency no later than March 12, 1990. Persons who have previously and voluntarily submitted a Manufacturer's Report to the ITC or EPA should read § 712.30(a)(3). This section allows these persons to submit a copy of the original Report to EPA or to notify EPA by letter of their desire to have this submission accepted in lieu of a current data submission.

Complete details of the reporting requirements, including exemptions and a facsimile of the reporting form, are fully described in 40 CFR part 712. Copies of the form are available from the TSCA Environmental Assistance Division at the address listed under **FOR FURTHER INFORMATION CONTACT.**

B. Health and Safety Data Reporting Rule

Listed below are the general reporting requirements of the section 8(d) model rule.

1. Persons who, in the 10 years preceding the date a chemical substance is listed, either have proposed to manufacture, import, or process, or have manufactured, imported, or processed, the listed chemical substance must submit to EPA: A copy of each health and safety study which is in their possession at the time the chemical substance is listed.

2. Persons who, at the time the chemical substance is listed, propose to manufacture, import, or process; or are manufacturing, importing, or processing the listed chemical substance must submit to EPA:

a. A copy of each health and safety study which is in their possession at the time the chemical substance is listed.

b. A list of health and safety studies known to them but not in their possession at the time the chemical substance is listed.

c. A list of health and safety studies that are ongoing at the time the chemical substance is listed and are being conducted by or for them.

d. A list of each health and safety study that is initiated after the date the chemical substance is listed and is conducted by or for them.

e. A copy of each health and safety study that was previously listed as ongoing or subsequently initiated and is now complete--regardless of completion date.

3. Persons who, after the time the chemical substance is listed, propose to manufacture, import, or process the listed chemical substance must submit to EPA:

a. A copy of each health and safety study which is in their possession at the time they propose to manufacture, import, or process the listed chemical substance.

b. A list of health and safety studies known to them but not in their possession at the time they propose to manufacture, import, or process the listed chemical substance.

c. A list of health and safety studies that are ongoing at the time they propose to manufacture, import, or process the listed chemical substance, and are being conducted by or for them.

d. A list of each health and safety study that is initiated after the time they propose to manufacture, import, or process the listed chemical substance, and is conducted by or for them.

e. A copy of each health and safety study that was previously listed as ongoing or subsequently initiated and is now complete--regardless of the completion date.

Detailed guidance for reporting unpublished health and safety data is provided in the **Federal Register** of September 15, 1986 (51 FR 32720). Also found there are the reporting exemptions.

C. Submission of Pair Reports and 8(d) Studies

PAIR reports and section 8(d) health and safety studies must be sent to:

TSCA Document Processing Center (TS-790),
Office of Toxic Substances,
Environmental Protection Agency,
401 M St., SW.,
Washington, DC 20460,
ATTN: (insert either PAIR or 8(d) Reporting).

D. Removal of Chemicals from the Rules

Any person who believes that section 8(a) or (d) reporting required by this rule is unwarranted, should promptly submit to the Agency in detail the reasons for that belief. EPA may then remove the chemical substance from this rule. When withdrawing a chemical substance from the rule, EFA will issue a rule amendment for publication in the **Federal Register**.

IV. Release of Aggregate Data

The Agency will follow procedures for the release of aggregate statistics as prescribed in a rule related notice published in the **Federal Register** of June 13, 1983 (48 FR 27041). Included in the notice are procedures for requesting exemptions from the release of aggregate data. Exemption requests concerning the release of aggregate data on any chemical substance must be received by EPA no later than March 12, 1990.

V. Economic Analysis

A. Preliminary Assessment Information Rule

EPA estimates the PAIR reporting cost of this rule is $21,781. To calculate this figure EPA used the TSCA Inventory to generate a list of manufacturers and importers of these chemical substances. Since none of these companies qualify as a small business as defined in 40 CFR 712.25(c), EPA expects 5 firms to report a total of 13 reports.

Reporting Cost (dollars):	
(a) 20 reports expected at $843/report	$16,680
(b) 7 familiarization cases at $703/case	4,921
Total	21,781
Average cost per site	3,112
Average cost per firm	3,112
Reporting burden (hours):	
(a) familiarization: 18 hours per site × 7 sites	126
(b) reporting: 16 hours per report × 20 reports	320
Total (hours)	446
EPA cost (dollars):	
Processing cost=20 reports × $95/reports	1,900

B. Health and Safety Data Reporting Rule

EPA estimates the total reporting costs for establishing section 8(d) reporting requirements for these chemical substances are $37,846. This cost estimate is relatively high, because the Agency is uncertain about the likely number of respondents to the rule. Although EPA has used the best available data to make its economic projections, much of the data are not current. Therefore, EPA intends to overestimate rather than underestimate the reporting burden.

Nevertheless, the cost of this final rule is low in comparison with its potential benefits. Health and safety studies concerning these chemical substances would improve EPA's ability to identify potential public health and environmental problems with regard to these chemicals. Therefore, the Agency would be better able to determine whether further regulatory action would be necessary. The estimated reporting costs are broken down as follows:

Initial corporate review	$2,016
Site identification	5,616
File searches at site	11,583
Title listing	585
Photocopying	1,942
Managerial review	11,232
Reporting on newly-initiated studies	256
Submissions after initial reporting period	4,616
Total	37,846

Reporting Burden (Hours)

(a) initial review 2 hours per firm × 21 firms	42 hours
(b) reporting 25.4 hours per firm × 39 firms	989 hours
Total Reporting Burden Hours	27.4 hours
Subtotal (section 8(d) portion)	$1,015
Total (PAIR and section 8(d) reporting costs)	$22,796

VI. Rulemaking Record

1. This final rule.
2. The economic analysis for this rule.
3. The Twenty-fifth Report of the ITC.

VII. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This rule is not major because it will not result in an effect on the economy of $100 million or more, an increase in costs or prices, or any of the adverse effects described in the Executive Order.

This amendment was not submitted to the Office of Management and Budget (OMB) for review, because the automatic listing of designated substances is provided for in 40 CFR 712.30(c) and 716.18(b)—final rules which have been previously reviewed by OMB under the terms of the Executive Order.

B. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by OMB under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control numbers 2070-0054 for PAIR reporting and 2070-0004 for TSCA section 8(d) reporting.

Public reporting burden for this collection of information is estimated to average 27.4 hours for 8(d) and 22 hours for PAIR per response; including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

List of Subjects in 40 CFR Parts 712 and 716

Chemicals, Environmental protection, Hazardous substances, Health and safety data, Recordkeeping and reporting requirements.

Dated: December 1, 1989.

Charles M. Auer,

Acting Director, Existing Chemical Assessment Division, Office of Toxic Substances.

Therefore, 40 CFR chapter I is amended as follows:

PART 712—[AMENDED]

1. In part 712—

a. The authority citation for part 712 continues to read as follows:

Authority: 15 U.S.C. 2607(a).

b. Section 712.30(w) is amended by adding in numerical sequence by CAS number the following chemicals to read as follows:

§ 712.30 Chemical lists and reporting periods.

* * * * *

(w) * * *

CAS Number	Substance	Effective date	Reporting date
* * *	* * *		
100-40-3	4-Vinylcyclohexene	1/11/90	3/12/90
* * *	* * *		
118-79-6	2,4,6-tribromophenol	1/11/90	3/12/90
* * *	* * *		
632-79-1	Tetrabromophthalic anhydride	1/11/90	3/12/90
* * *	* * *		
1163-19-5	Decabromodiphenyl ether	1/11/90	3/12/90
* * *	* * *		
3194-55-6	Hexabromocyclododecane	1/11/90	3/12/90
3296-90-0	Dibromoneopentyl glycol	1/11/90	3/12/90
* * *	* * *		
32534-81-9	Pentabromodiphenyl ether	1/11/90	3/12/90
32536-52-0	Octabromodiphenyl ether	1/11/90	3/12/90
32588-76-4	Ethylene Bis-(tetrabromophthalimide)	1/11/90	3/12/90
* * *	* * *		
37853-59-1	1,2-Bis(tribromophenoxy) ethane	1/11/90	3/12/90
41291-34-3	Ethylene(5,6-dibromonorbornane-2,3-dicarboximide)	1/11/90	3/12/90
57137-10-7	Tribrominated polystyrene	1/11/90	3/12/90
61262-53-1	Ethylene bis(pentabromophenoxide)	1/11/90	3/12/90
* * *	* * *		

PART 716—[AMENDED]

2. In part 716—

a. The authority citation for part 716 continues to read as follows:

Authority: 15 U.S.C. 2607(d).

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b. Part 716 is amended in § 716.120(a) by revising the entire entry for CAS No. 100-40-3, and adding 11 new chemical substances in numerical sequence by CAS Number to read as follows:

§ 716.120 Substances and listed mixtures to which this subpart applies.

(a) * * *

CAS Number	Substance	Special Exemptions	Effective Date	Sunset Date
* * *	* * *	*		
100-40-3	4-Vinylcyclohexene		1/11/90	1/11/00
118-79-6	2,4,6-Tribromophenol		1/11/90	1/11/00
632-79-1	Tetrabromophthalic anhydride		1/11/90	1/11/00
1163-19-5	Decabromodiphenyl ether		1/11/90	1/11/00
3194-55-6	Hexabromocyclododecane		1/11/90	1/11/00
32534-81-9	Pentabromodiphenyl ether		1/11/90	1/11/00
32536-52-0	Octabromodiphenyl ether		1/11/90	1/11/00
32588-76-4	Ethylene Bis-(tetrabromophthalimide)		1/11/90	1/11/00
37853-59-1	1,2-Bis(tribromophenoxy) ethane		1/11/90	1/11/00
41291-34-3	Ethylene(5,6-dibromonorbornane-2,3-dicarboximide)		1/11/90	1/11/00
57137-10-7	Tribrominated polystyrene		1/11/90	1/11/00
61262-53-1	Ethylene bis(pentabromophenoxide)		1/11/90	1/11/00

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federal register

Tuesday
December 12, 1989

Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 310 and 333
Topical Antifungal Drug Products for Over-the-Counter Human Use; Tentative Final Monograph; Notice of Proposed Rulemaking

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 310 and 333

[Docket No. 80N-0476]

RIN 0905-AA06

Topical Antifungal Drug Products for Over-the-Counter Human Use; Tentative Final Monograph

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is issuing a notice of proposed rulemaking in the form of a tentative final monograph that would establish conditions under which over-the-counter (OTC) topical antifungal drug products are generally recognized as safe and effective and not misbranded. FDA is issuing this notice of proposed rulemaking after considering the report and recommendations of the Advisory Review Panel on OTC Antimicrobial II Drug Products and public comments on an advance notice of proposed rulemaking that was based on those recommendations. This proposal is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments, objections, or requests for oral hearing on the proposed regulation before the Commissioner of Food and Drugs by March 12, 1990. Because of the length and complexity of this proposed regulation, the agency is allowing a period of 120 days for comments and objections instead of the normal 60 days. New data by December 12, 1990. Comments on the new data by February 12, 1991. Written comments on the agency's economic impact determination by March 12, 1990.

ADDRESSES: Written comments, objections, new data, or requests for oral hearing to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 23, 1982 (47 FR 12480), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC topical antifungal drug products, together with the recommendations of the Advisory Review Panel on OTC Antimicrobial II Drug Products, which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class. Interested persons were invited to submit comments by June 21, 1982. Reply comments in response to comments filed in the initial comment period could be submitted by July 21, 1982.

In a notice published in the **Federal Register** of September 7,1982 (47 FR 39464), the agency advised that it had reopened the administrative record for OTC topical antifungal drug products as it pertains to products used for the treatment of diaper rash to allow consideration of the statement of the Advisory Review Panel on OTC Miscellaneous External Drug Products on these products. Interested persons were invited to submit comments until December 6, 1982. Reply comments in response to comments filed in the initial comment period could be submitted until January 5, 1983. In response to numerous requests, the agency issued a notice in the **Federal Register** of December 28, 1982 (47 FR 57738) granting an extension of the deadline for comments until February 4, 1983, and for reply comments until March 7, 1983.

In accordance with § 330.10(a)(10), the data and information considered by the Panel were put on public display in the Dockets Management Branch (address above), after deletion of a small amount of trade secret information. Data and information received after the administrative record was reopened have also been put on display in the Dockets Management Branch.

In response to the advance notice of proposed rulemaking, nine drug manufacturers, one drug manufacturers' association, two medical facilities, and three consumers submitted comments. In response to the reopening of the administrative record to include OTC diaper rash drug products, four drug manufacturers, one manufacturer of fiber products, and one drug manufacturers' association submitted comments. Copies of the comments received are on public display in the Dockets Management Branch.

The advance notice of proposed rulemaking, which was published in the **Federal Register** of March 23, 1982 (47 FR 12480), was designated as a "proposed monograph" in order to conform to terminology used in the OTC drug review regulations (21 CFR 330.10). Similarly, the present document is designated in the OTC drug review regulations as a "tentative final monograph." Its legal status, however, is that of a proposed rule. In this tentative final monograph (proposed rule) to add new subpart C to part 333 (proposed in the **Federal Register** of July 9, 1982; 47 FR 29986), FDA states for the first time its position on the establishment of a monograph for OTC topical antifungal drug products. In this tentative final monograph the agency is also proposing to amend part 310. Final agency action on this matter will occur with the publication at a future date of a final monograph, which will be a final rule establishing a monograph for OTC topical antifungal drug products.

This proposal constitutes FDA's tentative adoption of the Panel's conclusions and recommendations on OTC topical antifungal drug products as modified on the basis of the comments received and the agency's independent evaluation of the Panel's report. Modifications have been made for clarity and regulatory accuracy and to reflect new information. Such new information has been placed on file in the Dockets Management Branch (address above). These modifications are reflected in the following summary of the comments and FDA's responses to them.

The OTC drug procedural regulations (21 CFR 330.10) now provide that any testing necessary to resolve the safety or effectiveness issues that formerly resulted in a Category III classification, and submission to FDA of the results of that testing or any other data, must be done during the OTC drug rulemaking process before the establishment of a final monograph. Accordingly, FDA will no longer use the terms "Category I" (generally recognized as safe and effective and not misbranded), "Category II" (not generally recognized as safe and effective or misbranded), and "Category III" (available data are insufficient to classify as safe and effective, and further testing is required) at the final monograph stage, but will use instead the terms "monograph conditions" (old Category I) and "nonmonograph conditions" (old Categories II and III). This document retains the concepts of Categories I, II, and III at the tentative final monograph stage.

The agency advises that the conditions under which the drug products that are subject to this monograph would be generally recognized as safe and effective and not misbranded (monograph conditions) will be effective 12 months after the date of publication of the final monograph in the **Federal Register**. On or after that date, no OTC drug product that is subject to the monograph and that contains a nonmonograph condition, i.e., a condition that would cause the drug to be not generally recognized as safe and effective or to be misbranded, may be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved application. Further, any OTC drug product subject to this monograph that is repackaged or relabeled after the effective date of the monograph must be in compliance with the monograph regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily with the monograph at the earliest possible date.

In the advance notice of proposed rulemaking for OTC topical antifungal drug products (47 FR 12480), the agency suggested that the conditions included in the monograph (Category I) be effective 6 months after the date of publication of the final monograph in the **Federal Register**. Experience has shown that relabeling of products covered by the monograph is necessary in order for manufacturers to comply with the monograph. New labels containing the monograph labeling have to be written, ordered, received, and incorporated into the manufacturing process. The agency has determined that it is impractical to expect new labeling to be in effect 6 months after the date of publication of the final monograph. Experience has shown also that if the deadline for relabeling is too short, the agency is burdened with extension requests and related paperwork.

In addition, some products may have to be reformulated to comply with the monograph. Reformulation often involves the need to do stability testing on the new product. An accelerated aging process may be used to test a new formulation; however, if the stability testing is not successful, and if further reformulation is required, there could be a further delay in having a new product available for manufacture.

The agency wishes to establish a reasonable period of time for relabeling and reformulation in order to avoid an unnecessary disruption of the marketplace that could not only result in economic loss, but also interfere with consumers' access to safe and effective drug products. Therefore, the agency is proposing that the final monograph be effective 12 months after the date of its publication in the **Federal Register**. The agency believes that within 12 months after the date of publication most manufacturers can order new labeling and reformulate their products and have them in compliance in the marketplace.

If the agency determines that any labeling for a condition included in the final monograph should be implemented sooner than the 12-month effective date, a shorter deadline may be established. Similarly, if a safety problem is identified for a particular nonmonograph condition, a shorter deadline may be set for removal of that condition from OTC drug products.

All "OTC Volumes" cited throughout this document refer to the submissions made by interested persons pursuant to the call-for data notice published in the **Federal Register** of December 16, 1972 (37 FR 26842) or to additional information that has come to the agency's attention since publication of the advance notice of proposed rulemaking. The volumes are on public display in the Dockets Management Branch (address above).

I. The Agency's Tentative Conclusions on the Comments and Reply Comments

A. General Comments

1. Two comments contended that OTC drug monographs are interpretive, as opposed to substantive, regulations. The comments referred to statements on this issue submitted earlier to other OTC drug rulemaking proceedings.

The agency addressed this issue in paragraphs 85 through 91 of the preamble to the procedures for classification of OTC drug products, published in the **Federal Register** of May 11, 1972 (37 FR 9464) and in paragraph 3 of the preamble to the tentative final monograph for antacid drug products, published in the **Federal Register** of November 12, 1973 (38 FR 31260). FDA reaffirms the conclusions stated there. Court decisions have confirmed the agency's authority to issue substantive regulations by rulemaking. (See, e.g., *National Nutritional Foods Association* v. *Weinberger*, 512 F.2d 688, 696-98 (2d Cir. 1975) and *National Association of Pharmaceutical Manufacturers* v. *FDA*, 487 F. Supp. 412 (S.D.N.Y. 1980), *aff'd*, 637 F.2d 887 (2d Cir. 1981).)

2. One comment requested that a currently marketed OTC spray-on antifungal foot powder be removed from the market immediately because, despite the warning on the container label not to breathe the spray, use of this product results in unavoidable inhalation. The comment maintained that the dispenser is defective in design because the spray cannot be localized to the toe area but envelops the head as well.

The OTC drug review program establishes monograph conditions under which OTC drug products are generally recognized as safe and effective and are appropriately labeled. These conditions principally consist of acceptable ingredients and approved labeling such as indications for use, warnings, and directions. Other agency regulations require warnings for certain drugs in dispensers pressurized by gaseous propellants. (See 21 CFR 369.21.) These warnings are intended to alert consumers to minimize contact of the aerosolized product with the eye and to minimize inhalation of the aerosol.

The agency continually monitors adverse reaction reports. When safety problems arise from the use of a particular ingredient or dosage form, such as an aerosol, the agency takes appropriate action. For example, in the **Federal Register** of August 16, 1977 (42 FR 41374), the agency issued a final regulation declaring that any aerosol drug or cosmetic product containing zirconium is a new drug or an adulterated cosmetic. This action was prompted by the agency's concern about the inhalation of zirconium aerosol by consumers. FDA was aware of reports that zirconium compounds caused skin granulomas and toxic effects in the lungs and other organs of laboratory animals. The regulation was intended to keep zirconium-containing aerosols off the market until adequate safety testing had been completed.

The agency has reviewed the submissions made to the Panel and other data to determine whether there have been adverse reaction reports or potential safety problems reported from inhalation of the product mentioned by the comment. None have been found. Accordingly, the agency considers the label warnings for this product to be adequate, and finds that there is no basis for removing it from the market. The agency also notes that antifungal drug products are available in dosage forms other than aerosols, such as creams, lotions, and powders. Consumers who find aerosols objectionable may select a different dosage form.

3. One comment suggested revisions of several discussions in the Panel's report. These suggestions included expansion or clarification of narrative statements related to sites of infection, fungal cultures, effectiveness criteria, sample size, and indications for a specific ingredient.

The Panel's report represents the Panel's opinion and recommendations based on clinical experience, a review of the scientific literature, and an evaluation of the data presented to it. As stated above, the present tentative

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final monograph represents FDA's adoption of the Panel report together with necessary modifications. This document is not, however, a restatement of the Panel report. And, because the revisions suggested by the comment would not alter the tentative final monograph, it is not necessary to address specifically the suggested revisions to the Panel's report as they relate to the form of the report.

4. One comment objected to a television advertisement which claimed that, according to an expert medical panel report to the FDA, a tolnaftate product contains the only medication proven to prevent reinfection from athlete's foot fungus and also "conveyed the message * * * that tolnaftate prevents jock itch." The comment stated that tolnaftate has not been approved for the prevention of jock itch and that "these advertising claims show dramatically the adverse consequences that would ensue if special prophylactic studies were to be required for agents that have already been proven effective in the treatment of fungal infections and if at the same time these requirements were not applied consistently to all drugs." The comment requested that FDA recognize that effective antifungals such as the undecylenates prevent reinfection and that separate prophylaxis studies are not necessary; that studies by Sulzberger et al. demonstrate the prophylactic effect of the undecylenates; and that if prophylaxis studies are to be required, they should be uniformly required of all drugs.

A reply comment responded that the primary regulatory jurisdiction for OTC drug advertising rests with the Federal Trade Commission (FTC), not FDA. The reply comment went on to state that the comment made several misstatements of facts and pointed out that the athlete's foot commercial did not make any claim for use of tolnaftate to prevent jock itch but contained the truthful claim in a tagline that the tolnaftate product for jock itch "cures jock itch fast" and that such a claim is clearly a treatment rather than a prevention claim. The reply comment further asserted that the Panel clearly listed tolnaftate as the only antifungal agent that has been demonstrated to be effective in preventing athlete's foot infection. The comment added that advertising that properly references the OTC drug review process has been commonplace in OTC drug advertising for many years and concluded that it could not understand how the truthful advertising statements could possibly "show dramatically the adverse consequences * * *."

The agency agrees with the reply comment that FTC has the primary responsibility for regulating OTC drug advertising and recommends that concerns about the truthfulness of advertising claims or implications be referred to the FTC. Resolution of the truthfulness of the advertisement in question is outside the scope of the OTC drug review. For a discussion of the Sulzberger study and the effectiveness of undecylenates in preventing reinfection and the need for separate prophylaxis studies, see comment 20 below.

5. In response to the reopening of the administrative record for OTC topical antifungal drug products to include the statement on diaper rash by the Advisory Review Panel on OTC Miscellaneous External Drug Products (47 FR 39464), two comments requested that a separate rulemaking be established for OTC drug products that prevent and treat diaper rash. One of the comments suggested that if a separate monograph is not established, a clearly identifiable subsection of the monograph for OTC skin protectants would be appropriate for diaper rash drug products. The comment argued that in cases where the ingredients in OTC diaper rash drug products are not skin protectants, these ingredients could be handled under appropriate combination policies. Another comment mentioned that several of the ingredients listed by the agency as diaper rash ingredients had not been referred to any rulemaking and suggested that these ingredients, especially those which are barrier-like skin protectants (e.g., cod liver oil, talc), should be referred to the rulemaking on OTC skin protectant drug products.

One comment concerned the use of zinc oxide for treatment of diaper rash. Another comment requested that its earlier submissions on sodium bicarbonate be included in the administrative record for a proposed monograph on OTC drug products for the treatment of diaper rash. The comments included articles on various uses of sodium bicarbonate and excerpts of a marketing study on this ingredient (Ref. 1). One comment stated that a review of ingredients in diaper rash product submissions revealed the use of borax in one product and boric acid in four products in concentrations ranging from 0.5 to 7.14 percent. The comment noted that according to the definition of "active ingredient" in § 210.3(b)(7) (21 CFR 210.3(b)(7)), boric acid and borax are not present as active ingredients but as buffering agents (i.e., pharmaceutical necessities).

One comment suggested two tests for the agency to consider as standards by which the effectiveness of a diaper rash product may be determined for a claimed therapeutic benefit. One comment expressed its opposition "to the inclusion in the OTC monographs of any anecdotal or superfluous comments about disposable diapers that are not confirmed by scientific data."

The agency has determined that it would be more appropriate to address the entire issue of diaper rash prevention and treatment at one time, either in a separate rulemaking or concurrently in each respective rulemaking. Accordingly, the comments on diaper rash drug products submitted to the rulemaking on antifungal drug products will be considered at a later time. An antifungal ingredient that is determined to be appropriate for the relief of diaper rash will be included in the appropriate tentative final monograph applicable to OTC diaper rash drug products. The same antifungal ingredient also may be determined to be appropriate for use in athlete's foot, ringworm, and jock itch and, therefore, can remain in this rulemaking for OTC antifungal drug products.

B. Comment on Definitions

6. Referring to the definition of dermatophyte in § 333.203(d) of the Panel's recommended monograph (47 FR 12480 at 12564), one comment pointed out that the definition should be revised to state that "filamentous fungi are *saprophytic* on human skin, hair or nails, (dead tissue only) and are *not* parasitic."

In its report the Panel discussed dermatophytes as follows:

> Dermatophytes. A group of taxonomically related fungi which normally live in soil, where they metabolically decompose organic keratinous debris through the enzymatic digestion of keratin (a fibrous protein also found in cornified epidermis). Many of these fungi cause superficial skin infections including athlete's foot, jock itch, and ringworm in humans and in animals by invading and living in the cornified epidermis or in the hair or nails. These fungi are subdivided and classified according to their usual source of isolation from soil, from animals, or from man.
>
> The dermatophytic fungi most commonly mentioned in this document include *Trichophyton rubrum (T. rubrum), Trichophyton mentagrophytes (T. mentagrophytes),* and *Epidermophyton floccosum (E. floccosum).* These organisms are the most frequent causes of human infections in the United States, but other strains may be involved. (See 47 FR 12480 at 12485.)

The Panel's definition of dermatophyte in § 333.203(d) i.e., "a fungus that is parasitic upon the skin, hair, or nails of humans or animals," was based on the above discussion. Words such as "parasitic" and "saprophytic," both of which may be applicable to fungi, have scientific definitions that are not generally understood by laymen and thus require further definition in order to be understood. Therefore, to make the term dermatophyte more understandable to laymen, the agency has deleted the word "parasitic" from its definition and is proposing the following definition in this tentative final monograph: *"Dermatophyte.* A fungus that invades and lives upon the skin or in the hair or nails." This definition is abstracted from the Panel's discussion, does not include any words that need further definition, and is sufficiently clear for use in this tentative final monograph. The Panel's reference to "animal" has been deleted from the definition because this rulemaking concerns only drugs intended for OTC human use.

C. Comment on Chloroxylenol

7. In response to the Panel's recommendation that one double-blind, placebo-controlled clinical trial be conducted to establish the effectiveness of chloroxylenol, one comment submitted such a study (Ref. 1) and stated its belief that the results will enable chloroxylenol to be moved from Category III to Category I. The comment also submitted three additional studies (Refs. 2, 3, and 4) containing safety data in response to the agency's concern (Ref. 5) about the irritation/sensitization potential of 2 percent chloroxylenol. The comment concluded that all of these studies demonstrate that a product containing 2 percent chloroxylenol is safe for human use against fungal infections.

The Panel concluded that chloroxylenol for OTC topical antifungal use is safe for application to small areas of the skin over short periods of time, at least over a 13-week period, but that there were insufficient efficacy data available to permit final classification (47 FR 12480 at 12533). The study submitted by the comment was a double-blind controlled trial (Ref. 1) in which 2 percent chloroxylenol (vehicle not specified) was compared with its aqueous emollient base vehicle in the treatment of postassium hydroxide (KOH) positive, culture positive tinea pedis. The patients were treated twice a day for 28 days and evaluated at time 0 (entry into the study) and at 14, 28, and 42 days (no therapy for 2 weeks before the last evaluation). In order for a patient to be considered cured, the patient must have had neither signs nor symptoms of active fungal infection in addition to a negative KOH and a negative culture at both the 28-day and 42-day evaluations. Of the 53 subjects who completed the study, 9 were changed to the active drug after initially being on the placebo. Four of the nine were changed to the active products after 3 to 14 days of placebo therapy. Five of the nine were changed to the active drug after 28 days of placebo therapy. The latter five cases were counted as placebo failures in the statistical analysis. When changed to the active drug, they were treated as new cases. Thus, 39 patients were treated with 2 percent chloroxylenol, and 33 were considered cured (92.3 percent). Nineteen patients were treated with placebo, and only three were considered cured (15.8 percent).

The agency has some concerns about this study. Of the 53 patients cultured, 46 yielded *Trichophyton tonsurans (T. tonsurans).* Although *T. tonsurans* is becoming a more common pathogen on the body and produces almost all of the scalp ringworm seen in the United States, it remains uncommon to find this pathogen on the feet. A published study indicates that only 5 to 15 percent of pedal lesions yield. *T. tonsurans* (Ref. 6). Consequently, it was most unusual for the submitted study to find 46 of 53 (86.8 percent) of the fungal isolates yielding this organism from the feet. It is not known whether chloroxylenol or other antifungals are as active against *T. tonsurans* as they are against the most common organisms cultured in athlete's foot. Only a very few patients in this study had the fungi *Trichophyton rubrum (T. rubrum), Trichophyton mentagrophytes (T. mentagrophytes),* or *Epidermophyton floccosum (E. floccosum),* and none were reported to have *Mricrosporum canis (M. canis)* or *Candida albicans (C. albicans).* The Panel stated that when establishing antifungal activity the antifungal action of the specific ingredient must be tested using all these fungi (47 FR 12480 at 12561).

This study is also flawed by inadequate documentation of the randomization procedure, a low proportion of evaluable patients, and a mistaken classification of patient outcomes. Also, patients were allowed to switch therapy during the trial. This shifting of patients between treatment groups not only interfered with the randomization process, but also jeopardized the double-blind nature of the study. In view of these problems, the comment's analysis and claim of drug efficacy based on data from 53 patients (5 entered twice) has questionable validity.

After the patient outcome data were corrected and reclassified, there were nine patients with unknown outcomes due to incomplete followup data (less than 4 weeks) on placebo. Consequently, out of 85 patients who entered the study, there were only 44 patients with evaluable data. There is no assurance that the treatment groups are still comparable after nearly half of the patients were excluded from the analysis. Thus, even if the randomization procedure had been adequate and data following drug reassignment are disregarded, this study does not provide sound statistical evidence that 2 percent chloroxylenol is effective for the treatment of athlete's foot. Consequently, the agency concludes at this time that chloroxylenol should not be reclassified as Category I for the treatment of athlete's foot because the data submitted are inadequate to show effectiveness.

Although noting that some cases of minor irritation had been reported, the Panel concluded that chloroxylenol in concentrations of 3.75 percent or less is safe for OTC antifungal use in the treatment of athlete's foot, jock itch, or ringworm. Nevertheless, the agency expressed concern that if chloroxylenol is irritating it could cause severe dermatitis on areas other than the feet, such as the groin, and recommended standard irritation and sensitization tests on the formulations being marketed to determine whether a warning against use on areas other than the feet would be needed (Ref. 5). In response to the agency's concern, the comment submitted primary skin irritation and primary eye irritation studies on rabbits (Refs. 2 and 3). In the skin irritation study, the test material was applied to 18 intact and 18 abraded sites on rabbits' backs, covered for 24 hours, and evaluated. The highest Draize score on any site was a 2, and all redness was gone by 48 hours. Thus, the product was classified as nonirritating. The standard Draize primary eye irritation study also indicated that the product was nonirritating. The agency has reviewed these studies and concurs with the comment that 2 percent chloroxylenol was shown to be nonirritating.

The comment also submitted two human studies. One study used a repeated insult patch test with a formulation containing 2 percent chloroxylenol (Ref. 4). Ten subjects were treated in the groin area using a modified Draize-Schelanski test. The

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area was covered for 24 hours following each application, rested for 24 hours, and then applications were repeated for a total of 10 times. Following a 14-day rest period, a challenge application was made to the same area. There were no adverse reactions, indicating a lack of irritation or sensitization. In the second human study, the efficacy study discussed above (Ref. 1), in which 39 subjects with athlete's foot were treated with the 2-percent chloroxylenol product, there were no adverse reactions, the regenerated tissue was good, and subject acceptance of the product was very good.

The agency concludes that these data indicate that 2 percent chloroxylenol does not appear to have a potential for irritation or sensitization and, therefore, can be considered safe for topical use on all areas of the body. In addition, the agency agrees with the Panel that 3.75 percent or less chloroxylenol is safe for use in the treatment of athlete's foot, jock itch, or ringworm over short periods of time, at least over a 13-week period.

In conclusion, safety appears to have been adequately demonstrated, but there is insufficient evidence of effectiveness to reclassify 2 percent chloroxylenol to Category I as an OTC antifungal agent for use in the treatment of athlete's foot, jock itch, and ringworm. The agency's detailed comments and evaluations are on file in the Docket's Management Branch (Ref. 7).

References

(1) Tilton, R.C., and R.E. Pinkerton, "A Controlled Clinical Study to Evaluate the Effectiveness of Chloroxylenol for the Treatment of Tinea Pedis," unpublished study in Comment No. LET011, Docket No. 80N–0476, Dockets Management Branch.

(2) Fanaras, J.C., and M. Schmidt, "Primary Skin Irritation Evaluation of Absorbine Athlete's Foot Product (L) 2119A," unpublished study in Comment No. LET010, Docket No. 80N–0476, Dockets Management Branch.

(3) Fanaras, J. C., and M. Schmidt, "Primary Eye Irritation Evaluation of Absorbine Athlete's Foot Product (L) 2119A," unpublished study in Comment No. LET010, Docket No. 80N–0476, Dockets Management Branch.

(4) Pinkerton, R. E., "Chloroxylenol Repeated Insult Patch Test in Human Subjects," unpublished study in Comment No. LET010, Docket No. 80N–0476, Dockets Management Branch.

(5) Letter from W. E. Gilbertson, FDA, to D. R. Smith, W. F. Young, Inc., coded LET007, Docket No. 80N–0476, Dockets Management Branch.

(6) Bronson, D. M., et al., "An Epidemic of Infection with *Trichophyton Tonsurans* Revealed in a 20-year Survey of Fungal Infections in Chicago," *Journal of the American Academy of Dermatology*, 8:322–330, 1983.

(7) Letter from W. E. Gilbertson, FDA, to D. R. Smith, W. F. Young, Inc., Coded LET014, Docket No. 80N–0476, Dockets Management Branch.

D. Comments on Clioquinol

8. One comment requested that clioquinol (iodochlorhydroxyquin) (alone or in combination with hydrocortisone) be added to the Panel's list of drugs effective in the treatment of candidal infections (cutaneous candidiasis). The comment cited four studies in support of clioquinol's effectiveness for this use (Refs. 1 through 4).

The combination of clioquinol and hydrocortisone is discussed in comment 23 below. In this comment the agency is presenting its review of the four studies submitted by the comment and its determination that the data are inadequate to establish the effectiveness of clioquinol when used alone in the treatment of cutaneous candidiasis.

In a study by Brecker et al. (Ref. 1), a patient group (unidentified with respect to sex) was diagnosed as having moniliasis. The treatment sites were the following: axilla, buttocks, groin, genitalia, perianal area, and perineal area. Only 32 patients out of the 354 culture-verified patients were shown to have infections caused by *Candida albicans*, and only 7 of these patients were treated with the single ingredient clioquinol. Other patients were treated with a combination of clioquinol and hydrocortisone, hydrocortisone alone, and the vehicle alone. Therefore, as stated by the authors themselves, the number of patients in the clioquinol treatment group was too small to make the results statistically significant.

Carpenter et al. (Ref. 2) tested the same four components in 112 female patients diagnosed as having secondary bacterial or fungal infections. The study analyzed data from only those patients having organisms of accepted pathogenicity: Coagulase positive *Staphylococcus aureus, Candida albicans, Candida tropicalis, Microsporum gypseum, Microsporum canis, Trichophyton rubrum, Trichophyton mentagrophytes*, and mixed *Staphylococcus aureus* and fungal infections. However, the distribution of the infections caused by these organisms in the treatment populations was not specified. Therefore, this study provides no specific data on the activity of clioquinol as a single ingredient in infections caused by *Candida*.

The study by Abdel-Aal et al. (Ref. 3) was not designed to demonstrate the effectiveness of clioquinol as a single ingredient and therefore does not provide any useful information relative to the activity of clioquinol in the treatment of cutaneous candidiasis.

The study of Barba-Rubio (Ref. 4), designed in the same manner as the Abdel-Aal study, also did not provide any useful data on the activity of clioquinol used alone in the treatment of cutaneous candidiasis.

In summary, the four studies cited by the comment did not demonstrate the effectiveness of clioquinol as a single ingredient in the treatment of cutaneous candidiasis. Further, in the preamble of the advance notice of proposed rulemaking, the agency dissented from the Panel's recommendation that OTC antifungal drug products be labeled for the "treatment of superficial skin infections caused by yeast (*Candida*)" (47 FR 12480). The agency solicited comments on the Panel's recommendations that haloprogin, miconazole nitrate, and nystatin be available OTC for the treatment of candidal infections. Except for the comments received on the use of those drugs for external feminine itching associated with vaginal yeast (*Candida*) infection, no comments were received. Therefore, the agency reaffirms its position that no antifungal ingredient can be labeled for OTC use for the treatment of cutaneous candidiasis. However, based on the Panel's Category I recommendations, the agency finds this claim to be a valid professional labeling claim and, therefore, is moving the Panel's recommended labeling in § 333.250(b)(4) to the professional labeling section of this tentative final monograph. This professional labeling approach is appropriate for haloprogin and miconazole nitrate because these ingredients have other appropriate OTC antifungal claims, but is not appropriate for nystatin, which currently does not have any OTC labeling claims and remains a prescription drug. As discussed in comment 35 below, the agency is deferring consideration of the use of antifungal ingredients for external vaginal itching associated with vaginal yeast (*Candida*) infection to the rulemaking for OTC vaginal drug products.

References

(1) Brecker, L. J., et al., "Protocol #02," draft of unpublished paper in OTC Volume 070193.

(2) Carpenter, C. L., et al., "Combined Steroid Antiinfective Topical Therapy in Common Dermatoses: A Double-Blind, Multi-Center Study of Iodochlorhydroxyquin-Hydrocortisone in 277 Patients," *Current Therapeutic Research*, 15:650–659, 1973.

(3) Abdel-Aal, H., et al., "A Double-Blind Comparison of a New Combination (Halcinonide-Neomycin-Amphotericin) and Active Controls in Cutaneous Candidiasis and Steroid-Responsive Dermatoses," *The Journal of International Medical Research*, 4:232–236, 1976.

(4) Barba-Rubio, J., "Clinical Evaluation of a New Halcinonide-Antifungal Combination," *Current Therapeutic Research*, 20:655–660, 1976.

9. One comment stated that the Panel made several errors in its review of antibacterial data submitted for clioquinol (Refs. 1 and 2) and that these errors resulted in the Panel's conclusion that clioquinol has little or no antibacterial activity (47 FR 12480 at 12497). The comment submitted an analysis that addressed each of the errors it claimed the Panel made in reviewing the submitted data.

One point noted by the comment in its analysis was that in discussing the submitted in vitro data the Panel stated that "soybean-casein digest agar was used, although Mueller-Hinton is the standard medium" (47 FR 12496). The comment pointed out that trypticase soy agar (BBL) is a general purpose nutrient medium that is also used for sensitivity testing, such as minimal inhibitory concentration (MIC) determination. The comment added that Mueller-Hinton agar is the accepted standard medium for the Standardized Disc Agar Diffusion Assay; but that because the studies reported were not being correlated with disc zone sizes, any suitable growth medium was acceptable for the MIC determination.

The comment also stated that the Panel's assessment of the MIC for the tested organisms (47 FR 12496 to 12497) is incorrect because the Panel misread the table that summarized the results of the MIC determination; that the values recorded in the table are the cumulative percentage of organisms inhibited at the clioquinol concentrations indicated in the heading as micrograms per milliliter (μg/mL); and that all strains, without exception, were inhibited at concentrations below 100 μg/mL.

The comment further stated that the Panel incorrectly identified the growth medium used in the agar dilution MIC determination as Dermatophyte Sporulation Test agar (47 FR 12480 at 12497), when in fact the medium used was Diagnostic Sensitivity Test Agar (DST) (oxoid), the medium recommended by the World Health Organization for conducting sensitivity tests. The comment also disagreed with the Panel's determination that the MIC for *Pseudomonas aeruginosa* (*P. aeruginosa*) was greater than 128 μg/mL, when actually only 24 percent of the 165 strains of *P. aeruginosa* tested had an MIC greater than 128 μg/mL.

The agency has reviewed the analysis submitted by the comment and concurs with the comment's assessment as described above. Although the comment did not specifically request that an antibacterial claim be allowed, the agency considers it appropriate to note here that such a claim as it relates to antifungal activity remains in Category III as the Panel recommended (47 FR 12553).

References

(1) Ciba-Geigy Laboratories (U.S.A. and Switzerland), "Inhibitory Activity of Vioform," unpublished study in OTC Volume 070233.

(2) Scherrer, M., et al., "The Antimicrobial Activity of Broad-Spectrum Antimicrobials with Special Regard to Salicylic Acid," *Mykosen*, 14:323–334, 1971.

E. Comment on Coal Tar

10. One comment noted the Panel's Category II recommendation for coal tar as a topical antifungal ingredient and, while not taking issue with the recommendation, expressed concern that the decision may have been based on relative safety and effectiveness grounds. The comment stated that the Panel considered animal studies and anecdotal human studies, but did not include recent retrospective human studies. Therefore, the Panel did not provide a balanced review of the available information. The comment provided information on the chemistry and toxicity of medicinal coal tar and referred to the symposium on coal tar held by the Antimicrobial II and Miscellaneous External Panels on June 25, 1977 (Ref. 1). The comment pointed out that the composition of medicinal coal tar is more consistent than indicated in the Panel's report and that data presented at the symposium (but not cited in the Panel's report) and other data (Refs. 2, 3, and 4) indicate there is not a significant carcinogenic burden from the proper use of medicinal coal tar.

The Panel's review of coal tar as an antifungal was based on data available to it at the time that it met. The Panel noted that there were abundant data on the carcinogenic potential of coal tar and that there were no double-blind controlled clinical studies supporting the effectiveness of this ingredient as an antifungal (47 FR 12480 at 12516). In the tentative final monograph for OTC dandruff, seborrheic dermatitis, and psoriasis drug products, the agency discussed the results of more recent studies that evaluated the carcinogenic risks from using medicinal coal tar and proposed that coal tar be classified as Category I for use in control of all three conditions because the agency believes that, for these uses, the benefits to be derived from coal tar outweigh the potential risks. (See 51 FR 27346; July 30, 1986.)

Although the comment submitted additional information, it did not dispute the Category II classification of coal tar as an antifungal. Coal tar remains in Category II in this tentative final monograph because no new data have been submitted to show that it is effective for antifungal use.

References

(1) Summary Minutes of the 27th Meeting of the Advisory Review Panel on Antimicrobial (II) Drug Products, June 24–26, 1977.

(2) Pittelkow, M.R., et al., "Coal Tar, Ultraviolet Light and Cancer," *Journal of the American Academy of Dermatology*, 4:234–235, 1981.

(3) Maughan, W.Z., et al., "Incidence of Skin Cancers in Patients with Atopic Dermatitis Treated with Coal Tar," *Journal of the American Academy of Dermatology*, 3:612–615, 1980.

(4) Stern, R.S., et al., "Skin Carcinoma in Patients with Psoriasis Treated with Topical Tar and Artificial Ultraviolet Radiation," *Lancet*, 1:732–735, 1980.

F. Comment on Menthol

11. One comment requested that menthol be reclassified from Category II to Category III for effectiveness and from Category III to Category I for safety. The comment noted that the Panel had placed menthol in Category III in the information copy of its report (dated November 1979), stating that menthol was a "potentially viable antifungal ingredient" and that an in vitro study and one clinical study were required to establish proof of its effectiveness. However, in the advance notice of proposed rulemaking (47 FR 12480), the Panel placed menthol in Category II for effectiveness. The comment maintained that the Panel's original findings were consistent with a Category III classification for menthol and that the change to Category II was unwarranted.

The comment also disagreed with the Panel's conclusion that there are insufficient safety data for menthol in concentrations greater then 0.2 percent. The comment cited the conclusions of the Advisory Review Panel on OTC Topical Analgesic, Antirheumatic, Otic, Burn, and Sunburn Prevention and Treatment Drug Products (Topical Analgesic Panel) that menthol is safe for topical analgesic, anesthetic, and antipruritic use in concentrations of 0.1 to 1 percent and as a counterirritant at 1.25 to 16 percent (44 FR 69768 at 69827; December 4, 1979).

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The information copy of the Panel report was a preliminary report; the final decisions of the Panel were presented in its report published in the **Federal Register** on March 23, 1982 (47 FR 12480). In its final report, the Panel concluded that, although menthol may be useful in providing symptomatic relief of fungal infections through its antipruritic action, it is not an effective antifungal ingredient. Thus, the Panel classified menthol in Category II. The agency has reviewed the data evaluated by the Panel (47 FR 12517) and agrees with the Panel's conclusion that the limited in vitro data available show menthol to be a poor fungicide.

The agency agrees with the comment that menthol has been shown to be safe at concentrations greater than 0.2 percent. In the tentative final monograph for OTC topical analgesic drug products (48 FR 5852 at 5867; February 8, 1983), menthol was included as an analgesic, anesthetic, or antipruritic at concentrations of 0.1 to 1 percent and as a counterirritant at concentrations of 1.25 to 16 percent. However, counterirritants carry a warning against use on wounds or damaged skin; therefore, the concentrations approved for counterirritant use would not be appropriate for athlete's foot, jock itch, or ringworm. The agency considers menthol concentrations of 0.1 to 1 percent safe (Category I) for topical applications of athlete's foot, jock itch, or ringworm. Concentrations greater than 1 percent will remain as Category III for safety.

Because no new data have been submitted on the effectiveness of menthol as an antifungal agent, the agency is classifying this ingredient in Category II for efficacy in this proposed rule.

G. Comments on Phenol

12. Two comments disagreed with the Antimicrobial II Panel's Category II classification of phenol/phenolate sodium at less than or equal to 1.5 percent concentration for antifungal use (47 FR 12480 at 12519). Both comments pointed out that four other OTC advisory review panels placed phenol in Category I for safety: Dentifrice and Dental Care and Antimicrobial I Panels at concentrations up to 1.5 percent (47 FR 22712 at 22734 (May 25, 1982) and 39 FR 33102 at 33133 (September 13, 1974)), Oral Cavity Panel at concentrations of 0.5 to 1.5 percent (47 FR 22780 at 22814 (May 25, 1982)), and Topical Analgesic Panel at concentrations of 0.5 to 2 percent (44 FR 69768 at 69832).

One of the comments (Ref. 1) submitted copies of some of the studies (Refs. 2 through 12) submitted to the Antimicrobial II Panel and one new study (Ref. 13) on a phenol-based mouthwash. The comment also submitted animal safety data already reviewed by the Panel and requested Category I status for safety. The comment also contended that "the uncontrolled in vivo studies submitted to the Antimicrobial II Panel indicate that phenol/phenate [phenolate] sodium has been demonstrated to be more effective than other Category III ingredients."

The other comment (Ref. 14) asserted that the data are not consistent with Category II classification and requested that phenol/phenate [phenolate] sodium be placed in Category I for safety and Category III for effectiveness. The comment discussed several studies (Refs. 2 through 5) that were submitted to the Panel and claimed that these studies demonstrated no adverse effects of phenol/phenolate when applied to both broken and intact skin. The comment also discussed studies by a number of clinical investigators (Refs. 6 through 12) on the use of phenol/phenolate sodium on oral and vaginal mucosal membranes and stated that no irritant, toxic, or sensitizing effects were observed in any of the studies. The comment contended that these studies demonstrate the safety of phenol/phenolate sodium when used to treat athlete's foot and similar dermatologic disorders exhibiting broken and denuded epithelialized areas. Both comments stated that the Panel's conclusion "that the symptomatic and pruritic relief which would be offered by the inclusion of phenol/phenate [phenolate] sodium does not justify the potential risk of skin irritation or systemic toxicity that may result from the topical application of the formulation" was not consistent with in vivo and in vitro studies conducted, nor with the fact that millions of consumers have used the ingredients for more than 30 years with no reportable adverse effects.

The agency acknowledges that four other panels described by the comments have placed phenol/phenolate sodium in Category I for safety. Two of these panels, the Oral Cavity Panel and the Dentifrice and Dental Care Panel, evaluated the use of phenol on oral mucosa. The studies submitted by the comments on the safety of phenol on oral mucosa (Refs. 6 through 11 and 13) involved the short-term use of a combination product on the throat. The agency believes that, because the throat is constantly moist, use of the ingredient in this area is not considered analogous to the use of the ingredient on broken or intact skin infected with fungus. The comment also submitted an uncontrolled study (Ref. 12) which reported the safe use of a combination product containing sodium phenolate and phenol (less than 2 percent) on the vaginal mucous membranes of 529 gynecological patients with cervicitis or for prehysterectomy surgery or vaginitis. Three of the four studies (Refs. 3, 4, and 5) submitted by the comments in support of the safety of phenol on skin were uncontrolled clinical studies using a preparation containing sodium phenolate, phenol (less than 2 percent), menthol, thymol, sodium tetraborate, glycerin and either methyl salicylate or chlorophyll. The fourth skin study (Ref. 2) was a repeated insult patch test using an unspecified combination product. All of the studies lack details of material, methods, and evaluation procedures. Thus, the reported results (no toxic or sensitizing effects) in some of these studies are considered supportive information but are not adequate to demonstrate the safety of phenol at concentrations of 1.5 percent or less when applied to broken or intact skin infected with fungus.

The agency is concerned about the safe use of phenol/phenolate sodium in the treatment of athlete's foot, jock itch, and ringworm. In the tentative final monograph for OTC external analgesic drug products, the agency proposed that phenol/phenolate sodium carry the label warning "Do not apply over large areas of the body or bandage" and that use be limited to 7 days if symptoms persist (48 FR 5852 at 5868 to 5869). In considering phenol/phenolate sodium as an antifungal agent, the Antimicrobial II Panel was concerned that using phenol in athlete's foot, jock itch, and ringworm would be similar to using it under a bandage because the affected areas would be covered by clothing (47 FR 12480 at 12518). The Panel noted that "in most reports of toxicity from dilute solutions of phenol, bandaging the application was necessary to produce severe local changes." The Topical Analgesic Panel also recommended that preparations containing 1 to 2 percent phenol should be applied only to the smallest area needing treatment and should not be bandaged to prevent severe skin irritation (44 FR 69768 at 69833). Because it may be necessary to use an antifungal drug for 4 weeks to clear the infection, this prolonged exposure period and the occlusion of the affected area increase the potential risk of skin irritation and systemic toxicity from phenol. Data are needed to establish that phenol/phenolate sodium is safe for use under these conditions.

For these reasons, the agency agrees with the Panel that more data are needed to demonstrate that phenol/phenolate sodium in concentrations less than or equal to 1.5 percent is safe for use in the treatment of athlete's foot, jock itch, and ringworm. Therefore, phenol/phenolate at less than or equal to 1.5 percent is classified in this tentative final monograph as Category III for safety for use as an antifungal.

With regard to effectiveness, the Panel found that the in vitro concentrations required for effective antifungal action often exceed 1.5 percent concentration of phenol (47 FR 12480 at 12517). The studies (Refs. 3, 4, and 5) referred to by the comment to support the statement that phenol is more effective than other Category III ingredients were uncontrolled studies with a product containing less than 2 percent phenol and a number of other ingredients, as mentioned above. None of the studies met the Panel's guidelines for effectiveness testing of an active ingredient for fungicidal or fungistatic activity. The agency finds the results of the studies inadequate to demonstrate the efficacy of phenol as an antifungal drug and, therefore, is classifying phenol/phenolate in Category III for effectiveness.

References

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(13) Breazeale, J., "Comparison of Cationic-Surfactant and Phenol-Based Mouthwash-Gargles in Relieving Oropharyngeal Pain," *Journal of the American College Health Association*, 23:165–166, 1974.

(14) Comment No. C00015, Docket No. 80N–0476, Dockets Management Branch.

H. Comments on Povidone-Iodine

13. One comment submitted data (Ref. 1) addressing two of the Panel's concerns on povidone-iodine: The availability of elemental iodine from the complex and the stability of povidone-iodine (47 FR 12480 at 12546). The comment stated that substantial data were submitted to the OTC Antimicrobial (I) Panel and other panels showing that iodine is freely released from the complex, and the rate of iodine release is controlled by tissue demand. The comment contended that at equilibrium any iodine that is removed from the complex is replaced within less than 25 milliseconds (ms) (Refs. 2 and 3). The comment pointed out that chemical titration studies were submitted to the antimicrobial rulemaking, and these studies show that povidone-iodine provides the same amount of available iodine as tincture of iodine (Ref. 4). Regarding the stability of the complex, the comment contended that even if a stability issue existed it would be outside the scope of the review because stability is covered by the Current Good Manufacturing Practice regulations (CGMP) (21 CFR parts 210 and 211). The comment stated that, under the CGMP regulations, minimum standards have been set to ensure product stability for finished drug products (21 CFR 211.166), and the manufacturer of the finished dosage form is responsible for complying with these stability standards. The comment added that expiration dating as well as appropriate storage conditions are determined through required written testing programs.

The Panel considered povidone-iodine to be safe, but recommended that further studies were needed on the stability of povidone-iodine and on the availability of elemental iodine from the complex. The agency has reviewed the data submitted regarding availability (Refs. 2 and 3) and agrees with the comment that iodine is rapidly released from the povidone-iodine complex. According to Schenck et al. (Ref. 2), a povidone-iodine solution at a concentration of 1 to 10 percent contains over 99 percent complexed iodine. The concentration of free iodine in the solution reaches a maximum of 8×10^{-5} moles/liter. At equilibrium, the povidone-iodine complex is self-monitoring. The rate of iodine release from the complex is controlled by tissue demand, and any iodine that is removed from the complex would be replaced within less than 25 ms (Ref. 3).

The agency also agrees with the comment that issues regarding stability would be governed by the CGMP regulations (21 CFR parts 210 and 211). These regulations require a written testing program to assess the stability of finished products and to determine appropriate storage conditions and an expiration date. Section 211.137(a) requires that drug products bear an expiration date supported by appropriate stability testing. However, § 211.137(g) provides that expiration dating requirements are not enforced for human OTC drug products if their labeling does not bear dosage limitations and they have been shown to be stable for at least 3 years by appropriate stability data. Therefore, FDA concludes that further submissions of data on the stability of povidone-iodine are not needed for purposes of this rulemaking proceeding. For additional information, see the agency's comments on the stability and availability of povidone-iodine in connection with the rulemaking for OTC topical acne drug products (Ref. 5). (See also the **Federal Register** of January 15, 1985; 50 FR 2172 at 2173.)

References

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(2) Schenck, H.U., et al., "Structure of Povidone-Iodine," *in* "Current Chemotherapy and Infectious Disease," Vol. I, American Society of Microbiology, Washington, pp. 477–478, 1980.

(3) Ditter, W., D. Horn, and E. Luedekke, "Thermodynamic and Kinetic Examinations Concerning the Complex Binding State and the Rate of Liberation of Iodine from Aqueous Iodine-PVP-Solutions," included in Comment No. C00012, Docket No. 80N–0476, Dockets Management Branch.

(4) Comment No. C00108, Docket No. 75N–0183, Dockets Management Branch.

(5) Letter from W. E. Gilbertson, FDA, to L. Blecher, GAF Corp., coded LET004, Docket No. 81N–0114, Dockets Management Branch.

14. One comment submitted the results of a clinical study (Ref. 1) in response to the Panel's statement (47 FR 12480 at 12546) that a double-blind, placebo-controlled clinical trial was needed to determine the effectiveness of povidone-iodine for the treatment of athlete's foot, jock itch, and ringworm.

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The comment also included a statistical analysis of the study (Ref. 2) and the results of an in vitro assay of two povidone-iodine solutions for antifungal activity (Ref. 3). The comment stated that these data should be sufficient to meet the Panel's requirement for reclassifying povidone-iodine into Category I for effectiveness.

In the clinical study (Ref. 1), 40 patients with clinically and laboratory diagnosed athlete's foot were divided into two groups, one group using a 10-percent povidone-iodine solution and the other using the same solution without the povidone-iodine. Patients applied the medication to all involved areas of the feet every morning and night for 4 weeks. Cultures and potassium hydroxide (KOH) preparations were done before the study and repeated at the end of the treatment period and at a followup visit 4 weeks later. Signs and symptoms were scored weekly during treatment and at the followup visit. When the patients were evaluated at the end of the treatment period and signs and symptoms, KOH preparations, and cultures were considered simultaneously, the patients using povidone-iodine solution had a 68.4-percent therapeutic cure rate whereas the patients using placebo had a 30-percent therapeutic cure rate (Ref. 2). These cure rates were sustained to 4 weeks after therapy, and the difference is statistically significant ($p<0.05$). No side effects were reported in the study.

An in vitro study (Ref. 3) was performed to show that there was no difference in the fungicidal activity of the povidone-iodine solution used in this study, which also contained 0.05 percent methyl salicylate, and an identical solution of 10 percent povidone-iodine without the methyl salicylate.

The agency concludes that this study, along with the information previously reviewed by the Panel, provides adequate evidence of the safety and effectiveness of 10 percent povidone-iodine in the treatment of fungal infections such as athlete's foot, jock itch, and ringworm. Therefore, the agency is proposing that 10 percent povidone-iodine be classified Category I for this indication.

The agency's detailed comments and evaluations are on file in the Dockets Management Branch (Ref. 4).

References

(1) Jolly, H. W., "Final Clinical Summary: Double-Blind Comparison Study of Isodine Athlete's Foot Solution Versus Placebo in the Treatment of Patients with *Tinea Pedis*," unpublished study submitted with Comment No. C00005, Docket No. 80N-0476, Dockets Management Branch.

(2) Jolly, H. W., and R. G. Mora, "Final Statistical Report: Double-Blind Comparison Study of Isodine Athlete's Foot Solution Versus Placebo in the Treatment of patients with *Tinea Pedis*," unpublished study in Comment No. C00005, Docket No. 80N-0476, Dockets Management Branch.

(3) Axler, D., "Final Clinical Summary: *In vitro* Assay of Two Povidone-Iodine Solutions for Antifungal Activity," unpublished study in Comment No. C00005, Docket No. 80N-0476, Dockets Management Branch.

(4) Letter from W. E. Gilbertson, FDA, to E. A. Conrad, The Perdue Frederick Co., Coded LET012, Docket No. 80N-0476, Dockets Management Branch.

I. Comment on Rubbing Alcohol

15. One comment noted that rubbing alcohol applied between the toes morning and night is one of the most economical methods of controlling and eliminating athlete's foot as well as maintaining cleanliness of the feet. The comment suggested that the public be made aware of this economical alternative to more expensive OTC drugs that may not be as effective a remedy.

A number of alcohols were included in the products submitted to the Panel for review. The Panel considered these ingredients as possible antifungal agents based on the available literature and in some cases based on concentrations reported in a submission. The Panel concluded that these alcohols are inactive ingredients when used in products labeled for fungal infections of the foot, body, or groin (47 FR 12480 at 12485). Because the comment did not submit any data to support its contention that rubbing alcohol is an effective athlete's foot treatment and because the agency is not aware of any rubbing alcohol product labeled for antifungal use, the agency is unable to evaluate the basis for the comment's conclusion. Therefore, rubbing alcohol is not being classified in this rulemaking.

J. Comment on Tannic Acid

16. One comment requested that tannic acid be reclassified from Category II to Category III. The comment noted that the Panel had placed tannic acid in Category III in the information copy of its report (dated November 1979), stating that tannic acid was a "potentially viable antifungal ingredient" and that an in vitro study and one clinical study were required to establish proof of its effectiveness. No safety issues were raised. However, in the advance notice of proposed rulemaking (47 FR 12480), the Panel placed tannic acid in Category II. The comment maintained that the Panel's original placement of tannic acid in Category III was consistent with the criteria for other ingredients classified in Category III in the published report and that the change to Category II was unwarranted.

The information copy of the Panel report was a preliminary report; the final decisions of the Panel were presented in its report published in the **Federal Register** of March 23, 1982 (47 FR 12460). In its final report, the Panel reassessed the available data and concluded that the inclusion of tannic acid in antifungal medications is largely of historical interest. Having found no in vitro or clinical data on the effectiveness of tannic acid, the Panel concluded that this ingredient is not effective in the treatment of athlete's foot, jock itch, or ringworm and placed it in Category II (47 FR 12521). The agency has reviewed and agrees with the Panel's conclusions on tannic acid. Because no new data have been submitted, the agency is classifying tannic acid in Category II in this proposed rule.

K. Comment on Thymol

17. One comment requested that thymol be reclassified from Category II to Category III for effectiveness and from Category III to Category I for safety. The comment noted that the Panel had placed thymol in Category III in the information copy of its report (dated November 1979), stating that thymol was a "potentially viable antifungal ingredient" and that an in vitro study and one clinical study were required to establish proof of its effectiveness. However, in the advance notice of proposed rulemaking (47 FR 12480), the Panel placed thymol in Category II for effectiveness. The comment maintained that the Panel's original findings were consistent with a Category III classification for thymol and that the change to Category II was unwarranted.

The comment also disagreed with the Panel's conclusion that there are insufficient safety data for thymol in concentrations greater than 0.2 percent. The comment cited the conclusions of the Topical Analgesic Panel that "clinical use has confirmed that thymol is safe in the dosage range used as an OTC external analgesic" and that "thymol has little effect when applied topically to the skin and is virtually unabsorbed" (44 FR 69768 at 69855).

The information copy of the Panel report was a preliminary report; the final decisions of the Panel were presented in its report published in the **Federal Register** of March 23, 1982 (47 FR 12460). In its final report, the Panel

placed thymol at concentrations greater than 0.2 percent in Category II because the only clinical trial in which thymol was evaluated showed it to be ineffective in clearing athlete's foot and often irritating (47 FR 12523).

The agency has reviewed and agrees with the Panel's conclusions on thymol. The agency concludes that there are insufficient data to determine the safety of thymol at concentrations greater than 0.2 percent. The Panel determined and the agency concurs that additional data are needed to ensure the safety of thymol at concentrations greater than 0.2 percent. Based on the information it reviewed, the Panel concluded that more data are necessary on the absorption of thymol from small areas of application to broken and intact skin, on the local effects of thymol on wound healing, and on the irritation potential of thymol (47 FR 12522). However at concentrations less than or equal to 0.2 percent, thymol is safe and may be used as an inactive ingredient in formulations for product identification. The agency concurs with this recommendation.

The agency also notes that the Topical Analgesic Panel only reviewed thymol for use as an OTC external analgesic. That Panel referred thymol "to another Panel for the determination of its safety and efficacy as an antimicrobial and antifungal agent" (44 FR 69768 at 69855). Because of the different nature of the skin conditions being treated, the agency does not believe that the Topical Analgesic Panel's conclusions are applicable to the antifungal use of thymol.

Because no new data have been submitted on the effectiveness of thymol, the agency is classifying this ingredient in Category III (safety) and Category II (effectiveness) in this proposed rule.

L. Comments on Tolnaftate

18. Two comments stated that tolnaftate should be permitted to be labeled for the prevention of jock itch in addition to the prevention of athlete's foot. The comments noted that the Panel's reservation about long-term use of any antifungal agent in the groin (47 FR 12480 at 12490) was applied generally to all ingredients without regard to the safety margin of any ingredients. One comment added that the wide margin of safety of tolnaftate, including a very low potential for irritation, has been well established both through laboratory and clinical studies and through extensive use experience. The comment stated that results of this experience were presented to the Panel in oral and written submissions and by cross-reference to data contained in the new drug application for tolnaftate. The other comment asserted that after 19 years of extensive controlled and uncontrolled human studies, as well as lifetime studies in animals, tolnaftate is completely nontoxic to man and animal, and the potential for systemic absorption of tolnaftate through sensitive genital tissues and the groin with resultant toxicity is a nonexistent risk.

Although the safety of tolnaftate in the treatment of athlete's foot, jock itch, and ringworm is well established, the agency agrees with the Panel's recommendation that claims of prevention for this ingredient be limited to athlete's foot. The Panel concluded that tolnaftate may be used in the prevention of athlete's foot, but not in the prevention of jock itch or ringworm (47 FR 12480 at 12508). The Panel recognized that use of this ingredient for prevention of these fungal conditions would likely result in long-term use, whereas OTC treatment of a particular condition is limited to a specific time period. Because there is generally no limitation to the period of use when a product is used to prevent a condition, and because the groin is a more sensitive area than the feet, the Panel concluded that antifungal drugs, including tolnaftate, should not be used indefinitely in the groin (47 FR 12508). The comments did not submit any new data, but referred to studies that had been reviewed by the Panel. Those studies focused on the prevention of athlete's foot and not on jock itch. Therefore, the agency concludes that clinical studies on the prevention of jock itch are needed to establish the long-term safety of using tolnaftate or any other antifungal drug in the groin area. At this time, the agency finds insufficient data to support labeling tolnaftate for the prevention of jock itch. Although the comments did not discuss the prevention of ringworm, the agency considers it appropriate to express agreement with the Panel's statement that it would be impractical to use an antifungal agent prophylactically over large areas of the body to prevent ringworm (47 FR 12490 and 12508).

19. One comment contended that the Panel's Category I recommendation for a prophylaxis claim for tolnaftate was inconsistent with the Panel's own specific requirement of a study lasting a minimum of 12 weeks (47 FR 12480 at 12563). The comment argued that in one of the studies reviewed by the Panel three of the four centers participating in the study treated their patients for only 8 weeks (Ref. 1). The fourth center, which did test for 12 weeks, failed to show any difference between vehicle and tolnaftate therapy. The comment argued that two other studies reviewed by the Panel were also only conducted for 8 weeks (Refs. 2 and 3). The comment requested that the agency abandon the distinction between treatment and prophylaxis for antifungals because if an agent is effective in the treatment of a fungal infection it will also be effective in the prevention of the disease. As an alternate suggestion, the comment requested that the prophylaxis indication for tolnaftate be dropped. The comment also contended that the wording of § 333.250(b)(2) unfairly singles out tolnaftate. The comment requested that the heading for § 333.250(b)(2) should be in the same general format as § 333.250(b)(1), i.e., the word "tolnaftate" should not be in the heading for § 333.250(b)(2).

A reply comment stated that the referenced studies do, in fact, meet the criteria established by the Panel for prophylaxis and that the Panel properly applied these criteria in evaluating the clinical data on tolnaftate. The reply comment submitted a copy of an oral presentation made to the Panel which explains the results of the studies (Ref. 4).

The agency has reevaluated the data reviewed by the Panel to support its Category I recommendation for a prophylaxis claim for tolnaftate. The study by Charney et al. (Ref. 1) was conducted at four centers (California, Mississippi, Puerto Rico, and Texas), with a total of 168 subjects who entered the study with no evidence of fungal infection. At three of the four centers (California, Mississippi, and Puerto Rico), therapy was continued for 12 weeks with evaluations either taking place at 4, 8, and 12 weeks (Mississippi) or during the last 4 weeks of the 12-week period (California and Puerto Rico). At the other center (Texas), therapy was given for about 8 weeks. Thus, at three of the four centers the study met the Panel's 12-week criteria for length of the trial because therapy continued during the evaluation period.

The study showed that subjects treated with tolnaftate were significantly more likely to be free of athlete's foot at the end of the treatment period than were the control subjects. When the subjects at the center that continued therapy for only 8 weeks are excluded from the analysis, the following results are obtained: 38 of 41 subjects treated with tolnaftate were negative (93 percent) while 48 of 63 subjects treated with placebo were negative (76 percent). Regarding the comment's concern about the

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significance of the results from one of the centers, the agency concludes that results with a p-value of less than 0.05 were obtained by pooling data from the three centers with 12-week trials.

In the study by Burrill and Nemlick (Ref. 2), therapy also continued for 12 weeks. The therapy consisted of an 8-week treatment period for each subject and a 4-week evaluation period, during which therapy continued. The study concluded that tolnaftate powder was superior to placebo in preventing the occurrence of athlete's foot in subjects free of tinea pedis at the start of the study. The study by Smith, Dickson, and Knox (Ref. 3) was similar in design to the Burrill and Nemlick study and arrived at a similar conclusion; however, the report of the Smith study did not make clear whether therapy continued during the evaluation period or only during the 8-week treatment period.

Although one part of the Charney study does not meet the Panel's 12-week criteria, the remainder of the Charney study and the Burrill and Nemlick study do meet the Panel's criteria, and the agency finds these studies adequate to support a prophylaxis claim for tolnaftate. Although the study by Smith, Dickson, and Knox does not meet the Panel's 12-week criteria, the results of the study can be considered supportive of the other two studies discussed above.

The agency disagrees with the comment's request to abandon a distinction between treatment and prophylaxis for antifungals. Treatment of an existing fungal condition and prevention of a condition are clearly different clinical entities. The intended use of the antifungal drug is different in each instance. Likewise, there is no reason to drop the prophylaxis indication for tolnaftate. This use has been satisfactorily established by the clinical data cited above.

However, the agency is revising the heading for § 333.250(b)(2), as suggested by the comment, so that it is consistent with the style and format of the other headings in the tentative final monograph.

References

(1) Charney, P., V. M. Torres, A. W. Mayo, and E. B. Smith, "Tolnaftate as a Prophylactic Agent for Tinea Pedis," *International Journal of Dermatology*, 12:179–185, 1973.

(2) Burrill, B. B., and A. S. Nemlick, "Prophylaxis of Tinea Pedis," *Journal of the Medical Society of New Jersey*, 67:629–631, 1970.

(3) Smith, E. B., J. E. Dickson, and J. M. Knox, "Tolnaftate Powder in Prophylaxis of Tinea Pedis," *Southern Medical Journal*, 67:776–778, 1974.

(4) Comment No. RC0002, Docket No. 80N–0476, Dockets Management Branch.

M. Comments on Undecylenates

20. One comment contended that under proper application of the governing scientific and legal standards FDA must conclude that the undecylenates are safe and effective for both treatment and prevention of athlete's foot, jock itch, and ringworm. The comment maintained that by definition an effective antifungal drug kills fungi and, with daily use, prevents the onset of infection. According to the comment, there is no evidence that fungi, unlike bacteria, develop resistance to topical agents, and separate prophylaxis studies are unnecessary to sustain prophylaxis claims. However, if separate evidence of prophylactic effect is to be required, the comment stated that such evidence has already been submitted to the agency for undecylenates (Ref. 1). In this study by Sulzberger and Kanof, 1,384 patients who received no treatment were compared with 1,213 patients treated with undecylenates. The researchers found that 28 percent of the untreated patients developed signs and symptoms of athlete's foot, but that only 4 percent of those on undecylenates developed the disease (Ref. 1). A reply comment reiterated the points made in the initial comment.

Another reply comment stated that the study of undecylenates by Sulzberger and Kanof (Ref. 1) falls quite short of the Panel's criteria to establish a prophylactic claim and gave the following reasons:

(1) No accurate record was made of actual treatment periods.

(2) No mycology was performed on any of the subjects. The only criterion was presence or absence of clinical symptoms.

(3) The control group received "no prophylactic agent" rather than a placebo vehicle control. This factor is especially important in a prophylactic study because the vehicle and proper hygiene make a significant contribution in the prevention of athlete's foot infections.

Another comment submitted new data consisting of the results of a study conducted with an undecylenate powder to prevent athlete's foot (Ref. 2). According to the comment, this study was designed in accordance with the Panel's recommendations, and the results of the study demonstrate the prophylactic effectiveness of undecylenates.

The Panel recognized that many Category I drugs effective in the treatment of athlete's foot might also be effective in its prevention. However, the Panel believed that data from human studies were necessary to support a prophylactic indication. The long-term effects of prophylactic drugs on the feet and on the fungi that cause athlete's foot are also not known. Accordingly, the agency concurs with the Panel that separate prophylaxis studies are necessary to support prophylactic claims.

With regard to the undecylenates, the agency concurs with the Panel and the reply comment that the study by Sulzberger and Kanof (Ref. 1), submitted to support a prevention claim for undecylenates, has the following serious deficiencies: The length of treatment was unclear; no potassium hydroxide (KOH) preparations or cultures were done; and the control group was "no treatment" controlled rather than "placebo vehicle" controlled.

The study submitted by the comment enrolled 87 subjects, some with and some without a history of athlete's foot; all had no lesions, negative cultures, and negative KOH preparations. Active drug (20 percent zinc undecylenate and 2 percent undecylenic acid) and vehicle were used in a double-blind manner. After 6 weeks of twice daily therapy, visual examination was performed on all patients and KOH preparations and cultures were done on those with lesions. Eight patients with positive mycological findings at week 6 were counted as prophylaxis failures and placed on therapy. All eight patients had been receiving the vehicle. Four other patients were dropped from the study for failing to appear at week 6. The remaining patients were kept on therapy until week 12, when cultures and KOH preparations were performed on all patients. No drug-related adverse effects were reported. The study, which included both 6-week and 12-week prophylaxis failures, concluded that infection occurred in 28 percent of the untreated groups, while infection occurred in only 7 percent of the treated group.

The agency has reviewed the study and finds that it does not provide sufficient evidence to support a claim for the effectiveness of undecylenates in the prevention of athlete's foot. A major flaw in this trial was the decision to perform mycological evaluations at week 6 only on those patients with visible foot lesions and to drop from the study those patients with positive mycology. Had mycological evaluations been done on all patients at week 6, additional failures (positive mycology but no clinical symptoms) might have been detected and the difference between vehicle and treatment groups may not have been as large. This point takes on added significance when one considers that, at the end of the 12-week study, 3 of 31 patients in the vehicle control group had positive mycology while 3 of 38 patients in the treatment group were positive. In addition, double blinding may have been compromised by the elimination of eight patients from the placebo group. It is the agency's view that either all patients or no patients should have been cultured at week 6. Because the study included both patients with and without a previous history of athlete's foot, there would be an expected difference at 12 weeks between those 2 groups without treatment. There is no evidence that the groups were evenly balanced to rule out this factor. Further, the results of the study were incompletely reported with regard to the grading system for clinical signs and symptoms, and specific organisms cultured from each group. The apparently superior performance of the group treated with the undecylenates cannot be accepted as evidence for the prophylactic properties of the drug because of the deficiencies in the study design. A new properly-controlled study would be necessary to prove the prophylactic effect of the undecylenates.

The agency's detailed comments and evaluations are on file in the Dockets Management Branch (Ref. 3).

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(1) Sulzberger, M. B., and A. Kanof, "Undecylenic and Propionic Acids in the Prevention and Treatment of Dermatophytosis," *Archives of Dermatology and Syphilology*, 55:391–395, 1947, included in OTC Volume 070306.

(2) Gundersen, K., "Use of Undecylenates in the Prophylaxis in Tinea Pedis," unpublished study in Comment No. LET008, Docket No. 80N–0476, Dockets Management Branch.

(3) Letter from W. E. Gilbertson, FDA, to R. E. Dann, Pennwalt Corp., Coded LET–13, Docket No. 80N–0476, Dockets Management Branch.

N. Comments on Drug Combinations

21. One comment disagreed with the Panel's 2.2-percent concentration limit for cresol in topical antifungal drug products. Citing the long marketing history of a particular product containing as its active ingredient a camphor metacresol complex (66-percent camphor and 22-percent metacresol), the comment stated that no adverse drug reactions have been reported and that the absence of complaints is especially significant considering that the product is primarily marketed to doctors, nurses, and paramedics. The comment cited a study submitted to the Panel to support the claim that there is strong evidence that a complex of camphor and metacresol exists and that only 1.5 percent of the metacresol in the product is "free" cresol (Ref. 1). The comment presented calculations showing that the daily exposure to metacresol from 60 milliliters (mL) of the product would be no more than 17 mL, released very gradually. According to the comment, this amount is many times lower than the lower toxic limit of cresol. The comment also referred to a National Institutes of Health (NIH) study on cresol that reportedly showed no toxic effect when the ingredient was injected subcutaneously in rabbits every second day for 2 weeks. The total amount injected was equivalent to 450 mL in a human adult (Ref. 2).

The comment indicated a willingness to limit the size of the container for its product to 1 fluid ounce and the recommended dose rate to 1 ounce applied in a 48-hour period in order to reduce further the amount of metacresol available for human exposure. The comment requested that, with these limitations on size and dose rate, the 66-percent camphor/22-percent metacresol combination be placed in Category I for safety and effectiveness.

The Antimicrobial II Panel proposed a concentration limit for cresol in topical antifungal drug products of 2.2 percent when combined with camphor in a 1-to-3 ratio. The Panel concluded that "evidence that a complex forms between metacresol and camphor [limiting the amount of the cresol to 1.5 percent] is lacking" and that "in the combination of 66 percent camphor and 22 percent metacresol all of the cresol would be available for absorption" (47 FR 12480 at 12536). To support its contention that only 1.5 percent of the metacresol in the product is free cresol, the comment cited only the study previously reviewed by the Panel (Ref. 1). The agency agrees with the Panel that this study does not provide adequate evidence of the amount of free cresol present. Without this evidence, the data on the toxicity of cresol in the NIH study (Ref. 2) are not directly applicable to the camphor/metacresol product.

Subsequently, in the rulemaking for OTC external analgesic drug products, the agency classified camphorated metacresol in a 3-to-1 ratio with a limit of 10.8-percent camphor and 3.6-percent metacresol as Category I for short-term use (i.e., 7 days) as an external analgesic (48 FR 5852 at 5856). The agency stated that there were insufficient data to establish general recognition of the safety of a concentration of metacresol greater than 3.6 percent when this ingredient is combined with camphor. The studies reviewed by the Topical Analgesic Panel and submitted to the agency in comments were very limited in scope. Most of the animal toxicity studies tested only one animal, observed the animal only for a short period of time, and did not include a detailed examination of the animal following drug application. Therefore, concentrations above 3.6-percent metacresol and 10.8-percent camphor were classifed in Category III. The use of camphorated metacresol as a first aid antiseptic will be addressed in the tentative final monograph for OTC first aid antiseptic drug products, to be published in a future issue of the **Federal Register**.

In regard to the comment's claim of "long history of safe use," marketing history alone cannot be regarded as adequate proof of safety. Moreover, there are no data showing that a limitation on the size of the container to 1 fluid ounce applied over a 48-hour time period would ensure safety. However, the agency believes, based on its previous determination in the external analgesic tentative final monograph and its pending determination in the first aid antiseptic tentative final monograph, that camphorated metacresol (a complex consisting of camphor and metacresol combined in a ratio of 3 parts camphor to 1 part metacresol) can be recognized as safe in OTC topical antifungal drug products. Concentrations above 3.6-percent cresol and 10.8-percent camphor remain in Category III for safety.

The effectiveness of metacresol as an antifungal agent has not been established. The Panel recommended one double-blinded clinical trial to determine the effectiveness of cresols in the treatment of athlete's foot, jock itch, and ringworm. The agency agrees with this recommendation. Until such a study is performed and evaluated and effectiveness is shown, camphorated metacresol at all concentrations remains in Category III for efficacy for antifungal use.

References

(1) Francis, A.W., "Physical Evidence of Association of Camphor with Phenol and the Cresols," *Journal of the American Pharmaceutical Association* (Scientific Ed.), 30:229–240, 1941, included on OTC Volume 070302.

(2) von Oettingen, W.F., "Phenol and Its Derivatives: The Relation Between Their Chemical Constitution and Their Effect on the Organism," *National Institutes of Health Bulletin*, No. 190, pp. 59–71 (1949), Public Health Service, The National Institutes of Health.

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22. Two comments supported the Panel's recommendation to allow OTC combinations containing an antiperspirant and an antifungal ingredient. Referring to the agency's dissent in the preamble to the Panel's report in which FDA stated that it would not allow reformulation of these types of combination products to include Category I antifungal ingredients that are prescription to OTC "switches" (47 FR 12480 at 12481), the comments stated that whether or not the antifungals are "switch" ingredients has no relevance to whether or not the addition of an antiperspirant would enhance effectiveness or treat additional symptoms. The comments added that because there is no reason to believe that an antiperspirant could decrease the effectiveness of the antifungal and because the agency did not state any reservation about the safety of antiperspirants in antifungal combinations, combinations of antiperspirants and antifungals, including "switch" ingredients, should be placed in Category I. The comments contended that the rationale for such combinations, particularly for the treatment of athlete's foot, is threefold: (1) Moist conditions favor the growth of fungi; helping to keep the affected area dry should aid the antifungal drug in eliminating the fungi; (2) wetness, particularly in the toeweb area, is a common symptom of athlete's foot, and treating this symptom with an antiperspirant is consistent with the FDA combination policy; and (3) because bacterial growth is more likely to accompany fungal infection when the environment is moist, the addition of an antiperspirant should help keep the environment dry and thus minimize bacterial infection that may accompany athlete's foot.

A third comment noted the Panel's statement that moisture contributes to the development and continuation of athlete's foot and jock itch (47 FR 12480 at 12488) and requested that combinations containing an antifungal and an antiperspirant be classified in Category I both for the treatment of athlete's foot, jock itch, and ringworm and for the prevention of athlete's foot.

The Advisory Review Panel on OTC Antiperspirant Drug Products (Antiperspirant Panel) placed in Category I several active ingredients that had been shown through numerous clinical tests to be safe and effective antiperspirants when used in the axillae. (See the **Federal Register** of October 10, 1978; 43 FR 46694 at 46718 to 46719.) Although the Panel concluded that these ingredients would very likely reduce perspiration from other body surfaces, the Panel stated that to establish a standard for antiperspirant activity for the foot or hand, it is necessary to have information from the test subjects regarding their perception of effectiveness. The Panel did receive and evaluate two controlled studies (Ref. 1) that tested an aluminum chlorhydrate formulation as a foot antiperspirant. However, the Panel concluded that the data were not sufficient to support a claim of antiperspirant activity on body parts other than the axillae. Although the two controlled studies demonstrated a reduction of perspiration for the treated foot, the level of effectiveness was not correlated with user-perception of effectiveness. Therefore, in the absence of adequate user-perception effectiveness data, the Panel recommended that the claim of antiperspirancy on body surfaces other than the axillae be considered a Category III claim. In the tentative final monograph for OTC antiperspirant drug products, the agency concurred in the Panel's recommendation and placed claims for the use of antiperspirant drug products on the hands and feet in Category III (47 FR 36492 at 36497; August 20, 1982).

Although the agency did not directly state reservations about the safety of antiperspirants in antifungal combinations, it should be noted that the agency proposed that products covered by the tentative final monograph for OTC antiperspirant drug products contain the warning "Do not apply to broken skin" (47 FR 36504). Broken skin is common in fungal infections such as athlete's foot, jock itch, and ringworm. Data submitted to the Antiperspirant Panel suggested that the direct application of antiperspirant drug products to intact skin has not been associated with systemic toxic effects because of the relatively impermeable properties of the skin to metallic salts and compiexes contained in antiperspirant drug products. In addition, results of percutaneous dermal toxicity tests performed on animals indicated no ill effects on the animals. However, some users of antiperspirant drug products have experienced local cutaneous irritation. Thus, although the Panel acknowledged that these adverse reactions are ordinarily not serious and are reversible, it recommended that antiperspirant drug products not be applied to open, broken, or abraded skin where the skin's barrier is breached (43 FR 46694 at 46707 to 46708).

The agency believes there is merit on one comment's argument that, because moisture contributes to the development and continuation of athlete's foot and jock itch, the combination of an antiperspirant to reduce moisture with an antifungal constitutes rational therapy. However, because broken skin is common in these infections and because sufficient data have not been submitted to demonstrate the safety of antiperspirants used on broken skin or to demonstrate effectiveness of antiperspirants used on the feet, groin, or other body parts except the axillae, the combination of an antifungal and an antiperspirant for the treatment of athlete's foot, jock itch, and ringworm and for the prevention of athlete's foot remains in Category III in this tentative final monograph.

There is a related issue concerning antifungal ingredients in combination with deodorant (cosmetic) ingredients. In the tentative final monograph for OTC antiperspirant drug products, the agency stated that deodorancy is a cosmetic claim and that the deodorant effectiveness of antiperspirant ingredients would not be further considered in that rulemaking (47 FR 36492 at 36494). Final OTC drug monographs do not address drug-cosmetic combination products, but cover only the drug aspects of products. If a product containing a monograph ingredient(s) is intended for both drug and cosmetic use, it must conform to the requirements of the final OTC drug monograph. In addition to the monograph labeling for OTC antifungal drug products, an antifungal-deodorant product must also bear appropriate labeling for cosmetic deodorant uses, in conformity with section 602 of the act (21 U.S.C. 362) and the provisions of 21 CFR part 701.

In accordance with the revised labeling requirements for OTC drug products, it is the agency's view that cosmetic claims may not appear within the boxed area designated "APPROVED USES." As discussed in the **Federal Register** of May 1, 1986 (51 FR 16258 at 16264 (paragraph 14)), cosmetic terminology is not reviewed and approved by FDA in the OTC drug monographs and therefore could not be placed in the box. Cosmetic claims may appear elsewhere in the labeling but not in the box, should manufacturers choose the labeling alternative provided in § 330.1(c)(2) (i) or (iii) for labeling cosmetic/drug products. Although the agency does not prohibit commingled drug and cosmetic labeling separate from the indications section, the agency requests that such claims be appropriately described so that consumers will more readily be able to differentiate the drug aspects from the cosmetic aspects of such labeling. If commingled drug and cosmetic labeling claims are confusing or misleading, the agency may determine that the product's labeling is misleading within the meaning of the act and declare the product misbranded under sections 502(a) and 602(a) of the act (21 U.S.C. 352(a) and 362(a)).

The use of prescription to OTC "switch" antifungal ingredients in reformulated products is addressed in comment 24 below.

Reference

(1) OTC Volume 140017.

23. Three comments supported the Panel's recommendation that combinations of up to three Category I antifungal ingredients with hydrocortisone or hydrocortisone acetate (0.5 to 1 percent) should be available for OTC use in the treatment of athlete's foot, jock itch, and ringworm (47 FR 12480 at 12554). The comments listed the following reasons why such combinations are rational: (1) They are consistent with FDA's September 1978 combination policy guidelines, which provide that Category I active ingredients from different therapeutic categories may be combined to treat different symptoms concurrently (Ref. 1); (2) the less-than-effective classification by FDA of two prescription products (discussed in the preamble to the Panel's report at 47 FR 12481) appears to have been based solely on the lack of demonstrated contribution of hydrocortisone to the antifungal effectiveness of the products, rather than on a judgment concerning the ability of hydrocortisone to relieve the concurrent symptoms of burning and itching, which is the only reason that it is included in the combination product; (3) although the Topical Analgesic Panel recommended that hydrocortisone and hydrocortisone acetate be approved for OTC use only as single ingredients, it gave no reason for that position. If the Panel had simply wanted to exercise caution until widespread experience had been gained with OTC hydrocortisone products, such experience has now been accumulated with no safety problems apparent; and (4) consumers should have available a product that treats the fungal infection as well as relieves the burning and itching caused by the fungal infection.

Another comment agreed with and supported the Panel's conclusion that the specific combination of clioquinol and hydrocortisone is safe and effective for OTC use in the treatment of athlete's foot, jock itch, and ringworm. The comment recognized that FDA had previously declared this combination product as lacking substantial evidence of effectiveness within the meaning of the agency's combination drug product policy. (See the **Federal Register** of September 25, 1981; 46 FR 47408.) The comment stated its belief that the agency's position on the effectiveness of this combination product was erroneous and contradicted by the adequate and well-controlled clinical studies reviewed by the Antimicrobial (II) Panel and previously reviewed by the agency itself during its Drug Efficacy Study Implementation (DESI) deliberations. The comment included a copy of its November 24, 1981, submission to the DESI proceeding to support the Panel's conclusion that the combination of clioquinol and hydrocortisone is effective.

The comment added that the Panel's proposed labeling for the combination should be modified to distinguish it from the indications for use of clioquinol alone. The comment recommended that the following language be adopted for the indications for use of clioquinol/hydrocortisone products: "Iodochlorhydroxyquin [Clioquinol]/hydrocortisone is effective in the treatment (or cure) of athlete's foot, jock itch, and ringworm and is recommended when additional relief from associated redness, scaling, and itching is desired." The comment cited four studies (Refs. 2 through 5) to support its position that the combination provided significant improvement over clioquinol alone for scaling and itching and for healing of lesions.

As an initial matter, the agency acknowledges that the Panel mentioned that several combinations of an antifungal agent with hydrocortisone or hydrocortisone acetate 0.5 to 1 percent were submitted for evaluation, and that antifungal agents included in the various submitted combinations include clioquinol, miconazole nitrate, and calcium undecylenate. (See 47 FR 12480 at 12554.) As the Panel pointed out, double-blind controlled studies were not performed on combinations containing calcium undecylenate. The Panel also discussed some studies done with a 2-percent miconazole nitrate/1-percent hydrocortisone combination in Belgium and Colombia, South America. However, such a product has never been marketed in the United States, and, although supportive, these studies alone cannot be used to establish the general recognition of the safety and effectiveness of antifungal/hydrocortisone combinations for OTC use.

The agency has been evaluating the effectiveness of the clioquinol/hydrocortisone combination product under the DESI program. The agency's position is that there is a lack of substantial evidence that the combination product is effective for its labeled indications, and that the available data do not demonstrate that each component of the combination makes a significant contribution to the claimed effects of the drug. In the **Federal Register** of August 21, 1984 (49 FR 33173), the agency announced a formal evidentiary hearing on its proposal to withdraw approval of the prescription combination product composed of clioquinol/hydrocortisone because there are no adequate and well-controlled investigations (including clinical investigations) by experts qualified by scientific training and experience to evaluate the effectiveness of the drug to demonstrate that clioquinol/hydrocortisone is an effective combination and will have the effects claimed or suggested in its labeling. The hearing concluded in March 1986. On February 5, 1988, the FDA Administrative Law Judge issued an Initial Decision, concluding that there is a lack of substantial evidence of the effectiveness of the combination product, and ordering the new drug application (NDA) for the product withdrawn (Ref. 6). Exceptions to the Initial Decision and replies to the exceptions (Ref. 7) have been filed with the Dockets Management Branch and are currently under review by the Commissioner.

Because the agency believes that resolution of the status of the clioquinol/hydrocortisone combination in the DESI proceeding will be pivotal to the final classification of antifungal/hydrocortisone combinations in this rulemaking, the agency is deferring classification of such combinations in this rulemaking until all administrative remedies have been exhausted and the matter is fully resolved in the DESI proceeding.

The agency also notes that the data upon which the Panel based its recommendation were for combinations of single antifungal ingredients and hydrocortisone or hydrocortisone acetate. No data have been submitted to demonstrate the safety and effectiveness of a combination of up to three antifungal ingredients and hydrocortisone or hydrocortisone acetate. The agency has evaluated the Panel's recommendation that up to three antifungal ingredients may be combined and has found no evidence to establish that such a combination offers any

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advantage over the antifungal ingredients when used alone and has placed this combination in Category III. (See comment 24 below.) The agency further notes that the Topical Analgesic Panel recommended that hydrocortisone and hydrocortisone acetate 0.25 to 0.5 percent be allowed OTC as single ingredients, but not in any combination. In the tentative final monograph for OTC external analgesic drug products, the agency concurred with the Panel's recommendation (48 FR 5852 at 5854). Also, as noted above, the studies on the miconazole nitrate/hydrocortisone combination product involved the use of hydrocortisone at a 1-percent concentration, a strength currently not approved for OTC marketing.

In conclusion, the combination of up to three Category I antifungal ingredients and hydrocortisone or hydrocortisone acetate is not being included in the tentative final monograph for OTC antifungal drug products at this time. The degree to which this combination complies with FDA's September 1978 combination policy guidelines is discussed further in comment 27 below, in which the combination of an antifungal with any Category I analgesic/anesthetic/antipruritic is addressed.

References

(1) Food and Drug Administration, "General Guidelines for OTC Drug Combination Products," September 1978, Docket No. 78D–0322, Dockets Management Branch.

(2) Brecker, L. J., et al., "Protocol #02," unpublished study in OTC Volume 070193.

(3) Abdel-Aal, H., et al., "A Double-Blind Comparison of a New Combination (Halcinonide-Neomycin-Amphotericin) and Active Controls in Cutaneous Candidiasis and Steroid-Responsive Dermatoses," *The Journal of International Medical Research*, 4:232–236, 1976.

(4) Barba-Rubio, J., "Clinical Evaluation of a New Halcinonide-Antifungal Combination," *Current Therapeutic Research*, 20:655–660, 1976.

(5) Carpenter, C. L., et al., "Combined Steroid-Antinfective Topical Therapy in Common Dermatoses: A Double-Blind, Multi-Center Study of Iodochlorhydroxyquin-Hydrocortisone in 277 Patients," *Current Therapeutic Research*, 15:650–659, 1973.

(6) Food and Drug Administration Initial Decision: "Proposal to withdraw Approval of the New Drug Application for Vioform-Hydrocortisone Cream, Ointment and Lotion Containing Iodochlorhydroxyquin and Hydrocortisone Under the Drug Efficacy Study Implementation Program, February 5, 1968, Coded IDF, Docket No. 80N–0012, Dockets Management Branch.

(7) Comments No. EXC00001, EXC00002, EXC00003, EXC00004, REX00001, and REX00002, Docket No. 80N–0012, Dockets Management Branch.

24. Two comments disagreed with the agency's decision not to allow the reformulation of combination products to include Category I ingredients where prescription to OTC switches are involved. The comments asserted that nowhere in the **Federal Register** of May 11, 1972 (37 FR 9464), which established the OTC drug review procedures, nor in the September 1978 guidelines for OTC drug combination products (Ref. 1), did the agency state that general recognition of the safety and effectiveness of ingredients for OTC use would be limited to those ingredients already marketed on an OTC basis. One comment also disagreed with the agency's decision to refuse to permit combinations of Category I antifungal ingredients and stated that the Panel's recommendation that a Category I combination may contain up to three antifungal ingredients "provided that each ingredient broadens the antifungal spectrum" (47 FR 12480) fully meets the FDA's combination policy (21 CFR 330.10(a)(iv)). The other comment pointed out that there is no precedent set by other panels for limiting switch ingredients to single-ingredient products except in the case of hydrocortisone, where the Topical Analgesic Panel recommended "a specific ingredient for a specific use." The comment added that the Antimicrobial II Panel intended its combination policy to encompass ingredients recommended for prescription to OTC switch. The comment urged that the Panel's recommendations be followed because the agency gave no rationale or justification for its restriction. The comment concluded that, in the absence of any stated rationale, the agency's decision is both arbitary and contrary to the purpose of the OTC drug review.

In the preamble to the Panel's report, the agency noted that the Panel had recommended that up to three Category I antifungal ingredients may be combined, provided that each ingredient broadens the antifungal spectrum, for the treatment of athlete's foot, jock itch, and ringworm. Under § 330.13 (12 CFR 330.13), combination products containing prescription-to-OTC switch antifungal drugs recommended as Category I by the Panel could have been marketed immediately following publication of the Panel's report and proposed monograph unless the agency disagreed with the Panel's recommendations at that time. FDA stated that it was not aware of any such Category I antifungal combinations on the OTC market at that time (47 FR 12480). The agency also stated that the Panel's report had been prepared independently of FDA, and that the agency had not yet fully evaluated the report. Therefore, the agency did not want new combination antifungal products containing switch drugs entering the OTC marketplace until it had fully evaluated the data relating to these products. The agency was willing, however, to permit reformulation of combinations of antifungal ingredients already on the OTC market to include Category I ingredients already in the OTC marketplace.

The agency has evaluated the Panel's recommendations that a combination may contain up to three antifungal ingredients provided each ingredient broadens the antifungal spectrum (47 FR 12480 at 12554). The agency has examined the antifungal spectra of the various Category I ingredients and determined that, with the exception of nystatin, the spectra of the various ingredients are similar. The ingredients clioquinol, tolnaftate, and undecylenic acid and its salts are effective against the dermatophytes cited by the Panel, namely, *T. rubrum, T. metagrophytes, E. floccosum,* and *M. canis,* in its criteria for evaluating the effectiveness of antifungal ingredients (47 FR 12491). In addition, the switch ingredients haloprogin and miconazole nitrate and effective against these four dermatophytes and *Candida.* Furthermore, the spectra of the switch ingredients are sufficiently broad as to make it unnecessary to combine these ingredients with any other Category I antifungal ingredient. Because of the similarity of spectra of the Category I antidermatophytic antifungal ingredients, combinations of up to three of these ingredients that are effective against the same dermatophytic fungi that cause athlete's foot, jock itch, and ringworm would not broaden the antifungal spectra. Clinical data are needed to show that a combination of any two of these ingredients would increase the spectrum of the product, or offer some other advantage over the single ingredients in terms of enhanced effectiveness, safety, patient acceptance, or quality of formulation, as provided in the OTC combination guidelines (Ref. 1). Also, the agency is not aware of any such combinations currently available on the market. Therefore, in the absence of data to support such combinations, the agency is not including combinations of antifungal ingredients effective against dermatophytic fungi in this tentatives final monograph.

Regarding the comment's reference to the guidelines for OTC drug combination products (Ref. 1), paragraph 3 of those guidelines states that Category I active ingredients from the same therapeutic

category that have the same mechanism of action may be combined in selected instances. However, the guidelines also state that such combinations must meet the OTC combination policy in all respects, offer some advantage over the active ingredients used alone, and, on a benefit-risk basis, be equal to or better than each of the active ingredients used alone at its therapeutic dose. The advantage of combinations of antifungals as defined by the Panel is the broadening of the antifungal spectrum. However, the spectrum was defined by the Panel as being those organisms that are the most common causes of jock itch, ringworm, and athlete's foot in the United States. Given this specific spectrum, combinations of Category I antifungal ingredients would not result in a broadening of the antifungal spectrum. No advantage over the active ingredients used alone has been shown to justify such combinations.

The Panel also stated that some fungal diseases are caused both by dermatophytes and by *Candida* and that, because most consumers cannot distinguish between these diseases, a combination containing an antidermatophytic ingredient, as discussed above, and an anticandidal ingredient, e.g., nystatin, would offer broader therapy (47 FR 12480 at 12554). However, the Panel did not cite any data to support this theory. In the absence of information showing that infection by *Candida* is a significant cause of athlete's foot or jock itch (see the Panel's discussion at 47 FR 12487), or that secondary infections of *Candida* are common, the combination of an antidermatophytic ingredient with an anticandidal ingredient is classified in Category III at this time. If information is submitted to the agency demonstrating that *Candida* is a significant problem in dermatophytic infections, the agency will consider data in support of the appropriations of these combinations. Specifically, these data would have to show increased effectiveness of the product resulting from the inclusion of nystatin in the combination product. As stated in the proposed rule for OTC antimicrobial drug products (43 FR 1210-at 1239; January 6 ,1978), "The Commissioner believes that antimicrobial agents are somewhat different from combinations of other OTC ingredients in that they act upon a foreign entity, the microorganism, rather than the host. In combinations of nonantimicrobial ingredients, the advantage of the combination may be that therapeutic activity is obtained at lower dosages for each component ingredient, whereas there can be no contribution of effectiveness of an antimicrobial ingredient by combining it with antimicrobial ingredients having identical bactericidal, virocidal, and fungicidal properties. Consequently, the Commissioner concludes that a rational combination of antimicrobials should have one of the following purposes: expansion of the microbial spectrum relevant to the product class for which the combination is intended, reduction of the toxicity of one or both of the ingredients, or a synergistic effect." This conclusion is equally applicable to antifungal drugs.

In conclusion, the agency is proposing in this tentative final monograph that all combinations of antifungal active ingredients, as permitted by the Panel in § 333.220(a), be placed in Category III. Because nystatin was included in the Panel's recommended monograph only for use in combination antifungal products, the agency is also placing nystatin in Category III because no combinations are currently included in the tentative final monograph.

Reference

(1) Food and Drug Administration, "General Guidelines for OTC Drug Combination Products," September 1978, Docket No. 78D–0322, Dockets Management Branch.

25. Two comments supported the Panel's recommendation at 47 FR 12480 at 12557 that an antifungal ingredient may be combined with a broad-spectrum antibacterial ingredient that is active against gram-positive and gram-negative bacteria for the treatment of athlete's foot. Although the Panel recognized the combination as rational, one of the comments questioned why the Panel required a double-blind, controlled clinical study to demonstrate the effectiveness of the combination. The comment stated that such a study was submitted to the Panel and was, in fact, the basis for the Panel's recognition of the need for an antifungal/antibacterial combination (Ref. 1). This comment asserted that the study was carefully conducted and that it adequately demonstrated the effectiveness of such therapy. Therefore, according to the comment, the only requirement for marketing such a combination should be the identification of appropriate Category I antibacterial agents and adding the combination of an antifungal and an antibacterial ingredient to the list of combinations in § 333.220 of the tentative final monograph.

The agency agrees with the Panel that a broad-spectrum antibacterial ingredient that is active against gram-positive and gram-negative bacteria is rational for use in combination with an antifungal for the treatment of athlete's foot. However, recognition of medical rationale by itself does not determine that this combination is generally recognized as safe and effective for the intended use. In fact, based on the data, including the study referred to by the comment, the Panel classified the combination in Category III (47 FR 12480 at 12557).

The study (Ref. 1), according to the authors, demonstrated that topical antibacterials produced definite clinical benefit in the treatment of athlete's foot, although the disease was "not cured, merely curbed," and that a combination of neomycin 1 percent and tolnaftate 1 percent was thought to be more effective than either treatment alone (47 FR 12557). After reviewing the study, the agency concurs in the Panel's conclusion that the combination of an antifungal with a broad-spectrum antibacterial is sometimes desirable for the treatment of athlete's foot characterized by soggy toewebs, but that a double-blind clinically controlled study is needed to show effectiveness (47 FR 12558). In addition, it should be noted that the Panel was concerned that chronic use of certain antibacterial ingredients could result in potential toxicity, including contact sensitization (47 FR 12558). Accordingly, the agency also concurs with the Panel that any antibacterial ingredient considered for inclusion in a combination antifungal product should be both safe and effective.

Because no new data on specific antibacterial/antifungal combinations have been submitted, such combinations remain in Category III in this tentative final monograph.

Reference

(1) Leyden, J. J., and A. M. Kligman, "Interdigital Athlete's Foot. The Interaction of Dermatophytes and Resident Bacteria," *Archives of Dermatology*, 114:1466–1472, 1978, in OTC Volume 070304.

26. One comment supported the Panel's recommended Category I combination of a keratolytic agent, e.g., salicylic acid, with up to three antifungal ingredients based on the action of an effective keratolytic that removes the outer layers of the stratum corneum, thus better exposing the infecting fungus to the action of the antifungal ingredients (47 FR 12480 at 12554). The comment disagreed with the agency's concerns about the lack of data to support such combinations and the concerns expressed by the Miscellaneous External Panel about the

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safety of salicylic acid used on skin areas other than those being treated (47 FR 12481). The comment argued that antifungals are for use on areas directly affected and thus the antifungal/keratolytic combination should be allowed as Category I.

The agency notes that the Antimicrobial II Panel stated that, theoretically, an effective keratolytic agent such as salicylic acid could remove the outer layers of the stratum corneum, thus better exposing the infecting fungus to the action of the antifungal ingredient (47 FR 12554). In the preamble to the Panel's report, the agency noted that the Panel provided no data to support its recommendation and that there was no evidence submitted to the Panel to show that a keratolytic agent would be useful or safe in treating fungus conditions. The comment did not submit any safety and effectiveness data to support the use of keratolytics in general, or the use of salicylic acid in particular, in combination with antifungal ingredients. Although the combination may theoretically be useful, this alone is not an adequate basis to include such a combination in the tentative final monograph.

The Miscellaneous External Panel recommended that salicylic acid be classified as Category I as a corn and callus remover at concentrations from 12 to 40 percent in pads, plasters, and disks and at concentrations from 12 to 17.6 percent in collodion. (See the **Federal Register** of January 5, 1982; 47 FR 522 at 527.) The agency concurred with this recommendation in the tentative final monograph for OTC corn and callus remover drug products. (See the **Federal Register** of February 20, 1987; 52 FR 5412.)

The Miscellaneous External Panel also recommended that salicylic acid be classified as Category I as a wart remover at concentrations of 5 to 17 percent in a collodion vehicle. (See the **Federal Register** of October 3, 1980; 45 FR 65609 at 65613.) The agency concurred with this recommendation in the tentative final monograph for OTC wart remover drug products. (See the **Federal Register** of September 3, 1982; 47 FR 39102.) The agency further expanded the proposed monograph to include 12 to 40 percent salicylic acid in a plaster vehicle and redesignated "a collodion vehicle" as a "collodion-like" vehicle for the dosage form containing 5 to 17 percent salicylic acid. (See the **Federal Register** of March 27, 1987; 52 FR 9992.)

In discussing the safety of salicylic acid as an antifungal agent, the Antimicrobial II Panel stated that this drug was safe when used in a concentration less than or equal to 3 percent and if the use of the drug is restricted to relatively small body areas (47 FR 12480 at 12549). The Panel also pointed out that the systemic toxicity of topical salicylic acid, like its keratolytic effects, appears to result from a combination of factors. Some of these factors are (1) a high concentration of salicylic acid in a vehicle that allows rapid absorption, (2) the frequency of application, (3) whether the surface area is occluded, and (4) the condition and area of skin to which the preparation is applied (47 FR 12549).

Subsequent to these reports, the agency classified salicylic acid as Category I for use in acne drug products, but proposed to limit the concentration to a range of 0.5 to 2 percent because there may be an increased potential for irritation from concentrations greater than 2 percent. (See the **Federal Register** of January 15, 1985; 50 FR 2172). Broken, denuded, diseased, or infected skin areas occur in fungal infections. In the case of athlete's foot and jock itch (and often ringworm), the affected area is occluded after the drug product is applied. The agency is concerned that a keratolytic agent such as salicylic acid combined with antifungal ingredients may further irritate the skin, especially in areas likely to be occluded, particularly sensitive areas like the groin. The agency is also concerned about a possible occurrence of some systemic toxicity. Further safety data are needed to ensure that these problems will not occur with such a combination product.

With regard to efficacy, the effective keratolytic concentrations recommended by the Miscellaneous External Panel discussed above are higher than the "safe" 3 percent concentration recommended by the Antimicrobial II Panel and the "safe" 0.5 to 2 percent range proposed by the agency for topical acne drug products. If a lower concentration of the keratolytic agent must be used, it must also be shown that that concentration is effective. Also, as a combination drug product, evidence is needed to show that the keratolytic component contributes to the effect of the product. There is a lack of data showing that the antifungal-keratolytic combination is more effective than the antifungal agent used alone. Therefore, the agency classifies the combination of an antifungal(s) and a keratolytic agent for the treatment of athlete's foot, jock itch, and ringworm and for the prevention of athlete's foot as Category III for both safety and effectiveness.

27. Two comments disagreed with the Panel's Category II classification of an antifungal ingredient with a local anesthetic (47 FR 12480 at 12555). The comments contended that it is rational therapy and beneficial to the consumer to combine a Category I antifungal with any Category I analgesic/anesthetic/antipruritic ingredient identified in § 348.10(b) of the OTC Topical Analgesic Panel's recommended monograph for OTC external analgesic drug products (44 FR 69768 at 69865). One comment stated that curing the disease (i.e., athlete's foot, jock itch, and ringworm) ultimately results in relief of the symptoms of burning and itching, but that it often requires several weeks of treatment to accomplish with an antifungal drug alone. Therefore, the comments maintained that topical analgesics/anesthetics/antipruritics would provide prompt short-term relief of such common symptoms as itching while the antifungal agent treated the underlying disease.

Both comments mentioned that the Panel concurred with the basic rationale for these combinations (47 FR 12554), but that the Panel had expressed some concern regarding these combinations. According to the comments, the Panel's concern that use of an anesthetic/antifungal combination would result in the anesthetic's masking the symptoms without eradicating the fungus was addressed at 47 FR 12564 where the Panel specified that any product labeled as an antifungal must contain a Category I antifungal ingredient. Masking symptoms would not be a concern because the antifungal ingredient would be eradicating the fungus simultaneously. Another concern was that some individuals would stop treatment once symptomatic relief (of the itching) was obtained but before the infection was cured. The comments believed that this concern could be handled by including on the label the directions recommended by the Panel in § 333.250(d)(1), which state that best results in athlete's foot and ringworm are usually obtained with 4 weeks' use of the product and in jock itch, with 2 weeks' use. The comments asserted that this combination meets the general OTC combination drug requirement that provides that one basis for combining active ingredients is for the concurrent treatment of multiple symptoms. The comments did not submit any data.

The agency agrees with the comments that the combination of an analgesic/anesthetic/antipruritic with a Category I antifungal is rational and is consistent with the agency's OTC combination policy requirement that active ingredients may be combined if they provide concurrent treatment of multiple symptoms (Ref. 1). The agency also agrees with the comments that the Panel's concerns could be addressed by specific labeling in the monograph. However, the recognition of medical rationale alone cannot establish that this combination is generally recognized as safe and effective for the intended OTC use. The purpose of combining the two individual components in this particular combination is to increase the effectiveness of the product in relieving burning and itching. Because the analgesic/anesthetic/antipruritic drug is being included in the combination to provide relief of burning and/or itching, an action that also results once the antifungal drug begins to cure the underlying disease, the contribution of the analgesic/anesthetic/antipruritic must be shown by demonstrating that the combination is more effective in relieving the burning and itching sooner (or in reducing the severity) than the antifungal drug used individually. The Panel found the data submitted to it to establish general recognition of the safety and effectiveness of such a combination to be inadequate, and the comments did not submit any additional data. However, based on the medical rationale presented by the comments, the agency is classifying these combinations in Category III, pending receipt of data on specific combinations. (See also comment 23 above, which discusses the combination of hydrocortisone with an antifungal.)

antifungal drug products is safe and effective in the prevention of athlete's foot. Data would have to be submitted to demonstrate the contribution of each active ingredient in the product in preventing athlete's foot. Such combinations are classified in Category III in this tentative final monograph. Therefore, the heading of § 333.250(b)(2) is not being changed as requested by the comment, but has been changed in response to another comment. (See comment 19 above.)

O. Comments on Testing

29. One comment recommended that the safety testing guidelines in the Panel's report be retained as guidelines for use only when applicable to a specific antifungal ingredient, as noted in the individual evaluation of that ingredient. The comment stated that requiring a standard battery of safety tests as outlined in the safety testing guidelines (47 FR 12480 at 12559) is appropriate for new drugs but is not appropriate for drugs that have been in widespread use for a long period of time, such as Category III antifungal ingredients. The comment suggested that if there is a particular area of concern for the safety of a given ingredient, then testing should be done in that particular area of concern rather than wasting resources by including testing in areas where safety is well known. Also, the comment pointed out that in several instances the Panel recommended specific tests for certain ingredients.

Another comment contended that, as written, the antifungal guidelines for safety and effectiveness testing are incomplete, confusing, and/or lack feasibility. The comment cited a number of examples to support its contention and recommended that two appropriate scientists from FDA and two from the pharmaceutical industry with experience in antifungal product development review, edit, and finalize these guidelines on laboratory testing.

The agency has not addressed specific testing guidelines in this document. In revising the OTC drug review procedures relating to Category III, published in the **Federal Register** of September 29, 1981 (46 FR 47730), the agency advised that tentative final and final monographs will not include recommended testing guidelines for conditions that industry wishes to upgrade to monograph status. Instead, the agency will meet with industry representatives at their request to discuss testing protocols. The revised procedures also state the time in which test data must be submitted for consideration in developing the final monograph. (See also part II. paragraph A.2. below—*Testing of Category II and Category III Conditions.*).

P. Comments on Labeling

30. Three comments disagreed with the use of the term "antifungal" as the required statement of identity on the product label. The comments maintained that antifungal is a technical term that is meaningful to FDA, industry, and health professionals, but may be meaningless to laypersons. The comments suggested that the statement of identify be made more flexible to allow alternative terminology that is more easily understood by consumers to enable them to identify the type of product appropriate for treating a condition they can recognize and self-treat, e.g., "athlete's foot remedy" or "jock itch remedy." Two comments argued that the word "antifungal" was recommended by the Panel as the statement of identity and as such should not have been classified as a Category II labeling statement. Stating that the term is medically correct and meaningful to many consumers, the comments recommended that it be placed in Category I for use elsewhere on the label, regardless of whether it is also used as a statement of identity.

The agency agrees that the examples of alternative statements of identity suggested by the comments are understood by consumers, but finds that the terms are similar to the indications statements recommended by the Panel in § 333.250(b) (47 FR 12480 at 12565). The agency sees no need to include in the statement of identity for antifungal drug products the same information found in the indications section. Wherever possible, the agency prefers to use the general pharmacologic category as the statement of identity because information on the principal intended action of the product is provided in the indications section. The agency believes that the indications section is fully informative and will allow consumers to identify the product as being appropriate for a particular condition they wish to self-treat. Therefore, the comment's suggestion is not being proposed in this tentative final monograph. However, the agency has no objection to terms such as "athlete's foot remedy" or "jock itch remedy" appearing elsewhere in the labeling provided they are not intermixed with labeling established by the monograph and do not detract from the required information.

In regard to the Panel's classification of "antifungal" as a Category II labeling claim, the agency concurs with the Panel that " 'antifungal' (when used alone)" in

Reference

(1) Food and Drug Administration, "General Guidelines for OTC Drug Combination Products," September 1978, Docket No. 78N-0322, Dockets Management Branch.

28. One comment disagreed with § 333.250(b)(2) of the Panel's recommended monograph in which a claim for prevention of athlete's foot is limited to products containing tolnaftate "as a single ingredient." The comment argued that there is no reason to exclude a prophylaxis claim for combination products containing two Category I antifungal ingredients, where one or both are approved for prophylaxis, or for combination products containing an antifungal for prophylaxis and an antiperspirant. The comment requested that the heading for § 333.250(b)(2) be reworded as follows: "For products containing any ingredient identified in § 333.210(e) alone or in a combination identified in § 333.220(b)(1) labeled for the prevention of athlete's foot."

Claims for prevention of athlete's foot for individual active ingredients are discussed in comments 18, 19 and 20 above. The agency has not received any data showing that a combination

labeling would be inadequate (47 FR 12460 at 12524) because the term does not provide sufficient information to inform consumers of the particular condition they wish to self-treat. However, the term "antifungal" may be used elsewhere in the labeling, as with the terms "athlete's foot remedy" and "jock itch remedy," discussed above.

31. Two comments asserted that the Panel erroneously expanded the scope of Category II labeling statements (47 FR 12524) by inappropriately including statements that are not "conditions that would result in the drug not being generally recognized as safe and effective or would result in misbranding," but rather are statements describing the performance of the product.

Both comments cited the following Category II claims: "promotes healing," "helps heal," "helps restore normal skin even in severe or persistent cases," "speeds healing of athlete's foot," "speeds healing of jock itch," "kills all major types of athlete's foot fungi," "kills most athlete's foot fungi," and "kills all major types of jock itch fungi." These terms should logically be in Category I, the comments maintained, because the medicinal agent actually kills the fungus and thus allows the infected area to heal. The comments added that this is not the case with many other types of OTC drug products that primarily ameliorate signs and symptoms rather than treat the underlying causes.

One comment added that the claim "for the treatment of athlete's foot and ringworm of the skin, exclusive of bodyfold areas" is simply an accurate statement of the proper use of such products and is not a Category II condition for which the products are not safe and effective.

Because of the comments' assertions, the agency has reevaluated all of the Category II labeling identified by the Panel at 47 FR 12524 for topical antifungal drug products. The agency notes that the Panel considered and classified each claim (that appeared in the labeling of the products that it reviewed) as an indication for use. It should be noted that the OTC drug review program establishes conditions under which OTC drugs are generally recognized as safe and effective and not misbranded. One aspect of the program is to develop standards for certain parts of the labeling of OTC drug products. FDA has found that it is simply not practical—in terms of time, resources, and other considerations—to set standards for all labeling found in OTC drug products. Accordingly, OTC drug monographs directly address only those labeling items that are related in a significant way to the safe and effective use of covered products by lay persons. Those labeling items are the product statement of identity; names of active ingredients; indications for use; directions for use; warnings against unsafe use, side effects, and adverse reactions; and claims concerning mechanism of drug action.

The agency believes that a number of the claims considered by the Panel are descriptive statements that do not relate in a significant way to the safe and effective use of antifungal drug products that are already labeled with the required information, and, therefore, are outside the scope of the monograph. The following claims are included: "athlete's foot, ringworm, jock itch (when these words are used alone)," "antifungal (when used alone)," "kills most athlete's foot fungi," " 'scientific treatment' for athlete's foot," "proven fungicide for athlete's foot, jock itch, and body ringworm fungi," "fungicidal against athlete's foot, jock itch, and ringworm fungi," "broad spectrum antifungal (for treatment of athlete's foot and jock itch)," "kills all major types of athlete's foot fungi," "kills all major types of jock itch fungi," "fungicidal," and "kills fungus spores." The agency believes that such information may be useful to the consumer in describing a product's action or intended effect. However, these and any other terms that are outside the scope of the monograph, even though they are truthful and not misleading, may not be intermixed with labeling established by the monograph and may not detract from the required information. They may be included elsewhere in the labeling.

In contrast, the agency believes that product performance claims such as "kills athlete's foot fungi on contact," "kills athlete's foot on contact," "kills jock itch fungi on contact," "kills athlete's foot fungi fast," "kills jock itch fungi fast," and "for fast relief of itching and burning of athlete's foot and jock itch" are misleading because such claims create a false impression of instant results, while the directions for use of antifungals state that athlete's foot and ringworm products should be used for 4 weeks and jock itch products for 2 weeks. Therefore, these claims remain in Category II.

Claims related to healing, e.g., may promote healing, and wound healing agents are classified as Category III in the rulemaking for OTC skin protectant drug products (48 FR 6820 at 6831; February 15, 1983) and in the rulemaking for OTC anorectal drug products (53 FR 30758 at 30765; August 15, 1988). However, the agency agrees with the comments that antifungal drugs are different from most OTC drug products in that they actually treat the underlying disease rather than only ameliorate signs and symptoms. "Treats," "cures," and "clears up" are included as part of the allowed indications for use in the proposed monograph. The agency believes that labeling that represents or suggests healing, e.g., "promotes healing," "helps heal," "helps restore normal skin even in severe or persistent cases," may be meaningful to the lay person who may consider "heals" and "cures" or "clears up" to be synonymous. Therefore, the agency would allow "helps heal" or "promotes healing" claims to appear elsewhere on the label provided they are not intermixed with labeling established by the monograph. However, data are inadequate to support any product performance claims, e.g., "speeds healing of athlete's foot" and "speeds healing of jock itch." The agency is unaware of any clinical studies for any antifungal ingredient that demonstrates such an effect. Such claims are classified as Category III.

The agency is proposing in this tentative final monograph to classify as Category III claims related to the antibacterial activity of antifungal drug products such as "inhibits growth of fungi and bacteria," "helps prevent germ and fungus infections," "controls bacteria and fungi," "bactericide," "germicide," "antiseptic," and "inhibitory antiseptic," the Panel acknowledged that some Category I antifungal ingredients, i.e., miconazole nitrate and iodochlorhydroxyquin, have in vitro antibacterial activity but concluded that the term "antibacterial" should not be used in labeling of OTC antifungal drug products without supportive clinical studies demonstrating an in vivo antibacterial activity of these ingredients (47 FR 12460 at 12553). The agency agrees with the Panel's recommendation.

The agency is also reclassifying the claims "penetrating action goes under crust and skin surface to kill athlete's foot fungi," "protects broken skin from infection," and "kills all known athlete's foot and jock itch fungi" to Category III because of the lack of data which demonstrate effectiveness for such claims and the lack of data that any Category I ingredient is known to "kill all known" athlete's foot and jock itch fungi.

The agency concludes that the other claims should remain in Category II for various reasons. "Adjunctive treatment," "for treatment of athlete's foot and ringworm of the skin, exclusive of body fold areas," and "invisible shield" are unclear and confusing. "Temporary relief of ringworm" and "temporary relief of itching and discomfort due to athlete's foot" are inaccurate because Category I antifungal ingredients, when used as directed, provide effective treatment of these conditions, not temporary relief. "The broadest proven dermatophyte spectrum" is not true because Category I antifungals are all effective and are not ranked as good, better, best in the monograph. "Fungistatic" is not true because Category I antifungal ingredients must be fungicidal not just fungistatic.

The agency believes that the term "first aid" is inappropriate in the labeling of a product promoted for the treatment of athlete's foot, jock itch, or ringworm. The term "first aid" is generally perceived as an emergency treatment, and in the context of OTC drug products, for the prevention of infection in minor cuts, scrapes, and burns. (See, e.g., the definition of "first aid antibiotic" in § 333.103(b) of the final monograph for OTC first aid antibiotic drug products (52 FR 47312 at 47323; December 11, 1987).)

Antifungal containing products for "athlete's foot, jock itch, or ringworm" should be used daily for up to 4 weeks and, therefore, are not considered a first aid treatment. The agency agrees with the Panel that the term is misleading and proposes that any claim which represents or suggests an antifungal product is a first aid remedy is Category II labeling.

The Panel recommended that a number of claims be Category II because they are to broad and unspecific to be meaningful. These include: "minor fungus skin infections," "prevention and control of minor skin infections including athlete's foot," "minor skin irritations associated with fungus," "combats and controls infection-causing fungi," "for irritations caused by fungus infections," "for fungus of hands, groin or body," "for superficial fungal infections of the skin," "helps prevent fungal infections," and "guards against fungus growth." The agency believes that these statements standing alone could broaden the intended OTC uses of these products and, therefore, should remain in Category II. However, these descriptive statements, if combined with the conditions for which the product is intended to be used, would be acceptable information for consumers. For example, the following statements would be acceptable: "for irritations caused by athletes foot infections," "for ringworm of hands, groin, or body," and "combats and controls athlete's foot infection-causing fungi." However, any statements that broaden the intended OTC uses of the product would not be acceptable.

A number of claims reviewed by the Panel remain in Category II. The claims "other skin fungus infections," "for the treatment of inflamed conditions of the skin, such as eczema and other fungal infections," and "aids in drying up excessive secretions," remain in Category II because they are too broad and unspecific. These claims imply effectiveness for conditions that are not supported by available data (e.g., eczema or excessive secretions). In addition, when used with the approved monograph indications, those claims that refer to other skin fungus infections may promote self-treatment of fungal infections other than athlete's foot, jock itch, and ringworm.

The claims "clinical improvement was obtained in 88 percent of athlete's foot cases" and "clinical studies show that it cured 78 percent of athlete's foot cases" are also classified as Category II. Specific percentages of successful and unsuccessful treatment will vary according to the test, i.e., an identical product in a different clinical study will result in different findings. All monograph drugs show clinical improvement in a certain percentage of patients. The agency believes that such labeling would not be very meaningful to consumers and could be confusing in selecting which product to use. Therefore, the agency concludes that such labeling should remain in Category II.

32. One comment requested that the statement "this product is not effective on the scalp or nails," which appears in the Panel's recommended directions in § 333.250(d)(1) for products labeled to treat athlete's foot, jock itch, and ringworm, be changed to read "this product is not effective in the treatment of fungal infections of the hair and nails." According to the comment, fungal infections of the skin of the scalp respond just as well to topical agents as does infected skin on other parts of the body.

The Panel provided the following reasons to support its position that topical antifungals are not effective for the treatment of ringworm of the scalp or nails: "Fungal infections of the scalp and nails tend to be chronic. They respond poorly to topical therapy, partly because of the thickness of the nails and the depth of the hair roots. Both sites of infection provide inaccessible locations for fungi, thus drastically decreasing the penetration of topical antifungals." (See 47 FR 12460 at 12467.)

Because the comment did not submit any data to support this suggested change, the agency is retaining the Panel's statement in the directions in this tentative final monograph.

33. Noting its continuing opposition to the exclusivity policy, one comment stated that FDA should not prohibit the use of alternative OTC labeling terminology to describe indications if that terminology is truthful, not misleading, and intelligible to the consumer. The comment stated that the existing statutory provisions (15 U.S.C. 1453(a), 21 CFR 201.61, and sections 502(e) and 508 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 352(e) and 358)) do not show a congressional intent to authorize FDA to legislate the exact wording of OTC drug claims to the exclusion of other equally accurate and truthful claims for these products. The comment also stated that if manufacturers use some of the terms recommended by some OTC advisory review panels, their labeling may be in violation of section 502(c) of the act (21 U.S.C. 352(c)), which requires label information to be in such terms as to render it likely to be read and understood by consumers under ordinary conditions of purchase and use. Other comments also stated that it is inappropriate and improper for FDA to prescribe exclusive lists of terms that must be used in labeling.

In the **Federal Register** of May 1, 1988 (51 FR 16258), the agency published a final rule changing its labeling policy for stating the indications of use for OTC drug products. Under 21 CFR 330.1(c)(2), the label and labeling of OTC drug products are required to contain in a prominent and conspicuous location, either (1) the specific wording on indications for use established under an OTC drug monograph, which may appear within a boxed area designated "APPROVED USES"; (2) other wording describing such indications for use that meets the statutory prohibitions against false or misleading labeling, which shall neither appear within a boxed area nor be designated "APPROVED USES"; or (3) the approved monograph language on indications, which may appear within a boxed area designated "APPROVED USES," plus alternative language describing indications for use that is not false or misleading, which shall appear elsewhere in the labeling. All other OTC drug labeling required by a monograph or other regulation (e.g., statement of identity, warnings, and directions) must appear in the specific wording established under the OTC drug

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monograph or other regulation where exact language has been established and identified by quotation marks, e.g., 21 CFR 201.63 or 330.1(g).

In this tentative final monograph for OTC topical antifungal drug products, supplemental language relating to indications has been proposed and captioned as *Other Allowable Statements*. Under FDA's revised labeling policy (51 FR 16258), such statements are included at the tentative final stage as examples of other truthful and nonmisleading language that would be allowed elsewhere in the labeling. In accordance with the revised labeling policy, such statements would not be included in a final monograph. However, the agency has decided that, because these additional terms have been reviewed by FDA, that should be incorporated, wherever possible, in final OTC drug monographs under the heading "Indications" as part of the indications developed under the monograph.

34. Referring to the Panel's guidelines for effectiveness studies and effectiveness standards for labeling indications of antifungal drug products for the treatment of ringworm of the body (47 FR 12480 at 12562), one comment disagreed with the Panel and stated that the treatment period should be 2 weeks and not 4 weeks with followup studies at 2 weeks and 4 weeks. The comment requested that the Panel's recommended directions in § 33.250(d)(1) be revised to provide for a 2-week treatment period of ringworm of the body rather than the 4-week period recommended by the Panel. The comment also requested that the directions be revised to alert consumers that "if a ringworm infection of the body does not clear within 2 weeks, professional consultation is recommended."

As discussed in comment 29 above, specific testing requirements are not being addressed in this tentative final monograph. With regard to the directions for use of antifungal drug products for the treatment of ringworm of the body, the Panel stated in its report that "The dosing regimen is standardized. Athlete's foot and ringworm are more difficult to treat than jock itch. For this reason the treatment period should be at least 4 weeks for athlete's foot and ringworm and 2 weeks for jock itch" (47 FR 12480 at 12492). The comment gave no reasons for changing the treatment period from 4 weeks to 2 weeks and did not submit any data to support its request. Thus, the agency concurs in the Panel's recommendation. Until data to support the comment's requests are submitted and evaluated, the changes recommended by the comment will not be made.

35. Several comments objected to the agency's dissent from the Panel's recommendation that certain prescription to OTC antifungal drugs be labeled "for the treatment of external itching associated with vaginal yeast (candidal) infections." One of the comments contended that "properly labeled anti-yeast and anti-inflammatory agents can be used safely and with benefits as OTC products." Another comment pointed out that 0.5 percent hydrocortisone for OTC use has an approved indication for the temporary relief of itching around the vagina.

After reconsidering its intention to include OTC antifungal drug products labeled for the treatment of external feminine itching in this rulemaking, the agency believes that it would be more appropriate to defer the consideration of antifungals for this labeling claim to the rulemaking for OTC vaginal drug products. (See the **Federal Register** of October 13, 1983; 48 FR 46694 at 46695 and 46729.) Therefore, comments on this subject that were submitted to the rulemaking for OTC antifungal drug products will be incorporated into the rulemaking for OTC vaginal drug products. If any antifungal ingredient is determined to be appropriate for the relief of external vaginal itching, it will be considered in the rulemaking for OTC vaginal drug products. The same antifungal ingredient may be determined to be appropriate for the prevention and/or treatment of athlete's foot and the treatment of ringworm and jock itch and will remain in the rulemaking or OTC antifungal drug products for this indication.

In the tentative final monograph for OTC external analgesic drug products, the agency proposed that hydrocortisone and hydrocortisone acetate 0.25 to 0.5 percent be available OTC for temporary relief of "genital" or "feminine" itching. (See the **Federal Register** of February 8, 1983; 48 FR 5852.) Thus, some of the concerns that the agency raised in the rulemaking for OTC antifungal drug products in 1982 were subsequently addressed in the external analgesic rulemaking. The agency will present its final conclusions on this use of hydrocortisone in the final monograph for OTC external analgesic drug products in a future issue of the **Federal Register**.

II. The Agency's Tentative Adoption of the Panel's Report

A. Summary of Ingredient Categories and Testing of Category II and Category III Conditions

1. *Summary of ingredient categories.* The agency has reviewed all claimed active ingredients submitted to the Panel, as well as other data and information available at this time, and is proposing to reclassify povidone-iodine (10 percent) from Category III to Category I and phenol (less than or equal to 1.5 percent) from Category II to Category III. The agency is also proposing to reclassify nystatin from Category I to Category III. As a convenience to the reader, the following list is included as a summary of the categorization of topical antifungal active ingredients recommended by the Panel and the categorization proposed by the agency.

Topical antifungal active ingredients	Panel	Agency
Aluminum salts	III	III
Alclora		
Aluminum sulfate		
Potassium alum		
Basic fuchsin	III	III
Benzethonium chloride	III	III
Benzoic acid	III	III
Borates	III	III
Boric acid		
Sodium borate		
Camphor	II	II
Candicidin	II	II
Caprylates	III	III
Sodium caprylate		
Zinc caprylate		
Chlorothymol	III	III
Chloroxylenol	III	III
Clioquinol (iodochlorhydroxyquin)	I	I
Coal tar	II	II
Cresols	III	III
Camphorated metacresol		
m-Cresol		
Secondary amyltricresols		
Dichlorophen	III	III
Haloprogin	I	I
Menthol	II	II
Miconazole nitrate	I	I
Nystatin	I	III
Oxyquinolines	III	III
Benzoxiquine		
Oxyquinoline		
Oxyquinoline sulfate		
Parabens	III	III
Methylparaben		
Propylparaben		
Phenolates	II	III
Phenol		
Phenolate sodium		
Phenyl salicylate	III	III
Povidone-iodine	III	I
Propionic acid and its salts	III	III
Sodium propionate		
Zinc propionate		
Resorcinol	II	II
Salicylic acid	III	III
Sulfur	III	III
Tannic acid	II	II
Thymol	II	II
Tolindate	II	II
Tolnaftate	I	I

Topical antifungal active ingredients	Panel	Agency
Triacetin	III	III
Undecylenic acid and its salts	I	I
Calcium undecylenate		
Copper undecylenate		
Zinc undecylenate		

2. *Testing of Category II and Category III conditions.* The Panel recommended testing guidelines for topical antifungal drug products in 47 FR 12480 at 12556. The agency's position regarding the Panel's testing guidelines is discussed in comment 29 above. Interested persons may communicate with the agency about the submission of data and information to demonstrate the safety or effectiveness of any topical antifungal ingredient or condition included in the review by following the procedures outlined in the agency's policy statement published in the **Federal Register** of September 29, 1981 (46 FR 47740) and clarified April 1, 1983 (48 FR 14050). That policy statement includes procedures for the submission and review of proposed protocols, agency meetings with industry or other interested persons, and agency communications on submitted test data and other information.

B. Summary of the Agency's Changes

FDA has considered the comments and other relevant information and concludes that it will tentatively adopt the Panel's report and recommended monograph with the changes described in FDA's responses to the comments above and with other changes described in the summary below. A summary of the changes made by the agency follows.

1. The agency has revised the definition of dermatophyte in § 333.203 to read: "A fungus that invades and lives upon the skin or in the hair or nails." (See comment 6 above.) The agency has also revised the definition of jock itch in § 333.203 to read: "A chronic and recurrent dermatophyte infection which affects the upper, inner thighs and sometimes extends to the groin and the pubic area; the condition most frequently occurs in men, but may also occur in women."

2. The agency has reclassified phenol from Category II to Category III. (See comment 12 above.)

3. The agency has reclassified povidone-iodine 10 percent into Category I. (See comment 14 above.)

4. The wording of § 333.250(b)(2) has been revised to be consistent with the style and format of § 333.250(b)(1), thereby including tolnaftate by reference rather than by name. (See comment 19 above.)

5. The Panel recommended that two or three antifungal ingredients identified in § 333.210 be combined provided each ingredient broadens the antifungal spectrum and provided the product is labeled according to § 333.250(b)(1). Because the Category I antidermatophytic antifungal ingredients have very similar spectra and combinations of up to three of these ingredients would result in duplication with respect to target organisms (that cause athlete's foot, jock itch, and ringworm) rather than broaden the antifungal activity, the agency is not proposing these combinations in this tentative final monograph. These combinations are classified in Category III in this document. (See comment 24 above.)

6. The agency is not proposing that any single active ingredient identified in § 333.210 or any combination of antifungal active ingredients be allowed in combination with an antiperspirant active ingredient for the treatment of athlete's foot, jock itch, and ringworm. These combinations are classified in Category III in this document. (See comment 22 above.)

7. The agency is not proposing that combinations of up to three Category I antifungal ingredients and hydrocortisone or hydrocortisone acetate 0.5 to 1 percent be available for OTC use in the treatment of athlete's foot, jock itch, and ringworm. The agency is deferring classification of such combinations in this rulemaking until the DESI proceeding involving one specific combination (clioquinol/hydrocortisone) is completed. (See comment 23 above.)

8. Because of the lack of efficacy data and a concern about safety of such products, the agency is not proposing combinations of Category I antifungal ingredients and any single keratolytic agent that is generally recognized as safe and effective in an OTC drug final monograph. These combinations are classified in Category III in this document. (See comment 26 above.)

9. The agency believes that it is more appropriate to defer the consideration of antifungal ingredients for treatment of external feminine itching to the rulemaking for OTC vaginal drug products. If any antifungal ingredient is determined to be appropriate for the relief of external vaginal itching, it will be considered in the rulemaking for OTC vaginal drug products. (See comment 35 above.)

10. The agency has determined that it is more appropriate to discuss the entire subject of diaper rash at one time. The comments on diaper rash drug products submitted to this rulemaking will be addressed at a later date when OTC diaper rash products are evaluated. (See comment 5 above.)

11. In the absence of information showing that infection by *Candida albicans* is a significant cause of athlete's foot or jock itch or that secondary infections of *Candida* are common in these conditions, the agency is not proposing the combination of an antidermatophytic ingredient with an anticandidal ingredient such as nystatin. Accordingly, the agency is reclassifying nystatin used in combination with other antifungal ingredients from Category I to Category III. (See comments 8 and 24 above.)

12. The agency is not including nystatin as a single Category I antifungal ingredient in this tentative final monograph. The Panel placed nystatin in Category I for the treatment of vaginal and superficial skin infections caused by *Candida albicans*. Because the agency has decided to defer the external feminine itching issue to another rulemaking and has determined that treatment of superficial skin infections caused by yeast (*Candida*) is not an appropriate OTC claim, nystatin as a single ingredient is not included in this tentative final monograph. (See comments 8, 24, and 35 above.)

13. The agency has concluded that no OTC antifungal drug product ingredient may be labeled for the treatment of cutaneous candidiasis, but that such claims may be included in the professional labeling for these products. Therefore, the agency is moving the labeling recommended by the Panel in § 333.250(b)(4) to the professional labeling section of this tentative final monograph. (See comment 8 above.)

14. No combinations are being proposed in this tentative final monograph. Therefore, the Panel's recommended § 333.220 is not being included in this tentative final monograph. (See comments 22 through 28 above.)

15. The agency has reevaluated all of the Category II labeling identified by the Panel and changed the status of certain claims. (See comment 31 above.)

16. The agency is not proposing the labeling for product attributes recommended by the Panel in § 333.250(b)(8). The Panel recommended that terms used to describe certain physical and chemical qualities of a drug product may be used in the labeling as long as these terms do not imply any therapeutic effect and are distinctly separated from the indications statements. These terms, such as "greaseless" or "nonstaining," are intended to provide consumer

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information and relate to a product's color, odor, or feel. OTC drug monographs regulate only labeling information related in a significant way to those therapeutic properties of covered products having a direct bearing on their safe and effective use by lay persons. Claims concerning nontherapeutic characteristics of drugs, such as product attributes, are not dealt with in OTC drug monographs. Such terms may not appear in any portion of the labeling that is required by the monograph, but may appear elsewhere in the labeling. Labeling claims of this type are, however, subject to the misbranding provisions of the act.

17. In several places in the warnings and directions sections, the Panel recommended that the consumer consult a doctor or pharmacist if certain conditions occur. These included: (1) If irritation occurs or if there is no improvement within 2 or 4 weeks, (2) if the condition persists or recurs, (3) do not use longer than 30 days, and (4) if satisfactory results have not occurred within these times (2 or 4 weeks' use of the antifungal product). Although the pharmacist is an important member of the health care team, FDA believes that the situations covered by these warnings and directions are more appropriately handled by the physician. In cases where there is no improvement or the condition persists or recurs, diagnosis of the condition by the physician is necessary to determine the actual nature of the condition and the appropriate treatment. It is likely in such cases, where the OTC drug product has not provided satisfactory relief, that the physician will treat the patient with a prescription medication. Therefore, the agency is not including the word pharmacist, as recommended by the Panel, in these warnings and directions as proposed in this tentative final monograph.

18. In the warnings section, the agency is proposing the statement "Avoid contact with the eyes" in addition to the warning "For external use only" recommended by the Panel. Use of both statements is consistent with the warnings included in a number of other OTC drug monographs for topical drug products. (See, for example, the tentative final monograph for OTC external analgesic drug products (48 FR 5852; February 8, 1983); the tentative final monograph for OTC skin protectant drug products (48 FR 6820; February 15, 1983); and the final monograph for OTC topical otic drug products (51 FR 28656; August 8, 1986).)

19. In an effort to simplify OTC drug labeling, the agency proposed in a number of tentative final monographs to substitute the word "doctor" for "physician" in OTC drug monographs on the basis that the word "doctor" is more commonly used and better understood by consumers. Based on comments to these proposals, the agency has determined that final monographs and any applicable OTC drug regulations will give manufacturers the option of using either the word "physician" or the word "doctor." This tentative final monograph proposes that option. (See § 333.250(e) below.)

20. Under agency regulations relating to official names and established names for drugs in § 299.4(b) (21 CFR 299.4(b)), the established name of a drug is defined in section 502(e) of the act (21 U.S.C. 352(e)) as (1) an official name designated pursuant to section 508 of the act (21 U.S.C. 358); (2) if no such official name has been designated for the drug and the drug is an article recognized in an official compendium, then the official title thereof in such compendium; and (3) if neither paragraphs (1) or (2) applies, then the common or usual name for the drug. "Iodochlorhydroxyquin" and 'Clioquinol" are synonyms for the same chemical entity for which an official name has not been designated pursuant to section 508 of the act. However, "Clioquinol" is the official title in an official compendium (Ref. 1) and therefore is the established name; accordingly "Iodochlorhydroxyquin" in § 333.210(b) of the Panel's recommended monograph has been replaced with "Clioquinol" in § 333.210(a) of this tentative final monograph.

References

(1) "The United States Pharmacopeia XXI—The National Formulary XVI," United States Pharmacopeial Convention, Inc., Rockville, MD, p. 227, 1985.

21. For products containing clioquinol, the agency is proposing the following warnings: "Do not use on children under 2 years of age" and "Do not use for diaper rash." These statements must appear in bold face type as the first warnings under the "Warnings" heading. (See Citizen Petition below.)

III. Citizen Petition

On July 24, 1985, a Citizen Petition was filed urging FDA to remove from the market as dangerous to infants and adults all prescription and OTC drugs containing clioquinol (formerly named iodochlorhydroxyquin) (Ref. 1). The petition stated that these drugs, when applied directly to the skin, are used in many cases for diaper rash and other skin problems in infants and children. The oral form of clioquinol was previously used to treat travelers' diarrhea and a rare disease known as acrodermatitis enteropathica. This form of the drug was taken off the market in most countries, including the United States, because it was linked to over 10,000 cases of subacute myelo-opticoneuropathy (SMON) in Japan and other countries.

While no cases of SMON related to the dermatologic use of clioquinol have been reported, the petition stated that there is now reason to believe that the topical form of the drug poses a significant threat of toxicity. According to the petition, recent studies have demonstrated that there is substantial percutaneous absorption of clioquinol resulting from topical use in humans and dogs, and that amounts of the drug not excreted from the body are stored in tissue. Further, it contended that animal studies suggest that toxicity may occur at fairly low levels of exposure, levels close to those an infant may receive. The petition expressed the view that clioquinol is dangerous because it concentrates in the organs and can cause SMON and liver toxicity. In support of its views, the petition cited recently published studies by Stohs et al. (Ref. 2) and Ezzedeen et al. (Ref. 3). (Those studies were published after publication of the Panel's report and thus were not evaluated by the Panel.)

In the Stohs study (Ref. 2), 5 gram (g) doses of 3 percent clioquinol cream were applied to the forearms of five healthy male subjects. Each dose was applied over a 200 square centimeter (cm^2) area, and the entire area was occluded with plastic wrap. Blood and urine samples were collected and assayed regularly. Twelve hours after application, the remaining drug was removed from the subjects' forearms. The amount removed was quantitatively analyzed and, based on this analysis, the authors concluded that approximately 40 percent of the topically applied drug had been absorbed.

In the Ezzedeen study (Ref. 3), 5 g doses of 3 percent clioquinol cream were applied twice daily to the backs of five mongrel dogs. The cream was applied over a shaved 200 cm^2 area and occluded with plastic wrap. The applications were continued for 28 days. Blood samples were drawn and assayed for clioquinol on a regular basis. The percentage of drug absorbed was estimated by measuring the amount of drug remaining on the back of each dog. Using this unvalidated method, the authors estimated that approximately 52 percent of the drug was absorbed.

This study was primarily a percutaneous absorption study.

However, the authors also made several observations that they suggest are toxic effects related to topical treatment with clioquinol. One dog died after 15 days of topical treatment, and microscopic examination of the liver revealed necrosis. One dog developed partial hand limb paralysis similar to that reported in a Japanese study of oral administration of clioquinol (Ref. 4). However, histologic and neurologic evaluations of this dog were not performed. All treated dogs lost weight, while no weight loss occurred in control animals.

In the second phase of this study, in addition to the topical application of clioquinol, three dogs were injected with a 100 milligrams (mg) intravenous (IV) bolus dose of clioquinol 2 months after topical treatment. The three dogs were killed 2 weeks after the bolus injections. Liver, kidney, and mesenteric adipose tissues were analyzed for clioquinol, and mean levels of 1.22, 0.83, and 0.88 mg/g, respectively, were found. The authors also microscopically examined the liver tissues of the 3 dogs and found liver lesions similar to those found in the dog that died after 15 days of topical treatment. The control dogs were not sacrificed or examined similarly.

The petition contended that if 1 g of a 3-percent clioquinol preparation was applied to a child's diaper rash three times a day, a total daily dose of 90 mg per day would be applied. If the child weighed 10 kilograms (kg) (22 lbs), the amount of clioquinol would be 9 mg/kg/day, which is close to the 17 mg/kg/day dose in the dog study and over three times higher than the single dose of 2.5 mg/kg in the human study in which blood levels of 0.37–0.56 mg/milliliter (mL) were obtained. The petition also expressed concern about the 9 mg/kg/day an infant might receive because of its proximity to the oral doses received by SMON victims (many between 12.5 and 25 mg/kg/day).

On November 18, 1985, FDA's Dermatologic Drugs Advisory Committee met to consider the petition. Sidney J. Stohs, a principal investigator in both cited studies, appeared before the Committee and discussed the results of his work.

After extensive questioning and discussion, the Committee generally agreed that the two studies upon which the petition is largely based are not adequate to support the removal of all clioquinol products from the market. The Committee expressed concern however that absorption of the drug by infants, even in small amounts, poses a potential risk, and voted to recommend that clioquinol be moved from the OTC market to prescription status to prevent indiscriminate use of the drug, especially in infants (Ref. 5).

The agency has reviewed the data presented in the petition. With regard to the Stohs' study (Ref. 2), the agency is unable to conclude that the extent of percutaneous absorption was reliably established. The method used to determine the extent of absorption is an indirect method of determining the absorption of topically applied drugs and, to the agency's knowledge, has not been validated as an accurate method. The published report on this study does not provide any information regarding the validity of this method. Furthermore, at the November 1985 Dermatologic Drug Advisory Committee meeting (Ref. 5), Dr. Stohs was unable to provide assurance that the method had been validated as accurate. The agency believes that it is highly probable that this method will greatly overestimate the amount of drug absorbed because of the difficulty in removing all of the drug remaining on the skin.

The agency believes that the observations made during the topical application phase of the Ezzedeen study are of concern, but also believes that the evidence linking the effects observed to the drug is weak. The published paper provides no information documenting that the pretreatment status and the handling of the dogs during the study were comparable for the treatment and control groups. Furthermore, at the November 1985 Dermatologic Drugs Advisory Committee meeting (Ref. 5), Dr. Stohs, one of the investigators in the Ezzedeen study, stated that the treatment and control dogs were not handled in a similar fashion.

The agency also finds the toxicity and tissue retention observations concerning the three dogs that received IV injections of clioquinol inadequate to support a conclusion that topical application of the drug would cause similar effects. The relationship between the effects of IV clioquinol administration and the effects of topical clioquinol application is unknown. Moreover, because of the inadequate control procedures used, the liver toxicity observations cannot be confidently attributed to the IV administration of clioquinol.

Overall, the agency believes that the two studies primarily relied upon to support the petition are inadequate to demonstrate that OTC topical clioquinol, prescription topical clioquinol/hydrocortisone, and prescription topical clioquinol/nystatin are dangerous to health when used in the dosage or manner, or with the frequency or duration prescribed, recommended, or suggested in their labeling. Based upon the extensive marketing history of this ingredient, the agency concludes that there are insufficient data available to justify removing all clioquinol-containing drug products from the market as misbranded under section 502(j) of the act (21 U.S.C. 352(j)) based upon the information presented in the petition.

Although the agency does not believe that the existing information requires removal of topical clioquinol from the market as suggested by the petition, or restriction to prescription-only status as recommended by the Dermatologic Drugs Advisory Committee, the agency shares the concern expressed by the petition and the Advisory Committee that use of topical clioquinol on infants may potentially place them at increased risk. This risk is not well defined because of the lack of information relating to the use of topical clioquinol on infants.

The Antimicrobial II Panel evaluated possible blood levels and the potential toxicity resulting from several "worst case" situations in which clioquinol would be applied topically to broken skin. The Panel considered application to a jock itch or ringworm condition, both of which represent a larger surface area than an athlete's foot condition, and assumed total and rapid absorption occurs after each application. The Panel reported that the blood levels estimated from such exposure would be well below the reported 15-to-30 μg/mL blood levels obtained during a 2-week oral administration of clioquinol in which no toxic symptoms were observed. (See 47 FR 12480 at 12490.)

In an adult, the surface area of contact is small (probably less than 5 percent) when clioquinol is used for its approved OTC indications. If clioquinol were used for diaper rash in infants, the affected area may be 10 to 15 percent of the body surface. Additionally, inflamed and often open surface areas are more permeable and permit a greater degree of absorption. Clioquinol is detoxified in the adult liver by conjugation with a glucuronide. Infants do not have as fully developed a conjugation pathway as adults; thus, clioquinol may accumulate in infants due to a reduced ability to detoxify the drug. Additionally, a young child has less percent body fat and a developing nervous system. Although clioquinol is not specifically approved for diaper dermatitis and there are no known reports of SMON or major systemic toxicity in children following topical use, children under age 2 are on theoretical grounds the population with the highest potential risk for an adverse outcome. Accordingly, while the agency

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believes that clioquinol may remain on the OTC market labeled for its approved OTC uses (i.e., athlete's foot, jock itch, and ringworm), it must be labeled that it is not for use on children under 2 years of age and that it is not for use for diaper rash. Therefore, the agency is proposing that 2 warning statements appear on all OTC drug products containing clioquinol, and that these statements appear in bold face type as the first warnings on the label, as follows: "Do not use on children under 2 years of age." "Do not use for diaper rash."

References

(1) Citizen Petition, Public Citizen Health Research Group, July 24, 1985, Coded CP, Docket No. 85P–0344, Dockets Management Branch.

(2) Stohs, S. J., et al., "Percutaneous Absorption of Iodochlorhydroxyquin in Humans," *The Journal of Investigative Dermatology*, 82:195–198, 1984.

(3) Ezzedeen, F. W., et al., "Percutaneous Absorption and Disposition of Iodochlorhydroxyquin in Dogs," *Journal of Pharmaceutical Sciences*, 73:1369–1372, 1984.

(4) Kono, R. "Introductory Review of Subacute Myelo-optico Neuropathy (SMON) and Its Studies Done by the SMON Research Commission." *Japanese Journal of Medical Science and Biology (Supp.)*, 28:1–21, 1975.

(5) Summary Minutes of the 26th Meeting of the Dermatologic Drugs Advisory Committee, November 18, 1985.

The agency has examined the economic consequences of this proposed rulemaking in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this proposed rule for OTC antifungal drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (Pub. L. 96–354). That assessment included a discretionary Regulatory Flexibility Analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC antifungal drug products is not expected to pose such an impact on small businesses. Therefore, the agency certifies that this proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities.

The agency invited public comment in the advance notice of proposed rulemaking regarding any impact that this rulemaking would have on OTC antifungal drug products. No comments on economic impacts were received. Any comments on the agency's initial determination of the economic consequences of this proposed rulemaking should be submitted by March 11, 1990. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR part 25).

The agency is proposing to remove § 310.201(a)(29) because the conditions in that section for tolnaftate preparations will be superseded by the requirements of the final monograph on OTC antifungal drug products (subpart C of 21 CFR part 333).

Interested persons may, on or before March 11, 1990, submit to the Dockets Management Branch written comments, objections, or requests for oral hearing before the Commissioner on the proposed regulation. A request for an oral hearing must specify points to be covered and time requested. Written comments on the agency's economic impact determination may be submitted on or before March 11, 1990. Three copies of all comments, objections, and requests are to be submitted, except that individuals may submit one copy. Comments, objections, and requests are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Comments, objections, and requests may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. Any scheduled oral hearing will be announced in the **Federal Register**.

Interested persons, on or before December 12, 1990, may also submit in writing new data demonstrating the safety and effectiveness of those conditions not classified in Category I. Written comments on the new data may be submitted on or before February 2, 1991. These dates are consistent with the time periods specified in the agency's final rule revising the procedural regulations for reviewing and classifying OTC drugs, published in the **Federal Register** of September 29, 1981 (46 FR 47730). Three copies of all data and comments on the data are to be submitted, except that individuals may submit one copy, and all data and comments are to be identified with the docket number found in brackets in the heading of this document. Data and comments should be addressed to the Dockets Management Branch (address above). Received data and comments may also be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

In establishing a final monograph, the agency will ordinarily consider only data submitted prior to the closing of the administrative record on February 12, 1991. Data submitted after the closing of the administrative record will be reviewed by the agency only after a final monograph is published in the **Federal Register**, unless the Commissioner finds good cause has been shown that warrants earlier consideration.

List of Subjects

21 CFR Part 310

Administrative practice and procedure, Drugs, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 333

Antifungal drug products, Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act, it is proposed that subchapter D of chapter I of title 21 of the Code of Federal Regulations be amended in parts 310 and 333 as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 512–516, 520, 601(a), 701, 704, 705, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 360b–360f, 360j, 361(a), 371, 374, 375, 376); secs. 215, 301, 302(a), 351, 354–360F of the Public Health Service Act (42 U.S.C. 216, 241, 242(a), 262, 263b–263n).

§ 310.201 [Amended]

2. Section 310.201 *Exemption for certain drugs limited by new-drug applications to prescription sale* is amended by removing paragraph (a)(29).

PART 333—TOPICAL ANTIMICROBIAL DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

3. The authority citation for 21 CFR part 333 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

4. Part 333 is amended by adding new subpart C to read as follows:

Subpart C—Topical Antifungal Drug Products

Sec.
333.201 Scope.
333.203 Definitions.
333.210 Antifungal active ingredients.
333.250 Labeling of antifungal drug products.
333.280 Professional labeling.

Subpart C—Topical Antifungal Drug Products

§ 333.201 Scope.

(a) An over-the-counter antifungal drug product in a form suitable for topical administration is generally recognized as safe and effective and is not misbranded if it meets each of the conditions in this subpart and each general condition established in § 330.1 of this chapter.

(b) References in this subpart to regulatory sections of the Code of Federal Regulations are to chapter I of title 21 unless otherwise noted.

§ 333.203 Definitions.

As used in this subpart:

(a) *Antifungal.* A drug which inhibits the growth and reproduction of fungal cells and decreases the number of fungi present.

(b) *Athlete's foot.* An infection of the feet caused by dermatophytic fungi.

(c) *Dermatophyte.* A fungus that invades and lives upon the skin or in the hair or nails.

(d) *Fungus.* Any of a large division of plants, including dermatophytes, yeasts, and molds, characterized by a simple cell structure and the absence of chlorophyll.

(e) *Jock itch.* A chronic and recurrent dermatophyte infection which affects the upper, inner thighs and sometimes extends to the groin and the pubic area; the condition most frequently occurs in men, but may also occur in women.

(f) *Ringworm.* A skin infection caused by dermatophytic fungi.

§ 333.210 Antifungal active ingredients.

The product consists of any of the following active ingredients within the specified concentrations established for each ingredient and the product is labeled according to § 333.250.

(a) Clioquinol 3 percent.

(b) Haloprogin 1 percent.

(c) Miconazole nitrate 2 percent.

(d) Povidone-iodine 10 percent.

(e) Tolnaftate 1 percent.

(f) Undecylenic acid, calcium undecylenate, copper undecylenate, and zinc undecylenate may be used individually or in any ratio which provides a total undecylenate concentration of 10 to 25 percent.

§ 333.250 Labeling of antifungal drug products.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as an "antifungal."

(b) *Indications.* The labeling of the product states, under the heading "Indications," any of the phrases listed in this paragraph, as appropriate. Other truthful and nonmisleading statements describing only the indications for use that have been established in this paragraph (b), may also be used, as provided in § 330.1(c)(2) of this chapter, subject to the provisions of section 502 of the act relating to misbranding and the prohibition in section 301(d) of the act against the introduction or delivery for introduction into interstate commerce of unapproved new drugs in violation of section 505(a) of the act.

(1) *For products containing any ingredient idenified in § 333.210 labeled for the treatment of athlete's foot, jock itch, and ringworm.* (Select one of the following: "Treats," "For the treatment of," "For effective treatment of," "Cures," "For the cure of," "Clears up," or "Proven clinically effective in the treatment of") (select one condition from any one or more of the following groups of conditions: (i) "athlete's foot," "athlete's foot (dermatophytosis)," "athlete's foot (tinea pedis)," or "tinea pedis (athlete's foot)"; (ii) "jock itch," "jock itch (tinea cruris)," or "tinea cruris (jock itch)"; or (iii) "ringworm," "ringworm (tinea corporis)," or "tinea corporis (ringworm),")

(2) *For products containing the ingredient identified in § 333.210(e) labeled for the prevention of athlete's foot.* (Select one of the following: "Clinically proven to prevent," "Prevents," "Proven effective in the prevention of," "Helps prevent," "For the prevention of," "For the prophylaxis (prevention) of," "Guards against," or "Prevents the recurrence of") (select one of the following: "athlete's foot," "athlete's foot (dermatophytosis)," "athlete's foot (tinea pedis)," or "tinea pedis (athlete's foot)") "with daily use."

(3) *Other allowable statement for products labeled according to paragraph (b)(1) of this section.* The labeling of the product may contain an additional indication statement as follows: (Select one of the following: "Relieves," "For relief of," "For effective relief of," or "Soothes,") (select one or more of the following: "itching," "scaling," "cracking," "burning," "redness," "soreness," "irritation," "discomfort," "chafing associated with jock itch," "itchy, scaly skin between the toes," or "itching, burning feet").

(4) *Other allowable statement for products labeled according to paragraph (b)(2) of this section.* The labeling of the product may contain an additional indication statement as follows: "Clears up athlete's foot infection and with daily use helps keep it from coming back."

(c) *Warnings.* The labeling of the product contains the following warnings under the heading "Warnings":

(1) *For products containing any ingredient identified in § 333.210.* (i) "Do not use on children under 2 years of age except under the advice and supervision of a doctor."

(ii) "For external use only."

(iii) "Avoid contact with the eyes."

(2) *For products labeled according to paragraph (b)(1) of this section for the treatment of athlete's foot and ringworm.* "If irritation occurs or if there is no improvement within 4 weeks, discontinue use and consult a doctor."

(3) *For products labeled according to paragraph (b)(1) of this section for the treatment of jock itch.* "If irritation occurs or if there is no improvement within 2 weeks, discontinue use and consult a doctor."

(4) *For products labeled according to paragraph (b)(2) of this section for the prevention of athlete's foot.* "If irritation occurs, discontinue use and consult a doctor."

(5) *For products containing the ingredient identified in § 333.210(a) labeled according to paragraph (b)(1) of this section.* The following statements must appear in bold face type as the first warnings under the "Warnings" heading. (i) "Do not use on children under 2 years of age." (This warning is to be used in place of the warning in paragraph (c)(1)(i) of this section.)

(ii) "Do not use for diaper rash."

(d) *Directions.* The labeling of the product contains the following statements under the heading "Directions:"

(1) *For products labeled according to paragraph (b)(1) of this section for the treatment of athlete's foot, jock itch, and ringworm.* "Cleanse skin with soap and water and dry thoroughly. Apply" (the

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word "spray" may be used to replace the word "apply" for aerosol products) "a thin layer over affected area morning and night or as directed by a doctor. For athlete's foot, pay special attention to the spaces between the toes. It is also helpful to wear well-fitting, ventilated shoes and to change shoes and socks at least once daily. Best results in athlete's foot and ringworm are usually obtained with 4 weeks' use of this product, and in jock itch, with 2 weeks' use. If satisfactory results have not occurred within these times, consult a doctor. Children under 12 years of age should be supervised in the use of this product. This product is not effective on the scalp or nails."

(2) *For products labeled according to paragraph (b)(2) of this section for the prevention of athlete's foot.* "To prevent fungal infection of the feet (athlete's foot), cleanse skin with soap and water and dry thoroughly. Apply" (the word "spray" may be used to replace the word "apply" for aerosol products) "a thin layer to feet once or twice daily, paying special attention to the toenails and the spaces between the toes. It is also helpful to wear well-fitting, ventilated shoes and to change shoes and socks at least once daily."

(e) The word "physician" may be substituted for the word "doctor" in any of the labeling statements in this section.

§ 333.280 Professional labeling.

The labeling provided to health professionals (but not to the general public) may contain the following additional indication:

(a) *For products containing haloprogin or miconazole nitrate identified in § 333.210 (a) and (c).* "For the treatment of superficial skin infections caused by yeast (*Candida albicans*)."

(b) [Reserved]

Dated: October 28, 1989.

James S. Benson,

Acting Deputy Commissioner of Food and Drugs.

[FR Doc. 89-28816 Filed 12-11-89; 8:45 am]

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Part V

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Bureau of Justice Assistance

Drug Control and System Improvement Formula Grants for Fiscal Year 1990; Notice

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DEPARTMENT OF JUSTICE

Bureau of Justice Assistance

Drug Control and System Improvement Formula Grants for Fiscal Year 1990

AGENCY: Bureau of Justice Assistance, Justice.
ACTION: Notice.

SUMMARY: The Bureau of Justice Assistance is publishing this notice of Program Guidance and Application Kit for implementation of the Drug Control and System Improvement Grant Program. This notice deals with procedures and requirements for formula grant applications and grant administration for Fiscal Year 1990.

EFFECTIVE DATE: This program guidance is effective November 21, 1989.

FOR FURTHER INFORMATION CONTACT: Curtis H. Straub II, Bureau of Justice Assistance, 633 Indiana Avenue NW., Washington, DC 20531 (202–724–6638). (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Bureau of Justice Assistance is publishing a program guidance and application kit for Fiscal Year 1990 for implementation of the Drug Control and System Improvement Formula Grant Program. The Anti-Drug Abuse Act of 1988, title VI, subtitle C, of Public Law 100–690 authorizes the Bureau of Justice Assistance to provide funds to eligible States for the purpose of making subgrants to State agencies, units of local government and private, nonprofit organizations.

The purpose of this program is to address the most pressing drug control and criminal justice system improvement problems as determined through the statewide strategic planning process to be implemented by the States. Grant funds are provided to the States to support specific programs which offer a high probability of improving the function of the criminal justice system, with a special emphasis placed on multilevel and multi-jurisdictional drug control efforts. Programs and projects are to be developed to assist State and local drug control efforts and to support national drug control priorities.

The States may award formula grant funds to State agencies and local units of government for the purpose of enforcing State and local laws which establish offenses similar to offenses established in the Controlled Substances Act (21 U.S.C. 801 *et seq.*) and to improve the functioning of the criminal justice system with emphasis on violent and serious offenders. Grants may provide personnel, equipment, training, technical assistance and information systems for the more widespread apprehension, prosecution, adjudication, detention and rehabilitation of persons who violate such laws and to assist the victims of such crime other than compensation. No program may be funded that is not contained in a State strategy that has been approved by the Bureau of Justice Assistance. The program guidance lists 21 purpose areas for which programs can be funded under the Act.

The program guidance and application kit describe a general process the States must follow to develop the required statewide strategy to qualify for funding under this Act and to make application for such funding. They succeed the prior program guidance for Fiscal Year 1989. Specific deadlines for application submission and award of subgrants are identified as required by the Act. In distributing the funds, States shall give priority to those jurisdictions with the greatest documented need. The State strategy should include goals and objectives to address the drug control and system improvement priorities and include identification of programs, needed legislative and administrative changes and establish mechanisms to improve the coordination of efforts at the State and local level.

Charles P. Smith,
Director, Bureau of Justice Assistance.

Introduction

The Bureau of Justice Assistance (BJA) of the Office of Justice Programs (OJP), under the Drug Control and System Improvement Formula Grant Program of the Anti-Drug Abuse Act of 1988, provides Federal financial assistance to state and local units of government for programs which improve the enforcement of state and local laws that establish offenses similar to offenses established in the Controlled Substances Act (21 U.S.C. 801, *et seq.*), and to improve the functioning of the criminal justice system with emphasis on violent crime and serious offenders.

This document provides the guidance, forms, instructions, and information necessary for an eligible grantee to apply to BJA for formula grant funds.

Key Program Elements

The Anti-Drug Abuse Act provides financial and technical resources to state and local units of government, as well as the Federal government, to engage them in the nation's fight against drugs. The National Drug Control Strategy was announced by President Bush on September 5, 1989. It sets priorities and makes recommendations for action by Federal, state and local governments and communities to reduce drug use in this country. Key policy elements from the Act and the National Strategy are outlined below to provide guidance to the states in their drug control efforts.

Drug Testing

Drug testing has been shown to be an effective tool in identifying drug users and discouraging use. Programs should be implemented within the state criminal justice systems to test defendants/offenders for drugs including arrestees, prisoners, parolees and those out on bail and to use the test results to make release decisions and set conditions of release, to monitor drug use while under court supervision and to make referrals to drug treatment. A description of the state's drug testing program should be included as part of the state strategy.

Street-level Enforcement

The National Drug Control Strategy identifies street-level drug enforcement as a "crucial component" of an effective drug strategy. It states that "street-level enforcement remains the best tool we have for restoring a sense of order and civility to neighborhoods where drugs—with all their attendant crime, violence and decay—have wrought havoc. The first priority of local drug enforcement, then, is to employ effective police methods capable of fighting drugs at the neighborhood level." States are encouraged to make street-level enforcement an important component of their strategy.

User Accountability

The criminal justice system has an important role to play in reducing the demand for drugs by holding drug users as well as dealers accountable for their actions. User accountability programs should be developed and implemented, including vigorous prosecution and use of fines for misdemeanor drug offenses and the increased use of civil penalties (e.g., the loss of professional and drivers licenses, fines and community service).

Alternative Sentencing Programs for Non-violent Drug Offenders

Many drug offenders receive inadequate, if any, supervision. Alternative sentencing programs, including house arrest and boot camp programs, should be developed to hold non-violent drug offenders accountable for their actions.

Planning and Designing Judicial and Correctional Facilities

New judicial and correctional facilities are needed in many states to expedite drug cases and to punish drug traffickers and violent and repeat drug offenders. Formula Funds may be used for actual construction of penal or correctional institutions. Priority also should be given to planning and designing new judicial and correctional institutions.

Marijuana Eradication

The National Drug Control Strategy recommends expansion of programs to eradicate the domestic marijuana crop. Marijuana producing states are encouraged to increase their eradication efforts.

Evaluation of the Strategy

To be effective in the fight against drugs, we must know what works and what does not. An evaluation capability should be established within the state to evaluate the impact of the statewide drug strategy and programs and projects instituted to implement the strategy.

Key Implementation Elements

Coordination

Success in the fight against drugs requires coordination and cooperation at all levels, including intergovernmental, interdisciplinary and public/private sector.

Coordination of State and Local Drug Control Efforts with Federal Efforts—States should incorporate the recommendations from the National Drug Control Strategy into their state strategy with an emphasis on street-level enforcement, planning and designing court and correctional facilities, alternative sentencing, user accountability and drug testing.

States are encouraged to contact and work with the Law Enforcement Coordinating Committee (LECC) of the United States Attorney(s) within the state. The LECC, which brings together Federal, state and local law enforcement and prosecutors, can serve as an important resource in the strategy development process. The LECC's role in the development of the strategy should be described in the application.

Coordination of Drug Control Efforts within the State—It is essential that State and local law enforcement, prosecutors, and other criminal justice personnel participate closely in developing the statewide drug strategy. State planning agencies should not draft the strategy and then submit the document for review, thereby depriving operational agencies from making substantive contributions at the beginning of the strategy development process. States are also encouraged to increase coordination among criminal justice, treatment and education systems within the state to achieve a comprehensive and effective approach to drug control. States are also encouraged to promote multi-jurisdictional and inter-agency activities which result in increased coordination and cooperation among criminal justice agencies.

Local Participation in Strategy Development—Taking our neighborhoods back from drug dealers and getting the community involved in drug prevention efforts is primarily a local responsibility. Thus, local units of government, including police, prosecutors and other justice officials, especially in jurisdictions with major drug problems, should be actively involved in the planning and strategy development process including the initial stages.

Matching Requirement

The fight against drug use must involve the active participation of all levels of government and the community. The matching requirement encourages state and local units of government to expand the resources committed to drug control efforts.

Distribution of Formula Funds within the State

As part of the requirements for the Anti-Drug Abuse Act, the states develop a statewide drug control strategy which defines the drug problem in the state, analyzes current efforts and resource needs and establishes priorities for the implementation of the strategy. The distribution of the formula funds within the state should be based on the strategy and should give priority to those jurisdictions with the greatest need.

Drug-Free Workplace

Clearly defined policies against drug use in the workplace and employee assistance programs for workers with drug problems provide an effective means of reducing drug use in the American workforce. All grantees of Federal funds, other than an individual, must provide a drug-free workplace in accordance with title V, sec. 5153 of the Anti-Drug Abuse Act of 1988 as defined by 28 CFR part 67, subpart F.

Purpose of Formula Grant Funds

The purpose of the Drug Control and System Improvement Grant Program is to assist states and units of local government in carrying out specific programs which offer a high probability of improving the functioning of the criminal justice system. Special emphasis is placed on a nationwide and multi-level drug control strategy. Programs and projects are to be developed to assist multi-jurisdictional and multi-state organizations in the drug control problem and to support national drug control priorities. Sec. 501(a) of the Act.

In accordance with Sec. 501(b) of the Act, the states may award formula grant funds to state agencies and units of local government for the purpose of enforcing state and local laws which establish offenses similar to offenses established in the Controlled Substances Act (21 U.S.C. 801 *et seq.*) and to improve the functioning of the criminal justice system, with emphasis on violent crime and serious offenders. Grants may provide personnel, equipment, training, technical assistance and information systems for the more widespread apprehension, prosecution, adjudication and detention and rehabilitation of persons who violate such laws, and to assist the victims of such crimes (other than compensation). The authorized programs are described in Appendix A. Formula funds should be devoted to programs that directly relate to drug control.

Allocation of Funds to the States

Eligible Applicants

State Government

All states are eligible to apply for and receive formula grants. Sec. 502 of the Act. State, as defined in the statute, means any state of the United States and includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands and American Samoa. Sec. 901(a)(2) of the Act.

Units of Local Government

Units of local government are eligible to receive subgrants from a participating state. Units of local government means any city, county, town, township, borough, parish, village or other general purpose political subdivision of a state and includes Indian tribes which perform law enforcement functions as determined by the Secretary of the Interior. Sec. 901(a)(3) of the Act.

Allocation

Sec. 506(a) of the Act provides that at least 80 percent of the total amount appropriated for this part shall be allocated for formula grants. The formula grant allocation is the balance of the appropriation remaining after a

set aside for discretionary programs of 20 percent of the total appropriation or $50,000,000, whichever is less. Each participating state shall receive a base amount of 0.25 percent of the total formula grant allocation or $500,000, whichever is greater. The remaining funds are allocated to each state on the basis of the state's relative share of total U.S. population. The FY 1990 allocations by state are found in Appendix B.

For the purposes of this Section, American Samoa and the Northern Mariana Islands shall be considered as one state, and 67 percent of the amount allocated shall be given to American Samoa and 33 percent to the Northern Mariana Islands. Sec. 901(a)(2) of the Act.

If BJA determines, on the basis of information available during any fiscal year, that a portion of the funds allocated to a state for that fiscal year will not be required or that a state will be unable to qualify or receive funds under the Formula Grant Program or that a state chooses not to participate in the program, then the state's portion of the funds shall be awarded by the Director of BJA to urban, rural and suburban units of local government or combinations thereof within the state, giving priority to those jurisdictions with greatest need. Sec. 506(e). Any funds allocated under the Formula Grant Program which are not distributed in accordance with Sec. 506 (a) and (b) shall be available for obligation under the Discretionary Grant Program. Sec. 506(f) of the Act.

Administrative Requirements

Distribution of Formula Funds Within the State

Variable Pass-through

Funds granted to the state are further subgranted by the state to state agencies and units of local government to carry out programs and projects contained in an approved application. Each state shall distribute to its local units of government, in the aggregate, a portion of the state's formula grant funds equal to the local government share of total state and local criminal justice expenditures for the previous fiscal year. Sec. 506(b)(1) of the Act. In determining the portion to be distributed to local units, the most recent and complete data (1988) available from the Bureau of Justice Statistics (BJS), OJP, of the U.S. Department of Justice shall be used unless the use of other data has been approved in advance by BJA. The portion of each state's allocation which must be passed through to local units of government is found in Appendix B.

To request approval of a distribution ratio other than that announced by BJA, the head of the State Office must certify in writing to BJA that the ratio it proposes is a correct reflection of the local share of total state and local criminal justice expenditures and that the state has notified its major local governments of the request and informed them of the opportunity to contact BJA within 30 days if they have any objections. The written request must also cite the expenditure data used to substantiate the proposed change, which shall be reviewed by BJS, prior to approval or rejection by BJA.

Distribution of Funds to State Agencies

Any funds not required to be passed through to local units of government may be used for programs administered by state agencies. Sec. 506(b)(3) of the Act. States may exceed the variable pass-through by providing funds not used at the state level to local units of government.

Priority to Jurisdictions With the Greatest Need

In distributing funds, the state shall give priority to those jurisdictions with the greatest need. Sec. 506(b)(2) of the Act.

45-Day Rule for Review of Local Government Applications

The state must make a decision on each complete application made by a local unit of government, or a combination of units of local government, within 45 days of receipt. An application shall be deemed approved by the state unless the state informs the applicant in writing within 45 days of the specific reasons for disapproval. The state shall not finally disapprove any application without first affording the applicant reasonable notice and opportunity for reconsideration. Sec. 506(a) of the Act. The state may establish program priorities for submission of the applications based on their strategy and criteria. The failure of an application to conform to the program priorities or to meet the criteria may constitute reason for disapproval.

45-Day Rule for Making Funds Available to Local Units of Government

Within 45 days following BJA's approval of a state's formula grant application and notice to and acceptance of conditions by the state, the state shall make funds available to local units of government, or combinations thereof, whose applications have been submitted to, approved and awarded by the state. The Director of BJA shall have the authority to waive the 45-day requirement upon a finding that the state cannot satisfy the requirement consistent with state statutes. Sec. 506(b) of the Act.

Matching Requirements

The requirement for states to provide a match of 25 percent of total project costs has been retained for FY 1990. Current law provides for the match to increase to 50 percent in any subsequent fiscal years.

Cash Match

The non-Federal share of expenditures shall be paid in cash. Sec. 504(e) of the Act. Funds required to pay the non-Federal portion of the cost of each program and project for which a grant is made shall be in addition to funds that would otherwise be made available for law enforcement by the recipients of the grant funds. Sec. 503(a)(3) of the Act.

Waiver of Matching Requirement for Indian Tribes

Funds subgranted to an Indian tribe which performs law enforcement functions (as determined by the Secretary of the Interior) shall be used to pay 100 percent of the cost of a program or project. Sec. 504(a)(2) of the Act.

Use of Proceeds Received Under the Equitable Sharing Program as Match

State and local units of government may use cash they received under the equitable sharing program to cover the non-Federal portion of costs of any OJP project or program.

Use of Proceeds from Asset Forfeitures as Match

A state or local unit of government may use forfeiture funds as match if state and local statutes allow for the collection and retention of such funds.

Administrative Costs

Given the increase in the formula grant allocation over previous years, states are encouraged to limit administrative costs to no more than five percent of their allocation. However, the Act allows up to 10 percent of grant funds to be used to pay for costs incurred in administering the formula grant program. Funds which are not used for administration of the program can be used to implement drug control efforts. Requests to use more than five percent of the funds for administration of the program should be justified in the formula grant application. There shall be a

presumption that funds specifically designated for preparation of the application for funds, including the drug strategy and administration of the award, are being used for the benefit of both state and local agencies and are expended in accordance with the variable pass-through requirement.

Undercover Operations

State agencies and local units of government may apply for and receive grants to conduct law enforcement undercover operations. The process by which these applications are reviewed and conducted must include provisions to protect the confidentiality of the operations. The standard of "need to know/right to know" is paramount when handling these types of applications. The following is provided as guidance:

- Information pertaining to the political jurisdictions and/or implementing agencies should be omitted on any documents submitted to BJA. The application should only include the program description, the funds involved and the number of projects.
- It is recommended that state agencies establish policies and procedures for special handling of undercover applications and grants. These should address:

—Limiting the need to provide confidential information by the applicant for review and funding decisions

—Minimizing the number of personnel having "need to know/right to know" status in performing application review and grant management functions

—Storing applications, grant awards and grant management documents in secure locations to prevent unauthorized access

Establishing/revising special management procedures relating to financial, monitoring and auditing activities in order to maintain confidentiality of the application and/or subgrant.

For the specific Office of Justice Programs (OJP) requirements governing the management of confidential funds, see OJP M 7100, Financial and Administrative Guide for Grants.

Allowable/Unallowable Expenses

General Salaries and Personnel Costs

Payment of personnel costs with grant funds is permitted if the costs are a part of an approved program or project. Sec. 501(b) of the Act.

Equipment and Hardware

Equipment and hardware expenses which are part of an approved program or project are allowable expenses. Sec. 501(b) of the Act.

Expenditures for Purchase of Evidence and Information

Formula grant funds which may be used for confidential expenditures are defined as funds used for the purchase of services, purchase of physical evidence and purchase of information including buy money, flash rolls etc. Guidelines related to confidential expenditures are found in OJP M7100, Financial and Administrative Guide for Grants (current edition). BJA has delegated to the State Office which administers the formula grant program authority to approve the allocation, use and expenditure of formula subgrant funds for confidential expenditures. Thus, the use of the term "Grantor Agency" as used in M7100 means the State Office for subgrants. All state applications containing projects which will utilize funds for confidential expenditures must contain an assurance that the guidelines found in M7100 will be followed.

Construction

Use of formula grant funds for construction projects is prohibited except when facilities to be constructed are penal or correctional institutions. Sec. 505(c) of the Act. Correctional institutions refer to prisons, jails, juvenile correctional institutions and residential community corrections facilities.

Land Acquisition

Acquisition of land with grant funds is prohibited. Sec. 505(c) of the Act.

Evaluation Cost

Expenses associated with conducting evaluations of programs/projects funded with formula grant funds are allowable expenses and may be paid with administrative funds, program funds or a combination of both. Sec. 504(d) of the Act.

Participation in Drug Enforcement Administration Task Forces

Formula grant funds may be used for expenses associated with participation of the state or units of local government, or combinations thereof, in the State and Local Task Force Program established by the Drug Enforcement Administration. Sec. 504(c) of the Act.

State Application Requirements

Application Submission

The Act requires that applications for funds be submitted within 60 days after the date that the appropriation for the program is enacted. Sec. 503(a) of the Act.

If a state fails to submit an application by the submission deadline as defined by the Act, BJA will provide the state with written notice that it intends to begin the process of making funds available to local units of government, or combinations thereof, within the state, within 30 days of the date of the notice. The state will be provided with an opportunity to submit its application and a justification for the late submission within the 30-day period. The Director of BJA will make a determination on adequacy of the justification prior to initiating review of the application.

An original and ten copies of the application should be mailed to: Bureau of Justice Assistance, Control Desk, 633 Indiana Avenue, NW., Washington, DC 20531.

Please note the number of copies which are being requested. This will assist BJA in the application review and award process.

Application Content

A complete formula grant application includes the following:

- Standard Form (SF) 424 "Federal Assistance" (revised 4–88)
- Executive Order 12372 Compliance
- Audit Requirements
- Civil Rights Requirements
- Certification Regarding Debarment
- Certification Regarding Drug-Free Workplace Requirements
- State Legislature Review
- Certified Assurances
- Statewide Strategy
- List of Program/Projects

Standard Form 424 (revised 4–88)

This form is the face sheet for the application. A copy of the current form is found in Appendix C. This document must be signed by a duly authorized official and dated. Note: Applications using an outdated version of the SF–424 will not be accepted.

Executive Order 12372 Compliance "Intergovernmental Review of Federal Programs"

Applicants must complete item 16 of SF–424 which requires information regarding compliance with Executive Order 12372. In accordance with the Executive Order and the Department of Justice's implementing regulation, 28

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CFR part 30, states must submit formula grant applications to the state "Single Point of Contact" (SPOC), if one exists, and if the program has been selected for coverage by the state process. The state may submit its application to the SPOC at the same time the application is submitted to BJA. The state SPOC may take up to 60 days from the application submission date to comment on the application. If, at the time that BJA approves the state's application, the SPOC has not commented on the application, and the 60-day comment period has not expired, the award will be special conditioned to allow for comment prior to the award of subgrants by the state.

Applicants are encouraged to contact their state's SPOC as soon as possible to inform them of the prospective application and to receive instructions regarding the state process.

Audit Requirements

Each grantee accepting BJA formula grant funds must agree to comply with the requirements of the OMB Circular A–128. Applications must include:

- Date of the last audit
- Dates covered by the last audit
- Date of the next audit
- Dates to be covered by the next audit
- Date next audit will be forwarded to cognizant audit agency
- Designated Federal cognizant agency

Civil Rights Requirements

In addition to the nondiscrimination and Equal Employment Opportunity Plan (EEOP) requirements listed in the Certified Assurances, applicants must include in their application:

- Civil Rights contact person
- Title and address of contact person
- Telephone number of contact person
- Number of persons employed by the organizational unit responsible for administering the grant

The contact person will serve as liaison with the Office for Civil Rights, OJP.

Applicants who previously applied for and received block or formula grant funding from BJA and have an approved EEOP, need only submit a statistical update of the previously approved plan. The statistical update shall be for the preceding year. At a minimum, the update shall contain the requirements found at 28 CFR 42.304 (a), (b), (c) and (d), along with a narrative statement describing the progress made during the preceding year, remedial action(s) taken and the status and issues of all discrimination complaints filed against the applicant during that period.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion

Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' Responsibilities, requires the grantee to obtain from each subgrantee applicant a *Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion.* Appendix C contains a copy of the Direct Recipient form which should be submitted by the state as part of the application. The Sub-Recipient form, also found in Appendix C, should be submitted to the state office as part of each subgrant application and should be kept on file by the State office.

Certification Regarding Drug-Free Workplace Requirements

Title V, Sec. 5153 of the Anti-Drug Abuse Act of 1988 requires all grantees of Federal funds, other than an individual, to certify to the granting agency that it will provide a drug free workplace. Appendix C contains the certification form. The drug-free workplace requirement applies to the direct grantees (e.g., Criminal Justice Planning Agency) and all recipient instrumentalities of the state (e.g., Corrections Departments).

State Legislature Review

As stated in the Act and the Certified Assurance, the application must be submitted for review to the state legislature or its designated body. The application must be submitted to the state legislature no later than the time of submission to BJA. BJA will not approve the use of funds until the state legislature or its designated body has reviewed the application or the 30-day review period has passed. A copy of the document which transmits the application to the state legislature should be included in the application submission packet.

Application Assurances

Many of the administrative requirements are met by the Chief Executive Officer of the state or his/her designee signing assurances regarding compliance. Documentation of compliance is retained by the state. A list of the assurances which must be signed and included in the application are found in Appendix C.

Statewide Strategy for Drug and Violent Crime Control

Each state is required to develop a statewide strategy to improve the functioning of the criminal justice system, with an emphasis on drug trafficking, violent crime and serious offenders. The strategy shall be prepared after consultation with state and local officials, particularly those whose duty it is to enforce drug and criminal laws and direct the administration of justice. The strategy should contain:

- A definition and analysis of the drug and violent crime problem in the state and an analysis of the problems in each of the counties and municipalities with major drug and violent crime problems.
- An assessment of the criminal justice resources being devoted to crime and drug control programs at the time of the application.
- A description of how the state is complying with coordination requirements, which should include a detailed description of the Federal LECC's role in assisting in the development of the statewide strategy.
- Identification of resource needs.
- The establishment of statewide priorities for crime and drug control activities and programs.
- An analysis of the relationship of the proposed state efforts to the *National Drug Control Strategy,* which should include a description of the state and local drug testing programs that include arrestees, prisoners, parolees, those out on bail, and others in the criminal justice system. The description should include an explanation of how drug test results are used in bail, sentencing, early release, probation, and parole decisions. If the state has not adopted comprehensive drug testing programs, information on timetables to do so should be provided.
- A plan for coordinating the programs to be funded under this program with other Federally funded programs, including state and local drug abuse education, treatment and prevention programs.

Programs to be Funded

Applications must set forth programs and projects which meet the purposes and criteria outlined in the Act. Sec. 506 (c) of the Act. Recommended program elements are highlighted on page 1. Since the Act identifies specific areas for funding, BJA deems some criminal justice system improvement programs as not appropriate for Federal funding (e.g., services for criminal defense and furlough programs for offenders who pose dangers to the community).

The application must designate which statutory purpose each program or project is intended to address and provide the name of the subgrantee, if known, and the estimated funding level for the program or project, including the amount and source of cash matching funds. The application must also include a description of the program and how it contributes to the statewide drug strategy's implementation.

The application must contain a Program List which includes:

- The legislatively authorized purpose area
- The title of the program or project
- The implementation Agency
- The Federal amount allocated to the program or project
- The amount of the match
- The source of the match (state, local, or other)

The Program List must be followed by specific information on each program to be funded including: a description of the program, the statutory purpose it addresses, its objectives, the critical elements in the program design, the indicators which will be used to assess performance and how it contributes to the implementation of the statewide strategy.

BJA develops program briefs that describe programs which have been found, based on evaluation and research, to be effective in drug and violent crime control.

If a program/project identified for funding includes activities which partially fall outside of the purposes set forth in Sec. 501 of the Act, the applicant must describe the program/project and clearly delineate the percentage of the funded activity which will be involved with Sec. 501 purposes. The description, which should also follow the Program List, must indicate the prorated amount of costs being covered by the formula grant funds and contain an adequate justification.

Federal, State and Local Participation in Strategy Development

Section 503 (a)(1) of the Act requires that "the strategy shall be prepared after consultation with State and local officials with emphasis on those whose duty it is to enforce drug and criminal laws and direct the administration of justice. Section 503 (a)(1)(A) requires that the strategy contain "a definition and analysis of the drug and violent crime problem in the state, and an analysis of the problems in each of the counties and municipalities with major drug and violent crime problems." Section 506 (b)(2) requires that "in distributing funds received under this part among urban, rural and suburban units of local government and combinations thereof, the State shall give priority to those jurisdictions with the greatest need."

It is essential that Federal, state and local law enforcement, prosecutors, and other criminal justice personnel participate closely in developing the statewide drug strategy. State planning agencies should not draft the strategy and then submit the document for review, thereby depriving operational agencies from making substantive contributions at the beginning of the strategy development process. As noted above, states are also encouraged to contact and work with the Law Enforcement Coordinating Committee (LECC) of the United States Attorney(s) within the state. The LECC, which brings together Federal, state and local law enforcement and prosecutors, can serve as an important resource in the strategy development process.

Further, after completion, the applicant is encouraged to send a copy of the statewide strategy or a summary of the strategy to local governments, major operational agencies and LECCs. This should include an analysis of the areas of greatest need, the allocation of funds and the impact of the state strategy on areas with major drug problems.

Drug and Violent Crime Policy Board

Each state is strongly encouraged to establish a Drug and Violent Crime Policy Board to serve as a forum for communication and a structure for coordination. The Board should be responsible for the development of the state strategy and should facilitate coordination within the state. The Board members should include state and local officials and operational level representatives from all components of the criminal justice system (e.g., law enforcement, prosecution, courts and corrections), education and treatment.

The United States Attorney or the Chair of the Law Enforcement Coordinating Committee should also be included on the Board to facilitate coordination with Federal drug control efforts. Federal employees who serve as members of the Board should be non-voting members relative to state grant funding decisions.

The Board should be appointed by the Governor to establish its credibility as the Policy Board within the state and the importance of its mission. If a Board is established, the application for formula grant funds should include a description of the Board's roles, responsibilities, and activities and a list of Board members, their agency and level of government and the criminal justice function and/or other discipline (e.g., education or drug treatment) they represent. Payment of the costs associated with the operation of the Drug and Violent Crime Policy Board is an allowable use for the administrative funds.

Review of State Applications

45-Day Rule for BJA Review of Applications

BJA must approve or disapprove applications or amendments within 45 days of official receipt. Sec. 505 (b) of the Act. The application or amendment shall be considered approved unless BJA informs the applicant in writing of specific reasons for disapproval prior to the expiration of the 45-day period. Applications which are incomplete, as determined by BJA, shall not be considered officially received for purposes of the 45-day rule.

Rather than reject or return incomplete applications, BJA will notify the applicant that its application has been received and what needs to be accomplished for the application to be considered "complete" and, thus, officially received. Every effort will be made to notify states of any problems early in the review process. This procedure will allow a review of the submitted material to start. The 45-day review period will not commence until BJA has determined that the application is "complete". Any outstanding special conditions on formula grant awards from prior fiscal years must be satisfied before a new award will be made.

Written Notification and Reason for Disapproval

BJA shall notify the applicant in writing of the specific reasons for the disapproval of the application or amendment, in whole or in part. The applicant will be afforded an opportunity for reconsideration before a final determination of disapproval is made. Sec. 505 (d) of the Act.

Affirmative Finding

Prior to approval of the application or amendments, BJA must make an affirmative finding in writing that the program or project has been reviewed in accordance with the Act. Sec. 505 (a) (2) of the Act.

Appendix A

Authorized Program Areas

1. Demand reduction education programs in which law enforcement officers participate;
2. Multi-jurisdictional task force programs that integrate Federal, state and local drug law enforcement agencies and prosecutors for the purpose of enhancing interagency coordination and intelligence and facilitating multi-jurisdictional investigations;
3. Programs designed to target the domestic sources of controlled and illegal substances, such as precursor chemicals, diverted pharmaceuticals, clandestine laboratories and cannabis cultivations;

4. Providing community and neighborhood programs that assist citizens in preventing and controlling crime, including special programs that address the problems of crimes committed against the elderly and special programs for rural jurisdictions;

5. Disrupting illicit commerce in stolen goods and property;

6. Improving the investigation and prosecution of white-collar crime, organized crime, public corruption crimes and fraud against the government with priority attention to cases involving drug-related official corruption;

7. a. Improving the operational effectiveness of law enforcement through the use of crime analysis techniques, street sales enforcement, schoolyard violator programs, gang-related and low-income housing drug control programs;

b. Developing and implementing antiterrorism plans for deep draft ports, international airports and other important facilities;

8. Career criminal prosecution programs, including the development of model drug control legislation;

9. Financial investigative programs that target the identification of money laundering operations and assets obtained through illegal drug trafficking, including the development of proposed model legislation, financial investigative training and financial information sharing systems;

10. Improving the operational effectiveness of the court process, such as court delay reduction programs and enhancement programs;

11. Programs designed to provide additional public correctional resources and improve the corrections system, including treatment in prisons and jails, intensive supervision programs and long-range corrections and sentencing strategies;

12. Providing prison industry projects designed to place inmates in a realistic working and training environment which will enable them to acquire marketable skills and to make financial payments for restitution to their victims, for support of their own families and for support of themselves in the institution;

13. Providing programs which identify and meet the treatment needs of adult and juvenile drug-dependent and alcohol-dependent offenders;

14. Developing and implementing programs which provide assistance to jurors and witnesses and assistance (other than compensation) to victims of crime;

15. a. Developing programs to improve drug control technology, such as pretrial drug testing programs, programs which provide for the identification, assessment, referral to treatment, case management and monitoring of drug-dependent offenders and enhancement of state and local forensic laboratories;

b. Criminal justice information systems to assist law enforcement, prosecution, courts and corrections organizations (including automated fingerprint identification systems);

16. Innovative programs which demonstrate new and different approaches to enforcement, prosecution and adjudication of drug offenses and other serious crimes;

17. Addressing the problems of drug trafficking and the illegal manufacture of controlled substances in public housing;

18. Improving the criminal and juvenile justice system's response to domestic and family violence, including spouse abuse, child abuse and abuse of the elderly;

19. Drug control evaluation programs which state and local units of government may utilize to evaluate programs and projects directed at state drug control activities;

20. Providing alternatives to prevent detention, jail and prison for persons who pose no danger to the community; and

21. Programs of which the primary goal is to strengthen urban enforcement and prosecution efforts targeted at street drug sales.

Appendix B—Allocation of Funds

FORMULA GRANT PROGRAM ALLOCATION OF FUNDS

State	FY 1990 Estimated state allocations	Percentage to be passed through to local jurisdictions
Alabama	$6,503,000	51.28
Alaska	1,704,000	24.63
Arizona	5,755,000	61.23
Arkansas	4,250,000	57.78
California	39,676,000	64.37
Colorado	5,498,000	64.03
Connecticut	5,405,000	44.76
Delaware	1,800,000	28.47
District of Columbia	1,831,000	100.00
Florida	17,842,000	65.13
Georgia	9,653,000	58.16
Hawaii	2,468,000	47.08
Idaho	2,358,000	62.82
Illinois	16,857,000	66.51
Indiana	8,580,000	58.91
Iowa	4,860,000	46.27
Kansas	4,397,000	54.56
Kentucky	6,080,000	30.33
Louisiana	7,011,000	55.09
Maine	2,634,000	45.98
Maryland	7,303,000	43.14
Massachusetts	9,035,000	44.28
Michigan	13,813,000	57.43
Minnesota	6,873,000	70.93
Mississippi	4,568,000	57.17
Missouri	8,012,000	58.06
Montana	2,068,000	58.56
Nebraska	3,177,000	60.13
Nevada	2,428,000	61.93
New Hampshire	2,470,000	54.86
New Jersey	11,538,000	56.55
New Mexico	3,047,000	44.84
New York	25,459,000	64.53
North Carolina	9,854,000	39.31
North Dakota	1,899,000	60.34
Ohio	15,820,000	61.89

FORMULA GRANT PROGRAM ALLOCATION OF FUNDS—Continued

State	FY 1990 Estimated state allocations	Percentage to be passed through to local jurisdictions
Oklahoma	5,416,000	46.25
Oregon	4,769,000	49.38
Pennsylvania	17,385,000	67.76
Rhode Island	2,345,000	44.75
South Carolina	5,729,000	40.96
South Dakota	1,962,000	49.36
Tennessee	7,676,000	53.21
Texas	23,999,000	67.52
Utah	3,297,000	50.80
Vermont	1,749,000	26.20
Virginia	9,207,000	51.50
Washington	7,339,000	62.91
West Virginia	3,551,000	49.86
Wisconsin	7,622,000	67.30
Wyoming	1,642,000	55.41
Puerto Rico	5,485,000	0
Virgin Islands	1,129,000	0
American Samoa	717,570	0
Guam	1,169,000	0
N. Mariana Islands	353,430	0
	[1] 365,101,000	

[1] The estimated allocations assume enactment of the Budget Reconciliation Act, H.R. 3299, and of the Compact of Free Association with Palau, H.J. Res. 175.

Appendix C—Application Forms and Assurances

BILLING CODE 4410-01-M

VOL 54 ISS 237 DE 12 1989 UMI

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐
A. State; B. County; C. Municipal; D. Township; E. Interstate; F. Intermunicipal; G. Special District; H. Independent School Dist.; I. State Controlled Institution of Higher Learning; J. Private University; K. Indian Tribe; L. Individual; M. Profit Organization; N. Other (Specify): _____

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ . ☐☐☐
TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:	
a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON
DATE _____
b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

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Certified Assurances FY-1990—(Drug Control and System Improvement Formula Grant Program) FY-1990

(1) The applicant assures that Federal funds made available under this formula grant will not be used to supplant state or local funds but will be used to increase the amounts of such funds that would, in the absence of Federal funds, be made available for law enforcement activities.

(2) The applicant assures that matching funds required to pay the non-Federal portion of the cost of each program and project, for which grant funds are made available, shall be in addition to funds that would otherwise be made available for law enforcement by the recipients of grant funds and shall be provided on a project-by-project basis. (However, the state may request BJA to approve exceptions such as match on a program-by-program basis, statewide basis, unit of government basis or a combination of the above. The state must include any requests for approval of other than project-by-project match in its application to BJA).

(3) The applicant assures that the state application, and any amendment thereto, has been submitted for review to the state legislature or its designated body. (For purposes of this section, such application or amendment shall be deemed to be reviewed if the state legislature, or its designated body, does not review such application or amendment within the 30-day period beginning on the date such application or amendment is submitted thereto).

(4) The applicant assures that the state application and any amendment thereto are made public before submission to BJA and, to the extent provided under state law or established procedure, an opportunity to comment thereon was provided to citizens and to neighborhood and community groups.

(5) The applicant assures that following the first fiscal year covered by an application and each fiscal year thereafter, a performance evaluation and assessment report will be submitted to BJA.

(6) The applicant assures that fund accounting, auditing, monitoring, evaluation procedures and such records as BJA shall prescribe shall be provided to assure fiscal control, proper management and efficient disbursement of funds received.

(7) The applicant assures that it shall maintain such data and information and submit such reports in such form at such times and containing such data and information as BJA may reasonably require to administer the program.

(8) The applicant certifies that the programs contained in this application meet all the requirements of the Act and guidelines, that all information contained in the application is correct, that there has been appropriate coordination with affected agencies and that the applicant will comply with all provisions of the Act and all other applicable Federal laws, regulations and guidelines.

(9) The applicant assures that the state is undertaking initiatives to reduce, through the enactment of innovative penalties or increasing law enforcement efforts, the demand for controlled substances by holding accountable those who unlawfully possess or use such substances.

(10) The applicant assures that it will comply with Title V of the Anti-Drug Abuse Act of 1988 and regulations promulgated by the Federal Government to maintain a drug-free workplace.

(11) The applicant assures that it will comply, and all its subgrantees and contractors will comply, with the nondiscrimination requirements of the Omnibus Crime Control and Safe Streets Act of 1968, as amended; title VI of the Civil Rights Act of 1964; section 504 of the Rehabilitation Act of 1973, as amended; title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; the Department of Justice Nondiscrimination Regulations 28 CFR part 42, subparts C, D, E and G; and Executive Order 11246, as amended by Executive Order 11375, and their implementing regulations, 41 CFR part 60.1 *et seq.*, as applicable to construction contracts.

(12) The applicant assures that in the event a Federal or state court or administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office for Civil Rights, OJP.

(13) The applicant assures that if required to formulate an Equal Employment Opportunity Program (EEOP), in accordance with 28 CFR 42.301 *et seq.*, it will maintain a current one on file. Further, the applicant will require every fund recipient required to formulate an EEOP, in accordance with the previously cited regulation, to submit a certification to the applicant that it has a current EEOP on file which meets the applicable requirements.

(14) The applicant assures that if required to maintain an EEOP and the applicant agency will directly utilize $500,000 or more in grant funds, it will submit a copy of the subject EEOP at the same time as the application submission, with the understanding that the statewide application for funds may not be awarded prior to approval of the applicant's EEOP by the Office for Civil Rights, OJP. Further, in those instances where a subgrantee is required to maintain an EEOP, the applicant will provide BJA a copy of said EEOP if the proposed subgrant is for $500,000 or more and not award a subgrant until the subgrantee's EEOP has been approved by the Office for Civil Rights, OJP.

(15) The applicant assures that it will comply with the provisions of OJP's M7100.1 Financial and Administrative Guide for Grants.

(16) The applicant assures that it will comply with the provisions of 28 CFR applicable to grants and cooperative agreement, including part II, Applicability of Office of Management and Budget Circulars; part 18, Administrative Review Procedures; part 20, Criminal Justice Information Systems; part 22, Confidentiality of Identifiable Research and Statistical Information Systems; part 23, Criminal Intelligence Systems Operating Policies; part 30, Intergovernmental Review of Department of Justice Programs and Activities; part 42, Nondiscrimination Equal Employment Opportunity Policies and Procedures; part 61, Procedures for Implementing the National Environmental Policy Act; and part 63, Floodplain Management and Wetland Protection Procedures.

(17) The grantee assures that it will submit for review and approval amendments to the application if as a result of compliance with Executive Order 12372, Intergovernmental Review of Federal Programs, and/or Sec. 503 (a)(5) of the Act Certified Assurance 4) comments are submitted to the grantee which the grantee feels are sufficiently valid to warrant such change.

Certification

I certify that the programs proposed in this application meet all the requirements of the Anti-Drug Abuse Act of 1988, Subtitle C—State and Local Narcotics Control and Justice Assistance Improvements of 1988, Pub. L. 100-690 (Nov. 18, 1988), that all the information presented is correct, that there has been appropriate coordination with affected agencies and that the application will comply with the provisions of the Act and all other Federal laws, regulations and guidelines. By appropriate language incorporated in each grant, subgrant or other document under which funds are to be disbursed, the undersigned shall assure the applicable conditions above apply to all recipients of assistance.

Authorized Official Date

BILLING CODE 4410-01-M

U.S. DEPARTMENT OF JUSTICE
OFFICE OF JUSTICE PROGRAMS
OFFICE OF THE COMPTROLLER

Certification Regarding Debarment, Suspension, and Other Responsibility Matters Primary Covered Transactions (Direct Recipient)

Application Number

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 28 CFR Part 67, Section 67.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 *Federal Register* (pages 19160-19211).

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Name and Title of Authorized Representative

Signature Date

Name and Address of Organization

OJP FORM 4061/2 (REV. 2/89) Previous editions are obsolete.

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Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may check the Nonprocurement List.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntary excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

U.S. DEPARTMENT OF JUSTICE
OFFICE OF JUSTICE PROGRAMS
OFFICE OF THE COMPTROLLER

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions
(Sub-Recipient)

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 28 CFR Part 67, Section 67.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 *Federal Register* (pages 19160-19211).

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Name and Title of Authorized Representative

Signature

Date

Name of Organization

Address of Organization

OJP FORM 4061/1 (REV. 2/89) Previous editions are obsolete.

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Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntary excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

U.S. DEPARTMENT OF JUSTICE
OFFICE OF JUSTICE PROGRAMS
OFFICE OF THE COMPTROLLER

Certification Regarding Drug-Free Workplace Requirements
Grantees Other Than Individuals

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988, 28 CFR Part 67, Subpart F. The regulations, published in the January 31, 1989 *Federal Register*, require certification by grantees, prior to award, that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the agency determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment (see 28 CFR Part 67, Sections 67.615 and 67.620).

The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about—
  (1) The dangers of drug abuse in the workplace;
  (2) The grantee's policy of maintaining a drug-free workplace;
  (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
  (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—
  (1) Abide by the terms of the statement; and
  (2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—
  (1) Taking appropriate personnel action against such an employee, up to and including termination; or
  (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

Place(s) of Performance: The grantee shall insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (street address, city, county, state, zip code):

_____

_____

_____

Organization Name _____ Application Number _____

Name and Title of Authorized Representative _____

Signature _____ Date _____

OJP FORM 4061/3 (2/89)

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Tuesday
December 12, 1989

Part VI

Department of Health and Human Services

Food and Drug Administration

Advisory Committee Meeting

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meeting: The following advisory committee meeting is announced:

Oncologic Drugs Advisory Committee

Date, time, and place. December 14, 1989, 8:30 a.m., Ballroom, Holiday Inn, 8120 Wisconsin Ave., Bethesda, MD.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open presentation of data, 9:30 a.m. to 10:30 a.m.; closed presentation of data, 10:30 a.m. to 12:30 p.m.; closed committee deliberations, 1:30 p.m. to 2:30 p.m.; open committee discussion, 2:30 p.m. to 3:30 p.m.; David F. Hersey, Center for Drug Evaluation and Research, Rm. 8B-45, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4695.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in cancer.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before the meeting and submit of brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will evaluate a possible increased incidence of neurotoxicity with a high dose of a generic Ara-C (cytarabine).

Closed presentation of data. The committee will hear trade secret and/or confidential commercial information relevant to a generic drug product. This portio of the meeting will be closed to permit discussion of this informaiton (5 U.S.C. 552b(c)(4)).

Closed committee deliberations. The committee will review trade secret or confidential commerical information relevant to a generic drug product. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

FDA is giving less than 15 days public notice of this Oncologic Drugs Advisory Committee Meeting because of the serious nature of the problem and the need to determine, if possible, its cause and arrive at a solution. The next regularly scheduled meeting of the committee is February 1 and 2, 1990, and FDA did not believe it appropriate to wait that long. Attempts were made to schedule a meeting in later December so as to provide sufficient time for at least a 15-day public notice of the meeting. However, it was not possible to find a date on which a quorum of the members could meet. The agency decided that it was in the public interest to hold this scientific meeting on December 14, 1989, even if there was not sufficient time for the customary 15-day public notice.

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI-35), Food and Drug Administration, Rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure whould constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. App. I), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: December 8, 1989.

James S. Benson,

Acting Commissioner of Food and Drugs.

[FR Doc. 89-29150 Filed 12-11-89; 11:39 am]

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H.R. 481/Pub. L. 101–199

To designate the building located at 2582 Hylan Boulevard, Staten Island, New York, as the "Walter Edward Grady United States Post Office Building". (Dec. 6, 1989; 103 Stat. 1793; 1 page) Price: $1.00

H.R. 3294/Pub. L. 101–200

To authorize distribution within the United States of the United States Information Agency film entitled "A Tribute to Mickey Leland". (Dec. 6, 1989; 103 Stat. 1794; 1 page) Price: $1.00

S. 892/Pub. L. 101–201

To exclude Agent Orange settlement payments from countable income and resources under Federal means-tested programs. (Dec. 6, 1989; 103 Stat. 1795; 1 page) Price: $1.00

S. 1960/Pub. L. 101–202

To authorize the food stamp portion of the Minnesota Family Investment Plan. (Dec. 6, 1989; 103 Stat. 1796; 9 pages) Price: $1.00

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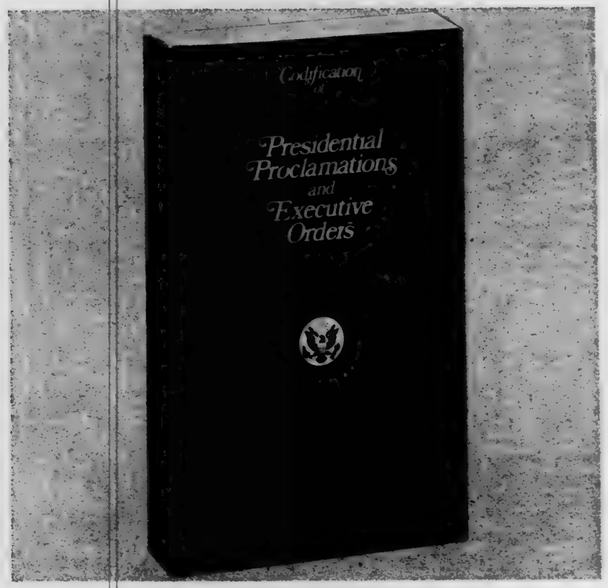

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Presidential Documents

Title 3—

The President

Proclamation 6082 of December 10, 1989

Human Rights Day, Bill of Rights Day, and Human Rights Week, 1989

By the President of the United States of America

A Proclamation

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness." With these words, our Nation's Founding Fathers declared America's independence from Great Britain more than 200 years ago. In so doing, they asserted the principles that form the fundamental moral vision of the United States. That vision—which recognizes protection of the God-given rights of individuals as the only legitimate end of just government—has inspired the United State's efforts to promote and defend the cause of freedom around the world. We Americans are firmly committed to the advancement of freedom and human rights because we also recognize the inherent relationship between respect for the worth and dignity of each person and the attainment of genuine peace and security.

In 1789, our Nation's Founding Fathers enumerated the rights of individuals in the first ten amendments proposed to our Constitution, known as the Bill of Rights. James Madison once noted that the idea of a Bill of Rights was valuable because "political truths declared in that solemn manner acquire by degrees the character of fundamental maxims of free government." Two hundred years later, the principles enshrined in our Bill of Rights have proved to be not only guiding tenets of American government, but also a model for the world.

The Bill of Rights guarantees freedom of speech and of the press, as well as freedom of religion and association; it ensures that no person shall be deprived of life, liberty, or property without due process of law; and it prohibits unreasonable search and seizure of a person's home, papers, or possessions. The Bill of Rights also guarantees anyone accused of a crime the right to a jury trial and defense counsel; the right to be informed of the charges against him; and protection against cruel or unusal punishment.

Two hundred years after the Bill of Rights was proposed to the States by the Congress, we can behold the remarkable influence and prescience of our Nation's Founding Fathers. In the Universal Declaration of Human Rights adopted on December 10, 1948, the United Nations General Assembly provided a resounding affirmation of the ideals enshrined in our Bill of Rights. This Declaration established a common standard of conduct for all peoples and all governments. Its signatories agreed to respect freedom of thought, freedom of conscience, as well as freedom of religion and belief. They also recognized an individual's right to freedom of movement and assembly, as well as his right to participate in the government of his country and to own property, either alone or in association with others. Noting that respect for the "inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world," the Declaration reaffirmed our conviction that human rights violations are the concern of all mankind, and not simply the internal affair of any given nation.

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In some areas of the world, we are witnessing historic change and significant improvements in human rights. We applaud the changes and at the same time will remain vigilant to help ensure that progress continues. We will continue to encourage institutionalization of reforms already introduced.

Tragically, however, in contempt for the Universal Declaration of Human Rights and for fundamental standards of morality, the rights of individuals are still being denied in many countries around the world. We will continue to condemn such human rights violations and to call upon the leaders of all countries to honor both the letter and spirit of international human rights agreements.

Safeguarding individual liberty and fundamental human rights is not only the duty of any legitimate government, but also the key to economic prosperity and lasting peace among nations. The United States thus has both a moral obligation and a proper interest in defending human rights and denouncing abuses of them wherever and whenever they occur. Our commitment to this obligation is unflagging. So, this week, as we give thanks for the freedom we enjoy as Americans, let us also renew our determination to value and protect the rights of others.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim December 10, 1989, as Human Rights Day and December 15, 1989, as Bill of Rights Day, and I call upon all Americans to observe the week beginning December 10, 1989, as Human Rights Week.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of December, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.

George Bush

[FR Doc 89-29225
Filed 12-11-89; 4:40 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 6063 of December 11, 1989

National Drunk and Drugged Driving Awareness Week, 1989

By the President of the United States of America

A Proclamation

As we prepare to celebrate the holidays and rejoice in the promise of the new year, it is fitting that we pause to remember the perils of drinking and driving. Each year, traffic accidents caused by drunk and drugged driving claim the lives of thousands of Americans. Many others are seriously injured as a result of such incidents. This week, we renew our commitment, as individuals and as a Nation, to keeping our roads and highways safe—not only during the holiday season, but throughout the year.

In past years, programs and activities held in observance of National Drunk and Drugged Driving Awareness Week have proven to be effective in enhancing public awareness of the dangers of driving while under the influence of drugs or alcohol. These programs and activities have been organized by concerned citizens and business leaders, as well as by public officials at all levels of government. Through candlelight vigils, safety campaigns, and voluntary efforts to provide rides from holiday parties, private citizens and business owners have helped focus greater attention on the problem of drunk and drugged driving. Governors, mayors, and other local officials have not only issued proclamations in observance of this week, but have also appointed special task forces to address the issue. The introduction of new drunk driving legislation in various States and the implementation of innovative law enforcement and detection programs have helped improve the safety of roads and highways across the country. These successful voluntary efforts and coordinated governmental activities demonstrate how each and every American can join in the fight against drunk and drugged driving.

Tragically, however, while we have made considerable progress in our efforts to reduce alcohol- and drug-impaired driving, approximately half of all fatal motor vehicle collisions continue to be alcohol-related. Some 80 percent of these accidents involve a legally intoxicated driver or pedestrian. These statistics mean that, during 1988, alcohol played a role in more than 23,000 traffic deaths. The toll in terms of personal suffering and loss can never be measured.

The observance of National Drunk and Drugged Driving Awareness Week reminds us of how much more we have to do in order to eliminate this senseless carnage of our Nation's roads and highways. Each of us must recognize the grave dangers posed by drinking and driving, and we must refuse to tolerate it. We must also recognize that drugs—including prescribed medications and those purchased over-the-counter—can seriously impair one's judgment and driving ability, whether taken alone or in combination with alcohol.

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This week provides an opportunity for all Americans to become involved in the campaign against drunk and drugged driving. We can do so by supporting the work of local law enforcement officials and by demonstrating a sense of personal responsibility ourselves. We can encourage friends and neighbors who consume alcohol to do so in moderation; and when a friend or neighbor drinks, we can refuse to let him or her drive. We can also wear a safety belt whenever we are behind the wheel, and we can insist that passengers do the same.

In order to encourage more citizens to become involved in efforts to improve the safety of our Nation's roads and highways, the Congress, by House Joint Resolution 429, has designated the week of December 10 through December 16, 1989, as "National Drunk and Drugged Driving Awareness Week" and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week of December 10 through December 16, 1989, as National Drunk and Drugged Driving Awareness Week. I ask each American to help improve the safety of our highways by refusing to tolerate drunk and drugged driving. I also call upon the Governors of the several States, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, and American Samoa, the chief officials of local governments, and the people of the United States to observe this week with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this eleventh day of December, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.

George Bush

[FR Doc. 89-29228
Filed 12-11-89; 4:47 pm]
Billing code 3195-01-M

Editorial note: For the President's remarks of Dec. 11 on signing Proclamation 6083, see the *Weekly Compilation of Presidential Documents* (vol. 25, no. 50).

Rules and Regulations

Federal Register
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Wednesday, December 13, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 89-206]

Mediterranean Fruit Fly; Addition to the Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the Mediterranean fruit fly regulations by adding additional portions of Los Angeles County, California, to the list of quarantined areas. This action is necessary on an emergency basis to prevent the spread of the Mediterranean fruit fly into noninfested areas of the United States.

DATES: Interim rule effective December 7, 1989. Consideration will be given only to comments received on or before February 12, 1990.

ADDRESSES: To help ensure that your comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 89-206. Comments received may be inspected at USDA, Room 1141, South Building, 14th and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Milton C. Holmes, Senior Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, Room 642, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8247.

SUPPLEMENTARY INFORMATION:

Background

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables, especially citrus fruits. the Mediterranean fruit fly (Medfly) can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

A document effective August 23, 1989, and published in the **Federal Register** on August 29, 1989 (54 FR 35629-35635, Docket Number 89-146), established the Mediterranean fruit fly regulations and quarantined an area in Los Angeles County, California (7 CFR 301.78 *et seq.*; referred to below as the regulations). In an interim rule effective September 14, 1989, and published in the **Federal Register** on September 20, 1989 (54 FR 38643-38645, Docket Number 89-169), we amended the regulations by adding a portion of Santa Clara County, California, to the list of quarantined areas. Also, in an interim rule effective October 11, 1989, and published in the **Federal Register** on October 17, 1989 (54 FR 42478-42480, Docket Number 89-182), we amended the regulations by adding an additional portion of Los Angeles County and a portion of San Bernardino County in California to the list of quarantined areas. In addition, we further amended the regulations by adding an additional portion of Los Angeles County in California to the list of quarantined areas in an interim rule effective November 17, 1989, and published in the **Federal Register** on November 24, 1989 (54 FR 48571-48572, Docket Number 89-202). These areas remain infested with Mediterranean fruit fly.

The regulations impose restrictions on the interstate movement of regulated articles from quarantined areas in order to prevent the spread of the Mediterranean fruit fly to noninfested areas.

Recent trapping surveys by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service, a unit within the U.S. Department of Agriculture, reveal that additional infestations of Medfly have been discovered in Los Angeles County, California.

Specifically, inspectors collected 22 Mediterranean fruit flies outside the perimeter of a previously quarantined area near Valinda, Baldwin Park, and Whittier, California, during the period of November 3, 1989, to November 27, 1989. In addition, one mated female was found near North Hollywood, California, on November 20, 1989.

The regulations in § 301.78-3 provide that the Administrator of the Animal and Plant Health Inspection Service shall list as a quarantined area each State, or each portion of a State, in which the Mediterranean fruit fly has been found by an inspector, in which the Administrator has reason to believe the Mediterranean fruit fly is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which the Mediterranean fruit fly has been found.

In accordance with these criteria, we are revising the quarantined area in Los Angeles County, California, by expanding the previously quarantined area near Valinda, Baldwin Park, and Whittier, and by designating an additional quarantined area near North Hollywood as follows:

Los Angeles County

That portion of the county in the Whittier, Baldwin Park, Valinda, and San Gabriel Valley areas bounded by a line drawn as follows: Beginning at the intersection of Rosemead Boulevard and Interstate Highway 210; then easterly along this highway to its intersection with Grand Avenue; then southerly along this avenue to its intersection with Valley Boulevard; then southwesterly along this boulevard to its intersection with Brea Canyon Road; then southerly along this road to its intersection with State Highway 60; then westerly along this highway to its intersection with Nogales Street; then southerly along this street to its intersection with Colima Road; then westerly along this road to its intersection with Fullerton Road; then southerly along this road to its intersection with the La Habra Heights City Limits; then northwesterly along the city limits to its intersection with Hacienda Boulevard; then southerly along this boulevard to its intersection with the Los Angeles/Orange County line; then westerly and southerly along this county line to its intersection with La Habra Boulevard; then westerly along this boulevard to its intersection with Leffingwell Road; then southwesterly along this road to its

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intersection with Imperial Highway; then westerly along this highway to its intersection with Interstate Highway 5; then northwesterly along this highway to its intersection with Soto Street; then northeasterly along this street to its intersection with Huntington Drive; then northeasterly along this drive to its intersection with Monterey Road; then northerly along this road to its intersection with Avenue 60; then northwesterly along this avenue to its intersection with Figueroa Street; then northeasterly along this street to its intersection with York Boulevard; then westerly along this boulevard to its intersection with Eagle Rock Boulevard; then northeasterly along this boulevard to its intersection with Colorado Boulevard; then westerly along this boulevard to its intersection with State Highway 2; then northerly along this highway to its intersection with Chevy Chase Drive; then northeasterly along this drive to its intersection with Highland Drive; then easterly along this drive to its intersection with Woodbury Road; then easterly along this road to its intersection with Lake Avenue; then northerly along this avenue to its intersection with New York Drive; then easterly and southeasterly along this drive to its intersection with Sierra Madre Villa Avenue; then southerly along this avenue to its intersection with Rosemead Boulevard; then southeasterly along this boulevard to the point of beginning.

That portion of the county in the North Hollywood area bounded by a line drawn as follows: Beginning at the intersection of Laurel Canyon Boulevard and Sherman Way; then easterly along this way to its intersection with Vineland Avenue; then southerly along this avenue to its intersection with Vanowen Street; then easterly along this street to its intersection with Empire Avenue; then easterly along this avenue to its intersection with Buena Vista Street; then southerly and southeasterly along this street to its intersection with Olive Avenue; then southwesterly along this avenue to its intersection with State Highway 134; then westerly along this highway to its intersection with U.S. Highway 101; then westerly along this highway to its intersection with Laurel Canyon Boulevard; then northerly along this boulevard to the point of beginning.

There does not appear to be any reason to designate other additional quarantined areas in California other than the areas specified above. California has adopted and is enforcing regulations imposing restrictions on the intrastate movement of the regulated articles that are equivalent to those imposed on the interstate movement of regulated articles under this subpart.

Emergency Action.

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that an emergency situation exists, which warrants publication of this interim rule without prior opportunity for public comment. Because the Mediterranean fruit fly could be spread to noninfested areas of the United States, it is necessary to act immediately to prevent its spread.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments received within 60 days of publication of this interim rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**, including a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This regulation affects the interstate movement of regulated articles from portions of Los Angeles County, California. In addition to the entities previously mentioned in the Valinda, Whittier, and Baldwin Park area, within the newly regulated areas approximately 424 entities will be affected by this rule. All would be considered small entities. They include 202 fruit/produce markets, 145 mobile vendors, 61 nurseries, 3 farmers markets, 8 florists, and 5 flea markets. These entities emprise less than 1 percent of the total of similar enterprises operating in the Sate of California. Most of the sales for these entities are local intrastate and would not be affected by this regulation. Further, the conditions in the Mediterranean fruit fly regulations and treatments in the Plant Protection and Quarantine Treatment Manual, incorporated by reference in the regulations, allow interstate movement of most articles without significant added costs.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The regulations in this subpart contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR 3015, Subpart V).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation, Mediterranean fruit fly, Incorporation by reference.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for 7 CFR Part 301 continues as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

3. In § 301.78–3 paragraph (c), the designation of the quarantined area is amended by revising the paragraph under "Los Angeles County" that begins "That portion of the county in the Valinda, Baldwin Park, and Whittier areas * * *" to read as follows:

§ 301.78–3 Quarantined areas.

* * * * *

(c) * * *

California

Los Angeles County

* * * * *

That portion of the county in the Whittier, Baldwin Park, Valinda, and San Gabriel Valley areas bounded by a line drawn as follows: Beginning at the intersection of Rosemead Boulevard and Interstate Highway 210; then easterly along this highway to its intersection with Grand Avenue; then southerly along this avenue to its intersection with Valley Boulevard; then southwesterly along this boulevard to its intersection with Brea Canyon Road; then southerly along this road to its intersection with State Highway 60; then westerly along this highway to its intersection with Nogales Street; then southerly along this street to its intersection with Colima Road; then westerly along this road to its intersection with Fullerton Road; then southerly along this road to its intersection with the La Habra Heights City Limits; then northwesterly along the city limits to its intersection with Hacienda Boulevard; then southerly along this boulevard to its intersection with the Los Angeles/Orange County line; then westerly and southerly along this county line to its intersection with La Habra Boulevard; then westerly along this boulevard to its intersection with Leffingwell Road; then southwesterly along this road to its intersection with Imperial Highway; then westerly along this highway to its intersection with Interstate Highway 5; then northwesterly along this highway to its intersection with Soto Street; then northeasterly along this street to its intersection with Huntington Drive; then northeasterly along this drive to its intersection with Monterey Road; then northerly along this road to its intersection with Avenue 60; then northwesterly along this avenue to its intersection with Figueroa Street; then northeasterly along this street to its intersection with York Boulevard; then westerly along this boulevard to its intersection with Eagle Rock Boulevard; then northeasterly along this boulevard to its intersection with Colorado Boulevard; then westerly along this boulevard to its intersection with State Highway 2; then northerly along this highway to its intersection with Chevy Chase Drive; then northeasterly along this drive to its intersection with Highland Drive; then easterly along this drive to its intersection with Woodbury Road; then easterly along this road to its intersection with Lake Avenue; then northerly along this avenue to its intersection with New York Drive; then easterly and southeasterly along this drive to its intersection with Sierra Madre Villa Avenue; then southerly along this avenue to its intersection with Rosemead Boulevard; then southeasterly along this boulevard to the point of beginning.

Done in Washington, DC, this 7th day of December 1989.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89–28994 Filed 12–12–89; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89–ANE–02; Amendment 39–6352]

Airworthiness Directives; Pratt & Whitney (PW) JT8D–9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR Turbofan Engines; Correction

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects the effective date and the incorporation by reference approval date for the above-captioned Airworthiness Directive published in the **Federal Register** on Tuesday, December 5, 1989 (54 FR 50232). A delay in the processing of the document resulted in publication less than 30 days before the effective date. In all other respects, the original document is correct.

DATE: Effective January 15, 1990.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 15, 1990.

SUPPLEMENTARY INFORMATION: A final rule Airworthiness Directive (AD) applicable to certain Pratt & Whitney JT8D turbofan engines was published in the **Federal Register** on Tuesday, December 5, 1989, with an effective date of January 1, 1990 (54 FR 50232). This document changes the effective date and the incorporation by reference approval date of that AD to January 15, 1990. Since none of the regulatory information has been changed, the final rule is not being republished.

Issued in Washington, DC, on December 6, 1989.

Donald P. Byrne,

Acting Assistant Chief Counsel for Regulations and Enforcement.

[FR Doc. 89–29048 Filed 12–12–89; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 89–NM–161–AD; Amdt. 39–6422]

Airworthiness Directives; Boeing of Canada, Ltd., de Havilland Division, Model DHC–7 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all de Havilland Model DHC–7 series airplanes, which requires a visual inspection for loose rivets, low frequency ultrasonic inspection for disbonding of unriveted stringers on fuselage skins, and repair, if necessary. This amendment is prompted by a recent report of disbonding found during routine inspection in a waffle doubler/belly skin. This condition, if not corrected, could lead to reduced structural capability of the fuselage and subsequent decompression of the airplane.

DATE: Effective January 14, 1990.

ADDRESSES: The applicable service information may be obtained from Boeing of Canada, Ltd., de Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the FAA, New England Region, 181 South Franklin Avenue, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Socias, Airframe Branch, ANE–172; telephone (516) 791–6220. Mailing address: FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York 11581.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to all de Havilland Model DHC–7 series airplanes, which requires a visual inspection for loose rivets, low frequency ultrasonic inspection for disbonding of unriveted stringers on fuselage skins, and repair, if necessary, was published in the **Federal Register** on September 1, 1989 (54 FR 36320).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

Both commenters supported the rule, but one commenter requested that the

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proposed compliance time for paragraph A. be increased from 30 days to 60 days so there will be minimal disruption of its fleet. Upon further investigation, the FAA has learned that 60 percent of the U.S. fleet has already been inspected, and no disbonding has been found. In light of this information, the FAA concurs with the commenter's request and has determined that the compliance time may be increased to 60 days without adversely affecting safety. Paragraph A. of the final rule has been revised accordingly.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change noted above. This change will neither increase the economic burden on any operator nor increase the scope of the rule.

This is considered to be interim action. The manufacturer is currently attempting to determine the extent and nature of the addressed damage, and is developing an appropriate repetitive inspection schedule and/or modification that will preclude the need for repetitive inspections. Once these are developed, the FAA may consider further rulemaking to revise this AD to require additional necessary actions.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

It is estimated that 42 airplanes of U.S. registry will be affected by this AD, that it will take approximately 36 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $60,480.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and reponsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing of Canada, Ltd., De Havilland Division: Applies to all Model DHC-7 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent reduced structural capability of the fuselage and subsequent decompression of the airplane, accomplish the following:

A. Within 60 days after the effective date of this AD, perform the following inspections and repair, in accordance with de Havilland Service Bulletin 7-53-33, Revision A, dated June 9, 1989:

1. Perform a low frequency ultrasonic inspection for disbonding of the fuselage belly skin doublers, between fuselage stations X248.00 and X535.25 below stringer 20 left and right, in accordance with Inspection Part A of the service bulletin.

2. Visually inspect for looseness or working of the rivets in the vertical skin joints, at fuselage stations X535.25 and X576.25 below stringer 20, left and right.

3. Visually inspect for looseness or working of the rivets in the fuselage skin joints at station X630.00 around the complete periphery of the fuselage, above and below the passenger and emergency exit doors.

4. Visually inspect for looseness or working of the rivets in the skin longitudinal joint between fuselage stations X424.00 to X484.00 along stringer 20, left and right. Pay particular attention to the lower line of rivets.

5. Repair all loose rivets prior to further flight, in a manner approved by the Manager, New York Aircraft Certification Office, ANE-170, FAA, New England Region.

6. Repair all disbonding prior to further flight, in accordance with the service bulletin.

B. Within 90 days after the effective date of this AD:

1. Perform a low frequency ultrasonic inspection for disbonding of the fuselage left and right sidewall skin doublers, between fuselage stations X248.00 and X590.75, between stringer 20 and 10, in accordance with de Havilland Service Bulletin 7-53-33, Revision A, dated June 9, 1989.

2. Repair any disbonding prior to further flight, in accordance with the service bulletin.

C. Within 150 days after the effective date of this AD:

1. Perform a low frequency ultrasonic inspection for disbonding of the fuselage roof skin doublers between fuselage stations X248.00 and X630.00, between stringer 10, left and right, in accordance with de Havilland Service Bulletin 7-53-33, Revision A., dated June 9, 1989.

2. Repair any disbonding prior to further flight, in accordance with the service bulletin.

D. Within 3 days after accomplishing each of the inspections required by paragraphs A., B., and C., above, report all findings, positive or negative, to the Director, Airworthiness Branch, Transport Canada, Ottawa, Canada; to the manufacturer, Boeing of Canada, Ltd., de Havilland Division, in accordance with de Havilland Service Bulletin 7-53-33, Revision A, dated June 9, 1989; and to the FAA, Manager, New York Aircraft Certification Office, ANE-170, New England Region.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office, ANE-170, FAA, New England Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, New York Aircraft Certification Office, ANE-170.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing of Canada, Ltd., de Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or New York Aircraft Certification Office, FAA, New England Region, 181 South Franklin Avenue, Valley Stream, New York.

This amendment becomes effective January 14, 1990.

Issued in Seattle, Washington, on November 30, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-29045 Filed 12-12-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-177-AD; Amendment 39-6424]

Airworthiness Directives; Boeing Model 737-300, 757, and 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Boeing Model 737-300, 757, and 767 series airplanes, which requires the replacement of all 1½-turn pull rings with 2-turn pull rings in each oxygen module assembly, and the inspection and replacement, if necessary, of certain oxygen generators which may be defective. This amendment is prompted by reports of failures of the oxygen generators during a functional test at an airline, failures of the pull rings during one cabin decompression, and tests by the manufacturer. This condition, if not corrected, could result in the oxygen generator not activating, resulting in no supplemental oxygen supply to passengers and flight attendants when necessary.

DATE: Effective January 17, 1990.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. David M. Herron, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1949. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to certain Boeing Model 737-300, 757, and 767 series airplanes, which requires the replacement of all 1½-turn pull rings with 2-turn pull rings in each oxygen module assembly, and the inspection and replacement, if necessary, of certain oxygen generators which may be defective, was published in the Federal Register on December 9, 1988 (53 FR 49677).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment received.

The Air Transport Association (ATA) of America, commenting on behalf of its members, stated that operators were unable to accomplish the modification as specified in the proposal because some lanyard loops were too small to accommodate the 2-turn ring. ATA requested that the rule be revised to include new modification instructions when available. The FAA concurs. Since issuance of the NPRM, the FAA has reviewed and approved Boeing Alert Service Bulletin 737-35A1029, Revision 3, dated June 29, 1989; Boeing Alert Service Bulletin 757-35A0006, Revision 2, dated June 29, 1989; and Boeing Alert Service Bulletin 767-35A0014, Revision 1, dated April 13, 1989. These revisions provide additional instructions to cover a situation when the lanyard loop is too small to accommodate the 2-turn ring. The final rule has been revised to allow modification in accordance with these later service bulletin revisions.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes noted above. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the rule.

There are approximately 842 Model 737-300, 757, and 767 series airplanes of the affected design in the worldwide fleet. It is estimated that 475 airplanes of U.S. registry will be affected by this AD, that it will take approximately 17.2 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $326,800.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 737-300, 757 and 767 series airplanes, listed in Boeing Alert Service Bulletins 737-35A1029, Revision 2, dated September 29, 1988; 757-35A0006, Revision 1, dated March 10, 1988; and 767-35A0014, dated December 17, 1987; certificated in any category. Compliance required within the next 3,000 hours time-in-service after the effective date of this AD, unless previously accomplished.

To prevent failure of the oxygen generator to activate when required, accomplish the following:

A. Inspect Puritan chemical generators, P/N 11700-13, for serial numbers 06339 through 06559, and replace those units in accordance with Puritan-Bennett Service Bulletin 117003-13-35-1, dated December 17, 1987.

B. Inspect, and if installed, replace 1½-turn oxygen generator lanyard pull rings with 2-turn pull rings as follows:

1. For Model 767 series airplanes, in accordance with Boeing Alert Service Bulletin 767-35A0014, dated December 17, 1987, or Revision 1, dated April 13, 1989;

2. For Model 757 series airplanes, in accordance with Boeing Alert Service Bulletin 757-35A0006, Revision 1, dated March 10, 1988, or Revision 2, dated June 29, 1989;

3. For Model 737-300 series airplanes, in accordance with Boeing Alert Service Bulletin 737-35A1029, Revision 2, dated September 29, 1988, or Revision 3, dated June 29, 1989.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or

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comment, and then send it to the Manager, Seattle Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124 and the Puritan-Bennett Aero Systems Co., Attn: Customer Services Dept., 10800 Pflumm Road, Lenexa, Kansas 66215. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective January 17, 1990.

Issued in Seattle, Washington, on December 1, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-29044 Filed 12-12-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-175-AD; Amendment 39-6421]

Airworthiness Directives; Boeing of Canada, Ltd., de Havilland Division, Model DHC-7 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all de Havilland Model DHC-7 series airplanes, which currently requires repetitive inspections of the main landing gear (MLG) unimproved upper lock strut assemblies for cracks, and replacement, if necessary. Such cracking, if not corrected, could result in collapse of the MLG and subsequent airplane damage. This amendment expands the inspection requirement to include assemblies that may have been improperly reworked, and requires eventual replacement of the upper lock struts with improved parts.

DATE: Effective January 14, 1990.

ADDRESSES: The applicable service information may be obtained from Boeing of Canada, Ltd., de Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the FAA, New England Region, 181 South Franklin Avenue, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. John Maher, Airframe Branch, ANE-172; telephone (516) 791-6220. Mailing address: FAA, New England Region, 181 South Franklin Avenue, Valley Stream, New York 11581.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 80-17-13, Amendment 39-3685 (45 FR 54732; August 18, 1980), applicable to all de Havilland Model DHC-7 series airplanes, with a new airworthiness directive to require an inspection of the main landing gear upper lock struts to determine the configuration installed and eventual replacement of the upper lock struts with improved parts, was published in the **Federal Register** on September 25, 1989 (54 FR 39188).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 46 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 manhour per airplane to accomplish the required initial inspection and 4 manhours to replace unimproved parts, and that the average labor cost will be $40 per manhour. The required parts will be supplied at no cost to the operator. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $9,200.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding AD 80-17-13, Amendment 39-3685 (45 FR 54732; August 18, 1980), with the following new airworthiness directive:

Boeing of Canada, Ltd, de Havilland Division: Applies to de Havilland Model DHC-7 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent possible collapse of a main landing gear (MLG) due to failure of the MLG upper lock strut, accomplish the following:

A. Within 50 hours time-in-service after the effective date of this AD, inspect the left and right main MLG upper lock struts to determine the part number of the struts. Accomplish this inspection in accordance with de Havilland Alert Service Bulletin A7-32-83, dated January 30, 1989.

B. If the part number is identified to be either 15707-5 or 15707-7 (subassembly P/N 15709-7 or 15709-9), the airplane may be returned to service after reprotecting the part with alodine solution #1200 and grey epoxy paint.

C. If the part number is 15707-3, or is both 15707-3 and 15707-5, or cannot be positively identified, prior to further flight, perform a one-time NDT inspection for cracks, in accordance with de Havilland Service Bulletin No. 7-32-21, Revision B, dated October 1, 1982; and thereafter perform a visual inspection for cracks prior to the first flight of each day. Upper lock struts with cracks must be replaced prior to further flight.

D. Replacement with a P/N 17509-7 or 17509-9 upper lock strut subassembly (machined P/N 15707-5 or 15707-7), constitutes terminating action for the repetitive inspections required by paragraph C., above.

E. Within 90 days after the effective date of this AD, replace upper lock struts having part number 15707-3, or both 15707-3 and 15707-5, or those that cannot be positively identified, with a P/N 17509-7 or 17509-9 upper lock strut subassembly (machined P/N 15707-5 or 15707-7). This constitutes terminating action for the repetitive inspection requirements of this AD.

F. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office, FAA, New England Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, New York Aircraft Certification Office.

G. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Canada, Ltd., de Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York.

This amendment supersedes Amendment 39-3885, AD 80-17-13.

This amendment becomes effective January 14, 1990.

Issued in Seattle, Washington, on November 30, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 89-29042 Filed 12-12-89; 8:45 am]

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14 CFR Part 39

[Docket No. 89-NM-214-AD; Amdt. 39-6423]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 767 series airplanes, which requires an inspection of the leading edge slat shutoff valve, the leading edge slat long-term shutoff control, the inboard and outboard leading edge slat drive mechanical rigging and the trailing edge flap bypass valve motor, and replacement of failed parts found during this inspection. This amendment is prompted by a report of an uncommanded slat extension during cruise, and several instances of an inoperative trailing edge flap bypass valve motor. This condition, if not corrected, could result in uncommanded extension of the wing leading edge slat or the wing trailing edge flap, causing damage to the airplane and/or degrading the handling characteristics of the airplane.

DATE: Effective December 27, 1989.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Don Kurle, ANM-130S; telephone (206) 431-1945. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: An inflight uncommanded deployment of the outboard leading edge slats occurred with the flap lever in the up position. The incident occurred while the airplane was in cruise configuration at a speed 5 knots below the flap placard speed. This incident occurred as a result of misrigging of the mechanical input to the Power Drive Unit (PDU), and an electrical signal holding the hydraulic shutoff valve (SOV) to the PDU open, after slat retraction. This condition, if not corrected, could lead to structural damage of the slats and/or result in an asymmetric aerodynamic wing loading and degraded flying qualities.

During ground operation, several incidents of trailing edge flap bypass valve motor failure were discovered. The motor failure has been traced to hydraulic fluid contamination. This condition, if not corrected, would compromise the trailing edge flap drive shut-down protection against flap asymmetry and uncommanded extension, and creates the potential for structural damage and/or degraded flying qualities.

The FAA has reviewed and approved Boeing Alert Service Bulletin 767-27A0094, dated September 28, 1989, which describes procedures for functional checks of the leading edge slat shutoff valve, the leading edge slat long-term shutoff control, trailing edge flap drive bypass valve, and inboard and outboard slat drive mechanical rigging.

Since this condition is likely to exist or develop on other airplanes of the same type design, this AD requires repetitive inspections and replacement, if necessary, of the affected components in accordance with the service bulletin previously described.

This repetitive inspection is considered to be an interim action. The FAA may consider further rulemaking action after procedures for rework of the affected components have been developed.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure herein are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations as follows:

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PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to all Model 767 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent uncommanded/asymmetric deployment of leading edge slats and trailing edge flaps, accomplish the following:

A. Within the next 25 days after the effective date of this AD, and at intervals not to exceed 400 hours time-in-service thereafter, conduct a functional check of the leading edge slat shutoff valve and the trailing edge flap drive bypass valve in accordance with Boeing Alert Service Bulletin 767-27A0094, dated September 28, 1989.

B. Within the next 25 days after the effective date of this AD, conduct a functional check of the leading edge slat long term shutoff control and the leading edge inboard and outboard slat drive mechanical rigging in accordance with Boeing Alert Service Bulletin 767-27A0094, dated September 28, 1989.

C. Replace, prior to further flight, all failed parts detected in functional checks performed in accordance with paragraphs A. and B., above.

D. An alternate means of compliance or adjustment of compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Seattle Aircraft Certification Office.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective December 27, 1989.

Issued in Seattle, Washington, on December 1, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-29043 Filed 12-12-89; 8:45 am]

BILLING CODE 4910-13-M

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Rescheduling Unfair Labor Practice Hearings

AGENCY: National Labor Relations Board.

ACTION: Final rule.

SUMMARY: The National Labor Relations Board issues a final rule permanently implementing its recent experimental modification of the procedures for rescheduling unfair labor practice hearings. The procedures are permanently modified so that the authority to reschedule hearings is transferred, subject to certain exceptions, from the Regional Directors to the administrative law judges.

EFFECTIVE DATE: December 1, 1989.

FOR FURTHER INFORMATION CONTACT: John C. Truesdale, Executive Secretary, 1717 Pennsylvania Avenue NW., Room 701, Washington, DC 20570, Telephone: (202) 254-9430.

SUPPLEMENTAL INFORMATION: On August 1, 1988, the National Labor Relations Board implemented a one-year experiment in all of its Regional Offices whereby the authority to reschedule unfair labor practice hearings was transferred, subject to certain exceptions, from the Regional Directors to the administrative law judges. (See 53 FR 26348). The experiment was subsequently extended until November 30, 1989 (see 54 FR 31392), and a comment period was provided until October 2, 1989 (see 54 FR 37039).

The Board received comments by the Acting Associate General Counsel, from the Deputy Chief Administrative Law Judge, and from several private law firms or attorneys that practice before the Agency. Each are summarized below.

Acting Associate General Counsel

The comments by Acting Associate General Counsel William G. Stack indicated that, although most of the Regional Offices opposed the experimental rescheduling system, the data which they had accumulated during the experimental period showed that the experiment had actually had "minimal impact" on their case processing. Thus, given the Board's expressed concern about the public's perception of the fairness of the old system, the Acting Associate General Counsel concluded that "permanently instituting the new system may create a more favorable image of the Agency with little, if any, adverse affect on casehandling."

Deputy Chief Administrative Law Judge

The comments from Deputy Chief Administrative Law Judge David S. Davidson indicated that while the experimental procedure had "somewhat increased" the workload of the administrative law judges, "most of the [rescheduling] requests require little time for disposition, and continuation of the procedure would present no problem" for the judges. However, noting that a postponement was virtually automatic in cases where there was no objection to the request, the Deputy Chief Administrative Law Judge suggested that an additional exception might be allowed to permit the Regional Directors to reschedule the hearing in such cases. Such an exception, the Deputy Chief Administrative Law Judge concluded, "would significantly reduce the number of requests coming to [the administrative law judges] and should have little impact on public perception of fairness."

Private Practitioners

Four comments were received from private law firms or attorneys that practice before the Agency. Two of these comments, from Edward Miller, former NLRB chairman and now Senior Counsel of Pope, Ballard, Shepard & Fowle, Ltd., and from Dean Denlinger of Denlinger, Rosenthal & Greenberg, were submitted at the outset of the experiment. Former Chairman Miller indicated that, although he had some concerns about how some of the exceptions would be applied, he was supportive of the experiment. Denlinger indicated that he generally supported the changes in the experimental procedure and recommended that the changes be made permanent, but urged that the exceptions in the experimental rule be eliminated and that all decisions concerning the rescheduling of hearings be made by the administrative law judges. The two other comments were submitted by G. Roger King of Bricker & Eckler, and Fred F. Holroyd of Holroyd, Yost & Merical. G. Roger King indicated that Bricker & Eckler was supportive of the experimental procedure, and recommended that the experiment "be made permanent." Fred F. Holroyd indicated that while he was also supportive of changing the old procedure, he could see "no difference in the actual practice from the old system to the new," and recommended that the authority to reschedule hearings be transferred to the administrative law judges without exception.

Having considered all of the above comments, the Board has decided to make the experimental rescheduling procedure permanent. Virtually all of the comments indicate that the experimental procedure will help at least in some degree to change the apparent public perception of unfairness in this area. Accordingly, we conclude that the experimental procedure will serve its stated purpose and should be permanently implemented in a final rule.

We will, however, make one change in the experimental procedure. In agreement with Deputy Chief Administrative Law Judge Davidson, we see no reason not to permit the Regional Directors to continue to reschedule hearings in those instances where there is no objection. Accordingly, we will incorporate this change into the final rule.

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Board certifies that the rule will not have a significant impact on a substantial number of small businesses.

List of Subjects in 29 CFR Part 102

Administrative practice and procedure, labor management relations.

Accordingly, 29 CFR part 102 is amended as follows:

PART 102—RULES AND REGULATIONS, SERIES 8

1. The authority citation for 29 CFR part 102 continues to read as follows:

Authority: Section 6, National Labor Relations Act, as amended (29 U.S.C. 151, 156). Section 102.117 also issued under section 552(a)(4)(A) of the Freedom of Information Act, as amended (5 U.S.C. 552(a)(4)(A)). Sections 102.143 through 102.155 also issued under section 504(c)(1) of the Equal Access to Justice Act, as amended (5 U.S.C. 504(c)(1).

2. Sections 102.16 and 102.24(a) are revised to read as follows:

§ 102.16 Hearing; change of date or place.

(a) Upon his own motion or upon proper cause shown by any other party, the Regional Director issuing the complaint may extend the date of such hearing or may change the place at which it is to be held, except that the authority of the Regional Director to extend the date of a hearing shall be limited to the following circumstances:

(1) Where all parties agree or no party objects to extension of the date of hearing;

(2) Where a new charge or charges have been filed which, if meritorious, might be appropriate for consolidation with the pending complaint;

(3) Where negotiations which could lead to settlement of all or a portion of the complaint are in progress;

(4) Where issues related to the complaint are pending before the General Counsel's Division of Advice or Office of Appeals; or

(5) Where more than 21 days remain before the scheduled date of hearing.

(b) Where in circumstances other than those set forth in subsection (a) of this section, motions to reschedule the hearing should be filed with the Division of Judges in accordance with section 102.24(a). When a motion to reschedule has been granted, the Regional Director issuing the complaint shall retain the authority to order a new date for hearing and retain the responsibility to make the necessary arrangements for conducting such hearing, including its location and the transcription of the proceedings.

§ 102.24 Motions; where to file; contents; service on other parties; promptness in filing and response; summary judgment procedures

(a) All motions under § 102.22 and 102.29 made prior to the hearing shall be filed in writing with the Regional Director issuing the complaint. All motions for summary judgment or dismissal made prior to the hearing shall be filed in writing with the Board pursuant to the provisions of § 102.50. All other motions made prior to the hearing, including motions to reschedule the hearing under circumstances other than those set forth in § 102.16(a), shall be filed in writing with the chief administrative law judge in Washington, DC, with the deputy chief judge in San Francisco, California, with the associate chief judge in New York, New York, or with the associate chief judge in Atlanta, Georgia, as the case may be. All motions made at the hearing shall be made in writing to the administrative law judge or stated orally on the record. All motions filed subsequent to the hearing, but before the transfer of the case to the Board pursuant to § 102.45, shall be filed with the administrative law judge, care of the chief administrative law judge in Washington, DC, the deputy chief judge in San Francisco, California, the associate chief judge in New York, New York, or the associate chief judge in Atlanta, Georgia, as the case may be. Motions shall briefly state the order or relief applied for and the grounds therefor. All motions filed with a Regional Director or an administrative law judge as set forth above shall be filed therewith by transmitting three copies thereof together with an affidavit of service on the parties. All motions filed with the Board, including motions for summary judgment or dismissal, shall be filed with the Executive Secretary of the Board in Washington, DC, by transmitting eight copies thereof together with an affidavit of service on the parties. Unless otherwise provided in these rules, motions and responses thereto shall be filed promptly and within such time as not to delay the proceeding.

* * * * *

Dated, Washington, DC, December 1, 1989.

By direction of the Board.

John C. Truesdale,

Executive Secretary, National Labor Relations Board.

[FR Doc. 89-29172 Filed 12-12-89; 8:45 am]

BILLING CODE 7545-01-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 4

RIN 1024-AB83

Vehicles and Traffic Safety

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The National Park Service (NPS) is establishing a mandatory seatbelt regulation that would apply to occupants of motor vehicles operated within units of the National Park System. A proposed rulemaking was issued December 21, 1988, in response to a specific provision in the Department of the Interior's 1989 Fiscal Year Appropriations Act that required the NPS to propose such a rulemaking. Under current NPS regulations, the use of seatbelts by the public is required only in park areas that lie within States that have a mandatory seatbelt law in effect; the applicable state law is adopted and enforced by the NPS. The NPS now requires the use of seatbelts by all front seat occupants of motor vehicles that are operated in park areas.

EFFECTIVE DATE: January 12, 1990.

FOR FURTHER INFORMATION CONTACT: James Loach, National Park Service, Division of Ranger Activities, P.O. Box 37127, Washington, DC 20013-7127, Telephone: 202-343-4206.

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SUPPLEMENTARY INFORMATION:

Background

The NPS administers 354 park areas throughout the country under the broad statutory mandates to promote and regulate their use; to conserve the scenery, the natural and cultural objects and the wildlife therein; and to provide for their enjoyment in such manner as will leave them unimpaired for the enjoyment of future generations. Facilities developed by the NPS in park areas, including roads, are limited to those necessary to carry out these legislative mandates and to support the purposes of the individual park areas as defined by Congress.

Although visitors to the National Park System use a variety of access methods, the vast majority continue to rely on motor vehicles and roadways to reach park areas and to circulate within them. Consequently, the NPS has major responsibilities and program involvement in the areas of road construction and maintenance, traffic safety and traffic law enforcement.

The NPS currently administers almost 8,000 miles of roads within the National Park System that are open to the public. There is great variety in the nature and extent of park roads, ranging from very short lengths of unpaved secondary roadways, to well-developed road systems complete with spur roads, parking areas and overlooks, to parkways running for hundreds of miles through several States, to parkways used primarily as commuter routes in the Washington, DC area. In addition, many park areas contain State and/or county highways and roads over which the NPS may exercise varying degrees of jurisdiction.

The following statistics provide an indication of the scope of NPS traffic safety and traffic law enforcement activities. In 1987 there were 287,200,000 visits recorded to the National Park System and approximately 2,600,000,000 vehicle-miles traveled on roads administered by the NPS. There were 9,358 traffic accidents reported that resulted in 70 fatalities, 1,979 personal injuries and $6.3 million in property damage. A total of 140,610 citations were issued by NPS law enforcement officers (Park Rangers and U.S. Park Police) for traffic violations.

NPS general regulations pertaining to vehicles and traffic safety are codified in Title 36 of the Code of Federal Regulations (36 CFR) part 4. These regulations apply to all units of the National Park System. They were totally revised in 1987. The rulemaking that proposed those revisions in 1986 included a section that would have established a mandatory seatbelt regulation that applied throughout the National Park System (see 51 FR 21840). However, the NPS did not incorporate that provision in the final rule for reasons that were discussed in detail in that document (see 52 FR 10670).

The Department of the Interior and the NPS strongly support the use of appropriate restraint systems by vehicle occupants and view the potential reduction in personal injuries and fatalities that might result from the promulgation of this regulation as highly desirable. The benefits of wearing seatbelts have been documented extensively.

The NPS seatbelt regulation being adopted by this rulemaking requires that a motor vehicle operator and all front seat passengers be restrained by a properly fastened seatbelt while the motor vehicle is in motion. The burden of compliance is placed on the operator. The final regulation prohibits operating a motor vehicle in motion unless all front seat passengers and the operator are restrained by a properly fastened safety belt. Children, as defined by applicable State law, are required to be restrained in accordance with State law. A person who is convicted of violating this or any other NPS regulation promulgated under the authority of the National Park Service Organic Act of August 16, 1916 (16 USC 3) would be subject to a maximum penalty as defined by law, currently a $500 fine, or six months imprisonment, or both.

According to figures provided by staff of the National Highway Traffic Safety Administration, all States have child restraint laws in effect: 31 States and the District of Columbia have mandatory seatbelt laws in effect. The seatbelt regulation in this rulemaking is intended to apply in all park areas. In States that do have a mandatory seatbelt law in effect which can be enforced in NPS areas, the NPS will continue to enforce the applicable State seatbelt law, regardless of whether the provisions of State law are identical to or different from the provisions of this regulation. If some provision of State law prevents the enforcement of that State's mandatory seatbelt requirement, this regulation will be enforced. To do otherwise would create the potential for unnecessary conflicts with State law.

The regulation would not apply to a motor vehicle operator or passenger who is occupying a seat that was not originally equipped with a seatbelt by the vehicle manufacturer, nor would it apply to a person with a medical condition that prevents restraint by a seatbelt.

The NPS intends that this regulation be enforced primarily through signing, text in brochures and incidental public contact, not through checkpoints or other enforcement contacts that are not initiated as a result of another violation.

The NPS estimates that this regulation could potentially affect approximately 100 park areas, or portions thereof, that are located within the following States: Alabama, Alaska, Arizona, Arkansas, Kentucky, Maine, Massachusetts, Mississippi, Nebraska, New Hampshire, North Dakota, Oregon, Rhode Island, South Carolina, South Dakota, West Virginia and Wyoming. Park areas located in the Virgin Islands would also be affected.

The existing strong support from the Department and the NPS for the wearing of seatbelts does not alter the basic position of the Department and the NPS that the respective States are the appropriate authorities to regulate traffic on roadways within units of the National Park System. The NPS believes that, to the extent practicable, motor vehicle operators should be subject to the same traffic laws and regulations while traveling on roadways in park areas as they are in the surrounding State(s); NPS traffic regulations should be limited to those that address problems or situations that are unique to park areas or that reflect a need to apply a consistent Servicewide regulatory approach. However, in this instance, the compelling evidence that many deaths and injuries are prevented by the use of safety belts and seats, the support for such a rule by the public in the comments received in response to the proposed rule, and in keeping with the NPS philosophy of protecting the public while they are utilizing the land and facilities administered by the NPS justify the adoption of this rule, even though it will not be consistent with rules and regulations of some States.

Summary of Comments

The policy of the National Park Service is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. The NPS specifically solicited comments from representatives of State and Federal highway safety agencies, traffic law enforcement agencies and other interested health and safety organizations.

The NPS received 175 responses to the proposed regulation.

One hundred and thirty seven were in favor and 38 were opposed. Forty nine comments were received from States affected by the proposed rule. Of the 49 comments received from those States not having a current mandatory seatbelt use law, 36 were in favor of the proposed regulation.

The majority of the 38 responses received in opposition to the proposed regulation argued that the individual States are best suited to promulgate their respective traffic regulations, public confusion might result in States that did not have mandatory seatbelt use laws, or that it could result in the unnecessary expenditure of funds for signing and enforcement.

Of the 137 comments received in support of the regulation, a number of comments were received from State and Federal highway safety agencies as well as other interested health and safety organizations. These were all in favor of the regulation. They supported mandatory seatbelt use as an effective method to reduce deaths and injuries resulting from motor vehicle accidents. In general the view taken was that while the adoption of a required seatbelt regulation might be in conflict with some States' traffic regulations, it would be consistent with the National Park Service's commitment to ensuring the public's safety while using NPS administered facilities.

Based upon the comments received, revisions were made in the proposed regulation to remove the direction of travel as a criteria for seatbelt use, the United States Department of Transportation standards for seatbelts were adopted, and the regulation's enforcement was further defined.

Drafting Information

The primary authors of this rulemaking are Andy Ringgold and James Loach of the NPS Division of Ranger Activities, Washington, DC. The staff of the National Highway Traffic Safety Administration was consulted informally during the development of this rulemaking and provided valuable advice and assistance.

Paperwork Reduction Act

This rulemaking does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance with Other Laws

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 (February 19, 1981), 46 FR 13193, and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). These findings are based on the fact that the overall economic effects of this rulemaking are negligible; it would impose no additional costs on any group or class of individuals. The NPS will incur costs associated with the installation of signs and the development of other public information programs in all affected park areas. These administrative costs could be significant in some park areas, depending on the road inventory and the number of access points.

The NPS has determined that this rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce noncompatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, this rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental regulations in 516 DM 6 (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

List of Subjects in 36 CFR Part 4

National parks, Traffic regulations.

In consideration of the foregoing, 36 CFR Chapter I, Part 4 is amended as follows:

PART 4—VEHICLES AND TRAFFIC SAFETY

1. The authority citation for part 4 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k).

2. By adding a new § 4.15 to read as follows:

§ 4.15 Safety belts.

(a) This section applies in any park area, or portion thereof, that is located within a State in which there is no State law in effect that requires the mandatory use of a vehicle safety belt by the vehicle operator and any front seat passenger. It also applies in any park area, or portion thereof, that is located within a State in which any provision of State law renders the enforcement of that State's mandatory safety belt law unenforceable in the park area.

(b) This section does not apply to an operator or a passenger of a motor vehicle occupying a seat that was not originally equipped by the manufacturer with a safety belt nor does it apply to an operator or passenger with a medical condition that prevents restraint by a safety belt or other occupant restraining device.

(c) The operator of a motor vehicle is prohibited from operating a motor vehicle in motion unless the operator and each front seat passenger is restrained by a properly fastened safety belt that conforms to applicable United States Department of Transportation standards, except that children, as defined by State law, shall be restrained as provided by State law.

(d) An authorized person may not cause an operator of a motor vehicle to stop the motor vehicle for the sole purpose of determining whether a violation of paragraph (c) of this section is being committed.

Dated: July 28, 1989.

Susan R. Lamson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89-29087 Filed 12-12-89; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AE01

Duty Periods

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its regulation for classification of training performed by members of the Senior Reserve Officers' Training Corps. This change is required because of a change of law regarding the definition of training for this group. The intended result of this change is to clarify the duty status of this group during specific types of training.

EFFECTIVE DATE: October 1, 1988, in accordance with the provisions of Public Law 100-456.

FOR FURTHER INFORMATION CONTACT: Bill Leonard, Legal Consultant, Regulations Staff, Compensation and Pension Service (211B), Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-3005.

SUPPLEMENTARY INFORMATION: On pages 24212-13 of the **Federal Register** of June 6, 1989, the VA published a proposed regulatory amendment on classification of training performed by

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members of the Senior Reserve Officers' Training Corps. A correction to this proposal was published on pages 26397–98 of the **Federal Register** of June 23, 1989.

Interested persons were invited to submit comments, suggestions, or objections by July 6, 1989. One comment was received which was from the Director of a VA regional office. The comment expressed concern that the rule as proposed would not allow payment of disability compensation benefits based on injuries incurred by members of the Senior Reserve Officers' Training Corps during travel to and from periods of inactive duty for training. This was not the intent of the legislation on which the amendment was based.

Upon further review of the current regulation and the proposed amendment, additional modifications are deemed necessary for the purpose of clarity and conformity to the controlling statute. In addition to the original proposed amendments, we are also amending 38 CFR 3.6(e) to conform with 38 U.S.C. 106(d) by deleting "Any member of a Reserve Component" and inserting in its place "Any individual." As this section defines service performed if injured during travel to or from both active and inactive duty for training, we are deleting the redundant provision contained in 38 CFR 3.6(c)(5).

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is nonmajor for the following reasons.

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program numbers are 64.100, 64.101, 64.104, 64.105, 64.106, 64.109, and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: November 21, 1989.

Edward J. Derwinski,

Secretary.

38 CFR Part 3, Adjudication, is amended as set forth below:

PART 3—[AMENDED]

1. In § 3.6, paragraphs (c)(4) and (c)(5) are revised, and authority citation is added following paragraph (c)(5), paragraph (d)(3) is redesignated as paragraph (d)(4), paragraph (d)(2) is revised, new paragraph (d)(3) and a new authority citation for the paragraph are added, and the introduction text of paragraph (e) is revised so the revised and added text reads as follows:

§ 3.6 Duty periods.

* * * * *

(c) * * *

(4) Duty performed by a member of a Senior Reserve Officers' Training Corps program when ordered to such duty for the purpose of training or a practice cruise under Chapter 103 of Title 10, United States Code.

(i) The requirements of this paragraph are effective—

(A) On or after October 1, 1982, with respect to deaths and disabilities resulting from diseases or injuries incurred or aggravated after September 30, 1982, and

(B) October 1, 1983, with respect to deaths and disabilities resulting from diseases or injuries incurred or aggravated before October 1, 1982.

(ii) Effective on or after October 1, 1988, such duty must be prerequisite to the member being commissioned and must be for a period of at least four continuous weeks.

(Authority: 38 U.S.C. 101(22)(D) as amended by Pub. L. 100-456)

(5) * * *

(Authority: 38 U.S.C. 101(22))

(d) * * *

(2) Special additional duties authorized for Reserves (including commissioned officers of the Reserve Corps of the Public Health Service) by the Secretary concerned and performed by them on a voluntary basis in connection with the prescribed training or maintenance activities of the units to which they are assigned; and

(3) Training (other than active duty for training) by a member of, or applicant for membership (as defined in 5 U.S.C. 8140(g)) in, the Senior Reserve Officers' Training Corps prescribed under Chapter 103 of Title 10, United States Code.

(4) * * *

(Authority: 38 U.S.C. 101(23))

(e) *Travel status—training duty (disability or death from injury).* Any individual:

* * * * *

[FR Doc. 89-29012 Filed 12-12-89; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 90407-9170]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustment.

SUMMARY: NOAA announces the apportionment of amounts of Alaska groundfish to the joint venture processing (JVP) portion of the domestic annual harvest (DAH) for pollock in the Aleutian Islands subarea. This action, taken under provisions of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP), is necessary to assure optimum use of groundfish in that area and to fully achieve the optimum yield.

DATES: Effective December 7, 1989. Comments will be accepted through December 22, 1989.

ADDRESS: Comments should be mailed to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802, or be delivered to Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Janet E. Smoker (Fishery Management Biologist, NMFS), 907–586–7230.

SUPPLEMENTARY INFORMATION: The FMP is implemented by rules appearing at 50 CFR 611.93 and Part 675.

Initial specifications for DAH, DAP (domestic annual processing), and JVP for 1989 were published at 54 FR 3606. Subsequent reapportionments occurred on September 3 (September 7, 1989, 54 FR 37112), September 16 (September 20, 1989, 54 FR 38686), October 6 (October 13, 1989, 54 FR 41977), October 31 (November 6, 1989, 54 FR 46619), November 9, (November 16, 1989, 54 FR 47683) and November 27 (November 30, 1989, 54 FR 49298).

On November 27, foreign permits were restricted so that all foreign vessels except Polish vessels lost their authorization to receive pollock from U.S. catcher vessels operating in joint venture fisheries. Notice of the decision to amend these permits was published on December 4, 1989, at 54 FR 50009. This action was to allow Polish vessels the opportunity to receive certain amounts of pollock JVP in both the Bering Sea and Aleutian Islands subareas. Because the Aleutian Islands pollock JVP will be raised by 13,000 metric tons (mt) in this notice, the Regional Director intends to inform vessels of all other foreign nations which participate in joint ventures in the Bering Sea and Aleutian Islands area that the permit restriction is modified to allow receipt of pollock in the Aleutian Islands subarea up to the total 13,000 mt reapportioned by this notice, effective on the date of this notice. When the Regional Director determines that 13,000 mt of pollock has been received by foreign fishing vessels other than Polish vessels, or alternatively that the total amount of pollock specified as JVP in the Aleutians Islands subarea (24,018 mt) has been received by foreign fishing vessels, this modification of the permit restriction will expire, and further receipts of pollock will be subject to the terms of the foreign vessels' permits.

Reapportionment

The following actions are taken by this notice to apportion groundfish from the non-specific reserve to the Aleutian Islands subarea JVP: an amount identified as excess to DAP needs for Aleutian Islands subarea pollock, 13,000 mt, is apportioned to JVP for Aleutian Islands subarea pollock. This amount does not result in overfishing of Aleutian Islands subarea pollock, as the resulting amount available for DAH harvest (26,950 mt) is less than the acceptable biological catch (117,900 mt).

Classification

This action is taken under the authority of 50 CFR 675.20(b) and complies with Executive Order 12291.

The Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment. Immediate effectiveness of this notice is necessary to benefit domestic fishermen who have only a few weeks of fishing remaining in the year. However, interested persons are invited to submit comments in writing to the address above for 15 days after the effective date of this notice.

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 7, 1989.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

TABLE 1—BERING SEA/ALEUTIANS REAPPORTIONMENTS OF TAC

[All values are in metric tons]

	Current	This action	Revised
Pollock (Aleutian Is)			
DAP	2,932		2,932
TAC = 13,450; ABC = 117,900			
JVP	11,018	+13,000	24,018
Total (TAC = 2,000,000)			
DAP	1,341,387		1,341,387
JVP	622,257	+13,000	635,257
Reserves	36,356	−13,000	23,356

[FR Doc. 89-29016 Filed 12-7-89; 4:28 pm]

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Proposed Rules

Federal Register
Vol. 54, No. 238
Wednesday, December 13, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 907 and 908

[FV-90-111 PR]

Expenses and Assessment Rates for California-Arizona Navel and Valencia Oranges

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish assessment rates under Marketing Order Nos. 907 and 908 for the 1989–90 fiscal year established for each order. Funds to administer these programs are derived from assessments on handlers. This action is needed in order for the Navel and Valencia Orange Administrative Committees, which are responsible for local administration of the respective orders, to have sufficient funds to meet the expenses of operating the programs. Expenses are incurred on a continuous basis.

DATE: Comments must be received by December 28, 1989.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Marketing Order Administration Branch (MOAB), Fruit and Vegetable Division (F&V), Agricultural Marketing Service (AMS), U.S. Department of Agriculture (USDA), P.O. Box 96456, room 2525–S, Washington, DC 20090–6456. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, MOAB, F&V, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 447–8139.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Order Nos. 907 (7 CFR Part 907) and 908 (7 CFR Part 908), both as amended, regulating the handling of California-Arizona navel and Valencia oranges, respectively. Both orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 125 handlers of navel oranges and 115 handlers of Valencia oranges subject to regulation under the navel and Valencia orange marketing orders. There are approximately 4,065 producers of navel oranges and 3,500 producers of Valencia oranges in the respective production areas. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts for the last three years of less then $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of California-Arizona navel and Valencia orange producers and handlers may be classified as small entities.

The navel and Valencia orange marketing orders require that assessment rates for a particular fiscal year shall apply to all assessable navel or Valencia oranges handled from the beginning of such year. An annual budget of expenses is prepared by the Navel Orange Administrative Committee (NOAC) and the Valencia Orange Administrative Committee (VOAC) and submitted to the U.S. Department of Agriculture for approval. The members of the NOAC and VOAC are handlers and producers of navel and Valencia oranges. They are familiar with the NOAC's and VOAC's needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each committee is derived by dividing anticipated expenses by expected shipments of navel or Valencia oranges. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay each committee's expected expenses. The recommended budget and rate of assessment is usually acted upon by each committee shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committees will have funds to pay their individual expenses.

The NOAC met on October 31, 1989, and unanimously recommended 1989–90 fiscal year expenditures of $1,377,425 and an assessment rate of $0.027 per carton of navel oranges. In comparison, 1988–89 fiscal year budgeted expenditures were $1,247,455 and the assessment rate was $0.25 per carton. Major expenditure categories in the 1989–90 budget are $367,525 for program administration, $188,805 for compliance activities, $646,350 for the field department, $171,300 for direct expenses, and $3,445 for a salary reserve. This compares to $338,630, $151,020, $583,155, $171,300, and $3,350, respectively, for the 1988–89 fiscal year. Expenditures for the 1989–90 fiscal year have increased because of increases in salary and benefits for the NOAC's personnel, the addition of two auditors to the Compliance Department, and expected relocation expenses. For these reasons, the assessment rate was increased $0.002 per carton to insure adequate income for the 1989–90 fiscal year. Assessment income for 1989–90 is expected to total $1,255,500, based on shipments of 46.5 million cartons of oranges. Interest and incidental income is estimated at $50,500. The NOAC may expend operational reserve funds of $17,425 to meet budgeted expenses. Additional reserve funds may be used to meet any other unanticipated deficit in assessment income.

The VOAC also met on October 31, 1989, and unanimously recommended 1989–90 fiscal year expenditures of $709,730 and an assessment rate of $0.028 per carton of Valencia oranges. In comparison, 1988–89 fiscal year budgeted expenditures were $694,840 and the assessment rate was $0.028 per carton. Major expenditure categories in the 1989–90 budget are $166,050 for program administration, $85,300 for compliance activities, $292,025 for the field department, $164,800 for direct expenses, and $1,555 for a salary reserve. This compares to $166,785, $74,380, $287,225, $164,800, and $1,650, respectively, for the 1988–89 fiscal year. Assessment income for 1989–90 is expected to total $688,000 based on shipments of 20.6 million cartons of oranges. Interest and miscellaneous income is estimated at $42,500. The VOAC may expend operational reserve funds of $79,230 to meet budgeted expenses. Additional reserve funds may be used to meet any other unanticipated deficit in assessment income.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of the AMS has determined that his action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the budget and assessment rate approval for these programs need to be expedited. The NOAC and VOAC need to have sufficient funds to pay their expenses, which are incurred on a continuous basis.

List of Subjects

7 CFR Part 907

Arizona, California, Marketing agreements and orders, Navel, Oranges.

7 CFR Part 908

Arizona, California, Marketing agreements and orders, Oranges, Valencia.

For the reasons set forth in the preamble, it is proposed that new §§ 907.227 and 908.229 be added as follows:

1. The authority citation for both 7 CFR parts 907 and 908 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

2. It is proposed that a new § 907.227 is added to read as follows:

§ 907.227 Expenses and assessment rate.

Expenses of $1,377,425 by the Navel Orange Administration Committee are authorized, and an assessment rate of $0.027 per carton of navel oranges is established for the fiscal year ending on October 31, 1990. Unexpended funds from the 1989–90 fiscal year may be carried over as a reserve.

3. It is proposed that a new § 908.229 is added to read as follows:

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

§ 908.229 Expenses and assessment rate.

Expenses of $709,730 by the Valencia Orange Administration Committee are authorized, and an assessment rate of $0.028 per carton of Valencia oranges is established for the fiscal year ending on October 31, 1990. Unexpended funds from the 1989–90 fiscal year may be carried over as reserve.

Dated: December 8, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–29078 Filed 12–12–89; 8:45 am]

BILLING CODE 3410–02–M

FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Reg. CC; Docket No. R–0644]

RIN 7100–AB01

Availability of Funds and Collection of Checks; Proposed Preemption Determination

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed interpretation.

SUMMARY: The Board is publishing for comment an official Board interpretation concerning a preemption determination under its Regulation CC, Availability of Funds and Collection of Checks, for the laws of California relating to commercial banks, branches of foreign banks, savings and loan associations, and savings banks. The Expedited Funds Availability Act provides standards for determining whether state law governing funds availability supersedes or is preempted by federal law. Under Regulation CC, the Board may issue preemption determinations with respect to state law upon request.

DATE: Comments must be submitted on or before January 16, 1990.

ADDRESSES: Comments, which should refer to Docket No. R–0644, may be mailed to the Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, Attention: Mr. William W. Wiles, Secretary; or may be delivered to Room B–2223 between 8:45 a.m. and 5:00 p.m. All comments received at the above address will be included in the public file and may be inspected at Room G–1122 between 8:45 a.m. and 5:15 p.m.

FOR FURTHER INFORMATION CONTACT: Louise L. Roseman, Assistant Director (202/452–3874) or Gayle Thompson, Manager (202/452–2934), Division of Federal Reserve Bank Operations; Oliver Ireland, Associate General Counsel (202–452–3625), or Stephanie Martin, Attorney (202/452–3198), Legal Division; for the hearing impaired only: Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION:

Background

On May 13, 1988, the Board adopted Regulation CC to carry out the provisions of Expedited Funds Availability Act ("Act") (12 U.S.C. 4001–4010). The regulation requires banks to make funds available to their customers within specified time frames and to disclose their funds availability policies to their customers. A number of states have also enacted rules governing funds availability. The Act (section 608) and Regulation CC (§ 229.20) provide that any provision of state law in effect on or before September 1, 1988, that requires a shorter hold for a category of checks than is required under federal law will supersede the federal provision.

Provisions of state law governing funds availability that permit a bank to make funds available for withdrawal in a longer period than permitted under Regulation CC are considered inconsistent with and are preempted by Regulation CC. In addition, state disclosure and notice requirements concerning funds availability related to accounts covered by Regulation CC are preempted by the federal disclosure scheme.

Regulation CC provides for Board determinations of whether state law

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related to the availability of funds is preempted by federal law upon request of a state, bank, or other interested party.

Discussion

On August 18, 1988, the Board issued for public comment a proposed preemption determination for California (53 FR 32359, August 24, 1988). California has different funds availability regulations governing (1) commercial banks and branches of foreign banks, (2) savings and loan associations and savings banks, (3) credit unions, and (4) industrial loan companies. The California State Banking Department and the State of California Department of Savings and Loan requested, in their comments, that the Board defer adoption of preemption determinations with regard to commercial banks, branches of foreign banks, savings and loan associations, and savings banks until the emergency regulations promulgated by those departments in October 1988 were adopted in final form. In November 1988, the Board published a summary of the comments received and a final preemption determination for the California funds availability law with respect to credit unions and industrial loan companies (54 FR 44325, November 2, 1988).

California's final regulations regarding commerical banks and branches of foreign banks became effective on April 12, 1989, and its final regulations regarding savings and loan associations and savings banks were approved on March 8, 1989. The new regulations are significantly different from those that were in effect when the Board issued its first proposed preemption determination in August 1988. Therefore, the Board is now requesting comment on revised preemption determinations with respect to the final state regulations. Generally, both sets of California regulations adopt the provisions of Regulation CC, but expand coverage to include certain non-transaction accounts. In addition, the State Banking Department regulations provide for shorter availability than Regulation CC in some cases and supersede the federal law in those cases.

List of Subjects in 12 CFR Part 229

Banks, banking; Federal Reserve System.

For the reasons set out in the preamble, 12 CFR part 229 is proposed to be amended as follows:

PART 229—[AMENDED]

1. The authority citation for part 229 continues to read as follows:

Authority: Title VI of Pub. L. 100-86, 101 Stat. 552, 635, 12 U.S.C. 4001 et seq.

2. In appendix F, the California preemption determination is amended by revising the second and third sentences of the second paragraph, and by adding, within the reserved sections, preemption determinations for Commercial Banks and branches of Foreign Banks and for Savings Institutions.

Appendix F—Offical Board Interpretations; Preemption Determinations

* * * * *

California

* * * * *

* * * The regulations applicable to commercial banks and branches of foreign banks located in California (Cal. Admin. Code tit. 10, §§ 10.190401–10.190402) were promulgated by the Superintendent of Banks. The regulations applicable to savings banks and savings and loan associations (Cal. Admin. Code tit. 10, §§ 106.200–106.202) were adopted by the Savings and Loan Commissioner. * * *

* * * * *

Commercial Banks and Branches of Foreign Banks

Coverage. The California State Banking Department regulations, which apply to California state commercial banks, California national banks, and California branch offices of foreign banks, provide that a depositary bank shall make funds deposited into a deposit account available for withdrawal as provided in Regulation CC with certain exceptions. The funds availability schedules in Regulation CC apply only to "accounts" as defined in Regulation CC, which generally consist of transaction accounts. The California funds availability law and regulations apply to accounts as defined by Regulation CC as well as savings accounts (other than time accounts), as defined in the Board's Regulation D (12 CFR 204.2(d)). (Note, however, that under § 229.19(e) of Regulation CC, Holds on other funds, the federal availability schedules may apply to savings, time, and other accounts not defined as "accounts" under Regulation CC in certain circumstances.)

Availability Schedules. Temporary schedule. Regulation CC provides that, until September 1, 1990, nonlocal checks must be made available for withdrawal by the seventh business day after the banking day of deposit, except for certain nonlocal checks listed in Appendix B–1, which must be made available within a shorter time (by the fifth business day following deposit for those California checks listed.) Under the temporary schedule in the California regulations, a depositary bank with a four-digit routing symbol of 1210 ("1210 bank") or of 1220 ("1220 bank") that receives for deposit a check drawn on a nonlocal, in-state commercial bank or foreign bank branch [1] must make the funds available for withdrawal by the fourth business day after the day of deposit. The California regulations provide that 1210 and 1220 banks must make deposited checks drawn on nonlocal in-state thrifts (defined as savings and loan associations, savings banks, and credit unions) available by the fifth business day after deposit. In addition, California law provides that all other depositary banks must make deposited checks drawn on a nonlocal in-state commercial bank or foreign bank branch available by the fifth business day after deposit and checks drawn on nonlocal in-state thrifts available by the sixth business day after deposit. To the extent that these schedules provide for shorter holds than Regulation CC and its Appendix B–1, the state schedules supersede the federal schedules. [2] For example, the California four-day schedule that applies to checks drawn on in-state nonlocal commercial banks or foreign bank branches and deposited in a 1210 or 1220 bank would be shorter than and would superseded the federal schedules.

The California regulations do not specify whether the state schedules apply to deposits of checks at nonproprietary ATMs. Under the temporary schedules in Regulation CC, deposits at nonproprietary ATMs must be made available for withdrawal by

[1] The California regulation uses the term "paying bank" when describing the institution on which these checks are drawn, but does not define "paying bank" or "bank." Regulation CC's definitions of "paying bank" and "bank" include savings institutions and credit unions as well as commercial banks and branches of foreign banks. However, because the California regulation makes separate provisions for checks drawn on savings institutions as credit unions, the Board interprets the term "paying bank," as used in the California regulation, to include only commercial banks and foreign bank branches.

[2] Appendix B–1 of Regulation CC provides that the federal schedules will be the same as the California schedules (5 days) in the following cases: a depositary bank bearing a 1210 routing number receiving for deposit checks bearing a 3220 or a 3223 routing number, and a depositary bank bearing a 1220 routing number receiving for deposit checks bearing a 3210 routing number. In the cases where federal and state law are the same, the state law is not preempted by, nor does it supersede, the federal law.

the seventh business day following deposit. To the extent that the California schedules provide for shorter availability for deposits at nonproprietary ATMs, they would supersede the nonproprietary ATMs specified in § 229.11(d).

Permanent schedule. Regulation CC provides that, as of September 1, 1990, nonlocal checks must be made available for withdrawal by the fifth business day after the banking day of deposit. Under the permanent schedule in the California regulations, a depositary bank with a four-digit routing symbol of 1210 or of 1220 that receives for deposit a check drawn a nonlocal, in-state commercial bank or foreign bank branch must make the funds available for withdrawal by the fourth business day after the day of deposit. These state schedules provide for shorter hold periods than and thus supersede the federal schedules.

Second-day availability. Section 867 of the California Financial Code requires depository institutions to make funds deposited by cashier's check, teller's check, certified check, or depository check available for withdrawal on the second business day following deposit, if certain conditions are met. The Regulation CC next-day availability requirement for cashier's checks and teller's checks applies only to those checks issued to a customer of the bank or acquired from the bank for remittance purposes. To the extent that the state second-day availability requirement applies to cashier's and teller's checks issued to a non-customer of the bank for other than remittance purposes, the state two-day requirement supersedes the federal local and nonlocal schedules.

Availability at start of day. The California regulations do not specify when during the day funds must be made available for withdrawal. Section 229.19(b) of Regulation CC provides that funds must be made available at the start of the business day. In those cases where federal and state law provide for holds for the same number of days, to the extent that the California regulations allows funds to be made available later in the day than does Regulation CC, the federal law would preempt state law.

Exceptions to the availability schedules. The California regulations do not provide for any exceptions to the availability schedules, nor do they indicate that any federal exceptions apply to those deposits for which the state schedules supersede the federal schedules. Under the state preemption standards of Regulation CC (see § 229.20(c) and accompanying Commentary), for deposits covered by the state availability schedules, a state exception may be used to extend the state availability schedule up to the federal availability schedule. Once the deposit is held up to the federal availability schedule limit under a state exception, the depository bank may further extend the hold under any federal exception that can be applied to the deposit. In those cases where the California schedules supersede Regulation CC, no exception holds may be applied because there are no state provisions for lengthening the state hold periods.

Disclosures. California law (Cal. Fin. Code § 866.2) requires depository institutions to provide written disclosures of their general availability policies to potential customers prior to opening any deposit account. The law also requires that preprinted deposit slips and ATM deposit envelopes contain a conspicuous summary of the general policy. Finally, the law requires depository institutions to provide specific notice of the time the customer may withdraw funds deposited by check or similar instrument into a deposit account if the funds are not available for immediate withdrawal.

Section 229.20(c)(2) of Regulation CC provides that inconsistency may exist when a state law provides for disclosures or notices concerning funds availability relating to accounts. California Financial Code Section 866.2 requires disclosures that differ from those required by Regulation CC and, therefore, is preempted to the extent that it applies to "accounts" as defined in Regulation CC. The state law continues to apply to savings accounts and other accounts not governed by Regulation CC disclosure requirements.

Savings Institutions

Coverage. The California Department of Savings and Loan regulations, which apply to California savings and loan associations and California savings banks, provide that a depository bank shall make funds deposited into a transaction or non-transaction account available for withdrawal as provided in Regulation CC. The funds availability schedules in Regulation CC apply only to "accounts" as defined in Regulation CC, which generally consist of transaction accounts. The California funds availability law and regulations apply to accounts as defined by Regulation CC as well as savings accounts as defined in the Board's Regulation D (12 CFR 204.2(d)). (Note, however, that under § 229.19(e) of Regulation CC, Holds on other funds, the federal availability schedules may apply to savings, time, and other accounts not defined as "accounts" under Regulation CC in certain circumstances.)

Availability Schedules. Second-day availability. Section 867 of the California Financial Code requires depository institutions to make funds deposited by cashier's check, teller's check, certified check, or depository check available for withdrawal on the second business day following deposit, if certain conditions are met. The Regulation CC next-day availability requirement for cashier's checks and teller's checks applies only to those checks issued to a customer of the bank or acquired from the bank for remittance purposes. To the extent that the state second-day availability requirement applies to cashier's and teller's checks issued to a non-customer of the bank for other than remittance purposes, the state two-day requirement supersedes the federal local and nonlocal schedules.

Temporary and Permanent Schedules. Other than the provisions of Section 867 as discussed above, California law incorporates the Regulation CC availability requirements with respect to deposits to accounts covered by Regulation CC. Because the state requirements are consistent with the federal requirements, the California regulation is not preempted by, nor does it supersede, the federal law.

Disclosures. California law (Cal. Fin. Code § 866.2) requires depository institutions to provide written disclosures of their general availability policies to potential customers prior to opening any deposit account. The law also requires that preprinted deposit slips and ATM deposit envelopes contain a conspicuous summary of the general policy. Finally, the law requires depository institutions to provide specific notice of the time the customer may withdraw funds deposited by check or similar instrument into a deposit account if the funds are not available for immediate withdrawal. The Department of savings and Loan regulations provide, however, that for those accounts covered by state law but not by federal law, disclosures in accordance with Regulation CC will be deemed to comply with the state law disclosure requirements.

Section 229.20(c)(2) of Regulation CC provides that inconsistency may exist when a state law provides for disclosures or notices concerning funds availability relating to accounts. To the extent that California Financial Code § 866.2 requires disclosures that differ from those required by Regulation CC

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and apply to "accounts" as defined in Regulation CC, the California law is preempted by Regulation CC. To the extent that the Department of Savings and Loan regulations permitting reliance on Regulation CC disclosures survive the preemption of California Financial Code Section 866.2, they are not preempted by, nor do they supersede, the federal law. The state law continues to apply to savings accounts and other accounts not governed by Regulation CC disclosure requirements.

By order of the Board of Govenrors of the Federal Reserve System, December 7, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-29011 Filed 12-12-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 76

[Order No. 1382-89]

Implementation of Civil Penalties Under Anti-Drug Abuse Act of 1988

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: Section 6486 of the Anti-Drug Abuse Act of 1988, Public Law 100-690, (hereinafter the Act), 21 U.S.C. 844(a), provides for civil penalties for the possession of small amounts of certain controlled substances. In order to implement this provision, this proposed rule sets forth the procedures to be followed in all matters brought before Administrative Law Judges when a complaint is filed seeking a civil penalty from a respondent who has violated this provision of the Act. The proposed rule will also provide notice to respondents and, where appropriate, their counsel, as to the rules of procedure that will be followed by Administrative Law Judges and United States Attorneys when their respective cases are heard.

DATE: Comments must be received on or before January 12, 1990.

ADDRESSES: Please submit written comments in duplicate to: George W. Calhoun, Senior Counsel, Room 4114, Department of Justice, 10th and Constitution Avenue, NW., Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: George W. Calhoun, Senior Counsel, Room 4114, Department of Justice, 10th and Constitution Avenue, NW., Washington, DC 20530. Tel. No. (202) 633-4374. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: As a part of the nation's continuing war on drugs, Congress enacted the Anti-Drug Abuse Act of 1988. Included in that Act is a new alternative to criminal prosecution of drug abusers. The provision authorizes imposition of a civil penalty up to $10,000 for the possession of small amounts of certain controlled substances for personal use. The objective Congress sought to achieve was to find a way to punish drug use where it appears that a financial penalty would be a sufficient punishment and deterrent.

Under section 6486 of the Act, Congress gave the Attorney General, acting through United States Attorneys or their designees, the power to file a complaint with an Administrative Law Judge against an individual (the respondent), and to seek an Order commanding the payment of a civil penalty. With certain exceptions, the administrative proceeding described below will follow the procedure set out in 28 CFR 68.2. At the conclusion of the hearing, the Administrative Law Judge (ALJ) will enter an opinion. If the ALJ orders the payment of a civil penalty, that Final Order will be reviewed by the Attorney General or his designee. The Attorney General then has the power to accept that Order, modify it, or set it aside. The Attorney General's Order is the final agency action, subject to review only by a United States Federal District Court. If an appeal is sought in a Federal Court, the trial will be *de novo* and the respondent will have the right to counsel, the right to a trial by jury, and the right to confront witnesses. The Attorney General also has the power to later expunge the record of payment of a civil penalty if certain provisions are met by the respondent.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule, if promulgated, will not be a major rule within the meaning of Paragraph 1(b) of E.O. 12291.

List of Subjects in 28 CFR Part 76

Drugs, Drug traffic control, Drug abuse, Authority delegations (Government agencies), Penalties.

Therefore, by virtue of the authority vested in me by law, including 28 U.S.C. 509, 510, 5 U.S.C. 301, and 21 U.S.C. 844(a), it is proposed to amend title 28 of the Code of Federal Regulations by adding a new part 76 to read as follows:

PART 76—RULES OF PROCEDURE FOR ASSESSMENT OF CIVIL PENALTIES FOR POSSESSION OF CERTAIN CONTROLLED SUBSTANCES

Sec.

76.1 Purpose.
76.2 Definitions.
76.3 Basis for civil penalties and assessments.
76.4 Enforcement procedures.
76.5 Complaint.
76.6 Service and filing of documents.
76.7 Content of pleadings.
76.8 Time computations.
76.9 Responsive pleading—answer.
76.10 Motions and requests.
76.11 Notice of hearing.
76.12 Prehearing statements.
76.13 Parties to the hearing.
76.14 Separation of functions.
76.15 Ex parte communications.
76.16 Disqualification of Administrative Law Judge.
76.17 Rights of parties.
76.18 Authority of the Administrative Law Judge.
76.19 Conferences.
76.20 Consent Order or settlement prior to hearing.
76.21 Discovery.
76.22 Exchange of witness lists, statements and exhibits.
76.23 Subpoenas for attendance at hearing.
76.24 Protective Order.
76.25 Fees.
76.26 Sanctions.
76.27 The hearing and burden of proof.
76.28 Location of hearing.
76.29 Witnesses.
76.30 Evidence.
76.31 Standards of conduct.
76.32 Hearing room conduct.
76.33 Legal assistance.
76.34 Record of hearings.
76.35 Decision and Order of the Administrative Law Judge.
76.36 Administrative and judicial review.
76.37 Collection of civil penalties and assessments.
76.38 Deposit in the United States Treasury.
76.39 Compromise or settlement after Decision and Order of Administrative Law Judge.
76.40 Records to be public.
76.41 Expungement of records.
76.42 Limitations.

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; 21 U.S.C. 844(a).

§ 76.1 Purpose

This part implements section 6486 of the Anti-Drug Abuse Act of 1988 (the Act), 21 U.S.C. 844(a). This part establishes procedures for imposing civil penalties against persons who knowingly possess a controlled substanced for personal use that is listed in 21 CFR 1316.91(j)(2) in violation of 21 U.S.C. 844(a) and specifies the appeal rights of persons subject to a

penalty pursuant to Section 6486 of the Act.

§ 76.2 Definitions.

(a) "Act" means the Anti-Drug Abuse Act of 1988, Pub. L. 100-690;

(b) "Adjudicatory proceeding" means a judicial-type proceeding leading to the formulation of a Final Order;

(c) "Administrative Law Judge" means an Administrative Law Judge appointed pursuant to the provisions of 5 U.S.C. 3105;

(d) "Administrative Procedure Act" means those provisions of the Administrative Procedure Act which are contained in 5 U.S.C. 551 thrugh 559;

(e) "Attorney General" means the Attorney General of the United States or his or her designees;

(f) "Department" means the U.S. Department of Justice;

(g) "Penalty" means the amount described in 28 CFR 76.3 and includes the plural of that term;

(h) The term "Personal Use Amount" means possession of controlled substances in circumstances where there is no other evidence of an intent to distribute, or to facilitate the manufacturing, compounding, processing, delivering, importing or exporting of any controlled substance. Evidence of personal use amounts shall not include sweepings or other evidence of possession of amounts of a controlled substance for other than personal use. The following criteria shall be used to determine whether an amount of controlled substance in a particular case is in fact a personal use amount. The absence of any of the factors listed in paragraphs (h)(1) through (h)(5) of this section and the existence of the factor in paragraph (h)(6) of this section shall be relevant, although not necessarily conclusive, to establish that the possession was for personal use.

(1) Evidence, such as drug scales, drug distribution paraphernalia, drug records, drug packaging material, method of drug packaging, drug "cutting" agents and other equipment, that indicates an intent to process, package or distribute a controlled substance;

(2) Information from reliable sources indicate possession of a controlled substance with intent to distribute;

(3) The controlled substance is related to large amounts of cash or any amount of prerecorded government funds;

(4) The controlled substance is possessed under circumstances that indicate such a controlled substance is a sample intended for distribution in anticipation of a transaction involving large amounts, or is part of a larger delivery; or

(5) Statements by the possessor, or otherwise attributable to the possessor, including statements of conspirators, that indicate possession with intent to distribute.

(6) The amounts do not exceed the following:

(i) One gram of mixture or substance containing a detectable amount of heroin;

(ii) One gram of a mixture or substance containing a detectable amount of—

(A) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivations of ecgonine or their salts have been removed;

(B) Cocaine, it salts, optical and geometric isomers, and salts of isomers;

(C) Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(D) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in paragraphs (h)(6)(ii)(A) through (h)(6)(ii)(C) of this section;

(iii) 1/10 gram of a mixture or substance described in paragraph (h)(6)(ii) of this section which contains cocaine base;

(iv) 1/10 gram of a mixture or substance containing a detectable amount of phencyclidine (PCP);

(v) 500 micrograms of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

(vi) One ounce of a mixture or substance containing a detectable amount of marijuana;

(vii) One gram of methamphetamine, its salts, isomers, and salts of its isomers, or one gram of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers.

(i) "United States Attorney" means the United States Attorney in the federal district in which the alleged violation occurred, or his or her designees;

(j) "Commencement of proceeding" is the filing of a complaint with the Administrative Law Judge who has been assigned by the Department to hear and decide cases under section 6486 of the Act within the federal district where the United States Attorney's Office is located;

(k) "Complainant" means the United States Attorney of the United States of America;

(l) "Complaint" means the formal document initiating an adjudicatory proceeding;

(m) "Consent Order" means any written document containing a specified remedy or other relief agreed to by all parties and entered as an Order by the Administrative Law Judge;

(n) "Hearing" means that part of a proceeding which involves the submission of evidence, either by oral presentation or written submission;

(o) "Motion" means an oral or written request, made by a person or party, for some action by an Administrative Law Judge;

(p) "Order" means the whole or any part of a final procedural or substantive disposition of a matter by the Administrative Law Judge;

(q) "Party" includes any person named or admitted as a complainant or respondent; and

(r) "Respondent" means any persons alleged in a complaint under 28 CFR 76.5 to be liable for a civil penalty or assessment under 28 CFR 76.3.

§ 76.3 Basis for civil penalties and assessments.

(a) Any individual who knowingly possesses a controlled substance that is listed in § 76.2(h) in violation of 21 U.S.C. 844(a) shall be liable to the United States for a civil penalty in an amount not to exceed $10,000 for such violation.

(b) The income and net assets of an individual shall not be relevant to the determination whether to assess a civil penalty under this part or to prosecute the individual criminally. However, if a decision is made to assess a civil penalty, the income and net assets of an individual shall be considered in determining the amount of a penalty under this part.

(c) A civil penalty may not be assessed under this part if the individual previously was convicted of a Federal or State offense relating to the same controlled substance(s) transaction as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).

(d) A civil penalty may not be assessed under this part if the individual has been assessed a civil penalty on two separate previous occasions.

(e) A civil penalty under this part may be assessed by the Attorney General only after an Order has been issued on the record and after an opportunity for a hearing has been given in accordance with 5 U.S.C. 554. The Attorney General by and through the United States Attorney having jurisdiction over the matter shall provide written notice to the individual who is the subject of the proposed Order informing the individual of the opportunity to receive such a hearing with respect to the proposed order. The hearing may be held only if the individual makes a request for the hearing before the expiration of the

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thirty (30) day period beginning on the date such notice is issued.

§ 76.4 Enforcement procedures.

(a) *Commencement of proceedings.* If the United States Attorney's office having jurisdiction over the matter determines that a person has violated section 6486 of the Act, the proceeding to assess a civil penalty under Section 6486 of the Act shall be commenced by the United States Attorney issuing a Notice of Intent to Assess Civil Penalty. Service of this Notice shall be accomplished pursuant to 28 CFR 76.6. The person identified in the Notice of Intent to Assess Civil Penalty shall be known as the respondent.

(b) *Notice of intent to assess a civil penalty.* The Notice of Intent to Assess Civil Penalty will contain a concise statement of factual allegations informing the respondent of the act or conduct alleged to be in violation of law, a designation of the charge(s) against the respondent, the statutory provisions alleged to have been violated, and the penalty proposed. The Notice of Intent to Assess a Civil Penalty will advise the respondent of the following:

(1) That the respondent has the right to representation by counsel, but not at government expense;

(2) That any statement given during the course of proceeding may be used against the person in any subsequent proceeding including a criminal prosecution, if prosecution of the Assessment of a Civil Penalty is not successful or if the information involves another criminal offense;

(3) That the respondent has the right to request a hearing before an Administrative Law Judge pursuant to 5 U.S.C. 554–557, and that such request, in accordance with paragraph (c) of this section, must be made within 30 days from the date the notice is issued; and

(4) That the United States Attorney may issue, where possible, a decision in forty-five (45) days if a written request for a hearing is not timely received and that there will be no appeal of the decision.

(c) *Answer to notice of intent to assess civil penalty.* To timely request a hearing in response to the issuance of a Notice of Intent to Assess a Civil Penalty, a respondent must, by mail, serve a written answer responding to each allegation listed in the Notice and request a hearing, in accordance with paragraph (b) of this section, within thirty (30) days from the issuance of the Notice. If the respondent does not file an answer within thirty days, the Attorney General by and through his designee may issue a Final Order, to which there is no appeal, ordering a payment of a civil penalty.

§ 76.5 Complaint.

(a) If the respondent requests a hearing, the United States Attorney shall, within fifteen (15) days after receipt of the request, file a complaint against the respondent with an Administrative Law Judge who has been assigned to hear and decide the case and serve a copy of the complaint on the respondent as provided in 28 CFR 76.6.

(b) The complaint shall contain a concise statement of factual allegations informing the respondent of the act or conduct alleged to be in violation of law, the approximate date, place and location of the alleged violation including the federal district, a designation of the charge(s) against the respondent, the statutory provisions alleged to have been violated, and the maximum amount of penalties and assessments for which the respondent could be held liable.

§ 76.6 Service and filing of documents.

(a) *Generally.* Unless ordered otherwise, an original and one copy of the complaint and all other pleadings shall be filed with the Administrative Law Judge who have been assigned to the case. A copy of all pleadings, including any attachments shall be delivered or mailed to all other parties of record. Each pleading filed shall be clear and legible.

(b) *By or on parties.* Service should normally be on the respondent. When it is known that a respondent is represented by an attorney, service shall be made upon the attorney. Service of any document upon any party or his or her representative may be made by personal delivery or by mailing a copy to his or here last known address. The party serving the document shall certify the manner and date of service.

(c) *By the Administrative Law Judge.* Service of Notices, Orders and Decisions shall be made by regular mail to the last known addresses of the parties or, if the parties are known to be represented by an attorney, to the attorney.

(d) *Service of notice of hearing.* Service of Notice of the Date Set for Hearing shall be made by the Administrative Law Judge with whom the complaint has been filed either by delivering a copy to the individual party or, if known, to the attorney of record of a party; or by leaving a copy at the principal office, place of business, or residence of a party; or by mailing a copy to the last known address of such individual or his or her attorney. Service is complete upon receipt by addressee in accordance with 28 CFR 76.8.

§ 76.7 Content of pleadings.

(a) Every pleading shall contain a caption setting forth the statutory provision under which the proceeding is instituted, the title of the proceeding, the docket number assigned by the Administrative Law Judge, the names of all parties, and a designation of the type of pleading or paper (e.g., complaint, motion to dismiss). The pleading shall be signed and shall contain the address and telephone number of the party or person representing the party. The pleadings should be typewritten when possible on standard size (8½ x 11) paper. Legal size (8½ x 14) paper will not be accepted, except upon approval by the Administrative Law Judge.

(b) Illegible documents, whether handwritten, typewritten, photocopied, or otherwise, will not be accepted. Papers may be reproduced by any duplicating process, provided all copies are clear and legible.

(c) All documents presented by a party in a proceeding must be in English or, if in a foreign language, accompanied by a certified translation.

§ 76.8 Time consemptions.

(a) *Generally.* In computing any period of time under these rules or in an Order issued hereunder, the time begins with the day following the act, event, or default requiring service, and includes the last day of the period unless it is a Saturday, Sunday, or legal holiday observed by the Federal Government, in which case the time period includes the next business day. When the period of time prescribed is seven (7) days or less, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation.

(b) *Date of entry of orders.* In computing any period of time involving the date of the entry of an Order, the date of entry shall be the date the Order is entered.

(c) *Computation of time for filing by mail.* Pleadings are not deemed filed until served upon the Administrative Law Judge assigned to the case. However, when pleadings are filed by mail, five (5) days shall be added to the prescribed period.

§ 76.9 Responsive pleading—answer.

(a) *Time for answer.* A respondent shall file an answer within thirty (30) days after the service of a complaint.

(b) *Default.* Failure of the respondent to file and serve an answer within the time provided shall be deemed to constitute a waiver of his or her right to

appear and contest the allegations of the complaint. The Administrative Law Judge may enter a judgement by default.

(c) *Answer.* Any respondent contesting any material fact alleged in a complaint, or contending that he or she is entitled to judgement as a matter of law, shall file an answer in writing.

(1) The answer shall include a statement of the facts supporting each affirmative defense.

(2) The answer shall include a statement that the respondent admits, denies, or does not have and is unable to obtain sufficient information to admit or deny each allegation.

(3) A statement of lack of information shall have the affect of a denial.

(4) Any allegation not expressly denied shall be deemed to be admitted.

(d) *Reply.* A complainant may file a reply responding to each affirmative defense asserted if the Administrative Law Judge, pursuant to 28 CFR 76.10, so provides.

(e) *Amendments and supplemental pleadings.* If it will facilitate resolution of the controversy, the Administrative Law Judge may, upon such conditions as are necessary to avoid prejudicing the public interest and the rights of the parties, allow appropriate amendments to complaints and other pleadings at any time prior to the issuance of the Administrative Law Judge's Final Order based on the complaint. When issues not raised by the pleadings are reasonably within the scope of the original complaint and are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings, and such amendments may be made as necessary to make the pleadings conform to the evidence. The Administrative Law Judge may, upon reasonable notice and such terms as are just, permit supplemental pleadings setting forth transactions, occurrences, or events which have happened or new law promulgated since the date of the pleadings and which are relevant to any of the issues involved.

§ 76.10 Motions and requests.

(a) *Generally.* Any application for an Order or any other request shall be made by motion which shall be in writing (unless the Administrative Law Judge in the course of an oral hearing consents to accept such motion orally), shall state with particularity the grounds therefore, and shall set forth the relief or Order sought. Motions or requests made during the course of any oral hearing or appearance before an Administrative Law Judge may be stated orally or in writing, and all parties shall be given reasonable opportunity to respond or object to the motion or request.

(b) *Answers to motions.* Within ten (10) days after a written motion is served, or within such other period as the Administrative Law Judge may fix, any party to the proceeding may file an answer in support of, or in opposition to, the motion, accompanied by such affidavits or other evidence as the party desires to rely upon. Unless the Administrative Law Judge provides otherwise, no reply to an answer, response to a reply, or any further responsive document shall be filed.

(c) *Oral arguments or briefs.* No oral argument will be heard on motions unless the Administrative Law Judge otherwise directs. Written memoranda or briefs may be filed with motions or answers to motions, stating the points and authorities relied upon in support of the position taken.

§ 76.11 Notice of hearing.

(a) When the Administrative Law Judge receives the compliant and answer, the Administrative Law Judge shall cause to be served a Notice of Hearing upon the parties in the manner prescribed by 28 CFR 76.5.

(b) Such notice shall include:

(1) The tentative time and place and nature of the hearing. In fixing the time and place of the hearing, the Administrative Law Judge will attempt to minimize the costs to the parties;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The description of the procedures for the conduct of the hearing; and

(4) Such other matters as the Administrative Law Judge deems appropriate.

§ 76.12 Prehearing statements.

(a) At any time prior to the commencement of the hearing, the Administrative Law Judge may order any party to file a prehearing statement of position.

(b) A prehearing statement shall state the name of the party or parties on whose behalf it is presented and shall briefly set forth the following matters, unless otherwise ordered by the Administrative Law Judge:

(1) Issues involved in the proceedings;

(2) Facts stipulated together with a statement that the party or parties have communicated or conferred in a good faith effort to reach stipulation to the fullest extent possible;

(3) Facts in dispute;

(4) Witnesses, except to the extent that disclosure would be privileged, and exhibits by which disputed facts will be litigated;

(5) A brief statement of applicable law;

(6) The conclusions to be drawn;

(7) The estimated time required for presentation of the party's or parties' case; and

(8) Any appropriate comments, suggestions, or information which might assist the parties or the Administrative Law Judge in preparing for the hearing or otherwise aid in the disposition of the proceeding.

§ 76.13 Parties to the hearing.

The parties to the hearing shall be the United States Attorney and the respondent.

§ 76.14 Separation of functions.

An employee or an agent of the Department who is engaged in investigative or prosecutive functions for or on behalf of the Department in a case may not, in that case or a factually-related case, participate or advise in the decision, except as a witness or counsel in public proceedings.

§ 76.15 Ex parte communications.

(a) *Generally.* No party or person (except employees in the Administrative Law Judge's office) shall communicate in any instance with the Administrative Law Judge on any matter at issue in a case, unless notice and opportunity has been afforded for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

(b) *Sanctions.* A party or participant who makes a prohibited *ex parte* communication, or who encourages or solicits another to make any such communication, may be subject to any appropriate sanctions, including, but not limited to, exclusion from the proceedings and an adverse ruling on the issue which is the subject of the prohibited communication.

§ 76.16 Disqualification of Administrative Law Judge.

(a) An Administrative Law Judge in a particular case may disqualify himself or herself at any time.

(b) A party may file a motion for disqualification of an Administrative Law Judge. Such motion shall be accompanied by an affidavit alleging personal bias or other reason(s) for disqualification.

(c) Such motion and affidavit shall be filed promptly upon the party's discovery of reasons requiring disqualification, or such objections shall be deemed waived.

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(d) Such affidavit shall state specific facts that support the party's belief that personal bias or other reason(s) for disqualification exists and the time and circumstances of the party's discovery of such facts. It shall be accompanied by a certificate of the party or representative of record that it is made in good faith.

(e) Upon the filing of such a motion and affidavit, the Administrative Law Judge shall proceed no further in the case until he or she resolves the matter of disqualification in accordance with this section. If the Administrative Law Judge determines that he or she is disqualified, the case shall be reassigned promptly to another Administrative Law Judge. If the Administrative Law Judge denies a motion to disqualify, the Chief Judge may determine the matter only as part of his or her review of the initial decision upon appeal, if any.

§ 76.17 Rights of parties.

Except as otherwise limited by this part, all parties may:

(a) Be accompanied, represented, and advised by a representative;

(b) Participate in any conference held by the Administrative Law Judge;

(c) Conduct discovery in accordance with 28 CFR 76.18 and 76.21;

(d) Agree to stipulations of fact or law, which shall be made part of the record;

(e) Present evidence relevant to the issues at the hearing;

(f) Present and cross-examine witnesses;

(g) Present oral arguments at the hearing as permitted by the Administrative Law Judge; and

(h) Submit written briefs and proposed findings of fact and conclusions of law after the hearing.

§ 76.18 Authority of the Administrative Law Judge.

(a) The Administrative Law Judge shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made.

(b) The Administrative Law Judge has the authority to:

(1) Set and change the date, time and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable period of time;

(3) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceding;

(4) Administer oaths and affirmations;

(5) Issue subpoenas requiring the attendance of witnesses and the production of documents at depositions or at hearings;

(6) Rule on motions and other procedural matters;

(7) Regulate the scope and timing of discovery;

(8) Regulate the course of the hearing and the conduct of representatives and parties;

(9) Examine witnesses;

(10) Receive, rule on, exclude, or limit evidence;

(11) Upon motion of a party, take official notice of facts;

(12) Upon motion of a party, decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact;

(13) Conduct any conference, argument, or hearing on motions in person or by telephone; and

(14) Exercise such other authority as necessary to carry out the responsibilities of the administrative Law Judge under this part.

(c) The Administrative Law Judge does not have the authority to find Federal status or regulations invalid.

§ 76.19 Conferences.

(a) *Purpose and scope.* Upon motion of a party or in the Administrative Law Judge's discretion, the Judge may direct the parties or their counsel to participate in a conference at any reasonable time prior to the hearing, or during the course of the hearing, when the Judge finds that the proceeding would be expedited by such a conference. Prehearing conferences normally shall be conducted by telephone conference unless, in the opinion of the Administrative Law Judge, such method would be impractical, or when such conferences can be conducted in a more expeditious or effective manner by correspondence or personal appearance. Reasonable notice of the time, place, and manner of the prehearing conference shall be given. At the conference, the following matters may be considered:

(1) The simplification of issues;

(2) The necessity of amendments to pleadings;

(3) The possibility of obtaining stipulations of facts and of the authenticity, accuracy, and admissibility of documents, which will avoid unnecessary proof;

(4) The limitations on the number of expert or other witnesses;

(5) Negotiations, compromise, or settlement of issues;

(6) The exchange of copies of proposed exhibits;

(7) The identification of documents or matters of which official notice may be required;

(8) A schedule to be followed by the parties for completion of the actions decided at the conference; and

(9) Such other matters, including the disposition of pending motions, as may expedite and aid in the disposition of the proceeding.

(b) *Reporting.* A verbatim record of the conference will not be kept unless directed by the Administrative Law Judge.

(c) *Order.* Actions taken as a result of a conference shall be reduced to a written Order, unless the Administrative Law Judge concludes that a stenographic report shall suffice or, if the conference takes place within seven (7) days of the beginning of the hearing, the Administrative Law Judge elects to make a statement on the record at the hearing summarizing the actions taken.

§ 76.20 Consent Order or settlement prior to hearing.

(a) *Generally.* At any time after the commencement of a proceeding, the parties jointly may move to defer the hearing for a reasonable time to permit negotiation of a settlement or an agreement containing findings and an Order disposing of the whole or any part of the proceeding. The allowance of such deferment and the duration thereof shall be at the discretion of the Administrative Law Judge, after consideration of such factors as the nature of the proceeding, the requirements of the public interest, the representations of the parties, and the probability of reaching an agreement which will result in a just disposition of the issue involved. The Administrative Law Judge may require the parties to submit progress reports on a regular basis as to the status of negotiations.

(b) *Consent orders.* Any agreement containing consent findings and an Order disposing of a proceeding or any part thereof shall also provide:

(1) That the Order shall have the same force and effect as an Order made after full hearing;

(2) That the entire record on which any Order may be based shall consist solely of the complaint or notice of administrative determination (or amended notice, if one is filed), as appropriate, and the agreement;

(3) A waiver of any further procedural steps before the Administrative Law Judge; and

(4) A waiver of any right to challenge or contest the validity of the order entered into in accordance with the agreement.

(c) *Submission.* On or before the expiration of the time granted for negotiations, the parties or their authorized representatives or their counsel may:

(1) Submit the proposed agreement containing consent findings and an Order for consideration by the Administrative Law Judge; or

(2) Notify the Administrative Law Judge that the parties have reached a full settlement and have agreed to dismissal of the action; or

(3) Inform the Administrative Law Judge that agreement cannot be reached.

(d) *Disposition.* In the event an agreement containing consent findings and an order is submitted, the Administrative Law Judge, within thirty (30) days or as soon as practicable thereafter may, if satisfied with its timeliness, form, and substance, accept such agreement by issuing a decision based upon the agreed findings. The Administrative Law Judge has the discretionary authority to conduct a hearing to determine the fairness of the agreement, consent findings, and proposed Order.

§ 76.21 Discovery.

(a) The following types of discovery may be authorized:

(1) Requests for production of documents for inspection and copying;

(2) Requests for admission of the authenticity of any relevant document or of the truth of any relevant fact;

(3) Written interrogatories; and

(4) Depositions.

(b) For the purpose of this section and §§ 76.22 and 76.23 of this part, the term "documents" includes documents, reports, answers, records, accounts, papers, and other previously compiled data and documentary evidence. Nothing contained herein shall be interpreted to require the creation of a document.

(c) Unless mutually agreed to by the parties, discovery is available only as ordered by the Administrative Law Judge. The Administrative Law Judge shall regulate the timing of discovery.

(d) Motions for discovery are to be handled according to the following procedures.

(1) A party seeking discovery may file a motion with the Administrative Law Judge. Such a motion shall be accompanied by a copy of the requested discovery, or in the case of depositions, a summary of the scope of the proposed disposition.

(2) Within ten days of service, a party may file an opposition to the motion and/or a motion for a Protective Order as provided in 28 CFR 76.24.

(3) The Administrative Law Judge may grant a motion for discovery only upopn a finding that the discovery sought is necessary for the expeditious, fair, and reasonable consideration of the issues; is not unduly costly or burdensome, will not unduly delay the proceeding; and does not seek privileged information.

(4) The burden in showing that discovery should be allowed is on the party seeking discovery.

(5) The Administrative Law Judge may grant discovery subject to a Protective Order under 28 CFR 76.24.

(e) Depositions are to be handled in the following manner:

(1) If a motion for deposition is granted, the Administrative Law Judge shall issue a subpoena for the deponent, which shall require the deponent to produce documents. The subpoena shall specify the time and place at which the deposition will be held.

(2) The party seeking to depose shall serve the subpoena in the manner prescribed in 28 CFR 76.23.

(3) Within ten days of service, the deponent may file with the Administrative Law Judge a motion to quash the subpoena or a motion for a protective Order.

(4) The party seeking the deposition shall provide for a verbatim transcript of the deposition, which shall be available to all parties for inspection and copying.

(f) Each party shall bear its own costs of discovery unless otherwise agreed by the parties.

§ 76.22 Exchange of witness lists, statements and exhibits.

(a) At least 15 days before the hearing or at such other time as may be ordered by the Administrative Law Judge, the parties shall exchange witness lists, copies of prior statements of proposed witnesses, and copies of proposed hearing exhibits, including copies of any written statements that the party intends to offer in lieu of live testimony in accordance with 28 CFR 76.22. At the time these documents are exchanged, any party that intends to rely on the transcript of deposition testimony in lieu of live testimony at the hearing, if permitted by the Administrative Law Judge, shall provide each party with a copy of the specific pages of the transcript it intends to introduce into evidence.

(b) If a party objects to admission, the Administrative Law Judge may not admit into evidence the testimony of any witness whose name does not appear on the witness list or any exhibit not provided to the opposing party as provided above unless the Administrative Law Judge finds good cause for the failure or that there is no prejudice to the objecting party.

(c) Unless another party objects within the time set by the Administrative Law Judge, documents exchanged in accordance with paragraph (a) of this section shall be deemed to be authentic for the purpose of admissibility at the hearing.

§ 76.23 Subpoenas for attendance at hearing.

(a) A party wishing to procure the appearance and testimony of any individual at the hearing may request that the Administrative Law Judge issue a subpoena.

(b) A subpoena requiring the attendance and testimony of an individual may also require the individual to procure documents at the hearing.

(c) A party seeking a subpoena shall file a written request therefor not less than 15 days before the dated fixed for the hearing unless otherwise allowed by the Administrative Law Judge upon a showing of good cause. Such request shall specify any documents to be produced and shall designate the witnesses and describe the address and location thereof with sufficient particularity to permit such witnesses to be found.

(d) The subpoena shall specify the time and place at which the witness is to appear and any documents the witness is to produce.

(e) The party seeking the subpoena shall serve it in the manner prescribed in 28 CFR 76.23. A subpoena on a party or upon an individual under the control of a party may be served by first class mail.

(f) A party or the individual to whom the subpoena is directed may file with the Administrative Law Judge a motion to quash the subpoena within ten days after service, or on or before the time specified in the subpoena for compliance if it is less than ten days after service.

§ 76.24 Protective order.

(a) A party or a prospective witness or deponent may seek to limit the availability or disclosure of evidence by filing a motion for a Protective Order with respect to discovery sought by an opposing party or with respect to the hearing.

(b) In issuing a Protective Order, the Administrative Law Judge may make an any Order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following Orders:

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(1) That the discovery not be had;
(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;
(3) That the discovery may be had only through a method of discovery other than that requested;
(4) That certain matters not be the subject of inquiry, or that the scope of discovery be limited to certain matters;
(5) That discovery be conducted with no one present except persons designated by the Administrative Law Judge;
(6) That the contents of discovery or evidence be sealed;
(7) That a sealed deposition be opened only by Order of the Administrative Law Judge;
(8) That facts pertaining to any criminal investigation, proceeding, or other administrative investigation not be disclosed or be disclosed only in a designated way; or
(9) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the Administrative Law Judge.

§ 76.25 Fees.

The party requesting a subpoena shall pay the cost of the fees and mileage of any witness subpoenaed. Such costs shall be in the amounts that would be payable to a witness in a proceeding in United States District Court. A check for witness fees and mileage shall accompany the subpoena when served, except that when a subpoena is issued on behalf of the complainant, a check for witness fees and mileage need not accompany the subpoena.

§ 76.26 Sanctions.

(a) The Administrative Law Judge may sanction a person, including any party or representative, for the following reasons:
(1) Failure to comply with an Order, Rule, or Procedure governing the proceeding;
(2) Failure to prosecute or defend an action; or
(3) Engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the proceeding.
(b) Any such sanction, including but not limited to those listed in paragraphs (c), (d), and (e) of this section, shall reasonably relate to the severity and nature of the failure or misconduct.
(c) When a party fails to comply with an Order, including an Order for taking a deposition, the production of evidence within the party's control, or a request for admission, the Administrative Law Judge may:
(1) Draw an inference in favor of the requesting party with regard to the information sought;
(2) In the case of requests for admission, deem each matter of which an admission is requested to be admitted;
(3) Prohibit the party failing to comply with such Order from introducing evidence concerning, or otherwise relying upon, testimony relating to the information sought; and
(4) Strike any part of the pleadings or other submissions of the party failing to comply with such request.
(d) If a party fails to prosecute or defend an action under this part commenced by service of a notice of hearing, the Administrative Law Judge may dismiss the action, without prejudice, or may issue an initial decision imposing penalties and assessments.
(e) The Administrative Law Judge may refuse to consider any motion, request, response, brief or other document which is not filed in a timely fashion.

§ 76.27 The hearing and burden of proof.

(a) The Administrative Law Judge shall conduct a hearing on the record in order to determine whether the respondent is liable for a civil penalty or assessment under 28 CFR 76.3 and, if so, the appropriate amount of any such civil penalty or assessment considering any aggravating or mitigating factors.
(b) The Attorney General shall prove respondent's liability and any aggravating factors by a preponderance of the evidence.
(c) The respondent shall prove any affirmative defenses and any mitigating factors by a preponderance of the evidence.
(d) The hearing shall be open to the public unless otherwise closed by the Administrative Law Judge for good cause shown.

§ 76.28 Location of hearing.

The hearing shall be held in the judicial district of the United States Attorney's Office which is the complainant in the case.

§ 76.29 Witnesses.

(a) Except as provided in paragraph (b) of this section, testimony at the hearing shall be given orally by witnesses under oath or affirmation.
(b) At the discretion of the Administrative Law Judge, testimony may be admitted in the form of a written statement or deposition. Any such written statement must be provided to all other parties along with the last known address of such witness, in a manner which allows sufficient time for other parties to subpoena such witness for cross-examination at the hearing. Prior written statements of witnesses proposed to testify at the hearing and deposition transcripts shall be exchanged as provided in 28 CFR 76.22.
(c) The Administrative Law Judge shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to—
(1) Make the interrogation and presentation effective for the ascertainment of the truth;
(2) Avoid needless consumption of time; and
(3) Protect witnesses from harassment or undue embarrassment.
(d) The Administrative Law Judge shall permit the parties to conduct such cross-examination as may be required for a full and true disclosure of the facts.
(e) At the discretion of the Administrative Law Judge, a witness may be cross-examined on matters relevant to the proceeding without regard to the scope of his or her direct examination. To the extent permitted by the Administrative Law Judge, cross-examination on matters outside the scope of direct examination shall be conducted in the manner of direct examination and may proceed by leading questions only if the witness is a hostile witness, an adverse party, or a witness identified with an adverse party.
(f) Upon motion of any party, the Administrative Law Judge shall order witnesses excluded so that they cannot hear the testimony of other witnesses. This rule does not authorize exclusion of the following:
(1) A party who is an individual; or
(2) An individual whose presence is shown by a party to be essential to the presentation of its case, including an individual employed by the Government engaged in assisting the representative for the Government.

§ 76.30 Evidence.

(a) The Administrative Law Judge shall determine the admissibility of evidence.
(b) Except as provided in this part, the Administrative Law Judge shall not be bound by the Federal Rules of Evidence. However, the Administrative Law Judge may apply the Federal Rules of Evidence where appropriate, e.g., to exclude unreliable evidence.
(c) The Administrative Law Judge shall exclude irrelevant and immaterial evidence.
(d) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.
(e) Relevant evidence may be excluded if it is privileged under Federal law.
(f) Grand jury-developed evidence may be used in these proceedings under Rule 6(e)(i)(3) (C)(i), Federal Rules of Criminal Procedure. See 18 U.S.C. 4.73, Notes of Committee on the Judiciary, Senate Report 95–354: "There is, however, no intent to preclude the use of grand jury-developed evidence for civil law enforcement purposes. On the contrary, there is no reason why such use is improper, assuming that the grand jury was utilized for the legitimate purpose of a criminal investigation."
(g) Evidence concerning offers of compromise or settlement shall be inadmissible to the extent provided in Rule 408 of the Federal Rules of Evidence.
(h) The Administrative Law Judge shall permit the parties to introduce rebuttal witnesses and evidence.
(i) All documents and other evidence offered or taken for the record shall be open to examination by all parties, unless otherwise ordered by the Administrative Law Judge pursuant to 28 CFR 76.27.

§ 76.31 Standards of conduct.

(a) All persons appearing in proceedings before an Administrative Law Judge are expected to act with integrity, and in an ethical manner.
(b) The Administrative Law Judge may exclude parties, witness, and their representatives for refusal to comply with directions, continued use of dilatory tactics, refusal to adhere to reasonable standards of orderly and ethical conduct, failure to act in good faith, or violation of the prohibition against ex parte communications. The Administrative Law Judge shall state in the record the cause for suspending or barring an attorney from participation in a particular proceeding. Any attorney so suspended or barred may appeal to the Attorney General but no proceeding shall be delayed or suspended pending disposition of the appeal; provided, however, that the Administrative Law Judge shall suspend the proceeding for a reasonable time for the purpose of enabling the party to obtain another attorney or representative.

§ 76.32 Hearing room conduct.

Proceedings shall be conducted in an orderly manner. The consumption of food or beverage, smoking, or rearranging of courtroom furniture, unless specifically authorize by the Administrative Law Judge, is prohibited.

§ 76.33 Legal assistance.

The Administrative Law Judge does not have authority to appoint counsel, nor can it refer parties to attorneys.

§ 76.34 Record of hearings.

(a) *General.* A verbatim written record of all hearings shall be kept. All evidence upon which the Administrative Law Judge relies for decision shall be contained in the transcript of testimony, either directly or by appropriate reference. All exhibits introduced as evidence shall be marked for identification and incorporated into the record. Transcripts may be obtained by the parties and the public from the official court reporter of record. Any fees in connection therewith shall be the responsibility of the parties.
(b) *Corrections.* Corrections to the official transcript will be permitted upon motion. Motions for correction must be submitted within ten (10) days of the receipt of the transcript, or such other time as may be permitted by the Administrative Law Judge. Corrections of the official transcript will be permitted only when errors of substance are involved and only upon approval of the Administrative Law Judge.

§ 76.35 Decision and Order of the Administrative Law Judge.

(a) *Proposed Decision and Order.* Within twenty (20) days of the filing of the transcript of the testimony, or such additional time as the Administrative Law Judge may allow, a party, if authorized by the Administrative Law Judge, may file proposed Findings of Fact, Conclusions of Law, and Order together with a supporting brief expressing the reasons for such proposals. Such proposals and brief shall be served on all parties, and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.
(b) *Decision.* Within a reasonable time after the time allowed for the filing of the proposed Findings of Fact, Conclusions of Law, and Order, or within thirty (30) days after receipt of an agreement containing Consent Findings and Order disposing of the disputed matter in whole, the Administrative Law Judge shall make a decision. The Administrative Law Judge shall make a decision within forty-five (45) days after receipt of the hearing transcript or of post-hearing briefs, proposed Findings of Fact and Conclusions of Law, if any. The decision of the Administrative Law Judge shall include Findings of Fact, and Conclusions of Law upon each material issue of fact or law presented on the record. The decision of the Administrative Law Judge shall be based upon the whole record. It shall be supported by reliable and probative evidence. The standard of proof shall be a preponderance of the evidence. Such decision shall be in accordance with the regulations and rulings of the statute of regulations conferring jurisdiction. If the Administrative Law Judge fails to meet the deadline contained in this paragraph, he or she shall notify the parties and the Attorney General of the reason for the delay and shall set a new deadline.
(c) *Order.* If the Administrative Law Judge determines, by a preponderance of the evidence, that the respondent knowingly possessed a controlled substance that is listed in section 401(b)(1)(A) of the Controlled substances Act (21 U.S.C. 844(b)) in violation of section 404 of that Act in an amount that, as specified by these regulations, is a personal use amount, the Order may require the respondent to pay a civil penalty of not more than $10,000 for each violation. If the Administrative Law Judge determines, by a preponderance of the evidence, that the respondent did not knowingly possess a controlled substance as described in § 76.2(b), for his or her personal use, then the Order shall dismiss the complaint.

§ 76.36 Administrative and judicial review.

(a) Upon issuance of a Final Order by an Administrative Law Judge, a copy of the decision together with the record of proceedings will be forwarded to the Attorney General, who may conduct such review he or she deems appropriate. Any party may file with the Attorney General, within five (5) days of the date of the decision, a written request for review of any issue of law together with supporting arguments. No earlier than thirty (30) days from the date of decision, the Attorney General may issue an Order which adopts, affirms, modifies or vacates the Administrative Law Judge's order.
(b) If the Attorney General issues no Order, the Administrative Law Judge's Order becomes the final Order of the Attorney General. If the Attorney General modifies or vacates the Order, the Order of the Attorney General becomes the final Order.
(c) A person adversely affected by a Final Order respecting an assessment or penalty after a hearing may, before the expiration of the thirty (30) day period beginning on the date the Order is issued, either by the Attorney General or the Administrative Law Judge,

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whichever is later, bring a civil action in the appropriate District Court of the United States. In such action, the law and the facts of the violation and the assessment of the civil penalty shall be determined *de novo*. The respondent shall have the right to a trial by jury, the right to counsel and the right to confront any witnesses. The facts of the violation shall be proved beyond a reasonable doubt.

§ 76.37 Collection of civil penalties and assessments.

(a) Collection of any penalty shall be the responsibility of the United States Attorney having jurisdiction over the matter.

(b) The United States Attorney having jurisdiction over the matter may commence a civil action in any appropriate District Court of the United States for the purpose of recovering the amount assessed and an amount representing interest at a rate computed in accordance with 28 U.S.C. 1961.

§ 76.38 Deposit in the United States Treasury.

All amounts collected pursuant to this part shall be deposited as miscellaneous receipts in the United States Treasury.

§ 76.39 Compromise or settlement after Decision and Order of Administrative Law Judge.

(a) The United States Attorney having jurisdiction over the case may, at any time before the Attorney General issues an Order, compromise, modify, or remit, with or without conditions, any civil penalty imposed under this section.

(b) Any compromise or settlement must be in writing.

§ 76.40 Records to be public.

All documents contained in the records of formal proceedings for imposing a penalty under this part may be inspected and copied, unless ordered sealed by the Administrative Law Judge.

§ 76.41 Expungement of records.

(a) The Attorney General shall expunge all official Department records created pursuant to this part upon application of a respondent at any time after the expiration of three (3) years from the date of the Final Order of assessment if:

(1) The respondent has not previously been assessed a civil penalty under this section;

(2) The respondent has paid the penalty;

(3) The respondent has complied with any conditions imposed by the Attorney General;

(4) The respondent has not been convicted of a Federal or State offense relating to a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802); and

(5) The respondent agrees to submit to a drug test, and such test shows the individual to be drug free.

(b) A non-public record of a disposition under this part shall be retained by the department solely for the purpose of determining in any subsequent proceeding whether the person qualifies for a civil penalty or expungement under this part.

(c) If a record is expunged under this part, the individual for whom such an expungement was made shall not be held guilty of perjury, false swearing, or making a false statement by reason of his failure to recite or acknowledge a proceeding under this part or the results thereof in response to an inquiry made of him for any purpose.

§ 76.42 Limitations.

No action under this part shall be entertained unless commenced within five years from the date on which the violation occurred.

Dated: November 29, 1989.

Dick Thornburgh,

Attorney General.

[FR Doc. 89-28951 Filed 12-12-89; 8:45 am]

BILLING CODE 4410-01-M

FEDERAL MARITIME COMMISSION

46 CFR Part 572

[Docket No. 89-23]

Agreements by Ocean Common Carriers and Other Persons Subject to the Shipping Act of 1984

AGENCY: Federal Maritime Commission.

ACTION: Availability of Finding of No Significant Impact.

SUMMARY: The Commission has completed an environmental assessment of a proposed rule in Docket No. 89-23 (54 FR 46273, Nov. 2, 1989) and found that its resolution of this proceeding will not have a significant impact on the quality of the human environment.

DATES: Petitions for review are due by December 26, 1989.

ADDRESSES: Petitions for review (Original and 15 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573-0001

FOR FURTHER INFORMATION CONTACT: Edward R. Meyer, Office of Special Studies, 1100 L Street, NW., Washington, DC 20573-0001.

SUPPLEMENTARY INFORMATION: Upon completion of an environmental assessment, the Federal Maritime Commission's Office of Special Studies has determined that Docket No. 89-23 will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. section 4321 et seq., and that preparation of an environmental impact statement is not required.

In Docket No. 89-23, the Commission proposes to remove the membership size limitation in its exemption of membership changes in certain passenger vessel operator agreements from the notice and waiting period requirements of section 6 of the Shipping Act of 1984 and the Information Form, notice and waiting period requirements of 46 CFR part 572. This will enable such membership changes to become effective upon filing with the Commission, regardless of the membership size of the involved agreement.

This Finding of No Significant Impact ("FONSI") will become final within 10 days of publication of this notice in the Federal Register unless a petition for review is filed pursuant to 46 CFR 504.6 (b).

The FONSI and related environmental assessment are available for inspection on request from the Office of the Secretary, Room 11101, Federal Maritime Commission, Washington, DC 20573-0001, telephone (202) 523-5725.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 89-29019 Filed 12-12-89; 8:45 am]

BILLING CODE 6730-01-M

Notices

Federal Register
Vol. 54, No. 238
Wednesday, December 13, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

December 8, 1989.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extentions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of P.L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Extension

- Food and Nutrition Service

Federal-State Special Supplemental Food Program Agreement
FNS-339
Annually
State or local governments; 86 responses; 44 hours; not applicable under 3504(h)
Laurie Hickerson, (703) 756-3710.

Revision

- Farmers Home Administration

7 CFR 1980-E, Business and Industrial Loan Program
FmHA 449-2, -4, -22, 1980-68, -70, -71, -73
Recordkeeping; On occasion; Quarterly
State or local governments; Businesses or other for-profit; Small businesses or organizations; 18,222 responses; 73,567 hours; not applicable under 3504(h)
Jack Holston, (202) 382-9736.

Larry K. Roberson,

Acting Departmental Clearance Officer.

[FR Doc. 89-29060 Filed 12-12-89; 8:45 am]

BILLING CODE 3410-01-M

Farmers Home Administration

Submission of Information Collection to OMB

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice.

SUMMARY: The information collection requirement described below has been submitted to OMB for emergency clearance under 5 CFR 1320.18. The agency solicits comments on subject submission. This action is necessary in order to comply with the Disaster Assistance Act of 1989 (Pub. L. 101-82).

ADDRESSES: Interested persons are invited to submit comments regarding this submission. Comments should refer to the proposal by name and should be sent to: Lisa Grove, USDA Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Beverly I. Craver, FmHA Business and Industry Division, USDA Room 6327, South USDA Building, 14th and Independence Avenue SW., Washington, DC 20250, 202-475-3805.

SUPPLEMENTARY INFORMATION: The agency has submitted the proposal for collection of information as described below, to OMB for clearance as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). It is requested that OMB approve this submission within seven days.

The supplemental supporting statement shown below delineates the revisions to 7 CFR part 1980, subpart E, Business and Industrial Loan Program.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3407.

Supplemental Supporting Statement

Amendments to 7 CFR part 1980, subpart E, implementing "Disaster Assistance for Rural Business Enterprises Guaranteed Loans."

FmHA is requesting OMB clearance of amendments to two forms being used to implement the Disaster Assistance for Rural Business Enterprises (DARBE) Guaranteed loan program. The proposed revisions to these forms will not increase the burden currently approved by OMB. The two forms being amended are as follows:

Form FmHA 1980-71, "Lender's Agreement—Disaster Assistance for Rural Business Enterprises Guaranteed Loans," is used to establish a contract between FmHA and the lender for DARBE Guaranteed Loans. The specific changes to Form FmHA 1980-71, are as follows:

1. Language has been added under the title of the form which informs the lender and the holder of the maximum loss payment.

2. Paragraph I has been revised to clarify the maximum loss payment under the DARBE guaranteed loan program.

3. Paragraph III A 3 b under Participations has been revised to remove the references to Farmer Program loans and Business and Industry Program loans and to add references to DARBE loans.

4. Paragraph IX C 10 under Lender's servicing responsibilities include, but are not limited to: has been revised to remove references to Farm Ownership, Soil and Water, and Operating loans.

5. Paragraph IX D has been removed as it does not apply to DARBE loans.

6. Paragraph X B has been revised to delete the last two sentences of the paragraph referencing Farmer Program loans.

7. Paragraph X C and D has been revised to clarify the maximum loss payment under the DARBE loan program.

8. Paragraph XI A 4 has been revised to replace references to the B&I program with references to the DARBE program. The second sentence of this paragraph has also been revised to remove the phrase "and all other loans regardless of the outstanding principal balance."

9. Paragraph XI F has been revised to remove references to loan subsidies and Farmer Program loans and to specify the

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DARBE Loan Note Guarantee and make references to only allowable accrued interest.

10. The fourth sentence in paragraph XI G has been deleted since it does not apply to DARBE loans.

11. Paragraph XVII has been deleted because it refers to only Farmer Program loans and paragraph XVIII, XIX and XX have been renumbered accordingly.

Form FmHA 1980–73, "Assignment Guarantee Agreement—Disaster Assistance for Rural Business Enterprises Guaranteed Loans," is used to express the terms of the guarantee and the nature and limits of contractual conditions when a holder buys a guaranteed loan.

The specific changes to Form FmHA 1980–73 are as follows:

1. The title of the form has been revised to include the word "Enterprise" which was omitted in the previous revision.

2. Language has been added under the title of the form which informs the maximum loss payment to a Holder or Lender.

3. The ninth line in the body of the form has been revised to clarify the maximum loss payment to Holder.

4. The second paragraph of paragraph 2 under "Loan Servicing" has been revised to delete the reference to loan subsidy and the last sentence referring to 1980 Subpart H which does not apply to the DARBE loan program.

5. Paragraph 5 has language added to conform to language in the Loan Note Guarantee DARBE.

6. Paragraphs 7 and 8 have language added to clarify the maximum loss payments, and to remove the reference to loan subsidy in paragraph 8.

7. Paragraph 10 has been revised to remove to reference to loan subsidy and to clarify how the Lender's servicing fee will be paid.

Loans closed using the previous forms would have caused confusion to all parties involved in the loan. Specific limits relating to the maximum loss payment to a Lender or Holder under the DARBE Guaranteed loan program had to be established and clearly stated in the forms.

This rule is to be published as an interim rule with a 30 day comment period to follow publication. All comments received will be analyzed and considered in finalizing the regulation.

Dated: December 4, 1989.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 89–29079 Filed 12–12–89; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF COMMERCE

International Trade Administration

Department of Commerce et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 89–064.

Applicant: U.S. Department of Commerce/NOAA, Research Triangle Park, NC 27711.

Instrument: Pulsed Wire Anemometer and Probe Support Unit.

Manufacturer: Pela Flow Instruments, Ltd., United Kingdom.

Intended Use: See notice at 54 FR 11992, March 23, 1989.

Reasons: The foreign instrument provides measurement of pollutants dispersed in highly turbulent or recirculating flow fields.

Docket Number: 89–182.

Applicant: Rutgers University, Piscataway, NJ 08854.

Instrument: Kelvin Probe.

Manufacturer: Delta Phi Elektronik, West Germany.

Intended Use: See notice at 54 FR 31722, August 1, 1989.

Reasons: The foreign article is an accessory allowing the measurement of the work function of material.

The capability of each of the foreign instruments described above is pertinent to each applicant's intended purposes. We know of no instrument or apparatus being manufactured in the United States which is of equivalent scientific value to either of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89–29004 Filed 12–12–89; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Intent To Conduct a Public Meeting on the Preparation of a Draft Environmental Impact Statement and Draft Management Plan for Sites Which Comprise the Chesapeake Bay National Estuarine Research Reserve in Virginia

AGENCY: Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, Commerce.

ACTION: Notice of intent to conduct public meeting and prepare a draft environmental impact statement and draft management plan (DEIS/MP).

SUMMARY: In accordance with section 315 of the Coastal Zone Management Act of 1972 as amended, the Commonwealth of Virginia and the National Oceanic and Atmospheric Administration (NOAA) intend to conduct a public meeting to present the draft management plan for the Chesapeake Bay Estuarine Research Reserve in Virginia (CBNERR–VA) and to discuss significant issues related to the preparation of a draft environmental impact statement. The DEIS/MP addresses research, monitoring, education, and resource protection needs at four sites on the York River which comprise the first components of the CBNERR–VA. These sites are Goodwin Islands (representing polyhaline conditions at the mouth of the York River in York County), Catlett Islands (representing mesohaline conditions of the lower estuary of the York River in Gloucester County), Taskinas Creek (representing mesohaline to oligohaline conditions of the transition zone of the York River in James City County), and Sweet Hall Marsh (representing tidal freshwater conditions in the Pamunkey River, a tributary of the York River, in King William County).

Discussion: In May 1989, NOAA approved the nomination of Goodwin Islands, Catlett Islands, Taskinas Creek, and Sweet Hall Marsh as the first components of a multiple-site research reserve system in the Virginia portion of the Chesapeake Bay and its tributaries. Research reserves will provide natural coastal habitats as field laboratories for baseline ecological studies and education programs. Research and monitoring programs will be designed to enhance basic scientific understanding of coastal environments and aid in resource management decisionmaking. Information derived from sponsored studies will provide a basis for measuring progress in Chesapeake Bay clean-up efforts and will be used to increase public awareness of coastal issues. The Virginia Institute of Marine Science (VIMS) has the lead role in developing and managing the reserve system.

VIMS has developed a draft management plan for the reserve system. The draft plan identifies specific needs and priorities related to research, monitoring, education, and resource protection at the approved sites. It also contains a five-year administration plan and budget as well as a discussion of volunteer programs, public access and visitor use policies, and facilities development needs. The draft plan will be available for review at the public meeting.

At the public meeting, VIMS and NOAA will provide a synopsis of the draft management plan and will solicit comments on significant socioeconomic and environmental issues which will be incorporated into a draft environmental impact statement.

The public meeting will be held on: Tuesday, December 12, 1989, at 7 p.m. in Waterman's Hall, Virginia Institute of Marine Science, Gloucester Point, Virginia.

Interested parties who wish to submit suggestions, comments, or substantive information regarding the scope or content of this proposed environmental impact statement are invited to attend. Parties who wish to respond in writing should do so by December 21, 1989. The DEIS will be prepared in compliance with the Council on Environmental Quality regulations (40 CFR section 1502.1–1502.25 (1988)).

Comments may be submitted in writing to Mr. Reed M. Bohne, Regional Manager, Marine and Estuarine Management Division, Office of Ocean and Coastal Resource Management, NOAA, 1825 Connecticut Avenue NW., Washington, DC 20235 (Telephone (202) 673–5122).

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Estuarine Reserves)

Dated: December 4, 1989.

Virginia K. Tippie,

Assistant Administrator, National Ocean Service.

[FR Doc. 89–29014 Filed 12–12–89; 8:45 am]

BILLING CODE 3510–08–M

COMMISSION OF FINE ARTS

Cancellation of Meeting

The Commission of Fine Arts' meeting scheduled for 14 December 1989 is *cancelled*. Our next scheduled meeting is Thursday, 18 January 1990 at 10:00 AM in the Commission's offices at 708 Jackson Place NW., Washington, DC 20006 to discuss various projects affecting the appearance of Washington, DC, including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government. Handicapped persons should call the Commission offices (566–1066) for details concerning access to meetings.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC 5 December 1989.

Charles H. Atherton,

Secretary.

[FR Doc. 89–29056 Filed 12–12–89; 8:45 am]

BILLING CODE 6330–01–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in India

December 7, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issujng a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: December 8, 1989.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6494. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Group II is being increased for special carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 53 FR 44937, published on November 7, 1988). Also see 54 FR 50071, published on December 13, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 7, 1989.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Commissioner: This directive amends, but does not cancel, the directive of December 8, 1988, as amended, from the Chairman, Committee for the Implementation of Textile Agreements. That directive establishes restraint limits for certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1989 and extends through December 31, 1989.

Effective on December 8, 1989, you are directed to amend further the December 8, 1988 directive to increase the current limit for Group II, as provided under the terms of the current bilateral textile agreement between the Governments of the United States and India:

Category Group II	Adjusted twelve-month limit [1]
200, 201, 220–229, 237, 239, 300/301, 317, 326, 330–334, 345, 349–352, 359–362, 369–O [2], 369–S [3], 600–607, 611–635, 638–652, 659, 665pt. [4], 666–670 and 831–859, as a group.	117,617,030 square meters equivalent

[1] The limit has not been adjusted to account for any imports exported after December 31, 1988.

[2] In Category 369–O, all HTS numbers except 6307.10.2005 in Category 369–S; 6302.60.0010, 6302.91.0005 and 6302.91.0045 in Category 369–D; and rugs exempt from the bilateral agreement in HTS numbers 5702.10.9020, 5702.49.1010 and 5702.99.1010.

[3] In Category 369–S, only HTS number 6307.10.2005.

[4] In Category 665pt., all HTS numbers except rugs exempt from the bilateral agreement in HTS numbers 5702.10.9030, 5702.42.2010, 5702.92.0010 and 5703.20.1000.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-29065 Filed 12-12-89; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of Import Limits and Guaranteed Access Levels for Certain Cotton, Wool, Man-Made Fiber and Other Vegetable Fiber Textiles and Textile Products from Jamaica

December 6, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits and guaranteed access levels for the new agreement year.

EFFECTIVE DATE: January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-5810. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

A copy of the current bilateral agreement between the Governments of the United States and Jamaica is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647-1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988).

Requirements for participation in the Special Access Program are available in **Federal Register** notices 51 FR 21208, published on June 11, 1986; 52 FR 26057, published on July 10, 1987; 53 FR 22202, published on June 14, 1988; and 54 FR 50425, published on December 6, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 6, 1989.

Commissioner of Customs

Department of the Treasury, Washington, D.C. 20229

Dear Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 27, 1986, as amended, between the governments of the United States and Jamaica; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1990, entry into the United States for consumption or withdrawal from warehouse for consumption of cotton, wool, man-made fiber and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Jamaica and exported during the twelve-month period which begins on January 1, 1990 and extends through December 31, 1990, in excess of the following designated levels:

Category	Twelve-Month Restraint Level
331/631	350,000 dozen pairs.
336/636	99,000 dozen.
338/339/638/639	780,902 dozen.
340/640	385,170 dozen of which not more than 308,990 dozen shall be in shirts made from fabrics with two or more colors in the warp and/or the filling in Categories 340-Y/640-Y—(only HTS numbers 6205.20.2015, 5205.20.2020, 6205.20.2046, 6205.20.2050, 6205.20.2060, 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060).
341/641	458,541 dozen.
342/642	175,000 dozen.
345/845	113,147 dozen.
347/348/647/648	842,885 dozen.
349/649	500,000 dozen.
352/652	300,000 dozen.
445/446	48,424 dozen.
447	10,000 dozen.
632	100,000 dozen pairs.

Imports charged to these category limits for the period January 1, 1989 through December 31, 1989 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future according to the provisions of the current bilateral agreement between the Governments of the United States and Jamaica.

In accordance with the provisions of the Special Access Program, as set forth in 51 FR 21208 (June 11, 1986), 52 FR 26057 (July 10, 1987) and 54 FR 50425 (December 6, 1989), you are directed to establish guaranteed access levels for properly certified cotton, man-made fiber and other vegetable fiber textile products in the categories listed below. These products shall be assembled in Jamaica from fabric formed and cut in the United States and exported to the United States from Jamaica during the twelve-month period which begins on January 1, 1990 and extends through December 31, 1990.

Category	Guaranteed Access Level
331/631	1,320,000 dozen pairs.
336/636	125,000 dozen.
338/339/638/639	1,500,000 dozen.
340/640	300,000 dozen.
341/641	375,000 dozen.
342/642	200,000 dozen.
345/845	50,000 dozen.
347/348/647/648	2,000,000 dozen.
349/649	2,200,000 dozen.
352/652	1,550,000 dozen.
447	30,000 dozen.
632	3,000,000 dozen pairs.

Any shipment for entry under the special Access Program which is not accompanied by a valid and correct certification and Export Declaration in accordance with the provisions of the certification requirements established in the directive of February 19, 1987 shall be denied entry unless the government of Jamaica authorizes the entry and any charges to the appropriate designated consultation levels or specific limits. Any shipment for entry under the special Access Program which is found not to qualify for the special Access Program may be denied entry into the United States.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth or Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisons of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-29066 Filed 12-12-89; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Army

Record of Decision; Proposed Actions at U.S. Army Kwajalein Atoll

Introduction

Pursuant to Council on Environmental Quality regulations implementing the National Environmental Policy Act, this document records the U.S. Army decision to implement proposed actions at U.S. Army Kwajalein Atoll (USAKA).

USAKA has served as a Department of Defense (DOD) Major Range and Test Facility since the late 1950's. The Proposed Action is to provide test range facilities and support services at USAKA for continuing research, development, operational missions, operational space tracking missions, and Strategic Defense Initiative (SDI) activities.

The Strategic Defense Initiative Organization (SDIO) needs to conduct Demonstration/Validation and technology development testing to support the acquisition of a Strategic Defense System. In 1987, environmental assessments (EAs) were prepared to support the decision to move six strategic defense technologies from concept exploration (Milestone 0) to Demonstration/Validation (Milestone 1) in the DOD major weapon systems acquisition process. The EAs revealed the potential for cumulative impacts at USAKA from three of the technologies: Exoatmospheric Reentry-vehicle Interceptor Sub-system (ERIS); Ground Based Surveillance and Tracking System (GSTS); and Space Based Interceptor (SBI). Findings of no significant cumulative impacts were issued for the Demonstration/Validation testing conducted in the United States; however, based on the potential for significant cumulative impacts at USAKA, SDIO and the Army decided to prepare an environmental impact statement (EIS) for the testing at USAKA.

An EIS was prepared with the U.S. Army Strategic Defense Command (USASDC), parent command for USAKA, acting as lead agency. The SDIO and the U.S. Army Corps of Engineers served as cooperating agencies for the EIS, which was completed in October 1989. The SDIO has issued its own Record of Decision which covers the SDI testing to be conducted at USAKA and closes out the environmental impact analysis process that began with the 1987 EAs. The SDIO Record of Decision is incorporated by reference as part of this document.

Based on the findings of the EIS, a mitigation plan has been developed which, when fully executed, will avoid or reduce to insignificant levels negative environmental impacts resulting from implementation of the Proposed Action. Moreover, these mitigation efforts will also reduce the negative environmental effects found to result from ongoing activities at USAKA. The U.S. Army is firmly committed to full execution of this mitigation plan which is summarized in this document and incorporated by reference.

Alternatives

The USAKA EIS considers three alternatives: No-Action; Proposed Action; and Change of Duration. The No-Action Alternative involves the continuation of USAKA mission activities. It includes missile launches for test flights, meteorological data gathering, radar calibration, the sensing and tracking of incoming reentry vehicles for DOD test programs, and space surveillance. Test programs are supported by radar and optical sensing equipment, telemetry, communications, and other technical range support facilities. Base operations include all the activities required to support a community of almost 3,000 people in an isolated location—transportation, utilities, housing, community support, maintenance, and repair services.

The Proposed Action consists of SDI and non-SDI activities planned to be conducted at USAKA. The proposed SDI testing includes the launch of target and interceptor missiles from Meck, Omelek, and Roi-Namur Islands, covering Demonstration/Validation tests associated with ERIS, GSTS, and SBI. In addition, it encompasses experiments associated with the concept development of the Ground Based Radar (GBR), the High Endoatmospheric Defense Interceptor system (HEDI), and the Airborne Optical Adjunct (AOA). It also analyzes technology development efforts associated with the Aerothermal Reentry Experiment, the Exoatmospheric Discrimination Experiment, the High Altitude Learjet Observatory and Infrared Instrumentation System, the Mid-Course Sensors Experiment, the Optical Aircraft Measurement Program, Project Cardinal, and the Strategic Target System.

Non-SDI activities, other than the on going activities, proposed for USAKA are the construction on Kwajalein Island of a desalination plant and family housing and on Roi-Namur Island a sewage treatment plant and a document control facility.

The Change of Duration Alternative differs from the Proposed Action in that testing of two SDI activities would be delayed, one for two years (GBR) and one for five years (HEDI). This alternative would have the effect of decreasing the number of SDI personnel at USAKA, thereby potentially lessening the stresses on the environment related to population increase.

Two alternatives which were rejected early in the process due to their unreasonableness were in the reduction of the level of activities at USAKA and the relocation of the USAKA mission to another place. I concur with the rejection of these alternatives for the reasons stated in the EIS. Primarily, I reject them because implementation of either of these alternatives would delay SDI and non-SDI activities as well as ongoing missions at USAKA or preclude them. Given the national security priority to demonstrate the feasibility of Strategic Defense, reduction or relocation of USAKA operations would be inconsistent with this national goal.

Impacts/Mitigations

The EIS reveals that most of the significant negative impacts which exist at USAKA are as a result of the ongoing mission activities and are not specifically related to SDI or non-SDI activities planned at USAKA. Thus, the vast majority of negative impacts flow from the No-Action Alternative and not from the Proposed Action or Change in Duration Alternatives. Nonetheless, because of the existing detrimental environmental conditions, SDI and non-SDI activities, whether associated with the Proposed Action or Change in Duration Alternatives, would exacerbate these already negative conditions. The EIS process has determined that significant negative impacts are occurring or will occur if either the Proposed Action or Change in Duration Alternatives are chosen in the following areas: groundwater quality; marine water quality; air quality; island flora; marine biological resources; rare species; archeological, cultural, or historical resources; housing; wastewater treatment; solid and hazardous waste handling; and drinking water.

All practical means to avoid or minimize environmental harm from the Proposed Action have been adopted. Additionally, inasmuch as the Proposed Action exacerbates ongoing activities, the Army will correct existing environmental deficiencies as a part of the overall mitigation plan. Some mitigations take the form of studies to fully define the extent of the problem and allow the mitigation to be tailored to the increase effectiveness. In

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addition, these studies may result in revealing additional mitigative measures which would be required. These additional requirements will be adequately addressed as they arise in consultation with United States Environmental Protection Agency (USEPA) and the Republic of the Marshall Islands (RMI). Standards used to develop mitigations in the mitigation plan and in this Record of Decision are based upon standards substantively similar to U.S. standards; however, alternative standards which are fully protective of health, safety, and the environment will be developed in consultation with the RMI and USEPA as envisioned in section 161 of the Compact of Free Association (48 U.S.C. 1681), the governing environmental protection obligation for United States activities in the RMI. These alternate standards may affect the ultimate mitigations implemented under this Record of Decision. The mitigation plan details all impacts and mitigation measures identified in the EIS; impacts and mitigation measures for the Proposed Action are summarized below.

a. *Freshwater.* Demands on the Kwajalein groundwater lens would jeopardize its availability as a source of fresh drinking water, particularly during drought periods. The potential to overpump the groundwater lens would increase the potential for temporary groundwater quality degradation because of saltwater infiltration. Mission activities proposed for USAKA would increase the risk of contamination or lens wells because of current hazardous materials and waste handling practices at USAKA. A desalination plant on Kwajalein will be installed to mitigate the increased demands on the groundwater lens system. Improved hazardous materials and waste handling procedures will be implemented to minimize the potential for contamination. The USEPA Primary Drinking Water Standards will be implemented as a basis for contaminant monitoring.

b. *Marine Water Quality.* Impacts on marine water quality—because of existing solid and hazardous waste management practices, treated sewage effluent at Kwajalein, untreated sewage effluent at Roi-Namur, dredging, and quarrying—will all increase as a result of the higher population and level of activities. Mitigations that will minimize impacts that result from sewage, solid waste, and hazardous waste are described below in their respective sections. Monitoring for heavy metals, hydrocarbons, bacteria, nutrients, tissue metals concentrations, sediment heavy metals concentration; bioassay tests; and, if necessary, bioaccumulation tests for crabs and other organisms will be conducted.

c. *Air Quality.* The increase in solid waste burning and power plant operations will exacerbate the existing exceedances of air quality standards. The new power plant on Kwajalein Island may contribute to air quality standard exceedances. A review of the new power plant design under New Source Review criteria will be conducted for the compliance with best available control technology (BACT). Air quality impacts will be mitigated as necessary by additional air quality controls, reduced power plant operation or increases in stack heights, and the installation of a solid waste incinerator with air pollution controls. Additionally, an ambient air quality study will be conducted and the results used to develop a baseline for the particular environment of the RMI.

d. *Island Flora.* Construction of a missile launch facility on Omelek Island, depending on where it is finally sited, could require the removal of parts of one of Omelek's three stands of native trees. Careful siting of the proposed facilities will be used to reduce the number of trees that will have to be removed. Threes that must be removed will be transplanted to other locations. Also, the use of any chemicals will be controlled through hazardous material handling and waste control measures to avoid impacts to vegetation.

e. *Marine Biological Resources.* Increased quarrying and dredging will produce short-term, localized, insignificant impacts. The sewage treatment plant which will be built on Roi-Namur Island will reduce impacts to marine life from untreated sewage effluent. To minimize shoreline erosion, quarries will be sited at least 100 feet from the outer reef edge. Harbor improvements at Omelek Island could cause a localized impact to the rich coral biota near the existing jetty. This impact will be mitigated through careful site planning and construction practices. In the vicinity of ecologically important areas such as the Omelek harbor area, dredging operations will include the use of silt curtains to prevent the movement of turbidity and suspended sediments over valuable coral reef areas and/or the use of a turbidity control standard. The standard will be established to allow dredging operations to continue provided that turbidity is not elevated 10 NTU above background levels within an established zone of mixing. Silt curtains deployed around the dredge site will serve to reduce the zone of mixing distance and allow dredging to occur adjacent to valuable ecological areas.

f. *Rare, Threatened, or Endangered Species.* Increased operations could put additional pressure on rare giant clams (*T. gigas*) and seagrass beds. To mitigate this, USAKA will issue a regulation that will be based on RMI Environmental Protection Authority regulations, as they are issued, prohibiting the taking of *T. gigas.* Giant clams will be transported from areas where they might be damaged by USAKA activities.

g. *Archaeological/Cultural/Historical.* The proposed construction of a launch facility on Omelek Island could disturb subsurface archaeological resources. Depending on final siting and on construction practices, proposed construction at Kwajalein Island and Roi-Namur Island could disturb subsurface historical resources. Increased population and activity on those islands could have an impact on these same resources. Ground-disturbing activities will be planned so that known sites of archaeological, cultural, or historical resources will be protected. Preconstruction sampling of the Omelek Island site will determine their extent, nature, and significance. If the proposed facilities cannot be located to avoid a significant site entirely, a preconstruction data recovery program will be used under the supervision of a qualified archaeologist. Archaeological monitoring with systematic sampling as necessary will accompany construction of the facilities at Kwajalein Island and Roi-Namur Island, delineated in the EIS. An educational program explaining the significance and importance of the historical resources will be instituted to deter damage to the resource.

h. *Socioeconomic Conditions.* The nonindigenous population at USAKA is expected to increase over the current figure of 2,972 (1988), but will not exceed the historical maximum. The population will increase by 403 in 1992–1993, but in 1994 this will decrease to 315 (excluding temporary construction workers). A shortage of family housing units is predicted for the Proposed Action, even after the construction of 130 new family housing units. Therefore, the use of substandard trailers will continue. The amount of suitable unaccompanied personnel housing is also projected to be deficient. USAKA has requested the construction of 400 units of unaccompanied personnel housing.

Other than the beneficial impacts in terms of increased tax revenues, no impacts were identified affecting the citizens of the RMI.

i. *Utilities.* In the area of Utilities, because impacts are so dependent on population growth, a large number of negative impacts were identified and are listed below accompanied by their associated mitigations.

(1) Drinking Water—Increased demands on the Kwajalein Island freshwater supply that would result from a larger population will exacerbate both the supply and water quality problems identified for the No-Action Alternative. The desalination plant construction will mitigate these impacts.

(2) Waste Water—Increase demands on the wastewater treatment system at Kwajalein Island could result in periodic discharges of excessive suspended solids exceeding primary treatment criteria. Water conservation, additional biological treatment capacity, and an additional clarifier will mitigate predicted impacts on the Kwajalein Island wastewater management system if further analysis shows a decrease in treatment effectiveness. The construction of a new sewage treatment plant on Roi-Namur Island will eliminate the discharge of untreated sewage.

(3) Solid Waste—The increase in population and activity at USAKA will exacerbate already inadequate solid waste management practices. Impacts will be mitigated by constructing facilities and instituting practices that will ensure acceptable disposal. New facilities will include an incinerator and sufficient improvements to the existing landfill to meet accepted standards. The identified adverse impacts of municipal solid waste practices will be mitigated by upgrading the design, construction, and operation of the existing open dump to landfill standards and by installing a municipal waste incinerator. Landfilling of untreated sewage sludge and septic tank pumpings has ceased and will be prohibited. The identified impacts on fresh water and marine water from solid waste handling practices will be mitigated by modifying the construction and operation of the landfill to meet appropriate standards. A hydrogeological study will be conducted; the volume, physical, and chemical characteristics of the leachate will be determined; and the existing quality of the ground water will be assessed.

(4) Hazardous Waste—The increase in population and activity will also exacerbate adverse impacts from hazardous materials and waste handling practices. Impacts will be mitigated by constructing new facilities and instituting new procedures. New facilities will include storage, an industrial furnace, and an acid neutralization unit. Impacts in the area of hazardous waste stem primarily from deficiencies in treatment, storage, and disposal practices.

Inadequate disposal practices for spent batteries will be corrected. Spent batteries will be drained, the acid neutralized, and the sludge disposed of as hazardous waste. Empty battery casings will be shipped to appropriate recycling facilities.

The identified adverse impacts of current waste oil disposal practices will be mitigated through replacement of the current unlined burn pits with an industrial incinerator. The burn pits will be closed and all hazardous material and contaminated soil disposed of. Solvent wastes will be segregated from waste oil and improved tracking and recordkeeping will be implemented. Collection, storage, transportation, and disposal practices that comply with hazardous waste generator management standards will be implemented.

The identified impacts of current petroleum products and solvents storage and use will be mitigated by upgrading the design and construction of the berm walls and floors in above ground storage locations, by complying with the technical requirements for underground storage tanks, and by upgrading the design and construction of hazardous material storage and dispensing areas. Pertinent design and operations considerations will include containment requirements, compatibility of hazardous materials with construction materials, and recordkeeping and inspections requirements.

Identified impacts from existing sandblasting activities will be mitigated by conducting testing to determine contaminant levels and requiring future sandblasting to be conducted in an area that provides containment and that prevents dispersion. Used grit will be tested and disposed of by regulation as dictated by its degree of hazardousness.

(5) Asbestos—Identified potential impacts from asbestos will be mitigated by conducting surveys to determine where facilities containing asbestos exist. Friable asbestos will be wetted, removed, bagged, and shipped to an approved disposal site in accordance with Occupational Health and Safety and USEPA policy. No on site burial of asbestos will be allowed.

(6) PCBs—In addition to storage and disposal of the transformers and oils containing PCBs, remediation of contamination in building 1500 will be in accordance with regulations under the Toxic Substance Control Act (TSCA). Disposal of PCB material will be by a licensed contrastor on the U.S. mainland.

Decision

The analysis in the EIS reveals that the No-Action Alternative is the environmentally preferred alternative. This is mainly due to the small increment of environmental harm which could occur if the Proposed Action or the Change in Duration Alternatives were implemented in addition to the harm being caused by ongoing activities. I am convinced that the mitigations chosen by the Army, in conjunction with those of which SDIO has informed me, will avoid or reduce to insignificant levels all impacts from ongoing activities and either of the action alternatives. Further, there appears to be no environmentally beneficial reason to select the Change in Duration Alternative over the Proposed Action, since the increment of environmental harm between the two alternatives is small and because the steps to mitigate any impacts from the Change in Duration Alternative are also more than adequate to mitigate any impacts from the Proposed Action.

The Director of SDIO, in his Record of Decision on the USAKA EIS has determined that there are excellent economic and technical reasons for selecting the Proposed Action over the Change in Duration Alternative. First, any delay in the development of the GBR and HEDI programs will necessitate an increase in the cost of developing those technologies. This is mainly due to the inflationary factor which must be applied to funding of these programs two to five years hence. Second, the risk of bringing highly complex, interactive technologies into the inventory is reduced the more the testing is integrated. In the case of GBR, for example, it is advantageous to integrate the radar with tests of GSTS and ERIS. Opportunities for simultaneous testing would be lost if the GBR is delayed for two years. Moreover, delay of the HEDI test for five years would have an impact on the integration of terminal defense tests with those in the exoatmospheric environment during the midcourse phase of a ballistic missile flight.

The Director of SDIO has also concluded that there are strong national policy reasons for the selection of the Proposed Action over the No-Action and Change of Duration Alternatives. The President has directed SDIO to develop sufficient information upon which to demonstrate the feasibility of a Strategic Defense System. In order to accomplish this direction, SDIO must conduct Demonstration/Validation and technology development tests of SDI

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elements within the timeframe and according to the parameters set out in the Proposed Action. No other course of action will allow the U.S. to support the feasibility decision or to prove the military effectiveness of the system. The schedule and testing program as described in the Proposed Action must be met in order to satisfy the requirements of the user as validated by the Joint Chiefs of Staff and approved by the Secretary of Defense.

Finally, the Director of SDIO has determined the Proposed Action would accomplish a crucial step in the testing of SDI elements, following the schedule established to assure the viability of an option for the timely development of a Strategic Defense System. Although the Change of Duration Alternative would also support the option to develop a Strategic Defense System, the delay of two significant test programs could compromise the timely development of such a system as a major element of the nation's defense forces.

As to the non-SDI activities contained in the Proposed Action which include desalination plant and family housing on Kwajalein Island and a sewage treatment plant and the document control facility on Roi-Namur Island, there are important environmental, technical, and national policy reasons to support their implementation. The desalination plant, family housing, and sewage treatment plant are also planned mitigations which are designed to offset significant negative impacts from the population growth associated with the Proposed Action. The document control facility is critical for maintaining security. It has almost no impact upon the environment and its primary purpose is to control classified documents essential to the national defense.

The Director of SDIO, in his Record of Decision, decided to go forward with the SDI testing planned to be conducted at USAKA based upon the EIS and the implementation of certain mitigation measures. As the agency responsible for the range where testing will occur and after reviewing the EIS, the SDIO decision, and considering in detail all of the environmental, technical, and national defense implications, I have decided that the Army will implement the Proposed Action as described in the EIS. Specifically, the Army will allow SDI testing at USAKA. I also approve the proposed non-SDI activities to be carried out at USAKA. As a condition of permitting the implementation, the Army will implement all mitigations detailed in the mitigation plan incorporated by reference as part of this document. This includes mitigations to lessen the impact of planned SDIO testing and non-SDI activities as well as mitigations to bring ongoing activities up to standard.

Monitoring/Enforcement

The extent and complexity of the mitigation which is part of this decision mandates a monitoring program. The program will ensure both enforcement and effectiveness of the stated mitigation measures to ensure compliance with all environmental standards and controls applicable to USAKA. In this regard, the RMI has endorsed the EIS and the mitigations addressed therein with the understanding that alternate standards will be developed as envisioned by the Compact of Free Association. Toward that end USASDC will initiate and have lead responsibility in developing alternate standards in consultation with the RMI, USEPA and the Department of State.

USASDC will have overall responsibility for implementation of the mitigation plan, development of alternate standards, and for implementation of the monitoring program, subject to review by my office. Cooperating agencies for this EIS will be called upon to assist in mitigation implementation and in mitigation monitoring, as appropriate. The Army will provide all necessary resources to execute the mitigation plan.

Enforcement monitoring will include review of all efforts to be performed at USAKA to include all proposed contracts involving test activities at USAKA to ensure that those efforts contain appropriate contract provisions consistent with planned mitigation and to ensure that the U.S. protects the environment of the RMI. Funding of planned activities will be made contingent upon the review. In addition, the SDIO and the U.S. Army Corps of Engineers will coordinate planned contract actions involving USAKA with the USASDC Environmental office. All of these reviews will be accomplished early in the acquisition process.

Effectiveness monitoring will be established with the assistance of the Army Environmental Hygiene Agency. Monitoring plans will be developed for appropriate mitigation actions prior to collection of baseline data. Monitoring results of relevant mitigations will be made available to cooperating or commenting agencies and to the public upon request. Routine reporting to SDIO on the status and results of mitigation actions made a part of the SDIO Record of Decision will be accomplished annually.

Dated: December 5, 1989.

Susan Livingstone,

Assistant Secretary of the Army (Installations, Logistics and Environment).

[FR Doc. 89-29006 Filed 12-12-89; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirements concerning Bid Labeling Requirements.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, OMB, room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. John L. O'Neill, Office of Federal Acquisition Policy, GSA (202) 523-3856 or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697-7268.

SUPPLEMENTARY INFORMATION: a. *Purpose:* Sealed bidding is a method of contracting that employs competitive bids, public opening of bids, and awards. In order to safeguard the content of bids, bidders must submit sealed bids addressed to the office specified in the solicitation and showing the time specified for receipt, the solicitation number, and the name and address of the bidder.

The information is required to assure the package is properly safeguarded and is not opened prior to the specified time.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, *18,690;* responses per respondent, *50;* total annual responses, *834,500;* hours per response, *.017;* and total response burden hours, *15,886.*

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523-4755. Please cite OMB Control No. 9000-0042, Bid Labeling Requirements.

Dated: December 6, 1989.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 89-29053 Filed 12-12-89; 8:45 am]

BILLING CODE 6820-JC-M

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirements regarding Type of Business.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, OMB, room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. John L. O'Neill, Office of Federal Acquisition Policy, GSA (202) 523-3856 or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697-7268.

SUPPLEMENTARY INFORMATION: a. *Purpose:* Firms proposing to provide supplies or services to the Government must indicate their type of business to ensure that any subsequent contracts contain the proper provisions and clauses.

This information is used by the Government in preparation of the contract and is then placed in the contract file and becomes a matter of record.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, *79,397;* responses per respondent, *14;* total annual responses, *1,111,558;* hours per response, *.07;* and total response burden hours, *77,810.*

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523-4755. Please cite OMB Control No. 9000-0046, Type of Business.

Dated: December 6, 1989.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 89-29054 Filed 12-12-89; 8:45 am]

BILLING CODE 6820-JC-M

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirements concerning Bid/Offer Acceptance Period.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, OMB, room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. John L. O'Neill, Office of Federal Acquisition Policy, GSA (202) 523-3856 or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697-7268.

SUPPLEMENTARY INFORMATION: a. *Purpose:* Bid acceptance period is the period of time from receipt of bids that is available to the Government to award the contract. This acceptance period is normally established by the Government. However, the bidder may establish a longer acceptance period than the minimum acceptance period set by the Government by filling in the blank. There are instances when the Government is unable to award a contract within the acceptance period due to unforeseen complications. Rather than incur the costly expense of readvertising, the Government requests the bidders to extend their bids for a longer period of time.

These data are placed with the respective bids and placed in the contract file to become a matter of record.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, *3,220;* responses per respondent, *40;* total annual responses, *128,800;* hours per response, *.017;* and total response burden hours, *2,190.*

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523-4755. Please cite OMB Control No. 9000-0044, Bid/Offer Acceptance Period.

Dated: December 6, 1989.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 89-29055 Filed 12-12-89; 8:45 am]

BILLING CODE 6820-JC-M

DEPARTMENT OF EDUCATION

Announcement of Effective Dates

AGENCY: Department of Education.

ACTION: Notice of effective dates.

SUMMARY: Section 431(d) of the General Education Provisions Act requires that most Department of Education regulatory documents be published in the **Federal Register** for forty-five (45) calendar days, or longer, if Congress takes certain adjournments, before they take effect. Since future congressional adjournments cannot be predicted with certainty when a document is published, the Department cannot announce a specific effective date at the time of publication. This notice announces the effective dates for certain regulatory documents subject to the delayed effective date requirement of Section 431(d).

DATES: For effective dates, see **"SUPPLEMENTARY INFORMATION."**

FOR FURTHER INFORMATION CONTACT: Kenneth C. Depew, Acting Director, Division of Regulations Management, Office of the General Counsel, Department of Education, Room 2131, FOB-6, 400 Maryland Avenue, Office of the General Counsel, Department of Education, Room 2131, FOB-6, 400 Maryland Avenue, SW., Washington, DC 20202-2241. Telephone: (202) 732-2887.

SUPPLEMENTARY INFORMATION: The effective date provision for each of the regulatory documents included in this notice stated that the effective date would be announced in a notice published in the **Federal Register.**

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Accordingly, this notice announces the following effective dates:

1. Notice of final funding priority for the Cooperative Demonstration Program, published June 8, 1989 (54 FR 24644).

Date: Effective date: July 23, 1989.

2. Notice of final funding priorities for the Rehabilitation Training Program, published June 9, 1989 (54 FR 24876).

Date: Effective date: July 24, 1989.

3. Notice of final funding priorities for the Special Project and Demonstrations for Providing Vocational Rehabilitation Services to Individuals With Severe Handicaps, published July 3, 1989 (54 FR 27978).

Date: Effective date: September 4, 1989.

4. Notice of final funding priority for the Talent Search Program, published July 18, 1989 (54 FR 30190).

Date: Effective date: September 4, 1989.

5. Notice of applicability of regulations for the Kuhry Bequest Program, published September 8, 1989 (54 FR 37406).

Date: Effective date: October 23, 1989.

6. Notice of final funding priorities for certain new Office of Special Education and Rehabilitative Services direct grant awards published on September 14, 1989 (54 FR 38160).

Date: Effective date: October 29, 1989.

7. Notice of final funding priorities for the Chapter 1—Migrant Education Coordination Program for State Educational Agencies, published on September 15, 1989 (54 FR 38350).

Date: Effective date: October 30, 1989.

(20 U.S.C. 1232(d))

Dated: December 7, 1989.

Edward C. Stringer,

General Counsel.

[FR Doc. 89-29040 Filed 12-12-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP85-169-045]

CNG Transmission Corp.; Notice of Refund Proposal

December 6, 1989

Take notice that on November 28, 1989, CNG Transmission Corporation (CNG) filed a refund proposal in compliance with the Commission's orders on the reserved GSS issue dated May 2 and October 10, 1989.

CNG's proposed distributed of the principal is as follows:

(1) The initial escrow fund of $3,747,245 per year was detemined pursuant to the Stipulation and Agreement in this proceeding. The escrow fund was later increased to $6,679,436 annually to account for the change in the federal income tax rate;

(2) A monthly amount was calculated and allocated to each customer receiving GSS service in that month by the ratio of its contract capacity to the total of all contract capacity for that month.

CNG states that the interest amount shown on the workpapers was computed in accordance with the Commission's regulations through November 9, 1989. Once the Commission has approved CNG's proposed distribution of the escrow fund the interest calculation will be updated, the monies distributed to the GSS customers, and a full refund report made to the Commission.

CNG states that copies of this filing are being mailed to all parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 918 CFR 385.214, 385.211 (1989)). All such protests should be filed on or before December 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29036 Filed 12-12-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-5-21-000]

Columbia Gas Transmission Corp.; Notice of Proposed Changes in FERC Gas Tariff

December 6, 1989

Take notice that Columbia Gas Transmission Corporation (Columbia) on November 30, 1989, tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1, to be effective December 1, 1989:

Twenty-fifth Revised Sheet No. 16B
Fifteenth Revised Sheet No. 16B1
Fifteenth Revised Sheet No. 16B2
Original Sheet No. 16B6
Original Sheet No. 16B7
Original Sheet No. 16B8
Original Sheet No. 16B9
Original Sheet No. 16B10
Original Sheet No. 16B11
Original Sheet No. 16B12

Columbia states that the foregoing tariff sheets modify and supplement Columbia's previous filings in Docket Nos. RP-187, *et al.*, in which Columbia established procedures pursuant to Order No. 500 to recover from its customers the take-or-pay and contract reformation costs billed to Columbia by its pipeline suppliers. Specifically, Columbia proposes to modify its earlier filings in Docket Nos. RP90-26 and TM90-2-21 to permit it to flow through revised take-or-pay and contract reformation costs from (i) Texas Eastern Transmission Corporation (Texas Eastern) pursuant to a filing made on October 11, 1989 which was accepted by the Federal Energy Regulatory Commission's (Commission) order issued on November 9, 1989 in Docket No. TM89-12-17; (ii) Panhandle Eastern Pipe Line Company (Panhandle) pursuant to a filing made on October 12, 1989 which was accepted by Commission's order issued on November 9, 1989 in Docket No. TM90-5-28, and (iii) Panhandle pursuant to a filing made on October 12, 1989 which was accepted by Commission's order issued on November 9, 1989 in Docket No. TM90-6-28.

Copies of the filing were served upon Columbia's jurisdictional customers, interested state commissions, and upon each person designated on the official service list compiled by the Commission's Secretary in Docket Nos. RP88-187, RP89-181, RP89-214, RP89-229, TM89-3-21, TM89-4-21, TM89-5-21, TM89-7-21, RP90-26 and TM90-2-21.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29032 Filed 12-12-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ90-1-45-001]

Inter-City Minnesota Pipelines Ltd., Inc.; Notice of Tariff Filing

December 8, 1989.

Take notice that on December 1, 1989, Inter-City Minnesota Pipelines, Ltd., Inc. ("Inter-City"), 245 Yorkland Boulevard, North York, Ontario, Canada M2J 1R1, tendered for filing a revised tariff sheet to Original Volume 1 of its FERC Gas Tariff to be effective December 1, 1989.

Original Volume No. 1

Substitute Third Revised Sheet No. 61-B

Inter-City states that Substituted Third Revised Sheet No. 61-B reflects Correction to Third Revised Sheet No. 61-B filed on November 21, 1989.

Inter-City states that copies of the filing have been mailed to all of its customers and the affected state regulatory commission.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, DC 20426, in accordance Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29034 Filed 12-12-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-50-000 and TM90-4-37-000]

Northwest Pipline Corp., Notice of Proposed Change in FERC Gas Tariff

December 8, 1989.

Take notice that on November 30, 1989, Northwest Pipeline Corporation ("Northwest") tendered for filing and acceptance the following tariff sheets:

Primary Tariff Sheets

First Revised Volume No. 1

Fifty-Eighth Revised Sheet No. 10
Thirty-Second Revised Sheet No. 10-A
Fourth Revised Sheet No. 12

Original Volume No. 1-A

Twenty-Second Revised Sheet No. 201

Original Volume No. 2

Twelfth Revised Sheet No. 2.3

Alternate Tariff Sheets

First Revised Volume No. 1

Alternate Fifty-Eighth Revised Sheet No. 10
Alternate Thirty-Second Revised Sheet No. 10-A
Fourth Revised Sheet No. 12

Original Volume No. 1-A

Alternate Twenty-Second Revised Sheet No. 201

Original Volume No. 2

Alternate Twelfth Revised Sheet No. 2.3

Northwest states that the purpose of this filing is to update its Commodity SSP Charge and Fixed Monthly SSP Charge, effective January 1, 1990, to (1) reflect interest applicable to October, November and December 1989, (2) the amortization of principal and interest for the months of July, August and September 1989, and (3) to reflect the inclusion of additional SSP Costs that have been incurred since Northwest's last quarterly filing. The proposed revised Commodity SSP Charge reflected in the primary tariff sheets is 3.77 cents per MMBtu, while the alternate tariff sheets reflect a proposed Commodity SSP Charge of 3.75 cents per MMBtu. The primary tariff sheets include carrying charges on four additional supplier settlements from the date of payment to the respective producers, while the alternate tariff sheets include carrying charges associated with the aforementioned settlements commencing January 1, 1990 which is the proposed effective date for the alternate and primary tariff sheets listed above.

Northwest states that a copy of this filing has been sent to all parties of record in Docket No. RP89-137 and to all jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington D.C. 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29033 Filed 12-12-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA90-1-41-002]

Paiute Pipeline Co.; Notice of Compliance Filing

December 6, 1989.

Take notice that on November 30, 1989, Paiute Pipeline Company (Paiute) tendered for filing Second Substitute Eleventh Revised Sheet No. 10 applicable to its FERC Gas Tariff, Original Volume No. 1, in compliance with the Commission's Order issued October 31, 1989 in Docket Nos. TA90-1-41-000 and TA90-1-41-001.

Paiute states that the Commission's October 31, 1989 Order accepted for filing effective November 1, 1989 Substitute Eleventh Revised Sheet No. 10 reflecting Paiute's annual purchased gas adjustment (PGA) filing, subject to certain conditions set forth in the Commission's Order. Paiute was directed to revise its PGA filing or provide additional information concerning six specific areas identified in the Commission's Order. Paiute was further directed to respond to or supply additional information concerning certain issues raised in the protest and intervention filed by Sierra Pacific Power Company.

In response to the Commission's Order, Paiute filed a revised tariff sheet and the requested supplemental information. Paiute noted in its compliance filing that the combined effect of all the revisions and corrections made did not change Paiute's Account No. 191 balance or the proposed effective sales tariff rate set forth in Paiute's original and first substitute PBA filings.

Paiute states that copies of this filing have been mailed to all parties of record and interested state commissions in the above-captioned proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20425 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will

not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29035 Filed 12-12-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-38-004, RP89-89-004]

U-T Offshore System; Notice of Compliance Filing

December 6, 1989.

Take notice that on November 29, 1989, U-T Offshore System (U-TOS) filed certain revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, to be effective December 29, 1989.

U-TOS states that in compliance with the Commissioner's order of October 17, 1989, this filing reflects additional justification for changes made to its previous filing.

U-TOS states that copies of this filing are being mailed to all parties in these consolidated proceedings and Staff.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure [18 CFR 385.214, 385.211 (1989)]. All such protests should be filed on or before December 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29036 Filed 12-12-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP83-137-030, et al.]

Transcontinental Gas Pipe Line Corp., et al.; Filing of Pipeline Refund Reports

December 6, 1989.

Take notice that the pipeline listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports. The date of filing and docket number are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports. All such comments should be filed with or mailed to the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, on or before December 27, 1989. Copies of the respective filings are on file with the Commission and available for public inspection.

Lois D. Cashell

Secretary.

APPENDIX

Filing Date	Company	Docket No.
Oct. 19, 1989	Transcontinental Gas Pipe Line Corporation.	RP83-137-030
Oct. 26, 1989	Alabama-Tennessee Natural Gas Company.	CP86-505-001
Oct. 27, 1989	Paiute Pipeline Company.	RP72-121-011
Oct. 27, 1989	Transcontinental Gas Pipe Line Corporation.	TC89-4-29-005
Oct. 31, 1989	Natural Gas Pipeline Company of America.	RP88-209-023
Nov. 6, 1989	Algonquin Gas Transmission Company.	RP86-41-006
Nov. 8, 1989	Questar Pipeline Company.	RP88-93-009
Nov. 24, 1989	Northwest Pipeline Corporation.	TA86-4-37-012

[FR Doc. 89-29039 Filed 12-12-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-236-001]

The Washington Water Power Co.; Notice of Filing

December 6, 1989.

Take notice that on November 29, 1989, the Washington Water Power Company (Water Power) filed Second Revised Sheet No. 6 to its FERC Gas Tariff, Original Volume No. 2, to be effective October 15, 1989.

Water Power states that this tariff sheets reflects the lower annual and monthly charges to B.C. Gas and otherwise resolves concerns expressed by Staff during the technical conference held on November 27, 1989. Water Power requests that the previously tendered tariff sheet filed on September 15, 1989 be replaced with the tariff sheet filed November 29, 1989.

Any person desiring to protect said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure [18 CFR 385.214, 385.211 (1989)]. All such protests should be filed on or before December 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29037 Filed 12-12-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-199-001 and RP90-13-001]

Algonquin Gas Transmission Co.; Proposed Change in FERC Gas Tariff

December 6, 1989.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on December 1, 1989, tendered for filing, to its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Proposed to be effective, October 16, 1989

Substitute Fourth Revised Sheet No. 629
Second Substitute Second Revised Sheet No. 630

Algonquin states that on June 26, 1989 in Docket No. RP89-199-000 Algonquin filed a request for a waiver of the Commission's regulations as necessary to allow inclusion of standby charges from its suppliers in the Purchased Gas Adjustment ("PGA") calculation (section 17 of the General Terms and Conditions). Algonquin further detailed its request in a subsequent filing made on October 17, 1989 in Docket No. RP90-13-000 to include those standby charges incurred as a result Algonquin's restructuring of its service contracts with Texas Eastern Transmission Corporation ("Texas Eastern"). Specifically, Algonquin requested authority to track Texas Eastern's standby charges incurred as a result of Algonquin converting from service under Texas Eastern's Rate Schedules DCQ and GS to Rate Schedules CD-1 and CD-2.

Algonquin further states that through a Letter Order issued on November 16, 1989 the Commission accepted Algonquin's revised Section 17 language and granted Algonquin authority to track standby charges incurred as a result of Algonquin's conversion from firm sales service to standby service on Texas Eastern's system. Such acceptance was conditional upon Algonquin filing revised tariff language within fifteen (15) days of the issuance of the Commission's Letter Order, clarifying that standby charges are not purchased gas costs and that such charges may be tracked as part of its PGA filings provided such charges are stated as a separately identified component of its rates on an as-billed basis.

Furthermore, Algonquin maintains that it is filing Substitute Fourth Revised Sheet No. 629 and Second Substitute Second Revised Sheet No. 630 to comply with the conditions of acceptance as set forth in the Commission's Letter Order.

Algonquin notes that a copy of this filing was served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 13, 1989.

Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29028 Filed 12-12-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-54-000]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

December 6, 1989.

Take notice that ANR Pipeline Company ("ANR"), on December 1, 1989, tendered for filing, as part of its Original Volume No. 1 of its FERC Gas Tariff, six copies each of the following sheets:

Substitute Twenty-Fourth Revised Sheet No. 18.
Substitute Twenty-Fifth Revised Sheet No. 18.
Substitute Twenty-Sixth Revised Sheet No. 18.
Third Revised Sheet No. 67.
Fifth Revised Sheet No. 88.
Fifth Revised Sheet No. 89.
Fifth Revised Sheet No. 90.
Fourth Revised Sheet No. 90A.
First Revised Sheet No. 90A.1.
First Revised Sheet No. 90B.
Original Sheet No. 128.
Original Sheet No. 129.

ANR states that the above-referenced tariff sheets are being filed in order to effectuate the relief requested in the "Supplemental Request For Cost Recovery Of ANR Pipeline Company", filed on November 13, 1989 in Docket Nos. RP89-45, RP89-127, RP89-193 and RP90-16, and including Docket No. RP90-46: collection of most of the buyout buydown costs involved in such dockets by direct charges to ANR's sales customers. ANR has presented the direct charges to be collected from its sales customers on three bases, depending upon whether the tariff sheets filed herein become effective on December 1, 1989, or January 1, 1990, or June 1, 1990. ANR has requested that December 1, 1989 be selected as the effective date.

ANR states that copies of the filing were served upon each of ANR's customers, and interested State Regulatory Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 North Capitol Street, NE., Washington, DC 20426 by December 13, 1989, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29029 Filed 12-12-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-53-000]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

December 6, 1989.

Take notice that on December 1, 1989, pursuant to section 4 of the Natural Gas Act and part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations thereunder, ANR Pipeline Company ("ANR") tendered for filing with the Commission Sixth Revised Sheet No. 570 of its FERC Gas Tariff, Original Volume No. 2 with an effective date of January 1, 1990.

Sixth Revised Sheet No. 570 reflects a decrease of $3,671 in the monthly charge paid by the High Island Offshore System ("HIOS") to ANR pursuant to Rate Schedule X-64 under Original Volume No. 2 of ANR's FERC Gas Tariff. Rate Schedule X-64 is a Service Agreement dated August 4, 1977 between ANR and HIOS. Under the terms of this Service Agreement, which was approved by Commission Order issued July 6, 1978 at Docket No. CP78-134, ANR provides certain gas measurement, dehydration and related services for HIOS at the Grand Chenier, Louisiana facility.

Any person desiring to be heard or to protest said filing should file a motion to intervene or to protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 29426, in accordance with Rule 211 or Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29030 Filed 12-12-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-213-004, RP89-75-006]

Black Marlin Pipeline Co.; Filing

December 6, 1989.

Take Notice that on November 30, 1989, Black Marlin Pipeline Company (Black Marlin) tendered for filing to become a part of Black Marlin's FERC Gas Tariff, Original Volume No. 1, the following tariff sheets:

Substitute 2nd Revised Sheet No. 105
Substitute 1st Revised Sheet No. 110
5th Revised Sheet No. 121
5th Revised Sheet No. 125

Black Marlin has submitted the listed tariff sheets in compliance with the Commission's November 15, 1989 Order in the referenced docket to clarify applicability of service under Rate Schedules FTS and ITS and delete reference to fuel reimbursement under Rate Schedules FTS/OCS and ITS/OCS.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.214). All such protests should be filed on or before December 13, 1989. Protests will be

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considered by the Commission in determining the appropriate action to be taken, but will serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter.

Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29031 Filed 12-12-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP86-158-018]

Columbia Gas Transmission Corp.; Correction to Filing

December 6, 1989.

Take notice that on November 30, 1989, Columbia Gas Transmission Corporation (Columbia) filed certain revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1, to be effective November 1, 1989.

Columbia states that these tariff sheets are filed to administratively correct certain clerical errors in its compliance filing of November 20, 1989. It states that the tariff sheets correct the PGA surcharge amounts for certain services, correct the retainage percentage for company-use and unaccounted-for (fuel) quantities applicable to transportation services, and correct the price cap negative surcharge amounts for the Commonwealth Customers.

Columbia states that copies of this filing are being mailed to its jurisdictional customers, wholesale customers and interested State Commissions, and all parties on the official service list.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such protests should be filed on or before December 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29024 Filed 12-12-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-1121-002 and RP90-17-000]

Mississippi River Transmission Corp; Tariff Filing

December 6, 1989

Take notice that on November 22, 1989, Mississippi River Transmission Corporation (MRT) submitted for filing the below listed tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1. These tariff sheets reflect a December 1, 1989 proposed effective date.

Second Substitute Thirty-Sixth Revised Sheet No. 4
Second Alternate Substitute Thirty-Sixth Revised Sheet No. 4

MRT states that on October 23, 1989, it filed certain revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1, in compliance with a FERC Order dated September 18, 1989 in the captioned proceeding. MRT later determined that Substitute Thirty-Sixth Revised Sheet No. 4 filed therewith did not reflect a reduction in the D-2 rate component of the Base Tariff Rate approved by the Commission in its September 18, 1989 order. As a result of this error, the Demand Charge D-2 under Rate Schedule CD-1 and the single part rates under Rate Schedule SGS-1 and PI-1 were overstated by approximately 1.2¢. The tariff sheets submitted in the instant filing reflect the D-2 rate reduction.

MRT requests waiver of the notice provisions of its tariff and the Commission's Regulations to permit the tariff sheets contained in the instant filing to be placed in effect December 1, 1989 in lieu of those previously submitted.

MRT states that copies of its filing have been served upon all of MRT's jurisdictional customers and state commissions, as well as on all parties reflected on the Commission's Official Service List in Docket No. CP89-1121-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29025 Filed 12-12-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-191-016, RP90-48-000]

Tennessee Gas Pipeline Co.

December 6, 1989.

Take notice that on November 30, 1989 Tennessee Gas Pipeline Company (Tennessee) filed the following tariff sheets to Second Revised Volume No. 1 of its FERC Gas Tariff:

Third Revised Sheet Nos. 40, 42 and 44
Substitute Third Revised Sheet Nos. 41 and 43
Third Revised Sheet No. 245A

Revised Sheets Nos. 40 through 44 are filed in accord with the terms of the Stipulation and Agreement (October 14, 1987) in Tennessee Gas Pipeline Company, Docket No. RP86-119 (42 FERC ¶ 61,175, order on reh'g, 43 FERC ¶ 61,329 (1988)) and Article XXX of the General Terms and Conditions of Tennessee's Tariff. The Take-or-Pay Demand Rate Surcharge reflected on these sheets is based on fifty percent of the non-affiliate, non-recoupable take-or-pay and contract reformation costs (TOP Costs) paid by Tennessee on or before November 30, 1989. Revised Sheet Nos. 40 through 44 are proposed to be effective January 1, 1990.

Tennessee states that it is submitting Third Revised Sheet No. 245A in order to revise the terms of its take-or-pay recovery procedure consistent with *American Gas Association, et al.* v. *FERC*, No. 87-1568 (DC Circuit, October 16, 1989). Accordingly, Tennessee has eliminated the "sunset" provisions limiting Tennessee's recovery of costs to TOP Costs incurred or known and measurable as of March 31, 1989. Tennessee requests that the Commission accept Revised Sheet No. 245A to be effective November 30, 1989.

Tennessee respectfully requests that the Commission grant any waivers it deems necessary for the acceptance of this filing.

Tennessee states that copies of the filing have been mailed to all parties in this proceeding, affected customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission, with the exception of Schedule 1 of the workpapers, and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29026 Filed 12-12-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-7-062]

Transcontinental Gas Pipe Line Corp.; Compliance Tariff Filing

December 6, 1989.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on November 30, 1989 revised tariff sheets to Second Revised Volume No. 1 and Original Volume No. 2 of its FERC Gas Tariff, which tariff sheets are included in Appendix A attached to the filing. The proposed effective dates of the revised tariff sheets are indicated in Appendix A.

The Commission's "Order Approving Contested Offer of Settlement" dated April 19, 1989 in Docket No. RP87-7-034 approved without modification the Stipulation and Agreement As To Pension Fund Issues ("Agreement") filed by Transco on April 25, 1988, in Docket No. RP87-7-012. The purpose of the instant filing is to revise Transco's sales, transportation, and storage rates to reflect a $3.4 million net annual cost of service increase in accordance with Article II of the Agreement and the Commission's April 19, 1989 Order. The $3.4 million net annual cost of service increase consists of: (1) a $6.0 million annual increase attributable to certain Transco employee benefit plans and (2) a $2.6 million annual reduction due to the elimination of Transco's Thrift Plan costs. Appendix B contains supporting schedules, which detail by service classification, the allocated net cost of service increase and the unit rate effect of such increase.

Transco states that copies of the instant filing are being mailed to customers, State Commissions and interested parties. In accordance with provisions of Section 154.16 of the Commission's Regulations, copies of this filing are available for public inspection, during regular business hours, in a convenient form and place at Transco's main offices at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE. Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before December 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29027 Filed 12-12-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-6-20-000]

Algonquin Gas Transmission Co.; Proposed Change in FERC Gas Tariff

December 7, 1989.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on December 1, 1989, tendered for filing, to its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Proposed To Be Effective January 1, 1990

Thirty-eighth Revised Sheet No. 201
Thirty-ninth Revised Sheet No. 203
Thirty-fifth Revised Sheet No. 204
Thirty-second Revised Sheet No. 205
Eighth Revised Sheet No. 223
Eighth Revised Sheet No. 224
Thirteenth Revised Sheet No. 324

Algonquin states that the Commission, through Opinion No. 334 found that the R&D funding unit for the calendar year 1990 of 1.26¢ per MMBtu to be just and reasonable and shall be collected by jurisdictional members of GRI from January 1, 1990 through December 31, 1990 without regard to purchased gas adjustment clause effective dates. Accordingly, Algonquin states that it is filing the revised tariff sheets, as listed above, to incorporate said GRI funding unit into the applicable Rate Schedules.

Algonquin further states that pursuant to § 154.310(c)(5)(iii) ("Transition Rules") of the Commission's PGA regulations, it is removing the current surcharge rate of negative 0.62¢ per MMBtu at the end of the Transition Rules mandated 10 month amortization period due to end on December 31, 1990.

The net effect of the GRI adjustment is to decrease the commodity charge by 0.20¢ per MMBtu, in Rate Schedules F-1, WS-1, I-1, E-1, I-2, F-2, F-3, F-4, AFT-1, AIT-1 while the removal of the Surcharge will increase the commodity charge under Rate Schedules F-1, WS-1, I-1 and E-1 by 0.62¢ per MMBtu.

Algonquin notes that a copy of this filing was served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 14, 1989.

Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29069 Filed 12-12-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-2-70-000]

Columbia Gulf Transmission Co.; Proposed Changes in FERC Gas Tariff

December 7, 1989.

Take notice that Columbia Gulf Transmission Company (Columbia Gulf), on November 30, 1989, tendered for filing the following substitute revised tariff sheet to its FERC Gas Tariff, Original Volume No. 1, with the proposed effective date of January 1, 1990:

Second Substitute Seventh Revised Sheet No. 5A

This revised tariff sheet is submitted to reflect the Gas Research Institute (GRI) funding unit of 1.26¢ per Dth as authorized by Opinion No. 334 issued by the Federal Energy Regulatory Commission (Commission) on October 10, 1989 in Docket No. RP89-157-000.

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Ordering Paragraph (B) of the Commission's Opinion approves the GRI funding requirement for the year 1990 and provides that members of GRI shall collect from their applicable customers, a general R&D funding unit of 1.26¢ per Dth during 1990 for payment to GRI.

Copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Columbia Gulf's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29096 Filed 12-12-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-2-2-000]

East Tennessee Natural Gas Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

December 7, 1989.

Take notice that on December 1, 1989, East Tennessee Natural Gas Company (East Tennessee) filed First Revised Sheet No. 5A to its FERC Gas Tariff to be effective January 1, 1990.

East Tennessee states that the purpose of this filing is to flow through the fourth demand surcharge implemented by Tennessee Gas Pipeline Company in Docket No. RP88-191 effective January 1, 1990. East Tennessee is flowing these charges to its customers pursuant to Article 30 of its FERC gas tariff, which was accepted by order of the Commission on July 28, 1988.

East Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene; provided, however, that any person who had previously filed a motion to intervene in this proceeding is not required to file a further motion. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29097 Filed 12-12-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-1-5-000]

Midwestern Gas Transmission Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

December 7, 1989.

Take notice that on December 1, 1989, Midwestern Gas Transmission Company (Midwestern) filed Original Sheet No. 7 to First Revised Volume 1 of its FERC Gas Tariff to be effective January 1, 1990.

Midwestern states that the purpose of this filing is to flow through the fourth demand surcharge implemented by Tennessee Gas Pipeline Company in Docket No. RP88-191 effective January 1, 1990. Midwestern is flowing these charges to its customers pursuant to Article 24 of its FERC Gas Tariff.

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene; provided, however, that any person who had previously filed a motion to intervene in this proceeding is not required to file a further motion. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29090 Filed 12-12-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-3-25-000]

Mississippi River Transmission Corp.;

December 7, 1989.

Take notice that on December 1, 1989 Mississippi River Transmission Corporation (MRT) submitted for filing the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 1-A, containing a proposed effective date of January 1, 1990:

Second Revised Volume No. 1

Thirty-Eight Revised Sheet No. 4
Seventh Revised Sheet No. 4B.

Original Volume 1-A

First Revised Sheet No. 2.
First Revised Sheet No. 3.

MRT states that the revised tariff sheets are being submitted to reflect a decrease in the Gas Research Institute (GRI) surcharge to 1.26 cents per MMBtu effective January 1, 1990 in accordance with the Commission's Opinion No. 334, issued on October 10, 1989 at Docket No. RP87-187-000.

MRT also states that copies of its filing have been served upon all of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29098 Filed 12-12-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-5-37-000]

Northwest Pipeline Corp.; Proposed Change in Sales Rates Pursuant to Purchased Gas Cost Adjustment

December 7, 1989.

Take notice that on December 1, 1989, Northwest Pipeline Corporation ("Northwest") submitted for filing a proposed change in rates applicable to service rendered under rate schedules affected by and subject to Article 16, Purchased Gas Cost Adjustment Provision ("PGA"), of its FERC Gas Tariff First Revised Volume No. 1. Such change in rates is for the purpose of reflecting changes in Northwest's estimated cost of purchased gas for the three months ending March 31, 1990.

The current PGA adjustment, for which notice is given herein, aggregates to a decrease of 6.12¢ per MMBtu in the commodity rate for all rate schedules affected by and subject to the PGA. The proposed change in Northwest's commodity rates for the first quarter of 1990 would decrease sales revenues by approximately $1,138,565. The instant filing also provides for an increase in the demand components of Northwest's gas sales rates and revised D-1 and D-2 billing determinants to reflect the proposed realignment in Northwest's service obligation effective October 1, 1989. The reduction in the GRI funding unit to 1.26¢ per MMBtu which was approved by Opinion No. 334 (October 10, 1989) in Docket No. RP89-187-000 is also reflected herein. Sheet No. 10 (Volume No. 1) and Sheet No. 201 (Volume No. 1-A) are filed in the alternative to reflect the SSP surcharge in a manner consistent with Northwest's quarterly Order No. 500 update which was filed November 30, 1989.

Northwest hereby tenders the following tariff sheets to be effective January 1, 1990:

Primary Tariff Sheets

First Revised Volume No. 1

Fifty-Ninth Revised Sheet No. 10
Eighth Revised Sheet No. 303

Original Volume No. 1-A

Twenty-Third Revised Sheet No. 201

Original Volume No. 2

Eighth Revised Sheet No. 2.2

Alternate Tariff Sheets

First Revised Volume No. 1

Alternate Fifty-Ninth Revised Sheet No. 10

Original Volume No. 1-A

Alternate Twenty-Third Revised Sheet No. 201

A copy of this filing is being served on Northwest's jurisdictional customers and affected state commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29091 Filed 12-12-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-9-28-000]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

December 7, 1989.

Take notice that on December 1, 1989 Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the following sheets to its FERC Gas Tariff, Original Volume No. 1 and FERC Gas Tariff, Original Volume No. 2:

FERC Gas Tariff, Original Volume No. 1

Seventy-Sixth Revised Sheet No. 3-A
Fifty-Third Revised Sheet No. 3-B
Ninth Revised Sheet No. 3-F
Fourth Revised Sheet No. 3-G
Second Revised Sheet No. 3-H
Second Revised Sheet No. 3-I

FERC Gas Tariff, Original Volume No. 2

Twelfth Revised Sheet No. 2731
Tenth Revised Sheet No. 2827
Tenth Revised Sheet No. 2850
Eighth Revised Sheet No. 3010

Panhandle states that such filing reflects a rate adjustment pursuant to Opinion No. 334 issued October 10, 1989 in Docket No. RP89-187-000. Ordering Paragraph (B) of that Opinion provides that jurisdictional members of Gas Research Institute (GRI), such as Panhandle, may file a general R&D cost adjustment to be effective January 1, 1990. This adjustment will permit the collection of 1.26 cents per Dt of Program Funding Services for payment to GRI.

Panhandle states that copies of its filing have been served on all affected customers subject to the tariff sheets an applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such petitions or protests should be filed on or before December 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29092 Filed 12-12-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-2-18-000]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

December 7, 1989.

Take notice that on December 1, 1989, Texas Gas Transmission Corporation (Texas Gas) tendered for filing the following revised tariff sheets to its FERC Gas Tariff:

FERC Gas Tariff, Original Volume No. 1

Twenty-second Revised Sheet No. 10
Twenty-second Revised Sheet No. 10A

FERC Gas Tariff, Original Volume No. 2-A

Third Revised Sheet No. 10
Third Revised Sheet No. 11

FERC Gas Tariff, Original Volume No. 3

Sixth Revised Sheet No. 21

The revised tariff sheets are being filed pursuant to section 24 of volume No. 1 and section 20 of volume No. 2-A of Texas Gas's tariff to reflect the 1990 General RD&D Funding Unit authorized by Opinion No. 334, issued by the Commission on October 10, 1989, in Docket No. RP89-187-000.

Copies of the revised tariff sheets are being mailed to Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal

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Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be file on or before December 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29093 Filed 12-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-2-42-000]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

December 7, 1989.

Take notice that Transwestern Pipeline Company ("Transwestern") on December 1, 1989, tendered for filing, as part of its FERC Gas Tariff, Second Revised Volume 1, the following tariff sheet:

73rd Revised Sheet No. 5
40th Revised Sheet No. 6
6th Revised Sheet No. 37

The above referenced tariff sheets are being filed to adjust Transwestern's Gas Research Institute (GRI) surcharge rate pursuant to the Commission's Opinion No. 334, issued October 10, 1989 approving a GRI surcharge rate of $0.0130/mcf, to be effective January 1, 1990. Transwestern herein proposes to effectuate a GRI surcharge rate of $0.0124/dth (as converted from million cubic feet to dekatherms) on January 1, 1990, which represents a decrease of $0.0019/dth from the currently effective GRI surcharge rate of $0.0143/dth.

Transwestern, herein, respectfully requests that the Commission grant any and all waivers of its rules, regulations, and orders as may be necessary so as to permit the above-listed tariff sheets to become effective on January 1, 1990.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29093 Filed 12-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-5-30-000]

Trunkline Gas Co.; Proposed Changes in FERC Gas Tariff

December 7, 1989.

Take notice that on December 1, 1989 Trunkline Gas Company (Trunkline) tendered for filing the following sheets to its FERC Gas Tariff, Original Volume No. 1 and FERC Gas Tariff, Original Volume No. 2:

FERC Gas Tariff, Original Volume No. 1

Seventy-Fourth Revised Sheet No. 3-A
Tenth Revised Sheet No. 3-A.3
Tenth Revised Sheet No. 3-A.4

FERC Gas Tariff, Original Volume No. 2

Eleventh Revised Sheet No. 3725
Tenth Revised Sheet No. 3881
Tenth Revised Sheet No. 3920
Tenth Revised Sheet No. 3969

Trunkline states that such filing reflects a rate adjustment pursuant to Opinion No. 334 issued October 10, 1989 in Docket No. RP88-187-000. Ordering Paragraph (B) of that Opinion provides that jurisdictional members of Gas Research Institute (GRI), such as Trunkline, may file a general R&D cost adjustment to be effective January 1, 1990. This adjustment will permit the collection of 1.26 cents per Dt of Program Funding Services for payment to GRI.

Trunkline states that copies of its filing have been served on all affected customers subject to the tariff sheets and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.2311 and 385.214). All such petitions or protests should be filed on or before December 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29094 Filed 12-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-6-43-000]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

December 7, 1989.

Take notice that Williams Gas Company (WNG) on December 1, 1989, tendered for filing the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Seventeenth Revised Sheet No. 6
Third Revised Sheet No. 6A
Sixteenth Revised Sheet No. 7
Third Revised Sheet Nos. 6B-6D

The proposed effective date of these tariff sheets is January 1, 1990.

WNG states that Seventeenth Revised Sheet No. 6 and Sixteenth Revised Sheet No. 7 reflect a decrease in the GRI funding unit from 1.51¢ per Dth to 1.26¢ per Dth for the year 1990, as approved by the Commission's Opinion No. 334, issued October 30, 1989.

WNG states that Third Revised Sheet Nos. 6B-6D are being filed to track additional costs allocated to WNG by Transwestern Pipeline Co. pursuant to Order No. 500 and WNG's take-or-pay passthrough Docket No. RP89-40.

WNG states that in accordance with submission procedures for electronic filings in Commission Order No. 493, *et al.*, WNG hereby submits a diskette along with the corresponding hard copies. Such hard copies include the same information as contained on the diskette.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29095 Filed 12-13-89; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Adoption of Changes to the Reports of Condition and Income

AGENCY: Federal Financial Institutions Examination Council.

ACTION: Notice of adoption of changes in reporting requirements.

SUMMARY: The Federal Financial Institutions Examination Council (FFIEC) has approved certain changes to the Reports of Condition and Income (Call Report) required quarterly by the Office of the Comptroller of the Currency (OCC) for national banks, the Federal Reserve Board (FRB) for state member banks, and the Federal Deposit Insurance Corporation (FDIC) for insured state nonmember commercial and savings banks. The Call Report changes will fulfill two objectives: (1) To provide the banking agencies with sufficient data to permit the monitoring of banks' risk-based capital levels, while limiting the amount of information reported by individual banks on the basis of bank size and capital level and (2) to provide other data considered necessary for bank supervisory purposes, particularly with respect to the nature and extent of banks' off-balance sheet activities. These changes will be implemented through the adoption of a new risk-based capital schedule (Schedule RC-R), a revised version of the current off-balance sheet schedule (Schedule RC-L), and modifications of existing items or the addition of new items in five other schedules. In addition, the data collected in the risk-based capital schedule during the first three quarters of 1990 will be accorded confidential treatment.

DATES: The effective date for these reporting changes is the March 31, 1990, report date, except for one new item that will be added to Schedule RC-O (Other Data for Deposit Insurance Assessments) as of June 30, 1990.

FOR FURTHER INFORMATION CONTACT:

OCC: David C. Motter, Special Assistant to the Chief National Bank Examiner, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East SW., Washington, DC 20219, (202) 447-1587.

FRB: Rhoger H Pugh, Manager, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue NW., Washington, DC 20551, (202) 728-5883.

FDIC: Robert F. Storch, Chief, Securities and Accounting Section, Division of Bank Supervision, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429, (202) 898-8906.

SUPPLEMENTARY INFORMATION: In August 1989, the Examination Council requested comment on proposed changes to the Call Report (54 FR 35533, August 28, 1989) and sent each commercial and savings bank required to file Call Reports (1) a document describing the proposed changes in reporting requirements and soliciting comments thereon, (2) samples of the report schedules that would be added or otherwise modified, and (3) draft instructions for the proposed risk-based capital schedule (Schedule RC-RBC) and the revised off-balance sheet schedule (Schedule RC-L).

The comment period expired on October 13 and the Examination Council received 18 letters in response to its request for comments: 12 letters from banks and bank holding companies, four from depository institution trade associations, one from a state banking department, and one from a Federal Reserve Bank. Of the letters from banking organizations, only two were from small banks. A majority of the commenters (11) regarded the proposed changes taken as a whole either favorably or somewhat favorably in light of the stated objectives for the changes. Nevertheless, most respondents also made specific comments about particular aspects of the proposed reporting changes or the related instructions.

The Examination Council has considered all of the comments submitted to it and determined that certain modifications should be made to the proposed report forms and related instructions in response to the comments received. After making these modifications, the Examination Council approved revised Call Report requirements that are otherwise substantially the same as those proposed in August. With one exception, these reporting changes will take effect as of March 31, 1990. Furthermore, the information report in the new risk-based capital schedule during the first three quarters of 1990 will be accorded confidential treatment. Data from this schedule for individual banks will become publicly available beginning with the reports for December 31, 1990.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511), the current Reports of Condition and Income required of all FDIC-insured commercial banks and all FDIC-supervised savings banks have been submitted, to and approved by, the Office of Management and Budget (OMB). (OMB Control Numbers: for OCC, 1577-0090; for FRB, 7100-0036; for FDIC, 3064-0052.) Each of the three banking agencies has submitted to OMB for its review the changes to the Call Reports that have been approved by the Examination Council.

Dated: December 8, 1989.

Robert J. Lawrence,

Executive Secretary, Federal Financial Institutions Examination Council.

[FR Doc. 89-29009 Filed 12-12-89; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC, Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-003156-006.

Title: Port Authority of New York and New Jersey Terminal Agreement.

Parties:

Port Authority of New York and New Jersey
Ecuadorian Line, Inc. (ELI).

Synopsis: The Agreement amends the basic lease agreement to: extend the agreement's term to February 29, 1999, provide ELI the option to further extend the agreement's term for an additional five-year period, and set forth the terms for ELI's construction of a temperature control holding room at Shed 138, Port Newark.

Agreement No.: 224-200308.

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Title: Indiana Port Commission Lease Agreement.
Parties:
Indiana Port Commission (Commission)
Pacific Great Lakes Transport Burns Harbor, Inc. (Pacific)
Lakes & Rivers Transfer Corporation, a Division of Jack Gray Transport, Inc. and Federal Marine Terminals Inc. DBA Burns Harbor Terminal Transfer (Burns).
Synopsis: The Agreement provides that Pacific has assigned all rights and obligations under their lease agreement with the Commission, involving property at the Port of Indiana (transit Shed #1, and preferential use of Berths #10 and #11, including outside storage areas adjacent to each of these berths), to Burns. The term of the Agreement is June 9, 1989 through May 31, 1991.

By Order of the Federal Maritime Commission.
Joseph C. Polking,
Secretary.
Dated: December 7, 1989.
[FR Doc. 89-29017 Filed 12-12-89; 8:45 am]
BILLING CODE 6730-01-M

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-009548-036.
Title: United States Atlantic and Gulf Ports/Eastern Mediterranean and North African Freight Conference.
Parties:
Farrell Lines, Inc.
Lykes Bros. Steamship Co., Inc.
Nordana Line AS
Pharos Lines S.A.
Waterman Steamship Corporation.
Synopsis: The proposed amendment would clarify procedures for the discussion and modification or cancellation of proposed or effective independent actions.

Agreement No.: 202-010776-052.
Title: Asia North America Eastbound Rate Agreement.
Parties:
American President Lines, Ltd.
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Liner Systems, Ltd.
Nippon Yusen Kaisha Line
Sea-Land Service, Inc.
Synopsis: The proposed amendment would create a separate voting group having jurisdiction over cargo movements from Korea to the United States, Puerto Rico and the U.S. Virgin Islands.

Agreement No.: 228-010916-003.
Title: Global Equipment Management Agreement.
Parties:
The East Asiatic Co. Ltd. A/S
Johnson Line AB
Rederiaktiebolaget Transocean
Wilh. Wilhelmsen Limited A/S
Barber Blue Sea
Barber West Africa Line
EAC-PNSL Service Ltd.
EAC Lines Trans Pacific Service Ltd.
EAC-West Africa Service
Johnson Scanstar
Johnson South America Lines AB
Pacific Australia Direct Line
Portulloyd
Rosa Line
Scancarriers
Streamline
The East Asiatic Co. Ltd. A/S,
Rederiaktiebolaget Transocean, and
Wilh. Wilhelmsen Limited A/S (with respect to their respective participations in the ScanDutch service)
Swedish Orient Line
Transatlantic-Southern Africa Services
Willine.
Synopsis: The proposed amendment would add as parties to the Agreement: Laser Lines Ltd. AB, Rederiaktiebolaget Transatlantic, EAC-HIL Australia Service Ltd., Laser Eurosal, Laser Rosa, Laser Stream, and Atlantic Container Line BV. It would delete as parties to the Agreement: Johnson Line AB, Rederiaktiebolaget Transocean (except with respect to its participation in the ScanDutch service), EAC-West Africa Service, Johnson South America Lines AB, Rosa Line, and Streamline. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.
Joseph C. Polking,
Secretary.
Dated: December 7, 1989.
[FR Doc. 89-29018 Filed 12-12-89; 8:45 am]
BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-009238-022.
Title: Greece Westbound Conference.
Parties:
Farrell Lines
Lykes Bros. Steamship Co., Ltd.
Sea-Land Service, Inc.
Zim Israel Navigation Company, Ltd.
Synopsis: The modification reduces, for a period of sixty days from the date of effectiveness, the required notification period for independent action from 10 calendar days to 4 calendar days. Parties have requested a shortened review period.

Agreement No.: 206-011286.
Title: United States Atlantic and Gulf Venezuela Freight Conference Carrier Agreement.
Parties:
United States Atlantic/Venezuela Freight Association
United States Gulf/Venezuela Freight Association
Synopsis: The proposed agreement would permit the parties to meet, discuss and agree upon rates, tariffs, service contracts, rules and conditions of service in the trade between U.S. Atlantic and Gulf ports and inland points via such ports, and ports and points in Venezuela.

By Order of the Federal Maritime Commission.

Dated: December 8, 1989.
Joseph C. Polking,
Secretary.
[FR Doc. 89-29076 Filed 12-12-89; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

CoreStates Financial Corp., et al.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8)) and section 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in section 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 5, 1990.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *CoreStates Financial Corp.*, Philadelphia, Pennsylvania; to merge with First Pennsylvania Corporation, Philadelphia, Pennsylvania, and thereby indirectly acquire First Pennsylvania Bank, N.A., Philadelphia, Pennsylvania; First Pennsylvania Bank (NJ), N.A., Evesham Twp., New Jersey; and First Pennsylvania Bank (Del), Wilmington, Delaware.

In connection with this application, Applicant proposes to acquire Centre Square Investment Group, Inc., Philadelphia, Pennsylvania, and thereby engage in providing investment advisory services pursuant to § 225.25(b)(4); First Pennsylvania Investments Company, Philadelphia, Pennsylvania, and thereby act as a discount broker pursuant to § 225.25(b)(15); First Pennsylvania International Capital Corporation, Philadelphia, Pennsylvania, which holds, nonconvertible capital notes of FIBI Holding Company, Ltd., a holding company organized under the laws of the State of Israel, pursuant to approval by Board order; First Pennsylvania Leasing, Inc., Philadelphia, Pennsylvania, and thereby engage in making or acquiring loans or other extensions of credit, in particular, commercial lending related to lease transactions and conditional sales financing pursuant to § 225.25(b)(5); Pennco Life Insurance Company, Phoenix, Arizona, and thereby engage in underwriting, as a reinsurer, of credit life and accident and health insurance in connection with extensions of credit by its subsidiary banks pursuant to § 225.25(b)(8); and Pennamco, Inc., Philadelphia, Pennsylvania, which is currently in the process of liquidation.

Board of Governors of the Federal Reserve System, December 7, 1989.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 89-29049 Filed 12-12-89; 8:45 am]
BILLING CODE 6210-01-M

Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies; Charles A. McNamara III

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 27, 1989.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Charles A. McNamara, III.*, Tulsa, Oklahoma; to acquire 35.89 percent; Michael S. Forsman, Tulsa, Oklahoma, to acquire 16.56 percent; and David W. Holden, Tulsa, Oklahoma; to acquire 2.76 percent of the voting shares of Central Service Corporation, Enid, Oklahoma, and thereby indirectly acquire Central National Bank and Trust Co., Enid, Oklahoma.

Board of Governors of the Federal Reserve System, December 7, 1989.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 89-29050 Filed 12-12-89; 8:45 am]
BILLING CODE 6210-01-M

Pennyrile Bancshares, Inc., et al.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and

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summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than January 4, 1990.

A. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Pennyrile Bancshares, Inc.*, Hopkinsville, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Pennyrile Citizens Bank and Trust Company, Hopkinsville, Kentucky.

Board of Governors of the Federal Reserve System, December 7, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-29051 Filed 12-12-89; 8:45 am]

BILLING CODE 6210-01-M

Synovus Financial Corp., et al.; Notice of Applications to Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 3, 1990.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 100 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Synovus Financial Corp.*, Columbus, Georgia; to engage *de novo* through its subsidiary, Synovus Data Corp., Columbus, Georgia, in providing bank and bank-related data processing services for affiliated and non-affiliated financial institutions, corporations, and businesses pursuant to § 225.25(b)(7); to retain 82 percent of Total System Services, Inc., Columbus, Georgia, and thereby engage in data processing activities; and to retain Columbus Depot Equipment Company, Columbus, Georgia, and thereby engage in leasing activities pursuant to § 225.25(b)(5) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 7, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-29052 Filed 12-12-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Advisory Committee on the Food and Drug Administration; Establishment

Pursuant to Public Law 92-463, the Federal Advisory Committee Act, the Office of the Secretary, Department of Health and Human Services, announces the establishment by the Secretary of the Advisory Committee on the Food and Drug Administration.

The Advisory Committee shall examine the mission, responsibilities and structure of the Food and Drug Administration (FDA) in order to make recommendations on how the FDA can be strengthened to benefit the public health. The Advisory Committee shall provide its advice and recommendations to the Secretary of Health and Human Services and the Assistance Secretary for Health.

The Advisory Committee shall terminate on November 20, 1990, unless the Secretary of Health and Human Services determines that continuance is in the public interest.

Dated: December 6, 1989.

James O. Mason,

Assistant Secretary for Health and Acting Surgeon General.

[FR Doc. 89-28871 Filed 12-12-89; 8:45 am]

BILLING CODE 4150-04-M

Health Resources and Services Administration

Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Public Law 92-463, the Annual Report for the following Health Resources and Service Administration's Federal Advisory Committee has been filed with the Library of Congress: National Advisory Council on the National Health Service Corps.

Copies are available to the public for inspection at the Library of Congress Newspaper and Current Periodical Reading Room, Room 1026, Thomas Jefferson Building, Second Street and Independence Avenue, SE., Washington, DC, or weekdays between 9:00 a.m. and 4:30 p.m. at the Department of Health and Human Services, Department Library, HHS North Building, Room G-400, 330 Independence Avenue, SW., Washington, DC, telephone (202) 245-6791. Copies may be obtained from: Anna Mae Voight, National Advisory Council on the National Health Service Corps, Room 7A-23, Parklawn Building, 5600 Fishers Land, Rockville, Maryland 20857, Telephone (301) 443-4814.

Dated: December 7, 1989.

[FR Doc. 89-29005 Filed 12-12-89; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Regional Administrator-Regional Housing Commissioner

[Docket No. D-89-909]

Designation of Order of Succession; Seattle Regional Office, Region X, Washington

AGENCY: Department of Housing and Urban Development, HUD.

ACTION: Designation of Order of Succession.

SUMMARY: The Regional Administrator-Regional Housing Commissioner of Region X (Seattle) is designating officials who may serve as Acting Regional Administrator-Regional Housing Commissioner, Region X (Seattle), during the absence, disability, or vacancy in the position of Regional Administrator-Regional Housing Commissioner.

EFFECTIVE DATE: December 6, 1989.

FOR FURTHER INFORMATION CONTACT: Waller Taylor III, Regional Counsel, Seattle Regional Office, Department of Housing and Urban Development, 1321 Second Avenue, Seattle, Washington 98101 (206) 442-4970. (This is not a toll-free number.)

Designation: Each of the officials appointed to the following positions is designated to serve as Acting Regional Administrator-Regional Housing Commissioner, Region X (Seattle) during the absence, disability, or vacancy in the position of the Regional Administrator-Regional Housing Commissioner with all the powers, functions, and duties redelegated or assigned to the Regional Administrator-Regional Housing Commissioner: Provided that no official is authorized to serve as Acting Regional Administrator-Regional Housing Commissioner unless all preceding listed officials in this designation are unavailable to act by reason of absence, disability, or vacancy in the position.

1. Deputy Regional Administrator
2. Director, Office of Administration
3. Regional Counsel
4. Director, Office of Community Planning and Development
5. Director, Office of Indian Programs.

Authority: Delegation of Authority, 27, FR 4319 (1962); section 9(c). Department of Housing and Urban Development Act, 42 U.S.C. 3531 note; and Interim Order II, 31 FR 815 (1966).

Dated: December 1, 1989.

William Y. Nishimura,

Regional Administrator-Regional Housing Commissioner, Seattle Regional Office.

[FR Doc. 89-29088 Filed 12-12-89; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM910-GPO-401; NM NM 69164]

Proposed Reinstatement of Terminated Oil and Gas Lease; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of 43 CFR 3108.2-3, George E. Conley petitioned for reinstatement of oil and gas lease NM NM 69164 covering the following described lands located in Lea County, New Mexico:

Eddy County, New Mexico

T. 25 S., R. 27 E., NMPM

sec. 4: SWNW, E½SW, SWSW, SE

Containing 320.00 acres.

It has been shown to my satisfaction that failure to make timely payments of rental was due to inadvertence.

No valid lease has been issued effecting the lands. Payment of back rentals and administrative cost of $500.00 has been paid. Future rentals shall be at the rate of $5.00 per acre per year and royalties shall be at the rate of 16⅔ percent, computed on a sliding scale of 4 percentage points greater than the competitive royalty schedule attached to the lease. Reimbursement for cost of the publication of this notice shall be paid by the lessee.

Dated: December 4, 1989.

Clarence F. Hougland,

Acting Chief, Adjudication Section.

[FR Doc. 89-29061 Filed 12-12-89; 8:45 am]

BILLING CODE 4310-FB

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701-TA-299 and 731-TA-431 (Final)]

Aluminum, Sulfate From Venezuela

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines,[2] pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the act), that an industry in the United States is materially injured by reason of imports from Venezuela of aluminum sulfate, provided for in subheading 2833.22.00 of the Harmonized Tariff Schedule of the United States (previously under item 417.18 of the former Tariff Schedules of the United States), that have been found by the Department of Commerce to be subsidized by the Government of Venezuela. The Commission also determines,[2] pursuant to section 735(b) of the act (19 U.S.C. 1673d(b)), that an industry in the United States is materially injured by reason of imports from Venezuela of aluminum sulfate that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted the countervailing duty investigation effective October 25, 1989, following a final determination by the Department of Commerce that imports of aluminum sulfate from Venezuela were being subsidized within the meaning of section 705(a) of the act (19 U.S.C. 1671d(a)). The antidumping investigation was instituted by the Commission effective August 9, 1989, following a preliminary determination by the Department of Commerce that imports of aluminum sulfate from Venezuela were being sold at LTFV within the meaning of section 735(a) of the act (19 U.S.C. 1673d(a)). Notice of the institution of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notices in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notices in the **Federal Register** of August 24, 1989 (54 FR 35256) and October 30, 1989 (54 FR 43998). The hearing was held in Washington, DC, on October 26, 1989, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on December 6, 1989. The views of the Commission are contained in USITC Publication 2242 (December 1989), entitled "Aluminum Sulfate from Venezuela: Determination of the Commission in Investigation No. 299 (Final) Under the Tariff Act of 1930 and Determination of the Commission in Investigation No. 431 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: December 7, 1989.

By Order of the Commission.

Kenneth R. Mason,

Secretary.

[Fk Doc. 89-29061 Filed 12-12-89; 8:45 am]

BILLING CODE 7020-02-M

[1] The record is defined in § 207.2(h) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(h)).

[2] Chairman Brunsdale dissenting.

[Investigation No. 337-TA-293]

Certain Crystalline Cefadroxil Monohydrate; Change of Commission Investigative Attorney

Notice is hereby given that, as of this date, George C. Summerfield, Esq., of the Office of Unfair Import Investigations has been designated as the Commission investigative attorneys in the above-cited investigation instead of Cheri M. Taylor, Esq.

The Secretary is requested to publish this Notice in the **Federal Register.**

Dated: December 1, 1989.

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Respectfully submitted,
Jeffrey R. Whieldon,
Acting Director, Office of Unfair Import Investigations. 500 E Street, SW, Washington, DC 20436.
[FR Doc. 89-29082 Filed 12-12-89; 8:45 am]
BILLING CODE 7020-02-M

[Investigation No. 332-285]

Durum Wheat; Conditions of Competition Between U.S. and Canadian Industries

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation.

SUMMARY: Following receipt on October 26, 1989, of a request from the Committee on Ways and Means, U.S. House of Representatives, and on November 15, 1989, from the Committee on Finance, United States Senate, the Commission instituted investigation No. 332-285, Durum Wheat: Conditions of Competition Between the U.S. and Canadian Industries, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)). As requested by the Committees, the study will focus on the competitive positions of U.S. and Canadian durum wheat in the U.S. market, but it will also address, to the extent possible, competitive conditions affecting U.S. and Canadian durum wheat in the Canadian market. As requested by the Committees, the Commission will submit its report not later than June 22, 1990.

EFFECTIVE DATE: December 4, 1989.

FOR FURTHER INFORMATION CONTACT: For information on other than the legal aspects of the study, contact John Pierre-Benoist (202-252-1320) or David Ingersoll (202-252-1309), Agriculture Division, Office of Industries, U.S. International Trade Commission. For information on the legal aspects of the study, contact William Gearhart (202-252-1091), Office of the General Counsel, U.S. International Trade Commission.

Background:

As requested by the Committees, the Commission will seek to provide in its report, to the extent possible, the following information:

(1) A description of the U.S. and Canadian durum wheat industries, including patterns of production, processing, and consumption;

(2) Statistical analyses of both U.S. and Canadian durum production, consumption, exports, imports, and import market shares, in terms of both levels and trends;

(3) A description of the current conditions of trade in durum wheat between the United States and Canada, and any recent changes in such conditions, including information on prices, exchange rates, transportation costs, and marketing practices (to the extent such practices have measurable effects). To the extent possible, the Commission will also seek to assess the regional impact of imports by determining their geographic concentration;

(4) A description of the Federal, State, or provincial government (either U.S. or Canadian) programs and policies to assist durum wheat producers and processors—for example programs that reduce fixed costs, programs that enhance revenues, and transportation assistance programs;

(5) A discussion of all other relevant factors affecting conditions of competition, including product prices, transportation costs, and product quality.

Written Submissions: Interested persons are invited to submit written statements concerning the investigation. Written submissions to be considered by the Commission should be received by the close of business on March 30, 1990. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be available for inspection by interested persons. All submissions should be addressed to the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

Hearing impaired persons may obtain information on this study by contacting the Commission's TDD terminal on (202-252-1810).

Issued: December 5, 1989.
By order of the Commission.
Kenneth R. Mason,
Secretary.
[FR Doc. 89-29083 Filed 12-12-89; 8:45 am]
BILLING CODE 7020-02-M

[Investigation No. 337-TA-276 (Enforcement Proceeding)]

Certain Erasable Programmable Read Only Memories, Components Thereof, Products Containing Such Memories, and Processes for Making Such Memories; Designation of Commission Investigative Attorney

Notice is hereby given that, as of this date, Thomas L. Jarvis, Esq., of the Office of Unfair Import Investigations is designated as the Commission investigative attorney in the above-cited investigation.

The Secretary is requested to publish this notice in the **Federal Register.**

Dated: December 7, 1989.
Respectfully submitted,
Jeffrey R. Whieldon,
Acting Director, Office of Unfair Import Investigations, 500 E Street, SW, Washington, DC 20436.
[FR Doc. 89-29084 Filed 12-12-89; 8:45 am]
BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Notice of Lodging Consent Decree; United States v. Marmon Corp.

In accordance with section 122(d)(2)(B) of the Comprehensive Environmental Response, Compensation and Liability Act and with Department of Justice Policy, 28 CFR 50.7, notice is hereby given that on November 28, 1989, a proposed Consent Decree in United States v. The Marmon Corporation, Rival Manufacturing Company, United Gas Pipe Line Company and Kiewit Continental, Inc., Civil Action No. J89-0660(L) was lodged with the United States District Court, Southern District of Mississippi, Jackson Division. The proposed Consent Decree concerns the cleanup of the Flowood, Mississippi Superfund Site ("Site") and reimbursement of expenses incurred and to be incurred by the United States in connection with the Site. The proposed Consent Decree requires the defendants to finance and conduct one hundred percent (100%) of the remedial/design action. The remedial action selected by the Environmental Protection Agency ("EPA") requires the defendants to stabilize/solidify the contaminated soils/sediments and, following stabilization, place the soils/sediments into an excavated slough area. The Consent Decree also requires the defendants to perform operation and maintenance in accordance with the Record of Decision (ROD). Under the Consent Decree, the defendants will reimburse the United States $350,000 for costs previously incurred and all future oversight costs. In the event the defendants fail to perform the work in accordance with the Consent Decree, the United States reserves the right to undertake, pursuant to CERCLA, removal and/or remedial actions and to recover all costs of those actions. The Consent Decree also provides for graduated stipulated penalties for the defendants' failure to comply with the terms of the Consent Decree. Termination of the Consent Decree is effected upon EPA's issuance of the certificate of compliance and completion of the operation and maintenance plan. However, termination shall not affect the Covenant Not to Sue provisions in the Consent Decree or the defendants' obligation to retain records and reimburse EPA oversight costs.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. The Marmon Corporation, et al.*, D.J. Ref. 90-11-2-466.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Southern District of Mississippi, Jackson Division, United States Courthouse, Jackson, Mississippi and at the Region IV, Office of the Environmental Protection Agency, 345 Courtland Street, N.E., Atlanta Georgia. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, room 1647, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $5.60 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Richard B. Stewart,
Assistant Attorney General, Land & Natural Resources Division.
[FR Doc. 89-29059 Filed 12-12-89; 8:45 am]
BILLING CODE 4410-01-M

Notice of Lodging of Consent Decree; United States v. Occidental Chemical Corp. et al.

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that on December 4, 1989, a proposed consent decree in *United States* v. *Occidental Chemical Corp, et al.*, and *New Jersey* v. *Occidental Chemical Corp., et al.*, was lodged with the United States District Court for the District of New Jersey. The actions were brought pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act and certain state statutes for cleanup of a portion of the Diamond Alkali Superfund Site located in Newark, New Jersey, and for the recovery of costs expended by the United States and the State in connection with the Site.

The consent decree is entered into between the United States and the State of New Jersey and Occidental Chemical Corporation (the former and current operator of the site) and Chemical Land Holdings, Inc., (the current owner of the site). The Decree requires the defendants to implement the remedial action selected by the Environmental Protection Agency ("EPA") for the site and to reimburse the United States and the State of New Jersey for their response costs at the site not previously reimbursed through prior settlements.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530. All comments should refer to *United States* v. *Occidental Chemical Corp., et al.*, D.O.J. Ref. 90-11-2-399.

The proposed consent decree may be examined at the office of the United States Attorney, District of New Jersey, Federal Building, Room 502, 970 Broad Street, Newark, New Jersey 07102 and at the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278. Copies of the proposed consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1647, Ninth Street and Pennsylvania Avenue, N.W. Washington, D.C. 20530. A copy of the proposed decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. Any request for a copy of the decree should be accompanied by a check in the amount of $8.60 for copying costs payable to the "United States Treasurer."

Richard B. Stewart,
Assistant Attorney General, Land and Natural Resources Division.
[FR Doc. 89-29056 Filed 12-12-89; 8:45 am]
BILLING CODE 4410-01-M

Antitrust Division

National Cooperative Research Act of 1984—High-Temperature Resistant Diesel Particulate Trap; Southwest Research Institute

Notice is hereby given that, on November 8, 1989, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Southwest Research Institute ("SwRI") filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing the withdrawal of a party to its group research project regarding "High-Temperature Resistant Diesel Particulate Trap." The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the SwRI advised that Navistar International Corporation (Navistar International Transportation Corporation) (effective September 12, 1989) has withdrawn as a party to the group research project.

No other changes have been made in either the membership or planned activity of the group research project.

On August 31, 1988, SwRI filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on September 27, 1988, 53 FR 37654-37655. On November 2, 1988, SwRI filed an additional written notification. The Department published a notice in the **Federal Register** in response to the additional notification on December 2, 1988, 53 FR 48735.

Joseph H. Widmar,
Director of Operations, Antitrust Division.
[FR Doc. 89-29060 Filed 12-12-89; 8:45 am]
BILLING CODE 4410-01-M

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Drug Enforcement Administration

[Docket No. 89-43]

Norman Bertels, M.D., Winston-Salem, NC; Hearing

Notice is hereby given that on May 25, 1989, the Drug Enforcement Administration, Department of Justice, issued to Norman Bertels, M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not deny your application for a DEA Certificate of Registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Wednesday, January 24, 1990, commencing at 9:45 a.m., at the United States Bankruptcy Court, Meyers Law Center Building, 101 West Sycamore Street, Courtroom 3, Third Floor, Greensboro, North Carolina.

Dated: December 4, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89-29073 Filed 12-12-89; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 89-46]

John T. Flanigan, D.D.S., Tampa, FL; Hearing

Notice is hereby given that on June 5, 1989, the Drug Enforcement Administration, Department of Justice, issued to John T. Flanigan, D.D.S., an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, AF1043429, and deny any pending applications for registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Tuesday, January 16, 1990, commencing at 10 a.m., at the United States District Court, 611 North Florida Avenue, Room 435, Tampa, Florida.

Dated: December 4, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89-29074 Filed 12-12-89; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 89-53]

John S. Noell, M.D. Morgantown, NC; Hearing

Notice is hereby given that on June 19, 1989, the Drug Enforcement Administration, Department of Justice, issued to John S. Noell, M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not deny your application for a DEA Certificate of Registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Friday January 26, 1990, commencing at 9:45 a.m., at the United States Bankruptcy Court, Meyers Law Center Building, 101 West Sycamore Street, Courtroom 3, Third Floor, Greensboro, North Carolina.

Dated: December 4, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89-29075 Filed 12-12-89; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application Nos. D-7494 and D-7495]

Withdrawal of the Notice of Proposed Exemption Involving the American Medical Association Pension Plan and the American Medical Association Retirement and Savings Plan (together, the Plans); Located in Chicago, IL

In the **Federal Register** dated October 26, 1988 (53 FR 43284), the Department of Labor (the Department) published a notice of proposed exemption from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 and from certain taxes imposed by the Internal Revenue Code of 1986. The notice of proposed exemption (the Notice) concerned the acquisition or sale by the Plans of shares of certain openend investment companies registered under the Investment Company Act of 1940 (the AMA Mutual Funds) managed by AMA Advisers, Inc. (AMA Advisers), an affiliate of the American Medical Association (AMA), the sponsor of the Plans.

By letter dated November 17, 1989, the applicant informed the Department that the AMA no longer wishes to proceed with the transactions which were the subject of the exemption request. Therefore, the applicant has requested that the exemption application be withdrawn.

Accordingly, the notice of proposed exemption is hereby withdrawn.

Signed at Washington, DC, the 7th day of December, 1989.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 89-29070 Filed 12-12-89; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 89-104; Exemption Application No. D-8023 et al.]

Grant of Individual Exemptions; Yehudi M. Felman, M.D., P.C. Defined Benefit Pension Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Yehudi M. Felman, M.D., P.C. Defined Benefit Pension Plan (the Plan), Located in Brooklyn, New York

[Prohibited Transaction Exemption 89-104; Exemption Application No. D-8023]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the purchase of certain shares in a cooperative corporation by the Plan from Yehudi M. Felman, M.D., P.C. (the Employer), a disqualified person with respect to the Plan, and the subsequent lease of an apartment from the Plan to the Employer, provided that the terms of the transactions are no less favorable than the Plan could obtain in arm's-length transactions with an unrelated party and that the transactions represent no more than 25 percent of the assets of the Plan at the time of purchase.[1]

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on November 3, 1989, at 54 FR 46490.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Casino Signs Inc. Money Purchase Pension Plan (the Plan), Located in Las Vegas, Nevada

[1] Because Yehudi Felman is the sole shareholder of the Employer and he and his wife, Brenda Felman, are the only participants in the Plan, there is no jurisdiction under title I of the Act pursuant to 29 CFR 2510.3-3(b). However, there is jurisdiction under title II of the Act under section 4975 of the Code.

[Prohibited Transaction Exemption 89-105; Exemption Application No. D-8066]

Exemption

The restrictions of section 406 (a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale of real property by the Plan to W. Ben Maze, K.A. Maze and Michael Dean Rogers individually, officers and directors of Casino Signs, Inc., and as such parties in interest with respect to the Plan, provided the Plan receives the greater of $96,000 or the fair market value as determined by an independent, qualified appraiser at the time of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on October 2, 1989 at 54 FR 40544.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Howard Simon and Associates, Inc. Profit Sharing Plan (the Plan), Located in Deerfield, IL

[Prohibited Transaction Exemption 89-106; Exemption Application No. D-7984]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to: (1) the purchase, by the individually-directed accounts (the Rollover Accounts) in the Plan of Mr. Howard Simon (Mr. Simon) and his spouse, Mrs. Elizabeth M. Simon (Mrs. Simon) of certain computer equipment (the Equipment) for the total cash consideration of $14,625; (2) the leasing (the Lease) of the Equipment by the Rollover Accounts to Dudley Enterprises, Inc. (DEI), a party in interest with respect to the Plan; (3) the guarantee of rental payment under the Lease by Mr. and Mrs. Simon; and (4) the future sale of the Equipment by the Rollover Accounts to DEI pursuant to an option to purchase, provided the terms of the transactions are at least as favorable to the Rollover Accounts as those obtainable in arm's length transactions with unrelated parties.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on November 3, 1989 at 54 FR 46488.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 7th day of December 1989.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 89-29071 Filed 12-12-89; 8:45 am]

BILLING CODE 4510-29-M

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[Application No. D-7846] et al.

Proposed Exemptions; Retirement System for Savings Institutions (RSSI), et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, room N-5671, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S.Department of Labor, room N-5507, 200 Constitution Avenue NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department on or before December 28, 1989. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Retirement System for Savings Institutions (RSSI), Located in New York, New York

(Application No. D-7846)

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975. If the exemption is granted the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to: (1) The proposed initial acquisition of shares of Newco by RSSI from Newco by means of transferring the operating assets and business of RSSI to Newco in exchange for Newco stock; (2) the proposed purchase of Newco stock by a member of Newco's management from a plan owning units in the investment funds offered by RSSI (a Participating Plan); (3) the proposed purchase of Newco stock by a Participating Plan from Newco or another Participating Plan which is a party in interest by reason of ownership of Newco stock; and (4) the proposed purchase of Newco stock by Newco from the Newco Stock Fund maintained by RSSI, provided the terms of all the transactions are not less favorable to the Participating Plans than those obtainable in arm's-length transactions with unrelated parties.

Summary of Facts and Representations

1. RSSI was established on October 22, 1940 pursuant to section 200 of the Insurance Law of New York. The Department issued an opinion in 1980 that section 200 of the New York Insurance Law, as applied to RSSI, was preempted by the Act. RSSI was established as an investment vehicle for plans sponsored by savings banks, affiliated entities and similar organizations located in New York State and New England. RSSI currently operates as a non-profit trust available as an investment vehicle to pension and profit sharing plans qualified under section 401(a) of the Code. RSSI is also an open-end diversified management investment company, registered under the Investment Company Act of 1940 (the 1940 Act). The business and affairs of RSSI are managed by its Board of Trustees.

2. Approximately 130 Participating Plans own units in the investment funds offered by RSSI. The total number of participants in these Plans is approximately 30,147. As of September 30, 1988, the aggregate value of assets held by RSSI was approximately $559 million. RSSI currently offers eight investment funds, some of which are internally managed by RSSI's employees, and the remainder of which are managed by outside registered investment advisers. RSSI currently provides a broad range of services to the Participating Plans in the area of plan administration.

3. In order to expand the services currently provided by RSSI to the Participating Plans and to unlock the "going concern" value of RSSI's operating assets for the benefit of the Participating Plans, RSSI wishes to undertake the proposed reorganization (the Reorganization). Under its current structure, participation in RSSI is limited to plans qualified under section 401(a) of the Code. RSSI would risk losing its tax-exempt status if it were to offer its products and services on a for-profit basis. Further, RSSI's inability to offer its management the possibility of equity participation in a profit-making enterprise has limited its ability to attract and retain highly capable management personnel. The creation of Newco will provide a vehicle to overcome these limitations for the benefit of Participating Plans. Newco, as an entity separate and apart from RSSI, would be free of the constraints imposed upon RSSI, and would thus be able to develop new products and services which could be offered to third parties. This will enable Newco to develop a broader base of clients and expertise than RSSI currently possesses and to realize certain economies of scale from the enhanced range of activities. The Reorganization will involve several material aspects, which are described below.

4. Under the Reorganization, a new and separate corporation, Newco, [1] will be organized as a Delaware corporation. RSSI will transfer to Newco, in exchange for Newco stock, all of its operating assets and business (e.g., office, furniture, computers, files, goodwill, etc.). In addition, it is anticipated that the current employees of RSSI will, upon the consummation of the Reorganization, become employees of Newco.

5. RSSI's Board of Trustees will be reorganized as may be necessary to comply with federal securities laws. It is contemplated that the Board of Trustees of RSSI following the consummation of the Reorganization will be reduced in size so that the standards of the 1940 Act and any SEC-imposed requirements are satisfied. Most of the persons remaining on RSSI's Board of Trustees, however, will be persons who are currently members of the Board of Trustees.

6. It is contemplated that the Board of Directors of Newco will initially consist of some of the same persons who currently serve on RSSI's Board of Trustees. Each of these persons is, with certain exceptions, the chairman of the board and/or the chief executive officer of the sponsor of a Participating Plan.

7. The investment pool of RSSI, i.e., the pool of assets invested by RSSI for the benefit of Participating Plans, would remain with RSSI. RSSI will continue to operate as a common law trust, exempt from federal taxation under section 501(a) of the Code, and as an open-end mutual fund registered under the 1940 Act.

8. Newco will form at least two operating subsidiaries: one (the Investment Adviser) will, pursuant to a management agreement, manage the RSSI funds currently being managed internally by RSSI employees. The Investment Adviser would also be free to enter into similar arrangements with other mutual funds, individuals, and entities, and its business would not be limited to servicing plans qualified under Code section 401(a). A second subsidiary of Newco (the Service Company) would perform administrative and management services with respect to RSSI and the Participating Plans. The Service Company would essentially be performing the same services for RSSI as are being performed currently by RSSI employees.

[1] While a permanent name has not yet been selected for Newco, the applicants represent that it is presently anticipated that after the consummation of the Reorganization, Newco will be known as "The Retirement System, Inc".

9. The shares of Newco stock received by RSSI in exchange for its operating assets and business would be allocated to the accounts of the Participating Plans in the same proportion that the dollar value of each Participating Plan's account, determined as of a record date established by RSSI's Board of Trustees, bears to the overall dollar value of the total units in RSSI. The record date shall be the date which establishes the right of the Participating Plans to vote on the Reorganization.

10. With respect to Participating Plans that are defined contribution plans (DC Plans), their allocated share of Newco stock would be deposited in a special fund established for that purpose (the Newco Stock Fund). The Newco Stock Fund would differ from RSSI's other funds in several ways: (a) It would be a finite, self-liquidating fund with no other Newco shares deposited other than those allocated to DC Plans; (b) neither plan administrators nor individual participants in DC Plans would be able to voluntarily transfer the value of their units in the Newco Stock Fund to other investment funds offered by RSSI; and (c) all investment and voting decisions by any DC Plan with respect to its allocated shares deposited in the Newco Stock Fund would be made by the plan administrator of the DC Plan and not by the Board of Trustees of RSSI. Participating Plans that are defined benefit plans (DB Plans) would be given the option of depositing their allocated shares of Newco stock either within RSSI's trust (but outside of the Newco Stock Fund and RSSI's other funds), or outside of RSSI's trust with another qualified entity serving as trustee or custodian of the shares on behalf of the Participating Plan.

11. Any Participating Plan that does not want to hold part or all of its allocated Newco shares would have the opportunity, at the time of consummation of the Reorganization (the Closing), and at specified times thereafter, to sell its allocated shares. DC Plans will be given priority over DB Plans in making such sales, for administrative reasons. Since individual participants in a DC Plan would have to have the value of the allocated shares credited to their accounts in the form of units of the Newco Stock Fund and would, upon termination of their employment with the sponsor of the DC Plan, normally have the right to receive the value of those accounts in cash, the applicants represent that the holding of Newco shares by DC Plans raises certain concerns. The DC Plans could incur increased expenses to the extent they would have to: (a) Keep records of the value of units in the Newco Stock Fund allocated to individual participants' accounts; (b) explain to individual participants the meaning and value of their small Newco Stock Fund accounts as reflected in the statements sent to them by the DC Plans; and (c) redeem units in the Newco Stock Fund in order to make lump sum payments to those participants who elect to receive the cash equivalent of the Newco units allocated to their accounts upon the termination of their employment and withdrawal from the DC Plan. The applicants represent that from the perspective of Newco, its stockholders (including the DB Plans) and its management, it would be desirable to minimize to the greatest extent possible the need for Newco to be obligated to repurchase allocated shares from the Newco Stock Fund.

12. Newco shares to be sold by Plans at the Closing would be offered to: (a) DB Plans, pro rata, based on the aggregate number of allocated shares offered and the number of allocated shares that each DB Plan desires to purchase, and (b) in the event that the DB Plans do not purchase all of such offered shares, to new defined benefit plans (New DB Plans) which became unit holders in RSSI after the record date for the Reorganization, and to members of Newco's management. Such acquisitions would be pro rata, based on the aggregate number of allocated shares offered to such New DB Plans and members of Newco's management and the number of such allocated shares each desires to purchase. The applicants represent that they believe that minimizing investments by third parties would best serve the interests of Newco, RSSI and Participating Plans by preserving a continuity of ownership interests in Newco, ensuring that Participating Plans reap the rewards of Newco ownership to the maximum extent consistent with their own investment discretion, maintaining strong ties between RSSI and Participating Plans, and ensuring the continued offering of quality serivices to Participating Plans at reasonable prices.

13. The Participating Plans and Newco's other stockholders will enter into a stockholders' agreement (the Stockholders' Agreement) with Newco and RSSI which would provide, in addition to the above-described opportunities to "cash out" Newco shares initially allocated to Participating Plans, for restrictions on transfers of Newco shares, limitations on the maximum amount of Newco capital stock that could be owned by any Newco stockholder, options in favor of

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Newco to repurchase shares of Newco stock upon the termination of employment or death of a stockholder or involuntary transfer of such shares, the obligation of Newco to repurchase shares in certain circumstances to provide DC Plans with the cash to distribute to withdrawing employees, and for limited third party investment in Newco.

14. The Closing would not be the only opportunity for Participating Plans to sell their allocated shares. Three additional periods (Offer Periods) would open within 30 days following the delivery of Newco's audited financial statements for each of its first three full or partial years of operation. During these Offer Periods, Participating Plans (with DC Plans again having a priority) could sell their allocated shares to eligible purchasers, which would include all Newco stockholders (except DC Plans) as of the date of commencement of such period, and in addition, any DB Plan, New DB Plan or member of Newco's management who was not a stockholder as of the date of commencement of such Offer Period. Upon the termination of employment of a vested participant in a DC Plan, such participant would have the right to receive the cash value of the units in the Newco Stock Fund allocated to his account.

15. With certain specified exceptions, no stockholder of Newco may own more than 5% of Newco's outstanding shares. It is contemplated in addition that, at the time of the Closing, no Participating Plan's investment in Newco stock would exceed 1% of such Plan's overall assets.

16. The Stockholders' Agreement restricts the sale, assignment, transfer, pledge or other disposition of any interest in any shares of Newco's stock by any stockholder of Newco to the specific terms of the Agreement. The Stockholders' Agreement provides that certain of these restrictions will terminate on the third anniversary of the Closing. In particular, the limitation of Participating Plans' selling shares of Newco stock only during Offer Periods and only to a limited group of specified persons, and the restrictions on sales of Newco stock by Newco, shall terminate on the third anniversary of the Closing. The other restrictions on transferability (e.g., the limitations relating to maximum ownership by any stockholder of Newco) will expire not later than the fifth anniversary of the Closing.

17. As a prerequisite to the Reorganization, at least 66⅔% of the outstanding units in RSSI owned by the Participating Plans must be voted in favor of the Reorganization and the Stockholders' Agreement. That approval would be solicited pursuant to a registration/proxy statement of Newco and RSSI which describes in detail the purposes and effects of the Reorganization. Any Participating Plan not in favor of the Reorganization may exercise its inherent right to sell its units in RSSI prior to the closing and thus to sever its relationship with RSSI and have its assets managed elsewhere.

18. All decisions with respect to the purchase, sale and voting of Newco stock held by a Participating Plan (either in RSSI's trust or in a separate trust maintained by the Participating Plan) will be made by a Plan fiduciary independent of Newco. Such Plan fiduciary will either be a single employee (usually an officer) or a committee of selected employees of the sponsor of the Participating Plan. To ensure that the Plan fiduciary is independent of Newco, the Participating Plans and their respective sponsors will bar any employee or officer of the Plan sponsor who is also a director of Newco form participating directly or indirectly in the decision-making process. Of the approximately 130 Plan sponsors which invest their Plan assets in RSSI, it is estimated that at most five of those sponsors may have an employee who is a director of Newco.

19. The applicants represent that a Participating Plan will not buy Newco shares from or sell Newco shares to any fiduciary with respect to such Plan, except that Newco may redeem shares from the Newco Stock Fund, and a member of Newco's management may buy Newco stock from a Participating Plan during one of the Offer Periods. The applicants reaffirm that in each of those two cases, the Participating Plan's decision to sell shares will be made by a fiduciary independent of Newco and the manager involved in the transaction.

20. Neither RSSI nor any Participating Plan will be required to enter into any service agreement with Newco, and any decision by a Participating Plan to enter into a service agreement with Newco will be made by a Plan fiduciary independent of Newco. The Participating Plans (and their respective sponsors) will preclude any Plan fiduciary who is also a director of Newco from participating directly or indirectly in this decision.[2]

21. The sales price of Newco stock at the Closing would equal the fair market value as determined by Merrill Lynch Capital Markets (MLCM). MLCM is a business unit of Merrill Lynch, Pierce, Fenner & Smith, Inc., which is the broker-dealer subsidiary of Merrill Lynch & Co., Inc. MLCM engages in various investment banking activities. RSSI and Newco have no affiliation with MLCM or its affiliates, and none of RSSI's funds owns any securities in Merrill Lynch & Co., Inc.

22. MLCM has presented to RSSI's Board of Trustees, which has accepted, a preliminary report on the Reorganization, which includes a draft of MLCM's option on the fairness of the Reorganization, a valuation of the operating assets and business to be transferred to Newco and of the fair market value of the Newco stock to be allocated to the accounts of the Participating Plans. MLCM's preliminary report states a "going concern" value for Newco of between $4,242,000 and $5,184,000. MLCM calculated this range of "going concern" values by using a formula which resulted in a "going concern" value of $4,713,000. MLCM then converted this number into a range of values by using 110% of this number as the upper limit of the range and 90% of this number as the lower limit of the range. The Stockholders' Agreement will provide that the sales price of Newco stock at the Closing will equal the fair market value of the shares. The fair market value of the the shares will be determined by dividing the "going concern" value determined by MLCM by the number of shares issued and outstanding. If MLCM determines the "going concern" value of Newco to be within a range of values, then the midpoint of the range will be used to calculate the per share price of the Newco stock. MLCM's preliminary valuation will be updated prior to any vote of the Participating Plans on the Reorganization. MLCM represents that it has considered the Reorganization, the Stockholders' Agreement, and the financial records of RSSI and has determined that the Reorganization would be fair to the unitholders of RSSI from a financial point of view. The applicants further represent that MLCM or another qualified independent investment banking firm will be engaged to do appraisals of Newco stock for each of the Offer periods, and the price of the stock will be determined accordingly.[3]

[2] In this proposed exemption, the Department is not providing relief for the receipt of fees with respect to services provided by Newco. In this regard, see section 408(b)(2) of the Act.

[3] MLCM represents that in performing its valuation of Newco stock, its procedures conformed to the requirements of section 3(18) of the Act and the proposed regulations promulgated thereunder. In addition, MLCM represents that for all future valuations of Newco stock, MLCM's procedures will satisfy the requirements of the Department's proposed regulation, in particular proposed

Continued

23. After the third anniversary of the Closing, Participating Plans may sell shares of Newco at any agreed-upon price to any person who agrees to become a party to the Stockholders' Agreement. It is possible at this time that a limited market for Newco stock may develop and that such market would influence, or even govern, the price at which any such sales are made. The applicants represent, however, that the determinations of fair market value of Newco stock which Newco is obligated to obtain per the Stockholders' Agreement are more likely to influence the price at which such sales are made. The Stockholders' Agreement provides that as long as Newco is obligated to purchase stock out of the Newco Stock Fund upon the termination of employment of a vested participant in a DC Plan, Newco must ensure that MLCM (or another investment banking firm selected by RSSI) determines a fair market value for the shares of Newco stock. Newco's obligation to ensure continued valuations for these shares will continue for at least five years, barring earlier termination of the Stockholder's Agreement or the sales of all shares of stock in the Newco Stock Fund. Once Newco's obligation to ensure continued valuations ends, the price at which Newco shares are bought and sold will be determined by the then-prevailing market. It is presently contemplated that at the termination of the Stockholders' Agreement, there may be an underwritten public offering by Newco of its shares of common stock. Such an offering would likely result in a public market for Newco's shares of common stock, either on a national securities exchange or on NASDAQ. Such decisions would depend on the economic and business conditions at the time, as well as Newco's financial condition.

24. As of September 30, 1988, RSSI's operating assets had a depreciated book value of approximately $1,839,000. This value is included in the overall net asset value of RSSI's funds of approximately $559 million as of that date. As a result of the transfer of these operating assets to Newco, the dollar value of units held by Participating Plans in RSSI's investment funds would be reduced accordingly. However, since the "going concern" value of the entire business transferred to Newco is, as determined by MLCM, between $4,242,000 and $5,184,000, the Participating Plans will be allocated approximately 250% more value in the form of Newco shares or units in the Newco Stock Fund than they would lose from their accounts by the transfer of the operating assets to Newco.[4] Furthermore, because the Participating Plans will hold common stock in a for-profit organization (as opposed to having that portion of their investment represented by depreciating assets), there is potential for the Participating Plans to realize long-term equity appreciation.

25. In summary, the applicants represent that the proposed transactions will satisfy the criteria of section 408(a) of the Act because: (a) It is anticipated that no Participating Plan will, as of the Closing, have more than 1% of its assets invested in Newco stock; (b) the Reorganization will be undertaken only if 66⅔% of the outstanding units in RSSI owned by the Participating Plans approve it; (c) any Participating Plan not in favor of the Reorganization may exercise its inherent right to sell its units in RSSI prior to the Closing, so the Reorganization will not be forced on any unwilling Plan; (d) the Participating Plans will be allocated Newco shares worth approximately 250% of the depreciated book value of the operating assets of RSSI being transferred to Newco; (e) MLCM, an independent investment banker has determined that the proposed transactions are fair to the Participating Plans, and will determine the fair market value of the Newco stock at the Closing; and (f) MLCM or another qualified independent investment banking firm will determine the fair market value of Newco stock for each of the Offer Periods.

Notice to Interested Persons

Notice will be provided to interested persons within 30 days of the date of publication of notice in the **Federal Register.** Comments are due within 60 days of the date of publication.

For Further Information Contact: Gary Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number).

regulation section 2510.3-18(b)(4) pertaining to valuation content, unless such requirements are superseded by different requirements set forth in subsequently issued regulations, in which case MLCM will follow such subsequently issued requirements. Furthermore, if an appraiser other than MLCM is retained to perform such valuation, the applicants represent that any contract or agreement with such appraiser will require adherence to Act section 3(18) and the applicable proposed or final regulations promulgated thereunder.

[4] As noted above (see rep. 22), if MLCM determines the "going concern" value of Newco to be within a range of values, then the midpoint of the range will be used to calculate the per share price of the Newco stock.

General Motors Retirement Program for Salaried Employees; General Motors Hourly-Rate Employees Pension Plan; and G.M. Special Pension Plan (Together, the Plans), Located in New York, New York

(Application Nos. D-7814 thru D-7816)

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the acquisition by the Plans on March 4, 1988, of a limited partnership interest in the Equitable Deal Flow Fund, L.P. (the Fund), the general partner of which is a wholly-owned subsidiary of the Equitable Life Assurance Society of the United States (Equitable), a party in interest with respect to the Plans and a limited partner of the Fund, provided that the terms of the transaction were at least as favorable to the Plans as an arm's-length transaction with an unrelated party.

Effective Date: If the proposed exemption is granted, the exemption will be effective March 4, 1988.

Summary of Facts and Representations

1. The Plans are defined benefit plans which were established to provide retirement benefits for eligible hourly and salaried employees of the General Motors Corporation (GMC) and its subsidiaries. The Plans covered a total of approximately 878,258 participants as of December 31, 1987.

The Plans are funded through several trusts (the Trusts) which are empowered to hold, manage and invest funds to be used for providing benefits under the Plans. The aggregate fair market value of the assets of the Trusts was approximately $30,920,900,000 as of December 31, 1987.

2. The Pension Investment Committee of GMC (the PIC) is a committee established by the Finance Committee of the Board of Directors of GMC (the Finance Committee), the named fiduciary of the Plans. The PIC has been delegated responsibility for allocating funds among trustees and investment managers, determining asset mix in accordance with the broad investment guidelines established by the Finance Committee, and overseeing in-house investing for a portion of the assets of

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the Plans. The PIC is comprised of officers of GMC, all of whom are independent of Equitable and its affiliates.

3. The applicant represents that the PIC decided to allocate a portion of the Plans' assets to privately placed debt and equity securities in order to diversify the Plans' assets and take advantage of new investment opportunities which yield a high rate of return. In order to pursue such investments, the PIC directed GMC's in-house investment staff, the Investment Funds Activity Staff, to develop greater access to private market investments. As a consequence, a private market investment group (the PMIG) was created within the Investment Funds Activity Staff.

In the course of pursuing private market investments, members of the PMIG engaged in discussions with Equitable Capital Management Corporation (ECMC). ECMC is a subsidiary of Equitable which actively invests in privately placed mezzanine and other corporate debt and equity securities. The applicant states that ECMC has developed preferential access to investment opportunities in such securities as well as expertise in corporate restructuring by troubled companies. ECMC made available to the Plans the opportunity to invest in the Fund, which ECMC established in 1987 to offer private market investment opportunities to various institutional investors, including employee benefit plans.

4. The Fund is a limited partnership which invests in subordinated debt securities, as well as preferred stock and other equity securities, in connection with leveraged buy-outs and other corporate restructuring transactions. Equitable Managed Assets, L.P. (the General Partner), a wholly-owned subsidiary of Equitable, serves as the general partner of the Fund. ECMC is responsible for the day-to-day management of the Fund.

Equitable and its affiliates have made a capital commitment of $500 million to the Fund. Each new investor in the Fund makes a capital commitment to the Fund. The total projected capital commitments to the Fund, when fully subscribed, are expected to be $2.5 billion. The partnership agreement for the Fund (the Partnership Agreement) states that all partners, whenever admitted to the Fund, share in the Fund's investments. Each partner's allocable share of the Fund's investments is based upon the ratio that such partner's capital commitment bears to the total capital commitments of all partners. As a result, the capital commitment of a new partner determines such partner's sharing ratio in current and future investments (see explanation below in Paragraph 8).

When new partners are admitted into the Fund, a valuation of the Fund's current investments is made by the General Partner pursuant to a valuation methodology established by Arthur D. Little, Inc. (Arthur Little), a qualified, independent financial consultant headquartered in New York, New York. Prospective partners for the Fund are permitted to review the valuation with the General Partner, ECMC, and Arthur Little.

5. The applicant represents that with respect to the valuation of the Fund, there is a thin secondary market for many of the debt securities held by the Fund. This secondary market is usually maintained by the financial institution that assisted the issuer in the placement of the securities. When there is a secondary market for the debt securities, the securities are appraised by the General Partner directly on the basis of the latest available prices on the secondary market. However, if direct price quotations are not available for the debt securities, the value of such securities is determined by assigning a value to that portion of the security that is equivalent to a U.S. Treasury Note of the same average maturity and then assigning a value to any residual amount. In a typical case, the residual value is the spread between the yield on the debt security over the applicable U.S. Treasury rate. In addition, an adjustment is made to the valuation which takes into account available price quotations on similar debt securities as well as changes in general economic conditions which affect the value of such securities. For example, if a change occurs with respect to high yield bonds, as determined by reference to the Salomon Spread Analysis for High Yield Bonds, a corresponding change is made to the value of the debt security.

The applicant represents further that with respect to the valuation of equity securities held by the Fund, such securities are not traded on the secondary market and are appraised by the General Partner on a residual basis pursuant to which the total value of the portfolio company is determined by using a multiple of projected earnings. Such multiple is based on the multiple of earnings at which the securities were initially acquired, adjusted for subsequent developments in the public securities markets. The face value of the outstanding debt securities of the portfolio company is substracted from the total value of the portfolio company and the residual value, if any, is attributed to the equity securities.

6. The applicant states that members of the PMIG reviewed ECMC's private market investment operations as well as the existing investments of the Fund. In addition, the PMIG analyzed the valuation of the Fund and its securities, the performance of the portfolio companies and the impact of such performance and general economic conditions upon the value of the Fund's investments. Members of the PMIG made suggestions for improving the Fund's methodology for valuing the investments, which were agreed to by the parties. Thereafter, the PMIG recommended to the PIC that the Plans invest in the Fund because such a transaction would provide the Plans with an opportunity to further diversify their assets in investments which yield a high rate of return.[5]

7. Arthur Little evaluated the securities portfolio of the Fund on February 22, 1988, at the direction of the General Partner and ECMC, to establish the value of the Fund's investments for the purpose of admitting new partners, including the Plans. The evaluation process involved the following: (1) An analysis of the securities of each company held by the Fund to determine whether changes in the ratings of the securities assigned by ECMC were merited based on events that had occurred between the valuation date and the date such securities were acquired by the Fund; (2) a determination of the changes in the market value of an index of debt securities that contained securities with similar assigned ratings, which were used by ECMC to value the Fund's debt securities; (3) a determination of changes in price-earnings ratios of an index of equity securities which were believed to be representative of the overall market for such securities, for purposes of valuing the Fund's equity securities; and (4) the aggregation of the individual values for all the Fund's securities to calculate the total value of the Fund. Based on the analysis of each portfolio company in the Fund and the provisions made for changes in the value of the overall debt and equity securities markets, Arthur Little concurred with the value assigned to the Fund's portfolio by the General Partner and ECMC on February 22, 1988.[6]

8. Prior to March 1, 1988, the Fund had capital commitments totalling $712,121,212 and investments valued at approximately $600,143,951. On March 1, 1988, two state pension funds with an aggregate capital commitment of $106,616,096 were admitted as additional partners in the Fund. At the request of the Plans, the General Partner agreed to preserve the most recent valuation, adjusted for accrued and unpaid interest or original issue discount on the Fund's investments, until March 4, 1988, to allow the Plans an opportunity to invest in the Fund on that date. On March 4, 1988, the Plans made a capital commitment of approximately $136,892,071 to the Fund, and the other partners increased their capital commitment by $17,345,942, making the total capital commitments to the Fund approximately $974,052,251. The Plans' capital commitment was approximately 14% of the total capital commitments of all partners immediately after the closing on March 4, 1988. On the same date, the Plans were required to make a capital contribution to the Fund of $96,903,900, in order to acquire an approximately 14% interest in the current investments of the Fund, which were valued at approximately $600 million. The amount contributed by the Plans on March 4, 1988, included the Plans' share of the cost of the Fund's pre-existing investments, plus the appreciation of such investments from the date of acquisition until the date of the Plans' admittance to the Fund. The amount contributed by the Plans also included their proportionate share of the Fund's expenses.

Coincidentally with the Plans' investment in the Fund, the pre-existing partners of the Fund, including Equitable and its affiliates, withdrew their proportionate share of the Plans' captial contribution, in accordance with the Partnership Agreement. Equitable and its affiliates withdrew $65,137,088 of the Plans' $96,903,900 cash contribution to the Fund. The applicant states that under the Partnership Agreement, this contribution and withdrawal was treated for federal income tax purposes as a sale of a portion of the partnership interests of the pre-existing partners in the Fund to the Plans.

9. Donaldson, Lufkin & Jenrette Securities Corporation (DLJ), a wholly-owned subsidiary of Equitable, provides brokerage services to the Plans. Therefore, the applicant states that DLJ was a party in interest with respect to the Plans on March 4, 1988 as a service provider to the Plans. As a result, Equitable was a party in interest with respect to the Plans, by reason of its ownership of DLJ, at the time of the transaction. However, the applicant states that neither Equitable nor its affiliates possessed any authority or control over the assets of the Plans at the time of the transaction, nor did Equitable or its affiliates render any particularized investment advice to the Plans' fiduciaries regarding an investment in the Fund or any other investment. In addition, the applicant states that the Fund was not a party in interest under the Act by reason of the partnership interests in the Fund owned by Equitable and its affiliates. Therefore, the applicant is requesting an exemption for the initial capital contribution by the Plans to the Fund because Equitable, a party in interest with respect to the Plans, engaged in an indirect sale transaction with the Plans when the Plans acquired an interest in the Fund.

10. The Plans and the other limited partners of the Fund, including Equitable and its affiliates, have made additional capital contributions to the Fund pursuant to their aggregate capital commitment. As a limited partner in the Fund, the Plans are not liable for any amounts beyond the value of their interest in the Fund and the unpaid balance of their capital commitment. The Plans are also not liable to make any loans or other extensions of credit to the Fund because, under the Partnership Agreement, the Fund is not permitted to borrow or otherwise incur indebtedness.

The applicant represents that the Plans' additional capital contributions to the Fund are not prohibited transactions under the Act because such transactions are not a sale of the partnership interests of the pre-existing partners in the Fund to the Plans. The applicant states that additional capital contributions to the Fund by the Plans, or any of the other partners of the Fund, do not result in the displacement of the Fund's partners from a portion of their share of the Fund's investments. Therefore, Equitable and its affiliates have not received and will not receive any portion of such additional capital contributions made by the Plans. All additional capital contributions to the Fund by existing partners of the Fund are used to acquire new investments for the Fund's portfolio.[7]

11. The General Partner and ECMC have undertaken to operate the Fund as a venture capital operating company (VCOC) and to acquire management rights over existing portfolio companies. The Partnership Agreement generally restricts the type and amount of investments by the Fund to eligible investments of a VCOC. The applicant represents that the Fund has satisfied all the requirements necessary to be considered a VCOC under the Department's "plan asset" regulation.[8] Thus, the applicant asserts that the Fund is not considered to hold "plan assets" as a result of the investment by the Plans, or any other benefit plan investors, in the Fund. Accordingly, the applicant states that the assets of the Plans are considered to consist solely of the partnership interest held by the Plans and are not considered to extend to any interest in the underlying securities held by the Fund.[9]

12. In summary, the applicant represents that the transaction met the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because: (a) The Plans purchased a limited partnership interest in the Fund under the same terms and conditions that existed in other transactions with the Fund involving unrelated parties; (b) the valuation of the Fund's investments, which determined the amount of the Plans' capital commitment and initial cash contribution for acquiring approximately a 14% interest in the fund, was conducted pursuant to a valuation methodology established by Arthur Little, an independent, qualified financial consultant; (c) Arthur Little evaluated the securities portfolio of the

[5] The Department notes that section 404(a)(1) of the Act requires, among other things, that a fiduciary of a plan must act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries, when making investment decisions on behalf of a plan. In order to act prudently in making investment decisions, plan fiduciaries must consider, among other factors, the availability, risks and potential return of alternative investments for the plan. Thus, a particular investment by a plan, which is selected in preference to other alternative investments, would generally not be prudent if such investment involved a greater risk to the security of plan assets than such other investments offering a similar return. In this proposed exemption, the Department expresses no opinion as to whether the investment by the Plans in the Fund satisfied the requirements of section 404(a)(1) of the Act.

[6] The applicant represents that neither the General Partner nor ECMC was a party in interest with respect to the Plans at the time of the valuation of the Fund for the purpose of admitting the Plans as new partners. In addition, the applicant states that neither the General Partner nor ECMC is a party in interest under the Act as a result of the investment by the Plans in the Fund (see Paragraph 11 herein).

[7] The Department is expressing no opinion as to whether additional capital contributions by the Plans to the Fund would be a prohibited transaction under the Act and is not providing any exemptive relief herein for such transactions.

[8] See 29 CFR 2510.3-101(d).

[9] The Department expresses no opinion in this proposed exemption as to whether the Fund qualifies as a VCOC. In this regard, the Department is providing no exemptive relief herein for the selection of, or the provision of services and fees to be received by, the General Partner, ECMC, or any other affiliate of Equitable. Further, the Department notes that in making a decision to invest in a VCOC, plan fiduciaries should consider, among other factors, that the fiduciary responsibility provisions of the Act do not apply to the operation of a VCOC.

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Fund on February 22, 1988, at the direction of the General Partner and ECMC, and concurred with the value assigned to the Fund's portfolio by the General Partner and ECMC; (d) the valuation methodology was reviewed and approved, prior to the Plans' acquisition of a partnership interest in the Fund, by the Plans' fiduciaries, all of whom were independent of Equitable and its affiliates; and (e) the Plans' fiduciaries determined, based on an analysis of ECMC's private market investment operations, that the transaction was in the Plans' interest because it provided the Plans with an opportunity to further diversify their assets in investments which yield a high rate of return.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

Newell Clinic Association Self-Employed Profit Sharing Plan (the Plan), Located in Chattanooga, Tennessee

(Application No. D–8190)

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471 April 28, 1975). If the exemption is granted the restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed purchase of two adjacent parcels of undeveloped real property (the Properties) from Dr. Edgar Akin (Dr. Akin), a party in interest with respect to the Plan, by his account under the Plan, provided the aggregate purchase price is no less than the aggregate fair market value of the Properties on the date of the purchase.

Summary of Facts and Representations

1. The Plan is a profit-sharing plan which permits each Plan participant to control the investment of the vested portion of his account under the Plan. In this regard, the Plan requires the Plan trustee to segregate any portion of the Plan's assets subject to the management of a Plan participant into one or more separate accounts, to charge any expenses related to investments directed by such participant against his accounts, and to credit all investment income or losses on investments in such separate accounts to such separate accounts only. The Plan states that these separate accounts shall not share in any income of the Plan's remaining assets. As of August 21, 1989, the Plan covered approximately 15 participants, including Dr. Akin, who is a partner in the partnership maintaining the Plan. As of June 30, 1989, Dr. Akin's account balance under the Plan amounted to $303,734.10, and since that date a contribution in the amount of $24,528 has been added to his account, which is fully vested.

2. In June of 1987, Dr. Akin purchased the Properties, which are two parcels of undeveloped real property. It is represented that at that time, Dr. Akin did not realize that the Plan provided for directed investments and that had he been aware of this feature, he would have instructed the Plan trustee to acquire the Properties directly as an investment for his account under the Plan. The Properties are lots 4 and 5 of the Stonehenge Subdivision, located on Stonehenge Drive in Chattanooga, Tennessee.

3. The aggregate fair market value of the Properties was appraised by David E. Uhles, RM (Mr. Uhles) as $78,000 as of October 26, 1989. Mr. Uhles states that he is affiliated with, among others, the American Institute of Real Estate Appraisers, is a former treasurer and vice president of Chapter 147 of the Society of Real Estate Appraisers, and has experience since 1972 in real-estate appraisal services and sales. He states that he sold a lot to Dr. Akin in 1974 and has appraised residential properties for him since then but that he has no other relationship to Dr. Akin. Mr. Uhles further states that less than one percent of his yearly gross income since 1986, when he started his own business, has been derived from his business with Dr. Akin.

4. It is proposed that to purchase the Properties, Dr. Akin's account under the Plan will pay the purchase price in a cash lump sum on the date of the purchase and that the purchase price will equal the aggregate fair market value of the Properties as of the date of the purchase. Based on the appraisal described in the preceeding paragraph, the estimated purchased price will be $78,000. However, the applicant states that before the purchase is consummated, Mr. Uhles will be contacted to determine if the aggregate fair market value of the Properties has changed between October 26, 1989, the date of Mr. Uhles' appraisal, and the date of the actual purchase. The applicant represents that the Plan will not pay any commissions or other expenses in effecting the proposed purchase.

5. In summary, the applicant represents that the proposed transaction satisfies the exemption criteria set forth in section 408(a) of the Act because: (a) The proposed purchase price will equal the aggregate fair market value of the Properties as of the purchase date; (b) the aggregate fair market value of the Properties as of October 26, 1989 has been determined by a qualified unrelated appraiser who will determine whether such value has changed as of the date of the actual purchase; (c) no commissions or other selling expenses will be charged to the Plan; (d) the proposed purchase will not exceed 25% of the value of Dr. Akin's vested account balance under the Plan; and (e) the only Plan participant affected by the proposed purchase will be Dr. Akin, and he desires the purchase to be consummated.

Notice to Interested Persons: Since the only Plan assets involved in the proposed transaction are those in Dr. Akin's account under the Plan and he is the only participant affected by the proposed transaction, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and hearing requests on the proposed exemption are due 30 days after the date of publication of this notice in the **Federal Register**.

For Further Information Contact: Mrs. Miriam Freund of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Columbia Urological Associates, P.A. Second Restated Money Purchase Plan and Columbia Urological Associates, P.A. Second Restated Profit Sharing Plan (Collectively, the Plans), Located in Columbia, Tennessee

(Application No. D–8136 and D–8137)

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale (the Sale) of a certain parcel of real property (the Property) located in Columbia, Tennessee by the Plans to James M. Fitts, Jr., M.D. (Dr. Fitts), a party in interest with respect to the Plans, provided that the consideration paid for the Property is not less than the greater of either the sum $9,500 or the fair market value of the Property on the date of the Sale.

Summary of Facts and Representations

1. The Plans are a money purchase plan and a profit sharing plan with each having six participants and total assest of $213,365.08 and $229,408.08, respectively, as of August 18, 1989. The fair market value of the Property represents approximately two percent of the total assets. Dr. Fitts is the fiduciary for the Plans with discretionary authority and responsibility for the investments of the Plans. The location of the Plans is 1407 Hatcher Lane in Columbia, Tennessee.

2. The sponsoring employer (the Employer) of the Plans, a professional association performing certain medical services, is owned by Dr. Fitts, who is the applicant (the Applicant) for the proposed exemption. The clinic facilities of the Employer are located upon real property which abuts upon the Property. The Property is described as a level 35 feet by 50 feet lot which is partially located in an abandoned alley and in the southwest portion of Parcel 29.02 as shown on the Maury County, Tennessee Tax Map 100]–D–100]. It is shown to have no access to a street except through or over adjacent properties owned by either the Applicant or unrelated persons. A determination was made, as of June 8, 1989, that the fair market value of the Property is $8,500 by Mr. G. Ray Porter of Columbia, Tennessee, a qualified, independent appraiser.

3. The Plans purchased the Property from unrelated parties on January 7, 1987, for $5,300 and spent an additional $3,136.61 for the installation of a required new drainage pipe, site preparation, recording the deed, and relocating a telephone cable. During the Plans' ownership of the Property, the Property was neither leased to nor used by a person who is a party in interest with respect to the Plans. The purchase of the Property and the improvements were done in anticipation of acquiring adjacent property and constructing rental facilities which would provide income to the Plans. A change of circumstances experienced by the owners of the adjacent property precluded the purchase of adjacent property, resulting in the Property becoming superfluous to the investment portfolio of the Plans. Because of the location of the Property and the expressed disinterest in purchasing the Property by the adjacent property owners, the Applicant proposes to purchase the Property for cash, paying a premium of 12 percent in excess of the amount expended by the Plans in acquiring and improving the Property.[10] This purchase is to enable the Plans to rid itself of a non-income producing investment and invest the proceeds of the Sale in income producing investments. None of the fees, commissions, or expenses of the Sale will be incurred by the Plans.

4. In summary, the Applicant represents that the proposed transaction satisfies the criteria for an exemption under section 408(a) of the Act because (a) the Sale will be a one-time transaction for cash with no expenses, commissions, or fees incurred by the Plans; (b) the Plan will received in consideration for the Property the greater of either the sum $9,500 or the fair market value of the Property on the date of the Sale as determined by a qualified, independent appraiser; and (c) the Plan will avoid holding a non-income producing asset and will invest the proceeds of the Sale in income producing assets.

For Further Information Contact: Mr. C.E. Beaver of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Robert L. Larson Contracting, Inc. Employees' Profit Sharing Plan and Trust (the Plan), Located in Kissimmee, FL

(Application No. D–8209)

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sale by the Plan of a parcel of unimproved real property, for the total cash consideration of $498,000, to Robert L. Larson and Iris D. Larson (Mr. and Mrs. Larson), who are parties in interest with respect to the Plan, provided the amount paid for the Property by Mr. and Mrs. Larson is not less than its fair market value at the time the transaction is consummated.

[10] The Applicant represents that the proposed transaction will not cause a violation of section 415 of the Code.

Summary of Facts and Representations

1. The Plan is a defined contribution plan with 24 participants and net assets of $954,828 as of July 31, 1989. The Plan is sponsored by the Robert L. Larson Contracting, Inc. (the Employer), a closely-held Florida corporation engaged in the manufacture and distribution of corrugated plastic pipe in Kissimmee, Florida. The trustees of the Plan (the Trustees) as well as Plan participants and decisionmakers with respect to Plan investments are Mr. and Mrs. Larson. Mr. and Mrs. Larson also own 100 percent of the common stock of the Employer and both individuals are employees and directors of the Employer.

2. Among the assets of the Plan is a parcel of unimproved and unencumbered real property located in an area of Osceola County, Florida that is zoned for agricultural conservation. The Property is situated approximately one-half mile north of the northern terminus of Bermuda Avenue in Osceola County, Florida and it has the following legal description: "The SE¼ of the SW¼ and the East ½ of the SW¼ of Section 4, Township 25 South, Range 29 East, Osceola County, Florida." The Property consists of a vacant 60 acre tract of pasture land which abuts the corporate limits of Kissimmee, Florida. The Property is not contiguous to any other property owned by Mr. and Mrs. Larson or the Employer.

3. The Plan acquired the Property in its entirety during 1983 from unrelated parties by making a cash payment to the sellers of $216,000. The Trustees represent that the Plan purchased the Property because of its potential for investment appreciation inasmuch as the Property is in close proximity to Walt Disney World. Based upon their knowledge of other property similarly-situated, the Trustees believed that the Property would appreciate greatly in value.

4. Other than paying the acquisition price, the Plan has expended a total of $11,672 since it has owned the Property. Of this amount, the Plan has paid $9,310 in real estate taxes, $1,362 in insurance premiums and $1,000 in appraisal fees. Also since the time of ownership, the Plan has not permitted the Property to be used by or leased to Mr. and Mrs. Larson, the Employer or other parties in interest.

5. Although the Property has appreciated in value at an average annual compounded return of 15 percent, the Trustees do not believe that the Property's development for future use is likely to occur for several years

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and then, any future appreciation of the Property may be considered speculative. Consequently, the Trustees state that the Property's income potential may be negligible since the best use of the Property at the present time is either for agricultural use or non-use. The Trustees note further that due to the Property, the Plan's assets are substantially invested in real estate and that such investments must be reduced in order to satisfy the Plan's liquidity and diversification requirements.[11] Thus, in order to achieve these goals, and because Mr. and Mrs. Larson have been the only parties to express an immediate interest in purchasing the Property, Mr. and Mrs. Larson, as the Plan's Trustees, are requesting an administrative exemption from the Department to purchase the Property from the Plan.

6. Accordingly, Mr. and Mrs. Larson will purchase the Property from the Plan, for cash, in the amount of the Property's independently appraised fair market value on the date of sale. As of March 28, 1989, the Property had a fair market value of $498,000 pursuant to an appraisal report of April 17, 1989 that was prepared by Messrs. E. E. Waller, III, M.A.I., S.R.P.A. and Glenn R. Hartpence, Associate, independent appraisers (the Appraisers) who are affiliated with the real estate appraisal firm of Pardue, Heid, Church, Smith and Waller, Inc. of Orlando, Florida. The appraisal will be updated by the Appraisers as of the date of the proposed sale to reflect any increases in the Property's fair market value. In addition, Mr. and Mrs. Larson will pay all fees and attendant costs in connection therewith.

7. To evidence the proposed sales transaction, the Plan and Mr. and Mrs. Larson will enter into a Contract for Sale and Purchase (the Contract). Besides specifying the sales terms noted above, the Contract requires Mr. and Mrs. Larson to make a deposit of $25,000 which will be held in escrow by Key Trust Company of Florida, N.A. (the Trust Company), located in Orlando, Florida.

8. The proposed sales transaction has been reviewed and approved by the Trust Company which will serve as the independent fiduciary on behalf of the Plan. The Trust Company has agreed to undertake the specific duties and make certain representations required by the Department of the independent fiduciary. In this regard, the Trust Company represents that it has subtantial experience under the Act in administering employee benefit plans and that it has no commercial, financial or business relationship with either Mr. and Mrs. Larson or the Employer. Moreover, the Trust Company represents that it understands and acknowledges its duties, responsibilities and liabilities under the Act in serving as a fiduciary with respect of the Plan.

The Trust Company believes the proposed sale of the Property by the Plan to Mr. and Mrs. Larson is in the best interests of the Plan and its participants and beneficiaries because it will: (a) Generate sufficient cash to provide liquidity for anticipated distribution to participants and beneficiaries; (b) provide the Plan with the ability to diversify its assets; (c) allow the cash proceeds to be invested in income-producing assets; (d) eliminate sales commissions and other costs associated therewith since Mr. and Mrs. Larson have agreed to assume these costs; and (e) allow the Plan to avoid potential market fluctuations associated with unimproved real property and long-term holding costs or unrelated business income related to the future sale or development of such Property. The Trust Company also states that in forming its opinion regarding the appropriateness of the proposed transaction it has examined the Plan's overall investment portfolio, considered the liquidity requirements of the Plan, examined the diversification of the Plan's assets in light of the proposed sale and considered whether the proposed sales transaction complies with the Plan's investment objectives and policies.

Besides giving its approval to the proposed sale, the Trust Company will monitor the consummation of the sale to ensure that the transaction proceeds on the terms and conditions proposed herein. The specific powers and duties that will be performed by the Trust Company in connection with the proposed sale are set forth in a Special Trust Agreement which was entered into by the Trust Company, the Employer and the Trustees on March 24, 1989.

9. In summary, it is represented that the proposed transaction will satisfy the statutory criteria for an administrative exemption under section 408(a) of the Act because: (a) The sale will be a one-time transaction for cash; (b) the Plan will not incur the costs, real estate commissions, fees and potential delay in locating a purchaser; (c) the sales price for the Property will be based upon its fair market value as determined by the Appraisers; (d) the Plan's interests in the proposed sales transaction will be represented by the Trust Company, the independent fiduciary, which has determined that the sale, as proposed, will be in the best interests of the Plan and its participants and beneficiaries; and (e) the sale will enable the Plan to satisfy its liquidity needs and diversification requirements thereby permitting the Plan to invest in higher income-yielding or appreciating investment vehicles.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified persons from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 7th day of December 1989.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 89-29072 Filed 12-12-89; 8:45 am]

BILLING CODE 4510-29-M

[11] As the result of an audit of the Plan by the Department, certain violations of section 404(a)(1)(B) and (C) of the Act were identified. Specifically, some 80 percent of the Plan's assets were invested in various parcels of real property, all of which were located within a 50 mile radius. To lessen any economic hardship to the Plan as a result of the non-diversification of its real estate-related investments, the Department recommended that the Trustees take appropriate steps to reduce such investments. In subsequent correspondence to the Department, the Trustees agreed to comply with the Department's recommendation to diversify the Plan's assets.

NATIONAL SCIENCE FOUNDATION

Materials Submitted for OMB Review

Notice is hereby given of an amendment to materials published in the **Federal Register**, Volume 54, No. 232, page 50293 on December 5, 1989. The change is being made to extend the public response time through February 2, 1990.

Materials Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public.

Public Comment: Interested persons are invited to submit written data, views or arguments to: Herman G. Fleming, Reports Clearance Officer, Rm. 208, National Science Foundation, 1800 G Street, NW., Washington, DC 20550, and to: Office of Management and Budget, Paperwork Reduction Project (3145-0058, Washington, DC, 20503), by February 2, 1990. All comments will be available for public inspection in Rm. 208, at the above NSF address between the hours of 9:00 a.m. and 4:00 p.m.

Title: Changes in NSF Proposal Format: Importance of Education and Human Resources; and Importance of Quality of Publications in the Merit Review Process.

Affected Public: Any institution/individual submitting a proposal to the National Science Foundation.

Respondents/Burden Hours: 37,000 respondents. NSF estimates that 120 hours are required to submit a proposal. This information collection will not effect the total amount of time required to submit a proposal. While additional information is being requested, some current collection is being deleted.

1. *Importance of Education and Human Resources.* One established criterion in NSF's merit review of proposals is the effect of the proposed research on the infrastructure of science and engineering. Reviewers are asked to consider the potential of the proposal to improve the quality, institutional distribution, or effectiveness of the Nation's scientific and engineering research, education, and work force. The NSF is particularly concerned about the development of scientists and engineers for the future. To make this more explicit, Principal Investigators (PI) will now be asked to specify the relationship of the project to the education and development of human resources.

2. *Importance of Quality of Publications in the Merit Review Process.* Evaluation of scientific productivity must emphasize quality of published work rather than quantity. To ensure this emphasis, NSF will now limit the number of publications considered in reviewing a grant application.

Changes: (1) Education and Human Resources: A Statement must be included specifying the potential of the proposed research to contribute to the education and the development of human resources in science and engineering at the postdoctoral, graduate, and undergraduate levels. This statement may include, but is not limited to, the role of the research in student training, course preparation, and seminars, particularly for undergraduates. Special effectiveness or achievement in the area of producing professional scientists and engineers from groups presently underrepresented should be described. (2) A complete list of publications for the past five years is no longer required. Biographical Sketches, in addition to data on educational background and career, must now include the following: (a) A list of up to five publications most relevant to the research proposed and up to five other significant research publications. Patents, copyrights, or software systems developed may be substituted for publications. These publications may overlap the continuing requirement for a list of all publications resulting from citing prior NSF support. Only the list of ten will be used in merit review; (b) a list of the names of graduate students with whom the PI has had an association as thesis advisor and postdoctoral scholars sponsored by the PI over the past five years, with a summary of the total numbers of graduate students advised and postdoctoral scholars sponsored; and (3) to avoid potential conflicts of interest in merit review, a list of scientists with whom the investigator has had a long-term association and/or with whom he/she has collaborated on a project or a book, article, report or paper within the last 48 months; and the investigator's own postdoctoral advisors.

Dated: December 7, 1989.

Herman G. Fleming,

NSF Reports Clearance Officer.

[FR Doc. 89-29023 Filed 12-12-89; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from November 17, 1989 through December 1, 1989. The last biweekly notice was published on November 29, 1989 (54 FR 49125).

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3)

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involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 12, 1990 the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Arizona Public Service Company, et al., Docket No. STN 50-528, Palo Verde Nuclear Generating Station (PVNGS), Unit 2, Maricopa County, Arizona

Date of amendment request: October 13, 1989

Description of amendment request: The proposed amendment would allow a one-time postponement for the following 18-month surveillance tests until the next refueling outage for Unit 2 (currently scheduled for February 1990):

1. Class 1E Diesel Generator and Integrated Safeguards Surveillance Tests. The affected Technical Specification (TS) Surveillance Requirements are: 4.3.2.3, "Engineered Safety Features Actuation System Instrumentation," 4.4.3.1.3, "Pressurizer," 4.5.1.d.2, "Safety Injection Tanks," 4.5.2.e.1 through 4.5.2.e.3, "Emergency Core Cooling System Subsystems," 4.6.2.1.d, "Containment Spray System," 4.6.2.2.d, "Iodine Removal System," 4.6.3.2.a, "Containment Isolation Valves," 4.7.1.2.b, "Auxiliary Feedwater System," 4.7.3.b and 4.7.3.c, "Essential Cooling Water System," 4.7.7.d.2, "Control Room Essential Filtration System," 4.7.8.d.2, "ESF Pump Room Air Exhaust Cleanup System," and 4.8.11.2.d.2, "AC Sources."
2. Station Battery Surveillance Test. The affected TS Surveillance Requirements is 4.8.2.1.d, "DC Sources."
3. Molded Case Circuit Breaker Surveillance Test. The affected TS Surveillance Requirement is 4.8.4.1.a.2, "Containment Penetration Conductor Overcurrent Protective Devices."

The proposed Technical Specification amendment relates to 18 month surveillance requirements that must be performed during plant shutdown and are scheduled to be performed during the second refueling outage. The schedule for the second refueling outage was delayed from September 15, 1989 to February 14, 1990, due to an unplanned outage that extended from March 15, 1989 to June 30, 1989 to address concerns that arose as a result of events at Units 1 and 3. Consequently, compliance with the 18-month interval would require that the plant be shut down for the sole purpose of performing these required surveillance tests. As recognized in Generic Letter 89-14, the safety benefits of a plant shutdown solely to perform surveillance tests is outweighed by the increased risks associated with an unnecessary transient.

Basis for Proposed No Significant Hazards Consideration Determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against these standards and has provided the following discussion:

STANDARD 1 — Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed Technical Specification change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change does not alter the current design or operation of the facility. The change allows an extension of certain surveillance intervals to permit performance of surveillance requirements during the next refueling outage currently scheduled to begin on February 14, 1990. The extensions beyond those allowed by Technical Specification 4.0.2.a will not constitute a significant increase over the original test interval as they would constitute an increase of less than 20% of the allowable surveillance interval. Based upon the fact that the proposed changes do not impact the operations of the facility the change would not significantly increase the probability or the consequences of an accident previously evaluated.

STANDARD 2 — Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed Technical Specification change will not create the possibility of a new or different kind of accident from any accident previously evaluated. Since there are no changes in the way the facility is being operated, the potential for an unanalyzed accident is not created. No new failure modes are introduced by the proposed change. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

STANDARD 3 — Involve a significant reduction in a margin of safety.

The proposed Technical Specification change does not involve a significant reduction in a margin of safety. The proposed change to extend the time span for certain surveillance requirements to permit their performance during the next refueling outage will not constitute a significant increase (less than a 20% increase) beyond the allowable test interval.

Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis.

Local Public Document Room location: Phoenix Public Library, Business and Science Division, 12 East McDowell Road, Phoenix, Arizona 85004

Attorney for licensees: Mr. Arthur C. Gehr, Snell & Wilmer, 3100 Valley Center, Phoenix, Arizona 85007.

NRC Project Director: George W. Knighton

Carolina Power & Light Company, et al., Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: August 4, 1989, and supplemented on November 16, 1989

Description of amendment request: The request would amend the Technical Specifications (TSs) to increase the allowable fuel enrichment in the reactor, the new fuel storage racks and the Spent Fuel Storage Pit from 3.90 weight percent (w/o) to 4.2 plus 0.05 (nominal 4.2) w/o.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Carolina Power & Light Company (CP&L) has reviewed the TS change request in accordance with the standards set forth in 10 CFR 50.92 and concluded that this change does not

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constitute a significant hazards consideration based upon the following:

1. Operation of the facility, in accordance with the proposed amendment, would not involve a significant increase in the probability or consequences of an accident previously analyzed.

The probability of occurrence of an accident is unaffected by the proposed enrichment change since it does not impact the way in which any systems operate which may be associated with the initiation of a Chapter 15 event. The consequences of any accidents evaluated in the FSAR will not increase, as discussed in the following sections:

Those areas which may be affected by a change in enrichment are the Fuel Pool Heat Load Analysis and those accidents which involve a radiological release to the environment. The heat load analysis is affected by the potential for increased assembly burnup made possible by the higher enriched fuel. Though decay heat is not expressly a function of enrichment, increased enrichment does trend toward increased assembly burnups, and decay heat is a function of burnup. However, the current UFSAR peak rod burnup limit of 50,000 MWD/MTU (corresponding to a batch average of 40,000 MWD/MTU) is unchanged. Therefore, it can be concluded that the increased enrichment will have no impact on the spent fuel pool's heat load.

The radiological impact of operation with higher enriched fuel focuses on the assumed fission product inventory and the currently assumed radiological consequences. In evaluating the consequences of a fuel handling accident (FHA) and non-FHA Chapter 15 events, two areas must be considered: (1) the effect of increased enrichment, and (2) the effects of the increased burnup that the higher enriched fuel can attain.

To evaluate the effects of increased enrichment on the FHA and non-FHA Chapter 15 events, the effect of the higher enrichment on the thyroid and whole body doses must be determined. The increased enrichment will not significantly increase the fission product inventory as compared to an assembly with the same burnup but with a lower enrichment. Therefore, the change to the thyroid and whole body doses will be small and the potential dose increase not significant relative to 10 CFR 100 limits. Since the assembly burnup limits have not changed, as noted above, the radiological consequences of an accident with 4.2 w/o nominal fuel are bounded by the existing calculations in Chapter 15.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

No new scenarios for new accidents or equipment malfunctions are created. The changes do not result in any changes in systems or fuel handling procedures. Therefore, the proposed changes will not create the possibility for an accident or malfunction of a different type than any previously evaluated in the FSAR.

3. Operation of the facility, in accordance with the proposed amendment, would not involve a significant reduction in a margin of safety.

The applicable margins are related to the radiological impact to the general public and the requirements on subcriticality in the new fuel storage and spent fuel storage racks. The subcriticality requirement for the new fuel rack is that the fuel rack K_{eff} remain [less than] 0.98 with optimum moderation and [less than] 0.95. Although it would be expected that use of higher enriched fuel would result in a small decrease in the margin to the limits, the analyses in support of this amendment request demonstrate that these criteria are met. The radiological impacts presented in the FSAR remain applicable and are well within the guidelines of 10 CFR 100. In addition, a cycle-specific safety evaluation is performed to verify that the fuel as arranged in the final core design continues to meet the acceptance criteria in the existing safety analyses. Therefore, operation in accordance with the proposed amendment does not involve a significant reduction in a margin of safety. In addition, this change closely resembles example [vi] of *Examples of Amendments that are Considered not Likely to Involve Significant Hazards Considerations* ... published in the Federal Register on March 6, 1986: "A change which ... may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan".

The licensee has concluded that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards consideration.

The Commission 's staff has made a preliminary review of the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P.O. Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Elinor G. Adensam

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Unit Nos. 1 and 2, Lake County, Illinois

Date of application for amendment: October 31, 1989

Description of amendment request: The proposed amendment adds limiting conditions of operations and surveillance requirements to the Technical Specifications as required by Generic Letter 83-37 dealing with NUREG 0737 Technical Specifications. The changes consist of the following items:

1) Addition of Containment Pressure (Wide Range), Core Exit Thermocouples, Containment Water Level (Narrow and Wide Range) and Reactor Vessel Water Level (Narrow and Wide Range) Instrumentation to Technical Specification 3/4.8.9, Accident Monitoring Instrumentation, Tables 3/4.8.9-1.

2) Revision of action requirements for inoperable Noble Gas Effluent Monitors in Technical Specifications 3/4.12.3, Radioactive Gaseous Effluent Monitor Instrumentation, Table 3.12-1.

3) Revision of action requirements for inoperable Containment High-Range Radiation Monitors in Technical Specification 3/4.14.1, Radiation Monitoring Instrumentation, Table 3.14-1.

4) Inclusion of control room air temperature limitation into Technical Specification Surveillance Requirement 4.17.1.A.

5) Revision of Post-Accident Sampling Program Administrative Technical Specification 6.2.1.L. to include specific requirements of the program.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards in 10 CFR 50.92 and has determined the following:

Item 1. This proposed change is being made in accordance with Generic Letter 83-37 which identifies items from NUREG 0737 that are required to be included in our Technical Specifications. The additional instrumentation being added to the Accident Monitoring Instrumentation System i.e.: Containment Pressure (Wide Range), Core Exit Thermocouples, Containment Water Level (Narrow and Wide Range), will provide additional indication to aid in identifying degraded core conditions. The addition of these instruments will enhance response to accidents as evaluated in the Final Safety Analysis Report and thus will not involve a significant increase in the probability or consequences of any accident previously analyzed.

The addition of a control room air temperature limitation in Technical Specification 4.17.1.A will ensure that action is taken to maintain the control room environment habitable for operators during all plant conditions. This change will not impact on any accident analysis addressed in the FSAR.

Changes to the requirements for inoperable containment high range area radiation monitors, noble gas effluent radiation monitors and steam generator atmospheric relief and safety valves radiation monitors have been made more conservative. They do not impact on any accidents previously analyzed in the FSAR.

Clarification of the Post-Accident Sampling Program is an administrative change and does not affect any accidents previously analyzed.

Item 2. The instruments added to the Accident Monitoring Instrumentation System will be used to improve the identification of plant conditions during and after an accident has occurred. In addition, changes to the Technical Specifications for the radiation monitoring system, control room environmental and post-accident sampling program will enhance overall plant operations. These changes also will not have an effect on the generation of any external event such as earthquakes or tornadoes. Thus, they do not create the possibility of a new or different kind of accident than any previously evaluated for Zion Station.

Item 3. As discussed above, this proposed amendment will upgrade the Accident Monitoring Instrumentation System, Radiation Monitoring System, Control Room Ventilation System and the Post-Accident Sampling Program at Zion Station. Thus, the additional requirements in this proposed amendment increase the margin of safety at Zion Station.

The proposed changes of this amendment are intended to upgrade the requirements of the Accident Monitoring System, Radiation Monitoring System, Control Room Ventilation System and the Post-Accident Sampling Program at Zion Station. Thus, example (ii) is applicable in this instance. Example (ii) states: (ii) A change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications; for example, a more stringent surveillance requirement.

Therefore, since the application for amendment satisfies the criteria specified in 10 CFR 50.92 and is similar to an example for which not significant hazards consideration exists, Commonwealth Edison Company has made a determination that the amendment involves no significant hazards consideration.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Based on this review, the staff therefore determines that the proposed amendment does no involve a significant hazards consideration.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085. Attorney to licensee: *Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.*

NRC Project Director: John W. Craig

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County Michigan

Date of amendment request: December 22, 1988

Description of amendment request: The proposed amendment revises the Technical Specification (TSs) Section 3/4.8.4.1 - A.C. Circuits Inside Primary Containment. The proposed change deletes four circuits from the TSs. The proposed change supersedes the TS change request of September 25, 1987.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists 10 CFR 50.92(c) for a proposed amendment to a facility operating license. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has submitted the following no significant hazards determination:

1) The proposed change to remove the de-energizing requirements of Items (c), (d), (e) and (f) from Technical Specification 3.8.4.1 does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change deletes spare circuits which do not enter primary containment or connect to containment electrical penetrations. The bases for the technical specification requirement is ensuring containment integrity by protecting the electrical penetration assemblies. Since these circuits no longer enter primary containment or connect to containment electrical penetrations, removal of the requirement to de-energize these spare circuits does not impact any previously evaluated accident as containment integrity is unaffected by these circuits.

The previous loads on Item (c), (d) and (e) have been relocated to circuits which have dual fusing. This is an acceptable alternative to de-energizing the circuits during plant operation because it is consistent with UFSAR design criteria, Section 8.2.1.2.1.5. Thus, there is no significant impact to any previously evaluated accident because the circuit modifications were consistent with design criteria of the UFSAR which has been previously evaluated and accepted. (Subsequent to relocating Item (c)'s loads, the loads which were located inside primary containment were deleted. Therefore, circuit (c) is also not required to be listed in Technical Specifications because it does not penetrate primary containment or connect to containment electrical penetrations. The previous loads on Item (f) did not interface with a primary containment penetration and thus, the circuit was not required to be included in Technical Specification 3/4.8.4.1.).

2. The proposed change to remove the de-energizing requirements of Items (c), (d), (e) and (f) from Technical Specification 3.8.4.1 does not create the possibility of a new or different kind of accident from any accident previously evaluated. As stated in 1) above, these are spare circuits which do not enter primary containment or connect to containment electrical penetrations. The removal of the requirement to deenergize these spare circuits does not create any new accident mode nor change any safety analysis or design basis at Fermi 2.

The modification of circuits required to be in Technical Specification 3/4.8.4.1 was performed in accordance with UFSAR design criteria. This design criteria has been evaluated and accepted for energized penetrations in service during plant operation; thus, the modification of these circuits does not create any new accident mode nor change any safety analysis because the modifications were designed to the existing design basis of Fermi 2.

3. The proposed change to remove the de-energizing requirements of Items (c), (d), (e) and (f) from Technical Specification 3.8.4.1 does not involve a significant reduction in a margin of safety. As stated in 1) above, containment integrity is maintained because the spare circuits no longer enter primary containment or connect to containment electrical penetrations. All modifications on Technical Specification 3/4.8.4.1 required circuits were designed in accordance with existing design criteria for circuits that are required to be energized during normal operation. Additionally, each circuit's modification was evaluated and it was determined that no unreviewed safety question(s) existed.

The staff has reviewed the licensee's evaluation and concurs with it. On the basis of the above consideration, the staff proposes to find that the changes do not involve a significant hazards consideration.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

NRC Project Director: John Thoma, Acting.

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of amendment request: November 21, 1989

Description of amendment request: Change Technical Specification 5.5.B to ensure that the K_{eff} of the spent fuel pool is less than or equal to 0.90 if the minimum gadolinium loading in the

spent fuel versus initial U-235 enrichment of the spent fuel is within certain limits.

Basis for proposed no significant hazards consideration determination: The licensee has reviewed the proposed change in accordance with 10 CFR 50.92 and has concluded, and the NRC agrees, that it does not involve a significant hazards consideration in that this change would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed. There are no design basis accidents adversely affected due to this proposed change. The new proposed figure is fully consistent with the analyses previously provided to the NRC Staff supporting the Millstone Unit No. 1 spent fuel pool reracking submitted June 24, 1988 (Reference 1). Criticality in the fuel pool will be precluded as long as enrichment and gadolinium loadings meet the requirements of the proposed figure. Thus, there is no increase in the probability of a criticality event. In addition, since criticality is precluded, consequences are also not adversely affected.

2. Create the possibility of a new or different kind of accident from any previously analyzed. Since there are no changes in the way the plant is operated, the potential for an unanalyzed accident is not created. No new failure modes are introduced. Bundled and storage rack design is such that there is no chance for a criticality event in the Millstone Unit No. 1 spent fuel pool. This change also ensures that all future bundles meet the criterion that precludes criticality. Thus, there is no increase in the probability of a new or different kind of accident.

3. Involve a significant reduction in a margin of safety. Since the proposed change does not affect the consequences of any accident previously analyzed, there is no reduction in margin of safety. The proposed change is fully consistent with the analyses previously provided to the NRC Staff in Reference 1 regarding fuel bundle reactivity. Thus, preventing criticality in the Millstone Unit No. 1 spent fuel pool is maintained with no loss of margin.

The spent fuel pool reracking analyses submitted by the licensee on June 24, 1988, were reviewed and approved by the staff in Amendment No. 40 issued November 27, 1989.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment request: November 16, 1989 (Reference LAR 89-14)

Description of amendment request: The proposed amendments would revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant (DCPP) Unit Nos. 1 and 2 to remove that part of TS 4.0.2 requiring that the combined time interval for any three consecutive surveillance intervals shall not exceed 3.25 times the specified surveillance interval and to modify the associated TS Bases. This change is in accordance with the guidance provided in Generic Letter 89-14, "Line Item Improvements in Technical Specifications - Removal of the 3.25 Limit on Extending Surveillance Intervals."

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment will not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee, in its submittal of November 16, 1989, evaluated the proposed changes against the significant hazards criteria of 10 CFR 50.92 and against the Commission guidance concerning application of this standard.

Based on the evaluation given below, the licensee has concluded that the proposed changes do not involve a significant hazards consideration. The licensee's evaluation is as follows:

a. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

Deletion of the 3.25 extension limitation will not significantly affect equipment reliability and does not affect the probability or consequences of accidents previously evaluated in the FSAR Update. The surveillance interval will still be constrained by the 25 percent interval extension criterion of TS 4.0.2. The risk involved with the alternative to perform 18-month surveillances during plant operation is greater than the risk involved with exceeding the 3.25 limit. When plant conditions are not conducive for the safe conduct of surveillances due to safety systems being out-of-service for maintenance or due to other ongoing surveillance activities, safety is enhanced by the use of the allowance that permits a surveillance interval to be extended.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed revision to the TS will not result in any physical alteration to any plant system, nor would there be a change in the method by which any safety related system performs its function.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. Does the change involve a significant reduction in a margin of safety?

Deletion of the requirement that any three consecutive surveillance intervals shall not exceed 3.25 times the interval will not significantly affect equipment reliability, rather it will reduce the potential to interrupt normal plant operations due to surveillance scheduling. This proposed exemption will allow all surveillance intervals to be constrained by the maximum allowable extension of 25 percent of the specified surveillance interval, which may enhance safety when used during plant operation.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC Staff has reviewed the proposed changes and the licensee's no significant hazards consideration determination and finds them acceptable. Therefore, the Staff proposes to determine that these changes do not involve significant hazards consideration.

Local Public Document Room location: California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Attorneys for licensee: Richard R. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120 and Bruce Norton, Esq., c/o Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Project Director: George W. Knighton

Philadelphia Electric Company, Docket No. 50-353, Limerick Generating Station, Unit 2, Montgomery County, Pennsylvania

Date of amendment request: November 3, 1989

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) in response to NRC Generic Letter (GL) 88-06 "Removal of Organization Charts from Technical Specification

Administrative Control Requirements" to: (1) remove the onsite and offsite organizational charts from TS Section 6.2.1 and 6.2.2, respectively and (2) make certain miscellaneous administrative changes in Section 6 of the TSs (Administrative Control) related to revisions to the corporate organization.

GL 88-06 encourages licensees to propose changes to their TS to remove organizational charts from TS and replace them with descriptions of the organizational structure and characteristics which are important to safety. The proposed changes concern the Administrative Controls in Section 6.0, and do not affect any Limiting Conditions for Operation or Surveillance Requirements. The proposed changes in this amendment request are grouped into two categories, Category A and Category B. Category "A" proposed changes involve removing the onsite and offsite organizational charts from TS Sections 6.2.1 and 6.2.2, respectively. These proposed changes are consistent with the guidance provided in GL 88-06. Category "B" proposed changes are five miscellaneous administrative changes. These proposed changes are to: (1) revise paragraph 6.5.2.1 to indicate that the Nuclear Review Board (NRB) reports to and advises the Executive Vice President-Nuclear, (2) revise paragraph 6.5.2.9.C to indicate that NRC audit reports shall be forwarded to the Corporate Officer(s) responsible for the areas audited, (3) revise paragraphs 6.2.3.2 and 6.2.3.4 to reflect title changes and the deletion of the corporate Independent Safety Engineering Group, (4) revise paragraph 6.14.2 to reflect the groups responsible for technical review of the Offsite Dose Calculation Manual and (5) revise paragraph 6.2.2.f by replacing the five specific titles of the superintendents who may authorize deviation from overtime guidelines with a reference to the administrative procedure that is used to designate which personnel are authorized to perform this function.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided an analysis of the no significant hazards consideration in its request for a license amendment for each of the proposed changes discussed previously. The staff has reviewed the licensee's analysis of the proposed amendment against the three standards in 10 CFR 50.92 and finds that:

A. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Removing the organization charts from TS does not affect plant operation. The proposed changes do not increase or decrease the qualification, experience or training requirements of onsite or offsite Limerick Generating Station (LGS) personnel. The LGS Quality Assurance Program contains detailed organization charts and associated descriptions of responsibilities. Appendix B to 10 CFR Part 50 and 10 CFR 50.54(a)(3) govern changes to the organizations described in the QA Program. In accordance with the requirements of 10 CFR 50.34(b)(6) the applicant's organizational structure is included in the LGS Final Safety Analysis Report, Chapter 13. As required by 10 CFR 50.71(e), the licensee submits annual updates to the FSAR.

The administrative changes involving a position title change, creation of an advisory board, distribution of audit reports, ISEG composition, and elimination of unnecessary review details, do not involve the design or operation of plant hardware or systems. Accidents analyzed remain unaffected by these changes. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

B. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Removing the organization charts from the TS does not affect plant operation. The proposed changes do not increase or decrease the qualification, experience or training requirements of onsite or offsite Limerick Generating Station (LGS) personnel. The LGS Quality Assurance Program contains detailed organization charts and associated descriptions of responsibilities. Appendix B to 10 CFR Part 50 and 10 CFR 50.54(a)(3) govern changes to the organizations described in the QA Program. In accordance with the requirements of 10 CFR 50.34(b)(6) the applicant's organizational structure is included in the LGS Final Safety Analysis Report, Chapter 13. As required by 10 CFR 50.71(e), the licensee submits annual updates to the FSAR.

The administrative changes involving a position title change, creation of an advisory board, distribution of audit reports, ISE&G composition, and elimination of unnecessary review details, do not involve the design or operation of plant hardware or systems. No new modes of operation, changes to setpoints or changes in operating parameters result from this change. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

C. The proposed changes do not involve a significant reduction in a margin of safety.

The removal of the organization charts from TS is accompanied by the addition of requirements for the Limerick organizational structure which are needed to maintain the essential aspects of the material being removed. This will permit the implementation of organizational changes without prior NRC approval provided the change meets these added organizational structure requirements. Consequently, enhancements to the organizational structure, as well as minor administrative changes such as position title revisions, can be implemented promptly upon identification of the need for the change thereby creating a positive impact on safety.

The administrative changes involving a position title change, creation of an advisory board, distribution of audit reports, ISEG composition, and elimination of unnecessary review details, do not involve the design or operation of plant hardware or systems. No new modes of operation, changes to setpoints or changes in operating parameters result from this change. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's submittal and significant hazards analysis and concurs with the licensee's determination as to whether the proposed amendment involves no significant hazards consideration. Therefore, the staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

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Attorney for licensee: Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: November 17, 1989

Description of amendment request: The amendments would change the Technical Specifications for Limerick 1 and 2 to: (a) remove surveillance requirement (SR) 4.1.3.5.b.2 (and the associated footnote) which requires Control Rod Drive (CRD) scram accumulator check valve testing once per 18 months and specifies test acceptance criteria, (b) modify Limiting Condition for Operation (LCO) 3.1.3.5.a.2.a to allow the reactor operator twenty (20) minutes to restart a tripped CRD pump provided that reactor pressure is greater than or equal to 900 psig or if reactor pressure is less than 900 psig, the operator will immediately place the reactor mode switch in the Shutdown position and (c) change the 18 month scram accumulator pressure sensor channel calibration (setpoint), SR 4.1.3.5.b.1.b. from "970 plus or minus 15 psig" to "equal to or greater than 955 psig".

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee has provided an analysis of no significant hazards considerations with the request for the license amendment. The licensee's analysis of the proposed amendment against the three standards in 10 CFR 50.92 is reproduced below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Three changes have been proposed.

A) Remove SR 4.1.3.5.b.2 which requires CRD scram accumulator check valve testing once per 18 months and specifies test acceptance criteria.

B) Modify LCO 3.1.3.5.a.2.a to allow the reactor operator twenty (20) minutes to restart a tripped CRD pump provided that reactor pressure is greater than or equal to 900 psig. If reactor pressure is less than 900 psig the operator will immediately place the mode switch in the Shutdown position.

C) Change the 18 month scram accumulator pressure sensor channel calibration (septoint), SR 4.1.3.5.b.1.b from "970 plus or minus 15 psig" to "equal to or greater than 955 psig."

The safety function of the scram accumulator is to assist in control rod insertion when reactor pressure alone is insufficient. The proposed changes do not change the capability of the control rod to perform its safety function and provide proper reactivity insertion within the required time.

Removal of the 18 month leak test specified by SR 4.1.3.5.b.2 does not affect the reliability of the check valves since operability of the scram accumulator check valves is assured by TS Section 4.0.5 which requires that inservice testing of the check valves comply with the ASME Code, Section XI.

The proposed additions to the TS LCO action statement 3.1.5.a.2.a described in (B) above impose additional requirements on operations personnel to prevent plant operation in a condition when the accumulators are required to support the scram function.

Finally, GE SIL 429 Rev. 1 provides a recommendation to change the applicable TS to allow for scram accumulator pressure instrument setpoint drift and thus avoid an unnecessary TS violation. The setpoint we have proposed in accordance with this GE SIL is within the currently allowed range but does not provide an upper limit. An upper limit is unnecessary since any pressure alarm activation above the minimum setpoint value is more conservative than alarm actuation at the minimum setpoint value.

In summary, the proposed will not affect nor change any plant hardware, plant design or plant system operation from that already described in the FSAR. Therefore the proposed changes do not modify or add any initiating parameters that would significantly increase the probability or consequences of any accident previously analyzed.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

As discussed in (1) above, the design bases of the LGS will remain the same. Therefore, the current FSAR will remain accurate with respect to its discussion of the licensing basis events and its analysis of plant response and consequences. The proposed changes do not affect any equipment nor do they involve any potential initiating events that would create any new or different kind of accident. As such, the plant initial conditions utilized for the design basis accident analyses are still valid.

3. The proposed changes do not involve a significant reduction in a margin of safety.

As discussed in item (1) above, the safety function of the scram accumulator is to assist in control rod insertion when reactor pressure alone is insufficient. The proposed changes do not change capability of the control rod to perform its safety function and provide proper reactivity insertion within the required time.

TS Section 3/4.1.3 requires that any control rod with an inoperable scram accumulator be restored to operable status or be declared as being inoperable and inserted. This requirement is unchanged by the proposed TS changes.

At normal reactor pressure (i.e., greater than 900 psig) reactor pressure alone is sufficient to scram the control rods. The proposed TS allow the plant operator 20 minutes to restore a tripped CRD pump if there is more than one inoperable scram accumulator and reactor pressure is equal to or greater than 900 psig. Control rod scram accumulators and accumulator check valves are required to support the scram function only at reactor pressure less than 600 psig. To prevent approaching the 600 psig limit, the proposed TS require plant operators to immediately scram the reactor if there is more than one inoperable scram accumulator and there is not a CRD pump operating when reactor pressure is less than 900 psig.

The proposed change to the scram accumulator pressure instrument calibration setpoint is within the currently allowed range and is more conservative than the setpoint recommended by GE.

For the reasons stated above the proposed changes do not involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's analysis and agrees with it. Therefore, we conclude that the amendment satisfies the three criteria listed in 10 CFR 50.92(c). Based on that conclusion, the staff proposes to determine that the proposed license amendment involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: December 28, 1988 and supplemented on July 31, 1989 and October 18, 1989.

Description of amendment request: The proposed amendments revise Salem Unit Nos. 1 and 2 Technical Specification Figures 3.4-2 and 3.4-3 and the associated Bases Section. The heatup and cooldown curves are being updated to reflect the changes in reactor vessel material properties as identified from the examination of the surveillance capsules removed from each reactor during the seventh and third refueling outages of Salem 1 and 2, respectively. The bases section is revised to reflect the use of Regulatory Guide 1.99, Rev. 2 methodology in estimating the radiation embrittlement of reactor vessel materials.

Basis for proposed no significant hazards consideration determination: 10 CFR Part 50, Appendix H requires that a sampling program exist to determine the effect of irradiation on reactor vessel materials. Part of that program requires that if the results of the testing program so indicates, a change to the plant heatup and cooldown curves provided in the Technical Specifications be submitted. The curves are being revised to ensure that the operation of the reactor will not exceed pressure and temperature limits imposed to prevent the potential for fracture of the reactor vessel or components. The curves provided in this submittal reflect the results of the latest specimen analysis. The proposed changes are also consistent with the guidance provided in Generic letter 88-11 and Regulatory Guide 1.99, Revision 2. Instrument uncertainties are being removed from the curves to clarify the actual requirements. Instrument uncertainties in the limits, in addition to other conservatisms, are not required to prevent vessel damage and are not required by the regulations.

The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has analyzed the proposed amendment to determine if a significant hazards consideration exists:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes do not increase the probability of an accident since they are being incorporated to ensure that existing safety limits are not exceeded due to changing conditions in the reactor. The proposed changes are requested so that the results of materials testing is reflected in the operating limits pursuant to the requirements of 10CFR50, Appendix H and Appendix G.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes are being made to ensure that the Salem units do not operate such that the potential for a new kind of accident is created (e.g., fracture of the reactor vessel). The proposed changes ensure that the operations remain within acceptable areas governed by previously analyzed areas. The proposed changes do not make a physical change to the facility. Therefore the proposed changes do not create a new or different type of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

The results of the surveillance tests indicate that the reactor pressure vessel has adequate toughness for the continued safe operation provided the requested heatup and cooldown limitations are adhered to. The proposed changes ensure that the existing margins of safety are met by modifying operating requirements to reflect the results of specimen capsule analysis. This analysis prescribes what the appropriate heatup and cooldown curves are and accounts for the effects of radiation on reactor vessel materials. Changes to the Bases Section of the Technical Specifications are being made to reflect Salem's compliance with later regulatory guidance regarding specimen analysis. Therefore the proposed changes do not involve significant reduction in a margin of safety.

The staff has reviewed the licensee's submittal and significant hazards analysis and concurs with the licensee's determination that the proposed amendment does not involve a significant hazards consideration. Therefore, the staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for Licensee: Mark J. Wetterhahn, Esquire, Conner and Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: August 29, August 31, October 11, and November 14, 1989

Description of amendment request: The proposed amendments would delete from section 6.2.2.g of the Salem 1 and 2 Technical Specifications the requirement that the Operations Manager hold a Senior Reactor Operator (SRO) license. A new section 6.2.2.h would be added specifying that the Operations Manager either hold a SRO license or has held a SRO license for a pressurized water reactor. Also, an asteriaked footnote would be added to section 6.3.1 to specify that the Operations Manager either hold a SRO license or has held a SRO license for a pressurized water reactor (PWR).

These proposed amendments were previously noticed (54 FR 38304, dated September 15, 1989) and are being renoticed because of significant revisions at the NRC's request.

Basis for proposed no significant hazards consideration determination: The Operations Department at Salem Generating Station is managed through the Operations Manager, two Operations Engineers and Shift Supervision. Technical Specifications currently require all of these individuals to hold a SRO license.

Current industry guidance on the selection, qualification and training of personnel for nuclear power plants (ANSI/ANS-3.1-1987), allows relaxation of the SRO license requirement for the Operations Manager position, provided certain conditions are met. An individual designated to fill the position of Operations Managers must satisfy one of the following conditions: (1) Hold a SRO license, (2) Have held a SRO license for a similar unit (PWR).

These special requirements ensure that a selected candidate has demonstrated knowledge at the senior operator level, even though he may not hold a SRO license. At Salem, the Operations Department Organization utilizes two Operating Engineers who are normally assigned the responsibility for overseeing the shift activities associated with a given Salem unit. Since the Operating Engineers are required by technical specifications to have a SRO license, the Operations Department licensed personnel (shift supervision and control room operators) are directly managed by an individual holding a SRO license.

The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has analyzed the proposed amendment to determine if a significant hazards consideration exists:

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1. Do not involve a significant increase in the probability or consequence of an accident previously evaluated.

An individual selected to fill the Operations Manager position will meet current industry guidance on the selection, qualification and training of personnel for nuclear power plants, as specified in the Technical Specifications. These requirements ensure that any candidate has demonstrated knowledge at the senior operator level.

2. Do not create the possibility of a new or different kind of accident from any previously evaluated.

The lack of a SRO license on the part of the Operations Manager, unlike a procedure or design change, is not a potential new accident precursor.

3. Do not involve a significant reduction in a margin of safety.

The Operations Department licensed personnel (shift supervision and control room operators) will continue to be directly managed by an individual holding a SRO license (Operating Engineer).

Unlicensed candidates selected for the Operations Manager position must meet the education, experience and training requirements of ANSI N18.1-1971 and have held a SRO license for a similar unit (PWR).

Therefore, it may be concluded that the proposed change does not involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's submittal and significant hazards analysis and concurs with the licensee's determination that the proposed amendment does not involve a significant hazards consideration. Therefore, the staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Conner and Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: September 11, 1989 and November 6, 1989

Description of amendment request: The proposed changes would delete from the Salem Unit 1 Technical Specification LCO 3.1.1.3 which currently specifies a minimum flow of 3000 gpm whenever a reduction in boron concentration is being made. Salem 1 Technical Specification Surveillance 4.9.8 and Salem 2 Technical Specification Surveillance 4.9.8.1 would be revised to replace the minimum RHR flow of 3000 gpm with 1000 gpm. To achieve consistency between Salem 1 and 2 Technical Specifications, Salem 1 LCO and Surveillance Requirements would be renumbered from 3.9.8 and 4.9.8 to 3.9.8.1 and 4.9.8.1, respectively.

Basis for proposed no significant hazards consideration determination: Evaluation of Salem's RHR system revealed that, reducing the RHR flow rate to less than 1800 gpm precludes air entrapment and vortex formation. Further review considered the minimum RHR flow rate necessary to: (1) remove decay heat (2) preclude boron stratification, and (3) provide an adequate flow rate for boron dilution accident concerns.

The potential for boron stratification was evaluated for RHR flow rates greater than 1000 gpm. The basis for preventing boron stratification in the RCS is to minimize the potential for a boron dilution accident. RHR flow rates greater than 1000 gpm ensure that adequate mixing occurs within the RCS. Thus, there is no concern for boron stratification above an RHR flow rate of 1000 gpm.

RHR flow rates should be maintained between 1000 and 1800 gpm when RCS hot leg water level is less than 6 inches above the counterline. Mid-loop operation is not implemented at Salem until at least 72 hours after shutdown. Adequate decay heat removal can be accomplished with less than 1500 gpm RHR flow at this time. The required flow rate decreases further with increased time after shutdown. For hot leg water levels greater than 6 inches above the counterline, flow rates can be extended from 1800 gpm up to 3000 gpm. This is based on vortex considerations.

Deletion of LCO 3.1.1.3 will provide consistency between the Unit 1 and Unit 2 technical specifications. The technical specifications currently require a minimum of at least one reactor coolant pump to be in operation in Modes 1, 2 and 3. In Modes 4, 5 and 6, a minimum of 1000 gpm will be required. Therefore minimum flow requirements will continue to be specified.

The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has analyzed the proposed amendment to determine if a significant hazards consideration exists:

The proposed changes to the Technical Specifications:

1. Do not involve a significant increase in the probability or consequence of an accident previously evaluated.

The Technical Specification requirement to maintain the minimum Reactor Coolant Loop in operation will ensure adequate RCS flow for Modes 1-4. The RHR loop OPERABLE LCO will ensure adequate RHR availability. The minimum RHR flow requirement will be reduced to 1000 gpm in the Technical Specification with further limitations specified in plant procedures. This change will increase the overall reliability of the RHR pumps by addressing vortexing concerns at higher flow rates. Therefore, it may be concluded that the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change only allows reduced flow rates when the RHR system is in service. The reduced flow rates are justified by analysis and controlled by the Technical Specifications and plant procedures. Since the RHR system will be maintained at a minimum flow rate of 1000 gpm, per Technical Specifications, no new or different accident from any previously evaluated will be created.

3. Do not involve a significant reduction in a margin of safety.

The proposed changes allow a reduction in the minimum RHR flow rate from 3000 gpm to 1000 gpm. Although this results in a reduced capability to remove decay heat and decreases the amount of mixing in the RCS, the minimum flow specified in the Technical Specifications ensures that adequate margin is maintained.

The flow reduction eliminates the potential for air entrapment and vortexing of the RHR pumps due to excessive flow rates. Thereby, increasing the reliability of the RHR pumps, while maintaining sufficient flow to ensure the RHR design requirements are met. Therefore, it may be concluded that the proposed changes do not involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's submittal and significant hazards analysis and concurs with the licensee's determination that the proposed amendment does not involve a significant hazards consideration. Therefore, the staff proposed to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Conner and Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Public Service Electric & Gas Company, Docket No. 50-311, Salem Generating Station, Unit No. 2, Salem County, New Jersey

Date of amendment request: September 25, 1989

Description of amendment request: The proposed amendment would modify the present Salem Unit 2 Technical Specification Surveillance interval requirement for Type A containment integrated leak rate testing (ILRT) (4.6.1.2a), from a frequency of 40 plus or minus 10 months to allow a one time test interval of 59 months.

Basis for proposed no significant hazards consideration determination: The proposed change allows a one time test interval of 59 months. The only other alternative is to conduct Type A ILRTs during the 5th and 6th refueling outages on Salem Unit 2. This would violate the technical specification minimum allowed interval between tests (30 months), extend the length of the 5th refueling outage with no appreciable gain in safety and result in the performance of (4) tests within a 10-year inservice period, exceeding the 10 CFR Part 50 Appendix J requirements.

This inconsistency resulted from an NRC recommendation that the licensee perform the first periodic ILRT (Type A test) during Salem 2's first refueling outage. Based on the NRC recommendation, the licensee successfully completed the first periodic ILRT during Salem Unit 2's first refueling outage.

It was recognized at that time that completing the ILRT during the first refueling outage, was at variance with the Technical Specification Surveillance requirement on testing intervals (40 plus or minus 10 months), since only 21 months had elapsed from the date of commercial operation. A waiver was granted to allow a shortened interval for the first ILRT.

The intent of the established testing intervals is to conduct three (3) approximately equal spaced Type A tests within a given 10-year inservice period, the third in conjunction with the 10-year inservice outage. The minimum/maximum values allow for flexibility while maintaining the "approximately equal intervals" concept. Conducting back to back Type A tests is not in-line within this intent.

The two previous Unit 2 Type A tests were completed successfully. There have not been any plant modifications, since the last successful Type A tests, that would adversely affect the test results. Type B and C tests have been completed satisfactorily at the required frequency and are scheduled for completion during the next refueling outage (5th). Demonstrated operability of the associated components and penetrations provides added assurance that the overall ILRT remains satisfactory.

The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has analyzed the proposed amendment to determine if a significant hazards consideration exists:

The proposed change to the Technical Specifications:

1. Does not involve a significant increase in the probability or consequence of an accident previously evaluated. The proposed change does extend the surveillance interval, however, the two (2) previous Unit 2 Type A tests were completed successfully. There have not been any plant modifications, since the last successful Type A test, that would directly affect test, that would directly affect the test results.

Type B and C tests have been completed satisfactorily at the required frequency, and are presently scheduled to be performed during the next refueling outage (5th). Operability of these components and pathways provides added assurance that the Overall Integrated Containment Leakage Rate remains satisfactory.

Therefore, it may be concluded that the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not adversely affect the design or operation of any system or component important to safety. No physical plant modifications or new operational configurations result from this change.

Therefore, it may be concluded that the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does not involve a significant reduction in a margin of safety.

The two (2) previously conducted Type A tests have been completed satisfactorily. Type B and C tests have been completed satisfactorily within the Technical Specification required surveillance interval. No major plant modifications have been implemented or planned for completion this outage that would directly impact Type A test results.

Therefore, it may be concluded that the proposed change does not involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's submittal and significant hazards analysis and concurs with the licensee's determination that the proposed amendment does not involve a significant hazards consideration. Therefore, the staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Conner and Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Public Service Electric & Gas Company, Docket No. 50-311, Salem Generating Station, Unit No. 2, Salem County, New Jersey

Date of amendment request: September 25, 1989

Description of amendment request: Revise Salem Unit 2 Technical Specification Surveillance Sections 4.7.6.1(b)1, 4.7.7(b)2 and 4.9.12(b)2 to specify the in-place testing acceptance criteria of removal of equal to or greater than 99% of the test medium, in addition to referencing the appropriate sections of Regulatory Guide 1.52, Revision 2, March 1978.

Basis for proposed no significant hazards consideration determination: The proposed change clarifies the in-place testing acceptance criteria for charcoal adsorbers and HEPA filter banks, to preclude an unnecessary plant shutdown due to overly restrictive test criteria. The present wording of the surveillance sections indicates that the test procedures addressed in the specified sections of Regulatory Guide 1.52 should be used to conduct in-place testing. Regulatory Guide Sections C.5.c and C.5.d specify acceptance criteria of: penetration less than 0.05 percent for HEPA filter banks and bypass leakage through charcoal adsorber section less

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than 0.05 percent. NRC Generic Letter 83-13 provides clarification of the relationship between the guidance provided in Regulatory Guide 1.52, Revision 2, and ANSI N510-1975, concerning the testing requirements of the HEPA filters and charcoal adsorber units.

Generic Letter 83-13 states that a "0.05 percent value is applicable when a HEPA filter or charcoal adsorber efficiency of 99 percent is assumed, or 1 percent when a HEPA filter or charcoal adsorber efficiency of 95 percent or less is assumed in the NRC staff's safety evaluation (use the value assumed for the charcoal adsorber efficiency if the value for the HEPA filter is different from the charcoal absorber efficiency in the NRC staff's evaluation)."

Salem Generating Station UFSAR specifies that the charcoal filters are designed to absorb at least 90 percent of elemental and methyl iodines contacted at rated flow. The UFSAR goes on to state that HEPA filters remove at least 99 percent of all particles 0.3 micron and larger in size.

The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has analyzed the proposed amendment to determine if a significant hazards consideration exists:

The proposed changes to the Technical Specifications:

1. Do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes, which are administrative in nature, do not impact any accident analysis used to support operation of the Salem Generating Station. Furthermore, the proposed changes do not adversely affect the design or operation of any system or component important to safety. Consequently, the reliability of the performance of plant safety functions is not adversely affected.

The inclusion of the specific in-place testing acceptance criteria, within the associated Technical Specification surveillance section, is requested to clarify the testing criteria.

Therefore, it may be concluded that the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not adversely affect the design or operation of any system or component important to safety. No physical plant modifications or new operational configurations will result from these changes.

Therefore, it may be concluded that the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do not involve a significant reduction in a margin of safety.

The proposed changes clarify existing Technical Specification surveillance requirements. The changes do not make any physical alterations to the plant and are consistent with previously reviewed and approved Technical Specifications (Salem Unit 1), and Regulatory guidance (Generic Letter 83-13).

Therefore, it may be concluded that the proposed changes do not involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's submittal and significant hazards analysis and concurs with the licensee's determination that the proposed amendment does not involve a significant hazards consideration. Therefore, the staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Conner and Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of Amendment request: September 28, 1989

Description of amendment request: The licensee proposed to modify Surveillance Requirement 4.5.2.i to require testing the Residual Heat Removal (RHR) open permissive interlock at 375 psig or greater. The current requirement is to test the open permissive interlock at 580 psig or greater.

Basis for proposed no significant hazards consideration determination: Surveillance Requirement 4.5.2.i requires that the automatic interlock function of the RHR system be verified within seven days prior to placing the RHR System in operation. This is currently done by imposing a test signal corresponding to a reactor coolant pressure of 580 psig or greater and verifying that the isolation valves, RHR1 and RHR2, cannot be opened. The 580 psig corresponds to the setpoint of the automatic closure interlock that has been removed from Unit 1 and will be removed from Unit 2 during the next refueling outage. The setpoint of the open permissive interlock is 375 psig, therefore the reduction in test pressure will more closely match the setpoint of the interlock.

The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has analyzed the proposed amendment to determine if a significant hazards consideration exists:

The proposed change does not involve a significant hazards consideration because operation of Salem Generating Station Units 1 and 2 in accordance with this change would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

Lowering the test signal pressure is a move in a conservative direction. This more adequately tests the OPI [Open Permissive Interlock] and is consistent with the FSAR [Final Safety Analysis Report] which prohibits the operation of the RHR System until reactor pressure is 375 psig and the temperature is 350 degrees F or less.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. The open permissive interlock serves the purpose of not allowing the opening of RH1 and RH2 until the reactor pressure drops below the specified setpoint. The proposed change more adequately tests the interlock and therefore could not create the possibility of a new or different kind of accident.

(3) Involve a significant reduction in a margin of safety.

Since the lowering of the test signal pressure is a move in the conservative direction, overall safety has been increased, and the margin of safety as defined in the bases of the Technical Specifications is maintained.

The staff has reviewed the licensee's submittal and significant hazards analysis and concurs with the licensee's determination that the proposed amendment does not involve a significant hazards consideration.

Therefore, the staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Conner and Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, DC 20006.

NRC Project Director: Walter R. Butler.

Public Service Electric & Gas Company, Docket No. 50-311, Salem Generating Station, Units 1 and 2, Salem County, New Jersey

Date of amendment request: October 17, 1989

Description of amendment request: The proposed amendments would revise Salem Units 1 and 2 Technical Specification Surveillance Sections 4.8.2.3.2 (d) and 4.8.2.5.2 (d) to require a design duty cycle (currently 2 hours) load profile service test (simulated emergency loads) or load service test (actual loads) for the 125 volt and 28 volt batteries in lieu of the (8) hour load service test currently specified in the Technical Specifications.

Basis for proposed no significant hazards consideration determination: The licensee is committed to Regulatory Guide 1.129, which endorses IEEE STD-450. IEEE STD-450 describes a recommended procedure for conducting battery service tests. The recommended procedure states in part, "The discharge rate and length should correspond as closely as is practical to the design requirements (battery duty cycle) of the DC system". The proposed change satisfies this requirement by bringing the battery service test in-line with the design requirements. Conducting (8) hour battery capacity service tests does not ensure that the battery is capable of sustaining the DC emergency equipment for the design duty cycle. The (8) hour test utilizes lower discharge current rates than those experienced at the design duty cycle test length which at this time is 2 hours. In addition, the battery manufacturer has recommended battery testing at the design duty cycle rate. The use of simulated emergency loads in lieu of actual loads is consistent with the Westinghouse Standard Technical Specifications Revision 4, previously reviewed and approved by the NRC. The load profile service test will be conducted for the design duty cycle duration at the loading values specified within the surveillance procedure. The actual loading values are established based on battery loading calculations. The Technical Specification Surveillance frequency is unaffected by this modification.

The reduction in battery service test duration from (8) hours to the design duty cycle and the use of simulated emergency loads achieves consistency between the Salem Generating Station Technical Specifications, Salem Generating Station UFSAR and Westinghouse Standard Technical Specifications.

The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has analyzed the proposed amendment to determine if a significant hazards consideration exists:

The proposed change to the Technical Specifications:

1. Does not involve a significant increase in the probability or consequence of an accident previously evaluated.

The proposed changes ensure that the battery surveillance acceptance criteria is based on the battery design duty cycle. An accurate determination of battery capacity, based on design duty cycle, provides assurance that the batteries will fulfill their design function when required.

Therefore, it may be concluded that the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not adversely affect the design or operation of any system or component important to safety. No physical plant modifications or new operational configurations result from these changes.

Therefore, it may be concluded that the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does not involve a significant reduction in a margin of safety.

The margin of safety is maintained, since satisfactory surveillance results will clearly indicate acceptable battery capacity. The proposed change achieves consistency between the surveillance requirements and the component design and does not affect the surveillance frequency. The change does not make any physical alterations to the plant and is consistent with the previously reviewed and approved Westinghouse Standard Technical Specifications.

Therefore, it may be concluded that the proposed change does not involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's submittal and significant hazards analysis and concurs with the licensee's determination that the proposed amendment does not involve a significant hazards consideration. Therefore, the staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Conner and Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: October 20, 1989

Description of amendment request: The proposed amendments would remove from the Salem 1 and 2 Technical Specifications, Section 4.0.2 and the associated Bases, the limitation that for any 3 consecutive surveillance intervals, the combined time shall not exceed 3.25 times the specified surveillance interval.

Basis for proposed no significant hazards consideration determination: The proposed amendments were submitted in compliance with Generic Letter 89-14 dated August 21, 1989. Removal of the 3.25 limit from Specification 4.0.2 results in a greater benefit to safety than limiting the use of the 25 percent allowance to extend surveillance intervals. This safety benefit is incurred when a surveillance interval is extended at a time that conditions are not suitable for performing the surveillance. Several Technical Specifications require that surveillances be performed during a plant shutdown. When a limit is reached on extending the surveillance interval, a forced plant shutdown to perform these surveillances or a license amendment that defers the performance of the surveillance until the end of the fuel cycle are the only alternatives. A forced shutdown to perform these surveillances is not justified from a risk standpoint to

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avoid exceeding the 3.25 limit when exceeding these surveillances is within the 25 percent allowance. Some surveillances are designed to be performed during a refueling outage when the plant is in a desirable condition for conducting these surveillances. The risk of performing some of these surveillances during plant operation is greater than the impact on safety of exceeding the 3.25 limit while using the 25 percent allowance to extend these surveillances. The safety benefit of performing these surveillances during a plant shutdown is that systems do not have to be removed from service at a time that they are required to be operable.

The Commission has provided standards for determining whether a significant hazard consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has analyzed the proposed amendment to determine if a significant hazards consideration exists.

The proposed changes to the Technical Specifications:

1. Do not involve a significant increase in the probability or consequence of an accident previously evaluated.

As stated in Generic Letter 89-14, the removal if the 3.25 limit from Specification 4.0.2 results in a greater benefit to safety than limiting the use of the 25 percent allowance to extend surveillance intervals. Therefore, it may be concluded that the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not adversely affect the design or operation of any system or component important to safety. No physical plant modifications or new operational configurations result from this change.

Therefore, it may be concluded that the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does not involve a significant reduction in a margin of safety.

As stated in Generic Letter 89-14, the use of the allowance to extend surveillance intervals by 25 percent can result in a significant safety benefit. This safety benefit is obtained when a surveillance interval is extended at a time when conditions are not suitable for performing the surveillance. The safety benefit of allowing the use of the 25 percent allowance to extend a surveillance interval outweighs any benefit derived by limiting three (3) consecutive surveillance intervals to the 3.25 limit.

Therefore, it may be concluded that the proposed change does not involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's submittal and significant hazards analysis and concurs with the licensee's determination that the proposed amendment does not involve a significant hazards consideration. Therefore, the staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Conner and Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Yankee Atomic Electric Company, Docket No. 50-029, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of amendment request: November 22, 1989

Description of amendment request: The proposed amendment would incorporate into Yankee Nuclear Power Station's Technical Specifications wording from Generic Letter 84-13 which allows the removal of Table 3.7.4.

Basis for proposed no signficant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee addressed the above three standards in the amendment application. In regard to the three standards, the licensee provided the following analysis:

This change is requested to incorporate into Yankee's Technical Specifications guidance contained in Generic Letter 84-13. The change is classified as administrative in that only the location of the list is modified. All of the other requirements for snubber operability remain in place. As such, this proposed change would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. The administrative relocation of the snubber list does not affect plant accident evaluations.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated. The administrative relocation of the snubber list does not affect plant equipment, system, or component evaluations.

3. Involve a significant reduction in a margin of safety. The relocation of the snubber list does not change the determination of snubber operability.

The staff has reviewed the licensee's no significant hazards consideration determination analysis. Based upon this review, the staff believes that the proposed Technical Specification will not endanger the health and safety of the public.

Based upon the discussion above, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301

Attorney for licensee: Thomas Dignan, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02111

NRC Project Director: Richard H. Wessman

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Plant, Vernon, Vermont

Date of amendment request: November 9, 1989

Description of amendment request: The proposed amendment would change the Limiting Conditions of Operation (LCO) for the Uninterruptible Power Supply (UPS) out-of-service time. This change would be from 7-days to 30-days before requiring initiation of a plant shutdown. The UPSs provide power to Certain Low Pressure Coolant Injection (LPCI) valves, and assure power is available in the event offsite power is lost and the diesel fails to function.

Date of Publication of individual notice in **Federal Register:** November 21, 1989 (54 FR 48170).

Expiration date of individual notice: December 21, 1989

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Commonwealth Edison Company, Docket No. 50-237 and 50-249, Dresden Nuclear Power Station, Unit No. 2 and 3, Grundy County, Illinois; Docket Nos. 50-254 and 50-265 Quad Cities Station, Unit Nos. 1 and 2, Rock Island County, Illinois

Date of application for amendments: June 12, 1989

Description of amendments: These amendments change the most limiting pathway due to gaseous effluents from an infant via the cow-milk-infant pathway to a child via the inhalation pathway.

Date of issuance: November 28, 1989

Effective date: Implemented within 60 days

Amendment Nos.: 104, 109 for Dresden and 122, 118 for Quad Cities

Provisional Operating License No. DPR-19, for Dresden Unit 2 and Facility Operating License No. DPR-25 for Dresden Unit 3 and Facility Operating Licenses DPR-29 and DPR-30 for Quad Cities Units 1 and 2: These amendments revised the Technical Specification Bases.

Date of initial notice in **Federal Register:** July 26, 1989 (54 FR 31102). The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated November 28, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Morris Public Library, 604 Liberty Street, Morris, Illinois 60450 (Dresden) and Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021 (Quad Cities).

NRC Acting Project Director: Paul C. Shemanski

Commonwealth Edison Company, Docket No. 50-374, LaSalle County Station, Unit No. 2, LaSalle County, Illinois

Date of application for amendment: September 7, 1988, and augmented May 25, 1989, and August 29, 1989

Brief description of amendment: The amendment revised the TS by deleting the specifications added by Amendment 30 to allow installation and use of the Fine Motion Control Rod Drive (FMCRD) during Unit 2, Cycle 2. The test for which the FMCRD was installed has been completed and the FMCRD was removed during the Unit 2 refueling outage that concluded in February 1989. The information contained in the May 25 and August 29, 1989 CECo letters was clarifying in nature and did not affect the staff's previous proposed no significant hazards consideration determination.

Date of issuance: November 28, 1989

Effective date: November 28, 1989

Amendment No.: 53

Facility Operating License No. NPF-18. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 30, 1988 (53 FR 53091). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 28, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: October 7, 1988.

Brief description of amendment: This amendment revises the Technical Specifications by deleting the requirement to perform response time testing of the High Drywell Pressure actuation of the High Pressure Coolant Injection (HPCI) system. The change eliminates unnecessary operation of the HPCI system and thus enhances overall HPCI system reliability.

Date of issuance: November 27, 1989

Effective date: November 27, 1989

Amendment No.: 45

Facility Operating License No. NPF-43. The amendment revises the Technical Specifications

Date of initial notice in **Federal Register:** April 19, 1989 (54 FR 15627). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 27, 1989.

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No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: November 15, 1988

Brief description of amendment: This amendment revises the TS to reflect that the previous exemption concerning Oxygen concentration is no longer effective because the period for which the exemption was valid expired May 23, 1988. The application also proposed changes to the TS dealing with accident monitoring instrumentation. These changes will be evaluated under a separate cover.

Date of issuance: November 28, 1989

Effective date: November 28, 1989

Amendment No.: 46

Facility Operating License No. NPF-43. The amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** May 7, 1989 (54 FR 21305). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 28, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Duke Power Company, Docket Nos. 50-269, 50-270 and 50-287, Oconee Nuclear Station, Units 1, 2 and 3, Oconee County, South Carolina

Date of application for amendments: July 28, 1987

Brief description of amendments: The amendments revised TS 3.3 by deleting requirements to test redundant components for operability prior to initiating maintenance on any component in the High Pressure Injection System, Low Pressure Injection System, Reactor Building Cooling System, Reactor Building Spray System and Low Pressure Service Water System. Additionally, the amendments deleted expired footnotes from TS 3.7.2, 4.6.4, and 4.18 as well as added a footnote for clarification purposes to TS Table 4.1-2.

Date of issuance: November 29, 1989

Effective date: November 29, 1989

Amendment Nos.: 178, 178, 175

Facility Operating License Nos. DPR-38, DPR-47 and DPR-55. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 6, 1988 (53 FR 11369). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 29, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

Duquesne Light Company, Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of application for amendments: January 12, 1989; revision dated August 14, 1989.

Brief description of amendments: The amendments revise specification 3.4.6.1 for each unit to permit both containment atmosphere particulate and gaseous radiation monitors (both are reactor coolant leakage detection instruments) be inoperable for up to 12 hours due to calibration or maintenance activities. They also revise Table 4.3-3 to permit a more flexible calibration schedule for these monitors.

Date of issuance: November 29, 1989

Effective date: November 29, 1989

Amendment Nos.: 147 for Unit 1; 23 for Unit 2.

Facility Operating License Nos. DPR-66 and NPF-73. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 22, 1989 (54 FR 7634), renotice dated October 18, 1989, (54 FR 42857). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 29, 1989

No significant hazards consideration comments received: No.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of amendment request: June 23, 1989

Brief description of amendment: The amendment added two Gould Type HE43 breakers to Technical Specification 3.8.4.1-1, "Primary Containment Penetration Conductor Overcurrent Protection Devices". These circuit breakers provide primary containment penetration conductor overcurrent protection for circuits providing power to two 480V receptacles in the drywell.

Date of issuance: November 20, 1989

Effective date: November 20, 1989

Amendment No.: 40

Facility Operating License No. NPF-47. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 26, 1989 (54 FR 31109). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 20, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of application for amendment: May 4, 1988

Brief description of amendment: Revises Technical Specification Sections 3.6.2 and 4.6.2 to clarify the surveillance requirements for Average Power Range Monitoring scram and Rod Withdrawal Block instrumentation.

Date of issuance: November 21, 1989

Effective date: November 21, 1989

Amendment No.: 111

Facility Operating License No. DPR-63: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** May 17, 1989 (54 FR 21310). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 21, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Northern States Power Company, Dockets Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Units Nos. 1 and 2, Goodhue County, Minnesota

Date of application for amendments: March 17, 1988

Brief description of amendments: The proposed amendment covers numerous changes throughout the Technical Specifications and changes in support of the human error reduction program at the Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2. The human error reduction program deals with reducing human errors in all facets of plant operations (both under normal and potential emergency conditions) that could occur by the instruction given in the maintenance areas, operating procedures, and adhering to the requirements of the Technical Specifications. Changes to the Technical Specifications include the reorganization and standardization of some sections, the addition of action statements for limiting conditions of operation, the removal of ambiguities to reduce the potential for misinterpretations that could lead to human error, and changes to ensure consistency exists throughout the Technical Specifications.

Date of issuance: October 27, 1989

Effective date: 105 days from the date of issuance.

Amendment Nos.: 91 and 84

Facility Operating Licenses Nos. DPR-42 and DPR-60. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 21, 1987 (52 FR 39301). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 27, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

NRC Project Director: John Thoma, Acting

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Units 1 and 2, San Luis Obispo County, California

Date of application for amendments: August 15, 1989 (Reference LAR 89-10).

Brief description of amendments: The amendments revised the Technical Specifications (TS) to delete certain cycle-specific parameter limits from the TS. The revised TS reference the Core Operating Limits Report for the values of those limits.

Date of issuance: October 20, 1989.

Effective date: October 20, 1989.

Amendment Nos.: 45 and 44.

Facility Operating License Nos. DPR-80 and DPR-82: Amendments changed the Technical Specifications.

Date of initial notice in **Federal Register:** September 6, 1989 (54 FR 37050). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 20, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Units 1 and 2, San Luis Obispo County, California

Date of application for amendments: August 15, 1989 (Reference LAR 89-09).

Brief description of amendments: The amendments revised the Technical Specifications to (1) allow the use of a temporary source range detector during refueling if one of the two permanently installed excore source range detectors fails, (2) clarify that certain activities, which do not significantly affect core reactivity, are not considered core alterations, (3) require containment closure during movement of the reactor vessel upper internals and head, and (4) allow latching the control rod mechanism shaft to the rod cluster control assemblies and friction testing of individual control rods with one source range detector.

Date of issuance: October 30, 1989.

Effective date: October 30, 1989.

Amendment Nos.: 46 and 45.

Facility Operating License Nos. DPR-80 and DPR-82: Amendments changed the Technical Specifications.

Date of initial notice in **Federal Register:** September 6, 1989 (54 FR 37049). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 30, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Pennsylvania Power and Light Company, Docket No. 50-387 Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of application for amendment: June 23, 1989

Brief description of amendment: This Amendment revised the Technical Specifications to reflect resolutions arrived at in response to NRC Bulletin 88-07 and its Supplement No. 1, related to, "Power Oscillations in Boiling Water Reactors".

Date of issuance: November 22, 1989

Effective date: November 22, 1989

Amendment No.: 60

Facility Operating License No. NPF-14: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 26, 1989 (54 FR 31114). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 22, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Pennsylvania Power and Light Company, Docket No. 50-387 Susquehanna Steam Electric Station, Unit 1, Luzerne County, Pennsylvania

Date of application for amendment: April 12, 1989 as revised June 22, 1989

Brief description of amendment: Technical Specification changes to address thermal hydraulic instability

Date of issuance: November 20, 1989

Effective date: November 20, 1989

Amendment No.: 93

Facility Operating License No. NPF-14: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 12, 1989 (54 FR 29406). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 20, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Portland General Electric Company, Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of application for amendment: February 6, 1989, as supplemented October 25, 1989

Brief description of amendment: The Amendment revised Technical Specification 3/4.6.1.2 , "Containment Leakage," to exclude applicability of Specification 4.0.2.

Date of issuance: December 1, 1989

Effective date: December 1, 1989

Amendment No.: 156

Facility Operating License No. NPF-1: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 18, 1989 (54 FR 42859). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 1, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Portland State University Library, 731 S. W. Harrison St., Portland Oregon 97207

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Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: October 4, 1989

Brief description of amendments: Delayed implementation of Amendments 101 and 78 for Salem 1 and 2, respectively, from October 12, 1989 to prior to startup from the first plant shutdown to Mode 3, Hot Standby.

Date of issuance: November 21, 1989

Effective date: November 21, 1989

Amendment Nos. 104 and 81

Facility Operating License Nos. DPR-70 and DPR-75. These amendments revised the license.

Public comments requested as to proposed no significant hazards consideration: Yes (54 FR 41887) October 12, 1989. The notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice provided for an opportunity to request a hearing (by November 13, 1989) but indicated that if the Commission makes a final no significant hazards consideration determination, any such hearing would take place after issuance of the amendment. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 21, 1989.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

Rochester Gas and Electric Corporation, Docket No. 50-244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of application for amendment: August 30, 1989

Brief description of amendment: The amendment modifies the Technical Specifications to reflect an administrative change in title from Vice President, Production and Engineering to Senior Vice President, Production and Engineering.

Date of issuance: November 17, 1989

Effective date: November 17, 1989

Amendment No.: 38

Facility Operating License No. DPR-18: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 20, 1989 (54 FR 38767). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 17, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Southern California Edison Company, et al., Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of application for amendment: March 20, 1989, as supplemented September 11, 1989.

Brief description of amendment: The amendment revised the following in their entirety: T.S. 3.14, "Fire Protection" and T.S. 4.15, "Fire Protection."

Date of issuance: November 15, 1989.

Effective date: This license amendment is effective the date of issuance and must be fully implemented no later than 30 days from date of issuance.

Amendment No.: 131

Provisional Operating License No. DPR-13. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 31, 1989 (54 FR 23324). The September 11, 1989 letter provided supplemental information and did not change our initial proposed determination of no significant hazards consideration. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 15, 1989.

No significant hazards consideration comments received: No comments.

Local Public Document Room location: General Library, University of California, Post Office Box 19557, Irvine, California 92713.

Tennessee Valley Authority, Dockets Nos. 50-259 , 50-260, and 50-296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, Alabama

Date of application for amendment: August 9, 1989 (TS 274)

Brief description of amendments: The changes revise reactor pressure requirements at which the High Pressure Coolant Injection System and Reactor Core Cooling Isolation System must be operable.

Date of issuance: November 24, 1989

Effective date: November 24, 1989, and shall be implemented within 30 days

Amendment No.: 173, 176, 144

Facility Operating License No. DPR-33, DPR-52 and DPR-68: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 4, 1989 (54 FR 40934). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 24, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: May 25, 1989 (TS 89-03)

Brief description of amendments: The amendments modify the Sequoyah Nuclear Plant, Units 1 and 2, Technical Specifications (TSs). The changes revise Tables 3.3-3, "Engineered Safety Feature Actuation System Instrumentation", 3.3-4, "Engineered Safety Feature Actuation System Instrumentation Trip Setpoints", and 4.3-2, "Engineered Safety Feature Actuation System Instrumentation Surveillance Requirements." The changes add requirements for the logic time delays associated with the auxiliary feedwater (AFW) pump automatic suction transfer. Specifically, the new requirements are the following: (1) a "Functional Unit" 6.h is added to each of the above tables to include requirements for the AFW pump suction transfer time delays, (2) the current wording of Table 3.3-3, Action 21, is replaced with a new action appropriate for the AFW pump suction transfer pressure switches and time delays, and (3) the "Action" and "Mininum Channels Operable" columns Table 3.3-3, Item 6.g, are revised to reflect the new Action 21. In addition, the wording of Table 4.3-2, "Functional Unit," Item 6.g, is revised to correct an inadvertent omission from a previous license amendment.

Date of issuance: November 28, 1989

Effective date: November 28, 1989

Amendment Nos.: 129, 116

Facility Operating Licenses Nos. DPR-77 and DPR-79. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 9, 1989 (54 FR 32717). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 28, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing. For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By January 12, 1990, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room for the particular facility involved.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also

provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: November 16, 1989

Brief description of amendment: This amendment revises the Technical Specifications Figure 3.2.3-2, Flow Correction (K_f) Factor. The figure was part of a previous license amendment request dated April 3, 1989, and issued by the NRC as Amendment No. 42 to the Fermi-2 Operating License and was recently found to be in error. Further review of Amendment No. 42 found five other figures should be modified to more clearly show the limits they impose upon plant operation. In addition, some administrative or typographical errors were found in the designation of fuel bundle types in Specification 3.2.4 and in the referencing of new figures in Specification 4.2.3.1. Minor correction to the Bases were also found to be necessary. The November 16, 1989 letter requested that the amendment be processed under the provisions of 10 CFR 50.91(a)(5) as an emergency situation. The bases for the emergency situation is that reactor startup is scheduled for November 20, 1989, and lack of timely action would necessarily prevent resumption of plant operation. The staff has reviewed the bases for the emergency circumstances and concurs that the proposed amendment does fall under the provision of 50.91(a)(5).

Date of Issuance: November 21, 1989

Effective date: November 21, 1989

Amendment No.: 44

Facility Operating License No. NPF-43: Amendment revises the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No.

Comments received: No. The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated November 21, 1989.

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

NRC Project Director: John O. Thoma, Acting.

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: November 10, 1989

Description of amendment requests: This amendment revises the pressurizer safety valves' 27 one percent setpoint tolerance of Technical Specifications 3.1.A.3.c to minus (-) one percent to plus (+) five percent for the remainder of Cycle 10 for both Surry Units 1 and 2 by replacing the current footnote.

Date of issuance: November 16, 1989

Effective date: November 16, 1989

Amendment Nos.: 135 and 135

Facility Operating License Nos. DPR-32 and DPR-37: Amendments revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No. The Commission's related evaluation of the amendment, finding of emergency circumstances, consultation with the Commonwealth of Virginia and final determination of no significant hazards consideration are contained in a Safety Evaluation dated November 16, 1989.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Post Office Box 1535, Richmond, Virginia 23213.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

NRC Project Director: Herbert N. Berkow

Dated at Rockville, Maryland, this 7th day of December, 1989.

For the Nuclear Regulatory Commission

John A. Zwolinski,

Acting Director, Division of Reactor Projects - III, IV, V and Special Projects Office of Nuclear Reactor Regulation

[Doc. 89-28968 Filed 12-12-89; 8:45 am]

BILLING CODE 7590-01-D

[Docket No. 15000033 General License (10 CFR 150.20) EA 88-285]

Basin Services, Inc., Williston, North Dakota; Order Imposing Civil Monetary Penalty

I

Basin Testing Laboratory, Inc. (licensee) dba Basin Services, Inc., is the holder of North Dakota Materials License No. ND 33-16105-02 issued by the state of North Dakota on January 3, 1985, and due to expire on December 31, 1989. The license authorizes the licensee to possess sealed radioactive sources in radiography devices and to conduct industrial radiography activities. 10 CFR 150.20 grants the licensee a general license to conduct these activities in Nuclear Regulatory Commission (NRC or Commission) jurisdiction (non-Agreement States).

II

Inspections of the licensee's activities in NRC jurisdiction were conducted on September 1 and October 5-6, 1988. The results of these inspections indicated that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty was served upon the licensee by letter dated January 19, 1989. The Notice stated the nature of the violations, the provisions of the NRC's requirements that the licensee had violated, and the amount of the civil penalty proposed for the violations. The licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalty by letter dated February 22, 1989. In its response, the licensee admitted that the violations occurred as set forth in the Notice, but requested that the civil penalty be mitigated or retracted.

III

After consideration of the licensee's response and the statements of fact, explanation, and arguments for mitigation contained therein, the Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support has determined, as set forth in the Appendix to this Order, that the violations occurred as stated and that the penalty proposed for the violations designated in the Notice of Violation and Proposed Imposition of Civil Penalty should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, it is hereby ordered that:

The licensee pay a civil penalty in the amount of $5,000 within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. A copy of the hearing request shall also be sent to the Assistant General Counsel for Hearings and Enforcement, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region IV, 611 Ryan Plaza Drive, Suite 1000, Arlington, Texas 76011.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issue to be considered at such hearing shall be whether, on the basis of the violations as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty referenced in Section II above, this Order should be sustained.

Dated at Rockville, Maryland, this 6th day of December 1989.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

Appendix—Evaluations and Conclusions

On January 19, 1989, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for the violations identified during NRC inspections. Basin Testing Laboratory responded to the Notice on February 22, 1989. The licensee admitted the violations but requested that the proposed civil penalty be mitigated or retracted. The NRC's evaluation and conclusions regarding the licensee's arguments are as follows:

Restatement of Violations

I. Violations Assessed a Civil Penalty

A. 10 CFR 34.31(a)(4) requires, in part, that the licensee shall not permit any individual to act as a radiographer until such individual has demonstrated understanding of the instructions in 10 CFR 34.31(a) by successful completion of a written test and a field examination on the subjects covered.

10 CFR 34.44 requires that whenever a radiographer's assistant uses radiographic exposure devices, uses sealed sources or related source handling tools, or conducts radiation surveys to determine that the sealed source has returned to the shielded position after an exposure, he shall be under the personal supervision of a radiographer. Personal supervision shall include: (1) The radiographer's personal presence at the site where the sealed sources are being used, (2) the ability of the radiographer to give immediate assistance if required, and (3) the radiographer's watching the assistant's performance of the operations referred to in this section.

Contrary to the above, on November 10-14 and November 18 and 19, 1987, at temporary job sites in Wyoming, the licensee permitted a radiographer's assistant, who did not meet the requirements of 10 CFR 34.31(a) and who was not under the personal supervision of a radiographer, to conduct the radiographic operations described in 10 CFR 34.44. Specifically, the radiographer's assistant had not demonstrated understanding of the instructions in 10 CFR 34.31(a) by successful completion of a written test and a field examination on the subjects covered, and was permitted to conduct the radiographic operations listed in 10 CFR 34.44 while not in the presence of, and observed by, a qualified radiographer.

B. 10 CFR 150.20(b)(1) requires, in part, that prior to engaging in activities in non-Agreement States, except as specified in 10 CFR 150.20(c), any person holding a specific license from an Agreement State shall, at least 3 days before engaging in each such activity, file 4 copies of NRC Form 241 (revised) "Report of Proposed Activities in Non-Agreement States" and 4 copies of its Agreement State specific license with the Regional Administrator of the U.S. Nuclear Regulatory Commission Regional Office listed in Appendix D of 10 CFR part 20, for the Region in which the Agreement State that issued the license is located.

Contrary to the above, between 1985 and October 6, 1988, the licensee engaged in licensed activities in non-Agreement States on at least 16 occasions, and did not file any NRC Form 241 with the appropriate Regional Administrator, and the exceptions of 10 CFR 150.20(c) did not apply.

C. 10 CFR 30.9(a) requires, in part, that information provided to the Commission by a licensee be complete and accurate in all material respects.

Contrary to the above, by letter dated October 13, 1988, in response to NRC's inspection findings which had been provided to the president of the company by telephone on October 12, 1988, the licensee's president indicated that the licensee had conducted work on September 12, 1988, in a particular area of North Dakota, an Agreement State. This information was not complete and accurate in all material respects in that the radiography work in question had been conducted on September 12, 1988, in Montana.

These violations have been assessed in the aggregate as a Severity Level III problem. (Supplement VI).

Cumulative Civil Penalty—$5,000 (assessed equally among the violations).

II. Violations Not Assessed A Civil Penalty

10 CFR 71.5(a) requires, in part, that each licensee who transports licensed material outside of the confines of its plant or other place of use shall comply with the applicable requirements of the regulations appropriate to the mode of transportation of the

Department of Transportation in 40 CFR parts 170 through 189.

A. 49 CFR 172.200(a) requires, in part, that except as otherwise provided in subpart C, each person who offers a hazardous material for transportation shall describe the hazardous material on the shipping papers.

49 CFR 172.202(a) requires, in part, that the description of a hazardous material on the shipping paper must include the proper shipping name prescribed for the material in 49 CFR 172.101 or 172.102, the identification number, preceded by "UN" or "NA" as appropriate.

49 CFR 172.203(a) requires, in part, that a description of a shipment of radioactive material must also include a description of the physical and chemical form of the material and the category of label and transportation index.

Contrary to the above, as of October 6, 1988, shipping papers utilized during the transport of industrial radiographic sources containing curie quantities of iridium-192 did not contain any of the above required information.

This is a Severity Level IV violation. (Supplement V)

B. 49 CFR 172.301 requires, in part, that except as provided by this subchapter packaging having a rated capacity of 110 gallons or less shall be marked with the proper shipping name and identification number, preceded by "UN" or "NA", as appropriate, to identify whether the content descriptions are considered appropriate for international shipments as described in 49 CFR 172.101(e).

Contrary to the above, on September 12, 1988, a package which was not excepted by the subchapter (Tech-Ops Model 520 exposure device) was utilized in transport of a sealed source of approximately 67 curies of iridium-192 and the identification number, preceded by "UN" was not included in the package markings.

This is a Severity Level IV violation. (Supplement V)

Summary of Licensee's Response and Request for Mitigation

The licensee admits that the violations occurred as stated in the Notice. However, the licensee states that the civil penalty should be mitigated in accordance with the factors in Section V.B. of the Enforcement Policy. Specifically, the licensee states: (1) That self identification does not apply; (2) that corrective actions were taken to assure future compliance; (3) that Basin's past performance warrants mitigation in that the violations described in the Notice represent the only occasions on which Basin has been accused of violating state or federal requirements; (4) that prior notice is not applicable in that Basin had not previously been notified of alleged violations; (5) that there are not multiple examples of violations with the exception of Basin's failure to file 241 forms; and (6) that the violations were of brief duration with the exception of Basin's failure to file 241 forms.

The licensee also states that none of the violations were intentional, and that the assessment of a civil penalty of $5000 will place a significant financial hardship upon Basin. In addition, the licensee claims that, in accordance with Table 1A. of the Enforcement Policy, Basin should not be assessed a civil penalty because it is properly designated as an industrial user of material having violations classified as "safeguards." In the alternative, the licensee requests that the NRC exercise its discretion under section V.G. of the Enforcement Policy and mitigate or suspend imposition of the proposed civil penalty.

NRC Evaluation of Licensee's Request for Mitigation

In deciding to propose a $5,000 civil penalty for the violations in Section I of the Notice, NRC gave consideration to each of the adjustment factors in section V.B. of the Enforcement Policy, and no adjustment to the base civil penalty was deemed appropriate. NRC views the licensee's comments regarding the policy's adjustment factors in the following way:

1. Identification and Reporting—NRC agrees that this factor is not applicable. Although the revisions to the policy published in October 1988 provide for increasing a penalty if violations are identified by NRC rather than the licensee, the violations that were the subject of this action, while discovered by the NRC, were found prior to the revisions to the policy becoming effective.

2. Corrective Actions to Prevent Recurrence—NRC agrees that, ultimately, the licensee implemented corrective actions to prevent noncompliance. However, we cannot conclude that Basin's corrective actions were prompt. Nor does NRC view Basin's corrective actions as particularly comprehensive. Thus, on balance, NRC sees no basis for any adjustment on the basis of this factor.

3. Past Performance—In terms of compliance with NRC requirements, there was no history of past performance to rely upon since NRC had not previously inspected Basin. Thus, there is no basis for adjustment of the proposed civil penalty based upon this factor.

4. Prior Notice of Similar Events, Multiple Occurrences and Duration—The licensee's reliance upon these factors as a basis for mitigation or retraction of the civil penalty is misplaced, as under the Enforcement Policy these factors are only considered as a basis for escalation of the base civil penalty.

The licensee asserts that none of the violations were intentional, and yet admits, in its response, that is knowingly allowed a radiographer's assistant to conduct radiographic operations. Further, based on an investigation by NRC's Office of Investigations (OI), it appears that the licensee's president "knowingly and intentionally disregarded NRC regulations which he became aware of in June 1988." Thus, based on the above facts, the NRC is unconvinced by the licensee's assertion that none of the violations were intentional, as its actions show willful noncompliance with the NRC's requirements.

NRC's Enforcement Policy states that "it is not the NRC's intention that the economic impact of a civil penalty be such that its puts a licensee out of business (orders, rather than civil penalties, are used when the intent is to terminate license activities) or adversely affects a licensee's ability to safely conduct licensed activities." While Basin states that this civil penalty would place a significant hardship on the company, it provides no evidence to suggest that paying the penalty would result in putting the company out of business or would adversely affect its ability to conduct its activities safely.

The NRC concurs with the licensee's statement that its program is correctly designated as an industrial user of material based on Table 1A. in the Enforcement Policy. However, the violations assessed a civil penalty involve "materials operations," not safeguards, and therefore, the Table 1A. base civil penalty for an industrial user is $10,000. When the factor for Severity Level as indicated in Table 1B. of the Enforcement Policy is considered, the base civil penalty becomes $5000 for the classification of the three violations in the aggregate at Severity Level III.

In regard to the licensee's request that NRC exercise the discretion provided in Section V.G. of the Enforcement Policy, there has not been a basis provided that would warrant the exercise of discretion for these NRC identified willful violations.

NRC Evaluation of Letter dated June 5, 1989 from Licensee's Attorney

Subsequent to the licensee's response of February 22, 1989, the NRC received a letter from the licensee's attorney dated June 5, 1989. This letter contended, among other things, that all of Basin's Level I and Level II operators were, in fact, radiographers and not radiographer's assistants and, therefore, that the licensee did not have any radiographer's assistants conducting radiographic processes, and did not fail to supervise radiographer's assistants. This letter contradicted the licensee's previous sworn admission of Violation I.A. in its February 22 response. Based on a telephone discussion between an NRC Region IV staff member and the attorney on June 30, 1989, the attorney orally withdrew his contentions. Therefore, the NRC has disregarded the contentions in the June 5, 1989 letter.

NRC Conclusion

NRC concludes based on its evaluation of the licensee's response that Basin has not provided an adequate basis for mitigation or retraction of the proposed civil penalty. Consequently, the proposed civil penalty in the amount of $5,000 should be imposed.

[FR Doc. 89-29062 Filed 12-12-89; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 15000033 General License (10 CFR 150.20) EA 88-285]

Basin Testing Laboratory, Inc. dba Basin Services, Inc. Williston, North Dakota; Order To Show Cause Why License Should Not Be Suspended

I

Basin Testing Laboratory, Inc. (licensee) is the holder of North Dakota Materials License No. ND 33-16105-02 issued by the State of North Dakota on January 3, 1985, and due to expire on December 31, 1989. The license authorizes the licensee to possess sealed radioactive sources in radiography devices and to conduct industrial radiography activities. 10 CFR 150.20 grants the licensee a general license to conduct these activities in Nuclear Regulatory Commission (NRC or Commission) jurisdiction (non-Agreement States).

II

Inspections of the licensee's activities within NRC jurisdiction were conducted on September 1 and October 5-6, 1988. The results of these inspections indicated that the licensee has not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty was served upon the licensee by letter dated January 19, 1989. Three violations were categorized in the aggregate at Severity Level III and assessed a civil penalty in the amount of $5,000. These involved: (1) Basin's permitting a radiographer's assistant, who had not completed a written test or field examination, to conduct radiographic operations while not in the presence of, and observed by, a qualified radiographer, a violation of 10 CFR 34.44; (2) Basin's failure to have informed NRC of its work in NRC jurisdiction from 1985 to 1988 by filing an NRC Form 241, a violation of 10 CFR 150.20; and (3) Basin's having provided NRC inaccurate information in its initial responses to the NRC's inspection findings, a violation of 10 CFR 30.9. In a February 22, 1989, response, Basin admitted the violations but sought to have the civil penalty mitigated or withdrawn. Based on its evaluation of Basin's arguments for mitigation, NRC is issuing, on the same date as this Order, an Order imposing upon Basin a civil penalty in the same amount as that proposed.

In its February 22, 1989, reply, which was provided as a sworn statement signed by Basin's President, William Cobban, Basin made the following statement in regard to the reason for its failure to have filed an NRC Form 241: "Basin was simply ignorant of the requirement for completing the form 241 prior to conducting activities in non-Agreement States." Because this statement was in conflict with information NRC had obtained from the North Dakota Department of Health regarding its inspections of Basin, NRC Region IV requested NRC's Office of Investigations (OI) to determine whether the company's president made a false statement to the NRC and whether Basin intentionally failed to inform NRC of its activities in non-Agreement States.

In the Report of Investigation 4-89-006, completed in July 1989, OI determined that the President of Basin "knowingly and intentionally disregarded NRC regulations which he admitted he became aware of in June 1988." OI also determined that the previously mentioned statement in Basin's February 22, 1989, reply to NRC was false respect to licensed activities Basin conducted in non-Agreement States after June 1988 but before NRC's inspections in September and October 1988. The basis for OI's findings is that Basin was informed during an inspection by the North Dakota Department of Health in June 1988 and in July 1988 in a written inspection report that it had an obligation to notify NRC of its then-current activities in Wyoming, a non-Agreement State, an obligation with which Basin did not comply.

In addition, the licensee at the Enforcement Conference argued that it was in compliance with 10 CFR 34.44 because there was a radiographer on site; however, in its February 22, 1989 response, the licensee admits it knowingly allowed a radiographer's assistant to conduct radiographic operations in violation of NRC's requirements.

III

On the basis of the information discussed in Section II of this Order, NRC concludes that Basin committed willful violations of NRC requirements in: (1) Failing to inform NRC of its licensed activities in Wyoming (Laramie Pipeline, Laramie, Wyoming) which occurred from June to August 1988, and (2) providing a false statement to the NRC as to its knowledge of this requirement. In addition, the licensee in its February 22 response, admits it knowingly allowed a radiographer's assistant to conduct radiographic operations in violation of NRC requirements. NRC recognizes based on its February 28, 1989, inspection that Basin currently appears to be in compliance with the NRC's regulations. However, because of the past willful violations, the NRC has substantial questions as to whether there is reasonable assurance that the licensee will comply in the future with the Commission requirements, including providing complete and accurate responses to the Commission's duly authorized agents. Therefore, the NRC requires that Basin Testing Laboratory, Inc., show cause why the general license authorized pursuant to 10 CFR 150.20 which allows Basin to conduct industrial radiography activities in locations under NRC jurisdiction should not be suspended until Basin Testing Laboratory, Inc. has taken sufficient actions to assure that licensed activities will be properly conducted and information provided the Commission and agents will be complete and accurate.

IV

In view of the above, and pursuant to sections 81, 161b, 161c, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended (Act), and the regulations in 10 CFR parts, 2, 30, 34 and 150, *it is hereby ordered that:*

Basin Testing Laboratory, Inc., doing business as Basin Services, Inc., which holds License Number ND 33-16105-02 issued by the state of North Dakota, show cause within 20 days of the date of this Order why its general license authorized by 10 CFR 150.20 to conduct industrial radiography activities within NRC jurisdiction should not be suspended.

V

Pursuant to 10 CFR 2.202(b), the licensee may show cause why this Order, in whole or in part, should not have been issued by filing a written answer under oath or affirmation within 20 days of the date of issuance of this Order, setting forth the matters of fact and law on which the licensee relies. The licensee may answer, as provided in 10 CFR 2.202(d), by consenting to the entry of this Order. If the licensee fails to file an answer within the specified time, consents to this order, or fails to request a hearing in accordance with section VI below, and in the absence of any other request for a hearing, this order shall be final without further proceedings.

VI

The licensee or any other person adversely affected by this Order may request a hearing within 20 days of the date of this Order. Any answer to this Order or request for a hearing shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. Copies also should be sent to the Assistant General Counsel for Hearings and Enforcement, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the Regional Administrator, U.S.

Nuclear Regulatory Commission, Region IV, 611 Ryan Plaza Drive, Suite 1000, Arlington, Texas 76011. If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by the licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of the hearing. If a hearing is held, the issue to be considered shall be whether the licensee's general license under 10 CFR 150.20 should be suspended.

Dated at Rockville, Maryland, this 6th day of December 1989.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

[FR Doc. 89-29063 Filed 12-12-89; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Request for Approval of OPM Form 1386; Applicant Race and National Origin Questionnaire Submitted to OMB for Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request to revise and reinstate the use of OPM Form 1386, Applicant Race and National Origin Questionnaire. OPM will use Form 1386, Applicant Race and National Origin Questionnaire, to collect data needed for determining impact of selection procedures and for complying with provisions of *Leuvano* v. *Newman*, Civil Action 79-0271, U.S. District Court for DC.

Approximately 60,000 will be processed annually; each form requires approximately 8 minutes to complete, for a total public burden of 8,000 hours.

For copies of this proposal, call Larry Dambrose, on (202) 632-0199.

Because OPM Form 1386 will be used in connection with alternative examinations for college entry positions developed in accordance with the *Luevano* decree, which must be announced early in Calendar Year 1990 if registers are to be established in time to hire 1990 graduates, OPM is requesting expedited OMB clearance to the revised and reinstated OPM Form 1386 within 14 days.

DATES: Comments on this proposal should be received on or before December 18, 1989.

ADDRESS: Send or deliver comments to Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 3235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Tracy E. Spencer on (202) 632-6817.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

BILLING CODE 6325-01-M

U.S. Office of Personnel Management

Form Approved: O.M.B. No. 3206-XXXX

APPLICANT RACE AND NATIONAL ORIGIN QUESTIONNAIRE

Instructions

1 – Complete only if the Occupation for which you are applying is listed in item 5.
2 – DO NOT fold, staple, tear or paper clip this form.
3 – Use only a Number 2 lead pencil.
4 – Completely blacken the circle corresponding to your response choice.
5 – Completely erase any mistakes or stray marks.
6 – Read the instructions for each item carefully before completing that item.

BATCH NUMBER (BNO)
FOR OFFICE USE ONLY

1 USE A NUMBER 2 PENCIL

Name *(Please Print)*

Write your response in the boxes and blacken the appropriate circles.

2 EXAMPLE

2 SOCIAL SECURITY NUMBER

The United States District Court for the District of Columbia, in a Decree approved in a lawsuit entitled Luevano v. Newman, Civil Action No. 79-0271, has ordered that Federal Government agencies provide data on the race and national origin of applicants for certain Federal occupations. The position for which you are applying is one of those occupations.

You are requested to complete this form. The data you supply will be used for statistical analysis pursuant to the requirements of the lawsuit. Submission of this information is voluntary. Your failure to do so will have no effect on the processing of your application for Federal employment. Read the Public Burden Statement on the back.

Your Social Security Number (SSN) is requested under the authority of Executive Order 9397 (November 22, 1943) for the orderly administration of personnel records. Submission of your SSN is voluntary and failure to furnish your SSN on this form will have no effect on your application.

This form is authorized for use by the Office of Personnel Management ONLY for the purposes of complying with the requirements of the Luevano v. Newman Decree.

3 RACIAL AND/OR NATIONAL ORIGIN

INSTRUCTIONS: The categories below provide descriptions of racial and national origins. Read the Definition of Category descriptions and then blacken the circle next to the category with which you identify yourself. If you are of mixed racial and/or national or origin, select the category with which you most closely identify yourself. **NOTE: Please mark only ONE circle!**

Name of Category	Definition of Category
○ American Indian or Alaskan Native	A person having origins in any of the original peoples of North America, and who maintains cultural identification through community recognition or tribal affiliation.
○ Asian or Pacific Islander	A person having origins in any of the original peoples of the Far East, Southeast Asia, the India subcontinent, or the Pacific Islands. For example, this area includes China, India, Japan, Korea, the Philippine Islands, and Samoa.
○ Black, not of Hispanic origin	A person having origins in any of the black racial groups of Africa. This does not include persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish cultures or origins.
○ Hispanic	A person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish cultures or origins. This does not include persons of Portuguese culture or origin.
○ White, not of Hispanic origin	A person having origins in any of the original peoples of Europe, North America, or the Middle East. This does not include persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish cultures or origins.
○ Other	A person not included in another category.

PLEASE COMPLETE BOTH SIDES

All Previous Editions are Obsolete

OPM Form 1386 (Rev. 1-90)

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4 PRIMARY GEOGRAPHIC ZONE

INSTRUCTIONS: Blacken the circle next to the Zone which includes your first choice for location of employment. This designation is for statistical use only and will not affect your actual consideration for employment. **NOTE: Please mark only ONE circle!**

ATLANTA	CHICAGO	DALLAS	PHILADELPHIA	SAN FRANCISCO
Alabama	Illinois	Arizona	Connecticut	California
Florida	Indiana	Arkansas	Delaware	Idaho
Georgia	Iowa	Colorado	Maine	Nevada
Mississippi	Kansas	Louisiana	Maryland	Oregon
North Carolina	Kentucky	Montana	Massachusetts	Washington
South Carolina	Michigan	New Mexico	New Hampshire	
Tennessee	Minnesota	Oklahoma	New Jersey	
Virginia	Missouri	Texas	New York	
	Nebraska	Utah	Pennsylvania	
	North Dakota	Wyoming	Rhode Island	
	Ohio		Vermont	
	South Dakota			
	West Virginia			
	Wisconsin			

ALASKA	CARIBBEAN	HAWAII
State of Alaska	Puerto Rico and the Virgin Islands	State of Hawaii and Pacific overseas area

○ **WASHINGTON, D.C.:** Washington, D.C. Metropolitan Area (Charles, Montgomery, and Prince George's Counties in Maryland. Arlington, Fairfax, Prince William, King George, Stafford and Loudoun Counties and Falls Church, Alexandria, and Fairfax cities in Virginia) and Overseas Atlantic area (African, European, Middle Eastern, Central and South American countries).

5 OCCUPATIONS

INSTRUCTIONS: The category below lists the Occupations with Positive Education Requirements. Blacken the circle next to the occupation for which you would like to be considered. **NOTE: Please mark only ONE circle!**

○ Archeology (0001O)	○ Geography (0001G)
○ Archivist (0001U)	○ History (0001K)
○ Community Planning (0001D)	○ International Relations (0001I)
○ Economist (0001E)	○ Manpower Research and Analysis (0001M)
○ Education Program (0001V)	○ Museum Curator (0001Q)
○ Foreign Affairs (0001F)	○ Psychology (0001P)
○ General Anthropology (0001N)	○ Social Science (0001J)
○ General Education and Training (0001T)	○ Sociology (0001S)

PUBLIC BURDEN STATEMENT

Public burden reporting for this collection of information is estimated to take approximately 8 minutes per response, including time for reviewing instructions, searching existing data sources, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Reports and Forms Management Officer, U.S. Office of Personnel Management, 1900 E Street, N.W., Room 6410, Washington, D.C. 20415; and to the Office of Management and Budget, Paperwork Reduction Project (3206-XXXX), Washington, D.C. 20503.

OPM Form 1389 BACK (Rev. 1-90)

[FR Doc. 89-29067 Filed 12-12-89; 8:45 am]
BILLING CODE 6325-01-C

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Increase in Level of Permissible Imports of Certain Articles From the European Community

AGENCY: Office of the United States Trade Representative.

ACTION: Modification of quantitative restrictions.

SUMMARY: This notice increases the level of permissible imports for 1989 and subsequent years of certain articles the product of member countries of the European Community (EC) that are subject to limitation under Presidential Proclamation 5478 of May 15, 1986.

EFFECTIVE DATE: 12:01 a.m., December 13, 1989.

FOR FURTHER INFORMATION CONTACT: Laura Anderson, (202) 395-3074, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20506.

SUPPLEMENTARY INFORMATION: On May 15, 1986, the President determined pursuant to section 301(a) of the Trade Act of 1974 that certain restrictions imposed by the EC on imports of grain and oilseeds deny benefits to the United States under the General Agreement on Tariffs and Trade (GATT), are unreasonable and constitute a burden or restriction on U.S. commerce. In Proclamation 5478 (51 FR 18294), the President proclaimed quantitative restrictions on imports into the United States of specified articles the product of any member country of the EC, effective May 19, 1986. In that proclamation, the President authorized the United States Trade Representative (USTR) to suspend, modify or terminate any of the quantitative restrictions upon publication in the **Federal Register** of the USTR's determination that such action is justified by actions of the EC or is otherwise appropriate.

The intent of the U.S. quantitative restrictions is to have an effect on EC trade comparable to the EC's restrictions on imports following Portugal's entry into the EC. The EC has not been willing to remove its restrictions with respect to oilseeds. However, the EC has committed to adjust the level of the EC quota on soybean oil consumption that alleviates the immediate risk of damage to U.S. export interests from these measures in 1990.

In response to this EC commitment, it is appropriate to adjust the level of U.S. restrictions in order to avoid a more damaging effect on EC trade than is warranted by the current operation of the EC restrictions in Portugal.

Modifications

Pursuant to the authority delegated to me in Proclamation 5478 of May 15, 1986, I have determined that a modification of the quantitative restrictions provided for in that proclamation is justified by actions taken by the EC with respect to this matter and is otherwise appropriate, taking into account the interests of the United States.

Accordingly, for calendar year 1989 and any subsequent calendar year, the levels of permissible imports under the quantitative restrictions provided for in subheadings 9903.17.20 and 9903.17.25 of subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTS) for articles the products of the European Economic Community are increased, and effective on the date of publication of this notice and determination in the **Federal Register**, the quantities specified in those HTS subheadings are modified to read as follows:

[Ale, porter, stout and beer:]

[9903.17.20	In containers other than glass each holding not over 3.8 liters (provided for in heading 2203 or 2206)] "26,159,450 liters"
[9903.17.25	In containers each holding over 3.8 liters (provided for in heading 2203 or 2206)] "78,039,000 liters"

Carla A. Hills,

United States Trade Representative.

[FR Doc. 89-29149 Filed 12-12-89; 8:45 am]
BILLING CODE 3190-01-M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; Pugent Sound Power & Light Co., 9.36% Preferred Stock, $25 Par Value (File No. 1-4393)

December 7, 1989.

Puget Sound Power & Light Company ("Company"), has filed an application with the Securities and Exchange Commission ("Commission") pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("AMEX").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

In February 1979, Puget Sound Power & Light Company ("the Company") issued 2 million shares of the 9.36% Preferred Stock. This issue has been listed on the AMEX. From 1982 through 1984, 57,600 shares were redeemed through open market purchases. On March 1, 1987, 162,000 shares were redeemed through sinking fund provisions. On July 1, 1987, 970,400 shares were called for redemption. An additional 162,000 shares were retired through the sinking fund on each March 1 in 1988 and 1989. Currently, 486,000 shares remain outstanding and are held by 270 holders of record. In addition, only 22 transactions involving the 9.36% Preferred Stock, inclusive of sales and certificate transfers, occurred during the first nine months of 1989.

Since the number of shares listed on the AMEX which have not been cancelled and remain outstanding has decreased from 2 million to 486,000 shares and because of the small number of holders of involving the shares, the Company has determined that the cost of continued listing on the AMEX is no longer prudent.

Any interested person may, on or before December 29, 1989, submit by letter to the Secretary of the Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-29022 Filed 12-12-89; 8:45 am]
BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Craven County, NC

AGENCY: Federal Highway Administration (FHWA), DOT

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ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project which bypasses the town of New Bern, North Carolina.

FOR FURTHER INFORMATION CONTACT: Robert L. Lee, District Engineer, Federal Highway Administration, P.O. Box 26806, Raleigh, North Carolina 27611, Telephone: (919) 790-2856.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the North Carolina Department of Transportation (NCDOT) will prepare an environmental impact statement (EIS) for the improvement of the US-17 Corridor around New Bern. The proposed action would be the construction of a multi-lane, divided, controlled access highway, on new location from the existing US-17, south of US-70, to US-17, north of the Neuse River, in Craven County. US-17 is North Carolina's major north-south route east of Interstate 95. Improvements to the corridor are considered necessary to increase safety and traffic service around New Bern.

Corridors under consideration include: (1) the "no-build", (2) the partial relocation and improvements of existing US-17, and (3) a highway on entirely new location.

Solicitation of comments on the proposed action are being sent to appropriate Federal, State and local agencies. A complete public involvement program is being developed for the project to include: distribution of newsletters to interested parties, public meetings, and a public hearing to be held in the study area. Information on the time and place of the public hearing will be provided in the local news media. The draft EIS will be available for public and agency review and comment prior to the public hearing. No formal scoping meeting is planned at this time.

To assure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Robert L. Lee,

District Engineer, Raleigh, North Carolina.

[FR Doc. 89-29015 Filed 12-12-89; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: December 7, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, P.L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Financial Management Service

OMB Number: 1510-0027.
Form Number: 1661.
Type of Review: Extension.
Title: Application for Payment of a Decreased Depositor's Postal Savings.
Description: This form is required in cases of deceased Postal Savings depositors with accounts of $50 or less. The form is used by relatives of the deceased depositors showing the relationship to the depositor and the date of depositor's death. The information helps to determine who is entitled to payment.
Respondents: Individuals or households.
Estimated Number of Respondents: 150.
Estimated Burden Hours Per Response: 15 minutes.
Frequency of Response: As needed.
Estimated Total Reporting Burden: 38 hours.
OMB Number: 1510-0052.
Form Number: TFS 458, 459, 460, 469.
Type of Review: Extension.
Title: Financial Institution Forms for Federal Tax and Treasury Tax and Loan Depository.
Description: Financial institutions are required to complete a contract application to participate in the FTD/TT&L Program. The approved application designates the depository as an authorized recipient of taxpayers' deposits for Federal taxes.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 450.
Estimated Burden Hours Per Response: 30 minutes.
Frequency of Response: Once for the duration of authorization.
Estimated Total Reporting Burden: 450 hours.
Clearance Officer: Jacqueline R. Perry (301) 436-6453, Financial Management Service, Room 500A, 3700 East West Highway, Hyattsville, MD 20782.
OMB Reviewer: Milo Sunderhauf (202) 395-6880 Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Irving W. Wilson, Jr.,

Department Reports Management Officer.

[FR Doc. 89-29013 Filed 12-12-89; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: December 7, 1989.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0245.
Form Number: 6627.
Type of Review: Revision.
Title: Environmental Taxes.
Description: Attached to Form 720 to compute and collect tax on petroleum, chemicals, imported chemical substances, and ozone-depleting chemicals.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 3,400
Estimated Burden Hours Per Response:

Recordkeeping	26 hours, 33 minutes.
Learning about the law or the form.	22 minutes.
Preparing the form	1 hour, 45 minutes.
Copying, assembling, and sending the form to IRS.	16 minutes.

Frequency of Response: Quarterly.
Estimated Total Reporting Burden: 393,448 hours.
OMB Number: 1545-0633.
Form Number: Notice 437, 438, 466.
Type of Review: Extension.
Title: Notice of Intention to Disclose.
Description: Notice is required by 26 U.S.C. 6110(f). A reply is necessary if recipient disagrees with the Service's proposed deletions. The Service uses the reply to consider propriety of making additional deletions to public inspection versions of written determinations or related background file documents.
Respondents: Individuals or households, Farms, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations.
Estimated Number of Respondents: 7,000.
Estimated Burden Hours Per Response: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 3,500 hours.
Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Irving W. Wilson, Jr.,

Departmental Reports Management Officer.

[FR Doc. 89-29077 Filed 12-12-89; 8:45 am]

BILLING CODE 4810-25-M

UNITED STATES SENTENCING COMMISSION

Public Access to Sentencing Commission Documents and Data

AGENCY: United States Sentencing Commission.

ACTION: Notice of promulgation of a revised interim policy regarding public access to Sentencing Commission documents and data and solicitation of comments; publication of agreement between the Administrative Office of the United States Courts and the United States Sentencing Commission concerning the confidentiality of certain sentencing information.

SUMMARY: Pursuant to its authority under section 995(a) of title 28, United States Code, the Sentencing Commission promulgates a revised interim policy on public access to Sentencing Commission documents and data set forth below and invites public comment. The Sentencing Commission also publishes the agreement which it entered into with the Administrative Office of the United States Courts on June 22, 1988, concerning the confidentiality of certain sentencing information.

EFFECTIVE DATE: The revised policy on public access to Sentencing Commission documents and data set forth below takes effect on March 15, 1990.

DEADLINE FOR COMMENTS: Comments should be received by the Commission no later than February 12, 1990.

ADDRESS: Comments should be sent to the United States Sentencing Commission, 1331 Pennsylvania Avenue, NW., Suite 1400, Washington, DC 20004, Attention: Public Access Comment.

FOR FURTHER INFORMATION CONTACT: Paul K. Martin, Communications Director for the Commission, telephone: (202) 662-8800.

SUPPLEMENTARY INFORMATION: Section 995(a)(1) of Title 28 authorizes the U.S. Sentencing Commission, an independent commission in the Judicial branch of government, to establish general policies and promulgate rules and regulations for the Commission as necessary to carry out the purposes of the Sentencing Reform Act of 1984.

On June 21, 1989, the Commission published in the **Federal Register** an interim policy on public access to Commission data and documents and solicited public comment. Comments were generally concerned with two areas: (1) That the agreement concerning the confidentiality of certain sentencing information which the Commission had entered into with the Administrative Office of the United States Courts had not been previously published; and, (2) that under the interim policy source documents are generally unavailable to the public. In response to the first comment, the Commission is publishing its agreement with the Administrative Office. The text of the agreement is set forth below following the revised interim policy on public access to Commission documents and data.

The Commission has also reviewed its initial determination not to provide public access to source documents such as judgement and commitment orders and plea agreements. The Commission is legally obligated not to provide access to confidential documents and continues to believe that it is under no legal obligation to provide access to other documents. Further, the effort required to provide access to judgement and commitment orders and plea agreements would place an excessive burden on the resources of the agency. It should be noted that the information contained in such documents will be summarized in the datasets which the Commission provides to the Inter-university Consortium for Political and Social Research. These datasets will contain a variety of information about the defendant (though not information which would identify him), the nature of the offense, and the sentence imposed. These datasets will be updated periodically with the addition of new cases. Further, such documents themselves are available from the court of origination.

The Commission has also included in the revised interim policy a provision in part III which makes clear that it may also assemble datasets of other non-confidential information which it has obtained in the course of conducting research, in support of policy development, or in otherwise performing its functions. Such datasets will also be made available to the public through the Inter-university Consortium for Political and Social Research.

Authority: 28 U.S.C. § 995(a)(1), Sentencing Reform Act of 1984 (Pub. L. 98-473, October 12, 1984).

William W. Wilkins, Jr.,

Chairman.

Public Access to Sentencing Commission Documents and Data

I. Introduction: General Purpose and Authorities

Providing public access to non-confidential sentencing information is consistent both with the letter and the spirit of the Sentencing Reform Act of 1984. Among the Commission's duties under the Act is to "establish sentencing policies and practices for the Federal criminal justice system that reflect, to the extent practicable, advancement in knowledge of human behavior as it relates to the criminal justice process." 28 U.S.C. 991(b)(1)(C). As part of that mandate, Congress envisioned that the Commission would "serv[e] as a clearinghouse and information center for the collection, preparation, and dissemination of information on Federal sentencing practices." 28 U.S.C. 995(a)(12)(A).

Consistent with its clearinghouse function, the Commission is required to provide certain information to the public regarding sentencing in the federal system. Thus, the Commission is

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responsible for: (a) Collecting systematically the data obtained from studies, research, and the empirical experience of public and private agencies concerning the sentencing process [28 U.S.C. 995[a][13]); (b) publishing data concerning the sentencing process (28 U.S.C. 995(a)(14)); (c) collecting systematically and disseminating information concerning sentences actually imposed, and the relationship of such sentences to the statutory purposes of sentencing set forth in section 3553(a) of title 18, United States Code (28 U.S.C. 995(a)(15)); (d) collecting systematically and disseminating information regarding effectiveness of sentences imposed [28 U.S.C. 995(a)(16)); and, (e) maintaining and making available for public inspection a record of the final vote of each member on any action taken by it (28 U.S.C. 995(e)).

The U.S. Sentencing Commission seeks to carry out its Congressional mandates in a manner that provides for the most efficient use of government resources and is consistent with its agreement with the Administrative Office of the U.S. Courts regarding the confidentiality of certain documents.

II. Public Access to Commission Publications and Other Reports

Publications.—Official Commission publications are available to the public through the Government Printing Office or other administratively efficient means. Copies of all such documents are available in the Commission library for public review.

Other Reports.—Requests for statistical information regarding federal sentencing practices will be limited to published and/or Commission approved reports. The reports produced from monitoring data collected by the Commission will be made available periodically and photocopies of such reports may be requested from the Commission. The cost of photocopied documents are the responsibility of the requestor.

III. Public Access to Commission Data

Comprehensive Datasets.—The Commission will create a comprehensive dataset on federal sentencing practices under the Sentencing Guidelines that will be made available for public use through the Inter-university Consortium for Political and Social Research. The dataset will contain a variety of information about the defendant (though not information which would identify him), the nature of the offense, and the sentence imposed. These datasets will be updated periodically with the addition of new cases.

From time to time the Commission, where appropriate, may also make available datasets of other non-confidential information which it has obtained in the course of conducting research, in support of policy development, or in otherwise performing its functions. These datasets will also be made available to the public through the Inter-university Consortium for Political and Social Research.

Source documents.—Source documents, in general, will not be available to the public. Much of the information contained within individual files is of a confidential nature and is protected by an agreement entered into by the Commission with the Administrative Office of the U.S. Courts.

IV. Public Access to Commission Minutes and Library Services

Commission Minutes. Approved minutes of Commission meetings are available for public inspection. Appointments to view the minutes must be coordinated through the Communications Director. Photocopies of minutes are also available. The cost of photocopied documents are the responsibility of the requestor.

Library Services. The public is afforded full access to the library and the documents contained therein. Books and other documents and materials are available for use by the public and may be photocopied at the expense of the user.

V. Special Research Projects

Authority and Purpose.—Under 28 U.S.C. 995(a) (6)–(7), the Commission has authority to enter into "cooperative agreements [ ] and other transactions * * * with any person, firm, association, corporation, educational institution, or nonprofit organization" and to "accept and employ * * * voluntary and uncompensated services." From time to time the Commission may enter into cooperative agreements with private researchers to undertake an analysis of sentencing data. The purpose of such agreements would be to further the Commission's duty to "establish sentencing policies and practices for the Federal criminal justice system that reflect, to the extent practicable, advancement in knowledge of human behavior as it relates to the criminal justice process." 28 U.S.C. 991(b)(1)(C).

Criteria and Requirements.—Cooperative agreements, when entered into, will involve formal arrangements with outside persons or organizations. All requirements with respect to preserving the confidentiality of information that are applicable to the Commission and its staff will apply equally to any party who enters into a cooperative agreement with the Commission. Proposals for cooperative agreements will be considered by the Commission in light of the following criteria:

- Whether the proposed research is sponsored by a recognized academic institution, non-profit research organization, or government entity;
- The purpose of the research and extent to which the proposed project would advance the knowledge of human behavior as it relates to the criminal justice process; and
- The amount of data that is being requested and the administrative burden involved in providing such data.

Special Project Coordination and Feasibility. Proposals for special projects will be reviewed by the Staff Director, the General Counsel, and the Associate Director(s) of Research of the Sentencing Commission, or their designees, who shall report to the Commission on the feasibility and appropriateness of the proposal. The Staff Director shall ensure that a representative of the General Counsel's Office and of the Probation Division of the Administrative Office of the U.S. Courts are consulted with respect to the proposed cooperative agreement as it my relate to the Commission's obligations involving confidentiality of sentencing data.

Explanation

Section I

This section sets forth the statutory authorities under which the Commission adopted a policy on public access.

Section II

Publications.—This section refers to official Commission publications such as the Guidelines Manual, the Supplementary Report on the Initial Sentencing Guidelines and Policy Statements, and the Annual Report that are currently available from the Government Printing Office (GPO). As new reports are produced and approved by the Commission for dissemination, they too will be made available through the GPO or other administratively efficient means. It is anticipated that the computer software developed to assist in application of the Sentencing Guidelines (ASSYST) will be made available to the general public through the National Technical Information Service.

Other Reports.—This section provides that materials other than official publications will only be made available to the public upon specific approval by the Commission.

Section III

Comprehensive Datasets.—This section provides that comprehensive datasets of sentencing information and, where appropriate, other information the Commission obtains through conducting research, in support of policy development, or in otherwise performing its functions, will be made available to the public through the Inter-university Consortium for Political and Social Research. Making information available in that manner is consistent with the policies of other federal agencies conducting or administering research related to sentencing and other criminal justice issues. Although the dataset will not contain information which would identify an individual defendant, it will contain a variety of information about the defendant, the nature of the offense, and the sentence imposed. Included will be variables identifying the circuit and district of the offense as well as demographic information about the defendant such as age, race, and sex. In addition, information about the defendant's prior criminal record, the statutes of conviction, and certain guideline indicators will be included in the file. Finally, information about the sentence imposed will be included.

Source Documents.—This section states that source documents will not be made available to the public. The Commission takes this position relative to source documents for two reasons. First, in June of 1988 the Commission entered into an agreement with the Administrative Office of the U.S. Courts concerning the appropriate treatment of confidential sentencing data.[1]

This agreement places several limitations on the Commission in terms of the data collected by representatives of the U.S. Courts and provided to the Commission:

- it permits the use of confidential information "only in connection with" the Commissioin's "statutory duties;"
- it requires that "[n]o information that will identify an individual defendant or other person identified in the sentencing information" be released outside of the Commission without the express permission of the court for which the information was prepared and that public Commission reports or summaries containing sentencing information be free of confidential identifying information; and
- it requires the Commission to maintain administrative and physical security over the information and limits internal distribution of confidential sentencing information to Commissioner and Commission personnel with a "need for the information."

It is imperative that the Commission operate both by the letter and the spirit of the agreement with the Administrative Office. The cooperation of the Administrative Office in the collection of the data is essential to the Commission's ability to carry out its statutory mandate to "collect systematically and disseminate information regarding effectiveness of sentences imposed."

The second reason that the Commission is unable to make source documents available to the public relates to the physical and financial burden that such a policy would place on the Commission. In order to protect the confidentiality of information, photocopies of every non-confidential document would be required. Each photocopy would require inspection and removal of individual identifying information. Separate storage would be required for the desensitized documents in order to remove the potential of accidental availability of confidential documents or documents that contained individual identifiers. The Commission simply does not have the resources to provide such a service, particularly given that summaries of the information available from such source documents would be available through the dataset provided in the Inter-university Consortium for Political and Social Research.

Section IV

Commission Minutes.—Section 995(e) of title 28, United States code, requires that a record of votes of each member of the Commission be made available to the public. This policy is proposed in furtherance of that statutory requirement.

Library Services.—The Commission is assembling a library that will contain books, academic journals and articles, government reports and documents, reports of varied studies on federal sentencing, and bibliographic materials on selected topics related to federal sentencing. As part of its clearinghouse function library materials are available to the public for review on Commission premises and for duplication at the users' expense.

Section V

This section provides a formal structure under which the Commission may share information with outside researchers for mutually beneficial purposes. The Commission possesses the authority under statute to enter into "cooperative agreements" with private individuals and organizations and to accept voluntary, uncompensated services. This section anticipates situations where the Commission may wish to cooperate with outside research organizations in the interests of furthering "the advancement in knowledge of human behavior as it relates to the criminal justice process." 28 U.S.C. § 991(b)(1)[C]. It provides that such cooperative agreements be formal and that all requirements concerning the confidentiality of information be observed. Criteria for accepting a proposed project are provided. Further, a staff committee is required to assess proposals for feasibility and appropriateness. It is also required that certain offices within the Administrative Office of the United States Courts be consulted with respect to any questions concerning the Commission's obligations involving the confidentiality of sentencing data as they may relate to a proposed cooperative agreement.

Agreement Concerning the Confidentiality of Certain Sentencing Information

Introduction.—The agreement between the Administrative Office of the United States Courts and the United States Sentencing Commission was memorialized in the following letter between L. Ralph Mecham, Director of the Administrative Office and Judge William W. Wilkins, Jr., Chairman of the Commission. The letter is dated June 22, 1988 and become effective when countersigned by Judge Wilkins on July 21, 1988. The letter follows:

June 22, 1988.

Honorable William W. Wilkins, Jr.,
Chairman, United States Sentencing Commission, 1331 Pennsylvania Avenue, NW., Washington, DC 20004.

Dear Judge Wilkins: On March 7, 1988, I notified the courts of the documentation needed by the Sentencing Commission to perform its statutory duty of monitoring sentences imposed under the provisions of the Sentencing Reform Act. My memorandum noted that a general agreement protecting the confidentiality of presentence reports would be entered into by the Commission and the Administrative Office. Since my memorandum, the General Accounting Office has requested access to presentence reports and other documents from the Commission. This request required agreement with the GAO on the protection of the confidentiality

[1] Letter from L. Ralph Mecham, Director, Administrative Office of the U.S. Courts, to Honorable William W. Wilkins, Jr., Chairman, U.S. Sentencing Commission, June 22, 1988.

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of presentence reports and coordination with your Research Division on how to honor requests that certain information not be forwarded to the GAO. Now that these arrangements have been made, we can execute an agreement on confidentiality. I understand that this agreement has been worked out by our respective General Counsels.

Accordingly, I understand that the United States Sentencing Commission agrees to maintain the confidentiality of sentencing information transferred to the Commission through the assistance of the Administrative Office as follows:

(1) The sentencing information will be used only in connection with the statutory duties of the Commission as set forth in chapter 58 of title 28, United States Code.

(2) No information that will identify an individual defendant or other person identified in the sentencing information will be disclosed to persons or entities outside of the Commission without the express permission of the court for which the information was prepared. However, this restriction does not prohibit disclosure of sentencing information to the General Accounting Office unless an individual court has identified a particular case as to which the court has requested that sentencing information not be disclosed to the General Accounting Office.

(3) The Commission will maintain administrative and physical security of the sentencing information in order to provide a reasonable assurance against accidental or deliberate disclosure to unauthorized persons.

(4) Access within the Commission to the sentencing information will be limited to commissioners and to those employees* who have a need for the information for the purposes set out in chapter 58 of title 28, United States Code, and the commissioners and such employees will be advised of and agree to comply with the provisions of this agreement.

(5) Any reports, findings or other summaries of the sentencing information that will become accessible to the public will not contain information that can reasonably be expected to lead to the identification of an individual defendant or other person identified in the sentencing information.

Please acknowledge acceptance of these conditions by signing the copy of this letter and returning it to the undersigned.

Sincerely,

L. Ralph Mecham,

Director.

Dated: July 21, 1988.

Agreed to as outlined above:

William W. Wilkins, Jr.,

Chairman, Sentencing Commission.

[FR Doc. 89-29004 Filed 12-12-89; 8:45 am]

BILLING CODE 2210-01-M

*As used in this document, the term "employees" includes all persons employed or retained by the Commission, including but not limited to contractors, consultants, temporary and part-time employees, and volunteers.

Sunshine Act Meetings

Federal Register
Vol. 54, No. 238
Wednesday, December 13, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Forwarded to the Federal Register on December 7, 1989.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Friday, December 15, 1989.

CHANGES IN THE MEETING: Addition of the following open item(s) to the meeting:

Board Multi-Year Affirmative Employment Program Plan.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: December 11, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-29156 Filed 12-11-89; 11:37 am]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 12:00 a.m., Monday, December 18, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: December 11, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-29157 Filed 12-11-89; 11:37 am]

BILLING CODE 6210-01-M

NATIONAL LABOR RELATIONS BOARD

TIME AND DATE: 10:00 a.m., Wednesday, December 13, 1989.

PLACE: Board Conference Room, Sixth Floor, 1717 Pennsylvania Avenue NW., Washington, DC 20570.

STATUS: Closed pursuant to 5 U.S.C. 552b(c)(2) (internal personnel rules and practices) and (c)(6) (personal information where disclosure would constitute a clearly unwarranted invasion of personal privacy).

MATTERS TO BE CONSIDERED: Personnel matters.

CONTACT PERSON FOR MORE INFORMATION: John C. Truesdale, Executive Secretary National Labor Relations Board, Washington, DC 20570, Telephone: (202) 254-9430.

Dated: Washington, DC, December 7, 1989.

By direction of the Board.

John C. Truesdale,

Executive Secretary, National Labor Relations Board.

[FR Doc. 89-29145 Filed 12-11-89; 11:06 am]

BILLING CODE 7445-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Tuesday, December 19, 1989.

PLACE: Board Room, Eighth Floor, 800 Independence Avenue, S.W., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Marine Accident Report: Sinking of the Passenger Vessel COUGAR, off the Coast of Oregon, September 15, 1989.

NEWS MEDIA PLEASE CONTACT BETTY SCOTT (202) 382-6600

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382-6525.

Dated: December 8, 1989.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 89-29167 Filed 12-11-89; 12:49 pm]

BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of December 11, 18, 25, 1989 and January 1, 1990.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of December 11

Thursday, December 14

10:00 a.m.
Briefing on Status of Implementation of the Severe Accident Master Integration Plan and Status of Licensee Progress on IPE (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of December 18—Tentative

Tuesday, December 19

10:00 a.m.
Briefing on Risk Communication (Public Meeting)

Wednesday, December 20

2:00 p.m.
Briefing by DOE on Status of Civilian High Level Waste Program (Public Meeting)

Thursday, December 21

2:00 p.m.
Briefing on NRC Actions for Cleanup of Contaminated Sites Under NRC Jurisdiction (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, December 22

10:00 a.m.
Briefing by Executive Branch (Closed—Ex. 1)

Week of December 25—Tentative

There are no Commission meetings scheduled for the Week of December 25.

Week of January 1—Tentative

Thursday, January 4

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

ADDITIONAL INFORMATION: By a vote of 5-0 on December 1, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that Commission business required that "Discussion of Management-Organization and Internal Personnel Matters" (Closed—Ex. 2 & 6), be held on December 1 and held on less than one week's notice to the public.

By a vote of 4-0 (Commissioner Roberts not present) on December 5, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that Commission business required that "Affirmation of Revised Policy Statement and Enforcement Criteria Related to the Maintenance of Nuclear Power Plant"

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(Public Meeting), be held on December 5 and held on less than one week's notice to the public.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meetings Call (Recording)—(301) 492–0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

Dated: December 7, 1989.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 89–29155 Filed 12–11–89; 11:37 am]

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federal register

Wednesday
December 13, 1989

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 73

Establishment of Warning Areas in the Airspace Overlying the Waters Between 3 and 12 Nautical Miles From the United States Coast; Extension of Expiration Date; Final Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. 25767; Special Federal Aviation Regulation (SFAR) No. 53–1]

Establishment of Warning Areas in the Airspace Overlying the Waters Between 3 and 12 Nautical Miles From the United States Coast

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; extension of expiration date.

SUMMARY: This action continues for an additional 12 months the effectiveness of warning areas established in airspace subject to FAA jurisdiction in order to reflect presidential action extending the territorial sea of the United States, for international purposes, from 3 to 12 nautical miles from the U.S. coast. The warning areas were established in the same location as non-regulatory warning areas previously designated over international waters. The Department of Defense (DOD) conducts hazardous military flight activities in these areas. The areas had been established for a period of 1 year to permit the FAA to consider the need for rulemaking action to meet military training needs in this airspace. This action continues the effectiveness of these areas while airspace analyses and rulemaking efforts are ongoing.

DATES: *Effective:* December 27, 1989.

Expiration date: December 27, 1990.

FOR FURTHER INFORMATION CONTACT: David L. Bennett, Office of the Chief Counsel, AGC–230, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, Telephone: (202) 267–3491.

SUPPLEMENTARY INFORMATION:

Availability of Document

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the number of this SFAR. Persons interested in being placed on a mailing list for future rules should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

Background

Presidential Proclamation No. 5928, signed on December 27, 1988, extended the sovereignty of the United States government, for international purposes, from 3 to 12 nautical miles from the U.S. coast. By final rule issued on that same date, the FAA amended parts 71 and 91 of the Federal Aviation Regulations to extend controlled airspace and the applicability of general flight rules to the airspace overlying the waters between 3 and 12 nautical miles from the U.S. coast (54 FR 264; January 4, 1989).

When the airspace was considered to be over international waters, military aircraft were not prohibited from conducting hazardous training activities within this area. Warning areas were designated in this airspace to provide notice to nonparticipating pilots of the location of hazardous military training operations. However, nonparticipating pilots were not restricted from operating in these areas.

Upon the extension of part 91 operating rules to this airspace, DOD would have been prohibited from hazardous flight activities without an exemption from the regulations or the designation of an airspace category for that purpose. Warning areas established in international airspace, under FAA internal procedures, do not in themselves authorize hazardous activities. An exemption would permit the continuation of military operations, but would not in itself adequately inform the general flying public of the existence of these activities. An interruption of military operations normally conducted in warning areas would have an adverse impact on national defense. Accordingly, the FAA established regulatory warning areas to permit the continuation of existing military training activities in the same areas where those activities were and are still being conducted (SFAR–53, 54 FR 260, January 4, 1989).

The warning areas established by SFAR–53 are unique airspace designations intended solely to allow the continuation of military training activity and to permit nonparticipating aircraft to fly through such areas. Controlled flights are not affected by SFAR–53 or this extension, as such flights will continue to be routed around active warning areas.

Warning area designations and descriptions are not contained in the Code of Federal Regulations (CFR). For **Federal Register** citations affecting the warning areas, see the List of CFR Sections Affected in the Finding Aids section of 14 CFR part 73.

The Office of the Secretary of Defense has advised the FAA that its assessment of the impact upon military training operations of the expansion of territorial airspace and the applicable flight rules is ongoing. The DOD requested, on the basis of its preliminary findings, a one-year delay in the expiration of SFAR–53. The DOD stated that this delay will enable the DOD, in consultation with the FAA, to determine the best course of implementation of regulatory special use airspace.

The FAA agrees that the additional year is necessary to develop any additional rulemaking actions necessary to redesignate portions of the affected airspace.

Regulatory Evaluation

This SFAR does not alter the provision of air traffic control (ATC) services, nor does it have an impact on ATC system users. This special rule merely allows military training activity to continue without interruption, while permitting nonparticipating pilots to fly through such areas. Accordingly, because the costs of the rule adopted are so minimal, a regulatory evaluation has not been prepared.

Federalism Implications

The amendment set forth herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this amendment does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons set forth above, the FAA has determined that this action is not a "major rule" under Executive Order 12291. In addition, the FAA certifies that this regulation will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Act. This regulation is not considered a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

List of Subjects in 14 CFR Part 73

Aviation safety, Special use airspace.

The Amendment

For the reasons set forth above, the Federal Aviation Administration is amending 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. No. 97–449, January 12, 1983); 14 CFR 1180.

2. By amending Special Federal Aviation Regulation No. 53 to revise the Applicability paragraph (which expires December 27, 1990), to read as follows:

Special Federal Aviation Regulation No. 53–1—Establishment of Warning Areas in the Airspace Overlying the Waters Between 3 and 12 Nautical Miles From the United States Coast

1. Applicability. This rule establishes warning areas in the same location as non-regulatory warning areas previously designated over international waters. This special regulation does not affect the validity of any non-regulatory warning area which is designated over international waters beyond 12 nautical miles from the coast of the United States. This special regulation expires on December 27, 1990.

* * * * *

Issued in Washington, DC, on December 7, 1989.

Jerry W. Ball,

Acting Director, Air Traffic Operations Service.

[FR Doc. 89–29047 Filed 12–12–89; 8:45 am]

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H.R. 972/Pub. L. 101–203
To amend section 3724 of title 31, United States Code, to increase the authority of the Attorney General to settle claims for damages resulting from law enforcement activities of the Department of Justice. (Dec. 7, 1989; 103 Stat. 1805; 1 page) Price: $1.00

H.R. 1312/Pub. L. 101–204
Domestic Volunteer Service Act Amendments of 1989. (Dec. 7, 1989; 103 Stat. 1806; 23 pages) Price: $1.00

H.R. 2134/Pub. L. 101–205
To amend the Federal Meat Inspection Act and the Poultry Products Inspection Act to authorize the distribution of wholesome meat and poultry products for human consumption that are not in compliance with the Acts to charity and public agencies. (Dec. 7, 1989; 103 Stat. 1829; 3 pages) Price: $1.00

H.R. 3720/Pub. L. 101–206
National Consumer Cooperative Bank Amendments of 1989. (Dec. 7, 1989; 103 Stat. 1832; 1 page) Price: $1.00

S. 1164/Pub. L. 101–207
To authorize appropriations for fiscal year 1990 for the Office of the United States Trade Representative, the United States International Trade Commission, and the United States Customs Service. (Dec. 7, 1989; 103 Stat. 1833; 3 pages) Price: $1.00

S. 1677/Pub. L. 101–208
To improve the operational efficiency of the James Madison Memorial Fellowship Foundation, and for other purposes. (Dec. 7, 1989; 103 Stat. 1836; 2 pages) Price: $1.00

S.J. Res. 164/Pub. L. 101–209
Designating 1990 as the "International Year of Bible Reading". (Dec. 7, 1989; 103 Stat. 1838; 1 page) Price: $1.00

S.J. Res. 203/Pub. L. 101–210
Providing for the appointment of Homer Alfred Neal as a citizen regent of the Board of Regents of the Smithsonian Institution. (Dec. 7, 1989; 103 Stat. 1839; 1 page) Price: $1.00

S.J. Res. 202/Pub. L. 101–211
Providing for the appointment of Robert James Woolsey, Jr. as a citizen regent of the Board of Regents of the Smithsonian Institution. (Dec. 7, 1989; 103 Stat. 1840; 1 page) Price: $1.00

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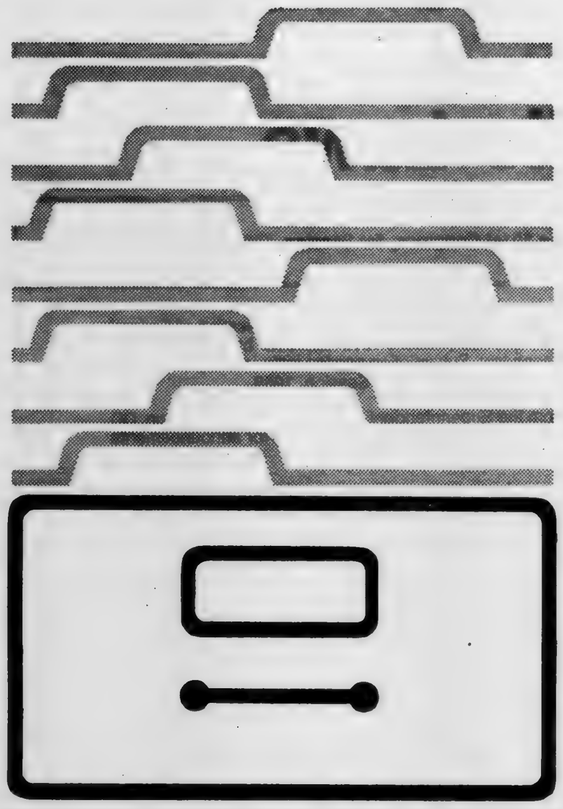

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Federal Register
Vol. 54, No. 239
Thursday, December 14, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

Special Supplemental Food Program for Women, Infants and Children (WIC): Participation of Homeless Individuals

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule amends regulations governing the Special Supplemental Food Program for Women, Infants and Children (WIC) to comply with the mandates of section 212 of the Hunger Prevention Act of 1988 (Pub. L. 100-435), enacted on September 19, 1988. The purpose of this rulemaking is to facilitate participation of otherwise eligible homeless persons in WIC. In accordance with the Act, this rulemaking defines "homeless individual" and specifically identifies WIC as a supplement to food assistance which may be provided by soup kitchens, shelters, and other forms of emergency food assistance. The definition of "homeless individual" specifies types of overnight facilities whose otherwise eligible residents must be granted access to WIC if such facilities meet conditions insuring that the individuals, not the facility, benefit from the program. The rulemaking also permits State agencies to extend WIC to persons associated with other institutions, provided the same conditions are met. Also pursuant to legislative mandates, the interim rule requires State agencies to include in their State plans a description of how they will provide program benefits to, and meet the special nutritional and nutrition education needs of, homeless individuals; a plan for disseminating program availability and eligibility information; and a plan to determine whether a homeless facility or institution meets the four mandatory conditions.

These regulations further require that competent professional authorities take into account the special needs and problems of homeless individuals when prescribing supplemental foods. Finally, State agencies may, under the interim regulations, request permission from the Food and Nutrition Service (FNS) to make substitutions for foods required in the food packages in order to accommodate the circumstances of the homeless.

DATES: This rulemaking becomes effective January 16, 1990. Comments must be received on or before April 13, 1990.

ADDRESS: Comments may be mailed to Ronald J. Vogel, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, room 1017, Alexandria, Virginia 22302, (703) 756-3746. All written submissions will be available for public inspection at this address during regular business hours (8:30 a.m. to 5 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Barbara Hallman, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, room 1017, Alexandria, Virginia 22302, (703) 756-3730.

SUPPLEMENTAL INFORMATION:

Classification

This interim rule has been reviewed under Executive Order 12291, and has been determined not to be major. The Department does not anticipate that this rule will have an impact on the economy of $100 million or more. This rule will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Further, this rule will not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). Pursuant to that review, the Administrator of the Food and Nutrition Service has certified that this interim rule will not have a significant impact on a substantial number of small entities.

The reporting requirements established by this rulemaking in §§ 246.4, 246.7(i), and 246.10 have been reviewed by the Office of Management and Budget under control number 0584-A536, in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

This rulemaking implements legislative mandates of section 212 of Public Law 100-435, which became effective on September 19, 1988. For this reason, the Administrator of FNS has certified that it is appropriate to waive the solicitation of public comments prior to implementation through a proposed rulemaking. However, the Department has exercised some discretion in the implementation of the legislative provisions of Public Law 100-435, and believes the rule may be improved by public comment. Therefore, comments are solicited on this rule until April 13, 1990. All comments received will be analyzed, and any appropriate changes in the rule will be incorporated in the subsequent publication of a final rule.

This program is listed in the Catalog of Federal Domestic Assistance Programs under 10.557 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, and final rule-related notice published June 24, 1983 (48 FR 29114)).

Background

There have never been specific, direct regulatory barriers to homeless persons' participation in the WIC program, such as the need for a fixed address or a durational residency requirement. Furthermore, particular attention has long been focused in the Child Nutrition Act of 1966, as amended, on the needs of special populations, e.g., migrants and native Americans. With the enactment of Public Law 100-435, Congress has ensured that homeless individuals will now receive special program emphasis. Over the past year, the Department has encouraged States to make a special effort to seek out and serve otherwise eligible homeless individuals. A number of State agencies have already begun to direct attention toward making the WIC Program more available and accessible

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to eligible homeless women, infants, and children, for example, by tailoring the food packages, or establishing local agency clinics and WIC certification offices in hotels which house homeless families. Other States have held statewide training sessions for their local WIC agencies to educate them about the special problems most frequently encountered by homeless individuals, and how WIC can help to alleviate some of these problems. The Department has tried to assist and encourage States in such efforts by providing them with: (1) The names and addresses of organizations currently working to assist the homeless; (2) data which help to characterize the homeless population; and (3) State-developed procedures that show promise in accommodating the homeless.

Many of the legislative requirements of Public Law 100–435 pertaining to the homeless can be met under existing WIC Program regulations. State agencies already have considerable flexibility in their food prescription and food delivery procedures. Therefore, it is not difficult to tailor the food package for homeless participants to include, for example, ultra-high temperature (UHT) milk, which does not require refrigeration, and smaller, single-serving packages of cereal or juice. Food delivery systems are also adaptable within the parameters of the current regulations by expedients such as issuing more food instruments, each for smaller quantities of food, so that storage does not become a problem.

Regulations have never precluded otherwise eligible persons residing in institutions that do not serve meals from unqualified access to the WIC Program. However, the rules on WIC services for persons residing in institutions that do serve meals have not been clear. Two regulatory provisions that have contributed to the conclusion that persons in residential institutions that serve meals are not eligible for WIC services are discussed below.

First, "family" has been defined in § 246.2 as "a group of related or nonrelated individuals who are *not residents of an institution* but who are living together as one economic unit." This definition has been viewed by some State agencies as a basis for denying WIC participation to all persons residing in institutions. However, the provision was intended only to preclude the consideration of all residents of one institution as one "family" for the WIC income determination proccess. This was clarified in November, 1987 in FNS Instruction 803–13. Second, § 246.12(o) of the regulations, which states that "The State agency shall ensure that supplemental foods are not issued for use in institutions which serve meals" has been interpreted in the WIC community to mean that persons in residential institutions may not benefit from WIC. Upon further review, the Department determined that the intent of the provision, i.e., to ensure that the WIC Program benefits the participant rather than the institution, could be satisfied without denying benefits to persons in such institutions. The provision was not intended to preclude from WIC otherwise eligible persons. The Department clarified this issue through FNS Instruction 803–13 in November 1987. This Instruction established conditions, discussed in detail below, under which residents of institutions serving meals could, in fact, participate in WIC. These conditions ensure that such participation is consistent with the concern that gave rise to the regulatory intent of § 246.12(o) that participation must benefit the individual, not the institution, and that foods provided through WIC retain their identity as supplemental foods meant solely for the participant's use instead of being utilized by the institution in lieu of foods which the institution would ordinarily provide. FNS Instruction 803–13 granted authority to State agencies to serve residents of institutions meeting the stipulated conditions. Such service was allowed, not mandated. Without an express legislative mandate that service be provided the persons in institutions with meal service, the Department believed States should have the authority to establish their own program service priorities.

However, section 212(b) of Public Law 100–435 makes such service mandatory by amending the Child Nutrition Act of 1966 to specify that WIC is supplemental to receipt of food assistance through specific types of overnight facilities generally designed to offer some degree of room, board, and services to homeless persons on a temporary basis. WIC legislation has already specified that WIC is to be a "supplemental" program. Section 212(b) strengthens this principle by specifying that WIC is supplementary to the Food Stamp Program and any other food distribution program which issues food in lieu of food stamps. The statutory definition of "homeless individual," to be discussed in detail later in this preamble, specifies the types of overnight facilities in which homeless persons may spend the night and still be eligible for the WIC Program. As indicated above, under previous regulations and FNS Instruction 803–13, the State agency could have opted not to serve persons in such settings. For example, a State could decide to direct limited WIC benefits to persons with any access to the food resources provided to persons using an overnight facility or institution. Public Law 100–435 mandates that persons using the specified types of facilities be deemed eligible for WIC if they meet the other regulatory eligibility requirements. Thus, this interim rulemaking makes WIC services mandatory to otherwise eligible persons in specified types of facilities to the extent that caseload slots are available at the local agency where they apply. These regulations will also permit States to make WIC services available to otherwise eligible persons in other types of residential accommodations.

Because the regulatory prohibition in § 246.12(o) against issuance of supplemental foods for use in institutions that serve meals has caused past misinterpretation, it is stricken by this interim rulemaking. In lieu thereof, and consistent with the intent of that provision, the Department has introduced into the rulemaking the conditions from FNS Instruction 803–13 which ensure that WIC benefits are, in fact, supplemental for the *participant:* that the participant rather than the "homeless facility" or "institution" gains from the program. These conditions apply both to (1) "homeless facilities" as specified in Public Law 100–435, whose otherwise eligible residents *must* be granted access to WIC; and (2) "institutions," whose residents the WIC State agency may, at its discretion, serve. Institutions include traditional types of residential, longer term institutions such as rehabilitative facilities and correctional facilities. It should be noted, however, that the more rigidly structured and regimented an institution is, the harder it is likely to be for the institution to comply with all four stipulated conditions.

Individual provisions of this interim rulemaking are discussed in detail below.

1. Definitions: "Homeless Facility," "Institution," "Family," and "Homeless Individual" (Section 246.2)

As indicated above, this rulemaking applies conditions (§ 246.7(m)) to residential accommodations in order to ensure that the program benefits the participant and not the accommodation. These conditions do not apply to private residences and residential accommodations without meal service since these living arrangements do not present a systematic risk that the WIC participant will not receive full benefit of program participation.

The accommodations to which the conditions of § 246.7(m) *do* apply are divisible into those whose residents must be served if they meet program eligibility requirements and caseload is available ("homeless facility"), and those whose residents *may,* at the State agency's discretion, be served ("institution"). The definition of "homeless facility" derives from Public Law 100–435 and means any of the following facilities which provide meal service: A supervised publicly or privately operated shelter (including a welfare hotel or congregate shelter) designed to provide temporary living accommodations; a facility that provides a temporary residence for individuals intended to be institutionalized; and a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. This definition includes all of the facility types referenced under the legislative definition of "homeless individual" except "a temporary accommodation in the residence of another individual." This latter category has been excluded because the conditions of § 246.7(m) do not apply to private residences.

The term "institution" is reserved for residential accommodations with a meal service, excluding private residences and homeless facilities. The State agency may, at its discretion, serve otherwise eligible persons in institutions that meet the specified conditions.

The definition of "family" is revised to read as follows: "a group of related or nonrelated individuals who are living together as one economic unit, except that residents of a homeless facility or an institution shall not all be considered members of a single family." This revision removes the ambiguous language that has been inappropriately interpreted as barring residents of homeless facilities/institutions from the program and incorporates into regulations the clarification of FNS Instruction 803–13 that residents of homeless facilities/institutions cannot all be considered members of a single family for purposes of determining their income eligibility.

Section 212(a) of Public Law 100–435 establishes a definition of the term "homeless individual" which applies to the WIC Program, and section 212(c) effectively extends this definition to persons in shelters for victims of domestic violence. "Homeless individual" thus includes persons in a broad range of circumstances, from "street people" to those residing in another's home on a temporary basis. Under the statute, a "homeless individual" is one who lacks a fixed and regular nighttime residence or whose primary nighttime residence is one of the following: (1) A supervised publicly or privately operated shelter (including a welfare hotel, congregate shelter or shelter for victims of domestic violence) designed to provide temporary living accommodations; (2) an institution that provides a temporary residence for individuals intended to be institutionalized; (3) a temporary accommodation in the residence of another individual; or (4) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. The definition of "homeless individual" is added to § 246.2, Definitions, of this interim rule. Throughout this preamble and in the rule, reference to homeless persons will encompass persons in the four specifically named types of homeless facilities listed above, or persons not in such facilities who lack a fixed and regular nighttime residence.

2. State Plan Amendments (Section 246.4)

Public Law 100–435 mandates additional requirements for the annual State plan of operations.

a. Provision of benefits to, and nutrition needs of, homeless persons. First, the State agency must now include in its State plan a description of how it will provide program benefits to, and meet the special nutrition education needs of, homeless participants. This requirement is addressed in §§ 246.4(a)(6), 246.4(a)(9), and 246.4(a)(11)(ii), which address, respectively, plans to provide program benefits to eligible migrants, Indians, and (with the enactment of Public Law 100–435) homeless persons; nutrition education goals and plans; and methods for providing nutrition education to participants. State agencies must assure the Department that an otherwise eligible homeless woman, infant, or child without any overnight shelter or in an overnight facility will not be denied WIC benefits because of circumstances directly related to that individual's homelessness. For example, lack of cooking facilities or storage space, problems frequently encountered by homeless persons, could have no bearing on the eligibility determination process. Furthermore, a homeless participant's access to program benefits, such as referrals to other public assistance agencies, or nutrition education contacts, may not be curtailed solely because of that person's homelessness. A number of States have already begun to develop special nutrition education lesson plans and referral plans which address the particular needs and difficulties that homeless participants encounter.

b. Announcement of program availability to organizations serving homeless persons. Second, States must include in their State plans, per section 212(c) of Public Law 100–435, a plan for the annual public announcement and distribution of information on the availability of program benefits, including participant eligibility criteria, the location of local agencies operating the program, and the four conditions established by a new § 246.7(m)(1)(i) of this rulemaking, to organizations and agencies serving homeless individuals. This new State plan requirement is incorporated into § 246.4(a)(7). A requirement for public announcement within 90 days of publication of this rule is added in § 246.7(m)(2).

c. Compliance of homeless facilities/institutions with stipulated conditions. Regulations will also be revised to add a new paragraph, § 245.4(a) (19), to require States to describe in their State Plans the process by which the State will ensure that homeless facilities serving otherwise eligible homeless WIC applicants can satisfy the four conditions in new § 246.7(m)(1)(i). (If the State agency chooses also to serve persons in institutions, the State agency will be expected to apply the same procedures to institutions. Such procedures must also be described in the State Plan of Operations.)

d. Modification of benefit delivery systems to meet needs of homeless persons. Section 212(c) of Public Law 100-435 allows States to adapt methods of delivering benefits to accommodate the special needs and problems of homeless individuals. If a State or a local agency does develop and implement special food delivery procedures for homeless participants, such procedures must also be described in the State plan, as required under § 246.4(a)(14)(ix). State agencies have always had the option of establishing special food delivery procedures to accommodate the unique problems and needs of special populations, such as Indians or migrants. They are now encouraged to extend such attention to the homeless. There is considerable flexibility within the parameters of the current program regulations allowing States, for example, to issue several food instruments for smaller portions of the food package instead of a single instrument for the entire package. The Department has consistently required States to provide detailed descriptions of their food delivery systems as an integral part of the State plan; Public

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Law 100–435 merely extends this requirement to encompass any food delivery system procedures or food package alterations which may be developed specifically for service to homeless participants. Technical, nonsubstantive revisions have been made to bring the paragraphs at the end of § 246.4(a)(14) into proper grammatical relationship with each other.

The procedure manual would also be an appropriate place for the State to promulgate policies or provide guidance to local agencies for food delivery or for tailoring food packages to meet the special needs and circumstances of the homeless.

3. Conditions Applicable to Homeless Facilities and Institutions (Section 246.7(m)(1)(i))

The Department believes that regulatory conditions must be established to ensure, per the legislative mandate, that WIC benefits supplement the participant's diet rather than replace food which homeless facility or an institution would otherwise provide, consistent with the general purposes of the WIC Program. The regulations must also ensure that a homeless person's ability to participate fully in WIC is protected. Therefore, the following four conditions in FNS Instruction 803–13 are established by regulation in a new § 246.7(m)(1)(i).

a. Program must benefit participant, not homeless facility or institution. First, the homeless facility/institution must not accrue financial or in-kind benefit from a person's participation in WIC, e.g., by reducing its expenditures for food because some of its residents participate in WIC. If such institutional benefit were permitted, WIC participation would not enhance the participant's individual welfare and would not supplement the individual's diet. Resources which should have benefitted only the individual participant would in effect be subsumed into the budget and food inventories to meet needs defined by the homeless facility/institution.

b. WIC foods must not be used in communal feeding. Second, food items purchased with WIC food instruments must not be used in communal feeding. WIC provides a specific package of foods intended to meet the individual nutritional needs of each participant based on that individual's stage of growth, development, and health and nutrition status. If WIC foods were used in the homeless facility's or the institution's communal food service, they might reduce institutional food purchases, and would not enhance the individual WIC participant's diet to the degree intended.

c. Restrictions apply to the use of proxies. Third, homeless facility/institutional proxies may not, as a standard procedure, pick up WIC food instruments for all program participants in their respective facilities or transact the food instruments in bulk. The Department is concerned that a person's benefits from the WIC Program not be diminished as a result of staying in a homeless facility or institution.

While proxies may be used in certain situations (such as illness) for *some* participants, proxies may not routinely pick up and transact WIC food instruments for all paticipants in the homeless facility/institution. Were institutional proxies permitted to perform these functions routinely, participants' contacts with WIC clinics, and thus with health care and referral services, would be seriously curtailed. Furthermore, if the homeless facility/institution managed food instruments and purchased WIC foods in bulk, a logical extension of this practice would be the use of WIC foods in communal food service rather than for the specific benefit of the WIC participants for whose use they are issued.

d. No restrictions or constraints can exist relative to program participation. Finally, no homeless facility/institutional constraints may be placed on the ability of the WIC participant to partake of supplemental foods and all associated WIC services made available to participants by the local WIC agency. This general prohibition stresses the need for full, free, and direct participant access to all program benefits and services which would ordinarily be available to participants not associated with a homeless facility or an institution.

Homeless facilities/institutions must meet these requirements in order to render their residents eligible for WIC. However, the homeless facilities/institutions themselves do not receive any program funds or provide any program sevices. Further, they do not stand to benefit directly from the WIC participation of their residents, nor are they subject to any legal liability for failure to comply with the above four conditions. Thus, unlike the relationship between the State agency and its vendors and local agencies, the State's relationship with homeless facilities/institutions is informal, not contractual. It does not entail an application process or appeal procedure. However, the State or local agency must develop a way of determining and documenting that a homeless facility or institution meets the requisite conditions and set forth its plans for doing so in its annual State Plan. The Department does not intend to stipulate how State agencies must establish that a homeless facility or institution meets the four conditions. However, States which implement the following can be reasonably assured of fulfilling the requirements of this provision.

A State may secure from the homeless facility or institution a written statement (1) attesting to compliance with these conditions, (2) establishing the State or local agency's authority to ensure compliance with these conditions through periodic on-site monitoring, and (3) establishig the homeless facility/institution's responsibility to inform the State or local agency in the event that it ceases to meet any of these conditions. The State agency would not be required to conduct, or to cause the local agency to conduct, a visit before the statement is signed, or to monitor after the statement has been obtained. However, such visits would serve not only to ensure compliance, but also as a means for becoming more aware of the needs and circumstances of homeless persons so that WIC can better serve them.

State agencies are required by § 246.4(a)(7) to announce publicly, on an annual basis, the availability of the program to homeless individuals, and to disseminate information on participant eligibility requirements, the location of WIC local agencies, and the institutional conditions of new § 246.7(m)(1)(i) to organizations and agencies serving the homeless within 90 days of publication of this interim rule. The Department has already provided State agencies with a list of organizations serving the homeless and their respective contact persons. This list may be used as a point of departure for identifying all of the relevant agencies and organizations in each community. State or local agencies should periodically provide all local certifying offices with complete and up-to-date lists of homeless facilities in their vicinity which comply with the four conditions described above.

As indicated above, persons in homeless facilities meeting the four conditions must be certified if (1) they meet the eligibility requirements under § 246.7(b), and (2) slots are available in the local agency where they apply. As with other applicants, if the local agency has filled its caseload, the homeless have access to the waiting list, from which they will be taken for certification as slots are vacated in accordance with their standing in the participant priority system of § 246.7(d)(4). Homelessness does not have a bearing on a person's placement in the appropriate priority level, though the State agency may establish a subpriority within a priority level for homeless persons.

4. Short-term Certification Option (Section 246.7(m)(3))

In addition to requiring early interaction with organizations serving the homeless, this rulemaking further facilitates timely access to WIC for homeless persons by providing for short-term certifications prior to the State's obtaining assurance that the homeless facilities in which they reside meet the four conditions. Under § 246.7(m)(3) of this interim rule, the State agency may authorize or require its local agencies to certify, for a period of up to 60 days, persons residing in such homeless facilities whose compliance with any of the four conditions is unknown. During this period, the State or local agency is expected to determine if the homeless facility is interested and able to meet the four conditions. In the event that the homeless facility does not meet the conditions, the State or local agency should provide timely information to the participant about any other overnight facilities for the homeless in the area which do meet the four conditions. If this determination is obtained within the 60-day period of short-term certification, the State agency must extend the person's certification period to the standard length for other persons in the same category, i.e., pregnant women, infants, etc. If it becomes known that a homeless facility falls out of compliance with any of the four conditions, all WIC participants residing in it must receive 30 days notice of the need to sever connection with the homeless facility or be disqualified from WIC. This 30-day notice period will also suffice as the required notice of adverse action specified in § 246.7(i)(6). Section 246.7(i)(6) is revised to reflect this requirement as the only exception to the standard requirement for 15-day notice of adverse action. These provisions also apply to institutions in the event that State agencies choose to extend participation to residents of institutions.

Local agencies are not required to determine whether each program applicant is homeless. However, homelessness will frequently become known to the certifying official in the process of gathering basic information such as the applicant's address. If a person is identified as homeless, the local agency must determine whether the applicant is staying overnight in one of the types of allowable facilities that meets the four specified conditions. There may be instances in which a participant becomes homeless after having been certified for WIC. In such cases, providing the individual's residence (however temporary) is still within the local WIC agency's defined service area, the participant's eligibility to complete the certification period will not be affected by homelessness. Barring a statewide WIC funding shortage that makes mid-certification disqualifications necessary, such participants must be allowed to complete their certification periods. This requirement applies regardless of whether they take up residence in a homeless facility or institution which does not meet the four conditions in § 246.7(m)(1)(i). If the participant moves into a facility known not to meet these requirements, the local agency would, however, be expected to recommend facilities which do. If the facility has not previously been considered for compliance with § 246.7(m)(1)(i), such consideration should be undertaken in a timely manner for future reference, even though the outcome does not affect the participant's current certification.

5. State Option To Serve Persons in Institutions (§ 246.7(m)(4))

As stated above, persons in homeless facilities as specified in the definition of "homeless individual" must, if they meet eligibility requirements and if caseload slots are available where they apply, be given access to WIC if the State determines that the homeless facility meets the above four conditions. Section 246.7(m)(4) of the interim rule also provides that State agencies *may* serve persons in institutions which meet the requirements. This option simply incorporates into program regulations the provisions of FNS Instruction 803–13 with regard to types of residential accommodations not covered by Public Law 100–435.

States should keep in mind that the four conditions are not to be construed as participant eligibility criteria in addition to those delineated in § 246.7(b) or as barriers to participation in the WIC Program. Rather, the conditions protect the program interests of prospective participants in institutions as part of a larger effort to extend WIC benefits to them.

6. Food Package Adaptations For Homeless Participants (Section 246.1(e))

a. Adaptations within food package requirements. Regulations governing the WIC food package allow a wide variety of types, forms, and packaging sizes of foods from which to choose. This latitude in food package design makes it possible to meet most cultural and ethnic preferences. For example, over 40 varieties of cereals, approximately half of which are formulated to appeal to children; a large number of domestic cheeses; and a wide selection of fruit and vegetable juices and milks, such as skim, buttermilk, or evaporated milk meet the Federal requirements for WIC foods.

Given this latitude and variety, current WIC food packages are also sufficiently flexible to meet the special needs of homeless persons in most instances. WIC State agencies have devised creative ways to accommodate homeless WIC participants within the framework of the existing WIC food package requirements. For example, some States provide WIC foods such as juice, cereal, cheese, and milk in smaller package sizes and issue more food instruments, each for a smaller part of the total food package, so that the homeless can acquire WIC foods in smaller quantities, thus reducing the need for conventional storage facilities. In some instances, single-serving containers are prescribed. To address the lack of refrigeration, some States have authorized the use of currently allowed ultra-high-temperature (UHT) milk. States have also addressed the problem of poor water supply by authorizing ready-to-feed formula for WIC infants.

The Department has encouraged and will continue to encourage these creative approaches, and has shared with all WIC State agencies the plans and guidance being used by some of these States to illustrate the possibilities within existing WIC food package requirements. The WIC food package consists of foods rich in nutrients known to be lacking in the diets of pregnant and breastfeeding women, infants and young children. These key nutrients are iron, protein, and vitamin A and C. It is thus important that every effort be made to afford homeless eligible persons the full nutritional benefits of WIC.

b. Adaptations entailing exceptions to food package requirements. However, in rare instances still greater flexibility in food packages may be warranted. Section 246.10(e) of the WIC regulations has long allowed States to submit for FNS review and approval a plan to make substitutions for required foods in order to accommodate specific cultural eating patterns. FNS evaluates each proposed substitution plan based on the criteria described in § 246.10(e)(2) and the State's justification for the proposed substitutions, and then makes a determination as to the acceptability of the plan. This interim rule amends § 246.10(e) to allow State agencies to submit plans for food packages intended to address the specific identified needs

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of specific homeless WIC participants, which may include elimination or substitution of specific foods. The Department will approve alternatives for homeless persons only if fully justified and directed only to homeless individuals in special circumstances, such as those specifically without consistent access to modest facilities for sanitary food storage, preparation, and service. State agencies seeking exceptions must describe in detail the circumstances under which homeless persons would receive the modified food packages and the reasons for removing certain foods and, where substitutions are altered, justification for providing others in their place, including rationale for proposed replacement foods or quantity increases beyond regulatory maximums for required foods as a means of compensating for foods which would be dropped from the package. The Department expects State agencies to explore exhaustively all alternatives within existing food package regulations before submitting alternative plans for food packages for homeless persons.

States wishing to propose and justify only *modest* variations to the standard WIC food packages based on need and nutrition rationale, such as small quantity adjustments to meet commercial packaging configurations, or alternative non-WIC foods such as canned instead of dried beans, would be likely to receive positive and expeditious consideration.

List of Subjects in 7 CFR Part 246.

Food assistance programs, Food donations, Grant programs—Social programs, Infants and Children, Maternal and child health, Nutrition education, Public assistance programs, WIC, women.

For reasons set forth in the preamble, 7 CFR part 246 is amended as follows:

PART 246—SPECIAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS, AND CHILDREN

1. The authority citation for Part 246 continues to read as follows:

Authority: Sec. 645, Pub. L. 100-460, 102 Stat. 2229; secs. 212 and 501, Pub. L. 100-435, 102 Stat. 1645 (42 U.S.C. 1786); sec. 3, Pub. L. 100-356, 102 Stat. 669 (42 U.S.C. 1786); secs. 8-12, Pub. L. 100-237, 101 Stat. 1733 (42 U.S.C. 1786); secs. 361-363, Pub. L. 99-500 and 99-501, 100 Stat. 1783 and 3341 (42 U.S.C. 1786); sec. 815, Pub. L. 97-35, 95 Stat. 521 (42 U.S.C. 1786); sec. 3, Pub. L. 96-499, 94 Stat. 2599; sec. 203, Pub. L. 95-627, 92 Stat. 3611 (42 U.S.C. 1786).

2. In § 246.1, a new sentence is added at the end of the section to read as follows:

§ 246.1 General purpose and scope.

* * * The program shall be supplementary to the Food Stamp Program; any program under which foods are distributed to needy families in lieu of food stamps; and receipt of food or meals from soup kitchens, or shelters, or other forms of emergency food assistance.

3. In § 246.2, the definition of "family" is revised and the definitions of "homeless facility," "homeless individual" and "institution" are added in alphabetical order to read as follows:

§ 246.2 Definitions.

* * * * *

"Family" means a group of related or nonrelated individuals who are living together as one economic unit, except that residents of a homeless facility or an institution shall not all be considered as members of a single family.

* * * * *

"Homeless facility" means the following types of facilities which provide meal service. A supervised publicly or privately operated shelter (including a welfare hotel or congregate shelter) designed to provide temporary living accommodations; a facility that provides a temporary residence for individuals intended to be institutionalized; or a public or private place not designed for, or normally used as, a regular sleeping accommodation for human beings.

"Homeless individual" means a woman, infant or child who lacks a fixed and regular nighttime residence; or whose primary nighttime residence is: A supervised publicly or privately operated shelter (including a welfare hotel, a congregate shelter, or a shelter for victims of domestic violence) designated to provide temporary living accommodation; an institution that provides a temporary residence for individuals intended to be institutionalized; a temporary accommodation in the residence of another individual; or a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

* * * * *

"Institution" means any residential accommodation which provides meal service, except private residences and homeless facilities.

* * * * *

4. In § 246.4:

a. Paragraphs (a)(6), (a)(7), (a)(9), and (a)(11)(ii) are revised;

b. At the end of paragraph (a)(14)(vi) the word "and" is removed;

c. At the end of paragraph (a)(14)(vii) the period is removed and a semicolon is added in its place;

d. At the end of paragraph (a)(14)(viii) the period is removed, and "; and" is added in its place;

e. A new paragraph (a)(14)(ix) is added; and

f. A new paragraph (a)(19) is added.

The revisions and additions read as follows:

§ 246.4 State plan.

(a) * * *

(6) Plans to provide program benefits to eligible migrant farmworkers and their families, to Indians, and to homeless individuals.

(7) The State agency's plans, to be conducted in cooperation with local agencies, for informing eligible persons of the availability of Program benefits, including the eligibility criteria for participation, the location of local agencies operating the Program, and the institutional conditions of § 246.7(m)(l)(i) of this part. Such information shall be publicly announced by the State agency and by local agencies at least annually. Such information shall also be distributed to offices and organizations that deal with significant numbers of potentially eligible persons, including health and medical organizations, hospitals and clinics, welfare and unemployment offices, social service agencies, farmworker organizations, Indian tribal organizations, organizations and agencies serving homeless individuals, and religious and community organizations in low-income areas.

* * * * *

(9) The State agency's nutrition education goals and action plans, including a description of the methods that will be used to meet the special nutrition education needs of migrant farmworkers and their families, Indians, and homeless persons.

* * * * *

(11) * * *

(ii) Methods for providing nutrition education to participants, including homeless individuals.

* * * * *

(14) * * *

(ix) If the State agency plans to adapt its food delivery system to accommodate the needs of homeless individuals, a description of such adaptations.

* * * * *

(19) The State agency's plan to ensure that residents of homeless facilities, and residents of institutions if it chooses to make the Program available to them, are served only if the homeless facilities/institutions meet the four conditions established in § 246.7(m)(1)(i) of this part.

* * * * *

5. In § 246.7:

a. Paragraph (i)(6) is revised; and

b. A new paragraph (m) is added.

The revision and addition read as follows:

§ 246.7 Certification of participants.

* * * * *

(i) * * *

(6) A person who is about to be disqualified from Program participation at any time during the certification period shall be advised in writing not less than 15 days before the disqualification, except that persons who may be disqualified due to residence in homeless facilities or institutions that do not meet the conditions of § 246.7(m)(1)(i)(A)–(D) of this part shall receive 30 days advance notice. Such notification shall include the reasons for this action, and the participant's right to a fair hearing. Further, such notification need not be provided to persons who will be disqualified for not picking up supplemental foods or food instruments in accordance with paragraph (g)(1)(ii) of this section.

* * * * *

(m) *Certification of persons in homeless facilities and institutions.* (1) Pregnant, breastfeeding, and postpartum women, infants or children who meet the requirements of paragraph (b) of this section, and who reside in a homeless facility, shall be considered eligible for the Program and shall be treated equally with all other eligible applicants at the local agency where they apply for WIC benefits, Provided that: the State or local agency has taken reasonable steps to:

(i) Confirm that the homeless facility meets the following conditions:

(A) The homeless facility does not accrue financial or in-kind benefit from a person's participation in the Program, e.g., by reducing its expenditures for food service because its residents are receiving WIC foods;

(B) Foods provided by the WIC Program are not subsumed into a communal food service, but are available exclusively to the WIC participant for whom they were issued;

(C) Institutional proxies do not, as a standard procedure, pick up food instruments for all Program participants in their respective homeless facilities or transact the food instruments in bulk; and

(D) The homeless facility places no constraints on the ability of the participant to partake of the supplemental foods and nutrition education available under the Program;

(ii) Contact the homeless facility periodically to ensure continued compliance with these conditions; and

(iii) Require the homeless facility to notify the State or local agency if it ceases to meet any of these conditions.

(2) The State agency may authorize or require local agencies to make the Program available to applicants who meet the requirements of paragraph (b) of this section, but who reside in institutions, provided that such institutions meet the conditions of paragraphs (m)(1)(i)(A)–(D) of this section. The State agency shall oversee institutions whose residents it chooses to serve in accordance with paragraphs (m)(1)(ii)–(iii) of this section.

(3) The State agency shall, by March 14, 1990, publicly announce the availability of the program to homeless individuals and disseminate information on program eligibility requirements, the location of local agencies administering the program, and the requirements of paragraphs (m)(1)(i)(A)–(D) of this section to organizations and agencies serving homeless individuals.

(4) If a caseload slot is available at the local agency, a resident of a homeless facility or an institution which has not been found out of compliance with the conditions of paragraphs (m)(1)(i)(A)–(D) of this section may be certified for a period of up to 60 days, during which time the State or local agency shall attempt to determine if the homeless facility/institution meets the requisite conditions. At the end of this period, the local agency shall extend the participant's certification period to the length provided to other participants in the same category (i.e., pregnant women, infants, children, etc.) if the homeless facility/institution has been determined to be in compliance with the conditions. As soon as the State or local agency determines that a homeless facility/institution does not meet the conditions, the local agency shall refer the participant to any other accommodations in the area which do meet the four conditions. Should a participant become homeless during a certification period, and move into a homeless facility or institution within the local agency's service area, the participant shall, except as provided under paragraph (g) of this section, be allowed to complete the certification period regardless of whether the homeless facility or institution meets the requirements of § 246.7(m)(1)(i).

6. In § 246.10, paragraph (e) is revised to read as follows:

§ 246.10 Supplemental foods.

* * * * *

(e) *Plans for substitutions or eliminations.* (1) The State agency may submit to FNS a plan for substitution of food acceptable for use in the Program to allow for different cultural eating patterns and substitution or elimination of a category of foods to accommodate the special needs of homeless persons. The plan shall provide the State agency's justification, including a specific explanation of the cultural eating pattern or the homeless situation which requires the proposed alteration and other information necessary for FNS to evaluate the plan as specified in paragraph (e)(2) of this section for cultural substitutions and in paragraph (e)(3) of this section for homeless substitutions or eliminations.

(2) FNS will evaluate a State agency's plan for substitution of foods for different cultural eating patterns based on the following criteria:

(i) Any proposed substitute food must be nutritionally equivalent or superior to the food it is intended to replace.

(ii) The proposed substitute must be widely available to participants in the areas where the substitute is intended to be used.

(iii) The cost of the substitute must be equivalent to or less than the cost of the food it is intended to replace.

(3) FNS will evaluate a State agency's plan for substitution or elimination of a food category to accommodate the special needs of a specific group of homeless persons based on the justification presented by the State agency documenting the need. Documentation shall illustrate that all alternatives from within existing food packages have been explored and shall include a specific description of the circumstances of the homeless persons to be served that necessitate the proposed food package alteration.

(4) FNS will make a determination on the proposed plan based on the evaluation criteria specified in paragraph (e)(2) or (e)(3) of this section, as appropriate. The State agency shall substitute or eliminate foods only after receiving the written approval of FNS.

* * * * *

§ 246.12 [Amended]

7. In § 246.12:

a. Paragraph (o) is removed; and

b. Paragraphs (p)–(u) are redesignated as paragraphs (o)–(t).

8. In § 246.25:

a. The OMB control number for § 246.4 is revised; and

b. The OMB control numbers for §§ 246.7(i) and 246.10 are added.

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The revision and additions read as follows:

§ 246.28 OMB control numbers.

* * * * *

7 CFR Part 246 Sections where requirements are described	Current OMB control No.
.4	0584–A536
* * * * *	*
.7(1)	0584–A536
.10	0584–A536
* * * * *	*

Dated: December 7, 1989.

G. Scott Dunn,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 89–29159 Filed 12–13–89; 8:45 am]

BILLING CODE 3410–30–M

Agricultural Marketing Service

7 CFR Part 966

[Docket No. FV–90–101]

Tomatoes Grown in Florida; Partial Exemption From the Handling Regulation for Yellow-Meated Tomatoes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule exempts shipments of yellow-meated tomatoes from the container requirement in the Florida tomato handling regulation under marketing order No. 966. Allowing handlers to ship yellow-meated tomatoes in containers other than those currently authorized under the order will facilitate the movement of such tomatoes and should improve returns to producers of Florida tomatoes.

DATES: The interim final rule is effective December 14, 1989; comments which are received by January 16, 1990, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the Office of the Docket Clerk during regular business hours. All comments should reference the docket number and the date and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone (202) 447–5331.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 125 and Marketing Order No. 966 (7 CFR part 966), both as amended, regulating the handling of tomatoes grown in Florida. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This interim final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 100 handlers of Florida tomatoes subject to regulation under the marketing order, and approximately 180 producers in the production area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of the handlers and producers of Florida tomatoes may be classified as small entities.

Under the marketing order, tomatoes shipped to fresh markets are required to meet the handling requirements specified in 7 CFR 966.323 (as amended at 53 FR 3191, February 4, 1988). The current requirements include a minimum grade of U.S. No. 3 and a minimum size of 2⅝s inches in diameter. Pack and container specifications are also in effect. In addition, all lots are required to be inspected and certified as meeting these grade, size, pack, and container requirements by an authorized representative of the Federal or Federal-State Inspection Service.

The Florida Tomato Committee (committee) met on September 7 and October 11, 1989, and unanimously recommended that shipments of yellow-meated tomatoes be exempt from the container requirement included in the handling regulation which specifies that tomatoes be packed in containers of 20 or 25 pounds net weight.

The yellow-meated tomato is a commodity just recently available from Florida. It is now being grown in relatively small volumes within the production area, and will be marketed as a specialty item. Like other tomato specialty items (e.g., greenhouse-grown tomatoes), yellow-meated tomatoes are typically harvested at a fully mature stage and are too fragile to withstand packing and shipping in the currently authorized 20- and 25-pound multi-layer cartons. Typically, tomatoes, such as greenhouse-grown and others that are exempt under § 966.323(d)(1) from the handling regulation, that are fully mature are packed in smaller, single-layer containers. This helps to reduce or eliminate damage that could occur during handling and shipping and thereby supply markets with the quality product desired. The committee therefore recommended that yellow-meated tomatoes be exempt from the requirement that they be packed in the larger containers. This action will facilitate the marketing of yellow-meated tomatoes, and should result in the development of new markets and the expansion of marketing opportunities for Florida tomato growers and handlers.

Although this rule exempts handlers from the requirement that they pack yellow-meated tomatoes in 20- or 25-pound containers, such tomatoes are still subject to all other provisions of the handling regulation, including the minimum grade and size requirements. The committee believes that, aside from the container specifications, the current handling requirements are appropriate for yellow-meated tomatoes. Requiring these tomatoes to meet the established grade, size, pack, and inspection requirements will ensure that the overall quality of tomatoes shipped from the production area will not be affected by this action.

Section 8(e) of the Act requires that whenever grade, size, quality or maturity requirements are in effect for certain commodities under a domestic marketing order, including tomatoes, imports of that commodity must meet the same or comparable requirements. However, the Act does not authorize the imposition of container requirements on imports, when such requirements are in effect under a domestic marketing order. Therefore, no change is necessary in the tomato import regulation as a result of this action to exempt yellow-meated tomatoes from container requirements.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because: (1) Shipments of tomatoes from the production area have already begun and, to be of maximum benefit, this relaxation should apply to as many shipments of yellow-meated tomatoes as possible; (2) tomato shippers are aware of this action which was recommended by the committee at its September 7 and October 11, 1989, public meetings; (3) there is no special preparation required of affected handlers; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to the finalization of the rule.

List of Subjects in 7 CFR Part 966

Florida, marketing agreements and orders, tomatoes.

PART 966—TOMATOES GROWN IN FLORIDA

1. The authority citation for 7 CFR part 966 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 966.323 is amended by revising paragraph (a)(3)(i) to read as follows:

Note: This section will be published in the Code of Federal Regulations.

§ 966.323 Handling regulation.

* * * * *

(a) * * *

(3) *Containers.* (i) Tomatoes shall be packed in containers of 20 or 25 pounds designated net weight and comply with the requirements of § 51.1863 of the U.S. tomato standards, except that yellow-meated varieties may be packed in containers of other than 20 or 25 pounds designated net weight.

* * * * *

Dated: December 11, 1989.

Winfred H. Crocker,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–29160 Filed 12–13–89; 8:45 am]

BILLING CODE 3410–02–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[FRL—3696–5; TN–077]

Designation of Areas for Air Quality Planning Purposes: Tennessee; Redesignation of Knox County for Total Suspended Particulates

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On May 16, 1989, the State of Tennessee requested redesignation of that portion of Knox County within downtown Knoxville from unclassified to attainment for total suspended particulates. EPA proposed approval of the change in attainment status on September 13, 1989 (54 FR 37817). Today, EPA is approving the attainment status change.

DATE: This action is effective January 16, 1990.

ADDRESSES: Copies of the State's submittal are available for review during normal business hours at the following locations:

Division of Air Pollution Control, Tennessee Department of Health and Environment, Customs House, 4th Floor, 701 Broadway, Nashville, Tennessee 37219;

Knox County Air Pollution Control Department, City/County Building, 400 Main Avenue, Suite L222, Knoxville, Tennessee 37902;

Environmental Protection Agency, Region IV; Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365;

Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Rosalyn Hughes, EPA Region IV Air Programs Branch, at the address listed above and phone (404) 347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: On May 16, 1989, the State of Tennessee submitted Board Order 04–89, reclassifying Knox County from unclassifiable to attainment for TSP. EPA proposed approval of the reclassification on September 13, 1989 (54 FR 37817). The local agency, the Knox County Department of Air Pollution Control, submitted eight consecutive quarters of the most recent ambient air quality data to support their request for reclassification. The State of Tennessee reviewed the Knox County request and on May 10, 1989 adopted Board Order 04–89 approving the reclassification request. The State then submitted the redesignation request, in the form of a Board Order, to EPA.

Final Action: EPA reviewed the request along with the monitoring which revealed no violations of the TSP National Ambient Air Quality Standards and found it to meet present EPA requirements. Therefore, EPA is redesignating Knox County from unclassified to attainment for TSP. This action is effective January 16, 1990.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 12, 1990. This action may not be challenged later in proceedings to enforce its requirements (see 307(b)(2)).

Under 5 U.S.C. section 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

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Dated: November 30, 1989.

Joe R. Franzmathes,

Acting Regional Administrator.

Part 81 of chapter 1, title 40, Code of Federal Regulations, is amended as follows:

Subpart C—Section 107 Attainment Status Designations

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 81.343 is amended by revising the attainment status for Knox County in the designation table for TSP to read as follows:

§ 81.343 Tennessee.

TENNESSEE—TSP

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
That portion of Knox Co. within a section of downtown Knoxville.		X		

[FR Doc. 89–29100 Filed 12–13–89; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 372

[OPTS–400020A; FRL–3685–9]

Sodium Hydroxide; Toxic Chemical Release Reporting; Community Right-to-Know

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating a rule to delete sodium hydroxide (solution) from the list of toxic chemicals under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986. The rule to delete sodium hydroxide is based on EPA's conclusion that there is no evidence that sodium hydroxide releases cause adverse affects to human health or the environment under ordinary exposure scenarios. By promulgating this rule, EPA is relieving facilities of their obligation to report in 1990 on releases of sodium hydroxide that occurred in 1989, and on releases that will occur in future years.

DATES: This rule is effective December 14, 1989.

FOR FURTHER INFORMATION CONTACT: Robert J. Israel, Petition Coordinator, Emergency Planning and Community Right-to-Know Hotline, U.S. Environmental Protection Agency, Mail Stop OS–120, 401 M St., SW., Washington, DC 20460, Toll free: 800–535–0202, In Washington, DC, and Alaska, 202–479–2449.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Authority

The deletion is issued under section 313(d) and (e)(1) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), also referred to as Title III of the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99–499).

B. Background

Section 313 of EPCRA requires certain facilities manufacturing, processing, or otherwise using toxic chemicals to report annually their environmental releases of such chemicals. Section 313 establishes an initial list of toxic chemicals that is composed of more than 300 chemicals and chemical categories. Any person may petition the Agency to add chemicals to or delete chemicals from the list.

EPA issued a statement of petition policy and guidance in the **Federal Register** of February 4, 1987 (52 FR 3479), to provide guidance regarding the recommended content and format for submitting petitions. EPA must respond to petitions within 180 days either by initiating a rulemaking or by publishing an explanation of why the petition is denied.

II. Description of Petition

On April 22, 1988, EPA received a petition from The Chlorine Institute, Inc. to delete sodium hydroxide (NaOH) solution from the list of toxic chemicals. NaOH can exist in both solid and solution form, but since only NaOH solution is listed under section 313, only the solution is covered by the petition. After review of the submitted petition and of additional information on NaOH available to EPA, the Agency proposed to delete NaOH from the section 313 list; the proposal was published in the **Federal Register** of December 9, 1988 (53 FR 3488). EPA had concluded that NaOH cannot be reasonably anticipated to cause adverse health or environmental effects of concern to warrant continued release reporting under section 313. A detailed review of the toxicity and environmental effects of NaOH, along with an assessment of actual or potential exposure, is contained in the proposal.

III. Comments on the Proposed Deletion of Sodium Hydroxide

EPA received comments from more than 25 commenters on the proposed deletion of NaOH, most of which supported the proposal. Two commenters took issue with EPA's proposal, however, arguing that the Agency had erred in its assessment of the effects of this chemical.

A. Acute Effects Beyond Facility Boundaries

One commenter (the Natural Resources Defense Council (NRDC)) argued that EPA had been overly restrictive in its considerationof NaOH 'releases' in evaluating NaOH acute effects beyond facility boundaries, and that the definition of 'releases' should include off-site disposal of NaOH which is likely to be at a high pH. Thus, NRDC commented that NaOH solution meets the requirement of being an acute hazard beyond facility boundaries.

EPA disagrees with this interpretation. Listing a substance as an acute hazard under section 313 is contingent not only on the question of 'continuous, or frequently recurring releases', but on EPA making a finding that such releases are 'known or can reasonably be anticipated to cause' acute effects — a finding which EPA decided was not the case for NaOH.

Even when the concept of 'continuous or frequently recurring releases' is extended to include off-site transfers of NaOH, there is still no indication that such releases would meet listing criteria. EPA's review of the acute health effects of NaOH did not reveal any known situations where off-site transfers posed a significant adverse acute risk to humans under conditions of continuous, or frequently recurring releases, nor were any examples provided by the commenters. EPA also finds no reason for reasonably anticipating that off-site transfers might pose such risks. A total of 135 million pounds of NaOH was transferred off-site by 1,124 facilities in 1987, according to Toxics Release Inventory data; three facilities accounted for more than half of that amount. From the data, most of the NaOH transferred off-site was neutralized in wastewater treatment

units; thus, any concern with regard to a high pH level is significantly diminished. EPA has not uncovered any information identifying these off-site transfers as an acute health risk that should be subject to the reporting requirements of EPCRA section 313.

B. Ecotoxicity

NRDC also argued that NaOH has severe indirect effects that EPA failed to consider. NRDC stated that releases of NaOH can result in increases in pH that, in turn, can result in increased concentrations of ammonia and certain metals. The comments cited EPA's 1986 Water Quality Criteria document to the effect that pH in the range of 6.5 to 9.0, though not lethal, results in indirect effects (such as increased ammonia concentrations) that can be serious. Also, rapid changes in pH can be problematic, even if the pH excursion is relatively small. NRDC also argued that EPA's apparent presumption of NaOH releases only in the pH 6.5 to 9.0 range (the legally permitted range under the Clean Water Act (CWA) under most discharge conditions) violates the intent of section 313, which requires the Agency to determine the potential for ecotoxic effects (as opposed to, e.g. actual fenceline concentrations). Thus, NRDC claimed that EPA erred in deciding there are no significant ecotoxicity concerns for NaOH.

In assessing ecotoxicity effects, section 313 directs EPA to consider if a chemical is 'known to cause or can reasonably be anticipated to cause...a significant adverse effect on the environment.' EPA agrees with the commenter that indirect effects should be considered in assessing whether a chemical meets the criteria for listing under section 313. However, EPA has thoroughly reviewed information on NaOH, and has not identified, nor have the commenters identified, any instances in which the release of NaOH led to the type of indirect ecotoxic effects cited above. In consideration of the chemical's rapid disassociation in the environment, the buffering capacity of many natural systems, existing pH restrictions regarding discharges to waterways, and the absence of information specifically linking NaOH to the type of ecotoxic effects cited by the commenter, EPA has concluded that NaOH is neither 'known to cause' nor 'can reasonably be anticipated to cause' any significant ecotoxic effects other than in cases of episodic releases.

In particular, there is no reason to presume that releases of NaOH lead to the type of problematic pH excursions cited in EPA's Water Quality Criteria document. Deliberate or naturally occurring neutralization processes can prevent significant changes in the pH of receiving waters; NaOH discharges can even have a beneficial effect in countering the impact of acidification of water. The first year of data collection under the section 313 recorded 78 million pounds of NaOH discharges to surface water from 515 plants across the country; half this amount comes from four facilities. Discharge permits issued under the CWA ordinarily restrict the pH range of these and other discharges. However, EPA did not restrict its analyses to CWA restrictions. Although permit restrictions, by themselves, are not an adequate grounds for dismissing possible impacts of NaOH releases to surface water, taken together with other data on NaOH, EPA has not uncovered any information identifying these discharges as posing an ecotoxic risk that should be subject to the reporting requirements of EPCRA section 313.

C. Accidental Releases

The Environmental Defense Fund (EDF) suggested a scenario where NaOH could pose a danger: a facility that land disposed NaOH which was subsequently released when a dike failed. EDF commented that this possibility is reason enough to keep NaOH on the section 313 list.

EPA's proposed rule on NaOH deals extensively with the issue of accidental spills. Releases of a reportable quantity or more of NaOH must be reported under section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and under EPCRA section 304. In the scenario cited, for instance, the spill from the disposal facility would not be reportable under section 313 unless occurring at a manufacturing facility covered by section 313 requirements. Even if it were reportable, it would not be identifiable as a spill, since section 313 reporting requires annual release numbers which combine routine with accidental releases. Furthermore, EPA's review of NaOH releases to the environment did not reveal any health or ecotoxic concerns pertaining to land disposal of NaOH, nor were any explicit concerns beyond the possibility of accidental releases identified by the commenters.

D. Sodium Hydroxide as a Carcinogen

EDF objected to EPA's distinction between cancer caused directly by a chemical, and cancer caused indirectly by secondary physical effects such as scarring.

This issue was addressed at length in the proposed rule. There is no information to suggest that NaOH is involved in tumor development under exposure conditions that humans may reasonably be expected to encounter in the environment. In addition, there is no indication from the long-term experience of workers handling NaOH that the compound is a human carcinogen. The only human cancers that can be linked to NaOH occurred after acute exposure to massive doses of NaOH, resulting in extensive tissue destruction.

A number of case studies reported in the literature indicate that under extremely unusual circumstances (i.e., suicide attempts or accidents involving the ingestion of very large amounts of NaOH), NaOH may indirectly lead to the development of esophageal cancer in humans. However, none of the cases are of occupational origin nor are they the result of exposure to concentrations of NaOH that humans can expect to encounter in the environment. All cases are associated with extensive tissue destruction, scar formation, and severe stricture of the esophagus. These esophageal cancers are likely due to the tissue destruction and scarring rather than to a direct carcinogenic action of NaOH itself. This supposition is supported by the fact that cancer at the site of damage is an even more frequent result of severe thermal burns.

NaOH's toxic properties are highly dependent on concentration and duration of exposure, and it poses a danger only in highly unusual circumstances, for example, deliberate ingestion. Thus, EPA does not believe that NaOH causes or can reasonably be anticipated to cause cancer in humans in the manner anticipated by the statutory language of section 313(d)(2)(B).

E. Information Access

EDF objected that section 313 data are not available elsewhere, and that delisting NaOH would mean that information on this chemical would not be readily available through other data collection systems on a national basis.

There is no doubt that by delisting NaOH, information on releases of this chemical may be more difficult to obtain. However, EPA believes that information on NaOH will still be available through other sources. For example, NaOH is a hazardous substance under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). Releases of 1,000 pounds or more of NaOH must be reported to the National Response Center under CERCLA section 103 and to state emergency response commissions (SERCs) and local emergency planning

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committees (LEPCs) under EPCRA section 304. Written follow-up information on the spill, and on potential health and environmental effects, is also required to be submitted to State and local authorities. In addition, data on storage of NaOH for emergency planning and community right-to-know purposes are already being collected at the local level. Under sections 311 and 312 of EPCRA, facilities are required to submit chemical safety information and inventories of chemicals on-site to local emergency planning committees and others to plan for emergencies and inform the public about the kinds of chemicals in their communities.

IV. Rulemaking Record

The record supporting this rule is contained in docket control number OPTS–400020A. All documents are available to the public in the TSCA Public Docket Office from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The TSCA Public Docket Office is located at EPA Headquarters, Rm. NE–G004, 401 M St., SW., Washington, DC 20460.

V. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is 'major' and therefore, requires a Regulatory Impact Analysis. EPA has determined that this rule is not a 'major rule' because it will not have an effect on the economy of $100 million or more.

This rule would decrease the impact of the section 313 reporting requirements on covered facilities and would result in cost-savings to industry, EPA, and States. Therefore, this is a minor rule under Executive Order 12291.

This rule was submitted to the Office of Management and Budget (OMB) under Executive Order 12291.

There are 19 companies manufacturing NaOH at 45 sites in the U.S. EPA estimates the number of processors and users that might be subject to reporting requirements under future threshold requirements to be more than 10,000. The cost savings of delisting for industry over a 10-year period are estimated at $67 million, while the savings for EPA are estimated to be $1.5 million (10-year present values using a 10 percent discount rate).

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980, the Agency must conduct a small business analysis to determine whether a substantial number of small entities will be significantly affected. Because the rule results in cost savings to facilities, the Agency certifies that small entities will not be significantly affected by the rule.

C. Paperwork Reduction Act

This rule does not have any information collection requirements under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Part 372

Community right-to-know, Environmental protection, Reporting and recordkeeping requirements, Toxic chemicals.

Dated: December 2, 1989.

Linda J. Fisher,

Assistant Administrator Office of Pesticides and Toxic Substances.

Therefore, 40 CFR part 372 is amended as follows:

PART 372—[AMENDED]

1. The authority citation for part 372 continues to read as follows:

Authority: 42 U.S.C. 11013 and 11028.

§ 372.65 [Amended]

2. Sections 372.65(a) and (b) are amended by removing the entire entry for sodium hydroxide (solution) under paragraph (a) and removing the entire CAS. No. entry for 1310–73–2 under paragraph (b).

[FR Doc. 89-29107 Filed 12-13-89; 8:45 am]

Billing Code 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 302–6

[FTR Amendment 4]

Federal Travel Regulation

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal Travel Regulation to increase the maximum dollar limitations on reimbursement for allowable real estate sale and purchase expenses incident to change of official station.

EFFECTIVE DATE: This final rule is effective for employees whose effective date of transfer is on or after October 1, 1989. For purposes of this regulation, the effective date of transfer is the date on which the employee reports for duty at the new official station.

FOR FURTHER INFORMATION CONTACT: Raymond F. Price, Jr., Travel Management Division (FBT), FTS 557–1253 or Commercial (703) 557–1253.

SUPPLEMENTARY INFORMATION: 5 U.S.C. 5724a(a)(4)(B) provides for an annual update in the maximum dollar limitations applicable to reimbursement for expenses incurred by an employee for the sale and purchase of a residence. The law requires that the dollar amounts be increased effective October 1 of each year based on the percent change, if any, in the Consumer Price Index for All Urban Consumers, United States City Average, Housing Component for December of the preceding year over that published for December of the second preceding year, adjusted to the nearest one-tenth of 1 percent.

The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 302–6

Government employees, Transfers, Relocation allowances and entitlements.

For the reasons set out in the preamble, 41 CFR part 302–6 is amended as follows:

PART 302–6—ALLOWANCE FOR EXPENSES INCURRED IN CONNECTION WITH RESIDENCE TRANSACTIONS

1. The authority citation for part 302–6 continues to read as follows:

Authority: 5 U.S.C. 5721–5734; 20 U.S.C. 905(a); E.O. 11609, July 22, 1971 (36 FR 13747).

2. Section 302–6.2 is amended by revising paragraphs (g)(1) and (2) and republishing the introductory text of paragraph (g) to read as follows:

§ 302–6.2 Reimbursable and nonreimbursable expenses.

* * * * *

(g) *Overall limitations.* The total amount of expenses that may be reimbursed is as follows:

(1) In connection with the sale of the residence at the old official station, reimbursement shall not exceed 10 percent of the actual sale price or $18,526, whichever is the lesser amount; and

(2) In connection with the purchase of a residence at the new official station, reimbursement shall not exceed 5 percent of the purchase price or $9,263, whichever is the lesser amount.

* * * * *

Dated: November 27, 1989.

Richard G. Austin,

Acting Administrator of General Services.

[FR Doc. 89-29057 Filed 12-13-89; 8:45 am]

BILLING CODE 6820-24

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89–285; RM–6582]

Radio Broadcasting Services; Gould, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 273A to Gould, Arkansas, as that community's first local broadcast service, in response to a petition filed by Arkansas Radio Company. The coordinates for Channel 273A at Gould, Arkansas, are 33–59–00 and 91–33–26. See 54 FR 27041, June 27, 1989. With this action, the proceeding terminated.

DATES: Effective January 18, 1990; The window period for filing applications on Channel 273A at Gould, Arkansas, will open on January 19, 1990, and close on February 20, 1990.

FOR FURTHER INFORMATION CONTACT: Ordee Pearson, (202) 634–6530. Questions related to the window application filing process at Gould, Arkansas, should be addressed to the Audio Service Division, FM Branch, Mass Media Bureau, (202) 632–0394.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89–285, adopted November 15 , 1989, and released December 4, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 39—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Arkansas by adding Gould, Channel 273A.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division; Mass Media Bureau.

[FR Doc. 89-29111 Filed 12-13-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89–62, RM–6522]

Radio Broadcasting Services; Quincy, Shingle Springs, and Sutter Creek, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 270B1 for Channel 271A at Shingle Springs, California, and modifies the permit for Station KLIQ(FM) to specify operation on the higher powered channel. In addition, Channel 271C2 is substituted for Channel 270C2 at Quincy, and the license of Station KQNC(FM) is modified and Channel 298A is substituted for Channel 269A at Sutter Creek, California. Coordinates for Channel 271C2 at Quincy are 40–03–35 and 120–54–42, for Channel 270B1 at Shingle Springs, 38–37–53 and 120–51–26, and for Channel 298A at Sutter Creek, 38–23–30 and 120–48–06. *See* 54 FR 12248, March 24, 1989. With this action, the proceeding is terminated.

EFFECTIVE DATE: January 22, 1990.

FOR FURTHER INFORMATION CONTACT: Ordee Pearson, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order in MM Docket No. 89–62, adopted November 22, 1989, and released December 8, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

47 CFR PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of Allotments, is amended under California by removing Channel 270C2 and adding Channel 271C2 at Quincy, removing Channel 271A and adding Channel 270B1 at Shingle Springs, and removing Channel 269A and adding Channel 298A at Sutter Creek.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-29112 Filed 12-13-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88–620; RM–6504 and RM–6729]

Radio Broadcasting Services; Traverse City and Gladwin, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 298C2 for Channel 298A at Traverse City, Michigan, and modifies the license for Station WCCW–FM, to reflect the higher class channel, in response to a petition filed by Fabiano-Strickler Communications, Inc., licensee of Station WCCW–FM. The coordinates for Channel 298C2 are 44–46–11 and 85–41–22. Canadian concurrence has been obtained for the allotment.

In response to a counterproposal filed by East-West Broadcasting, Inc., we have allotted Channel 280A to Gladwin, Michigan, at coordinates 43–59–00 and 84–29–18. Canadian concurrence has been obtained for the allotment. With this action, this proceeding is terminated.

DATES: Effective January 22, 1990; The window period for filing applications for Channel 280A at Gladwin, Michigan, will open on January 23, 1990, and close on February 22, 1990.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTAL INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88–620,

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adopted November 22, 1989, and released December 8, 1989.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 39—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under Michigan by removing Channel 298A and adding Channel 298C2 at Traverse City and by adding Channel 280A Gladwin.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-29113 Filed 12-13-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-218; RM-4836, RM-5014, RM-5211, RM-5530, RM-5531]

Radio Broadcasting Services; Newport, Kingsport and Colonial Heights, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 225A to Newport, Tennessee, as that community's first local FM service, at the request of WNPC, Incorporated, licensee of AM Station WNPC, Newport, Tennessee. See 51 FR 21777, June 16, 1986. The channel allotment meets the Commission's minimum spacing requirements at the reference coordinates, which are 35-57-54 and 83-11-06. In addition this action denies the mutually exclusive proposal of J.T. Parker Broadcasting for the allotment of Channel 225A to Kingsport, Tennessee (RM-5014). Further, this action dismisses the proposals of Murray Communications for the allotment of either Channel 225A or 225C2 to Colonial Heights, Tennessee (RM-5211 and RM-5530) and Gary Mason for the allotment of Channel 225C2 to Gray, Tennessee (RM-5531). With this action, this proceeding is terminated.

DATES: Effective January 22, 1990; The window period for filing applications will open on January 23, 1990, and close on February 22 , 1990.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 86-218, adopted November 20, 1990, and released December 7, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 39—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Tennessee, by adding Newport, Channel 225A.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-29114 Filed 12-13-89; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 54, No. 239
Thursday, December 14, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. 90; FRL-3695-5]

Approval, Disapproval and Promulgation of Air Quality Implementation Plans; Revision to the U.S. Virgin Islands Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is today proposing to approve and disapprove comprehensive revisions to the U.S. Virgin Islands Implementation Plan consisting of revised and new control regulations. The Virgin Islands has requested that title 12 of the Virgin Islands Code, chapter 9, entitled "Air Pollution Control" be made part of its implementation plan.

Among the revisions that EPA is proposing for approval are limitations on the sulfur content of residual fuel oil used on St. Thomas, St. Croix and St. John. This sulfur-in-fuel limit of 0.5 percent is contained in section 204-26. This section also grants a special 1.5 percent residual fuel oil to three sources; however, EPA is proposing to approve this limit only as it applies to two of these sources. Specifically, EPA is proposing to approve the 1.5 percent limit for Hess Oil, St. Croix and the Virgin Islands Water and Power Authority, St. Thomas. EPA is however proposing disapproval of these sulfur limits for three fuel-burning units operating at Martin Marietta, St. Croix.

EPA is also proposing to approve new opacity limits for internal combustion engines. These limits are found in section 204-28 and replace limits based on an outdated method for measuring visible emissions. This section and section 204-37, which provides for the regulated use of waste fuel oils, are being proposed for approval based on certain understandings described in today's notice. Similarly, in its proposed approval of section 204-25, which regulates sources of fugitive emissions, EPA has defined the term "fugitive emissions," as none exists in the revised regulation.

DATES: Written comments must be submitted on or before January 16, 1990.

ADDRESSES: All comments should be addressed to: William J. Muszynski, P.E., Acting Regional Administrator, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, New York, New York 10278.

Copies of the materials submitted by the Virgin Islands may be examined during normal business hours at the following locations:

U.S. Environmental Protection Agency, Air Programs Branch, 26 Federal Plaza, Room 1005, New York, New York 10278

Government of the Virgin Islands, Division of Natural Resource Management, Department of Planning and Natural Resources, #179 Altona & Welgunst, St. Thomas, Virgin Islands 00801

FOR FURTHER INFORMATION CONTACT: Raymond Werner, Acting Chief, Air Programs Branch, U.S. Environmental Protection Agency, 26 Federal Plaza, room 1005, New York, New York 10278 (212) 264-2517.

SUPPLEMENTARY INFORMATION: On March 20, 1987, the Virgin Islands Department of Planning and Natural Resources submitted its revised "Air Pollution Control" regulations to the Environmental Protection Agency (EPA) to be incorporated into its State Implementation Plan (SIP). Public hearings on these revisions were held September 8 and 9, 1986 in St. Thomas. On January 15, 1987, the Governor promulgated these revisions, which specifically involve title 12, chapter 9, subchapter 204, sections 204-20 through 204-45, and subchapter 206, sections 206-20 through 206-30 of the Virgin Islands Code. Sections 204-20 through 204-29 are being amended while new sections 204-33 through 204-45 are being appended to the Virgin Islands regulations. Sections 206-23 through 206-29 are being amended and redesignated as sections 206-24 through 206-30 and a new section 206-23 is being appended. Existing sections 206-30 and 206-31 are being redesignated 206-31 and 206-32 respectively, but are not being amended.

This revision replaces regulations in the Virgin Islands Implementation Plan which contain outdated terminology, in appropriate testing procedures, and are otherwise inapplicable to many of the Territory's air pollution sources. It also adds clarity and specificity to the meaning of the regulations and addresses air quality concerns that were previously beyond their scope. As a result, local and federal enforceability will be improved. The following sections of the Virgin Islands air regulations are fected:

- Section 204-20—"Definitions"
- Section 204-21—"Regulation to Control Open Burning"
- Section 204-22—"Regulations to Control Emission of Visible Air Contaminants"
- Section 204-23—"Regulations Governing Emission of Particulate Matter"
- Section 204-25—"Fugitive Emissions"
- Section 204-26—"Sulfur Compounds Emission Control"
- Section 204-28—"Internal Combustion Engine Limits"
- Section 204-29—"Upset, Breakdown, or Scheduled Maintenance"
- Section 204-33—"Air Pollution Emergencies"
- Section 204-35—"Continuous Emission Monitoring"
- Section 204-36—"Eligibility to Burn Waste Fuel A"
- Section 204-37—"Eligibility to Burn Waste Fuels A and B"
- Section 204-38—"Permit and/or Certificate Requirement for Waste Oil Facilities"
- Section 204-39—"Sale or Use of Waste Fuels A and B"
- Section 204-40—"Reports, Sampling and Analysis of Waste Fuels A and B"
- Section 204-41—"Existing Air Contamination Sources for Waste Fuel"
- Section 204-45—"Standards of Performance for Sulfur Recovery Units at Petroleum Refineries"
- Section 206-20—"Permits Required"
- Section 206-21—"Transfer"
- Section 206-22—"Applications"
- Section 206-23—"Application and Permit Fees"
- Section 206-24—"Cancellation of Applications"
- Section 206-25—"Test Methods"
- Section 206-26—"Permits to Construct"
- Section 206-27—"Permits to Operate"
- Section 206-28—"Permit Modifications, Suspensions or Revocations and Denials"
- Section 206-29—"Further Information"
- Section 206-30—"Appeals"
- Section 206-31—"Review of New Sources and Modifications"

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• Section 206-32—"Review of New or Modified Indirect Sources"

What follows is a description of the regulatory revisions that are being addressed by today's action.

• Section 204-20—Definitions

Section 204-20 is being revised by amending subsections 204-20 (b) and (k), by repealing subsection 204-20(i) and by adding some thirty new definitions in subsections 204-20(m) through 204-20(oo). In subsection 204-20(b), "Fuel-Burning Equipment" is being changed to "Fuel-Burning Facility," but the definition remains unchanged. In subsection 204-20(k), "Standard Conditions," the standard temperature is corrected from 60 to 68 degrees Fahrenheit. Section 204-20(i), "Rengelmann Scale," is being repealed. The smoke-reading technique using this scale is obsolete and is no longer used for determining opacity.

New subsections 204-20(m) to 204-20(oo) contain definitions being appended to the regulation. They include: (m) Air Contaminant, (n) Air Pollution, (o) Chemical Waste, (p) Combustion Efficiency, (q) Commence, (r) Commissioner, (s) Distillate Fuel, (t) Fuel Oil, (u) Gaseous Fuel (v) Liquid Fuel, (w) Major Modification, (x) Major Stationary Source, (y) Malfunction, (z) Marine Vessel, (aa) Motor Vehicle, (bb) Opacity, (cc) Permitted Source, (dd) Person, (ee) Refuse, (ff) Reprocessed Oil, (gg) Re-refined Oil, (hh) Residual Fuel, (ii) Significant, (jj) Solid Fuel (kk) Source, (ll) Waste Fuel, (mm) Waste Fuel A, (nn) Waste Fuel B, and (oo) Waste Oil.

• Section 204-21—Regulations to Control Open Burning

Subsection 204-21(c) is being replaced by three more stringent requirements applicable to open-burning. These include: (1) A curfew on when burning is prohibited, (2) a requirement to extinguish any open burning when required to comply with any legal requirement, and (3) the need for a permit to participate in open-burning, which must be produced upon the demand of any Virgin Islands authority.

• Section 204-22—Regulations to Control Emission of Visible Air Contaminants

This Section provides opacity limitations that apply to all of the Islands' stationary sources and to marine vessels moored in its harbors. The old provisions referred to the Ringelmann chart as the means for determining the extent to which visibility was impeded. However, opacity limitations are now commonly expressed as a percentage of visibility impairment and this procedure has now been adopted in the revised regulation.

• Section 204-23—Regulation Governing Emission of Particulate Matter Provisions From Fuel Burning Equipment

The provisions of subsection 204-23(b) have been modified to include specific particulate matter emission limits for different categories of fuel-burning equipment. Subsection (b)(1) contains emission limits for solid fuel burning facilities; (b)(2) contains emission limits for facilities that use oil, coal tar or liquid fuel that is derived from coal; (b)(4) contains emission limits for fuel burning facilities that were constructed prior to August 1, 1986. Subsection (b)(3), which discusses the manifolding of emissions from several sources into a single stack, remains unchanged.

• Section 204-25—Fugitive Emissions

Existing section 204-25, "Preventing Particulate Matter from Becoming Air-Borne," is retitled "Fugitive Emissions." In addition to the title change, the provisions of this section are also being amended. There are now extensive preventive measures that must be taken to minimize the chance for fugitive dust pollution to be generated at construction and building sites.

Since "Fugitive Emissions" is not defined in either the existing or revised regulations, EPA is today providing notice of the definition that it will apply when enforcing section 204-25. Consistent with 40 CFR 52.21(b)(20) "Fugitive Emissions" is defined by EPA as, "those emissions which could not reasonably pass through a stack, chimney, vent or through a functionally equivalent opening."

These two sections, "204-23 and 204-25", constitute the Virgin Islands' particulate matter SIP. However, these rules are based upon total suspended particulates even though EPA revised the particulate standard on July 1, 1987, (52 FR 24634) and eliminated the TSP ambient air quality standard. EPA's revised standard is expressed in terms of particulate matter with a nominal diameter of 10 micrometers or less (PM-10). However, at the Virgin Islands' option, EPA is processing TSP SIP revisions which were in process at the time the new PM-10 standard was promulgated. In the policy published on July 1, 1987, (p. 24682, column 1) EPA stated that it would regard existing TSP SIPs as necessary interim particulate matter plans during the period preceeding the approval of State plans specifically aimed at PM-10. If the TSP SIP revision was judged to include more stringent provisions than are in the existing TSP plan, EPA's general policy would be to approve it. It is EPA's judgement that the regulations in this action would increase the stringency of the TSP plan and are therefore likely to result in better control of PM-10 as well. Thus, EPA is proposing this TSP SIP for approval.

• Section 204-26—Sulfur Compounds Emission Control

In subsection 204-26(a)(2) the maximum allowable sulfur content of distillate and residual oil is being revised for sources on St. Croix, St. Thomas and St. John. The maximum allowable sulfur content of distillate and residual fuel oil expressed in percent by weight are now 0.3 and 0.5, respectively. These revisions to section 204-26 address an August 12, 1987 finding by EPA under section 110(a)(2)(H) of the Clean Air Act that the Virgin Islands Implementation Plan is "substantially inadequate" to provide for attainment and maintenance of the ambient air quality standards for sulfur dioxide downwind of the Virgin Islands Water and Power Authority plant on St. Croix. The limitations just described have been demonstrated to correct the defects which had led to this finding.

Because air quality modeling submitted in support of these limitations does not meet input data requirements defined by the *Guideline on Air Quality Models* (Revised, 1986), EPA is taking no action on the modeling demonstration at this time. However, EPA is proposing approval of the emission limitation because of the obvious air quality benefit to the Virgin Islands. The Virgin Islands Implementation Plan will not be fully approvable until an adequate demonstration showing that these limits attain the National Ambient Air Quality Standards (NAAQS) is performed and found acceptable by EPA.

In order to complete an acceptable demonstration, modeling using one year of on-site meteorological data must be performed consistent with the *Guideline on Air Quality Models* (Revised, 1986) to verify that the revised emission limit will attain the NAAQS or to show that a different emission limit is necessary.

EPA is also proposing to approve a special 1.5 percent residual fuel oil sulfur content limit for the Hess Oil Virgin Islands Corporation and the Virgin Islands Water and Power Authority facilities on St. Thomas contained in subsection 204-26(a)(2). These limits have been determined not to threaten applicable ambient air quality standards.

EPA is proposing to disapprove a similar 1.5 percent sulfur-in-fuel limit for the following sources at the Martin Marietta facility on St. Croix:

• Unit 71, consisting of 1 coal burner (which can also burn fuel oil),
• Unit 20, consisting of 3 oil boilers,
• Unit 10, consisting of 2 kilns.

The source is required to burn 0.5% sulfur content fuel in order to meet the Prevention of Significant Deterioration requirements as specified in part C of the Clean Air Act.

• Section 204-28—Internal Combustion Engine Limits

This section no longer uses the outdated Ringelmann scale to determine violations of visible emission limits by internal combustion engines. The revised section contains percent opacity limits for internal combustion engines operating in mobile and stationary sources. In subsection 204-28(b)(1) exceptions to the opacity limits are provided for sources in the start-up mode of operation. EPA is approving this subsection with the understanding that a source will not be considered in the start-up for more than a 15-minute period.

• Section 204-29—Upset, Breakdown, or Scheduled Maintenance

The provisions of section 204-29 now provide a more explicit set of procedures to be implemented in the event of equipment breakdown or malfunctions, including the requirement to report the event. If the condition causes excesses over the allowed emissions to continue for more than 24 hours, the source must cease operations. The earlier provisions failed to give specific guidance regarding mitigative steps to be taken should equipment and facility problems occur.

• Section 204-33—Air Pollution Emergencies

A new section is being incorporated into the regulations to prevent the excessive build-up of air pollutants during air pollution emergencies. These build-ups could be the result of both emissions into the atmosphere and meteorological conditions.

The new rule sets criteria that are to be used for identifying air pollution alerts, warnings or emergencies that may occur as a result of emissions of sulfur dioxide and particulate matter.

• Section 204-35—Continuous Emission Monitoring

New section 204-35 requires certain new and existing sources to operate and maintain continuous emission monitoring equipment. These include by reference federal requirements for certain new sources, found in title 40 of the *Code of Federal Regulations*, part 60, and federal requirements for existing sources, found at part 51, appendix P, "Minimum Emission Monitoring Requirements."

• Section 204-36—Eligibility to Burn Waste Fuel A

This new section identifies combustion facilities that are allowed to burn Waste Fuel A containing certain amounts of lead, halogens, sulfur and polychlorinated bi-phenyls (PCBs). Only facilities that are capable of very high efficiency combustion of this waste oil are allowed to burn this fuel, specifically equipment with a maximum operating heat input of 20 million British thermal units (Btu) per hour or greater and equipment capable of operation with at least 99 percent combustion efficiency. Previously, waste fuel of this type could be burned in any kind of combustion equipment.

• Section 204-37—Eligibility to Burn Waste Fuels A and B

This new section 204-37 sets conditions for allowing the use of Waste Fuels A and B. It allows for the issuance of permits or certificates to burn Waste Fuels A and/or B provided that certain documentation is provided to the Commissioner, including a demonstration showing that ambient air quality standards will not be violated as a result of the use of these waste fuels.

• Section 204-38—Permit and/or Certificate Requirement for Waste Oil Facilities

This new section requires all sources that use waste oil to obtain the required construction and operating permits before commencing construction or modification of the sources.

• Section 204-39—Sale or Use of Waste Fuels A and B

New section 204-39 forbids the sale and use of waste fuels unless the distributors and distributees of the fuel abide by all of the necessary rules and regulations that are being proposed for approval today. EPA understands that the reference made to Table 1 in this section is with regard to the table found in section 204-20. This table sets forth maximum allowable concentrations for certain constituents in waste fuel oil.

• Section 204-40—Reports, Sampling and Analysis of Waste Fuels A and B

This new section provides for detailed records to be maintained for sources that use waste oil. In addition, there are provisions that allow the Virgin Islands to order fuel tests for any source using waste fuel oils.

• Section 204-41—Existing Air Contamination Sources for Waste Fuel

This new rule requires older fuel burning facilities that use waste fuel to obtain and maintain valid operating permits.

• Section 204-45—Standards of Performance for Sulfur Recovery Units at Petroleum Refineries

This new section sets equipment and operating standards for the Hess Oil Virgin Island Corporation's petroleum refinery. It applies to the processing of tail gas in the refinery's four Claus Plants and two Beavon units to remove and recover the sulfur.

• Section 206-20—Permits Required

Existing subsections (a), (b) and (d) are being amended to require clearly that all sources and operators must possess the necessary permits to construct or operate.

• Section 206-21—Transfer

This existing section is being amended to forbid the transfer of construction or operating permits to new owners should be transfer of ownership take place. It also now provides that a subsequent source owner will be subject to all requirements that the former owner was subject to.

• Section 206-22—Applications

This section is being amended to require permit applications be filed in a prescribed manner and form.

• Section 206-23—Application and Permit Fees

This new section requires the payment of certain fees for each application for a permit to construct or operate and for permit renewals.

• Section 206-24—Cancellation of Applications

This section, which sets expiration dates for construction and operating permits, is currently designated as 206-23. It is being renumbered to 206-24. In addition, this section is amended to replace the dated term "authority to construct" with "construction permits."

• Section 206-25—Test Methods

The existing section 206-24, "Provisions of Sampling and Testing Facilities," is being repealed and a new section 206-25, "Test Methods," is added. In this new rule, all air pollution sources are subject to emission testing and sampling to determine if the source

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is in compliance with its permit to operate and other applicable rules.

- **Section 206–26—Permits to Construct**

A new section 206–26, "Permits to Construct," replaces previous section 206–25, "Standards for Granting Applications." This rule provides for the administration of the Virgin Islands' construction permits program. It requires among other things that construction permit applicants provide specifications for all air pollution control equipment and an air quality impact analysis.

- **Section 206–27—Permits to Operate**

A new section 206–27 gives the standards for an approvable operating permit. It also lists requirements for receiving one. These include that the applicant must demonstrate compliance with all applicable rules (e.g., emission limits) and that ambient air quality standards will be attained and maintained. In addition, this section gives standards for the issuance of renewal permits.

- **Section 206–28—Permit Modifications, Suspensions or Revocations and Denials**

Existing section 206–27, "Denials of Applications," is both amended and renumbered to section 206–28, "Permit Modifications, Suspensions or Revocations and Denials." This rule provides a means by which the Department of Planning and Natural Resources may study each permit and revoke, suspend, modify or deny it depending on its findings.

- **Section 206–29—Further Information**

Existing section 206–28 is being renumbered to 206–29 and is amended to replace dated language. The term "authority to construct" is replaced by "permit to construct."

- **Section 206–30—Appeals**

Existing section 206–29 is being renumbered to 206–30 and is amended to replace dated language. The term "authority to construct" is being replaced by "permit to construct."

- **Section 206–31—Review of New Sources and Modifications**

Existing section 206–30 is being renumbered to 206–31. It has not been amended.

- **Section 206–32—Review of New or Modified Indirect Sources**

Existing section 206–31 is being renumbered to 206–32. It has not been amended.

Finding:

EPA is proposing to find that, with the following exceptions and based on the following understandings, the revisions to the Virgin Islands Implementation Plan discussed in today's notice meet the requirements of section 110 of the clean Air Act and 40 CFR part 51 and are, therefore, approvable:

- Section 204–25—"Fugitive emissions," as used in section 204–25, will be defined by EPA as, "those emissions which could not reasonably pass through a stack, chimney, vent or through a functionally equivalent opening."
- Subsection 204–26(a)(2)—The 1.5 percent sulfur in fuel residual oil special limit for the following sources at Martin Marietta St. Croix is disapproved:
- Unit 71, consisting of 1 convertible coal burner,
- Unit 20, consisting of 3 oil burners,
- Unit 10, consisting of 2 kilns.
- Subsection 204–28(b)(i)—EPA understands that source startup will not extend to more than 15 minutes.
- Section 204–39—EPA understands that the reference Table 1 in this section is with regards to the table found in Section 204–20.

EPA is soliciting public comments on this notice and on issues relevant to EPA's proposed actions. Comments will be considered before taking final action. Interested parties may participate in the federal rulemaking procedure by submitting written comments to the above address. EPA will consider all comments received within 30 days of the publication of this notice.

Conclusion

EPA is proposing to approve the revised regulations as part of the Virgin Islands Implementation Plan, except for subsection 204–26(a)(2) of the revision that has been discussed in the "Finding" section of this notice.

This notice is issued as required by section 110 of the Clean Air Act, as amended. The Administrator's decision regarding the approval of this plan revision is based on its meeting the requirements of section 110 of the Clean Air Act and 40 CFR part 51.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

Under Executive Order 12291, this action is not "Major." It has been submitted to the Office of Management and Budget (OMB) for review.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Nitrogen dioxide.

Authority: 42 U.S.C. 7401–7642.

Dated: December 7, 1988.

William J. Muszynski,

Acting Regional Administrator, Environmental Protection Agency, Region II.

[FR Doc. 89–29104 Filed 12–13–89; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 85

[AMS–FRL–3696–7]

Performance Warranty Regulations and the Voluntary Aftermarket Part Certification Program: Proposed Alternative Short Test Procedure

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule; extension of public comment period.

SUMMARY: This notice announces an extension of the Public Comment Period for submittal of comments on the Notice of Proposed Rulemaking (NPRM) for a proposed alternative short test procedure in the voluntary aftermarket part certification program (53 FR 32598, August 8, 1989). The public comment period is extended for 60 days.

DATES: The public comment period will close on January 10, 1990.

ADDRESSES: Written comments regarding the NPRM may be submitted to the EPA, Air Docket, Room M–1500 (LE–131), Waterside Mall, 401 M Street SW., Washington, DC 20460.

ATTENTION: Docket No. A–88–31. Copies of material relevant to the NPRM in this docket will be available for public inspection from 8:30 a.m. to 12:00 noon and from 1:30 p.m. to 3:30 p.m. on weekdays. A reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Charles Cole, Certification Policy and Support Branch, Certification Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105, (313) 668–4444.

SUPPLEMENTARY INFORMATION: On August 8, 1989, EPA published the NPRM proposing an alternative test procedure for the certification of aftermarkets parts (54 FR 32598). The proposed alternative test is comprised of the first 505 seconds of the Federal Test Procedure (FTP).

Two trade associations, the Motor Vehicle Manufacturers Association and the Specialty Equipment Market Association have requested that the public comment period be extended. Both associations based their request on the need for additional time to evaluate the emission data (Public Docket Document Number A–88–31, II–B–1) used for the technical support document, entitled: "Using the Code 505 Emission Test Procedure for Certification of Aftermarket Parts."

EPA believes that extending the public comment period for the NPRM, to allow these associations and other interested parties sufficient time to complete their analyses of the emissions data, will contribute materially to this rulemaking. A complete evaluation of the emission data should result in improved comments by all interested parties. Therefore, EPA is extending the public comment period for 60 days through January 10, 1990.

Dated: December 7, 1989.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 89–29106 Filed 12–13–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89–556, RM–6794]

Radio Broadcasting Services; Copeland, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a proposal filed by Sound Broadcasting, Inc., requesting the allotment of FM Channel 251C1 to Copeland, Kansas. The coordinates for Channel 251C1 with a site restriction 23.8 kilometers southeast of the community are 37–22–50 and 100–27–05.

DATES: Comments must be filed on or before January 29, 1990, and reply comments on or before February 13, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Donald E. Martin, Spencer W. Weisbroth, 2000 L Street, N.W., Suite 200, Washington, DC 20036, (Counsel for the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–556 adopted November 22, 1989, and released December 6, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of subjects in 47 CFR Part 73:

Radio broadcasting.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–29115 Filed 12–13–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 89–551, RM–7015]

Radio Broadcasting Services; Clarksdale and Water Valley, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Sunflower Broadcasting Co., Inc., proposing the substitution of FM Channel 268C3 for Channel 269A at Clarksdale, Mississippi. Petitioner also requests modification of its license for Station WWUN(FM), Channel 269A, to specify Channel 268C3. The coordinates for Channel 268C3 are 34–18–00 and 90–23–30. To accommodate the upgrade at Clarksdale, we shall propose the substitution of Channel 268A for Channel 268A (vacant) at Water Valley, Mississippi. The applicant for Channel 268A at Water Valley would be permitted to amend its application to specify Channel 268A and retain its cut off protection. The coordinates for Channel 268A are 34–07–01 and 89–38–14.

DATES: Comments must be filed on or before January 29, 1990, and reply comments on or before February 13, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: U.J. Gilbert, President, Sunflower Broadcasting Co., Inc, P.O. Box 1475, Clarksdale, Mississippi 38614.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No 89–551, adopted November 17, 1989, and released December 7, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR Section 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–29116 Filed 12–13–89; 8:45 am]

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47 CFR Part 73

[MM Docket No. 89-557, RM-7043]

Radio Broadcasting Services; Lumberton, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Stone-Lamar Broadcast Services Corporation, proposing the substitution of FM Channel 237C2 for Channel 237A at Lumberton, Mississippi. Petitioner also requests modification of its license for Station WLUN to specify operation on Channel 237C2. The coordinates for Channel 237C2 are 30-51-30 and 89-11-29.

DATES: Comments must be filed on or before January 29, 1990, and reply comments on or before February 13, 1990.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Samuel Miller, Miller & Fields, P.C., P.O. Box 33003, Washington, DC 20033 (Counsel for the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-557, adopted November 22, 1989, and released December 8, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR section 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-29117 Filed 12-13-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-558, RM-6924]

Radio Broadcasting Services; Cameron, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Cameron Radio, Inc., permittee of Station KDEE-FM, Cameron, Missouri, proposing the substitution of Channel 261C2 for Channel 222A at Cameron and modification of its construction permit to specify the new channel. The coordinates for Channel 261C2 are 39-59-02 and 94-08-26.

DATES: Comments must be filed on or before January 29, 1990 and reply comments on or before February 13, 1990.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Erwin G. Krasnow, Verner, Liipfert, Bernhard, McPherson & Hand, 901 15th Street, NW., Suite 700, Washington, DC 20005-2301 (Counsel for the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-558, adopted November 22, 1989, and released December 8, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-29118 Filed 12-13-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

(MM Docket No. 89-559, RM-6351)

Radio Broadcasting Services; Aberdeen, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by KAYO Broadcasting, licensee of Station KAYO-FM, Channel 257A, Aberdeen, Washington, proposing the substitution of Channel 257C1 for Channel 257A at Aberdeen and modification of the station's license to specify operation on the higher class co-channel, as that community's second wide coverage area FM station. Station KAYO-FM's present transmitter site can be used for the upgrade. The coordinates are 46-58-59 and 123-49-13. Canadian concurrence must be obtained for the proposal.

DATES: Comments must be filed on or before January 29, 1990, and reply comments on or before February 13, 1990.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Peter Gutman, Esquire, Pepper & Corazzini, 200 Montgomery Building, 1776 K Street, NW., Washington, DC 20006 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-559, adopted November 22, 1989, and released December 8, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-29119 Filed 12-13-89; 8:45 am]

BILLING CODE 6712-01-M

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Notices

Federal Register
Vol. 54, No. 239
Thursday, December 14, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

CHRISTOPHER COLUMBUS QUINCENTENARY JUBILEE COMMISSION

Meeting

AGENCY: Christopher Columbus Quincentenary Jubilee Commission.

ACTION: Notice of Meeting.

SUMMARY: This notice announces a forthcoming meeting of the Christopher Columbus Quincentenary Jubilee Commission, a presidential commission established in 1984 (Pub. L. 98–375). The meeting will be held in Nassau, Bahamas and will be chaired by Commission Chairman John N. Goudie.

DATES: Monday, January 8, 1990, from 9 a.m. to 1 p.m., Plenary Session (Open). Monday, January 8, 1990, at 2:30 p.m., Culture Committee (Open), Monday, January 8, 1990, at 2:30 p.m., Public Relations and Events Committee (Open), Monday, January 8, 1990, at 4:00 p.m., Program Committee (Open), Monday, January 8, 1990, at 4:00 p.m., Maritime Committee (Closed). Tuesday, January 9, from 9 a.m. to 1 p.m., Plenary Session (Open).

ADDRESSES: All meetings will be held at Paradise Island Resort, Paradise Island, Bahamas.

FOR FURTHER INFORMATION CONTACT: Francisco J. Martinez-Alvarez, Deputy Director (202) 632–1992.

SUPPLEMENTARY INFORMATION: The Commission will meet with representatives of the Bahamian Government to discuss joint cooperative efforts. The Commission will also review proposals for endorsement submitted by interested individuals and organizations.

Francisco J. Martinez-Alvarez,
Deputy Director.
[FR Doc. 89–29158 Filed 12–13–89; 8:45 am]
BILLING CODE 6820–RS–M

CIVIL RIGHTS COMMISSION

Arkansas Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting and briefing session of the Arkansas Advisory Committee to the Commission will convene at 2:00 p.m. and adjourn at 4:30 p.m., on January 9, 1990, at the Federal Office Building, 700 West Capitol, Room 2503, Little Rock, Arkansas 72201. The purpose of the meeting is to discuss program plans and activities for FY 1990. For background an official from the Little Rock school system will be invited to brief the Committee on current developments in the desegregation program.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Alan Patteson, Jr., or William F. Muldrow, Civil Rights Analyst of the Central Regional Division (816) 426–5253, (TDD 816–426–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 7, 1989.

Melvin L. Jenkins,
Acting Staff Director.
[FR Doc. 89–29121 Filed 12–13–89; 8:45 am]
BILLING CODE 6335–01–M

Michigan Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting and briefing session of the Michigan Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 2:30 p.m., on January 19, 1990, at the State of Michigan Plaza Building, 1200 Sixth Avenue, 11th Floor Conference Room-South Tower, Detroit, Michigan. The purpose of the meeting is to conduct orientation for the newly rechartered Committee and to discuss program plans and activities for FY 1990. A briefing session will be held by representatives from selected civil rights organizations to provide an overview of significant civil rights issues in Michigan.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Dennis L. Gibson, or Farella E. Robinson, Civil Rights Analyst of the Central Regional Division (816) 426–5253, (TDD 816–426–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 7, 1989.

Melvin L. Jenkins,
Acting Staff Director.
[FR Doc. 89–29122 Filed 12–13–89; 8:45 am]
BILLING CODE 6335–01–M

Minnesota Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Minnesota Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 9:00 p.m., on January 9, 1990, at the Macalester College, Student Union, South Room, 1600 Grand Avenue, St. Paul, Minnesota. The purpose of the meeting is to discuss issues which are possible subjects for future SAC activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Mary Ryland, or Ascension Hernandez, Civil Rights Analyst of the Central Regional Division (816) 426–5253, (TDD 816/426–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 7, 1989.

Melvin L. Jenkins,
Acting Staff Director.
[FR Doc. 89–29123 Filed 12–13–89; 8:45 am]
BILLING CODE 6335–01–M

Ohio Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting and briefing session of the Ohio Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 2:30 p.m., on February 1, 1990, at the John Weld Peck Federal Building, 550 Main Street, Room 5409, Cincinnati, Ohio. The purpose of the meeting is to discuss program plans and activities for FY 1990. A briefing session will be held by representatives from selected civil rights organizations to provide an overview of significant civil rights issues in Ohio.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Lynwood L. Battle, Jr., or Farella E. Robinson, Civil Rights Analyst of the Central Regional Division (816) 426–5253, (TDD 816–426–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 7, 1989.

Melvin L. Jenkins,
Acting Staff Director.
[FR Doc. 89–29123 Filed 12–13–89; 8:45 am]
BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Technology Administration

National Technical Information Service; Advisory Board—Correction

AGENCY: Technology Administration, Commerce.

ACTION: Correction of the **Federal Register** notice, dated October 16, 1989 (page 42322), which solicited recommendations for membership on the National Technical Information Service Advisory Board (the "NTIS Advisory Board").

SUMMARY: The **Federal Register** notice, which solicited recommendations for membership on the NTIS Advisory Board, contained two errors in printing. Please note the following corrections:

1. The name and address of the person to whom such recommendations and background information should be sent should read as follows: Dr. Joseph F. Caponio, Director, NTIS, Springfield, VA 22161.

2. The name and address of the person to contact for further information should read as follows: Thomas J. Cox, Jr., Associate Director for Administration, NTIS, Springfield, VA 22161 Telephone (703) 487–4736.

GENERALLY: The NTIS Advisory Board was established pursuant to Section 212(c) of the National Technical Information Act of 1988 (15 U.S.C. § 3704b(c)). The statute provides that in appointing its members, the Secretary shall solicit the recommendations of the major users and beneficiaries of NTIS' activities. The Advisory Board is to review NTIS' general policies and operations and advise the Secretary and NTIS Director with respect thereto.

DATE: Recommendations and background information for each recommendation must be received on or before January 16, 1990. Persons who have already sent recommendations and background information to the address erroneously listed in the October 16, 1989 **Federal Register** notice are advised to contact NTIS as soon as possible to confirm receipt thereof.

Dated: December 5, 1989.

Joseph F. Caponio,
Director, NTIS.
[FR Doc. 89–29124 Filed 12–13–89; 8:45 am]
BILLING CODE 3510–04–M

DEPARTMENT OF DEFENSE

Meeting of the Advisory Council on Dependents' Education

AGENCY: Department of Defense Dependents Schools (DoDDS), Office of the the Secretary of Defense, DoD.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Dependents' Education (ACDE). It also describes the functions of the Council. Notice of this meeting is required under the National Advisory Committee Act. Although the meeting is open to the public, because of space constraints, anyone wishing to attend the meeting should contact the point of contact listed below.

DATE: January 12, 1990, 9 a.m. to 4:30 p.m.; January 13, 1990, 9 a.m. to 4:00 p.m.

ADDRESS: January 12, 1990, The Pentagon, Room 3E869, Washington, DC; January 13, 1990, Embassy Suites Hotel, Adams Morgan Room, 1402 South Eads Street, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Ms. Marilyn Witcher, Public Affairs Officer, DoD Dependents Schools, 2461 Eisenhower Avenue, Alexandria, Virginia, 22331–1100, Telephone: (202) 325–0867.

SUPPLEMENTARY INFORMATION: The Advisory Council on Dependents' Education is established under title XIV, section 1411, of Pub. L. 95–561, Defense Dependents' Education Act of 1978, as amended by title XII, section 1204(b)(3)–(5), of Pub. L. 99–145, Department of Defense Authorization Act of 1986 (20 U.S.C., chapter 25A, section 929, Advisory Council on Dependents' Education). The Council is cochaired by designees of the Secretary of Defense and the Secretary of Education. In addition to a representative of each of the Secretaries, 12 members are appointed jointly by the Secretaries. Members include representatives of educational institutions and agencies, professional employee organizations, unified military commands, school administrators, parents of DoDDS students, and one DoDDS student. The Director, DoDDS, serves as the Executive Secretary of the Council. The purpose of the Council is to advise the Secretary of Defense and the DoDDS Director about effective educational programs and practices that should be considered by DoDDS and to perform other tasks as may be required by the Secretary of Defense. The agenda includes discussions about the School Report Card (parent survey), recruitment procedures, the teacher transfer program, development of a homework policy, bus transportation and safety, communication throughout the system, initiatives in the DoDDS Management Improvement Program, and responses to the recommendations made by the Council during its August meeting.

Dated: December 11, 1989.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
[FR Doc. 89–29168 Filed 12–13–89; 8:45 am]
BILLING CODE 3810–01–M

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Office of the Secretary

Defense Science Board Task Force on Low Observable Technology

ACTION: Change in date and location of advisory committee meeting notice.

SUMMARY: The meeting of the Defense Science Board Task Force on Low Observable Technology scheduled for December 5, 1989 as published in the **Federal Register** (Vol. 54, No. 223, Page 48126, Tuesday, November 21, 1989, FR Doc. 89-27348) will be held on December 7, 1989 at the Institute for Defense Analyses, Alexandria, Virginia.

Dated: December 11, 1989.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-29169 Filed 12-13-89; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Army Subgroup on Low Observable Technologies

ACTION: Change in date of advisory committee meeting notice.

SUMMARY: The meeting of the Defense Science Board Task Force on Army Subgroup on Low Observable Technologies scheduled for December 13, 1989 as published in the **Federal Register** (Vol. 54, No. 223, Page 48125, Tuesday, November 21, 1989, FR Doc. 89-27349) will be held on December 11, 1989.

Dated: December 11, 1989.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-29170 Filed 12-13-89; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on SDIO Technology Assessment

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on SDIO Technology Assessment will meet in closed session on January 16-17, 1990 at Kirtland Air Force Base, New Mexico.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will receive classified briefings on critical SDIO technologies.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law No. 92-463, as amended (5 U.S.C. App. II (1982)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(C)(1) (1982), and that accordingly this meeting will be closed to the public.

Dated: December 11, 1989.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-29171 Filed 12-13-89; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Invention Available for License

AGENCY: Office of General Counsel, DOE.

ACTION: Notice of invention available for license.

SUMMARY: The Department of Energy hereby announces that U.S. Patent No. 4,832,122, entitled "In-situ Remediation System and Method for Contaminated Groundwater" is available for license, in accordance with 35 U.S.C. 207-209. A copy of the patent may be obtained, for a modest fee, from the U.S. Patent and Trademark Office, Washington, DC 20231.

FOR FURTHER INFORMATION CONTACT: Robert J. Marchick, Office of the Assistant General Counsel for Patents, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; telephone (202-585-2802).

SUPPLEMENTARY INFORMATION: 35 U.S.C. 207 authorizes licensing of Government-owned inventions. Implementing regulations are contained in 37 CFR part 404. 37 CFR 404.7(a)(1) authorizes exclusive licensing of Government-owned inventions under certain circumstances provided that notice of the invention's availability for license has been announced in the **Federal Register.**

Issued in Washington, DC on December 8, 1989.

Stephen A. Wakefield,

General Counsel.

[FR Doc. 89-29174 Filed 12-13-89; 8:45 am]

BILLING CODE 6450-01-M

Secretarial Panel for the Evaluation of Epidemiologic Research Activities; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Secretarial Panel for the Evaluation of Epidemiologic Research Activities.

Date and Time: Thursday, December 28, 1989, 8:30 a.m.-5:30 p.m. Friday, December 29, 1989, 7:30 a.m.-3:00 p.m.

Place: Albuquerque Marriott Hotel, 2101 Louisiana Boulevard NE., Albuquerque, New Mexico 87110, (505) 881-6800.

Contact: Steven F. Boedigheimer, Executive Director, S.P.E.E.R.A., 1000 Independence Ave., SW., Washington, DC 20585, Telephone: (202) 586-7304.

Purpose: The Panel was established to provide the Secretary with an independent evaluation of the Department of Energy's epidemiology program and the appropriateness, effectiveness, and overall quality of the Department's epidemiologic research activities.

Tentative Agenda:

Thursday, December 28, 1989

8:30 am-11:30 am
Invited Testimony and Work Session
8:30 am-9:15 am
Department of Energy, Office of Defense Programs, Richard W. Starostecki
9:15 am-10:00 am
Department of Energy, Office of Nuclear Energy, Jerry D. Griffith
10:00 am-10:45 am
Department of Energy, Office of Energy Research, Dr. James Decker
10:45 am-11:45 am
Invited Testimony and Work Session
11:45 am-1:15 pm
Lunch break
1:15 pm-2:15 pm
Rongelap Atoll Local Government, Senator Jeton Anjain, David Weiman
2:15 pm-3:30 pm
Centers for Disease Control, Dr. Daniel Hoffman
3:30 pm-4:30 pm
Institute of Environmental Medicine, New York University Medical Center, Dr. Roy Shore
4:30 pm-5:30 pm
Invited Testimony and Work Session

Friday, December 29, 1989

7:30 am-8:00 am
Work Session
8:00 am-9:00 am
Institute of Environmental Medicine, New York University Medical Center, Dr. Merrill Eisenbud, Professor Emeritus
9:00 am-9:30 am
Public Comment
9:30 am-10:30 am
International Commission on Radiological Protection, Charles Meinhold
10:30 am-11:30 am
Invited Testimony and Work Session
11:30 am-1:00 pm
Lunch break
1:00 pm-3:00 pm
Invited Testimony and Work Session

Public Participation: The meeting is open to the public. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will, in the Chairperson's judgment, facilitate the orderly conduct of business. Any member of the public who wishes to make oral statements pertaining to agenda items should contact the Executive Director at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. It is requested that oral presenters provide 15 copies of their statements at the time of their presentations.

Minutes: Available for public review and copying approximately 30 days following the meeting at the Public Reading Room 1E-190, Forrestal Building, 1000 Independence Ave., SW., Washington, DC between 9:00 am and 4:00 pm, Monday through Friday except Federal holidays.

Issued: Washington, DC, on: December 12, 1989.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 89-29263 Filed 12-12-89; 11:24 am]

BILLING CODE 6450-01-M

Compliance with the National Environmental Policy Act; Record of Decision to Proceed with the Clean Coal Technology Demonstration Program

AGENCY: Department of Energy (DOE).

ACTION: Decision to proceed with the clean coal technology demonstration program (CCTDP).

SUMMARY: Pursuant to the Council on Environmental Quality Regulations (40 CFR part 1500-1508) for implementing the procedural provisions of the National Environmental Policy Act (NEPA) and the Department of Energy's (DOE) guidelines for compliance with NEPA (52 FR 47662, December 15, 1987), the Office of the Assistant Secretary for Fossil Energy of the DOE is issuing a Record of Decision on the Clean Coal Technology Demonstration Program (CCTDP). DOE has decided to proceed with the CCTDP. This Record of Decision is based in part on the Programmatic Environmental Impact Statement (PEIS) on the CCTDP that was published as a draft (DOE/EIS-0146D) in June 1989, and, subsequently, made available for public comment. A final PEIS (DOE/EIS-0146) was prepared incorporating revisions in response to comments from federal agencies and the public and was published in November 1989. More than 400 copies were distributed to Congress, state and federal agencies, environmental organizations, and other interested parties. DOE has considered all comments in preparing the final PEIS and this Record of Decision.

FOR FURTHER INFORMATION CONTACT: Allyn Hemenway, FE-222, Office of Clean Coal Technology, U.S. Department of Energy, Washington, DC 20585, Telephone: (202) 586-7162.

Background

On December 19, 1985, Congress enacted Public Law 99-190 (An Act Making Appropriations for the Department of the Interior and Related Agencies for the Fiscal Year Ending September 30, 1986 and for Other Purposes). Included in this act were provisions for funds to conduct cost-shared, clean coal technology projects for constructing and operating facilities to demonstrate the feasibility of future clean coal applications. Congress mandated that a DOE solicitation be issued within 60 days, proposals received within 120 days, and selections made within 180 days. By Congressional direction, DOE issued a Program Opportunity Notice (PON) in February 1986. A programmatic NEPA evaluation was conducted as part of the competitive evaluation process. As a result of this solicitation and the subsequent evaluation process, a number of clean coal technology demonstration projects were selected and cooperative agreements were negotiated.

Public Law 100-202 (An Act Making Appropriations for the Department of the Interior and Related Agencies for the Fiscal Year Ending September 30, 1988 and for Other Purposes) was signed into law in December 1987. This law provided funds to conduct cost-shared Innovative Clean Coal Technology (ICCT) projects to demonstrate emerging clean coal technologies that are capable of retrofitting or repowering existing facilities. This time Congress mandated that a DOE solicitation was to be issued within 60 days, proposals received within 150 days, and selections made within 310 days from enactment. During this period DOE completed a Programmatic Environmental Impact Analysis (DOE/PEIA-0002, U.S. Department of Energy, September 1988) which was made available to the public. A second PON was issued by DOE and resulted in the selection of a number of cost-shared clean coal technology demonstration projects.

Language in Public Law 100-446 (Making Appropriations for the Department of the Interior and Related Agencies for the Fiscal Year Ending September 30, 1989 and for Other Purposes) established a schedule for a third solicitation. A PON was issued on May 1, 1989 and project selection will be made on or before January 1, 1990 as mandated by Public Law 101-45 (An Act Making Supplemental Appropriations for the Department of Veterans Affairs for the Fiscal Year Ending September 30, 1989 and for Other Purposes). DOE has now completed a final Programmatic Environmental Impact Statement with full public participation. Additional Congressional appropriations and DOE solicitations are anticipated for this program.

Program Description

The CCTDP is a technology demonstration program jointly funded by the federal government and industry. The program will select the best and most promising of the advanced coal-based utilization, processing, and emission control technologies and, over the next decade, advance their technical, environmental, and economic performance to the point where the private sector can introduce the demonstrated technologies into the commercial marketplace. These demonstrations will be on a scale large enough to generate all data from design, construction, and operation that are necessary for the private sector to judge their commercial potential and to make informed, confident decisions on commercial readiness. Further, these technologies will address, and may reduce and/or eliminate, the environmental and economic impediments that limit the full consideration of coal as an energy resource.

Technologies to be demonstrated must be capable of providing for the expanded use of coal, or for the repowering or retrofitting of existing facilities. Such existing facilities can be designed to use any conventional fuel (e.g., coal, oil, gas) or a new fuel form and can be either stationary or mobile.

Repowering technologies replace a major portion of an existing facility not only to achieve a significant emissions reduction but also to increase facility capacity, extend facility life, improve system efficiency, and/or provide for the use of a new fuel form. Repowering can increase capacity from 10% to 150% and may be more cost-effective than retiring older units and replacing them with new plants. It also offers the opportunity to efficiently and reliably integrate

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emissions control and power generation technologies. Repowering technologies include circulating atmospheric fluidized-bed combustion, pressurized fluidized-bed combustion, integrated gasification combined cycle, and integrated gasifier-fuel cell.

The retrofit technologies are divided into three classes: (1) New Source Performance Standard (NSPS) capable, which include those technologies that, when applied singly, meet both sulfur dioxide (SO_2) and nitrogen oxides (NO_x) NSPS requirements and thus can be retrofitted on existing plants and also be used for new plants; (2) partial NSPS capable, which include those technologies that, when applied singly, will control emissions of either SO_2 or NO_x to NSPS levels and thus could be retrofitted on existing plants but could not be applied singly to new plants to meet full NSPS requirements; and (3) new fuel forms, which include those technologies that chemically or physically alter the state of coal to produce a new fuel form with the objective of mitigating emissions of SO_2 and/or NO_x.

The strategy being implemented to achieve the goal of the CCTDP is to conduct a multiphase effort consisting of at least five separate solicitations for projects, each with individual objectives that, when integrated, will make available technology options on a schedule consistent with the demands of the energy market and responsive to the relevant environmental considerations. Project selection has already occurred for two of the solicitations (i.e., Clean Coal Technology-I and Clean Coal Technology-II) and site-specific project design and environmental review are underway. A significant common element of this multiphase effort is the capture and transfer to the private sector and international community of a data base containing sufficient technical, environmental, economic, and operational information to allow potential commercial users to confidently screen the technologies to select those which meet their operational requirements.

Future solicitations are in the planning stage and, as with the previous solicitations, will be consistent with Congressional guidance and administration policy. This guidance and policy will include implementing the recommendations of the Special Envoys' Report on Acid Rain, the President's Task Force on Regulatory Relief, and the Innovative Control Technology Advisory Panel (ICTAP). The views of other interested parties such as the National Coal Council, potential industrial participants, and states will also be considered to the maximum possible extent.

Description of Alternatives

As described in the final PEIS, DOE's proposed action is to continue the CCTDP, which assumes CCTDP projects are selected for cost-shared federal funding in the third and future solicitations and that successfully demonstrated technologies undergo widespread commercialization by 2010. Under the proposed action alternative, 22 generic clean coal technologies that cover the range of technologies that are anticipated for the proposed action have been analyzed for their environmental consequences. The other alternative that DOE considered in the final PEIS is the no-action alternative, which assumes that the CCTDP is not implemented and conventional coal technologies continue to be used.

Basis for Decision

In compliance with the National Environmental Policy Act (NEPA), DOE analyzed the environmental consequences of the proposed action in the final PEIS. The proposed action alternative assumes that the CCTDP is continued and that successfully demonstrated technologies undergo widespread commercialization by the year 2010. The no-action alternative assumes the CCTDP is not continued.

DOE concluded that the CCTDP would have a substantial beneficial effect on air quality in the year 2010 compared to the no-action alternative. Under widespread commercialization, the repowering and retrofit-NSPS capable technologies could lead to a significant reduction in SO_2 relative to the no-action alternative in 2010. The SO_2 reduction in the case of repowering ranges between 29% and 48% while the reduction for NSPS capable retrofit technologies is 30% to 45%. The potential emission levels in 2010 range between approximately 15 and 20 million tons of SO_2 per year for both the repowering category and the NSPS capable retrofit technologies. This would be below the 1985 SO_2 levels of approximately 24 million tons per year and the 2010 no-action alternative level of approximately 28 million tons per year. This significant reduction in SO_2 reflects the fact that both of these categories of technologies could be applied to the slate of unregulated plants still in service in 2010 and all new plants put into service between 1985 and 2010. The retrofit-partial NSPS capable technologies are applied only to the unregulated sources which exist in 2010. These technologies could result in SO_2 reduction between 30% and 48%. It should be noted that some of these retrofit technologies do not control SO_2 and therefore would not impact SO_2 emissions. The new fuel forms retrofit technologies could reduce SO_2 emissions up to 26%.

Widespread commercialization of the repowering technologies could also lead to a substantial reduction in NO_x. The analysis shows that reductions of 14% to 17% or approximately 4 to 5 million tons of NO_x per year could be achieved as compared to the 2010 no-action alternative emission level of approximately 27 million tons per year. Even with widespread commercialization NO_x emissions would grow from the 1985 baseline of approximately 17 million tons per year because NO_x controls are not expected to keep pace with the increase in coal use. The NSPS capable retrofit technologies, for which NO_x control is an integral part, could lead to reduction of approximately 33% or approximately 9 million tons per year from the 2010 no-action alternative levels. The NO_x control technologies contained in the retrofit partial NSPS capable category could lead to a reduction of approximately 15%, whereas the new fuel forms retrofit technologies would impact NO_x ±3% relative to the 2010 no-action alternative emission levels.

Repowering is the only category where all technologies could lead to a measurable reduction in CO_2. This reduction is directly attributable to the improved efficiencies associated with these technologies, particularly the gasifier fuel cell, integrated gasifier combined cycle and pressurized fluidized-bed. Reductions of 5% to 12% from the 2010 no-action alternative level of approximately 7100 million tons of CO_2 released per year could be achieved by the repowering technologies. The gas reburning technology in the retrofit partial NSPS capable category could lead to a reduction in CO_2 of approximately 2% if it were applied to 100% of its applicable market. The slight increase in CO_2 under the new fuel forms category is based on the fact that combustion of residual oil produces less CO_2 than combustion of coal derived fuels.

Both repowering and NSPS capable retrofit technologies would have an impact on solid waste generation. For the repowering technologies, the change in national emissions relative to the 2010 no-action alternative level of approximately 540 million tons per year ranges between a 16% reduction and an 8% increase. This equates to a 105% to 165% increase in solid waste above the 1985 level of approximately 220 million tons per year and is directly related to the increase in energy use and the fact that reductions in SO_2 are traded off against a potential increase in solid waste. The analysis of the NSPS capable technologies leads to essentially the same results with the range between a 22% reduction and a 19% increase in solid waste. The partial NSPS capable technologies could reduce solid waste by approximately 2% or lead to an increase of approximately 6% over the 2010 no-action alternative level of approximately 540 million tons per year. The new fuel forms retrofit technologies will, in most cases, lead to an increase in solid waste generation. The maximum level of increase is estimated to be approximately 23% or approximately 125 million tons per year over the 2010 no-action alternative level. Clean coal technology solid waste is produced in a dry form, and would be easier to handle and dispose of than flue gas desulfurization sludge, and would require less area per ton.

Considerations in the Implementation of the Decision

DOE will continue the CCTDP and select demonstration projects for cost-shared funding with industry. The PEIS, which is part of an overall NEPA compliance plan for the CCTDP, contains a description of generic technologies that are representative of specific types of technologies to be demonstrated under the CCTDP. From these generic technologies, forecasts are developed which describe potential environmental impacts that could occur from widespread deployment of commercial scale facilities. A second part of the NEPA compliance plan involves the preparation of preselection project-specific environmental review reports prepared by CCTDP Source Evaluation Boards (SEBs) for each solicitation. Because these reports contain SEB-sensitive information as well as business confidential and proprietary information, they can not be made available to the public. The Source Selection Official will consider the PEIS, along with the preselection project-specific environmental reviews, as part of the selection process. The third element of the NEPA compliance plan is the preparation of site-specific NEPA documentation for each CCTDP demonstration project selected to receive financial assistance. These site-specific documents will be made available to the public.

The demonstration projects selected under the CCTDP will provide sufficient technical, economic, operational, environmental, and health and safety information to allow potential users to confidently screen the technologies for those that meet their operational requirements for commercial use. As part of the CCTDP, the industrial participant in the demonstration project is required to develop and execute an environmental monitoring plan (EMP) during the demonstration.

Conclusion

DOE has analyzed and weighed the costs, benefits, schedule, and environmental impacts of the proposed action and the no-action alternatives in its decision to continue the CCTDP. Based on this analysis, DOE has selected the proposed alternative to continue the CCTDP. As the analysis of environmental impacts shows, the commercialization of clean coal technologies would have a substantial beneficial effect on air quality in the year 2010 compared to the no-action alternative. Therefore, the selected alternative of the proposed action is the environmentally preferable alternative. The reductions in SO_2 and NO_x emissions are expected to contribute to an amelioration of current impacts of acidic deposition, although the degree and rate of recovery is uncertain. The clean coal technologies could also lead to reduced emissions of CO_2 if higher efficiency technologies, such as repowering technologies, were employed in the production of electricity. The analysis shows that the amount of solid waste generated by the various clean coal technologies varies greatly. However, the impacts of disposing of these wastes could be somewhat less significant than for the no-action alternative because of their dry form.

Based on the conclusions of the PEIS, DOE has decided to continue the CCTDP, subject to authorization and appropriation of funds by Congress.

Issued in Washington, DC, on December 11, 1989.

Michael R. McElwrath,

Acting Assistant Secretary, Fossil Energy.

[FR Doc. 89-29173 Filed 12-13-89; 8:45 am]

BILLING CODE 6450-01-M

Dr. Richard M. Lambrecht; Notice of Intent Grant Exclusive Patent License

AGENCY: Office of the General Counsel, DOE.

ACTION: Notice of intent to grant exclusive patent license.

SUMMARY: Notice is hereby given of an intent to grant to Dr. Richard M. Lambrecht of Quoque, NY, an exclusive license to practice in the United States the invention described in U.S. Patent No. 4,681,727, entitled "Process for Providing Astatine-211 for Radiopharmaceutical Use." The patent is owned by the United States of America, as represented by the Department of Energy (DOE).

DOE intends to grant the license, upon a final determination in accordance with 35 U.S.C. 209(c), unless within 60 days of this notice the Assistant General Counsel for Patents, Department of Energy, Washington, DC 20585, receives in writing any of the following, together with supporting documents:

(i) A statement from any person setting forth reasons why it would not be in the best interests of the United States to grant the proposed license; or

(ii) An application for a nonexclusive license to the invention in the United States, in which applicant states that he already has brought the invention to practical application or is likely to bring the invention to practical application expeditiously.

DATE: Written comments or nonexclusive license applications are to be received at the address listed below no later than February 12, 1990.

ADDRESS: Office of Assistant General Counsel for Patents, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Robert J. Marchick, Office of the Assistant General Counsel for Patents, U.S. Department of Energy, Forrestal Building, room 6F-067, 1000 Independence Avenue, 20585; Telephone (202) 586-4792.

SUPPLEMENTARY INFORMATION: 35 U.S.C. 209(c) provides the Department with authority to grant exclusive licenses in Department-owned inventions, where a determination can be made, among other things, that the desired practical application of the invention has not been achieved, or is not likely expeditiously to be achieved, under a nonexclusive license. The statute and implementing regulations (37 CFR 404) require that the necessary determinations be made after public notice and opportunity for filing written objections.

Dr. Richard M. Lambrecht of Quoque, NY, has applied for an exclusive license to practice the invention embodied in U.S. Patent No. 4,681,727 entitled "Process for Providing Astatine-211 for Pharmaceutical Use." Applicant has plans for commercialization of the invention, contingent on obtaining exclusivity. The proposed license will be exclusive, subject to a license and other rights retained by the U.S. Government, and will be subject to a negotiated

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royalty. The Department will review all timely written responses to this notice, and will grant the license if, after expiration of the 60-day notice period, and after consideration is made, in accordance with 35 U.S.C. 209(c), that the license grant is in the public interest.

Issued in Washington, DC, on December 8, 1989.

Stephen A. Wakefield,

General Counsel.

[FR Doc. 89-29179 Filed 12-13-89; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Special Research Grant Program Notice 90-2; Energy Biosciences (Biological Energy Research)

AGENCY: Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Basic Energy Sciences of the Office of Energy Research (OER), U.S. Department of Energy (DOE) announces its interest in receiving preapplications from potential applicants for research funding in the Energy Biosciences program area. The intent in asking for a preapplication is to save the time and effort of applicants from writing and submitting a formal project application that may be inappropriate for the program. The preliminary screening of research ideas is aimed also at relieving some of the burden of the scientific community in reviewing an excessive number of research applications. The preapplication should consist of a two to three page concept paper about the research being contemplated as a formal application to the annual Energy Biosciences notice of funding availability. The concept paper should focus on the objectives of the planned research, its scientific goals and their significance, an outline of the approaches planned, and any other information that relates to the planned research. No budget information or biographical data need be included; nor is an institutional endorsement necessary. The application is an informal inquiry about the technical suitability for a submission. A response indicating appropriateness in preparing a formal application will be sent from the Division of Energy Biosciences office no later than March 10, 1990. The deadline for receipt of formal applications is June 11, 1990.

DATES: For timely consideration, all preapplications should be received by February 15, 1990. However, earlier submissions will be gladly accepted.

ADDRESS: Preapplications referencing Program Notice 90-2 should be forwarded to: U.S. Department of Energy, Office of Basic Energy Sciences, ER-17, Division of Energy Biosciences, Washington, DC 20545, ATTN: Program Notice 90-2.

PREAPPLICATIONS AND FURTHER INFORMATION: Before preparing a formal application, potential applicants should submit a brief preapplication in accordance with 10 CFR.600(d)(2) which consists of two to three pages of narrative describing research objectives. These will be reviewed relative to the scope and the research needs of the Energy Biosciences program. For timely consideration, all preapplications should be received by February 15, 1990. However, earlier submissions will be gladly accepted. Preapplications should be sent to the following address: U.S. Department of Energy, Office of Basic Energy Sciences, Division of Energy Biosciences, ER-17, Washington, DC 20545, (301) 353-2873. A response which is based on these preapplications and which discusses the potential program relevance of a formal application will be communicated by March 10, 1990. For further information contact: Ms. Pat Snyder, Division of Energy Biosciences, Office of Basic Energy Sciences, ER-17, Washington, DC 20545, (301) 353-2873.

SUPPLEMENTARY INFORMATION: Funds are expected to be available for new grant awards in FY 1991. The magnitude of these funds will depend on the budget process. The principal purpose in using preapplications at this time is to reduce the expenditures of time and effort of all parties. Information about development and submission of applications, eligiblity, limitations, evaluations and selection processes, and other policies and procedures may be found at 10 CFR part 605. Application kits for formal submissions and copies of 10 CFR part 605 are available from the same office listed under "Address" section of this Notice. Telephone requests may be made by calling (301) 353-2873. Instructions for preparation of an application are included in the application kit. The Catalog of Federal Domestic Assistance number for this program is 81.409.

Issued in Washington, DC on November 30, 1989.

D.D. Mayhew,

Deputy Director for Management, Office of Energy Research.

[FR Doc. 89-29180 Filed 12-13-89; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

Coal Policy Committee, National Coal Council, Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Coal Policy Committee of the National Coal Council.

Date and Time: Tuesday, January 9, 1990, 11:00 a.m.

Place: Hyatt-Regency, DFW Airport Hotel, Dallas, TX.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE-1), Washington, DC 20585, TelephoneL 202/586-4695.

Purpose of the Parent Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to coal and coal industry issues.

Purpose of the Meeting: To discuss new studies.

Tentative Agenda:

Call to order by Irving Leibson, Chairman.
Remarks by DOE representative (invited).
Update and discussion on "The Future Long-Range Role of Coal in the Energy Strategy of the United States."
Discuss any other business properly brought before the National Coal Council Coal Policy Committee.
Adjournment.

Public Participation: The meeting is open to the public. The Chairman of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, room 1E-190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC., between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC., on December 8, 1989.

J. Robert Franklin,

Deputy Advisory Committee, Management Officer.

[FR Doc. 89-29175 Filed 12-13-89; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 89-45-NG]

Equitable Resources Marketing Co.; Order Granting Blanket Authorization To Import Natural Gas From and Export and Export Natural Gas to Canada and Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order granting blanket authorization to import natural gas from and export natural gas to Canada and Mexico.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Equitable Resources Marketing Company (Equitable) blanket authorization to import natural gas to Canada and Mexico. The order authorizes Equitable to import up to 100 Bcf, and to export up to 100 Bcf, respectively, of Canadian, Mexican and/or domestically produced natural gas for a term of two years, commencing on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 6, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89-29176 Filed 12-13-89; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 89-40-NG]

Norbec International Corp.; Order Granting Blanket Authorization To Export Natural Gas From the United States to Mexcio

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order granting blanket authorization to export natural gas from the United States to Mexico.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Norbac International Corpration blanket authorization to export from the United States to Mexico up to 47.45 Bcf of domestic natural gas under short-term, spot market arrangements for a term of two years beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 6, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89-29177 Filed 12-13-89; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 89-10-NG]

Wisconsin Public Service Corp.; Order Granting Long Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order granting long term authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Wisconsin Public Service Corporation authorization to import from TransCanada PipeLines Limited up to 8,060 Mcf per day of natural gas on a firm basis and up to 11,820 Mcf per day of additional interruptible supplies for a term commencing the effective date of the order through October 31, 1992.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 8, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89-29178 Filed 12-13-89; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 3697-1]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 16, 1990.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of the Administrator

Title: Preaward Compliance Review Report for All Applicants Requesting Federal Financial Assistance (EPA ICR # 0275.04; OMB # 2090-0014). This ICR requests renewal of the existing clearance.

Abstract: All EPA grant applicants must complete a form so EPA can determine preaward compliance with laws that prohibit discrimination on the bases of race, color, national origin, sex, handicap and age.

Burden Statement: The public reporting burden for this collection of information is estimated to average .5 hours per response, including time for reviewing instructions, and completing and reviewing the collection of information.

Respondents: All EPA grant applicants.

Estimated Number of Respondents: 4000.

Estimated Total Annual Burden On Respondents: 2000 hours.

Frequency of Collection: On time with each application for financial assistance.

Send comments regarding the burden estimate, or any other aspect of these information collections, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street, SW., Washington, DC 20460, and

Marcus Peacock, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20530.

OMB Responses to Agency PRA Clearance Requests

EPA ICR # 1230.04; New Source Review and Prevention of Significant

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Deterioration Permitting Programs; was approved 07/31/89; OMB # 2060-0003; expires 07/31/92.

EPA ICR # 0976.04; 1989 Hazardous Waste Report; was approved 11/06/89; OMB # 2050-0024; expires 03/31/92.

EPA ICR # 0619.04; Mobile Source Emission Factor Survey; was approved 09/26/89; OMB # 2060-0078; expires 09/30/90.

EPA ICR # 1541.01; National Emission Standards for Benzene Waste Operations; was approved 10/30/89; OMB # 2060-0183; expires 09/30/92.

EPA ICR # 1412.01; NESHAP for Industrial Solvent use of Benzene in Rubber Tire Manufacturing and Pharmaceutial Manufacturing; was approved 10/27/89; OMB # 2060-0186; expires 09/30/92.

EPA ICR # 1155.01; NESHAP For Benzene Emissions from Gasoline Marketing Sources; was approved 10/30/89; OMB # 2060-0187; expires 09/30/92.

EPA ICR # 1031.03; Recordkeeping and Reporting Requirements for Allegations of Significant adverse Reactions to Human Health or the Environment; was approved 10/26/89; OMB # 2070-0017; expires 10/31/92.

EPA ICR # 1154.01; NESHAP for Benzene Emissions from Bulk Transfer Operations; was approved 10/30/89; OMB # 2060-0182; expires 10/1/92.

EPA ICR # 1539.01; Census of State Program Status Under SARA, Title III; was approved 10/25/89; OMB # 2050-0107; expires 10/31/92.

Dated: December 8, 1989.

David Schwarz,

Acting Director, Information and Regulatory Systems Division.

[FR Doc. 89-29166 Filed 12-13-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3697-2]

Transfer of Data to Contractors

AGENCY: Environmental Protection Agency.

ACTION: Notice of transfer of data and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) will transfer to its contractor, Roy F. Weston, Inc. (Weston), and their subcontractor, Westat, Inc., information which has been, or will be, submitted to EPA under the authority of the Resource Conservation and Recovery Act (RCRA). These firms are establishing a national data base on waste generation and management. This data base will be used to develop analyses on the adequacy of waste management capacity, which is required by the Superfund Amendments and Re-Authorization Act of 1986 (SARA). The data base will also form the basis of national reports to Congress. Some of the information may have a claim of business confidentiality.

DATES: Transfer of confidential data submitted to EPA will occur no sooner than (December 21, 1989).

ADDRESSES: Comments should be sent to Dina Villari, Document Control Officer, Office of Solid Waste (OS-312), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC, 20460. Comments should be identified as "Transfer of Confidential Data."

FOR FURTHER INFORMATION CONTACT: Dina Villari, Document Control Officer, Office of Solid Waste (OS-312), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC, 20460, (202) 382-4670.

SUPPLEMENTARY INFORMATION:

I. Transfer of Data

The U.S. Environmental Protection Agency is using annual and biennial report data to establish a national data base on waste generation and management. This data base will be used to develop analyses on the adequacy of waste management capacity, which is required by the Superfund Amendments and Re-Authorization Act of 1986 (SARA). The data base will also form the basis of national reports to Congress.

Under EPA Contract No. 68-04-3450, Weston, and their subcontractor, Westat, will assist the Information Management Staff of the Office of Solid Waste in using annual and biennial report data to establish a national data base on waste generation and management. Some of the information being transferred may have been, or will be, claimed as confidential business information.

In accordance with 40 CFR 2.305(h), EPA has determined that Weston and Westat require access to confidential business information (CBI) submitted to EPA under the authority of RCRA to perform work satisfactorily under the above-noted contract. EPA is issuing this notice to inform all submitters of confidential business information that EPA may transfer to these firms, on a need-to-know basis, CBI collected under the authority of RCRA. Upon completing their review of materials submitted, Weston and Westat will return all such materials to EPA.

Weston and Westat have been authorized to have access to RCRA CBI under the EPA "Contractor Requirements for the Control and Security of RCRA Confidential Business Information" security manual. EPA will approve the security plans of the contractors and will inspect their facilities, and approve them, prior to RCRA CBI being transmitted to the contractors. Personnel from these firms will be required to sign non-disclosure agreements and be briefed on appropriate security procedures before they are permitted access to confidential information, in accordance with the "RCRA Confidential Business Information Security Manual" and the Contractor Requirements Manual.

Dated: October 31, 1989.

Robert Wayland,

Acting Assistant Administrator.

[FR Doc. 89-29163 Filed 12-13-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3696-9]

Transfer of Data to Contractors

AGENCY: Environmental Protection Agency.

ACTION: Notice of transfer of data and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) will transfer to its contractor ICF, Inc., and their subcontractors, Camp Dresser and McKee, Inc.; Alliance Technologies, Inc.; Dynamac Corporation; PEI Associates, Inc; DPRA, Inc.; Radian Corporation; Temple, Barker and Sloane, Inc.; and Westat, Inc. information which has been, or will be, submitted to EPA under Section 3007 of the Resource Conservation and Recovery Act (RCRA). These firms will assist EPA in analyzing the following areas: (1) the capacity in the U.S. for treating, storing, and disposing of hazardous waste; (2) the management of used oil; and (3) the management of hazardous waste in tank systems. Some of the information may have a claim of business confidentiality.

DATES: The transfer of data submitted to EPA will occur no sooner than December 21, 1989.

ADDRESSES: Comments should be sent to Dina Villari, RCRA Document Control Officer, Office of Solid Waste (OS-312), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460. Comments should be identified as "Transfer of Confidential Data."

FOR FURTHER INFORMATION CONTACT: Dina Villari, RCRA Document Control Officer, Office of Solid Waste (OS-312), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC., 20460, (202) 382-4670.

SUPPLEMENTARY INFORMATION:

I. Transfer of Data

Under EPA Contract No. 68-W9-0081, ICF, Inc., and their subcontractors, will assist the Waste Management Division of the Office of Solid Waste in the following areas: (1) Evaluating the existing and potential capacity of facilities to treat or recover hazardous wastes which become subject to land disposal restriction; (2) developing a national capacity data base; (3) studying the existing used oil management methods; and (4) analyzing the regulatory options for the storage and treatment of hazardous waste in containers, tanks and other devices. To provide support to the Office of Solid Waste in the above-noted areas, the contractors will require access to the data submitted to EPA under Section 3007 of RCRA. Some of the information being transferred may have been, or will be, claimed as confidential business information.

In accordance with 40 CFR 2.305(h), EPA has determined that ICF, Inc., and their subcontractors, require access to confidential business information (CBI) submitted to EPA under the authority of RCRA to perform work satisfactorily under the above-noted contract. EPA is issuing this notice to inform all submitters of confidential business information that EPA may transfer to these firms, on a need-to-know basis, CBI collected under the authority of RCRA. Upon completing their review of materials submitted, the contractors will return all such materials to EPA.

ICF, Inc., and their subcontractors, have been authorized to have access to RCRA CBI under the EPA "Contractor Requirements for the Control and Security of RCRA Confidential Business Information" security manual. EPA will approve the security plans of the contractors and will inspect their facilities, and approve them, prior to RCRA CBI being transmitted to the contractors. Personnel from these firms will be required to sign non-disclosure agreements and be briefed on appropriate security procedures before they are permitted access to confidential information, in accordance with the "RCRA Confidential Business Information Security Manual" and the Contractor Requirements Manual.

Dated: October 7, 1989.

Jonathan Z. Cannon,

Acting Assistant Administrator.

[FR Doc. 89-29165 Filed 12-13-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3696-8]

Relative Risk Reduction Strategies Committee; Two Risk Reduction Subcommittee Meetings; Emergency Notice

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given of a public meeting of the Risk Reduction Subcommittee of the Relative Risk Reduction Strategies Committee (RRRSC). The Subcommittee will meet on December 20, 1989 (8:30 a.m. to 2:00 p.m.) and January 18, 1990 (8:30 a.m. to 2:00 p.m.) at the Howard Johnson's National Airport Hotel, 2650 Jefferson Davis Highway, Arlington, VA 22202. This meeting is being announced through an emergency notice because the need for the meeting was not determined until the Subcommittee's November 28 meeting. The date and location for the meeting took additional time to confirm. This is the eighth in a series of meetings related to the Relative Risk Reduction Strategies effort with **Federal Register** notices going back to August 1989.

PURPOSE: The purpose of this meeting is to discuss environmental risk reduction strategies based, in part, on an evaluation of EPA's 1987 report "Unfinished Business." For further information concerning this project, please refer to the notices contained in 54 FR 35386, August 25, 1989, and 54 FR 38282, September 15, 1989.

FOR FUTHER INFORMATION: Members of the public wishing further information concerning the Subcommittee or the meeting should contact Mrs. Kathleen Conway or Dr. Richard Corthern, Designated Federal Officials, U.S. Environmental Protection Agency (A-101F), 401 M. Street, SW., Washington, DC, (202) 382-2552 (FTS) 382-2552), FAX (202) 475-9693. Seating at the meeting is on a first come basis.

Dated: December 8, 1989.

Donald G. Barnes,

Director, Science Advisory Board.

[FR Doc. 89-29110 Filed 12-13-89; 8:45 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

DEPARTMENT OF DEFENSE

Department of the Army

[FRL-3696-4]

Memorandum of Agreement Concerning the Determination of Mitigation Under the Clean Water Act Section 404(b)(1) Guidelines

AGENCY: Environmental Protection Agency, EPA; Department of the Army, DOD.

ACTION: Notice.

SUMMARY: Notice is hereby given that pursuant to their authorities under the Clean Water Act (33 U.S.C. 1251 et seq.), the Assistant Administrator for Water of the Environmental Protection Agency and the Assistant Secretary of the Army (Civil Works) have entered into a Memorandum of Agreement which articulates the policy and procedures to be used in the determination of the type and level of mitigation necessary to demonstrate compliance with the Clean Water Act section 404(b)(1) Guidelines.

DATES: The effective date of this Memorandum of Agreement is December 15, 1989.

ADDRESSES: Copies of this Memorendum of Agreement are available from:

Office of Wetlands Protection (A-104F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460

Office of the Assistant Secretary of the Army (Civil Works), Department of the Army, Room 2E569, The Pentagon, Washington, DC 20310-0103

Headquarters, U.S. Army Corps of Engineers (CE-CW-OR), 20 Massachussetts Avenue, NW., Washington, DC 20314-1000.

FOR FURTHER INFORMATION CONTACT: Suzanne Schwartz of the Environmental Protection Agency at the address given above; telephone 202/475-7799, (FTS) 475-7799; or David Barrows of the Department of the Army at the address given above; telephone 202/695-1376, (FTS) 695-1376.

SUPPLEMENTARY INFORMATION: The Memorandum of Agreement (MOA) between the Environmental Protection Agency and the Department of the Army Concerning the Determination of Mitigation Under the Clean Water Act section 404(b)(1) Guidelines articulates the policy and procedures to be used in the determination of the type and level of mitigation necessary to demonstrate compliance with the Clean Water Act section 404(b)(1) Guidelines. The MOA

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published today provides general guidance to Corps and EPA personnel on implementing the Guidelines published at 40 CFR 230.10 pursuant to section 404(b)(1) of the Clean Water Act. It does not impose requirements on or otherwise affect the rights of public parties, which continue to be determined by reference to applicable statutory and regulatory provisions. Consequently, the MOA qualifies as an "interpretative rule" and a "general statement of policy," which are exempted from the notice-and-comment requirements of the Administrative Procedure Act. Therefore the MOA has been made effective 30 days after its date of signature. (See also 5 U.S.C. 553(b)(3)(B), discussing the waiver of prior notice and comment when such process is found by the agency for good cause to be impracticable, unnecessary or contrary to the public interest.)

LaJuana S. Wilcher,

Assistant Administrator for Water.

Robert W. Page,

Assistant Secretary of the Army (Civil Works).

Memorandum of Agreement Between the Environmental Protection Agency and the Department of the Army Concerning the Determination of Mitigation Under the Clean Water Act

Section 404(b)(1) Guidelines

I. Purpose

The United States Environmental Protection Agency (EPA) and the United States Department of the Army (Army) hereby articulate the policy and procedures to be used in the determination of the type and level of mitigation necessary to demonstrate compliance with the Clean Water Act (CWA) section 404(b)(1) Guidelines ("Guidelines"). This Memorandum of Agreement (MOA) expresses the explicit intent of the Army and EPA to implement the objective of the CWA to restore and maintain the chemical, physical, and biological integrity of the Nation's waters, including wetlands. This MOA is specifically limited to the section 404 Regulatory Program and is written to provide clarification for agency field personnel on the type and level of mitigation required to demonstrate compliance with requirements in the Guidelines. The policies and procedures discussed herein are consistent with current section 404 regulatory practices and are provided in response to questions that have been raised about how the Guidelines are implemented.

Although the Guidelines are clearly applicable to all discharges of dredged or fill material, including general permits and Corps of Engineers (Corps) civil works projects, this MOA focuses on standard permits (33 CFR 325.5(b)(1)).[1] This focus is intended solely to reflect the unique procedural aspects associated with the review of standard permits, and does not obviate the need for other regulated activities to comply fully with the Guidelines. EPA and Army will seek to develop supplemental guidance for other regulated activities consistent with the policies and principles established in this document.

This MOA is a directive for Corps and EPA personnel and must be adhered to when considering mitigation requirements for standard permit applications. The Corps will use this MOA when making its determination of compliance with the Guidelines with respect to mitigation for standard permit applications. EPA will use this MOA in developing its positions on compliance with the Guidelines for proposed discharges and will reflect this MOA when commenting on standard permit applications.

II. Policy

A. The Council on Environmental Quality (CEQ) has defined mitigation in its regulations at 40 CFR 1508.20 to include: avoiding impacts, minimizing impacts, rectifying impacts, reducing impacts over time, and compensating for impacts. The Guidelines establish environmental criteria which must be met for activities to be permitted under section 404.[2] The types of mitigation enumerated by CEQ are compatible with the requirements of the Guidelines; however, as a practical matter, they can be combined to form three general types: Avoidance, minimization and compensatory mitigation. The remainder of this MOA will speak in terms of these more general types of mitigation.

B. The Clean Water Act and the Guidelines set forth a goal of restoring and maintaining existing aquatic resources. The Corps will strive to avoid adverse impacts and offset unavoidable adverse impacts to existing aquatic resources, and for wetlands, will strive to achieve a goal of no overall net loss of values and functions. In focusing the goal of no overall net loss to wetlands only, EPA and Army have explicitly recognized the special significance of the nation's wetlands resources. This special recognition of wetlands resources does not in any manner diminish the value of other waters of the United States, which are often of high value. All waters of the United States, such as streams, rivers, lakes, etc., will be accorded the full measure of protection under the Guidelines, including the requirements for appropriate and practicable mitigation. The determination of what level of mitigation constitutes "appropriate" mitigation shall be based on the values and functions of the aquatic resource that will be impacted. This determination shall not be based upon characteristics of the proposed project such as need, societal value, or the nature or investment objectives of the project's sponsor. "Practicable" shall be defined as in § 230.10(a)(2) of the Guidelines. However, the level of mitigation determined to be appropriate and practicable under § 230.10(d) may lead to individual permit decisions which do not fully meet this goal because the mitigation measures necessary to meet this goal are not feasible, not practicable, or would accomplish only inconsequential reductions in impacts. Consequently, it is recognized that no net loss of wetlands functions and values may not be achieved in each and every permit action. However, it remains a goal of the Section 404 regulatory program to contribute to the national goal of no overall net loss of the nation's remaining wetlands base. EPA and Army are committeed to working with others through the Administration's interagency task force and other avenues to help achieve this national goal.

C. In evaluating standard section 404 permit applications, as a practical matter, information on all facets of a project, including potential mitigation, is typically gathered and reviewed at the same time. Notwithstanding this procedural approach, the Corps will, except as indicated below, first make a determination that potential impacts have been avoided to the maximum extent practicable; remaining unavoidable impacts will then be mitigated to the extent appropriate and practicable by requiring steps to minimize impacts and, only as a last resort, compensate for aquatic resource values. This sequence will be considered satisfied where the proposed mitigation is in accordance with specific provisions of a Corps and EPA approved comprehensive plan that ensures compliance with the compensation requirements of this MOA, as set forth at section II.B (examples of such comprehensive plans may include Special Area Management Plans,

[1] Standard permits are those individual permits which have been processed through application of the Corps public interest review procedures (33 CFR 325) and EPA's section 404(b)(1) Guidelines, including public notice and receipt of comments. Standard permits do not include letters of permission, regional permits, nationwide permits, or programmatic permits.

[2] (except where section 404(b)(2) applies).

Advance Identification areas (section 230.80), and State Coastal Zone Management Plans). In some circumstances, it may be appropriate to deviate from the sequence when EPA and the Corps agree the proposed discharge is necessary to avoid environmental harm (e.g., to protect a natural aquatic community from saltwater intrusion, chemical contamination, or other deleterious physical or chemical impacts), or EPA and the Corps agree that the proposed discharge can reasonably be expected to result in environmental gain. This environmental gain must be solely attributable to the project itself, exclusive of benefits which may accrue from proposed compensatory mitigation.

In determining "appropriate and practicable" measures to offset unavoidable impacts, such measures should be appropriate to the scope and degree of those impacts and practicable in terms of cost, existing technology, and logistics in light of overall project purposes. The Corps will give full consideration to the views of the resource agencies when making this determination.

1. Avoidance.[3] Section 230.10(a) allows permit issuance for only the least environmentally damaging practicable alternative.[4] The thrust of this section on alternatives is avoidance of impacts. Section 230.10(a)(1) requires that, to be permittable, an alternative must be the least environmentally damaging practicable alternative. In addition, § 230.10(a)(3) sets forth rebuttable presumptions that (1) alternatives for non-water dependent activities that do not involve special aquatic sites [5] are available and (2) alternatives that do not involve special aquatic sites have less adverse impact on the aquatic environment. Compensatory mitigation may not be used as a method to reduce environmental impacts on the selection of the least environmentally damaging practicable alternatives for the purposes of requirements under § 230.10(a).

2. Minimization. Section 230.10(d) states that appropriate and practicable steps to minimize the adverse impacts will be required through project modifications and permit conditions. Subpart H of the Guidelines describes several (but not all) means for minimizing impacts of an activity.

3. Compensatory Mitigation. Appropriate and practicable compensatory mitigation will be required for unavoidable adverse impacts which remain after all appropriate and practicable minimization has been required. Compensatory actions (e.g., restoration of existing degraded wetlands or creation of man-made wetlands) should be undertaken, when practicable, in areas adjacent or contiguous to the discharge site (on-site compensatory mitigation). If on-site compensatory mitigation is not practicable, off-site compensatory mitigation should be undertaken in the same geographic area (i.e., in close physical proximity and, to the extent possible, the same watershed). In determining compensatory mitigation, the functional values lost by the resource to be impacted must be considered. In most cases, in-kind compensatory mitigation is preferable to out-of-kind. There is continued uncertainty regarding the success of wetland creation or other habitat development. Therefore, in determining the nature and extent of habitat development of this type, careful consideration should be given to its likelihood of success. Because the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, restoration should be the first option considered.

In the situation where the Corps is evaluating a project where a permit issued by another agency requires compensatory mitigation, the Corps may consider that mitigation as part of the overall application for purposes of public notice, but avoidance and minimization shall still be sought.

Mitigation banking may be an acceptable form of compensatory mitigation under specific criteria designed to ensure an environmentally successful bank. Where a mitigation bank has been approved by EPA and the Corps for purposes of providing compensatory mitigation for specific identified projects, use of that mitigation bank for those particular projects will be considered as meeting the requirements of section II.C.3 of this MOA, regardless of the practicability of other forms of compensatory mitigation. Additional guidance on mitigation banking will be ppovided. Simple purchase or "preservation" of existing wetlands resources may in only exceptional circumstances be accepted as compensatory mitigation. EPA and Army will develop specific guidance for preservation in the context of compensatory mitigation at e later date.

III. Other Procedures

A. Potential applicants for major projects should be encouraged to arrange preapplication meetings with the Corps and appropriate federal, state or Indian tribal, and local authorities to determine requirements and documentation required for proposed permit evaluations. As a result of such meetings, the applicant often revises a proposal to avoid or minimize adverse impacts after developing an understanding of the Guidelines requirements by which a future section 404 permit decision will be made, in addition to gaining an understanding of other state or tribal, or local requirements.

B. In achieving the goals of the CWA, the Corps will strive to avoid adverse impacts and offset unavoidable adverse impacts to existing aquatic resources. Measures which can accomplish this can be identified only through resource assessments tailored to the site performed by qualified professionals because ecological characteristics of each aquatic site are unique. Functional values should be assessed by applying aquatic site assessment techniques generally recognized by experts in the field and/or the best professional judgment of federal and state agency representatives, provided such assessments fully consider ecological functions included in the Guidelines. The objective of mitigation for unavoidable impacts is to offset environmental losses. Additionally for wetlands, such mitigation will provide, at a minimum, one for one functional replacement (i.e., no net loss of values),[6] with an adequate margin of safety to reflect the expected degree of success associated with the mitigation plan, recognizing that this minimum requirement may not be relevant in some cases, as discussed in section II.B of this MOA.

C. The Guidelines are established as the environmental standard for section 404 permit issuance under the CWA. Aspects of a proposed project may be affected through a determination of requirements needed to comply with the

[3] Avoidance as used in this MOA does not include compensatory mitigation.

[4] It is important to recognize that there are circumstances where the impacts of the project are so significant that even if alternatives are not available, the discharge may not be permitted regardless of the compensatory mitigation proposed (40 CFR 230.10(c)).

[5] Special aquatic sites include sanctuaries and refuges, wetlands, mud flats, vegetated shallows, coral reefs and riffle pool complexes.

[6] In most cases a minimum of 1 to 1 acreage replacement of wetlands will be required to achieve no net loss of values. However, this ratio may be greater where the functional values of the area being impacted are demonstrably high. Conversely, the ratio may be less than 1 to 1 for areas where the functional values associated with the area being impacted are demonstrably low and the likelihood of success associated with the mitigation proposal is high.

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Guidelines to achieve these CWA environmental goals. Other reviews, such as NEPA and the Corps public interest review, cannot be used to nullify any Guidelines requirements or to justify less rigorous Guidelines evaluations.

D. Monitoring is an important aspect of mitigation, especially in areas of scientific uncertainty. Monitoring should be directed toward determining whether permit conditions are complied with and whether the purpose intended to be served by the condition is actually achieved.

Any time it is determined that a permittee is in non-compliance with mitigation requirements of the permit, the Corps will take action in accordance with 33 CFR part 326. Monitoring should not be required for purposes other than these, although information for other uses may accrue from the monitoring requirements. For projects to be permitted involving mitigation with higher levels of scientific uncertainty, such as some forms of compensatory mitigation, long term monitoring, reporting and potential remedial action should be required. This can be required of the applicant through permit conditions.

E. Mitigation requirements shall be conditions of standard section 404 permits. Army regulations authorize mitigation requirements to be added as special conditions to an Army permit to satisfy legal requirements (e.g., conditions necessary to satisfy the Guidelines) (33 CFR 325.4(a)). This ensures legal enforceability of the mitigation conditions and enhances the level of compliance. If the mitigation plan necessary to ensure compliance with the Guidelines is not reasonably implementable or enforceable, the permit shall be denied.

F. Nothing in this document is intended to diminish, modify or otherwise affect the statutory or regulatory authorities of the agencies involved. Furthermore, formal policy guidance on or interpretation of this document shall be issued jointly.

G. This MOA shall take effect thirty (30) days after the date of the last signature below, and will apply to those completed standard permit applications which are received on or after the effective date. This MOA may be modified or revoked by agreement of both parties, or revoked by either party alone upon six (6) months written notice.

Dated: November 14, 1989.

Robert W. Page,

Assistant Secretary of the Army (Civil Works).

Dated: November 15, 1989.

LaJuana S. Wilcher,

Assistant Administrator for Water Environmental Protection Agency.

[FR Doc. 89-29109 Filed 12-13-89; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51713B; FRL-3686-1]

Certain Chemical; Premanufacture Notice; Termination of Review Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Following the submission of additional data for the new chemical substance described in premanufacture notice (PMN) P-88-1823, EPA is revoking the remaining portion of a 90-day extension of the review period under the authority of section 5(c) of the Toxic Substances Control Act (TSCA). Therefore, the review period is terminated and the company is free to commence non-exempt commercial manufacture and import of the substance.

EFFECTIVE DATES: December 1, 1989.

FOR FURTHER INFORMATION CONTACT: Darlene Jones, New Chemicals Branch, Chemcial Control Division, (TS-794), Environmental Protection Agency, Rm. E-613, 401 M Street, SW., Washington, DC 20460, (202) 382-2279.

SUPPLEMENTARY INFORMATION: The original 90-day statutory review period under section 5(a)(1)(A) of TSCA, plus suspensions voluntarily requested by the company under 40 CFR 720.75(b), for P-88-1823 was scheduled to expire on February 13, 1989. EPA published a section 5(c) 90-day extension notice for the PMN in the **Federal Register** of February 22, 1989 (54 FR 7598), to provide the Agency with sufficient time to issue an Order under section 5(e). The Order would have prohibted the Company from manufacturing the PMN substance in, or importing it into, the United States pending the submission and evaluation of test data addressing the potential risk of injury to the environment. EPA's concern for toxicity to aquatic organisms was based on test data on other polyacrylates.

The review period, including the 90-day extension under section 5(c), was scheduled to expire May 14, 1989. After the 5(c) extension was published, the company suspended the notice review period and submitted additional test data. In light of this new information, EPA no longer expects the substance to present a risk of injury to the environment.

Therefore, EPA is revoking the remaining portion of the extended review period, effective immediately. The company is now free to commence non-exempt commercial manufacture and import of the substance.

Dated: December 1, 1989.

John W. Melone,

Director, Chemical Control Division.

[FR Doc. 89-29105, Filed 12-13-89; 8:45am]

BILLING CODE 6560-50-D

[OPTS-44543; FRL 3685-3]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on octamethylcyclotetrasiloxane (OMCTS) (CAS No.556-67-2), and alkyl phthalates (CAS Nos. 84-74-2, 131-11-3 and 84-66-2) submitted pursuant to a consent order under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543B, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: Under 40 CFR 790.60, all TSCA section 4 consent orders must contain a statement that results of testing conducted pursuant to these testing consent orders will be announced to the public in accordance with section 4(d).

I. Test Data Submissions

Test data for OMCTS was submitted by the Silicones Health Council on behalf of the Dow Corning, General Electric, Union Carbide, Rhone Poulenc and Wacker Silicones pursuant to a consent order at 40 CFR 799.5000. It was received by EPA on November 13, 1989. The submissions describe the determination of water solubility in fresh water and synthetic seawater. Fresh and salt water solubility testing is required by this consent order.

Test data for alkyl phthalates was submitted by Chemical Manufacturers Association on behalf of the Aristech Chemical Corporation, BASF Corporation, Exxon Chemical Company, Eastman Kodak Company and Witco Corporation pursuant to a consent order at 40 CFR 799.5000. It was received by EPA on November 12, 1989. The submission describes the analytical characterization of three phthalate esters and their [^{14}C] labelled analogs. These phthalates are di(n-butyl) phthalate CAS No 84-74-2, dimethyl phthalate CAS No. 131-11-3, and diethyl phthalate CAS No. 84-66-2. Analytical characterization tests are required by this consent order.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS-44543). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. NE-G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: December 1, 1989.

Charles M. Auer,

Acting Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc.89-29103 Filed 12-13-89; 8:45 am]

BILLING CODE 6560-50-D

[OPTS-40018;FRL 3658-8]

Conditional Exemptions From TSCA Section 4 Test Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: NOTICE.

SUMMARY: EPA is granting conditional exemptions from Toxic Substances Control Act (TSCA) section 4 test rule requirements to certain manufacturers of chemical substances subject to these rules.

DATES: These conditional exemptions are effective on December 14, 1989.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543B, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: This notice grants conditional exemptions from TSCA section 4 test rule requirements to all manufacturers of the chemical substances identified below who submitted exemption applications in accordance with 40 CFR 790.80. In each case, EPA has received a letter of intent to conduct the testing from which exemption is sought. Accordingly, the Agency has conditionally approved these exemption applications because the conditions set out in 40 CFR 790.87 have been met. All conditional exemptions thus granted are contingent upon successful completion of testing and submission of data by the test sponsors according to the requirements of the applicable test rule.

If the test requirements are not met and EPA terminates a conditional exemption under 40 CFR 790.93, the Agency will notify each holder of an affected conditional exemption by certified mail or **Federal Register** notice.

This conditional approval applies to all manufacturers who submitted exemption applications for testing of the chemical substances named in the final test rules listed below as of the date of this notice. Any applications received after that date will be addressed separately.

Chemicals	CAS No	CFR Citation
Office of Solid Waste (OSW) Chemicals:		
bis(2- chloroethoxy)methane	111-91-1	40 CFR 799.5055
bromoform	75-25-2	40 CFR 799.5055
4 chlorobenzotrichloride	5216-25-1	40 CFR 799.5055
2,4 D	94-75-7	40 CFR 799.5055
dibromomethane	74-95-3	40 CFR 799.5055
1,2-dichlorobenzene	95-50-1	40 CFR 799.5055
1,1-dichloroethane	75-34-3	40 CFR 799.5055
1,3-dichloropropanol	96-23-1	40 CFR 799.5055
dihydrosafrole	94-58-6	40 CFR 799.5055
endrin	72-20-8	40 CFR 799.5055
ethyl methacrylate	97-63-2	40 CFR 799.5055
malononitrile	109-77-3	40 CFR 799.5055
methanethiol	74-93-1	40 CFR 799.5055
methyl chloride	74-87-3	40 CFR 799.5055
p-nitrophenol	100-02-7	40 CFR 799.5055
pentachloroethane	76-01-7	40 CFR 799.5055
1,2,4,5-tetrachlorobenzene	95-94-3	40 CFR 799.5055
Other Chemicals:		
anthraquinone	84-65-1	40 CFR 799.500
cresols		40 CFR 799.1250
cumene	98-82-8	40 CFR 799.1285
commercial hexane:		
methylcyclopentane	96-37-7	40 CFR 799.2155
n-hexane	110-54-3	40 CFR 799.2155
dichlorobenzene	106-46-7	40 CFR 799.1052
diethylene glycol butyl ether (DGBE)	112-34-5	40 CFR 799.1560
diethylene glycol butyl ether acetate (DGBA)	124-17-4	40 CFR 799.1580
ethylhexanoic acid	149-57-5	40 CFR 799.1650
ethylhexanol	104-76-7	40 CFR 799.1645
2-mercaptobenzothiazole	149-30-4	40 CFR 799.2475
oleylamine	112-90-3	40 CFR 799.3175
1,2,4,5-tichlorobenzene	120-82-1	40 CFR 799.1054
triethylene glycol monomethyl ether	112-35-6	40 CFR 799.4440
vinylidene fluoride	75-38-7	40 CFR 799.1700

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As provided in 40 CFR 790.80, processors are not required to apply for an exemption or conduct testing unless EPA so specifies in a test rule or in a special Federal Register notice.

Authority: 15 U.S.C. 2603.

Dated: December 4,1989.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 89-29106 Filed 12-13-89; 8:45 am]

BILLING CODE 6560-50-D

FEDERAL COMMUNICATIONS COMMISSION

December 8, 1989

The following information collection requirement has been approved by the Office of Management and Budget as required by the Paperwork Reduction Act of 1980, (44 U.S.C. 3507). For further information contact Judy Boley, Federal Communications Commission, (202) 632-7513.

OMB No.: 3060-0029.

Title: Application for New Broadcast Station License.

Form No.: FCC 302.

A revised application form FCC 302 has been approved for use through 9/30/92. The June 1988 edition with an OMB expiration date of 9/30/90 will remain in use until revised forms are available. For those applicants who will be increasing power pursuant to the Report and Order in MM Docket 88-375, the supplemental exhibit concerning environmental protection and certificate of compliance must be submitted as contained in Appendix B of the Report and Order.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 89-29144 Filed 12-13-89; 8:45 am]

BILLING CODE 6712-01-M

Comments Invited on Philadelphia Metropolitan Area Regional Public Safety Plan

December 7, 1989.

The Commission has received the public safety radio communications plan for the Philadelphia Metropolitan Area (Region 28).

In accordance with the Commission's Report and Order in General Docket No. 87-112 implementing the Public Safety National Plan, parties are hereby given thirty days from the date of Federal Register publication of this public notice to file comments and fifteen days to reply to any comments filed. (See Report and Order, General Docket No. 87-112, 3 FCC Rcd 905 (1987), at paragraph 54.)

In accordance with the Commission's Memorandum Opinion and Order in General Docket No. 87-112, Region 28 consists of the following counties: Ocean, Burlington, Camden, Gloucester, Salem, Cumberland, Atlantic and Cape May counties, New Jersey; Bucks, Chester, Montgomery, Philadelphia, Berks, Delaware, Lehigh, Northampton, Bradford, Carbon, Columbia, Dauphin, Lackawanna, Lancaster, Lebanon, Luzerne, Lycoming, Monroe, Montour, Northumberland, Pike, Schuylkill, Sullivan, Susquehanna, Tioga, Wayne, Wyoming and York counties, Pennsylvania and the State of Delaware. General Docket No. 87-112, 3 FCC Rcd 2113 (1988).)

Comments should be clearly identified as submissions to General Docket 89-573, Philadelphia Metropolitan Area—Region 28, and commenters should send an original and five copies to the Secretary, Federal Communications Commission, Washington, DC 20554.

Questions regarding this public notice may be directed to Maureen Cesaitis, Private Radio Bureau, (202) 632-6497 or Fred Thomas, Office of Engineering and Technology, (202) 653-8112.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 89-29120 Filed 12-13-89; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the office of the Board of Governors. Comments must be received not later than January 8, 1990.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Oren Lee Benton*, Denver, Colorado, to acquire an additional 91.07 percent of the voting shares of Balcaro Bank (formerly Prudential Bank), Glendale, Colorado.

Board of Governors of the Federal Reserve System, December 8, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-29140 Filed 12-13-89; 8:45 am]

BILLING CODE 6210-01-M

Emclaire Financial Corp. et al; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)). Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 5, 1990.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Emclaire Financial Corp.*, Emlenton, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of The Farmers National Bank of Emlenton, Emlenton, Pennsylvania.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Metro Financial Corporation*, Atlanta, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Metro Bank, Atlanta, Georgia.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First Banks, Inc.*, St. Louis, Missouri; to acquire at least 79.04 percent of the voting shares of West Frankfort Community Bancshares, Inc., West Frankfort, Illinois, and thereby indirectly acquire First Community Bank of West Frankfort, West Frankfort, Illinois.

D. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *First Interstate Bancsystem of Montana, Inc.*, Billings, Montana; to acquire 100 percent of the voting shares and merge with Commerce Bancshares of Wyoming, Inc., Sheridan, Wyoming, and thereby indirectly acquire First Interstate Bank of Commerce, Sheridan, Wyoming.

E. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Sun State Capital Corporation*, Las Vegas, Nevada; to become a bank holding company by acquiring at least 48.63 percent of the voting shares of Sun State Bank, Las Vegas, Nevada.

Board of Governors of the Federal Reserve System, December 8, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-29147 Filed 12-13-89; 8:45 am]

BILLING CODE 6210-01-M

First New York Business Bank Corp. et. al., Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 C.F.R. 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 C.F.R. 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 29, 1989.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *First New York Business Bank Corp.*, New York, New York (formerly Public Bank Holding Company, Inc.); to engage *de novo* in providing data processing and data transmission services, pursuant to § 225.25(b)(7) of the Board's Regulation Y.

B. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *FNB Shares, Inc.*, McConnelsville, Ohio; to engage *de novo* in operating a data processing disaster recovery center, pursuant to § 225.25(b)(7) of the board's Regulation Y.

C. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *First State Corporation*, Albany, Georgia; to engage *de novo* through Southeastern Mortgage Company, Albany, Georgia, in making, acquiring, and servicing loans or other extensions of credit. Specifically, First State Corporation will engage in the following activities: (1) origination of mortgage loans, and (2) handling construction loans, pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 8, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-29148 Filed 12-13-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89F-0496]

The Nutrasweet Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the NutraSweet Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of aspartame as a sweetener in soft candy.

FOR FURTHER INFORMATION CONTACT: Carl L. Giannetta, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-5467.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348 (b)(5))), notice is given that the NutraSweet Co., 1751 Lake Cook Rd., Deerfield, IL 60015, has filed a petition (FAP OA4185), proposing that § 172.804 *Aspartame* (21 CFR 172.804) be amended to provide for the safe use of aspartame as a sweetener in soft candy.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Dated: December 4, 1989.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-29151 Filed 12-13-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK-968-4230-15; AA-8465-A]

Alaska Native Claims Selection; Knikatnu, Inc.

In accordance with Departmental Regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of

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Section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Knikatnu, Incorporated for 4.99 acres. The lands involved are in the vicinity of Knik, Alaska in T. 14 N., R. 5 W., Seward Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Anchorage Daily News. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until January 16, 1990 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Ramona Chinn,

Chief, Branch of Cook Inlet and Ahtna Adjudication.

[FR Doc. 89-29127 Filed 12-13-89; 8:45 am]

BILLING CODE 4310-84-M

[MT-060-00-4212-11; MTM-43923]

Revocation of Classification and Opening of Land; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action revokes Recreation and Public Purpose Classification MTM-43923 and opens the lands affected to the operation of the public land and mining laws. They have been and remain open to mineral leasing.

EFFECTIVE DATE: January 16, 1990.

FOR FURTHER INFORMATION CONTACT: Chuck Otto, BLM Lewistown District Office, P.O. Box 1160, Lewistown, Montana 59457, 406-538-7461.

SUPPLEMENTARY INFORMATION: The Recreation and Public Purpose Act classification effected by the Initial Classification Decision of December 29, 1981, for the following described lands is hereby revoked as provided for in 43 CFR 2450.6:

Principal Meridian

T. 18 N., R. 18 E.,
Section 32, Lots 3, 4;

The area described contains 2.5 acres in Fergus County.

1. At 9:00 a.m. on January 16, 1990, the land will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to January 16, 1990, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

2. At 9:00 a.m. on January 16, 1990, the land will be opened to location and entry under the United States mining laws. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. section 38 shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: December 8, 1989.

Chuck Otto,

Area Manager.

[FR Doc. 89-29128 Filed 12-13-89; 8:45 am]

BILLING CODE 4310-DN-M

[UT-040-00-4212-11; UTU-54574]

Notice of Realty Action Classification of Public Land for Recreation or Public Purposes in Iron County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Under the provisions of the Recreation and Public Purposes Act as amended (43 U.S.C. 869 et seq.) public land described as:

Salt Lake Meridian

T. 35 S., R. 12 W., Sec. 11, NESW, E2NWSW, E2E2W2NWSW, W2W2NWSE, W2W2SWSE, containing 85 acres more or less,

is proposed for lease or conveyance to Iron County. The lands described are hereby segregated from all forms of appropriation under the public land laws, including the mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws.

SUMMARY: Iron County proposes to use the land for public recreation facilities and develop it in conjunction with 70 acres of adjacent public land already under a Recreation and Public Purposes Act lease to Iron County.

DATES: Comments should be submitted by January 29, 1990. In the absence of any adverse comments, the classification will become effective February 12, 1990.

ADDRESS: Detailed information concerning this action is available at the Beaver River Resource Area Office, 444 South Main, Cedar City, Utah 84720, (801) 586-2458. Comments should be sent to the same address.

SUPPLEMENTARY INFORMATION: The lease/conveyance, when issued, will be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All valid existing rights documented on the official public land records at the time of lease/conveyance issuance.

4. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

5. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

Any adverse comments received during the comment period will be reviewed by the State Director. In the absence of any adverse comments, this realty action notice will be the final determination of the Department of Interior.

Dated: November 16, 1989.

Gordon Staker,

District Manager

[FR Doc. 89-29129 Filed 12-13-89; 8:45 am]

BILLING CODE 4310-DQ-M

[NV-930-00-4212-24]

Emergency Closure of Public Lands; Churchill County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice is hereby given that selected public lands adjacent to Bravo-17 bombing range are closed to the public until further notice. The closure is necessary to ensure public safety and allow the U.S. Navy to perform operations required to clean-up and dispose of live and inert ordnance on public lands adjacent to Bravo 17.

DATES: This closure goes into effect on December 7, 1989, and shall remain in effect until further notice.

FOR FURTHER INFORMATION CONTACT: Mike Phillips, Area Manager, Lahontan Resource Area, Carson City District, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89706, telephone: (702) 882-1631.

SUPPLEMENTARY INFORMATION: The authority for this closure is 43 CFR 8364.1. Any person who fails to comply with this closure order is subject to arrest and fine of up to $1,000.00 and/or imprisonment not to exceed 12 months. This closure applies to all the public except authorized military and BLM personnel.

The public lands affected by this closure are described as follows:

Mt. Diablo Meridian

T. 15 N., R. 33 E.,
Sections 1-5, all;
Section 6, E½E½;
Section 7, NE¼NE¼;
Section 8, E½, E½NW¼, NW¼, E½SW¼;
Sections 9-16, all;
Section 17, E½, E½W½;
Sections 23 and 24, all;
Section 25, E½, E½W½;
Section 36, N½NE¼, NE¼NW¼.
T. 16 N., R. 33 E.,
Section 1, that portion south of U.S. Highway 50;
Section 2, E½E½, SW¼NE¼, that portion south of U.S. Highway 50;
Section 11, NE¼NE¼, E½NW¼NE¼.
T. 16 N., R. 33½ E.,
Section 1, that portion south of U.S. Highway 50.
T. 15 N., R. 34 E.,
Sections 5-8, all;
Section 7, all, excluding any potential mining claims;
Section 17, N½;
Section 18, all, excluding any patented mining claims;
Section 19, all;
Section 30, W½E½, W½;
Section 31, NW¼NE¼, N½NW¼.
T. 16 N., R. 34 E.,
Sections 4-8, those portions south of U.S. Highway 50;
Section 8, E½, E½W½, excluding any patented mining claims;
Section 9, N½N½, SW¼NW¼, E½SW¼;
Section 16, W½W½, excluding any patented mining claims;
Section 17, N½NE¼, SE¼NE¼, NE¼NW¼, E½SW¼, N½SE¼, excluding any patented mining claims;
Section 20, W½NE¼, SE¼NE¼, E½W½, SE¼, excluding any patented mining claims;
Section 21, W½W½, excluding any patented mining claims;

Section 28, W½W½;
Section 29, E½, E½W½;
Section 32, E½, E½W½;
Section 33, W½W½.

Aggregating approximately 18,400 acres.

Dated this 7th day of December, 1989.

James W. Elliott,

District Manager, Carson City District.

[FR Doc. 89-29153 Filed 12-13-89; 8:45 am]

BILLING CODE 4310-HC-M

[UT-060-06-4351-12]

Environmental Statement; Moab District, UT

December 8, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public comment period on draft environmental assessment analyzing impacts of a desert bighorn sheep capture operation in Sid's Mountain Wilderness Study Area, Moab District.

SUMMARY: The draft environmental assessment has been prepared in response to a proposal by Utah Division of Wildlife Resources to capture up to 20 desert bighorn sheep in an area within and adjacent to the Sid's Mountain Wilderness Study Area, UT-060-023. The bighorns will be moved to another area. Public comments will be accepted for a period of 15 days from the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Mike Beron, Bureau of Land Management, San Rafael Resource Area, 900 N. 700 East, Price, Utah 84501 or Moab District Office, P.O. Box 970, Moab, Utah 84532. Copies of the draft Environmental Assessment are available upon request.

Kenneth V. Rhea,

Associate District Manager.

[FR Doc. 89-29130 Filed 12-13-89; 8:45 am]

BILLING CODE 4310-DQ-M

[AZ 020-41-5410-10; AZA-23133 & AZA-23150]

Receipt of Conveyance of Mineral Interest Applications

ACTION: Notice of receipt of conveyance of mineral interest applications AZA-23133 and AZA-23150.

Notice is hereby given that: Pursuant to section 209 of the Act of October 21, 1976, 90 Stat. 2757, Michael and Gloria Pollack have applied for conveyance of the mineral estate described as follows:

Gila and Salt River Meridian, Arizona

T. 6 N., R. 4 E.,
Sec. 10, W½NE¼.

Containing 20.6 acres, more or less.

Pursuant to section 209 of the Act of October 21, 1976, 90 Stat. 2757, Albert J. Goulder has applied for conveyance of the mineral estate described as follows:

Gila and Salt River Meridian, Arizona

T. 11 N., R. 3 W.,
Sec. 8, lots 1, 10, N½NE¼, NW¼SW¼, E½SE¼;
Sec. 9, W½, W½SE¼;
Sec. 17, lot 2, SW¼NW¼;
Sec. 19, E½;
Sec. 20, W½, SE¼;
Sec. 21, W½;
Sec. 29, NW¼;
Sec. 30, NE¼.

Containing 2,158.63 acres, more or less.

The mineral interests will be conveyed in whole or in part upon favorable mineral examination.

The purpose is to allow consolidation of surface and subsurface ownership for the lands described above, where there are no known mineral values or in those instances where the reservation of ownership of the mineral interest in the United States interferes with or precludes appropriate non-mineral development of the lands and such development would be a more beneficial use of the lands than its mineral development.

Additional information concerning this application may be obtained from the Area Manager, Phoenix Resource Area, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Upon publication of this notice in the Federal Register, the mineral interests described above will be segregated to the extent that they will not be open to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance of such mineral interests, upon final rejection of the application or two years from December 8, 1989.

Dated: December 8, 1989.

Henri E. Bisson,

District Manager.

[FR Doc. 89-29131 Filed 12-13-89; 8:45 am]

BILLING CODE 4310-32-M

[AZ-020-00-4212-12; A 20348-Y]

Realty Action: Exchange of Public Lands, Pinal County, AZ

BLM proposes to exchange public land in order to achieve more efficient management of the public land through consolidation of ownership.

The following described public lands are being considered for disposal by

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exchange pursuant to Section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716.

Gila and Salt River Meridian, Arizona

T. 5 S., R. 12 E.,
Secs. 8, 9, 10 and 11, all.
T. 7 S., R. 13 E.,
Sec. 27, SE¼SW¼, SW¼SE¼;
Sec. 34, N½NW¼, SW¼NW¼.
Containing 2,760 acres, more or less.

Final determination on disposal will await completion of an environmental analysis.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this notice will segregate the public lands as described in this notice from appropriation under the public land laws and the mining laws, but not the mineral leasing laws or Geothermal Steam Act.

The segregation of the above-described lands shall terminate upon issuance of a document conveying such lands or upon publication in the **Federal Register** of a notice of termination of the segregation or the expiration of two years from the date of publication, whichever occurs first.

For a period of forty-five (45) days from the date of publication of this notice in the **Federal Register**, all persons asserting a claim to or interest in the described lands, other than holders of leases, permits or rights-of-way listed above, may file such claim with the Phoenix District Manager, 2015 West Deer Valley Road, Phoenix, Arizona 85027, with evidence that a copy thereof has been served on the Board of Land Commissioners, State of Arizona (address).

Dated: December 7, 1989.

Henri E. Bisson,
District Manager.

[FR Doc. 89-29126 Filed 12-13-89; 8:45 am]
BILLING CODE 4310-33-M

[OR-130-00-4212-13; GPO-079]

Realty Action; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following described lands in Franklin County have been determined to be suitable for exchange under Section 206 of the Federal Land Policy and Management Act of 1976 (43 USC 1716):

	Acres
T9N R29E WM	
Section 4: Unnumbered Lots 1-4, S½N½, Those portions of the N½SW¼, N½S½SW¼ lying westerly of the centerline of Franklin County Road No. 60	439.40
T10N R29E WM	
Section 28: E½SE¼	80.00
Section 28: That portion of the E½ lying easterly of the centerline of Taylor Flats Road	292.10
Section 34: E½NE¼, SE¼	240.00
T9N R30E WM	
Section 4: Lots 1, 2, S½N½	239.61
Section 6: Lots 1, 2, S½NE¼	159.42
Section 14: SW¼W½S E½W½E½SE¼	280.00
T10N R30E WM	
Section 20: W½SW¼, SE¼	240.00
Section 34: E½NW¼	80.00
T10N R31E WM	
Section 6: SE¼	160.00
Total	2,210.53

In exchange for these lands, the Federal Government will acquire from Glacier Park Company the following described private lands in Franklin and Grant Counties:

	Acres
T10N R31E WM	
Section 13: All	640.00
T11N R31E WM	
Section 23: All	640.00
Section 25: All	640.00
Section 35: All	640.00
Grant County	
T15N R23E WM	
Section 11: All	640.00
Section 13: All	640.00
T15N R24E WM	
Section 7: Lots 1-4, E½, E½W½	624.80
Section 13: All	640.00
Section 21: All	640.00
T15N R25E WM	
Section 11: All	640.00
Section 17: All	640.00
T15N R26E WM	
Section 7: S½N½ Lot 1, S½ Lot 1, Lots 2-4, E½, E½W½	607.92
Section 9: N½NE¼NE¼, SW¼NE¼NE¼, N½SE¼NE¼NE¼, SW¼SE¼NE¼NE¼, W½NE¼SE¼NE¼, SE¼NE¼SE¼NE¼, W½SE¼NE¼, SE¼SE¼NE¼, W½, SE¼	635.00
Section 11: All	640.00
Total	8,907.72

The purpose of this exchange is to acquire checkerboard private ownership within the Saddle Mountains and Juniper Forest Management Areas by trading 11 tracts of land that have few public benefits and which are located outside specific management areas. This exchange is consistent with BLM planning and will serve the public interest.

DATES: Until January 29, 1990, interested parties may submit comments to the District Manager, Bureau of Land Management, Spokane District Office, E. 4217 Main, Spokane, WA 99202. Objections will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

SUPPLEMENTARY INFORMATION: The publication of this notice in the Federal Register segregates the Federal lands described above from appropriation under the public lands laws, including the mining laws, but not from exchange under the above cited statute, for 2 years or until title transfer is completed or the segregation is terminated by publication in the **Federal Register**, whichever occurs first.

The exchange will be made subject to a reservation to the United States of all minerals and the right to construct ditches and canals. The patent for the public lands will also be subject to all valid existing rights of record (e.g., easements, licenses, etc.). Lastly, the exchange will be subject to value equalization through acreage adjustments. Detailed information concerning these reservations as well as specific conditions of the exchange are available for review at the above address.

Joseph K. Buesing,
District Manager.

[FR Doc. 89-29132 Filed 12-13-89; 8:45 am]
BILLING CODE 4310-33-M

[ID-942-00-4730-12]

Filing of Plats of Survey; Idaho

The protraction diagram of the following described townships will be filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective January 31, 1990.

Protraction Diagram No. 67A, prepared to correct the location of certain Mineral Surveys in T. 14 N., R. 11 E. and T. 15 N., R. 11 E., Boise Meridian, Idaho, was approved December 5, 1989.

This diagram was prepared to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: December 7, 1989.

Duane E. Olsen,
Chief Cadastral Surveyor for Idaho.

[FR Doc. 89-29133 Filed 12-13-89; 8:45 am]
BILLING CODE 4310-GG-M

[AK-932-00-4214-10; F-034575]

Cancellation of Withdrawal Application; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This Notice will terminate the segregative effect of a proposed protective withdrawal application filed by the Bureau of Land Management. The land, however, will remain withdrawn pursuant to the Alaska National Interest Lands Conservation Act (ANILCA) P.L. 96-487, as part of the Denali National Park.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM Alaska State Office, 907-271-5477.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management filed application F-034575 for lands near the then existing Mt. McKinley National Park. The land was subsequently withdrawn by ANILCA as a part of the Denali National Park. Therfore, the application has been cancelled in its entirety for those lands described in the Notice of Proposed Withdrawal published in the **Federal Registger** on May 13, 1965 (30 FR 6593). The land remains subject to the withdrawal for the Denali National Park.

Sue A. Wolf,
Chief, Branch of Land Resources.

[FR Doc. 89-29134 Filed 12-13-89; 8:45 am]
BILLING CODE 4310-JA-M

[NV-930-00-4214-11; Nev-045154]

Proposed Continuation of Withdrawal; Nevada

December 1, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Corps of Engineers on behalf of the U.S. Air Force proposes that 10 acres of a withdrawal for the Ely Range Radar Site be continued for an additional 25 years. The lands will remain closed to surface entry, mining, mineral leasing and disposal of minerals under the Act of July 31, 1947.

DATES: Comments should be received by March 14, 1990.

ADDRESSES: Comments should be sent to: Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 12000, Reno, Nevada 89520.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, Nevada State Office, 702-328-6326.

The Corps of Engineers on behalf of the U.S. Air Force proposes that 10 acres of the existing land withdrawal made for the Ely Range Radar Site by Public Land Order 2307 be continued for a period of 25 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

Mount Diablo Meridian

T. 17 N., R. 61 E.,
Sec. 27, Commencing for reference at U.S.C. and G.S. Triangulation Station entitled "South Ridge", whose geographic position is latitude 39°18'31.20" and longitude 115°05'07.25"; thence South 330 feet to the point of beginning: Thence West, 330 feet; North, 660 feet; East 660 feet; South 660 feet; West, 330 feet to the point of beginning.

The area described aggregates 10 acres in White Pine County.

The withdrawal was established for the use of the U.S. Air Force for the construction and operation of radar facilities. The land is being utilized for that purpose. The withdrawal segregates the land from operation of the public land laws generally, including the mining and mineral leasing laws and disposal of materials under the Act of July 31, 1947.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed continuation of the withdrawal may present their views in writing to the Chief, Branch of Lands and Minerals Operations, in the Nevada State Office. The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Edward F. Spang,
State Director, Nevada.

[FR Doc. 89-29135 Filed 12-13-89; 8:45 am]
BILLING CODE 4310-HC-M

[OR-943-00-4214-11; GPO-060; WASH-02220]

Proposed Continuation of Withdrawal; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes that the land withdrawal for the Sullivan Lake and Sullivan Creek Recreation Areas continue for an additional 20 years and requests that the lands involved remain closed to mining and opened to surface entry.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208.

The Forest Service proposes that the existing land withdrawal made by Public Land Order No. 1685 dated July 21, 1958, be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The following described lands and projects are involved:

Colville National Forest

Sullivan Lake Recreation Area, 323.01 acres located in secs. 6 and 18, T. 38 N., R. 44 E., and secs. 31 and 32, T. 39 N., R. 44 E., W.M., in Pend Oreille County, approximately 7 miles northeast of Ione.

Sullivan Creek Recreation area, 283.57 acres located in secs. 25, 26, and 32 to 36, inclusive, T. 39 N., R. 44 E., and secs. 9, 10, 15, 16, 17, 19, 20, and 30, T. 39 N., R. 45 E., W.M., in Pend Oreille County, approximately 12 miles northeast of Ione.

The withdrawal currently segregates the lands from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. The Forest Service requests no changes in the purpose or segregative effect of the withdrawal except that the lands be opened to operation of the public land laws generally.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President

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and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination of the continuation of the withdrawal will be published in the Federal Register. The existing withdrawal will continue until such final determination is made.

Dated: December 6, 1989.

Robert E. Mollohan,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 89-29130 Filed 12-13-89; 8:45 am]

BILLING CODE 4310-29-M

Minerals Management Service

Environmental Documents Prepared for Proposed Oil and Gas Operations on the Gulf of Mexico Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the availability of environmental documents prepared for OCS mineral proposals on the Gulf of Mexico OCS.

SUMMARY: The Minerals Management Service (MMS), in accordance with Federal Regulations (40 CFR 1501.4 and 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Environmental Assessments (EA's) and Findings of No Significant Impact (FONSI's), prepared by the MMS for the following oil and gas activities proposed on the Gulf of Mexico OCS. This listing includes all proposals for which FONSI's were prepared by the Gulf of Mexico OCS Region in the period subsequent to publication of the preceding notice.

Activity/operator	Location	Date
Santa Fe International Corporation, six exploratory wells, SEA No. N-3403.	High Island Area, East Addition, South Extension, Lease OCS-G 7367, Block A-373, 105 miles southeast of Texas coastline.	October 10, 1989.
Mobil Exploration and Producing U.S. Inc., six exploratory wells, SEA No. N-3450.	Pensacola Area, Leases OCS-G 10401, 10406, 10407, 10411, and 10412; Blocks 845, 846, 889, 890, 933, and 934; 9 miles south of Santa Rosa Island, FL.	November 15, 1989.
Western Atlas International Inc., geophysical exploration using explosives, SEA No. ES/G 89-001.	Green Canyon Area, Leases OCS-G 7027 and 7028, Blocks 165 and 166, 83 miles offshore Louisiana.	October 20, 1989.
Water Oil & Gas Corporation, structure removal operations, SEA No. ES/SR 89-031.	Vermilion Area, Lease OCS 0433, Block 178, 45 miles south of Vermilion Parish, LA.	August 30, 1989.
Shell Offshore Inc., structure removal operations, SEA No. ES/SR 89-063A.	Eugene Island Area, Lease OCS 0796, Block 100, 20 miles south of St. Mary Parish, LA.	September 15, 1989.
Chevron U.S.A., structure removal operations, SEA No. ES/SR 89-077.	South Marsh Island Area Lease OCS-G 2315, Block 287, 34 miles south of Iberia Parish, LA.	November 29, 1989.
Chevron U.S.A., structure removal operations, SEA No. ES/SR 89-081.	West Cameron Area, Lease OCS 0560, Block 29, 5 miles offshore Cameron Parish, LA.	September 14, 1989.
Chevron U.S.A., structure removal operations, SEA No. ES/SR 89-087.	Matagorda Island Area, Lease OCS-G 4705, Block 667, 22 miles southeast of Aransas, TX.	September 26, 1989.
Marathon Oil Company, structure removal operations, SEA No. ES/SR 89-088/089.	Eugene Island Area, Leases OCS-G 2802 and 2894, Blocks 57 and 39, 2 and 5 miles south of Terrebonne Parish, LA.	August 17, 1989.
Union Oil Company of California, structure removal operations, SEA No. ES/SR 89-090.	Ship Shoal Area, Lease OCS 0827, Block 209, 36 miles south of Terrebonne Parish, LA.	September 15, 1989.
Chevron U.S.A., structure removal operations, SEA No. ES/SR 89-092.	Ship Shoal Area, Lease OCS 0814, Block 108, 23 miles south of Terrebonne Parish, LA.	September 11, 1989.
Mobil Exploration & Producing U.S. Inc., structure removal operations, SEA No. ES/SR 89-093.	Eugene Island Area, Lease OCS 049, Block 119, 24 miles south of St. Mary Parish, LA.	September 11, 1989.
ODECO Oil and Gas Company, structure removal operations, SEA No. ES/SR 89-095.	Vermilion Area, Lease OCS 0564, Block 101, 26 miles south of Vermilion Parish, LA.	October 12, 1989.
Mobil Exploration & Producing U.S. Inc., structure removal operations, SEA No. ES/SR 89/097.	East Cameron Area, Lease OCS-G 1972, Block 33, 9 miles south of Cameron Parish, LA.	September 29, 1989.
Shell Offshore Inc., structure removal operations, SEA No. ES/SR 89-101.	Ship Shoal Area, Lease OCS-G 9610, Block 77, 17 miles south of Terrebonne Parish, LA.	November 22, 1989.
Chevron U.S.A. Inc., structure removal operations, SEA No. ES/SR 89-102.	Sabine Pass Area, Lease OCS-G 3959, Block 13, 17 miles south of Cameron Parish, LA.	October 17, 1989.
ARCO Oil and Gas Company, structure removal operations, SEA No. ES/SR 89-105.	West Cameron Area, Lease OCS-G 4392, Block 211, 36 miles south of Cameron Parish, LA.	November 7, 1989.
Samedan Oil Corporation, structure removal operations, SEA No. ES/SR 90-001.	West Delta Area, Lease OCS-G 5669, Block 16, 10 miles south of Plaquemines Parish, LA.	October 24, 1989.
Mobil Exploration & Producing U.S. Inc., structure removal operations, SEA No. ES/SR 90-002.	Eugene Island Area, Lease OCS-G 0478, Block 116, 42 miles south of Terrebonne Parish, LA.	November 3, 1989.
ODECO Oil and Gas Company, structure removal operations, SEA No. ES/SR 90-004.	Ship Shoal Area, Lease OCS-067, Block 113, 12 miles south of Terrebonne Parish, LA.	November 27, 1989.
Kerr-McGee Corporation, structure removal operations, SEA No. ES/SR 90-005.	Ship Shoal Area, Leases OCS 0345 and 0346, Blocks 29 and 28, 7 miles south of Terrebonne Parish, LA.	November 3, 1989.
Chevron U.S.A. Inc., structure removal operations, SEA No. ES/SR 90-006.	West Cameron Area, Lease OCS-G 1971, Block 181, 26 miles south of Cameron Parish, LA.	October 26, 1989.
Seagull Energy E&P Inc., structure removal operations, SEA No. ES/SR 90-010.	Eugene Island Area, Lease OCS-G 3991, Block 45, 13 miles south of Iberia Parish, LA.	November 8, 1989.

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about EA's and FONSI's prepared for activities on the Gulf of Mexico OCS are encouraged to contact the MMS office in the Gulf of Mexico OCS Region.

FOR FURTHER INFORMATION CONTACT: Public Information Unit, Information Services Section, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394, Telephone (504) 736-2519.

SUPPLEMENTARY INFORMATION: The MMS prepares EA's and FONSI's for proposals which relate to exploration for and the development/production of oil and gas resources and structure removals on the Gulf of Mexico OCS. The EA's examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects.

Environmental Assessments are used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA section 102(2)(C). A FONSI is prepared in those instances where the MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA. This notice constitutes the public notice of availability of environmental documents required under the NEPA Regulations.

Dated: December 7, 1989.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 89-29137 Filed 12-13-89; 8:45 am]

BILLING CODE 4310-MR-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

AGENCY: National Endowment for the Arts, NFAH.

ACTION: Notification of availability.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to the award of a Cooperative Agreement to provide management of technical assistance services to up to 50 developing arts organizations selected for participation in the FY 90 Advancement Program. The work will be carried out through engagement and coordination of a team of non-profit management consultants who will work on-site with assigned organizations over a fifteen month period from July 1990 through October 1991. Consultants will assist each organization with the development of a multi-year artistic and management plan and provide additional services in areas of identified need such as board and staff development, financial systems and controls fundraising plans and strategy, marketing, public relations, or program development. Those interested in receiving the Solicitation package should reference Program Solicitation PS 90-04 in their written request and include two (2) self-addressed labels. Verbal requests for the Solicitation will not be honored.

DATES: Program Solicitation PS 90-04 is scheduled for release approximately January 3, 1990 with proposals due on February 8, 1990.

ADDRESSES: Requests for the Solicitation should be addressed to National Endowment for the Arts, Contracts Division, room 217, 1100 Pennsylvania Ave., NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: William I. Hummel, Contracts Divison, National Endowment for the Arts, 1100 Pennsylvania Ave., NW., Washington, DC 20506 (202/682-5482).

William I. Hummel,

Director, Contracts and Procurement Division.

[FR Doc. 89-29136 Filed 12-13-89; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL MEDIATION BOARD

Appointment of Members to the Performance Review Board

ACTION: Notice of appointment of members to the performance review board.

Notice is hereby given in accordance with 5 USC 4314 of the membership of the National Mediation Board's Performance Review Board for the position of Executive Director. The members are as follows:

Mr. Walter C. Wallace, Member, National Mediation Board, Washington, DC;

Ms. Linda A. Lafferty, Executive Director, Federal Service Impasses Panel, Washington, DC;

Mr. John C. Truesdale, Executive Secretary, National Labor Relations Board, Washington, DC.

EFFECTIVE DATE: December 8, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Charles R. Barnes, Executive Director, 1425 K Street, NW., Washington, DC 20572 (202) 523-5950.

By direction of the National Mediation Board.

Charles R. Barnes,

Executive Director.

[FR Doc. 89-29138 Filed 12-13-89; 8:45 am]

BILLING CODE 7550-01-M

NATIONAL SCIENCE FOUNDATION

Program Announcement; Undergraduate Curriculum and Course Development in Engineering, Mathematics and the Sciences

This program in Undergraduate Curriculum and Course Development in Engineering, Mathematics and the Sciences (NSF 89-125) is managed by the Division of Undergraduate Science, Engineering and Mathematics Education (USEME) in collaboration with the Research Divisions and Directorates throughout the Foundation.

Copies of the Program Announcement

The text of the program announcement and guidelines is presented below. Individual copies of this program announcement and guidelines (NSF 89-125) complete with appendices and forms will be available soon from: Forms and Publications Unit, Rm 232, National Science Foundation, 1800 G Street NW., Washington, DC 20550, (202) 357-7666, Bitnet: pubs@nsf Internet: pubs@note.nsf.gov.

Program Inquiries

Questions about this program may be directed to program staff in the following NSF offices:

Directorate for Science and Engineering Education: Division of Undergraduate Science, Engineering and Mathematics Education: (202) 357-7051

Directorate for Biological, Behavioral and Social Sciences: (202) 357-9880

Directorate for Computer and Information Science and Engineering: (202) 357-7936

Directorate for Engineering: (202) 357-5102

Directorate for Geosciences: (202) 357-9591

Directorate for Mathematical and Physical Sciences: Division of Astronomical Sciences: (202) 357-7622; Division of Chemistry: (202) 357-7503; Division of Materials Research: (202) 357-9737; Division of Mathematical Sciences: (202) 357-3695; Division of Physics: (202) 357-7611

Directorate for Scientific, Technological and International Affairs: (202) 357-7571

The Foundation has TDD (Telephonic Device for the Deaf) capability, which enables individuals with hearing impairments to communicate with the Division of Personnel and Management for information relating to NSF programs, employment, or general information. The TTD number is (202) 357-7492.

For other opportunities for undergraduate curriculum development in engineering and calculus, as well as other disciplinary-related considerations, see the special section Disciplinary-Related Considerations in the program announcement presented below.

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Text of the Program Announcement and Guidelines

Undergraduate Curriculum and Course Development

In Engineering, Mathematics and the Sciences

This program is part of the National Science Foundation's evolving long range plan to add programs to (1) support better undergraduate lecture and laboratory instruction, included large-enrollment introductory course laboratories, (2) develop a better understanding of U.S. undergraduate science, engineering and mathematics education, and of teaching and learning processes, (3) improve ways science, engineering and mathematics are taught at the introductory level to help assure the scientific and technological literacy of all students, and (4) support a broad-based program to develop undergraduate courses and curricula. This program complements other related NSF undergraduate programs which are listed in the section Related Undergraduate Programs.

Scope of the Program

The National Science Foundation announces an expanded program to support major changes to reshape and strengthen undergraduate courses, curricula and attendant laboratories in engineering, mathematics and the sciences.

This year the program will emphasize proposals affecting introductory-level courses, curricula and laboratories of undergraduate degree programs. The phrase introductory-level courses, curricula and laboratories should be interpreted broadly to encompass all activities affecting the learning environment and experiential education of undergraduate students enrolled in the introductory-level component of their undergraduate degree programs as typified by the Freshman and Sophomore years. (In some instances, introductory courses may include those other than of the lower division).

A principal goal of this program is to support fresh approaches and experiments to produce major changes in U.S. undergraduate engineering, mathematics and science education through:

—comprehensive curriculum development,
—major lecture and laboratory development, or
—individual course and laboratory innovation.

The program will support projects in all fields normally supported by the Foundation. Multidisciplinary and interdisciplinary proposals are especially encouraged. This program will support activities in engineering, mathematics and the sciences that address:

—the introductory-level education of *all* undergraduate students, including (1) students majoring in a field of engineering, mathematics or the sciences, (2) students majoring in other technical fields, and (3) students majoring in non-technical fields, and
—all aspects of the introductory-level undergraduate learning experience, such as new courses and curricula coupled with new delivery systems, teaching processes or learning environments, improved instructional applications of communications and information technologies, more engaging field experiences and laboratories, new instructional materials and delivery systems, curricula and laboratories in emerging fields, improving the pre-college and undergraduate interface, increasing the retention of all students in the disciplines, increasing the participation of women, minorities and the disabled in disciplines, improving the scientific and technological literacy of all students, and multidisciplinary and interdisciplinary instruction.

Purpose of the Program

U.S. undergraduate education faces many challenges. These challenges have been studied in depth by a number of national task committees and workshops. (See the Selected Bibliography for NSF's recent reports.) Among the principal challenges for undergraduate engineering, mathematics and science education are to:

—reverse the continuing decline in Freshman interest in engineering, mathematics and science careers, increase substantially the participation of women and underrepresented groups in the disciplines, and encourage more U.S. students to pursue graduate studies,
—revitalize undergraduate education in the disciplines, especially at the introductory level, prepare graduates better for careers in the next century, and develop a new learning environment with better utilization of information and communications technology,
—improve the scientific and technological literacy of all students, prepare precollege students better for careers in the disciplines, and improve the precollege to college transition and the 2-year college to 4-year institution interface.

These and other social, environmental, and technological challenges require new approaches and instructional innovations to reshape all aspects of the undergraduate learning experience. Among the most critical areas are the expository portions of the instructional process—the courses, curricula and laboratories in their broadest sense—and especially the introductory-level curricula that crucially affect the career interests and aspirations of students in the disciplines as well as the attitudes and understanding of engineering, mathematics and the sciences by non-majors. This program for Undergraduate Curriculum and Course Development in Engineering, Mathematics and the Sciences: Introductory-Level seeks to support fresh approaches and experiments to produce major changes in U.S. undergraduate engineering, mathematics, and science education.

Proposal Categories

Proposals will be accepted for two categories: Comprehensive Development Projects, and Prototype and Pilot Projects. Proposals should address major challenges facing U.S. undergraduate education at the introductory-level and describe activities that are fresh approaches to significantly reshape the introductory-level undergraduate learning experience in engineering, mathematics or the sciences. Multidisciplinary and interdisciplinary proposals are especially encouraged.

Comprehensive Development Projects—Proposals submitted in this category should describe a well-defined vision and well-formulated plans for comprehensive introductory-level curriculum development. This category will support a few major projects involving a broad-based, cohesive set of activities to significantly change undergraduate education at the introductory level.

Prototype and Pilot Projects—Proposals submitted in this category should present more focused activities as typified by individual courses, laboratories and topic areas at the introductory level. Also appropriate are proposals for activities such as workshops, studies, or pilot projects to improve the probability for success of a future comprehensive curriculum and/or laboratory course development project. This category will support a modest number of projects with the potential for producing significant improvements in the undergraduate learning experience.

Although the kinds of activities described in this announcement are expected to comprise the majority of projects supported through this program, proposals that address other mechanisms for improving undergraduate education will be considered by the NSF.

Deadlines

The closing dates for the Comprehensive Development projects and the Prototype and Pilot projects are the same: April 9, 1990. Proposals received after this date may be reviewed, but decisions may be delayed by the late arrival of the proposal.

Proposals must be received by the Proposal Processing Unit, Room 223, National Science Foundation, 1800 G Street NW., Washington, DC 20550, by 5 pm., April 9, 1990.

Institutional Commentment

Institutional commitments are strongly urged. Commitments may be in the form of funds, equipment, and personnel time, etc., and they may be provided from the institution(s), industry, and/or other non-Federal sources.

Equipment must be matched by non-Federal funds equal to or greater than the funds requested from NSF.

Announcement and Administration of Awards

Awards are expected to be made in the fall of 1990. Projects may request support for a period of up to 5 years. The number of awards in each category will depend on the quality of the proposals received and the availability of funds for this program. NSF anticipates having funds to award a few Comprehensive Development Projects and a modest number of awards for Prototype and Pilot Projects.

The evaluation and processing of proposals will require approximately six months. Decisions will be announced individually through written notices to the institution and to the principal investigator. Before such notice is dispatched, the Foundation can give no information concerning the probability that any particular proposal will be supported or declined. Proposers are strongly urged to refrain from making premature inquiries. Decisions will be announced as soon as they are made, not all together. Thus, it is normal for some proposers to receive a decision earlier than others.

Grants awarded as a result of this announcement will be administered in accordance with the terms and conditions of NSF GC–1, "Grant General Conditions," or FDP–II, "Federal Demonstration Project General Terms and Conditions," depending on the grantee organization. Copies of these documents are available at no cost from the NSF Forms and Publications Unit, telephone (202) 357–7666, or via e-mail (Bitnet:pubs nsf or Internet: pubs note.nsf.gov). More comprehensive information is contained in the NSF Grant Policy Manual (July 1989) for sale through the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

The Foundation strongly encourages publication of research results and instructional experiments developed. The awardee, however, is wholly responsible for the conduct of the project and for preparation of the results for publication. The Foundation does not assume responsibility for project results or their interpretation.

Within 90 days after the expiration of a grant, the principal investigator is required to submit a Final Project Report (NSF Form 98A), including the Part IV Summary. Applicants should review this form prior to proposal submission so that appropriate tracking mechanisms are included in the proposal plan to ensure that complete information will be available at the conclusion of the project. Final expenditure information is supplied by the grantees through the Federal Cash Transactions Report (SF 272), normally submitted by the grantee's financial officer. Annual reports of progress are required of grantees, in accordance with Article 16 of NSF GC–1, Grant General Conditions.

If a Principal Investigator (PI) leaves a project before its completion, the grantee institution is expected to explain the circumstances in a letter to the Program Officer named in the grant letter, and to nominate a suitable replacement. This letter should include the nominee's curriculum vitae, and must be signed both by the nominee and by an official authorized to act for the institution in such matters. The appointment of a new PI is not effective until confirmed by the NSF.

Disciplinary-Related Considerations

Because of the perceived need to support undergraduate curriculum development efforts in engineering and calculus, NSF established the Undergraduate Curriculum Development in Engineering and the Undergraduate Curriculum Development in Mathematics: Calculus programs in fiscal year 1988. These programs continue and complement the activities supported by this program. Proposers interested in undergraduate curriculum development in engineering or calculus are encouraged to also consider the Engineering Education Coalitions initiative of the Undergraduate Curriculum Development in Engineering program and the Undergraduate Curriculum Development in Mathematics: Calculus program. The following descriptions provide additional considerations for broad disciplinary areas.

Biological Sciences: Proposals are encouraged that emphasize the improvement of the introductory-level course in biology, including the laboratory and field experience as part of such courses. Both Comprehensive Development Projects and Prototype and Pilot Projects will be considered, but the greatest interest is in focused projects that span the diversity of interests and institutions that teach introductory biology.

Chemistry and Physics: These disciplines play a key role in any curriculum development effort aimed at the introductory level. Activities should emphasize coordinated approaches to curriculum development involving consortia of institutions and/or professional societies. Such coordination is critical to ensure that the results of projects supported go beyond the local level and facilitate interdisciplinary curriculum development.

Computer and Information Science: Computer and Information Science are rapidly evolving fields in which research results must be quickly transferred into instructional content. In addition, they draw from and affect a variety of scientific and engineering disciplines. There are thus significant opportunities to improve introductory and advanced-level courses within the core fields, and in interacting disciplines. Proposals are invited for both Comprehensive Development Projects and Prototype and Pilot Projects in all computer and information science and engineering fields. Comprehensive curriculum development (e.g., educational infrastructure development) and course-specific (e.g., curriculum in interface areas, undergraduate VLSI design education) proposals are encouraged.

Engineering: Proposers interested in major, comprehensive projects should consult the Engineering Education Coalitions initiative (NSF 89–107, see the section on Related Undergraduate Programs). For this program, only prototype and Pilot projects will be considered for engineering. Examples of engineering curriculum proposals that are appropriate for this program would be those focusing on introductory-level undergraduate engineering education or mechanisms to enhance the technological literacy of all students.

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Mathematics: Both Comprehensive Curriculum Development and Prototype and Pilot Projects will be considered. The primary focus would be proposals dealing with non-calculus introductory mathematics courses such as precalculus, discrete mathematics, geometry, and statistics. Similarly, proposals that would embed elements of calculus in broad courses aimed at mathematical literacy or in interdisciplinary courses would be appropriate for this program. Proposers interested in curriculum development projects in calculus and related courses, such as the differential equations and linear algebra courses typically included in the two-year calculus sequence, should consult the Undergraduate Curriculum Development in Mathematics: Calculus (NSF 89–62, see the section on Related Undergraduate Programs).

Multidisciplinary/Interdisciplinary: Many of the challenges and opportunities today and into the next century cross traditional disciplinary boundaries, including boundaries beyond engineering, mathematics and the sciences. Increasingly, all undergraduate students need to be prepared for the multidisciplinary and interdisciplinary scientific and technological environment of the future. Multidisciplinary and interdisciplinary proposals are strongly encouraged, especially those focused on the scientific and technological literacy of all students. Both Comprehensive Curriculum Development and Prototype and Pilot Projects will be considered.

Other Disciplines: Proposals from other disciplines normally supported by NSF and otherwise not addressed above are also highly encouraged. Both Comprehensive Curriculum Development and Prototype and Pilot Projects will be considered.

Who May Submit

Proposals are invited from scientists, engineers and mathematicians representing 2-year colleges, primarily undergraduate institutions, major doctoral universities, professional societies, consortia of institutions, and other education-related organizations. The Foundation encourages proposals that address the strengthening of undergraduate education at primarily minority institutions and the increased participation of women, minorities and the disabled.

Proposals may be submitted for support in all fields ordinarily supported by the Foundation. Specifically excluded are activities that address clinical fields associated with medicine, nursing, clinical psychology, and physical education, as well as activities involving social work, home economics, business, the arts and the humanities EXCEPT activities with significant scientific, mathematical or engineering concepts within technical, professional or pre-professional programs. The degree to which such projects will be competitive will depend upon the quality and currency of the science and technology to be taught.

Proposal Preparation and Format

Proposals submitted in response to this program announcement should be prepared in accordance with the guidelines provided in the NSF brochure, Grants for Research and Education in Science and Engineering (NSF 83–57. rev. 11/89), except as modified or elaborated by this announcement. Single copies of this brochure are available at no cost from the NSF Forms and Publications Unit, telephone (202) 357–7668, or via e-mail (Bitnet:pubs@nsf or Internet: pubs@note.nsf.gov).

A proposal should present clearly the vision, goals, plans, and anticipated results of the proposed project in sufficient detail to be evaluated in accordance with the criteria listed in this announcement. The proposal should contain only material essential for the review. A lengthy proposal is not encouraged. Copies of proposals should be securely fastened. Each proposal should contain the following information and be assembled in the corresponding order.

1. Cover Page—NSF Form 1207.
2. Table of Contents.
3. NSF Project Data and Summary Form. Use the form provided in the back of the announcement. (This form is contained in the program announcement available from the Forms and Publications Unit. Ask for the program announcement NSF 89–125. The address of the Forms and Publications Unit is listed in the Program Inquiries section above). The instructions are on the back of the form. This information is used by the program staff for a variety of purposes, including the assignment of proposals to reviewers. The section, Summary of the Proposed Work, should be a concise description of the vision, goals, plans, special features and significance of the project. The description is limited to 22 pica or 18 elite lines. If the project is supported, the Summary may be published by the Foundation to inform the public about its programs. Therefore, it should be written so that a scientifically/technologically literate layperson could understand the use of Federal funds in support of the project.
4. *Results From Prior NSF Support* for the Project Director/Principal Investigator as described in GRESE.
5. *Project Description.* This section should not exceed 15 single-spaced (or 30 double-spaced) pages. During the first year of this program the emphasis will be on proposals to enrich the introductory component of undergraduate programs as typified by the Freshman and Sophomore years. The anticipated results of the proposed project should be significant changes to the undergraduate learning experience, e.g., new curricula, innovative laboratories, courses coupled with new delivery systems, fresh instructional materials, etc., and they should be of interest and use to wide segments of the U.S. undergraduate education communities in engineering, mathematics and/or the sciences.

The Project Description should describe the overall vision, goals, and plans of the project, the anticipated results of the project activities, and the expected impact on U.S. undergraduate education in engineering, mathematics and/or the sciences. Proposers are strongly encouraged to consult the references listed in the Selected Bibliography. NSF will support activities such as planning and designing educational innovation, experimenting with the implementation of such innovations, assessing and evaluating outcomes, and disseminating the results to other educators. Indicate how the changes proposed at the introductory level better prepare undergraduates for their subsequent learning experience and for careers in engineering, mathematics or the sciences in the next century. Describe the plans for integrating the curriculum innovations into the institutions' academic programs. For multi-year projects, it is expected that project's activities will be integrated into the institution's(s') academic programs within the period of the award. Describe the plans for the dissemination of the results of the project activities to other institutions both during and after the project.
6. *Bibliography.*
7. *Biographical Sketches*—Provide no more than a two page biographical sketch for each senior personnel listed in section A. Senior Personnel on the Summary Proposal Budget Form (Form 1030) except for those included in line A.5. Others. In accordance with Important Notice No. 107 (9/89), biographical sketches, in addition to data on educational background and career, must now include the following information:

—a list of up to five publications most relevant to the work proposed and up to five other significant publications. Patents, copyrights, or software systems developed may be substituted for publications. These publications may overlap the continuing requirement for a list of all publications resulting from and citing prior NSF support. A complete list of publications for the past five years is no longer required. Only the list of up to ten will be used in merit review.
—a list of the names of graduate students with whom the PI has had an association as thesis advisor and postdoctoral scholars sponsored by the PI over the past five years, with a summary of the total numbers of graduate students advised and postdoctoral scholars sponsored.
—to avoid potential conflicts of interest in merit review, a list of scientists with whom the investigator has had a long-term association and/or with whom he/she has collaborated on a project or a book, article, report or paper within the last 48 months; and the investigator's own graduate and postdoctoral advisors.

For senior personnel included in line A.5. of the Summary Proposal Budget Form (Form 1030), provide a list of their names, titles, departments, and institutional affiliations.

8. *Budget*—NSF anticipates that the majority of the costs for the project activities will be for personnel time and personnel-related costs, including modest amounts of materials, supplies, equipment, computing services, etc. It is expected that the institutions will have the majority of computing facilities, equipment, and physical environment to achieve the goals of the project, and therefore NSF does not anticipate providing major equipment and facilities support. For multi-year projects the results of the project are expected to be integrated into the academic programs of the institutions within the period of the award, and therefore it is expected that the budgets will reflect the assumption of responsibility by the participating institution(s) as the educational innovations are fully implemented.

Eligible Costs—In developing the budget, include only items that represent new costs. NSF funds may not be used to support expenditures that would have been undertaken in the absence of an award, such as the costs for normal teaching activities and normal curriculum development. Equipment costs must be matched with non-Federal funds equal to or greater than the funds requested from NSF.

Forms and Documentation—NSF Form 1030 for each annual budget and for the cumulative budget for all years of the project. Separate budget explanation pages should be attached (see "Budget Explanation Pages" on the reverse of Form 1030) and they should: (1) provide detail supporting the funds requested from NSF on Form 1030, and (2) provide a summary of the expenditures for the project as a whole—that is, for the combined total of requested NSF funds and institutional commitments.

9. *Current and Pending Support*—NSF Form 1239.

10. *Appendices.*

I. Facilities and Equipment—If appropriate, include a description of no more than two pages of the relevant and related facilities, plans for purchase of and justification for major items of equipment.

II. Letters of Commitment—As appropriate, official letters only that verify specific institutional and other resource commitments.

III. Other Appendices—Other appendices provided should be relevant and concise.

MATERIALS REQUIRED

1. Fifteen (15) copies of the proposal (limited to either 15 single-spaced or 30 double-spaced pages).

2. One (1) copy of the NSF Form 1225 attached to the copy of the proposal bearing original signatures. Do not include the form within the body of the proposal, since this would compromise the confidentiality of the information. WHILE PROVIDING THE INFORMATION REQUESTED IS VOLUNTARY, SUBMITTING THIS FORM IS REQUIRED BY NSF. OMISSION OF THIS FORM WILL CAUSE DELAY IN PROCESSING THE PROPOSAL.

3. Two (2) sets of the following extra forms with each set of forms stapled as a unit.

a. One copy of the Cover Sheet.

b. One copy of the Project Data and Summary Form.

c. One copy of the Budget, including explanation pages.

These materials should be submitted to: Proposal Processing Unit, Room 223, Attn: Undergraduate Curriculum and Course Development in Engineering, Mathematics and the Sciences, National Science Foundation, 1800 G St. NW., Washington, DC 20550.

Proposal Evaluation and Criteria

Proposals will be evaluated by mail and/or panel review. The criteria that follow apply to both the Comprehensive Development projects and the Prototype and Pilot projects. Proposals will be evaluated according to the criteria outlined in Grants for Research and Education in Science and Engineering (NSF 83–57, rev. 11/89). These criteria address:

—Capability of the investigator(s) and the adequacy of the institutional resources to carry out the proposed work;
—Intrinsic merit of the proposed project;
—Utility or relevance of the proposed project;
—Expected impact of the proposed project.

In addition, a proposal should exhibit evidence of the project's potential to contribute to the national effort to strengthen U.S. undergraduate education in engineering, mathematics, or the sciences, including the following as appropriate to the category above into which they relate. The proposal should:

—Propose activities of high quality and creativity that address major challenges facing U.S. undergraduate education in engineering, mathematics or the sciences at the introductory level and that have the potential for major national impact on U.S. undergraduate education in the disciplines.
—Present well-developed plans for major change and reshaping of the undergraduate learning experience at the introductory level that recognize the breadth of the engineering, mathematics or science education pipeline and the role of undergraduate education within it.
—Present evidence that the results of the project will prepare undergraduates better for subsequent learning experiences and careers in the next century.
—Provide plans to integrate the results of the project's activities into the academic programs of the participating institution(s).
—Present evidence that the infrastructure created will support continued growth and development of undergraduate education after completion of the project.
—Describe appropriate mechanisms to evaluate the project efforts as the project progresses and upon its completion, that is, describe plans to determine the "value-added" as a consequence of the project's activities.
—Present significant mechanisms for disseminating the results of the project with other educators and students at institutions outside the project, both during the period of the project and upon its completion.
—Provide clear evidence of faculty involvement and institutional

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commitment to the success of the project.

Selected Bibliography

The following selected publications on undergraduate science, engineering and mathematics education and related issues are available at no cost from Forms and Publications Unit, Room 232, National Science Foundation, Washington, DC 20550, or by telephone (202) 357–7668, or e-mail (Bitnet: pubs@nsf or Internet: pubs@note.nsf.gov).

Undergraduate Science, Mathematics and Engineering Education, Pub. No. NSB 86–100.

Report on the NSF Disciplinary Workshops on Undergraduate Education, Pub. No. NSF 89–3.

Report on the NSF Workshop on Science, Engineering and Mathematics Education in Two-Year Colleges, Pub. No. 89–50.

NSF Forms, Publications and Related Undergraduate Programs

Copies of Grants for Research and Education in Science and Engineering (NSF 83–57, rev. 11/89) and other forms and publications are available at no cost from: Forms and Publications Unit, Room 232, National Science Foundation, 1800 G Street NW., Washington, DC 20550, (202) 357–7668, e-mail, Bitnet: Pubs@nsf or Internet: pubs@note.nsf.gov.

The NSF Guide to Programs briefly describes all the Foundation's programs, most of which are open to all institutions. It is available at most institutions or may be obtained at no cost from the Forms and Publications Unit. Some programs related to undergraduate activities are listed below.

Undergraduate Curriculum Development in Engineering: Engineering Education Coalitions

Undergraduate Curriculum Development in Mathematics: Calculus Instrumentation and Laboratory Improvement

Undergraduate Faculty Enhancement

Career Access Opportunities in Science and Technology for Women, Minorities and the Disabled

Research Experiences for Undergraduates

Inquiries should be directed to Program Officers in the Division or Directorate offices identified in the Program Inquiries section at the beginning of this announcement.

Robert F. Watson,

Division Director, Division of Undergraduate Science, Engineering and Mathematics Education, Directorate for Science and Engineering Education.

[FR Doc. 89–29162 Filed 12–13–89; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Design and Manufacturing Systems; Open Meeting

In accordance with the Federal Advisory Committee Act, Public Law 92–463, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Design and Manufacturing Systems (DDM)
Date and Time:
January 6–7, 1990
9:00 a.m.–5:00 p.m., January 6
9:00 a.m.–12:00 p.m., January 7
Place: Holiday Inn, California Room, 915 East Apache Boulevard, Tempe, AZ
Type of Meeting: Open
Contact Person: Ms. Carol Guido, Administrative Officer, DDM, Room 1128, National Science Foundation, Washington, D.C. 20550; Telephone: (202) 357–7508
Minutes: Ms. Carol Guido
Purpose of Meeting: To provide advice, recommendations, and counsel on major goals and policies pertaining to the Division of Design and Manufacturing Systems
Summarized Agenda: Discussions on issues, opportunities and future directions for the Division of Design and Manufacturing Systems; discussion of the DDM budget for FY 90, as well as other items.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89–29161 Filed 12–13–89; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Correction to Bi-Weekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Consideration

On November 29, 1989, the Federal Register published the Bi-weekly Notice of Applications and Amendments to Opeating Licenses Involving No Significant Hazards Consideration. On page 49141, under Carolina Power & Light Company, Docket No. 50–324, the number of the amendment issued should have been Amendment No. 169.

Dated at Rockville, Maryland, this 7th day of December 1989.

For the Nuclear Regulatory Commission.

E.G. Tourigny,

Acting Director, Project Directorate II–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 29154 Filed 12–13–89; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF STATE

[CM–8–1333]

The U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) National Committee; Meeting

The Department of State announces that the National Committee for the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT), will meet on January 4, 1990 in Room 1107, Department of State, 2201 C Street NW., Washington, DC. The meeting will begin at 9:30 a.m.

The National Committee assists in the resolution of administrative/procedural problems pertaining to U.S. CCITT activities; provides advice on matters of policy and positions in the preparation for CCITT Plenary Assemblies and meetings of the International Study Groups; provides advice and recommendations in regard to the work of the U.S. CCITT Study Groups; and recommends the disposition of proposed U.S. contributions to the international CCITT which are submitted to the Committee for consideration.

The purpose of the meeting is to:

Consider reports of the Strategic Planning Group ad hoc committee.

Review report of the Extraordinary Administrative Council meeting.

Review reports of the ad hoc group set up under IXth Plenary Resolution 18 to continue the study of CCITT structure and operating procedures.

Discuss preparations for CCITT based interests to input into the High Level Committee preparatory process.

Any other relevant business raised from the floor. Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and individual building passes are required for each attendee. Entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl Barbely, State Department, Washington, DC; telephone (202) 647–5220. All attendees must use the C entrance to the building.

Dated: December 4, 1989.

Earl S. Barbely,

Director, Office of Telecommunications and Information Standards; Chairman, U.S. CCITT National Committee.

[FR Doc. 89–29140 Filed 12–13–89; 8:45 am]

BILLING CODE 4710–07–M

[CM–8–1335]

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea; Working Group on Containers and Cargoes; Bulk Cargoes Panel; Meeting

The Bulk Cargoes Panel of the Working Group on Containers and Cargoes of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on January 10, 1990 at 10:30 a.m. in Room 6319 at Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC.

The purpose of this meeting will be a general review of the agenda items to be considered at the 30th Session of the International Maritime Organization (IMO) Subcommittee on Containers and Cargoes (BC) to be held January 22–26, 1990. Proposed U. S. positions on BC agenda items will be discussed.

The major items of discussion will be the following:

1. Proposed revision of chapter VI of the International Convention for the Safety of Life at Sea (SOLAS).

2. Proposed amendments to the Code of Safe Practice for Solid Bulk Cargoes, including:

Development of new criteria on liquefaction and sliding failures;

Consideration of requirements for new cargoes; and

Segregation and classification of materials possessing chemical hazards.

3. Development of a mandatory Code for the Carriage of Grain in Bulk.

4. Proposed revision of the Code of Safe Practice for Ships Carrying Timber Deck Cargoes.

Members of the public may attend up to the seating capacity of the room.

For further information, contact Mrs. Dawn Anderson, U.S. Coast Guard Headquarters (G–MTH), at the above address, or telephone (202) 267–1217.

Dated: November 29, 1989.

Thomas J. Wajda,

Chairman, Shipping Coordinating Committee.

[FR Doc. 89–29141 Filed 12–13–89; 8:45 am]

BILLING CODE 4710–07–M

[CM–8–1334]

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea; Working Group on Ship Design and Equipment; Working Group on Fire Protection; Meetings

The Working Group on Ship Design and Equipment and the Working Group on Fire Protection of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct open meetings on January 9, 1990, and January 18, 1990, respectively, at 9:30 a.m. in Room 2415 at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC.

Working Group on Ship Design and Equipment

The purpose of the meeting will be to discuss the activities of the 32nd Session of the International Maritime Organization (IMO) Subcommittee on Ship Design and Equipment (DE), held December 5 to 9, 1988, and to prepare for the 33rd Session of IMO DE, scheduled for April 23 to 27, 1990. Items of discussion will include the following: Materials other than steel for pipes; maneuverability of ships; helicopter facilities offshore; requirements for purpose and non-purpose-built ships dedicated to the carriage of irradiated nuclear fuel; harmonization of alarm provisions; amendments of regulations II–1/41 and 45 of SOLAS 1974, as amended; ventilation of vehicle decks during loading, unloading and during the voyage; review of reporting requirements on Codes and Assembly resolutions related to the work of the Subcommittee; underpressure in cargo tanks due to the application of vacuum systems to minimize the effect of pollution of oil after damage; maximum stowage height of survival craft; carriage of dangerous goods on vehicle decks of cargo ships; revision of design and construction requirements in the 1977 Torremolinos Convention; use on board ships of ozone-depleting substances other than halons; and, guidelines on standard calculation methods for mobile offshore drilling unit anchoring positioning systems and dynamic positioning systems.

Working Group on Fire Protection

The purpose of the meeting will be to discuss actions the U.S. should take on better defining the known problems with current domestic and international standards on shipboard ventilation systems, and to propose solutions. The international community is reconsidering smoke control on ships and is looking at methods of improving it. The U.S. is also concerned with smoke control and has prohibited the use of jumper ducts (See Federal Register Vol. 53. No. 163 dated August 23, 1988, pages 32050 and 32051). The concept of venting staterooms through door louvers to corridors may be dangerous. Interested parties are welcome to attend the meeting to provide their views on the problem and possible solutions and, in particular, to comment on testing which the Coast Guard plans to conduct in February 1990. Testing will be carried out at the Coast Guard's Fire and Safety Test Detachment in Mobile, Alabama in the stateroom area on a test ship to measure the spread of smoke from the stateroom to the corridor area. Draft copies of the problem definition and test plan are available.

Members of the public may attend up to the seating capacity of the room.

For further information regarding the meeting of the SOLAS Working Group on Ship Design and Equipment (January 9, 1990) contact Captain J.C. Maxham at (202) 267–2967, and for further information regarding the meeting of the SOLAS Working Group on Fire Protection (January 18, 1990) contact Ms. Marjorie Murtagh at (202) 267–2997, U.S. Coast Guard Headquarters (G–MTH), 2100 Second Street, SW., Washington, DC. 20593–0001.

Dated: November 29, 1989.

Thomas J. Wajda,

Chairman, Shipping Coordinating Committee.

[FR Doc. 89–29142 Filed 12–13–89; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA Waiver Petition Docket No. RSGM–88–29]

Postponement of Public Hearing; Herzog Contracting Corp.

The public hearing scheduled for December 12, 1989, in Washington, DC, concerning the captioned waiver petition has been postponed. When a new hearing date has been scheduled, a notice will be published in the Federal Register.

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The postponement is being made at the request of the petitioner, Herzog Contracting Corporation, which seeks a waiver of the Safety Glazing Standards (49 CFR part 223). (See original hearing notice published November 20, 1989, at 54 FR 48049.)

FRA regrets any inconvenience caused by the postponement of this hearing.

Issued in Washington, DC, on December 5, 1989.

Joseph W. Walsh,

Associate Administrator for Safety.

[FR Doc. 89-29101 Filed 12-13-89; 8:45 am]

BILLING CODE 4910-06-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 239
Thursday, December 14, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

AFRICAN DEVELOPMENT FOUNDATION

Board of Directors Meeting

TIME: 10:00 a.m.—1:00 p.m.

PLACE: African Development Foundation.

DATE: Friday, 15 December 1989.

STATUS: Open.

Agenda

1. Chairman's Report.
2. President's Report.
3. Other Business.

This is to replace a document published in the **Federal Register** issue of November 24, 1989 (54 FR 48719) concerning a meeting, originally scheduled for Friday, 08 December 1989, which was cancelled, due to bad weather.

CONTACT PERSON FOR MORE INFORMATION:
Ms. Janis McCollim, 673-3916.

Leonard H. Robinson, Jr.,

President.

ADF Agency Number 11010006

ADF BOAC Number 053901

FR Doc. 89-29313 Filed 12-12-89; 1:34 pm]

BILLING CODE 6116-01-M

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER 89-28739

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, December 14, 1989, 10:00 a.m., Open Meeting.

THE FOLLOWING ITEM WAS DELETED FROM THE AGENDA: Attorney Grade Levels.

DATE AND TIME: Tuesday, December 19, 1989, 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings
Correction and Approval of Minutes
Final Rules Concerning Debts Owed by Candidates and Political Committees (11 CFR Part 116)
Election of Officers for 1990
A. Chairman
B. Vice Chairman
Administrative Matters

DATE AND TIME: Tuesday, December 19, 1989, following the open meeting.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

PERSON TO CONTACT FOR INFORMATION:
Mr. Fred Eiland, Information Officer, Telephone: (202) 376-3155.

Hilda Arnold,

Administrative Assistant, Office of the Secretariat, Federal Election Commission.

[FR Doc. 89-29272 Filed 12-12-89; 11:21 am]

BILLING CODE 6715-01-M

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Corrections

Federal Register
Vol. 54, No. 239
Thursday, December 14, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1079

[Docket No. AO-295-A38; DA-88-111]

Milk in the Iowa Marketing Area; Decision of Proposed Amendments to Marketing Agreement and To Order

Correction

In proposed rule document 89-27767 beginning on page 48900 in the issue of Tuesday, November 28, 1989, make the following correction:

§ 79.2 [Corrected]

On page 48911, in the third column, in § 1079.2(a), in the fourth line, insert "Butler" following "Buchanan".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

International Trade Administration

[C-201-402]

Lime From Mexico; Final Results of Changed Circumstances Countervailing Duty Administrative Review and Revocation of Countervailing Duty Order

Correction

In notice document 89-28076 beginning on page 49324 in the issue of Thursday, November 30, 1989, make the following correction:

On page 49325, in the second column, beginning with the third complete paragraph and up to the fourth complete paragraph in the third column on page 49326, the text was printed out of order. The text is correctly published below.

In "Certain Fasteners from India; Final Results of Administrative Review and Partial Revocation of Countervailing Duty Order" (47 FR 44129; October 6, 1982) ("Indian Fasteners"), the Department determined that "Congress intended 'impose' to mean 'levy,'" at the time section 303(a)(2) was enacted and that "the jury requirement extends beyond the issuance of the countervailing duty order throughout the life of an order whenever duties are assessed or collected." Accordingly, Article VI prohibits the United States from "imposing," or assessing, countervailing duties on lime from Mexico unless there has been a determination that the imported goods are causing, or threatening to cause, material injury to a U.S. industry.

To argue, as petitioners have, that any obligations with respect to an injury determination terminates with issuance of an order, and that application of the injury requirements of Article VI to this case is a retroactive application of treaty obligations, overstates the significance of an order and misinterprets the nature of such obligations. Although the determinations regarding subsidies and injury (where the latter is required) are normally made prior to the issuance of a countervailing duty order, the one-time issuance of an order does not vitiate the continuing nature of the Article VI obligation. The GATT has always recognized that a contracting party has a continuing obligation to review and update the original determinations that resulted in the countervailing duty order; the issuance of an order does not establish a basis for collecting duties indefinitely. Under the U.S. countervailing duty law, administrative reviews are conducted periodically and countervailing duties assessed in accordance with U.S. obligations in effect at the time the subject merchandise entered into the United States. Thus, the United States is fully within its rights to collect countervailing duties on entries of lime from Mexico made on or before August 23, 1988. Only subsequent to Mexico's accession to the GATT, on August 24, 1986, did the legal prerequisites for an order issued on duty-free merchandise under section 303(a)(1) cease to exist in the absence of an injury determination, and the obligation for an injury determination arise.

Comment 2: Petitioners argue that GATT cannot provide an independent source of authority for an injury investigation in this case because, having never been ratified by Congress, the GATT has the status of an executive agreement that is inferior to subsequently enacted legislation. Since Article VI took effect with respect to the United States, Congress has enacted legislation providing for injury investigations and reviews in a wide variety of situations but has declined to authorize injury determinations in the circumstances of this case.

Sonocal replies that, in the case of the GATT, the President was authorized by Congress to enter into an international agreement, and the fact that Congress has not subsequently ratified the agreement does not in itself vitiate the agreement or preclude its enforcement in domestic law; executive agreements, like formal treaties, can be enforced as the supreme law of the land. Sonocal also points out that petitioners have acknowledged that section 303(a)(2) was enacted to satisfy U.S. obligations under Article VI. Finally, Sonocal asserts that where the specific purpose of a statute, as clearly established by its legislative history, is to give effect to an obligation contained in an international agreement to which the United States has acceded, one cannot conclude without any basis in the language of the statute that, in the process of implementing a GATT provision, Congress restricted the scope of U.S. obligations under that provision.

Department's Position: Since signing the GATT in 1948, the United States has consistently taken the position that it was required under international law to fulfill the obligations of that agreement. The United States has agreed to the Protocol Application and has undertaken numerous GATT obligations thereunder. The fact that Congress has authorized the President to enter into several rounds of trade negotiations under the auspices of the GATT also supports the view that the GATT was to be enforced as domestic law. The legislative history of section 303(a)(2) clearly indicates that the section was enacted to fulfill U.S. obligations under Article VI to provide for an injury determination on duty-free merchandise.

Moreover, the legislative history of the Trade Agreements Act of 1979 speaks further to the general proposition that the United States is obligated to uphold the principles of the GATT in its domestic law. Given the general framework of Congressional acknowledgement of the GATT as an international agreement that must be adhered to in domestic law, the Department believes that providing for an injury determination in this case fulfills Congressional intent under the countervailing duty law.

Comment 3: Petitioners claim that the Department has deduced the requirement for an injury determination with respect to the outstanding order on lime from Mexico based on a single word, "levy," in Article VI. The Department's conclusion that "levy" means "assess" duties, thus creating an obligation to conduct an injury investigation on an order that was issued before any right to the injury test existed and in which no injury review is authorized by law, is a misreading of that provision. As used in Article VI, "levy" is merely a general reference to the overall process of imposing countervailing duties and not a specific step in that process, the actual assessment of duties. The definition of "levy" appears in a footnote to Article 4:2 of the "Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade" ("the Subsidies Code") and has meaning only as used in that context, to distinguish between provisional measures and the final assessment of countervailing duties. The definition does not govern, or have any special relevance to, interpreting the term in the context of Article VI. Thus, it does not have the far-reaching significance attributed to it by the Department.

Sonocal responds that the definition of "levy" cannot be restricted solely to the context of the Subsidies Code. The meaning of "levy" in Article VI is logically and properly found in the Subsidies Code, an international agreement concluded with the specific purpose of prescribing the interpretation and application of Article VI. Article VI states that no contracting party shall levy any countervailing duty on the products of another contracting party without a determination of injury and defines the right to an injury determination in absolute terms. The legislative history is also clear that Congress intended section 303(a)(2) to conform the countervailing duty law to Article VI. Consequently, there is no basis for inferring that the term "imposed" in section 303(a)(2) has any legal meaning independent of the term "levy" in Article VI or that a contracting party foregoes its right to an injury determination under Article VI because it became entitled to assert that right only after a countervailing duty order was issued. In fixing the point at which the right to an injury determination must be accorded, Article VI refers only to the "levy" of duties.

Respondents assert that the term "levy" refers specifically to the final act of assessing countervailing duties. Thus, prior to Mexico's accession to the GATT, the Department was correct in assessing countervailing duties without an injury determination pursuant to section 303(a)(1). However, once Mexico became a contracting party to the GATT, Article VI became effective between the United States and Mexico, and section 303(a)(2) became the controlling statute. Thus, an affirmative injury determination by the ITC is a mandatory prerequisite to any assessment of countervailing duties on lime from Mexico subsequent to August 24, 1986. The exception for outstanding orders asserted by petitioners has no basis in Article VI or the countervailing duty law.

Department's Position: Although it is true that Article VI does not expressly define "levy," the word was used as it was commonly understood at the time, *i.e.*, "imposing and collection of a tax or other payment." Because Mexico's entitlement to an injury determination prescribed by Article VI arose when it became a contracting party to the GATT, the United States cannot collect countervailing duties absent an affirmative injury determination.

Comment 4: Petitioners argue that the precedents for revoking this order cited by the Department, "Indian Fasteners" and "Carbon Steel Wire Rod from Trinidad & Tobago; Preliminary Results of Administrative Review and Tentative Determination to Revoke Countervailing Duty Order" (50 FR 19562; May 9, 1985) ("T & T Wire Rod") are inapplicable. These cases were wrongly decided because the United States' obligation under the GATT for providing an injury determination is prospective only and is required only with respect to investigations initiated after the change in status of the goods or the country involved. These cases also are distinguishable from this case because India and Trinidad & Tobago were contracting parties to the GATT when the countervailing duty investigations were conducted, whereas Mexico acceded to the GATT only after the order on lime was issued.

Respondents concur with the Department's reliance upon the "Indian Fasteners" and "T & T Wire Rod" precedents in making its determination to revoke this order and assert that petitioners have cited no legal precedent to contradict the Department's determinations in those cases. Even though the factual context in this case may be slightly different from the precedents cited, the legal ramifications are exactly the same; section 303(a)(2) applies to merchandise whenever both factual prerequisites (duty-free status and international obligations) exist and the order in which these prerequisites were met is a distinction without a difference.

Department's Position: We addressed the issue of prospective application of U.S. obligations under Article VI in our response to Comment 1 and stand by our reliance on the "Indian Fasteners" and "T & T Wire Rod" precedents.

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP90-73-000 et al.]

Pan American Gas Co., et al.; Natural Gas Certificate Filings

Correction

In notice document 89-27962 beginning on page 49342 in the issue of Thursday, November 30, 1989, make the following corrections:

1. On page 49346, in the second column, under **Transcontinental Gas Pipe Line**, the docket number should read "CP90-132-000".

2. On page 49349, in the first column, under **21. Trunkline Gas Company**, the dateline should read "November 22, 1989."

BILLING CODE 1505-01-D

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Reg. Z; TIL-1]

Truth in Lending; Proposed Update to Official Staff Commentary

Correction

In proposed rule document 89-27270 beginning on page 48253 in the issue of Wednesday, November 22, 1989, make the following corrections:

1. On page 48257, in the first column, under **Subpart A—General**, in *Section 226.2—Definitions and Rules of Construction*, in the paragraph designated ►3. *Charge card.*, in the eighth line, "care" should read "card".

2. On the same page, in the same column, under **Subpart A—General**, in *Section 226.2—Definitions and Rules of Construction*, in paragraph 3., in the first

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line, "Comment 2(a)(2)–5" should read "Comment 2(a)(20)–5".

3. On the same page, in the second column, in the paragraph designated ►6. *Multiple purpose transactions.*, in the sixth line, the first "of" should read "or", and in the 13th line "purchase" was misspelled.

4. On the same page, in the same column, under *Section 226.5—General Disclosure Requirements*, in the heading *Paragraph 5(b)(1) Initial disclosure*, "disclosure" should read "disclosures".

5. On the same page, in the third column, in the paragraph designated 5. *Terminology.*, in the seventh line, "closed" should read "close".

6. On the same page, in the same column, in the paragraph designated 2. *Noncoverage of "consumer initiate" requests.*, "consumer initiate" should read "consumer initiated".

7. On page 48258, in the second column, in the heading *4a(b)(5) Grace period.*, *4a(b)(5)* should read *5a(b)(5).*

8. On the same page, in the third column, in the first line, "but" should read "that", and in the third line, insert "a" following "of".

9. On page 48259, in the first column, under *5a(e) Applications and solicitations made available to general public.*, in paragraph 2. *Cross-selling.*, in the 10th line, "card" should read "car".

10. On the same page, in the second column, in the last line, insert "not" following "need".

11. On page 46260, in the second column, under *5b(a)(1) General.*, in paragraph 4. *Method of providing disclosures.*, in the 15th line, "conjunctions" should read "conjunction", and in the 30th line, "employees" should read "employee".

12. On page 48261, in the third column, in paragraph 2. *Fixed rate and term payment options during draw period.*, in the 28th line, "§ 26.5b(f)(1)" should read "§ 226.5b(f)(1)" and in the 31st line, "§ 26.5b(d)(12)(xi)" should read "§ 226.5b(d)(12)(xi)".

13. On page 48262, in the first column, in paragraph 2. *Representative examples.*, in the 14th line "outstanding" is misspelled; in the 16th line, the first "of" should read "or"; in the 44th line, "disclosure" should read "disclosures"; and in the last line, insert a period following "(d)(5)(iii)".

14. On the same page, in the second column, in paragraph 3. *Reverse mortgages.*, at the end of the first line, "mortgages" is misspelled.

15. On page 48263, in the second column, under "Paragraph 5b(d)(12)(x)", in paragraph 1. *maximum rate payment example.*, in the seventh line, "disclosure" should read "disclose".

16. On page 48264, in the first column, in paragraph 6. *Rate limitations.*, in the third line, insert a period following "example"; in the fifth line, "§ 226.5(d)(120(ix)" should read "§ 226.5(d)(12)(ix)"; and in the eighth line, "annual" should read "annually".

17. On page 48265, in the first column, under "Paragraph 5b(f)(3)", in paragraph 1. *Scope of provision.*, in the 11th line, "later" should read "late".

18. On the same page, in the same column, under "Paragraph 5b(f)(3)", in paragraph 2. *Charges not covered.*, in the ninth line, "§ 226.4(d)92)" should read "§ 226.4(d)(2)".

19. On page 48267, in the third column, in paragraph 5. *Periodic fees.*, in the 11th line, "disclose" should read "discloses".

20. On page 48269, in the third column, in paragraph 25., in the heading *19(6) Certain variable-rate transactions*, "*19(6)*" should read "*19(b)*".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 88F-0175]

Indirect Food Additives: Polymers

Correction

In rule document 89–27874 beginning on page 49079 in the issue of Wednesday, November 29, 1989, make the following correction:

§ 177.1520 [Corrected]

On page 49080, in the table, in the second entry, move the "Do." from the fifth column to the second column.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 888

[Docket No. 86P-0425]

Hip Joint Metal/Ceramic/Polymer Semi-Constrained Cemented or Nonporous Uncemented Prosthesis; Announcement of Reclassification

Correction

In rule document 89–27375 beginning on page 48238 in the issue of Wednesday, November 22, 1989, make the following correction:

§ 888.3353 [Corrected]

On page 48239, in the second column, in the last line of § 888.3353(a) the word "our" should read "or".

BILLING CODE 1505-01-D

federal register

Thursday
December 14, 1989

PART II

Department of Agriculture

Federal Grain Inspection Service

7 CFR Part 68

United States Standards for Beans, Rice, Peas, and Lentils; Final Rule

BEST COPY AVAILABLE

VOL 54 ISS 239 DEC 14 1989 UMI

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 68

United States Standards for Beans, Rice, Peas, and Lentils

AGENCY: Federal Grain Inspection Service.

ACTION: Final rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) is amending 7 CFR part 68, subparts B through H to correct miscellaneous nonsubstantive errors, including spelling and format errors appearing in the Code of Federal Regulations.

EFFECTIVE DATE: December 14, 1989.

FOR FURTHER INFORMATION CONTACT: Paul D. Marsden, Federal Grain Inspection Service, USDA, Room 0628 South Building, Box 96454, Washington, DC 20090–6454, telephone: (202) 475–3428.

SUPPLEMENTARY INFORMATION: The Federal Grain Inspection Service is amending 7 CFR part 68, subparts B through H to make miscellaneous nonsubstantive corrections to the text of the regulations, including spelling errors and format errors in certain grade tables for these standards.

In addition, for consistency, FGIS is removing all hyphens as they appear in connection with "long, medium, or short grain rice" in subparts C through E of the part 68 regulations. The titles of two subparts are being amended to spell out "United States" from the abbreviation "U.S." for consistency with other subparts.

These changes are technical and nonsubstantive, and are made to reflect correction to these regulations. Further, pursuant to section 553(b)(3)(A) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(A)) (APA), the requirements of general notice of proposed rulemaking do not apply to interpretive rules, general policy statements, or rules regarding agency organization, procedure, or practices. Since this rule relates to general agency management, including procedure and practice, the requirements regarding general notice of rulemaking under the APA do not apply. For the same reasons, the relevant provisions of Departmental Regulation 1512–1, Executive Order 12291, and the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are also not applicable.

Additionally, upon good cause, the provisions of section 553(d) of the APA (5 U.S.C. 553(d)) concerning postponing the effective date of a substantive rule until 30 days after publication in the **Federal Register** do not apply to this action which is nonsubstantive in nature.

List of Subjects in 7 CFR Part 68

Administrative practices and procedures—FGIS, Agricultural commodities, Export.

For reasons set forth in the preamble, 7 CFR part 68, subparts B through H are amended as follows:

1. The authority citation for part 68 continues to read as follows:

Authority: Secs 202–208, 60 Stat. 1087, as amended (7 U.S.C. 1621 *et seq.*).

Subpart B—U.S. Standards for Beans

2. The title of subpart B is revised to read "United States Standards for Beans".

§ 68.121 [Amended]

3. Section 68.121 is amended by removing "§ 68.122" from the end of the section.

Subpart C—United States Standards for Rough Rice

§§ 68.202 and 68.211 [Amended]

4. Subpart C is amended by removing all hyphens wherever they appear after the words "long-", "medium-", and "short-" in § 68.202(c), (h), and as they appear in "Notes" at the end of §§ 68.202(h) and 68.211(b).

§ 68.207 [Amended]

5. Section 68.207 is amended by changing "instructions, for" to read "instructions. For".

Subpart D—U.S. Standards for Brown Rice for Processing

6. The title of Subpart D is revised to read "United States Standards for Brown Rice for Processing."

§ 68.252 [Amended]

7. Subpart D is amended by removing all hyphens wherever they appear after "long-", "medium-", and "short-" in § 68.252 (d), (i), and as they appear in the "Note" at the end of § 68.252(i).

8. Section 68.252 is further amended by removing the phrase "and medium or short grain rice in long grain rice" at the end of paragraph (i)(1)(i).

9. Section 68.261 is revised to read as follows:

Grades, Grade Requirements, and Grade Designations

§ 68.261 Grade and grade requirements for the classes of brown rice for processing. (See also § 68.263.)

Grade	Maximum limits of—									
	Paddy kernels		Seeds and heat-damaged kernels			Red rice and damaged kernels (singly or combined)	Chalky kernels [1]	Broken kernels removed by a 6 plate or a 6 ½ sieve [2]	Other types [3]	Well-milled kernels
	Percent	No. in 500 grams	Total (singly or combined) No. in 500 grams	Heat damaged kernels No. in 500 grams	Objectionable seeds No. in 500 grams	Percent	Percent	Percent	Percent	Percent
U.S. No. 1		20	10	1	2	1.0	2.0	1.0	1.0	1.0
U.S. No. 2	2.0		40	2	10	2.0	4.0	2.0	2.0	3.0
U.S. No. 3	2.0		70	4	20	4.0	6.0	3.0	5.0	10.0
U.S. No. 4	2.0		100	8	35	8.0	8.0	4.0	10.0	10.0
U.S. No. 5	2.0		150	15	50	15.0	15.0	6.0	10.0	10.0
U.S. Sample grade	U.S. Sample grade shall be brown rice for processing which (a) does not meet the requirements for any of the grades from U.S. No. 1 to U.S. No. 5, inclusive; (b) contains more than 14.5 percent of moisture; (c) is musty, or sour, or heating; (d) has any commercially objectionable foreign odor; (e) contains more than 0.2 percent of related material or more than 0.1 percent of unrelated material; (f) contains two or more live weevils or other live insects; or (g) is otherwise of distinctly low quality.									

[1] For the special grade Parboiled brown rice for processing, see § 68.263(a).
[2] Plates should be used for southern production rice and sieves should be used for western production rice, but any device or method which gives equivalent results may be used.
[3] These limits do not apply to the class Mixed Brown Rice for Processing.

Subpart E—United States Standards for Milled Rice

§ 68.302 [Amended]

10. Subpart E is amended by removing all hyphens wherever they appear after "long-", "medium-", and "short" in § 68.302 (d), (i), and as they appear in the "Note" at the end of § 68.302(i). Section 68.302 is further amended by removing the hyphen between the words "Second-Head Milled Rice" as it appears in the second paragraph of § 68.302(d).

11. Sections 68.310, 68.311, and 68.312 are revised to read as follows:

Grades, Grade Requirements, and Grade Designations

§ 68.310 Grades and grade requirements for the classes Long Grain Milled Rice, Medium Grain Milled Rice, Short Grain Milled Rice, and Mixed Milled Rice. (See also § 68.315.)

Grade	Maximum limits of—											
	Seeds, heat-damaged and paddy kernels (singly or combined)		Red rice and damaged kernels (singley combined) (percent)	Chalky kernels [1]		Broken kernels				Other types [2]		Color requirements [1]	Minimum milling requirements [4]
	Total (No. in 500)	Heat damaged kernels and objectionable seeds (No. in 500)		In long-grain rice (percent)	In medium or short grain rice (percent)	Total (percent)	Removed by a 5 plate [3] (percent)	Removed by a 6 plate [3] (percent)	Through a 6 sieve [3]	Whole kernels (percent)	Whole and broken kernels (percent)		
U.S. No. 1	2	1	0.5	1.0	2.0	4.0	0.04	0.1	0.1		1.0	Shall be white or creamy.	Well milled
U.S. No. 2	4	2	1.5	2.0	4.0	7.0	0.06	0.2	0.2		2.0	May be slightly gray.	Well milled
U.S. No. 3	7	5	2.5	4.0	6.0	15.0	0.1	0.5	0.5		3.0	May be light gray.	Reasonably well milled
U.S. No. 4	20	15	4.0	6.0	8.0	25.0	0.4	2.0	0.7		5.0	May be gray or slightly rosy.	Reasonably well milled
U.S. No. 5	30	25	[4] 6.0	10.0	10.0	35.0	0.7	3.0	1.0	10.0		May be dark gray or rosy.	Lightly milled
U.S. No. 6	75	75	[5] 15.0	15.0	15.0	50.0	1.0	4.0	2.0	10.0		May be dark gray or rosy.	Lightly milled
U.S. Sample grade	U.S. Sample grade shall be milled rice of any of these classes which: (a) does not meet the requirements for any of the grades from U.S. No. 1 to U.S. No. 6, inclusive; (b) contains more than 15.0 percent of moisture; (c) is musty or sour, or heating; (d) has any commercially objectionable foreign odor; (e) contains more than 0.1 percent of foreign material; (f) contains two or more live or dead weevils or other insects, insect webbing, or insect refuse; or (g) is otherwise of distinctly low quality.												

[1] For the special grade Parboiled milled rice, see § 68.315(c).
[2] Plates should be used for southern production rice; and sieves should be used for western production rice, but any device or method which gives equivalent results may be used.
[3] These limits do not apply to the class Mixed Milled Rice.
[4] For the special grade Undermilled milled rice, see § 68.315(d)
[5] Grade U.S. No. 6 shall contain not more than 6.0 percent of damaged kernels.

§ 68.311 Grades and Grade Requirements for the Class Second Head Milled Rice. (See also § 68.315.)

Grade	Maximum limits of—				Color requirements [1]	Milling requirements (minimum) [2]
	Seeds, heat-damaged, and paddy kernels (singly or combined)		Red rice and damaged kernels (singly or combined) (percent)	Chalky kernels [1] (percent)		
	Total (No. in 500 grams)	Heat-damaged kernels and objectionable seeds (No. in 500 grams)				
U.S. No. 1	15	5	1.0	4.0	Shall be white or creamy	Well milled.
U.S. No. 2	20	10	2.0	6.0	May be slightly gray	Well milled.
U.S. No. 3	35	15	3.0	10.0	May be light gray	Reasonably well milled.
U.S. No. 4	50	25	5.0	15.0	May be gray or slighly rosy	Reasonably well milled.
U.S. No. 5	75	40	10.0	20.0	May be dark gray or rosy	Lightly milled.
U.S. Sample grade	U.S. Sample grade shall be milled rice of this class which: (a) does not meet the requirements for any of the grades from U.S. No. 1 to U.S. No. 5 inclusive; (b) contains more than 15.0 percent of moisture; (c) is musty, or sour, or heating; (d) has any commercially objectionable foreign odor; (e) contains more than 0.1 percent of foreign material; (f) contains two or more live or dead weevils or other insects, insect webbing, or insect refuse; or (g) is otherwise of distinctly low quality.					

[1] For the special grade Parboiled milled rice, see § 68.315(c).
[2] For the special grade Undermilled milled rice, see § 68.315(d).

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§ 68.312 Grades and Grade Requirements for the Class Screenings Milled Rice. (See also § 68.315.)

	Maximum limits of—				
	Paddy kernels and seeds				
	Total (singly or combined) (No. in 500 grams)	Objectionable Seeds (No. in 500 grams)	Chalky kernels [1] (percent)	Color requirements [1]	Milling requirements (minimum) [2]
U.S. No. 1 [3] [4]	30	20	5.0	Shall be white or creamy	Well milled.
U.S. No. 2 [3] [4]	75	50	8.0	May be slightly gray	Well milled.
U.S. No. 3 [3] [4]	125	90	12.0	May be light gray or slightly rosy	Reasonably well milled.
U.S. No. 4 [3] [4]	175	140	20.0	May be gray or rosy	Reasonably well milled.
U.S. No. 5	250	200	30.0	May be dark gray or very rosy	Lightly milled.
U.S. Sample grade	U.S. Sample grade shall be milled rice of this class which: (a) does not meet the requirements for any of the grades from U.S. No. 1 to U.S. No. 5 inclusive; (b) contains more than 15.0 percent of moisture; (c) is musty, or sour, or heating; (d) has any commercially objectionable foreign odor; (e) has a badly damaged or extremely red appearance; (f) contains more than 0.1 percent of foreign material; (g) contains two or more live or dead weevils or other insects, insect webbing, or insect refuse; or (h) is otherwise of distinctly low quality.				

[1] For the special grade Parboiled milled rice see § 68.315(c).
[2] For the special grade Undermilled milled rice see § 68.315(d).
[3] Grades U.S. No. 1 to U.S. No. 4, inclusive, shall contain not more than 3.0 percent of heat-damaged kernels, kernels damaged by heat and/or parboiled kernels in nonparboiled rice.
[4] Grades U.S. No. 1 to U.S. No. 4, inclusive, shall contain not more than 1.0 percent of material passing through a 30 sieve.

Subpart G—United States Standards for Split Peas [1]

§ 68.501 [Amended]

12. Section 68.501(k) is amended by removing the phrase "(*Pisumsativum var. arvense (L.) Poir.*)" and inserting in its place "(*Pisum sativum var. arvense (L.) Poir.*)".

13. Section 68.507 is revised to read as follows:

Grades, Grade Requirements, and Grade Designations

§ 68.507 Grades and grade requirements for split peas. (See also § 68.509.)

Grade	Maximum limits of—					
	Split peas passing through—					
	[1]⅝₄ Round-hole sieve (percent)	⅝₄ Round-hole sieve (percent)	⅝₄ Round-hole sieve (percent)	Weevil-damaged split peas (percent)	Heat-damaged split peas (percent)	Damaged split peas [1] (percent)
U.S. No. 1	3.0	0.5	0.1	0.5	0.2	1.0
U.S. No. 2	15.0	3.0	0.2	1.0	0.5	1.5
U.S. No. 3	25.0	5.0	0.3	1.5	1.0	2.0
U.S. Sample grade	U.S. Sample grade shall be split peas which—(a) Do not meet the requirements for the grades U.S. Nos. 1, 2, or 3; or (b) Contain more than 15.0 percent moisture; live weevils, other live insects, insect webbing or filth, metal fragments, broken glass, or a commercially objectionable odor; or (c) Are heating, or are distinctly low quality.					

[1] Compliance with the provisions of these standards does not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act, or other Federal Laws.

Grade	Maximum limits of—							Minimum requirements for color
	Defective peas						Foreign material (percent)	
	Contrasting split peas		Whole peas (percent)	White caps		Bleached peas in green and yellow split peas only (percent)		
	In green and yellow split peas only (percent)	In winter split peas only (percent)		In green and yellow split peas only (percent)	In winter split peas only (percent)			
U.S. No. 1	0.3	0.5	0.5	1.0	1.5	1.5	0.1	Good.
U.S. No. 2	0.8	1.0	1.0	2.0	3.0	3.0	0.2	Fair.
U.S. No. 3	1.5	2.0	2.0	3.0	5.0	5.0	0.5	Poor.

[1] Damaged peas do not include weevil-damaged or heat-damaged peas.

Subpart H—United States Standards for Lentils [1]

§ 68.601 [Amended]

14. Section 68.601 is amended by removing the parenthesis from the word "Chilean" in paragraphs (a)(2) and (a)(3).

§ 68.607 [Amended]

15. Section 68.607 is revised to read as follows:

Grades, Grade Requirements, and Grade Designations

§ 68.607 Grades and grade requirements for dockage-free lentils. (See also § 68.609)

Grade	Maximum limits of—						Minimum requirements for color
	Defective lentils			Foreign material		Skinned lentils (percent)	
	Total (percent)	Weevil-damaged lentils (percent)	Heat-damaged lentils (percent)	Total (percent)	Stones (percent)		
U.S. No. 1	2.0	0.3	0.2	0.2	0.1	4.0	Good.
U.S. No. 2	3.5	0.8	0.5	0.5	0.2	7.0	Fair.
U.S. No. 3	5.0	0.8	1.0	0.5	0.2	10.0	Fair.
U.S. Sample grade	U.S. Sample grade shall be lentils which—(a) Do not meet the requirements for the grades U.S. Nos. 1, 2, or 3; or (b) Contain more than 14.0 percent moisture, live weevils, or other live insects, metal fragments, broken glass, or a commercially objectionable odor; or (c) Are materially weathered, heating or distinctly low quality.						

Dated: November 16, 1989.
W. Kirk Miller,
Administrator.
[FR Doc. 89-27448 Filed 12-13-89; 8:45 am]
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H.J. Res. 429/Pub. L. 101–212
To designate the week of December 10, 1989, through December 16, 1989, as "National Drunk and Drugged Driving Awareness Week". (Dec. 11, 1989; 103 Stat. 1841; 2 pages) Price: $1.00

H.R. 422/Pub. L. 101–213
Local Rail Service Reauthorizing Act. (Dec. 11, 1989; 103 Stat. 1843; 6 pages) Price: $1.00

H.R. 675/Pub. L. 101–214
Fredericksburg and Spotsylvania County Battlefields Memorial National Military Park Expansion Act of 1989. (Dec. 11, 1989; 103 Stat. 1849; 3 pages) Price: $1.00

H.R. 3696/Pub. L. 101–215
To provide survival assistance to victims of civil strife in Central America. (Dec. 11, 1989; 103 Stat. 1852; 1 page) Price: $1.00

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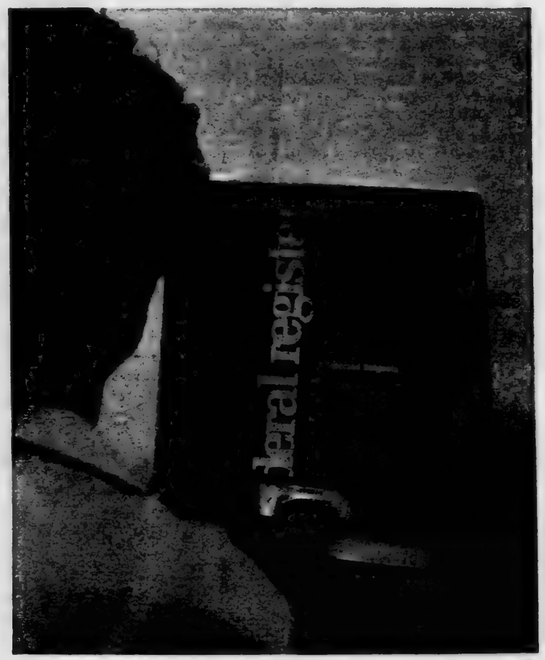

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272, 273, 274 and 276

[Amdt. No. 318]

Food Stamp Program; Food Stamp Issuance and Issuance Liability Rule

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule—corrections and Reinstatement.

SUMMARY: This action amends Food Stamp Program regulations to make technical amendments to correct errors in spelling, regulatory references, and consistency in word choice that appeared in a final rule, published February 15, 1989, at 54 FR 6990, entitled Food Stamp Program; Food Stamp Issuance and Issuance Liability, a final rule published June 6, 1989, at 54 FR 24149, entitled Food Stamp Program; Disaster Assistance Act, Nondiscretionary Provisions of the Hunger Prevention Act, and Technical Corrections and an interim rule published June 7, 1989, at 54 FR 24510, entitled Food Stamp Program: Administrative Improvement and Simplification Provisions From the Hunger Prevention Act of 1988. The technical amendments for the February 15 final and June 7 interim rules affect the program areas of mail issuance loss and loss reporting level plans, newly-certified households which apply after the 15th day of the month, the maximum allowable period between issuances, validity periods for issuances made in authorization document and direct access systems, restrictions on replacement issuances made to households, expiration dates on identification cards, State agency liabilities, and use of coupons by eligible households. The technical amendments for the June 6 final rule affect the program area of the dependent care deduction. this action also reinstates provisions that were unintentionally removed from the Code of Federal Regulations as a result of the February 15 and June 6, 1989 final rules. The omitted provisions being reinstated affect the program areas of coupon use and redemption, use of household IDs, cash change in coupon transactions, and preparation of monthly reports by State agencies for handicapped households. The effect of this action will be to make the wording of the aforementioned provisions technically correct without changing the intended policies which were set forth in the final and interim rules containing these provisions, or to reinstate provisions, without change, which were erroneously removed.

EFFECTIVE DATE: This rule is effective retroactively to April 1, 1989 for corrections to the February 15 final and June 7, 1989 interim rules, and retroactively to October 1, 1988 for the June 6, 1989 final rule.

FOR FURTHER INFORMATION CONTACT: Marilyn Carpenter, Chief, State Administration Branch, Program Accountability Division, Food Stamp Program, Food and Nutrition Service (FNS), USDA, 3101 Park Center Drive—Room 904, Alexandria, Virginia 22302 telephone (703) 756-3383.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order No. 12291 and Secretary's Memorandum No. 1512-1. This action has been reviewed in relation to the requirements of Executive Order No. 12291 and Secretary's Memorandum No. 1512-1, and it has been determined that the action will not result in an annual effect on the economy of $100 million or more or a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Additionally, this action will not result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, this action has been classified as "non-major."

Executive Order No. 12372. This Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in 7 CFR part 3015, subpart V and related notice (48 FR 29115, June 24, 1983), this Program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act. This action has also been reviewed in relation to the requirements of the Regulatory Flexibility Act of 1980 (5. U.S.C. 601-606). G. Scott Dunn, Acting Administrator of the Food and Nutrition Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. This final rule only corrects previous errors and omissions in two final rules and an interim rule. No new requirements are being placed on small businesses or organizations, and the corrections and reinstated provisions will not have a significant economic impact on local governments.

Paperwork Reduction Act. This action does not contain reporting or recordkeeping burdens subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980.

This document makes technical amendments only and imposes no new requirements. Therefore, the Acting Administrator of the Food and Nutrition Service has determined in accordance with 5 U.S.C. 553 (b) and (d) that prior notice and comment are unnecessary and contrary to public interest, and that good cause exists for making this rule effective upon publication.

Amendments and Analysis

1. On February 15, 1989, the Department published in the **Federal Register** at 54 FR 6990 a final rule comprising a comprehensive revision of the Food Stamp Program's current issuance and State agency issuance liability rules. The primary intent of the rule was to reorganize the current rules, consolidating all of the issuance provisions throughout the rules into part 274, and relocating non-issuance related provisions from part 274 into other parts where they more logically belong.

Prior to publication of the February 15, 1989 final rule, the regulations contained provisions at 7 CFR 274.10 governing eligible food, meal services, the use and redemption of coupons to purchase meals, use of household ID cards, use of

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coupon purchases by residents of certain institutions, use of coupons by homeless households, providing cash change in coupon purchases, and payment prior to delivery of food. The Department intended with the publication of the February 15 rule to retain these provisions, without change, and to place them in the reorganization of part 274 within § 274.10. However, through error, the provisions were omitted from the February 15 final rule which resulted in removal of the provisions from the Code of Federal Regulations. Consequently, the omitted provisions are hereby reinstated by amending 7 CFR 274.10 to revise the title of 7 CFR 274.10 and adding new paragraphs (d) through (j).

2. Also in the February 15, 1989 final rule were several typographical errors and word-choice inconsistencies which did not change the intended meaning of the item, but were, nevertheless, confusing. These errors and inconsistencies, found in the preamble, as well as the amendatory language and regulatory text, are as follows:

(a) On page 6991, under the Table of Redesignations, the reference to § 274.10(c) is incorrect. The correct reference is § 274.10(a)(4)(ii). The error is hereby corrected.

(b) On page 6994, the regulatory reference of § 274.3(d)(7) at the end of Item 11 is incorrect. The correct reference is § 274.3(e)(1). The error is hereby corrected.

(c) On page 7000, the regulatory reference of § 274.10(b)(3)(iii) at the end of Item 25 is incorrect. The correct reference is § 274.10(b)(7). The error is hereby corrected.

(d) On page 7001, the regulatory reference of § 276.2(b)(3) at the end of paragraphs two, three, and eight, of Item 29 is incorrect. The correct reference is § 276.2(b)(4). The errors are hereby corrected.

(e) On page 7003, the regulatory references of § 276.3(b)(3) and § 276.3(b)(3)(ii) in lines two and fourteen of § 272.2(d)(1)(viii) are incorrect. The correct references are § 276.2(b)(4) and § 276.2(b)(4)(ii), respectively. The errors are hereby corrected.

(f) On page 7005, the phrase, "... participating longer than two consecutive months.", should be added to the end of the second sentence in § 274.2(c)(1). This is to allow for those instances in which a period of more than 40 days may occur between the initial (combined) issuance and the first regular issuance for a household applying after the 15th of the month and processed under expedited service, provided that all verification is complete. If the State agency uses staggered issuance, the period between the combined issuance and the first regular issuance may be longer than 40 days. The omission is hereby corrected.

The 40-day provision, from section 1518 of the Food Security Act of 1985, is meant to be applied when a State agency changes the dates of mail issuance for a household anytime after the initial benefits (month of application) have been issued, i.e., an ongoing household. The aggregate allotment provision from section 203 of the Hunger Prevention Act of 1988 applies to newly-certified households processed under expedited service.

(g) On page 7006, in the third column, the term "original" in § 274.3(d)(4) is superfluous and should be removed from the text. All issuances are considered to be "original" unless actions or circumstances cause them to be designated by another title. By having the term "original" remain in the regulations, there is concern that the term will be interpreted to mean a new category of benefits, which is not the Department's intent. The text is hereby corrected.

(h) On page 7006, in § 274.3(e)(1), the phrase "... at least 30 days or ..." is incorrect. The correct phrase is "... at least 20 days or ...". This was a typographical error, and was stated correctly in Item 11 on page 6994 of the preamble to the February 15, 1989 rule. The error is hereby corrected.

(i) On page 7007, in § 274.4(b)(2)(ii), the word "final" in the first line is an erroneous addition to the text and should be removed from the text since there is no deadline for the receipt of a final report. This agrees with the preamble to the February 15, 1989 rule, on page 6995, in which our conclusion is that State agencies should be given the opportunity to correct errors found in their records. The text is hereby corrected.

(j) On page 7009, in § 274.6(b)(1), the phrase "... after the 25th of the month ..." is incorrect. The correct phrase is "... after the 20th of the month ...". This was a typographical error, and was stated correctly in Item 15 on page 6997 of the preamble. The error is hereby corrected.

(k) On page 7012, in § 274.7(f)(1), the first sentence after the paragraph title is corrected by adding a phrase which clarifies that unusable coupons distributed by the manufacturer to the State agency are to be destroyed within 30 days after the end of the month in which the unusable coupons are discovered, not received, by the State agency. Since State agencies may order coupons for the entire State, we believe that a State agency's accountability and coupon security should not be jeopardized by requiring an entire shipment to be opened at the time of receipt, since the coupons may not be prepared for issuance for as long as two months. The text is hereby corrected.

(l) On page 7014, § 274.10(a)(3), concerning the use of expiration dates on temporary IDs, could be misinterpreted as a result of the placement of the word "temporary" within the text. The paragraph is being corrected to more clearly state that expiration dates have to appear on all temporary ID cards, which includes ID cards for those households eligible to receive delivered meals for a specified period. The clarification is hereby made.

(m) On page 7014, in § 274.10(b)(4)(i), the spelling for the sixth word in line 9 is incorrect. The correct spelling is "member". The error is hereby corrected.

(n) On page 7017, in § 276.(b)(4)(ii), the regulatory references of (b)(3)(i) and (b)(3)(iii) in lines five and eight are incorrect. The correct references are (b)(4)(i) and (b)(4)(iii), respectively. The errors are hereby corrected.

3. On June 6, 1989, the Department published a final rule (54 FR 24149) which implemented, among other provisions, nondiscretionary provisions of Public Law 100-435, the Hunger Prevention Act of 1988. On page 24155 (third column) of that publication, amendatory statement number 10b. in § 273.21 is incorrect. The statement, as it appears, provides that 7 CFR 273.21(b)(1) is revised in its entirety. The statement should have reflected that 7 CFR 273.21(b)(3) is being redesignated as 7 CFR 293.21(c)(7) and only the remaining text after this redesignation is intended to be revised. Prior to publication of the June 6 final rule, the provision of § 273.21(b)(3) required that State agencies assist in completing and filing monthly report forms for households whose adult members are handicapped, non-English speaking, or otherwise lacking in reading and writing skills such that they were unable to complete and file the reports. It was never the Department's intent to change this requirement. The Department intended to retain the provision, but relocate it to 7 CFR 273.21(c)(7). This error is hereby corrected by revising amendatory statement number 10b. under § 273.21 to reflect the Department's intent.

Additionally, this action corrects an error in regulatory referencing that appeared on page 24155 of the June 6, 1989 publication. In paragraph 'd)(4) in the first column, the regulatory reference to § 273.20(d)(1)(i) is incorrect. Such a paragraph does not exist. The correct reference is § 273.10(d)(1)(i). The error is hereby corrected.

4. On June 7, 1989, the Department published an interim rule (54 FR 24518) which implemented administrative improvement and simplification provisions of Public Law 100-435, the Hunger Prevention Act of 1988. On page 24530 (third column) of that publication, the first sentence in paragraph (b)(2) of § 274.2 is incorrect, in that it refers to households applying "during the last 15 days of the month ...". The correct wording is "after the 15th day of the month ...". The preamble to the June 7, 1989 rule refers to "after the fifteenth of the month ..."; this is consistent with section 203(a)(3) of the Hunger Prevention Act which uses the term "after the 15th day of the month ...". The comments received as a result of this error in the June 7, 1989 rule addresses the inconsistency of the wording in the public law, the preamble to the rule, and the regulatory language. This error is hereby corrected by revising the first sentence of the regulatory language under § 274.2(b)(2) to be consistent with the wording of the law.

5. *Implementation.* The provisions of this action do not change or alter procedures or policies under which State agencies are currently operating, and therefore do not require additional implementation efforts by the State agencies.

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs-social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs-social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

7 CFR Part 274

Administrative practice and procedure, Food stamps, Grant programs-social programs, Reporting and recordkeeping requirements.

7 CFR Part 276

Administrative practice and procedure, Food stamps, Fraud, Grant programs-social programs, Penalties.

Accordingly, 7 CFR parts 272, 273, 274 and 276 are amended as follows:

1. The authority citation for parts 272, 273, 274 and 276 continues to read as follows:

Authority: 7 U.S.C. 2011-2029.

2. In rule document 89-13294, beginning on page 24149 in the issue of Tuesday, June 6, 1989, make the following corrections:

§ 273.9 [Corrected]

A. On page 24155, column one, in § 273.9(d)(4), the reference to "§ 273.20(d)(1)(i)" is corrected to read "§ 273.10(d)(1)(i)".

§ 273.21 [Corrected]

B. On page 24155, column three, for § 273.21, amendatory statement number 10b. is corrected to read: "b. The introductory text of paragraph (b) and paragraphs (b)(1) and (b)(2) are revised, paragraph (b)(3) is redesignated as paragraph (c)(7), and a new paragraph (b)(3) is added.".

3. In rule document 89-13295, beginning on page 24518 in the issue of Wednesday, June 7, 1989, make the following correction:

§ 274.2 [Corrected]

On page 24530, column three, in § 274.2, the first four lines in paragraph (b)(2) are corrected to read: "Households which apply for initial months benefits (as described in § 273.10(a)) after the 15th day of the month and which have completed the ...".

4. In rule document 89-3245 beginning on page 6990 in the issue of Wednesday, February 15, 1989, make the following corrections:

A. On page 6991, column one, Table of Redesignations, the regulatory reference to "274.10(a)(4)(iii)" in the "New Section" column is corrected to read "274.10(a)(4)(ii)".

B. On page 6994, column one, the regulatory reference to "§ 274.3(d)(7)" at the end of Item 11 is corrected to read "§ 274.3(e)(1)".

C. On page 7000, column one, the regulatory reference to "§ 274.10(b)(3)(iii)" at the end of Item 25 is corrected to read "§ 274.10(b)(7)".

D. On page 7001, columns one and two, the three regulatory references to "§ 276.2(b)(3)" are corrected to read "§ 276.2(b)(4)".

§ 272.2 [Corrected]

E. On page 7003, column two, in § 272.2(d)(1)(viii), the regulatory references to "§ 276.2(b)(3)" and "§ 276.2(b)(3)(ii)" in lines two and fourteen are corrected to read "§ 276.2(b)(4)" and "§ 276.2(b)(4)(ii)", respectively.

§ 274.2 [Corrected]

F. On page 7005, column two, in § 274.2(c)(1), the second sentence is corrected to read: "In doing so, however, State agencies shall not allow more than 40 days to elapse between any two mail issuances provided to a household participating longer than two consecutive, complete months."

§ 274.3 [Corrected]

G. On page 7006, column three, in § 274.3(d)(4), line three is corrected by removing the word "original".

H. On page 7006, column three, in § 274.3(e)(1), the number "30" in line twenty-one is corrected to read "20".

§ 274.4 [Corrected]

I. On page 7007, column three, in § 274.4(b)(2)(ii), line one is corrected by removing the word "final".

§ 274.6 [Corrected]

J. On page 7009, column two, in § 274.6(b)(1), "25th" in line seven is corrected to read "20th".

§ 274.7 [Corrected]

K. On page 7012, column two, in § 274.7(f)(1), the first sentence of the paragraph is corrected to read: "(1) The State agency shall require coupon issuers, bulk storage points, and claims collection points to dispose of unusable coupons received from the manufacturer or received as payment for claims within 30 days after the close of the month in which unusable coupons shipped from the manufacturer are discovered, or are received from recipients as payment for claims."

§ 274.10 [Corrected]

L. On page 7014, column one, in § 274.10 paragraph (a)(3) is corrected to read: "(3) The State agency shall place an expiration date on all temporary ID cards, and on the regular ID cards issued to households certified for delivered meals for a specific period."

M. On page 7014, column three, in § 274.10(b)(4)(i), the word "member" in line nine is corrected to read "member".

§ 276.2 [Corrected]

N. On page 7017, column one, in § 276.2(b)(4)(ii), the regulatory references to "(b)(3)(i)" and "(b)(3)(iii)" in lines five and eight of the paragraph are corrected to read "(b)(4)(i)" and "(b)(4)(iii)", respectively.

5. In § 274.10, the heading of the section is revised and new paragraphs (d) through (j) are added. These provisions were unintentionally removed from the Code of Federal Regulations by a previous rulemaking (54 FR 6990, dated February 15, 1989) and are hereby reinstated. The revision and additions read as follows:

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PART 274—ISSUANCE AND USE OF COUPONS

§ 274.10 Use of identification cards and redemption of coupons by eligible households.

* * * * *

(d) *Eligible food.* A household member should sign each coupon book issued to the household. The coupons may be used only by the household, or other persons the household selects, to purchase eligible food for the household, which includes, for certain households residing in certain designated areas of Alaska, the purchase of hunting and fishing equipment with coupons. Uncanceled and unendorsed coupons of $1 denomination, returned as change by authorized retail food stores, may be presented as payment for eligible food. All other detached coupons may be accepted only if accompanied by the coupon book which bears the same serial number as the detached coupons. It is the right of the household or the authorized representative to detach the coupons from the book.

(e) *Meals-on-wheels.* Eligible household members 60 years of age or over or members who are housebound, physically handicapped, or otherwise disabled to the extent that they are unable to adequately prepare all their meals, and their spouses, may use coupons to purchase meals prepared for and delivered to them by a nonprofit meal delivery service authorized by FNS.

(f) *Residents of certain institutions.* (1) Members of eligible households who are narcotics addicts or alcoholics and who regularly participate in a drug or alcoholic treatment and rehabilitation program may use coupons to purchase food prepared for them during the course of such program by a private nonprofit organization or institution or a publicly operated community mental health center which is authorized by FNS to redeem the coupons through wholesalers in accordance with § 278.1, or which redeems coupons at retail food stores as the authorized representative of participating households in accordance with § 278.2(g).

(2) Eligible residents of a group living arrangement may use coupons issued to them to purchase meals prepared especially for them at a group living arrangement which is authorized by FNS to redeem coupons at wholesalers in accordance with § 278.1, or which redeems coupons at retail food stores as the authorized representative of participating households in accordance with § 278.2(g).

(3) Residents of shelters for battered women and children as defined in s271.2 may use their coupons to purchase meals prepared especially for them at a shelter which is authorized by FNS in accordance with § 278.1 to redeem at wholesalers, or which redeems at retailers as the authorized representative of participating household in accordance with § 278.2(g).

(g) *Homeless food stamp households.* Homeless food stamp households may use their food stamp benefits to purchase prepared meals from authorized homeless meal providers.

(h) *Use of ID cards.* Upon request, the household or the authorized representative shall present the household's ID card to the retail food store or meal service when exchanging food coupons for eligible food.

(i) *Prior payment prohibition.* Coupons shall not be used to pay for any eligible food purchased prior to the time at which the coupons are presented to authorized retail food stores or meal services. Neither shall coupons be used to pay for any eligible food in advance of the receipt of food, except when prior payment is for food purchased from a nonprofit cooperative food purchasing venture.

(j) *Cash change.* When change in an amount less than $1 is required in a coupon transaction, the household shall receive the change in cash not to exceed 99 cents. However, in the case of homeless food stamp households, neither cash change nor credit slips shall be returned for coupons used for the purchase of prepared meals from authorized homeless meal providers. Such meal providers may use uncancelled and unmarked $1 coupons which were previously accepted for meals served to food stamp recipients when change is required for $5 and $10 coupons.

Dated: December 7, 1989.

G. Scott Dunn,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 89-29219 Filed 12-14-89; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Regulation 696]

Navel Oranges Grown in Arizona and Designated Part of California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of California-Arizona navel oranges that may be shipped to domestic markets during the period from December 15 through December 21, 1989. Consistent with program objectives, such action is needed to balance the supplies of fresh navel oranges with the demand for such oranges during the period specified. This action was recommended by the Navel Orange Administrative Committee (Committee), which is responsible for local administration of the navel orange marketing order.

DATES: Regulation 696 [7 CFR Part 907] is effective for the period from December 15 through December 21, 1989.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2523-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 382-1754.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order 907 [7 CFR part 907], as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the use of volume regulations on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 123 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order and approximately 4,065 navel orange producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual receipts of less than

$500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona navel oranges may be classified as small entities.

The California-Arizona navel orange industry is characterized by a large number of growers located over a wide area. The production area is divided into four districts which span Arizona and part of California. The largest proportion of navel orange production is located in District 1, Central California, which represented 85 percent of the total production in 1988-89. District 2 is located in the southern coastal area of California and represented 13 percent of 1988-89 production; District 3 is the desert area of California and Arizona, and it represented approximately 1 percent; and District 4, which represented approximately 1 percent, is northern California. The Committee's estimate of 1989-90 production is 79,800 cars (one car equals 1,000 cartons at 37.5 pounds net weight each), as compared with 70,633 cars during the 1988-89 season.

The three basic outlets for California-Arizona navel oranges are the domestic fresh, export, and processing markets. The domestic (regulated) fresh market is a preferred market for California-Arizona navel oranges. The Committee estimates that about 62 percent of the 1989-90 crop of 79,800 cars will be utilized in fresh domestic channels (49,500 cars), with the remainder being exported fresh (9 percent) or processed (29 percent). This compares with the 1988-89 total of 45,581 cars shipped to fresh domestic markets, about 64 percent of the crop.

Volume regulations issued under the authority of the Act and Marketing Order No. 907 are intended to provide benefits to growers. Growers benefit from increased returns and improved market conditions. Reduced fluctuations in supplies and prices result from regulating shipping levels and contribute to a more stable market. The intent of regulation is to achieve a more even distribution of oranges in the market throughout the marketing season.

Based on the Committee's marketing policy, the crop and market information provided by the Committee, and other information available to the Department, the costs of implementing the regulations are expected to be more than offset by the potential benefits of regulation.

Reporting and recordkeeping requirements under the navel orange marketing order are required by the Committee from handlers of navel oranges. However, handlers in turn may require individual growers to utilize certain reporting and recordkeeping practices to enable handlers to carry out their functions. Costs incurred by handlers in connection with recordkeeping and reporting requirements may be passed on to growers.

Major reasons for the use of volume regulations under this marketing order are to foster market stability and enhance grower revenue. Prices for navel oranges tend to be relatively inelastic at the grower level. Thus, even a small variation in shipments can have a great impact on prices and grower revenue. Under these circumstances, strong arguments can be advanced as to the benefits to growers, particularly smaller growers.

At the beginning of each marketing year, the Committee submits a marketing policy to the U.S. Department of Agriculture (Department) which discusses, among other things, the potential use of volume and size regulations for the ensuing season. The Committee, in its 1989-90 season marketing policy, considered the use of volume regulation for the season. This marketing policy is available from the Committee or Ms. Pello. The Department reviewed that policy with respect to administrative requirements and regulatory alternatives in order to determine if the use of volume regulations would be appropriate. A "Notice of Marketing Policy" (notice), which summarized the Committee's marketing policy, was prepared by the Department and published in the October 19, 1989, issue of the **Federal Register** [54 FR 42966]. The purpose of the notice was to allow public comment on the Committee's marketing policy and the impact of any regulations on small business activities.

The notice provided a 30-day period for the receipt of comments from interested persons. That comment period ended on November 20, 1989. Three comments were received. The Department is continuing its analysis of the comments received and the analysis will be made available to interested persons. That analysis will assist the Department in evaluating recommendations for the issuance of weekly volume regulations.

The Committee met publicly on December 12, 1989, in Visalia, California, to consider the current and prospective conditions of supply and demand and recommended, by a vote of nine to one with one abstention, that 2,000,000 cartons is the quantity of navel oranges deemed advisable to be shipped to fresh domestic markets during the specified week. The marketing information and data provided to the Committee and used in its deliberations was compiled by the Committee's staff or presented by Committee members at the meeting. This information included, but was not limited to, price data for the previous week from Department market news reports and other sources, preceding week's shipments and shipments to date, crop conditions, weather and transportation conditions, and a reevaluation of the prior week's recommendation in view of the above.

The Department reviewed the Committee's recommendation in light of the Committee's projections set forth in its 1989-90 marketing policy. This recommended amount is the same as that estimated in the tentative shipping schedule adopted by the Committee on November 14, 1989. Of the 2,000,000 cartons, 1,960,000 are allotted for District 1, and 40,000 are allotted for District 3. Districts 2 and 4 are not regulated as they do not have a sufficient quantity of fruit available for current shipment.

During the week ending on December 7, 1989, shipments of navel oranges to fresh domestic markets, including Canada, totaled 1,957,000 cartons compared with 1,979,000 cartons shipped during the week ending on December 8, 1988. Export shipments totaled 222,000 cartons compared with 156,000 cartons shipped during the week ending on December 8, 1988. Processing and other uses accounted for 437,000 cartons compared with 374,000 cartons shipped during the week ending on December 8, 1988.

Fresh domestic shipments to date this season total 8,689,000 cartons compared with 6,008,000 cartons shipped by this time last season. Export shipments total 1,181,000 cartons compared with 509,000 cartons shipped by this time last season. Processing and other use shipments total 2,136,000 cartons compared with 1,444,000 cartons shipped by this time last season.

For the week ending on December 7, 1989, regulated shipments of navel oranges to the fresh domestic market were 1,898,000 cartons on an adjusted allotment of 1,726,000 cartons which resulted in net overshipments of 172,000 cartons. Regulated shipments for the current week (December 8 through December 14) are estimated at 2,220,000 cartons on an adjusted allotment of 2,003,000 cartons. Thus, overshipments of 217,000 cartons could be carried over into the week ending on December 21, 1989.

The average f.o.b. shipping point price for the week ending on December 7, 1989, was $7.45 per carton based on a reported sales volume of 1,580,000

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cartons compared with last week's average of $7.38 per carton on a reported sales volume of 1,342,000 cartons. The season average f.o.b. shipping point price to date is $8.23 per carton. The average f.o.b. shipping point price for the week ending on December 8, 1989, was $8.35 per carton; the season average f.o.b. shipping point price at this time last season was $9.34 per carton.

The Committee reports that overall demand for navel oranges continues to be very good. The quality of the fruit is also improving. The market is expected to remain good over the next few weeks as the Christmas market continues to develop. There is uncertainty, however, over the effects the weather may have on the East Coast market.

According to the National Agricultural Statistics Service, the 1988–89 season average fresh equivalent on-tree price for California-Arizona navel oranges was $3.86 per carton, 65 percent of the season average parity equivalent price of $5.98 per carton.

Based upon fresh utilization levels indicated by the Committee and an econometric model developed by the Department, the point estimate of the 1989–90 season average fresh on-tree price would be $4.33 per carton. This is equivalent to 66 percent of the projected season average fresh on-tree parity equivalent price of $6.54 per carton. It is currently estimated that there is less than a one percent probability that the 1989–90 season average fresh on-tree price will exceed the projected season average fresh on-tree parity equivalent price.

Limiting the quantity of navel oranges that may be shipped during the period from December 15 through December 21, 1989, would be consistent with the provisions of the marketing order by tending to establish and maintain, in the interest of producers and consumers, an orderly flow of navel oranges to market.

Based on considerations of supply and market conditions, and the evaluation of alternatives to the implementation of this volume regulation, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities and that this action will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is further found and determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register. This is because there is insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act.

In addition, market information needed for the formulation of the basis for this action was not available until December 12, 1989, and this action needs to be effective for the regulatory week which begins on December 15, 1989. Further, interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and handlers were apprised of its provisions and effective time. It is necessary, therefore, in order to effectuate the declared purposes of the Act, to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

Arizona, California, Marketing agreements and orders, Navel, Oranges.

For the reasons set forth in the preamble, 7 CFR part 907 is amended as follows:

PART 907—[AMENDED]

1. The authority citation for 7 CFR part 907 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 907.996 is added to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 907.996 Navel Orange Regulation 696.

The quantity of navel oranges grown in California and Arizona which may be handled during the period from December 15 through December 21, 1989, is established as follows:

(a) District 1: 1,960,00 cartons;
(b) District 2: unlimited cartons;
(c) District 3: 40,000 cartons;
(d) District 4: unlimited cartons.

Dated: December 13, 1989.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 89–29366 Filed 12–14–89; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 910

[Lemon Reg. 696]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 696 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 300,000 cartons during the period from December 17 through December 23, 1989. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 696 (7 CFR part 910) is effective for the period from December 17 through December 23, 1989.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 475–3861.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action to essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 85 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2,500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR part 910), regulating the handling of lemons grown in California and Arizona.

The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601–674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee (Committee) and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the California-Arizona lemon marketing policy for 1989–90. The Committee met publicly on December 12, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that overall demand for lemons is good.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Arizona, California, Lemons, Marketing agreements and orders.

For the reasons set forth in the preamble, 7 CFR part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.996 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.996 Lemon Regulation 696.

The quantity of lemons grown in California and Arizona which may be handled during the period from December 17, 1989, through December 23, 1989, is established at 300,000 cartons.

Dated: December 13, 1989.

Charles T. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 89–29362 Filed 12–14–89; 8:45 am]

BILLING CODE 3410–02–M

Food Safety and Inspection Service

9 CFR Part 327

[Docket No. 89–021F]

RIN 0583–AB16

Imported Product; Withdrawal of Panama From the List of Countries Eligible for the Importation of Meat Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: On August 29, 1989, the Food Safety and Inspection Service (FSIS) published a proposed rule to withdraw the country of Panama from the list of countries eligible to have their products of cattle, sheep, swine, and goats imported into the United States under the Federal Meat Inspection Act (FMIA). The FMIA requires that, in order for a country to be eligible to export meat products to the United States, the meat inspection system of the country must assure compliance with requirements that are "at least equal to" the requirements of the FMIA and regulations as applied to official establishments in the United States and their products. FSIS has determined that Panama has not certified that any plant met United States standards in 1988, that it has not conducted residue testing and therefore did not receive a residue certification in 1988, and that reliance cannot be placed upon the certifications required of Panamanian authorities under the FMIA. Because of the lack of current information and the failure of Panama to demonstrate its "equal to" status, the Administrator is withdrawing the country of Panama from the list of countries eligible for importation of their meat products into the United States.

EFFECTIVE DATE: January 16, 1990.

FOR FURTHER INFORMATION CONTACT: Dr. Lawrence Skinner, Director, Foreign Programs Division, International Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–6933.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule is issued in conformance with Executive Order 12291, and has been determined not to be a "major rule." It will not result in an annual effect of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. There are currently no domestic importers of Panamanian meat products.

Effect on Small Entities

The Administrator, Food Safety and Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601) because there are currently no domestic importers of Panamanian meat products.

Background

On August 29, 1989, FSIS published in the **Federal Register** (54 FR 35665) a proposed rule to withdraw the country of Panama from the list of countries eligible to have their products of cattle, sheep, swine, and goats imported into the United States under the FMIA (21 U.S.C. 601 *et seq.*). Under the FMIA, the Secretary of Agriculture is responsible for administering the programs which are designed to ensure that meat and meat food products distributed to consumers are wholesome, not adulterated, and properly marked, labeled, and packaged. The Administrator of FSIS has been delegated the authority to issue regulations and implement appropriate procedures to ensure compliance with the requirements of the FMIA. The regulations addressing imported meat are contained in 9 CFR Part 327. In these regulations, the Administrator has established procedures by which foreign countries desiring to export meat or meat products to the United States may become eligible to do so (9 CFR 327.2(a)(2)(iii)).

The Agriculture and Food Act of 1981 (Farm Bill) amended the FMIA to require that imported meat products meet the same inspection, sanitation, quality, species verification, and residue standards applied to domestically prepared product. The Farm Bill directed the Secretary to enforce its provisions through random inspections of imported

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product at port of entry for residues and species verification, and requires exporting countries to conduct random sampling and testing of internal organs and fat of carcasses at the point of slaughter in accordance with methods approved by the Secretary.

The Food Security Act of 1985 (Farm Bill, Pub. L. 99–198) amended the FMIA by requiring that each foreign country from which meat is offered for importation into the United States obtain a certification issued by the Secretary stating that the country maintains a program using reliable analytical methods to ensure compliance with the United States standards for residues in such meat, and further provides that no meat articles shall be permitted entry into the United States from a country for which the Secretary has not issued such a certification.

Regulations implementing the 1981 Farm Bill requirements were published in the **Federal Register** on February 10, 1988 (48 FR 6091). All countries eligible to export product to the United States were notified of the 1985 Farm Bill changes by letter dated July 13, 1987.

To continue to export meat to the United States, a country must demonstrate that it maintains, among other things, a residue program that meets United States standards. FSIS collects information to verify that the United States standards are being met. This information includes: Annual residue testing results, the findings of FSIS technical experts from on-site reviews, and results of port-of-entry reinspections. In March 1987, FSIS notified Panama that it had not demonstrated continued proficiency in residue testing and further specified the information that must be provided before initiating any plans to certify product for export to the United States. The response from Panama indicated that no residue testing was done in 1987 and 1988.

Panama did not certify that any plants met United States standards in 1988, and therefore no on-site reviews of the inspection system in operation were made. On-site reviews of plants are normally confined to those certified to export to the United States. A portion of these reviews is devoted to obtaining information concerning random selection of residue samples at slaughter. In addition, residue testing laboratories are reviewed to determine if analytical methods meet United States standards. Since no plants were certified and no residue testing was being conducted, FSIS was not able to obtain current information. Therefore Panama did not receive a residue certification for 1988. This means that FSIS will not accept any plant certifications from Panama until it demonstrates that its residue program meets United States standards. Without certified plants, shipments of meat products to the United States cannot legally occur.

Although Panama had no plants certified, three consignments of meat product arrived at the port of New Orleans, Louisiana, in January, April and May, 1989, accompanied by a Panamanian meat inspection certificate stating that the meat was produced in certified plants and met United States standards. None of these consignments was accepted for entry. Following the January consignment, FSIS notified Panama that neither plant nor product certifications would be accepted until United States requirements were met. However, Panamanian officials have continued to certify product.

Section 327.4(a) (9 CFR 327.4(a)) requires that any fresh meat or fresh meat byproducts consigned to the United States from a foreign country be accompanied by a foreign meat inspection certificate (health certificate) certifying that the product therein described was derived from livestock which received ante-mortem and post-mortem veterinary inspections at the time of slaughter in certified plants.

Section 327.2(a)(4) (9 CFR 327.2(a)(4)) states that:

> • • • The listing of any foreign country under this section may be withdrawn whenever it shall be determined by the Administrator that the system of meat inspection maintained by such foreign country does not assure compliance with requirements at least equal to all • • • requirements of the Act and the regulations • • • as applied to official establishments in the United States; or that reliance cannot be placed upon certificates required • • • from authorities of such foreign country; or • • • for lack of current information concerning the system of meat inspection being maintained by such foreign country • • •.

Therefore, the Administrator of FSIS has determined that, in the absence of certified plants, residue testing, and current information about the operation of Panama's meat inspection system, Panama's "equal to" status has not been demonstrated; and, moreover, that reliance cannot be placed upon certificates required under the regulations (9 CFR part 327) from the authorities of such foreign country.

Therefore, pursuant to § 327.2 of the Federal meat inspection regulations (9 CFR 327.2), FSIS is withdrawing Panama from the list of countries from which cattle, sheep, swine, and goat products may be imported into the United States.

Comments on The Proposed Rule

FSIS did not receive any comments in response to the proposed rule.

Final Rule

List of Subjects in 9 CFR Part 327

Imported Products, Meat Inspection.

Accordingly, 9 CFR part 327 of the Federal Meat Inspection Regulations is amended as set forth below.

PART 327—IMPORTED PRODUCTS

1. The authority citation for part 327 continues to read as follows:

> **Authority:** 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 436; 21 U.S.C. 71 *et seq.*

§ 327.2 [Amended]

2. Paragraph (b) of § 327.2 is amended by removing the following country from the list of countries eligible for importation of products of cattle, sheep, swine, and goats into the United States: Panama.

Done at Washington, DC on: Nov. 24, 1989.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 89–29275 Filed 12–14–89; 8:45 am]

BILLING CODE 3410–DM–M

FEDERAL RESERVE SYSTEM

12 CFR Part 203

[Regulation C; Docket No. R–0674]

RIN 7100–AB04

Home Mortgage Disclosure

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is publishing a revised Regulation C (Home Mortgage Disclosure). The regulation implements amendments to the Home Mortgage Disclosure Act (HMDA), contained in the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA), which are effective on January 1, 1990. The FIRREA amendments expand the coverage of HMDA to include mortgage lenders that are not affiliated with depository institutions or holding companies. They require covered institutions to report data regarding applications for mortgage and home improvement loans, in addition to data regarding loan originations and purchases. Most institutions will now also report the race, sex, and income of loan applicants.

The Board has adopted a loan/application register form for HMDA reporting on which institutions will record the required information for loan applications, loans actually made, and loans purchased.

The first set of reports in the new register format will be due in early 1991. The reports covering loan data for calendar year 1989, which are due on March 31, 1990, remain subject to the existing provisions of the regulation; institutions must use the current Form HMDA–1 or HMDA–2, as appropriate, for those reports.

EFFECTIVE DATE: January 1, 1990.

FOR FURTHER INFORMATION CONTACT: For information regarding the revisions to Regulation C and the reporting requirements, contact Thomas J. Noto or W. Kurt Schumacher, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at 202–452–2412 or 202–452–3667. For the hearing impaired *only*, contact Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf, at 202–452–3544. For information regarding the Board's approval of the reporting form under the Paperwork Reduction Act *only*, contact Frederick J. Schroeder, Federal Reserve Board Clearing Officer, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551, at 202–452–3829, or Gary Waxman, OMB Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503, at 202–395–7340.

SUPPLEMENTARY INFORMATION:

(1) Background

The Board's Regulation C (12 CFR part 203) implements the Home Mortgage Disclosure Act of 1975 (HMDA) (12 U.S.C. 2801 *et seq.*). The regulation currently requires depository institutions, mortgage banking subsidiaries of holding companies, and savings and loan service corporations that have over $10 million in assets and have offices in metropolitan statistical areas or primary metropolitan statistical areas, to disclose annually their originations and purchases of mortgage and home improvement loans. Data must be itemized by census tract (or by county, in some instances) and also by type of loan. A disclosure statement covering the data on a calendar-year basis currently must be made available to the public and sent to the institution's federal supervisory agency by March 31 following the calendar year for which the data are compiled. The Federal Financial Institutions Examination Council (FFIEC) produces tables showing aggregate lending patterns in each MSA and provides facsimiles of the individual institutions' reports to central data depositories.

The Financial Institutions Reform, Recovery and Enforcement Act (FIRREA), which was signed into law on August 9, 1989, made major revisions to HMDA. (FIRREA, Pub. L. No. 101–73, section 1211, 103 Stat. 183, 524–526 (1989).) First, the coverage of HMDA was expanded to include other mortgage lenders besides those affiliated with depository institutions or holding companies. Second, the FIRREA amendments require reporting of data regarding loan applications; currently, institutions report only data regarding loans originated or purchased. Third, the FIRREA amendments require most covered lenders to report the race, sex, and income of mortgage applicants and borrowers; depository institutions with assets under $30 million are exempt from this particular requirement. Fourth, the FIRREA amendments require that lenders identify the class of purchaser for mortgage loans that they sell. Finally, the amendments permit lenders to explain the basis for lending decisions to their supervisory agency. Proposed revisions to Regulation C to implement the FIRREA amendments were published for public comment on October 6, 1989 (54 FR 41255), and the Board is now adopting a final rule.

The new requirements apply beginning with calendar year 1990. They do not affect the reports covering loans made or purchased in calendar year 1989 which are due by March 31, 1990. The current provisions of Regulation C govern these reports; institutions should use Form HMDA–1 or HMDA–2 as appropriate. The FFIEC's *Guide to HMDA Reporting: Getting It Right!* (published in January 1989) provides guidance for preparing reports covering the 1989 data.

Register format. The revised Regulation C provides for a "register" form of reporting. Lenders will record data for each application (whether granted, denied, or withdrawn) that they receive, and will submit the registers to their supervisory agency at the close of the calendar year. Institutions will have to maintain detailed loan data, which is unavoidable given the FIRREA requirements. But since institutions will not have to cross-tabulate the data as is now the case, the register format should minimize the burden of the new reporting requirements.

The Board is publishing the entire text of the regulation for the public's convenience. However, the major changes (aside from the expanded coverage of lenders) relate to the data to be collected and the form in which the data will be reported, as prescribed in § 203.4 and in Appendix A. The revisions to the reporting form have been reviewed and approved under authority delegated to the Board by the Office of Management and Budget.

The format for data submission was developed by the Board in consultation with the other agencies responsible for enforcing HMDA—the Federal Deposit Insurance Corporation (FDIC), the Department of Housing and Urban Development (HUD), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), and the Office of Thrift Supervision (OTS). Several of these agencies currently require the lenders subject to their jurisdiction to keep an application register of some sort. Steps are under way to eliminate duplicate requirements. Institutions will be advised of any changes by their respective supervisory agencies.

(2) Section-by-Section Summary

The changes to each section of the regulation are discussed below.

Section 203.1—Authority, Purpose, and Scope

Section 203.1(b)(1)(iii) reflects the purpose of the new reporting requirements—stated in the FIRREA amendments—of identifying possible discriminatory lending patterns. Sections 203.1 (c) and (d) address the coverage and scope of the regulation and the FFIEC's role in producing disclosure statements and other reports from data submitted by financial institutions.

Section 203.2—Definitions

Section 203.3 defines terms used in the regulation. Revisions are noted below.

Act. The definition of "act" in § 203.2(a) is unchanged.

Application. Under section 1211(c) of the FIRREA amendments, institutions are required to report data for "completed" loan applications, in addition to reporting data for loans originated or purchased. A definition of "application" has been added as § 203.2(b); succeeding provisions have been renumbered accordingly.

The Board originally proposed to define "application" in a way slightly different from the definition contained in Regulation B (Equal Credit Opportunity) (12 CFR 202.2(f)). A number of commenters suggested that the Board use the Regulation B definition since it is

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familiar to lending institutions. Based on the comments and further analysis, the Board has defined "application" in keeping with the Regulation B definition. Thus, for purposes of HMDA coverage, an application results when an institution receives an oral or written request for a mortgage or home improvement loan that is made in accordance with procedures established by the financial institution.

The FIRREA amendments refer to "completed applications," and the legislative history suggests that an application would be deemed complete for purposes of reporting under HMDA even if the institution had not yet received reports or approvals by secondary market entities, government entities, or private mortgage insurers. Under Regulation B, such an application would not be considered complete for purposes of the timing rules and required notices. Given the manner in which the Board has implemented the reporting requirements in Regulation C, however, the concept of a "completed" application is not relevant. The revised Regulation C requires that institutions report loan originations in the year of origination and loan purchases in the year of purchase; this is the rule currently applicable. In the case of loans not granted, institutions will report the application for the year in which disposition takes place (approved, denied, withdrawn).

Section 202.9(c) of Regulation B provides that if additional information from the applicant is needed for a credit decision, the creditor shall send a written notice of incompleteness. That notice must specify the information to be provided and the date by which it must be received. No further action is required on the part of the creditor if the applicant fails to respond.

The Board solicited comment on whether, in cases involving the applicant's failure to respond, an application should be reported as withdrawn or whether a new category ("file closed for incompleteness") should be added. The commenters were divided in their views. Some indicated that an additional category might cause confusion. Others, however, suggested that the additional code would provide a more accurate representation of the disposition of the application. The Board has decided to provide a separate code in the interest of more accurate data.

Branch office. The definition of branch office has several implications. First, institutions that do not have a home or branch office in an MSA are totally exempt from HMDA. Second, institutions must identify the census tract for loans on property located in any MSA in which the institution has a home or branch office. Third, loan data must be made available to the public at one branch office (or at the home office) in each MSA where the institution has a home or branch office. Finally, the institution must post notices in branch offices located in MSAs to inform the public of the availability of the HMDA data.

Section 203.2(c)(1) retains, for depository institutions, the definition currently set forth in § 203.2(b)(1)(i) without substantive change. A branch office for banks, savings and loan associations, and credit unions is an office approved as a branch by a federal or state supervisory agency.

The definition of branch office is different for other mortgage lenders. Just last year, the Congress expanded HMDA coverage to institutions other than depository institutions, namely, to mortgage banking subsidiaries of bank and thrift holding companies and to savings and loan service corporations. The FIRREA amendments of 1989 have further expanded coverage to "other lending institutions." For all of these entities, designatged "mortgage lending institutions" in § 203.2(c)(2) of the revised regulation, a branch office refers to any physical location at which the institution takes applications from the public for home purchase or home improvement loans. Previously this definition appeared in § 203.2(b)(1)(ii).

For mortgage lending institutions, moreover, the definition of branch office extends beyond a physical presence. Under section 1211(f) of the FIRREA amendments, "other lending institutions" are deemed to have a branch office in any MSA where they receive applications for, originate, or purchase five or more home purchase or home improvement loans. Section 203.2(c)(2) incorporates this rule. This five-or-more-loan rule applies in determining, for purposes of coverage, whether an institution has an office within an MSA, and also whether an institution must itemize data by census tract within a given MSA.

Dwelling. In the current regulation, parenthetical material in the definitions of home purchase and home improvement loans indicates that the term "dwelling" includes condominiums, cooperatives, mobile homes, and manufactured homes. Section 203.2(d) adds a definition of "dwelling" that incorporates these references as well as the definition of "state" previously contained in § 203.2(i).

FHA, FmHA, and VA loans. The definition of these loans, previously contained in § 203.2(c), has been deleted from the regulatory text. The instructions for completing the register (Appendix A to the regulation) set forth the categories of loans that must be identified on the register.

Financial institution. Revised § 203.2(e) defines "financial institution" to include all institutions covered by the regulation: banks, savings and loan associations, credit unions, and other "mortgage lending institutions."

Under the current regulation, depository institutions such as banks and savings associations are covered by HMDA if they originate "federally related mortgage loans," as defined in § 203.2(d). An institution meets this test if it originates home purchase loans and the institution either (1) is federally insured or regulated or (2) writes home purchase loans that are federally insured or guaranteed or are to be sold to FNMA, GNMA, or FHLMC. The Board has consolidated the "federally related mortgage loan" criteria into the definition of "financial institution." The reference to GNMA has been removed, since GNMA no longer purchases mortgages. The Board solicited comment on whether coverage of depository institutions could be defined in terms of those that are federally insured and make home purchase loans. Based on further analysis, however, the Board believes that some institutions presently covered by the regulation would be exempted by this change, and has therefore not adopted it.

Section 1211(d) of the FIRREA amendments expanded the coverage of HMDA to include "other lending institutions." An "other lending institution" is defined in section 1211(e)(2) of the act as "any person engaged for profit in the business of mortgage lending." The regulation refers to these entities as "mortgage lending institutions" in § 203.2(e)(2). The regulatory definition also covers mortgage banking subsidiaries of bank and savings and loan holding companies and savings and loan service corporations, and the mortgage banking subsidiaries of depository institutions.

The Board believes that, by using the qualifying words "in the business of mortgage lending," the Congress evidenced an intent to exclude from coverage institutions that make a relatively small volume of mortgage loans. Accordingly, the Board has established an activity test in the regulation to determine whether a given lender is a "mortgage lending institution." Under this test, an entity is a "mortgage lending institution" if, in the preceding calendar year, 10 percent or more of its loan volume (measured in dollars) consisted of home purchase loan originations. This threshold mirrors the rule currently used in § 203.2(e)(1)(ii) to define whether a holding company subsidiary is a "mortgage banking" subsidiary.

Under current § 203.2(e)(2), majority-owned subsidiaries of banks and savings associations are treated as part of their parent institution. Accordingly, the report submitted by the parent institution now includes data of the subsidiary; the data for loans made or purchased by the subsidiary are itemized by census tract only for MSAs where the parent has a home or branch office. In light of the definition of and treatment accorded to "other lending institution" in the FIRREA amendments (through the five-or-more-loan rule mentioned above, for example), the Board has changed the rules applicable to subsidiaries of depository institutions. A continuation of the current arrangement would only serve to magnify existing differences in reporting that are based on corporate structure alone. For example, a holding company subsidiary would itemize information by census tract for loans in MSAs where it took applications for, originated, or purchased five or more mortgage loans. Bank and thrift subsidiaries, on the other hand, would report itemized information only for MSAs in which the parent institution has a physical branch.

The Board believes that such markedly different results are inappropriate given the FIRREA amendments. Consequently, the revised regulation, under § 203.2(e)(2), treats mortgage lending subsidiaries of depository institutions as independent entities. As such, they will comply with HMDA in their own right if they meet the 10 percent threshold of that section.

Several commenters maintained that this treatment of subsidiaries would result in parent institutions not receiving credit for the lending activity of their subsidiaries. To avoid such a result, institutions are free to make available, with their disclosure statements, information that explains their relationship to other entities. In addition, the Board has revised the reporting form so that subsidiaries may note the identity of their parent institutions. Finally, the Board plans to explore, with the FFIEC, the possibility of preparing a consolidated disclosure statement that would reflect the activity of both entities.

Home improvement and home purchase loans. Institutions are required to report data regarding home improvement and home purchase loans. These terms are defined in § 203.2(f) and 203.2(g). With the added definition of "dwelling" in § 203.2(d), the parenthetical references to condominiums, cooperatives, and mobile and manufactured homes have been deleted.

Metropolitan statistical area. Institutions must specify the location of the property to which a loan relates if the property is located in a metropolitan statistical area (MSA) in which the institution has a home or a branch office. The definition of MSA in § 203.2(j) is unchanged.

State. The definition of "state," currently contained in § 203.2(i), is incorporated within the new definition of "dwelling."

Section 203.3—Exempt Institutions

Section 203.3(a) and (b) exclude from coverage institutions with under $10 million in assets, institutions that do not have offices in MSAs, and institutions that have been granted an exemption because they are subject to a similar state law.

A number of commenters raised questions regarding the proposed application of the $10 million asset test, derived from section 309 of HMDA. They observed that mortgage companies' assets tend to be low relative to the volume of loans that they originate. Moreover, applying the $10 million test directly to mortgage subsidiaries of depository institutions could exclude entites that are now covered by virtue of the relationship to their parent institution. If lending activities were concentrated in smaller subsidiaries, valuable loan data might not be reported. The same result could occur in the case of mortgage lenders with relatively low assets that are the subsidiaries of large non-bank companies. The Board believes that the Congress intended, in the FIRREA amendments, to cover a wide range of lenders in order to capture the fullest possible information regarding mortgage lending patterns. Applying the $10 million test to a mortgage company alone, notwithstanding its affiliation with a larger entity, could thwart this intent in many instances. The Board believes it appropriate, in these circumstances, that the assets of any parent institution be combined with those of the subsidiary for purposes of applying the $10 million test. Section 203.3(a) has been revised accordingly. Thus, a mortgage lending subsidiary of a bank, savings institution, holding company, or other corporation will be covered by the regulation so long as the assets of the subsidiary, combined with those of its parent, exceed $10 million.

Some commenters expressed concern about the proposed application of the $10 million test to the independent mortgage companies that will report to HUD. They suggested that doing so would exclude a large number of these companies from coverage. As indicated above, this concern is understandable. Because these entities have no parent institution, however, the asset test necessarily applies directly to them, and they are therefore exempt if their assets are under $10 million. The Board understands, however, that the bulk of mortgage lending by independent mortgage companies may be done by companies that exceed the $10 million threshold.

The $10 million test also applies directly to banks, savings institutions, and credit unions. Thus, for example, a bank with $10 million or less in assets is exempt notwithstanding its relationship to a holding company. The Board believes that the $10 million test reflects a decision by the Congress that the lending activity of financial institutions at this asset level is not high enough to warrant coverage by HMDA. The Board sees no intent, in the FIRREA amendments, to disturb this treatment.

Section 203.4—Compilation of loan data

Section 203.4 has been revised extensively. The FIRREA amendments require institutions to report data on all loan applications, and not just on originations and purchases of loans as is currently the case. The FIRREA amendments also call for the reporting of data on the race, sex, and income of applicants and borrowers, in addition to the geographic itemization of loans that is currently required. Given the expanded data collection, the Board has determined that to require cross-tabulation of data in the manner of the HMDA–1 and HMDA–2 forms would be both confusing and extremely burdensome for covered institutions. The Conference Report to the FIRREA amendments indicates that the Congress intended for the Board to have flexibility in establishing a report format that would enhance the utility of the data while minimizing, to the extent possible, the reporting burden for covered institutions. (H.R. Rep. No. 101–222, 101st Cong., 1st Sess. 459). Accordingly, the Board has provided in § 203.4 that institutions submit a register using the format set forth in Appendix A of the regulation. Under this arrangement, institutions will record data on an application-by-application basis and will submit the completed register at the end of the year to their supervisory agency for processing by the FFIEC. The FFIEC will produce individual disclosure statements for each reporting institution

(plus aggregate tables for each MSA) using the data from the registers.

collecting this applicant information when required to do so by some other

this period to March 1. Some commenters asked that the March 31

with member agencies of the FFIEC in exploring approaches by which the raw

Action taken and date. Codes indicating the type of action taken by

companies will submit the registers to the OCC, FDIC, Federal Reserve, or OTS

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(plus aggregate tables for each MSA) using the data from the registers.

Virtually all commenters that addressed the issue expressed support for this arrangement. They indicated that the register approach would be considerably easier and less costly for reporting institutions since they would not have to undertake the further step of preparing cross-tabulations of the data. Regulatory agencies indicated that the arrangement would enhance their ability to monitor compliance with fair lending and community reinvestment requirements.

The Board believes that the register approach offers these and other advantages and has adopted it in the final regulation. (The specific requirements for the register are discussed below in the section on Appendix A.)

A number of commenters urged the Board to encourage other regulatory agencies to review their requirements for loan registers in light of the revisions to Regulation C. These agencies are in the process of reviewing current requirements to determine the extent to which the HMDA register can replace their separate logs.

Section 203.4(a) requires, among other things, that institutions collect data on the race or national origin, sex, and income level of applicants for all home improvement and home purchase loans. Section 203.4(b)(1) tells how race or national origin and sex information is to be collected. The Board has prescribed a form and instructions for collecting these data in Appendix B to Regulation C. The language varies slightly from the form prescribed under Regulation B (Equal Credit Opportunity). Use of either form meets the requirements of Regulation C; creditors need not maintain a separate stock of forms.

The FIRREA requirement for reporting data on race or national origin, sex, and income does not apply to purchased loans. In addition, depository institutions with assets of $30 million or less are not required to report this information at all. However, § 203.4(b)(2) allows for optional reporting of these data in both instances. (Under the FIRREA amendments, mortgage lending institutions do not qualify for the $30 million exception; therefore, they must include data on race or national origin, sex, and income for all applications and loan originations, though not for purchased loans.)

Regulation B, § 202.5(d), generally prohibits lenders from requesting data about race or national origin and sex. There is an exception in § 202.5(b)(2): Lenders do not violate Regulation B by collecting this applicant information when required to do so by some other state or federal regulation. The proposed update to the official staff commentary to Regulation B contains a reference to the new HMDA requirement, to make clear that lenders may collect data about race or national origin and sex in mortgage and home improvement transactions without violating the ECOA (54 FR 50514, December 7, 1989). The commentary makes clear also that this exception applies even in the case of lenders whose asset size makes their reporting of such data optional.

Section 1211(b) of the FIRREA amendments permits institutions, at their option, to report reasons for their loan decisions. Several commenters urged the Board to require this information. In view of the statutory language, however, § 203.4(c) authorizes, but does not require, reporting of such data.

Section 203.4(d), which previously was designated § 203.4(c), relates to data that is not to be reported. Two changes have been made. First, the Board has eliminated the rule that mortgage banking subsidiaries of bank and savings and loan holding companies are not to report FHA loans. Data on FHA loans by these institutions was originally collected by HUD outside of Regulation C, whereas now HUD is a direct participant in the implementation of HMDA. Dropping the current provision will produce a uniform rule for reporting of these loans by all institutions covered by HMDA, avoiding confusion and also producing more complete data.

The exclusion for certain refinancings, currently set forth in § 203.4(c)(1)(iii), has been deleted. Refinancings of home purchase loans are to be reported even when they involve the original borrower and original lender. While refinancings between original parties may not technically result in new money being disbursed into the community, the Board believes that these transactions do provide an indication of an institution's willingness to meet credit needs. A separate code has been added to the register to indicate entries that involve a refinancing, and the reporting rules for refinancings have been clarified in the instructions to the register.

Section 203.5—Disclosure and Reporting

Section 203.5 sets the rules for making loan data available at offices of an institution and for reporting the data to supervisory agencies. The Board had proposed that institutions submit registers for a given calendar year by the following February 15. In response to the comments, the Board has extended this period to March 1. Some commenters asked that the March 31 reporting date be retained. The Board has opted not to do so in light of the need to ensure that data are processed and disclosure statements produced by the FFIEC in a timely fashion.

The Board believes that March 1 is reasonable given that minimal processing on the part of institutions is required. Institutions will have to assemble the registers from their different branches into one package, but there is no need to copy the data onto a master document. They also will not have to wait until year-end to prepare the HMDA submission; while there is still a requirement to geocode loans (and applications), there is no longer a need to cross-tabulate data loan and application information by census tract. Currently institutions must defer report preparation because of having to list data for all loans in a given census tract on a single line of the report.

Section 203.5(b) of the proposal would have required institutions to make disclosure statements available within 15 business days after receiving them from the FFIEC. A number of commenters suggested that it would be impossible to arrange for copying and distribution of the disclosure statements to multiple branch offices within that time frame. Others believed that institutions should have a reasonable opportunity to review the disclosure statements for accuracy before making them publicly available. Based on these comments, the Board has extended this period to 30 calendar days. Use of calendar days avoids differences of interpretation for counting business days.

Several commenters asked whether the disclosure statements must be made available in MSAs where they have no physical office but where they are deemed to have a branch office by virtue of the five-or-more-loan rule. Sections 203.5 (c) and (d) have been revised to make clear that the disclosure statements need only be made available in MSAs where the institution has a physical branch office.

Under the proposal, reporting institutions would not be required to make the actual registers available to the public. Some commenters supported this position, but others indicated that meaningful analyses could not be undertaken without the raw application and loan data. The Board has decided against requiring that the institutions make the registers public. The Board continues to believe that certain items on the register raise legitimate privacy concerns. But the Board plans to work with member agencies of the FFIEC in exploring approaches by which the raw data could be made available in some form, at cost, to the public. (See the discussion below in the section "Disclosure statements and availability of data".)

Section 203.6—Enforcement

Section 203.6 sets forth rules relating to administrative enforcement and bona fide errors. The provisions of this section are essentially unchanged.

Appendix A—Form and Instructions for Loan/Application Register

Appendix A contains the loan/application register and instructions for its completion as well as a transmittal sheet to accompany the registers when they are submitted. The register form that is reproduced below has been reduced in size for printing in the Federal Register; the actual register forms, which are available from the supervisory agencies, are 8½ by 14 inches. Institutions must use the prescribed format but are not required to use the forms themselves. An institution may, for example, produce a computer printout of its register instead.

Due to the volume of data being submitted, the Board encourages covered institutions to develop computer programs that will enable them to submit the data in machine-readable format. Technical specifications and filing procedures will be made available through the supervisory agencies in the near future.

The following is a summary of the information that will be provided on the register and the number of characters to be allotted for each data item. The instructions contained in Appendix A provide guidance on the requirements for the register and answer more detailed questions.

Application or loan number. A unique number identifying the application or transaction. It can be any number of the institution's choosing. Based on the comments and consultation with HUD, the FHA case number will not be required. (25 characters)

Date application received. For applications, the date the application was received by the financial institution by month, day, and year. (6 characters)

Other application or loan information. Codes indicating the type of loan, the purpose of the loan, and whether the property is owner-occupied, plus the amount of the loan (or the amount applied for) in thousands of dollars. (1 character each for type, purpose, and occupancy status; 5 characters for amount)

Action taken and date. Codes indicating the type of action taken by the institution or, in some cases, by the applicant. In addition to loan purchase or loan origination, the institution will indicate whether a loan was approved but not accepted by the applicant (this code was added in response to the comments), was denied, or was withdrawn. In addition, a code was added for instances in which the application file is closed due to incompleteness following the sending of a written notice under § 202.9(c) of Regulation B. Also, the date the action occurred. (1 character for action taken; 6 characters for month, day, and year)

Location of the property. For loans written on property in MSAs where the institution has a home or branch office, the location of the property. (4 characters for MSA, 2 for state, 3 for county, and 7 for census tract including a decimal point, where needed)

Applicant characteristics. A code indicating the race and sex of the applicant and any co-applicant, and the income relied upon by the lender, in thousands of dollars. This section need not be completed (by any institution) for loan purchases; and it need not be completed by any bank, savings and loan, or credit union with $30 million or less in assets. (1 character each for race and sex of applicant and of co-applicant; 4 characters for income)

Type of purchaser. For loans that are sold, a code indicating the class of purchaser. (1 character)

Reason for denial. Up to three codes indicating the reasons for denial. This information is optional. (3 characters)

The Board requested comment on whether the number of reasons for denial should be expanded to be more specific. A number of commenters suggested that the reasons should correspond to the reasons listed on the model checklist for adverse action provided in Regulation B. The Board has kept the number of reasons to a minimum in order to allow up to three reasons to be indicated, and has provided a listing that "translates" the Regulation B reasons into the codes.

Appendix B—Form and Instructions for Data Collection on Race or National Origin and Sex

Appendix B of the current regulation lists the supervisory agencies to which covered institutions must submit their reports. In the revised regulations, this material has been incorporated into the instructions to the reporting form, in Appendix A. Independent mortgage lending institutions will submit their registers to HUD while subsidiaries of depository institutions or their holding companies will submit the registers to the OCC, FDIC, Federal Reserve, or OTS

Appendix B contains a form that can be used to collect data on race or national origin and sex, and instructions for its use. It is identical in substance to the form prescribed in Regulation B for data collection (related to applications for home purchase loans), except for the added reference to HMDA. Institutions may use the Regulation B and Regulation C forms interchangeably; they need not maintain a special stock of each.

(3) Disclosure Statements and Availability of Data

The FFIEC (with support from each of the federal regulators with HMDA responsibilities) aggregates the loan data received from all reporting institutions in each MSA. The FFIEC also produces tables for each MSA showing lending patterns according to demographic characteristics such as income level and age of housing stock. These tables, together with disclosure statements of the individual institutions, are sent to central data depositories in each MSA, where they are available to the public.

The FFIEC will generate disclosure statements from the register data submitted by institutions to show lending activity in each MSA for which the institution reports data. These statements (in the form of summary tables) will be provided to the institutions, which will in turn make them available to the public. The FFIEC expects that these statements will be provided to institutions by October following submission of the register data on March 1. This timetable is dictated by the large volume of data to be processed. The supervisory agencies and the FFIEC will take appropriate steps to ensure that both the individual disclosure statements and the aggregate tables become available to the public as early as possible.

In addition, the FFIEC will produce aggregate tables based on loan data from all covered institutions for each MSA, and make them available at the central data depositories.

Considerable comment was received on the proposed output that the FFIEC would produce from the data submitted. Because of the need to publish a final regulation as quickly as possible given the effective data of January 1, 1990, FFIEC consideration of issues related to the output tables has been deferred and will be taken up early next year. Among the issues that will be considered is whether the raw data compiled from the registers can be made available to the

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public in some form once the FFIEC has completed processing the reports. The

	Number of		Average hours

§ 203.1 Authority, purpose, and scope.

(a) *Authority.* This regulation is issued

(b) *Application* means an oral or written request for a home purchase or

area or a primary metropolitan statistical area, as defined by the U.S.

(1) A number for the loan or loan application, and the date the application

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public in some form once the FFIEC has completed processing the reports. The Board plans to search for ways of making the raw data available in a form that will not compromise the privacy of applicants and borrowers (perhaps by eliminating the application numbers and dates), and will work with member agencies of the FFIEC to explore possible options.

(4) Effective Dates

The revised regulation is effective on January 1, 1990. The Board believes that this effective date, which coincides with the effective data of the FIRREA amendments, is necessary to ensure that institutions are provided with the guidance necessary to comply with the new requirements.

The revised regulation applies to applications received, and loans originated or purchased, on or after January 1, 1990. Institutions will be required to report data for calendar year 1990 in the revised format by March 1, 1991. In the case of applications received before January 1, 1990, institutions need only report the data on race or national origin and sex if they have the information; they are not required to contact applicants again in order to obtain it.

The current requirements of Regulation C apply to reports of data for calendar year 1988; accordingly, institutions will use the exiating forms HMDA–1 or HMDA–2, as appropriate, for the reports that are due on March 31, 1990.

(5) Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction act of 1980, 44 U.S.C. chapter 35, and 5 CFR 1320.13, the revisions to Regulation C that relate to reporting requirements were approved under authority delegated to the Board by the Office of Management and Budget.

The following information relates only to the effect of the revised reporting requirements on institutions supervised by the Board. As indicated earlier, other types of institutions are also covered by the regulation.

Approval Under OMB Delegated Authority for the Following Information Collection

Report title: HMDA Loan/Application Register.
Agency form number: FR HMDA–LAR.
OMD docket number: 7100–0247.
Reporters: State member banks and mortgage banking subsidiaries of bank holding companies.
Reporters:

	Number of respondents	Frequency	Average hours per response
State member banks.	478	Annually	30
Mortgage banking subsidiaries.	723	Annually	160

Annual reporting hours: 130,020.

Small businesses are not affected.

General description of report.—This information collection is mandatory (12 U.S.C. 2801–2810, 12 CFR part 203). The report will collect information on applications for, and originations and purchases of, home purchase and home improvement loans. State member banks and mortgage banking subsidiaries of bank holding companies will be required to keep the HMDA Loan/Application Register as a running log throughout the calendar year and to send it to the Federal Reserve System by March 1 of the following calendar year.

(6) Regulatory Flexibility Analysis

The Board's Division of Research and Statistics has prepared a Regulatory Flexibility Analysis of the revisions to Regulation C. A copy of the analysis may be obtained from Publications Services, Board of Governors of the Federal Reserve System, Washington, DC 20551, at 202–452–3245.

List of Subjects in 12 CFR Part 203

Banks, Banking, Consumer protection, Federal Reserve System, Home mortgage disclosure, Mortgages, Reporting and recordkeeping requirements.

(7) Regulatory text

For the reasons set forth in this notice and pursuant to the Board's authority under section 305(a) of the Home Mortgage Disclosure Act (12 U.S.C. 2804(a)), 12 CFR part 203 is revised as follows:

PART 203—HOME MORTGAGE DISCLOSURE

Sec.

203.1 Authority, purpose, and scope
203.2 Definitions
203.3 Exempt institutions
203.4 Compilation of loan data
203.5 Disclosure and reporting
203.6 Enforcement
Appendix A—Form and instructions for loan/application register.
Appendix B—Form and instructions for data collection on race or national origin and sex.

Authority: 12 U.S.C. 2801–2810

§ 203.1 Authority, purpose, and scope.

(a) *Authority.* This regulation is issued by the Board of Governors of the Federal Reserve System ("Board") pursuant to the Home Mortgage Disclosure Act (12 U.S.C. 2801 *et seq.*), as amended. The information-collection requirements have been approved by the U.S. Office of Management and Budget under 44 USC 3501 *et seq.* and have been assigned OMB No. 7100–0247.

(b) *Purpose.* (1) This regulation implements the Home Mortgage Disclosure Act, which is intended to provide the public with loan data that can be used:

(i) To help determine whether financial institutions are serving the housing needs of their communities;

(ii) To assist public officials in distributing public-sector investments so as to attract private investment to areas where it is needed; and

(iii) To assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes.

(2) Neither the act nor this regulation is intended to encourage unsound lending practices or the allocation of credit.

(c) *Scope.* This regulation applies to certain financial institutions, including banks, saving associations, credit unions, and other mortgage lending institutions, as defined in section 203.2(e). It requires an institution to report data to its supervisory agency about home purchase and home improvement loans it originates or purchases, or for which it receives applications; and to disclose certain data to the public.

(d) *Loan aggregation and central data depositories.* Using the loan data made available by financial institutions, the Federal Financial Institutions Examination Council will prepare disclosure statements and will produce various reports for individual institutions for each metropolitan statistical area (MSA), showing lending patterns by location, age of housing stock, income level, sex, and racial characteristics. The disclosure statements and reports will be available to the public at central data depositories located in each MSA. A listing of central data depositories can be obtained from the Federal Financial Institutions Examination Council, Washington, DC 20006.

§ 203.2 Definitions.

In this regulation:

(a) *Act* means the Home Mortgage Disclosure Act (12 U.S.C. 2801 *et seq.*), as amended.

(b) *Application* means an oral or written request for a home purchase or home improvement loan that is made in accordance with procedures established by a financial institution for the type of credit requested.

(c) *Branch office* means: (1) Any office of a bank, savings association, or credit union that is approved as a branch by a federal or state supervisory agency, but excludes free-standing electronic terminals such as automated teller machines;

(2) Any office of a mortgage lending institution (other than a bank, savings association, or credit union) that takes applications from the public for home purchases or home improvement loans. A mortgage lending institution is also deemed to have a branch office in an MSA if, in the preceding calendar year, it received applications for, originated, or purchased five or more home purchase or home improvement loans on property located in that MSA.

(d) *Dwelling* means a residential structure (whether or not it is attached to real property) located in a state of the United States of America, the District of Columbia, or the Commonwealth of Puerto Rico. The term includes an individual condominium unit, cooperative unit, or mobile or manufactured home.

(e) *Financial institution* means: (1) A bank, savings association, or credit union that originated in the preceding calendar year a home purchase loan (other than temporary financing such as a construction loan) secured by a first lien on a one-to-four family dwelling if:

(i) The institution is federally insured or regulated; or

(ii) The loan is insured, guaranteed, or supplemented by any federal agency; or

(iii) The institution intended to sell the loan to the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation;

(2) A for-profit mortgage lending institution (other than a bank, savings association, or credit union) whose home purchase loan originations equaled or exceeded ten percent of its loan volume, measured in dollars, in the preceding calendar year.

(f) *Home improvement loan* means any loan that: (1) Is stated by the borrower (at the time of the loan application) to be for the purpose of repairing, rehabilitating, or remodeling a dwelling; and

(2) Is classified by the financial institution as a home improvement loan.

(g) *Home purchase loan* means any loan secured by and made for the purpose of purchasing a dwelling.

(h) *Metropolitan statistical area or MSA* means a metropolitan statistical area or a primary metropolitan statistical area, as defined by the U.S. Office of Management and Budget.

§ 203.3 Exempt institutions.

(a) *Exemption based on asset size or location.* A financial institution is exempt from the requirements of this regulation for a given calendar year if on the preceding December 31:

(1) The institution had neither a home office nor a branch office in an MSA; or

(2) In the case of a bank, savings association, or credit union, the institution's total assets were $10 million or less; or

(3) In the case of a for-profit mortgage lending institution (other than a bank, savings association, or credit union), the total assets of the institution combined with those of any parent corporation were $10 million or less.

(b) *Exemption based on state law.* (1) A state-chartered or state-licensed financial institution is exempt from the requirements of this regulation if the Board determines that the institution is subject to a state disclosure law that contains requirements substantially similar to those imposed by this regulation and contains adequate provisions for enforcement.

(2) Any state, state-chartered or state-licensed financial institution, or association of such institutions may apply to the Board for an exemption under this paragraph.

(3) An institution that is exempt under this paragraph shall submit the data required by the state disclosure law to its state supervisory agency for purposes of aggregation.

(c) *Loss of exemption.* (1) An institution losing an exemption that was based on asset size or location under paragraph (a) of this section shall comply with this regulation beginning with the calendar year following the year in which it lost its exemption.

(2) An institution losing an exemption that was based on state law under paragraph (b) of this section shall comply with this regulation beginning with the calendar year following the year for which it last reported loan data under the state disclosure law.

§ 203.4 Compilation of loan data.

(a) *Data format and itemization.* A financial institution shall collect data regarding applications for, and originations and purchases of, home purchase loans (including refinancings) and home improvement loans for each calendar year. These data shall be presented on a register in the format prescribed in Appendix A and shall include the following items:

(1) A number for the loan or loan application, and the date the application was received.

(2) The type and purpose of the loan.

(3) The owner-occupancy status of the property to which the loan relates.

(4) The amount of the loan or application.

(5) The type of action taken, and the date.

(6) The location of the property to which the loan relates, by MSA, state, county, and census tract, if the institution has a home or a branch office in that MSA.

(7) The race or national origin and sex of the applicant or borrower, and the income relied upon in processing the loan application.

(8) The type of entity purchasing a loan that the institution originates or purchases and then sells within the same calendar year.

(b) *Collection of data on race or national origin, sex, and income.* (1) A financial institution shall collect data about the race or national origin and sex of the applicant or borrower as prescribed in Appendix B. If the applicant or borrower chooses not to provide the information, the lender shall note the data on the basis of visual observation or surname, to the extent possible.

(2) Race or national origin, sex, and income data may but need not be collected for:

(i) Loans purchased by the financial institution; or

(ii) Applications received or loans originated by a bank, savings association, or credit union with assets on the preceding December 31 of $30 million or less.

(c) *Optional data.* A financial institution may report the reasons it denied a loan application.

(d) *Excluded data.* A financial institution shall not report:

(1) Loans originated or purchased by the financial institution acting in a fiduciary capacity (such as trustee);

(2) Loans on unimproved land;

(3) Temporary financing (such as bridge or construction loans);

(4) The purchase of an interest in a pool of loans such as mortgage-participation certificates); or

(5) The purchase solely of the right to service loans.

§ 203.5 Disclosure and reporting.

(a) *Reporting requirements.* By March 1 following the calendar year for which the loan data are compiled, a financial institution shall send two copies of its complete register to the agency office specified in Appendix A of this

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regulation, and shall retain a copy for its records for a period of not less than two years.

(b) *Disclosure to the public.* A financial institution shall make its mortgage loan disclosure statement (to be prepared by the Federal Financial Institutions Examination Council) available to the public no later than 30 calendar days after the institution receives it from its supervisory agency. The financial institution shall make the statement available to the public for a period of five years.

(c) *Availability of disclosure statement.* A financial institution shall make the disclosure statement available at its home office. If it has a physical branch office in other MSAs, it shall also make a statement available in at least one branch office in each of those MSAs; the statement at a branch office need only contain data relating to property in the MSA where that branch office is located. An institution shall make the disclosure statement available for inspection and copying during the hours the office is normally open to the public for business. It may impose a reasonable charge for photocopying services.

(d) *Notice of availability.* A financial institution shall post a general notice about the availability of its disclosure statement in the lobbies of its home office and any physical branch offices located in an MSA. Upon request, it shall promptly provide the location of the institution's offices where the statement is available. At its option, an institution may include the location in its notice.

§ 203.6 Enforcement.

(a) *Administrative enforcement.* A violation of the act or this regulation is subject to administrative sanctions as provided in section 305 of the act. Compliance is enforced by the agencies listed in Appendix A of this regulation.

(b) *Bona fide errors.* An error in compiling or recording loan data is not a violation of the act or this regulation if it was unintentional and occurred despite the maintenance of procedures reasonably adapted to avoid such errors.

Appendix A—Form and Instructions for Loan/Application Register

Loan/Application Register Form

Public reporting burden for this collection of information is estimated to vary from 10 to 750 hours per response, with an average of 120 hours per response, including time to gather and maintain the data needed and to review instructions and complete the information collection. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Instructions to Lending Institutions

I. General

A. Who Must File a Report

1. Subject to some exceptions that are discussed below, banks, savings associations, credit unions, and other mortgage lending institutions must complete a register listing data about loan applications received, loans originated, and loans purchased if on the preceding December 31 the institution:

a. Had assets of more than $10 million, and

b. Had a home or branch office in a "metropolitan statistical area" or a "primary metropolitan statistical area" (both are referred to in these instructions by the term "MSA").

Example: If on December 31, 1989, you had a home or a branch office in an MSA and your assets exceeded $10 million, you must complete a register that lists the home purchase and home improvement loans that you originate or purchase during calendar year 1990, and also lists applications that did not result in an origination.

2. You need not complete a register—even if the tests for asset size and location are met—if your institution is a bank, savings association, or credit union and it made *no* first-lien home purchase loans on one-to-four family dwellings in the preceding calendar year.

3. You need not complete a register—even if the tests for asset size and location are met—if your institution is a for-profit mortgage lender (other than a bank, savings association, or credit union) and the home purchase loans that you originated in the preceding year came to less than 10 percent of your total loan volume, measured in dollars.

4. If you are a for-profit mortgage lender (other than a bank, savings association, or credit union) the asset test is based on the combined assets of your institution and any parent corporation.

5. If you are the subsidiary of a bank or savings association you must complete a separate register for your institution and submit it, directly or through your parent, to the agency that supervises your parent.

B. Institutions Exempted From HMDA

Institutions that are specifically exempted by the Federal Reserve Board from complying with federal law because they are covered by a similar state law on mortgage loan disclosures must use the disclosure form required by their state law.

C. Format

1. You must use the format of this loan/application register, but you are not required to use the form itself. For example, you may produce a computer printout instead. The layout must conform exactly, however, to that of this register, including the order of columns, column headings, etc. Or you may submit the data in machine-readable form (see paragraph D.2. below).

2. The required data are to be entered in the register for each loan origination, each application acted upon during the calendar year, and each loan purchased. Your institution will have to decide on the procedure it wants to follow—whether to begin entering the required data when an application is received, or to enter the data when final action is taken (such as when a loan goes to closing or an application is denied). Keep in mind that an application is to be reported in the calendar year when final action is taken. Loan originations are to be reported in the year they go to closing; do not report applications for loans that have been approved but that have not yet gone to closing at year-end.

3. Your institution may use separate registers at different branches, or separate registers for different loan types (such as for home purchase or home improvement loans, or for loans on multifamily dwellings). But you must submit the registers to your supervisory agency *in one package*, with the prescribed transmittal sheet; and an officer of your institution must certify to the accuracy of the data.

4. Entries need *not* be grouped by MSA, or chronologically, or by census tract numbers, or in any other particular order. But make sure the application or loan numbers (discussed under paragraph II.C.1.a. below) are unique. If separate registers are being maintained in various branches, your institution could add a letter code to identify different branches, or assign series of numbers to each branch, to avoid duplicate numbers.

5. Number each page of your report, indicating the total number of pages (for example, "Page 1 of 24").

D. Submission of Report; Release of Disclosure Statements

1. You must submit the register to the office specified by your federal supervisory agency no later than March 1 following the calendaar year for which the data are compiled. A list of the agencies appears at the end of these instructions.

2. Institutions are encouraged to submit data in machine-readable form. Contact your federal supervisory agency for information regarding electronic submission.

3. If you submit your register in hard copy, you must send two copies.

4. The FFIEC (Federal Financial Institutions Examination Council) will prepare a disclosure statement from the data that you submit. Your disclosure statement will be returned to you at the address that you indicate on the transmittal sheet. When you receive that disclosure statement you must make a copy available for inspection by the public within 30 calendar days. You must make it available at your home office and, if you have physical branch offices in other MSAs, at one branch office in each of those MSAs. (Your agency can provide you with HMDA posters that you can use to inform the public of the availability of your disclosure statement.)

II. Completion of Register

A. Data to be shown

1. Show the data on home purchase and home improvement loans that you originated (or that were originated in your name) and loans that you purchased during the calendar year covered by the report. Report these data even if the loans were subsequently sold. Include refinancings of home purchase loans.

2. For these same types of loans, show the data for applications that did not result in originations—for example, applications that your institution denied or that the applicant withdrew during the calendar year covered by the report. Include applications that were received in the previous calendar year but not acted upon until the calendar year covered by the register.

B. Data to be excluded

Do not report the following loans or applications for loans:

1. Loans that, although secured by real estate, are made for purposes other than home purchase, home improvement, or refinancing (for example, do not report a loan secured by residential real property for purposes of financing college tuition, a vacation, or business operations);

2. Loans received in a fiduciary capacity (for example, by your trust department);

3. Loans on unimproved land;

4. Construction or bridge loans and other temporary financing;

5. The purchase of an interest in a pool of loans (such as mortgage-participation certificates); or

6. The purchase solely of the right to service loans.

C. Itemization of Data

Your loan/application register must include the following:

1. Application or loan information. a. *Application or loan number.* Enter an identifying number or code that can be used later to retrieve the loan or application file. It can be any number of your choosing (not exceeding 25 characters). You may use letters, numerals, or a combination of both. But make sure that all numbers are unique within your institution. If your register contains data for branch offices, for example, you could use codes to identify the loans or applications of particular branches, or could assign certain series of numbers to particular branches to avoid duplicate numbers.

b. *Date application received.* Enter the date the loan application was received by your institution by month, day, and year, using numerals (for example, 02/28/90). Or if your institution normally records the date shown on the application form, you may use that date. Enter "NA" for loans purchased by your institution.

c. *Type.* Indicate the type of loan (or loan application) by entering the applicable code from the following:

1—Conventional (any loan other than FHA, VA or FmHA loans)
2—FHA-insured (Federal Housing Administration)
3—VA-guaranteed (Veterans' Administration)
4—FmHA-insured (Farmers Home Administration)

d. *Purpose.* Indicate the purpose of the loan or application by entering the applicable code from the following:

1—Home purchase (one-to-four family)
2—Home improvement (one-to-four family)
3—Refinancing (home purchase, one-to-four family)
4—Multifamily dwelling (home purchase, home improvement, and refinancings)

e. *Explanation of purpose codes.* Code 1: Home purchase

i. This code applies to loans made, and to applications for loans, for the purpose of purchasing a residential dwelling for one to four families, if the loan is secured by a lien.

ii. At your option, you may use code 1 for loans that are made for home improvement purposes but are secured by a first lien, if you normally classify such first-lien loans as home purchase loans.

Code 2: Home improvement. i. Code 2 applies to loans and applications for loans that (1) the borrowers have said will be used for repairing, rehabilitating, or remodeling one-to-four family residential dwellings, and (2) are recorded on your books as home improvement loans.

ii. Report both secured and unsecured loans.

iii. At your option, you may record a home equity line of credit as a home improvement loan if the borrower or applicant indicates at the time of application or when the account is opened that some portion of the proceeds will be used for home improvement. (For such credit lines, under "Amount" in paragraph g. below, enter only that portion of the line which the borrower or applicant indicates will be for home improvement purposes.) Report only in the year the line is established.

Code 3: Refinancings. i. Use this code only for refinancings of home purchase loans on one-to-four family residential dwellings.

ii. Use this code whether or not you were the original creditor on the loan being refinanced, and whether or not the refinancing results in an increase in the outstanding principal.

iii. Report the full amount of a refinancing if more than 50 percent of the loan proceeds is for home purchase or home improvement. You may treat the amount that is equivalent to the unpaid principal of the original loan as being for home purchase.

Code 4: Multifamily dwelling. i. Use this code for loans and loan applications on dwellings for five or more families, including home purchase loans, refinancings, and loans for repairing, rehabilitation, and remodeling purposes.

ii. Do not use this code for loans on individual condominium or cooperative units; use codes 1, 2, or 3 for such loans, as applicable.

f. *Occupancy.* Use the applicable code to indicate whether the property to which the loan or loan application relates is to be owner-occupied as a principal dwelling.

1—Owner-occupied as a principal dwelling
2—Not owner-occupied
3—Not applicable

i. Use code 2 for loans on second homes or vacation homes, as well as on rental properties.

ii. Use code 2 only for nonoccupant loans or applications related to one-to-four family dwellings (including individual condominium or cooperative units).

iii. Use code 3 if the property to which the loan relates is a multifamily dwelling; is not located in an MSA; or is located in an MSA in which your institution has neither a home nor a branch office.

iv. For purchased loans, you may assume that the property will be owner-occupied as a principal dwelling unless the loan documents or application contain information to the contrary.

g. *Amount.* Enter the amount of the loan or application. Round to the nearest thousand ($500 should be rounded up to $1,000). Show in terms of thousands; for example, a loan for $187,300 should be entered as 187.

i. For home purchase loans that you originate, "amount" means the original principal amount of the loan. For home purchase loans that you purchase, "amount" means the unpaid principal balance of the loan at the time of purchase.

ii. For home improvement loans (both originations and purchases), you may include unpaid finance charges in the amount if that is how you record such loans on your books.

iii. For lines of credit secured by home equity, include only that portion of the line indicated by the applicant or borrower at the time the application is made or when the account is opened as being for the purpose of home improvement. Report only in the year the line is established.

iv. For a loan application that was denied or withdrawn, enter the amount applied for.

v. If you offered to lend less than the applicant applied for, enter the amount of the loan if the offer was accepted, enter the amount initially applied for.

2. Action taken. Indicate the type of action taken on the application or loan by using the following codes:

1—Loan originated
2—Application approved but not accepted by applicant
3—Application denied
4—Application withdrawn
5—File closed for incompleteness
6—Loan purchased by your institution

a. *Type of action taken.* Do not report any loan application still pending at the end of the calendar year. You will report that applicaton in your register for the year final action is taken.

i. Use code 2 where an application has been approved by you, but where the applicant fails to respond to your notification of approval or your commitment letter within the specified time.

ii. Use code 4 only when an application has been expressly withdrawn by the applicant.

iii. Use code 5 if you sent a written notice of incompleteness under § 202.9(c) of Regulation B (Equal Credit Opportunity) and if the applicant failed to respond to your request for additional information within the period of time specified in your notice.

b. *Date.* Enter the date by month, day, and year, using numerals (for example, 02/28/90).

i. For loans originated, enter the settlement or closing date.

ii. For applications denied, applications approved but not accepted by the applicant, and files closed for incompleteness, enter the

date that the action was taken by your institution or the date the notice was sent to the applicant.

3. Type of purchaser. If you sold the loan during the calendar year covered by the register, indicate the type of purchaser by using the following codes:

0—Not applicable
1—FNMA
2—GNMA
3—FHLMC
4—FAMC
5—Commercial bank, savings bank or savings association
6—Life insurance company
7—Affiliate institution
8—Other type of purchaser

4. Reasons for denial. If you denied the application, indicate the reason(s) by using the following codes:

1—Debt-to-income ratio
2—Employment history
3—Credit history
4—Collateral
5—Insufficient cash
6—Unverifiable information
7—Credit application incomplete
8—Mortgage insurance denied
9—Other

5. Pricing-related information. a. *Rate spread.* If you made the loan, enter the rate spread between the annual percentage rate for the loan and the yield on Treasury securities of comparable maturity. Report only if the annual percentage rate is equal to or greater than the yield on Treasury securities of comparable maturity by 10 percentage points or more. Enter the rate spread to the nearest two decimal points (for example, 10.95).

b. *Fixed or variable.* If you made the loan, indicate whether the interest rate is fixed or variable by using the following codes:

1—Fixed rate
2—Variable rate

6. Loan term. If you made the loan, enter the number of months in the loan term (for example, 360).

7. Property location. a. *MSA.* Enter the MSA number for the property to which the loan or application relates. If the property is not located in an MSA, enter "NA."

b. *State.* Enter the two-letter abbreviation for the state to which the loan or application relates.

c. *County.* Enter the three-digit code for the county to which the loan or application relates.

d. *Census tract.* Enter the four-digit census tract number for the property to which the loan or application relates.

8. Applicant information. a. *Race.* Enter the code for the race of the applicant or borrower:

1—American Indian or Alaskan native
2—Asian or Pacific Islander
3—Black
4—White
5—Information not provided by applicant in mail or telephone application
6—Not applicable

b. *Sex.* Enter the code for the sex of the applicant or borrower:

1—Male
2—Female
3—Information not provided by applicant in mail or telephone application
4—Not applicable

c. *Income.* Enter the gross annual income relied on in processing the application, rounded to the nearest thousand ($500 should be rounded up to $1,000). Show in terms of thousands; for example, $34,200 should be entered as 34. If no income is relied on in processing the application (for example, in a "no income verification" type loan), enter "NA."

d. *Type of purchaser.* If you sold the loan during the calendar year covered by the register, indicate the type of purchaser by using the following codes:

0—Not applicable
1—FNMA
2—GNMA
3—FHLMC
4—FAMC
5—Commercial bank, savings bank or savings association
6—Life insurance company
7—Affiliate institution
8—Other type of purchaser

e. *Reasons for denial.* If you denied the application, indicate the reason(s) by using the following codes:

1—Debt-to-income ratio
2—Employment history
3—Credit history
4—Collateral
5—Insufficient cash
6—Unverifiable information
7—Credit application incomplete
8—Mortgage insurance denied
9—Other

f. *Pricing-related information.* a. *Rate spread.* If you made the loan, enter the rate spread between the annual percentage rate for the loan and the yield on Treasury securities of comparable maturity. Report only if the annual percentage rate is equal to or greater than the yield on Treasury securities of comparable maturity by 10 percentage points or more. Enter the rate spread to the nearest two decimal points (for example, 10.95).

b. *Fixed or variable.* If you made the loan, indicate whether the interest rate is fixed or variable by using the following codes:

1—Fixed rate
2—Variable rate

6. Loan term. If you made the loan, enter the number of months in the loan term (for example, 360).

7. Property location. a. *MSA.* Enter the MSA number for the property to which the loan or application relates. If the property is not located in an MSA, enter "NA."

b. *State.* Enter the two-letter abbreviation for the state to which the loan or application relates.

c. *County.* Enter the three-digit code for the county to which the loan or application relates.

d. *Census tract.* Enter the four-digit census tract number for the property to which the loan or application relates.

8. Applicant information. a. *Race.* Enter the code for the race of the applicant or borrower:

1—American Indian or Alaskan native
2—Asian or Pacific Islander
3—Black
4—White
5—Information not provided by applicant in mail or telephone application
6—Not applicable

b. *Sex.* Enter the code for the sex of the applicant or borrower:

1—Male
2—Female
3—Information not provided by applicant in mail or telephone application
4—Not applicable

c. *Income.* Enter the gross annual income relied on in processing the application, rounded to the nearest thousand ($500 should be rounded up to $1,000). Show in terms of thousands; for example, $34,200 should be entered as 34. If no income is relied on in the credit decision (such as in "no income verification" type loans), enter "NA."

Unable to verify income, and Unable to verify residence.

f. *Use code 7 for:* Credit application incomplete.

State member banks of the Federal Reserve System, their subsidiaries, and subsidiaries of bank holding companies. Federal Reserve Bank serving the district in

subsidiaries of savings institution holding companies. To the District or other office specified by the Office of Thrift Supervision.

Credit unions. National Credit Union

date that the action was taken by your institution or the date the notice was sent to the applicant.

iii. For applications withdrawn, enter the date that you received the applicant's express withdrawal; or you may enter the date shown on the notification from the applicant, in the case of a written withdrawal.

3. *Property location.* In these columns you will enter the applicable codes for the MSA, state, county, and census tract locations for the property to which a loan relates. (See paragraph e. below for treatment of loans on property outside the MSAs in which you have offices.)

a. *MSA.* For each loan or loan application, indicate the location of the property by the MSA number. Enter only the MSA number, not the MSA name. MSA boundaries are defined by the U.S. Office of Management and Budget; use the boundaries that were in effect on January 1 of the calendar year for which you are reporting.

b. *State and county.* Use the two-digit numerical code for state and the three-digit numerical code for county available from your regional supervisory agency. Use only these established codes. Do not use the abbreviations used by the U.S. Postal Service.

c. *Census tract.* Indicate the census tract in which the property is located.

i. Enter the code "NA" if the property is located in an area not divided into census tracts on the U.S. Census Bureau's census-tract outline maps (see paragraph d. below).

ii. If the property is located in a county with a population of 30,000 or less in the 1980 census, enter "NA" or enter the census tract number. To determine population, use the Census Bureau's PC80–1–A population series even if the population has increased above 30,000 since 1980.

d. *Census tract number.* To determine the census tract number, consult the U.S. Census Bureau's census tract outline maps. You must use the maps from the Census Bureau's PHC80–2 series for the 1980 census, or equivalent 1980 census data from the Census Bureau (such as GBF/DIME files) or from a private publisher. You will continue to use the maps in the 1980 series until you are advised differently by your supervisory agency, even if more current maps are available.

e. *Outside-MSA.* For loans on property located outside the MSAs in which you have a home or branch office (or outside any MSA), you may either enter the code "NA" in the MSA, state, county, and census tract columns or enter the data. Keep in mind that if you are a for-profit mortgage lending institution (other than a bank, savings association, or credit union) and (1) you received five or more loan applications or (2) originated or purchased five or more home purchase or home improvement loans in an MSA in the preceding year, you *must complete* these columns because you are considered to have a branch office in that MSA, whether or not you have a physical office there.

4. *Race or national origin, sex, and income.* Appendix B of Regulation C contains instructions for the collection of data on race or national origin and sex, and also contains a sample form for data collection. You may also use the form that you use to obtain data on race or national origin and sex under § 202.13 of Regulation B.

a. *Applicability.* You must report this information concerning applicants for loans that you originate and applications that you receive.

i. You need not collect or report this information for loans purchased; if you choose not to, enter the appropriate code specified in the lists under paragraphs c., d., and e. below for "not applicable."

ii. If your institution is a bank, savings association, or credit union that had assets of $30 million or less on the preceding December 31, you may—but need not—collect and report these data. If you choose not to, enter the appropriate codes specified in the lists under paragraphs c., d., and e. below for "not applicable."

iii. If the borrower or applicant is not a natural person (a corporation or partnership, for example), use the appropriate code under paragraphs c., d., and e. below for "not applicable."

b. *Telephone and mail applications.* Any application forms mailed to all applicants must contain a collection form similar to that shown in Appendix B, and you must record the data on race or national origin and sex if the applicant provides it. If the applicant chooses not to provide the data, enter the applicable code number for "information not provided by applicant in mail or telephone application" under paragraphs c. and d. below.

c. *Race or national origin of borrower or applicant.*

Use the following codes to indicate the race or national origin of the applicant or borrower under column "A" and of any co-applicant or co-borrower under column "CA." If there is more than one co-applicant, provide this information only for the first co-applicant listed on the application form.

1—American Indian or Alaskan Native
2—Asian or Pacific Islander
3—Black
4—Hispanic
5—White
6—Other
7—Information not provided by applicant in mail or telephone application
8—Not applicable

d. *Sex of borrower or applicant.* Use the following codes to indicate the sex of the applicant or borrower under column "A" and of any co-applicant or co-borrower under column "CA." If there is more than one co-applicant, provide this information only for the first co-applicant listed on the application form:

1—Male
2—Female
3—Information not provided by applicant in mail or telephone application
4—Not applicable.

e. *Income.* Enter the income that your institution relied upon in making credit decision.

i. Round all dollar amounts to the nearest thousand (round $500 up to the next $1,000), and show in terms of thousands. For example, $35,550 should be reported as 36.

ii. For loans on multifamily dwellings, enter "NA."

iii. If no income is asked for or relied on in the credit decision (such as in "no income verification" type loans), enter "NA."

5. *Type of purchaser.* For loans originated or purchased and then sold within the same calendar year, enter the applicable code to indicate the secondary market entity:

0—Loan was not sold in calendar year covered by register
1—FNMA (Federal National Mortgage Association)
2—GNMA (Government National Mortgage Association)
3—FHLMC (Federal Home Loan Mortgage Corporation)
4—FmHA (Farmers Home Administration)
5—Commercial bank
6—Savings bank or savings association
7—Life insurance company
8—Affiliate institution
9—Other type of purchaser

a. If you originated or purchased a loan and did not sell the loan that same calendar year, enter code 0.

b. If you sell a loan in a succeeding year, you need not report the sale.

c. If you conditionally assign a loan to GNMA in connection with a mortgage-backed security transaction, use code 2.

d. Loans "swapped" for mortgage-backed securities are to be treated as sales; enter the type of entity receiving the loans that are swapped as the purchaser.

e. Use code 8 for loans sold in the same year to an institution affiliated with you, such as a subsidiary or a parent corporation.

6. *Reasons for denial.* You need not enter the reasons for the denial of an application. But if you wish to do so, you may indicate up to three reasons by using the following codes:

1—Debt-to-income ratio
2—Employment history
3—Credit history
4—Collateral
5—Insufficient cash (downpayment, closing costs)
6—Unverifiable information
7—Credit application incomplete
8—Mortgage insurance denied
9—Other

If your institution uses the model form for adverse action supplied in the appendix to Regulation B (Form C–1 in Appendix C, Sample Notification Form, which offers some 20 reasons for denial), the following list shows which codes to use.

a. *Use code 1 for:* Income insufficient for amount of credit requested, and Excessive obligations in relation to income.

b. *Use code 2 for:* Temporary or irregular employment, and Length of employment

c. *Use code 3 for:* Insufficient number of credit references provided; Unacceptable type of credit references provided; No credit file; Limited credit experience; Poor credit performance with us; Delinquent past or present credit obligations with others; Garnishment, attachment, foreclosure, repossession, collection action, or judgment; and Bankruptcy.

d. *Use code 4 for:* Value or type of collateral not sufficient.

e. *Use code 6 for:* Unable to verify credit references, Unable to verify employment, Unable to verify income, and Unable to verify residence.

f. *Use code 7 for:* Credit application incomplete.

g. *Use code 9 for:* Length of residence, Temporary residence, and Other.

III. Federal supervisory agencies

Send your loan/application register and direct any questions to the office of your federal supervisory agency specified below. If you are the subsidiary of a bank, savings association, or credit union, send the register to the supervisory agency for your parent institution.

National banks and their subsidiaries. District office of the Office of the Comptroller of the Currency serving the district in which the national bank or subsidiary is located.

State member banks of the Federal Reserve System, their subsidiaries, and subsidiaries of bank holding companies. Federal Reserve Bank serving the district in which the state member bank or subsidiary is located.

Nonmember insured banks (except for federal savings banks) and their subsidiaries. Regional Director of the Federal Deposit Insurance Corporation for the region in which the bank or subsidiary is located.

Savings institutions insured under the Savings Association Insurance Fund of the FDIC; federally-chartered savings banks insured under the Bank Insurance Fund of the FDIC (but not including state-chartered savings banks insured under the Bank Insurance Fund), their subsidiaries, and subsidiaries of savings institution holding companies. To the District or other office specified by the Office of Thrift Supervision.

Credit unions. National Credit Union Administration, Office of Examination and Insurance, 1776 G Street, NW., Washington, DC 20456.

Other depository institutions. Regional Director of the Federal Deposit Insurance Corporation for the region in which the institution is located.

Other mortgage lending institutions. Assistant Secretary for Housing, HMDA Reporting—Room 9233, U.S. Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410.

BILLING CODE 6210-01-M

VOL 54 ISS 240 DE 15 1989 UMI

Form FR HMDA-LAR
OMB No. 7100-0247, Approval expires December 31, 1992
Hours per response: 10-750 (120 average)
This report is required by law (12 USC 2801-2810 and 12 CFR 203)

LOAN/APPLICATION REGISTER

TRANSMITTAL SHEET

Control Number (agency use only)

|_|_|_|_|_|_|_|_|_|_|-|_|

You must complete this transmittal sheet (please type or print) and attach it to the Loan/Application Register, required by the Home Mortgage Disclosure Act, that you submit to your supervisory agency.

The Loan/Application Register that is attached covers activity during 19____ and contains a total of ____ pages.

Enter the name and address of your institution. The disclosure statement that is produced by the Federal Financial Institutions Examination Council will be mailed to the address you supply below:

_____
Name

_____
Address

_____
City, State, ZIP

Enter the name and telephone number of a person who may be contacted if questions arise regarding your report:

_____ _____
Name Telephone Number

If your institution is a subsidiary of another institution or corporation, enter the name of your parent:

_____
Name

_____
Address

_____
City, State, ZIP

Enter the name and address of your supervisory agency:

_____
Name

_____
Address

_____
City, State, ZIP

An officer of your institution must complete the following section.

I certify to the accuracy of this report.

_____ _____ _____
Name of Officer Signature Date

LOAN/APPLICATION REGISTER Page ____ of ____

Form FR HMDA–LAR

Name of Reporting Institution ______________________ City and State ______________________

Control number (agency use only) |_|_|_|_|_|_|_|_|_|_|.|_|

Application or Loan Information						Action Taken		Property Location				Applicant Information A = Applicant CA = Co-Applicant						
Application or Loan Number	Date Application Received (mm/dd/yy)	Type	Purpose	Occupancy	Amount in thousands	Type	Date (mm/dd/yy)	MSA Number	State Code	County Code	Census Tract	Race or National Origin		Sex		Income in thousands	Type of Purchaser of Loan	Reason(s) for Denial (Optional)
												A	CA	A	CA			

LOAN/APPLICATION REGISTER

Use the following codes to complete the Loan/Application Register. The instructions explain the proper use of each code.

Application or Loan Information

Type:

1 -- Conventional (any loan other than FHA, VA or FmHA loans)
2 -- FHA-insured (Federal Housing Administration)
3 -- VA-guaranteed (Veterans Administration)
4 -- FmHA-insured (Farmers Home Administration)

Purpose:

1 -- Home purchase (one-to-four family)
2 -- Home improvement (one-to-four family)
3 -- Refinancing (home purchase, one-to-four family)
4 -- Multifamily dwelling (home purchase, home improvement, and refinancings)

Occupancy:

1 -- Owner-occupied as a principal dwelling
2 -- Not owner-occupied
3 -- Not applicable

Action Taken:

1 -- Loan originated
2 -- Application approved but not accepted by applicant
3 -- Application denied
4 -- Application withdrawn
5 -- File closed for incompleteness
6 -- Loan purchased by your institution

BILLING CODE 6210-01-C

Applicant Information

Race or National Origin:

1 -- American Indian or Alaskan Native
2 -- Asian or Pacific Islander
3 -- Black
4 -- Hispanic
5 -- White
6 -- Other
7 -- Information not provided by applicant in mail or telephone application
8 -- Not applicable

Sex:

1 -- Male
2 -- Female
3 -- Information not provided by applicant in mail or telephone application
4 -- Not applicable

Type of Purchaser

0 -- Loan was not sold in calender year covered by register
1 -- FNMA (Federal National Mortgage Association)
2 -- GNMA (Government National Mortgage Association)
3 -- FHLMC (Federal Home Loan Mortgage Corporation)
4 -- FmHA (Farmers Home Administration)
5 -- Commercial Bank
6 -- Savings Bank or Savings Association
7 -- Life Insurance Company
8 -- Affiliate Institution
9 -- Other type of purchaser

Reasons for Denial

1 -- Debt-to-income ratio
2 -- Employment history
3 -- Credit history
4 -- Collateral
5 -- Insufficient cash (downpayment, closing costs)
6 -- Unverifiable information
7 -- Credit application incomplete
8 -- Mortgage insurance denied
9 -- Other

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Appendix B—Form and instructions for data collection on race or national origin and sex

I. Instructions on collection of data on race or national origin and sex.

A. Format.

You may list questions regarding the race or national origin and sex of the applicant on your loan application form, or on a separate form that refers to the application. (See the sample form below for recommended language.)

B. Procedures.

1. You must ask for this information, but cannot require the applicant to provide it.

2. If the applicant chooses not to provide the information for an application taken in person, note this fact on the form and note the data, to the extent possible, on the basis of visual observation or surname.

3. Inform the applicant that the Federal government is requesting this information in order to monitor compliance with Federal statutes that prohibit lenders from discriminating against applicants on these bases. Inform the applicant that if the information is not provided where the application is taken in person, you are required to note the data on the basis of visual observation or surname.

4. If an application is made entirely by telephone, you need not request this information. And you need not provide the data when you take an application by mail, if the applicant fails to answer these questions on the application form. You should indicate whether an application was received by mail or telephone, if it is not otherwise evident on the face of the application.

5. The "other" block is available only to the applicant who chooses to indicate some other appropriate category for race or national origin. If completing the form based on visual observation, do not use this category; use one of the other five categories.

II. Sample race or national origin and sex data collection form

INFORMATION FOR GOVERNMENT MONITORING PURPOSES

The following information is requested by the federal government for certain types of loans related to a dwelling in order to monitor the lender's compliance with equal credit opportunity, fair housing, and home mortgage disclosure laws. You are not required to furnish this information, but are encouraged to do so. The law provides that a lender may not discriminate on the basis of this information, or on whether you choose to furnish it. However, if you choose not to furnish the information and you have made this application in person, under federal regulations the lender is required to note race or national origin and sex on the basis of visual observation or surname. If you do not wish to furnish the information, please check below.

APPLICANT:

☐ I do not wish to furnish this information

Race or National Origin:

☐ American Indian, Alaskan Native
☐ Asian, Pacific Islander
☐ Black
☐ Hispanic
☐ White
☐ Other (specify)_____

Sex:

☐ Female
☐ Male

CO-APPLICANT:

☐ I do not wish to furnish this information

Race or National Origin:

☐ American Indian, Alaskan Native
☐ Asian, Pacific Islander
☐ Black
☐ Hispanic
☐ White
☐ Other (specify)_____

Sex:

☐ Female
☐ Male

By order of the Board of Governors of the Federal Reserve System, December 11, 1989.
William W. Wiles,
Secretary of the Board.
[FR Doc. 89-29240 Filed 12-13-89; 12:22 pm]
BILLING CODE 6210-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064-AA96

Assessments

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule with request for comments.

SUMMARY: The Board of Directors of the Federal Deposit Insurance Corporation ("FDIC") is amending part 327 of its regulations, 12 CFR part 327, entitled "Assessments," in response to the requirements of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"). The final rule continues the existing procedures for filing certified statements and making assessment payments for insured banks. For insured savings associations, the final rule prescribes new procedures for filing certified statements and making assessment payments.

DATES: Effective December 15, 1989. Written comments should be delivered not later than January 16, 1990.

ADDRESSES: Written comments may be addressed to the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550-17th Street NW., Washington, DC, 20429.

FOR FURTHER INFORMATION CONTACT: William Farrell or Carole Edwards, Compliance Examination Unit, Division of Accounting and Corporate Services, Federal Deposit Insurance Corporation, 550-17th Street NW., Washington, DC, 20429, (202) 898-6564 or 416-2073.

SUPPLEMENTARY INFORMATION:

A. In General

The Federal Deposit Insurance Act ("FDI Act"), as amended by the FIRREA, requires the FDIC to assess all insured depository institutions. The FDIC's assessment rules are set forth in part 327 of the Code of Federal Regulations. The main provisions of part 327 speak only of insured banks. The FDIC must update these provisions to reach insured savings associations ("thrifts").

Except in three minor respects,[1] the rules that apply to banks have not been changed. Banks will continue to prepare their own certified statements and compute their own assessments; they will continue to file the certified statements on the same dates; and they will continue to remit their payments by check.

Similarly, the new part 327 preserves the existing—but very different—procedures for assessing thrifts. The FDIC will continue to compute the amount of the assessment, and notify the thrift of the amount to be paid,[2] as the Federal Savings and Loan Insurance Corporation ("FSLIC") did in the past. Thrifts will continue to pay their assessments electronically through the Federal Home Loan Bank of Des Moines. The FDIC and the other two entities that assess thrifts—the Financing Corporation and the Resolution Funding Corporation—will allocate the proceeds of the assessments among themselves, once the proceeds are received by the Federal Home Loan Bank of Des Moines.

Although these two sets of procedures differ substantially from each other, the difference does not favor banks over thrifts nor thrifts over banks. Banks pay their assessments somewhat earlier than thrifts. But banks make their payments by paper check, and therefore enjoy some of the benefits of "float;" thrifts' payments clear immediately. Moreover, while banks must sustain the burden of computing their own assessments, many banks will regard this as an advantage rather than the reverse. The FDIC computes the amounts assessed to thrifts, but thrifts are required to pay the amounts so computed— unless they are able to review the computations, correct them if necessary, certify the results, and notify the FDIC of the corrections, all by the end of the first month of the current semiannual period.

In other respects, the final rule extends the existing provisions of part 327 to reach thrifts as well as banks. For example, it lets thrifts use experience factors in computing assessments; it describes in some detail (but does not alter) the mechanics of computing assessments; and it provides for the payment or charging of interest on overpaid or underpaid assessments.

[1] One change affects banks that are considering the use of experience factors. The other two affect banks which either belong to the Savings Association Insurance Fund ("SAIF") themselves, or that acquire a SAIF-member thrift pursuant to the section 5(d)(3) of the FDI Act (described below).

[2] The FDIC will provide notification to thrifts that file their quarterly call reports when they are due. Thrifts that file their call reports after the due date will not receive such notification.

B. Procedural Requirements

When an institution weighs the merits of buying a troubled or failing thrift, the purchaser must be able to determine the assessment costs it will incur as a result of taking over the thrift's deposits. The FDIC considers that it is imperative to maintain stability and orderliness in the process of transferring the business of such thrifts to stronger hands. It is therefore necessary to establish clear, well-defined procedures that set forth the computation and payment of assessments, and to codify these procedures in regulations. Moreover, to facilitate transactions currently contemplated or in negotiation, it is necessary to adopt these procedures immediately.

For these reasons, it is impracticable—and contrary both to public interest and to the intent of the FIRREA—to incur the delay that the ordinary process of notice and public comment would entail. The FDIC is therefore issuing this rule as a final rule without notice and public comment (pursuant to 5 U.S.C. 553(b)(3)(B)) or a delayed effective date (pursuant to *id.* 553(d)(3)). The FDIC will, however, consider any public comments received by January 16, 1990, in order to determine whether this final rule should be revised.

C. Provisions Affecting Banks

1. Banks That Belong to the SAIF

The FDIC recognizes that it is possible for a bank to belong to the Savings Association Insurance Fund ("SAIF") rather than to the Bank Insurance Fund ("BIF"). Such a bank will not, in the ordinary course, be one that is already engaged in the business of banking. Rather it will be a converted SAIF-member thrift (*e.g.*, a thrift that loses its status as a Qualified Thrift Lender), or a bank chartered for the express and limited purpose of acquiring the assets and liabilities of a SAIF-member thrift.

The possibility further remains open that such a bank (and possibly even a thrift) may not wish to maintain a demand deposit account in a Federal home loan bank. Part 327 contemplates that SAIF members will pay their assessments electronically. Accordingly, to provide for such banks (and thrifts, if any), part 327 says that SAIF-member institutions must either maintain a demand deposit account with a Federal home loan bank, or, at the institution's option, with a commercial bank that belongs to the Federal Reserve System, which account will be used for the purpose of making assessment payments.

2. Banks Participating in Section 5(d)(3) Transactions

Section 5(d)(3) of the FDI Act ("Section 5(d)(3)") speaks of transactions involving banks and thrifts that belong to the same holding company. This provision allows a BIF-member bank to acquire its sister thrift (under certain conditions).

After the bank has acquired the thrift, the bank's assessments are computed in a special and unusual manner. Each semiannual assessment has two components:

—*SAIF component.* The first component represents an assessment on the deposits that the bank acquires from the thrift, plus an artificial growth factor for such deposits.[3] The SAIF component is computed by determining the amount of the deposits acquired at the time of transfer, and then increasing that amount each semiannual period either by the bank's actual growth rate or by a factor of 7 percent per annum, whichever is larger. The amout so determined is assessed at the SAIF rate, not at the BIF rate. The proceeds are deposited into the SAIF.

—*BIF component.* The second component represents an assessment on its "ordinary" deposits—*i.e.*, its assessment base minus the SAIF component.[4] The BIF component is assessed at the ordinary BIF rate; the proceeds are deposited into the BIF.

The FIRREA specifies that the amount of the deposits "acquired by such bank" in connection with a Section 5(d)(3) transaction must be determined at the time of the transaction. The FDIC considers that the deposits that the bank "acquires" are those that the bank can expect to retain. When the transaction involves a healthy thrift, the retained deposit base will be the entire amount of the transferred deposits. When the transaction involves a thrift in conservatorship or receivership, however, the retained deposit base will be equal to 80 per cent of the thrift's nonbrokered deposits under $80,000.

In a transaction involving a healthy thrift, the holding company controls the thrift's business policies and the timing of the transaction. If the holding company wishes to retain the thrift's interest-sensitive deposits, it can transfer them to the bank, and incur the assessment costs prescribed under Section 5(d)(3). Alternatively, the holding company can delay the transaction until the deposits mature, at which time the thrift may decline to renew them, thereby reducing the bank's future assessments.

The case is quite different for a thrift in conservatorship or receivership. The conservator or receiver—not the bank's parent company—controls the thrift's business policies. The holding company may be willing to take over the thrift's business, making use of a transaction under Section 5(d)(3). But the holding company may reject the strategy of paying high rates to attract deposits. Nevertheless, the conservator or receiver—for reasons of administrative efficiency—may require the bank to accept all the thrift's deposits as a condition of the transfer. Under these conditions, a significant number of such deposits will vanish from the bank as soon as they mature.

The FDIC considers that it makes no sense to require the bank to continue to pay assessments on such "phantom" deposits. Moreover, such a requirement would impair the FDIC's ability to transfer the business of such thrifts to healthy enterprises, to the detriment of the communities they serve. The FDIC is therefore excluding such deposits from the category "deposits acquired by the bank," but only for thrifts that are in conservatorship or receivership.

One category of "phantom" deposit consists of brokered deposits.

Brokered deposits are generally sensitive to the interest rates paid on them, and are volatile. The acquiring bank will generally be unwilling to pay the rates that the thrift has been paying on such deposits. Accordingly, brokered deposits are almost certain to be withdrawn promptly.

The other category is a certain portion of the thrift's ordinary deposits. Some of these deposits represent funds placed for interest-rate purposes, just as brokered funds generally do. But depositors often have other reasons for taking their money out of the acquiring bank as well. The FDIC's experience shows that, on average, the acquiring bank will only be able to retain about 80 percent of the thrift's nonbrokered deposits under $80,000.

The FDIC particularly hopes to receive comment regarding this provision. Even if the provision is modified in response to comments, however, the FDIC will not recompute the "adjusted attributable deposit amount" for transactions consummated prior to the modification. Accordingly, banks that participate in such transactions can be sure that their estimate of future assessment costs will not be affected by later changes in part 327.

[3] These deposits include all liabilities that are "deposits" within the meaning of Section (3)(*l*) of the FDI Act. They are not limited to "deposits" as reported on Thrift Financial Reports or on modified call reports. See below.

[4] The SAIF component must always grow at 7 percent per annum or more, without regard for the actual fortunes of the acquiring bank. Accordingly, there may well be times when the SAIF component is increasing and the BIF component is decreasing.

Finally, when these banks file their certified statements, they must identify the amount subject to assessment at the rate applicable to BIF deposits and the amount applicable to SAIF deposits, and the assessments to be paid on each amount.

3. Experience Factors

Some banks' accounting systems do not readily show the actual amounts of unposted debits and credits that are present on report dates. Part 327 allows banks to determine the amount of such debits and credits manually, over a two-year period, and then use the experience factors thus derived in computing their assessments.

In the past, banks computed their experience factors using data for the first day of the second month in each semiannual period. In addition, the deposit figures were based both on the general ledger deposits and on the adjusted deposits shown in the call report.

The final rule simplifies the computation of experience factors. Banks—and thrifts, should they use experience factors—will use data for the March and September reporting dates. Moreover, the deposit figures will only be based on general ledger deposits.

D. Provisions Affecting Thrifts

1. Reporting of Deposits

Section 7 of the FDI Act—as amended by the FIRREA—says that every insured depository institution must file certified statements with the FDIC twice each year. The certified statement is due by the end of the first month following each semiannual period—*i.e.*, by January 31 and July 31 of each year. This requirement is new for thrifts.

The certified statement presents the institution's average assessment base for the prior semiannual period. The average assessment base is derived from the institution's quarterly reports of condition ("call reports") for the two prior quarters, which are filed with the institution's primary Federal supervisor. Accordingly, the certified statement—and the semiannual assessment—are inextricably linked to the call reports.

Section 7 also prescribes the information to be reported in the call reports. Many thrift's data-collection procedures are not set up to provide all the required information, however. Instead they are designed to supply the information reported in the Thrift Financial Reports ("TFRs") that FSLIC-insured thrifts used to file on a quarterly basis prior to the passage of the FIRREA. The TFRs differed significantly

from the call reports. For example, the TFR category "deposits" did not include all the liabilities that are "deposits"

Complete reporting, as currently required of BIF members, will be required of thrifts at a future date.

p.m., Eastern time, on the last business day of the first month,[9] the thrift may pay the amended amount rather than the

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deposits reported in the quarterly reports of condition filed on September 30 and December 31 of any year must be

(b) *Computation of assessment base.* The assessment base of an insured depository institution for any date on

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from the call reports. For example, the TFR category "deposits" did not include all the liabilities that are "deposits" under the FDI Act.[5] Nor did the TFRs separate deposits into "demand deposits" and "time and savings deposits."

Thrifts will need to make changes in their data-collection procedures to prepare the call reports required under Section 7. The changes may require more than a few months to accomplish.

Acknowledging this difficulty, the Office of Thrift Supervision ("OTS") has allowed thrifts to file reports for the third and fourth quarters of 1989 that are, in form, the same as the old TFRs.[6] Thereafter, the OTS will allow thrifts to file modified call reports for some period, but these new modified call reports will contain more information than the old TFRs.[7]

The FDIC will follow the OTS' lead. The FDIC will accept certified statements prepared on the basis of information presented in modified call reports; and the FDIC will compute the assessments on that basis as well.

At the same time, however, the FDIC will not automatically accept the classification given to liabilities in the modified call reports. The assessment base includes all deposits—as defined in Section 3(*l*) of the FDI Act—that are reported in the modified call reports. Accordingly, the FDIC will compute each thrift's assessment base using all the information presented in such reports, regardless of whether the reports themselves classify a particular kind of liability as a "deposit" or otherwise.[8]

Complete reporting, as currently required of BIF members, will be required of thrifts at a future date.

2. Form of Thrift Certified Statements

Each thrift is responsible for submitting its own certified statement in a timely manner. But to streamline the assessment process, the FDIC will use the call-report information on file at the OTS to prepare a preliminary statement for any thrift that has filed its call reports when they are due. The FDIC will send the preliminary statement to each thrift for review.

Each thrift that receives a preliminary statement should check the figures provided by the FDIC against its own records, and should change anything that it considers incorrect. The thrift may then sign the preliminary statement and return it to the FDIC. The signed statement constitutes the thrift's certified statement, which the thrift must return to the FDIC.

The FDIC-supplied statement is only provided as an accommodation to the thrifts, however. Each thrift remains obliged to prepare its own certified statement, without regard for whether the thrift has received a preliminary statement from the FDIC. Conversely, of course, each thrift retains the option of preparing its own certified statement independently of the preliminary statement if it prefers to do so.

3. Assessment Procedures

The final rule generally preserves the existing arrangements for collecting assessments from thrifts, but with some modifications that are necessary to accommodate the FDIC's assessment schedule.

Thrifts will be required to pay their semiannual assessments on the sixth business day of February and August, through the Federal Home Loan Bank of Des Moines.

As a rule, the FDIC will compute thrifts' assessments using the call-report data on file at the OTS. The FDIC will use quarterly call reports that the OTS has received by the end of January or July, whether or not filed timely. Thrifts must pay the amount that the FDIC has computed. If a thrift disagrees with the FDIC's computation, the issue will be resolved afterward.

A thrift that files its call reports on time—and therefore receives a preliminary statement—has a special advantage, however. The thrift has a chance to review the FDIC's computation and correct it. If the thrift amends the assessment figure shown on the preliminary statement, and notifies the FDIC of the amendment before 5 p.m., Eastern time, on the last business day of the first month,[9] the thrift may pay the amended amount rather than the amount computed by the FDIC.

Thrifts that have not filed their call reports by the end of January or July present a special problem. If such a thrift has filed its certified statement on time, the thrift must pay the amount it has reported at the same time and according to the same procedure as other thrifts; the FDIC will check its computation later on. If a thrift has failed to file a timely certified statement, it must pay its assessment when it does file such a statement, and is also subject to interest on the assessment.

A few thrifts have credits that exceeded the Transition Payment collected from them in September, 1989. When the FDIC provided for the Transition Payment, the FDIC contemplated that any such credits would be applied in equal parts to the semiannual assessments due in 1990. The amount of the credits has proven to be minimal, however. Accordingly, the final rule provides that the entire amount of these credits will be applied to the first assessment due in 1990.

Other Matters

Regulatory Flexibility Act Statement

The Final Rule will not have a significant economic impact on a substantial number of small entities. Accordingly, the provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603 & 604) are not applicable.

List of Subjects in 12 CFR Part 327

Assessments, Banks, banking, Bank deposit insurance, Financing Corporation, Savings associations, Savings and loan associations.

The Board of Directors of the Federal Deposit Insurance Corporation revises part 327 of title 12 of the *Code of Federal Regulations* as follows:

PART 327—ASSESSMENTS

Subpart A—In General

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[5] For example, the TFRs classed "accrued interest payable" as "other liabilities," not as "deposits." In addition, thrifts holding funds as escrow agent in connection with certain mortgage-servicing arrangements could report those funds as "other liabilities." Both accrued interest payable and funds held as escrow agent have the status of "deposits" under the FDI Act, and are subject to assessment.

[6] The September and December TFRs have a separate line for reporting taxes and insurance collected on mortgage-servicing accounts. But they do not break out the principal of such accounts or the interest paid on them. Those amounts are subsumed in categories that may contain other nondepository liabilities as well.

[7] The modified call reports to be filed in 1990 will have a separate line for reporting the principal and interest of all funds that thrifts hold as escrow agent.

[8] When computing the assessment for the first semiannual period of 1990, the FDIC will include "accrued interest payable" and amounts relating to mortgage servicing arrangements in the assessment base. When computing the assessment for the second semiannual period of 1990, the FDIC will include "accrued interest payable" and all amounts relating to mortgage servicing arrangements in the assessment base—not just tax and insurance, but principle and interest as well.

[9] The thrift must actually deliver the information to the FDIC by that time, however, and the FDIC in turn must formally confirm the receipt in writing. A thrift may notify the FDIC by electronic communication (*e.g.*, fax), but the FDIC's confirmation must be more than the mere acknowledgement of the transmission. The FDIC must notify the thrift that the amended information has been formally received. It is not necessary for the thrift to receive the FDIC's confirmation for the confirmation to be effective.

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Subpart B—BIF Members

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Subpart C—SAIF Members

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Subpart D—Banks Participating in Section 5(d)(3) Transactions

327.31 Scope.
327.32 Computation and payment of assessment.
327.33 Form of certified statement.

Authority: 12 USC 1441, 1441b, 1817–19

Subpart A—In General

§ 327.1 Purpose and scope.

(a) *Scope.* This part 327 applies to any insured depository institution, including any insured branch of a foreign bank.

(b) *Purpose.* (1) Except as specified in paragraph (b)(2) of this section, this part 327 sets forth the rules for:

(i) The time and manner of filing certified statements by insured depository institutions;

(ii) The time and manner of payment of the semiannual assessments by such institutions; and

(iii) The payment of assessments by depository institutions whose insured status has terminated.

(2) Deductions from the assessment base of an insured branch of a foreign bank are stated in part 346 of this chapter.

§ 327.2 Certified statements.

(a) *Required.* Each insured depository institution shall file a certified statement during each semiannual period.

(b) *Form.* The certified statement to be filed by an insured depository institution shall be in the form appropriate for such institution as prescribed by the Corporation.

(c) *Time for filing*— (1) Dates. (i) *First-half statements.* Certified statements that are based on the deposits reported in the quarterly reports of condition filed as of March 31 and June 30 of any year must be filed on or before July 31 of such year.

(ii) *Second-half statements.* Certified statements that are based on the deposits reported in the quarterly reports of condition filed on September 30 and December 31 of any year must be filed on or before January 31 of the following year.

(2) *Timeliness.* Certified statements are deemed to be filed in a timely manner if they are postmarked on or before the last day of the month during which they are required to be filed.

§ 327.3 Payment of semiannual assessments.

(a) *Required*— (1) *In general.* Except as provided in paragraph (a)(2) of this section, each insured depository institution shall pay the amount of the semiannual assessment due for the current semiannual period, as shown on its certified statement for such period.

(2) *Newly insured institutions.* A newly insured institution shall not be required to pay an assessment for the semiannual period during which it becomes an insured institution.

(b) *Responsibility for computation.* Each insured depository institution shall be responsible for computing the amount of its own assessment.

(c) *Amount.* The semiannual assessment to be paid by each insured depository institution for the current semiannual period shall be computed by multiplying the institution's average assessment base for the prior semiannual period by one-half the annual assessment rate applicable to such institution.

§ 327.4 Average assessment base.

(a) *Computation of average assessment base.* The average assessment base of an insured depository institution for any semiannual period shall be determined as follows:

(1) *In general.* In the case of any institution other than a newly insured institution, the average assessment base shall be computed—

(i) By adding the institution's assessment base for the first date during such semiannual period on which the institution is required to file a quarterly report of condition and the institution's assessment base for the second date during such semiannual period on which the institution is required to file a quarterly report of condition; and

(ii) Dividing the sum so computed by two.

(2) *Newly insured institutions.* In the case of a newly insured institution, the average assessment base shall be the institution's assessment base for the last date within the semiannual period during which it became an insured institution on which it was required to file a quarterly report of condition.

(b) *Computation of assessment base.* The assessment base of an insured depository institution for any date on which the institution is required to file a quarterly report of condition shall be computed by:

(1) Adding—

(i) All demand deposits—

(A) That the institution reported as such in the quarterly report of condition for that date;

(B) That belong to subsidiaries of the institution and were eliminated in consolidation;

(C) That are held in any insured branches of the institution that are located in the territories and possessions of the United States;

(D) That represent any uninvested trust funds required to be separately stated in the quarterly report for that date;

(E) That represent any unposted credits to demand deposits, as determined in accordance with the provisions of paragraph (c)(1) of this section; and

(ii) All time and savings deposits, together with all interest accrued and unpaid thereon—

(A) That the institution reported as such in the quarterly report of condition for that date;

(B) That belong to subsidiaries of the institution and were eliminated in consolidation;

(C) That are held in any insured branches of the institution that are located in the territories and possessions of the United States;

(D) That represent any unposted credits to time and savings deposits, as determined in accordance with the provisions of paragraph (c)(1) of this section; then

(2) Subtracting, in the case of any institution that maintains such records as will readily permit verification of the correctness of its assessment base—

(i) Any unposted debits;

(ii) Any pass-through reserve balances;

(iii) 16⅔ percent of the amount computed by subtracting, from the amount specified in paragraph (b)(1)(i) of this section, the sum of:

(A) Unposted debits allocated to demand deposits pursuant to the provisions of paragraph (c)(2) of this section; plus

(B) Pass-through reserve balances representing demand deposits;

(iv) 1 percent of the amount computed by subtracting, from the amount specified in paragraph (b)(1)(ii) of this section, the sum of:

(A) Unposted debits allocated to time and savings deposits pursuant to the

provisions of paragraph (c)(2) of this section; plus

(ii) *Newly-insured institutions.* Any depository institution becoming an

(2) Time and savings deposits shall be the percentage obtained by dividing the amount of unposted credits on the last

percentage obtained by dividing the aggregate amount of the unposted credits by the aggregate amount of the

the institution shall continue to use its existing factor or factors.

(2) *Corporation requiring new*

the payment of the assessment on the deposits by the assuming depository institution shall satisfy the terminating

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provisions of paragraph (c)(2) of this section; plus

(B) Pass-through reserve balances representing time and savings deposits.

(c) *Methods of reporting unposted credits and unposted debits.*

(1) *Unposted credits.* Each insured depository institution shall report unposted credits in quarterly reports of condition for additon to the assessment base in the following manner:

(i) If the institution's records show the total actual amount of unposted credits segregated into demand deposits and time and savings deposits, the institution must report the segregated amounts for addition to demand deposits and time and savings deposits, respectively.

(ii) If the institution's records show the total actual amount of unposted credits but do not segregate the amount as stated in paragraph (c)(1)(i) of this section, and if the institution does not elect to segregate the credits on the basis of the experience factors, the institution must report the total actual amount of the unposted credits for addition to time and savings deposits.

(iii) If the institution's records show the total actual amount of the unposted credits but do not segregate the amount as stated in paragraph (c)(1)(i) of this section, and if the institution elects to segregate the credits on the basis of the experience factors, the institution must report the segregated amounts for addition to demand deposits and time and savings deposits.

(iv) If the institution's records do not show the total actual amount of unposted credits (either in total or in segregated amounts), the amount of the unposted credits must be determined by experience factor or factors and reported in a total unsegregated amount for addition to time and savings deposits or in segregated amounts for addition to demand deposits and time and savings deposits.

(2) *Unposted debits.* Unposted debits may be reported in the same manner as stated in paragraph (c)(1) of this section for deduction from the assessment base, except that unsegregated amounts may be reported for deduction only from demand deposits.

§ 327.5 Experience factors.

(a) *Procedure for obtaining approval to use an experience factor or factors*—(1) *Notice to Corporation*—(i) *In general.* If an insured depository institution intends to use an experience factor in computing the amounts of unposted credits for unposted debits, the institution shall state its intention in writing to the Corporation.

(ii) *Newly-insured institutions.* Any depository institution becoming an insured depository institution whose records do not show amounts of unposted credits and unposted debits and which proposes to report such items for assessment purposes by means of experience factors, shall so inform the Corporation within thirty (30) days after it becomes an insured depository institution.

(2) *Form.* Upon receipt of the notice, the Corporation will furnish the institution a form for submitting to the Corporation the computations used in determining the experience factors.

(3) *Interim factors.* If the experience factors are approved by the Corporation, the institution shall use the factors in reporting unposted credits or debits until new experience factors are established under this section or until the institution's accounting methods are changed to show actual amounts from day to day.

(b) *Reporting on basis of experience factor or factors.* (1) A depository institution using an experience factor or factors may use either—

(i) Separate factors for computing the additions or deductions to demand deposits and time and savings deposits; or

(ii) A single factor for computing additions to be made in total amount to time and savings deposits or for computing deductions to be made in total amount from demand deposits.

(2) When a single factor is used, the additions or deductions are required to be made to or from the type of deposit giving the lesser advantage to the depository institution in taking the 16⅔ percent deduction from demand deposits and the 1 percent deduction from time and savings deposits.

(c) *Computing and using experience factors.* In the case of an institution that uses an experience factor or factors—

(1) *Initial experience factor for unposted credits.* The reporting depository institution may use either of the following initial experience factors in reporting unposted credits for addition to the assessment base for two years:

(i) *Separate experience factors.* (A) The factor for each semiannual period for:

(*1*) Demand deposits shall be the percentage obtained by dividing the amount of unposted credits on the last business day of March or September which are allocable to demand deposits by the amount of total demand deposits shown on the books of the depository institution at the close of business on the same day; and

(*2*) Time and savings deposits shall be the percentage obtained by dividing the amount of unposted credits on the last business day of March or September which are allocable to time and savings deposits by the amount of total time and savings deposits shown on the books of the depository institution at the close of business on the same day.

(B) Until two years' experience has been obtained, the depository institution shall determine on the last business day of March or September of each year the total actual amount of unposted credits segregated into demand deposits and time and savings deposits.

(c) For assessment purposes, there shall be separately stated in each quarterly report of condition for addition to demand deposits the amount obtained by multiplying the amount to total demand deposits shown on the books of the depository institution at the close of business on the report date by the factor for demand deposits for such semiannual period, and for addition to time and savings deposits the amount obtained by multiplying the amount of total time and savings deposits shown on the books of the depository institution at the close of business on the report date by the factor for time and savings deposits for such semiannual period.

(ii) *A single experience factor.* (A) The factor for each semiannual period shall be the percentage obtained by dividing the amount of total unposted credits on the last business day of March or September by the total deposits shown on the books of the depository institution at the close of business on the same day.

(B) Until two years' experience has been obtained, the depository institution shall determine on the last business day of March or September of each year the total actual amount of all unposted credits.

(C) For assessment purposes, there shall be separately stated in each quarterly report of condition for addition to time and savings deposits for assessment purposes the amount obtained by multiplying the amount of total deposits shown on the bank's books at the close of business on the report date by the factor for such semiannual period.

(2) *Permanent experience factor for unposted credits.* When two years' experience has been obtained with respect to an experience factor developed under paragraph (c)(1) of this section, a permanent experience factor shall be computed and used for the ninth and subsequent quarterly reports of condition. This factor shall be the

percentage obtained by dividing the aggregate amount of the unposted credits by the aggregate amount of the deposits which were used in establishing each factor for the four preceding semiannual periods.

(3) *Initial and permanent experience factors for unposted debits.* The reporting depository institution may use the same procedure outlined in paragraphs (c)(1) and (c)(2) of this section for establishing an experience factor or factors in reporting unposted debits for deduction from the assessment base, except:

(i) The terms "deduction" and "debit" would be substituted for the terms "addition" and "credit"; and

(ii) In developing the single experience factor, if the amount of the deductions computed exceeds the amount of the demand deposits, the excess may be deducted from time and savings deposits.

(4) *Alternative methods.* When it is impracticable to segregate the amounts of unposted credits or debits outstanding in a "branch clearings" account or similar account or to segregate the unposted credits or debits into demand deposits and time and savings deposits in computing a factor or factors under paragraph (c) of this section, the depository institution may apply to the Corporation for permission to compute the amounts by other methods.

(d) *Mergers, consolidations, deposit assumptions, and conversions.* (1) In any merger or consolidation or deposit assumption transaction in which the continuing or resulting institution uses an experience factor or factors, the continuing or resulting institution, if it elects to continue to use such a factor or factors, shall use new experience factors based on the combined experience of the participating institutions for the two-year period prior to such transaction or may establish a new factor or factors in accordance with paragraph (c) of this section.

(2) A depository institution resulting from the conversion of an institution that uses an experience factor or factors shall, if it elects to continue to use such factor or factors, continue to use the experience factor or factors of the converted institution.

(e) *Changes in experience factors*—(1) *New experience factors.* A depository institution that uses an experience factor or factors may apply to the Corporation for permission to establish a new permanent factor or factors in the manner provided in paragraph (c) of this section. Until the new permanent factor or factors have been determined and approved in writing by the Corporation, the institution shall continue to use its existing factor or factors.

(2) *Corporation requiring new experience factors.* The Corporation at any time may require a depository institution that uses an experience factor or factors to establish a new factor or factors, and for this purpose may designate a day or days and a period or periods, other than those specified, for the determination of deposits and the total actual amounts of unposted credits or unposted debits, or both. After the new factor or factors have been computed by the institution or the Corporation and have been approved in writing by the Corporation, the institution shall use the new factor or factors for all subsequent quarterly reports of condition.

(3) *Notice to corporation of changes in accounting methods.* If a depository institution that uses an experience factor or factors changes its accounting procedures from those used when its experience factor or factors were established and this causes an increase or decrease in the amount of unposted credits or unposted debit, it shall promptly give written notice to the Corporation of the change.

§ 327.6 Payment of assessments by depository institutions whose insured status has terminated.

(a) *Terminations pursuant to deposit assumptions.* When the deposit liabilities of an insured depository institution are assumed by another insured depository institution—

(1) *Assessments on assumed deposits.* For assessment purposes, the assumed deposits shall be deposit liabilities of the assuming institution and shall cease to be deposit liabilities of the institution whose deposits are assumed.

(2) *Payment of assessments; certified statements*—(i) *Payment by institution whose deposits are assumed.* Except as provided in paragraph (a)(2)(ii) of this section, the insured depository institution whose deposits are assumed shall file a final certified statement and shall pay to the Corporation the normal assessment on the deposits. If the deposits of the terminating depository institution are assumed by a newly insured depository institution, the terminating depository institution is not required to file certified statements or pay any assessment upon the deposits assumed after the semiannual period in which the assumption occurs.

(ii) *Payment by assuming institution.* When the assuming depository institution agrees to file the certified statement which the terminating depository institution is required to file, the filing of the certified statement and the payment of the assessment on the deposits by the assuming depository institution shall satisfy the terminating depository institution's obligations in this regard if—

(A) The requisite notice of assumption, as provided in part 307 of this chapter, is given to the depositors of the terminating depository institution; and

(B) The certified statement is filed separately from that required to be filed by the assuming depository institution.

(b) *Other terminations.* When the insured status of an institution is terminated, and the deposit liabilities of such institution are not assumed by another insured depository institution—

(1) *Payment of assessments; certified statements.* The terminating depository institution shall continue to file certified statements and pay assessments for the period its deposits are insured. Such terminating institution shall not be required to file further certified statements or to pay further assessments after the depository institution has paid in full its deposit liabilities and the assessment to the Corporation required to be paid for the semiannual period in which its deposit liabilities are paid in full, and after it, under applicable law, has ceased to have authority to transact a banking business and to have existence, except for the purpose of, and to the extent permitted by law for, winding up its affairs.

(2) *Payment of deposits; certification to Corporation.* When the deposit liabilities of the depository institution have been paid in full, the depository institution shall certify to the Corporation that the deposit liabilities have been paid in full and give the date of the final payment. When the depository institution has unclaimed deposits, the certification shall further state the amount of the unclaimed deposits and the disposition made of the funds to be held to meet the claims. For assessment purposes, the following will be considered as payment of the unclaimed deposits:

(i) The transfer of cash funds in an amount sufficient to pay the unclaimed and unpaid deposits to the public official authorized by law to receive the same; or

(ii) If no law provides for the transfer of funds to a public official, the transfer of cash funds or compensatory assets to an insured depository institution in an amount sufficient to pay the unclaimed and unpaid deposits in consideration for the assumption of the deposit obligations by the insured depository institution.

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(3) *Notice to depositors.* (i) The terminating depository institution shall give sufficient advance notice of the intended transfer to the owners of the unclaimed deposits to enable the depositors to obtain their deposits prior to the transfer. The notice shall be mailed to each depositor and shall be published in a local newspaper of general circulation. The notice shall advise the depositors of the liquidation of the depository institution, request them to call for and accept payment of their deposits, and state the disposition to be made of their deposits if they fail to promptly claim the deposits.

(ii) If the unclaimed and unpaid deposits are disposed of as provided in paragraph (b)(2)(i) of this section, a certified copy of the public official's receipt issued for the funds shall be furnished to the Corporation.

(iii) If the unclaimed and unpaid deposits are disposed of as provided in paragraph (b)(2)(ii) of this section, an affidavit of the publication and of the mailing of the notice to the depositors, together with a copy of the notice and a certified copy of the contract of assumption, shall be furnished to the Corporation.

(4) *Notice to Corporation.* The terminating depository institution shall advise the Corporation of the date on which the authority or right of the depository institution to do a banking business has terminated and the method whereby the termination has been effected (*i.e.*, whether the termination has been effected by the surrender of the charter, the cancellation of its authority or license to do a banking business by the supervisory authority, or otherwise).

(c) *Resumption of insured status before insurance of deposits ceases.* If a depository institution whose insured status has been terminated is permitted by the Corporation to continue or resume its status as an insured depository institution before the insurance of its deposits has ceased, the institution will be deemed, for assessment purposes, to continue as an insured depository institution and must thereafter furnish certified statements and pay assessments as though its insured status had not been terminated. The procedure for applying for the continuance or resumption of insured status is set forth in § 303.5 of this chapter.

§ 327.7 Payment of interest on delinquent assessment payments and assessment overpayments.

(a) *Payment of interest—*(1) *Payment by institutions—*(i) *Required.* Each insured depository institution shall pay interest to the Corporation on any delinquent assessment payment.

(ii) *Delinquent payments.* An assessment payment will be considered delinquent if—

(A) In the case of an assessment to be paid by a bank, the assessment is postmarked after the time for payment specified in § 327.2;

(B) In the case of an assessment to be paid by a savings association, the assessment is paid—

(*1*) In the case of an institution specified in § 327.22(a) or (b)(1), after the sixth business day of the second month of the current semiannual period; or

(*2*) In the case of an institution specified in § 327.22(b)(2), after the last day of the first month of the current semiannual period;

including late payments caused by errors on the part of the depository institution in its certified statement, unless the delay has been caused by a depository institution's good faith reliance on a specific rule, regulation or approval issued by the Corporation.

(2) *Payment by Corporation.* The Corporation will pay interest to an insured depository institution for any overpayment of an assessment.

(b) *Interest rate.* The interest rate will be the United States Treasury Department's current value of funds rate which is issued under the Treasury Fiscal Requirements Manual (TFRM rate) and published in the **Federal Register**. The interest rate will be determined as follows:

(1) *Current year.* (i) For delinquent days occurring on or prior to March 31, the rate will be the TFRM rate that is published in the preceding December.

(ii) For delinquent days occurring from April 1 to June 30, inclusive, the rate will be the TFRM rate that is in effect for the second quarter of the year.

(iii) For delinquent days occurring from July 1 to September 30, inclusive, the rate will be the TFRM rate that is in effect for the third quarter.

(iv) For delinquent days occurring from October 1 to December 31, inclusive, the rate will be the TFRM rate that is in effect for the fourth quarter.

(2) *Prior years.* The interest will be calculated quarterly and compounded annually at the rates applicable for each quarter as issued under the TFRM. For the initial year, the rate will be applied to the gross amount of the delinquent payment. For each additional year or portion thereof the rate will be applied to the net amount of the delinquent payment after it has been reduced by the assessment credit, if any, for the year.

§ 327.8 Definitions.

(a) *Unposted credits and debits—*(1) *Unposted credit.* The term "unposted credit" means any deposit received in any office of a depository institution for deposit in any other office of the depository institution located in any State of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, the Northern Marianas Islands, or the Virgin Islands, except those which have been:

(i) Included in the total deposits in the quarterly report of condition; or

(ii) Offset in the quarterly report of condition by an equal amount of cash items in the institution's possession drawn on itself (on the same type of deposits as those offset) and not charged against deposit liabilities at the close of business on the date of the quarterly report of condition.

(2) *Unposted debit.* The term "unposted debit" means a cash item in the reporting institution's possession that is drawn on the institution and immediately chargeable, but not yet charged, against the institution's deposit liabilities at the close of business on the date of the quarterly report of condition. The following items are excluded:

(i) Cash items drawn on other depository institutions,

(ii) Overdrafts and nonsufficient fund (NSF) items,

(iii) Cash items returned unpaid to the last endorser for any reason, and

(iv) Drafts and warrants that are "payable at" or "payable through" the reporting institution for which there is no written authorization on file at the institution or State statute allowing the institution at its discretion to charge the items against the deposit accounts of the drawees.

(3) *Exclusion.* The above terms "unposted credit" and "unposted debit" do not include items which have been reflected in deposit accounts on the general ledger and in the quarterly report of condition, even though they have not been credited or debited to individual deposit accounts.

(b) *Deposits—*(1) *Deposit.* The term "deposit" has the meaning specified in section 3(*l*) of the Federal Deposit Insurance Act. In particular, the term "deposit" includes any liability—without regard for whether the liability is a liability of an insured bank or of an insured savings association—that is of a kind which, had the liability been a liability of an insured bank immediately prior to the effective date of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, would have constituted a deposit in such bank within the meaning of section 3(*l*) of the

Federal Deposit Insurance Act as such section 3(*l*) was then in effect.

(2) *Demand deposits.* The term "demand deposits" refers to deposits specified in § 329.1(b) of this chapter, except that any reference to "bank" in such section shall be deemed to refer to "depository institution".

(3) *Time and savings deposits.* The term "time and savings deposits" refers to any deposits other than demand deposits.

(4) *Exception.* (i) Deposits accumulated for the payment of personal loans, which represent actual loan payments received by the depository institution from borrowers and accumulated by the depository institution in hypothecated deposit accounts for payment of the loans at maturity, shall not be reported as deposits on the quarterly report of condition. The deposit amounts covered by the exception are to be deducted from the loan amounts for which these deposits have been accumulated and assigned or pledged to effectuate payment.

(ii) Time and savings deposits that are pledged as collateral to secure loans are not "deposits accumulated for the payment of personal loans" and are to be reported in the same manner as if they were not securing a loan.

(c) *Quarterly report of condition.* The term "quarterly report of condition" means a report required to be filed pursuant to section 7(a)(3) of the Federal Deposit Insurance Act.

(d) *Semiannual period—*(1) *In general.* The term "semiannual period" means a period beginning on January 1 of any calendar year and ending on June 30 of the same year, or a period beginning on July 1 of any calendar year and ending on December 31 of the same year.

(2) *Current semiannual period.* The term "current semiannual period" means, with respect to a certified statement or an assessment, the semiannual period within which such certified statement is required to be filed or such assessment is required to be paid.

(3) *Prior semiannual period.* The term "prior semiannual period" means, with respect to a certified statement or an assessment, the semiannual period immediately prior to the current semiannual period.

(e) *Newly insured institution.* The term "newly insured institution" means an institution that became an insured depository institution during the semiannual period immediately prior to the period for which the certified statement is required: *Provided,* That the term "newly insured institution" does not include any institution that became an insured depository institution as a result of the operation of section 4(a)(2) of the Federal Deposit Insurance Act.

(f) *BIF member.* The term "BIF member" means a depository institution that is a member of the Bank Insurance Fund.

(g) *SAIF member.* The term "SAIF member" means a depository institution that is a member of the Savings Association Insurance Fund.

Subpart B—BIF Members

§ 327.11 Scope.

Subpart B of this part applies to any BIF member other than a bank specified in § 327.31(a).

§ 327.12 Form of certified statement.

The certified statement to be filed by any BIF member shall be the statement prescribed in § 304.3(a) of this chapter.

§ 327.13 Payment of assessment.

(a) *Time of payment.* Each BIF member shall pay the assessment due for any semiannual period on or before the last day of the first month of such semiannual period.

(b) *Procedure for payment.* Each BIF member may pay such assessment by check or other draft drawn on such member or such member's account at another insured depository institution.

Subpart C—SAIF Members

§ 327.21 Scope.

Subpart C of this part applies to any SAIF member.

§ 327.22 Time for payment of assessment.

(a) *SAIF members filing quarterly reports of condition within the first month of the semiannual period. In the case of any SAIF member that has filed its quarterly reports of condition for the prior semiannual period on or before the last day of the first month of the current semiannual period—*

(1) *Computation of assessment.* The Corporation shall compute the amount of the assessment due from the SAIF member for the current semiannual period.

(2) *Payment of assessment—*(i) *In general.* On the sixth business day of the second month of the current semiannual period, the SAIF member shall pay the amount so computed by the Corporation according to the procedure prescribed by § 327.23.

(ii) *Exception.* If, in the case of a SAIF member that has received a certified statement form prepared by the Corporation for the current semiannual period, the president or other officer notifies the Corporation, before 5 p.m., Eastern time, of the last business day of the first month of the current semiannual period, of any amendment such SAIF member has made to the amount of the assessment due as computed by the Corporation, and if the Corporation confirms in writing the receipt of such notice, the SAIF member may pay the amended amount rather than the amount computed by the Corporation.

(b) *Other SAIF members.* In the case of any SAIF member that has not filed its quarterly reports of condition for the prior semiannual period on or before the last day of the first month of the current semiannual period—

(1) If—

(i) The SAIF member files a certified statement for the current period in a timely manner; and

(ii) The Corporation receives, before 5 p.m., Eastern time, of the last business day of the first month of the current semiannual period, notification from such SAIF member of the amount of the assessment due, and confirms in writing the receipt of such notice to such SAIF member;

the SAIF member may pay the amount of the assessment due for such semiannual period as shown on the SAIF member's certified statement according to the procedure prescribed by § 327.23.

(2) If the Corporation has not received, before 5 p.m., Eastern time, of the last business day of the first month of the current semiannual period, notification from such SAIF member of the amount of the assessment due, the SAIF member shall pay the amount of the assessment due as shown in its certified statement for such period upon filing the certified statement with the Corporation. The payment to be made under this paragraph (b)(2) shall be subject to interest from and including the first day of the second month of the current semiannual period through the date on which the payment is made.

(c) *Adjustments to payments.* (1) If a SAIF member believes that the amount of an assessment as computed by the Corporation differs from the amount the SAIF member properly owes, the SAIF member shall promptly notify the Corporation of the discrepancy.

(2) If the Corporation determines that the amount computed by the Corporation is improper, the amount of any overpayment on the part of the SAIF member shall be repaid to such SAIF member by check, with interest, and the amount of any underpayment on the part of the SAIF member shall be paid by such SAIF member by check, with interest if appropriate.

(d) *Certain credits—*(1) *Secondary Reserve offsets.* Notwithstanding any

shall be in the form prescribed by the Corporation.

described in paragraph (a) of this section as a conversion transaction; and

acquisition, in whole or in part, of a BIF member during such semiannual period.

certified public accountant (CPA) under certain specified conditions. The rule is

proposal, with the comment period ending on October 23, 1989. (See 54 FR

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(d) *Certain credits*—(1) *Secondary Reserve offsets.* Notwithstanding any other provision of this part, a SAIF member may offset the amount described in section 7(m) (1) and (3) of the Federal Deposit Insurance Act against any assessment required to be paid pursuant to section 7(b) of such Act.

(2) *Carry-over credits.* If an institution that became an insured depository institution as the result of the operation of section 4(a)(2) of the Federal Deposit Insurance Act had credits during calendar year 1989 exceeding amounts assessed by the Corporation during 1989, such excess credits shall be applied to the assessment the institution is required to pay in the first semiannual period in calendar year 1990 up to the maximum amount of the assessment. Any remaining amount of any such excess credits shall be applied to the assessment the institution is required to pay in the second semiannual period in calendar year 1990.

§ 327.23 Manner of payment.

(a) *Payment through collection agent*— (1) *Use of collection agent.* The amounts required to be paid pursuant to § 327.22(a) or (b)(1) shall be paid through the Collection Agent.

(2) *"Collection Agent" defined.* "Collection Agent" means any person, corporation, governmental unit, or any other entity that has been authorized by the Corporation to act as its agent for collecting assessments.

(b) *Establishment of demand deposit accounts for assessment purposes.* Every SAIF member shall establish a demand deposit account at the Federal home loan bank of which it is a member, or at a commercial bank that is a member of the Federal Reserve System and is approved by the Corporation, for the purpose of paying the assessments required pursuant to this part, and shall authorize such Federal home loan bank or commercial bank to debit the account in the amount of any such assessment at the direction of the Corporation.

(c) *Deposit of funds for assessment payments.* Prior to the due date for each assessment payment, each SAIF member shall deposit sufficient funds in the demand deposit account established pursuant to paragraph (b) of this section in order that such account may be directly debited by the respective Federal home loan bank or correspondent bank for the amount of the assessment then due.

§ 327.24 Certified statements.

(a) *Standard form.* The certified statement to be filed by SAIF members shall be in the form prescribed by the Corporation.

(b) *Preliminary certified statement form*—(1) *Preparation by the FDIC.* (i) Preparation; transmission to SAIF member.—If a SAIF member has filed its quarterly reports of condition on or before the dates on which they are required to be filed, the Corporation, as an accommodation to the SAIF member, may prepare a preliminary certified statement form for the SAIF member showing the amount of the assessment to be paid by the SAIF member, and send it to the SAIF member.

(ii) *Contents.* The preliminary certified statement form shall show the data available to the Corporation regarding the information required to be shown in the SAIF member's certified statement.

(2) *Review by SAIF member.* The president of the SAIF member, or another officer designated by the SAIF member's board of directors or trustees, may review the information contained in the preliminary certified statement form.

(3) *Signature*—(i) *Form accepted.* If the president or such other officer agrees that the information presented in such preliminary certified statement form is accurate, the president or such other officer may sign and date the form on the lines provided.

(ii) *Form amended.* If the president or such other officer does not agree that the information presented in such preliminary certified statement form is accurate, the president or such other officer may make such corrections in the information as may be needed, and may then sign and date the form on the lines provided.

(4) *Use of Preliminary certified statement form.* The SAIF member may file a signed and dated preliminary certified statement form in lieu of the standard form, and such signed and dated preliminary certified statement form shall constitute the certified statement that such SAIF member is required to file pursuant to section 7(c) of the Federal Deposit Insurance Act.

Subpart D—Banks Participating in Section 5(d)(3) Transactions

§ 327.31 Scope.

(a) *Affected institutions.* Subpart D of this part applies to any bank that—

(1) Is a BIF member; and

(2) Is the assuming, surviving, or resulting institution in a transaction undertaken pursuant to section 5(d)(3) of the Federal Deposit Insurance Act.

(b) *Duration.* Subpart D of this part shall cease to apply to a bank if—

(1) On or after August 9, 1994, the Corporation approves an application by the bank to treat the transaction described in paragraph (a) of this section as a conversion transaction; and

(2) The bank pays the amount of any exit and entrance fee assessed by the Corporation with respect to such transaction.

§ 327.32 Computation and payment of assessment.

(a) *Amount of assessment*—(1) *Responsibility for computation.* Each bank subject to subpart D of this part shall compute its own assessment.

(2) *Rate of assessment*—(i) *BIF member rate.* (A) Except as provided in paragraph (a)(2)(ii) of this section, the assessment to be paid by a bank subject to subpart D of this part shall be computed at the rate applicable to BIF members.

(B) Such rate shall be applied to the bank's assessment base less that portion of the assessment base which is equal to the bank's adjusted attributable deposit amount.

(ii) *SAIF member rate.* Notwithstanding paragraph (a)(2)(i) of this section, that portion of the assessment base of a bank subject to subpart D of this part which is equal to the adjusted attributable deposit amount of such bank shall—

(A) Be subject to assessment at the assessment rate applicable to SAIF members pursuant to subpart C of this part; and

(B) Not be taken into account in computing the amount of any assessment to be allocated to the Bank Insurance Fund.

(3) *"Adjusted attributable deposit amount."* A bank's "adjusted attributable deposit amount" for any semiannual period is equal to the sum of—

(i) The amount of any deposits acquired by the bank in connection with a transaction described in § 327.31(a);

(ii) The total of the amounts determined under paragraph (a)(3)(iii) of this section for semiannual periods preceding the semiannual period for which the determination is being made under this section; and

(iii) The amount by which the sum of the amounts described in paragraphs (a)(3)(i) and (a)(3)(ii) of this section would have increased during the preceding semiannual period (other than any semiannual period beginning before the date of such transaction) if such increase occurred at a rate equal to the greater of—

(A) An annual rate of 7 percent; or

(B) The annual rate of growth of deposits of such bank minus the amount of any deposits acquired through the acquisition, in whole or in part, of a BIF member during such semiannual period.

(4) *"Deposits acquired by the bank."* As used in paragraph (a)(3)(i) of this section, the term "deposits acquired by the bank" means all deposits that are held in the institution acquired by such bank on the date of such transaction; *Provided,* That if the Corporation or the Resolution Trust Corporation has been appointed as conservator or receiver for the acquired institution, such term—

(i) Does not include any deposit held in the acquired institution on the date of such transaction which the acquired institution has obtained, directly or indirectly, by or through any deposit broker; and

(ii) Does not include that part of any remaining deposit held in the acquired institution on the date of such transaction that is in excess of $60,000;

(iii) Is limited to 80 per centum of the remaining portion of the aggregate of the deposits specified in paragraph (a)(4)(ii) of this section.

(5) *"Deposit broker."* As used in paragraph (a)(4) of this section, the term "deposit broker" has the meaning specified in section 29 of the Federal Deposit Insurance Act (12 U.S.C. 1831f).

(b) *Procedures for computation and payment.* A bank subject to subpart D of this part shall follow the payment procedure that is set forth in subpart B of this part.

§ 327.33 Form of certified statement.

The certified statement to be filed by a bank subject to subpart D of this part shall be in the form prescribed by the Corporation.

By order of the Board of Directors.

Dated at Washington, DC, this 5th day of December 1989.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 89-29188 Filed 12-14-89; 8:45 am]

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701 and 741

Requirements For An Outside Audit; Requirements for Insurance

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: This final rule adds § 701.13 and amends § 741.2. The rule prescribes the regulatory requirement for an outside, independent audit of any federally insured credit union by a certified public accountant (CPA) under certain specified conditions. The rule is being added to reflect applicable provisions of Public Law 101-73, the Federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). The rule is substantially unchanged from a proposed rule issued in September 1989.

EFFECTIVE DATE: December 7, 1989.

ADDRESS: National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: D. Michael Riley or Karen K. Kelbly, Office of Examination and Insurance, at the above address or telephone (202) 682-9640.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The proposed rule stated that this rule imposed no additional paperwork requirements. During the comment period, NCUA staff reconsidered this position and determined that the proposed rule did impose additional requirements. They are as follows:

a. Some additional paperwork burden may be added in the case of a credit union which performed an audit under § 701.12 which was deemed unsatisfactory, and

b. Additional audit workpapers required by a CPA to complete an opinion audit will be required in the case of a credit union which has been determined to have serious and persistent recordkeeping problems.

These additional requirements were submitted to the Office of Management and Budget (OMB) on October 31, 1989. NCUA will publish a notice in the Federal Register once OMB action is taken on the submitted requirements.

Background

This rule is necessitated by section 919 of the Federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) which amends section 202(a) of the Federal Credit Union Act [12 U.S.C. 1782(a)]. FIRREA requires that within 120 days of its enactment, the NCUA Board prescribe, by regulation, audit requirements for the outside, independent audit of any federally insured credit union by a certified public accountant under certain conditions. Accordingly, this rule is effective December 7, 1989, rather than allowing for a 30-day delayed effective date.

In September 1989, consistent with FIRREA, the NCUA Board issued a proposed revision to § 701.13 and § 741.2 of the NCUA Rules and Regulations. The Board sought comments and recommendations concerning the proposal, with the comment period ending on October 23, 1989. (See 54 FR 38870, September 21, 1989).

The proposed rule, in § 701.13, sets forth the three statutory conditions under which an outside, independent audit by a certified public accountant is to be required:

(1) The supervisory committee of the credit union has not conducted an annual supervisory committee audit; or

(2) The annual supervisory committee audit conducted was not complete and satisfactory; or

(3) The credit union has experienced serious and persistent recordkeeping deficiencies.

It was proposed that under either of the first two conditions, the scope of the audit would be that required by existing § 701.12; under the third condition, an opinion audit would be necessary. The proposal also defined what constitutes a "complete and satisfactory supervisory committee audit" and "serious and persistent recordkeeping deficiencies".

The proposal also recommended amending § 741.2 to require annual audits of federally-insured, state-chartered credit unions using the same standards as for federal credit unions.

Comments

A total of twenty-three comment letters were received in response to the proposed revisions to §§ 701.13 and 741.2. Seventeen letters were from Federal credit unions, two were from federally-insured state credit unions, three were from trade associations, and one from a Federal government department.

Nine commenters supported the proposed rule unchanged. One of these nine, as well as five additional commenters, voiced their support to regularly require an outside, CPA audit of all federally-insured credit unions. Because the financial hardship a routine CPA audit requirement would place on many smaller credit unions, the Board has no immediate plans to change the existing § 701.12 audit and verification requirements.

At the opposite end of the spectrum, four commenters objected to any requirements for a CPA audit arguing that audit quality is not assured by a CPA and that a CPA audit places an undue hardship on smaller credit unions. The FIRREA, which mandated that the Board institute this regulation, also mandated that the audit be "an outside, independent audit * * * by a certified public accountant." As a result, the Board is unable to consider these comments.

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Several commenters did not understand that the proposed rule would take effect only if a particular credit union was not meeting existing regulatory audit and verification requirements (§§ 701.13 and 741.2), and thus, argued that the supervisory committee's and the credit union board's autonomy were being infringed. Based on this misunderstanding of the facts, one commenter criticized the lack of a regulatory flexibility analysis. The Board wishes to stress that credit unions can control their own destiny in this regard; if a credit union's supervisory committee is functioning in a manner that protects the members and the credit union as a whole consistent with the existing regulations, the new rule will have no effect on the credit union. Accordingly, the Board continues to feel that a Regulatory Flexibility Analysis is not required.

Because of differing state requirements and the fact that some state credit unions have audit committees rather than supervisory committees, one commenter suggested the Board drop the § 741.2 reference to the supervisory committee for federally-insured credit unions. While the Board recognizes that the intent of Congress was not to mandate the formation of supervisory committees by state-chartered credit unions, the Board has opted to retain the supervisory committee reference consistent with the FIRREA. The Board does not intend to take exception merely on the use of the term "supervisory committee" as opposed to other state-required language.

One commenter requested clarification of the Board's intent with regard to league auditing services and the permissibility of league audits to fulfill the § 701.13 and § 741.2 audit and verification requirements. In cases where the supervisory committee audit has not been conducted or was incomplete or unsatisfactory, league auditors may perform the audit through satisfying the requirements of § 701.12, provided the auditor is a certified public accountant. The condition triggered by serious and persistent problems may not be met through use of league auditing services but rather, requires an opinion audit performed by a certified public accountant accepting responsibility under those credentials. Auditors lacking certified public accountant standing will continue to be permitted to conduct § 701.12 audits and verifications.

One commenter expressed concern that credit unions with cited deficiencies be given a reasonable time for compliance and the implementation of corrective action before requirements of the new rule take effect. Two commenters believe the regulation should state precisely what the consequences would be if a credit union does not comply. One commenter felt the regulation permitted the Administration too much subjectivity in determining what constitutes "a complete and satisfactory audit" and "serious and persistent recordkeeping deficiencies." The Board believes the regulation as written provides as specific guidance as is advisable while affording the Administration the flexibility needed to carry out its supervisory responsibilities.

One letter of comment supported amending § 741.2(b) to read the credit union shall verify "all passbooks and accounts with the records of the treasurer not less frequently than on a yearly basis" rather than the existing "not less than once every 2 years." The commenter argued that in the case of "serious and persistent recordkeeping deficiencies," 2-years time is too prolonged a period between account verifications and would be detrimental to member's assets. Section 115 of the Federal Credit Union Act (12 U.S.C. 1761(d)) requires the supervisory committee to verify accounts every 2 years. The Board believes the proposed rule is consistent with statutory requirements and ensures the protection of member's accounts. Credit unions having serious and persistent recordkeeping problems are required by the new rule to obtain an outside, independent CPA audit which results in an opinion. Under generally accepted auditing standards, the CPA would have to perform tests (verifications) and gather evidential material to gain a level of assurance that all accounts, including member's deposits, were not materially misstated. The CPA's opinion would reflect the results of such tests and disclose his opinion/assurance with regard to member's deposits.

One commenter criticized the Board for allowing an insufficient period for comment. The Board did not have the option of permitting a longer period for comment; the FIRREA required implementation of the new rule within 120 days of enactment (December 1989). The final rule is substantially similar to the proposed regulation.

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board certifies that the proposed rule, if made final, will not have a significant impact on a substantial number of small credit unions. The rule will only affect small credit unions to the extent they do not adhere to existing regulations. Accordingly, the NCUA Board has determined that a Regulatory Flexibility Analysis is not required.

Executive Order 12612

Congress has mandated in section 919 of FIRREA that NCUA prescribe regulations requiring that all federally-insured, state-chartered credit unions obtain an outside, independent audit by a certified public accountant if the credit union has not obtained an annual supervisory committee audit, the supervisory committee audit is not complete and satisfactory or the credit union has experienced serious and persistent recordkeeping deficiencies as defined by the NCUA Board.

To implement the FIRREA provisions, it is incumbent upon NCUA to define what constitutes a "complete and satisfactory supervisory committee audit" and "serious and persistent recordkeeping deficiencies". To accomplish this, NCUA has applied to federally-insured, state-chartered credit unions the same standards that exist in §§ 701.12 and proposed 701.13 for federal credit unions.

It is the NCUA Board's belief that this is the most fair and administratively feasible method of accomplishing the requirements of FIRREA, and that, inasmuch as state-chartered credit unions are already subject to comparable audit requirements under state law, significant new burdens will not be imposed beyond those legislatively mandated by FIRREA.

List of Subjects

12 CFR Part 701

Credit unions; Reporting and recordkeeping requirements; Supervisory committee audits.

12 CFR Part 741

Credit unions; Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on December 7, 1989.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA proposes to amend its regulations (12 CFR parts 701 and 741) as follows:

PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 is revised to read as follows:

Authority: 12 U.S.C. 1755, 1756, 1757, 1759, 1761(a), 1761(b), 1766, 1767, 1782, 1784, 1787, 1789, and 1789; and Pub. L. 101–73. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*, 42 U.S.C. 1861 and 42 U.S.C. 3601–3610. Section 701.8 is also authorized by 31 U.S.C. 3717.

2. Section 701.13 is added to read as follows:

§ 701.13 Requirements for an outside audit.

(a) A federal credit union shall obtain an outside, independent audit by a certified public accountant for any fiscal year during which any one of the following three conditions is present:

(1) The supervisory committee of the federal credit union has not conducted an annual supervisory committee audit;

(2) The annual supervisory committee audit conducted did not meet the audit requirements of § 701.12 including § 701.12(e);

(3) The federal credit union has experienced serious and persistent recordkeeping deficiencies as defined in paragraph (c) of this section.

(b) In the case of an audit required pursuant to paragraph (a)(1) or (2) of this section, the scope of the outside, independent audit conducted by a certified public accountant must fully encompass the requirements set forth in § 701.12. In the case of an audit required pursuant to paragraph (a)(3) of this section, the outside, independent audit by a certified public accountant must be an opinion audit as that term is understood under generally accepted auditing standards.

(c) As used in paragraph (a)(3) of this section, persistent recordkeeping deficiencies shall mean serious recordkeeping problems which continue to exist past a usual, expected, or normal period of time. Persistent recordkeeping deficiencies shall be considered serious if the Administration has a reasonable doubt that the financial condition of the credit union is accurately and fairly presented in the credit union's statements and that management practices and procedures are sufficient to safeguard members' assets.

PART 741—REQUIREMENTS FOR INSURANCE

1. The authority citation for part 741 is revised to read as follows:

Authority: 12 U.S.C. 1757, 1766(a), and 1781 through 1790; Pub. L. 101–73.

2. Section 741.2 is revised to read as follows:

§ 741.2 Audit and verification requirements.

(a) The supervisory committee of each credit union insured pursuant to title II of the Act shall make or cause to be made an audit of the credit union at least once every calendar year covering the period elapsed since the last audit. The audit must fully meet the requirements set forth in §§ 701.12 and 701.13.

(b) Each credit union which is insured pursuant to title II of the Act shall verify or cause to be verified, under controlled conditions, all passbooks and accounts with the records of the treasurer not less frequently than once every 2 years. The verification must fully meet the requirements set forth in §§ 701.12(e) and 701.13.

[FR Doc. 89–29191 Filed 12–14–89; 8:45 am]

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12 CFR Parts 705 and 701

Community Development Revolving Loan Program for Credit Unions; Nonmember and Public Unit Accounts

AGENCY: National Credit Union Administration.

ACTION: Final Rule.

SUMMARY: This rule makes several clarifying changes to Part 705 of NCUA's Rules and Regulations ("Community Development Revolving Loan Program for Credit Unions") and one corresponding change to § 701.32 of NCUA's Rules and Regulations ("Nonmember and Public Unit Accounts"). These amendments result from a review of Part 705 following a recent amendment to the Federal Credit Union ("FCU") Act clarifying that the Community Development Credit Union Revolving Loan Fund ("Fund") is subject only to the rules and regulations prescribed by the NCUA Board. NCUA has been unable to approve any loans because the Office of Management and Budget did not make an allotment to NCUA for use of the funds. The monies in the Fund are now available for loans.

The Board has made this rule effective immediately since it simply updates and clarifies the existing regulations, and does not impose any new requirements.

EFFECTIVE DATE: December 15, 1989.

ADDRESS: National Credit Union Administration, 1776 G St., NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Robert J. LaPorte, Central Liquidity Facility, or Julie Tamuleviz, Staff Attorney, at the above address or telephone: (202) 682–9780 (Mr. LaPorte) or (202) 682–9630 (Ms. Tamuleviz).

SUPPLEMENTARY INFORMATION:

Background

The Community Development Revolving Loan Fund Program for Credit Unions

Congress established the Community Development Revolving Loan Fund Program ("Program") to make loans to participating credit unions to enable them to provide basic financial and related services to residents in needy communities and to stimulate economic activities in the communities they serve, resulting in increasing income, ownership and employment opportunities for low-income residents and other community-growth efforts. In 1986, Congress transferred the Fund and the authority to administer the Fund from the Secretary of Health and Human Services ("HHS") to the NCUA. Part 705 of NCUA's Regulations established the program under which loans from the Fund are made.

No state or local funds are required. A Federal or state-chartered credit union applies to NCUA for a loan from the Fund. 12 CFR 705.5(a). A state-chartered credit union seeking a loan must obtain "written concurrence from [its] state regulatory authority." 12 CFR 705.8. A state-chartered credit union receiving a loan under the Program remains subject to supervision and examination by the state regulator.

Funding for the Program comes from Congressional appropriation. The Fund received a $6,000,000 appropriation in 1979 and currently has a balance of $6,679,000. Since the Fund was transferred to NCUA in 1986, NCUA has solicited, received, and reviewed loan fund applications from eligible credit unions. However, NCUA has been unable to approve any loans because the Office of Management and Budget had not authorized use of the appropriation.

Public Law 101–144

Public Law 101–144, enacted on November 9, 1989, amended Section 120 of the FCU Act (12 U.S.C. 1766) by adding the following new subsection (k):

(k) Notwithstanding any other provision of law, the Board may exercise the authority granted to it by the Community Development Credit Union Revolving Loan Fund Transfer Act (Public Law 99–369, sec. 1, November 6, 1986, 100 Stat. 3475) subject only to the rules and regulations prescribed by the NCUA Board.

The amendment provides NCUA with

full control of the Fund's balance, and ensures that the funds are now available for loans.

Section 705.9—Application Period

Section 705.9 currently provides that applications for loans will be accepted

with § 701.37 (Treasury Tax and Loan Depositaries; Depositaries and Financial Agents of the Government) and

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 520

Dated: December 7, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

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full control of the Fund's balance, and ensures that the funds are now available for loans.

Technical Amendments to Part 705

Section 705.0—Applicability

This section currently provides that monies from the Fund loaned after October 1, 1987, are governed by Part 705. This final amendment deletes the reference to October 1, 1987. When the regulation was promulgated, the date was included to make clear that any loans extended by HHS prior to the time Congress transferred control of the Fund to NCUA would be subject to HHS regulation. Since the only loan remaining will be paid off by the end of this year, reference to the date is no longer necessary.

Section 705.7—Loans to Participating Credit Unions and Section 701.32—Nonmember Deposits

Section 705.7(b)(1) requires that credit unions receiving loans from the Fund must match the amount of the loan monies received by increasing member and nonmember share deposits to an amount at least equal to the loan amount. Section 701.32 of NCUA's Rules and Regulations was amended in July 1989 (54 FR 31182, 7/27/89) to require that federally-insured credit unions that wish to maintain nonmember and public unit shares in excess of 20% of their total shares submit a plan setting forth the intended use of the funds and request NCUA's approval. Credit union acceptance of deposits to meet the matching requirement does not relate to the problems at which § 701.32 is aimed. Part 705 requires that a participating credit union submit, as part of its application for a Program loan, financial information and a plan for the use of the loan funds. It also requires that a community development committee be established to continue to evaluate the participating credit union's needs. 12 CFR 705.5 and 705.6. In effect, these requirements and the matching requirement are a substitute for the plan required under § 701.32. Moreover, § 705.7(a) of NCUA's Regulations limits the amount of loans from the Fund to $200,000, thereby setting a cap on any nonmember deposits for purposes of meeting the matching requirement to $200,000. The NCUA Board deems it unnecessary to include the matching shares accepted under § 705.7(b)(1) in the limitations set forth in § 701.32. A corresponding change has been made to § 701.32(c). Once the loan is repaid, nonmember share deposits accepted to meet the matching requirement are subject to § 701.32.

Section 705.9—Application Period

Section 705.9 currently provides that applications for loans will be accepted through November 30, 1987. This statement is being deleted. Rather than setting a new date in the regulation that would require future amendments to the regulation depending upon the availability of funds, amended § 705.9 provides that when funds are available, application periods will be announced and notice provided to all eligible credit unions through publication in the **Federal Register.**

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board certifies that this rule will not have a significant economic impact on a substantial number of small credit unions. It updates and clarifies the existing regulation. Therefore, a regulatory flexibility analysis is not required.

Executive Order 12612

Part 705 applies to FCU's and state-chartered credit unions. State-chartered credit unions need not be federally insured to participate in the Program. The amendments made to the regulations only update and clarify the current regulations. The amendments will not change current practice.

List of Subjects in 12 CFR Part 701

Credit unions, nonmember accounts, community development revolving loan program.

12 CFR Part 705

Credit unions, community development revolving loan program.

By the National Credit Union Administration Board on December 7, 1989.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA amends its regulations as follows:

PART 701—[AMENDED]

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1787, and 1789. Section 701.31 is also authorized by 15 U.S.C. 1601 et seq., 42 U.S.C. 1761 and 42 U.S.C. 3601–3610.

2. Section 701.32(c) is revised to read as follows:

§ 701.32 Payments on shares by public units and nonmembers.

* * * * *

(c) The limitations herein do not apply to accounts maintained in accordance with § 701.37 (Treasury Tax and Loan Depositaries; Depositaries and Financial Agents of the Government) and matching funds required by § 705.7(b) (Community Development Revolving Loan Program for Credit Unions). Once a loan granted pursuant to part 705 is repaid, nonmember share deposits accepted to meet the matching requirement are subject to this section.

PART 705—[AMENDED]

1. The authority citation for part 705 is revised to read as follows:

Authority: Pub. L. 97–35; Pub. L. 99–600, note to 42 U.S.C. 9822; Pub. L. 101–144.

2. Section 705.0 is revised to read as follows:

§ 705.0 Applicability.

Monies from the Community Development Revolving Loan Fund for Credit Unions are governed by this regulation.

3. Section 705.7(b)(1) is revised to read as follows:

§ 705.7 Loans to participating credit unions.

* * * * *

(b) * * *

(1) Loan monies made available must be matched by the participating credit union by increasing its member and nonmember share deposits in an amount at least equal to the loan amount. Share deposits accepted to meet this matching requirement are not subject to the § 701.32 limitation on nonmember deposits. Participating credit unions must meet this matching requirement within one year of the approval of the loan application and must maintain the increase in the total amount of share deposits for the duration of the loan. Once the loan is repaid, nonmember share deposits accepted to meet the matching requirement are subject to § 701.32.

* * * * *

4. Section 705.9 is revised to read as follows:

§ 705.9 Application period.

NCUA will announce and publish in the **Federal Register** when applications for participation in the program may be submitted. Such notice will be dependent upon the availability of funds.

[FR Doc. 89–29190 Filed 12–14–89; 8:45 am]

BILLING CODE 7535-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Animal Drugs, Feeds, and Related Products; Albendazole Paste

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by SmithKline Animal Health Products. The NADA provides for use of albendazole paste as an anthelmintic in cattle.

EFFECTIVE DATE: December 15, 1989.

FOR FURTHER INFORMATION CONTACT: John L. Olsen, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4913.

SUPPLEMENTARY INFORMATION: SmithKline Animal Health Products, Division of SmithKline Beckman Corp., 1600 Paoli Pike, West Chester, PA 19380, filed NADA 128–070 providing for oral use of a 30-percent albendazole paste (Valbazen™) in cattle. It is used for removal and control of adult liver flukes, heads and segments of tapeworms, adult and 4th stage larvae of stomach worms (brown stomach worm, barberpole worm, small stomach worm), intestinal worms (thread-necked intestinal worm, small intestinal worm), lungworms, 4th stage inhibited larvae of brown stomach worm, and adult stages of certain intestinal worms (hookworm, bankrupt worm, nodular worm).

The NADA is approved and 21 CFR 520.45b is added to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(iii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Section 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. New § 520.45b is added to read as follows:

§ 520.45b Albendazole paste.

(a) *Specifications.* The product contains 30 percent albendazole.

(b) *Sponsor.* See No. 000007 in § 510.600(c) of this chapter.

(c) *Related tolerances.* See § 556.34 of this chapter.

(d) *Conditions of use in cattle*—(1) *Amount.* Equivalent to 4.54 milligrams per 1 pound of body weight (10 milligrams per kilogram).

(2) *Indications for use.* For removal and control of the following internal parasites of cattle: adult liver flukes (*Fasciola hepatica*); heads and segments of tapeworms (*Moniezia benedeni, M. expansa*); adult and 4th stage larvae of stomach worms (brown stomach worms including 4th stage inhibited larvae (*Ostertagia ostertagi*); barberpole worm (*Haemonchus contortus, H. placei*); small stomach worm (*Trichostrongylus axei*)); adult and 4th stages larvae of intestinal worms (thread-necked intestinal worm (*Nematodirus spathiger, N. helvetianus*); small intestinal worm (*Cooperia punctata* and *C. oncophora*)); adult stages of intestinal worms (hookworm (*Bunostomum phlebotmum*); bankrupt worm (*Trichostrongylus colubriformis*), nodular worm (*Oesophagostomum radiatum*)); adult and 4th stage larvae of lungworms (*Dictyocaulus viviparus*).

(3) *Limitations.* Administer as a single oral dose. Do not slaughter within 27 days of last treatment. Do not use in female dairy cattle of breeding age. Do not administer to female cattle during first 45 days of pregnancy or for 45 days after removal of bulls. Consult your veterinarian for assistance in the diagnosis, treatment, and control of parasitism.

Dated: December 7, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89–29316 Filed 12–14–89; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 558

Animal Drugs, Feeds, and Related Products; Technical Amendments

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendments.

SUMMARY: The Food and Drug Administration (FDA) in amending certain animal drug regulations in 21 CFR part 558, failed to properly reflect the change of several medicated feed definitions from "premixes" to "Type A medicated articles." In addition, a phrase was inadvertently omitted in amending another section. This document amends the regulations accordingly.

EFFECTIVE DATE: December 15, 1989.

FOR FURTHER INFORMATION CONTACT: John W. Borders, Center for Veterinary Medicine (HFV–238), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6243.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 3, 1986 (51 FR 7382), FDA published a final rule implementing the "Second Generation Medicated Feed Program." That program provided for use of such terms as "Type A medicated articles and Type B and Type C medicated feeds." In 21 CFR 558.15(g), the introductory text was amended to incorporate those terms. Inadvertently, a subsequent document published in the **Federal Register** of March 14, 1986 (51 FR 8811 at 8812), amended that text improperly. In addition, in 21 CFR 558.3(b)(4), the third sentence is revised. Accordingly, this document amends §§ 558.3(b)(4) and 558.15(g), introductory text.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

PART 2619—[AMENDED]

1. The authority citation for part 2619 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, and 1362.

Appendix D—Tables Used to Determine Expected Retirement Age

TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Tables I–79 through I–89 in Appendix D establish retirement rate categories for the calendar years 1979 through 1989.

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

2. Section 558.3 is amended by revising the third sentence in paragraph (b)(4) to read as follows:

§ 558.3 Definitions and general considerations applicable to this part.

* * * * *

(b) * * *

(4) * * * It is manufactured by diluting a Type A medicated article or a Type B medicated feed. A Type C medicated feed may be further diluted to produce another Type C medicated feed. * * *

* * * * *

§ 558.15 [Amended]

3. Section 558.15 *Antibiotic, nitrofuran, and sulfonamide drugs in the feed of animals* is amended in the introductory text of paragraph (g) by removing the term "Type B feed" wherever it appears and inserting in its place "Type A medicated article".

Dated: December 6, 1989.

Robert C. Livingston,

Acting Director, Office of New Animal Drug Evaluation Center for Veterinary Medicine.

[FR Doc. 89-29319 Filed 12-14-89; 8:45 am]

BILLING CODE 4160-01-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2619

Valuation of Plan Benefits in Single-Employer Plans; Expected Retirement Age

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This rule amends the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Benefits in Single-Employer Plans (29 CFR part 2619) by adding a new Table I-90 to Appendix D. Table I-90 is to be used by any terminating pension plan with a valuation date falling in 1990 to determine expected retirement ages for plan participants. This Table is needed in order to compute the value of early retirement benefits and, thus, the total value of benefits under the plan.

EFFECTIVE DATE: January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Renae R. Hubbard, Special Counsel, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; 202-778-8850 (202-778-8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The regulation of the Pension Benefit Guaranty Corporation ("PBGC") on Valuation of Plan Benefits in Single-Employer Plans (29 CFR part 2619) sets forth the methods for valuing plan benefits of terminating single-employer plans covered under title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). As a general rule, all plans wishing to terminate in a distress termination under ERISA section 4041(c) must value guaranteed benefits and benefit liabilities under the plan using formulas set forth in part 2619. Plans terminating in a standard termination may also use the formulas in Part 2619 to value benefit liabilities for purposes of the notice to the PBGC required by ERISA section 4041(b)(2)(A), although this is not required. (Such plans may value benefit liabilities that are payable as annuities on the basis of a qualifying bid obtained from an insurer.)

Under § 2619.46, early retirement benefits are valued according to the annuity starting date, if a retirement date has been selected, or according to the expected retirement age, if the annuity starting date is not known on the valuation date. Subpart D of part 2619 sets forth rules for determining the expected retirement ages for plan participants entitled to early retirement benefits. Appendices D and E of Part 2619 contain tables and examples to be used in determining the expected early retirement ages.

There are two sets of tables in Appendix D. The first set, Selection of Retirement Rate Category (I-79 through I-89), is used to determine whether a participant has a low, medium, or high probability of retiring early. The second set of tables, Expected Retirement Ages for Individuals in the Low/Medium/High Categories (II-A, II-B, and II-C), is used to determine the expected retirement age after the probability of early retirement has been determined.

The first set of tables determines the probability of early retirement based on the year a participant would reach normal retirement age and the participant's monthly benefit at normal retirement age. The second set of tables establishes, by probability category, the expected retirement age based on both the earliest age a participant could retire under the plan and the normal retirement age under the plan. This expected retirement age is used to compute the value of the early retirement benefit and, thus, the total value of benefits under the plan.

Tables I-79 through I-89 in Appendix D establish retirement rate categories for the calendar years 1979 through 1989. The table for each year applies only to plans with valuation dates in that year. This rule amends Appendix D to add Table I-90 in order to provide an updated correlation, appropriate for calendar year 1990, between the amount of a participant's benefit and the probability that the participant will elect early retirement. Table I-90 will be used to value benefits in plans with valuation dated that occur during calendar year 1990.

The PBGC has determined that notice of an public comment on this rule are impracticable and contrary to the public interest.

Plan administrators need to be able to estimate accurately the value of plan benefits as early as possible before initiating the termination process. For that purpose, if a plan has a valuation date in 1990, the plan administrator needs the updated table being promulgated in this rule. Accordingly, the public interest is best served by issuing this table expeditiously, without an opportunity for notice and comment, to allow as much time as possible to estimate the value of plan benefits with the proper table for plans with valuation dates in early 1990. Moreover, because of the need to provided immediate guidance for the valuation of benefits under such plans, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that good cause exists for making this amendment to the regulation effective less than 30 days after publication.

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291 because it will not result in an annual effect on the economy of $100 million or more, a major increase in costs for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity or innovation.

Because no general notice of proposed rulemaking is required for this regulation, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

List of Subjects in 29 CFR Part 2619

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, Appendix D to part 2619 of subchapter C of chapter XXVI of title 29, Code of Federal Regulations, is hereby amended as follows:

PART 2619—[AMENDED]

1. The authority citation for part 2619 is revised to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, and 1362.

2. Appendix D to part 2619 is amended by adding Table I-90 as follows:

Appendix D—Tables Used to Determine Expected Retirement Age

* * * * *

TABLE I-90—SELECTION OF RETIREMENT RATE CATEGORY

[For plans with valuation dates after December 31, 1989, and before January 1, 1991]

Participant reaches NRA in year	Participant's retirement rate category is—			
	Low [1] if monthly benefit at NRA is less than	Medium [2] if monthly benefit at NRA is		High [3] if monthly benefit at NRA is greater than
		From	To	
1991	326	326	1,374	1,374
1992	337	337	1,418	1,418
1993	346	346	1,456	1,456
1994	354	354	1,488	1,488
1995	360	360	1,513	1,513
1996	366	366	1,539	1,539
1997	378	378	1,565	1,565
1998	385	385	1,592	1,592
1999	391	391	1,619	1,619
2000 or later	398	398	1,647	1,647

[1] Table II-A. [2] Table II-B. [3] Table II-C.

Issued at Washington, DC, this 8th day of December, 1989.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 89-29271 Filed 12-14-89; 8:45 am]

BILLING CODE 7708-01-M

29 CFR Part 2676

Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal—Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676). The regulation prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of the Employee Retirement Income Security Act of 1974. Section 2676.15(c) of the regulations contains a table setting forth, for each calendar month, a series of interest rates to be used in any valuation performed as of a valuation date within that calendar month. On or about the fifteenth of each month, the PBGC publishes a new entry in the table for the following month, whether or not the rates are changing. This amendment adds to the table the rate series for the month of January 1990.

EFFECTIVE DATE: January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006; 202-778-8820 (202-778-8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The PBGC finds that notice of and public comment on this amendment would be impracticable and contrary to the public interest, and that there is good cause for making this amendment effective immediately. These findings are based on the need to have the interest rates in this amendment reflect market conditions that are as nearly current as possible and the need to issue the interest rates promptly so that they are available to the public before the beginning of the period to which they apply. (See 5 U.S.C. 533 (b) and (d).) Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 533 601(2)).

The PBGC has also determined that this amendment is not a "major rule" within the meaning of Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 29 CFR Part 2676

Employee benefit plans and Pensions.

In consideration of the foregoing, part 2676 of subchapter H of chapter XXVI of title 29, Code of Federal Regulations, is amended as follows:

PART 2676—VALUATION OF PLAN BENEFITS AND PLAN ASSETS FOLLOWING MASS WITHDRAWAL

1. The authority citation for part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1).

2. In § 2676.15, paragraph (c) is amended by adding to the end of the table of interest rates therein the following new entry:

§ 2676.15 Interest.

* * * * *

(c) *Interest Rates.*

For valuation	The values for i_t are:

participate in proceedings that may affect the member's direct or indirect financial interests. Prior to this

penalties under the regulatory program for the IDNR.

The definition of "employee" in

The Director finds that the proposed amendments to IC 13-4.1-2-3 are not consistent with SMCRA at 517(g) and

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For valuation dates occurring in the month:	The values for i_k are:															
	i_1	i_2	i_3	i_4	i_5	i_6	i_7	i_8	i_9	i_{10}	i_{11}	i_{12}	i_{13}	i_{14}	i_{15}	i_n
January 1990 ...	.0625	.08	.0775	.075	.0725	.07	.07	.07	.07	.07	.065	.065	.065	.065	.065	.05875

James B. Lockhart III,
Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 89-28270 Filed 12-14-89; 8:45 am]
BILLING CODE 7708-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Indiana Regulatory Program; Financial Interests

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval, with certain exceptions, of an amendment to the Indiana Permanent Regulatory Program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment changes the Indiana Surface Mining Law provisions concerning: (1) Filing statements of employment and financial interest, (2) authority to pursue legal action against any person interfering with implementation of the regulatory program, and (3) procedures for forwarding conflict of interest disclosure statements. The amendment is intended to revise the Indiana program to be consistent with the corresponding Federal rules, and to clarify and simplify existing requirements.

EFFECTIVE DATE: December 15, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Richard D. Rieke, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Room 300, Minton-Capehart Federal Building, 575 N. Pennsylvania Street, Indianapolis, Indiana 46204; telephone, (317) 226-6166.

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of Amendments
III. Director's Findings
IV. Public and Agency Comments
V. Director's Decision
VI. Procedural Determinations

I. Background

The Secretary of the Interior conditionally approved the Indiana program effective July 29, 1982, and fully approved the program on August 19, 1983. Information regarding the general background on the Indiana program, including the Secretary's findings, and the disposition of comments can be found in the July 26, 1982, **Federal Register** (47 FR 32107) and the August 19, 1983, **Federal Register** (48 FR 37631). Subsequent actions concerning the conditions of approval and proposed amendments are identified in 30 CFR 914.10, 914.12, 914.15, and 914.16.

II. Discussion of Amendments

By letter dated March 18, 1988 (Administrative Record No. IND-0559A), the Indiana Department of Natural Resources (IDNR) submitted to OSM pursuant to 30 CFR 732.17, proposed State program amendments. The provisions of the amendments were included in three laws enacted by the 1988 Indiana General Assembly: Senate Enrolled Acts Nos. 45, 121, and 231. By letter dated October 19, 1988 (Administrative Record No. IND-0611), Indiana requested that OSM process each of the three laws separately as individual program amendments. This notice concerns Senate Enrolled Act No. 45 that revised provisions at Indiana Code (IC) 13-4.1-2-3; 13-4.1-11-10; and 35-44-1-3. Decisions concerning the amendments contained in Senate Enrolled Act No. 121 and Senate Enrolled Act No. 231 will be presented in separate **Federal Register** notices.

The provisions of Senate Enrolled Act No. 45 are briefly summarized below.

(1) Senate Enrolled Act No. 45, Section 1 amends IC 13-4.1-2-3 to require that each member of the Natural Resources Commission file, in addition to the filings required under existing IC 35-44-1, a statement of employment and financial interest. The amendment also provides that commission members may not participate in proceedings that may affect the member's direct or indirect financial interests.

(2) Senate Enrolled Act No. 45, Section 2 amends IC 13-4.1-11-10 by changing all references to the "permittee" to read "person" or "persons." This change is intended to allow the State to pursue legal action against anyone interfering with implementation of the regulatory program, including non-permitted "persons."

(3) Senate Enrolled Act No. 45, Section 3 amends IC 35-44-1-3 to delete the requirement that referenced disclosures be forwarded under IC 13-4.1-2-3.

(4) Senate Enrolled Act No. 45, Sections 4 through 24 make changes to the Indiana oil and gas statutes. These do not apply to the Indiana program approved by OSM and are, therefore, not discussed in this **Federal Register** announcement.

OSM announced receipt of the proposed amendments in the May 10, 1988, **Federal Register** (53 FR 16560) and, in the same notice, opened the public comment period and provided opportunity for a public hearing on their substantive adequacy. The public comment period ended June 9, 1988. There were two requests for a public hearing concerning the May 10, 1988, submittal, and a hearing was held on June 6, 1988.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendments to the Indiana program.

1. IC 13-4.1-2-3 Conflict of Interest

The Indiana statute at Indiana Code (IC) 13-4.1-2-3 states that an employee of the department who has any duty under the Surface Coal Mining and Reclamation Article (IC 13-4.1) may not have a direct or indirect financial interest in any surface coal mining operation. Indiana proposes to amend IC 13-4.1-2-3 to add the requirement that, in addition to the filings required under IC 35-44-1, each member of the Natural Resources Commission (NRC) must file annually with the Director of the Department of Natural Resources a statement of employment and financial interests. The proposed amendment also adds that commission members may not participate in proceedings that may affect the member's direct or indirect financial interests. Prior to this amendment, IC 13-4.1-2-3 required that members of the commission who had a direct or indirect financial interest in any surface coal mining operation file annually with the State board of accounts a disclosure statement of that interest.

The Indiana Department of Natural Resources (IDNR) is the designated State Regulatory Authority. The statute establishing the IDNR provides that the IDNR "shall consist of the NRC, the director of the IDNR, * * * and such other personnel as are necessary * * *" (IC 14-3-3-3). The NRC is designated by statute as the ultimate authority of the IDNR (IC 14-3-3-21(a)). Indiana law defines "ultimate authority" as the "individual or panel of individuals in whom the final authority of an agency is vested by law or executive order" (IC 4-21.5-1-15). The NRC is designated by statute as the entity to adopt rules on behalf of the IDNR (IC 14-3-3-21(b)), and to issue notices of violation (NOV's) and assess civil penalties for laws administered by the IDNR (IC 14-3-3-22). Therefore, members of the NRC have a duty under the Indiana Surface Coal Mining and Reclamation Article (IC 13-4.1).

Section 517(g) of SMCRA states that no employee of the regulatory authority performing any function or duty under SMCRA shall have a direct or indirect financial interest in any underground or surface coal mining operation. The provisions of 30 CFR part 705 establish certain filing requirements and restrictions on financial interests, to implement the prohibition in SMCRA Section 517(g) against regulatory employees having any financial interests in surface coal mining operations. In order to determine whether the provisions of part 705 apply to NRC members, it must be determined whether or not members of the NRC may appropriately be considered employees of the regulatory authority under 30 CFR 705.5. That section defines "employee" to include "* * * commission members * * * who perform any function or duty under the Act, if they perform decisionmaking functions for the State Regulatory Authority under the authority of State law or regulations." Section 705.5 defines "performing any function or duty under this Act" to mean "those decisions or actions, which if performed or not performed by an employee affect the programs under the Act." The NRC members meet this definition. They adopt rules and issue NOV's and civil penalties under the regulatory program for the IDNR.

The definition of "employee" in § 705.5 also provides that "members of * * * commissions established in accordance with State law or regulations to represent multiple interests are not considered to be employees." NRC members, however, are not required or authorized by statute or regulation to represent different interests, such as environmental interests or industry interests. The statute which establishes NRC membership (IC 14-3-3-3) provides that seven of the twelve NRC members are to be the head of officers of specified state agencies and advisory councils, and the other five members are to be appointed by the governor. No reference to representation of interests was set out in the statutory provision concerning NRC membership. Therefore, members of the NRC must be considered employees of the regulatory authority. As employees of the regulatory authority, members of the NRC may not have a direct or indirect financial interest in coal mining operations and must comply with the Indiana regulations at 310 IAC 12-7-1(b) concerning employees performing any duty or function under the Act (IC 13-4.1).

The proposed language to be added to IC 13-4.1-2-3 states that a member of the commission may not participate in proceedings that may affect the member's direct or indirect financial interests. As discussed above, however, OSM must consider members of the NRC to be employees of the regulatory authority and, as such, members of the NRC may not have a direct or indirect financial interest in any surface coal mining operation. Therefore, the proposed language contradicts the approved provision which prohibits employees of IDNR who have any functions or duty under IC 13-14.1 from having a direct or indirect financial interest in any surface coal mining operation. The proposed language implies that members of the NRC may have such direct or indirect financial interests. Similarly, the proposed language which states "in addition to the filings required under IC 35-44-1, each member of the commission shall file annually with the director a statement of employment and financial interest on a form prescribed by the department" implies that NRC members may not be employees of IDNR as discussed above. This is also inconsistent with the finding discussed above.

The Director finds that the proposed amendments to IC 13-4.1-2-3 are not consistent with SMCRA at 517(g) and the Federal rules at 30 CFR part 705 and cannot be approved. In addition, the language of the existing statute which states, "A member of the commission who has such an interest shall file annually with the state board of accounts a disclosure statement of that interest on a form prescribed by the state board of accounts," is also inconsistent with SMCRA and the Federal rules. The language implies that members of the NRC may have a direct or indirect financial interest in any surface coal mining operation. As discussed above, members of the NRC are employees of the regulatory authority who have a function or duty under SMCRA, and, as such, may not have a direct or indirect financial interest in any coal mining operation. Therefore, the Director is requiring that Indiana amend IC 13-4.1-2-3 or otherwise amend the Indiana program to be consistent with SMCRA at 517(g) and the Federal rules at 30 CFR part 705 concerning employees of the regulatory authority who have a function or duty under SMCRA.

2. IC 13-4.1-11-10 Civil Actions for Relief

Indiana has amended its program at IC 13-4.1-11-10 to delete the words "the permittee" and to insert the words "a person." In addition, at subsections 3 and 4, the word "his" is deleted and the words "the person's" are inserted. These changes have been enacted to ensure that implementation of the article cannot be construed to apply only to permittees. Indiana has indicated that the purpose for this amendment is to make clear that any person engaging in surface mining operations without a valid surface coal mining permit, or attempting to obstruct implementation of the Indiana program are subject to the State surface mining law as are permittees (Administrative Record No. IND-0559).

The proposed amendment is consistent with the Indiana Code at IC 13-4.1-1-7 which specifies that "a person who engages in surface coal mining operations and is not a permittee, is subject to the criminal, civil, and regulatory provisions of this article as if the person were a permittee." The amendment provision is also consistent with the Indiana Code at IC 13-4.1-12-3 which states any person who willfully resists, prevents, impedes, or interferes with the director or his representatives in the performance of his duties under the Indiana surface coal

mining and reclamation law is guilty of a Class A misdemeanor.

The Director finds that the proposed amendments to IC 13-4.1-2-3 are not consistent with SMCRA at 517(g) and the Federal rules at 30 CFR part 705 and cannot be approved. In addition, the language of the existing statute which states, "A member of the commission who has such an interest shall file annually with the state board of accounts a disclosure statement of that interest on a form prescribed by the state board of accounts," is also inconsistent with SMCRA and the Federal rules. The language implies that members of the NRC may have a direct or indirect financial interest in any surface coal mining operation. As discussed above, members of the NRC are employees of the regulatory authority who have a function or duty under SMCRA, and, as such, may not have a direct or indirect financial interest in any coal mining operation. Therefore, the Director is requiring that Indiana amend IC 13-4.1-2-3 or otherwise amend the Indiana program to be consistent with SMCRA at 517(g) and the Federal rules at 30 CFR part 705 concerning employees of the regulatory authority who have a function or duty under SMCRA.

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concerning procedures for forwarding conflict of interest disclosure statements.

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program
II. Submission of Amendments

The proposed amendment modifies portions of the Kentucky Administrative Regulations (KAR) Title 405 Chapters 8

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mining and reclamation law is guilty of a Class A misdemeanor.

The Director finds that the amendment is in accordance with and no less stringent than the provisions of SMCRA at section 521(c) concerning civil action for relief and at section 704 concerning the protection of government employees. The Director, therefore, approves the amendment to the Indiana code at IC 13-4.1-11-10.

3. IC 35-44-1-3 Offenses Against Public Administration

Indiana has amended its program at IC 35-44-1-3(e) by deleting the citation "IC 13-4.1-2-3." The provision now requires that the state board of accounts forward a copy of all disclosures filed with the board under IC 16-12.1, IC 16-12.2-5, or IC 34-44-1-3. The disclosures required by IC 35-44-1-3 apply to a public servant who has a pecuniary interest in or derives a profit from a contract or purchase connected with an action by the government entity being served by the public servant. Indiana considers the requirement to forward a copy of a financial interest disclosure under both IC 13-4.1-2-3 and IC 35-44-1-3 to be redundant.

The Federal regulations at 30 CFR 705.11 require all state regulatory authority employees performing any duties or functions under SMCRA to file statements of employment and financial interest. The Indiana Code at IC 13-4.1-2-3, as amended here, and the Indiana rules at 310 IAC 12-7-4 continue to require any employee of the Department of Natural Resources performing a duty or function under SMCRA to file conflict of interest statements. The Director finds, therefore, that the amendment to the Indiana program is in accordance with the requirements of SMCRA and can be approved.

IV. Public and Agency Comments

As discussed in the section of this notice entitled "Discussion of Amendments," the Director solicited public comment and provided opportunity for a public hearing on the proposed amendments. No comments concerning the amendments addressed in this rulemaking were received from the public during the public comment period which closed on June 9, 1988. No comments which concern the amendments addressed in this rulemaking were presented during the hearing which was held on June 6, 1988.

Pursuant to 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, comments were also solicited from various Federal agencies with an actual or potential interest in the Indiana program. No comments pertaining to these amendments were received.

V. Director's Decision

Based upon the above findings, the Director is approving the amendments submitted by Indiana on March 18, 1988, and included in Senate Enrolled Act No. 45, with the exception of those amendments determined not to be in accordance with SMCRA.

Based upon Finding 1, the Director is not approving the proposed amendments to IC 13-4.-2-3. In addition, the Director is also requiring that Indiana amend the existing language of IC 13-4.1-1-2-3 which concerns members of the Indiana Natural Resources Commission or to otherwise amend the Indiana program to be in accordance with SMCRA at section 517(g) and consistent with the Federal rules at 30 CFR part 705 concerning employees of the regulatory authority who have a function or duty under SMCRA.

The Federal rules at 30 CFR Part 914 codifying decisions concerning the Indiana program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs to the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effects of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In his oversight of the Indiana program, the Director will recognize only the statutes, regulations and other materials approved by him, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Indiana of only such provisions.

VI. Procedural Determinations

National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 914

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: December 6, 1989.

Carl C. Close,

Assistant Director, Eastern Field Operations.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below.

PART 914—INDIANA

1. The authority citation of part 914 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Paragraph (x) is added to § 914.15 to read as follows:

§ 914.15 Approval of regulatory program amendments.

* * * * *

(x) The following amendments to the Indiana permanent regulatory program, as submitted to OSM on March 18, 1988, are approved, with the exception of the proposed amendments to IC 13-4.1-2-3 concerning the filing of statements of employment and financial interest, effective December 15, 1989: Revisions to the Indiana Code (IC) as contained in Senate Enrolled Act No. 45 that amend IC 13-4.1-11-10, concerning authority to pursue legal action against any person interfering with implementation of the regulatory program; and IC 35-44-1-3, concerning procedures for forwarding conflict of interest disclosure statements.

3. In § 914.16, paragraph (b) is revised to read as follows:

§ 914.16 Required program amendments.

* * * * *

(b) By May 15, 1990, Indiana shall submit revisions to IC 13-4.1-2-3 or otherwise propose to amend its program to be in accordance with SMCRA at section 517(g) and consistent with the Federal regulations at 30 CFR part 705 which require that no employee of the State regulatory authority performing any function or duty under SMCRA shall have a direct or indirect financial interest in any underground or surface coal mining operation.

[FR Doc. 89-29279 Filed 12-14-89; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 917

Kentucky Regulatory Program; Cultural and Historic Resources

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval of proposed amendments to the Kentucky regulatory program (hereinafter referred to as the Kentucky program) approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments modify five Kentucky regulations concerning cultural and historic resources and are intended to revise the Kentucky program to be consistent with the Federal regulations. In addition, the Memorandum of Agreement (MOA) between the Kentucky Natural Resources and Environmental Protection Cabinet—Department for Surface Mining Reclamation and Enforcement and Kentucky's State Historic Preservation Office has been submitted to provide a narrative description on the consultation procedures that will be used in arriving at decisions regarding historical, cultural, and archeological resources. OSM finds this MOA to be acceptable.

EFFECTIVE DATE: December 15, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Roger Calhoun, Acting Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504; Telephone: (606) 233-7327.

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program
II. Submission of Amendments
III. Director's Findings
IV. Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Kentucky Program

The Kentucky program was conditionally approved by the Secretary of the Interior on May 18, 1982. Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Kentucky program can be found in the May 18, 1982, Federal Register (47 FR 21404-21435). Subsequent actions concerning the conditions of approval and program amendments are identified in 30 CFR 917.11, 917.15, 917.16, and 917.17.

II. Submission of Amendments

Pursuant to 30 CFR 732.17(f)(1), OSM notified Kentucky by a letter dated June 9, 1987 (Administrative Record Number KY-736), of needed changes to the State regulations concerning cultural and historic resources that were necessary to keep the Kentucky program as effective as the Federal program.

In response to OSM's letter, Kentucky submitted on December 21, 1988, proposed program amendments to the cultural and historic resources regulations contained in the Kentucky program (Administrative Record No. KY-841).

Within the January 24, 1989, Federal Register (54 FR 3493), OSM announced the receipt of and requested public comments on the proposed amendments. The public comment period closed February 23, 1989.

By letter dated July 5, 1989 (Administrative Record No. KY-903), Kentucky submitted a revised amendment package to supersede the December 21, 1988, amendment package. Additionally, Kentucky submitted a MOA between the Department for Surface Mining Reclamation & Enforcement (DSMRE) and the Kentucky Heritage Council (the State Historic Preservation Officer (SHPO)).

Within the August 4, 1989, Federal Register (54 FR 32093), OSM announced the receipt of the second amendment package and solicited public comments. The comment period for the revised amendments closed September 5, 1989. A summary of pertinent comments received and their disposition appears in the section of this notice entitled "Disposition of Comments."

The proposed amendment modifies portions of the Kentucky Administrative Regulations (KAR) Title 405 Chapters 8 and 24. Specifically, the proposed amendment makes the following modifications.

1. 405 KAR 8:010 is revised at Section 14 by adding a requirement for an additional written finding to be made by the Kentucky Natural Resources and Environmental Protection Cabinet (NREPC) to support its decisions on approval or denial of permit applications. The added finding is intended to ensure that the NREPC has taken into account the effect of proposed operations on properties listed or eligible for listing on the National Register of Historic Places.

2. 405 KAR 8:020 is revised at Section 2 to require that information on cultural or historic resources listed or known to be eligible for listing on the National Register of Historic Places, and known archeological resources located within the proposed exploration area; and any other information which the NREPC may require regarding known or unknown historic or archeological resources, be included in the narrative description portion of the exploration and reclamation operations plan of each application for an exploration permit.

3. 405 KAR 8:030 and 405 KAR 8:040 are revised at Section 11 to specify that Kentucky may require the applicant to identify and evaluate important historic and archeological resources that may be eligible for listing on the National Register of Historic Places, through collection of additional information, field investigations, or other appropriate analysis.

4. 405 KAR 8:030 and 405 KAR 8:040 are revised at Section 30 to clarify that the protections of these sections apply to publicly-owned parks and to any places, regardless of ownership, listed on the National Register of Historic Places. The revision also specifies that each mining and reclamation plan shall contain a description of measures to be used to prevent adverse impacts to public parks and places listed on the National Register of Historic Places, and that the NREPC may require the applicant to utilize appropriate mitigation and treatment measures to protect historic or archeological properties listed or eligible for listing on the National Register.

5. 405 KAR 24:040 is revised at Section 2 to permit the relocation of cemeteries if authorized by applicable State law or regulations.

In addition, Kentucky MOA between DSMRE and the SHPO identified the specific procedures to arrive at

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decisions regarding historic, cultural, and archeological resources.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendments to the Kentucky program. Only substantive changes will be discussed in detail, revisions not specifically discussed are found to be no less stringent that SMCRA and no less effective than the Federal regulations.

1. 405 KAR 8:010 General Provisions for Permits

Kentucky proposes to revise 405 KAR 8:010 Section 14 to ensure that the protections provided by this section are extended to both private and publicly owned places listed on the National Register of Historic Places, and to require an additional written finding by the NREPC prior to its approval of a permit application. The language of the amendment closely parallels the language of the Federal rules at 30 CFR 773.15(c) as revised February 10, 1987. Therefore, the Director finds the proposed amendment to be no less effective than the Federal rules.

2. 405 KAR 8:020 Coal Exploration

Kentucky proposes to revise 405 KAR 8:020 Section 2 to require that a permit application for coal exploration operations intending to remove more than 250 tons of coal contain a narrative description of cultural or historic resources listed or known to be eligible for listing on the National Register of Historic Places, known archeological resources located within the proposed exploration area, and any other information regarding known or unknown historic or archeological resources that the NREPC may require. The addition of this new language renders Kentucky's rule substantively identical to the Federal rule at 30 CFR 772.12 as revised on February 10, 1987.

Therefore, the Director finds the proposed amendment to be no less effective than the Federal rules.

3. 405 KAR 8:030 Surface Coal Mining Permits and 405 KAR 8:040 Underground Coal Mining Permits

Kentucky proposes to revise 405 KAR 8:030 Section 11, and 405 KAR 8:040 Section 11, to require that each permit application include a description of and identification of the nature of archeological resources listed or eligible for listing on the National Register of Historic Places, and known archeological sites within the permit and adjacent areas. Paragraph 2(b) is added to these sections to specify that the NREPC may require an applicant to identify and evaluate important historic and archeological resources that may be eligible for listing on the National Register of Historic Places, through collection of additional information, field investigations, or other appropriate analyses. The language of the amendments closely parallel that of 30 CFR 779.12 and 30 CFR 783.12 as revised February 10, 1987. Therefore, the Director finds the proposed amendments to be no less effective that the Federal rules.

4. 405 KAR 8:030 Surface Coal Mining Permits and 405 KAR 8:040 Underground Coal Mining Permits

Kentucky proposes to revise 405 KAR 8:030 Section 30, paragraph 1 and 405 KAR 8:040 Section 30, paragraph 1 to clarify that "any" places, including privately owned places, listed on the National Register of Historic Places that may be affected by the proposed operations, are afforded the protections of these sections. Paragraph (1) is further revised to require that each mining and reclamation plan describe the measures to be used to prevent adverse impacts, or, if valid existing rights exist or joint agency approval is to be obtained, to minimize adverse impacts to cultural or historic resources. A new paragraph (2) is added to these sections to specify that the NREPC may require an applicant to protect historic or archeological properties listed or eligible for listing on the National Register of Historic Places through appropriate mitigation and treatment measures. The language of these amendments closely parallels that of 30 CFR 780.31 and 30 CFR 784.17 as revised February 10, 1987. Therefore, the Director finds the proposed amendments to be no less effective than the Federal rules.

5. 405 KAR 24:040 Areas Unsuitable for Mining.

Kentucky proposes to revise 405 KAR 24:040 Section 2 to provide that cemeteries may be relocated if authorized by applicable state law or regulations. The language of the proposed amendment renders Kentucky's rule substantively identical to the Federal rule at 761.11(g). Therefore, the Director finds the proposed amendment to be no less effective than the Federal rules.

6. Memorandum of Agreement Between the Natural Resources and Environmental Protection Cabinet, Department for Surface Mining Reclamation and Enforcement, and the State Historic Preservation Officer (SHPO)

As part of their July 5, 1989, amendment package, Kentucky submitted a Memorandum of Agreement (MOA) between DSMRE and the Kentucky Heritage Council, the SHPO for the Commonwealth of Kentucky. This MOA establishes procedures whereby the DSMRE will consult with the SHPO regarding all proposed mining and reclamation operations, exploration operations removing more than 250 tons of coal, and all exploration operations in areas designated unsuitable for mining, regardless of tonnage. The MOA further prescribes the procedures for consultation, recommendations for conducting archeological surveys in advance of mining, identification of adverse impacts to important resources, and determination of appropriate mitigation measures.

The Director finds that the MOA establishes procedures that are consistent with the implementing regulations as proposed and fulfills the requirement of 30 CFR 731.14 (g)(17) by providing a narrative description of the system for consulting with agencies having a responsibility for historic, cultural, and archeological resources, and for making decisions regarding such resources.

IV. Summary and Disposition of Comments

Public Comments

The public comment period and opportunity to request a hearing announced in the August 4, 1989, **Federal Register** ended on September 5, 1989. No one requested an opportunity to testify at the scheduled public hearing and no hearing was held.

In response to the request for public comments, one individual representing the Kentucky Resources Council (KRC) submitted comments by way of a letter dated September 5, 1989 (Administrative Record No. KY–913). In that letter, KRC stated that on February 7, 1989, they had commented on the previous amendment package and that those previous comments (Administrative Record No. KY–850) apply and should supplement these comments.

OSM agrees to address both sets of comments submitted by the KRC.

1. KRC stated that the Federal regulations and by extension the State amendments are in violation of the National Historic Protection Act by not protecting eligible-for-listing cultural and historic properties by requiring consultation with the SHPO and establishing a procedure for surveys of proposed mine operations for unknown but eligible sites.

OSM will restrict its comments to the adequacy of the Kentucky program and proposed amendments. As part of the approved Kentucky program, 405 KAR 8:010 Section 3 requires the NREPC to coordinate with other agencies to avoid duplication and to ensure that the requirements of various laws are met. Among these laws, is the National Historic Preservation Act of 1966 as amended. The MOA submitted by Kentucky as part of the July 5, 1989, amendment package specifies under Section II: "[T]he importance of a resource is defined by its eligibility for listing on the National Register, as set forth in 36 CFR 60.6. All determinations of eligibility will be made by consultation between the SHPO and DSMRE. Cultural resource management decisions by DSMRE will be made in consultation with the SHPO."

Under Section IV of the MOA, procedures for consultation with the SHPO are specified for the protection of unknown eligible sites. The SHPO is afforded the opportunity to recommend further investigation of the site if there seems to be a probability of discovering a site eligible for listing on the National Register of Historic Places (NRHP). DSMRE has the authority under 405 KAR 8:030 Section 11(2)(b) to require that an applicant identify and evaluate important historic and archeological resources that may be eligible for listing on the NRHP. The Director believes the amendment to be no less effective than 30 CFR 780.31 and 30 CFR 784.17 and has reflected that opinion in his decision.

2. The KRC's comments of February 7, 1989, state that the proposed Kentucky amendment at 405 KAR 8:010 Section 8(7)(c) does not provide for coordination with the Office of the State Archaeologist. The Director agrees with the KRC, but points out that the Federal regulations at 30 CFR 773.13(a)(3)(ii), are specific in their requirements for the notification of, and coordination with the SHPO, but that there is no requirement for coordination with the State archeologist.

3. The KRC's comments of February 7, 1989, state that the proposed amendment does not protect archeological sites from the impacts of coal exploration. However, the Director notes that the proposed amendment contains, at 405 KAR 8:020 Section 2, protective language substantively identical to the Federal rule at 30 CFR 772.12. The Director also notes that the MOA completed on April 4, 1989, between the NREPC and the SHPO does apply to all coal exploration operations removing more than 250 tons of coal and to exploration in areas designated unsuitable for mining.

4. The KRC's comments of February 7, 1989, expressed a concern for the use of the term "surface mining activities" as that term is used in proposed 405 KAR 8:030 Section 30(2). The KRC suggests that the use of this language prevents Kentucky from requiring the completion of mitigating measures before any impact associated with the mining operation occurs. KRC states further that this same provision denies the State the authority to require completion of mitigation measures prior to permit issuance.

The Federal rules at 30 CFR 780.31(b) provide that appropriate mitigation and treatment measures may be required to be taken after permit issuance provided they are completed before the properties are affected by any mining operations. This language recognizes the importance of having appropriate mitigation and treatment measures in place before a property is affected by mining, but does not preclude the completion of the appropriate measures after a permit has been issued. While the Federal regulations do not rule out the use of the language proposed by Kentucky neither do they require it. There is no Federal requirement for the completion of mitigating measures prior to permit issuance. The Kentucky proposal provides protections similar to the federal rule by requiring that mitigation and treatment measures be completed before the properties are affected by surface mining activities.

5. The KRC's comments of February 7, 1989, expressed a concern for the failure of the proposed amendment to identify how Kentucky will assure that sites that are eligible for listing on the National Register of Historic Places, but have not yet been identified, will be screened and identified prior to mining. The Director notes that Kentucky's proposal submitted on July 5, 1989, contains a MOA executed by the NREPC and the SHPO on April 4, 1989. The MOA addresses the issues of KRC's concern and provides the key elements for the identification and screening of sites not yet identified. The content of a memorandum of agreement between state agencies is not dictated by SMCRA or the Federal regulation. The Director finds, however, that MOA submitted for approval as part of the package outlines the basic coordination process for the protection of cultural and historic resources and does not preclude the implementation of the regulations proposed.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Kentucky program. Several agencies responded but with no substantive comments.

Pursuant to 30 CFR 732.17(h)(4), the State Historic Preservation Officer (SHPO) and the Advisory Council for Historic Preservation were sent a copy of the amendment for comment. Comments were received only from the SHPO. The Kentucky Heritage Council (KHC) is the SHPO in Kentucky. By letter dated August 11, 1989 (Administrative Record No. KY–910), KHC commented on the proposed amendment package.

1. KHC stated Kentucky regulations on cultural and historic resources, like their Federal counterparts, are deficient in several critical areas. The regulations suffer from lack of definition and inconsistent use of key terms.

Although OSM agrees that a consistent use of terminology would improve the clarity of the amendments, the terms used by Kentucky are consistent with the Federal program and do not render the Kentucky amendment submittal less effective in protecting cultural and historic resources.

2. KHC commented that the draft regulations fail to reference recognized professional standards such as the minimal qualifications for archeologists and historians, and the standards and guidelines for archeology and historic preservation.

The professional standards prescribed by 36 CFR part 66, Appendix C and the "Standards and Guidelines for Archaeology and Historic Preservation" are not binding on the states. For further discussion of this issue, see the February 10, 1987, **Federal Register** notice (52 FR 4251). In the review of the Kentucky amendments, OSM considered in accordance with section 503(b)(7) whether the rules submitted were consistent with the regulations issued by the Secretary pursuant to SMCRA. The Director has found that the regulations and the MOA submitted are consistent with the Federal regulations and has indicated his rationale in the Section "Director's Findings".

3. KHC commented that the submission was impaired by the absence of specific procedures for making management decisions for

historic properties. Specifically, the revised regulations fail to establish specific guidelines on how each under that MOA, the SHPO must provide comments on effect and suggest mitigation measures. The language of CFR 761.11(g). In the case where a cemetery was listed or eligible for listing

List of Subjects in 30 CFR Part 917

Coal mining, Intergovernmental

support Ohio's use of average county yields for demonstrating yield

release; OAC 1501:13–9–15(F)(12) concerning non-augmentative practices;

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historic properties. Specifically, the revised regulations fail to establish specific guidelines on how each requirement of the regulations will be met.

As discussed under the Section "Director's Findings", the proposed Kentucky regulations are found to be substantively similar to and no less effective than the equivalent Federal regulations. The procedures for implementing the proposed regulations are further specified in the MOA between the DSMRE and the SHPO. This MOA was found to be consistent with the proposed regulations and would not preclude the implementation of those regulations.

4. KHC states that 405 KAR 8:010, Section 12 limits the confidentiality placed on archeological and historical resources to information on public and Indian lands as required by the Archeological Resources Protection Act of 1979. The SHPO's inventory of archeological and historical site locations are exempt from public inspection pursuant to the Commonwealth's Open Record's Act. To make this locational information available to the public as part of the permit file would be damaging to the historic resources of the Commonwealth.

Section 505 of SMCRA states that no State law or regulation that provides for more stringent land use or environmental controls will be construed to be inconsistent with the SMCRA. The Commonwealth's Open Record's Act exemption as interpreted by the State Attorney General would not be superseded by the adoption of the proposed regulation as written. The Director based his findings on the proposed regulation on the basis that the regulation provided as stringent controls as afforded under SMCRA and controls as effective as controls afforded under the Federal regulations.

5. KHC states that 405 KAR 8:010, Section 14(5) (a) and (b), prescribe that DSMRE must determine that places included on the National Register of Historic Places are not adversely affected, except as provided for in 405 KAR 24:040, Section 2(4). DSMRE must also take in account the effect of proposed operations on properties listed or eligible for listing in the National Register of Historic Places. KHC is concerned that there is no explanation of effect, and the way that these will be taken in account.

The MOA prescribes in Section V that the DSMRE will consult with the SHPO on the nature of the operations and there effects on cultural resources. As a part of the SHPO's responsibilities under that MOA, the SHPO must provide comments on effect and suggest mitigation measures. The language of the regulation is substantively similar to the equivalent Federal regulation. As stated on the February 10, 1987, Federal Register notice (52 FR 4250), regulatory authorities "are not obligated to use the definitions at 36 CFR 800.9 for determining an adverse effect on historic resources from surface coal mining operations."

6. KHC commented that 405 KAR 8:030, Section 11(2); 405 KAR 8:030, Section 23(c); 405 KAR 8:040, Section 11(3)(a); and 405 KAR 8:040, Section 23(1)(c) all make references to resources listed on or eligible for the NHRP. KHC felt that working is poorly organized and there is a lack of consistent use of terms.

As discussed in response to comment No. 1 in this section, Kentucky's use of certain terminology is consistent with the terms used in the Federal surface mining regulations.

7. KHC states that 405 KAR 8:030, Section 30, and 405 KAR 8:040, Section 30 provide that the applicant provide a mine reclamation plan for the protection of public parks and historic places. Section 30(2) of each regulation states that DSMRE may require the applicant to protect historic and archeological properties listed or eligible for listing on the National Register. KHC states that this is in direct conflict with 405 KAR 24:040, Section 2 which requires DSMRE to deny a permit if it determines that a mining operation would be adversely affected.

The language proposed by Kentucky is substantively similar to 30 CFR 780.31(b) and 784.17(b). The proposed regulations do not conflict with 405 KAR 24:040, Section 2 in that there are certain situations under 405 KAR 24:040 where mining is allowed, such as when an operator has valid existing rights to mine. The proposed language in 405 KAR 8:030, Section 30, and 405 KAR 8:040, Section 30 gives the DSMRE the authority to require certain protective measures whenever those properties specified in 405 KAR 8:030, Section 30(1) are subject to valid existing rights or joint agency approval is obtained. For further discussion of this issue see the Federal Register notice published on February 10, 1987 (52 FR 4259).

8. KHC states that 405 KAR 24:040, Section 2(3) allows for the relocation of cemeteries if authorized by applicable State law or regulations. KHC points out that cemeteries may be listed or eligible for listing on the National Register of Historic Places and should be appropriately protected.

The authority to move a cemetery if State law permits is prescribed by 30 CFR 761.11(g). In the case where a cemetery was listed or eligible for listing on the National Register of Historic Places, it is afforded appropriate protection. There is no indication that the protection that is afforded to sites eligible or listed on the National Register would be precluded by 405 KAR 24:040, Section 2(3).

V. Director's Decision

Based on the findings discussed above, the Director is approving the proposed amendment to the Kentucky permanent program regulations and the Memorandum of Agreement submitted on July 5, 1989.

This final rule is being made effective immediately to expedite the State program amendment process and to encourage the State to conform their programs with the Federal standards without delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

1. Compliance With the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Compliance With Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 917

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: December 11, 1989.

Carl C. Close,

Assistant Director, Eastern Field Operations.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 917—KENTUCKY

1. The authority citation for part 917 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 917.15, a new paragraph (bb) is added to read as follows:

§ 917.15 Approval of regulatory program amendments.

* * * * *

(bb) The following amendment to the Kentucky Administrative Regulations (KAR) and the Memorandum of Agreement between the Natural Resources and Environmental Protection Cabinet—Department for Surface Mining Reclamation and Enforcement and the State Historic Preservation Officer as submitted to OSM on July 5, 1989, are approved effective December 15, 1989: Revisions to 405 KAR 8:010, 405 KAR 8:020, 405 KAR 8:030, 405 KAR 8:040, and KAR 24:040 concerning protection of cultural and historic resources.

[FR Doc. 89-29280 Filed 12-14-89; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 935

Ohio Regulatory Program; Revegetation

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval in part of Program Amendment Number 25 Revised (25R) to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment is intended to incorporate changes to the program initiated by the State in response to OSM's findings on Program Amendment 25 published in the Federal Register on July 17, 1987 (52 FR 26971). The amendment provides information to support Ohio's use of average county yields for demonstrating yield restoration on cropland which is not prime farmland and information in support of Ohio's method of evaluation of revegetation success.

EFFECTIVE DATE: December 15, 1989.

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43232; Telephone: (614) 866-0578.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program.
II. Submission of Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval, can be found in the August 10, 1982, Federal Register (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified in 30 CFR 935.11, 935.12, 935.15 and 935.16.

II. Submission of Amendment

By letter dated November 3, 1987 (Administrative Record No. OH-987), the Ohio Department of Natural Resources, Division of Reclamation (Ohio) submitted proposed Program Amendment Number 25R in response to OSM's findings on Program Amendment 25 published in the Federal Register on July 17, 1987 (52 FR 26971). 30 CFR 935.16(d–h) required that an amendment to the Ohio program be submitted by October 17, 1987 to address deficiencies found in Program Amendment 25.

Program Amendment 25R proposes to amend several rules: OAC 1501:13–9–09(A)(4) and (E)(3) concerning coal waste disposal sites; OAC 1501:13–9–15(F)(4)(b) concerning revegetation standards for non-prime farmlands; OAC 1501:13–9–15(B) to exempt small areas from the requirement to establish vegetation where the vegetation would interfere with the post-mining land use as long as no environmental harm would occur; OAC 1501:13–9–15(F)(5)(e)(i) concerning the 5-year period of extended liability; OAC 1501:13–9–15(F)(5) (f and g) concerning demonstration of restored yields on prime farmland for Phase II bond release; OAC 1501:13–9–15(F)(12) concerning non-augmentative practices; and, administrative record information was provided in response to required State program amendments identified at 30 CFR 935.16(f) concerning a statistically valid technique to evaluate revegetation success, (g) to support the use of average county yields as a measure of comparable productivity on cropland which is not prime farmland, and (h) concerning the required crop yield information for Phase II bond release.

OSM announced receipt of the proposed amendment in the December 10, 1987 Federal Register (52 FR 46783), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment.

During review of the proposed amendment, OSM identified concerns relating to three sections of the proposed amendment. These concerns related to yield requirements needed to satisfy the requirements for a phase II bond release on areas containing prime farmland, insufficient support for Ohio's method of evaluating success of revegetation, and inadequate support of the use of county average yields for demonstrating restored yields on cropland which is not prime farmland. OSM notified Ohio of these concerns by letter dated March 7, 1988 (Administrative Record No. OH-1225). This letter indicated that at Ohio's request, OSM would conduct a study of the Ohio method of evaluating revegetation success and would defer final action on this concern until the study was completed.

Ohio responded, by letter dated May 24, 1988 (Administrative Record No. OH-1030), indicating that the state was working with the Ohio Crop Reporting Service to develop a method to address OSM's concern about the use of county average yields on cropland and would need additional time to resolve the concern. The letter also indicated that the concern on prime farmland yield requirements at the time of phase II bond release would be addressed in Program Amendment 34.

By letter dated May 24, 1988, Ohio submitted Program Amendment 34 (Administrative Record No. OH-1033). This amendment superseded the proposed changes to OAC 1501:13–9–09 (A)(4) and (E)(3), OAC 1501:13–9–15(F)(4)(b) OAC 1501:13–9–15(F)(5)(e) (i), (f), and (g) OAC 1501:13–9–15(B), and the administrative record information in response to the required amendment at 30 CFR 935.16(h) presented in Program Amendment 25R. OSM approved

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Program Amendment 34 on December 22, 1988 (53 FR 51543). Therefore, these provisions of proposed Program Amendment 25R will not be considered part of this rulemaking.

By letter dated April 17, 1987 (Administrative Record No. OH–0931), Ohio submitted Program Amendment No. 28. This amendment addressed non-augmentative practices at OAC 1501:13–9–15(F)(12), and superseded the proposed changes to OAC 1501:13–9–15(F)(12) in Program Amendment No. 25R. A final rule notice concerning Program Amendment No. 28 was published in the **Federal Register** on February 21, 1989 (54 FR 7406–7409). By letter dated January 26, 1989 (Administrative Record No. OH–1135), Ohio submitted Program Amendment No. 29R. This amendment also addressed non-augmentative practices at OAC 1501:13–9–15(I)(2)(c), formerly (F)(12). The final rule notice concerning Program Amendment No. 29R is being prepared by OSM and, therefore, the provisions concerning non-augmentative practices will not be considered part of this rulemaking for Program Amendment No. 25R. As a result of these other program amendments, the only proposed amendments which remain from the original submittal of proposed Program Amendment No. 25R involve narrative information submitted in response to the required program amendments identified at 30 CFR 916.35 (f) and (g).

By letter dated July 28, 1988 (Administrative Record No. OH–1226), OSM granted additional time for Ohio to work with the Ohio Crop Reporting Service. The letter also indicated that, due to the severe drought, the study on the Ohio method of evaluation of revegetation had been delayed. The letter extended the time to respond to the OSM letter of March 7, 1988 to November 1, 1988.

Ohio submitted additional information on December 27, 1988 (Administrative Record No. OH–1122) to support the use of yield data from the Ohio Crop Reporting Service in response to the OSM concern about use of county average yields for demonstration of restored yield on cropland that is not prime farmland. On May 4, 1989 (Administrative Record No. OH–1195), Ohio submitted information from the Ohio Crop Reporting Service indicating the yields obtained by the new procedures.

The OSM study on the Ohio method of evaluating revegetation success was completed and a final report was forwarded to Ohio by letter dated June 30, 1989 (Administrative Record No. OH–1196). The study concluded that the Ohio's ocular method was not as effective as a statistically valid method.

In summary, the two remaining issues to be addressed by this rulemaking are a finding on Ohio's use of county average yields to demonstrate restored productivity on cropland which is not prime farmland and a finding on the Ohio method of evaluating revegetation success.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Ohio program.

1. County Average Yields

In approving Program Amendment No. 25 on July 17, 1987 (Finding 41, 52 FR 26967) the Director required at 30 CFR 935.16(g) that Ohio amend its program at OAC 1501:13–9–15(F)(4)(c) to require yield on restored cropland, which is not prime farmland, to be restored to production levels representative of unmined lands in the area being reclaimed to be no less effective than 30 CFR 816.116(a)(2).

The Ohio Crop Reporting Service collects crop yield information on an annual basis by distributing a questionnaire to farms throughout the state. In response to a request from the Ohio Division of Reclamation, the Crop Reporting Service revised its questionnaire so that any farms reporting yields on any land that was previously mined will not be counted in developing the county average yield. The information submitted by Ohio indicates that the county average yield collected by the Ohio Crop Reporting Service does not include yields reported from mined areas. Therefore, the Director finds that Ohio has demonstrated that the requirements at OAC 1501:13–9–15(F)(4)(c) are no less effective than the corresponding Federal rules at 30 CFR 816.116(a)(2).

2. Evaluation Method

In approving Program Amendment No. 25 on July 17, 1987 (Finding 41, 52 FR 26966), the Director required at 30 CFR 935.16(f) that Ohio amend its program to include a statistically valid technique for the evaluation of revegetation to augment its current method to be as effective as the Federal rules at 30 CFR 816.116(a).

Ohio submitted additional information in support of its method of evaluation of revegetation but did not include any analysis indicating the reliability of the ocular ground cover estimates nor did it provide any indication that a statistically based sampling method would be used on questionable areas. Ohio in turn requested that OSM conduct a study to evaluate their method. OSM conducted a study which reviewed a random sample of sites in the State by using a statistically valid method of evaluating the revegetation on the areas where Ohio had approved bond release. The study was conducted jointly with Ohio Division of Reclamation personnel and OSM personnel during the fall of 1988. A draft report on the study was provided to Ohio for their review and comment. Ohio's comments were considered in development of the final report which was completed and sent to Ohio on June 30, 1989 (Administrative Record No. OH–1196). The study found that the method of evaluating the success of revegetation presently being used by Ohio does not provide results as effective as a statistically valid sampling technique. Based on this study, the Director finds that Ohio has not demonstrated that its method of evaluating the success of revegetation is no less effective than the Federal rules at 30 CFR 816.116(a).

IV. Summary and Disposition of Comments

Public Comments

The public comment period announced in the December 10, 1987, **Federal Register** (52 FR 46783) ended January 11, 1988.

Comments were received on the proposed amendment from the National Coal Association. Their comments supported the use of average county yields as a measure of comparable productivity on cropland which is not prime farmland. As discussed in Finding 1 above, Ohio has developed a method of excluding crop data of previously mined lands from data used to calculate county average crop yield. Based on this information, the Director has determined that Ohio has demonstrated that the requirements at OAC 1501:13–9–15(F)(4)(c) are no less effective than the corresponding Federal rules at 30 CFR 816.116(a)(2). Other comments addressed other portions of the proposed amendment which are no longer a part of this rulemaking since they were superseded by Program Amendment No. 34. A final rule notice concerning Ohio Program Amendment No. 34 was published in the **Federal Register** on December 22, 1988 (53 FR 51534–51550).

The scheduled public hearing was not held as no one requested an opportunity to provide testimony within the time

period specified in the **Federal Register** notice of December 10, 1987.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Ohio program. The U.S. Department of Agriculture, Soil Conservation Service; the U.S. Department of Labor, Mine Safety and Health Administration; and the Department of the Army, Office of the Chief of Engineers responded to proposed portions of the amendment which have been superseded by Program Amendment No. 34. Their comments no longer pertain to this rulemaking. The U.S. Department of Agriculture, Farmers Home Administration responded indicating that they had no comments on the proposed amendment. No other comments were received.

V. Director's Decision

Based on Finding 1 above, the Director is approving in part, Ohio Program Amendment No. 25R as supported by the additional information submitted on December 27, 1988 and May 4, 1989 concerning the use of average county yields as a measure of comparable productivity on cropland which is not prime farmland.

Based on Finding 2 above, the Director has determined that Ohio has not demonstrated that its method of evaluating the success of revegetation is no less effective than the Federal rules at 30 CFR 816.116(a), and is, therefore, continuing to require that Ohio amend its program to include a statistically valid technique to evaluate revegetation success. The required program amendment contained in 30 CFR 935.16(f) is being revised to provide Ohio with additional time to amend its program. The additional time is justified based on the findings of the OSM study on Ohio's current method discussed above.

The Director is amending 30 CFR part 935 to implement this decision.

This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In his oversight of the Ohio program, the Director will recognize only the statutes, regulations and other materials approved by him, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Ohio of only such provisions.

VI. Procedural Determinations

National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 935

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: December 6, 1989.

Carl C. Close,

Assistant Director, Eastern Field Operations.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 935—OHIO

1. The authority citation for part 935 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 935.15, a new paragraph (kk) is added to read as follows:

§ 935.15 Approval of regulatory program amendments.

* * * * *

(kk) The following amendment, as submitted to OSM on November 3, 1987, with additional information submitted on December 27, 1988 and May 4, 1989 is approved effective December 15, 1989: Revisions to the procedure used to obtain county average yields which supports the requirements of OAC 1501:13–9–15(F)(4)(c).

3. In § 935.16, paragraph (g) is removed and reserved, and paragraph (f) is revised to read as follows:

§ 935.16 Required program amendments.

* * * * *

(f) By May 31, 1990, Ohio shall amend its program to include a statistically valid technique for the evaluation of revegetation success to augment or replace its current method to be as effective as the Federal rules at 30 CFR 816.116(a).

[FR Doc. 89–29278 Filed 12–14–89; 8:45 am]
BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD1–89–121]

Temporary Drawbridge Operation Regulations; Oceanport Creek, NJ

AGENCY: Coast Guard, DOT.

ACTION: Final temporary rule.

SUMMARY: At the request of the New Jersey Transit Rail Operations (NJTRO), the Coast Guard is issuing temporary regulations permitting the Oceanport drawbridge over Oceanport Creek, at mile 8.4, at Little Silver, New Jersey to remain closed for seven months from 1 December 1989 through 30 June 1990. This temporary regulation is needed to facilitate replacement of machinery and repairs to the center pier of the swing bridge. This action will relieve the bridge owner of the burden to open the draw during the reconstruction of the bridge and will only permit marine traffic which can pass under the closed span to transit the waterway.

EFFECTIVE DATE: These regulations become effective on 1 December 1989.

FOR FURTHER INFORMATION CONTACT:

remain in the closed position from 9 a.m. on 1 December 1989 through 11:59 p.m. on 30 June 1990, inclusive.

December 1, 1989 through 7 p.m. June 30, 1990.

Dated: December 5, 1989.

Environmental Protection Agency, 401 M Street SW., Washington, DC 20460
Air Programs Branch, Region IV,

prepare revised limitation consistent with their revised SIPs. All SIP revisions and revised emission limits were to be

calculations by Alabama indicated that 11 facilities had 28 units with stacks greater that GEP (one of the 28 units emitted only volatile organic

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EFFECTIVE DATE: These regulations become effective on 1 December 1989.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, First Coast Guard District, (212) 668–7170.

SUPPLEMENTARY INFORMATION: This temporary deviation from the regulation is issued under 33 CFR 117.35(d) and will not be codified in the CFR.

DRAFTING INFORMATION: The drafters of this regulation are Sylvia L. Bowens, project officer, and Lieutenant John B. Gately, project attorney.

DISCUSSION OF FINAL TEMPORARY REGULATIONS: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for these regulations and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing a Notice of Proposed Rulemaking and delaying its effective date would be contrary to the public interest since implementation of these temporary regulations is necessary to complete the bridge repairs previously required by the Coast Guard to provide for the needs of navigation. The existing drive mechanism which is badly deteriorated must be removed and the center pier repaired before the installation of the new drive mechanism can commence.

The primary users of the bridge are the taller vessels moored at the Fort Monmouth Marina. The Fort Monmouth Special Services operates this 75 to 90 boat marina (from approximately 1 May through 31 October each year) for the Post's civilian and military personnel and retirees. On 1 November 1989, a meeting was held at Fort Monmouth with all interested parties. At this meeting, closure of the bridge was agreed upon, providing provisions were made for the New Jersey Department of Environmental Protection (NJDEP) dredging and the Fort Monmouth construction equipment to transit the bridge on or after 1 March 1990. The bridge in the closed position provides a vertical clearance of four feet above Mean High Water (MHW).

The current regulations provide that the draw of the bridge shall open on signal from 15 May through 15 September between 5 a.m. and 9 p.m.; except that, the bridge need not open from 6 a.m. to 7:45 a.m. and 5:30 p.m.to 7:30 p.m. on weekdays except holidays. At all other times the draw will open on signal upon four hours advanced notice. Additionally, public vessels of the United States and vessels in distress are required to be passed as soon as possible at any time. The temporary regulation would allow the bridge to remain in the closed position from 9 a.m. on 1 December 1989 through 11:59 p.m. on 30 June 1990, inclusive.

ECONOMIC ASSESSMENT AND CERTIFICATION: These temporary regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This is based upon the fact that the closure will be accomplished largely during the winter months when the Fort Monmouth Marina is closed and recreational boating is shut down. Additionally, the railroad has agreed to make provisions for critical vessel transits on or after 1 March 1990. Since the economic impact of this proposal is expected to be minimal the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

FEDERALISM IMPLICATION ASSESSMENT: This action has been analyzed under the principles and criteria in Executive Order 12612, and it has been determined that this temporary rule does not have sufficient federalism implications to warrant preparation of a federal assessment.

List of Subjects in 33 CFR Part 117

Bridges.

TEMPORARY REGULATIONS:

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.736 is amended by designating the existing paragraph as (a); the new paragraph (a) is suspended from 1 December 1989 through 30 June 1990, and a new paragraph (b) is added effective 1 December 1989 through 30 June 1990 to read as follows: Because this is a temporary rule this paragraph will not be codified in the CFR.

§ 117.736 Oceanport Creek.

* * * * *

(b) Repair of NJTRO Oceanport Bridge. The draw of the NJTRO Oceanport Bridge, mile 8.4 near Oceanport, NJ need not be opened for the passage of any vessel and paragraph (a) above is suspended from 7 a.m. December 1, 1989 through 7 p.m. June 30, 1990.

Dated: December 5, 1989.

R. I. Rybacki,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 89–29214 Filed 12–14–89; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3696–6; AL–020]

Approval and Promulgation of Implementation Plans; Alabama: Stack Height Review

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA today approves a declaration by Alabama that recent revisions to EPA's stack height regulations do not necessitate source-specific revisions to the State Implementation Plan (SIP). The State was required to review its SIP for consistency within nine months of final promulgation of the stack height regulations. The intended effect of this action is to formally document that Alabama has satisfied its obligations under section 406 of the Clean Air Act Amendments of 1977 to review its SIP with respect to EPA's revised stack height regulations. No emission limftations were affected by stack height credit above GEP or any other dispersion technique with the exception of Exxon Company's Big Escambia Creek Treating Facility and Tennessee Valley Authority's Colbert Steam Plant. The analysis for these sources will be dealt with in a subsequent notice. Also, the negative declaration does not apply to 13 other sources which received credit under stack height regulation provisions remanded to EPA by the U.S. Court of Appeals for the D.C. Circuit.

EFFECTIVE DATES: This action will be effective on February 13, 1990, unless notice is received on or before January 16, 1990, that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Copies of the materials submitted by Alabama may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Air Programs Branch, Region IV, Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365

Alabama Department of Environmental Management, 1751 Congressman William L. Dickinson Drive, Montgomery, Alabama 36130

FOR FURTHER INFORMATION CONTACT: Beverly T. Hudson, EPA Region IV Air Programs Branch, at the above listed address, telephone (404) 347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: On February 8, 1982 (47 FR 5864), EPA promulgated final regulations limiting stack height credit and other dispersion techniques required by section 123 of the Clean Air Act (the Act). These regulations were challenged in the U.S. Court of Appeals for the D.C. Circuit by the Sierra Club Legal Defense Fund, Inc., the Natural Resources Defense Council, Inc., and the Commonwealth of Pennsylvania in *Sierra Club* v. *EPA*, 719 F. 2d 436.

On October 11, 1983, the court issued its decision, ordering EPA to reconsider portions of the stack height regulations, reversing certain portions, and upholding other portions.

On February 28, 1984, the electric power industry filed a petition for a writ of certiorari with the U.S. Supreme Court. On July 2, 1984, the Supreme Court denied the petition (104 S. CT. 3571), and on July 18, 1984, the Court of Appeals formally issued a mandate implementing its decision and requiring EPA to promulgate revisions to the stack height regulations within six months. The promulgation deadline was ultimately extended to June 27, 1985.

Revisions to the stack height regulations were proposed on November 9, 1984 (49 FR 44878), and finalized on July 8, 1985 (50 FR 27892). The revisions redefine a number of specific terms, including "excessive concentration," "dispersion techniques," "nearby," and other important concepts, and modify some of the bases for determining good engineering practice (GEP) stack height.

Pursuant to section 406(d)(2) of Public Law 95–95, all states were required to (1) review and revise, as necessary, their state implementation plans (SIPs) to include provisions that limit stack height credit and dispersion techniques in accordance with the revised regulations and (2) review all existing emission limitation to determine whether any of these limitations have been affected by stack height credit above GEP or any other dispersion techniques. For any limitations so affected, states were to prepare revised limitation consistent with their revised SIPs. All SIP revisions and revised emission limits were to be submitted to EPA within 9 months of promulgation, as required by statute.

Subsequently, EPA issued detailed guidance on carrying out the necessary reviews. For the review of emission limitations, states were to prepare inventories of stacks greater than 65m in height and sources with emissions of sulfur dioxide (SO_2) in excess of 5,000 tons per year. These limits correspond to the *de minimis* GEP stack height and the *de minimis* SO_2 emission exemption from prohibited dispersion techniques. Sources were exempted from further review if they fell under the grandfathering clause (i.e., in existence before December 31, 1970), if their stack height was less than *de minimis* stack height (65m), or if their actual height was less than the calculated Good Engineering Practice (GEP) stack height. The remaining sources were then subjected to detailed review for conformance with the revised regulations. State submissions were to contain an evaluation of each stack and source in the inventory.

On May 29, 1987, the Alabama Department of Environmental Management submitted the required documentation for Good Engineering (GEP) Stack Height (this documentation is available for review at the State office listed above). Since the State formally revised its SIP, a public hearing on these stack height reviews was held on April 23, 1987. EPA is therefore approving the State's declaration that no emission limitations were affected by stack height credit above GEP or any other dispersion technique, with the exception of Exxon Company's Big Escambia Creek Treating Facility and the Tennessee Valley Authority's Colbert Steam Plant. The analysis for these two sources will be dealt within a subsequent notice.

Alabama reviewed its inventory of existing sources to determine stacks potentially affected by the GEP stack height regulations. After reviewing the files on 3300 emission units, Alabama compiled two lists of potentially affected sources. The first identified all sources with stacks greater than 65 meters. The second list identified all sources which share a common stack.

Further review of each stack greater than 65 meters indicated that 75 of the 107 emission units identified had stacks which were not in existence as of December 31, 1970. Additional analysis was required for the 75 units in question. Forty-seven (47) units had stacks which were greater than 65 meters, but less than GEP. Review of the GEP calculations by Alabama indicated that 11 facilities had 28 units with stacks greater that GEP (one of the 28 units emitted only volatile organic compounds). Each stack that exceeded the GEP stack height or utilized other prohibited dispersion techniques was modeled at the respective GEP stack height.

Sources which share a common stack were reviewed further to determine which sources did not meet the EPA requirements regarding plume rise techniques. Of the 3,300 emission units reviewed, 198 units were determined to be ducted to merged stacks. Further investigation revealed that the following sources were exempt from dispersion analysis.

Exemption	Number of units
Total facility wide emissions less than 5,000 tons SO_2/yr	91
Exhaust streams merged prior to 12/31/70	28
Facility originally designed and constructed with merged gas streams	23
Exhaust streams were merged prior to July 8, 1985 and merging was part of a change in operation that included installation of emission control equipment	46
Exhaust streams were merged prior to July 8, 1985 and merging was carried out for sound economic or engineering reasons	6

The review determined that the TVA Colbert Steam Plant, units 1 through 4, were utilizing plume rise techniques prohibited by the GEP regulations. All 4 units were merged into one stack.

On January 22, 1988, the U.S. Court of Appeals for the District of Columbia Circuit issued its decision in *NRDC* v. *Thomas*, 838 F.2d 1224 (D.C. Cir. 1988), regarding the Environmental Protection Agency's (EPA's) stack height regulations (50 FR 27892, July 8, 1985); the court upheld most of the rules, but certain provisions were remanded to the EPA for further consideration. Accordingly, EPA is not acting on thirteen other sources (Alabama Electric Cooperative—Lowman Steam Plant; Alabama Power Company—Miller Steam Plant, Gadsden Steam Plant, Gorgas Steam Plant, and Barry Steam Plant; Alabama River Pulp; Champion International Corporation; Container Corporation of America; General Electric Burkville Plant; International Paper; Scott Paper Company; Union Camp Corporation; and U.S. Steel) because they currently receive credit under one of the provisions remanded to the EPA. Alabama and EPA will review these sources for compliance with any revised requirements when EPA

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completes rulemaking to respond to the *NRDC* remand.

EPA Review. EPA has reviewed Alabama's submittal and concurs with the conclusion that no revisions to Alabama's existing source emission limitations are necessary as a result of EPA's revised stack height regulations. Alabama has therefore met its obligations under section 406 of Public Law 95–95 for existing source emission limitations with the exception of Tennessee Valley Authority's Colbert Steam Plant and Exxon Company's Big Escambia Creek Treating Facility. The analysis for these sources will be dealt with in a subsequent notice.

Final Action. EPA approves the declaration by Alabama that recent revisions to EPA's stack height regulations do not necessitate SIP revisions for specific sources in this State. This action is taken without prior proposal because the issues are straightforward and no adverse comment is anticipated. The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 13, 1990. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

Under 5 U.S.C. 605(b), I certify that this SIP action will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Tables 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Sulfur oxides, Particulate matter.

Dated: December 4, 1989.

Joe R. Franzmathes,

Acting Regional Administrator.

Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

Subpart B—Alabama

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.62 is added to read as follows:

§ 52.62 Control strategy: Sulfur oxides and particulate matter.

In a letter dated May 29, 1987, the Alabama Department of Health and Environmental Control certified that no emission limits in the State's plan are based on dispersion techniques not permitted by EPA's stack height rules. This certification does not apply to: Alabama Electric Cooperative—Lowman Steam Plant; Alabama Power Company—Gorgas Steam Plant, Miller Steam Plant, Gadsden Steam Plant, and Barry Steam Plant; Alabama River Pulp; Champion International Corporation; Container Corporation of America; Exxon Company's Big Escambia Creek Treating Facility; General Electric's Burkville Plant; International Paper; Scott Paper Company; TVA's Colbert Steam Plant; Union Camp Corporation; and U.S. Steel.

[FR Doc. 89–29262 Filed 12–14–89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88–29; RM–5796]

Radio Broadcasting Services; Anchorage, AK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes FM Channel 275C2 for Channel 277C2 in Anchorage, Alaska, and modifies the license of Station KXDZ(FM), Anchorage, in response to a petition for reconsideration filed by Peninsula Communications, Inc. The allotment of Channel 275C2 will provide Anchorage with an additional expanded coverage area FM broadcast service. With this action, the proceeding is terminated.

EFFECTIVE DATE: January 24, 1990.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Memorandum Opinion and Order, MM Docket No. 88–29, adopted November 22, 1989, and released December 11, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Anchorage, Alaska, is amended by removing Channel 277C2 and adding Channel 275C2.

Federal Communications Commission.

Douglas Webbink,

Acting Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–29248 Filed 12–14–89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88–390; RM–6302]

Radio Broadcasting Services; Coosa, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 237A to Coosa, Georgia, as that community's first local FM service, at the request of Steven L. Gradick. The channel can be allotted to Coosa, in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.4 kilometers south to avoid a short-spacing to unoccupied but applied for Channel 239A at Trion, Georgia. The coordinates for this allotment are North Latitude 34–13–54 and West Longitude 85–21–25. With this action, this proceeding is terminated.

DATES: Effective January 24, 1990; The window period for filing applications will open on January 25, 1990, and close on February 26, 1990.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–390, adopted November 22, 1989, and released December 11, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended by adding Coosa, Georgia, Channel 237A.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–29249 Filed 12–14–89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[Federal Acquisition Circular 84–44]

Federal Acquisition Regulation (FAR); Miscellaneous Amendments; Correction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule; correction.

SUMMARY: For the purpose of annually revising 48 CFR part 1 (Federal Acquisition Regulation), this document revises the correction to Federal Acquisition Circular (FAC) 84–44 published in the **Federal Register** on Monday, May 1, 1989 (54 FR 18507).

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523–4755. Please cite FAC 84–44 correction.

SUPPLEMENTARY INFORMATION: In FR Doc. 89–10333 (FAC 84–44 correction), on page 18507, in the second column, in **SUPPLEMENTARY INFORMATION,** remove the words "by removing the introductory text of paragraph (j)(3)(i)". This introductory text is to be retained in section 31.205–6 and is correct in FR Doc. 89–7370 (FAC 84–44) as published on Wednesday, March 29, 1989 (54 FR 13022).

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: December 11, 1989.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

[FR Doc. 89–29246 Filed 12–14–89; 8:45 am]

BILLING CODE 6820-JC-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1039

[Ex Parte No. 346 (Sub-No. 24)]

Rail General Exemption Authority—Miscellaneous Manufactured Commodities

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: Under its authority in 49 U.S.C. 10505, the Commission adds to the list of exempt commodities identified in 49 CFR part 1039, the transportation by rail of the manufactured commodities set forth below. Regulation as to these commodities is not needed to carry out the nation's rail transportation policy objectives; and the level of intermodal competition is sufficiently pervasive that continued regulation is not necessary to protect shippers from actual or potential abuse of rail market power.

EFFECTIVE DATE: The final rule is effective January 14, 1990.

FOR FURTHER INFORMATION CONTACT: Robert F. Lundy, (202) 275–6853 (TDD Services (202) 275–1721).

SUPPLEMENTARY INFORMATION: By decision served February 9, 1988, noticed at 53 FR 3900 (February 10, 1988) we proposed to exercise our authority under 49 U.S.C. 10505 to exempt from regulation the transportation by rail of various named manufactured or processed commodities and commodity groups. The final rules are set forth below. Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289–4357/4359. Assistance for the hearing impaired is available through TDD Services, (202) 275–1721.

This action will not significantly affect the quality of the human environment or energy conservation.

This action will not have a significant economic impact on a substantial number of small entities. It imposes no new regulatory burden or reporting requirements on any person. The impact, if any, will be to reduce the amount of paperwork, tariff filing and related activities.

List of Subjects in 49 CFR Part 1039

Railroads, Agricultural commodities, Intermodal transportation.

Decided: November 28, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners André, Lamboley, and Phillips. Commissioner Lamboley concurred in part and dissented in part with a separate expression. Vice Chairman Simmons dissented with a separate expression.

Noreta R. McGee,

Secretary.

For the reasons set forth in the Preamble, title 49, chapter X, part 1039 of the Code of Federal Regulations is amended as follows:

PART 1039—EXEMPTIONS

1. The authority citation for 49 CFR part 1039 continues to read as follows:

Authority: 49 U.S.C. 10321, 10505, 10708, 10762 and 11105, 5 U.S.C. 553.

2. Section 1039.11(a) is amended by adding to the end of the chart the following commodities and also by adding concluding text to paragraph (a).

§ 1039.11 Miscellaneous commodities exemptions.

(a) * * *

BEST COPY AVAILABLE

STCC No.	STCC tariff	Commodity	STCC No.	STCC tariff	Commodity	STCC No.	STCC tariff	Commodity

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STCC No.	STCC tariff	Commodity
20	6001-Q, eff. 1-14-90.	Food and kindred products except 20 331 Lard. 20 139 Meat products, nec. 20 143 Grease or inedible tallow. 20 32 Canned specialties. 20 33 Canned fruits, jams, jellies, preserves or vegetables. 20 4 Grain mill products. 20 6 Sugar, beet or cane. 20 8 Beverages or flavoring extracts. 20 911 Cottonseed oil. 20 914 Cottonseed cake or meal or by products. 20 92 Soybean oils or by-products. 20 93 Nut or vegetable oils or by-products.
22	do	Textile mile products.
23	do	Apparel or other finished textile products.
24 9	do	Miscellaneous wood products except 24 91 Treated wood products.
25	do	Furniture or Fixtures.
26	do	Pulp, paper or allied products except 26 1 Pulp or pulp mill products. 26 211 Newsprint. 26 212 Ground wood paper. 26 213 Printing paper, coated or uncoated, etc. 25 214 Wrapping paper, wrappers or coarse paper. 26 218 Sanitary tissue stock. 26 471 Sanitary tissue or health products. 26 6 Building paper or building board.
27	do	Printed matter.
30	do	Rubber or miscellaneous plastics products except 30 111 Rubber pneumatic tires or parts.
31	do	Leather or leather products.
32	do	Clay, concrete, glass or stone products except 32 411 Hydraulic cement, natural, portland or masonry. 32 741 Lime or lime plaster. 32 95 Nonmetallic earths or minerals, ground or treated.
33 123	do	Iron or steel sheet or strip.
33 13	do	Electrometallurgical products.
33 15	do	Steel wire, nails, or spikes.
33 219	do	Iron or steel castings, nec.
33 5	do	Nonferrous metal basic shapes.
33 6	do	Nonferrous metal or base alloy castings.
33 9	do	Miscellaneous primary metal products.
34	do	Fabricated metal products except 34 6 Metal stampings. 34 919 40 Radioactive metal shipping containers.
35	do	Machinery, except electrical except 35 11 Steam engines, turbines, turbine generator sets or parts. 35 31 Construction machinery. 35 85 Refrigerators, Refrigeration machinery or complete air conditioners.
36	do	Electrical machinery, equipment or supplies except 36 12 Power distribution or specialty transformers. 36 21 Motors or generators.
38	do	Instruments, photographic goods, optical goods, watches or clocks.
39	do	Miscellaneous products of manufacturing.

Also excepted from this exemption are those recyclable products specifically identified by the Commission at 350 I.C.C. 445–447, those commodities previously exempt, and any transportation service regarding which the Commission has made a finding of market dominance. However, this exemption shall not be construed as affecting in any way the existing regulations, agreements, prescriptions, conditions, allowances or levels of compensation regarding the use of equipment, whether shipper or railroad owned or leased, including car hire, per diem and mileage allowances, and also including exemption from the anti-trust laws necessary to negotiate car service regulations or mandatory interchange of equipment or to maintain and execute such agreements. Nor shall this exemption be construed to affect existing Class III railroad "protections" in the case of boxcars.

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[FR Doc. 89–29283 Filed 12–14–89; 8:45 am]

BILLING CODE 7035–01–M

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1421

Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations at 7 CFR 1421.5551 *et seq.* relating to the Commodity Credit Corporation (CCC) Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed. The proposed rule would establish new and uniform load out requirements for warehouses approved under the Uniform Grain Storage Agreement, Uniform Rice Storage Agreement, Milled Rice Storage Agreement, Bean Storage Agreement, and Seed Storage Agreement.

DATES: Comments must be received on or before January 16, 1990, in order to be assured of consideration.

ADDRESS: Interested persons are invited to send written comments to Jerry Goodall, Director, Storage Contract Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013, (202) 447–4018.

FOR FURTHER INFORMATION CONTACT: Jerry Kretsch, Storage Contract Division, USDA, Room 5968-South Building, P.O. Box 2415, Washington, DC 20013, (202) 447–7433.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed in conformity with Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "not major" since implementation of the provisions of this proposed rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, federal, State, or local governments, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, the environment, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

This action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities. Therefore, the Regulatory Flexibility Act is not applicable to this proposed rule. In addition, CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this proposed rule.

It has been determined by an environmental evaluation that this action will have no significant adverse impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The CCC Charter Act (15 U.S.C. 714 *et seq.*) authorizes CCC to conduct various activities to stabilize, support, and protect farm income and prices. CCC is authorized to carry out such activities as making price support available with respect to various agricultural commodities, removing and disposing of surplus agricultural commodities, exporting or aiding in the exportation of agricultural commodities, and procuring agricultural commodities for sale both in the domestic market and abroad.

Section 4(h) of the CCC Charter Act (15 U.S.C. 714b(h)) provides that CCC shall not acquire real property in order to provide storage facilities for agricultural commodities, unless CCC determines that private facilities for the storage for such commodities are inadequate. Further, section 5 of the CCC Charter Act (15 U.S.C. 714c) provides that, in carrying out the Corporation's purchasing and selling operations, and in the warehousing, transporting, processing, or handling of agricultural commodities, CCC is directed to use, to the maximum extent possible, the usual and customary channels, facilities, and arrangements of trade and commerce.

Accordingly, CCC has published Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed that must be met by warehousemen before CCC will enter into storage agreements with such warehousemen for the storage of grain and other commodities owned by CCC or which are serving as collateral for CCC price support loans.

Changes in the grain warehousing industry, transportation industry, State warehousing laws, and federal contracting requirements during the past few years require amendment of the Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed.

Presently, under CFR 1421.5552(a)(9), warehousemen approved under the Uniform Grain Storage Agreement are required to have a work force and equipment available to complete a load out of their facility within approximately thirty 30 working days. Warehousemen approved under the Uniform Rice Storate Agreement, Milled Rice Storage Agreement, Bean Storage Agreement, and Seed Storage Agreement are allowed ninety (90) working days to complete a load out of their facility.

Several grain warehousemen and members of the grain trade have requested that CCC reconsider the thirty day requirement and permit a grain warehouseman a longer period of time to effect a complete load out of his facility. They believe a longer load out time is needed because many warehousemen have lost their rail service over the last several years, and load out from these warehouses is now limited to truck only. In addition, many warehousemen have increased their respective storage capacities during the 1980's, at the urging of CCC, when storage space was very tight.

CCC agrees that these changes may cause several warehousemen problems in meeting the thirty day load out requirement. However, any increase in the amount of time permitted a warehouseman to load out his facility must be balanced against CCC's ability to service its foreign and domestic programs. CCC has determined that the

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maximum amount of time a warehouseman could be permitted to load out his entire inventory without hurting CCC's ability to serve its foreign and domestic sales and donation program would be sixty (60) working days. The ninety working days permitted to complete a load out of warehouses approved under the Rice, Bean, and Seed Storage Agreements is excessive and could hinder CCC's ability to service its domestic and foreign programs, especially in the case of emergencies. In addition, CCC believes, to the maximum extent practicable, all warehousemen storing commodities for CCC should operate under the same set of procedures. Therefore, it is proposed that the maximum load out time afforded all warehousemen subject to these regulations be set at sixty working days.

List of Subjects in 7 CFR Part 1421

Agriculture, Grain, Loan programs, Oilseeds, Peanuts, Price support programs, Soybeans, Surety bonds, Tobacco, Warehouses.

Proposed Rule

PART 1421—[AMENDED]

According, it is proposed that 7 CFR part 1421 be amended as follows:

1. The authority citation for 7 CFR part 1421, Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed continues to read as follows:

Authority: 15 U.S.C. 714b and 714c; 7 U.S.C. 1441, 1446, 1447, 1421, 1423, and 1425.

2. In § 1421.5552, paragraph (a)(9) is revised to read as follows:

§ 1421.5552 [Amended]

* * * * *

(a) * * *

(9) Have a work force and equipment available to complete load out within sixty (60) working days of that quantity of grain, rice, beans, or seed for which the warehouse is or may be approved under the Uniform Grain Storage Agreement, Uniform Rice Storage Agreement, Milled Rice Storage Agreement, Bean Storage Agreement, or Seed Storage Agreement. The load out capacity of any of these warehouses need not exceed the equivalent of 200 railroad cars per day.

* * * * *

Signed at Washington, DC on December 12, 1989.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 89-29276 Filed 12-14-89; 8:45 am]

BILLING CODE 3410-05-M

FEDERAL RESERVE SYSTEM

12 CFR Part 203

[Reg. C; Docket No. R-0681]

Home Mortgage Disclosure; Notice of Intent to Terminate Exemptions for Connecticut, Massachusetts and New Jersey

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of intent to terminate state exemptions.

SUMMARY: Certain financial institutions in Connecticut, Massachusetts, and New Jersey are currently exempted from the Home Mortgage Disclosure Act because the Board determined that they are subject to substantially similar mortgage disclosure requirements under state law. Recent amendments to the act and to the Board's implementing rule, Regulation C, have produced discrepancies between the federal provisions and current state laws such that the state laws are considered no longer to be substantially similar to the federal statute and regulation, as amended.

Notice is hereby given that the Board proposes to terminate the current exemptions as a result of the recent amendments to federal law, effective January 1, 1990, when the amended act and regulation go into effect. The formal determination may be made after January 1, given the need to assess public comment, but any termination of exemption will be retroactive to January 1, 1990.

DATES: Comments must be received on or before January 15, 1990. The effective date for the termination of these state exemptions, if adopted, would be January 1, 1990.

ADDRESSES: Comments should refer to Docket No. R-0681 and be sent to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551. They may also be delivered to room B-2222 of the Board's Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays or delivered to the guard station in the Eccles Building Courtyard on 20th Street, NW. (between Constitution Avenue and C Street, NW.) any time. Comments received at the above address will be available for inspection and copying by any member of the public in the Freedom of Information Office room B-1122 of the Eccles Building between 9 a.m. and 5 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Thomas J Noto or W. Kurt Schumacher, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452-2412 or (202) 452-3667; for the hearing impaired *only*, contact Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452-3544.

SUPPLEMENTARY INFORMATION: The Board's Regulation C (12 CFR part 203) implements the Home Mortgage Disclosure Act of 1975 (HMDA) (12 U.S.C. 2801 *et seq.*). The regulation currently requires depository institutions, mortgage banking subsidiaries of holding companies, and savings and loan service corporation that have over $10 million in assets and have offices in metropolitan statistical areas or primary metropolitan statistical areas, to disclose annually their originations and purchases of mortgage and home improvement loans. Individual loan data must be aggregated by the institutions and itemized by census tract (or by county, in some instances) and also by type of loan. A disclosure statement covering the data on a calendar-year basis currently must be made available to the public and sent to the institution's federal supervisory agency by March 31 following the calendar year for which the data are compiled.

The Financial Institutions Reform, Recovery and Enforcement Act (FIRREA), which was signed into law on August 9, 1989, made major revisions to HMDA. (FIRREA, Pub. L. No. 101-73, section 1211, 103 Stat. 183 (1989).) First, the coverage of HMDA was expanded to include mortgage lenders that are not affiliated with depository institutions or holding companies. Second, the FIRREA amendments require reporting of data regarding loan applications; currently, institutions report only data regarding loans originated or purchased. Third, the amendments require most covered lenders to report the race, sex, and income of mortgage applicants and borrowers (depository institutions with assets under $30 million are exempt from this particular requirement). Fourth, the FIRREA amendments require that lenders identify the class of purchaser for mortgage loans that they sell. Fifth, the amendments permit lenders to explain the basis for lending decisions to their supervisory agency. Finally, the revised Regulation C provides for a "register" form of reporting. Lenders will record certain data for each application (whether granted, denied, withdrawn, or incomplete) that they receive and for each home purchase or home improvement loan that they originate or purchase, and will submit the registers to their supervisory agency at the close of the calendar year. Thus, covered institutions will no longer be required to aggregate loan data, as was the case under federal law previously.

The revisions to Regulation C to implement the FIRREA amendments to HMDA have been published in final form elsewhere in this issue of the Federal Register.

Under HMDA and Regulation C, the Board may grant exemptions to state-chartered institutions that are subject to state mortgage disclosure laws that are substantially similar to the Federal law and that contain adequate provision for enforcement. Based on the act and regulation in effect prior to the recent amendments, exemptions have been granted for institutions subject to the state mortgage disclosure laws of Connecticut, Massachusetts, and New Jersey.

Exemptions are subject to termination if the Board determines that the state laws no longer impose requirements substantially similar to the Federal law or do not adequately ensure enforcement. Due to the substantial changes encompassed in the FIRREA and Regulation C amendments, and the discrepancies thus arising between federal and state laws, the Board proposes to terminate the current exemptions as of January 1, 1990, the effective date of the changes to HMDA and Regulation C.

After the 30 day comment period has ended, if the Board confirms that this termination is warranted, an Order will be issued revoking the exemptions effective as of January 1, 1990. In that event, institutions currently exempted from HMDA and Regulation C by virtue of the disclosure laws of Connecticut, Massachusetts, and New Jersey would have to comply with the data collection requirements of the federal law as of that date.

If the Board determines that a state has adopted new requirements that are substantially similar to the federal law, and they are effective as of January 1, 1990, the Board may grant a continuation of the exemption or may reinstate it at a later date, effective January 1.

To meet the "substantially similar" test, however, it will be necessary for the state law to cover applications as well as loans granted and purchased; to require reporting of information on the race or national origin, sex, and income of applicants and borrowers; and to call for a register form of reporting. Thus, even if an exemption is continued or is reinstated, lenders that have been within the scope of an exemption in one of these three states will, as a practical matter, have to comply with the revised federal rules beginning on January 1, 1990. Continuation or reinstatement of a state exemption will simply mean that, at year end 1990, they need submit only one report (to their state supervisory agency) and not separate reports to federal and state regulators.

The proposed termination of state exemptions do not affect the mortgage disclosures required for loans made or purchased in calendar year 1989. Exempt institutions must comply with the applicable disclosure laws currently in effect and submit reports to their state supervisory agency in keeping with state law requirements.

By order of the Board of Governors of the Federal Reserve System, December 11, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-29241 Filed 12-14-89; 8:45 am]

BILLING CODE 6210-01-M

12 CFR Part 229

[Regulation CC; Docket No. R-0679]

RIN 7100-AB01

Availability of Funds and Collection of Checks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is publishing for comment proposed amendments to its Regulation CC, Availability of Funds and Collection of Checks. The regulation requires banks to make funds available to their customers within specified times, to disclose their funds availability policies to their customers, and to handle returned checks expeditiously. The proposals include shortening the time requirements for giving notice of nonpayment, proposed changes to the model forms, and other technical and clarifying modifications to the regulation and its Official Commentary (Appendix E to the regulation).

DATES: Comments must be submitted on or before February 16, 1990.

ADDRESSES: Comments, which should refer to Docket No. R-0679, may be mailed to the Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551, Attention: Mr. William W. Wiles, Secretary; or may be delivered to Room B-2223 between 8:45 a.m. and 5:00 p.m. All comments received at the above address will be included in the public file and may be inspected at Room B-1122 between 8:45 a.m. and 5:15 p.m.

FOR FURTHER INFORMATION CONTACT: Louise L. Roseman, Assistant Director (202/452-3874) or Gayle Thompson, Manager (202/452-2934), Division of Federal Reserve Bank Operations; Oliver Ireland, Associate General Counsel (202/452-3625), or Stephanie Martin, Attorney (202/452-3198), Legal Division. For information regarding modifications to Appendix C, contact Thomas J. Noto, Staff Attorney (202/452-3667), or Jane E. Ahrens, Staff Attorney (202/452-3667), Division of Consumer and Community Affairs. For the hearing impaired only: Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION: On May 13, 1988, the Board adopted Regulation CC to carry out the provisions of the Expedited Funds Availability Act ("Act") (12 U.S.C. 4001-4010). The regulation requires banks [1] to make funds available to their customers for withdrawal within specified time frames, to disclose their funds availability policies to their customers, and to handle returned checks expeditiously. Section 229.33(a) of the regulation requires a paying bank to provide notice of nonpayment of any returned check in the amount of $2,500 or more. This notice must be received by the depositary bank by 4:00 p.m. (local time) on the second business day following the banking day on which the check was presented to the paying bank. This requirement generally ensures that the depositary bank would receive the notice prior to the time it must make funds available for withdrawal under the temporary availability schedule.

Some banks have expressed concern that, under the permanent availability schedule, which becomes effective September 1, 1990, depositary banks often would not receive notice of nonpayment of large-dollar returned checks prior to the time that funds must be made available for withdrawal. Therefore, the Board is requesting comment on alternatives to shorten the current time requirements for giving notice of nonpayment. In addition, the Board is issuing proposed revisions to

[1] The regulation defines "bank" to include all depository institutions, including commercial banks, savings and loan associations, and credit unions. A "depositary bank" is defined as the first bank to which a check is transferred. A "paying bank" is generally the bank by, at, or through which a check is payable and to which it is sent for collection. A "returning bank" is a bank (other than the paying or depositary bank) that handles a returned check or a notice in lieu of return.

the deposit deadlines for the Federal Reserve notice of nonpayment service

regulation provides that if a bank invokes an exception hold under

§ 229.18(e). The Board proposes to revise the Commentary to § 229.18(e) to

ATM, rather than the local time of the account-holding branch. Depending on whether the account-holding branch is

banks cannot meet both a UCC Saturday midnight deadline and the expeditious return requirements of

bank). Because funds must be made available for withdrawal before the depositary bank has an opportunity to

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the deposit deadlines for the Federal Reserve notice of nonpayment service that would take effect if the time requirements for notice of nonpayment were to be shortened. (See Docket R-0680 elsewhere in today's **Federal Register**.) Further, in response to various questions that have been raised by banks regarding the regulation, the Board is issuing for comment proposed technical and clarifying amendments. The proposed changes to shorten the time for giving notice of nonpayment and the proposed technical and clarifying amendments are described below.

Section 229.2(k) Definition of "check." The Board has been requested to clarify the status of ACH debit transfers under Regulation CC. The Board is proposing a revision to the Commentary to the definition of "check" to state explicitly that an ACH debit transfer is not a check.

Section 229.2(r) Definition of "local check." The Board adopted final rules regarding the issuance of bank payable through checks in July 1989. Under the new rules, effective February 1, 1991, bank payable through checks are required to contain the words "payable through" followed by the name of the payable through bank. Two sentences in the Commentary to the definition of "local check" refer to bank payable through checks that do not contain a designation of the payable through bank. The Board proposes to delete these sentences and to revise the Commentary to indicate that, in the case of bank payable through checks, the depositary bank can rely on the first four digits of the nine-digit routing number of the paying bank that is printed on the face of the check to determine whether the check is local or nonlocal.

Section 229.2(u) Definition of "noncash item." The Board is proposing a revision to the Commentary to "noncash item" to clarify that if a bank handles an item in the same manner as it would handle a cash item, the item does not qualify as a noncash item.

Section 229.3(a) Enforcement agencies. As part of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Congress amended the Expedited Funds Availability Act regarding the enforcement agency for savings associations. The Board is proposing a conforming amendment to Regulation CC to provide that the Director of the Office of Thrift Supervision has authority to enforce compliance with Regulation CC by savings associations.

Section 229.13(h)(4) Availability of deposits subject to exceptions. The regulation provides that if a bank invokes an exception hold under § 229.13(b) through (f), it may extend the availability schedule by a reasonable period of time. Currently, the regulation provides that a four business day extension is a reasonable period and that a longer extension may also be reasonable, but the bank has the burden of so establishing. The four day period is designed to provide adequate time for the depositary bank to learn of the nonpayment of virtually all checks that are returned. Thus, under the temporary schedule, a bank invoking an exception hold under § 229.13 may normally hold local checks until the seventh business day after deposit and nonlocal checks until the eleventh business day after deposit. When the permanent schedule becomes effective on September 1, 1990, these periods will shorten to six and nine business days, respectively.

Because there will be no significant payment system improvements applicable to the return of checks before the permanent schedule becomes effective, it is unlikely that depositary banks will learn of the return of many checks subject to a § 229.13 exception faster they do today.[8] The Board, therefore, believes it may be appropriate to extend the reasonable hold period. The Board is requesting comment on a proposal to extend the reasonable hold period from four days to five days for local checks and from four days to six days for nonlocal checks, thereby retaining the existing exception hold periods of seven and eleven days, respectively. The Board requests comment on whether such a change would obviate the need to revise disclosures and the need to extend the reasonable hold period, based on current returned check experience.

Section 229.18(e) Changes in policy. The temporary schedule allows case-by-case holds under § 229.16(c) to be imposed for up to seven business days for nonlocal checks. Unless a longer time is reasonable, exception holds under § 229.13 can be imposed for eleven business days. If the Board does not revise § 229.13 as discussed above, these periods will be reduced under the permanent schedule to five and nine business days, respectively. Banks that provided disclosures referencing the longer time periods permitted under the temporary schedule would have to notify their consumer account-holders of the change in accordance with § 229.18(e). The Board proposes to revise the Commentary to § 229.18(e) to provide guidance on how this change could be disclosed. The notice must be provided by October 1, 1990. (If the Board adopts the proposed changes to § 229.13(h) lengthening reasonable exception holds, the proposed Commentary language to § 229.18(e) as well as the changes to the model forms in Appendix C discussed below would be revised accordingly.)

Section 229.19(a) When funds are considered deposited. Under § 229.19(a)(5) (ii), funds deposited at an ATM or off-premise facility after the depositary bank's cut-off hour of 12:00 noon or later are considered deposited on the next banking day. The Board has been asked whether the 12:00 noon cut-off is determined by the local time of the ATM or off-premise facility or the local time of the branch holding the customer's account.

The Commentary to the definitions of "banking day" and "business day" states, "A deposit made at an ATM or off-premise facility (such as a remote depository or a lock box) is considered made at the branch holding the account into which the deposit is made for the purpose of determining the day of deposit * * * The day of deposit for such funds is determined by the banking day at the account-holding branch at the time the funds are received at the ATM." Similarly, the Commentary to § 229.19(b) regarding availability of funds at the start of business on a day funds are available for withdrawal states that the start of business is determined by the local time of the account-holding branch. Consistent with these provisions, the Board proposes to clarify that the depositary bank may establish a cut-off hour for deposits at ATMs or other off-premise facilities of no earlier than 12:00 noon local time of the account-holding branch.

Under the proposal, an East Coast bank that permits its customers to make deposits at ATMs nationwide may establish a 12:00 noon Eastern Time cut-off for receipt of ATM deposits by its customers. Thus, deposits made by customers of the East Coast bank at West Coast ATMs after 9:00 a.m. Pacific Time can be considered received on the next banking day. Conversely, a West Coast bank must consider all deposits made at East Coast ATMs by 3:00 p.m. Eastern Time (12:00 noon Pacific Time) received on that banking day.

The Board specifically requests comment on the operational and customer service implications of this proposal, and whether the cut-off should be determined by the local time of the ATM, rather than the local time of the account-holding branch. Depending on whether the account-holding branch is east or west of the ATM in which the deposit is made, the earliest cut-off time permitted under the proposal could be either earlier or later than 12:00 noon local time of the ATM. If the time zone of the ATM is west of that of the account-holding branch, the proposal may adversely affect the customer's availability of funds, because the cut-off hour for considering deposits received on a given banking day may be earlier than 12:00 noon local time of the ATM. However, if the time zone of the ATM is east of that of the account-holding branch, the proposal would limit the time for the ATM processor to remove the deposits from the ATM, verify and process them, and put them in the forward collection stream.

Section 229.19(c) Effect on policies of depositary bank. The Board is proposing a revision to the Commentary to § 229.19(c) to clarify the relationship between the availability schedules and the depositary bank's right to charge back its customer's account for a returned check. The revised Commentary would state explicitly that the depositary bank may charge back its customer's account upon receipt of a returned check or notice of nonpayment, even if the check or notice is received after the time by which the proceeds of the check must otherwise be made available for withdrawal under the provisions of the regulation.

Section 229.30(c) Extension of deadline. Increasingly, banks are providing banking services to the public on Saturdays and/or Sundays. These days are not regarded as banking days under Regulation CC, because Saturdays and Sundays are not "business days," but they may be regarded as banking days for the purposes of the Uniform Commercial Code ("UCC"). Banks that are open on Saturday may not have couriers leaving on Saturday to deliver returned checks, and even if they did, the returning or depositary bank to which the returned checks were sent might not be prepared to receive or process checks until Sunday night or Monday morning.

Prior to the implementation of Regulation CC, these banks could meet a UCC Saturday night midnight deadline for checks presented on Friday by mailing their returned checks on Saturday. Since the implementation of Regulation CC, however, these banks have been subject to expeditious return requirements that generally may not be met by mailing returned checks. For checks presented on Fridays, these banks cannot meet both a UCC Saturday midnight deadline and the expeditious return requirements of Regulation CC without establishing special courier runs on Saturday evening to deliver returned checks to returning or depositary banks. Such runs would often be in addition to runs during the day on Sunday delivering forward collection checks to the same banks in their capacity as collecting or paying banks in the forward collection process. (The Federal Reserve Banks and many correspondent banks accept deposits on Sunday afternoon or evening so that mailing returns is not necessary to meet the Sunday night midnight deadline for Saturday presentments.)

To address this problem, the Board is proposing to extend the Saturday night midnight deadline if the returned checks reach the receiving bank by a cut-off hour (usually on Sunday night or Monday morning) that permits processing during the receiving bank's next processing cycle for returned checks following the Saturday midnight deadline.

Section 229.33(a) Notice of nonpayment. This section requires a paying bank to provide notice of nonpayment of any returned check in the amount of $2,500 or more. Currently, this notice must be received by the depositary bank by 4:00 p.m. (local time) on the second business day following the banking day on which the check was presented to the paying bank. This requirement generally ensures that the depositary bank would receive the notice prior to the time it must make funds available for withdrawal under the temporary availability schedule.

Some banks have expressed concern that, under the permanent availability schedule, which becomes effective September 1, 1990, depositary banks often would not receive notice of nonpayment of large-dollar returned checks prior to the time that funds must be made available for withdrawal. Specifically, under the permanent schedule, the first $5,000 of the deposit of a local check must be made available to the customer for withdrawal by the second business day following deposit. The amount in excess of $5,000 may be held for a longer period of time under the large-deposits exception (see § 229.13(b)). Because it generally takes at least a day for a check to be sent from the depositary bank to the paying bank, the depositary bank generally would not receive notice of nonpayment of a large-dollar local check until the third business day following deposit (which would be the second business day following presentment to the paying bank). Because funds must be made available for withdrawal before the depositary bank has an opportunity to learn of the return of the check, the depositary bank is at increased risk of loss from insolvent or fraudulent depositors. (Generally, this problem would not exist for nonlocal checks, because the depositary bank would receive notice of nonpayment of these checks before the funds must be made available for withdrawal under the permanent availability schedule.)

In a recent survey on the impact of the Expedited Funds Availability Act and Regulation CC conducted by a number of depository institution trade associations in coordination with the Federal Reserve, approximately nine percent of the respondents reported an increase in fraud losses as a result of the Act and regulation.[9] Although the Board is concerned that this percentage may increase, the Board believes that because banks are still adjusting to the changes in returned check procedures prompted by Regulation CC, further significant operational changes to the check return system may be premature. Nevertheless, some bankers have suggested shortening the time within which notice of nonpayment must be provided to the depositary bank. Therefore, the Board requests comment on whether the risks inherent in the requirement that funds be made available to the customer for withdrawal prior to the time the depositary bank has an opportunity to learn of the return of large-dollar local checks are sufficient to warrant accelerating the time within which notice of nonpayment must be provided to the depositary bank.

If shortening the time within which the depositary bank receives notice of nonpayment is warranted, how early can the paying bank initiate such notice? Today, paying banks generally post checks to their customers' accounts on the evening of the day of presentment. In many banks, however, the decision to return a check is not made at the time of posting, but is dependent on subsequent bank management review, which may entail contacting the customer. In these cases, the decision to return a check unpaid may not be made until early afternoon on the day following presentment. Shortening the time in which notice can be given could require these decisions to be made earlier in the day, particularly for West Coast paying

[8] Although the Board is requesting comment on whether to shorten the time within which to provide notice of nonpayment of large-dollar checks, many checks subject to § 229.13 exception holds are not subject to the notice of nonpayment requirement.

[9] See The 1989 Report to Congress Under the Expedited Funds Availability Act, Board of Governors of the Federal Reserve System, June 1989.

banks if notices must be given so that they are received at East Coast depositary banks prior to their close of business? Would East Coast banks be able to meet the deadline? Would the depositor notified of the receipt of the notice of nonpayment by the depositary bank? If notice of nonpayment must be

Board amended Regulation CC to require certain information to be printed on checks payable by a bank and

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (12

(h) *Availability of deposits subject to exceptions.* * * *

(4) For the purposes of paragraphs

(2) * * *

* * * A bank is responsible for

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banks if notices must be given so that they are received at East Coast depositary banks prior to their close of business on the day following presentment. (A paying bank giving notice warrants that it has returned or will return the check.) Shortening the time in which decisions to return checks must be made may, in turn, increase the number of checks returned causing other difficulties or inconveniences for paying banks' customers, increased risks to depositary banks, as well as additional burdens on the check return system.

One approach to the East Coast-West Coast time zone problem would be to apply the notice requirement only to large-dollar local checks that are returned unpaid. If the earlier notice requirement applied only to large-dollar local checks, rather than to both local and nonlocal checks, the paying bank would generally have additional time within which to initiate the notice, because it would not be subject to time zone constraints. This greater flexibility is reduced for some paying banks in the 15 check processing regions that cover multiple time zones.

The Board requests comment on the ability of paying banks to provide notice of nonpayment for local and/or nonlocal checks that would be received by the depositary bank (1) late in the day (e.g., 4:00 p.m. or 8:00 p.m.) on the next business day following the banking day on which the check is presented, or (2) earlier than 4:00 p.m. (e.g., 10:00 a.m. or 1:00 p.m.) on the second business day following the banking day on which the check is presented.

The Board also requests comment on the extent to which shortening the time within which notice of nonpayment must be provided would affect the manner by which the paying bank provides notice. For example, some paying banks currently rely on the return of local checks to the depositary bank to fulfill the notice requirement. If the notice of nonpayment requirement was made earlier than 2:00 p.m. on the second business day following presentment, paying banks could not rely on receipt of the physical check to satisfy the notice requirement for many local checks, particularly local checks not returned through a clearing house arrangement.

In addition, the Board requests comment on the benefits to the depositary bank of receiving notice of nonpayment at these earlier times. Do depositary banks act on notices of nonpayment promptly when they are received, or do they defer action until that evening's account processing? How promptly, and by what means (e.g., by phone or by written notice) is the depositor notified of the receipt of the notice of nonpayment by the depositary bank? If notice of nonpayment must be provided by late in the day on the business day following presentment (e.g., by 8:00 p.m.) would depositary banks have staff available at that time to accept and act on the notices? If notices are sent to a correspondent bank that indorses as depositary bank, would the correspondent bank be able to relay an earlier notice to the original depositary bank?

Docket R–0680 in today's **Federal Register** proposes changes to the Federal Reserve's notice of nonpayment service that may be adopted if the Board were to adopt a more stringent requirement in § 229.33 regarding the timing of notices of nonpayment. The Board also requests comment on the extent to which other service providers could continue to offer notice of nonpayment services to facilitate compliance by paying banks with an earlier notice requirement.

Section 229.34(a) Warrant of Returned Check The regulation provides that a paying or returning bank that transfers and receives settlement for a notice in lieu of return warrants that the original check has not and will not be returned. The Board has been asked to clarify that the paying or returning bank is warranting that the original check has not and will not be returned for payment, as opposed to being returned to the depositary bank for other purposes, such as to provide evidence of a forgery, that do not call for payment of the check under § 229.32. The Board proposes to amend the Commentary accordingly.

Section 229.35(a) Indorsement Standards. Since September 1988, when Regulation CC became effective, the quality of indorsements has varied widely. In some cases, banks that handle returned checks have found indorsements to be illegible, even though the indorsements may meet the informational requirements of the regulation. There are several reasons indorsements may be unclear, such as very small type size, or poor imprinting mechanisms, which may result in faint or indistinct indorsements.

Currently under § 229.35 and Appendix D, the duty of an indorsing bank to apply a legible indorsement is implied, but not explicit. The Board believes that the requirement that an indorsing bank should be responsible for ensuring that its indorsement is legible should be made explicit and is proposing to make this duty explicit in the regulation and the Commentary.

Section 229.36(e) Issuance of payable through checks. In July 1989, the Board amended Regulation CC to require certain information to be printed on checks payable by a bank and payable through another bank ("bank payable through checks"). Section 229.36(e) now requires such checks to contain the name, address, and first four digits of the routing number of the bank by which the check is payable, and the phrase "payable through" followed by the name and address of the payable through bank.

The Board has received inquiries as to whether it would be permissible for a bank that holds checking accounts and processes checks at a central location but that has widely-dispersed branches to label all of its checks as "payable through" a single branch and include the name, address, and four-digit routing symbol of another branch. These checks would be payable by and through the *same* bank,[4] and therefore the provisions of § 229.36(e) would not apply. If the Board were to allow such a practice, the result would be to lead depositors and depositary banks to believe mistakenly that the check is a bank payable through check for which availability must be assigned based on the location of the branch whose four-digit routing symbol appears on the check rather than on the location of the central office whose nine-digit routing number is encoded on the MICR line of the check.

The Board, therefore, is proposing an amendment to the regulation and the Commentary to provide that a bank is responsible for damages under § 229.38 to the extent that a check payable by it and not payable through another bank is labelled as provided in § 229.36(e).

Appendix C Model forms. The Board is proposing several revisions to the model forms and clauses in Appendix C and to the accompanying Commentary. Several of these changes are designed to reflect the availability periods under the permanent schedule and the recent revisions to the regulation regarding payable-through checks. Other changes are designed to provide additional guidance regarding the disclosure of availability times for electronic payments or to clarify existing language. The Commentary to Appendix C would be revised to make clear that banks may rely on earlier versions of the model forms though they are encouraged to update their forms when reordering new supplies.

[4] "Bank" is defined in § 229.2(e) to include all of a bank's offices in the United States. Therefore, all of a bank's U.S. branches would be considered part of a single bank.

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (12 U.S.C. 601–612) requires an agency to publish an initial regulatory flexibility analysis with any notice of proposed rulemaking. Two of the requirements of an initial regulatory flexibility analysis (12 U.S.C. 603(b)), a description of the reasons why action by the agency is being considered and a statement of the objectives of, and legal basis for, the proposed rule, are contained in the supplementary material above. The proposed rules require no additional reporting or record-keeping requirements nor are there relevant federal rules that duplicate, overlap, or conflict with the proposed rule.

Another requirement for the initial regulatory flexibility analysis is a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply. The proposals will apply to all depository institutions, regardless of size, but should not place a significant burden on small institutions. These proposals are aimed primarily at reducing risk to depositary banks under the permanent availability schedules and clarifying Regulation CC in response to questions that the Board has received from depository institutions. The Board does not believe that adoption of the proposals will result in any significant economic impact on a substantial number of small entities.

List of Subjects in 12 CFR Part 229

Banks, Banking; Federal Reserve System.

For the reasons set out in the preamble, 12 CFR part 229 is proposed to be amended as follows:

PART 229—[AMENDED]

1. The authority citation for Part 229 continues to read as follows:

Authority: Title VI of Pub. L. 100–86, 101 Stat. 552, 635, 12 U.S.C. 4001 et seq.

2. In § 229.3, paragraph (a)(2) is revised to read as follows:

§ 229.3 Administrative enforcement.

(a) Enforcement agencies.* * *

(2) Section 8 of the Federal Deposit Insurance Act, by the Director of the Office of Thrift Supervision in the case of savings associations the deposits of which are insured by the Federal Deposit Insurance Corporation; and

* * * * *

3. In § 229.13, paragraph (h)(4) is revised to read as follows:

§ 229.13 Exceptions.

* * * * *

(h) *Availability of deposits subject to exceptions.** * *

(4) For the purposes of paragraphs (h)(1), (h)(2), and (h)(3) of this section, an extension of up to five business days for local checks and six business days for nonlocal checks is a reasonable period. A longer extension may be reasonable, but the bank has the burden of so establishing.

4. In § 229.30, paragraph (c) is revised to read as follows:

§ 229.30 Paying bank's responsibility for return of checks.

* * * * *

(c) *Extension of deadline.* The deadline for return or notice of nonpayment under the UCC or Regulation J (12 CFR part 210) is extended:

(1) If a paying bank, in an effort to expedite delivery of a returned check to a bank, uses a means of delivery that would ordinarily result in the returned check being received by the bank to which it is sent on or before the receiving bank's next banking day following the otherwise applicable deadline; this deadline is extended further if a paying bank uses a highly expeditious means of transportation, even if this means of transportation would ordinarily result in delivery after the receiving bank's next banking day; or

(2) If the deadline falls on a Saturday that is a banking day, as defined in the UCC, for the paying bank, and the paying bank uses a means of delivery that would ordinarily result in the returned check being received by the bank to which it is sent prior to the receiving banks' cut-off hour for its next processing cycle after midnight Saturday night.

* * * * *

5. In § 229.35, paragraph (a) is revised to read as follows:

§ 229.35 Indorsements.

(a) *Indorsement standards.* A bank (other than a paying bank) that handles a check for collection or a returned check shall legibly indorse the check in accordance with the indorsement standard set forth in appendix D to this part.

* * * * *

6. In § 229.36, a new sentence is added to the end of paragraph (e) concluding text as follows:

§ 229.36 Presentment and issuance of checks.

* * * * *

(e) *Issuance of payable through checks.* * * *

(1) * * *

(2) * * *

* * * A bank is responsible for damages under § 229.38 of this part to the extent that a check payable by it and not payable through another bank is labelled as provided in this section.

Appendix C—[Amended]

7. Appendix C is amended as set forth below:

a. The first paragraph of model forms C–1, C–2, and C–3 is revised to read as follows:

at [*bank name and location*]

Our policy is to make funds from your deposits available to you on the first business day after the day we receive your deposit. Electronic direct deposits will be available on the day we receive the deposit. Once they are available, you can withdraw the funds in cash and we will use the funds to pay checks that you have written.

* * * * *

b. In model form C–3, the heading is revised, and under the subheading "Longer Delays May Apply," the second sentence of the first paragraph and the last sentence of the last paragraph are revised to read as follows:

C–3. Next-day availability, case-by-case holds to statutory limits, and § 229.13 exceptions (permanent schedule).

* * * * *

Longer Delays May Apply

* * * Depending on the type of check that you deposit, funds may not be available until the fifth business day after the day of your deposit. * * *

* * * * *

* * * They will generally be available no later than the ninth business day after the day of your deposit.

* * * * *

c. In model forms C–4, C–5, C–6, and C–7, a new paragraph and a subheading is added immediately preceding the subheading "Next-Day Availability," and the first sentence under the subheading "Next-Day Availability" is revised to read as follows:

* * * * *

Same-Day Availability

Funds from electronic direct deposits to your account will be available on the day we receive the deposit.

Next-Day Availability

Funds from the following deposits are available on the first business day after the day of your deposit:

U.S. Treasury checks that are payable to you.

Wire transfers.

Checks drawn on [*bank name*] (unless [*any limitations related to branches in different states or check-processingregions*]).

* * * * *

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d. In model forms C–4, C–6, and C–7, the second paragraph under the subheading "Other Check Deposits" is revised to read as follows:

* * * * *

Other Check Deposits

* * * * *

If the first four digits of the routing number (1234 in the examples above) are (local numbers), then the check is a local check. Otherwise, the check is a nonlocal check. Some checks are marked "payable through" and have a four- or nine-digit number nearby. For these checks, use the four-digit number (or the first four digits of the nine-digit number), not the routing number on the bottom of the check, to determine if these checks are local or nonlocal. Our policy is to make funds from local and nonlocal checks available as follows.

* * * * *

e. In model form C–5, two new sentences are added at the beginning of the second paragraph under the subheading "Other Check Deposits" to read as follows:

* * * * *

Other Check Deposits

* * * * *

Some checks are marked "payable through" and have a four or nine-digit number nearby. For these checks, use this four-digit number (or the first four digits of the nine-digit number), not the routing number on the bottom of the check, to determine if these checks are local or nonlocal. * * *

* * * * *

f. In forms C–2, C–3, C–4, C–5, and C–6, under the subheading "Special Rules for New Accounts," the second paragraph is deleted, and the third paragraph is revised to read as follows:

Special Rules for New Accounts

* * * * *

Funds from electronic direct deposits into your account will be available on the day we receive the deposit. Funds from deposits of cash, wire transfers, and the first $5,000 of a day's total deposits of cashier's, certified, teller's, traveler's, and federal, state and local government checks will be available on the first business day after the day of your deposit if the deposit meets certain conditions. For example, the checks must be payable to you (and you may have to use a special deposit slip). The excess over $5,000 will be available on the ninth business day after the day of your deposit. If your deposit of these checks (other than a U.S. Treasury check) is not made in person to one of our employees, the first $5,000 will not be available until the second business day after the day of your deposit.

* * * * *

g. In form C–7, under the subheading "Special Rules for New Accounts," the second, third, and fourth sentences of the first paragraph are deleted and the second paragraph is revised to read as follows:

Special Rules for New Accounts

* * * * *

Funds from electronic direct deposits into your account will be available on the day we receive the deposit. Funds from deposits of cash, wire transfers, and the first $5,000 of a day's total deposits of cashier's, certified, teller's, traveler's, and federal, state and local government checks will be available on the first business day after the day of your deposit if the deposit meets certain conditions. For example, the checks must be payable to you (and you may have to use a special deposit slip). The excess over $5,000 will be available on the ninth business day after the day of your deposit. If your deposit of these checks (other than a U.S. Treasury check) is not made in person to one of our employees, the first $5,000 will not be available until the second business day after the day of your deposit.

* * * * *

h. In model clause C–8, the last sentence is deleted.

i. Model clauses C–19 and C–19A are deleted.

Appendix E—[Amended]

8. Appendix E is amended as set forth below:

a. In the Commentary to § 229.2, the first sentence of the last paragraph of paragraph (k) is revised, the last two sentences of paragraph (r) are removed and a new sentence is added to the end, and a new sentence is added to the end of the first paragraph of paragraph (u) as follows:

Section 229.2 Definitions

* * * * *

(k) Check * * *

The definition of "check" does not include an instrument payable in a foreign currency (i.e., other than United States money as defined in 31 U.S.C. 5101), a credit card draft (i.e., a sales draft used by a merchant or a draft generated by a bank as a result of a cash advance), or an ACH debit transfer. * * *

* * * * *

(r) *Local Check* * * * In these cases, the depositary bank may rely on the first four digits of the nine-digit routing number of the paying bank that is printed on the face of the check to determine whether the check is local or nonlocal.

* * * * *

(u) *Noncash item.* * * * To qualify as a noncash item, an item must be handled as such and may not be handled as a cash item.

* * * * *

b. In the Commentary to § 229.13, in paragraph (h), the second sentence of the first paragraph, the first sentence of the second paragraph, and the fourth paragraph are revised to read as follows:

Section 229.13 Exceptions

* * * * *

(h) Availability of deposits subject to Exceptions. * * * This provision establishes that an extension of up to five business days for local checks and six business days for nonlocal checks is reasonable. * * *

For example, assume a bank extended the hold on a local check deposit by five business days based on its reasonable cause to believe that the check is uncollectible. * * *

* * * * *

Five business days for local checks and six business days for nonlocal checks, in addition to the time period provided in the schedule, should provide adequate time for the depositary bank to learn of the nonpayment of virtually all checks that are returned.

* * * * *

c. In the Commentary to § 229.18, a new paragraph is added after the last paragraph of paragraph (e) to read as follows:

Section 229.18 Additional Disclosure Requirements

* * * * *

(e) Changes in policy * * *

* * * * *

In disclosing the changes (due to the implementation of the permanent schedule) in the maximum periods for case-by-case and exception holds, a bank may provide notice in any form that is clear and conspicuous. For example, banks could use language such as the following on account statements (or on inserts) to disclose the change in policy: "Our disclosure on funds availability described certain limited circumstances in which funds from deposits would not be available until the seventh or the eleventh business day following the day of your deposit. Effective September 1, 1990, those periods will be reduced, respectively, to five and nine business days."

d. In the Commentary to § 229.19, the third sentence of the fifth paragraph of paragraph (a) is revised, and two new sentences are added to the end of the second paragraph of paragraph (c) to read as follows:

Section 229.19 Miscellaneous

(a) *When funds are considered deposited.* * * *

* * * * *

* * * For receipt of deposits at ATMs or off-premise facilities, such as night depositories or lock boxes, the depositary bank may establish a cut-off hour of 12:00 noon or later (local time of the branch or other location of the depositary bank at which the account is maintained). * * *

* * * * *

* * * (c) *Effect on policies of depositary bank.* * * *. For example, even if a check is returned or a notice of nonpayment is received after the time by which funds must be made available for withdrawal in accordance with this regulation, the depositary bank may charge back the customer's account for the full amount of the check. (See § 229.33(d) and Commentary.)

* * * * *

e. In the Commentary to § 229.30, the heading and first two paragraphs of paragraph (c) are revised to read as follows:

Section 229.30 Paying Bank's Responsibility for Return of Checks

* * * * *

(c) *Extension of deadline.* This paragraph permits extension of the midnight deadline, but not of the duty of expeditious return, in two circumstances:

(1) A paying bank may have a courier that leaves after midnight to deliver its forward collection checks. This paragraph removes the constraint of the midnight deadline for returned checks if the returned check reaches either the depositary bank or the returning bank to which it is sent on that bank's banking day following the expiration of the midnight deadline or other applicable time for return. The extension also applies if the check reaches the bank to which it is sent later than the close of that bank's banking day, if highly expeditious means of transportation are used. For example, a West Coast paying bank may use this further extension to ship a returned check by air courier directly to an East Coast depositary bank even if the check arrives after the close of the depositary bank's banking day.

(2) A paying bank may observe a banking day, as defined in the UCC, on a Saturday, which is not a business day and therefore not a banking day under Regulation CC. In such a case, the UCC midnight deadline for checks received on Friday might force the bank to return the checks by midnight Saturday. However, the bank may not have couriers leaving on Saturday to carry returned checks, and even if it did, the returning or depositary bank to which the returned checks were sent ("receiving bank") might not be open until Sunday night or Monday morning to receive and process the checks. This paragraph extends the midnight deadline if the returned checks reach the receiving bank by a cut-off hour (usually on Sunday night or Monday morning) that permits processing during the receiving bank's next processing cycle following the Saturday midnight deadline.

The time limits that are extended in each case are the paying bank's midnight deadline in UCC sections 4–301 and 4–302 and § 210.12 of Regulation J (12 CFR 210.12). As these extensions are designed to speed (§ 229.30 (c)(1)), or at least not slow § 229.30(c)(2)), the overall return of checks, no modification or extension of the expeditious return requirements in § 229.30(a) is required.

* * * * *

f. In the Commentary to § 229.34, the first sentence of paragraph (a) is revised to read as follows:

Section 229.34 Warranties by Paying Bank and Returning Bank

(a) *Warranty of returned check.* This paragraph includes warranties that a returned check, including a notice in lieu of return, was returned by the paying bank, or in the case of a check payable by a bank and payable through another bank, the bank by which the check is payable, within the deadline under the UCC, Regulation J, or § 229.30(c); that the paying or returning bank is authorized to return the check; that the returned check has not been materially altered; and that, in the case of a notice in lieu of return, the original check has not been and will not be returned for payment (see the Commentary to § 229.30(f)). * * *

* * * * *

g. In the Commentary to § 229.35, a new sentence is added before the last sentence of the first paragraph of paragraph (a) as follows:

Section 229.35 Indorsements

(a) *Indorsement standards.* * * * The regulation places a duty on banks to ensure that their indorsements are legible. * * *

* * * * *

h. In the Commentary to § 229.36, two new sentences are added after the first sentence in the second paragraph of paragraph (e), and the second sentence is revised to read as follows:

Section 229.36 Presentment and Issuance of Checks

* * * * *

(e) *Issuance of payable through checks.* * * *

* * * Similarly, a bank may be liable under § 229.38 if a check payable by it that is not payable through another bank is labelled as provided in this section. (All of a bank's offices within the United States are considered part of the same bank; see § 229.2(e).) For example, a bank by which a check is payable could be liable to a depositary bank that suffers a loss, such as lost interest or liability under subpart B, that would not have occurred had the check, in the case of a payable through check, met the requirements of this paragraph, or, in the case of a check that is not payable through another bank, not been mislabelled. * * *

i. In the Commentary to Appendix C, under the subheading "Modes C–1 through C–7 generally," the last paragraph is revised and a new paragraph is added at the end thereof to read as follows:

Appendix C—Model Forms, Clauses, and Notices

* * * * *

Models C–1 through C–7 generally. * * *

* * * * *

While § 229.10(b) of the regulation requires next-day availability for electronic payments, Treasury regulations (31 CFR part 210) and ACH association rules require that preauthorized credits ("direct deposits") be made available on the day the bank receives the funds. Model Forms C–1 through C–7 reflect these rules. Wire transfers, however, are not governed by Treasury or ACH rules, but banks generally make funds from wire transfers available on the first business day following deposit. Banks with different policies should revise the forms to reflect the availability given in most cases for wire transfers.

Banks that have used earlier versions of the model forms or clauses (such as those forms that gave Social Security benefits and payroll payments as examples of preauthorized credits available the day after deposit) are protected from civil liability under § 229.21(e). Banks are encouraged, however, to use current versions of the forms when reordering supplies of forms.

* * * * *

By order of the Board of Governors of the Federal Reserve System, December 7, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89–29007 Filed 12–14–89; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89–NM–236–AD]

Airworthiness Directives; Boeing of Canada, Ltd., de Havilland Division, Model DHC–8–300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain de Havilland Model DHC–8–300 Series Airplanes, Serial Numbers 100 through 231, inclusive, which would require repetitive visual inspections to detect cracks and/or complete separation of the three bleed air precooler mounting lugs, and repair, if necessary. This proposal is prompted by reports of cracking and complete separation of engine bleed air precooler mounting lugs. This condition, if not corrected, could result in loss of support of the engine bleed air precooler and possible reputure of the engine bleed air ducts.

DATES: Comments must be received no later than January 19, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 89–NM–236–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing of Canada, Ltd., de Havilland Division, Garrett Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway

South, Seattle, Washington, or at the FAA, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. Jon Hjelm, Airframe Branch, ANE-172; telephone (516) 791-6220. Mailing address: FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-236-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

Transport Canada, which is the airworthiness authority of Canada, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain de Havilland Model DHC-8-300 series airplanes. There have been recent reports of in-service cracks and complete separation of the engine bleed air precooler mounting lugs. This condition, if not corrected, could result in loss of support of the engine bleed air precooler and possible rupture of the engine bleed air ducts.

Boeing of Canada, Ltd., de Havilland Division, has issed Alert Service Bulletin A8-21-32, dated October 27, 1989, which describes procedures for repetitive visual inspections to detect cracks or complete separation of the bleed air precooler mounting lugs, and repair, if necessary. Transport Canada has classified this service bulletin as mandatory, and has issued a message dated October 31, 1989, addressing this subject.

This airplane model is manufactured in Canada and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD requires repetitive visual inspections to detect cracks or complete separation of the bleed air precooler mountings lugs, and repair, if necessary, in accordance with the service bulletin previously described.

This is considered to be interim action. The manufacturer is currently developing a modification which, when installed, will terminate the need for the repetitive inspections. Once this modification is developed, the FAA may consider further rulemaking action to revise this AD to require additional necessary action.

It is estimated that 3 airplanes of U.S. registry would be affected by this AD, that it would take approximately one-half manhour per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $60.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would have not sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing of Canada, Ltd., De Havilland Division: Applies to de Havilland Model DHC-8-300 series airplanes, Serial Numbers 100 through 231, inclusive, certified in any category. Compliance is required as indicated, unless previously accomplished.

To prevent possible rupture of the engine bleed air ducts, accomplish the following:

A. Within the next 50 hours time-in-service after the effective date of this AD, and thereafter at intervals not to exceed 50 hours time-in-service, perform a visual inspection to detect cracks or complete separation of the bleed air precooler mounting lugs, in accordance with de Havilland Alert Service Bulletin A8-21-32, dated October 27, 1989.

B. If cracks are found in more than one lug, or if any lug has completely separated, repair prior to further flight, in accordance with de Havilland Alert Service Bulletin A8-21-32, dated October 27, 1989.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptance level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Boeing of Canada, Ltd., de Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

Issued in Seattle, Washington, on December 4, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-29234 Filed 12-14-89; 8:45 am]

BILLING CODE 4910-13

[Docket No. 89-NM-221-AD]

14 CFR Part 39

Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A300 series airplanes, which would require repetitive high frequency eddy current (HFEC) inspections to detect cracks in the bottom skin stringers adjacent to Rib 14, and repair, if necessary. This proposal is prompted by full-scale fatigue testing by the manufacturer, which revealed cracks in the bottom skin stringers adjacent to Rib 14. This condition, if not corrected, could result in rupture of the bottom skin stringers and subsequent reduced structural capability of the wings.

DATES: Comments must be received no later than January 28, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-221-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 431-1916. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-221-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority of France, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain Airbus Industrie Model A300 series airplanes. During full-scale fatigue testing, the manufacturer discovered cracks in the bottom skin stringers adjacent to Rib 14. This condition, if not corrected, could lead to rupture of the bottom skin stringers and subsequent reduced structural capability of the wings.

Airbus Industrie has issued Service Bulletin A300-57-148, dated November 30, 1988, which describes procedures for repetitive high frequency eddy current (HFEC) inspections to detect cracks in the bottom skin stringers adjacent to Rib 14, and repair, if necessary. The DGAC has classified this service bulletin as mandatory, and has issued Airworthiness Directive 89-109-097(B) addressing this subject.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require repetitive HFEC inspections to detect cracks in the botton skin stringers adjacent to Rib 14, and repair, if necessary, in accordance with the service bulletin previously described.

It is estimated that 66 airplanes of U.S. registry would be affected by this AD, that it would take approximately 25 manhours per airplane to accomplish the required actions, and the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $66,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. For Model A300 B2 series airplanes, repeat the inspection at intervals not to

interested persons. A report summarizing each FAA/public contact, concerned with the substance of this

same type design registered in the United States, an AD is proposed which would require modification of the wing

the following new airworthiness directive:

British Aerospace: Applies to Model BAe

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PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Applies to Model A300 series airplanes, as listed in Airbus Industrie Service Bulletin A300-57-148, dated November 30, 1988, certificated in any category. Complaince is required as indicated, unless previously accomplished.

To prevent rupture of the bottom skin stringers and subsequent reduced structural capability of the wings, accomplish the following:

A. Perform a high frequency eddy current (HFEC) inspection of the bottom skin stringers adjacent to Rib 14, in accordance with Airbus Industrie Service Bulletin A300-57-148, dated November 30, 1988, as follows:

1. Model A300 B2 Series Airplanes:

a. For airplanes that have accumulated less than 23,000 landings, the initial inspection must be performed prior to the accumulation of 25,000 landings.

b. For airplanes that have accumulated at least 23,000 landings but not more than 28,000 landings, the initial inspection must be performed within 2,000 landings after the effective date of this AD.

c. For airplanes that have accumulated 28,000 or more landings, the initial inspection must be performed within 1,000 landings after the effective date of this AD.

2. Model A300 B4-100 and B4-2C series airplanes:

a. For airplanes that have accumulated less than 19,000 landings, the initial inspection must be performed prior to the accumulation of 21,000 landings.

b. For airplanes that have accumulated at least 19,000 landings but not more than 23,000 landings, the initial inspection must be performed within 1,500 landings after the effective date of this AD.

c. For airplanes that have accumulated 23,000 or more landings, the initial inspection must be performed within 750 landings after the effective date of this AD.

3. Model A300 B4-200 series airplanes:

a. For airplanes that have accumulated less than 15,000 landings, the initial inspection must be performed prior to the accumulation of 17,000 landings.

b. For airplanes that have accumulated at least 15,000 landings but not more 19,000 landings, the initial inspection must be performed within 1,500 landings after the effective date of this AD.

c. For airplanes that have accumulated 19,000 or more landings, the initial inspection must be performed within 750 landings after the effective date of this AD.

B. If no cracks are found, repeat the inspections required by paragraph A., above, at the following intervals:

1. For Model A300 B2 series airplanes, repeat the inspection at intervals not to exceed 9,400 landings.

2. For Model A300 B4-100 and B4-2C series airplanes, repeat the inspection at intervals not to exceed 8,000 landings.

3. For Model A300 B4-200 series airplanes, repeat the inspection at intervals not to exceed 6,100 landings.

C. If cracks are found, repair prior to further flight, in a manner approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region. Repeat inspections thereafter at intervals specified in paragraph B., above.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way south, Seattle, Washington.

Issued in Seattle, Washington, on November 30, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-29232 Filed 12-14-89; 8:45 am]

BILLING CODE 4910-13

14 CFR Part 39

[Docket No. 89-NM-234-AD]

Airworthiness Directives; British Aerospace Model BAe 146-100A, -200A, and -300A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe 146-100A, -200A, and -300A series airplanes, which would require modification of the wing flap electronic control unit (ECU) and installation of a warning placard on the ECU. This proposal is prompted by the identification of a sequence of events, involving possible crew actions or environmental occurrences and subsequent hardware failure, that could result in the in-flight failure of the flap ECU and could create an asymmetric flap condition. This condition, if not corrected, could result in loss of wing flap asymmetry protection, which would adversely affect airplane controllability.

DATES: Comments must be received no later than February 1, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-234-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 431-1565. Mailing Address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by

interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-234-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The United Kingdom Civil Aviation Authority (CAA), in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain British Aerospace Model BAE 146-100A, -200A, and -300A series airplanes. There have been reports of spurious flap fault indications occurring in extreme low temperature conditions. Reports received also indicate that a combination of possible crew actions or environmental occurrences, such as lightning, and subsequent possible hardware failures, could result in an asymmetric wing flap condition. The manufacturer is aware of occurrences wherein crew members have re-racked the wing flap electronic control unit (ECU) in an attempt to clear a fault warning. This particular crew action, or a lightning strike, can cause the ECU to fail in a way that it could unlock the flap actuators system and allow flaps to extend asymmetrically after a mechanical failure has occurred. This condition, if not corrected, could result in loss of wing flap asymmetry protection and would adversely affect airplane controllability.

British Aerospace has issued Service Bulletin 27-95-70420A, dated April 27, 1989, which describes procedures for installing an improved wing flap ECU having software and hardware modification, including a modification to control lane monitoring and a modification to improve lightning strike protection; and procedures for installing an engraved warning placard on the front face of the ECU, stating, "WARNING—This equipment must not be removed or re-racked in flight." The United Kingdom CAA has classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certified in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require modification of the wing flap ECU, and installation of an engraved warning placard on the front face of the ECU, in accordance with the service bulletin previously described.

It is estimated that 61 airplanes of U.S. registry would be affected by this AD, that it would take approximately two and one-half manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The required parts will be supplied to operators at no cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $8,100.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Applies to Model BAe 146-100A, -200A, and -300A series airplanes: Serial Numbers E1002 and subsequent, E2012 and subsequent, and E3118 and subsequent; certificated in any category. Compliance is required within 180 days after the effective date of this AD, unless previously accomplished.

To prevent loss of wing flap asymmetry protection and loss of airplane controllability, accomplish the following:

A. Install an improved wing flap electronic unit (ECU) in accordance with British Aerospace Service Bulletin 27-95-70420A, dated April 27, 1989.

Note: The British Aerospace Service Bulletin references Dowty Rotol Service Bulletin 146-27-75 for additional instructions.

B. Install a warning placard on the front face of the ECU, in accordance with British Aerospace Service Bulletin 27-95-70420A, dated April 27, 1989. The warning placard states:

"WARNING—This equipment must not be removed or re-racked in flight."

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on December 1, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-29229 Filed 12-14-89; 8:45 am]

BILLING CODE 4910-13-M

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[Docket No. 89-NM-232-AD]

they may desire. Communications should identify the regulatory docket

certificated in the United States under the provisions of § 21.29 of the Federal

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449,

Branch, 9010 East Marginal Way South, Seattle, Washington.

South, C-68966, Seattle, Washington 98168.

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14 CFR Part 39

[Docket No. 89-NM-232-AD]

Airworthiness Directives; British Aerospace Model BAe 146-200A and -300A Series Airplanes Equipped With Modification HCM30107C and HCM30300A

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe 146-200A and -300A series airplanes, which would require an inspection of the cabin insulation bags between frames 19 and 26, and frames 32 to 40, inclusive, to ensure adequate clearance between the insulation bags and the floor, and modification, if necessary. This proposal is prompted by a report of insufficient clearance between the lower edge of the cabin insulation bags and the floor structure. This condition, if not corrected, could result in restricted airflow from above the cabin floor to below the floor in the event of rapid decompression, which could result in extensive structural damage to the airplane.

DATE: Comments must be received no later than January 28, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-232-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 431-1565. Mailing Address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-232-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The United Kingdom Civil Aviation Authority (CAA), in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain British Aerospace Model BAe 146-200A and -300A series airplanes. The manufacturer has reported that, with the installation of a new style interior trim, there is insufficient clearance between the lower edge of the cabin insulation bags and the floor structure. This condition, if not corrected, could result in restricted airflow from above the cabin floor to below the floor in the event of rapid decompression, which could result in extensive structural damage to the airplane.

British Aerospace has issued Service Bulletin 25-A157, dated August 14, 1989, which describes procedures for inspection of the insulation bags between frames 19 to 26 and frames 32-40, inclusive, to determine if there is adequate clearance between the lower edge of the cabin insulation bags and the floor structure, and modification, if necessary. The United Kingdom CAA has classified this service bulletin as mandatory, and has issued Airworthiness Directive 009-08-89 addressing this subject.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require an inspection of the cabin insulations bags on the right and left of the airplane to determine if there is adequate clearance between the lower edge of the insulation bags and the floor structure, and modification, if necessary.

It is estimated that 3 airplanes of U.S. registry would be affected by this AD, that it would take approximately one manhour per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $120.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Applies to Model BAe 146-200A and -300A series airplanes, equipped with Modification HCM30107C and HCM30300A, as listed in British Aerospace inspection Service Bulletin 25-A157, dated August 14, 1989, certificated in any category. Compliance is required within 30 days after the effective date of this AD, unless previously accomplished.

To ensure unrestricted passage of air from above the cabin floor to below the floor in the event of rapid decompression, accomplish the following:

A. Inspect the cabin insulation bags between frames 19 to 26, and frames 32 to 40, inclusive, both left and right sides of the cabin, to ensure the lower edge of the insulation bag is 4 inches above the level of the floor structure, in accordance with British Aerospace Service Bulletin 25-A157, dated August 14, 1989.

1. If sufficient clearance is found, reassemble parts and return the airplane to service.

2. If insufficient clearance is found, prior to further flight, modify the insulation bags by folding under the lower edge and securing the insulation bags, in accordance with the service bulletin.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on November 30, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-29230 Filed 12-14-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-233-AD]

Airworthiness Directives; British Aerospace Model BAe 146-100A and -200A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe 146-100A and -200A series airplanes, which would require installation of new roller bearing pins at the forward top position on flap track No. 3 lower carriage assemblies. This proposal is prompted by structural testing by the manufacturer which revealed inadequate strength under certain conditions in the forward top roller bearing pins on the lower carriage on right and left flap track No. 3. This condition, if not corrected, could result in the inability of the flap system to sustain expected loads, which would adversely affect airplane controllability.

DATES: Comments must be received no later than January 28, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-233-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 431-1565. Mailing Address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-233-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The United Kingdom Civil Aviation Authority (CAA), in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain British Aerospace Model BAe 146-100A and -200A series airplanes. Structural testing by the manufacturer has revealed inadequate strength in the forward top roller bearing pins on the lower carriage on the right and left No. 3 flap track. This understrength condition exists when an incipient jam condition occurs in the wing flap system. This condition, if not corrected, could result in the inability of the flap system to sustain expected loads, which would adversely affect airplane controllability.

British Aerospace has issued Service Bulletin 57-24-00911A, Revision 1, dated May 1, 1988, which describes procedures to install new roller bearing pins at the forward top position on flap track No. 3 lower carriage assemblies. The United

Kingdom CAA has classified this service bulletin as mandatory.

PART 39—[AMENDED]

1. The authority citation for part 39

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[Docket No. 89-ANE-39]

action is taken on the proposed rule. The proposal contained in this notice may be changed in light of comments received.

and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation

Executive Park, Burlington, Massachusetts 01803.

Issued in Burlington, Massachusetts, on

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Kingdom CAA has classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require installation of new roller bearing pins at the forward top position on flap track No. 3 lower carriage assemblies in accordance with the service bulletin previously described.

It is estimated that 54 airplanes of U.S. registry would be affected by this AD, that it would take approximately 9 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The estimated cost for the required modification kit is $885 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $67,230.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Applies to Model BAe 146–100A and –200A series airplanes, as listed in British Aerospace Service Bulletin 57–24–00911A, Revision 1, dated May 1, 1988, certificated in any category. Compliance is required within 180 days after the effective date of this AD, unless previously accomplished.

To prevent inability of the flap system to sustain expected loads and prevent loss of airplane controllability, accomplish the following:

A. Install new roller bearing pins at the forward top position on the right and left flap track No. 3 lower carriage assemblies, in accordance with British Aerospace Service Bulletin 57–24–00911A, Revision 1, dated May 1, 1988.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on November 30, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–29231 Filed 12–14–89; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 89–ANE–39]

Airworthiness Directives; CFM International (CFMI) CFM56–3/–3B/–3C Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This document proposes to adopt an airworthiness directive (AD) that would require installation of a new fan splitter fairing, and a new variable bypass valve (VBV) configuration in CFM56–3/–3B/–3C series turbofan engines. The proposed AD is needed to prevent power loss or flameout while operating in heavy precipitation.

DATES: Comments must be received on or before January 16, 1990.

ADDRESSES: Comments on the amendment may be mailed in duplicate to: Federal Aviation Administration, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 89–ANE–39, 12 New England Executive Park, Burlington, Massachusetts 01803, or delivered in duplicate to Room 311 of the Regional Rules Docket at the above address. Comments must be marked: Docket No. 89–ANE–39.

Comments may be inspected at the above location, in Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable manufacturer's service bulletins (SB) may be obtained from the General Electric Company, Technical Publications Department, 1 Neumann Way, Cincinnati, Ohio 45215, or may be examined in the Regional Rules Docket.

FOR FURTHER INFORMATION CONTACT: Marc J. Bouthillier, Engine Certification Branch, ANE–142, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273–7085.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the FAA before any final action is taken on the proposed rule. The proposal contained in this notice may be changed in light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Regional Rules Docket, New England Region, Office of the Assistant Chief Counsel, Room 311, Burlington, Massachusetts 01803, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: Comments to Docket No. 89–ANE–39. The postcard will be date/time stamped and returned to the commenter.

The FAA has determined that CFM56–3 series turbofan engines have inadequate flameout margin for operation in heavy precipitation. The determination is based on three dual engine and one single engine power loss/flameout events which occurred while operating in heavy precipitation (rain and hail). Subsequent water ingestion ground testing has confirmed the finding of inadequate flameout margin. It has also been determined that installation of a new type fan splitter fairing, and a VBV configuration will significantly increase the engine's flameout margin in heavy precipitation. Therefore, a proposed AD is being issued which will require installation of the above noted hardware prior to July 1, 1990.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that the proposed regulation involves 1,450 engines, and the cost per engine to the operators would be negligible since hardware and labor costs are being assumed by CFM International. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) proposes to amend part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

General Electric: Applies to CFM International (CFMI) CFM56–3/3B/3C series turbofan engines.

Compliance is required as indicated, unless already accomplished.

To prevent power loss or flameout while operating in heavy precipitation, accomplish the following:

(a) Install fan splitter fairing, fan stage 1 vane assembly, and new centering shroud, in accordance with the accomplishment instructions contained in CFMI Service Bulletin (SB) 72–450, Revision 1, dated May 30, 1989, at the next shop visit, or on or before July 1, 1990, whichever occurs first.

(b) Install the 12 door variable bypass valuve (VBV) configuration in accordance with the accomplishment instructions contained in CFMI SB 72–462, Revision 1, dated May 30, 1989, at the next shop visit, or on or before July 1, 1990, whichever occurs first.

Note: Shop visit is defined as the introduction of an engine into a shop for the conduct of maintenance.

(c) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD may be accomplished.

(d) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, an alternative method of compliance with the requirements of this AD or adjustments to the compliance times specified in this AD, may be approved by the Manager, Engine Certification Office, ANE–140, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

Issued in Burlington, Massachusetts, on December 4, 1989.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 89–29235 Filed 12–14–89; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 89–NM–238–AD]

Airworthiness Directives; Fokker Model F–27 Series Airplanes

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Fokker Model F–27 series airplanes, which would require a one-time X-ray inspection to detect cracks in Stringers 5 and 6 of the upper wing skin, and repair, if necessary. This proposal is prompted by reports of cracked Stringers 5 and 6 of the upper skin, outboard of Wing Station 10760. Undetected fatigue cracks could lead to reduced structural capability of the wing.

DATES: Comments must be received no later than February 1, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 89–NM–238–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM–113; telephone (206) 431–1978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such

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written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-238-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority of the Netherlands, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain Fokker Model F-27 series airplanes. Reports have been received of cracked Stringers 5 and 6 of the upper skin outboard of Wing Station 10760. The cracks started at the rivet holes for the connection of the stringer with the upper cap of ribs at Wing Stations 11260, 11860, 12660, and 13460. In one case, cracks were found at all eight positions on the left and right hand wing. The cause of the cracking is attributed to fatigue. Undetected fatigue cracks could lead to reduced structural capability of the wing.

Fokker has issued Service Bulletin F27/57-65, dated October 4, 1989, which describes procedures for a one-time X-ray inspection of the stringers at Wing Station 11260, 11860, 12660, and 13460, and repair, if necessary. The RLD has classified this service bulletin as mandatory, and has issued Airworthiness Directive BLA No. 89-121 addressing this subject.

This airplane model is manufactured in the Netherlands and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require a one-time X-ray inspection to detect cracks in the top skin Stringers 5 and 6, and repair, if necessary, in accordance with the service bulletin previously described.

This is considered to be interim action. The manufacturer is currently attempting to determine the extent and nature of the addressed damage, and is developing an appropriate repetitive inspection schedule and/or modification that will preclude the need for repetitive inspections. Once these are developed, the FAA may consider further rulemaking to revise this AD to require additional necessary action.

It is estimated that 33 airplanes of U.S. registry would be affected by this AD, that it would take approximately 14 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $18,480.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker: Applies to Model F-27 series airplanes, 10102 through 10684, 10686, 10687, and 10689 through 10692, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent reduced structural capability of the wing due to fatigue cracks, accomplish the following:

A. Perform a one-time X-ray inspection of the top skin Stringers 5 and 6 at Wing Stations 11260, 11860, 12660, and 13460, in accordance with Fokker Service Bulletin F27/57-65, dated October 4, 1989, and the following schedule:

1. For airplanes that have accumulated less than 40,000 landings as of the effective date of this AD, inspect prior to the accumulation of 30,000 landings or within 180 days after the effective date of this AD, whichever occurs later.

2. For airplanes that have accumulated 40,000 landings or more but less than 50,000 landings as of the effective date of this AD, inspect within 90 days after the effective date of this AD.

3. For airplanes that have accumulated 50,000 landings or more as of the effective date of this AD, inspect within 30 days after the effective date of this AD.

B. If cracks are found, repair prior to further flight, in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin F27/57-65, dated October 4, 1989.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All person affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on December 1, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-29233 Filed 12-14-89; 8:45 am]

BILLING CODE 4910-13-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL 3698-2]

Approval and Promulgation of State Implementation Plans; South Dakota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to approve the Committal State Implementation Plan (SIP) for the Rapid City, South Dakota, Group II PM_{10} area submitted by the State on July 12, 1988, as part of the South Dakota SIP. The SIP commits the State to continuing monitoring for PM_{10} and to submit a full SIP if a violation of the PM_{10} National Ambient Air Quality Standards (NAAQS) is detected. It also commits the State to make several revisions related to PM_{10} to the existing SIP. EPA published a direct final rule approving the submittal in the May 15, 1989, **Federal Register** (54 FR 20845); however, because notice was received that adverse comments will be submitted, the final rule was withdrawn in another **Federal Register** notice (54 FR 29554, July 13, 1989).

DATE: Comments must be received on or before January 16, 1990.

ADDRESSES: Written comments should be addressed to: Douglas M. Skie, Chief, Air Programs Branch, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202-2405.

Copies of the revision are available for public inspection between 8 a.m. and 4 p.m., Monday through Friday, at the following offices: Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, Suite 500, Denver, Colorado 80202-2405.

FOR FURTHER INFORMATION CONTACT: Rob Corry, Air Programs Branch, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202-2405; (303) 293-1759, (FTS) 564-1759.

SUPPLEMENTARY INFORMATION: The 1977 amendments to the Clean Air Act require EPA to review periodically and, if appropriate, revise the criteria on which the NAAQS for each air pollutant are based, as well as review and revise the NAAQS themselves. In response to these requirements, EPA published a notice to promulgate revised NAAQS for particulate matter under ten microns in size (known as PM_{10}) on July 1, 1987 (52 FR 24634). As a result, States must revise their State Implementation Plans (SIPs) to attain and maintain the new NAAQS.

To implement the new SIP requirements, all areas in the country were divided into three groups, based on the probability that each of these areas would violate the PM_{10} NAAQS. Group I areas have violated the PM_{10} NAAQS or have air quality data showing high (greater than 95 percent) probabilities of violating the NAAQS. These areas must submit full SIPs including control strategies and attainment demonstrations. Group II areas are estimated to have a moderate (20 to 95 percent) probability of violating the PM_{10} NAAQS, and must commit to monitor for PM_{10} and submit a full SIP if a violation occurs. Group III areas are estimated to have a low (less than 20 percent) probability of violating PM_{10} NAAQS, and no new control strategy requirements apply.

The Rapid City, South Dakota area has been classified as a Group II area. On July 12, 1988, the State submitted a Commital SIP for this area. The requirements for Group II Committal SIPs, and the State's response to these requirements are described below.

EPA Requirements for Group II Committal SIPs

The following SIP requirements apply to all PM_{10} areas, regardless of their grouping:

(1) All SIPs should provide for the attainment and maintenance of the PM_{10} standards, and PM_{10} should be regulated as a criteria pollutant.

(2) Since the SIP must protect both the PM_{10} standard and the total suspended particulates (TSP) increment for prevention of significant deterioration (PSD), it must trigger preconstruction review for a new or modified source which would emit significant (as defined at 40 CFR 51.166(b)(23)) amounts of either TSP or PM_{10}.

(3) The significant harm level for particulate matter was revised in 40 CFR 51.151 to 600 $\mu g/m^3$ measured as PM_{10}, and the combined sulfur-dioxide-particulate matter significant harm level was deleted. In addition, the example alert, warning, and emergency levels of particulate matter in appendix L of part 51 were also revised to reflect PM_{10} concentrations. Therefore, State emergency episode plans must be revised to reflect these changes.

(4) Revisions to 40 CFR part 58 set forth the requirements for design of national, State and local PM_{10} air monitoring networks. The revised monitoring networks must be submitted for EPA approval. The required monitoring frequency varies with area grouping: Group I areas are required to monitor daily at at least site in the area of expected maximum concentration, Group II areas are required to monitor every other day at such a site, and Group III areas are required to monitor every sixth day at such a site. Monitoring frequency in Group I and Group II areas can be reduced if the reduction is supported by at least one year of data.

In addition, Committal SIPs for Group II areas must contain enforceable commitments to:

(1) Gather ambient PM_{10} data, at least to an extent consistent with minimum EPA requirements and guidance.

(2) Analyze and verify the ambient PM_{10} data and report 24-hour PM_{10} NAAQS exceedances to the appropriate Regional Office within 45 days of each exceedance.

(3) When an appropriate number of verifiable 24-hour NAAQS exceedances becomes available or when an annual arithmetic mean above the level of the annual PM_{10} NAAQS becomes available, acknowledge that a nonattainment problem exists and immediately notify the appropriate Regional Office.

(4) Within 30 days of the notification referred to in (3), above, or within 37 months of promulgation of the PM_{10} NAAQS, whichever comes first, determine whether the measures in the existing SIP will assure timely attainment and maintenance of the primary PM_{10} standards, and immediately notify the appropriate Regional Office.

(5) Within 6 months of the notification referred to in (4), above, adopt and submit to EPA a PM_{10} control strategy that assures attainment as expeditiously as practicable but no later than 3 years from approval of the Committal SIP.

(6) Committal SIPs must include an enforceable schedule with appropriate milestones or checkpoints.

South Dakota Submittal

The State submittal addresses EPA's requirements as follows:

(1) *PM_{10} air quality standards.* The State has adopted ambient air quality

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standards for PM_{10} at Administrative Rules of South Dakota (ASRD) 74:26:02:35. EPA approved this provision at 53 FR 34077, September 2, 1988.

(2) *Preconstruction review of major stationary sources of PM_{10}.* The State administers a new source review (NSR) program for non-PSD stationary sources and modifications. The State has not received delegation or SIP approval of the PSD program, and review of PSD sources is carried out by EPA. By adopting ambient air quality standards for the PM_{10}, the State has triggered a requirement (under the State regulations) for preconstruction review of all non-PSD sources of PM_{10}.

The Rapid City area was designated nonattainment for TSP on March 3, 1978 (43 FR 8962). This designation required the State to implement a nonattainment area NSR program under part D of the Clean Air Act. The State developed nonattainment area NSR regulations, which were approved by EPA on November 3, 1981 (46 FR 54541). These rules were based on the EPA requirements which were in effect prior to August 10, 1980, and contained several minor deficiencies. EPA approved the State NSR rules with the understanding that the State would revise its rules to conform to new EPA requirements promulgated on August 7, 1980 (45 FR 52676) and would correct the other existing deficiencies.

The State submitted revised rules on December 21, 1981; however, these rules also contained deficiencies. As a result, EPA proposed to disapprove the State NSR program on February 25, 1986 (51 FR 6564). No final action was taken by EPA, due to uncertainty over how promulgation of the PM_{10} NAAQS and repeal of the TSP NAAQS would affect the need for an NSR program in the existing TSP nonattainment area.

To protect the Rapid City area (and the rest of South Dakota) from violations of the PM_{10} NAAQS, the State must revise its NSR regulations to address 40 CFR 51.165(b) (NSR for attainment and unclassifiable areas). 40 CFR 51.165(b) prohibits the permitting of a source which would exceed certain ambient impact levels, and which would cause or contribute to a violation of the NAAQS, unless the source obtains offsets. In its Committal SIP, the State has committed to revise its NSR regulations by August 31, 1990.

Region VIII has provided extensive comments to the State on the existing NSR regulations. These comments were primarily focused toward assisting the State in revising its regulations to address 40 CFR 51.165(b), although EPA also identified several areas in the nonattainment area definitions (listed in 40 CFR 51.165(a) of the Federal NSR rules) where revisions were necessary.

EPA believes that the existing State NSR regulations contain language similar in intent to 40 CFR 51.165(b), and are acceptable in the interim until the State revises its regulations to address 40 CFR 51.165(b). For example, ARSD 74:26:01:12 allows the issuance of a construction permit only "when it has been shown that the operation of the new source will not prevent or interfere with the attainment or maintenance of an applicable ambient air quality standard." In addition, the State has retained ambient TSP standards, and the NSR program for TSP (which includes offset requirements) will remain in effect until a PM_{10} attainment demonstration is approved and the Rapid City area is redesignated from nonattainment to unclassifiable for TSP. The existing TSP NSR program will provide an additional degree of protection for the PM_{10} NAAQS by requiring permits for nearly all stationary sources of particulate matter in the Rapid City area.

(3) *Revised emergency episode plans.* In its Committal SIP, the State has committed to revise its emergency episode plans by December 1988, to reflect the changes in the Federal regulations due to PM_{10}. The State did not meet this deadline; these revisions are required to be completed by August 31, 1990.

(4) *PM_{10} monitoring networks.* The Rapid City PM_{10} monitoring network consists of three sites (one site was recently shut down due to loss of use of the property upon which it was located; the State has located a replacement site, but this site has not been formally reviewed by EPA). One of the sites is operated on an every-other-day schedule; the remaining sites monitor every sixth day. The monitoring network design and coverage were reviewed before the recent shutdown and approved by the Region VII Environmental Services Division on February 27, 1989.

(5) *Collection of ambient PM_{10} data.* The State began monitoring PM_{10} in January 1985, and has committed to continue monitoring in the Committal SIP.

(6) *Reporting exceedances to EPA within 45 days.* This commitment is contained in the Committal SIP.

(7) *Immediate notification of EPA if the area moves into nonattainment.* This commitment is contained in the Committal SIP.

(8) *Determination of adequacy of the existing SIP.* This commitment is contained in the Committal SIP.

(9) *Submittal of a revised control strategy of PM_{10} if the area moves into nonattainment.* This commitment is contained in the Committal SIP.

The Committal SIP also contains commitments to submit actual emissions of major sources of PM_{10} and TSP, and to notify EPA if a TSP monitor is being used as a surrogate PM_{10} monitor records an exceedance of the PM_{10} NAAQS.

EPA requirements for administrative procedures, adequate legal authority to implement the SIP, and intergovernmental consultation have been satisfied by the State. These procedures have been approved as part of the SIP in previous **Federal Register** notices (44 FR 44494, July 30, 1979; 46 FR 54541, July 7, 1983; 53 FR 34077, September 2, 1988).

The State held a public hearing on the Committal SIP on June 14, 1988. A draft Committal SIP was submitted to EPA for review prior to this hearing. EPA reviewed the draft SIP and found it to meet the necessary requirements with some minor exceptions, which were corrected in the final submittal. EPA's comments on the draft SIP were the only comments received by the State.

Proposed Action: EPA proposes to approve the Committal SIP for the Rapid City, South Dakota PM_{10} Group II area as part of the South Dakota SIP.

Interested parties are invited to comment on all aspects of these proposed actions.

Under 5 U.S.C. section 605(b), I certify that this SIP Revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

This action has been classified as a table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

List of Subjects in 40 CFR Part 52

Air pollution control, Particulate matter.

Authority: 42 U.S.C. 7401–7642.

Dated: November 21, 1989.

James J. Scherer,

Regional Administrator.

[FR Doc. 89–29295 Filed 12–14–89; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 61

[AD-FRL 3697-7]

National Emission Standards for Hazardous Air Pollutants; Benzene Emissions From Benzene Waste Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; clarification.

SUMMARY: On September 14, 1989 (54 FR 38044), EPA proposed national emission standards for hazardous air pollutants (NESHAP) limiting emissions of benzene from chemical manufacturing process vents, industrial solvent use, transfer operations, gasoline marketing, and waste operations. That action was proposed under section 112 of the Clean Air Act. Numerous public comments were received during the comment period requesting clarification on the industry categories to be covered by the proposed waste operation rule. The public comment period ended on November 13, 1989. This notice clarifies EPA's intent on coverage under the proposed NESHAP for benzene waste operations. The proposed rule is intended to apply only to benzene wastes from chemical plants, petroleum refineries, coke by-product recovery plants, and commercial hazardous waste treatement, storage, and disposal facilities. Coverage of these industry categories is consistent with the background information used as the basis for the proposed rule (refer to Docket No. A–89–06).

ADDRESSES: *Docket.* Docket No. A–89–06 contains supporting information used in developing the proposed rule for benzene waste operations. The docket is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket Section, Waterside Mall, Room M1500, 1st Floor, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For further information, contact either Mr. Doug Bell at (919) 541–5568, or Ms. Debbie Stackhouse at (919) 541–5258, Standards Development Branch, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

List of Subjects in 40 CFR Part 61

Asbestos, Benzene, Beryllium, Coke oven emissions, Hazardous substances, Incorporation by reference, Inorganic arsenic, Intergovernmental relations, Mercury, Radionuclides, Reporting and recordkeeping requirements, Vinyl chloride, Volatile hazardous air pollutants.

Dated: December 11, 1989.

William Rosenberg,

Assistant Administrator for Air and Radiation.

[FR Doc. 89–29294 Filed 12–14–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

46 CFR Part 540

[Docket No. 89–25]

Security for the Protection of the Public

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to add a new provision to subparts A and B of its rules requiring proof of financial responsibility for passenger vessels. The new language would provide that the Commission may permit, for good cause, deviations from the standard language prescribed in Forms FMC–132A, FMC–133A, FMC–132B and FMC–133B, which are the surety bond and guaranty forms for financial responsibility vis-a-vis nonperformance and casualty. The new regulations would provide greater flexibility for the Commission to consider surety bonds and guaranties which, because of the particular circumstances of the applicant, may differ from the standard prescribed language.

DATES: Comments due January 4, 1990.

ADDRESSES: Comments (Original and fifteen (15) copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT:

Robert G. Drew, Director, Bureau of Domestic Regulation, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523–5796;

Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523–5740.

SUPPLEMENTARY INFORMATION: The Commission's rules implementing Public Law 89–777, 46 U.S.C. app. 817d and 817e, are contained in part 540 of 46 CFR. They prescribe requirements for certification of financial responsibility for passenger vessels against nonperformance or liability for death or injury (casualty). Codified in the rules are the following forms which are to be used by applicants for certificates:

FMC–132A—Passenger Vessel Surety Bond (46 CFR Part 540) [Performance]

FMC–133A—Guaranty in Respect of Liability for Nonperformance, Section 3 of the Act

FMC–132B—Passenger Vessel Surety Bond (46 CFR Part 540) [Casualty]

FMC–133B—Guaranty in Respect of Liability for Death or Injury, Section 2 of the Act

Under the present rules, applicants must submit surety bonds and guaranties using the language and format of the forms.

The Commission proposes to add the following provision to the relevant sections of the regulations: "The requirements of Form _____, however, may be amended by the Commission in a particular case for good cause." This change is intended to allow the Commission flexibility in considering evidence of financial responsibility when particular, unusual circumstances may justify a deviation from the forms. This rule is not intended to effect a lower or relaxed standard of evidence of financial responsibility, but rather to accommodate variations in arrangements which may be necessary in particular situations, lest a rigid adherence to form results in undue hardship on applicants.

The Federal Maritime Commission has determined that this proposed rule is not a "major rule" as defined in Executive Order 12291, 46 FR 12193, February 27, 1981, because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effect on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Chairman of the Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., that this proposed rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units, and small governmental jurisdictions.

The proposed rule does not contain information collection requirements within the meaning of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, et seq. Accordingly, OMB approval of the proposed rule is not required.

List of Subjects in 46 CFR part 540

Insurance, Maritime carriers, Penalties, Reporting and recordkeeping requirements, Surety bonds.

FEDERAL COMMUNICATIONS COMMISSION

List of Subjects in 47 CFR Part 73

Radio broadcasting.

no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in

copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140,

released December 11, 1989. The full text of this Commission decision is available for inspection and copying during

List of Subjects in 46 CFR part 540

Insurance, Maritime carriers, Penalties, Reporting and recordkeeping requirements, Surety bonds, Transportation.

Therefore, pursuant to 5 U.S.C. 553; secs. 2 and 3, Pub. L. 89–777, 80 Stat. 1356–1358, 46 U.S.C. app. 817e, 817d; sec. 43 of the Shipping Act, 1916, 46 U.S.C. app. 841a; sec. 17 of the Shipping Act of 1984, 46 U.S.C. app. 1716, the Federal Maritime Commission proposes to amend part 540 of title 46 of the Code of Federal Regulations as follows:

1. The authority citation for part 540 continues to read as follows:

Authority: 5 U.S.C. 553; secs. 2 and 3, Pub. L. 89–777, 80 Stat. 1356–1358, 46 U.S.C. app. 817e, 817d; sec. 43 of the Shipping Act, 1916, 46 U.S.C. app. 841a; sec. 17 of the Shipping Act of 1984, 46 U.S.C. app. 1716.

2. Section 540.5 is amended to add a new sentence to paragraph (c) as follows:

§ 540.5 Insurance, guaranties, escrow accounts, and self insurance.

* * * * *

(c) * * *

The requirements of Form FMC–133A, however, may be amended by the Commission in a particular case for good cause.

3. Section 540.6 is amended to add a new sentence to paragraph (a) as follows:

§ 540.6 Surety bonds.

(a) * * *

The requirements of Form FMC–132A, however, may be amended by the Commission in a particular case for good cause.

* * * * *

4. Section 540.24 is amended to add new sentences to paragraphs (b) and (d) as follows:

§ 540.24 Insurance, surety bonds, self-insurance, guaranties, and escrow accounts.

(b) * * *

The requirements of Form FMC–132B, however, may be amended by the Commission in a particular case for good cause.

* * * * *

(d) * * *

The requirements of Form FMC–133B, however, may be amended by the Commission in a particular case for good cause.

* * * * *

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 89–29223 Filed 12–14–89; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89–560, RM–6952]

Radio Broadcasting Services; Dillingham, AK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Jackson McCormick, seeking the allotment of FM channel 256A to Dillingham, Alaska, as that community's first local FM broadcast service. Coordinates for this proposal are 59–02–30 and 158–27–30.

DATES: Comments must be filed on or before January 31, 1990, and reply comments on or before February 15, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Jackson McCormick, McCormick Construction & Maintenance, P.O. Box 157, Dillingham, AK 99576.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the commission's Notice of Proposed Rule Making, MM Docket No. 89–560 adopted November 29, 1989 and released December 11, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division Mass Media Bureau.

FR Doc. 89–29251 Filed 12–14–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 89–562, RM–6951]

Radio Broadcasting Services; Guntersville, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Guntersville Broadcasting Co., Inc., licensee of Station WTWX–FM, Channel 240A, Guntersville, Alabama, seeking the substitution of FM Channel 240C3 for Channel 240A and modification of its license accordingly. Coordinates for this proposal are 34–23–03 and 86–12–57.

DATES: Comments must be filed on or before January 31, 1990, and reply comments on or before February 15, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Mark E. Fields, Esq., Miller & Fields, P.C., P.O. Box 33003, Washington, DC 20033.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–562, adopted November 29, 1989, and released December 11, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–29250 Filed 12–14–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 89–563, RM–6953]

Radio Broadcasting Services; Walsenburg, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed on behalf of Hargrave Broadcasting Corporation, licensee of Station KSPK(FM), Channel 272A, Walsenburg, Colorado, seeking the substitution of FM Channel 272C3 for Channel 272A and modification of its license accordingly. Coordinates for this proposal are 37–37–39 and 104–49–17.

DATES: Comments must be filed on or before January 31, 1990, and reply comments on or before February 15, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Julia L. Frey, Esq., Lowndes, Drosdick, Doster, Kantor & Reed, 215 North Eola Dr., Orlando, FL 32801.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking, MM Docket No. 89–563, adopted November 29, 1989, and released December 11, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–29252 Filed 12–14–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 89–561, RM–6966]

Radio Broadcasting Services; Veedersburg, IN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed on behalf of Christian Family Radio, seeking the allotment of FM Channel 225A to Veedersburg, Indiana, as that community's first local broadcast service. Coordinates for this proposal are 40–06–47 and 87–15–45.

DATES: Comments must be filed on or before January 31, 1990, and reply comments on or before February 15, 1990.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: James M. Weitzman, Esq., Kaye, Scholer, Fierman, Hays & Handler, 901–15th St., NW., Suite 1100, Washington, DC 20005.

FOR FUTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–561, adopted November 29, 1989 and released December 11, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M. Street NW., Suite, 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–29253 Filed 12–24–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 90

[General Docket 88–441; FCC 89–326]

Advanced Technologies for the Public Safety Radio Services

AGENCY: Federal Communications Commission.

ACTION: Further notice of inquiry; modification.

SUMMARY: The Commission has adopted a Further Notice of Inquiry dealing with advanced technologies for the public safety radio services. This action was taken following release of a Memorandum Opinion and Order, 54 FR 20615 (May 12, 1989), in which the Commission decided that concerns about interoperability and spectrum efficiency in the public safety services could be best addressed by focusing on the future use of advanced technologies, such as digital, in these services. The Commission directed the preparation of this Further Notice of Inquiry, which explores the many technical, economic, and regulatory issues relating to the

possible implementation of digital technology by the public safety services.

DATES: Interested persons may file

technologies, (2) the operational features that digital technology may be able to offer, (3) the various cost factors that

notification of receipt of comments must include a self-addressed, stamped postcard.

Federal action having significant impact on the human environment under the National Environmental Policy Act

amended by Pub L. 96–369; 48 CFR 1.301; 49 CFR 1.49.

Commanding Officer, U.S. Coast Guard Resident Inspection Office, Seattle, Washington.

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possible implementation of digital technology by the public safety services.

DATES: Interested persons may file comments on or before March 16, 1990 and may file reply comments on or before April 13, 1990.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Marty Liebman, Private Radio Bureau, Land Mobile and Microwave Division, Policy and Planning Branch, (202) 632-6497.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Inquiry, Gen. Docket No. 88-441, adopted November 28, 1989, and released December 11, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Further Notice of Inquiry

1. On September 7, 1988, the Commission released a Notice of Inquiry (53 FR 35965, 9/15/88), to obtain public comment on the issue of trunking standards for radio equipment operating in the 821-824/866-869 MHz public safety spectrum. The Commission received comments from a number of parties representing the public safety radio equipment industry, the user community, and other interested organizations. After careful consideration of the record, the Commission, in a Memorandum Opinion and Order released May 1, 1989, determined that standards based on current analog technologies were not necessary. At the same time, the Commission decided that the public safety community's concerns about interoperability and the Commission's ongoing objective of providing maximum spectrum efficiency would be best served by focusing on the future development and use of advanced radio technologies, such as digital, in the public safety services. Accordingly, the Commission ordered that a Further Notice of Inquiry be prepared to explore ways in which advanced technologies might be used to meet the future operational and spectrum requirements of the public safety community.

2. The Notice raises questions on a variety of topics, including (1) the differences between analog and digital technologies, (2) the operational features that digital technology may be able to offer, (3) the various cost factors that might be associated with a conversion to digital by public safety, (4) the issue of digital equipment standards, and (5) the possible role of the Commission in promoting the development of such standards.

3. The information acquired through this Further Notice will enable the Commission to make an informed decision on what further actions should be taken in this area, if any. The Commission invites all interested parties to comment on the questions raised in the Further Notice. Comments must be filed on or before March 16, 1990, and reply comments must be filed on or before April 13, 1990.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 89-29254 Filed 12-14-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

48 CFR Parts 1201, 1202, 1204, 1206, 1209, 1212, 1215, 1219, 1222, 1225, 1227, 1233, 1245 and 1252

[Docket 46625 Notice No. 89-24]

RIN 2105-AB54

Acquisition Regulation

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposal changes the Department's Transportation Acquisition Regulation (TAR). These changes add coverage on debarment and suspension, and on protests to the agency, as well as making changes with respect to several internal operating procedures. This proposed rule also adds coverage to the TAR to implement Federal Acquisition Circular 84-38.

DATES: Comments should be received by no later than February 13, 1990. Late-filed comments will be considered to the maximum extent practicable.

ADDRESS: Submit written comments, preferably original plus 4 copies to OST Docket Clerk, Docket Number 46625, Room 4107, Office of the Secretary, Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590. All comments received will be available for examination at the above address between 9:00 a.m. and 5:00 p.m. EST Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Charles E. Ventura at 400 Seventh Street SW, Room 9401, Washington, DC 20590, phone number (202) 366-4286.

SUPPLEMENTARY INFORMATION: The TAR is now up to date and current with the Federal Acquisition Regulation (FAR) through Federal Acquisition Circular 84-38. This rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment pursuant to Executive Order 12612.

Executive Order 12291

Under Bulletin No. 85-7, the Director of the Office of Management and Budget (OMB) withdrew the general exemption from Executive Order 12291 that OMB had created on February 17, 1981, for agency procurement regulations.

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of Executive Order 12291. The rule will not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local agencies or geographic regions; or (3) have significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This rule is considered as nonsignificant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979.) Since the economic impact of this rule is expected to be minimal, a formal economic analysis has not been prepared.

Regulatory Flexibility Act

Consistent with the provisions of section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601), the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The information requirements contained in the TAR were submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), and were approved February 23, 1987. The OMB approval number for the TAR is 2105-0517.

National Environmental Policy Act

DOT has concluded that promulgation of this rule would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 432 et seq. 1976). Therefore, neither an environmental impact statement nor an environmental assessment will be made pursuant to NEPA.

Administrative Procedure Act

Section 553 of the Administrative Procedure Act exempts rules relating to public contracts from the prior notice and comment procedure normally required for informal rulemaking. However, the Office of Federal Procurement Policy (OFPP), Office of Management and Budget (OMB), has established procedures to be used by all Federal agencies in the promulgation of procurement regulations.

In OFPP letter 83-2, OFPP states that an agency must provide an opportunity for public comment before adopting procurement regulations if the regulations represent a "significant" change to existing regulations. "Significant" is defined generally as something that has an effect beyond the internal operating procedures of the agency or has a cost or administrative impact on contractors.

The Department has determined that this rule does not represent a significant change. The changes proposed are principally in the areas of format and internal procedures. The internal procedural changes are necessary primarily to set forth procedures with respect to debarment and protests to the agency.

The Department traditionally has provided for prior notice and comment even when not required by the Administrative Procedure Act.

List of Subjects in 49 CFR Parts 1201, 1202, 1204, 1206, 1209, 1212, 1215, 1219, 1222, 1225, 1227, 1233, 1245, 1252

Government procurement.

This rule is issued under delegated authority under 49 CFR part 1.59(q).

Dated: December 11, 1989.

Melissa J. Allen,

Deputy Assistant Secretary for Administration.

Accordingly, the Department of Transportation amends 48 CFR Chapter 12 as follows:

1. The authority for 48 CFR Parts, 1201, 1202, 1204, 1206, 1209, 1212, 1215, 1219, 1222, 1225, 1227, 1233, 1245, 1252 continues to read as follows:

Authority: Sec. 205(c) Federal Property and Administrative Services Act, as amended 40 U.S.C. 486(c); 41 U.S.C. 255 et. seq., 10 U.S.C. 2301 et. seq., 41 U.S.C. 403 et. seq., as amended by Pub L. 96-369; 48 CFR 1.301; 49 CFR 1.49.

PART 1201—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Section 1201.403 is revised to read:

1201.403 Individual deviations.

Requests for individual deviations from the FAR and TAR must be approved by the agency head. However, for OST, the request shall be submitted by the HCA to the Senior Procurement Executive for approval. All such deviations shall be coordinated with legal counsel. Requests for deviations shall cite the specific part of the FAR or TAR from which its desired to deviate; shall set forth the nature of the deviation(s); and shall give the reasons for the action requested. The agency head shall transmit copies of approved individual FAR and TAR deviations to the Senior Procurement Executive.

1201.404 [Amended]

3. Section 1201.404 is amended by changing the first sentence to read: "Requests for class deviations to the FAR and TAR shall be submitted by the HCA to the Senior Procurement Executive for approval," in compliance with the requirements of FAR section 1.404.

PART 1202—DEFINITIONS OF WORDS AND TERMS

Section 1202.170 is amended by adding paragraph (g) to this section to read:

1202.170 Definitions.

* * * * *

(g) "Headquarters Units in the Coast Guard" means:

Commanding Officer, U.S. Coast Guard Aircraft Repair and Supply Center, Elizabeth City, North Carolina.
Commanding Officer, U.S. Coast Guard Training Center, Cape May, New Jersey.
Commanding Officer, U.S. Coast Guard Training Center, Petaluma, California.
Commanding Officer, U.S. Coast Guard Yard, Baltimore, Maryland.
Commanding Officer, U.S. Coast Guard Electronics Engineering Center, Wildwood, New Jersey.
Commanding Officer, U.S. Coast Guard Activities, Europe, London.
Commanding Officer, U.S. Coast Guard Reserve Training Center, Yorktown, Virginia.
Commanding Officer, U.S. Coast Guard Pay and Personnel Center, Topeka, Kansas.
Commanding Officer, U.S. Coast Guard Resident Inspection Officer, Middletown, Rhode Island.
Commanding Officer, U.S. Coast Guard Resident Inspection Office, Bath, Maine.
Commanding Officer, U.S. Coast Guard Resident Inspection Office, Lockport, Louisiana.
Commanding Officer, U.S. Coast Guard Resident Inspection Office, Seattle, Washington.
Commanding Officer, U.S. Coast Guard Aircraft Program office, Grand Prairie, Texas.
Commanding Officer, U.S. Coast Guard Air Station, Washington, National Airport, Washington, D.C.
Commanding Officer, U.S. Coast Guard Aviation Training Center, Mobile, Alabama.
Commanding Officer, U.S. Coast Guard Station, Alexandria, Virginia.
Commanding Officer, U.S. Coast Guard Institute, Oklahoma City, Oklahoma.
Commanding Officer, U.S. Coast Guard COMDAC Support Facility, Portsmouth, Virginia.
Commanding Officer, U.S. Coast Guard Central Regional Recruiting Center, Hazelwood, Missouri.
Commanding Officer, U.S. Coast Guard Eastern Regional Recruiting Center, Norfolk, Virginia.
Commanding Officer, U.S. Coast Guard Western Regional Recruiting Center, Seattle, Washington.
Commanding Officer, U.S. Coast Guard Training Center, Governors Island, New York, New York.

PART 1204—ADMINISTRATIVE MATTERS

1204.602 [Amended]

5. Section 1204.602 is amended by adding paragraph (d) to read:

* * * * *

(d) The Federal Procurement Data System (FPDS) requires that the Dun & Bradstreet Data Universal Numbering System (DUNS) number and Congressional information be recorded for certain contract actions. Since each firm submitting bids or proposals on Department of Transportation (DOT) solicitations will know (or can readily determine) their DUNS number, as well as the Congressional District in which their home office and principal place of performance is located, a solicitation provision has been devised to obtain this information when bids or offers are submitted. Failure of a bidder or offeror to furnish the requested information as a part of his bid shall not render the bid nonresponsive and, in such instances, the information will be obtained by appropriate means. Use of this solicitation provision by DOT procurement offices is not mandatory. The procurement office may elect to obtain the information after opening bids or proposals or can purchase a DUNS microfiche file and look up the contractor's number. Contracting officers may use the solicitation provision at 1252.204-70, Congressional/DUNS Information, or a similar provision, in solicitations to obtain Congressional and DUNS information.

* * * * *

PART 1206—COMPETITION REQUIREMENTS

rescinding such action, notify GSA and the Senior Procurement Executive. The following information shall be provided:

(3) All known affiliates, subsidiaries, or parent firms, and the nature of the affiliation;

Subpart 1212.2—Liquidated Damages

1212.202 Policy.

The contracting officer shall ensure that the pre-contract cost agreement does not violate the Anti-deficiency Act.

Enterprises (SDBE). For all proposed subcontracting plans with SB or SDBE goals of less than 10 percent, the Office

PART 1206—COMPETITION REQUIREMENTS

1206.304 [Amended]

6. Section 1206.304(a)(1)(ii) is revised to read:

(a) * * *
(1) * * *
(i) * * *
(ii) For the Coast Guard: The HCA for the Coast Guard Maintenance Logistics Commands and their units. The HCA for Coast Guard Headquarters. The HCA for the Coast Guard Academy. The Commander or Commanding Officer of the Headquarters Units defined under 1202.170 who have procurement authority over $25,000. This authority is delegable to no lower than the Comptroller, if applicable, of the Headquarters unit.

1206.305 [Amended]

7. The last sentence of section 1206.305 is changed to read: "A copy of the CBD synopsis, or a copy of the synopsis waiver, should be attached to the justification, or the justification should include sufficient information to support the waiver of snyopsis determination."

* * * * *

PART 1209—CONTRACTOR QUALIFICATIONS

1209.4 [Amended]

8. Subpart 1209.4 is amended to add sections 1205.470 through 1209.473 to read as follows:

Subpart 1209.4—Debarment, Suspension, and Ineligibility

* * * * *

1209.470 Debarring and suspending officials.

The debarring and suspending officials for the Department shall be "Head of the Agency" as defined at 1202.170.

1209.471 Distribution of consolidated list of debarred, suspended and ineligible contractors.

The Office of Acquisition and Grant Management (M–60) in the Office of the Secretary shall make distribution of the Consolidated Lists of Parties Excluded from Federal Procurement or Non-Procurement Programs, which the General Services Administration (GSA) is to compile and maintain on a Government-wide basis.

1209.472 Notifying GSA of ineligible contractors.

Each Operating Administration shall, within 5 working days after debarring or suspending a contractor, or modifying or rescinding such action, notify GSA and the Senior Procurement Executive. The following information shall be provided:

(a) The name and address of debarred or suspended contractor;

(b) The cause for the action;

(c) The effective date of the action and, in the case of debarments, the termination date; and

(d) The name and telephone number of the office responsible for the action.

1209.473 Procedures.

(a) The Contracting Officer shall prepare a report to the debarring and suspending official incorporating the information outlined in paragraph (c) of this section when:

(1) A contractor has committed, or is suspected of having committed, any of the acts described in FAR 9.406–2 and 9.407–2;

(2) A report is required due to suspicion of fraud or other improper business practices;

(3) A report is required by FAR 3.409 (contingent fees);

(4) A report is required by FAR 49.108 (fraud related to termination settlements);

(5) Buy American Act violations are suspected (see FAR 25.204); or,

(6) A contractor is suspected of attempting to evade the prohibition or debarments or suspensions imposed under this regulation by changes of address, multiple addresses, formation of new companies, or by other devices.

However, circumstances that involve possible criminal or fraudulent activities shall first be reported to the Office of Inspector General for investigative consideration, in accordance with DOT Order 8000.5, Office of the Inspector General Investigative Procedures. If appropriate, the Office of the Inspector General shall make a referral to the appropriate Departmental debarring official.

(b) In debarment situations which involve small business or businesses owned by minority or disadvantaged individuals and women, a copy of the report to the debarring and suspending official shall be furnished to the Office of Small and Disadvantaged Business Utilization (OSDBU), S–40.

(c) Each report prepared pursuant to this subsection shall contain the name and telephone number of the contracting officer handling the case and shall include substantially the following information, where available:

(1) Name and address of the contractor;

(2) Names of the principal officers, partners, owners, or managers;

(3) All known affiliates, subsidiaries, or parent firms, and the nature of the affiliation;

(4) Description of the contract or contracts concerned, including the contract number, and all office identifying numbers or symbols, the amount of each contract, the degree of completion, the amount paid the contractor and the amount still due, and the percentage of work to be completed;

(5) The status of vouchers;

(6) Whether the contract has been assigned pursuant to the Assignment of Claims Act, and if so assigned, the name and address of the assignee and a copy of the assignment;

(7) Whether any other contracts are outstanding with the contractor or any of his affiliates, and if so, the amount of such contracts, whether they are assigned pursuant to the Assignment of Claims Act, an the amount paid or due on such contracts;

(8) A complete summary of all pertinent evidence;

(9) A recommendation as to the continuation of all current contracts with a full explanation of the reason for such recommendation, or if no recommendation is made, the reason therefor;

(10) An estimate of damages, if any, sustained by the Government as a result of the action of the contractor, including an explanation of the method used in making the estimate;

(11) The comments and recommendations of the Contracting Officer and of each successive point of review as to (i) whether the contractor should be suspended or debarred, (ii) whether any limitations should be applied to such action, and (iii) the period of any debarment; and,

(12) As an enclosure, a copy of the contract (or contracts) or pertinent excerpts therefrom, appropriate exhibits, testimony or statements of witnesses, copies of assignments, and other relevant documentation, such as affidavits, the notice of proposal to debar, copies of investigative reports and certified copies of indictments and judgments.

(d) The contracting officer shall obtain legal review and concurrence prior to presenting the report to the debarring and suspending official.

PART 1212—CONTRACT DELIVERY OR PERFORMANCE

Part 1212 is amended to add subpart 1212.2 consisting of section 1212.202 to read as follows:

Subpart 1212.2—Liquidated Damages

1212.202 Policy.

(a) Upon final administrative determination, funds withheld or collected for liquidated damages pursuant to FAR clauses 52.212–4, Liquidated Damages-Supplies, Services, or Research and Development, and 52.212–5, Liquidated Damages-Construction, may be used to modify the existing contract or to award a new contract, if such contract or modification is for the express purpose of making the Government whole and ensuring that the Government receives the goods or services for which it bargained under the original contract, or to mitigate the damages suffered by the Government. Such funds may be obligated only if they have not yet expired.

(b) This section does not apply to: (1) The disposition of funds withheld or collected as unpaid wages and "liquidated damages" under FAR clause 52.222–4, Contract Work Hours and Safety Standards Act-Overtime Compensation, nor (2) the disposition of funds withheld pursuant to FAR clauses 52.222–6, Davis-Bacon Act, and 52.222–7, Withholding of Funds.

PART 1215—CONTRACTING BY NEGOTIATION

10. Section 1215.103 is added to read:

1215.103 Converting from sealed bidding to negotiation procedures.

The HCA is delegated the responsibility for determining that an invitation for bids is to be canceled and that the use of negotiation is appropriate to complete the acquisition.

11. Section 1215.170 is revised to read as follows:

1215.170 Pre-contract costs.

(a) *Authorizing pre-contract costs.* (1) Except as authorized in 1215.170(b), no DOT employee shall encourage or authorize any potential contractor to incur costs prior to contract award.

(2) Pre-contract costs shall not be authorized prior to approval by the HCA. The request for HCA approval shall include the following:

(i) Identification of the requirement;

(ii) Name of the proposed contractor;

(iii) Brief description of the work for which pre-contract costs are necessary;

(iv) Total amount of pre-contract costs involved and approximate duration of the period over which costs will be incurred;

(v) Reason(s) why use of pre-contract costs are necessary and in the best interest of the Government.

(3) Pre-contract costs shall only be authorized when funds are available. The contracting officer shall ensure that the pre-contract cost agreement does not violate the Anti-deficiency Act.

(4) Pre-contract cost agreements shall be bilateral and in writing when feasible.

(b) *Procedures.* (1) The contracting officer shall notify the contractor in writing when authorizing the incurrence of pre-contract costs. Such notice shall include:

(i) A not-to-exceed dollar limitation;

(ii) The period for which pre-contract costs are authorized; and

(iii) Notice to the contractor that reimbursement of all pre-contract costs incurred will be subject to award (or modification) (i.e., only those costs considered allowable and allocable under the terms of the awarded contract will be reimbursed), of a contract and the terms of the awarded contract (or modification), and that pre-contract costs incurred shall not be reimbursed prior to contract award (or modification).

(2) Payments shall not be made to a contractor for reimbursing pro-contract costs until a contract is awarded (or modified) and funds obligated for that purpose.

(3) Pre-contract cost agreements shall be incorporated into the terms and conditions of the awarded contract.

* * * * *

12. Section 1215.905–70 is amended by revising paragraph (b)(5) to read:

1215.905–70 Methods.

* * * * *

(b) * * *

(5) Generally, assignment of specific percentages from within the "profit weight ranges" shown in columns 6 (c), (d) or (e) of DOT Form 4220.32 can be established after appropriate analysis of the elements of cost (i.e., items 7 through 12 of DOT Form 4220.32). However, to ensure consistency of contract risk assessment for DOT acquisitions, the assigned weight (%) for Line 15, Cost Risk, of DOT Form 4220.32 shall generally be selected as follows:

* * * * *

PART 1219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

13. Section 1219.705–4 is added to read:

1219.705–4 Reviewing the subcontracting plan.

It is DOT policy that all approved Public Law 95–507 subcontracting plans have at a minimum, a combined 10 percent goal for Small Business (SB) and Small Disadvantaged Business Enterprises (SDBE). For all proposed subcontracting plans with SB or SDBE goals of less than 10 percent, the Office of Small and Disadvantaged Business Utilization shall be afforded an opportunity to review the plans and provide comments and recommendations to the contracting officer, prior to acceptance of the plans.

* * * * *

PART 1222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

14. Subpart 1222.4 consisting of sections 1222.404–6 and 1222.406–11 is added to read as follows:

Subpart 1222.4—Labor Standards for Contracts Involving Construction.

1222.404–6 Modifications of wages determinations.

Authority to request an extension to a general wage determination, pursuant to FAR 22.304–6(b)(6), is delegated to the HCA.

1222.406–11 Contract terminations.

The HCA is responsible for ensuring that a report is submitted to the Administrator, Wage and Hour Division, Department of Labor, and to the Comptroller General, as required by FAR 22.406–11.

* * * * *

PART 1225—FOREIGN ACQUISITION

15. Part 1225 is amended to add subpart 1225.10 consisting of section 1225.1003 to read as follows:

Subpart 1225.10—Restrictions on Federal Public Works Projects

1225.1003 Waivers.

Proposed waivers shall be submitted to the Secretary for approval via the Senior Procurement Executive. The administration requesting the waiver shall be responsible for publishing notice of the waiver in the Federal Register pursuant to FAR 25.1003(b).

PART 1227—PATENTS, DATA AND COPYRIGHTS

* * * * *

16. Section 1227.404 is added to read as follows:

1227.404 Basic rights in data clause.

(a) For contracts and solicitations which do not require the development, use or delivery of items, components or processes that are intended to be acquired by or for the Government, the contracting officer may include

Alternate 1 of FAR clause 52.227–14, Rights in Data-General (reference FAR 27.404(c)).

Department and the protester maximum information regarding their respective positions.

process or contract performance will continue or resume.

relating to motor vehicle management and the official use of Government vehicles.

(d) Congressional District of the principal place of performance:

challenges to restrictions on technical data from more than one contracting officer, and notifies each contracting officer of the

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Alternate 1 of FAR clause 52.227–14, Rights in Data-General (reference FAR 27.404(c)).

(b) For copyrighted data first produced in the performance of a contract, the contracting officer may obtain a copyright license of a different scope than that set forth in subparagraph (c)(1) of FAR clause 52.227–14, Rights in Data-General, if he or she determines in writing that such different license will substantially enhance the transfer or dissemination of the data first produced under the contract, and will not interfere with the Government's use of the data as contemplated by the contract or if required for international agreements (reference FAR 27.404(f)(1)).

(c) For copyrighted data not first produced in the performance of a contract, the contracting officer may obtain a copyright license of a different scope than that set forth in subparagraph (c)(2) of FAR clause 52.227–14, Rights in Data-General, if he or she determines in writing that the scope of the license is not inconsistent with the purpose for acquiring the data (reference FAR 27.404(f)(2)).

(d) For software first produced in the performance of the contract, the contracting officer may include a clause in contracts and solicitations restricting any claim(s) to copyright in any computer software for the purpose of meeting established agency distribution programs, or when required to accomplish the purpose(s) for which the software is produced.

1227.470 Validation of proprietary data.

Pursuant to Public Law 98–577, contracts for property or services which provide for the delivery of technical data shall include the clause at 1252.227–70, Validation of Proprietary Data.

* * * * *

PART 1233—PROTESTS, DISPUTES, AND APPEALS

17. Section 1233.103 is revised to read:

1233.103 Protests to the agency.

(a) *Policy.* It is the Department's policy to resolve protests in an informal manner whenever possible. Protesters are strongly encouraged to address their concerns to the contracting officer prior to resorting to litigation or other formal, external means of resolution. The objectives of the following procedures are to resolve agency protests effectively, to help build confidence in the Department's procurement system, to reduce the need to file protests at GAO or GSBCA, and to provide both the Department and the protester maximum information regarding their respective positions.

(b) *Procedures.* (1) Agency protests may be submitted by interested parties to the contracting officer.

(2) Protests based on alleged improprieties in a solicitation which are apparent prior to bid opening or the closing date for receipt of initial proposals must be received prior to bid opening or the closing date for receipt of initial proposals. In negotiated acquisitions, for alleged improprieties which do not exist in the initial solicitation but which are subsequently incorporated into the solicitation, the protest must be received not later than the next closing date for receipt of proposals following the incorporation.

(3) In cases other than those covered in paragraph (b)(2) of this section, protests must be received not later than 10 working days after the basis of protest is known or should have been known, whichever is earlier.

(4) Protests shall be in writing and shall include, as a minimum, the following information:

(i) Name, address, and telephone number of the protester;

(ii) Solicitation or contract number;

(iii) Detailed statement of the legal and factual grounds for the protest, including copies of relevant documents;

(iv) Request for a ruling by the contracting officer to whom the protest is submitted;

(v) Statement as to the form of relief requested.

(5) Upon receipt of an agency protest, the contracting officer shall:

(i) Immediately notify legal counsel and provide them with a copy of the protest, as well as providing a copy to the Office of Acquisition and Grant Management for information;

(ii) Prepare a report as prescribed in FAR 33.104(a)(2), except that, if the contract action or contract performance continues after receipt of the protest, the report shall include any determination prescribed in FAR 33.103(a);

(iii) Obtain review of the protest response by legal counsel;

(iv) Ensure that the protest response is sent in sufficient time for the protester to receive it within 25 working days after receipt of the protest.

(6) If the contracting officer and the protester agree on corrective action, a report is not required; however, in addition to amending the solicitation or taking other corrective action, the contracting officer shall inform the protester in writing of the proposed corrective action and give written notice to the protester that the solicitation process or contract performance will continue or resume.

(7) For protests to the agency, the Agency Head on a non-delegable basis is responsible for the determination authorizing award of a contract prior to resolution of the protest.

(8) If a written protest after award has been lodged with the contracting officer, the HCA may authorize continued contract performance notwithstanding the pending protest if he or she makes a written determination that (i) performance of the contract is in the Government's best interest, or (ii) urgent and compelling circumstances significantly affecting interests of the United States do not permit waiting for the protest decision. A copy of this determination shall be forwarded to the Office of Acquisition and Grant Management, M–60.

* * * * *

PART 1245—GOVERNMENT PROPERTY

18. Section 1245.101 is amended by changing the definition of "Noncapitalized equipment" to read:

1245.101 Definitions.

* * * * *

"Noncapitalized equipment" as used in this part, means personal property (plant equipment) of a nonexpendable nature having a unit acquisition cost of $100 or more but less than $5,000, and other items of personal property regardless of cost when so designated by the Government.

19. Subpart 1245.3 is amended by adding section 1245.304.1 to read as follows:

Subpart 1245.3—Providing Government Property to Contractors

* * * * *

1245.304–1 Policy.

(a) Contractors shall ordinarily furnish any motor vehicles needed in performing Government contracts. DOT administrations, however, may provide contractors with motor vehicles when it is in the Department's best interest, in accordance with the criteria in FAR 45.304.

(b) Prior to providing motor vehicles to contractors, DOT administrations shall contact the Office of Administrative Services and Property Management (M–40). M–40 will provide information on the priority of sources for satisfying vehicle requirements. Additionally, M–40 will provide up-to-date guidance on relevant requirements for contracting officers and contractors relating to motor vehicle management and the official use of Government vehicles.

20. Subpart 1245.5 is amended by adding section 1245.505–71 to read:

Subpart 1245.5—Management of Government Property in the Possession of Contractors

* * * * *

1245.505–71 Listing Government property in contracts.

The contracting officer shall include in all contracts which include Government-furnished property, a list of Government property provided to the contractor under the contract, unless the contracting officer determines in writing that the inclusion of such a list would not be feasible. The list should identify the Government property by make or model number when possible and indicate the dollar value of the property. This requirement does not apply to contractor-acquired Government property.

PART 1252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

21. Section 1252.209–70 is added to read:

1252.209–70 Congressional/DUNS Information.

As prescribed at 1204.602(d), insert the following provision in Section K of solicitations.

Congressional/DUNS Information (Effective Date of Rule)

Each bidder or offeror is requested to fill in the appropriate information set forth below:

(a) DUNS Identification Number _____ [This number is assigned by Dun & Bradstreet, Inc., and is contained in that company's Data Universal Numbering System (DUNS). If the number is not known, it can be obtained from the local Dun & Bradstreet office. If no number has been assigned by Dun & Bradstreet, insert the word "none."]

(b) Home office County and Congressional District:

_____

(c) Principal place of performance of the work required under the resulting contract (city, county, and state):

_____

(d) Congressional District of the principal place of performance:

_____

(End of Provision)

* * * * *

22. Section 1252.215–72 is amended as follows:

1252.215–72 [Amended]

In paragraph 2 of TAR provision 1252.215–72, Cost Proposal Instructions, the reference to "FAR Table 15–3" is revised to read "FAR Table 15–2."

1252.216–71 [Amended]

23. Section 1252.216–71 is amended by adding the words "or unacceptable" to the end of the last sentence.

24. Section 1252.227–70 is added to read:

1252.227–70 Validation of proprietary data.

As prescribed at 1227.470 insert the following clause in Section I of solicitations and contracts:

Validation of Proprietary Data (. . . Date . . .)

(a) The contractor, or subcontractor at any tier shall be prepared to furnish to the contracting officer, at his or her request, a written justification for any restriction asserted on the Government's right to use technical data delivered in accordance with the requirements of this contract.

(b) The contracting officer may review the validity of any restriction asserted by the contractor or by a subcontractor under the contract on the right of the Government to use technical data furnished by the Government under this contract if the contracting officer determines that reasonable grounds exist to question the current validity of the asserted restriction and the continued adherence to the asserted restriction by the Government would make it impracticable to procure the item competitively at a later time.

(c) Review; challenge; notice.

If after such review the contracting officer determines that a challenge to the asserted restriction is warranted, the contracting officer shall provide written notice to the contractor or subcontractor challenging the restriction. The contractor, upon receipt of such notification, shall provide written notice to the subcontractor. Both notices shall state:

(1) The grounds for challenging the asserted restriction; and

(2) The requirement for a response within 60 days justifying the current validity of the asserted restriction.

(d) Written request; additional time; schedule of responses. If the contractor or subcontractor asserting a restriction subject to this clause submits to the contracting officer a written request, showing the need for additional time to comply with the requirement to justify the current validity of the asserted restriction, additional time to adequately permit the submission of such justification shall be provided by the contracting officer as appropriate. If a party asserting a restriction receives notices of challenges to restrictions on technical data from more than one contracting officer, and notifies each contracting officer of the existence of more than one challenge, the contracting officer initiating the first in time challenge, after consultation with the party asserting the restriction and the other contracting officers, shall formulate a schedule of responses to each of the challenges that will afford the party asserting the restriction with an equitable opportunity to respond to each such challenge.

(e) Decision. (1) Upon a failure by the contractor or subcontractor to submit any response under paragraph (b) of this clause, the contracting officer will issue a decision pertaining to the validity of the asserted restriction.

(2) If a justification is submitted in response to the notice provided pursuant to paragraph (b) of this clause, the contracting officer shall within 60 days of receipt of any justification submitted, issue a decision or notify the party asserting the restriction of the time within which a decision will be issued.

(f) Claim. Claims submitted by the contractor pertaining to the contracting officer's decision on the validity of the asserted restrictions shall be considered a claim within the meaning of the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.)

(g) Final disposition of challenge.

(i) If, upon final disposition, the contracting officer's challenge to the restriction on the right of the Government to use such technical data is sustained:

(A) The restriction on the right of the Government to use the technical data shall be canceled; and

(B) If the asserted restriction is found not to be substantially justified, the contractor or subcontractor, as appropriate, shall be liable to the Government for payment of the cost to the Government of reviewing the asserted restriction and the fees and other expenses (as defined in section 2412(d)(2)(A) of Title 28) incurred by the Government in challenging the asserted restriction, unless special circumstances would make such payment unjust.

(ii) If, upon final disposition, the contracting officer's challenge to the restriction on the right of the Government to use such technical data is not sustained:

(A) The Government shall continue to be bound by the restriction; and

(B) The Government shall be liable for payment to the party asserting the restriction for fees and other expenses (as defined in section 2412(d)(2)(A) of Title 28) incurred by the party asserting the restriction in defending the asserted restriction if the challenge by the Government is found not to have been made in good faith.

(End of clause)

[FR Doc. 89–29236 Filed 12–14–89; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

comments may be submitted until that time at the Service office in the

ADDRESS: Please send correspondence concerning this document to the Office

submitted by the United States (54 FR 36827) and October 6, 1989, for proposals by other Parties (54 FR 41282). Proposals on plant species were first

a two-thirds majority of the Parties present and voting. Action by Committee I was accepted by the Plenary Session unless one-third of the

In addition, because of lack of time, Committee I did not reach a conclusion on the proposals on the Iberian lynx and the corals; the discussion of these

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB35

Endangered and Threatened Wildlife and Plants; Extension of Comment Period on Proposed Endangered Status for the Desert Tortoise

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; Notice of extension of comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice that the comment period will be extended for the proposed rule to determine the Mojave population of the desert tortoise *(Gopherus (=Xerobates, =Scaptochelys) agassizii)* as an endangered species pursuant to the Endangered Species Act of 1973, as amended (Act).

DATE: The comment period on this proposal is extended to January 19, 1989. Comments received after the closing date may not be considered in the final decision on this proposal.

ADDRESS: Comments and materials concerning this proposal should be sent to the Regional Director (Attn: Listing Coordinator), U.S. Fish and Wildlife Service, 1002 N.E. Holladay Street, Portland, Oregon 97232-4181. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Robert P. Smith, Assistant Regional Director, Fish and Wildlife Enhancement, at the above address (telephone (503) 231-6131 or FTS 429-6131).

SUPPLEMENTARY INFORMATION:

Background

A proposed rule to determine the Mojave population of the desert tortoise as an endangered species was published in the **Federal Register** (54 FR 42270) on October 13, 1989. The comment period on the proposal originally closed on January 11, 1989. The Service has been asked by the Nevada Department of Wildlife to extend the comment period one week.

The State of Nevada Department of Wildlife must receive approval from the State of Nevada Board of Wildlife Commissioners. To accommodate submission of this significant additional information, the Service is extending the comment period on the proposal for eight days. The comment period now closes on January 19, 1990. Written comments may be submitted until that time at the Service office in the ADDRESSES section.

Author

This notice was prepared by Dr. Jay F. Watson, Chief, Division of Technical Service, U.S. Fish and Wildlife Service, at the above address (telephone (503) 231-6154 or FTS 429-6154).

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1543; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500, unless otherwise noted.

Dated: December 8, 1989.

Marvin L. Plenert,

Regional Director.

[FR Doc. 89-29152 Filed 12-14-89; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 23

RIN 1018-AA29

Changes in List of Species in Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES or the Convention) regulates international trade in certain animals and plants. Species for which such trade is controlled are listed in Appendices I, II, and III to the Convention.

This document announces decisions by the Conference of Parties to CITES on amendments to Appendices I and II, and invites comments on whether the United States should enter reservations on any of the amendments. The effect of a reservation would be to exempt this country from implementing the Convention for a particular species. However, even if a reservation were taken, some importing countries would require comparable documents, and many importers to the United States would be required, under the Lacey Act Amendments of 1981, to obtain permits issued by foreign countries. The CITES amendments to Appendices I and II described in this document will enter into effect on January 18, 1990.

DATES: The amendments to Appendices I and II adopted at the recent meeting of the Conference of the Parties become effective 90 days after their adoption under terms of the Convention and therefore are enforceable as of January 18, 1990. The Service will consider all comments received by January 16, 1990 in determining whether the United States should enter any reservations.

ADDRESS: Please send correspondence concerning this document to the Office of Scientific Authority; Mail Stop: Room 725, Arlington Square; U.S. Fish and Wildlife Service; Department of the Interior; Washington, DC 20240. Materials received will be available for public inspection from 8:00 a.m. to 4:00 p.m., Monday through Friday, in room 750, Arlington Square Building, 4401 North Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, DC 20240, telephone (703) 358-1708.

SUPPLEMENTARY INFORMATION:

Background

The Convention regulates import, export, reexport, and introduction from the sea of certain animal and plant species. Species for which the trade is controlled are included in three appendices. Appendix I includes species threatened with extinction that are or may be affected by trade. Appendix II includes species that although not necessarily threatened with extinction may become so unless trade in them is strictly controlled. It also lists species that must be subject to regulation in order that trade in other currently or potentially threatened species may be brought under effective control (e.g., because of difficulty in distinguishing specimens of currently or potentially threatened species from those of other species). Appendix III includes species that any Party nation identifies as being subject to regulation within its jurisdiction for purposes of preventing or restricting exploitation, and for which it needs the cooperation of other Parties in controlling trade.

Any Party nation may propose amendments to Appendices I and II for consideration at meetings of the Conference of the Parties. The text of any proposal must be communicated to the Convention's Secretariat at least 150 days before the meeting. The Secretariat must then consult the other Parties and appropriate intergovernmental agencies, and communicate their responses to all Parties no later than 30 days before the meeting.

Recent Decisions

The seventh meeting of the Conference of Parties to CITES was held on October 9-20, 1989, in Lausanne, Switzerland. At the meeting, the Parties considered 43 different animal proposals and 49 different plant proposals to amend the appendices. These were listed in the **Federal Register** on September 5, 1989, for proposals

submitted by the United States (54 FR 36827) and October 6, 1989, for proposals by other Parties (54 FR 41282). Proposals on plant species were first discussed in the Plants Committee meeting as a group of Committee I. All proposed amendments were discussed and decided on in Committee I with each accredited attending Party having one vote. Amendments were adopted by a two-thirds majority of the Parties present and voting. Action by Committee I was accepted by the Plenary Session unless one-third of the Parties voting expressed the desire to reopen discussion on a specific species proposal. Debate was reopened on Thailand's proposal on *Pitta guajana* and a vote taken in the Plenary Session.

In addition, because of lack of time, Committee I did not reach a conclusion on the proposals on the Iberian lynx and the corals; the discussion of these proposals was completed and votes taken in the Plenary Session. Results of actions by the Conference of the Parties on the proposed amendments are given in the following table.

Species	Proposed amendment	Proponent	Final decision of the Parties
Mammals			
Order Chiroptera:			
Pteropus insularis (Truk flying fox)	Transfer from II to I.[17]	Sweden, USA	Approved.[17]
Pteropus mariannus (Mariana flying fox)	...do	...do	Do.
Pteropus molossinus (Ponape flying fox)	...do	...do	Do.
Pteropus phaeocephalus (Mortlock flying fox).	...do	...do	Do.
Pteropus pilosus (Large Palau flying fox).	...do	...do	Do.
Pteropus samoensis (Samoan flying fox).	...do	...do	Do.
Pteropus tokudae (Little Mariana flying fox).	...do	Sweden	Withdrawn[2].
Pteropus tonganus (Insular flying fox)	...do	Sweden	Approved.
Acerodon spp	Add to II.[16,17]	USA	Approved.[16,17]
Pteropus spp	Add to II.[16,17]	USA	Approved.[16,17]
Order Carnivora			
Melursus ursinus (Sloth bear)	Add to I	Federal Republic of Germany, India.	Approved.
Ursus americanus (Black bear)	Add to II	Japan	Withdrawn[1]
Ursus arctos (Brown bear)	Add to II	Japan	Withdrawn[1]
Ursus arctos (Brown bear)	Include *U. arctos* population of Asia, Turkey and USSR on II[4].	China, Denmark	Approved.[4]
Ursus arctos (Brown bear)	Transfer *U. arctos isabellinus* and *U. arctos pruinosus* populations from I to II.	China, Denmark	Withdrawn[2]
Ursus arctos nelsoni	Replace present App. I listing with the listing *Ursus arctos* (population of Mexico).	China, Denmark	Approved.
Aonyx cinerea (Asian small-clawed otter).	Transfer from II to I	India	Rejected.
Lutra perspicillata (Smooth-coated otter).	Transfer from II to I	India	Rejected.
Felis pardalis (Ocelot)	Transfer from II to I	Federal Republic of Germany	Approved.
Felis tigrina (Little spotted cat)	...do	...do	Approved.
Felis weidi (Margay)	...do	...do	Approved.
Lynx pardinus (Iberian lynx)	Transfer from II to I	Portugal, Fed. Republic of Germany.	Approved.
Order Pinnipedia:			
Callorhinus ursinus	Add to II	USA	Withdrawn.[1,18]
Order Probuscidea:			
Loxodonta africana (African elephant)	Transfer from II to I[6]	Austria, Gambia, Hungary, Kenya, Somalia, Tanzania, USA.	Approved.[5]
Order Artiodactyla:			
Cephalophus jentinki (Jentink's duiker)	Transfer from II to I	Federal Republic of Germany	Approved.
Birds			
Order Rheiformes:			
Rhea americana (Rhea)	Add to II	Japan	Withdrawn[1]
Order Tinamiformes:			
Rhynchotus rufescens (3 spp.) (Rufous tinamous).	Remove from II	Uruguay	Withdrawn[2]
Order Ciconiiformes:			
Ciconia ciconia (White stork)	Add to II	Federal Republic of Germany	Rejected.
Order Galliformes:			
Francolinus ochropectus (Djibouti francolin).	Remove from II	Switzerland	Approved.
Francolinus swierstrai (Swierstra's francolin).	...do	...do	Approved.
Order Psittaciformes:			
Agapornis cana (Grey-headed lovebird)	Remove from II (if accepted, Madagascar had indicated that they would include it in Appendix III).	Madagascar	Rejected.
Ara maracana (Illiger's macaw)	Transfer from II to I	Paraguay	Approved.
Amazona tucumana (Tucuman amazon)	...do	Denmark	Approved.
Cacatua moluccensis (Moluccan cockatoo).	Transfer from II to I	Switzerland	Approved.
Order Coraciiformes:			
Buceros bicornis (Great pied hornbill)	Remove from I	Switzerland	Withdrawn.[1]

Species	Proposed amendment	Proponent	Final decision of the Parties
Buceros spp. (Hornbills)	Add to II	...do	Withdrawn.[1]

Species	Proposed amendment	Proponent	Final decision of the Parties
Psarisomus dalhousiae (spotic - pest devil)	Add to II.[11]	India	Approved.[11]

Species	Proposed amendment	Proponent	Final decision of the Parties
Buceros spp. (Hornbills)	Add to II	...do	Withdrawn.[1]
Buceros rhinoceros (Rhinoceros hornbill).	...do	Belgium	Approved.
Order Passeriformes:			
Pitta gurneyi Gurney's pitta	Add to I	Thailand	Approved.
Pitta guajana (Banded pitta)	Add to II	...do	Approved.
Pseudochelion sirintarae (White-eyed river martin).	Transfer from II to I	...do	Approved.
Reptiles			
Order Testudinata:			
Chelonia mydas (Green sea turtle)	Transfer from I to II; proposal submitted pursuant to resolution Conf. 5.21; export quota of 3,000 specimens.	Indonesia	Withdrawn.[2]
Eretmochelys imbricata (Hawksbill sea turtle).	Transfer from I to II; proposal submitted pursuant to resolution Conf. 5.21; export quota of 3,000 specimens.	...do	Withdrawn.[2]
Order Crocodylia:			
Crocodylus cataphractus (African slender-snouted crocodile).	Transfer Cong's population from I to II, pursuant to resolution Conf. 5.21 subject to an annual export quota of 600.	Congo	Approved.
Crocodylus niloticus (Nile crocodile)	Transfer Botswana's population from I to II, pursuant to Conf. 3.15 on ranching.[6].	Botswana	Approved.[6]
Crocodylus niloticus (Nile crocodile)	Transfer Cong's population from I to II, pursuant to resolution Conf. 5.21 subject to an annual export quota of 150.	Congo	Withdrawn.[2]
Crocodylus niloticus (Nile crocodile)	Transfer Ethiopia's population from I to II, pursuant to resolution Conf. 5.21 subject to an annual export quota of 2,845 (of which 45 taken from the wild) in 1989 and increased quotas in subsequent years.[7].	Ethiopia	Approved.[7]
Crocodylus niloticus (Nile crocodile)	Transfer Kenya's population from I to II, pursuant to resolution Conf. 5.21 subject to an annual export quota of 5,000 (with 1,000 from the wild).[6].	Kenya	Approved.[6]
Crocodylus niloticus (Nile crocodile)	Transfer Madagascar's population from I to II, pursuant to resolution Conf. 3.15 on ranching.[15].	Madagascar	Withdrawn/ Approved.[15]
Crocodylus niloticus (Nile crocodile)	Transfer Malawi's population from I to II, pursuant to Conf. 3.15 on ranching.[6].	Malawi	Approved.[6]
Crocodilus niloticus (Nile crocodile)	Transfer Mozambique's population from I to II, pursuant to resolution Conf. 3.15 on ranching.[6].	Mozambique	Approved.[6]
Crocodilus niloticus (Nile crocodile)	Transfer Somalia's population from I to II, pursuant to resolution Conf. 5.21 with export quota of 2,000 specimens.[8]	Somalia	Approved.[8]
Crocodilus niloticus (Nile crocodile)	Transfer Sudan's population from I to II, pursuant to resolution Conf. 5.21 with export quota of 5,040 specimens in 1990	Sudan	Approved.
Crocodilus niloticus (Nile crocodile)	Transfer Tanzania's population from I to II, pursuant to resolution Conf. 5.21 subject to an export quota of 3,500 specimens.[6]	Tanzania	Approved.[6]
Crocodilus niloticus (Nile crocodile)	Transfer of Zambia's population from I to II, pursuant to resolution Conf. 3.15 on ranching.	Zambia	Approved.
Crocodylus porosus (Saltwater crocodile).	Transfer Indonesia's population from I to II, pursuant to resolution Conf. 5.21 with export quota of 5,000 specimens.[6]	Indonesia	Approved.
Order Squamata:			
Dracaena paraguayensis(Caiman lizard)	Add to II	Paraguay	Approved.
Shinisaurus crocodilorus (Chinese crocodile lizard).	...do	Federal Republic of Germany	Approved.
Varanus bengalensis (Bengal monitor	Transfer from I to II	Japan	Withdrawn.[2]
Varanus grayi (Gray's monitor)	Transfer from II to I	Federal Republic of Germany	Rejected.
Varanus griseus (Desert monitor)	Transfer from I to II	Japan	Withdrawn.[1]
Naja naja (Cobra)	Add to II	India	Approved.
Ophiophagus hannah (King cobra)	...do	...do	Approved.
Ptyas mucosus (Oriental ratsnake)	...do	...do	Approved.
Fishes (Places)			
Cynolebias spp. (Pearlfishes)	Remove from II	Switzerland	Withdrawn.[2]
Latimeria chalumnae (Coelacanth)	Transfer from II to I	Federal Republic of Germany	Approved.
Scleropages formosus Asian bonytongue).	Transfer from I to II, pursuant to resolution Conf. 5.21, subject to an annual export quota of 2,500 specimens.[6].	Indonesia	Approved.[6]
CORALS (CNIDARIA)			
Athecata spp	Add to II[9]	Israel, Philippines	two families Approved.[9]
Coenothecalia spp	...do	...do	Approved.
Scleractinia spp	...do	...do	Approved.
Stolonifera spp	...do	...do	one family Approved.[9]
Plants[10]			
Family Amaryllidaceae:			
Galanthus spp. and natural hybrids (snowdrops).	Add to II	USA	Approved.
Sternbergia spp. (sternbergias)	Add to II	United Kingdom	Approved.
Family Apocynaceae:			
Pachypodium baronii, P. brevicaule, P. decaryi, and their natural hybrids.	Transfer from II to I	USA	Approved.

Species	Proposed amendment	Proponent	Final decision of the Parties
Rauvolfia serpentina (snake—root devil-pepper).	Add to II[11]	India	Approved.[11]
Family Araceae:			
Alocasia zebrina	Remove from I	USA	Approved.
Family Aristolochiaceae:			
Aristolochia indica (India birthwort)	Add to II	India	Withdrawn.[2]
Family Berberidaceae:			
Podophyllum hexandrum (Himalayan may-apple).	Add to I[10,11]	India	Approved.[10,11]
Family Caryocaraceae:			
Caryocar costaricense (ajo)	Remove from I[10]	USA	Approved.[10]
Family Cycadaceae:			
Seeds (only) of App. II spp	Remove from II	USA	Approved.
Family Droseraceae:			
Drosera burmannii, D. indica, D. peltata	Add to II	India	Withdrawn.[2]
Family Euphorbiaceae:			
Euphorbia subgenus *Lecanthis* dwarf spp. in Madagascar and their natural hybrids: E. ambovombensis, E. cylindrifolia, E. decaryi, E. francoisii, E. moratii, E. parvicyathophora, E. primulifolia, E. quartziticola, and E. tulearensis.	Transfer from II to I	USA	Approved.
Family Fagaceae:			
Quercus copeyensis (copey oak)	Remove from II	Switzerland	Withdrawn.[2]
Family Gentianaceae:			
Gentiana kurroo (Indian gentian)	Add to II	India	Withdrawn.[2]
Prepusa hookeriana	Remove from I	USA	Approved.
Family Humiriaceae:			
Vantanea barbourii (caracolillo)	Remove from I[10]	Switzerland	Approved.[10]
Family Juglandaceae:			
Oreomunnea (=*Engelhardia*) *pterocarpa* (gavilán blanco).	Remove from I	Switzerland	Withdrawn.[2]
Family Leguminosae (Fabaceae):			
Cynometra hemitomophylla (guapinol negro).	Remove from I[9]	...do	Approved.[10]
Platymiscium pleiostachyum, (cristobal)	...do	...do	Approved.[10]
Tachigali versicolor (cana fistula)	Remove from I *or* downlist to II	Switzerland/USA	Withdrawn Approved.[2]
Family Liliaceae:			
Gloriosa superba (Malabar gloriosa-lily)	Add to II	India	Withdrawn.[2]
Family Melastomataceae:			
Lavoisiera lambana	Remove from I	USA	Approved.
Family Meliaceae:			
Guarea longipetiola	Remove from I	USA	Approved.
Family Moraceae:			
Batocarpus costaricensis (ojoche macho).	Remove from I[10]	Switzerland	Approved.[10]
Family Orchidaceae:			
Eriopsis biloba (Guatemalan pop.) (bilobed eriopsis).	Transfer from II to I	Guatemala	Withdrawn.[2]
Lemboglossum (=*Odontoglossum*) *majale* (May lemboglossum).	...do	do	Withdrawn.[2]
L. uro-skinneri (Skinner lemboglossum)	...do	do	Withdrawn.[2]
Paphiopedilum spp. (Asian tropical lady-slipper orchids).	...do	Netherlands	Approved.
Phragmipedium spp. (New World tropical lady-slipper orchids).	...do	Federal Republic of Germany	Approved.
Rossioglossum (=*Odontoglossum*) *williamsianum* (Williams rossioglosum).	...dO	Guatemala	Withdrawn.[2]
Family Palmae (Arecaceae):			
Chamaedorea amabilis, C. ferruginea, C. glaucifolia, C. klotzschiana, C. montana, C. oreophila, C. pulchra, C. stolonifera, and *C. tenella.*	Add to I	USA	Rejected.[12]
Chamaedorea cataractarum, C. ernesti-augusti, C. metallica, C. radicalis, C. rojasiana, C. simplex, and *C. tuerkheimii.*	Add to II	USA	Rejected.
Chamaedorea elegans and *C. seifrizii*	...do	USA	Withdrawn.[1], [10]
Phoenix hanceana var. *philippinensis*	Remove from II	USA	Approved.
Salacca clemensiana	...do	...do	Approved.
Family Podocarpaceae:			
Podocarpus costalis (coastal podocarp)	Remove from I	Switzerland	Approved.
Family Podophyllaceae (see Family Berberidaceae):			
Family Ranunculaceae:			
Aconitum deinorrhizum (then-rooted monkshood).	Add to II	India	Withdrawn.[2]
Family Sterculiaceae:			
Pteryota excelsa (=*Basiloxylon excelsum*) (*castaño*).	Remove from II	Switzerland	Approved.

Species	Proposed amendment	Proponent	Final decision of the Parties
Sabal mauritiiformis (Botan hat palm)	Remove from II	Switzerland	Withdrawn.[2]
Trachycarpus fortunei (Chinese windmill palm).	Add to II	India	Withdrawn.[2]
Family Pandanaceae:			
Pandanus spp. (screwpines)	Add to II	United Kingdom	Approved.
Family Pinaceae:			
Abies guatemalensis (Guatemalan fir)	Remove from II	Switzerland	Withdrawn.[2]
Family Podocarpaceae:			
Podocarpus costalis (coastal podocarp)	Remove from I	Switzerland	Approved.
Family Podophyllaceae (see Family Berberidaceae):			
Family Ranunculaceae:			
Aconitum deinorrhizum (then-rooted monkshood).	Add to II	India	Withdrawn.[2]
Family Sterculiaceae:			
Pteryota excelsa (=*Basiloxylon excelsum*) (*castaño*).	Remove from II	Switzerland	Approved.

not apply to this listing process. This proposed rule does not contain information collection requirements that require approval

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric

300 South New Street, Dover, DE 19901–6790.

FOR FURTHER INFORMATION CONTACT

Species	Proposed amendment	Proponent	Final decision of the Parties
Family Valerianaceae:			
Nardostachys grandiflora (=*N. Jatamansi*) (*Indian nard*).	Add to II	India	Withdrawn.[3]
Family Welwitschiaceae:			
Welwitschia mirabilis	Transfer from I to II	USA	Approved.
Family Zamiaceae:			
seeds (only) of App. II spp.	Remove from II	do	Approved.
Chigua spp	Transfer from II to I	do	Approved.

[1] Withdrawn prior to consideration at the meeting of the Conference of the Parties.
[2] Withdrawn during Plants Committee and/or Committee I discussions.
[3] Withdrawn after rejection by Committee I, but prior to consideration in Plenary session.
[4] Proposal amended to exclude population in U.S.S.R. and then approved after clarification that populations in Iran, Iraq, and Syria also were included.
[5] Appendix I proposal rejected, but then approved with the stipulation that a panel of experts be established to recommend whether specific biological and trade criteria are met for certain populations that would warrant the Parties transferring these populations to Appendix II.
[6] Amended proposal approved that excluded export of specimens taken from the wild in Botswana and Kenya, and that reduced the export of wild specimens from 750 to 250 in Malawi, and from 1,000 to 20 in Mozambique.
[7] Approved export quotas for specimens from Ethiopia included 45 wild-caught adults, 2,500 skins from "ranched" animals, and 300 curios from "ranched" animals in 1989 (added to 1990 quota); 70 wild-caught adults, 2,500 wild-caught hatchlings, 4,000 skins from "ranched" animals, and 300 curios from "ranched" animals taken in 1990; and similar quotas in 1991 and 1992, except that the quotas for skins from "ranched" animals would be increased to 6,000 each year.
[8] Amended proposal approved so that Somalia's quota included 500 wild-caught specimens and 1,500 "ranched" specimens; Tanzania's quota included only 1,000 wild-caught specimens; Indonesia's saltwater crocodile quota included 3,000, 3,000 and 2,500 wild-caught specimens in 1990, 1991 and 1992 respectively, with a further restriction on breeding adults (based on limitation in skin width), and 2,000, 3,000 and 5,000 "ranched" specimens in 1990, 1991 and 1992 respectively; and finally the quotas for Asian bony-tongue specimens from Indonesia included 1,250 wild-caught in 1990, 1,500 specimens in 1991 with a portion from captive-breeding programs, and 2,500 specimens in 1992 with 1,250 specimens from captive-breeding programs.
[9] Amended proposal that was approved included the Orders Scleractina and Coenothecalia, the family Tubiporidae in the Order Stolonifera, and the families Milleporidae and Stylasteridae in the Order Athecata in Appendix II, but any fossil coral taxa in these groups were excluded.
[10] Approved after proposal was amended to transfer from Appendix I to Appendix II.
[11] Approved with exemption of chemical derivatives.
[12] Rejected after proposal was amended to list the species in Appendix II instead of Appendix I.
[13] The proposal to downlist Madagascar's Nile crocodile population under provisions of resolution Conf. 3.15 on "ranching" was withdrawn. A proposal to retain the species in Appendix II with export quotas under provisions of resolution Conf. 5.21 was approved with a zero quota for 1990, and quotas for 2,000 "ranched" specimens (raised from wild-collected eggs and hatchlings) in 1991, and 4,000 such specimens in 1992.
[14] Includes *Acerodon jubatus* listed under provisions of Article II paragraph 2(a) with other species listed for reasons of similarity of appearance under provisions of paragraph 2(b).
[15] Includes *Pteropus speciosus* listed under provisions of Article II paragraph 2(a) with other species listed for reasons of similarity of appearance under provisions of paragraph 2(b).
[16] The proposal not to annotate any of the species in Appendix I prior to this 7th meeting was approved. Consequently, their artificially propagated hybrids will be regulated in the same manner as Appendix II species. [Similarly, such hybrids of the Appendix I species listed at this 7th meeting will be regulated as the Appendix II species, in accord with resolution Conf. 6.19(a).]
[17] The Parties accepted an interpretation that dead specimens could not be regulated separately. Therefore, the listing of *Pteropus* and *Aderodon* species was interpreted to also include live specimens.
[18] The Service did not have sufficient information to show that any taking of specimens for the purpose of international trade was likely to threaten the survival of this species.
[19] For both species, the extent of trade in young and mature whole plants from the wild appeared to be less than first believed and not to threaten the survival of the species. For both species artificial propagation in México, while not fully known, appears to be significant. Recent information from México on *Chamaedorea elegans* made its overall status in the wild unclear. Additionally, information on trade in wild specimens was lacking from the mid-portion of its range. Also, the extent of taking seeds and leaves from the wild in the remainder of its range and whether it might be excessive became less clear. *Chamaedorea seifrizii* is easily and extensively propagated artificially (from non-wild seeds). Recently, its known range was expanded to include Belize and Guatemala. There was no clear evidence that taking seeds or leaves from the wild was excessive.

All proposals in the preceding table that were approved by the Conference of the Parties will enter into effect 90 days after the meeting (i.e., on January 18, 1990) under terms of the Convention.

Article XV of CITES enables any Party to exempt itself from implementing CITES for any particular species if it enters a reservation with respect to that species. In the case of a nation that is a Party at the time an amendment is adopted, a reservation may be entered only during the period of 90 days after the meeting at which the Parties voted to place the species in Appendix I or II. If the United States enters any reservation, this action would be announced in the **Federal Register** by January 18, 1990.

Reservations may do little to relieve importers in the United States from the need for foreign export permits because the Lacey Act Amendments of 1981 (16 U.S.C. 3371 *et seq.*) make it a Federal offense to import into the United States any animals taken, possessed, transported, or sold in violation of foreign conservation laws. If the foreign nation has enacted the Convention as part of its positive law, and that nation has not taken a reservation with regard to the animal or plant, or its parts or derivatives, the United States would continue to require Convention documents as a condition of import. A reservation by the United States also might provide exporters in this country with little relief from the need for U.S. export documents. Receiving countries that are party to the Convention would generally require Convention-equivalent documentation from the United States even if it enters a reservation, because the Parties have agreed to allow trade with non-Parties (including reserving Parties) only if they issue documents containing all of the information required in Convention permits or certificates. In addition, if a reservation is taken on a species listed in Appendix I, the species should still be treated by the reserving Party as in Appendix II, according to resolution Conf. 4.25, thereby still requiring Convention documents for export of these species.

The Service requests comments on whether it should be recommended that the United States enter a reservation on any of the recent CITES amendments. At present, the Service proposes not to recommend any reservations. It would do so only if evidence is presented to show that implementation of the amendment would be contrary to the interests of law of the United States.

Note: The Department has determined that amendments to Convention appendices, which result from actions of the Parties to the Convention, do not require the preparation of Environmental Assessments as defined under authority of the National Environmental Policy Act (42 U.S.C. 4321–4347). The Department also has determined that this listing action is not a rule for purposes of Executive Order 12291, and that the Regulatory Flexibility Act (5 U.S.C. 601) does not apply to this listing process. This proposed rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 50 CFR Part 23

Endangered and threatened plants, Endangered and threatened wildlife, Exports, Fish, Imports, Marine mammals, Plants (agriculture), Treaties.

This document is issued under authority of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*; 87 Stat. 884, as amended). It was prepared by Drs. Charles W. Dane and Bruce MacBryde, Office of Scientific Authority.

Proposed Regulation Promulgation

The Service proposes to amend the list of species contained in § 23.23 of title 50 of the Code of Federal Regulations by incorporating all changes in CITES Appendices I and II that were approved by the Conference of the Parties, as set forth in the supporting statement of the present notice.

Dated: December 5, 1989.

Constance B. Harriman,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89–29187 Filed 12–14–89; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 628

Bluefish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of a fishery management plan and request for comments.

SUMMARY: NOAA issues this notice that the Mid-Atlantic Fishery Management Council (Council) has submitted the Fishery Management Plan for the Bluefish Fishery (FMP) for review by the Secretary of Commerce. Comments are invited from the public on the FMP and any other documents made available.

DATE: Comments will be accepted until February 8, 1989.

ADDRESS: Send comments to Richard B. Roe, Regional Director, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. Mark the envelope "Comments on Bluefish FMP". Copies of the FMP, Environmental Assessment, and Regulatory Impact Review/Initial Regulatory Flexibility Analysis are available upon request from John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, Room 2115, 300 South New Street, Dover, DE 19901–6790.

FOR FURTHER INFORMATION CONTACT: Jack Terrill, Resource Policy Analyst, 508–281–9252.

SUPPLEMENTARY INFORMATION: This FMP was prepared under the provisions of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq*). This FMP proposes measures for managing the Atlantic bluefish fishery. The measures proposed will (1) establish an allocation of 80 percent of the total catch for the recreational fishery and 20 percent for the commercial fishery, (2) establish controls if the commercial fishery exceeds its allocation, (3) establish a recreational possession limit of 10 fish and a means of adjusting the possession limit, and (4) establish a permit requirement for those individuals fishing commercially.

The receipt date for this FMP is December 10, 1989. Proposed regulations for this FMP will be published within 15 days.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 11, 1989.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–29227 Filed 12–12–89; 9:00 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 54, No. 240

guide other State and Federal EBT initiatives. Included in the more specific objectives were the collection and

operations. The State's system is fully integrated into two systems are equivalent. However, the PRC system

Dated: November 24, 1989.

G. Scott Dunn,

Acting Administrator.

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Notices

Federal Register
Vol. 54, No. 240
Friday, December 15, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Food Stamp Program: Electronic Benefit Transfer Alternative Issuance Demonstration Project

AGENCY: Food and Nutrition Service, USDA.

ACTION: Amended General Notice.

SUMMARY: The Department is hereby amending its General Notice for the Electronic Benefit Transfer (EBT) Alternative Issuance Demonstration Project in Reading, Pennsylvania to extend project operations through June 30, 1990. The continuing project is being conducted under the research, demonstration and evaluation authority of section 17 of the 1977 Food Stamp Act, as amended. Pennsylvania is currently pursuing the development of an Enhanced EBT demonstration project designed to replace the current Reading system with a system designed to improve the operating efficiency and cost effectiveness of benefit delivery.

EFFECTIVE DATE: December 15, 1989.

FOR FURTHER INFORMATION CONTACT: Jeffrey Cohen, Supervisor, Demonstration Projects Section, Program Design Branch, Program Development Division; Food Stamp Program; Food and Nutrition Service, USDA; Alexandria, Virginia 22302. Telephone: (703) 756–3517.

SUPPLEMENTARY INFORMATION:

Executive Order 12291/Secretary's Memorandum 1521–1

This notice has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1521–1. The notice will affect the economy by less than $100 million a year. The notice will not significantly raise costs or prices for consumers, industries, government agencies or geographic regions. There will not be a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, the Department has classified the notice as "not major".

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in 7 CFR 3015, subpart V and related Notice (48 FR 29115), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This notice has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). G. Scott Dunn, Acting Administrator of the Food Nutrition Service, has certified that this action will not have a significant economic impact on a substantial number of small entities because it will be conducted in a limited area. The Commonwealth of Pennsylvania and its local welfare agencies will be affected to the extent that they are involved in administering this alternative system. Food retailers and banks within the demonstration project area will be affected to the extent that they agree to participate. Individuals participating in the Food Stamp Program and living within the Reading, Pennsylvania demonstration project area in Berks County will be affected to the extent that they will continue using an alternative benefit issuance instrument and continue to be subject to the alternative issuance procedures.

Paperwork Reduction Act

This notice does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980.

Comments

This notice provides for a further extension, through June 30, 1990 of a current operating system without any significant changes to the demonstration's operating procedures. Consequently, comments are not being requested and the provisions of this notice will be effective upon publication.

Background

On July 8, 1983, the Department of Agriculture published a General Notice in the **Federal Register** (48 FR 31431) which, in accordance with 7 CFR 282.5, established the specific operational procedures and explained the basis and purpose for the Alternative Issuance Demonstration Projects, including the EBT demonstration. On August 21, 1984, the Department published an Amended General Notice in the **Federal Register** (48 FR 33152) which provided additional details on the operational procedures of the project. The reader is referred to those previous publications as a background to this publication.

The Original Demonstration Project

Implementation of the EBT system began in October 1984. Following the phase-in of participating recipients, the system became fully operational in February 1985. USDA contracted with Planning Research Corporation (PRC) of McLean, Virginia for the administration of EBT system operations through December 1985.

Reaction to the system by the different groups participating in the demonstration was favorable. Recipients had few problems using the system. Retailers and banks expressed their pleasure regarding the time and effort saved by not having to process coupons. While there were some system problems during early stages of the test which raised concern by all parties, system improvements were implemented to minimize the chance for problem recurrence and to satisfy the retailers and recipients. Further enhancements were not viewed as appropriate by the Department during this initial phase because of its limited duration.

The final evaluation report for the initial period of EBT operations was published in May 1987 and is available for inspection at FNS Headquarters in Alexandria, Virginia.

The Extended Demonstration Project

In consultation with the Commonwealth of Pennsylvania, the Department decided in 1985 to extend demonstration project operations. The purpose of the extended EBT demonstration project evaluation was to obtain data to provide recommendations for management of the EBT system and

guide other State and Federal EBT initiatives. Included in the more specific objectives were the collection and assessment of data in five major areas: the costs to the government in operating a redesigned EBT system, the vulnerability of the EBT system to loss or misuse of program benefits, the costs retailers incur to participate in the EBT system, the effects of the EBT system on the recipients themselves and the costs and effects of the EBT system upon participating financial institutions.

On December 30, 1985, the Department published an Amended General Notice in the **Federal Register** (50 FR 53170) to extend the project for 15 additional months. During this extension, the operating procedures remained as published in the August 1984 Amended General Notice except that the EBT Center was operational 24 hours per day instead of the 18 hours stated in the notice. The State's operation of the EBT Demonstration Project is governed by an amendment to the State Plan of Operation. In this amendment the State agreed to maintain the EBT system performance at a level which met or exceeded the pre-existing acceptable levels of performance, with no degradation of system operations or performance and to include a back-up system which provided continuous processing to minimize system down-time and manual processing.

For the first three months of the extended demonstration, PRC continued to operate the EBT system under contract with the Pennsylvania State agency. Subsequent to this period, Pennsylvania assumed responsibility for operating the EBT system and moved the EBT equipment and EBT Center operations to their own offices in Harrisburg, Pennsylvania. During this second phase, all operations were coordinated by State personnel in Harrisburg.

With the publication of an Amended General Notice dated May 28, 1987, the third phase of the Extended Demonstration Project began. Upon receiving FNS approval, the State proceeded to convert to a redesigned EBT system. FNS approval was based on the State's demonstration of system readiness through the documentation provided by the State and by FNS' satisfaction with the acceptance tests being conducted. The State transferred operations to the new system on June 22, 1987. The primary difference between the State's and PRC's system is in the utilization of system equipment. Functionally the two systems are equivalent. However, the PRC system computers were totally dedicated to EBT operations. The State's system is fully integrated into two systems are equivalent. However, the PRC system computers were totally dedicated to EBT operations. The State's system is fully integrated into the existing PDPW production environment and shares processing resources with other programs. System enhancements which accompanied this phase were for the most part transparent to users. The changes improved internal systems accountability and cost performance. The Department also permitted a small expansion of the project to include approximately 500 households that were customers of retailers already participating in the project.

In an Amended General Notice dated Tuesday, July 12, 1988, the EBT demonstration project was again extended. In conjunction with the extension, an option to expand both retailer and recipient participation was proposed by the State and tentatively approved by USDA. It was anticipated that approximately 1,500 additional FSP recipients and all retailers (wishing to participate) in Berks County would be added. Performance standards for this extension were the same as those previously negotiated by the Department with the State. The planned retailer/recipient expansion was not pursued by the State during the extension period.

An evaluation of the EBT demonstration continued through the extension period. Evaluation results should be completed and available to the public sometime in early 1990.

Current Action

This extension will allow the extended EBT demonstration to continue to operate under demonstration project authority through June 30, 1990. During this period the PDPW will seek waiver authority from USDA to substantially modify, enhance and expand its EBT system. The proposed system modification is expected to include the disbursement of Aid to Families with Dependent Children (AFDC) payments, both at point-of-sale and through automated teller machines (ATM's). It is also anticipated that the proposal will call for system deployment in the remainder of Berks County, and in four counties in western Pennsylvania to facilitate further increases in overall cost-effectiveness by spreading the costs over a larger number of households. This extension is designed to enable such a modification without disrupting the current EBT system; however, approval of a proposed system revision must be obtained by PDPW from FNS.

Dated: November 24, 1989.

G. Scott Dunn,

Acting Administrator.

[FR Doc. 89–29277 Filed 12–14–89; 8:45 am]
BILLING CODE 3410–30–M

Soil Conservation Service

Lower Aquilla-Hackberry Creek Watershed, TX

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Lower Aquilla-Hackberry Creek Watershed; Hill and McLennan Counties, Texas.

FOR FURTHER INFORMATION CONTACT: Harry W. Oneth, State Conservationist, Soil Conservation Service, 101 South Main, Temple, Texas 76501, telephone (817) 774–1214.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Harry W. Oneth, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan to conserve water, improve water quality, reduce sediment damage, assure the capability to sustain long-term agricultural productive capacity, and improve social well-being of area residents. The plan consists of an accelerated land treatment program that provides financial and technical assistance to apply conservation practices on cropland.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on

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file and may be reviewed by contacting Harry. W. Oneth.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Dated: December 6, 1989.

Harry. W. Oneth,

State Conservationist.

[FR Doc. 89-29224 Filed 12-14-89; 8:45 am]

BILLING CODE 3410-16-M

BOARD FOR INTERNATIONAL BROADCASTING

SES Performance Review Board; Membership

Sec. 4314(c)(1) through (5) of title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more Performance Review Boards. The Boards shall review and evaluate the initial appraisal by the supervisor of a senior executive's performance, along with any recommendations to the appointing authority relative to the performance of the senior executive.

Because of the Board for International Broadcasting's small size, a Performance Review Board register is established in which SES members from other small agencies participate. This notice is to establish a PRB for the Board for International Broadcasting. The members whose names appear are:

Gary Edles,
Legal Counsel,
Administrative Conference of the U.S.,
(PRB Chairman);
Gerald J. Smith,
Executive Secretary,
Barry Goldwater Foundation;
Kenneth M. Pusateri,
Deputy Director,
Federal Energy Regulatory Commission.

Mark. G. Pomar,

Acting Executive Director.

[FR Doc. 89-29316 Filed 12-14-89; 8:45 am]

BILLING CODE 8155-01-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration.

Title: Marine Fisheries Initiative (MARFIN).

Form Number: None; OMB-0648-0175.

Type of Request: Request for extension of OMB approval of a currently cleared collection.

Burden: 60 respondents; 390 reporting hours; average hours per response—1.86 hours.

Needs and Uses: Any citizen of the U.S. may apply for a research and development grant to optimize the use of a U.S. Gulf of Mexico fishery involving U.S. vessels. The information submitted in an application is used to evaluate the relative merits of proposals and to determine funding.

Affected Public: Individuals or households, state or local governments, business or other for-profit, Federal agencies or employees, non-profit institutions, small businesses or organizations.

Frequency: On occasion, quarterly, and annually.

Respondent's Obligation: Required to obtain or maintain a benefit.

OMB Desk Officer: Russell Scarato, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230. Written comments and recommendations for the proposed information collection should be sent to Russell Scarato, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: December 5, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-29286 Filed 12-14-89; 8:45 am]

BILLING CODE 3510-CW-M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Export Administration (BXA).

Title: Swedish Consignee's Letter of Assurance.

Form Number: Export Administration Regulations, Part 772.5; OMB No. 0694-0062.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 289 respondents; 154 reporting/recordkeeping hours. Approximate hours per response is one-half hour.

Needs and Uses: This information is submitted to BXA by Swedish importers of controlled U.S. origin goods or technology. The purpose of these collections is to provide the U.S. with an extra measure of security against the diversion of these goods or technology to proscribed destinations.

Affected Public: Businesses or other for-profit institutions; small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Donald Arbuckle, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Donald Arbuckle, OMB Desk Officer, Room 3208 New Executive Office Building, Washington, DC 20503.

Dated: December 5, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-29287 Filed 12-14-89; 8:45 am]

BILLING CODE 3510-CW-M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration.

Title: Survey of Intent and Capacity to Harvest and Process Fish and Shellfish (Northeast Region).

Form Number: None.

Type of Request: New collection.

Burden: 77 respondents; 10 reporting hours; average time per response—5 minutes.

Needs and Uses: U.S. fish processors, joint venture companies, and fishermen involved in selected fisheries in the Northeast Region of the U.S. are required to provide the tonnage of their actual and expected use of the species. The information is used to establish

fishery quotas and to develop fishery management plans.

Affected Public: Business or other for-profit, and small businesses or organizations.

Frequency: Semi-annual, annual.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Russell Scarato, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230. Written comments and recommendations for the proposed information collection should be sent to Russell Scarato, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: December 5, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-29288 Filed 12-14-89; 8:45 am]

BILLING CODE 3510-CW-M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration

Title: Deep Seabed Mining Regulations for Exploration Licenses

Form number: None; OMB-0648-0141

Type of request: Request for extension of OMB approval for a currently approved collection

Burden: 4 respondents; 80 reporting hours; average time per response—20 hours

Needs and uses: U.S. companies wishing to conduct deep seabed mining exploration activities must obtain a license. The information required in the application and subsequent reports is used to ensure that the provisions of the Deep Seabed Hard Mineral Resources Act are met.

Affected public: Business or other for-profit

Frequency: On occasion, annually

Respondent's obligation: Required to obtain or retain a benefit

OMB desk officer: Russell Scarato, 395-7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230. Written comments and recommendations for the proposed information collection should be sent to Russell Scarato, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: December 8, 1989.

Edward Michals,

Department Clearance Officer, Office of Management and Organization.

[FR Doc. 89-29284 Filed 12-14-89; 8:45 am]

BILLING CODE 3510-CW-M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration

Title: National Marine Sanctuary Permits

Form Number: None; OMB—0648-0141

Type of Request: Request for extension of OMB approval of a currently cleared collection

Burden: 30 respondents; 52 reporting hours; average hours per response—.875 hours

Needs and Uses: Persons seeking to conduct otherwise prohibited activities in marine sanctuaries may request a permit. The application information is reviewed to determine if the proposed activity is consistent with the management goals of the sanctuary.

Affected public: Individuals or households, state or local governments, business or other for profit, Federal agencies or employees, non-profit institutions, small businesses or organizations

Frequency: On occasion

Respondent's obligation: Required to obtain or retain a benefit

OMB Desk officer: Russell Scarato, 395-7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230. Written comments and recommendations for the proposed information collection should be sent to Russell Scarato, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: December 8, 1989.

Edward Michals,

Department Clearance Officer, Office of Management and Organization.

FR Doc. 89-25285 Filed 12-14-89; 8:45 am]

BILLING CODE 3510-CW-M

Foreign-Trade Zones Board

[Order No. 455]

Approval for Expansion of Foreign-Trade Zone 106; Oklahoma City, OK

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 USC 81a–81u), the Foreign-Trade Zones Board adopts the following Resolution and Order:

Whereas, the Port Authority of Oklahoma City, Oklahoma, Grantee of Foreign-Trade Zone 106, has applied to the Board for authority to expand its general-purpose zone at the Will Rogers World Airport in Oklahoma City, within the Oklahoma City Customs port of entry, and for authority for manufacturing within the zone on behalf of the dialysis machine manufacturing operation of Organon Teknika Corporation (OTC);

Whereas, the application was accepted for filing on July 15 1967, and notice inviting public comment was given in the **Federal Register** on July 31, 1967 (Docket 8-87, 52 FR 28581);

Whereas, an examiners committee has investigated the application in accordance with the Board's regulations and recommends approval;

Whereas, the expansion is necessary to improve and expand zone services in the Oklahoma City area; and

Whereas, the Board has found that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations would be satisfied, and that approval of the application would be in the public interest, provided approval is subject to a restriction requiring OTC to elect privileged foreign status on all foreign components admitted to its zone manufacturing operation;

Now, therefore, the Board hereby orders:

That, subject to the foregoing restriction on the OTC activity, the Grantee is authorized to expand its zone in accordance with the application filed July 15, 1967. The Grantee shall notify the Board for approval prior to the commencement of any additional manufacturing or assembly operations. The authority given in this Order is subject to settlement locally by the District Director of Customs and the District Army Engineer regarding compliance with their respective requirements relating to foreign-trade zones.

BEST COPY AVAILABLE

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Signed at Washington, DC, this 7th day of December, 1989.

Eric L Garfinkel,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 89-29291 Filed 12-14-89; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-307-801]

Antidumping Duty Order; Aluminum Sulfate From Venezuela

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: In its antidumping duty investigation, the U.S. Department of Commerce (the Department) determined that aluminum sulfate from Venezuela is being sold in the United States at less than fair value. In a separate investigation, the U.S. International Trade Commission (ITC) determined that a U.S. industry is being materially injured by reason of imports of aluminum sulfate from Venezuela.

As a result of the affirmative findings of the Department and the ITC, pursuant to section 736(a)(1) of the Tariff Act of 1930, as amended (19 U.S.C. 1673e(a)(1)) (the Act) all unliquidated entries of aluminum sulfate from Venezuela, as described in this notice, which were entered, or withdrawn from warehouse, for consumption on or after August 14, 1989, the date on which the Department published its preliminary affirmative antidumpting duty determination in the **Federal Register**, will be liable for the possible assessment of antidumping duties.

A cash deposit of estimated antidumping duties must now be made on all entries of aluminum sulfate from Venezuela entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this antidumping duty order in the **Federal Register**.

EFFECTIVE DATE: December 15, 1989.

FOR FURTHER INFORMATION CONTACT: Mary Jenkins, Kimberly Hardin, or Mary Clapp, Office of Antidumping Investigations, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-1756, 377-8371, or 377-3965 respectively.

SUPPLEMENTAL INFORMATION: We note some ambiguities exist in the scope language previously published in the initiation, preliminary and final determinations notices with regard to aluminum sulfate. Therefore, to clarify the definition of the scope of this investigation, this investigation covers both liquid and dry aluminum sulfate. Aluminum sulfate is used in water purification, in waste water treatment, and for other industrial applications, and is currently provided for under HTS item number 2833.22.00.00.

In accordance with section 735(a) of the Act (19 U.S.C. 1673d(a)), on October 18, 1989, the Department made its final determination that aluminum sulfate from Venezuela is being sold at less than fair value (54 FR 43438, October 25, 1989). On December 6, 1989, in accordance with section 735(d) of the Act, the ITC notified the Department that imports of aluminum sulfate from Venezuela are materially injuring a U.S. industry.

Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department will direct U.S. Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of aluminum sulfate from Venezuela entered or withdrawn from warehouse, for consumption, on or after August 4, 1989, the date on which the Department published its preliminary determination notice in the **Federal Register** (54 FR 33254, August 14, 1989).

On or after the date of publication in the **Federal Register** of this antidumping duty order, U.S. Customs officers must require a cash deposit equal to the margin percentage noted below for entries of aluminum sulfate from Venezuela:

Manufacturer/producer/exporter	Margin percentage
Sulfatos Del Orinoco, C.A. (SULFORCA)	259.17%
All Others	259.17%

This determination constitutes an antidumping duty order with respect to aluminum sulfate from Venezuela, pursuant to sections 735(d) and 736(a) of the Act (19 U.S.C. 1673d(d) and 1673e(a)). Interested parties may contact the Central Records Unit, Room B-099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This notice is published in accordance with sections 735(d) and 736(a) of the Act (19 U.S.C. 1673d(d) and 1673e(a)).

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

December 8, 1989.

[FR Doc. 89-29292 Filed 12-14-89; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

1988 Survey of Striped Bass Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of survey results.

SUMMARY: NOAA publishes the results of a survey of Atlantic coast striped bass fisheries for 1988. The report of survey results is required by the Atlantic Striped Bass Conservation Act. The intent is to provide information on the status of the striped bass fisheries.

ADDRESSES: Copies of the 1988 survey results are available from David G. Deuel, NOAA/NMFS, 1335 East-West Highway, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: David G. Deuel, 301-427-2347.

SUPPLEMENTARY INFORMATION:

Comprehensive Annual Survey of the Atlantic Striped Bass Fisheries—Calendar Year 1988 Survey Results

Section 6 of the Atlantic Striped Bass Conservation Act (Pub. L. 98-613, 16 U.S.C. 1851) requires the Secretary of Commerce and the Secretary of the Interior to conduct a comprehensive annual survey of the Atlantic striped bass fisheries. Each survey was to include, but not be limited to, a compilation and assessment of the recreational and commercial landings of striped bass in the coastal states during the period considered in the survey. The results of each annual survey are to be published in the **Federal Register**. Reauthorization of the Atlantic Striped Bass Conservation Act (the Act) in 1986 (Pub. L. 99-432) and in 1988 (Pub. L. 100-589), extended the requirement for the annual survey. This report presents data for calendar year 1988 as required by section 6 of the Act.

The Act was signed into law on October 31, 1984. Under the Act, no funds were authorized for appropriation for activities in fiscal year 1985. For fiscal years 1986 through 1989, funds were authorized but not appropriated. Thus, for calendar years 1985 through 1988, no funds were appropriated for conduct of the comprehensive annual survey and no separate surveys were conducted on the Atlantic striped bass fisheries. However, the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration (U.S. Department of Commerce) routinely collects data on all U.S. commercial fisheries and on marine recreational fisheries on the Atlantic, Gulf, and Pacific coasts. These data are used in this report to satisfy the requirements of section 6 of the Act.

A description of the statistical survey procedures for the commercial fishery landings may be found in "Fishery Statistics of the United States 1977" (U.S. Department of Commerce, 1984), and for the recreational fishery data in "Marine Recreational Fishery Statistics Survey, Atlantic and Gulf Coasts, 1986" (U.S. Department of Commerce, 1987).

The Act addresses striped bass from Maine through North Carolina; the data presented here are for the same area. Commercial landings of striped bass in 1988 totaled 407,000 pounds, a decrease of 24,000 pounds from the 1987 landings of 431,000 pounds. Landings in 1986 of 335,000 pounds were the lowest on record. Maximum landings of 14.7 million pounds occurred in 1973, but have steadily declined at about 20 percent per year since that time (Figure 1). Part of the decline since 1982 has resulted from restrictive regulations on the commercial fishery. Commercial landings by state from 1981 through 1988 are shown in Table 1.

Catch and harvest of striped bass by recreational fisherman were estimated from the annual marine recreational fishery statistics surveys from 1979 through 1988. Catch is defined as the total number of fish caught, including those released alive. Harvest is the number of fish which were removed from the population. Estimated weights are available for the fish harvested. The reliability of the survey estimates is greater for species which occur more frequently in the catch than for those which occur infrequently. In recent years, with the striped bass stocks at low levels, the estimates for striped bass are less reliable than those for other species such as bluefish, winter flounder, or scup, which occur frequently in the catch. In addition, there is high variability of striped bass catch estimates by state from year to year. Although a separate survey of the recreational fishery for striped bass would likely provide more reliable estimates of the catch and harvest of striped bass, such a survey would be extremely expensive to conduct.

In 1988, recreational fishermen caught an estimated 1,465,000 striped bass, of which 114,000 were harvested. The remaining 1,351,000 were released alive. The estimated weight of the 1988 recreational harvest was 1.4 million pounds. Table 2 presents estimates of the total recreational catch of striped bass by state from 1981 through 1988.

The total recreational catch of striped bass declined from about 2.0 million fish in 1979 to about 600,000 fish annually from 1983-1985. As with the commercial fishery, restrictions on the recreational fishery contributed to the decrease in catch. The increase in total catch since 1986 likely reflects the increased abundance of the 1982 and subsequent year classes, which have received nearly total protection by management measures in force since 1985. The number of striped bass harvested declined from about 1.3 million fish in 1979 to 51,000 in 1987, and was only 111,000 in 1988. Since the early 1980's, the percentage of the total catch that was released alive has generally increased. From 1979-1981, an average of 24 percent was released alive; from 1982-1985, an average of 76 percent was released alive; and from 1986-1988, an average of 92 percent of the fish caught was released alive. This demonstrates the effectiveness of size limits and bag limits in conserving striped bass in the recreational fishery.

The management measures imposed on striped bass fishing by the coastal states, as recommended by the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for the Striped Bass (as amended), have had a significant impact on the level of the recreational harvest and of the commercial landings. Most new management regulations were put in place between 1982 and 1986, with those having the most impact being implemented during 1984, 1985, and 1986. These regulations include closed seasons, closed areas, size limits, commercial gear restrictions, and bag limits on the recreational fishery. Most significantly, a moratorium was imposed on striped bass fishing in Maryland and Delaware in January 1985. During 1986, the striped bass fishery was closed in the marine waters of New York, Connecticut, and Rhode Island. Since then, a one fish per angler per day bag limit has been allowed for the recreational fishery in New York (during the open season) and Rhode Island. Several other states prohibit sale of striped bass and all states have now implemented a 36-inch total length minimum size limit. Bag limits range from 1 to 5 fish in states which allow possession of recreationally caught fish.

Appropriate data from which to estimate the striped bass population size have not been collected. Prior to 1982, striped bass commercial landings data were used as an indicator of the stock size. The commercial fishery has since been severely restricted by regulations; thus, landings in recent years are not comparable to those in earlier years nor are they indicative of trends in stock size. The recreational fishery for striped bass has been similarly affected by management regulations. Thus, caution should be used in interpreting recent landings data.

In the last few years commercial and recreational fishermen have reported increases in the numbers of striped bass. In addition to these undocumented reports, data obtained from sampling the population shows an increase relative abundance of fish from recent year classes (year in which fish are born). This increase supports the hypothesis that high levels of fishing mortality contributed significantly to the severe decline of the striped bass population on the Atlantic coast during the 1970's, and certainly shows that management measures have been effective in conserving and rebuilding the striped bass population.

Recent information indicates that female striped bass of the Chesapeake Bay stock may not all mature until age 8, and females from the first year class (1982), offered nearly total protection from fishing mortality, are just now reaching full maturity. Full recovery of the population from the decline of the 1970's now depends on successful reproduction by the females of these protected year classes. Production of juvenile striped bass in 1987 in the Hudson River and in the Virginia portion of the Chesapeake Bay reached record highs and remained high during 1988, although production in the Maryland portion of Chesapeake Bay remained low in 1988 relative to earlier years.

Historically, spawning areas in Maryland have produced the majority of the striped bass found along the Atlantic coast. While fishing mortality was certainly a factor in the decline of the population, reduced water quality may have also played a role through reduced survival of eggs and/or larval fish. In some spawning rivers in Maryland during some years, survival of larval striped bass exposed to various contaminants and/or low pH levels present in the rivers was less than the survival of larvae exposed to water without contaminants or low pH. Thus,

although an increased number of females are now in the spawning population, successful reproduction also will depend on water quality during the spawning season to allow survival of eggs and larval fish.

Note: Juvenile production in Maryland for 1989, as measured by the Maryland juvenile index, was 25.2. The next highest index on record of 30.4 occurred in 1970. Both indices far exceed the 1954–1989 average index of 8.9.)

Dated: December 8, 1989.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

TABLE 1.—REPORTED COMMERCIAL LANDINGS (THOUSANDS OF POUNDS) OF STRIPED BASS IN ATLANTIC COASTAL STATES, 1981–1988

State	1981	1982	1983	1984	1985	1986	1987	1988
Maine	1	—	—	—	1	—	—	—
New Hampshire	—	—	—	—	—	—	—	—
Massachusetts	708	643	224	107	119	96	78	80
Rhode Island	235	270	196	54	61	11	1	—
Connecticut	5	6	2	2	6	—	—	—
New York	822	471	310	595	469	—	—	—
New Jersey	14	10	20	9	12	10	—	—
Delaware	23	26	7	37	—	—	—	—
Maryland	1,641	518	446	1,108	43	8	33	45
Virginia	395	147	151	508	241	23	57	165
North Carolina	417	338	361	513	280	189	262	115
Total	4,261	2,429	1,717	2,933	1,232	337	431	407

Source: National Marine Fisheries Service, F/RE1, unpublished data.
Dash denotes none reported.
Note: Restrictive regulations contributed to the decrease in landings since 1981.

TABLE 2.—ESTIMATED TOTAL RECREATIONAL CATCH (THOUSANDS OF FISH) OF STRIPED BASS BY STATE, MAINE TO NORTH CAROLINA, 1981–1988.

State	1981	1982	1983	1984	1985	1986	1987	1988
Maine	—	—	—	—	77	—	—	—
New Hampshire	—	0	—	0	—	0	—	—
Massachusetts	—	129	68	132	123	655	138	301
Rhode Island	—	—	—	72	50	—	107	31
Connecticut	—	555	45	41	41	—	95	30
New York	37	—	36	101	95	149	227	146
New Jersey	40	151	210	84	—	43	89	704
Delaware	0	0	—	—	—	0	—	36
Maryland	174	40	155	148	102	502	181	163
Virginia	0	0	—	—	—	—	—	—
North Carolina	576	0	—	—	—	—	0	—
Total	892	911	568	626	518	1,399	886	1,465

Estimates include both fish harvested and those released.
— = less than 30,000 reported
0 = none reported
Sources: 1981–1982: USDOC, 1985. Current Fishery Statistics No. 8324. 1983–1984: USDOC, 1985. Current Fishery Statistics No. 8326. 1985: USDOC, 1986. Current Fishery Statistics No. 8327. 1986: USDOC, 1987. Current Fishery Statistics No. 8392. 1987–1988: National Marine Fisheries Service, R. Essig, personal communication.

BILLING CODE 3510-22-M

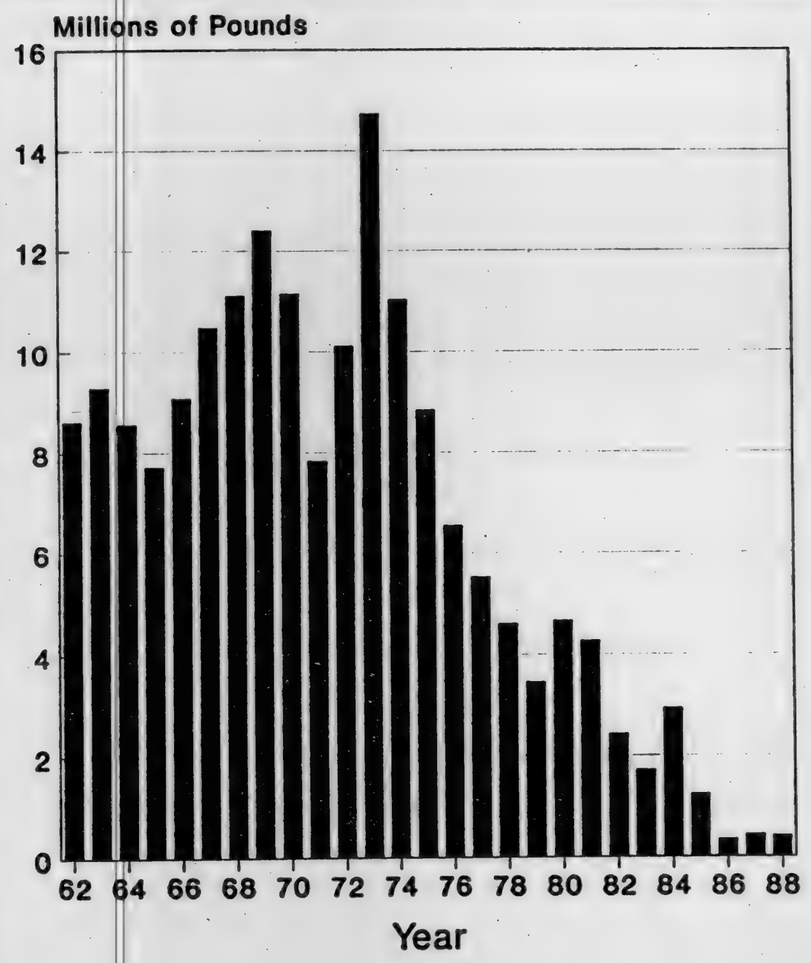

Figure 1. Reported commercial landings of striped bass along the Atlantic Coast, 1962-1988.

Note: Restrictive regulations on the commercial fishery contributed to the decrease in landings since 1982.

[FR Doc. 89-29169 Filed 12-14-89; 8:45 am]
BILLING CODE 3510-22-C

VOL 54 ISS 240 DE 15 1989 UMI

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

December 11, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: December 18, 1989.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6496. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Governments of the United States and Pakistan agreed to increase the current designated consultation level for Category 666 for the 1989 agreement year only.

A description of the textile and apparel categories in terms HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 50438, published on December 15, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designated to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 11, 1989.
Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 12, 1989 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Pakistan and exported during the period which began on January 1, 1989 and extends through December 31, 1989.

Effective on December 18, 1989, the directive of December 12, 1988 is being amended further to increase to 1,471,933 kilograms [1] the current limit for Category 666.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89–29289 Filed 12–14–89; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of Import Limits for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Socialist Republic of Yugoslavia

December 11, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: December 18, 1989.

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–5810. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 51299, published on December 21, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 11, 1989.
Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive of December 16, 1988 issued to you by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Yugoslavia and exported during the twelve-month period which began on January 1, 1989 and extends through December 31, 1989.

Effective on December 18, 1989 the directive of December 16, 1988 is amended further to increase the limits for the following categories, as provided under the terms of the current bilateral textile agreement between the Governments of the United States and the Socialist Federal Republic of Yugoslavia:

Category	Adjusted 12-mo limit [1]
443/643	312,139 numbers of which not more than 111,074 numbers shall be in Category 443.
604–A [2]	339,431 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1988.
[2] In Category 604–A, only HTS number 5509.32.0000.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89–29290 Filed 12–14–89; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the United Mexican States

December 11, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

[1] The limit has not been adjusted to account for any imports exported after December 31, 1988.

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For further information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs Port or call (202) 535–9481. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 13, 1988, as amended, between the Governments of the United States and the United Mexican States establishes import limits for certain cotton, wool and man-made fiber textile products for 1990, including certain categories subject to the Special Regime. Sublevels for Special Regime categories are established for products which are not subject to the terms of the Special Regime. The limit and sublimit for Categories 341/641 and the limit for Categories 604–0/607–0 have been reduced for carryforward applied to the 1989 limits.

A copy of the current bilateral textile agreement between the Governments of the United States and United Mexican States is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647–1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989).

Requirements for participation in the Special Regime Program are available in **Federal Register** notices 53 FR 15724, published on May 3, 1988; 53 FR 32421, published on August 25, 1988; 53 FR 49346, published on December 7, 1988; and 54 FR 50425, published on December 6, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 11, 1989

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 13, 1988, as amended, between the Governments of the United States and the United Mexican States; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1990, entry into the United States for consumption, and withdrawal from warehouse for consumption, of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Mexico and exported during the twelve-month period beginning on January 1, 1990 and extending through December 31, 1990, in excess of the following levels and sublevels of restraint:

Category	Twelve-month limit
218–220, 225–227, 313–326, 611–617 and 625–629, as a group.	41,336,779 square meters equivalent.
Sublevels within the group	
218	939,473 square meters.
219	10,334,200 square meters.
313	20,666,398 square meters.
317	10,334,200 square meters.
316	939,473 square meters.
Individual limits not in the group	
[1] 201–C/669–C	1,274,141 kilograms.
222	406,233 kilograms.
[2] 223pt.	635,029 kilograms.
[3] 229–F	660,389 kilograms.
[4] 229–O	771,107 kilograms.
237	50,000 dozen.
239	583,000 kilograms.
[5] 300/301/607–Y	6,751,156 kilograms of which not more than 3,750,642 kilograms shall be in Category 300.
334	78,852 dozen.
335	134,832 dozen.
336/636	202,248 dozen.
338/339/638/639	1,235,960 dozen.
340/640	404,496 dozen.
341/641	758,880 dozen of which not more than 274,176 dozen shall be in blouses with two or more colors in the warp and/or filling in Categories 341–Y/641–Y [6].
342/642	307,400 dozen.
345	19,022 dozen.
347/348/647/648	4,213,500 dozen.
349/649	2,809,000 dozen.
350	13,725 dozen.
351/651	325,844 dozen.
352/652	2,809,000 dozen.
[7] 359–C/659–C	650,502 kilograms.
[8] 359–O	676,219 kilograms.
363	5,500,000 numbers.
[9] 369–S	1,274,141 kilograms.
[10] 369–U	161,437 kilograms.
[11] 369–D	1,707,348 kilograms.
[12] 369–O	161,437 kilograms.
410	397,160 square meters.
433	11,000 dozen.
435	10,201 dozen.
442	5,556 dozen.
443	84,000 numbers.
447	12,000 dozen.
459	22,680 kilograms.
[13] 604–A	637,787 kilograms.
[14] 604–O/607–O	1,923,232 kilograms.
621	90,718 kilograms.
632	750,000 dozen pairs.
633	95,506 dozen.
634	73,034 dozen.
635	129,214 dozen.
645/646	45,000 dozen.
650	13,725 dozen.
[15] 659–H	158,757 kilograms.
[16] 659–S	254,828 kilograms.
[17] 659–O	822,554 kilograms.
666	3,461,817 kilograms.
[18] 669–B	662,553 kilograms.
[19] 669–O	294,835 kilograms.
670	2,494,758 kilograms.

Non-special regime category sublimits Category	Sublimit
239	212,000 kilograms.
335	33,708 dozen.
338/339/638/639	617,980 dozen.
340/640	101,124 dozen.
342/642	61,480 dozen.
347/348/647/648	505,901 dozen.
349/649	561,800 dozen.
351/651	48,877 dozen.
352/652	1,264,050 dozen.
359–C/659–C (coveralls and overalls).	168,187 kilograms.
369–S (handbags and luggage).	191,121 kilograms.
369–U (shoe uppers)	256,102 kilograms.
633	9,551 dozen.
634	10,955 dozen.
659–S (swimwear)	25,482 kilograms.
666	1,730,909 kilograms.

[1] In Categories 201–C/669–C, only HTS numbers 5607.41.3000, 5607.49.1500, 5607.49.2500, 5607.50.2000 and 5607.90.2000 in Category 201–C; and 5607.49.3000 and 5607.50.4000 in Category 669–C.
[2] In Category 223pt., all HTS numbers except 5801.21.0010.
[3] In Category 229–F, only HTS numbers 5608.11.0000, 5608.19.1010 and 5608.19.1020.
[4] In Category 229–O, all HTS numbers except 5608.11.0000, 5608.19.1010 and 5608–19–1020 in Category 229–F.

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[8] In Categories 300 and 301 and in 607-Y, only HTS numbers 5509.53.0030 and 5509.53.0060.

[9] In Categories 341-Y/641-Y, only HTS numbers 6204.22.3060, 6206.30.3010 and 6206.30.3030 in Category 341-Y; and 6204.23.0050, 6204.29.2030, 6206.40.3010, and 6206.40.3025 in Category 641-Y.

[7] In Categories 359-C/659-C, only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010 in Category 359-C; and 6103.23.0055, 6103.43.2020, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.69.1000, 6104.69.3014, 6114.30.3040, 6114.30.3050, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010 in Category 659-C.

[8] In Category 359-O, all HTS numbers except 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010 in Category 359-C.

[9] In Category 369-S, only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.22.4020, 4202.22.4500, 4202.22.8030, 4202.92.1500, 4202.292.3015, and 4202.92.6000.

[10] In Category 369-D, only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.045.

[11] In Category 369-U, only HTS numbers 6406.10.7560.

[12] In Category 369-O, all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.22.4020, 4202.22.4500, 4202.22.8030, 4202.92.1500, 4202.92.3015 and 4202.92.6000 in Category 369-S; 6302.60.0010, 6302.91.0005 and 6302.91.0045 in Category 369-D; and 6406.10.7560 in Category 369-U; and 5601.10.1000 and 5601.21.0090.

[13] In Category 604-A, only HTS number 5509.32.0000.

[14] In Category 604-O, all HTS numbers except 5509.32.0000; and in Category 607-O, all HTS numbers except 5509.53.0030 and 5509.53.0060.

[15] In Category 659-H, only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5060, 6505.90.6060, 6505.90.7060 and 6505.90.8060.

[16] In Category 659-S, only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[17] In Category 659-O, all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.69.1000, 6104.69.3014, 6114.30.3040, 6114.30.3050, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010 in Category 659-C; 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5060, 6505.90.6060, 6505.90.7060 and 6505.90.8060 in Category 659-H; and 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6211.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 in Category 659-S.

[18] In Category 669-S, only HTS numbers 6305.31.0020 and 6305.39.000.

[19] In Category 669-O, all HTS numbers except 5607.49.3000 and 5607.50.4000 in Category 669-C; 6305.31.0020 and 6305.39.0000 in Category 669-S, and 6305-31-0010 which covers polyethylene or polypropylene packing bags weighing one kilogram or more.

Imports charged to these category limits for the period January 1, 1989 through December 31, 1989 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the limits set forth in this directive.

The bilateral agreement establishes separate treatment for products in certain categories. Those products which are made of U.S. formed and cut fabric are subject to the Special Regime and to the category limits listed in this directive. Those products which are exported from Mexico to the United States under provisions of the Special Regime on and after January 1, 1990 must be accompanied by a properly certified Form ITA-370P.

Any shipment for entry under the Special Regime Program which is not accompanied by a valid and correct certification and Shippers Export Declaration (Form ITA-370P) in accordance with the provisions of the certification requirements established in the directive of August 22, 1988, as amended, shall be denied entry. Invoices visaed for Special Regime shall include only products that are subject to the Special Regime or entry will be denied.

Shipments of products in categories covered by the Special Regime, but that are not subject to the Special Regime, are subject to the applicable limits and sublimits listed in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-29293 Filed 12-14-89; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1990; Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to procurement list.

SUMMARY: This action adds to Procurement List 1990 a service to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: January 16, 1990.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On September 29, 1989, the Committee for Purchase from the Blind and Other Handicapped published notice (54 FR 40160) of proposed addition to Procurement List 1990, which was published on November 3, 1989 (54 FR 46540).

Comments on this proposed addition were received from the current contractor for this service, the Local Union representing that contractor's employees, and members of Congress. The commenters expressed concern that the employees who may be displaced if this service is added to the Procurement List would be unable to obtain other employment.

The Committee recognizes that some impacts of this nature are a necessary consequence of its operations, and carefully considers the overall impact of each of its actions. The concerns expressed in the comments about the loss of employment and the possible inability of the displaced employees to obtain other employment at comparable wages were considered by the Committee in arriving at its decision to add this service to the Procurement List. The Committee has determined that the employment gains for persons with profound disabilities who have difficulty in finding a job at any wage outweigh the possible loss of employment by persons who do not have severe disabilities.

The value of firm's current contract for this service represents 5.0 percent of its total annual sales. This is not considered to be severe adverse impact.

After consideration of the material presented to it concerning the capability of a qualified workshop to provide the service at a fair market price and the impact of the addition on the current or most recent contractor, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the service listed.

c. The action will result in authorizing small entities to provide the service procured by the Government.

Accordingly, the following service is hereby added to Procurement List 1990: Janitorial/Custodial, U.S. Customhouse, 423 Canal Street, New Orleans, Louisiana.

Beverly L. Milkman,

Executive Director.

[FR Doc. 89-29273 Filed 12-14-89; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1990; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1990 commodities to be produced and services to be provided by workshops for the blind and other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: January 16, 1990.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and services to Procurement List 1990, which was published on November 3, 1989 (54 FR 46540):

Commodities

Clip, End Strap
8315-01-259-6863

Dropcloth, Painter's
8340-00-068-7908

Marker, Tray
P.S. Item 01249A
P.S. Item 01249B
P.S. Item 01249C
P.S. Item 01249D
P.S. Item 01249E
P.S. Item 01249F
P.S. Item 01250A
P.S. Item 01250B
P.S. Item 01250C
P.S. Item 01250D
P.S. Item 01250E
P.S. Item 01250F

Services

Commissary Shelf Stocking & Custodial, Kelly Air Force Base, Texas

Grounds Maintenance, Naval Air Station, Corpus Christi, Texas

Janitorial/Elevator Operator, Navy Yard Annex, Building 205, Washington, DC

Beverly L. Milkman,

Executive Director.

[FR Doc. 89-29274 Filed 12-14-89; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Department of the Navy

CNO Executive Panel Advisory Committee; Closed Meeting

Notice was published on November 7, 1989, at 54 FR 46758 that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Defense Subpanel Task Force will meet on December 11-12, 1989 at 4401 Ford Avenue, Alexandria, Virginia. Further notice was published on November 21, 1989, at 54 FR 48131 that this meeting was rescheduled for December 18, 1989 because of operational necessity.

This meeting has been further rescheduled for January 8, 1990 to avoid a conflict in schedule.

In accordance with 5 U.S.C. 552b(e)(2), the meeting rescheduling is publicly announced at the earliest practical time.

Dated: December 12, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89-29338 Filed 12-14-89; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.116B-3]

Notice Inviting Applications for New Awards Under the Comprehensive Program Final Year Dissemination Competition Conducted by the Fund for the Improvement of Postsecondary Education (FIPSE) for Fiscal Year 1990 (CFDA No. 84.116B-3)

Purpose: Provides grants to institutions of postsecondary education and other public and private institutions and agencies to improve postsecondary education by supporting the efforts of current grantees to disseminate project ideas and results. Eligibility under the Final Year Dissemination Competitions is limited to grantees of FIPSE whose projects are in their final year of funding, except that a recipient of a single-year grant may apply for assistance under this competition within one year following the termination of its project.

Deadline for Transmittal of Applications: January 19, 1990.

Applications Available: November 28, 1989.

Available Funds: $80,000.

Estimated Size of Awards: $8,000 maximum.

Project Period: Not to exceed 12 months.

Application Regulations: (a) The regulations governing the Fund for the Improvement of Postsecondary Education, 34 CFR parts 74, 75, 77, 79, 80, and 85.

For Applications or Information Contact: Sandra Newkirk, 400 Maryland Avenue, SW. (room 3100, ROB-3), Washington, DC 20202-5175. Telephone number (202) 732-5750.

Authority: 20 U.S.C. 1135a-3.

Dated: December 7, 1989.

Leonard L. Haynes, III,

Assistant Secretary for Postsecondary Education.

[FR Doc. 89-29220 Filed 12-4-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Determination To Establish the Secretary of Energy Advisory Board

Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act (FACA) (Public Law 92-463), and in accordance with 41 CFR 101-6.10, and following consultation with the Committee Management Secretariat, General Services Administration (GSA), notice is hereby given that the Secretary of Energy Advisory Board has been established.

The Board will provide advice to the Secretary of Energy on the research, development, energy, and national defense responsibilities, activities, and operations of the Department of Energy and provide expert guidance in these areas to the Department.

Board members will be selected for their backgrounds and experience in the basic sciences, in energy production and distribution technologies, in related fields of conservation, economics, the environment, management, and public policy, and in the national defense field, such as nuclear weapons research, testing, and verification and nuclear weapons research, testing, and verification and nuclear materials production and safety. Particular attention will also be paid to obtaining a balance of interests, points of view, and geography.

The establishment of the Secretary of Energy Advisory Board has been determined necessary and in the public interest in connection with the performance of duties imposed upon the

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Department of Energy by law. The Board will operate in accordance with the provisions of FACA, the Department of Energy Organization Act, the GSA Final Rule on Federal Advisory Committee Management, and other directives and instructions issued in implementation of those acts.

Further information regarding this advisory committee can be obtained from Elinor Donnelly (202/586–3448).

Issued in Washington, DC, on December 12, 1989.

Howard H. Raiken,

Advisory Committee Management Officer.

[FR Doc. 89–29264 Filed 12–14–89; 8:45 am]

BILLING CODE 6450–01–M

Proposed Finding of No Significant Impact for the Southwestern Public Service Co. Circulating Fluidized Bed Boiler Repowering Demonstration Project, Amarillo, TX

AGENCY: Department of Energy.

ACTION: Proposed finding of no significant impact (FONSI) for the Southwestern Public Service Company circulating fluidized bed boiler repowering demonstration project, Amarillo, Texas.

SUMMARY: The Department of Energy (DOE) is negotiating a Cooperative Agreement with Southwestern Public Service Company (SPS) under the Innovative Clean Coal Technology (ICCT) Demonstration Program to conduct a cost-shared demonstration of the economic and environmental acceptability of a circulating fluidized bed (CFB) boiler repowering technology. The proposed project would be located at the SPS Nichols Station, Unit 3, in Potter County, Texas, near the City of Amarillo. Construction for the proposed facility would begin in 1990 and end in early 1993; the demonstration project would begin in 1993 and continue through 1997. If the demonstration is successful, commercial operation of the CFB boiler at Nichols Station would continue until the year 2027.

Before a cost-sharing demonstration project can proceed beyond preliminary design, DOE must comply with the requirement of the National Environmental Policy Act of 1969 (NEPA) to assess the impact of the proposed action and its alternatives. As part of its overall NEPA strategy for the ICCT Program, DOE conducted a comparative environmental review of alternative sites and alternative technologies. The results of this review were factored into the evaluation of the proposals and the selection of demonstration projects for negotiation.

In addition, an Environmental Assessment (EA) has been prepared to evaluate the potential impacts of the proposed action and the following alternative actions: no action, delayed action, alternative sites, and alternative technologies. The alternatives were rejected in favor of the proposed action because (1) No action would not contribute to the accomplishment of the objectives of the ICCT because it would preclude the collection of data and information on the economic and environmental acceptability of the CFB boiler technology as part of that program; (2) delayed action would delay the collection of data and information on the CFB technology and its commercial application; (3) alternative sites within the SPS system were not of the appropriate size or age for a demonstration of the CFB boiler technology; and (4) demonstration of an alternative technology at the Nichols station would eliminate the opportunity for collection of data and information on the CFB boiler technology as part of the ICCT demonstration program.

The analysis presented in the EA concludes that the proposed project will have no significant adverse impacts on air and water quality; ecological, socio-economic, and cultural resources; and any other facet of the human environment in Potter County, Texas, and regionally. The proposed project will be located at an existing industrial facility on previously disturbed land, have zero wastewater discharge, and operate within the atmospheric emissions limits set forth in the facility's federal and state air permits.

Based on the EA, the DOE has determined that the proposed CFB boiler repowering project is not a major federal action that would siginficantly affect the quality of the human environment within the context of NEPA, and as such, proposes to issue a Finding of No Significant Impact (FONSI). The proposed FONSI and the supporting EA are being made available for public review for a period of 30 days following the date of this notice. Following completion of the public review period, DOE will make its final determination on whether to issue a FONSI or to prepare an Environmental Impact Statement (EIS) for the proposed project.

Copies of the EA are Available From: Allyn Hemenway, FE–222, Office of Clean Coal Technology, U.S. Department of Energy, 1000 Independence Ave., SE., Washington, DC 20585, Telephone: 202/586–7162.

For Further Information About the Proposed Action Contact: John Brellenthin, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, 3610 Collins Ferry Road, Morgantown, WV 26505, Telephone: 304/291–4379.

For Further Information About the NEPA Process Contact: Carol Borgstrom, Office of NEPA Project Assistance, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, Telephone: 202/586–4600.

Comments: Comments on the proposed FONSI may be sent to Mr. Hemenway at the above address. Comments must be received by January 16, 1990 to assure consideration.

Background: The DOE has prepared an EA for the proposed CFB boiler repowering project pursuant to NEPA, as amended (42 U.S.C. 4321 et seq.), and the President's Council on Environmental Quality regulations for implementing NEPA (40 CFR parts 1500–1508). Following is a summary of the analysis presented in the EA

Description of the Proposed Action

The proposed action is a repowering project to be conducted at the SPS Nichols Station, Unit 3, in Potter County, Texas, near the City of Amarillo. Nichols Station consists of 3 gas-fired units capable of generating a total of 479 megawatts (MW). The demonstration technology would be a CFB coal-fired boiler, which would replace the existing 256 MW gas-fired Unit 3. The proposed action is intended to demonstrate the successful application of a repowering technology that could be used by U.S. utilities to replace a major portion of an existing facility. Application of this technology could increase facility capability, extend facility life, improve system efficiency, add/or provide for the use of different fuel while complying with environmental standards. The demonstration of the CFB boiler has been scaled to generate sufficient data from design, construction, and operation so that private industry can assess its potential for commercial application.

Construction activities for the demonstration project will include; (1) excavation for the boiler building foundations, utilities, the baghouse, and the stack; (2) set up the boiler, auxiliary systems, baghouse, and stack; (3) connection of utilities; (4) installation of a new railroad siding and access road at the north end of the plant; (5) development of temporary ash storage and/or permanent ash disposal areas; and (6) construction of a coal conveyor from the SPS Harrington Station located one mile north of Nichols. About 12 acres of previously disturbed land will be excavated for new CFB facilities. From 15 to 55 acres of land would be needed for temporary ash storage and/or permanent ash disposal sites. Construction is scheduled to begin in 1990 and extend through completion in early 1993.

Demonstration of the CFB boiler would begin in 1993 and would last 4 years. For purposes of analyzing projected project impacts from the proposed action, the EA assumes that the repowered Unit 3 would operate continuously at its full rated capacity (256 MW). Part of the demonstration would be dedicated to testing various coals having different properties, especially sulfur and ash content, and various sorbents. The actual capacity factor of the unit may vary during the demonstration based on SPS system demand.

Operation of the CFB boiler will involve coal and limestone sorbent being simultaneously introduced into a combustion chamber in a bed of solids that is suspended through the action of fluidized combustion air. Fluidization will promote the turbulent mixing conditions required for high combustion efficiency and a reaction of the sulfur in the coal combustion gases with the calcium in the sorbent. The process will provide a 70–90% reduction of sulfur dioxide (SO_2) emissions without the need for flue gas scrubbers. Combustion temperature will be less than that of conventional coal-fired boilers and will reduce the formation of nitrogen oxides (NO_x) in the combustion gases by about 50%.

Cyclones collect and recirculate most of the solids emitted by the fluidized-bed boiler. The combustion gas will exit the cyclone and flow to a baghouse which collects particulate matter (fly ash).

Alteratives to the Proposed Action

As discussed above, alteratives considered in the review of the proposed action included: (1) No action, (2) delayed action, (3) alternative sites, and (4) alterative technologies.

Environmental considerations

Because of the quantitative changes in atmospheric emissions when coal rather than natural gas is burned, the EA describes the existing air quality in detail, and the impacts analysis correspondingly focuses on air quality. Other areas of potential impact include terrestrial ecology, land use, water quality and socioeconomics.

Based on the analysis presented in the EA, DOE concludes that the proposed project will not significantly impact air and water quality; ecological, socioeconomic, and cultural resources; or any other facet of the human environment in Potter County, Texas, and regionally. The following points support the conclusion of no significant impact from the SPS CFB boiler repowering demonstration project.

Air Quality

Coal combustion in the Nichols Unit 3 boiler would increase the maximum emissions of all measurable air pollutants over maximum emissions from the existing natural gas fired boiler as shown in Table 1.

TABLE 1—COMPARISON OF MAXIMUM AIR EMISSIONS FOR NICHOLS UNIT 3 GAS-FIRED, AND NICHOLS UNIT 3

[CFB in tons per year*]

Pollutant	Nichols 3 Gas-Fired	Nichols 3 CFB
Sulfur Dioxide (SO_2)	5.9	7298
Nitrogen Oxides (NO_x)	5420	7298
Particulate Matter (PM)	49	368
Carbon Dioxide (CO_2)	0.95×10^6	1.64×10^6
Carbon Monoxide (CO)	394	2146
Sulfuric Acid (H_2SO_4)	0.06	35
Volatile Organic Compounds (VOC)	14	33
Fluoride (F)	Trace	2.9
Mercury (Hg)	Trace	1.5
Lead (Pb)	Trace	0.05
Beryllium (Be)	Trace	0.000005

*Maximum emissions based on a variety of coal types. Actual emissions are expected to be less.

Potential impacts from coal combustion emissions (PM, SO_2, NO_x, and CO) were evaluated by comparing maximum predicted ground-level concentrations in the ambient air (at or beyond the SPS perimeter) to the National Ambient Air Quality Standards (NAAQS). Because no NAAQS exists for H_2SO_4 mist and Hg, predicted ambient concentrations of these were compared with Texas ambient air quality standards and Prevention of Significant Deterioration (PSD) *de minimis* impact values, respectively. Emissions of VOC, Pb, F, and Be were not subjected to further analysis since none exceeded the PSD significant emission rates.

Comprehensive air dispersion modeling was performed using the Industrial Source Complex Short Term (ISCST) model to estimate maximum ground-level concentrations of particulate matter, SO_2, NO_x and CO. ISCST estimates concentrations of a pollutant from multiple point sources by using a steady-state Gaussian plume equation for continuous sources.

Predicted concentrations from the CFB boiler alone and cumulative emissions from the CFB boiler and existing sources were compared with HAAQS and PSD increments for SO_2 and NO_x, for PM and CO, predicted concentrations from the CFB boiler alone were found to be such a small fraction of the standards that the evaluation of impacts from cumulative emissions is unnecessary. The comparison of cumulative emissions to PSD increments includes some sources existing prior to the implementation of PSD regulations; therefore, this analysis goes beyond regulatory requirements. Examination of SO_2 and NO_x sources with the potential to contribute substantially to ambient concentrations revealed that the only major existing SO_2 sources are the three Harrington Station coal-fired units. Substantial existing NO_x sources include the Harrington units, the gas-fired Nichols units, and two smaller sources at the ASARCO Copper Refinery located approximately 1.5 km (0.9 mi) east of the project site.

Results of ISCST model runs indicate that maximum predicted concentrations are less than existing NAAQS and PSD increments for the four pollutants modeled (PM, SO_2, NO_x, and CO) for all averaging times. The 24-hour SO_2 concentration for cumulative emissions consumes the greatest percentage (85%) of the PSD increment (77 vs 91 ug/m^3). Maximum concentrations occur within 10 km (6 mi) of Nichols Unit 3. Short-term SO_2 concentrations, and to a lesser extent annual NO_x concentrations, would be the "drivers" for the proposed project in meeting and maintaining air quality standards, (i.e., if maximum concentrations do not exceed NAAQS PSD increments for short-term SO_2, it is unlikely that other violations would occur). Predicted particulate matter and CO concentrations are a very small fraction of the standards. Maximum concentrations of sulfuric acid mist and mercury, estimated by prorating results from air dispersions modeling of SO_2 are less than or equal to 5% of the Texas ambient air quality standards and PSD *de minimis* impact value, respectively. Because of the conservative assumptions stated previously, the results for all pollutants form an upper bound of expected concentrations.

While compliance with regulatory standards is not conclusive evidence that the impacts from this project are insignificant, it provides a useful benchmark for comparison. Using the conservative analysis described above (maximum emission rates and inclusion of adjacent sources), the ambient air quality levels after the project begins operation are expected to remain well below the applicable NAAQS.

The above analysis indicates that on a 24-hour basis up to 85% of the available

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PSD increment for SO_2 may be consumed. This raises questions regarding the potential for further industrial growth in the area because of the relatively small increment remaining. It is important to note several items regarding increments and predicted concentration levels. First, predicted concentrations are very sensitive to source locations in relation to one another, to the height at which pollutants are emitted (stack height), and to meteorological conditions, especially wind speed and direction, and atmospheric stability. Industrial growth would be possible by carefully considering these parameters during the design phase of future projects.

Second, the analysis presented here represents a combination of conditions that provide an upper bound against which to measure impacts. Third, this analysis includes sources (e.g., Harrington Units 2 and 2) which would not be included in a regulatory analysis of increment consumption designed to support a new source permit applications. Therefore, actual increment consumption could be less than predicted in this anaylsis.

The nearest Class I PSD area (designated to restrict the degradation of ambient air quality) is located 275 km (172 mi) east of Nichols Station in Oklahoma. Because of the distance of the Class I area from Nichols Unit 3, Nichols emissions are expected to result in ambient concentrations that are indistinguishable from existing background levels at the Class I PSD area.

Coal combustion generates atomspheric emissions of SO_2 and NO_x that are believed to contribute to the formation and deposition of acidic compounds. The effect of atmospheric emisssions of SO_2 and NO_x on acidic deposition (acid precipitation and dry deposition) is difficult to quantify. The complex chemical reactions that transform, SO_2 and NO_x into acidic compounds which contribute to acid rain are not fully understood, and these source-receptor relationships between power plant emissions and acidic deposition have not been fully quantified. Establishement of clear source-receptor relationship for acid rain is hampered by the long travel times between sources of acid rain precursors and the occurrence of acid rain. The long travel times translate into long distances between sources and receptors because the emissions are carried by the wind from one region to another. Acid rain is currently most evident in the eastern United States, with the greatest acidity (a pH of approximately 4.2) found in an area from eastern Ohio through Pennsylvania into Western and Northern New York. The 1987 National Acid Precipitation Assessment Program found that the Ozark Mountains, the nearest downwind region where project impacts from acid rain might occur, has acidity levels equal to average natural background precipitation for the eastern U.S. with a pH of approximately 5.0.

The relative contribution of the CFB project emissions to regional acidic deposition can be estimated by comparing the annual SO_2 and NO_x emissions from the CFB (6635 metric tons each (7298 tons)) with regional total SO_2 and NO_x emissions. SO_2 and NO_x emissions from the proposed project would equal 16% and 20% respectively, of the 1985 emissions from all coal-fired power plants in the northern Texas panhandle. From the perspective of the entire state of Texas, SO_2 and NO_x emissions from the proposed project would equal approximately 1% and 2% respectively, of existing state-wide emissions of SO_2 and NO_x. Project emissions would be less than 1% of the five-state total emissions for 1985. Because the comparison considers only coal-fired power plants (excluding industrial sources of SO_2 and NO_x) in the region and states, the percentages of emissions form an uppper bound of the CFB project's potential contribution to acidic deposition. Based on the current understandiang of acid rain phenomena, the emissions from the proposed project, and the meteorology of the project area, it cannot be stated conclusively whether or not the CFB project will cause or contribute to the adverse impacts associated with acidic deposition either regionally or nationally.

A critical worldwide environmental issue is the possibility of significant changes in the global climate (e.g., global warming) as a consequence of increasing atmospheric concentrations of "greenhouse" gases, especially CO_2. It is generally agreed that fossil fuel burining is the primary contributor to increasing concentrations of CO_2. Because CO_2 is stable in the atomosphere and is essentially uniformly mixed throughout the troposphere and stratosphere, the climatic impact does not depend on the geographic location of sources. Therefore, an increase in CO_2 emissions at a specific source is effective in altering CO_2 concentrations to the extent that it contributes to the global total of fossil fuel burning that increase global CO_2 concentrations.

The proposed CFB boiler is expected to emit a maximum of 1.64 million tons per year of CO_2 compared with an existing maximum of approximately 0.95 million tons per year for the natural gas-fired Nichols Unit 3. The percentage increase in CO_2 emissions contributed by the CFB boiler compared with the total from all U.S. coal combustion is less than 0.1%. The percentages are even less when compared with U.S. and global combustion of all fossil fuels.

Water Resources

Sources of wastewater from operation of Nichols Unit 3 CFB include cooling tower blowdown, boiler blowdown, sanitary wastes, fly ash vacuum seal blowdown, and boiler water treatment and regeneration wastewater. All but the cooling tower blowdown and sanitary wastes would be recycled in the complex for use as makeup water. Sanitary wastes would be discharged to the plant's sewage system, while cooling tower blowdown would be pumped to onsite lined storage ponds for subsequent use in the irrigation of forage crops.

Cooling tower wastewater produced per MWh would be the same for gas- and coal-fired operation.

The daily total wastwater produced by Nichols Unit 3 (including boiler, cooling tower, and fly ash seal blowdown) will decrease from 319,488 to 288,768 gal during the demonstration project, or about 10%. For the Nichols-Harrington complex as a whole, the net decrease in daily wastewater produced during the demonstration will be 30,720 gallons, or a decrease of about 1%. The significance of this change was evaluated with regard to the holding capacity of the on-site storage ponds and the potential for irrigation water to contaminate surface water. Eleven on-site lined ponds store wastewater from the Nichols and Harrington plants for use in irrigation. The ponds have a combined capacity of 0.3 billion gal. Maximum annual wastewater produced from both Nichols and Harrington during the demonstration project would be 1.7 billion gallons. Therefore, if none of the stored water were used for irrigation, the on-site ponds would be capable of retaining all wastewater produced for 60 days on an average basis. The wastewater would be used for irrigation up to the maximum Texas Water Commission permitted rate of 4.6 acre-ft/acre/year (1.9 billion gal per year).

The Texas Water Commission permit to dispose of Nichols-Harrington wastewater specifies that "there shall be no discharge of process wastewaters to the waters of the State." It also defines the natural drainage of the irrigation areas to Indian Creek and Bonita Creek and ultimately, the Canadian River Basin. The storage ponds are spatially located in the irrigated areas so that irrigation tailwater and surface runoff will flow back to them and not to surface waters. This prevents process wastewaters from flowing to waters of the State. No significant change in quantity or quality of wastewaters is expected to result due to repowering of the present gas-fired operations at Nichols Unit 3.

Implementation of this project will result in no measurable change to the existing groundwater impacts. Quantities of wastewater to be used in irrigation will decrease by about 1% for the Nichols-Harrington complex as a whole. The decrease is within the historical variation in annual wastewater volumes. Irrigation water application and monitoring of water table levels and groundwater chemistry will continue as required in the complex's wastewater disposal system permit.

Leachate generation rates through temporary ash storage or permanent ash disposal sites are expected to be low because there is a large annual excess of evaporation over rainfall at the site. It can be assumed that the calcium rich fly ash will react with water used for ash disposal to form a natural cement which will further limit the potential infiltration of rainfall (an assumption which will be tested by leach tests on Nichols Station fly ash during the demonstration phase of CFB operations). Furthermore, the ash storage cell will be lined to contain any leachate generated within the cell and thereby prevent negative impacts of leachate on groundwater.

Land Use

The project activities are consistent with existing land use and no zoning changes would be required. The project would be installed and operated at an existing industrial facility in a previously disturbed location. The proposed site is not located in a floodplain, and no wetlands will be affected by construction or operation of the CFB boiler and associated facilities.

Terrestrial Ecology

Only about 5 ha (12 acres) would be permanently occupied by new construction. A few more hectares of land beneath the proposed conveyor belt would be needed. In addition, another 8 to 12 ha (20 to 30 acres) would be disturbed temporarily for ancillary activities (e.g., construction parking and materials laydown areas) during construction. The areas planned for the CFB boiler, the construction material laydown site, and the new plant access road are currently either planted in wheatgrass or have already been disturbed by prior plant activities. SPS has successfully revegetated other areas near Nichols Station with native grasses, and revegetation of areas temporarily disturbed during construction would be expected to be similar. The areas to be permanently covered by new construction currently do not provide significant wildlife habitat. When construction is complete and re-vegetation of temporarily disturbed sites is completed, wildlife would again use those areas. Thus, any impacts on terrestrial ecosystems due to construction would be fully mitigated.

Coal combustion in the CFB boiler at the Nichols plant would result in an increase in emissions of SO_2 and NO_x with corresponding potential for increases in regional acidic deposition. The prevailing southwesterly wind pattern suggests that most of the acidic material emitted would be carried aloft toward the northeast, ultimately increasing wet and dry deposition in the Ozark Mountains of Arkansas, Eastern Kansas, and Western Missouri. The impacts associated with deposition on crops and terrestrial ecosystems are not fully understood but are expected to be slight as present levels in the receptor areas. Potential effects that have been identified include (1) declines in forest productivity, (2) changes in forest cation cycling, (3) changes in wetlands species composition, and, in some cases, (4) reductions in crop yields (e.g., peanuts, soybeans). Hardwood forests and crops in Arkansas, Kansas, and Missouri would most likely be affected by regional emissions, including those from the Nichols CFB unit. However, soils in the target areas are naturally acidic and may not exhibit effects. Arkansas is one of the states considered potentially at risk for crop losses from acidic deposition. Because the increased emissions of SO_2 and NO_x from the demonstration project will constitute less than 1% of the five-state regional total emissions, impacts of the project to terrestrial ecosystems are not expected to be quantifiable using currently available techniques of measurement and analysis.

Ash from the demonstration phase of the CFB that is not marketed will be disposed at one of two alternative sites. Site I (the perferred site), is currently planted in wheatgrass and irrigated with wastewater. If this site is used for ash disposal, other areas on the site could replace its present use for wastewater disposal. Site II is currently vegetated with a mixture of low quality grasses, forbs and shrubs, that is typical of the undeveloped portions of the site. Specific characteristics of CFB generated ash are not fully known. A full chemical and physical characterization of the ash will be performed during the demonstration.

Irrigation with wastewater would be similar to that which is ongoing at the site. No significantly different impacts to terrestrial ecosystems have been observed to have resulted from irrigation with wastewater in the past, as compared to irrigation of similar crops with other water sources, and none would be expected in the future.

Aquatic Ecology

There are no permanent aquatic communities near the Nichols-Harrington complex that would be impacted by construction and operation of the proposed project. The absence of aqueous effluents from the site precludes impacts of off-site aquatic biota.

Impacts from the deposition of acidic air emissions on water quality and aquatic biota are related to the acid-buffering capacity of the receiving waters. Near the Nichols Station, surface waters are generally alkaline and would be affected little by a small increase in acidic deposition. However, the surface waters of eastern Texas and Oklahoma and western Arkansas are not highly mineralized and are susceptible to acidification. Acidification of lakes and streams could cause a loss of fish and other aquatic organisms, although the degree of pH change and any resultant loss of aquatic biota due to acidic deposition from the Nichols project would be difficult to quantify.

Threatened and Endangered Species

No state or federally proposed or listed threatened or endangered species or critical habitat for such species are present in the project area or are expected to be impacted by the proposed project. Consultation with the U.S. Fish and Wildlife Service in compliance with Section 7 of the Endangered Species Act has been completed.

Socioeconomics

The proposed action would require an average construction employment of 165 people from 1991 through 1993, with a peak employment of 279 in 1992. Most of the construction employment would be supplied from within the Amarillo area. However, there may be some craftsmen, such as boilermakers, who would be temporarily relocated to the Amarillo

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area. Assuming 15% of the 279 required construction workers move into the area and the average increase per new worker is 2.3 persons, the total in-migration (workers plus family) for the project would be 98 during 1992. This would be temporary and would represent an increase of 0.05% of the existing population.

The operating phase of the proposed action would require 12 additional permanent employees. This increase is expected to have little, if any, discernible effect on long-term employment or population in the Amarillo area. The proposed action would provide a relatively small positive benefit to the local economy through increased employment and expenditures for labor during the construction period.

Potential impacts to housing, public services, and infrastructure would result from direct demands by the project on these services and/or indirect demands related to changes in income and population. The construction phase would induce an in-migration of about 42 construction workers with an additional 54 family members. These workers and their families temporarily would require housing and public services. However, demands would be well within Amarillo's capacity to accommodate them. In January 1989 it was estimated that there were 4000 unoccupied single-family units, more than 2800 unoccupied apartments, and around 300 unoccupied mobile homes in Amarillo. There is expected to be no significant influence on the Amarillo infrastructure and capacity to supply public services due to construction or operation of the CFB.

Traffic would increase during construction with a worst-case estimated peak employment of 279 in 1992. Demonstration project construction employees would work an 8 a.m. to 5 p.m. shift; plant operation employees work a 7:30 a.m. to 4 p.m. shift. Therefore, the additional traffic generated by construction would not exacerbate existing plant traffic during peak periods. Although increased traffic during construction would be noticeable during peak arrival and departure times, no significant delays or traffic problems would be anticipated. During later operation, the effect of 12 additional permanent employees on traffic would be minor. The proposed project would require 2 trucks per day to deliver limestone and an additional 2 trains per week to deliver coal. These deliveries represent a small increase in current operations which require no limestone trucks each day, and 7 trains weekly. Current truck traffic to the Nichols/Harrington complex for ash sales averages 15 trucks per day.

Cultural Resources

The Texas Historical Commission has indicated that the proposed action would not affect sites on or eligible for the National Register of Historic Places. The Commission has, however, indicated that cultural materials may be buried in the project area. If any are encountered during construction or disposal activities, excavation would be halted temporarily until the State Historic Preservation Office (SHPO) could be contacted for assistance and instructions in dealing properly with the cultural materials involved.

Noise

Ambient noise levels would increase temporarily during construction because of heavy equipment used for earth moving and compaction during excavation. This disturbance would begin in August 1990 and last several months. Noise levels between 65 and 100 dBA (at the source) would be audible at attenuated levels at residences about 1.2 km (0.76 mi) to the west and 0.5 km (0.3 mi) to the south. The noise would occur during daylight hours and would most likely affect only outdoor activities.

Noise from construction would attenuate to acceptable levels at the nearest residence (less than 65 dBA) and would not adversely affect hearing. However, prolonged disruption of the residential ambience could annoy residents and interfere with speech intelligibility. Impacts on residential well being would depend on the resident's subjective perceptions about the construction activity and the Nichols Station in general. Overall, impacts would be expected to be minor due to the temporary nature of heavy equipment use and the limited number of residents who are within hearing distance of the site. Increased noise during operation would result from forced draft fans (about 90 to 100 dBA). Noise inside buildings as a result of equipment not presently used for gas fired operations at Nichols Station would increase above present levels, and greater noise protection for employees will be provided. The fans will be equipped with sound deadening enclosures, acoustically effective insulation, inlet silencers, and/or variable speed drivers, as needed to protect employees in the vicinity of these units from high intensity sound.

Thus, the limited increase in noise during operation would occur primarily within plant structures and would not be expected to affect nearby residential areas.

Solid Wastes

Construction waste generated by the proposed project would include non-hazardous solids, concrete rubble, and excavated soil, all of which would be landfilled on-site near Harrington Station under the terms of an existing permit. Non-hazardous liquids would be incinerated by SPS for energy recovery. Hazardous liquids would be stored in drums at a temporary holding site and later shipped to an off-site RCRA-permitted hazardous waste facility.

Two alternative ash storage and/or disposal sites have been proposed. Either of these sites would be suitable because they lie on relatively high ground, well above the water table, and are unlikely to be impacted by floodwater. During operation of the CFB demonstration project, as much as 73,000 tons per year of fly ash would be generated. This could vary substantially depending on whether Powder River Basin or Raton Basin coal is utilized. During the demonstration period, fly ash would be temporarily stored on a 5 ha (12-acre) site to a depth of between 1.3 and 2.8 m (4.3 and 9.4 ft). The storage cell would be excavated to a depth of about 3 m (10 ft), and the soil removed would be used to construct a dike a few meters above grade to serve as a wind break and to direct runoff away from the cell. Upon completion of the demonstration period, the stored ash would either be sold and shipped off-site, or the storage cell would continue to receive ash during commercial operation until it reaches its full height of 12 m (38.4 ft). An additional 1.2 ha (3 acres) would be required for a laydown area. Total land requirements for ash storage during the 4-year demonstration project would be approximately 8 ha (19 acres). Details of design and construction of disposal sites would be negotiated between SPS and the Texas Water Commission, Solid Waste Division, to prevent groundwater impacts and to keep air quality, surface water, and land use impacts as low as reasonably achievable.

Electromagnetic Fields

Electrical power transmission lines produce electromagnetic fields around them. The CFB demonstration project would not require a change in the nature or number of existing transmission lines from the Nichols-Harrington complex, therefore, it is not expected that any additional impacts will result from construction or operation of the CFB facility.

Commercial Operation

SPS has indicated that commercial operation of the CFB boiler at Nichols Station Unit 3 would begin after the demonstration period ends in 1997 and would continue through the year 2027. During commercial operations the unit would generate a maximum of 250 MW and would be integrated into the SPS system, and be dispatched with the other SPS power generating facilities.

Since commercial operations are not expected to differ substantially from operations during the 4-year demonstration, the impacts from commercial operation are not expected to be significantly different than those described for the demonstration period.

Regulatory Consideration

SPS facilities are required to comply with the Federal Clean Air Act and the Texas Clean Air Act. A PSD air permit from EPA and a construction and operating permit from the state has been obtained for the proposed CFB project. Provisions for ash handling are included.

The project will be a new source regulated by Federal New Source Performance Standards (NSPS). Plant emissions will be monitored continuously by SPS for SO_2 opacity, NO_x and O_2 or CO_2. These data will be collected by instrumentation and averaged and recorded as required. The coal will be analyzed on a daily basis. The sulfur content and heating value of the coal will be used to determine the percent reduction of the sulfur emissions accomplished by the CFB technology.

The Nichols-Harrington complex presently operates under a zero discharge permit issued by the TWC (Wastewater Permit # 01990). Minor modifications of the permit are anticipated to include a notification of the process changes that would result from the proposed project. Irrigation application rates and water quality are expected to remain within permitted conditions.

Consultation with the U.S. Fish and Wildlife Service in compliance with section 7 of the Endangered Species Act has indicated that no proposed or listed threatened or endangered species or proposed or designated critical habitats would be affected by this project.

Section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) authorizes the Army Corps of Engineers to issue permits for the discharge of dredged or fill material into navigable waters of the U.S., which includes wetlands. No wetlands at or near the project site are expected to be affected by the proposed project, therefore, a dredge and fill permit will not be needed.

Liquid wastes are regulated by the TWC. Solid wastes are regulated by the TWC, Solid Wastes Section. Design and construction of temporary storage and/or permanent disposal cells for fly ash at Nichols Station will be carried out in accordance with guidelines of and consultation with the TWC.

The National Historic Preservation Act of 1966 (Pub. L. 89-665; 16 U.S.C. 470 *et seq.*), as amended, requires Federal agencies to consider the effect of their actions on any property included in, or eligible for inclusion in, the National Register of Historic Places. Compliance, as outlined in DOE's NEPA Compliance Guide, requires that such properties be identified and the effects of the project be determined in consultation with the State Historic Preservation Office (SHPO). If the process determines that there would be an adverse effect, DOE must consult with the SHPO and notify the Federal Advisory Council on Historic Preservation to determine appropriate mitigating measures. The Texas Historical Commission has advised DOE that no sites listed or eligible for the National Register of Historic Places occur at the Nichols Station and that further consultation is unnecessary.

Proposed Determination

Based on the information and analyses in the EA, the DOE believes that the proposed CFB Repowering Demonstration Project located in Potter County, Texas, does not constitute a major federal action that would significantly affect the quality of the human environment within the context of NEPA. Thus, DOE proposes to issue a FONSI and therefore not require the preparation of an EIS. DOE will make a final determination following consideration of comments received during the 30-day public review period.

Issued in Washington, DC, December 11, 1989.

Peter N. Brush,

Acting Assistant Secretary, Environment, Safety and Health.

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Bonneville Power Administration

Record of Decision on the Surplus Power Sale and Exchange Agreement with M-S-R Public Power Agency

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Record of Decision (ROD).

SUMMARY: BPA has decided to enter into a surplus firm power sale and exchange agreement with the M-S-R (Modesto-Santa Clara-Redding) Public Power Agency. Beginning the first day of the first calendar month after the California-Oregon Transmission Project (COTP) starts commercial operation, BPA will make available, and M-S-R will purchase, surplus firm power. When BPA determines that it will not have enough surplus firm power to serve its Pacific Northwest (PNW) customers and its extraregional obligations, the power sale will convert in whole or in part to a seasonal capacity-for-energy exchange. Conversions would occur in increments no smaller than 50 megawatts (MW). Furthermore in no case will power deliveries continue for more than 20 years following the date of execution of the contract. However, deliveries of capacity shall continue for 20 years following the date of initial deliveries under the contract. The date of initial delivery will depend on the commercial operation date of the COTP.

The agreement consists of 100 MW of demand with a 50-percent load factor from the beginning of the agreement (the first month after commercial operation of the COTP) through July 31, 1996. Contract demand will increase to 150 MW, also at a 50-percent load factor from August 1, 1996, until 20 years after the agreement is executed, unless previously converted to a capacity-for-energy exchange. Through January 1, 1990, M-S-R has a one-time right to increase or decrease either or both the 100-MW and 150-MW contract demand blocks with associated annual energy by up to 50 percent.

The Administrator relied on the Intertie Development and Use Final Environmental Impact Statement (IDU Final EIS, DOE/EIS-0125F) in determining the potential environmental effects of this decision. The IDU Final EIS analyzed the environmental effects of various potential extraregional firm marketing activities, such as this agreement with M-S-R. The alternative actions considered in the EIS were (1) to take no action, i.e., not to enter into firm contracts with extraregional entities; and (2) to enter into a variety of firm contracts including features like those contained in the agreement with M-S-R. In making this decision, the Administrator considered environmental, economic, and legal factors.

Except for potential effects on resident fish and cultural resources, the IDU analyses indicated no significant adverse environmental impacts in the PNW, California, Inland Southwest (ISW), or British Columbia as a result of BPA's proposal to make firm sales

outside the PNW. In consultation with the U.S. Fish and Wildlife Service and the State of Montana, BPA is funding imprint planting and habitat improvements on Hungry Horse Reservoir tributaries to preclude potential adverse impacts on resident fish, an important food source for bald eagles. To mitigate for potential adverse effects on cultural resources at the five major Federal storage reservoirs studied, BPA is developing a Programmatic Memorandum of Agreement (PMOA) with appropriate parties. This PMOA will fully satisfy BPA's National Historic Preservation Act obligations. All practicable means to avoid or minimize environmental harm from the selected alternative have been adopted and all consultation, review, and permit requirements have been met.

Economic analysis of this agreement shows that the present value of the expected revenues from the power sale to M–S–R for Fiscal Years (FY) 1993 through 2001 is $168 million, versus the present value of forecast spot market sales of $104 million over the same period. After 2001, it is projected that the sale would convert to a seasonal capacity-for-energy exchange through the end of the contract term.

BPA's agreement with M–S–R is consistent with applicable legislation, including Public Law 88–552, 16 U.S.C. 837–837h (Northwest Preference Act), and the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. § 839–839h (Northwest Power Act).

Entering into an agreement with M–S–R is the environmentally preferred alternative because of slight near-term reductions in air pollution in densley populated area in California, reduced near-term consumption of nonrenewable oil and gas fuels, and the added potential to defer building new resources in both regions.

FOR FURTHER INFORMATION CONTACT: Anthony R. Morrell, Assistant to the Administrator for Environment, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208; telephone (503) 230–5136.

SUPPLEMENTARY INFORMATION:

I. Decision

Bonneville Power Administration has decided to sign a long-term surplus power sale and exchange agreement with M–S–R.

II. Major Components of the Agreement

The major components of the power sale and exchange agreement are as follows:

A. *Term.* The power sale for up to 20 years from the date of execution of the contract and the capacity/energy exchange for 20 years from the date deliveries begin.

B. *Amount of Power.* 100 MW of contract demand, with 438,000 megawatthours (MWh) annual energy through July 31, 1996; then 150 MW of contract demand with 657,000 MMh annual energy from August 1, 1996, through the end of the contract.

C. *Options to Increase or Decrease.* M-S-R has the one-time right to increase or decrease by up to 50 percent either or both the 100-MW and 150-MW contract demand blocks and the associated annual energy amount. Written notice must be received by BPA on or before January 1, 1990.

D. *Rate.* The rate for this sale is under BPA's Short-Term Surplus Firm Power Rate Schedule, SP–87, which received interim approval from the Federal Energy Regulatory Commission (FERC) on September 29, 1987, Docket No. EF87–2011–000 and EF87–2021–000, 40 FERC ¶ 61,351, or its successor rate schedule(s) (section II(c)(1)). The SP–87 rate schedule includes a contract rate and a flexible rate. The flexible rate provides that BPA may negotiate a price with its customer which may be less than or higher than the contract rate. The prices in the M-S-R contract were negotiated between BPA and M-S-R and fall under the flexible rate provision of the SP–87 rate schedule. Initial rate for deliveries prior to October 1, 1991, is $5.00 per kilowattmonth (kW-mo) of demand and 26.9 mills per kilowatthour (kWh) of energy. Each October 1, beginning October 1, 1991, demand and energy rates will escalate based on changes in BPA's Priority Firm (PF) rate, plus a 1.75 percent escalator compounded annually through October 1, 2003. Thereafter, the rates will escalate based on changes in BPA's PF rate.

E. *Conversion to Seasonal Capacity-for-Energy Exchange.* When BPA determines that not enough firm energy is available to serve both its PNW customers and its extraregional surplus firm energy obligations, the sale will convert in whole or in part to a seasonal capacity-for-energy exchange in increments no smaller than 50 MW. The sale may also convert to an exchange if, despite its best efforts, BPA is unable to maintain in effect rates that accommodate the rate formulae applicable to the sale.

F. *The Exchange.* Upon complete or partial conversion to the seasonal capacity-for-energy exchange, BPA will make peaking capacity available to M-S-R during the May 15 through October 15 period. In exchange, BPA will receive peaking replace energy and exchange energy. M-S-R will return peaking replacement energy to BPA equal to the amount of peaking energy M-S-R received earlier from BPA, by 2400 hours on the day following BPA's delivery of peaking energy to M-S-R. In addition, M-S-R will deliver exchange energy to BPA, in equal weekly increments, during the November 1 through April 15 period at an exchange ratio of 1200 kWh of exchange energy per kilowatt (kW) of BPA capacity.

G. *Energy Account.* An energy account will be established in BPA's favor for the deferral of deliveries of peaking replacement energy and exchange energy from M-S-R. Energy in the energy account may be withdrawn by BPA on a first-in/first-out basis. BPA may not withdraw more than 22,410 MWh/month from the energy account prior to August 1, 1996, and not more than 33,615 MWh/month thereafter. These figures will be adjusted pursuant to M-S-R's exercise of its option to increase or decrease contract demand. Energy remaining in the account after 11 months must be cashed out. No more than one monthly total of energy can be cashed out in any monthly bill.

H. *Restrictions:* Energy deliveries are subject to 60-day termination of deliveries, and capacity deliveries are subject to a 60-month termination of deliveries by BPA pursuant to Public Law 88–552, 16 U.S.C. § 837–837h (Northwest Preference Act) and 16 U.S.C. § 839–839h (Northwest Power Act).

III. Background

In the fall of 1984, BPA began preparing the IDU Draft EIS addressing actions related to the power system effects of (1) adoption of a Long-Term Intertie Access Policy (LTIAP); (2) potential export marketing arrangements; and (3) expansion of Intertie capacity. The Draft IDU EIS was issued on October 31, 1986. The need for the actions addressed by the IDU Draft EIS included managing the transfer of surplus power between the PNW and California (see IDU Draft EIS, p. 1–1). The BPA/M-S-R power sale and exchange agreement is an export marketing arrangement of the type analyzed in the IDU Draft EIS.

The IDU Draft EIS used computer models to simulate the operation of the PNW combined thermal and hydropower system and the resulting potential impacts on fish, recreational resources, cultural resources, irrigation, air and water quality, land use, and nonrenewable resources. As a result of

comments received during a 78-day public comment period, some changes were made in the models.

On November 13, 1987, BPA published the Hydro Operations Information Paper, based on an analysis of computer simulations produced by the revised, updated models. The paper included an analysis of the effects of long-term extraregional firm marketing on anadromous and resident fish, recreational resources, and cultural resources. The results of these analyses were similar to the results shown in the IDU Draft EIS. Public review and further BPA analysis did not reveal any significant new information, so BPA completed its IDU Final EIS and filed it with the U.S. Environmental Protection Agency on April 8, 1988. A ROD on one of the actions that was proposed in the IDU Draft EIS, that is, the adoption of a LTIAP, was signed by the Administrator on May 17, 1988.

Copies of the IDU Draft and Final EIS's, the Hydro Operations Information Paper, the LTIAP, the LTIAP ROD, the DC (Direct Current) Terminal Expansion ROD, the Third AC (Alternating Current) ROD, and the Southern California Edison ROD are available from BPA's Public Information Center, located in BPA's headquarters building, 905 NE. 11th Avenue, Portland, Oregon.

IV. Alternatives

BPA considered two alternatives: (1) Take no action—do not enter into such agreements as the power sale and exchange agreement with M-S-R; and (2) enter into contracts for extraregional firm power and exchange agreements such as the power sale and exchange agreement with M-S-R.

V. Decision Factors and Issues

In arriving at the decision to enter into the agreement with M-S-R, environmental, economic, and legal factors were considered.

A. *Environmental Factors.* In the IDU Final EIS, BPA analyzed how various extraregional long-term firm contract scenarios, including Federal marketing, could be expected to affect the quality of the human environment. The sale to M-S-R, including capacity-for-energy exchange options, represents only a small portion of the 2550 MW (capacity) of generic firm contracts analyzed under the Federal marketing scenarios in the EIS. Therefore, only a small portion of the total cumulative effects of Federal marketing activities addressed in the IDU EIS could be attributed to the BPA/M-S-R agreement. On the other hand, if BPA took no action, there would be no change in the environmental status quo in the Northwest.

1. *Impacts on Fish, Wildlife, and Vegetation Related to Operation of Pacific Northwest Hydroelectric Resources.* Under the Northwest Power Act, BPA must protect, mitigate, and enhance fish and wildlife, including related spawning grounds and habitat, of the Columbia River and its tributaries. BPA must conduct its river operations in a manner that provides for equitable treatment for fish and wildlife. Firm extraregional marketing activities were found in general to have no significant effect on anadromous fish and vegetation. Potential adverse effects on resident fish (an important food source for bald eagles) at Hungry Horse Reservoir will be mitigated by imprint planting, habitat improvement, and monitoring.

Commenters on the IDU Draft EIS and Hydro Operations Information Paper stated that the potential for significant adverse effects on resident and anadromous fish, wildlife, and cultural resources from firm marketing activities was a major environmental concern. It was also contended that the methodology BPA used to analyze impacts on anadromous fish underpredicts, incorrectly predicts, or is too uncertain to predict these impacts.

BPA performed extensive analyses on how various firm marketing activities could affect fish. These results are reported in the IDU Final EIS. BPA believes that the Systems Analysis Model (SAM) and the FISHPASS model used for the IDU Final EIS constitute the best available methodology for analysis of impacts of operation of the hydrosystem on anadromous fish. Sensitivity analyses were performed to test the uncertainty of the model results with respect to key FISHPASS model parameters, bypass system assumptions, and key SAM assumptions. These analyses showed that, when used for a comparative analysis (i.e., when comparing fish survival under one alternative versus another), variations in the key assumptions did not significantly alter model results. Consequently, it is reasonable to conclude that much of the uncertainty of the FISHPASS model parameters is not critical to the study results for relative changes in survival associated with the alternatives addressed in the IDU Final EIS (see IDU Final EIS, pp. 4.2.3–23 through 4.2.3–32, and Appendix E, Part 6). The effects of firm marketing activities on anadromous fish survival were found to be small and are not expected to be significant, provided planned fish passage improvements are made at several mid-Columbia projects (see IDU Final EIS, pp. 4.2.3–35).

BPA's reliance on the accomplishment of planned fish passage improvements at Federal and public utility dams on the Columbia and Snake Rivers, to preclude potential significant impacts on anadromous fish, was an issue raised by several commenters in the IDU Draft EIS process. The potential effects of failure to install planned fish passage facilities were addressed in four sensitivity analyses (see IDU Final EIS, pp. 4.2.3–33 through 2.3–34). In the first, bypass installation was delayed 3 years beyond the dates assumed in BPA's principal analysis. In the second, planned new bypass systems at The Dalles and Ice Harbor Dams were assumed to be foregone. In the third, an assumption was made of no new planned bypass system at The Dalles, Ice Harbor, and Lower Monumental Dams. The fourth sensitivity test assumed no additional new bypass systems and no improvements of existing systems at any of the dams.

The predicted effects of firm marketing activities under these various conditions were minor. Sensitivity analyses indicate that failure to construct the planned mid-Columbia bypass facilities, in conjunction with Federal marketing activities, could impact Methow River spring chinook (see IDU Final EIS, p. 4.2.3–35). The Methow River spring chinook run is likely a mixture of natural stock and fish from Winthrop National Fish hatchery. The stock has shown improvement in recent years with both runs having about 600 spawners. It is still considered depressed and unharvestable, but the improvements are promising.

There has been no sport or Indian harvest of the Methow River spring chinook stock. Columbia River sport, commercial, and Indian spring chinook fisheries are regulated to harvest minimum numbers of upriver stocks. Therefore, it is assumed that no significant numbers of Methow spring chinook are taken in any fishery. The stock is managed throughout its life cycle as a critical hatcher-supplemented stock.

Design and testing of bypass facilities at the mid-Columbia Public Utility District projects are proceeding. BPA is confident that these bypass improvements will be completed within the time projected in the IDU Final EIS.

An analysis also was conducted to assess the impacts of firm marketing activities on the ability to coordinate fall and spring flow levels to facilitate successful adult spawning and fry emergence within the Hanford Reach. No significant effects were found (see IDU Final EIS, p. 4.2.3–41). BPA has

since become a party to the Vernita Bar agreement which insures protection of fall chinook on Vernita Bar.

have no significant effects (see IDU Final EIS, p. 4.2.2–4).

5. *Impacts on Cultural Resources.*

firm contracts have negligible impacts on PNW coal generation. Hence, impacts on coal consumption and

compliance with permits, and the fact that effects on threatened and endangered species must be considered

BPA's average PF rate. Through October 1, 2003, the annual escalation of the M–S–R demand and energy charges is the

postpone expensive purchase or construction of resources, especially sources of capacity.

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since become a party to the Vernita Bar agreement which insures protection of fall chinook on Vernita Bar.

With regard to resident fish production in PNW reservoirs, long-term firm power contracts, such as Federal marketing, do affect reservoir elevations. Elevations generally are lower in the fall and winter months. There are potential adverse impacts on resident fish in Hungry Horse Reservoir with monthly average reservoir levels dropping by as much as about 5 feet during the critical months of September through November (see IDU Final EIS, pp. 4.2.3–12 through 4.2.3–14). Mitigation to avoid these impacts is discussed later in this ROD.

Wildlife and vegetation around the reservoirs are not expected to be affected significantly because changes in reservoir operations are expected to be small and are within reservoir operating constraints (see IDU Final EIS, p. 4.2.5–1). BPA completed informal consultation with the U.S. Fish and Wildlife Service on endangered and threatened species and determined that firm marketing activities were not likely to adversely affect any threatened and endangered species. The U.S. Fish and Wildlife Service concurred with BPA's biological assessment.

2. *Impacts on Water Quality and Fish in British Columbia.* BPA found no adverse impacts on water quality and fish in British Columbia due to firm marketing activities. Anadromous fish do not exist in the Columbia or Peace River systems within British Columbia. Because firm marketing activities have only minor effects on reservoir levels and flows on the Peace River reservoirs and Columbia River reservoirs in British Columbia, impacts on resident fish are not expected to be significant (see IDU Final EIS, pp. 4.2.4–4 through 4.2.4–8).

3. *Impacts on Irrigation.* BPA found no adverse impacts on irrigation due to firm marketing activities. Levels of allowable irrigation withdrawals are determined by the States and are established water rights. Hydro operations planning is developed around flows that include authorized irrigation withdrawals. Therefore, firm marketing activities would not affect the amount of water available for irrigation (see IDU Final EIS, pp. 4.2.2–4 through 4.2.2–6).

4. *Impacts on Recreation.* No adverse impacts on recreation were found from firm marketing activities. Project changes in reservoir levels associated with firm marketing are small, especially during the summer recreation season, and result in minimal recreation impacts at all the reservoirs studied. Changes in downstream flows also are projected to have no significant effects (see IDU Final EIS, p. 4.2.2–4).

5. *Impacts on Cultural Resources.* Changes in reservoir levels (within existing constraints) at hydroelectric projects might have effects on cultural resources in and around Federal storage reservoirs in the PNW. These reservoirs are Grand Coulee (Lake Roosevelt), Dworshak, Libby (Lake Koocanusa), Albeni Falls (Lake Pend Oreille), and Hungry Horse. Many cultural resource sites in the areas of potential effect already have been and continue to be affected by erosion and vandalism. Changes in reservoir elevations may change the rate of site erosion and may make sites more or less accessible to vandals.

Known properties on or eligible for the National Register of Historic Places on these reservoirs are the Middle Kootenai River Archeological District at Lake Koocanusa, Montana, and the Kettle Falls Archeological District and the Fort Spokane Historic District at Lake Roosevelt, Washington.

Information about the existence and significance of cultural resources within the area of potential effect is incomplete. It is possible that other potentially affected properties may be eligible for the National Register.

Analysis of the data in the IDU Final EIS indicates that increased erosion of cultural resource sites at Libby Reservoir is a potential problem with firm marketing activities in 1988, the earliest year studied. Analyses were conducted to address both wave erosion effects and effects on site accessibility for vandals and relic collectors. Libby will continue to be operated according to project constraints used in Coordination Agreement planning and provided by the U.S. Army Corps of Engineers (Corps). The initiation of a Programmatic Agreement to mitigate potential impacts on cultural resources caused by firm marketing activities, as well as other power marketing activities analyzed in the IDU Final EIS, is discussed later in this ROD under Mitigation and Monitoring.

Other hydroelectric project reservoirs in the Federal Columbia River Power System are operated either as run-of-river of primarily for flood control and are generally independent of power marketing activities. Therefore, Federal marketing activities will not affect cultural resources at these projects (see IDU Final EIS, pp. 4.2.2–7 through 4.2.2–8, and 4.6–1 through 4.6–2).

6. *Nonrenewable Resource Use and Land Use Impacts.* No adverse impacts on nonrenewable resource use and land use were found from firm marketing activities. Differing levels of long-term firm contracts have negligible impacts on PNW coal generation. Hence, impacts on coal consumption and associated land disturbance also are negligible (see IDU Final EIS, p. 4.3.1–3).

Annual coal use in the ISW is projected to increase slightly with firm marketing (see IDU Final EIS, pp. 4.3.1–5 and 4.3.1–20). Gas and oil consumption in California is not significantly affected by firm marketing activities. During the early years, however, there is a slight reduction in consumption of gas and oil fuels (see IDU Final EIS, pp. 4.3.1–4 and 4.3.1–15).

7. *Air Quality and Solid Waste Impacts.* No adverse impacts were found in the PNW, California, or the ISW. Air quality impacts related to power system operational effects of firm marketing activities were found to derive from changes in the operation of coal-fired power plants in the PNW and the ISW and changes in the operation of gas- and oil-fired generating plants in California. All projected ambient air quality changes due to firm marketing activities are small (see IDU Final EIS, p. 4.3.2–13). In the early years, these changes do include small reductions in air pollution in densely populated air basins in California.

Solid waste impacts vary with changes in annual generation at coal-fired plants. Solid waste impacts from altering coal plant operations to accommodate firm marketing activities are not considered significant (see IDU Final EIS, p. 4.3.2–7 and Appendix G).

8. *Water Use and Quality Impacts of Thermal Plants.* No adverse impacts on water use and water quality in the PNW, California, or the ISW were found. The only potentially significant problem areas identified were entrainment at the Pittsburg and Contra Costa thermal plants in California. It was not possible to determine quantitatively how firm marketing activities would affect these entrainment problems. However, since the average annual generation at these plants is reduced with firm marketing activities, it is unlikely that the entrainment would be made worse (see IDU Final EIS, pp. 4.3.3–8 through 4.3.3–13).

9. *Impacts on Vegetation and Wildlife Related to Thermal Plant Operational Changes.* No adverse impacts in the PNW, California, or the ISW were found from firm marketing activities. This is primarily because air quality, acid deposition, solid waste, and water consumption impacts of the coal-fired plants considered in the analysis are not significant. In addition, because of permit requirements, enforcement of compliance with permits, and the fact that effects on threatened and endangered species must be considered before permits are granted, firm marketing activities will not cause signficant adverse effects to any threatened or endangered species (see IDU Final EIS, p. 4.3.4–2).

Nuclear plant operations are not expected to be affected (see IDU Final EIS, p. 4.1–14). Therefore, firm marketing should not change the impacts on vegetation and wildlife from operation of nuclear plants.

10. *Impacts Related to Development of New Power Resources.* Firm marketing activities were found to have virtually no effect on the development of future PNW resources (see IDU Final EIS, p. 4.4–7). The BPA/M–S–R agreement converts to a seasonal capacity-for-energy exchange when there is insufficient firm surplus energy to support the power sale. Seasonal capacity-for-energy exchanges of the M–S–R variety may delay the need for development of new resources in both the PNW and California.

11. *Consultation, Review, and Permit Requirements.* In addition to their responsibilities under the National Environmental Policy Act (NEPA), Federal agencies are required to carry out the provisions of other Federal environmental laws. The Federal Government is required to take State and local government environmental and land-use laws and regulations into consideration when making its decisions (see IDU Final EIS, pp. 4.6–1 through 4.6–3). Throughout preparation of the IDU Draft EIS, the Hydro Operations Information Paper, IDU Final EIS, and the LTIAP, BPA worked closely with the Corps, the Bureau of Reclamation, the U.S. Fish and Wildlife Service, and the Columbia River Inter-Tribal Fish Commission to ensure that its responsibilities under NEPA and other appropriate laws and regulations were fulfilled.

B. *Economic Factors.* The economic effects that could be expected from BPA's proposed sale are potential impacts, as a result of the revenues received or foregone due to the sale, on (1) BPA's and M–S–R's member utilities' customers' rates; (2) both parties' financial conditions; and (3) BPA's ability to repay the U.S. Treasury as scheduled.

The proposed rate for surplus firm power sold under the M–S–R contract begins, for deliveries prior to October 1, 1991, at $5.00 per kW-mo of demand and 26.9 mills per kWh of energy. The initial demand and energy rates are escalated each October 1 beginning October 1, 1991, by factors based on changes in BPA's average PF rate. Through October 1, 2003, the annual escalation of the M–S–R demand and energy charges is the percentage change in the average PF (or successor) rate from the PF rate in effect on September 30, 1991, plus 1.75 percent compounded annually for each year after FY 1991. After October 1, 2003, at the time of any PF (or successor) rate increase, the M–S–R demand and energy rates in effect on October 1, 2003, will be escalated by the percentage increase in the average PF (or successor) rate in effect on October 1, 2003.

Both parties expect to benefit from the proposed rates. BPA's forecast of the present value of the power sales revenue is approximately $168 million for FY 1993–2001. The present value of forecast spot market sales, BPA's alternative market for the power, is approximately $104 million over the same period. After FY 2001, BPA projects that the sale would convert wholly to a capacity-for-energy exchange through the end of the contract period.

The proposed sales to M–S–R thus would provide higher revenues to BPA than the No-Action Alternative. The sales would provide BPA a stable market for a portion of its surplus firm power at favorable, predictable rate. This would aid BPA's long-term resource and financial planning and increase BPA's ability to keep its rates to its customer groups as low and stable as possible and to repay the U.S. Treasury on schedule.

In the future, when the power sale converts to a capacity-for-energy exchange, BPA and its ratpayers will continue to receive benefits. BPA's surplus of capacity is projected to last considerably longer than the energy surplus. A capacity-for-energy exchange would provide BPA with a prearranged market for surplus capacity. In return, BPA would receive a predictable amount of energy when needed. For 100 MW of demand, the exchange energy provided to BPA would equal 120,000 MWh; for 150 MW of demand, exchange energy would total 180,000 MWh. Energy from M–S–R could allow BPA to avoid expensive resource acquisition and would aid resource planning. The energy account feature allows BPA to take the peaking replacement energy and exchange energy only when needed or to be paid for it.

Similarly, the contract with BPA provides M–S–R with a stable amount of power at a predictable price. The purchase could aid M–S–R's long-term resource and financial planning, enhancing M–S–R's member utilities' rate and financial stability. Power from BPA could allow M–S–R to defer or postpone expensive purchase or construction of resources, especially sources of capacity.

C. *Legal Factors.* On May 24, 1988, BPA published notice that it had surplus firm power available for sale to the PNW and Pacific Southwest (PSW). BPA has forecast the long-term availability of surplus energy and capacity in its *December 1988 Pacific Northwest Loads and Resources Executive Summary* as being 481 average MW of firm power in 1989 and 2600 MW capacity through the year 2006.

In making marketing decisions, BPA must consider certain loads in forecasting future PNW customer requirements. These loads include those of BPA's direct service industrial customers and all utility loads, firm and nonfirm. Certain energy requirements of PNW customers are excluded. For example section 9(c) of the Northwest Power Act further excludes a utility's firm energy (both hydro and thermal) that is sold outside the region and which increases the firm energy requirements of that utility customer or any other utility customer of BPA in the region.

Under the Northwest Preference Act, BPA may sell outside the PNW only energy and peaking capacity from Federal hydro plants that is surplus to the present and planned power needs of the region. Section 9(c) of the Northwest Power Act applies this restriction to all BPA power sold outside the PNW.

Section 1(c) of the Northwest Preference Act defines surplus energy as electric energy generated at Federal hydroelectric plants in the PNW that otherwise would be wasted because of the lack of a market therefore in the PNW at any established rate. This definition is modified by section 9(c) of the Northwest Power Act which defines surplus energy as electric energy for which there is no market in the PNW at any rate established for the disposition of such energy. BPA has interpreted "any rate" in both section 9(c) and section 1(c) as meaning "the price" at which BPA proposes to sell energy to an out-of-region customer. Congress intended BPA's PNW customers to have a first right-of-refusal on the power sold and to compete in the surplus market for energy beyond their firm contract entitlements.

BPA demonstrates that there is no immediate PNW demand for this energy by offering it to PNW customers on the same terms and conditions, including price, as offered to a PSW purchaser. Although a PNW customer may offer to purchase at a rate lower than that specified by BPA, BPA is not required to sell at the lower price.

Section 2 of the Northwest Preference Act requires BPA to provide written notice to its customers that negotiations

termination of energy deliveries. Additionally, under section 15, if BPA has restricted or terminated deliveries of

reservoirs on tributaries to the Snake and Columbia Rivers.

BPA expects to preclude significant

agreement may include provisions for further identification and evaluation of potentially affected cultural resources.

- New Business Discussion
- Public comment (10 minute rule)

Public Participation: The meeting is

BECO will pay a capacity charge, an energy charge, and station service energy charge to the NU Companies for

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Section 2 of the Northwest Preference Act requires BPA to provide written notice to its customers that negotiations are pending for a contract for the sale, delivery, or exchange of surplus energy and peaking capacity for use outside the PNW. This notice is provided at least 30 days prior to contract execution. Upon request, BPA will make current drafts of a proposed contract available for inspection.

BPA provided notice of the M–S–R agreement in June 1989. BPA will not execute this agreement prior to 30 days following the date of notice. Copies of the contract draft offered by M–S–R are available on request.

PNW customers have an opportunity during the 30-day notice period, prior to BPA's execution of the M–S–R offer, to request a contract containing the same terms and conditions as the M–S–R offer. If no existing PNW customer of BPA seeks to purchase on the same terms and conditions, including price, within this period, the power is considered to be surplus to PNW needs. The Administrator then may accept the M–S–R offer.

Section 3(a) of the Northwest Preference Act requires the sale of surplus firm energy for use outside the PNW to be subject to a 60-day recall provision. The recall permits restriction of contract energy deliveries on 60 days' notice. The recall is exercised whenever it reasonably can be foreseen that such delivery would impair the Administrator's ability to meet the energy requirements of any PNW customer.

Before negotiating the present offer from M–S–R, BPA determined the amount of surplus firm power available for sale to both PNW and PSW customers. M–S–R's offer is less than the amount of available power. The sale will not impair the Administrator's ability to meet planned or forecasted energy requirements of BPA's PNW customers. The agreement includes several provisions to aid the Administrator in meeting the energy requirements of PNW customers in the event that a future unanticipated need arises.

These provisions include section 14 which provides that BPA may, in accordance with section 3 of the Northwest Preference Act, terminate energy deliveries to the extent that the energy is needed in the PNW to meet BPA customer requirements. If BPA terminates deliveries of such energy, section 6 of the agreement provides for a conversion to a capacity/energy exchange. The exchange, a firm energy resource, would help alleviate the energy shortage that caused the termination of energy deliveries. Additionally, under section 15, if BPA has restricted or terminated deliveries of energy under section 14, BPA and M–S–R may enter into either an exchange or a sale of capacity A sale of capacity under this section 15 is subject to termination upon 60 months' notice.

Under section 5 of the Northwest Preference Act, BPA may exchange surplus energy and capacity with the PSW and other regions. These exchanges are not subject to the limitations of sections 2 and 3 noted above. Thus, the capacity/energy exchange portion of the M–S–R contract is provided for in section 5 of the Northwest Preference Act.

VI. Environmentally Preferred Alternative

The environmentally prefered alternative is for BPA to enter into a power sale and exchange agreement with M–S–R. There are no significant adverse impacts from this alternative, assuming that bypass facilities are constructed at mid-Columbia dams, as planned, and provided that agreed-upon, planned mitigation activities for resident fish at Hungry Horse Reservoir and cultural resources at the five Federal storage projects are implmented. In addition, this alternative has some slight environmental benefits not achievable under the No-Action Alternative. These benefits are (1) small reductions in air pollution in densely populated air basins in California in the early years; (2) reduced consumption of nonrenewable gas and oil fuels in the early years; and (3) potential for additional deferral of the construction of new generating resources and their subsequent operation.

VII. Conclusion

Because a sale to M–S–R is the environmentally preferred alternative, would achieve economic benefits for BPA and others, and is consistent with statutory guidelines, BPA's decision is to enter into the previously described power sale and capacity-for-energy exchange agreement with M–S–R.

VIII. Environmental Mitigation and Monitoring

Several mitigation and monitoring actions are being adopted in conjunction with the LTIAP which are pertinent to this decision. These actions include programs to survey resident fish populations at Hungry Horse Reservoir to assure that an adequate food supply is maintained for the bald eagles living or passing through the area and to survey and evaluate cultural resource sites surrounding Federal storage reservoirs on tributaries to the Snake and Columbia Rivers.

BPA expects to preclude significant adverse impacts to resident fish at Hungry Horse Reservoir by undertaking measures to increase use of Hungry Horse tributaries by resident fish. BPA consulted with the U.S. Fish and Wildlife Service and the Montana Department of Fish, Wildlife and Parks in developing these measures. Measures include funding for imprint planting of west slope cutthroat trout and mountain whitefish in four Hungry Horse Reservior tributaries over a 5-year period. Also included is funding for offsite fish habitat improvements on Flathead River sloughs, including cleaning of spawning gravels and imprint planting of cutthroat trout, kokanee, and mountain whitefish (see IDU Final EIS, p. 4.2.3.–13). If monitoring studies at Hungry Horse Reservior indicate that significant adverse effects on resident fish are occurring as a result of Intertie actions, including Federal marketing activities, information from these monitoring studies will be used to develop and implement additional effective mitigation measures.

In order to mitigate for potential adverse effects on cultural resources at the Federal storage reservoirs, BPA has initiated procedures to develop a Programmatic Agreement with the Advisory Council on Historic Preservation; the Idaho, Montana, and Washington State Historic Preservation Officers; the Bureau of Reclamation; and the Corps. Also involved in devloping the Programmatic Agreement are the Confederated Tribes of the Colville Reservation, Washington; the Spokane Tribe of the Spokane Reservation, Washington; the Kalispel Indian Community of the Kalispel Reservation, Washington; the Coeur D'Alene Tribe of the Coeur D'Alene Reservation, Idaho; the Nez Perce Tribe of Idaho, Nez Perce Reservation, Idaho; the Kootenai Tribe of Idaho; the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana; the Blackfeet Tribe of the Blackfeet Indian Reservation of Montana; the Bureau of Indian Affairs; the U.S. Forest Service; and the National Park Service.

The Programmatic Agreement was initiated as mitigation for potential effects of firm marketing transactions but will satisfy BPA's responsibilities under section 106 of the National Historic Preservation Act (16 U.S.C. 470, *et seq.*) for all Federal actions taken with respect to operation of the Columbia River and Snake River Federal hydroelectric facilities for power production. Terms of the agreement may include provisions for further identification and evaluation of potentially affected cultural resources.

The Programmatic Agreement also is being designed to ensure consistency with the American Indian Religious Freedom Act (42 U.S.C. 1966) by providing for BPA participation in the relocation of Native American burials if such sites are discovered through the resource survey and evaluation that will occur as part of the agreement.

Issued in Portland, Oregon, on October 31, 1989.

Edward W. Sienkiewicz,

Senior Assistant Administrator for Power Management.

[FR Doc. 29266 Filed 12–14–89; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Research

Health and Environmental Research Advisory Committee; Open Meeting

Under the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Health and Environmental Research Advisory Committee (HERAC).

Date and Time: January 8, 1990—9:00 a.m.–5:00 p.m., January 9, 1990—9:00 a.m.–12:00 Noon.

Place: The (Compri) Hotel, 805 Russell Avenue, Gaithersburg, Maryland.

Contact: George D. Duda, Office of Health and Environmental Research (ER–72), Office of Energy Research, Department of Energy, Washington, DC 20545, Telephone: 301/353–3651.

Purpose of the Committee: To provide advice on a continuing basis to the Secretary of the Department of Energy (DOE), through the Director of Energy Research, on the many complex scientific and technical issues that arise in the development and implementation of the Health and Environmental Research (HER) program.

Tentative Agenda: Briefings and discussions of:

January 8, 1990

- Report from HERAC Subcommittee on Boron Neutron Capture Therapy
- Report from HERAC Subcommitte on Technology Transfer
- Report from HERAC Subcommittee on Global Change
- Public comment (10 minute rule)

January 9, 1990

- Report from Representatives of the DOE/National Institutes of Health Joint Subcommittee on the Human Genome: Five-Year Plan
- New Business Discussion
- Public comment (10 minute rule)

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contract George D. Duda at the address or telephone number listed above. Requests to make oral statements must be received 5 days prior to the meetings; reasonable provision will be made to include the statement in the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: The transcript of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, IE–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on December 12, 1989.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 89–29267 Filed 12–14–89; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER90–91–000, et al.]

Northeast Utilities Service Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

December 6, 1989.

Take notice that the following filings have been made with the Commission:

1. Northeast Utilities Service Company

[Docket No. ER90–91–000]

Take notice that on December 1, 1989, Northeast Utilities Service Company (NUSCO) acting as Agent for the Connecticut Light and Power Company (CL&P), Western Massachusetts Electric Company (WMECO, and together with CL&P the NU Companies) tendered for filing as an initial rate schedule an agreement (the Agreement) between NUSCO and Boston Edison Company (BECO). The Agreement dated as of March 7, 1988, provides for the exchange of capacity and associated energy, if any, from the NU Companies' and BECO's generating units/entitlements on a daily or weekly basis (an exchange). BECO will pay a capacity charge, an energy charge, and station service energy charge to the NU Companies for each NU provided to BECO in an exchange. BECO will also reimburse the NU Companies for NEPOOL EHV–PTF transmission charges incurred by the NU companies for receiving from BECO an entitlement in a Pool Planned Unit. The NU Companies will pay BECO an energy charge and a variable maintenance charge for BECO Units provided to the NU Companies in an exchange.

NUSCO requests that the Commission waive its customary notice period and allow the Agreement to become effective on March 7, 1988.

The Agreement has been executed by the NU Companies and by BECO and copies have been mailed or delivered to each of them.

NUSCO further states that the filing is in accordance with section 35 of the Commission's Regulations.

Comment date: December 20, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Indianapolis Power & Light Company

[Docket No. FA88–51–001]

Take notice that on November 22, 1989, Indianapolis Power & Light Company tendered for filing its compliance refund report in accordance with the Commission's Opinion No. 328 issued in this docket on July 11, 1989 and the Commission's order on rehearing issued on September 21, 1989.

Comment date: December 20, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Mary S. Metz

[Docket No. ID–2431–000]

Take notice that on November 29, 1989, Mary S. Metz, (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Director Pacific Gas and Electric Company
Director Union Bank

Comment date: December 27, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Montana-Dakota Utilities Company

[Docket No. EC90–5–000]

Take notice that on November 30, 1989, Montana-Dakota Utilities Company (Montana-Dakota), a Division of MDU Resources Group, Inc., tendered for filing an application pursuant to section 203 of the Federal Power Act and part 33 of the Commission's Regulations thereunder, for

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authorization to sell a 15,000 KVA, 69–46 KV three phase power transformer in Elgin, North Dakota, to Mor-Gran-Sou Electric Cooperative, Inc. (Mor-Gran-Sou) all as more fully set forth in the application on file with the Commission and open to public inspection.

Comment date: December 28, 1989, in accordance with Standard Paragraph E at the end of this notice.

5. Central and South West Services, Inc.

[Docket No. ER84–31–002]

Take notice that on November 30, 1989, Central and South West Services, Inc., on behalf of the operating electric utility subsidiaries of Central and South West Corporation, Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma and Southwestern Electric Power Company, submitted for filing certain tariff sheets and supporting workpapers in response to the Commission's Opinion No. 332 issued in Central and South West Services, Inc., Docket No. ER84–31–000, on August 31–000.

Central and South West Services, Inc. states that the filing will be served upon all parties to Docket No. ER84–31–000, and on the Public Utility Commission of Texas, the Oklahoma Corporation Commission, the Arkansas Public Service Commission and the Louisiana Public Service Commission.

Comment date: December 20, 1989, in accordance with Standard Paragraph E at the end of this notice.

6. Central Louisiana Electric Company, Inc.

[Docket No. ER90–38–000]

Take notice that on December 4, 1989, Central Louisiana Electric Company, Inc. (CLECO) filed proposed revisions to its Interconnection Agreement for service to the City of Lafayette, Louisiana pursuant to FERC Rate Schedule No. 33. CLECO states that the rate changes would enable the City of Lafayette to receive its allocation in federally-generated hydroelectric peaking power from Southwestern Power Administration. The revised rate schedule is proposed to become effective on August 29, 1986, which is the date that the subject Interconnection Agreement was executed by the parties to the Agreement.

Comment date: December 20, 1989, in accordance with Standard Paragraph E at the end of this notice.

7. Cincinnati Gas & Electric Company

[Docket No. ER90–87–000]

Take Notice that the Cincinnati Gas & Electric Company (Cincinnati) tendered for filing November 30, 1989 Modification No. 4 dated as of December 1, 1989 to the Interconnection Agreement dated as of January 1, 1979, between Cincinnati and the Dayton Power and Light Company.

Modification No. 4 cancels existing rate schedules A, B, D, and E and adopts new rate schedules providing for emergency service, interchange power, short-term power and limited term power. There is no estimate of increased revenues since transactions will occur only as load and capacity conditions dictate. A December 1, 1989 effective date has been requested.

A copy of the filing was served upon the Dayton Power and Light Company and the Public Utilities Commission of Ohio.

Comment date: December 20, 1989, in accordance with Standard Paragraph E at the end of this notice.

8. Gulf States Utilities Company

[Docket No. ER90–88–000]

Take notice that Gulf States Utiliies Company (Gulf States) tendered for filing on November 30, 1989 a letter agreement between Gulf States and Sam Rayburn Dam Electric Cooperative, Inc. (SRDE) concerning the sale of reserve capacity by Gulf States to SRDE, for the period January 1, 1989, to May 31, 1990. The rate for the sales will be %4.10/KW/Month. Pursuant to section 35.11 of the Commission's regulations, Gulf States requests an effective date of January 1, 1989, for the letter agreement.

Gulf States also requests an effective date of January 1, 1987, for the $50.10/kw rate for reserves which Gulf Staes began billing to SRDE on that date and an effective date of January 1, 1985, for a $5.00/kw rate for reserves that Gulf States began billing on that date. Gulf States requests a waiver of the notice requirements of the Federal Power Act and the Commission's regulations to allow these effective dates.

Copies of the filing were served on Sam Rayburn Dam Electric Cooperative, Inc., Sam Rayburn Municipal Power Agency, Sam Rayburn G&T Electric Cooperative, Inc., and the Public Utilities Commission of Texas.

Comment date: December 20, 1989, in accordance with Standard Paragraph E at the end of this notice.

9. Montana Power Company

[Docket No. ER90–89–000]

Take notice that on November 30, 1989, the Montana Power Company (Montana) tendered for filing with the Commission pursuant to 18 CFR 35.12 (1989) a "Power Sales Agreement Between The Montana Power Company and Puget Sound Power and Light Company." Montana requests that the Commission (a) accept the agreement for filing, to be effective on October 1, 1989; and (b) grant a waiver of notice pursuant to 18 CFR 35.11 (1989), so as to allow the filing of the Agreement less than 60 days prior to the date on which service under the Agreement is commenced.

Copies of the filing were served upon Puget Sound Power and Light Company and the State of Washington.

Comment date: December 20, 1989, in accordance with Standard Paragraph E at the end of this notice.

10. Northeast Utilities Service Company

[Docket No. ER90–90–000]

Take notice that on November 30, 1989, Northeast Utilities Company (NUSCO) as Agent for Connecticut Light and Power Company tendered for filing a Notice of Termination of the following rate schedule:

Transmission Service Agreement between CL&P, WMECO, and Newport Electric Corporation (Newport) dated April 1, 1989 (CL&P Rate Schedule FERC No. 453, WMECO FERC No. 347) (Agreement).

NUSCO requests that the Commission allow the termination to become effective October 31, 1989.

Comment date: December 20, 1989, in accordance with Standard Paragraph E end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–29210 Filed 12–14–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP89–237–002]

North Penn Gas Co.; Compliance Filing

December 7, 1989.

Take notice that on November 14, 1989, North Penn Gas Company (North Penn) filed a letter proposing the following plan for distribution of any under- or over-collected balances in Account 191:

(1) Within thirty (30) days after March 15, 1990, North Penn shall commence to clear any balance remaining in its Account 191 as of March 15, 1990 by either remitting to each of its then-current FERC-jurisdictional sales customers its allocable portion of any credit balance in a lump sum payment, or by directly billing to each of its sales customers its allocable portion of any debit balance in equal monthly principal installments over a period of six months. The percentage of any credit or debit balance (including carrying costs for the PGA period) to be allocated to each FERC sales customer shall be equal to (a) such customer's total volume purchases of gas from North Penn during the 12-month period ending February 28, 1990, divided by (b) North Penn's total FERC jurisdictional sales of gas during such 12-month period. Interest calculated from March 15, 1990 to the date or payment or billing by North Penn shall be added to any principal amounts to be paid or billed by North Penn, and shall be computed at the rates prescribed by § 154.67(c) of the Commission's Regulations.

(2) North Penn shall absorb any purchased gas costs or refunds received by North Penn after March 15, 1990 which are applicable to sales prior to March 15, 1990.

(3) The elimination of North Penn's PGA shall not diminish in any way North Penn's right to recover other gas supply related costs (such as production related costs under Order Nos. 94 and 473, LNG costs, Order No. 500 or other take-or-pay costs, or gas inventory charges) relating to past PGA time periods.

(4) The foregoing plan is subject to future Commission orders on the dispersal of North Penn's Account 191 balances, including any relevant orders in Docket Nos. RP88–190, *et al.* North Penn reserves the right to seek rehearing or judicial review of any Commission orders relating to or amending the distribution of Account 191 balances here proposed.

North Penn states that copies of this letter have been served upon each person designated on the official service list.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such protests should be filed on or before December 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–29212 Filed 12–14–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP89–143–003]

Pacific Offshore Pipeline Co.; Compliance Filing

December 7, 1989.

Take notice that on December 1, 1989, Pacific Offshore Pipeline Company (POPCO) filed Alternate Original Sheet Nos. 10 and 18 to its FERC Gas Tariff, Original Volume No. 1, to be effective April 1, 1989.

POPCO states that it is offering these alternatives so that the Commission can decide whether its August 18, 1989 or this filing fully satisfies the directives contained in the letter order dated July 19, 1989.

POPCO states that a copy of this filing is being served on all parties listed on the Commission's official service list, on all its jurisdictional customers, the California Public Utilities Commission, and other interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such protests should be filed on or before December 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–29211 Filed 12–14–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP89–36–000 [1], CP90–273–000, CP88–338, CP88–266, CP87–107 and CP87–106 (Not Consolidated)]

Viking Gas Transmission Co.; Filing of Offer of Settlement Concerning Part 284 Transportation and Other Matters

December 7, 1989.

Take notice that on November 21, 1989, Viking Gas Transmission Company (Viking), P.O. Box 2511, Houston, Texas 77252, filed in the captioned proceeding a Stipulation and Agreement and motion to consolidate (the Stipulation) as an offer of settlement under Rule 602 of the Commission's regulations.

Viking states that the Stipulation resolves all issues in Docket No. RP89–36, involving Viking's restatement of its Base Tariff Rates effective January 1, 1989, and establishes the rates, terms and conditions under which Viking will conduct blanket open-access transportation pursuant to part 284 of the Commission's Regulations. Viking states further that the Stipulation includes Settlement Rates, which have been restructured consistent with the "Policy Statement Providing Guidance With Respect to the Designing of Rates," issued May 30, 1989 in Docket Nos. PL 89–2–000 *et al.*, Interstate Natural Gas Pipeline Rate Design, 47 FERC 61,295, order on rehearing, 48 FERC 61,122 (July 27, 1989).

Viking also states that, as part of the settlement, it has filed contemporaneously with the Stipulation a certificate application for a restructuring of its services. The service restructuring application filing includes: an application for a blanket certificate of public convenience and necessity, pursuant to part 284, subpart G of the Commission's regulations, to provide non-discriminatory, open-access transportation; a request for a declaration that § 284.10 does not apply to Rate Schedule CD–2 or a limited waiver of § 284.10 with respect to Rate Schedule CD–2 pending Commission

[1] The captioned docket is consolidated with *Midwestern Gas Transmission Company*, Docket No. RP89–35. The instant offer of settlement relates only to Docket No. RP89–36 and the operations of the system of Viking Gas Transmission Company. Midwestern Gas Transmission Company filed a separate Stipulation and Agreement in Docket No. RP89–35 on August 29, 1989.

action on an application by Viking to be filed in a separate docket not later than the date for the filing of comments on

shall be the date of the original contracts.

Viking states that copies of this filing

were end-users or reseller/retailers requesting refunds of $5,000 or less. Therefore, each applicant was presumed

Exxon Corp./Brannock's Exxon, et al., 9/19/89, RF307–2, et al.

The Department of Energy issued a

made by Stan's Service Station, Case No. RF307–2816. The DOE determined that this application should be denied

Gulf Oil Corporation/Hasler Oil Company, 9/22/89, RF300–4873

The DOE issued a Decision and Order

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action on an application by Viking to be filed in a separate docket not later than the date for the filing of comments on the Stipulation, which requests abandonment of Viking's limited merchant obligation under Rate Schedule CD–2 from 1990 through 1992 and conversion of such service to firm transportation; a request for pregranted abandonment of Viking's sales obligations to firm sales customers who convert to firm transportation; a request for pregranted abandonment of individually certificated (Volume No. 2) firm and interruptible transportation services where the affected shipper elects to convert to open-access transportation; [2] an application for blanket certificate and abandonment authority to allow Viking's system sales customers under Rate Schedule CR–2 and CRL–2 to reassign their firm sales obligations temporarily or permanently during the term of their service agreements; [3] an application to provide a limited quantity overrun sales service to Viking's small sales customers who historically have depended on interruptible sales gas to meet their requirements during extreme weather conditions; and, a request for authority to revise the quantity limitations on the availability of Rate Schedule CR–2 to 1,000 Dth per day, which exceeds Viking's maximum delivery obligations to the SR–2 customers.

Viking states that the Stipulation includes a request for consolidation of Docket No. RP89–36 with this new certificate application and the pending certificate application in Docket No. CP88–338–000 and the issuance of a contemporaneous decision in the referenced dockets. Viking further states that the Stipulation is intended to resolve Docket Nos. CP88–266, CP87–107 and CP87–106 by providing that, upon acceptance of a blanket certificate, Viking will enter into new transportation agreements with the affected shippers for the full terms and quantities requested in the certificate applications. Viking states that, consistent with Commission precedent, the priority date for these services for purposes of scheduling and interruption shall be the date of the original contracts.

Viking states that copies of this filing have been mailed to all parties on the official service list in the captioned proceeding and all affected customers and state regulatory commissions. Viking further states that it will expeditiously make copies of the Stipulation available to interested persons desiring to file comments.

Any interested person not already a party to the captioned proceeding who desires to file comments on the Stipulation should, on or before December 22, 1989, file such comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, together with a motion to intervene, in accordance with the requirements of Rules 211, 214 and 602(f) of the Commission's Rules of Practice and Procedure.[4] Reply comments should be filed on or before January 5, 1990. Persons who are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–29213 Filed 12–14–89; 8:45 am]

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[2] Viking states that it is intended that the conversion of individually-certificated transportation to self-implementing transportation will not affect the shipper's scheduling and curtailment priority.

[3] Viking states that the certificate application includes *pro forma* tariff sheets for the nondiscriminatory reassignment of firm sales and open-access firm transportation service rights. Viking has concluded that no certificate authorization is necessary for the reassignment of firm transportation rights as proposed by it.

[4] Under Rule 602(f), comments on the settlement from those already parties would be due on December 11, 1989, and reply comments on December 21, 1989. The dates are superseded by the deadlines established in this notice.

Office of Hearings and Appeals

Issuance of Decisions and Orders Issued During the Week of September 18 Through September 22, 1989

During the week of September 18 through September 22, 1989, the decisions and orders summarized below were issued with respect to applications for refund filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Refund Applications

Atlantic Richfield Company/C.O. Webster, et al., 9/20/89, RF304–4192, et al.

The DOE issued a Decision and Order concerning ten Applications for Refund filed in the Atlantic Richfield Company (ARCO) special refund proceeding. All of the applicants documented the volume of their ARCO purchases and were end-users or reseller/retailers requesting refunds of $5,000 or less. Therefore, each applicant was presumed injured. The refunds granted in this Decision totalled $13,185, including $3,236 in accrued interest.

Atlantic Richland Company, Union Paving Company, et al., 9/18/89, RF304–6207, et al.

The DOE issued a Decision and Order concerning 117 Applications for Refund filed by 107 claimants from a consent order fund made available by Atlantic Richland Company. As end-users and reseller/retailers applying for small claims or mid-level presumption refunds, these applicants were presumed to have been injured. Accordingly, the DOE concluded that they should receive refunds totaling $207,972, representing $157,304 in principal and $50,668 in accrued interest.

Beacon Oil Company/John Harness & Son, Inc., 9/22/89, RF238–20

The DOE issued a Decision and Order concerning an Application for Refund filed by John Harness & Son, Inc. (Harness) in the Beacon Oil Company (Beacon) special refund proceeding. Harness documented its purchases of 113,466 gallons of Beacon Diesel fuel. In addition, Beacon records indicated that Harness was entitled to receive $468 in unpaid credit that Beacon remitted to the DOE for Harness' purchases of motor gasoline from Beacon. Harness therefore received a refund of $2,201 in principal based on both its diesel fuel purchases and its unpaid motor gasoline credit. In addition, Harness received $2,399 in accrued interest for a total refund of $4,600.

Exxon Corporation/Balala's Exxon, 9/19/89, RF307–7068

The DOE issued a Decision and Order granting an Application for Refund filed by Federal Refunds, Inc. (FRI) on behalf of Balala's Exxon (Balala's) in the Exxon Corporation special refund proceeding. However, due to FRI's questionable filing practices and lack of knowledge of the OHA refund process, the DOE determined that this refund and subsequent refund checks issued to applicants represented by FRI in the Exxon proceeding would be sent directly to the applicant involved. Balala's purchased directly from Exxon and was a retailer of Exxon products whose allocable share is less than $5,000. Accordingly, the DOE determined that Balala's was eligible to receive a refund equal to its full allocable share. The refund granted to Balala's is $524 ($427 principal plus $97 interest).

Exxon Corp./Brannock's Exxon, et al., 9/19/89, RF307–2, et al.

The Department of Energy issued a Decision and Order granting refunds to 24 applicants based on their purchases of refined petroleum products from Exxon Corporation during the period from petroleum products from Exxon Corporation during the period from March 6, 1973, through January 27, 1981. Each applicant submitted a purchase volume schedule prepared by Exxon to support its gallonage claim. Each applicant was either a reseller whose allocable share was less than $5,000 or an end-user of the products that it purchased, and was therefore eligible for a full volumetric refund under a presumption of injury. The sum of the refunds granted in this Decision is $31,960 ($26,960 ($26,056 principal and $5,904 interest).

Exxon Corporation/Guy Garnett Publishing Co., et al., 9/19/89, RF 307–6600, et. al.

The Office of Hearings and Appeals of the Department of Energy issued a Decision and Order granting 41 Applications for Refund from consent order funds obtained from Exxon Corporation. Each applicant sought a refund of less than $5,000 and was therefore presumed to have suffered injury as a result of Exxon's alleged overcharges. The sum of the refunds granted is $40,098.

Exxon Corporation/James D. Gouldin, Sr., 9/18/89, RF 307–10056

The Department of Energy issued a Decision and Order rescinding a refund previously granted in the Exxon Corporation refund proceeding after learning that the person who had filed the refund application and received the refund was not authorized to represent the applicant. The refund recipient, the current owner of a service station that purchased Exxon motor gasoline during the Exxon consent order period, claimed that he was entitled to a refund for the purchases made prior to his acquisition of the business. The Decision directs the refund recipient to return the refund, but permits him to file an application on his own behalf.

Exxon Corporation/Stan's Service Station, Ron's Automotive Service, 9/22/89, RF307–2818, RF307–2819

The DOE issued a Decision and Order concerning two Applications for Refund filed in the Exxon Corporation special refund proceeding. Both Applications were filed by Ron's Automotive Service, Inc. (Ron's), the current owner of a retail outlet previously doing business as Stan's Service Station. One of the applications was based on purchases made by Stan's Service Station, Case No. RF307–2818. The DOE determined that this application should be denied because the right to a refund was not transferred to Ron's from the previous owner. Ron's however, was found to be eligible to receive a refund based on its own purchases from Exxon. The refund granted to Ron's is $71 ($58 principal plus $13 interest).

Exxon Corporation/Star Exxon, 9/19/89 RF307–7246, RF307–8039

The DOE issued a Decision and Order concerning two Applications for Refund filed in the Exxon Corporation special refund proceeding. Both Applications were based on purchases of Exxon products made by Star Exxon. On March 24, 1989, the DOE issued a Proposed Decision and Order that tentatively denied both refund requests. However, after considering the comments filed in response to the Proposed Decision, the DOE determined that the application filed by Petroleum Funds, Inc., Case No. RF307–8039, should be denied because the submission contained a false certification. The application filed by Akin Energy, Inc., Case No. RF307–7246, was accepted for consideration, and Star was found to be eligible to receive a refund equal to its full allocable share. The refund granted to Star is $623 ($512 principal plus $111 interest).

Getty Oil Company/College Tire & Supply, et al., 9/22/89, RF265–2809, et al.

The DOE issued a Decision and Order concerning twenty-four Applications for Refund filed by resellers of retailers of refined petroleum products covered by a Consent Order that the DOE entered into with Getty Oil Company. Each applicant submitted information indicating the volume of its Getty purchases. In twenty-two of these claims, the applicants were eligible for a refund below the small claims threshold of $5,000. In the remaining two claims, each of the applicants elected to limit its claim to $5,000. The sum of the refunds approved in this Decision is $119,181, representing $57,427 in principal and $61,754 in accrued interest.

Gulf Oil Corporation/H.C. McComas Fuel Company, et al., 9/20/89, RF 300–49866, et al.

The DOE issued a Decision and Order concerning six Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each Application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $18,346.

Gulf Oil Corporation/Hasler Oil Company, 9/22/89, RF300–4873

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding. The application was approved using a presumption of injury. The total refund granted in this Decision is $6,719.

Gulf Oil Corporation/Joseph Vizzi, et al., 9/18/89, RF300–3389, et al.

The DOE issued a Decision and Order concerning eight Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, which includes principal and interest, is $14,440.

Gulf Oil Corporation/Lou's Gulf Service, 9/18/89, RR300–2

The DOE issued a Decision and Order concerning a Motion for Reconsideration submitted on behalf of Lou's Gulf Service (Lou's) in the Gulf Oil Corporation special refund proceeding by Federal Refunds, Inc. Lou's original application was denied a refund because the applicant was unable to demonstrate that it purchased Gulf products during the consent order period. However, in its Motion for Reconsideration, Lou's was able to demonstrate that it did purchase Gulf products during this period, and therefore was granted a refund using a presumption of injury. The refund granted to Lou's in this Decision, which includes principal and interest, is $875.

Gulf Oil Corporation/R.G. Health, Britt Manufacturing Co., Inc., 9/20/89, RF300–4405, RF300–4407

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding by reseller/consignees of covered Gulf products. Because the firms combined allocable shares for their reseller gallons and 10 percent of their consignee gallons amounted to less than $5,000, they were presumed injured. The sum of the refunds granted equals $5,650.

Gulf Oil Corporation/Story-Winn Fuel Company, et al., 9/18/89, RF300–3850, et al.

The DOE issued a Decision and Order concerning four Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, which

includes principal and interest, is $32,018.

Gulf Oil Corporation/Suburban Gas

procedures for disbursement of $1,179,460.83, plus accrued interest, in alleged crude oil violation amounts obtained by the DOE under the terms of

Commenting parties are requested to provide two copies of their submissions. Comments must be submitted within 30 days of publication of this notice in the

have considered the ERA's request to implement subpart V procedures with respect to the monies received from Cibro, and have determined that such

includes principal and interest, is $32,018.

Gulf Oil Corporation/Suburban Gas, Inc., et al., 9/22/89, RF300–8830, et al.

The DOE issued a Decision and Order concerning 21 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, including interest, is $41,506.

Gulf Oil Corporation/Virginia Electric and Power Company, 9/20/89, RF300–10065

The DOE issued a Decision and Order concerning an Application for Refund filed by Virginia Electric and Power Company (VEPCO), a regulated public utility, in the Gulf Oil Corporation special refund proceeding. The DOE granted the VEPCO refund request after the firm certified that it would notify its appropriate state regulatory agency of any refund received in the Gulf proceeding and that it would pass through the amount of any refund received to its customers. The total refund amount granted in this Decision, inclusive of interest, is $128,884.

International Paper Company, 9/21/89, RC272–71

The DOE issued a Supplemental Decision and Order to International Paper Company modifying a Decision which granted the firm a refund in the Crude Oil subpart V Proceeding. The modification provides that the firm's refund shall be disbursed via electronic funds transfer in accordance with instructions submitted by the applicant's attorney.

Murphy Oil Corporation, James E. Dirago, Inc., Jimmy's Imperial Oil Co., Inc., 9/20/89, RF309–607, RF309–609

The DOE issued a Decision and Order granting Applications for Refund filed by two commonly owned applicants, each a purchaser of refined petroleum products, in the Murphy Oil Corporation special refund proceeding. The two refund applications were considered together in the determination of the appropriate injury presumption because all of the stock in James E. DiRago, Inc., which includes the right to any unanticipated refund, was purchased by Jimmy's Imperial Oil Co., Inc. in 1977. The two applicants received a single principal refund of $5,000 under the mid-level reseller presumption of injury as defined in Murphy Oil Corporation, 17 DOE 86,782 (1988). The total of the refund granted in this Decision was $6,022, representing $5,000 in principal and $1,022 in accrued interest.

Total Petroleum, Inc./Saveway Oil Company, Sooner Petroleum Co., 9/22/89, RF310–219, RF310–220

The DOE issued a Decision and Order concerning applications for Refund filed by Saveway Oil Company and Sooner Petroleum Co. The applicants sought a portion of the settlement fund obtained by the DOE through a consent order entered into with Total Petroleum, Inc. Both applicants purchased Total motor gasoline and No. 2 oils during the consent order period. Because they share common ownership, the applicants' purchases were consolidated for the purpose of computing their refund. The joint refund was then disbursed on a pro rate basis. Under the standards established in Total Petroleum, Inc., 17 DOE 85,542 (1988), the DOE granted the applicants a joint refund of $9,217 ($7,696 principle and $1,521 interest). The DOE granted $4,424 to Saveway ($3,694 principal plus $730 interest) and $4,793 to Sooner ($4,002 principle plus $791 interest).

Yale e. Key, Inc., et al., 9/18/89, RF272–37303, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 33 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant was an end-user of the products it claimed and was therefore presumed injured by the alleged crude oil overcharges. The sum of the refunds granted in this Decision is $59,604. The applicants will be eligible for additional refunds as additional crude oil overcharge funds become available.

Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decision and Order:

Name	Case No.	Date	Number of Applicants	Total refund
Buford Plantation, et al	RF272-2065	9/19/89	17	$4,892

Dismissals

The following submissions were dismissed:

Name	Case No.
A.T. Hamby	RF307-1128
Coast Gas, Inc	RF238-88
Darrell's Exxon	RF307-236; RF-307-239
Deerfield Auto & Tires	RF300-10668
Exxon Self Serve	RF307-3316
Jorge's Shell	RF315-2599; RF315-2656
Milford Oil Company	RF307-965
Myers Exxon Service Center	RF307-925
Peacock Oil Company	RF300-9060
Ramon Sanchez Marty	RF307-7778
Ridgeway Exxon	RF307-918
Sellers Shell Service	RF315-2598; RF315-1529
Sitton's Exxon	RF307-1954
Wattupa Oil Company, Inc	RF315-6524

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: December 7, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 89–29268 Filed 12–14–89; 8:45 am]

BILLING CODE 6450–01–M

Proposed Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of proposed implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the proposed procedures for disbursement of $1,179,460.85, plus accrued interest, in alleged crude oil violation amounts obtained by the DOE under the terms of a consent order entered into with Cibro Sales Corporation, Inc. (Case No. KEF–0136). The OHA has tentatively determined that the funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986).

DATE AND ADDRESS: Comments must be filed in duplicate within 30 days of publication of this notice in the **Federal Register**, and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. All comments should display a reference to case number KEF–0136.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–2094 (Mann); 586–2383 (Klurfeld).

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute crude oil overcharge funds obtained from Cibro Sales Corporation, Inc. The funds are being held in an interest-bearing escrow account pending distribution by the DOE.

The OHA has tentatively determined to distribute these funds in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986) (the MSRP). Under the MSRP, crude oil overcharge monies are divided among the states, the federal government, and injured purchasers of refined products. Under the plan we are proposing, refunds to the states would be distributed in proportion to each state's consumption of petroleum products during the period of price controls. Refunds to eligible purchasers would be based on the number of gallons of petroleum products which they purchased and the extent to which they can demonstrate injury.

Applications for refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures.

Commenting parties are requested to provide two copies of their submissions. Comments must be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue SW., Washington, DC 20585.

Dated: December 6, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy; Implementation of Special Refund Procedure

December 6, 1989.

Name of Firm: Cibro Sales Corporation, Inc.

Date of Filing: June 19, 1989.

Case Number: KEP–0136.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. 10 CFR 205.281. These procedures are used to refund monies to those injured by actual or alleged violations of the DOE price regulations.

The ERA has filed a Petition for the Implementation of Special Refund Procedures for crude oil overcharge funds obtained from Cibro Sales Corporation, Inc. (Cibro). This firm remitted a total of $1,179,460.85 to the DOE, in accordance with Consent Order 6C0X00289. An additional $233,552.82 in interest has accrued on that amount as of October 31, 1989. This Proposed Decision and Order sets forth the OHA's plan to distribute these funds. Comments are solicited.

The general guidelines which the OHA may use to formulate and implement a plan to distribute refunds are set forth in 10 CFR part 205, subpart V. The subpart V process may be used in situations where the DOE cannot readily identify the persons who may have been injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive. For a more detailed discussion of subpart V and the authority of the OHA to fashion procedures to distribute refunds, see Office of Enforcement, 9 DOE 82,508 (1981), and Office of Enforcement 8 DOE 82,597 (1981). We have considered the ERA's request to implement subpart V procedures with respect to the monies received from Cibro, and have determined that such procedures are appropriate.

I. Background

On July 28, 1986, the DOE issued a Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986) (the MSRP). The MSRP, issued as a result of a court-approved Settlement Agreement in In re: The Department of Energy Stripper Well Exemption Litigation, M.D.L. No. 378 (D. Kan. 1986), provides that crude oil overcharge funds will be divided among the states, the federal government, and injured purchasers of refined petroleum products. Under the MSRP, up to twenty percent of these crude oil overcharge funds will be reserved initially to satisfy valid claims by injured purchasers of petroleum products. Eighty percent of the funds, and any monies remaining after all valid claims are paid, are to be disbursed equally to the states and federal government for indirect resititution.

Shortly after the issuance of the MSRP, the OHA announced its intention to apply the Modified Policy in all subpart V proceedings involving alleged crude oil violations. *See* Order Implementing the MSRP, 51 FR 29689 (August 20, 1986). That Order provided a period of thirty days for the filing of any objections to the application of the MSRP, and solicited comments concerning the appropriate procedures to follow in processing refund applications in crude oil refund proceedings.

On April 6, 1987, the OHA issued a Notice analyzing the numerous comments it received in response to the August 1986 Order. 52 FR 11737 (April 10, 1987) (the April 10 Notice). The April 10 Notice set forth generalized procedures and provided guidance to assist claimants that wish to file refund applications for crude oil monies under the subpart V regulations. In that Notice, the OHA stated that all applicants for crude oil refunds would be required to document their purchase volumes of petroleum products during the period of price controls and prove that they were injured by the alleged overcharges. The April 10 Notice indicated that end-users of petroleum products whose businesses are unrelated to the petroleum industry will be presumed to have absorbed the crude oil overcharges, and need not submit any further proof of injury to receive a refund. Finally, the OHA stated that refunds would be calculated

on the basis of a per gallon refund amount derived by dividing crude oil violation amounts by the total consumption of petroleum products in sufficient funds will be available for refunds to injured parties. The amount of the reserve may be adjusted denied 16 DOE 85,494, aff'd sub nom. In re: The Department of Energy Stripper Well Exemption Litigation, 3 Fed. Energy Guidelines, 26,613 (D. Kan. 1987)

the states and federal government for indirect restitution. Refunds to the states the election to enlarge an existing lock rather than use an entirely new location. Wilderness Study Areas (WSAs), Wilderness Designation or Non-

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on the basis of a per gallon refund amount derived by dividing crude oil violation amounts by the total consumption of petroleum products in the United States during the period of price controls. The numerator would include the crude oil overcharge monies that were in the DOE's escrow account at the time of the settlement and a portion of the funds in the M.D.L. 378 escrow at the time of the settlement.

These procedures, which the OHA has applied in numerous cases since the April 10 Notice, see, e.g., New York Petroleum, Inc., 18 DOE 85,435 (1988); Shell Oil Co., 17 DOE 85,204 (1988); Ernest A. Allerkamp, 17 DOE 85,079 (1988), have been approved by the United States District Court for the District of Kansas as well as the Temporary Emergency Court of Appeals. Various states had filed a Motion with the Kansas District Court, claiming that the OHA violated the Settlement Agreement by employing presumptions of injury for end-users and by improperly calculating the refund amount to be used in those proceedings. On August 17, 1987, Judge Theis issued an Opinion and Order denying the states' Motion in its entirety. The court concluded that the Settlement Agreement "does not bar OHA from permitting claimants to employ reasonable presumptions in affirmatively demonstrating injury entitling them to a refund." In re: The Department of Energy Stripper Well Exemption Litigation, 671 F Supp. 1316, 1323 (D. Kan. 1987). The court also ruled that, as specified in the April 10 Notice, the OHA could calculate refunds based on a portion of the M.D.L. 378 overcharges. *Id.* at 1323–24. The states appealed the latter ruling, and the Temporary Emergency Court of Appeals affirmed Judge Theis' decision. In re: The Department of Energy Stripper Well Exemption Litigation, 857 F.2d 1481 (Temp. Emer. Ct. App. 1988).

II. The Proposed Refund Procedures

A. Refund Claims

We now propose to apply the procedures discussed in the April 10 Notice to the crude oil subpart V proceeding that is the subject of the present determination. As noted above, an alleged crude oil violation amount of $1,179,460.85 in principal, plus $233,552.82 in interest, or $1,413,013.67, is covered by this proposed Decision. We have decided to reserve initially the full twenty percent of the alleged crude oil violation amounts, or $235,892.17 in principal, plus $46,710.56 in interest, or $282,602.73, for direct refunds to claimants, in order to ensure that sufficient funds will be available for refunds to injured parties. The amount of the reserve may be adjusted downward later if circumstances warrant such action.

The process which the OHA will use to evaluate claims based on alleged crude oil violations will be modeled after the process the OHA has used in subpart V proceedings to evaluate claims based upon alleged overcharges involving refined products. *See* MAPCO, Inc., 15 DOE ¶ 85,097 (1986); Mountain Fuel Supply Co., 14 DOE ¶ 85,475 (1986) (Mountain Fuel). As in non-crude oil cases, applicants will be required to document their purchase volumes and to prove that they were injured as a result of the alleged violations. Following subpart V precedent, reasonable estimates of purchase volumes may be submitted. Greater Richmond Transit Co., 15 DOE ¶ 85,028 at 88,050 (1986). Generally, it is not necessary for applicants to identify their suppliers of petroleum products in order to receive a refund.

Applicants who were end-users or ultimate consumers of petroleum products, whose businesses are unrelated to the petroleum industry, and who were not subject to the DOE price regulations are presumed to have been injured by any alleged crude oil overcharges. In order to receive a refund, end-users need not submit any further evidence of injury beyond volumes of product purchased during the period of price controls. *See* A. Tarricone, Inc., 15 DOE ¶ 85,495 at 88,893–96 (1987). The end-user presumption of injury is rebuttable, however. Berry Holding Co., 16 DOE 85,405 at 88,797 (1987). If an interested party submits evidence which is of sufficient weight to cast serious doubt on whether the specific end-user in question was injured, the applicant will be required to produce further evidence of injury. *See* New York Petroleum, 18 DOE at 88,701–03.

Reseller and retailer claimants must submit detailed evidence of injury, and may not rely on the presumptions of injury utilized in refund cases involving refined petroleum products. They can, however, use econometric evidence of the type employed in the OHA Report to the District Court in the Stripper Well Litigation, 6 Fed. Energy Guidelines, 90,507 (June 19, 1985). Applicants who executed and submitted a valid waiver pursuant to one of the escrows established in the Stripper Well Agreement have waived their rights to apply for crude oil refunds under subpart V. Boise Cascade Corp., 16 DOE ¶ 85,214 at 88,411, reconsideration denied 16 DOE 85,494, aff'd sub nom. In re: The Department of Energy Stripper Well Exemption Litigation, 3 Fed. Energy Guidelines, 26,613 (D. Kan. 1987).

Refunds to eligible claimants who purchased refined petroleum products will be calculated on the basis of a volumetric refund amount derived by dividing the alleged crude oil violation amounts involved in this determination ($1,179,460.85) by the total consumption of petroleum products in the United States during the period of price controls (2,020,997,335,000 gallons). Mountain Fuel, 14 DOE at 88,868 n. 4. This yields a volumetric refund amount of $0.0000005836 per gallon.

As we stated in previous Decisions, a crude oil refund applicant will be required to submit only one application for crude oil overcharge funds. *See* Allerkamp, 17 DOE at 88,176. Any party that has previously submitted a refund application in the crude oil refund proceedings need not file another application; that application will be deemed to be filed in all crude oil proceedings finalized to date. A deadline of June 30, 1988 was established for all refund applications for the first pool of crude oil funds. The first pool was funded by the crude oil refund proceedings, implemented pursuant to the MSRP, up to and including Shell Oil Co., 17 DOE, 85,204 (1988). A deadline of October 31, 1989 was established for applications for refunds from the second pool of crude oil funds. The second pool was funded by those crude oil refund proceedings beginning with World Oil Co., 17 DOE ¶ 85,568, corrected, 17 DOE 85,669 (1988), and ending with Texaco Inc., 19 DOE 85,200, corrected, 19 DOE, ¶ 85,236 (1989). The deadline for filing an application for refund from the third pool of funds, pursuant to this proceeding, is October 31, 1990. The volumetric refund amount from the third pool of crude oil funds will be increased as additional crude oil violation amounts are received in the future. Applicants may be required to submit additional information to document their refund claims for these future amounts. Notice of any additional amounts available in the future will be published in the **Federal Register.**

B. Payments to the States and Federal Government

Under the terms of the MSRP, we propose that the remaining eighty percent of the alleged crude oil violation amounts subject to this Proposed Decision, or $943,568.68 in principal, plus $186,842.26 in interest, or $1,130,410.94, should be disbursed in equal shares to the states and federal government for indirect restitution. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Stripper Well Agreement. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil moneys received by the states under the Stripper Well Agreement.

Before taking the actions we have proposed in this Decision, we intend to publicize our proposal and solicit comments on it. Comments regarding the tentative distribution process set forth in this Proposed Decision and Order should be filed with the OHA within thirty days of its publication in the **Federal Register.**

It is therefore ordered that:

The refund amount remitted to the Department of Energy by Cibro Sales Corporation, Inc. pursuant to the Consent Order executed on February 15, 1984, will be distributed in accordance with the foregoing Decision.

[FR Doc. 89-29289 Filed 12-14-89; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3697-4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared November 27, 1989 through December 1, 1989 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 383–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 7, 1989 (54 FR 15006).

Draft EISs

ERP No. D–COE–E32071–00, Rating EC2, McAlpine Locks and Dams Navigation Improvement, Implementation Ohio River, Jefferson and Oldham Counties, KY and Floyd and Clark Counties, IN.

Summary: EPA feels that certain on-site adverse environmental consequences of the proposed upgrades to McAlpine Lock have been avoided by the election to enlarge an existing lock rather than use an entirely new location. There are a number of potential environmental ramifications of this project which could pose concern if measures are not taken to avoid them.

Final EISs

ERP No. F–FHW–L40161–AK, North Douglas Highway Extension; Outer Point to Point Hilda, Funding, Section 404 Permit and Right-of-Way Acquisition, City and Borough of Juneau, AK.

Summary

EPA continues to have environmental objections to the proposed action, and believes that significant environmental effects could occur as a result of road construction and induced development.

Dated: December 12, 1989.
William D. Dickerson,
Deputy Director, Office of Federal Activities.
[FR Doc. 89-29322, Filed 12-14-89; 8:45 am]
BILLING CODE 6560-50-M

[ER-FRL-3697-3]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075.

Availability of Environmental Impact Statements Filed December 4, 1989 Through December 8, 1989 Pursuant to 40 CFR 1506.9.

EIS No. 890342 FSuppl, EPA, MA, Metropolitan Boston Wastewater Treatment Facilities Construction and Operation, Grant, Deer Island, Suffolk, Norfolk and Middlesex Counties, MA, Due: February 6, 1990, Contact: Ann Rodney (617) 565–4424.

EIS No. 890343, Draft, BPA, OR, North/South Eugene-Springfield Transmission Line, Comprehensive Plan, Development, Lane County, OR, Due: February 1, 1990, Contact: Anthony R. Morrell (503) 230–3478.

EIS No. 890344, Final, EPA, FL, CF Mining Complex II, Open Pit Phosphate Mine and Beneficiation Plan, Construction and Operation, NPDES and 404 Permits, Hardee County, FL, Due: January 19, 1990, Contact: Heinz J. Mueller (404) 347–3776.

EIS No. 890345, DRevised, AFS, CA, Sherwin Bowl Ski Area Development Alpine Skiing, Special Use Permit, Substantive Changes, Inyo National Forest, Mammoth Ranger District, Mono County, CA, Due: January 29, 1990, Contact: John Ruopp (619) 873–5841.

EIS No. 890346, Final, BLM, CO, UT, Grand Junction Resource Area, Wilderness Study Areas (WSAs), Wilderness Designation or Non-designation, Demaree Canyon, Little Book Cliffs, Black Ridge Canyon, Palisade, Dominguez Canyon, Sewemup Mesa, Black Ridge Canyon West, Garfield, Mesa, Montrose and Delta Counties, CO and Grand County, UT, Due: January 14, 1990, Contact: John Singlaub (303) 243–6552.

EIS No. 890347, Draft, EPA, MA, New Bedford Secondary Wastewater Treatment Plant, Construction and Operation, City of New Bedford, MA, Due: February 12, 1990, Contact: Anne Rodney (617) 565–4424.

EIS No. 890348, DSuppl, AFS, CO, San Juan National Forest, Land and Resource Mgmt Plan Amendment, Timber Management Program, Implementation, CO, Due: March 15, 1990, Contact: Jim Powers (303) 385–1211.

Amended Notices

EIS No. 890273, Draft, FAA, MI, Detroit Metropolitan Wayne County Airport, Construction and Extension, Airport Layout Plan, Approval and Funding Wayne County, MI, Due: December 27, 1989, Contact: Ernest Gubry (313) 484–4040.

Published FR 10–13–89—Review period extended.

Dated: December 12, 1989.
William D. Dickerson,
Deputy Director, Office of Federal Activities.
[FR Doc. 89-29321 Filed 12-14-89; 8:45 am]
BILLING CODE 6560-50-M

[FRL-3697-9]

Notice of Proposed Administrative Settlement Under Section 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of CERCLA, notice is hereby given that the United States Environmental Protection Agency is proposing to enter into an administrative settlement for recovery of costs incurred at the Darling Hill Dump Superfund site in Lyndon, Vermont. Notice is being published to inform the public of the proposed settlement and of the opportunity to comment. The settlement resolves an EPA claim under section 107 of CERCLA against the following three parties who have executed signature pages

committing them to participate in the settlement: the Village of Lyndonville, Vermont, FHV–Weidmann Industries,

SUMMARY: As announced in the 5 September 1989 **Federal Register** (54 FR 36892), the EPA held Public Hearings to

FOR FURTHER INFORMATION CONTACT:

Region I: Doug Thompson, Water Management Division, Wetlands

of the Demonstration Cities and Metropolitan Development Act. States eligible for these grants must notify the

[OPP-100065A; FRL-3668-4]

Radian Corp., Science Applications

data base will be used to develop and evaluate a sampling plan for surveying the pesticide formulating/packaging

committing them to participate in the settlement: the Village of Lyndonville, Vermont, EHV-Weidmann Industries, Inc; and Vermont American Corporation. The settlement requires the settling parties to pay $308,226.66 to the Hazardous Substance Superfund. This amount represents 100 percent of the government response costs incurred at the Site up to and including August 31, 1989. The U.S. Department of Justice approved this settlement on November 21, 1989.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency's response to any comments received will be available for public inspection at the Town Clerk's Office, Village of Lyndonville, 24 Main Street, Lyndonville, Vermont and at the EPA Records Center at 90 Canal Street, Boston, Massachusetts.

DATE: Comments must be submitted on or before January 16, 1990.

ADDRESSES: The proposed settlement is available for public inspection at the EPA Records Center at 90 Canal Street, Boston, Massachusetts. A copy of the proposed settlement may be obtained from Samuel L. Silverman, U.S. Environmental Protection Agency Region I, Office of Regional Counsel, J.F.K. Federal Building—Room 2207, Boston, Massachusetts 02203. Comments should reference the Darling Hill Dump in Lyndon, Vermont, EPA Docket No. I-89-1089, and should be addressed to the Office of the Regional Administrator, U.S. Environmental Protection Agency Region I, J.F.K. Federal Building—Room 2203, Boston, Massachusetts 02203.

FOR FURTHER INFORMATION CONTACT: Samuel L. Silverman, U.S. Environmental Protection Agency, Office of Regional Counsel (RCE-2207), J.F.K. Federal Building, Boston, Massachusetts 02203, (617) 565-3443.

Dated: December 7, 1989.

Paul G. Keough,

Acting Regional Administrator.

[FR Doc. 89-29299 Filed 12-14-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-36981]

Extension of Time to Either Withdraw the Proposed Determination or Prepare a Recommended Determination for Two Forks Dam and Reservoir

AGENCY: Environmental Protection Agency.

ACTION: Notice of an extension of time.

SUMMARY: As announced in the 5 September 1989 **Federal Register** (54 FR 36882), the EPA held Public Hearings to receive comment on the Two Forks Dam and Reservior 404(c) Proposed Determination in Denver, Colorado on 23-24 October 1989, and in Grand Islands, Nebraska on 27 October 1989. Over 350 individuals provided oral comment during the hearings. The public comment period for written comment closed 17 November 1989. Since the initiation of the 404(c) process in March, 1989, over 10,000 written comments have been received by the Region VIII office. Based on the diversity and numbers of comments received during the comment period, and the significance of the concerns raised, EPA has decided, under its authority contained at 40 CFR 231.8, to extend the 404(c) process to either withdraw the Proposed Determination or prepare a Recommended Determination until January 31, 1990.

FOR FURTHER INFORMATION CONTACT: Gene Reetz, Two Forks Technical Team Leader or Mary Alice Reedy, Records Clerk, State Programs Management Branch, Water Management Division, 999 18th Street, Suite 500, Denver, Colorado 80202-2405 (303) 293-1570, FTS 564-1570.

Lee A. DeHihns,

Regional Decision Officer, EPA Region VIII.

[FR Doc. 89-29296 Filed 12-14-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3697-8]

Grants; Availability and Review of New Financial Assistance Program; Wetlands Protection—State Development Grants

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability and review.

SUMMARY: The Environmental Protection Agency (EPA) announces the availability of a new financial assistance program (66.461, "Wetlands Protection—State Development Grants") to support the initial development of State wetlands protection programs or to support refinement/enhancement of existing State wetlands protection programs. Grant funds cannot be used for operational support of State wetlands protection programs. Grants will be awarded under section 104(b)(3) of the Clean Water Act for research, investigations, experiments, training, demonstrations, surveys, and studies related to the development of State wetlands protection programs.

FOR FURTHER INFORMATION CONTACT:

Region I: Doug Thompson, Water Management Division, Wetlands Protection Section (WWP-1900), U.S. EPA Region I, John F. Kennedy Federal Building, Boston, MA 02203, 617-835-4421.

Region II: Dan Montello, Water Management Division, Wetlands Section (2WM-MWP) U.S. EPA Region II, 26 Federal Plaza, New York, NY 10278, 212-264-5170.

Region III: Barbara D'Angelo, Environmental Services Division, Wetlands and Marine Policy Section (3ES42), U.S. EPA Region III, 841 Chestnut Street, Philadelphia, PA 19107, 215-597-9301.

Region IV: Gail Vanderhoogt, Water Management Division, Wetlands Planning Unit (4WM-MWB), U.S. EPA Region IV, 345 Courtland Street, Atlanta, GA 30365, 404-347-2126.

Region V: Doug Ehorn, Water Management Division, Wetlands Protection Section (5WQW-TUB-8), U.S. EPA Region V, 230 South Dearborn Street, Chicago, IL 60604, 312-353-2079.

Region VI: Jerry Saunders, Environmental Services Division, Technical Assistance Section (6E-FT), U.S. EPA Region VI, 1445 Ross Avenue, Dallas, TX 75202, 214-655-2263.

Region VII: Diane Hershberger, Environmental Review Branch, Wetlands Protection Section, U.S. EPA Region VII, 726 Minnesota Avenue, Kansas City, KS 66101, 913-236-2823.

Region VIII: Gene Reetz, Water Management Division, Water Quality Requirements Section (8MW-SP), U.S. EPA Region VIII, 999 18th Street, Denver, CO 80202, 303-293-1575.

Region IX: Phil Oshida, Water Management Division, Wetlands Section (W-7-2), U.S. EPA Region IX, 215 Fremont Street, San Francisco, CA 94105, 415-744-2180.

Region X: Bill Riley, Water Management Division, Water Resources Assessment Section (WD-138), U.S. EPA Region X, 1200 Sixth Avenue, seattle, WA 98101, 206-442-1412.

Office of Wetlands Protection: Lori Williams, Office of Wetlands protection (A-104F), U.S. EPA, 401 M Street, SW., Washington, DC 20460, 202-382-5043.

SUPPLEMENTARY INFORMATION: EPA will award grants to State wetlands protection agencies and/or agencies with wetlands related programs under the authority of the Clean Water Act (CWA) section 104(b)(3).

This program is eligible for intergovernmental review under Executive Order 12732 and is subject to the review requirements of section 204

of the Demonstration Cities and Metropolitan Development Act. States eligible for these grants must notify the following office within thirty days of this publication whether their State's official E.O. 12372 process will review applications in this program: Grants Administration Division (PM-216F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, ATTN: Corinne Allison.

Applicants must contact their State's Single Point of Contact (SPOC) for intergovernmental review as early as possible to find out if the program is subject to the State's official E.O. 12732 review process and what material must be submitted to the SPOC for review. In addition, applications for projects within a metropolitan area must be sent to the areawide/Regional/local planning agency designated to perform metropolitan or regional planning for the area for their review.

SPOCs and other reviewers should send their comments on an application to the appropriate EPA Regional Grants Management Office, no later than sixty days after receipt of the application and other required material for review.

EPA has long recognized the role States can play in protecting the nation's wetlands, and has worked with States to develop effective wetlands protection programs. EPA is establishing a new financial assistance program (66.461; Wetlands Protection—State Development Grants) specifically designated for development of State wetlands protection programs. These grants will be awarded for research, investigations, experiments, training, demonstrations, surveys, and studies related to the development of State wetlands protection programs. These are not program operational support grants, but are intended to encourage program development or to enhance/augment existing, effective programs. Ongoing, effective State wetlands programs can be augmented in many ways, for example, by expanding the scope of activities regulated or geographic coverage.

States are encouraged to work closely with their appropriate Regional Offices to develop a formal grant application that effectively addresses the critical goals of this new grant program.

David G. Davis,

Director, Office of Wetlands Protection, Environmental Protection Agency.

[FR Doc. 89-29298 Filed 12-14-89; 8:45 am]

BILLING CODE 6560-50-M

[OPP-100056A; FRL-3668-4]

Radian Corp., Science Applications International Corp., Pesticide Consulting Services Co.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Radian Corp. and its subcontractors, Science Applications International Corp. (SAIC) and Pesticide Consulting Services Co. (PCSC) have been awarded a contract to perform work for EPA's Office of Water Regulations & Standards and will be provided access to certain information submitted to EPA under FIFRA and FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to Radian Corp., its subcontractors SAIC and PCSC consistent with the requirements of 40 CFR 2.307(h)(3) and 2.308(i)(2), respectively and will enable them to fulfill the obligations of the contracts and this notice serves to notify affected persons.

DATE: Radian Corp., its subcontractors SAIC and PCSC will be given access to this information no sooner than December 20, 1989.

FOR FURTHER INFORMATION CONTACT:

By mail: Catherine S. Grimes, Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 212, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557-4460.

SUPPLEMENTARY INFORMATION: This notice is to amend the list of subcontractors that appeared in a **Federal Register** notice of July 19, 1989 (54 FR 30258). SAIC and PCSC should have been listed in addition to the subcontractor for Radian Corp. mentioned in the above **Federal Register**.

Under the Clean Water Act, the Office of Water Regulations & Standards is conducting a survey to obtain information to support the development of an effluent guidelines regulation. A data base will be used to develop and evaluate a sampling plan for surveying the pesticide formulating/packaging point source category. In addition, the production rate of pesticide products will be used, in conjunction with the data obtained from the OWRS survey, towards the development of wastewater pollutant limitations and standards. The type of information to be collected includes a description of the formulating and packaging processes, the volume and chemical nature of wastewater generated by these processes and any related sources of wastewater, the treatment technologies used to remove pollutants from wastewater and the effectiveness of this treatment.

Under Contract No. 68-C8-0006, Radian Corp. and its subcontractors, SAIC and PCSC will assist with the engineering analysis for development of the effluent guidelines regulation.

The Office of Water Regulations & Standards and the Office of Pesticide Programs have jointly determined that the contracts herein described involve work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under these contracts. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and obtained under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3) and 2.308(i)(2), the contracts with Radian Corp. and its subcontractors SAIC and PCSC prohibit use of the information for any purpose other than purposes specified in the contract; prohibit disclosure of the information in any form to a third party without prior written approval from the Agency or affected business; and require that each official and employee of the contractor sign an agreement to protect the information from unauthorized release. In addition, Radian Corp. and its subcontractors, SAIC and PCSC are required to submit for EPA approval a security plan in accordance with the FIFRA Information Security Manual under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to the contractor and subcontractors until the above requirements have been fully satisfied. Records of information provided to the contractor and subcontractors will be maintained by the Project Officer for the contract in the

EPA, Office of Water Regulations &

DATE: This list is current as of July 19,

newly identified facilities that have

facilities were inadvertently omitted from the initial list or first update. For

III. Process for Compiling the Updated Docket

environmental restoration program report, as discussed above).

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EPA, Office of Water Regulations & Standards. All information supplied to Radian Corp. and its subcontractors SAIC and PCSC by EPA for use in connection with the contract will be returned to EPA when they have completed their work.

Dated: December 5, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 89-29297 Filed 12-14-89; 8:45am]

BILLING CODE 6560-50-D

[FRL-3696-2]

Federal Agency Hazardous Waste Compliance Docket

AGENCY: Environmental Protection Agency.

ACTION: Notice of Second Update of the Federal Agency Hazardous Waste Compliance Docket Pursuant to CERCLA Section 120(c).

SUMMARY: Section 120(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), requires the Environmental Protection Agency (EPA) to establish a Federal Agency Hazardous Waste Compliance Docket that contains certain information regarding Federal facilities that manage hazardous waste or from which hazardous substance may be or have been released. CERCLA requires that the docket be updated every 6 months as new facilities are reported to EPA by Federal agencies. The following list identifies the Federal facilities to be included in the second update of the docket (i.e., facilities not previously listed on the docket and reported to EPA since the last update to the docket, November 16, 1988). EPA policy specifies that for each Federal facility that is included on the docket during an update, the responsible Federal agency must complete a preliminary assessment and, if warranted, a site inspection, within 18 months of publication of this notice. Such remedial site evaluation activities will help determine whether the facility should be included on the National Priorities List and will provide EPA and the public with valuable information about the facility. In addition to the update list, this notice includes a section comprising revisions (i.e., corrections and deletions) to the initial docket list and the first update. At the time of publication of this notice, the new total number of Federal facilities listed on the docket is 1266.

DATE: This list is current as of July 19, 1989.

FOR FURTHER INFORMATION CONTACT: Federal Facilities Docket Hotline. Telephone: (800) 548-1016 toll free.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Revisions to the Initial Docket
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IV. Facilities Not Included
V. Information Contained on Docket Listing

I. Introduction

The Federal Agency Hazardous Waste Compliance Docket ("docket") was required to be established under Section 120(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9620(c), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA). The docket contains information on Federal facilities that is submitted by Federal agencies to the U.S. Environmental Protection Agency ("EPA" or "the Agency") under Sections 3005, 3010, and 3016 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6925, 6930, and 6937, and under Section 103 of CERCLA. The term "Federal facility" remains unchanged from that used for the initial docket and is based primarily on the RCRA definition of facility (see 47 FR 32288-9 (1982), 50 FR 28712 (1985), and 53 FR 4280 (1988)). The docket serves, among other reasons, three major purposes: (1) To identify the universe of Federal facilities that must be evaluated to determine whether they pose a risk to public health and the environment sufficient to warrant inclusion on the National Priorities List; (2) to compile and maintain the information submitted to EPA on these facilities under the provisions listed in Section 120(c) of CERCLA; and (3) to provide a mechanism to make this information available to the public.

The initial list of Federal facilities to be included in the docket was published on February 12, 1988 (53 FR 4280). The first update was published on November 16, 1988 (53 FR 46364). The second update of the docket is being published today.

Today's notice is divided into three major sections: (1) Corrections, (2) deletions, and (3) additions. The docket corrections section lists changes information on facilities already listed on the docket. The deletions section lists facilities that EPA is removing from the docket. The additions section lists newly identified facilities that have been reported to EPA since the last update and are now being included on the docket.

The information submitted to EPA on each Federal facility is contained in docket repositories located in the EPA Regional Offices where the facility is found. (See 53 FR 4280 (1988) for a description of the information required under these provisions.) All docket repositories are currently operational and available to the public. Each repository contains the documents submitted to EPA under the reporting provisions (and correspondence relevant to the reporting provisions) for each facility. A complete national index of the information found in the Regional docket repositories will be maintained at EPA Headquarters in Washington, DC, and made available to the public. This index will also be available for public review at each Regional repository. Contact the Federal Facilities Docket Hotline (800-548-1016) for information on repository locations and arrangements for reviewing and copying specific documents.

II. Revisions to the Initial Docket

1. Corrections

Necessary changes to correct the initial docket were identified by both EPA and Federal agencies. These changes vary from simple address and spelling changes to facility names and ownership corrections. Many are simply typographical or typesetting errors. For each facility with a correction, the original entry as it appeared in the February 12, 1988, notice or the November 16, 1988, update is shown directly above the corrected entry for easy comparison.

2. Deletions

Facilities are being deleted from the docket for a number of reasons, such as incorrect reporting of hazardous waste activity, change in Federal ownership, and exemption as a small quantity generator (SQG) under RCRA (40 CFR 262.44). Facilities being deleted will no longer be required to conduct a preliminary assessment (PA) as required by CERCLA Section 120(d).

3. Additions

Today, 130 facilities are being added to the docket primarily because of new information obtained by EPA indicating that a facility should now be listed (i.e.; recent reporting of a facility pursuant to RCRA Sections 3005, 3010, or 3016 or CRECLA Section 103). In some cases,

facilities were inadvertently omitted from the initial list or first update. For all facilities being added in this section, it is EPA's policy that the responsible agency will complete the required PA, and, if warranted, a site inspection (SI), within 18 months from the date of this publication.

It is EPA's policy not to list on the docket facilities which are SQGs and have never produced more than 1,000 kg of hazardous waste in any month. However, the Agency believes that facilities which are SQGs but have reported releases under Section 103, or hazardous waste activities pursuant to another reporting mechanism, should be listed on the docket. EPA believes that such facilities should undergo remedial site evaluation activities, such as a PA and, where appropriate, a SI. All such facilities will now be listed on the docket regardless of whether they are SQGs pursuant to RCRA. As a result, some of the facilities that EPA is today adding to the docket are SQGs which had not been previously listed on the docket but which have reported releases or hazardous waste activities to EPA under another reporting provision.

In the process of compiling the documents for the Regional repositories, EPA identified a number of facilities that had previously submitted a PA report, a SI report, a Department of Defense Installation Restoration Program report, or another Federal agency environmental restoration program report, but had not submitted a Section 103 notification form. Section 120(c)(3) of CERCLA requires that EPA include information submitted under Section 103 in the docket. In general, Section 103(a) requires notification of a release of a reportable quantity of hazardous substances and Section 103(c) provides for notification to EPA by any person who has knowledge of known, suspected, or likely releases of hazardous substances from a facility. The aforementioned Federal agency environmental restoration program reports contain information similar to information provided pursuant to CERCLA Section 103 and are considered equivalent forms of notification for purposes of the docket. Thus, the Agency believes that facilities which have provided information equivalent to a CERCLA Section 103 notification, such as a Federal agency environmental restoration program report, should be included in the docket regardless of the absence of formal Section 103 notification. Therefore, some of the facilities that EPA is adding today are being placed on the docket because of the above-mentioned reports.

III. Process for Compiling the Updated Docket

In compiling the newly reported facilities for the update being published today, EPA extracted the names, addresses, and identification numbers of facilities from two EPA data bases (Hazardous Waste Data Management System and CERCLIS, the CERCLA data base) that contain Federal facility information submitted under the four provisions listed in Section 120(c).

Extensive computer checks compared the initial docket list with the information obtained from the above data bases to determine which facilities were, in fact, newly reported and qualified for inclusion on the update. In spite of the quality assurance efforts EPA has undertaken, it is possible that State-owned or privately owned facilities may have been included. These potential problems are the result of historical procedures used to report and tract Federal facility data, and the Agency is working to resolve them. Federal agencies are requested to contact EPA's Docket Coordinator in writing at the following address if revisions to this update information are necessary:

Federal Facilities Docket Coordinator, U.S. EPA, 401 M Street, SW. (OS-530), Washington, DC 20460.

IV. Facilities Not Included

As explained in the original docket preamble (53 FR 4280), the docket does not include the following categories of facilities (note, however, that any of these types of facilities may, where appropriate, be listed on the NPL):

1. Facilities formerly owned by a Federal agency and now privately owned. However, facilities that are now owned by another Federal agency will remain on the docket, with responsibility for conducting PA's and SI's resting with the current owner.

2. Any facilities not currently owned by a Federal agency. For example, facilities that are operated by the Federal government under State or private ownership will not be listed on the docket.

3. SQGs that have never produced more than 1,000 kg in any month and have not reported releases under Section 103 or other hazardous waste activities under Section 3016.

4. Facilities that are solely transporters as reported under RCRA Section 3010.

5. Any Federal facility not reported to EPA pursuant to RCRA Sections 3005, 3010, or 3016 or CERCLA Section 103 (or an equivalent Federal agency environmental restoration program report, as discussed above).

V. Information Contained on Docket Listing

As discussed above, the update information below is divided into three separate sections. The first section comprises corrections to the docket. The second section is a list of facilities being deleted from the docket. The third section is a list of new facilities that are being added to the docket. Each facility listed as part of the update has been assigned a code that indicates more specific reason(s) for the correction, deletion, or addition. The code key precedes the lists.

It is EPA's policy that all facilities on the additions list to this second docket update submit a PA, and, if warranted, a SI, to EPA within 18 months of the date of this publication. This includes any facility changing responsible agencies (codes 21 and 22). These reports should be submitted to the CERCLA Federal Facility Coordinator in the appropriate EPA Regional Office.

Facilities in each section are organized by State and then grouped alphabetically within each State by the Federal agency responsible for the facility. Under each State heading is listed the facility name and address, the statutory provision(s) under which the facility was reported to EPA (indicated by an "x" in the appropriate column(s)), the EPA Region where the facility is located, and the correction codes.

The complete list of Federal facilities that now makes up the docket is not being published today. However, the list is available to interested parties and can be obtained by calling the Federal Facilities Docket Hotline (800-548-1016). As of today, the total number of Federal facilities that appear on the docket is 1268.

Dated: November 15, 1989.

Mary A. Gade,

Acting Assistant Administrator for Solid Waste and Emergency Response.

I. Docket Revisions

Categories of Revisions for Docket Update by Correction Code.

Categories for Facility Removal

(1) Small Quantity Generator.
(2) Not Federally Owned.
(3) Formerly Owned.
(4) No Hazardous Waste Generated.
(5) Temporary Storage/One Time Permitted Disposal.
(6) Redundant Listing/Site on Facility.
(7) Combining Sites Into One Facility-Entries Combined.

FEDERAL FACILITIES DOCKET ADDITIONS

Agency	Facility name	Facility address	City	State	ZIP code	RCRA 3005	RCRA 3010	RCRA 3016	CER-CLA 103	EPA region	Corr. code
Interior	Lake Clark National Park and Preserve.	Box 61, 701 C. St.	Anchorage	AK	99513				X	10	19A
Transportation	USDOT—FRA Arctic Cooperage.	932 Whitney Rd.	Anchorage	AK					X	10	19A
Transportation	USDOT—FAA Air Route Traffic Center.	5400 Davis Highway.	Anchorage	AK					X	10	15
Interior	Katmai National Park and Preserve.	Box 7	King Salmon.	AK	99613				X	10	19A
Interior	Noatak National Preserve		Kotzebue	AK	99752				X	10	19A
Interior	Bering Land Bridge National Preserve.	Box 220	Nome	AK	99762				X	10	19A
Interior	USDOI-BLM Maclaren Glacier Mine.	Fairbanks MER T19S R6E Sec 14NE Sec 11.	Paxson	AK					X	10	19A
Transportation	USDOT—FAA Biorka Island	6 mi W of Sitka	Sitka	AK	99835		X			10	19A
Army	Army Whittier Tank Farm	¾ mi N of Town	Whittier	AK					X	10	19A
Corps of Engineers Civil.	San Carlos Irrigation project	Crn Hwy 287 & Coolidge Blvd.	Coolidge	AZ	85226		X			9	19A
Air Force	161st AREFG Air National Guard.	2001 S. 32nd St	Phoenix	AZ	85034		X			9	17
Health and Human Services.	HU HU KAM Memorial Hospital.	PHS Indian Health Service.	Sacaton	AZ	85247		X			9	19A
Interior	BLM Blue Rock Millsite	T8S R37E Sec 8 SESE.		CA					X	9	19A
Interior	BLM Desert Site	9mi west of Yuma, AZ.		CA					X	9	19A
Interior	BLM Duck Flat	T36NR 19E Sec 7 NWSE.		CA					X	9	19A
Interior	BLM Indio Hills	1 mi. E. of Dillon Rd.		CA					X	9	19A
Interior	BLM Victory Millsite	T11N R12W Sec 32.		CA					X	9	19A
Interior	BLM Afton Canyon/Union Pacific Railroad.	T10–11R4–6 Sec 4–22.	Afton	CA				X		9	19A
NASA	NASA JPL Goldstone Tracking Facil.	35 Mi n of Barstow @ Ft Irwin.	Barstow	CA	92311				X	9	19A
Interior	BLM Riverside Co. Dump	1,000 Midland Rd	Blythe	CA					X	9	19A
Transportation	CAMSPAC San Francisco	525 Mesa Rd	Bolinas	CA	94956		X			9	19A
Interior	BLM Brawley Drug Lab	Near Brawley	Brawley	CA					X	9	19A
Air Force	Davis Transmitter Site	Davis	Davis	CA					X	9	19A
NASA	NASA DFRF	Bldg 4800 Edwards AFB.	Edwards AFB.	CA	93523				X	9	19A
Interior	BLM Simcal Chemical Corporation.	50 W. Dennenberg Rd.	El Centro	CA					X	9	19A
Agriculture	Sierra Nat'l Forest	1130 O St. Room 3017.	Fresno	CA	93721				X	9	19A
Air Force	Fresno Aucrad	5168 East Dakota Ave.	Fresno	CA	93727		X			9	19A
Army	Army & Air Force Exch SVC	Bld 99 Maraline	Oakland	CA	94623		X			9	19A
Agriculture	Grizzard Property	1140 Mountain View.	Oxnard	CA				X		9	19A
Air Force	Douglas Aircraft Co	3000 E Ave M	Palmdale	CA	93550		X			9	19A
Agriculture	Plumas Nat'l Forest	159 Lawrence St. Box 11500.	Quincy	CA	95971 6025				X	9	19A
Agriculture	Shasta-Trinity N.F.	2400 Washington Ave.	Redding	CA	96001				X	9	19A
Navy	Portsmouth Naval Housing Area.	25th St & El Anita Dr.	San Pedro	CA					X	9	19A
Interior	BLM Stateline Dump	T48N R6 E Sec 18.	Stateline	CA				X		9	19A
Interior	BLM Delta County Landfill	T14N R95 W Sec 10, 6THPM.		CO					X	8	19A
Interior	BLM Bookcliff Landfill	T1N R101 W Sec 6, UTEPM.	Bookcliff	CO					X	8	19A
Interior	BLM Town of Granby Sanitary Landfill.	T2NR87W6, THPM Sec 23.	Granby	CO					X	8	19A
Interior	BLM Rangely Landfill	T1N R101 W Sec 6, 6THPM.	Rangely	CO					X	8	19A
Interior	BLM South Fork Landfill	T40N R3 E Sec 26.	Southfork	CO					X	8	19A
Interior	BLM Walden Landfill	T9N R79 W Sec 24, 6THPM.	Walden	CO					X	8	19A
Navy	NRL Underwater Sound Reference Detachment.	755 Gatlin Ave	Orlando	FL	32806		X			4	19A
Air Force	Kaala AFS	Taxiway 5 & Kamakahi St.	Honolulu	HI					X	9	19A

FEDERAL FACILITIES DOCKET ADDITIONS—Continued

Agency	Facility name	Facility address	City	State	ZIP code	RCRA 3005	RCRA 3010	RCRA 3016	CER-CLA 103	EPA region	Corr. code
Interior	BLM Browns Gulch	T6S R7E Sec 10W1/2.		ID					X	10	19A
Interior	BLM Castleford Butte	T10S R12E Sec 23.		ID					X	10	19A
Interior	BLM Feedlot Dump	T4S R3E Sec 26		ID					X	10	19A
Interior	BLM Montview	T8N R34E Sec 22 NWNW.		ID					X	10	19A
Interior	BLM W. Carman Lake	T7S R25E Sec 9		ID					X	10	19A
Interior	BLM Warrior Road	T3S R1W Sec 11		ID					X	10	19A
Energy	Burley Maint HQ	1247 W. Main	Burley	ID	83318		X			10	17
Agriculture	Idaho Panhandle National Forests.	1201 Ironwood Dr	Coeur D' Alene.	ID	83814			X		10	19A
Agriculture	U.S. Sheep Experiment Station.	HC 62, Box 2010	Dubois	ID	83423			X		8	19A
Interior	BLM-Hell's Half Acre, E. Finger.	T1SR36E Sec 4	Firth	ID	83236				X	10	16
Interior	BLM-Hell's Half Acre, W. Finger.	T1SR36E Sec 32	Firth	ID	83236				X	10	16
Agriculture	Soil and Water Management Research Unit.	Route 1, Box 186, 3600 East.	Kimberly	ID	83341			X		10	19A
Agriculture	Salmon National Forest	P.O. Box 729	Salmon	ID	83467				X	10	19A
Justice	USDEA North Cen Lab	500 US Customs House 610 Canal.	Chicago	IL	60607		X			5	19A
General Services Admin.	US Army Corps of Engineers	219 S Dearborn St	Chicago	IL	60604		X			5	19A
Veterans Administration	US VA Medical Center	2401 W Main St	Marion	IL	62959		X			5	19A
Commerce	US Dept of Commerce Bureau of The Census.	2255 Enterprise Dr	Westchester.	IL	60153		X			5	19A
Corps of Engineers, Civil.	Floating Plant—Repair Facility	27th & Canal	Louisville	KY	40212		X			4	19A
Agriculture	Watertown Dairy	6 Moore Road	Wayland	MA				X		1	19A
Air Force	(Air National Guard)—Martin's Airport.	Eastern Ave and Wilson Point Rd.	Baltimore	MD					X	3	19A
Commerce	NMFS—Oxford		Oxford	MD						3	15A
Veterans Administration	USVA Medical Center	5500 Armstrong Rd.	Battle Creek.	MI	49016		X			5	19A
Agriculture	Huron-Manistee N.F.	412 S. Mitchell St	Cadillac	MI	49601			X		5	19A
Agriculture	Hiawatha Nat'l Forest	2727 N. Lincoln Rd.	Escanaba	MI	49829			X		5	19A
Postal Service	US Post Office	1515 Fort St	Lincoln	MI	48146		X			5	19A
Navy	US Naval Reserve Center	25400 E Eleven Mile Rd.	Southfield	MI	48075		X			5	19A
Veterans Administration	Veterans Administration Medical Center.	54th St & 48th Ave S.	Minneapolis.	MN	55417		X			5	19A
Energy	Tatum Dome		Hattiesburg	MS	39401				X	4	17
Interior	BLM High Ore Mine	17NR5WSEC36		MT					X	8	19A
Army	US Dept of the Army AMSA #5.	1430 Broadwater Ave.	Billings	MT	59102		X			8	19A
Agriculture	Beaverhead N.F.	610 N. Montana St.	Dillon	MT	59725			X		8	19A
Interior	US Bureau of Reclama (Hungry Horse Dam).	Edge of Hungry Horse.	Hungry Horse.	MT	59919		X			8	19A
Interior	BLM Steamboat Point	T25NR10E Sec 18PMM.	Loma	MT					X	8	19A
Army	Marine Ocean Terminal/ Sunny Point.	ATTN: MTE SUFE.	Southport	NC	28461				X	4	17
Postal Service	US Postal Service	Federal Square room B-97.	Newark	NJ	07102		X			2	19A
Army	Pedricktown Support Facility	Route 130 Slever Sandberg USARC.	Pedricktown.	NJ	08067				X	2	19A
Postal Service	US Postal Service	660 State Hwy 130.	Trenton	NJ	08650		X			2	19A
Energy	Lovelace Inhalation Toxicology Research Inst.	Bldg. 9200, Kirtland AFB East.	Albuquerque.	NM	87185				X	6	17
Interior	BLM Anthony Landfill	T26R4ESEC30, NMPH.	Anthony	NM					X	6	19A
Interior	BLM Carlsbad Ldfl	T21S R27 E Sec 27NMPH.	Carlsbad	NM					X	6	19A
Interior	BLM Chaparral Landfill	T26S R5E Sec 14	Chaparral	NM					X	6	19A
Interior	BLM Espanola Landfill	T20N R9E Sec 6N MPH.	Espanola	NM					X	6	19A
Interior	BLM Hyde Mine	35/32/46 & 108/41/26.	Gallup	NM					X	6	19A
Interior	BLM Hill Landfill	T22S R1E Sec SS&4N MPH.	Hill	NM					X	6	19A

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FEDERAL FACILITIES DOCKET ADDITIONS—Continued

Agency	Facility name	Facility address	City	State	ZIP code	RCRA 3005	RCRA 3010	RCRA 3016	CERCLA 103	EPA region	Corr. code
Interior	BLM Lemitar Landfill	T2S R1W Sec S13&24.	Lemitar	NM					X	6	19A
Army	US Aadacen & Ft Bliss	McGregor Range FAW 10.	McGregor Range.	NM	88003					6	19A
Air Force	US Air Force Melrose Range	25 Mi W of Cannon AFB.	Melrose	NM	88124		X			6	19A
Interior	BLM Mesquite Landfill	T24S R3E Sec 29N MPH.	Mesquite	NM					X	6	19A
Interior	BLM Orogrande Landfill	T22S R8E Sec 14SW5ESW.	Orogrande	NM					X	6	19A
Interior	BLM San Antonio Landfill	T5S R1E Sec 6N MPH.	San Antonio.	NM					X	6	19A
Interior	BLM Thoreau Landfill	T14N R13W Sec 20N MPH.	Thoreau	NM					X	6	19A
Interior	BLM Truth or Consequences Landfill.	T13S R4W Sec 22N MPH.	Truth or Consequences.	NM					X	6	19A
Interior	BLM Velarde Landfill	T22N R9E Sec 20N MPH.	Velgarde	NM					X	6	19A
Agriculture	Humbolt N.F	967 Mountain City Hwy.	Elko	NV	89801				X	9	19A
Agriculture	Toiyabe National Forest	1200 Franklin Way	Sparks	NV	89431				X	9	19A
Transportation	USCG Group Moriches	100 Moriches Island Rd.	East Moriches.	NY	11940		X			2	19A
Transportation	CG Station Shinnecock	Unknown	Hampton Bays.	NY	11946		X			2	19A
Postal Service	US Postal Service	2400 Orange Ave GMF Room 208.	Cleveland	OH	44101		X			5	19A
Agriculture	Wayne National Forest		Ironton	OH	45638				X	5	19A
Corps of Engineers, Civil.	US Army COE Rosaford Depot.	851 Third St	Perrysburg	OH	43551		X			5	19A
Corps of Engineers, Civil.	Army COE Erie Industrial Park	Erie Industrial Pk Bldg 2.	Port Clinton.	OH	43452		X			5	19A
Air Force	US Air Force Altus AFB	443 ABG/DEEV	Altus	OK	73521		X			6	19A
Agriculture	Southern Plains Range Research Laboratory.	2000 18th St	Woodward	OK	73801				X	6	19A
Agriculture	Willamette National Forest	Box 10607	Eugene	OR	97440				X	10	19A
Agriculture	Fremont Nat'l Forest	524 North G St	Lakeview	OR					X	10	19A
Army	USAR Center Clearfield	RD 2 Box 314	Clearfield	PA	16830		X			3	19A
Army	USARC - Pendel-Caminiti	950 New Castle Rd.	Farrell	PA	16121		X			3	19A
Agriculture	Allegheny Nat'l Forest	222 Liberty St Box 847.	Warren	PA					X	3	19A
Postal Service	US Postal Service-Warrendale.	300 Commonwealth Ave.	Warrendale.	PA	15086		X			3	19A
Energy	US DOE Y-12 Plant	Bear Creek Rd	Oak Ridge	TN	37830	X	X		X	4	17
Interior	BLM Snowville Landfill	T14NR9W Sec 5C32SLM.	Snowville	UT					X	8	19A
Interior	BLM Wendover Landfill	T1SR19W Sec 3, Lots 1 & 2.	Wendover	UT					X	8	19A
Interior	US Navy Saint Helena Annex	South Main St	Norfolk	VA	23523		X			3	19A
Commerce	Columbia Gardens		Pasco	WA					X	10	19A
Army	US Army Reserve Ctr	619 W Wisconsin Ave.	Pewaukee	WI	53072		X			5	19A
Veterans Administration	USVA Medical Center	Veterans Dr	Tomah	WI	54660		X			5	19A
Army	USAR Martinsburg MEM Reserve Center.	900 Maryland Ave	Martinsburg	WV	25401		X			3	19A
Interior	BLM Old Lysite Landfill	T30NR91W Sec 1		WY					X	8	19A
Interior	BLM South Bighorn County Landfill.	T52NR93W Sec 20.		WY					X	8	19A
Interior	BLM Baroil Landfill	T26NR90W Sec 26.	Baroil	WY					X	8	19A
Interior	BLM Boulder Landfill	T31NR106W Sec 3.	Boulder	WY					X	8	19A
Agriculture	High Plains Grassland Research Station.	8408 Hildreth Rd	Cheyenne	WY	82009			X		8	19A
Interior	BLM Cody Landfill	T52NR101W Sec 20.	Cody	WY					X	8	19A
Interior	BLM Riverton Landfill	T34NR96W Sec 26.	Riverton	WY					X	8	19A
Interior	BLM Birch Creek Site	T27NR113W Sec 34.	Worland	WY					X	8	19A
Interior	BLM Worland Landfill	T47NR93W Sec 23.	Worland	WY					X	8	19A

FEDERAL FACILITIES DOCKET REMOVALS

Agency	Facility name	Facility address	City	State	Zip code	RCRA 3005	RCRA 3010	RCRA 3016	CERCLA 103	EPA Region	Corr. Code
Interior	US Dept of Interior Hope Wildlife area.	4 miles North off Hwy 32.	Hope	AR	71801				X	6	2
Interior	BLM-Caliente Resource area, Parcel No. 147-090-06.	520 Butte Street	Bakersfield	CA	93305				X	9	2
NASA	Canoga manufacturing facility	6633 Canoga Ave	Canoga Park.	CA	91303			X		9	6
General Services Admin.	Chet Holifield Federal Energy building.	24000 Avila Road	Laguna Ni Guel.	CA	92677		X		X	9	4
Air Force	Los Angeles Air Force station	2400 El Segundo Blvd.	Los Angeles.	CA	90009		X		X	9	6
Labor	Pepper Industries	91-294 Kauhi St	EWA Beach.	HI	96706	X				9	2
General Services Admin.	Federal Bldg	205 N 4th Street	Coeur D'Alene.	ID	83814		X		X	10	1
Interior	BLM-Hell's Half Acre, S. Finger and W. Finger.	T1SR36ESEC4&32	Firth	ID	83236				X	10	6
Agriculture	USDA-FS forestry sciences lab.	1221 S Main St	Moscow	ID	83843				X	10	4
Interior	Iberville Land Company Well #3.	2.2 Mi E of H-975, 5.5 Mi W I-10.	Henderson	LA	70517				X	6	6
Interior	Iberville Land Co. Well #1	3.03 Mi E of LA975 & 5.5 Mi N of I-10.	Henderson	LA	70517				X	6	6
NASA	NASA Michoud/Martin Marietta Aerospace.	13800 Old Gentilly Rd.	New Orleans.	LA	70129	X	X	X	X	6	6
Navy	Naval Facility Nantucket	Tom Nevers Head	Nantucket	MA						1	2
Army	US Army Reserve XVIII ARBN Corps.	Afza FE EE	Fort Bragg	NC	28307		X	X	X	4	6
Energy	Great Plains Coal gasification plant.	7 Mi NW of Beulah.	Beulah	ND	58523	X	X	X		8	3
Veterans Administration	GSA/VA Depot	Route 206	Somerville	NJ	08876				X	2	6
Agriculture	Mineral Creek Tailing	Forest Route 701 3.5 Mi E of Hwy 180.	Alma	NM	88039				X	6	2
Interior	Caddo County Landfill #1	SE/4 Sec7 T5N R11W SW/4 Sec8.	Apache	OK	73006				X	6	4
Army	US Army Bristol Nike Site	Rt 126	Bristol	RI	02809				X	1	2
Army	US Army Foster Nike Site	Off Boss Rd	Foster	RI	02825				X	1	2
Army	US DOD Defense Depot, Memphis.	Perry & Elliston Rd	Memphis	TN	38106				X	4	6
Agriculture	Unidentified site	US Forest Service property.	Huntsville	TX	77340				X	6	4
Agriculture	US Dept Agri livestock insects.	Fredericksburg Road.	Kerrville	TX	78028	X	X			6	6
Treasury	US Customs—Millington addition.	East of FM 170	Presidio	TX	79845				X	6	2
Interior	East Summit mining claims			UT				X		8	6
Army	Cape Charles Air Force Station.		Cape Charles.	VA	23310		X			3	6
Treasury	Customs Service—Seattle	909 First Ave.	Seattle	WA	98174		X			10	1
Agriculture	Clam Lake		Clam Lake	WI				X		5	6
Veterans Administration	Veterans Admin Medical Center.	5000 W. National Avenue.	Wood	WI	53193		X	X		5	1
Air Force	Wake Island Air Fld	154ABW	Wake Island.	WQ	96706				X	9	6

FEDERAL FACILITIES DOCKET CORRECTIONS

[O=Original, C=Corrected]

Agency	Facility name	Facility address	City	State	ZIP Code	RCRA 3005	RCRA 3010	RCRA 3016	CERCLA 103	EPA region	Corr. codes
O—Air Force	Murphy Dome AFS	11 TCG/CC	Elmendorf AFB.	AK	99506		X			10	
C—Air Force	Murphy Dome AFS	11 TCW/CC	Elmendorf AFB.	AK	99506		X				20A
O—Air Force	Sparrenvohn AFS	11 TCG/CC	Elmendorf AFB.	AK	99506		X		X	10	
C—Air Force	Sparrenvohn AFS	11 TCW/CC	Elmendorf AFB.	AK	99506		X		X	10	20A
O—Air Force	Indian Mountain AFS	11 TCG/CC	Elmendorf AFB.	AK	99506		X		X	10	
C—Air Force	Indian Mountain AFS	11 TCW/CC	Elmendorf AFB.	AK	99506		X		X	10	20A

FEDERAL FACILITIES DOCKET CORRECTIONS—Continued

[O=Original, C=Corrected]

FEDERAL FACILITIES DOCKET CORRECTIONS—Continued

[O=Original, C=Corrected]

FEDERAL FACILITIES DOCKET CORRECTIONS—Continued

[O=Original, C=Corrected]

Agency	Facility name	Facility address	City	State	ZIP Code	RCRA 3005	RCRA 3010	RCRA 3016	CER-CLA 103	EPA region	Corr. codes
O—Air Force	USAF—Aniak AFB LDFL	Head Shank Kuskokwim RIV/ SLOGH.	Aniak	AK	99557				X	10	
C—Air Force	Aniak AFB	Head Shank Kuskokwim RIV/ SLOGH.	Aniak	AK	99557				X	10	20A
O—Air Force	USAF—Bethel AFS LDFL	Airport—W end of main road.	Bethel	AK	99559		X		X	10	
C—Air Force	Bethel AFS	Airport—W end of main road.	Bethel	AK	99559		X		X	10	20A
O—Air Force	USAF—Big Mountain AFS LDFL	S Shoure Iliamna/ S side Big Mtn.	Big Mountain AFS.	AK	99501		X		X	10	
C—Air Force	Big Mountain AFS	S Shoure Iliamna/ S side Big Mtn.	Big Mountain AFS.	AK	99501		X		X	10	20A
O—Air Force	USA—Clear AFS LDFL	Hwy 3 & Nenana Rd.	Anderson	AK	99704		X		X	10	
C—Air Force	Clear AFS	13 MWS/CC	Anderson	AK	99704		X		X	10	20A
O—Air Force	USAF—Dewline Site POW-3	E of Flaxman Island.	Bullen Point.	AK	99723				X	10	
C—Air Force	USAF—Dewline Site POW-3	E of Flaxman Island.	Bullen Point.	AK	99723		X		X	10	23
O—Air Force	USAF—Driftwood Bay AFS LDFL	N Coast Unalaska Island.	Driftwood Bay.	AK	99553				X	10	
C—Air Force	USAF—Driftwood Bay AFS	N Coast Unalaska Island.	Driftwood Bay.	AK	99553				X	10	20A
O—Air Force	USAF—Duncan Canal LDFL	12 mi. SW of CY	Petersburg	AK	99683				X	10	
C—Air Force	Duncan Canal	12 mi. SW of CY	Petersburg	AK	99683				X	10	20A
O—Air Force	USAF—Fort Yukon AFS LDFL	N of Yllota Slough	Fort Yukon	AK	97740				X	10	
C—Air Force	Fort Yukon AFS	N of Yllota Slough	Fort Yukon	AK	99740		X		X	10	23 20A
O—Air Force	USAF—North River AFS LDFL	Mouth of North River.	Unalakleet	AK	99684				X	10	
C—Air Force	USAF—North River AFS	Mouth of North River.	Unalakleet	AK	99684				X	10	20A
O—Air Force	USAF—Port Heiden AFS LDFL	NW Shore of Heiden Bay.	Port Heiden.	AK	99549				X	10	
C—Air Force	USAF—Port Heiden AFS	NW Shore of Heiden Bay.	Port Heiden.	AK	99549				X	10	20A
O—Transportation	USDOT—CG Kodiak Support Ctr.	Womans Bay Kodiak Isl.	Kodiak	AK	99619		X		X	10	
C—Transportation	USDOT—CG Kodiak San LDFL	USCG Support Center.	Kodiak	AK	99619				X	10	20A 24
O—Air Force	Cape Newenham AFS	11 TCG/CC Bay	Elmendorf AFB.	AK	99506		X		X	10	
C—Air Force	Cape Newenham AFS	11 TWC/CC Bay	Elmendorf AFB.	AK	99506		X		X	10	20A
O—Air Force	Eielson AFB	5010 CSG/DE 343 CSG DEEV BLDG 2258.	Eielson AFB.	AK	99702	X	X	X	X	10	
C—Air Force	Eielson AFB	343 CSB/DE	Eielson AFB.	AK	99702	X	X	X	X	10	20A
O—Air Force	Tatlina AFS	11 TCG/CC	Elmendorf AFB.	AK	99506		X		X	10	
C—Air Force	Tatalina AFS	11 TCW/CC	Elmendorf AFB.	AK	99506		X		X	10	20A
O—Air Force	Tin City AFS	11 TCG/CC	Elmendorf AFB.	AK	99506		X		X	10	
C—Air Force	Tin City AFS	11 TCW/CC	Elmendorf AFB.	AK	99506		X		X	10	20A
O—Air Force	Elmendorf AFB	215 CSG/DE 21 CSG/DEEV B22-009.	Elmendorf AFB.	AK	99506-5000	X	X	X		10	
C—Air Force	Elmendorf AFB	21 CSG/CC 21	Elmendorf AFB.	AK	99506-5000	X	X	X	X	10	23 20A
O—Air Force	Cape Romanzof AFS	11 TCG/CC	Elmendorf AFB.	AK	99506		X		X	10	
C—Air Force	Cape Romanzof AFS	11 TCW/CC	Elmendorf AFB.	AK	99506		X		X	10	20A
O—Air Force	USAF Cape Lisbourne AFS	11 TCG/CC	Elmendorf AFB.	AK	99506		X		X	10	
C—Air Force	USAF-Cape Lisbourne AFS	11 TCW/CC	Elmendorf AFB.	AK	99506		X		X	10	20A

FEDERAL FACILITIES DOCKET CORRECTIONS—Continued

[O=Original, C=Corrected]

Agency	Facility name	Facility address	City	State	ZIP Code	RCRA 3005	RCRA 3010	RCRA 3016	CER-CLA 103	EPA region	Corr. codes
O—Air Force	USAF-Dewline site POW-2	Simpson Lagoon-Beaufort Bay.	Oliktok	AK	99599				X	10	
C—Air Force	USAF-Dewline site POW-2	Simpson Lagoon-Beaufort Bay.	Oliktok	AK	99599		X		X	10	23
O—Army	USA Redstone Arsenal	CMDR USAMICOM DRSMI-K - Triana/ Tennessee River Redstone Arsenal.	Huntsville	AL	35898	X	X	X	X	4	
C—Army	USA Redstone Arsenal	CMDR USAMICOM DRSMI-K.	Huntsville	AL	35898	X	X	X	X	4	20A
O—Air Force	USAF Maxwell Air Force Base.	3800 Air Base Group DEE.	Maxwell AFB.	AL	36112	X	X		X	4	
C—Air Force	USAF Maxwell Air Force Base.	3800 Air Base Group DEE.	Maxwell AFB.	AL	36112		X		X	4	20
O—Tennessee Valley Authority.	TVA Muscle Shoals Power Stores.	AL Hwy 133	Muscle Shoals.	AL	35660	X	X	X	X	4	
C—Tennessee Valey Authority.	TVA Muscle Shoals Power Stores.	AL Hwy 133	Muscle Shoals.	AL	35660	X	X	X		4	24
O—Tennessee Valley Authority.	TVA Bellefonte Nuclear Plt	Off US Hwy 72	Hollywood	AL	36401		X		X	4	
C—Tennessee Valley Authority.	TVA Bellefonte Nuclear Plt	Off US Hwy 72	Hollywood	AL	36401	X	X		X	4	23
O—Army	DOA/Wheeler National Wildlife Refuge.	PO Box 1643	Decatur	AL	35602			X		4	
C—Army	DOA/Wheeler National Wildlife Refuge.	PO Box 1643	Decatur	AL	35602			X	X	4	23
O—Tennessee Valley Authority.	TVA Colbert Steam Plant	Off US Hwy 72 W	Tuscumbia	AL	35674				X	4	
C—Tennessee Valley Authority.	TVA Colbert Steam Plant	Off US Hwy 72 W	Tuscumbia	AL	35674	X	X		X	4	23
O—Air Force	USAF Blytheville Air Force Base.	97 CSG/DEEV	Blytheville	AR	72315-5000	X	X		X	6	
C—Air Force	Eaker AFB	97 CSG/DEEV	Eaker AFB	AR	72315-5000	X	X	X	X	6	23 20A
O—Air Force	Little Rock AFB	314 CSG/CC	Little Rock AFB AR.	AR	72979	X	X	X	X	6	
C—Air Force	Little Rock AFB	314 CSG/CC	Little Rock AFB AR.	AR	72099	X	X	X	X	6	20A
O—Army	Navajo Army Depot	I-40	Flagstaff	AZ	86001	X	X		X	9	
C—Army	Navajo Army Depot	I-40	Flagstaff	AZ	86001	X	X	X	X	9	23
O—Air Force	Arizona Air Natl Guard 162 TAC FTR Gp.	1500 E. Valencia Road.	Tucson	AZ	85706	X	X		X	9	
C—Air Force	Arizona Air Natl Guard 162 TAC FTR Gp.	1500 E. Valencia Road.	Tucson	AZ	85706		X		X	9	20A 24
O—Air Force	Air Force Plant 44 (Hughes Aircraft Co.).	Emery Port Station	Tucson	AZ	85734	X		X		9	
C—Air Force	Air Force Plant 44 (Hughes Aircraft Co.).	Old Nogales Road	Tucson	AZ	85734	X		X		9	20A
O—Interior	Yuma Desalting Plt	7301 Calle Agua Salada.	Yuma	AZ	85364	X	X	X		9	
C—Interior	Yuma Desalting Plant	7301 Calle Agua Salada.	Yuma	AZ	85364	X	X	X		9	20A
O—Agriculture	USDA Shafter US Cotton Research.	17053 Shafter Avenue.	Shafter	CA	93263		X		X	9	
C—Agriculture	US Cotton Research Center	17053 Shafter Avenue.	Shafter	CA	93263		X	X	X	9	23 20A
O—Air Force	Edwards Air Force Base	AFFTC Edwards AFB.	Edwards	CA	93523	X	X	X	X	9	
C—Air Force	Edwards Air Force Base	P.O. Box 458	Edwards	CA	93523	X	X	X	X	9	20A
O—Air Force	McClellan AFB	SM-ALC/EM	McClellan AFB.	CA	95652	X	X	X	X	9	
C—Air Force	McClellan AFB	SM-ALC/EM	Sacramento.	CA	95652	X	X	X	X	9	20A
O—Air Force	Point Arena Air Force Station	26 ADS/DE	Pt. Arena AFS.	CA	95468				X	9	
C—Air Force	Point Arena Air Force Station	26 ADS/DE	Pt. Arena AFS.	CA	95468			X	X	9	23
O—Air Force	March AFB	22 CSG/CC	March AFB	CA	92518	X	X		X	9	
C—Air Force	March AFB	22 CSG/CC	March AFB	CA	92518	X	X	X	X	9	23
O—Air Force	Air Force Plant 19	4297 Pacific Coast Hwy.	San Diego	CA	92101				X	9	

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FEDERAL FACILITIES DOCKET CORRECTIONS—Continued

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Agency	Facility name	Facility address	City	State	ZIP Code	RCRA 3005	RCRA 3010	RCRA 3016	CERCLA 103	EPA region	Corr. codes
C—Air Force	Air Force Plant 19	4297 Pacific Coast Hwy.	San Diego	CA	92101-5001				X	9	20A
O—Energy	Lawrence Livermore Lab—Site.	Corral Hollow Rd.	San Diego	CA	94550	X	X		X	9	
	300		Joaquin/ Alameda Counties.								
C—Energy	Lawrence Livermore Lab—Site 300.	Corral Hollow Rd.	San Diego Joaquin/ Alameda Counties.	CA	94550	X	X	X	X	9	23
O—Energy	US Doe Sandia Natl. Lab	7261 East Avenue	Livermore	CA	94550	X	X	X	X	9	
C—Energy	US Doe Sandia Natl. Lab	7011 East Avenue	Livermore	CA	94550	X	X	X	X	9	20A
O—Navy	Naval Shipyard Hunters Point		San Francisco.	CA	94593		X		X	9	
C—Navy	Naval Station Treasure Island Shipyard Hunters Point Annex.		San Francisco.	CA	94130		X	X	X	9	20A 23
O—Navy	Naval Air Station Moffett Field.		Moffett Field.	CA	94035	X	X		X	9	
C—Navy	Naval Air Station Moffett Field.		Moffett Field.	CA	94035	X	X	X	X	9	23
O—Navy	Naval Supply Ctr. Oakland–Pt. Molate Sta.	End Western Dr. Off SR 17.	Richmond	CA	94801	X	X			9	
C—Navy	Naval Supply Ctr. Oakland–Pt. Molate Sta.	End Western Dr. Off SR 17.	Richmond	CA	94801		X			9	24
O—Navy	Naval Air Station Lemoore	Naval Air Station	Lemoore	CA	93245		X		X	9	
C—Navy	Naval Air Station Lemoore	Naval Air Station	Lemoore	CA	93245		X	X	X	9	23
O—Navy	Naval Station Treasure Island	Treasure Island	San Francisco.	CA	94130	X	X		X	9	
C—Navy	Naval Station Treasure Island	Treasure Island	San Francisco.	CA	94130	X	X	X	X	9	23
O—Navy	Dept. of Defense Housing Facility.	Branch HSG Office Bldg. 1000.	Novato	CA	94939		X			9	
C—Navy	Dept. of Defense Housing Facility.	Branch HSG Office Bldg. 1000.	Novato	CA	94939		X	X		9	23
O—Navy	Marine Corps Recruit Depot San Diego.	Barnett Ave. & Pacific Hwy..	San Diego	CA	92140		X		X	9	
C—Navy	Marine Corps Recruit Depot San Diego.	Barnett Ave. & Pacific Hwy..	San Diego	CA	92140		X	X	X	9	23
O—Navy	Marine Corps Air Station Tustin.	MCAS Tustin	Tustin	CA	92719			X		9	
C—Navy	Marine Corps Air Station Tustin.	MCAS Tustin	Tustin	CA	92719	X		X		9	23
O—Air Force	George Air Force Base	331 CSG/DE	George AFB.	CA	92392	X	X	X	X	9	
C—Air Force	George Air Force Base	831 CSG/DE	George AFB.	CA	92392	X	X	X	X	9	20A
O—Air Force	Air Force Plant 42 (Rockwell International).	20th Street & E Aves. D&M.	Palmdale	CA	93550	X	X		X	9	
C—Air Force	Air Force Plant 42 (Rockwell International).	20th & E Street Aves. D & M.	Palmdale	CA	93550-0678	X	X	X	X	9	20A 23
O—Defense	Defense Fuel Supply Center Ozol.	Carquinez Scenic Drive.	Martinez	CA	94553		X	X	X	9	
C—Defense	Defense Fuel Supply Center Ozol.	700 Carquinez Scenic Drive.	Martinez	CA	94553		X	X	X	9	20A
O—Energy	Energy Technology Engineering Center.	Santa Susana Mtn..	Chatsworth County.	CA	93063	X		X		9	
C—Energy	Energy Technology Engineering Center.	Santa Susan Mountain.	Simi Hills	CA	93063	X		X		9	20A
O—Navy	Naval Air Logistics Force Crows Landing.	Naif Crows Landing.	Crows Landing.	CA	95313		X			9	
C—Navy	Naval Air Logistics Force Crows Landing.	Naif Crows Landing.	Crows Landing.	CA	95313		X	X		9	23
O—Energy	Naval Petroleum Reserve #1	Elk Hills	Tupman	CA	93276			X	X	9	
C—Energy	Naval Petroleum Reserve #1	Elk Hills, P.O. Box 11.	Tupman	CA	93276			X	X	9	20A
O—Air Force	Norton Air Force Base	63ABG/DE	Norton AFB.	CA	92409	X	X	X	X	9	
C—Air Force	Norton Air Foce Base	63ABG/CC	Norton AFB.	CA	92409	X	X	X	X	9	20A

FEDERAL FACILITIES DOCKET CORRECTIONS—Continued

[O=Original, C=Corrected]

Agency	Facility name	Facility address	City	State	ZIP Code	RCRA 3005	RCRA 3010	RCRA 3016	CERCLA 103	EPA region	Corr. codes
O—Navy	Naval Submarine Base San Diego.	Naval Station Building 545.	San Diego	CA			X	X		9	
C—Navy	Naval Submarine Base San Diego.	140 Sylvester Rd. Naval Station Building 545.	San Diego	CA	92106		X	X		9	20A
O—Agriculture	Aquatic Weed Research Facility.	University of Calif.	Davis	CA	95616			X		9	
C—Agriculture	Aquatic Weed Control Research Laboratory.	3116 Wickson Hall University of Calif..	Davis	CA	95616			X		9	20A
O—Agriculture	Fresno Research Center	2021 South Peach Ave..	Fresno	CA	93727			X		9	
C—Agriculture	Fresno Horticultural Field Station.	2021 South Peach Ave..	Fresno	CA	93727			X		9	20A
O—Interior	BLM Horse Corrals	T29NR15ESEC9 6 mi NW of Susanville.	Susanville	CA	96130				X	9	
C—Interior	Susanville Site	T29NR15ESEC9 6 mi NW of Susanville.	Susanville	CA	96130				X	9	20A
O—Interior	Cuyama Drug Lab.	T10N, R28W, SEC15, NESE.		CA				X		9	
C—Interior	Cuyama Drug Lab.	T10N, R28W, SEC15, NESE.	Santa Barbara.	CA				X		9	20A
O—Navy	Sere Camp		Warner Springs.	CA					X	9	
C—Navy	Fleet Aviation Spec. Operational Training Group.		Warner Springs.	CA					X	9	20A
O—Army	Pueblo Army Depot	I-50, 13 mi. E. of Pueblo.	Pueblo	CO	81002	X	X		X	8	
C—Army	Pueblo Army Depot	1-50, 13 mi. E. of Pueblo.	Pueblo	CO	81002	X	X	X	X	8	23
O—Air Force	Peterson Air Force Base	All Bldgs. on Base	Colorado Springs.	CO	80914		X		X	8	
C—Air Force	Peterson Air Force Base	1003 SSC/CC	Peterson AFB.	CO	80914	X	X		X	8	23 20A
O—Air Force	US Air Force Academy	10 mi. N. Colorado Springs on 1-25.	Colorado Springs.	CO	80912		X		X	8	
C—Air Force	US Air Force Academy	AFA/DE	Colorado Springs.	CO	80840		X		X	8	20A
O—Interior	Water & Power Resources Serv.	910 Van Buren	Loveland	CO	80537		X		X	8	
C—Interior	Bureau of Reclamation	910 Van Buren	Loveland	CO	80537		X		X	8	20A
O—Transportation	FHWA Central Direct Fed. Div. Materials.	6th St., Bldg. 52, DFC.	Denver	CO	80225		X		X	8	
C—Transportation	FHWA Central Direct Fed. Div. Materials.	6th St., Bldg. 52, DFC.	Denver	CO	80225	X	X		X	8	23
O—Energy	Anvil Points	7 mi W. of Rifle	Rifle	CO	81650				X	8	
C—Energy	Anvil Points	7 mi W. of Rifle	Rifle	CO	81650			X	X	8	23
O—EPA	National Enforcement Investigation Center.	DFC	Denver	CO	80225	X				8	
C—EPA	National Enforcement Investigation Center.	DFC	Denver	CO	80225		X			8	23 24
O—Interior	BLM-Chaffee County Landfill	T.51.N.R.8.E. SEC. 21.		CO					X	8	
C—Interior	BLM-Chaffee County Landfill	T.51.N.R.8.E. SEC. 21,-US Hwy 285 10m North of Salida.		CO					X	8	20A
O—Army	Fitzsimons Army Medical Ctr	Corner of Colfax and Peoria.	Aurora	CO	80045		X		X	8	
C—Army	Fitzsimons Army Medical Ctr	Corner of Colfax and Peoria.	Aurora	CO	80045	X	X		X	8	23
O—Interior	US Bureau of Rec—Engineering & Research Center.	Denver Federal Center, Bldg. 56.	Denver	CO	80225	X	X			8	
C—Interior	US Bureau of Rec—Engineering & Research Center.	Denver Federal Center, Bldg. 56.	Denver	CO	80225	X	X		X	8	23
O—Interior	BLM-Montrose County Dump	T48N R19W SEC. 22.	Montrose	CO					X	8	
C—Interior	BLM-Montrose County Dump	T48NR19W SEC. 22.	Montrose	CO					X	8	
O—Army	Stratford Army Engine Plant	550 South Main Street.	Stratford	CT	06497	X		X		1	
C—Army	Stratford Army Engine Plant	550 South Main Street.	Stratford	CT	06497	X	X	X		1	23

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FEDERAL FACILITIES DOCKET CORRECTIONS—Continued

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FEDERAL FACILITIES DOCKET CORRECTIONS—Continued

[O=Original, C=Corrected]

Agency	Facility name	Facility address	City	State	ZIP Code	RCRA 3005	RCRA 3010	RCRA 3016	CER-CLA 103	EPA region	Corr. codes
O—Energy	US DOE Knolls Atomic Power Laboratory Windsor Site.	Prospect Hill Road	Windsor	CT	06095	X	X			1	
C—Energy	US DOE Knolls Atomic Power Laboratory Windsor Site	Prospect Hill Road	Windsor	CT	06095	X	X	X	X	1	23
O—Navy	Naval Underwater Systems Center.	New London Laboratory.	New London.	CT	06320		X			1	
C—Navy	Naval Underwater Systems Center.	New London Laboratory.	New London.	CT	06320		X		X	1	23
O—Treasury	US Bureau of Engraving & Printing.	14th & C Sts. SW.	Washington.	DC	20228		X		X	3	
C—Treasury	US Bureau of Engraving & Printing.	14th & C Sts. SW.	Washington.	DC	20228	X	X			3	23 20
O—Air Force	Dover Air Force Base	436 Military Airlift Wing/DE.	Dover AFB	DE	19901	X	X	X	X	3	
C—Air Force	Dover Air Force Base	436 ABG/CC	Dover AFB	DE	19902	X	X	X	X	3	20A
O—Navy	Naval Underwater Systems Center Palm Beach.	Autec West Palm Beach.	W Palm Beach.	FL	33402		X			4	
C—Navy	Naval Underwater Systems Center Palm Beach.	801 Clematis Street.	W Palm Beach.	FL	33402		X			4	20A
O—Navy	US Naval Air Station Pensacola.	US Naval Air Station.	Pensacola	FL	32508		X	X	X	4	
C—Navy	US Naval Air Station Pensacola.	US Naval Air Station.	Pensacola	FL	32508	X	X	X	X	4	23
O—Air Force	USAF Hurlburt Field	Terry & Lokasik Ave..	Hurlburt Field.	FL	32544		X	X	X	4	
C—Air Force	USAF Hurlburt Field	834 CSG/CC	Hurlburt Field.	FL	32544	X	X		X	4	23 24 20A
O—Air Force	Patrick Air Force Base	Base Civil Engineer.	Patrick AFB.	FL	32925	X	X	X		4	
C—Air Force	Patrick Air Force Base	6550 ABG/DEEV	Patrick AFB.	FL	32925	X	X	X	X	4	23 20A
O—Navy	Naval Air Station Cecil. Field	103rd St. & Normandy Blvd..	Jacksonville.	FL	32215	X	X	X		4	
C—Navy	Naval Air Station Cecil. Field	103rd St. & Normandy Blvd..	Cecil Field	FL	32215	X	X	X	X	4	20A 23
O—Navy	Naval Air Station, Key West	Naval Air Station	Key West	FL	33042	X	X			4	
C—Navy	Naval Air Station, Key West	Naval Air Station	Key West	FL	33042	X	X	X	X	4	23
O—Navy	Naval Air Station, Jacksonville.	Code 184 Public Works Department Box 5.	Jacksonville.	FL	32212	X	X			4	
C—Navy	Naval Air Station, Jacksonville.	Code 184 Public Works Department Box 5.	Jacksonville.	FL	32212	X	X	X	X	4	23
O—Air Force	Avon Park AFB	56 Combat Support Group/DE.	Macdill AFB.	FL	33608	X	X			4	
C—Air Force	Avon Park AFB	56 Combat Support Group/DE.	Macdill AFB.	FL	33606	X	X	X		4	23
O—Air Force	Elgin AFB	ADTC/CCN	Elgin AFB	FL	32542	X	X	X	X	4	
C—Air Force	Elgin AFB	3200 SPTW/DEV	ElginAFB	FL	32542	X	X	X	X	4	20A
O—Air Force	Homestead Air Force Base	31 CSG/DE	Homestead AFB.	FL	33039	X	X	X		4	
C—Air Force	Homestead Air Force Base	31 CSG/DE	Homestead AFB.	FL	33039	X	X	X	X	4	23
O—Navy	Naval Coastal Systems Ctr., Panama City.	Code 6310MC	Panama City.	FL	32407	X	X	X	X	4	
C—Navy	Naval Coastal Systems Ctr., Panama City.	Hwy 98 Code 6310MC.	Panama City.	FL	32407	X	X	X		4	20A 24
O—EPA	Environmental Research Facility.	Sabin Island	Gulf Breeze.	FL	32561		X	X		4	
C—EPA	Environmental Research Facility.	Sabin Island	Gulf Breeze.	FL	32561		X	X		4	20A
O—Agriculture	Osceola National Forest		Unincorporated Lake City.	FL	32055				X	4	
C—Agriculture	Osceola National Forest	National Forests of Florida.	Unincorporated Lake City.	FL	32055			X		4	23 24 20A

FEDERAL FACILITIES DOCKET CORRECTIONS—Continued

[O=Original, C=Corrected]

Agency	Facility name	Facility address	City	State	ZIP Code	RCRA 3005	RCRA 3010	RCRA 3016	CER-CLA 103	EPA region	Corr. codes
O—Air Force	Cape Canaveral	6550 ABW/DER	Patrick AFB.	FL	32925	X	X	X	X	4	
C—Air Force	Cape Canaveral	6550 ABG/DEEV	Patrick AFB.	FL	32925	X	X	X	X	4	20A
O—Air Force	Dobbins Air Force Base	94 CSG/DE	Marietta	GA	30069				X	4	
C—Air Force	Dobbins Air Force Base	94 CSG/DE	Marietta	GA	30069			X	X	4	23
O—Army	USA Fort Gillem	Attn AFZK-EH-C	Forest Park.	GA	30330	X		X	X	4	
C—Army	USA Fort Gillem	ATTN AFZK-EH-C.	Forest Park.	GA	30330	X	X	X	X	4	23
O—Army	USA Fort Gordon & HQ USA Signal Ctr.	ATZHFE EC	Fort Gordon.	GA	30905		X		X	4	
C—Army	USA Fort Gordon & HQ USA Signal Ctr.	ATZHFE EC	Fort Gordon.	GA	30905	X	X	X	X	4	23
O—Air Force	Robins Air Force Base	2653 CES/DE	Robins Air Force Base.	GA	31098	X	X	X	X	4	
C—Air Force	Robins Air Force Base	WR-ALC/EM	Warner Robins Base.	GA	31098	X	X	X	X	4	20A
O—Air Force	USAF Plant No. 6 Lockheed Existing LDFL.	86 S Cobb Drive Di Chromate Spill Past LDFL.	Marietta	GA	30063	X	X	X	X	4	
C—Air Force	USAF Plant No. 6 Lockheed	86 S Cobb Drive Zone 54.	Marietta	GA	30063	X	X	X		4	20A 24
O—Navy	Naval Ship Repair Facility, Guam.		Agana	GU	96630	X	X			9	
C—Navy	Naval Ship Repair Facility, Guam.		Agana	GU	96630	X	X	X		9	23
O—Air Force	Andersen AFB	43 CSG/CC Route 1.	Yigo	GU	96912	X	X		X	9	
C—Air Force	Anderson AFB	43 CSG/CC Route 1.	Yigo	GU	96912	X	X	X	X	9	23
O—Navy	Naval Air Station Agana		Agana	GU	96637	X	X		X	9	
C—Navy	Naval Air Station Agana		Agana	GU	96637	X	X	X	X	9	23
O—Air Force	Hickam Air Force Base	15 ABW/DE	Honolulu	HI	96853	X	X		X	9	
C—Air Force	Hickam Air Force Base	15 ABW/DE	Honolulu	HI	96853	X	X	X	X	9	23
O—Air Force	Wheeler AFB	Base Civil Engineer.	Wheeler AFB.	HI	96854		X		X	9	
C—Air Force	Wheeler AFB	Base Civil Engineer.	Wheeler AFB.	HI	96854		X	X	X	9	23
O—Navy	Naval Magazine Lualualei	Naval Magazine Demilitarization Furnace.	Westloch	HI	96860	X	X		X	9	
C—Navy	Naval Magazine Lualualei	Naval Magazine Demilitarization Furance.	Westloch	HI	96860	X	X	X	X	9	23
O—Navy	Barbers Point Naval Air Station.		Barbers Point.	HI	96662		X		X	9	
C—Navy	Barbers Point Naval Air Station.		Barbers Point.	HI	96662		X	X	X	9	23
O—Navy	Pearl Harbor Naval Sta	US Naval Sta	Pear Harbor.	HI	96860		X		X	9	
C—Navy	Pearl Harbor Naval Sta	US Naval Sta	Pearl Harbor.	HI	96860		X	X	X	9	23
O—Navy	Kaneohe Bay Marine Corps Air Station.	MCAS Kaneohe Base Moakapu Penin.	Kaneohe Bay.	HI	96863	X	X		X	9	
C—Navy	Kaneohe Bay Marine Corps Air Station.	MCAS Kaneohe Base Moakapu Penin.	Kaneohe Bay.	HI	96863	X	X	X	X	9	23
O—Army	Makua Military Reservation	Makua Military Reservation.	Waianae	HI	96792	X	X			9	
C—Army	Ordinance Disposal Area, Makua Mil. Res.		Waianae	HI	96792			X		9	20A, 24, 23
O—Interior	Howland Island National Wildlife Refuge.	P.O. Box 50167	Honolulu	HI					X	9	
C—Interior	Howland Island National Wildlife Refuge.	Lat. 1 N. Long. 170 W.	1 N. 170 W..	HQ					X	9	20A
O—Army	Iowa Army Ammunition Plant	Hwy 79 off Middletown Road.	Middletown	IA	52638	X	X	X	X	7	
C—Army	Iowa Army Ammunition Plant	Hwy 79 off Middletown Road.	Middletown	IA	52638	X	X	X	X	7	20A

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FEDERAL FACILITIES DOCKET CORRECTIONS—Continued

[O=Original, C=Corrected]

Agency	Facility name	Facility address	City	State	ZIP Code	RCRA 3005	RCRA 3010	RCRA 3016	CERCLA 103	EPA region	Corr. codes
O—Agriculture	National Animal Disease Center.	2300 Dayton Road PO Box 70.	Ames	IA	50010			X		7	
C—Agriculture	National Animal Disease Center.	2300 Dayton Road PO Box 70.	Ames	IA	50010		X	X		7	23
O—Energy	Ames Laboratory	107 Office & Lab ISU.	Ames	IA	50011			X	X	7	
C—Energy	Ames Laboratory	107 Office & Lab ISU.	Ames	IA	50011	X		X	X	7	23
O—Interior	BLM Pesticide Dump, Murphy	Boise Dist Sec. 5	Murphy	ID	83650				X	10	
C—Interior	Pesticide Dumpsite Sec. 5	Boise Dist Sec. 5	Murphy	ID	83650				X	10	20A
O—Interior	BLM-Hulet Dump	Avail frm St. Office.		ID					X	10	
C—Interior	BLM-Hulet Dump	T. 35. R. 1W. Sec. 15.		ID					X	10	20A
O—Interior	BLM Shoshone (Gwinn Cave)	T4S R17E S14	Shoshone	ID	83352				X	10	
C—Interior	BLM Shoshone (Gwinn Cave)	T4S R17E S14	Shoshone	ID	83352			X	X	10	23
O—Army	Joliet Army Ammunition Plant	6 Miles S. of Elwood Off Rte. 53. Will County.	Joliet	IL	60634	X	X		X	5	
C—Army	Joliet Army Ammunition Plant	6 Miles S. of Elwood Off Rte. 53. Will County.	Joliet	IL	60634	X	X	X	X	5	23
O—Commerce	Wisconsin Steel	E. 106th & Torrence Avenue.	Chicago	IL				X		5	
C—Commerce	Wisconsin Steel	E. 106th & Torrence Avenue.	Chicago	IL		X	X	X		5	23
O—Air Force	US Air Force Scott AFB	375 ABG/DEEY Bldgs 59 & 540.	Scott Air Force Base.	IL	62225	X			X	5	
C—Air Force	Scott AFB	375 ABG/CC	Scott AFB	IL	62225	X	X		X	5	23 20A 20A
O—Air Force	Grissom Air Force Base	305th CSG/DE	Grissom AFB.	IN	46971	X	X		X	5	
C—Air Force	Grissom Air Force Base	305th CSG/DE	Grissom AFB.	IN	46971	X	X	X	X	5	23
O—Commerce	US Dept. of Commerce Bureau of Census.	1201 E. 10th Street.	Jeffersonville.	IN	47130		X	X		5	
C—General Services Admin.	Jeffersonville Federal Center	1201 E. 10th Street.	Jeffersonville.	IN	47130		X	X		5	21 20A
O—Army	Ft. Riley Infantry Div. (M)	Dickman Avenue	Junction City.	KS	66442	X	X	X		7	
C—Army	Ft. Riley 1st Infantry Div (M)	Bldg 330	Fort Riley	KS	66442	X	X	X		7	20A
O—Army	Kansas AAP	3 Miles East of Town.	Parsons	KS	67357	X	X	X	X	7	
C—Army	Kansas AAP	3 Miles East of Town.	Parsons	KS	55757	X	X	X	X	7	20A
O—Army	Sunflower Army Ammunition Plant.	103 Rd. St. South of Desoto.	Desoto	KS	66018	X	X	X	X	7	20A
C—Army	Sunflower Army Ammunition Plant.	33425 W. 103 Rd. Street.	Desoto	KS	66018	X	X	X	X	7	20A
O—Army	Combined Arms Cnt. & Ft. Leavenworth.	Ft. Leavenworth Reservation.	Leavenworth.	KS	66027	X	X	X		7	
C—Army	Combined Arms Center & Ft. Leavenworth.	Ft. Leavenworth Reservation DEH-Bldg 65.	Ft. Leavenworth.	KS	66027	X	X	X		7	20A
O—Energy	US DOE Paducah Gas Diffusion Plt.	PO Box 1410	Paducah	KY	42001	X	X	X		4	
C—Energy	US DOE Paducah Gas Diffusion Plt.	PO Box 1410 Hobbs Road.	Paducah	KY	42001	X	X	X		4	20A
O—Army	USA Lexington Blue Grass Depot Activity.	US Hwy. 421	Richmond	KY	40475				X	4	
C—Army	USA Lexington Blue Grass Depot Activity.	US Hwy. 421	Richmond	KY	40475	X			X	4	23
O—Agriculture	Southern Regional Research Center, USDA.	1100 Robert E. Lee Blvd.	New Orleans.	LA	70124		X		X	6	
C—Agriculture	Southern Regional Research Center, USDA.	1100 Robert E. Lee Blvd.	New Orleans.	LA	70124		X	X	X	6	23
O—Air Force	Otis Air Force Base	Mass. Military Reservation 102 FIW/CC.	Falmouth	MA	02542		X		X	1	
C—Air Force	Otis Air Force Base	Mass. Military Reservation 102 FIW/CC.	Falmouth	MA	02542		X	X	X	1	23
O—Air Force	Hanscom Air Force Base	3245 ABG/CC	Bedford	MA	01731		X	X	X	1	

FEDERAL FACILITIES DOCKET CORRECTIONS—Continued

[O=Original, C=Corrected]

Agency	Facility name	Facility address	City	State	ZIP Code	RCRA 3005	RCRA 3010	RCRA 3016	CERCLA 103	EPA region	Corr. codes
C—Air Force	Hanscom Air Force Base	3245 ABG/DEEV	Bedford	MA	01731	X	X	X	X	1	23 20A
O—Navy	Naval Air Station South Weymouth.	NAS S. Weymouth PWD Code 72.3.	South Weymouth.	MA	02190		X			1	
C—Navy	Naval Air Station South Weymouth.	NAS S. Weymouth PWD Code 72.3.	South Weymouth.	MA	02190	X	X			1	23
O—Interior	Cape Code Seashore	East Off Route 6	Wellfleet	MA	02667			X	X	1	
C—Interior	Old Camp Wellfleet	East Off Route 6	Wellfleet	MA	02667			X	X	1	20A
O—Air Force	Andrews Air Force Base	1776 ABW/DE	Camp Springs.	MD	20331	X	X	X	X	3	
C—Air Force	Andrews Air Force Base	1776 ABW/CC	Andrews AFB.	MD	20331	X	X	X	X	3	20A
O—Army	Fort Detrick—Frederick Can	Ft. Detrick	Frederick	MD	21701	X	X	X	X	3	
C—Army	Fort Detrick	Ft. Detrick	Frederick	MD	21701		X	X	X	3	20 20A
O—Army	Harry Diamond Labs-Adelphi	SLCIS-FE 2800 Powder Mill.	Adelphi	MD	20783	X	X	X	X	3	
C—Army	Harry Diamond Labs-Adelphi	2800 Powder Mill Rd.	Adelphi	MD	20783	X	X	X	X	3	20A
O—Health And Human Services.	NIH Bethesda	9000 Rockville Pike.	Bethesda	MD	20205	X	X	X	X	3	
C—Health And Human Services.	NIH Bethesda	9000 Rockville Pike.	Bethesda	MD	20692	X	X	X	X	3	20A
O—Navy	National Naval Medical Center.	National Capital Region.	Bethesda	MD	20814	X	X	X		3	20A
C—Navy	National Naval Medical Center.	8901 Wisconsin Ave.	Bethesda	MD	20814	X	X	X		3	
O—General Services Admin.	GSA Curtis Bay Depot	Ordnance Road	Baltimore	MD	21226	X	X	X		3	20A
C—General Services Admin.	GSA Curtis Bay Depot	710 Ordnance Road.	Baltimore	MD	21226	X	X	X		3	
O—Agriculture	Beltsville Agricultural Res. Ctr	Building 1321 & 204 Barc. Muirkirk Rd.	Beltsville	MD	20705		X	X	X	3	
C—Agriculture	Beltsville Agricultural Res. Ctr	Biding 003 BARC-West.	Beltsville	MD	20705		X	X	X	3	20A
O—Navy	US Naval Station, Annapolis	Old Severn river Bridge.	Annapolis	MD	21402		X		X	3	
C—Navy	US Naval Station, Annapolis	Old Severn River Bridge.	Annapolis	MD	21402	X	X	X	X	3	23
O—Army	Harry Diamond Lakes—Blossom.	Blossom Point Road.	La Plata	MD				X		3	
C—Army	Harry Diamond Labs.—Blossoms Point Facility.	Blossom Point Road.	La Plata	MD				X		3	20A
O—Navy	NSEC Solomons Island	Deptartment of the Navy.	Solomons	MD	20688				X	3	
C—Navy	Naval Air Station Patuxent River Annex.	Department of the Navy.	Solomons	MD	20688				X		
O—Navy	USN Portsmouth Naval Shipyard.	Seavy Island	Kittery	ME	03904	X	X	X	X	1	
C—Navy	USN Portsmouth Naval Shipyard.	Seavy Island	Kittery	ME	03904	X	X	X	X	1	23
O—Air Force	Selfridge Air National Guard	Detachment 1/ Dee.	Mount Clemens.	MI	48045	X	X		X	5	
C—Air Force	Selfridge Air National Guard	Detachment 1/ Dee.	Mount Clemens.	MI	48045	X	X	X	X	5	23
O—Transportation	USCG Air Station Ave. "E" Groundwater Contamination).	Aeropark Dr. Section 12 T27AR1 1W Grand Traverse County.	Traverse City.	MI	45685		X		X	5	
C—Transportation	USCG Air Station Ave. "E" Groundwater Contamination).	Airport Road	Traverse City.	MI	45685		X		X	5	20A
O—Agriculture	Northwoods Sanitary Landfill			WI					X	5	
C—Agriculture	Superior National Forest	Box 338	Duluth	MN	55801				X	5	20A
O—Commerce	Brainerd Foundry	10th & Pine Streets.	Brainerd	MN					X	5	
C—Commerce	Brainerd Foundry	10th & Pine Streets.	Brainerd	MN				X	X	5	23
O—Air Force	Twin Cities Air Force Reserve Base.	Minneapolis/St. Paul Hennepin County 3016 934 TAC/DE.	Minneapolis.	MN	54450		X		X	5	

FEDERAL FACILITIES DOCKET CORRECTIONS—Continued

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[O=Original, C=Corrected]

Agency	Facility name	Facility address	City	State	ZIP Code	RCRA 3005	RCRA 3010	RCRA 3016	CERCLA 103	EPA region	Corr. codes
C—Air Force	Twin Cities Air Force Reserve Base.	Minneapolis/St. Paul Hennepin County 3016 934 TAC/DE.	Minneapolis.	MN	54417		X	X	X	5	20A 23
O—Air Force	US AFB Duluth Intl. Airport	Stebner Rd.	Duluth Intl. Airport.	MN	55814				X	5	
C—Air Force	US AFB Duluth Intl. Airport	Stebner Rd.	Duluth Intl. Airport.	MN	55814	X	X		X	5	23
O—Army	US ATC Engineer & Ft. Leonardwood.	Fort Leonardwood 144.	Pulaski	MO	65473	X	X	X	X	7	
C—Army	US ATC Engineer & Ft. Leonardwood.	Fort Leonardwood 144.	Pulaski	MO	65473-5000	X	X	X	X	7	20A
O—Army	Lake City AAP	Jct. MO Hwy 78	Independence.	MO	64050	X	X	X	X	7	
C—Army	Lake City AAP	Jct. MO Hwy 78	Independence.	MO	64050-0330	X	X	X	X	7	20A
O—Army	St. Louis Army Ammo Plant	4300 Goodfellow Blvd. Hanley area.	St. Louis	MO	64131-3088			X	X	7	
C—Army	St. Louis Army Ammo Plant	4300 Goodfellow Blvd. Hanley area.	St. Louis	MO	63120			X	X	7	20A
O—Army	Weldon Springs Training Area, Ft. Lnrdwd.	25 Miles W. of St. Louis.	St. Charles	MO	63301			X	X	7	
C—Army	Weldon Springs Training Area, Ft. Lnrdwd.	Hwy. 94 South	St. Charles	MO	63301			X	X	7	20A
O—Energy	Weldon Spring Chemical Plant.	St. Hwy. 94 2 mi. S of US 40 Site Remedial Action Project, Rt. 2, Hwy 94 South.	St. Charles	MO	63301		X			7	
C—Energy	Weldon Spring Remedial Action Project.	St. Hwy. 94 2 Mi. S of US 40 Site Remedial Action Project. Rt. 2, Hwy. 94 South.	St. Charles	MO	63301		X	X		7	23 20A
O—Air Force	Richards Gebaur AFB	424 CSC/DE	Belton	MO	6430			X		7	
C—Air Force	Richards Gebaur AFB	442 CSC	Belton	MO	64030			X		7	20A
O—Air Force	Whiteman AFB	357 CSC/CC	Knobnoster.	MO	65336	X	X	X		7	
C—Air Force	Whiteman AFB	351 CSC/DEEV	Whiteman AFB.	MO	65305-5000	X	X	X		7	20A
O—Army	Mississippi Army Ammo Plant	Bldg. 9101 NASA NSTL	Bay St. Louis.	MS	39529		X	X	X	4	
C—NASA	Mississippi Army Ammo Plant	Bldg. 9101 NASA SSC.	Bay St. Louis.	MS	39529	X	X	X	X	4	23 21 20A
O—Air Force	Pope Air Force Base	317 CSG/DE	Pope AFB	NC	28308	X	X		X	4	20A
C—Air Force	Pope Air Force Base	317 CSG/CC	Pope AFB	NC	28308	X	X		X	4	20A
O—Army	Fort Bragg	AFZA-DE-D	Fort Bragg	NC	28307			X		4	
C—Army	Fort Bragg	AFZA-DE-D	Fort Bragg	NC	28307		X	X	X	4	23
O—Army	USA Army Reserve XVIII ARBN Corps.	AFZA FE EE	Fort Bragg	NC	28307			X	X	4	
C—Army	USA Army Reserve XVIII ARBN Corps.	2144 Lakeshore Dr.	Wilmington	NC	28401		X		X	4	20A 23 24
O—Army	USA Army Reserve XVIII ARBN Corps.	AFZA FE EE	Fort Bragg	NC	28307			X	X	4	
C—Army	USA Army Reserve XVIII ARBN Corps.	804 Fairview Rd.	Rocky Mount.	NC	28701		X		X	4	20A 23 24
O—Army	USA Army Reserve XVIII ARBN Corps.	AFZA FE EE	Fort Bragg	NC	28307			X	X	4	
C—Army	USA Army Reserve XVIII ARBN Corps.	E French Broad St.	Brevard	NC	28712		X		X	4	20A 23 24
O—Army	USA Army Reserve XVIII ARBN Corps.	AFZA FE EE	Fort Bragg	NC	28307			X	X	4	
C—Army	USA Army Reserve XVIII ARBN Corp.	1300 Westover Dr.	Charlotte	NC	28205		X		X	4	20A 23 24
O—Army	USA Army Reserve XVIII ARBN Corp.	AFZA FE EE	Fort Bragg	NC	28307			X	X	4	
C—Army	USA Army Reserve XVIII ARBN Corp.	1228 Carrol St.	Durham	NC	27701		X		X	4	20A 23 24

FEDERAL FACILITIES DOCKET CORRECTIONS—Continued

[O=Original, C=Corrected]

Agency	Facility name	Facility address	City	State	ZIP Code	RCRA 3005	RCRA 3010	RCRA 3016	CERCLA 103	EPA region	Corr. codes
O—Army	USA Army Reserve XVIII ARBN Corp.	AFZA FE EE	Fort Bragg	NC	28307			X	X	4	
C—Army	USA Army Reserve XVIII ARBN Corp.	224 Louisiana	Ashville	NC	28806		X		X	4	20A 23 24
O—Army	USA Army Reserve XVIII ARBN Corp.	AFZA FE FE	Fort Bragg	NC	28307			X	X	4	
C—Army	USA Army Reserve XVIII ARBN Corp.	2017 Garner St.	Garner	NC	27529		X		X	4	20A 23 24
O—Army	USA Army Reserve XVIII ARBN Corp.	AFZA FE EE	Fort Bragg	NC	28307			X	X	4	
C—Army	USA Army Reserve XVIII ARBN Corp.	156 Parris Ave.	High Point	NC	28307		X		X	4	20A 23 24
O—Army	USA Army Reserve XVIII ARBN Corp.	AFZA FE EE	Fort Bragg	NC	28307			X	X	4	
C—Army	USA Army Reserve XVIII ARBN Corp.	1825 Woodleaf Rd. PO Box 1927.	Salisbury	NC	28114		X		X	4	20A 23 24
O—Army	USA Army Reserve XVIII ARBN Corp.	AFZA FE EE	Fort Bragg	NC	28307			X	X	4	
C—Army	USA Army Reserve XVIII ARBN Corp.	1818 E Main St.	Albemarle	NC	28001		X		X	4	20A 23 24
O—Army	USA Army Reserve XVIII ARBN Corp.	AFZA FE EE	Fort Bragg	NC	28307			X	X	4	
C—Army	USA Army Reserve XVIII ARBN Corp.	405 Fisher St.	Morehead City.	NC	28557		X		X	4	20A 23 24
O—Army	USA Army Reserve XVIII ARBN Corp.	AFZA FE EE	Fort Bragg	NC	28307			X	X	4	
C—Army	USA Army Reserve XVIII ARBN Corp.	3115 Western Blvd.	Raleigh	NC	27606	X	X		X	4	20A 23 24
O—Army	USA Army Reserve XVIII ARBN Corp.	AFZA FE EE	Fort Bragg	NC	28307			X	X	4	
C—Army	USA Army Reserve XVIII ARBN Corp.	1500 12th Street NW.	Hickory	NC	28601		X		X	4	20A 23 24
O—Army	USA Army Reserve XVIII ARBN Corp.	AFZA FE EE	Fort Bragg	NC	28307			X	X	4	
C—Army	USA Army Reserve XVIII ARBN Corps.	1412 Westover Dr.	Charlotte	NC	28205		X		X	4	20A 23 24
O—Army	USA Army Reserve XVIII ARBN Corps.	AFZA FE EE	Fort Bragg	NC	28307			X	X	4	
C—Army	USA Army Reserve XVIII ARBN Corps.	1391 N Mem. Dr	Greenville	NC	27834		X		X	4	20A 23 24
O—Army	USA Army Reserve XVIII ARBN Corps.	AFZA FE EE	Fort Bragg	NC	28307			X	X	4	
C—Army	USA Army Reserve XVIII ARBN Corps.	1120 Church St.	Greensboro.	NC	27405		X		X	4	20A 23 24
O—Army	USA Army Reserve XVIII ARBN Corps.	AFZA FE EE	Fort Bragg	NC	28307			X	X	4	
C—Army	USA Army Reserve XVIII ARBN Corps.	1400 Carthage Rd	Lumberton	NC	28358		X		X	4	20A 23 24
O—Army	USA Army Reserve XVIII ARBN Corps.	AFZA FE EE	Fort Bragg	NC	28307			X	X	4	
C—Army	USA Army Reserve XVIII ARBN Corps.	724 Foster St.	Durham	NC	27701		X		X	4	20A 23 24
O—Agriculture	Metabolism & Radiation Research Lab.	1605 W. College St.	Fargo	ND	58105		X	X	X	8	
C—Agriculture	Red River Valley Agricultureal Research Center.	1605 W. College St.	Fargo	ND	58105		X	X	X	8	20A
O—Agriculture	Northern Great Plains Research Lab.	P.O. Box 459, Hwy 6 S.	Mandan	ND	58554			X		8	
C—Agriculture	Northern Great Plains Research Lab.	P.O. Box 459, Hwy 6 S.	Mandan	ND	58544			X	X	8	23
O—Agriculture	Roman L. Hruska Meat Animal Research Cntr.	State Spur 18D	Clay Center.	NE	68933		X		X	7	

FEDERAL FACILITIES DOCKET CORRECTIONS—Continued

[O=Original, C=Corrected]

Agency	Facility name	Facility address	City	State	ZIP Code	RCRA 3005	RCRA 3010	RCRA 3016	CERCLA 103	EPA region	Corr. codes
C—Agriculture	Roman L Hruska Meat Animal Research Cntr.	P.O. Box 166, State Spur 18D.	Clay Center.	NE	68933		X	X	X	7	20A 23
O—Air Force	Offutt Air Force Base	55 CSG/CC	Offutt AFB	NE	68113	X	X	X	X	7	
C—Air Force	Offutt Air Force Base	55 CSG/DEEV	Offutt AFB	NE	68113-5000	X	X	X	X	7	20A
O—Army	Cornhusker Army Ammunition Plant.	6 Mi W of	Grand Island.	NE	68802			X	X	7	
C—Army	Cornhusker Army Ammunition Plant.	P.O. Box 2041	Grand Island.	NE	68802			X	X	7	20A
O—Air Force	Pease Air Force Base	509 CSG/CC	Portsmouth	NH	03801	X	X		X	1	
C—Air Force	Pease Air Force Base	509 CSG/CC	Portsmouth	NH	03801	X	X	X	X	1	23
O—Air Force	McGuire Air Force Base	438 ABG/DE	Wrightstown.	NJ	08641	X	X	X	X	2	
C—Air Force	McGuire Air Force Base	438 ABC/CC	McGuire AFB.	NJ	08641	X	X	X	X	2	20A
O—Energy	Maywood Interim Storage Site	Route 17 and Grove Street.	Maywood/Rochell E Park.	NJ	07662				X	2	
C—Energy	Maywood Interim Storage Site	Route 17 and Grovs Street.	Maywood/Rochell E Park.	NJ	07662			X	X	2	23
O—Transportation	FAA—NAFEC	Routes 563 and 575.	Pomona	NJ	08405				X	2	
C—Transportation	FAA—NAFEC	Routes 563 and 575.	Pomona	NJ	08405			X	X	2	23
O—Air Force	Bomarc/McGuire MSL	Rt. 539	New Egypt	NJ	08533				X	2	
C—Air Force	Bomarc/McGuire MSL	438 ABC/CC	McQuire AFB.	NJ	08533				X	2	20A
O—Veterans Administration.	GSA/VA Depot	Route 206	Somerville	NJ	08876				X	2	
C—General Services Admin.	GSA Depot	Route 206	Somerville	NJ	08876				X	2	20A
O—Air Force	Kirtland Air Force Base	1606 CSC/DE	Kirtland AFB.	NM	87117	X	X		X	6	
C—Air Force	Kirtland Air Force Base	1606 ABW/CC	Kirtland AFB.	NM	87117	X	X	X	X	6	23 20A
O—Interior	BLM—South Farmington Sanitary Landfill.	T29NR13W5EC20	Farmington	NM	87401				X	6	
C—Interior	BLM-South Farmington Sanitary Landfill.	T29NR13WSEC20	Farmington	NM	87401			X	X	6	23
O—Interior	BLM—Bloomfield City Landfill	T29NR11WSEC34	Bloomfield	NM	87413				X	6	
C—Interior	BLM—Bloomfield City Landfill	T29NR11WSEC34	Bloomfield	NM	87413			X	X	6	23
O—Interior	BLM—Amax Chemical	Eddy County	Artesia	NM	88201				X	6	
C—Interior	BLM—Duval Co.	Eddy County	Carlsbad	NM	88220				X	6	20A
O—Interior	BLM Las Cruces Landfill	T23SR2ESEC11	Las Cruces	NM	88001				X	6	
C—Interior	BLM Las Cruces Landfill	T23S2ESEC11	Las Cruces	NM	88001			X	X	6	23
O—Interior	BLM—International Materials & Chemical.	Roswell	Roswell	NM					X	6	
C—Interior	BLM—International Mineral and Chemical.	Carlsbad	Carlsbad	NM					X	6	20A
O—Interior	BLM—Dee Gold Corp.	T37NR50ESC6	Elko	NV					X	9	
C—Interior	BLM—DEE Gold Mining Co.	T37NR50ESEC6	Elko County.	NV					X	9	20A
O—Army	USMA—West Point	Rt. 9W—Bldg 733	West Point	NY	10996	X	X		X	2	
C—Army	USMA—West Point	Rt. 9W—Bldg 733	West Point	NY	10996	X	X	X	X	2	23
O—Navy	Naval Weapons Industrial Reserve Plant.	S. Oyster Bay Rd.	Bethpage	NY	11714				X	2	
C—Navy	Naval Weapons Industrial Reserve Plant.	S. Oyster Bay Rd.	Bethpage	NY	11714			X	X	2	23
O—Air Force	US Air Force Plant #36	Porter & Balmer Rds.	Porter Twp	NY	14131	X	X		X	2	
C—Air Force	US Air Force Plant #36	Porter & Balmer Rds.	Porter Twp	NY	14131	X	X	X	X	2	23
O—Energy	Niagara Falls Storage Site	E. of Rt. 18. N. of Fletcher Rd.	Lewistown	NY	14092				X	2	
C—Energy	Niagara Falls Storage Site	East of Route 18, North of Fletcher Rd.	Lewistown	NY	14092			X	X	2	23 20A
O—Air Force	Newark Air Force Base	2803 ABG/DE	Newark AFB.	OH	43055	X	X	X		5	
C—Air Force	Newark Air Force Base	AGMC/EM	Newark AFB.	OH	43057	X	X	X		5	20A
O—Air Force	Wright Patterson Air Force Base.	2750 ABW/DE	Fairborn	OH	45433	X	X		X	5	
C—Air Force	Wright Patterson Air Force Base.	2750 ABW/EM	Dayton	OH	45433	X	X	X	X	5	23 20A

FEDERAL FACILITIES DOCKET CORRECTIONS—Continued

[O=Original, C=Corrected]

Agency	Facility name	Facility address	City	State	ZIP Code	RCRA 3005	RCRA 3010	RCRA 3016	CERCLA 103	EPA region	Corr. codes
O—Air Force	Rickenbacker Air Force Base	DET 1 HQ ANG/DE.	Rickenbacker AFB.	OH	43217	X	X			5	
C—Air Force	Rickenbacker Air Force Base	DET 1 HQ ANG/DE.	Rickenbacker AFB.	OH	43217		X	X		5	23 24
O—Army	US Army Lima Tank Center	1155 Buckeye Rd. Allen County.	Lima	OH	45804		X		X	5	
C—Army	US Army Lima Army Tank Center.	1155 Buckeye Rd. Allen County.	Lima	OH	45804		X	X	X	5	23
O—Air Force	US Air Force Youngstown MAP Ohio.	King Graves Rd.	Vienna Twp.	OH	44473				X	5	
C—Air Force	US Air Force Youngstown MAP Ohio.	King Graves Rd.	Vienna Twp.	OH	44473		X		X	5	23
O—Air Force	Tinker Air Force Base	OC—ALC/CC	Tinker AFB	OK	73145	X	X	X	X	6	
C—Air Force	Tinker Air Force Base	OC—ALC/EM	Oklahoma City.	OK	73145	X	X	X	X	6	20A
O—Air Force	USAF Altus Air Force Base Landfill.	443 ABG/DEEV	Altus	OK	73521		X		X	6	
C—Air Force	Altus Air Force Base	443 ABG/CC	Altus AFB	OK	73523		X		X	6	20A
O—Interior	BLM-Vale City Dumpsite	T18SR45ESEC32	Vale	OR	97918-0006				X	10	
C—Interior	BLM-Vale City Dumpsite	T18SR45ESEC32	Vale	OR	97918-0006			X	X	10	23
O—Interior	BLM-Minexco Millsite	T9SR42ESEC8	Baker	OR	97814				X	10	
C—Interior	BLM-Minexco Millsite	T9SR42ESEC8	Baker	OR	97814			X	X	10	23
O—Interior	BLM-Merlin Ldfl.	T35SR6WSEC27	Merlin	OR	97532				X	10	
C—Interior	BLM-Merlin Ldfl.	T35SR6WSEC27	Merlin	OR	97532			X	X	10	23
O—Interior	BLM-Slides Dump Site	T15SR46ESEC35, Lots 1, 2.	Ontario	OR	97914				X	10	
C—Interior	BLM—Slides Dump Site	T15SR46ESEC35. LOTS1, 2.	Ontario	OR	97914			X	X	10	23
O—Navy	Navy Ships Parts Control Center.	5450 Carlisle Pike P.O. Box 2020.	Mechanicsburg.	PA	17055	X	X		X	3	
C—Navy	Navy Ships Parts Control Center.	5450 Carlisle Pike PO Box 2020.	Mechanicsburg.	PA	17055	X	X	X	X	3	20A
O—Navy	NAS Willow Grove	RT. 611	Willow Grove.	PA	19090	X	X			3	
C—Navy	NAS Willow Grove	RT. 611	Willow Grove.	PA	19090	X	X	X	X	3	23
O—Navy	Naval Regional Medical Center.	17 St. and Pattison Ave.	Philadelphia.	PA	19145		X			3	
C—Navy	Naval Regional Medical Center.	17 St. and Pattison Ave.	Philadelphia.	PA	19145		X	X		3	23
O—Navy	Naval Station Philadelphia	Broad St.-North Div. Code 114.	Philadelphia.	PA	19112	X	X		X	3	
C—Navy	Naval Shipyard Philadelphia	Broad St.-North Div. Code 114.	Philadelphia.	PA	19112	X	X	X	X	3	23
O—Commerce	DOC Econ. Dev. Adm. Robins Footwear.	208N. Division St.	Mt. Union	PA	17066			X		3	
C—Commerce	DOC Econ. Dev. Adm. Robin Footwear Facility.	208 N. Division St.	Mt. Union	PA	17066			X		3	20A
O—Navy	Naval Station Roosevelt Roads.	Villa Verde Street Drydock & Repair Facility.	Miramar	PR	00903	X	X			2	
C—Navy	Naval Station Roosevelt Roads.	Villa Verde Street Drydock & Repair Facility.	Miramar	PR	00903	X	X	X		2	23
O—Navy	Naval Construction Battalion Ctr. Davisville.	Off Quionessett Rd.	North Kingstown.	RI	02871				X	1	
C—Navy	Naval Construction Battalion Ctr. Davisville.	Off Quionessett Rd.	North Kingstown.	RI	02871			X		1	23
O—Navy	Navy Marine Corps. Reserve Center.	One Narragansett Ave.	Cranston	RI	03445		X			1	
C—Navy	Armed Forces Reserve Center.	One Narragansett Ave.	Providence	RI	03445		X			1	20A
O—Army	Charleston Army Depot	Remount Road	North Charleston.	SC	29406				X	4	
C—Navy	Charleston Army Depot	Remount Road	North Charleston.	SC	29406				X	4	21
O—Air Force	Myrtle Beach Air Force Base	354 CSG/DE	Myrtle Beach.	SC	29577	X	X	X	X	4	

FEDERAL FACILITIES DOCKET CORRECTIONS—Continued

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FEDERAL FACILITIES DOCKET CORRECTIONS—Continued

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Agency	Facility name	Facility address	City	State	ZIP Code	RCRA 3005	RCRA 3010	RCRA 3016	CERCLA 103	EPA region	Corr. codes
C—Air Force	Myrtle Beach Air Force Base	354 CSG/DE	Myrtle Beach.	SC	29577	X	X	X	X	4	24
O—Navy	Naval Weapons Station, Charleston.	Redbank Road	Charleston	SC	29406	X	X	X		4	
C—Navy	Naval Weapons Station, Charleston.	Redbank Road	Charleston	SC	29406	X	X	X	X	4	23
O—Air Force	Charleston Air Force Base	437 ABG/DE	Charleston	SC	29404	X	X	X	X	4	
C—Air Force	Charleston Air Force Base	437 ABC/CC	Charleston AFB.	SC	29404	X	X	X	X	4	20A
O—Navy	Marine Corps Recruit Depot, Parris Island.	Marine Corps Recruit Depot.	Parris Island.	SC	29905	X	X	X	X	4	
C—Navy	Marine Corps Recruit Depot, Parris Island.	Marine Corps Recruit Depot.	Parris Island.	SC	29905	X	X	X		4	24
O—Energy	US Doe Savannah River Plt	PO Box A	Aiken	SC	29802 3016	X	X	X	X	4	
C—Energy	US Doe Savannah River Site	PO Box A	Aiken	SC	29802 3016	X	X	X	X	4	20A
O—Navy	Naval Weapons Industrial Res. Plant.	100 Vance Tank Road Raytheon Co.	Bristol	TN	36720–5698		X	X		4	
C—Navy	Naval Weapons Industrial Res. Plant.	100 Vance Tank Road Raytheon Co.	Bristol	TN	36720–5698			X	X	4	23 24
O—Army	UD DOD Defense Depot Memphis.	2163 Airways Blvd	Memphis	TN	38114	X	X		X	4	
C—Army	Defense Depot Memphis	2163 Airways Blvd	Memphis	TN	38114	X	X	X	X	4	23 20A
O—Air Force	Arnold Engr Devlp. Ctr	Commander AEDC	Arnold Air Force Base.	TN	37389 3010	X	X	X	X	4	
C—Air Force	Arnold Engr Devlp. Ctr	AEDC/DEV	Arnold Air Force Base.	TN	37389 3010	X	X	X	X	4	20A
O—Tennessee Valley Authority.	TVA Kingston Steam Plant	Natural Resources Building.	Norris	TN	37828		X		X	4	
C—Tennessee Valley Authority.	TVA Kingston Steam Plant	Off I-40 East	Kingston	TN	37763	X	X		X	4	23 20A
O—Agriculture	Subtropical Agriculture Research Lab.	FM 1015	Weslaco	TX	76115		X			6	
C—Agriculture	Subtropical Agriculture Research Lab.	FM 1015, South Expressway 83.	Weslaco	TX	76115		X	X		6	23 20A
O—Army	Lake Lavon—North Cully Site 1.	Highway 380	Wylie	TX	75077			X		6	
C—Corps of Engineers, Civil.	Lake Lavon—North Cully Site 1.	Highway 380	Wylie	TX	75077			X		6	21
O—Army	US Army Camp Stanley Storage.	Ralph Fair Road	San Antonio.	TX	78229	X	X			6	
C—Army	US Army Camp Stanley Storage.	Ralph Fair Road	San Antonio.	TX	78229	X	X	X		6	23
O—Army	US Army Plant #2 Bell Helicopter Textron.	Blue Mound Road Highway 156.	Saginaw	TX	76131		X			6	
C—Army	US Army Saginaw Aircraft Plant.	Blue Mound Road Highway 156.	Saginaw	TX	76131		X		X	6	23 20A
O—Agriculture	Livestock Insects Laboratory	SH 16/IH 10	Kerrville	TX				X		6	
C—Agriculture	Knipling-Bushland US Livestock Insects Laboratory.	Intasection SH 16 and IH 10.	Kerrville	TX	78028			X		6	20A
O—Air Force	USAF Ellington Air Force Base Hazardous Waste.	Clothier Avenue	Houston	TX	77209				X	6	
C—Air Force	147th ING at Ellington Field	Clothier Avenue	Houston	TX	77209				X	6	20A
O—Air Force	Hill Air Force Base	2849 ABC/DEEXX	Hill AFB	UT	84056	X	X	X	X	8	
C—Air Force	Hill Air Force Base	OC-ALC/EM	Ogden	UT	84056	X	X	X	X	8	20A
O—Navy	Naval Ind. Reserve Ordnance Plant-Hercules Inc.	8400 W. 4100 South.	Magna	UT	84044			X	X	8	
C—Navy	Naval Ind. Reserve Ordnance Plant/Hercules Inc.	8400 W. 4100 South.	Magna	UT	84044	X	X	X	X	8	23
O—Interior	BLM-Chevron Red Wash Unit	T7SR7ESEC22	Vernal	UT	84078				X	8	
C—Interior	BLM-Chevron Red Wash Unit	T7SR7ESEC 22	Vernal	UT	84078			X	X	8	23
O—Interior	BLM-Cottonwood Canyon	T37SR21ESEC3	Hite	UT	84511				X	8	
C—Interior	BLM-Cottonwood Canyon	T37SR21ESEC3	Hite	UT	84511			X	X	8	23
O—Interior	BLM-Deseret Mound & Mine	T35NR13WSEC35	Ceder City	UT	84720				X	8	
C—Interior	BLM-Desert Mound Mine	T35NR13WSEC35	Ceder City	UT	84720			X	X	8	23 20A
O—Interior	IRECO Chemical	17SR1ESEC5, 6, 7 Pelican Pt. Site A&B.	Lehi	UT	84043	X			X	8	

FEDERAL FACILITIES DOCKET CORRECTIONS—Continued

[O=Original, C=Corrected]

Agency	Facility name	Facility address	City	State	ZIP Code	RCRA 3005	RCRA 3010	RCRA 3016	CERCLA 103	EPA region	Corr. codes
C—Interior	IRECO Chemical	17SR1ESEC5, 6, 7 Pelican Pt. Site A&B.	Lehi	UT	84043	X	X	X	X	8	23
O—Energy	Monticello Uranium Mill Tailings Site.	SE of Monticello	Monticello	UT				X		8	
C—Energy	Monticello Uranium Mill Tailings Site.	SE of Monticello	UT					X	X	8	23
O—Agriculture	Only Chance Mining Claim	Vernal Ranger Dist	Uintah County.	UT				X		8	
C—Agriculture	Ashley National Forest	355 North Vernal Ave.	Vernal	UT	84078			X		8	20A
O—Air Force	Langley AFB	1 CSG/DE	Langley AFB.	VA	23665	X	X		X	3	
C—Air Force	Langley AFB	1CSG/DE	Langley AFB.	VA	23665	X	X	X	X	3	23
C—Army	Fort Belvoir	DFAE BLDG 193 ATZA-FE ATZA-DEH-EN Bldg. 1442.	Fort Belvoir.	VA	22060–50000	X	X	X	X	3	
C—Army	Fort Belvoir	ATZA-DEH-Bldg. 1442.	Fort Belvoir.	VA	22060–5113	X	X	X	X	3	20A
O—Army	Cameron Station	5010 Duke St	Alexandria	VA	22314			X	X	3	
C—Army	Cameron Station	5010 Duke St	Alexandria	VA	22314			X	X	3	23
O—Army	Fort Story	Bldg. 300	Fort Story	VA	23459	X	X	X	X	3	
C—Army	Fort Story	Bldg. 300	Virginia Beach.	VA	23459	X	X	X	X	3	20A
O—Navy	MC Devel. & Educ. Comm. Quantico.	N/A	Quantico	VA	22134	X	X	X	X	3	
C—Navy	Marine Corps Combat Development Center (MCCDC).	N/A	Quantico	VA	22134–5001	X	X	X	X	3	20A
O—Navy	DOD Armed Forces Exper. Training Activity.	Camp Peary—PO Box 1447.	Williamsburg	VA	23185		X		X	3	
C—Navy	DOD Armed Forces Exper. Training Activity.	Camp Peary—PO Box 1447.	Williamsburg	VA	23185		X	X	X	3	23
O—Navy	Naval Air Station Oceana	N/A	Virginia Beach.	VA	23460	X	X	X	X	3	
C—Navy	Naval Air Station Oceana	Public Works Department.	Virginia Beach.	VA	23460	X	X	X	X	3	20A
O—Army	Harry Diamond Labs Woodbridge.	U.S. Army	Woodbridge.	VA	22186			X	X	3	
C—Army	Harry Diamond Labs Woodbridge.	Dawson Beach Rd	Woodbridge.	VA	22191			X	X	3	20A
O—Defense	Defense General Supply Center Richmond.	Jefferson Davis Highway.	Richmond	VA	23297	X	X	X		3	
C—Defense	Defense General Supply Center Richmond.	Jefferson Davis Highway.	Richmond	VA	23297	X	X	X	X	3	23
O—Navy	Naval Supply Center, Norfolk	Craney Island	Portsmouth	VA	23703	X	X	X	X	3	
C—Navy	Naval Supply Center, Norfolk	Craney Island Fuel Terminal	Portsmouth	VA	23702	X	X	X	X	3	20A
O—EPA	EPA Environmental Photographic Interpretation Ctr.	Bld. 166—Vint Hill Farm.	Warranton	VA	22186		X	X		3	
C—EPA	EPA Environmental Photographic Interpretation Ctr.	Bldg. 166—Vint Hill Farm Station.	Warrenton	VA	22186		X	X		3	20A
O—Navy	Fleet Combat Training Ctr	Dam Neck FCTC, Atlantic Dam NK.	Virginia Beach.	VA	23461		X	X	X	3	
C—Navy	Fleet Combat Training Ctr	FCTC Atlantic Dam Neck.	Virginia Beach.	VA	23461		X	X	X	3	20A
O—Interior	E. Shore VA Fisherman Island.	Rd. 1 Box 1228	Cape Charles.	VA	23310			X	X	3	
C—Interior	E. Shore VA National Wildlife Refuge.	Rd. 1 Box 1228	Cape Charles.	VA	23310			X	X	3	20A
O—Commerce	USDOC-NOAA Pacific Marine Center.	1801 Fairview Ave. E.	Seattle	WA	98102		X			10	
C—Commerce	USDOC-NOAA Pacific Marine Center.	1801 Fairview Ave. E.	Seattle	WA	98102		X	X		10	23
O—Air Force	Fairchild AFB	92 CSG/CC	Fairchild AFB.	WA	99011	X	X	X		10	
C—Air Force	Fairchild AFB	92 CSG/CC	Fairchild AFB.	WA	99011	X	X	X	X	10	23
O—Air Force	USAF McChord AFB	62 ABG/DE	Fairchild AFB.	WA	98438	X	X	X	X	10	
C—Air Force	McChord AFB	62 ABG/CC	McChord AFB.	WA	98438		X	X	X	10	20A 20
O—Energy	USDOE Hanford Site	Hanford Site	Richland	WA	99352	X	X		X	10	
C—Energy	USDOE Hanford Site	Hanford Site	Richland	WA	99352	X	X	X	X	10	23

FEDERAL FACILITIES DOCKET CORRECTIONS—Continued

[O=Original, C=Corrected]

Agency	Facility name	Facility address	City	State	ZIP Code	RCRA 3005	RCRA 3010	RCRA 3016	CERCLA 103	EPA region	Corr. codes
O—Navy	Navy Undersea Warfare Eng. Sta. Keyport.	Code 073 Hwy. 306, E. End.	Keyport	WA	98345	X	X		X	10	
C—Navy	Naval Undersea Warfare Eng. Sta. Keyport.	Code 073 Hwy. 306 E. End.	Keyport	WA	98345	X	X	X	X	10	23
O—Navy	Naval Shipyard Puget Sound	1st Street Code 106.	Bremerton	WA	98314	X	X		X	10	
C—Navy	Naval Shipyard Puget Sound	1st Street Code 106.	Bremerton	WA	98314	X	X	X	X	10	23
O—Navy	USNavy Bangor Submarine Base.	Clear Creek Rd	Bangor	WA	98315	X	X			10	
C—Navy	USNavy Bangor Submarine Base.	Clear Creek Rd	Bremerton	WA	98315–5000	X	X	X	X	10	20A 23
O—Agriculture	Wenatchee National Forest	T3IN R17E WM SEC7.	Holden	WA	98616				X	10	
C—Agriculture	Wenatchee National Forest	Box 811	Wenatchee	WA	98616			X	X	10	23 20A
O—Air Force	Volk Field—Camp Douglas OMS1.	Hwy. 94 Juneau County.	Camp Douglas.	WI	54618	X			X	5	
C—Air Force	Volk ANG Base—Camp Douglass OMS1.	Hwy. 94 Juneau County.	Camp Douglas.	WI	54618		X	X	X	5	23 20A
O—Air Force	Wake Island Air Field	Wake Island	Wake Island.	WQ	96798				X	9	
C—Air Force	Wake Island Air Field	15ABW, Wake Island.	Wake Island Air Field.	WQ	96798				X	9	20A
O—Navy	Naval Radio Station LF #1	10 Mi off Rte. 33	Sugar Grove.	WV	26815		X		X	3	
C—Navy	Naval Radio Station LF #1	10 mi off Rte. 33	Sugar Grove.	WV	26815		X	X	X	3	23
O—Air Force	F. E. Warren Air Force Base	1–25 and Randall Avenue.	Cheyenne	WY	82005–5000			X	X	8	
C—Air Force	F.E. Warren Air Force Base	90 Civ. Eng. Sq. Bldg. 320.	Cheyenne	WY	82005–5000	X	X	X	X	8	23 20A

[FR Doc. 89–28976 Filed 12–14–89; 8:45 am]
BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 212–010286–023.
Title: South Europe/U.S.A. Pool Agreement.
Parties:
Compania Trasatlantica Espanola, S.A.
Costa Container Line, A Division of Contship Containerlines Limited
Evergreen Marine Corporation (Taiwan) Ltd.
Farrell Lines, Inc.
"Italia" di Navigazione S.p.A.
Jugolinija
Lykes Bros. Steamship Co., Ltd.
A.P. Moller-Maersk Line
Nedlloyd Lijnen B.V.
P&O Containers (TFL) Ltd.
Sea-Land Service, Inc.
Zim Israel Navigation Company, Ltd.

Synopsis: The proposed modification provides that in the French and North Spain sections, overcarriage and undercarriage, if any, for any, for each member will be calculated on the basis of their respective Pool Freight earnings in each such Pool section for the period February 1, 1989 through March 31, 1990.

Agreement No.: 202–011102–008.
Title: U.S. Atlantic & Gulf/Western Mediterranean Rate Agreement.
Parties:
Compagnie Generale Maritime
Compania Trasatlantica Espanola, S.A.
Costa Container Line, A Division of Contship Containerlines Limited
Evergreen Marine Corporation (Taiwan) Ltd.
Farrell Lines, Inc.
"Italia" di Navigazione, S.p.A.
Lykes Bros. Steamship Co., Inc.
Nedlloyd Lijnen B.V.
P&O Containers (TFL) Ltd.
Sea-Land Service, Inc.
Zim Israel Navigation Company, Ltd.

Synopsis: The modification amends the Agreement to provide that in the event any member fails to respond to a telephone or telex poll on any commodity rate item being considered by the Executive Committee or Pricing Committee by the close of the third business day following the initiation of such poll, the member shall be recorded as abstaining on the matter presented. In addition, the modification amends Appendix A of the Agreement to reflect the correct name of Lykes Lines.

Agreement No.: 207–011142–002.
Title: The NOSAC Agreement.
Parties:
Wilh. Wilhelmsen Limited A/S
K/S NOSAC A/S & Co.
K/S Benargus A/S & Co.

Synopsis: The proposed amendment would expand the scope of the Agreement to include Mediterranean ports in Europe and Africa, and all Red Sea ports, as well as Pakistan and the Far East, east of Pakistan, including islands in the Pacific. It would also increase from four to seven the number of sailings per month and the capacities of the vessels employed in the Agreement trade. The parties have requested a shortened review period.

Agreement No.: 203–011170–003.
Title: Ro-Ro Agreement.
Parties:
Barber Blue Sea
NOSAC.

Synopsis: The proposed amendment would reflect the changed status of NOSAC as a common carrier westbound in the Agreement trade. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.
Dated: December 11, 1989.
Joseph C. Polking,
Secretary.
[FR Doc. 89–29221 Filed 12–14–89; 8:45 am]
BILLING CODE 6730–01–M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200179–002.
Title: City of Los Angeles Terminal Agreement.
Parties:
City of Los Angeles,
California Cartage Company, Inc.

Synopsis: The Agreement amends the basic agreement. Section 1 is amended to add to the premises Bay No. 5 of Warehouse No. 10. Section 4(a) is amended to add compensation for Bay No. 5. A new subsection (c) is added to section 1 which provides for certain adjustments to the leased premises. This new subsection also provides that any further agreement relating to adjustment of the premises and associated compensation will be submitted to the Commission as an amendment.

By order of the Federal Maritime Commission.
Dated: December 11, 1989.
Joseph C. Polking,
Secretary.
[FR Doc. 89–29222 Filed 12–14–89; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

[Docket No. R–0680]

Proposals to Modify the Reserve Banks' Notice of Nonpayment Service

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed service modifications.

SUMMARY: The Board is publishing for comment proposals to modify the deadlines for the notice of nonpayment service offered by Federal Reserve Banks. Modification of the current deadlines may be adopted if the Board adopts an amendment to Regulation CC shortening the time requirement for providing notice of nonpayment to the depository bank.

DATE: Comments must be submitted on or before February 16, 1990.

ADDRESSES: Comments, which should refer to Docket No. R–0680, may be mailed to the Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, Attention: Mr. William W. Wiles, Secretary; or may be delivered to Room B–2223 between 8:45 a.m. and 5:00 p.m. All comments received at the above address will be included in the public file and may be inspected at Room B–1122 between 8:45 a.m. and 5:15 p.m.

FOR FURTHER INFORMATION CONTACT: Louise L. Roseman, Assistant Director (202/452–3674) or Gayle Thompson, Manager (202/452–2934), Division of Federal Reserve Bank Operations; or Stephanie Martin, Attorney (202/452–3198), Legal Division; for the hearing impaired only: Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION:

Currently, Regulation CC requires paying banks to provide notice of nonpayment to the depository bank by 4:00 p.m. (local time of the depositary bank) on the second day following presentment for checks of $2,500 or more. Although this requirement reduces risk inherent in the return process, some banks have expressed concern that, under the permanent availability schedule, which becomes effective September 1, 1990, the instances in which depository banks will not receive notice of nonpayment of large-dollar returned checks prior to the time that funds must be made available for withdrawal will increase. Specifically, under the permanent schedule, the $5,000 of the deposit of a local check must be made available to the customer for withdrawal by the second business day following deposit. Even though the amount in excess of $5,000 can be held for a longer period of time under the large-deposits exception [§ 229.13(b)], the depository bank's risk exposure may increase because it would generally not receive notice of nonpayment of a large-dollar local check until after the first $5,000 of the check must be made available for withdrawal.

The Board is requesting comment on whether the regulation should be revised to reduce the time within which notice of nonpayment must be provided to the depositary bank [See Docket R–0679 elsewhere in today's **Federal Register**]. The Board proposes that, if it amends Regulation CC to reduce the time within which notice of nonpayment must be given, the Reserve Banks would revise the deposit deadlines for the large-dollar notice of nonpayment service in support of this change. At this time, the Board is not proposing any fee changes; however, fees may need to be increased for notices of nonpayment originated by telephone or physical check if the processing is moved into a high-cost peak processing time. Any revised Reserve Bank deadlines would be structured to facilitate compliance with the regulatory requirement for receipt of notices of nonpayment, if the Board adopts such an amendment. Because no specific time requirement for depository bank receipt of notices of nonpayment is being proposed, following is a discussion of how the Federal Reserve service, might be modified to assist banks in meeting any new requirements.

If the regulation is modified to reduce the time within which notice must be given to 4:00 p.m. on the business day following the banking day on which the check is presented to the paying bank, the Reserve Banks would retain their current deadlines for the notice of nonpayment service; however, the paying bank would be required to provide the physical checks or information to its Reserve Bank one day earlier than is currently the case.

Origination method	Deadline
Wire	12:00 noon on due date.
Telephone call to Fed	9:00 a.m. on due date.

Origination method	Deadline

in producing legible facsimiles may preclude this alternative.

a.m., the Board requests comment on whether the Federal Reserve notice of

depreciated somewhat over the intermeeting period.

By order of the Federal Open Market Committee, December 6, 1989.
Gary P. Gillum,

to § 225.25(b)(11) of the Board's Regulation Y.

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Origination method	Deadline
Physical check to Fed	9:00 a.m. on due date.

The Board recognizes that the deadlines for providing notice by 4:00 p.m. on the day following presentment generally would preclude use of the Federal Reserve notification service based on providing use of the Federal Reserve notification service based on providing the Reserve Bank with the typical check or making a telephone call to the Reserve Bank because most paying banks may not be able to make their return decision and then deliver the check or call the Reserve Bank by 9:00 a.m. on the day following presentment.

The times for both deposit and delivery of notices are based on local times of the paying bank's Reserve Bank and of the depository bank, respectively. The 12:00 noon deadline for wire origination is necessary because the Federal Reserve guarantees that a wire notice sent by a West Coast paying bank to an East Coast depository bank at 12:00 noon Pacific Time (PT) (3:00 p.m. Eastern Time (ET)) would be delivered to the depository bank by 4:00 p.m. ET. The Reserve Banks would be unable to guarantee delivery for notices initiated later than 12:00 noon PT. The 9:00 a.m. deadline for notices originated by telephone or physical check is necessary to allow the Federal Reserve sufficient time to process manually the notice information.

Alternatively, the Federal Reserve could establish the deadlines in Eastern Time. This could allow for later deadlines for non-West Coast paying banks; however, West Coast paying banks would still be constrained by the proposed deadlines. If the Board were to adopt a time than 4:00 p.m. for receipt of the notice by the depositary bank, the deadlines could be moved to a later time, accordingly; however, because the Federal Reserve service is provided via Fedwire, the cutoff for Federal Reserve provision of the notice would provide for receipt by the close of Fedwire, regardless of whether the legal requirement allowed for a later time. This constraint generally would not allow sufficient time for a bank located remotely from its local Reserve Bank office to originate notice by providing the physical checks to the Reserve Bank. In recognition of this, the Federal Reserve is investigating whether alternatives, such as fax delivery of a copy of the physical check, could provide a feasible service substitution for the paying bank; however, difficulty in producing legible facsimiles may preclude this alternative.

If the Board adopts an amendment to § 229.33(a) of Regulation CC requiring that notice of nonpayment be provided to the depositary bank by 4:00 p.m. on the day following presentment to the paying bank, the Board requests comment on whether the Federal Reserve notice of nonpayment service should be modified as described in the alternatives above. In addition, the Board requests commenters to provide suggestions regarding alternatives for paying banks to meet the deadline for providing notice of nonpayment from the physical check or via telephone call.

If the regulation were modified to require that notice of nonpayment be provided to the depositary bank by 10:00 a.m. on the second business day after presentment to the paying bank, the Board proposes to modify the notice of nonpayment service to provide same-day notice at the following new deadlines:

Origination method	Current deadline	Proposed deadline
Wire	12:00 noon local time on due date.	9:00 a.m. Eastern Time on due date.
Telephone call to Fed.	9:00 a.m. local time on due date.	4:00 p.m. local time on day before due date.
Physical check to Fed.	9:00 a.m. local time on due date.	12:01 a.m. local time on due date.

These proposed deadlines are based on a combination of Fedwire processing hours and check processing flows. The 9:00 a.m. Et wire deadline allows for information to be entered after the opening of Fedwire so that it can be delivered to the depositary bank by 10:00 a.m. local time. The 4:00 p.nm. local time on the day before the due date for telephone origination would allow paying banks to notify the Federal Reserve during business hours, when staff is generally available to accept the telephone calls. The Federal Reserve could provide a later deadline for receipt of the telephone notice, but this would likely result in higher prices because additional staff would be necessary to handle relatively small volumes. The 12:01 a.m. local time deadline for receiving physical checks from which the Federal Reserve would provide notice is tied to existing transportation arrangements for delivering checks to the local Reserve Bank office.

If the Board adopts an amendment to Section 229.33(a) of Regulation CC requiring that notice of nonpayment must be provided to the depositary bank on the second business day after presentment to the paying bank at 10:00 a.m., the Board requests comment on whether the Federal Reserve notice of nonpayment service be modified as described above.

By order of the Board of Governors of the Federal Reserve System, December 7, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-29010 Filed 12-14-89; 8:45 am]

BILLING CODE 6210-01-M

Federal Open Market Committee; Domestic Policy Directive of October 3, 1989

In accordance with § 217.5 of its rules regarding availability of information, there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on October 3, 1989.[1] The directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests that economic activity continued to expand at a moderate pace in the third quarter. In July and August, total nonfarm payroll employment rose appreciably despite the depressing effect of strike activity. The civilian unemployment rate remained around 5¼ percent. Industrial production picked up in August, mainly because of a rebound in auto assemblies and coal mining. Consumer spending has registered larger gains in recent months, reflecting in part a surge in auto sales. Housing starts in July and August were slightly above their second-quarter average. Indicators of business capital spending suggest somewhat slower growth in the third quarter after the substantial increase in the first half of the year. The nominal U.S. merchandise trade deficit recorded a further decline in July relative to June and to the average for the second quarter as a whole. Sharp reductions in energy prices over the summer months damped increases in consumer prices and contributed to declines in producer prices. The latest wage data suggest no change in prevailing trends.

Interest rates generally show small mixed changes on balance since the Committee meeting on August 22. In foreign exchange markets, the trade-weighted value of the dollar in terms of the other G-10 currencies fell after the release of the G-7 statement on September 23; on balance, the dollar depreciated somewhat over the intermeeting period.

M2 grew fairly briskly in August and evidently also in September, lifting its expansion thus far this year to somewhat above the lower end of the Committee's annual range. M3 grew at a substantially reduced pace in this period, as assets of thrift institutions and their associated funding needs apparently contracted further; for the year to date, M3 has grown at a rate around the lower bound of the Committee's annual range.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability, promote growth in output on a sustainable basis, and contribute to an improved pattern of international transactions. In furtherance of these objectives, the Committee at its meeting in July reaffirmed the ranges it had established in February for growth of M2 and M3 of 3 to 7 percent and 3½ to 7½ percent, respectively, measured from the fourth quarter of 1988 to the fourth quarter of 1989. The monitoring range for growth of total domestic non-financial debt also was maintained at 6½ to 10½ percent for the year. For 1990, on a tentative basis, the Committee agreed in July to use the same ranges as in 1989 for growth in each of the monetary aggregates and debt, measured from the fourth quarter of 1989 to the fourth quarter of 1990. The behavior of the monetary aggregates will continue to be evaluated in the light of movements in their velocities, developments in the economy and financial markets, and progress toward price level stability.

In the implementation of policy for the immediate future, the Committee seeks to maintain the existing degree of pressure on reserve positions. Taking account of progress toward price stability, the strength of the business expansion, the behavior of the monetary aggregates, and developments in foreign exchange and domestic financial markets, slightly greater reserve restraint might or slightly lesser reserve restraint would be acceptable in the inter-meeting period. The contemplated reserve conditions are expected to be consistent with growth of M2 and M3 over the period from September through December at annual rates of about 6½ and 4½ percent, respectively. The Chairman may call for Committee consultation if it appears to the Manager for Domestic Operations that reserve conditions during the period before the next meeting are likely to be associated with a federal funds rate persistently outside a range of 7 to 11 percent.

By order of the Federal Open Market Committee, December 6, 1989.

Gary P. Gillum,

Deputy Assistant Secretary, Federal Open Market Committee.

[FR Doc. 89-29242 Filed 12-14-89; 8:45 am]

BILLING CODE 6210-01-M

[1] Copies of the record of policy actions for the Committee for the meeting of October 3, 1989, are available upon request to The Board of Governors of the Federal Reserve System, Washington, DC 20551.

Campbell Group, Ltd.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and section 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted through the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 8, 1990.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Campbell Group, Ltd., Worth, Illinois; to engage *de novo* in management consulting advice, pursuant to § 225.25(b)(11) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 11, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-29243 Filed 12-14-89; 8:45 am]

BILLING CODE 6210-01-M

F.N.B. Corporation, et al., Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 8, 1990.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. F.N.B. Corporation, Hermitage, Pennsylvania; to acquire 13.26 percent of the voting shares of Emclaire Financial Corporation (a bank holding company in formation), Emlenton, Pennsylvania, and thereby indirectly acquire The Farmers National Bank, Emlenton, Pennsylvania.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Campbell Group, Ltd., Worth, Illinois; to become a bank holding company by acquiring (1) 7.72 percent of the voting shares of Southwest Bancorp, Inc., Worth, Illinois, and thereby indirectly acquire First National Bank of Danville, Danville, Illinois, Mount Greenwood Bank, Chicago, Illinois, and

Worth Bank and Trust, Worth, Illinois; (2) 9.6 percent of the voting shares of Terrapin Bancorp, Inc., Elizabeth, Illinois, and thereby indirectly acquire The Elizabeth State Bank, Elizabeth, Illinois; (3) 10.06 percent of the voting shares of Rock River Bancorporation, Inc., Oregon, Illinois, and thereby indirectly acquire Rock River Bank, Oregon, Illinois; (4) 15.0 percent of the voting shares of Scott County Bancorp, Inc., Winchester, Illinois, and thereby indirectly acquire The First State Bank of Winchester, Winchester, Illinois; and (5) 1.29 percent of the voting shares of Peotone Bancorp, Inc., Peotone, Illinois, and thereby indirectly acquire Peotone Bank and Trust Company, Peotone, Illinois.

Board of Governors of the Federal Reserve System, December 11, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-29244 Filed 12-14-89; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Robert R. Fowler III

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 8, 1990.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Robert R. Fowler, III, Trustee for the Robert R. Fowler Estate Marital Trust, Oxford, Georgia; to acquire 31.5 percent of the voting shares of Main Street Banks, Incorporated, Covington, Georgia, and thereby indirectly acquire The Bank of Covington, Covington, Georgia.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. William H. Henson, Maysville, Oklahoma; to acquire an additional 10.16 percent of the voting shares of H. Pat Henson Company, Maysville, Oklahoma, and thereby indirectly acquire Farmers and Merchants Bank, Maysville, Oklahoma.

2. Ross McKnight, Throckmorton, Texas; to acquire 24.83 percent of the voting shares of H. Pat Henson Company, Maysville, Oklahoma, and thereby indirectly acquire Farmers and Merchants Bank, Maysville, Oklahoma.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Mr. David L. Kriegel, Lima, Ohio; to acquire 5.79 percent of the voting shares of Giddings Citizens State Bancshares, Inc., Giddings, Texas, and thereby indirectly acquire Citizens State Bank, Giddings, Texas.

2. Pinnacle Banc Group, Oakbrook, Illinois; to acquire 4.73 percent of the voting shares of Giddings Citizens State Bancshares, Inc., Giddings, Texas, and thereby indirectly acquire Citizens State Bank, Giddings, Texas.

3. BMR Financial Group, Inc., Atlanta, Georgia; to acquire 4.73 percent of the voting shares of Giddings Citizens State Bancshares, Inc., Giddings, Texas, and thereby indirectly acquire Citizens State Bank, Giddings, Texas.

4. Mr. Reed Rubin, New York, New York; to acquire 4.73 percent of the voting shares of Giddings Citizens State Bancshares, Inc., Giddings, Texas, and thereby indirectly acquire Citizens State Bank, Giddings, Texas.

5. South Atlantic Venture, Tampa, Florida; to acquire 19.31 percent of the voting shares of Giddings Citizens State Bancshares, Inc., Giddings, Texas, and thereby indirectly acquire Citizens State Bank, Giddings, Texas.

6. Mr. Richard D. Segal, Rye, New York; to acquire 48.29 percent of the voting shares of Giddings Citizens State Bancshares, Inc., Giddings, Texas, and thereby indirectly acquire Citizens State Bank, Giddings, Texas.

7. Mr. Robert Feldman, Scarsdale, New York; to acquire 2.12 percent of the voting shares of Giddings Citizens State Bancshares, Inc., Giddings, Texas, and thereby indirectly acquire Citizens State Bank, Giddings, Texas.

Board of Governors of the Federal Reserve System, December 11, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-29245 Filed 12-14-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 86N-0499]

Advisory List of Critical Devices—1988; Update

AGENCY: Food and Drug Administration.

ACTION: Notice; update.

SUMMARY: The Food and Drug Administration (FDA) is updating its "Advisory List of Critical Devices—1988" prepared by FDA's Center for Devices and Radiological Health (CDRH) that published in the **Federal Register** of March 17, 1988 (53 FR 8854) to add a device that the agency inadvertently omitted.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857, MD.

FOR FURTHER INFORMATION CONTACT: Sharon Kalokerinos, Center for Devices and Radiological Health (HFZ-332), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1131.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 21, 1978 (43 FR 31508), FDA published the current good manufacturing practice regulation (CGMP) for devices. The preamble to the CGMP regulations provided a "Guideline List of Critical Devices" (43 FR 31508 at 31511). This was an illustrative list of 75 devices provided to give examples of devices that FDA concluded met the definition of critical device as found in the final CGMP regulations (21 CFR 820.3(f)). The definition reads "a device that is intended for surgical implant into the body or to support or sustain life and whose failure to perform when properly used in accordance with instructions for use provided in the labeling can be reasonably expected to result in a significant injury to the user." In developing this list, FDA used the recommendations received from the Device Good Manufacturing Practice Advisory Committee (21 CFR 14.100(d)(2)) and the device advisory panels (21 CFR 14.100(d)(1)). The agency announced that the list was not exhaustive and that it was based on the most curent information available to FDA. The agency also stated that the list would be updated periodically as additional information became available and after consultation with the committee (43 FR 31508 at 31511).

In the **Federal Register** of March 17, 1988 (53 FR 8854), FDA published an updated and expanded "Advisory List of Critical Devices—1988" prepared by CDRH. In the 1988 list, FDA listed (No. 66) § 876.3350 *Penile inflatable implant. The agency should have also included § 876.3630 Penile rigidity implant* in the list.

Interested persons may submit comments to the Dockets Management Branch (address above). Comments will be considered in determining if further changes to the "Advisory List of Critical Devices—1988" are warranted. Two copies of any comments should be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The list and any comments received may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 8, 1989.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-29320 Filed 12-14-89; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committees; Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meetings.—The following advisory committee meetings are announced:

Abuse Liability Subcommittee of the Drug Abuse Advisory Committee

Date, time, and place.—January 8 and 9, 1990, 9 a.m., Parklawn Bldg., Conference Rms. G and H, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person.—Open public hearing, January 8, 1990, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 4:30 p.m.; open committee discussion, January 9, 1990, 9 a.m. to 4:30 p.m.; Thomas E. Nightingale, Center for Drug Evaluation and Research (HFD-9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5455.

General function of the committee.—The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs which possess stimulant, depressant, or analgesic properties including those aspects of safety related to the potential of these drugs to produce dependence and to be abused.

Agenda—Open public hearing.—Interested persons may present data, information, or views, orally or in writing, or issues pending before the committee. Those desiring to make formal presentations should notify the contact person before December 21, 1989, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open subcommittee discussion.—The subcommittee will discuss the development of guidelines for research in the area of abuse liability testing, i.e., to develop guidelines for FDA which can be useful in ensuring the early recognition of abuse or dependence liability of new chemical entities, and to set minimum standards for categorizing abuse liability as negative.

Obstetrics—Gynecology Devices Panel

Date, time, and place.—January 18, 1990, 9 a.m., Conference Rm. G, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.

Type of meeting and contact person.—Open public hearing, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; Colin M. Pollard, Center for Devices and Radiological Health (HFZ-470), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1230.

General function of the committee.—The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing.—Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before January 5, 1990, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion.—The committee will review, discuss, and make a recommendation on a premarket approval application on a home uterine activity monitor for preterm labor.

Cardiovascular and Renal Drugs Advisory Committee

Date, time, and place.—January 25 and 26, 1990, 9 a.m., National Institutes of Health, Clinical Center, Bldg. 10, Jack Masur Auditorium, 9000 Rockville Pike, Bethesda, MD.

Type of meeting and contact person.—Open public hearing, January 25, 1990, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; open committee discussion, January 26, 1990, 9 a.m. to 5 p.m.; Joan C. Standaert, Center for Drug Evaluation and Research (HFD-9), Food and Drug Administration, 234 Summit St., Toledo, OH 43604, 419-259-6211 or 301-443-4730.

General function of the committee.—The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs for use in the treatment of cardiovascular and renal disease and makes recommendations regarding the appropriate clinical development of such products.

Agenda—Open public hearing.—Interested persons wishing to present data, information, or views, orally or in writing, on issues pending before the committee, should communicate with the contact person.

Open committee discussion.—On January 25, 1990, the committee will discuss guidelines for the study of antiarrhythmic drugs. On January 26, 1990, the committee will discuss new drug application 19-665, Unicard (dilevalol), sponsored by Schering Corp., to be indicated for hypertension.

Antiviral Drugs Advisory Committee

Date, time, and place.—January 29 and 30, 1990, 8:30 a.m., Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD.

Type of meeting and contact person.—Open public hearing, January 29, 1990, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; open committee discussion, January 30, 1990, 8:30 a.m. to 4:30 p.m.; Gretchen Hascall, Center for Drug Evaluation and Research (HFD-9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4695.

General function of the committee.—The committee reviews and evaluates

available data on the safety and effectiveness of marketed and

14. Under 21 CFR 10.205, representatives of the electronic media may be

National Institutes of Health

Meeting of the Advisory Committee to

of the meeting and a roster of the committee members upon request.

Health Resources and Services Administration

longer considered necessary in Fiscal Year 1990, for programmatic reasons.

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available data on the safety and effectiveness of marketed and investigational human drugs for use in the treatment of acquired immunodeficiency syndrome (AIDS), AIDS-related complex (ARC), and other viral, fungal, and mycobacterial infections.

Agenda—Open public hearing.—Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before January 16, 1990, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and adresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion.—On January 29, 1990, the committee will discuss expanded indications for Zidovudine (AZT). On January 30, 1990, the committee will receive an update from the FDA staff on the status of expanded availability of experimental agents for persons with human immunodeficiency virus (HIV)-infection (parallel tracking). The ongoing trials of Dideoxyinosine may be discussed in this context.

FDA public advisory committee meetings may have as many as four separable prtions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person lsited above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, Room. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, Room. 4–62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (5 U.S.C. App. I), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: December 8, 1989.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–29247 Filed 12–14–89; 8:45 am]

BILLING CODE 4160–01–M

National Institutes of Health

Meeting of the Advisory Committee to the Director, NIH

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Advisory Committee to the Director, NIH, on January 26, 1990, from 8:30 a.m. to 5 p.m., at the National Institutes of Health, Bethesda, Maryland 20892. The meeting will be held in the Shannon Building, Wilson Hall, and will be open to the public.

The meeting will be devoted to a review and discussion of two reports prepared by ad hoc consultant panels of the Advisory Committee to the Director, NIH: the *Study of Scientific Review Procedures of the NIH Intramural Research Program*, and the *Report of the Panel on Physical Medicine and Rehabilitation Research.*

The Executive Secretary, Jay Moskowitz, Ph.D., National Institutes of Health, Shannon Building, Room 103, Bethesda, Maryland 20892, (301) 496–3152, will furnish the meeting agenda, rosters of Committee members and consultants, and substantive program information upon request.

Dated: December 8, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–29216 Filed 12–14–89; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the AIDS Liaison Subcommittee of the AIDS Research Advisory Committee, National Institute of Allergy and Infectious Diseases, on January 18, 1990, in Building 31C, Conference Room 6, at the National Institutes of Health, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 10:30 a.m. to adjournment on January 18. The subcommittee will discuss the mission and directions of the Division of AIDS (DAIDS) providing input and broad programmatic advice on the DAIDS extramural program with respect to basic and clinical research. Attendance by the public will be limited to space available.

Ms. Patricia Randall, Office of Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301–496–5717) will provide a summary of the meeting and a roster of the committee members upon request.

Mr. Thomas Voskuhl, Assistant Director for Program Operations, DAIDS, NIAID, NIH, Control Data Building, room 250P, 6003 Executive Boulevard, Rockville, Maryland 20892, telephone (301–496–0545) will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855 Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institute of Health)

Dated: December 8, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–29218 Filed 12–14–89; 8:45 am]

BILLING CODE 4140–1–M

National Heart, Lung, and Blood Institute; Meeting of the Cardiology Advisory Committee

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Cardiology Advisory Committee, National Heart, Lung, and Blood Institute, January 22–23, 1990, Building 31C, Conference Room 6, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 9:00 a.m. on January 22 to adjournment on January 23. Attendance by the public will be limited to space available. Topic for discussion will include a review of the research programs relevant to the Cardiology area and consideration of future needs and opportunities.

Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, room 4A21, Building 31, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the committee members.

Michael J. Horan, M.D., Associate Director for Cardiology, Division of Heart and Vascular Diseases, National Heart, Lung, and Blood Institute, Room 320, Federal Building, Bethesda, Maryland 20892, (301) 496–5421, will furnish substantive program information upon request.

(Catalog of Federal Domestic Assistance Program No. 13.837, Heart and Vascular Diseases Research, National Institutes of Health)

Dated: December 8, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–29217 Filed 12–14–89; 8:45 am]

BILLING CODE 4140–01–M

Health Resources and Services Administration

Program Announcement and proposed Funding Preference for Training Grants for Acquired Immunodeficiency Syndrome (AIDS) Regional Education and Training Centers Program

The Health Resources and Services Administration (HRSA), announces that during Fiscal Year (FY) 1990 approximately $14.3 million dollars are available for training grants to continue the development of AIDS Regional Education and Training Centers (ETCs) as authorized by section 788A of the Public Health Service Act and also being implemented under Section 301. These centers will provide training for health care personnel in the care of people with Acquired Imunodeficiency Syndrome (AIDS) and other conditions related to infection with the Human Immunodeficiency Virus (HIV).

Programmatic activity may be conducted under Section 301 dependent upon appropriation and authorization. Grants may be awarded to public and nonprofit private entities. Activities will be devoted to the preparation of primary care providers who are workers in high HIV prevalence areas.

In addition, grants are awarded to accredited health professions schools and academic health science centers under Section 788A to meet the cost of projects:

(1) To train the faculty of schools and graduate departments of medicine, nursing, osteopathic medicine, dentistry, public health, psychology, and allied health to teach health professions students to provide for the health care needs of individuals with acquired immune deficiency syndrome;

(2) With respect to improving clinical skills in the diagnosis, treatment, and prevention of such syndrome, to educate and train the health professionals and clinical staff of schools of medicine, osteopathic medicine, and dentistry; and

(3) To develop and disseminate curricula relating to the care and treatment of individuals with acquired immune deficiency syndrome.

The centers will operate in collaboration with health professionsss schools, community hospitals, health departments, and other organizations involved in the provision of care to peopel with HIV related conditions. Comments are invited on the proposed funding preference. The review criteria which were established in Fiscal Year 1989 will remain unchanged in FY 1990. The funding categories for supplemental support established in Fiscal Year 1990, are rescinded. These categories are no longer considered necessary in Fiscal Year 1990, for programmatic reasons.

Approximately $10.4 million of the $14.3 million is needed for continuation commitments. Competing continuation needs are estimated at $3.9 million.

Review Criteria

Applications will be reviewed and rated according to the applicant's ability to meet the following review criteria which was established in 1989 and will be continued in FY 1990.

1. The degree to which the project plan adequately provides for meeting the project specifications;

2. The potential effectiveness of the project in carrying ot the purposes of the grant program;

3. The capability of the applicant to conduct the proposed activities in a cost efficient manner;

4. The soundness of the fiscal plan for assuring effective utilization of grant funds; and

5. The potential of the project to continue on a self-sustaining basis after the period of grant support.

In addition, the following mechanism may be applied in determining the funding of approved applications.

—Funding preferences—funding of a specific category or group of approved applications ahead of other categories or groups of applications.

Statutory Funding Preference

In making grant awards in Fiscal Year 1990, as required by Section 788A, the Secretary shall give *preference* to projects which will:

(1) Train, or result in the training of, health professionals who will provide treatment for minority individuals with acquired immune deficiency syndrome and other individuals who are at high risk of contracting such syndrome; and

(2) Train, or result in the training of, minority health professionals and minority allied health professionals to provide treatment for individuals with acquired immune deficiency syndrome.

Established Non-Statutory Funding Preference

A funding preference established in FY 1989 will continue in FY 1990 to applicants proposing a center in a State where no federally funded ETC program office exists.

Proposed Non-Statutory Funding Preference

In making awards for FY 1990, an additional funding preference is proposed to be given to competing continuation applications that demonstrate: (1) an increased level of

nonfederal funding to support the project since previous grant funding, and (2) sustained or expanded levels of

requested from: Grants Management Officer (D35), Bureau of Health Professions, Health Resources and

OMB, for emergency processing, an information collection package with respect to the June 23, 1989 Decree

HUD proposes to issue two information collection forms and instruction sheets, as follows: (1) "Data Collection Form for

June 23, 1989 Decree in *NAACP* v. *Kemp*, HUD must submit semi-annually "a report * * * setting forth the current

developments and HUD-insured single family housing in Boston.

Form Number: None.

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nonfederal funding to support the project since previous grant funding, and (2) sustained or expanded levels of educational experiences to respond to the service needs of the targeted populations throughout the regions involved.

This preference is established to maximize both federal and non-federal investments and to allow projects to respond quickly to critical health needs.

Interested persons are invited to comment on the proposed funding preference. Normally the comment period would be 60 days due to the need to implement any changes for the Fiscal Year 1990 award cycle, this comment period has been reduced to 30 days. All comments received on or before January 16, 1990, will be considered before the final funding preference is established. No funds will be allocated or final selections made until a final notice is published stating whether the final funding preference will be applied.

Written comments should be addressed to: Director, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 4C–25, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Medicine, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

The application deadline date is January 19, 1990. Applications shall be considered as meeting the deadline if they are either:

1. *received on* or before the deadline date; or

2. *postmarked on* or before the deadline date and received in time for submission to the review committee. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be acceptable as proof of timely mailing.

Applications received after the deadline will be returned to the applicant.

Requests for technical or programmatic information should be directed to: AIDS Regional Education and Training Centers Program, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 4C–03, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6364.

Training grant application form (PHS 6025–1, approved under OMB number 0915–0060) and additional information regarding business, administrative and fiscal issues related to the awarding of grants under this notice may be requested from: Grants Management Officer (D35), Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C–26, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6857.

Completed applications should be forwarded to the Grants Management Officer at the above address.

This program is listed at 13.145 in the *Catalog of Federal Domestic Assistance* and is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: November 1, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89–29317 Filed 12–14–89; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–89–2092]

Submission of Proposed Information Collection to the Office of Management and Budget

AGENCY: Office of General Counsel, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, an information collection package with respect to the June 23, 1989, Decree entered in *NAACP, Boston Chapter* v. *Kemp*, C.A. No. 78–850–S (D. Mass.). Section III.A of that Decree directs HUD to submit semi-annually "a report * * * setting forth the current racial makeup, family composition, and vacancy rate of HUD assisted housing in the City" of Boston, Massachusetts.

Pursuant to Section III.A of the Court's Decree, HUD needs to obtain the foregoing occupancy information from the owners of HUD-assisted privately owned multifamily housing developments, and HUD-insured single family housing, in Boston. To obtain this information, HUD has developed "Data Collection Form for Multi-Family Developments" and a "Data Collection Form for HUD-Insured Single-Family Housing," along with corresponding instruction sheets. In order to meet the requirements of the Decree, HUD has requested OMB to complete its review of these forms by December 18, 1989.

The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: December 13, 1989.

David S. Cristy,

Deputy Director, Information Policy and Management Division.

Proposal: Pursuant to Section III.A of the June 23, 1989 Decree in *NAACP* v. *Kemp*, C.A. No. 78–850–S (D.Mass.), HUD proposes to issue two information collection forms and instruction sheets, as follows: (1) "Data Collection Form for Multi-Family Developments"; and (2) "Data Collection Form for HUD-Insured Single-Family Housing."

Office: General Counsel, HUD.

Description of the Need for the Information and Its Proposed Use: In order to implement Section III.A of the June 23, 1989 Decree in *NAACP* v. *Kemp*, HUD must submit semi-annually "a report * * * setting forth the current racial makeup, family composition and vacancy rate of HUD assisted housing in the City" of Boston, Massachusetts. The foregoing information collection forms are designed to elicit that information from the owners of HUD-assisted privately owned multifamily housing developments and HUD-insured single family housing in Boston.

Form Number: None.

Respondents: Owners of HUD-assisted privately owned multifamily housing developments and HUD-insured single family housing in Boston.

Frequency of Response: Twice a year for a minimum of five years.

Reporting Burden:

Description of info. collection	No. of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Semi-annual reports by owners of privately owned HUD-assisted multi-family housing and HUD-assisted single family properties in Boston setting forth current racial makeup, family composition and vacancy rates.	221 (128 multi-family) (93 single-family).		2		16 (multi-family owners) (single-family owners).	1	4,282

Total Estimated Burden Hours: 4,282.

Status: New.

Contact: Ellen Dole, HUD (617) 565–5126. John Allison, OMB (202) 395–6880.

Dated: December 13, 1989.

[FR Doc. 89–29361 Filed 12–14–89; 8:45 am]

BILLING CODE 4210–10–M

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–89–1917; FR–2606–N–50]

Underutilized and Unutilized Federal Buildings and Real Property Determined by HUD To Be Suitable for Use for Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

EFFECTIVE DATE: December 15, 1989.

ADDRESS: For further information, contact James Forsberg, Room 7228, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC (20410; telephone (202) 755–7300; TDD number for the hearing- and speech-impaired (202) 755–5965. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD is publishing this Notice to identify Federal buildings and real property that HUD has determined are suitable for use for facilities to assist the homeless. The properties were identified from information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property.

The Order requires HUD to take certain steps to implement section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), which sets out a process by which unutilized or underutilized Federal properties may be made available to the homeless. Under section 501(a), HUD is to collect information from Federal landholding agencies about such properties and then to determine, under criteria developed in consultation with the Department of Health and Human Services (HHS) and the Administrator of General Services (GSA), which of those properties are suitable for facilities to assist the homeless. The Order requires HUD to publish, on a weekly basis, a Notice in the **Federal Register** identifying the properties determined as suitable.

The properties identified in this Notice may ultimately be available for use by the homeless, but they are first subject to review by the landholding agencies pursuant to the court's Memorandum of December 14, 1988 and section 501(b) of the McKinney Act. Section 501(b) requires HUD to notify each Federal agency about any property of such agency that has been identified as suitable. Within 30 days from receipt of such notice from HUD, the agency must transmit to HUD: (1) Its intention to declare the property excess to the agency's need or to make the property available on an interim basis for use as facilities to assist the homeless; or (2) a statement of the reasons that the property cannot be declared excess or made available on an interim basis for use as facilities to assist the homeless.

First, if the landholding agency decides that the property cannot be declared excess or made available to the homeless for use on an interim basis the property will no longer be available.

Second, if the landholding agency declares the property excess to the agency's need, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law and the December 12, 1988 Order and December 14, 1988 Memorandum, subject to screening for other Federal use.

Homeless assistance providers interested in any property identified as suitable in this Notice should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, Room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit such written expressions of interest within 30 days from the date of this Notice. For complete details concerning the timing and processing of applications, the reader is encouraged to refer to HUD's **Federal Register** Notice on June 23, 1989 (54 FR 26421), as corrected on July 3, 1989 (54 FR 27975).

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Army Corps of Engineers: Bob Swieconek, HQ–US

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Army Corps of Engineers, Attn: CERE-MN, 20 Massachusetts Avenue NW. Washington, DC 20415-1000, (202) 272-1750.

Dated: December 11, 1989.

Paul Roitman Bardack,

Deputy Assistant Secretary for Program Policy Development and Evaluation.

Suitable Land (by State)

(Number of Properties [ ])

Virginia

Portion (borders Weir Ditch) [1]
Dismal Swamp Canal
Chesapeake, VA
Landholding Agency: COE
Location: Adjacent to Deep Creek United Methodist Church (excess)
Comment: .035 acres; access easement needs to be negotiated

Unsuitable Building (by State)

(Number of Properties [ ])

Wisconsin

Ceder Locks (Former Lockmaster's Dwell.) [1]
4527 E. Wisconsin Road
Appleton, WI
Landholding Agency: COE
Location:
Reason: Floodway
Appleton 4th Lock (Former Lock. Dwelling) [1]
905 South Lowe Street
Appleton, WI
Landholding Agency: COE
Location:
Reason: Within 2000 ft. from flammable or explosive material. Floodway
Kaukauna 1st Lock (Former Lock. Dwelling [1]
301 Canal Street
Kaukauna, WI
Landholding Agency: COE
Location:
Reason: Floodway
Little Chute 2nd Lock (For. Lock. Dwell) [1]
214 Mill Street
Little Chute, WI
Landholding Agency: COE
Location:
Reason: Floodway
DePere Lock (Former Lockmaster's Dwell) [1]
100 James Street
DePere, WI
Landholding Agency: COE
Location:
Reason: Floodway

[FR Doc. 89-29315 Filed 12-14-89; 8:45 am]
BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Final Determination That the San Juan Southern Paiute Tribe Exists as an Indian Tribe

December 11, 1989.

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.9(h), notice is hereby given that the Assistant Secretary has determined that the San Juan Southern Paiute Tribe, c/o Mrs. Evelyn James, P.O. Box 2956, Tuba City, Arizona 86045, exists as an Indian tribe within the meaning of Federal law.

This notice is based on a determination, following a review of public comments on the proposed finding to acknowledge the group, that the San Juan Southern Paiute Tribe meets all of the criteria set forth in 25 CFR 83.7, and, therefore, meets the requirements necessary for a government-to-government relationship with the United States.

A notice of the proposed finding to acknowledge the San Juan Southern Paiute Tribe was published in the **Federal Register** on Tuesday, August 11, 1987 (pp. 29735-36, Volume 52, No. 154). The 120-day period provided in the regulations for comment on the proposed finding was extended for 90 days at the request of the Navajo Tribe and to ensure adequate opportunity for all parties to comment on the proposed finding. The Navajo Tribe's comments were received March 8, 1988. Under the regulations, § 83.8(d), the petitioner was afforded a period, initially set at 90 days, to respond to the Navajo comments. This period was extended until September 1, 1988, at the request of the petitioner because of the extent of comments, the length of time afforded the Navajo Tribe and other parties to comment on the proposed finding, and a change of counsel by the petitioner. Limited comments were received from several individual researchers who had worked with the San Juan Paiutes and/or related groups.

This final determination is based on a consideration of new evidence and arguments submitted by the Navajo Tribe in response to the proposed finding and by the San Juan Southern Paiute petitioner in response to the proposed finding and the Navajo Tribe's comments. The extensive evidence and arguments that were presented by the San Juan Paiutes and the Navajo Tribe for the proposed finding or were generated by the Branch of Acknowledgment and Research's (BAR) staff in the conduct of its own research in preparing the proposed finding were also considered in making this final determination.

The proposed finding concluded that the San Juan Southern Paiute Tribe had been identified as an Indian entity and as Paiute since earliest sustained contact. In response to the proposed finding, additional historical and ethnographic documents from the 19th and 20th centuries were submitted which identified the group as a distinct Paiute entity. No substantial evidence was presented which would change the proposed finding's conclusions. Almost all of the evidence submitted for the proposed finding, the additional evidence presented in response to the proposed finding, and that developed by the BAR staff, indicates that the San Juan Paiutes continue to be identified by Navajos and others in the local areas where they live as a distinct, Paiute entity. The materials submitted with the Navajo response in support of its assertion that the San Juan band's members have been absorbed into the Navajo Tribe and are no longer distinct from Navajos were of a general and recent nature and were inconsistent with the large, detailed body of materials used for the proposed finding and this final determination.

The proposed finding concluded that at first sustained non-Indian contact, in 1850, the San Juan Paiute band had a clearly-defined territory and constituted a single, well-defined social unit consisting of several subgroups which were political units under independent leaders. These subgroups had probably become unified into a single political unit by the 1870's. The band remained a culturally and socially distinct community throughout the 19th and early 20th centuries up until the present. Population decrease and the loss of territory due to the expansion of Navajo population led to a reduction of the band's composition to two subgroups by the 1920's. These two subgroups continue to exist today and the band continues to maintain significant internal social and economic relationships within its membership.

The responses to the proposed finding included no significant comment on or new evidence concerning the proposed finding's conclusion that the contemporary San Juan Paiutes maintained significant social contact within the band, including with its non-resident members.

No substantial documentary or ethnographic evidence was presented in the responses concerning the proposed finding's conclusion that the present-day San Juan Paiutes are a distinct social group from the Navajos on the reservation, despite some participation in Navajo tribal institutions and close social interaction with Navajos which dates to the latter half of the 19th century.

Significant new evidence was presented concerning the historical existence of the San Juan Paiutes as a community. A brief 1933 ethnographic study of the Navajo Mountain Paiutes in 1933 and other new documentation indicated that while the Paiutes at Navajo Mountain were influenced by Navajo culture in some ways, they constituted a distinct group from the Navajos. Miscellaneous additional documentation between the 1890's and the 1930's supported the historical existence of the San Juan Paiutes as a community.

The proposed finding concluded that the Paiutes have maintained a distinct culture, uninfluenced by Navajo culture except in nonfundamental areas. Key institutions such as political and kinship organization and most of the belief systems were not influenced. The Paiutes presented extensive new evidence describing distinct San Juan Paiute beliefs, ceremonies and other cultural practices that have been maintained. Some of the elements of Navajo culture used by the Paiutes are more accurately characterized as due to cultural borrowing rather than acculturation to Navajo culture as the proposed finding had concluded.

The Navajo response challenged the proposed finding's conclusion that certain areas were "San Juan Paiute territory" previous to and after sustained non-Indian contact. It stated that the evidence was weak that the San Juan Paiutes had been a historical band, and that the historical Navajo presence in these areas was greater than the proposed finding had concluded.

The Navajo response did not address most of the basic ethnographic and documentary sources which were used to prepare the proposed finding concerning the existence of the band at the time of first sustained contact with non-Indians and the territory the band then occupied. A review of the evidence indicates that, with some minor modifications, the territory of the San Juan Paiutes in 1850 was substantially as described in the proposed finding.

None of the cited evidence or arguments concerning San Juan territory and the historical existence of the band provided a basis for changing the proposed finding that the San Juan Paiute band had occupied distinct areas, as a community, since first sustained contact, and that those areas had become reduced as the Navajo population in the area expanded sharply beginning in the 1870's. There was some additional evidence in the responses which supported this conclusion.

Therefore, the San Juan Southern Paiute Tribe has existed as a distinct community occupying a specific area from earliest sustained contact until the present.

The proposed finding described leaders and the exercise of tribal political authority within the San Juan Paiute band from earliest sustained contact until the present. The responses to the proposed finding provided limited additional data concerning the historical exercise of tribal political authority. Additional documentary evidence, from the Paiute response, provided earlier documentation than had previously been available of the leadership of Pakai, who was band leader until about 1930, and some supporting evidence of his role as economic intermediary for the band with outsiders in the early part of the 20th century. The majority of the proposed finding's conclusions concerning San Juan Paiute leaders, the historical exercise of tribal political influence, and the large body of documentary, ethnographic and oral history information on which the conclusions were based were not addressed by the Navajo response.

The Navajo response characterized the decision-making and leadership processes within the San Juan Paiute band as only those that might occur within an extended family rather than a tribe. The San Juan Paiute political system, although partly kinship-based, is also based on non-kinship factors such as religious knowledge and ability to mobilize support. The type of decisions and authority exercised went beyond those of an extended family.

The primary additional information submitted with the responses relevant to the maintenance of tribal political influence as an autonomous entity concerned whether the San Juan Paiutes participated in the political system of the Navajo Tribe and whether the Navajo Tribe was involved in the internal political processes of the band. Substantial new documentary materials concerning Paiute voting and possible involvement in Navajo chapters, tribal courts and tribal programs, were submitted by the Navajo Tribe.

No significant evidence was submitted to change the proposed finding's conclusion that the Navajo Tribe had not influenced the internal political processes of the San Juan Paiutes. Almost all of the evidence submitted was not valid evidence of such influence. Of the evidence cited by the Navajo response concerning dispute resolution, only one instance involved dispute resolution between Paiutes. The majority concerned disputes or other matters between Navajos and Paiutes. These occurred in Navajo institutions because the institutions' jurisdiction includes non-Navajos as well as Navajos. Paiute involvement, therefore, did not indicate political affiliation.

A detailed analysis was made of the history of Paiute voting in Navajo Tribal elections, based on extensive additional information submitted with the responses together with the evidence available for the proposed finding. Only a small portion of the resident Paiutes, less than 20 percent, had voted consistently. Sixty percent of the resident adult Paiutes, and 73 percent of the total adults in the band, had never been registered or had never voted though they were registered. Voting was the only significant evidence of possible involvement by Paiutes in the Navajo political system. The available evidence was that what voting there was not intended by the Paiutes to signify political participation in the Navajo Tribe.

The proposed finding's basic conclusion that the Paiutes had not been involved in Navajo chapter political or decision-making processes was not changed by the additional evidence submitted. Most of the extensive new evidence concerning the chapters did not indicate any political involvement. However, one individual marginal to the Paiute band was nominated to an important chapter office over 15 years ago. Another individual Paiute, not marginal, was elected to a community board office from that chapter 20 years ago but subsequently resigned because the Navajos on the board refused to respond to Paiute requests.

Substantial additional records concerning receipt of services were provided in the Navajo response. With some exceptions, these confirmed the proposed finding's conclusion that most of the services received were from programs, previously administered by other Federal or State agencies and now administered by the Navajo Tribe, which were not limited to members of the Navajo Tribe. The Paiutes had infrequently, and to a limited degree, received some services and employment through the chapters of a kind usually limited to tribal members. The records concerning services did not provide a basis for changing the conclusion that the San Juan Paiutes were not involved in Navajo chapter political or decision-making processes.

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Overall, San Juan Paiute participation in the Navajo political system has not been significant nor continuous and there is little evidence of any participation at all before 1968. There is no significant evidence that a continuous political affiliation with the Navajo Tribe has existed among the San Juan Paiute membership.

The San Juan Paiutes have maintained tribal political influence within the band since earliest sustained historical contact. This has been, and is, autonomous of influence by the Navajo Tribe.

The San Juan Paiute Southern Tribe has no written governing document. The proposed finding concluded that the petition's description of the San Juan band's governing processes and its membership criteria was adequately complete and accurate. No new evidence or argument was presented to change the proposed finding.

The proposed finding concluded that the petitioner had submitted a current membership roll which had been prepared in response to Acknowledgement regulations. Members listed on the current roll were found to meet the tribe's own membership criteria of descent from a San Juan Paiute ancestor and participation in or allegiance to the group as a whole. The Navajo response to the proposed finding provided no evidence to the contrary.

The proposed finding concluded that virtually all of the petitioner's membership can trace their tribal ancestry to historic communities that can be identified as "San Juan Paiute." Their San Juan Paiute ancestry can be documented satisfactorily using records which span a period of 100 years. New materials presented in response to the proposed finding further support the finding that the petitioner's members are Paiute and descend from the historic tribe.

Acceptable evidence of their ancestry as Paiute appears in the historical records of the Federal Government and the records of the Navajo, Ute Mountain Ute, and Paiute Indians of Utah Tribes, and in the writings and field notes of anthropologists who have worked with the San Juan Paiutes and other Indians in the area. Even San Juan Paiutes who have some Navajo blood can be documented as descendants of historical Paiute communities which have been identified historically as "San Juan" Paiute, distinct from the Navajo. Identification of the San Juan Paiutes as "Indian" has never been an issue.

The San Juan Paiutes provided a list of their current members. These members meet the band's own membership criteria and can establish, using evidence acceptable to the Secretary, that they descend from the historic San Juan Paiute band.

Citerion 83.7(f) requires that a petitioner be principally composed of persons who are not members of an already recognized tribe. The definition of membership in a recognized tribe (83.1(k)) has two parts, each with two subparts. It defines such membership as meeting the membership requirements of the tribe or being recognized by the governing body, and continuously maintaining tribal relations with the tribe or being listed on a tribal roll, if such rolls are kept. The term "tribal roll" is not defined. To meet the definition of "Member of an Indian Tribe," the individual must meet at least one subpart in each of the two parts of the definition. Any combination of one of the subparts of part 1 with one of the subparts of part 2 will suffice. Inherent in and fundamental to the definition of membership in a recognized tribe is the principle that membership is a bilateral political relationship.

The proposed finding was that the 119 San Juan Paiutes who have "Navajo census numbers" were not legitimately members of the Navajo Tribe because they did not meet any of the subparts of the definition of "Member of an Indian Tribe." They further were found to have not maintained a continuous bilateral political relationship with the Navajo Tribe. However, they have maintained such a relationship with the San Juan Paiute band.

The proposed finding concluded that Paiutes with census numbers had not acquired or used them with the intent and understanding of becoming members of the Navajo Tribe. Census numbers were found to have been issued routinely by Bureau and/or tribal census clerks as part of a Bureau process and without approving action by the Navajo Tribal governing body. Legally adopted and in force sections of the Navajo Tribal Code governing membership and enrollment were not being used by the Tribe to enroll Navajos or Paiutes. The proposed finding was that the Navajo Tribe had not been exercising its authority to determine its own membership, Navajo or Paiute. The proposed finding further concluded that the defacto "Navajo Tribal Roll" is a reservation-wide census and did not have the character of a tribal roll within the meaning of the acknowledgment regulations. The Navajo response to the proposed finding provided no significant new evidence to refute the proposed finding's conclusions concerning the character of the "Navajo Tribal Roll."

The proposed finding concluded that the San Juan Paiutes do not meet the requirements for membership in the Navajo Tribe because the membership requirements are vague and ambiguous and do not indicate how much Navajo blood is required of persons "on the official roll" or which version of the BIA's 1940 censuses of the Navajo Reservation is to be used as the Tribe's "official roll." There is no tribal administrative record of determinations of tribal membership to indicate how such issues concerning membership requirements would be decided. Further, there is no evidence that the Tribe's legally adopted membership requirements and enrollment procedures have been used by the Tribe's governing body to determine eligibility for membership for either Navajos or Paiutes. The response to the proposed finding did not provide significant new evidence to refute the proposed finding's conclusions.

The response to the proposed finding did not provide significant new evidence to refute the proposed finding's conclusion that those Paiutes with census numbers have not met the alternative requirement of the definition of membership in a recognized tribe, collective acceptance by the Navajo Tribal government. The Navajo Tribe has not acted on applications, enrolled as members through existing tribal code procedures or otherwise established membership of the Paiutes who have census numbers. While some tribal government actions have implied acceptance of some of the Paiutes as members, there has been significant question in the Navajo Tribe about the legitimacy of the Paiutes holding census numbers and receiving membership benefits. Recent resolutions by tribal governing bodies do not constitute conclusive evidence of collective recognition of the Paiutes as members by the Navajo tribal governing body, given the circumstances surrounding their passage, the history of past questions about Paiute membership and the lack of clear membership standards.

We conclude that the Paiutes have not maintained tribal relations with the Navajo Tribe on a substantially continuous basis, and, therefore, do not meet that part of the definition of membership in a recognized tribe. Finally, they are not listed on a "tribal roll" of exclusively Navajo tribal members within the meaning of the Acknowledgment regulations and therefore we conclude they do not meet that part of the definition.

There was no new compelling evidence to refute the proposed finding's conclusions that the Paiutes did not meet the membership criteria of the Navajo Tribe and that they had not been collectively recognized by the members of the Navajo Tribal governing body. It was not necessary to finally resolve these issues, since the 119 Paiutes with "Navajo census numbers" are neither listed on a tribal roll nor maintaining tribal relations with the Navajo Tribe and, therefore, do not meet the definition of membership in a recognized tribe set forth in the regulations.

In summary, the 119 Paiutes with "Navajo census numbers" do not meet the definition of membership in a recognized tribe. The names of 46 other Paiutes (24 percent) appeared only on the San Juan Paiute membership roll. The names of the 23 (12 percent) remaining members of the San Juan Paiute band appears on the rolls of one of three other recognized tribes. The relationships of the 23 to the other tribes was not researched in depth under criterion f because the size of this portion of the membership was not sufficient in and of itself to affect the determination under criterion f. The 23 were, however, found to be maintaining tribal relations with the San Paiute band.

At least 105 (88 percent) of the members of the San Juan Southern Paiute Tribe were found not to be members of any other North American Indian tribe. Therefore, the petitioner's membership is composed principally of persons who are not members of any other North American Indian tribe.

No legislation terminating the San Juan Paiutes or affecting their ability to be acknowledged as an Indian tribe was found. The 1922 executive action restoring to the public domain the reservation established in 1907 for the San Juan Paiutes did not constitute "termination" of them as a tribe. Subsequent executive branch actions indicate that they continued to be recognized. The 1974 Hopi-Navajo Settlement Act (Public Law 93-531), which provides for individual allotments for Paiutes "not now members of the Navajo tribe," deals with some of the Paiutes as individuals. The act makes no reference to, nor provisions for or against, the San Juan Paiutes as a tribal entity and thus does not forbid their acknowledgement as a tribe.

This determination is final and will become effective 60 days after the date on which this notice appears in the Federal Register unless the Secretary of the Interior requests a reconsideration by the Assistant Secretary—Indian Affairs pursuant to 25 CFR 83.10(a-c). Requests to the Secretary for reconsideration may be made by any party and must be received within 30 days of publication of this notice. Requests should be accompanied by a detailed statement of grounds and new evidence and should include a copy of such new evidence. Requests from parties other than the petitioner will have fifteen days to comment on any request to reconsider this decision to acknowledge it as a tribe. If necessary, the 60-day time limit in 83.10(a) may be extended to allow the Secretary a period of 30 days from the receipt of a request for reconsideration and any responses in which to act.

The Secretary may, at his discretion, consider the submission of materials after the closure of the comment period, if not considered in preparation of this final determination, as a request for reconsideration. The party submitting these materials may withdraw or supplement them within 30 days of the publication of this notice.

If the Secretary receives a request for reconsideration or considers materials submitted after the closure of the comment period to be a request for reconsideration, the Assistant Secretary—Indian Affairs, will recommend that such a request, together with any comments, be referred to the Director of the Office of Hearings and Appeals (OHA) and that the OHA will be authorized (pursuant to 43 CFR part 4) to determine whether reconsideration is merited on the grounds stated in 83.10(c)(1-3) of the Acknowledgement regulations (25 CFR 83). The Director of OHA may assign preparation of the decision to such other officials in his office as he may deem appropriate. The OHA may request that the Assistant Secretary submit comment on a request for reconsideration. The Assistant Secretary—Indian Affairs will further recommend that within 60 days the OHA shall either affirm this determination or, if the reconsideration request is merited, vacate the decision and return it to the Assistant Secretary for reconsideration. This determination will become final upon receipt by the Assistant Secretary of a decision by the OHA to affirm the determination. If the determination is returned for reconsideration, the Assistant Secretary shall, in accord with § 83.10(a), issue a reconsidered determination within 60 days of receipt of the OHA's decision. The reconsidered determination shall be final and effective upon publication in the Federal Register.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 89-29280 Filed 12-14-89; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[UT-020-00-4351-02-24-11]

Availability of the Salt Lake Districts Animal Damage Control (ADC) Program Environmental Assessment (EA No. UT-020-89-35)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of the Salt Lake District Animal Damage Control (ADC) Program Environmental Assessment (EA No. UT-020-89-35).

SUMMARY: Notice is hereby given that pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, BLM has prepared an Environmental Assessment (EA) on the Animal Damage Control (ADC) Program within the Salt Lake District, BLM, Utah.

The ADC Program is authorized by BLM and conducted by USDA APHIS/ADC for lands administered by BLM. This EA analyzes the environmental impacts of the ADC Program within the Salt Lake District. It addresses the impacts of the Proposed Action, No Action Alternative and a Limited Action Alternative. The continuation of the Existing Situation and an alternative of no restrictions on the ADC Program were considered but not analyzed since neither alternative would fulfill BLM's land management responsibility. The Proposed Action contains several changes to the Existing Situation. These changes are intended to increase the depth of the ADC Program and to mitigate or eliminate conflicts with other uses. These changes are administrative in nature and require no planning document amendments. The BLM and APHIS/ADC will develop and sign an Annual Plan of Operations based upon maps showing safety areas and restriction zones. Emergency Control and control in Wilderness and Wilderness Study Areas are stipulated. Nine restrictions and constraints are listed and are proposed to become part of the Annual Plan of Operation.

A copy of the Draft EA is available upon request at the following BLM office: Bureau of Land Management, Salt Lake District Office, 2370 South, 2300 West, Salt Lake City, Utah 84119.

DATE/ADDRESS: Written comments on the document will be accepted until January 31, 1990 and should be sent to the above address in care of Mr. Deane H. Zeller.

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FOR FURTHER INFORMATION CONTACT: Mr. Jack Brown (District Wildlife Biologist) at the above address or phone (801) 977–4332.

Deane H. Zeller,

District Manager.

[FR Doc. 89–29300 Filed 12–14–89; 8:45 am]

BILLING CODE 4310-DQ-M

[NV-060-09-4132-02]

Battle Mountain District Advisory Council Meeting in Eureka, Nevada

December 6, 1989.

SUMMARY: Notice is hereby given in accordance with Public Law 94–579 and 43 CFR Part 1780 that a meeting of the Battle Mountain District Advisory Council will be held on Thursday, January 11, 1990. The meeting will convene at 9:00 a.m. in the Eureka County Court House, Eureka, Nevada.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include:

1. Update on District recreation program;
2. Bird mortality from cyanide leach operations; and
3. Mining activity on Roberts Mountain.

The meeting is open to the public. Interested persons may make oral statements between 3:00 and 3:30 p.m. If you wish to make an oral statement, please contact James D. Currivan, District Manager, by 4:30 p.m., January 5, 1989.

FOR FURTHER INFORMATION CONTACT: James D. Currivan, District Manager, P.O. Box 1420, Battle Mountain Nevada 89820 or phone (702) 635–5181.

James D. Currivan,

Battle Mountain, Nevada.

[FR Doc. 89–29239 Filed 12–14–89; 8:45 am]

BILLING CODE 4310-HC-M

[CO-070-08-4432-09; FES 89–31]

Availability of Final Wilderness Environmental Impact Statement for Grand Junction Resource Area; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of Final Wilderness Environmental Impact Statement (EIS) for the Grand Junction Resource Area, Grand Junction District, Colorado.

SUMMARY: This EIS analyzes the environmental effects of designating or not designating as wilderness seven Wilderness Study Areas (WSA) in the Grand Junction Resource Area. The names of the WSAs, their acreages, and the proposed action for each are as follows:

Wilderness study area	Total acres	Acres recommended suitable	Acres recommended unsuitable
Demaree Canyon	21,050	0	21,050
Little Book Cliffs	26,525	0	26,525
Black Ridge Canyons	18,143	[1] 19,595	590
Black Ridge Canyons West	54,265	[2] 54,342	673
The Palisade	26,050	0	26,050
Dominguez Canyon	75,800	[3] 73,888	2,245
Sewemup Mesa	19,140	18,835	305

[1] Includes 2,035 acres in a triangular parcel between Black Ridge Canyons and Black Ridge Canyons West which would be added to the designated wilderness area.

[2] Includes 725 acre presently outside the WSA boundary which would be added to the designated wilderness area.

[3] Includes 320 acres of a recently acquired private inholding and 13 acres presently outside the WSA boundary which would be added to the designated wilderness area.

The Bureau of Land Management wilderness proposals will ultimately be forwarded by the Secretary of the Interior to the President and from the President to the Congress. The final decision on wilderness designation rests with Congress. The Secretary must wait 30 days following the filing of this EIS before a final decision may be made. This complies with the Council on Environmental Quality Regulations, 40 CFR 1506.10B(2).

SUPPLEMENTARY INFORMATION: A copy of the EIS may be obtained from the Area Manager, Grand Junction Resource Area, 764 Horizon Drive, Grand Junction, Colorado 81506. Copies are also available for inspection at the following Department of the Interior, Bureau of Land Management locations: 18th & C Street, NW., Washington, DC 20240; Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215; Grand Junction District, 764 Horizon Drive, Grand Junction, Colorado 81506.

FOR FURTHER INFORMATION CONTACT: Bruce Conrad, District Manager, Grand Junction District, 764, Horizon Drive, Grand Junction, Colorado 81506.

Dated: December 6, 1989.

Jonathan P. Deason,

Director, Office of Environmental Affairs.

[FR Doc. 89–28937 Filed 12–14–89; 8:45 am]

BILLING CODE 4310-JB-M

[NV-930-00-4212-11; N-50889]

Realty Action; Lease/Purchase for Recreation and Public Purposes Clark County, NV

The following described public land in Las Vegas, Clark County, Nevada has been identified and examined and will be classified as suitable for lease/purchase under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). The lands will not be offered for lease/purchase until at least 60 days after the date of publication of this notice in the **Federal Register**.

Mount Diablo Meridian, Nevada

T. 20 S., R. 60 E.,
Sec. 9: NW¼NE¼SE¼.
Aggregating 10 acres (gross)

This parcel of land contains approximately 10 acres. The Clark County School District intends to use the land for an elementary school. The lease and/or patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations at the Secretary of the Interior may prescribe.

and will be subject to:

1. An easement for streets, roads and public utilities in accordance with the transportation plan for Clark County.

The land is not required for any federal purpose. The lease/purchase is consistent with the Bureau's planning for this area.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for recreation and public purposes and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the lands described in this Notice will become effective 60 days from the date of publication in the **Federal Register**.

Dated: December 8, 1989.

Ben F. Collins,

District Manager, Las Vegas, NV.

[FR Doc. 89–29192 Filed 12–14–89; 8:45 am]

BILLING CODE 4310-HC-M

[NV-930-00-4212-11; N-51822]

Realty Action; Lease/Purchase for Recreation and Public Purposes, Clark County, NV

The following described public land in Las Vegas, Clark County, Nevada has been identified and examined and will be classified as suitable for lease/purchase under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). The lands will not be offered for lease/purchase until at least 60 days after the date of publication of this notice in the **Federal Register**.

Mount Diablo Meridian, Nevada

T. 21 S., R. 60 E.,
Sec. 20: E½SW¼NE¼, E½W½SW¼NE¼, W½W½SE¼NE¼.
Aggregating 40 acres (gross)

This parcel of land contains approximately 40 acres. The Clark County School District intends to use the land for a high school. The lease and/or patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. An easement for streets, roads and public utilities in accordance with the transportation plan for Clark County.

The land is not required for any federal purpose. The lease/purchase is consistent with the Bureau's planning for this area.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for recreation and public purposes and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the lands described in this Notice will become effective 60 days from the date of publication in the **Federal Register**.

Dated: December 8, 1989.

Ben F. Collins,

District Manager, Las Vegas, NV.

[FR Doc. 89–29193 Filed 12–14–89; 8:45 am]

BILLING CODE 4310-HC-M

[NV-930-00-4212-11; N-41565–17]

Realty Action Lease/Purchase for Recreation and Public Purposes Clark County, NV

The following described public land in Las Vegas, Clark County, Nevada has been identified and examined and will be classified as suitable for lease/purchase under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). The lands will not be offered for lease/purchase until at least 60 days after the date of publication of this notice in the **Federal Register**.

Mount Diablo Meridian, Nevada

T. 21 S., R. 60 E.,
Sec. 25: NW¼SE¼NW¼.
Aggregating 10 acres (gross)

This parcel of land contains approximately 10 acres. The Clark County School District intends to use the land for an elementary school. The lease and/or patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

and will be subject to:

1. An easement for streets, roads and public utilities in accordance with the transportation plan for Clark County.

The land is not required for any federal purpose. The lease/purchase is consistent with the Bureau's planning for this area.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for recreation and public purposes and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the lands described in this Notice will become effective 60 days from the date of publication in the **Federal Register**.

Dated: December 8, 1989.

Ben F. Collins,

except for recreation and public purposes and leasing under the mineral

Office of Management and Budget, Paperwork Reduction Project (1029–

Armin Corporation, 301 West Side Avenue, Jersey City, New Jersey 07305. Incorporated in New Jersey.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

prepare and coordinate the Association's comments. The railroads found tentatively revenue adequate by

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Dated: December 6, 1989.

Ben F. Collins,

District Manager, Las Vegas, NV.

[FR Doc. 89-29194 Filed 12-14-89; 8:45am]

BILLING CODE 4310-HC-M

[NV-930-00-4212-11; N-41568-15]

Realty Action; Lease/Purchase for Recreation and Public Purposes Clark County, NV

The following described public land in Las Vegas, Clark County, Nevada has been identified and examined and will be classified as suitable for lease/purchase under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). The lands will not be offered for lease/purchase until at least 60 days after the date of publication of this notice in the **Federal Register.**

Mount Diablo Meridian, Nevada

T. 22 S., R. 61 E.,
Sec. 15, E½SE¼NE¼, SW¼SE¼NE¼.
Aggregating 30 acres (gross)

This parcel of land contains approximately 30 acres. The Clark County School District intends to use the land for a junior high school. The lease and/or patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

and will be subject to:

1. An easement for streets, roads and public utilities in accordance with the transportation plan for Clark County.

The land is not required for any federal purpose. The lease/purchase is consistent with the Bureau's planning for this area.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for recreation and public purposes and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the lands described in this Notice will become effective 60 days from the date of publication in the **Federal Register.**

Dated: December 8, 1989.

Ben F. Collins,

District Manager, Las Vegas, NV.

[FR Doc. 89-29195 Filed 12-14-89; 8:45 am]

BILLING CODE 4310-HC-M

[NV-930-00-4212-14; N-51785]

Realty Action; Non-Competitive Sale of Public Lands in Clark County, NV

Notice of Realty Action for N-51785 appearing on page 39817 of the **Federal Register** (Doc. No. 89-22907) published on Thursday, September 28, 1989 is hereby corrected. The legal description is corrected to delete the E½SW¼ SE¼SW¼, and to add the SW¼SE¼ SW¼, section 26, T. 22 S., R. 60 E., Mount Diablo Meridian, Nevada changing the total acreage from 127.50 to 132.50 acres (gross).

The remainder of the Notice of Realty Action was correct as published.

Dated: December 8, 1989.

Ben F. Collins,

District Manager, Las Vegas, NV.

[FR Doc. 89-29196 Filed 12-14-89; 8:45 am]

BILLING CODE 9310-HC-M

Office of Surface Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related form may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029-0096), Washington, DC 20503, telephone 202-395-7340.

Title: Adoption of State Standards, 30 CFR part 718.

OMB Approval Number: 1029-0096.

Abstract: Information collected in part 718 of the regulations of the Office of Surface Mining Reclamation and Enforcement are used to determine whether State laws or regulations contain more stringent standards than the Federal requirements in 30 CFR parts 715, 716, or 717.

Bureau Form Number: None.

Frequency: On occasion.

Description of Respondents: State regulatory authorities.

Annual Responses: One.

Annual Burden Hours: One.

Average Burden Hours Per Response: One.

Bureau Clearance Officer: Andrew F. DeVito, 202-343-5954.

Dated: November 21, 1989.

Annetta L. Cheek,

Chief, Regulatory Development and Issues Management.

[FR Doc. 89-29201 Filed 12-14-89; 8:45 am]

BILLING CODE 4310-05-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Tyco Laboratories, Inc. One Tyco Park, Exeter, New Hampshire 03833, Incorporated in Massachusetts.

2. Wholly-owned subsidiaries which will participate in the operations and State(s) of incorporation:

Grinnell Corporation, Three Tyco Park, Exeter, New Hampshire 03833, Incorporated in Delaware

Allied Tube & Conduit Corporation, 1600 S. Lathrop Avenue, Harvey, Illinois 60426, Incorporated in Delaware

Mueller Co., 500 West Eldorado, Decatur, Illinois 62522, Incorporated in Illinois

Ludlow Corporation, One Tyco Park, Exeter, New Hampshire 03833, Incorporated in Massachusetts

Simplex Wire and Cable Company, 2073 Woodbury Avenue, P.O. Box 479, Portsmouth, New Hampshire 03801, Incorporated in Massachusetts

Armin Corporation, 301 West Side Avenue, Jersey City, New Jersey 07305, Incorporated in New Jersey.

Noreta R. McGee,

Secretary.

[FR Doc. 89-29202 Filed 12-14-89; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31567]

CMW Acquisition Corp., Acquisition and Operation Exemption

CMW Acquisition Corp. (Acquisition), a non-carrier, has filed a notice of exemption to acquire and operate approximately 402 miles of rail lines owned by the Chicago, Missouri & Western Railway Company (CMW). The lines are located between Cockrell, IL (milepost 192.4) and Kansas City, MO (milepost 488.8); and between Roadhouse, IL (milepost 237.2) and Church and Tolson, near East St. Louis, IL (milepost 286.0), except that between Godfrey, IL (milepost 252.1) and Church and Tolson, IL, Acquisition will acquire only an undivided 50 percent interest. Acquisition will also acquire CMW's branch lines between Murrayville, IL (milepost 0.0) and Jacksonville, IL (milepost 11.0), and between Mexico, MO (milepost 0.0) and Fulton, MO (milepost 23.8). The transaction is proposed to be consummated on or about December 31, 1989.

Any comments must be filed with the Commission and served on Richard M. Smith, of Mayer, Brown & Platt, 2000 Pennsylvania Ave, NW., Washington, DC 20006.

Acquisition shall retain its interest in and take no steps to alter the historic integrity of all sites and structures on the line that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470.[1]

This notice is filed under 49 CFR 1150.31 and 1150.35. If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: December 8, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-29181 Filed 12-14-89; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31555]

CSX Transportation, Inc.; Trackage Rights Exemption

Central of Georgia Railroad Company has agreed to grant overhead trackage rights to CSX Transportation, Inc., between milepost 241.6±, at Oglethorpe, GA, and milepost 297.4±, at Albany, GA, a distance of approximately 56 miles. The trackage rights became effective on November 27, 1989.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Charles M. Rosenberger, 500 Water Street, CSX Transportation, Inc., Jacksonville, FL 32202.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. (1980).

Dated: December 8, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-29182 Filed 12-14-89; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 463]

Railroad Revenue Adequacy—1988 Determination

December 13, 1989.

AGENCY: Interstate Commerce Commission.

ACTION: Extension of time to file comments in revenue adequacy proceeding.

SUMMARY: In the **Federal Register** of November 20, 1989 (54 FR 48034), the due date for the submission of public comment was established to be December 18, 1989. The Association of American Railroads has requested that the due date be extended to January 17, 1990 for all parties. The petition shall be granted. Additional time is necessary to prepare and coordinate the Association's comments. The railroads found tentatively revenue adequate by the Commission have consented to be deemed revenue adequate during the extension period.

DATES: Public comments are due January 17, 1990.

ADDRESSES: Send an original and 15 copies of comments to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Ward L. Ginn, Jr., (202) 275-7489 (TDD for the hearing impaired: (202) 275-1721).

By the Commission, Heather J. Gradison, Chairman.

Noreta R. McGee,

Secretary.

[FR Doc. 89-29380 Filed 12-13-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Consent Judgment Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act; United States of America Versus Consolidated Rail Corp.

Notice is hereby given that on December 7, 1989, a proposed Consent Decree in *United States of America* v. *Consolidated Rail Corporation,* Civil Action No. 85-502 MMS, was lodged with the United States District Court for the District of Delaware.

The complaint filed by the United States in August 1985, under section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9607(a), sought recovery of response costs incurred and to be incurred in responding to the release of coal tar and other hazardous substances from an abandoned treatment facility in Delaware. Named as defendants in the complaint were the operators of the facility, the owner of the facility, and six generators who had contracted with the operator for the treatment or disposal of their hazardous substances. The defendants added twenty third-party defendants.

In the proposed Partial Consent Decree, the generator defendants, the owner, and some of the third-party defendants agree to pay the United States $1.3 million in settlement of its past response cost claim. The defendants and participating third party defendants are not released from future costs nor is the United States settling its injunctive relief claim with regard to

[1] Acquisition certifies that it has identified to the appropriate State Historic Preservation Officer all sites and structures 50 years old and older that will be transferred as a result of this transaction.

future work at the site. Some of the third party defendants and defendants are presently performing a Remedial

recovery of antitrust plaintiffs to actual damages under specific circumstances.

On August 8, 1988, CableLabs filed

prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits

New General Wage Determinations Decisions

The numbers of the decisions added

General Wage Determination Publication

General wage determinations issued

Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this

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future work at the site. Some of the third party defendants and defendants are presently performing a Remedial Investigation and Feasibility Study pursuant to an administrative order on consent.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC, 20530, and should refer to *United States* v. *Consolidated Rail Corporation*, Civil Action No. 85-502 MMS, DOJ Ref. No. 90-11-3-83. The proposed Partial Consent Decree may be examined at the office of the United States Attorney, District of Delaware, J. Caleb Boggs Federal Building, 844 King Street, Rm. 5110, Wilmington, Delaware 19801. Copies of the Consent Decree may also be examined and obtained in person at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Tenth and Pennsylvania Avenue, NW., Washington, DC. A copy of the proposed Consent Decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Box 7611, Ben Franklin Station, Washington, DC, 20044. When requesting a copy, please present or enclose a check in the amount of $2.50 (ten cents per page reproduction costs) payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR. Doc. 89-29308 Filed 12-14-89; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Pursuant to the National Cooperative Research Act of 1984—Cable Television Laboratories, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301, *et seq.* ("the Act"), Cable Television Laboratories, Inc. ("CableLabs") on October 12, 1989, filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in the membership of CableLabs, Inc. The additional notification was filed for the purpose of extending the protections of section 4 of the Act, limiting the recovery of antitrust plaintiffs to actual damages under specific circumstances.

On August 8, 1988, CableLabs filed simultaneously with the Attorney General and the Federal Trade Commission its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to section 6(b) on September 7, 1988, (53 FR 34593). On November 7, 1988 and February 3, 1989, CableLabs filed additional written notifications. The Department published notices in response to the additional notifications on December 16, 1988 (58 FR 50590) and March 1, 1989 (54 FR 8608).

As of October 12, 1989, the following have become members of CableLabs: Apollo Cablevision, Inc., 13100 Alondra Boulevard, Suite 104, Cerritos, CA 90701.

No other changes have been made in either the membership or planned activity of CableLabs. The membership remains open.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89-29309 Filed 12-14-89; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wage payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not provided for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

New General Wage Determinations Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume State and page number(s).

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I:

Connecticut:
CT89-1 (Jan. 6, 1989) ..... p. 61, p. 64.

Florida:
FL89-13 (Jan. 6, 1989) ..... pp. 129-130.
FL89-35 (Jan. 6, 1989) ..... pp. 181-182.
FL89-37 (Jan. 6, 1989) ..... pp. 187-189.
FL89-39 (Jan. 6, 1989) ..... pp. 195-197.
FL89-40 (Jan. 6, 1989) ..... pp. 199-200.
FL89-43 (Jan. 6, 1989) ..... pp. 203-204.

Virginia:
VA89-18 (Jan. 6, 1989)..... pp. 1175-1176.

Volume II:

Illinois:
IL89-11 (Jan. 6, 1989) ..... pp. 161-163.
IL89-13 (Jan. 6, 1989) ..... pp. 179, p. 161.

Indiana:
IN89-6 (Jan. 6, 1989) ..... p. 313, pp. 318-319.

Wisconsin:
WI89-10 (Jan. 6, 1989) ..... p. 1187, pp. 1190-1191.

Volume III:

Hawaii:
HI89-1 (Jan. 6, 1989) ..... pp. 135-136.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 8th day of Dec. 1989.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 89-29102 Filed 12-14-89; 8:45 am]

BILLING CODE 4510-27-M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 26, 1989.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 26, 1989.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Approved Fur Processing Inc. (Formerly Diamond-Alaska Fur Processing, Inc.) (FLM/FJC).	New York, NY	12/4/89	11/20/89	23,659	Dyeing and blending.
Coleman Products, Co. (workers)	Coleman, WI	12/4/89	11/21/89	23,660	Lead Wire for auto harness assembly.
Concord MFG (ILGWU)	Morrisville, VT	12/4/89	11/14/89	23,661	Mens' and womens' shorts and shirts.
Delmar Sportswear, Inc. (ILGWU)	Delmar, MD	12/4/89	11/21/89	23,662	Ladies' sportswear.
Dotson Wheels (workers)	Saltville, VA	12/4/89	11/20/89	23,663	Rims and wheels.
Eaton Corp. (workers)	Belmond, IA	12/4/89	11/20/89	23,664	Engine valves.
End Devices, Inc. (Company)	Midland, TX	12/4/89	11/15/89	23,665	Electronic control devices.
Flock Industries, Inc. (Company)	Phillipsburg, NJ	12/4/89	11/21/89	23,666	Converts loose flock into materials.
General Electric Co. (workers)	Wilmington, MA	12/4/89	11/1/89	23,667	Flat panel display systems.
H.F. Sutton, Inc. (workers)	Oil City, LA	12/4/89	11/21/89	23,668	Oil and gas.
Health-Tex, Inc. (workers)	Centreville, AL	12/4/89	11/20/89	23,669	Childrens' clothing.
Interbake Foods, Inc. (UBWU)	Battle Creek, MI	12/4/89	11/23/89	23,670	Ice cream wafers for sandwiches and cookies.
Jeems Bayou Production Corp. (workers)	Oil City, LA	12/4/89	11/21/89	23,671	Oil and gas
June Sportswear Co., Inc. (ILGWU)	Boston, MA	12/4/89	11/21/89	23,672	Ladies' Sportswear.
Mettler Automation (Company)	Landing, NJ	12/4/89	11/15/89	23,673	Packaging equipment.

APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
TA-W-23,522; Crescent Pipe & Supply Co., Tulsa, OK	line separated on or after September 18, 1988.				
TA-W-21, 210; Buckeye, Inc., Midland, TX					

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APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Northern Telecom (workers)	Nashville, TN	12/4/89	10/30/89	23,674	Telephone sets.
Orbit Drilling (workers)	Kimball, NE	12/4/89	11/20/89	23,675	Drilling contract services.
Picker International (IBEW)	Highland Hts., OH	12/4/89	11/16/89	23,676	Medical diagnostic equipment.
Quality Components, Inc.	St. Marys, PA	12/4/89	11/20/89	23,677	Capacitors and molded winding form.
R&K Originals, Inc. (ILGWU)	North Bergen, NJ	12/4/89	11/15/89	23,678	Ladies dresses.
Reynolds Metal-Bristol End Plant (workers)	Bristol, VA	12/4/89	11/22/89	23,679	Can ends.
Robert L. Krul General (workers)	Midland, PA	12/4/89	11/20/89	23,680	General contractor (mosoleums).
Silla Lingerie (ILGWU)	Jersey City, NJ	12/4/89	7/25/89	23,681	Lingerie.
Stanley-Proto Tool (IAMAW)	Portland, OR	12/4/89	11/21/89	23,682	Hand tools, sockets and adaptors, etc.
Sunbeam Appliance Co. (workers)	Coushatta, LA	12/4/89	10/14/89	23,683	Clothes irons.
Star Fashion Coat Corp. (workers)	Patterson, NJ	12/4/89	11/16/89	23,684	Ladies' coats.
Villa Fashions (workers)	Shenandoah, PA	12/4/89	11/13/89	23,685	Ladies' blazers.

[FR Doc. 89-29303 Filed 12-14-89; 8:45 am]
BILLING CODE 1510-30-M

[TA-W-23,408]

AT&T, Inc., Material Management Systems Division, Arlington, Va; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 31, 1989 applicable to all workers of AT&T, Inc., Material Management Systems, Arlington, Virginia. The notice was published in the **Federal Register** on November 15, 1989 (54 FR 47568).

Based on new information from the company, additional workers will be retained for close down operations beyond the December 31, 1989 termination date. The notice, therefore, is amended by deleting the December 31, 1989 termination date.

The amended notice applicable to TA-W-23,408 is hereby issued as follows:

"All workers of AT&T, Inc., Material Management Systems Division, Arlington, Virginia who became totally or partially separated from employment on or after September 8, 1988 are eligible to apply for adjustment assistance under section 222 of the Trade Act of 1974."

Signed at Washington, DC, this 4th day of December 1989.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-29304 Filed 12-14-89; 8:45 am]
BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period November 1989.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or treat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-23,450; Palace Knitting Mills, Brooklyn, NY

TA-W-23,473; Kent Knitting Mills, Inc., Jersey City, NJ

TA-W-23,438; AT&T Microelectronics, Clark, NJ

TA-W-23,476; Rostra Engineered Components, Inc., Precision Metal Div., Waterbury, CT

TA-W-23,466; Dive-Ettes, Inc., Allentown, PA

TA-W-23,471; Joy Knitting, Allentown, PA

TA-W-23,465; Car-Mal Sportswear, Inc., South Boston, MA

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-23,441; Commodore Semiconductor Group, Norristown, PA

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,483; Ansewn Shoe Co., Eastport, ME

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,479; Taylor Diving, Inc., Belle Chase, LA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-23,468; Elco Dress Co., Inc., Holyoke, MA

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,467; Ethicon, Inc., Somerville, NJ

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,474; Products Tooling, Inc., Corinth, MS

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-23,469; Graphic Interprelations, Inc., Midland, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-23,522; Crescent Pipe & Supply Co., Tulsa, OK

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-23,470; Honeywell, Inc., Fort Washington, PA

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-23,472; Kalart Victor Corp., Plainville, CT

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,525; Eason Oil Co., Tulsa, OK

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-23,457; Arco Oil & Gas Co., Crane Field, Crane, TX

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,458; Arco Oil & Gas Co., Crane Gas Plant, Crane, TX

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,462; BHP Petroleum Snyder Gas Processing Plant, Snyder, TX

The investigation revealed that criterion (1) has not been met. Employment did not decline during the relevant period as required for certification.

Affirmative Determinations

TA-W-23,482; Alexander Well Service, Inc., Nowata, OK

A certification was issued covering all workers separated on or after September 30, 1988 and before August 1, 1989.

TA-W-23,454; Tubulart, Inc., Youngstown, OH

A certification was issued covering all workers separated on or after September 21, 1988.

TA-W-23,305; A.T.F. Davidson, Inc., Whitinsville, MA

A certification was issued covering all workers separated on or after February 12, 1989.

TA-W-23,444; General Motors Corp., BOC Janesville, Janesville, WI

A certification was issued covering all workers engaged in the production of medium weight truck assembly line 8 of the conventional pickup truck assembly line separated on or after September 18, 1988.

TA-W-23,549; Crystal Brands, Inc., Aston, PA

A certification was issued covering all workers separated on or after October 16, 1988.

TA-W-23,449; North American Cerutti Corp., Pittsburgh, PA

A certification was issued covering all workers separated on or after September 6, 1988.

TA-W-23,400; St. Raymond Corp., Peyepscot, ME

A certification was issued covering all workers separated on or after September 6, 1988.

TA-W-23,446; Kerr McGee Corp., Midland, TX & Operating at Various Locations in The Following States TA-W-23,446A OK, TA-W-23,446B TX, TA-W-23,446C OK, TA-W-23,446D LA

A certification was issued covering all workers separated on or after December 23, 1988.

TA-W-23,460; BHP Petroleum, Inc., Rocky Mountain Reg, Denver, CO & Operating at Various Locations in The Following States TA-W-23,460A CO (Exclu Denver); TA-W-23,460B NM; TA-W-23,460C UT, TA-W-23,460D WY

A certification was issued covering all workers separated on or after September 25, 1988.

TA-W-23,459; BHP Petroleum, Inc., Mid Continent Reg, Oklahoma City, OK & Operating at Various Locations in The Following States TA-W-23,459A KS; TA-W-23,459B OK (Exclu OKC)

A certification was issued covering all workers separated on or after March 14, 1989.

TA-W-23, 461; BHP Petroleum, Inc., Southwestern Reg., Midland, TX & Operating at Various Locations in The Following States TA-W-23, 461A NM, TA-W-23, 461B (Exclu Midland)

A certification was issued covering all workers separated on or after September 25, 1988.

TA-W-22, 031; Emphasis Oil Operations, Russell, KS

A separation was issued covering all workers separated on or after October 1, 1985.

TA-W-22, 263; Walters Drillings, Inc., Farmington, NM

A certification was issued covering all workers separated on or after October 1, 1988.

TA-W-21, 210; Buckeye, Inc., Midland, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-22, 162; Mayers & Co., Englewood, CO

A certifications was issued covering all workers separated on or after November 17, 1987.

TA-W-21, 937; RPI International, Inc., Austin, TX

A certification was issued covering all workers separated on or after January 1, 1986 and before November 30, 1986.

TA-W-21, 938; RPI International, Inc., Boulder, CO

A certification was issued covering all workers separated on or after January 1, 1986 and before January 1, 1987.

TA-W-22, 227; The Grove Co., Sikeston, MO

A certification was issued covering all workers separated on or after November 18, 1987.

TA-W-22, 213; Cheyenne Oil & Well Service, Inc. Ness City, KS & Operating at Various Locations in The Following States TA-W-22, 213A Utica, KS; TA-W-22, 213B Larned, KS

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21, 955; Seiscom Delta United, Houston, TX

A certification was issued covering all workers separated on or after October 1, 1985 and before January 1, 1989.

TA-W-22, 287; J & S Sewing Ridgefield, NJ

A certification was issued covering all workers separated on or after December 9, 1987 and before January 31, 1989.

TA-W-21, 948; S.W. Jack Drilling Co., Indiana, PA

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21, 983; Texas Universal Petroleum Co., Midland, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21, 944; Renfro Fishing Service, Inc., Casper, WY

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-22, 257; Spartan Well Service, Farmington, NM

A certification was issued covering all workers separated on or after October 1, 1985 and before June 30, 1988.

TA-W-21, 896; Mandarin Oil & Gas Co., Dallas, TX

A certification was issued covering all workers separated on or after February 1, 1986.

TA-W-22, 043; Harpel Drilling Co., Casper, WY & Operating at Various Locations in The Following States TA-W-22, 043A Co; TA-W-22, 043B WY

A certification was issued covering all workers separated on or after October 1, 1985 and before January 1, 1987.

TA-W-21, 917; Nowsco Services, Houston, TX & Operating at Various Locations in The Following States TA-W-21, 917A TX; TA-W-21, 917B AL; TA-W-21, 917C AK; TA-W-21, 917D CA; TA-W-21, 917E CO; TA-W-21, 917F LA; TA-W-21, 917G MS; TA-W-21, 917H NM; TA-W-21, 917I OK; TA-W-21, 917J UT; TA-W-21, 917K WY

A certification was issued covering all workers separated on or after October 1, 1985 and before December 31, 1986.

TA-W-22, 216; Covington MDM Ltd, Covington, VA

A certification was issued covering all workers separated on or after November 15, 1987.

TA-W-21, 839; Fargo Trading Co., Corpus Christi, TX

A certification was issued covering all workers separated on or after November 1, 1987 and before September 30, 1988.

TA-W-22, 137 Fancy Stitchers, Inc., Lewiston, ME

A certification was issued covering all workers separated on or after November 15, 1987.

TA-W-21, 981; Woods Petroleum Corp., Formerly Texas Energies, Inc, Wichita, KS

A certification was issued covering all workers separated on or after November 17, 1987.

TA-W-22, 020; Commodore Oil & Gas, Inc., Burksville, KY

A certification was issued covering all worker separated on or after January 1, 1986 and before January 1, 1987.

TA-W-22, 149; Hilyard Drilling Co., El Dorado, AR

A certification was issued covering all workers separated on or after October 1, 1985 and before December 31, 1986.

TA-W-22, 149A; Hilyard Drilling Co., Fairfield, TX

A certification was issued covering all workers separated on or after October 1, 1985 and before December 31, 1986.

TA-W-22, 150; Hilyard Drilling Co., Laurel, MS

A certification was issued covering all workers separated on or after October 1, 1985 and before December 31, 1986.

TA-W-21, 986; Transok, Inc., Exploration & Production Dept., Tulsa, OK

A certification was issued covering all workers separated on or after November 15, 1987.

TA-W-22, 097; Alliance Well Service, Inc., Liberty, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-22, 098; Alliance Well Service, Inc., Lovington, NM

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-22, 099; Alliance Well Service, Inc., Farmington, NM

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-22, 100; Alliance Well Service, Inc., El Campo, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-22, 101; Alliance Well Service, Inc., El Reno, OK

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21, 670; Teledyne Exploration Co., Midland, TX

A certification was issued covering all workers separated on or after January 1, 1988.

TA-W-22, 418; Triangle Well Service, Ellis, KS

A certification was issued covering all workers separated on or after January 6, 1988.

TA-W-22, 050; Mid-Kansas Acid, Inc., Russell, KS

A certification was issued covering all workers separated on or after October 1, 1985 and before October 16, 1988.

TA-W-22, 160; The Louisiana Land & Exploration Co., Denver, CO

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-22, 300; Penaljo Shoe Co., DeSoto, MO

A certification was issued covering all workers separated on or after November 19, 1987.

TA-W-22,158; Snyder Logging Services, Inc., Grayville, IL

A certification was issued covering all workers separated on or after October 1, 1985 and before January 1, 1987.

TA-W-22,158A; Synder Drilling, Inc., Grayville, IL

A certification was issued covering all workers separated on or after October 1, 1985 and before January 1, 1987.

TA-W-21,899; Marshall Oil Corp., Oklahoma City, OK

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,899A; Marshall Oil Corp., Oklahoma City OK

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,899B; Dorchester Drilling, Oklahoma City OK

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,899C; Tash, Inc., Oklahoma City, OK

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,077; Cypress Oilfield Contractors, Eunice, LA

A certification was issued covering all workers separated on or after October 1, 1985 and before September 30, 1986.

TA-W-21,083; Dunncraft, Inc., Philadelphia, PA

A certification was issued covering all workers separated on or after September 12, 1987.

TA-W-21,005; General Well Service, Roosevelt, UT

A certification was issued covering all workers separated on or after August 2, 1986.

TA-W-21,140; Southern Well Surveys, Inc., Henderson, KY

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,209; Missouri Valley Perforating, Inc., Welliston, ND

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,153; Wright Drilling Co., Sunbright, TN

A certification was issued covering all workers separated on or after October 1, 1985 and before January 22, 1987.

TA-W-21,149; Western Sky Oil & Gas, Abilene, TX

A certification was issued covering all workers separated on or after August 1, 1986.

TA-W-21,158; Armadillo Roustabout Service, Abilene, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,148; West Sierra Drilling Co., Abilene, TX

A certification was issued covering all workers separated on or after October 1, 1985 and before May 31, 1987.

TA-W-21,175; Discovery Mud Co., Midland, TX

A certification was issued covering all workers separated on or after October 1, 1985 and before January 1, 1987.

TA-W-21,058; Barad & Co., Salem, MI

A certification was issued covering all workers separated on or after August 30, 1988.

TA-W-21,059; Barad & Co., St. Louis, MO

A certification was issued covering all workers separated on or after November 15, 1987 and before October 31, 1988.

TA-W-21,147; The Lee Co., Stevenson, AL

A certification was issued covering all workers separated on or after September 9, 1987.

TA-W-21,097; Grant-Norpac, Inc., Houston, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,098; Grant-Norpac, Inc., Traverse City, MI

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,099; Grant-Norpac, Inc., New Iberia, LA

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,100; Grant-Norpac, Inc., Bakersfield, CA

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,101; Grant-Norpac, Inc., Denver CO

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,102; Grant-Norpac, Inc., Midland, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,102A; Grant-Norpac, Inc., Englewood, CO

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,364; Kenting Drilling Service, Inc., Williston, ND

A certification was issued covering all workers separated on or after October 1, 1985 and before October 1, 1987.

TA-W-21,207; Midwest Equipment Co., Odessa, TX

A certification was issued covering all workers separated on or after October 1, 1985 and before December 1, 1987.

TA-W-21,543; Westburne Drilling, Inc., Denver CO

A certification was issued covering all workers separated on or after September 20, 1988.

TA-W-21,250; Wells Enterprises, Abilene, TX

A certification was issued covering all workers separated on or after October 1, 1985 and before March 1, 1986.

TA-W-21,300; Pitman Casing, Williston, ND

A certification was issued covering all workers separated on or after October 1 1985.

TA-W-21,329; Burris Drilling Co., Casper, WY

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,256; Ausimont, Elizabeth, NJ

A certification was issued covering all workers separated on or after January 1, 1988.

TA-W-20,994; Eagle Oil and Gas Co., Wichita Falls, TX

A certification was issued covering all workers separated on or after September 9, 1987 and before January 31, 1988.

TA-W-21,303; Professional Geophysics, Inc., Houston, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,114; Lyons Petroleum, Inc., Shreveport, LA

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,496; Von R. Frierson, Inc., Houston, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,196; Hydrocarb Well Logging, Florence, MS

A certification was issued covering all workers separated on or after January 1, 1988.

TA-W-21,465; Penrod Drilling Corp., Dallas, TX & at The Following Plant Locations: TA-W-21,465A Houma, LA; TA-W-21,465B Lafayette, LA

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,206; Mid-Coast Drilling, Inc., Victoria, TX

A certification was issued covering all workers separated on or after October 1, 1985 and before June 30, 1986.

TA-W-21,237; Sundown Well Service, Formerly Cardinal Well Service, Andrews, TX

A certification was issued covering all workers separated on or after October 1, 1985.

I hereby certify that the aforementioned determinations were issued during the month of November 1989. Copies of these determinations are available for inspection in Room 6434. U.S. Department of Labor. 601 D Street, NW., Washington, DC 20213 during normal business hours or will be mailed to persons to write to the above address.

Dated: December 4, 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89-29305 Filed 12-14-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-23,270]

Parker Seal Company Berea, Kentucky; Negative Determination Regarding Application for Reconsideration

By an application dated October 21, 1989, a former worker requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on October 10, 1989 and published in the **Federal Register** on October 31, 1989 (54 FR 45812).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The former worker claims that molds and other machines were shipped back and forth between Parker Seal's Mexican plants and the subject plant. It

is also claimed that Parker Seal loss in a government contract (Hyrdopact) was the result of company imports. The

Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 6th day of

(b) The minimum quantity of air reaching the last open crosscut in any pair or set of developing entries be 5,000

Development Revolving Loan Program for Credit Unions (the "Program"). The

Paperwork Reduction Act (44 U.S.C.) chapter 35).

Use: Grant administration and oversight.

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is also claimed that Parker Seal loss in a government contract (Hyrdopact) was the result of company imports. The question is raised about the possibility of selling Mexican made parts as if they were made in Berea.

Investigation findings show that Parker Seal operates plants in Berea, Kentucky; McAllen, Texas and Matamoros and Reynosa, Mexico with the Berea plant producing sealing devices for automotive and aerospace applications. These seals are of a different product composition and are used for different applications than the seals produced in Mexico whose production is integrated with McAllen. The findings show that sales and production and average employment increased at Berea in FY 1989 compared to FY 1988. The production decrease in the first two months of FY 1990 (July-August 1990) at Berea is related to a decline in purchases from the subject firm's customers.

The Department's denial was based on the fact that the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act of 1974 was not met. A Departmental survey revealed that most customers did not import "O" ring sealing devices in 1987, 1988 and in the first eight months of 1989. The few customers reporting increased purchases of "O" ring sealing devices did not reduce purchases from the subject firm during the survey period.

The claim concerning the transfer of production equipment (molds, extruders and buffing machines) used in the production of sealing devices would not form a basis for certification. The articles produced at the workers' firm is sealing devices not production equipment.

With respect to the worker's claim concerning the loss in the Hydropact contract the findings show that Parker Seal did not lose the Hydropact contract with NASA, however, production has been scaled back somewhat because the number of launchings have been reduced. No part of the Hydropact was produced in Mexico during the period relevant to the petition.

Lastly, the Department found no merit in the worker's claim that Mexican made parts were being sold in the U.S. as made in Berea.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 6th day of December 1989.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-29306 Filed 12-14-89; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-89-171-C)]

Skyview Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Skyview Coal Company, R.D. No. 1, Box 526, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.301 (air quality, quantity, and velocity) to its 1½ Vein Slope (I.D. No. 36-07575) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that the minimum quantity of air reaching the last open crosscut in any pair or set of developing entries and the last open crosscut in any pair or set of rooms be 9,000 cubic feet a minute, and the minimum quantity of air reaching the intake end of a pillar line be 9,000 cubic feet a minute. The minimum quantity of air reaching each working face is required to be 3,000 cubic feet a minute.

2. Air sample analysis history reveals that harmful quantities of methane are nonexistent in the mine. Ignition, explosion, and mine fire history are nonexistent for the mine. There is no history of harmful quantities of carbon monoxide and other noxious or poisonous gases.

3. Mine dust sampling programs have revealed extremely low concentrations of respirable dust.

4. Requiring extremely high velocities in small cross-sectional airways and manways in friable anthracite veins for control purposes, particularly in steeply pitching mines, present a very dangerous flying object hazard to the miners and cause extremely uncomfortable damp and cold conditions in the mine.

5. As an alternate method, petitioner proposes that:

(a) The minimum quantity of air reaching each working face be 1,500 cubic feet per minute;

(b) The minimum quantity of air reaching the last open crosscut in any pair or set of developing entries be 5,000 cubic feet per minute; and

(c) The minimum quantity of air reaching the intake end of a pillar line by 5,000 cubic feet per minute, or whatever additional quantity of air that may be required in any of these areas to maintain a safe and healthful mine atmosphere.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 16, 1990. Copies of the petition are available for inspection at that address.

Dated: November 30, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variance.

[FR Doc. 89-29307 Filed 12-14-89; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL CREDIT UNION ADMINISTRATION

Community Development Revolving Loan Program for Credit Unions

ACTION: Notice of application.

SUMMARY: The National Credit Union Administration ("NCUA") will accept applications for participation in the Community Development Revolving Loan Program For Credit Unions through March 30, 1990. Application procedures are set forth in part 705 of NCUA's Rules and Regulations ("Community Development Revolving Loan Program for Credit Unions") (12 CFR part 705).

ADDRESS: Applications to participate in the Program should be submitted to: NCUA, Community Development Revolving Loan Program for Credit Unions, 1776 G Street NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Robert J. LaPorte, Central Liquidity Facility, at the above address or telephone (202) 682-8760.

SUPPLEMENTARY INFORMATION: Part 705 of NCUA's Regulations (12 CFR part 705) implements the Community Development Revolving Loan Program for Credit Unions (the "Program"). The purpose of the Program is to make reduced rate loans to both federally- and state-chartered credit unions serving low-income communities so that the credit unions may provide needed financial services and help to stimulate the economy in the communities they serve.

This Notice is published pursuant to § 705.9 of NCUA's Regulations (12 CFR 705.9) stating that NCUA will provide notice in the Federal Register when funds in the Program are available for loans, and the time period during which applications for participation in the Program will be accepted. Funds are currently available for loans. Applications for participation in the Program will be accepted through March 30, 1990. Credit unions wishing to participate in the Program should refer to part 705 of NCUA's Regulations for the application procedures and Program requirements. Only credit unions currently in existence may apply.

By the National Credit Union Administration on December 7, 1989.

Becky Baker,

Secretary, NCUA Board.

[FR Doc. 89-29312 Filed 12-14-89; 8:45 am]

BILLING CODE 7535-01-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) a request for expedited clearance by January 22, 1990 of the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C.) chapter 35).

DATES: Comments on this information collection must be submitted on or before December 29, 1989.

ADDRESSES: Send comments to Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue NW., room 310, Washington, DC 20506 (202-786-0494) and Mr. Jim Houser, Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW., room 3208, Washington, DC 20503 (202-395-7316).

FOR FURTHER INFORMATION CONTACT: Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue NW., room 310, Washington, DC 20506 (202) 786-0494 from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries are subject to 44 U.S.C. 3504(h). Grantees of the National Endowment for the Humanities that award subgrants with NEH funds are required to forward lists of proposed subgrants to NEH for review and approval. The lists will be accompanied by a description for each project and a copy of the complete application from all persons proposed for awards.

Category: New Forms

Title: Oversight of subgrants.
Form Number: Not applicable.
Frequency of Collection: On occasion.
Respondents: NEH grantees that conduct subgranting.
Use: Grant administration and oversight.
Estimated Number of Respondents: 22.
Frequency of Response: On occasion.
Estimated Hours for Respondents to Provide Information: 3 per respondent.
Estimated Total Annual Reporting and Recording Burden: 66 hours.

Thomas S. Kingston,

Assistant Chairman for Operations.

[FR Doc. 89-29228 Filed 12-14-89; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

Application for License to Export Utilization Facility

Pursuant to 10 CFR 110.70(b) "Public notice of receipt of an application", please take notice that the Nuclear Relgulatory Commission has received the following application for an export license. A copy of the application is on file in the Nuclear Regulatory Commission's Public Document Room located at 2120 L Street NW., Washington, DC.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the Federal Register. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission; and the Executive Secretary, U.S. Department of State, Washington, Dc 20520.

In its review of the application for license to export special nuclear material for a nuclear reactor as defined in 10 CFR part 110 and noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the facility to be exported. The information concerning this application follows.

NRC EXPORT LICENSE APPLICATION

Name of applicant, date of application, date received, application no.	Material type	Material in Kilograms		End use	Country of destination
		Total element	Total isotope		
Transnuclear, Inc., 12/1/89, 12/05/89, XSNM02492	93.45% enriched uranium	47.356	44.254	Fuel for Orphee Reactor	France.

Dated this 7th day of December 1989 at Rockvill, Maryland.

during this time an air lock door is opened, an overall air lock test at Pa

within schedule. Whenever conditions (1), (2), or (3) are not met, the

For the Nuclear Regulatory Commission.

John Zwolinski,

items are available for public inspection at the Commission's public Document

evaluated; or (2) create the possibility of a new or different kind of accident from

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Dated this 7th day of December 1989 at Rockvill, Maryland.

For the Nuclear Regulatory Commission.

C.N. (Mike) Smith,

Assistant Director for International Security, Exports and Materials Safety, International Programs Officer of Governmental and Public Affairs.

[FR Doc. 89-29257 Filed 12-14-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-255]

Consumers Power Co. (Palisades Plant); Exemption

I

Consumers Power Company (the licensee) is the holder of Provisional Operating License No. DPR-20, which authorizes the licensee to operate the Palisades Plant at power levels up to 2530 megawatts thermal. The facility is a pressurized water reactor located on the licensee's site in Van Buren County, Michigan. The license provides, among other things, that it is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II

Paragraph III.D.2.(b)(ii) of Appendix J to 10 CFR part 50, Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors, states that containment air locks that have been opened during periods when containment integrity is not required by the plant's Technical Specifications shall be tested at the end of such periods at not less than Pa. (Pa is the calculated peak containment pressure for design basis accidents.) Consumers Power Company has requested exemption from this requirement and proposes, in lieu of testing the air lock at Pa, to perform a between-the-seals leak test at a pressure of not less than 10 psig. Consumers Power Company proposes to apply this alternate testing only if no maintenance or modification has been performed on the air lock during the period that could affect the sealing capability; otherwise, the testing as required by Paragraph III.D.2.(b)(ii) of Appendix J to 10 CFR part 50 would be performed. No other provisions of Appendix J to 10 CFR part 50 are affected by this Exemption.

III

Whenever the facility is in cold shutdown, defined as when the boron concentration is at shutdown concentration and the primary coolant temperature is less than 210 °F, containment integrity is not required. If during this time an air lock door is opened, an overall air lock test at Pa must be performed prior to leaving the cold shutdown condition to comply with Paragraph III.D.2.(b)(ii) of Appendix J to 10 CFR part 50. The air lock door designs are such that a test at Pa of the entire air lock can be performed only with structural bracing (strongbacks) installed on the inner door. These strongbacks are needed because the pressure exerted on the inner door during the test is in the reverse direction to the pressure exerted during accidents. To conduct the leak test in compliance with Paragraph III.D.2.(b)(ii) requires approximately 24 hours, whereas only two to four hours are required for the alternate testing proposed.

Paragraph III.D.2.(b)(iii) of Appendix J to 10 CFR part 50 states that containment air locks that have been opened during periods when containment integrity is required by the technical specifications shall be tested within three days. This paragraph also provides that for doors with testable seals, seal testing fulfills this requirement, and further provides for reduced pressure testing of the seals. There is no reason to expect an air lock to leak excessively merely because a door was opened during cold shutdown or refueling vice during other operating conditions provided (1) there has been no maintenance, modification, or other activity that could affect the leak-tightness or sealing capability of the air lock, (2) the air lock doors are closed in accordance with applicable procedures, and (3) the periodic test at Pa required by Paragraph III.D.2.(b)(i) of Appendix J to 10 CFR part 50 has been performed within schedule.

The alternate testing proposed will prove air lock integrity following cold shutdown or refueling in the same manner that the air lock is proven during periods when containment integrity is required. Thus, the door seal leak test at reduced pressure (not less than 10 psig) is sufficient to demonstrate continuing integrity of the air locks.

Accordingly, we conclude that Consumers Power Company's proposed approach of substituting reduced-pressure seal leakage testing (at not less than 10 psig) per Paragraph III.D.2.(b)(iii) for the full-pressure testing per Paragraph III.D.2.(b)(ii) of Appendix J is acceptable provided (1) there has been no maintenance, modification, or other activity that could affect the leak tightness or sealing capability of the air lock, (2) the air lock doors are closed in accordance with applicable procedures, and (3) the periodic test at Pa required by Paragraph III.D.2.(b)(i) of Appendix J to 10 CFR part 50 has been performed within schedule. Whenever conditions (1), (2), or (3) are not met, the requirements of Paragraph III.D.2.(b)(ii) of Appendix J must be met.

The proposed alternative testing of the air locks is sufficient to achieve the underlying purpose of the prescribed Appendix J testing; viz, to verify air lock integrity after closure to assure that containment leakage is within specified technical specifications limits.

The Commission has granted previously this same exemption to other plants, and intends to revise appendix J to obviate the need for similar exemptions in the future. Consequently, the special circumstances described by 10 CFR 50.12 of the regulation in these particular circumstances is not necessary to achieve the underlying purpose of the regulation since the proposed alternative testing accomplishes the intent of the regulation.

IV

Accordingly, the Commission haa determined that pursuant to 10 CFR 50.12(a) this exemption as described in section III is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission determines further that special circumstances as provided in 10 CFR 50.12(a)(2)(ii) are present justifying the exemption.

Therefore, the Commission hereby grants the exemption to Paragraph III.D.2.(b)(ii) of Appendix J to 10 CFR part 50 as discussed in section III except that air locks opened during periods when containment integrity is not required by the Technical Specifications shall be tested at the end of such periods at not less than Pa when maintenance, modification, or other activities that could affect air lock leak-tightness or sealing capability have been performed.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of this Exemption will have no significant impacts on the environment (54 FR 50461 December 6, 1989).

For further details with respect to this action, see the request for exemption dated August 25, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington DC 20555, and at the Van Zoeren Library, Hope College, Holland, Michigan 49423.

This Exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

John Zwolinski,

Acting Director, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-29258 Filed 12-14-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-362]

Southern California Edison Co., et al.; Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 69 to Facility Operating License No. NPF-15, issued to Southern California Edison Company, San Diego Gas and Electric Company, The City of Riverside, California and the City of Anaheim, California (the licenses), which revised the Technical Specifications for operation of the San Onofre Nuclear Generating Station, Unit No. 3, located in San Diego County California.

The amendment was effective as of the date of issuance. This amendment revises Technical Specification 3/4.7.6 "Snubbers," to permit at one-time extension of the inspection period from 12 months (± 25%) to 20 months (± 25%) for certain inaccessible snubbers in the containment. This amendment is in response to an application for amendment designated as PCN 294.

The application for amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations, the Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR chapter I, which is set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on September 7, 1989 (54 FR 37171). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined that an environmental impact statement will not be prepared and that issuance of the amendment will have significant adverse effect on the quality of the human environment.

For further details with respect to the action see: (1) The application for amendment dated July 28, 1989 (2) Amendment No. 69 to License No. NPF-15, (3) the Commisson's related Safety Evaluation and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's public Document Rooom, 1220 L Street NW., Washington. DC 20555, and the General Library, University of California, P.O. Box 19557, Irvine, California 92713. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commisson, Washington, DC 20555, Attention: Director, Division of Reactor Projects III, IV, V and Special Projects.

Dated at Rockville, Maryland this 4th day of December, 1989.

For the Nuclear Regulatory Commission

George W. Knighton,

Dirctor, Project Directornte V Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulations.

[FR Doc. 89-29259 Filed 12-14-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-295 and 50-304]

Commonwealth Edison Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed of Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR-39 and DPR-48, issued to Commonwealth Edison Company (the licensee), for operation of the Zion Station, Units 1 and 2 located in lake County, Illinois.

The proposed amendment would impose restrictions on containment purge and vent operations. When operating above Cold Shutdown conditions, the containment purge supply and exhaust isolation valves shall only be opened for safety related reasons. The valves will be limited to a maximum of 50 degrees opening.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee originally proposed the amendment by letter dated February 21, 1986. It was noticed in **Federal Register** (51 FR 24251) on July 2, 1986. However, the licensee revised the original submittal on September 25 and 29, 1989, and November 21, 1989. The November 21, 1989 submittal supersedes all previous submittals, and it incorporates all of the staff's comments regading this issue.

The licensee provided the following discussion regarding the three criteria for no significant hazards consideration determination:

Discussion—Item #1

The imposition of these restrictions results in more conservative operation than was previsously allowed by the Zion Technical Specifications. The 50 degree maximum opening limit provided by a permanent mechanical stop results in more reliable containment isolation than a full open valve. Thus, the excessive release of radioactive material following a postulated LOCA is less likely with the valve opening limited to 50 degrees.

The additional restriction of only purging or venting the containment for safety related reasons will ensure that unnecessary operation of the system will not be performed. Thus, the potential consequences of any previsously evaluated accidents have been reduced. In addition, the imposition of these tighter controls over the purge and vent operations does not effect the probability of any previously evaluated accident.

Discussion—Item #2

As discussed above, the proposed amendment will impose tighter restrictions on purge and vent operations than the existing Technical Specifications. There have been no design changes as a result of this change. Thus, the imposition of limits on purge valve position and closure time as previously addressed in Specification 4.9.3.A.2.d per Amendments 105/95, will result in more conservative operation and will not create the possibility of a new or different kind of accident.

Discussion—Item #3

The imposition of the more conservative limits on purge valve position and reduced closure time of 7.0 seconds as addressed in Item #2 will increase the margin of safety. Also,

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these new restrictions on valve opening, closure time, and only purging and venting for safety related reasons will reduce the likelihood of an excessive release of radioactive materials following a postulated LOCA. Thus, the margin of safety will be increased.

Note that the proposed amendment meets and exceeds the example (ii) of the Commissions guidance provided in 48 FR 14870:

(ii) A change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specification: for example, a more stringent surveillance requirement.

Therefore, since the application for amendment satisfies the criteria in 10 CFR 50.92 and is similar to examples for which no significant hazards consideration exists, Commonwealth Edison Company has made a determination that the application involves no significant hazards consideration.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis.

Therefore, based on the above considerations, the Commission has made a proposed determiantion that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of the **Federal Register** notice. Written comments may also be delivered to Room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 16, 1990, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rule of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at the Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards considerations. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendment involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If a final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30–day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30–day notice period, provided that its final determination is that the amendment involves no significant hazards considerations. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John W. Craig: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.174(d).

For further details with respect to this action, see the application for amendment dated November 21, 1989, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room located at Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Dated at Rockville, Maryland, this 13th day of December 1989.

For the Nuclear Regulatory Commission.

Chandu P. Patel,

Project Manager, Project Directorate III–2, Division of Reactor Projects II, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–29357 Filed 12–14–89; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-27524; SR-NSCC-89-16]

Self-Regulatory Organizations; National Securities Clearing Corporation; Filing of Proposed Rule Change Amending NSCC's Fee Structure

December 8, 1989

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 30, 1989, the National Securities Clearing Corporation, ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The text of the proposed rule change is attached as Exhibit A.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

I. Background

For over a year, NSCC conducted a comprehensive review of its services, present and projected revenue sources, as well as anticipated expenses in providing its services over the next three years. Based on that review, NSCC recognized that its revenue sources were dwindling due to a decrease in Members' use of services involving the processing of physical certificates and other services involving manual labor (e.g. Envelope Settlement, Direct Clearing, and Keypunch services). NSCC revenue sources have been further reduced by the industry's use of Locked-in Trades, which have resulted in a correlative reduction in the need for NSCC's more expensive comparison and correction functions. The review also included a comparison of current services and revenues against those in 1982, when NSCC last effected an overall pricing revision.

The comparison revealed that:

1. There has been a decrease of approximately 50 percent in physical activity services since 1982, with a corresponding 300 percent increase in the volume of shares processed.

2. In 1982, the ratio of revenue derived from physical activity to Comparison, Recording and Clearance was 22 to 78. In 1988, it was 10 to 90.

3. In 1982, 98 percent of NSCC's revenue was earned from traditional business (those products and services in place when NSCC became a Registered Clearing Agency). In 1988, 27 percent of revenue was derived from new sources, developed in response to the needs of the Members with corresponding increased expense for research, development and start-up.

II. Methodology

The methodology used in NSCC's review included allocating to each product pool its own primary and secondary costs. The product pools are: Equity Processing, Corporate Bond Processing, Municipal Bond Processing, Mutual Funds, ACATS, Envelopes, Direct Clearing and Other and DTC Pass Through. Primary costs are comprised of direct manpower and computer costs (which include office space and supervision). Secondary costs include such items as branch office costs, master file maintenance, keypunch, and overhead.

III. Projections

The study concluded that the decreasing use of traditional services by the industry will continue to erode the revenue base supporting the costs of providing services. New product development will also play a part in increasing NSCC's expenses, as the industry introduces new investment vehicles and requires NSCC's support. Finally, NSCC's investment in systems to support the industry's predicted "billion share day", the regulators' request to shorten settlement periods, and the relocation by SIAC to Metrotech, all make NSCC projected revenue based on current fees too little to support its operational requirements for the next three year period.

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IV. Fee Structure Revision Objectives

When it was finally concluded that a general fee increase was required, the following objectives were used as guidelines in determining the new fees:

1. Maintain an adequate revenue base in order to liquidate current production costs, provide for a continuance of product enhancements and development, provide for a discount when volume levels equal or exceed projections and provide for retained earnings as directed by the NSCC Board.

2. Establish prices which, when aggregated at the "product pool" level, fully cover that product pool's production costs and contribute toward revenue margins which provide adequate funding of development, discounts, and retained earnings.

3. Establish prices which equitably distribute the costs of operations to the various Member constituencies when the underlying products are fully operational.

4. Introduce new products and enhancements at a price which will encourage participation by amortizing start-up costs either over a period of time or at a volume level which will not unduly burden initial participation.

5. Encourage systems compliance and efficient operations by awarding early, correct and automated submissions with relatively lower fees and by discouraging late, erroneous and manual submissions with relatively higher fees.

6. Recognize the administrative costs associated with providing services to low volume Members so that they pay a fair share of costs by the institution of or increase in "minimum" and/or "membership" type fees.

7. Continue "Geographic Price Mutualization" so as not to differentiate prices among services offered to "in town" and "out of town" Members.

V. Highlights of the Proposed Changes

The important features of the proposed fees are noted below: In an effort to move closer to a side charge and adjust to higher average share volumes, the concept of minimum and maximum (share quantity) transaction charges for equity trade comparison, T-contracts and trade recording have been retained but the fees and the share quantity have been adjusted. The $.033 fee per side per 100 shares for regular trade comparison will be reduced to $.025 which will result in a substantial savings to most firms. The minimum fees for trade comparison will change from $.066 to $.10 for a minimum of 400 shares (previously 200). The maximum fee will change from $1.65 to $1.875 for a maximum of 7500 shares (previously 5,000).

The fee for trade recording will remain at $.02 per 100 shares per side. The minimum fee for trade recording will change from $.04 to $.08. The maximum fee will change from $1.00 to $1.50. These adjustments [especially in minimum charges] were required to bring the fees more in line with costs.

Two additional clearance fees are being instituted:

(1) A fee for failing to deliver to CNS on settlement date (short positions in CNS); and,

(2) A trade clearance netting fee which will be applied to all trades.

In addition, new and revised fees will be established for those Members who use the services of NSCC's Broker Cashiering (Direct Clearing Operations). For example, NSCC has been performing the processing of daily settlement activity for Direct Clearing Members and not charging for such service. Fees for requesting NSCC to physically prepare and deliver envelopes have been increased to reflect the additional cost of physical labor. In certain instances, fees have been equalized in recognition of the same underlying costs despite a difference in the service performed, e.g., all fees for depository handling have been made equal regardless of the method of withdrawal. Trade correction fees will be increased to encourage timely and accurate submission.

Since its inception, NSCC has maintained a discount policy that returns excess revenues directly to Members. This has resulted in over $12 million being returned to Members over the past two years. Continuing that policy, the ACAT service will now be eligible for a discount; however, delivery services fees, trade correction fees, and certain other labor intensive or corrective services will no longer be discounted. In addition, all labor intensive services such as broker cashiering, which were previously half discounted, will no longer be discounted. NSCC believes that the volume discounts on these services are inappropriate because costs are not based on volume but on fixed costs for providing the basic services.

VI. Summary

It is NSCC's objective that the proposed Fee Schedule be applicable for at least the next three years without the necessity for or the disruption caused by annual price revisions except as explained in Section 5 below. Accordingly, the revised fee schedule has been developed to assist the Members in generally planning their minimum clearing costs on a long term basis, with the knowledge and expectation that discounts, if any, should be greatest in the first year. Chart I illustrates NSCC's projected revenues, expenses and discounts over the next three years.

CHART I—NATIONAL SECURITIES CLEARING CORPORATION PROPOSED PRICING PLAN COST AND REVENUE PROJECTED CHANGES

[Millions]

	1990 (proposed)	1991 (proposed)	1992 (proposed)
Revenue before Discount [1]	$81.3	$91.4 [2]	$91.5 [2]
Revenue erosion: [3]			
—Comparison to recording	(.5)	(.7)	(1.0)
—Correction		(.3)	(.5)
—Direct clearing	(.2)	(.3)	(.3)
—Sub revenue erosion	(.7)	(1.3)	(1.8)
—New revenue—gross	90.6	90.1	89.7
Expenses:			
Base budget	76.8	76.8	76.8
Inflation [3]	3.1	6.3	9.6
Metrotech	1.5	.4	2.6
Billion share day	.5	1.3	1.5
Total expenses	81.9	84.8	90.5
Discount (surcharge)	8.7	5.3	(.8)

CHART I—NATIONAL SECURITIES CLEARING CORPORATION PROPOSED PRICING PLAN COST AND REVENUE PROJECTED CHANGES—Continued

[Millions]

	1990 (proposed)	1991 (proposed)	1992 (proposed)
Percent discount	15	10	(2)

[1] Revenue based on 1988 volume.
[2] Increase in Revenue before Discount is attributed to phase in of Sponsored Account Fees.
[3] Revenue Erosion and Inflation numbers are cumulative.

(b) The proposed rule change equitably allocates reasonable fees among NSCC Members and other persons using its services and, therefore, is consistent with the requirements of the Act, as amended, and the rules and regulations thereunder applicable to NSCC.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments on the proposed rule change were solicited from Members by an Important Notice dated September 6, 1989, which is contained in the filing on file with, and available from, the Commission. In addition, NSCC contacted by letter, telephone or in meeting, over 180 firms which NSCC determined would be most impacted by the fee changes and which firms' billings comprise 80 percent of NSCC's revenue base. In response to the Important Notice and these other contacts, NSCC received written responses from only ten firms. Of these, one was in support of the proposed changes. The comment letters are contained in the filing on file with, and available from, the Commission. After carefully analyzing the issues raised by the letters as well as verbal comments, and reviewing projected revenues based on such fees, NSCC determined that certain of the proposed fees could be revised without materially impairing NSCC's ability to cover its costs, but that the remaining fees had to be retained because they were economically necessary. Discussed below is a synopsis of the comments received and NSCC's action in response thereto.

A. 1. *CNS Short Fee:* Several objections were raised to the proposed fee for failing to deliver to CNS on Settlement date. NSCC incurs expenses in maintaining fails in the CNS system. Historically, NSCC has not segregated such expenses from CNS fees in general. This cost was picked up by the entire membership, including those who timely deliver securities. Given current market conditions, NSCC believes that it is appropriate to charge those Members who fail to deliver and cause NSCC to incur such expense of maintaining fails.

2. *Netting Fee:* Five firms objected in writing to the proposed $.04 netting fee. Netting is an integral part of the clearance and settlement systems. Currently, Members only pay for movements in CNS *after* netting and for the issuance of balance orders after netting. Therefore, if a Member nets out to a flat position, it receives the benefit of netting, but does not pay any share of the costs incurred.

The original proposed fees of $.50 for CNS shorts and $.04 for netting were expected to return to NSCC sufficient revenues to support NSCC's costs. These fees contemplated certain levels of discounts at certain volume levels. To meet Members' concerns, NSCC has determined to reduce the CNS short fee to $.35 and the netting fee to $.03. These fees, when aggregated with other fees at the currently projected volume levels will merely result in an overall decrease of the projected discount without impairing NSCC's ability to cover its costs. Should the projected volume levels vary adversely from current projections, NSCC contemplates that an increase in either or both fees may become necessary prior to 1992. If volume levels are greater than expectations, a change in the fees would not be expected, but would be reflected in the application of the discount.

B. *Trade Recording:* Two firms commented negatively on the increase to the minimum trade recording fee. NSCC's costs are based on the sides submitted, and not on the number of shares in each submission. In recognition of this fact, NSCC has not increased the per 100 share fee, but rather, has increased the minimum and maximum fees. This results in reducing the difference in charges between Members submitting small trades versus those submitting large trades, thus more closely approximating a "per side" fee. NSCC has determined that the proposed fee will allow NSCC to recover its true costs. NSCC believes that the corresponding reduction in trade comparison fees will result in a minimal impact on Members from this proposed fee. Accordingly, no changes to the proposed fee are being made.

C. *Print Discount:* One comment was received regarding the elimination of the print discount. Originally the discount was in the form of a credit of $.50 for each 1,000 lines not printed on paper report output. This discount was intended to encourage Members to develop the capabilities to receive NSCC reports in automated format. Since most Members have automated capabilities, the application of an incentive discount to this service is no longer necessary and accordingly, the proposal remains unchanged.

D. *DTC Sponsorship Fee:* Several sponsored accounts verbally expressed concern over the proposed DTC sponsored account fee. This fee was intended to be a pass-through of the DTC monthly membership fees which NSCC has picked up and has been absorbed by the membership at large. The net affect of this policy was that direct DTC Members were paying the DTC costs being incurred by sponsored Members. In keeping with its policy of allocating costs to those who incur them, NSCC determined that sponsored firms must bear this cost directly. Upon re-examination, NSCC recognized that the proposed change from the current practice of a "movement" fee structure to a pass-through fee structure could cause an undue burden on certain Members. NSCC determined, therefore, to phase in the fee by retaining the "movement" structure but raising the per side fee from $.75 to $1.00 and imposing a minimum charge of $200.00 per month and a maximum charge of $480.00 per month. These fees are based on DTC's current monthly charge of $480.00. If DTC's fees are changed during the phase-in period, NSCC will make proportional changes to these minimum and maximum fees. In January 1991, NSCC will increase the minimum

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charge to 70 percent of DTC's then monthly fee, and in January 1992, the movement fee will be eliminated and DTC's monthly charge will be directly passed through at that time.

E. *Broker Cashiering Services:* Some broker cashiering firms questioned the increased broker cashiering charges for processing ESS receives and non-CNS Buy-Ins and the new charges for processing FOSS and DSS receives. Broker Cashiering services require NSCC, as agent for the Member, to receive and process envelopes containing securities, money only charges, dividend claims and buy-in notices. The fees which NSCC has proposed reflect NSCC's cost of processing such envelopes and notices.

1. *DSS:* Currently NSCC examines valued and non-valued DSS envelopes. To keep Members' costs down in respect of DSS envelopes, NSCC has determined to revise the procedure for these items. Rather than examining all DSS envelopes, NSCC will only examine envelopes containing the actual dividend charge (the valued envelope) and pass the non-valued envelope directly to the Member without examination. Accordingly, since physical activity will no longer be incurred for non-valued envelopes, NSCC has modified the proposed fee of $3.50 per envelope to $3.50 per valued envelope.

2. *Non-CNS Buy-ins:* Similar to other broker cashiering services, the processing of buy-ins involves manual labor, the cost of which has increased since NSCC instituted the current $5.00 fee. However, in revaluating the proposed increase to $12.60, NSCC recognized that out-of-town Members, who would bear the burden of such increase, should not be penalized for their geographic locations and, therefore, NSCC has determined to reduce the proposed charge from $12.00 to $10.00 with the net effect that the membership at large will continue to bear part of the burden of the remaining expenses.

F. *Trade Correction:* Due to verbal comments received from Members, NSCC has re-evaluated the proposed Trade Correction fee structure. NSCC had proposed an increase in the cost of timely input of "demand as of" and "demand withholds" from $.50 to $1.00 while only increasing the cost of late responses to $.60. The net effect of such proposal would have been to discourage timely input. Consequently, fees for late responses to "demand as of's" and "demand withhold's" have been raised to $1.00.

G. *Discount Policy:* The proposed fee structure was developed using 1988 volume figures. Based on the projected discount, some of the Members questioned the proposed fee increase generally. These Members believe that 1988 volume is not indicative of 1990–1992 volume projections and that if the proposed fees were applied to 1989 volume levels, the discount would be even greater. NSCC applied the revised fee structure to volume figures for the first nine months of 1989. Such application did not result in a statistically significant increase in the projected discount. It is uncertain whether volume levels in 1990 and thereafter will equal those of the first nine months of 1989. Since NSCC would prefer not to surcharge Members if fees are inadequate, NSCC has determined that fee decreases other than those indicated above are inappropriate. Because NSCC has decreased certain of the fees against which the discount is applied, it is expected that the overall discount rate will be reduced from the originally projected 20% to 16% for 1990 and 13% to 10% in 1991. Unless projected volume increases or NSCC raises certain fees, no discount is projected for 1992.

H. *Favorable Comments:* NSCC did receive many favorable verbal comments regarding the fee structure. Firms do realize that by automating their operations they could realize (or are realizing) overall savings. Members also recognize that NSCC is entitled to establish a fee structure which will enable it to recover its costs and plan for future enhancements and development. NSCC has had an exemplary record in reducing the per transaction cost, which is still less than before NSCC was organized in 1976. NSCC has not instituted a major revision to its fee structure in over seven years, and barring unforeseen circumstances and except as detailed above, does not expect to revise the general fee structure for the 1990–1992 period.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and published its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be approved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organizations. All submissions should refer to File No. SR-NSCC-89-18 and should be submitted by January 5, 1990.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

EXHIBIT A

Amend NSCC's Rules and Procedures as follows:

Italics Indicate additions

[Brackets] Indicate deletions

ADDENDUM A

NATIONAL SECURITIES CLEARING CORPORATION

Fee Structure

I. *Trade Comparison and Recording Service Fees*—represents the fees to enter and correct original trade data

A. Trade Comparison:

1. Each side of each stock, warrant or right trade submitted—$[.033].*025* per 100 shares, with a minimum fee of $[.066]. *.10* and a maximum fee of $[1.65]*1.875* being applicable.

2. Each side of each bond trade submitted[, except municipal bond trades—$.30]—*$.50* per side.

[3. Each side of each municipal bond trade submitted—$.50 per side.]

[4].*3.* Each side of a compared trade in Foreign Securities—$2.00, in addition to the fees provided for in I.A.1. above.

b. Trade Correction Fees: (*FN 1*)

[1. Stamped advisory submitted on:

a. The first day the advisory appears on the contract sheet—$.20 per stamped advisory.

b. The second day the advisory appears on the contract sheet—$.35 per stamped advisory.

2. Trades deleted—$.20 both sides.

3. Add by Seller—$.20 both sides.

4. QT (Questioned Trade) and DK (Don't Know) input by non-originating party:

a. The first day the QT/DK input can be entered into the system—$.35 per QT/DK.

b. The second day or thereafter the QT/DK input can be entered in the system—$.50 per QT/DK.

5. All other input (CHC, As Of, Demand As Of, Withhold, Demand Withhold):

a. The first day all other input can be entered into the system—$.20 per side

b. The second day all other input can be entered into the system—$.35 per side

c. The third day or thereafter all other input can be entered into the system—$.50 per side

6. Demand As Of Advisories:

a. DK'd (Don't Know) or Rejected:

(1) Response on the first day the Demand Advisory appears on the contract sheets (Day 1)—no charge.

(2) Response on the day after the Demand Advisory appears on the contract sheets (Day 2)—$.35 to the responder.

(3) Response on the second day after the Demand Advisory appears on the contract sheets (Day 3)—$.75 to the responder.

b. Accepted (Stamped):

(1) Response on Day 1—$.20 to the responder

(2) Response on Day 2—$.35 to the responder

(3) Response on Day 3—$.75 to the responder

c. Automatic Acceptance (No response by Day 3)—$4.00 to the participant that failed to respond.

7. Demand Withhold Advisories

a. DK'd (Don't Know)

(1) Response on the first day the Demand Advisory appears on the contract sheets (Day 1)—no charge.

(2) Response on the day after the Demand Advisory appears on the contract sheets (Day 2)—$.35 to the responder.

b. Accepted (Stamped):

(1) Response on Day 1—$.20 to the responder

(2) Response on Day 2—$.35 to the responder

c. Automatic Acceptance (No Response by Day 2)—$4.00 to the participant that failed to respond.]

1. OTC Equity System Correction Fees:

a. All supplemental input after the night of Trade Date (Advisory, As Of, Demand As Of, Withhold, Demand Withhold) except for Demand As Of Advisories and Demand Withhold Advisories:

(1) T+1—$.40 to the submitter

(2) T+2—$.60 to the submitter

(3) after T+2—$1.00 to the submitter

b. Demand Withhold Advisories:

(1) DK'd (Don't Know):

(a) Response on the first day the Demand Advisory appears on the contract sheets (Day 1)—no charge.

(b) Response on the day after the Demand Advisory first appears on the contract sheets (Day 2)—$1.00 to the responder.

(2) Accepted (Stamped): Response on Day 1 or Day 2—$1.00 to the responder.

(3) Automatic Acceptance (No Response on Day 1 or Day 2)—$5.00 to the participant that failed to respond.

2. Listed Equity System Correction Fees:

Suggested Name Deletes submitted to NSCC directly by participants on T+1—$.40 to both sides.

3. Bond System Correction Fees:

a. All supplemental input after T+1 (Advisory, As Of, Demand As Of, Withhold) except for Demand As Of Advisories, Trades Deleted, Add by Seller, OT and DK input.

(1) T+2—$.40 to the submitter

(2) T+3—$.60 to the submitter

(3) after T+3—$1.00 to the submitter

b. Trades Deleted:

(1) T+2—$.40 to both sides

(2) T+3—$.60 to both sides

(1) after T+3—$1.00 to both sides

c. Add by Seller—$.40 to both sides

d. QT (Questioned Trade) and DK (Don't Know) input by non-originating party:

(1) T+3—$.60 per OT/DK

(2) after T+3—$1.00 per QT/DK

4. OTC Equity and Bond System Correction Fees:

Demand As Of Advisories:

(1) DK'd (Don't Know) or Rejected:

(a) Response on the first day the Demand Advisory appears on the contract sheets (Day 1)—no charge.

(b) Response on the second or third day after the Demand Advisory first appears on the contract sheets (Day 2 or Day 3)—$1.00 to the responder.

(2) Accepted (Stamped): Response on Day 1, Day 2 or Day 3—$1.00 to the responder.

(3) Automatic Acceptance (No Response on Day 1, Day 2 or Day 3)—$5.00 to the participont that failed to respond.

C. Trade recording fees will be charged as follows on those items originally compared by other parties, but cleared through NSCC: *(FN2)*

1. Each side of each stock, warrant or right item entered for settlement, but not compared by NSCC—$.02 per 100 shares, with a minimum fee of $[.04].*08* and a maximum fee of $[1.00]*1.50* being applicable.

2. Each side of each bond item entered for settlement, but not compared by NSCC—$[.18].*30* per side.

D. Recaps:

1. Submission for Pricing—$[.25].*50* per submission.

2. Sides submitted for re-comparison—$[.50].*75* per side.

II. *Trade Clearance Fees*—represents fees for netting, issuance of instructions to receive or deliver, effecting book-entry deliveries, and related activity

A. Receipts from CNS to satisfy a long valued position[(2)]*(FN 3)*—$[.45].*50* per issue received.

B. Deliveries to CNS in the night processing cycle to cover a short valued position—$[.45].*50* per delivery.

C. Deliveries to CNS in the day processing cycle to cover a short valued position—$[1.20]*1.25* per delivery.

D. Fails to Deliver to CNS (Short-In CNS)—$.35 per item.

E. Trade Clearance (netting)—$.03 per side.

[D]*F. Designated valued deliveries[(3)](FN 4)* (transaction processing) entered into the clearance system through special representative procedures—$.15 per side[, except for Flip Trades for which the charge is $.05 per side].

G. Flip Trades—$.05 per side.

[E]*H.* Security orders generated[(4)]*(FN 5)*—$.25 per item.

[F]*I. CNS* Buy-In[s submitted] *(long Broker and short Broker)*—$5.00 per item.

[G]*J.* Clearing Interface Exemption or Inclusion Instruction to NSCC—$.75 per item.

[H]*K.* Reorganizations.

1. Mandatory Reorganizations—Mergers, Redemptions and Liquidations.	$2.50 each.
2. Voluntary Reorganizations—	
a. Long Broker (per input)	
Automated Input	15.00 each.
Manual Input	20.00 each.
b. Short Broker (per reorganization).	15.00 each.

III. *Delivery Service Fees*

b. DSS Receives	$3.50 per valued

[e.] [Withdrawn by transfer (abbreviated [$.45 per item].

b. Asset Receives	$.12 per asset which is

1. Trade Processing System

The minimum Participant Fee per number: $50.00 per month.

III. *Delivery Service Fees*

A. Envelope Settlement Service:	
1. Intra-city deliveries (EES)[(5)]*(FN 6)*	
Night zone, up to 9:15 a.m.	$[.75]*1.00* per envelope.
Early a.m. zone, 9:16 a.m. to 11:00 a.m.	$[1.25]*1.50* per envelope.
Late a.m. zone, 11:01 a.m. to 11:30 a.m.	$[2.00]*2.50* per envelope.
Reclamations, 11:31 a.m. to 2:00 p.m.	$[.75]*1.00* per envelope.
2. ESS Receives	*$1.00 per envelope.*
[2]*3.* Inter-City Deliveries *or Receives* (IESS).	$[2.75]*2.50* per envelope.
[3.] [Receives]	[$.75 per envelope].
B. Funds Only Settlement Service: [(5)]*(FN 6)*	
1. Deliveries *or*	$1.00 per envelope.
[2.] Reclamation (except for reclamations of original deliveries made in the reclaim zone, for which there is no charge to the reclaiming participant).	[$.50 per envelope].
[3]2. Receives	$[.50]*1.00* per envelope.
C. National Transfer Service (NTS)	$[1.25]*2.50* per envelope.
D. Dividend Settlement Service (DSS)	$[.25]*.50* per envelope.
E. New York State Transfer Taxes	$[.20]*1.00* per item.

IV. *Other Service Fees*

A. Correspondent Delievery and Collection Service (CDCS):	
1. Deliveries [(6)] *(FN 7)* other than international deliveries through International Securities Clearing Corporation.	$18.00 per envelope plus pass-through cost to reach locations outside of immediate local delivery areas.
2. International receives through International Securities Clearing Corporation.	$.75 per envelope.
B. Receive—Physical: [(7)] *(FN 8).*	
1. Without collection (at other than primary receive location).	[.90] *7.00* per item.
2. Against payment	$[4.90]*7.00* per item.
3. Over the Window Receives.	*$10.00 per item.*
4. Other Envelopes	.
a. FOSS Receives	*$7.00 per envelope.*
b. DSS Receives	*$3.50 per valued envelope.*
C. Underwriting Pick-Up	$22.50 per pick-up.
D. Customer Transfer in which the participant instructs NSCC to physically act on their behalf[:(8)].	*$2.70 per item plus pass-through of any direct charges.*
[1. Regular]	[$2.70 per item].
[2. Legal]	[$5.40 per item].
[3. Rush]	[$5.40 per item plus pass-through of any direct charges].
E. Remote Trade Comparison Handling in which the participant instructs NSCC to perform the local P&S function on behalf of the participant (*FN* 9).	$.50 per reported side.
F. Preparation of T+1 input	*$1.00 per trade.*
[F]*G.* Options Processing Fees in which the participant instructs NSCC to act on their behalf: (*FN* 10).	
1. Remote trade comparison handling (P+S).	$.60 per reported side.
2. Exercise processed for the participant.	$6.75 per item.
3. Exercise by exception processed for the participant.	$2.25 per item.
4. Assignment processed for the participant.	$2.25 per item.
[G]*H.* Depository Handling Fees in which the NSCC participant instructs NSCC to act on their behalf:.	
1. Each physical item withdrawn from a participant's account in a depository by NSCC at the participant's request[:].	*$3.00 per item.*
[a.] [Withdrawn by order-out for pick-up at primary receive location].	[$.90 per item].
[b.] [Withdrawn by order-out for pick-up at other branch location].	[$1.60 per item].
[c.] [Withdrawn by order-out for delivery through a delivery service].	$4.50 per item plus cost of delivery service [ESS, IESS, or CDCS)].
[d.] [Withdrawn by transfer for pick-up at primary receive location].	[$.65 per item].
[e.] [Withdrawn by transfer (abbreviated service, i.e., not including verification of registration and resubmission of erroneous items].	[$.45 per item].
[f.] [Withdrawn by transfer for pick-up at other than primary location].	[$1.55 per item].
2. Each physical item deposited to NSCC to a participant's account in a depository.	[$.45 per item plus any depository fees charged to NSCC.
3. Deposit Rejects by a Depository.	*$3.00 per item.*
[3.] [Each manual instruction submitted to a depository by NSCC for a participant:].	
[a.] [Pledge, release]	[$.90 per item].
[b.] [Book-entry movement, etc.].	[$.45 per item].
[H]*I.* Preparation Fees:.	
1. Preparing DTC forms [for deposits, CODs, DOs].	$1/60 per item.
2. Preparing securities *and other envelopes* for delivery [through a delivery service (ESS, IESS, CDCS)].	$3.60 per item plus cost of delivery service [(ESS, IESS or CDCS) (11)].
3. Preparing securities for physical transfer, physical collateral loan or drafting.	$3.60 per item.
4. Preparing DSS envelopes.	*$3.60 per item.*
[I]*J.* Reorganizations	$10.00 per item.
K. Non-CNS Buy-ins	*$10.00 per item.*
L. Check and Draft processing.	*$165.00 per month.*
M. Reconciliation and Proof of Settlement.	*$100 per month.*
N. Processing Daily Settlement activity entered on Settlement Statement.	*$1.00 per item (minimum $25.00; maximum $250.00 per month).*
[J]*O* Special EDP Tape [and Card] Output.	$45.00 per report as requested by participant.
[K]*P.* Automated Customer Account Transfer Service.	
1. Transfer Initiation Form	$[1.00] *1.50* per submission.
2. Recording.	
a. Asset Delivers	$.12 per asset which is reported by the delivering firm.
b. Asset Receives	$.12 per asset which is received by the receiving firm.
3. Corrections—Asset additions, deletions, or changes.	$.12 per asset.
4. Non-CNS–Receive/Deliver Orders.	$.25 per order issued.
5. Adjustment of customer account number.	$.12 per adjustment.
[L]*O.* Mutual Fund Settlement, Entry and Registration Verification Service.	$.50 per side per settled transaction.
[M]*R.* NETWORKING.	
1. Membership Fee: for each participating Settling Member and Fund Member regardless of activity level.	$250.00 per month.
2. Monthly Account Base Fee:.	
a. for accounts with Funds paying dividends monthly.	$.06 per side per NETWORKING subaccount.
b. for accounts with Funds paying dividends less frequently than monthly.	$.04 per side per NETWORKING subaccount.
3. Position File Fee:.	
a. for two position files requested by broker/dealer per CUSIP per month.	No charge.
b. for more than two position files requested by broker/dealer per CUSIP per month.	$100.00 per CUSIP per each request payable only by broker/dealer.
[N]*S.* PC Data Entry.	
Either.	
(a)(i) The first application and..	$50.00 per month.
(a)(ii) each subsequent application, or.	$30.00 per month.
(b) RECAPS application only.	$200.00 per year.

V. *Pass-Through and Other Fees*

A. Participant Fees—represents the monthly fee for each number assigned to a Member, Municipal Comparison Only Member or Fund Member for participation by each Member, Mubicipal Comparison Only Member or Fund Member under such number in one or more of the specified services provided by NSCC. The eight services and their related base fees are:

1. Trade Processing System	
a. For Members or Municipal Comparison Only Members with 10 or less assigned numbers.	$1.00 per side for the first [100]*150* sides compared per month under each assigned number with a minimum monthly fee of $50.00 [(12)] *(FN11).*
b. For Members or Municipal Comparison Only Members with 11 or more assigned numbers [(13)] *(FN 12).*	$100.00 per month for each of the first 10 assigned numbers and $25.00 per month for each number assigned thereafter.
2. Envelope Settlement System (ESS, IESS and FOSS).	$50.00 per month.
3. Correspondent Delivery and Collection Service (CDCS).	$30.00 per month.
4. National Transfer Service (NTS).	$50.00 per month.
5. Dividend Settlement Service (DSS).	$50.00 per month.
6. Fund/Serv Service	$50.000 per month.
7. Qualified Special Representative.	$250.00 per month.
8. Trade input, either (a) as a Service Bureau or (b) by an affiliated Service Bureau.	$250.00 per month.
The maximum cumulative charge per number for items 1 through 8:	
a. For Members or Municipal Comparison Only Members with ten or less assigned numbers. or	$[150]*200.00* per month.
b. For Members or Municipal Comparison Only Members with eleven or more assigned numbers [(14)] *(FN 13).*	$150.00 per month for each of the first ten assigned numbers and $75.00 per month for each number assigned thereafter.
The minimum Participant Fee per number:	$30.00 per month, (except for numbers in excess of ten assigned to Members of Municipal Comparison Only Members, where the minimum monthly Participant Fee is $25.00 per month).
B. Special Service Fees:	
1. Commission Billing:	
a. Debit	$[.25]*.50* per item.
b. Credit	$[.25]*.50* per item.
2. Options cage processing (daily settlement).	$300.00 per month.
3. DTC Sponsored Accounts—available to each NSCC/CNS participant who is not also a particiapnt of DTC:	
[For each item delivered or received through DTC].	$[.75]*1.00* per item *with a minimum of $200.00 per month and a maximum of $460.00 per month* plus the pass-through of all normal DTC billings assessed the sponsored account, with the exception of the monthly DTC participant fee.
[*Maximum charge* for delivered or received items].	[$350.00 per month].
4. For each broker/dealer on whose behalf participants have indicated they will act as provided in NSCC Rule 3, Section 3.	$5.00 per month.
5. Output Fees	
a. Machine Readable Output [Fees].	$10.00 per tape.

[(1) Tape Output]	[$100.00 per month per
a. Physical handling and envelope delivery	*Cost* [Fees imposed (if

(2) Trade Recording Fees will be charged for all OCS and IDC input

[(14)] *(13)* As with subsection V.A.1. above, this maximum charge shall apply

VIII. *NSCC Pricing Policy*

Stock, $100 Par Value from unlisted trading privileges on the American

[(1) Tape Output]	[$100.00 per month per tape plus $20.00 per month for each additional firm on a tape after the first].
[(2) Card Output]	[$.03 per card with a maximum of $200.00 per month for each type of output selected by a participant].
b. [(3)] Service Bureau Tapes.	[Cost prorated] *$250. per tape.*
[b. Hard Copy Output Fees and Credit]	
[(1) Credit for suppression of hard copy output].	[$.50 per each. 1,000 lines suppressed].
[(2) Fee for additional hard copy output].	[$.50 per each 1,000 lines printed].
c. Additional hard copy output.	*$1.25 per each. 1,000 lines printed.*
d. Magnetic Tape not returned.	$20.00 per tape.
6. Microfiche Reports	$3.00 per fiche.
[7. On-line Input to Service Bureaus].	[$.05 per line key-punched].
[8]7. Special Research	$[11]*25.00*] per hour.
[9. Processing cash or stock dividend claims made against the Corporation's NCC & Co. nominee by NSCC participants and others].	[$10.00 per record date].
[10]*8.* [Depository Handling] Fees in which the participant requests NSCC to receive and submit transactions [to DTC on a Bag-In and Bag-Out basis] *by courier.*	$25.00 per month [for each type of DTC transaction handled].
[11]*9.* Stock Loan Rebate Payment and Collection Service.	$[.50] *2.50* per rebate per side.
C. Pass-Through Expenses:	
1. Transportation and Insurance:	
a. Physical handling and envelope delivery service outside of New York City.	*Cost* [Fees imposed (if any) by bank receiving agent on valued deliveries and cost of transporting securities].
b. Identifiable insurance costs, if any, incurred in shipping securities between NSCC branch offices.	Cost.
2. Communications	
a. Communications Access.	Cost.
b. Telephone *toll calls*	Cost.
3. Forms	Cost [+ Handling].
4. Certificate Fees incurred by NSCC to process transfers.	Costs.
5. Postage Costs [incurred by NSCC].	Cost.
6. Miscellaneous Expenses Any other expense not specified above, whether one-time or recurring, which the Corporation may incur on behalf of a Member at a Member's request.	Cost.
D. Production of Clearing Data: [(15)] *(FN 14)*	
To provide a bi-monthly ranking within a pre-selected group of municipal bonds (not to exceed fifty in number), based upon NSCC's comparison activity..	$1,025 per month for the first twelve (12) months; $500 per month thereafter.
E. (1) Each item submitted in paper form (except Envelope Settlement Service, Funds Only Settlement Service, Dividend Settlement Service, Correspondent Delivery and Collection Service, and Automated Customer Account Transfer Service *Transfer Initiation Form*).	[.25]*.50* per item.
(2) [(a)] Each ACAT Transfer Initiation Form submitted in paper form.	$1.00 per item.
[(b) Each other ACAT item submitted in paper form].	[$.40 per time.]

(1) [Trade Correction Fees will be applied in addition to the fees charged in I.A. above.] *Trade Submission Fees (see I.A. above) will be charged in addition to the Trade Correction Fees detailed in I.B. Trade Correction Fees will not be applied on OCS, IDC and ACT input.*

(2) Trade Recording Fees will be charged for all OCS and IDC input except for sides originally submitted correctly to NSCC's

[(2)] *(3)* Multiple receipts made in a depository during a daily period due to partial delivery procedures as a result of timing differences will be considered as a single receipt and counted on a per-issue basis.

[(3)](*4*) A designated valued delivery is an instruction from a Special Representative to CNS to transfer a valued position from one NSCC participant to another participant or to a nonparticipant through a clearing interface.

[(4)] *(5)* A security order, or non-CNS settling item, is an instruction to deliver or receive securities outside of the CNS system. These instructions will be generated when cleared securities are not eligible for CNS or when both parties to a transaction wish to settle in this manner. Security orders may be issued on an item-by-item basis or netted through "balance order" procedures.

[(5)] *(6)* At present, New York City and Jersey City only.

[(6)] *(7)* Includes all physical deliveries, redeliveries and reclamations made outside of the envelope settlement system.

[(7)] *(8)* Under instructions, NSCC will receive [securities] envelopes from third parties, at NSCC offices.

[(8) For transfers handled outside of the depository system (see IV.H.(d), (e) and (f) for depository transfers).]

(9) NYSE odd/lots are excluded from this charge.

(10) See also V.B.2. Options Cage Processing Fee.

[(11) The stated prices for IV.C.3. and IV.H.c. include security preparation fees.]

[(12)] *(11)* The first [100] *150* sides per month is based on total sides compared by NSCC, sides compared by other parites and forwarded to NSCC for settlement, and sides entered by special representatives through transactions processing procedures (see II.[D]*F. above).* It includes both stock and bond transactions and is applicable to sides settled through CNS, security order or interface processing.

[(13)] *(12)* This fee shall apply only for those members that do not require NSCC to provide training to the organizations or entities on whose behalf the Member has requested the additional numbers. If NSCC provides such training, then the fee provided for in subsection V.A.1.a. shall be applied and not this fee.

[(14)] *(13)* As with subsection V.A.1. above, this maximum charge shall apply only for those Members or Municipal Comparison Only Members that do not require NSCC to provide training to the organizations or entities on whose behalf the Member or Municipal Comparison Only Member has requested the additional numbers. If NSCC provides such training, then the maximum charge shall be $[150]*200* per number.

[(15)]*14* In establishing fees for the production of clearing data, NSCC will include its costs of developing requested programs, running such programs and any additional costs to distribute such data as produced, including an appropriate allocation of NSCC's general and administrative expenses and an appropriate allocation of NSCC's development costs of the system or service from which the data is developed provided, however, that such latter allocation shall not exceed 25% of the above combined NSCC costs.

VI. *Collection Charge*

The Corporation may, but shall not be obligated, to include from time to time on Settling Members' preliminary and/or final settlement statements, charges which may be imposed on such Settling Members by self-regulatory organizations, as defined in the Securities Exchange Act of 1934, as amended, or other security industry organizations or entities, with which the Corporation may enter into agreements. Any amounts so collected shall, in accordance with agreements between the Corporation and the respective organization or entity, be remitted to the appropriate organization or entity imposing the charge.

VII. *Application of Fees*

With the exception of certain registered clearing agencies, all fees will be charged uniformly to all participants and collected through the settlement system if possible. Charges will not be made to registered clearing agencies for inter-clearing corporation OTC trade comparison if the agency provides its own intra-clearing corporation OTC trade comparison, or for interface processing. Fees for other standard services provided to registered clearing agencies will be the same as those charged to other participants. Special services performed for other registered clearing agencies such as intra-clearing corporation OTC trade comparison, sharing of branches, CDCS handling, etc., will be contracted on an individual basis.

VIII. *NSCC Pricing Policy*

[NSCC's policy is to retain only those revenues which are required to support its operations. Since October of 1978, the date that NSCC installed its original Consolidated Rate Structure, gross billable revenues before adjustment (i.e., revenues before discount) have exceeded costs. In order to match actual revenues received to the approximate level of costs, NSCC has adjusted downward (i.e., discounted) participants' invoices every month since October 1978. If NSCC's gross billable revenues before adjustment do not equal the approximate level of costs, gross billable revenues will be adjusted upward (i.e., surcharged). Both the discount and the surcharge will be reflected on participants' monthly invoices. It is NSCC's existing policy to continue matching revenues to costs in the above manner.]

[NSCC's policy is to retain only those revenues which are required to maintain an adequate revenue base in order to liquidate current production costs, provide for a continuance of product enhancements and development, provide for a discount when volume levels equal or exceed projections and provide for retained earnings as directed by the NSCC Board. In order to meet such objectives NSCC will:

If NSCC's gross billable revenues before adjustment (i.e., revenues before discount) exceed the approximate level of costs, adjust downward (i.e., discount) participants' invoices.

If NSCC's gross billable revenues before adjustment (i.e., revenues before surcharge) are less than the approximate level of costs, adjust upward (i.e., surcharge) participants' invoices.

Both the discount and the surcharge when applicable will be reflected directly on participants' invocies.

[FR Doc. 89-29197 Filed 12-14-89; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Application to Terminate Unlisted Trading Privileges; The American Stock Exchange, Inc. (West Texas Utilities Company) File No. 0-340

December 11, 1989.

WEST TEXAS UTILITIES COMPANY ("the Company") has filed an application with the Securities and Exchange Commission ("Commission") pursuant to section 12(f) of the Securities Exchange of 1934 ("Act") and Rule 12(f)(3) promulgated thereunder to withdraw its 4.40% Cumulative Preferred Stock, $100 Par Value from unlisted trading privileges on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for terminating unlisted trading privileges include the following:

West Texas Utilities Company has determined to terminate unlisted trading privileges in the above stock on the Amex because of a very nominal and adequate amount of trading that does not justify the expense of maintaining such unlisted trading privileges. The Amex has posed no objection in this matter.

Any interested person may, on or before (insert 10 days from date of publication) submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-29208 Filed 12-14-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-27505; SR-GSCC-89-10]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Approving Proposed Rule Change Amending Various Rules

December 5, 1989.

The Government Securities Clearing Corporation ("GSCC") has filed, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] a proposed rule change (File No. SR-GSCC-89-10) making various adjustments to GSCC's rules, including rules concerning funds-only settlement, hearing procedures and restrictions on member access to services. The Commission published notice of the proposal in the **Federal Register**.[2] No

[1] 15 U.S.C. 78s(b)(1) (1981).

[2] See Securities Exchange Act Release No. 27334 (October 3, 1989), 54 FR 42122.

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comments were received regarding the proposal. On November 7 and 30, 1989, GSCC filed in letter form minor amendments to the proposal, with the November 30, 1989 letter superceding the November 7, 1989 letter. This order approves the proposed rule change.

I. Description of the Proposal

On July 7, 1989, the Commission approved four proposed rule changes which established a netting and settlement system, along with membership and access restrictions and a system of safeguards designed to limit financial exposure to GSCC and its members of the risks inherent in a netting system ("Netting Order").[3] The proposals completed GSCC's basic core of services to provide comparison, clearance and settlement services to members for government and agency securities transactions. The present proposal amends various GSCC rules to eliminate unnecessary or duplicative rules that exist as a result of the changes approved in the Netting Order. The proposal also contains other changes regarding service of notices and the timing of fund-only settlement obligation payments.

The proposal deletes Rule 46 from GSCC rules and makes conforming changes to other rules.[4] GSCC Rules 46 contains provisions that allow the Board of Directors to suspend a member or limit or prohibit a member access to GSCC services in the event of certain situations, such as a member financial difficulty. Identical provisions appear in GSCC Rule 18 (Ceasing to Act for a Member) and GSCC Rule 20 (Insolvency of a Member).

The proposal also amends GSCC Rule 45 to allow to send written notices to its members or applicants, or vice versa, by means of a facsimile machine. Previously, such notice could be served only in writing through the mails to the member's or applicant's office or to GSCC at its principal place of business. The proposal makes acceptable the service of notice by either method.

The proposals revises GSCC Rule 26, which governs bills rendered to members for charges for GSCC services and any fines imposed by GSCC. Under the proposal, GSCC will render its bills on the fifth business day (instead of the tenth business day) of the succeeding month. For comparison-only members, payment is due upon receipt of the bill, while netting members are obligated to pay the bill on the tenth business day of the succeeding month as a part of their funds-only payment obligations. The rule previously did not distinguish netting members from comparison-only members.

The proposal also revises GSCC Rule 13, section 5, which covers the payment of funds-only settlement accounts. Currently, the rule specifies that a member must pay its funds-only settlement obligation to GSCC by the later of 10:00 a.m. or two hours after the report listing the obligation is made available to the member. The proposal revises the rules by requiring a member to pay its funds-only settlement obligation to GSCC no later than the latest of 10:00 a.m.; one and a half hours after the opening of the cash Fedwire operated by the Federal Reserve Bank of New York; or two hours after the report listing the obligation is made available to the member. Similarly, the proposal revises the time GSCC must pay members who are due to receive funds-only settlement amounts; GSCC will pay participants no later than the latest of 11:00 a.m.; two and a half hours after the opening of the cash Fedwire; or three hours after the report listing such obligation is made available to the member.

Finally, the proposal changes GSCC Rule 3, which covers lists of eligible securities and members maintained by GSCC and which are available to members. The reference to "cleared securities" is deleted, as it is no longer a defined term in the rules, and is replaced with the defined terms "eligible security" and "eligible netting security." The proposal also clarifies that members are entitled to a copy of the lists of eligible securities and eligible netting securities. The proposal also lists three types of members, clearing-agent bank, comparison-only, and netting, and states that lists maintained of each of these are available to members. Other language referred to a list of brokers and dealers on whose behalf members will act in comparing trades has been deleted because it is unnecessary.

II. Rationale for the Proposal

GSCC states that the proposal will promote the prompt and accurate clearance and settlement of securities transactions for which GSCC is responsible, and is, therefore, consistent with the requirements of the Act, and the rules and regulations thereunder applicable to self-regulatory organizations.

III. Discussion

The purpose of the proposed rule change, in part, is to revise certain GSCC rules to reflect the existence of the recently-implemented netting and settlement system. The proposal also makes other changes designed to make GSCC systems operate more efficiently. As discussed below, the Commission believes the proposal will promote the prompt and accurate clearance and settlement of securities transactions and is in compliance with the Act.

The Commission believes the adjustment to the funds-only settlement payment deadlines is an important and sensible change. Funds-only settlement payments are made to and from GSCC clearing banks by members over the cash Fedwire. Although the cash Fedwire normally opens at 8:30 a.m., substantial delays in its opening can occur. Such a delay may make it difficult, if not impossible, for members to make their payments by 10 a.m. and for GSCC to turnaround the funds and make payments to members by 11 a.m. The proposal eliminates the possibility of such a situation and gives members and GSCC sufficient time to make their payments. The proposal also, in the event that the cash Fedwire opens earlier than 8:30 a.m., will not require members to make payments earlier than 10 a.m., giving them sufficient time to make their payments.

Each of the remaining changes serves to improve GSCC's services or operations in some way by eliminating the possibility of confusion or enhancing an existing service in a small way. First, the elimination of Rule 46 and the accompanying changes removes a redundancy in GSCC's rule caused by changes made in the rules to accommodate the addition of the netting and settlement system. Second, the use of a facsimile machine to serve written notices provide a safe and speedy alternative to the mails. Third, the use of the funds-only settlement payment to collect fees and fines from members eliminates a separate payment made by members and standardizes the date fees and fines are collected from netting members. Finally, the amendments to the rule regarding lists of eligible securities reflects changes resulting from the addition of the netting and settlement system and clarifies an already-existing member service.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that GSCC's proposed rule change (File No. SR-GSCC-89-10) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-29201 Filed 12-14-89; 8:45 am]

BILLING CODE 8010-01-M

[3] See Securities Exchange Act Release No. 27006 (July 7, 1989), 54 FR 29798.

[4] Such conforming changes are made in GSCC Rules 37 and 45. GSCC Rule 37 provides procedures for members to request a hearing in the event of the imposition of a fine or other action by GSCC. GSCC Rule 45 sets forth guidelines for GSCC to give notice to members in conjunction with certain actions taken by GSCC.

[Release No. 34-27519; File No. SR-MSRB-89-11]

Self-Regulatory Organizations; Notice of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Disclosures in Connection with New Issues

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 16, 1989, the Municipal Securities Rulemaking Board ("Board") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested people.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board is filing an amendment to Board rule G-32 regarding disclosures in connection with new issues to clarify that commercial paper, whether taxable or tax-exempt, is exempt from the rule G-32 definition of new issue municipal securities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of and statutory basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Sections I, II, and III below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Rule G-32 on disclosures in connection with new issues, requires a dealer that sells a new issue municipal security to deliver to the customer no later than the settlement of the transaction a copy of the official statement in final form prepared by or on behalf of the issuer, or if a final official statement is not being prepared by or on behalf of the issuer, a written notice to that effect. Rule G-32(c)(i) defines the term "new issue municipal securities" to mean:

> securities of an issue that are sold by a broker, dealer or municipal securities dealer during the underwriting period, but shall not include issues of tax-exempt commercial paper.

In 1985, the Board revised rule G-32 to delineate more clearly the responsibilities of dealers that sell new issue municipal securities, as well as to strengthen and facilitate enforcement of the rule. During its deliberation of these amendments, the Board determined to exclude short-term commercial paper from the definition of new issue securities because issuers of those securities typically provide investors with quarterly disclosure documents although an official statement may not be prepared to accompany any specific issue of these securities. The Board concluded that the disclosure process for these issues assures that investors receive material information pertaining to their investments in these securities and, given the differences between the disclosure practices for these issues and other types of municipal securities, it would not be appropriate to include these issues in the rule G-32 definition of new issue municipal securities.

Since the intent of the commercial paper exemption in rule G-32 was to exclude all short-term commercial paper, not just tax-exempt commercial paper, the proposed rule change clarifies this issue.

(b) The Board has adopted the proposed rule change pursuant to section 15B(2)(C) of the Act which directs the Board to propose and adopt rules which are:

> Designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest * * * *

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board believes that the proposed rule change will not have any impact on competition since it applies equally to all brokers, dealers and municipal securities dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Board neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested people are invited to submit written data, views and arguments concerning the foregoing. People making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 5, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: December 7, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-29198 Filed 12-14-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27517; File No. SR-MCC-89-11]

Self Regulatory Organizations; The Midwest Clearing Corporation; Order Approving a Proposed Rule Change to Create a Midwest Clearing Corporation-Only Category of Participant and Impose a Revised Fee for Such Participants

December 7, 1989.

On August 24, 1989, the Midwest Clearing Corporation ("MCC") filed a proposed rule change (File No. SR-MCC-89-11) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposed rule change appeared in the **Federal Register** of September 14, 1989.[2] No comments were received. As discussed below, the Commission is approving the proposed rule change.

I. Description

The proposal amends MCC's Rules, eliminating the requirement that limits MCC participation exclusively to firms who are also participants in the Midwest Securities Trust Company ("MSTC").[3] MCC's proposal does not alter any of the membership standards and obligations, therefore the new category of members (*i.e.*, "MCC-only" participants) will be bound by MCC's Rules and Procedures to the same extent as regular MCC participants.

The proposed rule change sets an additional fee for MCC-only participants. MCC will continue to charge the current account maintenance monthly fee of $170,[4] and, in addition, MCC-only participants will be assessed a settlement service fee of $200 per month.[5]

As required by MCC's Rules, MCC will compare trade data submitted by MCC-only participants and will subsequently record successfully compared contracts.[6] Once recorded, trades usually clear for settlement through MCC's Continuous Net Settlement ("CNS") or trade-by-trade accounting systems. While MCC guarantees trades to be settled through CNS, it does not guarantee trades settled through the trade-by-trade accounting system.[7]

Delivery and receipt obligations arising from transactions cleared through MCC may occur by book entry, through the Envelope Settlement Service ("ESS"),[8] the Special Security Movement ("SSM") delivery settlement service,[9] the Correspondent Delivery and Collection Service ("CDCS"),[10] or the Correspondent Receipt and Payment Service ("CRPS").[11] A MCC-only participant's settlement of receive and deliver obligations involving a physical movement (*i.e.*, ESS, SSM, CDCS and CRPS), will follow the procedures set forth in MCC's Rules for these settlement services. MCC will receive the MCC-only participant's instructions to receive or deliver securities and subsequently debit or credit the participant's account for the securities according to the rules of the service chosen by that participant. Likewise, MCC will follow these rules in order to process payment for the receipt or delivery of securities.

As a result of MCC's proposed rule change, however, MCC-only participants will not be able to perform intra-depository account movements within MSTC. For this reason, transactions involving book entry movements, credits through ESS or a delivery of securities to a MCC-only participant will be submitted for clearance through the Regional Interface Organization ("RIO") [12] for settlement through the clearing corporation where the participant maintains an account.[13]

The MCC-only participant's RIO designated trade is initially submitted for trade recording and reporting through MCC's trade processing facilities. This results in an initial settlement obligation at MCC. In order to transfer this settlement obligation, a corresponding trade ("RIO trade") is recorded between the MCC-only participant (*i.e.*, National Securities Clearing Corporation or Stock Clearing Corporation or Stock Clearing Corporation of Philadelphia) for subsequent settlement on the same day as the original MCC, RIO designated trade.[14]

As a result of this procedure, the MCC-only participant assumes a secondary obligation with its clearing corporation. This obligation settles at the clearing corporation chosen by the MCC-only participant. The obligation of the MCC-only participant's trading counterpart remains at MCC. This obligation settles between MCC and the trading participant at MCC.[15]

The clearing corporations settle the trading parties' (*i.e.*, the MCC-only participant and its trading counterpart) obligations based on an inter-clearing agency settlement obligation on behalf of their participants. Based on these obligations, MCC or the clearing agency chosen by the MCC-only participant will debit or credit settlement accounts maintained with one another. Underlying depository eligible and book-entry securities transfers occur through depository accounts held by MCC and the MCC-only participant's clearing corporation at their corresponding depositories.[16]

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] Securities Exchange Act Release No. 27214 (September 1, 1989), 54 FR 36021 (September 14, 1989).

[3] Midwest Clearing Corporation Rules, Art. VIII, R. 1, § 1 (1984).

[4] The account maintenance fee for specialists and market makers is one hundred and sixty dollars ($160.00) per month.

[5] Like other participants, MCC-only participants will be required to pay the regular fee corresponding to any additional services they use.

[6] Midwest Clearing Corporation Rules, Art. II, R. 1, § 1 (1984).

[7] Until MCC guarantees settlement of a trade, each side to the trade bears the risk of a default by its counterpart. Once MCC guarantees settlement, the original contractual obligations are discharged and replaced by contracts between MCC and each of the original parties (*i.e.*, MCC becomes the buyer to every seller and the seller to every buyer).

[8] ESS allows a participant to request MCC to deliver or otherwise make available to another participant an ESS envelope containing a list of securities to be credited to its account. MCC delivers this envelope and debits the account of the participant receiving the ESS envelope. MCC acts as an agent in this process and does not guarantee the contents of the ESS envelope. Midwest Clearing Corporation Rules, Art. V, R. 2 (1984).

[9] Through this system a participant may file a delivery ticket, instructing MCC to effect a physical security movement to another participant and to verify good delivery and number of shares. Upon delivery of the securities MCC debits the account of the participant receiving the securities for the value of the securities. *Id.* R. 3.

[10] CDCS allows a participant to authorize MCC to make physical delivery of securities to a non-participant prior to receiving payment. Upon delivery, MCC is authorized to receive payment for the delivered securities and credit the participant's account for their value. Under this service, MCC is not responsible for a non-participant's failure to make payment. *Id.* at R. 5, § 1.

[11] Through CRPS a participant may instruct MCC to make payment for and receive on behalf of the participant securities delivered by a non-participant. Upon receipt of securities, MCC is authorized to make payment for the securities, deliver the securities to the participant and debit its account accordingly. *Id.* at R. 5, § 2.

[12] RIO offers a participant the option of clearing and settling trades through the clearing facility of its choice, regardless of the market of execution. See Securities Exchange Act Release No. 20461 (December 7, 1983), 48 FR 55654, 55655 n.9 (December 14, 1983).

[13] MCC's proposed rule change does not require MCC-only participants to maintain accounts at other clearing or depository institutions. MCC, however expects participants to maintain comparison and settlement accounts outside MCC and MSTC. Regardless of whether a participant maintains such accounts, a MCC-only participant will be bound by any action undertaken by MCC on its behalf. Midwest Clearing Corporation Rules, Art. VII, R. 1, § 5 (1984).

[14] If the MCC-only participant is unable to record the corresponding RIO trade at the clearing agency chosen for settlement because the clearing agency ceases to act for the participant, settlement will be effectuated through MCC pursuant to MCC's settlement rules. See *id.* at Arts. III, IV & V.

[15] Settlement will occur through MCC's CNS system if the trade security is CNS eligible at MCC, otherwise the trade will settle on a trade-by-trade basis, pursuant to MCC Rules, Art. IV.

[16] Securities Exchange Act Release No. 20461, *supra* note 12. Settlement of RIO ineligible trades will occur physically outside of the depository environment.

II. MCC's Rationale

MCC believes that the proposed rule change is consistent with the requirements of the Act in that it promotes the prompt and accurate clearance and settlement of securities transactions.[17]

According to MCC, the purpose of the proposed additional fee is to cover "costs and associated expenses incurred by MCC in (i) facilitating settlement (including physical receipt and delivery), when necessary, and (ii) performing accounting and other administrative functions currently performed by MSTC on behalf of MCC and MCC participants." [18]

III. Discussion

The Commission believes that the proposed rule change is consistent with section 17A of the Act because it fosters cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.[19] The proposed rule change will expedite the reconciliation process of trades by allowing a MCC-only participant to settle its trades directly at the depository facility of its choice.

Under the proposed rule change, moreover, MCC will be required to direct settlement of trades through another clearing facility and, ultimately, to a depository other than MSTC. As such, the proposal encourages interface activity among depositories in order to allow consolidated settlement of the MCC-only member's RIO eligible trades outside of MSTC. As required by the Act, therefore, this proposal assists in the removal of impediments to, and perfects the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.[20]

The Commission believes that MCC's proposal is consistent with section 17A(b)(3)(F) of the Act, which prohibits unfair discrimination in the admission of participants.[21] While a clearing agency may discriminate among potential participants, such discrimination should be based on standards of financial responsibility, operational capability, experience and competence.[22] The Commission believes that the proposal does not resort to any unfair discrimination or imposes any obstacles contrary to the public interest against the admission of participants to MCC. The proposal, instead, enables MCC to continue applying the capital, operational and experience membership requirements already embodied in MCC's Rules.[23] For this reason the Commission believes that MCC's proposal is consistent with section 17A(b)(3)(B) of the Act.

The Act requires that a clearing agency's rule be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency. In order to comply with this requirement MCC must assess the impact that the participation of a new type of membership may have on the safety of the clearing agency and, provide safeguards to protect against such risk.[24] Like MCC, the Commission does not foresee any unreasonable financial risk stemming from the creation of a new MCC-only type of membership. For this reason the Commission agrees with MCC's decision not to alter any of the protective membership requirements contained in its Rules and currently in operation.[25]

In addition to the existing protective membership standards, MCC's proposal does not alter the financial protective measures contained in its Rules. MCC-only participants who fail to deliver eligible securities to the clearing corporation of their choice will be bound by the rules and regulations of that entity. Moreover, if a participant to whom the securities are to be delivered fails to receive said securities, MCC or the receiving participant, may cause the securities to be bought in or borrowed.[26]

In addition, a MCC-only participant will be required to contribute to the participant's fund to the same extent as prescribed by MCC's Rules for regular members.[27] For this reason, if a MCC-only participant fails to meet its obligations under the CNS settlement system,[28] MCC will be entitled to recover from the MCC-only participant itself or from its contribution to the participant's fund the amounts payable in its account.[29] The Commission, therefore believes that by not altering the financial protective measures contained in its Rules, MCC, as required by the Act, continues to assure the safeguarding of securities and funds which are in its custody or control.[30]

MCC, moreover, will charge MCC-only participants an additional monthly fee in order to satisfy any expenses incurred by MCC in the course of facilitating settlement and offering certain accounting services to these new members. The Commission believes that, as required by section 17A(b)(3)(D) of the Act,[31] the proposed fee is reasonable. The Commission also finds that the decision to charge the proposed fee to MCC-only members is equitable, since these members will be the beneficiaries of the services for which the proposed charge is being assessed

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed filing (SR-MCC-89-11) be, and is hereby, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. 17 CFR 200.30-3(12) (1988).

Jonathan G. Katz,

Secretary.

[FR Doc. 89-29199 Filed 12-14-89; 8:45 am]

BILLING CODE 8010-01-M

[17] Securities Exchange Act Release No. 27214, *supra* note 2 at 36022.

[18] MCC's Proposed Rule Change, Form 19b-4 at 2.

[19] 15 U.S.C. 78q-1(b)(3)(F) (1982).

[20] Securities Exchange Act of 1934 § 17A(b)(3)(F), 15 U.S.C. 78q-1(b)(3)(F) (1982).

[21] *Id.*

[22] Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41020, 41021 (June 23, 1980).

[23] See specifically Midwest Clearing Corporation Rules, *supra* note 3 at § 2.

[24] In the Release setting forth standards for the registration of clearing agencies, the Division of Market Regulation ("Division") espoused its belief that while a clearing agency could accept specific categories of persons other than those enumerated in section 17A(b)(3)(B) (15 U.S.C. 78q-1(b)(3)(B)), it must be cognizant of the impact that such new participation may have on the financial safety of the clearing agency. MCC's proposed rule change will not necessarily result in the admission of members outside of the categories specified in this secion of the Act, however, given MCC's obligation to safeguard securities and funds in its custody, the requirement to assess the financial effect of creating a new type of membership is necessary in order to comply with the statutory requirement of protection against unreasonable financial risks. See Securities Exchange Act Release No. 16900, *supra* note 22 at 41022.

[25] *E.g.*, Midwest Clearing Corporation Rules, *supra* note 3 at § 2 (admission requirements).

[26] If the trade is CNS eligible, MCC's Rules provide that MCC will issue the buy in or borrow order. *Id.* at Art. III, R. 4, § 1. If, however, the trade is due to settle through MCC's trade-by-trade accounting system the receiving participant may require its counterpart, MCC, to buy in the securities. *Id.* at Art. IV, R. 2, § 1.

[27] *Id.* at Art. IX, R. 2, § 1.

[28] While MCC guarantees CNS eligible trades, it does not guarantee trades to be settled through its trade-by-trade system.

[29] Midwest Clearing Corporation Rules, *supra* note 3 at R. 3, § 1(e).

[30] 15 U.S.C. 78q-1(b)(3)(F) (1982).

[31] 15 U.S.C. 78q-1(b)(3)(D) (1982).

[Release No. 34-27499; File No. SR-PSE-89-24]

(A) Self-Regulatory Organization's Statement of the Purpose of, and

trading floor, thereby facilitating compliance with their Primary

(C) Self-Regulatory Organization's Statement on Comments on the

[Release No. 34-27522; File No. SR-MSE-89-10]

Indemnification of Board of Governors

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[Release No. 34-27499; File No. SR-PSE-89-24]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Stock Exchange, Inc.; Relating to Market Maker Trading Requirements and Obligations.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 10, 1989, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend PSE Rule VI, Sections 75, 79 and 80, and delete Options Floor Procedure Advices B-1, B-3, B-5 and B-9. The purpose for the proposed changes is to increase the trading requirements and obligations of PSE market makers. Specifically, among other things, the PSE proposes to increase the percentage of trades that market makers are required to execute in their Primary Appointment Zones and increase the percentage of trades market makers are required to execute in-person while on the floor of the Exchange. In addition, the Exchange proposes to increase the sanctions imposed for violations of these trading requirements and restructure the Primary Appointment Zones. The full text of the proposed rule change is available at the PSE or the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The PSE proposes to amend several rules which relate to the trading requirements and obligations of PSE market makers. In amending these rules, several of the Exchange's Options Floor Procedure Advices ("OFPA") have been amended and incorporated into the aforementioned rules, thereby deleting these OFPA's. The purpose for such deletions is to work toward the Exchange's eventual plan of eliminating the procedural advices entirely.

The first rule proposed to be amended is Rule VI, section 75, which governs the Primary Appointment Zones of market makers. Specifically, the amendment will incorporate OFPA B-9 and Commentary .04 of Rule VI, section 79 into section 75. As they presently exist, OFPA B-9 and section 79 require that at least 50% of the trading activity of a market maker be in classes of option contracts to which his Primary Appointment extends. As amended, section 75, Commentary .03, would require that at least 75 percent of a market maker's trading activity be in his Primary Appointment Zone. In addition, the proposed amendments to section 75 increase the sanctions for violations of this trading requirement, the existing sanctions of which are now delineated in OFPA B-9. The Exchange states that the purpose for increasing the in-zone trading requirement and the sanctions is to bring the PSE in line with the other options exchanges, and to provide increased liquidity to options traded on the PSE.

In addition to increasing the Primary Appointment Zone trading requirements, the PSE also proposes to modify section 75 to provide for certain exceptions to the 75 percent in-zone requirement. Specifically, trades effected through a floor broker and facilitation trades effected pursuant to an unsolicited order on behalf of an account other than that of another market maker will not count for or against the market maker's 75 percent in-zone requirement.

The proposed amendment to section 75 also alters the structure of Primary Appointment Zones. Whereas a Primary Appointment Zone is presently comprised of arrangements of classes of option contracts, the amended rule organizes the zones according to actual posts on the trading floor, and further requires that the Primary Appointment Zones be comprised of posts contiguous to each other. The PSE believes that such restructuring will narrow market makers' physical placement on the trading floor, thereby facilitating compliance with their Primary Appointment trading requirements One other proposed change to section 75, set out in the fourth paragraph of the Rule, codifies an existing procedure regarding the grace period and selection of Primary Appointment Zones for newly registered market makers.

The second rule proposed to be amended is Rule VI, section 79, which addresses the trading obligations of market makers. The primary change to this rule is the incorporation and modification of the in-person trading requirements currently delineated in OFPA B-5. At present, OFPA B-5 requires that 40 percent of a market maker's transactions be executed by the market maker in-person, while present on the trading floor. As amended, section 79 would increase the in-person trading requirement to 60 percent. In addition, the PSE proposes to increase the fine schedule for violations of this rule, which currently is set-out in OFPA B-5, and incorporate it into Section 79. The Exchange believes that such changes will bring the PSE in line with the other options exchanges, and contribute to a fair and orderly market by requiring the extended availability of market makers on the floor throughout each trading session.

Another proposed change to section 79 deals with the concept of Supplemental Appointments. As amended, the Rule gives all market makers supplemental obligations with respect to all securities traded on the floor, as mandated in OFPA B-3, which has now been deleted and incorporated into section 79.

The third and last rule proposed to be amended is rule VI, section 80, which places restrictions on PSE members from acting simultaneously as a market maker and floor broker. Specifically, the amended rule incorporates the language of OFPA B-1 which prohibits market makers from trading as floor brokers in options covering the same underlying security to which their Primary Appointments extend.

The Exchange believes that the proposed rule change is consistent with the requirements of the Act, and, in particular, section 6(b)(5) as it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 5, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

Dated: December 4, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-29202 Filed 12-14-89; 8:45 am]

BILLING CODE 8010-01-M

[1] 17 CFR 200.30-3(a)(12) (1988).

[Release No. 34-27522; File No. SR-MSE-89-10]

Self-Regulatory Organizations; Notice of Proposed Rule Change by Midwest Stock Exchange, Inc. Relating to Changes to its Certificate of Incorporation, Constitution, and Rules

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 4, 1989, the Midwest Stock Exchange, Inc. ("MSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes the following changes to its Certificate of Incorporation, Constitution and Rules: (Italics indicate new language.)

Certificate of Incorporation, Article 11:

". . . best interests of the Corporation and its members." *To the fullest extent that the General Corporation Law of the State of Delaware, as it exists on the date hereof or as it may hereafter be amended, permits the limitation or elimination of the liability of Governors, no Governor of the Exchange shall be liable to the Exchange or its members for monetary damages for breach of fiduciary duty as a Governor. No amendment to or repeal of this Article shall apply to or have any effect on the liability of any Governor of the Exchange for or with respect to any acts or omissions of such Governor occurring prior to such amendment or repeal.*

Constitution, Article X, section 1:

". . . in connection with such action, suit or proceeding." *To the fullest extent that the General Corporation Law of the State of Delaware, as it exists on the date hereof or as it may hereafter be amended, permits the limitation or elimination of the liability of Governors, no Governor of the Exchange shall be liable to the Exchange or its members for monetary damages for breach of fiduciary duty as a Governor. No amendment to or repeal of this Article shall apply to or have any effect on the liability of any Governor of the Exchange for or with respect to any acts or omissions of such Governor occurring prior to such amendment or repeal.*

Rules, *Article XVIII, Rule 1:*

Indemnification of Board of Governors

Any provisions of the Certificate of Incorporation, the Constitution or the Rules of the Exchange which provides for the limitation or elimination of the liability of Governors of the Exchange to the Exchange or its members for monetary damages for breach of fiduciary duty as a Governor shall not apply in any instance where such liability arises directly or indirectly as a result of a violation of federal securities laws.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Rule filing SR-MSE-88-06 proposed an amendment to the MSE Certificate of Incorporation and Constitution which would exempt MSE Governors from monetary damages for breach of fiduciary duty to the Exchange or its members. This proposed rule change was withdrawn by the MSE, effective November 29, 1989, and is being resubmitted here.[1] In addition, the proposed amendment to the MSE Rules introducing the limitation-language is being added pursuant to a recommendation by the Commission.

The proposed amendments to the Certificate of Incorporation and Constitution are based on section 102(b)(7) (added 1986) of the General Corporation Law of the State of Delaware, under which the Exchange is organized, which allows a corporation to adopt provisions in its Certificate of Incorporation limiting or eliminating a director's monetary liability to the corporation or its shareholders for breach of fiduciary duty.[2] Many Boards

[1] See letter from Daniel J. Liberti, Associate Counsel, MSE to Mary Revell, Branch Chief, Division of Market Regulation, SEC dated November 27, 1989.

[2] The Commission has approved a similar rule change proposed by the Pacific Stock Exchange, Inc.

Continued

of Delaware Corporations adopted similar provisions in 1987.

The proposed amendment does not eliminate a Governor's duty of care, which requires Governors to exercise informed business judgement in discharging their duties. Rather, the personal liability of the Exchange's Governors to the Exchange or its members will be limited should they fail, through negligence or gross negligence, to satisfy their duty. Such limitations do not apply in the following circumstances:

(1) Breach of the duty of loyalty to the Exchange or its members (*i.e.*, the responsibility to conduct business in good faith and in the honest belief that the action taken is in the best interest of the Exchange);

(2) Acts or omissions that are not performed in good faith, or which involve intentional misconduct or violation of law;

(3) Unlawful payment of dividends or unlawful purchase or redemption of stock; and

(4) Transactions from which the director derived improper personal benefits.

The amendment does not eliminate other equitable legal remedies, such as recission or injunctive actions, and in no way affects a Governor's liability under the federal securities laws. In addition, the proposed rule change does not eliminate the liability of officers of the Exchange for actions taken in that capacity, even if the officer is also a Governor. This amendment does not apply to the liability of a Governor for acts or omissions which may have occurred prior to its approval.

Lastly, the proposed rule change limits the applicability of the proposed amendment to the Certificate of Incorporation and Constitution to exclude from its coverage breaches of fiduciary duty which arise directly or indirectly as a result of a violation of the federal securities laws.

The Exchange believes that the amendment is a necessary measure in order to help assure its ability to recruit and retain competent Governors. Without the protections offered by the proposed rule change, the Exchange believes there will be a deterrent effect upon the entrepreneurial decision-making of its Governors. In addition, due to the increase numbers and magnitude of lawsuits against directors, many other Delaware corporations have already adopted similar provisions.

The proposed rule change is consistent with section 6(b) of the Act and furthers the objectives of section 6(b)(3) in that the protections offered by the amendment help to remove impediments to attracting competent Governors, which will thereby help to assure the fair representation of members in the selection of directors and administration of the affairs of the Exchange and will help attract directors who are representative of issuers and investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the MSE. All submissions should refer to File No. SR-MSE-89-10 and should be submitted by January 5, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: December 7, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-29206 Filed 12-14-89; 8:45 am]

BILLING CODE 8010-01-M

("PSE") which amended the PSE Certificate of Incorporation and Rules to eliminate the monetary liability of Governors for breach of fiduciary duty to the PSE or its members. See Securities Exchange Act Release No. 27466 (November 22, 1989), 54 FR 49380 (approving File No. SR-PSE-89-23).

[Release No. 34-27521; File No. SR-NYSE-89-39]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange, Inc., Relating to Proposed Decreases in Transaction Charges.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 20, 1989, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), the proposed Rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE, pursuant to Rule 19b-4 of the Act, submitted a proposed rule change to institute, as of January 1, 1990, a rate decrease affecting the Transaction Charges payable by Exchange members for public agency transactions. Transaction Charges payable for floor brokerage earned remains the same.

The Exchange proposes the following rate revisions to its transaction charges:

TABLE OF CHARGES [1]

[Payable Monthly]

Public agency transactions	1989 Price	1990 Price
Per Share Charge [2]—Equities		
First 5,000 shares	$.00265	$.00265
5,001-672,500 shares	.0001	.0001
Subsequent shares	.0001	

TABLE OF CHARGES [1]—Continued

[Payable Monthly]

Public agency transactions	1989 Price	1990 Price
Credit per eligible order placed through the Common Message Switch	(.25)	(.30)

[1] Does not apply to principal transactions by a member for his or her own account.

[2] Includes shares, rights and warrants.

Note—No individual firm's fee may increase more than 4 percent over the fee in effect in 1988. This limitation was in effect in 1989 and will be retained in 1990.

—In 1989, no individual firm's fee could decrease more than 5 percent of the fee effective in 1988. This downward limitation will be eliminated in 1990.

—1990 fee is subject to a maximum charge per transaction of $80.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule changes and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below of the most significant aspect of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to provide for a more equitable distribution of the Exchange's overall charges among its constituents and to respond to general market conditions.

The proposed rule change is consistent with Section 6(b)(4) of the Act in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using the Exchange's facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NYSE does not believe that any burden will be placed on competition as result of the proposed rule change.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3) of the Act and subparagraph (e) of Securities Exchange Act Rules 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such action if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. Section 552 will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE.

All submissions should refer to File No. SR-NYSE-89-39 and should be submitted by January 5, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: December 7, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-29207 Filed 12-14-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27520; File No. SR-NASD-89-55]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to Trade Reporting Requirements for the Automated Confirmation Transaction Service

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 30, 1989, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to request comments from interested persons, and is publishing an order granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing an amendment to the Rules of Practice and Procedures for the Automated Confirmation Transaction Service ("ACT Rules"), section (d)(2) Trade Report Input.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the rule change is to expand the time frame for submitting trade data into the ACT system and to make the time frame for accepting or declining trade reports using the Browse function consistent, regardless of the method of input used by the ACT participant. This action is taken partially in response to comments

received from a member firm concerning the short time frame initially proposed

III. Date of Effectiveness of the Proposed Rule Change and Timing for

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the

Financial Reserves Fund; Income Portfolios; Plymouth Fund; Plymouth Investment Series; Plymouth Securities

FOR FURTHER INFORMATION CONTACT: Jeremy N. Rubenstein, Staff Attorney, at (202) 272-2847 or Matthew A Chambers

the respective transactions, but rather reflects the power of the banks to negotiate a higher rate of interest on

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received from a member firm concerning the short time frame initially proposed for data input (90 seconds for firms that reported to NASDAQ through a computer interface, and 6.5 minutes for firms reporting through NASDAQ terminals), and partially due to concerns with member firms' inexperience with the new ACT system. The NASD takes this action to allow participants longer periods of time to report executions to the systems while the ACT system is being fully implemented and all firms are becoming acclimated to the requirements of participation. Thereafter, the NASD anticipates that the trade reporting time frames will be reviewed and possibly shortened.

The time frame for reporting transactions in securities that are not tape reportable (*i.e.*, other than transactions in National Market System securities) will be extended to fifteen (15) minutes for the reporting side of the transaction. The contra side on any transaction, including tape reportable trades, will be allowed twenty (20) minutes to accept or decline the ACT report. The NASD believes that these longer time frames are responsive to concerns of lesser automated members that may have had difficulty meeting the original deadlines for reporting. The 15/20 minute time frames, however, still require trade reporting in close proximity to execution so that the primary purpose of the ACT system—to capture trade data as close to the trade as feasible to compare and lock-in the trade for clearing—is not compromised.

The statutory basis for the proposed rule change is found in section 15A(b)(6) of the Act. Among other things, section 15A(b)(6) requires that the rulemaking initiatives of the NASD be designed to foster cooperation and coordination with people engaged in clearing, settling and facilitating transactions in securities. The ACT system will facilitate the prompt and accurate clearance and settlement of trades by performing the comparison function and transmitting locked-in trades to the clearing agency.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD requests that the Commission find good cause pursuant to section 19(b)(2) of the Act for approving the proposed rule change prior to the thirtieth day after publication in the **Federal Register** and in any event by December 15, 1989. The ACT Rules as they apply to self-clearing firms were approved by the Commission in Release No. 34-27229 on September 7, 1989. Following a brief testing period, seven self-clearing broker/dealers began participating in ACT on November 17, 1989, sending trade reports through ACT to clearing. By December 15, 1989, the NASD expects several of the larger self-clearing broker/dealers to begin comparing trades through ACT, and the NASD believes that approval of the proposed rule change modifying the trade reporting time frames on an accelerated basis will facilitate ACT's implementation.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of Section 15A and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing in that accelerated approval is appropriate to facilitate ACT's implementation.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies theredof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 52 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by January 5, 1990.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-NASD-89-56), be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: December 7, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-29200 Filed 12-14-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17257; 812-6852]

Daily Money Fund, et al., Notice of Application

December 8, 1989

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 ("Act").

Applicants: Daily Money Fund; Daily Tax-Exempt Money Fund; Equity Portfolio: Growth; Equity Portfolio; Income; Fidelity California Tax-Free Fund; Fidelity Capital Trust; Fidelity Cash Reserves; Fidelity Charles Street Trust; Fidelity Congress Street Fund; Fidelity Contrafund; Fidelity Corporate Trust; Fidelity Court Street Trust; Fidelity Daily Income Trust; Fidelity Destiny Portfolios; Fidelity Devonshire Trust; Fidelity Deutsche Mark Performance Portfolio, L.P.; Fidelity Exchange Fund; Fidelity Financial Trust; Fidelity Fixed-Income Trust; Fidelity Fund; Fidelity Government Securities Fund (a limited partnership); Fidelity High Income Fund (a limited partnership); Fidelity Institutional Cash Portfolios; Fidelity Institutional Tax-Exempt Cash Portfolios; Fidelity Intermediate Bond Fund; Fidelity Investment Trust; Fidelity Limited Term Municipal; Fidelity Magellan Fund; Fidelity Massachusetts Tax-Free Fund; Fidelity Money Market Trust; Fidelity Municipal Trust; Fidelity New Jersey Tax-Free Portfolio, L.P.; Fidelity New York Tax-Free Fund; Fidelity Puritan Trust; Fidelity Qualified Dividend Fund; Fidelity Securities Fund; Fidelity Select Portfolios; Fidelity Special Situations Fund; Fidelity Sterling Performance Portfolio, L.P.; Fidelity Summer Street Trust; Fidelity Tax-Exempt Money Market Trust; Fidelity Trend Fund; Fidelity U.S. Investments: Government Securities Fund, L.P.; Fidelity U.S. Treasury Money Market Fund, L.P.;

Financial Reserves Fund; Income Portfolios; Plymouth Fund; Plymouth Investment Series; Plymouth Securities Trust; Tax-Exempt Portfolios; Variable Insurance Products Fund; Variable Insurance Products Fund II; Fidelity Yen Performance Portfolio, L.P.; Zero Coupon Bond Fund (together with other open-end management investment companies for which Fidelity Management & Research Company or an affiliate acts as investment adviser, the "Funds");[1] and Fidelity Management & Research Company ("FMR").

Relevant Act Sections: Order requested (i) under sections 6(c) and 17(b) that would exempt Applicants from the provisions of sections 12(d)(1), 17(a)(1), 17(a)(3), 17(d), 18(f), and 21(b) of the Act and Rule 17d-1 thereunder to the extent necessary to engage in the activities described in the application, and (ii) under Rule 17d-1 to permit certain joint transactions.

Summary of Application: Applicants seek an order that would permit the Funds to borrow from and lend to each other through a proposed credit facility at interest rates that would be both higher for the lender and lower for the borrower than would otherwise be available, subject to the representations and conditions contained in the application.

Filing Date: The original application was filed on August 26, 1987, and was amended on January 25, 1989, August 29, 1989 and November 13, 1989.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 10, 1990, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, 82 Devonshire Street, Boston, Massachusetts 02109.

FOR FURTHER INFORMATION CONTACT: Jeremy N. Rubenstein, Staff Attorney, at (202) 272-2847 or Matthew A Chambers, Assistant Director, at (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee by either going to the SEC's Public Reference Branch or by contacting the SEC's commerical copier at (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. Each of the Funds is organized as a business trust under the laws of the Commonwealth of Massachusetts or as a partnership under the laws of the State of Nebraska or Delaware. Each Fund has entered into a management or advisory and service contract with FMR. The principal underwriter for the Funds is Fidelity Distributors Corporation.

2. In 1981, the Funds and FMR obtained an order exempting them from the provisions of section 17(d) of the Act and Rule 17d-1 thereunder to the extent necessary to permit the Funds to establish a joint account ("FICASH") for investing in certain repurchase agreements. Investment Company Act Release No. 12061 (Nov. 27, 1981). During each trading day, the Funds' uninvested cash balances are deposited in FICASH. FICASH invests these cash balances in one or more large short-term repurchase agreements, each of which has a duration of no more than seven days. FMR invests these cash balances as part of its duties under its existing management or advisory service contract with each of the Funds, and does not charge any additional fee for this service.

3. At any particular time, while some Funds are lending money by entering into repurchase agreements (either directly or through FICASH) other Funds may be borrowing money to satisfy redemption requests. Currently, the Funds have bank credit arrangements available to them totaling more than $6 billion. Under volatile market conditions, short-term borrowings by the Funds from banks have reached as high as $900 million.

4. The interest rate paid by the Funds for bank borrowings is usually significantly higher (ranging between 125 and 40 basis points from July 1987 through December 1988) than the rate earned on investments in repurchase agreements. Applicants believe that the differential does not reflect a material difference in the quality or the risk of the respective transactions, but rather reflects the power of the banks to negotiate a higher rate of interest on Fund borrowings than they pay on repurchase agreements.

5. The Funds propose to enter into master loan agreements that would permit them to lend money to each other for temporary purposes through a proposed credit facility. The credit facility is intended to reduce substantially the Funds' borrowing costs and to enhance the ability of the Funds to earn higher rates of interest for their short-term lendings. Although the credit facility would substantially reduce the Funds' reliance on their bank credit arrangements, the Funds would continue to maintain existing loan agreements and to borrow money from banks. The terms and conditions of such unaffiliated bank transactions would serve as a guideline for interfund loan transactions.

6. The proposed transactions are likely to provide the Funds with significant savings at times when the cash position of a Fund is insufficient to meet temporary cash requirements. This situation generally arises when shareholder redemptions exceed anticipated volumes and the Funds have insufficient cash on hand to satisfy such redemptions. When the Funds liquidate portfolio securities to meet redemption requests, they often do not receive payment in settlement for up to seven days (or longer for certain foreign transactions). However, shareholder redemption requests are normally effected immediately. Therefore, the Funds need a source of immediate, short-term liquidity pending settlement of the sale of portfolio securities.

7. While bank borrowings will continue to be available to supply such liquidity, the rates charged under the proposed credit facility would be below those offered by banks on short-term loans. Likewise, Funds making cash loans to other Funds would earn interest at a rate higher than they otherwise could obtain from investing their cash in short-term repurchase agreements. Thus, the credit facility would benefit both those Funds that are borrowers and those Funds that are lenders.

8. The interest rate to be charged to the Funds on any loan made pursuant to the credit facility would be the average of the current repurchase agreement rate available through FICASH and a single benchmark rate set for all Funds. The benchmark rate would be calculated each day by FMR according to a formula established by the Funds' boards of trustees to approximate the lowest interest rate at which bank loans are

[1] Certain investment companies currently advised by FMR or an affiliate that do not presently intend to participate in the interfund lending facility have not executed the application. Any such investment company and any other investment company that may be advised by FMR or an affiliate in the future would be covered by any order if such company hereafter determines to participate in the facility.

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available to the Funds. The formula would be based upon a publicly available rate (e.g., Federal Funds plus 25 basis points) and would vary with this rate so as to reflect changing bank loan rates.

9. The Cash Management Department of Fidelity Service Co. (the transfer, pricing and bookkeeping agent for most of the Funds) would administer the credit facility together with the FICASH account and the Funds' bank loan arrangements.[3] On each business day, the Cash Mangement Department would compare the interfund loan rate for that day (which will reflect actual rates negotiated by the Cash Management Department that day for FICASH) and the available borrowing rates quoted by at least three of the lending banks with which the Funds have loan agreements. The Cash Management Department will make cash available to borrowing Funds only if the interfund loan rate is more favorable to the lending Fund than the FICASH rate and more favorable to the borrowing Fund than the lowest quoted bank loan rate.

10. The Funds currently have loan agreements with seven banks, although no Fund has agreements with all seven banks. The agreements provide for extensions of credit of between $75 million and $2 billion. The lending banks are currently large banks of national standing. Generally, the size and prominence of banks able to make loans of this size ensure that the rates quoted to the Funds for loans will be representative of the available market rates. FMR currently solicits daily rate quotes from each bank with which the Funds have loan agreements. While Applicants anticipate that this practice will continue, FMR will obtain at least three such representative quotes on any day on which an interfund loan takes place. If quoes are solicited from fewer than all lending banks, FMR will solicit quotes from those banks which, on the basis of the facts and circumstances known at the time, it believes will offer loan interest rates as favorable to the borrowing Funds as comparable loans from the other banks with which one or more Funds have lending agreements. Applicants submit that these procedures provide a high level of assurance that quoted rates will be representative of the prevailing available bank loan rates.

11. Under the proposal, the portfolio managers for each participating Fund, other than the money market Funds, may provide the Cash Management Department with standing instructions to participate in the credit facility daily as a borrower or lender. A Fund would not participate in the credit facility as a lender unless it also elected to participate in FICASH or, in the case of money market Funds, unless the Fund would invent on any given day in FICASH. As in the case of FICASH, the Cash Management Department on each business day would collect data on the uninvested cash balances and borrowing requirements of all participating Funds, other than the money market Funds, from the Funds' custodians. With respect to the money market Funds, the portfolio managers would inform the Cash Management Department directly each day by a time or times specified by the Cash Management Department (initially mid-morning) of the amount of cash, if any, they wished to direct to the credit facility as a lender.[3] The money market Funds typically would not participate as a borrower because they rarely need to borrow cash to meet redemptions.

12. The Cash Management Department would allocate borrowing demand and cash available for lending among the Funds on an equitable basis, subject to certain administrative procedures applicable to all Funds, such as the time of filing requests to participate, minimum loan lot sizes, and the need to keep the number of transactions and associated administrative costs to a minimum. To reduce transaction costs, each single loan normally would be allocated in a manner that would minimize the number of participants necessary to complete the loan transaction.

13. Applicants expect that there typically would be far more available uninvested cash each day than borrowing demand.[4] Therefore, after the Cash Management Department has allocated cash for interfund loans, it would inform the money market Fund managers of the amount of loans, if any, made for each money market Fund so that the Fund managers may invest any remaining cash in FICASH or other available investments. With respect to other participating Funds, the Cash Management Department would follow standing instructions from the portfolio managers to invest the remaining amounts daily through FICASH.

14. No Fund would be permitted to participate in the proposed credit facility unless: (1) The Fund had obtained shareholder approval for its participation or, if such approval were not required by law, the Fund's prospectus and/or statement of additional information had disclosed at all times the possibility of the Fund's participation in the credit facility upon receipt of requisite regulatory approvals; (2) the Fund had fully disclosed all material information concerning the proposed credit facility in its prospectus and/or statement of additional information; and (3) the Fund's participation in the credit facility was consistent with its investment objective, fundamental investment limitations and/or Declaration of Trust or Partnership Agreement. Even if a Fund's participation in the credit facility were found not to require shareholder approval, each Fund would seek such approval unless it had previously obtained such approval or its prospectus and/or statement of additional information had at all times disclosed the possibility of its participation upon receipt of requisite regulatory approvals.

Applicant's Conditions

Applicants agree that any order granted on the application will be subject to the following conditions:

1. The interest rates to be charged to the Funds under the credit facility will be the average of the current FICASH repurchase agreement rate and a benchmark rate established periodically to approximate the lowest rate available from banks on loans to the Funds.

2. The Cash Management Department on each business day will compare the interfund loan rate set pursuant to the formula calculated as provided in condition 1 with the FICASH repurchase agreement rate negotiated that day and all short-term borrowing rates quoted to any of the Funds by any bank with which any Fund has a loan agreement. At least three such quotations will be obtained each day in which any Fund borrows through the credit facility prior to such borrowing. The Cash Management Department will make cash available for interfund loans only if the interfund loan rate is more favorable to the lending Fund than the FICASH rate and more favorable to the borrowing Fund than the lowest quoted bank loan rate.

3. If a Fund has outstanding borrowings from one or more banks, any interfund loans to the Fund (i) will be at an interest rate equal to or lower than any outstanding bank loan, (ii) will be secured at least on an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding bank loan that requires collateral, (iii) will have a maturity no longer than any outstanding bank loan (and in no event over seven days), and (iv) will provide that, if an event of default occurs under any agreement evidencing an outstanding bank loan, it will automatically (without need for action or notice by the lending Fund) constitute an immediate event of default under the interfund loan agreement entitling the lending Fund to call the loan (and exercise all rights with respect to any collateral) and that such call will be made if the lending bank exercises its right to call its loan under its agreement with the borrowing Fund.

4. A Fund may make an unsecured borrowing through the credit facility if its outstanding borrowings from all sources immediately after the interfund borrowing total less than 10% of its total assets, provided that if the Fund has a secured loan outstanding from any other lender, including but not limited to another Fund, the Fund's interfund borrowing will be secured on at least an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding loan that requires collateral. If a Fund's total outstanding borrowings immediately after an interfund borrowing would be between 10% and 15% of its total assets, the Fund may borrow only on a secured basis through the credit facility. A Fund could not borrow through the credit facility if its total outstanding borrowings immediately after the interfund borrowing were more than 15% of its total assets.

5. Before any Fund that has outstanding interfund borrowings may, through additional borrowings, cause its outstanding borrowings from all sources to exceed 10% of its total assets, the Fund must first secure each outstanding interfund loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan. If the total outstanding borrowings of a Fund with outstanding interfund exceeds 10% of its total assets for any other reason (such as a decline in net asset value or because of shareholder redemptions), the Fund will within one business day thereafter (i) repay all its outstanding interfund loans, (ii) reduce its outstanding indebtedness to 10% or less of its total assets, or (iii) secure each outstanding interfund loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan until the Fund's total outstanding borrowings cease to exceed 10% of its total assets, at which time the collateral called for by this condition 5 shall no longer be required. Until each interfund loan that is outstanding at any time that a Fund's toal outstanding borrowings exceeds 10% is repaid or the Fund's total outstanding borrowings cease to exceed 10% of its total assets, the Fund will mark the value of the collateral as is necessary to maintain the market value of the collateral to market each day and will pledge such additional collateal that secures each outstanding interfund loan at least equal to 102% of the outstanding principal value of the loan.

6. No equity, taxable bond, or money market Fund may loan funds through the credit facility if the loan would cause its aggregate outstanding loans through the credit facility to exceed 5%, 7.5%, and 10%, respectively, of its current net assets at the time of the loan.

7. A Fund's interfund loans to any one Fund will be limited to 5% of the lending Fund's net assets.

8. The duration of interfund loans will be limited to the time required to receive payment for securities sold, but in no event more than seven days. Loans effected within seven days of each other will be treated as separate loan transactions for purposes of this condition.

9. A Fund's borrowings through the credit facility, as measured on the day when the most recent loan was made, will not exceed 125% of the Fund's total net cash redemptions for the preceding seven calendar days.

10. All loans may be called on one business day's notice by a lending Fund and may be repaid on any day by a borrowing Fund.

11. A Fund's participation in the credit facility must be consistent with its investment policies and limitations and Declaration of Trust or Partnership Agreement.

12. The Cash Management Department will calculate total Fund borrowing and lending demand through the credit facility, and allocate loans on an equitable basis among Funds, without the intervention of the portfolio manager of any Fund. The Cash Management Department will not solicit cash for the credit facility from any Fund or prospectively publish or disseminate loan demand data to portfolio managers. The Cash Management Department will invest amounts remaining after satisfaction of borrowing demand in FICASH in accordance with standing instructions from portfolio managers or return remaining amounts for investment directly by the portfolio managers of the money market Funds.

13. FMR will monitor the interest rates charged and the other terms and conditions of the loans and will make a quarterly report to the Boards of Trustees of the Funds concerning their participation in the credit facility and the terms and other conditions of any extensions of credit thereunder.

14. Each Fund's Board of Trustees, including a majority of the Independent Trustees,

(a) Will review no less frequently than quarterly the Fund's participation in the credit facility during the preceding quarter for compliance with the conditions of any order permitting such transactions,

(b) Will establish the benchmark rate formula used to determine the interest rate on loans, and review no less frequently than annually the continuing appropriateness of such benchmark rate formula, and

(c) Will review no less frequently than annually the continuing appropriateness of the Fund's participation in the credit facility.

15. In the event an interfund loan is not paid according to its terms and such default is not cured within two business days from its maturity or from the time the lending Fund makes a demand for payment under the provisions of the interfund loan agreement, FMR will promptly refer such loan for arbitration to a retired Independent Trustee previously selected by the board of each Fund, who no longer has any fiduciary responsibilities to any Fund and who will serve as arbitrator of disputes concerning interfund loans. The arbitrator will resolve any problem promptly, and the arbitrator's decision will be binding on both Funds. The arbitrator will submit, at least annually, a written report to the boards setting forth a description of the nature of any dispute and the actions taken by the Funds to resolve the dispute.

16. Each Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any transaction under the credit facility occurred, the first two years in an easily accessible place, written records of all such transactions setting forth a description of the terms of the transaction, including the amount, the maturity and the rate of interest on the loan, the rate of interest available at the time on short-term repurchase

[3] In the event of any future change in the organizational structure of Fidelity Service Co., the Cash Management Department will remain at all times under the direct or indirect control of FMR Corp., the parent of FMR and Fidelity Service Co.

[3] Money market Fund managers would not delegate investment of cash balances to the Cash Management Department under standing instructions because Applicant believe that the investment objective of such Funds and the unique requirements of Rule 2a-7 require their direct management of all money market Fund assets, including short-term cash positions.

[4] Applicants represents that, while short-term bank borrowing by the Funds has reached as high as $900 million, short-term investments of up to seven days directly and through FICASH by the Fidelity Funds, other than the tax-free Funds, has recently ranged between $3.3 billion and $3.5 billion.

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agreements and commercial bank borrowings, and such other information

limitations on borrowing, and the percentage limitations on lending.

quality" by independent statistical rating organizations.

invest in short-term repurchase agreements or comparable short-term

[Release No. 35-24993]

to be deposited by the County with the trustee ("Trustee") under the indenture

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agreements and commercial bank borrowings, and such other information presented to the Fund's boards of trustees in connection with the review required by the conditions 13 and 14.

17. FMR will prepare and submit to the Fund boards for review an initial special report on the "Design of a System" with respect to the operations of the interfund credit facility prior to the commencement of operations of the facility, including a report thereon of its independent public accountants. A test program of modest duration involving actual transactions may be conducted prior to submission of the initial report to the boards. An appropriate single Fund which next files its Form N–SAR after Board Review of the initial report will file the report with its Form N–SAR, and the other Funds will incorporate the report by reference in their next Form N–SAR filings. Thereafter, an annual report on the "Design of a System and Certain Compliance Tests" with respect to the accounting control procedures of the credit facility which includes an opinion of the independent public accountants will be filed for two years (measured from the commencement of operations of the facility subsequent to the test program) with the Form N–SAR of an appropriate single Fund which next files its Form N–SAR after the release of such annual report and opinion, and the other Funds will incorporate each such annual report by reference in their next subsequent Form N–SAR filings. A Form of the independent public accountants' opinion is attached as an exhibit to the application.

The initial "Design" report and the annual "Design and Compliance Tests" report will each be prepared in accordance with the requirements of Statement of Auditing Standards No. 44 ("SAS 44") as it may be amended from time to time or pursuant to similar auditing standards as may be adopted by the American Institute of Certified Public Accountants from time to time, including reports of independent accountants thereon. Each SAS 44 report will include a description of the principal procedures used by the Cash Management Department to monitor compliance with certain of the conditions the Funds have agreed to as part of the relief requested. The principal procedures described in the initial "Design" report and the annual "Design and Certain Compliance Tests" reports will include, at a minimum, procedures that are designed to achieve the following objectives:

a. The Funds are required to comply with the net redemption and percentage limitations on borrowing, and the percentage limitations on lending.

b. The Funds are required to make loans only at the interfund rate and such rate must be higher than the FICASH rate but lower than the lowest daily quote rate for available borrowing.

c. The Funds are required to allocate borrowing and lending demand in accordance with procedures established by the boards of trustees.

d. If a Fund, at the time of its borrowing from a Fund, also has outstanding third-party borrowings, the interest rate on such interfund borrowing cannot exceed the interest rate on third-party borrowings.

e. The Funds are required to pledge collateral for interfund loans when and to the extent provided by the conditions to any order issued on the application.

f. The Funds are required to follow established procedures for binding arbitrations in instances in which a payment delay or other loan controversy exists.

Each annual SAS 44 report will consider compliance with the procedures designed to achieve the foregoing objectives. After the final annual SAS 44 report, compliance with the conditions to any order issued on the application will be considered by the external auditors as part of their internal accounting control procedures, performed in connection with Fund audit examinations, which form the basis, in part, of the auditors' report on internal accounting controls in Form N–SAR.

18. No Fund will be permitted to participate in the credit facility upon receipt of requisite regulatory approval unless the Fund has fully disclosed in its prospectus all material facts about its intended participation.

Applicants' Legal Analysis

1. Because of (i) the very high asset coverage requirement for all interfund loans, (ii) the high quality and liquidity of the assets covering the loans, (iii) the fact that all interfund loans having less than 1000% asset coverage will be fully collateralized, (iv) the requirement that if a lending bank requires collateral from a Fund, all interfund loans to the Fund will be similarly collateralized regardless of asset coverage level, (v) the ability to call interfund loans on any business day, and (vi) the fact that the Independent Trustees will exercise effective oversight of the interfund lending program as administered by FMR and its affiliates, the trustees consider that interfund loans would be equivalent in credit quality to other money-market instruments rated "high quality" by independent statistical rating organizations.

2. The trustees also consider that the program would involve no realistic risk resulting from potential conflicts of interest. FMR has no direct pecuniary interest in the administration of the program. FMR would administer the credit facility together with the Funds' existing bank loan agreements and the FICASH repurchase agreement facility as part of the Funds' overall cash management program. FMR administers this program under its existing management agreements with the Funds, and FMR would receive no additional compensation from its administration of the proposed credit facility.[5] Thus, FMR would administer the facility as a disinterested fiduciary.

3. The interfund lending program does not involve any potential that one Fund might receive a preferential rate to the disadvantage of another Fund. Under the credit facility, the Funds would neither negotiate interest rates between themselves, nor would FMR set rates in its discretion. Rather, rates would be set pursuant to a preestablished formula, approved by the trustees, which would be a function of the current rates quoted by independent third-parties for short-term bank borrowing and for short-term repurchase agreements. All Funds participating in the credit facility on any given day would receive the same rate.

4. The proposed credit facility is consistent with the overall purpose of sections 17(a)(3) and 21(b). These sections are intended to prevent a party with strong potential adverse interests and influence over the investment decisions of a registered investment company from causing or inducing the investment company to engage in lending transactions that are detrimental to the best interests of the investment company and its shareholders. The proposed transactions do not raise such concerns because (i) FMR would administer the program as a disinterested fiduciary, (ii) all loans made by any Fund to another Fund would consist only of uninvested cash reserves that the Fund otherwise would invest in short-term repurchase agreements or comparable short-term instruments either directly or through FICASH, (iii) the interfund loans would not involve a significantly greater risk than such other investments, (iv) the lending Fund would receive interest at a rate higher than it could obtain through such other investments, and (v) the borrowing Fund would pay interest at a rate lower than otherwise available to it under its bank loan agreements. Moreover, the proposed conditions would effectively preclude the possibility of any undue advantage.

5. For the reasons discussed above, each Applicant's participation in the credit facility is consistent with the standards of section 17(d) and Rule 17d–1. Each Applicant's participation in the credit facility would not involve overreaching or unfair advantage over any other Applicant, would be consistent with the provisions, policies, and purposes of the Act, and participation by each Fund would be on terms that are no different from or less advantageous than that of other participating Funds.

6. Applicants submit that the credit facility would not involve the type of abuse at which section 12(d)(1) was directed. Section 12(d)(1) was intended to prevent the pyramiding of the purpose of the proposed credit facility is to save money for all participating Funds and there would be no duplicative costs to the Funds or their shareholders.

7. Applicants also submit that the credit facility would not involve the type of abuse that section 18(f)(1) was intended to prevent. Applicants seek relief from section 18(f)(1) to the limited extent necessary to allow a Fund to borrow from other Funds in amounts, as measured on the day when the most recent loan was made, not to exceed 125% of the borrowing Funds net cash redemptions for the preceding seven calendar days. Applicants would be subject to all of the proposed conditions, including the percentage and collateral limitations on interfund borrowings. The Funds would remain subject to the requirement of section 18(f)(1) that all borrowings of a Fund, including interfund and bank borrowings, have at least 300% asset coverage.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-29209 Filed 12-14-89; 8:45 am]

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[5] FMR affiliated companies may collect standard pricing and bookkeeping fees applicable to repurchase and lending transactions generally, including transactions effected through the credit facility. Although current agreements with the Funds do not provide for transaction fees to FMR or its affiliates in connection with bank loans, such fees might be approved by the Funds' trustees at some future date. Should this occur, the fees for interfund loan transactions would be no higher than those applicable for comparable bank loan transactions and would not exceed $7.50 (as adjusted for inflation from 1989) per interfund transaction or service performed.

[Release No. 35-24993]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

December 7, 1989.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by January 2, 1990 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Appalachian Power Company (70–6171)

Appalachian Power Company ("Appalachian"), 40 Franklin Road, SW., Roanoke, Virginia 24011, an electric utility subsidiary company of American Electric Power Company, Inc., a registered holding company, has filed a post-effective amendment to its application-declaration under sections 9(a) and 10 of the Act.

By Commission order dated June 30, 1978 (HCAR No. 20610), Appalachian was authorized to enter into an agreement ("Agreement") with Mason County, West Virginia ("County") concerning the financing of pollution control facilities ("Facilities") at Appalachian's Philip Sporn and Mountaineer plants. Under the Agreement the County is to issue and sell its pollution control revenue bonds ("Revenue Bonds"), in one or more series. The proceeds from such sales are to be deposited by the County with the trustee ("Trustee") under the indenture ("Indenture") entered into between County and the Trustee pursuant to which Indenture the Revenue Bonds are issued and secured. The proceeds will then be applied to the payment of the costs of construction of the Facilities, originally estimated at $120 million or, in the case of proceeds from the sale of refunding bonds, to the payment of the principal, premium (if any) and/or interest on Revenue Bonds to be refunded. Appalachian conveyed an undivided interest in a portion of the Facilities to the County, which portion the County sold to Appalachian under an installment sales arrangement requiring Appalachian to pay as the purchase price semi-annual installments in such an amount (together with other monies held by the Trustee under the Indenture for that purpose) as to enable the County to pay, when due, the interest and principal on the Revenue Bonds. Jurisdiction was reserved in the order of June 30, 1978, with respect to the payment of the purchase price of the Facilities by installment payments insofar as such payments were affected by the interest rate or rates of Revenue Bonds to be issued and sold by the County.

By orders dated June 30, 1978, June 14, 1979, February 20, 1981, January 25, 1984, April 6, 1984 and March 14, 1985 (HCAR Nos. 20610, 21103, 21927, 23208, 23277, 23630), such jurisdiction was released concerning the sale of Revenue Bonds in the principal amounts of $40 million, $50 million, $40 million, $30 million, $30 million, and $30 million, respectively, as such sales affected the purchase price to Appalachian.

It is now stated that the County will issue and sell an additional series of Revenue Bonds in the aggregate principal amount of $30 million, the net proceeds from the sale of which will be used to provide for the principal payment required for the refunding, prior to their stated maturity, of $30 million principal amount of Pollution Control Revenue Bonds (Appalachian Power Company Project), Series F, 8¾% maturing on March 1, 2014. The Revenue Bonds will be issued under and secured by the Indenture and a sixth supplemental indenture, will bear interest semi-annually and will mature at a date or dates not more than thirty years from the date of issuance. Appalachian states that it will not agree to the issuance of any Series G Bond by the County if the rate of interest to be borne by any such Revenue Bonds shall exceed 8% per annum. It is contemplated that the Revenue Bonds will be sold by

the County pursuant to arrangements with Goldman Sachs & Co. as

the aggregate amounts so obtained from Consolidated for financing leveraged

Trust Company ("Owner Trustee" or "Lessor"), trustee under one or more

[File No. 500–1]

Tzaar Corp. and Simco Data Group, Inc.; Order of Suspension of Trading

became effective on September 6, 1988, and are incorporated in 17 CFR part 200.

following the completion of the self-evaluation and will be open to public inspection, along with the Commission's

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the County pursuant to arrangements with Goldman Sachs & Co. as underwriter. Appalachian requests authority to alter the terms of its payments of the purchase price of the Facilities insofar as such payments will reflect the new terms of the Revenue Bonds.

Consolidated Natural Gas Company, et al. (70-7567)

Consolidated Natural Gas Company ("Consolidated"), a registered holding company, and its subsidiary, CNG Financial Services, Inc. ("Financial"), both located at CNG Tower, Pittsburgh, Pennsylvania 15222-3199 have filed a post-effective amendment to an application-declaration under sections 6(a), 7, 9(a), 10, and 12(b) of the Act and Rule 45 thereunder.

By prior Commission order in this matter, Consolidated was authorized to form Financial to engage in the investment in leverage leases (HCAR No. 24805, January 12, 1989). The order authorized Financial to seek one or more investment firms for the purpose of together acquiring an interest in one or more joint ventures ("Joint Ventures") to invest as equity participants in leverage issues. The order further authorized Consolidated to provide financing up to an aggregate of $100 million to Financial through December 31, 1989 to fund the leverage leasing activities of Financial. The Commission reserved jurisdiction over the terms and conditions of the debt and equity components of the leverage leasing transactions and over the fees to be charged by any advisor or partner in such transactions. Financial states that to date, it has not engaged in any leverage lease transactions.

Consolidated and Financial now propose to allow Financial to engage in certain preliminary leverage leasing activities through December 31, 1991. Financial states that authorization to consummate the formation of specific Joint Ventures with investment firms (on such terms as defined in the January 12, 1989 Order) and to engage in specific leverage leasing transactions, including the terms and conditions of the debt and equity components thereof and related fees, will be the subject of one or more subsequent post-effective amendments to this filing.

It is proposed that Financial will from time to time, through December 31, 1991 obtain necessary funding from Consolidated for leveraged lease financings through: (a) The sale of Financial common stock, 10,000 par value; (b) open account advances; or (c) long-term loans, in any combination of the foregoing and in such amounts that the aggregate amounts so obtained from Consolidated for financing leveraged leasing will not at any time exceed $100 million. Financial also proposes to, from time to time, purchase from Consolidated shares of Financial's common stock, $10,000 par value, hold such acquired shares as treasury shares, and resell such shares to Consolidated.

The open account advances and long-term loans will have the same effective terms and interest rates as related borrowings from Consolidated. Consolidated and Financial state that open account balances made to Financial will bear the same interest rate as open account balances made to participants in the Consolidated System Money Pool authorized by the Commission (HCAR No. 24128, June 12, 1986). If there are no corresponding outstanding borrowings of Consolidated, such borrowings by Financial would carry the following interest rates: open account advances—the federal funds' effective rate as quoted daily by the Federal Reserve Bank of New York; and long-term loans—the indicative rate for comparable debt issuances published in "Salomon Brothers Inc. Bond Market Roundup" dated nearest to the time of takedown.

AEP Generating Company; Indiana Michigan Power Company (70-7621)

AEP Generating Company ("AEGCo") and Indiana Michigan Power Company ("I&M") (collectively, "Applicants"), both located at 1 Riverside Plaza, Columbus, Ohio 43215, subsidiary companies of American Electric Power Company, Inc. ("AEP"), a registered holding company, have filed a post-effective amendment to their application-declaration pursuant to sections 9(a), 10, 12(b), 12(c) and 12(d) of the Act and Rules 44, 45 and 46 thereunder.

By prior Commission orders dated April 25, 1989, June 22, 1989 and November 21, 1989 (HCAR Nos. 24872, 24910 and 24989), Applicants were authorized to enter into one or more transactions involving the sale and leaseback pursuant to a net lease or leases (collectively, "Lease") of their respective 50% undivided ownership interests ("Undivided Interests") in Rockport Generating Station Unit No. 2 ("Rockport 2") located in Spencer County, Indiana. Applicants expect that the maximum aggregate fair market value of their Undivided Interests in Rockport 2 will not exceed $1.7 billion. To effectuate this transaction, Applicants will enter into participation agreements providing for the sale of their Undivided Interests to Wilmington Trust Company ("Owner Trustee" or "Lessor"), trustee under one or more trust agreements (collectively, "Owner Trust") between the Owner Trustee and five or more institutional equity investors ("Owner Participants"), and simultaneously Applicants will lease their Undivided Interests back from the Owner Trustee pursuant to the Lease which will not exceed a term of 33 years. It was proposed that approximately 15-25% of the Lessor's cost would be provided by the Owner Participants through their equity investment in the Owner Trust and 75-85% would be borrowed by the Owner Trustee.

With respect to that portion of the Lessor's cost to be borrowed, approximately $937 million of interim financing will be provided by one or more domestic or foreign financial institutions in return for nonrecourse notes ("Initial Series Notes") of the Lessor. Long-term financing of up to $750 million of privately-placed bonds was also authorized of which approximately $468 million will be issued. Jurisdiction was reserved over the terms of any additional long-term financing insofar as the Lease payments by the Applicants would be affected.

In order to refund the Initial Series Notes, Applicants now propose that authorization be given allowing the public offering of up to an aggregate amount of $950 million principal amount of long-term bonds ("Public Bonds"), by RGS (I&M) Funding Corporation and RGS (AEGCo) Funding Corporation, non-affiliates of Applicants. The Public Bonds will be issued by each funding corporation in one or more series. The maturity of any series of Public Bonds will not exceed thirty-three years nor will any such series of Public Bonds bear interest at a rate in excess of 11.1%. Interest on all Public Bonds will be payable semi-annually in arrears. Applicants state that in no event will any borrowings incurred in connection with the proposed transaction or in connection with those heretofore approved, in the aggregate, exceed 85% of the $1.7 billion purchase price of Rockport 2 or $1.445 billion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-29205 Filed 12-14-89; 8:45 am]

BILLING CODE 8010-01-M

[File No. 500-1]

Tzaar Corp. and Simco Data Group, Inc.; Order of Suspension of Trading

December 11, 1989.

It appears to the Securities and Exchange Commission that there is a lack of adequate and accurate current information concerning the securities of Tzaar Corporation and Simco Data Group, Inc., and that questions have been raised about the adequacy and accuracy of the publicly disseminated information concerning, among other things, the identities of shareholders, the corporate history and the claims for exemption from the registration provisions of the Securities Act of 1933 made by these companies and pursuant to which their securities are trading. Among other things, substantial questions have been raised about the true ownership of shares in these corporations, and whether the issuers have distributed or are distributing securities in violation of the registration provisions of the Securities Act of 1933. The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed companies, over-the-counter or otherwise, is suspended for the period from 9:30 a.m. EST, December 11, 1989 through 11:59 p.m. EST, on December 20, 1989.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-29204 Filed 12-14-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27510; File No. S7-30-89]

Request for Comments on Self-Evaluation Study conducted under Section 504 of the Rehabilitation Act of 1973

AGENCY: Securities and Exchange Commission.

ACTION: Request for comments.

SUMMARY: On July 8, 1988, the Commission participated with other Federal agencies by issuing final rules in the **Federal Register**, 53 FR 25872, to implement section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794). Section 504, as amended, prohibits discrimination on the basis of handicap in programs or activities conducted by federal executive agencies. The Commission's rules became effective on September 6, 1988, and are incorporated in 17 CFR part 200. Also, source documentation is contained in SECR 6-23, dated July 19, 1988.

17 CFR 200.610 requires the Commission to conduct a self-evaluation of its compliance with section 504 and to provide interested persons with an opportunity to participate in the process by submitting oral or written comments. As part of the evaluation process, the staff has prepared a written review of its compliance efforts. Interested persons may obtain access to the self-evaluation file.

DATE: Comments must be submitted on or before January 5, 1990.

ADDRESSES: Written comments should be sent to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth St. NW., Washington, DC 20549. Comments should be filed in triplicate and refer to File No. S7-30-89. Verbal comments may be submitted to Nancy A. Wolynetz, Selective Placement Coordinator, 202-272-2550 (voice) or 202-272-2552 (TDD).

FOR FURTHER INFORMATION CONTACT: Nancy A. Wolynetz, Selective Placement Coordinator, Securities and Exchange Commission, 450 Fifth St. NW., Washington, DC 202-272-2550 (voice) or 202-272-2552(TDD).

The Commission was established in 1934. The Commission's principal principal responsibilities are the administration and enforcement of the Federal Securities Laws.

SUPPLEMENTARY INFORMATION: The Commission was established in 1934. The Commission's principal responsibilities are the administration and enforcement of the Federal Securities Laws.

On July 8, 1988 the Commission joined with other federal agencies in issuing final rules to implement section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits discrimination on the basis of handicap in executive agency programs or activities. *See* 53 FR 25872. These rules were based on a prototype developed by the Department of Justice and were adopted by the Commission as part 200 of its regulations. 17 CFR 200, subpart L. 17 CFR 200.610 requires that the Commission evaluate its policies and practices in light of Section 504 and provide an opportunity to interested persons, including those with handicaps or organizations representing persons with handicaps, to participate in this self-evaluation by submitting oral or written comments. Oral comments received will be converted into a written record for public inspection. Comments received will be kept for three years following the completion of the self-evaluation and will be open to public inspection, along with the Commission's own description of areas examined, any problems identified and any modifications made.

The Commission has conducted its review and is now requesting comments to complete the self-evaluation. A brief summary of some of the Commission's implementation efforts follows: An accessibility study of the Headquarters Office and regional offices was completed and is presently being evaluated. Every hearing-impaired employee either has his/her own TDD or immediate access to a TDD. Additionally, there are TDD's in the Office of Personnel (receptionist area), and in the Office of Selective Placement Coordinator who is located in the Office of Personnel. The Office of Consumer Affairs and Office of Public Affairs also have TDD's for communication with employees and the general public. The location and telephone numbers of these devices are listed in the SEC telephone directory with instructions for their use. Also, the SEC Employee Newsletter periodically contains articles illustrating the use of these devices. The Commission has a contract with a sign language association to ensure that employees and the general public who are hearing impaired will be able to communicate in day to day activities. The contract includes scheduled times each week and also is available on an as-needed basis.

Reading materials also are available in alternate forms. A pamphlet, SEC 1678 (3/89), lists publications available to the public which includes a statement that these publications can be requested in other than a written mode. Also, written notices of public meetings include a statement that auxiliary aids will be available to persons who are handicapped so that they will be able to fully participate in the meetings.

Interested persons may obtain access to the Commission's self-evaluation file by contacting Nancy A. Wolynetz, Selective Placement Coordinator, Office of Personnel, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, telephone number 202-272-2550 (voice) 202-272-2552 (TDD).

Dated: December 6, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-29203 Filed 12-14-89; 8:45 am]

BILLING CODE 8010-01-M

VOL 54 ISS 240 DE 15 1989 UMI

DEPARTMENT OF TRANSPORTATION

[Docket No. 37554]

Notice of Order Adjusting the Standard Foreign Fare Level Index

The International Air Transportation Competition Act (IATCA), Public Law 96–192, requires that the Department, as successor to the Civil Aeronautics Board, establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seat-mile. Order 80–2–69 established the first interim SFFL and Order 89–10–5 set the currently effective two-month SFFL applicable through November 30, 1989.

In establishing the SFFL for the two-month period beginning December 1, 1989, we have projected nonfuel costs based on the year ended September 30, 1989 data, and have determined fuel prices on the basis of the latest experienced monthly fuel cost levels as reported to the Department.

By Order 89–12–17 fares may be increased by the following factors over the October 1, 1979, level:

Atlantic	1.2583
Latin America	1.2829
Pacific	1.6050
Canada	1.3879

For further information contact: Keith A. Shangraw (202) 366–2439.

By the Department of Transportation.

Dated: December 8, 1989.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 89–29183 Filed 12–14–89; 8:45 am]

BILLING CODE 4910–62–M

Coast Guard

[CGD8–89–15]

Eighth Coast Guard District Industry Day

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: On 10 January 1990, the Commander, Eighth Coast Guard District will sponsor an Industry Day program to provide for a.. exchange of ideas, opinions and information concerning developments affecting the Coast Guard and the maritime community as well as related industries. The Industry Day program will be held at the Sheraton-New Orleans in New Orleans, LA.

The format for the day will be as follows:

7:15 am Registration begins
8:00 am General session; greeting, opening remarks
8:30 am Group discussions; four separate, small group discussions focusing on the Deep Sea Industry, Offshore Oil/Support Industry, Towing Industry and Shore Side Facilities.
11:00 am No host cocktails
12:00 am No host lunch (cost $20.00)
1:30 am General Session
3:00 am Break
3:30 am Reconvene General Session
5:00 am Adjourn

Persons desiring to attend the program are encouraged to provide additional topics for consideration. Preregistration for the program is required. Contact the below named officer to submit topics for discussion and to obtain registration forms. Topic suggestions and lunch reservations must be received by 27 December 1989.

DATE: 10 January 1990, 8:00 am to 5:00 p.m.

ADDRESS: Sheraton-New Orleans Hotel, 500 Canal Street, New Orleans, LA 70130.

FOR FURTHER INFORMATION CONTACT: LCDR Robert L. Knapp, USCG, c/o Commander (mvs), Eighth Coast Guard District, Hale Boggs Federal Building, Room 1341, 501 Magazine Street, New Orleans, LA 70130–3396; telephone number (504) 589–6271.

Dated: December 5, 1989.

W. F. Merlin,

Rear Admiral U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 89–29261 Filed 12–14–89; 8:45 am]

BILLING CODE 4910–14–M

National Highway Traffic Safety Administration

[Docket No. 90–01–EX–N01]

Receipt of Petition for Temporary Exemption From Standard No. 208

Officine Alfieri Maserati S.p.A. of Modena, Italy, through Maserati Automobiles Incorporated of Baltimore, MD, has petitioned for a temporary exemption from the passive restraint requirements of Motor Vehicle Safety Standard No. 208 *Occupant Restraint Systems.* The exemption would cover its convertible models, and expire May 31, 1991. The basis of the petition is that compliance would cause the petitioner substantial economic hardship, and that it has, in good faith, attempted to comply with Standard No. 208, as required by 15 U.S.C. 1410(a)(1)(A).

This notice of receipt of the petition is published in accordance with the regulations of the National Highway Traffic Safety Administration (49 CFR Part 555), and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

A manufacturer is eligible to apply for a hardship exemption if its total motor vehicle production in its most recent year of production does not exceed 10,000, as determined by the NHTSA Administrator (Section 1410(d)(1)). During the 12-month period ending July 31, 1989, Maserati produced a total of 3,155 passenger cars. Although two other motor vehicle manufacturers, Chrysler Corporation and G.B.M. S.p.A. (Benelli motorcycles), hold interests in Maserati, NHTSA has previously determined that neither manufacturer can be considered the manufacturer of Maserati passenger cars by virtue of being a sponsor, and that Maserati is eligible to apply for a hardship exemption (53 FR 28324, at 28325).

Maserati's long-term goal is to develop an air bag system for use in all models. Following NHTSA's denial of its previous petition in August 1988 (53 FR 34629) for an exemption from Standard No. 208 until September 1, 1989, Maserati developed an automatic belt system for its closed vehicles. This system could not be installed in convertibles, and the effort expended in its development delayed Maserati's efforts to achieve compliance through an air bag system. However, it believes that it will be able to install an air bag system in its convertibles by June 1991. In the meantime, however, it will be unable to sell convertibles in the U.S. market absent an exemption. The convertible presently accounts for 40 to 50 percent of the company's sales in the United States, and Maserati estimates that it may rise to 60 to 70 percent of its U.S. volume as demand for its closed cars lessens. Maserati further estimates that a total of approximately 350 convertibles would be covered by an exemption if granted for the period of time requested.

In addition to the potential loss of sales, and in further support of its hardship argument, Maserati calls NHTSA's attention to its declining production over the past few years, from a high of approximately 5000 cars in 1985, to a low of about 3000 in 1988, the U.S. sales portion of that figure declining from 2000 to 650 units respectively. The petitioner's cumulative losses for 1987 and 1988 exceed $44,000,000, and those of its U.S. sales representative, $11,600,000.

Notwithstanding these losses, in those years Maserati expended $10,600,000 "on research and development in good faith effort to build a product in compliance with required standards." Between $500,000 and $600,000 of this has been expended in the past year on passive belt development. Future costs to be incurred in air bag development are expected to total an additional $1,100,000.

The company also argued that an exemption would be consistent with the public interest and the objectives of the Vehicle Safety Act. A denial would mean a cessation of importation depriving the U.S. market "of the products of one of the last small independent automobile manufacturers", one which has a 70-year history. It does not believe that the number of vehicles to be exempted will have a material effect upon motor vehicle safety, as they will be equipped with 3-point restraint systems acceptable until September 1 of this year. Most importantly, granting the petition will allow Maserati to offer air bags sooner and in more vehicles than if the petition is denied. The economic benefits of continued sales will allow greater research and development. Once the air bag is installed in convertibles, its installation in closed cars will follow shortly thereafter. With an exemption, Maserati hopes to provide a passenger side air bag by December 1991, "some 2 years before they are required."

Interested persons are invited to submit comments on the petition of Maserati described above. Comments should refer to the docket number and be submitted to Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered. The petition and supporting materials, and all comments received, are available for examination in the docket both before and after the closing date. Comments received after the closing date will be considered to the extent practicable. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: January 4, 1990.

(15 U.S.C. 1410; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on December 11, 1989.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 89–29184 Filed 12–14–89; 8:45 am]

BILLING CODE 4910–59–M

Research and Special Programs Administration

International Standards on the Transport of Dangerous Goods; Public Meeting

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice is to advise interested persons that RSPA, in conjunction with the International Regulations Committee (INTEREC) of the Hazardous Materials Advisory Council, will conduct a public meeting (1) to exchange views on proposals submitted to the second session of the United Nation's Sub-Committee of Experts on the Transport of Dangerous Goods and (2) to report the results of the 12th session of the International Civil Aviation Organization's Dangerous Goods Panel.

DATE: January 4, 1990 at 9:30 a.m.

ADDRESS: Room 8334, Nassif Building, 400 Seventh Street SW., Washington, DC, 20590.

FOR FURTHER INFORMATION CONTACT: Frits Wybenga, International Standards Coordinator, Office of Hazardous Materials Transportation, Department of Transportation, Washington, DC 20590; (202) 366–0656.

SUPPLEMENTARY INFORMATION: This meeting will in part be held in preparation for the second session of the Sub-committee of Experts on the Transport of Dangerous Goods to be held 15 to 26 January 1990 in Geneva. During ths meeting the U.S. position on proposals submitted to the second session of the Sub-Committee will be discussed. Topics to be covered include classification and grouping criteria for self-reactive substances; application of performance packaging test requirements to minor variations of previously tested combination packages; requirements for infectious substances; revision of the classification and grouping criteria for gases; adoption of a generic classification system for all classes of dangerous goods and other proposed amendments to the United Nations Recommendations on the Transport of Dangerous Goods. A second purpose for the meeting will be to review the results of the 12th session of the International Civil Aviation Organization's (ICAO) Dangerous Goods Panel. Agreed amendments to the ICAO Technical Instructions for the Safe Transport of Dangerous Goods by Air will be discussed.

Issued in Washington, DC, on December 11, 1989.

Elaine Economides Joost,

Deputy Director, Office of Hazardous Materials, Transportation

[FR Doc. 89–29215 Filed 12–14–89; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirments Submitted to OMB for Review

December 11, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue NW, Washington, DC 20220.

Internal Revenue Service

OMB Number: New.
Form Number: None.
Type of Review: Reinstatement.
Title: Records (26 CFR 1.6001–1).
Description: Internal Revenue Code section 6001 requires, in part, that every person liable for tax, or for the collection of that tax, keep such records and comply with such rules and regulations as the Secretary may from time to time prescribe. These records are needed to ensure proper compliance with the Code.
Respondents: Individuals or households, State or local governments, Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.
Estimated Number of Respondents: 1.
Estimated Burden Hours Per Response: 1 hour.
Frequency of Response: Other.
Estimated Total Reporting Burden: 1 hour.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW, Washington, DC 2024.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive

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Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 89-29256 Filed 12-14-89; 8:45 am]

BILLING CODE 9810-25-M

Fiscal Service

1990 Fee Schedule for the Transfer of U.S. Treasury Book-Entry Securities Held at Federal Reserve Banks

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury has determined that the schedule of fees to be used in 1990 for assessing charges on the transfer of book-entry Treasury securities between accounts of depository institutions maintained at Federal Reserve Banks and Branches will remain unchanged from the levels effective in 1989.

EFFECTIVE DATE: January 2, 1990.

FOR FURTHER INFORMATION CONTACT:

Carl M. Locken, Jr., Assistant Commissioner (Financing), Bureau of the Public Debt, Room 534, E Street Building, Washington, DC 20239-0001 (202) 376-4350.

William A. Saunders, Government Securities Specialist, Bureau of the Public Debt, Room 534, E Street Building, Washington, DC 20239-0001 (202) 376-4350.

SUPPLEMENTARY INFORMATION: On October 1, 1985, the Department of the Treasury established a fee schedule for the transfer of Treasury book-entry securities between accounts of depository institutions maintained at Federal Reserve Banks and Branches. The Treasury fee schedule was revised effective January 3, 1989, to include certain previously excluded securities transfers in the fee structure and to increase the Treasury portion of the fees to offset the anticipated increase in the cost of providing the Treasury transfer service.

Based on the latest review of book-entry costs and volumes, the Treasury has determined that the fees for securities transfers in 1990 should remain virtually unchanged from the levels currently in effect. There will be one change in the fee structure, to eliminate the fee currently charged for the received portion (deposit) of an off-line account switch. An account switch is the transfer of a security from one book-entry sub-account to another book-entry sub-account of the same depository institution.

Although Treasury has decided to maintain the same level of fees for book-entry transfers for 1990, the Department has also stipulated the need for making an extensive evaluation of costs and fees in 1990 due to several important factors affecting the book-entry environment, such as the Government Securities Clearing Corporation ("GSCC") netting program which will likely reduce the volume of Treasury security transfers processed, and the development costs of a future book-entry system.

The fees described in this notice apply only to the transfer of Treasury book-entry securities. The Federal Reserve System assesses fees to recover the costs associated with the processing of the funds component of Treasury book-entry transfer messages, as well as the costs of providing book-entry services for Government agencies. The Federal Reserve fees for those services are set out in a separate notice published November 7, 1989, by the Board of Governors of the Federal Reserve System.

The following is the Treasury fee schedule that will be effective January 2, 1990, for the Treasury book-entry transfer service:

1990 Fee Schedule

	Cost per transfer
On-line transfers originated	$1.65
On-line reversal transfers received	$1.65
Off-line transfers originated	$6.40
Off-line transfers received	$6.40
Off-line reversal transfers received	$6.40

Dated:

Marcus W. Page,

Acting Fiscal Assistant Secretary.

[FR Doc. 89-29237 Filed 12-14-89; 8:45 am]

BILLING CODE 4810-10-M

UNITED STATES INFORMATION AGENCY

United States Advisory Commission on Public Diplomacy

A meeting of the U.S. Advisory Commission on Public Diplomacy will be held December 20, 1989 in Room 600, 301 4th Street, SW., Washington, DC from 10:15 a.m. to 11:15 a.m.

The Commission will meet with Mr. Michael Pistor, Counselor, USIA; Mr. Dell Pendergrast, Deputy Director for Eastern Europe and the Soviet Union, USIA; Mr. Csaba Chikes, Deputy Director-designate for Eastern Europe and the Soviet Union, USIA; and Ms. Carol Ludwig, Director, Foreign Press Centers, for a discussion of USIA's role at the Malta summit and the public diplomacy outlook in the Soviet Union and Eastern Europe.

Please Call Gloria Kalamets, (202) 485-2468, if you are interested in attending the meeting since space is limited and entrance to the building is controlled.

Dated: December 11, 1989.

Ledra L. Dildy,

Management Analyst, Federal Register Liaison.

[FR Doc. 29314 Filed 12-14-89; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 240
Friday, December 15, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMISSION ON CIVIL RIGHTS

December 12, 1989.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 54 FR 50662 (Friday, December 8, 1989).

PLACE: 1121 Vermont Avenue, NW., Washington, DC 20425.

TIME AND DATE: Friday, December 15, 1989, 9:00 a.m.-12:00 Noon.

STATUS: The meeting, scheduled for the place, time, and date shown above, has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: Barbara Brooks, Press and Communications Division, (202) 376-8312.

Jeffrey P. O'Connell,

Acting Solicitor (202) 376-8514.

[FR Doc. 89-29333 Filed 12-12-89; 4:27 pm]

BILLING CODE 6335-01-M

POSTAL SERVICE BOARD OF GOVERNORS

Notice of Vote to Close Meeting

At its meeting on December 4, 1989, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting scheduled for January 8, 1990, in Washington, DC. The members will discuss (1) Preparations for the rate case filing and (2) possible strategies in collective bargaining negotiations.

The meeting is expected to be attended by the following persons: Governors Alvarado, del Junco, Griesemer, Hall, Mackie, Nevin, Pace, Ryan and Setrakian; Postmaster General Frank, Deputy Postmaster General Coughlin, Secretary to the Board Harris, and General Counsel Cox.

As to the first item, the Board determined that pursuant to section 552b(c)(3) of title 5, United States Code, and § 7.3(c) of title 39, Code of Federal Regulations, discussion of this matter is exempt from the open meeting requirement of the Government in the Sunshine Act, [5 U.S.C. 552b(b)], because it is likely to disclose information in connection with proceedings under chapter 36 of title 39 (having to do with postal ratemaking, mail classification and changes in postal services), which is specifically exempted from disclosure by section 410(c)(4) of title 39, United States Code.

The Board has determined further that pursuant to section 552b(c)(10) of title 5, United States Code, and § 7.3(j) of title 39, Code of Federal Regulations, the discussion is exempt because it is likely to specifically concern the participation of the Postal Service in a civil action or proceeding or the litigation of a particular case involving a determination on the record after opportunity for a hearing. The Board further determined that the public interest does not require that the Board's discussion of this matter be open to the public.

As to the second item, the Board determined that pursuant to section 552b(c)(3) of title 5, United States Code, and § 7.3(c) of title 39, Code of Federal Regulations, this portion of the meeting is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552(b)] because it is likely to disclose information prepared for use in connection with the negotiation of collective bargaining agreements under chapter 12 of title 39, United States Code, which is specifically exempted from disclosure by section 410(c)(3) of title 39, United States Code.

In accordance with section 552b(f)(1) of title 5, United States Code, and § 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting may properly be closed to public observation pursuant to section 552b(c)(3) and (10) of title 5, United States Code; section 410(c)(3) and (4) of title 39, United States Code; and § 7.3 (c) and (j) of title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268-4800.

David F. Harris,

Secretary.

Paul J. Kemp,

Certifying Officer.

[FR Doc. 89-29343 Filed 12-13-89; 10:33 am]

BILLING CODE 7710-12-M

RESOLUTION TRUST CORPORATION

Notice of changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 3:35 p.m. on Tuesday, December 12, 1989, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C. C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency) and Director M. Danny Wall (Director of the Office of Thrift Supervision), that Corporation business required the withdrawal of the following item from the "*Discussion Agenda*" on less than seven days' notice to the public:

Item A: Resolution Programs for Minority Institutions

The Board further determined, by the same majority vote, that Corporation business required the addition of the following item to the "*Discussion Agenda*" for consideration at the meeting on less than seven days' notice to the public:

Item E: Policy Statement Regarding Qualified Financial Contracts.

The Board further determined, by the same majority vote, that no earlier notice of these changes in the subject matter of the meeting was practicable.

Dated: December 13, 1989.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 89-29352 Filed 12-13-89; 11:48 am]

BILLING CODE 6714-01-M

Corrections

Federal Register
Vol. 54, No. 240
Friday, December 15, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 655

[Docket No. 90764-9261]

Atlantic Mackerel, Squid, and Butterfish Fisheries

Correction

In proposed rule document 89-27074 beginning on page 47799 in the issue of Friday, November 17, 1989, make the following correction:

The table appearing on pages 47799 and 47800 was incorrectly published and is republished below.

TABLE—PRELIMINARY INITIAL ANNUAL SPECIFICATIONS FOR ATLANTIC SQUIDS AND BUTTERFISH FOR THE 1990 FISHING YEAR, JANUARY 1 THROUGH DECEMBER 31, 1990

[In metric tons (mt)]

Specifications	Squid		Butterfish
	Loligo	Illex	
Max OY [a]	44,000	30,000	16,000
ABC [b]	37,000	22,500	16,000
IOY	25,010	15,000	10,019
DAH	25,000	15,000	10,000
DAP	25,000	12,000	10,000
JVP	0	3,000	0
TALFF	10	0	19

[a] Max OY as sated in the FMP.
[b] IOY can rise to the amount.

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1 and 2

[Docket No. 90383-9221]

RIN 0651-AA40

Patent and Trademark Automated Search System Fees

Correction

In rule document 89-28791 beginning on page 50942 in the issue of Monday, December 11, 1989, make the following corrections:

1. On page 50944, in the first column, in paragraph 1., in the fifth line, insert "available" following "commercially".

2. On page 50946, in the third column, directly below the table, in the second line, insert "usage" following "projected".

§ 1.21 [Corrected]

3. On page 50949, in the second column, in § 1.21(o), in the eighth line, "Patient" should read "Patent".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-3615-9]

Standards of Performance for New Stationary Sources; Appendix A—Reference Methods; Amendments to Methods 15 and 16

Correction

In rule document 89-23963 beginning on page 46236 in the issue of Thursday, November 2, 1989, make the following corrections:

1. On page 46239, in the second column, in paragraph 3., in the fifth line, "=" should read "—".

2. On page 46241, in the second column, in paragraph 5.2 *Dilution System.*, the text of the paragraph should be in roman type.

BILLING CODE 1505-01-D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1

[PR Docket No. 88-567; FCC 89-301]

Private Land Mobile Radio Service Stations

Correction

In rule document 89-28206 beginning on page 50237 in the issue of Tuesday, December 5, 1989, make the following correction:

On page 50238, in the third column, amendatory instruction 3. should read "3. Section 1.925 is amended by redesignating current paragraph (i) as paragraph (j) and revising it and by adding new paragraph (i) to read as follows:".

BILLING CODE 1505-01-D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-65, RM-6168, 6342, 6343, 6344]

Radio Broadcasting Services; East Hemet, Indio, Rancho California, Sun City, and Temecula, CA

Correction

In rule document 89-26640 appearing on page 47362 in the issue of Tuesday, November 14, 1989, make the following correction:

§ 73.202 [Corrected]

In the second column, in amendatory instruction 2, in the sixth line, "Channel 223A" should read "Channel 233A".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

National Institute for Occupational Safety and Health; Request for Comments and Secondary Data on Occupational Cumulative Trauma Disorders of the Upper Extremities

Correction

In notice document 89-27296 beginning on page 48154 in the issue of Tuesday,

November 21, 1989, make the following correction:

On page 48154, in the third column, under **SUPPLEMENTARY INFORMATION:**, in the third line, "1977" should read "1970", and in the fifth line, "1970" should read "1977".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Animal Drugs, Feeds, and Related Products; Detomidine Hydrochloride Injection

Correction

In rule document 89-28390 beginning on page 50364 in the issue of Wednesday, December 6, 1989, make the following corrections:

§ 522.536 [Corrected]

1. On page 50365, in the second column, in the heading, **§ 522.536 DETOMIDINE HYDROCHLORIDE INJECTION**, "hydrocholoride" should read "hydrochloride".

2. On the same page, in the same column, in § 522.536(a), in the fourth line, "hydrocholoride" should read "hydrochloride".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89N-0503]

Drug Export; Once-a-day Benylin Cold Controlled Release Capsule (Pseudoephedrine Hydrochloride 240 mg., USP and Chlorpheniramine Maleate 24 mg., USP)

Correction

In notice document 89-28169 appearing on page 49817 in the issue of Friday, December 1, 1989, make the following corrections:

In the first column, under **ADDRESS:**, in the 6th and 11th lines, , "contract" should read "contact".

BILLING CODE 1505-01-D

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federal register

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Part II

Environmental Protection Agency

40 CFR Part 61
National Emission Standards for Hazardous Air Pollutants; Radionuclides; Final Rule and Notice of Reconsideration

ENVIRONMENTAL PROTECTION AGENCY

requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings

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I. Definitions
A. Terms

material and wastes from the processing of ores primarily to recover their source material content

spent uranium fuel, to the extent that these directly support the production of electrical power for public use utilizing

hazardous air pollutants by (1) protecting the greatest number of

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[FRL-3557-4]

RIN 2060-AC47

National Emission Standards for Hazardous Air Pollutants; Radionuclides

AGENCY: Environmental Protection Agency [EPA].

ACTION: Final rule and notice of reconsideration.

SUMMARY: This final rule announces the Administrator's final decisions on National Emission Standards for Hazardous Air Pollutants (NESHAPs) under section 112 of the Clean Air Act for emissions of radionuclides from the following source categories: DOE Facilities, Licensees of the Nuclear Regulatory Commission and Non-DOE Federal Facilities, Uranium Fuel Cycle Facilities, Elemental Phosphorus Plants, Coal-Fired Boilers, High-level Nuclear Waste Disposal Facilities, Phosphogypsum Stacks, Underground and Surface Uranium Mines, and the operation and disposal of Uranium Mill Tailings Piles. The final rule also responds to the major public comments on the March 7, 1989 proposed decisions for these categories (54 FR 9612). EPA is conducting this rulemaking pursuant to a voluntary remand and a schedule issued by the U.S. Court of Appeals for the D.C. Circuit which requires final action by October 31, 1989. In addition EPA is granting a reconsideration of the standards of 40 CFR part 61, subpart I concerning emissions from facilities licensed by the Nuclear Regulatory Commission, with respect to the issues of duplicative regulation and possible effects on medical treatment.

DATES: Effective Date: December 15, 1989. Subpart I is stayed until March 15, 1990. Comments on subpart I may be submitted on or before February 13, 1990. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 15, 1989. Under section 307(b)(1) of the CAA, judicial review of decisions under section 112 is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of these rules. Under section 307(b)(2) of the CAA, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESS: Comments on subpart I should be submitted (in duplicate if possible) to: Central Docket (A-130), Environmental Protection Agency, Attn: Docket No. A-79-11, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: James M. Hardin, Environmental Standards Branch, Criteria and Standards Division (ANR-460), Office of Radiation Programs, Environmental Protection Agency, Washington DC 20460, (202) 475-9610.

SUPPLEMENTARY INFORMATION:

Motion for Reconsideration

For any party who wishes to present new information to EPA, regarding the appropriateness of these rules, a Petition for Reconsideration may be filed under section 307(d)(7)(B).

Docket

The rulemaking record is contained in Docket No. A-79-11 and contains information considered in determining health effects, listing radionuclides as hazardous air pollutants, and setting standards. It also contains all comments received from the public during the comment period. This docket is available for public inspection and copying between 8:00 a.m. and 3:00 p.m. on weekdays. A reasonable fee may be charged for copying.

A single copy of the Background Information Document and Economic Assessment (which, combined, form the final Environmental Impact Statement (EIS)) have been placed in the docket. Other documents available include: A Guide for Determining Compliance with the Clean Air Act Standards for Radionuclide Emissions from NRC-Licensed and Non-DOE Federal Facilities (October 1989); Procedures Approved for Demonstrating Compliance with 40 CFR part 61, subpart I (October 1989); and User's Guide for the COMPLY Code (October 1989). Copies of these documents may be obtained by writing to: Director, Criteria and Standards Division (ANR-460), Office of Radiation Programs, Environmental Protection Agency, Washington, DC 20460.

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VIII. Miscellaneous

I. Definitions

A. Terms

Activity—The amount of a radioactive material. It is a measure of the transformation rate of radioactive nuclei at a given time. The customary unit of activity, the curie, is 3.7×10^{10} nuclear transformations per second.

Agreement State—Any state with which the Nuclear Regulatory Commission or the former Atomic Energy Commission has entered into an effective agreement under subsection 274(b) of the Atomic Energy Act.

Annualized Cost—A stream of annual payments for a determined time period, equal in value to a one-time payment based on a selected rate of interest.

By-product Material—Any radioactive material (except source material and special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material and wastes from the processing of ores primarily to recover their source material content.

Dose Standard—A regulatory standard that requires a regulated facility to limit its emissions to the level necessary to ensure that no individual receives an effective dose equivalent greater than the specified level.

Effective Dose Equivalent (EDE)—The sum of the risk-weighted organ dose equivalent commitments. The effective dose equivalent has the same risk (for the model used to derive the weighting factors) as a uniform dose equivalent to all organs and tissues. For the purposes of these standards, "effective dose equivalent" means the result of the calculation used to determine the dose equivalent to the whole body, by taking into account the specific organs receiving radiation, the dose each organ receives, and the risk per unit dose to that organ. A description of the weighting factors used in the calculation of the EDE is described in detail in the International Commission on Radiological Protection's Publication No. 26, Pergamon Press, New York (1982).

Flux standard—A regulatory standard that limits the amount of radon that can emanate per square meter of regulated material per second, averaged over a single source.

Half-Life—The time in which half the atoms of a particular radioactive substance transform, or decay, to another nuclear form.

Incidence—This term denotes the predicted number of fatal cancers in a population from exposure to a pollutant. Other health effects (non-fatal cancers, genetic, and developmental) are noted separately.

Maximum Individual Risk—The maximum additional cancer risk of a person due to exposure to an emitted pollutant for a 70-year lifetime.

Pathway—A way that radionuclides might contaminate the environment or reach people, e.g. air, water, food.

Radionuclide—A type of atom which spontaneously undergoes radioactive decay.

Source Term—The amount of radioactive material emitted to the atmosphere from a source, either estimated, measured or reported, that is used in the risk assessment.

Transuranic—An element with an atomic number greater than the atomic number of uranium.

Uranium Fuel Cycle—The operations of milling of uranium ore, chemical conversion of uranium, isotopic enrichment of uranium, fabrication of uranium fuel, generation of electricity by a light-water-cooled nuclear power plant using uranium fuel, and reprocessing of spent uranium fuel, to the extent that these directly support the production of electrical power for public use utilizing nuclear energy. This definition does not include mining operations, operations at waste disposal sites, transportation of any radioactive material in support of these operations, or the reuse of recovered non-uranium special nuclear and by-product materials from the cycle.

B. Acronyms

AEA—Atomic Energy Act, 42 U.S.C. 2011 *et seq.*
ALARA—As low as reasonably achievable
AMC—American Mining Congress
ANPR—Advanced Notice of Proposed Rulemaking
CAA—The Clean Air Act, 42 U.S.C. 7401 *et seq.*
CAP-88—Clean Air Act Assessment Package-1988
CERCLA—Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. 9601 *et seq.*
CFR—Code of Federal Regulations
BID—The Background Information Document prepared in support of this rulemaking (Volume 1 of the EIS)
EIA—The Economic Impact Assessment prepared in support of this rulemaking (Volume 2 of the EIS)
EIS—Environmental Impact Statement
DOE—United States Department of Energy
EDF—Environmental Defense Fund
EPA—United States Environmental Protection Agency
HLW—High-Level Radioactive Waste
ICRP—International Commission on Radiological Protection
MSHA—Mine Safety and Health Administration
mrem—millirem, 1×10^{-3} rem
NAAQS—National Ambient Air Quality Standards
NESHAP—National Emission Standard for Hazardous Air Pollutants
NCRP—National Council on Radiation Protection and Measurements
NRC—United States Nuclear Regulatory Commission
NRDC—Natural Resources Defense Council, Inc.
pCi—picocurie, 1×10^{-12} curie
UFC—Uranium Fuel Cycle
UMTRCA—Uranium Mill Tailings Radiation Control Act of 1978, 42 U.S.C. 7901, *et seq.*

II. EPA NESHAPs Policy

This section provides a description of the EPA's approach for the protection of public health under section 112. In protecting public health with an ample margin of safety under section 112, EPA strives to provide maximum feasible protection against risks to health from hazardous air pollutants by (1) protecting the greatest number of persons possible to an individual lifetime risk level no higher than approximately 1 in 1 million and (2) limiting to no higher than approximately 1 in 10 thousand the maximum estimated risk that a person living near a plant would have if he or she were exposed to the emitted pollutant for 70 years. Implementation of these goals is by means of a two-step standard-setting approach, with an analytical first step to determine an "acceptable risk" that considers all health information, including risk estimation uncertainty, and includes a presumptive limit on maximum individual lifetime risk (MIR) of approximately 1 in 10 thousand. A second step follows in which the actual standard is set at a level that provides "an ample margin of safety" in consideration of all health information, including the number of persons at risk levels higher than approximately 1 in 1 million, as well as other relevant factors including costs and economic impacts, technological feasibility, and other factors relevant to each particular decision. Applying this approach to the radionuclide source categories in today's notice results in controls that protect over 90 percent of the persons within 80 kilometers (km) of these sources at risk levels no higher than approximately 1 in 1 million.

A principle that accompanies these numerical goals is that the state of the art of risk assessment does not enable numerical risk estimates to be made with comparable confidence. Therefore, judgment must be used in deciding how numerical risk estimates are considered with respect to these goals. As discussed below, uncertainties arising from such factors as the lack of knowledge about the biology of cancer causation and gaps in data must be weighed along with other public health considerations. Many of the factors are not the same for different pollutants, or for different source categories.

A. Background

On March 7, 1989, EPA proposed decisions on standards under section 112 for twelve source categories of radionuclides. A principal aspect of the proposal, and the basis for the proposed decisions on the source categories, were four proposed approaches for decisions under section 112 as mandated by the D.C. Circuit's decision in *NRDC* v. *EPA*, 824 F.2d at 1146 (1987) (the *Vinyl Chloride* decision). The *Vinyl Chloride* decision required the Administrator to exercise his judgment under section 112 in two steps: first, a determination of a "safe" or "acceptable" level of risk

considering only health factors, followed by a second step to set a standard that provides an "ample margin of safety", in but also incorporating consideration of incidence from Approach B and consideration of health protection for

The EPA also considers incidence to be an important measure of the health risk to the exposed population.

the survey ranged from 10^{-1} to 10^{-7} (that is, the lifetime risk of premature death ranged from 1 in 10 to 1 in 10 million),

The EPA believes that the level of the MIR, the distribution of risks in the exposed population, incidence, the

technological feasibility, uncertainties, and any other relevant factors. After considering all of these factors, the

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considering only health factors, followed by a second step to set a standard that provides an "ample margin of safety", in which costs, feasibility, and other relevant factors in addition to health may be considered.

The four proposed approaches were designed to provide for consideration of a variety of health risk measures and information in the first step analysis under the *Vinyl Chloride* decision—the determination of "acceptable risk." Included in the alternative approaches were three that consider only a single health risk measure in the first step: (1) Approach B, which considers only total cancer incidence with 1 case per year as the limit for acceptability; (2) Approach C, which considers only the maximum individual risk ("MIR") with a limit of 1 in 10 thousand for acceptability; and (3) Approach D, which considers only the maximum individual risk with 1 in 1 million as the limit. The fourth approach, Approach A, was a case-by-case approach that considers all health risk measures, the uncertainties associated with them, and other health information.

In the second step, setting an "ample margin of safety", each of the four approaches considers all health risk and other information, uncertainties associated with the health estimates, as well as costs, feasibility, and other factors which may be relevant in particular cases. The proposal solicited comment on each of the approaches for implementing the *Vinyl Chloride* decision. The Agency received many public comments on the approaches from citizen's groups, companies and industry trade groups, state and local governments, and individuals.

B. General NESHAP Policy Considerations

The purpose of this section is to discuss the appropriate criteria for determining an "acceptable risk" and an "ample margin of safety". In its determination, EPA will consider measures of health risk, and limitations and uncertainties of the risk estimation methods and basic data. A discussion of these factors follows. The framework adopted in this proceeding has already been selected in the Benzene NESHAP and will also become the policies for decisions on future NESHAPs but will not apply to other Agency programs or other sections of the Clean Air Act.

1. Selection of Approach

Based on the comments and the record developed in the rulemaking, EPA selected an approach announced in the notice on benzene standards published on September 14, 1989 (54 FR 38044), based on Approaches A and C but also incorporating consideration of incidence from Approach B and consideration of health protection for the general population on the order of 1 in 1 million from Approach D. Thus, in the first step of the *Vinyl Chloride* inquiry, EPA will consider the extent of the estimated risk were an individual exposed to the maximum level of a pollutant for a lifetime. The EPA will generally presume that if the risk to that individual is no higher than approximately 1 in 10 thousand, that risk level is considered acceptable and EPA then considers the other health and risk factors to complete an overall judgment on acceptability. The presumptive level provides a benchmark for judging the acceptability of maximum individual risk, but does not constitute a rigid line for making that determination.

The Agency recognizes that consideration of maximum individual risk—the maximum estimated risk of contracting cancer following a lifetime of exposure to the emitted pollutant—must take into account the strengths and weaknesses of this measure of risk. It is estimated based on the assumption of continuous exposure for 24 hours per day for 70 years. As such, it does not necessarily reflect the true risk, but displays a conservative risk level which is an upperbound that is unlikely to be exceeded. The Administrator believes that an MIR of approximately 1 in 10 thousand should ordinarily be the upper end of the range of acceptability. As risks increase above this benchmark, they become presumptively less acceptable under section 112. They then would be weighed with the other health risk measures and information in making an overall judgment on acceptability. Or, the Agency may find, in a particular case, that a risk that includes MIR less than the presumptively acceptable level is unacceptable in the light of other health risk factors.

In establishing a presumption for MIR, rather than a rigid line for acceptability, the Agency intends to weigh it with a series of other health measures and factors. These include the overall incidence of cancer or other serious health effects within the exposed population, the numbers of persons exposed within each individual lifetime risk range and associated incidence within a radius around facilities, the science policy assumptions and estimation uncertainties associated with the risk measures, weight of the scientific evidence for human health effects, and other quantified or unquantified health effects.

The EPA also considers incidence to be an important measure of the health risk to the exposed population. Incidence measures the extent of health risk to the exposed population as a whole, by providing an estimate of the occurrence of cancer or other serious health effects in the exposed population. The EPA believes that even if the MIR is low, the overall risk may be unacceptable if significant numbers of persons are exposed to a hazardous air pollutant, resulting in a significant estimated incidence. Consideration of this factor would not be reduced to a specific limit or range, such as the 1 case per year limit included in proposed Approach B, but estimated incidence would be weighed along with other health risk information in judging acceptability.

The limitation of MIR and incidence are put into perspective by considering how these risks are distributed within the exposed population. This information includes both individual risk, including the number of persons exposed within each risk range, as well as the incidence associated with the persons exposed within each risk range. In this manner, the distribution provides an array of information on individual risk and incidence for the exposed population.

Particular attention will also be accorded to the weight of evidence presented in the risk assessment of potential human carcinogenicity or other health effects of a pollutant. While the same numerical risk may be estimated for an exposure to a pollutant judged to be a known human carcinogen, and to a pollutant considered a possible human carcinogen based on limited animal test data, the same weight cannot be accorded to both estimates. In considering the potential public health effects of the two pollutants, the Agency's judgment on acceptability, including the MIR, will be influenced by the greater weight of evidence for the known human carcinogen.

In the *Vinyl Chloride* decision, the Administrator is directed to determine a "safe" or "acceptable" risk level, based on a judgment of "what risks are acceptable in the world in which we live." 824 F.2d at 1165. To aid in this inquiry, the Agency compiled and presented a "Survey of Societal Risk" in its March 1989 proposal (54 FR 9621–22). As described there, the survey developed information to place risk estimates in perspective and to provide background and context for the Administrator's judgment on the acceptability of risks "in the world in which we live." Individual risk levels in the survey ranged from 10^{-1} to 10^{-9} (that is, the lifetime risk of premature death ranged from 1 in 10 to 1 in 10 million), and incidence levels ranged from less than 1 case per year to estimates as high as 5,000 to 20,000 cases/year. Everyday risks include risks from natural background radiation as well as risks from home accidents. Natural background radiation (excluding radon) at sea level creates individual lifetime cancer risks in the range of 3 in 1,000 and an estimated 10,000 cancer cases per year. Naturally occurring radon in homes poses an additional source of radiation risk, and these risks can be as high as 1 in 100 to 1 in 10. EPA estimates that this causes an estimated 8,000 to 40,000 cancer cases per year. In the U.S., accidents, natural disasters, and rare diseases pose individual risks of death from 1 in 10,000 (e.g., tripping and falling which cause approximately 470 deaths per year) to 1 in 10,000,000 (e.g., rabies, which causes an average of 1.5 deaths per year).

Judgments on risks have also spanned a broad range of risk levels. The NCRP, following recommendations of the International Commission on Radiological Protection, has recommended that maximum individual exposures from non-medical, manmade radiation be limited to an amount corresponding to risks of 3 in 1,000. It is important to note that the recommendations of national and international bodies are coupled with recommendations that radiation doses should be "as low as reasonably achievable" (ALARA). The implementation of ALARA requires a site-specific consideration of the cost effectiveness of controls that could be added to reduce radiation doses.

The EPA concluded from the survey that no specific factor in isolation could be identified as defining acceptability under all circumstances, and that the acceptability of a risk depends on consideration of a variety of factors and conditions. However, the presumptive level established for MIR of approximately 1 in 10 thousand is within the range for individual risk in the survey, and provides health protection at a level lower than many other risks common "in the world in which we live." And, this presumptive level also comports with many previous health risk decisions by EPA premised on controlling maximum individual risks to approximately 1 in 10 thousand and below.

In today's decisions, EPA is using this approach based on the judgment that the first step judgment on acceptability cannot be reduced to any single factor. The EPA believes that the level of the MIR, the distribution of risks in the exposed population, incidence, the science policy assumptions and uncertainties associated with the risk measures, and the weight of evidence that a pollutant is harmful to health are all important factors to be considered in the acceptability judgment. The EPA concluded that this approach best incorporates all vital health information and enables the Agency to weigh it appropriately in making a judgment. In contrast, the single measure Approaches B, C, and D, while providing simple decisionmaking criteria, provide an incomplete set of health information for decisions under section 112. The Administrator believes that the acceptability of risk under section 112 is best judged on the basis of a broad set of health risk measures and information. As applied in practice, the EPA's approach is more protective of public health than any single factor approach. In the case of the radionuclide sources regulated here, more than 90 percent of the population living within 80 km would be exposed to risks no greater than approximately 1 in 1 million and, the total number of cases of death or disease estimated to result would be kept low.

Under the two-step process specified in the *Vinyl Chloride* decision, the second step determines an "ample margin of safety," the level at which the standard is set. This is the important step of the standard-setting process at which the actual level of public health protection is established. The first step consideration of acceptability is only a starting point for the analysis, in which a ceiling for the ultimate standard is set. The standard set at the second step is the legally enforceable limit that must be met by a regulated facility.

Even though the risks judged "acceptable" by EPA in the first step of the *Vinyl Chloride* inquiry are already low, the second step of the inquiry, determining an "ample margin of safety," again includes consideration of all of the health factors, and whether to reduce the risks even further. In the second step, EPA strives to provide protection to the greatest number of persons possible to an individual lifetime risk level no higher than approximately 1 in 1 million. In the ample margin decision, the Agency again considers all of the health risk and other health information considered in the first step. Beyond that information, additional factors relating to the appropriate level of control will also be considered, including costs and economic impacts of controls, technological feasibility, uncertainties, and any other relevant factors. After considering all of these factors, the Agency will establish the standard at a level that provides an ample margin of safety to protect the public health, as required by section 112. The Agency terms its approach the "multifactor approach."

2. Format of Standards

The format of the standards for the various source categories varies because of the differing properties of the sources and the radionuclides they emit. Area sources emitting radon are best monitored by flux measurements. Thus, flux standards are most appropriate. For other categories, mixtures of radionuclides are best related to public health through the use of the concept of dose. EPA has promulgated dose standards to limit emissions in those cases where it is appropriate. Where a single radionuclide is emitted or a single radionuclide emission limit would serve to limit all others, EPA has promulgated an emission limit for that radionuclide. All standards include releases from accidents and accidental releases can result in a violation of the standard. However, releases from accidents shall not be considered when determining whether or not a facility should be granted permission to construct or modify under §§ 61.07 and 61.08. Releases that are not routine but are more likely than not to occur are included in determining whether such approval shall be granted.

Plants are required to monitor their operations continuously and keep records of the results of their monitoring onsite for five years. Plant owners will have to certify on a semiannual basis that no changes in operations that would require new testing have occurred. Although the report is based on a calendar year, the emission limit applies to any year, i.e. any period of 12 consecutive months.

III. Historical Background of Radionuclide NESHAPs

On December 27, 1979, EPA listed radionuclides as a hazardous air pollutant under section 112 of the CAA (44 FR 76738, December 27, 1979). EPA determined that radionuclides are a known cause of cancer and genetic damage and that radionuclides cause or contribute to air pollution that may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible or incapacitating reversible illness, and therefore constitute a hazardous air pollutant within the meaning of section 112(a)(1).

EPA then determined that radionuclides presented a risk warranting regulation

level radioactive waste. The Agency also decided to study further the

time schedule for EPA to propose regulatory decisions for all radionuclide

people receive as a result of these emissions is typically lower than their natural background dose, the resulting

rulemaking. However, it is important to note that other health effects have also been considered in the rulemaking. The

induced, its severity is independent of the dose.

Regarding cancer, there continues to

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EPA then determined that radionuclides presented a risk warranting regulation under Section 112, and listed the pollutant under that section. Once listed, radionuclides became subject to the requirement of section 112(b)(1)(B) that EPA establish National Emission Standards for Hazardous Air Pollutants (NESHAPs) at a "level which (in the judgment of the Administrator) provides an ample margin of safety to protect the public health from such hazardous air pollutant," or find that they are not hazardous and delist them.

On April 6, 1983, EPA proposed standards regulating radionuclide emissions from four source categories: (1) Elemental phosphorus plants, (2) DOE facilities, (3) NRC-licensed facilities and non-DOE federal facilities (NRC-licensees), and (4) underground uranium mines. The Agency simultaneously proposed decisions not to regulate several other categories: (1) Coal-fired boilers, (2) the phosphate industry, (3) other extraction industries, (4) uranium fuel cycle facilities, (5) uranium mill tailings, (6) high level radioactive waste facilities, and (7) low energy accelerators (48 FR 15076, April 6, 1983). In February 1984, the Sierra Club filed suit in the U.S. District Court for the Northern District of California to compel EPA to take final action on the proposed standards. *Sierra Club* v. *Ruckelshaus*, No. 84–0656. EPA was subsequently ordered by the Court to promulgate final standards or make a finding that radionuclides are not hazardous air pollutants and delist them.

In October 1984, EPA withdrew the proposed emission standards for elemental phosphorus plants, DOE facilities, and NRC licensees, finding that the control practices already in effect for those categories protected the public from exposure to radionuclides with an ample margin of safety. EPA, therefore, concluded that no additional requirements were necessary (49 FR 43906, October 31, 1984). In the notice, EPA also withdrew proposed standards for underground uranium mines but stated its intention to promulgate a different standard for that category and simultaneously published an Advance Notice of Proposed Rulemaking (ANPR) for radon-222 emissions from underground uranium mines to solicit additional information on control methods. EPA also published an ANPR for radon-222 emissions from licensed uranium mills. EPA affirmed its decision not to regulate the other categories: coal-fired boilers, the phosphate industry, other extraction industries, uranium fuel cycle facilities, and high level radioactive waste. The Agency also decided to study further the category of phosphogypsum stacks to determine the need for a standard.

On December 11, 1984, the U.S. District Court for the Northern District of California found EPA in contempt of its order to promulgate final standards and again directed that EPA issue final radionuclide emission standards for the original four categories or make a finding that radionuclides are not hazardous air pollutants. EPA complied with the court order by promulgating standards for radionuclides emissions from elemental phosphorus plants, DOE facilities, and NRC-licensees (50 FR 7280, February 6, 1985) and a work practice standard for radon-222 emissions from underground uranium mines (50 FR 15385, April 17, 1985). On September 24, 1986, EPA promulgated a final rule regulating radon-222 emissions from licensed uranium mill processing sites by establishing work practices for new tailings (51 FR 34056, September 24, 1986).

The Environmental Defense Fund (EDF), the Natural Resources Defense Council (NRDC), and the Sierra Club filed petitions for review of the October 1984 withdrawals and final decisions not to regulate, the February 1985 standards for the three source categories and the April 1985 standard for underground uranium mines. The April 1985 standard for underground uranium mines was also challenged by the American Mining Congress (AMC). In November 1986, AMC and EDF filed petitions challenging the standard for licensed uranium mill processing sites.

On July 28, 1987, the U.S. Court of Appeals for the D.C. Circuit remanded to the Agency an emissions standard for vinyl chloride which had also been promulgated under Section 112 of the CAA. *Natural Resources Defense Council, Inc.* v. *EPA*, 824 F.2d 1146 (D.C. Cir. 1987) (*Vinyl Chloride*). The Court in *Vinyl Chloride* concluded that the Agency improperly considered cost and technological feasibility without first making a determination based exclusively on risk to health.

In light of that decision, EPA concluded that the standards for elemental phosphorus plants, DOE facilities, NRC-licensees, and underground uranium mines should be reconsidered and on November 16, 1987, moved the D.C. Circuit Court for a voluntary remand of the challenged decisions. EPA also agreed to reexamine all issues raised by the parties to the litigation. On December 8, 1987, the Court granted EPA's motion for voluntary remand and established a time schedule for EPA to propose regulatory decisions for all radionuclide source categories within 180 days and finalize them within 360 days. On March 17, 1988, the Court granted a subsequent EPA motion and modified the order to require proposed regulatory decisions by February 28, 1989 and final action by August 31, 1989.

On April 1, 1988, EPA also requested a remand for its standard for licensed uranium mill tailings. On August 3, 1988 the Court granted EPA's motion and put the uranium mill tailings NESHAP on the same schedule as the other radionuclide NESHAPs.

On March 7, 1989, EPA published a proposed NESHAP which described four possible policy approaches for regulating emissions of radionuclides. Public hearings were held on April 10, 11, 13, and 14, 1989.

On July 14, 1989, the court granted EPA's request for an extension until October 31, 1989 for final action.

IV. Characterization of the Risks of Radiation

A. Sources of Radiation

Every day each person is exposed to radiation from a variety of natural and manmade sources. Natural sources of radiation include cosmic rays, radon, and other terrestrial sources. Manmade radiation includes medical and dental X-rays, fallout from above ground nuclear weapons testing and industrial sources.

The earth's atmosphere acts as a shield to cosmic rays, absorbing much of the radiation. People receive a higher dose of cosmic rays at higher altitudes because there is less atmosphere to shield them from cosmic rays. For example, people living in the mountains receive a higher dose than people living at sea level, and people are exposed to even higher levels when flying in an airplane. Terrestrial radiation comes from the small amount of radionuclides that are naturally present in all matter: soil, air, food, clothes, and even our bodies.

Radon is a radionuclide that is produced as a radioactive decay product of the radium which is naturally found in soil. Radon is always present in the ambient air at levels which are estimated to pose some health risk. In addition, radon often gets trapped in homes, leading to even higher estimated health risks. EPA has issued recommendations to homeowners for reducing these risks.

This rulemaking deals with sources of radionuclide emissions, including radon, from industrial sources. Although the amount of radiation dose that most

people receive as a result of these emissions is typically lower than their natural background dose, the resulting risk can still be significant. A source does not present an acceptable risk simply by being less than natural background. It is important to note that total background radiation from all sources, including naturally occurring radon, results in a calculated individual lifetime risk of fatal cancer of approximately one in one hundred. In most cases, little can be done to reduce most of this radiation exposure which people receive from natural background.

Industrial sources of radionuclide emissions in the air include a wide variety of facilities, ranging from nuclear power facilities to hospitals to uranium mill tailing piles. Industry uses hundreds of different radionuclides in solid, liquid, and gaseous forms, emitting different types of radiation (alpha, beta, gamma) at various energy levels. Industrial sources of radionuclide emissions fall into two major categories. The first include industries that use radioactive materials and have emissions as a result of an inability to completely contain the materials they use. For example, hospitals use radionuclides as part of their radiology departments. Since many of the radionuclides they use are gases, liquids capable of evaporation, or solids capable of sublimation, some radionuclides inevitably are released into the environment. The other type of source is that which releases radionuclides (usually radon) as an unintended consequence of another activity, such as mining or milling. An example of this is phosphogypsum stacks (piles). These piles of waste material emit radon because radium (from which radon is produced by radioactive decay) is found naturally in the same soils that are the source of phosphate rock.

B. Health Effects of Radiation

The level and type of hazard posed by radionuclides vary, depending on such characteristics as the radionuclide's radioactive half-life, the type of radiation it emits, the energy level of the emission(s), and its ability to concentrate in the body. Different radionuclides will irradiate different parts of the body causing different types of cancers.

There are three major types of long-term health impacts from exposure to radiation: Cancer, hereditary effects, and developmental effects on fetuses such as mental retardation. Since there is such a strong foundation for quantifying the risk of fatal cancer, EPA's consideration of fatal cancers is the principal health consideration in this rulemaking. However, it is important to note that other health effects have also been considered in the rulemaking. The other effects are not specifically addressed in this discussion because none of them pose a more severe risk to health. In addition, risk distribution of health effects from radiation from most of the sources considered for regulation show that fatal cancers occur much more frequently than non-fatal cancers and cancers generally occur more often than genetic or developmental effects. For sources that emit radon, no genetic or developmental effects, and very few non-fatal cancers are expected.

Numerous studies have demonstrated that radiation is a carcinogen. It is assumed that there is no completely risk-free level of exposure to radiation to cause cancer. Health effects from radiation have been observed in studies of occupationally exposed workers and of the survivors of the Hiroshima and Nagasaki atomic bombs. This information has been verified with studies of animals in laboratories. However, the effects of radiation doses at low levels of exposure can only be predicted by extrapolating from the observed effects at higher doses since we do not have direct evidence of cancer causation at low exposure levels. Some pollutants cause diseases that are unique to the pollutant; for example, asbestos causes asbestosis. Radiation, however, causes some of the same types of cancers, e.g. leukemia and lung and liver cancer, that are caused by other factors. Since these cancers are not uniquely associated with radiation, it is not possible to differentiate cancers caused by radiation from other cancers.

The second type of effect is the induction of hereditary effects in descendants of exposed persons, which vary in degree and effect and may even be fatal. It is assumed that there is no completely risk-free level of exposure for hereditary effects. Although hereditary effects have been observed in experimental animals at high doses, they have not been confirmed at low doses in studies of humans.

Based on extensive scientific evidence, EPA believes it prudent to assume that carcinogens, including radionuclides, pose a risk of health effects even at low levels of exposure. Based on this science policy judgment, EPA calculates health risk estimates assuming that the risk of incurring either cancer or hereditary effects is linearly proportional to the dose received in the relevant tissue. However, the severity of either effect is not related to the amount of dose received. That is, once a cancer or an hereditary effect has been induced, its severity is independent of the dose.

Regarding cancer, there continues to be divided opinion on how to interpolate between the absence of radiation effect at zero dose and the observed effects of radiation (mostly at high doses) in order to estimate the most probable effects at doses that represent small increases above natural background radiation. Most scientists believe that available data best support use of a linear model for estimating such effects. Others, however, believe that other models, which usually predict somewhat lower risk, provide better estimates. These differences of opinion have not been resolved to date by studies of the effects of radiation in humans, the most important of which are those of the survivors of the Hiroshima and Nagasaki atomic bombs.

Some studies have recently been completed, and others are now underway to reassess radiation dose calculations for the survivors of the Hiroshima and Nagasaki atomic bombs and to provide improved estimates of risk. These studies may reduce the uncertainty associated with extrapolation from high doses to low doses. These studies may also result in an increase of the estimated risk per unit dose. But they will not address the question of whether a threshold exists. EPA is monitoring the progress of this work and will initiate reviews of the risks of exposure to low levels of radiation upon its completion.

C. Risk Assessment

1. Risk Measures Considered in NESHAP Policy

In decisions on cancer risks from stationary sources of hazardous air pollutants, the Agency has estimated three measures of health risk. These are termed "maximum individual risk", "risk distribution", and "incidence". Each of these combines an estimate of the dose/response for a pollutant with estimates of exposure to the pollutant. The response estimated is the pollutant-related increase in the probability that an individual will contract fatal cancer in his or her lifetime. The exposure estimated is the average daily exposure assuming exposure for 70 years.

a. *Maximum Individual Risk.* Individual risk is expressed as an estimated probability, e.g., 1 in 100 (10^{-2}), 1 in 1,000 (10^{-3}), 1 in 10,000 (10^{-4}). Thus, a 1×10^{-3} individual risk is an added "chance" of 1 in 1,000 of contracting fatal cancer sometime in the individual's lifetime.

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In this discussion, the maximum individual lifetime risk is the maximum additional cancer risk of any person due to exposure to an emitted pollutant for a 70-year lifetime. The maximum individual risk is sometimes called the maximum exposed individual risk. This estimate is based on the fact that the concentration of an emission, and the consequent risk, diminishes with distance from its source. For radionuclide NESHAP decisions, the practice has been to estimate exposure according to census data on residence locations. It has also been estimated in some other Agency decisions as the maximum at the source perimeter.

The maximum individual lifetime risk is different from average individual risk which is sometimes estimated for sources like public drinking water systems or food in which the concentration of a pollutant and other factors are assumed to be equal at all distribution locations. This distinction is particularly relevant when considering the maximum risk one might find acceptable from different sources. In using the maximum individual risk in acceptable risk decisions for hazardous air pollutants, its limitations should be considered. Used alone, the measure does not tell how many people may be so affected; it relates only to the risk to the most exposed individual(s).

b. *Risk Distribution.* A risk distribution estimates how many persons within a certain distance (e.g. 80 km) of a source of pollutant emissions are at what level of individual risk. Typically, the distribution is given for 10-fold increments of individual risk. Such a distribution provides the decisionmaker with information on both the individual risk level for those exposed and the number of persons exposed at each level. For NESHAP and other decisions, the Agency has examined risk distributions both as measures of risk and to compare the effects of various strategies for risk reductions across a source category.

In making an acceptable risk decision, one relevant consideration is how many people are exposed at each risk level, e.g. a 10^{-3} risk might be acceptable if only one person were at that level, but not if 1,000 people were subject to it. Similarly, the numbers of persons exposed at various individual risk levels could be an important element in deciding on acceptable risk. The risk distribution could be used in similar ways to consider whether an ample margin of safety exists.

c. *Incidence.* Incidence is an estimate of population, rather than individual, risk. It is derived by multiplying individual risk by the estimate of the number of persons at that level of risk and summing the results over all risk levels. This number, which provides a lifetime population risk figure, is then divided by 70 (years) to give an annual fatal cancer incidence estimate. The incidence parameter can be used as an estimate of impact on the entire exposed population within a given area by totalling the incidence associated with each increment of individual risk. Incidence can also be portrayed along with individual risk and population numbers in a risk distribution. Typically, the Agency weighs incidence estimates in conjunction with maximum individual risk or average individual risk estimates. Estimated incidence generally is a particularly informative parameter when looking at aggregate risk from a category of like sources. One feature to take into account whenever it is used is its dependence on the size of the source category.

2. Uncertainties in Risk Measures

Each of the three risk parameters defined above has three elements. These are the estimated response per unit of pollutant concentration (e.g. pCi/l in air), the estimated exposure concentration, and the estimation of the number and location of the population residing in the area of the sources (usually taken from census data).

Uncertainties exist in estimating each of these elements for a variety of reasons including the fact that the relevant data and our understanding of the biological events involved are not complete. Where data gaps exist, qualitative and quantitative assumptions are made based on our present understanding of the biological mechanisms of cancer causation, estimates of air dispersion, engineering estimates, and other factors. Selection of certain assumptions to be used is a policy decision. The Agency has published guidelines covering many of these for both cancer risk assessment and exposure assessment ("Final Guidelines for Carcinogen Risk Assessment," (51 FR 33992, September 24, 1986) and "Final Guidelines for Estimating Exposures," (51 FR 33042, September 24, 1986)).

The following is a discussion of methods used to calculate the three parameters, together with a few examples of the uncertainties.

Risk assessment, under EPA guidelines, takes into account the nature and amount of evidence that the agent will cause the effect of concern in humans as well as the uncertainties of interpretation of data and its quantification. When the toxicity data from human studies are available, as in the case of radionuclides (which is a known human carcinogen), there is less uncertainty about the hazard of dose/response than when the data is solely from animal studies. Nevertheless, important uncertainties enter into the analysis even when human data is available. Examples include the fact that human epidemiological studies are often retrospective and measure effects of exposure that occurred many years in the past. The level of exposure to the agent at that time usually must be estimated and cannot be verified. Also, in certain categories of human studies, the studies are often of workers exposed to the pollutant. Worker populations are not representative of the general population with respect to age or sex. Workers are also generally the healthier segment of the population. These factors can lead to over- or underestimation of risk.

When data from animal studies are used, uncertainties about exposure can be experimentally controlled, but other uncertainties arise. Many of these concern the extrapolation from data collected in animal tests to estimate effects on humans. The extrapolation has to try to account for many factors, such as the equivalent dose for humans and laboratory animals given the size differences and the potential differences in metabolism and excretion of a chemical pollutant.

In addition, uncertainties arise in extrapolating the observed dose/response relationship from either workplace or animal test exposures to the usually lower dose levels of the general population.

In estimating exposure, the dispersion of a pollutant from a source is usually quantified by a predictive mathematical model using a known or model source emission rate, temperature and velocity characteristics, and weather patterns at a nearby recording weather station. The model predicts the concentration of the dispersed pollutant at various distances from the source. Standard assumptions are that the population around the source resides there for a 70-year lifetime and is continuously exposed to the modeled concentrations. The amount of emissions can be derived from sampling and analysis of emissions at the source or from engineering estimates, with more or less uncertainty associated with each method according to the type of emission. There are varying degrees of accuracy and precision in sampling, analysis, or estimates of emissions. Therefore, the uncertainties involved in the method of estimating individual exposure and the number of individuals exposed are numerous. Thus, it is evident that uncertainty is difficult to quantify. However, the Agency has completed a preliminary uncertainty analysis of risk from radionuclide emissions from a limited number of facilities using Monte Carlo simulation techniques. Instead of discreet values, distributions were used for factors having a significant effect on outcome. The results suggest that the risks calculated represent essentially median values if the receptor remains at that location for 70 years.

3. Methodology

To take into account the buildup of radioactivity in the body and the environment, the risk assessment models incorporate the concepts of committed dose and the dose committed by an annual release into the environment or, equivalently, the annual dose received at equilibrium as a result of constant annual releases over long periods of time.

In attempting to make these estimates, EPA has tried at all times to give "best estimates" of the radionuclide concentrations in the environment and individual and population risks. Wherever possible, measured or reported data of emissions, meteorology and population were used. Where estimates were used, EPA has tried to use the most likely numbers in its assessments. When model facilities were used, they were designed to be representative of actual facilities. EPA's risk assessments are based on a current "snapshot" of each industrial source category as it now stands. EPA has not estimated the maximum conceivable risks that may result from the facilities analyzed at some point in the future. Future risks may be higher or lower depending on whether people move closer to, or further away from, the facilities studied and whether the emissions from those facilities increase or decrease. This is not to say that there is little or no uncertainty in the final results. As in all such assessments, the analyses have considerable uncertainty. EPA's analyses are not designed to consistently overestimate or underestimate risks.

The level of uncertainty is greater in the estimate of the maximum individual risk than in the estimate of population risk. Many possible errors in the analysis can cancel out in assessments of populations. For example, local meteorological conditions may cause more radionuclides to go in one direction than another. This effect may cause an overestimate or underestimate of the maximum individual risk, depending on where the most exposed individual is located. However, this source of error tends to be less important in population estimates, since the analysis integrates individual doses to a large number of people. If one person gets a larger risk due to local dispersion effects, it means that another person is getting less. Consequently, when the individual risks are summed, local conditions will not cause a serious error in the value for total population risk.

In estimating the radiation exposure to the most exposed individual, EPA assumes that the person receiving the maximum individual risk lives for a 70-year lifetime at the same site. EPA then makes its best estimate of the risks to that individual.

EPA recognizes that most people will not actually live their entire life in the same location. Nevertheless, EPA makes this assumption as a matter of policy and does not believe that it diminishes the validity of its risk assessments. EPA has made this assumption for several reasons. First, EPA is attempting to estimate the maximum individual risk, and it is completely possible that an individual could live in the same place for his or her entire life. Use of different assumptions could lead, in some cases, to underestimating the actual maximum risk.

Second, a large fraction of the risk can occur in less than the same fraction of the 70 years. Risk is not independent of age. Children appear to be more susceptible to the effects of radiation than adults. In addition, due to their youth, they generally have a longer time in which to develop the cancer caused by the radiation (and they are less likely to die of something else before they contract and die of the cancer). Due to these two factors, younger people are at a greater risk from the same dose than older people. (See Table 1). If EPA were to reduce the number of years of assumed exposure to less than a lifetime, it is unclear what number of years should be used or where to place those years within a lifetime. For example, should EPA assume that a person lives in the same place from birth to age 19 or from age 35 to 50? Generally, in the first case, the risk is 6 times greater than in the second case. Finally, the difference that would be caused by assuming a shorter period of exposure is not very significant. For an assumed constant rate of exposure, people receive over 60% of their total lifetime risk during their first nineteen years. To change the period of exposure from 70 years to the first 19 years of life would change the final result by less than a factor of 2.

Many commenters, including the SAB, disagreed with EPA's decision to use 70 year exposures in calculating maximum individual risk. However, as stated above, EPA believes that this is the correct method for doing risk assessments for NESHAPs. Had EPA used another method of calculating the maximum individual risk, it might have found it necessary to find a different, possibly more stringent benchmark for determining acceptable risk.

Third, the conservatism of this assumption counters two important and unknown uncertainties that can lead to an underestimation of risk. The first is the susceptibility of some members of the population to radiation. Scientific studies have shown that not all people respond in the same way to the same biological insult; some members of the population are more susceptible than the population as a whole. This problem is especially acute for the radon sources. Estimates of the risk of exposure to radon are largely based on epidemiological studies of miners, i.e. adult males. It is known that children seem to be more susceptible to radiation than adults. In addition, for some cancers, women are more susceptible than men; this may be true for lung cancer.

The second factor that EPA has been unable to quantify, but which would lead to an underestimation of the risk, is the synergistic effects of radiation with other pollutants. Radiation is not the only carcinogen in the environment. There are large numbers of carcinogens and potential carcinogens in the environment. Radionuclides are not the only carcinogens that cause cancer by first causing genetic damage. In addition, some chemicals may disrupt or stop the body's natural repair mechanisms. It is possible that some of these pollutants work synergistically with radiation to increase the effect of radiation above what it would be otherwise. While EPA's relative risk model takes into account the effect of chemicals that are widely distributed in the environment, there are hundreds of chemicals that are concentrated in local areas, and the effects of these chemicals are not and can not be taken into account. However, EPA's inability to quantify this potential increase in risk does not mean that this effect does not exist or that it should not be considered.

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TABLE 1— AGE DEPENDENCE OF RISK DUE TO WHOLE BODY RADIATION

guidance for workers occupationally exposed to radiation, accepted this methodology for the regulation of risks

used in this rulemaking. EPA has worked closely with the SAB with respect to their comments and findings

EPA Response: EPA has improved the presentation of risk in the EIS by more clearly stating overall assessment

indicated that exposure to radionuclides can cause three major types of health effects: cancer, genetic damage, and

section 112. Therefore, EPA reaffirms its prior conclusion that radionuclides should be listed for regulation under

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TABLE 1— AGE DEPENDENCE OF RISK DUE TO WHOLE BODY RADIATION

Assumed Percentage of Total Lifetime Risk As A Function Of Ages At Which Radiation Exposure Occurs [1]

Period of exposure (ages)	Percentage of lifetime risk	Cumulative percentage of lifetime risk [1]
0 to 9	30	30
10 to 19	30	60
20 to 34	20	80
35 to 50	10	90
50+	10	100

[1] Exposure is at a constant rate for a lifetime.

4. Technology Availability and Plant Closure Considerations

In the benzene NESHAP, as well as in this NESHAP for radionuclides, EPA has considered only factors relating to risks to public health in deriving alternative "acceptable" levels of risk. However, in evaluating whether to further reduce the risk to provide for an ample margin of safety, EPA has also considered the extent to which plants would be forced to: (a) Install control technologies which are not cost effective or fully demonstrated and/or (b) curtail or stop production. These considerations are reflected in today's proposal to the extent that they apply to affected radionuclide sources.

With regard to the availability of technology to control air pollutants, EPA has in this case considered a technology available if it has been installed on a commercial scale in the United States and adequate data have been collected on plant and control equipment characteristics and performance. However, at various times in the past, EPA has considered emission standards which force plants to install technologies which do not meet these current "availability" criteria or cause facilities to curtail production or shut down. For example, EPA has in the past considered a technology "available" if it has been commercially demonstrated in other countries, even if no units have been installed in the United States. Also, EPA has considered bench- or pilot-scale demonstrations in order to judge reasonableness of expenditures for commercial demonstration of a given technology.

D. Effective Dose Equivalent

Since 1985, when EPA proposed dose standards regulating NRC-licensees and DOE facilities, a different methodology for calculating dose has come into widespread use, the effective dose equivalent (EDE). In 1987, EPA, in recommending to the President new guidance for workers occupationally exposed to radiation, accepted this methodology for the regulation of risks from radiation. This method, which was originally developed by the International Commission on Radiological Protection, will be used in all the dose standards promulgated by EPA in this notice. In the past, EPA dose standards were specified in terms of limits for specific organ doses and the "whole body dose", a methodology which is no longer consistent with current practices of radiation protection.

The EDE is simple, is more closely related to risk, and is recommended by the leading national and international advisory bodies. By changing to this new methodology, EPA will be converting to the commonly accepted international method for calculating dose. This will make it easier for the regulated community to understand and comply with our standards.

The EDE is the weighted sum of the doses to the individual organs of the body. The dose to each organ is weighted according to the risk that dose represents. These organ doses are then added together, and that total is the effective dose equivalent. In this manner, the risk from different sources of radiation can be controlled by a single standard. The weighting factors for the individual organs are listed in Table 2.

TABLE 2—WEIGHTING FACTORS FOR INDIVIDUAL ORGANS

Organ	Factor
Lung	.12
Breast	.15
Thyroid	.03
Gonads	.25
Bone Surface	.03
Red Bone Marrow	.12
Remainder	.30

EPA's risk models differ from those underlying the ICRP recommendations, primarily due to advances in the field of radiation risk estimation since the ICRP recommendations were published. As a result, the risks calculated by EPA are not strictly proportional to the EDE derived using ICRP quality factors and organ weighting factors. While the risk methodology underlying the ICRP EDE differs from that used by EPA, the widespread acceptance of the EDE approach make it a reasonable basis for regulation under the CAA.

E. Science Advisory Board Review

Beginning in 1984, EPA's Science Advisory Board (SAB) has conducted reviews of the risk assessment methods used in this rulemaking. EPA has worked closely with the SAB with respect to their comments and findings and believes it has been responsive to them.

In 1984, the SAB recommended that available scientific information be integrated into an assessment document that would lead from identification of emission sources through calculation of radiation dose and health risk and the associated degrees of uncertainty. This has been done in the Environmental Impact Statement accompanying this rulemaking.

In 1988 and again in 1989, the SAB considered the scientific merits of the EIS prepared by the Agency in support of this rulemaking. Estimates of health risk factors were found to be acceptable. Given below are some important specific SAB comments and the Agency's responses.

SAB Comment: EPA should use the effective dose equivalent concept for regulations protecting people from exposure to radiation.

EPA Response: This has been done in the final rules.

SAB Comment: EPA should use simple screening methods in implementation procedures such that only the largest users of radionuclides are required to report annually to EPA.

EPA Response: A simple screening procedure has been made part of the final rule.

SAB Comment: EPA should be certain that the data used to derive its estimates of risk are the most current available, and wherever practicable to base their assessments on consensus documents.

EPA Response: EPA agrees. The SAB has given specific advice on risk factors for low-LET radiation and for radon. The SAB approaches to these risk factors have been used in the risk assessments supporting this rulemaking. The Agency acknowledges that the BEIR–III report on which some of the risk factors are based may become out of date due to new data that are becoming available. EPA's risk factors will be revised to reflect these recent developments and to incorporate this newer data as soon as it is practical to do so. Preliminary information indicates that the most probable effect of this new information will be to increase somewhat the estimate of the number of health effects due to a unit dose of radiation. The size of this increase is not likely to be large enough to affect the decisions made under this rulemaking.

SAB Comment: The actual objective of the risk assessment should be made clear.

EPA Response: EPA has improved the presentation of risk in the EIS by more clearly stating overall assessment objectives. In particular, assessment objectives are carefully defined in terms of the individual and populations at risk. The number of people at risk and incidence is presented by range of risk. Radiation risks are compared with other risks and other radiation control recommendations. The objective of obtaining a best estimate of the dose and health implications for real persons and for populations is now explained in more detail together with explanations of how these groups are to be defined.

SAB Comment: EPA should use best estimates and ranges in the specification of risk and provide a detailed explanation of the uncertainties in the estimates themselves.

EPA Response: EPA agrees, but this is a large task. For the short term, we have performed a sensitivity analysis of the most important parameters using simplifying assumptions and have performed preliminary uncertainty analyses using a Monte Carlo simulation. These analyses have been presented in support of the final rule. For the long term, an Agency task group has been formed to plan and conduct more complete studies of the uncertainty question. This longer term effort will take a number of years to complete and will be dependent on the resources available.

EPA acknowledges the uncertainty in risk estimates, considers them when making risk management decisions and recognizes that a more complete quantitative analysis of uncertainty would be an improvement. However, it does not believe that such a complete analysis would change the decisions made in this rulemaking. A more complete discussion of uncertainty is to be found in chapter 7, volume 1 of the EIS.

V. Decision to List Under Section 112

Section 122(a) of the CAA required EPA to determine whether or not "emissions of radioactive pollutants * * * will cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health." Once an affirmative determination is made, that section requires EPA to list the substance under section 108(a)(1), governing National Ambient Air Quality Standards (NAAQS), 111(b)(1)(A), governing New Source Performance Standards, or 112(b)(1)(A), governing NESHAPs. The initial decision to list a substance does not constitute a decision to regulate any particular source category. EPA analyzed numerous studies which indicated that exposure to radionuclides can cause three major types of health effects: cancer, genetic damage, and developmental effects. After considering these health effects, EPA judged that radionuclides cause or contribute to air pollution which "may reasonably be anticipated to endanger public health" and that they should be listed under section 112(b)(1)(A) (44 FR 76738, Dec. 27, 1979). That decision was the first step in the regulatory process, and it was challenged in the current litigation. As a result, EPA has reevaluated the decision and the comments from the public during this rulemaking and has come to the conclusion that the original listing under section 112 is correct.

The first part of the listing decision, the "hazardousness" of radionuclides, is unchallenged. The evidence that radionuclides can cause cancer has, if anything, increased since 1979; see Volume 1 of the BID. The evidence now suggests that the risks from radiation exposure are higher than was believed at that time. While some people have expressed the view that, even though radiation can cause cancer, the amount of radionuclides that are released from a given source or industry is insignificant and do not present a risk, EPA believes that the results of the risk assessments for the source categories demonstrate the risk to public health that results from radionuclide emissions from industrial sources. Furthermore, as already discussed, EPA assumes radiation to be a non-threshold pollutant. This assumption, and EPA's risk assessments, support the listing decision.

Section 112(b)(1)(A) applies not merely to any "air pollutant" as do sections 108 and 111, but to a "hazardous air pollutant" that is defined as a pollutant that "causes or contributes to air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible or incapacitating reversible illness." Once a pollutant is determined to be a hazardous air pollutant, the only remaining step is for the Administrator to determine whether emissions of the pollutant present a risk warranting regulation under section 112—that is, whether it is a hazardous air pollutant "for which he intends to establish an emission standard" under that section. EPA has determined that radionuclides not only pose a risk of carcinogenicity and mutagenicity when emitted into the air (see, National Academy of Sciences, Commission on Biological Effects of Ionizing Radiation, Reports Number 3 and 4) but also are emitted in sufficient quantities as to create a risk warranting listing under section 112. Therefore, EPA reaffirms its prior conclusion that radionuclides should be listed for regulation under section 112.

EPA notes that several sources included among the source categories addressed by this rulemaking present very small risks when viewed individually. Several are predicted to emit a level resulting in an incidence of less than one case of cancer every 1000 years, and an associated MIR well below 1×10^{-4}, or even 1×10^{-6}. Based on this, it has been suggested that EPA should apply a significance test to these sources, and determine that they do not warrant regulation based on the insignificance of the risks presented.

EPA considers it unnecessary to reach that argument here. EPA applied the significance test of the Supreme Court's OSHA benzene opinion in its prior rulemakings on radionuclides to determine whether each source category warranted regulation. See *Industrial Union Dept., AFL–CIO* v. *American Petroleum Institute*, 448 U.S. 607 (1980) (interpreting the Occupational Safety and Health Act of 1970 as requiring that benzene sources be regulated only if they present "significant" risks); see also 50 FR 5189–5194 (Feb. 6, 1985), 49 FR 43905–43915 (Oct. 31, 1984) (discussing the requirement that risks from radionuclide air emission sources be significant in order to be regulated under Clean Air Act Section 112); Memorandum of A. James Barnes, General Counsel, to the Administrator of EPA entitled "Final Action on Radionuclides" (Oct. 23, 1984) (same); but see *Sierra Club* v. *Ruckelshaus*, 602 F. Supp. 892 (N.D. Cal. 1984). However, EPA believes it is unnecessary to reach this issue at this time since EPA believes that its standards should have no practical effect on the facilities to which such a test might have applicability. But see CAA section 307(d)(7)(B). Based on the record, EPA judges that the facilities that might be deemed to pose insignificant risks individually already emit radionuclides at levels well below the final standard. And, implementation of a significance test to each individual source would, for some source categories such as the NRC licensee category which contains several thousand sources, present huge implementation and resource problems for the Agency to examine each source individually.

The standards would have no practical impact on operations of sources that might be deemed to pose insignificant risks, other than to assure that emissions from these sources could not increase so as to exceed the

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standard. Moreover, imposition of standards assure that EPA would be notified of significant increases in emissions at these sources, or other relevant changes in circumstances, such as changes in the location or exposure of the most exposed individual, that might require additional regulatory attention.

VI. Discussion of Source Categories

The regulatory decisions reached today are based on the risk assessments and other factors available in the rulemaking record. This rule is also based on consideration of information received during the comment period to the rulemaking.

A. Department of Energy Facilities

1. Introduction

The DOE administers many facilities, including government-owned, contractor-operated facilities across the country. Some facilities conduct nuclear energy and weapons research and development, some enrich uranium and produce plutonium for nuclear weapons and reactors, and some process, store and dispose of radioactive wastes. These facilities contain significant amounts of radioactive material and emit radionuclides into the air. Other facilities contain large stockpiles of waste ore which emit large quantities of radon. A discussion of those DOE facilities appears as a separate section later in this Preamble. EPA is considering the two categories separately in this rulemaking because the two categories employ different control methods. Some of the DOE facilities emitting radionuclides are on large sites covering hundreds of square miles in remote locations. Some of the smaller sites resemble typical industrial facilities and are located in suburban areas.

In total, DOE has approximately 30 major sites that emit radionuclides. These facilities emit a wide variety of radionuclides in various physical and chemical states. Emissions from various DOE facilities represent many types of radionuclides and both internal and external dose pathways (although specific facilities may emit only one or two radionuclides effecting only one pathway).

DOE facilities are presently covered by a radionuclide NESHAP which limits emissions such that no individual receives a whole body dose of 25 mrem/y or receives a dose of 75 mrem/y to any organ. DOE also controls releases from these facilities under DOE orders which limit calculated doses to the general public to less than 100 mrem/y from all sources and pathways. By incorporating the ALARA concept into its Orders, DOE has kept the dose to the public well below 100 mrem/y. The NESHAP also mandates that DOE send annual reports of emissions to EPA. The information gathered from these reports contributed to EPA's risk assessment of DOE facilities.

2. Estimates of Exposure and Risk

EPA's risk assessment of DOE facilities is a site-by-site assessment. Emissions are based on DOE's 1986 report of emissions, meteorological data are from on-site towers or from nearby weather stations, and population distributions within 80 km are based on U.S. census tract data. EPA has updated its risk assessment with information received during the comment period. EPA has a high degree of confidence in the results of this risk assessment.

According to EPA's analysis, all DOE facilities are in compliance with the current NESHAP. The risk to the most exposed individual is approximately 2.0×10^{-4}. DOE facilities are estimated to cause 0.26 fatal cancers per year to the exposed populations within 80 km of all DOE facilities. Most of the exposed population has a lifetime fatal cancer risk of less than 1×10^{-6}.

Table 3 presents example scenarios to show how different emission levels would result in different health risk profiles. The table presents the risk estimates at baseline in terms of estimated annual fatal cancer incidence, maximum individual lifetime risk, total population exposed at or above particular risk levels (i.e., risk distribution), and annual incidence attributable to the population exposed at each risk level. The table also presents available estimates of annual incidence and maximum individual lifetime risk for a lower emission level.

3. Application of Decision Methodology to the DOE Facilities Source Category

The decision that results from the application of the multifactor policy approach to the DOE source category is described below.

Decision on Acceptable Risk. As stated earlier, the maximum individual risk to any individual is 2.0×10^{-4}. In establishing the policy for setting NESHAPs in the context of benzene, the Agency determined that emissions resulting in a lifetime MIR no greater than approximately 1×10^{-4} are presumptively acceptable. In light of the numerous uncertainties in both establishing the parameters for the risk assessment and in modelling actual emissions and exposure, as well as the recognition that in achieving compliance, sources will generally control so as to ensure that a buffer exists below the actual level of a standard, EPA judges that the MIR of 2.0×10^{-4} is essentially equivalent to the presumptively safe level of approximately 1×10^{-4}. EPA then considered the other risk factors in order to determine whether the baseline level is acceptable.

The estimated annual incidence is 0.28 fatal cancers per year, or 1 case every 4 years; in addition, there would be an approximately equal number of non-fatal cancers per year. Very few people are at risks greater than 1.0×10^{-4}, and approximately 98% of people within 80 km of DOE facilities receive risks of less than 1×10^{-6}.

After examining these factors, the Administrator has determined that the baseline emission levels and risks from DOE facilities are acceptable.

Decision on Ample Margin of Safety. In addition to reexamining all the health-related factors discussed above, EPA has also examined the cost, scientific certainty, and technological feasibility of control technology necessary to lower emissions from DOE facilities. The results of this analysis may be seen in Table 4. Alternative I, a standard of 10 mrem/y, representing the current baseline emissions, was compared with alternative II, a standard of 3 mrem/y a standard, equivalent to 1×10^{-4}.

A comparison of the two alternatives indicates that only a very small reduction in incidence would occur, from 0.28 to 0.25, or 1 case every 33 years, with a concommitant reduction in MIR from 2×10^{-4} to 1×10^{-4}. Based on this very small reduction in incidence, the small decrease in individual risk that would result, and on the costs of achieving Alternative II, EPA has determined that a 10 mrem standard provides an ample margin of safety by continuing regulation of this category to insure that the current levels of emissions are not increased. Requirements of the rule, such as the submission of yearly reports and obtaining prior approval of new construction or modification, assure that DOE facilities will keep emissions at or below an acceptable level insuring an ample margin of safety. Moreover, because each facility subject to this rule must demonstrate compliance with the 10 mrem/y ede emissions standard, it is likely that most, if not all, exposed individuals will receive a dose significantly less than 10 mrem/y ede. Therefore, EPA believes that limiting emissions to their current level by imposition of a standard of 10 mrem/y EDE to replace the previous standard, will protect public health with an ample margin of safety. EPA is promulgating a NESHAP mandating that radionuclide emissions from DOE facilities shall not cause any individual to receive a dose of greater than 10 mrem/y ede.

TABLE 3.—DOE FACILITIES

[*Description:* The facilities owned and controlled by DOE. These include nuclear weapons production, testing and research facilities and other nuclear research and production facilities. There are 30 major DOE facilities that release radionuclides into the air.]

	Alternative I (baseline)	Alternative II
Maximum individual risk (lifetime)	2.0×10^{-4}	1×10^{-4}
Incidence within 80 km (death/y)	0.28	0.25
Risk individual		
E-2 to E-1	0	0
E-3 to E-2	0	0
E-4 to E-3	(*)	(*)
E-5 to E-4	0.25	0.22
E-6 to E-5	0.032	0.0074
less E-6	0.010	0.014

Other Health Impacts: Total cancers no more than twice fatal cancers.

* There are fewer than 25 people at this risk. However, we cannot quantify the number because detailed demographics have not been obtained.

TABLE 4.—DOE FACILITIES

Alternative	MIR	Incidence	Increment incidence reduction	Total incidence reduction	Increment capital cost	Increment annualized cost	Total annualized cost
I (Baseline)	2.0×10^{-4}	0.28					
II	1.0×10^{-4}	0.25	0.03	0.03	$ 5.9M	$ 0.2M	$ 0.2M

Comments: Alternative I: Baseline rule, emission limit of 10 mrem/y ede—highest emissions are from Los Alamos and Oak Ridge.
Alternative II: Emission limit of 3 mrem/y ede (equivalent to a MIR of 1×10^{-4})—the following controls are needed: Los Alamos—beam stops and delay lines; Oak Ridge—HEPA filters, particulate scrubbers, and tritiated water capture.

4. Implementation

a. *Introduction.* ORP's experience in implementing the existing radionuclide NESHAP covering DOE facilities has shown that implementation of the current standard has several problems. EPA has developed a new system for implementing the NESHAP designed to overcome the limitations in the present standard.

b. *Yearly Reports.* The implementation system for the NESHAP is designed to provide EPA with yearly reports on the levels of emissions from regulated facilities and resulting doses. Presently, DOE facilities monitor their emissions and make annual reports to EPA. These reports shall continue under the new NESHAP. Although the report is based on a calendar year the dose standard applies to any year, i.e. any period of 12 consecutive months. Since these reports provide EPA with the information it needs, DOE facilities are exempted from the requirements of 61.10.

c. *Methods of Measurement.* Because the thresholds for measurement are much lower than the standard, under certain circumstances the concentration and potential doses associated with release points that are above the threshold may be so low that direct measurement may not be practical. With prior EPA approval, DOE may determine these emissions through alternate procedures.

d. *Definition of a Facility.* A problem in implementing the current standard is the ambiguity associated with the present definition of a facility. To resolve this ambiguity, the new rule specifies that all the buildings, structures and operations within one contiguous site shall be considered a single facility. For example, the entire DOE facility at Oak Ridge, Tennessee must meet the current standard of 10 mrem/y ede, instead of each individual building meeting the 10 mrem/y ede standard.

e. *Distinction Between Construction and Modification.* A potential problem resulting from EPA's definition of a facility as all the buildings, structures and operations within a given plant site, is confusion over whether the construction of a new building is part of an existing facility, is new construction, or is a modification of an existing facility. This rule specifies that the construction of a new building is new construction at the facility and not a modification of the facility. This distinction is important because all new construction needs to be checked to see whether or not it needs prior approval but modifications which do not cause a net increase in the rate of emissions from the facility do not need prior approval.

f. *Prior Approval of New Construction or Modification.* EPA will not change the basic definition of modification that exists at 40 CFR 61.15. A change that will result in any increase in the rate of emissions is a modification, no matter how small that increase is. This includes cases where the modification has the potential to increase emissions above prior actual emissions. However, to reduce unnecessary paperwork, it is appropriate to avoid applications for approval in cases of small changes.

Therefore, EPA is promulgating a system under which DOE facilities will use CAP–88 to determine the dose to the most exposed individual due to the modification or new construction. If the estimated maximum individual dose added by the new construction or modification is less than 1% of the standard, then the modification or new construction does not need prior approval.

In making the determination of dose for this purpose, DOE must use the emission factors and source term determination from "BID: Procedures Approved for Demonstrating Compliance with the Dose Limits Established by 40 CFR part 61, subpart I." (BID: Compliance) or other procedures for which EPA has granted prior approval.

B. Nuclear Regulatory Commission Licensed and Non-DOE Federal Facilities

1. Introduction

The Nuclear Regulatory Commission (NRC) licenses the use of radionuclides by private industry, universities, and Federal facilities (other than DOE). Licensees include industrial radiography companies, nuclear medicine departments of hospitals, and manufacturers of radiopharmaceuticals. Federal facilities licensed by NRC include the Veterans Administration hospitals and the Naval Nuclear Propulsion Program. Most of these facilities are small, and emissions are low. Many of the facilities are located in urban areas. Emissions from these facilities are controlled by the use of fume hoods, glove boxes, and other containment devices. Emissions from these facilities are not presently regulated by the NESHAP.

2. Estimates of Exposure and Risk

EPA's risk assessment of NRC licensees is based on a survey of 5,000 NRC licensees. Emissions are based on information from NRC's Nuclear Materials Management and Safeguards System. Population distributions within 80 km are based on U.S. census tract data. EPA has a high degree of confidence in the results of this risk assessment.

According to EPA's analysis, all NRC licensees are in compliance with the current NESHAP. The risk to the most exposed individual is approximately 1.0×10^{-4}. NRC licensees are estimated to cause 0.03 fatal cancers per year to the exposed populations within 80 km of all NRC licensees. Most of the exposed population has a lifetime fatal cancer risk of less than 1×10^{-6}.

Table 5 presents example scenarios to show how different emission levels would result in different health risk profiles. The table presents the risk estimates at baseline in terms of estimated annual fatal cancer incidence, maximum individual lifetime risk, total population exposed at or above particular risk levels (i.e., risk distribution), and annual incidence attributable to the population exposed at each risk level. The table also presents available estimates of annual incidence and maximum individual lifetime risk for a lower emission level.

3. Application of Decision Methodology to the NRC Licensees Source Category

The decision that results from the application of the multifactor policy approach to the NRC licensees source category is described below.

Decision on Acceptable Risk. As stated earlier, the maximum individual risk to any individual is 1.0×10^{-4}. In establishing the policy for setting NESHAPs in the context of benzene, the Agency determined that emissions resulting in a lifetime MIR no greater than approximately 1×10^{-4} are presumptively acceptable. In light of the numerous uncertainties in both establishing the parameters for the risk assessment and in modelling actual emissions and exposure, as well as the recognition that in achieving compliance, sources will generally control so as to ensure that a buffer exists below the actual level of a standard, EPA judges that the MIR of 1.0×10^{-4} is essentially equivalent to the presumptively safe level of approximately 1×10^{-4}. EPA then considered the other risk factors in order to make an overall determination

that NRC licensees will keep emissions at or below levels insuring an ample margin of safety. Moreover, because cause any individual to receive a dose of greater than 10 mrem/y ede, of which no more than 3 mrem/y ede can come

TABLE 5—NRC LICENSEES—Continued

[*Description:* There are about 5,000 NRC material licensees: Radiopharmaceutical manufacturers and

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B. Nuclear Regulatory Commission Licensed and Non-DOE Federal Facilities

1. Introduction

NRC-licensed, Agreement state-licensed, and non-DOE federal facilities include over 6,000 different facilities. These facilities include research and test reactors, hospitals, clinics, the radiopharmaceutical industry, low level nuclear waste disposal facilities, and other research and industrial facilities. These facilities are located in all fifty states. EPA estimates that virtually every American lives within 80 km of an NRC licensee.

The facilities in this category emit a large number of radionuclides. These radionuclides affect individuals by inhalation, ingestion, ground deposition and immersion pathways. Individual facilities may emit only one or two radionuclides affecting only one or two pathways.

Emissions from this source category are presently covered by a radionuclide NESHAP which mandates that emissions do not cause any individual to receive a whole body dose of more than 25 mrem/y or receive a dose of 75 mrem/y to any organ. Two categories of NRC-licensees have been exempted from coverage by the existing NESHAP: High-level nuclear waste (HLW) facilities and uranium fuel cycle (UFC) facilities. There are two types of HLW facilities, management and disposal facilities. The disposal of HLW, which occurs at a few unique facilities, is considered as a separate source category. The management, processing and storage of HLW that occurs at a NRC-licensee is included in the estimate of emissions of the licensee used in the analysis that underlies the rule for this category. UFC facilities, which are distinctly different facilities, are being analyzed as a separate source category.

2. Estimates of Exposure and Risk

EPA's risk assessment of this category combined an analysis of the nine sub-categories that make up this category. Due to the wide scope of this category, EPA's risk assessment of this source category includes both the largest known emitters and model facilities with model populations. The estimates of maximum individual risk are based on the assessment of the largest known emitters.

The analysis of the largest sources was based on information compiled from previously existing databases and information received from some of the sources themselves. The model facilities were developed after reviewing data from surveys conducted by the NRC and the Conference of Radiation Control Program Directors. The use of model facilities increases the uncertainty of the risk assessment. Especially uncertain are estimates of the population within given risk ranges.

The estimates of population risks are based on extrapolations from model facilities using census tract data. Frequency distributions do not take into account overlapping sources.

The results of this analysis show a maximum individual risk of 1.6×10^{-4}. EPA estimates that this category results in 0.16 fatal cancers per year. Although virtually the entire U.S. population is exposed to emissions from this category, EPA's analysis shows that less than 0.5% of the U.S. population receives a lifetime fatal cancer risk greater than 1×10^{-6}. Some of the larger NRC-licensees release small amounts of iodine-125 and iodine-131; these radionuclides can cause thyroid cancer, which is usually non-fatal.

Table 5 presents example scenarios to show how different emission levels would result in different health risk profiles. The table presents the risk estimates at baseline in terms of estimated annual fatal cancer incidence, maximum individual lifetime risk, total population exposed at or above particular risk levels (i.e., risk distribution), and annual incidence attributable to the population exposed at each risk level. The table also presents available estimates of annual incidence and maximum individual lifetime risk for a lower emission level.

3. Application of the Decision Methodology to the NRC Licensees and non-DOE Federal Facilities Source Category

The decision that results from the application of the multifactor approach to the NRC-licensees and non-DOE Federal facilities source category is described below.

Decision on Acceptable Risk. As stated earlier, the maximum individual risk to any individual is 1.6×10^{-4}. In establishing the policy for setting NESHAPs in the context of benzene, the Agency determined that emissions resulting in a lifetime MIR no greater than approximately 1×10^{-4} are presumptively acceptable. In light of the numerous uncertainties in both establishing the parameters for the risk assessment and in modelling actual emissions and exposure, as well as the recognition that in achieving compliance sources will generally control so as to ensure a buffer exists below the actual level of a standard, EPA judges that the MIR of 1.6×10^{-4} is essentially equivalent to the presumptively safe level of approximately 1×10^{-4}. EPA then considered the other risk factors in order to make an overall determination on acceptability.

Very few people are at risks greater than 1.0×10^{-4} and approximately 99% of people within 80 km of NRC licensees are at risk levels of less than 1×10^{-6}. The estimated annual incidence is 0.16 fatal cancers per year, or 1 case every 6 years. In addition, there would be an estimated annual incidence of approximately 0.8 non-fatal cancers per year, most of which is attributable to thyroid cancer caused by emissions of radioactive iodine from hospitals and radiopharmaceutical manufacturers (thyroid cancer is also treated with iodine treatments).

After examining these factors, the Administrator concludes that baseline emissions are acceptable for this source category.

Decision on Ample Margin of Safety. In addition to re-examining all the health-related factors discussed above, EPA has also examined the cost, scientific certainty, and technological feasibility of control technology necessary to lower emission from NRC facilities. The results of this analysis may be seen in Table 6. Due to a lack of detailed information on all NRC licensees, EPA has analyzed model facilities. Alternative I, a standard of 10 mrem/y representing the current baseline emissions, was compared with Alternative II, a standard of 3 mrem/y, a standard equivalent to 1×10^{-4}.

EPA's risk assessment indicates that no reduction in incidence would occur and only a small reduction of the MIR would occur if reduction of current emissions to Alternative II levels were required. In this source category almost all the incidence comes from people whose risk level is less than 1×10^{-6}. This means that small reductions in the emissions of a few licensees have little, if any, effect on the number of health effects, both fatal and non-fatal, in the population. The costs associated with these reductions are $5,000,000 with an annualized cost of $2,400,000 for compliance with Alternative II. Based on the very small reductions in the risks to public health and the costs of achieving Alternative II, EPA has determined that Alternative I protects the public health with an ample margin of safety.

EPA has decided to continue regulation of this category to insure that the current levels of emissions are not increased. Requirements of the rule, such as the submission of yearly reports and obtaining prior approval of new construction or modification, will assure that NRC licensees will keep emissions at or below levels insuring an ample margin of safety. Moreover, because each facility subject to this rule must demonstrate compliance with the 10 mrem/y ede emissions standard, it is likely that most, if not all, exposed individuals will receive a dose significantly less than 10 mrem/y ede. EPA believes that limiting emissions with a baseline standard, represented by a level of 10 mrem/y ede, will therefore protect public health with an ample margin of safety. Furthermore, to insure that the risk of nonfatal thyroid cancer does not increase, the standard further provides that no more than 3 mrem/y ede out of the 10 mrem/y ede can come from any of the isotopes of iodine. Therefore, EPA is promulgating a NESHAP mandating that radionuclide emissions from NRC licensees shall not cause any individual to receive a dose of greater than 10 mrem/y ede, of which no more than 3 mrem/y ede can come from isotopes of iodine.

TABLE 5—NRC LICENSEES

[*Description:* There are about 6,000 NRC material licensees: Radiopharmaceutical manufacturers and users, sealed sources manufacturers, research reactors, industrial and university laboratories, and low-level waste disposal facilities.]

	Alternative I (baseline)	Alternative II
Maximum individual risk (lifetime)	1.6×10^{-4}	1×10^{-4}
Incidence within 80 km (deaths/y)	0.16	0.16
Risk individual:		
E-2 to E-1	0	0
E-3 to E-2	0	0
E-4 to E-3	(*)	(*)
E-5 to E-4	5,000	5,000
E-6 to E-5	760,000	760,000
less E-6	240M	240M
Risk incidence:		
E-2 to E-1	0	0
E-3 to E-2	0	0
E-4 to E-3	(*)	(*)
E-5 to E-4	0.0024	0.0024
E-6 to E-5	0.027	0.027
less E-6	0.13	0.13

(*) There are fewer than 25 people at this risk. However, we cannot quantify the number because detailed demographics have not been obtained.

Other Health Impacts: Total cancers are approximately 5 times higher than the number of fatal cancers because risks from some of the largest facilities in this source category are caused predominately by iodine which causes thyroid cancer.

TABLE 6—NRC LICENSEES

Alternative	MIR	Incidence	Increment incidence reduction	Total incidence reduction	Increment capital cost	Increment annualized cost	Total annualized cost
I (Baseline)	1.6×10^{-4}	0.16					
II	1.0×10^{-4}	0.16	<0.01	<0.01	$5M	$2.4M	$2.4M

Comments: For this category, non-fatal cancer risk is appreciably higher than the fatal cancer risk because most of the risk is due to I-131 and I-125 exposure (thyroid).

Alternative I: Baseline rule, 10 mrem/y ede—As a practical matter, this alternative is the same as the current NESHAP.

Alternative II: Emission limit of 3 mrem/y ede (equivalent to a MIR of 1×10^{-4})—cost estimates are very uncertain. Several hundred facilities would install controls or measure emissions to demonstrate compliance. Thousands would have to report to EPA.

4. Implementation

a. *Introduction.* The system for implementing this NESHAP is described in "A Guide for Determining Compliance with Clean Air Act Standards for Radionuclide Emissions From NRC-Licensed and Non-DOE Federal Facilities." The Agency has also developed the COMPLY Computer Code, for use with "MS–DOS" or "PC–DOS," computers to assist the regulated community in determining compliance with the standard. For more information, see "Draft User's Guide for the COMPLY Code" and "Background Information Document—Procedures Approved for Demonstrating Compliance with 40 CFR part 61, subpart I."

b. *Yearly Reports.* The implementation system for the NESHAP is designed to provide EPA with yearly reports on the levels of emissions and the dose caused by those emissions from regulated facilities. There are over 6,000 NRC-licensees, many of which possess very small amounts of radionuclides. EPA considers that the emissions from most sources in this category are so low that reporting should not be necessary. EPA has developed a system to determine whether or not reporting is required by estimating the dose caused by a facility's emissions. As long as the dose to the maximum individual is 10% of the standard or less, the facility does not have to report. With this provision, EPA currently estimates that less than 300 facilities would have to report to EPA.

The Agency has developed a system for dose determination that is based on screening models originally developed by the NCRP. This system is a series of screening tests each more complicated and more realistic than the previous one. Using this system, each affected facility will, annually, have to check to see whether or not it needs to report to EPA. Even if it does not have to report, it must keep records of the results for 5 years to demonstrate that it has checked to see whether or not it needs to report. Although the report is based on a calendar year, the dose standard applies to any year, i.e. any period of 12 consecutive months.

In order to simplify calculation of the source term, the Agency will allow the use of EPA-approved emission factors. The derivation of these emission factors is explained in "BID: Compliance." These factors are applied to the quantity of radionuclides used annually at the facility. Radionuclides in sealed containers are excluded. The results of these calculations are used as the input of emissions for the screening model mentioned above.

For the calculation of dose from low level radioactive waste, facilities must use CAPP–88 or another model which has prior approval from EPA.

Since these reports will provide EPA with the information it needs, NRC-licensees are exempted from the requirements of § 61.10.

c. *Prior Approval for Modification or New Construction.* EPA has decided that the system discussed for DOE facilities also be used for this source category except that the sources will not use CAP–88 to calculate the doses. Instead they will use the screening models (COMPLY code) described in the BID.

5. Reconsideration of NRC Licensee Category

Late in the rulemaking, issues related to the application of the standard in Subpart I to NRC licensees were presented to EPA which raised serious concerns about possible effects of

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duplicative, and perhaps conflicting, standards on NRC-licensees, including, for example, the use of radioisotope therapies by the National Institutes of Health (NIH) and other medical facilities. The concerns arise from the fact that these licensees would be regulated by both a Clean Air Act standard under Subpart I and an existing NRC standard under 10 CFR part 20. While the level of health protection achieved under the NRC standard is generally comparable to that required by EPA's rule, the two standards are very different in form, and the means of demonstrating compliance with each standard impose significantly different regulatory requirements. The basic issue is whether these different regulatory requirements will discourage the use of radioisotopes in medical and experimental therapies. In addition, NRC has raised the issue of whether regulation of its licensees under a Clean Air Act standard provides any additional public health benefits.

EPA has expressed similar concerns in past proceedings on this regulation. In its **Federal Register** notice of October 31, 1984, EPA stated, with respect to NRC-licensed facilities, that the record "does not support the conclusion that regulation of (these) * * * facilities is necessary to protect public health with an ample margin of safety." 49 **Federal Register** at 43912. In its **Federal Register** notice of February 6, 1985 (50 FR 5190) EPA stated that:

> EPA continues to believe existing emissions from these sources are already so low that the public health is already protected with an ample margin of safety * * *

Nevertheless, due to the court-ordered deadline for completion of the rulemaking by October 31, EPA has determined that it must promulgate the final standard under Subpart I at this time. However, in recognition of the serious nature of these concerns, and the need to further investigate and resolve these matters, EPA has concluded that it should treat the comments and information filed by NIH and NRC as petitions for reconsideration of the standard with respect to the range of issues raised by NRC and NIH, and EPA is granting reconsideration. For this purpose, a comment period of 60 days from the date of publication of this notice is hereby established for the purpose of receiving further information and comments on these issues, and a 3 month stay of subpart I, as provided for under 307(d)(7)(B), shall commence on the [date of publication]. Comments should be submitted (in duplicate if possible) to: Central Docket (A–130), Environmental Protection Agency, Attn: Docket No. A–79–11, Washington, DC 20460. After considering the information received, and other available information pertaining to these issues, EPA will issue a decision on the need for further rulemaking on the standard in subpart I.

C. Uranium Fuel Cycle Facilities

1. Introduction

Uranium Fuel Cycle (UFC) facilities are the facilities used in the conversion of uranium ore to electric power. They include uranium mills and tailings (non-radon emissions), uranium hexafloride conversion plants, light-water uranium fuel fabrication plants, commercial light-water nuclear power plants, and fuel reprocessing plants. These facilities are licensed by the NRC. (Uranium fuel enrichment facilities are not included in this category because they are included in the DOE facilities source category. Reprocessing plants are not included since the only one ever operated is being decommissioned and no reprocessing can occur under current policies. If a new one were to be opened in the future, it would be covered by the rule.) These facilities involve operations with the potential for large releases of radionuclides.

These facilities are not currently covered by a NESHAP. However, all releases from these facilities (air, water and direct gamma radiation) are covered under the Uranium Fuel Cycle Standard, 40 CFR part 190. This standard was promulgated by EPA under the authority of the AEA and is implemented and enforced by NRC. Under the standard, the combined releases of all UFC facilities must not cause any member of the public to receive a dose of more than 25 mrem/y to the whole body or to any organ except the thyroid (which can receive 75 mrem/y). In the past, the Administrator decided not to regulate this category under section 112, because he determined that the AEA standard protected public health with an ample margin of safety. EPA's decision not to regulate this category is one of the issues in the current litigation.

2. Estimates of Exposure and Risk

EPA's risk assessment for this category is the combination of the results of the assessments of the different types of facilities included in this category. The source term for emissions from uranium mill tailing piles is estimated for operable mills using NRC's methodology. Fugitive dust emissions from a tailing pile are assumed to be a function of meteorological conditions (wind, rainfall, temperature), ore composition, particle size and other factors. The estimate does not include radon releases which are covered by a separate NESHAP. Meteorological and population data are based on actual mill sites. The assessment of the two uranium hexafluoride conversion plants is based on reported emissions and census population distributions and meteorological data from nearby airports.

The assessment for fuel fabrication plants is based on reported emissions and census population distributions from the largest facility. The emission estimate for nuclear power plants is based on actual releases from operating plants. Population data is taken from NRC reference populations. Assessments consider effects of multiple reactors at a site, but not the overlap of multiple sites. The results of the analysis show that the most exposed individual receives a dose associated with an increased risk of fatal cancer of 1.5×10^{-4}. There is a predicted incidence of 0.1 fatal cancer per year in the population, with almost all the population risk received by people with a lifetime risk of less than 1×10^{-6}. Virtually the entire U.S. population lives within 80 km of at least one UFC facility.

Table 7 presents example scenarios to show how different emission levels would result in different health risk profiles. The table presents the risk estimates at baseline in terms of estimated annual fatal cancer incidence, maximum individual lifetime risk, total population exposed at or above particular risk levels (i.e., risk distribution), and annual incidence attributable to the population exposed at each risk level. The table also presents available estimates of annual incidence and maximum individual lifetime risk for a lower emission level.

3. Application of Decision Methodology to the Uranium Fuel Cycle Source Category

The decision that results from the application of the multifactor approach to the UFC facilities source category is described below.

Decision on Acceptable Risk. As stated earlier, the maximum individual risk to any individual is approximately 1.5×10^{-4}. In establishing the policy for setting NESHAPs in the context of benzene, the Agency determined that emissions resulting in a lifetime MIR no greater than approximately 1×10^{-4} are presumptively acceptable. In light of the numerous uncertainties in both establishing the parameters for the risk assessment and in modelling actual emissions and exposure, as well as the recognition that in achieving compliance, sources will generally control so as to ensure a buffer exists below the actual level of a standard, EPA judges that the MIR of 1.5×10^{-4} is essentially equivalent to the presumptively safe level of approximately 1×10^{-4}. EPA then considered the other risk factors in order to make an overall decision on acceptability. The estimated annual incidence is 0.1 fatal cancer per year, and approximately 99% of that risk is borne by people whose risk is less than 1×10^{-6}. Only 60 individuals incur a risk greater than 1×10^{-4}, and the incidence in the level greater than 1×10^{-4} is only 0.00093.

After examining these factors, the Administrator has determined that the baseline risks from UFC facilities are acceptable.

TABLE 7—URANIUM FUEL CYCLE FACILITIES

[Description: The facilities that convert uranium ore into electric power. They include operating uranium mills (nonradon emissions), uranium hexafluoride conversion plants, fuel fabrication plants, nuclear power reactors. About 135 facilities make up this category.]

	Alternative I (baseline)	Alternative II
Maximum individual risk (lifetime)	1.5×10^{-4}	3.0×10^{-5}
Incidence within 80 km (death/y)	0.1	0.1
Risk individual:		
E–2 to E–1	0	0
E–3 to E–2	0	0
E–4 to E–3	80	0
E–5 to E–4	6,600	4,000
E–6 to E–5	42,000	20,000
less E–6	240M	240M
Risk incidence:		
E–2 to E–1	0	0
E–3 to E–2	0	0
E–4 to E–3	0.0002	0
E–5 to E–4	0.0012	0.001
E–6 to E–5	0.0002	0.0006
less E–6	0.094	0.094

Other Health Impacts: Total cancers no more than twice fatal cancers.

TABLE 8—URANIUM FUEL CYCLE FACILITIES

Alternative	MIR	Incidence	Increment incidence reduction	Total incidence reduction	Increment capital cost	Increment annualized cost	Total annualized cost
I (Baseline)	1.5×10^{-4}	0.1					
II	3.0×10^{-5}	0.1	<0.01	<0.01	$75M	$31M	$31M

Comments:
Alternative I: Baseline rule, 10 mrem/y ede—the dose from one uranium mill is of this magnitude.
Alternative II: Emission limit of 1 mrem/y ede (equivalent to a MIR of 3×10^{-5})—Most of the incidence is due to power reactors and only a few are affected by this alternative, so there is little reduction in incidence. Additional controls are required for uranium mills and uranium conversion plants.

Decision on Ample Margin of Safety. In addition to reexamining all the health-related factors discussed above, EPA has also examined the cost, scientific certainty, and technological feasibility of control technology necessary to lower emissions from UFC facilities. The results of this analysis may be seen in Table 8. To reduce the complexity of studying the costs and benefits of all different control options, EPA has concentrated on the facilities with the largest emissions. Alternative I, a standard of 10 mrem/y representing the current baseline emissions, was compared with Alternative II, a standard of 1 mrem/y, equivalent to 3×10^{-5}.

EPA's risk assessment indicates that a small reduction in the MIR and an estimated reduction of incidence by less than one case every 100 years would occur by reducing emissions from their present levels to a level equivalent to 1×10^{-4}. This occurs because the incidence from this source category is caused by the large number of people, each of whom is at very low risk levels. This results in a situation where small reductions in emissions from a couple of facilities that are above the level of Alternative II, achieve effectively no reduction in the public health impact from the source category. Based on these factors and on the costs of achieving Alternative II (Table 8), EPA has determined that the current emission level provides an ample margin of safety. Therefore, EPA believes that limiting emissions to their current level by imposition of a standard of 10 mrem/y ede, will protect public health with an ample margin of safety.

EPA has decided to regulate this category to insure that the current levels of emissions are not increased. The requirements of the rule assure that UFC facilities will keep emissions at or below the level of the standard, thereby insuring an ample margin of safety. The reporting provisions also provide the public with information on the emissions from the facility and provides them with assurance that the emissions will remain safe with an ample margin of safety, regardless of changes in the facility or the local population. Moreover, because each facility subject to this rule must demonstrate compliance with the 10 mrem/y ede emissions standard, it is likely that most, if not all, exposed individuals will receive a dose significantly less than 10 mrem/y ede. Therefore, EPA is promulgating a NESHAP mandating that radionuclide emissions from UFC facilities shall not cause any individual to receive a dose greater than 10 mrem/y ede.

4. Implementation

EPA has determined that the same level of regulation is appropriate for both UFC facilities and NRC-licensees. Therefore, EPA has removed the exemption for UFC facilities in the NRC-licensee NESHAP and will regulate them exactly the same as other licensees, including reporting and recordkeeping requirements.

EPA approves the use of the current version of NRC regulatory guidances for use in determining the emissions from UFC facilities and will consider making a technical change to this rule to allow use of updated versions when they become available.

D. Elemental Phosphorus Plants

1. Introduction

Elemental phosphorus plants extract pure phosphorus from ore for use in the chemical industry. These facilities emit radionuclides into the air because phosphate ore is high in uranium and its decay products. These decay products, especially polonium-210 and lead-210, become volatilized during the extraction process and are released into the

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atmosphere. There are eight (5 operational, 3 standby) elemental phosphorus plants located in four different states. However, most of the emissions come from two plants in Idaho.

Due to the types of radionuclides emitted by these plants, virtually all the dose is received by the lung through the inhalation pathway causing an increased risk of lung cancer. This risk can be controlled through the use of a standard which directly limits emissions of polonium-210 (control measures which limit polonium-210 also limit emissions of lead-210). There is no need to write dose standards.

Elemental phosphorus plants are currently regulated by a NESHAP that limits their emissions to no more than 21 curies of polonium-210 annually.

2. Estimates of Exposure and Risk

EPA's risk assessment of elemental phosphorus plants is a site-by-site assessment of operating and standby plants, based on monitored data and throughput. Changes in the risk assessment since the proposal are the result of corrected meteorological data. Maximum individual risks were assessed at actual residences or at a location 1500 m in the predominant wind direction. The location of nearby populations was taken from census tract data.

According to the assessment, EPA estimates that the most exposed individual receives a lifetime fatal cancer risk of 5.7×10^{-4}. There is an increased incidence of 0.072 fatal cancer per year in the nearby (within 80 km) population, or 1 case every 14 years. Over 75% of the exposed population receives risks of less than 1×10^{-6}.

Table 9 presents example scenarios to show how different emission levels would result in different health risk profiles. The table presents the risk estimates at baseline in terms of estimated annual fatal cancer incidence, maximum individual lifetime risk, total population exposed at or above particular risk levels (i.e., risk distribution), and annual incidence attributable to the population exposed at each risk level. The table also presents available estimates of annual incidence and maximum individual lifetime risk for a lower emission level.

3. Application of Decision Methodology to the Elemental Phosphorus Plants Source Category

The decision that results from the application of the multifactor approach to the elemental phosphorus plants source category is described below.

Decision on Acceptable Risk. As stated earlier, the maximum individual risk to any individual is 5.7×10^{-4}. This is higher than the presumptively safe level. The estimated annual incidence is 0.072 fatal cancer per year. There are an estimated 5000 people that are exposed to risk levels greater than 1×10^{-4}, and an estimated 365,000 people that are exposed to risk levels greater than 1×10^{-6}. After examining these factors, the Administrator has determined that the risk level represented by the baseline is unacceptable. EPA then considered Alternatives II and III to determine an acceptable risk level. A reduction in emissions to 2 curies/y Po-210 would reduce the incidence to 0.024, or 1 case every 40 years and expose no one to a risk level greater than 1×10^{-4}. This equals the level that is presumptively safe. Therefore, the acceptable level of emissions of polonium-210 is a level that limits the maximum individual risk to any individual of 1×10^{-4}, represented by an emissions level of 2 curies/y Po-210.

TABLE 9—ELEMENTAL PHOSPHORUS PLANTS

[Description: These plants extract pure phosphorus for use in the chemical industry. They emit polonium-210 and lead-210 because these materials are present in phosphate ore and are vaporized by the high temperature in the process. There are 8 elemental phosphorus plants, of which 5 are currently operating. The majority of emissions come from 2 plants in Idaho.]

	Alternative I (baseline)	Alternative II	Alternative III
Maximum individual risk (lifetime)	5.7×10^{-4}	1×10^{-4}	1×10^{-5}
Incidence within 80 km (death/y)	0.072	0.024	0.0022
Risk individual:			
E-2 to E-1	0	0	0
E-3 to E-2	0	0	0
E-4 to E-3	5,000	0	0
E-5 to E-4	110,000	20,000	0
E-6 to E-5	250,000	330,000	17,000
less E-6	1.5M	1.5M	1.8M
Risk incidence:			
E-2 to E-1	0	0	0
E-3 to E-2	0	0	0
E-4 to E-3	0.010	0	0
E-5 to E-4	0.049	0.0051	0
E-6 to E-5	0.016	0.013	0.00049
less E-6	0.0058	0.0059	0.0018

Other Health Impacts: Non-fatal cancers no more than 5% of deaths.

TABLE 10—ELEMENTAL PHOSPHORUS PLANTS

Alternative	MIR	Incidence	Increment incidence reduction	Total incidence reduction	Increment capital cost	Increment annualized cost	Total annualized cost
I (Baseline)	5.7×10^{-4}	0.072					
II	1×10^{-4}	0.024	0.048	0.048	$8.5M	$2.4M	$2.4M
III	1×10^{-5}	10.0022	0.022	0.070	$35M	$18M	$20M

Comments:
Alternative I: Baseline rate, emission limit at 18 Ci/y Po-210—highest current emission rate is 10 curies/y Po-210.
Alternative II: Emission limit of 2 Ci/y Po-210, high energy scrubbers on the two largest plants.
Alternative III: Fabric filters on the two largest plants. High energy scrubbers on all other plants.

Decision on Ample Margin of Safety. In addition to reexamining all the health-related factors discussed above, EPA has also examined the cost, scientific certainty, and technological feasibility of control technology necessary to lower emissions from elemental phosphorus plants. The results of this analysis may be seen in Table 10. Alternative II, a standard of 2 curies/y of polonium-210 representing the acceptable level, was compared with Alternative III, which would require a collection of work practices.

A comparison of the two alternatives indicates that in absolute terms, a very small reduction in incidence would occur, from 0.024 to 0.0022, representing an estimated savings of 1 life every 45 years. Level III would also lower the MIR by one order of magnitude to 1×10^{-5}. EPA examined these very small reductions in risks, and the relatively large costs of achieving Alternative III, and has determined that Alternative II protects the public health with an ample margin of safety. Therefore, EPA is establishing a NESHAP limiting emissions from elemental phosphorus plants to 2 curies/y of polonium-210, as compared to the existing standard of 21 curies/y.

4. Implementation

The current NESHAP for elemental phosphorus plants required each plant to either conduct an initial test on its emissions or get a waiver from testing. After this original report no further testing was required, unless plant operations were changed significantly. EPA plans to continue this system, without the waiver provisions. Tests conducted under the current NESHAP are still valid if conditions have not changed.

Plants will be required to monitor their operations continuously and keep records of the results of their monitoring onsite for five years. Plant owners will have to certify on a semiannual basis that no changes in operations that would require new testing have occurred. Although the report is based on a calendar year the emission limit applies to any year, i.e. any period of 12 consecutive months.

Since the reports provide EPA with the information it needs, elemental phosphorus plants are exempted from the requirements of § 61.10.

B. Coal-Fired Utility and Industrial Boilers

1. Introduction

This category covers electrical utility and industrial boilers which emit the radionuclides naturally present in coal. Coal contains only minute amounts of radionuclides. This category is being considered because large boilers burn large quantities of coal and are so widely dispersed throughout the nation that the radionuclide emissions are estimated to cause 0.8 fatal cancer a year among the U.S. population.

Emissions from coal-fired boilers are presently regulated under National Ambient Air Quality Standards for particulate matter. In addition, the larger new coal-fired boilers have to meet New Source Performance Standards (NSPS). Coal-fired boilers are regulated for the other pollutants they emit including SO_2 and particulates.

2. Estimates of Exposure and Risk

EPA's risk assessment of coal-fired boilers is based on extrapolations of estimated radionuclide emissions based on actual particulate emissions with model populations. Estimates of emissions are from the reference facilities with the largest emissions. Population risks are based on emissions from typical plants. These emissions were analyzed on four sites: urban, suburban, rural and remote. Further information was received from a recent study of emissions from coal-fired boilers done by the Office of Air Quality, Planning and Standards. EPA assumed that the entire U.S. population lives within 80 km of at least one coal fired boiler.

EPA estimates that the maximum individual risk is 2.5×10^{-5} and that there are 0.8 fatal cancer a year caused by radionuclide emissions from both utility and industrial coal fired boilers. Virtually all the fatal cancer risk is borne by individuals whose lifetime fatal cancer risk is less than 1×10^{-6}.

Table 11 presents example scenarios to show how different emission levels would result in different health risk profiles. The table presents the risk estimates at baseline in terms of estimated annual fatal cancer incidence, maximum individual lifetime risk, total population exposed at or above particular risk levels (i.e., risk distribution), and annual incidence attributable to the population exposed at each risk level. The table also presents available estimates of annual incidence and maximum individual lifetime risk for a lower emission level.

3. Application of Decision Methodology to Coal-Fired Boilers Source Category

The decision that results from the application of the multifactor approach to the coal-fired boilers source category is described below.

Decision on Acceptable Risk. As stated earlier, the maximum individual risk to any individual is 2.5×10^{-5} which is below the presumptively safe level. The estimated annual incidence within 80 km is 0.8 fatal cancer per year. Over 99% of the incidence comes from people whose individual risk is less than 1×10^{-6}. Almost everyone in the U.S. lives within 80 kilometers of a coal-fired boiler, which results in a risk which is very evenly and equitably distributed. Therefore, EPA concludes that the baseline risk level is acceptable.

TABLE 11—COAL-FIRED BOILERS

[Description: Over 1,500 electrical utility and large industrial boilers release the small amounts of radionuclides naturally found in coal along with the non-radioactive particulates.]

	Alternative I (Baseline)	Alternative II
Maximum individual risk (lifetime)	2.5×10^{-5}	1×10^{-6}
Incidence within 80 km (death/y)	0.8	0.4
Risk individual:		
E-2 to E-1	0	0
E-3 to E-2	0	0
E-4 to E-3	0	0
E-5 to E-4	(*)	0
E-6 to E-5	130,000	(*)
less E-6	240M	240M
Risk incidence		
E-2 to E-1	0	0
E-3 to E-2	0	0
E-4 to E-3	0	0
E-5 to E-4	(*)	0
E-6 to E-5	0.001	(*)
less E-6	0.8	0.4

* We believe that people are at this risk level but all 1,500 facilities in this category have not been characterized.

Other Health Impacts: Total cancers no more than twice fatal cancers.

TABLE 12—COAL-FIRED BOILERS

Alternative	MIR	Incidence	Increment incidence reduction	Total incidence reduction	Increment capital cost	Increment annualized cost	Total annualized cost
I (Baseline): (all)	2.5×10^{-5}	0.4					

TABLE 12—COAL-FIRED BOILERS—Continued

TABLE 13—HIGH LEVEL NUCLEAR WASTE

from DOE facilities to no more than 20

all of these factors, especially the high

TABLE 12—COAL-FIRED BOILERS—Continued

Alternative	MIR	Incidence	Increment incidence reduction	Total incidence reduction	Increment capital cost	Increment annualized cost	Total annualized cost
(ends)	*7×10^{-6}	*0.4					
Alternative II:							
(left)	1×10^{-7}	0.2	0.2	0.2	$138	$4.4B	$4.4B
(ends)	*1×10^{-6}	*0.2	*0.2	*0.2		*$1.7B	*$1.7B

*Office of Air Quality Planning and Standards values (Draft—Coal and Oil Combustion Study), 1989).

Comments:
Alternative I: Baseline, no rule—utility boilers: current emissions as controlled by NSPS, PSD, and SIP; industrial boilers: current emissions as controlled by SIP.
Alternative II: Utility boilers: retrofit of all sources to meet NSPS (particulate standard). Assumes ESPs are used to retrofit to an emission limit of 13 ng/joule (NSPS revised). Retrofit would yield additional health benefits due to reductions in particulate emissions.
Industrial boilers: retrofit all units >2MM Btu/h with ESPs.

Decision on Ample Margin of Safety. In addition to reexamining all the health-related factors discussed above, EPA has also examined the cost, scientific certainty, and technological feasibility of control technology necessary to lower emissions from coal-fired boilers. The results of this analysis may be seen in Table 12. Alternative I, baseline emissions, was compared with Alternative II, which would require retrofitting existing sources to meet the NSPS. EPA's risk assessment indicates that the baseline MIR from coal-fired boilers, 2.5×10^{-6}, is very low, well below the presumptively safe level of approximately 1×10^{-4}. The risk is very evenly distributed among the population. The costs of Alternative II are extremely large. EPA examined the small risks presented by coal-fired boilers and the very large costs of achieving Alternative II, and determined that the current level of emissions represents an ample margin of safety. In addition, since all new facilities will have to meet NSPS, the effect of the NESHAP would solely be to require retrofitting of existing boilers. The NSPS provides assurance that the risks from coal-fired boilers will be reduced over time.

Therefore, EPA has determined that current levels of radionuclide emissions from coal-fired boilers represent a level of risk that protects the public health with an ample margin of safety.

F. High-Level Nuclear Waste Disposal Facilities

1. Introduction

Management and storage operations for high-level nuclear waste, spent fuel and transuranic waste are addressed in the categories for DOE facilities and NRC-licensed and non-DOE Federal facilities described above. This category addresses facilities constructed and dedicated to long term disposal of such materials pursuant to regulations to be promulgated at 40 CFR 191. Site characterization studies for the first such repository are being conducted by DOE and currently center on Yucca Mountain, Nevada. In addition, DOE is constructing an experimental Waste Isolation Pilot Plant (WIPP) which may be dedicated as a disposal facility.

2. Estimates of Exposure and Risk

EPA's risk assessment of HLW disposal facilities is based upon DOE engineering estimates for conceptual designs for the WIPP in New Mexico, and a permanent repository at Yucca Mountain. They were analyzed by EPA and are believed to be reasonable. Population data was taken from U.S. census data at these sites. Although the decision on Yucca Mountain's acceptability as a disposal site has not yet been made, EPA has analyzed the Yucca Mountain site in order to incorporate site specific information into the analysis.

EPA estimates that the maximum individual risk is 7×10^{-6} and that there would be 0.0000043 fatal cancers a year caused by radionuclide emissions from HLW disposal facilities to less than 1 million people within 80 km of these facilities. All the fatal cancer risk is borne by individuals whose total fatal cancer risk is less than 1×10^{-4}.

The reason that the emissions and risks are so low is the nature of the disposal operations. Most material will be brought to the site already sealed and buried below ground. Normal operations preclude any significant air emissions.

Table 14 presents the risk estimates at baseline in terms of estimated annual fatal cancer incidence, maximum individual lifetime risk, total population exposed at or above particular risk levels (i.e., risk distribution), and annual incidence attributable to the population exposed at each risk level.

3. Application of Decision Methodology to the High Level Waste Source Category

The decision that results from the application of the multifactor approach to the HLW disposal facilities source category is described below.

Decision on Safe With an Ample Margin of Safety. As stated above, the individual risks from HLW disposal facilities are very small, 7×10^{-6}, much less than the 1×10^{-4} benchmark. In addition, there would be 0.0000043 fatal cancer a year from radionuclide emissions from disposal of HLW, see Table 13. The emissions and risk levels are so low that it was not necessary to evaluate any alternatives. The Administrator determines that the estimate of emissions from disposal of HLW represents a level that will protect public health with an ample margin of safety.

Operations involving the management, processing or storage of high-level waste, the operations from which an increase in emissions are more likely to occur, are regulated under NESHAPS controlling emissions from NRC-licensees, uranium fuel cycle facilities and DOE facilities. Disposal operations involve burying sealed containers of radioactive material, operations from which emissions are unlikely to occur. Therefore, EPA believes that there is no reason to expect that emissions to air would significantly increase, and, since the expected emissions are so low, no NESHAP is needed.

TABLE 13—HIGH LEVEL NUCLEAR WASTE DISPOSAL FACILITIES

[Description: Facilities designed to dispose of high level nuclear waste. There are no currently operating facilities. A geological repository is being considered for Yucca Mountain, Nevada. The Waste Isolation Pilot Plant now under construction in New Mexico, may also become a disposal facility. Baseline emissions are estimates of expected emissions. No alternatives are given due to expected risks well below 1×10^{-4}.]

	Alternative I (Baseline)
Maximum individual risk (lifetime)	7.0×10^{-6}
Incidence within 80 km (death/y)	0.0000043
Risk individual:	
E-2 to E-1	0
E-3 to E-2	0
E-4 to E-3	0
E-5 to E-4	0
E-6 to E-5	0
less E-6	101,000
Risk incidence:	
E-2 to E-1	0
E-3 to E-2	0
E-4 to E-3	0
E-5 to E-4	0
E-6 to E-5	0
less E-6	0.0000043

Other Health Impacts: Total cancers no more than twice fatal cancers.

G. Radon Releases from Department of Energy Facilities

1. Introduction

The DOE administers many facilities, including government-owned, contractor-operated facilities across the country. Some of these facilities have large stockpiles of radium-containing material. Because this material has a high radium content it emits large quantities of radon. This material is stored in at least six different sites (at five locations) owned or controlled by DOE in Missouri, New Jersey, New York, Ohio and Utah. DOE is presently in the process of taking remedial action at these sites to dispose of the material on a long-term basis under procedures defined by Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), or has completed required action and placed residues in interim storage. DOE has entered into or is negotiating a CERCLA compliance agreement for these remedial actions in accordance with CERCLA requirements, EPA policy and Executive Order 12580. The agreement for the DOE Monticello site has incorporated a 20 pCi/m^2-s flux standard through reference to DOE guidelines and 40 CFR 192.

The current NESHAP covering DOE facilities does not regulate radon emissions. Environmental groups challenged EPA in court to address the problem of radon emissions from DOE facilities. In March, EPA proposed that these facilities be regulated under a NESHAP; one option in that proposal would have limited emissions of radon from DOE facilities to no more than 20 pCi/m^2-s.

2. Estimates of Exposure and Risk

EPA's risk assessment of DOE facilities is a site-by-site assessment of current emissions. Radon emission estimates were mostly measured values provided by DOE or estimated from measured radium-226 concentrations in the wastes. The meteorological data were taken from nearby stations and populations are based on U.S. census tract data.

According to EPA's analysis, lifetime fatal cancer risk to the most exposed individual is 1.4×10^{-3}. DOE facilities cause an estimated 0.08 fatal cancer per year, or approximately 1 case every 12 years to the 28 million persons within 80 km of the DOE facilities. Approximately 75% of the risk to that population comes from individuals whose risk is over 1×10^{-6}. It is noted that this analysis does not consider the planned remedial actions which will be implemented under CERCLA, as amended, in conjunction with either Interagency Agreements or Federal Facilities Agreements with EPA.

Table 14 presents example scenarios to show how different emission levels would result in different health risk profiles. The table presents the risk estimates at baseline in terms of estimated annual fatal cancer incidence, maximum individual lifetime risk, total population exposed at or above particular risk levels (i.e., risk distribution), and annual incidence attributable to the population exposed at each risk level. The table also presents available estimates of annual incidence and maximum individual lifetime risk for lower emission levels identified as Alternatives II, and III.

3. Application of Decision Methodology to the Radon Emissions From DOE Facilities Source Category

The decision that results from the application of the multifactor approach to the DOE radon source category is described below.

Decision on Acceptable Risk. As stated earlier, the maximum individual risk to any individual is 1.4×10^{-3} which is higher than the presumptively safe level. EPA has considered other risk factors to determine whether the baseline risk is acceptable. The estimated annual incidence is approximately 0.072 fatal cancers per year, and approximately 75% of that risk is borne by people whose risk is over 1×10^{-6}. Over 2,000 people are exposed to risks greater that 1×10^{-4}. Considering all of these factors, especially the high level of maximum individual risk, the baseline is unacceptable.

EPA next examined several alternatives before determining the acceptable level; those alternatives and the risks they present are presented in Table 14. After examining these different options, the Agency determined that Alternative II, setting a NESHAP limiting radon emissions to 20 pCi/m^2-s, is acceptable. The maximum individual risk that results from this alternative, 1.8×10^{-4}, which in light of the numerous uncertainties in both establishing the parameters for the risk assessment and in modelling actual emission and exposure, as well as the recognition that in achieving compliance sources will generally control so as to ensure that a buffer exists below the actual level of a standard, is essentially equivalent to the presumptively safe level of approximately 1×10^{-4}. Over 99% of the population would be exposed to risks of less than 1×10^{-6}. In addition, the incidence level is only 0.040 fatal cancers per year and 0.0021 non-fatal cancers annually. Only a few people (approximately 100) would be exposed to risks greater than 1×10^{-4}; the predicted rate of fatal cancer among this group is less than 1 every 5,000 years.

Decision on Ample Margin of Safety. In addition to reexamining all of the health-related factors discussed above, EPA has also examined the cost, scientific certainty, and technological feasibility of control technology necessary to lower radon emissions from DOE facilities. The results of this analysis can be seen in Table 15. When EPA examined the control technology necessary to lower radon emissions from DOE facilities it concluded that the only technologically feasible control is burying the sources of radon emissions. The examined options Alternative II, and Alternative III, differ only in the amount of dirt that is used to bury the radium bearing waste. The costs and benefits of controlling emissions to various levels can be seen in Table 15.

A comparison of the two alternatives indicates that a very small reduction in incidence of 0.009, would result from imposing Alternative III, representing an estimated savings of 1 life every 111 years; the change in maximum individual risk would also be very small. EPA examined this very small reduction in incidence and maximum individual risk and the costs of achieving Alternative III and has determined that Alternative II provides an ample margin of safety. Therefore, EPA has decided to regulate this category by setting a

NESHAP limiting emissions from these sources to 20 pCi/m^2-s. This rule will assure that all DOE radon sites (radium-226 byproduct material disposal and storage sites) resulting from DOE cleanup and restoration under CERCLA will be covered by the rule. This standard will protect public health with an ample margin of safety.

locations of nearby residents obtained from industry or topographical maps. Where information was unavailable,

Alternative II, differ only in the amount of dirt that is used to bury the radium bearing waste. The costs and benefits of

continued safety of the public with an ample margin of safety. This numerical standard simply ensures maintenance of

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NESHAP limiting emissions from these sources to 20 pCi/m²-s. This rule will assure that all DOE radon sites (radium-226 byproduct material disposal and storage sites) resulting from DOE cleanup and restoration under CERCLA will be covered by the rule. This standard will protect public health with an ample margin of safety.

TABLE 14—RADON FROM DOE FACILITIES

[Description: Radon released from waste materials left behind from the Manhattan project and the early days of the Atomic Energy Commission. These wastes are currently stored at six facilities controlled by DOE.]

	Alternative I (baseline)	Alternative II	Alternative III
Maximum individual risk (lifetime)	1.4×10^{-3}	1.8×10^{-4}	1×10^{-4}
Incidence within 80 km (death/y)	0.072	0.040	0.012
Risk individual:			
E-2 to E-1	0	0	0
E-3 to E-2	30	0	0
E-4 to E-3	2,000	100	0
E-5 to E-4	8,200	3,800	470
E-6 to E-5	360,000	92,000	19,000
less E-6	28M	28M	28M
Risk incidence:			
E-2 to E-1	0	0	0
E-3 to E-2	0.00056	0	0
E-4 to E-3	0.0058	0.00019	0
E-5 to E-4	0.0031	0.0014	0.00015
E-6 to E-5	0.0067	0.0026	0.00052
less E-6	0.054	0.036	0.011

Other Health Impacts: Non-fatal cancers no more than 5% of deaths.

TABLE 15—RADON FROM DOE FACILITIES

Alternative	MIR	Incidence	Increment incidence reduction	Total incidence reduction	Increment capital cost	Increment annualized cost	Total annualized cost
I (Baseline)	1.4×10^{-3}	0.072	—	—	—	—	—
II	1.8×10^{-4}	0.040	0.032	0.032	$29M	$1.5M	1.5M
III	1.0×10^{-4}	0.012	0.028	0.060	$25M	$1.3M	$2.8M

Comments:
Alternative I: Baseline, no rule—Self-regulated by DOE.
Alternative II: Cover source to limit emissions to 20 pCi/m²-s—This is the same level as the current AEA rule set by EPA for uranium mill tailings.
Alternative III: Cover source to limit emissions to 2 pCi/m²-s—Most of the cost is to control emissions from the Monticello tailings pile.

4. Implementation

This NESHAP is a flux standard that limits the emission of radon from DOE facilities. The standard limits the amount of radon that can be emitted per unit area (m²) per unit of time (s). This standard is not an average per facility but is an average per radon source. This will require that all radon sources must be disposed of in a manner that will reduce the radon flux to meet the standard.

Currently, all DOE radon sites have completed construction of interim storage facilities or have signed or are negotiating cleanup agreements under CERCLA with EPA regional offices. All existing agreements require that the waste be covered to reduce the radon flux to 20 pCi/m²-s. This rule will assure that all future agreements will require that the radon flux be reduced to at least this level.

While EPA believes that DOE will be able to meet this standard, EPA recognizes that in some cases DOE may need some time to perform all the actions necessary to reduce radon emissions to the required levels. In such a case, DOE may request a waiver of the compliance deadline of up to two years, under section 112(c)(1)(b)(ii) of the CAA. If two years is not sufficient time to complete remediation of the sites, EPA is prepared to discuss extended schedules for compliance. EPA recognizes that the requirements of CERCLA and other environmental laws will have to be considered in these discussions. This process will ensure that these sites are cleaned up as quickly as possible.

EPA believes that the existing oversight of DOE sites through the CERCLA program is sufficient to protect the public health, therefore, EPA is requiring no additional reporting or implementation requirements for this source category. Unlike the other categories that may be regulated by other laws, these sites are reporting and will continue to report to EPA regional offices, providing EPA with all the information it needs to assure compliance with this standard. Therefore, these DOE facilities are exempted from the requirements of § 61.10.

H. Phosphogypsum Stacks

1. Introduction

Phosphogypsum stacks are large piles of waste from wet acid phosphorus fertilizer production. Phosphogypsum stacks are found at 41 different sites in 12 states. Because phosphate ore contains a relatively high concentration of uranium and radium, phosphogypsum stacks are also high in these elements. The presence of radium in the stacks causes them to release radon into the atmosphere.

2. Estimates of Exposure and Risk

EPA has performed a pile-by-pile assessment of radon releases at 58 phosphogypsum stacks at 41 sites. Radon emissions are based on measured radon fluxes at stacks in Florida and Idaho which, combined with the radium content of the phosphate rock, allowed EPA to estimate emissions from the other stacks. The maximum individual risks estimates are based on the locations of nearby residents obtained from industry or topographical maps. Where information was unavailable, people were assumed to be 800 meters from the site boundary. Populations within 80 km were taken from census tract data. The risk assessment presented with the proposal has been updated in response to new information provided from the comments.

The estimated maximum individual risk of fatal cancer from radon emissions from phosphogypsum stacks is 9×10^{-3}. The radon emissions are estimated to cause 0.95 fatal cancers and 0.047 non-fatal cancers per year to the 95 million people within 80 km. Approximately 90% of the risk to the population is borne by people whose risk is less than 1×10^{-5}, and 33% of the risk is borne by people whose risk is less than 1×10^{-6}.

Table 16 presents example scenarios to show how different emission levels would result in different health risk profiles. The table presents the risk estimates at baseline in terms of estimated annual fatal cancer incidence, maximum individual lifetime risk, total population exposed at or above particular risk levels (i.e., risk distribution), and annual incidence attributable to the population exposed at each risk level. The table also presents available estimates of annual incidence and maximum individual lifetime risk for a lower emission level identified as Alternative II.

3. Application of Decision Methodology to Phosphogypsum Source Category

The decision that results from the application of the multifactor approach to the phosphogypsum source category is described below.

Decision on Acceptable Risk. As stated earlier, the maximum individual risk to any individual is 9×10^{-3} which is less than the benchmark of approximately 1×10^{-4} and is, therefore, presumptively safe. While the incidence is 0.95, it results from the low levels of risk to the millions of persons included within the modelling radius, with the bulk of the incidence from people whose individual risk is less than 1×10^{-6}. Over 77% of the population is exposed to risks of less than 1×10^{-6}. EPA has concluded that the baseline risk is acceptable.

Decision on Ample Margin of Safety. In addition to reexamining all of the health-related factors discussed above, EPA has also examined the cost, scientific certainty, and technological feasibility of control technology necessary to lower radon emissions from phosphogypsum stacks. The results of this analysis can be seen in Table 17. The examined options, Alternative I and Alternative II, differ only in the amount of dirt that is used to bury the radium bearing waste. The costs and benefits of controlling emissions to various levels can be seen in Table 17.

A comparison of the two alternatives indicates that a small reduction in incidence would occur from imposing Alternative II, 0.16; this represents an estimated incidence reduction of 1 life every 6 years. Simultaneously the maximum individual risk would be reduced only marginally, from 9.1×10^{-5} to 8.2×10^{-5}. EPA examined this small reduction in incidence and maximum individual risk and the relatively large costs to achieve these small reductions in risks and determined that Alternative I provides an ample margin of safety. EPA has concluded that a standard is warranted for this category. Setting a standard will treat phosphogypsum stacks the same way that other radium bearing wastes (uranium mill tailings) are being treated. A standard will also ensure that the public will be protected with an ample margin of safety in all cases. Therefore, EPA has decided to regulate this category by setting a NESHAP limiting emissions from these sources to no more than 20 pCi/m²-s.

4. Implementation

This standard is in the form of a work practice standard that initially directs that the phosphogypsum by-product be disposed into stacks or old phosphate mines, and imposes on those stacks or mines a standard to ensure that they do not emit radon into the ambient air in an amount greater than a flux of 20 pCi/m²-s. EPA has settled on this form of a standard pursuant to its authority under CAA section 112(e) to set a work practice standard when it is "not feasible to prescribe or enforce an emission standard" because the hazardous air pollutant cannot be emitted through a conveyance designed or constructed to emit or capture such air pollutant. Given the size of the stacks, use of a conveyance to capture the radon emitted by the stacks is utterly impractical. Without requiring the radium-rich phosphogypsum be first disposed into large, manageable stacks or mines, which is generally what has been done with the existing phosphogypsum, the phosphogypsum may be incorporated into other products or otherwise diffused throughout the country, such that the Agency will be unable to ensure that the phosphogypsum's radon emissions do not present an unacceptable risk to public health.

Once the phosphogypsum is deposited in stacks, an additional requirement of 20 pCi/m²-s is sufficient to ensure the continued safety of the public with an ample margin of safety. This numerical standard simply ensures maintenance of the status quo as EPA believes all existing phosphogypsum stacks meet these requirements without the need for additional control technology.

Under this NESHAP, all phosphogypsum stacks will be limited in the amount of radon they may release. The standard limits the amount of radon that can be emitted per unit area (m²) per unit of time (s). This standard is an average per stack.

Ninety days after the effective date of this rule or sixty days after the stack becomes inactive, whichever is later, the operator must test the stack to determine whether or not the stack is in compliance with the flux standard. The stack is considered inactive if it is no longer being used for the disposal of phosphogypsum or for waste water management operations associated with the mining and milling of phosphogypsum. If a stack has not been used for two years, it is presumed to be inactive.

Once testing demonstrates that the stack is in compliance, it does not have to be tested again. EPA expects that few, if any, stacks will be used after they are tested; however, if the stack is used again, it ceases to be inactive. When it ceases to be used subsequently, it again becomes inactive and must be retested.

Since EPA has all the current information it needs on phosphogypsum stacks, they are exempted from the requirements of § 61.10.

TABLE 16—DISPOSAL OF PHOSPHOGYPSUM STACKS

[Description: Large piles of waste from wet acid phosphorous fertilizer production. Radon is released from the uranium decay product found in phosphate ore. There are about 60 stacks on 40 sites.]

	Alternative I (baseline)	Alternative II
Maximum individual risk (lifetime)	9.1×10^{-5}	8.2×10^{-5}
Incidence within 80 km (death/y)	0.95	0.79
Risk individual:		
E-2 to E-1	0	0
E-3 to E-2	0	0
E-4 to E-3	0	0
E-5 to E-4	400,000	250,000
E-6 to E-5	17M	14M
less E-6	77M	81M
Risk incidence:		
E-2 to E-1	0	0
E-3 to E-2	0	0
E-4 to E-3	0	0
E-5 to E-4	0.082	0.055
E-6 to E-5	0.54	0.41
less E-6	0.32	0.33

Other Health Impacts: Non-fatal cancers no more than 5% deaths.

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TABLE 17—DISPOSAL OF PHOSPHOGYPSUM STACKS

Alternative	MIR	Incidence	Increment incidence reduction	Total incidence reduction	Increment capital cost	Increment annualized cost	Total annualized cost
I (Baseline)	9.1×10^{-5}	0.95					
II	8.2×10^{-5}	0.79	0.16	0.16	$450M	$43M	$43M

Comments:
Alternative I: Baseline rule, cover source to limit emissions to 20 pCi/m²-s—Stacks have emissions of 4 to 15 pCi/m²-s; no cover would be needed. This rule would be equivalent to the current AEA rule set by EPA for uranium mill tailings.
Alternative II: Cover source to limit emissions to 6 pCi/m²-s—Stacks are covered with 0.5 meters of dirt. Usually dirt is not locally available and must be hauled to the site.

I. Underground Uranium Mines

1. Introduction

When these mines are operating, their ventilation systems emit large amounts of radon into the atmosphere. The levels of radon in an unventilated mine are a hazard to the miners. Ventilating to reduce radon exposure to the miners increases exposure to the general population.

Underground uranium mines are regulated by an existing NESHAP. This NESHAP requires bulkheading of unused portions of the mines in an effort to reduce the internal wall surface area of the mine and thereby reduce radon emissions into the mine air. EPA has found that this system is unworkable for existing mines, and it is unproven for new mines. The interiors of existing mines are so extensively interconnected that any attempt at bulkheading either produces no results or prevents fresh air from getting to the miners.

2. Estimates of Exposure and Risk

EPA's risk assessment of underground uranium mines is a site-by-site assessment of all operating or operable mines. Emission estimates were based on radon concentration or working level measurements and ventilation rates provided by mine operators. The meteorological data were taken from nearby stations and populations from 5 to 80 km are based on U.S. census tract data. Population distributions within 5 km were taken from site visits or obtained from mine owners.

The maximum individual risk of fatal cancer from radon emissions from underground uranium mines is 4×10^{-3}. The radon emissions are estimated to cause 0.79 fatal cancers per year to the population within 80 km.

Table 18 presents example scenarios to show how different emission levels would result in different health risk profiles. The table presents the risk estimates at baseline in terms of estimated annual fatal cancer incidence, maximum individual lifetime risk, total population exposed at or above particular risk levels (i.e., risk distribution), and annual incidence attributable to the population exposed at each risk level. The table also presents available estimates of annual incidence and maximum individual lifetime risk for lower emission levels identified as alternatives II and III.

Unlike other tables in this notice, Table 18 includes two different estimates of risks for each option. The reason for the two calculations is the large uncertainty of how the regulated community would comply with a standard at the level represented by the alternative. Options available include bulkheading, reducing their hours of operation, or shutting down. The wide range of options available to mine owners greatly increases the difficulty of predicting what will be the impacts of the various regulatory options.

EPA has calculated the possible risks resulting from the regulatory options using two different methods. The first method assumes that all mines whose emissions result in doses higher than the standard will reduce their emissions sufficiently to meet the standard. EPA then uses these reduced emissions to calculate the new health impacts. This method creates what EPA considers to be the expected risks associated with that option.

However, to achieve the standard by reducing emissions, some mines will have to make very dramatic reductions in emissions, reductions that may be too costly for the mine to remain in operation. The second method used to calculate risks (marked with a + on the tables) assumes that all mines causing doses in excess of the standard simply shut down, except in those cases where the mine owner could meet the standard by reducing their emissions by less than 25%. EPA believes that this method will calculate the maximum health benefit that could occur as a result of this rulemaking. This second method of calculating risks shows a lower figure for the total population exposed because the mines which are assumed to be shut down would expose no one.

TABLE 18—UNDERGROUND URANIUM MINES

[Description: Underground mines used to produce uranium ore. Only 15 are still operating. Emissions come from operations when mines are ventilated to reduce radon exposure to miners.]

	Alternative I (baseline)	Alternative II	Alternative II+	Alternative III	Alternative III+
Maximum individual risk (lifetime)	4.4×10^{-3}	3×10^{-4}	3×10^{-4}	1×10^{-4}	1×10^{-4}
Incidence within 80 km (death/y)	0.79	0.24	0.05	0.09	0.009
Risk individual:					
E-2 to E-1	0	0	0	0	0
E-3 to E-2	(*)	0	0	0	0
E-4 to E-3	90,000	3,500	3,500	0	0
E-5 to E-4	1.6M	330,000	76,000	120,000	11,000
E-6 to E-5	450,000	1.6M	240,000	1.5M	110,000
less E-6	51,000	100,000	25,000	600,000	20,000

TABLE 18—UNDERGROUND URANIUM MINES—Continued

[Description: Underground mines used to produce uranium ore. Only 15 are still operating. Emissions come from operations when mines are ventilated to reduce radon exposure to miners.]

	Alternative I (baseline)	Alternative II	Alternative II+	Alternative III	Alternative III+
Risk incidence:					
E-2 to E-1	0	0	0	0	0
E-3 to E-2	(*)	0	0	0	0
E-4 to E-3	0.21	0.006	0.006	0	0
E-5 to E-4	0.55	0.13	0.037	0.032	0.0038
E-6 to E-5	0.030	0.11	0.011	0.055	0.0047
less E-6	0.00040	0.0008	0.0002	0.0060	0.00017

+ Analysis assumes closure of all mines that do not meet the standard, if the mines operate in such a way that they meet the standard population risks will increase.
* Less than 25 people at this risk. However, we cannot quantify the number because detailed demographics have not been obtained.
Other Health Impacts: Non-fatal cancers no more than 5% of deaths.

TABLE 19—UNDERGROUND URANIUM MINES

Alternative	MIR	Incidence	Increment incidence reduction	Total incidence reduction	Increment capital cost	Increment annualized cost	Total annualized cost
I (baseline)	4.4×10^{-3}	0.79					
II	3.0×10^{-4}	0.24	0.55	0.55	$0	$0.4M	$0.4M
II+	3.0×10^{-4}	0.05	0.74	0.74	(1)	(1)	(1)
III	1.0×10^{-4}	0.09	0.15	0.70	$0	$0.4M	$0.5M
III+	1.0×10^{-4}	0.009	0.04	0.78	(1)	(1)	(1)

1 Costs not calculated.

Comments:
Alternative I: Baseline, no rule.
Alternative II: 10 mrem/y ede. Affects 9 mines, estimates assume all mines over the standard reduce emissions by a sufficient amount to meet the standard. This is assumed to be equivalent to the expected results of the standard.
Alternative II+: 10 mrem/y ede. Affects 9 mines, estimates assume that 5 mines that exceed the standard by more than 25% close down, the other 4 mines reduce emissions. This represents the maximum reduction in health effects to be expected.
Alternative III: 3 mrem/y ede. Affects 9 mines, estimates assume all 9 mines over the standard reduce emissions by a sufficient amount to meet the standard. This is assumed to be equivalent to the expected results of the standard.
Alternative III+: 3 mrem/y ede. Affects 9 mines, estimates assume that all 9 mines that exceed the standard close down. This represents the maximum reduction in health effects to be expected.

3. Application of Decision Methodology to the Underground Uranium Mine Source Category

The decision that results from the application of the multifactor approach to the underground uranium mines source category is described below.

Decision on Acceptable Risk. As stated earlier, the maximum individual risk to any individual is 4×10^{-3} which is much higher than the presumptively safe level. Considering the high level of individual risk, the presumption is very strong that the baseline is unacceptable. The estimated annual incidence is approximately 0.79 fatal cancers per year, and over 90 percent of that risk is borne by people whose risk is over 1×10^{-5}. Over 90,000 people are exposed to risks greater than 1×10^{-4}. These factors support the judgment that the risk level represented by the baseline is unacceptable.

EPA examined several alternatives before determining the acceptable level; those alternatives and the risks they present are illustrated in Table 18. After examining these different Alternatives, the Agency determined that Alternative II, setting a NESHAP limiting emissions from underground uranium mines to 10 mrem/y ede which results in a maximum individual risk of 3×10^{-4} less than 10 percent of the population exposed to risks less than 1×10^{-4} (this is due to the unusual demographics of the risk assessment area, which contains unevenly distributed population centers as opposed to the more normal situation where the population is more evenly distributed), and an incidence of 0.24 fatal cancers per year is acceptable.

In establishing the policy for setting NESHAPS in the context of the earlier benzene decision, the Agency determined that emissions resulting in a lifetime MIR no greater than approximately 1×10^{-4} are presumptively acceptable. In light of the numerous uncertainties in both establishing the parameters for the risk assessment and in modelling actual emission and exposure, as well as the recognition that in achieving compliance sources will generally control so as to ensure that a buffer exists below the actual level of a standard, EPA judges that the MIR of 3×10^{-4} is essentially equivalent to the presumptively safe level of approximately 1×10^{-4}. Next, EPA examined the other risk information on this category. Radon causes only lung cancer, which means that emissions from underground uranium mines will cause only 0.012 non-fatal cancers a year. In addition, it must be noted that for most of the people whose risks are above 1×10^{-4}, very few, if any, would receive risks as high as 3×10^{-4}, the risk level equivalent to 10 mrem/y. Only the few individuals who are closest to the mines would receive a dose approaching 10 mrem/y. Everyone else would receive progressively smaller doses and risks as distance from the mine increases. For the vast majority of people whose risk is above 1×10^{-4}, their dose will be much closer to 3 mrem/y than it will be to 10 mrem/y.

Decision on Ample Margin of Safety. In addition to reexamining all of the health-related factors discussed above, EPA has also examined the cost, scientific certainty, and technological feasibility of control technology necessary to lower emissions from underground uranium mines. The results of this analysis can be seen in Table 19. EPA has considered Alternatives II and III for underground uranium mines. Since different mine owners may use

different methods to reduce the risk to the maximum individual, there is a great deal of uncertainty in assessing the costs and the benefits going from

In the past, annual production from surface mines ranged from a few hundred tons of ore to 100,000 tons or

maximum individual lifetime risk, total population exposed at or above particular risk levels (i.e., risk

category, and the depressed nature of the industry led EPA to the decision that it is unnecessary for EPA to set a NESHAP for this source category.

TABLE 20.—SURFACE URANIUM MINES—Continued

[Description: Open pit mines excavations to unearth uranium ore. Only two are operating (one of which

TABLE 20.—SURFACE URANIUM MINES—Continued

[Description: Open pit mines excavations to unearth uranium ore. Only two are operating (one of which

different methods to reduce the risk to the maximum individual, there is a great deal of uncertainty in assessing the costs and the benefits going from Alternative II to Alternative III. The range of the benefits of controlling emissions to various levels can be seen in Table 19.

A comparison of the two alternatives indicates that a small reduction in incidence would occur, from a range of 0.24 to 0.05 (approximately 1 every 4 to 20 years), to a range of 0.09 to 0.009 (approximately 1 every 11 to 111 years). This reduction must be compared to the increased difficulty and expense that would be incurred by 9 of the 15 underground uranium mines in further reducing the dose to the maximum individual by a factor of 3 and the questionable feasibility of the control technology. EPA has determined that the level of Alternative II protects public health with an ample margin of safety. Therefore, EPA is setting a NESHAP limiting the dose to the maximally exposed individual to 10 mrem/y ede.

4. Implementation

This standard is an effective dose equivalent standard. Mines are limited in the amount of dose their radon emissions can cause to the nearby population. Due to Mine Safety and Health Administration (MSHA) regulations, which are designed to protect the miners from high levels of radon in the mine, the exhaust fans must be operating whenever there are miners working in the mine. This limits EPA flexibility in developing other types of standards to control radon emissions.

Under this rule, uranium mine owners will have to measure their emissions of radon, find the location of the maximally exposed individual, use that information as input into the COMPLY computer code, calculate the dose to the maximum exposed individual, and report the results to EPA. Since enforcement of the standard will be based on the results of these calculations, mine owners can comply with the new limit by whatever method or combinations of methods they choose.

J. Surface Uranium Mines

1. Introduction

Surface mining is accomplished by the excavation of one or more pits to expose uranium ore for removal. This technique accounted for about 45 percent, on average, of the uranium ore tonnage produced in this country between 1958 and 1985. However, much of today's uranium production is from underground mines and other sources.

In the past, annual production from surface mines ranged from a few hundred tons of ore to 100,000 tons or more from as many as 1200 mines. Due to the dramatic decline in the uranium industry since 1981, the number of surface mines in operation in the U.S. has dropped from 50 in 1981 to just 2 in 1987; one of these is scheduled to close in 1993.

During surface mining, topsoil (called overburden) may be segregated and saved for reclamation; overburden is piled on land beside the pit. The pit and overburden represent a large surface area from which radon can escape into the atmosphere. Radon emissions from the pit and overburden are higher than normal soil because the rock surrounding uranium deposits has higher radium concentrations than normal soil.

Health, safety and environmental hazards associated with uranium mining are regulated by a variety of Federal and State laws. As a result of the laws and regulations, many of the inactive uranium mines, are in various stages of reclamation by the placement of an earthen cover over the pit and the overburden. This reclamation of the mines significantly reduces radon emissions. In the past, EPA decided not to promulgate a NESHAP for this category. That decision was challenged in litigation and is being reexamined in this rulemaking.

2. Estimates of Exposure and Risk

EPA conducted a field study during the summer of 1988 to obtain information with which to model the surface mining industry so that estimates of risk from surface mining could be made. Radiometric surveys were conducted of the two active mines, located in Texas and Wyoming, and 25 inactive mines located in Arizona, New Mexico, Colorado, South Dakota, Texas and Wyoming. In addition, the demographic and meteorologic data were gathered in and around each mining site.

The maximum individual risk of fatal cancer from radon emissions from surface uranium mines is 5×10^{-4}. The radon emissions are estimated to cause 0.026 fatal cancers per year to the population within 80 km. Over 95 percent of the risk to the population is borne by people whose risk is less than 1×10^{-6}, and over 75 percent of the risk is borne by people whose risk is less than 1×10^{-6}.

Table 20 presents example scenarios to show how different emission levels would result in different health risk profiles. The table presents the risk estimates at baseline in terms of estimated annual fatal cancer incidence, maximum individual lifetime risk, total population exposed at or above particular risk levels (i.e., risk distribution), and annual incidence attributable to the population exposed at each risk level. The table also presents available estimates of annual incidence and maximum individual lifetime risk for a lower emission level identified as Alternative II.

3. Application of Decision Methodology to Surface Uranium Mine Source Category

The decision that results from the application of the multifactor approach to the surface uranium mine source category is described below.

Decision on Acceptable Risk. As stated earlier, the maximum individual risk to any individual is 5×10^{-4} which is lower than the benchmark of approximately 1×10^{-3}. The estimated annual incidence within 80 km is 0.026 fatal cancers per year. In addition, only 24,000 people out of 30 million (<0.1 percent) are exposed to risks greater than 1×10^{-6}. Based on these factors EPA concludes that the baseline risk is acceptable.

Decision on Ample Margin of Safety. In addition to reexamining all of the health-related factors discussed above, EPA has also examined the cost, scientific certainty, and technological feasibility of control technology necessary to lower radon emissions from surface uranium mines. The results of this analysis can be seen in Table 21. The examined options, Alternative I and Alternative II, differ only in the amount of dirt that is used to bury the radium bearing waste. The costs and benefits of controlling emissions to various levels can be seen in Table 21.

A comparison of the two alternatives indicates that a very small reduction in incidence would occur from moving to Alternative II, 0.022, representing an estimated incidence reduction of 1 life every 45 years. In addition, a small reduction in maximum individual risk would result, from 4.8×10^{-4} to 2.4×10^{-4}. EPA examined these small reductions in incidence, and maximum individual risk and the costs of achieving Alternative II and has determined that Alternative I would provide an ample margin of safety to protect public health.

In addition, this source category is already regulated by a host of state and federal mine reclamation laws. Due to the depressed state of the uranium mining industry, there is no reason to believe that new surface mines will be constructed. The presence of these laws, the very low maximum individual risk and incidence level associated with this category, and the depressed nature of the industry led EPA to the decision that it is unnecessary for EPA to set a NESHAP for this source category. Therefore, no standard is promulgated regulating emissions from surface uranium mines.

TABLE 20.—SURFACE URANIUM MINES

[Description: Open pit mines excavations to unearth uranium ore. Only two are operating (one of which will close in 1993); about twelve hundred are closed and will not reopen.]

	Alternative I (baseline)	Alternative II
Maximum individual risk (lifetime)	4.8×10^{-4}	2.4×10^{-4}
Incidence within 80 km (death/y)	0.026	0.0038
Risk individual		
E-2 to E-1	0	0
E-3 to E-2	0	0
E-4 to E-3	0	0
E-5 to E-4	4,000	3,000
E-6 to E-5	200,000	80,000
less E-6	30M	30M
Risk incidence		
E-2 to E-1	0	0
E-3 to E-2	0	0
E-4 to E-3	0	0
E-5 to E-4	0.001	0.0008
E-6 to E-5	0.005	0.0020
less E-6	0.020	0.0010

Other Health Impacts: Non-fatal cancers no more than 5% of deaths.

TABLE 21.—SURFACE URANIUM MINES

Alternative	MIR	Incidence	Increment incidence reduction	Total incidence reduction	Increment capital cost	Increment annualized cost	Total annualized cost
I (Baseline)	4.8×10^{-4}	0.026					
II	2.4×10^{-4}	0.0038	0.022	0.022	$15M	$0.6M	$0.6M

Comments:

Alternative I: Baseline, no rule—State reclamation rules apply. Analysis assumes larger production mines characterize the risk associated with surface uranium mining. Analysis is based on 25 mines. States with reclamation requirements included Colorado, Texas, Utah, Wyoming and South Dakota.

Alternative II: Cover source to limit emissions to 40 pCi/m²-s—Assumes 0.2 meters of dirt cover.

K. Operating Uranium Mill Tailings Piles

I. Introduction

The process of separating uranium from its ore creates waste material called uranium mill tailings. Since uranium ore generally contains less than 1 percent uranium, uranium milling produces large quantities of tailings. These tailings are collected in impoundments that vary in size from 20 to 400 acres. The tailings contain large amounts of radium, and, therefore, they emit large quantities of radon. There are 26 NRC-licensed uranium mills in the western United States. Due to the depressed state of the uranium industry, most of these mills are not currently operating.

The Uranium Fuel Cycle standard, 40 CFR part 190, does not regulate radon emissions from the tailings piles. Radon emissions during operations are currently regulated by a NESHAP 40 CFR part 61, subpart W, which is a work practice standard specifying two methods, one of which must be used in the construction of any new tailings impoundment. The piles must ultimately be disposed of in accordance with an EPA Atomic Energy Act regulation, 40 CFR part 192, which is implemented by the NRC.

For the current radionuclides NESHAP rulemaking, EPA is promulgating rules for three different subcategories that deal with mill tailings: operating mill tailings—existing piles, operating mill tailings—new technology, and disposal of uranium mill tailings (as a separate source category; see section VIII.L of this notice).

This source category, operating mill tailings, has two subcategories because existing and future mill tailings piles present different problems. Existing mill tailings piles are large piles of wastes that emit radon. Radon emissions from these piles are retarded by the presence of water. However, if operations cease, and the pit is allowed to dry out, emissions can increase significantly.

New piles can be designed to overcome this problem in one of two ways: (1) Limit the size of the pile, which limits the radon source; or (2) utilize a disposal system, continuous disposal, that does not allow large piles to accumulate. The new technology is not feasible for old piles, as it is easier and cheaper and releases less radon to simply cover up the existing piles, rather than to break them up into a series of smaller piles and dispose of them separately.

2. Estimates of Exposure and Risk

EPA's risk assessment of operating uranium mill tailings is a site-by-site assessment of all 12 licensed mills that are either currently operating or on standby. Emissions were estimated from the radium-226 concentrations in the tailings, the amount of tailings, and the assumption that 1 pCi/g of radium-226 in the tailings produces 1 pCi/m²-s of radon. The meteorological data was taken from nearby stations and populations from 5 to 80 km are based on U.S. census tract data. Populations within 5 km were counted at each of the sites. EPA analyzed current emissions and the emissions that would be expected when new tailings impoundments are created in the future.

EPA estimates that the lifetime fatal cancer risk to the most exposed individual is 3×10^{-4} from the twelve licensed piles that are either operating or on standby. Uranium mill tailings are estimated to cause 0.004 fatal cancers per year, approximately 1 case every 250 years to the 2 million persons within 80 km of the tailings piles. This risk is much lower than the estimated risks presented in the proposed rule. The reason for the great reduction in the risk calculated is that EPA has received and confirmed information during the comment period that these piles are mostly wet or covered with clay. This greatly reduces the rate of radon emissions from the

TABLE 20.—SURFACE URANIUM MINES—Continued

[Description: Open pit mines excavations to unearth uranium ore. Only two are operating (one of which will close in 1993); about twelve hundred are closed and will not reopen.]

	Alternative I (baseline)	Alternative II
Incidence within 80 km (death/y)	0.026	0.0038
Risk individual		
E-2 to E-1	0	0
E-3 to E-2	0	0
E-4 to E-3	0	0
E-5 to E-4	4,000	3,000
E-6 to E-5	200,000	80,000
less E-6	30M	30M
Risk incidence		
E-2 to E-1	0	0
E-3 to E-2	0	0
E-4 to E-3	0	0
E-5 to E-4	0.001	0.0008
E-6 to E-5	0.005	0.0020
less E-6	0.020	0.0010

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piles, greatly reducing the risks that they pose.

EPA's analysis of new technologies is based on one set of model mills. By creating a set of model mills the analysis provides a meaningful comparison of the different technological alternatives, unaffected by assumptions about the number and locations where new mills and new piles might be constructed. However, this may understate the incidence from these piles if more mills are constructed, than are included in this analysis.

Tables 22, 23, 24 and 25 present example scenarios to show how different emission levels would result in different health risk profiles. Tables 22 and 23 provide information on existing piles; Tables 24 and 25 provide information on the options for new piles. The tables present the risk estimates at baseline in terms of estimated annual fatal cancer incidence, maximum individual lifetime risk, total population exposed at or above particular risk levels (i.e., risk distribution), and annual incidence attributable to the population exposed at each risk level.

3. Application of Decision Methodology to the Operating Mill Tailings Piles Source Category

The decisions that result from the application of the multifactor approach to the operating uranium mill tailings piles source category is described below. Two separate decisions were made: one for existing piles and the other for new piles.

a. *Existing Mill Tailings Piles.* Decision on Acceptable Risk. As stated earlier, the maximum individual risk is 3×10^{-5} which is clearly below the benchmark level of approximately 1×10^{-4} and is, therefore, presumptively safe. The estimated annual incidence within 80 km is 0.0043 fatal cancers per year, which is less than one case every 200 years. Only 240 people are exposed to risks greater than 1×10^{-5} and 97 percent of the people exposed have risks less than 1×10^{-6}. Based on these factors, EPA has concluded that the baseline risks are acceptable.

Decision on Ample Margin of Safety. In addition to re-examining all of the health-related factors discussed above, EPA has also examined the cost, scientific certainty, and technological feasibility of control technology necessary to lower emissions from operating uranium mill tailings piles. The results of this analysis can be seen in Table 23. As explained above, the risks from current emissions are very low. A NESHAP requiring that emissions from operating mill tailings piles limit their emissions to no more than 20 pCi/m^2-s represents current emissions. EPA has determined that the risks are low enough that it is unnecessary to reduce the already low risks from the tailings piles further.

However, EPA recognizes that the risks from mill tailings piles can increase dramatically if they are allowed to dry and remain uncovered. An example of how high the risks can rise if the piles are dry and uncovered can be seen in the proposed rule, 54 FR 9645. That analysis assumed that the piles were dry and uncovered and the risks were as high as 3×10^{-3} with 1.6 fatal cancers per year. Therefore, EPA is promulgating a standard that will limit radon emissions to an average of 20 pCi/m^2-s. This rule will have the practical effect of requiring the mill operators to keep their piles wet or covered. At the point that a mill decides to no longer keep the piles emissions below the standard, the pile should be disposed of, otherwise the piles increased radon emissions are likely to present unacceptably high risks.

EPA recognizes that in the case of a tailings pile which is not synthetically or clay lined (the clay lining can be the result of natural conditions at the site) water placed on the tailings in an amount necessary to reduce radon levels, can result in ground water contamination. In addition, in certain situations the water can run off and contaminate surface water. EPA cannot allow a situation where the reduction of radon emissions comes at the expense of increased pollution of the ground or surface water. Therefore, all piles will be required to meet the requirements of 40 CFR 192.32(a) which protects water supplies from contamination. Under the current rules, existing piles are exempt from these provisions, this rule will end that exemption.

b. *New Mill Tailing Impoundments.* Decision on Acceptable Risk. In establishing the policy for setting NESHAPS in the context of the earlier benzene decision, the Agency determined that emissions resulting in a lifetime MIR no greater than approximately 1×10^{-4} are presumptively acceptable. In light of the numerous uncertainties in both establishing the parameters for the risk assessment and in modelling actual emission and exposure, as well as the recognition that in achieving compliance sources will generally control so as to ensure that a buffer exists below the actual level of a standard, EPA judges that the maximum individual risk to any individual from Alternative I, which represents a continuation of current practice, is 1.6×10^{-4} is essentially equivalent to the presumptively safe level of approximately 1×10^{-4}. The estimated annual incidence is 0.014 fatal cancers per year or approximately 1 case every 70 years. In addition there would be an estimated 0.0007 non-fatal cancers per year. Only 20 people are at risks greater than 1.0×10^{-4} and approximately 18 percent of people within 80 km of mill tailings piles receive risks of less than 1×10^{-6}. After examining these factors, the Administrator has determined that the baseline risks from new uranium mill tailings impoundments are acceptable.

Decision on Ample Margin of Safety. In addition to re-examining all of the health-related factors discussed above, EPA has also examined the cost, scientific certainty, and technological feasibility of control technology necessary to lower emissions from new uranium mill tailings impoundments. The results of this analysis can be seen in Table 25. The examined options, Alternative I, Alternative II, and Alternative III, represent different methods of disposal. Alternative I is the use of one large impoundment, Alternative II is the use of phased disposal, and Alternative III is the use of continuous disposal.

A comparison of the alternatives indicates that very small reductions in incidence would occur, 0.005 in going from Alternative I to Alternative II, and 0.008 in going from Alternative I to Alternative III. In addition, the maximum individual risk would be reduced from 1.6×10^{-4} to 9×10^{-5} or 6×10^{-5}. In addition both Alternatives II and III will assure that over 97 percent of the population will be exposed to risks less than 1×10^{-6}. EPA examined this small reduction in incidence and maximum individual risk and the small costs of changing work practices, but also considered the uncertainties in this analysis. EPA believes that for this category, the economic assessment is especially uncertain. This uncertainty make this analysis different from the other analyses conducted by EPA in this rulemaking.

The uncertainty arises because it assumes a steady state industry over time. If the uranium market once again booms there would be increased risks associated with Alternative I. If the industry then experienced another economic downturn, the costs of Alternative I would increase because of the economic waste that occurs when a large impoundment is constructed and not filled. The risks can also increase if a company goes bankrupt and cannot afford the increased costs of closing a large impoundment and the pile site uncovered emitting radon. The risks can also increase if many new piles are constructed, creating the potential for the population and individual risks to be higher than EPA has calculated.

These uncertainties significantly affect the accuracy of the analysis and given the small cost of going to Alternatives II and III, EPA has determined that in order to protect the public with an ample margin of safety, both now and in the future, new mill tailings impoundments must use phased or continuous disposal.

EPA believes that in the long run mill owners will save money using continuous disposal, however, this technology has not been used in uranium operations in this country. Given the resulting uncertainty about the technological feasibility of this disposal method, EPA is also allowing them to use Alternative II which is phased disposal, since it also protects public health with an ample margin of safety. Either one of these technologies will assure that future risks will be kept under control by assuring that only small amounts of tailings are uncovered at any time. This will prevent mill tailings from becoming a large problem in the future.

TABLE 22.—OPERATING URANIUM MILL TAILINGS PILES—EXISTING PILES

[Description: Piles of uranium mill tailings at the 11 licensed operating uranium mill sites.]

	Alternative I (baseline)
Maximum individual risk (<lifetime exposure)	2.9×10^{-5}
Incidence within 80 km	0.0043
Risk individual	
E-2 to E-1	0
E-3 to E-2	0
E-4 to E-3	0
E-5 to E-4	240
E-6 to E-5	60,000
less E-6	1.2M
Risk incidence	
E-2 to E-1	0
E-3 to E-2	0
E-4 to E-3	0
E-5 to E-4	0.000057
E-6 to E-5	0.0023
less E-6	0.0020

Other Health Impacts: Non-fatal cancers no more than 5 percent deaths.

TABLE 23.—OPERATING URANIUM MILL TAILINGS—EXISTING PILES

Alternative	MIR	Incidence	Increment incidence reduction	Total incidence reduction	Increment capital cost	Increment annualized cost	Total annualized cost
I (Baseline)	2.9×10^{-5}	0.0043					

Comments:
Alternative I: Baseline rule—Flux standard for operating piles of 20 pCi/m^2-s.

TABLE 24.—OPERATING URANIUM MILL TAILINGS PILES—NEW TECHNOLOGIES [1]

[Description: The different methods of disposal that can be used for the construction of new uranium mill tailings piles by uranium milling companies.]

	Alternative I (baseline)	Alternative II	Alternative III
Maximum individual risk (lifetime)	1.6×10^{-4}	9×10^{-5}	6×10^{-5}
Incidence within 80 km (deaths/y)	0.014	0.009	0.006
Risk individual			
E-2 to E-1	0	0	0
E-3 to E-2	0	0	0
E-4 to E-3	20	0	0
E-5 to E-4	6,800	100	100
E-6 to E-5	680,000	20,000	20,000
less E-6	120,000	780,000	780,000
Risk incidence			
E-2 to E-1	0	0	0
E-3 to E-2	0	0	0
E-4 to E-3	0.00009	0	0
E-5 to E-4	0.0014	0.00009	0.00005
E-6 to E-5	0.012	0.0001	0.0005
less E-6	0.001	0.009	0.0055

[1] Risks are for only one model mill. Numbers should be used for comparison purposes only.

Other Health Impacts: Non-fatal cancers no more than 5 percent of deaths

TABLE 25.—OPERATING URANIUM MILL TAILINGS—NEW TECHNOLOGIES [1]

Alternative	MIR	Incidence	Increment incidence reduction	Total incidence reduction	Increment capital cost	Increment annualized cost	Total annualized cost
I (Baseline)	1.6×10^{-4}	0.014					
II	9.0×10^{-5}	0.009	0.005	0.005	$ 6.5M	$ 0.5M	$ 0.5M
III	6.0×10^{-5}	0.006	0.008	0.008	<$ 1.0M>	<$ 0.05M>	<$ 0.05M>

[1] All estimates for a single model mill Alternative II and III are each compared to Alternative I.

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Comments:

Alternative I: Baseline, no rule—current technology is used. Single large impoundment.

Alternative II: Current NESHAP—several small impoundments with 40 acre limit (phased disposal).

Alternative III: Current NESHAP—tailings are dried and disposed of immediately (continuous disposal). Total capital cost is less than other two alternatives. Costs and incidence reductions are compared to baseline alternative.

4. Implementation

The NESHAP for existing mill tailings piles is a flux standard that limits the emission of radon from the piles. The standard limits the amount of radon that can be emitted per unit area (m^2) per unit of time (s). This standard is not an average per facility but is an average per radon source. The mill will annually test its impoundments and report the results to EPA.

The NESHAP for new impoundments is a work practice standard that requires mill operators to manage their tailings in a way that will reduce radon emissions. Mill operators will not be allowed to build any new mill tailings impoundment which does not meet this work practice standard. EPA will receive information on the construction of new impoundments through the requirements for EPA to approve of new construction under 40 CFR part 61, subpart A.

Since EPA already has or will receive through these reports the information it needs, uranium mill tailings are exempted from the requirements of § 61.10.

L. Disposal of Uranium Mill Tailings Piles

1. Introduction

After uranium mill tailings impoundments can no longer be used, they must be disposed of. In addition to the fourteen licensed piles that commercial licensees are decommissioning, DOE controls 24 abandoned uranium mill tailings piles. The 1978 Uranium Mill Tailings Radiation Control Act (UMTRCA) gave DOE responsibility for remedial actions at these latter sites. This Act also required EPA to set environmental standards to control releases from uranium mill tailings impoundments. EPA promulgated standards for both types of sites at 40 CFR part 192. That regulation limits post-closure radon releases to 20 pCi/m^2-s from the tailings piles.

In the past, EPA decided not to regulate under the CAA the disposal of uranium mill tailing impoundments which are regulated under UMTRCA. That decision was challenged in the litigation, so EPA is reexamining it.

2. Estimates of Exposure and Risk

EPA's risk assessment of uranium mill tailings is a site-by-site assessment of all 24 inactive piles and the 14 licensed piles that are being decommissioned. An uncertainty in this risk assessment occurs because DOE currently has plans to relocate eleven of the inactive mill tailings piles to unpopulated areas; in addition, DOE plans to stabilize the remaining 13 piles pursuant to the 40 CFR part 192 standards. EPA has considered information in the rulemaking record concerning DOE's plans in its determination on this category.

Emissions were estimated from the area of each tailings pile and an assumed radon flux of 20 pCi/m^2-s for reclaimed piles unless information existed which demonstrated that the radon flux would be less, and 1 pCi/m^2-s per pCi/g of radium for unreclaimed piles. Where specific documentation existed, such as contracts or agreements with regulatory agencies, EPA assumed that piles would be disposed of according to existing plans at the time scheduled. Meteorological data were taken from nearby stations, and populations from 5 to 80 km are based on U.S. census tract data. Populations within 5 km were measured at the sites. According to EPA's analysis, the lifetime fatal cancer risk to the most exposed individual is 3×10^{-4}. These tailings piles are estimated to cause 0.070 fatal cancers per year or approximately 1 case every 14 years, to the 9.4 million persons within 80 km.

Table 26 presents two alternative scenarios to show how different emission levels would result in different health risk profiles. The table presents the risk estimates at baseline, Alternative I, in terms of estimated annual fatal cancer incidence, maximum individual lifetime risk, total population exposed at or above particular risk levels (i.e., risk distribution), and annual incidence attributable to the population exposed at each risk level. The table also presents available estimates of annual incidence and maximum individual lifetime risk for a lower emission level identified as Alternative II.

3. Application of Decision Methodology to the Disposal of Uranium Mill Tailings Category

The decision that results from the application of the multifactor approach to the disposed uranium mill tailings source category is described below.

Decision on Acceptable Risk. In establishing the policy for setting NESHAPS in the context of the earlier benzene decision, the Agency determined that emissions resulting in a lifetime MIR no greater than approximately 1×10^{-4} are presumptively acceptable. In light of the numerous uncertainties in both establishing the parameters for the risk assessment and in modelling actual emission and exposure, as well as the recognition that in achieving compliance sources will generally control so as to ensure that a buffer exists below the actual level of a standard, EPA judges that the maximum individual risk of 3×10^{-4} is essentially equivalent to the presumptively safe level of approximately 1×10^{-4}. The estimated annual incidence is 0.070 fatal cancers per year or 1 case every 14 years; in addition, there would be 0.0035 non-fatal cancers per year. Only 200 people are at risks greater than 1.0×10^{-4}, and approximately 86 percent of the people within 80 km are at risk levels of less than 1×10^{-6}.

After examining these factors, the Administrator has determined that the baseline risks from the disposal of uranium mill tailings impoundments are acceptable.

Decision on Ample Margin of Safety. In addition to reexamining all of the health-related factors discussed above, EPA has also examined the cost, scientific certainty, and technological feasibility of control technology necessary to lower radon emissions from the disposal of uranium mill tailings piles. The results of this analysis can be seen in Table 27. The examined options, Alternative I and Alternative II, differ only in the amount of dirt that is used to bury the radium bearing waste.

A comparison of the two alternatives indicates that a small reductions in incidence would occur, 0.044; this represents an estimated incidence reduction of 1 life every 23 years. In addition, the maximum individual risk is reduced from 3.0×10^{-4} to 8.7×10^{-5}. EPA examined these small reduction in incidence and maximum individual risk and the relatively large costs of achieving Alternative II, $158 million in capital costs and $13 million in annualized costs and determined that

Alternative I protects public health with an ample margin of safety.

Although this category is already regulated under 40 CFR part 192, EPA believes that a NESHAP would still serve a useful purpose. The existing UMTRCA regulations set no time limits for the disposal of the piles. Some piles have remained uncovered for decades emitting radon. Although recent action has been taken to move toward disposal of these piles, some of them may still remain uncovered for years. In addition, a rule would assure that piles which are not ready for disposal at this time will be disposed of in a timely manner after they are removed from service. As a result, this NESHAP would reduce radon emissions from uncovered piles and assure that the public will be protected. Therefore, EPA has decided to regulate this category by setting a NESHAP limiting emissions from these sources to no more than 20 pCi/m^2-s.

TABLE 26.—DISPOSAL OF URANIUM MILL TAILINGS

[Description: The disposal of uranium mill tailings piles when they are no longer used for the disposition of new tailings. Twenty-four piles are controlled by DOE; 26 piles are controlled by individual uranium milling companies.]

	Alternative I (baseline)	Alternative II
Maximum individual risk (lifetime)	3.0×10^{-4}	8.7×10^{-5}
Incidence within 80 km (death/y)	0.070	0.026
Risk individual		
E-2 to E-1	0	0
E-3 to E-2	0	0
E-4 to E-3	200	0
E-5 to E-4	33,000	3,000
E-6 to E-5	1.3M	136,000
less E-6	8.1M	9.3M
Risk incidence		
E-2 to E-1	0	0
E-3 to E-2	0	0
E-4 to E-3	0.00052	0
E-5 to E-4	0.0089	0.0014
E-6 to E-5	0.030	0.0049
less E-6	0.031	0.020

Other Health Impacts: Non-fatal cancers no more than 5% of deaths.

TABLE 27.—DISPOSAL OF URANIUM MILL TAILINGS

Alternative	MIR	Incidence	Increment incidence reduction	Total incidence reduction	Increment capital cost	Increment annualized cost	Total annualized cost
I (Baseline)	3.0×10^{-4}	0.070					
II	8.7×10^{-5}	0.026	0.044	0.044	$200M	$16M	$16M

Comments:

Alternative I: Baseline rule: Cover source to limit emissions to 20 pCi/m^2-s—the same level as the current AEA rule set by EPA.

Alternative II: Cover source to limit emissions to 6 pCi/m^2-s.

4. Implementation

Under this NESHAP, all uranium mill tailings will have to be covered to reduce the amount of radon they release. The standard limits the amount of radon that can be emitted per unit area (m^2) per unit of time (s). This standard is an average per mill tailings pile.

Piles must be tested when disposal operations are completed but before the disposed pile is turned over to a government organization charged with long term ownership. Since these reports of the testing will provide EPA with the additional information it needs, uranium mill tailings are exempted from the requirements of § 61.10.

This standard, like all NESHAPs, requires compliance by existing sources within 90 days after the effective date in accordance with the CAA, 42 U.S.C. 7412(c)(1)(B)(i). However, EPA is aware that many sources covered by this subpart will not be able to come into compliance that quickly. EPA is making a generic finding that at least two years is required for the disposal of uranium mill tailings and that during that period all persons will be protected from imminent endangerment from uranium mill tailings piles. This finding also applies to piles that are not yet ready for disposal but will cease to be operational at some point in the future.

If the two year period is not enough time for these piles to dry out and be covered and disposed of then EPA is prepared to develop expeditious compliance schedules in consultation with affected parties within the framework of the enforcement mechanisms of 42 U.S.C. 7413, as appropriate. In these discussions with DOE, EPA will consider the restraints on DOE discussed in Senate Report No. 100-543, accompanying Pub. L. 100-616, 100th Congress, 2nd Sess., reprinted in 1988 U.S. Code Cong. & Ad. News, 4329 *et seq.* EPA recognizes that the requirements of CERCLA and other environmental laws will also have to be considered in these consultations.

VII. Responses to Legal and Policy Comments

On March 7, 1989, the EPA published in the **Federal Register** proposed National Emission Standards for Hazardous Air Pollutants (NESHAPs) for radionuclides emitted to ambient air from 12 source categories. The **Federal Register** notice requested public comments on the proposed NESHAPs, and the specific risk management approaches that were used to develop the standards. Informal public hearings were held in Washington DC and Las Vegas, NV., to give interested parties an opportunity to present their views, and

written comments were solicited. Comments were received from almost 300 individuals and organizations.

Several commenters disagreed with the previous comments. These commenters argued that a safe level is

The court explained that "the Congressional mandate to provide "an ample margin of safety" to "protect the

prohibiting use of any food coloring additive "found * * * to induce cancer

in *Ethyl Corp.* v. *EPA*, 541 F.2d 1 (1976) (*en banc*). This commenter argued that

equated with being "safe" is not zero risk; while the scientific approach can

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written comments were solicited. Comments were received from almost 300 individuals and organizations representing government agencies, industry and other members of the regulated community, environmental and public interest groups, and the general public. This section of the preamble discusses the legal and policy-related comments received during the comment period. A separate Response to Comments Document was prepared which addresses comments relating to modeling and compliance procedures, as well as comments particular to each source category.

1. Interpretation of Vinyl Chloride Decision

Comment: Several commenters discussed the fact that the D.C. Circuit decision in *Natural Resources Def. Council, Inc.* v. *EPA*, 824 F.2d 1146 (1987) (*Vinyl Chloride*) recognizes that EPA may deem some level of cancer risk as acceptable, in light of the fact that many carcinogenic substances are assumed not to have a threshold value below which they pose no risk. The issue raised by these commenters is what level of risk from radionuclide emissions could be characterized as "acceptable" under the Court of Appeals' ruling, particularly in light of such court decisions as *Alabama Power Co.* v. *Costle*, 636 F.2d at 323 (D.C. Cir. 1979) and *Public Citizen* v. *Young*, 831 F.2d at 1108 (D.C. Cir. 1987).

In the context of the *Vinyl Chloride* decision, the issue is whether the "acceptable" risk is equated with *de minimis* risk, and is thereby defined as "trivial" or "of no value," or whether some higher level of risk is considered acceptable under the court's ruling.

It was argued that the *Alabama Power* and *Public Citizen* cases support the contention that acceptable risk and *de minimis* risk are synonymous, and that, consequently, only "trivial" risk "of no value" can be interpreted as "acceptable risk" under the *Vinyl Chloride* decision. Moreover, the risk cannot be dismissed as "trivial" unless EPA demonstrates a public consensus that the risk levels are unworthy of preventive response. Hazardous air pollutant-induced cancer risks of 6×10^{-3}, 1×10^{-3}, or 1×10^{-4} are not in this category, and EPA may not be able to show such consensus even for risks of 1×10^{-6}. Similarly, it was posited that *Public Citizen* and *Vinyl Chloride* support the position that only a *de minimis* level of risk (e.g., 1×10^{-6} or lower) can be considered acceptable, and that this position is consistent with the CAA focus on public health and providing an ample margin of safety.

Several commenters disagreed with the previous comments. These commenters argued that a safe level is not the equivalent of a *de minimis* risk level and distinguished between *de minimis* risks, which are too trivial to warrant regulation, and a broad zone of higher risks that may still satisfy the court's definition of "acceptable risk." The commenters pointed to the fact that the court used the latter term intentionally in the *Vinyl Chloride* decision, and was aware of the differing legal meaning of *de minimis*. The commenters also cited the *Alabama Power* and *Public Citizen* cases, stating that those decisions held *de minimis* risk to be applicable except for those instances where Congress had already been "extraordinarily rigid" in establishing regulatory requirements.

Commenters also pointed out that the court in the *Vinyl Chloride* decision specifically stated that "acceptable risk" does not necessarily mean risk free. They argued that the court defined something as "unsafe" when it exposes humans to a "significant risk of harm." The fact that a risk is not *de minimis* does not mean that it poses a "significant risk of harm." For instance, the examples of "acceptable risk" cited by the court, such as driving a car or breathing city air have a higher than *de minimis* risk. Therefore, using this example as a guide, there is no basis for regulation of certain categories of sources since risks significantly above this level may be judged "acceptable" under the *Vinyl Chloride* decision.

Some commenters stated that the "acceptable risk" finding derives directly from the text and legislative history of Section 112 of the CAA, while the *de minimis* concept is a nonstatutory doctrine identified as a risk test by the court in the *Alabama Power* and *Public Citizen* cases. Thus, the "acceptable" and *de minimis* risk test serve much different functions in public health regulation.

Response: As the commenters acknowledge, the *Vinyl Chloride* decision recognizes that EPA may find some level of cancer risk to be "acceptable." In its explanation of the term, the court cited the preamble to the **Federal Register** notice announcing the final *Vinyl Chloride* regulations:

> Scientific uncertainty, due to the unavailability of dose/response data and the 20-year latency period between initial exposure to vinyl chloride and the occurrence of disease, makes it impossible to establish any definite threshold below which there are no adverse effects to human health." [citation omitted] 824 F.2d 1146, (D.C. Cir. 1987).

The court explained that "the Congressional mandate to provide "an ample margin of safety" to "protect the public health" requires the Administrator to make an initial determination of what is "safe." This determination must be based exclusively upon the Administrator's determination of the risk to health at a particular emission level. The Administrator's decision does not require a finding that "safe" means "risk free." 824 F.2d at 1164.

Where the commenters differ is over what level of risk from radionuclides emissions can be considered an "acceptable risk" within the meaning of the *Vinyl Chloride* decision. Some argue that in order to be "acceptable", the risk must be no more than *de minimis* within the meaning of *Alabama Power* and *Public Citizen*, while others dispute this position.

The EPA does not interpret "acceptable risk", for purposes of Section 112, as synonymous with or limited to *de minimis* risk as described in *Alabama Power* and *Public Citizen*. The *Vinyl Chloride* decision, while going into great detail in discussing the concepts of both "acceptable risk," and "ample margin of safety," never mentioned the concept of *de minimis* risk. What the court did say was that Congress exhibited no intent to require EPA to prohibit emissions of all nonthreshold pollutants, and, citing the Supreme Court decision in *Industrial Union Dept., AFL–CIO* v. *American Petroleum Institute*, 448 U.S. 607 (1980) stated that "safe does not mean risk free." 824 F.2d at 1153.

The court declined to restrict the Administrator to any particular method of determining what constitutes an acceptable risk but explained simply that "the Administrator must determine what inferences should be drawn from available scientific data and decide what risks are acceptable in the world in which we live." 824 F.2d at 1166.

By way of example, the court referred to language in the Supreme Court's *Industrial Union* decision, to the effect that driving a car or breathing city air are risk-laden activities that society does not consider "unsafe." 824 F.2d at 1165. Thus, the determination of what is an "acceptable risk" is discretionary with the Administrator, and involves evaluation of existing scientific data and uncertainties concerning that data.

The EPA disagrees with the commenters' contention that *Public Citizen* demonstrates that "acceptable risk" is limited to *de minimis* risk. *Public Citizen* involved a Food and Drug Administration (FDA) statute

prohibiting use of any food coloring additive "found * * * to induce cancer in man or animal." 831 F.2d at 1109. The FDA in that case argued that a *de minimis* exception, allowing use of the challenged additives when the cancer risks involved are trivial, could properly be interpreted into the statute. The court however, while acknowledging that the cancer risks were indeed trivial, held that the statute imposed an absolute ban once a finding of carcinogenicity had been made, and therefore no *de minimis* exception could be employed.

The situation in *Public Citizen* involving a "no-risk" statute is markedly different from the facts of the *Vinyl Chloride* case. In the *Vinyl Chloride* case the court interpreted the Clean Air Act as *not* equating "safe" with "risk free." 824 F.2d at 1153 [citations omitted]. Indeed, as explained above, the *Vinyl Chloride* court specifically used examples of activities having acceptable levels of risk "in the world in which we live" 824 F.2d at 1165 [citations omitted], but which exceed the *de minimis* concept described in *Alabama Power*. Thus, unless the *Vinyl Chloride* decision is read to broaden the *de minimis* concept from triviality to a level which is acceptable in the world in which we live, the dicta in *Public Citizen* is an apparent misconstruction of the *en banc Vinyl Chloride* opinion. Furthermore, *Public Citizen* did not deal with a statute requiring a determination of a "safe" level, and therefore cannot reasonably be compared to Section 112 of the CAA, and the court's analysis of risk in the *Vinyl Chloride* opinion.

Finally, the *Vinyl Chloride* court's citation of *Alabama Power* does not constitute adoption of the *de minimis* concept. As stated above, the *Vinyl Chloride* decision makes no mention of the *de minimis* concept, and cites *Alabama Power* following a discussion of risks found acceptable by the Supreme Court in *Industrial Union* which clearly exceed *de minimis*. Therefore, at most, *Alabama Power* was apparently cited as *an example* of a risk level, which would, of course, be considered "acceptable." Obviously, the enumeration of other, higher, risks precludes the interpretation that the court was equating the *de minimis* concept and "safe" or "acceptable risk" in *Vinyl Chloride*. In conclusion, EPA does not believe that the terms *de minimis* and "acceptable risk" are synonymous. Further, EPA believes that it is not required by *Vinyl Chloride* to reduce risk to a *de minimis* level.

Comment: One commenter argued that EPA has ignored the precedent established in the D.C. Circuit decision in *Ethyl Corp.* v. *EPA*, 541 F.2d 1 (1976) (*en banc*). This commenter argued that the decision established a "significant increment" test that must be satisfied before EPA can set a standard under section 112, a test that Congress adopted in amending section 112 in 1977.

Response: The commenter has misconstrued not only the teaching of the D.C. Circuit in *Ethyl*, but the Congressional intent in modifying section 112 to follow the court's ruling. First, the *Ethyl* decision does not apply directly to section 112, as the court was construing the language of section 211(c)(1)(A) as it then existed in that case; in addition, the decision involved lead, which unlike radionuclides, is a threshold pollutant. Second, while the court did describe a portion of its reasoning by using the phrase "significant increment", that was not the basic holding of the case. In fact, the court rejected exclusive use of such a test, in stating that Congress " * * * did not mean for 'endanger' to be measured only in incremental terms." 541 F2d. at 30–31. Third, while Congress did adopt language for section 112(a)(1) prescribing the definition of a "hazardous air pollutant" ("an air pollutant * * * which in the judgment of the Administrator causes or contributes to air pollution which may reasonably be anticipated to result in") from the reasoning of the *Ethyl* court, its purpose was to emphasize the preventive or precautionary nature of the Act. *1977 Legislative History*, 2516. In adopting this approach, the House Report stated that the " * * * language is intended to emphasize the necessarily judgmental element in the task of predicting future health risks of present action and to confer upon the Administrator the requisite authority to exercise such judgment." *Id.* at 2518. Finally, the Administrator has, in this rulemaking, used a significance test in its decisions on listing radionuclides and on standards for each of the source categories, as described in the **Federal Register** notice. But, it has not used it in the manner that the commenter has urged, which would eviscerate the true meaning of the *Ethyl* decision and Congressional endorsement of it. EPA believes that its use of a "significance" test here is fully consistent with the statute, its legislative history, and applicable case law, including the Supreme Court's decision in the OSHA benzene case.

Comment: Several commenters addressed the *Vinyl Chloride* court's finding on acceptable risk versus zero risk. Several commenters felt that "acceptable" risk which the court equated with being "safe" is not zero risk; while the scientific approach can reduce uncertainty, life cannot be risk free.

Response: The D.C. Circuit Court in *Vinyl Chloride* held that the Administrator is required, under section 112, to make an initial determination of what is "safe." 824 F.2d 1164. The court went on to state specifically that the "Administrator's decision does not require a finding that "safe" means "risk free" *Id.*, and further stated that the Administrator must decide "what risks are acceptable in the world in which we live." 824 F.2d at 1165. Thus, the *Vinyl Chloride* court made it clear that "safety" or "acceptable risk" is not to be equated with zero risk. The *Vinyl Chloride* court cites the Supreme Court decision in *Industrial Union Dept., AFL–CIO* v. *American Petroleum Institute*, 448 U.S. 607 (1980) as support for the proposition that zero risk is not mandated, stating that *Industrial Union* holds that "something is 'unsafe' only when it threatens humans with a 'significant risk of harm'." 824 F.2d at 1153. *Industrial Union* is clearly an appropriate precedent here.

Comment: The EPA's proposed approaches were based on a two-step decision process, and some commenters also interpreted the *Vinyl Chloride* decision as requiring a two-step process. Other commenters disagreed, stating that the the *Vinyl Chloride* decision does not mandate a two-step procedure for making section 112 decisions, but made clear that an integrated, single-step procedure could be used as long as the decision satisfied both the "acceptable risk" and the "ample margin of safety" criteria. Thus, for example, if existing emissions pose risks that are well below the acceptable risk, the Administrator could determine that both the acceptable risk criterion and the reasonable degree of protection criterion are satisfied in one step.

Response: The court in *Vinyl Chloride* specifically addressed the one or two-step process question, stating as follows:

> In response to the facts presented in this case we have analyzed this issue by using a two-step process. We do not mean to indicate that the Administrator is bound to employ this two-step process in setting every emission standard under section 112. If the Administrator finds that some statistical methodology removes sufficiently the scientific uncertainty present in this case, then the Administrator could conceivably find that a certain statistically determined level of emissions will provide an ample margin of safety. If the Administrator uses this methodology, he cannot consider cost and technological feasibility: these factors are no longer relevant because the

Administrator has found another method to provide an "ample margin" of safety. 824 F.2d

enumerated criteria may well evince a Congressional intent for the

Approach A because they did not find it stringent enough. On the other hand,

specific way to account for this belief other than to qualitatively consider it in

acceptable risk decision. Many other commenters rejected Approach C

the methodology adopted which seeks to protect as large a portion of the exposed

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Administrator has found another method to provide an "ample margin" of safety. 824 F.2d at 1165 n. 11.

Thus, *Vinyl Chloride* does not mandate a two-step process in all cases. However, if a one-step process were utilized, the Administrator could not consider cost or technological feasibility.

Comment: One commenter wrote that the *Vinyl Chloride* opinion states that "the Administrator 'may, and perhaps must' include additional control measures where technologically feasible, in order to reduce public exposure by a cancer-causing chemical 'to the lowest feasible level'." The commenter therefore believed the correct interpretation of section 112 of the CAA according to *Vinyl Chloride* is that "EPA must provide such additional protection as is feasible at the second-step 'ample margin of safety' determination."

Response: In the March 7, 1989, notice proposing emission standards for radionuclides, EPA raised the question of whether to require all technically feasible controls for which costs are reasonable no matter how small the risk reduction. The *Vinyl Chloride* case provided that technological feasibility can be considered under section 112, so long as it is not considered in the "acceptable risk" determination, but only in the "ample margin of safety" determination. ("Since we cannot discern clear Congressional intent to preclude consideration of cost and technological feasibility in setting emission standards under section 112, we necessarily find that the Administrator may consider these factors." 824 F.2d at 1163.) The court explained that "it is not the court's intention to bind the Administrator to any specific method of determining what is 'safe' or what constitutes an 'ample margin'." 824 F.2d at 1166. Thus, the court provided that technological feasibility may be considered under section 112, at the "ample margin of safety" step in the analysis, and that it is within the discretion of the Administrator to determine what weight it is to be given, along with other relevant considerations such as the cost of additional controls. Because the court has specifically sanctioned the consideration of costs as well as feasibility of controls, it is clear that *Vinyl Chloride* does not require imposition of the maximum feasible controls without regard to cost or effectiveness: "Section 112(b)(1)'s command to provide an ample margin of safety to protect public health is self-contained, and the absence of enumerated criteria may well evince a Congressional intent for the Administrator to supply reasonable ones." 824 F.2d at 1159.

2. Regulatory Approaches

The comments on the four approaches proposed by EPA for making the acceptable risk decision and for providing an ample margin of safety were generally polarized: Approach A was favored largely by industry; Approach D was favored by many private citizens, State regulatory agencies, and public interest groups; Approach B received essentially no support; and, while approach C was criticized by many industries, private citizens, State regulatory agencies and public interest groups, it received some support from other commenters within these groups. In addition, alternative approaches were suggested by several commenters with some favoring a higher acceptable risk level and others a zero emissions approach.

The EPA considered all of these comments in selecting the final policy for setting standards under section 112. This was done in light of the *Vinyl Chloride* decision; the final policy is described above in this **Federal Register** notice. The EPA response to these comments are presented below.

In considering the comments on the proposed approaches and alternative suggestion for a policy under section 112, EPA viewed the comments in the context that some positions and concerns expressed by the commenters were diametrically opposed to one another. Thus, EPA realized that no response could completely resolve these positions and concerns. Accordingly, after thoroughly viewing and considering these comments, EPA selected a final policy for setting standards under section 112.

The following sections are split into discussions of the four alternative approaches presented in the March 7, 1989 **Federal Register** notice and by ancillary issues that were relevant to selecting the final policy for setting NESHAPs. The main position and concerns presented by commenters are followed by an EPA response to the comments in the context of the final policy.

Approach A Comments: Many commenters favored Approach A on the basis that it would be flexible, not overly simplistic nor based on a single risk measure, that it would take into account all relevant health information and uncertainties in risk estimation, and it would be a more balanced and rational approach than the other approaches. Many commenters rejected Approach A because they did not find it stringent enough. On the other hand, some commenters felt the preferred level for the MIR of 10^{-4} or less was unnecessarily restrictive. One commenter suggested that Approach A should be modified to increase the maximum lifetime risk limit to 25 mrem/y ede. Several commenters found Approach A unacceptable because it does not establish a consistent and equitable policy, thereby allowing different acceptable risk decisions for different pollutants and source categories.

Response: The EPA agrees with many of these comments and, thus, the final policy, like proposed Approach A, is flexible, provides an equitable response to regulation of air toxics under section 112, and takes into account all the relevant health information and uncertainty in the risk assessment. The final policy is not overly simplistic (that is, based on a single risk measure) and is clearly consistent with the EPA's guidelines for cancer risk assessment for full disclosure of risk uncertainties and quantitative range of risks. The EPA appreciates the position of commenters who supported the EPA's concern that risk estimates less than 1×10^{-6} should be given less weight than risk estimates greater than 1×10^{-4}. The EPA believes, though, that it should reduce risks to less than 1×10^{-6} for as many exposed people as reasonably possible. The EPA also agrees with commenters that proposed Approach A may not be stringent enough, and, therefore, even though the final policy is similar to proposed Approach A, the application to the final policy results in lower levels of emissions. Regarding the maximum lifetime risk limit, the EPA has considered the recommendation of the NCRP, ICRP, and other expert advisory committees and in the context of the source categories herein considered, has concluded that individual dose levels greater than 10 mrem/y ede are inconsistent with the requirements of section 112.

The EPA also does not agree with commenters who said that several aspects of Approach A (e.g., its flexibility and consideration of uncertainty) would lead to an inconsistent policy allowing different acceptable risk decisions for different pollutants and source categories. The EPA believes that the uncertainties within different risk assessments can appropriately result in different acceptable risk decisions. For example, while EPA believes that the risk assessment may be overstated or understated in certain cases, there is no specific way to account for this belief other than to qualitatively consider it in the acceptable risk decision; EPA sees this as an appropriate use of its expert judgment. In addition, EPA does not agree with commenters who said that the uncertainty of a risk assessment should only be considered in the ample margin of safety decision. Risk assessments are only as good as the weakest information and modeling tools used in the assessments, and the value of the results of these assessments must be considered every time they are used; to ignore the uncertainty of these assessments is scientifically unsound and could result in similarly unsound decisions that may be viewed as inconsistent.

Approach B Comments: No commenters favored Approach B. The commenters who opposed this approach generally fell into two groups: industries, who generally felt that Approach B was too conservative and narrow; and State governments, private citizens, and public interest groups, who felt that Approach B was not stringent enough.

Many commenters rejected Approach B (also C and D) because it is based on a single measure of acceptable risk (incidence in Approach B) and does not allow EPA to consider the full range of available health information. Some commenters opposed Approach B because the incidence is often greatly dependent on the definition of the source category. Most of these commenters felt that Approach B did not consider the maximum exposed individual and did not protect smaller populations from high risk when total incidence is low.

Response: The EPA agrees with most of these comments. The final policy, unlike proposed Approach B, provides an equitable response to regulation of air toxics under section 112 by providing for the consideration of the MIR, yet takes into account all the other relevant health information and uncertainty in the risk assessment, including incidence. The final policy is not overly simplistic (that is, based on a single risk measure) and is clearly consistent with the EPA's guidelines for cancer risk assessment for full disclosure of risk uncertainties and quantitative range of risks. The EPA appreciates the concern of commenters that incidence is often greatly dependent on the definition of the source category.

Approach C Comments: Approach C was supported by several commenters as being a straight-forward, bright-line approach. In contrast, some commenters found Approach C too conservative, inflexible, and limiting of the information which could be considered by the Administrator in making the acceptable risk decision. Many other commenters rejected Approach C because they did not find it stringent enough.

Response: The EPA agrees with many of these comments. The EPA utilizes a level of approximately 1×10^{-4} as an appropriate presumptive benchmark of acceptability in employing its selected policy approach. At the same time, EPA agrees with commenters that Approach C was inflexible and did not consider all the relevant health information and uncertainty in the risk assessment. Accordingly, as indicated in the discussion of the final policy, EPA believes that MIR levels greater than approximately 1×10^{-4} are presumptively unacceptable, but that the risk estimates must be considered in light of all the relevant health information and the uncertainties in the risk assessment. As part of this perspective, EPA agrees that exposures to background concentrations and multiple sources of a pollutant may be considered to the extent that it is practical and reasonable to do so.

Approach D Comments: A large group of public interest groups, and private citizens supported this approach. Their primary reason for support was because this was the most stringent approach, but other reasons included consistency with existing State air toxics programs and Federal regulations and accounting for underestimation of risk. A few commenters favored Approach D in order to protect public health in a multiple carcinogen environment.

The commenters who rejected Approach D did so for a variety of reasons. Some found Approach D too conservative, inflexible, and limiting in the information which could be considered in the acceptable risk decision. Several commenters disagreed with those who argue that a 1×10^{-6} acceptable risk level is justified due to concern about exposure to multiple chemicals; these commenters said that section 112 regulatory decisions should not be based on concerns about chemical exposures that have little relevance to the pollutant and source category being regulated.

Many commenters felt either that even the risk level of 1×10^{-6} given in Approach D was unacceptable or not protective enough of public health, or that "acceptable" risk should mean zero risk.

Response: The EPA agrees with commenters that felt that Approach D was too conservative, inflexible, and limiting of the information which could be considered in the acceptable risk decision. However, much of the intent of Approach D has been incorporated in the methodology adopted which seeks to protect as large a portion of the exposed population as possible to risks no higher than approximately 1×10^{-6}. The EPA also agrees with commenters who stated that consistency with State and Federal regulations must be viewed in light of the purpose and actual implementation of those regulations and, specifically, agrees that comparing NESHAP requirements with State programs (many of which are guidelines and contain waivers or flexibility if technology cannot achieve the programs' stated goals) is inappropriate. Also, EPA finds the comment that there is a public consensus that only an MIR of 1×10^{-6} or less is acceptable to be difficult to support given the wide range of positions expressed in this rulemaking.

While EPA agrees that multiple exposures to hazardous air pollutants are important to understand and consider in the EPA's overall implementation of its public health mandates, EPA disagrees that these exposures should be routinely evaluated and considered in selecting standards under section 112. In taking this position, EPA is agreeing with commenters who said using these exposures explicitly in selecting standards would be very difficult and possibly impractical. The EPA also disagrees with commenters who said that even the risk level of 1×10^{-6} given in Approach D was unacceptable or not protective enough of public health, or that "acceptable" risk is zero risk.

Alternative Acceptable Risk Approaches: Several commenters proposed variations on, or alternatives to, the EPA's four proposed approaches for determining acceptable risk. Several of these were modifications to the case-by-case approach. Another group argued for more stringent criteria than Approach D, with a ultimate goal of zero risk. A third group provided various other alternative acceptable risk levels.

Comment: Several commenters advocated higher levels of acceptable risk than those proposed in any of the EPA's approaches. Some did so by explicitly referencing guidance issued by the ICRP, the NCRP, or other groups involved with radiation health protection that sanction greater risks than those proposed by EPA.

Response: The EPA does not agree with the commenters who advocated higher levels of risk than any considered in the March 7, 1989, **Federal Register** notice. While some commenters interpreted the *Vinyl Chloride* decision to mandate these high risk levels, EPA believes that the *Vinyl Chloride* decision requires EPA to consider

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societal risks in making an expert judgment on acceptability. The EPA completed such considerations, made an expert judgment and, consequently, selected a presumptive MIR level of approximately 1×10^{-4}. For the sources considered in this notice, EPA believes that associated risks in the range of 1×10^{-3} and 1×10^{-5} are too high, and presumptively unacceptable.

3. *Risk Comparisons in the Acceptable Risk Decision:* Several commenters expressed positions on whether comparison of hazardous air pollutant risk with other risks encountered by society should be considered in making the acceptable risk decision. Some commenters thought comparisons were appropriate while others did not.

Comment: Several commenters thought that as part of the acceptable risk decision, EPA should compare risks from radiation with other risks that are encountered in ordinary life and accepted by society. They generally used comparative risks as an argument in favor of Approach A and as evidence that risks of 1×10^{-4}, or even higher, could be considered acceptable. The commenters said such comparisons are consistent with the *Vinyl Chloride* decision's reference to consider the acceptability of risk in "the world in which we live." Many commenters listed several activities encountered in daily life which entail lifetime risks in the 1×10^{-3} to 1×10^{-4} range as evidence that this level of risk could be considered acceptable.

Others said the comparison is not valid because risks such as driving a car are voluntary, whereas pollutant exposures are involuntary.

Response: The *Vinyl Chloride* decision provides for such comparisons and for EPA to make an expert judgment of the acceptability of the risks for sources of hazardous air pollutants. However, EPA believes that it is prudent to view such comparisons cautiously and to reflect the uncertainty in such comparisons in the EPA's decisions on the acceptability of the risks for sources of hazardous air pollutants. Factors, such as whether the risks are voluntary, controllable, man-made, and uncertain, lead EPA to be cautious in making such comparisons. After considering these risks, EPA has determined that MIR's greater than approximately 1×10^{-4} are presumptively unacceptable and are considered in making an overall judgment on acceptability along with other relevant health and risk factors, including uncertainty.

However, in this regard, it is important to point out that MIR estimates are based on a different and, more conservative, concept than average risk expressions such as the risks associated with motor vehicles, or the risk of being killed by lightning. Average risks generally apply to the total population and do not reflect the distribution of risks across a population. For example, the average lifetime risk of death due to motor vehicle accidents is about 5×10^{-3}. A city with a population of 2 million might, therefore, expect about 150 traffic-related deaths every year even though some members of this population are at greater risk. On average, this 150 deaths every year does not express the incidence rate for those members of the population. In contrast, if the MIR at a typical industrial facility located in a city of 2 million population is 5×10^{-3}, the annual estimated incidence would only be about 1 death in 20 years (0.05 cases/year). And, the "average" individual risk to the exposed population is typically much lower, by orders of magnitude, than the MIR. Thus, while EPA believes that MIR risks greater than approximately 1×10^{-4} are presumptively not acceptable, EPA maintains that commenters who apply the MIR to entire populations are improperly characterizing population risks as well as the MIR.

Comment: Several commenters said that if levels of exposure are within the bounds of variation in ambient background levels, the activity should not be regulated. In addition, an annual dose of 10 mrem/y ede is probably within the normal variations seen in natural background; therefore, a cumulative dose of this magnitude from all man-made sources and pathways appears to be acceptable when considering risks if the ALARA principal is followed and enforced.

Response: The EPA believes that comparison of estimated MIR levels to natural background risk levels is irrelevant. What EPA considers important is the incremental risk associated with a particular activity. Reference to natural background risk levels is only acceptable in deciding what benchmark society deems acceptable.

4. *Ample Margin of Safety Decision:* Some commenters expressed opinions on what factors should be considered in the decision on what level of regulation provides an "ample margin of safety" as required by section 112 of the CAA and the *Vinyl Chloride* decision. Some commenters argued for strong consideration of health effects and uncertainties, while others emphasized consideration of economic impacts or a balancing of multiple factors.

Comment: Several commenters suggested that in the ample margin of safety decision, EPA should give greater consideration to health effects, noncancer effects, alternative exposure pathways, co-emitted pollutant risks, nonquantified health effects, interactions among pollutants, and uncertainties not taken into account in the EPA's risk estimates. It was also suggested that an "ample margin of safety" means no less than elimination of all avoidable risks.

Some commenters identified additional economic factors that they thought should be considered and that would lead to more stringent regulatory decisions. For instance, there are many costs to society associated with the deaths and illnesses associated with pollution, such as emotional costs to families, medical costs of treatment and institutionalization, and weakening of the gene pool.

Response: EPA disagrees with the comment that an "ample margin of safety" requires the elimination of all avoidable risks. The *Vinyl Chloride* decision does not require this degree of stringency. EPA did consider non-fatal cancers and genetic effects in developing this rule; additional health and economic information was considered to the extent that it exists in the rulemaking record. EPA will continue to endeavor to consider fully all relevant factors in the selection of final standards under section 112.

5. *Risk Assessment and Treatment of Uncertainty:* The response to the EPA's solicitation of comment regarding the treatment of uncertainty varied from approval of the EPA's position to suggestions that uncertainty should force stricter standards, or conversely, prohibit restrictive standards. One group of commenters stated that EPA had shown a good appreciation of the uncertainty associated with the scientific evaluation of health data and the exposure data used in estimating risk. Commenters also provided recommendations on which step of the decision process was the appropriate place for the consideration of uncertainty.

Comment: Some commenters favored consideration of uncertainties in the acceptable risk step of the decision process, while others felt it is more appropriate to consider uncertainties only in the ample margin of safety step, and still others advocated consideration during both steps. Some stated that questions of uncertainty and conservatism cannot be separated or deferred from the determination of acceptable risk, while others felt that consideration of uncertainty should be deferred until the ample margin of safety step. Most of these latter commenters believed that the MIR should be the sole criterion for making the acceptable risk decision, and that uncertainties and other factors are best considered in the ample margin of safety step. In so doing, some added that these uncertainties should not be addressed by incorporating unscientific, over-conservative assumptions into the risk assessments.

Response: The EPA believes that it is essential to consider the quality of the information it uses to make decisions when the decisions are being made. Thus, EPA agrees with commenters that stated that it would be inappropriate to evaluate the "safe" level and the "margin of safety" without taking the uncertainties (both scientific and technological) into account. Because EPA has concluded that many factors should be considered in making the acceptable risk decision, the EPA disagrees with commenters who believed that MIR should be the sole criterion for making the acceptable risk decision and that uncertainties and other factors are best considered in the ample margin of safety step.

Comment: When estimates are imprecise, accurate quantified statements of uncertainty are essential; these factors must be actively involved in the decision-making process both for regulations and site-specific permitting decisions.

Response: The EPA has initiated a substantial effort to quantify the uncertainty in its radiation risk estimates. However, until quantitative uncertainty estimates are available, the Agency must base its decisions on the current measures of uncertainty at its disposal.

Comment: It would be inconsistent with the EPA's distinction between risk assessment and risk management for the Agency to deal with bona fide scientific questions at the stage of deciding what probability of contracting cancer is "acceptable." Risk considerations alone should be dealt with in this first step. Moreover, an adequate data base must be established for technical, scientific, and economic considerations before these can be balanced with acceptable risks.

Response: The EPA disagrees that bona fide scientific questions are inappropriate at the risk management step. The EPA's risk assessments are based on what it considers the best available scientific evidence, with conservative but reasonable assumptions made when necessary. At the risk management step, the decisionmakers need to know the uncertainties associated with the risk estimates and the range of scientific opinion regarding the assumptions that have been included in the assessment.

Comment: Some commenters suggested that the proposed rules are improperly based on incomplete technical analyses.

Response: The final rules are the result of extensive research and technical analysis conducted over a period of several years, and, thus, the record underlying the rules is reasonably complete and accurate. Commenters' technical comments, as well as those of other commenters, are incorporated into the record to the extent they proved pertinent. In arriving at the acceptable risk decisions under CAA section 112 for these rules, costs and technological feasibility were not considered. Such were considered along with the health-related factors, however, in determining whether more stringent rules were needed in arriving at the statutorily required ample margin of safety.

Comment: Several commenters have asserted that EPA's risk assessments are not realistic but are worst case estimates. Some commenters objected to EPA's assumption that people living in the vicinity of radionuclide sources were exposed continuously, for a 24 hours per day 70-year lifetime, to predicted long-term ambient radionuclide levels. Commenters maintained that the average lifetime of an industrial facility is considerably less than 70 years, and that few individuals would be expected to live in the same location for their entire lives.

Response: The EPA recognizes that the assumption of 70 years of continuous exposure constitutes a simplification of actual conditions and represents, in part, a policy judgment by EPA, but feels that this assumption is preferable to other alternatives. Although emissions of radionuclides from industrial sources would reasonably be expected to change over time, such changes cannot be predicted with any certainty. In lieu of closing, plants may elect to replace or even expand their operations and subsequently increase their emissions. The 70-year exposure duration represents a steady-state emissions assumption that is consistent with the way in which the measure of carcinogenic strength is expressed (i.e., as the probability of contracting cancer based upon a lifetime [70 year] exposure to a unit concentration). Constraining the analysis to an "average" plant lifetime carries the implication that no one could be exposed for a period longer than the average. Since by definition, some plants would be expected to emit longer than the average, this assumption would tend to underestimate the possible MIR. The EPA agrees that the U.S. population is highly mobile. However, adjusting the exposure assumptions to constrain the possibility of exposure to emissions implies that exposure during the periods away from the residence are zero. In addition, a less-than-lifetime assumption would also have a proportional impact on the estimated MIR, suggesting that no individual could be exposed for 70 years. On balance, EPA believes that the present assumption of continuous exposure is consistent with the steady-state nature of the analysis and with the stated purpose of making plausible, if conservative, estimates of the potential health risks. It is the EPA's opinion that this assumption, while representing in part a policy judgment by EPA, continues to be preferable to adopting a shorter lifetime figure, both in view of the shortcomings of such alternatives and in the absence of compelling evidence to the contrary.

Comment: The EPA should measure the gain in risk reduction made against the costs to reach such gain and compare the benefits against the increased risk borne by workers.

Response: The EPA does consider both the incremental reduction in risk and the costs at the ample margin of safety step. The EPA is unaware of any increase in worker exposure that will be caused by the promulgated NESHAPs.

6. Scope of the Regulations

Comment: Several commenters stated that NESHAPS should be developed for other sources or categories of radionuclide emissions including that from Naturally Occurring Radioactive Materials (NORM) contamination of oil and gas production equipment and in construction materials, and also from naturally occurring radon in the soil that underly residences, schools, businesses and offices. They questioned whether emanation rates of radon (222 and 220) from coal stockpiles, boilers, fly ash, and bottom ash significant for regulation under the NESHAP program.

Response: The EPA believes that the source categories evaluated in this rulemaking represent the sources with the greatest potential for causing unacceptable risks from radionuclide emissions to ambient air. The Agency has examined the potential problem of radon in natural gas provided to homes and found that the transit times allow for the decay of the radon to acceptable levels. Emissions of radon from coal piles and coal ash piles has also been examined, as part of the CERCLA rulemaking on Reportable Quantities,

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with similar results. EPA will continue to look at these and other potential sources to see if they are appropriate sources for regulation under section 112. Finally, it must be noted that EPA's authority under CAA Section 112 is limited to the regulation of source categories of toxics to ambient air and, thus, lacks authority to regulate or control naturally ocurring radon in soils that underly homes or businesses under this code section.

Comment: Consideration should be given to the problems presented by overlapping sources, any increase in the number of facilities within each category over time, and the goal of controlling the total incremental pollution for all radionuclide emissions from all source points in all twelve source categories.

Response: The Agency agrees and its policies on acceptable risk levels are based, in part, on assuring that risks caused by overlapping and multiple sources do not result in individuals receiving an unacceptable level of exposure and risk. Explicitly accounting for overlapping and multiple sources of exposure greatly complicates the calculation of exposures and risks. Since concentrations of radionuclides decline rapidly with distance from a source, however, it is highly unlikely that any individual could be the most exposed individual for more than one source. In most cases, members of the public will receive risks less than 1×10^{-6} from more than one source.

Comment: The standards should address cumulative health impacts resulting from exposures to multiple radiological and nonradiological pollutants emitted by the same or multiple sources located in relative proximity to one another.

Response: Although EPA has been unable to quantify cumulative and synergistic health impacts for multiple hazardous materials and sources have not been accurately qualified, it is our judgment that if such effects could be accurately quantified, they would not substantially alter EPA's conclusions in this rulemaking.

Comment: The standards consider only fatal cancers and fail to take into account the entire range of chronic debilitating and incapacitating diseases that may result from radionuclide emissions.

Response: EPA has taken into account the entire range of chronic debilitating and incapacitating diseases that may result from radionuclide emissions.

Comment: Proposed standards are based on what the EPA perceives as achievable rather than a safe level of airborne radioactivity emissions; this is not an appropriate basis for setting air emission standards under the Act.

Response: The EPA believes that its standards ensure an acceptable level of risk to public health with an ample margin of safety as required by the Clean Air Act and the decision in *Vinyl Chloride*. The Agency has established a threshold presumption that lifetime fatal cancer risks to individuals of approximately 1×10^{-4} are acceptable under the *Vinyl Chloride* decision, and has attempted to assure that as many persons as possible do not receive lifetime risks greater than 1×10^{-6}.

Comment: The potential effect of the proposed rule on Federal preemption in the area of regulation of facilities needs to be carefully considered. Nuclear facilities are unique and complex, and consistent regulation is in the best interest of the public. Congress determined that national regulation of nuclear power plants is appropriate in establishing the Atomic Energy Act.

Response: The Agency agrees that consistent regulation is in the interest of the public and has promulgated national emissions standards that apply to nuclear power plants. However, the Clean Air Act does not preempt state standards that are at least as stringent as those set by the Federal Government.

Comment: The consistency of these standards with other existing and proposed radiation standards, for air pathways and other pathways, should be discussed.

Response: As noted in the March 7, 1989 **Federal Register** notice for the proposed standards, the statutory requirements of CAA section 112 differ from the requirements of other authorities under which the EPA and other regulatory bodies set radiation standards. Therefore, the first priority for EPA is to assure that the regulations promulgated are in accordance with its statutory mandate.

Comment: All facilities that emit similar radionuclides should be held to the same emission standards; a remote facility should not be allowed higher emission rates than an urban facility, nor should a government or municipal facility be allowed higher emission rates than a private or industrial facility.

Response: The EPA's decisionmaking approach in setting final rules assures that all members of the public are adequately protected, regardless of the source of their exposure or their choice of residence in an urban, suburban, rural, or remote area of the country. The EPA believes that different source categories may be treated differently even if they emit similar pollutants, so long as the final standard protects public health with an ample margin of safety.

Comment: The Clean Air Act does not allow for dose standards.

Response: We disagree with those commenters stating that Congress in directing the Agency to set emission standards did not authorize that those standards be set in terms of dose to an individual. CAA section 302(k) defines the term "emission standard" to include limits on the quantity, rate, or concentration of an air pollutant and the Agency views dose standards fully consistent with that definition. In many cases, because there are over two hundred known radionuclides, numerous different ones are emitted from an individual source. In addition, the risk due to each is a further function of many factors such as particle size and exact chemical state. An emission standard for radionuclides based on quantity at the stack would often be complex to the point of impracticality. A dose standard provides a better approach to protecting the public since it allows the establishment of a uniform limit based on consideration of all of the factors related to the particular mix of radionuclides emitted from each source. Moreover, this approach is supported by radiation protection experts and the regulated community.

Comment: Some commenters posit that Clean Air Act Section 112 does not, or should not, authorize EPA to regulate radionuclide air emissions from those sources, or categories of sources, that are already regulated pursuant to the Uranium Mill Tailings Radiation Control Act of 1978, Pub. L. No. 95-604, 92 Stat. 3021 (codified in scattered sections of 42 U.S.C.) ("UMTRCA"). These commenters reason that because UMTRCA was promulgated subsequent to the last comprehensive revisions to the Clean Air Act, and, because UMTRCA's statutory scheme is more specifically focused upon the sources to which it applies than is the Clean Air Act, EPA's authority under CAA Section 112 is, in effect, preempted.

Response: EPA disagrees that it lacks authority to regulate, under CAA Section 112, the radionuclide air emissions of sources also regulated under UMTRCA. Indeed, UMTRCA itself resolves this issue by quite explicitly stating that "[n]othing in this chapter applicable to byproduct material * * * shall affect the authority of the [EPA] under the Clean Air Act of 1970, as amended * * *" 42 U.S.C. section 2022(e). The legislative history is similar: "Authorities of the EPA under other laws would not be abridged by the new requirements." H. Rep. No. 1480, 95th Cong., 2d Sess. 6, reprinted in, 1978 U.S. Code Cong. & Admin. News 7433, 7444. In other words, there is no indication that Congress intended UMTRCA to preempt EPA's regulatory authority under the Clean Air Act; rather Congress expressly contemplated EPA authority to simultaneously regulate under both legislative schemes.

7. Procedural

Comment: Many commenters felt that the affected parties familiar with the proposed standards have not had adequate time to thoroughly review available documents, and many stated that many supporting documents were not available until mid-April. In addition, several stated that the material contained significant errors.

Response: The EPA made every effort to notify affected parties of the rulemaking action, and it timely prepared and distributed the background materials supporting the proposed rules. However, the court order under which this rulemaking has been conducted necessitated strict adherence to the schedule for public comments and hearings. The Agency is not aware of any significant errors in the risk assessment. Where additional or new information was provided or developed during the comment period, it has been incorporated into the Final Environmental Impact Statement (FEIS), also referred to as the Background Information Document (BID).

Comment: The Proposed Rulemaking Notice, published in the **Federal Register** on March 7, 1989, does not identify those who participated in its preparation. The authors of the Draft Environmental Impact Statement (DEIS) do not appear to represent the kinds of knowledge, experience, and expertise necessary for the task.

Response: The DEIS does identify the ORP staff members who contributed to the development of the background material and indicates that S. Cohen and Associates, Inc., the Office's Technical Support Contractor, provided considerable technical support and analysis. The Agency disagrees strongly that the participants in this effort lack the necessary knowledge, experience, and expertise to prepare the proposal or final rulemaking packages.

Comment: The conclusion of the Regulatory Flexibility Act analysis that this rule will have little or no impact on small businesses because virtually all small businesses regulated under this rule already comply with the proposed standards is unsupported.

Response: The final rule for NRC-Licensed and Non-DOE Federal facilities is the only NESHAP with the potential to affect small businesses. That standard is a baseline standard, which indicates that EPA is unaware of any particular facility that does not comply with the final rule. In doing its risk assessment, EPA looked at model facilities with relatively large emissions for that class of facility to ensure that the risk was not underestimated. Therefore, EPA believes that it is highly unlikely that any small business would have emissions which would exceed the standard.

Comment: An international panel of recognized health professionals and epidemiologist should review and comment on the health effects of these very low levels of proposed radiation protection standards.

Response: The Agency invited comments from all interested parties during the public comment period. Further, it has reviewed and considered the findings and recommendations of the NCRP, the ICRP, UNSCEAR, and the NAS in developing its risk coefficients. Finally, the risk coefficients used in this risk assessment were reviewed and approved by the Agency's Science Advisory Board.

Comment: Even among the various sources proposed for regulation in this rulemaking there does not appear to be an even handed application of the EPA's own analysis. The different regulatory standards proposed by the EPA for the various sources are irrational.

Response: The EPA disagrees. The proposed regulations were developed on a consistent basis for each of the four approaches. For the final rule, the EPA used a single approach to determine the level of each standard it set. The EPA believes that consistency among the standards has been achieved.

Comment: The EPA should defer final action in this rulemaking to permit public comment on the Science Advisory Board's Review of EPA's proposal.

Response: The court imposed schedule for this rulemaking does not permit the Agency to extend the public comment period.

Comment: The EPA should propose its enforcement policy for public review and comment.

Response: The EPA does not plan at this time to create a specific enforcement policy for these rules, but instead currently intends to enforce them in the same manner that it enforces other Clean Air Act standards.

8. Decision to List Under Section 112

The FR notice requested comments on the appropriateness of listing radionuclides as hazardous air pollutants under section 112 of the Act. Comments on this issue ranged from unequivocal support for listing to questions as to the justification for listing under this section of the Act. Many, while not necessarily opposing listing, stated that their particular source or source category should not be regulated under the Act due to the insignificant risks to public health presented, or, in light of the existence of other regulations.

Comment: Several commenters stated that the listing under section 112 is appropriate because a hazardous air pollutant includes those substances that may result in an increase in mortality or an increase in serious irreversible or incapacitating reversible illness. The EPA should apply the same risk assessment criteria to radionuclides that are applied to other toxic air pollutants regulated under section 112. Such an approach is the only way that the health protection goals will be achieved.

Response: The EPA agrees that listing under section 112 is appropriate, and it does apply the same approach and criteria to all risk assessments and standard setting under section 112. However, differences in our knowledge about different hazardous materials, differences in the modes of exposure (pathways), and differences in the assessment of exposure lead to different risk assessment methods.

Comment: Many oppose the listing of radionuclides for three main reasons: (1) Radionuclide emissions from all source categories constitute only ⅓oth of natural background, which is an insignificant amount; (2) concentrations released into the general environment as a matter of routine emissions do not constitute the degree of hazard which section 112 was meant to regulate; and (3) there is no evidence with respect to the health effects of low level radionuclide emissions.

Response: The EPA believes that its listing of radionuclides as hazardous air pollutants under section 112 is proper and is compelled by both the weight of the scientific evidence and the Administrator's statutory duties under the Act. While the EPA agrees that there is no conclusive human epidemiological data demonstrating health effects at low levels of exposure, we believe that the preponderance of the scientific evidence (both human epidemiology at higher levels of exposure and the data from non-human sources) indicates that the linear non-threshold dose response model is consistent with the available data and its utilization for regulatory purposes is appropriate. The EPA disagrees that the levels of risks posed by releases of radioactive materials into

the air are below those the Congress intended to regulate under section 112. Finally, the EPA does not consider the

Response: The EPA agrees that the availability of demonstrated control technology should be considered.

are designed not to provide an average exposure level but a maximum exposure level. Therefore, comparison with the

respect to the determination of the needed ample margin of safety.

be shut down, and exposures received during maintenance should be

B. General Provisions

Except where otherwise specifically

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the air are below those the Congress intended to regulate under section 112. Finally, the EPA does not consider the comparison of the risks posed by man-made sources to the risks from background to be relevant. The level of exposure corresponding to safe with an ample margin of safety, not background, is the appropriate criterion for regulation under section 112. Many risks associated with natural background radiation are relatively high and, thus, are not appropriate as a benchmark for evaluating the need for regulation.

Comment: Some commenters felt that regulation of radionuclides under section 112 is appropriate but that EPA should exempt some categories of industries that are regulated under other authorities, unless the current emissions within the source category can be shown to be unsafe.

Response: The Agency has concluded that for source categories where emissions present or potentially present unacceptable risks, it should not defer to other regulatory authorities.

9. Technological and Economic Factors

Comment: The EPA should not be concerned with availability or feasibility of controls. It should simply establish the requirement and let industry determine how it will meet it.

Response: In determining the safe level, EPA agrees. Thus, at that stage it does not consider either the availability or feasibility of controls. These are considered, however, at the second step ample margin of safety determination. Moreover, where possible, such as with the NESHAP for underground uranium mines, the regulated community is given wide latitude in selecting the combination of controls and/or work practices that will allow them to meet the mandated level of the standard.

Comment: The factors the EPA should consider before requiring control technology include: commercial vendor availability, adaptability from other uses, readily understood and applicable operating principles, costs and health benefits. Availability to U.S. industry should not be based on foreign commercialization.

Response: In general, these are the factors that the EPA considers. However, the EPA sees no reason to automatically preclude a technology solely because it has been developed and commercialized only outside of the U.S.

Comment: A technological development that has been demonstrated to reduce emissions and is in use in or outside the U.S. should be considered available and required.

Response: The EPA agrees that the availability of demonstrated control technology should be considered. However, the requirement of additional controls, at the ample margin of safety step, rests also on consideration of costs and other factors.

Comment: Because of the existing regulatory framework that forces the use of control technology pursuant to the ALARA principle, the nuclear industry is already at a very low level of emissions and further regulation is merely duplicative.

Response: The EPA agrees that the emissions from many segments of the nuclear industry are at low levels. The EPA does not anticipate that facilities with state-of-the art control systems will need additional controls to comply with the limits of the NESHAP. However, EPA does not agree that in all circumstances regulation under CAA section 112 is unnecessary and indeed has determined that final rules are needed for the radionuclide source categories identified.

Comment: The EPA should not promulgate additional radionuclide emission regulations for the uranium fuel cycle (UFC) including nuclear power plants. The industry has a proven record of protecting the public health and safety from airborne radioactive emissions. This results from the conservative design of the facilities, the careful operating philosophy employed in these facilities, and the existing framework of EPA and NRC regulations. The public already enjoys better protection from UFC radionuclide emissions than from almost any other industry's emissions.

Response: As stated in the FR notice, the Administrator has determined that regulation of potentially significant risks should not be deferred to other regulatory authorities. Based on its evaluation of the doses and risks caused by UFC facilities, the EPA does not believe that non-milling facilities will have to modify their operations to comply with the NESHAP. However, EPA has agreed to reconsider the issue of duplication of regulation as described in the discussion on subpart I.

Comment: The DOE is concerned that the EPA has proposed an outdoor radon concentration standard that is far below the level the EPA is willing to allow indoors.

Response: The authorities under which the NESHAPs and indoor radon guidance are promulgated are entirely different. The EPA does not have the authority to mandate indoor radon levels. Its guidance to homeowners is based on a single screening measurement, the protocols for which are designed not to provide an average exposure level but a maximum exposure level. Therefore, comparison with the limits established by the NESHAP is invalid.

Comment: Regulations that have the effect of forcing use of control technology are clearly inappropriate where the technology has not been shown to be currently available.

Response: CAA section 112 requires EPA to set a safe or acceptable level without regard to the availability of control technology. Nevertheless, as a practical matter, while NESHAPs allow for use of new technologies, none of the promulgated NESHAPs requires the development of new technologies.

Comment: A strong regulatory stance by the EPA in requiring pollution controls will act to stimulate innovation, reduce prices via increased sales of control technologies and processes, and reduce risk.

Response: This stimulation of innovation and price competition in the effluent control industry, while a laudable public goal, is not a requirement under section 112 of the Act. Rather, the purpose and focus of NESHAPs is to protect public health with an ample margin of safety.

Comment: EPA should include avoided costs, e.g. possible tort judgments, including punitive damages, in determining the level of the final standard at the ample margin of safety step of the decision-making process.

Response: In theory, the EPA agrees. However, as a practical matter, it is often difficult to arrive at even an approximation of avoided costs when dealing with specific source categories. They are simply too speculative, especially given that the source categories are often comprised of thousands of individual facilities.

Comment: Cost as used in the ample margin of safety discussion should include all of the costs identifiable with the decision; this would include value of the facility, economic effects on the community, and social effects of labor force dislocation.

Response: To the extent that the EPA is able to develop quantitative estimates of these costs they are considered pursuant to the decision-making process. However, as already noted, such costs are often only available, if at all, as rough, qualitative estimates.

Comment: Industry should meet the criteria irrespective of costs or technological feasibility.

Response: The EPA agrees with respect to meeting the levels determined to be "safe." The EPA disagrees with respect to the determination of the needed ample margin of safety.

Comment: Fundamental fairness prohibits the EPA from imposing controls that cost more than some ceiling amount per estimated death prevented.

Response: Since the *Vinyl Chloride* decision precludes consideration of cost when determining what constitutes "safe," all sources must meet the standards or utilize controls to the degree necessary to bring their emissions into compliance, regardless of the cost.

Comment: EPA has not explained the basis for abandoning the existing regulatory program for uranium mill tailings disposal in favor of regulation under the CAA. The UMTRCA, passed subsequent to the CAA, provides flexibility.

Response: The Administrator has determined not to defer to other regulatory authorities when the risk merits issuance of a NESHAP under section 112 of the Act. However, the requirements of the other regulations must still be met.

Comment: If post-closure emissions are to be actively regulated under the standard, the EPA should address financial assurances for evaluation, monitoring, reporting, facility modification request, and remedial actions.

Response: Given the one-time nature of the post-closure monitoring requirements for phosphogypsum stacks and uranium mill tailings disposal sites, the EPA does not believe that the small financial burden requires specific financial assurance requirements. Details of monitoring and reporting requirements are included in the appropriate Subparts.

Comment: The proposal fails to address the occupational dose increment resulting from the installation, operation, and maintenance of the additional equipment and systems required for compliance; the collective occupational exposures required for some of these additions will be at higher individual doses and of significantly more consequence than the questionable savings in public risk.

Response: The lack of specific instances makes it impossible to fully address this concern. The EPA is not aware of any instance where a NESHAP will require emission controls that will result in a significant occupational exposure. Where controls may be required, for example at elemental phosphorus plants, they supplement or replace existing, less effective, controls. The exposure resulting from installation should be minimal since the process will be shut down, and exposures received during maintenance should be comparable.

Comment: Consideration should be given to whether public welfare would not be improved by diverting moneys from regulatory procedures with no measurable effect on human health, to research efforts, which have resulted in considerable advantages to the public health and well being. Human costs to those dependent on the industry as well as other adverse environmental repercussions caused by a shift away from nuclear power toward more polluting technologies, will far outweigh any theoretical public health benefit.

Response: The suggested cost-benefit determination is outside the purview of the Agency. However, given the concerns of the National Institutes of Health that health care may be affected, EPA has agreed to reconsider this issue.

Comment: The statement that demand for nuclear energy is on the decline due to reduced demand for nuclear generated electricity is fallacious. Also, while the analysis recognizes that these regulations will worsen the already weak position of the domestic uranium industry, it does not examine the adverse effects that will have on the national trade deficit.

Response: Imported uranium is a trivial component of the United States trade deficit.

Comment: The EPA estimates costs associated with the alternative regulatory approaches for each source category but the total fuel cycle cost will be passed through to nuclear utilities and should be assessed on that basis. This includes sources under subparts B, H, I, K, R, S, T, and W.

Response: Costs associated with the final rule are not significant compared with the total fuel cycle costs. There would be no significant impacts.

VIII. Miscellaneous

A. Docket

The docket is an organized and complete file of all information considered by EPA in the development of the standards. The docket allows interested persons to identify and locate documents so they can effectively participate in the rulemaking process. It also serves as the record for judicial review.

Transcripts of the hearings, all written statements, the Agency's response to comments, and other relevant documents have been placed in the docket and are available for inspection and copying during normal working hours.

B. General Provisions

Except where otherwise specifically stated, the general provisions of 40 CFR part 61, subpart A apply to all sources regulated by this rule.

C. Paperwork Reduction Act

The information collection requirements in this final rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2060-0191.

D. Executive Order 12291

Under Executive Order 12291, EPA is required to judge whether this regulation is a "major rule" and therefore subject to certain requirements of the Order. The EPA has determined that regulations promulgated today will result in none of the adverse economic effects set forth in section I of the Order as grounds for finding a regulation to be a "major rule." These regulations are not major because (1) nationwide annual compliance costs do not meet the $100 million threshold; (2) the regulations do not significantly increase prices or production costs; and (3) the regulations do not cause significant adverse effects on domestic competition, employment, investment, productivity, innovation, or competition in foreign markets.

All of the final regulations presented in this notice were submitted to OMB for review as required by Executive Order 12291. Any written comments from OMB to EPA and any written EPA response to those comments has been included in the docket.

E. Regulatory Flexibility Analysis

Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, requires EPA to prepare and make available for comment an "initial regulatory flexibility analysis" in connection with any rulemaking for which there is a statutory requirement that a general notice of proposed rulemaking be published. The "initial regulatory flexibility analysis" describes the effect of the proposed rule on small business entities.

However, section 604(b) of the Regulatory Flexibility Act provides that section 603 "shall not apply to any proposed . . . rule if the head of the Agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."

EPA believes that virtually all small businesses are currently in compliance with these rules. In addition, EPA has placed reporting exemptions in the rule

for NRC-licensees to limit the amount of paperwork that would be required by

of part 61. The following terms shall have the following specific meanings:

(2) The name of the person responsible for the operation of the

(2) If the facility is under a judicial or administrative enforcement decree the

(a) *Effective dose equivalent* means the sum of the products of absorbed

flow rates through pipes and small vents.

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for NRC-licensees to limit the amount of paperwork that would be required by the smaller operators. Therefore, this rule will have little or no impact on small businesses. A small business is one that has 750 employees or fewer.

For the preceding reasons, I certify that this rule will not have significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 61

Air pollution control, Arsenic, Asbestos, Beryllium, Benzene, Incorporation by reference, Mercury, Radionuclides, Vinyl chloride.

Dated: October 31, 1989.

William G. Rosenberg,

Acting Administrator.

Part 61 of chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 61—[AMENDED]

1. The authority citation for part 61 continues to read as follows:

Authority: 42 U.S.C. 7401, 7412, 7414, 7416, 7601.

2. Part 61 is amended by revising subparts B, H, I, K and W and by adding subparts R and T to read as follows. These subparts are effective December 15, 1989. Subpart I is stayed until March 15, 1989.

Subpart B—National Emission Standards for Radon Emissions From Underground Uranium Mines

Sec.

61.20 Designation of facilities.
61.21 Definitions
61.22 Standard.
61.23 Determining compliance.
61.24 Annual reporting requirements.
61.25 Recordkeeping requirements.
61.28 Exemption from the reporting and testing requirements of 40 CFR 61.10

§ 61.20 Designation of facilities.

The provisions of this subpart are applicable to the owner or operator of an active underground uranium mine which:

(a) Has mined, will mine or is designed to mine over 100,000 tons of ore during the life of the mine; or

(b) Has had or will have an annual ore production rate greater than 10,000 tons, unless it can be demonstrated to EPA that the mine will not exceed total ore production of 100,000 tons during the life of the mine.

§ 61.21 Definitions.

As used in this subpart, all terms not defined here have the meaning given them in the Clean Air Act or subpart A of part 61. The following terms shall have the following specific meanings:

(a) *Active mine* means an underground uranium mine which is being ventilated to allow workers to enter the mine for any purpose.

(b) *Effective dose equivalent* means the sum of the products of absorbed dose and appropriate factors to account for differences in biological effectiveness due to the quality of radiation and its distribution in the body of reference man. The unit of the effective dose equivalent is the rem. The method for calculating effective dose equivalent and the definition of reference man are outlined in the International Commission on Radiological Protection's Publication No. 26.

(c) *Underground uranium mine* means a man-made underground excavation made for the purpose of removing material containing uranium for the principal purpose of recovering uranium.

§ 61.22 Standard.

Emissions of radon-222 to the ambient air from an underground uranium mine shall not exceed those amounts that would cause any member of the public to receive in any year an effective dose equivalent of 10 mrem/y.

§ 61.23 Determining compliance.

(a) Compliance with the emission standard in this subpart shall be determined and the effective dose equivalent calculated by the EPA computer code COMPLY-R. An underground uranium mine owner or operator shall calculate the source terms to be used for input into COMPLY-R by conducting testing in accordance with the procedures described in Appendix B, Method 115, or

(b) Owners or operators may demonstrate compliance with the emission standard in this subpart through the use of computer models that are equivalent to COMPLY-R provided that the model has received prior approval from EPA headquarters. EPA may approve a model in whole or in part and may limit its use to specific circumstances.

§ 61.24 Annual Reporting Requirements.

(a) The mine owner or operator shall annually calculate and report the results of the compliance calculations in section 61.23 and the input parameters used in making the calculation. Such report shall cover the emissions of a calendar year and shall be sent to EPA by March 31 of the following year. Each report shall also include the following information:

(1) The name and location of the mine.

(2) The name of the person responsible for the operation of the facility and the name of the person preparing the report (if different).

(3) The results of the emissions testing conducted and the dose calculated using the procedures in § 61.23.

(4) A list of the stacks or vents or other points where radioactive materials are released to the atmosphere, including their location, diameter, flow rate, effluent temperature and release height.

(5) A description of the effluent controls that are used on each stack, vent, or other release point and the effluent controls used inside the mine, and an estimate of the efficiency of each control method or device.

(6) Distances from the points of release to the nearest residence, school, business or office and the nearest farms producing vegetables, milk, and meat.

(7) The values used for all other user-supplied input parameters for the computer models (e.g., meteorological data) and the source of these data.

(8) Each report shall be signed and dated by a corporate officer in charge of the facility and contain the following declaration immediately above the signature line: "I certify under penalty of law that I have personally examined and am familiar with the information submitted herein and based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment. See, 18 U.S.C. 1001."

(b) If the facility is not in compliance with the emission standard of § 61.22 in the calendar year covered by the report, the facility must then commence reporting to the Administrator on a monthly basis the information listed in paragraph (a) of this section for the preceding month. These reports will start the month immediately following the submittal of the annual report for the year in noncompliance and will be due 30 days following the end of each month. This increased level of reporting will continue until the Administrator has determined that the monthly reports are no longer necessary. In addition to all the information required in paragraph (a) of this section, monthly reports shall also include the following information:

(1) All controls or other changes in operation of the facility that will be or are being installed to bring the facility into compliance.

(2) If the facility is under a judicial or administrative enforcement decree the report will describe the facilities performance under the terms of the decree.

(c) The first report will cover the emissions of calendar year 1990.

(Approved by the Office of Management and Budget under Control Number 2060-0191.)

§ 61.25 Recordkeeping requirements.

The owner or operator of a mine must maintain records documenting the source of input parameters including the results of all measurements upon which they are based, the calculations and/or analytical methods used to derive values for input parameters, and the procedure used to determine compliance. In addition, the documentation should be sufficient to allow an independent auditor to verify the accuracy of the determination made concerning the facility's compliance with the standard. These records must be kept at the mine or by the owner or operator for at least five years and upon request be made available for inspection by the Administrator, or his authorized representative.

§ 61.26 Exemption from the reporting and testing requirements of 40 CFR 61.10.

All facilities designated under this subpart are exempt from the reporting requirements of 40 CFR 61.10.

Subpart H—National Emission Standards for Emissions of Radionuclides Other Than Radon From Department of Energy Facilities

Sec.

61.90 Designation of facilities.
61.91 Definitions.
61.92 Standard.
61.93 Emissions monitoring and test procedures.
61.94 Compliance and reporting.
61.95 Recordkeeping requirements.
61.96 Applications to construct or modify.
61.97 Exemption from the reporting and testing requirements of 40 CFR 61.10.

§ 61.90 Designation of facilities.

The provisions of this subpart apply to operations at any facility owned or operated by the Department of Energy that emits any radionuclide other than radon-222 and radon-220 into the air, except that this subpart does not apply to disposal at facilities subject to 40 CFR part 191, subpart B or 40 CFR part 192.

§ 61.91 Definitions.

As used in this subpart, all terms not defined here have the meaning given them in the Clean Air Act or 40 CFR part 61, subpart A. The following terms shall have the following specific meanings:

(a) *Effective dose equivalent* means the sum of the products of absorbed dose and appropriate factors to account for differences in biological effectiveness due to the quality of radiation and its distribution in the body of reference man. The unit of the effective dose equivalent is the rem. For purposes of this subpart, doses caused by radon-222 and its respective decay products formed after the radon is released from the facility are not included. The method for calculating effective dose equivalent and the definition of reference man are outlined in the International Commission on Radiological Protection's Publication No. 26.

(b) *Facility* means all buildings, structures and operations on one contiguous site.

(c) *Radionuclide* means a type of atom which spontaneously undergoes radioactive decay.

(d) *Residence* means any home, house, apartment building, or other place of dwelling which is occupied during any portion of the relevant year.

§ 61.92 Standard.

Emissions of radionuclides to the ambient air from Department of Energy facilities shall not exceed those amounts that would cause any member of the public to receive in any year an effective dose equivalent of 10 mrem/yr.

§ 61.93 Emission monitoring and test procedures.

(a) To determine compliance with the standard, radionuclide emissions shall be determined and effective dose equivalent values to members of the public calculated using EPA approved sampling procedures, computer models CAP-88 or AIRDOS-PC, or other procedures for which EPA has granted prior approval. DOE facilities for which the maximally exposed individual lives within 3 kilometers of all sources of emissions in the facility, may use EPA's COMPLY model and associated procedures for determining dose for purposes of compliance.

(b) Radionuclide emission rates from point sources (stacks or vents) shall be measured in accordance with the following requirements or other procedures for which EPA has granted prior approval:

(1) Effluent flow rate measurements shall be made using the following methods:

(i) Reference Method 2 of Appendix A to part 60 shall be used to determine velocity and volumetric flow rates for stacks and large vents.

(ii) Reference Method 2A of Appendix A to part 60 shall be used to measure flow rates through pipes and small vents.

(iii) The frequency of the flow rate measurements shall depend upon the variability of the effluent flow rate. For variable flow rates, continuous or frequent flow rate measurements shall be made. For relatively constant flow rates only periodic measurements are necessary.

(2) Radionuclides shall be directly monitored or extracted, collected and measured using the following methods:

(i) Reference Method 1 of Appendix A part 60 shall be used to select monitoring or sampling sites.

(ii) The effluent stream shall be directly monitored continuously with an in-line detector or representative samples of the effluent stream shall be withdrawn continuously from the sampling site following the guidance presented in ANSIN13.1–1969 "Guide to Sampling Airborne Radioactive Materials in Nuclear Facilities" (including the guidance presented in Appendix A of ANSIN13.1) (incorporated by reference—see § 61.18) The requirements for continuous sampling are applicable to batch processes when the unit is in operation. Periodic sampling (grab samples) may be used only with EPA's prior approval. Such approval may be granted in cases where continuous sampling is not practical and radionuclide emission rates are relatively constant. In such cases, grab samples shall be collected with sufficient frequency so as to provide a representative sample of the emissions.

(iii) Radionuclides shall be collected and measured using procedures based on the principles of measurement described in Appendix B, Method 114. Use of methods based on principles of measurement different from those described in Appendix B, Method 114 must have prior approval from the Administrator. EPA reserves the right to approve measurement procedures.

(iv) A quality assurance program shall be conducted that meets the performance requirements described in Appendix B, Method 114.

(3) When it is impractical to measure the effluent flow rate at an existing source in accordance with the requirements of paragraph (b)(1) of this section or to monitor or sample an effluent stream at an existing source in accordance with the site selection and sample extraction requirements of paragraph (b)(2) of this section, the facility owner or operator may use alternative effluent flow rate measurement procedures or site

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selection and sample extraction procedures provided that:

(i) It can be shown that the requirements of paragraph (b) (1) or (2) of this section are impractical for the effluent stream.

(ii) The alternative procedure will not significantly underestimate the emissions.

(iii) The alternative procedure is fully documented.

(iv) The owner or operator has received prior approval from EPA.

(4)(i) Radionuclide emission measurements in conformance with the requirements of paragraph (b) of this section shall be made at all release points which have a potential to discharge radionuclides into the air in quantities which could cause an effective dose equivalent in excess of 1% of the standard. All radionuclides which could contribute greater than 10% of the potential effective dose equivalent for a release point shall be measured. With prior EPA approval, DOE may determine these emissions through alternative procedures. For other release points which have a potential to release radionuclides into the air, periodic confirmatory measurements shall be made to verify the low emissions.

(ii) To determine whether a release point is subject to the emission measurement requirements of paragraph (b) of this section, it is necessary to evaluate the potential for radionuclide emissions for that release point. In evaluating the potential of a release point to discharge radionuclides into the air for the purposes of this section, the estimated radionuclide release rates shall be based on the discharge of the effluent stream that would result if all pollution control equipment did not exist, but the facilities operations were otherwise normal.

(5) Environmental measurements of radionuclide air concentrations at critical receptor locations may be used as an alternative to air dispersion calculations in demonstrating compliance with the standard if the owner or operator meets the following criteria:

(i) The air at the point of measurement shall be continuously sampled for collection of radionuclides.

(ii) Those radionuclides released from the facility, which are the major contributors to the effective dose equivalent must be collected and measured as part of the environmental measurement program.

(iii) Radionuclide concentrations which would cause an effective dose equivalent of 10% of the standard shall be readily detectable and distinguishable from background.

(iv) Net measured radionuclide concentrations shall be compared to the concentration levels in Table 2 of Appendix E to determine compliance with the standard. In the case of multiple radionuclides being released from a facility, compliance shall be demonstrated if the value for all radionuclides is less than the concentration level in Table 2, and the sum of the fractions that result when each measured concentration value is divided by the value in Table 2 for each radionuclide is less than 1.

(v) A quality assurance program shall be conducted that meets the performance requirements described in Appendix B, Method 114.

(vi) Use of environmental measurements to demonstrate compliance with the standard is subject to prior approval of EPA. Applications for approval shall include a detailed description of the sampling and analytical methodology and show how the above criteria will be met.

§ 61.94 Compliance and reporting.

(a) Compliance with this standard shall be determined by calculating the highest effective dose equivalent to any member of the public at any offsite point where there is a residence, school, business or office. The owners or operators of each facility shall submit an annual report to both EPA headquarters and the appropriate regional office by June 30 which includes the results of the monitoring as recorded in DOE's Effluent Information System and the dose calculations required by § 61.93(a) for the previous calendar year.

(b) In addition to the requirements of paragraph (a) of this section, an annual report shall include the following information:

(1) The name and location of the facility.

(2) A list of the radioactive materials used at the facility.

(3) A description of the handling and processing that the radioactive materials undergo at the facility.

(4) A list of the stacks or vents or other points where radioactive materials are released to the atmosphere.

(5) A description of the effluent controls that are used on each stack, vent, or other release point and an estimate of the efficiency of each control device.

(6) Distances from the points of release to the nearest residence, school, business or office and the nearest farms producing vegetables, milk, and meat.

(7) The values used for all other user-supplied input parameters for the computer models (e.g., meteorological data) and the source of these data.

(8) A brief description of all construction and modifications which were completed in the calendar year for which the report is prepared, but for which the requirement to apply for approval to construct or modify was waived under § 61.96 and associated documentation developed by DOE to support the waiver. EPA reserves the right to require that DOE send to EPA all the information that normally would be required in an application to construct or modify, following receipt of the description and supporting documentation.

(9) Each report shall be signed and dated by a corporate officer or public official in charge of the facility and contain the following declaration immediately above the signature line: "I certify under penalty of law that I have personally examined and am familiar with the information submitted herein and based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment. See, 18 U.S.C. 1001."

(c) If the facility is not in compliance with the emission limits of § 61.92 in the calendar year covered by the report, then the facility must commence reporting to the Administrator on a monthly basis the information listed in paragraph (b) of this section, for the preceding month. These reports will start the month immediately following the submittal of the annual report for the year in noncompliance and will be due 30 days following the end of each month. This increased level of reporting will continue until the Administrator has determined that the monthly reports are no longer necessary. In addition to all the information required in paragraph (b) of this section, monthly reports shall also include the following information:

(1) All controls or other changes in operation of the facility that will be or are being installed to bring the facility into compliance.

(2) If the facility is under a judicial or administrative enforcement decree, the report will describe the facilities performance under the terms of the decree.

(d) In those instances where the information requested is classified, such information will be made available to EPA separate from the report and will be handled and controlled according to applicable security and classification regulations and requirements.

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§ 61.95 Recordkeeping requirements.

All facilities must maintain records documenting the source of input parameters including the results of all measurements upon which they are based, the calculations and/or analytical methods used to derive values for input parameters, and the procedure used to determine effective dose equivalent. This documentation should be sufficient to allow an independent auditor to verify the accuracy of the determination made concerning the facility's compliance with the standard. These records must be kept at the site of the facility for at least five years and, upon request, be made available for inspection by the Administrator, or his authorized representative.

§ 61.96 Applications to construct or modify.

In addition to any activity that is defined as construction under 40 CFR part 61, subpart A, any fabrication, erection or installation of a new building or structure within a facility that emits radionuclides is also defined as new construction for purposes of 40 CFR part 61, subpart A.

(b) An application for approval under § 61.07 or notification of startup under § 61.09 does not need to be filed for any new construction of or modification within an existing facility if the effective dose equivalent, caused by all emissions from the new construction or modification, is less than 1% of the standard prescribed in § 61.92. For purposes of this paragraph the effective dose equivalent shall be calculated using the source term derived using Appendix D as input to the dispersion and other computer models described in § 61.93. DOE may, with prior approval from EPA, use another procedure for estimating the source term for use in this paragraph. A facility is eligible for this exemption only if, based on its last annual report, the facility is in compliance with this subpart.

(c) Conditions to approvals granted under § 61.08 will not contain requirements for post approval reporting on operating conditions beyond those specified in § 61.94.

§ 61.97 Exemption from the reporting and testing requirements of 40 CFR 61.10.

All facilities designated under this subpart are exempt from the reporting requirements of 40 CFR 61.10.

Subpart I—National Emission Standards for Radionuclide Emissions From Facilities Licensed by the Nuclear Regulatory Commission and Federal Facilities Not Covered by Subpart H

Sec.

61.100 Applicability.
61.101 Definitions.
61.102 Standard.
61.103 Determining compliance.
61.104 Reporting requirements.
61.105 Recordkeeping requirements.
61.106 Applications to construct or modify.
61.107 Emission determination.
61.108 Exemption from the reporting and testing requirements of 40 CFR 61.10.

§ 61.100 Applicability.

The provisions of this subpart apply to Nuclear Regulatory Commission-licensed facilities and to facilities owned or operated by any Federal agency other than the Department of Energy, except that this subpart does not apply to disposal at facilities regulated under 40 CFR part 191, subpart B, or to any uranium mill tailings pile after it has been disposed of under 40 CFR part 192, or to low energy accelerators, or to any NRC-licensee that possesses and uses radionuclides only in the form of sealed sources.

§ 61.101 Definitions.

As used in this subpart, all terms not defined here have the meaning given them in the Clean Air Act or subpart A of part 61. The following terms shall have the following specific meanings:

(a) *Agreement State* means a State with which the Atomic Energy Commission or the Nuclear Regulatory Commission has entered into an effective agreement under subsection 274(b) of the Atomic Energy Act of 1954, as amended.

(b) *Effective dose equivalent* means the sum of the products of absorbed dose and appropriate factors to account for differences in biological effectiveness due to the quality of radiation and its distribution in the body of reference man. The unit of the effective dose equivalent is the rem. For purposes of this subpart doses caused by radon-222 and its decay products formed after the radon is released from the facility are not included. The method for calculating effective dose equivalent and the definition of reference man are outlined in the International Commission on Radiological Protection's Publication No. 26.

(c) *Facility* means all buildings, structures and operations on one contiguous site.

(d) *Federal facility* means any facility owned or operated by any department, commission, agency, office, bureau or other unit of the government of the United States of America except for facilities owned or operated by the Department of Energy.

(e) *NRC-licensed facility* means any facility licensed by the Nuclear Regulatory Commission or any Agreement State to receive title to, receive, possess, use, transfer, or deliver any source, by-product, or special nuclear material.

(f) *Radionuclide* means a type of atom which spontaneously undergoes radioactive decay.

§ 61.102 Standard.

(a) Emissions of radionuclides, including iodine, to the ambient air from a facility regulated under this subpart shall not exceed those amounts that would cause any member of the public to receive in any year an effective dose equivalent of 10 mrem/yr.

(b) Emissions of iodine to the ambient air from a facility regulated under this subpart shall not exceed those amounts that would cause any member of the public to receive in any year an effective dose equivalent of 3 mrem/yr.

§ 61.103 Determining compliance.

(a) Compliance with the emission standard in this subpart shall be determined through the use of either the EPA computer code COMPLY or the alternative requirements of Appendix E. Facilities emitting radionuclides not listed in COMPLY or Appendix E shall contact EPA to receive the information needed to determine dose. The source terms to be used for input into COMPLY shall be determined through the use of the measurement procedures listed in § 61.107 or the emission factors in Appendix D or through alternative procedures for which EPA has granted prior approval; or,

(b) Facilities may demonstrate compliance with the emission standard in this subpart through the use of computer models that are equivalent to COMPLY, provided that the model has received prior approval from EPA headquarters. Any facility using a model other than COMPLY must file an annual report. EPA may approve an alternative model in whole or in part and may limit its use to specific circumstances.

§ 61.104 Reporting requirements.

(a) The owner or operator of a facility subject to this subpart must submit an annual report to the EPA covering the emissions of a calendar year by March 31 of the following year.

(1) The report or application for approval to construct or modify as

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required by 40 CFR part 61, subpart A and § 61.106, must provide the following information:

(i) The name of the facility.

(ii) The name of the person responsible for the operation of the facility and the name of the person preparing the report (if different).

(iii) The location of the facility, including suite and/or building number, street, city, county, state, and zip code.

(iv) The mailing address of the facility, if different from item (iii).

(v) A list of the radioactive materials used at the facility.

(vi) A description of the handling and processing that the radioactive materials undergo at the facility.

(vii) A list of the stacks or vents or other points where radioactive materials are released to the atmosphere.

(viii) A description of the effluent controls that are used on each stack, vent, or other release point and an estimate of the efficiency of each device.

(ix) Distances from the point of release to the nearest residence, school, business or office and the nearest farms producing vegetables, milk, and meat.

(x) The effective dose equivalent calculated using the compliance procedures in § 61.103.

(xi) The physical form and quantity of each radionuclide emitted from each stack, vent or other release point, and the method(s) by which these quantities were determined.

(xii) The volumetric flow, diameter, effluent temperature, and release height for each stack, vent or other release point where radioactive materials are emitted, the method(s) by which these were determined.

(xiii) The height and width of each building from which radionuclides are emitted.

(xiv) The values used for all other user-supplied input parameters (e.g., meteorological data) and the source of these data.

(xv) A brief description of all construction and modifications which were completed in the calendar year for which the report is prepared, but for which the requirement to apply for approval to construct or modify was waived under section 61.106, and associated documentation developed by the licensee to support the waiver. EPA reserves the right to require that the licensee send to EPA all the information that normally would be required in an application to construct or modify, following receipt of the description and supporting documentation.

(xvi) Each report shall be signed and dated by a corporate officer or public official in charge of the facility and contain the following declaration immediately above the signature line: "I certify under penalty of law that I have personally examined and am familiar with the information submitted herein and based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment. See, 18 U.S.C. 1001."

(b) Facilities emitting radionuclides in an amount that would cause less than 10% of the dose standard in § 61.102, as determined by the compliance procedures from § 61.103(a), are exempt from the reporting requirements of § 61.104(a). Facilities shall annually make a new determination whether they are exempt from reporting.

(c) If the facility is not in compliance with the emission limits of § 61.102 in the calendar year covered by the report, the facility must report to the Administrator on a monthly basis the information listed in paragraph (a) of this section, for the preceding month. These reports will start the month immediately following the submittal of the annual report for the year in noncompliance and will be due 30 days following the end of each month. This increased level of reporting will continue until the Administrator has determined that the monthly reports are no longer necessary. In addition to all the information required in paragraph (a) of this section, monthly reports shall also include the following information:

(1) All controls or other changes in operation of the facility that will be or are being installed to bring the facility into compliance.

(2) If the facility is under a judicial or administrative enforcement decree the report will describe the facilities performance under the terms of the decree.

(d) The first report will cover the emissions of calendar year 1990.

§ 61.105 Recordkeeping requirements.

The owner or operator of any facility must maintain records documenting the source of input parameters including the results of all measurements upon which they are based, the calculations and/or analytical methods used to derive values for input parameters, and the procedure used to determine compliance. This documentation should be sufficient to allow an independent auditor to verify the accuracy of the determination made concerning the facility's compliance with the standard, and, if claimed, qualification for exemption from reporting. These records must be kept at the site of the facility for at least five years and upon request be made available for inspection by the Administrator, or his authorized representative.

§ 61.106 Applications to construct or modify.

(a) In addition to any activity that is defined as construction under 40 CFR part 61, subpart A, any fabrication, erection or installation of a new building or structure within a facility is also defined as new construction for purposes of 40 CFR part 61, subpart A.

(b) An application under § 61.07 does not need to be filed for any new construction of or modification within an existing facility if one of the following conditions is met:

(1) The effective dose equivalent calculated by using methods described in § 61.103, that is caused by all emissions from the facility including those potentially emitted by the proposed new construction or modification, is less than 10% of the standard prescribed in § 61.102.

(2) The effective dose equivalent calculated by using methods described in § 61.103, that is caused by all emissions from the new construction or modification, is less than 1% of the limit prescribed in § 61.102. A facility is eligible for this exemption only if the facility, based on its last annual report, is in compliance with this subpart.

§ 61.107 Emission determination.

(a) Facility owners or operators may, in lieu of monitoring, estimate radionuclide emissions in accordance with Appendix D, or other procedure for which EPA has granted prior approval.

(b) Radionuclide emission rates from point sources (e.g. stacks or vents) shall be measured in accordance with the following requirements:

(1) Effluent flow rate measurements shall be made using the following methods:

(i) Reference Method 2 of Appendix A to part 60 shall be used to determine velocity and volumetric flow rates for stacks and large vents.

(ii) Reference Method 2A of Appendix A to part 60 shall be used to measure flow rates through pipes and small vents.

(iii) The frequency of the flow rate measurements shall depend upon the variability of the effluent flow rate. For variable flow rates, continuous or frequent flow rate measurements shall be made. For relatively constant flow rates only periodic measurements are necessary.

(2) Radionuclides shall be directly monitored or extracted, collected, and measured using the following methods:

(i) Reference Method 1 of Appendix A part 60 shall be used to select monitoring or sampling sites.

(ii) The effluent stream shall be directly monitored continuously using an in-line detector or representative samples of the effluent stream shall be withdrawn continuously from the sampling site following the guidance presented in ANSIN13.1–1969 "Guide to Sampling Airborne Radioactive Materials in Nuclear Facilities" (including the guidance presented in Appendix A of ANSIN13.1) (incorporated by reference—see § 61.18). The requirements for continuous sampling are applicable to batch processes when the unit is in operation. Periodic sampling (grab samples) may be used only with EPA's prior approval. Such approval may be granted in cases where continuous sampling is not practical and radionuclide emission rates are relatively constant. In such cases, grab samples shall be collected with sufficient frequency so as to provide a representative sample of the emissions.

(iii) Radionuclides shall be collected and measured using procedures based on the principles of measurement described in Appendix B, Method 114. Use of methods based on principles of measurement different from those described in Appendix B, Method 114 must have prior approval from the Administrator. EPA reserves the right to approve alternative measurement procedures in whole or in part.

(iv) A quality assurance program shall be conducted that meets the performance requirements described in Appendix B, Method 114.

(3) When it is impractical to measure the effluent flow rate at an existing source in accordance with the requirements of paragraph (b)(1) of this section or to monitor or sample an effluent stream at an existing source in accordance with the site selection and sample extraction requirements of paragraph (b)(2) of this section, the facility owner or operator may use alternative effluent flow rate measurement procedures or site selection and sample extraction procedures provided that:

(i) It can be shown that the requirements of paragraphs (b) (1) and (2) of this section are impractical for the effluent stream.

(ii) The alternative procedure will not significantly underestimate the emissions.

(iii) The alternative procedure is fully documented

(iv) The owner or operator has received prior approval from EPA.

(4)(i) Radionuclide emission measurements in conformance with the requirements of paragraph (b) of this section shall be made at all release points which have a potential to discharge radionuclides into the air in quantities which could cause an effective dose equivalent in excess of 1% of the standard. All radionuclides which could contribute greater than 10% of the potential effective dose equivalent for a release point shall be measured. For other release points which have a potential to release radionuclides into the air, periodic confirmatory measurements should be made to verify the low emissions.

(ii) To determine whether a release point is subject to the emission measurement requirements of paragraph (b) of this section, it is necessary to evaluate the potential for radionuclide emissions for that release point. In evaluating the potential of a release point to discharge radionuclides into the air, the estimated radionuclide release rates shall be based on the discharge of the uncontrolled effluent stream into the air.

(5) Environmental measurements of radionuclide air concentrations at critical receptor locations may be used as an alternative to air dispersion calculations in demonstrating compliance with the standards if the owner or operator meets the following criteria:

(i) The air at the point of measurement shall be continuously sampled for collection of radionuclides.

(ii) Those radionuclides released from the facility, which are the major contributors to the effective dose equivalent must be collected and measured as part of the environmental measurements program.

(iii) Radionuclide concentrations which would cause an effective dose equivalent greater than or equal to 10% of the standard shall be readily detectable and distinguishable from background.

(iv) Net measured radionuclide concentrations shall be compared to the concentration levels in Table 2 of Appendix E to determine compliance with the standard. In the case of multiple radionuclides being released from a facility, compliance shall be demonstrated if the value for all radionuclides is less than the concentration level in Table 2 and the sum of the fractions that result when each measured concentration value is divided by the value in Table 2 for each radionuclide is less than 1.

(v) A quality assurance program shall be conducted that meets the performance requirements described in Appendix B, Method 114.

(vi) Use of environmental measurements to demonstrate compliance with the standard is subject to prior approval of EPA. Applications for approval shall include a detailed description of the sampling and analytical methodology and show how the above criteria will be met.

(c) The following facilities may use either the methodologies and quality assurance programs described in paragraph (b) of this section or may use the following:

(1) Nuclear power reactors may determine their radionuclide emissions in conformance with the Effluent Technical Specifications contained in their Operating License issued by the Nuclear Regulatory Commission. In addition, they may conduct a quality assurance program as described in the Nuclear Regulatory Commission's Regulatory Guide 4.15 dated February 1979.

(2) Fuel processing and fabrication plants and uranium hexafluoride plants may determine their emissions in conformance with the Nuclear Regulatory Commission's Regulatory Guide 4.16 dated December 1985. In addition, they may conduct a quality assurance program as described in the Nuclear Regulatory Commission's Regulatory Guide 4.15 dated February 1979.

(3) Uranium mills may determine their emissions in conformance with the Nuclear Regulatory Commission's Regulatory Guide 4.14 dated April 1980. In addition, they may conduct a quality assurance program as described in the Nuclear Regulatory Commission's Regulatory Guide 4.15 dated February 1979.

§ 61.108 Exemption from the reporting and testing requirements of 40 CFR 61.10.

All facilities designated under this subpart are exempt from the reporting requirements of 40 CFR 61.10.

Subpart K—National Emission Standards for Radionuclide Emissions From Elemental Phosphorus Plants

Sec.

61.120 Applicability.
61.121 Definitions.
61.122 Emissions standard.
61.123 Emission testing.
61.124 Recordkeeping requirements.
61.125 Test methods and procedures.
61.126 Monitoring of operations.
61.127 Exemption from the reporting and testing requirements of 40 CFR 61.10

§ 61.120 Applicability.

The provisions of this subpart are

phosphate rock processing rate in metric tons. In determining the annual

they are based, the calculations and/or analytical methods used to derive

(c) For the purpose of conducting an emission test under § 61.123, the owner or operator of any source subject to the

radium in sufficient concentration to emit radon-222 in excess of this standard prior to remedial action.

§ 61.203 Radon monitoring and compliance procedures.

(a) Sixty days following the date at

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§ 61.120 Applicability.

The provisions of this subpart are applicable to owners or operators of calciners and nodulizing kilns at elemental phosphorus plants.

§61.121 Definitions.

(a) *Elemental phosphorus plant* or *plant* means any facility that processes phosphate rock to produce elemental phosphorus. A plant includes all buildings, structures, operations, calciners and nodulizing kilns on one contiguous site.

(b) *Calciner* or *Nodulizing kiln* means a unit in which phosphate rock is heated to high temperatures to remove organic material and/or to convert it to a nodular form. For the purpose of this subpart, calciners and nodulizing kilns are considered to be similar units.

§ 61.122 Emission standard.

Emissions of polonium-210 to the ambient air from all calciners and nodulizing kilns at an elemental phosphorus plant shall not exceed a total of 2 curies a year.

§ 61.123 Emission testing.

(a) Each owner or operator of an elemental phosphorus plant shall test emissions from the plant within 90 days of the effective date of this standard and annually thereafter. The Administrator may temporarily or permanently waive the annual testing requirement or increase the frequency of testing, if the Administrator determines that more testing is required.

(b) The Administrator shall be notified at least 30 days prior to an emission test so that EPA may, at its option, observe the test.

(c) An emission test shall be conducted at each operational calciner or nodulizing kiln. If emissions from a calciner or nodulizing kiln are discharged through more than one stack, then an emission test shall be conducted at each stack and the total emission rate from the calciner or kiln shall be the sum of the emission rates from each of the stacks.

(d) Each emission test shall consist of three sampling runs that meet the requirements of § 61.125. The phosphate rock processing rate during each run shall be recorded. An emission rate in curies per metric ton of phosphate rock processed shall be calculated for each run. The average of all three runs shall apply in computing the emission rate for the test. The annual polonium-210 emission rate from a calciner or nodulizing kiln shall be determined by multiplying the measured polonium-210 emission rate in curies per metric ton of phosphate rock processed by the annual phosphate rock processing rate in metric tons. In determining the annual phosphate rock processing rate, the values used for operating hours and operating capacity shall be values that will maximize the expected processing rate. For determining compliance with the emission standard of § 61.122, the total annual emission rate is the sum of the annual emission rates for all operating calciners and nodulizing kilns.

(e) If the owner or operator changes his operation in such a way as to increase his emissions of polonium-210, such as changing the type of rock processed, the temperature of the calciners or kilns, or increasing the annual phosphate rock processing rate, then a new emission test, meeting the requirements of this section, shall be conducted within 45 days under these conditions.

(f) Each owner or operator of an elemental phosphorus plant shall furnish the Administrator with a written report of the results of the emission test within 60 days of conducting the test. The report must provide the following information:

(1) The name and location of the facility.

(2) The name of the person responsible for the operation of the facility and the name of the person preparing the report (if different).

(3) A description of the effluent controls that are used on each stack, vent, or other release point and an estimate of the efficiency of each device.

(4) The results of the testing, including the results of each sampling run completed.

(5) The values used in calculating the emissions and the source of these data.

(6) Each report shall be signed and dated by a corporate officer in charge of the facility and contain the following declaration immediately above the signature line: "I certify under penalty of law that I have personally examined and am familiar with the information submitted herein and based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment. See, 18 U.S.C. 1001."

(Approved by the Office of Management and Budget under Control Number 2060-0191.)

§ 61.124 Recordkeeping requirements.

The owner or operator of any plant must maintain records documenting the source of input parameters including the results of all measurements upon which they are based, the calculations and/or analytical methods used to derive values for input parameters, and the procedure used in emission testing. This documentation should be sufficient to allow an independent auditor to verify the accuracy of the results of the emission testing. These records must be kept at the site of the plant for at least five years and, upon request, be made available for inspection by the Administrator, or his authorized representative.

§ 61.125 Test methods and procedures.

(a) Each owner or operator of a source required to test emissions under § 61.123, unless an equivalent or alternate method has been approved by the Administrator, shall use the following test methods:

(1) Test Method 1 of Appendix A to 40 CFR part 60 shall be used to determine sample and velocity traverses;

(2) Test Method 2 of Appendix A to 40 CFR part 60 shall be used to determine velocity and volumetric flow rate;

(3) Test Method 3 of Appendix A to 40 CFR part 60 shall be used for gas analysis;

(4) Test Method 5 of Appendix A to 40 CFR part 60 shall be used to collect particulate matter containing the polonium-210; and

(5) Test Method 111 of Appendix B to 40 CFR part 61 shall be used to determine the polonium-210 emissions.

§ 61.126 Monitoring of operations.

(a) The owner or operator of any source subject to this subpart using a wet-scrubbing emission control device shall install, calibrate, maintain, and operate a monitoring device for the continuous measurement of the pressure loss of the gas stream through the scrubber. The monitoring device must be certified by the manufacturer to be accurate within ±250 pascal (±1 inch of water). Records of these measurements shall be maintained at the source and made available for inspection by the Administrator, or his authorized representative for a minimum of 5 years.

(b) The owner or operator of any source subject to this subpart using an electrostatic precipitator control device shall install, calibrate, maintain, and operate a monitoring device for the continuous measurement of the primary and secondary current and the voltage in each electric field. Records of these measurements shall be maintained at the source and made available for inspection by the Administrator, or his authorized representative for a minimum of 5 years.

(c) For the purpose of conducting an emission test under § 61.123, the owner or operator of any source subject to the provisions of this subpart shall install, calibrate, maintain, and operate a device for measuring the phosphate rock feed to any affected calciner or nodulizing kiln. The measuring device used must be accurate to within ±5 percent of the mass rate over its operating range. Records of these measurements shall be maintained at the source and made available for inspection by the Administrator, or his authorized representative for a minimum of 5 years.

§ 61.127 Exemption from the reporting and testing requirements of 40 CFR 61.10.

All facilities designated under this subpart are exempt from the reporting requirements of 40 CFR 61.10.

Subpart Q—National Emission Standards for Radon Emissions From Department of Energy Facilities

Sec.

61.190 Designation of facilities.
61.191 Definitions.
61.192 Standard.
61.193 Exemption from the reporting and testing requirements of 40 CFR 61.10.

§ 61.190 Designation of facilities.

The provisions of this subpart apply to the design and operation of all storage and disposal facilities for radium-containing material (i.e., byproduct material as defined under section 11.e(2) of the Atomic Energy Act of 1954 (as amended)) that are owned or operated by the Department of Energy that emit radon-222 into air, including these facilities: The Feed Materials Production Center, Fernald, Ohio; the Niagara Falls Storage Site, Lewiston, New York; the Weldon Spring Site, Weldon Spring, Missouri; the Middlesex Sampling Plant, Middlesex, New Jersey; the Monticello Uranium Mill Tailings Pile, Monticello, Utah. This subpart does not apply to facilities listed in, or designated by the Secretary of Energy under Title I of the Uranium Mill Tailings Control Act of 1978.

§ 61.191 Definitions.

As used in this subpart, all terms not defined here have the meaning given them in the Clean Air Act or subpart A of part 61. The following terms shall have the following specific meanings:

(a) *Facility* means all buildings, structures and operations on one contiguous site.

(b) *Source* means any building, structure, pile, impoundment or area used for interim storage or disposal that is or contains waste material containing radium in sufficient concentration to emit radon-222 in excess of this standard prior to remedial action.

§ 61.192 Standard.

No source at a Department of Energy facility shall emit more than 20 pCi/m^2–s of radon-222 as an average for the entire source, into the air. This requirement will be part of any Federal Facilities Agreement reached between Environmental Protection Agency and Department of Energy.

§ 61.193 Exemption from the reporting and testing requirements of 40 CFR 61.10.

All facilities designated under this subpart are exempt from the reporting requirements of 40 CFR 61.10.

Subpart R—National Emission Standards for Radon Emissions From Phosphogypsum Stacks

Sec.

61.200 Designation of facilities.
61.201 Definitions.
61.202 Standard.
61.203 Radon monitoring and compliance procedures.
61.204 Recordkeeping requirements.
61.205 Exemption from the reporting and testing requirements of 40 CFR 61.10.

§ 61.200 Designation of facilities.

The provisions of this subpart apply to the owners and operators of the phosphogypsum that is produced as a result of phosphorus fertilizer production and all that is contained in existing phosphogypsum stacks.

§ 61.201 Definitions.

As used in this subpart, all terms not defined here have the meaning given them in the Clean Air Act or subpart A of part 61. The following terms shall have the following specific meanings:

(a) *Inactive stack* means a stack to which no further routine additions of phosphogypsum will be made and which is no longer used for water management associated with the production of phosphogypsum. If a stack has not been used for either purpose for two years it is presumed to be inactive.

(b) *Phosphogypsum stacks* or *stacks* are piles of waste from phosphorus fertilizer production containing phosphogypsum. Stacks shall also include phosphate mines that are used for the disposal of phosphogypsum.

§ 61.202 Standard.

All phosphogypsum shall be disposed of in stacks or in phosphate mines which shall not emit more than 20 pCi/m^2–s of radon-222 into the air.

§ 61.203 Radon monitoring and compliance procedures.

(a) Sixty days following the date at which a stack becomes an inactive stack, or ninety days after the effective date of this rule if the stack is already inactive, the owners or operators of inactive phosphogypsum stacks shall test the stacks in accordance with the procedures described in 40 CFR part 61, Appendix B, Method 115. EPA shall be notified at least 30 days prior to an emissions test so that EPA may, at its option, observe the test. If meteorological conditions are such that a test cannot be properly conducted, then the owner or operator shall notify EPA and test as soon as conditions permit.

(b) Ninety days after the testing is required, the owner or operator shall provide EPA with a report detailing the actions taken and the results of the radon-222 flux testing. Each report shall also include the following information:

(1) The name and location of the facility,

(2) A list of the stacks at the facility including the size and dimensions of the stack,

(3) The name of the person responsible for the operation of the facility and the name of the person preparing the report (if different),

(4) A description of the control measures taken to decrease the radon flux from the source and any actions taken to insure the long term effectiveness of the control measures, and

(5) The results of the testing conducted, including the results of each measurement.

(6) Each report shall be signed and dated by a corporate officer in charge of the facility and contain the following declaration immediately above the signature line: "I certify under penalty of law that I have personally examined and am familiar with the information submitted herein and based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment. See, 18 U.S.C. 1001."

(c) If year-long measurements are made in accordance with Method 115 Appendix B to part 61 this report shall include the results of the first measurement period and provide a schedule for the measurement frequency to be used. An additional report containing all the information in

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paragraph (b) of this section shall be submitted ninety days after completion of the final measurements.

§ 61.221 Definitions.

As used in this subpart, all terms not defined here have the meaning given them in the Clean Air Act or subpart A of part 61. The following terms shall have the following specific meanings:

(a) *Inactive stack* means a stack to which no further routine additions of phosphogypsum will be made and which is no longer used for water management associated with the production of phosphogypsum. If a stack has not been used for either purpose for two years it is presumed to be inactive.

(b) *Phosphogypsum stacks* or *stacks* are piles of waste from phosphorus fertilizer production containing phosphogypsum. Stacks shall also include phosphate mines that are used for the disposal of phosphogypsum.

§ 61.222 Standard.

All phosphogypsum shall be disposed of in stacks or in phosphate mines which shall not emit more than 20 pCi/m^2–s of radon-222 into the air.

§ 61.223 Radon monitoring and compliance procedures.

(a) Sixty days following the date at which a stack becomes an inactive stack, or ninety days after the effective date of this rule if the stack is already inactive, the owners or operators of inactive phosphogypsum stacks shall test the stacks in accordance with the procedures described in 40 CFR part 61, Appendix B, Method 115. EPA shall be notified at least 30 days prior to an emissions test so that EPA may, at its option, observe the test. If meteorological conditions are such that a test cannot be properly conducted, then the owner or operator shall notify EPA and test as soon as conditions permit.

(b) Ninety days after the testing is required, the owner or operator shall provide EPA with a report detailing the actions taken and the results of the radon-222 flux testing. Each report shall also include the following information:

(1) The name and location of the facility,

(2) A list of the stacks at the facility including the size and dimensions of the stack,

(3) The name of the person responsible for the operation of the facility and the name of the person preparing the report (if different),

(4) A description of the control measures taken to decrease the radon flux from the source and any actions taken to insure the long term effectiveness of the control measures, and

(5) The results of the testing conducted, including the results of each measurement.

(6) Each report shall be signed and dated by a corporate officer in charge of the facility and contain the following declaration immediately above the signature line: "I certify under penalty of law that I have personally examined and am familiar with the information submitted herein and based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment. See, 18 U.S.C. 1001."

(c) If year-long measurements are made in accordance with Method 115 Appendix B to part 61 this report shall include the results of the first measurement period and provide a schedule for the measurement frequency to be used. An additional report containing all the information in

parameters including the results of all measurements upon which they are based, the calculations and/or

tailings does not exceed 30 percent by weight.

(d) *Existing impoundment* means any

measurements are to be made over a one year period, EPA shall be provided with a schedule of the measurement

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paragraph (b) of this section shall be submitted ninety days after completion of the final measurements.

(d) If at any point an owner or operator once again uses a stack for the disposal of phosphogypsum or for water management, the stack ceases to be in inactive status and the owner or operator must notify EPA in writing within 45 days. When the owner or operator ceases to use the stack it will once again become inactive and require retesting and reporting.

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§ 61.204 Recordkeeping requirements.

An owner or operator subject to this subpart must maintain records documenting the source of input parameters including the results of all measurements upon which they are based, the calculations and/or analytical methods used to derive values for input parameters, and the procedure used to determine compliance. This documentation should be sufficient to allow an independent auditor to verify the correctness of the determination made concerning the facility's compliance with the standard. These records must be kept by the owner or operator for at least five years and upon request be made available for inspection by the Administrator, or his authorized representative.

§ 61.205 Exemption from the reporting and testing requirements of 40 CFR 61.10.

All facilities designated under this subpart are exempt from the reporting requirements of 40 CFR 61.10.

Subpart T—National Emission Standards for Radon Emissions From the Disposal of Uranium Mill Tailings

Sec.

61.220 Designation of facilities.
61.221 Definitions.
61.222 Standard.
61.223 Compliance procedures.
61.224 Recordkeeping requirements.
61.225 Exemption from the reporting and testing requirements of 40 CFR 61.10.

§ 61.220 Designation of facilities.

The provisions of this subpart apply to the owners and operators of all sites that are used for the disposal of tailings, and that managed residual radioactive material or uranium byproduct materials during and following the processing of uranium ores, commonly referred to as uranium mills and their associated tailings, that are listed in, or designated by the Secretary of Energy under Title I of the Uranium Mill Tailings Control Act of 1978 or regulated under Title II of the Uranium Mill Tailings Control Act of 1978.

§ 61.221 Definitions.

As used in this subpart, all terms not defined here have the meaning given them in the Clean Air Act or subpart A of part 61. The following terms shall have the following specific meanings:

(a) *Long term stabilization* means the addition of material on a uranium mill tailings pile for purpose of ensuring compliance with the requirements of 40 CFR 192.02(a) or 192.32(b)(i). These actions shall be considered complete when the Nuclear Regulatory Commission determines that the requirements of 40 CFR 192.02(a) or 192.32(b)(i) have been met.

(b) *Operational* means a uranium mill tailings pile that is licensed to accept additional tailings, and those tailings can be added without violating subpart W or any other Federal, state or local rule or law. A pile cannot be considered operational if it is filled to capacity or the mill it accepts tailings from has been dismantled or otherwise decommissioned.

(c) *Uranium byproduct material* or *tailings* means the waste produced by the extraction or concentration of uranium from any ore processed primarily for its source material content. Ore bodies depleted by uranium solution extraction and which remain underground do not constitute byproduct material for the purposes of this subpart.

§ 61.222 Standard.

(a) Radon-222 emissions to the ambient air from uranium mill tailings pile that are no longer operational shall not exceed 20 pCi/m^2-s of radon-222.

(b) Once a uranium mill tailings pile or impoundment ceases to be operational it must be disposed of and brought into compliance with this standard within two years of the effective date or within two years of the day it ceases to be operational whichever is later. If it is not physically possible for a mill owner or operator to complete disposal within that time, EPA shall, after consultation with the mill owner or operator, establish a compliance agreement which will assure that disposal will be completed as quickly as possible.

§ 61.223 Compliance procedures.

(a) Sixty days following the completion of covering the pile to limit radon emissions but prior to the long term stabilization of the pile, the owners or operators of uranium mill tailings shall conduct testing for all piles within the facility in accordance with the procedures described in 40 CFR part 61, Appendix B, Method 115, or other procedures for which EPA has granted prior approval.

(b) Ninety days after the testing is required, each facility shall provide EPA with a report detailing the actions taken and the results of the radon-222 flux testing. EPA shall be notified at least 30 days prior to an emission test so that EPA may, at its option, observe the test. If meteorological conditions are such that a test cannot be properly conducted, then the owner or operator shall notify EPA and test as soon as conditions permit. Each report shall also include the following information:

(1) The name and location of the facility.

(2) A list of the piles at the facility.

(3) A description of the control measures taken to decrease the radon flux from the source and any actions taken to insure the long term effectiveness of the control measures.

(4) The results of the testing conducted, including the results of each measurement.

(5) Each report shall be signed and dated by a corporate officer or public official in charge of the facility and contain the following declaration immediately above the signature line: "I certify under penalty of law that I have personally examined and am familiar with the information submitted herein and based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment. See, 18 U.S.C. 1001."

(c) If year long measurements are made in accordance with Method 115 of Appendix B of part 61, this report shall include the results of the first measurement period and provide a schedule for the measurement frequency to be used. An additional report shall be submitted ninety days after completion of the final measurements.

(d) If long term stabilization has begun before the effective date of the rule then testing may be conducted at any time, up to 60 days after the long term stabilization is completed.

(e) If the testing demonstrates that the pile meets the requirement of § 61.222(a) and long term stabilization has been completed then the pile is considered disposed for purposes of this rule.

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§ 61.224 Recordkeeping requirements.

The owner or operator must maintain records documenting the source of input parameters including the results of all measurements upon which they are based, the calculations and/or analytical methods used to derive values for input parameters, and the procedure used to determine compliance. This documentation should be sufficient to allow an independent auditor to verify the accuracy of the determination made concerning the facility's compliance with the standard. The Administrator shall be kept apprised of the location of these records and the records must be kept for at least five years and upon request be made available for inspection by the Administrator, or his authorized representative.

§ 61.225 Exemption from the reporting and testing requirements of 40 CFR 61.10.

All facilities designated under this subpart are exempt from the reporting requirements of 40 CFR 61.10.

Subpart W—National Emission Standards for Radon Emissions From Operating Mill Tailings

Sec.

61.250 Designation of facilities.
61.251 Definitions.
61.252 Standard.
61.253 Determining compliance.
61.254 Annual reporting requirements.
61.255 Recordkeeping requirements.
61.256 Exemption from the reporting and testing requirements of 40 CFR 61.10.

§ 61.250 Designation of facilities.

The provisions of this subpart apply to owners or operators of facilities licensed to manage uranium byproduct materials during and following the processing of uranium ores, commonly referred to as uranium mills and their associated tailings. This subpart does not apply to the disposal of tailings.

§ 61.251 Definitions.

As used in this subpart, all terms not defined here have the meaning given them in the Clean Air Act or 40 CFR part 61, subpart A. The following terms shall have the following specific meanings:

(a) *Area* means the vertical projection of the pile upon the earth's surface.

(b) *Continuous disposal* means a method of tailings management and disposal in which tailings are dewatered by mechanical methods immediately after generation. The dried tailings are then placed in trenches or other disposal areas and immediately covered to limit emissions consistent with applicable Federal standards.

(c) *Dewatered* means to remove the water from recently produced tailings by mechanical or evaporative methods such that the water content of the tailings does not exceed 30 percent by weight.

(d) *Existing impoundment* means any uranium mill tailings impoundment which is licensed to accept additional tailings and is in existence as of December 15, 1989.

(e) *Operation* means that an impoundment is being used for the continued placement of new tailings or is in standby status for such placement. An impoundment is in operation from the day that tailings are first placed in the impoundment until the day that final closure begins.

(f) *Phased disposal* means a method of tailings management and disposal which uses lined impoundments which are filled and then immediately dried and covered to meet all applicable Federal standards.

(g) *Uranium byproduct material or tailings* means the waste produced by the extraction or concentration of uranium from any ore processed primarily for its source material content. Ore bodies depleted by uranium solution extraction and which remain underground do not constitute byproduct material for the purposes of this subpart.

§ 61.252 Standard.

(a) Radon-222 emissions to the ambient air from an existing uranium mill tailings pile shall not exceed 20 pCi/m^2-s of radon-222.

(b) After December 15, 1989, no new tailings impoundment can be built unless it is designed, constructed and operated to meet one of the two following work practices:

(1) Phased disposal in lined tailings impoundments that are no more than 40 acres in area and meet the requirements of 40 CFR 192.32(a) as determined by the Nuclear Regulatory Commission. The owner or operator shall have no more than two impoundments, including existing impoundments, in operation at any one time.

(2) Continuous disposal of tailings such that tailings are dewatered and immediately disposed with no more than 10 acres uncovered at any time and operated in accordance with § 192.32(a) as determined by the Nuclear Regulatory Commission.

(c) All mill owners or operators shall comply with the provisions of 40 CFR 192.32(a) in the operation of tailings piles, the exemption for existing piles in 40 CFR 192.32(a) notwithstanding.

§ 61.253 Determining compliance.

Compliance with the emission standard in this subpart shall be determined annually through the use of Method 115 of Appendix B. When measurements are to be made over a one year period, EPA shall be provided with a schedule of the measurement frequency to be used. The schedule may be submitted to EPA prior to or after the first measurement period. EPA shall be notified 30 days prior to any emissions test so that EPA may, at its option, observe the test.

§ 61.254 Annual reporting requirements.

(a) The owners or operators of operating existing mill impoundments shall report the results of the compliance calculations required in § 61.253 and the input parameters used in making the calculation for each calendar year shall be sent to EPA by March 31 of the following year. Each report shall also include the following information:

(1) The name and location of the mill.

(2) The name of the person responsible for the operation of the facility and the name of the person preparing the report (if different).

(3) The results of the testing conducted, including the results of each measurement.

(4) Each report shall be signed and dated by a corporate officer in charge of the facility and contain the following declaration immediately above the signature line: "I certify under penalty of law that I have personally examined and am familiar with the information submitted herein and based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment. See, 18 U.S.C. 1001."

(b) If the facility is not in compliance with the emission limits of § 61.252 in the calendar year covered by the report, then the facility must commence reporting to the Administrator on a monthly basis the information listed in paragraph (a) of this section, for the preceding month. These reports will start the month immediately following the submittal of the annual report for the year in noncompliance and will be due 30 days following the end of each month. This increased level of reporting will continue until the Administrator has determined that the monthly reports are no longer necessary. In addition to all the information required in paragraph (a) of this section, monthly reports shall also include the following information:

(1) All controls or other changes in operation of the facility that will be or are being installed to bring the facility into compliance.

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(2) If the facility is under a judicial or administrative enforcement decree, the report will describe the facilities performance under the terms of the decree.

(c) The first report will cover the emissions of calendar year 1990.

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§ 61.255 Recordkeeping requirements.

The owner or operator of the mill must maintain records documenting the source of input parameters including the results of all measurements upon which they are based, the calculations and/or analytical methods used to derive values for input parameters, and the procedure used to determine compliance. In addition, the documentation should be sufficient to allow an independent auditor to verify the accuracy of the determination made concerning the facility's compliance with the standard. These records must be kept at the mill for at least five years and upon request be made available for inspection by the Administrator, or his authorized representative.

§ 61.256 Exemption from the reporting and testing requirements of 40 CFR 61.10.

All facilities designated under this subpart are exempt from the reporting requirements of 40 CFR 61.10.

§ 61.03 [Amended]

3. By adding to the list of System International units of measure in § 61.03(a) an entry for "m²" following "m=meter" to read as follows:

m²=square meter

4. By adding to the list of other units of measure in § 61.03(b) an entry for "Ci" following "cc"; an entry for "pCi" following "oz"; and an entry for "mrem" following "ml" to read as follows:

Ci=curie

* * * * *

mrem=millirem=10^{-3} rem

* * * * *

pCi=picocurie=10^{-12} curie

5. Section 61.18 is amended by adding paragraph (c) to read as follows:

§ 61.18 Incorporations by reference.

* * * * *

(c) The following material is available for purchase from the American National Standards Institute, Inc., 1430 Broadway, New York, NY 10018.

(1) ANSI N13.1—1969, "Guide to Sampling Airborne Radioactive Materials in Nuclear Facilities." IBR approved for §§ 61.93(b)(2)(ii); 61.107(b)(2)(ii); and Method 114, par. 2.1 of Appendix B to part 61.

Appendix B to Part 61—[Amended]

6. By amending Method 111 of Appendix B as follows:

a. Section 4.1 is revised to read as follows:

4.1 Sample Preparation.

The glass fiber filter and acetone rinse from Method 5 of Appendix A to 40 CFR part 60 are combined and dissolved as described below.

4.1.1 Add polonium-209 tracer to the acetone rinse in the glass beaker from Method 5 in an amount approximately equal to the amount of polonium-210 expected in the total particulate sample. Add 16 M nitric acid to the beaker to digest and loosen the residue.

4.1.2 Transfer the residue from the glass beaker to a teflon beaker containing the glass fiber filter. Rinse the glass beaker with 16 M nitric acid. If necessary reduce the volume in the beaker by evaporation until all of the nitric acid from the glass beaker has been transferred to the teflon beaker.

4.1.3 Add 30 ml of 29 M hydrofluoric acid to the teflon beaker and evaporate to near dryness on a hot plate in a properly operating hood. Caution: Do not allow the residue to go to dryness and overheat; this will result in loss of polonium.

4.1.4 Repeat step 4.1.3 until filter is dissolved.

4.1.5 Add 100 ml of 16 M nitric acid to the residue in the teflon beaker and evaporate to near dryness. Caution: Do not allow the residue to go to dryness.

4.1.6 Add 50 ml of 16 M nitric acid and 10 ml of 12 M perchloric acid to the teflon beaker and heat until dense fumes of perchloric acid are evolved.

4.1.7 Repeat steps 4.1.3 to 4.1.6 as necessary until sample is completely dissolved.

4.1.8 Add 10 ml of 12 M hydrochloric acid and evaporate to dryness. Repeat additions and evaporations several times.

4.1.9 Transfer the sample to a 250 ml volumetric flask and dilute to volume with 3 M hydrochloric acid.

b. Section 4.4.2 is removed and sections 4.4.3 through 4.4.8 are redesignated as sections 4.4.2 through 4.4.7 respectively.

c. In section 5.1, Equation 111–3 is amended by removing "A=picocuries of polonium-210 per filter" and adding "A= picocuries of polonium-210 in the particulate sample".

d. In section 5.2, Equation 111–4 is amended by revising the entry for "A=" to read "A= picocuries of polonium-210 in the particulate sample as determined by A in Equation 111–3".

e. Section 9.1.2 is removed.

7. By adding Method 114 to the methods in Appendix B to part 61 to read as follows:

Method 114—Test Methods for Measuring Radionuclide Emissions from Stationary Sources

1. Purpose and Background

This method provides the requirements for: (1) Stack monitoring and sample collection methods appropriate for radionuclides; (2) radiochemical methods which are used in determining the amounts of radionuclides collected by the stack sampling and; (3) quality assurance methods which are conducted in conjunction with these measurements. These methods are appropriate for emissions for stationary sources. A list of references is provided.

Many different types of facilities release radionuclides into air. These radionuclides differ in the chemical and physical forms, half-lives and type of radiation emitted. The appropriate combination of sample extraction, collection and analysis for an individual radionuclide is dependent upon many interrelated factors including the mixture of other radionuclides present. Because of this wide range of conditions, no single method for monitoring or sample collection and analysis of a radionuclide is applicable to all types of facilities. Therefore, a series of methods based on "principles of measurement" are described for monitoring and sample collection and analysis which are applicable to the measurement of radionuclides found in effluent streams at stationary sources. This approach provides the user with the flexibility to choose the most appropriate combination of monitoring and sample collection and analysis methods which are applicable to the effluent stream to be measured.

2. Stack Monitoring and Sample Collection Methods

Monitoring and sample collection methods are described based on "principles of monitoring and sample collection" which are applicable to the measurement of radionuclides from effluent streams at stationary sources. Radionuclides of most elements will be in the particulate form in these effluent streams and can be readily collected using a suitable filter media. Radionuclides of hydrogen, oxygen, carbon, nitrogen, the noble gases and in some circumstances iodine will be in the gaseous form. Radionuclides of these elements will require either the use of an in-line or off-line monitor to directly measure the radionuclides, or suitable sorbers, condensers or bubblers to collect the radionuclides.

2.1 Radionuclides as Particulates. The extracted effluent stream is passed through a filter media to remove the particulates. The filter must have a high efficiency for removal of sub-micron particles. The guidance in ANSI N13.1—1969 shall be followed in using filter media to collect particulates (incorporated by reference–see § 61.18).

2.2 Radionuclides as Gases.

2.2.1 The Radionuclide Tritium (H–3). Tritium in the form of water vapor is collected from the extracted effluent sample by sorption, condensation or dissolution techniques. Appropriate collectors may include silica gel, molecular sieves, and ethylene glycol or water bubblers.

Tritium in the gaseous form may be measured directly in the sample stream using Method B–1, collected as a gas sample or may be oxidized using a metal catalyst to tritiated water and collected as described above.

2.2.2 Radionuclides of Iodine. Iodine is collected from an extracted sample by sorption or dissolution techniques. Appropriate collectors may include charcoal, impregnated charcoal, metal zeolite and caustic solutions.

2.2.3 Radionuclides of Argon, Krypton and Xenon. Radionuclides of these elements are either measured directly by an in-line or off-line monitor, or are collected from the extracted sample by low temperature sorption techniques. Appropriate sorbers may include charcoal or metal zeolite.

2.2.4 Radionuclides of Oxygen, Carbon, Nitrogen and Radon. Radionuclides of these elements are measured directly using an in-line or off-line monitor. Radionuclides of carbon in the form of carbon dioxide may be collected by dissolution in caustic solutions.

2.3 Definition of Terms

In-line monitor means a continuous measurement system in which the detector is placed directly in or adjacent to the effluent stream. This may involve either gross radioactivity measurements or specific radionuclide measurements. Gross measurements shall be made in conformance with the conditions specified in Methods A–4, B–2 and G–4.

Off-line monitor means a measurement system in which the detector is used to continuously measure an extracted sample of the effluent stream. This may involve either gross radioactivity measurements or specific radionuclide measurements. Gross measurements shall be made in conformance with the conditions specified in Methods A–4, B–2 and G–4.

Sample collection means a procedure in which the radionuclides are removed from an extracted sample of the effluent using a collection media. These collection media include filters, absorbers, bubblers and condensers. The collected sample is analyzed using the methods described in Section 3.

3. Radionuclide Analysis Methods

A series of methods based on "principles of measurement" are described which are applicable to the analysis of radionuclides collected from airborne effluent streams at stationary sources. These methods are applicable only under the conditions stated and within the limitations described. Some methods specify that only a single radionuclide be present in the sample or the chemically separated sample. This condition should be interpreted to mean that no other radionuclides are present in quantities which would interfere with the measurement.

Also identified (Table 1) are methods for a selected list of radionuclides. The listed radionuclides are those which are most commonly used and which have the greatest potential for causing dose to members of the public. Use of methods based on principles of measurement other than those described in this section must be approved in advance of use by the Administrator. For radionuclides not listed in Table 1, any of the described methods may be used provided the user can demonstrate that the applicability conditions of the method have been met.

The type of method applicable to the analysis of a radionuclide is dependent upon the type of radiation emitted, i.e., alpha, beta or gamma. Therefore, the methods described below are grouped according to principles of measurements for the analysis of alpha, beta and gamma emitting radionuclides.

3.1 Methods for Alpha Emitting Radionuclides

3.1.1 Method A–1, Radiochemistry-Alpha Spectrometry.

Principle: The element of interest is separated from other elements, and from the sample matrix using radiochemical techniques. The procedure may involve precipitation, ion exchange, or solvent extraction. Carriers (elements chemically similar to the element of interest) may be used. The element is deposited on a planchet in a very thin film by electrodeposition or by coprecipitation on a very small amount of carrier, such as lanthanum fluoride. The deposited element is then counted with an alpha spectrometer. The activity of the nuclide of interest is measured by the number of alpha counts in the appropriate energy region. A correction for chemical yield and counting efficiency is made using a standardized radioactive nuclide (tracer) of the same element. If a radioactive tracer is not available for the element of interest, a predetermined chemical yield factor may be used.

Applicability: This method is applicable for determining the activity of any alpha-emitting radionuclide, regardless of what other radionuclides are present in the sample provided the chemical separation step produces a very thin sample and removes all other radionuclides which could interfere in the spectral region of interest. APHA–605(2), ASTM–D–3972(13).

3.1.2 Method A–2, Radiochemistry-Alpha Counting.

Principle: The element of interest is separated from other elements, and from the sample matrix using radiochemistry. The procedure may involve precipitation, ion exchange, or solvent extraction. Carriers (elements chemically similar to the element of interest) may be used. The element is deposited on a planchet in a thin film and counted with a alpha counter. A correction for chemical yield (if necessary) is made. The alpha count rate measures the total activity of all emitting radionuclides of the separated element.

Applicability: This method is applicable for the measurement of any alpha-emitting radionuclide, provided no other alpha emitting radionuclide is present in the separated sample. It may also be applicable for determining compliance, when other radionuclides of the separated element are present, provided that the calculated emission rate is assigned to the radionuclide which could be present in the sample that has the highest dose conversion factor. IDO–12096(18).

3.1.3 Method A–3, Direct Alpha Spectrometry.

Principle: The sample, collected on a suitable filter, is counted directly on an alpha spectrometer. The sample must be thin enough and collected on the surface of the filter so that any absorption of alpha particle energy in the sample or the filter, which would degrade the spectrum, is minimal.

Applicability: This method is applicable to simple mixtures of alpha emitting radionuclides and only when the amount of particulates collected on the filter paper are relatively small and the alpha spectra is adequately resolved. Resolutions should be 50 keV (FWHM) or better, ASTM–D–3084(16).

3.1.4 Method A–4, Direct Alpha Counting (Gross alpha determination).

Principle: The sample, collected on a suitable filter, is counted with an alpha counter. The sample must be thin enough so that self-absorption is not significant and the filter must be of such a nature that the particles are retained on the surface.

Applicability: Gross alpha determinations may be used to measure emissions of specific radionuclides only (1) when it is known that the sample contains only a single radionuclide, or the identity and isotopic ratio of the radionuclides in the sample are well-known, and (2) measurements using either Method A–1, A–2 or A–5 have shown that this method provides a reasonably accurate measurement of the emission rate. Gross alpha measurements are applicable to unidentified mixtures of radionuclides only for the purposes and under the conditions described in section 3.7. APHA–601(3), ASTM–D–1943(10).

3.1.5 Method A–5, Chemical Determination of Uranium.

Principle: Uranium may be measured chemically by either colorimetry or fluorometry. In both procedures, the sample is dissolved, the uranium is oxidized to the hexavalent form and extracted into a suitable solvent. Impurities are removed from the solvent layer. For colorimetry, dibenzoylmethane is added, and the uranium is measured by the absorbance in a colorimeter. For fluorometry, a portion of the solution is fused with a sodium fluoride-lithium fluoride flux and the uranium is determined by the ultraviolet activated fluorescence of the fused disk in a fluorometer.

Applicability: This method is applicable to the measurements of emission rates of uranium when the isotopic ratio of the uranium radionuclides is well known. ASTM–E–318(15), ASTM–D–2907(14).

3.1.6 Method A–6, Radon-222—Continuous Gas Monitor.

Principle: Radon-222 is measured directly in a continuously extracted sample stream by passing the air stream through a calibrated scintillation cell. Prior to the scintillation cell, the air stream is treated to remove particulates and excess moisture. The alpha particles from radon-222 and its decay products strike a zinc sulfide coating on the inside of the scintillation cell producing light pulses. The light pulses are detected by a photomultiplier tube which generates electrical pulses. These pulses are processed by the system electronics and the read out is in pCi/l of radon-222.

Applicability: This method is applicable to the measurement of radon-222 in effluent

streams which do not contain significant quantities of radon-220. Users of this method

radionuclides present and to establish the relationship between specific radionuclide

contain more than one radionuclide but only when the energies of the beta particles are

determined from the gamma counts in the energy range for which the counter is set.

form. The ionization current produced is measured.

samples, and be mounted in an identical manner. If the samples contain variable

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streams which do not contain significant quantities of radon-220. Users of this method should calibrate the monitor in a radon calibration chamber at least twice per year. The background of the monitor should also be checked periodically by operating the instrument in a low radon environment. EPA 520/1-89-009(24).

3.1.7 Method A-7, Radon-222-Alpha Track Detectors

Principle: Radon-222 is measured directly in the effluent stream using alpha track detectors (ATD). The alpha particles emitted by radon-222 and its decay products strike a small plastic strip and produce submicron damage tracks. The plastic strip is placed in a caustic solution that accentuates the damage tracks which are counted using a microscope or automatic counting system. The number of tracks per unit area is correlated to the radon concentration in air using a conversion factor derived from data generated in a radon calibration facility.

Applicability: Prior approval from EPA is required for use of this method. This method is only applicable to effluent streams which do not contain significant quantities of radon-220, unless special detectors are used to discriminate against radon-220. This method may be used only when ATDs have been demonstrated to produce data comparable to data obtained with Method A-6. Such data should be submitted to EPA when requesting approval for the use of this method. EPA 520/1-89-009(24).

3.2 Methods for Gaseous Beta Emitting Radionuclides.

3.2.1 Method B-1, Direct Counting in Flow-Through Ionization Chambers.

Principle: An ionization chamber containing a specific volume of gas which flows at a given flow rate through the chamber is used. The sample (effluent stream sample) acts as the counting gas for the chamber. The activity of the radionuclide is determined from the current measured in the ionization chamber.

Applicability: This method is applicable for measuring the activity of a gaseous beta-emitting radionuclide in an effluent stream that is suitable as a counting gas, when no other beta-emitting nuclides are present. DOE/EP-0096(17), NCRP-58(23).

3.2.2 Method B-2, Direct Counting With In-line or Off-line Beta Detectors.

Principle: The beta detector is placed directly in the effluent stream (in-line) or an extracted sample of the effluent stream is passed through a chamber containing a beta detector (off-line). The activities of the radionuclides present in the effluent stream are determined from the beta count rate, and a knowledge of the radionuclides present and the relationship of the gross beta count rate and the specific radionuclide concentration.

Applicability: This method is applicable only to radionuclides with maximum beta particle energies greater then 0.2 MeV. This method may be used to measure emissions of specific radionuclides only when it is known that the sample contains only a single radionuclide or the identity and isotopic ratio of the radionuclides in the effluent stream are well known. Specific radionuclide analysis of periodic grab samples may be used to identify the types and quantities of radionuclides present and to establish the relationship between specific radionuclide analyses and gross beta count rates.

This method is applicable to unidentified mixtures of gaseous radionuclides only for the purposes and under the conditions described in section 3.7.

3.3 Methods for Non-Gaseous Beta Emitting Radionuclides.

3.3.1 Method B-3, Radiochemistry-Beta Counting.

Principle: The element of interest is separated from other elements, and from the sample matrix by radiochemistry. This may involve precipitation, distillation, ion exchange, or solvent extraction. Carriers (elements chemically similar to the element of interest) may be used. The element is deposited on a planchet, and counted with a beta counter. Corrections for chemical yield, and decay (if necessary) are made. The beta count rate determines the total activity of all radionuclides of the separated element. This method may also involve the radiochemical separation and counting of a daughter element, after a suitable period of ingrowth, in which case it is specific for the parent nuclide.

Applicability: This method is applicable for measuring the activity of any beta-emitting radionuclide, with a maximum energy greater than 0.2 MeV, provided no other radionuclide is present in the separated sample. APHA-608(5).

3.3.2 Method B-4, Direct Beta Counting (Gross beta determination).

Principle: The sample, collected on a suitable filter, is counted with a beta counter. The sample must be thin enough so that self-absorption corrections can be made.

Applicability: Gross beta measurements are applicable only to radionuclides with maximum beta particle energies greater than 0.2 MeV. Gross beta measurements may be used to measure emissions of specific radionuclides only (1) when it is known that the sample contains only a single radionuclide, and (2) measurements made using Method B-3 show reasonable agreement with the gross beta measurement. Gross beta measurements are applicable to mixtures of radionuclides only for the purposes and under the conditions described in section 3.7. APHA-602(4), ASTM-D-1890(11).

3.3.3 Method B-5, Liquid Scintillation Spectrometry.

Principle: An aliquot of a collected sample or the result of some other chemical separation or processing technique is added to a liquid scintillation "cocktail" which is viewed by photomultiplier tubes in a liquid scintillation spectrometer. The spectrometer is adjusted to establish a channel or "window" for the pulse energy appropriate to the nuclide of interest. The activity of the nuclide of interest is measured by the counting rate in the appropriate energy channel. Corrections are made for chemical yield where separations are made.

Applicability: This method is applicable to any beta-emitting nuclide when no other radionuclide is present in the sample or the separated sample provided that it can be incorporated in the scintillation cocktail. This method is also applicable for samples which contain more than one radionuclide but only when the energies of the beta particles are sufficiently separated so that they can be resolved by the spectrometer. This method is most applicable to the measurement of low-energy beta emitters such as tritium and carbon-14. APHA-609(6), EML-LV-539-17(19).

3.4 Gamma Emitting Radionuclides

3.4.1 Method G-1, High Resolution Gamma Spectrometry.

Principle: The sample is counted with a high resolution gamma detector, usually either a Ge(Li) or a high purity Ge detector, connected to a multichannel analyzer or computer. The gamma emitting radionuclides in the sample are measured from the gamma count rates in the energy regions characteristic of the individual radionuclide. Corrections are made for counts contributed by other radionuclides to the spectral regions of the radionuclides of interest. Radiochemical separations may be made prior to counting but are usually not necessary.

Applicability: This method is applicable to the measurement of any gamma emitting radionuclide with gamma energies greater than 20 keV. It can be applied to complex mixtures of radionuclides. The samples counted may be in the form of particulate filters, absorbers, liquids or gases. The method may also be applied to the analysis of gaseous gamma emitting radionuclides directly in an effluent stream by passing the stream through a chamber or cell containing the detector. ASTM-3649(9), IDO-12096(18).

3.4.2 Method G-2, Low Resolution Gamma Spectrometry.

Principle: The sample is counted with a low resolution gamma detector, a thallium activated sodium iodide crystal. The detector is coupled to a photomultiplier tube and connected to a multichannel analyzer. The gamma emitting radionuclides in the sample are measured from the gamma count rates in the energy regions characteristic of the individual radionuclides. Corrections are made for counts contributed by other radionuclides to the spectral regions of the radionuclides of interest. Radiochemical separation may be used prior to counting to obtain less complex gamma spectra if needed.

Applicability: This method is applicable to the measurement of gamma emitting radionuclides with energies greater than 100 keV. It can be applied only to relatively simple mixtures of gamma emitting radionuclides. The samples counted may be in the form of particulate filters, absorbers, liquids or gas. The method can be applied to the analysis of gaseous radionuclides directly in an effluent stream by passing the gas stream through a chamber or cell containing the detector. ASTM-D-2459(12), EMSL-LV-0539-17(19).

3.4.3 Method G-3, Single Channel Gamma Spectrometry.

Principle: The sample is counted with a thallium activated sodium iodide crystal. The detector is coupled to a photomultiplier tube connected to a single channel analyzer. The activity of a gamma emitting radionuclide is determined from the gamma counts in the energy range for which the counter is set.

Applicability: This method is applicable to the measurement of a single gamma emitting radionuclide. It is not applicable to mixtures of radionuclides. The samples counted may be in the form of particulate filters, absorbers, liquids or gas. The method can be applied to the analysis of gaseous radionuclides directly in an effluent stream by passing the gas stream through a chamber or cell containing the detector.

3.4.4 Method G-4, Gross Gamma Counting.

Principle: The sample is counted with a gamma detector usually a thallium activated sodium iodine crystal. The detector is coupled to a photomultiplier tube and gamma rays above a specific threshold energy level are counted.

Applicability: Gross gamma measurements may be used to measure emissions of specific radionuclides only when it is known that the sample contains a single radionuclide or the identity and isotopic ratio of the radionuclides in the effluent stream are well known. When gross gamma measurements are used to determine emissions of specific radionuclides periodic measurements using Methods G-1 or G-2 should be made to demonstrate that the gross gamma measurements provide reliable emission data. This method may be applied to analysis of gaseous radionuclides directly in an effluent stream by placing the detector directly in or adjacent to the effluent stream or passing an extracted sample of the effluent stream through a chamber or cell containing the detector.

3.5 Counting Methods. All of the above methods with the exception of Method A-5 involve counting the radiation emitted by the radionuclide. Counting methods applicable to the measurement of alpha, beta and gamma radiations are listed below. The equipment needed and the counting principles involved are described in detail in ASTM-3648(8).

3.5.1 Alpha Counting:

• *Gas Flow Proportional Counters.* The alpha particles cause ionization in the counting gas and the resulting electrical pulses are counted. These counters may be windowless or have very thin windows.

• *Scintillation Counters.* The alpha particles transfer energy to a scintillator resulting in a production of light photons which strike a photomultiplier tube converting the light photons to electrical pulses which are counted. The counters may involve the use of solid scintillation materials such as zinc sulfide or liquid scintillation solutions.

• *Solid-State Counters.* Semiconductor materials, such as silicon surface-barrier p-n junctions, act as solid ionization chambers. The alpha particles interact which the detector producing electron hole pairs. The charged pair is collected by an applied electrical field and the resulting electrical pulses are counted.

• *Alpha Spectrometers.* Semiconductor detectors used in conjunction with multichannel analyzers for energy discrimination.

3.5.2 Beta Counting:

• *Ionization Chambers.* These chambers contain the beta-emitting nuclide in gaseous form. The ionization current produced is measured.

• *Geiger-Muller (GM) Counters-or Gas Flow Proportional Counters.* The beta particles cause ionization in the counting gas and the resulting electrical pulses are counted. Proportional gas flow counters which are heavily shielded by lead or other metal, and provided with an anti-coincidence shield to reject cosmic rays, are called low background beta counters.

• *Scintillation Counters.* The beta particles transfer energy to a scintillator resulting in a production of light photons, which strike a photomultiplier tube converting the light photon to electrical pulses which are counted. This may involve the use of anthracene crystals, plastic scintillator, or liquid scintillation solutions with organic phosphors.

• *Liquid Scintillation Spectrometers.* Liquid scintillation counters which use two photomultiplier tubes in coincidence to reduce background counts. This counter may also electronically discriminate among pulses of a given range of energy.

3.5.3 Gamma Counting:

• *Low-Resolution Gamma Spectrometers.* The gamma rays interact with thallium activated sodium iodide or cesium iodide crystal resulting in the release of light photons which strike a photomultiplier tube converting the light pulses to electrical pulses proportional to the energy of the gamma ray. Multi-channel analyzers are used to separate and store the pulses according to the energy absorbed in the crystal.

• *High-Resolution gamma Spectrometers.* Gamma rays interact with a lithium-drifted (Ge(Li)) or high-purity germanium (HPGe) semiconductor detectors resulting in a production of electron-hole pairs. The charged pair is collected by an applied electrical field. A very stable low noise preamplifier amplifies the pulses of electrical charge resulting from the gamma photon interactions. Multichannel analyzers or computers are used to separate and store the pulses according to the energy absorbed in the crystal.

• *Single Channel Analyzers.* Thallium activated sodium iodide crystals used with a single window analyzer. Pulses from the photomultiplier tubes are separated in a single predetermined energy range.

3.5.4 Calibration of Counters. Counters are calibrated for specific radionuclide measurements using a standard of the radionuclide under either identical or very similar conditions as the sample to be counted. For gamma spectrometers a series of standards covering the energy range of interest may be used to construct a calibration curve relating gamma energy to counting efficiency.

In those cases where a standard is not available for a radionuclide, counters may be calibrated using a standard with energy characteristics as similar as possible to the radionuclide to be measured. For gross alpha and beta measurements of the unidentified mixtures of radionuclides, alpha counters are calibrated with a natural uranium standard and beta counters with a cesium-137 standard. The standard must contain the same weight and distribution of solids as the samples, and be mounted in an identical manner. If the samples contain variable amounts of solids, calibration curves relating weight of solids present to counting efficiency are prepared. Standards other than those prescribed may be used provided it can be shown that such standards are more applicable to the radionuclide mixture measured.

3.6 Radiochemical Methods for Selected Radionuclides. Methods for a selected list of radionuclides are listed in Table 1. The radionuclides listed are those which are most commonly used and which have the greatest potential for causing doses to members of the public. For radionuclides not listed in Table 1, methods based on any of the applicable "principles of measurement" described in section 3.1 through 3.4 may be used.

3.7 Applicability of Gross Alpha and Beta Measurements to Unidentified Mixtures of Radionuclides. Gross alpha and beta measurements may be used as a screening measurement as a part of an emission measurement program to identify the need to do specific radionuclide analyses or to confirm or verify that unexpected radionuclides are not being released in significant quantities.

Gross alpha (Method A-4) or gross beta (Methods B-2 or B-4) measurements may also be used for the purpose of comparing the measured concentrations in the effluent stream with the limiting "Concentration Levels for Environmental Compliance" in Table 2 of Appendix E. For unidentified mixtures, the measured concentration value shall be compared with the lowest environmental concentration limit for any radionuclide which is not known to be absent from the effluent stream.

TABLE 1.—LIST OF APPROVED METHODS FOR SPECIFIC RADIONUCLIDES

Radionuclide	Approved methods of analysis
Am-241	A-1, A-2, A-3, A-4
Ar-41	B-1, B-2, G-1, G-2, G-3, G-4
Ba-140	G-1, G-2, G-3, G-4
Br-82	G-1, G-2, G-3, G-4
C-11	B-1, B-2, G-1, G-2, G-3, G-4
C-14	B-5
Ce-45	B-3, B-4, B-5
Ce-144	G-1, G-2, G-3, G-4
Cm-244	A-1, A-2, A-3, A-4
Co-60	G-1, G-2, G-3, G-4
Cr-51	G-1, G-2, G-3, G-4
Cs-134	G-1, G-2, G-3, G-4
Cs-137	G-1, G-2, G-3, G-4
Fe-55	B-5, G-1
Fe-59	G-1, G-2, G-3, G-4
Ga-67	G-1, G-2, G-3, G-4
H-3 (H_2O)	B-5
H-3 (gas)	B-1
I-123	G-1, G-2, G-3, G-4
I-125	G-1
I-131	G-1, G-2, G-3, G-4
In-113m	G-1, G-2, G-3, G-4
Ir-192	G-1, G-2, G-3, G-4
Kr-85	B-1, B-2, B-5, G-1, G-2, G-3, G-4
Kr-87	B-1, B-2, G-1, G-2, G-3, G-4

TABLE 1.—LIST OF APPROVED METHODS FOR SPECIFIC RADIONUCLIDES—Continued

Radionuclide	Approved methods of analysis
Mn-54	G-1, G-2, G-3, G-4
Mo-99	G-1, G-2, G-3, G-4
Nb-95	G-1, G-2, G-3, G-4
Ni-63	B-5
Pa-234	G-1, G-2, G-3, G-4
Pb-210	A-1, A-2, A-3, A-4
Pm-147	B-5
Po-210	A-1, A-2, A-3, A-4
Pu-238	A-1, A-2, A-3, A-4
Pu-239	A-1, A-2, A-3, A-4
Ra-226	A-1, A-2, A-3, A-4
Ra-228	B-3, B-4, B-5
Rb-86	G-1, G-2, G-3, G-4
Ru-103	G-1, G-2, G-3, G-4
Ru-106	G-1, G-2, G-3, G-4
Sb-124	G-1, G-2, G-3, G-4
Sb-125	G-1, G-2, G-3, G-4
Sr-89	B-3, B-4, B-5
Sr-90	B-3, B-4, B-5
Tc-99	B-3, B-4, B-5
Te-125m	G-1, G-2, G-3, G-4
Te-127m	G-1, G-2, G-3, G-4
Te-129m	G-1, G-2, G-3, G-4
Th-228	A-1, A-2, A-3, A-4
Th-230	A-1, A-2, A-3, A-4
Th-232	A-1, A-2, A-3, A-4
Th-234	G-1, G-2, G-3, G-4
Tl-204	B-3, B-4, B-5
U-234	A-1, A-2, A-3, A-4
U-235	A-1, A-2, A-3, A-4
U-238	A-1, A-2, A-3, A-4
W-187	G-1, G-2, G-3, G-4
Xe-133	B-1, B-2, G-1, G-2, G-3, G-4
Y-90	B-3, B-4, B-5
Y-91	B-3, B-4, B-5
Zn-65	G-1, G-2, G-3, G-4
Zr-95	G-1, G-2, G-3, G-4

4. Quality Assurance

4.1 Effluent Flow Rate Measurements. Sampling and measurement systems should be calibrated after installation, after major maintenance, and semiannually. Calibration procedures and frequency of calibration should be based on the recommendations of ANSI N13.1-1969, American National Standards Institute, New York, New York (1969).

No. 50, "Environmental Radiation Measurements", National Council on Radiation Protection and Measurement, Bethesda, Maryland (1976).

(c) A weekly radon-222 emission rate shall be calculated for each weekly period according to the method described in Section 1.1.1. In this calculation T=168 hr.

2.1.2 Distribution of Flux Measurements. The distribution and number of radon flux measurements required on a pile will depend on clearly defined areas of the pile (called

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TABLE 1.—LIST OF APPROVED METHODS FOR SPECIFIC RADIONUCLIDES—Continued

Radionuclide	Approved methods of analysis
Kr-86	B-1, B-2, G-1, G-2, G-3, G-4
Mn-54	G-1, G-2, G-3, G-4
Mo-99	G-1, G-2, G-3, G-4
N-13	B-1, B-2, G-1, G-2, G-3, G-4
O-15	B-1, B-2, G-1, G-2, G-3, G-4
P-32	B-3, B-4, B-5
Pm-147	B-3, B-4, B-5
Po-210	A-1, A-2, A-3, A-4
Pu-238	A-1, A-2, A-3, A-4
Pu-239	A-1, A-2, A-3, A-4
Pu-240	A-1, A-2, A-3, A-4
S-35	B-5
Se-75	G-1, G-2, G-3, G-4
Sr-90	B-3, B-4, B-5
Tc-99	B-3, B-4, B-5
Te-201	G-1, G-2, G-3, G-4
Uranium (total alpha)	A-1, A-2, A-3, A-4
Uranium (isotopic)	A-1, A-3
Uranium (Natural)	A-5
Xe-133	G-1
Yb-169	G-1, G-2, G-3, G-4
Zn-65	G-1, G-2, G-3, G-4

4. Quality Assurance Methods

Each facility required to measure their radionuclide emissions shall conduct a quality assurance program in conjunction with the radionuclide emission measurements. This program shall assure that the emission measurements are representative, and are of known precision and accuracy and shall include administrative controls to assure prompt response when emission measurements indicate unexpectedly large emissions. The program shall consist of a system of policies, organizational responsibilities, written procedures, data quality specifications, audits, corrective actions and reports. This quality assurance program shall include the following program elements:

4.1 The organizational structure, functional responsibilities, levels of authority and lines of communications for all activities related to the emissions measurement program shall be identified and documented.

4.2 Administrative controls shall be prescribed to ensure prompt response in the event that emission levels increase due to unplanned operations.

4.3 The sample collection and analysis procedures used in measuring the emissions shall be described including where applicable:

4.3.1 Identification of sampling sites and number of sampling points, including the rationale for site selections.

4.3.2 A description of sampling probes and representativeness of the samples.

4.3.3 A description of any continuous monitoring system used to measure emissions, including the sensitivity of the system, calibration procedures and frequency of calibration.

4.3.4 A description of the sample collection systems for each radionuclide measured, including frequency of collection, calibration procedures and frequency of calibration.

4.3.5 A description of the laboratory analysis procedures used for each radionuclide measured, including frequency of analysis, calibration procedures and frequency of calibration.

4.3.6 A description of the sample flow rate measurement systems or procedures, including calibration procedures and frequency of calibration.

4.3.7 A description of the effluent flow rate measurement procedures, including frequency of measurements, calibration procedures and frequency of calibration.

4.4 The objectives of the quality assurance program shall be documented and shall state the required precision, accuracy and completeness of the emission measurement data including a description of the procedures used to assess these parameters. Accuracy is the degree of agreement of a measurement with a true or known value. Precision is a measure of the agreement among individual measurements of the same parameters under similar conditions. Completeness is a measure of the amount of valid data obtained compared to the amount expected under normal conditions.

4.5 A quality control program shall be established to evaluate and track the quality of the emissions measurement data against preset criteria. The program should include where applicable a system of replicates, spiked samples, split samples, blanks and control charts. The number and frequency of such quality control checks shall be identified.

4.6 A sample tracking system shall be established to provide for positive identification of samples and data through all phases of the sample collection, analysis and reporting system. Sample handling and preservation procedures shall be established to maintain the integrity of samples during collection, storage and analysis.

4.7 Periodic internal and external audits shall be performed to monitor compliance with the quality assurance program. These audits shall be performed in accordance with written procedures and conducted by personnel who do not have responsibility for performing any of the operations being audited.

4.8 A corrective action program shall be established including criteria for when corrective action is needed, what corrective actions will be taken and who is responsible for taking the corrective action.

4.9 Periodic reports to responsible management shall be prepared on the performance of the emissions measurements program. These reports should include assessment of the quality of the data, results of audits and description of corrective actions.

4.10 The quality assurance program should be documented in a quality assurance project plan which should address each of the above requirements.

5. References

(1) American National Standards Institute, "Guide to Sampling Airborne Radioactive Materials in Nuclear Facilities", ANSI–N13.1–1969, American National Standards Institute, New York, New York (1969).

(2) American Public Health Association, "Methods of Air Sampling", 2nd Edition, Method 605, "Tentative Method of Analysis for Plutonium Content of Atmospheric Particulate Matter". American Public Health Association, New York, NY (1977).

(3) Ibid, Method 601, "Tentative Method of Analysis for Gross Alpha Radioactivity Content of the Atmosphere".

(4) Ibid, Method 602, "Tentative Method of the Analysis for Gross Beta Radioactivity Content of the Atmosphere".

(5) Ibid, Method 608, "Tentative Method of Analysis for Strontium-90 Content of Atmospheric Particulate Matter".

(6) Ibid, Method 609, "Tentative Method of Analysis for Tritium Content of the Atmosphere".

(7) Ibid, Method 603, "Tentative Method of Analysis for Iodine-131 Content of the Atmosphere".

(8) American Society for Testing and Materials, 1986 Annual Book ASTM Standards, Designation D–3648–78, "Standard Practices for the Measurement of Radioactivity". American Society for Testing and Materials, Philadelphia, PA (1986).

(9) Ibid, Designation D–3649–85, "Standard Practice for High Resolution Gamma Spectrometry".

(10) Ibid, Designation D–1943–81, "Standard Test Method for Alpha Particle Radioactivity of Water".

(11) Ibid, Designation D–1890–81, "Standard Test Method for Beta Particle Radioactivity of Water".

(12) Ibid, Designation D–2459–72, "Standard Test Method for Gamma Spectrometry of Water".

(13) Ibid, Designation D–3972–82, "Standard Test Method for Isotopic Uranium in Water by Radiochemistry".

(14) Ibid, Designation D–2907–83, "Standard Test Methods for Microquantities of Uranium in Water by Fluorometry".

(15) Ibid, Designation E–318, "Standard Test Method for Uranium in Aqueous Solutions by Colorimetry".

(16) Ibid, Designation D–3084–75, "Standard Practice for Alpha Spectrometry of Water".

(17) Corley, J.P. and C.D. Corbit, "A Guide for Effluent Radiological Measurements at DOE Installations", DOE/EP–0096, Pacific Northwest Laboratories, Richland, Washington (1983).

(18) Department of Energy, "RESL Analytical Chemistry Branch Procedures Manual", IDO–12096, U.S. Department of Energy, Idaho Falls, Idaho (1982).

(19) Environmental Protection Agency, "Radiochemical Analytical Procedures for Analysis of Environmental Samples", EMSL–LV–0539–17, U.S. Environmental Protection Agency, Environmental Monitoring and Support Laboratory, Las Vegas, Nevada (1979).

(20) Environmental Protection Agency, "Radiochemistry Procedures Manual", EPA 520/5–84–006, Eastern Environmental Radiation Facility, Montgomery, Alabama (1984).

(21) National Council on Radiation Protection and Measurements, NCRP Report No. 50, "Environmental Radiation Measurements", National Council on Radiation Protection and Measurement, Bethesda, Maryland (1976).

(22) Ibid, Report No. 47, "Tritium Measurement Techniques". (1976).

(23) Ibid, Report No. 58 "A Handbook of Radioactivity Measurement Procedures" (1985).

(24) Environmental Protection Agency, "Indoor Radon and Radon Decay Product Measurement Protocols", EPA 520/1–89–009, U.S. Environmental Protection Agency, Washington, DC (1989).

8. By adding Method 115 to the list of methods in Appendix B to part 61 to read as follows:

Method 115—Monitoring for Radon-222 Emissions

This Appendix describes the monitoring methods which must be used in determining the radon-222 emissions from underground uranium mines, uranium mill tailings piles, phosphogypsum stacks, and other piles of waste material emitting radon.

1. Radon-222 Emissions from Underground Uranium Mine Vents

1.1 Sampling Frequency and Calculation of Emissions. Radon-222 emissions from underground uranium mine vents shall be determined using one of the following methods:

1.1.1 Continuous Measurement. These measurements shall be made and the emissions calculated as follows:

(a) The radon-222 concentration shall be continuously measured at each mine vent whenever the mine ventilation system is operational.

(b) Each mine vent exhaust flow rate shall be measured at least 4 times per year.

(c) A weekly radon-222 emission rate for the mine shall be calculated and recorded weekly as follows:

$$A_w = C_1Q_1T_1 + C_2Q_2T_2 + \ldots C_iQ_iT_i$$

Where:

A_w = Total radon-222 emitted from the mine during week (Ci)

C_i = Average radon-222 concentration in mine vent i(Ci/m³)

Q_i = Volumetric flow rate from mine vent i(m³/hr)

T_i = Hours of mine ventilation system operation during week for mine vent i(hr)

(d) The annual radon-222 emission rate is the sum of the weekly emission rates during a calendar year.

1.1.2 Periodic Measurement. This method is applicable only to mines that continuously operate their ventilation system except for extended shutdowns. Mines which start up and shut down their ventilation system frequently must use the continuous measurement method describe in Section 1.1.1 above. Emission rates determined using periodic measurements shall be measured and calculated as follows:

(a) The radon-222 shall be continuously measured at each mine vent for at least one week every three months.

(b) Each mine vent exhaust flow rate shall be measured at least once during each of the radon-222 measurement periods.

(c) A weekly radon-222 emission rate shall be calculated for each weekly period according to the method described in Section 1.1.1. In this calculation T=168 hr.

(d) The annual radon-222 emission rate from the mine should be calculated as follows:

$$A_y = \frac{52 - W_e}{n}(A_{w1} + A_{w2} + \ldots A_{wi})$$

Where:

A_y = Annual radon-222 emission rate from the mine(Ci)

A_{wi} = Weekly radon-222 emission rate during the measurement period i (Ci)

n = Number of weekly measurement periods per year

W_e = Number of weeks during the year that the mine ventilation system is shut down in excess of 7 consecutive days, i.e. the sum of the number of weeks each shut down exceeds 7 days

1.2 Test Methods and Procedures

Each underground mine required to test its emissions, unless an equivalent or alternative method has been approved by the Administrator, shall use the following test methods:

1.2.1 Test Method 1 of Appendix A to part 60 shall be used to determine velocity traverses. The sampling point in the duct shall be either the centroid of the cross section or the point of average velocity.

1.2.2 Test Method 2 of Appendix A to part 60 shall be used to determine velocity and volumetric flow rates.

1.2.3 Test Methods A–6 or A–7 of Appendix B, Method 114 to part 61 shall be used for the analysis of radon–222. Use of Method A–7 requires prior approval of EPA based on conditions described in Appendix B.

1.2.4 A quality assurance program shall be conducted in conformance with the programs described for Continuous Radon Monitors and Alpha Track Detectors in EPA 520/1–89–009. (2)

2. Radon–222 Emissions from Uranium Mill Tailings Piles

2.1 Measurement and Calculation of Radon Flux from Uranium Mill Tailings Piles.

2.1.1 Frequency of Flux Measurement. A single set of radon flux measurements may be made, or if the owner or operator chooses, more frequent measurements may be made over a one year period. These measurements may involve quarterly, monthly or weekly intervals. All radon measurements shall be made as described in paragraphs 2.1.2 through 2.1.6 except that for measurements made over a one year period, the requirement of paragraph 2.1.4(c) shall not apply. The mean radon flux from the pile shall be the arithmetic mean of the mean radon flux for each measurement period. The weather conditions, moisture content of the tailings and area of the pile covered by water existing at the time of the measurement shall be chosen so as to provide measurements representative of the long term radon flux from the pile and shall be subject to EPA review and approval.

2.1.2 Distribution of Flux Measurements. The distribution and number of radon flux measurements required on a pile will depend on clearly defined areas of the pile (called regions) that can have significantly different radon fluxes due to surface conditions. The mean radon flux shall be determined for each individual region of the pile. Regions that shall be considered for operating mill tailings piles are:

(a) Water covered areas,
(b) Water saturated areas (beaches),
(c) Dry top surface areas, and
(d) Sides, except where earthen material is used in dam construction.

For mill tailings after disposal the pile shall be considered to consist of only one region.

2.1.3 Number of Flux Measurements. Radon flux measurements shall be made within each region on the pile, except for those areas covered with water. Measurements shall be made at regularly spaced locations across the surface of the region, realizing that surface roughness will prohibit measurements in some areas of a region. The minimum number of flux measurements considered necessary to determine a representative mean radon flux value for each type of region on an operating pile is:

(a) Water covered area—no measurements required as radon flux is assumed to be zero.
(b) Water saturated beaches—100 radon flux measurements.
(c) Loose and dry top surface—100 radon flux measurements.
(d) Sides—100 radon flux measurements, except where earthern material is used in dam construction.

For a mill tailings pile after disposal which consists of only one region a minimum of 100 measurements are required.

2.1.4 Restrictions to Radon Flux Measurements. The following restrictions are placed on making radon flux measurements:

(a) Measurements shall not be initiated within 24 hours of a rainfall.
(b) If a rainfall occurs during the 24 hour measurements period, the measurement is invalid if the seal around the lip of the collector has washed away or if the collector is surrounded by water.
(c) Measurements shall not be performed if the ambient temperature is below 35°F or if the ground is frozen.

2.1.5 Areas of Pile Regions. The approximate area of each region of the pile shall be determined in units of square meters.

2.1.6 Radon Flux Measurement. Measuring radon flux involves the adsorption of radon on activated charcoal in a large-area collector. The radon collector is placed on the surface of the pile area to be measured and allowed to collect radon for a time period of 24 hours. The radon collected on the charcoal is measured by gamma-ray spectroscopy. The detailed measurement procedure provided in Appendix A of EPA 520/5–85–0029(1) shall be used to measure the radon flux on uranium mill tailings, except the surface of the tailings shall not be penetrated by the lip of the radon collector as directed in the procedure, rather the collector shall be

carefully positioned on a flat surface with soil or tailings used to seal the edge.

2.1.7 Calculations. The mean radon flux for each region of the pile and for the total pile shall be calculated as follows:

$$J = \frac{J_1A_1 + J_2A_2 + \ldots J_nA_n}{A_1 + A_2 + \ldots A_n}$$

within each region on the phosphogypsum stack, except for those areas covered with water. Measurements shall be made at

samples spiked with known quantities of radium-226.

E. Data Precision, Accuracy, and Completeness

Measurement Protocols", EPA 520/1–89–009, U.S. Environmental Protection Agency, Washington, DC. (1989).

(a) Determine the amount (in curies) used at facilities for the period under consideration. Radioactive materials in sealed packages that remain unopened, and

carefully positioned on a flat surface with soil or tailings used to seal the edge.

2.1.7 Calculations. The mean radon flux for each region of the pile and for the total pile shall be calculated and reported as follows:

(a) The individual radon flux calculations shall be made as provided in Appendix A EPA 86 (1). The mean radon flux for each region of the pile shall be calculated by summing all individual flux measurements for the region and dividing by the total number of flux measurements for the region.

(b) The mean radon flux for the total uranium mill tailings pile shall be calculated as follows.

$$J_s = \frac{J_1A_1 + \ldots J_nA_n \ldots J_tA_t}{A_t}$$

Where:
J_s = Mean flux for the total pile (pCi/m²-s)
J_i = Mean flux measured in region i (pCi/m²-s)
A_i = Area of region i (m²)
A_t = Total area of the pile (m²)

2.1.8 Reporting. The results of individual flux measurements, the approximate locations on the pile, and the mean radon flux for each region and the mean radon flux for the total stack shall be included in the emission test report. Any condition or unusual event that occurred during the measurements that could significantly affect the results should be reported.

3.0 Radon-222 Emissions from Phosphogypsum Stacks.

3.1 Measurement and Calculation of the Mean Radon Flux. Radon flux measurements shall be made on phosphogypsum stacks as described below:

3.1.1 Frequency of Measurements. A single set of radon flux measurements may be made after the phosphogypsum stack becomes inactive, or if the owner or operator chooses, more frequent measurements may be made over a one year period. These measurements may involve quarterly, monthly or weekly intervals. All radon measurements shall be made as described in paragraphs 3.1.2 through 3.1.6 except that for measurements made over a one year period, the requirement of paragraph 3.1.4(c) shall not apply. For measurements made over a one year period, the radon flux shall be the arithmetic mean of the mean radon flux for each measurement period.

3.1.2 Distribution and Number of Flux Measurements. The distribution and number of radon flux measurements required on a stack will depend on clearly defined areas of the stack (called regions) that can have significantly different radon fluxes due to surface conditions. The mean radon flux shall be determined for each individual region of the stack. Regions that shall be considered are:

(a) Water covered areas,
(b) Water saturated areas (beaches),
(c) Loose and dry top surface areas,
(d) Hard-packed roadways, and
(e) Sides.

3.1.3 Number of Flux Measurements. Radon flux measurements shall be made within each region on the phosphogypsum stack, except for those areas covered with water. Measurements shall be made at regularly spaced locations across the surface of the region, realizing that surface roughness will prohibit measurements in some areas of a region. The minimum number of flux measurements considered necessary to determine a representative mean radon flux value for each type of region is:

(a) Water covered area—no measurements required as radon flux is assumed to be zero,
(b) Water saturated beaches—50 radon flux measurements,
(c) Loose and dry top surface—100 radon flux measurements,
(d) Hard-packed roadways—50 radon flux measurements, and
(e) Sides—100 radon flux measurements.

A minimum of 300 measurements are required. A stack that has no water cover can be considered to consist of two regions, top and sides, and will require a minimum of only 200 measurements.

3.1.4 Restrictions to Radon Flux Measurements. The following restrictions are placed on making radon flux measurements:

(a) Measurements shall not be initiated within 24 hours of a rainfall.
(b) If a rainfall occurs during the 24 hour measurement period, the measurement is invalid if the seal around the lip of the collector has washed away or if the collector is surrounded by water.
(c) Measurements shall not be performed if the ambient temperature is below 35 °F or if the ground is frozen.

3.1.5 Areas of Stack Regions. The approximate area of each region of the stack shall be determined in units of square meters.

3.1.6 Radon Flux Measurements. Measuring radon flux involves the adsorption of radon on activated charcoal in a large-area collector. The radon collector is placed on the surface of the stack area to be measured and allowed to collect radon for a time period of 24 hours. The radon collected on the charcoal is measured by gamma-ray spectroscopy. The detailed measurement procedure provided in Appendix A of EPA 520/5–85–0029(1) shall be used to measure the radon flux on phosphogypsum stacks, except the surface of the phosphogypsum shall not be penetrated by the lip of the radon collector as directed in the procedure, rather the collector shall be carefully positioned on a flat surface with soil or phosphogypsum used to seal the edge.

3.1.7 Calculations. The mean radon flux for each region of the phosphogypsum stack and for the total stack shall be calculated and reported as follows:

(a) The individual radon flux calculations shall be made as provided in Appendix A EPA 86 (1). The mean radon flux for each region of the stack shall be calculated by summing all individual flux measurements for the region and dividing by the total number of flux measurements for the region.

(b) The mean radon flux for the total phosphogypsum stack shall be calculated as follows.

$$J_s = \frac{J_1A_1 + J_2A_2 + \ldots J_nA_n}{A_t}$$

Where:
J_s = Mean flux for the total stack (pCi/m²-s)
J_i = Mean flux measured in region i (pCi/m²-s)
A_i = Area of region i (m²)
A_t = Total area of the stack

3.1.8 Reporting. The results of individual flux measurements, the approximate locations on the stack, and the mean radon flux for each region and the mean radon flux for the total stack shall be included in the emission test report. Any condition or unusual event that occurred during the measurements that could significantly affect the results should be reported.

4.0 Quality Assurance Procedures for Measuring Rn–222 Flux

A. Sampling Procedures

Records of field activities and laboratory measurements shall be maintained. The following information shall be recorded for each charcoal canister measurement:

(a) Site
(b) Name of pile
(c) Sample location
(d) Sample ID number
(e) Date and time on
(f) Date and time off
(g) Observations of meteorological conditions and comments

Records shall include all applicable information associated with determining the sample measurement, calculations, observations, and comments.

B. Sample Custody

Custodial control of all charcoal samples exposed in the field shall be maintained in accordance with EPA chain-of-custody field procedures. A control record shall document all custody changes that occur between the field and laboratory personnel.

C. Calibration Procedures and Frequency

The radioactivity of two standard charcoal sources, each containing a carefully determined quantity of radium-226 uniformly distributed through 180g of activated charcoal, shall be measured. An efficiency factor is computed by dividing the average measured radioactivity of the two standard charcoal sources, minus the background, in cpm by the known radioactivity of the charcoal sources in dpm. The same two standard charcoal sources shall be counted at the beginning and at the end of each day's counting as a check of the radioactivity counting equipment. A background count using unexposed charcoal should also be made at the beginning and at the end of each counting day to check for inadvertent contamination of the detector or other changes affecting the background. The unexposed charcoal comprising the blank is changed with each new batch of charcoal used.

D. Internal Quality Control Checks and Frequency

The charcoal from every tenth exposed canister shall be recounted. Five percent of the samples analyzed shall be either blanks (charcoal having no radioactivity added) or samples spiked with known quantities of radium-226.

E. Data Precision, Accuracy, and Completeness

The precision, accuracy, and completeness of measurements and analyses shall be within the following limits for samples measuring greater than 1.0 pCi/m²—s.

(a) Precision: 10%
(b) Accuracy: ±10%
(c) Completeness: at least 85% of the measurements must yield useable results.

5.0 References

(1) Hartley, J.N. and Freeman, H.D., "Radon Flux Measurements on Gardinier and Royster Phosphogypsum Piles Near Tampa and Mulberry, Florida," U.S. Environmental Protection Agency Report, EPA 520/5–85–029, January 1986.

(2) Environmental Protection Agency, "Indoor Radon and Radon Decay Product Measurement Protocols", EPA 520/1–89–009, U.S. Environmental Protection Agency, Washington, DC. (1989).

9. By adding Appendix D to part 61 to read as follows:

Appendix D to Part 61—Methods for Estimating Radionuclide Emissions

1. Purpose and Background

Facility owners or operators may estimate radionuclide emissions to the atmosphere for dose calculations instead of measuring emissions. Particulate emissions from mill tailings piles should be estimated using the procedures listed in reference #2. All other emissions may be estimated by using the "Procedures" listed below, or using the method described in reference #1.

2. Procedure

To estimate emissions to the atmosphere:

(a) Determine the amount (in curies) used at facilities for the period under consideration. Radioactive materials in sealed packages that remain unopened, and have not leaked during the assessment period should not be included in the calculation.

(b) Multiply the amount used by the following factors which depend on the physical state of the radionuclide. They are:

(i) 1 for gases;
(ii) 10^{-3} for liquids or particulate solids; and
(iii) 10^{-6} for solids.

If any nuclide is heated to a temperature of 100 degrees Celsius or more, boils at a temperature of 100 degrees Celsius or less, or is intentionally dispersed into the environment, it must be considered to be a gas.

(c) If a control device is installed between the place of use and the point of release, multiply emissions from (b) by an adjustment factor. These are presented in Table 1.

TABLE 1.—ADJUSTMENT TO EMISSION FACTORS FOR EFFLUENT CONTROLS

Controls	Types of radionuclides controlled	Adjustment factor to emissions	Comments and conditions
HEPA filters	Particulates	0.01	Not applicable to gaseous radionuclides; periodic testing is prudent to ensure high removal efficiency.
Fabric filter	Particulates	0.1	Monitoring would be prudent to guard against tears in filter.
Sintered metal	Particulates	1	Insufficient data to make recommendation.
Activated carbon filters	Iodine gas	0.1	Efficiency is time dependent; monitoring is necessary to ensure effectiveness.
Douglas bags: Held one week or longer for decay	Xenon	0.5/wk	Based on xenon half-life of 5.3 days;
Douglas bags: Released within one week	Xenon	1	Provides no reduction of exposure to general public.
Venturi scrubbers	Particulates	0.05	Although venturis may remove gases, variability in gaseous removal efficiency dictates adjustment factor for particulates only.
	Gases	1	
Packed bed scrubbers	Gases	0.1	Not applicable to particulates.
Electrostatic precipitators	Particulates	0.05	Not applicable for gaseous radionuclides
Xenon traps	Xenon	0.1	Efficiency is time dependent; monitoring is necessary to ensure effectiveness.
Fume hoods	All	1	Provides no reduction to general public exposures.
Vent stacks	All	1	Generally provides no reduction of exposure to general public.

References

(1) Environmental Protection Agency, "A Guide for Determining Compliance with the Clean Air Act Standards for Radionuclides Emissions from NRC-Licensed and Non-DOE Federal Facilities", EPA 520/1–89–002, January 1989.

(2) Nuclear Regulatory Commission, "Methods for Estimating Radioactive and Toxic Airborne Source Terms for Uranium Milling Operations", U.S. Nuclear Regulatory Commission Regulatory Guide 3.59, March 1987.

10. By adding Appendix E part 61 to read as follows:

Appendix E to Part 61—Compliance Procedures Methods for Determining Compliance With Subpart I

1. Purpose and Background

This Appendix provides simplified procedures to reduce the burden on Nuclear Regulatory Commission (NRC) licensees, and non-Department of Energy Federal facilities in determining compliance with 40 CFR part 61, subpart I. The procedures consist of a series of increasingly more stringent steps, depending on the facility's potential to exceed the standard.

First, a facility can be found in compliance if the quantity of radioactive material possessed during the year is less than that listed in a table of annual possession quantities. A facility will also be in compliance if the average annual radionuclide emission concentration is less than that listed in a table of air concentration levels. If the facility is not in compliance by these tables, it can establish compliance by estimating a dose using screening procedure developed by the National Council on Radiation Protection and Measurements with a radiological source term derived using EPA approved emission factors. These procedures are described in a "Guide for Determining Compliance with the Clean Air Act Standards for Radionuclide Emissions From NRC-Licenced and Non-DOE Federal Facilities."

A user-friendly computer program called COMPLY has been developed to reduce the burden on the regulated community. The Agency has also prepared a "User's Guide for the COMPLY Code" to assist the regulated community in using the code, and in handling more complex situations such as multiple release points. The basis for these compliance procedures are provided in "Background Information Document: Procedures Approved for Demonstrating Compliance with 40 CFR part 61, subpart I". The compliance model is the highest level in the COMPLY computer code and provides for the most realistic assessment of dose by allowing the use of site-specific information.

2. Table of Annual Possession Quantity

(a) Table 1 may be used for determining if facilities are in compliance with the standard. The possession table can only be used if the following conditions are met:

(i) No person lives within 10 meters of any release point; and

(ii) No milk, meat, or vegetables are produced within 100 meters of any release point.

(b) Procedures described in Reference (1) shall be used to determine compliance or exemption from reporting by use of Table 2.

TABLE 1.—ANNUAL POSSESSION QUANTITIES FOR ENVIRONMENTAL COMPLIANCE

Radionuclide	Possession quantity (curies)
Actinium-228	10
Americium-241	0.01
Americium-242m	0.01
Americium-243	0.01
Antimony-124	10
Antimony-125	10
Barium-133	10
Barium-140	10
Bismuth-210	0.1
Bismuth-212	10
Bismuth-214	10
Cadmium-109	10
Cadmium-113	0.01
Calcium-45	10
Californium-252	0.01
Carbon-14	10
Cerium-139	10
Cerium-141	10
Cerium-144	1
Cesium-134	10
Cesium-135	10
Cesium-137	10
Chlorine-36	10
Chromium-51	10
Cobalt-56	10
Cobalt-57	10
Cobalt-58	10
Cobalt-60	10
Curium-242	0.01
Curium-243	0.01
Curium-244	0.01
Curium-245	0.01
Curium-246	0.01
Curium-247	0.01
Curium-248	0.01
Europium-152	10
Europium-154	10
Europium-155	10
Gadolinium-153	10
Germanium-68	10
Gold-195	10
Gold-198	10
Gold-199	10
Hafnium-172	0.1
Hafnium-181	10
Holmium-166	10
Hydrogen-3	10
Indium-113m	10
Indium-114m	10
Indium-115	10
Iodine-123	10
Iodine-125	10
Iodine-126	10
Iodine-129	10
Iodine-131	10
Iodine-133	10
Iodine-135	10
Iridium-192	10
Iron-55	10
Iron-59	10
Krypton-85	10
Lanthanum-140	10
Lead-210	0.1
Lead-212	10
Lutetium-177	10
Manganese-54	10
Mercury-197	10
Mercury-203	10
Molybdenum-99	10
Neodymium-147	10
Neodymium-149	10
Nickel-59	10
Nickel-63	10
Niobium-93m	10
Niobium-94	10
Niobium-95	10
Niobium-97	10
Osmium-185	10
Osmium-191	10
Osmium-191m	10
Osmium-193	10
Palladium-103	10
Palladium-109	10
Phosphorus-32	10
Platinum-191	10
Platinum-193m	10
Platinum-195m	10
Platinum-197	10
Platinum-197m	10
Plutonium-236	0.01
Plutonium-238	0.01
Plutonium-239	0.01
Plutonium-240	0.01
Plutonium-241	0.01
Plutonium-242	0.01
Plutonium-244	0.01
Polonium-208	0.1
Polonium-209	0.1
Polonium-210	0.1
Potassium-42	10
Potassium-43	10
Potassium-45	10
Praseodymium-142	10
Praseodymium-143	10
Promethium-145	10
Promethium-147	10
Promethium-149	10
Protactinium-230	10
Protactinium-231	0.01
Protactinium-233	10
Radium-223	0.1
Radium-224	0.1
Radium-225	0.1
Radium-226	0.1
Radium-228	0.1
Rhenium-186	10
Rhenium-188	10
Rhenium-189	10
Rhodium-103m	10
Rhodium-105	10
Rubidium-81	10
Rubidium-86	10
Rubidium-87	10
Ruthenium-97	10
Ruthenium-103	10
Ruthenium-105	10
Ruthenium-106	1
Samarium-145	10
Samarium-147	10
Samarium-151	10
Samarium-153	10
Scandium-44	10
Scandium-46	10
Scandium-47	10
Scandium-48	10
Selenium-75	10
Silicon-31	10
Silicon-32	10
Silver-105	10
Silver-110m	10
Silver-111	10
Sodium-22	10
Sodium-24	10
Strontium-85	10
Strontium-89	10
Strontium-90	10
Strontium-91	10
Strontium-92	10
Sulfur-35	10
Tantalum-182	10
Technetium-96	10
Technetium-97	10
Technetium-97m	10
Technetium-99	10
Technetium-99m	10
Tellurium-123m	10
Tellurium-125m	10
Tellurium-127	10
Tellurium-127m	10
Tellurium-129	10
Tellurium-129m	10
Tellurium-131m	10
Tellurium-132	10
Terbium-160	10
Thallium-200	10
Thallium-201	10
Thallium-202	10
Thallium-204	10
Thorium-227	0.1
Thorium-228	0.1
Thorium-229	0.1
Thorium-230	0.1
Thorium-231	10
Thorium-232	0.1
Thorium-234	10
Thulium-170	10
Thulium-171	10
Tin-113	10
Tin-123	10
Tin-125	10
Tin-126	10
Titanium-44	10
Tungsten-181	10
Tungsten-185	10
Tungsten-187	10
Uranium-230	0.1
Uranium-231	10
Uranium-232	0.1
Uranium-233	0.1
Uranium-234	0.1
Uranium-235	0.1
Uranium-236	0.1
Uranium-238	0.1
Vanadium-48	10
Xenon-133	10
Xenon-135	10
Ytterbium-175	10
Yttrium-88	10
Yttrium-90	10
Yttrium-91	10
Yttrium-92	10
Yttrium-93	10
Zinc-65	10
Zinc-69	10
Zinc-69m	10
Zirconium-93	10
Zirconium-95	10
Zirconium-97	10

TABLE 1.—ANNUAL POSSESSION QUANTITIES FOR ENVIRONMENTAL COMPLIANCE—Continued

Radionuclide	Possession quantity (curies)
Any single radionuclide not listed above with decay mode other than alpha emission or spontaneous fission	10
Any single radionuclide not listed above which decays by alpha emission or spontaneous fission	0.01

TABLE 1.—ANNUAL POSSESSION QUANTITIES FOR ENVIRONMENTAL COMPLIANCE—Continued

Radionuclide	Possession quantity (curies)
Any combination of radionuclides	1

TABLE 1.—ANNUAL POSSESSION QUANTITIES FOR ENVIRONMENTAL COMPLIANCE—Continued

Radionuclide	Possession quantity (curies)
Any combination of radionuclides	1

TABLE 1.—ANNUAL POSSESSION QUANTITIES FOR ENVIRONMENTAL COMPLIANCE

[Annual Possession Quantities (Ci/yr)]

Radionuclide	Gaseous form*	Liquid/powder forms	Solid form*
Ac-225	9.6E-05	9.6E-02	9.6E+01
Ac-227	1.6E-07	1.6E-04	1.6E-01
Ac-228	3.4E-03	3.4E+00	3.4E+03
Ag-106	1.6E+00	1.6E+03	1.6E+06
Ag-106m	2.6E-03	2.6E+00	2.6E+03
Ag-108m	6.5E-06	6.5E-03	6.5E+00
Ag-110m	9.4E-05	9.4E-02	9.4E+01
Ag-111	6.7E-02	6.7E+01	6.7E+04
Al-26	4.0E-06	4.0E-03	4.0E+00
Am-241	2.3E-06	2.3E-03	2.3E+00
Am-242	1.8E-02	1.8E+01	1.8E+04
Am-242m	2.5E-06	2.5E-03	2.5E+00
Am-243	2.3E-06	2.3E-03	2.3E+00
Am-244	4.6E-02	4.6E+01	4.6E+04
Am-245	7.0E+00	7.0E+03	7.0E+06
Am-246	9.8E-01	9.8E+02	9.8E+05
Ar-37	1.4E+06		
Ar-41	1.4E+00		
As-72	2.9E-02	2.9E+01	2.9E+04
As-73	6.0E-02	6.0E+01	6.0E+04
As-74	4.3E-03	4.3E+00	4.3E+03
As-76	8.8E-02	8.8E+01	8.8E+04
As-77	7.9E-01	7.9E+02	7.9E+05
At-211	1.0E-02	1.0E+01	1.0E+04
Au-193	4.2E-01	4.2E+02	4.2E+05
Au-194	3.5E-02	3.5E+01	3.5E+04
Au-195	3.3E-03	3.3E+00	3.3E+03
Au-198	4.6E-02	4.6E+01	4.6E+04
Au-199	1.5E-01	1.5E+02	1.5E+05
Ba-131	1.0E-02	1.0E+01	1.0E+04
Ba-133	4.9E-05	4.9E-02	4.9E+01
Ba-133m	9.3E-02	9.3E+01	9.3E+04
Ba-135m	5.8E-01	5.8E+02	5.8E+05
Ba-139	4.7E+00	4.7E+03	4.7E+06
Ba-140	2.1E-03	2.1E+00	2.1E+03
Ba-141	1.3E+00	1.3E+03	1.3E+06
Ba-142	1.1E+00	1.1E+03	1.1E+06
Be-7	2.3E-02	2.3E+01	2.3E+04
Be-10	3.0E-03	3.0E+00	3.0E+03
Bi-206	3.1E-03	3.1E+00	3.1E+03
Bi-207	8.4E-06	8.4E-03	8.4E+00
Bi-210	4.2E-03	4.2E+00	4.2E+03
Bi-212	4.7E-02	4.7E+01	4.7E+04
Bi-213	6.0E-02	6.0E+01	6.0E+04
Bi-214	1.4E-01	1.4E+02	1.4E+05
Bk-249	7.0E-04	7.0E-01	7.0E+02
Bk-250	1.0E-01	1.0E+02	1.0E+05
Br-77	7.5E-02	7.5E+01	7.5E+04
Br-80	1.2E+01	1.2E+04	1.2E+07
Br-80m	1.5E+00	1.5E+03	1.5E+06
Br-82	1.6E-02	1.6E+01	1.6E+04
Br-83	9.9E+00	9.9E+03	9.9E+06
Br-84	5.6E-01	5.6E+02	5.6E+05
C-11	1.3E+00	1.3E+03	1.3E+06
C-14	2.9E-01	2.9E+02	2.9E+05
Ca-41	2.7E-02	2.7E+01	2.7E+04
Ca-45	5.8E-02	5.8E+01	5.8E+04
Ca-47	1.1E-02	1.1E+01	1.1E+04
Cd-109	5.0E-03	5.0E+00	5.0E+03
Cd-113	3.3E-04	3.3E-01	3.3E+02
Cd-113m	4.4E-04	4.4E-01	4.4E+02
Cd-115	5.4E-02	5.4E+01	5.4E+04
Cd-115m	1.0E-02	1.0E+01	1.0E+04
Cd-117	5.6E-02	5.6E+01	5.6E+04
Cd-117m	1.3E-01	1.3E+02	1.3E+05
Ce-139	2.6E-03	2.6E+00	2.6E+03
Ce-141	1.8E-02	1.8E+01	1.8E+04
Ce-143	1.0E-01	1.0E+02	1.0E+05
Ce-144	1.7E-03	1.7E+00	1.7E+03
Cf-248	2.0E-05	2.0E-02	2.0E+01
Cf-249	1.7E-06	1.7E-03	1.7E+00
Cf-250	4.0E-06	4.0E-03	4.0E+00
Cf-251	1.7E-06	1.7E-03	1.7E+00
Cf-252	6.4E-06	6.4E-03	6.4E+00
Cf-253	3.3E-04	3.3E-01	3.3E+02

TABLE 1.—ANNUAL POSSESSION QUANTITIES FOR ENVIRONMENTAL COMPLIANCE—Continued

[Annual Possession Quantities (Ci/yr)]

Radionuclide	Gaseous form*	Liquid/powder forms	Solid form*
Cf-254	3.6E-06	3.6E-03	3.6E+00
Cl-36	1.9E-04	1.9E-01	1.9E+02
Cl-38	6.5E-01	6.5E+02	6.5E+05
Cm-242	6.0E-05	6.0E-02	6.0E+01
Cm-243	3.3E-06	3.3E-03	3.3E+00
Cm-244	4.2E-06	4.2E-03	4.2E+00
Cm-245	2.3E-06	2.3E-03	2.3E+00
Cm-246	2.3E-06	2.3E-03	2.3E+00
Cm-247	2.3E-06	2.3E-03	2.3E+00
Cm-248	6.4E-07	6.4E-04	6.4E-01
Cm-249	4.6E+00	4.6E+03	4.6E+06
Cm-250	1.1E-07	1.1E-04	1.1E-01
Co-56	2.4E-04	2.4E-01	2.4E+02
Co-57	1.6E-03	1.6E+00	1.6E+03
Co-58	9.0E-04	9.0E-01	9.0E+02
Co-58m	1.7E-01	1.7E+02	1.7E+05
Co-60	1.6E-05	1.6E-02	1.6E+01
Co-60m	4.0E+00	4.0E+03	4.0E+06
Co-61	3.8E+00	3.8E+03	3.8E+06
Cr-49	9.0E-01	9.0E+02	9.0E+05
Cr-51	6.3E-02	6.3E+01	6.3E+04
Cs-129	1.5E-01	1.5E+02	1.5E+05
Cs-131	2.8E-01	2.8E+02	2.8E+05
Cs-132	1.3E-02	1.3E+01	1.3E+04
Cs-134	5.2E-05	5.2E-02	5.2E+01
Cs-134m	3.2E-01	3.2E+02	3.2E+05
Cs-135	2.4E-02	2.4E+01	2.4E+04
Cs-136	2.1E-03	2.1E+00	2.1E+03
Cs-137	2.3E-05	2.3E-02	2.3E+01
Cs-138	4.4E-01	4.4E+02	4.4E+05
Cu-61	4.0E-01	4.0E+02	4.0E+05
Cu-64	5.2E-01	5.2E+02	5.2E+05
Cu-67	1.5E-01	1.5E+02	1.5E+05
Dy-157	4.4E-01	4.4E+02	4.4E+05
Dy-165	5.6E+00	5.6E+03	5.6E+06
Dy-166	8.1E-02	8.1E+01	8.1E+04
Er-169	4.0E-01	4.0E+02	4.0E+05
Er-171	3.6E-01	3.6E+02	3.6E+05
Es-253	2.6E-04	2.6E-01	2.6E+02
Es-254	2.3E-05	2.3E-02	2.3E+01
Es-254m	1.8E-03	1.8E+00	1.8E+03
Eu-152	1.6E-05	1.6E-02	1.6E+01
Eu-152m	3.5E-01	3.5E+02	3.5E+05
Eu-154	2.0E-05	2.0E-02	2.0E+01
Eu-155	5.2E-04	5.2E-01	5.2E+02
Eu-156	3.2E-03	3.2E+00	3.2E+03
F-18	5.6E-01	5.6E+02	5.6E+05
Fe-52	4.9E-02	4.9E+01	4.9E+04
Fe-55	1.4E-01	1.4E+02	1.4E+05
Fe-59	1.3E-03	1.3E+00	1.3E+03
Fm-254	1.8E-02	1.8E+01	1.8E+04
Fm-255	4.0E-03	4.0E+00	4.0E+03
Fr-223	1.4E-01	1.4E+02	1.4E+05
Ga-66	5.6E-02	5.6E+01	5.6E+04
Ga-67	1.1E-01	1.1E+02	1.1E+05
Ga-68	7.6E-01	7.6E+02	7.6E+05
Ga-72	3.6E-02	3.6E+01	3.6E+04
Gd-152	4.4E-06	4.4E-03	4.4E+00
Gd-153	2.0E-03	2.0E+00	2.0E+03
Gd-159	6.8E-01	6.8E+02	6.8E+05
Ge-68	2.3E-04	2.3E-01	2.3E+02
Ge-71	2.6E+00	2.6E+03	2.6E+06
Ge-77	1.0E-01	1.0E+02	1.0E+05
H-3	1.5E+01	1.5E+04	1.5E+07
Hf-181	2.5E-03	2.5E+00	2.5E+03
Hg-193m	9.5E-02	9.5E+01	9.5E+04
Hg-197	2.4E-01	2.4E+02	2.4E+05
Hg-197m	2.5E-01	2.5E+02	2.5E+05
Hg-203	5.2E-03	5.2E+00	5.2E+03
Ho-166	2.8E-01	2.8E+02	2.8E+05
Ho-166m	6.0E-06	6.0E-03	6.0E+00
I-123	4.9E-01	4.9E+02	4.9E+05
I-124	9.3E-03	9.3E+00	9.3E+03
I-125	6.2E-03	6.2E+00	6.2E+03

TABLE 1.—ANNUAL POSSESSION QUANTITIES FOR ENVIRONMENTAL COMPLIANCE—Continued

[Annual Possession Quantities (Ci/yr)]

Radionuclide	Gaseous form*	Liquid/powder forms	Solid form*
I-126	3.7E-03	3.7E+00	3.7E+03
I-128	9.3E+00	9.3E+03	9.3E+06
I-129	2.6E-04	2.6E-01	2.6E+02
I-130	4.6E-02	4.6E+01	4.6E+04
I-131	6.7E-03	6.7E+00	6.7E+03
I-132	2.0E-01	2.0E+02	2.0E+05
I-133	6.7E-02	6.7E+01	6.7E+04
I-134	3.2E-01	3.2E+02	3.2E+05
I-135	1.2E-01	1.2E+02	1.2E+05
In-111	4.9E-02	4.9E+01	4.9E+04
In-113m	2.1E+00	2.1E+03	2.1E+06
In-114m	4.9E-03	4.9E+00	4.9E+03
In-115	2.7E-04	2.7E-01	2.7E+02
In-115m	1.4E+00	1.4E+03	1.4E+06
In-116m	3.5E-01	3.5E+02	3.5E+05
In-117	1.3E+00	1.3E+03	1.3E+06
In-117m	7.6E-02	7.6E+01	7.6E+04
Ir-190	3.5E-03	3.5E+00	3.5E+03
Ir-192	9.7E-04	9.7E-01	9.7E+02
Ir-194	2.5E-01	2.5E+02	2.5E+05
Ir-194m	1.5E-04	1.5E-01	1.5E+02
K-40	6.8E-05	6.8E-02	6.8E+01
K-42	2.9E-01	2.9E+02	2.9E+05
K-43	6.0E-02	6.0E+01	6.0E+04
K-44	4.9E-01	4.9E+02	4.9E+05
Kr-79	7.0E+00		
Kr-81	1.8E+02		
Kr-83m	2.0E+04		
Kr-85	8.4E+02		
Kr-85m	1.1E+01		
Kr-87	2.0E+00		
Kr-88	4.2E-01		
La-140	1.6E-02	1.6E+01	1.6E+04
La-141	1.1E+00	1.1E+03	1.1E+06
La-142	2.3E-01	2.3E+02	2.3E+05
Lu-177	1.4E-01	1.4E+02	1.4E+05
Lu-177m	3.5E-04	3.5E-01	3.5E+02
Mg-28	2.1E-02	2.1E+01	2.1E+04
Mn-52	3.5E-03	3.5E+00	3.5E+03
Mn-52m	5.2E-01	5.2E+02	5.2E+05
Mn-53	5.7E-02	5.7E+01	5.7E+04
Mn-54	2.5E-04	2.5E-01	2.5E+02
Mn-56	2.5E-01	2.5E+02	2.5E+05
Mo-93	1.5E-03	1.5E+00	1.5E+03
Mo-99**	5.7E-02	5.7E+01	5.7E+04
Mo-101	8.4E-01	8.4E+02	8.4E+05
Na-22	3.2E-05	3.2E-02	3.2E+01
Na-24	2.6E-02	2.6E+01	2.6E+04
Nb-90	2.5E-02	2.5E+01	2.5E+04
Nb-93m	1.2E-02	1.2E+01	1.2E+04
Nb-94	6.0E-06	6.0E-03	6.0E+00
Nb-95	2.3E-03	2.3E+00	2.3E+03
Nb-95m	2.0E-02	2.0E+01	2.0E+04
Nb-96	2.5E-02	2.5E+01	2.5E+04
Nb-97	1.0E+00	1.0E+03	1.0E+06
Nd-147	3.0E-02	3.0E+01	3.0E+04
Nd-149	1.1E+00	1.1E+03	1.1E+06
Ni-56	2.0E-03	2.0E+00	2.0E+03
Ni-57	2.1E-02	2.1E+01	2.1E+04
Ni-59	2.2E-02	2.2E+01	2.2E+04
Ni-63	1.4E-01	1.4E+02	1.4E+05
Ni-65	7.0E-01	7.0E+02	7.0E+05
Np-235	3.0E-02	3.0E+01	3.0E+04
Np-237	1.8E-06	1.8E-03	1.8E+00
Np-238	1.9E-02	1.9E+01	1.9E+04
Np-239	1.0E-01	1.0E+02	1.0E+05
Np-240	6.5E-01	6.5E+02	6.5E+05
Np-240m	4.7E+00	4.7E+03	4.7E+06
Os-185	9.2E-04	9.2E-01	9.2E+02
Os-191m	9.0E-01	9.0E+02	9.0E+05
Os-191	3.8E-02	3.8E+01	3.8E+04
Os-193	2.9E-01	2.9E+02	2.9E+05
P-32	1.7E-02	1.7E+01	1.7E+04
P-33	1.2E-01	1.2E+02	1.2E+05

TABLE 1.—ANNUAL POSSESSION QUANTITIES FOR ENVIRONMENTAL COMPLIANCE—Continued

[Annual Possession Quantities (Ci/yr)]

Radionuclide	Gaseous form*	Liquid/powder forms	Solid form*
Pa-230	6.3E-04	6.3E-01	6.3E+02
Pa-231	6.3E-07	6.3E-04	6.3E-01
Pa-233	9.3E-03	9.3E+00	9.3E+03
Pa-234	9.3E-02	9.3E+01	9.3E+04
Pb-203	6.3E-02	6.3E+01	6.3E+04
Pb-205	1.2E-02	1.2E+01	1.2E+04
Pb-209	1.1E+01	1.1E+04	1.1E+07
Pb-210	5.5E-05	5.5E-02	5.5E+01
Pb-211	1.2E-01	1.2E+02	1.2E+05
Pb-212	6.0E-03	6.0E+00	6.0E+03
Pb-214	1.2E-01	1.2E+02	1.2E+05
Pd-103	2.1E-01	2.1E+02	2.1E+05
Pd-107	8.2E-02	8.2E+01	8.2E+04
Pd-109	9.4E-01	9.4E+02	9.4E+05
Pm-143	7.6E-04	7.6E-01	7.6E+02
Pm-144	1.1E-04	1.1E-01	1.1E+02
Pm-145	5.2E-04	5.2E-01	5.2E+02
Pm-146	4.4E-05	4.4E-02	4.4E+01
Pm-147	2.6E-02	2.6E+01	2.6E+04
Pm-148	1.7E-02	1.7E+01	1.7E+04
Pm-148m	7.6E-04	7.6E-01	7.6E+02
Pm-149	2.8E-01	2.8E+02	2.8E+05
Pm-151	1.2E-01	1.2E+02	1.2E+05
Po-210	9.3E-05	9.3E-02	9.3E+01
Pr-142	2.8E-01	2.8E+02	2.8E+05
Pr-143	1.0E-01	1.0E+02	1.0E+05
Pr-144	1.5E+01	1.5E+04	1.5E+07
Pt-191	6.4E-02	6.4E+01	6.4E+04
Pt-193	2.1E-02	2.1E+01	2.1E+04
Pt-193m	4.8E-01	4.8E+02	4.8E+05
Pt-195m	1.4E-01	1.4E+02	1.4E+05
Pt-197	1.1E+00	1.1E+03	1.1E+06
Pt-197m	3.6E+00	3.6E+03	3.6E+06
Pu-236	7.0E-06	7.0E-03	7.0E+00
Pu-237	2.3E-02	2.3E+01	2.3E+04
Pu-238	2.7E-06	2.7E-03	2.7E+00
Pu-239	2.5E-06	2.5E-03	2.5E+00
Pu-240	2.5E-06	2.5E-03	2.5E+00
Pu-241	1.3E-04	1.3E-01	1.3E+02
Pu-242	2.5E-06	2.5E-03	2.5E+00
Pu-243	3.8E+00	3.8E+03	3.8E+06
Pu-244	2.4E-06	2.4E-03	2.4E+00
Pu-245	2.1E-01	2.1E+02	2.1E+05
Pu-246	4.8E-03	4.8E+00	4.8E+03
Ra-223	1.3E-04	1.3E-01	1.3E+02
Ra-224	3.2E-04	3.2E-01	3.2E+02
Ra-225	1.3E-04	1.3E-01	1.3E+02
Ra-226	5.5E-06	5.5E-03	5.5E+00
Ra-228	1.3E-05	1.3E-02	1.3E+01
Rb-81	4.2E-01	4.2E+02	4.2E+05
Rb-83	1.4E-03	1.4E+00	1.4E+03
Rb-84	2.0E-03	2.0E+00	2.0E+03
Rb-86	1.7E-02	1.7E+01	1.7E+04
Rb-87	1.0E-02	1.0E+01	1.0E+04
Rb-88	1.7E+00	1.7E+03	1.7E+06
Rb-89	6.4E-01	6.4E+02	6.4E+05
Re-184	1.8E-03	1.8E+00	1.8E+03
Re-184m	3.6E-04	3.6E-01	3.6E+02
Re-186	1.9E-01	1.9E+02	1.9E+05
Re-187	9.3E+00	9.3E+03	9.3E+06
Re-188	3.7E-01	3.7E+02	3.7E+05
Rh-103m	1.7E+02	1.7E+05	1.7E+08
Rh-105	3.4E-01	3.4E+02	3.4E+05
Ru-97	8.3E-02	8.3E+01	8.3E+04
Ru-103	3.1E-03	3.1E+00	3.1E+03
Ru-105	2.9E-01	2.9E+02	2.9E+05
Ru-106	5.9E-04	5.9E-01	5.9E+02
S-35	7.5E-02	7.5E+01	7.5E+04
Sb-117	2.0E+00	2.0E+03	2.0E+06
Sb-122	3.9E-02	3.9E+01	3.9E+04
Sb-124	6.0E-04	6.0E-01	6.0E+02
Sb-125	1.4E-04	1.4E-01	1.4E+02
Sb-126	1.8E-03	1.8E+00	1.8E+03
Sb-126m	7.6E-01	7.6E+02	7.6E+05

TABLE 1.—ANNUAL POSSESSION QUANTITIES FOR ENVIRONMENTAL COMPLIANCE—Continued

[Annual Possession Quantities (Ci/yr)]

Radionuclide	Gaseous form*	Liquid/powder forms	Solid form*
Sb-127	2.0E-02	2.0E+01	2.0E+04
Sb-129	1.8E-01	1.8E+02	1.8E+05
Sc-44	1.4E-01	1.4E+02	1.4E+05
Sc-46	4.0E-04	4.0E-01	4.0E+02
Sc-47	1.1E-01	1.1E+02	1.1E+05
Sc-48	1.1E-02	1.1E+01	1.1E+04
Sc-49	1.0E+01	1.0E+04	1.0E+07
Se-73	1.6E-01	1.6E+02	1.6E+05
Se-75	1.1E-03	1.1E+00	1.1E+03
Se-79	6.9E-03	6.9E+00	6.9E+03
Si-31	4.7E+00	4.7E+03	4.7E+06
Si-32	7.2E-04	7.2E-01	7.2E+02
Sm-147	1.4E-05	1.4E-02	1.4E+01
Sm-151	3.5E-02	3.5E+01	3.5E+04
Sm-153	2.4E-01	2.4E+02	2.4E+05
Sn-113	1.9E-03	1.9E+00	1.9E+03
Sn-117m	2.3E-02	2.3E+01	2.3E+04
Sn-119m	2.8E-02	2.8E+01	2.8E+04
Sn-123	1.8E-02	1.8E+01	1.8E+04
Sn-125	7.2E-03	7.2E+00	7.2E+03
Sn-126	4.7E-06	4.7E-03	4.7E+00
Sr-82	1.9E-03	1.9E+00	1.9E+03
Sr-85	1.9E-03	1.9E+00	1.9E+03
Sr-85m	1.5E+00	1.5E+03	1.5E+06
Sr-87m	1.2E+00	1.2E+03	1.2E+06
Sr-89	2.1E-02	2.1E+01	2.1E+04
Sr-90	5.2E-04	5.2E-01	5.2E+02
Sr-91	1.2E-01	1.2E+02	1.2E+05
Sr-92	2.5E-01	2.5E+02	2.5E+05
Ta-182	4.4E-04	4.4E-01	4.4E+02
Tb-157	2.2E-03	2.2E+00	2.2E+03
Tb-160	8.4E-04	8.4E-01	8.4E+02
Tc-95	9.0E-02	9.0E+01	9.0E+04
Tc-95m	1.4E-03	1.4E+00	1.4E+03
Tc-96	5.6E-03	5.6E+00	5.6E+03
Tc-96m	7.0E-01	7.0E+02	7.0E+05
Tc-97	1.5E-03	1.5E+00	1.5E+03
Tc-97m	7.2E-02	7.2E+01	7.2E+04
Tc-98	6.4E-06	6.4E-03	6.4E+00
Tc-99	9.0E-03	9.0E+00	9.0E+03
Tc-99m	1.4E+00	1.4E+03	1.4E+06
Tc-101	3.8E+00	3.8E+03	3.8E+06
Te-121	6.0E-03	6.0E+00	6.0E+03
Te-121m	5.3E-04	5.3E-01	5.3E+02
Te-123	1.2E-03	1.2E+00	1.2E+03
Te-123m	2.7E-03	2.7E+00	2.7E+03
Te-125m	1.5E-02	1.5E+01	1.5E+04
Te-127	2.9E+00	2.9E+03	2.9E+06
Te-127m	7.3E-03	7.3E+00	7.3E+03
Te-129	6.5E+00	6.5E+03	6.5E+06
Te-129m	6.1E-03	6.1E+00	6.1E+03
Te-131	9.4E-01	9.4E+02	9.4E+05
Te-131m	1.8E-02	1.8E+01	1.8E+04
Te-132	6.2E-03	6.2E+00	6.2E+03
Te-133	1.2E+00	1.2E+03	1.2E+06
Te-133m	2.9E-01	2.9E+02	2.9E+05
Te-134	4.4E-01	4.4E+02	4.4E+05
Th-226	3.0E-02	3.0E+01	3.0E+04
Th-227	6.4E-05	6.4E-02	6.4E+01
Th-228	2.9E-06	2.9E-03	2.9E+00
Th-229	4.9E-07	4.9E-04	4.9E-01
Th-230	3.2E-06	3.2E-03	3.2E+00
Th-231	8.4E-01	8.4E+02	8.4E+05
Th-232	6.0E-07	6.0E-04	6.0E-01
Th-234	2.0E-02	2.0E+01	2.0E+04
Ti-44	5.2E-06	5.2E-03	5.2E+00
Ti-45	4.0E-01	4.0E+02	4.0E+05
Tl-200	4.4E-02	4.4E+01	4.4E+04
Tl-201	1.8E-01	1.8E+02	1.8E+05
Tl-202	1.0E-02	1.0E+01	1.0E+04
Tl-204	2.5E-02	2.5E+01	2.5E+04
Tm-170	2.4E-02	2.4E+01	2.4E+04
Tm-171	5.9E-02	5.9E+01	5.9E+04
U-230	5.0E-05	5.0E-02	5.0E+01

TABLE 1.—ANNUAL POSSESSION QUANTITIES FOR ENVIRONMENTAL COMPLIANCE—Continued

[Annual Possession Quantities (Ci/yr)]

Radionuclide	Gaseous form*	Liquid/powder forms	Solid form*
U-231	1.4E-01	1.4E+02	1.4E+05
U-232	1.3E-06	1.3E-03	1.3E+00
U-233	7.6E-06	7.6E-03	7.6E+00
U-234	7.6E-06	7.6E-03	7.6E+00
U-235	7.0E-06	7.0E-03	7.0E+00
U-236	8.4E-06	8.4E-03	8.4E+00
U-237	4.7E-02	4.7E+01	4.7E+04
U-238	8.6E-06	8.6E-03	8.6E+00
U-239	6.3E+00	6.3E+03	6.3E+06
U-240	1.8E-01	1.8E+02	1.8E+05
V-48	1.4E-03	1.4E+00	1.4E+03
V-49	1.3E+00	1.3E+03	1.3E+06
W-181	1.1E-02	1.1E+01	1.1E+04
W-185	1.6E-01	1.6E+02	1.6E+05
W-187	1.1E-01	1.1E+02	1.1E+05
W-188	1.0E-02	1.0E+01	1.0E+04
Xe-122	7.6E-02	7.6E+01	7.6E+04
Xe-123	1.6E+00	1.6E+03	1.6E+06
Xe-125	6.0E-01		
Xe-127	7.0E+00		
Xe-129m	7.6E+01		
Xe-131m	2.2E+02		
Xe-133	5.2E+01		
Xe-133m	6.0E+01		
Xe-135	7.6E+00		
Xe-135m	4.2E+00		
Xe-138	9.9E-01		
Y-86	2.8E-02	2.8E+01	2.8E+04
Y-87	2.3E-02	2.3E+01	2.3E+04
Y-88	2.5E-04	2.5E-01	2.5E+02
Y-90	1.1E-01	1.1E+02	1.1E+05
Y-90m	4.3E-01	4.3E+02	4.3E+05
Y-91	1.8E-02	1.8E+01	1.8E+04
Y-91m	1.6E+00	1.6E+03	1.6E+06
Y-92	7.0E-01	7.0E+02	7.0E+05
Y-93	3.8E-01	3.8E+02	3.8E+05
Yb-169	5.5E-03	5.5E+00	5.5E+03
Yb-175	2.1E-01	2.1E+02	2.1E+05
Zn-62	8.6E-02	8.6E+01	8.6E+04
Zn-65	4.4E-04	4.4E-01	4.4E+02
Zn-69	2.7E+01	2.7E+04	2.7E+07
Zn-69m	2.0E-01	2.0E+02	2.0E+05
Zr-86	2.4E-02	2.4E+01	2.4E+04
Zr-88	2.7E-04	2.7E-01	2.7E+02
Zr-89	1.6E-02	1.6E+01	1.6E+04
Zr-93	2.8E-03	2.8E+00	2.8E+03
Zr-95	6.4E-04	6.4E-01	6.4E+02
Zr-97	4.6E-02	4.6E+01	4.6E+04

*Radionuclides boiling at 100 °C or less, or exposed to a temperature of 100 °C, must be considered a gas. Capsules containing radionuclides in liquid or powder form can be considered to be solids.

**Mo-99 contained in a generator to produce Technetium-99 can be assumed to be a solid.

3. Table of Concentration Levels

(a) Table 2 may be used for determining if facilities are in compliance with the standard.

1. The concentration table as applied to emission estimates can only be used if all releases are from point sources and concentrations have been measured at the stack or vent using EPA-approved methods, and the distance between each stack or vent and the nearest resident is greater than 3 times the diameter of the stack or vent. Procedures provided in Ref. (1) shall be used to determine compliance or exemption from reporting by use of Table 2.

2. The concentration table may be used to determine compliance with the standard based on environmental measurements

TABLE 2.—CONCENTRATION LEVELS FOR ENVIRONMENTAL COMPLIANCE—Continued

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TABLE 2.—CONCENTRATION LEVELS FOR ENVIRONMENTAL COMPLIANCE—Continued

TABLE 2.—CONCENTRATION LEVELS FOR ENVIRONMENTAL COMPLIANCE—Continued

6. References

(1) Environmental Protection Agency, "A Guide for Determining Compliance with the

2. The concentration table may be used to determine compliance with the standard based on environmental measurements provided these measurements are made in conformance with the requirements of § 61.107(b)(5).

4. NCRP Screening Model

The procedures described in Reference (4) may be used to determine doses to members of the general public from emissions of radionuclides to the atmosphere. Both the total dose from all radionuclides emitted, and the dose caused by radioactive iodine must be considered in accordance with the procedures in Ref. (1).

5. The COMPLY Computer Code

The COMPLY computer code may be used to determine compliance with subpart I. The compliance model in the COMPLY computer code may be used to determine the dose to members of the general public from emissions of radionuclides to the atmosphere. The EPA may add radionuclides to all or any part of COMPLY to cover radionuclides that may be used by the regulated community.

TABLE 2.—CONCENTRATION LEVELS FOR ENVIRONMENTAL COMPLIANCE

Radionuclide	Concentration (Ci/m³)	Radionuclide	Concentration (Ci/m³)
Ac-225	9.1E−14	Bi-207	1.0E−14
Ac-227	1.8E−16	Bi-210	2.9E−13
Ac-228	3.7E−12	Bi-212	5.6E−11
Ag-106	1.9E−09	Bi-213	7.1E−11
Ag-106m	1.2E−12	Bi-214	1.4E−10
Ag-108m	7.1E−15	Bk-249	5.6E−13
Ag-110m	9.1E−14	Bk-250	9.1E−11
Ag-111	2.5E−12	Br-77	4.2E−11
Al-26	4.8E−15	Br-80	1.4E−08
Am-241	1.9E−15	Br-80m	1.8E−09
Am-242	1.5E−11	Br-82	1.2E−11
Am-242m	2.0E−15	Br-83	1.2E−08
Am-243	1.8E−15	Br-84	6.7E−10
Am-244	4.0E−11	C-11	1.5E−09
Am-245	8.3E−09	C-14	1.0E−11
Am-246	1.2E−09	Ca-41	4.2E−13
Ar-37	1.6E−03	Ca-45	1.3E−12
Ar-41	1.7E−09	Ca-47	2.4E−12
As-72	2.4E−11	Cd-109	5.9E−13
As-73	1.1E−11	Cd-113	9.1E−15
As-74	2.2E−12	Cd-113m	1.7E−14
As-76	5.0E−11	Cd-115	1.6E−11
As-77	1.6E−10	Cd-115m	8.3E−13
At-211	1.1E−11	Cd-117	8.7E−11
Au-193	3.8E−10	Cd-117m	1.6E−10
Au-194	3.2E−11	Ce-139	2.6E−12
Au-195	3.1E−12	Ce-141	6.3E−12
Au-198	2.1E−11	Ce-143	3.0E−11
Au-199	4.8E−11	Ce-144	6.2E−13
Ba-131	7.1E−12	Cf-248	1.8E−14
Ba-133	5.9E−14	Cf-249	1.4E−15
Ba-133m	5.9E−11	Cf-250	3.2E−15
Ba-135m	1.8E−10	Cf-251	1.4E−15
Ba-139	5.6E−09	Cf-252	5.6E−15
Ba-140	1.3E−12	Cf-253	3.1E−13
Ba-141	1.4E−09	Cf-254	3.0E−15

TABLE 2.—CONCENTRATION LEVELS FOR ENVIRONMENTAL COMPLIANCE—Continued

Radionuclide	Concentration (Ci/m³)	Radionuclide	Concentration (Ci/m³)
Ba-142	1.3E−09	Cl-36	2.7E−15
Be-7	2.3E−11	Cl-38	7.7E−10
Be-10	1.6E−12	Cm-242	5.3E−14
Bi-206	2.3E−12	Cm-243	2.6E−15
Cm-244	3.3E−15	Eu-156	1.9E−12
Cm-245	1.8E−15	F-18	6.7E−10
Cm-246	1.9E−15	Fe-52	5.6E−11
Cm-247	1.9E−15	Fe-55	9.1E−12
Cm-248	5.0E−16	Fe-59	6.7E−13
Cm-249	3.7E−09	Fm-254	2.0E−11
Cm-250	9.1E−17	Fm-255	4.3E−12
Co-56	1.8E−13	Fr-223	3.3E−11
Co-57	1.3E−12	Ga-66	6.2E−11
Co-58	6.7E−13	Ga-67	7.1E−11
Co-58m	1.2E−10	Ga-68	9.1E−10
Co-60	1.7E−14	Ga-72	3.8E−11
Co-60m	4.3E−09	Gd-152	5.0E−15
Co-61	4.5E−09	Gd-153	2.1E−12
Cr-49	1.1E−09	Gd-159	2.9E−10
Cr-51	3.1E−11	Ge-66	2.0E−13
Cs-129	1.4E−10	Ge-71	2.4E−10
Cs-131	3.3E−11	Ge-77	1.0E−10
Cs-132	4.8E−12	H-3	1.5E−09
Cs-134	2.7E−14	Hf-181	1.9E−12
Cs-134m	1.7E−10	Hg-193m	1.0E−10
Cs-135	4.0E−13	Hg-197	8.3E−11
Cs-136	5.3E−13	Hg-197m	1.1E−10
Cs-137	1.9E−14	Hg-203	1.0E−12
Ca-138	5.3E−10	Ho-166	7.1E−11
Cu-61	4.8E−10	Ho-166m	7.1E−15
Cu-64	5.3E−10	I-123	4.3E−10
Cu-67	5.0E−11	I-124	6.2E−13
Dy-157	5.0E−10	I-125	1.2E−13
Dy-165	6.7E−09	I-126	1.1E−13
Dy-166	1.1E−11	I-128	1.1E−08
Er-169	2.9E−11	I-129	9.1E−15
Er-171	4.0E−10	I-130	4.5E−11
Es-253	2.4E−13	I-131	2.1E−13
Es-254	2.0E−14	I-132	2.3E−10
Es-254m	1.8E−12	I-133	2.0E−11
Eu-152	2.0E−14	I-134	3.8E−10
Eu-152m	3.8E−10	I-135	1.2E−10
Eu-154	2.3E−14	In-111	3.6E−11
Eu-155	5.9E−13	In-113m	2.5E−09
In-114m	9.1E−13	Nb-95	2.2E−12
In-115	7.1E−14	Nb-95m	1.4E−11
In-115m	1.8E−09	Nb-96	2.4E−11
In-116m	4.2E−10	Nb-97	1.2E−09
In-117	1.6E−09	Nd-147	7.7E−12
In-117m	9.1E−11	Nd-149	7.1E−10
Ir-190	2.6E−12	Ni-56	1.7E−12
Ir-192	9.1E−13	Ni-57	1.8E−11
Ir-194	1.1E−10	Ni-59	1.5E−11
Ir-194m	1.7E−13	Ni-63	1.4E−11
K-40	2.7E−14	Ni-65	8.3E−10
K-42	2.6E−10	Np-235	2.5E−11
K-43	6.2E−11	Np-237	1.2E−15
K-44	5.9E−10	Np-238	1.4E−11
Kr-79	8.3E−09	Np-239	3.8E−11
Kr-81	2.1E−07	Np-240	7.7E−10
Kr-83m	2.3E−05	Np-240m	5.5E−09
Kr-85	1.0E−06	Os-185	1.0E−12
Kr-85m	1.3E−08	Os-191	2.9E−10

TABLE 2.—CONCENTRATION LEVELS FOR ENVIRONMENTAL COMPLIANCE—Continued

Radionuclide	Concentration (Ci/m³)	Radionuclide	Concentration (Ci/m³)
Kr-87	2.4E−09	Os-191	1.1E−11
Kr-88	5.0E−10	Os-193	9.1E−11
La-140	1.2E−11	P-32	3.3E−13
La-141	7.7E−10	P-33	2.4E−12
La-142	2.7E−10	Pa-230	3.2E−13
Lu-177	2.4E−11	Pa-231	5.9E−16
Lu-177m	3.8E−13	Pa-233	4.8E−12
Mg-28	1.5E−11	Pa-234	1.1E−10
Mn-52	2.8E−12	Pb-203	6.2E−11
Mn-52m	6.2E−10	Pb-205	5.6E−12
Mn-53	1.5E−11	Pb-209	1.3E−06
Mn-54	2.8E−13	Pb-210	2.8E−15
Mn-56	2.9E−10	Pb-211	1.4E−10
Mo-93	1.1E−12	Pb-212	6.3E−12
Mo-99	1.4E−11	Pb-214	1.2E−10
Mo-101	1.0E−09	Pd-103	3.8E−11
Na-22	2.6E−14	Pd-107	3.1E−11
Na-24	2.6E−11	Pd-109	4.8E−10
Nb-90	2.6E−11	Pm-143	9.1E−13
Nb-93m	1.0E−11	Pm-144	1.3E−13
Nb-94	7.1E−15	Pm-145	6.2E−13
Pm-146	5.3E−14	Re-154m	3.7E−13
Pm-147	1.1E−11	Re-186	1.8E−11
Pm-148	5.0E−12	Re-187	2.6E−10
Pm-148m	6.7E−13	Re-188	1.7E−10
Pm-149	4.2E−11	Rh-103m	2.1E−07
Pm-151	7.1E−11	Rh-105	1.3E−10
Po-210	7.1E−15	Ru-97	6.7E−11
Pr-142	1.1E−10	Ru-103	2.6E−12
Pr-143	7.1E−12	Ru-105	2.8E−10
Pr-144	1.8E−08	Ru-106	3.4E−13
Pt-191	4.3E−11	S-35	1.3E−12
Pt-193	1.8E−11	Sb-117	2.4E−09
Pt-193m	4.8E−11	Sb-122	1.4E−11
Pt-195m	3.2E−11	Sb-124	5.3E−13
Pt-197	4.0E−10	Sb-125	1.6E−13
Pt-197m	2.6E−09	Sb-126	1.4E−12
Pu-236	5.9E−15	Sb-126m	9.1E−10
Pu-237	1.9E−11	Sb-127	7.1E−12
Pu-238	2.1E−15	Sb-129	7.7E−11
Pu-239	2.0E−15	Sc-44	1.7E−10
Pu-240	2.0E−15	Sc-46	4.2E−13
Pu-241	1.0E−13	Sc-47	3.8E−11
Pu-242	2.0E−15	Sc-48	9.1E−12
Pu-243	4.2E−09	Sc-49	1.2E−06
Pu-244	2.0E−15	Se-73	1.7E−10
Pu-245	2.1E−10	Se-75	1.7E−13
Pu-246	2.2E−12	Se-79	1.1E−13
Ra-223	4.2E−14	Si-31	5.6E−09
Ra-224	1.5E−13	Si-32	3.4E−14
Ra-225	5.0E−14	Sm-147	1.4E−14
Ra-226	3.3E−15	Sm-151	2.1E−11
Ra-228	5.9E−15	Sm-153	5.9E−11
Rb-81	5.0E−10	Sn-113	1.4E−12
Rb-83	3.4E−13	Sn-117m	5.6E−12
Rb-84	3.6E−13	Sn-119m	5.3E−12
Rb-86	5.6E−13	Sn-123	1.1E−12
Rb-87	1.6E−13	Sn-125	1.7E−12
Rb-88	2.1E−09	Sn-126	5.3E−15
Rb-89	7.1E−10	Sr-82	6.2E−13
Re-184	1.5E−12	Sr-85	1.8E−12
Sr-85m	1.6E−09	Th-232	6.2E−16
Sr-87m	1.4E−09	Th-234	2.2E−12
Sr-89	1.8E−12	Ti-44	6.2E−15

TABLE 2.—CONCENTRATION LEVELS FOR ENVIRONMENTAL COMPLIANCE—Continued

Radionuclide	Concentration (Ci/m³)	Radionuclide	Concentration (Ci/m³)
Sr-90	1.9E−14	Ti-45	4.8E−10
Sr-91	9.1E−11	Ti-200	4.5E−11
Sr-92	2.8E−10	Ti-201	1.0E−10
Te-182	4.5E−13	Ti-202	5.0E−12
Tb-157	2.5E−12	Ti-204	1.2E−12
Tb-160	7.7E−13	Tm-170	3.3E−12
Tc-95	1.0E−10	Tm-171	2.6E−11
Tc-95m	1.4E−12	U-230	1.5E−14
Tc-96	5.6E−12	U-231	4.2E−11
Tc-96m	6.7E−10	U-232	1.3E−15
Tc-97	7.1E−13	U-233	7.1E−15
Tc-97m	7.1E−12	U-234	7.7E−15
Tc-98	6.7E−15	U-235	7.1E−15
Tc-99	1.4E−13	U-236	7.7E−15
Tc-99m	1.7E−09	U-237	1.0E−11
Tc-101	4.5E−09	U-238	8.3E−15
Te-121	1.0E−12	U-239	4.3E−09
Te-121m	1.2E−13	U-240	1.3E−10
Te-123	1.4E−13	V-48	1.0E−12
Te-123m	2.0E−13	V-49	1.6E−10
Te-125m	3.6E−13	W-181	6.7E−12
Te-127	1.0E−09	W-185	2.6E−12
Te-127m	1.5E−13	W-187	7.7E−11
Te-129	7.7E−09	W-188	5.3E−13
Te-129m	1.4E−13	Xe-122	9.1E−11

TABLE 2.—CONCENTRATION LEVELS FOR ENVIRONMENTAL COMPLIANCE—Continued

Radionuclide	Concentration (Ci/m³)	Radionuclide	Concentration (Ci/m³)
Te-131	9.1E−11	Xe-123	1.6E−09
Te-131m	1.0E−12	Xe-125	1.1E−11
Te-132	7.1E−13	Xe-127	8.3E−09
Te-133	9.1E−10	Xe-129m	9.1E−08
Te-133m	2.2E−10	Xe-131m	2.6E−07
Te-134	5.3E−10	Xe-133	6.2E−08
Th-226	3.4E−11	Xe-133m	7.1E−08
Th-227	3.6E−14	Xe-135	9.1E−09
Th-228	3.1E−15	Xe-135m	5.0E−09
Th-229	5.3E−16	Xe-138	1.2E−09
Th-230	3.4E−15	Y-86	3.0E−11
Th-231	2.9E−10	Y-87	1.7E−11
Y-88	2.7E−13	Zn-65	9.1E−14
Y-90	1.3E−11	Zn-69	3.2E−08
Y-90m	1.9E−10	Zn-69m	1.7E−10
Y-91	2.1E−12	Zr-88	2.4E−11
Y-91m	1.3E−09	Zr-88	3.1E−13
Y-92	8.3E−10	Zr-89	1.3E−11
Y-93	2.9E−10	Zr-93	2.6E−12
Yb-169	3.7E−12	Zr-95	6.7E−13
Yb-175	4.3E−11	Zr-97	3.8E−11
Zn-62	9.1E−11		

6. References

(1) Environmental Protection Agency, "A Guide for Determining Compliance with the Clean Air Act Standards for Radionuclides Emissions from NRC-Licensed and Non-DOE Federal Facilities", EPA 520/1–89–002, October 1989.

(2) Environmental Protection Agency, "User's Guide for the COMPLY Code", EPA 520/1–89–003, October 1989.

(3) Environmental Protection Agency, "Background Information Document: Procedures Approved for Demonstrating Compliance with 40 CFR part 61, subpart I", EPA 520/1–89–001, January 1989.

(4) National Council on Radiation Protection and Measurement, "Screening Techniques for Determining Compliance with Environmental Standards" NCRP Commentary No. 3, Revision of January 1989 with addendum of October, 1989.

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Part III

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Parts 204 and 229

Regulations Governing the Taking of Marine Mammals Incidental to Commercial Fishing Operations; Interim Exemption for Commercial Fisheries; Final Rule

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 204 and 229

[Docket No. 81140-9231]

RIN 0648-AC85

Regulations Governing the Taking of Marine Mammals Incidental to Commercial Fishing Operations; Interim Exemption for Commercial Fisheries

AGENCY: National Marine Fisheries Service (NOAA Fisheries), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA Fisheries issues this final rule to govern the reporting of the take of marine mammals incidental to commercial fishing operations. These regulations implement the reporting requirement for commercial fishermen of the 1988 amendments to the Marine Mammal Production Act of 1972 (MMPA). The effect of this final rule is the establishment of a program and format for commercial fishing vessel owners engaged in Category I, Category II, and Category III fisheries to report the taking of marine mammals as required by the 1988 amendments to the MMPA. NOAA Fisheries also issues this final rule to update the list of Office of Management and Budget control numbers assigned to NOAA Fisheries regulations containing information collection requirements.

EFFECTIVE DATE: This rule is effective January 16, 1990.

FOR FURTHER INFORMATION CONTACT: Herbert W. Kaufman, Office of Protected Resources, 301-427-2319; Douglas Beach, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930, 508-281-9254; Charles Oravetz, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, FL 33702, 813-893-3366; James Lecky, Southwest Region, National Marine Fisheries Service, 300 S. Ferry St., Terminal Island, CA 90731, 213-514-6664; Brent Norberg, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, Seattle, WA 98115, 206-526-6110; Dr. Steve Zimmerman, Alaska Region, National Marine Fisheries Service, 709 W. 9th St., Fed. Bldg. 453, P.O. Box 21668, Juneau, AK 99802, 907-586-7233.

SUPPLEMENTARY INFORMATION:

Background

Before the 1988 amendments, the MMPA prohibited the take of marine mammals incidental to commercial fishing operations unless authorized by a General Permit or a small take exemption. In order to issue a General Permit, NOAA Fisheries was required to determine that the population stock from which a marine mammal was to be taken was within its optimum sustainable population (OSP) and that the marine mammal stock would not be disadvantaged by the incidental take. Without these determinations, a General Permit could not be issued for that particular marine mammal stock. Early in 1988 it became apparent that the necessary determinations to renew certain General Permits could not be made and many fishermen would be forced to forgo fishing altogether or risk substantial penalties for violating the MMPA. To address this problem, the Congress amended the MMPA based on a proposal developed by representatives of the fishing industry and conservation community.

Section 114, added by Public Law 100-711 on November 23, 1988, replaces certain provisions of the MMPA for granting incidental take authorizations (including small take exemptions) to most commercial fishermen with an interim exemption system until October 1, 1993. Section 114 gives commercial fishermen a 5-year exemption from the incidental taking prohibition of the MMPA, provided that certain conditions are met. The primary objective of this interim system is to provide a means to obtain reliable information from fishermen about interactions between commercial fishing activities and marine mammals. This system also allows commercial fishing operations to continue despite NOAA Fisheries' current inability to make the determinations necessary to issue General Permits for many fisheries. The information collected in conjunction with the exemption system and information on the status and trends of marine mammal populations will be used to develop a long-term program to govern the taking of marine mammals associated with commercial fisheries. The Secretary of Commerce is required to provide the Congress a proposed system of authorizing incidental takes by January 1, 1992.

On January 27, 1989, NOAA Fisheries published an advance notice of proposed rulemaking and proposed List of Fisheries (54 FR 4154) associated with the exemption system and requested comments. A final List of Fisheries (54 FR 16072, April 20, 1989) categorizing fisheries as either Category I (a frequent incidental taking of marine mammals), Category II (an occasional incidental taking of marine mammals), Category III (a remote likelihood of, or no known incidental taking of, marine mammals) and an interim rule (54 FR 21910, May 19, 1989) governing the exemption system have also been published by NOAA Fisheries. The interim rule requires that vessel owners or their authorized agents engaged in a Category I or Category II fishery register with and obtain an Exemption Certificate from NOAA Fisheries to engage lawfully in any Category I or II fishery. The initial Exemption Certificate is valid from July 21, 1989, to December 31, 1990, provided reporting requirements are met. Subsequent Exemption Certificates will be issued on a calendar year basis (i.e., January 1 to December 31) and be issued only if reporting requirements and other conditions of the Exemption Certificate are met.

The 1988 amendments require vessel owners holding an Exemption Certificate to compile information regarding incidental takings of marine mammals as of July 21, 1989. This information shall be reported to the Secretary of Commerce at the close of each fishing season or annually. The 1988 amendments (section 114(c)) indicate that such reports shall include:

(1) The type of fishery engaged in by the owner's vessel;
(2) The date and approximate time of any incidental taking of a marine mammal;
(3) The area in which the incidental taking occurred;
(4) The fishing gear used at the time of the incidental taking;
(5) The species of fish involved; and for each incidental taking
(6) The number of marine mammals involved;
(7) The species of marine mammals involved; and whether the marine mammals were
(8) Deterred from gear or catch;
(9) Incidentally injured;
(10) Incidentally killed; or
(11) Lethally removed to protect gear, catch, or human life.

In addition, the 1988 amendments require vessel owners in Category III fisheries to report all lethal incidental takings of marine mammals.

On June 19, 1989, NOAA Fisheries published a proposed rule (54 FR 25832) that would govern these reporting requirements and requested comments. Based on Congressional guidance, NOAA Fisheries' interpretation of the 1988 amendments, public comment on the proposed rule and meetings and consultations with State and Federal agencies, Regional Fishery Management Councils, Indian treaty tribes, and other interested parties, NOAA Fisheries issues this final rule to govern the reporting of the take of marine mammals incidental to commercial fishing operations under the authority of section 112 and section 114(k) of the MMPA.

Comments and Responses

NOAA Fisheries received several comments concerning the proposed reporting system published June 19, 1989 (54 FR 25832). The majority of comments received on the proposed rule dealt with the proposed report/log form. Comments relating to the system as a whole are discussed first, followed by comments on the proposed report/log form. All of the comments were considered in developing this final rule.

1. One commenter supported NOAA Fisheries' efforts to collect information on interactions between commercial fishing activities and marine mammals.

The effect of this final rule is the establishment of a program and report/log format for commercial fishing vessel owners engaged in Categories I, II, and III fisheries to report the taking of marine mammals as required by the 1988 amendments to the MMPA. The primary objective of the reporting system is to obtain reliable information about interactions between commercial fishing activities and marine mammals.

2. One commenter felt that the requirement for Category III fishermen to report the lethal incidental taking of marine mammals within 10 days of returning from a fishing trip was quite reasonable because it would allow fishermen flexibility in administering to the other activities after completion of one trip and before beginning another and recommended that the final rule reflect the same time frame. Another commenter interpreted this requirement to mean that a Category III fisherman must report marine mammal takes within 10 days of their occurrence. This commenter indicated that such a requirement would not be possible for vessels that remain at-sea for greater than 10 days.

Vessel owners engaged in Category III fisheries must report all lethal incidental takings of marine mammals by contacting the nearest NOAA Fisheries Office, in person, by phone, or by letter (see **FOR FURTHER INFORMATION CONTACT**), within 10 days of the *return* from the fishing trip during which the lethal incidental take occurred. The report must include information on: The fishery, fishing effort, gear type and fish species involved; the marine mammal species (or description of the animal(s), if species is not known), number, date, and location of all lethal incidental takes of marine mammals; a description of any intentional lethal takes (i.e., efforts to deter animals to protect gear, catch, or human life); and any loss of fish or gear caused by marine mammals.

3. One commenter questioned whether NOAA Fisheries was preparing a report form for Category III fishermen. This commenter also encouraged NOAA Fisheries to distribute to all Category III fishermen a clear description of their specific reporting requirements. Another commenter suggested that NOAA Fisheries state what reporting method Category III fishermen should use. One commenter suggested that Category III fishermen who lethally take a marine mammal be required to collect the same information as Category I and II fishermen.

NOAA Fisheries is not preparing a report/log form for Category III fishermen. NOAA Fisheries believes that there is only a remote likelihood of, or no known incidental taking of, marine mammals by Category III fishermen. Therefore, NOAA Fisheries expects few such reports. Category III fishermen must report all lethal incidental takings of marine mammals by contacting the nearest NOAA Fisheries Office, in person, by phone, or by letter (see **FOR FURTHER INFORMATION CONTACT**), within 10 days of the return from the fishing trip during which the lethal incidental take occurred. The report must include the same information as Category I and II reports—the fishery, fishing effort, gear type and fish species involved; the marine mammal species (or description of the animal(s), if species is not known), number, date, and location of all lethal incidental takes of marine mammals; a description of any intentional lethal takes (i.e., efforts to deter animals to protect gear, catch, or human life); and any loss of fish or gear caused by marine mammals.

NOAA Fisheries has mailed over 85,000 brochures describing the exemption program to fishermen registered with applicable Federal and state agencies. There are an estimated 23,000 Category I and II fishermen; thus, a large number of Category III fishermen have been informed of the exemption program.

4. One commenter felt the regulations should be more specific as to when Category I and II log entries are to be made. It was pointed out that in the proposed rule, Exemption Certificate holders would be required to maintain accurate daily report/log forms covering the current fishing trip, and that the proposed regulations did not specify how often the logs should be updated. The commenter believed that the regulations should specify how soon after the event entries must be made, because timely log entries will help ensure the accuracy of the logs and allow for more definitive enforcement procedures. Another commenter indicated that the 1988 amendments to the MMPA required that fishermen "regularly compile information" (section 114(c)) whereas the proposed rule would require that the information be compiled daily. Two commenters believed that fishermen should be allowed to fill out the report/log form following each trip, instead of each day. One commenter thought that NOAA Fisheries should also be more specific as to when the reports should be sent to NOAA Fisheries.

Category I and II fishermen must complete an entry on their report/log form each day they fish. NOAA Fisheries believes that this requirement is necessary and sufficient to ensure that information concerning incidental takes is recorded accurately and definitive enforcement measures are possible. Fishermen are encouraged to submit these reports to NOAA Fisheries following their fishing season or on a regular basis. However, fishermen must submit their reports, if not previously submitted, no later than December 31 of each year.

5. One commenter encouraged NOAA Fisheries to seek funding adequate to support on-board observer and alternative observation programs at a level that would provide statistically reliable fisheries and marine mammal information.

NOAA Fisheries is currently designing such programs as required by the 1988 amendments to the MMPA (section 114(d)). These alternate programs are not addressed in this rule. The purpose of this rule is to provide a means to obtain reliable reports from vessel owners concerning interactions between commercial fishing activities and marine mammals.

6. A commenter indicated that monitoring of reports by State Enforcement Agents in Indian waters should not occur and that Federal monitoring of reports should be closely coordinated and approved by Indian tribal governments. This commenter also indicated that NOAA may not have the authority to restrict or terminate Indian fishing rights due to reporting requirements without the express authority of the Congress.

NOAA Fisheries does not intend to implement any enforcement measures that violate the rights of Indians or

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Indian tribal governments. Federal efforts to monitor Indian reports will be coordinated with Indian tribal governments as appropriate. If reporting problems occur, Indian fishing rights will not be restricted or terminated unless such action is in compliance with applicable law.

7. One commenter indicated that confidentiality of data measures should be approved by Indian tribal governments. This would be in keeping with NOAA's government to government responsibilities with Indian tribes.

NOAA Fisheries will consult with the Indian tribal governments concerning appropriate measures to ensure confidentiality of data collected from Indian fishermen.

8. One commenter noted that the classification section of the proposed rule did not describe consultation or agreement from the Indian governments.

The classification section of this rule is intended primarily to document compliance with procedural requirements necessary to rulemaking. The Interim Rule (54 FR 21910, May 19, 1989) implementing the exemption system and this rule adequately provide for consultation with Indian tribal governments where appropriate.

9. One commenter questioned the basis of NOAA Fisheries' estimate that it would take 2.5 minutes/day to fill out the proposed form.

NOAA Fisheries bases this estimate on prior experience, which has shown that an average of 2.5 minutes/day is adequate to allow fishermen to fill out a report/log form of this type.

10. One commenter thought that allowing information collected through the reporting system to be used in civil or criminal enforcement proceedings would jeopardize the accuracy of information reported.

Although the agency recognizes this concern, it is not anticipated that the accuracy of reports will be significantly jeopardized because the reports can be used in civil or criminal enforcement proceedings. Most of the information to be reported is not expected to involve illegal takings because of the broad exemption granted by section 114 of the MMPA. Moreover, NOAA Fisheries will be attempting to verify reports through other measures.

11. One commenter felt that the level of detail of the proposed report form was beyond the understanding of some fishermen. This commenter suggested that discussions be held with fishermen to establish a process that might be more acceptable.

NOAA Fisheries is providing, with report/log forms, detailed instructions (see appendix) on how to fill out the report/log forms. Fishermen may also contact any NOAA Fisheries office for assistance (see **FOR FURTHER INFORMATION CONTACT**). Additionally, NOAA Fisheries will consider allowing the use of alternate report/log forms for collecting the required information. However, prior approval of the Assistant Administrator for Fisheries will be required before such forms can be used (see the following comment/response).

12. One commenter suggested that alternate reporting forms issued by Indian Governments also be accepted. Another commenter supported NOAA Fisheries' acceptance of alternate report forms.

NOAA Fisheries will accept alternate report/log forms, such as those issued by individual states, Fishery Management Councils, or Indian Governments, if prior approval from the Assistant Administrator for Fisheries is obtained. These alternate forms must collect the same information required by NOAA Fisheries.

13. One commenter suggested that the report form identify separate gear types. This commenter pointed out that in some fisheries different gear types may be used on the same day. For example, some fishermen may use mid-water and bottom trawls in the same day. The proposed report form would lump all interactions under one gear type when in fact mid-water and bottom trawls may have different marine mammal interaction rates.

NOAA Fisheries believes that the information required by the report/log form is sufficient to determine interaction levels between commercial fisheries and marine mammals. Detailed information concerning different gear types within an individual fishery may be collected, at least in Category I fisheries, through an on-board observer program.

14. One commenter suggested that the term "Fish Species" on the proposed report form be clarified. Another indicated that NOAA Fisheries should require that all fish species caught be identified, not just those retained. This commenter also suggested that the total number (or amount) of fish caught and their relative proportions also be required for comparison with the number of fish lost to marine mammals.

The term "Fish Species" has been replaced on the final report/log form with "Fishery Code." As stated in the report form's instructions (see appendix), "Fishery Code" refers to the fishery code found on the fisherman's Exemption Certificate or the list of fisheries included with report/log forms. If a fisherman participates in more than one fishery during a single day, a separate line of the report/log form must be completed for each fishery. In this way, fishermen can report the incidental take of marine mammals in more than one fishery during the same day. It is not essential to require fishermen to report the number of different types of fish, or amount of fish, caught and retained each day to determine interaction levels between commercial fisheries and marine mammals.

15. One commenter proposed that the type of operation a vessel is engaged in (e.g., fishing, headed and gutted processing, surimi processing, etc.) also be included on the report form. The commenter believed that the marine mammal interactions of different operations may vary.

NOAA Fisheries believes that the collection of information by fishery is sufficient to determine levels of marine mammal and commercial fishery interactions. Additional, detailed information may be collected, at least for Category I fisheries, through an on-board observer program.

16. One commenter indicated that a fishing vessel may fish in several separate areas each day. Since the proposed report form had a column for "Area Fished," the commenter believed that fishermen would be confused as to whether they were to fill out one line per day or one line per area fished. A second commenter suggested that "Area Fished" relate to specific fishery management areas, rather than using latitude/longitude or loran data since many vessels may not have this equipment. Another commented that only latitude/longitude or loran data should be accepted.

Instructions included with the report/log form (see appendix) state that fishermen must complete an entry on the report/log form for each day fished. Fishermen do not need to fill out a separate line for each area in which they fish. Fishermen must only report the area in which they began fishing that day. NOAA believes that requiring only one entry per day per fishery fished in simplifies and streamlines reporting requirements so that regular reporting is more likely. Fishermen may report the area in which they fished by latitude/longitude, loran, or fishing management area. NOAA Fisheries believes that fishermen should be allowed to report the area they fished in by whichever method is easiest for them. However, if the fisherman participates in more than one fishery during a single day, a separate line of the report/log form must be completed for each fishery.

17. A commenter suggested that the report log should better define and distinguish between "in-gear" and "deterrence" interactions. Further, the commenter wondered if marine mammals deterred to protect a human life should be included. Another commenter suggested that the "Gear Interactions" and "Deterrence from Gear or Catch" columns be replaced by a "Mammals Taken" column. This column would be broken down into "No. Harassed," "No. Injured," "No. Dead," and "Type of Interaction—Accidental or Intentional" columns.

NOAA Fisheries has included detailed instructions with the report/log form (see appendix) defining these terms. The term "Gear Interactions" refers to marine mammals that were caught in, or interacted directly with, the vessel's fishing gear. Columns for the total number of marine mammals involved in such interactions and the number injured and killed by fishing gear are also included. The term "Deterrence from Gear or Catch" refers to marine mammals which were deterred from the vessel's fishing gear or catch. Columns for the total number of such deterrences and the number of marine mammals injured and killed as a result of these efforts are also included. Any marine mammals deterred to protect a human life should be included under "Deterrence from Gear or Catch." NOAA Fisheries believes that these column headings are sufficient to collect the necessary information on interactions between marine mammals and commercial fishing activities.

18. One commenter requested that the term "Harassment Effective" be defined. Another suggested the type of harassment used by the fishermen also be required.

The term "Harassment Effective" has been replaced with "Effective" under "Deterrence from Gear or Catch" and refers to whether or not any harassment methods were effective in deterring marine mammals away from the vessel's fishing gear or catch (see appendix). The report/log form also requests the type of harassment used by the fishermen. NOAA Fisheries believes that this information is necessary to determine which types of harassment are effective but do not harm the animal.

19. Two commenters suggested that the report log should clarify the need to complete the report form even if no marine mammal interactions occurred. These commenters pointed out that such information is critical for an accurate estimate of the rate of marine mammal interactions in each fishery.

A statement to this effect is included on the report/log form and in the accompanying instructions (see appendix).

20. Two commenters suggested that NOAA Fisheries provide fishermen with a one or two page identification chart with line drawings and key identification characteristics, perhaps on the inside of the front and back cover of the log book, to assist fishermen in identifying marine mammals.

NOAA Fisheries will develop such identification charts and distribute them along with report/log forms to fishermen. These charts will indicate a species codes for marine mammals for use on the report/log form under "Marine Mammal Species Code." A list of these marine mammal codes will also be included with the report/log form book (see appendix).

21. One commenter requested that the "Gear Lost" column be better defined. The commenter also suggested that the type of gear lost and its value also be collected. Another commenter suggested that the "Gear Lost" column require only a yes or no answer. This commenter also suggested that the fish lost column be a yes or no question instead of a open-ended question.

Instructions included with the report/log form (see appendix) indicate that the "Gear Lost" column is a yes/no question. Collection of this level of information is sufficient to determine which fisheries lose gear to, or have gear damaged by, marine mammals. Detailed information on the amount, type, and value of gear lost may be collected, at least for Category I fisheries, through an on-board observer program.

NOAA Fisheries agrees that the "Fish Lost" column should also be a yes/no question. The report/log form (see appendix) reflects this change. Collection of this level of information is sufficient to indicate which fisheries lose fish to, or have fish damaged by, marine mammals. Additional, detailed information concerning the amount or number of fish lost due to marine mammal interactions may be collected, at least for Category I fisheries, through an on-board observer program.

22. One commenter suggested that the report forms should be in a book format to accommodate use and storage in the wheelhouse. Another suggested that NOAA Fisheries' address be included on the log book.

The report/log forms will be in a book format comparable to log books already in use around the country. NOAA Fisheries also encourages fishermen to submit their reports periodically throughout the year, thus, reducing the number of forms which must be kept on-board. NOAA Fisheries' address will be included on each log book.

23. One commenter suggested that the "Hours Fished" column be replaced with a "Number of Gear Sets" column. The commenter defined this column as "any deployment of gill net, trawl, longline, etc." The commenter indicated that the duration fished and amount of gear deployed could be estimated from the number of sets.

NOAA Fisheries believes that, nationwide, "Hours Fished" is a more generic measure of fishing effort and sufficient to determine interaction levels between commercial fisheries and marine mammals. Instructions included with the form indicate various ways of filling in this column for different fisheries (see appendix).

24. One commenter suggested that the date landed, the port of landing, days absent, and a fishery code be added to the report form.

NOAA Fisheries does not believe that date landed, port of landing, and days absent are necessary, in addition to information already on the form, to estimate the interaction levels between marine mammals and commercial fisheries. The report/log form requires fishermen to indicate the fishery in which they are participating. "Fishery Code" refers to the fishery code found on the fisherman's Exemption Certificate or the list of fisheries included with report/log forms.

25. One commenter suggested that a column be added indicating whether or not an observer was on board the vessel. The commenter believed that this column is necessary to indicate whether objective confirmation of the data was possible.

NOAA Fisheries has designed its information management system to allow direct comparison of data reported by the fishermen and the data from on-board observers.

Reporting Requirements

Exemption Certificate holders are required to maintain accurate daily logs of fishing effort, incidental takes [1] of marine mammals, and other information determined necessary by the Assistant Administrator for Fisheries in such form as prescribed by NOAA Fisheries. Fishermen must complete an entry on a separate line of the report/log form each day they fish. If a fisherman participates in more than one fishery during a single day, a separate line must be completed

[1] "Incidental take" means the accidental or intentional taking of a marine mammal in the course of commercial fishing operations (54 FR 21992, May 19, 1989).

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for each fishery. A current report/log form must be kept on board covering the current fishing trip and must be made

must include information on: the fishery, fishing effort, gear type and fish species involved; the marine mammal species

Classification

The Assistant Administrator for

information is estimated to average 2.5 minutes per day fished for fishermen operating in Category I or II fisheries to

consistency determination at that time would be appropriate.

This rule has been determined not to

in such form as prescribed by the Assistant Administrator for Fisheries. Fishermen must complete an entry on

for each fishery. A current report/log form must be kept on board covering the current fishing trip and must be made available for inspection upon request by any state or federal enforcement agent authorized to enforce the MMPA or designated agent of NOAA Fisheries. NOAA Fisheries is providing report/log forms and instructions for recording the information required to all Exemption Certificate holders for use in maintaining records and filing reports.

These reports, consisting of a copy of the required daily log, are required for each vessel engaged in a Category I or Category II fishery, whether or not marine mammals were taken. An annual report must be submitted to NOAA Fisheries no later than December 31 of each year covering all Category I and II fisheries for which each Exemption Certificate holder is registered. The submission of reports at the end of each fishing season or on a regular basis throughout the year, however, is encouraged. Exemption Certificate renewal requests must include these reports, if not previously submitted, or a new Exemption Certificate will not be issued. If a fishing vessel is not used in a Category I or Category II fishery during an exemption period for which it was registered, a report to that effect is required. With prior approval by the Assistant Administrator for Fisheries, alternate report/log forms, such as forms issued by individual states, Fishery Management Councils, or Indian Governments, for collecting the same information required by NOAA Fisheries, are acceptable.

Marine mammal report/log forms for Category I and II fisheries require information on: The fishery, fishing effort, gear type and fish species involved; the marine mammal species (or description of the animal(s), if species is not known), number, date, and location of marine mammal incidental takes; type of interaction and any injury to the marine mammal; a description of any intentional takes (i.e., efforts to deter animals to protect gear, catch, or human life by non-lethal or lethal means); and any loss of fish or gear caused by marine mammals. The report/log form used to collect this information, and instructions for its use, are included as an Appendix.

Vessel owners engaged in Category III fisheries must report all lethal incidental takings of marine mammals by contacting the nearest NOAA Fisheries Office, in person, by phone, or by letter (see **FOR FURTHER INFORMATION CONTACT**), within 10 days of the return from the fishing trip during which the incidental take occurred. The report must include information on: the fishery, fishing effort, gear type and fish species involved; the marine mammal species (or description of the animal(s), if species is not known), number, date, and location of all lethal incidental takes of marine mammals; a description of any intentional lethal takes (i.e., efforts to deter animals to protect gear, catch, or human life); and any loss of fish or gear caused by marine mammals. NOAA Fisheries will incorporate this information into its data management system.

Information Management

NOAA Fisheries has developed an information management system to compile, store, process, and analyze data received from fishermen's reports, observer and verification programs, and other sources. To protect the confidentiality of this data, information from the system will be made available to the public only in an aggregate form which does not directly or indirectly disclose the identity or business of any person. Such information will be available on a continuing basis, no later than six months after receipt. Depending on the nature of information requests, appropriate user fees may be charged for the information.

To maintain the confidentiality of individual vessel owner reports, only their Exemption Certificate number, Coast Guard documentation number, state registration number, and the fisheries the vessel was engaged in are required on the individual report/log forms. Further, as section 114(j) of the MMPA indicates, confidential or proprietary information will not be disclosed except:

(1) To Federal employees requiring such information, including to Federal contractors that are authorized to collect, process or analyze report or observer data and that are bound by the restrictions on public release of such data;

(2) To State employees under agreement with NOAA Fisheries that prevents public disclosure of the identity or business of any person;

(3) When required by court order; or

(4) In the case of scientific information involving fisheries, to employees of Regional Fishery Management Councils.

Under exceptions (1) and (3) above, information from observers or from fisherman reports indicating a violation of the MMPA, regulations, or terms and conditions of Exemption Certificates may be used in civil or criminal enforcement proceedings.

Classification

The Assistant Administrator for Fisheries has determined that implementation of the regulations of 50 CFR part 229 will not have a significant impact on the human environment. NOAA Fisheries has prepared an environmental assessment (EA) on this action. The finding of that EA was that no significant impact on the human environment will occur as a result of this rule and that no environmental impact statement was required. The EA is available upon request (see **FOR FURTHER INFORMATION CONTACT**).

The Under Secretary for Oceans and Atmosphere, Department of Commerce, has determined that this rule is not a major rule requiring a regulatory impact analysis under Executive Order 12291. This rule will not result in (1) an annual major increase in costs or prices for consumers, individual industries, or government agencies; (2) an annual effect on the economy of $100 million or more; or (3) a significant adverse effect on competition, employment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that the addition of 50 CFR 229.6(c) and 229.7(b) to the regulations will not have a significant economic impact on a substantial number of small entities. NOAA Fisheries has reviewed the final rule and has determined that the economic impact of this rule is limited to the amount of time necessary for registered fishermen to enter daily whether they had an interaction with any marine mammals. NOAA Fisheries estimates that this will require an average of 2.5 minutes per day fished for fishermen operating in Category I or II fisheries. For the limited number of lethal incidental takes of marine mammals by commercial fishermen in Category III fisheries, NOAA Fisheries estimates that those fishermen will spend on average 20 minutes per year to record and report to NOAA Fisheries. As a result, a regulatory flexibility analysis was not prepared.

This rule contains a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and has been approved by the Office of Management and Budget (OMB control number 0648-0225). The collection which is subject to the Paperwork Reduction Act is found at 50 CFR 229.6(c) and 229.7(b). Public reporting burden for this collection of information is estimated to average 2.5 minutes per day fished for fishermen operating in Category I or II fisheries to report the incidental take of marine mammals. These estimates include the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. For the limited number of lethal incidental takes of marine mammals by commercial fishermen in Category III fisheries, NOAA Fisheries estimates that those fishermen will spend on average 20 minutes per year to record and report to NOAA Fisheries. Send comments regarding these burden estimates or any other aspect of this collection of information, including suggestions for reducing this burden, to the National Marine Fisheries Service, MMPA Exemption Task Force, 1335 East-West Highway, Silver Spring, MD 20910, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn. Paperwork Reduction Project 0648-0225).

NOAA Fisheries has determined that this rule does not directly affect the coastal zone of any State that has an approved coastal zone management program under the Coastal Zone Management Act (CZMA). These actions are being taken under the MMPA which grants exclusive authority to the Federal government to regulate the takings of marine mammals. This rule imposes additional registration and reporting requirements on a small segment of the fishing industry but the nature of these requirements is such that by themselves they do not have a direct effect on the coastal zone of any state. This determination was submitted for review by the responsible State agencies under section 307 of the CZMA. Connecticut, Florida, Louisiana, New Hampshire, New Jersey, New York, North Carolina, and Virginia concurred with NOAA Fisheries' determination. Those not responding were assumed to concur also. Massachusetts did not concur, stating that the activities implementing the MMPA Exemption System have the potential to directly affect the Massachusetts' coastal zone and therefore a consistency determination is necessary. NOAA Fisheries, while recognizing that future actions taken pursuant to these regulations may directly affect a state's coastal zone, disagrees that a consistency determination is required at this time. If some future action taken pursuant to these regulations directly affects a state's coastal zone, then a consistency determination at that time would be appropriate.

This rule has been determined not to contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects

50 CFR 204

Reporting and recordkeeping requirements.

50 CFR 229

Fisheries, Fishing vessels, Marine mammals, Reporting and recordkeeping.

Regulation Promulgation

For the reasons set out in the preamble, 50 CFR Chapter II is amended as follows:

PART 204—OMB CONTROL NUMBERS FOR NOAA INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for part 204 continues to read as follows:

Authority: Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520 (1982).

2. Paragraph (b) of § 204.1 is amended by adding the following in numerical order:

§ 204.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) *Display.*

50 CFR part or section where the information collection requirement is located	Current OMB Control number (all numbers begin with 0648–)
* * * * *	
§ 229.6	–0225
§ 229.7	–0225
* * * * *	

* * * * *

PART 229—[AMENDED]

1. The authority citation for part 229 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

2. A new paragraph (c)(2) is added to § 229.6 as follows:

§ 229.6 Issuance of exemption certificates.

* * * * *

(c) * * *

(2) Reports. (i) All Exemption Certificate holders must ensure that a daily log of fishing effort and incidental takes of marine mammals is accurately maintained on board the fishing vessel in such form as prescribed by the Assistant Administrator for Fisheries. Fishermen must complete an entry on the report/log form each day they fish. Marine mammal report/log forms require information on: The fishery, fishing effort, gear type and fish species involved; the marine mammal species (or description of the animal(s), if species is not known), number, date, and location of marine mammal incidental takes; type of interaction and any injury to the marine mammal; a description of any intentional takes (i.e., efforts to deter animals to protect gear, catch, or human life by non-lethal or lethal means); and any loss of fish or gear caused by marine mammals. With prior approval by the Assistant Administrator for Fisheries, National Marine Fisheries Service, alternate report/log forms, such as forms issued by individual states, Fishery Management Councils, or Indian Governments, which collect the same information required by the National Marine Fisheries Service, are acceptable.

(ii) A current report/log must be kept on board and must be made available for inspection upon request by any state or federal enforcement agent authorized to enforce the Act or any designated agent of the National Marine Fisheries Service.

(iii) An annual report, consisting of a copy of the required log, must be submitted to the National Marine Fisheries Service no later than December 31 of each year covering all Categories I and II fisheries for which the Exemption Certificate holder is registered. This log shall include information for all Categories I and II fisheries for which each Exemption Certificate holder is registered, whether or not any marine mammals were taken. If a fishing vessel was not used in a Category I or Category II fishery during an exemption period for which it was registered, a report to that effect must be submitted.

* * * * *

2. A new paragraph (b) is added to § 229.7 as follows:

§ 229.7 Requirements for Category III fisheries.

* * * * *

(b) Vessel owners must report all lethal incidental takes of marine mammals by contacting the nearest National Museum Fisheries Service office, in person, by phone, or by letter, within 10 days of return from the fishing trip during which the incidental take occurred. The report must include information on: the fishery, fishing

effort, gear type and fish species involved; the marine mammal species

effort, gear type and fish species involved; the marine mammal species (or description of the animal(s), if species is not known), number, date, and location of all lethal incidental takes of marine mammals; a description of any incidental lethal takes (i.e., efforts to deter animals to protect gear, catch, or human life); and any loss of fish or gear caused by marine mammals.

* * * * *

Date: December 6, 1989.

James E. Douglas, Jr.,

Acting Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration.

Appendix

Note: The following Appendix will not appear in the Code of Federal Regulations.

BILLING CODE 3510-22-M

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CONFIDENTIAL

MARINE MAMMAL LOG

CONFIDENTIAL

Exemption No.: _____ CG Documentation No.: _____ State Vessel Registration No.: _____

A Complete Set of Instructions are Included on the Back of this Form

This form must be kept current and available for inspection.
This form must be filled out each day you fish, whether or not you interact with a marine mammal.
Submit completed forms to your Regional Office at any time, however, all report forms must be received no later than December 31.

					Gear Interactions			Deterrence From Gear or Catch					Loss Due to Marine Mammal	
Date	Hours Fished	Fishery Codes	Area Fished	Marine Mammal Species Codes	Total No. Involved	No. Injured	No. Killed	Total No. Harassed	No. Injured	No. Killed	Method	Effective Y or N	Fish Loss Y or N	Gear Loss Y or N

If you intend to fish in 1991 and want to renew your exemption certificate, please check this box.

The estimated public burden for this collection of information is estimated to average approximately 2.5 minutes per day to compile information pertaining to the incidental taking of marine mammals. This estimate includes the time spent reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send any comments regarding the collection of this data or any other aspect of this program, including suggestions for reducing this burden to the National Marine Fisheries service, FPR, East-West Highway, Silver Spring, MD 20910, and to the Office of Management and Budget, Paperwork Reduction Project 0648-0225, Washington, DC 20503.

OMB Number: 0648-0225. Expiration Date: 06/30/92

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MARINE MAMMAL LOG INSTRUCTIONS

A separate line on the form must be filled-out each day you fish whether or not you interact with a marine mammal. If you fish in more than one fishery in one day, complete a separate line for each fishery.

Submit completed forms to your Regional office at any time, however, all report forms must be received no later than December 31 of each year. This form must be kept current and available for inspection.

- DATE - The date you fished.
- HOURS FISHED - Total number of hours your gear was in the water for that date. For example, "soak time" for gillnetters, "troll time" for trollers, or time of trawl for trawl fishermen.
- FISHERY CODE - The code for the fishery you participated in during that day. This code can be found on your exemption certificate or from the list provided with this log book. If you fish in more than one fishery in one day, complete a separate line for each fishery.
- AREA FISHED - Area you began fishing in during that day. Please indicate the area by latitude/longitude, loran, or by fishing management area.
- MARINE MAMMAL SPECIES CODE - If you interacted with any marine mammals that day, indicate the species by using the enclosed codes. Drawings are provided with this log book for identification purposes.
- GEAR INTERACTIONS

  TOTAL INVOLVED - Total number of each marine mammal species (identified under MARINE MAMMAL SPECIES CODE) that were caught in, or interacted with, your fishing gear that day.

  NO. INJURED - Number of each marine mammal species (identified under MARINE MAMMAL SPECIES CODE) that were injured while in, or by, your fishing gear.

  NO. KILLED - Number of each marine mammal species (identified under MARINE MAMMAL SPECIES CODE) that were killed while in, or by, your fishing gear.

- DETERRENCE FROM GEAR OR CATCH (or to protect a person)

  TOTAL NO. HARASSED - Total number of each marine mammal species (identified under MARINE MAMMAL SPECIES CODE) that were harassed to keep them away from your fishing gear or catch (or to protect a person) for that day.

  NO. INJURED - Number of each marine mammal species (identified under MARINE MAMMAL SPECIES CODE) that were injured.

  NO. KILLED - Number of each marine mammal species (identified under MARINE MAMMAL SPECIES CODE) that were killed.

  METHOD - Indicate the method, if any, used to deter each marine mammal species (identified under MARINE MAMMAL SPECIES CODE) away from your gear or catch.

  DETERRENCE EFFECTIVE - Indicate whether or not each marine mammal species (identified under MARINE MAMMAL SPECIES CODE) was effectively deterred away from your fishing gear or catch that day.

- LOSS DUE TO MARINE MAMMALS

  FISH LOST - Indicate if any fish were lost to, or damaged by, each marine mammal species (identified under MARINE MAMMAL SPECIES CODE) for that day.

  GEAR LOST - Indicate if any fishing gear was lost to, or damaged by, each marine mammal species (identified under MARINE MAMMAL SPECIES CODE) that day.

THANK YOU FOR YOUR COOPERATION

CODES FOR ATLANTIC OCEAN AND GULF OF MEXICO FISHERIES

FISHERY CODES:

Category I Commercial Fisheries in the Atlantic Ocean:

1. Southern New England, Mid-Atlantic foreign mackerel trawl fishery
2. Gulf of Maine groundfish/mackerel gillnet fishery

Category II Commercial Fisheries in the Atlantic Ocean and Gulf of Mexico:

3. Southern New England, Mid-Atlantic offshore squid trawl fishery
4. Southern New England, Mid-Atlantic mackerel trawl fishery
5. Atlantic Ocean and Gulf of Mexico tuna, shark, and swordfish longline fishery

MARINE MAMMAL CODES:

Seals -

6. Harbor seal
35. Grey seal

Dolphin/Porpoise -

15. Harbor porpoise
16. Common (Saddleback) dolphin
19. Striped dolphin
20. Bottlenose dolphin
22. Grampus (Risso's) dolphin
34. Atlantic whitesided dolphin
36. Spotted dolphin
50. Spinner dolphin

Whales -

23. Pilot whale
24. False killer whale
25. Killer whale
28. Sperm whale
29. Beaked whale
31. Humpback whale
32. Minke whale
37. Pygmy sperm whale
38. Northern right whale
39. Fin whale
60. Dwarf sperm whale

Other -

40. Manatee

Unidentified Marine Mammals -

27. Unidentified dolphin or porpoise
33. Unidentified whale
42. Unidentified seal

CODES FOR PACIFIC OCEAN FISHERIES

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CODES FOR PACIFIC OCEAN FISHERIES

FISHERY CODES:

Category I Commercial Fisheries in the Pacific Ocean

6. AK Prince William Sound drift gillnet salmonid fishery
7. AK Prince William Sound set gillnet salmonid fishery
8. AK Peninsula drift gillnet salmonid fishery
9. WA marine set gillnet for salmonids in Areas 4, 4A, and 4B
10. WA, OR lower Columbia River region, Willipa Bay, Grays Harbor drift gillnet salmonid fishery
11. WA, OR, and CA thresher shark and swordfish drift gillnet fishery
12. CA halibut set gillnet fishery
13. CA angel shark set gillnet fishery
14. AK Bering Sea/Gulf of Alaska groundfish trawl fishery

Category II Commercial Fisheries in the Pacific Ocean

15. Southeast AK drift gillnet salmonid fishery
16. AK Yakutat set gillnet salmonid fishery
17. AK Cook Inlet set and drift gillnet salmonid fisheries
18. AK Kodiak set gillnet salmonid fishery
19. AK Peninsula set gillnet salmonid fishery
20. AK Bristol Bay set and drift gillnet salmonid fisheries
21. WA Puget Sound region, Hood Canal, Straits of Juan de Fuca set and drift gillnet salmonid fishery
22. WA coastal river gillnet salmonid fishery
23. CA Klamath River gillnet salmonid fishery
24. AK gillnet fisheries for other finfish
25. CA gillnets for white sea bass, yellow tail, soupfin shark, white croaker, and bonito/flying fish
26. AK South Unimak (False Pass and Unimak Pass purse-seine salmon fishery
27. AK salmon troll fishery
28. WA, OR, and CA salmon troll fisheries
29. CA herring purse-seine
30. CA anchovy, mackerel, and tuna purse-seine
31. CA sardine purse-seine
32. CA squid purse-seine
33. AK Prince William Sound sablefish long line/set line fishery
34. AK Southern Bering Sea sablefish long line/set line fishery
35. AK Metlakatla fish trap fishery
36. CA squid dip net fishery
37. WA and OR salmon net pens
38. OR salmon ranches

MARINE MAMMAL CODES:

Seals, Sea Lions, and Walrus -

1. Northern fur seal
2. Steller (Northern) sea lion
3. California sea lion
5. Walrus
6. Harbor seal
7. Spotted seal
8. Ringed seal
9. Ribbon seal
10. Bearded seal
11. Northern elephant seal

Dolphin/Porpoise -

14. Dall's porpoise
15. Harbor porpoise
16. Common (Saddleback) dolphin
17. Pacific whitesided dolphin
18. Northern right whale dolphin
20. Bottlenose dolphin
22. Risso's (Grampus) dolphin

Whales -

23. Pilot whale
25. Killer whale
26. Beluga whale
28. Sperm whale
29. Beaked whales
30. Gray whale
31. Humpback whale
32. Minke whale
38. Northern right whale

Sea Otters -

13. Alaska sea otter
41. Southern (California) sea otter

Unidentified Marine Mammals -

4. Unidentified sea lion
27. Unidentified dolphin or porpoise
33. Unidentified whale
42. Unidentified seal

[FR Doc. 89-29068 Filed 12-14-89; 8:45 am]
BILLING CODE 3510-22-C

federal register

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Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 3
Federal Acquisition Regulation (FAR); Special Government Employees; Proposed Rule

DEPARTMENT OF DEFENSE

award a contract to a Government employee, or to a business concern, or to

because the rule pertains only to contracts with special Government

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 3

Federal Acquisition Regulation (FAR); Special Government Employees

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering a change to FAR 3.601 to state that individuals appointed as special Government employees serving as advisors or consultants, or on advisory committees, are not Government employees for purposes of FAR 3.601 unless the contract arises directly out of the activity for which they are special Government employees or, if in the individual's capacity as a special Government employee, the individual is in a position to influence the award of the contract.

DATE: Comments should be submitted to the FAR Secretariat at the address shown below on or before February 13, 1990, to be considered in the formulation of a final rule. Consistent with our efforts to expedite the rulemaking process, comments received after the date specified may not be considered.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405. Please cite FAR Case 89–92 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523–4755. Please cite FAR Case 89–82.

SUPPLEMENTARY INFORMATION:

A. Background

FAR 3.601 states a general policy that contracting officers shall not knowingly award a contract to a Government employee, or to a business concern, or to other organization-owned, or substantially-owned, or controlled, by one or more Government employees. This policy is intended to avoid any conflict of interest that might arise between employees' interests and their Government duties, and to avoid the appearance of favoritism or preferential treatment by the Government toward its employees.

Included in the category of Government employees are special Government employees, as defined in 18 U.S.C. 202; that is, individuals who can work no more than 130 days during any period of 365 days and who are not required by law to receive compensation. Consequently, individuals serving as special Government employees or organizations within their control may not be awarded contracts in accordance with FAR 3.601.

This proposed rule eliminates the applicability of FAR 3.601 to special Government employees appointed as advisors or consultants, or serving as members of advisory committees, except where the contract would arise directly out of the activity of the special Government employee or, in the individual's capacity as a special Government employee, the individual is in a position to influence award of the contract. The Councils believe that only in these cases (i.e., where the individual's activity is related to the contract, or where the individual is in a position to influence award of the contract) is there the potential for an actual conflict or the appearance of a conflict of interest and, therefore, the need for a policy prohibition. Further, to assure that a conflict or appearance of a conflict does not exist, special Government employees are required, prior to assuming official responsibilities, to file a confidential or public financial disclosure form. Also, by virtue of an individual's position as a special Government employee, they are made subject to certain post-employment restrictions.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the rule pertains only to contracts with special Government employees. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. However, comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR section will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite section 89–610 (FAR Case 89–82) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et. seq.

List of Subjects in 48 CFR Part 3

Government procurement.

Dated: December 6, 1989.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR part 3 be amended as set forth below:

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

1. The authority citation for 48 CFR part 3 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

2. Section 3.601 is amended by adding a sentence following the first sentence to read as follows:

3.601 Policy.

* * * For purposes of this subpart, special Government employees appointed as advisors, consultants, or members of advisory committees, are not considered Government employees unless the contract arises directly out of the individual's activity as a special Government employee, or, in the individual's capacity as a special Government employee, the individual is in a position to influence the award of the contract. * * *

[FR Doc. 89–29125 Filed 12–14–89; 8:45 am]

BILLING CODE 6820–JC–M

federal register

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Part V

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

This report gives the status, as of December 1, 1989, of seven deferrals contained in the first special message of

deferred from obligation. Attachment A shows the history and status of each deferral reported during FY 1990.

TABLE A
STATUS OF 1990 DEFERRALS

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OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

December 1, 1989.

This report is submitted in fulfillment of the requirement of Section 1014(e) of the Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) requires a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to Congress.

This report gives the status, as of December 1, 1989, of seven deferrals contained in the first special message of FY 1990. This message was transmitted to Congress on October 2, 1989.

Rescissions

As of the date of this report, no rescission proposals are pending before Congress.

Deferrals (Table A and Attachment A)

As of December 1, 1989, $1,363.2 million in budget authority was being deferred from obligation. Attachment A shows the history and status of each deferral reported during FY 1990.

Information from Special Messages

The special message containing information on the deferrals covered by this cumulative report is printed in the **Federal Register** cited below: 54 FR 41410, Friday, October 6, 1989.

Richard G. Darman,
Director.

BILLING CODE 3110-01-M

TABLE A
STATUS OF 1990 DEFERRALS

	Amount (In millions of dollars)
Deferrals proposed by the President	1,380.4
Routine Executive releases through December 1, 1989	-17.2
Overturned by the Congress	0
Currently before the Congress	1,363.2

Attachments

Attachment A - Status of Deferrals - Fiscal Year 1990

As of December 1, 1989 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change (+)	Date of Message	Cumulative OMB/Agency Releases (-)	Congressionally Required Releases (-)	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 12-1-89
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Economic support fund	D90-1	271,000		10-02-89	10,200				260,800
DEPARTMENT OF AGRICULTURE									
Forest Service									
Expenses, brush disposal	D90-2	188,680		10-02-89	7,000				181,680
Cooperative work	D90-3	410,189		10-02-89					410,189
DEPARTMENT OF DEFENSE - CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation, Defense	D90-4	1,047		10-02-89					1,047
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Social Security Administration									
Limitation on administrative expenses (construction)	D90-5	7,078		10-02-89					7,078
DEPARTMENT OF STATE									
Bureau for Refugee Programs									
United States emergency refugee and migration assistance fund, executive	D90-6	44		10-02-89					44

Attachment A - Status of Deferrals - Fiscal Year 1990

As of December 1, 1989 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change (+)	Date of Message	Cumulative OMB/Agency Releases (-)	Congressionally Required Releases (-)	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 12-1-89
DEPARTMENT OF TRANSPORTATION									
Federal Aviation Administration Facilities and equipment (Airport and airway trust fund).....	D90-7	502,361		10-02-89					502,361
TOTAL, DEFERRALS.....		1,380,400	0		17,200	0		0	1,363,200

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H.R. 1495/Pub. L. 101–216

Arms Control and Disarmament Amendments Act of 1989. (Dec. 11, 1989; 103 Stat. 1853; 4 pages) Price: $1.00

H.R. 3620/Pub. L. 101–217

To clarify the Food Security Act of 1985. (Dec. 11, 1989; 103 Stat. 1857; 2 pages) Price: $1.00

S. 488/Pub. L. 101–218

Renewable Energy and Energy Efficiency Technology Competitiveness Act of 1989. (Dec. 11, 1989; 103 Stat. 1859; 11 pages) Price: $1.00

H.J. Res. 175/Pub. L. 101–219

To authorize entry into force of the Compact of Free Association between the United States and the Government of Palau, and for other purposes. (Dec. 12, 1989; 103 Stat. 1870; 6 pages) Price: $1.00

S. 1783/Pub. L. 101–220

To make technical and correcting changes in agriculture programs. (Dec. 12, 1989; 103 Stat. 1876; 10 pages) Price: $1.00

H.R. 3275/Pub. L. 101–221

Steel Trade Liberalization Program Implementation Act. (Dec. 12, 1989; 103 Stat. 1886; 6 pages) Price: $1.00

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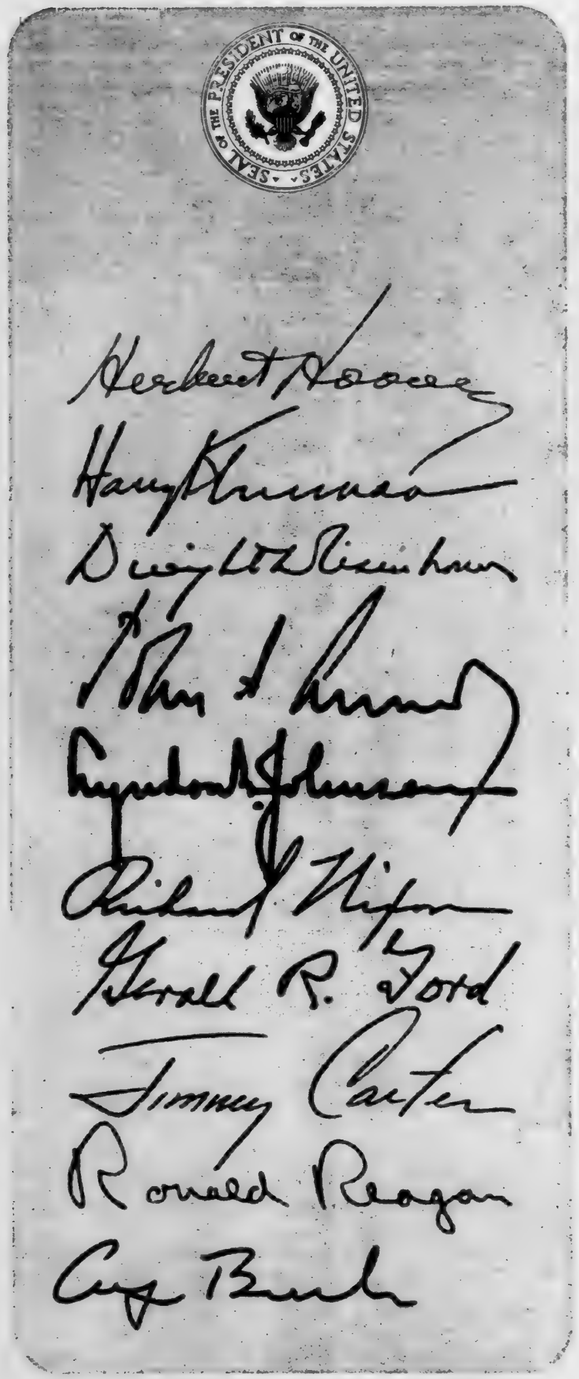

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Agricultural Marketing Service

7 CFR Part 906

[Docket No. FV-89-095FR]

Oranges and Grapefruit Grown in the Lower Rio Grande Valley in Texas; Relaxation of Minimum Size Requirements for Texas Grapefruit and Container Requirements for Texas Oranges and Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting without modification as a final rule an interim final rule, which delayed implementation of a final rule tightening minimum size requirements for fresh Texas grapefruit shipments until the 1990–91 shipping season and each season thereafter. Under the earlier final rule, the minimum size requirements for grapefruit would have been tightened in 1989 to prohibit the shipment of any grapefruit smaller than pack size 96 during the period November 16 through January 31 each season. The interim final rule also authorized Texas orange and grapefruit handlers to use two additional containers for shipping fresh fruit to market. This rule is expected to help the Texas citrus industry to continue to successfully market the 1989–90 orange and grapefruit crops.

DATES: The container requirements for Texas oranges and grapefruit became effective October 11, 1989, and the effective date of the January 24, 1989 (54 FR 3420) rule tightening minimum size requirements for Texas grapefruit was delayed until February 1, 1990, under the interim final rule (54 FR 41583, October 11, 1989). This final rule becomes effective December 18, 1989.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone (202) 475–3918.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order No. 906, both as amended (7 CFR part 906), regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1, and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act and rules issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 78 handlers of oranges and grapefruit subject to regulation under the marketing order for oranges and grapefruit grown in Texas. In addition, there are about 2,500 orange and grapefruit producers in Texas. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and agricultural services firms are defined as those whose annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

The interim final rule delayed the effective date of an increase in grapefruit size requirements (7 CFR 906.365) and authorized two containers for oranges and grapefruit on a permanent basis (7 CFR 906.340). That rule was issued October 5, 1989, and published on October 11, 1989 in the **Federal Register** (54 FR 41583). It provided that interested persons could file written comments through November 13, 1989. No comments were received. These actions were unanimously recommended by the Texas Valley Citrus Committee (committee) on August 1, 1989. The committee administers the marketing order locally.

Section 906.365 specifies minimum grade and size requirements for fresh shipments of oranges and grapefruit grown in Texas. The minimum size requirements require fresh grapefruit to be at least pack size 96 (3⁹⁄₁₆ inches in diameter), except that grapefruit grading at least U.S. No. 1 may be shipped if they are at least pack size 112 (3⁵⁄₁₆ inches in diameter). These requirements are in effect on a continuous basis from season to season unless changed. Under a final rule (54 FR 3420, January 24, 1989), minimum size requirements for fresh Texas grapefruit would have been tightened effective November 16, 1989, to prohibit shipments of pack size 112 grapefruit grading at least U.S. No.1 during the period November 16 through January 31 each season. The interim final rule delayed the effective date of that rule until February 1, 1990 to permit such grapefruit to be shipped throughout the entire 1989–90 season. That delay reflected crop and marketing conditions which made implementation of the final rule for the 1989–90 season impracticable. In addition, the interim final rule similarly delayed the effective date of miscellaneous changes made by the earlier final rule to delete obsolete language and to update references to be U.S. Standards for Grades of Oranges and Grapefruit in § 906.365.

Due to freeze damage in February 1989, the industry is experiencing good marketing opportunities for size 112 grapefruit this season due to a reduced supply of smaller sized Texas grapefruit. In addition, the committee expects that the juice market, the major alternative outlet for small Texas grapefruit, will be depressed this season.

Allowing the use of smaller size 112 grapefruit in fresh markets this entire season will provide handlers and growers in the production area the

opportunity of obtaining greater returns. The committee believes that the 1990–91 season growing and marketing

recommendations and information submitted by the committee and other available information to determine

need to maintain the changed requirements and delay the effective date of the tighter size requirements for

11, 1989), is adopted as a final rule without change.

Note.—This action will appear in the Code

Regulatory Flexibility Analysis

Because no notice of proposed rulemaking is required for this rule, the

12 CFR part or section where identified and described	Current OMB control No.

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opportunity of obtaining greater returns. The committee believes that the 1990–91 season growing and marketing conditions will have returned to normal, and thus, the tighter grapefruit size requirements should become effective during the November 16 through January 31 period during the 1990–91 season and each season thereafter. The tighter requirements are intended to provide more desirable sizes with more acceptable maturity and flavor during the peak demand period during the season and to enable Texas grapefruit to more effectively compete with grapefruit from Florida during that period. The committee also believes that by the 1990–91 season, growing and marketing conditions will have returned to normal, and the tighter size requirements should be in place at that time.

Section 906.340 (7 CFR 906.340) specifies container, pack, and container marking requirements on a continuous basis for fresh shipments of oranges and grapefruit grown in Texas. These current container requirements require Texas orange and grapefruit handlers to use specific containers for shipping fresh fruit to market. The interim final rule authorized handlers to use two additional containers, both of which were used on an experimental basis last season and found to be suitable for shipping fresh citrus to market. The additional containers provide Texas citrus handlers more flexibility in packing and shipping their fruit. One of these containers is a poly or vexar bag with a capacity of four pounds of fruit, which may be used only for shipping oranges. The other container is a mesh type bag with a capacity of ten pounds of fruit. Both of these containers must be packed in the matter container specified in paragraph (a)(1)(iii) of this section.

The interim final rule also made conforming changes necessary in paragraph (a)(1)(iii) to permit the master container authorized under that paragraph to be used for the two newly authorized containers. In addition, a change was made for clarity to paragraph (a)(1)(ix) which is redesignated as paragraph (a)(1)(xi). Container requirements are designed to ensure that fresh citrus is packed in suitable containers, so that it arrives in the marketplace in good condition.

The committee meets each season to review the handling requirements for Texas oranges and grapefruit, which are in effect on a continuous basis. Committee meetings are open to the public, and interested persons may express their views at these meetings. The U.S. Department of Agriculture (Department) reviews committee recommendations and information submitted by the committee and other available information to determine whether modification, suspension, or termination of the handling requirements would tend to effectuate the declared policy of the Act.

Texas orange and grapefruit shipments to fresh markets in the United States, Canada, and Mexico are subject to handling requirements effective under this marketing order. Exempt from such handling requirements are shipments made: (1) Within the production area (Cameron, Hidalgo, and Willacy counties in Texas; (2) in individually addressed gift packages aggregating not more than 500 pounds which are not for resale; (3) under the order's current 400 pound minimum quantity exemption provisions, and (4) for relief, charity, and home use. In addition, fruit shipped to approved processors for processing may be exempted from the handling requirements.

Section 8e of the Act (7 U.S.C. 608e–1) provides that whenever specified commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity into the United States are prohibited unless they meet the same or comparable grade, size, quality, and maturity requirements as those in effect for the domestically produced commodity. Section 8e also provides that whenever two or more current marketing orders regulate the same commodity produced in different areas of the United States, the Secretary shall determine which area produces the commodity in most direct competition with the improved commodity. Imports anywhere in the United States must then meet the quality standards set for that particular area.

Minimum grade and size requirements for grapefruit imported into the United States are specified in § 944.106 (7 CFR part 944), and are effective under section 8e of the Act. These import requirements are based upon Florida grapefruit requirements issued under M.O. 905 (7 CFR part 905), and require imported grapefruit to meet the same minimum grade and size requirements as those specified for the various varieties of Florida grapefruit in Table I of paragraph (a) in § 905.306. Accordingly, the findings and determinations for imported grapefruit in part 944 would not be changed by this action and no change in the provisions of part 944 is necessary. Thus, import requirements would continue to be based upon Florida grapefruit requirements under M.O. 905.

This action reflects the committee's and the Department's appraisal of the need to maintain the changed requirements and delay the effective date of the tighter size requirements for grapefruit. The Department's view is that this action will have a beneficial impact on producers and handlers because it will permit 1989–90 season grapefruit shipments to continue to be made consistent with anticipated crop and market conditions. The application of handling requirements to Texas oranges and grapefruit over the past several years has been beneficial to the Texas citrus industry in marketing their crop.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other available information, it is found that the final rule finalizing the interim final rule, as published in the **Federal Register** (54 FR 41583, October 11, 1989), will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action adopts without change the provisions of the interim final rule; (2) shipment of the 1989–90 season Texas citrus crop is currently under way; (3) the interim final rule provided a 30-day comment period, and no comments were received; and (4) no useful purpose would be served by delaying the effective date until 30 days after publication.

List of Subjects in 7 CFR Part 906

Grapefruit, Marketing agreements and orders, Oranges, Texas.

For the reasons set forth in the preamble, 7 CFR part 906 is amended as follows:

PART 906—ORANGES AND GRAPEFRUIT GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS

1. The authority citation for 7 CFR part 906 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Accordingly, the interim final rule delaying the November 16, 1989 effective date of a final rule amending the provisions of § 906.365 (54 FR 3420, January 24, 1989), until February 1, 1990; and amending the provisions of § 906.340, which was published in the **Federal Register** (54 FR 41583, October 11, 1989), is adopted as a final rule without change.

Note.—This action will appear in the Code of Federal Regulations.

Dated: December 13, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–29349 Filed 12–15–89; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 506

[No. 89–469]

OMB Control Numbers Assigned Pursuant to the Paperwork Reduction Act

Date: December 7, 1989.

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision ("Office") is adding 12 CFR part 506 in order to display control numbers assigned by the Office of Management and Budget ("OMB") pursuant to the Paperwork Reduction Act of 1980, as amended, to information collection requirements contained in the Office's regulations.

EFFECTIVE DATE: December 18, 1989.

FOR FURTHER INFORMATION CONTACT: Colleen Devine, Acting Director, Directives Management Division, (202) 906–6025, or Mary J. Hoyle, Paralegal Specialist, Regulations and Legislation Division, (202) 906–7135, Office of Chief Counsel, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The Office of Thrift Supervision is collecting and displaying the control numbers assigned to the information collection requirements contained in its regulations by the Office of Management and Budget, pursuant to the Paperwork Reduction Act, Public Law 96–511, 94 Stat. 2812, as amended. The Office is publishing such control numbers in compliance with the requirements of 5 CFR 1320.7.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(a)(2), the Office has determined that this rule is not subject either to the notice and comment or delayed effective date requirements of the Administrative Procedure Act.

Regulatory Flexibility Analysis

Because no notice of proposed rulemaking is required for this rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601) do not apply.

Executive Order 12291

Because this rule relates to agency management, the provisions of Executive Order 12291 do not apply.

List of Subjects in 12 CFR Part 506

Paperwork, Reporting and recordkeeping requirements, Collection of information.

Accordingly, the Office hereby amends subchapter A, chapter V, title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER A—ORGANIZATION AND PROCEDURES

1. Part 506 is added to read as follows:

PART 506—INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT

Authority: Sec. 2(a), 94 Stat. 2812, as amended (44 U.S.C. 3501 *et seq.*), 5 CFR 1320.7.

§ 506.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This part collects and displays the control numbers assigned to information collection requirements contained in regulations of the Office of Thrift Supervision by the Office of Management and Budget ("OMB") pursuant to the Paperwork Reduction Act of 1980, Public Law 96–511, as amended, and is adopted in compliance with the requirements of 5 CFR 1320.7.

(b) *Display.*

12 CFR part or section where identified and described	Current OMB control No.
Part 528	1550–0021
543.9	1550–0007
544.2	1550–0017
544.5	1550–0018
545.74	1550–0013
545.82	1550–0033
545.96(c)	1550–0011
545.113(b)	1550–0011
552.4	1550–0017
552.5	1550–0018
552.11	1550–0011
563.1(b)	1550–0011
563.10	1550–0027
563.41	1550–0034
563.45	1550–0002
563.47(e)	1550–0011
563.48(c)	1550–0011
563.90	1550–0011
563.93(c)	1550–0011
563.96(g)	1550–0029
563.131(c)	1550–0026
563.132	1550–0033
563.172(a)	1550–0011
563.173(e)	1550–0011
563.174(e)	1550–0011
563.174(f)	1550–0011
563.177	1550–0041
563.183(b)	1550–0032
563.233(b)	1550–0011
Part 563(b)	1550–0014
563c.10(c)	1550–0011
Part 563d	1550–0019
563e.4 through 563e.6	1550–0012
Part 563g	1550–0035
566.4(b)	1550–0011
574.4	1550–0032
574.5(b)	1550–0032

By the Office of Thrift Supervision.

M. Danny Wall,

Director.

[FR Doc. 89–29324 Filed 12–15–89; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88–NM–169–AD; Amdt. 39–6420]

Airworthiness Directives; British Aerospace Model BAe 146–100A, –200A, and –300A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to British Aerospace Model BAe 146–100, –200A, and –300A series airplanes, which requires inspection of the aileron disconnect units (ADU's) and modification or replacement, if necessary. This amendment is prompted by reports of the ADU failing to cock and/or release when tested. This condition, if not corrected, could lead to loss of all roll control should a jam in the aileron flight control system occur.

DATE: Effective January 14, 1990.

ADDRESSES: The applicable service information may be obtained from British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM–113; telephone (206) 431–

1565. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway

Adoption of the Amendment

Accordingly, pursuant to the authority

Service News Letter, dated September 12, 1988, for specific installation procedures.

Compliance: As indicated in the body of the AD.

June 9, 1989, was issued to expand the inspection area to include all the hub bolt holes. McCauley Service Bulletin

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness

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1565. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a airworthiness directive, applicable to British Aerospace Model BAe 146-100A, -200A, and -300A series airplanes, which requires inspection of the aileron disconnect units, and replacement or modification, if necessary, was published in the **Federal Register** on October 3, 1989 (54 FR 40677).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supported the rule. After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 58 airplanes of U.S. registry will be affected by this AD, that it will take approximately 5 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The estimated cost for the modifications is $100. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $17,400.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Applies to British Aerospace (BAe) Model 146-100A, -200A and -300A series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent loss of roll control should a jam in aileron control system occur, accomplish the following:

A. Within 60 days after the effective date of this AD:

1. Determine if Fraser Nash part Number A0-100-902 aileron disconnect units (ADU's) or Normalair-Garrett, Ltd. (NGL) part Numbers 1099R000, 1224R000, or 1295R000 ADU's are installed. If NGL part Number 1295R000 ADU's modified to British Aerospace (BAe) Modification HCM70212C (NGL Modification No. 5RM) configuration are installed, no further action is required.

2. Modify NGL part Number 1295R000 ADU's to BAe modification HCM70212C (NGL modification 5RM) configuration, in accordance with BAe Modification Service Bulletin 27-88 70212C, dated November 10, 1988.

3. Inspect Fraser Nash part Number A0-100-902 and NGL part Numbers 1099R000 and 1224R000 ADU's for dormant failure, in accordance with British Aerospace Inspection Service Bulletin 27-87, dated September 30, 1988. Replace any failed units with serviceable units prior to further flight.

B. For all airplanes equipped with NGL part Numbers 1099R000 and 1224R000 ADU's that have not been previously modified to BAe HCM 70212A&B (NGL Modification 3RM and 4RM) configuration:

1. Within one year after the effective date of this AD, modify NGL part Number 1099R000 and 1224R000 ADU's to BAe HCM70212A&B (NGL Modification 3RM and 4RM) and BAe HCM70212C (NGL Modification 5RM) configuration, in accordance with BAe Modification Service Bulletins 27-75-70212A&B, dated June 16, 1988, and 27-88-70212C, dated November 10, 1988.

Note: British Aerospace Modification Service Bulletin 27-75-70212A&B refers to NGL Service Bulletins 1099R-27-4 and 1224R-27-5. British Aerospace Modification Service Bulletin 27-88-70212C refers to NGL Service Bulletin 1295R-27-6, Revision 1, and NGL Service News Letter, dated September 12, 1988, for specific installation procedures.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective January 14, 1990.

Issued in Seattle, Washington, on November 30, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-29046 Filed 12-15-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-ANE-44; Amendment 39-6398]

Airworthiness Directives; McCauley Accessory Division, Cessna Aircraft Company, Model 1A103/TCM6958 Fixed-Pitch Propellers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires inspection and rework of an area of the blade hub on McCauley Accessory Division, Cessna Aircraft Company, Model 1A103/TCM6958 fixed-pitch propellers. The AD is needed to prevent blade separation which could possibly lead to engine separation and loss of aircraft control.

DATE: *Effective:* January 31, 1990.

Compliance: As indicated in the body of the AD.

ADDRESSES: The applicable service bulletin may be obtained from McCauley Accessory Division, Cessna Aircraft Company, 3535 McCauley Drive, Vandalia, Ohio 45377, or may be examined in the Regional Rules Docket, Room 311, Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Mr. Tomaso DiPaolo, Chicago Aircraft Certification Office, Propulsion Branch, ACE-140C, Small Airplane Certification Directorate, Aircraft Certification Service, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018; telephone (312) 694-7031.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations (FAR) to include an AD which requires inspection and rework of an area of the blade hub on certain McCauley Accessory Division, Cessna Aircraft Company, Model 1A103/TCM6958 fixed-pitch propellers was published in the **Federal Register** on January 19, 1988 (53 FR 1373).

The proposal was prompted by an FAA determination that certain McCauley Accessory Division, Cessna Aircraft Company, Model 1A103/TCM6958 fixed-pitch propellers had evidence of scratches or tool marks on the propeller blade-to-hub forward face transition area. The scratches or tool marks can lead to fatigue cracks and subsequent propeller blade separation followed by possible engine separation and loss of aircraft control. There were two occurrences in service where complete propeller blade separation occurred. Since these conditions were likely to exist on other propellers of the same type design, the Notice of Proposed Rulemaking (NPRM) (53 FR 1373, January 19,1988) required dye penetrant inspection and rework of the propeller blade-to-hub forward face transition area to remove any indication of scratches or tool marks on certain McCauley Accessory Division, Cessna Aircraft Company, Model 1A103/TCM6958 propellers.

An opportunity to comment on the NPRM was extended to the public. No objections to the NPRM were received. However, discussions with FAA field offices indicated that, based on field reports, consideration should be given to expand the inspection area. Investigations revealed a single incident of cracks in the hub bolt holes. McCauley Service Bulletin 169B, dated June 9, 1989, was issued to expand the inspection area to include all the hub bolt holes. McCauley Service Bulletin 169C, dated September 22, 1989, was issued to reduce the inspection of the hub bolts holes to those adjacent to the leading edge of the propeller blade and with no changes to the inspection procedure of the propeller blade-to-hub forward face transition area.

The FAA concurs with the comments and will expand the inspection area. Inspecting the bolt holes will not significantly increase the required inspection time. Accordingly, the proposal is adopted with changes to the inspection/rework area to include the hub bolt holes adjacent to the leading edge of the propeller blade.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation involves 8,778 aircraft, and will cost approximately $120.00 per aircraft. This regulation will not have a significant economic impact since no repetitive inspection or rework will be required. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, and Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) amends part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

McCauley Accessory Division, Cessna Aircraft Company: Applies to McCauley Accessory Division, Cessna Aircraft Company Model 1A103/TCM6958 fixed-pitch propellers installed on, but not limited to Cessna Aircraft Company Models 152 and A152 and Reims Aviation S. A. Models F152 and FA152 aircraft. Affected propeller serial numbers are 770001 through 777380 and BC-001 up to, but not including JA001.

Compliance is required within the next 100 hours time in service after the effective date of this AD, or before the accumulation of 1200 hours time in service, whichever occurs later, unless already accomplished.

To prevent possible fatigue cracks that can lead to blade separation near the hub, which could subsequently lead to engine separation and loss of aircraft control, accomplish the following:

(a) Inspect and rework the hub bolt holes adjacent to the leading edge of the propeller blade and the propeller blade-to-hub forward face transition area in accordance with the Appendix (McCauley Accessory Division Service Bulletin 169C, dated September 22, 1989) to this AD.

Note: Previous compliance with McCauley Accessory Division Service Bulletin 169B, accomplished prior to the effective date of this AD, does constitute compliance with the requirements of this AD.

(b) Remove from service prior to further flight any propeller which, after initial or final inspection following rework, shows evidence of cracks or other unairworthy conditions as described in the Appendix to this AD.

(c) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(d) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, an alternate method of compliance with the requirements of this AD or adjustments to the compliance time specified in this AD may be approved by the Manager, Chicago Aircraft Certification Office, ACE-115C, Small Airplane Certification Directorate, Aircraft Certification Service, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

This amendment becomes effective on January 31, 1990.

Issued in Burlington, Massachusetts, on November 6, 1989.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

Note: The appendix is not published in the **Federal Register**. It is available from New England Headquarters. See **ADDRESSES** section. This appendix contains McCauley

Accessory Division Service Bulletin 169C, dated September 22, 1989.

[FR Doc. 89-29041 Filed 12-15-89; 8:45 am]

State has the necessary personnel and funding to fully implement the agreement in accordance with SMCRA.

State regulatory authority under a cooperative agreement the review and approval of exploration operations not

III. Public Comments

The public comment period and opportunity to request a public hearing

Columbus, Ohio 43232; Telephone: (614) 866-0578.

List of Subjects in 30 CFR Part 935

Article VI: Review of Permit Application Package

The Division shall assume the primary responsibility for the review of permit

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Accessory Division Service Bulletin 169C, dated September 22, 1989.

[FR Doc. 89-29041 Filed 12-15-89; 8:45 am]

BILLING CODE 4310-13-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Surface Coal Mining and Reclamation Operations Under the Federal Lands Program; State-Federal Cooperative Agreements; Ohio

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: OSMRE is adopting an amendment to the cooperative agreement between the Department of the Interior and the State of Ohio for the regulation of surface coal mining and reclamation operations on Federal lands in Ohio. This final rule authorizes the State of Ohio to regulate coal exploration activities on Federal lands in Ohio under the terms of the cooperative agreement. This cooperative agreement is authorized under section 523(c) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The Federal regulations at 30 CFR 745.14 provide for amendments to cooperative agreements of this type.

EFFECTIVE DATE: January 17, 1990.

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Columbus Field Office Director, Office of Surface Mining Reclamation and Enforcement, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43232; Telephone: (614) 866-0578.

SUPPLEMENTARY INFORMATION:

I. Background
II. Summary of Amendment to the Cooperative Agreement
III. Public Comment on Proposed Amendment
IV. Procedural Matters

I. Background

Section 523(c) of SMCRA, 30 U.S.C. 1201 *et seq.*, and the implementing regulations at 30 CFR parts 740 and 745, allow a State and the Secretary of the Interior to enter into a cooperative agreement to provide for State regulation of surface coal mining and reclamation operations on Federal lands within the State, provided the State has an approved State program for the regulation of surface coal mining and reclamation operations, and the Secretary determines in writing that the State has the necessary personnel and funding to fully implement the agreement in accordance with SMCRA. The Federal regulations at 30 CFR 745.14 state that a cooperative agreement which has been approved pursuant to § 745.11 may be amended by mutual agreement of the Secretary and the Governor of a State.

On March 26, 1982, the State of Ohio requested a cooperative agreement between the Department of the Interior and State of Ohio to give the State primacy in the administration of its approved regulatory program on Federal lands in Ohio. The Secretary of the Interior (the Secretary) approved the cooperative agreement on February 22, 1984. Approval of the cooperative agreement was published on April 13, 1984 (49 FR 14735). The text of the existing cooperative agreement can be found at 30 CFR 935.30.

The approved cooperative agreement signed by the Secretary and the Governor of Ohio does not contain specific language regarding coal exploration on Federal lands in Ohio. On April 26, 1988, OSMRE sent a letter to the State outlining proposed amendments to the cooperative agreement to include this language and to make other minor changes regarding reference to an appendix to the agreement. In a letter dated May 13, 1988, the State of Ohio indicated that the proposed changes were acceptable to the State.

II. Summary of Amendment to the Cooperative Agreement

The text of the cooperative agreement is being amended to replace reference to the "Office of Surface Mining" with the "Office of Surface Mining Reclamation and Enforcement" and to replace all references to "OSM" with "OSMRE." The following sections of the cooperative agreement are also amended:

Article I.A.—Authority and Article VI.—Review of Permit Application Package

The authority provision of Article I.A. is amended to provide that Ohio's authority to regulate surface coal mining and reclamation operations on Federal lands includes coal exploration operations not subject to 43 CFR part 3480, subpart 3480 through 3487. In addition, Article VI has been amended to add the phrase "coal exploration" to the statement that identifies Ohio's responsibility for the review of permit application packages. The amended language is similar to the Federal regulation at 30 CFR 740.4(c)(6) which states that OSMRE may delegate to a State regulatory authority under a cooperative agreement the review and approval of exploration operations not subject to the requirements of 43 CFR parts 3480–3487. Therefore, the specific mention of exploration operations in Articles I and VI of the cooperative agreement with Ohio is in accordance with SMCRA and consistent with the Federal regulations.

Article XV.—Reservation of Rights and Appendix A

The Reservation of Rights provision at Article XV is amended to clarify that the agreement shall not be construed as waiving or preventing the assertion of any State or Federal rights that have not been expressly addressed in the agreement.

An appendix A has been added that consists of a list of the laws and regulations to which, at a minimum, the Reservation of Rights Provision applies. A reference to appendix A has also been added to Article XV.

The Federal regulations at 30 CFR 745.13 prohibit the Secretary from delegating certain authorities to States in State-Federal cooperative agreements. The revisions to Article XV and the addition of appendix A to the cooperative agreement should adequately clarify that certain rights are reserved by the Secretary and the State of Ohio under this cooperative agreement. The amendments are in accordance with SMCRA and consistent with the Federal regulations.

Surface Effects of Underground Mining

OSMRE had proposed to amend the authority provision of Article I.A. to state that Ohio's authority to regulate surface coal mining and reclamation operations on Federal lands also includes the surface effects of underground mining operations. However, since the Federal definition of "surface coal mining operations" at 30 CFR 700.5 includes the phrase "surface operations and surface impacts incident to an underground coal mining" OSMRE has determined that the specific mention in the cooperative agreement of surface effects resulting from underground mining operations is unnecessary and may have been confusing. Therefore, this change is not adopted. The Ohio cooperative agreement will continue to provide authority for Ohio to regulate surface coal mining operations on Federal lands in the State including surface impacts incident to underground mines.

III. Public Comments

The public comment period and opportunity to request a public hearing on the proposed rule published August 30, 1988 (53 FR 33150), ended on September 29, 1988. No public comments were received and the scheduled public hearing was not held as no one requested an opportunity to provide testimony. Comments also were solicited from various Federal agencies with an actual or potential interest in the Ohio program. No substantive comments were received.

IV. Procedural Matters

Executive Order No. 12291 and the Regulatory Flexibility Act

On October 21, 1982, the Department of the Interior received from the Office of Management and Budget an exemption for State-Federal cooperative agreements from the requirements of sections 3 and 7 of Executive Order 12291.

The Department has reviewed this proposed agreement in light of the Regulatory Flexibility Act (Pub. L. 96–354). Having conducted this review, the Department has determined that this document will not have a significant economic effect on a substantial number of small entities because no significant departure from either the State or Federal requirements already in effect will occur and no new or additional information will be required by the proposed agreement.

National Environmental Policy Act

Proceedings relating to adoption or amendment of a permanent program State-Federal cooperative agreement are part of the Secretary's implementation of the Federal lands program pursuant to section 523 of the Act. Such proceedings are exempt under section 702(d) of the Act from the requirements to prepare a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This amendment to the Ohio Cooperative Agreement does not contain information collection requirements which require clearance from the Office of Management and Budget under 44 U.S.C. 3507.

Author

The author of this regulation is Ms. Nina Rose Hatfield, Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43232; Telephone: (614) 866-0578.

List of Subjects in 30 CFR Part 935

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Accordingly, title 30, chapter VI, subchapter T of the Code of Federal Regulations is amended as set forth below:

Dated: November 16, 1989.

Dave O'Neal,

Assistant Secretary—Land and Minerals Management.

PART 935—OHIO

1. The authority citation for part 935 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended.

§ 935.30 [Amended]

2. Section 935.30, State-Federal Cooperative Agreement, is amended to remove the words "Office of Surface Mining" as they appear in the first paragraph and add, in their place, the words "Office of Surface Mining Reclamation and Enforcement." In addition, all references to "OSM" throughout the text of the cooperative agreement are revised to read "OSMRE".

3. In § 935.30, State-Federal Cooperative Agreement, Article I.A., Article VI introductory text, and Article XV are revised and appendix A is added to read as follows:

§ 935.30 State-Federal Cooperative agreement.

* * * * *

Article I: Introduction, Purpose, and Responsible Administrative Agency

A. Authority: This Agreement is authorized by section 523(c) of the Surface Mining Control and Reclamation Act (Act), 30 U.S.C. 1273(c), which allows a State with a permanent regulatory program approved by the Secretary under 30 U.S.C. 1253, to elect to enter into an Agreement with the Secretary of the Department of the Interior for State regulation of surface coal mining and reclamation operations on Federal lands. This Agreement provides for State regulation of surface coal mining and reclamation operations and of coal exploration operations not subject to 43 CFR part 3480, subparts 3480 through 3487, on Federal lands in Ohio which are under the jurisdiction of the United States Department of Agriculture, Forest Service, except those lands containing leased Federal coal, consistent with State and Federal laws governing such activities in Ohio, the Federal lands program (30 CFR parts 740–745) and the Ohio State program (approved State program).

* * * * *

Article VI: Review of Permit Application Package

The Division shall assume the primary responsibility for the review of permit application packages for surface coal mining and reclamation and coal exploration operations on Forest Service lands covered by this Agreement. The Division shall coordinate the review of permit application packages with the Forest Service and other Federal agencies which may be affected by the proposed surface coal mining and reclamation operation to ensure compliance with Federal laws other than the Act and regulations other than the approved State program. When requested by the State, OSMRE shall assist the State in identifying Federal agencies other than the Forest Service which may be affected by the mining proposal.

* * * * *

Article XV: Reservation of Rights

In accordance with 30 CFR 745.13, this Agreement shall not be construed as waiving or preventing the assertion of any rights that have not been expressly addressed in this Agreement that the State or the Secretary may have under other laws or regulations, including but not limited to those listed in Appendix A.

Approved:

Richard F. Celeste,

Governor of Ohio.

Date: April 19, 1989.

Manuel Lujan,

Secretary of the Interior.

Date: December 11, 1989.

Appendix A

1. The Federal Land Policy and Management Act, 43 U.S.C. 1701 *et seq.*, and implementing regulations.

2. The Mineral Leasing Act of 1920, 30 U.S.C. 181 *et seq.*, and implementing regulations, including 43 CFR part 3480.

3. The National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and implementing regulations, including 40 CFR part 1500.

4. The Endangered Species Act, as amended, 16 U.S.C. 1531 *et seq.*, and implementing regulations, including 50 CFR part 402.

5. The Fish and Wildlife Coordination Act, as amended, 16 U.S.C. 661 *et seq.*, 48 Stat. 401.

6. The National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.*, and implementing regulations, including 36 CFR part 800.

7. The Clean Air Act, 42 U.S.C. 7401 *et seq.*, and implementing regulations.

8. The Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.*, and implementing regulations.

9. The Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 *et seq.*, and implementing regulations.

10. The Reservoir Salvage Act of 1960, as amended by the Preservation of Historical and Archaeological Data Act of 1974, 16 U.S.C. 469 *et seq.*

11. Executive Order 11593 (May 13, 1971), Cultural Resource Inventories on Federal Lands.

12. Executive Order 11988 (May 24, 1977),

Rockville, Maryland 20857; telephone: (301) 443–6190.

SUPPLEMENTARY INFORMATION: On

amendment will alleviate a burden on grantees and on grant applicants, and thus create greater flexibility for both

PART 57—GRANTS FOR CONSTRUCTION OF TEACHING FACILITIES, EDUCATIONAL

regulations implementing procurement integrity for a 1-year period beginning December 1, 1989, and ending November

b. For solicitations issued prior to December 1, 1989, for the acquisition of leasehold interests in real property

11. Executive Order 11593 (May 13, 1971), Cultural Resource Inventories on Federal Lands.
12. Executive Order 11988 (May 24, 1977), for flood plain protection.
13. Executive Order 11990 (May 24, 1977), for wetlands protection.
14. The Mineral Leasing Act for Acquired Lands, 30 U.S.C. 351 *et seq.*, and implementing regulations.
15. The Stock Raising Homestead Act of 1916, 43 U.S.C. 291 *et seq.*
16. The Archaeological Resources Protection Act of 1979, 16 U.S.C. 470aa, *et seq.*
17. The Constitution of the United States.
18. The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*, as amended.
19. 30 CFR chapter VII.
20. The Constitution of the State of Ohio.
21. Ohio Revised Code, Chapter 1531.
22. Ohio Administrative Code, Chapter 1501.

[FR Doc. 89-29325 Filed 12-15-89; 8:45 am]
BILLING CODE 4310-05-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 57

RIN 0905-AD03

Grants for Residency Training and Faculty Development in General Internal Medicine and General Pediatrics

AGENCY: Public Health Service, HHS.

ACTION: Final rule.

SUMMARY: This rule amends the existing regulations implementing Grants for Residency Training and Faculty Development in General Internal Medicine and General Pediatrics to remove requirements that specific percentages of the training experience be devoted to providing continuity care experience to a defined panel of patients. The Department believes that the amendment will alleviate a burden on grantees and on grant applicants, and thus create greater flexibility for both the Department and the grantees in the administration of this grant program.

EFFECTIVE DATE: This final rule is effective December 18, 1989.

FOR FURTHER INFORMATION CONTACT: Marilyn H. Gaston, M.D., Director, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 4C-25, 5600 Fishers Lane, Rockville, Maryland 20857; telephone: (301) 443-6190.

SUPPLEMENTARY INFORMATION: On December 15, 1988, the Assistant Secretary for Health, with the approval of the Secretary, published in the **Federal Register** (53 FR 50407) a final rule amending the regulations that govern programs administered under section 784 of the Public Health Service Act (the Act) to add provisions for faculty development training in General Internal Medicine and General Pediatrics.

Specifically, subpart FF of part 57 of title 42 of the Code of Federal Regulations was amended by adding new project requirements for a faculty development program under § 57.3105, entitled *"Project requirements."*, and by rearranging and redesignating the paragraphs under this section.

To provide greater flexibility in the administration of this program by both grantees and the Department, this amendment deletes the requirement in redesignated § 57.3105(a)(11) (formerly § 57.3105(k)) that specific percentages of the residency training experiences be devoted to providing continuity care to a defined panel of patients. Specifically, the following language in the last sentence of the introductory text of paragraph (a)(11) and subparagraphs (i) through (iii) is being deleted:

A resident's time in these settings must:
(i) Comprise at least 10 percent of his or her total training time (excluding vacation time) during each year in the program (i.e., at least one-half day per week);
(ii) Comprise at least 25 percent of his or her total training time (excluding vacation time) for the entire residency training period; and
(iii) Be scheduled in at least nine months of each year of training.

This deletion is consistent with the recommendation included in a recent evaluation study of this grant program. The study found that a number of high quality programs were dissuaded from participation in the program because these specific requirements could not realistically be attained for their programs. It recommended that the requirement be reviewed and that the emphasis be placed on program content. The Department can focus grantee efforts on providing valuable continuity care experience to residents using the general requirement of § 57.3105(a)(11), without this restrictive regulatory provision.

Justification for Omitting Public Comment

The Department believes that the amendment will alleviate a burden on grantees and on grant applicants, and thus create greater flexibility for both the Department and the grantees in the administration of this grant program. The Secretary has therefore determined, according to 5 U.S.C. 553 and Department policy, that it would be both unnecessary and contrary to the public interest to obtain public comment on these regulations or to delay their effective date.

Regulatory Flexibility Act and Executive Order 12291

These regulations govern financial assistance programs in which participation is voluntary. The rule will not exceed the threshold level of $100 million established in section (b) of Executive Order 12291. For these reasons, the Secretary has determined that this rule is not a major rule under Executive Order 12291 and a regulatory impact analysis is not required. Further, because the rule does not have a significant economic impact on a substantial number of small entities, a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980 is not required.

Paperwork Reduction Act of 1980

The amendment does not affect the recordkeeping or reporting requirements for the Grants for Residency Training and Faculty Development in General Internal Medicine and General Pediatrics programs.

List of Subjects in 42 CFR Part 57

Dental health, Education of the disadvantaged, Educational facilities, Educational study program, Emergency medical services, Grant programs-education, Grant programs-health, Health facilities, Health professions, Loan programs-health, Medical and dental schools, Scholarships and fellowships, Student aid.

Accordingly, 42 CFR part 57, subpart FF is amended as set forth below:

Dated: July 13, 1989.

James O. Mason,

Assistant Secretary for Health.

Approved: November 16, 1989.

Louis W. Sullivan,

Secretary.

(Catalog of Federal Domestic Assistance, No. 13.884, Grants for Residency Training in General Internal Medicine and General Pediatrics)

PART 57—GRANTS FOR CONSTRUCTION OF TEACHING FACILITIES, EDUCATIONAL IMPROVEMENTS, SCHOLARSHIPS AND STUDENT LOANS

Subpart FF—Grants for Residency Training and Faculty Development in General Internal Medicine and General Pediatrics

1. The authority citation for subpart FF continues to read as follows:

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690, 63 Stat. 35 (42 U.S.C. 216); sec. 784, Public Health Service Act, 90 Stat. 2315, as amended by 95 Stat. 922–923, and 99 Stat. 540 (42 U.S.C. 295g–4).

2. Section 57.3105 is amended by revising paragraph (a)(11) to read as follows:

§ 57.3105 Project requirements.

(a) * * *

(11) Make provision for each resident to serve a panel of patients and/or families who recognize him or her as their provider of longitudinal and comprehensive (including preventive and psychosocial) health care. The panel must be sufficiently numerous and varied to provide the resident with broad clinical experience. The clinical experience must be scheduled principally in ambulatory care settings as described in paragraph (a)(10) of this section.

* * * * *

[FR Doc. 89-28842-Filed 12-15-89; 8:45 am]
BILLING CODE 4160-15-M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 503, 505 and 552

[Acquisition Circular AC-89-2]

General Services Administration Acquisition Regulation; Procurement Integrity

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Cancellation of temporary rule.

SUMMARY: General Services Administration Acquisition Regulation (GSAR) Acquisition Circular AC-89-2, which temporarily amended the GSAR to implement and supplement the Federal Acquisition Regulation (FAR) as amended by FAC 84-47 on Procurement Integrity, and which was published in the **Federal Register** on July 14, 1989, (54 FR 29720), is hereby cancelled. As a result of the enactment of section 507 of the Ethics Reform Act of 1989, the FAR has been amended by FAC 84-54 to suspend the effect on the FAR regulations implementing procurement integrity for a 1-year period beginning December 1, 1989, and ending November 30, 1990. Accordingly, the GSAR is amended to conform to the FAR as amended by FAR 84-54.

EFFECTIVE DATE: December 1, 1989.

FOR FURTHER INFORMATION CONTACT: Ida Ustad, Office of GSA Acquisition Policy, (202) 566-1224.

List of Subjects in 48 CFR Part 503, 505, and 552

Government procurement.

1. The authority citation for 48 CFR Parts 503, 505 and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. 48 CFR Parts 503, 505 and 552 are amended by the following Acquisition Circular (Cancellation):

General Services Administration Acquisition Regulation Acquisition Circular AC-89-2 (Cancellation)

December 1, 1989.

To: All GSA contracting activities.

Subject: Implementation of Federal Acquisition Circular 84-54.

1. *Purpose.* This cancels General Services Administration Acquisition Regulation (GSAR) Acquisition Circular AC-89-2, dated July 10, 1989, on the subject of Procurement Integrity—OFPP Act Amendments of 1988.

2. *Background.* Acquisition Circular AC-89-2 was issued to temporarily amend the GSAR as necessary to conform to the Federal Acquisition Regulation (FAR), as amended by Federal Acquisition Circular 84-47, which implemented section 27 of the Office of Federal Procurement Policy Act dealing with procurement integrity. As a result of the enactment of section 507 of the Government Ethics Reform Act of 1989, the FAR has been amended by FAC 84-54 to suspend the effect of the FAR regulations implementing procurement integrity for a 1-year period beginning December 1, 1989, and ending November 30, 1990. Accordingly, Acquisition Circular AC-89-2 is being cancelled in order to amend the GSAR to conform to the FAR as amended by FAC 84-54.

3. *Effective date.* December 1, 1989.

4. *Supplementary instructions.*

a. Solicitations for the acquisition of leasehold interests in real property issued prior to December 1, 1989, for which offers have not been received, shall be amended, wherever practical, to delete the provisions at 552.203-71 and 552.203-8 and the clauses at 52.203-9 and 552.203-10.

b. For solicitations issued prior to December 1, 1989, for the acquisition of leasehold interests in real property where offers were received before December 1, 1989, but an award has not been made, the contracting officer shall disregard the lack of certification in determining eligibility for award and shall delete the provisions at GSAR 552.203-71 and 552.203-8 and the clauses at FAR 52.203-9 and GSAR 552.203-10 from the contract presented to the successful offeror for signature.

c. Contracts for supplies, services (including construction) and for the acquisition of leasehold interests in real property, which were awarded during the period that section 27 of the OFPP Act was in effect (July 16, 1989 to November 30, 1989) need not be modified to delete the FAR and/or GSAR provisions and clauses applicable to procurement integrity. However, contracting officers may wish to notify contractors that the clauses will have no force or effect for activities and conduct that occur during the 1-year suspension period.

Richard H. Hopf, III,

Associate Administrator for Acquisition Policy.

[FR Doc. 89-29354 Filed 12-15-89; 8:45 am]
BILLING CODE 6820-61-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1090

[Ex Parte No. 230 (Sub 7)]

Improvement of TOFC/COFC Regulations (Pickup and Delivery)

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted regulations exempting the motor carrier pickup and delivery portion of trailer-on-flatcar (TOFC) and container-on-flatcar (COFC) services. The revised regulation at 49 CFR 1090.2 reflects our finding that, under 49 U.S.C. 10505, the motor carrier portion of such coordinated TOFC/COFC service, which by definition involves a prior or subsequent movement by rail carrier, is a matter related to rail carrier transportation, and that application of the Interstate Commerce Act is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101a or to protect shippers from the abuse of market power. Under the revised rule, "Plan I" service (in which rail service is substituted for a portion of a motor

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carrier's authorized service) is not being exempted as a class. The Commission will assess applications for individual Plan I exemptions on a case-by-case basis.

EFFECTIVE DATE: The revised rule is effective January 17, 1990.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 275-7691. (TDD for hearing impaired: (202) 275-1721).

SUPPLEMENTARY INFORMATION: The revised regulation at 49 CFR part 1090.2 is set forth below. The regulation adopted here takes full account of public comments filed in response to the notice of proposed rulemaking (NPR) in this proceeding, 52 FR 41748 (October 30, 1987). In the NPR, we expressed the preliminary view that the logical scope of the class exemption should extend to all motor/rail COFC/TOFC services (save, perhaps, Plan I). We asked parties to respond to various specific questions designed to enhance our understanding of how the industry has evolved since 1980 and whether a further exemption would be consistent with the policies of the Interstate Commerce Act, as amended in 1980 with respect to both rail and motor carriers.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD service (202) 275-1721.)

Environmental and Energy Considerations

This action will not significantly affect the quality of the human environment or energy conservation. The exemption should have beneficial energy consumption and environmental impacts. To the extent that the exemption encourages the increased use of intermodal TOFC/COFC service in place of all-highway service, the net effect on the environment and on energy consumption should be favorable, because it is generally recognized that transportation by rail has a smaller environmental impact and uses less fuel than transportation by highway. Increased use of intermodal service also should reduce highway congestion and road damage.

Regulatory Flexibility Analysis

The Commission certifies that the revised rule will have a significant positive economic impact on a substantial number of small entities. It imposes no new regulatory burdens or requirements on any person, but instead relieves a potentially large number of persons, including small businesses, of such burdens and requirements. We have considered the purposes and anticipated effects of the exemption, as well as the alternatives (no exemption, partial exemption) open to us. We have chosen the feasible alternative that imposes the fewest, and removes the most, regulatory burdens on small businesses and other entities.

List of Subjects in 49 CFR Part 1090

Freight forwarders, Intermodal transportation, Maritime carriers, Motor carriers, Railroads.

Decided: November 27, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips. Commissioner Lamboley dissented with a separate expression.

Noreta R. McGee,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1090 of the Code of Federal Regulations is amended as follows:

PART 1090—PRACTICES OF CARRIERS INVOLVED IN THE INTERMODAL MOVEMENT OF CONTAINERIZED FREIGHT

1. The authority citation for part 1090 continues to read as follows:

Authority: 49 U.S.C. 10321, 10505, and 5 U.S.C. 553.

2. Section 1090.2 is revised to read as follows:

§ 1090.2 Exemption of rail and highway TOFC/COFC service.

Except as provided in 49 U.S.C. 10505 (e) and (g), 109229(1), and 10530, rail TOFC/COFC service and highway TOFC/COFC service provided by a rail carrier either itself or jointly with a motor carrier as part of a continuous intermodal freight movement is exempt from the requirements of 49 U.S.C. subtitle IV, regardless of the type, affiliation, or ownership of the carrier performing the highway portion of the service. Motor carrier TOFC/COFC pickup and delivery services arranged independently with the shipper or receiver (or its representative/agent) and performed immediately before or after a TOFC/COFC movement provided by a rail carrier are similarly exempt. Tariffs heretofore applicable to any transportation service exempted by this section shall no longer apply to such service. The exemption does not apply to a motor carrier service in which a rail carrier participates only as the motor carrier's agent (Plan I TOFC/COFC), nor does the exemption operate to relieve any carrier of any obligation it would otherwise have, absent the exemption, with respect to providing contractual terms for liability and claims.

[FR Doc. 89-29328 Filed 12-15-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 371

[Docket No. 60616-6116]

Fraser River Sockeye and Pink Salmon Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of 1989 inseason orders.

SUMMARY: The Secretary of Commerce (Secretary) hereby publishes the inseason orders regulating fisheries in United States waters that were issued by the Fraser River Panel (Panel) of the Pacific Salmon Commission (Commission) and subsequently approved and issued by the Secretary during the 1989 sockeye and pink salmon fisheries within the Fraser River Panel Area (Fraser River Panel (U.S.)). These orders established fishing times, areas, and types of gear for U.S. treaty Indian and all-citizen fisheries during the period the Commission exercised jurisdiction over these fisheries.

Due to the frequency with which inseason orders are issued, publication of individual orders is impracticable. The 1989 orders are therefore being published in this notice to avoid fragmentation.

EFFECTIVE DATES: Each of the following inseason orders of the Secretary was effective upon announcement on telephone hotlines as specified at 50 CFR 371.21(b)(1) (at 51 FR 23420, June 27, 1986).

ADDRESS: Comments on these inseason orders may be sent to Rolland A. Schmitten, Director, Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Seattle, WA 98115.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten, 206-526-6150.

SUPPLEMENTARY INFORMATION: The Treaty between the Government of the United States of America and the Government of Canada Concerning Pacific Salmon (Treaty) was signed at Ottawa on January 28, 1985, and subsequently was given effect in the

United States by the Pacific Salmon Treaty Act (Act) at 16 U.S.C. 3631-3644.

Under authority of the Act, an emergency interim rule was promulgated at 50 CFR part 371 (51 FR 23420, June 27, 1986) to provide a framework for implementation of certain regulations of the Commission and inseason orders of the Commission's Panel for sockeye and pink salmon fisheries in the Fraser River Panel Area (U.S.). The emergency interim rule was effective from June 22, 1986, and remains in effect until modified, superseded, or rescinded. It applies to fisheries for sockeye and pink salmon in the Fraser River Panel Area (U.S.) during the period each year when the Commission exercises jurisdiction over these fisheries.

The emergency interim rule closes the Fraser River Panel Area (U.S.) to sockeye and pink salmon fishing unless opened by Panel regulations or by inseason orders of the Secretary that give effect to Panel orders, unless such orders are determined not to be consistent with domestic legal obligations. During the fishing season, the Secretary may issue orders that establish fishing times and areas consistent with the annual Commission regime and inseason orders of the Panel. Such orders must be consistent with domestic legal obligations. The Secretary issues inseason orders through his delegate, the Northwest Regional Director of NMFS. Official notice of these inseason actions of the Secretary is provided by two telephone hotlines described at 50 CFR 371.21 (b)(1). Inseason orders of the Secretary must be published in the **Federal Register** as soon as practicable after they are issued. Due to the frequency with which inseason orders are issued, publication of individual orders is impracticable. The 1989 orders are therefore being published in this notice to avoid fragmentation.

The following inseason orders were adopted by the Panel and issued for U.S. fisheries by the Secretary during the 1989 fishing season. The times listed are local times, and the areas designated are Puget Sound Management and Catch Reporting Areas as defined in the Washington State Administrative Code at Chapter 220-22.

Order No. 1989-1: Issued 11:10 a.m. June 29, 1989.

Treaty Indian Fishery: Areas 4B, 5 and 6C—Drift gill nets open 12 noon, June 29 to 12 noon, July 2.

Order No. 1989-2: Issued 2 p.m., June 30, 1989.

Treaty Indian Fishery: Areas 4B, 5 and 6C—Drift gill nets closed at 12 noon, July 1. Areas 6, 7 and 7A—Net fishing open from 4 a.m. to 8 p.m., July 5.

All-Citizen Fishery: Areas 7 and 7A—Reef nets open 11:30 a.m. to 9:30 p.m., July 3. Gill nets open 5 a.m. to 12 noon, July 6. Purse seines open 2 p.m. to 9 p.m., July 6.

Order No. 1989-3: Issued 11:30 a.m., July 7, 1989. Referred only to Canadian area Panel Waters.

Order No. 1989-4: Issued 11:15 a.m., July 12, 1989.

All-Citizen Fishery: Areas 7 and 7A—Purse seines open 8 a.m. to 12 noon, July 13. Gill nets open 2 p.m. to 8 p.m., July 13. Reef nets open 11:30 a.m. to 5:30 p.m., July 14.

Order No. 1989-5: Issued 1:30 p.m., July 14, 1989.

Treaty Indian Fishery: Areas 4B, 5 and 6C—Drift gill nets open 12 noon, July 16 to 11 p.m., July 18. Areas 6, 7 and 7A—Open to net fishing 7 a.m. to 11 p.m., July 18.

All-Citizen Fishery: Areas 7 and 7A—Reef nets open 11:30 a.m. to 9:30 p.m., July 17. Gill nets open 5 a.m. to 12 noon, July 19. Purse seines open 2 p.m. to 9 p.m., July 19.

Order No. 1989-6: Issued 11 a.m., July 17, 1989.

Treaty Indian Fishery: Areas 4B, 5 and 6C—Drift gill nets open 12 noon, July 20 to 12 noon, July 23.

Order No. 1989-7: Issued 3:35 p.m., July 19, 1989.

Treaty Indian Fishery: Areas 4B, 5 and 6C—Drift gill nets closed until further notice.

Order No. 1989-8: Issued 1:30 p.m., July 28, 1989.

Treaty Indian Fishery: Areas 4B, 5 and 6C—Drift gill nets open 12 noon, July 30 to 12 noon, August 2. Areas 6, 7 and 7A—Open to net fishing 4 a.m. to 11 p.m., July 31.

All-Citizen Fishery: Areas 6, 7 and 7A—Purse seines open 6 a.m. to 6 p.m., August 1. Gill nets open 10 a.m. to 10 p.m., August 2. Reef nets open 11 a.m. to 9 p.m., August 3.

Order No. 1989-9: Issued 11:30 a.m., August 1, 1989.

All-Citizen Fishery: Area 4 and Area 3 north of 48°00′15″ N.—Open for commercial trolling in waters westerly of the 100-fathom contour from 12:01 a.m., August 7 to 11:59 p.m., August 10.

Order No. 1989-10: Issued 2:10 p.m., August 4, 1989.

Treaty Indian Fishery: Areas 4B, 5 and 6C—Drift gill nets open 12 noon, August 8 to 12 noon, August 9. Areas 6, 7 and 7A—Open to net fishing 5 a.m., August 8 to 9 a.m., August 9.

All-Citizen Fishery: Areas 6, 7 and 7A—Reef nets open 5 a.m. to 9:30 p.m., August 5. Purse seines open 5 a.m. to 9 p.m., August 6. Gill nets open 5 a.m. to 10 p.m., August 7.

Order No. 1989-11: Issued 11:25 a.m., August 8, 1989.

Treaty Indian Fishery: Areas 6, 7 and 7A—Opening extended for net fishing from 9 a.m., August 9 to 9 a.m., August 10.

Order No. 1989-12: Issued 4:25 p.m. August 11, 1989.

Treaty Indian Fishery: Areas 4B, 5 and 6C—Drift gill nets open 5:30 a.m. to 2:30 p.m., August 16. Areas 6, 7 and 7A—Open to net fishing 5:30 a.m. to 2:30 p.m., August 16.

All-Citizen Fishery: Areas 6, 7 and 7A—Reef nets open 5 a.m. to 8 p.m., August 12, and 7 a.m. to 8 p.m., August 14. Purse seines open 11 a.m. to 8 p.m., August 15. Gill nets open 11 a.m. to 5 p.m., August 17.

Order No. 1989-13: Issued 1:45 p.m., August 14, 1989.

All-Citizen Fishery: Area 4 and Area 3 north of 48°00′15″ N.—Open for commercial trolling in waters westerly of the 100-fathom contour from 12:01 a.m., August 16 to 11:59 p.m., August 19.

Order No. 1989-14: Issued 11:30 a.m. August 15, 1989. Referred only to fishing in Canadian area Panel Waters.

Order No. 1989-15: Issued 1:40 p.m., August 18, 1989.

Treaty Indian Fishery: Areas 4B, 5 and 6C—Drift gill nets open 4 a.m. to 4 p.m., August 23. Areas 6, 7 and 7A—Open to net fishing 4 a.m. to 4 p.m., August 23.

All-Citizen Fishery: Areas 6, 7 and 7A—Gill nets open 11 a.m. to 7 p.m., August 24. Areas 4 and 3 north of 48°00′15″ N.—Closed to commercial trolling at 11:59 p.m., August 18.

Order No. 1989-16: Issued 9:30 p.m., August 18, 1989. Referred only to fishing in Canadian area Panel Waters.

September 13. Purse seines open from 5 a.m. to 9 p.m., September 13.

Treaty Indian and All-Citizen fisheries:

control extended until further notice. Area 7A—Closed to net fishing northerly and westerly of a

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Order No. 1989–16: Issued 9:30 p.m., August 18, 1989. Referred only to fishing in Canadian area Panel Waters.

Order No. 1989–17: Issued 6 p.m., August 19, 1989. Referred only to fishing in Canadian area Panel Waters.

Order No. 1989–18: Issued 11:30 a.m., August 22, 1989. Referred only to fishing in Canadian area Panel Waters.

Order No. 1989–19: Issued 1:50 p.m., August 25, 1989.

Treaty Indian Fishery: Areas 4B, 5 and 6C—Drift gill nets open from 4 a.m., August 27 to 10 a.m., August 28. Areas 6, 7 and 7A—Open to net fishing from 4 a.m., August 27 to 10 a.m., August 28.

Order No. 1989–20: Issued 11:30 a.m., August 29, 1989.

Treaty Indian Fishery: Areas 4B, 5 and 6C—Open to drift gill nets from 12 noon, August 30 to 12 noon, September 2.

Order No. 1989–21: Issued 1:05 p.m., September 1, 1989.

Treaty Indian Fishery: Areas 4B, 5 and 6C—Drift gill nets extended from 12 noon, September 2 to 12 noon, September 9. Areas 6, 7 and 7A—Open to net fishing from 6 p.m., September 3 to 9 p.m., September 5.

All-Citizen Fishery: Areas 6, 7 and 7A—Purse seines open from 5 a.m. to 9 p.m., September 6. Gill nets open from 6 p.m., September 6 to 9 a.m., September 7. Reef nets open from 5 a.m. to 9 p.m., September 8.

Order No. 1989–22: Issued 3:45 p.m., September 5, 1989. Referred only to fishing in Canadian area Panel Waters.

Order No. 1989–23: Issued 1:30 p.m., September 8, 1989.

Treaty Indian Fishery: Areas 4B, 5 and 6C—Drift gill nets extended from 12 noon, September 9 to 12 noon, September 16. Areas 6, 7 and 7A—Open to net fishing from 5 a.m., September 11 to 9 a.m., September 12.

All-Citizen Fishery: Areas 6, 7 and 7A—Reef nets open from 5 a.m. to 9 p.m., September 10. Gill nets open from 6 p.m., September 12 to 9 a.m., September 13. Purse seines open from 5 a.m. to 9 p.m., September 13.

Treaty Indian and All-Citizen fisheries: Area 7A—Closed to net fishing northerly and westerly of a straight line drawn from Iwersen's Dock on Point Roberts to Georgina Point Light at the entrance to Active Pass in the Province of British Columbia.

Order No. 1989–24: Issued 3:45 p.m., September 11, 1989.

Treaty Indian Fishery: Areas 6, 7 and 7A—Extended for net fishing from 9 a.m. to 3 p.m., September 12.

All-Citizen Fishery: Areas 6, 7 and 7A—Reef nets open from 5 a.m. to 9 p.m., September 13. Gill nets open from 6 p.m., September 13 to 9 a.m., September 14. Purse seines open from 5 a.m. to 9 p.m., September 14. Area 7A—Closed to net fishing northerly and westerly of a straight line drawn from Iwersen's Dock on Point Roberts to Georgina Point Light at the entrance to Active Pass in the Province of British Columbia.

Order No. 1989–25: Issued 12 noon, September 13, 1989.

Treaty Indian Fishery: Areas 4B, 5 and 6C—Closed to drift gill nets at 8 a.m., September 15.

Order No. 1989–26: Issued 12:15 p.m., September 15, 1989.

All-Citizen Fishery: Area 6—Regulatory control extended until further notice.

Order No. 1989–27: Issued 3:45 p.m., September 18, 1989.

All-Citizen Fishery: Areas 7 and 7A—Reef nets open from 5 a.m. to 9 p.m., September 19. Purse seines open from 5 a.m. to 9:0 p.m., September 20. Gill nets open from 6 p.m., September 20 to 9 a.m., September 21. Area 7A—Closed to net fishing northerly and westerly of a straight line drawn from Iwersen's Dock on Point Roberts to Georgina Point Light at the entrance to Active Pass in the Province of British Columbia.

Order No. 1989–28: Issued 3:50 p.m., September 21, 1989.

Treaty Indian and All-Citizen Fisheries: Areas 6, 7 and 7A—Regulatory control extended until further notice. Area 7A—Closed to net fishing northerly and westerly of a straight line drawn from Iwersen's Dock on Point Roberts to Georgina Point Light at the entrance to Active Pass in the Province of British Columbia.

Treaty Indian Fishery: Areas 6, 7 and 7A—Open to net fishing from 6 p.m., September 22 to 9 p.m., September 24.

All-Citizen Fishery: Reef nets open from 5 a.m. to 9 p.m., September 25. Gill nets open from 6 p.m., September 25 to 9 a.m., September 26. Purse seines open from 5 a.m. to 9 p.m., September 26.

Order No. 1989–29: Issued 2:35 p.m., September 26, 1989.

Treaty Indian and All-Citizen Fisheries: Areas 6, 7 and 7A—Relinquish regulatory control effective Sunday, October 1, except in those waters lying northerly and westerly of a straight line drawn from Iwersen's Dock on Point Roberts to Georgina Point Light at the entrance to Active Pass in the Province of British Columbia.

Order No. 1989–30: Issued 9:50 a.m., October 6, 1989.

Treaty Indian and All-Citizen Fisheries: Areas 6, 7 and 7A—Relinquish regulatory control effective Sunday, October 8.

Other Matters

This action is taken under authority of 50 CFR 371.21 (51 FR 23420, June 27, 1986) and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 371

Fisheries, Fishing, Pacific Salmon Commission, Treaty Indians.

Authority: 16 U.S.C 3636(b).

Dated: December 11, 1989.

James E. Douglas, Jr.,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 89–29337 Filed 12–15–89; 8:45 am]

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 945

[Docket No. FV–89–065]

Irish Potatoes Grown in Idaho and Eastern Oregon; Withdrawal of Proposed Rule To Require Positive Lot Stamping on Containers of Lot-Inspected Potatoes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Withdrawal of proposed rule.

SUMMARY: This document withdraws a proposed rule to require positive lot stamping on containers of lot-inspected Idaho-Oregon potatoes. The proposal was initially recommended by the Idaho-Eastern Oregon Potato Committee (committee), to become effective for the 1989–90 season. Upon further review, the committee withdrew its recommendation due to difficulties it foresees in implementing the requirements at this time.

DATE: This withdrawal is effective December 18, 1989.

FOR FURTHER INFORMATION CONTACT: Anne M. Dec, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, Telephone 202–447–2020.

SUPPLEMENTARY INFORMATION: This action withdraws a proposed rule issued under Marketing Agreement No. 98 and Marketing Order No. 945 [7 CFR part 945], both as amended, regulating the handling of Irish potatoes grown in certain counties in Idaho and Malheur County, Oregon. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

Fresh market shipments of potatoes grown in Idaho and Eastern Oregon are currently required to meet minimum quality and size standards, as well as pack specifications. They are also required to be inspected and certified as meeting those quality, size and pack standards by the Idaho or Oregon Federal-State Inspection Service.

On August 11, 1989, a proposed rule was issued to require that containers of lot-inspected potatoes be stamped with a Federal or Federal-State approved positive lot number. The proposal was published in the **Federal Register** on August 16, 1989 (54 FR 33707), and was based upon a unanimous recommendation by the Idaho-Eastern Oregon Potato Committee (committee), which is responsible for local administration of the marketing order program. Comments on the proposal were requested through September 5, 1989.

While no comments were received during the allotted comment period, the committee subsequently held a public meeting on November 9, 1989, to reconsider its recommendation. At that meeting it was determined that while the use of positive lot stamp procedures may have merit, some shippers would have difficulty implementing the new procedures at the current time. For example, shippers with smaller packing and storage facilities do not have adequate floor space to unstack the containers in each lot, have them stamped, and then restack them prior to shipment. The committee therefore unanimously rescinded its recommendation that all containers of lot-inspected potatoes be required to be stamped with a positive lot number.

Based upon the committee's November 9, 1989, recommendation and a further review of all available information, it is hereby determined that the record does not support establishing positive lot stamping requirements for containers of potatoes grown in Idaho-Eastern Oregon at this time. Therefore, the proposed amendment to the handling regulation published in the **Federal Register** on August 16, 1989 (54 FR 33707), is hereby withdrawn.

List of Subjects in 7 CFR Part 945

Idaho, Marketing agreements and orders, Oregon, Potatoes.

Dated: December 13, 1989.

William J. Doyle

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–29350 Filed 12–15–89; 8:45 am]

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7 CFR Parts 1002 and 1004

[Docket No. AO–71–A77 and AO–166–A85; DA–88–105]

Milk in the New York-New Jersey and Middle Atlantic Marketing Areas; Partial Decision on Proposed Amendments to Marketing Agreements and to Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision changes the New York-New Jersey Federal milk order with respect to the dates by which payments are to be made to producers, to cooperatives, and to and from the producer-settlement fund, and by which the market administrator is to announce the uniform prices to producers. Most of the dates will be 5 days earlier than specified in the current order provisions. The changes will allow for earlier payments to producers and will accommodate economic changes resulting from recent New York State legislation that will require, beginning January 1, 1990, that producers receive their final payment for milk each month on or before the 20th day of the following month. Proposals to provide for earlier and more frequent payments to producers and for a partial payment to the producer-settlement fund under the New York-New Jersey and Middle Atlantic Federal milk orders are denied. The decision is based on a public hearing held June 27–July 21, 1988, and November 14–16, 1988.

A referendum will be conducted to determine whether producers who supplied milk during April 1989 favor issuance of the amended order. It must be approved by at least two-thirds of the eligible voting producers to become effective.

Other issues considered at the hearing included proposed amendments to the New England Federal milk order, as well as other proposed changes to the New York-New Jersey and Middle Atlantic orders. All of the remaining issues not covered in this decision will be considered in a later decision. Only those proposals dealing with the timing and number of payments to producers, and related reporting and announcement requirements are considered in this partial decision.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division,

Agriculture, his partial recommended decision containing notice of the opportunity to file written exceptions

7. Partial payments to producers and cooperatives, and the dates by which certain reports, announcements and

would be required by the 20th, instead of the currently required 25th. Authorized cooperatives would be

under any other Federal order is the 25th, under the Middle Atlantic order.

The New York Farm Bureau (NYFB), a

The National Farmers Organization (NFO) proposed an accelerated plan for paying producers, which would require

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FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. box 96456, Washington, DC 20090-6456, (202) 447-7183.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amended order will promote more orderly marketing of milk by producers and regulated handlers.

Prior documents in this proceeding.

Notice of Hearing: Issued June 7, 1988; published June 10, 1988 (53 FR 21825).

Supplemental Notice of Hearing: Issued September 29, 1988; published October 4, 1988 (53 FR 38963).

Notice of Re-opened Hearing: Issued August 10, 1989; published August 16, 1989 (54 FR 33709).

Recommended Decision: Issued September 20, 1989; published September 26, 1989 (54 FR 39377).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreements and the orders regulating the handling of milk in the New England, New York-New Jersey and Middle Atlantic marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice (7 CFR part 900), at Syracuse, New York, on June 27-July 1, July 5-8, and July 18-21, 1988; at Manchester, New Hampshire, on July 11-14, 1988; and at Philadelphia, Pennsylvania, on November 14-16, 1988. A notice of hearing was issued June 7, 1988 (53 FR 21825), and a supplemental notice of hearing was issued September 29, 1988 (53 FR 38963). The hearing was re-opened solely for limited purposes on August 22, 1989 in Alexandria, Virginia, pursuant to a notice of hearing issued August 10, 1989 (54 FR 33709).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Administrator, Agricultural Marketing Service, on September 20, 1989, filed with the Hearing Clerk, United States Department of Agriculture, his partial recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein, subject to the following modifications:

1. One paragraph is added at the end of Issue No. 7.

2. Twenty-three paragraphs are added at the end of Issue No. 8.

The material issues on the record of the hearing relate to:

Proposals To Amend All Three Orders

1. Classes of utilization.

Proposals To Amend Orders 1 and 2

2. Pooling standards.

a. Designated pool plants (Order 2).

b. Pool supply plants and bulk tank units.

c. Qualification of producer milk for pooling.

3. Seasonal payment plans.

4. Location pricing, zone pricing and transportation credits.

Proposals To Amend Order 1 Only

5. Producer-handler receipts of pool milk.

6. Charges on overdue accounts.

Proposals To Amend Order 2 Only

7. Partial payments to producers and to cooperatives, and the dates by which certain reports, announcements and payments should be made to accelerate payments to producers and accommodate economic conditions resulting from Pennsylvania and New York State law.

Proposals To amend Orders 2 and 4 Only

8. Partial payments to producers and to cooperatives, and the dates by which certain reports, announcements and payments should be made for the purpose of further accelerating payments to producers.

Proposal To amend Order 4 Only

9. Pricing producer milk at the location to which diverted.

This partial decision deals only with issues Nos. 7 and 8. The remaining issues of the hearing will be considered in a later decision on this record.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

7. Partial payments to producers and cooperatives, and the dates by which certain reports, announcements and payments should be made to accelerate payments to producers and accommodate economic conditions resulting from Pennsylvania and New York State law. The proposals concerning certain reports, announcements and payments under the New York-New Jersey order (Order 2), which were advanced by Dairylea Cooperative, Inc. (Dairylea), and Eastern Milk Producers Cooperative Association, Inc. (Eastern), should be adopted. Specifically, the order should be amended to require handlers to make partial payments by the last day of the month for the milk they receive during the first 15 days of the month from producers and cooperatives. The minimum rate for making such payments should be the lowest class price for the preceding month. Handlers regulated under Order 2 currently are not required by the order to make partial payments to producers.

The dates by which certain reports, announcements and payments are required to be made under Order 2 should be changed. In that regard, all reports required to be filed by handlers with the market administrator on or before the 10th day of the following month would have to be received at the office of the market administrator by that date to be considered as filed on time. At present, the order requires such reports to be postmarked on or before the 8th of the following month or be delivered physically to the market administrator's office no later than the 10th. The market's uniform price for the month would be computed and announced by the market administrator on or before the 14th day of the following month. Announcement of the uniform price is currently required on the 15th.

Final settlement with cooperatives for all of their milk deliveries in the previous month would be required of the buying handlers at the appropriate class prices on or before the 15th day of the month, instead of the 19th as currently required. The date by which handlers would be required to pay the amounts they owe to the producer-settlement fund would be changed from the 21st to the 16th day after the end of each month. By the end of the next business day (the 17th, rather than the 22nd day after the end of the month) the market administrator would be required to pay the amounts due to handlers from the producer-settlement fund. Final payments by handlers to producers for milk deliveries in the previous month would be required by the 20th, instead of the currently required 25th. Authorized cooperatives would be permitted to collect from handlers payments due their producer-members two days earlier than payments are due to individual dairy farmers if the payments are made by check. However, if the handler pays the cooperative on a cash or cash equivalent basis, the payments to the cooperative may be made on the same date payments are due individual dairy farmers. Also, on or before the 20th day of each month, rather than the present date of the 25th, the market administrator would pay the amounts deducted from the computation of the uniform price for the preceding month to the qualified cooperatives and federations for their performance of specified services of marketwide benefit.

The witness representing Dairylea and Eastern testified that the purpose of the cooperatives' proposals was to bring the payment dates required under Order 2 into conformity with those required under both New York and Pennsylvania State laws. He explained that moving the date of final payment to producers from the 25th to the 20th of the month following the month in which the milk was received will also require changes in other payment dates and in reporting dates in order to make possible timely payments into and out of the producer-settlement fund. The witness stated that Order 2 should incorporate a partial payment to producers for milk received during the first half of the month, as the State programs currently require, and pointed out that the timing of payments required by Order 2 lags behind all other Federal order markets in nearly every category of payment.

The Dairylea/Eastern witness modified the cooperatives' proposal to require handlers' reports of receipts and utilization to be received by the market administrator no later than the 10th of the month, rather than continue to allow reports postmarked no later than the 8th to be considered as filed on time. He argued that a report mailed on the 8th will not necessarily be received on the 10th. The witness supported the proposed amendment that payroll reports be due on the 25th of the month, rather than on the last day of the month, for the preceding month's milk receipts by stating that the time allowed for filing the report after final payment to producers would not change. He also pointed out that most handlers file their payroll reports immediately after running producers' checks, and that the latest date for filing payroll reports under any other Federal order is the 25th, under the Middle Atlantic order.

The New York Farm Bureau (NYFB), a general farm organization that consists of 23,000 members, including 10,000 dairy farmers, proposed a package of payment proposals similar to those submitted by Dairylea/Eastern. The proponent NYFB witness stated that the proposals were designed to accomplish the goal of conforming with the payment requirements of New York State laws and providing earlier payments to dairy farmers covered under Order 2. The witness recognized the necessity of making earlier payments into and out of the producer-settlement fund in order to make earlier payments to producers.

The proposed amendments supported by the NYFB witness agreed with the Dairylea/Eastern proposals on all but three payment dates. The NYFB proposed that the due dates for payments to and from the producer-settlement fund be advanced by three days, instead of the 5 days proposed by Dairylea/Eastern. Payments to cooperatives at class prices would have been advanced by only one day under the NYFB proposal, instead of by 4 days, as proposed by the two cooperatives. Also, the proposed amendments supported by the NYFB witness did not include any change in the date by which the market administrator should make payments to qualified cooperatives. No testimony was presented by the NYFB witness to explain the differences between its proposed payment dates and those advanced by Dairylea/Eastern.

A witness representing Farmland Dairies, Inc. (Farmland), opposed the Dairylea/Eastern proposal to move the due date for filing payroll reports ahead by 5 days. The witness testified that this change would have an adverse impact on small businesses such as Farmland because it is difficult to meet the present Order 2 deadline for filing such reports. A brief filed on behalf of Farmland stated that the Dairylea/Eastern proposals regarding the due dates of payments to cooperatives, and to and from the producer-settlement fund impose earlier payment deadlines than are required by New York and Pennsylvania law. The brief argued that the NYFB proposals more accurately reflect the changes required by those laws. The Farmland brief also described the proposed change of date for payments from the producer-settlement fund to qualified cooperatives for marketwide services from the 25th to the 20th as self-serving on the part of the cooperatives, and urged the Secretary to reject the proposed amendment.

The National Farmers Organization (NFO) proposed an accelerated plan for paying producers, which would require two partial payments to producers and cooperatives in addition to partial payments to the producer-settlement fund. In connection with such proposals, NFO also proposed a complete schedule of due dates to implement its payment plan. At the hearing, NFO took the position that they did not oppose the proposals by the cooperatives and the NYFB but preferred their own proposed payment plan. The NFO proposals concerning payments and due dates are dealt with as a separate issue later in this partial decision.

There was no testimony from any hearing participant denying the need to align the Order 2 payment provisions with the terms of payment under State laws. The amendments adopted herein, which provide for partial payments and move the payment dates forward by several days, will accomplish the goals intended by the NYFL's proposals. They also will meet some of the objectives of NFO.

There is an urgent need to deal with the payment issues. If Order 2 is not amended by January 1, 1990, final payments to New York dairy farmers will be required by New York law on or before the 20th day of each month, while the Federal order provisions would not provide for payments to handlers from the producer-settlement fund until the 22nd of the month. Consequently, manufacturing handlers and cooperatives would have to borrow money or use internal funds to pay their producers in accordance with New York State law before those handlers could receive the amounts due them for that purpose from the producer-settlement fund. The adverse economic consequences resulting from the diffrence between the Order 2 payment terms and the payment requirements under the laws of New York State can be avoided if the amendments adopted herein are made effective by January 1, 1990. The January 1990 deadline cannot be met if the decision on this issue is delayed until all issues involved in this proceeding are decided. This partial decision on the payment proposals should allow sufficient time to amend Order 2 by January 1 when the new New York State payment requirements become effective.

State legislative actions have already altered the payment practices of Order 2 handlers who are buying milk from producers and cooperatives. In 1981, in an attempt to standardize industry payment practices for producers and reduce their exposure to possible

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financial losses, the New York State legislature enacted a law mandating partial payments by milk dealers to New York producers for their milk deliveries in the first 15 days of each month. The New York State legislature took further action in 1987 to reduce the financial exposure of dairy farmers by accelerating payments to producers in two phases. From the law's effective date through December 31, 1988, New York dairy farmers must be paid a partial payment by the 5th day of the following month for their milk deliveries in the first 15 days of the month at the Federal order Class II price for the preceding month. Final payments are due such producers by the 23rd day of the following month. Handlers regulated under Order 2 have been able to pay their producers within the present New York State payment schedule because payments to handlers from the Order 2 producer-settlement fund are made on or before the 22nd. In January 1990, however, the New York law will require partial payments to be made to producers for their first 15 days' production no later than the last day of the month in which the milk is received. The law will require final payments to producers to be made on or before the 20th. As a result, it will be necessary for the Federal order to require payments from the producer-settlement fund to be made earlier than currently required so that handlers will be able to meet the State payment schedule.

In 1983, the Commonwealth of Pennsylvania enacted payment regulations for milk produced by Pennsylvania dairy farmers that are more stringent than the New York State payment requirements. Under the Pennsylvania regulations, partial payments by milk dealers are required by the last day of the month for the milk they buy from Pennsylvania dairy framers during the first 15 days of the month, at a rate which at least equals the Class II price for the preceding month. Final payments to such dairy farmers must be made by the 18th day of the next month.

The record shows that approximately 70 percent of the milk pooled under Order 2 is produced on farms in New York, with approximately another one-quarter of the market's milk produced in Pennsylvania. Producers located in these two states, then, are responsible for over 90 percent of the milk pooled under Order 2 and have for some time been receiving two payments per month, with final payments made earlier than Order 2 currently requires. It is therefore appropriate, and likely to require only minimal changes in handlers' payment practices, to include provisions in Order 2 that reflect such ongoing payment practices by handlers. By so doing, the minimum payment terms will be extended throughout the marketplace and apply to all producers and handlers covered by Order 2.

The various due dates specified by Order 2 for reports, announcements and payments must be established in a particular sequence, and within a time frame limited by the market administrator's receipt of handlers' reports of receipts and utilization and final payments to producers. Each specified due date is contingent upon the timely completion of a prior activity. The time allowed for the performance of the required reports, announcements and payments must be structured to afford handlers a reasonable opportunity to comply with the regulations. It is necessary that the due dates for payments prescribed in the order allow adequate time for the money to be transferred between the different persons involved. Otherwise, handlers could be placed in the position of being unable to comply with the terms of the order simply because it is impossible to meet the established due dates. Since some of the payment steps that must occur between the payments mandated by the State laws are not addressed by the NYFB proposals, the schedule of due dates proposed by Dairylea/Eastern should provide Order 2 handlers a reasonable opportunity to comply with the amended order.

The 5-day advancement (from the 25th to the 20th) in the due date for final payments by handlers to producers under Order 2 will merely reflect the minimum payment requirements that all handlers will be meeting under the laws of New York State.

Partial and final payments by handlers to cooperatives collecting the money due their individual member producers should be payable two days prior to the date by which payments to individual producers must be made if paid by check. Proponent cooperatives proposed that such payments be made two days earlier than those to individual producers. The NYFB proposed that such payments to cooperatives be required on the same date payments are due to individual producers, as the current order provides. Under the New York law that becomes effective on January 1, 1990, dealers buying milk from cooperatives must transmit payment by any method whereby the cooperatives receive the cash or cash equivalent no later than the date the payment is due or receive a check at least two days prior to that date. Under such payment terms, handlers are permitted to choose their method of payment (wire transfer or check), but they must make the money available to the cooperatives by the due date. If a handler pays by bank transfer, the funds are available to the cooeprative immediately. However, if a handler pays by check, it takes at least two days after the check is received by the cooperative for the check to clear the banking system and for the funds to become available for use by the cooperative.

In cases where cooperatives are collecting partial and final payments due their member producers, handlers paying by check should be required to make such payments to cooperatives at least two days prior to the date on which payments are due individual producers. However, if the payments are made in cash or cash equivalent (presumably by wire transfers of money), the handler payments would be due on the same date the payments are due to individual dairy farmers. This change will merely reflect the payment practices that will be in effect with regard to most of the Order 2 milk as a result of the New York State law, while allowing handlers a choice in the manner of payments made to cooperatives for their members' milk. If handlers choose to make their payments to cooperatives by electronic transfers of funds, they should be able to have use of the funds until the date of the bank transfer. For the same reasons, this two-day provision will also apply to the partial payment by handlers to cooperative associations for milk purchased on the basis of class prices.

The due dates for various other payments under the order must be based on the date for announcing the uniform price that is payable to producers. It is only after the uniform price has been announced by the market administrator that the amounts of payments due to and payable from the producer-settlement fund can be determined and final payments can be made to producers and cooperatives.

As proposed by Dairylea and Eastern, the deadline for announcing the uniform price each month should be moved forward one day to the 14th. The order now provides that the uniform price must be announced by the market administrator on or before the 15th day of each month. The last time the Order 2 uniform price was announced as late as the 15th day of the month was in January 1973. In about one-half of the months since that time, the uniform price has been announced on the 14th. In the other half of the months involved, the price was announced on the 12th and 13th, with one announced as early as the 11th. This change should, then, present no difficulty.

If the uniform price is to be announced by the 14th of the month, it is reasonable to expect handlers to pay their producer-settlement fund obligations no later than the 16th. Under other Federal milk orders, the average period of time between the announcement of uniform prices and payments by handlers to the producer-settlement fund is 2.15 days.

Payments to handlers by the market administrator from the producer-settlement fund should be required on or before the 17th day of the month. This payment schedule will give handlers an opportunity to receive their money from the producer-settlement fund and, in turn, make final payments to New York producers by the 20th day of the month, and to Pennsylvania producers on the 18th. The dates for payments to and from the producer-settlement fund as advocated by NYFB and Farmland would not allow for handlers to receive their producer-settlement fund payment before being required to pay their Pennsylvania producers. Since only 25 percent of the Order 2 milk is from Pennsylvania producers, the adverse economic consequences are not as large as in the case of the New York producers. Nevertheless, the proposal adopted herein is more equitable and advantageous since it avoids this economic dislocation with regard to payments to producers in both States. In addition, for handlers of New York producers' milk, this payment schedule will allow 2 days for a weekend between the 14th and the 20th.

Final payments by handlers to cooperative associations for milk purchased on the basis of class prices should be made no later than the 15th day of the month. Such payments cannot be delayed beyond that date because cooperatives that are accountable to the pool for the milk of their member producers should be paid for the milk they sell to processing plants before the cooperatives' payments are due to the producer-settlement fund. Otherwise, the cooperatives would have to borrow money or use internal funds to make their equalization payments into the marketwide pool. Thus, the later dates advocated by NYFB and Farmland for such payments to cooperatives would create unnecessary and adverse economic consequences.

The amounts deducted from the computation of the uniform price each month to effectuate the payments to cooperatives for marketwide services would be paid by the market administrator to the qualifying organizations on or before the 20th day of each month. Moving the due dates of payments for marketwide services forward 5 days complements the 5-day advancement in the due date of final payments to producers. Although NYFB proposed a later date, and Farmland supported the NYFB proposal, failure to change the date for this payment would not benefit any other handlers. Also, after all of the other payments required to be made from the producer-settlement fund have been disbursed, there is no reason for the market administrator to delay making this payment to qualified cooperatives.

This decision decreases the amount of time currently allowed by Order 2 between the announcement of the uniform price and the due date for final payments to producers. To meet these earlier payment deadlines, the latest available technolgies in moving money from one account to another (electronic bank transfers) most likely will have to be relied upon by some handlers and by the market administrator.

In addition to advancing certain payment and announcement dates under Order 2, the dates by which certain reports must be filed should be modified. As proposed by Dairylea/Eastern, handler reports of milk receipts and utilization for the month would continue to be required to be received by the market administrator on or before the 10th day of the next month. The postmark deadline of the 8th, which the current order provides as an option to personal delivery by the 10th, should be eliminated because mailing a report on the 8th will not assure that the report would be received by the 10th.

In addition to the reports of milk receipts and use, handlers are required to file with the market administrator certain other supplementary information by the 10th of the following month concerning producer additions and withdrawals, changes in farm operators and the establishment of bulk tank units. The additional information is needed by the market administrator to verify the correctness of the information on the handler's report of receipts and utilization. To aid in the market administrator's verification of the handler's reported information, the supplementary reports also should be received by the 10th.

Although the proposal by the cooperatives to require handlers to file producer payroll reports by the 25th day of the following month, or 5 days earlier than at present, was included with their proposals to accelerate payment dates, that issue should be considered in a later decision. The primary effect of the proposed change in the payroll reporting date would be to facilitate the computation of producer bases if the base plan proposal is adopted. Thus, the change is not needed to accommodate the other changes herein relating to payment dates, and could impose a slightly heavier reporting burden on handlers.

Using a receipt rather than a postmark basis for some reporting deadlines may require handlers and the market administrator to use new methods of data transmission. Data are commonly transferred between distant locations on a regular basis in the business world today by such means as computer terminals and overnight mail service. With widespread availability of such methods, handlers who are running close to a reporting deadline may have several options from which to choose in communicating the required information to the market administrator on a timely basis, and in a manner prescribed by the market administrator.

The primary objective of the payment schedule under any order is to get the money owed dairy farmers for their milk to them as quickly as possible. It is evident from the foregoing that the amendments proposed by Dairylea/Eastern and adopted in this decision will accomplish that objective, and were carefully designed to ameliorate any adverse economic consequences to Order 2 handlers in complying with payment obligations imposed by State law.

Comments filed by Dairylea and Eastern Milk Producers in response to the recommended decision supported the decision and urged its immediate adoption and implementation.

8. *Partial payments to producers and to cooperatives, and the dates by which certain reports, announcements and payments should be made for the purpose of further accelerating payments to producers.* The accelerated payment plans proposed by the National Farmers Orgainzation (NFO) for the New York-New Jersey order (Order 2) and the Middle Atlantic order (Order 4) should not be adopted.

NFO is a national cooperative association representing about 320 Order 2 dairy farmers who supply approximately 18 million pounds of milk per month for the Order 2 market. The cooperative association also represents about 30 producers who supply approximately 3.5 million pounds of milk per month for the Order 4 market. Three other cooperatives (Middlebury Center, Cedarville Milk Producers and Lowville Milk Producers) supported NFO's accelerated payment plan. These three cooperatives supply about 26

million pounds of milk per month for the Order 2 market.

The NFO proposals to amend Orders 2 and 4 would require handlers to make partial payments to producers and cooperatives by the 8th day of the month for milk received during the first 15 days of the month, and by the 23rd day of the month for milk received during the last 15 days of the month. Final payments would be made by the 8th day of the following month. Handlers would be required to report receipts and utilization to the market administrator by the 8th of the following month so that the uniform price can be computed and announced by the market administrator by the 12th day of the month.

NFO's witness testified that the proposed payment plans would benefit producers by providing them with more frequent payments and by reducing the amount of money owed to them by handlers. He stated that the proposed payment plans would benefit handlers by reducing the amount of money they owe to producers and cooperatives. He also stated that the proposed payment plans would benefit cooperatives by reducing the amount of money they must borrow to pay producers and by reducing the interest expense associated with borrowing.

NFO's witness testified that the proposed payment plans would not increase the administrative burden on handlers because they would be required to make payments to producers and cooperatives on a regular basis. He stated that the proposed payment plans would not increase the administrative burden on the market administrator because the proposed reporting dates are consistent with existing and proposed payment plans. They also compare the variation in payment lag. For example, under the

have increased also. Similarly, he stated, as the number of producers supplying the Order 2 and Order 4 markets has declined over the

under Orders 2 and 4 are currently being paid more frequently than twice per month.

partial payments which are not required under Order 2, and earlier final payments.

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million pounds of milk per month for the Order 2 market.

The NFO proposals to amend Orders 2 and 4 would require handlers to make two partial payments for the milk they buy from cooperative associations and individual dairy farmers. Also, they would require partial payments to the producer-settlement fund. In connection with the implementation of its payment plans for Orders 2 and 4, NFO also proposed a complete schedule of due dates by which certain reports, announcements and payments must be made.

NFO modified its proposals at the hearing to provide for paying producers and cooperatives three times per month at 10-day intervals. Specifically, on or before the 25th day of the month Order 2 and 4 handlers who purchase milk from cooperatives would be required to pay the associations not less than 105 percent of the prior month's lowest class price for milk they received from such cooperatives during the first 15 days of the month. On or before the 5th day of the following months, handlers would be required to pay cooperatives at the same rate for milk they received from such associations during the 16th through 25th days of the month. Final settlement at the uniform prices for all milk deliveries by cooperatives in the previous month would be required of handlers by the 15th day of the following month. Handlers who buy milk from cooperatives on the basis of class prices would be required to pay the cooperatives 2 days earlier, by the 13th. Handlers would be required to pay for milk purchased from individual dairy farmers by the 27th, 7th and the 17th. The terms (rate of payment and deliveries covered) for making partial and final payments to individual producers would be identical with those provided in paying cooperatives under both orders.

The NFO proposals also would provide that Order 2 and 4 handlers who had pool obligations for the previous month be required to make partial payments of 50 percent of their previous month's pool obligation into the producer-settlement fund on the first day of the next month. In connection with its proposals that producers and cooperatives supplying milk for Orders 2 and 4 be paid three times each month, NFO modified its proposals included in the hearing notice to require earlier due dates for certan reports, payments and announcements. In that regard, the reports of milk receipts and utilization and any supplemental information that must be filed with those reports would be required to be received by the market administrator by the 8th of the following month so that the uniform price can be computed and announced by the market administrator on or before the 12th. Handlers would be required to pay the money they owe to the producer-settlement fund by the 13th and the market administrator would in turn pay the money due handlers from such fund on the 14th.

An NFO witness contended that the present payment terms under Orders 2 and 4 are inequitable because they result in unnecessary financial exposure and unjustified shifting of capital requirements from handlers to producers. The witness testified that NFO's member dairy farmers lost substantial amounts of money in the financial defaults of two major dairy industry organizations (NEDCO and Knudsen-Foremost). Because of these losses, the witness stated, NFO decided to study the industry's credit structure to determine whether certain changes in practices and procedures could be implemented to lessen or avoid such losses in the future.

The NFO witness testified that an analysis of its bad debt losses nationally showed that NFO's dairy losses averaged 20–40 times more than its meat animal losses and 5–10 times more than its losses from grain sales. He stated that the cooperative concluded that the greater dairy losses were a result of payment delays on milk sales, which were considerably longer than those in connection with its meat or grain sales. The witness testified that the proposed amendments are intended to reduce the financial risks of dairy farmers and increase their cash flow.

In support of the accelerated payment plan, a witness for NFO testified that handlers are not required to pay producers for milk until a date well after the dairy farmer has delivered the product. Proponent contended that a delay in payments by handlers for milk they have received materially increases the financial risks facing dairy farmers. He claimed that these payment delays increase capital requirements for dairy farmers who in effect are financing the operations of milk processors. Also, he said, in the event the processor's operation fails, dairy farmers as unsecured creditors suffer significant financial losses.

To demonstrate the problems with the current delay in payments, an NFO witness presented an exhibit showing the amount of time between delivery of a producer's milk and payment to the farmer for the milk. The data estimate the maximum and average financial exposure of dairy farmers under various existing and proposed payment plans. They also compare the variation in payment lag. For example, under the provisions of Order 2, which currently requires only a single payment to producers by the 25th of each month for milk delivered in the previous month, there is a maximum payment lag of 56 days and an average lag of 41 days. Order 4 requires partial payments to dairy farmers for their milk deliveries during the first 15 days of the month on the last day of the month and a final payment for all deliveries in the prior month by the 20th day of the following month. The Order 4 payment schedule results in a maximum lag of 37 days and an average lag of 26.9 days.

To further illustrate the potential cost of delays in payments to producers, the NFO witness estimated the maximum financial exposure of producers at $212 million and $82 million per month under Orders 2 and 4, respectively. These figures represent the maximum potential monetary losses by dairy farmers in the event of financial failure of handlers. Proponent indicated that these figures are not particularly important because it is unlikely that all handlers would fail at the same time. However, he stated, the numbers are noteworthy because they indicate the substantial amounts of money that producers are advancing to handlers each month.

Proponent witness claimed that the maximum and average exposure of an individual producer are highly relevant in terms of the amount of credit a dairy farmer is extending and thus the financial risk involved for each such person. Because of the differences in payment lags under the two orders, the witness said, the maximum financial exposure of an average producer was $14,371 under Order 2 and $12,761 under Order 4. He also stated that the average financial exposure per dairy farmer reflects the amount of additional capital required per farm because of the delayed payment system. He estimated that the average exposure per producer is $10,522 under Order 2, and $9,277 under Order 4.

A witness for NFO also contended that because of higher milk prices and costs of capital, dairy farmers have been facing ever-increasing costs and risks because of the time lag in milk payments. He claimed that such costs and risks have increased over the years due to the decline in the number of plants and producers. The witness testified that with fewer plants, the volume per plant has increased and the monetary consequences to producers resulting from a single plant's failure have increased also. Similarly, he stated, as the number of producers supplying the Order 2 and Order 4 markets has declined over the years, the exposure per producer has increased. Proponent claimed that as these trends continue in the future, payment delay will become more of a problem for dairy farmers.

According to an NFO witness, NFO changed its payment schedule for its dairy farmer members in the Minnesota-Wisconsin area from twice each month to three times per month in January 1987. He stated that at the same time NFO started paying its producers three times each month, the cooperative association initiated a program of billing its customers and collecting the money from its sales of milk on an accelerated basis so that the cooperative would have the money to pay its member-producers. Processors buying milk from NFO were permitted to choose a three-payment or a two-payment per month system. According to the witness, the purpose of both payment systems was to accelerate the flow of money from processors who use the milk to dairy farmers who produce and deliver the milk to dealers for processing.

The NFO witness testified that NFO introduced its accelerated payment program in the States of New York, New Jersey and Pennsylvania in October 1987. Milk produced by NFO member-producers in these states is regulated under either Order 2 or Order 4. The witness stated that under the association's payment program for the Northeast, producers receive a partial payment for their deliveries in the first 10 days of the month by the 25th day of the month and receive an additional partial payment for shipments during the next 10 days by the 5th day of the following month. Final payment to producers is made not later than the 18th day of the month for all milk delivered in the previous month. According to the witness, NFO expanded its accelerated payment program to cover producers delivering milk under the New England order (Order 1) in January 1988. Since that time, he said, all of NFO's producers have been covered by some type of accelerated billing, collection and payment program.

The NFO representative stated that several other Order 2 handlers currently pay some producers more than twice a month. He testified, however, that these handlers do not follow the same payment patterns as those adopted by NFO. Altogether, the witness estimated that less than 5 percent of the more than 21,000 producers whose milk is pooled under Orders 2 and 4 are currently being paid more frequently than twice per month.

Testimony was received from 19 individual dairy farmers in support of NFO's payment proposal. The producers stated that more frequent payments allow them to take advantage of discounts offered by their suppliers and to make loan payments earlier, thereby reducing their interest costs. The dairy farmers also supported the payment plan because of the assurance they felt it offered of payment for their milk deliveries in the event of handler failure. In addition, 56 dairy farmers submitted nearly identical letters supporting the proposals on the basis that dairy farmers do not receive the same credit terms that they are required to extent to the buyers of their milk.

A witness for a national association of milk processors and witnesses for associations of New York State and Pennsylvania milk processors testified in opposition to NFO's payment proposal. In addition, testimony from several individual handlers, including one cooperative association, was received opposing the proposal. Briefs filed on behalf of five other proprietary handlers, another cooperative association, and another national association of regulated handlers also opposed adoption of the NFO proposal.

Opponents of the proposal argued that adoption of the proposal to require that dairy farmers whose milk is pooled under Orders 2 and 4 be paid earlier and more frequently is unnecessary for the security of those producers. The witness representing New York State Dairy Foods, Inc., a trade association of milk handlers, stated that the New York State Milk Control and Milk Producers Security Fund Act of 1987 protects producers for 43 days' milk, while the maximum exposure of dairy farmers under New York State's current payment requirements is 39 days. He noted that dealers must post bonds for 43 days' milk or participate in the Milk Producers' Security Fund by paying 1.5 cents per hundredweight of the milk they handle in addition to posting a bond for 13 days' milk. According to the witness, the balance in the fund is over $3.8 million, and the law provides for a loan from the State if a default exceeding the amount of the fund were to occur. The witness observed that over 71 percent of the milk pooled under Order 2 is produced in New York State, and that the dairy farmers who produce that milk are fully protected from handler defaults by the New York State law. He also stated that under the State law, producers are already receiving partial payments which are not required under Order 2, and earlier final payments.

A representative of the Association of Pennsylvania Milk Dealers stated that the association's members buy about 50 percent of the milk produced in Pennsylvania, and sell about 90 percent of the fluid milk sold in the State. He testified that 63 percent of the producer milk pooled under Order 4 is produced in Pennsylvania. The witness explained that under Pennsylvania's Milk Producer Security Act, handlers may choose to post a bond that covers 30 days of the handler's milk receipts, or post a bond ensuring payment for 12 days' receipts and pay 2 cents per hundredweight of milk handled by the security fund. He stated that over 98 percent of the Order 4 milk produced in Pennsylvania is covered by the 30-day bond provision. In addition, the witness stated, Order 2 handlers buying milk produced in Pennsylvania must post bonds to ensure payment for that milk.

A spokesman for the Milk Industry Foundation (MIF) and the International Ice Cream Association testified against NFO's payment proposals on the basis of the financial and administrative burden such a plan would place on those organizations' members who are regulated under Orders 2 and 4. The witness stated that the organizations' members operate 750 processing plants accounting for 80 percent of the fluid milk products distributed on routes in the United States and 65 percent of the U.S. frozen dessert industry. The MIF representative stated that adoption of the NFO proposals would create a significant cash flow strain and financial burden for handlers that would be borne eventually by consumers. He explained that handlers' accounts receivable generally run 24–40 days on most commercial accounts, with schools and state institutions usually on a longer, 60–90-day payment schedule. As a consequence, the witness said, handlers would have to pay producers before the handlers receive payment.

The MIF spokesman estimated the cost of the proposed payment schedule to Order 2 handlers as an additional $321,000 in April 1988, or an increase of 3.3 cents per hundredweight in the cost of raw milk. He stated that adoption of the proposals would require a 15-million-pound-per-month Order 2 handler to pay out $823,500 eight days earlier than at present to meet the proposed first partial payment date, and $550,000 16 days earlier to meet the proposed second partial payment date. Further, he said, the proposal to require partial payments to the producer-

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settlement fund would cause Order 2 handlers to pay $1.8 million 20 days earlier each month, while Order 4 handlers would have to pay $1.7 million 14 days earlier. The MIF witness projected that these increases would result in added costs of $3.7 million per year to New York-New Jersey consumers, and $1.7 million to Order 4 consumers.

The MIF witness estimated that the additional cost of issuing 3 checks each month to producers could amount to as much as 1 cent per hundredweight. However, he noted, cooperatives could not be required to pay their dairy farmer members with any more frequency than they do at present. As a result, he stated, cooperative associations with processing and manufacturing operations would gain a significant advantage over proprietary processors. The witness also pointed out that handlers in unregulated area and those regulated under other marketing orders would not be required to pay producers three times per month, and thereby would have a competitive advantage. Manufacturing handlers, he maintained, would be competitively disadvantaged nationally, since most orders require only two payments per month.

The MIF spokesman testified that while handlers generally are able to obtain credit less expensively than producers, the extent of the added cost burden to handlers under NFO's accelerated payment proposal would be more than the gain to producers. He expressed the opinion that the "cost of money" to producers as a result of having to wait for payment for their milk is reflected in the Minnesota-Wisconsin price series which reflects prices paid to producers of unregulated Grade B milk in the upper midwest and which, over time, reflects the cost of producing milk.

While most of the individual handlers who testified or submitted briefs agreed that adoption of more frequent and earlier payments to producers would cause them severe cash-flow problems, a number of them also argued that the NFO proposals would increase their administrative costs of issuing checks to producers by at least 50 percent. An NFO witness had testified that the cost of issuing each extra check is approximately 70 cents.

The operators of two proprietary pool plants regulated under Order 2 testified that handlers currently have the option of paying producers more frequently than twice per month but may choose, instead, to offer premium payments to producers. Both handlers stated that more frequent payments to producers should remain an option to be negotiated between a handler and the producers or cooperative associations from which the handler obtains milk. One of the handlers expressed his opinion that producers currently are compensated for extending credit to handlers by receiving over-order prices for their milk.

Another handler argued that the partial payment rate of 105 percent of the previous month's lowest class price would be too high in some months, and may result in overpaying producers who quit in the middle of the month. Another problem he foresaw would be having to issue a final check containing negative adjustments for portions of the month. The handler pointed out that in every month of 1987, 105 percent of the previous month's Minnesota-Wisconsin price represented over 90 percent of the order's blend price, and exceeded the blend price in May and June. He explained that the high percentage of Class II use in Order 2 results in a blend price that is likely to be exceeded by 105 percent of the previous month's lowest class price.

Representatives of two cooperative associations agrued that the NFO proposal would disrupt marketing conditions in the overlapping milkshed between Orders 1 and 2, and would not allow enough time for handlers to file reports of receipts and utilization, or for the different payments to be made to cooperative associations, into and out of the producer-settlement fund, and by handlers to producers. The cooperatives pointed out that their members are protected from some of the risks of handler defaults by a sharing of risk, management's monitoring of handlers' financial condition, and the practice of discontinuing deliveries of milk to poor-risk handlers, or insisting on payment on delivery. Consequently, they stated, their memberships do not support the NFO proposal. One cooperative witness objected that the requirement that handlers having obligations to the producer-settlement fund in the previous month pay a partial payment to the fund on the first day of the next month discriminates against handlers with a percentage of Class I use above the average for the marketwide pool. The cooperative spokesman explained that the cooperative pays into the pool for some months, and draws money out in others. With such a requirement, he stated, the cooperative may have to pay into the fund on the basis of the prior month's obligation, and then wait two weeks to get its money back if the cooperative were drawing money out of the pool during the current month. As a result, the spokesman said, the cooperative would lose the use of its members' money and interest during that period.

NFO's proposals to accelerate producer payments to three times per month on earlier dates should not be adopted. There is little testimony or evidence in the record of this proceeding to indicate that the concerns expressed by NFO to support adoption of its accelerated payment proposals have any substantive basis. Also, the record indicates very little producer support for the proposed amendments, with a broad base of handler opposition to their adoption.

One of the major concerns addressed by NFO was the producer payment lag and resulting financial exposure of dairy farmers, particularly under Order 2, which does not provide for partial payments to producers. However, NFO's use of payment dates required by Order 2 to contrast the current payment lags to producers with those resulting from NFO's proposals distorts the actual payment situation of producers by ignoring the payment requirements legislated by the States of New York and Pennsylvania. These State laws were enacted for the same reasons given by NFO to support adoption of three payments per month to producers, namely to improve dairy farmers' cash flow and reduce their exposure to risk of financial losses. Although the milkshed for the Order 2 market covers a 7-state area, over 97 percent of the market's total milk production is produced on farms in New York and Pennsylvania.

While Order 2 currently requires only a single payment by handlers to dairy farmers on the 25th day after the end of each month, the States of New York and Pennsylvania have adopted legislation which provides for earlier and more frequent payments to producers and establishes security funds to ensure that handlers' financial failures will not result in nonpayment to dairy farmers.

Since 1978, there have been seven bankruptcies by handlers regulated under Order 2. The most recent and certainly the most significant in terms of the amount of money involved would be the bankruptcy of the Northeast Dairy Cooperative Federation, Inc. (NEDCO), which occurred in 1985. The record shows that NEDCO owed about $1 million to the producer-settlement fund and $21 million to dairy farmers at the time it filed for bankruptcy protection from its creditors. Although some of the money was later recovered, dairy farmer losses were substantial. The adverse financial impact of NEDCO and other handler bankruptcies on dairy farmers prompted New York State legislators to advance the payment dates for New York producers in order to limit the exposure of the Producer Security Fund and see that dairy farmers receive their money on a more timely basis.

In 1987, New York State took action to reduce the financial exposure of dairy farmers and improve their cash-flow position by accelerating payments to dairy farmers in two phases. Under the 1987 law, the dates of payments to dairy farmers were moved forward to reduce the payment lag and financial exposure of such persons. From that law's effective date on November 27, 1987, until December 31, 1989, New York dairy farmers must be paid a partial payment by the 5th day of the following month for their deliveries in the first 15 days of the prior month. Final payments to such producers must be made by the 23rd day of the next month. After January 1, 1990, New York producers must be paid by the last day of the month for their deliveries during the first 15 days of the month with final payments due by the 20th day of the following month.

In addition to mandating partial payments and advancing the payment dates for New York dairy farmers, the New York legislature imposed further requirements on milk dealers to enhance the payment security for New York dairy farmers in cases of payment default. Under the Milk Control and Milk Producer Security Fund Act of 1987, milk dealers are required to post a bond covering 43 days of their milk receipts from dairy farmers or participate in the Milk Producer Security Fund. Dealers who choose to pay into the security fund are assessed 1.5 cents per hundredweight on all milk purchased from dairy farmers each month and also must post a bond for 13 days' worth of milk receipts. Therefore, under either arrangement, a handler buying milk from New York dairy farmers is required to provide a bonding contract with an insurance company or bank guaranteeing payment for producers' milk receipts. Any losses not covered by bonding or the security fund may be paid off through a loan from the State to the security fund, as provided for by the law.

The record also indicates that the States of New Jersey, Massachusetts and Vermont also provide security programs to protect dairy farmers if the persons buying their milk are unable to pay them.

The Pennsylvania State Legislature enacted earlier final payment dates for Pennsylvania dairy farmers after a major dairy bankruptcy in 1983. Under Pennsylvania law, final payments to Pennsylvania producers are due by the 18th day of the following month (2 days earlier than under New York law). The Pennsylvania Legislature also enacted a law entitled the "Mills Producers Security Act." The law requires that dairy farmers and cooperatives receive prompt payments from milk dealers and handlers. It also is intended to protect dairy farmers against losses resulting from nonpayment for milk because of defaults by purchasers. Under the Pennsylvania law, a milk dealer has the option of posting a bond for an amount which covers 30 days of milk receipts, or posting a bond covering 12 days' worth of milk and paying 2 cents per hundredweight into the security fund each month. If an Order 2 milk dealer buys milk produced in Pennsylvania, he must file a bond with the Pennsylvania Milk Marketing Board.

The Order 4 milkshed covers the States of Delaware, Maryland, Pennsylvania, Virginia, New Jersey and West Virginia. Of these States, New Jersey and Pennsylvania, which represent 65 percent of the Order 4 milk supply, have security laws to protect the financial status of dairy farmers when a handler buying their milk is unable to pay them.

As indicated, the recent legislation in New York and Pennsylvania advancing the payment dates and updating the security laws have strengthened the financial positions of dairy farmers under both Orders 2 and 4. About 84 percent of the milk priced under these two orders is produced in New York and Pennsylvania.

The changes in the Order 2 payment provisions adopted under Issue No. 7 in this partial decision were designed and proposed to accelerate payments to producers and ameliorate adverse economic consequences caused by differences between the order payment obligations of Order 2 handlers with the terms of payment required under New York and Pennsylvania State law. In addition, the adopted changes in the Order 2 payment dates will also bring Order 2 into conformity with other nearby Federal orders. The changes will result in comparable exposure to financial risk and in similar rates of cash flow for dairy farmers whose milk is pooled under Orders 1, 2, and 4. For instance, the amended Order 2 payment provisions will reduce the maximum number of days of milk production for which dairy farmers have not received payment from 56 to 37, which is the same maximum financial exposure of dairy farmers supplying milk for Orders 1 and 4. Similarly, these changes also reduce the average financial exposure of producers under Order 2 from 41 days to 27 days, which is identical with the average exposure under the Order 4 payment provisions and 2.3 days' less financial exposure than under the payment terms of Order 1, which provides a later date for partial payments.

At the hearing, there was considerable discussion about the importance of applying uniform terms and provisions to handlers regulated under the three Northeast orders. Several witnesses acknowledged the significance of this consideration. However, even though an NFO witness testified that the cooperative had implemented its accelerated billing, collection and payment program in the Order 1 market, the cooperative did not propose that the Order 1 payment provisions be amended in a manner similar to those proposed for Orders 2 and 4 so that uniform payment provisions would be applicable under all three orders in the northeast region.

The milksheds for the Order 1 and 2 markets overlap extensively in New York State. For instance, market data for December 1987 show that in 24 such New York counties there were 1,292 producers supplying milk for Order 1 handlers and 3,881 dairy farmers shipping milk to Order 2 handlers. The record indicates that dairy farmers whose milk has been marketed under Order 2 are solicited regularly by proprietary handlers and cooperatives from Order 1. Adopting different minimum terms for paying producers under these two orders would only intensify the competition for dairy farmers and complicate the procurement problems of regulated handlers.

Many of the handlers who would be required to make earlier and more frequent payments to producers and to the producer-settlement fund if NFO's proposal were adopted expressed vigorous opposition to the proposed amendments. Handlers objected primarily to the impact of the proposal on their own cash-flow position, and on the cost of preparing and issuing extra checks. Milk handlers, like dairy farmers and any other business entities, are not immune to cash-flow problems. Handlers' largest customers are supermarket chains, for whose business they must compete with other handlers. One of the elements of such competition is apparently the terms of payment required by the handler. Other major customers are school districts and institutions which, according to the record, often pay for the milk they receive as many as 60–90 days later.

The extra costs required of handlers to implement the proposed payment plan would place them at a significant disadvantage in competing with unregulated handlers and with handlers

regulated under other orders. In addition to the potential for handlers' cash flow problems, the administrative cost of

and in letters submitted to the Department after the hearing, these producers represent only a very small

changes in the orders' payment provisions.

Exceptions to the recommended

opposition places considerably more burden on proponents to show that their accelerated payment plan, which would

addition to the potential for handlers' cash flow problems, the administrative cost of adopting NFO's proposed

these two states are of particular importance in securing payments for farmers because an overwhelming

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regulated under other orders. In addition to the potential for handlers' cash flow problems, the administrative cost of adopting NFO's proposed payment plan (70 cents per check, according to NFO's experience) is clearly not insignificant. Further, the record indicates that the costs of such a plan to handlers would be expected to exceed its benefits to producers.

According to the record, handlers can, and some do, choose to pay their producers more frequently than the States of New York and Pennsylvania currently require. These payment arrangements apparently are part of, or instead of, premium payments to producers, and are negotiated between a handler and the producers or cooperatives supplying milk to the handlers. Handlers should continue to be free to explore and adopt such payments arrangements independently, as NFO did, without having the substantial burdens of a more-frequent-payment plan imposed on them. Therefore, for these reasons alone, the NFO proposals should not be adopted.

A further argument against adoption of NFO's payment proposals is the lack of widespread producer support for their adoption. Except for the three cooperatives identified earlier as supporters of NFO's plan for accelerated payments to producers, no other producer groups testified in favor of the three-times-per-month payment plan. A spokesman for Dairylea and Eastern Milk Producers cooperatives, which represent more than 30 percent of the Order 2 producers, stated that the Boards of Directors of these two organizations reviewed the terms of NFO's proposed payment plan with their members and found no support among their members for such a payment plan. The Pennmarva Dairymen's Federation, which represents about 90 percent of the producers supplying milk for Order 4, took no position with respect to the NFO payment plan.

NFO and the three cooperative associations that supported the accelerated payment proposals represent less than 4 percent of the milk pooled under Order 2, while NFO represents less than 1 percent of the milk pooled under Order 4. Dairylea and Eastern Milk Producers, cooperative associations representing about 30 percent of Order 2 producers, opposed adoption of the proposals. No producer groups supplying the Order 4 market, other than NFO, supported the proposals. Although a number of individual dairy farmers indicated their support for more frequent payments to producers in testimony at the hearing and in letters submitted to the Department after the hearing, these producers represent only a very small percentage of the producers who would be affected by adoption of the proposals. It is evident that board general support for NFO's payment proposals has not been shown at this time.

A motion for sanctions against NFO was filed with the post-hearing brief submitted on behalf of Kraft, Inc., Pollio Dairy Products Company and Friendship Dairy. The request was attached to a copy of an advertisement placed by NFO in a New York magazine or newspaper targeted at a rural audience. The advertisement urged producers to file letters with the Hearing Clerk in support of NFO's proposals, and provided a form letter suitable for filing, with blanks where individual information could be filled in. The proprietary handlers' motion for sanctions is apparently based on alleged misrepresentations of the record contained in the advertisement as examples of the benefits to be gained through adoption of the proposals. The motion fails to indicate what type of sanction is requested and fails to note any provision of the applicable Rules of Practice which authorize or require a sanction.

Any person, whether or not a participant at a formal rulemaking hearing, is always free to file a brief or similar document in a timely fashion after the hearing. However, under the applicable Rules of Practice "Factual material other than that adduced at the hearing or subject to official notice shall not be alluded to therein, and, in any case, shall not be considered in the formulation of the marketing agreement or marketing order." (7 CFR 900.9(b). Consequently, all timely received briefs and letters were filed and considered but all factual material therein which was not "adduced at the hearing or subject to official notice" was not considered in reaching this decision. As noted, the NFO proposals have not been adopted based on the record of this proceeding. In view of these circumstances, it is considered unnecessary to act on the motion for sanctions. It is curious to note, however, that this advertisement, which apparently was made widely available to dairy farmers in a number of different publications throughout the milksheds of both Order 2 and Order 4, and which made communications to the Hearing Clerk as effortless as possible, drew responses from only 56 of the approximately 21,000 dairy farmers who would be affected by the proposed changes in the orders' payment provisions.

Exceptions to the recommended decision filed on behalf of NFO began with 2 general criticisms followed by 5 specific exceptions to findings in the recommended decision, and ended with several "key arguments" which NFO stated had not been addressed in the decision. These arguments related to delays in payments to dairy farmers. As such, they are discussed under "(3)." below, dealing with the cash flow problems of dairy farmers.

NFO accused the Secretary of ignoring evidence and arguments put forward by proponents in support of the proposals. The general exceptions stated that, in developing the recommended decision, the Department maintained a pre-existing position of opposition to the proposals without regard for the record of the hearing. The second general exception charged that the recommended decision relied on a lack of widespread producer support in denying the proposals instead of considering the economic and policy merits of the issue.

Contrary to NFO's assertions, all of the record evidence relating to the accelerated payment plan was considered and discussed in the recommended decision. The decision provides several objective and adequate bases for not adopting NFO's payment proposals regardless of the Department's initial willingness to hear the proposals.

The Department's decision to deny NFO's proposals was not based solely on a lack of producer support and handler opposition, as exceptor implies. Although the decision describes lack of widespread producer support as a further argument against adoption of NFO's payment proposals, other more significant factors were considered in detail.

The decision acknowledges that while NFO proposals are supported by some producers supplying milk for these two markets, other producers covered under Orders 2 and 4 do not support the proposed payment plan. Also, objections to the proposals were voiced by many of the handlers regulated under Orders 2 and 4. Although all of the individual dairy farmers who were bussed to the hearing by NFO and testified were in favor of the proposed payment plan, it is evident that there are substantial differences of opinion among producers and handlers covered by these two orders as to whether more frequent and earlier payments to producers than those adopted under Issue 7 in this decision are desirable. This significant opposition places considerably more burden on proponents to show that their accelerated payment plan, which would impose additional payment obligations on regulated handlers, is needed to assure the maintenance of orderly marketing under the two orders. Proponents did not meet this burden.

The NFO comments specifically objected to a statement in the decision attributed to the Dairylea/Eastern witness that the Boards of Directors of these two organizations reviewed the terms of NFO's proposed payment plan with their members and found no support among their members for such a payment plan. He contended that this statement implied that a direct membership survey was made when in fact that was not done. Actually, the record indicates that, "Both Eastern and Dairylea have reviewed the proposal for three times a month payment with our Board of Directors, and we have found no support on the part of our membership for three times a month payments." Although the record is not specific as to how the Board determined lack of producer support, it is clear that they found no support among their members for NFO's payment proposals. Board members of a cooperative, (be it Dairylea, Eastern or NFO) are charged with the responsibility of reflecting the veiws of the dairy farmers they represent. For that reason, the Board's position on a particular issue should be considered to reflect the views of the cooperative's membership.

NFO's exceptions to specific findings of the decision are described and discussed below:

(1) NFO's exceptions asserted that in determining that the administrative cost of the NFO proposals would be burdensome to handlers, the Department relied entirely on the insignificant cost to handlers of issuing one extra check per month.

As indicated in the decision, handlers were primarily concerned with the impact of NFO's payment plan on their cost of doing business. The uncontested estimates by handlers of the cost of making three payments on earlier dates instead of two payments on later dates of each month reflect the adverse financial impacts on the cash flow positions of such persons and are in addition to the administrative costs of writting additional checks for milk. The decision concludes that imposing such extra costs on handlers regulated under Orders 2 and 4 would place them at a significant disadvantage with unregulated handlers and handlers regulated under other Federal orders.

With respect to the check-writting cost, the decision states that, "In addition to the potential for handlers' cash flow problems, the administrative cost of adopting NFO's proposed payment plan (70 cents per check according to NFO's experience) is clearly not insignificant." The decision clearly emphasizes that the administrative expenses associated with writing more checks is an additional cost factor to handlers, but less significant than the changes in the cash flow positions of such persons would be under NFO's accelerated payment proposals.

NFO also argued in exceptions that if the Department wanted to avoid the extra administrative costs of paying producers three times a month, the objectives of NFO's proposals could be achieved by an accelerated two-times-per-month payment schedule that was suggested by NFO's witness at the hearing. Exceptor took the position that this suggestion was not discussed in the recommended decision.

The accelerated two-times-per-month payment schedule referred to in NFO's exceptions was alluded to in very limited testimony at the hearing by NFO witnesses. NFO did not offer details as to how such a plan would work, and the alternative was not specifically addressed by other hearing participants. The two-times-per-month payment alternative therefore was not explored adequately enough by hearing participants to consider it for adoption. However, the matter of accelerating payment to producers was addressed specifically in this decision under issue no. 7. Payments to Order 2 dairy farmers were accelerated significantly and their financial exposure was reduced substantially by the changes adopted herein. The Order 2 changes align the payment provisions of the three Northeast markets which were involved in this proceeding. Actually, the average financial exposure of producers under Orders 2 and 4 will be identical, and less than the exposure for producers under Order 1 for which no changes were proposed by NFO.

(2) The exceptions state that the Department's reliance on the existing security systems under the Pennsylvania and New York laws to assure producers protection from handler defaults ignores all of those producers not having the benefit of those State's protection and overstates the adequacy of the Pennsylvania and New York security sytems.

The decision states that recent legislative changes in New York and Pennsylvania to update their security laws have strengthened the financial positions of dairy farmers supplying Orders 2 and 4. The security laws for these two states are of particular importance in securing payments for farmers because an overwhelming majority of the milk supply for these two markets originates in these two states. The record evidence indicates a fairly good payment record for claims against the security funds of these two states. The characterization in the exceptions of the $3.5 million in the New York security fund as grossly insufficient for any large default completely ignores both the large majority of handlers covered by bonding and the provision in the New York law for loans from the State to the security fund if needed. However, no security program can assure full payments in all cases to dairy farmers for their milk deliveries if handlers buying their milk cannot pay them. Risk is an inherent part of doing business, and is part of the definition of an entrepeneur. The States of New York and Pennsylvania have enacted laws to reduce the financial risks of dairy farming, and the payment dates adopted in the earlier part of this decision incorporate in the order the State-mandated payment dates. However, financial risks by business entities cannot be eliminated.

(3) NFO's exceptions charge that the recommended decision found that handlers' cash flow problems are more important than farmers', while ignoring evidence of handler liquidity. The comments argue that the record indicates that handlers bill their customers weekly, and that store owners are paid cash for dairy products within 1–10 days after producer milk is processed. NFO descirbes the operators of vertically integrated chain stores and chains of convenience stores as major handlers in both the Order 2 and Order 4 markets, and depicts them as turning farmers' production into cash two to three times before paying farmers for it.

Although the Act expresaly authorizes the establishment of payment dates under an order, it does not specify when or how frequently handlers must pay producers. Nor does it require that the payment terms for milk compare favorably with such terms for other agricultural commodities. The payment provisions of a Federal milk order customarily are established on the basis of prevailing marketing conditions, including payment practices already existing in an area or practices that handlers and producers find mutually desirable. Only recently have New York producers enjoyed the benefits of partial payments for their milk, and that change was adopted by the State legislature to bring the terms of payment to New York producers up to the industry-wide

standard. That prevailing market practice is now being incorporated into the Order 2 payment provisions in this

NFO's characterization of the role of vertically integrated chain stores and the operators of chains of convenience

NFO's contention that producers whose milk is pooled under Orders 2 and 4 should be subject to the more

justifiable level. As indicated, the record in this proceeding does not indicate that it would be justifiable to impose more

findings and conclusions and the regulatory provisions of this decision are at variance with any of the

formulate marketing agreements and marketing orders have been met.)

Findings and Determinations

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standard. That prevailing market practice is now being incorporated into the Order 2 payment provisions in this decision. The payment plan adopted in this decision, which includes some delay in payment after the delivery of milk to a handler, is used widely throughout the United States, not only to pay milk producers under Federal orders, but to pay manufacturing grade producers and producers delivering milk to unregulated markets, as well as those covered by state regulation.

The NFO exceptions argue that the Department is pursuing a policy requiring farmers, rather than handlers, to finance the dairy industry. On the contrary, farmers are merely expected to bear the capital requirements of dairy farming. In dairy farming, as in most other businesses, capital is required and operating costs are incurred before a return on investment is realized. These requirements are also encountered in the operation of dairy plants. According to the record of this proceeding, handlers customarily wait some time after processed milk is delivered to retail outlets before receiving payment for it. NFO's citation of testimony that "admitted" that fluid milk products are reduced to cash in store owners' hands within 1 to 10 days of processing completely overlooks testimony in the record that grocery store chains are able to dictate most of the terms of trade between milk handlers and retail outlets. Also overlooked is the fact that over half of the milk marketed under Orders 2 and 4 is used in manufactured, rather than fluid, milk products. Many of these manufactured products are quite storeable, and may not be "reduced to cash" for some weeks, or even months.

An NFO witness' statement that an unidentified national dairy processor had told him that the handler bills its customers on a weekly basis may be true, but has no bearing on the amount of time that elapses before such bills are paid. The record contains direct testimony by handlers that supermarkets do not pay for milk delivered to them for 3 to 4 weeks after billing, and by a representative of a handler association that the accounts receivable of its members are not paid for 25–40 days. Most businesses encounter a time lag between producing and delivering a product and receiving payment for it. The record shows that the period of time dairy plant operators customarily wait for payment for their sales of processed milk to retail outlets is as long as the time period dairy farmers wait for payment from milk handlers.

NFO's characterization of the role of vertically integrated chain stores and the operators of chains of convenience stores in both markets as "major" is not supported by the record. Although there apparently are a number of such handlers in the Order 4 market, their relative share of the market is not revealed in record evidence. There is testimony in the record, by an NFO witness, that the largest group of handlers in the two markets is not part of a grocery chain, and would be subject to a longer period of time before being paid for its deliveries of processed milk to grocery stores than are handlers who are connected with grocery store chains. The characterization of vertically integrated handlers' ability to turn the farmers' product into cash two or three times before paying the farmer is of limited use in determining payment provisions appropriate for all of the parties affected by the order.

The "key arguments" raised at the end of NFO's exceptions deal with the questions of why dairy farmers must wait for payment after delivering milk to a handler when other farmers are paid for their crops on delivery; why partial payments to producers pooled under the northeast orders are required less frequently or at lower rates than partial payments to producers whose milk is pooled under some other milk orders; and why dairy farmers should have to supply any of the capital required by the dairy industry in view of handlers' superior ability to raise capital.

NFO's argument that prevailing order payment terms uniquely disadvantage dairy farmers, as opposed to the producers of other commodities, has no validity because, as noted above, milk order payment provisions reflect payment practices already extant throughout the dairy industry. Producers of other commodities may be paid upon delivery of their product because of marketing conditions unique to or traditional for those commodities. It should be noted that, in the case of grain producers, product is harvested and delivered only once per year, making a far longer period between payments than the twice-per-month payments common in the dairy industry. In one respect, the milk order program does delay final payment to producers by requiring handlers to complete reports of their receipts and utilization of milk during the previous month and then allowing time for a blend price to be calculated so that producers can be paid on the basis of the use of their milk. This built-in delay in payment is a necessary disadvantage of administering a classified pricing program.

NFO's contention that producers whose milk is pooled under Orders 2 and 4 should be subject to the more favorable payment terms enjoyed by dairy farmers supplying several other markets, whose orders provide three payments per month and/or increase the partial payment rate, ignores the fact that the payment terms of Order 2 and 4 must be based on the hearing record dealing with those orders. The payment provisions for the few markets that require more frequent or larger partial payments were established on the basis of hearing records reflecting marketing conditions under those orders. Most of these markets have considerably higher Class I use percentages than do the New York-New Jersey and Middle Atlantic markets. The existence of more favorable payment terms under other Federal orders does not justify the adoption of such provisions under these two orders.

As discussed earlier, the customary delays in being paid for milk produced should be considered part of the capital cost of owning and operating a dairy farm. Even if, as proponent claims, handlers have a superior ability to raise capital, that is not a sufficient justification to require them to supplement the capital requirements of dairy farmers.

(4) NFO described the decision as concluding that adoption of NFO's proposals would somehow add to the procurement problems of Order 2 handlers, and disagreed with that conclusion. The decision states that providing different payment terms under Orders 1 and 2 would only intensify the competition for dairy farmers and complicate the procurement problems of regulated handlers. Counsel for NFO reiterated the cooperative's hearing position in exceptions by contending that its payment plan should be adopted for Order 2 so that handlers operating under that order would have an advantage over Order 1 handlers in procuring milk supplies, and to offset the blend price advantage that Order 1 handlers now enjoy because of the market's higher Class I utilization. It would be inappropriate to adopt a plan to pay dairy farmers under Order 2 to correct pooling and pricing problems between Orders 1 and 2.

(5) NFO also excepted to the Department's finding in the recommended decision that accelerated payment plans should remain voluntary. Since that option would be available even if NFO proposals were adopted, the cooperative contended that the minimum payment terms under Orders 2 and 4 need to be raised to a more justifiable level. As indicated, the record in this proceeding does not indicate that it would be justifiable to impose more stringent payment requirements on handlers operating in these two markets.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above, to the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the request to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the New York-New Jersey order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and an Order amending the order regulating the handling of milk in the New York-New Jersey marketing area, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered that this entire decision and the two documents annexed hereto be published in the **Federal Register**.

Referendum Order to Determine Producer Approval; Determination of Representative Period; and Designation of Referendum Agent

It is hereby directed that a referendum be conducted and completed on or before the 30th day from the date this decision is issued, in accordance with the procedure for the conduct of referenda (7 CFR 900.300–311), to determine whether the issuance of the attached order as amended and as hereby proposed to be amended, regulating the handling of milk in the New York-New Jersey marketing area is approved or favored by producers, as defined under the terms of the order, as amended and as hereby proposed to be amended, who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

The representative period for the conduct of such referendum is hereby determined to be April 1989.

The agent of the Secretary to conduct such referendum is hereby designated to be N. K. Garber, Acting Market Administrator.

List of Subjects in 7 CFR Part 1002

Dairy products, Milk, Milk marketing orders.

Signed at Washington, DC, on December 12, 1989.

Jo Ann R. Smith,

Assistant Secretary for Marketing and Inspection Services.

Order Amending the Order Regulating the Handling of Milk in the New York-New Jersey Marketing Area

(This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.)

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) Findings. A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the New York-New Jersey marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area; and the minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order Relative to Handling

It is therefore ordered that on and after the effective date hereof, the handling of milk in the New York-New Jersey marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the recommended decision issued by the Administrator, Agricultural Marketing Service, on September 20, 1989 and published in the **Federal Register** on September 26, 1989 (54 FR 39377) shall

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be and are the terms and provisions of this order, amending the order, and are set forth in full herein.

PART 1002—MILK IN THE NEW YORK-NEW JERSEY MARKETING AREA

1. The authority citation for 7 CFR part 1002 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1002.22 [Amended]

2. In § 1002.22 Additional duties of the market administrator, paragraph (m)(2) is amended by changing "15th" to "14th".

3. In § 1002.30 Reports of receipts and utilization, the introductory text is revised to read as follows:

§ 1002.30 Reports of receipts and utilization.

Each handler, except a handler receiving own farm milk and not required to be listed pursuant either to § 1002.11 or § 1002.12, shall report each month to the market administrator for the preceding month in the manner and on the forms prescribed by the market administrator with respect to each pool plant, partial pool plant, pool unit or partial pool unit operated by such person, the information set forth in paragraphs (a) through (d) of this section. Such report shall be physically recieved at the office of the market administrator no later than the close of business on the 10th day of the month. Other information required to be reported no later than the 10th day of the month pursuant to §§ 1002.25 and 1002.31 must also be physically received by the market administrator no later than the 10th day of the month.

* * * * *

4. In § 1002.50a Class prices, the introductory text is revised to read as follows:

§ 1002.50a Class prices.

For pool milk received during each month from dairy farmers or cooperative associations of producers, each handler shall pay per hundredweight not less than the prices set forth in this section, subject to the differentials and adjustments in §§ 1002.51 and 1002.81. Any handler who purchases or recevies milk during any month from a cooperative association of producers but does not operate the plant or unit receiving this milk from producers shall pay the cooperative association on or before 2 days before the last day of the month if paid by check, or the last of the month if paid in cash or cash equivalent, at not less than the lowest class price pursuant to this section for the preceding month for milk received from such cooperative during the first 15 days of the month, and shall pay the cooperative association on or before the 15th day of the following month the balance due for milk received during the month from such cooperative at not less than the class prices pursuant to this section subject to the differentials and adjustments set forth in §§ 1002.51 and 1002.81 applicable at the plant at which the milk is first received from the cooperative association. Such payments to a cooperative association shall be deemed not to have been made until the payments have been received by the cooperative association.

* * * * *

5. In § 1002.80 Time and rate of payments, paragraphs (c) through (f) are redesignated as paragraphs (d) through (g); paragraphs (b) is redesignated as paragraph (c) and revised; paragraph (a) is redesignated as paragraph (b) and newly designated paragraph (b) introductory text is revised; and a new paragraph (a) is added, as follows.

§ 1002.80 Time and rate of payments.

(a) On or before the last day of the month, each handler shall make payment to each producer for milk received from such producer during the first 15 days of the month at not less than the lowest class price for the preceding month.

(b) On or before the 20th day of the month, each handler shall make payment, pursuant to paragraphs (c), (d), (e), (f), and (g) of this section, to each producer for the balance due for all milk received from such producer during the proceding month at not less than the uniform price for such month, subject to the following adjustments:

* * * * *

(c) Upon receipt of a written request from a cooperative association which the market administrator determines is authorized by its producer-members to collect payment for their milk, each handler, on or before 2 days before payments are due to individual producers if paid by check, or the same day such payments are due to individual producers if paid in cash or cash equivalent, shall pay the cooperative association for milk received during the month from the producer-members of such association an amount equal to not less than the total amount otherwise due such producer-members as determined pursuant to paragraphs (a) and (b) of this section.

* * * * *

§ 1002.85 [Amended]

6. § 1002.85 Payments to the producer-settlement fund, is amended by changing the language "21st" to "16th".

§ 1002.86 [Amended]

7. In § 1002.86 Payments out of the producer-settlement fund, paragraph (a) is amended by changing "22nd" to "17th", and paragraph (b) is amended by changing "25th" to "20th".

§ 1002.89 [Amended]

8. In § 1002.89 Cooperative payments for market services, paragraph (f)(1) is amended by changing "25th" to "20th".

PART 1004—MILK IN THE MIDDLE ATLANTIC MARKETING AREA

Note: There are no proposed amendments to this part at this time.

Marketing Agreement Regulating the handling of Milk in the New York-New Jersey Marketing Area

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR part 900), desire to enter into this marketing agreement and do hereby agree that the provision referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ 1002.1 to 1002.90, all inclusive, of the order regulating the handling of milk in the New York-New Jersey marketing area (7 CFR part 1002) which is annexed hereto; and

II. The following provisions:

§ 1002.91 Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he handled during the month of April 1989, hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Director, or Acting Director, Dairy Division, Agricultural Marketing Service, to correct any typograhical errors which may have been made in this marketing agreement.

§ 1002.92 Effective date.

This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with section 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitation herein contained and not otherwise, have hereunto set their respective hands and seals.

(Seal)
(Signature)
BY _____
(Name) (Title)
(Address)
Attest
Date

[FR Doc. 89-29398 Filed 12-15-89; 8:45 am]
BILLING CODE 3810-02-M

FARM CREDIT ADMINISTRATION

12 CFR Part 611

RIN 3052-AB12

Organization; Reorganization Authorities For System Institutions

AGENCY: Farm Credit Administration.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Agricultural Credit Act of 1987, Public Law 100–233, amended the Farm Credit Act of 1971 (Act) by establishing the procedure under with a Farm Credit institution may terminate its Farm Credit charter by becoming chartered as a financial institution under other Federal or State authority. The Act imposes certain requirements on an institution that wishes to terminate its status as a Farm Credit institution and authorizes the Farm Credit Administration (FCA) to impose by regulation such other conditions as the FCA considers appropriate. The FCA is soliciting comments from the public on the implementation of the statutory requirements and such other conditions that members of the public believe are appropriate in connection with an institution's exercise of this termination authority.

DATE: Comments must be received on or before January 31, 1990.

ADDRESS: Comments may be mailed or delivered (in triplicate) to Anne E. Dewey, General Counsel, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090. Copies of all communications received will be available for examination by interested parties in the Office of General Counsel, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

Robert S. Child, Credit Specialist, Office of Financial Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4402

or

Gary L. Norton, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090 (703) 883–4020.

SUPPLEMENTARY INFORMATION: The Agricultural Credit Act of 1987, Public Law 100–233, amended the Farm Credit Act of 1971 (Act) 12 U.S.C. 2001, *et seq.* by adding, among other provisions, a new section 7.10—Termination of System Institution Status. Section 7.10, provides that a Farm Credit institution may terminate its status as a Farm Credit institution if it satisfies the following requirements: (1) 90-day advance notice to the FCA; (2) approval by the FCA Board; (3) approval by a Federal or State authority of a charter for a bank, savings and loan, or other financial institution; (4) the payment by the institution of the amount by which total capital of the institution exceeds 6 percent of its assets, such payments to be made to the Farm Credit Assistance Fund if the termination occurs prior to January 1, 1992, or to the Farm Credit System Insurance Fund if the termination occurs after such date; (5) the institution pays or makes adequate provision for the payment of all outstanding debt obligations of the institution; (6) the termination is approved by a majority of the stockholders of the institution voting, in person or by written proxy, at a duly authorized stockholders' meeting, held prior to giving notice to the FCA Board; (7) the institution meets such other conditions as the FCA Board, by regulation, considers appropriate.

In addition to the requirement of section 7.10 that a plan of termination be submitted to the FCA Board for approval following an affirmative stockholder vote, section 7.11 of the Act requires that any plan of termination, together with all information that will be distributed to the shareholders, must be submitted to the FCA Board for approval prior to the shareholder vote. The infosmation to be distributed to shareholders must include an enumerated statement of the anticipated benefits and potential disadvantages of such action. The FCA is required to act within 30 days on a plan submitted for approval prior to the stockholder vote. If the plan is disapproved by the FCA Board, the notice of disapproval shall specify the reasons for such disapproval.

The FCA requests public comments on issues raised in connection with this new authority. Comments received will be considered in the development of proposed regulations implementing these statutory provisions. The FCA, in interpreting this statutory authority and developing such regulations as may be necessary, seeks to ensure that the overall intent of section 7.10 is carried out. Specifically, institutions must be afforded a meaningful opportunity to terminate their Farm Credit status in accordance with the statutory requirement, but should not be able to take actions that may be designed to circumvent those statutory requirements. The FCA is seeking any comments members of the public deem relevant to these matters and, in particular, seeks comments relating to the following:

1. New section 7.10 provides that an institution that terminates its Farm Credit charter shall pay an exit fee equal to the amount by which the total capital of the institution exceeds 6 percent of the institution's assets. The Act does not define the terms "total capital" or "assets" as they are used in this section. In seeking to define those terms several questions are raised:

(A) Is there any basis for not including the institution's allowances for losses in the computation of total capital?

(B) If all allowances are not included, should the amount of the allowances that are included be limited to the general portion of the allowance, that allowance based on generally accepted accounting principles (GAAP), or some formula (e.g., a specific percentage of such allowance)?

(C) Should the computation of assets be based exclusively on the requirements of GAAP or should it include modifications?

(D) Should assets and total capital be measured at one point in time or based on an average over some prior period, such as an average over several months, 12 months, or several years?

(E) From what point in time should the computation of assets and total capital be based? For instance, should such computation be based on the data of the shareholders' meeting, the date of application to FCA, or some other date?

2. Section 7.10 requires the terminating institution to pay or make adequate provision for the payment of all outstanding debt obligations.

(A) Should the terminating institution be required to pay off all obligations to the Farm Credit Bank (FCB) and other Farm Credit institutions or should a phased payoff be authorized?

(B) If a terminating association can pay off its loan to the FCB on a phased basis, is the association authorized or required to establish an "other financing institution" (OFI) relationship with the FCB under section 1.7 of the Act?

(C) If the terminating institution is a bank, is there any acceptable basis upon which such bank can satisfy its joint and several liability on Systemwide and consolidated notes and bonds, and its liability for interest payments on the individual obligations issued by banks operating under the same title of the Act? See section 4.4 of the Act.

(D) What are the appropriate ways to measure and provide for the payment of other contingent and accrued liabilities? statutory requirement. For instance, to what extent should the regulations prohibit and/or require the recapture of

A notice of proposed rulemaking will be published in due course after consideration of the comments received

consumers under item 806.30, TSUS, for further processing. Under item 806.30, TSUS, a partial duty exemption has

comments supported the petition and the requested reclassification.

judgment rendered by the U.S. Court of International Trade or the U.S. Court of Appeals for the Federal Circuit.

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(D) What are the appropriate ways to measure and provide for the payment of other contingent and accrued liabilities? Examples of such liabilities include, but are not limited to: FCA assessments, tax liability, accounts payable, interest payable, loss-sharing agreements, legal suits, and guarantee agreements.

(E) Can an association terminate its Farm Credit status without first redeeming and retiring any preferred stock it issued to the Farm Credit System Financial Assistance Corporation?

3. Section 4.3A of the Act requires the FCA to establish minimum permanent capital standards for all Farm Credit institutions and restricts the ability of institutions to reduce their capital if they do not meet such standards.

(A) If the terminating institution is an association, to what extent must the capital adequacy position of the FCB be taken into consideration before the FCB can retire equities owned by the terminating association?

(B) If the terminating institution is an association, to what extent can the FCB retire any stock owned by such association if the FCB has issued and continues to have outstanding preferred stock issued to the Farm Credit System Financial Assistance Corporation?

(C) Should investments in other Farm Credit institutions be regulated as to retirement?

(D) If the terminating institution is an association, should the FCB be required to retire any stock, surplus, allocated or unallocated equities, other than equities that were purchased by the terminating association?

4. The FCA is analyzing whether and to what extent a proposed termination should be restricted or delayed until the territory chartered to terminating institution(s) is chartered to a new or existing Farm Credit institution. The question may present special problems if a FCB seeks to terminate its Farm Credit affiliation when one or more of the associations in the district want to retain their Farm Credit charters.

(A) To what extent could simultaneous terminations of associations be permitted if such terminations would have a major impact on the remaining district institutions?

(B) What provisions must be made for those associations that seek to retain their Farm Credit charters?

5. Section 7.10 requires a terminating institution to pay an exit fee equal to the amount by which the total capital of the institution exceeds 6 percent of assets of the institution. The FCA is analyzing whether and to what extent measures should be implemented to ensure that an institution does not circumvent this statutory requirement. For instance, to what extent should the regulations prohibit and/or require the recapture of extraordinary expenditures which were designed for, or had the effect of, reducing capital or increasing assets?

6. Section 4.12 of the Act provides for the voluntary liquidation of Farm Credit institutions. The FCA questions whether institutions should be permitted to use this authority to avoid paying the exit fee required under section 7.10. If an institution chooses voluntarily to liquidate and not continue lending operations as a business entity, should the institution be required to pay the 6-percent exit fee? Should the regulations preclude an institution from undertaking any type of reorganization outside the System without paying the exit fee? Are there other means of addressing these concerns?

7. Should dissenting shareholders of an institution that terminates its status be afforded rights to continue as borrowers and stockholders of a Farm Credit institution? If so, to what extent are such stockholders entitled to a distribution of the equity of the terminating institution?

8. Sections 4.13 and 4.14 of the Act provide for certain rights to borrowers from Farm Credit institutions. The FCA seeks input regarding whether and to what extent any rights afforded to borrowers under the Act would continue to be available to the borowers of an institution following termination of Farm Credit status, particularly if it does not become an OFI under section 1.7 of the Act.

9. Section 7.11 of the Act requires that the shareholder disclosure material be submitted to the FCA for approval prior to its distribution to shareholders. What, if any, specific disclosure requirements should be required as part of the proxy material? General areas which the FCA believes should be addressed include, but are not limited to, the following:

(A) terms for repayment of the direct loan;

(B) source and terms available for alternative funding;

(C) financial projections regarding the new institution;

(D) rights of stockholders, particularly as they affect stockholders who previously owned protected stock;

(E) effect of the termination on borrower rights;

(F) right of shareholders to reconsider the termination vote;

(G) the regulatory environment of the successor institution; and

(H) the existence of any continuing contingent liabilities that will not be paid immediately upon termination.

A notice of proposed rulemaking will be published in due course after consideration of the comments received in response to this notice.

Dated: December 12, 1989.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 89-29345 Filed 12-15-89; 8:45 am]

BILLING CODE 6705-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 175

[T.D. 89-106]

Petitioners' Desire To Contest Decision Denying Domestic Interested Party Petition Concerning the Classification of Certain Stainless Steel Products

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of Petitioners' Desire to Contest Decision on Domestic Interested Party Petition.

SUMMARY: This document advises the public of the desire of several interested parties to contest Customs decision denying their petition requesting reclassification of certain imported stainless steel products made from exported United States scrap steel. The petitioners have advised Customs of their intention to pursue this matter through appropriate court proceedings.

DATE: December 18, 1989.

FOR FURTHER INFORMATION CONTACT: Craig Walker, Value, Special Programs and Admissibility Branch, (202) 566-2938.

SUPPLEMENTARY INFORMATION:

Background

On April 29, 1987, a notice was published in the **Federal Register** (52 FR 15512) indicating that Customs had received a petition dated November 14, 1986, on behalf of certain domestic interested parties engaged in the manufacture of stainless steel products, filed under section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), requesting reclassification of certain stainless steel products processed abroad from exported U.S. steel scrap and then reimported for further processing. The imported steel products under consideration include primarily stainless steel sheet, plate and strip, that are manufactured abroad from exported U.S. scrap metal which is used as a raw material. The scrap-based steel products have been imported by industrial consumers under item 806.30, TSUS, for further processing. Under item 806.30, TSUS, a partial duty exemption has been provided for articles of metal manufactured or subjected to a process of manufacture in the United States, exported abroad for further processing, and returned to the United States for still further processing. Duty is assessed only on the value of the foreign processing. The corresponding provision under the Harmonized Tariff Schedule of the United States (HTSUS), which became effective on January 1, 1989, is subheading 9802.60.

On July 23, 1984, Customs issued Ruling 553128 which held that item 806.30, TSUS, was applicable to steel scrap of U.S. origin exported for melting and casting into basic metal shapes and forms that are then returned to the United States under item 806.30, TSUS, for further processing by industrial users.

On November 14, 1986, a petition was filed on behalf of several domestic producers of specialty steel products. Petitioners challenged the prior ruling on the basis that scrap-based stainless steel products, imported by industrial consumers, were ineligible for item 806.30, TSUS, tariff treatment. The petitioners argued that this classification was inapplicable to the imported scrap-based stainless steel products and that the legislative history of the tariff provision runs contrary to the current interpretation. Other arguments advanced concern the nature of scrap metal and its meaning under the tariff provision. It is asserted that scrap is not a "manufactured" product within the meaning of item 806.30, TSUS, and its counterpart provision, subheading 9802.00.60, HTSUS, and that the test used to determine whether scrap is a metal article of U.S. manufacture is ambiguous and permits the application of item 806.30, TSUS, and subheading 9802.00.60, HTSUS, to foreign scrap contrary to the requirements of the statute. Finally, petitioners generally contend that the foreign operations do not produce an intermediate product requiring further processing for finishing. Instead, the foreign process results in finished goods that do not require further processing in the United States. Selling flat-rolled steel products to industrial consumers constitutes the end use of the imported steel products.

Six of the eight comments received in response to the **Federal Register** notice of April 29, 1987, supported the correctness of the current application of the tariff provision and supported denial of the petition, while the remaining two comments supported the petition and the requested reclassification.

Decision on Petition and Notice of Petitioners' Desire to Contest

After careful analysis of the comments received in response to the notice and further review of the matter, the petitioners were informed, by letter dated March 14, 1988 (CLA-2 CO:R:CV:V 554750), that Customs had determined the application of item 806.30, TSUS, to be correct and, accordingly, the petition was denied. Customs stated (1) that where the legislative purpose is evident from the plain meaning of the written text, and the language is neither ambiguous nor uncertain, no occasion arises to consult extrinsic data for clarification; (2) with respect to whether or not metal scrap is considered a manufactured product, it is clear that, whether regarded as an end product or a by-products, scrap metal results from a manufacturing process. The statute requires that an article of metal be manufactured or subjected to a process of manufacture in the United States. There is no restriction as to the shape or form that the U.S. metal article must take; (3) obsolete scrap qualifies as a U.S. manufactured metal article if the discarded or worn-out articles from which the obsolete scrap was obtained was manufactured or subjected to a process of manufacture in the United States. Merely subjecting foreign obsolete scrap to shredding, crushing or other reclamation activities in the U.S. will not result in the scrap being considered a metal article of United States manufacture; (4) with respect to whether the imported articles are finished products, as petitioners claim, although the imported stainless steel plate, sheet and strip are articles of commerce in that they can be bought and sold, they still remain in the condition of basic metal shapes that must be further manufactured into final end-use products. In their imported condition, the steel shapes are not dedicated to special use but must be further processed for final consumer use.

In response to Customs decision to deny the petition, on April 12, 1988, the petitioner filed notice of their desire to contest the decision in accordance with section 516(c), and Tariff Act of 1930, as amended (19 U.S.C. 1516(c)), and § 175.23, Customs Regulations (19 CFR 175.23).

Customs has reconsidered the matter in light of petitioners' letter, but remains of the opinion that its March 14, 19188, decision on the applicability of item 806.30, TSUS, or subheading 9802.00.60, HTSUS, is correct. That decision will stand in the absence of a contrary judgment rendered by the U.S. Court of International Trade or the U.S. Court of Appeals for the Federal Circuit.

Authority

This notice is published under the authority of section 516(c), Tariff Act of 1930, as amended (19 U.S.C. 1516(c)), and § 175.24, Customs Regulations (19 CFR 175.24.).

Drafting Information

The principal author of this document was Arnold L. Sarasky, General Classification Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other customs offices participated in its development.

Michael H. Lane,

Acting Commissioner of Customs.

Dated: November 22, 1989.

John P. Simpson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 89-29364 Filed 12-15-89; 8:45 am]

BILLING CODE 4820-02-M

19 CFR Part 177

Withdrawal of Proposed Change of Practice Regarding Tariff Classification of Imported Television Tubes and Chassis

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed change of practice; withdrawal.

SUMMARY: This document withdraws a proposed change of practice regarding the tariff classification of imported color television picture tubes and television chassis, not assembled together at the time of importation but nonetheless entered as a single tariff entity, as unfinished articles. Under the proposed change of practice, published in the **Federal Register** of May 16, 1988 (53 FR 17226), television pictures tubes would have been classified as a separate tariff entity even though they may have been entered with a similar number of compatible television chassis. The Omnibus Trade and Competitiveness Act of 1988, effective October 1, 1988, changed the tariff treatment of television picture tubes imported with television chassis so that the tubes are generally classifiable as a separate tariff item. Thus the proposed change of practice has become moot and is being withdrawn.

DATE: Withdrawal effective December 18, 1989.

FOR FURTHER INFORMATION CONTACT: John Valentine, Commercial Rulings Division, (202) 566-8181.

SUPPLEMENTARY INFORMATION:

DEPARTMENT OF DEFENSE

PART 255A—CONFIDENTIALITY OF MEDICAL QUALITY ASSURANCE (QA)

healthcare services in a military MTF or DTF or who is licensed or certified to perform healthcare services by a

other person associated with the DoD QA program, shall be deleted from the

provision of information was in good faith, based on prevailing professional

SUPPLEMENTARY INFORMATION:

Background

On May 16, 1988, Customs published a proposed change of practice in the **Federal Register** (53 FR 17226), pursuant to which the Customs Service proposed to treat color television picture tubes as a separate tariff item, even though they may have been entered with a similar number of compatible television chassis. This would have changed the existing practice of classifying such merchandise as an unfinished unassembled television receiver which was established pursuant to Customs Service ruling 553020 of November 15, 1984. A petition filed by a domestic interested party challenging that practice was denied in a **Federal Register** notice of February 19, 1985 (59 FR 7026).

Discussion

Five comments were received in response to the proposed change of practice notice. Three of the comments favored the proposal. Two commenters, in part representing the same party, opposed the proposed change.

Prior to the substantive consideration of the above comments and the rendering of a final decision regarding the proposed change of practice, the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418) was enacted on August 23, 1988. It changed the tariff treatment of television picture tubes so that the tubes, in general, are separately classifiable even though they may have been entered with a similar number of compatible television chassis. The change was effecive October 1, 1988.

Conclusion

The change in the tariff treatment of television picture tubes, imported with television chassis, effectuated by the above referenced legislation, has made the proposed change of practice moot. Accordingly, the proposed change of practice is being hereby withdrawn.

Drafting Information

The principal author of this document was Arnold L. Sarasky, General Classification Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

Approved: December 7, 1989.

Samuel H. Banks,

Acting Commissioner of Customs.

Salvatore R. Martoche,

Assistant Secretary of the Treasury.

[FR Doc. 89-29365 Filed 12-15-89; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 255a

[DoD Directive 6040.aa]

Confidentiality of Medical Quality Assurance (QA) Records

AGENCY: Department of Defense.

ACTION: Proposed rule.

SUMMARY: The Department of Defense has given high priority to the establishment and continuation of medical quality assurance programs throughout the military medical care system. An effective quality assurance program is predicated on peer assessment of professional practice. In order to foster participation in meaningful discussion and critical review of care, it is critical that the confidentiality of peer review processes be protected. In 1987, Congress provided confidentiality for medical quality assurance documents in the DoD Authorization Act, recognizing that confidentiality is important to prevent public disclosure of facts and opinions that might cause harm to participants in the process of quality assurance activities. At the same time, allowance is made for disclosure of specified information when required for authorized quality monitoring, patient safety, or administrative functions. This proposed rule adheres closely to the specific provisions of the statute.

DATE: Written comments on this proposed rule are due by January 17, 1990.

ADDRESSES: Comments should be sent to: Office of the Assistant Secretary of Defense for Health Affairs (Professional Affairs and Quality Assurance), The Pentagon, Washington, DC 20301-1200.

FOR FURTHER INFORMATION CONTACT: CDR Barbara Ramsey, NC, USN at (202) 695-6800.

SUPPLEMENTARY INFORMATION: Regarding regulatory procedures, this proposed rule is not a major rule under Executive Order 12291. Also, we certify that it would not have a significant impact on small entities under the Regulatory Flexibility Act. We welcome public comment on this proposed rule. We anticipate publication of a final rule approximately 30 days after the close of the comment period.

Title 32, chapter I, subchapter M, is proposed to be amended by establishing a new part 255a, as follows:

PART 255A—CONFIDENTIALITY OF MEDICAL QUALITY ASSURANCE (QA) RECORDS

Sec.

255a.1 Purpose.
255a.2 Applicability and scope.
255a.3 Definitions.
255a.4 Policy.
255a.5 Responsibilities.
255a.6 Procedures.

Authority: 10 U.S.C. 1101; 5 U.S.C. 301.

§ 255a.1 Purpose.

This part implements 10 U.S.C. 1102 in accordance with policies in 5 U.S.C. 552 and 552a, DoD Directive 6025.13 [1], and DoD Directive 6025.11 [2].

§ 255a.2 Applicability and scope.

This part applies to:

(a) The Office of the Secretary of Defense (OSD), the Military Departments (including their National Guard and Reserve components), the Joint Chiefs of Staff (JCS), the Unified and Specified Commands, the Defense Agencies, and the DoD Field Activities.

(b) Civilian healthcare entities or individuals, when they provide medical QA information on healthcare of DoD beneficiaries to the Department of Defense.

(c) 10 U.S.C. 1102 is applicable to the Peer Review Organization (PRO) Program of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), as specified in DoD 6010.8-R [3].

§ 255.3 Definitions.

Aggregate statistical data. An assembled collection of numerical facts and other data derived from various DoD health program activities. Names, social security numbers, or other specific information that will identify or reasonably lead to identification of individual healthcare providers, patients, healthcare facilities, or other specific organizational entities may not be included in aggregate statistical data.

Credentials. Documents providing evidence of education, training, licensure, experience, and expertise of a healthcare provider.

Healthcare provider. Any military or civilian healthcare professional under regulations of a Military Department, who is granted clinical practice privileges or is in training to provide

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, Attn: Code 1053, 5801 Tabor Avenue, Philadelphia, PA 19120.

[2] See footnote 1 to § 255a.1.

[3] Copies may be obtained, at cost from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

healthcare services in a military MTF or DTF or who is licensed or certified to perform healthcare services by a governmental board or Agency or professional healthcare society or organization.

Healthcare QA program. Any activity carried out before, on, or after the enactment of 10 U.S.C. 1102 by or for the Department of Defense to monitor and assess the quality of healthcare. This includes activities conducted by individuals, military MTF or DTF committees, contractors, military medical departments, or DoD Agencies responsible for QA, credentials review and clinical privileging, infection control, patient care assessment (including review of treatment procedures, therapeutics, blood use, medication use), review of healthcare records, health resources management review, and risk management review. This does not include the Office of the ASD(HA) (OASD(HA)) or Service review of patient complaints when the conclusions of such reviews are based on the following:

(1) The medical facts of a case.

(2) The usual standards of practice as reflected in professional literature.

(3) Expert opinion when such expert opinion is requested for the purpose of responding to a complaint.

Individual QA action. A provider sanction, privileging action, or other activity on an individual healthcare provider intended to address a quality of healthcare matter. Such an action is based on processes structured by the QA program.

Medical. Include medical, mental health and dental QA records, programs, activities, and information.

QA record. The proceedings, records, minutes, and reports that emanate from healthcare QA program activities and are produced or compiled by the Department of Defense as part of a healthcare QA program.

§ 255a.4 Policy.

It is DoD policy that:

(a) Medical QA records created by or for the Department of Defense, as part of a medical QA program, are confidential and privileged. They may not be made available to any person under the "Freedom of Information Act". As a system of records, they are within the purview of the "Privacy Act" and the healthcare provider who is the subject of an individual QA action may be entitled to the records under the "Privacy Act". With the exception of such a provider, the identities of third parties in the record; i.e., any person receiving healthcare services (patients) from the Department of Defense or any other person associated with the DoD QA program, shall be deleted from the record before any disclosure of the record is made outside the Department of Defense. The identity deletion requirement does not apply to disclosures under 5 U.S.C. 552a.

(b) In compliance with, and subject to, the exceptions in 10 U.S.C. 1102, no part of any medical QA record may be subject to discovery or admitted into evidence in any judicial or administrative proceeding.

(c) In compliance with 10 U.S.C. 1102, a person who reviews or creates medical QA records for the Department of Defense or who participates in any proceeding that reviews or creates such records may not testify in any judicial or administrative proceeding on such records or on any finding, recommendation, evaluation, opinion, or action taken by such person or body for such records, except under this part.

(d) In compliance with 10 U.S.C. 1102, a person or entity having possession of or access to QA records or testimony may not disclose the contents of such record or testimony in any manner or for any purpose except as provided in this part.

(e) Any person who willfully discloses a medical QA record other than as provided in this part, knowing that such record is a medical QA record, shall be subject to adverse personnel action (to include, in appropriate cases, dismissal or separation), and may be liable under 10 U.S.C. 1102 for a fine of not more than $3,000 in the case of a first offense and not more than $20,000 in the case of a subsequent offense.

(f) Information on healthcare providers who are found to be incompetent, negligent, medically or psychiatrically impaired, or guilty of misconduct as defined in DoD Directive 6025.13 or 6025.11 shall be provided to Agencies specified in those Directives.

(g) Information on healthcare providers responsible for care of patients receiving payment for malpractice claims shall be submitted to the National Practitioner Data Bank instituted by Public Law 99-660.

(h) Aggregate statistical information on results of DoD medical QA programs may be provided in response to written requests, unless the information identifies a particular provider or patient or reasonably might lead to such identification.

(i) In compliance with 10 U.S.C. 1102, a person who participates in or provides information to a person or body that reviews or creates medical QA records shall not be civilly liable for such participation or for providing such information if the participation or provision of information was in good faith, based on prevailing professional standards at the time the medical QA program activity took place.

(j) In accordance with 10 U.S.C. 1102, nothing in this part shall be construed as limiting access to information in a record created and maintained outside a medical QA program, including a patient's medical records, on the grounds that the information was presented during meetings of a review body that are part of a health care QA program.

§ 255a.5 Responsibilities.

(a) The *Assistant Secretary of Defense (Health Affairs)* (ASD(HA)) shall monitor implementation of this part.

(b) The *General Counsel of the Department of Defense* (GC, DoD) shall provide legal advice on the interpretation and implementation of this part.

(c) The *Secretaries of the Military Departments,* or designees, shall implement the requirements of this part.

§ 255a.6 Procedures.

The Secretaries of the Military Departments shall issue regulations on confidentiality of medical and dental QA documents. Those regulations shall describe confidentiality protection, as follows:

(a) *Records that are protected from disclosure, except as described in paragraphs (b)(1) through (8) of this section.* Those records include the minutes, data, testimony, and working documents of any medical or dental treatment facility (MTF or DTF), DoD contractor, Military Department, or DoD Agency involved in monitoring, assessing, or documenting quality of healthcare.

(b) *DoD QA records may be authorized for disclosure or testimony to the following.* (1) A Federal Executive Agency, or private organization, if such medical QA record or testimony is needed by such Agency or organization to perform licensing or accreditation functions for DoD healthcare facilities or to perform monitoring, required by law, of DoD healthcare facilities.

(2) An administrative or judicial proceeding commenced by a present or former DoD healthcare provider on the termination, suspension, or limitation of clinical privileges of such healthcare provider.

(3) A governmental board or Agency or a professional healthcare society or organization, if such medical QA record or testimony is needed by such board, Agency, society, or organization to

perform licensing, credentialing, or the monitoring of professional standards of any healthcare provider who is, or was,

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule updates, clarifies, and reorganizes the procedures

believed that a comprehensive schedule had to be developed as a single project. Sections 1228.20 through 1228.24 will

New section	Old section	Comments
1228.1	1228.1	Second sentence of introductory paragraph and paragraphs (a) through (d) are new.

perform licensing, credentialing, or the monitoring of professional standards of any healthcare provider who is, or was, a member or an employee of the Department of Defense.

(4) A hospital, medical center, or other institution that provides healthcare services, if such medical QA record or testimony is needed by such institution to assess the professional qualifications of any healthcare provider who is, or was, a member or employee of the Department of Defense and who has applied for, or has been granted, authority or employment to provide healthcare services in or for such institution.

(5) An officer, employee, or contractor of the Department of Defense who has a need for such record or testimony to perform official duties.

(6) A criminal or civil law enforcement agency or instrumentality charged under applicable law with the protection of the public health or safety, if a qualified representative of such agency or instrumentality makes a written request that such record or testimony shall be provided as authorized by law.

(7) A committee of either House of Congress, any joint committee of Congress, or the General Accounting Office (GAO) if such record pertains to any matter within their respective jurisdictions.

(8) An administrative or judicial proceeding commenced by a criminal or civil law enforcement agency or instrumentality referred to in paragraph (b)(6) of this section, but only for the subject of such proceeding.

(c) *Aggregate statistical data.* Nothing in this part shall be construed as authorizing or requiring the withholding from any person or entity, aggregate statistical information on the results of DoD medical QA programs.

Dated: December 12, 1989.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 89-29301 Filed 12-15-89; 8:45 am]

BILLING CODE 3810-01-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Parts 1220 and 1228

RIN 3095-AA46

Disposition of Federal Records

AGENCY: National Archives and Records Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule updates, clarifies, and reorganizes the procedures governing the disposition of Federal records. It provides information on what documentary materials are subject to these records disposition regulations. This proposed rule distinguishes between the scheduling process and the resulting schedules. It also establishes procedures for the temporary loan of permanent and unscheduled Federal records. This proposed rule affects Federal agencies.

DATE: Comments must be received by February 16, 1990.

ADDRESS: Comments should be sent to Director, Policy and Program Analysis Division (NAA), National Archives and Records Administration, Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: John Constance or Nancy Allard at 202-523-3214 (FTS 523-3214).

SUPPLEMENTARY INFORMATION: The National Archives and Records Administration (NARA) reviewed the regulations relating to records disposition to ensure clarity and conformity to current practices. This revision was developed to provide additional information to agencies to assist them in carrying out their responsibilities.

Discussion of Changes

Section 1220.14, which defines terms used throughout subchapter B of 36 CFR chapter XII, is amended to provide definitions of additional terms and to clarify existing terms.

Part 1228 has been reorganized and revised to clarify disposition procedures. Section 1228.1 has been expanded to specify the types of documentary materials the disposition of which is governed by part 1228.

Subparts B, C, and D have been combined into a new Subpart B, Scheduling Records. Subpart B will reflect that the records scheduling process is virtually identical for permanent and temporary records. Subpart B will contain procedures for obtaining disposition authority for both permanent and temporary records now found in §§ 1228.30 through 1228.72. Section 1228.28 will require agencies to specify on proposed schedules all access restrictions on permanent records, and § 1228.30 will require agencies to specify Privacy Act restrictions for temporary records.

Because of the wording of the current regulation some agencies mistakenly believed that a comprehensive schedule had to be developed as a single project. Sections 1228.20 through 1228.24 will make clear that comprehensive schedules may be developed incrementally.

Section 1228.22 was redesignated subpart C and updated to conform with the recently revised General Records Schedules.

Subpart D will contain implementation procedures now found in §§ 1228.20, 1228.34, and §§ 1228.66 through 1228.74. Many agencies issue instructions based on NARA regulations and procedures. Upon receipt of copies of such issuances, NARA has frequently found discrepancies that could cause problems in scheduling records or retiring them to Federal records centers. Section 1228.50 has been revised to require NARA clearance of such instructions before issuance. A requirement that agencies disseminate additions and changes to the General Records Schedules within six months has also been added to § 1228.50.

At times, agencies have loaned Federal records to non-Federal organizations for exhibit or research purposes. As NARA is concerned about the preservation of permanent and potentially permanent (unscheduled) records, subparts E through J have been redesignated as subparts F through K and a new subpart E has been added to control the temporary loan of such records.

Minor changes have been made to § 1228.92 concerning disposal methods for records on nitrocellulose base film that constitute a continuing menace to human life or health or to property. Salvage of silver content is required only if the silver content and market value of silver warrant salvage. Alternatively, the film may be buried in approved landfills.

Finally, § 1228.152 was revised to clarify that all SF 115s are to be submitted to NARA's Records Appraisal and Disposition (NIR) Division, even if the agency is requesting an exception for the transfer of unscheduled records to a Federal records center.

Other nonsubstantive changes have been made to §§ 1228.94, 1228.100, 1228.102, 1228.104, and 1228.136 to improve the clarity of those sections.

Derivation table

The following derivation table summarizes the changes being made in part 1228.

New section	Old section	Comments
1228.1	1228.1	Second sentence of introductory paragraph and paragraphs (a) through (d) are new.
1228.10	1228.10	Minor rewording.
1228.12	1228.12	Revised.
1228.20(a)	1228.30	No change.
1228.20(b)	1228.60	No change.
1228.22	1228.12	New third and fourth sentences of introductory paragraph add provision for incremental development of comprehensive schedule.
1228.22(a)		New.
1228.22(b)	1228.12(a)	Minor rewording.
1228.22(c)		New.
1228.22(d)	1228.12(b)	Additional information on retention periods is provided.
1228.22(e)	1228.12(c)	Minor rewording.
1228.22(f)	1228.12(d)	GAO approval is added.
1228.24(a)	1228.20(a)	Revised.
1228.24(b)	1228.20	Revised.
1228.24(b)(1)	1228.20(b)(1)	Revised.
1228.24(b)(2)	1228.20(b)(3)	Minor rewording.
1228.24(b)(3)	1228.20(b)(4)	Minor rewording.
1228.24(b)(4)	1228.20(b)(5)	Revised. Disposition of nonrecord material will be controlled in agency records disposition manual and will not be included on SF 115.
1228.24(c)	1228.20(c)	Minor rewording.
1228.26(a)		New.
1228.26(a)(1)	1228.20(b)	Only second sentence of current paragraph remains.
1228.26(a)(2)	1228.20(b)(6)	No change.
1228.26(b)	1228.20(d)	No change.
1228.26(c)	1228.20(c)	Last sentence is added to new section.
1228.28(a)		New.
1228.28(b)(1)		New.
1228.28(b)(2)		New.
1228.28(b)(3)		New.
1228.28(b)(4) through (b)(7).	1228.32(b)	No change. Elements are listed individually in proposed rule.
1228.28(b)(8)(i)	1228.32(c)	Additional guidance is provided.
1228.28(b)(8)(ii)	1228.32(d)	Minor rewording.
1228.28(c)	1228.34(a)	No change.
1228.28(c)(1)	1228.34(b)	Minor rewording.
1228.28(c)(2)	1228.34(c)	No change.
1228.30(a)		New.
1228.30(b)		New.
1228.30(c)	1228.34(d)	Minor rewording.
1228.30(d)	1228.64	Revised to allow concurrent submission to NARA and GAO.
1228.30(e)		New.
1228.32	1228.70	Minor rewording.
1228.40	1228.22, 1228.22(a)(1), 1228.22(a)(2).	Revised to cover only temporary records.
1228.42(a)	1228.22(a)(3)	Minor rewording.
1228.42(b)	1228.22(a)(4)	Minor rewording.
1228.42(c)	1228.22(a)(5)	No change.
1228.44	1228.22(b)	Updated to reflect the current GRS.
1228.46	1228.22(c)	Revised.
1228.50	1228.20(h) and 1228.66.	Revised.
1228.50(a)		New.
1228.50(a)(1)		New.
1228.50(a)(2)		New.
1228.50(a)(3)		New.
1228.50(a)(4)	1228.20, 1228.22(h), and 1228.66.	Combined provisions for sending directives and published schedules to NARA.
1228.50(b)		New.
1228.50(c)	1228.20(b)(6)	Added requirement to disseminate GRS changes within 6 months.
1228.50(d)	1228.22(h)	Contains only the first sentence of current paragraph (h).
1228.50(d)(1)	1228.22(g)(1)	No change.
1228.50(d)(2)	1228.22(g)(2)	No change.
1228.50(d)(3)	1228.22(g)(3)	No change.
1228.52	1228.68	No change.
1228.54	1228.72	Minor rewording.
1228.56	1228.34(e)	Subpart reference is updated.
1228.58(a)	1228.74(a)	Minor rewording.
1228.58(b)	1228.74(b)	Minor rewording. Privacy Act records are identified as a type of record requiring witnessed destruction.
1228.58(c)	1228.74(d)	Additional methods of destruction are added.
1228.60	1228.74(c)	Minor rewording.
1228.70		New.
1228.72		New.
1228.74		New.
1228.76		New.
1228.92(a)	1228.92(a)	Rewritten for improved clarity.
1228.92(b)	1228.92(b)	Rewritten for improved clarity.
1228.92(b)(1)	1228.92(b)(1)	Qualifies when agency must salvage silver.
1228.92(b)(2)	1228.92(b)(2)	Burning is no longer authorized.
1228.92(d)	1228.92(d)	Directions for burning are deleted.
1228.94	1228.94	Minor rewording.

New section	Old section	Comments
1228.100	1228.100	Minor rewording.

Series means file units or documents arranged according to a filing system or kept together because they relate to a

1228.56 Transfer of permanent records.
1228.58 Destruction of temporary records.
1228.60 Donation of temporary records.

maintain a records disposition program to ensure efficient, prompt, and orderly reduction in the quantity of records and

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New section	Old section	Comments
1228.100	1228.100	Minor rewording.
1228.102	1228.102	Penalty in 18 U.S.C. 2071 is stated.
1228.104	1228.104	Minor rewording.
1228.36	1228.36	Adds transfer of records between two components of the same Executive department as exception.
1228.152(a)(1)(i)	1228.152(a)(1)(i)	SF 115 must be submitted to NIR instead of to NARA's Office of Federal Records Centers (NC).

This rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant impact on small business entities.

List of Subjects in 36 CFR Parts 1220 and 1228

Archives and records.

For the reasons set forth in the preamble, NARA proposes to amend Chapter XII of Title 36 of the Code of Federal Regulations as follows:

PART 1220—FEDERAL RECORDS; GENERAL

1. The authority citation for part 1220 is revised to read as follows:

Authority: 44 U.S.C. 2104(a) and Chapters 29 and 33.

2. Section 1220.14 is amended by removing the definition of "National Archives of the United States"; revising the definitions of "permanent record, " 'records schedule' or schedule' ", "series", and "unscheduled records"; and adding the new definitions in alphabetical order as follows:

§ 1220.14 General Definitions.

* * * * *

Agency (see "Executive agency" and "Federal agency").

Appraisal is the process by which the National Archives and Records Administration (NARA) determines the value and thus the final disposition of Federal records, making them either temporary or permanent.

Comprehensive schedule is a printed agency manual or directive containing descriptions of and disposition instructions for all documentary materials, record and nonrecord, created by a Federal agency or major component of an Executive department. Unless taken from the General Records Schedules (GRS) issued by NARA, the disposition instructions for agency records must be approved by NARA on one or more Standard Form(s) 115, Request for Records Dispostion Authority, prior to issuance by the agency. The disposition instructions for the nonrecord material is established by the agency and does not require NARA approval.

Contingent records are records whose final disposition is dependent on an action or event, such as sale of property or destruction of a facility, which will take place at some unspecified time in the future.

Disposition means the action taken with regard to records following their appraisal by NARA. 44 U.S.C. 2901(5) defines "records disposition" as any activity with respect to:

(a) Disposal of temporary records no longer needed for the conduct of business by destruction or donation to an eligible person or organization outside of Federal custody in accordance with the requirements of part 1228 of this chapter.

(b) Transfer of records to Federal agency storage facilities or records centers;

(c) Transfer to the National Archives of the United States of records determined to have sufficient historical or other value to warrant continued preservation; or

(d) Transfer of records from one Federal agency to any other Federal agency in accordance with the requirements of part 1228 of this chapter.

Documentary materials is a collective term for records and nonrecord materials that refers to all media on which information is recorded, regardless of the nature of the medium or the method or circumstances of recording.

* * * * *

Information system is the organized collection, processing, transmission, dissemination, retention, and storage of information in accordance with defined procedures. It is also called a "record system" or simply a "system." The term is most often used in relation to electronic records and involves input or source documents, records on electronic media, and output records.

* * * * *

National Archives means those records that have been determined by the Archivist of the United States to have sufficient historical or other value to warrant their continued preservation by the Federal Government, and that have been accepted for deposit in the Archivist's custody. Also called National Archives of the United States (44 U.S.C. 2901(11)).

Nonrecord materials are those Federally owned informational materials that do not meet the statutory definition of records (44 U.S.C. 3301) or that have been excluded from coverage by the definition. Excluded materials are extra copies of documents kept only for reference, stocks of publications and processed documents, and library or museum materials intended solely for reference or exhibit.

Permanent record means any Federal record that has been determined by NARA to have sufficient value to warrant its preservation in the National Archives. Permanent records include all records accessioned by NARA's Office of the National Archives and later increments of the same records, and those for which the disposition is "permanent" on SF 115s, Request for Records Disposition Authority, approved by NARA on or after May 14, 1973.

Records include all books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the Government or because or the informational value of the data in them (44 U.S.C. 3301).

* * * * *

Records schedule or "schedule" means:

(a) An SF 115, Request for Records Disposition Authority, that has been approved by NARA to authorize the disposition of Federal records;

(b) A General Records Schedule (GRS) issued by NARA; or

(c) A printed agency manual or directive containing the records descriptions and disposition instructions approved by NARA on one or more SFs 115 or issued by NARA in the GRS. (See also the definition "Comprehensive schedule".)

Series means file units or documents arranged according to a filing system or kept together because they relate to a particular subject or function, result from the same activity, document a specific kind of transaction, take a particular physical form, or have some other relationship arising out of their creation, receipt, or use, such as restrictions on access and use. Also called a records series.

* * * * *

Unscheduled records are records the final disposition of which has not been approved by NARA. Unscheduled records are those not disposable under the General Records Schedules; those that have not been included on a Standard Form 115, Request for Records Disposition Authority, approved by NARA; those described but not authorized for disposal on an SF 115 approved prior to May 14, 1973; and those described on an SF 115 but not approved by NARA (withdrawn, canceled, or disapproved).

PART 1228—DISPOSITION OF FEDERAL RECORDS

3. The authority citation for part 1228 continues to read as follows:

Authority: 44 U.S.C. 2101–2111, 2901–2909, 3101–3107, 3301–3314.

4. The Table of Contents for part 1228, subparts A through D are revised and new subpart E is added (current subparts E through J are redesignated as subparts F through K in amendatory instruction 10) to read as follows:

* * * * *

Subpart A—Records Disposition Programs

Sec.
1228.10 Authority.
1228.12 Basic elements of disposition programs.

Subpart B—Scheduling Records

1228.20 Authorities.
1228.22 Developing records schedules.
1228.24 Formulation of agency records schedules.
1228.26 Request for records disposition authority.
1228.28 Scheduling permanent records.
1228.30 Scheduling temporary records.
1228.32 Request to change disposition authority.

Subpart C—General Records Schedules

1228.40 Authority.
1228.42 Applicability.
1228.44 Current schedules.
1228.46 Availability.

Subpart D—Implementing Schedules

1228.50 Application of schedules.
1228.52 Withdrawal of disposal authority.
1228.54 Temporary extension of retention periods.
1228.56 Transfer of permanent records.
1228.58 Destruction of temporary records.
1228.60 Donation of temporary records.

Subpart E—Loan of Permanent and Unscheduled Records

1228.70 Authority.
1228.72 Approval.
1228.74 Agency request.
1228.76 NARA action on request.

* * * * *

5. Section 1228.1 is revised to read as follows:

§ 1228.1 Scope of part.

This part sets policies and establishes standards, procedures, and techniques for the disposition of all Federal records in accordance with 44 U.S.C. Chapters 21, 29, 31, and 33. The disposition of documentary materials created or acquired by a Federal agency, regardless of physical form or characteristics, is controlled by this part if any of the following conditions are met:

(a) The materials are created or received in the course of business and contain information related to the organization, functions, policies, decisions, procedures, operations, or other official activities of the agency. Also included is documentation of oral exchanges such as telephone conversations and meetings during which policy was discussed or formulated or other significant activities of the agency were planned, discussed, or transacted.

(b) The creation, retention, or disposition of the materials is mandated by statute or agency or other Federal regulations, directives, policies, or procedures.

(c) The materials are controlled, maintained, preserved, processed, filed, or otherwise handled following established agency procedures for records.

(d) The material contains unique information, such as substantive annotations, including drafts, transmittal sheets, and final documents or other materials circulated or made available to employees other than the creator for official purposes, such as approval, comment, action, recommendation, follow-up, or to keep agency staff informed regarding agency business.

6. Subpart A of part 1228 is revised to read as follows:

Subpart A—Records Disposition Programs

§ 1228.10 Authority.

The head of each agency (in accordance with 44 U.S.C. 2904, 3102, and 3301) is required to establish and maintain a records disposition program to ensure efficient, prompt, and orderly reduction in the quantity of records and to provide for the proper maintenance of records designated as permanent by NARA.

§ 1228.12 Basic elements of disposition programs.

The primary steps in managing a records disposition program are given below. Details of each element are contained in the NARA records management handbook, Disposition of Federal Records (NSN 7610–01–055–6704).

(a) Issue a program directive assigning authorities and responsibilities for records disposition activities in the agency and keep that directive up-to-date.

(b) Develop, implement, and maintain an accurate, current, and comprehensive records schedule.

(c) Train all agency personnel taking part in the agency's records disposition activities.

(d) Publicize the program to make all agency employees aware of their records disposition responsibilities.

(e) Evaluate the results of the program to ensure adequacy, effectiveness, and efficiency.

7. Subpart B of part 1228 is revised to read as follows:

Subpart B—Scheduling Records

§ 1228.20 Authorities.

(a) The head of each agency shall direct the creation and preservation of records containing accurate and complete documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency (44 U.S.C. 3101). The National Archives and Records Administration shall establish standards for the retention of those records having continuing value, and assist Federal agencies in applying the standards to records in their custody (44 U.S.C. 2905).

(b) No Federal records shall be destroyed or otherwise alienated from the Government except in accordance with procedures described in this part 1228 (44 U.S.C. 3314).

§ 1228.22 Developing records schedules.

The primary steps in developing agency records schedules are given below. Details in each step are contained in the NARA records management handbook, Disposition of Federal Records (NSN 7610–01–055–8704). Ultimately, all records of an agency must be scheduled, but they

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need not all be scheduled at the same time. An agency may schedule the records of one function, program or organizational element at a time.

(a) Determine the functions and activities documented by the records to be scheduled.

(b) Prepare an inventory of the records including a description of their medium, location, volume, inclusive dates, informational content and use.

(c) Evaluate the period of time the agency needs each records series or system by reference to its uses and value to agency operations or legal obligations.

(d) Based on agency need, formulate specific recommended disposition instructions for each records series or each part of an automated information system, including file breaks, retention periods for temporary records, transfer periods for permanent records, and instructions for the retirement of records to Federal records centers, when appropriate. Recommended retention periods take into account the rights and interests of the Government and the rights and interests of those directly affected by agency actions.

(e) Assemble into a draft schedule the descriptions and recommended disposition instructions for logical blocks of records, i.e., entire agency, organizational component, or functional area.

(f) Obtain approval of the records schedules from NARA (and from the General Accounting Office, when so required under Title 8 of the GAO "Policy and Procedures Manual for the Guidance of Federal Agencies").

§ 1228.24 Formulation of agency records schedules.

(a) *General.* Agency records schedules approved by the Archivist of the United States specify the disposition for agency records. Records of continuing (permanent) value will be scheduled for retention and immediate or eventual transfer to the legal custody of NARA. All other records will be scheduled for destruction or donation after a specific period of time based on administrative, fiscal, and legal values.

(b) *Characteristics of schedules.* Though records disposition authority may be requested from NARA on a program-by-program, function-by-function, or office-by-office basis, all agency records must be scheduled. Schedules must follow the guidelines provided below:

(1) Schedules shall identify and describe clearly each series or system and shall contain disposition instructions that can be readily applied. (Additional information is required for permanent records as specified in § 1228.28(b).) Schedules must be prepared so that each office will have standing instructions detailing the disposal, transfer, or retention of records.

(2) SF 115s shall include only new records not covered by the General Records Schedules (GRS) (see subpart C), deviations from the GRS (see § 1228.42), or previously scheduled records requiring changes in retention periods or substantive changes in description.

(3) All schedules shall take into account the physical organization of records or the filing system so that disposal or transfer can be handled in blocks.

(4) The disposition of nonrecord materials is controlled by instructions in the agency's printed or published records disposition manual. These instructions do not require NARA approval. Such items shall not be included on SF 115s. Nonrecord materials, such as extra copies of documents preserved solely for reference, and stocks of processed documents, and personal materials shall be maintained separately from official agency files to aid in records disposition.

(c) *Provisions of schedules.* Records schedules shall provide for:

(1) The destruction of records that have served their statutory, fiscal, or administrative uses and no longer have sufficient value to justify further retention. Procedures for obtaining disposal authorizations are prescribed in § 1228.30;

(2) The removal to a Federal records center (or to an agency records center approved under subpart K) of records not eligible for immediate destruction or other disposition but which are no longer needed in office space. These records are maintained by the records center until they are eligible for further disposition action;

(3) The retention of the minimum volume of current records in office space consistent with effective and efficient operations; and

(4) The identification of records of permanent value in accordance with § 1228.28, and the establishment of cutoff periods and dates when such records will be transferred to the legal custody of NARA.

§ 1228.26 Request for records disposition authority.

(a) *Submission.* Requests for records disposition authority shall be initiated by Federal agencies by submitting Standard Form 115 Request for Records Disposition Authority, to NARA (NIR). An SF 115 is used for requesting authority to schedule (or establish the disposition for) permanent and temporary records, either on a recurring or one-time basis.

(1) New Federal agencies shall apply General Records Schedules to eligible records and shall submit to NARA SF 115s covering all remaining records within 2 years of their establishment.

(2) Agencies shall submit to NARA schedules for the records of new programs and of programs that are reorganized or otherwise changed in a way that results in the creation of new or different records within 1 year of the implementation of the change.

(b) *Certification.* The signature of the authorized agency representative on the SF 115 shall constitute certification that the records recommended for disposal do not or will not have sufficient administrative, legal, or fiscal value to the agency to warrant retention beyond the expiration of the specified period and that records described as having permanent value will be transferred to the National Archives upon expiration of the stated period.

(c) *Disapproval of requests for disposition authority.* Requests for records disposition authority may be returned to the agency if the SF 115 is improperly prepared. The agency shall make the necessary corrections and resubmit the form to NARA (NIR). NARA may disapprove the disposition request for an item if, after appraisal of the records, NARA determines that the proposed disposition is not consistent with the value of the records. In such cases, NARA will notify the agency in writing.

§ 1228.28 Scheduling permanent records.

(a) *Initiation.* Federal agencies propose permanent retention of records in accordance with guidelines contained in the NARA records management handbook' Disposition of Federal Records (NSN 7610-01-55-8704).

(b) *Requirements.* Each item proposed for permanent retention on an SF 115 shall include the following:

(1) Records series title used by agency personnel to identify the records;

(2) Complete description of the records including physical type and informational contents;

(3) Inclusive dates;

(4) An arrangement statement;

(5) Statement on restrictions on access which NARA should impose in conformity with the Freedom of Information Act;

(6) An estimate of the volume of records accumulated annually if the records are current and continuing;

(7) The total volume to date; and

(8) Disposition instructions, developed using the following guidelines:

(i) If the records series or system is current and continuing, the SF 115 will include a disposition instruction specifying the period of time after which the records will be transferred to the National Archives, normally within 30 years for paper records, 5–10 years for audiovisual or microform records, and as soon as the records become inactive or the agency cannot meet the maintenance requirements found in § 1228.188 of this part for electronic records.

(ii) If the records series or system is nonrecurring, i.e., no additional records will be created or acquired, the agency may propose either immediate or future transfer to the National Archives.

(c) *Determination.* NARA will determine whether or not records are of permanent value and when the transfer of the permanent records will take place.

(1) If NARA determines that records are not permanent, it will notify the agency and negotiate an appropriate disposition. The disposition instruction on the SF 115 will be modified prior to NARA approval.

(2) If NARA determines that records are permanent, but that the transfer instructi ms are not appropriate, it will negotiate appropriate transfer terms with the agency. The disposition instruction on the SF 115 will be modified prior to NARA approval.

§ 1228.30 Scheduling temporary records.

(a) *Initiation.* Federal agencies request authority to dispose of records, either immediately or on a recurring basis. Requests for immediate disposal are limited to records already in existence which no longer accumulate. For recurring records, approved schedules provide continuing authority to destroy the records. The retention periods approved by NARA are mandatory, and the agency shall dispose of the records after expiration of the retention period, except as provided in § 1228.54.

(b) *Requirements.* Each item on an SF 115 proposed for eventual destruction shall include the following:

(1) Records series title used by agency personnel to identify the records;

(2) Description of the records including physical type and informational contents;

(3) Statement of any Privacy Act restrictions on the records; and

(4) Disposition instructions, developed using the following guidelines:

(i) If the records series or system is current and continuing, the SF 115 will include a disposition instruction specifying the period of time after which the records will be destroyed.

(ii) If the records series or system is nonrecurring, i.e., no additional records will be created or acquired, the agency may propose either immediate destruction or destruction on a future date.

(c) *Determination.* NARA may determine that records proposed as temporary merit permanent retention and transfer to the National Archives. In such cases, NARA arranges with the agency to change the disposition instruction prior to approval of the SF 115.

(d) *General Accounting Office concurrence.* Each Federal agency shall obtain the approval of the Comptroller General for the disposal of program records less than 3 years old and for certain classes of records relating to claims and demands by or against the Government, and to accounts in which the Government is concerned in accordance with the GAO "Policy and Procedures Manual for Guidance of Federal Agencies", Title 8—Records Management (44 U.S.C. 3309). This approval must be obtained before the approval of the disposal request by NARA, but the request may be submitted concurrently to GAO and NARA.

(e) *Withdrawn items.* Agencies may request that items listed on the SF 115 be withdrawn in order to aid in NARA's processing (appraisal) of the remaining items on the schedule.

(1) If, during the course of the appraisal process, NARA determines that records described by an item(s) on the proposed schedule do not exist or are not arranged as stated on the SF 115, NARA may request the agency to withdraw the item(s) from consideration, if the agency is unable to offer sufficient clarification.

(2) If NARA and the agency cannot agree on the retention period for an item(s), the items(s) may be withdrawn. In these cases, the agency will submit an SF 115 with a revised proposal for disposition within 6 months of the date of the approval of the original SF 115.

§ 1228.32 Request to change disposition authority.

Agencies desiring to change the approved disposition of a series or system of records shall submit an SF 115. Disposition authorities contained in approved SF 115s are automatically superseded by approval of a later SF 115 applicable to the same records unless the later SF 115 specified an effective date. Agencies submitting revised schedules shall indicate on the SF 115 the relevant schedule and item numbers to be superseded, the citation to the current printed records disposition schedule, if any, and/or the General Records Schedules and item numbers which cover the records.

8. Subpart C of part 1228 is revised to read as follows:

Subpart C—General Records Schedules

§ 1228.40 Authority.

The Archivist of the United States shall issue schedules authorizing disposal, after specified periods of time, of records common to several or all agencies after determining that the records lack value for continued retention by the U.S. Government. General Records Schedules constitute authority to destroy records described therein after expiration of the stated retention period. Application of the disposition instructions in these schedules is mandatory (44 U.S.C. 3303a).

§ 1228.42 Applicability.

(a) New items or changes in the disposition of GRS records supersede approved agency schedules for the same series or system of records, unless the agency schedule provides for a shorter retention period, or unless NARA indicates that the GRS standard must be applied without exception. Agencies shall not request authority to apply GRS authorizations (see § 1228.24(b)(2)).

(b) Agencies may request exceptions to disposition instructions in the GRS by submitting an SF 115 in accordance with § 1228.30 accompanied by a written justification explaining why the agency needs the records for a different period of time from other agencies.

(c) Provisions of the General Records Schedules may be applied to records in the custody of the National Archives at NARA's discretion subject to the provisions of § 1228.200.

§ 1228.44 Current schedules.

The following General Records Schedules governing the disposition of records common to several or all agencies were developed by the National Archives and Records Administration after consultation with other appropriate agencies. They have been approved by the Archivist of the United States.

Schedule Number and Type of Records Governed

1. Civilian Personnel Records.
2. Payrolling and Pay Administration Records.
3. Procurement, Supply and Grant Records.
4. Property Disposal Records.

5. Budget Preparation, Presentation, and Apportionment Records.
6. Accountable Officers' Accounts Records.

nonrecurring records) and the General Records Schedules. Also include nonrecord materials with disposition

functional format may be applied to any organizational component within the department or agency that is responsible

extension of a retention period by sending a letter to NARA (NIR), Washington, DC 20408. The request

classified or exempted from disclosure by statute, including the Privacy Act, or regulation, the wastepaper contractor

(ii) That records proposed for transfer to a person or commercial business are directly pertinent to the custody or

5. Budget Preparation, Presentation, and Apportionment Records.
6. Accountable Officers' Accounts Records.
7. Expenditure Accounting Records.
8. Stores, Plant, and Cost Accounting Records.
9. Travel and Transportation Records.
10. Motor Vehicle Maintenance and Operation Records.
11. Space and Maintenance Records.
12. Communications Records.
13. Printing, Binding, Duplication, and Distribution Records.
14. Information Services Records.
15. Housing Records.
16. Administrative Management Records.
17. Cartographic, Aerial Photographic, Architectural, and Engineering Records.
18. Security and protective Services Records.
19. Research and Development Records: Rescinded.
20. Electronic Records.
21. Audiovisual Records.
22. Inspector General Records.
23. Records Common to Most Offices Within Agencies.

§ 1228.46 Availability.

The GRS and instructions for their use are available from NARA (NI). The Archivist of the United States distributes new schedules and schedule revisions under sequentially numbered GRS transmittals.

9. Subpart D of part 1228 is revised to read as follows:

SUBPART D—IMPLEMENTING SCHEDULES

§ 1228.50. Application of schedules.

The application of approved schedules is mandatory (44 U.S.C. 3303a). The Archivist of the United States will determine whether or not records may be destroyed or transferred to the National Archives. If the Archivist approves the request for disposition authority, NARA will notify the agency by returning one copy of the completed SF 115. This shall constitute mandatory authority for the final disposition of the records (for withdrawal of disposal authority or the extension of retention periods, see §§ 1228.52 and 1228.54). The authorized destruction shall be accomplished as prescribed in § 1228.58. The head of each Federal agency shall direct the application of records schedules to ensure the agency has recorded information necessary to conduct Government business, avoid waste, and preserve permanent records for transfer to the National Archives. The agency head shall take the following steps to ensure proper dissemination and application of approved schedules:

(a) Issue an agency directive incorporating the disposition authorities approved by NARA, i.e., SF 115s (except for one-time authorities covering nonrecurring records) and the General Records Schedules. Also include nonrecord materials with disposition instructions developed by the agency. Once all records and nonrecord materials are included, this document is the agency's comprehensive schedule. Agencies may also issue other directives containing instructions relating to agency records disposition procedures.

(1) Published schedules do not include nonrecurring records for which NARA has granted authority for immediate disposal or transfer to the National Archives. They do include general instructions for retirement of records to the Federal records centers, transfer of records to the National Archives, and other records disposition procedures.

(2) Comprehensive schedules are formally published manuals or directives that provide for the disposition of all recurring records and nonrecord materials created by an agency. These schedules must cite the GRS or SF 115 and item numbers that provide the legal disposition authority for items covering record material.

(3) Prior to issuance, agencies shall submit final drafts of directives or other issuances containing approved schedules, instructions for use of the Federal records centers, transfer of records to the National Archives, or other matters covered by NARA procedures or regulations to the National Archives and Records Administration (NI) for clearance.

(4) Agencies shall forward to the National Archives and Records Administration (NIR) three copies of each final directive or other issuance relating to records disposition and 20 copies of all published records schedules (printed agency manuals) and changes.

(b) Establish internal training programs to acquaint appropriate personnel with the requirements and procedures of the records disposition program.

(c) Apply the approved records disposition schedules to the agency's records.

(1) Records described by items marked "disposition not approved" or "withdrawn" may not be destroyed until a specific disposition has been approved by NARA.

(2) Disposition authorities for items on approved SF 115s that specify an organizational component of the department or agency as the creator or custodian of the records may be applied to the same records after internal reorganization, but only if the nature, content, and functional importance of the records remain the same. Authority approved for items described in a functional format may be applied to any organizational component within the department or agency that is responsible for the relevant function.

(3) Disposition authorities approved for one department or independent agency may not be applied by another. Departments or agencies that acquire records from another department or agency, and/or continue creating the same series of records previously created by another department or agency through interagency reorganization must submit an SF 115 to NARA for disposition authorization for the records within one year of the reorganization.

(d) Review approved schedules, and, if necessary, update them annually. Additions and changes to the GRS shall be incorporated or otherwise disseminated within 6 months of issuance from NARA.

§ 1228.52 Withdrawal of disposal authority.

In an emergency or in the interest of efficiency of Government operations, NARA will withdraw disposal authorizations in approved disposal schedules (44 U.S.C. 2909). This withdrawal may apply to particular items on schedules submitted by agencies or may apply to all existing authorizations for the disposal of a specified type of record obtained by any or all agencies of the Government. If the withdrawal is applicable to only one agency, that agency will be notified of this action by letter signed by the Archivist; if applicable to more than one agency, notification may be by NARA bulletin issued and signed by the Archivist.

§ 1228.54 Temporary extension of retention periods.

(a) Approved agency records schedules and the General Records Schedules are mandatory (44 U.S.C. 3303a). Records approved for destruction shall not be maintained longer without the prior written approval of the National Archives and Records Administration (NIR).

(b) Upon submission of adequate justification, NARA may authorize a Federal agency to extend the retention period of a series or system of records (44 U.S.C. 2909). These extensions of retention periods will be granted for records which are required to conduct Government operations because of special circumstances which alter the normal administrative, legal, or fiscal value of the records.

(c) The head of a Federal agency may request approval of a temporary extension of a retention period by sending a letter to NARA (NIR), Washington, DC 20408. The request shall include:

(1) A concise description of the records for which the extension is requested.

(2) A complete citation of the specific provisions of the agency records schedule or the General Records Schedule currently governing disposition of the records;

(3) A statement of the estimated period of time that the records will be required; and

(4) A statement of the current and proposed physical location of the records including information on whether the records have been or will be transferred to one or more Federal records centers.

(d) Approval of a request for extension of retention periods may apply to records in the custody of one Federal agency or records common to several or all Federal agencies. If approval of a request is applicable to records in the custody of one agency, that agency will be notified by letter. If approval is applicable to records common to several agencies, notification may be made by NARA bulletin.

(e) Upon approval of a request for a change in retention periods applicable to records that have been or will be transferred to one or more Federal records centers, centers will be notified of the change and agencies will be furnished a copy of the notification. Agencies shall forward to the National Archives and Records Administration (NIR) 20 copies of all formally issued instructions which extend retention periods.

(f) Upon expiration of an approved extension of retention period, NARA will notify all affected agencies to apply normal retention requirements.

§ 1228.56 Transfer of permanent records.

All records scheduled as permanent shall be transferred to the National Archives after the period specified on the SF 115 in accordance with procedures specified under subpart J.

§ 1228.58 Destruction of temporary records.

(a) *Authority.* Federal agencies are required to follow regulations issued by the Archivist of the United States governing the methods of destroying records (44 U.S.C. 3302). Only the methods described in this section shall be used.

(b) *Sale or salvage.* Paper records to be disposed of normally must be sold as wastepaper. If the records are restricted because they are national security classified or exempted from disclosure by statute, including the Privacy Act, or regulation, the wastepaper contractor must be required to pulp, macerate, shred, or otherwise definitively destroy the information contained in the records, and their destruction must be witnessed either by a Federal employee or, if authorized by the agency that created the records, by a contractor employee. The contract for sale must prohibit the resale of all other paper records for use as records or documents. Records other than paper records (audio, visual, and data tapes, disks, and diskettes) may be salvaged and sold in the same manner and under the same conditions as paper records. All sales must be in accordance with the established procedures for the sale of surplus personal property. (See 41 CFR part 101–45, Sale, Abandonment, or Destruction of Personal Property.)

(c) *Destruction.* If the records cannot be sold advantageously or otherwise salvaged, the records may be destroyed by burning, pulping, shredding, macerating, or other suitable means.

§ 1228.60 Donation of temporary records.

(a) When the public interest will be served, a Federal agency may propose the transfer of records eligible for disposal to an appropriate person, organization, institution, corporation, or government (including a foreign government) that has requested them. Records will not be transferred without prior written approval of NARA.

(b) The head of a Federal agency shall request the approval of such a transfer by sending a letter to NARA (NIR), Washington, DC 20408. The request shall include:

(1) The name of the department or agency, and subdivisions thereof, having custody of the records;

(2) The name and address of the proposed recipient of the records;

(3) A list containing:

(i) An identification by series or system of the records to be transferred,

(ii) The inclusive dates of the records,

(iii) The NARA disposition job (SF 115) or GRS and item numbers that authorize disposal of the records.

(4) A statement providing evidence:

(i) That the proposed transfer is in the best interests of the Government,

(ii) That the proposed recipient agrees not to sell the records as records or documents, and

(iii) That the transfer will be made without cost to the U.S. Government;

(5) A certification that:

(i) The records contain no information the disclosure of which is prohibited by law or contrary to the public interest, and/or

(ii) That records proposed for transfer to a person or commercial business are directly pertinent to the custody or operations of properties acquired from the Government, and/or

(iii) That a foreign government desiring the records has an official interest in them.

(c) NARA will consider each request and determine whether the donation is in the public interest. Upon approval NARA will notify the requesting agency in writing. If NARA determines such a proposed donation is contrary to the public interest, the request will be denied and the agency will be notified that the records must be destroyed in accordance with the appropriate disposal authority.

Subparts F Through K—[Redesignated From Subparts E Through J]

10. In part 1228, subparts E through J are redesignated as subparts F through K and a new subpart E is added to read as follows:

Subpart E—Loan of Permanent and Unscheduled Records

§ 1228.70 Authority.

The Archivist is required to establish standards for the selective retention of records of continuing value (44 U.S.C. 2905).

§ 1228.72 Approval.

No permanent or unscheduled records shall be loaned to non-Federal recipients without prior written approval from NARA. This authorization is not required for temporary loan of permanent and unscheduled records between Federal agencies.

§ 1228.74 Agency request.

The head of a Federal agency shall request approval for the loan by sending a letter to NARA (NIR), Washington, DC 20408. The request will include:

(a) The name of the department or agency and subdivisions thereof, having custody of the records;

(b) The name and address of the proposed recipient of the records;

(c) A list containing:

(1) An identification by series or system of the records to be loaned,

(2) The inclusive dates of each series, and

(3) The NARA disposition job (SF 115) and item numbers covering the records, if any;

(d) A statement of the purpose and duration of the loan;

(e) A statement specifying any restrictions on the use of the records

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and how these restrictions will be administered by the donee; and

(f) A certification that the records will be stored according to the environmental specifications for archival records.

§ 1228.76 NARA action on request.

The Archivist of the United States shall be a signatory on all formally executed loan agreements for permanent and unscheduled records. Such agreements shall not be implemented until the Archivist has signed. NARA will deny the request if the records should be transferred to the National Archives or if the loan would endanger the records or otherwise contravene the regulations in 36 CFR chapter XII, subchapter B. If the request is denied, the Archivist will notify the agency in writing and provide instructions for the disposition of the records.

11. In newly redesignated subpart F, § 1228.92, paragraphs (a), (b), and (d) are revised to read as follows:

§ 1228.92 Menaces to human life or health or to property.

(a) Agencies may destroy records that constitute a continuing menace to human health or life or to property (44 U.S.C. 3310). When such records are identified, the agency head shall notify NARA (NIR), specifying the nature of the records, their location and quantity, and the nature of the menace. If NARA concurs in the determination, the Archivist will direct the immediate destruction of the records or other appropriate means of destroying the recorded information. However, if the records are still or motion picture film on nitrocellulose base that has deteriorated to the extent described in paragraph (b) of this section, the head of the agency may follow the procedure therein provided.

(b) Whenever any radar scope, aerial, or other still or motion picture film on nitrocellulose base has deteriorated to the extent that it is soft and sticky, is emitting a noxious odor, contains gas bubbles, or has retrograded into acrid powder, and the head of the agency having custody of it shall determine that it constitutes a menace to human health or life or to property, and the agency shall without prior authorization of the Archivist:

(1) Arrange for its destruction in a manner that will salvage its silver content if the silver content is of sufficient quantity and market value per troy ounce to warrant such salvage;

(2) Authorize burial in approved landfills, in the event the quantity is not sufficiently large to justify the salvaging of its silver content; or

(3) Effect other appropriate methods in the event that the methods provided in paragraph (b)(1) or (2) of this section are not feasible.

* * * * *

(d) Within 30 days after the destruction of the film as provided in this section, the head of the agency who directed its destruction shall submit a written statement to NARA (NIR), Washington DC 20408, describing the film and showing when, where, and how the destruction was accomplished.

* * * * *

12. In newly redesignated subpart F, § 1228.94 is revised to read as follows:

§ 1228.94 State of war or threatened war.

(a) Destruction of records outside the territorial limits of the continental United States is authorized whenever, during a state of war between the United States and any other nation or when hostile action by a foreign power appears imminent, the head of the agency that has custody of the records determines that their retention would be prejudicial to the interest of the United States, or that they occupy space urgently needed for military purposes and are without sufficient administrative, legal, research, or other value to warrant their continued preservation (44 U.S.C. 3311).

(b) Within 6 months after the destruction of any records under this authorization, a written statement describing the character of the records and showing when and where the disposal was accomplished shall be submitted to NARA (NIR) by the agency official who directed the disposal.

13. Newly redesignated subpart G of part 1228 is retitled to read as follows:

Subpart G—Damage to, Alienation, and Unauthorized Destruction of Records

14. In newly redesignated subpart G, §§ 1228.100 and 1228.102 are revised to read as follows:

§ 1228.100 Responsibilities.

(a) The Archivist of the United States and the heads of Federal agencies are responsible for preventing the alienation or unauthorized destruction of records, including all forms of mutilation. Records may not be removed from Federal custody or destroyed without regard to the provisions of agency records schedules (SF 115) approved by NARA or the General Records Schedules issued by NARA (44 U.S.C. 2905, 3106, and 3303a).

(b) The heads of Federal agencies are responsible for ensuring that all employees are aware of the provisions of the law relating to unauthorized destruction, alienation, or mutilation of records, and should direct that any such action be reported to them.

§ 1228.102 Criminal penalties.

The maximum penalty for the willful and unlawful destruction, damage, or alienation of Federal records is a $2,000 fine, 3 years in prison, or both (18 U.S.C. 2071).

15. In newly redesignated subpart G, § 1228.104 is amended by revising the introductory text in paragraph (a) and paragraph (a)(4) to read as follows:

§ 1228.104 Reporting.

(a) The head of a Federal agency shall report any unlawful removal, defacing, alteration, or destruction of records in the custody of that agency to NARA (NIR) Washington, DC 20408. The report shall include:

* * * * *

(4) A statement of the safeguards established to prevent further loss of documentation.

* * * * *

16. In newly redesignated subpart H, § 1228.124, the word "and" is added to the end of paragraph (d), paragraph (f) is removed, and paragraph (e) is revised to read as follows:

§ 1228.124 Agency request.

* * * * *

(e) A justification for the transfer including an explanation of why it is in the best interests of the Government.

17. In newly redesignated subpart H, § 1228.136 is revised to read as follows:

§ 1228.136 Exceptions.

Prior written approval of NARA is not required when:

(a) Records are transferred to the Federal records centers or the National Archives in accordance with subparts I and J.

(b) Records are loaned for official use.

(c) The transfer of records or functions or both is required by statute, Executive Order, Presidential reorganization plan, or Treaty, or by specific determinations made thereunder.

(d) The records are transferred between two components of the same Executive department.

(e) Records accessioned by the National Archives, later found to lack sufficient value for continued retention by the National Archives are governed exclusively for further disposition in accordance with § 1228.200.

18. In newly redesignated subpart I, § 1228.152, paragraph (a)(1)(i) is revised to read as follows:

§ 1228.152 Procedures for transfers to Federal records centers.

* * * * *

(a) * * *

(1) * * *

(i) Requests for exceptions for unscheduled records will be considered only if an SF 115 has been submitted and accepted in accordance with the provisions of subpart C. The request must include information on the volume of the records and the anticipated reference activity.

* * * * *

Dated: November 9, 1989.

Don W. Wilson,

Archivist of the United States

[FR Doc. 89-29238 Filed 12-15-89; 8:45 am]

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the applicant. Establishment data in the computer are indexed by establishment number, Region, Area, and circuit; export data by country personnel data

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to or amend records pertaining to themselves should submit a written

regulates the introduction of certain genetically engineered organisms and products..

FOR FURTHER INFORMATION CONTACT:

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Notices

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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

[Docket No. 89-012N]

Privacy Act of 1974; Systems of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Proposed new system of records.

SUMMARY: Notice is hereby given that USDA proposes to create a new Privacy Act system of records, USDA/FSIS–2, entitled "Common On-Line Reference for Establishments (CORE)."

EFFECTIVE DATE: This system shall become effective without further notice on February 16, 1990, unless modified by a subsequent notice to incorporate public comments. Written comments must be received by the contact person listed below on or before January 17, 1990.

ADDRESS: Interested persons may submit written comments to Policy Office, Attn: Linda Carey, FSIS Hearing Clerk, room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Catherine DeRoever, Director, Executive Secretariat, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, Telephone (202) 447–9150.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974, 5 U.S.C. 552a, USDA proposes to add a new system of records, USDA/FSIS—2, "Common On-Line Reference for Establishments (CORE)." This system of records is necessary to enable the Agency to implement an automated information system that will include personal data on persons "responsibly connected" with an applicant for Federal meat and poultry inspection, as well as certain Agency personnel. The data will be used to improve communications and to support the Agency's Compliance Program. "Responsibly connected" individuals are all owners, partners, officers, directors, holders or owners of 10 per centum or more of voting stock of an applicant, and persons employed in managerial or executive capacities by the applicant.

A "Reporting on New System," required by 5 U.S.C. 552a(r) was furnished to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget on December 7, 1989.

Done at Washington DC, on December 12, 1989.

Jack C. Parnell,
Acting Secretary.

USDA/FSIS—2

SYSTEM NAME:

Common On-Line Reference for Establishments (CORE), USDA/FSIS.

SYSTEM LOCATION:

Food Safety and Inspection Service, USDA, 14th and Independence Avenue, SW., Washington, DC 20250.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals responsibly connected with the applicant for Federal meat, poultry, or import inspection: All owners, partners, officers, directors, holders or owners of 10 per centum or more of voting stock, and employees in a managerial or executive capacity in the business; regional, area, and circuit personnel of Meat and Poultry Inspection Operations; Import Inspection Office personnel of International Programs; FSIS headquarters personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of: Names and addresses of applicants for Federal meat, poultry or import inspection and descriptive information about their business establishments (plants). The system includes the name, title, social security number, date of birth, place of birth and stock ownership (if 10 per centum or more) of all persons listed as responsibly connected with the applicant. It also includes types of operations, slaughter and processing categories, export restrictions, other names under which business will be conducted, plant types, numbers of authorized inspectors, dates of grants of inspection, types of inspection, and import information. In addition, the system contains mail management data necessary to mail USDA literature to non-establishment organizations (FSIS headquarters and field personnel) and to provide for the production of mailing labels and publication of the Meat and Poultry Inspection Directory.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

21 U.S.C. 451 *et seq.*, and 601 *et seq.*

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) To a contractor for the purpose of collating, analyzing, aggregating or otherwise refining or processing records in this system or for developing, modifying and/or manipulating ADP software. Data would also be disclosed to contractors incidental to consultation, programming, operation, user assistance, or maintenance for ADP or telecommunications systems containing or supporting records in the system.

(2) In the event that material in this system indicates a violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute, or by regulation, rule or order issued pursuant thereto, the relevant records may be disclosed to the appropriate Agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order, issued pursuant thereto.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on computer disks, magnetic tape, FSIS Form 5200–2, "Application for Federal Meat Poultry, or Import Inspection" and in computer printouts.

RETRIEVABILITY:

Records are arranged by establishment number and alphabetically by name of applicant. Records are also retrievable by names of persons responsibly connected with

the applicant. Establishment data in the computer are indexed by establishment number, Region, Area, and circuit; export data by country; personnel data by Region/Area/circuit; mail data by access code, literature code, or recipient code.

SAFEGUARDS:

Records are maintained in password-protected minicomputers, microcomputers, magnetic tape or locked file cabinets with attendants on duty during normal operating hours. Offices are locked after normal operating hours.

RETENTION AND DISPOSAL:

Active records are maintained indefinitely. Computer records for withdrawn plants are retained for 3 years. Computer printouts are destroyed after use.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Information Systems Development and Support Section, FSIS, Room 4906, South Building, 14th Street and Independence Avenue, SW., Washington, DC 20250.

NOTIFICATION PROCEDURE:

A request for information should be addressed to the FSIS Privacy Act Coordinator, 14th Street and Independence Avenue, SW., Washington, DC 20250.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to or amend records pertaining to themselves should submit a written request to the Privacy Act Coordinator at the above address.

CONTESTING RECORD PROCEDURES:

Same as records access procedures.

RECORD SOURCE CATEGORIES:

Information in this system comes from the individuals to whom the records pertain.

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BILLING CODE 3410–57–M

Animal and Plant Health Inspection Service

[Docket No. 89–198]

Receipt of Permit Applications for Release into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that six applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products..

FOR FURTHER INFORMATION CONTACT: Mary Petrie, Program Analyst, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permit Unit, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which are Plant Pests or Which There Is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment), in the United States, certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications for permits to release genetically engineered organisms into the environment:

Application No.	Applicant	Date received	Organisms	Field test location
89-290-01	Auburn University	10-17-89	*Xanthomonas campestris* pv. *campestris* genetically engineered to contain a gene to confer bioluminescence as a marker.	Alabama.
89-293-01	Monsanto Agricultural Company	10-20-89	Tomato plants genetically engineered for resistance to Tobacco Mosaic Virus or Tomato Mosaic Virus.	Florida.
89-300-01	UpJohn Company	10-27-89	Cantaloupe and squash expressing resistance to Cucumber Mosaic Virus and/or Papaya Ringspot Virus.	Michigan.
89-305-01	UpJohn Company	11-01-89	Cantaloupe and squash expressing resistance to Cucumber Mosaic Virus and/or Papaya Ringspot Virus.	California.
89-305-03	UpJohn Company	11-01-89	Cantaloupe and squash expressing resistance to Cucumber Mosaic Virus and/or Papaya Ringspot Virus.	California.
89-311-01	UpJohn Company	11-07-89	Cantaloupe and squash expressing resistance to Cucumber Mosaic Virus and/or Papaya Ringspot Virus.	Georgia.

Done in Washington, DC, this 12th day of December 1989.

A. Strating,
Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89–29310 Filed 12–15–89; 8:45 am]
BILLING CODE 3410-34-M

[Docket No. 89–192]

U.S. Veterinary Biological Product and Establishment Licenses Issued, Suspended, Revoked, or Terminated

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The purpose of this notice is to advise the public of the issuance, suspension, revocation, or termination of veterinary biological product and establishment licenses by the Animal and Plant Health Inspection Service during the months of August and September, 1989. These actions are taken in accordance with the regulations issued pursuant to the Virus-Serum-Toxin Act.

FOR FURTHER INFORMATION CONTACT: Joan Montgomery, Program Assistant, Veterinary Biologics, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection

Service, U.S. Department of Agriculture, room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–6332.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 102, "Licenses For Biological Products," require that every person who prepares certain biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

Pursuant to these regulations, the Animal and Plant Health Inspection Service (APHIS) issued the following U.S. Veterinary Biological Product Licenses during the months of August and September 1989:

Product License Code	Date Issued	Product	Establishment	Establishment License No.
1081.00	08-28-89	Bordetella Bronchiseptica Vaccine, Avirulent Live Culture	MVP, Inc.	301
1175.20	08-07-89	Bovine Rhinotracheitis-Virus Diarrhea-Parainfluenza$_3$ Vaccine, Killed Virus.	CEVA Laboratories, Inc.	243–A
1291.00	08-23-89	Bursal Disease Vaccine, Live Virus, Standard and Variant	Select Laboratories, Inc	279
1555.20	08-30-89	Feline Leukemia Vaccine, Killed Virus	Bio-Trends International	375
18M1.21	08-31-89	Parvovirus Vaccine, Modified Live Virus	Rhone Merieux, Inc	298
2051.00	08-01-89	Autogenous Bacterin	Addleon Biological Laboratory, Inc	355
2051.00	08-11-89	Autogenous Bacterin	Arko Laborstories, Ltd	377
2051.00	08-31-89	Autogenous Bacterin	Texas Vet Lab, Inc	290
2671.01	08-01-89	Leptospira Canicola-Icterohaemorrhagiae Bacterin	American Home Products Corporation	112
3524.00	08-30-89	Escherichia Coli Antibody, Bovine Origin	Procor Technologies, Inc	370
4435.20	08-07-89	Bovine Rhinotracheitis-Virus Diarrhea Parainfluenza$_3$ Vaccine-Leptospira Canicola-Grippotyphosa-Hardjo-Icterohaemorrhagiae-Pomona Bacterin, Killed Virus.	CEVA Laboratories, Inc.	243–A
4636.20	08-31-89	Canine Distemper-Adenovirus Type 2-Parainfluenza-Parvovirus Vaccine, Killed Virus, Leptospira Bacterin.	Diamond Scientific Co.	213
5018.02	08-23-89	Canine Heartworm Antigen Test Kit	IDEXX Corp.	313
5070.00	08-16-89	Mycoplasma Gallisepticum Antibody Test Kit	Kirkegaard and Perry Laboratories, Inc	350
5110.00	08-18-89	Pseudorabies Virus Antibody Test Kit	Fermenta Animal Health Company	272
8201.01	08-03-89	Clostridium Perfringens Types C&D Toxoid	American Home Products Corporation	112
G900.R0	08-17-89	Escherichia Coli, Killed Culture	Smithkline Beckman Corporation	169
1091.20	08-27-89	Bovine Respiratory Syncytial Virus Vaccine, Modified Live Virus	Beecham Inc	225
1165.20	08-08-89	Bovine Rhinotracheitis-Virus Diarrhea-Parainfluenza-Respiratory Syncytial Virus Vaccine, Killed Virus.	Fermenta Animal Health Company	272
1231.11	09-21-89	Bronchitis Vaccine, Mass Type, Live Virus	Tri Bio Laboratories	275–A
1271.00	09-21-89	Bursal Disease Vaccine, Live Virus	Tri Bio Laboratories	275–A
1271.01	09-21-89	Bursal Disease Vaccine, Live Virus	Tri Bio Laboratories	275–A
1271.02	09-21-89	Bursal Disease Vaccine, Live Virus	Tri Bio Laboratories	275–A
1275.00	09-21-89	Bursal Disease Vaccine, Killed Virus	Tri Bio Laboratories	275–A
12G5.40	09-21-89	Bursal Disease-Newcastle Disease, Killed Virus	Tri Bio Laboratories	275–A
1561.21	09-08-89	Feline Panleukopenia Vaccine, Modified Live Virus	Rhone Merieux, Inc	298
1565.20	08-08-89	Feline Panleukopenia Vaccine, Killed Virus	Rhone Merieux, Inc	298
1621.00	09-21-89	Fowl Pox Vaccine, Live Virus	Tri Bio Laboratories	275–A
1621.01	09-21-89	Fowl Pox Vaccine, Live Virus	Tri Bio Laboratories	275–A
1641.00	09-21-89	Marek's Disease Vaccine, Live Turkey Herpesvirus, Cell Associated	Tri Bio Laboratories	275–A
1641.01	09-21-89	Marek's Disease Vaccine, Live Turkey Herpesvirus, Cell Free	Tri Bio Laboratories	275–A
16C1.20	09-08-89	Feline Rhinotracheitis-Calici Vaccine, Modified Live Virus	Rhone Merieux, Inc	298
16D8.20	09-08-89	Feline Rhinotracheitis-Calici-Panleukopenia Vaccine, Modified Live Virus.	Rhone Merieux, Inc	298
16D9.20	09-08-89	Feline Rhinotracheitis-Calici-Panleukopenia Vaccine, Modified Live Virus.	Rhone Merieux, Inc	298
1705.10	09-21-89	Newcastle Disease Vaccine, Killed Virus	Tri Bio Laboratories	275–A
1711.10	09-21-89	Newcastle Disease Vaccine, B$_1$ Type, B$_1$ Strain, Live Virus	Tri Bio Laboratories	275–A
1721.10	09-21-89	Newcastle Disease Vaccine, B$_1$ Type, Lasota Strain, Live Virus	Tri Bio Laboratories	275–A
1761.11	09-21-89	Newcastle-Bronchitis Vaccine, B$_1$ Type, B$_1$ Strain, Mass Type, Live Virus.	Tri Bio Laboratories	275–A
1771.11	09-21-89	Newcastle-Bronchitis Vaccine, B$_1$ Type, Lasota Strain, Mass Type, Live Virus.	Tri Bio Laboratories	275–A
1851.00	09-21-89	Pasteurella Haemolytica Vaccine, Avirulent Live Culture	Tri Bio Laboratories	275–A
1871.06	09-21-89	Pasteurella Multocida Vaccine, Avirulent Live Culture, Bovine Isolates.	Tri Bio Laboratories	275–A
18M1.21	09-11-89	Parvovirus Vaccine, Modified Live Virus	American Home Products Corporation	112
44A5.20	09-11-89	Bovine Rhinotracheitis-Virus Diarrhea-Parainfluenza$_3$ Respiratory Syncytial Virus Vaccine-Pasteurella Haemolytica Bacterin, Killed Virus.	American Home Products Corporation	112
5021.00	09-15-89	Canine Brucellosis Antibody Test Kit	Rhone Merieux, Inc	298
A275.10	09-21-89	Bursal Disease Virus, Killed Virus, For Further Manufacture	Tri Bio Laboratories	275–A
A2A5.10	09-21-89	Bursal Disease Virus, Killed Variant, Viral Fluids, For Further Manufacture.	Tri Bio Laboratories	275–A
B702.13	09-21-89	Pasteurella Multocida Bacterin, Avian Isolates, Types 1, 3, & 4, For Further Manufacture.	Tri Bio Laboratories	275–A

The regulations in 9 CFR part 102 also require that each person who prepares biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold a U.S. Veterinary Biologics Establishment License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license. Pursuant to these regulations, APHIS issued the following U.S. Veterinary Biologics Establishment Licenses during the months of August and September, 1989:

Establishment	Establishment License No.	Date Issued
Addison Biological Laboratory, Inc.	355	08-01-89

The regulations in 9 CFR parts 102 and 105 also contain provisions concerning the suspension, revocation, and termination of U.S. Veterinary Biological Product Licenses and U.S. Veterinary Biologics Establishment Licenses. Pursuant to these regulations, APHIS terminated U.S. Veterinary Biologics Establishment License No. 280–A issued to Keevet Laboratories. Also, pursuant to these regulations, APHIS terminated the following U.S. Veterinary Biological Product Licenses during the months of August and September 1989:

Establishment	Establishment License No.	Date Issued
Procor Technologies, Inc	370	08-30-89
Bio-Trends International	375	08-30-89
Tri Bio Laboratories, Inc.	275–A	09-21-89

Product License Code	Date Terminated	Product	Establishment	Establishment License No.
1231.10	08-30-89	Bronchitis Vaccine, JMK Type, Live Virus	Salsbury Laboratories	195
1271.12	08-30-89	Bursal Disease Vaccine, Live Virus	Salsbury Laboratories	195
2648.06	08-30-89	Escherichia Coli Bacterin	Salsbury Laboratories	195
B8R8.56	08-30-89	Escherichia Coli Bacterin, For Further Manufacture	Smithkline Beckman Corporation	169
1231.11	09-21-89	Bronchitis Vaccine, Mass Type, Live Virus	Keevet Laboratories	280–A
1271.00	09-21-89	Bursal Disease Vaccine, Live Virus	Keevet Laboratories	208–A
1271.01	09-21-89	Bursal Disease Vaccine, Live Virus	Keevet Laboratories	208–A
1271.02	09-21-89	Bursal Disease, Vaccine Live Virus	Keevet Laboratories	208–A
1275.00	09-21-89	Bursal Disease, Vaccine Killed Virus	Keevet Laboratories	208–A
12G5.40	09-21-89	Bursal Disease-Newcastle Disease, Killed Virus	Keevet Laboratories	208–A
1621.00	09-21-89	Fowl Pox Vaccine, Live Virus	Keevet Laboratories	208–A
1621.01	09-21-89	Fowl Pox Vaccine, Live Virus	Keevet Laboratories	208–A
1641.00	09-21-89	Marek's Disease Vaccine, Live Turkey Herpesvirus, Cell Associated	Keevet Laboratories	208–A
1641.01	09-21-89	Marek's Disease Vaccine, Live Turkey Herpesvirus, Cell Free	Keevet Laboratories	208–A
1705.10	09-21-89	Newcastle Disease Vaccine, Killed Virus	Keevet Laboratories	208–A
1711.10	09-21-89	Newcastle Disease Vaccine, B$_1$ Type, B$_1$ Strain, Live Virus	Keevet Laboratories	208–A
1721.10	09-21-89	Newcastle Disease Vaccine, B$_1$ Type, Lasota Strain, Live Virus	Keevet Laboratories	208–A
1761.11	09-21-89	Newcastle-Bronchitis Vaccine, B$_1$ Type, B$_1$ Strain, Mass Type, Live Virus.	Keevet Laboratories	208–A
1771.11	09-21-89	Newcastle-Bronchitis Vaccine, B$_1$ Type, Lasota Strain, Mass Type, Live Virus.	Keevet Laboratories	208–A
1851.00	09-21-89	Pasteurella Haemolytica Vaccine, Avirulent Live Culture	Keevet Laboratories	208–A
1871.06	09-21-89	Pasteurella Multocida Vaccine, Avirulent Live Culture, Bovine Isolates.	Keevet Laboratories	208–A
A275.10	09-21-89	Bursal Disease Virus, Killed Virus	Keevet Laboratories	208–A
A2A5.10	09-21-89	Bursal Disease Virus, Killed Variant, Viral Fluids	Keevet Laboratories	208–A
B702.13	09-21-89	Pasteurella Multocida Bacterin, Avian Isolates, Types 1, 3, & 4	Keevet Laboratories	208–A

Done in Washington, DC., this 12th day of December 1989.

A. Strating,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-29611 Filed 12-15-89; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

Use of Herbicides to Control Undesirable Understory Vegetation; Allegheny National Forest, Elk, Forest, McKean and Warren Counties, PA

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare a draft and final environmental impact statement (EIS) which will reconsider the limited use of herbicides to control undesirable understory vegetation on some forested lands within the Allegheny National Forest. The Allegheny National Forest Land and Resource Management Plan, completed in 1986, approved limited use of herbicides for this purpose. The draft EIS and Final EIS will also evaluate site-specific proposals for understory vegetation control

The agency invites written comments and suggestions on the scope of the analysis. In addition, the agency gives notice that a full environmental analysis will occur on the proposal so that interested and affected people are aware of how they may participate in and contribute to the final decision. Comments directed to the substance of the proposal, as opposed to the scope, are more appropriately submitted during the comment period following release of the draft environmental impact statement. This EIS will likely result in an amendment to the Allegheny National Forest Land and Resource Management Plan.

DATE: Comments concerning the scope of the analysis should be received in writing by January 16, 1990, to ensure timely consideration.

ADDRESS: Send written comments to Herbicide Analysis, Allegheny National Forest, 222 Liberty Street, P.O. Box 847, Warren, PA 16365.

FOR FURTHER INFORMATION: Contact either Robert L. White, Forest Silviculturist, or Brad B. Nelson, Forest Ecologist, Allegheny National Forest, phone 814/723–5150.

SUPPLEMENTARY INFORMATION: The Allegheny National Forest Land and Resource Management Plan (Forest Plan) was completed and approved in April 1986. One management decision in the Forest Plan provides for the use of the herbicide Roundup ® (active ingredient is glyphosate) to control undesirable understory vegetation as a method of establishing adequate tree seedlings which will perpetuate new trees following timber harvesting. Undesirable understory vegetation includes New York and hay-scented

fern, grasses, beech brush and striped maple. The Forest Plan estimates the need to treat approximately 2,000 acres

The comment period on the draft environmental impact statement will be 45 days from the date the EPA notice of

impact statement. The final environmental impact statement is scheduled to be completed in April 1990.

487–4650 or by writing to Order Department, NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Dated: December 12, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison

January 25, 1990. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to

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fern, grasses, beech brush and striped maple. The Forest Plan estimates the need to treat approximately 2,000 acres per year for the 10-year management period 1986–1995. Between 1987 and 1989, the Forest treated 2,826 acres with herbicide.

Treatment results have generally been good; however, the Forest has identified a need to achieve better control of ferns within spray vehicle tracks and of grasses which germinate from seed following spraying.

The Forest Plan also states that as research identifies a better herbicide, its appropriateness for use will be evaluated. Based upon the glyphosate spraying results mentioned above and the results of recent research, sulfometuron methyl (formulated as the herbicide Oust ®) has been identified as another desirable agent for controlling undesirable understory vegetation both exclusively and together with glyphosate.

A range of alternatives for this proposal will be considered including no treatment, continued use of glyphosate only, and use of glyphosate and/or sulfometuron methyl. The draft and final EIS will also include a site-specific analysis of proposed treatments for Fiscal Year 1990.

Federal, State and local agencies, and other individuals or organizations who may be interested in or affected by the decision are invited to participate in the scoping process. This process will include: (1) Identification of potential issues; (2) identification of issues to be analyzed in depth; and (3) elimination of insignificant issues or those which have been covered by a previous environmental review.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments should be as specific as possible.

Preliminary issues that have been identified are: (1) What are the human health effects; (2) how should the Forest control undesirable understory vegetation so that adequate tree seedlings can become established and perpetuate the forest; (3) what are the effects on wildlife and fish; and (4) what are the economic costs of various treatment techniques.

The analysis is expected to take two (2) months. The draft environmental impact statement is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in February 1990. At that time, EPA will publish a notice of availability of the draft environmental impact statement in the **Federal Register**.

The comment period on the draft environmental impact statement will be 45 days from the date the EPA notice of availability appears in the **Federal Register**. It is very important that those interested in the management of the Allegheny National Forest participate at that time. To be most helpful, comments on the draft environmental impact statement should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage may be waived if not raised until after completion of the final environmental impact statement, *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1988) and *Wisconsin Heritages Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

Comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.).

After the comment period ends on the draft environmental impact statement, the comments will be analyzed and considered by the Forest Service in preparing the final environmental impact statement. The final environmental impact statement is scheduled to be completed in April 1990. In the final environmental impact statement the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the environmental impact statement, and applicable laws, regulations and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in a Record of Decision. That decision will be subject to appeal under 36 CFR 217.

The responsible official is David J. Wright, Forest Supervisor, Allegheny National Forest, 222 Liberty Street, P.O. Box 847, Warren, Pennsylvania 16365.

Dated: December 12, 1989.

David J. Wright,

Forest Supervisor.

[FR Doc. 89–29356 Filed 12–15–89; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

National Technical Information Service

Prospective Grant of Exclusive Patent License

This notice in accordance with 15 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Technical Information Service (NTIS), U.S. Department of Commerce, is contemplating the grant of an exclusive license in the United States and foreign countries to practice the invention embodied in U.S. Patent Application Serial Number 07–226,057, "Device of Sustained-Release of a Chemical onto An Animal and Method of Using the Device", to SmithKline Beecham Corporation having a place of business at Philadelphia, PA. The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

A copy of the instant patent application may be purchased from the NTIS Sales Desk by telephoning 703/

487–4650 or by writing to Order Department, NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Inquiries, comments and other materials relating to the contemplated license must be submitted to Girish C. Barua, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 89–29342 Filed 12–15–89; 8:45 am]

BILLING CODE 3510-04-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Marine Corps Advertising Awareness and Attitude Tracking Study.

OBM Control Number: 0704–0155.

Type of Request: Extension.

Average Burden Hours/Minutes Per Response: 21 minutes.

Frequency of Response: Semi-annual.

Number of Respondents: 900.

Annual Burden Hours: 630.

Annual Responses: 1800.

Needs and Uses: The Marine Corps Advertising Awareness and Attitude Tracking Study is used by the Marine Corps to measure effectiveness of current advertising campaigns and to plan future advertising campaigns.

Affected Public: Individuals.

Frequency: Semi-annual.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Dr. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. Timothy Sprehe at Office of Management and Budget, Desk Officer, room 3235, New Executive Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

Written request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHE/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302.

Dated: December 12, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89–29334 Filed 12–15–89; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Intent To Grant Exclusive Patent License

Pursuant to the provisions of part 404 of title 37, Code of Federal Regulations, which implements Public Law 96–517, the Department of the Air Force announces its intention to grant Hemostasis Diagnostics International Company (HDI), 800 Clermont Street, Suite 20, Denver, Colorado 80220, a corporation of the State of Colorado, an exclusive license under United States Letters Patent No. 4,877,741, which matured from application Serial No. 07/261,302, filed 24 October 1988 in the names of James L. Babcock and David L. McGlasson for "Treatment of Human Plasma with Brown Recluse Spider Toxin to Emulate a Lupus Anticoagulant."

The license described above will be granted unless an objection thereto, together with a request for an opportunity to be heard, if desired, is received in writing by the addressee set forth below within sixty (60) days from the date of publication of this Notice. Copies of the patent may be obtained, on request, from same addressee.

All communications concerning this Notice should be sent to: Mr. Donald J. Singer, Chief, Patents Division, Office of The Judge Advocate General, HQ USAF/JACP, 1900 Half Street, SW., Washington, DC 20324–1000, telephone No. (202) 475–1386.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89–29323 Filed 12–5–89; 8:45 am]

BILLING CODE 3910-01-M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Naval Research Advisory Committee will meet on January 24–25, 1990. The meeting will be held at the NASA Lyndon B. Johnson Space Center, Houston, Texas. The meeting will commence at 8 a.m. and terminate at 5 p.m. on January 24; and commence at 8 a.m. and terminate at 12 noon on January 25, 1990. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide briefings and demonstrations for the committee members on space travel, astronaut training, and state-of-the-art technology and simulators. The agenda will include briefings and discussions related to Lunar/Mars space travel, superconductivity/avionics research, shuttle and space station training, robotics, orbital debris, and physiological aspects of space travel. These briefings, discussions and demonstrations will contain classified information that is specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive Order. The classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c) (1) of title 5, United States Code.

For further information concerning this meeting contact: Commander L.W. Snyder, U.S. Navy, Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217–5000, Telephone Number: (202) 696–4870.

Dated: December 12, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89–25339 Filed 12–15–89; 8:45 am]

BILLING CODE 3810-A-E

Intent To Grant Partially Exclusive Patent License; Coulter Immunology Division, Coulter Corp.

SUMMARY: The Department of the Navy hereby gives notice of intent to grant to Coulter Corp. a revocable, nonassignable, partially exclusive license to practice the Government-owned invention described in U.S. Patent No. 4,710,472, "Magnetic Separation Device," issued December 1, 1987, inventors: Joseph W. Saur, Charles P. Reynolds, and Alfred T. Black.

Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Office of the Chief of Naval Research (Code OOCIP), Arlington, Virginia 22217–5000.

DATE: December 18, 1989.

FOR FURTHER INFORMATION: Mr. R. J. Erickson, Staff Patent Attorney, Office

The specific changes to the record systems being amended are set forth

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

written inquiries to the Assistant Judge Advocate General (Civil Law), Office of

Performance jackets and academic records include performance aptitude

military service; and, Privacy Act disclosure forms. Nomination and

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FOR FURTHER INFORMATION: Mr. R. J. Erickson, Staff Patent Attorney, Office of the Chief of Naval Research (Code OOCCIP), 800 N. Quincy Street, Arlington VA 22217–5000, telephone (202) 696–4001.

Dated: December 12, 1989.

Sandra M. Day,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89–29340 Filed 12–15–89; 8:45 am]

BILLING CODE 3810-AE-M

Privacy Act of 1974; Amended Record Systems

AGENCY: Department of the Navy, DOD.

ACTION: Notice of amended systems of records subject to the Privacy Act.

SUMMARY: The Department of the Navy proposes to amend eight systems of records in its inventory of record systems subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a).

DATES: This proposed action will be effective without further notice January 17, 1990, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to Mrs. Gwen Aitken, Head, PA/FOIA Branch, Office of the Chief of Naval Operations (OP–09B30), room 5E521, Department of the Navy, The Pentagon, Washington, DC 20350–2000. Telephone (202) 697–1459, Autovon: 227–1459.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems of records notices inventory subject to the Privacy Act of 1974 have been published in the **Federal Register** as follows:

51 FR 12908, Apr 16, 1986
51 FR 18086, May 16, 1986 (Compilation, changes follow)
51 FR 19884, Jun 3, 1986
51 FR 30377, Aug 26, 1986
51 FR 30393, Aug 26, 1986
51 FR 45931, Dec 23, 1986
52 FR 2147, Jan 20, 1987
52 FR 2149, Jan 20, 1987
52 FR 8500, Mar 18, 1987
52 FR 15530, Apr 29, 1987
52 FR 22871, Jun 15, 1987
52 FR 45846, Dec 2, 1987
53 FR 17240, May 16, 1988
53 FR 21512, Jun 8, 1988
53 FR 22028, Jun 13, 1988
53 FR 25363, Jul 6, 1988
53 FR 39499, Oct 7, 1988
53 FR 41224, Oct 20, 1988
54 FR 8322, Feb 28, 1989
54 FR 14377, Apr 11, 1989
54 FR 32882, Aug 9, 1989
54 FR 40160, Sep 29, 1989
54 FR 41495, Oct 10, 1989
54 FR 43453, Oct 25, 1989
54 FR 45781, Oct 31, 1989
54 FR 48131, Nov 21, 1989

The specific changes to the record systems being amended are set forth below, followed by the system notices, as amended, published in their entirety. These notices are not within the purview of subsection (r) of the Privacy Act, 5 U.S.C. 552a, which requires the submission of altered systems reports.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

December 12, 1989

N01301–1

SYSTEM NAME:

Judge Advocate General Reporting Questionnaire (51 FR 18100, May 16, 1986).

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete the entire entry and substitute with "Name, rank, branch of service, date of rank, date reported, previous duty station, date detached, Social Security Number, designator, division assignment, room number, office phone, spouse's name, number of dependents' spouse's employment, dependents names and ages, home telephone number, home address, name of officer relieving, billet sequence code, unit identification code, place of birth, date of birth, security clearance, basis, completed by and date of completion."

* * * * *

N01301–1

SYSTEM NAME:

Judge Advocate General Reporting Questionnaire.

SYSTEM LOCATION:

Office of the Judge Advocate General (Code 61), Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Officers reporting for duty in the Office of the Judge Advocate General.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, rank, branch of service, date of rank, date reported, previous duty station, date detached, Social Security Number, designator, division assignment, room number, office phone, spouse's name, number of dependents' spouse's employment, dependents names and ages, home telephone number, home address, name of officer relieving, billet sequence code, unit identification code, place of birth, date of birth, security clearance, basis, completed by and date of completion.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 806 and E.O. 9397.

PURPOSE(S):

To assist the Judge Advocate General in assignment of officers within the Office of the Judge Advocate General.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are kept in a folder alphabetically and are stored in a file cabinet.

RETRIEVABILITY:

Retrieved by officer's name.

SAFEGUARDS:

Records are maintained in a file cabinet under the control of authorized personnel during working hours; and the office space in which the cabinet is located is locked outside official working hours.

RETENTION AND DISPOSAL:

Records are destoryed when the officer is transferred from the Office of the Judge Advocate General.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400.

The request should contain the full name of the individual concerned and must be signed. For personal visits, the requesting individual should be able to provide some acceptable identification, e.g. Armed Forces identification card, driver's license, etc.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records should address

written inquiries to the Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400.

The request should contain the full name of the individual concerned and must be signed. For personal visits, the requesting individual should be able to provide some acceptable identification, e.g. Armed Forces identification card, driver's license, etc.

CONTESTING RECORD PROCEDURE:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information submitted by the officer upon his/her reporting for duty in the Office of the Judge Advocate General.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N01531–1

SYSTEM NAME:

USNA Applicants, Candidates, and Midshipmen Records (52 FR 2147, January 20, 1987)

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete the entire entry and substitute with "Admissions records contain pre-candidate questionnaires concerning educational background, personal data, physical data, extracurricular activities, and employment; personal data; personal statements; transcripts from previously attended academic institutions; admission test results; physical aptitude exam results; recommendation letters from school officials and others; professional development tests; interest inventory; extracurricular activities reports; reports of officer interviews; records of prior military service; and, Privay Act disclosure forms. Nomination and appointment records include all card files of congressional offices and the names of persons whom each congressman appointed; files of candidates nominated for the following academic year; status cards, indexed by nominating source of all candidates appointed, admitted, and graduated, or resigned prior to graduation. Similar files are separately kept on foreign candidates.

Performance jackets and academic records include performance aptitude evaluations, preformance grades, personal history, autobiography, record of emergency data, aptitude history, review boards records, medical excuse from duty forms, conduct records and grades, professional development tests, counseling and guidance interview sheets and data forms, academic grades, class rankings, letters of commendation, training records, Oath of Office, Agreement to Service, Privacy Act disclosure forms and other such records and information relative to the midshipmen."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete the entire entry and substitute with "5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 6956, 6957, 6958, 6962 and 6963; 44 U.S.C. 3101; and E.O. 9397."

PURPOSE(S):

In last sentence, delete the "." and add ", and midshipmen for summer training programs."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

After paragraph five, add "The Contract Tailor Shop for the limited purpose of scheduling appointments as required for uniform fittings."

* * * * *

N01531–1

SYSTEM NAME:

USNA Applicants, Candidates, and Midshipmen Records.

SYSTEM LOCATION:

U.S. Naval Academy, Annapolis, MD 21402–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants and candidates for admission and Naval Academy Midshipmen.

CATEGORIES OF RECORDS IN THE SYSTEM:

Admissions records contain pre-candidate questionnairies concerning educational background, personal data, physicial data, extracurricular activities, and employment; personal data; personal statements; transcripts from previously attended academic institutions; admission tests results; physical aptitude exam results; recommendation letters from school officials and others; professional development tests; interest inventory; extracurricular activities reports; reports of officer interviews; records of prior military service; and, Privacy Act disclosure forms. Nomination and appointment records include all card files of congressional offices and the names of persons whom each congressman appointed; files of candidates nominated for the following academic year; status cards, indexed by nominating source of all candidates appointed, admitted, and graduated, or resigned prior to graduation. Similar files are separately kept on foreign candidates.

Performance jackets and academic records include performance aptitude evaluations, performance grades, personal history, autobiography, record of emergency data, aptitude history, review boards records, medical excuse from duty forms, conduct records and grades, professional development tests, counseling and guidance development tests, counseling and guidance interview sheets and data forms, academic grades, class rankings, letters of commendation, training records, Oath of Office, Agreement to Serve, Privacy Act disclosure forms and other such records and information relative to the midshipmen.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 6956, 6957, 6958, 6962, and 6963; 44 U.S.C. 3101; and E.O. 9397.

PURPOSE(S):

To establish an audit trail of files which contains information on individuals as they progress from the application stage, through the admissions process, to disenrollment or graduation from the Naval Academy. Applicant's files contain information which is used to evaluate and to determine competitive standing and eligibility for appointments to the Naval Academy. Successful applicants become candidates whose files contain information to evaluate further each candidate's eligibility. Candidates' files are also used to identify candidates profiles for initiation of formal officer accession programs in conjunction with the Naval Academy admission process. Successful candidates who accept appointments become midshipmen. Midshipment records contain personal, academic, and professional background information and are used for the management, supervision, administration, counseling, and discipline of midshipmen.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Computer records are safeguarded through selective file access, signing of Privacy Act forms, passwords, RAM

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contesting

Hampton Boulevard, Norfolk, VA 23508–1296."

* * * * *

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

N05800–2

SYSTEM NAME:

Legal Records System (51 FR 18165,

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Parents and legal guardians of midshipmen for the limited purpose of counseling midshipmen who encounter academic, performance, or disciplinary difficulties.

The United States Naval Institute for the limited purpose of notifying midshipmen and their parents about benefits and opportunities provided by the United States Naval Institute.

The Naval Academy Athletic Association for the limited purpose of promoting and funding the Naval Academy Intercollegiate Athletic Program.

The United States Naval Academy Foundation for the limited purpose of sponsoring midshipment candidates who were not admitted in previous years.

The United States Naval Academy Alumni Association for the limited purpose of supporting its activities related to the mission of the Naval Academy.

The Contract Tailor Shop for the limited purpose of scheduling appointments as required for uniform fittings.

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All hard copy records are kept in file folders in secure rooms or in locked cabinets.

On-line storage is maintained on the Honeywell DPS8 mainframe in Computer Services, with line networking to VACs and interfacing with microcomputers and dial-up lines.

Off-line storage is kept on disks.

Records on magnetic tapes and hard copy data are kept in secured rooms or in locked cabinets for operator access and user pickup.

Backup magnetic tapes are kept in a vault.

RETRIEVABILITY:

Records are kept alphabetically by Company and Class. Records can be retrieved from data base by selection of any data element, i.e., name, address, alpha code, six digit candidate number, or Social Security Number, etc.

SAFEGUARDS:

Visitor control. Records are kept in locked cabinets or in secured rooms. Computer records are safeguarded through selective file access, signing of Privacy Act forms, passwords, RAM systems, program passwords, user controls, encoding and port controls. Disk and tape storage is in a secure room. Backup systems on magnetic tapes are secured in fire proof vault in Ward Hall.

RETENTION AND DISPOSAL:

On-line computer records are destroyed one year after the midshipman's class graduates or the midshipman is separated.

Performance records are retained by the Performance Officer for two years after the midshipman's class graduates, and then destroyed. Backup systems on magnetic tapes and disks are kept in secure storage and destroyed two years after the midshipman's class graduates. Files relative to midshipmen separated involuntarily, including by qualified resignation, are retained for two years after the midshipman's class graduates, or three years from the date of separation, whichever date is later, and then destroyed.

Official transcripts and records files are kept indefinitely by the Registrar on microfilm, computer files, magnetic tapes, and hard copy; Admission records of unsuccessful candidates are properly destroyed after one year. Counseling and Guidance Research data are kept by the Professional Development Research Coordinator indefinitely. Nomination and appointment files are retained for varying lengths of time.

SYSTEM MANAGER(S) AND ADDRESS:

Superintendent, United States Naval Academy, Annapolis, MD 21402-5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Superintendent, United States Naval Academy, Annapolis, MD 21408-5000. Written requests should contain full name, company, class, and any personal identifier, such as a Social Security Number.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Superintendent, United States Naval Academy, Annapolis, MD 21408-5000. Written requests should contain full name, company, class, and any personal identifier, such as a Social Security Number.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR Part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individuals, midshipman, supervisors, Registrar, instructors, professors, officers, midshipman personal history/performance record, midshipman autobiography, Record of Emergency Data (NAVPERS 601-2), Statement of Personal History (DD Form 398), Aptitude History Record (Form 1610-105), Midshipman Summary Sheet, Certificate of Release or Discharge From Active Duty (DD Form 214), Military Performance Board Results, Letters of Probation, Midshipmen Performance Evaluation Reports (Form 54A), Medical Reports, Clinical Psychologist Reports, Excused Squad Chits (Form 6320/20), Conduct Card (Form 1690/91C), Letters of Commendation, Counseling and Guidance Interview and Data Records, Letters of Congressmen, parents, etc., and copies of replies thereto, transcripts from high school or prior college, Review Board Records, and Record of Disclosure (Privacy Act).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05760-1

SYSTEM NAME:

Biographical and Service Record Sketches of Chaplains (51 FR 18164, May 16, 1989)

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete the entire entry and substitute with "Chaplain Corps Historian, Chaplain Resource Board, 6500 Hampton Boulevard, Norfolk, VA 23508-1296."

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete the entire entry and substitute with "5 U.S.C. 301, Departmental Regulations".

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete the entire entry and substitute with "Chaplain Corps Historian, Chaplain Resource Board, 6500

Hampton Boulevard, Norfolk, VA 23508-1296."

* * * * *

N05760-1

SYSTEM NAME:

Biographical and Service Record Sketches of Chaplains.

Delete the entire entry and substitute with "Chaplain Corps Historian, Chaplain Resource Board, 6500 Hampton Boulevard, Norfolk, VA 23508-1296."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy chaplains who have served on extended active duty at some time during the period 1778-1981 inclusive, and any future editions. It lists the names, years in which they were commissioned, and the ecclesiastical affiliations of all who held chaplaincy commissions during the period.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographical and professional summary which includes individual's full name, denomination of faith group, date and place of birth, education, ordination, date of marriage and name of spouse, first names of children, prior professional experience, authorship, prior military service (including date of commission, date of rank of commissioning, ships/stations, places and dates; and period spent, if any, in Inactive Reserve), date of augmentation (if applicable), promotion history, awards and decorations, conclusion of active duty (date of resignation, release from active duty, or retirement as applicable), post active duty career (retirees only), and distinctions which have made the chaplains career interesting or unusually significant (corroborative material suggested).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations.

PURPOSE(S):

To provide background data in response to news media requests; to provide information on individual chaplains prior to public appearances in which they are scheduled to appear; to provide internal release of information as required.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in bound and published volumes. Source materials are in paper files.

RETRIEVABILITY:

Data is retrieved alphabetically by individual names.

SAFEGUARDS:

Files are locked after official working hours.

RETENTION AND DISPOSAL:

Forms and documents are destroyed after five years from the date of publication. The volumes are kept indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chaplain Corps Historian, Chaplain Resource Board, 6500 Hampton Boulevard, Norfolk, VA 23508-1296.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Chaplain Corps Historian, Chaplain Resource Board, 6500 Hampton Boulevard, Norfolk, VA 23508-1296.

The request should contain full name and address of the individual.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Chaplain Corps Historian, Chaplain Resource Board, 6500 Hampton Boulevard, Norfolk, VA 23508-1296.

The request should contain full name and address of the individual.

CONTESTING RECORD PROCEDURE:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR Part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information in this system comes from returned questionnaires addressed to individual chaplains, supplemented by Officer Data Cards and historical research.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05800-2

SYSTEM NAME:

Legal Records System (51 FR 18165, May 16, 1986).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete the entire entry and substitute with "Chief, Bureau of Medicine and Surgery, Navy Department, Washington, DC 20372-5120 and naval medical facilities. Official mailing addresses are published as an appendix to the Department of the Navy's compilation of records systems notices."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete the entire entry and substitute with "Naval (military and civilian) health care personnel or staff employed at naval medical facilities; patients and visitors of medical facilities."

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete the entire entry and substitute with "Requests for legal representation; requests for information by subpoena; requests for assistance; all background material necessary to answer the requests; and copies of letters replying to the requests.

Article 138, UCMJ complaints and all proceedings, including statements, affidavits, correspondence, briefs, conditions, court records, etc.

Incident reports and in-house investigations compiled as background for possible claims."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete the entire entry and substitute with "5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 938; Article 15(g), UCMJ; Naval Military Personnel Manual; 28 U.S.C. 1346(b), "Federal Torts Claim Act"; 42 U.S.C. 2651-2653, "Medical Care Recovery Act"."

PURPOSE(S):

Delete the entire entry and substitute with "To provide a record of individual requests and responses for reference and appellate purposes and to prepare responses to individual requests.

To provide background for the proceedings on complaints and review of those complaints.

To prepare correspondence and materials for actual or possible disciplinary proceedings.

To investigate, provide background on, and determine future action concerning possible claims."

* * * * *

RETRIEVABILITY:

Delete the entire entry and substitute with "By name of involved person; date; status, approximate date of contact with system (if known).

1346(b), "Federal Torts Claim Act"; 42 U.S.C. 2651-2653, "Medical Care Recovery Act".

Stovall Street, Alexandria, VA 22332-2400.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

RECORD SOURCE CATEGORIES:

Components within the Department of

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RETRIEVABILITY:

Delete the entire entry and substitute with "By name of involved person; date; type of incident, claim, or complaint; location of incident; or by object of request."

SAFEGUARDS:

Delete the entrie entry and substitute with "Files are maintained in file cabinets and other manual storage devices under the control of authorized during working hours; the office spaces in which the file cabinets and storage devices are located are locked outside office working hours."

RETENTION AND DISPOSAL:

Delete the entire entry and substitute with "Records are retained for two years after final action and then destroyed."

SYSTEM MANAGER(S) AND ADDRESS:

Delete the entrie entry and substitute with "Chief, Bureau of Medicine and Surgery, Navy Department, Washington, DC 20372–5120."

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N06800–2

SYSTEM NAME:

Legal Records System.

SYSTEM LOCATION:

Bureau of Medicine and Surgery, Navy Department, Washington, DC 20372–5120 and naval medical facilities. Official mailing addresses are published as an appendix to the Navy's compilation of systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Naval (military and civilian) health care personnel or staff employed at medical facilities; patients and visitors of medical facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Requests for legal representation; requests for information by subpoena; requests for assistance; all background material necessary to answer the requests; and copies of letters replying to the requests.

Article 138, UCMJ complaints and all proceedings, including statements, affidavits, correspondence, briefs, conditions, court records, etc.

Incident reports and in-house investigations compiled as background for possible claims.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; Article 138, UCMJ; 10 U.S.C. 936; Article 15, UCMJ; Naval Military Personnel Manual; 28 U.S.C. 1346(b), "Federal Torts Claim Act"; 42 U.S.C. 2651–2653, "Medical Care Recovery Act".

PURPOSE(S):

To provide a record of individual requests and responses for reference and appellate purposes and to prepare responses to individual requests.

To provide background for the proceedings on complaints and review of those complaints.

To prepare correspondence and materials for actual or possible disciplinary proceedings.

To investigate, provide background on, and determine future action concerning possible claims.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, forms, letters.

RETRIEVABILITY:

By name of involved person; date; type of incident, claim, or complaint; location of incident; or by object of request.

SAFEGUARDS:

Files are maintained in file cabinets and other manual storage devices under the control of authorized personnel during working hours; the office spaces in which the file cabinets and storage devices are located are locked outside office working hours.

RETENTION AND DISPOSAL:

Records are retained for two years after final action and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Bureau of Medicine and Surgery, Navy Department, Washington, DC 20372–5120.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquires to the naval medical facility where the incident took place or to the Chief, Bureau of Medicine and Surgery, Navy Department, Washington, DC 20372–5120. Official mailing addresses are published as an appendix to the Navy's compilation of systems notices.

Written requests should contain full name, Social Security Number, military status, approximate date of contact with system (if known).

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the naval medical facility where the incident took place or to the Chief, Bureau of Medicine and Surgery, Navy Department, Washington, DC 20372–5120. Official mailing addresses are published as an appendix to the Navy's compilation of systems notices.

Written requests should contain full name, Social Security Number, military status, approximate date of contact with system (if known).

CONTESTING RECORD PROCEDURE:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR Part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Investigative reports (as from JAG Manual investigations, Office of Naval Intelligence reports, security system, etc), Military Personnel system, medical records, personal interviews, personal observations, reported by persons witnessing or knowing of incidents.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05802–1

SYSTEM NAME:

Fiduciary Affairs Records (51 FR 18166, May 16, 1986).

CHANGES:

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RETRIEVABILITY:

In lines one and two, deleted "• • • or by the name of the trustee."

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RETENTION AND DISPOSAL:

At the end of the entry, add "In addition, Fiduciary Affairs files which have been closed for a period of five years are transferred to the Federal Records Center, Suitland, MD."

• • • • •

SYSTEM NAME:

Fiduciary Affairs Records.

SYSTEM LOCATION:

Office of the Judge Advocate General (Code 12), Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All active duty, fleet reserve, and retired members of the Navy and Marine Corps who have been medically determined to be mentally incapable of managing their financial affairs, their appointed or prospective trustees, and members' next-of-kin.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains proceedings of medical boards, documentation indicating the origin of the mental incapability, the name(s) and address(es) of the individual's next-of-kin, the disability retirement index, a copy of the interview(s) of prospective trustee(s), the appointment of the approved trustee, authority to pay the individual's retirement pay to the approved trustee, the instruction of duties and responsibilities to the trustee, annual trustee accounting reports, copy of the trustee's surety bond, a copy of the affidavit executed by the trustee to obtain the surety bond, miscellaneous correspondence relating to the trustee's duties and responsibilities, annual approvals of the trustee account, discharge(s) of trustee, release(s) of surety, periodic physical examinations, medical records and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulation; 37 U.S.C. 601–604; and 44 U.S.C. 3101.

PURPOSE(S):

To provide non-judicial financial management of military pay and allowances payable to active duty, fleet reserve, and retired Navy and Marine Corps members for the period during which they are medically determined to be mentally incapable of managing their financial affairs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

To officials of the Department of Justice when there is reason to suspect financial mismanagement and no satisfactory settlement with the surety can be reached.

To officials and employees of the Veterans Administration in connection with programs administered by that agency.

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

paper records in file folders stored in file cabinets or other storage devices.

RETRIEVABILITY:

By name of the member.

SAFEGUARDS:

Files are maintained in file cabinets and other storage devices under the control of authorized personnel during working hours; the office space in which the file cabinets and storage devices are located is locked outside official working hours.

RETENTION AND DISPOSAL:

Indefinitely; however, after the death of a member, his/her files are transferred to the Federal Records Center, Suitland, MD 20409. In addition, Fiduciary Affairs files that have been closed for a period of five years are transferred to the Federal Records Center, Suitland, Maryland.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, 200 Stovall Street, Alexandria, VA 22332–2400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, 200 Stovall Street, Alexandria, VA 22332–2400. The request should contain the full name of the individual concerned and should be signed.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, 200 Stovall Street, Alexandria, VA 22332–2400. The request should contain the full name of the individual concerned and should be signed.

CONTESTING RECORD PROCEDURE:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Components within the Department of the Navy, medical doctors, approved trustees, prospective trustees, surety companies, and the Veterans Administration.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05813–1

SYSTEM NAME:

Ethics File (51 FR 18168, May 16, 1986).

CHANGES:

SYSTEM LOCATION:

In line two, change "(Code 20)" to read "(Code 01)".

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete the entire entry and substitute with "Civilian and military lawyers certified by the Judge Advocate General of the Navy: (1) Under the provisions of article 27(b) of the Uniform Code of Military Justice (UCMJ); or (2) as legal assistance attorneys; and (3) whose professional or personal conduct has been brought into question under JAGINST 5803.1. Attorneys not certified under article 27(b), UCMJ or as legal assistance attorneys but who practice under the supervision of the Judge Advocate General of the Navy are also included in the system."

• • • • •

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete the entire entry and substitute with "Manual of the Judge Advocate General, Section 0165, 5 U.S.C. 301, Departmental Regulations; and JAGINST 5803.1."

PURPOSE(S):

Delete the entire entry and substitute with "To record the disposition of ethics complaints, to provide a record of individual lawyers who are not authorized to practice as legal assistance attorneys, before courts-martial, in other proceedings under the UCMJ, or in administrative proceedings, and to document ethics violations and corrective action taken."

• • • • •

RETRIEVABILITY:

Delete the entire entry and substitute with "Files are kept in alphabetical order according to the last name of the attorney concerned."

• • • • • •

RECORD SOURCE CATEGORIES:

Delete the entire entry and substitute with "Correspondence from individuals,

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The "Blanket Routine Uses" that

Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall

SYSTEM MANAGER(S) AND ADDRESS:

Delete the entire entry and substitute with "Director, Office of Civilian

Department of the Navy's compilation of systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING,

701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

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RECORD SOURCE CATEGORIES:

Delete the entire entry and substitute with "Correspondence from individuals, military judges, staff judge advocates, and other military personnel; correspondence from the Judge Advocate General of other branches of the Armed Forces; investigative reports from Naval Investigative Service Command and other offices, correspondence from other military and civilian authorities and copies of court papers."

* * * * *

N05813-1

SYSTEM NAME:

Ethics File.

SYSTEM LOCATION:

Office of the Judge Advocate General (Code 01), Department of the Navy, 200 Stovall Street, Alexandria, VA 22332-2400.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian and military lawyers certified by the Judge Advocate General of the Navy: (1) Under the article 27(b) of the Uniform Code of Military Justice (UCMJ); or (2) as legal assistance attorneys; and (3) whose professional or personal conduct has been brought into question under JAGINST 5803.1. Attorneys not certified under article 27(b), UCMJ or as legal assistance attorneys but who practice under the supervision of the Judge Advocate General of the Navy are also included in the system.

CATEGORIES OF RECORDS IN THE SYSTEM:

Reports of investigation, correspondence, and court papers relating to the complaint brought against attorneys.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Manual of the Judge Advocate General, Section 0165, 5 U.S.C. 301, Departmental Regulations; and JAGINST 5803.1.

PURPOSE(S):

To record the disposition of ethics complaints, to provide a record of individual lawyers who are not authorized to practice as legal assistance attorneys, before courts-martial, in other proceedings under the UCMJ, or in administrative proceedings, and to document ethics violations and corrective action taken.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Files are kept in alphabetical order according to the last name of the attorney concerned.

SAFEGUARDS:

Files are maintained in file cabinets and other storage devices under the control of authorized personnel during working hours; the office space in which the file cabinets and storage devices are located is locked outside official working hours.

RETENTION AND DISPOSAL:

Records are maintained in office for two years and then forwarded to the Federal Records Center, Suitland, MD 20409 for storage.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332-2400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Deputy Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332-2400. The written request should include the full name of the individual concerned and must be signed. Personal visits may be made to the assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, room 9N21, Hoffman Building II, 200 Stovall Street, Alexandria, VA 22332-2400, during normal working hours; Monday through Friday, 8 a.m. to 4:30 p.m. Individuals making such visits should be able to provide some acceptable identification, e.g., Armed Forces identification card, driver's license, etc.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves should address written inquiries to the Deputy Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332-2400. The written request should include the full name of the individual concerned and must be signed.

Personal visits may be made to the Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Room 9N21, Hoffman Building II, 200 Stovall Street, Alexandria, VA 22332-2400, during normal working hours; Monday through Friday 8 a.m. to 4:30 p.m. Individuals making such visits should be able to provide some acceptable identification, e.g., Armed Forces identification card, driver's license, etc.

CONTESTING RECORD PROCEDURE:

The Department of the Navy rules for contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Correspondence from individuals, military judges, staff judge advocates, and other military personnel; correspondence from the Judge Advocate General of other branches of the Armed Forces; investigative reports from Naval Investigative Service Command and other offices, correspondence from other military and civilian authorities and copies of court papers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N12290-2

SYSTEM NAME:

Models for Organizational Design and Staffing (MODS) (51 FR 18214, May 16, 1986).

CHANGES:

* * * * *

SYSTEM LOCATION:

In line one, delete "Chief of Naval Operations (OP-16)" and substitute with "Office of Civilian Personnel Management".

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

At the end of the entry, add "and E.O. 9397."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete the entire entry and substitute with "Director, Office of Civilian Personnel Management, 800 North Quincy Street, Arlington, VA 22203-1998."

NOTIFICATION PROCEDURE:

In lines two, three, and four, delete "Chief of Naval Operations (OP-14)," and substitute with "Office of Civilian Personnel Management,".

* * * * *

N12290-2

SYSTEM NAME:

Models for Organizational Design and Staffing (MODS).

SYSTEM LOCATION:

Office of Civilian Personnel Management and Navy Department Staff, Headquarters, field activities employing civilians; also at contractor facilities. Official mailing addresses are published as an appendix to the Navy's compilation of records systems.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy civilian employees paid from appropriated funds.

CATEGORIES OF RECORDS IN THE SYSTEM:

Automated and manual files contain information on individual's proficiencies and knowledges as reported in self-evaluation questionnaires vouchered by the supervisor, as well as data on the requirements of specific jobs submitted by the supervisor.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulation; and E.O. 9397.

PURPOSE(S):

To test the operational usefulness of a staffing.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

To officials and employees of the Office of Personnel Management in the performance of their duties related to staffing and/or evaluation of civilian manpower programs.

To the University of Texas faculty and students working under a contract relating to MODS to monitor progress of research study.

To Carnegie-Mellon University faculty and students working under contract relating to MODS to assist in research project.

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer magnetic tape and drum, and optical scanner forms and computer printouts.

RETRIEVABILITY:

Accessed by Social Security Number.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel.

RETENTION AND DISPOSAL:

Records are retained so long as personnel continue to work at same activity.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Civilian Personnel Management, 800 North Quincy Street, Arlington, VA 22203-1998.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Director, Office of Civilian Personnel Management, Department of the Navy, Washinton, DC 22203-1998 or to the head of the Navy activity at which the individual is or was employed. Official mailing addresses are published as an appendix to the Navy's compilation of systems notices. Written requests for information must contain full name of individual, current verbal information that could be verified.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records contains information about themselves should address written inquires to the Director, Office of Civilian Personnel Management, Department of the Navy, Washinton, DC 22203-1998 or to the head of the Navy activity at which the individual is or was employed. Official mailing addresses are published as an appendix to the Navy's compilation of systems notices. Written requests for information must contain full name of individual, current verbal information that could be verified.

CONTESTING RECORD PROCEDURE:

The Department of the Navy rules for accessing records and for contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

First line supervisors and Personnel Automated Data System (PADS).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N12300-1

SYSTEM NAME:

Employee Assistance Program Case Record System (51 FR 18215, May 16, 1986).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete line one and substitute with "Office of Civilian Personnel Management." In line four, delete the word "Command" and substitute with "Center."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

In line one, delete the words "Chief of Naval Operations (OP-14), and substitute with "Office of Civilian Personnel Management."

* * * * *

N12300-1

SYSTEM NAME:

Employee Assistance Program Case Record System.

SYSTEM LOCATION:

Office of Civilian Personnel Management, Department of the Navy and Designated Contractors; Navy Civilian Personnel Command (NCPC); NCPC Field Division; and, Navy staff, headquarters, and field activities employing civilians. Official mailing addresses are published as an appendix to the Navy's compilation of systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All civilian employees in appropriated and non-appropriated fund activities who are referred by management for, or voluntarily request, counseling assistance.

CATEGORIES OF RECORDS IN THE SYSTEM:

System is comprised of case records on employees who are patients (counselee) which are maintained by individual counselors and consist of information on condition, current status, and progress of employees or dependents who have alcohol, drug, emotional, or other personal problems,

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including admitted or urinalysis-detected illegal drug abuse.

Distruction is by shredding, pulping, macerating, or burning.

Electronic records are purged of

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Former and present civilian

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this

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including admitted or urinalysis-detected illegal drug abuse.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7301; 42 U.S.C. 290dd–3 and 290ee–3, Pub. L. 100–71; E.O. 12564; and E.O. 9397.

PURPOSE(S):

To record counselor's observations concerning patient's condition, current status, progress, prognosis and other relevant treatment information regarding patients in an employee assistance treatment facility.

Used by the Navy counselor in the execution of his/her counseling function as it applies to the individual patient.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In order to comply with provisions of 5 U.S.C. 7301 and 42 U.S.C. 290dd–3 and 290ee–3, the Office of the Secretary of Defense "Blanket Routine Uses" do not apply to this system of records.

Records in this system may not be disclosed without prior written consent of such patient, unless the disclosure would be:

(a) To medical personnel to the extent necessary to meet a bona fide medical emergency;

(b) To qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, and individual patient in any report of such research, audit, or evaluating, or otherwise disclose patient identities in any manner; and

(c) If authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefor.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Case records are stored in paper file folders.

RETRIEVABILITY:

By employee name or by locally assigned identifying number.

SAFEGUARDS:

All records are stored under strict control. They are maintained in spaces accessible only to authorized persons, and are kept in locked cabinets.

RETENTION AND DISPOSAL:

Paper records are destroyed five years after termination of counseling.

Distruction is by shredding, pulping, macerating, or burning.

Electronic records are purged of identifying data five years after termination of counseling. Aggregate data without personal identifiers is maintained for management/statistical purposes until no longer required.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Civilian Personnel Management, 800 North Quincy Street, Arlington, VA 22203–1998 and employee assistance program administrators at Department of the Navy staff, headquarters, and field activity levels. Official mailing addresses are published as an appendix to the Department of the Navy's compilation of systems of records.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Director, Office of Civilian Personnel Management, 800 North Quincy Street, Arlington, VA 22203–1998 or to the appropriate employee assistance program administrator. Official mailing addresses are published as an appendix to the Department of the Navy's compilation of systems of records. The request should contain the name, approximate period of time, by date, during which the case record was developed, and address of the individual concerned and should be signed.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves continued in this system of records should address written inquiries to the Director, Office of Civilian Personnel Management, 800 North Quincy Street, Arlington, VA 22203–1998 or to the appropriate employee assistance program administration. Official mailing addresses are published as an appendix to the Department of the Navy's compilation of systems of records.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Patient, counselors, supervisors, co-workers or other agency or contractor-employee personnel, private individuals to include family members of patient and outside practitioners.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N12771–1

SYSTEM NAME:

Employee Grievances, Discrimination, Complaints, and Adverse Action Appeals (51 FR 18217, May 16, 1986).

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

In line seven, delete the words "Examiners' reports" and substitute with "administrative judges' reports." In line nine, delete the word "BUPERS" and substitute with "Naval Military Personnel Command."

* * * * *

PURPOSE(S):

In line two, after the phrase "adjudicative cases", and ", Office of Civilian Personnel Management (OCPM).". In lines fourteen and twenty, delete the words "Examiner's reports" and replace with "administrative judges' reports."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Add the following paragraph to the end of the entry "Note: Records of identity, diagnosis, prognosis or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, requested, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided herein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–3 and 290ee–3. These statutes take precedence over the Privacy Act of 1974 in regard to accessibility of such records except to the individual to whom the record pertains. The Department of the Navy's "Blanket Routine Uses" do not apply to these records.

* * * * *

N12771–1

SYSTEM NAME:

Employee Grievances, Discrimination Complaints, and Adverse Action Appeals.

SYSTEM LOCATION:

Employee Appeals Review Board, Ballston Tower 2, 801 N. Randolph Street, Arlington, VA 22203–1998.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Former and present civilian employees of the Department of the Navy, and applicants for employment with the Department of the Navy.

CATEGORIES OF RECORDS IN THE SYSTEM:

The case files contain background material on the act or situation complained of; the results of any investigation including affidavits and depositions; records of personnel actions involved; transcripts of hearings held; administrative judges' reports of findings and recommended actions; advisory memoranda from the Chief of Naval Operations, Navy Military Personnel Command, Department of Defense, Systems Commands; Secretary of the Navy decisions; reports of actions taken by local activities; comments by the Employee Appeals Review Board (EARB) or local activities on appeals made to the Equal Employment Opportunity Commission (EEOC); EEOC decisions, Court decisions, Comptroller General decisions. Brief summaries of case files are maintained on index cards.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1301, 3301, 3302, 7151–7154, 7301, and 7701.

PURPOSE(S):

This information is used by the EARB to adjudicate cases. Systems Commands, the Chief of Naval Operations, Office of Civilian Personnel Management (OCPM), and Naval Civilian Personnel Command (NCPC) are internal users for informational/implementational purposes. Individual members acting on behalf of the individual involved are supplied with copies of decisions and other appropriate background material. Grievants and appellants are furnished Secretary of the Navy decisions, with copies to their representatives, EEO complainants are furnished Secretary of the Navy (SECNAV) decisions, with copies of the hearing transcripts and administrative judges' reports; complainants' representatives are provided copies of SECNAV decisions on grievances and appeals. Activities involved in EEO complaints are provided copies of SECNAV decisions, hearing transcripts, and administrative judges' reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

To officials and employees of the Equal Employment Opportunity Commission to adjudicate cases.

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of record systems also apply to this system.

Note: Records of identity, diagnosis, prognosis or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, requested, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided herein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–3 and 290ee–3. These statutes take precedence over the Privacy Act of 1974 in regard to accessibility of such records except to the individual to whom the report pertains. The Departent of the Navy's "Blanket Routine Uses" do not apply to these records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders and index cards.

RETRIEVABILITY:

Name.

SAFEGUARDS:

Classified material is kept in a locked safe. Other materials are kept in file cabinets within the EARB Administrative Offices. Access during business hours is controlled by Board personnel. The office is locked at the close of business; the building in which the office is located employs security guards.

RETENTION AND DISPOSAL:

Case files maintained for one year and sent to the Washington National Records Center, 4205 Suitland Road, Suitland, MD 20409; and maintained for four years. EEOC decisions and index cards are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Naval Council of Personnel Boards, Ballston Tower 2, 801 N. Randolph Street, Arlington, VA 22203–1998.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Director, Naval Council of Personnel Boards, Ballston Tower 2, 801 N. Randolph Street, Arlington, VA 22203–1998. The requester must provide full name, employing office, and appropriate identification card.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Director, Naval Council of Personnel Boards, Ballston Tower 2, 801 N. Randolph Street, Arlington, VA 22203–1998. The requester must provide full name, employing office, and appropriate identification card.

CONTESTING RECORD PROCEDURE:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR Part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information in the file is obtained from former and present civilian employees of the DON, applicants for employment with the DON, employing activities, EEOC, NCPC.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N12930–1

SYSTEM NAME:

Industrial Relations Personnel Records (51 FR 18218, May 16, 1986).

CHANGES:

* * * * *

SYSTEM LOCATION:

In lines two and three, delete the words "Fort Wadsworth" and substitute with "Naval Station New York Staten Island". In line four, delete "Central Offices".

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete the words "and 10 U.S.C. 5031" and add ", Departmental Regulations and E.O. 9397."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

In lines two and three, delete the words "Fort Wadsworth" and substitute with "Naval Station New York Staten Island". In lines four and five, delete "Manager, Recruitment and Employment (IRD3)" and substitute with "Workforce/Planning and Administrative Support Branch". In lines six and seven, delete the words "Fort Wadsworth" and substitute with "Naval Station New York Staten Island".

* * * * *

SYSTEM NAME:

Industrial Relations Personnel Records.

SYSTEM LOCATION:

Primary location: Commanding officer of activity where employed. Duplicate records may be maintained at the Naval Civilian Personnel Command, Washington Navy Yard, Washington, DC 20374–5097.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian employees of the Department of the Navy.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to grievances and appeals; congressional correspondence; investigative reports and summaries of personnel policies, practices and matters affecting working conditions.

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of record systems also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Name.

SAFEGUARDS:

Records are maintained in locked file cabinets under the control of authorized personnel during working hours; the office in which the records are maintained is locked outside of working hours.

RETENTION AND DISPOSAL:

Records are destroyed three years after case is closed.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of activity where employed.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the commanding officer of activity where employed. The request should contain full name, Social Security Number, activity where last employed or where last

5097. The request should contain full name, Social Security Number, activity where last employed or where last

DEPARTMENT OF ENERGY

Federal Energy Regulatory

Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

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SYSTEM NAME:

Industrial Relations Personnel Records.

SYSTEM LOCATION:

Commander, Navy Resale and Services Support Office, Naval Station New York Staten Island, Staten Island, NY 10305–5097 (for all Navy Exchanges). Personnel records of employees of the central office and in the Navy Resale System activities employing Civilians paid from non-appropriated funds.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian employees, former civilian employees, and applicants for employment with the Navy Resale and Services Support Office and Navy Exchanges located worldwide. Employee categories paid from non-appropriated funds are regular full time, regular part-time, temporary full time, temporary part-time and intermittent.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel jackets, including but not limited to Personnel Information Questionnaire, Personnel Action; Certification of Medical Examination Indoctrination Checklist; Designation of beneficiary; death benefit; leave records; report of accident; notice of excessive absence and tardiness and warnings; disciplinary actions; certified record of court attendance; certified copy of completed military orders for any annual duty tours with recognized reserve organizations; employee job description; tuition assistance records; examination papers and tests, if any; evidence of date of birth, where required; official letters of commendation; cash register overage/shortage records; report of hearings and recommendations relative to employees grievances; official work performance rating; designation of beneficiary for unpaid compensation; reference check records; applicant files; employee profiles; personnel security information (including copies of NSA and NIS reports); travel requests, travel allowance and claims records; transportation agreements; employee affidavits; privilege card application, work assignments, work performance capability, counseling records, work-related records, training records including courses, type and completion dates; and related data.

Labor and Employee Relations Records include Notices of excessive absence, tardiness and warnings; disciplinary actions; unsatisfactory work performance evaluations; grievances, appeals, complaint and appeal records; reports of potential grievances and appeals; congressional correspondence; investigative reports and summaries of personnel administrative actions; data relating to Quality Salary Increase, Superior Accomplishment Recognition Awards, beneficial suggestions and similar awards; and personnel listings of the aforementioned services.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397.

PURPOSE(S):

To provide a basis by which an employee or an applicant may be determined to be suitable for employment, transfer, promotion or retention in employment; for verification of employment; to provide a record of travel performed and verification that the employees receive proper remuneration for the travel performed; to insure employees received timely consideration in the processing of work/appraisals and salary increases; for recognition of accomplishments and contributions by employees, and in the processing, administration, and adjudication of discipline, grievances, complaints, appeals, litigation, and program evaluation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To appeals officers and complaints examiners of the Equal Employment Opportunity Commission for the purpose of conducting hearings in connection with employees appeals from adverse actions and formal discrimination complaints.

To a federal agency in response to it's request in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security of suitability investigation of an individual, the classifying of jobs, the letting of a contract or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary.

To the National Archives and Records Service (GSA) in records management inspection conducted under authority of 5 U.S.C. 2904 and 2906.

In response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in the pending judicial or administrative proceeding.

To officials of labor organizations recognized under the Civil Service Reform Act when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices and matters affecting working conditions.

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of records systems apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The media in which these records are maintained vary, but include file folders; magnetic tape; disks; punch cards; rolodex files; cardex files; ledgers and printed reports.

RETRIEVABILITY:

Name and/or Social Security Number: employee payroll number.

SAFEGUARDS:

Locked desks in supervisor's office and also, locked cabinets in locked offices supervised by appropriate personnel; supervised computer tape library which is accessible only through the Computer Center (entry to the computer center is controlled by a combination lock known by authorized personnel only; security guards.

RETENTION AND DISPOSAL:

Current employee records remain on file at the appropriate personnel offices; records on former employees are retained for one year and then forwarded to the Director, National Personnel Records Center, (Civilian Personnel Records), 111 Winnebago Street, St. Louis, MO 63118 for retention of permanent papers and destruction of temporary papers. Applicant files are retained for one year. Navy Exchange records retention standards are contained in the Disposal of Navy and Marine Corps Records Part II, Chapters 3 and 5 in the Navy Exchange Manual.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Official is the Commander, Navy Resale and Services Support Office, Naval Station New York Staten Island, Staten Island, NY 10305–5097.

Record Holder is the Manager, Workforce/Planning and Administrative Support Branch (IRD4), Navy Resale and Services Support Office, Naval Station New York Staten Island, Staten Island, NY 10305–5097.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commander, Navy Resale and Services Support Office, Naval station New York Staten Island, Staten Island, NY 10305–5097. The request should contain full name, Social Security Number, activity where last employed or where last application for employment was filed. A list of other offices the requester may visit will be provided after initial contact is made at the office listed above. At the time of a personal visit, requester must provide proof of identity containing the requester's signature.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records themselves contained in this system of records should address written inquiries to the Commander, Navy Resale and Services Support Office, Naval Station New York Staten Island, Stanten Island, NY 10305–5097. The request should contain full name, Social Security Number, activity where last employed or where last application for employment was filed. A list of other offices the requester may visit will be provided after initial contact is made at the office listed above. At the time of a personal visit, requester must provide proof of identity containing the requester's signature.

CONTESTING RECORD PROCEDURE:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determination by the individual concerned are published in Secretary of the Navy Instruction 5211.4; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The individual to whom the record pertains; current and previous supervisors/employers; other records of the activity concerned; counseling records and comparable papers; educational institutions; applicants; applicant's previous employees; current and previous associates of the employee named by the employee as references; other records of activity investigators; witnesses; correspondents; investigate results and information provided by appropriate investigative agencies of the Federal Government.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt under 5 U.S.C. 552a(k)(5) and (6), as applicable. For additional information contact the system manager. An exemption rule for this system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 701, subpart G.

[FR Doc. 89–29335 Filed 12–15–89; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. QF84-269-002]

Smith Falls Hydropower; Application for Commission Recertification of Qualifying Status of a Small Power Production Facility

December 12, 1989.

On December 1, 1989, Smith Falls Hydropower (Applicant), of 699 E. South Temple, Suite 220, Salt Lake City, Utah 84102, submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed hydroelectric facility (FERC P. 8436) will be located on Smith Creek, in Boundary County, Idaho.

The certification for the original application was issued on June 21, 1984 (27 FERC 62,324). The first recertification was issued on October 27, 1987 (41 FERC 62,095). The instant recertification is requested due to a change in ownership and increase in electric power production capacity from 30 MW to 36.15 MW. Title to the facility will be vested in Westinghouse Credit Corporation who will lease the facility to the Applicant.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed by December 27, 1989 and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Lois D. Cashell,

Secretary.

[FR Doc. 89–29331 Filed 12–15–89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP90-272-000, et al.]

Consumers Power Company, et al.; Natural Gas Certificate Filings

December 7, 1989.

Take notice that the following filings have been make with the Commission:

1. Consumers Power Co.

[Docket No. CP90-272-000]

Take notice that on November 21, 1989, Consumers Power Company (Consumers), 1945 West Parnall Road, Jackson, Michigan 49201, filed in Docket No. CP90–272–000 an application pursuant to § 284.224 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing the transportation of natural gas, all as more fully set forth in the application on file with the Commission and open to public inspection.

It is stated that Consumers agrees to comply with the conditions set forth in § 284.224(e) and understands that any transaction authorized under a blanket certificate shall be subject to the same rates and charges, terms, conditions and reporting requirements that would apply if the transactions were authorized for an intrastate pipeline by subparts C, D, and E of part 284 of the Commission's Regulations.

Comment date: December 28, 1989, in accordance with Standard Paragraph F at the end of this notice.

2. Great Lakes Gas Transmission Co.

[Docket No. CP90-276-000]

Take notice that on November 22, 1989, Great Lakes Gas Transmission Company (Great Lakes), 2100 Buhl Building, Detroit, Michigan 48226, filed in Docket No. CP90–276–000 an application pursuant to section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon natural gas sales service provided by Peoples Natural Gas Company, a division of UtiliCorp United Inc., (Peoples) pursuant to Great Lakes' FERC Gas Tariff, First Revised Vol. No. 1, Rate Schedule G–3, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Great Lakes states that by order dated June 15, 1988 in Docket No. CP88–35–000, [illegible] the Commission [illegible] that Peoples does not execute the agreement in the time provided for, Great Lakes requests that the [illegible] CP90–292–000 a request pursuant to § 157.205 of the Regulations under the

certificate issued in Docket No. CP88–316–000, pursuant to section 7 of the [illegible] automatic provisions of § 284.223(a) of the Commission's Regulations.

Comment date: January 22, 1990, in § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST90–495–000, Williams further explains

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Great Lakes states that by order dated June 15, 1988 in Docket No. CP88-35-000, 43 FERC 62,319 (1988), the Commission granted Great Lakes a certificate of public convenience and necessity to provide to Peoples a firm transportation service of up to 4,052 Mcf per day and permitted Great Lakes to abandon the sales service that is the subject of this application; that the Commisison's order was predicated on the unbundling of People's natural gas sales service; and that Peoples has not executed the firm Transportation Service Agreement authorized by the Commission's order. Great Lakes states that it has notified Peoples of the Commission's order and Great Lakes' willingness to enter into the previously approved agreement.

Great Lakes states that it neither produces nor gathers natural gas; that it purchases Canadian natural gas from TransCanada PipeLines Limited (TransCanada) for resale to Peoples; that the quantities of natural gas purchased from TransCanada correlate to the amounts resold to Peoples; that Peoples negotiates the applicable natural gas pricing directly with TransCanada to Peoples. Great Lakes states that in the recent past, it has unbundled its sales service to contractually recognize and permit former sales customers to negotiate directly with natural gas suppliers, and that Great Lakes currently provides transportation services to such former sales customers.

Great Lakes states that its natural gas purchase arrangements with TransCanada for supplies for Peoples terminate on October 31, 1990; that Peoples' Service Agreement terminates on November 1, 1990; that Great Lakes anticipates a cessation of its gas merchant function after November 1, 1990; and that Great Lakes will continue as a transporter of gas thereafter. Great Lakes states that because its gas merchant function is anticipated to cease at November 1, 1990, and to ensure proper and economic system operation after that date, Great Lakes must project its system requirements after termination of its merchant function.

Great Lakes states that it is hereby offering to Peoples the Transportation Service Agreement previously authorized by the Commission, which must be executed within 90 days of the filing date of the application. In the event that Peoples executes the Transportation Service Agreement, Great Lakes states that is would withdraw this abandonment request and proceed under the order issued in Docket No. CP88-35-000. In the event that Peoples does not execute the agreement in the time provided for, Great Lakes requests that the Commission grant it authority to abandon its FERC Gas Tariff, First Revised Vol. No. 1, Rate Schedule G-3 natural gas sales service to Peoples, effective November 1, 1990.

Great Lakes requests that the Commission issue its order authorizing the abandonment on or before May 1, 1990. Great Lakes states that the May 1, 1990 order date would provide Peoples, if necessary, the opportunity to arrange for alternate sales or transportation services, and would also permit Great Lakes some lead time to determine an appropriate utilization of any released capacity. Great Lakes is not proposing herein to abandon any facilities.

Comment date: December 28, 1989 in accordance with Standard Paragraph F at the end of the notice.

3. Williams Natural Gas Co.

[Docket No. CP90-286-000]

Take notice that on November 29, 1989, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP90-288-000 a request pursuant to section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Texaco Gas Marketing Company (Texaco), a marketer of natural gas, under WNG's blanket certificate issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

WNG proposes to transport, on a firm basis, up to 500 dt equivalent of natural gas on a peak and average day and 182,500 dt equivalent on an annual basis for Texaco. It is stated that WNG would receive the gas at various receipt points on its system in Kansas and Oklahoma, and would deliver equivalent volumes at various points on WNG's system in Kansas, and Missouri. It is explained that the transportation service commenced September 1, 1989, under the self-implementing authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST90-462-000.

Comment date: January 22, 1990, in accordance with Standard Paragraph G at the end of this notice.

4. Southern Natural Gas Co.

[Docket No. CP90-292-000]

Take notice that on November 30, 1989, Southern Natural Gas Company, (Southern) P.O. Box 2563, Birmingham, Alabama 35303-2563, filed in Docket No. CP90-292-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Alabama Power Company (Alabama Power) under the authorization issued in Docket No. CP88-316-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern would perform the proposed transportation service for Alabama Power, a end-user of natural gas, pursuant to a service agreement dated September 25, 1989, under Southern's Rate Schedule IT (Service Agreement No. 852050). It is states that the term of the service agreement is effective from September 25, 1989, and shall be in full force and effect for a primary term of one month and shall continue and remain in force and effect for successive terms of one month thereafter until cancelled by either party giving five days written notice to the other party. Southern proposes to transport on a peak day up to 4,500 MMBtu; on an average day 221 MMBtu; and on an annual basis 81,000 MMBtu of natural gas for Alabama Power. Southern proposes to receive the gas at various receipt points in offshore Texas, offshore Louisiana, Texas, Louisiana, Mississippi, and Alabama for delivery to Alabama Power at a point of interconnection in Etowah County, Alabama. Southern asserts that no new facilities are required to implement the proposed service.

Southern states that it would perform such transportation service for Alabama Power pursuant to its Rate Schedule IT. It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Regulations. Southern commenced such self-implementing service on October 1, 1989, as reported in Docket No. ST90-125-000.

Comment date: January 22, 1990, in accordance with Standard Paragraph G at the end of this notice.

5. Southern Natural Gas Co.

[Docket No. CP90-294-000]

Take notice that on November 30, 1989, Southern Natural Gas Company (Southern) filed in Docket No. CP90-294-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible gas transportation service for Heath Petra Resources, Inc. (Heath), a gas producer, under Southern's blanket certificate issued in Docket No. CP88-316-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Pursuant to a service agreement dated September 18, 1989, Southern requests authorization to transport up to 100,000 MMBtu of natural gas per day for Heath under Southern's Rate Schedule IT. Southern states that the service agreement is for a primary term of one month with successive terms of one month thereafter unless cancelled by either party. Southern further states that Heath anticipates that only 22,000 MMBtu would transported on an average day and, based thereon, it is estimated that 8,030,000 MMBtu would be transported on an annual basis. Southern proposes to receive the gas at various existing receipt points in Texas, Louisiana, Mississippi, Alabama, offshore Texas, and offshore Louisiana and redeliver the gas to various existing points of delivery in Georgia, South Carolina and Tennessee. Southern advises that the service commenced on October 1, 1989, as reported in Docket No. ST90-121-000, pursuant to § 284.223(a)(1) of the Commission's Regulations.

Comment date: January 22, 1990, in accordance with Standard Paragraph G at the end of this notice.

6. United Gas Pipe Line Co.

[Docket No. CP90-301-000]

Take notice that on December 1, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP90-301-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for Gulf South Pipeline Company (Gulf South), under United's blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United requests authorization to transport a maximum daily quantity of 309,000 MMBtu equivalent of natural gas for Gulf South, with an estimated average daily quantity of 309,000 MMBtu. It is stated that on an annual basis, Gulf South estimates a volume of 112,785,000 MMBtu equivalent of natural gas.

United states that transportation service for Gulf South commenced October 16, 1989, as reported in Docket No. ST90-388-000, under the 120-day automatic provisions of § 284.223(a) of the Commission's Regulations.

Comment date: January 22, 1990, in accordance with Standard Paragraph G at the end of this notice.

7. Williams Natural Gas Co.

[Docket No. CP90-303-000]

Take notice that on December 1, 1989, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP90-303-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Mountain Iron & Supply Company (Mountain Iron), under WNG's blanket certificate issued in Docket No. CP86-631-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the aplication which is on file with the Commission and open to public inspection.

WNG requests authorization to transport, on firm basis, up to a maximum of 900 dekatherms of natural gas per day for Mountain Iron from receipt points located in Kansas and Oklahoma to delivery points located in Kansas and Missouri. WNG anticipates transporting an annual volume of 328,500 dekatherms.

WNG states that the transportation of natural gas for Mountain Iron commenced October 2, 1989, as reported in Docket No. ST90-464-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to WNG in Docket No. CP88-631-000.

Comment date: January 22, 1990, in accordance with Standard Paragraph G at the end of this notice.

8. Williams Natural Gas Co.

[Docket No. CP90-304-000]

Take notice that on December 1, 1989, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP90-304-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act for GasTrak Corporation (GasTrak), all as more fully set forth in the request on file with the commission and open to public inspection.

Williams proposes to transport natural gas for GasTrak, a marketer, on a firm basis, pursuant to a transportation agreement dated October 1, 1989. Williams explains that service commenced October 2, 1989, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST90-465-000. Williams further explains that the peak day quantity would be 1,825 Dth and that the annual quantity would be 666,125 Dth. Williams explains that it would receive natural gas for the account of GasTrak at receipt points located in Kansas, Oklahoma, and Wyoming and would redeliver the gas at various delivery points in Kansas and Missouri.

Comment date: January 22, 1990, in accordance with Standard Paragraph G at the end of this notice.

9. Transwestern Pipeline Company

[Docket No. CP90-306-000]

Take notice that on December 1, 1989, Transwestern Pipeline Company (Transwestern), P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP90-306-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Arco Natural Gas Marketing, Inc. (Arco), a marketer of natural gas, under Transwestern's blanket certificate issued in Docket No. CP88-133-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the commission and open to public inspection.

Transwestern proposes to transport, on an interruptible basis, up to 50,000 MMBtu per day for Arco. Transwestern states that construction of facilities would not be required to provide the proposed service.

Transwestern further states that the maximum day, average day, and annual transportation volumes would be approximately 50,000 MMBtu, 37,500 MMBtu and 18,250,000 MMBtu respectively.

Transwestern advises that service under § 284.223(a) commenced October 1, 1989, as reported in Docket No. ST90-262.

Comment date: January 22, 1990, in accordance with Standard Paragraph G at the end of this notice.

10. Tennessee Gas Pipeline Co.

[Docket No. CP90-309-000]

Take notice that on December 1, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252 filed an application with the Commission in Docket No. CP90-309-000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to modify a metering facility used to measure and deliver

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natural gas volumes to National Fuel Supply Corporation (National Fuel), an existing customer, under Tennessee's blanket certificate issued in Docket No. CP82-413-000, all as more fully set forth in the application which is open to public inspection.

Tennessee states that is proposes to modify its Clarence sales meter station in Erie County, New York, by installing an additional 10-inch meter tube to accurately measure and deliver a maximum daily natural gas quantity of 150,000 dekatherms to National Fuel. Tennessee would modify its meter station to facilitate its increased interruptible sales and transportation services to National Fuel. Tennessee also states that National Fuel would reimburse if for the $63,000 estimated modification cost pursuant to their October 20, 1989, reimbursement agreement.

Tennessee proposes no changes in its authorized total daily or annual delivery quantities to National Fuel. Tennessee asserts that its proposed meter station modification is not prohibited by its tariff and that it has sufficient capacity to deliver gas volumes to National Fuel without detriment or disadvantage to any of its other customers.

Comment date: January 22, 1990, in accordance with Standard Paragraph G at the end of this notice.

11. El Paso Natural Gas Co.

[Docket No. CP90-313-000]

Take notice that on December 1, 1989, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP90-313-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for Mobil Natural Gas Inc. (Mobil), a broker, under El Paso's blanket certificate issued in Docket No. CP88-433-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

El Paso proposes to transport on an interruptible basis up to 51,500 MMBtu of natural gas on a peak day, 51,500 MMBtu on an average day and 18,797,500 MMBtu on an annual basis for Mobil. El Paso states that it would perform the transportation service for Mobil under El Paso's Rate Schedule T-1. El Paso indicates that it would receive the gas at any point of interconnection existing from time to time on El Paso's facilities, except those requiring transportation by others to provide the subject service. El Paso states that it would deliver the gas to points of interconnection located in Texas, Oklahoma, Colorado, and New Mexico.

It is explained that the service commenced October 1, 1989, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST90-234. El Paso indicates that no new facilities would be necessary to provide the subject service.

Comment date: January 22, 1990, in accordance with Standard Paragraph G at the end of this notice.

12. Transwestern Pipeline Co.

[Docket No. CP90-314-000]

Take notice that on December 4, 1989, Transwestern Pipeline Company (Transwestern), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP90-314-000 a request pursuant to §§ 157.205 and 284.223 (18 CFR 157.205 and 284.223) of the Commission's Regulations under the Natural Gas Act for authorization to provide interruptible transportation service for Enron Gas Marketing, Inc. (Enron), a marketer of natural gas, under Transwestern's blanket transportation certificate issued in Docket No. CP88-133-000 on March 1, 1988, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transwestern proposes, pursuant to an agreement dated September 28, 1989, to transport for Enron from various receipt points in Texas and redeliver the gas at Needles, Mohave County, Arizona. Transwestern states that it proposes to transport up to 200,000 MMBtu equivalent of gas per peak day and approximately 150,000 MMBtu and 73,000,000 MMBtu equivalent of gas on an average day and annually, respectively. Transwestern states that transportation service under § 284.223(a) commenced on October 1, 1989, as reported to the Commission in Docket No. ST90-263-000 on October 27, 1989.

Comment date: January 22, 1990, in accordance with Standard Paragraph G at the end of this notice.

13. Columbia Gas Transmission Corp.

[Docket No. CP90-311-000]

Take notice that on December 1, 1989, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP90-311-000 a request pursuant to § 157.205 of the Commission's Regulations (18 CFR 157.205) to transport natural gas on behalf of Columbia Gas Development Corporation (CGDC), under Columbia's blanket certificate issued in Docket No. CP86-240-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia proposes to transport on an interruptible basis up to 25,000 MMBtu equivalent of natural gas on a peak day, 20,000 MMBtu equivalent on an average day and 3,000,000 MMBtu equivalent on an annual basis for CGDC. It is stated that Columbia would perorm the transportation service under its Rate Schedule ITS. It is asserted that the transportation service would be effected using existing facilities and that no construction of additional facilities would be required. It is explained that the service commenced September 1, 1989, under the self-implementing authorization of § 284.223 of the Commission's Regulations, as reported in Docket No. ST90-29.

Comment date: January 22, 1990, in accordance with Standard Paragraph G at the end of this notice.

14. Northern Natural Gas Co., Division of Enron Corp.

[Docket No. CP90-315-000]

Take notice that on December 4, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP90-315-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Petrus Oil Company, L.P. (Petrus), a marketer , under the blanket certificate issued in Docket No. CP86-435-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern states that pursuant to a transportation agreement dated October 10, 1989, under its Rate Schedule IT-1, it proposes to transport up to 50,000 MMBtu per day equivalent of natural gas for Petrus. Northern states that it would transport the gas from multiple receipt points as shown in Appendix "A" of the transportation agreement and would deliver the gas to multiple delivery points also shown in Appendix "A" of the agreement.

Northern advises that service under § 284.223(a) commenced October 10, 1989, as reported in Docket No. ST90-434 (filed November 8, 1989). Northern further advises that it would transport 37,500 MMBtu on an average day and 18,520,000 MMBtu annually.

Comment date: January 22, 1990, in accordance with Standard Paragraph G at the end of this notice.

15. Viking Gas Transmission Co.

[Docket No. CP90-273-000]

Take notice that on December 6, 1989, Viking Gas Transmission Company (Viking) 1010 Milam Street, Houston, Texas 77252, filed in Docket No. CP90-273-000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act and § 284.221 of the Commission's Regulations for authorization to restructure its services and for a blanket certificate of public convenience and necessity authorizing the transportation of natural gas on behalf of others pursuant to Order Nos. 436 and 500, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Viking states that its application is submitted in conjunction with a Stipulation and Agreement (Stipulation) in Docket No. RP89-36-000 which resolves all issues in that proceeding and establishes the rates, terms and conditions under which Viking will provide blanket open-access transportation. Viking states that it will not accept the blanket certificate requested herein prior to the Commission's approval of the Stipulation. In addition, Viking requests that the Commission either declare that § 284.10 of the Regulations does not apply to Rate Schedule CD-2 or waive § 284.10 insofar as it relates to Viking's service to ANR under Rate Schedule CD-2. According to Viking, this relief is necessary to allow it to become an open-access transporter without the exposure to extremely large liabilities for Canadian purchased gas demand charges under contracts for which Viking is a conduit for direct purchases by ANR Pipeline Company (ANR) from TransCanada. While the requested declaration or waiver initially postpones ANR's conversion rights, Viking states that as part of the accommodations made to settle Docket No. RP89-36-000 it will file, prior to the date for comments on the Stipulation, an application under sections 7(b) and 7(c) of the Natural Gas Act (NGA) to abandon its obligations under Rate Schedule CD-2 in stages over a two-year period beginning November 1, 1990, and convert ANR's sales obligations to self-implementing firm transportation on an accelarated scheduled.

Viking also requests pregranted abandonment of its obligations to provide firm sales service and individually certificated firm and interruptible transportation services to the extent that customers elect in the future to convert from firm sales to blanket firm transportation under § 284.10 of the Regulations or from individually certificated transportation arrangements to blanket firm or interruptible transportation. Viking requests that the Commission clarify that the scheduling and curtailment priority of a shipper who converts from individually certificated transportation to self-implementing transportation will not change as a result of a conversion.

Viking also requests blanket certificate and abandonment authority under sections 7(b) and 7(c) of the NGA to allow existing firm sales customers to reduce their firm sales obligations temporarily or permanently by transfer to other firm sales customers. In order to allow opportunity for public comment on individual transactions and specific Commission scrutiny of CD transfers where appropriate, Viking proposes to employ prior notice and protest procedures modeled after the procedures in § 157.205 of the Regulations.

Viking proposes that any firm sales customer under Rate Schedules CR-2 or CRL-2 may notify Viking at any time of its desire to be relieved of all or a portion of its firm sales obligation for one or more months. Viking states that it would then offer the available contract demand to all other Rate Schedule CR-2 or CRL-2 customers, who would submit additional requests for available CD within 30 days after such offer. If Viking is successful in finding new buyers for the available CD, it states that it will execute amendments to the service agreements of the transferror and transferee and will file a request for authorization from the Commission.

Viking states that the general terms and conditions also include a similar program for the non-discriminatory reassignment of firm transportation rights under blanket FT transportation on a first-come, first-served basis. Viking believes that the grant of its request for a blanket certificate will provide the authority necessary to allow non-discriminatory transfers of FT entitlements.

Viking also requests authority to provide limited quantity overrun sales service to Vikings's small sales customers under Rate Schedules CR-2, CRL-2 and SR-2 who historically have depended on interruptible sales gas to meet their requirements during extreme weather conditions. Viking states that this service would be available to its Rate Schedule CR-2, CLR-2 and SR-2 customers and would be limited to 50 percent of the contract demand or maximum delivery obligations of such customers. Viking proposes that its overrun service would be subordinate to firm transportation and firm sales service, but would have a higher priority than other interruptible sales under Rate Schedule I-2 and open-access transportation requested after Viking receives its blanket certificate. Overrun sales would, according to Viking, generally have the same curtailment priority as existing (pre-open-access) interruptible transportation. Additionally, Viking requests authority to revise the quantity limitations on the availability of Rate Schedule SR-2 to 1,000 Dt per day, a level which is above Viking's existing maximum delivery obligations in its service agreements with Rate Schedule SR-2 customers.

Comment date: December 22, 1989, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

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Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89–29332 Filed 12–15–89; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[ERA Docket No. 89–64–NG]

Boundary Gas, Inc.; Order Amending Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order amending long-term authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued an order to Boundary Gas, Inc. (Boundary), amending Boundary's authorization to import natural gas from Canada. On August 9, 1982, Boundary was conditionally authorized in DOE/ERA Opinion and Order No. 45 (Order 45), 1 ERA Para. 70,539, to import up to 165,000 Mcf of Canadian natural gas per day for a ten-year period beginning November 1, 1982. The authorization was conditioned upon completion of an environmental review of Boundary's import arrangements. Boundary subsequently reduced the scope of its import project and divided it into two phases. The first phase, Boundary Phase I, involved importing 40,000 Mcf per day commencing November 1, 1984, and continuing until facilities were available for Phase II, at which time 92,500 Mcf per day would be imported. The DOE, after reviewing the environmental impact of the restructured Boundary import project, reaffirmed its decision in Order 45 and removed the condition for the Phase I volumes on February 8, 1984, in DOE/ERA Opinion and Order No. 45–B, 1 ERA Para. 70,560, and for the Phase II volumes on October 10, 1989, in DOE/FE Opinion and Order No. 45–C, 1 FE Para 70,244.

The amended authorization allows Boundary to import up to 92,500 Mcf per day until January 15, 2003, pursuant to an amended Phase II contract. The amended Phase II contract does not change the overall pricing structure of Boundary's import arrangement but does eliminate the Producer fixed cost component from Boundary's demand charge as well as reflect the adoption of a two-part rate by NOVA, an Alberta Corporation which is servicing Boundary. The amended Phase II contract also contains a revised gas supply provision that provides Boundary with specific assurances regarding the deliverability of gas over the term of the import arrangement.

A copy of the order is available for inspection and copying in the Office of Fuels Programs Docket Room, Room 3F–056, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW. Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 8, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89–29359 Filed 12–15–89; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 89–56–NG]

Exxon Corp.; Order Granting Authorization To Import Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order granting blanket authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued an order granting Exxon Corporation blanket authorization to import up to 73 Bcf of Canadian natural gas over a two-year period beginning on the date of first delivery. A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 8, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89–29360 Filed 12–15–89; 8:45 am]

BILLING CODE 6450–01–M

FARM CREDIT ADMINISTRATION

Final Order Barring Claims, Discharging and Releasing the Farm Credit Bank of Louisville and Canceling Charter of the Federal Land Bank Association of Shelbyville

AGENCY: Farm Credit Administration.

ACTION: Notice.

On December 1, 1989, the Chairman of the Farm Credit Administration Board executed a Final Order barring claims against the Farm Credit Bank of Louisville (FCB) as successor to the Federal Land Bank of Louisville (FLB), arising out of the liquidation of the Federal Land Bank Association of Shelbyville; discharging the FCB; and canceling the charter of the Federal Land Bank Association of Shelbyville. The text of the Final Order is set forth below:

Final Order Barring Claims, Discharging and Releasing the Farm Credit Bank of Louisville and Canceling Charter of Federal Land Bank Association of Shelbyville.

Whereas, on September 17, 1986, the Board of Directors of the Federal Land Bank Association of Shelbyville (Shelbyville FLBA) adopted a resolution placing Shelbyville FLBA in voluntary liquidation contingent upon shareholder approval of a Purchase and Assumption Agreement (Agreement) under which substantially all assets and liabilities of Shelbyville FLBA would be transferred to the Federal Land Bank Association of the Fourth District (Fourth District FLBA) and adopted a Plan of Liquidation (the Plan) outlining the manner in which the liquidation was to proceed;

Whereas, on December 17, 1986, the stockholders of the Shelbyville FLBA approved the Agreement and, on December 22, 1986, the Farm Credit Administration approved the Plan;

Whereas, on December 23, 1986, pursuant to the Agreement, all liabilities of the Shelbyville FLBA were assumed by the Fourth District FLBA, each holder of stock or participation certificates of the Shelbyville FLBA received stock or participation certificates of the Fourth District FLBA, and all assets of the Shelbyville FLBA were transferred to the Fourth District FLBA, except for cash reserved to pay expenses of the liquidation;

Whereas, effective at the close of business on December 23, 1986, the Farm Credit Administration appointed the Federal Land Bank of Louisville (FLB), predecessor of the Farm Credit Bank of Louisville, as the Receiver of the Shelbyville FLBA, and, pursuant to the Plan, the FLB appointed Rebecca Reed as the Liquidating Agent;

Whereas, all assets of the Shelbyville FLBA have been disposed of in accordance with the Plan;

Whereas, the Shelbyville FLBA has been audited and examined, and the accounts of the Shelbyville FLBA for the period December 23, 1986, through the date of this Order have been approved;

Whereas, in accordance with the Plan and the Agreement, all claims have been paid or provided for, including, without limitation, certain administrative expenses which the Farm Credit Bank of Louisville (as successor to the FLB) has paid; and

Whereas, all claims of creditors and holders of equities of the Shelbyville FLBA shall forever be discharged;

Now, therefore, it is hereby ordered that:

1. All claims of creditors, stockholders, and holders of participation certificates and other equities, and of any other person and/or entities, against the Federal Land Bank Association of Shelbyville, or, to the extent arising out of the actions of the Federal Land Bank of Louisville or its successor, the Farm Credit Bank of Louisville, in carrying out the Plan of Liquidation of the Federal Land Bank Association of Shelbyville, as approved by the Farm Credit Administration on December 22, 1986, against the Federal Land Bank of Louisville, the Farm Credit Bank of Louisville, and the Liquidating Agent, are hereby forever discharged, and the commencement of any action, the employment of a process, or any other act to collect, recover or offset any such claims are hereby forever barred.

2. The accounts of the Federal Land Bank Association of Shelbyville for the period December 23, 1986, through the date of this Order are hereby approved.

3. The Farm Credit Bank of Louisville is hereby finally discharged and released from all responsibility or liability to the Farm Credit Administration or any other person or entity arising out of, related to, or in any manner connected with the administration and liquidation of the Federal Land Bank Association of Shelbyville during the period December 23, 1986, through the date of this Order. The discharge and release of the Liquidating Agent by the Farm Credit Bank of Louisville is hereby approved.

4. The Charter of the Federal Land Bank Association of Shelbyville is hereby canceled.

Signed: December 1, 1989.

Harold B. Steele,

Chairman, Farm Credit Administration Board.

Dated: December 12, 1989.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 89–29340 Filed 12–15–89; 8:45 am]

BILLING CODE 6705–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Fowarder License Applicants

Notice is given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 45 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarder and Passenger Vessel Operations, Federal Maritime Commission, Washington, DC 20573.

Choice Transportation Services, Inc., 826 Foster Ave., Bensenville, IL 60106, Officers: David L. Moss, President/Director, Suzette A. Emmons, Secretary.

Shipping Systems Corporation, 12201 S.W. 132 Ct. 2nd, Miami, FL 33186, Officers: Rolando R. Handal, President, Sandra Handal, Director, Sandra Yanitza Handal, Stockholder, Ronaldo V. Handal, Stockholder.

Texas Cargo, 4647 Richmond Ave., Houston, TX 77027, Officer: Elba De Melo, Sole Proprietor.

Sanka International Cargo, 8 Cypress Court, Trophy Club, TX 76262, Officer: James Milton Kaechele, Sole Proprietor.

ABM International Corporation, 388 South Ash Street, P.O. Box 67, Kuna, Idaho 83634, Officer: Ronna L. Martin, President.

Carnisco International Express, Inc., 125 Franklin Ave., Valley Stream, NY 11580, Officer: Louis J. DeMarco, President.

KCC Transport Systems Inc., 15151 S. Main Street, Gardena, CA 90247, Officers: Arthur Lee, President, Jim Kim, Vice President.

J.B. Daman, (USA), Ltd., 2500–A Broening Highway, #100, Baltimore, MD 21224, Officers: Joseph Yongseung Cho, President, Shahid Mahmud, V. President, Young Ja Cho, Secretary/Treasure.

Logistic Distrubtion Systems USA, Inc., 433 Blair Road, Avenel, New Jersey 07001, Officers: Salvatore Salomone, President, Vincenzo Rossi, Vice President, Riccardo Del Mastro, Asst. Vice President, Nisith Mitra, Treasurer.

Idaleen L. Benjamin, 2203 Airport Way South, Suite 110, Seattle, Washington 98134, Officer: Idaleen L. Benjamin, Sole Proprietor.

Steinweg/Puget Sound Warehousing Corporation, World Trade Center—Port of Tacoma, P.O. Box 1375, Tacoma, Washington 98401, Officers: Alexander Wilson, Director/Stockholder, Erik Wentges, Director/Stockholder, John B. Stakenburg, Vice Presient, Lillian M. Wilson, Secretary/Treasurer.

By the Federal Maritime Commission.

Dated: December 13, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89–29347 Filed 12–15–89; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Ambulatory and Hospital Care Statistics; Meeting

In accordance with the Federal Advisory Committee Act (Pub.L. 92–463), notice is hereby given that the NCVHS Subcommittee on Ambulatory and Hospital Care Statistics established pursuant to 42 U.S.C. 242k, section 306(k)(2), of the Public Health Service Act, as amended, announces the following meeting.

Name: NCVHS Subcommittee on Ambulatory and Hospital Care Statistics.

Time and Date: January 18–19, 1990, 9:00 a.m.–5:00 p.m. (both days).

Place: Room 337A–339A, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

Status: Open.

Purpose: The purpose of this meeting is for the Subcommittee to receive reports on data systems and research concerned with patient-provider

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encounters in ambulatory and hospital care statistics and to consider the need to review and revise the Uniform Hospital Discharge Data Set.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and roster of Committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, Room 2-12, Center Building, 3700 East West Highway, Hyattsville, Maryland 20782, telephone number, (301) 436-7050.

Date: December 12, 1989.

Elvin Hilyer,

Associate Director for Policy Coordination, Center for Disease Control.

[FR Doc. 89-29355 Filed 12-15-89; 8:45 am]

BILLING CODE 4160-18-M

Health Care Financing Administration

[BPD-539-N]

Medicare and Medicaid Programs; Organ Procurement and Transplantation Network Rules and Membership Actions

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: General notice.

SUMMARY: This notice sets forth the Secretary's interpretation of certain provisions of section 1138 of the Social Security Act. That section requires Medicare and Medicaid participating hospitals that perform organ transplants to be members of and abide by the rules and requirements of the Organ Procurement and Transplantation Network (OPTN) as established by section 372 of the Public Health Service Act. Section 1138 also requires that for organ procurement costs attributable to payments to an Organ Procurement Organization (OPO) to be paid by Medicare or Medicaid, the OPO must be a member of and abide by the rules and requirements of the OPTN. No other entity (for example, a histocompatibility laboratory) is required to be a member of or abide by the rules of the OPTN under the provisions of the statute. This notice states that no rule, requirement, policy, or other issuance of the OPTN will be considered to be a "rule or requirement" of the Network within the meaning of section 1138 unless the Secretary has formally approved that rule. It also provides that no action of the OPTN to deny an applicant or member membership status in the OPTN will be considered effective under section 1138 unless the Secretary has ratified that action.

EFFECTIVE DATE: This notice is effective February 16, 1990.

FOR FURTHER INFORMATION CONTACT: Joan Mahanes, (301) 966-4642.

SUPPLEMENTARY INFORMATION:

I. Background

The Social Security Amendments of 1972 (Pub.L. 92-603) extended Medicare coverage to individuals with end stage renal disease who require dialysis or kidney transplantation. Section 1881 of the Social Security Act (the Act) provides for Medicare payment for kidney transplantation. Medicare also covers certain other organ transplants that HCFA has determined are "reasonable and necessary" under section 1862 of the Act, and will pay for those transplants and related organ procurement services.

The Organ Procurement and Transplantation Network (OPTN) was established under section 372 of the Public Health Service Act, as enacted by the National Organ Transplant Act of 1984 (Pub.L. 98-507), which requires the Secretary to provide by contract for the establishment and operation of the OPTN to—

(A) establish in one location or through regional centers—

(i) a national list of individuals who need organs, and

(ii) a national system, through the use of computers and in accordance with established medical criteria, to match organs and individuals included in the list, especially individuals whose immune system makes it difficult for them to receive organs,

(B) establish membership criteria and medical criteria for allocating organs and provide to members of the public an opportunity to comment with respect to such criteria,

(C) maintain a twenty-four-hour telephone service to facilitate matching organs with individuals included in the list,

(D) assist organ procurement organizations in the distribution of organs,

(E) adopt and use standards of quality for the acquisition and transportation of donated organs, including standards for preventing the acquisition of organs that are infected with the etiologic agent for acquired immune deficiency syndrome,

(F) prepare and distribute, on a regionalized basis (and, to the extent practicable, among regions on a national basis), samples of blood sera from individuals who are included on the list and whose immune system makes it difficult for them to receive organs, in order to facilitate matching the compatibility of such individuals with organ donors,

(G) coordinate, as appropriate, the transportation of organs from organ procurement organizations to transplant centers,

(H) provide information to physicians and other health professionals regarding organ donation,

(I) collect, analyze, and publish data concerning organ donations and transplants, and

(J) Carry out studies and demonstration projects for the purpose of improving procedures for organ procurement and allocation.

The House Report (H.R. Rep. No. 575, 98th Congress, 1st Session 12 (1983)) which accompanied Public Law 98-507 stated that the Committee intended that the OPTN be a strong, active national network for matching donated organs and for making available to OPOs a variety of services and resources to assist and enhance their operation.

Until the enactment of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-509), membership in the OPTN was voluntary. Section 9318 of Public Law 99-509 added a new section 1138 to the Act. Section 1138(a)(1)(B) requires Medicare and Medicaid participating hospitals that perform organ transplants to be members of and abide by the rules and requirements of the OPTN. Section 1138(b)(1)(D) requires that for organ procurement costs attributable to payments to an Organ Procurement Organization (OPO) to be paid by Medicare or Medicaid, the OPO must be a member of and abide by the rules and requirements of the OPTN. Although not required by Federal law, other entities (for example, histocompatibility laboratories) may also choose to be members of the OPTN.

Section 102(c) of the Balanced Budget and Emergency Deficit Control and Reaffirmation Act of 1987 (Pub. L. 100-119) delayed the effective date of section 1138(a) of the Act concerning hospitals from October 1, 1987 to November 21, 1987 and section 4009(g) of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203) extended the effective date of section 1138(b) of the Act concerning OPOs to April 1, 1988.

Title IV, the Organ Transplant Amendments of 1988 (Pub. L. 100-607), amended section 372 of the Public Health Service Act to require that the OPTN establish membership criteria and subject its policies to public review and comment.

On March 1, 1988 (53 FR 6526), HCFA published final rules that included the requirement that Medicare and Medicaid OPOs and hospitals performing transplants must be members of and abide by the rules and requirements of the OPTN (42 CFR 485.305 and 482.12(c)(5)(ii)) in order to qualify for Medicare or Medicaid payments. There has been no further guidance issued by HCFA or other HHS components concerning what constitutes

a rule or requirement of the Network or what procedures will be used to determine whether an entity is a member of the Network, and, more specifically, no establishment of the process by which the Secretary will approve or disapprove actions of the OPTN and announce these decisions to the public.

Consequently, there is a potential for confusion with OPOs and with hospitals performing transplants concerning the procedures under which OPTN rules will be made and enforced. It also may not be clear whether other entities, such as histocompatibility laboratories, are required to be members of, and abide by the rules of the OPTN. We note that there is no statutory or other requirement for such membership.

The purpose of this general notice is to clarify that OPTN rules and requirements which are mandatory upon Medicare and Medicaid participating hospitals performing transplants and OPOs are subject to the Administrative Procedure Act (APA) requirements, and to announce the Secretary's interpretation of the section 1138 phrase "rules and requirements" of the Network. The provisions of this notice state that the Secretary must review and approve matters proposed by the OPTN contractor to be rules and requirements of the OPTN in order for them to be binding upon hospitals and OPOs and must approve the exclusion of such entities from membership in order for such action to become effective. Generally stated, when the Secretary has approved a rule or requirement of the OPTN, he or she will publish it in the **Federal Register**. To date, no policies or procedures have been approved by the Secretary as binding OPTN rules.

II. Provisions of the Notice

In order to be a rule or requirement of the OPTN, and therefore mandatory or binding on hospitals and OPOs participating in Medicare or Medicaid, the Secretary must have given formal approval to the rule or requirement. Approved rules and requirements will be issued in accordance with the Administrative Procedure Act (5 U.S.C. 501 et seq.). If an OPTN rule or requirement would constitute a "rule" within the meaning of the APA and is not exempt from the publication requirement, it will be published in the **Federal Register**. No hospital will be considered out of compliance with section 1138(a)(1)(B) of the Act or the regulations at 42 CFR 482.12(c)(5)(ii), and no OPO will be considered to be out of compliance with section 1138(b)(1)(D) of the Act or regulations at 42 CFR 485.305 unless the Secretary has given the OPTN formal notice approving the decision to exclude the entity from the OPTN and has also notified the entity in writing.

III. Regulatory Impact Statement

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any notice that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a notice would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all OPOs and participating hospitals performing organ transplants are considered to be small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a proposed rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer whan 50 beds located outside of a Metropolitan Statistical Area.

There are two provisions of this notice. Initially, no rule of the OPTN will be mandatory or binding on hospitals and OPOs participating in Medicare or Medicaid unless and until the Secretary has given formal approval to the rule and it has been published in the **Federal Register**. Secondly, no hospital will be considered out of compliance with section 1138(a)(1)(B) of the Act or regulations at 42 CFR 482.12(c)(5)(ii) and no OPO will be considered to be out of compliance with section 1138(b)(1)(D) of the Act or regulations at 42 CFR 485.305 unless the Secretary has given the OPTN formal notice approving the decision to exclude the entity from the OPTN and has also notified the entity in writing. Section 1138(a)(1)(B) of the Act and 42 CFR 482.12(c)(5)(ii) require hospitals in which organ transplants are performed to be members of the OPTN and abide by its rules and requirements while section 1138(b)(1)(D) of the Act and 42 CFR 485.305 require an OPO to be a member of, have a written agreement with, and abide by the rules and requirements of the OPTN.

The purpose of this notice is to ensure that OPOs and hospitals performing transplants have the opportunity to be apprised of proposed rules of the OPTN that will be considered mandatory for participation in Medicare or Medicaid, to comment on those rules and to have their comments considered in final rulemaking under the Administrative Procedure Act. Any such actions will be analyzed for economic impact prior to publication. This notice does not itself create any requirements under section 1138 of the Act, and therefore has no effect on the economy, beneficiaries, or small entities.

This notice does not meet the $100 million criterion nor do we believe that it meets the other E.O. 12291 criteria. Therefore, this notice is not a major rule under E.O. 12291, and a regulatory impact analysis is not required. In addition, for the reasons stated above, we have determined, and the Secretary certifies, that this notice will not have a significant economic impact on a substanital number of small entities and will not have a significant impact on the operations of a substanial number of rural hospitals. Therefore, we have not prepared analyses for either the RFA or small rural hospitals.

IV. Paperwork Reduction Act

This notice contains no information collection requirements subject to Executive Office of Management and Budget approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

(Sec. 1138 of the Social Security Act (42 U.S.C. 1320B-8))

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance)

Dated: October 12, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 89-29341 Filed 12-15-89; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

or (202) 426-0015 (TDD). These are not toll free numbers.

Bureau of Land Management at the address identified above, where the

Written Comments: Interested persons may file written comments with the

the adequacy of those efforts, and suggest alternative approaches or

effectiveness of the regulations prescribed pursuant to the section.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. D-89-810; FR-2696]

Delegation of Authority Under Section 504 of the Rehabilitation Act of 1973, as amended, and 24 CFR Part 8

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of delegation of authority.

SUMMARY: This delegation of authority relates to the enforcement of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination based on handicap, in programs and activities receiving Federal financial assistance from the Department of Housing and Urban Development (HUD) (24 CFR part 8). This delegation of authority specifically concerns the "reviewing civil rights official;" *i.e.*, the person within HUD assigned to accept appeals from certain determinations of the responsible civil rights official." On May 24, 1988, the Secretary delegated this authority to the Under Secretary (53 FR 20253, June 2, 1988). The Secretary of HUD is now revoking that delegation to the Under Secretary and is delegating to the Assistant Secretary for Fair Housing and Equal Opportunity the authority to act as the "reviewing civil rights official" under 24 CFR part 8. The Assistant Secretary now has the authority both to issue a preliminary finding of noncompliance under section 504 (in the role of "responsible civil rights official" (see 53 FR 20253)) and to review that preliminary finding in light of supplementary information (in the role of "reviewing civil rights official"). Because a review of the preliminary finding must be based on new information which was not known at the time of the initial finding, the current delegation of authority does not create a conflict with respect to the Assistant Secretary's dual roles. In those cases in which a finding of compliance is made, the Assistant Secretary acts only as "reviewing civil rights official;" the "responsible civil rights official" in such cases is the Director of the Office of HUD Program Compliance. This change in the delegation of authority is being made because such authority is more appropriately vested in the Assistant Secretary for Fair Housing and Equal Opportunity, the principal official within the Department responsible for civil rights matters.

FOR FURTHER INFORMATION CONTACT: Eleanor Clagett at (202) 755-5404 (voice) or (202) 426-0015 (TDD). These are not toll free numbers.

Delegation of Authority

The Secretary of Housing and Urban Development revokes the previous delegation to the Under Secretary, and delegates to the Assistant Secretary for Fair Housing and Equal Opportunity, the authority to act as the "reviewing civil rights official" as set forth in 24 CFR part 8, "Nondiscrimination Based on Handicap in Federally-Assisted Programs and Activities of the Department of Housing and Urban Development."

Dated: December 7, 1989.

Jack Kemp,

Secretary, Department of Housing and Urban Development.

[FR Doc. 89-29327 Filed 12-15-89; 8:45 am]

BILLING CODE 4210-33-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK-965-4230-15; F-73308]

Alaska Native Claims Selection; NANA Regional Corp.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of sec. 14(h)(8) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(8), will be issued to NANA Regional Corporation, Inc. for approximately 43,722 acres. The lands involved are in the vicinity of the Red Dog Mine in Alaska.

Kateel River Meridian, Alaska (Unsurveyed)

T. 30 N., R. 17 W.
T. 31 N., R. 17 W.
T. 32 N., R. 17 W.
T. 30 N., R. 18 W.
T. 31 N., R. 18 W.
T. 32 N., R. 18 W.
T. 30 N., R. 19 W.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Tundra Times. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until January 17, 1990 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Carolyn A. Bailey,

Acting Chief, Branch of Northwest, Adjudication.

[FR Doc. 89-29344 Filed 12-15-89; 8:45 am]

BILLING CODE 9210-JA-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-297]

Certain Cellular Radiotelephones and Subassemblies and Component Parts Thereof; Initial Determination Terminating Respondents on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondents on the basis of a settlement agreement: Nokia Corporation (a/k/a Nokia Oy and AB Nokia Oy), Nokia-Mobira Oy, Nokia, Inc., Nokia-Mobira, Inc., TMC Ltd. (formerly known as Tandy Mobira Communications Corporation), Tandy Corporation, and A&A International.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. S1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on November 28, 1989.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

Written Comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 500 E Street SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202-252-1802.

Issued: November 28, 1989.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-29431 Filed 12-15-89; 8:45 am]

BILLING CODE 7020-02-M

MERIT SYSTEMS PROTECTION BOARD

Establishment of the Advisory Committee on Federal Workforce Quality Assessment

AGENCY: Merit Systems Protection Board.

ACTION: Notice of establishment of an advisory committee.

SUMMARY: This notice is published in accordance with sec. 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463) and advises of the establishment of the Advisory Committee on Federal Workforce Quality Assessment. The committee is being established jointly with the Office of Personnel Management. The Chairman of the Merit Systems Protection Board and the Director of the Office of Personnel Management have determined that establishment of this Advisory Committee is in the public interest. The purpose of the Advisory Committee is to provide the opportunity for a wide spectrum of experts to review the various workforce quality assessment efforts underway or contemplated within the Federal Government. The committee will advise the Merit Systems Protection Board and the Office of Personnel Management on the adequacy of those efforts, and suggest alternative approaches or additional initiatives. Agencies, unions, academia, private companies and professional associations will be represented on the Advisory Committee.

EFFECTIVE DATE: January 2, 1990.

FOR FURTHER INFORMATION CONTACT: Katherine Naff, Office of Policy and Evaluation, Merit Systems Protection Board (202) 653-7833.

Dated: December 13, 1989.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 89-29361 Filed 12-15-89; 8:45 am]

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OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Policy Letter on Consultants and Conflicts of Interest; Invitation for Public Comment

AGENCY: Office of Federal Procurement Policy, OMB.

ACTION: The Office of Federal Procurement Policy (OFPP) is publishing a Policy Letter dealing with consultants and conflicts of interest.

SUMMARY: This OFPP Policy Letter establishes (a) government-wide policy relating to conflict of interest standards for persons who provide consulting services to the United States Government or to persons who contract with the United States, and (b) procedures to promote compliance with those standards.

The policy is issued pursuant to section 8141 of the 1989 Department of Defense Appropriation Act, Public Law No. 100-463, 102 Stat. 2270-47 (1988) and section 6 of the OFPP Act, codified at 41 U.S.C. 404.

Section 8141 directs that government-wide regulations be promulgated to implement the provisions of this Policy Letter no later than 180 days after the date of issuance of the policy.

Before the issuance of the regulations required by section 8141, the President is empowered to make a determination that the regulations "would have a significantly adverse effect on the accomplishment of the mission of the Department of Defense or other federal government agencies * * *." Submission of a report containing an adverse effect determination to Congress will automatically nullify and void the regulations.

Section 8141 also directs the Comptroller General to report to Congress no later than one year from the date of enactment his assessment of the effectiveness of the regulations prescribed pursuant to the section.

SUPPLEMENTARY INFORMATION: A proposed Policy Letter was published on June 7, 1989, at 54 FR 24435. Twenty-six comments were received by OFPP in response to its request for comments. The following summarizes the major issues raised and explains how OFPP responded.

1. Definition of unfair competitive advantage. Several people requested that the term "unfair competitive advantage" be defined and a definition has been provided. The underlying general concept of the definition is that people should not benefit from exclusive access to information. This is intended to be consistent with and to supplement the provisions of FAR Subpart 9.5, Organizational Conflicts of Interest.

2. Definition of "conflict of interest." One respondent observed that nowhere does the definition of "conflict of interest" make clear that the consultant must be "acting in conflict with a prior and continuing obligation to another party," and that the examples given in section 4(d) of the Policy Letter encompass perfectly permissible activity. We believe, however, that it is sufficient to require "impartial" assistance or advice. The examples given, furthermore, are cited as situations in which there is a potential for conflicts to arise.

Another respondent pointed out that we have provided no standards by which a contractor can reasonably determine whether a possible conflict exists. We have added explanatory language to the definition, but also envision that the writers of the regulations that will implement this Policy Letter will provide further clarification where necessary to permit contractors to make more meaningful "bid/no bid" decisions and to permit contracting officers to make more informed judgments about whether a conflict of interest may be present.

Several respondents pointed out the redundancies in the proposed definition of conflict of interest. Accordingly, we substituted "impartial" for "impartial, technically sound, or objective."

Another suggestion was to make the definition of "conflict of interest" in the Policy Letter consistent with the FAR 9.501 definition. We believe the two definitions are consistent. However, for the Policy Letter, we have relied principally on the definition of conflict of interest provided in 1977 legislation pertaining to the Department of Energy at 15 U.S.C. 789 and 42 U.S.C. 5918. Furthermore, FAR Subpart 9.5 emphasizes restrictions on future

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activities, whereas sections 10(e) and 12 of this Policy Letter explicitly authorize contracting officers not to award a contract at all, as opposed to writing restrictions applicable to future activities into a contract to be awarded. (FAR 9.501 provides as follows: An "organizational conflict of interest exists when the nature of the work to be performed under a proposed Government contract may, without some restriction on future activities, (a) result in an unfair competitive advantage to the contractor or (b) impair the contractor's objectivity in performing the contract work.")

3. Providing for contractor standards of conduct. Several respondents questioned provisions relating to internal standards of conduct and codes of ethics. Another objected to the lack of full disclosure afforded firms with such standards. We have reconsidered this portion of the Policy Letter and, based on the comments received, have deleted these provisions.

4. Consistency with Department of Energy conflict of interest regulatory program. The Department of Energy urged OFPP to recognize an exception from the application of the Policy Letter where an agency's conflict of interest program goes beyond the intent and coverage of the proposed Policy Letter or is based on other statute or authority requiring conflict of interest provisions. In formulating our policy we relied heavily on the same statutory authority that is the basis of the Department of Energy's conflict of interest program, so there should not be a conflict between the approach chosen by the Department and this policy. Where the Department is subject to a specific statutory mandate, it must, of course, comply.

5. Certificate unnecessary. One respondent objected to calling for the use of a certification. We believe, however, that certification offers a reasonable means for ensuring heightened attention to conflict of interests by both government and industry personnel, in keeping with the intent of the statute.

6. Clarification of definitions. Comments received highlight the difference between nondiscretionary technical or engineering services and services that assist in formulation of policy and decisionmaking. One respondent correctly pointed out that our definition of advisory and assistance services appeared to exclude engineering and technical services, when in fact those kinds of services do involve discretionary decisions. Accordingly, we make clear that not all engineering and technical services are included, only those involving this discretionary element.

Thus, a "tech rep" who is engaged to maintain a diesel generator will indeed be rendering a technical service, but he will maintain the equipment according to well established technical standards likely found in a maintenance manual.

These situations are to be contrasted with an engineer's recommending that an XYZ Corporation antitank missile be purchased rather than one produced by the ABC Corporation when he or she has done work for XYZ on antitank missiles in the past.

Similarly, if an accounting firm is hired to install an accounting system already identified in a solicitation, this is distinguishable from its being hired to recommend which system the government should install. A consultant that tests auto emissions for an auto manufacturer provides a different type of service when it advises the Environmental Protection Agency on emission standards for autos.

In all the exclusions provided for there is the underlying belief that they either do not involve the making of highly discretionary decisions or that the potential for abuse, even if present, is not serious. Also, we note the fact that many professionals are governed by strict codes of ethics, as well as the fact that even within a single firm it is possible for informal peer review to play a part in ensuring adherence to established technical principles and procedures. Nonetheless, a sensitivity to conflict of interest issues should guide government and private officers and employees at all times, even when this Policy Letter or other laws or regulations do not impose specific duties. Provisions for exclusions in this Policy Letter are not intended to encourage ways of doing business that are not in accordance with the highest ethical standards. See subsection 6(b) of the Policy Letter.

7. Reexamine reliance on Circular A–120. One respondent suggested that in considering how to define advisory and assistance services, we should look at the conceptual problems with Office of Management and Budget Circular A–120, Guidelines for the Use of Advisory and Assistance Services. The respondent contends that the assumptions underlying Circular A–120 are outdated to the extent that the Competition in Contracting Act has injected more competition into the process of acquiring advisory and assistance services.

There is merit to this view and it will be taken into account in considering the recommendations of an inter-agency working group that is studying ways to improve Circular A–120. For the present, the Policy Letter has sought to avoid a proliferation of definitions of "advisory and assistance services" by incorporating by reference the definitions in Circular A–120.

8. Same or substantially similar. Respondents expressed concern over the requirement that information would need to be reported about clients when the consultant has rendered "services respecting the same subject matter of the instant solicitation, or substantially similar to it * * *." They believe this will adversely affect consultants who render specialized services relating to a narrow range of activities, as, for example, generic inventory control systems. We have clarified the requirement by changing the language of paragraphs 8(b)(5) and 9(b)(4) of the Policy Letter to require information with respect to "the same subject matter of the instant solicitation, or directly relating to such subject matter * * *." This approach emphasizes the need for more of a connection to the instant solicitation than that inherent in the idea of substantial similarity, and focuses attention on conduct that has the greatest potential for conflicts of interest.

9. Agency head waivers. Some respondents requested a different provision for agency head waivers, namely that we provide for a waiver if the services in question are "integral to the operation of a program or system." We did not adopt this approach because we think the concept of integral services is ambiguous. Based on other comments, we have clarified that the waiver authority is to be exercised on a contract-by-contract basis, and only by the head of the agency.

10. Thresholds, time periods. We did not adopt the suggestion to lower and make uniform all thresholds provided for in the Policy Letter. Nor did we adopt a suggestion that we raise the thresholds. We have tried to establish thresholds that will allow the government to collect meaningful data yet not burden large numbers of contractors where the risk of abuse is low. As practice dictates, we can revise the thresholds in the future. A related suggestion was made to make the certification provisions apply only to procurements of major systems. We believe this is to be too restrictive a provision. We also did not adopt a suggestion that marketing consultants be required to report on their activities for a period longer than 12 months.

11. Apparently successful offeror. One respondent suggested that we require certificates of others beside the apparently successful offeror. This would have the advantage of ensuring that contractors address conflict of interest questions at the earliest opportunity and of ensuring that a successful offeror discovered to have a conflict of interest on the verge of being awarded a contract does not delay the procurement unduly if it happens that an award cannot be made to that contractor. Because of the importance of the conflict of interest issue, we believe that contractors already have the incentive to address the issue as early as possible. We have also provided new language in paragraphs 8(c) of the Policy Letter to encourage this. We agree that there is a risk of delay in our approach but we believe the flexibility available in the device of modifying contract language to avoid or mitigate conflicts will reduce that risk. Finally, our approach minimizes the burden on contractors.

12. Reliance on contractor judgments. One respondent questioned our reliance on a form of self-certification in paragraphs 8(c) and 9(b)(5) of the Policy Letter because of the subjectivity involved in such a device. We recognize the validity of this observation but choose not to devise an alternative approach that causes large amounts of raw information to flow to the hands of the contracting officer. We believe the approach selected adequately heightens sensitivity to conflict of interest problems.

13. Three-year option. One respondent suggested that the provision in section 10(f) of the Policy Letter permitting the contracting officer to request up to three years of data is a significant requirement. We agree, but note that these data can only be requested upon approval of the head of the contracting activity. We anticipate that this authority will be sparingly used, and then only for limited periods of time.

14. Prime contractor retention of marketing consultant certificates. One respondent suggested that we provide for the prime contractor to retain the marketing consultant's certificate in its files, similar to the procedure established in section 27a of the OFPP Act, codified at 41 U.S.C. section 423, relating to procurement integrity. We did not adopt this suggestion because we want the marketing consultant's certificate to be addressed to the government and to be retained by the government in the event of a false statement. Also, we want all certificates that contain information relating to any unfair competitive advantage to be delivered to the contracting officer.

15. Paperwork Reduction Act. One respondent suggested that the Policy Letter requires submission of information and is hence an information collection request requiring clearance from the Office of Management and Budget's Office of Information and Regulatory Affairs. While the Policy Letter itself requires no submission of data, the regulations implementing the letter will require Paperwork Reduction Act clearance.

16. Prime contractor's role in processing marketing consultant information. One respondent suggested that the information to be submitted by a marketing consultant be sent to the contracting officer, not the prime contractor. We did not adopt this suggestion because we want the prime contractor to be a participant in the process of watching for unfair competitive advantages on the part of people or firms it might wish to engage. This will require marketing consultants to provide information bearing on any possible unfair competitive advantage they might provide. We anticipate that this requirement will have the effect over time of causing marketing consultants to avoid activities that may lead to unfair competitive advantages. The idea that prime contractors might be tasked to collect information from marketing consultants in sealed envelopes would solve the confidentiality problem but this would effectively remove the prime from the process, the opposite of the result we are trying to achieve.

17. Large consulting organizations. Several respondents pointed out their concerns about how the policies in the Policy Letter will affect large consulting offices that emply many people in many branches around the world, particularly when the branches operate independently of centralized management. They also pointed out that their acounting systems have not been designed to track conflict of interest data. We have tried to define the kind of information we wish contractors to provide so that firms, even large firms, will be able to make reasonable inquiries. Nonetheless, the regulation writers may if they choose, provide for flexibility on the part of such firms, such as limiting the duty to inquire within certain geographical areas, subsidiaries, or work groups, among other things.

DATES: This Policy Letter is effective 30 days from the date of issuance on the first page of the Policy Letter. Because of the necessity for implementing regulations, the Policy Letter is issued in final form now, but will apply only to solicitations issued after the effective date of the regulations. Comments on the Policy Letter must be received by January 17, 1990.

ADDRESSES: Comments should be submitted to the Office of Management and Budget, Office of Federal Procurement Policy, Room 9025, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Richard A. Ong, Deputy Associate Administrator, Office of Federal Procurement Policy, 725 17th Street, NW., Washington, DC 20503. Telephone (202) 395–6810.

Dated: December 8, 1989.

Allan V. Burman,

Administrator Designate.

December 8, 1989.

Policy Letter 89–1

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Conflict of Interest Policies Applicable to Consultants

1. *Purpose.* The purpose of this Policy Letter is (a) to establish policy relating to conflict of interest standards for persons who provide consulting services to the government and to its contractors and (b) to provide procedures to promote compliance with those standards.

2. *Authority.* This Policy Letter is issued pursuant to section 8141 of the 1989 Department of Defense Appropriation Act, Pub. L. 100–463, 102 Stat. 2270–47 (1988) (hereinafter referred to as "the Act") and section 6 of the Office of Federal Procurement Policy (OFPP) Act, codified at 41 U.S.C. section 404.

3. *Background.* This Policy Letter is intended to implement section 8141 of the Act. That section provides, in part, as follows:

"(a) Not later than 90 days after the date of enactment of this Act, the Administrator of the Office of Federal Procurement Policy shall issue a policy, and not later than 180 days thereafter government-wide regulations shall be issued under the Office of Federal Procurement Policy Act which set forth:

"(1) conflict of interest standards for persons who provide consulting services described in subsection (b); and

"(2) procedures, including such registration, certification, and enforcement requirements as may be appropriate, to promote compliance with such standards.

"(b) The regulations required by subsection (a) shall apply to the following types of consulting services:

"(1) advisory and assistance services provided to the government to the extent necessary to identify and evaluate the potential for conflicts of interest that could be prejudicial to the interests of the United States;

"(2) services related to support of the preparation or submission of bids and proposals for federal contracts to the extent that inclusion of such services in such regulations is necessary to identify and evaluate the potential for conflicts of interest that could be prejudicial to the interests of the United States; and

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"(3) such other services related to federal contracts as may be specified in the regulations prescribed under subsection (a) to the extent necessary to identify and evaluate the potential for conflicts of interest that could be prejudicial to the interests of the United States."

4. *Definitions.*

(a) "Advisory and assistance services" means advisory and assistance services as defined in OMB Circular No. A–120, "Guidelines for the Use of Advisory and Assistance Services," dated January 4, 1988, and any amendments thereto. Only those compensated services provided pursuant to nonpersonal service contracts are covered by this Policy Letter.

(1) Such services include—

(i) services provided by individual experts and consultants;

(ii) management and professional support services;

(iii) the conduct and preparation of studies, analyses, and evaluations; and

(iv) engineering and technical services.

(2) *Exclusions.* In addition to the exclusion in OMB Circular A–120, the following services are excluded from the coverage of this Policy Letter:

(i) routine engineering and technical services (such as installation, operation, or maintenance of system, equipment, software, components, or facilities);

(ii) routine legal, actuarial, auditing, and accounting services; and

(iii) training services.

(b) "Agency" means an executive department specified in section 101 of title 5, United States Code; a military department specified in section 102 of such title; and independent establishment as defined in section 104(1) of such title; and a wholly owned government corporation fully subject to the provisions of chapter 91 of title 31, United States Code.

(c) "Conflict of interest" means that condition or circumstance wherein a person is unable or is potentially unable to render impartial assistance or advice to the government because of other activities or relationships with other persons, or wherein a person has an unfair competitive advantage.

The critical element in this definition is the existence of a relationship or potential relationship that might cause an offeror, if awarded a contract, to make recommendations or interpretations that, at the expense of the government, favor the interests of the offeror directly, or those of persons or entities presently or potentially able to confer a benefit on the offeror.

Types of potential conflicts include, but are not limited to, the following:

(1) evaluating a contractor's, or potential contractor's products or services, where the evaluator is or was substantially involved in the development or marketing of those products or services;

(2) serving as a consultant to a contractor seeking the award of a contract (or seeking to be awarded the contract directly) after preparing or assisting substantially in the preparation of specifications, or other significant contract provisions or requirements, to be used in the same acquisition;

(3) serving as a consultant to a contractor seeking the award of a contract (or seeking to be awarded the contract directly) after having access to source selection or proprietary information not available to other persons competing for the contract; and

(4) providing advice and assistance to an agency where such advice and assistance could benefit the contractor's other clients.

(d) An "unfair competitive advantage" exists, in addition to the situations addressed in FAR Subpart 9.5, where a contractor competing for award of any federal contract possesses

(1) proprietary information that was obtained from a government official without proper authorization, or

(2) source selection information that is relevant to the contract but is not available to all competitors, and

such information would assist that contractor in obtaining the contract.

(e) "Marketing Consultant" means any independent contractor who furnishes advice, information, direction, or assistance to any other contractor in support of the preparation or submission of a bid or proposal for a government contract by such contractor. An independent contractor is not a marketing consultant if he or she would be rendering advisory and assistance services pursuant to any of the exclusions in paragraph 4(a)(2), above.

5. *Exemptions.* The following may be exempted from the application of policies and regulations issued under this Policy Letter:

(a) *Intelligence activities.* Services rendered in connection with intelligence activities as defined in section 3.4(e) of Executive Order 12333 or a comparable definitional section in any successor order, or in connection with special access programs; and

(b) *Public interest considerations.* Specific contract actions where the head of an agency grants a waiver on the basis of the public interest.

6. *Policy.* Agencies must comply with the following policies:

(a) Responsibility for identifying and preventing potential conflicts of interst in government contracts is shared among the government contracting officer, the requester of the service, and other government officials with access to applicable information. The responsibility for deciding whether to award a particular contract, however, rests with the government contracting officer;

(b) Prior to contract award, contracting officers shall take appropriate steps to identify and evaluate the potential for conflicts of interest that could be prejudicial to the interests of the United States with regard to persons who provide advisory and assistance services to the government, and to take steps to avoid or mitigate any conflicts believed to exist; similar actions will be taken with regard to any unfair competitive advantage that marketing consultants provide to contractors;

(c) Federal contracting officers shall require, for contracts covered by this Policy Letter, that the apparent successful offeror provide certified information describing the nature and extent of any conflicts of interest that may exist with respect to the proposed award. Marketing consultants shall also be required to certify that they have provided no information to the contractor employing them that would give the contractor an unfair competitive advantage;

(d) Federal procurement officials shall encourage contractors to consider carefully the potential for conflicts of interest in all of their activities associated with federal procurement, and shall be sensitive to the appearance of conflicts of interest in any contracting actions; and

(e) Federal procurement regulations that implement this policy and address conflicts of interest shall take into account the need to (1) encourage participation of highly qualified persons and firms in federal procurement programs; (2) enhance and safeguard the Nation's industrial base; (3) promote full and open competition in the award of government contracts; and (4) improve the overall effectiveness and efficiency of the government's procurement programs.

7. *Responsibilities of the Defense Acquisition Regulatory Council and Civilian Agency Acquisition Council.* The Councils shall promulgate the government-wide regulations specified in section 6141 of the Act within 180 days of the effective date of this Policy Letter. Such regulations shall conform to the policies established herein. Only solicitations issued after the effective date of the regulations are affected by these policies.

8. *Responsibilities of prime contractors employing marketing consultants.* An individual or firm that employs, retains, or engages one or more marketing consultants in connection with a federal acquisition must submit to the contracting officer, with respect to each marketing consultant, the certificates described below, if the individual or firm is notified that it is the apparent successful offeror.

(a) *Certificate required.* No certificates are required for contracts of $200,000 or less. For contracts over $200,000, the contractor must file the certificate described below with respect to each marketing consultant, or provide a written statement to the contracting officer giving the reasons why no such certification can be made. The reasons given must be satisfactory to the contracting officer as to why such certificate cannot be made.

(b) *Contents of certificate.* The certificate to be submitted must contain the following:

(1) the name of the agency and the number of the solicitation in question,

(2) the name, address, telephone number, and federal taxpayer identification number of the marketing consultant;

(3) the name, address, and telephone number of a responsible officer or employee of the marketing consultant who has personal knowledge of the marketing consultant's involvement in the contract;

(4) a description of the nature of the services rendered by or to be rendered by each marketing consultant;

(5) based on information provided to the contractor by the marketing consultant, if any marketing consultant is rendering or, in the 12 months preceding the date of the certificate, has rendered services respecting the same subject matter of the instant solicitation, or directly relating to such subject matter, to the government or any other client (including any foreign government or person), the name, address, and telephone number of the client or clients, and the name of a responsible officer or employee of the marketing consultant who is knowledgeable about the services provided to such client(s), and a description of the nature of the services rendered to such client(s);

(6) a statement that the person who signs to certificate for the prime contractor has informed the marketing consultant of the existence of this Policy Letter and associated regulations; and

(7) the signature, name, title, employer's name, address, and telephone number of the persons who signed the certificates for both the prime contractor and the marketing consultant.

(c) *Marketing consultant certificate.* In addition, the prime contractor will forward to the contracting officer a certificate addressed to the government and signed by the marketing consultant that (i) such marketing consultant has been told of the existence of the regulations implementing this Policy Letter and (ii) such marketing consultant has made inquiry, and to the best of his or her knowledge and belief, he or she has provided no unfair competitive advantage to the prime contractor with respect to the services rendered or to be rendered in connection with the solicitation, or that any unfair competitive advantage that, to the best of his or her knowledge and belief, does or may exist, has been disclosed to the prime contractor. Prime contractors may request such a certificate from a marketing consultant, or make inquiries of any marketing consultant, at any time they negotiate for the marketing consultant's services, or afterwards, until an award is made, to satisfy themselves that the marketing consultant has provided no unfair competitive advantage.

9. *Responsibilities of contractors providing advisory and assistance services.* Those individuals or firms providing advisory and assistance services to the government must submit to the contracting officer the certificate or certificates described below if the individual or firm is notified that it is the apparent successful offeror.

(a) *Certificate required.* No certificates are required for contracts of $25,000 or less. For contracts over $25,000, the certificate described in (b), below, must be filed or a written statement provided to the contracting officer giving the reasons that no such certification can be made. The reasons given must be satisfactory to the contracting officer as to why such certificate cannot be made.

(b) *Contents of the certificate.* The certificate must contain the following:

(1) name of the agency and the number of the solicitation in question;

(2) the name, address, telephone number, and federal taxpayer identification number of the apparent successful offeror,

(3) a description of the nature of the services rendered by or to be rendered on the instant contract;

(4) if, in the 12 months preceding the date of the certification, services were rendered to the government or any other client (including a foreign government or person) respecting the same subject matter of the instant solicitation, or directly relating to such subject matter, the name, address, telephone number of the client or client(s), a description of the services rendered to the previous client(s), and the name of a responsible officer or employee of the offeror who is knowledgeable about the services rendered to each client. The agency and contract number under which the services were rendered must also be included, if applicable;

(5) a statement that the person who signs the certificate has made inquiry and that, to the best of his or her knowledge and belief, (a) no actual or potential conflict of interest or unfair competitive advantage exists with respect to the advisory and assistance services to be provided in connection with the instant contract, or (b) that any actual or potential conflict of interest or unfair competitive advantage that does or may exist with respect to the contract in question has been communicated in writing to the contracting officer or his or her representative; and

(6) the signature, name, employer's name, address, and telephone number of the person who signed the certificate.

10. *Responsibilities of Executive Branch Agencies.*

(a) *Maintenance of data files.* Each agency must maintain the certificates described by this Policy Letter in the contract file. Agencies may extract and categorize such information from these files and consolidate them in a central registry, as appropriate, subject only to the requirement to safeguard information (1) as requested by the submitter of the certificate as confidential, sensitive, privileged, proprietary, or otherwise not releasable, or (2) based on independent agency determinations not to release the information pursuant to the Freedom of Information Act, or other authority.

(b) *Availability of data.* Certificates must be made available to department or agency contracting officers and their superiors, advisors, or their designees, as well as to inspectors general and government audit officials.

(c) *Nondisclosure of information.* Agencies and departments must protect, to the fullest extent permitted by law, all sensitive business and other information submitted pursuant to any policy devised or regulation promulgated pursuant to the Act. Contractors and consultants must take care to identify what information is not releasable. Opportunity to so mark such information shall be afforded to the submitter of the information at any time.

(d) *Preaward conflict of interest analysis; special contract provisions.* Agency officials must, before an award of a contract is made, determine whether a conflict of interest exists with regard to those providing advisory and assistance services to the government, or whether an unfair competitive advantage exists with respect to services provided by a marketing consultant in connection with a particular contract action. In performing this function, they may use (a) information from any certificates or statements previously submitted or submitted with the bid or offer in question and (b) any other substantive information available to them. The contracting officer shall award the contract to the apparent successful offeror unless a conflict of interest or unfair competitive advantage is believed to exist that cannot be avoided or mitigated. Finally, before the contracting officer decides not to award a contract based on conflict of interest considerations, he or she shall notify the prime contractor, or the contractor rendering advisory and assistance services, and provide a reasonable opportunity to respond. Where the contracting officer finds that it is in the best interest of the United States to award the contract notwithstanding such conflict or unfair competitive advantage, the contract file should be documented to reflect the basis for that finding.

(e) *Other information.* This Policy Letter does not prohibit contracting officers from requesting other information relevant to the goals of this Policy Letter. In addition, in special cases, and if approved by the head of the contracting activity, the contracting officer may request that the certificates described above, be made with respect to a period as long as, but no longer than, 36 months preceding the date of the certificate.

11. *Responsibilities of the Federal Acquisition Regulatory Council.* All government-wide regulations to be issued pursuant to section 6141 of the Act will be provided to the Federal Acquisition Regulatory Council for review not less than thirty days prior to publication in the Federal Register for public comment.

12. *Remedies.* Persons required to certify in accordance with this Policy Letter's associated regulations but who fail to do so may be determined to be ineligible for award of a contract. Misrepresentation of any fact may result in suspension or debarment, as well as penalties associated with false certifications or such other provisions provided for by law or regulation.

13. *Information contact.* For information regarding this Policy Letter please contact Richard A. Ong, Deputy Associate Administrator, the Office of Federal Procurement Policy, 725 17th Street, N.W., Washington, DC 20503. Telephone (202) 395–6810.

14. *Effective date.* The effective date of this Policy Letter is 30 days from the date of issuance on the first page.

15. *Sunset review date.* This Policy Letter will be reviewed three years from the date of issuance and every three years thereafter to ensure accuracy and relevancy. This review must include a reexamination of the threshold amounts in the light of any changes made in the small purchase amount provided for in FAR Part 13.

Allan V. Burman,

Administrator Designate.

[FR Doc. 89–29359 Filed 12–15–89; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

Applicant's Representations

1. The Trust is an investment

Bonds. Neither consequence will be in the best interest of the Unit holders nor

bid by the Applicant is "better than" the best price bid by the other sources in

indication that the price at which Bear Stearns would purchase such Bonds is a

conditions set forth herein or otherwise referred to herein.

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SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-17261; 812-7427]

Bear, Stearns & Co. Inc.; Notice of Application

December 11, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: Bear, Stearns & Co. Inc. ("Bear Stearns" or the "Applicant"), on behalf of Municipal Securities Trust, High Income Series (the "Trust").

Relevant 1940 Act Sections: Exemption requested under section 17(b) from the provisions of section 17(a) and under section 45(a) of the 1940 Act.

Summary of Application: The Applicant seeks an order permitting it as sponsor of the Trust to purchase certain specified securities (the "Bonds") from the Trust and for an order granting confidential treatment for certain information made a part of the application regarding the Bonds.

Filing Date: The application was filed on November 13, 1989.

Hearing or Notifcation of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 8, 1990, and should be accompained by proof of service on the Applicant, in the form of an affidavit or, for lawyers a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549; Applicant, c/o Michael R. Rosella, Esq., Battle Fowler, 280 Park Avenue, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENT INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. The Trust is an investment company registered under the 1940 Act that is sponsored by the Applicant whose units ("Units") are registered under the Securities Act of 1933. The Trust was formed to provide a high level of interest income (including earned original issue discount) by investing in a fixed, diversified portfolio of long-term tax-exempt bonds.

2. Bonds such as those included in the Trust which generate high levels of interest income are, under most circumstances, subject to greater market fluctuations and risk of loss of income and principal than are investments in lower yielding bonds. Any such fluctuations will affect the value of the portfolio and the Units. Some of the bonds in the Trust are not rated by any national rating organization and the market for such bonds may not be as broad as the market for rated bonds.

3. The Trust has invested in bonds that were purchased on a privately negotiated basis. The Bonds in question were purchased for the Trust in the privately negotiated bond market. The terms of such bonds usually are negotiated between the issuer of the bonds and the purchasers. These types of bonds usually are issued to a small number of institutional investors in smaller dollar amounts than publicly traded bonds available in the marketplace. As a result, the market for such bonds is not extensive because the terms of the instruments may reflect the particular and individualized needs of the original purchasers. In addition, there are fewer dealers making a market in these bonds because it is impractical for most dealers to allocate resources to follow issues structured by other underwriters. Therefore, there may not be a readily available market for such bonds if the Trust decides to sell them from the portfolio. The limited and specialized secondary market maintained by the original underwriter is generally the only market available for resales of these bonds.

Applicant's Legal Analysis

I. Section 17(b)

If a portfolio security is being disposed of by the Trust for credit reasons, the Applicant's exclusion from the market of dealers bidding for the security may be detrimental to the Trust and its Unit holders. To preclude Bear Stearns from bidding for the portfolio security in this specialized market may prevent the Trust from getting the "best price" in the market or force the Trust to retain the security where the Applicant is the only prospective bidder for the Bonds. Neither consequence will be in the best interest of the Unit holders nor in furtherance of the policies of the 1940 Act. The application seeks an exemption from section 17(a) which would permit Bear Stearns, the sponsor of the Trust, to purchase these privately negotiated Bonds according to the terms of the application.

II. Section 45(a)

1. Disclosure of the information regarding the Bonds is neither necessary nor appropriate in the public interest or for the protection of investors. The Unit holders of the Trust will be informed of the sale of the Bonds by the trustee ("Trustee") pursuant to the terms of the Trust's indenture. Therefore, disclosure of this information will not further any interest of the Unit holders.

2. No other public interest would be furthered by the disclosure of this information. While it is important for the SEC to review this information, public disclosure of this information would be inappropriate. The information regarding the Bonds has been obtained at the expense of Bear Stearns and, therefore, should be considered its own proprietary information. By public disclosure, other investors and potential investors will unfairly gain the benefit of this proprietary information belonging to Bear Stearns.

3. The Bonds are being sold by the Trust because their credit quality is no longer consistent with the Trust's credit quality standards. This credit quality determination may not be applicable or appropriate for holders with different investment objectives from those of the Trust. As a significant market maker in these privately negotiated Bonds, Bear Stearns is concerned that public disclosure of this information may have an adverse effect on the value of both the Bonds and privately negotiated bonds generally.

Applicant's Conditions

Applicant agrees that if the requested order is granted it will be expressly conditioned on the following:

1. Before executing any sale of the privately negotiated Bonds to Bear Stearns, the Trust will first obtain such information as it deems necessary to determine the "best price" available with respect to the quantity of the security being sold and, in doing so, the Trustee will be required to advertise the bond on national municipal bond broker wire services to obtain competitive bids. In each instance where other bids are obtained, a determination will be required, based upon the information available to the Trustee, that the price bid by the Applicant is "better than" the best price bid by the other sources in order for the Trustee to effect the sale with the Applicant. To be considered "better than" that available from other sources, Applicant's bid must be at least a standard minimum prince increment (*i.e.*, at least ⅛th of 1% of principal amount or $1.25 per $1,000 principal amount) better than the best bid from other sources. The Trustee will maintain records with respect to any transactions effected with the Applicant where the Applicant quotes the "best price" to the Trust, including documentation for having obtained bids from other dealers.

2. Before effecting a sale to the Applicant where it is the only bidder and where there are no other bids available, the Trustee will be required to determine whether such price is a "fair price." Determining whether a price is a "fair price," the Trustee may consider, to the extent possible, price quotations for privately placed securities of comparable maturity and credit quality from dealers who are not making a market in this particular security but are actively engaged in the market making of privately negotiated bonds of the type in question and any other criteria it deems appropriate (*e.g.*, appraisal of the underlying collateral or the net operating income of the project in question). Where appropriate, the factors the Trustee will examine in making the determination that securities are of "comparable maturity and quality" include, but are not limited to, (1) the respective current and projected earnings of the obligors, (2) the balance sheets or financial conditions of the respective obligors, (3) the industry outlooks for the respective obligors, (4) the management of the respective obligors, (5) debt service coverage of the respective obligors, (6) securities of comparable yield, (7) securities with comparable credit characteristics, and (8) securities of comparable maturity. The Trustee will maintain records with respect to any transactions effected with Bear Stearns, where Bear Stearns quotes the only price, and a "fair price", to the Trust, including documentation for having obtained bids from other dealers of comparable securities and any appraisals or records regarding the underlying collateral or obligors.

3. Where the Applicant has repurchased a portion of the Bonds in question from other institutional holders within 30 days of the time the Trust makes its sale of the Bonds, the price at which the Trust sells the Bonds to Bear Stearns will not be less than the highest price paid to any such institutional holder. (This procedure offers further indication that the price at which Bear Stearns would purchase such Bonds is a "fair price" since other independent institutional investors will make judgments that the repurchase price is fair based upon their own arm's-length analysis.)

4. Bear Stearns undertakes and represents that any net profit from future resale of the Bonds, liquidation of underlying collateral or recovery from litigation involving the Bonds would be paid to the Trust from which it was purchased (the Trust's pro rata portion of the amount ultimately realized by Bear Stearns less (i) the price previously paid to the Trust and (ii) the pro rata amount of the out-of-pocket costs incurred in connection with such realization, including real estate brokers' fees, selling expenses, outstanding real estate taxes and legal and other litigation related expenses), thus eliminating the profit possibility from any self-dealing. If the Trust has been completely liquidated at the time of this realization, the net profit will be paid to the Trust's Unit holders of record who received the final liquidating distribution from the Trust.

5. While the determination that the Bonds should be sold from the Trust was made by the Applicant as sponsor, the personnel of Bear Stearns making this decision are not the same personnel that are involved in the underwriting and market making of privately placed municipal securities. The unit investment trust department at Bear Stearns is involved in the selection and purchase of securities on the part of the Trust and has direct involvement in the administration and monitoring of the Trust. The public finance department and the municipal bond department of Bear Stearns perform the underwriting and market marking activities for municipal bonds. The decision to sell a portfolio security by the Trust originates and is made only by the unit investment trust department, although the municipal bond department may have been consulted on the evaluation of a portfolio security's investment quality. No solicitation of the Trust for the security is made by the public finance or municipal bond departments. The public finance and municipal bond departments will not attempt to influence or control in any way the placing of orders to sell the Bonds by the Trust with Bear Stearns.

6. Bear Stearns undertakes to maintain complete and segregated records of all the relevant documentation required under the application and of all necessary support documentation implicit in satisfying the conditions set forth herein or otherwise referred to herein.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-29329 Filed 12-15-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17290; File No. 812-7408]

Provident Mutual Life Insurance Company of Philadelphia, et al.

December 11, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for order under the Investment Company Act of 1940 ("Act").

Applicants: Provident Mutual Life Insurance Company of Philadelphia ("Provident Mutual"), Provident Mutual Variable Growth Separate Account ("Growth Account"), Provident Mutual Variable Money Market Separate Account ("Money Market Account") Provident Mutual Variable Bond Separate Account ("Bond Account") Provident Mutual Variable Managed Separate Account ("Managed Account"), (collectively, the "Continuing Accounts"), Provident Mutual Variable Growth Separate Account A ("Growth Account A"), Provident Mutual Variable Money Market Separate Account A ("Money Market Account A"), Provident Mutual Variable Bond Separate Account A ("Bond Account A"), and Provident Mutual Variable Managed Separate Account A ("Managed Account A"), (collectively, the "Combining Accounts").

Summary of Application: Order requested under section 17(b) for exemption from section 17(a).

Summary of Application: Applicants seek an order exempting the restructuring proposed below to the extent necessary to permit the transfer of assets, in the form of shares of stock of the Market Street Fund, Inc., (the "Fund") and liabilities arising in connection with certain scheduled premium variable life insurance contracts of Growth Account A to Growth Account; of Money Market Account A to Money Market Account; of Bond Account A to Bond Account; and of Managed Account A to Managed Account.

Filing Date: The Application was filed on October 6, 1989 and amended on December 6, 1989.

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Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any request must be received by the SEC by 5:30 p.m. on January 2, 1990. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, Provident Mutual Life Insurance Company of Philadelphia, 1600 Market Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Jeffrey M. Ulness, Attorney, (202) 272–3027 or Clifford E. Kirsch, Acting Assistant Director, at (202) 272–2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 253–4300).

Applicant's Representations

1. Provident Mutual, a mutual life insurance company, has issued the scheduled premium variable life insurance contracts ("Combining Account Contracts") as well as the single premium and modified premium variable life insurance contracts ("Continuing Account Contracts"). For purposes of the Act, Provident Mutual is the depositor and sponsor of the Combining Accounts and the Continuing Accounts.

2. The Growth Account, Money Market Account, Bond Account, Managed Account and Provident Mutual Variable Zero Coupon Bond Separate Account were established by Provident Mutual as separate investment accounts under Pennsylvania insurance law on October 21, 1985 as funding media for the Continuing Account Contracts. Provident Mutual similarly established the Provident Mutual Variable Aggressive Growth Separate Account on February 21, 1989. The six separate accounts are collectively registered under the Act as a single unit investment trust. The single premium and modified premium variable life insurance contracts are registered separately under the Securities Act of 1933, as amended. The Provident Mutual Variable Zero Coupon Bond Separate Account invests exclusively in units of interest of The Stripped ("Zero") U.S. Treasury Securities Fund, Provident Mutual Series A, a unit investment trust registered under the Act. The remaining five separate accounts each invest exclusively in the shares of a designated investment portfolio of the Fund, described below. Provident Mutual Variable Zero Coupon Bond Separate Account and Provident Mutual Variable Aggressive Growth Separate Account are not involved in the proposed restructuring and, therefore, are not parties to this application.

3. Under Pennsylvania law, the assets of each of the Continuing Accounts attributable to variable life insurance contracts are owned by Provident Mutual for the benefit of owners of, and the persons entitled to payments under, these contracts. Consequently, such assets are not chargeable with liabilities arising out of any other business of Provident Mutual. Income and both realized and unrealized gains and losses from the assets of the separate accounts are credited to or charged against the accounts without regard to the income, gains or losses arising out of any other business Provident Mutual may conduct.

4. The Growth Account A, Money Market Account A, and Bond Account A were established as separate investment accounts under the Pennsylvania insurance law in 1983 and the Managed Account A in 1985 as funding media for the combining Account Contracts. Three of the Combining Accounts were originally organized as separate diversified open-end management investment companies and registered accordingly under the Act. In 1985, these three separate accounts were reorganized into their current unit investment trust form, adding Managed Account A in the process and transferring the investment portfolios to the newly formed Fund. Like the Continuing Accounts, all four accounts collectively registered under the Act as a single unit investment trust.

5. Each of the Combining Accounts, invests exclusively in shares of a designated investment portfolio of the Fund. The assets of the Combining Accounts, like those of the Continuing Accounts, are not chargeable with liabilities arising out of any other business of Provident Mutual, and income, and both realized and unrealized gains and losses are credited or charged against the Combining Accounts without regad to income, gains and losses arising out of any other business Provident Mutual may conduct.

6. The Fund was organized as a Maryland Corporatin on March 21, 1985, and is registered under the Act as an open-end diversified management investment company of the series type. The Fund currently sells one series of its common stock for each of its five investment portfolios to one or more corresponding separate accounts of Provident Mutual. The Continuing Accounts and the Combining Accounts both purchase shares of stock of the Growth Portfolio, Money Market Portfolio, Bond Portfolio and Managed Portfolio.

7. In light of the small size of each of the Combining Accounts and the fact that Provident Mutual no longer offers the Combining Account Contracts for sale, the management and Board of Directors of Provident Mutual have determined that no useful business purpose is served by maintaining two duplicate sets of separate accounts as funding media for its various variable life insurance contracts. Accordingly, Provident Mutual proposes to combine the Combining Accounts with the Continuing Account by transferring the Fund Shares held as assets by each of the Combining Accounts to the Continuing Account which holds as assets Fund shares of the same investment portfolio.

8. On November 20, 1989, Provident Mutual obtained the approval of the Pennsylvania Insurance Commissioner to carry out the proposed restructuring. At the time notice of this application is published in the **Federal Register**, Provident Mutual will notify owners of the Combining Account Contracts in writing of the pending change. Provident Mutual will also pay all expenses incurred in effecting the proposed restructuring. Consistent with the requirements of the Act, state law and the terms of the Combining Account Contracts, Combining Account Contract owners will not be asked to approve the restructuring. As a practical matter, however, no owner's investment under a Combining Account Contract will change as a result of the proposed restructuring.

9. The proposed restructuring will, in effect, result in owners of the Combining Account Contracts having their interests in any of the Combining Accounts exchanged for identical interests in a corresponding Continuing Account. The Continuing Accounts are identical in structure and operation to the Combining Accounts in every way that might affect a Combining Account Contract owner's interest. The number and value of units of interest supporting each of the Combining Account Contracts in the Combining Accounts will be exactly the same after the proposed restructuring as those supporting the Combining Account Contracts in the Combining Accounts before the restructuring. The size and type of fees deducted from assets supporting the Combining Account Contracts in the Continuing Accounts will remain unchanged after the proposed restructuring from those currently being deducted from the Combining Accounts. The total size of each of the Continuing Accounts after the proposed restructuring will significantly exceed that of the corresponding Combining Accounts before the proposed restructuring.

10. The proposed restructuring will not, in any way, alter the Combining Account Contracts or in any other way change the terms and conditions of a Combining Account Contract owner's interest in the Continuing Accounts from the terms and conditions of his or her current interest in the Combining Accounts. Specifically: (1) Provident Mutual will remain the insurer and guarantor of insurance obligations under the Combining Account Contracts and will provide the same Combining Account Contract owner services after the proposed restructuring as it currently provides; (2) the cash value, cash surrender value, face amount, variable adjustment amount and loan values will be the same under each Combining Account Contract immediately after the proposed restructuring as immediately before the restructuring; (3) the calculation of cash value, cash surrender value, and variable adjustment amounts will be done in the same manner after the restructuring as it is currently done; (4) the exercise of cash value transfers and other privileges under the Combining Account Contracts will remain the same after the proposed restructuring as it currently is; (5) all fees and charges under each Combining Account Contract will remain the same after the restructuring as they currently are; and (6) the tax status of the Combining Account Contracts will be the same after the proposed restructuring as it currently is.

11. In order to reflect the transfer of assets supporting the Contracts to the Continuing Accounts, Provident Mutual will file a new registration statement under the 1933 Act on Form S–6 for the Combining Account Contracts in a timely manner to ensure that it will become effective by the date of the proposed restructuring and file an amendment to the Form N–8B–2 registration statement under the Act for the Continuing Accounts. Once the Form S–6 registration statement becomes effective, Provident Mutual will distribute copies of the prospectus contained therein to owners of the Combining Account Contracts. After the proposed restructuring Provident Mutual will, pursuant to section 8(f) of the Act and Rule 8F–1 thereunder, apply to the Commission for an order declaring that the Combining Accounts have ceased to be an investment company.

12. Because the Combining Accounts and the Continuing Accounts are affiliated persons of each other, the transfer of assets from the Combining Accounts to the Continuing Accounts may involve these entities, acting as principal, in buying and selling securities or other property from or to one another in contravention of section 17(a). Section 17(b) of the Act provides that the Commission may, upon application, grant an order exempting transactions from the prohibitions of section 17(a) of the Act.

13. Applicant represents that the terms of the proposed restructuring, as described in this application, are reasonable and fair, including the consideration to be paid and received; do not involve overreaching; are consistent with the investment policies of each of the Combining and Continuing Accounts; and are consistent with the general purposes of the Act.

14. Each of the Continuing Accounts invests exclusively in the shares of the same designated investment portfolio of the Fund as does its Combining Account counterpart. Therefore, to the extent that the investment objectives of these portfolios can be attributed to any of the Combining or Continuing Accounts, each Continuing Account will, by definition, have the same investment objects, policies, restrictions and portfolios after the proposed restructuring as its Combining Account counterpart has before the proposed restructuring. The proposed restructuring will be affected by "combining" each of the Combining Accounts with its twin among the Continuing Accounts by transferring Fund shares from the Combining Account to the Continuing Account. The transfer will occur in conformity with section 22(c) of the Act and Rule 22c–1 thereunder in that the aggregate net asset value of the transferred shares will not change and each Combining Account Contract owner holding units of interest in one of the Combining Accounts will have those units exchanged for units of equal value in the corresponding Continuing Account. The "prices" or values of the exchanged interests under the Contracts will thus be equivalent. In addition, the proposed restructuring will impose no tax liability upon Contract owners or alter the tax status of the Combining Account Contracts. The proposed restructuring will not in any way dilute the interests of the Combining Account Contract owners. Provident Mutual will bear all costs and expenses associated with the proposed restructuring. The Combining Accounts, the Continuing Accounts and the Combining Account Contracts owners will incur no costs or expenses and will not pay any fees or charges as a result of the proposed restructuring. Therefore, no direct or indirect dilution of Combining Account Contract owner interest will occur.

15. Applicants assert that the proposed restructuring will benefit Combining Account Contract owners by consolidating eight separate accounts into four. The restructuring is motivated by efficiencies of administration that will result from the elimination of the Combining Accounts, the continued existence of which serves no reasonable purpose. Provident Mutual expects and intends that Combining Account Contract owners will benefit from the proposed restructuring to the extent that it streamlines record keeping and other administrative operations.

16. Applicants assert that the proposed restructuring is consistent with the general purposes of the Act, as enunciated in the Findings and Declaration of Policy of the Act, particularly, section 1(b)(2). Applicants further assert that the proposed restructuring does not present any of the abuses the Act was designed to prevent or raise issues it was designed to address. Applicants represent that they will carry out the proposed restructuring in a manner appropriate in the public interest and consistent with the protection of investors.

17. Applicants request an order of the Commission pursuant to section 17(b) of the Act exempting the proposed restructuring from the provisions of section 17(a) of the Act. For all reasons stated above, the terms of the proposed restructuring including the consideration to be paid or received, are reasonable and fair to the Combining and

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Continuing Accounts and to the Combining Account Contract owners and do not involve overreaching on the part of any person; furthermore, the proposed restructuring is consistent with the policy of each of the Combining Accounts and the general purposes of the Act.

For the Commission, by the Division of Investment Management, pursuant to the delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-29330 Filed 12-15-89; 8:45 am]

BILLING CODE 8010-01-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 241
Monday, December 18, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, December 20, 1989.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

MATTERS TO BE CONSIDERED:

Open to the Public

1. *Election of Vice Chairman.* The Commission will elect a Vice Chairman for term beginning January 1, 1990 and ending December 31, 1990.

2. *Acetonitrile and Sodium Bromate Petition, PP 88-2.* The staff will brief the Commission on Petition PP 88-2 requesting Child Resistant Packaging for glue removers containing acetonitrile and permanent wave neutralizers containing potassium bromate or sodium bromate.

Closed to the Public

3. *Enforcement Matter OS# 4380.* The staff will brief the commission on enforcement matter OS# 4380.

4. *Compliance Status Report.* The staff will brief the Commissionn on various compliance matters.

For a recorded message containing the latest agenda information, call: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301-492-6800.

Dated: December 13, 1989.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 89-29466 Filed 12-14-89; 2:00 pm]

BILLING CODE 6355-01-M

FEDERAL TRADE COMMISSION:

TIME AND DATE: 2:00 p.m., Thursday, February 22, 1990.

PLACE: Federal Trade Commission Building, Room 532, 6th Street and Pennsylvania Avenue, NW., Washington, D.C. 20580.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Portions Open to Public:

(1) Oral Argument in Owens-Illinois, Inc., et al. Docket 9212.

Portions Closed to the Public:

(2) Executive Session to follow Oral Argument in Owens-Illinois, Inc., et al. Docket 9212.

CONTACT PERSON FOR MORE INFORMATION: Susan B. Ticknor, Office of Public Afairs: (202) 326-2179, Recorded Message: (202) 326-2711.

Donald S. Clark,

Secretary.

[FR Doc. 89-29470 Filed 12-14-89; 2:00 pm]

BILLING CODE 6750-01-M

Corrections

Federal Register
Vol. 54, No. 241
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Corrections

Federal Register
Vol. 54, No. 241
Monday, December 18, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Determination of Fees for Sanitation Inspections of Cruise Ships

Correction

In notice document 89-27792 beginning on page 48942 in the issue of Tuesday, Novemer 28, 1989, make the following corrections:

1. On page 48942, in the second column, under **ACTION**, in the sixth line, "extra small" should read "Extra Small".

2. On page 48943, in the second column, in the second line "agreeess" should read "agrees".

3. On the same page, in the same column, in the sixth line "grater" should read "greater".

4. On the same page, in the same column, the table following the third complete paragraph was incorrectly published and is republished below.

Tonnage	Classification	Fee
<3,001 GRT	Extra Small Ship	$624
3,001–15,000 GRT	Small Ship	$1,249
15,001–30,000 GRT	Medium Ship	$2,496
30,001–60,000 GRT	Large Ship	$3,747
>60,000	Extra Large Ship	$4,996

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 436 and 442

[Docket No. 88N-0412]

Antibiotic Drugs; Cephalexin Hydrochloride Monohydrate Tablets

Correction

In rule document 89-27763 beginning on page 48859 in the issue of Tuesday, November 28, 1989, make the following correction:

§ 436.367 [Corrected]

On page 48860, in the first column, in § 436.367(c), in the seventh line, "concentration" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

[INS NO. 1138-89]
RIN 1115-AB05

Nonimmigrant Classes Pursuant to the United States-Canada Free-Trade Agreement

Correction

In rule document 89-27536 beginning on page 48575 in the issue of Friday, November 24, 1989, make the following corrections:

§ 214.2 [Corrected]

1. On page 48578, in the second column, in § 214.2(1), above paragraph (17), "(1)" should read "(l)".

2. On the same page, in the third column, in the sixth line, "to" should read "in".

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 264

[INS Number: 1247-89]
RIN 1115-AA39

Applicant Processing for the Legalization Program; Conforming Amendments

Correction

In rule document 89-28418 beginning on page 50340 in the issue of Wednesday, December 6, 1989, make the following corrections:

§ 264.1 [Corrected]

1. On page 50341, in the third column, in § 264.1(c)(3)(v)(b), in the first line, the "(b)" should read "(B)".

2. On the same page, in the third column, in § 264.1(c)(3)(v)(c), in the first line, the "(c)" should read "(C)".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-218-AD]

Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes

Correction

In proposed rule document 89-28445 beginning on page 50411 in the issue of Wednesday, December 6, 1989, make the following correction:

§ 39.13 [Corrected]

On page 50413, in the first column, in § 39.13(B.2.a.), in the third line, "3,000" should read "3,100"

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. PS-115; Notice 1]

RIN 2137 AB53

Gas Pipeline Operating Above 72 Percent of Specified Minimum Yield Strength

Correction

In proposed rule document 89-28793 beginning on page 50780 in the issue of Monday, December 11, 1989, make the following correction:

On page 50780, in the second column, under **DATES**, in the third line, "March 12, 1989" should read "March 12, 1990".

BILLING CODE 1505-01-D

Monday
December 18, 1989

Part II

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for New Stationary Sources; Industrial-Commercial Institutional Steam Generating Units; Amendments to Nitrogen Oxides Performance Testing and Monitoring Requirements; Final Rules

ENVIRONMENTAL PROTECTION AGENCY

steam generating units with heat input capacities greater than 29 MW (100

Btu). However, firing very low sulfur fuel oils capable of meeting the SO_2

II. Administrative Requirements

The docket is an organized and

these revisions, the standards would not affect a substantial number of small

(2) Affected facilities located in a noncontinental area; or

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-3679-7]

Standards of Performance for New Stationary Sources; Industrial-Commercial-Institutional Steam Generating Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule adopts amendments to the sulfur dioxide (SO_2) and particulate matter (PM) emission standards for oil-fired industrial-commercial-institutional steam generating units with heat input capacities greater than 29 MW (100 million Btu/hour).

These amendments, which were proposed on July 6, 1989 (54 FR 28447), (1) revise the definition of very low sulfur oil, and (2) delete the PM emission limit of 43 ng/J (0.10 lb/million Btu) heat input for units that fire very low sulfur oils.

No objections were raised concerning these proposed amendments during the public comment period. In response to suggestions made by the commenters, two minor changes are being incorporated to clarify the amendments. These amendments, therefore, are being promulgated basically as proposed.

DATE: The effective date of this regulation is June 19, 1986.

ADDRESSES: *Docket.* Docket Number A-83-27, containing supporting information used in developing the promulgated revision, is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket, room M-1500, 1st Floor, Waterside Mall, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Porter ((919) 541-5251) or Mr. Rick Copland ((919) 541-5265), Standards Development Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

I. Background

New source performance standards (NSPS) were proposed on June 19, 1986 (51 FR 22384), and were promulgated on December 16, 1987 (52 FR 47828), limiting emissions of SO_2 from coal- or oil-fired industrial-commercial-institutional steam generating units with heat input capacities greater than 29 MW (100 million Btu/hour) and limiting emissions of PM from oil-fired industrial-commercial-institutional steam generating units with heat input capacities greater than 29 MW (100 million Btu/hour). Based on new information regarding the sulfur content and PM emissions potential of fuel oils, proposed revisions to the SO_2 and PM emission standards were published in the Federal Register on July 6, 1989 (54 FR 28447).

The national average sulfur content of distillate fuel oil is about 0.3 weight percent, which is equivalent to 0.3 lb SO_2 per million Btu. Consequently, an SO_2 emission rate of 0.3 lb/million Btu was used to distinguish very low sulfur fuel oil, such as distillate fuel oil, from higher sulfur fuel oil in the analyses supporting proposal and promulgation of the standards limiting SO_2 emissions from oil-fired industrial-commercial-institutional steam generating units with heat input capacities greater than 29 MW (100 million Btu/hour).

A review of Department of Energy data, however, indicated that the sulfur content of distillate fuel oil is highly variable. Although the national average sulfur content of distillate fuel oil is about 0.3 weight percent, the actual sulfur content of an individual shipment can range from as low as 0.1 weight percent to as high as 0.5 weight percent depending on such factors as: (1) The season of the year, (2) the geographic location, (3) the crude oil from which the distillate fuel oil is refined, and (4) the extent to which desulfurization or blending is used to produce distillate fuel oil at the refinery.

The maximum sulfur content of distillate fuel oil is limited to 0.5 weight percent through fuel oil specifications adopted by the American Society for Testing and Materials (ASTM). In producing a distillate fuel oil product for sale, refineries meet or exceed these specifications. The use and acceptance of these ASTM specifications is so widespread that the actual sulfur content of a shipment of distillate fuel oil is frequently not reported.

In light of the variability in the sulfur content of distillate fuel oil and the presence of widely accepted ASTM specifications limiting the sulfur content of distillate fuel oil, it seemed appropriate to define very low sulfur fuel oil by the maximum sulfur content of distillate fuel oil as specified by ASTM rather than by the national average sulfur content.

The promulgated standards for oil-fired steam generating units limit PM emissions to 43 ng/J (0.10 lb/million Btu). However, firing very low sulfur fuel oils capable of meeting the SO_2 emission limit discussed above result in PM emissions of 43 ng/J (0.10 lb/million Btu) or less. Thus, for those oil-fired units which fire very low sulfur oil, the imposition of the promulgated PM emission limit achieves no additional PM emission reductions beyond that achieved by SO_2 standards. On the other hand, the PM emission limit imposes additional costs due to the emission source testing requirements associated with the emission limit. Therefore, it did not seem reasonable to require steam generating units firing very low sulfur oil to meet the PM emission limit.

Public comments were solicited on the proposed revisions. Eleven comments were received. The commenters included six utility companies, two chemical companies, one paper company, one oil company, and one State agency. No objections to the amendments were raised. All commenters expressed support for the proposed amendments. Two commenters stated that the proposed amendments are consistent with the commenters' experience.

One commenter stated that, while the proposal is based on the ASTM specification of 0.5 weight percent sulfur, very low sulfur fuel oil is still defined in terms of lb/million Btu. The commenter stated that percent sulfur and lb/million Btu are not exactly equal in all cases and recommended that the definition be clarified so that fuel oils with 0.5 weight percent sulfur meet the definition of very low sulfur fuel oil. For the reasons stated by the commenter, the definition of very low sulfur fuel oil has been clarified to include fuel oils which contain 0.5 weight percent sulfur or less.

One commenter stated that, since the definition of very low sulfur fuel oil is based on the widely accepted ASTM specification for distillate fuel oil, there should be no need to further demonstrate through performance testing and monitoring that ASTM distillate oil meets the standard. Therefore, distillate oil that meets the ASTM specifications has been exempted from performance testing and monitoring requirements in the final standards.

One commenter questioned whether the amendments apply to sources which commenced construction between the original proposal date (June 19, 1986) and the date of the proposed revisions (July 6, 1989). These revised standards apply to all units which commenced construction after June 19, 1986.

II. Administrative Requirements

The docket is an organized and complete file of all the information considered in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking development. The docket system is intended to allow members of the public and industries involved to identify and locate documents so that they can effectively participate in the rulemaking process. Along with the statement of the basis and purpose of the proposed and promulgated amendments to the NSPS, the contents of the docket, except for interagency review materials, will serve as the record in case of judicial review (see Clean Air Act, section 307(d)(7)(A), 42 U.S.C. 7607(d)(7)(A)).

Section 317(a) of the Clean Air Act, 42 U.S.C. 7617(a) states that economic impact assessments are required for revisions to standards or regulations when the Administrator determines such revisions to be substantial. These revisions are not substantial; as a result, an economic impact assessment has not been prepared.

Paperwork Reduction Act

The information collection requirements previously approved by OMB for the Industrial-Commercial-Institutional Steam Generating Unit NSPS (40 CFR part 60 subpart Db) remain unchanged as a result of today's promulgated amendment.

Under Executive Order 12291, EPA is required to judge whether a regulation is a "major rule" and therefore subject to the requirement of a regulatory impact analysis (RIA). These amendments would result in none of the significant adverse economic effects set forth in section 1(b) of the Order as grounds for finding a regulation to be a "major rule." The amendments are not substantial. Therefore, this action is not a "major rule" under Executive Order 12291.

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601-612, requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act requires the completion of a regulatory flexibility analysis for every rule unless the Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities. Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator certifies that the final rule will not have a significant economic impact on a substantial number of small entities. The revised rule would reduce the burden on this source category, and it has already been determined that, in the absence of these revisions, the standards would not affect a substantial number of small entities (52 FR 47841, December 16, 1987).

List of Subjects in 40 CFR Part 60

Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 1, 1989.

William K. Reilly,

Administrator.

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7411, 7414, and 7601(a).

2. Section 60.41b is amended by revising the following definition:

§ 60.41b Definitions.

* * * * *

"Very low sulfur oil" means an oil that contains no more than 0.5 weight percent sulfur or that, when combusted without sulfur dioxide emission control, has a sulfur dioxide emission rate equal to or less than 215 ng/J (0.5 lb/million Btu) heat input.

* * * * *

3. Section 60.42b is amended by revising the first phrase of paragraph (a), and by revising paragraphs (d), (e) and (f), and by adding paragraph (j) to read as follows:

§ 60.42b Standard for sulfur dioxide.

(a) Except as provided in paragraphs (b), (c), (d), or (j) of this section, * * *

* * * * *

(d) On and after the date on which the performance test is completed or required to be completed under 60.8 of this part, whichever comes first, no owner or operator of an affected facility listed in paragraphs (d) (1), (2), or (3) of this section shall cause to be discharged into the atmosphere any gases that contain sulfur dioxide in excess of 520 ng/J (1.2 lb/million Btu) heat input if the affected facility combusts coal, or 215 ng/J (0.5 lb/million Btu) heat input if the affected facility combusts oil other than very low sulfur oil. Percent reduction requirements are not applicable to affected facilities under this paragraph.

(1) Affected facilities that have an annual capacity factor for coal and oil of 30 percent (0.30) or less and are subject to a Federally enforceable permit limiting the operation of the affected facility to an annual capacity factor for coal and oil of 30 percent (0.30) or less;

(2) Affected facilities located in a noncontinental area; or

(3) Affected facilities combusting coal or oil, alone or in combination with any other fuel, in a duct burner as part of a combined cycle system where 30 percent (0.30) or less of the heat input to the steam generating unit is from combustion of coal and oil in the duct burner and 70 percent (0.70) or more of the heat input to the steam generating unit is from the exhaust gases entering the duct burner.

(e) Except as provided in paragraph (f) of this section, compliance with the emission limits, fuel oil sulfur limits, and/or percent reduction requirements under this section are determined on a 30-day rolling average basis.

(f) Except as provided in paragraph (j)(2) of this section, compliance with the emission limits or fuel oil sulfur limits under this section is determined on a 24-hour average basis for affected facilities that (1) have a Federally enforceable permit limiting the annual capacity factor for oil to 10 percent or less, (2) combust only very low sulfur oil, and (3) do not combust any other fuel.

* * * * *

(j) Percent reduction requirements are not applicable to affected facilities combusting only very low sulfur oil. The owner or operator of an affected facility combusting very low sulfur oil shall demonstrate that the oil meets the definition of very low sulfur oil by: (1) Following the performance testing procedures as described in § 60.45b(c) or § 60.45b(d), and following the monitoring procedures as described in § 60.47b(a) or § 60.47b(b) to determine sulfur dioxide emission rate or fuel oil sulfur content; or (2) maintaining fuel receipts as described in § 60.49b(r).

4. Section 60.43b is amended by revising paragraphs (b) and (f) to read as follows:

§ 60.43b Standard for particulate matter.

* * * * *

(b) On and after the date on which the performance test is completed or required to be completed under 60.8 of this part, whichever date comes first, no owner or operator of an affected facility that combusts oil (or mixtures of oil with other fuels) and uses a conventional or emerging technology to reduce sulfur dioxide emissions shall cause to be discharged into the atmosphere from that affected facility any gases that contain particulate matter in excess of 43 ng/J (0.10 lb/million Btu) heat input.

* * * * *

(f) On and after the date on which the initial performance test is completed or is required to be completed under 60.8 of

this part, whichever date comes first, no owner or operator of an affected facility that combusts coal, oil, wood, or

if the owner or operator obtains fuel receipts as described in § 60.49b(r).

8. Section 60.49b is amended by

These amendments were proposed on January 13, 1989 (54 FR 1606) in response to petitions for reconsideration of the

Clean Air Act. They stated that continuous emission monitoring requirements were not reasonable for

The commenter recommended that Reference Method 7E be used instead of Reference Methods 7 or 7A. If Reference

capacity to calculate the annual capacity utilization rate.

As an example, the commenter stated

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this part, whichever date comes first, no owner or operator of an affected facility that combusts coal, oil, wood, or mixtures of these fuels with any other fuels shall cause to be discharged into the atmosphere any gases that exhibit greater than 20 percent opacity (6-minute average), except for one 6-minute period per hour of not more than 27 percent opacity.

* * * * *

5. Section 60.45b is amended by revising paragraph (d) introductory text and adding paragraph (j) to read as follows:

§ 60.45b Compliance and performance test methods and procedures for sulfur dioxide.

* * * * *

(d) Except as provided in paragraph (j), the owner or operator of an affected facility that combusts only very low sulfur oil, has an annual capacity factor for oil of 10 percent (0.10) or less, and is subject to a Federally enforceable requirement limiting operation of the affected facility to an annual capacity factor for oil of 10 percent (0.10) or less shall: * * *

* * * * *

(j) The owner or operator of an affected facility that combusts very low sulfur oil is not subject to the compliance and performance testing requirements of this section if the owner or operator obtains fuel receipts as described in § 60.49b(r).

6. Section 60.46b is amended by revising paragraph (d) introductory text to read as follows:

§ 60.46b Compliance and performance test methods and procedures for particulate matter and nitrogen oxides.

* * * * *

(d) To determine compliance with the particulate matter emission limits and opacity limits under § 60.43b, the owner or operator of an affected facility shall conduct an initial performance test as required under § 60.8 using the following procedures and reference methods: * * *

* * * * *

7. Section 60.47b is amended by revising the first phrase of paragraph (a) and by adding paragraph (f) to read as follows:

§ 60.47b Emission monitoring for sulfur dioxide.

(a) Except as provided in paragraphs (b) and (f) of this section. * * *

* * * * *

(f) The owner or operator of an affected facility that combusts very low sulfur oil is not subject to the emission monitoring requirements of this section if the owner or operator obtains fuel receipts as described in § 60.49b(r).

8. Section 60.49b is amended by adding paragraph (r) to read as follows:

§ 60.49b Reporting and recordkeeping requirements.

* * * * *

(r) The owner or operator of an affected facility who elects to demonstrate that the affected facility combusts only very low sulfur oil under § 60.42b(j)(2) shall obtain and maintain at the affected facility fuel receipts from the fuel supplier which certify that the oil meets the definition of distillate oil as defined in § 60.41b. For the purposes of this section, the oil need not meet the fuel nitrogen content specification in the definition of distillate oil. Quarterly reports shall be submitted to the Administrator certifying that only very low sulfur oil meeting this definition was combusted in the affected facility during the preceding quarter.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL 3647-8]

Standards of Performance for New Stationary Sources; Industrial-Commercial-Institutional Steam Generating Units; Amendments to Nitrogen Oxides Performance Testing and Monitoring Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule adopts amendments to the performance testing and monitoring requirements for nitrogen oxides (NO_x) applicable to industrial-commercial-institutional steam generating units with heat input capacities greater than 73 MW (250 million Btu/hour) that fire natural gas, distillate oil, and low nitrogen residual oil and that operate at very low annual capacity factors (i.e., less than 10 percent). In addition, today's promulgated rule exempts from the NO_x emission limit and the NO_x performance testing and monitoring requirements any steam generating units with heat input capacities of 73 MW (250 million Btu/hour) or less that fire natural gas, distillate oil, and low nitrogen residual oil and that operate at very low annual capacity factors (i.e., less than 10 percent).

These amendments were proposed on January 13, 1989 (54 FR 1606) in response to petitions for reconsideration of the original rule promulgated on November 25, 1986 (51 FR 42768). Several comments were submitted on the proposed amendments, and minor changes are being incorporated to the amendments to clarify the performance testing and monitoring procedures.

DATE: June 19, 1984, under section 307(b)(1) of the Clean Air Act, judicial review of the actions taken by this notice is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of the rule. Under section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Incorporation by Reference: The incorporation by reference of certain publications in these standards is approved by the Director of the Office of the **Federal Register** as of December 18, 1989.

ADDRESSES: *Docket.* Docket Number A-79-02, containing supporting information used in developing the final rule, is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket, room M1500, first floor, Waterside Mall, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Copland ((919) 541-5265) or Mr. Fred Porter ((919) 541-5251), Standards Development Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

I. Background

On November 25, 1986, standards of performance were promulgated limiting emissions of particulate matter (PM) and NO_x from industrial-commercial-institutional steam generating units with heat input capacities greater than 29 MW (100 million Btu/hour) (51 FR 42768). The Utility Air Regulatory Group (UARG) and owners of the William H. Zimmer Generating Station (Cincinnati Gas and Electric Company, Columbus and Southern Ohio Electric Company, and the Dayton Power and Light Company) requested reconsideration of the rule under section 307(d)(7)(B) of the Clean Air Act. They stated that continuous emission monitoring requirements were not reasonable for very low capacity factor steam generating units that use certain low nitrogen fuels. After reviewing the information submitted by the petitioners, the Administrator decided to use his discretionary authority to amend the rule.

Proposed revisions to the NO_x performance testing and monitoring requirements were published in the **Federal Register** on January 13, 1989 (54 FR 1606). The proposed revisions would require initial performance testing and annual testing of large industrial-commercial-institutional steam generating units (i.e., units with heat input capacities greater than 73 MW (250 million Btu/hour)) that fire natural gas, distillate oil, or low nitrogen residual oil and that operate at very low annual capacity factors (i.e., less than 10 percent). In addition, the proposed revisions would exempt from the NO_x emission limit and the NO_x performance testing and monitoring requirements any smaller steam generating units (i.e., units with heat input capacities of 73 MW (250 million Btu/hour) or less) that fire natural gas, distillate oil, or low nitrogen residual oil and that operate at very low annual capacity factors (i.e., less than 10 percent).

Public comments were solicited on the proposed revisions. Comments requesting changes to the proposed NOx amendments were submitted by the South Carolina Department of Health and Environmental Control; the Georgia Department of Natural Resources; Detroit Edison Company; the Utility Air Regulatory Group; Texaco, Inc.; Houston Lighting and Power Company; and Texas Utilities Electric Company. A summary of the comments and EPA's responses is presented below.

II. Comments Submitted Concerning the Proposed NO_x Amendment

A. Reference Methods Used for NO_x Compliance Testing

1. *Comment:* The South Carolina Department of Health and Environmental Control expressed reservations about using Reference Methods 7 and 7A to meet the proposed performance testing requirements. The commenter stated that Reference Methods 7 and 7A require four NO_x samples to be taken per run at 15-minute intervals, meaning that a 24-hour performance test would require 96 collection flasks. The commenter pointed out that the number of flasks and time spent leak checking them all may be a problem for most sources.

The commenter recommended that Reference Method 7E be used instead of Reference Methods 7 or 7A. If Reference Method 7E were used, the flask problem would be eliminated and a continuous record of the NO_x emissions for the 24-hour test period would be recorded with any trends in emissions easily documented and available for review. The commenter maintained that continuous monitoring would be more informative than four grab samples per hour which represent only 4 minutes per hour of actual emissions.

Response: Compliance with the NO_x standards can be demonstrated using "Method 7, Method 7A, or other approved reference methods, or using a continuous monitoring system." Method 7E, "Determination of Nitrogen Oxides Emissions from Stationary Sources (Instrumental Analyzer Procedure)," is an approved reference method for continuous monitoring of NO_x emissions from utility auxiliary steam generating units. Accordingly, the wording in §§ 60.46b(h)(1) and 60.46b(h)(2) is revised to include Method 7E.

B. Procedures for Determining Maximum Heat Input Capacity

1. *Comment:* The Georgia Department of Natural Resources (Georgia) pointed out that, although the proposed NO_x amendment contains a requirement to conduct a 24-hour test to demonstrate the maximum heat input capacity and to report the results (§§ 60.46b(g) and 60.49b(b)), no method for determining the maximum heat input capacity is given. The commenter stated that specific methods for calculating maximum heat input capacity should be given to ensure consistency in approach.

Response: The method for calculating the maximum heat input capacity of a steam generating unit must be consistent with the 24-hour test procedures in the American Society of Mechanical Engineers (ASME) *Power Test Code* 4.1. These procedures are incorporated by reference in § 60.17(h) of the final amendment.

2. *Comment:* Detroit Edison Company was concerned about the lack of flexibility in the 24-hour maximum heat input capacity demonstration. The commenter stated that, depending on the particular circumstances for a given facility, it may not be possible to demonstrate the maximum heat input capacity at which the steam generating unit will be operated during the first 180 days after initial startup. The commenter maintained that, in some instances, an affected facility could be forced to use an artificially low demonstrated maximum heat input capacity to calculate the annual capacity utilization rate.

As an example, the commenter stated that some auxiliary steam generating units experience peak steam demand from building heating systems only during the winter months. As another example, the commenter mentioned facilities where the normal steam load could increase over time as a phased construction program is completed or as new steam customers are added.

To offer more flexibility than currently allowed, the commenter recommended that the design maximum heat input capacity be used to calculate the annual capacity utilization factor. The commenter suggested two possible alternatives if EPA insists that an affected facility demonstrate its maximum heat input capacity either: (1) Allow the affected facility to repeat the 24-hour maximum heat input capacity demonstration at a later date when there is a higher steam demand or (2) base the annual capacity utilization rate on maximum heat input demonstrations run on steam generating units with the same design as the facility seeking a permit.

Response: Although not stated specifically in the proposed NO_x amendment, an owner/operator is allowed to repeat the 24-hour maximum heat input capacity demonstration test at any time. If a steam generating unit that is retested during a period of high steam demand demonstrates a higher maximum heat input capacity, this higher value would be accepted as long as it does not exceed the manufacturer's rated heat input capacity.

3. *Comment:* The UARG questioned whether a demonstration of maximum heat input capacity is needed. The UARG pointed out that design information provided by the steam generating unit manufacturer was used in establishing the Subpart Db NO_x emission standards (See 51 FR 42776). The UARG maintained that the manufacturer's steam generating unit capacity rating should be reliable. To verify rated capacity, an agency could simply inspect the pressure relief valve that is required by code to be the same as the maximum rated capacity.

Response: There are many different ways that manufacturers can determine the maximum rated capacity of a steam generating unit. Due to this large degree of variability and the incentive provided in the amendment to "over rate" or err on the high side in determining the maximum heat input capacity of a steam generating unit, it is necessary that owners and operators demonstrate the

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maximum rated heat input capacity of their auxiliary units.

With regard to inspecting the pressure relief valve, the ASME code requires that the steam generating unit capacity of the pressure relief valve must be at least equal to the maximum heat input capacity of the steam generating unit, and thus provides only a minimum specification. A manufacturer desiring a margin of safety can install a pressure relief valve with a larger capacity, so the value on the pressure relief valve is not necessarily an accurate measure of the maximum rated heat input capacity of the steam generating unit.

4. *Comment:* The UARG urged more flexibility in demonstrating maximum heat input capacity because it may not be possible to perform the 24-hour test within 180 days of startup. The UARG stated that if the steam from a utility auxiliary steam generating unit is used primarily to start the main unit, and a main unit startup does not occur within the initial 180-day period, then the maximum heat input capacity demonstration could not be conducted. The UARG maintained that in such cases the owner or operator could not simply vent the steam to the atmosphere for the 24-hour test period.

The UARG argued that the steam would have to be vented through the steam generating unit's pressure relief valve and the noise resulting from this activity would require some type of sound-muffling device to be installed to comply with EPA/OSHA noise requirements. The UARG also stated that 24-hour venting through a preasure relief valve would most likely destroy the valve. The UARG pointed out that if an operator were to remove the pressure relief valve, he would not be able to operate the steam generating unit because he would be violating steam generating unit codes and insurance requirements.

The UARG argued that even if all of these requirements could be met, a problem would still exist with make-up water. The UARG explained that steam generating units are built as a closed loop design so that the capability of producing deareated and demineralized water is typically only 1 to 5 percent of steam flow. According to UARG, venting steam to the atmosphere during a maximum heat capacity demonstration would require a make-up water capability at or near 100 percent of steam flow. The UARG further stated that steam generating units are simply not designed with such make-up water capabilities and that operation of a steam generating unit for 24 hours using raw water as make-up water would almost certainly damage the unit.

Response: In some cases, owners/operators of steam generating units may feel they are unable to vent steam through the pressure relief valve without damaging the valve in some way. As mentioned by UARG in an earlier comment (See Docket No. A–79–02, Docket Item VI–D–4), one of the functions of a utility auxiliary steam generating unit is to drive feed water pumps and to operate deareators during startup of the main utility steam generating unit. Once normal operating conditions of the main steam generating unit have been achieved, the owner/operator will bleed off some of the steam from the main electric utility steam generating unit and use this steam to operate the pumps and deareators. This method is more efficient than continuing to use the auxiliary unit to perform these functions. As a result, the amount of steam produced by the auxiliary steam generating unit is reduced as soon as the main steam generating unit is able to take over these functions. However, in conducting the 24-hour performance test, the utility auxiliary steam generating unit could remain in operation after the main steam generating unit starts up, continuing to provide steam to the pumps and deareators as it did during startup.

In some cases, a utility steam generating unit operates simultaneously with the main steam generating unit other than during startup. At times of peak energy demand, an owner/operator may bring the auxiliary steam generating unit on line to provide steam for operating the auxiliary equipment, thus allowing the main steam generating unit to provide as much steam as possible to generate electricity or to meet other plant steam demands. By operating the plant steam system in a similar manner, a plant owner/operator could conduct a 24-hour compliance test without venting steam.

5. *Comment:* Houston Lighting and Power Company (HL&P) recommended that a 3-hour test be used instead of a 24-hour test to document maximum heat capacity on typical steam generating units with capacity factors less than 10 percent. The HL&P pointed out that a test of shorter duration would be satisfactory to document maximum heat input and would significantly reduce the cost of the test program. The HL&P thought it unlikely that the steam produced during the test of a low capacity factor unit would be used. The HL&P stated that the cost to conduct this 24-hour test on a 70 MW (240 million Btu/hour) heat input capacity steam generating unit at full load would be $720/hour or $17,280, assuming the price of fuel to be $3/million Btu. The HL&P stated that this cost does not include steam generating unit feedwater treatment costs or additional manpower costs required for an extended test, so the actual cost could be higher.

Response: A 24-hour test is necessary to demonstrate the maximum steady-state heat input capacity of a utility auxiliary steam generating unit. During shorter testing periods, such as a 3-hour test, a steam generating unit can be operated at peak levels that exceed its true maximum steady-state continuous steam generating capacity. Because calculation of the unit's annual capacity factor is based on the maximum steady-state heat input capacity and because a 24-hour test is more representative of this heat input capacity than a 3-hour test, a 24-hour test is required in the final rule.

The costs cited by the petitioners are not unreasonably high. Furthermore, in cases where the steam produced by the auxiliary steam generating unit is used for space heating or other plant purposes (as discussed in the previous response), the effective cost of the compliance test would be lower.

C. Determination of Annual Capacity Factor

1. *Comment:* Detroit Edison noted that to calculate the annual capacity factor for § 60.49b(q), a record of the hourly steam load should be required in § 60.49b(p).

Response: A record of the hourly steam load should be required in § 60.49b(p) in order to calculate the annual capacity factor for § 60.49b(q) and, therefore, such a requirement is being added to § 60.49b(p)(3).

2. *Comment:* The HL&P stated that under the current regulations, steam generating units with capacity factors greater than 10 percent are required to conduct an initial NO_x compliance test where NO_x emissions are monitored for 30 successive steam generating unit days within the first 180 days following startup of the facility. The commenter argued that some steam generating units with low capacity factors (but above 10 percent) would have difficulty completing a 30-day test in a 180-day time period. The commenter estimated that the cost of operating the steam generating unit and venting steam to collect the additional necessary data would be $720/hour. The commenter recommended that such high costs could be avoided by using the first 30 steam generating unit operating days for compliance determination, with no 180 calendar day limit.

Response: Many auxiliary steam generating units with annual capacity factors greater than 10 percent are likely to operate on at least 30 days out of the first 180 days after startup of the unit. These units should be able to obtain the required 30 days of NO_x emissions data without incurring any additional costs. Units that would not normally operate for 30 days out of the first 180 days after unit startup could be operated as described in the response to Comment B.4, above, to obtain the needed emissions data with relatively little economic penalty. Furthermore, performance of this compliance test is required only once over the life of the unit; when compared with costs incurred over the entire life of a unit, the cost of the initial compliance test is minimal. Based on these considerations, requiring units with annual capacity factors greater than 10 percent to acquire 30 days of NO_x emissions data during the first 180 days following startup of the unit is reasonable.

D. Requirements for Initial and Annual Compliance Testing

1. *Comment:* Georgia stated that for facilities covered by § 60.44b(j), the conditions under which the initial 24-hour performance test or the follow-up 3-hour annual test should be conducted are unclear. Specifically, the commenter questioned which fuel or what combination of fuels should be used for the performance test or should individual tests be required on each fuel projected to be used.

Response: The NO_x standards state that owners or operators of an affected facility are required to demonstrate the performance of each fuel fired. A steam generating unit can combust multiple fuels in two ways, either separately or as a mixture. If a steam generating unit combusts the fuels separately, then the owner/operator must conduct a performance test to demonstrate compliance for each individual fuel to be used. If the unit combusts a mixture of fuels, then the owner/operator determines the emission limit for the mixture by multiplying the emission limit for each individual fuel by its fractional portion of the mixture. Only a single performance test, however, is required to demonstrate compliance for the mixture of fuels.

2. *Comment:* Georgia also stated that the wording in the promulgated § 60.45b(b) should be changed so as not to exempt the three-run requirement for the short-term 3-hour test. The commenter stated that for the test methods allowed, replicate runs should be required due to the accuracy and precision of the methods and the length of the test run. The commenter also stated that, for the short-term 3-hour tests, certain conditions on the use of the test methods (e.g., number of runs, sample volume, etc.) such as given in 40 CFR 60.46 should be included.

Response: The wording in § 60.45b(b) should be changed so as not to exempt the three-run requirement for the short-term, 3-hour NO_x test. The three-run requirement would help ensure accuracy and precision of the short-term 3-hour test. Because detailed information (such as sample volume) needed to perform the required reference methods is presented in appendix A of 40 CFR part 60, it is not necessary to provide specific test conditions in the regulation.

3. *Comment:* Georgia also pointed out that according to the promulgated § 60.44b(h), the NO_x standards apply at all times, including startup, shutdown, or malfunction. However, the commenter believed that this provision was only meant to apply when a 30-day rolling average compliance determination is made and recommended that the proposed amendment be changed to state that this paragraph does not apply for the short-term 3-hour tests.

Response: Demonstration of compliance during periods of startup and shutdown is not appropriate when using the short-term 3-hour annual test. A slight revision to the wording of § 60.44(b)(h) is being made.

4. *Comment:* Texas Utilities Electric Company (TU Electric) stated that it is often necessary to start up and shutdown a large main steam generating unit frequently during its first year of operation in order to check out the system and to fine tune the equipment. The commenter pointed out that this could increase the capacity factor of the auxiliary steam generating unit for the first 12 months of operation. The commenter argued that after the first year of operation, the auxiliary steam generating unit's capacity factor would decrease dramatically and then remain at a very low level for the rest of the unit's service life. In view of this, the commenter requested that the auxiliary steam generating unit capacity factor requirement either be waived or increased to 30 percent for the first 12 months of main electric utility steam generating unit operation.

Response: The purpose of the NO_x amendment is to exempt from the NO_x standards small utility auxiliary steam generating units that are used infrequently and exhibit very low annual capacity factor levels. In the case where an auxiliary steam generating unit is used frequently to start up and shut down a large main steam generating unit and the annual capacity factor of the auxiliary unit is 20 percent, 30 percent, or more, for example, its operation is no different than that of any other steam generating unit that operates at similar annual capacity factors. Consequently, if the operation of an auxiliary unit exceeds 10 percent annual capacity factor, it is subject to the same NO_x standards as any other steam generating unit.

In those cases where the annual capacity factor of an auxiliary steam generating unit exceeds 10 percent in its first year of operation but then falls to less than 10 percent in subsequent years, the unit owner/operator could apply for a permit modification, which would restrict operation of the auxiliary steam generating unit to less than 10 percent annual capacity factor. During the first year when the auxiliary steam generating unit is used frequently, the owner/operator could install temporary monitoring equipment, such as a portable continuous emissions monitoring system. This equipment could be removed when the auxiliary steam generating unit's annual capacity factor decreased to less than 10 percent.

In conclusion, the impacts of the standards are considered reasonable for steam generating units operated at annual capacity factors greater than 10 percent.

5. *Comment:* The UARG pointed out that § 60.46b(h)(2) addresses performance testing after the initial performance test. The UARG recommended that, to be consistent with § 60.44b(j), § 60.46b(h)(2) should state that subsequent performance tests are to be conducted over a 3-hour period.

Response: To be consistent with § 60.44b(j), § 60.46b(h)(2) should state that subsequent performance tests are to be conducted over a 3-hour period and, therefore, the wording in § 60.46b(h)(2) is being revised to reflect this change.

E. Applicability of Standards to Units Greater than 250 Million Btu/hour

1. *Comment:* Texaco, Inc., stated that the approach used to determine the significance of NO_x emissions was not justifiable. The proposed amendment stated that estimated NO_x emissions from typical steam generating units operating at 10 percent or less capacity factor would be insignificant when compared to the overall annual tons of NO_x reduction in the fifth year following promulgation of the NSPS. The commenter argued that the 20 tons per year of NO_x reduction from each steam generating unit greater than 73 MW (250 million Btu/hour) heat capacity could not be considered significant unless the

total number of large steam generating units was determined.

§ 60.44b(k) are exempt from the initial and subsequent performance test

Budget, Washington, DC 20503, marked "Attention: Desk Officer, for EPA."

(h) The ASME *Power Test Codes* 4.1, 8 August 1972, is available for purchase from the following address: The

§ 60.45b Compliance and performance test methods and procedures for sulfur dioxide.

(h) The owner or operator of an affected facility described in § 60.44b(j) that has a heat input capacity greater

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total number of large steam generating units was determined.

Texaco Inc., recommended that all steam generating units firing natural gas, distillate oil, or low nitrogen residual oil and operating at 10 percent or less capacity factor be exempted from both the NO_x emission standards and the monitoring requirements.

Response: The exemption from the NO_x standards for auxiliary steam generating units less than 73 MW (250 million Btu/hour) heat input capacity was established based on the reasonableness of controlling NO_x emissions from such units. The cost of the emission reductions were considered in assessing the reasonableness of the NO_x standards.

Although the total number of auxiliary steam generating units and the annual NO_x emissions from auxiliary steam generating units are small relative to annual NO_x emissions from steam generating units operating at much higher capacity factors, the emissions from both large and small auxiliary steam generating units contribute significantly to the endangerment of public health and welfare, irrespective of the number of units. For large steam generating units, the cost of achieving the standard is considered reasonable and, therefore, these units are subject to the proposed compliance requirement. For small steam generating units, however, the costs were considered excessive compared to potential emission reductions. For that reason, small units with very low capacity factors were exempted from the NO_x standard.

F. Miscellaneous

1. *Comment:* The UARG also stated that § 60.49(q) delineates quarterly reporting requirements for steam generating units meeting the criteria set forth by § 60.44b(j) or § 60.44b(k). However, because Item (1)—results of NO_x emission tests—applies only to those steam generating units meeting the criteria of § 60.44b(j), the UARG suggested that Item (1) be added to Item (4), which also applies only to steam generating units meeting the criteria of § 60.44b(j).

Response: Because those affected facilities that meet the criteria of § 60.44b(k) would not be subject to the NO_x emission limit, they would not be required to perform or to submit results of any NO_x emission test on a quarterly basis. Therefore, § 60.49b(q) is being revised to clarify this point.

2. *Comment:* One commenter noted that § 60.46b(h) of the proposed amendment does not state that the affected facilities described in § 60.44b(k) are exempt from the initial and subsequent performance test requirements.

Response: To clarify this exemption, the wording of § 60.46b(h) is being revised.

III. Administrative Requirements

The docket is an organized and complete file of all the information considered in the development of this regulation. The docket is a dynamic file because material is added throughout the rulemaking process. The docket system is intended to allow members of the public and industries involved to identify and locate documents so that they can effectively participate in the rulemaking process. Along with the statement of the basis and purpose of the proposed and promulgated amendments to the NSPS and EPA responses to significant comments, the contents of the docket, except for interagency review materials, will serve as the record in case of judicial review (See Clean Air Act, section 307(d)(7)(A), 42 U.S.C. 7607(d)(7)(A).

The effective date of this revised regulation is June 19, 1984. Section 317(a) of the Clean Air Act, 42 U.S.C. 7617(a), states that economic impact assessments are required for revisions to standards or regulations when the Administrator determines such revisions to be substantial. These revisions are not subtantial; as a result, an economic impact assessment has not been prepared.

Paperwork Reduction Act

Changes to the information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by EPA (ICR No. 1088); and a copy may be obtained by writing Sandy Farmer, Information Policy Branch, U.S. Environmental Protection Agency, 401 M Street, SW., (PM–223), Washington, DC 20460 or by calling (202) 382–2468. The public reporting burden for this collecton of information is estimated to be 99,800 hours per year for all respondents.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch (PM–223), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Paperwork Reduction Project (2060–1088), Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer, for EPA."

Under Executive Order 12291, EPA is required to judge whether a regulation is a "major rule" and therefore subject to the requirement of a regulatory impact analysis (RIA). The EPA has determined that the amendments would result in none of the significant adverse economic effects set forth in section 1(b) of the Order as grounds for finding a regulation to be a "major rule." The amendments are not substantial. The EPA has, therefore, concluded that this action is not a "major rule" under Executive Order 12291. This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments form OMB and any EPA response to those comments are in the public docket for this rulemaking.

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act requires the completion of a regulatory flexibility analysis for every rule unless the Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities. Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator certifies that the final rule will not have a significant economic impact on a substantial number of small entities. The revised rule would reduce the burden on this source category, and it has already been determined that, in the absence of these revisions, the standards would not affect a substantial number of small entities (51 FR 42787 and 42788, November 25, 1986).

List of Subjects in 40 CFR Part 60

Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 1, 1989.

William K. Reilly,

Administrator.

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7411, 7414, and 7601(a).

§ 60.17 [AMENDED]

2. Section 60.17 is amended by adding paragraph (h) to read as follows:

* * * * *

(h) The ASME *Power Test Codes* 4.1, 8 August 1972, is available for purchase from the following address: The American Society of Mechanical Engineers, 22 Law Drive, Box 2350, Fairfield, New Jersey 07007–2350.

3. Section 60.44b is amended by adding a phrase to the beginning of paragraphs (a) and (b), and by revising paragraph (h), and by adding paragraphs (i), (j), and (k) to read as follows:

§ 60.44b Standard for nitrogen oxides.

(a) Except as provided under paragraph (k) of this section, * * *

(b) Except as provided under paragraph (k) of this section, * * *

* * * * *

(h) For purposes of paragraph (i) of this section, the nitrogen oxide standards under this section apply at all times including periods of startup, shutdown, or malfunction.

(i) Except as provided under paragraph (j) of this section, compliance with the emission limits under this section is determined on a 30-day rolling average basis.

(j) Compliance with the emission limits under this section is determined on a 24-hour average basis for the initial performance test and on a 3-hour average basis for subsequent performance tests for any affected facilities that:

(1) Combust, alone or in combination, only natural gas, distillate oil, or residual oil with a nitrogen content of 0.30 weight percent or less;

(2) Have a combined annual capacity factor of 10 percent or less for natural gas, distillate oil, and residual oil with a nitrogen content of 0.30 weight percent or less; and

(3) Are subject to a Federally enforceable requirement limiting operation of the affected facility to the firing of natural gas, distillate oil, and/or residual oil with a nitrogen content of 0.30 weight percent or less and limiting operation of the affected facility to a combined annual capacity factor of 10 percent or less for natural gas, distillate oil, and residual oil and a nitrogen content of 0.30 weight percent or less.

(k) Affected facilities that meet the criteria described in paragraphs (j) (1), (2), and (3) of this section, and that have a heat input capacity of 73 MW (250 million Btu/hour) or less, are not subject to the nitrogen oxides emission limits under this section.

4. Section 60.45b is amended by revising paragraph (b) to read as follows:

§ 60.45b Compliance and performance test methods and procedures for sulfur dioxide.

* * * * *

(b) In conducting the performance tests required under § 60.8, the owner or operator shall use the methods and procedures in Appendix A of this part or the methods and procedures as specified in this section, except as provided in § 60.8(b). Section 60.8(f) does not apply to this section. The 30-day notice required in § 60.8(d) applies only to the initial performance test unless otherwise specified by the Administrator.

* * * * *

5. Section 60.46b is amended by revising paragraph (c) and adding paragraphs (g) and (h) as follows:

§ 60.46b Compliance and performance test methods and procedures for particulate matter and nitrogen oxides.

* * * * *

(c) Compliance with the nitrogen oxides emission standards under § 60.44b shall be determined through performance testing under paragraph (e) or (f), or under paragraphs (g) and (h) of this section, as applicable.

* * * * *

(g) The owner or operator of an affected facility described in § 60.44b(j) or § 60.44b(k) shall demonstrate the maximum heat input capacity of the steam generating unit by operating the facility at maximum capacity for 24 hours. The owner or operator of an affected facility shall determine the maximum heat input capacity using the heat loss method described in Sections 5 and 7.3 of the ASME *Power Test Codes* 4.1 (see IBR § 60.17(h)). This demonstration of maximum heat input capacity shall be made during the initial performance test for affected facilities that meet the criteria of § 60.44b(j). It shall be made within 60 days after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial start-up of each facility, for affected facilities meeting the criteria of § 60.44b(k). Subsequent demonstrations may be required by the Administrator at any other time. If this demonstration indicates that the maximum heat input capacity of the affected facility is less than that stated by the manufacturer of the affected facility, the maximum heat input capacity determined during this demonstration shall be used to determine the capacity utilization rate for the affected facility. Otherwise, the maximum heat input capacity provided by the manufacturer is used.

(h) The owner or operator of an affected facility described in § 60.44b(j) that has a heat input capacity greater than 73 MW (250 million Btu/hour) shall:

(1) Conduct an initial performance test as required under § 60.8 over a minimum of 24 consecutive steam generating unit operating hours at maximum heat input capacity to demonstrate compliance with the nitrogen oxides emission standards under § 60.44b using Method 7, 7A, 7E, or other approved reference methods; and

(2) Conduct subsequent performance tests once per calendar year or every 400 hours of operation (whichever comes first) to demonstrate compliance with the nitrogen oxides emission standards under § 60.44b over a minimum of 3 consecutive steam generating unit operating hours at maximum heat input capacity using Method 7, 7A, 7E, or other approved reference methods.

6. Section 60.48b is amended by revising paragraph (b) and adding paragraph (i) to read as follows:

§ 60.48b Emission monitoring for particulate matter and nitrogen oxides.

* * * * *

(b) Except as provided under paragraphs (g), (h), and (i) of this section, the owner or operator of an affected facility subject to the nitrogen oxides standards under § 60.44b shall install, calibrate, maintain, and operate a continuous monitoring system for measuring nitrogen oxides emissions discharged to the atmosphere and record the output of the system.

* * * * *

(i) The owner or operator of an affected facility described in § 60.44b(j) or § 60.44b(k) is not required to install or operate a continuous monitoring system for measuring nitrogen oxides emissions.

7. Section 60.49b is amended by revising paragraphs (a)(2), (b), (e), (g) introductory text, and adding paragraphs (p) and (q) to read as follows:

§ 60.49b Reporting and recordkeeping requirements.

(a) * * *

(2) If applicable, a copy of any Federally enforceable requirement that limits the annual capacity factor for any fuel or mixture of fuels under § 60.42b(d)(1), § 60.43b(a)(2), § 60.43b(a)(3)(iii), § 60.43b(c)(2)(ii), § 60.43b(d)(2)(iii), § 60.44b(c), § 60.44b(d), § 60.44b(e), § 60.44b(i), § 60.44b(j), § 60.44b(k), § 60.45b(d), § 60.46b(g), § 60.46b(h), or § 60.48b(i).

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(b) The owner or operator of each affected facility subject to the sulfur dioxide, particulate matter, and/or nitrogen oxides emission limits under § 60.42b, § 60.43b, and § 60.44b shall submit to the Administrator the performance test data from the initial performance test and the performance evaluation of the CEMS using the applicable performance specifications in appendix B. The owner or operator of each affected facility described in § 60.44b(j) or § 60.44b(k) shall submit to the Administrator the maximum heat input capacity data from the demonstration of the maximum heat input capacity of the affected facility.

* * * * *

(e) For an affected facility that combusts residual oil and meets the criteria under § 60.46b(e)(4), § 60.44b(j), or § 60.44b(k), the owner or operator shall maintain records of the nitrogen content of the residual oil combusted in the affected facility and calculate the average fuel nitrogen content on a per calendar quarter basis. The nitrogen content shall be determined using ASTM Method D3431–80, Test Method for Trace Nitrogen in Liquid Petroleum Hydrocarbons (IBR-see § 60.17), or fuel suppliers. If residual oil blends are being combusted, fuel nitrogen specifications may be prorated based on the ratio of residual oils of different nitrogen content in the fuel blend.

* * * * *

(g) Except as provided under paragraph (p) of this section, the owner or operator of an affected facility subject to the nitrogen oxides standards under § 60.44b shall maintain records of the following information for each steam generating unit operating day:

* * * * *

(p) The owner or operator of an affected facility described in § 60.44b(j) or § 60.44b(k) shall maintain records of the following information for each steam generating unit operating day:

(1) Calendar date,

(2) The number of hours of operation, and

(3) A record of the hourly steam load.

(q) The owner or operator of an affected facility described in § 60.44b(j) or § 60.44b(k) shall submit to the Administrator on a quarterly basis:

(1) The annual capacity factor over the previous 12 months,

(2) The average fuel nitrogen content during the quarter, if residual oil was fired; and

(3) If the affected facility meets the criteria described in § 60.44b(j), the results of any nitrogen oxides emission tests required during the quarter, the hours of operation during the quarter, and the hours of operation since the last nitrogen oxides emission test.

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Monday
December 18, 1989

Part III

Department of Labor

Employment and Training Administration

Job Training Partnership Act Title: III National Reserve Grants; Notice of Availability of Funds and Application Procedures for Program Year 1988

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DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act Title: III National Reserve Grants; Availability of Funds and Application Procedures for Program Year 1989

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of availability of funds and of solicitation for grant applications.

SUMMARY: The Employment and Training Administration announces the availability of JPTA title III discretionary national reserve funds for the remainder of Program Year (PY) 1989 (July 1, 1989–June 30, 1990) for the Federal delivery of dislocated worker services, and the procedures for making application in PY 1989. Applications will be accepted for four funding categories: Within State dislocated worker projects (including emergency circumstances), multistate dislocated worker projects, dislocated worker projects on Indian reservations and additional financial assistance to programs and activities provided by State and substate grantees. Information is also provided regarding application procedures to be used for technical assistance and training grants, contracts and agreements.

DATES: Applications will be accepted on an ongoing basis throughout the Program Year as the need for funds arises. Grant awards will be made during the Program Year in response to the applications received. The closing date for receipt of applications under this announcement is June 10, 1990. All applications must be received by 4:45 p.m. (Eastern Time) at the address below. Any application not reaching the designated place and date of delivery will not be considered, unless mailed not later than five (5) days prior to the closing date.

Applications submitted by mail must be postmarked no later than June 5, 1990. The term "postmark" means a printed, stamped, or otherwise placed impression (exclusive of postage meter machine impression) that is readily identifiable without further action as having been supplied or affixed on the date of mailing by employees of the U.S. Postal Service.

Hand-delivered applications must be received by 4:45 p.m. (Eastern Time) on June 5, 1990. It is preferred that applications be mailed. Telephone requests will not be honored.

ADDRESS: Mail or hand-deliver applications to: Office of Financial and Administrative Management, Division of Acquisition and Assistance, Employment and Training Administration, Department of Labor, room C–4305, 200 Constitution Avenue NW., Washington, DC 20210, Attention: Barbara J. Carroll, Reference: Dislocated Worker Program.

FOR FURTHER INFORMATION CONTACT: Mr. Robert N. Colombo, Director, Office of Employment and Training Programs, Telephone: (202) 535–0577.

SUPPLEMENTARY INFORMATION: The Employment and Training Administration (ETA) announces the availability of funds reserved by the Secretary of Labor for the delivery of dislocated worker services, and the procedures to make application for these funds. Funding is authorized by section 302(a)(2) of the Job Training Partnership Act (JPTA or the Act) (29 U.S.C. 1652(a)(2)), as added by section 6302(a) of the Economic Dislocation and Worker Adjustment Assistance Act (EDWAA), Pub. L. 100–418, 102 Stat. 1107, 1525. The application procedures, selection criteria, and approval process contained in this notice are issued in accordance with JTPA and 20 CFR 631.61 (54 FR 39118, 39147, September 22, 1989).

This program announcement consists of five parts. Part I provides the background and purpose of the discretionary funds reserved to the Secretary of Labor (Secretary) for activities under section 323 of the Act. 29 U.S.C. 1662b. Part II describes the grant application process. Part III provides detailed guidelines for the preparation of an application and part IV enumerates the primary selection criteria used in reviewing an application for funding. Part V provides information regarding application for funding of technical assistance and training grants, contracts and agreements.

This program is listed in the *Catalog of Federal Domestic Assistance* at No. 17–246 "Employment and Training Assistance—Dislocated Workers" (JTPA title III programs).

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Part I. Background

Funds available for title III of JTPA for Program Year (PY) 1989 (July 1, 1989–June 30, 1990) total $283,773,000. Of this amount, $227,018,400 has been allotted by formula as prescribed in Section 302(a)(1) of the JTPA [Job Training Partnership Act as amended by EDWAA] and, of the remainder, $47,636,007 is available to be used by the Secretary pursuant to JTPA section 323(a) for discretionary purposes to provide services as described in JTPA section 314 in the following circumstances:

(1) Mass layoffs, including mass layoffs caused by natural disasters or Federal Government actions (such as relocations of Federal facilities) when the workers are not expected to return to their previous occupations;

(2) Industrywide projects;

(3) Multistate projects;

(4) Special projects carried out through agreements with Indian tribal entities;

(5) Special projects to address national and regional concerns;

(6) Demonstration projects;

(7) To provide additional financial assistance to programs and activities provided by States and substate grantees under part A of title III; and

(8) To provide additional assistance under proposals for financial assistance that are submitted to the Secretary and approved by the Secretary after consultation with the Governor of the State in which the project is to operate. 29 U.S.C. 1652(a)(1), 1661c, and 1662b.

In addition, these funds may be used for emergency assistance to a distressed industry or area as determined by the Secretary with the agreement of the Governor.

Pursuant to JTPA section 322(a)(3), the discretionary funds reserved by the Secretary shall be allocated in a manner that efficiently targets resources to areas of most need, encourages a rapid response to economic dislocations, and promotes effective use of funds. 29 U.S.C. 1662a(a)(3).

Projects and activities funded pursuant to section 323 (29 U.S.C. 1662b) shall be subject to the Act and regulations with the exception of the cost limitations which may, in the Secretary's discretion, be varied for a particular grant or project. In addition, attention is called to:

- Section 141(c) (29 U.S.C. 1551(c)) regarding restrictions on services to assist in the relocation of an establishment, and
- The Department of Labor policy regarding requirements for acceptable fixed-unit-price, performance-based contracts as published in the **Federal Register** at 54 FR 10459 (March 13, 1989).

Title III national reserve funds shall not be considered as an ongoing source of funds for existing centers or other permanent arrangements. For this reason, it is a general policy that the Department will not refund previously funded (by State or national reserve title III) projects, except under extraordinary circumstances.

The need for national reserve funds must be sufficiently severe that

(1) These needs cannot be met by JTPA programs and funds currently within the State, or other State and local resources, and

(2) Substantial numbers of individuals concentrated in a substate area, labor market area, region or industry are affected. In the case of multistate, regional and industrywide project applications, the threshold for determining that a "substantial" number of workers have been affected is the same as that used to define a "substantial layoff" at 20 CFR 631.1 of the JTPA regulations. 54 FR at 39139. The State may also apply for assistance for workers dislocated from small and medium-sized companies within a single State where the Governor has determined they constitute a substantial proportion of the State's econmic base as described at 20 CFR 631.30(b) of the JTPA regulations. 54 FR at 39143.

Eligible dislocated workers shall be those described in section 301(a) of the Act. 29 U.S.C. 1651(a). Special emphasis will be placed on those workers who "are unlikely to return to their previous industry or occupation." Since these funds are appropriated for title III of the JTPA, the projects operated by these funds are subject to the provisions of that Act and Federal regulations promulgated under the Act with the exception, in some cases, of those related to cost limitations and performance standards.

The Secretary may consider applications for title III discretionary funds to be used for on-going title III formula-funded activities. Such applications should be submitted only under unusual circumstances. The Department expects States and substate grantees to plan and operate their programs within the constraints of their formula allotments. Operations should not be conducted in a manner that anticipates discretionary funds in order to sustain formula operations. The Department will evaluate the use of both the formula allotments and the reallocated funds in its funding decision process. These funds are to be treated as all other formula funds. They are subject to the "forty percent/sixty percent" State and substate grantee distribution requirement (section 302(c)(1); 29 U.S.C. 1652(c)(1)) and the cost limitations. However, these funds are not subject to recapture and reallotment. For purposes of tracking national reserve funds, expenditures will be reported separately. In determining a State or substate grantee's performance, expenditures and additional participants resulting from such funding will be included in performance standard computations.

Because the Department recognizes the need for early intervention, proposals will be considered on a timely basis and every effort will be made to respond within 45 days of the Department's receipt of a proposal.

Generally, funds will be distributed as discussed in this notice. However, the Secretary reserves the right to distribute some of these funds taking into consideration special circumstances and unique needs that may arise throughout the course of the program year. If insufficient applications are received by the Department that are of acceptable quality and meet the guidelines and selection criteria to exhaust the title III national reserve account authorized funding level, the Department will return the remaining national reserve funds to the United States Treasury.

Part II. The Application Process

A. *Funding considerations.*

1. Identification of dislocated workers.

a. Dislocated workers eligible to be provided services with national reserve funds are defined as individuals who meet the definition set forth in section 301(a) of the Act. 29 U.S.C. 1651(a). The dislocated workers to be served must be identified in the application.

Eligible individuals may be served without regard to the State of residence of the individual (section 311(b)(1)(B); 29 U.S.C. 1661(b)(1)(B)).

b. Applications should indicate that the provision of services to eligible participants will take into account those "most in need", *i.e.*, those least likely to be recalled, those with the least transferable skills, those with the most barriers to other employment opportunities such as poor reading or math skills. They should also indicate that those participants requiring labor exchange services and other minimal employment services are directed to other appropriate resources including the State Employment Service.

c. In addition, when the proposed target group(s) has been laid off or terminated more than 4 months prior to submission of an application for funds, information should be provided to show the number of workers who remain unemployed and in need of services. In the case of layoffs, the likelihood of recall, retirement and transfer as well as the proportion of workers requiring little or no assistance in finding alternative employment should be assessed in determining the number of individuals likely to need services.

2. Disclocated Worker Project applications selected for funding will generally be those which define the need precisely, *i.e.*,

(a) Specify groups of dislocated workers, industries or plants, occupations and geographic areas;

This certification form is found in appendix B. If the applicant has already submitted such a form to the

3. The effective date for the use of the funds will be the date of the grant award letter or grant document and no costs

Labor Grant Officer accompanying the grant award.

The State assures that the information

2. *An application for a Multistate Dislocated Worker Project* including regionwide or industrywide projects

(1) Applications for multistate, regionwide, and industrywide projects for dislocated workers shall be

(a) Specify groups of dislocated workers, industries or plants, occupations and geographic areas;

(b) Link training and placement services with specific local demand occupations;

(c) Demonstrate a timely response to the target group's employment and training needs for such services; and

(d) Are cost-effective in terms of services to be provided and results to be achieved.

3. Priority consideration will be given to applications focusing on services to workers who "are unlikely to return to their previous occupation or industry" with particular emphasis on those requiring and wanting retraining for occupations determined to be in demand in the local economy.

B. *Screening and review of applications.*

1. Screening requirements.

All applications will be screened to determine completeness and conformity to the application guidelines and any other requirements contained in this announcement.

In order for an application to be in conformance, it must include the following:

a. A transmittal letter from the authorized signatory or Governor containing the required assurances.

b. SF 424, Application for Federal Domestic Assistance (Catalogue No. 17.246).

c. A detailed line item budget according to the cost categories found at 20 CFR 631.13 of the JTPA title III regulations. 54 FR 39118, 39140 (September 22, 1989).

d. Project narrative. The narrative portion of the application shall not exceed twenty-five (25) double-spaced pages, typewritten on one side of the paper only. The narrative must address all of the elements specified in the application guidelines.

e. A certification regarding a drug-free workplace shall be submitted with the application except in the case where the grantee is the State and has already submitted its annual certification to DOL. These requirements apply to direct recipients of grant funds from the Department of Labor. The certification for a drug-free workplace is found in appendix A.

f. A certification regarding Debarment, Suspension and Other Responsibility Matters, Primary Covered Transactions shall be submitted with all national reserve applications except those related to natural disasters, as required by the DOL regulations implementing Executive Order 12549, "Debarment and Suspension." 29 CFR 98.510, "Participants' responsibilities." This certification form is found in appendix B. If the applicant has already submitted such a form to the Department, it may include a copy of such form.

2. Complete, conforming applications will then be reviewed and evaluated based on the selection criteria in part IV and the availability of funds.

C. *Information and reporting requirements.*

1. By accepting a grant, the grantee agrees that it shall maintain and make available to the Department of Labor upon request, information on the operation of the project and on project expenditures. Such information may include the implementation status of the project such as completion of subagreements, hiring of staff, date enrollments began, current and cumulative number of participants and cumulative expenditures.

2. Reports.

The grantee shall submit to the Employment and Training Administration, an original and two copies of

a. The Worker Adjustment Program Quarterly Report. ETA Form No. 9020 (OMB No. 1205-0274)

b. The Worker Adjustment Program Annual Program Report. ETA Form No. 9019 (OMB No. 1205-0274)

D. *Funding mechanisms.*

1. (a) In the case of an Intrastate Dislocated Project such as a "within a single State" worker dislocation project, emergency funding of a dislocated worker project, or additional financial assistance to programs and activities provided by State or substate area grantees, the Department will issue a Notice of Obligation (NOO) of title III national reserve funds to the State, pursuant to the JTPA Governor/Secretary Agreement.

(b) A grant award letter containing the general specifications expected as a condition of the grant will accompany the NOO.

(c) The grant award letter, the grant application and the assurances and any amendments approved will govern the operation of the project.

2. (a) In the case of a grantee of a multistate, regionwide, industrywide project or of a project operated on an Indian reservation, a grant document will be signed by the grant applicant and the Grant Officer.

(b) The Grant Officer will provide specific information and instructions as to the method to be used to provide funds to the project at the time the grant document is signed.

(c) The grant document and any amendment will govern the operation of the project

3. The effective date for the use of the funds will be the date of the grant award letter or grant document and no costs may be incurred prior to this date. The authority to expend funds immediately is given in most cases to permit the most timely response to the needs of the newly dislocated worker.

4. Instructions regarding Grant Amendments required due to changes in circumstances after the grant award will be transmitted with the grant award letter or grant document.

E. *Application requirements.*

1. *An application for an Intrastate Dislocated Worker Project, i.e.,* within a single State, must comply with the following requirements:

a. The eligible grant applicant for such a project is the State agency (currently identified as the "administrative entity" under the JTPA Governor/Secretary Agreement with the Department of Labor hereinafter referred to as the State JTPA Agency) responsible for the provision of employment and training services to dislocated workers pursuant to title III of JTPA.

b. Eligible subgrantees who may operate such a dislocated worker project include but are not limited to State agencies JTPA title III substate grantees, units of local government, local public agencies, such as community colleges or area vocational schools; private non-profit organizations, including community-based organizations, labor organizations, regional development councils, and industry-sponsored associations; private-for-profit organizations and Indian tribal entities.

c. Submission of applications. Eligible applicants must ensure that the proposed "program operator" submits national reserve grant applications through the appropriate substate area grantee who will then forward the application to the Governor or State JTPA agency. The grant application shall then be forwarded to the Department by the Governor or State JTPA agency accompanied by the assurances listed below from the authorized signatory.

d. Assurances.

(1) Applications submitted by, or through, the substate grantee and the State shall be transmitted with a letter from the Governor or authorized JTPA signatory containing the following paragraphs:

If the proposed project is funded, any title III funds awarded from funds reserved by the Secretary will be administered in accordance with the proposal and amendments approved by the Grant Officer, if any, and consistent with the letter signed by the Department of Labor Grant Officer accompanying the grant award.

The State assures that the information provided in the proposal is correct and the activities proposed conform to State program standards.

Certification regarding debarment, suspension, ineligibility and voluntary exclusion, lower tier covered transactions as required by the regulations implementing Executive Order 12549, "Debarment and Suspension" as set forth in 29 CFR 98.510, "Participants' responsibilities," shall be maintained for all subgrantees receiving funds under this project. (The required form may be found in appendix C.)

The State agrees to accept any grant funds awarded under this application, and provide administration and oversight of the grant.

Following receipt of the grant approval, the State will advise the Grant Officer of the projected date project operations will begin. If the date to be provided exceeds 30 days from receipt of the grant award, the State will provide additional information explaining the projected implementation date.

The State agrees to compile and maintain information on project implementation on a monthly, and performance and expenditures data on a quarterly, basis. The information will, at a minimum, be consistent with the activities and cost categories contained in the project proposal and will be available to the Department as requested.

(2) Project proposals not accompanied by these required assurances will not be accepted for review.

e. Review and coordination requirements.

(1) The Governor and substate area grantee. The Governor and substate area grantee may include comments regarding the proposed project with respect to the availability of State and substate formula funds, experience of the applicant in operating programs for dislocated workers, and any other area of concern pertinent to the funding of the project. These comments shall be forwarded by the Governor or authorized signatory at the time of submission.

(2) Private Industry Council (PIC)/ local elected official (LEO). All grant applications to provide services to dislocated workers shall provide evidence that the appropriate PICs and LEOs have been given the opportunity for review and comment.

(3) Labor organizations. All applications for dislocated worker projects where a substantial number (at least 20 percent) of affected workers are represented by a labor organization(s) must provide documentation of full consultation with the appropriate local labor organization(s) in the development of the project design. Thus, documentation is required for *each* union representing at least 20 percent of the affected workers.

2. *An application for a Multistate Dislocated Worker Project* including regionwide or industrywide projects must comply with the following requirements:

a. Eligible grant applicants. Applications may be submitted by, but are not limited to, State agencies, local public agencies such as community colleges or area vocational schools, private non-profit organizations, including community-based organizations, labor organizations, regional development councils, and industry-sponsored associations; and private-for-profit organizations.

All entities may not be appropriate applicants for all types of multistate projects. Applicant entities must be an appropriate agency given the nature and extent of the proposed project.

b. Eligible subgrantees who may operate such a dislocated worker project include but are not limited to State agencies; units of local government; local public agencies, such as community colleges or area vocational schools; private non-profit organizations, including community-based organizations, labor organizations, regional development councils, and industry-sponsored associations; and private-for-profit organizations.

c. Additional requirements.

(1) Applications must certify that recall within the next 12 months is highly unlikely for the majority of affected workers.

(2) Applicants for industrywide projects must demonstrate that the subject industry's employment is declining and there are poor prospects for reemployment based on any combination of the following data: Labor turnover, Employment Service vacancy data, labor market conditions in the States with industry facilities, and production trends, or that the Secretary has determined the industry to be depressed based on data available to the Federal Government.

d. Submission of applications.

(1) In the case of regionwide, industrywide, and multi-state projects, applications shall be submitted directly to the Grant Officer accompanied by the assurances listed below from the authorized signatory for the applicant.

(2) The application will not be accepted for consideration unless the applicant can demonstrate that there has been a series of mass layoffs affecting a minimum of 100 workers per site in at least 3 States with a minimum of 3 distinct separate subsites planned for the project.

e. Assurances.

(1) Applications for multistate, regionwide, and industrywide projects for dislocated workers shall be transmitted with a letter from the proposed grantee containing the following assurances:

If the proposed project is funded, any Title III funds awarded from funds reserved by the Secretary will be administered in accordance with the Act and JTPA regulations, the proposal and amendments approved by the Grant Officer, if any, and shall be consistent with the grant document signed by the Department of Labor Grant Officer.

The Grantee agrees to compile and maintain information on project implementation, performance and expenditures. The information will, at a minimum, be consistent with the activities and cost categories contained in the project proposal and will be available to the Department as requested.

Certification regarding debarment, suspension, ineligibility and voluntary exclusion, lower tier covered transactions, as required by the regulations implementing Executive Order 12549, "Debarment and Suspension," as set forth in 29 CFR 98.510, "Participants' responsibilities" shall be maintained for all subgrantees receiving funds under this project. (The required form may be found in appendix C.)

The grantee assures that the information provided in the proposal is correct and the activities proposed conform to the Act and Federal regulations for Title III activities.

Following receipt of the grant approval, the Grantee will advise the Grant Officer of the projected date project operations will begin. If the date to be provided exceeds 30 days from receipt of the grant award, the Grantee will provide additional information explaining the projected implementation date.

(2) Project proposals not accompanied by these required assurances will not be accepted for review.

f. Review and coordination requirements.

(1) Governors and substate grantees. Applications must include evidence that the Governor of each State and appropriate grantee of a substate area in which a project site is proposed have been informed of such an application and given an opportunity to comment on the proposed project as it would affect workers in that State or substate area.

Letters from the appropriate Governors and substate grantees are to be included to document that the opportunity was provided for review and comment of the application. Each Governor's letter shall indicate why the State has not funded the proposed subproject for that State. The substate grantee letter shall indicate why the substate grantee is unable to provide sufficient services to the proposed subproject in the substate area, as well as a description of the funding and

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assistance it will provide to the subproject.

(2) Private Industry Council (PIC)/

d. The Secretary of Labor may determine that the massive devastation and economic dislocation caused by a

submitted using the same procedures as for intrastate dislocated worker project applications regarding the requirements

under section 301(a)(1) (A) and (B)). 29 U.S.C. 1651(a)(1) (A) and (B).

b. The project location (city, county, Indian reservation);

to submittal of the application, information should be provided to show how the proposed operator determined

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assistance it will provide to the subproject.

(2) Private Industry Council (PIC)/local elected official (LEO). All grant applications to provide services to dislocated workers shall provide evidence that the appropriate PICs and LEOs have been given the opportunity for review and comment.

(3) Labor organizations. All applications for dislocated worker projects where a substantial number (at least 20 percent) of affected workers are represented by a labor organization(s) must provide documentation of full consultation with the appropriate local labor organization in the development of the project design. Thus, documentation is required for *each* union representing at least 20 percent of the affected workers.

3. *An Application for a Disclosed Worker Project on an Indian Reservation* must comply with the following requirements:

a. Eligible grant applicants. In the case of dislocation events affecting Indians on an Indian reservation, tribal entities shall be eligible grant applicants.

b. Indian tribal entities may contract with appropriate entities to administer the delivery of employment and training services to project participants.

c. Applications for dislocated worker projects to operate on Indian reservations shall be submitted directly to the Grant Officer accompanied by the assurances as provided in paragraph E.2.e.

d. Labor organizations. All applications for dislocated worker projects where a substantial number (at least 20 percent) of affected workers are represented by a labor organization(s) must provide documentation of full consultation with the appropriate local labor organization in the development of the project design. Thus, documentation is required for each union representing at least 20 percent of the affected workers.

4. *An Application for Emergency Funds* must comply with the following requirements (section 323(b); 29 U.S.C. 1662b(b)):

a. The determination that a situation or set of circumstances has resulted in a distressed area or industry that is appropriate for application for emergency funding may be initiated by either the Governor of the State where the emergency exists or by the Secretary.

b. The eligible grant applicant for emergency funds will be the State agency designated by the Governor to administer such funds.

c. Eligible subgrantees include all entities described at Part II.E.1.b.

d. The Secretary of Labor may determine that the massive devastation and economic dislocation caused by a natural disaster constitutes an emergency requiring emergency assistance with funds under section 302(a)(2) to those areas that are distressed as a result of the natural disaster, 29 U.S.C. 1652(a)(2). Under such circumstances, the Secretary, with the Governor(s) of the principal State(s) affected, may determine to mount special programs to demonstrate that title III funds can be used to assist the affected communities in a response that will enable workers to return to employment as soon as possible.

(1) A principal strategy in this approach would be to develop special temporary jobs that would inure to the public benefit. Such jobs shall be in public or private non-profit agencies for up to six months duration to assist in community repairs and cleanup, to enable resumption of regular employment.

(2) It is in the interest of the public and affected individuals that these jobs be filled as rapidly as possible.

(3) These jobs are to be filled consistent with section 301(a) of the Act. 29 U.S.C. 1651(a). Therefore, for purposes of eligibility for emergency jobs under these special programs, individuals who have become unemployed because of the natural disaster, or who are long-term unemployed as determined by the Governor, shall meet the eligibility requirements.

e. An initial request for funds based on correspondence or telephone communication with the Secretary shall be submitted to the Grant Officer accompanied by the required assurances, as found at paragraph E.1.d.

f. Initial emergency funding, not to exceed 30 percent of the total amount approved for the grant award, may be made available based on the initial funding request and shall be used to provide funds for project planning (including surveys or other needs assessment activities), start-up costs (obtaining facilities, hiring costs) and early implementation costs (such as staff salaries until the grant application is approved), assessment, and training costs.

g. Documentation in support of the emergency request, accompanied by a complete application for the balance of the available national reserve grant funds, shall be submitted within 60 days of receipt of emergency funds, unless the Governor and the Secretary have agreed to a different time frame.

The fully documented application for other emergency circumstances shall be submitted using the same procedures as for intrastate dislocated worker project applications regarding the requirements for review and coordination and assurances. The application will be reviewed using the same selection criteria as those used for other title III national reserve applications. The Secretary may require specific information relating to the particular circumstances of the emergency or may use the guidelines for an application for a dislocated worker project as found at paragraph D of Part III.

5. *An Application for Additional Financial Assistance to programs and activities provided by State and substate grantees* (section 323(a)(7); 29 U.S.C. 1662b(a)(7)) other than to fund a dislocated worker project.

Such an application must comply with the following requirements:

a. The eligible grant applicant for such a project is the State agency responsible for the provision of employment and training services to dislocated workers pursuant to title III of JTPA.

b. Additional eligibility requirements:

(1) No State or substate grantee shall be eligible if funds from that State or substate area were reallocated the previous year.

(2) No State or substate grantee shall be eligible as long as there are unused funds that would not be expended by the end of the Program Year.

(3) No State or substate grantee may request funds just for a single activity such as administration or needs-related payments.

(4) The State must demonstrate that based on the statutory formula used to allot funds to the State (section 302(b); 20 U.S.C. 1652(b)), there has been an increase of at least 20 percent in at least one of the appropriate funding formula factors such as: The number of relative unemployed individuals who reside in the State or substate area as compared to the total number of unemployed individuals in all States or in all of that State's substate areas; in the relative excess number of unemployed individuals residing in the State; or in the number of individuals who have been unemployed in excess of 15 weeks.

(5) No State or substate grantee may receive grant funds to serve additional dislocated workers if the State or substate grantee is presently serving displaced homemakers with formula funds in the year in which the application is submitted (as a result of a determination that service to this additional dislocated worker group could be provided without adversely affecting the delivery of services to dislocated workers eligible for services under section 301(a)(1) (A) and (B)). 29 U.S.C. 1651(a)(1) (A) and (B).

c. Submission of applications.

The Governor or authorized signatory for the State shall submit a national reserve application for additional financial assistance in support of title III formula-funded activities and programs provided by the State or substate grantees to the Grant Officer. The application shall be accompanied by the assurances listed below.

d. Assurances.

Applications submitted by, or through, the substate grantee and the State shall be transmitted with a letter from the Governor or authorized signatory containing the following paragraphs:

If the proposed request for financial assistance is funded, any Title III funds awarded from funds reserved by the Secretary will be administered in accordance with the grant application approved by the Grant Officer and consistent with the letter signed by the Department of Labor Grant Officer.

The State assures that the information provided in the proposal is correct and the activities proposed conform to State program standards.

Within 30 days of receipt of the grant approval, the State agrees to allocate the grant funds for additional financial assistance to the substate grantees in accordance with the proposal and grant award letter.

Part III. Application Content

A. *Content of an Application for an Intrastate, or Multistate Dislocated Worker Project or a Dislocated Worker Project on an Indian Reservation.*

Following are the areas to be addressed and information to be provided in each grant application submitted for JTPA title III national reserve funds. It is strongly recommended that grant applicants follow the format and sequence presented.

1. Period of Performance: Application should cover a period of time generally not to exceed 18 months. Applications for periods in excess of 18 months may be submitted with information supporting the need for the additional period.

2. Period of Award: Generally, awards will be made for an 18-month period to allow for project start-up, operation, and phasedown.

3. Synopsis of the Project to serve dislocated workers. A short summary of the pertinent facts regarding the project that includes the following:

a. The name and address of the project operator along with the name and phone number of a contact person for the project operator;

b. The project location (city, county, Indian reservation);

c. The planned starting and ending dates of the project;

d. The total amount of Title III national reserve funds requested;

e. The name(s) of the company(ies) from which the affected workers have been dislocated, and the type of business or industry involved;

f. The date(s) of employment termination and the number of workers affected;

g. The names of the counties and cities or Indian reservation in which the affected workers reside;

h. The total number of participants planned;

i. The total number of placements planned;

j. The planned cost per participant;

k. The planned cost per entered employment; and

l. The name, address, and telephone number of the signatory official for the substate grantee(s) serving the area in which the project is to be operated.

4. The Project Narrative must address the following elements:

a. Target Group Identification. A description of the need for a project to serve the target group and an explanation of how this need was determined. (Note: An application by an Indian tribal entity for funds for a dislocated worker project must be based upon a specific plant closure or mass layoff that has occurred within the past year. The facility involved must be located on an Indian reservation.) The description should include:

(1) The industry(ies) affected;

(2) The schedule for layoff(s) and/or closing(s);

(3) The number of individuals likely to participate in the program, taking into consideration:

(a) The total number of individuals affected by specific occupations and the wage levels for each occupation;

(b) The number of individuals eligible to participate, with special attention given to those workers who will need more extensive services than available labor exchange services provided by the State Employment Service agency, based on their occupational skills;

(c) The number of individuals likely to retire;

(d) The number of individuals likely to transfer;

(e) The number of individuals likely to be recalled;

(f) The number of individuals who possess locally transferable skills and, therefore, will find other employment with minimal assistance; and

(g) When the layoff(s) or closure(s) has occurred more than 4 months prior to submittal of the application, information should be provided to show how the proposed operator determined the number of individuals who remain unemployed and in need of services.

Note: Provide the methodology that was used to determine these numbers.

(4) Evidence that the workers to be served are aware of and support the proposed program operator's application.

(5) The economic conditions for the State and the geographic area to be served as documented by the most recent unemployment rate for the area, or the economic and unemployment trends in the specific industry affected, to illustrate the severity of the need for such a project.

(6) In the case of an application to address workers dislocated due to a natural disaster, it is important to identify the companies whose workers are permanently displaced and will not resume operations after a clean-up or short recovery period. Workers affected by a natural disaster may also be eligible to receive Disaster Unemployment Assistance through the local UI offices.

(7) If the proposed target group includes workers dislocated as a result of the relocation of a company plant, the City and State to which the plant will be relocated should be provided.

b. Why the need cannot be met by existing resources. A statement of why the need cannot be met by existing Federal, State and local resources. The statement should indicate why the proposed project was not funded with State or substate grantee title III funds.

(1) In the case of an application submitted through the State, the status of fund availability for both the State's title III formula program and discretionary awards, including total obligations and expenditures from available title III funds against total availability shall be provided. This information should be through the end of the quarter prior to the subject application. Where a substate grantee will operate the proposed program, the same information regarding fund availability, obligation and expenditure of substate formula funds, as well as any discretionary national reserve funds, should be provided.

(2) The application must indicate whether an application has been made (provide petition number, if available), or a certification given, for Trade Adjustment Assistance (TAA) for the affected workers. When the proposed target group has applied for TAA certification or has been certified, a

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description of how TAA resources and national reserve grant funds will be coordinated should be provided. A statement shall be provided, pursuant to section 141(h) of JTPA, that the project operator will ensure that duplication of services does not occur. 29 U.S.C. 1551(h).

The current TAA funding availability and obligations shall be provided as well as information on any current request to the Department for TAA funds to serve these workers.

(3) The nature and duration of any contractual obligation of, or voluntary arrangements by, the employer(s) or union(s) to provide employment-related services to terminated employees shall be included.

c. Labor market employment opportunities.

All applications must contain a discussion demonstrating familiarity with the local labor markets including occupations in which participants will be trained, retrained or placed. The discussion shall include the following:

(1) An explanation of how the potential for placement in occupational areas was determined, including information on specific employers or industries that have demands for workers in those occupational areas and whether retraining will be required prior to placement. The source of such information should be provided.

Note: A list of demand occupations within the State is the least acceptable approach to providing this information. Local information, including special employer surveys, is preferable.

(2) Information that shows how the characteristics and skills of the target group population are related to the demand occupations identified in the labor market for placement.

(3) Certification that the number of currently unemployed workers available for employment in the demand occupations for which retraining is planned is insufficient to meet the need.

d. Coordination and linkage.

In addition to the applicable review and coordination requirements described in Part II paragraph E.1.e; E.2.f; or E.3.d. of this announcement, all applications for funds will be required to:

(1) Describe the involvement (if any) of organized labor in the development and operation of the proposed project activities.

(2) Show how the proposed project for dislocated workers will coordinate with other State and local agencies and related programs including but not limited to:

(a) The local substate grantee(s),

(b) Veterans' programs (including JTPA) available in the area.

(c) The State Employment Service, including the Trade Adjustment Assistance (TAA) program if appropriate,

(d) The Unemployment Compensation System to ensure that workers understand the requirement for enrollment in training in order to be eligible for needs-related payments, as outlined in 20 CFR 631.20 of the JTPA regulations 54 FR 39118, 39142 (September 22, 1989),

(e) The Pell Grant program, and

(f) Other appropriate State and local program resources.

In those instances where other State funds, such as vocational education, economic development, TAA, or special appropriations are available to the project, it is necessary to include a brief discussion of the activities for which these funds will be used and their relationship to the national reserve funds requested, taking into consideration section 141(b) of the Act.

e. A description of services.

(1) Basic Readjustment Services (JTPA section 314(c); 29 U.S.C. 1661c(c)). Describe how assessment, job search assistance, counseling, job development and placement services and any other activities will be coordinated with training activities (assessment procedures must include the capability to determine if a participant's reading skills are below the 7th grade level);

(2) Retraining services (JTPA section 314(d); 29 U.S.C. 1661c(d)). Describe the training to be provided, including the types and lengths of training for various occupations or occupational areas, and the likely providers of both on-the-job and classroom skill training (Note: National reserve funds will not be provided to substitute for such activities as the employer's traditional training responsibility associated with model changes, the introduction of new products or general employee upgrading.);

(3) Participant supportive services. Discuss which services will be provided and how they will be coordinated with training activities, including needs-related payments; (JTPA section 314(e); 29 U.S.C. 1661c(e)); and

(4) Intake and eligibility determination. Describe the procedures to recruit and ensure the eligibility of each participant.

f. Implementation Plan.

(1) A schedule for the implementation of program activities upon receipt of funds and discussion of initial actions taken to support implementation. Enrollment of participants should normally occur within 90 days of the grant award. If such a time schedule cannot be met or is inappropriate, an explanation of the implementation schedule provided should be included.

(2) Quarterly implementation data showing the following projected cumulative data:

(a) Enrollments for each major activity—assessment, job search assistance, classroom skills training, on-the-job training and other training;

(b) Total terminations;

(c) Number of participants entering employment from each activity; and

(d) Expenditures.

g. Planned Outcomes. Project data showing the projected overall:

(1) Cost per Participant;

(2) Cost per Entered Employment;

(3) Entered Employment Rate; and

(4) Average Wage Rate at Entered Employment.

In multistate projects, this data shall also be provided for each subproject site.

h. Financial and Management Capability. Except where the actual project operator will be the State or the substate grantee, a description of the fiscal and management capabilities of the prospective project operator should include: (Limit to no more than three pages.)

(1) Background description of how the prospective project operator (or the division which will have responsibility for this project) is or will be organized.

(2) Current or previous relevant experience in providing services to dislocated workers or in administering such programs.

(3) The capability to maintain and report as necessary required fiscal and management information.

i. A Detailed Line Item Budget.

(1) Costs for each item shall be apportioned under administration, rapid response, basic readjustment, services, retraining, needs-related payments and supportive services cost categories as classified in 20 CFR 631.13. 54 FR 39118, 39140 (September 22, 1989).

(a) Line items include but are not limited to: facilities, equipment, supplies, staffing and fringe benefits, job search assistance, classroom vocational skill training, on-the-job training, remedial education, counseling, transportation assistance, child care, relocation assistance, and needs-related payments.

(b) In the case of an intrastate project, the State may reserve .015 percent of the total grant award or $15,000, whichever is less, for costs associated with the administration of the grant such as contract negotiation, reporting activities and project oversight. State

administrative costs requested that are above this established setaside must be accompanied by a justification showing the projected person-hours and functions to be performed.

(2) Depending on the nature of the project and the identity of the grantee, an applicant may submit a budget that requests a deviation from the cost limitations in 20 CFR 631.14. The general intent of the limitations should be reflected in the allocation of the budget. 54 FR at 39141. The Secretary will decide, in the grant award, whether and to what extent the cost limitations apply.

(3) Where national reserve funds will be combined with funds from other sources—the employer, union training funds, State formula-allotted funds, State vocational education, or economic development funds, *etc.*—the budget should indicate for each line item the total cost and the amount to be funded from the national reserve account and the other funding source(s).

B. *Content of an application for emergency funds.*

1. *The State's initial request for funding* should be brief and provide the following information:

a. An explanation of the circumstances requiring the emergency funds;

b. The areas to be served by the grant;

c. A brief assessment of the need;

d. An estimate of the number of individuals impacted by the emergency;

e. A brief summary of the activities to be conducted;

(1) These activities must be allowable under section 314 of the Act. 29 U.S.C. 1661c. In the case of a natural disaster, temporary job creation may be permitted as a demonstration program under Section 324 of the Act. 29 U.S.C. 1662(c).

(2) Wages paid for any temporary jobs created must meet the requirements set forth in section 142(a)(3) of the Act. 29 U.S.C. 1552(a)(3).

f. An estimate of the number of participants to be served by the emergency grant request. Participants shall be eligible pursuant to the definitions set forth at section 301(a). 29 U.S.C. 1661(a); and

g. The total amount of funds requested.

2. *A fully documented proposal* submitted by the State must be approved before the remaining balance of the approved grant amount will be allocated to the State.

a. A fully documented proposal shall include the same items required for a dislocated worker project application as found in Part III, paragraph A, except when the emergency funds are to be used only for temporary job creation in the case of a natural disaster.

b. The fully documented proposal to conduct only short-term emergency activities in the instance of a natural disaster must include:

(1) A period of performance of 6 months.

(2) A substantive description of the nature and extent of the problem in the State with an estimate of the number of individuals affected, including the geographic location of the emergency circumstances, the area where services and activities will be conducted if different from the location of the emergency circumstances, and the projected immediate recovery period.

(3) A description of how the State will identify and recruit individuals to be served under the project, and the total number of individuals to be served.

(4)(a) A description of the types of services to be provided and the numbers of individuals to receive various services under the short-term emergency response. This includes the number of individuals to be provided temporary jobs, the types and location of temporary jobs, a statement that the workers are authorized to perform the temporary jobs, the wages (or wage range) to be paid in major job categories, and a description of the employers for such jobs with any criteria the State uses in selecting such employers. To the extent that regular employees of the employing unit (*e.g.*, unit of government utilizing the emergency JTPA funds) have the authority to do this work, then so do the employees hired with the emergency funds.

(b) A description of how the State will determine individuals to fill any temporary jobs.

(c) A monthly implementation schedule for each of the activities to be conducted.

(5)(a) Identification of the entity in the State that will be responsibile for the overall administration of the emergency project.

(b) A description of the monitoring plan of the project and the steps that will be taken to ensure the integrity of project activities.

(6)(a) A line-item budget for JTPA national reserve funds by major activities that specifically reflects staff and other costs to be supported by the award in each of the cost categories. The title III cost categories shall be used in the proposal. Expenditures on temporary jobs for participants are to be included under the cost category of retraining-natural disaster. The title III cost limitations on administration and needs-related payments/supportive services shall apply.

(b) A description of the relationship between JTPA funds and any other funds which may be available.

(7)(a) The reporting of JTPA funds and activities shall reflect the budget categories and activities contained in the approved project proposal.

(b) The State will submit a detailed report of the project within 45 days of the end of the project.

(c) The State will also provide brief monthly cumulative reports on the number served, total expenditures and the number of monitoring visits conducted. These reports will be submitted on the 10th of the month for the previous month.

(8) The State will assure that it will monitor on a regular basis and provide technical assistance to each subgrantee to ensure that—

(a) The objectives of the program will be met;

(b) The jobs created will be consistent with jobs specified by subgrantees;

(c) Time and attendance records will be accurate; and

(d) The subgrantee is managing and operating its programs in accordance with the Act, the regulations, and the provisions, terms, and conditions of the emergency grant.

C. *Content of an application for additional financial assistance to formula-funded Title III programs and activities provided by State and substate grantees (section 323(a)(7); 29 U.S.C. 1662b(a)(7)).*

1. Period of Award. Applications should cover a period of time not to exceed 12 months. Applications for periods in excess of 12 months may be submitted with information supporting the need for the additional period.

2. Synopsis of the proposal:

a. The total amount of title III national reserve funds requested;

b. Total number of participants to be served with the requested funds;

c. The total number of placements planned;

d. Planned cost per participant based on additional funds to be used by substate grantees; and

e. Planned cost per entered employment based on additional funds to be used by substate grantees.

3. Application narrative:

a. Describe the substate area or areas for which the additional financial assistance is required including the projected number of participants served under the substate plan and the substate grantee's performance to date based on the services provided.

b. Address why the need cannot be met by existing resources.

(1) Provide the status of fund

shall be apportioned by the cost categories required for Department of Labor Report ETA 9020, "Worker

workers. This shall be a major factor in determining the responsiveness of a proposal

significantly changed so as to justify the need for additional funds.

3. The severity of circumstances and

D. "Drug-free workplace" means a site for the performance of work done in connection with a specific contract at which employees

of subpragraphs (2)(a) through II.F of this provision.

3. By submission of its offer, the offeror, if

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b. Address why the need cannot be met by existing resources.

(1) Provide the status of fund availability (obligations and expenditures) for the State and substate grantees, where appropriate, for the most recent quarter.

(2) Where appropriate, a statement from the State should be included certifying that the substate grantee's funds have not been subject to reallocation.

(3) The State must indicate that it has exercised State reallocation procedures and that no funds are available from either the 60 percent or 40 percent funds within the State.

c. An explanation must be submitted, stating how the circumstances under which State formula funds were provided, or under which the State allocated funds to the substate area(s) have substantially and significantly changed so as to justify the need for additional funds. Such circumstances would include an increase in mass layoffs or plant closings with accompanying numbers of dislocated workers which are at least 10 percent of the State or local labor force, a 20 percent increase in the State or local unemployment rate or rate of long-term unemployment, or similar increases such as farm or ranch failures or closures.

d. A statement must be included providing information to indicate the severity of need for additional funds, such as the area unemployment rate, an analysis of unemployment insurance (UI) exhaustees, the proportion of unemployed workers who lack sufficient skills to remain in the labor force without assistance, *etc.*

e. Include a brief descripton of the activity(ies) to be funded.

f. Include an implementation plan which provides:

(1) A schedule for the implementation of proposed activities upon receipt of funds, and

(2) Quarterly implementation data showing the following cumulative projected data as appropriate: enrollments by activity, total terminations, number of participants who entered employment and expenditures.

g. Set forth planned outcomes, if appropriate, including: cost per participant, cost per entered employment, and entered employment rate.

h. A detailed line-item budget must be submitted. These funds are subject to the cost limitations found in section 315 of the Act (29 U.S.C. 1661*d*) and are subject to the regulations found at 20 CFR 631.14. 54 FR 30118, 30141 (September 22, 1989). Line-item costs shall be apportioned by the cost categories required for Department of Labor Report ETA 9020, "Worker Adjustment Program Quarterly Financial Report" (WQFR). (OMB Control No. 1205–0274)

IV. Application Selection Criteria

Grant applications for JTPA Title III national reserve funds will be evaluated and selected for funding based on the following:

A. *Overall criteria* (JTPA section 322(a)(3); 29 U.S.C. 1662b(a)(3)) against which all applications for national reserve funds, regardless of the proposed use, will be considered. The application—

1. Efficiently targets resources to areas of most need,

2. Encourages a rapid response to economic dislocations, and

3. Promotes the effective use of funds.

B. *Application Review.*

1. Applications will be reviewed and approved or rejected based upon overall responsiveness of the application's content and the application of the selection criteria, taking into consideration the extent to which funds are available.

2. Applications may be rejected where—

a. Other available applications appear to be more effective in achieving the goals of title III, or

b. The information required is not provided in sufficient detail to permit adequate assessment of the proposal, or

c. The information regarding why the State and substate grantee were unable to fund the proposed project is not provided.

C. *Additional specific criteria for evaluation and selection of applications for Intrastate, Multistate, Indian Reservation and Emergency Dislocated Worker Projects.*

1. Demonstrated need. The severity of the circumstances and need as described in the grant application *e.g.*, the immediacy of the schedule for layoff(s) and plant closing(s), the number of individuals affected, the local and State unemployment rates compared to the national rate, the scope of a natural disaster, the projected short- and long-term effect of events on unemployment).

2. The identification of a specific target group(s). The concentration of the eligible individuals in a specific occupation(s), plant(s), industry(ies) or geographic area(s). The extent to which the project is focused on the affected subpopulation actually requiring retraining services in order to remain in the labor force as shown by an analysis of the characteristics of the affected workers. This shall be a major factor in determining the responsiveness of a proposal.

3. Coordination and utilization of resources. The extent to which it is demonstrated that the project will be integrated with other existing program and community resources, including the State/substate Title III formula-funded activities and other JTPA programs, as well as the Trade Adjustment Assistance program, where appropriate.

4. Service delivery strategy. The services to be provided and the service mix, including the degree to which the services appear to meet the needs of the target population. The extent to which *specific occupations* identified for retraining and placement, with evidence presented that demand exists for workers to be served by the project, as well as the degree to which a proposal provides for retraining in specific occupations, either in an on-the-job or in a classroom setting shall be major factors in determining fundability.

5. Management capability. Assurance of project operator's fiscal and program management capabilities to administer the proposed project. The demonstrated ability to begin program operations expeditiously.

6. Cost effectiveness. The cost effectiveness of the project; *e.g.*, cost per participant, cost per placement, and cost per activity in relation to services provided and the outcomes projected including expected wage levels. The level of funding designated for client services as opposed to staff support and administration. The proportion of staff costs to those costs directly attributable to client services such as tutition, tools *etc.* The cost effectiveness of the project shall be a major factor in determining fundability.

7. Comments regarding the application received by the Grant Officer.

8. The overall effectiveness and efficiency of the proposal itself as compared to other proposals received.

D. *Additional specific criteria for evaluation and selection of Applications for Title III discretionary funds to be used by States and substate grantees for formula activities:*

1. A demonstration that State and substate grantee formula funds will not remain unused and that formula funds are not available to meet the need. The burden of proof regarding the unavailability of funds lies with the applicant.

2. A demonstration that the circumstances under which State formula funds were provided or under which the State allocated funds to the substate grantee have substantially and significantly changed so as to justify the need for additional funds.

3. The severity of circumstances and need in the State or substate area as described in the grant application.

4. The ability of the State or substate grantee(s) to utilize the funds provided immediately.

5. The cost effectiveness of the project or activity, including the extent to which other State and substate public and private resources, have been integrated into the proposed project or activity.

6. The extent to which the expenditure of funds will be directly for, or related to, the provision of services to participants.

7. The overall effectiveness and efficiency of the proposal itself.

PART V. Technical Assistance and Training (TAT)

Section 323(c)(1) and (2) of the JTPA allows for amounts, not to exceed 5 percent of the funds reserved under section 302(a)(2), for Staff Training and Technical Assistance. 29 U.S.C. 1662b(c)(1) and (2); see 29 U.S.C. 1652(a)(2). Section 323(d) allows for those same amounts to be used for training of rapid response staffs. Such funds may be used under 20 CFR 631.61, 54 FR 30118, 30147 (September 22, 1989). Should the Department decide to procure such services, it will issue a separate solicitation. The selection of grantees and contractors shall be in compliance with Employment and Training Order 2–87, "Management of Procurements Administered by Employment and Training Administration National and Regional Offices," as it applies to Technical Assistance and Training Grants, Contracts and Agreements.

Signed at Washington, DC, this Seventh day of December, 1989.

Roberts T. Jones,

Assistant Secretary for Employment and Training.

Appendix A

Certification for a Drug-Free Workplace

I. Definitions. As used in this provision,

A. "Controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11–1308.15.

B. "Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

C. "Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession or use of any controlled substance.

D. "Drug-free workplace" means a site for the performance of work done in connection with a specific contract at which employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

E. "Employee" means an employee of a Contractor directly engaged in the performance of work under a Government contract.

F. "Individual" means an offeror/contractor that has no more than one employee including the offeror/contractor.

II. By submission of its offer, the offeror, if other than an individual, who is making an offer that equals or exceeds $25,000, certifies and agrees, that with respect to all employees of the offeror to be employed under a contract resulting from this solicitation, it will—

A. Publish a statement notifying such employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

B. Establish a drug-free awareness program to inform such employees about—

1. The dangers of drug abuse in the workplace;

2. The Contractor's policy of maintaining a drug-free workplace;

3. Any available drug counseling, rehabilitation, and employee assistance programs; and

4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

C. Provide all employees engaged in performance of the contract with a copy of the statement required by subparagraph II.A.(a) of this provision;

D. Notify such employees in the statement required by subparagraph II.A.(a) of this provision, that as a condition of continued employment on the contract resulting from this solicitation, the employee will—

1. Abide by the terms of the statement; and

2. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;

E. Notify the contracting officer within ten (10) days after receiving notice under subdivision (b)(4)(ii) of this provision, from an employee or otherwise receiving actual notice of such conviction; and

F. Within 30 days after receiving notice under subparagraph II.D. of this provision of a conviction, impose the following sanctions or remedial measure on an employee who is convicted of drug abuse violations occurring in the workplace;

1. Take appropriate personnel action against such employee, up to and including termination; or

2. Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by Federal, State, or local health, law enforcement, or other appropriate agency.

G. Make a good faith effort to maintain a drug-free workplace through implementation of subpragraphs (2)(a) through II.F of this provision.

3. By submission of its offer, the offeror, if an individual who is making an offer of any dollar value, certifies and agrees that the offeror will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in the performance of the contract resulting from this solicitation.

4. Failure of the offeror to provide the certification required by paragraphs 2 or 3 of this provision, renders the offeror unqualified and ineligible for award. (See 29 CFR part 98, 54 FR 4947 (Jan. 31,1989), corrected at 54 FR 6363 (Feb. 9, 1989)).

5. In addition to other remedies available to the Government, the certification in paragraphs 2 or 3 of this provision concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under title 18, United States Code, section 1001.

Appendix B

Certification Regarding Debarment, Suspension, and Other Responsibility Matters; Primary Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 29 CFR Part 98, Section 98.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 **Federal Register** (pages 19160–19211).

(Before Signing Certification, Read Attached Instructions Which Are an Integral Part of the Certification)

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such

prospective participant shall attach an explanation to this proposal.

Name and Title of Authorized Representative

Signature

Date

Instruction for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the Department of Labor's (DOL) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the DOL determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the DOL may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate action notice to the DOL if at any time the prospective primary participant learns its certification was erroneous when submitted or has become erroneous by reason of charged circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the DOL for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared, ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the DOL.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions," provided by the DOL, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the *List of Parties Excluded From Procurement or Nonprocurement Programs.*

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the DOL may terminate this transaction for cause or default.

Appendix C

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion; Lower Tier Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 29 CFR Part 98, Section 98.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 **Federal Register** (pages 19160–19211).

(Before Completing Certification, Read Attached Instructions Which Are an Integral Part of the Certification)

(1) The prospective recipient of Federal assistance funds certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective recipient of Federal assistance funds is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Name and Title of Authorized Representative

Signature

Date

Instructions for Certification

1. By signing and submitting this proposal, the prospective recipient of Federal assistance funds is providing the certification as set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective recipient of Federal assistance funds knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Department of Labor (DOL) may pursue available remedies, including suspension and/or debarment.

3. The prospective recipient of Federal assistance funds shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective recipient of Federal assistance funds learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective recipient of Federal assistance funds agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the DOL.

6. The prospective recipient of Federal assistance funds further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to check the *List of Parties Excluded from Procurement or Nonprocurement Programs.*

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under

paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the DOL may pursue available remedies, including suspension and/or debarment.

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Part IV

Department of Transportation

Research and Special Programs Administration

49 CFR Part 199

Control of Drug Use in Natural Gas, Liquefied Natural Gas and Hazardous Liquid Pipeline Operations; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs

recent Supreme Court decisions, as well as consideration of the issues raised by several petitions for reconsideration.

governmental safety interest sufficient to demonstrate the constitutionality of the final rule because DOT has

Executives' Association v. *Burnley*, 839 F.2d 575 (1988)). The Court noted that a substance-impaired employee

Programs" (DOT Procedures) (54 FR 49854, December 1, 1989). The DOT Procedures are modeled after and

its regulatory program and an operator's compliance to determine if changes are needed to enhance safety.

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 199

[Docket No. PS-102, Amdt. No. 199-2]

RIN 2137-AB54

Control of Drug Use in Natural Gas, Liquefied Natural Gas, and Hazardous Liquid Pipeline Operations

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule; partial grant of petitions for reconsideration.

SUMMARY: This action responds to petitions for reconsideration, of the final rule, published in the **Federal Register** on November 21, 1988 (53 FR 47084), requiring operators of pipeline facilities for the transportation of natural gas or hazardous liquids and operators of liquefied natural gas facilities to have an anti-drug program for employees who perform certain sensitive safety-related functions covered by the pipeline safety regulations. On April 13, 1989, the implementation dates contained in the final rule were modified to permit reevaluation of the rule in light of recent decisional law and consideration of issues raised by the petitions for reconsideration. The petitions for reconsideration are granted in part and denied in part, for the reasons set forth below. This document amends the final rule to implement those portions of the petitions granted, and makes other clarifying changes and corrections.

EFFECTIVE DATE: The amendments in this document are effective January 17, 1990.

FOR FURTHER INFORMATION CONTACT: Cesar De Leon, Assistant Director for Regulation, Office of Pipeline Safety, Research and Special Programs Administration, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-1640.

SUPPLEMENTARY INFORMATION: On November 21, 1988, RSPA published a final rule (53 FR 47084) entitled "Control of Drug Use in Natural Gas, Liquefied Natural Gas, and Hazardous Liquid Pipeline Operations." The rule requires pipeline operators to have an anti-drug program which includes pre-employment, post-accident, random, and reasonable cause drug testing and an Employee Assistance Program (EAP) for education and training regarding the effects and consequences of drug use.

On April 13, 1989, RSPA published a notice of a delay in the implementation dates (54 FR 14922) to permit careful reevaluation of its rule in light of two recent Supreme Court decisions, as well as consideration of the issues raised by several petitions for reconsideration. Dates for commencement of drug testing were modified in the following manner: The date for commencement of drug testing for operators with more than 50 employees subject to testing was delayed to April 20, 1990, and the date for operators with 50 or fewer such employees was delayed to August 21, 1990. RSPA received timely petitions for reconsideration of the final rule from the American Gas Association, the Interstate Natural Gas Association of America, the MidCon Corporation, Tenneco Gas Pipeline Group, Pacific Gas and Electric Company, and El Paso Natural Gas Company, and a late-filed petition from the United Steelworkers of America, AFL-CIO. RSPA considered the issues raised in all seven petitions for reconsideration and also reviewed the rule in light of recent decisional law. Discussion of the issues and RSPA's response follows.

Request for Stay Pending Supreme Court Decisions. Pacific Gas and Electric Company (PG&E), the Interstate Natural Gas Association of America (INGAA), and the Tenneco Gas Pipeline Group (Tenneco) requested a delay in implementation of the final rule until the Supreme Court issued decisions in two cases that directly affect employee drug testing programs: *Skinner* v. *Railway Labor Executives' Association*, 109 S. Ct. 1402 (1989), and *National Treasury Employees Union* v. *Von Raab*, 109 S. Ct. 1384 (1989). INGAA requested a stay of one year after the constitutional issues are resolved.

RSPA Response. On March 21, 1989, the Supreme Court announced its decisions in both cases and upheld the constitutionality of certain types of federally-mandated employee drug testing. On April 13, 1989, RSPA published a notice delaying the implementation dates for the final rule to enable consideration of the Supreme Court decisions and of the pending petitions for reconsideration. RSPA thus effectively granted this portion of the petitioners' request. RSPA does not believe any additional delay in implementing the rule is needed.

Constitutional Issues. The American Gas Association (AGA) argued that mandatory random drug testing may violate the Fourth Amendment prohibition on unreasonable searches, and suggested that until the issue is resolved by the courts, operators should be given the option of instituting random testing, but should not be required to do so.

Specifically, the petitioners asserted that RSPA has not shown a compelling governmental safety interest sufficient to demonstrate the constitutionality of the final rule because DOT has acknowledged the excellent safety record of the pipeline industry and has been unable to provide any evidence of a drug problem in the pipeline industry. Two petitioners also noted that a U.S. District Court (Northern District of California) had issued a temporary restraining order against random and mandatory post-accident drug testing in the trucking industry, (which was subsequently expanded to a preliminary injunction) and suggested therefore that random testing was unlikely to withstand constitutional scrutiny.

INGAA asserted that a number of pipeline employees may have property interests in their jobs stemming from a collective bargaining agreement or other employment contract. INGAA contends that to the extent these employees have such a property interest, the drug testing regulations violate the due process clause of the Fifth Amendment because a positive urine test requires that the employee be removed immediately from his or her job duties without a hearing, and endangers his or her continued employment.

RSPA Response. The decisions the Supreme Court handed down in *Skinner* and *Von Raab* shed considerable light on the constitutional issues raised in the petitions. The Supreme Court agreed that the drug tests were "searches" and, therefore, implicated the Fourth Amendment's protection against "unreasonable searches and seizures"; however, the Court concluded that the tests were reasonable, under a "balancing test" that measured the privacy interests of the employees against the Government's public safety and law enforcement interests. The most important factors in this balancing were: The Government's compelling interest in detecting and deterring the use of drugs and alcohol by workers in safety or security-related jobs; the employees' diminished expectations of privacy resulting from either existing, pervasive governmental safety regulation, or the nature of the employees' duties; the search was not conducted pursuant to a criminal investigation; and the minimal intrusion on employee privacy from the tests, which were conducted in a medical-like environment and, generally, without direct observation.

The Court found the Government's interests in drug testing sufficiently compelling to make warrants, probable cause, or "individualized suspicion" unnecessary (reversing an earlier ruling by the U.S. Court of Appeals for the Ninth Circuit, *Railway Labor Executives' Association* v. *Burnley*, 839 F.2d 575 (1988)). The Court noted that a substance-impaired employee performing a safety-sensitive job could cause tragic consequences long before any signs of impairment were noticeable. Significantly, the Court found that the Government's interest was served by the deterrent effect of the drug testing in both cases, notwithstanding that testing might reveal few drug users. In *Von Raab*, however, the Court held that the record evidence was insufficient to determine whether the drug testing was reasonable for employees subject to testing only because they had access to classified materials. The Court remanded this issue to the Fifth Circuit Court of Appeals.

Although *Skinner* and *Von Raab* did not consider random testing, recent decisions by the U.S. Court of Appeals for the District of Columbia Circuit make it clear that while the random nature of the testing is a consideration, the lower courts will follow substantially the same analysis used by the Supreme Court. *Harmon* v. *Thornburgh*, 878 F.2d 484 (D.C.Cir. 1989) (random testing of employees holding top secret security clearances is justified); *National Federation of Federal Employees* v. *Cheney*, No. 88-5080 (D.C.Cir., August 29, 1989) (random testing of certain civilian employees of the Army is reasonable); *American Federation of Government Employees* v. *Skinner*, No. 87-5417 (D.C.Cir., September 8, 1989) (random testing of DOT employees with safety-sensitive jobs is constitutional). The *Von Raab* and *Skinner* cases establish that if the Government can show that the testing program is reasonable, drug testing is permissible without a warrant, without probable cause, and without particularized suspicion.

In *Skinner*, the Court considered several factors in weighing individual privacy interests against the Government's objectives. The D.C. Circuit enumerated these factors, including "(1) the 'limited' intrusions occasioned by the testing procedures; (2) the diminished expectation of privacy that attaches to employment in an 'industry that is regulated pervasively to ensure safety'; and (3) the government's 'compelling' or 'surpassing' interest in railway safety." *Cheney*, slip. op. at 10 (citations omitted). These factors are directly relevant to the pipeline anti-drug rule. The same "limited" intrusions occasioned by the testing procedures are present in Part 199, which mandates use of 49 CFR Part 40, "Procedures for Transportation Workplace Drug Testing Programs" (DOT Procedures) (54 FR 49854, December 1, 1989). The DOT Procedures are modeled after and closely conform to the rigorous standards and procedures imposed by the Department of Health and Human Services (DHHS) for drug testing of federal employees (published at 53 FR 11970, April 11, 1988). In addition, the pipeline industry has been and is regulated pervasively to ensure safety so that a diminished expectation of privacy attaches to employment.

Finally, the Government has an obviously compelling interest in pipeline safety. Although pipelines have an excellent safety record, there are still deaths and injuries each year occurring as a result of pipeline accidents. Moreover, there is the potential for a catastrophic accident. Pipelines are often located in populated areas, near schools, homes, and industry, and adjacent to public rights-of-way. RSPA believes the categories of pipeline employees covered by the rule are appropriate in light of the recent court decisions. Employees performing regulated operation, maintenance, and emergency response functions may directly affect the safety of those who work or live near the pipeline.

RSPA does not agree with petitioners' concerns that the rule may result in a violation of employees' Fifth Amendment due process rights. In any event, the concerns are premature for employees may always challenge their removal from a safety-related position at the time it occurs. When RSPA determines that a generally applicable rule is necessary for safety reasons, that determination overrides inconsistent terms of labor-management agreements.

Post-Accident Testing. AGA indicated that AGA members are concerned about DOT's institution of a separate category for post-accident testing. AGA indicated that post-accident testing should be based on reasonable suspicion. AGA pointed out that in *Burnley*, the Ninth Circuit Court held that post-accident testing was permissible only when accompanied with reasonable suspicion.

Since the final rule was published, RSPA has received numerous requests to clarify the post-accident testing requirements in the event an employee is injured or unconscious.

RSPA Response. The Supreme Court decision in *Skinner* held that particularized suspicion was not required. RSPA believes that post-accident testing should be retained as a separate category because of the programmatic need to evaluate the factors in pipeline accidents. Accident investigation enables RSPA to examine its regulatory program and an operator's compliance to determine if changes are needed to enhance safety.

In response to the requests for clarification, RSPA has revised the post-accident testing requirement in 49 CFR 199.11(b) to clarify that all reasonable steps must be taken to obtain a urine sample if an employee is injured, unconscious, or otherwise unable to evidence consent to the drug test. These reasonable steps include the following procedures. Any injury to an employee should be treated first. The operator should notify the hospital of the need for a specimen. If the employee is injured or unconscious and unable to consent to a urine sample, the operator should wait until the treating physician determines the employee is able to understand a request to provide a sample.

Reasonable Cause Testing. AGA believes that if DOT is concerned with protecting the public safety by eliminating drug impaired employees from safety-sensitive positions, it should eliminate the reasonable cause standard and substitute the reasonable suspicion standard. AGA asserts that the reasonable cause standard is stricter, and requires that there be reasonable grounds for suspecting that a drug test will reveal evidence of drug abuse on the job. AGA contends that the reasonable suspicion standard, by contrast, would permit testing based upon observations of an employee's performance.

In addition, AGA opposes DOT's requirement that large operators with 50 or more employees have at least two of an employee's supervisors substantiate and concur in the decision to test the employee under the "reasonable cause" category as unnecessary and burdensome because of the subjective nature of reasonable cause testing. AGA argues that reasonable cause testing will be subjective regardless of the number of supervisors who concur in a decision to test. The findings of one properly trained supervisor, AGA argues, should be sufficient to initiate reasonable cause testing of an employee.

AGA noted that it supports the exception that an operator with 50 or fewer employees need only obtain the opinion of *one* trained supervisor to initiate reasonable cause testing and fails to see a clear distinction between the subjective nature of reasonable cause testing when applied by large or small operators.

AGA proposes that if RSPA retains the requirement that two or more supervisors substantiate and concur in a decision to test the employee of a large operator, RSPA should incorporate in

the rule language used in the preamble to the final rule to clarify that the

drug paraphernalia, or information received from a third party may

Law No. 100-561, enacted October 31, 1988.

regulation. Tenneco stated that RSPA's assumption that the problem of drug abuse exists in the pipeline industry in

drug use. With respect to Tenneco's contention concerning pressure testing and inspection, RSPA does not believe

testing is unconstitutional because it does not differentiate on- and off-duty

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the rule language used in the preamble to the final rule to clarify that the concurrence between two supervisors may be made by telephone.

El Paso objected to the requirements for reasonable cause testing because RSPA failed to take into consideration that there may be locations where no supervisor is available, and there may be evidence of drug use other than by observable individual impairment, or behavior, such as possession of "roach clips" (marijuana smoking devices), information supplied by other employees, etc. El Paso noted that the rule precludes testing entire locations upon receipt of information that drug use is occurring. El Paso stated that it has found that drug testing of entire locations upon receipt of information concerning drug use is a demonstrated effective deterrent.

El Paso suggested "that DOT revise its regulations to permit reasonable cause testing of an individual based on documented observable performance or behavior by a supervisor based on information received either from within or outside its workforce of possible drug use." El Paso further suggested that the required concurrence of a second supervisor should be deleted from the rules and that such testing should require only the authorization of a member of the operator's management.

RSPA Response. RSPA agrees with the petitioners that the reasonable cause drug testing requirements should be clarified to incorporate language used in the preamble to the final rule, regarding the concurrence of two supervisors by telephone, and has modified 49 CFR 199.11(d) accordingly. RSPA does not agree, however, that this category of testing should be labeled reasonable suspicion. We have defined the conditions under which the test is performed and the label is, therefore, irrelevant. We see no basis for changing the conditions. Furthermore, while a determination to test based on reasonable cause will always be subjective to some extent, requiring two supervisors to concur lessens the subjectivity involved and the potential for harassment. The exception allowing employers with 50 or fewer employees to have only one supervisor substantiate the decision to test based on reasonable cause was provided to recognize that employees of smaller operators in many cases will not have two supervisors. The potential for a subjective judgment is no less real with a small operator, but the reality of the workplace dictated that RSPA make some provision for these operators.

With regard to El Paso's suggestions, evidence of illegal drug use, such as drug paraphernalia, or information received from a third party may certainly be considered in making a determination of reasonable cause, but neither should be the sole basis for making such a determination. Further inquiry must be made and the supervisor must conclude that there are objective factors indicative of probable drug use. RSPA believes that the concurrence of two of the employee's supervisors is necessary to lessen the possibility of an arbitrary determination and the potential for harassment. Requiring two supervisors in an employee's chain of command, rather than simply another member of the operator's management, provides an additional safeguard in that those supervisors are more likely to be familiar with the employee's work history and behavior. Accordingly, RSPA has not revised this portion of the rule except as noted above.

Statutory Authority. Tenneco, AGA, and INGAA argued that the Department does not have statutory authority to regulate the employees or the way in which they conduct their personal lives. Tenneco stated that neither the Natural Gas Pipeline Safety Act of 1968, its legislative history, nor any prior or existing regulations evidence any intent or purpose to regulate the physical or mental attributes, or conduct of employees other than to require that the product of their efforts be satisfactory.

RSPA Response. The two primary statutes under which RSPA administers the pipeline safety program are the Natural Gas Pipeline Safety Act of 1968, as amended (49 App. U.S.C. 1671 *et seq.*) and the Hazardous Liquid Pipeline Safety Act of 1979, as amended (49 App. U.S.C. 2001 *et seq.*). RSPA also regulates operators of offshore gas gathering lines under the Hazardous Materials Transportation Act (49 App. U.S.C. 1801 *et seq.*).

Authority to implement drug education, awareness, and testing programs is derived from the broad authority granted in the above cited statutes. This authority is applicable to various aspects of pipeline facilities affecting pipeline safety, including "design, installation, inspection, emergency plans and procedures, testing, construction, extension, operation, replacement, and maintenance of pipeline facilities," 49 App. U.S.C. 1672 and 2002. Under this authority, RSPA can set qualifications, such as experience and training, for pipeline personnel. This authority extends to allow RSPA to mandate certification programs for such personnel. Section 101 and 201 of Public Law No. 100-561, enacted October 31, 1988.

Administrative Procedure Act (APA). Tenneco, AGA, and INGAA pointed out that the Act also requires the Secretary to consider:

(a) Relevant available pipeline safety data;

(b) Whether such standards are appropriate for the particular type of pipeline transportation or facility;

(c) The reasonableness of any proposed standards; and

(d) The extent to which such standards will contribute to public safety.

According to these petitioners, the Department acted outside its authority by failing to consider any of these factors in promulgating the final rule. Petitioners contention, however, is, at bottom, an argument that the rule is arbitrary and capricious. These petitioners argue that RSPA has not considered available pipeline safety data, has no evidence of a drug problem in the natural gas industry, and has acknowledged the excellent safety record of the industry.

Tenneco pointed out that the Department's safety data demonstrates the absence of any kind of a safety problem, and a complete dearth of safety problems relating to illicit drug use. According to Tenneco, considering the stringent pipeline pressure testing and inspection regulations which protect the integrity of the pipeline from a theoretically impaired employee, the extensive drug testing regulations are neither appropriate nor needed for any pipeline facility.

Tenneco indicated that some of the unreasonable burdens the Secretary failed to consider in promulgating this rule include (1) the regulations' conflict with state laws that prohibit random testing of employees; (2) civil liability, not only for the operator's employees but for contractor's employees; (3) the attenuated or piggyback jurisdiction in requiring operators to require random testing of independent contractors; and (4) the high cost to the industry without any corresponding benefit to the industry.

AGA, MidCon and Tenneco objected that the final rule is arbitrary and capricious in violation of the APA because RSPA assumed that there was a drug problem in the pipeline industry even though RSPA did not provide any evidence of a drug problem in the industry, and RSPA did not distinguish between the safety records of the various transportation industries. The petitioners particularly objected to the random testing requirements of the

regulation. Tenneco stated that RSPA's assumption that the problem of drug abuse exists in the pipeline industry in similar proportion to that existing in society as a whole is unsupported by the evidence. Tenneco contended that although the regulations could conceivably deter the small percentage of pipeline employees who may use drugs, they will not significantly increase safety because the test does not measure impairment. Since testing does not measure impairment, Tenneco contends, the regulation does not have a sufficient nexus to the government's legitimate concern and is therefore arbitrary. AGA argued that RSPA has no justification for imposing mandatory random testing on the pipeline industry because, unlike the other industries covered by the DOT rules, pipelines have an excellent safety record, do not carry people, and are located underground. AGA also contended that pipeline employees are highly supervised and frequently work in teams, making it less likely that an impaired employee could endanger the public. Moreover, AGA stated, most pipeline accidents are caused by third party excavators over which operators have little control. Finally, AGA argued that the examples RSPA used to discount the above factors; i.e., the 1987 train accident in Chase, Maryland, and the nuclear power industry, where the Nuclear Regulatory Commission had found evidence of drug-related accidents, do not support its position. AGA contended, therefore, that the final rule is arbitrary because RSPA could find no evidence of drug-related accidents in the natural gas industry.

RSPA Response. Part 199 established standards for ensuring that operator personnel who perform functions directly affecting the safety of pipeline transportation are free of drug-induced impairment. In promulgating Part 199, RSPA considered all of the required statutory criteria. RSPA acknowledged the excellent safety record of the industry, but concluded that the potential for harm was serious enough to warrant an anti-drug rule. Faced with substantial evidence of a societal drug problem, RSPA cannot ignore its responsibility to the public. The Supreme Court has held that the existence of a drug problem within a particular workplace is not a prerequisite for an anti-drug program. *Von Raab*, 109 S. Ct. at 1395. The pipeline anti-drug program is limited to those employees who may directly affect safety, and the standards and procedures are designed both to protect employees' privacy and to detect illegal drug use. With respect to Tenneco's contention concerning pressure testing and inspection, RSPA does not believe that these measures are sufficient to counteract the behavior of a drug-impaired employee. Pressure testing and inspection are conducted principally at the time of initial construction and detect flaws in the pipeline. After that time, many other factors, including human error, come into play in the operation of a pipeline. RSPA concluded, based on the record evidence and after considering public comments, that part 199 is the minimum standard needed under the circumstances to deter drug use in the pipeline industry. The petitioners have not advanced any arguments or information to convince us otherwise.

With regard to possible conflicts with state laws that prohibit random testing of employees, part 199 preempts, under the Supremacy Clause of the U.S. Constitution, any state or local law, rule, regulation, order, or standard that covers testing of pipeline employees for the presence of drugs or drug metabolites. This preemption exists to the extent that the state or local law interferes with implementation of the federal law. The rule does not preempt any state law that imposes sanctions for the violation of a provision of a state criminal code related to reckless conduct leading to actual loss of life, injury, or damage to property, whether such provisions apply specifically to pipeline employees or generally to the public.

The purported burdens of extending these regulations to contractor personnel are discussed later in this preamble under "Contractor Responsibility."

Finally, regarding Tenneco's comments about the burdens of these regulations because there is no corresponding benefit to the industry, RSPA concluded that these rules will result in a benefit to the public. The Final Regulatory Evaluation, filed in the docket, shows that benefits will exceed costs for these regulations.

RSPA has already responded to petitioners' arguments concerning the safety record of the pipeline industry and the evidence of a drug problem in the industry. Petitioners' arguments are no more persuasive in the APA context than in the constitutional context.

Regarding impairment, the Supreme Court has indicated that urinalysis testing, while it may not detect impairment, serves to deter it. *Von Raab*, 109 S. Ct. at 1393. The D.C. Circuit, following this reasoning, has rejected arguments that urinalysis testing is unconstitutional because it does not differentiate on- and off-duty impairment. *AFGE*, slip. op. at 25. A primary purpose of Part 199 is to deter illegal drug use that could compromise safety.

Regarding the differences between the pipeline industry and other transportation industries, RSPA acknowledged the fact that the pipeline industry does not transport people. The functions performed by pipeline employees, however, can directly affect the physical safety of people who live or work near the pipeline. The D.C. Circuit has upheld random testing of DOT hazardous materials inspectors (who do not transport people) because their "assigned duties require exposure 'to poisonous, explosive, and highly flammable commodities that could be * * * suddenly ignited by improper handling.'" *AFGE*, slip. op. at 14. Similarly, pipeline employees performing operation and maintenance functions may work in close proximity to, or otherwise affect, natural gas, gasoline, oil, and other hazardous materials which are explosive, flammable, or combustible, and pose great risks to personal and public safety.

The D.C. Circuit has also rejected arguments that drug testing is unreasonable because a system of safeguards and supervision can abate the risks posed by a drug-impaired employee, relying on the Supreme Court's decision in *Skinner* that the reasonableness of a particular technique does not depend on the existence of other alternatives the agency might have considered. *Chenev*, slip. op. at 15–16.

Random Testing—Non-Constitutional Issues. Issues raised by petitioners concerning the constitutionality or record support for random testing are discussed under "Constitutional Issues" or "Administrative Procedure Act."

AGA stated that mandatory random testing would impose a financial burden on employers, and asserted that RSPA did not conduct an adequate economic evaluation. The AGA indicated that RSPA did not distinguish the costs of testing between its own federal employees (where the costs of drug testing were obtained) and the other industries covered by the rule. In addition, AGA argued that RSPA did not adequately include all of the very significant costs of transporting workers to test sites, travel time for the employee being tested, lost productivity of workers being tested, the costs of maintaining an EAP, or the costs and procedures incurred by the Medical Review Officer. AGA also said that the Technical Pipeline Safety Standards

Committee and the Technical Hazardous Liquid Pipeline Safety Standards Committee voted against

possible detection. Using a true random selection basis, employees selected for each weekly or monthly increment

RSPA rejected the recommendations of the Technical Pipeline Safety Standards Committee and the Technical

advance knowledge of which workers will be used on a given day. AGA stated that monitoring a drug testing program

recommended, therefore, that operators be granted flexibility in the design and implementation of their drug testing

performance language. AGA stated that the requirement that an MRO be a licensed physician is too restrictive and

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Committee and the Technical Hazardous Liquid Pipeline Safety Standards Committee voted against random testing and RSPA's published reasons for rejecting the Committees' recommendations were short, cursory, and merely referred to the Department's earlier responses to AGA and other commenters.

El Paso Natural Gas Company (El Paso) questioned whether the 50 percent rate of random testing is justified. El Paso stated that the 50 percent random testing rate was established because it is the rate established by DOT for its own employees and there is no evidence supporting any particular level of testing.

El Paso suggested that DOT revise its regulations to allow the operator to determine the level of testing deemed appropriate for its workforce, with a minimum of no more than 15 percent of the operator's covered employees.

El Paso is also concerned about the requirement to randomly select employees for testing by using a random number table or a computer-based number generator. El Paso's concern is that the random testing prescribed by the RSPA regulation would preclude testing an entire geographic location at one time and the regulations would require that the selected employees must be transported to the collection facility for each random test.

RSPA Response. As discussed in the preamble to the final rule, RSPA believes that unannounced testing based on random selection is an essential component of an effective drug testing program. Unannounced random testing has proven to be an effective deterrent to drug use and will provide safety benefits to the pipeline industry by reducing or eliminating drug use by pipeline personnel. Unannounced random testing programs initiated by the military, including the Coast Guard, and private industry show declining drug use, evidenced by a decrease in the number of individuals who test positive for drugs, over the course of the drug testing program.

Random selection avoids potential bias toward, and selective harassment of, an employee because every employee has an equal chance for selection at any time. Random selection is usually accomplished through scientifically accepted methods, such as the use of a random-number table or computer-based, random-number generator. Both methods select individuals by matching these randomly selected numbers against an employee's social security number or payroll account number. With random testing, abstinence is the only alternative to possible detection. Using a true random selection basis, employees selected for each weekly or monthly increment would be returned to the pool of those eligible for testing and would be subject to reselection. The vulnerability for reselection deters drug use because an individual selected early in the testing cycle would still be subject to testing throughout the remainder of the year and would still risk detection if he or she used drugs after the first test.

RSPA reiterates that a 50 percent testing rate is necessary to establish a valid confidence level as well as to provide an adequate deterrent to drug use by employees. During the comment period on the proposed rule, RSPA requested specific advice on what the random testing rate should be. Although many commenters suggested rates of 10–20 percent, none provided any data to support a particular level. RSPA, therefore, chose a random testing rate of 50 percent in part based on DOT's experience with its own internal drug testing program, as well as the rates used by the military services. Although the military had used higher rates to achieve the deterrent affect referred to above, RSPA believed that the 50% rate offered a sufficient balance between a rate high enough to deter use while keeping costs reasonable. At this time, petitioners have not presented any information to warrant changing the rate. RSPA committed in the preamble to the final rule to analyzing random drug testing data after the program goes into effect to determine if the random testing program should be revised, including a revision of the random testing rate. RSPA has made one change to the rule to clarify that random testing is to be conducted at a rate equivalent to 50 percent of covered employees. While the preamble to the final rule was clear, the existing rule language, read literally, could have been interpreted to require the actual testing of half the operator's covered employees.

All employees subject to the anti-drug program must be included in the random testing pool. The selection method must ensure that all eligible employees have an equal probability of selection. Operators may randomly select sites and may test either all, or a predetermined percentage, of the eligible employees at the location. If an operator randomly selects a site for testing, the operator has to be very careful that there is no discrimination, for example, either for or against a particular group of employees because of their work schedules (e.g., shift workers or a core office staff that support other employees that are out in the field).

RSPA rejected the recommendations of the Technical Pipeline Safety Standards Committee and the Technical Hazardous Liquid Pipeline Safety Standards Committee that random testing be eliminated. The reasons given by RSPA for rejecting the advice given by these two advisory committees was that RSPA believes that random testing is a critical component of an anti-drug program and that a 50 percent drug testing rate is necessary to establish a valid confidence level as well as to provide a sufficient deterrent to drug use by employees. RSPA further stated that the 50 percent random testing rate will not impose an undue economic or administrative burden on operators and employees.

RSPA believes that the reasons given by RSPA for rejecting the Committees' recommendations were sufficient in light of the detailed and lengthy discussion on random testing set forth earlier in the final rule. The discussion set forth above also reiterates the earlier RSPA position on random testing and all of these arguments are equally applicable to the reasons for rejecting the Committees' recommendations to delete random testing from the anti-drug program. RSPA's commitment in the preamble to the final rule to analyze random drug testing data after the program goes into effect to determine if the random testing program should be revised is equally applicable to responding to the Committees' concerns regarding random drug testing.

Contractor Responsibility. AGA objected that although the final rule permits the operator to contractually require that the contractor implement its own drug program, the operator is still responsible for ensuring that the contractor comply with DOT regulations. According to AGA, this imposed duty to monitor the contractor means that while the operator does not conduct the testing, it must oversee and inspect the operations of another company. AGA argues that given the nature of the pipeline industry's operations and use of contractors and subcontractors without permanent work forces, it is unreasonable to make operators responsible for ensuring that contractors test their employees.

AGA provided an example of a large midwestern distribution operator that employs seven contractors. At any one time, those contractors provide workers equivalent to the operator's permanent workforce so that the operator's responsibility for providing a drug-free environment is doubled. In addition, the contractors typically hire workers from a labor pool and therefore have no

advance knowledge of which workers will be used on a given day. AGA stated that monitoring a drug testing program under those circumstances would be nearly impossible.

PG&E and MidCon made similar arguments regarding contractor employees, stating that including the contractor employees in a drug testing program, a program which their employees must administer, will result in extraordinary expense and operational delays. El Paso also raised this issue and suggested a revision to § 199.21(a) to require that the operator provide by contract that the contractor carry out the provisions of the rule, and provide written documentation of its compliance.

RSPA Response. RSPA noted, in the preamble to the final rule, that pipeline operators who choose to use contractors to perform their safety-related work have always been held responsible for compliance just as if the operator's own employees were performing the work. Furthermore, an operator can require a contractor to implement its own drug program and, as long as the operator is diligent about monitoring the contractor's compliance, the operator should be protected from civil liability. In addition, as noted in the preamble to the final rule, limiting the final rule to certain covered functions should minimize the impact on operators who hire unskilled contract laborers. In the example posed by AGA, it is not clear that those contract employees would be performing covered functions. If they were, however, the operator may insist as part of the contract that the contractor implement a drug program and test the entire pool of available workers. Based on a thorough review of this issue, RSPA believes that contractors must be covered and that operators must be responsible for the work performed by contractors. The performance of contract employees in covered positions is no less critical to safety than the performance of the operator's own employees.

Collective Bargaining. AGA argued that the final rule is in direct conflict with collective bargaining requirements. AGA stated that since DOT concedes that drug testing is a mandatory subject of collective bargaining agreements under section 8(b) of the National Labor Relations Act, the operator may not be able to impose the DOT regulations in their entirety on a unilateral basis. AGA stated that even with a delay in the effective date to allow more time for negotiation, DOT's rigid regulatory criteria will make it difficult for employers to bargain in good faith. AGA recommended, therefore, that operators be granted flexibility in the design and implementation of their drug testing programs.

The United Steelworkers of America, AFL–CIO (USWA) supported the petition for reconsideration filed by AGA. While the USWA did not concur with each of the specific objections of AGA, USWA believes that the AGA petition is an accurate reflection of the problems with the regulation. The specific example cited was with regard to the issue of the need for collective bargaining, since many of the USWA contracts with the gas industry expire in 1990 and 1991. USWA requested that the effective date of the regulations be stayed until all administrative and legal action on these regulations are concluded, and at least until 1991 to revise or adopt collective bargaining contracts.

RSPA Response. RSPA believes that the regulations in Part 199 provide operators sufficient flexibility in the design and implementation of the drug testing programs to be able to bargain in good faith. Drug programs can be tailored to meet the specific requirements of management and labor.

Moreover, the time provided for implementation of these drug regulations offers sufficient time to revise or adopt collective bargaining agreements. RSPA believes that sufficient modifications to existing collective bargaining agreements can be made to permit a transition until 1990 and 1991 when the existing contracts will expire. More importantly, RSPA safety regulations override collective bargaining agreements. The fact that a matter is a mandatory subject of collective bargaining means that the employer cannot unilaterally impose a requirement for testing. However, when a Federal regulation imposes a legal burden on the employer or employee, they must comply.

Medical Review Officer. AGA objected to the Medical Review Officer (MRO) process because they assert that they did not have an opportunity to comment on the need for or responsibilities of an MRO in the NPRM.

AGA believes that the RSPA requirement for an MRO expands the role of the MRO as established in the DHHS Guidelines. AGA also indicated that many operators would have to appoint numerous MRO's at great expense because of the numerous geographic locations of an operator's facilities.

AGA also stated that requirements for the MRO's are written in prescriptive language and urged RSPA to adopt performance language. AGA stated that the requirement that an MRO be a licensed physician is too restrictive and urged RSPA to permit operators to use a qualified person, such as an EAP counselor or industrial nurse, who is knowledgeable about drug abuse. Finally, AGA asked for clarification of whether an individual who fails a pre-employment drug test is subject to the MRO review process.

AGA requested that RSPA clarify whether individuals who are actually hired who: (1) Fall within the pre-employment testing category and (2) also test positive for drug use are included within the lengthy MRO review and interview procedures for "employees" described in § 199.15. AGA noted that RSPA stated in the preamble that "* * * an employer may not hire * * * anyone to perform certain functions until he or she has passed a drug test." Thus, it is unclear to AGA whether an individual described above is an employee for purposes of MRO review. AGA stated that many natural gas operators refuse to hire employment applicants who test positive and these operators should not be burdened with the requirement of providing expensive MRO services to employment applicants who test positive.

MidCon also raised some of the same arguments as AGA, particularly with respect to the cost of MRO's and the need for operators to employ several MRO's due to the numerous and often remote locations of manned facilities. El Paso stated that some of the duties ascribed to the MRO are more appropriately the responsibility of the operator's EAP counselor or Human Resources Officer. El Paso proposes that an EAP counselor should interview an employee about a confirmed positive test and determine the rehabilitation program required in each case, as well as determine when an employee may return to duty. El Paso suggested that, at most, the MRO interpret the results of a confirmed drug test and that all other duties be the responsibility of the operator's EAP counselor, with the exception of scheduling random testing.

RSPA Response. The preamble to the Notice of Proposed Rulemaking (53 FR 25892, July 8, 1988) stated that "testing would be required to be carried out according to the DHHS guidelines. Each operator would be required to make sure that any testing conformed to these guidelines." 53 FR 25898. The proposed rule included a notice that the guidelines were available for inspection and copying at RSPA. Commenters thus had the opportunity to comment on the MRO requirements.

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RSPA does not agree that the final rule expanded the role of the MRO as established in the DHHS Guidelines. Section 199.15 conforms to the MRO duties in section 40.33 of the DOT Procedures, which are based on the DHHS Guidelines.

Section 199.15 retains the requirement that the MRO be a licensed physician because it requires a physician's medical training with knowledge of substance abuse disorders to interpret an individual's positive test to determine whether an employee who refused to take or did not pass a drug test may return to duty. This requires the skills of a licensed physician to determine whether there is a legitimate medical explanation, including the use of a legally prescribed medication, for the positive test result of an individual. Other duties of the MRO are to receive the results of all drug tests from the laboratory and verify that the laboratory report and assessment of drug test results are correct. The MRO's function with respect to negative tests is merely to provide an administrative review to be sure that chain of custody requirements have been met. This responsibility of the MRO is important to assure that the MRO is cognizant of all drug tests to determine the reasonableness of the overall drug test results of the operator's personnel. The MRO must report the results of each test to an individual designated by the operator to receive such information.

RSPA does not envision that an operator would need to hire multiple MRO's to serve at various locations. An MRO need not be physically present at a particular location to perform his or her duties. For example, an MRO can confer by telephone with an individual to determine if there is a legitimate explanation for a positive result from the laboratory.

In response to AGA's request for clarification, all testing performed under Part 199 must be performed in accordance with the DOT Procedures to ensure that test results are not misused. This means that if an individual is pre-employment tested, the sample must be collected in accordance with the DOT Procedures, subjected to an initial test at an approved laboratory, and if the initial test is positive, subjected to a confirmatory test using gas chromatography/mass spectrometry. If the sample is then confirmed positive, the result must be reported to the MRO for verification of the positive test result, including giving the individual an opportunity to discuss the test results with him or her. If the MRO then verifies the test as positive, the MRO reports the test result to the operator. The operator then may not hire the applicant for a covered position and may decline, at the operator's sole discretion, to hire the applicant for a non-covered position. It is necessary to have MRO involvement even for preemployment tests because applicants who have legitimate explanations for positive tests should not be deprived of an opportunity for a job.

Finally, § 199.11(e) has also been revised and retitled "Return to duty testing" because of the other deletions involving rehabilitation that are made in this document. Similar to the other deletions regarding rehabilitation, since the final rule does not require the operator to provide an opportunity for rehabilitation, it is inappropriate to base the "return to duty testing" in § 199.11(e) on an employee undergoing rehabilitation. This section has been further revised to include the duty of the MRO to determine whether and when an employee may return to duty. In addition, the definition of "Rehabilitation committee" in § 199.3 is deleted because the requirement to establish such a committee was deleted in the final rule.

Use of Drug Test Results in Arbitration and/or Wrongful Discharge Suits. The final rule limits release of an individual's drug test results to two cases: Upon written consent of the individual, or as part of an accident investigation. AGA requested that DOT create an additional exception in § 199.23(b) that information regarding an employee's drug test results may be used by the operator-employer in its defense in the event of a challenge. It appears to AGA that an employer who disciplines or discharges an employee with a positive drug test result does so at the risk of defending itself in an arbitration and/or wrongful discharge suit without the benefit of such test results. AGA believes that the regulations should allow an operator-employer access and use of those test results to defend itself in the event of such a challenge. AGA believes that the requested exception is consistent with § 40.29(n)(5) of the DOT Procedures. That section provides that a laboratory should have qualified personnel available to testify in an administrative or disciplinary proceeding against an employee when that proceeding is based on positive urinalysis results reported by the laboratory.

RSPA Response. RSPA agrees with AGA that the DOT Procedures contemplate that an employer should be able to use information regarding an individual's drug test results in the event of a challenge. RSPA has not amended its rule, however, because this issue is addressed in the final rule responding to comments on the DOT Procedures (54 FR 49861).

Executive Order 12291 and the Paperwork Reduction Act. INGAA asserted that ignoring burdens such as paperwork, liability for contractors, potential conflict with collective bargaining agreements, and compliance with the DOT Procedures, and by failing to show a need for the final rule, RSPA ran afoul of Executive Order 12291, which requires, inter alia, that:

(a) Administrative decisions shall be based on adequate information concerning the need for and consequences of proposed government action;

(b) Regulatory action shall not be undertaken unless the potential benefits to society for the regulation outweigh the potential costs to society;

(c) Regulatory objectives shall be chosen to maximize the net benefits to society;

(d) Among alternative approaches to any given regulatory objective, the alternative involving the least net cost to society shall be chosen; and

(e) Agencies shall set regulatory priorities with the aim of maximizing the aggregate net benefits to society, taking into account the condition of the particular industries affected by regulations, the condition of the national economy, and other regulatory actions contemplated for the future.

INGAA stated that RSPA failed to determine that there is a need for drug testing in the pipeline industry. Accordingly, RSPA failed to identify any benefit which would outweigh the burdens imposed by the final rule, thus defeating the Presidential policy of "reduc[ing] the burdens of existing and future regulations, increas[ing] agency accountability for regulatory actions * * * and insur[ing] well-reasoned regulations."

INGAA set forth a list of burdens which it believes outweigh the benefits of the anti-drug program. The burdens include: assuming responsibility for testing contractors, contractors' employees and subcontractors; establishing at least one collection site with all necessary personnel, materials, equipment, facilities, and supervision to provide for the collection, security, temporary storage, and shipping of urine specimens to a certified drug testing laboratory; hiring a "collection site person" to collect urine samples; having a supervisor available to the collection site person; providing transportation of urine samples from the collection site to the laboratory; arranging to have urine samples tested at a certified laboratory; and hiring a "Medical Review Officer," a licensed physician with knowledge of substance abuse, to review laboratory results.

AGA stated that RSPA had not justified the need for the final rule, and did not address the administrative and financial burdens imposed by the final rule, concerning contractor employees, MRO procedures, chain of custody forms, written instructional materials for employees, testing, and permanent records of all tests. AGA also asserted that RSPA had not complied with the Paperwork Reduction Act. AGA noted that RSPA had not obtained the required clearance of the Office of Management and Budget (OMB) when the final rule was published in the Federal Register.

AGA also identified as another burden the potential conflicts between the final rule and collective bargaining agreements or other employment contracts.

RSPA Response. RSPA carefully considered all of the burdens raised by AGA and INGAA in developing the final rule. The Final Regulatory Evaluation was based on the costs associated with implementing the DOT drug testing program, a program with widely dispersed geographic specimen collection site locations and took into account all of the associated administrative costs, implementation costs, and paperwork costs of carrying out the anti-drug program.

With regard to the AGA and INGAA concerns regarding the widely dispersed geographic collection site locations, RSPA contacted INGAA, AGA, and the American Petroleum Institute regarding the approximate number of pipeline personnel working in each segment of the industry. From this information, RSPA considered that about two-thirds of pipeline personnel subject to these regulations work for distribution operators, and the other one-third work for transmission operators. In addition, about 85 large distribution operators, which serve over 85 percent of the U.S. gas consumers, are located in metropolitan areas, and most of the transmission operators, both hazardous liquid and natural gas, are headquartered in metropolitan areas. Therefore, RSPA believes that about 85 percent of personnel working for distribution operators and over half of the personnel working for transmission operators are in metropolitan areas and not in widely dispersed geographic locations.

The recordkeeping and reporting requirements of the final anti-drug rule were approved by OMB (OMB No. 2137–0579) in accordance with the Paperwork Reduction Act of 1980.

AGA's issue regarding collective bargaining agreements is discussed under "Collective Bargaining."

Prohibited Drugs. El Paso stated that in addition to the five drugs listed in the final rule it also tests for barbiturates, benzodiazepine, methadone, methaqualone, and opiate derivatives including codeine and heroin. El Paso believes that the five drugs listed in the rule are an appropriate minimum, but because operators may need to tailor their drug screening to the demographics of their workforce, they should be permitted to test for other drugs without being required to seek prior approval from RSPA, and without obtaining a second sample from the employee.

RSPA Response. In accordance with the DOT procedures, RSPA may not grant requests to test for additional drugs unless and until the DHHS has established collection and testing procedures and positive thresholds for the drugs to be added. The DHHS has not established collection and testing procedures applicable to additional drugs, so RSPA cannot provide for the testing of additional drugs at this time. This issue is addressed more fully in the final rule on the DOT Procedures (54 FR 49854). It should be noted that the rule does not prohibit an operator from testing for other drugs if the operator has the independent legal authority to do so and it obtains a second sample.

Miscellaneous Clarifying Changes. Section 199.7 has been changed to clarify that the anti-drug plan must contain procedures for notifying employees of the coverage and provisions of the plan. The discussion in the preamble to the final rule covered this issue but addressing it in the regulations clarifies the requirement.

Section 199.9(b) has been revised to delete references in the rule regarding the requirement for an employee to complete a rehabilitation program before returning to duty. The proposal to require the operator to provide an opportunity for rehabilitation was deleted from the final rule and such rehabilitation is left to the discretion of the operator. This clarifying revision now provides that an employee may return to work after passing a drug test and when the MRO has recommended to the operator that the employee may safely be returned to his or her job.

Economic Assessment

In accordance with the requirements of Executive Order 12291, RSPA reviewed the costs and benefits of the final anti-drug rule published on November 21, 1988. At that time, RSPA prepared a Final Regulatory Evaluation of the final rule. RSPA included that evaluation in the public docket. RSPA also summarized and analyzed the comments submitted by interested persons on the economic issues in the final rulemaking document.

This final rule does not change the basic regulatory structure and requirements promulgated in the final rule and therefore RSPA anticipates little or no costs associated with these minor changes.

Because any potential difference in costs and benefits would be minimal, RSPA has determined that revision of the Final Regulatory Evaluation for the final anti-drug rule is not necessary and preparation of a separate economic analysis is not warranted. This final rule will not result in an annual effect on the economy of $100 million or more and will not result in a significant increase in consumer prices; thus, the final rule is not a major rule pursuant to Executive Order 1229. However, the final anti-drug rule is significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979) because it involves issues of substantial interest to the public.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 requires a federal agency to review any final rule to assess its impact on small business. RSPA certifies that the amendments contained in this final rule will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

The recordkeeping and reporting requirements of the final anti-drug rule published on November 21, 1988, previously were submitted to the Office of Management and Budget (OMB) and approved in accordance with the Paperwork Reduction Act of 1980. Because this final rule does not amend the recordkeeping and reporting requirements, it is not necessary to amend the prior approvals received from OMB.

Federalism Implications

The final rule adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, RSPA has determined that this final rule does not have sufficient federalism implications

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to warrant preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 199

Pipeline safety, Drug testing.

In consideration of the foregoing, RSPA amends 49 CFR part 199 as follows:

PART 199—DRUG TESTING

0. The authority citation for part 199 continues to read as follows:

Authority: 49 App. U.S.C. 1672, 1674a, 1681, 1804, 1808, 2002, and 2040; 49 CFR 1.53.

§ 199.3 [Amended]

1. In § 199.3, the definition of "Rehabilitation committee" is removed.

2. Section 199.7 is revised as follows:

§ 199.7 Anti-drug plan.

Each operator shall maintain and follow a written anti-drug plan that conforms to the requirements of this part and the DOT Procedures. The plan must contain—

(a) Methods and procedures for compliance with all the requirements of this part, including the employee assistance program;

(b) The name and address of each laboratory that analyzes the specimens collected for drug testing;

(c) The name and address of the operator's medical review officer; and

(d) Procedures for notifying employees of the coverage and provisions of the plan.

3. Section 199.9 is amended by revising paragraph (b) to read as follows:

§ 199.9 Use of persons who fail or refuse a drug test.

* * * * *

(b) Paragraph (a)(1) of this section does not apply to a person who has—

(1) Passed a drug test under DOT Procedures;

(2) Been recommended by the medical review officer for return to duty in accordance with § 199.15(c); and

(3) Not failed a drug test required by this part after returning to duty.

4. Section 199.11 is amended by revising paragraphs (b) through (e) to read as follows:

§ 199.11 Drug tests required.

* * * * *

(b) *Post-accident testing.* As soon as possible but no later than 32 hours after an accident, an operator shall drug test each employee whose performance either contributed to the accident or cannot be completely discounted as a contributing factor to the accident. If an employee is injured, unconscious, or otherwise unable to evidence consent to the drug test, all reasonable steps must be taken to obtain a urine sample. An operator may decide not to test under this paragraph but such a decision must be based on the best information available immediately after the accident that the employee's performance could not have contributed to the accident or that, because of the time between that performance and the accident, it is not likely that a drug test would reveal whether the performance was affected by drug use.

(c) *Random testing.* Each operator shall administer, every 12 months, a number of random drug tests at a rate equal to 50 percent of its employees. Each operator shall select employees for testing by using a random number table or a computer-based random number generator that is matched with an employee's social security number, payroll identification number, or other appropriate identification number. However, during the first 12 months following the institution of random drug testing under this part, each operator shall meet the following conditions:

(1) The random drug testing is spread reasonably through the 12-month period;

(2) The last test collection during the year is conducted at an annualized rate of 50 percent; and

(3) The total number of tests conducted during the 12 months is equal to at least 25 percent of the covered population.

(d) *Testing based on reasonable cause.* Each operator shall drug test each employee when there is reasonable cause to believe the employee is using a prohibited drug. The decision to test must be based on a reasonable and articulable belief that the employee is using a prohibited drug on the basis of specific, contemporaneous physical, behavioral, or performance indicators of probable drug use. At least two of the employee's supervisors, one of whom is trained in detection of the possible symptoms of drug use, shall substantiate and concur in the decision to test an employee. The concurrence between the two supervisors may be by telephone. However, in the case of operators with 50 or fewer employees subject to testing under this part, only one supervisor of the employee trained in detecting possible drug use symptoms shall substantiate the decision to test.

(e) *Return to duty testing.* An employee who refuses to take or does not pass a drug test may not return to duty until the employee passes a drug test administered under this part and the medical review officer has determined that the employee may return to duty. An employee who returns to duty shall be subject to a reasonable program of follow-up drug testing without prior notice for not more than 60 months after his or her return to duty.

5. Section 199.15 is amended by republishing paragraph (c) introductory text and by revising paragraphs (c)(3), (c)(4), and (c)(5) to read as follows:

§ 199.15 Review of drug testing results.

* * * * *

(c) *MRO duties.* The MRO shall perform the following functions for the operator:

* * * * *

(3) Determine whether and when an employee who refused to take or did not pass a drug test administered under DOT Procedures may be returned to duty.

(4) Determine a schedule of unannounced testing, in consultation with the operator, for an employee who has returned to duty.

(5) Ensure that an employee has been drug tested in accordance with the DOT Procedures before the employee returns to duty.

* * * * *

Issued in Washington, DC, on December 7, 1989.

Travis P. Dungan,

Administrator, Research and Special Programs Administration.

[FR Doc. 89-29186 Filed 12-15-89; 8:45 am]

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federal register

Monday
December 18, 1989

Part V

Department of Health and Human Services

Public Health Service

42 CFR Part 57

Nursing Student Loan Program; Notice Of Proposed Rulemaking

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 57

RIN: 0905-AC78

Nursing Student Loan Program

AGENCY: Public Health Service, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend existing regulations governing the Nursing Student Loan (NSL) program to require schools to: (1) Invest their NSL funds and return earnings from the investments to the NSL funds; (2) identify and return to the Department excess cash from the NSL funds; and (3) determine the collectibility of defaulted loans and either obtain approval to write off the loans or reimburse the fund in the amount of the loans. However, schools would not be required to obtain write-off approval or reimburse the fund for loans that became uncollectible prior to January 1, 1983. The Department believes that these revisions will enhance its enforcement capabilities for improving the cash management practices of schools participating in the NSL program.

DATE: Comments on this proposed rule are invited. To be considered, comments must be received no later than February 16, 1990.

ADDRESSES: Written comments should be addressed to Paul M. Schwab, Acting Director, Bureau of Health Professions, room 8-05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. All comments received will be available for public inspection and copying at the Office of Program Development, BHPr, room 8A-55, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley A. Zimmerman, Chief, Program Accounting and Analysis Branch, Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8-34, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number: 301 443-1700.

SUPPLEMENTARY INFORMATION: The Department has had concerns over the cash management practices of the schools participating in the NSL program. Of particular concern to the Department is that in many cases, schools are not returning income earned from investment of the funds' cash balances to the NSL fund or are not investing the idle cash that is in the funds, are maintaining balances in the funds in excess of their needs, and are carrying uncollectible loans on their books for long periods of time. These problems were recently highlighted by various assessments conducted by the Health Resources and Services Administration (HRSA), extensive cash management audits performed by the Department's Office of the Inspector General (OIG), and a study conducted by the General Accounting Office (GAO).

Many schools are not properly crediting earnings from invested funds to the appropriate NSL fund as required by statute. Specifically, section 835(b)(2)(E) of the Public Health Service Act (the Act) requires that schools deposit in the fund "* * * any other earnings of the fund." This requirement is also included in the terms of agreement which all schools sign to paritipcpate in the program. Although this requirement has been in existence since the inception of the program, many schools whose funds are invested, and especially whose funds are pooled for investment with other university or State funds, are not properly crediting the proportionate share of investment earnings to the NSL fund(s).

In other instances, schools are not investing and earning interest on cash balances. HRSA policy guidance states that when there is a delay between the time funds are received and disbursed to students, schools must invest cash balances in insured, interest-bearing accounts. When schools fail to properly invest program funds and return income earned to the loan fund, needy students are deprived of additional funds for new loans. In response to these concerns, the Department is proposing to amend the regulations to require that a school maintain all monies relating to the NSL fund in one or more interest-bearing accounts that are insured by an agency of the Federal Government, or invest in income-producing securities issued or guaranteed by the United States and assure that all earnings become a part of the fund.

The Department is also concerned that schools are maintaining cash balances in excess of their needs despite efforts to monitor, through the Department's annual operating and debt management reports, the level of cash balances being maintained by the schools. As a part of the Department's required semi-annual reports, each active school is instructed to determine whether it has excess cash by comparing its projected levels of expenditures and collections with the fund balance and to return any excess cash to the Department. A school in closing status must review the balance in the fund as a part of required quarterly reports. Excess cash returned to the Department is reallocated to NSL schools, with priority to schools that established NSL funds after September 30, 1975.

To strengthen the Department's ability to assure that excess cash is properly identified and returned to the Federal Government, the Department is proposing to make explicit in these regulations the requirement that a school must review, on at least a semi-annual basis, its cash balance to identify any monies in excess of its needs and return the Federal Government's share of the excess amount to the Department. The regulations would also make explicit the Secretary's authority to make the final determination as to whether excess cash exists. Additionally, they would provide that a school which fails to comply with these requirements will be subject to the noncompliance provisions set forth in § 57.318 and to the Department's Claims Collection regulations (45 CFR part 30), as appropriate.

A final concern of the Department with schools' cash management practices is that many schools are not making determinations on the collectibility of their defaulted loans. They are neither requesting write-off of these defaulted loans where due diligence can be documented, nor reimbursing the NSL fund for the remaining amount owed on the loan where due diligence was not followed or cannot be documented. The result of this practice is that the amount of loan funds available for loans to needy nursing students is less than it could be. Accordingly, the Department is proposing to establish timeframes within which nursing schools must determine the collectibility of defaulted loans and request write-off approval for those uncollectible loans for which due diligence can be documented. The Department is also proposing to set timeframes within which the school must reimburse the fund or the Department (if the school is in closing status) for those loans for which due diligence was not followed or cannot be documented. Schools will not be required to request write-off approval or to reimburse the fund for loans that became uncollectible (i.e., loans on which payments were 2 or more years past due) prior to January 1, 1983, consistent with the Nursing Shortage Reduction and Education Extension Act of 1988, (title VII of Pub. L. 100-607), enacted on November 4, 1988.

The Department believes that these revisions will enhance its enforcement capabilities for improving the cash management practices of schools participating in the NSL program.

Interested persons are invited to submit written comments on these proposed revisions to the NSL regulations. Written comments should be directed to the Director of the Bureau of Health Professions at the address given above.

The proposed revisions are discussed below according to the section numbers and headings affected.

Section 57.305 Nursing Student Loan Funds

Paragraph (a) of this section states in part that any fund established by a school with Federal capital contributions will be deposited and carried in a special account of the school with the institutional capital contribution represented at all times. This notice proposes to require that schools must at all times maintain all monies relating to the fund in one or more interest-bearing accounts that are insured by an agency of the Federal Government, or invest in income-producing securities issued or guaranteed by the United States, and assure that all earnings become a part of the fund. The school must place all earnings into the fund, but may first deduct from total earnings any reasonable and customary charge incurred through the use of an interest-bearing account. Additionally, these regulations will require that the school must exercise the level of care required of a fiduciary with regard to these deposits and investments.

The second proposed revision to this paragraph would make explicit in regulations the requirements that a school must review the balance in the fund on at least a semi-annual basis to determine whether the fund balance compared with projected levels of expenditures and collections exceeds its needs and that a school in closing status must review the balance in the fund on a quarterly basis. It would also state explicitly that monies identified as exceeding the school's needs must be reported, and the Federal share returned to the Federal Government, by the due date of the required report which identifies the excess monies. The proposed timeframes are consistent with most schools' existing planning cycles and the Department's current reporting requirements on excess cash. This proposed amendment would also state that the school's determination of whether it has excess cash is subject to the review and approval of the Secretary.

Finally, a new paragraph (c) is being added to make clear that a school which fails to comply with the requirements of this section will be subject to the noncompliance provisions of § 57.318 and the Department's Claims Collection regulations (45 CFR part 30), as appropriate.

Section 57.310 Repayment of Collection of Nursing Student Loans

Paragraph (b)(4) of this section states in part that a school may request write-off approval of uncollectible loans and that where the Secretary determines that a school has failed to exercise due diligence in the collection of a loan, the school will be required to place in the fund the full amount of the loan that remains uncollected. If write-off approval is granted, the school is not required to reimburse the Federal Government for its share of the remaining principal, interest, and penalty charges on the loan. This notice proposes to revise the paragraph to require a school to classify any loan on which payments are 2 or more years past due as uncollectible unless the loan is the subject of an open court case and either to place the full amount of the uncollectible loan into the fund or to submit the loan for write-off approval within 30 days of the determination that it is uncollectible. In the event that a school is holding a loan which would be "uncollectible," according to the proposed regulations, at the time the regulations become final, the school would be required to submit the loan for write-off approval within 30 days of the effective date of the regulations or reimburse the fund within timeframes described below. A school would be permitted to determine a loan to be uncollectible sooner than 2 years past due only when it has evidence supporting this determination. In no case however, would a school be permitted to consider a loan uncollectible if the loan has not been in default for at least 120 days, in accordance with the default formula in section 835(c) of the Act on which a school's participation in the program is based. Schools will not be required to obtain write-off approval or reimburse the fund for loans which became uncollectible (i.e., on which payments were 2 or more years past due) prior to January 1, 1983, consistent with Public Law 100-607, enacted on November 4, 1988. The Department notes that there is nothing to prevent a school from further pursuing the collection of a loan that has been determined to be uncollectible, when the school has knowledge of changes in a borrower's financial situation. Any such amounts recovered are required to be deposited into the fund and reported to the Department.

The 2-year period for attempting to collect a loan is based on a reasonable time period for compliance with the regulatory due diligence requirements set forth in this section, which typically could include 4 months of initial followup by the school, a 9-month period of collection efforts by commercial collection agents, and an additional extended period for litigation. It is also consistent with criteria used by the Department's OIG in conducting extensive cash management audits at participating schools. The proposed rule would also require that upon determination by a school that a loan is uncollectible or upon receipt of a denial of a request for write-off approval, the school must reimburse the fund by the following June 30 or December 31, whichever is sooner, for the remaining balance on the loan; however, in no case would a school be required to reimburse the fund in less than 30 days. The Department expects that tying the timeframe for reimbursing the fund to current reporting requirements will facilitate the Department's monitoring of a school's compliance and will allow a reasonable time for schools to secure the institutional funds necessary to repay the NSL fund.

Finally, the regulations would state that any school which fails to comply with these reimbursement requirements, except for loans that became uncollectible prior to January 1, 1983, will be subject to the noncompliance provisions of § 57.318 and the Department's Claims Collection regulations (45 CFR part 30), as appropriate.

Regulatory Flexibility Act and Executive Order 12291

The Department believes that the resources required to implement the requirements in this proposed regulation are minimal. Therefore, in accordance with the requirements of the Regulatory Flexibility Act of 1980, the Secretary certifies that this regulation will not have a significant impact on a substantial number of nursing schools.

The Department has also determined that this rule is not a major rule under Executive Order 12291; therefore, a regulatory impact analysis is not required. In addition, the rule will now exceed the threshold level of $100 million established in section (b) of Executive Order 12291.

Paperwork Reduction Act

This proposed rule contains

estimate of the annual reporting burden. Included in the estimate is the time for

Description: Schools must report and return excess cash on a semi-annual basis and request permission to write off

uncollectible or reimburse the fund in the full amount of the loan, pursuant to § 57.310(b)(4)(iii). In any instance where

(ii) If the Secretary determines that a school has exercised due diligence in the collection of a loan, in accordance

reimbursement must be made by the following June 30 or December 31, whichever is sooner, except that in no

Paperwork Reduction Act

This proposed rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The title, description, and respondent description of the information collections are shown below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Nursing Student Loan Program: Cash Management.

Description: Schools must report and return excess cash on a semi-annual basis and request permission to write off uncollectible loans or reimburse the loan fund in the full amount of the uncollectible loan.

Description of Respondents: Public or other non-profit institutions.

Estimated Annual Reporting Burden:

Section requirement	Annual No. of respondents	Annual frequency	Average burden per response	Annual burden hours
57.305(a)(2)	The burden associated with this regulatory requirement is included in the Annual Operating Report and the Debt Management Report—OMB Clearance Nos. 0915-0044 and 0915-0046)			
57.310(b)(4)	200	600 requests	30 min.	400 hrs.

We have submitted a copy of this proposed rule to OMB for its review of this information collection. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the agency official designated for this purpose whose name appears in this preamble, and to the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503.

List of Subjects in 42 CFR Part 57

Dental health, Education of disadvantaged, Educational facilities, Educational study programs, Emergency medical services, Grant programs-education, Grant programs-health, Health facilities, Health professions, Loan programs-health, Medical and dental schools, Scholarships and fellowships, and Student aid.

Accordingly, subpart D of 42 CFR part 57 is proposed to be amended as follows:

(Catalog of Federal Domestic Assistance, No. 13.364, Nursing Student Loan Program)

Dated: May 5, 1989.

James O. Mason,

Assistant Secretary for Health.

Approved: November 16, 1989.

Louis W. Sullivan,

Secretary.

PART 57—GRANTS FOR CONSTRUCTION OF TEACHING FACILITIES, EDUCATIONAL IMPROVEMENT, SCHOLARSHIPS AND STUDENT LOANS

Subpart D—Nursing Student Loans

1. The authority for subpart D is revised to read as follows:

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690, 87 Stat. 631, (42 U.S.C. 216); sections 835–842 Public Health Service Act, 78 Stat. 913–916, as amended, 99 Stat. 397–400, 536–537, and as amended by 102 Stat. 3160–3161 (42 U.S.C. 297e–i).

2. Section 57.305 is amended by revising paragraph (a) and adding a new paragraph (c) to read as follows:

§ 57.305 Nursing student loan funds.

(a) *Funds established with Federal capital contributions.* Any fund established by a school with Federal capital contributions will be deposited and carried in a special account of the school. At all times the fund must contain monies representing the institutional capital contribution. The school must at all times maintain all monies relating to the fund in one or more interest-bearing accounts that are insured by an agency of the Federal Government or invest such monies in income-producing securities issued or guaranteed by the United States. The school must place all earnings into the fund but may first deduct from total earnings any reasonable and customary charge incurred through the use of an interest-bearing account. An institution shall exercise the level of care required of a fiduciary with regard to these deposits and investments.

(1) The Federal capital contribution fund is to be used by the school only for:

(i) Nursing student loans to full-time or half-time students;

(ii) Capital distribution as provided in section 839 of the Act or as agreed to by the school and the Secretary; and

(iii) Costs of litigation, costs associated with membership in credit bureaus; and to the extent specifically approved by the Secretary, other collection costs that exceed the usual expenses incurred in the collection of nursing student loans;

(2) A school must review the balance in the fund on at least a semi-annual basis to determine whether the fund balance compared with projected levels of expenditures and collections exceeds its needs. A school in closing status must review the balance in the fund on a quarterly basis. Monies identified as in excess of the school's needs must be reported, and the Federal share returned to the Federal Government, by the due date of the required report which identifies the excess monies. The school's determination is subject to the review and approval of the Secretary.

* * * * *

(c) Failure to comply with the requirements of this section will subject a school to the noncompliance provisions of § 57.318 and the Department's Claims Collection regulations (45 CFR part 30), as appropriate.

3. Section 57.310 is amended by revising paragraph (b)(4) to read as follows:

§ 57.310 Repayment and collection of nursing student loans.

* * * * *

(b) * * *

(4) A school must review and assess the collectibility of its loans to determine which loans it considers uncollectible. A school must consider as uncollectible any loan on which payments are 2 or more years past due. A school may determine a loan to be uncollectible sooner when it has evidence that the loan cannot be collected, but in no case should a school consider a loan as uncollectible if it has not been in default for at least 120 days. A school is not subject to the requirements in paragraph (b)(4) (i) and (iii) of this section for loans that became uncollectible (i.e., loans on which payments were 2 or more years past due) prior to January 1, 1983.

(i) A school must request permission to write off an uncollectible loan within 30 days of the determination that it is uncollectible or reimburse the fund in the full amount of the loan, pursuant to § 57.310(b)(4)(iii). In any instance where the Secretary determines that a school has failed to exercise due diligence in the collection of a loan, in accordance with the applicable regulatory requirements, the school will be required to place in the fund an amount equal to the full amount of principal, interest, and penalty charges that remains uncollected on the loan. This reimbursement must be made by the following June 30 or December 31, whichever is sooner, except that in no case will a school be required to reimburse the fund in less than 30 days following the Secretary's determination that it failed to exercise due diligence.

(ii) If the Secretary determines that a school has exercised due diligence in the collection of a loan, in accordance with the applicable regulatory requirements, the school will be permitted to reduce its accounts receivable for the NSL fund by the full amount of principal, interest, and penalty charges that remains uncollected on that loan and will not be required to return the Federal share of the loss to the Secretary.

(iii) If a school does not request permission to write off an uncollectible loan within the required timeframe, it must reimburse the fund for the full amount of principal, interest, and penalty charges that remains uncollected on that loan. This reimbursement must be made by the following June 30 or December 31, whichever is sooner, except that in no case will a school be required to reimburse the fund in less than 30 days following its determination that a loan is uncollectible.

(iv) Failure to comply with the requirements of this section will subject a school to the noncompliance provisions of § 57.318 and the Department's Claims Collection regulations (45 CFR part 30), as appropriate.

* * * * *

[FR Doc. 89-28840 Filed 12-15-89; 8:45 am]

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Part VI

Department of Health and Human Services

Public Health Service

42 CFR Part 57

Health Professions Student Loan Program; Notice of Proposed Rulemaking

DEPARTMENT OF HEALTH AND HUMAN SERVICES

balances to the HPSL fund or are not investing the idle cash that is in the

fund balance and to return any excess cash to the Department. A school in

Pub. L. 100-607), enacted on November 4, 1988.

The Department believes that these

whether it has excess cash is subject to the review and approval of the Secretary.

Finally, a new paragraph (c) is being

determined to be uncollectible, when the school has knowledge of changes in a borrower's financial situation. Any such

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 57

RIN: 0905-AC78

Health Professions Student Loan Program

AGENCY: Public Health Service, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend existing regulations governing the Health Professions Student Loan (HPSL) program to require schools to: (1) Invest their HPSL funds and return earnings from the investments to the HPSL funds; (2) identify and return to the Department excess cash from the HPSL funds; and (3) determine the collectibility of defaulted loans and either obtain approval to write off the loans or reimburse the fund in the amount of the loans. However, schools would not be required to obtain write-off approval or reimburse the fund for loans that became uncollectible before August 1, 1985. The Department believes that these revisions will enhance its enforcement capabilities for improving the cash management practices of schools participating in the HPSL program.

DATE: Comments on this proposed rule are invited. To be considered, comments must be received no later than February 16, 1990.

ADDRESSES: Written comments should be addressed to Paul M. Schwab, Acting Director, Bureau of Health Professions, Room 8-05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. All comments received will be available for public inspection and copying at the Office of Program Development, BHPr, Room 8A-55, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley A. Zimmerman, Chief, Program Accounting and Analysis Branch, Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8-34, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number: 301-443-1700.

SUPPLEMENTARY INFORMATION: The Department has had concerns over the cash management practices of the schools participating in the HPSL program. Of particular concern to the Department is that in many cases, schools are not returning income earned from investment of the funds' cash balances to the HPSL fund or are not investing the idle cash that is in the funds, are maintaining balances in the funds in excess of their needs, and are carrying uncollectible loans on their books for long periods of time. These problems were recently highlighted by various assessments conducted by the Health Resources and Services Administration (HRSA), extensive cash management audits performed by the Department's Office of the Inspector General (OIG), and a study conducted by the General Accounting Office (GAO).

Many schools are not properly crediting earnings from invested funds to the appropriate HPSL fund as required by statute. Specifically, section 740(b)(2)(E) of the Public Health Service Act (the Act) requires that schools deposit in the fund "* * * any other earnings of the fund." This requirement is also included in the terms of agreement which all schools sign to participate in the program. Although this requirement has been in existence since the inception of the program, many schools whose funds are invested, and especially whose funds are pooled for investment with other university or State funds, are not properly crediting the proportionate share of investment earnings to the HPSL fund(s).

In other instances, schools are not investing and earning interest on cash balances. HRSA policy guidance states that when there is a delay between the time funds are received and disbursed to students, schools must invest cash balances in insured, interest-bearing accounts. When schools fail to properly invest program funds and return income earned to the loan fund, needy students are deprived of additional funds for new loans. In response to these concerns, the Department is proposing to amend the regulations to require that a school maintain all monies relating to the HPSL fund in one or more interest-bearing accounts that are insured by an agency of the Federal Government, or invest in income-producing securities issued or guaranteed by the United States and assure that all earnings become a part of the fund.

The Department is also concerned that schools are maintaining cash balances in excess of their needs despite efforts to monitor, through the Department's annual operating and debt management reports, the level of cash balances being maintained by the schools. As a part of the Department's required semi-annual reports, each active school is instructed to determine whether it has excess cash by comparing its projected levels of expenditures and collections with the fund balance and to return any excess cash to the Department. A school in closing status must review the balance in the fund as a part of required quarterly reports. Excess cash returned to the Department is reallocated to HPSL schools, with priority to schools that established HPSL funds between July 1, 1972 and September 30, 1985.

To strengthen the Department's ability to assure that excess cash is properly identified and returned to the Federal Government, the Department is proposing to make explicit in these regulations the requirement that a school must review, on at least a semi-annual basis, its cash balance to identify any monies in excess of its needs and return the Federal Government's share of the excess amount to the Department. The regulations would also make explicit the Secretary's authority to make the final determination as to whether excess cash exists. Additionally, they would provide that a school which fails to comply with these requirements will be subject to the noncompliance provisions set forth in § 57.218 and to the Department's Claims Collection regulations (45 CFR part 30), as appropriate.

A final concern of the Department with schools' cash management practices is that many schools are not making determinations on the collectibility of their defaulted loans. They are neither requesting write-off of these defaulted loans where due diligence can be documented, nor reimbursing the HPSL fund for the remaining amount owed on the loan where due diligence was not followed or cannot be documented. The result of this practice is that the amount of loan funds available for loans to needy health professions students is less than it could be. Accordingly, the Department is proposing to establish timeframes within which health professions schools must determine the collectibility of defaulted loans and request write-off approval for those uncollectible loans for which due diligence can be documented. The Department is also proposing to set timeframes within which the school must reimburse the fund or the Department (if the school is in closing status) for those loans for which due diligence was not followed or cannot be documented. Schools will not be required to request write-off approval or to reimburse the fund for loans that became uncollectible (i.e., loans on which payments were 2 or more years past due) before August 1, 1985, consistent with the Health Professions Reauthorization Act of 1988, (title VI of Pub. L. 100-607), enacted on November 4, 1988.

The Department believes that these revisions will enhance its enforcement capabilities for improving the cash management practices of schools participating in the HPSL program.

Interested persons are invited to submit written comments on these proposed revisions to the HPSL regulations. Written comments should be directed to the Director of the Bureau of Health Professions at the address given above.

The proposed revisions are discussed below according to the section numbers and headings affected.

Section 57.205 Health professions student loan funds.

Paragraph (a) of this section states in part that any fund established by a school with Federal capital contributions will be deposited and carried in a special account of the school with the institutional capital contribution represented at all times. This notice proposes to require that schools must at all times maintain all monies relating to the fund in one or more interest-bearing accounts that are insured by an agency of the Federal Government, or invest in income-producing securities issued or guaranteed by the United States, and assure that all earnings become a part of the fund. The school must place all earnings into the fund, but may first deduct from total earnings any reasonable and customary charge incurred through the use of an interest-bearing account. Additionally, these regulations will require that the school must exercise the level of care required of a fiduciary with regard to these deposits and investments.

The second proposed revision to this paragraph would make explicit in regulations the requirements that a school must review the balance in the fund on at least a semi-annual basis to determine whether the fund balance compared with projected levels of expenditures and collections exceeds its needs and that a school in closing status must review the balance in the fund on a quarterly basis. It would also state explicitly that monies identified as exceeding the school's needs must be reported, and the Federal share returned to the Federal Government, by the due date of the required report which identifies the excess monies. The proposed timeframes are consistent with most schools' existing planning cycles and the Department's current reporting requirements on excess cash. This proposed amendment would also state that the school's determination of whether it has excess cash is subject to the review and approval of the Secretary.

Finally, a new paragraph (c) is being added to make clear that a school which fails to comply with the requirements of this section will be subject to the noncompliance provisions of § 57.218 and the Department's Claims Collection regulations (45 CFR part 30), as appropriate.

Section 57.210 Repayment and collection of health professions student loans.

Paragraph (b)(4) of this section states in part that a school may request write-off approval of uncollectible loans and that where the Secretary determines that a school has failed to exercise due diligence in the collection of a loan, the school will be required to place in the fund the full amount of the loan that remains uncollected. If write-off approval is granted, the school is not required to reimburse the Federal Government for its share of the remaining principal, interest, and penalty charges on the loan. This notice proposes to revise the paragraph to require a school to classify any loan on which payments are 2 or more years past due as uncollectible unless the loan is the subject of an open court case and either to place the full amount of the uncollectible loan into the fund or to submit the loan for write-off approval within 30 days of the determination that it is uncollectible. In the event that a school is holding a loan which would be "uncollectible," according to the proposed regulations, at the time the regulations become final, the school would be required to submit the loan for write-off approval within 30 days of the effective date of the regulations or reimburse the fund within timeframes described below. A school would be permitted to determine a loan to be uncollectible sooner than 2 years past due only when it has evidence supporting this determination. In no case however, would a school be permitted to consider a loan uncollectible if the loan has not been in default for at least 120 days, in accordance with the default formula in section 740(c) of the Act on which a school's participation in the program is based. Schools will not be required to obtain write-off approval or reimburse the fund for loans which became uncollectible (i.e., on which payments were 2 or more years past due) before August 1, 1985, consistent with Public Law 100-607, enacted on November 4, 1988. The Department notes that there is nothing to prevent a school from further pursuing the collection of a loan that has been determined to be uncollectible, when the school has knowledge of changes in a borrower's financial situation. Any such amounts recovered are required to be deposited into the fund and reported to the Department.

The 2-year period for attempting to collect a loan is based on a reasonable time period for compliance with the regulatory due diligence requirements set forth in this section, which typically could include 4 months of initial followup by the school, a 9-month period of collection efforts by commercial collection agents, and an additional extended period for litigation. It is also consistent with criteria used by the Department's OIG in conducting extensive cash management audits at participating schools. The proposed rule would require that upon determination by a school that a loan is uncollectible or upon receipt of a denial of a request for write-off approval, the school must reimburse the fund by the following June 30 or December 31, whichever is sooner, for the remaining balance on the loan; however, in no case would a school be required to reimburse the fund in less than 30 days. The Department expects that tying the timeframe for reimbursing the fund to current reporting requirements will facilitate the Department's monitoring of a school's compliance and will allow a reasonable time for schools to secure the institutional funds necessary to repay the HPSL fund.

Finally, the regulations would state that any school which fails to comply with these reimbursement requirements, except for loans that became uncollectible before August 1, 1985, will be subject to the noncompliance provisions of § 57.218 and the Department's Claims Collection regulations (45 CFR part 30), as appropriate.

Regulatory Flexibility Act and Executive Order 12291

The Department believes that the resources required to implement the requirements in this proposed regulation are minimal. Therefore, in accordance with the requirements of the Regulatory Flexibility Act of 1980, the Secretary certifies that this regulation will not have a significant impact on a substantial number of health professions schools.

The Department has also determined that this rule is not a major rule under Executive Order 12291; therefore, a regulatory impact analysis is not required. In addition, the rule will not exceed the threshold level of $100

million established in section (b) of Executive Order 12291.

collections are shown below with an estimate of the annual reporting burden. Included in the estimate is the time for

Description: Schools must report and return excess cash on a semi-annual

(iii) of this section for loans that became uncollectible (i.e., loans on which payments were 2 or more years past

whichever is sooner, except that in no case will a school be required to reimburse the fund in less than 30 days

amount of principal, interest, and penalty charges that remains uncollected on that loan. This

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million established in section (b) of Executive Order 12291.

Paperwork Reduction Act of 1980

This proposed rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The title, description, and respondent description of the information collections are shown below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Health Professions Student Loan Program: Cash Management.

Description: Schools must report and return excess cash on a semi-annual basis and request permission to write off uncollectible loans or reimburse the loan fund in the full amount of the uncollectible loan.

Description of Respondents: Public or other non-profit institutions.

Estimated Annual Reporting Burden:

Section requirement	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
57.205(a)(2)	(The burden associated with this regulatory requirement is included in the Annual Operating Report and the Debt Management Report—OMB Clearance Nos. 0915-0044 and 0915-0046)			
57.210(b)(4)(i)	60	120 requests	30 min	60 hrs.

We have submitted a copy of this proposed rule to OMB for its review of these information collections. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the agency official designated for this purpose whose name appears in this preamble, and to the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503.

List of Subjects in 42 CFR Part 57

Dental health, Education of disadvantaged, Educational facilities, Educational study programs, Emergency medical services, Grant programs-education, Grant programs-health, Health facilities, Health professions, Loan programs-health, Medical and dental schools, Scholarships and fellowships, Student aid.

Accordingly, subpart C of 42 CFR part 57 is proposed to be amended as follows:

Dated: May 5, 1989.

James O. Mason,

Assistant Secretary for Health.

Approved: November 16, 1989.

Louis W. Sullivan,

Secretary.

(*Catalog of Federal Domestic Assistance*, No. 13.342, Health Professions Student Loan Program)

PART 57—GRANTS FOR CONSTRUCTION OF TEACHING FACILITIES, EDUCATIONAL IMPROVEMENT, SCHOLARSHIPS AND STUDENT LOANS

Subpart C—Health Professions Student Loans

1. The authority for subpart C is revised to read as follows:

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216); secs. 740–747, Public Health Service Act, 77 Stat. 170–173, 90 Stat. 2286–2288, 91 Stat. 390–391, 95 Stat. 920, 99 Stat. 532–536, 102 Stat. 3125 (42 U.S.C. 294m–q).

2. Section 57.205 is amended by revising paragraph (a) and adding a new paragraph (c) to read as follows:

§ 57.205 Health professions student loan funds.

(a) *Funds established with Federal capital contributions.* Any fund established by a school with Federal capital contributions will be deposited and carried in a special account of the school. At all times the fund must contain monies representing the institutional capital contribution. The school must at all times maintain all monies relating to the fund in one or more interest-bearing accounts that are insured by an agency of the Federal Government or invest such monies in income-producing securities issued or guaranteed by the United States. The school must place all earnings into the fund but may first deduct from total earnings any reasonable and customary charge incurred through the use of an interest-bearing account. An institution shall exercise the level of care required of a fiduciary with regard to these deposits and investments.

(1) The Federal capital contribution fund is to be used by the school only for:

(i) Health professions student loans to full-time students;

(ii) Capital distribution as provided in section 743 of the Act or as agreed to by the school and the Secretary; and

(iii) Costs of litigation, costs associated with membership in credit bureaus, and to the extent specifically approved by the Secretary, other collection costs that exceed the usual expenses incurred in the collection of health professions student loans;

(2) A school must review the balance in the fund on at least a semi-annual basis to determine whether the fund balance compared with projected levels of expenditures and collections exceeds its needs. A school in closing status must review the balance in the fund on a quarterly basis. Monies identified as in excess of the school's needs must be reported, and the Federal share returned to the Federal Government, by the due date of the required report which identifies the excess monies. The school's determination is subject to the review and approval of the Secretary.

* * * * *

(c) Failure to comply with the requirements of this section will subject a school to the noncompliance provisions of § 57.218 and the Department's Claims Collection regulations (45 CFR part 30), as appropriate.

3. Section 57.210 is amended by revising paragraph (b)(4) to read as follows:

§ 57.210 Repayment and collection of health professions student loans.

* * * * *

(b)* * *

(4) A school must review and assess the collectibility of its loans to determine which loans it considers uncollectible. A school must consider as uncollectible any loan on which payments are 2 or more years past due. A school may determine a loan to be uncollectible sooner when it has evidence that the loan cannot be collected, but in no case should a school consider a loan as uncollectible if it has not been in default for at least 120 days. A school is not subject to the requirements in paragraphs (b)(4) (i) and (iii) of this section for loans that became uncollectible (i.e., loans on which payments were 2 or more years past due) before August 1, 1985.

(i) A school must request permission to write off an uncollectible loan within 30 days of the determination that it is uncollectible or reimburse the fund in the full amount of the loan, pursuant to § 57.210(b)(4)(iii). In any instance where the Secretary determines that a school has failed to exercise due diligence in the collection of a loan, in accordance with the applicable regulatory requirements, the school will be required to place in the fund an amount equal to the full amount of principal, interest, and penalty charges that remains uncollected on the loan. This reimbursement must be made by the following June 30 or December 31, whichever is sooner, except that in no case will a school be required to reimburse the fund in less than 30 days following the Secretary's determination that if failed to exercise due diligence.

(ii) If the Secretary determines that a school has exercised due diligence in the collection of a loan, in accordance with the applicable regulatory requirements, the school will be permitted to reduce its accounts receivable for the HPSL fund by the full amount of principal, interest, and penalty charges that remains uncollected on that loan and will not be required to return the Federal share of the loss to the Secretary.

(iii) If a school does not request permission to write off an uncollectible loan within the required timeframe, it must reimburse the fund for the full amount of principal, interest, and penalty charges that remains uncollected on that loan. This reimbursement must be made by the following June 30 or December 31, whichever is sooner, except that in no case will a school be required to reimburse the fund in less than 30 days following its determination that a loan is uncollectible.

(iv) Failure to comply with the requirements of this section will subject a school to the noncompliance provisions of § 57.218 and the Department's Claims Collection regulations (45 CFR part 30), as appropriate.

* * * * *

[FR Doc. 89-28841 Filed 12-15-89; 8:45 am]

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Part VII

The President

Proclamation 6084—Wright Brothers Day, 1989

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Presidential Documents

Title 3—

The President

Proclamation 6064 of December 14, 1989

Wright Brothers Day, 1989

By the President of the United States of America

A Proclamation

Less than a century ago, Orville and Wilbur Wright ushered in the age of modern aviation with the first sustained, manned flight in a mechanically propelled aircraft. Although their flight lasted only 12 seconds and spanned only 120 feet over the windy beach at Kitty Hawk, North Carolina, it began an exciting process of design, trial, and discovery that continues to this day.

Today, as we recall the historic events of that cold, windy December afternoon in 1903, we also celebrate the tremendous progress in aviation that has been made during the past 86 years. Advances in air transportation have linked nations and continents, bringing the peoples of the world ever closer together. Man has journeyed into space, and American astronauts have walked on the moon. Now we are shaping further plans for manned space flight beyond Earth's orbit and into the solar system.

By the end of this year, Americans will have used commercial aircraft more than 475 million times to travel around the country and around the world. Only 86 years after the Wright brothers took to the skies with their bold yet tentative flight, we are able to travel millions of miles with confidence and ease.

On Wright Brothers Day, we salute all the courageous pioneers who, with vision and determination, have made these great advances possible. In so doing, they have not only helped make American aviation a model for the world but also led the way to the exploration of our universe.

The Congress, by a joint resolution approved December 17, 1963 (77 Stat. 402; 36 U.S.C. 169), has designated the 17th day of December of each year as "Wright Brothers Day" and requested the President to issue annually a proclamation inviting the people of the United States to observe that day with appropriate ceremonies and activities.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim December 17, 1989, as Wright Brothers Day. I call upon the people of the United States to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of December, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.

George Bush

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H.R. 91/Pub. L. 101–222
Anti-Terrorism and Arms Export Amendments Act of 1989. (Dec. 12, 1989; 103 Stat. 1892; 9 pages) Price: $1.00

H.R. 1502/Pub. L. 101–223
District of Columbia Police Authorization and Expansion Act of 1989. (Dec. 12, 1989; 103 Stat. 1901; 4 pages) Price: $1.00

H.R. 1658/Pub. L. 101–224
National Oceanic and Atmospheric Administration Ocean and Coastal Programs Authorization Act of 1989. (Dec. 12, 1989; 103 Stat. 1905; 3 pages) Price: $1.00

H.R. 2459/Pub. L. 101–225
Coast Guard Authorization Act of 1989. (Dec. 12, 1989; 103 Stat. 1906; 20 pages) Price: $1.00

H.R. 3614/Pub. L. 101–226
Drug-Free Schools and Communities Act Amendments of 1989. (Dec. 12, 1989; 103 Stat. 1928; 15 pages) Price: $1.00

H.R. 3629/Pub. L. 101–227
Extending the authority of the Secretary of Commerce to conduct the quarterly financial report program under section 91 of title 13, United States Code, through September 30, 1993. (Dec. 12, 1989; 103 Stat. 1943; 2 pages) Price: $1.00

H.J. Res. 449/Pub. L. 101–228
Providing for the convening of the second session of the One Hundred First Congress. (Dec. 12, 1989; 103 Stat. 1945; 1 page) Price: $1.00

H.R. 1727/Pub. L. 101–229
Everglades National Park Protection and Expansion Act of 1989. (Dec. 13, 1989; 103 Stat. 1946; 7 pages) Price: $1.00

H.R. 2178/Pub. L. 101–230
To designate lock and dam numbered 4 on the Arkansas River, Arkansas, as the "Emmett Sanders Lock and Dam". (Dec. 13, 1989; 103 Stat. 1953; 1 page) Price: $1.00

H.R. 3611/Pub. L. 101–231
International Narcotics Control Act of 1989. (Dec. 13, 1989; 103 Stat. 1954; 13 pages) Price: $1.00

H.R. 3670/Pub. L. 101–232
To authorize the expansion of the membership of the Superior Court of the District of Columbia from 50 associate judges to 58 associate judges. (Dec. 13, 1989; 103 Stat. 1967; 1 page) Price: $1.00

S. 804/Pub. L. 101–233
North American Wetlands Conservation Act. (Dec. 13, 1989; 103 Stat. 1968; 11 pages) Price: $1.00

H.R. 3607/Pub. L. 101–234
Medicare Catastrophic Coverage Repeal Act of 1989. (Dec. 13, 1989; 103 Stat. 1979; 8 pages) Price: $1.00

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[5] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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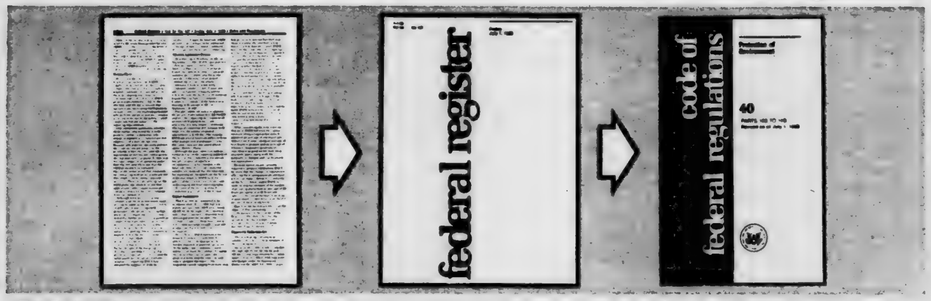

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Rules and Regulations

Federal Register
Vol. 54, No. 242
Tuesday, December 19, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

GENERAL ACCOUNTING OFFICE

4 CFR Part 31

Claims Against the United States; General Procedure

AGENCY: General Accounting Office.

ACTION: Final rule.

SUMMARY: This final rule amends the provisions of the General Accounting Office's claims regulations concerning the Barring Act, 31 U.S.C. 3702(b) (1982). Under the prior regulations a claim had to be filed with the General Accounting Office (GAO) within 6 years after the claim accrued in order to be timely filed within the limitations period established by the Barring Act. This amendment provides that a claim is considered timely filed for purposes of the Barring Act when the claim is filed either with GAO or with the agency whose activities gave rise to the claim within 6 years after the claim accrues. Since this amendment relieved a restriction on the filing of claims, immediate implementation was desirable, and we issued it as an interim rule on June 15, 1989, with a 60-day comment period (54 FR 25437). We have considered the comments received and taken them into account in developing a final rule.

This rule also makes editorial changes to update 4 CFR part 31 and bring it into conformance with existing administrative practices of the General Accounting Office.

EFFECTIVE DATE: This final rule is effective, June 15, 1989, and applies to claims not barred by 31 U.S.C. 3702(b) as of that date.

FOR FURTHER INFORMATION CONTACT: Robert L. Higgins, Associate General Counsel, at FTS 275–6410 or commercial (202) 275–6410.

SUPPLEMENTARY INFORMATION: By notice published in the **Federal Register** on June 15, 1989, the General Accounting Office issued an interim rule which provided that the timely filing of a claim with the individual federal agency involved is sufficient to satisfy the filing requirements of 31 W.S.C. 3702(b). The so-called Barring Act, 31 W.S.C. 3702(b) (1982), provides that, with certain exceptions, a claim within the settlement jurisdiction of the General Accounting Office "must be received by the Comptroller General within 6 years after the claim accrues * * *" Since enactment of the Barring Act in 1940, we have required that such claims be filed directly with GAO within the allowed 6 years. Therefore, claims filed with any agency other than GAO did not satisfy the filing requirement of the Barring Act.

We no longer believe this requirement is warranted in light of the fact that under current practice, claimants are encouraged to file their claims initially with the particular agency involved in the matter. We believe the purpose of the Barring Act is served if a claim is filed within the statutory 6-year period, either with GAO or with the agency where the claim arose and which will initially adjudicate it.

No written comments were received in response to our request for comments on the interim rule. Several telephone comments and inquiries were received and have been considered.

One question related to the effective date of the new rule. As stated above and in the interim rule, the effective date is June 15, 1989, with respect to any claim not barred by 31 U.S.C. 3702(b) prior to that date. Thus, any claim that accrued before June 15, 1983, is time-barred unless it was filed with GAO within 6 years after the date it accrued. However, a claim that accrued on or after June 15, 1983, is not time-barred if it was filed either with the agency involved or with GAO within the applicable 6-year period. If such a claim was filed with the agency involved before June 15, 1989, the claim need not be filed with GAO for purposes of tolling the statute, but will be treated as if it were filed with GAO on June 15, 1989.

Another question raised was whether the statement in § 31.4 of the interim rule that "[c]laims which cannot be resolved by the department or agency shall be transmitted to the Claims Group, General Accounting Office, for resolution" was intended to preclude claimants from appealing agency determinations to GAO. It was not so intended. A claimant has always had the right to file a claim with GAO if he or she is not satisfied with the agency's determination or resolution of the claim. Also, agencies may continue to refer doubtful claims to GAO for resolution. The intent of § 31.4 is simply to make it clear that a claim should be initially filed with the department or agency involved in the subject matter and that that department or agency should attempt to resolve the dispute. Both the agency and the claimant continue to have access to GAO to settle doubtful or disputed claims. Section 31.4 has been revised to clarify this issue.

Accordingly, GAO's claims regulations in 4 CFR part 31 are amended to provide that a claim, within GAO's settlement jurisdiction, which is not time-barred prior to June 15, 1989, and which is received within the statutory 6-year period by the agency whose program or activity gave rise to the claim, shall be treated as having been timely filed for purposes of the Barring Act. Agencies are urged to develop procedures to ensure that the date of receipt is clearly recorded to avoid disputes over the filing date.

List of Subjects in 4 CFR Part 31

Accounting, Claims, Filing procedures, Government employees, Military personnel.

Accordingly, for the reasons set forth in the preamble, the interim rule amending 4 CFR part 31 which was published at 54 FR 25437, June 15, 1989, is adopted as final with the following changes:

PART 31—CLAIMS AGAINST THE UNITED STATES; GENERAL PROCEDURE

1. The authority citation for part 31 continues to read as follows:

Authority: 31 U.S.C. 711. Interpret or apply 31 U.S.C. 3702.

§ 31.3 [Amended]

2. The second sentence of § 31.3 is revised to read as follows: "See part 11 of this chapter".

3. Section 31.4 is revised to read as follows:

§ 31.4 Where claims should be filed, appeals.

functions, and availability of information to the public. By publishing

PART 3010—ORGANIZATION AND FUNCTIONS

(e) *Financial Systems Division.* Develops policies, standards,

regulations by providing guidance for any person wishing to request records

Freedom of Information Act Officer, National Finance Center, OFM, USDA,

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§ 31.4 Where claims should be filed, appeals.

A claimant should file his or her claim with the administrative department or agency out of whose activities the claim arose. The agency shall initially adjudicate the claim. If the claimant is not satisfied with the agency's determination, he or she may appeal that determination to the Claims Group, General Accounting Office. Claims which cannot be resolved by the department or agency shall be transmitted to the Claims Group, General Accounting Office, for resolution. Claims referred by agencies or by claimants to the General Accounting Office, or any correspondence regarding a claim, should be addressed to: Claims Group, U.S. General Accounting Office, Washington, DC 20548.

4. Section 31.5, paragraph (a), is revised to read as follows:

§ 31.5 Statutory limitations on claims.

(a) *Statutory limitations relating to claims generally.* All claims against the United States Government, except as otherwise provided by law, are subject to the 6-year statute of limitations contained in 31 U.S.C. 3702(b). To satisfy the statutory limitation, a claim must be received by the General Accounting Office, or by the department or agency out of whose activities the claim arose, within 6 years from the date the claim accrued. The burden of establishing compliance with the statute of limitations rests with the claimant.

* * * * *

Milton J. Socolar,

Acting Comptroller General of the United States.

[FR Doc. 89-29436 Filed 12-18-89; 8:45 am]

BILLING CODE 1610-01-M

DEPARTMENT OF AGRICULTURE

Office of Finance and Management

7 CFR Parts 3010 and 3011

Statement of Agency Organization, Functions, and Availability of Information to the Public

AGENCY: Office of Finance and Management, USDA.

ACTION: Final rule.

SUMMARY: This document amends chapter XXX to reflect the new name and organizational structure of USDA's former Office of Operations and Finance. In this publication, the new Office of Finance and Management sets forth its organizational structure, functions, and availability of information to the public. By publishing this information, the new Office is now in compliance with the requirements of the Freedom of Information Act and makes the public aware of how information can be requested.

EFFECTIVE DATE: December 19, 1989.

FOR FURTHER INFORMATION CONTACT: Nicholas Giacobbe, Freedom of Information Act Officer, Office of Finance and Management, U.S. Department of Agriculture, Room 117-W, Administration Building, 14th and Independence Ave., SW., Washington, DC 20250-9000. Telephone (202) 382-1221.

SUPPLEMENTARY INFORMATION: Former chapter XXX, title 7, Code of Federal Regulations related to the Office of Operations and Finance, Department of Agriculture. Part 3010 set forth the regulations of the Office of Operations and Finance pertaining to the availability of information to the public. The Office of Operations and Finance is no longer in existence. Hence, this document renames chapter XXX as the "Office of Finance and Management." The regulations in part 3010 are removed and replaced with regulations pertaining to the Organization and Functions of the Office of Finance and Management. A new part 3011 is added prescribing regulations for the Office of Finance and Management relating to the availability of information to the public.

This rule is exempt from 5 U.S.C. 553 because it pertains to agency management. This rule does not constitute a "major rule" within the meaning of Executive Order No. 12291 (Improving Government Regulations), nor will these regulations cause significant economic impact or other substantial effect on small entities. Therefore, the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, do not apply.

List of Subjects

7 CFR Part 3010

Organization and functions (Government agencies).

7 CFR Part 3011

Freedom of information.

Accordingly, 7 CFR chapter XXX is amended as follows:

1. The heading for chapter XXX is revised to read as follows:

CHAPTER XXX—OFFICE OF FINANCE AND MANAGEMENT, DEPARTMENT OF AGRICULTURE

2. Part 3010 is revised to read as follows:

PART 3010—ORGANIZATION AND FUNCTIONS

Sec.

3010.1 General statement.
3010.2 Organization.
3010.3 Functions.

Authority: 5 U.S.C. 301 and 552; 7 CFR 2.75.

§ 3010.1 General statement.

This part is issued in accordance with 5 U.S.C. 552(a) to provide guidance for the general public as to Office of Finance and Management (OFM) organization and functions.

§ 3010.2 Organization.

The Office of Finance and Management (OFM) was established January 12, 1982. Delegations of authority to the Director, OFM, appear at 7 CFR 2.75. The organization is comprised of five divisions and one staff at its Washington, DC, Headquarters, and the National Finance Center in New Orleans, Louisiana. Descriptions of the functions of these organizational units are in the following section. The organization is headed by a Director. A Deputy Director or person designated by the Director acts for the Director in the absence of the Director.

§ 3010.3 Functions.

(a) *Director.* Provides executive direction for OFM. Develops and provides leadership, oversight and coordination of USDA management of:

(1) Finance and accounting policy,

(2) Financial reporting,

(3) Development and operation of accounting and financial systems,

(4) Cash and credit management,

(5) Safety and health management and

(6) Management of the Working Capital Fund.

Acts as the Director of Finance, the Chief Financial Officer, and the Chief Management Improvement Office for USDA.

(b) *Deputy Director for Policy.* Assists the Director in the daily operations of the policy divisions that are located at the Headquarters office, and in the absence of the Director, serves as Acting Director.

(c) *Deputy Director for Operations.* Assists the Director in the management of automated systems by serving as the Director of the National Finance Center.

(d) *Working Capital Fund, Budget and Fiscal Services Staff.* Responsible for management the industrial fund which finances centralized services such as data processing, copying and graphic services for USDA agencies. Also provides budget and fiscal services to the Office of the Secretary and the Departmental staff offices.

(e) *Financial Systems Division.* Develops policies, standards, implementation regulations and guidelines for cash and debt management, advises on system requirements and design, and provides oversight to ensure that finance systems are in compliance with USDA policies and Federal Government regulations.

(f) *Resources Management and Analysis Division.* Responsible for externally mandated programs such as internal controls, productivity improvement, performance of commercial activities, audit followup, and privatization studies.

(g) *Technical and Management Assistance Division.* Provides professional and management assistance to USDA agencies and staff offices. Also has responsibility for developing the annual Information Resources Management plan and the ADP security plan for OFM.

(h) *Management Improvement and Fiscal Policy Division.* Responsible for USDA management initiatives such as the Annual Management Plan, coordination of cross-servicing agreements, USDA organizational proposals, travel, and fiscal policy development.

(i) *Safety and Health Management Division.* Has responsibility for USDA's safety and health programs, including providing leadership in the Department to positively influence safety, emotional and physical health of all USDA employees.

(j) *National Finance Center.* Designs, develops and operates automated administrative and financial management systems for the Department of Agriculture.

3. A new part 3011 is added to read as follows:

PART 3011—AVAILABILITY OF INFORMATION TO THE PUBLIC

Sec.

3011.1 General statement.
3011.2 Public inspection and copying.
3011.3 Indexes.
3011.4 Initial request for records.
3011.5 Appeals.
3011.6 Fee schedule.

Authority: 5 U.S.C. 301 and 522; 7 CFR 1.3

§ 3011.1 General statement.

This part is issued in accordance with 7 CFR 1.3 of the Department of Agriculture regulations governing the availability of records (7 CFR 1.1—1.23 and Appendix A) under the Freedom of Information Act (5 U.S.C. 552, as amended). These regulations supplement the Department's regulations by providing guidance for any person wishing to request records from the Office of Finance and Management (OFM).

§ 3011.2 Public inspection and copying.

(a) *Background.* 5 U.S.C. 552(a)(2) requires each agency to maintain and make available for public inspection and copying certain kinds of records.

(b) *Procedure.* To gain access to OFM records that are available for public inspection, contact the Freedom of Information Act Officer by writing to the address shown in § 3011.4(b) of this title.

§ 3011.3 Indexes.

5 U.S.C. 552(a)(2) also requires that each agency maintain and make available for public inspection and copying current indexes providing identifying information for the public with regard to any records which are made available for public inspection and copying. OFM does not maintain any materials within the scope of these requirements.

§ 3011.4 Initial requests for records.

(a) *Background.* The Freedom of Information Act Officer is authorized to:

(1) Grant or deny requests for OFM records,

(2) Make discretionary release of OFM records when the benefit to the public in releasing the document outweighs any harm likely to result from disclosure,

(3) Reduce or waive fees to be charged where determined to be appropriate.

(b) *Procedures.* This part provides the titles and mailing address of officials who are authorized to release records to the public. The normal working hours of these offices are 8:30 a.m. to 5:00 p.m., local time, Monday through Friday, excluding holidays, during which public inspection and copying of certain kinds of records is permitted. Persons wishing to request records from the Office of Finance and Management may do so by submitting each initial written request for OFM records to the appropriate OFM official shown below:

(1) For records held at the Washington, DC Headquarters units, submit initial requests to the Freedom of Information Act Officer, Office of Finance and Management, USDA, 14th and Independence Ave., SW., Room 117-W, Administration Building, Washington, DC 20250-9000.

(2) For records held at the National Finance Center in New Orleans, Louisiana, submit initial requests to the Freedom of Information Act Officer, National Finance Center, OFM, USDA, 13800 Old Gentilly Road, Building 350, (P.O. Box 60,000, New Orleans, LA 70160), New Orleans, Louisiana 70129. If the requester is unable to determine the official to whom the request should be addressed, it should be submitted to the Headquarters Freedom of Information Act Officer who will refer such requests to the appropriate officials.

§ 3011.5 Appeals.

Any person whose initial request is denied in whole or in part may appeal that denial, in accordance with 7 CFR 1.6(e) and 1.8, to the Director, Office of Finance and Management, USDA, Room 117-W, Administration Building, 14th and Independence Ave., Washington, DC 20250-9000.

§ 3011.6 Fee schedule.

Departmental regulations provide for a schedule of reasonable standard charges for document search and duplication. See 7 CFR 1.2(b). Fees to be charged are set forth in 7 CFR part 1, subpart A, Appendix A.

Signed at Washington, DC, this 12th day of December, 1989.

Larry Wilson, Jr.,

Director, Office of Finance and Management.

[FR Doc. 89-29351 Filed 12-18-89; 8:45 am]

BILLING CODE 3410-85-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 103

[Order No. 1385-89]

RIN 1115-AA21

Powers and Duties of Service Officers; Availability of Service Records

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the fee schedule of the Immigration and Naturalization Service. This change adds fees for two new forms created as a result of the Immigration Marriage Fraud Amendments of 1986 (IMFA). These forms are the Joint Petition to Remove the Conditional Basis of Alien's Permanent Resident Status (Form I-751) and the Application for Waiver of Requirement to File Joint Petition for

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Removal of Conditions (Form I–752). The change reflects the estimated cost of providing the benefits and services to the public, taking into account public policy and other pertinent facts.

EFFECTIVE DATE: January 18, 1990.

FOR FURTHER INFORMATION CONTACT:

Charles S. Thomason, Systems Accountant, Finance Branch, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, Telephone: (202) 633–4705;

Michael L. Shaul, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, Telephone: (202) 633–3946.

SUPPLEMENTARY INFORMATION: On November 10, 1986, Public Law 99–639, the Immigration Marriage Fraud Amendments of 1986 (IMFA) was enacted. Among other things, IMFA created a conditional basis of lawful permanent residence for most aliens who immigrate to the United States based upon a marriage to a citizen or resident of the United States. IMFA also created a requirement whereby an alien in such conditional status must file a petition (jointly with his or her spouse) to remove the conditional basis of the residence, or (in certain situations) an application for waiver of the requirement.

On June 22, 1989 the Immigration and Naturalization Service ("the Service") published proposed regulations at 54 FR 26210 setting forth fees for both the joint petition and the waiver application. The public was invited to submit comments on the proposed rulemaking on or before July 24, 1989. No comments were received from any interested parties. Accordingly, the Service is publishing the final rulemaking as proposed.

In setting the fees the Service has complied with 31 U.S.C. 9701 and OMB Circular A–25, which require that a benefit or service provided to or for any person by a Federal agency be self-sustaining to the fullest extent possible. The charges are fair and equitable, and take into consideration the direct and indirect costs to the government, the value to the recipient, the public policy or interest served, the other pertinent facts. The services provided to the public by the Service have been examined for applicability of user charges and the costs which should be recovered in order to be fair and equitable to the taxpayers and the recipients. The following fees are based on the principles set forth in the law and the circular:

1. A fee of $35.00 for the filing Form I–751, Joint Petition to Remove the Conditional Basis of Alien's Permanent Resident Status.

2. A fee of $85.00 for the filing Form I–752, Application for Waiver of Requirement to File Joint Petition for Removal of Conditions.

This rule is not a major rule for the purposes of E.O. 12291 (46 FR 13193, 3 CFR 1981 Comp., p. 127). As required by the Regulatory Flexibility Act, it is hereby certified that the rule will not have a significant impact on small business entities.

This rule contains information collection requirements which have been cleared by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. The Office of Management and Budget control numbers for these collections are contained in 8 CFR 299.5.

List of Subjects in 8 CFR Part 103

Administrative practice and procedures, Archives and records, Authority delegation, Fees, Forms.

Accordingly, chapter I of title 8, Code of Federal Regulations, is amended to read as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 is revised to read as follows:

Authority: 5 U.S.C. 522(a); 8 U.S.C. 1101, 1103, 1201, 1301–1305, 1351, 1443, 1454, 1455; 28 U.S.C. 1746; 7 U.S.C. 2243; 31 U.S.C. 9701; E.O. 12356; 3 CFR 1982 Comp., P 166; 8 CFR part 2.

2. In § 103.7, paragraph (b)(1) is amended by adding in numerical sequence the following:

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

Form I–751, For filing joint petition for removal of conditional basis of residence on Form I–751 under section 216 of the Act—$35.00.

Form I–752, For filing application for waiver of requirement to file joint petition for removal of conditional basis of residency under section 216 of the Act—$85.00.

* * * * *

Dated: December 8, 1989.

Dick Thornburgh,

Attorney General.

[FR Doc. 89–29482 Filed 12–18–89; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 23

[Docket No. 077CE, Special Condition 23–ACE–48]

Special Conditions; Beech Model B300 and 1900D Series Airplanes, Electronic Flight Instrument System (EFIS)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are being issued for incorporation of an electronic flight instrument system (EFIS) in the Beech Model B300 and 1900D Series Airplanes. These airplanes will have novel and unusual design features when compared to the state of technology envisaged in the airworthiness standards applicable to these airplanes when EFIS is installed. These novel and unusual design features include the installation of electronic displays and the protection of them from high energy radiated electromagnetic fields (HERF) for which the applicable regulations do not contain adequate or appropriate airworthiness standards. These special conditions contain the additional safety standards which the Administrator considers necessary to establish a level of safety equivalent to that provided by the applicable airworthiness standards.

EFFECTIVE DATE: December 11, 1989.

FOR FURTHER INFORMATION CONTACT:

Ervin E. Dvorak, Aerospace Engineer, Standards Office (ACE–110), Aircraft Certification Service, Central Region, Federal Aviation Administration, Room 1544, 601 East 12th Street, Federal Office Building, Kansas City, Missouri 64106; telephone (816) 426–5688.

SUPPLEMENTARY INFORMATION:

Background

On March 7, 1989, Beech Aircraft Corporation, Wichita, Kansas submitted an application for amended type certificate for the Beech Model B300 and also made application on April 28, 1989, on the Model 1900D airplanes under the commuter category provisions of Part 23. On October 18, 1989, Beech Aircraft Corporation informed the FAA that they intend to certify the airplanes in the near future to install a Collins Model 85B (EFIS) on the Beech Model B300 and 1900D airplanes. This EFIS installation incorporates an electronic attitude director indicator (EADI) and electronic horizontal situation indicator (EHSI) in lieu of the traditional mechanical or electromechanical displays providing similar information to the flight crew.

Type Certification Basis

The type certification basis for the Beech Model B300 and 1900D airplanes are as follows: part 23 of the Federal Aviation Regulation (FAR) effective February 1, 1965, including amendments 23–1 through 23–34; Special Federal Aviation Regulations (SFAR) No. 27, effective February 1, 1974, as amended by amendments 27–1 through 27–5; Part 36 of the FAR, effective December 1, 1969, as amended by amendments 36–1 through 36–15 and special conditions adopted by this rulemaking action.

Discussion

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.101 do not contain adequate or appropriate safety, standards because of novel or unusual design features of an airplane or installation. Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become a part of the type certification basis, as provided by § 21.101(b)(2).

The proposed type design of the Collins–85B EFIS installation in the Beech Model B300 and 1900D airplanes contains a number of novel and unusual design features not envisaged by the applicable airworthiness standards. Special conditions are considered necessary because the applicable airworthiness standards do not contain adequate or appropriate safety standards for the novel or unusual design features of the Collins–85B EFIS installation in the Beech Model B300 and 1900D series airplanes.

Special conditions resulting from this notice will also be applicable to all Beech Model B300 and 1900D series airplanes for installation of similar EFIS (not limited to the same manufacturer) without further amendment of the special conditions.

Electronic Flight Instrument System (EFIS)

Beech Aircraft Corporation has proposed cathode-ray tube (CRT) electronic display units for primary attitude, heading, and navigation cockpit displays. The cockpit instrument panel configuration would feature two displays, an EADI and EHSI on the pilot side of the instrument panels. All other displays, i.e., airspeed, altitude, vertical speed, etc., will be conventional electromechanical instruments. A standby conventional attitude instrument will be near the center of the panel. On some later installations, another EADI and EHSI may be installed on the copilot side.

Emissive color on a CRT display will inevitably appear different than reflective colors on conventional electromechanical displays. Different intensities and color temperatures of ambient illumination will also affect the perceived colors. Therefore, display legibility must be adequate for all cockpit lighting conditions including direct sunlight.

Features of this system are novel and unusual relative to the applicable airworthiness requirements. Current small airplane airworthiness requirements are based on "single-fault" or "fail-safe" concepts and, when promulgated, the FAA did not envision use of complex, safety-critical systems in small airplanes. The current small airplane requirements envisioned instruments that were single function; i.e., a failure would cause loss of only one instrument function, although several instrument functions may have been housed in a common case.

Flight instruments for the pilot are required to be grouped in front of the pilot so deviation from looking forward along the airplace flight path is minimized when the pilot shifts from viewing the flight path to viewing the flight instruments.

For instrument flight, the airplane must be equipped with the minimum flight instruments listed in the operating rules. This minimum listing of instruments includes all instruments that have long been accepted as the minimum for continued safe flight. Standby instruments for flight instruments are not required by the small airplane airworthiness requirements because the FAA has long accepted that the small airplane could be safely flown by using partial panel techniques following a single instrument failure. The basic airman certification program for an instrument flight rules (IFR) rating has long included requirements for the pilot to demonstrate the ability to fly the airplane safely following failure of any one of the previously cited instruments.

The special condition will provide appropriate requirements for installation of electronic displays featuring design characteristics where a single malfunction or failure could affect more than one primary instrument, display, or system. The special condition would also provide requirements to assure adequate reliability of system design functions that are determined to be essential for continued safe flight and landing of the airplane.

For installations where electronic displays take the place of traditional instruments, the reliability must not be less than that of the traditional instruments. This concerns the collective reliability of the traditional instruments rather than the reliability of a single traditional instrument. For this reason, the special condition includes requirements needed for their certification.

The special condition will also require a detailed examination of each item of equipment/component of the electronic display system, and installation of the system, to determine if the airplane is dependent upon its function for continued safe flight and landing or if its failure would significantly reduce the capability of the airplane or the ability of the crew to cope with these adverse operating conditions. Each component of the installation identified by such an examination as being critical to the safe operation of the airplane would be required to meet the proposed special condition.

The existing § 23.1309, which was incorporated into part 23 by amendment 23–14, dated December 20, 1973, has been used as a means of evaluating systems for those airplanes that include § 23.1309 in their type certification basis. The "no-single-fault" or "fail-safe" concept of § 23.1309, along with experience based on service-proven designs and good engineering judgment, have been used to successfully evaluate most airplane systems and equipment. The type certification basis for this airplane includes § 23.1309, however, the "single fault" concept does not provide an adequate means for determining and evaluating the effect of certain failure conditions which may exist in complex systems such as an EFIS installation. Therefore, the FAA considers it necessary to include the proposed additional system analysis requirements in the certification basis. This will also allow the use of the latest available "rational method" of safety analysis of the systems to assure a level of safety intended in the applicable requirements.

The development of rational methods for safety assessment of systems is based on the premise that an inverse relationship exists between the probability of a failure condition and its effect on the airplane. That is, the more serious the effect, the lower the probability must be that the related failure condition will occur. Rational methods of showing compliance for safety assessment of systems may be

shown by the use of numerical analysis but it is not mandatory. In many cases,

Furthermore, the electromagnetic environment has undergone a

conditions for the certification of aircraft which employ electrical and

certification reassessment based on the finalized rule requirements. The

frequencies where the unmodulated signal caused deviations from normal

1. Electronic Flight Instrument Displays

In addition to, and in lieu of, the

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shown by the use of numerical analysis but it is not mandatory. In many cases, adequate data is not available for preparing a stand-alone numerical analysis for showing compliance. Therefore, in small airplane certification, a rational analysis based on identification of failure modes and their consequences is frequently a more acceptable substantiation of compliance with the various required levels of system reliability than a numerical analysis alone.

If it is determined that the airplane includes systems that perform critical functions, it will be necessary to show that those systems meet more stringent requirements. These systems would be required to meet requirements establishing either that there will be no failures of that system or that a failure is extremely improbable. Critical functions means those functions whose failure would contribute to or cause a failure condition which would prevent the continued safe flight and landing of the airplane.

The special condition also requires that the occurrence of system(s) failures that would significantly reduce the airplane's capability or the ability of the crew to cope with adverse operating conditions, and thereby be potentially catastrophic, be improbable. It is recognized that any system(s) failure will reduce the airplane's or crew's capability be some degree, but that reduction may not be of the degree leading to potentially catastrophic results.

The special condition provides reliability requirements that are based on the criticality of the system's function and will provide the standards needed for certification of complex safety-critical systems being proposed for installation.

Protection of Systems From High Energy Radiated Electromagnetic Fields (HERF)

Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of solid state components and digital electronics, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the high energy radiated electromagnetic fields (HERF) incident on the external surface of aircraft. These induced transient currents and voltages can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the electromagnetic environment has undergone a transformation which was not envisioned when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the population of transmitters has increased significantly.

At present, aircraft certification requirements, as well as the industry standards for protection from the adverse effects of HERF, are inadequate in view of the aforementioned technological advances. In addition, some significant safety events have been reported of incidents and accidents involving military aircraft equipped with advanced electronic systems when they were exposed to electromagnetic radiation.

The combined effect of the technological advances in aircraft design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the aircraft. Effective measures against the effects of exposure to high energy radiated electromagnetic fields (HERF) must be provided by the design and installation of these systems. The primary factors that have contributed to this increased concern are: (1) The increasing use of sensitive electronics that perform critical functions; (2) the reduced electromagnetic shielding afforded airplane systems by advanced technology airframe materials; (3) the adverse service experience of military airplanes which use these technologies; and (4) the increase in the number and power of radio frequency emitters and expected future increases.

Cognizant of the need for aircraft certification standards to cope with the developments in technology and environment in 1988, the FAA initiated a high priority program (1) to determine and define the electromagnetic energy levels; (2) to develop and describe guidance material for design, test, and analysis; and (3) to prescribe and promulgate regulatory standards. The FAA sought and received the participation of international airworthiness authorities and industry to develop internationally recognized standards for certification.

At this time, the FAA and other airworthiness authorities have established an agreed level of HERF environment which the airplane is expected to be exposed to in service. While the HERF requirements are being finalized, the FAA has adopted special conditions for the certification of aircraft which employ electrical and electronic systems which perform critical functions. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. This special condition requires that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HERF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2.

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversley affected when the aircraft is exposed to the HERF environment, defined below, or

FIELD STRENGTH VOLTS/METER

Frequency	Peak	Averge
10-500 KH$_z$	80	80
500-2000	80	80
2-30 MH$_z$	200	200
30-100	33	33
100-200	33	33
200-400	150	33
400-1000	6.3K	2K
1-2 GH$_z$	9K	1.5K
2-4	17K	1.2K
4-6	14.5K	800
6-8	4K	666
8-12	9K	2K
12-20	4K	509
20-40	4K	1K

(2) The applicant may demonstrate by a laboratory test that the electrical and electronic systems that perform critical functions withstand a peak of electromagnetic field strength of 100 volts per meter in a frequency range of 10KHz to 18GHz. When using a laboratory test to show compliance with the HERF requirements, no credit is given for signal attenuation due to installation.

In view of the revised HERF envelope, the requirement for the fixed value test has been changed to 100 v/m from the previously used value of 200 v/m. The applicant opting for the fixed value laboratory test, in lieu of the HERF envelope, will be subject to post certification reassessment based on the finalized rule requirements. The applicants should be cautioned that choosing 100 v/m may make it difficult, under post certification reassessment requirements, to qualify the installations without design upgrade. If the system should not meet the post certification reassessment requirements, additional protection provisions and/or testing may be required.

A preliminary hazard analysis must be performed by the applicant for approval by the FAA to identify electrical and/or electronic systems that perform critical functions. The term "critical" means those functions whose failure would contribute to, or cause, a failure condition which would prevent the continued safe flight and landing of the aircraft. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HERF requirements. The primary electronic flight display and the full authority digital engine control (FADEC) systems are examples of systems that perform critical functions. A system may perform both critical and non-critical functions. Primary electronic flight display systems and their associated components perform critical functions such as attitude, altitude, and airspeed indication. The HERF requirements only apply to critical functions.

Compliance with HERF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or a combination thereof. Service experience alone is not acceptable since such experience in normal flight operations may not include an exposure to the HERF environmental condition.

Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HERF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

The modulation should be selected as the signal most likely to disrupt the operation of the system under test based on its design characteristics. For example, flight control systems may be susceptible to 3 Hz square wave modulation while the video signals for electronic display systems may be susceptible to 400 Hz sinusoidal modulation. If the worst case modulation is unknown or cannot be determined, default modulations may be used. Suggested default values are a 1 KHz sine wave with 80% depth of modulation in the frequency range from 10 KHz to 400 MHz and 1 KHz square wave with greater than 90% depth of modulation from 400 MHz to 18GHz. For frequencies where the unmodulated signal caused deviations from normal operation, several different modulating signals with various waveforms and frequencies should be applied.

Acceptable systems performance is attained by demonstrating that the system under consideration continues to perform its intended function during and after exposure to required electromagnetic fields. Deviations from system specification may be acceptable and will need to be independently assessed for each application for approval by the FAA.

Conclusion

In review of the design features discussed for the installation in the Beech Model B300 and 1900D series airplane, the following special conditions are issued to provide a level of safety equivalent to that intended by the regulations incorporated by reference. This action is not a rule of general applicability and affects only the model/series of airplanes identified in these special conditions.

The substance of these special conditions has been subject to the notice and public comment procedure in several prior instances (54 FR 4317; October 25, 1988), (54 FR 41955; October 13, 1989), (53 FR 14782; April 26, 1988), and (51 FR 37711, October 24, 1986). For this reason, and because a delay would significantly affect the applicant installation of the system and the certification of the airplane, which is imminent, the FAA has determined that good cause exists for adopting these special conditions without further notice. Therefore, special conditions are being issued without substantive change for this airplane and made effective immediately.

List of Subjects in 14 CFR Parts 21 and 23

Aircraft, Air transportation, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 21.16 and 21.01; and 14 CFR 11.28 and 11.49.

Adoption of Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator of the Federal Aviation Administration, the following special conditions are issued as part of the type certification basis for the Beech Model B300 and 1900D series airplanes:

1. Electronic Flight Instrument Displays

In addition to, and in lieu of, the applicable requirements of part 23 of the FAR and requirements to the contrary, for instruments, systems, and installations whose design incorporates electronic displays that feature design characteristics where a single malfunction or failure could affect more than one primary instrument display or system, and/or system design functions that are determined to be essential for continued safe flight and landing of the airplane, the following special condition applies:

(a) Systems and associated components must be examined separately and in relation to other airplane systems to determine if the airplane is dependent upon its function for continued safe flight and landing, and if its failure would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions. Each system and each component identified by this examination, upon which the airplane is dependent for proper functioning to ensure continued safe flight and landing, or whose failure would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions, must be designed and examined to comply with the following requirements:

(1) It must be shown that there will be no single failure or probable combination of failures under any foreseeable operating condition which would prevent the continued safe flight and landing of the airplane, or it must be shown that such failures are extremely improbable.

(2) It must be shown that there will be no single failure or probable combination of failures under any foreseeable operating condition that would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions, or it must be shown that such failures are improbable.

(3) Warning information must be provided to alert the crew to unsafe system operating conditions and to enable them to take appropriate corrective action. Systems, controls, and associated monitoring and warning means must be designed to minimize initiation of crew action which would create additional hazards.

(4) Compliance with the requirements of this special condition may be shown by analysis and, where necessary, by appropriate ground, flight, or simulator tests. The analysis must consider:

(i) Modes of failure, including malfunction and damage from

14 CFR Part 39

[Docket No. 89-NM-253-AD; Amdt. 39-

that fuel vapors in the Branson STC fuel tank were ignited, probably by an

immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and

Branson Aircraft Corporation: Applies to Beech Model 400 airplanes, Serial Numbers RJ-1 through RJ-50, and RJ-52

Bulletin 1396-2, dated November 9, 1989 (for Mitsubishi Model MU-300 airplanes).

c. Remove the existing blue-colored

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(i) Modes of failure, including malfunction and damage from foreseeable sources;

(ii) The probability of multiple failures, and undetected faults;

(iii) The resulting effects on the airplane and occupants, considering the state of flight and operating conditions; and

(iv) The crew warning cues, corrective action required, and the capability of detecting faults.

(5) Numerical analysis may be used to support the engineering examination.

(b) Electronic display indicators, including those incorporating more than one function, may be installed in lieu of mechanical or electro-mechanical instruments if:

(1) The electronic display indicators:

(i) Are easily legible under all lighting conditions encountered in the cockpit, including direct sunlight;

(ii) In any normal mode of operation, do not inhibit the primary display of attitude; and

(iii) Incorporate sensory cues for the pilot that are equivalent to those in the instrument being replaced by the electronic display units.

(2) The electronic display indicators, including their systems and installations, must be designed so that one display of information essential to safety and successful completion of the flight will remain available to the pilot, without need for immediate action by any crewmember for continued safe operation, after any single failure or probable combination of failures that is not shown to comply with paragraph (a)(1) of this section.

2. Protection of Electronic Flight Instrument Systems From High Energy Radiated Electromagnetic Fields (HERF)

(a) Each system that performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these critical functions are not adversely affected when the airplane is exposed to high energy radiated electromagnetic fields external to the airplane.

Issued in Kansas City, Missouri on December 11, 1989.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-29400 Filed 12-18-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-253-AD; Amdt. 39-6426]

Airworthiness Directives; Applies To Beech Model 400 Airplanes, Mitsubishi Model MU-300-10 and MU-300 Airplanes, Which Have Been Modified in Accordance With Branson Supplemental Type Certificate (STC) SA2744NM or SA1596NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Beech Model 400 airplanes and Mitsubishi Model MU-300-10 and Model MU-300 airplanes, which requires either the imposition of certain operating limitations or modification of the fuselage fuel tanks. This amendment is prompted by a recent report that fuel vapors in the Branson STC extended range fuel tank ignited, and the resulting deflagration released liquid and vaporous fuel into the cabin. This condition, if not corrected, could result in an explosion and/or fire in the cabin.

DATE: Effective January 2, 1990.

ADDRESSES: The applicable service information may be obtained from Branson Aircraft Corporation, 3790 Wheeling Street, Denver, Colorado 80239, or Beech Aircraft Corporation (United States agents for Mitsubishi Heavy Industries, Incorporated), P.O. Box 85, Wichita, Kansas 67201-0085. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the FAA, Central Region, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Mr. James M. Peterson, Wichita Aircraft Certification Office, ACE-140W; telephone (316) 946-4427. Mailing address: FAA, Central Region, 1801 Airport Road, Room 100, Wichita, Kansas 67209.

SUPPLEMENTARY INFORMATION: The FAA recently investigated an incident involving a Beech Model 400 airplane, which had been previously modified by the incorporation of Branson STC SA2744NM. This STC adds an extended range fuel tank in the aft area of the cabin, interconnected with the existing Beech fuselage fuel tank and vent system. Further investigation revealed that fuel vapors in the Branson STC fuel tank were ignited, probably by an electrostatic discharge, and deflagration resulted. The resultant pressure grossly deformed, but did not rupture, the Branson STC fuel tank. The deformation dislodged the tank from the mounting structure and disconnected the fuel and vent interconnect lines from the Beech fuselage fuel tank and vent system, releasing liquid and vaporous fuel into the cabin. This condition, if not corrected, could result in an explosion and/or fire in the cabin.

The Beech Model 400 and the Mitsubishi Models MU-300-10 and MU-300 airplance fuselage fuel tank systems are identical, as are the modifications described in Branson STCs SA2744NM and SA1596NM.

Since this condition is likely to exist or develop in other airplanes of this same type design, this AD requires either (a) the imposition of operating limitations which prohibit gravity refueling of the fuselage tanks and prohibit the use of JP-4 and JET B fuels, or (b) modification of the Branson fuel tank installation to improve electrical bonding and to install static charge dissipating charcoal-colored explosion suppression safety foam in the Branson fuel tank; and the modification of the Beech/Mitsubishi fuselage fuel tanks to remove and replace the blue-colored explosion suppression safety foam with static charge dissipating charcoal-colored explosion suppression safety foam.

Branson has issued Service Bulletins No. 2744-1, dated November 3, 1989, and No. 1596-1, dated November 9, 1989, which describe procedures for modification of the probe mounting clamps and transfer line clamps to ensure proper grounding of these components in the fuselage fuel tank system.

Beech has issued Service Bulletin No. 2338, dated November 1989, and Mitsubishi Heavy Industries has issued Service Bulletin No. 28-001, dated November 21, 1989, which describe procedures for installation of a placard on the fuel filler door, and replacement of the aft fuselage fuel tank foam.

Branson has also issued Service Bulletin No. 2744-2, dated November 3, 1989, and No. 1596-2, dated November 9, 1989, which describe procedures to install static charge dissipating charcoal-colored explosion suppression safety foam in the Branson extended range fuselage fuel tank.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Branson Aircraft Corporation: Applies to Beech Model 400 airplanes, Serial Numbers RJ-1 through RJ-50, and RJ-52 through RJ-65, which have been modified in accordance with Branson STC SA2744NM; Mitsubishi Model MU-300-10, airplanes Serial Numbers A1001S.A. through A1011S.A., which have been modified in accordance with Branson STC SA2744NM; and Mitsubishi Model MU-300 airplanes, Serial Numbers A001S.A. through A091S.A., which have been modified in accordance with Branson STC SA1596NM; certificated in any category. Compliance is required within the next 10 days after the effective date of this AD, unless previously accomplished.

To prevent the release of liquid and vaporous fuel into the cabin, and possible subsequent explosion and/or fire in the cabin, accomplish the following:

A. Accomplish either paragraph A.1. (Procedure 1) or paragraph A.2. (Procedure 2) below:

1. Procedure 1

a. Incorporate the following into the Operating Limitations Section of the FAA-approved Airplane Flight Manual (AFM). This may be accomplished by inserting a copy of this AD in the AFM.

"*Fuel System Limitations:* Only the following fuels are approved for use: Commercial Kerosene JET A and JET A-1, in accordance with Pratt and Whitney Service Bulletin 7144, Revision 9, dated April 17, 1989.

"*Fuselage Tank Refueling:* Gravity refueling of the fuselage tank is prohibited. Refuel the fuselage tanks only by transfer from the left wing tank. Refer to the Branson Aircraft Corporation AFM Supplement for filling procedures and limitations."

Note: The above limitations supersede any other AFM Limitations which may be contradictory.

b. Install Beech placard P/N 128-020210-1, or equivalent, centered on the fuselage fuel tank fuel filler access door.

c. Obscure the words "JET B" on the fuel placards adjacent to the left and right wing fuel filler ports and the fuselage fuel tank fuel filler port.

2. Procedure 2

a. Modify the fuel quantity probe mounting clamps and the transfer line clamps installation in the Branson extended range fuel tank and in the Beech/Mitsubishi aft fuselage fuel tanks, in accordance with the instructions in Branson Service Bulletin Number 2744-1, dated November 3, 1989 (for Beech Model 400 and Mitsubishi Model MU-300-10 airplanes), or in accordance with Branson Service Bulletin 1596-1, dated November 9, 1989 (for Mitsubishi Model MU-300 airplanes).

b. Install static charge dissipating charcoal-colored explosion suppression safety foam in the Branson extended range fuselage fuel tank in accordance with the instructions in Branson Service Bulletin Number 2744-2, dated November 3, 1989 (for Beech Model 400 and Mitsubishi Model MU-300-10 airplanes), or in accordance with Branson Service Bulletin 1596-2, dated November 9, 1989 (for Mitsubishi Model MU-300 airplanes).

c. Remove the existing blue-colored explosion suppression safety foam from the Beech/Mitsubishi aft fuselage fuel tank and install static charge dissipating charcoal-colored explosion suppression safety foam in accordance with the instructions in Part II of Beechcraft Mandatory Service Bulletin Number 2338, dated November, 1989 (for Beech Model 400 and Mitsubishi Model MU-300-10 airplanes), or in accordance with Part II of Mitsubishi Heavy Industries Service Bulletin 28-001, dated November 21, 1989 (for Mitsubishi Model MU-300 airplanes).

d. If Procedure 2 is accomplished after accomplishing Procedure 1 (described in paragraph A.1., above), perform the following:

1. Remove the AFM limitations imposed by Procedure 1, paragraph A.1.(a), above.

2. Remove the Beech placard, P/N 128-020210-1, or its equivalent, from the fuselage fuel tank fuel filler access door which was installed in accordance with Procedure 1, paragraph A.1.(b).

3. Remove the obscuring material from the fuel placards adjacent to the left and right fuel filler ports, revealing "JET B", which was obscured in accordance with Procedure 1, paragraph A.1.(c).

B. An alternate means of compliance or adjustment of the compliance time, which provides an equivalent level of safety, may be approved by the Manager, Wichita Aircraft Certification Office, FAA, Central Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Wichita Aircraft Certification Office.

C. Special Flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturers may obtain copies upon request to Branson Aircraft Corporation, 3790 Wheeling Street, Denver, Colorado 80239, or Beech Aircraft Corporation (United States agents for Mitsubishi Heavy Industries, Incorporated), P.O. Box 85, Wichita, Kansas 67201-0085. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the FAA, Central Region, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas.

This amendment becomes effective January 2, 1990.

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Issued in Seattle, Washington, on December 7, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-29408 Filed 12-19-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-96-AD; Amendment 39-6429]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, which requires a one-time inspection and installation, if necessary, of the power control actuator bushings, on the left-hand and right-hand elevators. This amendment is prompted by reports of bushings missing from elevator power control actuator reaction link rod end locations. This condition, if not corrected, could result in unacceptable airframe vibration during flight.

DATES: Effective January 26, 1990.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Dan R. Bui, Airframe Branch, ANM-120S; telephone (206) 431-1919. Mailing address: FAA Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 757 series airplanes, which requires a one-time inspection and installation, if necessary, of the power control actuator bushings, on the left-hand and right-hand elevators, was published in the **Federal Register** on July 24, 1989 (54 FR 30755).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter requested that the free play check required by AD 89-03-05, Amendment 39-6129 (54 FR 3430; January 24, 1989), be considered as an alternate means of compliance to the proposed one-time inspection of the subject actuator. This commenter indicated that the freeplay check required by the existing AD will accomplish the intent of that proposed by this action; that all of its fleet of Model 757's have had the freeplay check of the PCA assembly performed within the last 90 days in accordance with that AD; and to be required to accomplish the check a second time is redundant and an unnecessary burden and expense to operation. The FAA notes that AD 89-03-05 requires an freeplay check of the elevator PCA assembly (in accordance with Boeing Service Bulletin 757-27A0086, dated June 9, 1988) and applies only to airplanes, line positions 2 through 136; this final rule action, however, requires an inspection to determine if any PCA bushings are missing (in accordance with Boeing Service Letter 757-SL-27-43, dated May 3, 1989) and applies only to airplanes, line positions 137 through 222 and 225. The FAA concurs that the freeply check required by the existing AD may also determine the presence of the proper number of PCA bushings; however, the two rules apply to two different groups of airplanes. The applicability statement of this final rule specifically states that operators are "credited" for any required action that has been previously accomplished; therefore if an operator has already accomplished the required inspection, a second inspection would not be required. Further, under the provisions of paragraph C. of the final rule, operators may use an alternate means of compliance if it demonstrates an acceptable level of safety and is approved by the FAA.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

There are approximately 75 Model 757 series airplanes of the affected design in the worldwide fleet. It is estimated that 46 airplanes of U.S. registry will be affected by this AD, that it will take approximately 30 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $57,600.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 757 series airplanes, listed in Boeing Service Letter 757-SL-27-43, dated May 3, 1989, certificated in any category. Compliance required within the next 60 days after the effective date of this AD, unless previously accomplished.

To prevent unacceptable airframe vibration during flight, accomplish the following:

A. Conduct a one-time inspection of the left and right elevator power control actuator to determine the presence of the bushings, in accordance with Boeing Service Letter 757-SL-27-43, dated May 3, 1989. If any bushing is missing, prior to further flight, install new a bushing in accordance with the Boeing Model 757 Maintenance Manual.

B. Within 10 days after the completion of the inspection required by paragraph A., above, submit a report of findings, positive or negative, to the Manager, Manufacturing Inspection District Office, FAA, 7300 Perimeter Road South, Seattle, Washington 98108. Reports must include the aircraft serial number.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Seattle Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective January 26, 1990.

Issued in Seattle, Washington, on December 11, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-29407 Filed 12-18-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 89-AGL-14]

Transition Area Establishment, Clare, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to establish the Clare, MI, transition area to accommodate a new VOR/DME-A Standard Instrument Approach Procedure (SIAP) to Clare Municipal Airport, Clare, MI. The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

EFFECTIVE DATE: 0901 UTC, March 8, 1990.

FOR FURTHER INFORMATION CONTACT: Henry D. French, Air Traffic Division, System Management Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7477.

SUPPLEMENTARY INFORMATION:

History

On Thursday, October 5, 1989, the Federal Aviation Administration (FAA) proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish transition area airspace near Clare, MI (54 FR 41109).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes transition area airspace near Clare, MI. This transition area is being established to accommodate a new VOR/DME-A SIAP to Clare Municipal Airport.

The development of this procedure requires that the FAA alter the designated airspace to insure that the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined areas which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Clare, MI [New]

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Clare Municipal Airport (lat. 43° 49' 35" N., long. 80° 44' 36" W.); within 2 miles each side of the 181° bearing from Clare Municipal Airport, extending from the 5-mile radius to 6.5 miles south of the airport.

Issued in Des Plaines, Illinois on December 6, 1989.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 89-29410 Filed 12-18-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 806

[Docket No. 90682-9271]

RIN 0691-AA15

Direct Investment Surveys: BE-10, Benchmark Survey of U.S. Direct Investment Abroad, 1989

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Final rule.

SUMMARY: These final rules revise 15 CFR part 806.16 to set forth reporting requirements for the BE-10, Benchmark Survey of U.S. Direct Investment Abroad—1989, and to delete the rules now in part 806.16, which were for the last benchmark survey covering 1982. Section 4(b) of the International

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Investment and Trade in Services Survey Act (Pub. L. 94–472, 90 Stat. 2059, 22 U.S.C. 3101–3106, as amended) requires that a benchmark survey of U.S. direct investment abroad be conducted covering 1989 and every fifth year thereafter. These rules also amend 15 CFR part 806.14 to change the year of coverage of this next benchmark survey from 1987, as was specified in the original legislation authorizing the survey, to 1989, as now specified by amendment to that legislation (see Pub. L. 97–33 and Pub. L. 97–70).

EFFECTIVE DATE: These rules will be effective January 18, 1990.

FOR FURTHER INFORMATION CONTACT: Betty L. Barker, Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 523–0659.

SUPPLEMENTARY INFORMATION: In the October 6, 1989 Federal Register, Volume 54, No. 193, 54 FR 41275, the Bureau of Economic Analysis published a notice of proposed rulemaking to revise 15 CFR § 806.16 to set forth reporting requirements for the BE–10, Benchmark Survey of U.S. Direct Investment Abroad—1989, and to delete the requirements now in § 806.16, which were for the last benchmark survey covering 1982. It also proposed to amend 15 CFR § 806.14 to change the year of coverage of this next benchmark survey from 1987, as was specified in the original legislation authorizing the survey, to 1989, as now specified by amendment to that legislation. No comments on the proposed rulemaking were received. Thus, this final rule is the same as the proposed rule.

The benchmark survey is to be conducted by the Bureau of Economic Analysis, U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act, hereinafter, "the Act." Section 4(b) of the Act, as amended, requires that "* * * With respect to United States direct investment abroad, the President shall conduct a benchmark survey covering year 1982, a benchmark survey covering year 1989, and benchmark surveys covering every fifth year thereafter * * *" The responsibility for conducting benchmark surveys of U.S. direct investment abroad has been delegated by the President to the Secretary of Commerce, who has redelegated it to the Bureau of Economic Analysis (BEA).

The benchmark surveys are BEA's censuses, intended to cover the universe of U.S. direct investment abroad in value terms. U.S. direct investment abroad is defined as the ownership or control, directly or indirectly, by one U.S. person of 10 percent or more of the voting securities of an incorporated foreign business enterprise or an equivalent interest in an unincorporated foreign business enterprise, including a branch.

The purpose of the benchmark survey is to obtain universe data on the financial and operating characteristics of, and on positions and transactions between, U.S. parent companies and their foreign affiliates. The data from the survey are needed to measure the size of U.S. direct investment abroad, monitor changes in such investment, assess its impact on the U.S. and foreign economies, and, based upon this assessment, make informed policy decisions regarding U.S. direct investment abroad. The data will provide benchmarks for deriving current universe estimates of direct investment from sample data collected in other BEA surveys in nonbenchmark years. In particular, they will serve as benchmarks for the quarterly direct investment estimates included in the U.S. international transactions and gross national product accounts, and for annual estimates of the U.S. direct investment position abroad and of the operations of U.S. parent companies and their foreign affiliates.

The benchmark surveys are the most comprehensive of BEA's surveys of U.S. direct investment abroad in terms of subject matter in order that they obtain the detailed information needed for policy purposes. As specified in the Act, policy areas of particular interest include, among other things, trade in both goods and services, employment and employee compensation, taxes, and technology of U.S. parent companies and their foreign affiliates.

The survey will consist of an instruction booklet, a claim for not filing the BE–10, and the following report forms:

1. Form BE–10A for reporting by a U.S. Reporter that is not a bank;
2. Form BE–10A Bank for reporting by a U.S. Reporter that is a bank;
3. Form BE–10B(LF) (Long Form) for reporting "large" nonbank foreign affiliates of nonbank parents (those with assets, sales, or net income *outside* the range of negative $15 million to positive $15 million);
4. Form BE–10B(SF) (Short Form) for reporting "small" nonbank foreign affiliates of nonbank parents (those with assets, sales, or net income *outside* the range of negative $3 million to positive $3 million but *within* the range of negative $15 million to positive $15 million) and all nonbank affiliates of bank parents with assets, sales, or net income *outside* the range of negative $3 million to positive $3 million; and
5. Form BE–10B Bank for foreign affiliates that are banks and that have assets, sales, or net income *outside* the range of negative $3 million to positive $3 million.

Although the survey is intended to cover the universe of U.S. direct investment abroad, in order to minimize the reporting burden, foreign affiliates with assets, sales, and net income *within* the range of negative $3 million to positive $3 million will not have to be reported on Form BE–10B(LF), (SF), or Bank (but will have to be listed on the BE–10A or BE–10A Bank Supplement).

The due date for U.S. Reporters with 50 or more reportable foreign affiliates is June 29, 1990. The due date for all other U.S. Reporters is May 31, 1990. In order to provide major U.S. Reporters with an early look at the survey questions to aid them in preparing for the benchmark survey, BEA plans to mail all U.S. Reporters with 20 or more reportable foreign affiliates a draft copy of the BE–10 report forms in January 1990. Mailout of the printed forms is scheduled for March 1, 1990.

The public reporting burden for this collection of information is estimated to vary from 14 to 8,500 hours per response, with an average of 156 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments regarding the burden estimate, including suggestions for reducing this burden, may be sent to Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project 0608–0049, Washington, DC 20503.

Executive Order 12291

BEA has determined that these final rules are not "major" as defined in E.O. 12291 because they are not likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Executive Order 12612

These final rules do not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 12612.

Paperwork Reduction Act

The collection of information requirement in these final rules has been approved by OMB (OMB No. 0608–0049).

Regulatory Flexibility Act

The General Counsel, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this final rulemaking, if adopted, will not have a significant economic impact on a substantial number of small entities because few, if any, small businesses are subject to the reporting requirements of this survey. The exemption level is set in terms of the size of a U.S. company's foreign affiliates. If an affiliate is owned 10 percent or more by the U.S. company and has assets, sales, or net income greater than $3 million (positive or negative), it must be reported. Usually, the U.S. parent company (the one required to file the report) is many times larger.

Also, to minimize the reporting burden on small U.S. businesses, Form BE–10B(SF), the short form, has been introduced for reporting foreign affiliates with assets, sales, and net income of $15 million or less (but above $3 million). For these affiliates, far less information must be reported than for those with assets, sales, or net income of more than $15 million. Affiliates with assets, sales, and net income of $3 million or less do not have to be reported on Form BE–10B(SF), but must be listed on the BE–10A or BE–10A Bank Supplement.

List of Subjects in 15 CFR Part 806

Balance of payments, Economic statistics, U.S. investment abroad, Reporting and recordkeeping requirements.

Dated: November 22, 1989.

Allan H. Young,

Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, BEA amends 15 CFR part 806 as follows:

PART 806—DIRECT INVESTMENT SURVEYS

1. The authority citation for 15 CFR part 806 continues to read as follows:

Authority: 5 U.S.C. 301, 22 U.S.C. 3101–3108, and E.O. 11961, as amended.

2. Section 806.14(g)(1) is amended by deleting "at least once every five years" and inserting in its place "in 1982, 1989, and every fifth year thereafter."

3. Section 806.14(g)(2) is revised as follows:

§ 806.14 U.S. direct investment abroad.

* * * * *

(g) * * *

(2) BE–10-Benchmark Survey of U.S. Direct Investment Abroad: Section 4(b) of the Act (22 U.S.C. 3103) provides that a comprehensive benchmark survey of U.S. direct investment abroad will be conducted in 1982, 1989, and every fifth year thereafter. The survey, referred to as the "BE–10," consists of a Form BE–10A or BE–10A BANK for reporting information concerning the U.S. Reporter and Form(s) BE–10B(LF), BE–10B(SF), or BE–10B BANK for reporting information concerning each foreign affiliate. Exemption levels, specific requirements for, and the year of coverage of, a given BE–10 survey may be found in § 806.16.

4. Section 806.16 is revised as follows:

§ 806.16 Rules and regulations for BE–10, Benchmark Survey of U.S. Direct Investment Abroad—1989.

A BE–10, Benchmark Survey of U.S. Direct Investment Abroad will be conducted covering 1989. All legal authorities, provisions, definitions, and requirements contained in §§ 806.1 through 806.13 and § 806.14(a) through (d) are applicable to this survey. Specific additional rules and regulations for the BE–10 survey are given below.

(a) *Response required.* Section 806.4 requires that all persons subject to the reporting requirements, contained herein, of the BE–10, Benchmark Survey of U.S. Direct Investment Abroad—1989, respond, whether or not they are contacted by BEA. It also requires that a person, or their agent, who is contacted by BEA about reporting in this survey, either by sending them report forms or by written inquiry, must respond in writing. They may respond by:

(1) Certifying in writing, within 30 days of being contacted by BEA, to the fact that the person had no direct investment within the purview of the reporting requirements of the BE–10 survey;

(2) Completing and returning the "BE–10 Claim for Not Filing" within 30 days of receipt of the BE–10 survey report forms; or

(3) Filing the properly completed BE–10 report by May 31, 1990, or June 29, 1990, as required.

(b) *Who must report.* (1) A BE–10 report is required of any U.S. person that had a foreign affiliate—that is, that had direct or indirect ownership or control of at least 10 percent of the voting stock of an incorporated foreign business enterprise, or an equivalent interest in an unincorporated foreign business enterprise—at *any* time during the U.S. person's 1989 fiscal year.

(2) If the U.S. person had *no* foreign affiliates during its 1989 fiscal year, a "BE–10 Claim for Not Filing" must be filed within 30 days of receipt of the BE–10 survey package. No other forms in the survey are required. If the U.S. person had *any* foreign affiliates during its 1989 fiscal year, a BE–10 report is required and the U.S. person is a U.S. Reporter in this survey.

(3) Reports are required even though the foreign business enterprise was established, acquired, seized, liquidated, sold, expropriated, or inactivated during the U.S. person's 1989 fiscal year.

(c) *Forms for nonbank U.S. Reporters and foreign affiliates.* (1) Form BE–10A (Report for the U.S. Reporter)—A BE–10A report must be completed by a U.S. Reporter that is not a bank.

Note: If the U.S. Reporter is a corporation, Form BE–10A is required to cover the fully consolidated U.S. domestic business enterprise.

(i) If a nonbank U.S. Reporter had *any* foreign affiliates at any time during its 1989 fiscal year, whether held directly or indirectly, for which *any one* of the three items—total assets, sales or gross operating revenues excluding sales taxes, or income (or loss) after provision for U.S. income taxes—was *outside* the range of negative $3 million to positive $3 million, the U.S. Reporter must file a complete Form BE–10A and, as applicable, a BE–10A SUPPLEMENT listing each, if any, exempt foreign affiliate. It must also file a Form BE–10B(LF), BE–10B(SF), or BE–10B, BANK, as appropriate, for *each* nonexempt foreign affiliate.

(ii) If a nonbank U.S. Reporter had *no* foreign affiliates for which any of the three items listed in paragraph (c)(1)(i) of this section was *outside* the range of negative $3 million to positive $3 million, then only items 1–4 of Form BE–10A and the BE–10A SUPPLEMENT, listing all exempt foreign affiliates, must be completed.

(2) Form BE–10B(LF) or (SF) (Report for foreign affiliate).

(i) A BE–10B(LF) (Long Form) must be filed for each nonbank foreign affiliate of a nonbank U.S. Reporter, whether held directly or indirectly, for which *any one* of the three items—total assets, sales or gross operating revenues

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excluding sales taxes, or net income (loss) after provision for local income taxes—was *outside* the range of negative $15 million to positive $15 million.

(ii) A BE–10B(SF) (Short Form) must be filed

(A) For each nonbank foreign affiliate of a nonbank U.S. Reporter, whether held directly or indirectly, for which *any one* of the three items listed in (c)(2)(i) of this section was *outside* the range of negative $3 million to positive $3 million but for which all of these items were *within* the range of negative $15 million to positive $15 million and

(B) For each nonbank foreign affiliate of a U.S. bank Reporter for which *any one* of the three items listed in (c)(2)(i) of this section was *outside* the range of negative $3 million to positive $3 million.

(iii) Notwithstanding (c)(2)(i) and (c)(2)(ii) of this section, a Form BE–10B (LF) or (SF) must be filed for a foreign affiliate of the U.S. Reporter that owns another nonexempt foreign affiliate of that U.S. Reporter, even if the foreign affiliate parent is otherwise exempt, i.e., a Form BE–10B (LF) or (SF) must be filed for all affiliates upward in a chain of ownership.

(d) *Forms for U.S. Reporters and foreign affiliates that are banks or bank holding companies.* (1) For purposes of the BE–10 survey, "bank" means a business entity engaged in deposit banking, an Edge Act corporation engaged in international of foreign banking, a foreign branch or agency of a U.S. bank whether or not it accepts deposits abroad, and a bank holding company, i.e., a holding company for which over 50 percent of its total revenues is from banks which it holds. If the bank or bank holding company is part of a consolidated business enterprise and the gross operating revenues from nonbanking activities of this consolidated entity are more than 50 percent of its total revenues, then the consolidated entity is deemed *not* to be a bank even if banking revenues make up the largest single source of all revenues. (Activities of subsidiaries of a bank or bank holding company that may not be banks but that provide support to the bank parent company, such as real estate subsidiaries set up to hold the office buildings occupied by the bank parent company, are considered bank activities.)

(2) Form BE–10A Bank, (Report for a U.S. Reporter that is a bank). A BE–10A Bank, report must be completed by a U.S. Reporter that is a bank. Note: For purposes of filing Form BE–10A Bank, the U.S. Reporter is deemed to be the fully consolidated U.S. domestic business enterprise and all required data on the form shall be for the fully consolidated domestic entity.

(i) If a U.S. bank had *any* foreign affiliates at any time during its 1989 fiscal year, whether a bank or nonbank and whether held directly or indirectly, for which *any one* of the three items—total assets, sales or gross operating revenues excluding sales taxes, or net income (loss) after provision for local income taxes—was *outside* the range of negative $3 million to positive $3 million, the U.S. Reporter must file a complete Form BE 10A Bank and, as applicable, a BE–10A Bank Supplement listing each, if any, exempt foreign affiliate, whether bank or nonbank. It must also file a Form BE–10B(SF) for *each* nonexempt nonbank foreign affiliate and a Form BE–10B Bank for *each* nonexempt foreign bank affiliate.

(ii) If the U.S. bank Reporter had *no* foreign affiliates for which *any one* of the three items listed in paragraph (d)(2)(i) of this section was *outside* the range of negative $3 million and positive $3 million, then only items 1–4 of Form BE–10A Bank and the BE–10A Bank Supplement, listing all exempt foreign affiliates, should be completed.

(3) Form BE–10B Bank (Report for a foreign affiliate that is a bank).

(i) A BE–10B Bank report must be filed for each foreign bank affiliate of a bank or nonbank U.S. Reporter, whether directly or indirectly held, for which *any one* of the three items—total assets, sales or gross operating revenues excluding sales taxes, or net income (loss) after provision for local income taxes—was *outside* the range of negative $3 million to positive $3 million.

(ii) Notwithstanding paragraph (d)(3)(i) of this section, a Form BE–10B Bank must be filed for a foreign bank affiliate of the U.S. Reporter that owns another *nonexempt* foreign affiliate of that U.S. Reporter, even if the foreign affiliate parent is otherwise exempt, i.e., a Form BE–10B Bank must be filed for all bank affiliates upward in a chain of ownership. However, a Form BE–10B Bank is not required to be filed for a foreign bank affiliate in which the U.S. Reporter holds only an indirect ownership interest of 50 percent or less and that does not own a reportable nonbank foreign affiliate, but the indirectly owned bank affiliate must be listed on the BE–10A or BE–10A Bank Supplement.

(e) *Due date.* A fully completed and certified BE–10 report comprising Form BE–10A or 10A Bank (as required) and Form(s) BE–10B (LF), (SF), or Bank (as required) is due to be filed with BEA not later than May 31, 1990 for those U.S. Reporters filing less than fifty, and June 29, 1990 for those U.S. Reporters filing fifty or more, Forms BE–10B (LF), (SF), or Bank.

[FR Doc. 89–29428 Filed 12–18–89; 8:45 am]
BILLING CODE 3510–06–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 211

[Rel. No. SAB–87]

Staff Accounting Bulletin No. 87; Property-Casualty Insurance Reserves for Unpaid Claims Costs; Contingency Disclosures

AGENCY: Securities and Exchange Commission.

ACTION: Publication of Staff Accounting Bulletin.

SUMMARY: This staff accounting bulletin expresses the staff's views regarding contingency disclosures on property-casualty insurance reserves for unpaid claim costs.

FOR FURTHER INFORMATION CONTACT: James W. Barge, Office of the Chief Accountant (202–272–2130), Robert A. Bayless, Division of Corporation Finance (202–272–2553), or Michael L. Hund, Division of Corporation Finance (202–272–3233), Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The statements in staff accounting bulletins are not rules or interpretations of the Commission nor are they published as bearing the Commission's official approval. They represent interpretations and practices followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the Federal securities laws.

Dated: December 12, 1989.

Jonathan G. Katz,

Secretary.

Part 211 of title 17 of the Code of Federal Regulations is amended by adding Staff Accounting Bulletin No. 87 to the table found in subpart B.

Staff Accounting Bulletin No. 87

The staff hereby adds section W to Topic 5 of the Staff Accounting Bulletin Series. Topic 5–W discusses contingency disclosures related to property-casualty insurance reserves for unpaid claim costs.

* * * * *

Topic 5: Miscellaneous Accounting W. Contingency Disclosures Regarding Property-Casualty Insurance Reserves for Unpaid Claim Costs

Facts: A property-casualty insurance company (the "Company") has established reserves, in accordance with Statement of Financial Accounting Standards No. ("SFAS") 60, *Accounting and Reporting by Insurance Enterprises*, for unpaid claim costs, including estimates of costs relating to claims incurred but not reported ("IBNR").[1] The reserve estimate for IBNR claims was based on past loss experience and current trends except that the estimate has been adjusted for recent significant unfavorable claims experience that the Company considers to be nonrecurring and abnormal. The Company attributes the abnormal claims experience to a recent acquisition and accelerated claims processing; however, actuarial studies have been inconclusive and subject to varying interpretations. Although the reserve is deemed adequate to cover all probable claims, there is a reasonable possibility that the abnormal claims experience could continue, resulting in a material understatement of claim reserves.

SFAS 5, *Accounting for Contingencies*, requires, among other things, disclosure of loss contingencies.[2] However, paragraph 2 of that pronouncement notes that "[n]ot all uncertainties inherent in the accounting process give rise to contingencies as that term is used in [SFAS 5]"

Question 1: In the staff's view, do SFAS 5 disclosure requirements apply to property-casualty insurance reserves for unpaid claim costs? If so, how?

Interpretive Response: Yes. The staff believes that specific uncertainties (conditions, situations and/or sets of circumstances) not considered to be normal and recurring because of their significance and/or nature can result in loss contingencies [3] for purposes of applying SFAS 5 disclosure requirements. General uncertainties, such as the amount and timing of claims, that are normal, recurring, and inherent to estimations of property-casualty insurance reserves are not considered subject to the disclosure requirements of SFAS 5. Some specific uncertainties that may result in loss contingencies pursuant to SFAS 5, depending on significance and/or nature, include insufficiently understood trends in claims activity; judgmental adjustments to historical experience for purposes of estimating future claim costs (other than for normal recurring general uncertainties); significant risks to an individual claim or group of related claims; or catastrophe losses.

Question 2: Do the facts presented above describe an uncertainty that requires SFAS 5 disclosures?

Interpretive Response: Yes. The staff believes the judgmental adjustments to historical experience for insufficiently understood claims activity noted above results in a loss contingency within the scope of SFAS 5. Based on the facts presented above, at a minimum the Company's financial statements should disclose that for purposes of estimating IBNR claim reserves, past experience was adjusted for what management believes to be abnormal claims experience related to the recent acquisition of Company A and accelerated claims processing. It should also be disclosed that there is a reasonable possibility that the claims experience could be the indication of an unfavorable trend which would require additional IBNR claim reserves in the approximate range of $XX–$XX million (alternatively, if Company management is unable to estimate the possible loss or range of loss, a statement to that effect should be disclosed). Additionally, the staff also expects companies to disclose the nature of the loss contingency and the potential impact on trends in their loss reserve development discussions provided pursuant to Property-Casualty Industry Guides 4 and 6. Consideration should also be given to the need to provide disclosure in Management's Discussion and Analysis.

Question 3: Does the staff have an example in which specific uncertainties involving an individual claim or group of related claims result in a loss contingency the staff believes requires disclosure?

Interpretive Response: Yes. A property-casualty insurance company (the "Company") underwrites product liability insurance for an insured manufacturer which has produced and sold millions of units of a particular product which has been used effectively and without problems for many years. Users of the product have recently begun to report serious health problems that they attribute to long term use of the product and have asserted claims under the insurance policy underwritten and retained by the Company. To date, the number of users reporting such problems is relatively small, and there is presently no conclusive evidence that demonstrates a causal link between long term use of the product and the health problems experienced by the claimants. However, the evidence generated to date indicates that there is at least a reasonable possibility thatthe product is responsible for the problems and the assertion of additional claims is considered probable, and therefore the potential exposure of the Company is material. While an accrual may not be warranted since the loss exposure may not be both probable and estimable, in view of the reasonable possibility of material future claim payments, the staff believes that disclosures made in accordance with SFAS 5 would be required under these circumstances.

The disclosure concepts expressed in this example would also apply to an individual claim or group of claims that are related to a single catastrophic event or multiple events having a similar effect.

[FR Doc. 89–29454 Filed 12–18–89; 8:45 am]
BILLING CODE 3010–01–M

[1] Paragraph 16 of SFAS 60 prescribes that "[t]he liability for unpaid claims shall be based on the estimated ultimate cost of settling the claims (including the effects of inflation and other societal and economic factors), using past experience adjusted for current trends, and any other factors that would modify past experience." [Footnote reference omitted].

[2] Paragraph 10 of SFAS 5 specifies that "[i]f no accrual is made for a loss contingency because one or both of the conditions in paragraph 8 are not met, *or if an exposure to loss exists in excess of the amount accrued* pursuant to the provisions of paragraph 8, disclosure of the contingency shall be made when there is at least a reasonable possibility that a loss or an additional loss may have been incurred. The disclosure shall indicate the nature of the contingency and shall give an estimate of the possible loss or range of loss or state that such an estimate cannot be made." [Footnote reference omitted and emphasis added].

[3] The loss contingency referred to in this document is the potential for a material understatement of reserves for unpaid claims.

DEPARTMENT OF EDUCATION

34 CFR Part 222

RIN 1810–AA20

Assistance for Local Educational Agencies in Areas Affected by Federal Activities and Arrangements for Education of Children Where Local Educational Agencies Cannot Provide Suitable Free Public Education; Correction

AGENCY: Department of Education.

ACTION: Final rule; correction.

SUMMARY: This document corrects errors made in the final regulations published in the **Federal Register** on September 7, 1989 (54 FR 37250) concerning assistance for local educational agencies in areas affected by Federal activities and arrangements for education of children where local educational agencies cannot provide suitable free public education.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Hansen, Director, Impact Aid Programs, U.S. Department of Education, 400 Maryland Avenue SW., Room 2079, Washington, DC 20202–6272 Telephone: (202) 732–3637.

Dated: December 12, 1989.

Daniel F. Bonner,

Acting Assistant Secretary, Elementary and Secondary Education.

(Catalog of Federal Domestic Assistance No. 84.041, School Assistance in Federally Affected Areas—Maintenance and Operation)

The following corrections are made in FR Doc. 89–20935, 54 FR 37250 in the issue of September 7, 1989:

§ 222.3 [Amended]

1. On page 37253, item 3, column 3, in the definition of *Parent employed on Federal property*, paragraph (1)(iii), "(a)(ii)" on the fifth line, should read "(1)(ii)".

§ 222.37 [Amended]

2. On page 37256, column 3, the amendatory language for item 17 is corrected by removing the words "paragraph (e)" and adding in their

place, the words "paragraph (f)" and

the sale of flood insurance to owners of property located in the communities

list have recently entered the NFIP, subsidized flood insurance is now

Insurance Administration, to whom authority has been delegated by the

place, the words "paragraph (f)" and revising the new paragraph designation in § 222.37 accordingly.

§ 222.61 [Amended]

3. On page 37256, column 3, the amendatory language for item 19, is corrected by removing the designation "(b)(4) and (b)(5)" and adding in its place "(b)(3) and (b)(4)", and revising the paragraph designations in § 222.61 acccordingly.

[FR Doc. 89-29394 Filed 12-18-89; 8:45 am]
BILLING CODE 3820-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6758

[AZ-930-00-4214-10; AR-05058]

Partial Revocation of Public Land Order No. 1176; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a public land order (PLO) insofar as it affects 17.80 acres of National Forest System land withdrawn for use as an administrative site. The land is no longer required for administrative site purposes and is needed to permit consummation of a proposed Forest Service exchange. The land is being opened to surface entry and mining, subject to the proposed Forest Service exchange and other segregations of record. The land has been open to mineral leasing; however, both the surface and mineral estates will be a part of the proposed exchange.

EFFECTIVE DATE: January 3, 1990.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, 602-241-5509.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976; 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Public Land Order No. 1176 is hereby revoked insofar as it affects the following land:

Gila & Salt River Meridian

T. 12 N., R. 17 E.,
Sec. 32, lot 13.

The area described contains 17.80 acres in Navajo County.

2. At 10 a.m. on January 3, 1990, the land shall be opened to such forms of disposition as may by law be made of National Forest System lands, including location and entry under the United States mining laws, subject to segregation by an exchange application pursuant to the General Exchange Act, other segregations of record, valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. Appropriation of land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: December 14, 1989.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 89-29475 Filed 12-18-89; 8:45 am]
BILLING CODE 4310-02-M

43 CFR Public Land Order 6759

[CA-940-00-4214-10; CACA-26089]

Partial Revocation of Executive Order dated April 17, 1926, Public Water Reserve No. 107; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes an Executive order insofar as it affects 40 acres of public land withdrawn for a public water reserve. The land is no longer needed for public water reserve purposes. This action will open 40 acres to surface entry and nonmetalliferous mining. The land has been and will remain open to metalliferous mining and mineral leasing.

EFFECTIVE DATE: January 18, 1990.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, BLM California State Office, Room E-2845, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825, 916-978-4820.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Executive Order of April 17, 1926, creating Public Water Reserve No. 107, as interpreted by Bureau of Land Management Order dated October 2, 1979, is hereby revoked insofar as it affects the following described land:

Mount Diablo Meridian

T. 22 S., R. 12 E.,
Sec. 18, NE¼SE¼.

The area described contains 40 acres in Monterey County.

2. At 10 a.m. on January 18, 1990, the land will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on January 18, 1990, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 10 a.m. on January 18, 1990, the land will be opened to nonmetalliferous mining under the United States mining laws. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: December 14, 1989.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 89-29476 Filed 12-18-89; 8:45 am]
BILLING CODE 4310-40-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6857]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the fourth column of the table.

ADDRESS: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: Post Office Box 457, Lanham, Maryland 20706, Phone: (800) 638-7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street SW., Room 417, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance and floodplains.

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 64.6 List of eligible communities.

State	Location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date
New Eligible—Emergency Program				
Arkansas	Boone County, unincorporated areas	050016	Nov. 1, 1989	June 17, 1977.
Missouri	Velda Village Hills, village of, St. Louis County.	290857	Nov. 10, 1989	Do.
North Caroline	[1] Whispering Pine, village of, Moore County.	370464	Nov. 10, 1989	Do.
New Eligible—Regular Program				
North Carolina	Walnut Creek, village of, Wayne County.	370435	Oct. 19, 1989	Sept. 9, 1983.
Montana	Hamilton, city of, Ravalli County	300186	Nov. 10, 1989	Aug. 3, 1989.
North Dakota	[2] Oxbow, city of, Cass County	380081	Do. Emerg.	Do.
Reinstatements—Regular Program				
Colorado	Cripple Creek, town of, Teller County	080174	July 15, 1975, Emerg.; Dec. 18, 1985, Reg.; Aug. 15, 1989, Susp.; Nov. 2, 1989, Rein.	Dec. 18, 1985.
Do	Gilpin County, unincorporated areas	080075	Mar. 17, 1980, Emerg.; Mar. 1, 1986, Reg.; July 17, 1989, Susp.; Nov. 2, 1989, Rein.	Mar. 1, 1986.
Texas	[3] Borger, city of, Hutchinson County	480374	Aug. 1, 1976, Emerg.; Apr. 15, 1985, Withdrawn Nov. 3, 1989, Rein.	Apr. 16, 1976.
Colorado	Fremont County, unincorporated areas.	080067	June 25, 1975, Emerg.; Sept. 29, 1989, Reg.; Sept. 29, 1989, Susp.; Nov. 6, 1989, Rein.	Sept. 29, 1989.
Pennsylvania	Versailles, borough of, Allegheny County.	420061	June 11, 1976, Emerg.; Oct. 16, 1989, Reg.; Oct. 16, 1989, Susp.; Nov. 7, 1989, Rein.	Oct. 16, 1989.
Louisiana	Grosse Tete, village of, Iberville Parish.	220084	Apr. 23, 1973, Emerg.; Mar. 1, 1978, Reg.; May 4, 1988, Susp.; Nov. 6, 1989, Rein.	Mar. 1, 1978.
Kentucky	[4] Wheelwright, city of, Floyd County	210074	Oct. 15, 1974, Emerg.; June 16, 1986, Reg.; June 16, 1986, Susp.; Nov. 1, 1989, Rein.	June 16, 1986.
Wisconsin	Tony, village of, Rusk County	550377	July 22, 1975, Emerg.; Sept. 16, 1988, Reg.; Sept. 16, 1988, Susp.; Nov. 10, 1989, Rein.	Sept. 16, 1988.

State	Location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date
New Eligible—Emergency Program				
Arkansas	Boone County, unincorporated areas	050016	Nov. 1, 1989	June 17, 1977.
Missouri	Velda Village Hills, village of, St. Louis County.	290857	Nov. 10, 1989	Do.
North Caroline	[1] Whispering Pine, village of, Moore County.	370464	Nov. 10, 1989	Do.
New Eligible—Regular Program				
North Carolina	Walnut Creek, village of, Wayne County.	370435	Oct. 19, 1989	Sept. 9, 1983.
Montana	Hamilton, city of, Ravalli County	300186	Nov. 10, 1989	Aug. 3, 1989.
North Dakota	[2] Oxbow, city of, Cass County	380081	Do. Emerg.	Do.
Reinstatements—Regular Program				
Colorado	Cripple Creek, town of, Teller County	080174	July 15, 1975, Emerg.; Dec. 18, 1985, Reg.; Aug. 15, 1989, Susp.; Nov. 2, 1989, Rein.	Dec. 18, 1985.
Do	Gilpin County, unincorporated areas	080075	Mar. 17, 1980, Emerg.; Mar. 1, 1986, Reg.; July 17, 1989, Susp.; Nov. 2, 1989, Rein.	Mar. 1, 1986.
Texas	[3] Borger, city of, Hutchinson County	480374	Aug. 1, 1976, Emerg.; Apr. 15, 1985, Withdrawn Nov. 3, 1989, Rein.	Apr. 16, 1976.
Colorado	Fremont County, unincorporated areas.	080067	June 25, 1975, Emerg.; Sept. 29, 1989, Reg.; Sept. 29, 1989, Susp.; Nov. 6, 1989, Rein.	Sept. 29, 1989.
Pennsylvania	Versailles, borough of, Allegheny County.	420061	June 11, 1976, Emerg.; Oct. 16, 1989, Reg.; Oct. 16, 1989, Susp.; Nov. 7, 1989, Rein.	Oct. 16, 1989.
Louisiana	Grosse Tete, village of, Iberville Parish.	220084	Apr. 23, 1973, Emerg.; Mar. 1, 1978, Reg.; May 4, 1988, Susp.; Nov. 6, 1989, Rein.	Mar. 1, 1978.
Kentucky	[4] Wheelwright, city of, Floyd County	210074	Oct. 15, 1974, Emerg.; June 16, 1986, Reg.; June 16, 1986, Susp.; Nov. 1, 1989, Rein.	June 16, 1986.

State	Location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date
Wisconsin	Tony, village of, Rusk County	550377	July 22, 1975, Emerg.; Sept. 16, 1988, Reg.; Sept. 16, 1988, Susp.; Nov. 10, 1989, Rein.	Sept. 16, 1988.

State	Location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date
Wyoming	Jackson, town of, Teton County	560052	Aug. 8, 1975, Emerg.; May 4, 1989, Reg.; May 4, 1989, Susp.; Nov. 10, 1989, Rein.	May 4, 1989.
Ohio	Parma, city of, Cuyahoga County	390123	April 10, 1975, Emerg.; Aug. 17, 1981, Reg.; Aug. 3, 1989, Susp.; Nov. 14, 1989, Rein.	Aug. 17, 1981.
New Jersey	Lakehurst, borough of, Ocean County	340377	June 25, 1975, Emerg.; Dec. 15, 1982, Reg.; Dec. 15, 1982, Susp.; Nov. 21, 1989, Rein.	Dec. 15, 1982.
Colorado	Montrose County, unincorporated areas.	080124	Jan. 31, 1975, Emerg.; Jan. 1, 1984, Reg.; June 19, 1989, Susp.; Nov. 22, 1989, Rein.	July 17, 1986.
Pennsylvania	Irvona, borough of, Clearfield County	420308	Dec. 6, 1976, Emerg.; Nov. 3, 1989, Reg.; Nov. 3, 1989, Susp.; Nov. 22, 1989, Rein.	Nov. 3, 1989.
Do	Lilly, borough of, Cambria County	421430	Feb. 25, 1977, Emerg.; Oct. 17, 1989, Reg.; Oct. 17, 1989, Susp.; Nov. 22, 1989, Rein.	Oct. 17, 1989.
New York	Athens, village of, Greene County	360285	April 24, 1975, Emerg.; Sept. 6, 1989, Reg.; Sept. 6, 1989, Susp.; Nov. 24, 1989, Rein.	Sept. 6, 1989.
Pennsylvania	Ashville, borough of, Cambria County	422266	July 25, 1975, Emerg.; May 1, 1985, Reg.; Nov. 3, 1989, Susp.; Nov. 29, 1989, Rein.	Nov. 3, 1989.
Do	Amwell, town of, Washington County	422615	Jan. 17, 1975, Emerg.; Sept. 15, 1989, Reg.; Sept. 15, 1989, Susp.; Nov. 29, 1989, Rein.	Sept. 15, 1989.
Do	East St. Clair, township of, Bedford County.	421337	March 3, 1977, Emerg.; June 19, 1989, Reg.; June 19, 1989, Susp.; Nov. 29, 1989, Rein.	June 19, 1989.
Colorado	Castle Rock, town of, Douglas County	080050	April 22, 1975, Emerg.; Sept. 30, 1987, Reg.; Sept. 30, 1987, Susp.; Nov. 29, 1989, Rein.	Sept. 30, 1987.

State	Location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date
Region I—Regular Program Conversions				
Connecticut	Cheshire, town of, New Haven County.	090074	Nov. 3, 1989. Suspension withdrawn.	Nov. 3, 1989.
Maine	Canton, town of, Oxford County	230091	do	Do.
Region III				
Pennsylvania	Port Matilda, borough of, Centre County.	420268	do	Nov. 3, 1975.
Do	Unionville, borough of, Centre County	420272	do	Nov. 3, 1989.
Do	Washington, township of, Cambria County.	421448	do	Do.
Virginia	Harrisonburg, city of, Independent city	510076	do	Do.
Do	Urbanna, town of, Middlesex County	510292	do	Do.
Region IV				
Tennessee	Maury County, unincorporated areas	470123	do	Do.
Do	Williamson County, unincorporated areas.	470204	do	Do.
Region V				
Michigan	Brooks, township of, Newaygo County	260467	do	Do.
Region VI				
Texas	Poteet, city of, Atascosa County	480016	do	Do.
Region X				
Oregon	Burns, city of, Harney County	410064	do	Do.
Do	Hines, city of, Harney County	410065	do	Do.

State	Location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date
Region I				
Maine	Jay, town of, Franklin County	230349	Nov. 15, 1989. Suspension withdrew.	Nov. 15, 1989
Do	Noblesboro, town of, Lincoln County	230219	do	Do.
Region II				
New York	Amenia, town of, Dutchess County	361332	do	Do.
Do	Greenport, town of, Columbia County	361319	do	Do.
Region III				
Pennsylvania	Choconut, township of, Susquehanna County.	422078	do	Do.
Do	Conneaut, township of, Erie County	421361	do	Do.
Do	New Ringgold, borough of, Schuylkill County.	421996	do	Do.
Do	North Manheim, township of, Schuylkill County.	422013	do	Do.
Virginia	Purcellville, town of, Loudoun County	510231	do	Do.

State	Location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date
West Virginia	Grant County, unincorporated areas	540038	do	Do.
Region IV				
Florida	Bradford County, Suwannee County	120015	do	Do.
Mississippi	Columbus, city of, Lowndes County	280106	do	Do.
Region V				
Indiana	Carroll County, unincorporated areas	180019	do	Do.
Michigan	Manistee, township of, Manistee County.	260132	do	Do.
Ohio	Allen County, unincorporated areas	390758	do	Do.
Do	Butler, village of, Richland County	390605	do	Do.
Do	Sabina, village of, Clinton County	390627	do	Do.

Code for reading fourth column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

* Declared Disaster Area.

[1] The Village of Whispering Pines, North Carolina will be converted to the Regular Program on *December 15, 1989. The Community's FIRM becomes effective on that date.*

[2] The City of Oxbow has adopted the Township of Pleasant's Flood Insurance Study and FIRM dated February 3, 1982, and all subsequent revisions for floodplain management and insurance purposes.

[3] Reinstatement Emergency Program.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 89-29426 Filed 12-18-89; 8:45 am]

BILLING CODE 6718-21-M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 501, 515, 536, 552, and 553

[APD 2800.12A CHGE 2]

General Services Administration Acquisition Regulation; Implement FAC 84-49

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR) is amended to revise section 501.707 to add a reference in paragraph "l" to FAR 25.901 (c) and (d) under the "D&F Requirement" Column of Table 501-1; to delete section 515.406-2 because the new provision at FAR 52.204-4, Contractor Establishment Code, will provide the DUNS number previously obtained through the GSAR provision prescribed in this section; to delete reference to the Standard Form 1410 and substitute a reference to Optional Form 1419 and 1419A; to correct section 552.212-1 by substituting "DESIRED" for "REQUIRED" in the column heading under the Time of Delivery clause in paragraph (b); to delete section 552.215-75 because the new provision at FAR 52.204-4, Contractor Establishment Code, will provide the DUNS number previously obtained through the CSAR provision; to revise section 553.370-72A to illustrate the May 1989 edition of GSA Form 72A, Contractor's Report of Orders Received; to add section 553.370-3516 to illustrate the October 1989 edition of GSA Form 3516, Solicitation Provisions (Acquisition of Leasehold Interests in Real Property); to add section 553.3517 to illustrate the October 1989 edition of GSA Form 3517, General Clauses (Acquisition of Leasehold Interests in Real Property); to add section 553.370-3518 to illustrate the October 1989 edition of GSA Form 3518, Representations and Certifications (Acquisition of Leasehold Interests in Real Property).

EFFECTIVE DATE: December 26, 1989.

FOR FURTHER INFORMATION CONTACT: John Joyner, Office of GSA Acquisition Policy (202) 566-1224.

SUPPLEMENTARY INFORMATION:

A. Public comments

This rule was not published in the **Federal Register** for public comment because it simply revises the GSAR to conform to the Federal Acquisition Regulation (FAR) as amended by FAC 84-49 which had already undergone the public comment process.

B. Background

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule. This rule amends the GSAR as necessary to conform with the FAR as amended by FAC 84-49. The Regulatory Flexibility Act does not apply to this rule because the proposed policy was not required to be published in the **Federal Register**. The rule does not contain information collection requirements which require the approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

List of Subjects in 48 CFR Parts 501, 515, 536, 552 and 553

Government procurement.

1. The authority citation for 48 CFR parts 501, 515, 536, 552 and 553 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 501—[AMENDED]

2. Section 501.707 is amended by revising paragraph "l" to read as follows:

§ 501.707 Signatory authority.

* * * * *

TABLE 501-1—SIGNATORY AUTHORITY

D&F requirement	Signatory authority
* * *	* * *
l. Determinations to omit the clause specified at FAR 52.215-1, Examination of Records by Comptroller General, from contracts with foreign contractors or subcontractors. (See 41 U.S.C. 254(c), FAR 15.106-1(b) and 25.901 (c) and (d)).	Individual D&Fs must be signed by the Administrator with the concurrence of the Comptroller General or a designee.
* * *	* * *

PART 515—[AMENDED]

§ 515.406-2 [Removed]

3. Section 515.406-2 is removed.

PART 536—[AMENDED]

4. Section 536.203 is amended by revising paragraph (c) to read as follows:

§ 536.203 Government estimate of construction cost.

Note: The CSA forms mentioned in the summary are made a part of the CSAR

SUMMARY: NOAA announces the apportionment of amounts of Alaska

30, 1989), and on December 7 at 54 FR 51200 (December 13, 1989).

subject to the terms of the foreign vessels' permits.

the numerical optimum yield (OY) quota for that species is reached. The 1989 OY

§ 536.203 Government estimate of construction cost.

* * * * *

(c) If the procurement is by sealed bidding, the sealed copy of the Government estimate must be stored with the bids received until bid opening. Before releasing an amendment to a solicitation that may affect the price, a revised sealed Government estimate must be stored with the bids until bid opening. After the bids are read and recorded, the sealed Government estimate will be opened and retained with the abstract of offers (See Optional Forms 1419 and 1419A). However, the Government's estimate must not be disclosed until after award. Immediately after award the Government estimate must be recorded on the abstract of offers as the Independent Government Estimate.

* * * * *

PART 552—[AMENDED]

5. Section 552.212–1 is amended by revising the Time of Delivery Clause under paragraph (b) that references 512.104(a)(2) to read as follows:

§ 552.212–1 Time of delivery.

* * * * *

(b) As prescribed in 512.104(a)(2) insert the following clause:

Time of Delivery (May 1989)

The Government desires that delivery be made at destination within the number of calendar days after receipt of order (ARO) as set forth below. Offerors are requested to insert in the "Time of Delivery (days ARO)" column in the Schedule of Items a definite number of calendar days within which delivery will be made. If the Offeror does not insert a delivery time, the Offeror will be deemed to offer delivery in accordance with the Government's stated desired delivery time.

ITEMS OR GROUPS OF ITEMS
(Special Item Numbers or Nomenclature)

DESIRED DELIVERY TIME (DAYS ARO)

(End of Clause)

* * * * *

§ 552.215–75 [Removed]

6. Section 552.215–75 is removed.

Note: The CSA forms mentioned in the summary are made a part of the CSAR looseleaf edition. Copies may be obtained from the Director of the Office of GSA Acquisition Policy (VP), 18th and F Streets, NW, Washington, DC 20405. The forms will not appear in this volume of the Federal Register or title 48, chapter 5 of the Code of Federal Regulations.

Dated: December 5, 1989.

Richard H. Hopf, III,

Associate Administrator for Acquisition Policy.

[FR Doc. 89–29353 Filed 12–18–89; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 81130–8265]

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure and request for comments.

SUMMARY: NOAA issues this notice closing the fishery for widow rockfish off the coasts of Washington, Oregon, and California, and seeks public comment on this action. This closure is authorized under regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP) which state that retention or landing of a species is prohibited when that species quota is reached.

DATES: Effective from 0001 hours Pacific Standard Time, December 13, 1989, until 2400 hours Pacific Standard Time, December 31, 1989. Comments will be accepted until January 3, 1990.

ADDRESSES: Send comments to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., Bldg. 1, Seattle, WA 98115. The aggregate data upon which this determination is based are available for public inspection at the address listed above during business hours until the end of the comment period.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at (206) 526–6140.

SUPPLEMENTARY INFORMATION: Regulations implementing the FMP at 50 CFR 663.21(b) require the Secretary of Commerce (Secretary) to prohibit retention or landing of a species when the numerical optimum yield (OY) quota for that species is reached. The 1989 OY for widow rockfish is 12,400 metric tons (54 FR 32, January 3, 1989).

Based on the best available information to date from the Pacific Fishery Management Council's Groundfish Management Team, the Regional Director has determined that the widow rockfish quota was reached on November 25, 1989. Accordingly, the Secretary announces that retention or landing of widow rockfish taken in the U.S. exclusive economic zone off the coasts of Washington, Oregon, and California is prohibited from 0001 hours Pacific Standard Time, on December 13, 1989, the earliest date possible, until 2400 hours Pacific Standard Time, December 31, 1989. The states of Washington, Oregon, and California also will close state ocean waters during the same period.

Classification

The determination to prohibit further landings of widow rockfish is based on the most recent data available. This action is taken under the authority of 50 CFR 663.21(b) and 663.23, and is in compliance with Executive Order 12291.

Because of the immediate need to prohibit further landings of widow rockfish and thereby prevent the excessive harvest that could otherwise result, the Secretary finds that advance notice and public comment prior to this closure are impracticable and not in the public interest, and that no delay should occur in its effective date. Public comments, however, will be accepted for 15 days after this notice is published in the Federal Register. The Secretary therefore finds good cause to waive the 30-day delayed effectiveness provision of § 663.23(c).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 13, 1989.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–29402 Filed 12–13–89; 8:45 am]

BILLING CODE 3510–22–M

50 CFR Part 675

[Docket No. 90407–9170]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustment; reopening of fishery.

SUMMARY: NOAA announces the apportionment of amounts of Alaska groundfish to the joint venture processing (JVP) portion of the domestic annual harvest (DAH) for pollock in the Bering Sea subarea. This action, taken under provisions of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP), is necessary to assure optimum use of groundfish in that area and to fully achieve the optimum yield.

DATES: This notice is effective December 14, 1989. Comments will be accepted through January 3, 1990.

ADDRESS: Comments should be mailed to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802, or be delivered to Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Janet E. Smoker (Fishery Management Biologist, NMFS), 907–586–7230.

SUPPLEMENTARY INFORMATION: The FMP is implemented by rules appearing at 50 CFR 611.93 and part 675.

Initial specifications for DAH, DAP (domestic annual processing) and JVP for 1989 were published at 54 FR 3605 (January 25, 1989). Subsequent reapportionments occurred on September 3 at 54 FR 37112, September 18 at 54 FR 38686 (September 20, 1989), on October 6 at 54 FR 41977 (October 13, 1989), on October 31 at 54 FR 46619 (November 6, 1989), on November 9 at 54 FR 47863 (November 16, 1989), on November 27 at 54 FR 49296 (November 30, 1989), and on December 7 at 54 FR 51200 (December 13, 1989).

On November 27 foreign permits of all foreign vessels, except Polish vessels, were restricted and the authority to receive pollock from U.S. catcher vessels operating in joint venture fisheries was terminated. Notice of the decision to amend these permits was published at 54 FR 50009 (December 4, 1989). That action allowed Polish vessels to receive the remaining amounts of pollock JVP in both the Bering Sea and Aleutian Islands subareas. Subsequently, on December 7, the amount of Aleutian Islands subarea pollock available for JVP operations was increased by 13,000 metric tons (mt), and the permit restrictions of vessels of all foreign nations other than Poland were modified to allow receipt of 13,000 mt at 54 FR 51200 (December 13, 1989).

Because the amounts of Bering Sea subarea pollock available for JVP operations will be increased by 21,000 mt in this notice, the Regional Director intends to inform vessels of all other foreign nations which participate in joint ventures in the Bering Sea and Aleutian Islands area that the permit restriction is modified to allow receipt of pollock in the Bering Sea subarea up to 17,000 mt, effective on the date of this notice. When the Regional Director determines that 17,000 mt of pollock has been received by foreign fishing vessels other than Polish vessels, or, alternatively, that the total amount of pollock specified as JVP in the Bering Sea subarea has been received by all foreign fishing vessels, this modification of the permit restriction will expire, and further receipts of pollock will be subject to the terms of the foreign vessels' permits.

Reapportionment (Table 1)

The following actions are taken to apportion groundfish from the non-specific reserve to JVP: an amount identified as excess to DAP needs for Bering Sea subarea pollock, 21,000 mt, is apportioned to JVP for Bering Sea subarea pollock. This amount does not result in overfishing of Bering Sea subarea pollock, as the resulting amount available for DAH harvest, 1,340,000 mt is equal to the acceptable biological catch (ABC) (1,340,000 mt).

Classification

This action is taken under the authority of 50 CFR 675.20(b) and complies with Executive Order 12291.

The Assistant Administrator for Fisheries finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment. Immediate effectiveness of this notice is necessary to benefit domestic fishermen who have only a few weeks of fishing remaining in the year. However, interested persons are invited to submit comments in writing to the address above for 15 days after the effective date of this notice.

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 14, 1989.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

TABLE 1.—BERING SEA/ALEUTIANS REAPPORTIONMENTS OF TAC

		Current	This action	Revised
Pollock (Bering Sea)	DAP	1,045,585		1,045,585
TAC=1,340,000	JVP	273,415	+21,000	294,415
ABC=1,340,000				
Total (TAC=2,000,000)	DAP	1,341,387		1,341,387
	JVP	635,257	+21,000	656,257
	Reserves	23,356	−21,000	2,356

[FR Doc. 89–29533 Filed 12–14–89; 5:11 pm]

BILLING CODE 3510–22–M

Proposed Rules

are in consonance with that policy decision.

To prevent migration of the aileron control tab hinge pins, accomplish the following:

Issued in Seattle, Washington, on December 7, 1989.

VOL 54 ISS 242 DE 19 1989 UMI

Proposed Rules

Federal Register
Vol. 54, No. 242
Tuesday, December 19, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-245-AD]

Airworthiness Directives; Aerospatiale Model ATR42 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to revise an existing airworthiness directive (AD), applicable to certain Aerospatiale Model ATR42 series airplanes, which currently requires repetitive inspections of the aileron control tab hinge pins, repair if necessary, and modification of the hinge pins on certain airplanes. Those actions were necessary to prevent hinge pin migration, which could lead to excessive aileron forces and loss of controllability of the airplane. This proposal would require the installation of a previously optional modification, consisting of new hinge pins and stop plates, which will terminate the need for the currently required repetitive inspections. Additionally, this proposal would add additional airplanes to the applicability of the rule.

DATE: Comments must be received no later than February 2, 1990.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-245-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert McCracken, Standardization Branch, ANM-113; telephone (206) 431-1979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-245-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On August 11, 1989, the FAA issued AD 89-18-03, Amendment 39-6304 (54 FR 34498; August 21, 1989) to require repetitive inspections of the aileron control tab hinge pins, and repair, if necessary. That action was prompted by reports of hinge pin migration continuing to occur following a previous modification. This condition, if not corrected, could lead to excessive aileron forces and loss of controllability of the airplane. This proposal would require installation of new hinge pins and stop plates, and would terminate the need for the repetitive inspections. The FAA has determined that the optional modification in the existing AD should be made mandatory rather than relying on repetitive inspections.

Since issuance of that AD, Aerospatiale has issued Service Bulletin ATR42-57-0030, Revision 2, dated September 18, 1989, which updates procedures for installation of new hinge pins and stop plates. Installation of this modification terminates the need for the repetitive inspections. The Direction Generale de L'Aviation Civile, which is the airworthiness authority of France, has classified this service bulletin as mandatory and has issued Airworthiness Directive 89-077-021(B)R3 addressing this subject.

Additionally, since issuance of AD 89-18-03, the Model ATR42 fleet has increased and additional airplanes that were not listed in the applicability of the existing AD are also subject to the unsafe condition addressed by that action. This is reflected in both Service Bulletins ATR42-57-0028, Revision 1, dated April 20, 1989, and ATR42-57-0030, Revision 2, dated September 18, 1989.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would revise AD 89-18-03 to require installation of new hinge pins and stop plates, in accordance with the service bulletin previously described.

The degree of assurance necessary as to the adequacy of inspections needed to maintain the safety of the transport airplane fleet, coupled with a better understanding of the human factors associated with numerous repetitive inspections, has caused the FAA to place less emphasis on repetitive inspections and more emphasis on design improvements and material replacement. Thus, in lieu of its previous position of continual inspection, the FAA has decided to require, whenever practicable, airplane modifications necessary to remove the source of the problem addressed. The proposed modification requirements of this action are in consonance with that policy decision.

It is estimated that 53 airplanes of U.S. registry would be affected by this AD, that it would take approximately 5 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The required modification kit will be supplied by the manufacturer at no cost to the operator. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $10,600.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised) Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by amending Amendment 39-6304 (54 FR 34498; August 21, 1989), AD 89-18-03, as follows:

Aerospatiale: Applies to Model ATR42 series airplanes, Serial Numbers 003 through 147, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent migration of the aileron control tab hinge pins, accomplish the following:

A. Within 7 days after June 12, 1989 (the effective date of AD 89-12-05, Amendment 39-6229), for airplanes Serial Numbers 003 through 068, modify the aileron control tab hinge pins in accordance with Part B of Aerospatiale Service Bulletin ATR42-57-0019, Revision 1, dated June 7, 1989.

B. Within 7 days after June 12, 1989 (the effective date of AD 89-12-05, Amendment 39-6229), for airplanes Serial Numbers 003 through 135, perform an inspection of the aileron control tab hinge pins in accordance with Part B of Aerospatiale Service Bulletin ATR42-57-0028, Revision 1, dated April 20, 1989. If the inspection reveals that the end knuckle is not peened, prior to further flight, modify the aileron control tab hinge pins in accordance with the service bulletin.

C. Within 7 days after September 5, 1989 (the effective date of AD 89-18-03, Amendment 39-6304), for airplanes Serial Numbers 003 through 147, unless accomplished within the last 50 hours time-in-service, inspect all aileron control tab hinges to determine if the hinge pin has visibly migrated out of its housing. If the inspection reveals that a hinge pin has migrated, prior to further flight, push the hinge pin back into its housing. Repeat the inspection for hinge pin migration, and the associated repair, if necessary, at intervals not to exceed 50 hours time-in-service.

D. Within 60 days after the effective date of this amendment, for airplanes Serial Numbers 003 through 147, install new hinge pins and stop plates, in accordance with Service Bulletin ATR42-57-0030, Revision 2, dated September 18, 1989. This modification constitutes terminating action for the repetitive inspections required by paragraph C., above.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on December 7, 1989.

Leroy A. Keith,
Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-29411 Filed 12-18-89; 8:45 a.m.]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-250-AD]

Airworthiness Directives; British Aerospace Model BAe 146-100A, -200A, and -300A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe 146-100A, -200A, and -300A series airplanes, which would require repetitive inspections of the attachment bolts and nuts in the rear spar root joint attachment fittings at wing rib 2, left and right, for integrity of nuts, tightness of bolts, and/or fuel leaks, and repair, if necessary. This proposal is prompted by reports of fuel leaks from bolt positions on the rear spar attachment fitting at wing rib 2. This condition, if not corrected, could result in loss of fuel and a subsequent fire.

DATE: Comments must be received no later than February 12, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-250-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 431-1565. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

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SUPPLEMENTARY INFORMATION:
Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-250-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The United Kingdom Civil Aviation Authority (CAA), in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain British Aerospace Model BAe 146-100A, -200A, and -300A series airplanes. There have been recent reports of fuel leaks from bolt positions on the rear spar attachment fitting at wing rib 2. Leaks have been attributed to loose bolts, thread bound bolts, ineffective sealing, and damaged bolts. This condition, if not corrected, could result in loss of fuel and a subsequent fire.

British Aerospace has issued Service Bulletin 57-33, dated August 31, 1989, which describes procedures for repetitive inspections of the attachment bolts and nuts in the rear spar root joint attachment fittings at wing rib 2, left and right, for loose or damaged bolts and/or fuel leaks, and repair, if necessary. The United Kingdom CAA has classified this service bulletin as mandatory.

This airplane model is manufactured in United Kingdom and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require repetitive inspections of the attachment bolts and nuts in the rear spar root joint attachment fittings at wing rib 2, left and right, for loose or damaged bolts and/or fuel leaks, and repair, if necessary, in accordance with the service bulletin previously described.

It is estimated that 61 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $4,880.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39 [AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Airspace: Applies to Model BAe 146-100A, -200A, and -300A series airplanes, as listed in British Aerospace Service Bulletin 57-33, dated August 31, 1989, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent fuel leakage from bolt positions on the rear spar attachment fitting at wing rib 2 on the left and right side of the airplane, accomplish the following:

A. Within 12 months after the effective date of this AD, and thereafter at intervals not to exceed 3,000 landings, visually inspect the outboard vertical row of fasteners at the left and right rear spar root joint attachment fittings for integrity of nuts, tightness of bolts, and/or fuel leaks, in accordance with British Aerospace Service Bulletin 57-33, dated August 31, 1989.

1. If no defects are found, reinstall the left and right wing-to-fuselage fairing panels, in accordance with the service bulletin.

2. If defects are found, repair prior to further flight, in accordance with the service bulletin.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington. Issued in Seattle, Washington, on December 11, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-29412 Filed 12-18-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-239-AD]

Airworthiness Directives; McDonnell Douglas Model DC-9-81, -82, -83, and -87 Series Airplanes, and Model MD-88 Airplanes, Fuselage Numbers 909 through 1619

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC-9-80 series and Model MD-88 airplanes, which would require inspection and modification of all generator power feeder cable installations to preclude overheating of the firewall connector. This proposal is prompted by reports of the APU generator power feeder firewall connector overheating and burning attached wiring. This condition, if not corrected, could result in loss of electrical power from the affected generator and fire on board the airplane.

DATE: Comments must be received no later than February 12, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-239-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Business Unit Manager, Technical Publications, C1-HCW (54-60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Alan T. Shinseki, Aerospace Engineer, Systems and Equipment Branch, ANM-132L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5343.

SUPPLEMENTARY INFORMATION:
Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-239-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

There have been five reports of loose terminal connections in the Auxiliary Power Unit (APU) generator firewall connector on McDonnell Douglas Model DC-9-80 series airplanes. Investigations by McDonnell Douglas revealed that loose terminal lugs and heat shrink insulation pinched between a terminal lug and mating surface had contributed to loose connections. This condition, if not corrected, could result in overheating, arcing, and possible loss of electrical power from the APU generator and fire aboard the airplane. The firewall connectors used with each engine-driven generator power feeder cable installation are identical to that of the APU installation; therefore, the firewall connections of the power feeder cable installation are also susceptible to the reported problem.

The FAA has reviewed and approved McDonnell Douglas MD-80 Service Bulletin A24-113, dated October 30, 1989, which describes inspection procedures and modification instructions to correct the generator power feeder cable firewall connector terminations. The modification consists of replacing worn or damaged attachments, correctly assembling, and tightening to proper torque value to minimize the possibility of loose terminal connections.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require a one-time inspection and modification of the generator power feeder cable firewall connector installation in McDonnell Douglas Model DC-9-81, -82, -83, and -87 series and Model MD-88 airplanes, in accordance with the service bulletin previously described.

There are approximately 531 McDonnell Douglas Model DC-9-81, -82, -83, and -87 series and Model MD-88 series airplanes of the affected design in the worldwide fleet. It is estimated that 375 airplanes of U.S. registry would be affected by this AD, that it would take approximately 12 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The required parts will be provided by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $180,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

14 CFR Part 39

[Docket No. 89-NM-240-AD]

30, 1989, which describes modification instructions to correct the bonding strap installation in the overhead stowage

PART 39 [AMENDED]

1. The authority citation for part 39

Issued in Seattle, Washington, on December 11, 1989.

Darrell M. Pederson,

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-9-81, -82, -83, and -87 series and Model MD-88 airplanes, Fuselage Numbers 909 through 1619, certificated in any category. Compliance required within 12 months after the effective date of this Airworthiness Directive (AD), unless previously accomplished.

To eliminate a potential fire ignition source from the generator power feeder cable installations, accomplish the following:

A. Visually inspect the generator power feeder cable at the receptacle for evidence of arcing, burning, or chafing. If damage is found, prior to further flight, replace damaged feeder cable.

B. Modify the generator power feeder firewall connector installation in accordance with the Accomplishment Instructions of McDonnell Douglas MD-80 Alert Service Bulletin A24-113, dated October 30, 1989.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Avionics Inspector (PAI), who will either concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Business Unit Manager, Technical Publications, C1-HCW (54-60). These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806.

Issued in Seattle, Washington, on December 11, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-29413 Filed 12-18-89; 8:45 am]

BILLING Code 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-240-AD]

Airworthiness Directives: McDonnell Douglas Model DC-9-81, -82, -83, and -87 Series Airplanes and Model MD-88 Airplanes, Fuselage Numbers 909 through 1644

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC-9-80 and MD-88 series airplanes, which would require inspection and modification of the electrical bonding straps for the overhead stowage compartment support rail assembly to preclude premature chafing of electrical wiring in the cabin overhead area. This proposal is prompted by two reports of electrical shorting and smoke emanating from the passenger compartment ceiling area. This condition, if not corrected, could result in fire on board the airplane above the cabin overhead stowage compartments.

DATE: Comments must be received no later than February 12, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-240-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Business Unit Manager, Technical Publications, C1-HCW (54-60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Alan T. Shinseki, Aerospace Engineer, ANM-132L, FAA Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5343.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-240-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

An operator of McDonnell Douglas Model DC-9-80 series airplanes reported an electrical fire in the main cabin above the overhead stowage compartment area at row 16R on one airplane. The reported fire extinguished by itself within two to three minutes after electrical power to the cabin lights was removed. No circuit breakers had tripped. Investigation revealed that the cabin lights wiring had shorted and burned in the vicinity of a terminal strip and caused damage to the electrical wiring, a stowage compartment module, and the surrounding insulation blankets. However, there was no reported damage to the airplane structure or airplane exterior skin. A similar occurrence was reported by that same operator on a different airplane. Further investigations have revealed that a bonding strap installed between the overhead stowage compartment support rail assembly and the fuselage frame assembly had chafed through the insulation of cabin lights electrical wiring and shorted the wires. This condition, if not corrected, could result in shorting and sparking of electrical wire, which could lead to similar occurrence of fire in the main cabin above the overhead stowage compartment area.

The FAA has reviewed and approved McDonnell Douglas MD-80 Alert Service Bulletin A25-309, dated October 30, 1989, which describes modification instructions to correct the bonding strap installation in the overhead stowage compartment support rail assembly.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require a one-time inspection and modification of the bonding strap installation for the overhead stowage compartment support rail assembly on McDonnell Douglas Model DC-9-81, -82, -83, and -87 series and MD-88 Model airplanes, in accordance with the service bulletin previously described.

There are approximately 556 McDonnell Douglas Model DC-9-81, -82, -83, and -87 series and Model MD-88 airplanes of the affected design in the worldwide fleet. It is estimated that 313 airplanes of U.S. registry would be affected by this AD, that it would take approximately 30 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The required parts will be provided by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $375,600.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 39 of the Federal Aviation Regulations as follows:

PART 39 [AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-9-81, -82, -83, and -87 series and Model MD-88 airplanes, Fuselage Numbers 909 through 1644, certificated in any category. Compliance required within 12 months after the effective date of this Airworthiness Directive (AD), unless previously accomplished.

To eliminate a potential fire ignition source in the main cabin above the overhead stowage compartment area, accomplish the following:

A. Visually inspect the overhead stowage compartment rail assembly for evidence of arcing, burning, or chafing to electrical wiring in the vicinity of each electrical bonding strap. If damage is found, prior to further flight, repair the electrical wires in accordance with McDonnell Douglas MD-80 Maintenance Manual, Chapters 20-50-01 and 20-50-02.

B. Modify the electrical bonding strap installation of the overhead stowage compartment rail assembly in accordance with the Accomplishment Instructions of McDonnell Douglas MD-80 Alert Service Bulletin A25-309, dated October 30, 1989.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Avionics Inspector (PAI), who will either concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Business Unit Manager, Technical Publications, C1-HCW (54-60). These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

Issued in Seattle, Washington, on December 11, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-29414 Filed 12-18-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-246-AD]

Airworthiness Directives; Sud Aviation Caravelle SE 210 Models III and VIR Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to all Sud Aviation Caravelle SE 210 Models III and VIR series airplanes, which would require repetitive inspections to detect cracks in the left-hand forward passenger door frame, and repair, if necessary. This proposal is prompted by reports of cracks discovered on in-service airplanes in the upper corners of the left-hand forward passenger door frame. This condition, if not corrected, could lead to failure of the passenger door frame and subsequent decompression of the airplane.

DATE: Comments must be received no later than February 7, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-246-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Aerospatiale, 316 Rue de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert J. Huhn, Standardization Branch, ANM-113; telephone (206) 431-1950. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to

participate in the making of the proposed rule by submitting such written data, views, or arguments as

§ 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness

be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention:

notified the FAA of an unsafe condition which may exist on certain Sud Aviation Caravelle SE-210 Model III and

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participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-246-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority of France, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain Sud Aviation Caravelle SE-210 Models III and VIR series airplanes. There have been reports of cracks found on in-service airplanes in the corners of the left-hand forward passenger door frame. The cracks initiate in the hole of the 4 mm. diameter rivet located in the first row of rivets counted from the edge of the door frame. This condition, if not corrected, could lead to failure of the passenger door and subsequent decompression of the airplane.

Sud Aviation has issued Service Bulletin 53-56, dated October 21, 1988, which describes procedures for repetitive inspections to detect cracks in left-hand forward passenger door frame, and repair, if necessary. The DGAC has classified this service bulletin as mandatory, and has issued Airworthiness Directive 88-112-067(B)R1 addressing this subject.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require repetitive inspections to detect cracks in the left-hand forward passenger door frame, and repair, if necessary, in accordance with the service bulletin previously described.

It is estimated that 5 airplanes of U.S. registry would be affected by this AD, that it would take approximately 5 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Sud Aviation: Applies to Sud Aviation Caravelle SE 210 Model III and VIR series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent failure of the left-hand forward passenger door frame and subsequent decompression of the airplane, accomplish the following:

A. Prior to the accumulation of 20,000 landings, or within 50 landings after the effective date of this AD, whichever occurs later, perform one of the following inspections in accordance with Sud Service Bulletin 53-56, dated October 21, 1988:

1. Perform a visual inspection of the skin plating, stamping, and visible edge of the fitting, plus a dye penetrant inspection of the fitting edge; or

2. Perform an X-ray inspection in accordance with the following maintenance manuals:

a. For Mark III airplanes—Chapter 53-1-1, Figure 606;

b. For Mark VIR airplanes—Chapter 53-12-1, Figure 604; or

3. Perform an inspection of holes by defectometer, after removal of fasteners identified on Figure 606 (Mark III) or Figure 604 (Mark VIR), as applicable; or

4. Perform an inspection of holes by Rototest, after removal of fasteners identified on Figure 606 (Mark III) or Figure 604 (Mark VIR), as applicable.

B. If no cracks are found, repeat the inspections at the following intervals:

a. If the immediately preceding inspection was performed by visual method and dye check, the next inspection must be performed within 100 landings.

b. If the immediately preceding inspection was performed by X-ray, the next inspection must be performed within 300 landings.

c. If the immediately preceding inspection was performed by defectometer, the next inspection must be performed within 2,000 landings.

d. If the immediately preceding inspection was performed by rototest, the next inspection must be performed within 4,000 landings.

C. If cracks are found, repair prior to further flight, in accordance with Sud Service Bulletin 53-56, dated October 21, 1988. Thereafter, repeat visual inspections of the fasteners around the edge at intervals not to exceed 500 landings, and replace with a new fitting prior to the accumulation of 5,000 landings, in accordance with the service bulletin.

D. Upon the installation of a new fitting, perform the initial inspection prior to the accumulation of 20,000 landings, in accordance with paragraph A., above, and thereafter at intervals specified in paragraph B., above.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Aerospatiale, 316 Rue de Bayonne, 31060 Toulouse, Cedex 03, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on December 7, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-29415 Filed 12-18-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-247-AD]

Airworthiness Directives; Sud Aviation Caravelle SE 210 Model III and VIR Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Sud Aviation Caravelle SE 210 Model III and VIR series airplanes, which would require repetitive visual and radiographic or eddy current inspections to detect cracks in the nose gear well area, and repair, if necessary. This proposal is prompted by fatigue testing by the manufacturer and in-service experience, which have identified fatigue cracks in the nose gear well angles. This condition, if not corrected, could result in reduction of the structural integrity within the nose wheel well area of these airplanes.

DATE: Comments must be received no later than February 7, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-247-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Aerospatiale, 316 Rue de Bayonne, 31060, Toulouse Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert J. Huhn, Standardization Branch, ANM-113; telephone (206) 431-1950. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-247-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The Direction General de l'Aviation civile (DEAC), which is the airworthiness authority of France, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain Sud Aviation Caravelle SE-210 Model III and VIR series airplanes. Results of fatigue testing by the manufacturer and in-service experience have identified fatigue cracks in the nose gear well angles. This condition, if not corrected, could result in reduced structural integrity within the nose gear well area of these airplanes.

Sud Aviation has issued Service Bulletin 53-49, Revision 3, dated June 2, 1986, which describes procedures for repetitive visual and radiographic or eddy current inspections to detect cracks in nose gear well angles and fuselage skin, and repair, if necessary. The DGAC has classified this service bulletin as mandatory, and has issued Airworthiness Directive 76-06-48(B)RI addressing this subject.

This airplane model is manufactured in France and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require repetitive visual and radiographic or eddy current inspections to detect cracks in the fuselage skin and well angles in the nose landing gear zone, and repair, if necessary, in accordance with the service bulletin previously described.

It is estimated that 5 airplanes of U.S. registry would be affected by this AD, that it would take approximately 7 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,400.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact,

positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

B. If cracks are found, repair prior to further flight, in accordance with Sud Service Bulletin 53-49, Revision 3, dated June 2, 1986.

Avenue, SW., Washington, DC 20591; telephone (202) 267-9250.

provide protected airspace for instrument flight rules helicopters executing a new Copter TACAN 135/

and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND

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positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety. Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [AMENDED]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Sud Aviation: Applies to all Sud Aviation Caravelle SE 210 Model III and VIR series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To identify and correct fatigue cracks in the nose landing gear well angles, which could result in reduction of the structural integrity within that area of the airplane, accomplish the following:

A. Prior to the accumulation of 32,500 landings or within 30 days after the effective date of this AD, whichever occurs later, perform the following inspections in accordance with Sud Service Bulletin 53-49, Revision 3, dated June 2, 1986:

1. Perform a visual and dye penetrant inspection of doublers and fuselage skin bordering doublers (fitted in accordance with Sud Service Bulletins 53-15 and 53-36) at frame 9 and frame 17, in accordance with the service bulletin. Repeat this inspection thereafter at intervals not to exceed 2,500 landings.

2. Perform an X-ray inspection or low frequency eddy current inspection of skin panels under doublers at frame 9 and at frame 17, in accordance with the service bulletin. Repeat this inspection thereafter at intervals not to exceed 5,000 landings.

3. Perform a visual inspection and dye penetrant inspection of the front angles at frame 15 on airplanes not fitted with doublers in this area, in accordance with the service bulletin. Repeat this inspection thereafter at intervals not to exceed 2,500 landings.

4. Perform an X-ray inspection of the front angles at frame 15, on airplanes fitted with repair doublers, in accordance with the service bulletin. Repeat this inspection at intervals not to exceed 5,000 landings.

B. If cracks are found, repair prior to further flight, in accordance with Sud Service Bulletin 53-49, Revision 3, dated June 2, 1986. Repeat inspections thereafter at intervals specified in paragraph A., above.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Aerospatiale, 316 Rue de Bayonne, 31060 Toulouse Cedex 03, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on December 7, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-29416 Filed 12-18-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 89-AWA-12]

Proposed Establishment of the Tampa Terminal Control Area and Revocation of the Tampa International Airport Airport Radar Service Area; FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This action corrects minor errors in the "Summary" section and the "Proposal" section of the notice of proposed rulemaking (NPRM) that was published in the Federal Register on October 17, 1989. This action corrects those mistakes.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 89-24412, published on October 17, 1989, proposed to established the Tampa Terminal Control Area (TCA) at Tampa International Airport, FL. (54 FR 42694). The Summary and the Proposal sections indicate that a segment of the TCA contains altitude restrictions "from 8,000 to 10,000 feet MSL" when in fact that statement should read "6,000 to 10,000 feet MSL." Also, under the Proposal section it states airspace extending upward "from 1,200 feet AGL" when actually it should read "from 1,200 feet MSL."

List of Subjects in 14 CFR Part 71

Aviation safety, Terminal control areas and Airport radar service areas

Correction to NPRM

Accordingly, pursuant to the authority delegated to me, the preamble of the NPRM (Federal Register Document No. 89-24412), as published on October 17, 1989, (54 FR 42694), is corrected to read as follows:

1. In the Summary section (page 42894, column 1), on line twelve, remove the words "restrictions from 8,000" and add the words "restrictions from 6,000."

2. In the Proposal section (page 42897, column 1), on the second line of paragraph number 2, remove the words "from 1,200 feet above ground level" and add the words from 1,200 feet mean sea level." Also, on the second line of paragraph numbers 4 and 5 (page 42897, column 2), remove the words "from 8,000 feet MSL" and add the words "from 6,000 feet MSL."

Issued in Washington, DC, on December 8, 1989.

Jerry W. Ball,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-29417 Filed 12-18-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 89-ANE-32]

Proposed Alteration of Transition Area, Biddeford, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This Notice proposes to amend the description of the Biddeford, Maine 1200 foot Transition Area so as to provide protected airspace for instrument flight rules helicopters executing a new Copter TACAN 135/ Copter TACAN 315 Standard Instrument Approach Procedure (SIAP) to the Walker's Point Heliport, Kennebunkport, Maine.

DATE: Comments must be received no later than February 2, 1990.

ADDRESSES: Send comments on the Rule in triplicate to: Manager, Systems Management Branch, Air Traffic Division, New England Region, Docket No. 89-ANE-32, Department of Transportation, Federal Aviation Administration, Burlington, MA 01803.

The Official Docket may be examined in the Office of Assistant Chief Counsel, New England Region, Federal Aviation Administration, Room 311, 12 New England Executive Park, Burlington, MA 01803.

FOR FURTHER INFORMATION CONTACT: Charles M. Taylor, Airspace Specialist, Systems Management Branch, ANE-530, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, MA 01803; Telephone: (617) 270-2428.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-ANE-32." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in Office of the Assistant Chief Counsel, New England Region, Room 311, 12 New England Executive Park, Burlington, MA 01803, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in this docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to section 181 part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the description of the Biddeford, ME 1200 foot transition area so as to provide protected airspace for Instrument Flight Rules Helicopters executing a new Standard Instrument Approach Procedure to the Walker's Point Heliport, Kennebunkport, Maine. Section 181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small business entities under the Criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. (97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Biddeford, ME [Amended]

On line eleven, after coordinates, (Latitude 43°30'00" N., Longitude 70°08'00" W.), add: to Latitude 43°22'45" N., Longitude 70°18'10" W.; to Latitude 43°22'30" N., Longitude 70°17'45" W.; to Latitude 43°15'15" N., Longitude 70°23'00" W.; to Latitude 43°16'10" N., Longitude 70°25'00" W.; to Latitude 42°56'00" N., Longitude 70°25'00" W.; 70°34'00" W.; thence to clockwise via the state boundary to the point of beginning.

Issued in Burlington, Massachusetts, on December 8, 1989.

James I. Lucas

Manager, Air Traffic Division.

[FR Doc. 89-29418 Filed 12-18-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 89-AEA-25]

Proposed Alteration of Transition Area; Wurtsboro, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: Due to the reorganization of Air Traffic Control procedures provided to the Wurtsboro-Sullivan County Airport, Wurtsboro, NY, the FAA has determined that portions of controlled airspace which were designated to contain arrivals and departures to the airport are no longer required. The FAA proposes to reduce that amount of controlled airspace within the Wurtsboro, NY, 700-foot Transition Area to that which is deemed necessary to accommodate aircraft arriving at and departing from this airport. In addition, a minor change to the geographic coordinates of the airport would be made to reflect the actual location.

DATES: Comments must be received on or before January 26, 1990.

ADDRESSES: Send comments on the rule in triplicate to: Edward R. Trudeau, Manager, System Management Branch,

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AEA–530, Docket No. 89–AEA–25, FAA Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Systems Management Branch, AEA–530, Federal Aviation Administration, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Airspace Specialist, System Management Branch, AEA–530, Federal Aviation Administration, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone (718) 917–0857.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89–AEA–25." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA–7, Federal Aviation Administration, Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Wurtsboro, NY 700-foot Transition Area to reflect that airspace which is necessary to contain arriving and departing flights at the Wurtsboro/Sullivan County Airport, Wurtsboro, NY. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Wurtsboro, NY [Revised]

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the center, lat. 41°35'50"N., long. 74°27'32"W., of Wurtsboro-Sullivan County Airport, Wurtsboro, NY; within 3 miles each side of the 084°(T) 090°(M) bearing from the Wurtsboro-Sullivan County Airport extending from the 5-mile radius to 7 miles east of the airport; excluding the portions that coincide with the Newburgh, NY and Monticello, NY transition areas. This transition area is effective from sunrise to sunset daily.

Issued in Jamaica, New York, on November 29, 1989.

John D. Canoles,

Manager, Air Traffic Division.

[FR Doc. 89–29419 Filed 12–18–89; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 799

[Docket No. 91047–9247]

Quarterly Review of the Commodity Control List

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Notice of quarterly review of the Commodity Control List; Request for comments.

SUMMARY: The Bureau of Export Administration maintains the Commodity Control List (CCL), which identifies those items subject to Department of Commerce export controls. Section 5(c)(3) of the Export Administration Act of 1979 (the Act), as amended by the Omnibus Trade and Competitiveness Act of 1988, requires that the Department of Commerce conduct quarterly reviews of entries on the CCL that are controlled for national security reasons. The Act also mandates that the Department provide a 30-day period during each review for the submission of comments by affected or potentially affected parties. This notice and request for comments is being issued to solicit public comments on the CCL entries that are being reviewed.

Section 5(g)(2)(A) of the Act, as amended by the Omnibus Trade and Competitiveness Act of 1988, requires the Department of Commerce to conduct annual reviews of items controlled for national security reasons to determine the appropriate performance levels for eligibility to export under: (1) existing special licensing procedures, (2) the PRC Advisory Notes to the CCL that permit exports to China with only notification to COCOM, and (3) the QWY Advisory Notes (AEN level) that permit exports to the Soviet Bloc with only notification to COCOM. This notice and request for comments also is being issued to solicit public comments on the appropriateness of these technical performance levels. Comments on the technical performance levels should be submitted during the 30-day comment periods provided for the quarterly review of CCL entries and should address only those performance levels that are contained in the entries being reviewed during a particular quarter.

DATES: Comments should be received between:

December 19, 1989, and January 16, 1990 (Quarterly Review Cycle Number One);

January 1–January 31, 1990 (Quarterly Review Cycle Number Two);

April 1–May 1, 1990 (Quarterly Review Cycle Number Three);

July 1–July 31, 1990 (Quarterly Review Cycle Number Four).

ADDRESS: Written comments (six copies) should be sent to: Willard Fisher, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, Room 1622, Washington, DC 20230.

FURTHER INFORMATION CONTACT: Richard Barth, Program Review Staff, Bureau of Export Administration. Telephone: (202) 377–3984.

SUPPLEMENTARY INFORMATION: This is a notice and request for comment in connection with four quarterly reviews of entries on the Commodity Control List (CCL) of the Department of Commerce Export Administration Regulations. Each review will cover roughly one fourth of the entries on the CCL. The entries included in each quarterly review are listed below. The public is invited to comment on the controls reflected in these entries for the following purposes. After consultation with the Departments of Defense and State:

(1) Commerce will review controls imposed for national security reasons to determine whether each item, if uncontrolled, would make a significant contribution to the military potential of a controlled country, which contribution would prove detrimental to the national security of the United States. Items that do not meet this standard will not continue to be controlled under Section 5 of the Export Administration Act (EAA). This element of the review is required by sections 3(2)(A) and 5(c)(3) of the Act.

(2) Commerce will review controls imposed for national security reasons to determine whether controlled countries possess an item or a functionally equivalent item and whether the item is available in fact to a controlled country from outside the United States in sufficient quantity and of comparable quality to render the control ineffective. This element of the review is required by sections 5(c)(3) and 5(d)(4) of the Act. If the item meets the standard in paragraph one above and if comparable items are available from sources outside of the United States in sufficient quality and quantity to render a control ineffective, then Commerce will either cause the initiation of negotiations to eliminate the source of foreign availability or remove the item from the Control List. Items that meet both the standard in paragraph one above and the standard in this paragraph will remain under control under Section 5 of the Act.

(3) Commerce will review controls imposed for national security reasons to determine appropriate performance levels for eligibility to export under:

(a) Each special license (e.g., the distribution license, the project license, and the service supply license);

(b) The PRC Advisory Notes to the CCL—which permit Commerce to license exports to China without referral to COCOM or to other agencies;

(c) The Advisory Notes to the CCL (known as the "AEN level")—which permit Commerce to license exports to the Soviet Bloc without referral to COCOM;

(d) General Licenses G–COCOM, G–COM, and GFW—which permit certain exports to certain destinations without a validated license.

This element of the review is mandated by section 5(g)(2)(A) of the Act, which requires annual assessment of these performance levels.

In addition to the above, Commerce will review controls imposed for national security reasons to determine appropriate performance levels of other general licenses that may be of interest to the public.

As provided in section 5(c)(3) of the Act, Commerce will use the results of these list reviews to formulate U.S. proposals for revisions in multilateral controls. In the course of the reviews, Commerce shall integrate items from the Military Critical Technologies List established under section 5(d) into the control list in accordance with the requirements and standards of section 5(c). Pursuant to section 5(d), it is also an objective of the review to insure that export controls cover and are limited to militarily critical goods and technology.

The Role of the Technical Advisory Committees

Commerce will consult with the various Technical Advisory Committees in connection with this quarterly list review. The Technical Advisory Committees are chartered by the Department of Commerce under section 5(h) of the Act. The Technical Advisory Committees consist of representatives of industry and government. They advise Commerce on technical matters, worldwide availability and actual utilization of production technology, licensing procedures that affect the level of export controls applicable to any goods or technology, revisions of the control list (as provided in sections 5(c)(4) and 5(h)(2) of the Act), including proposed revisions of the multilateral controls in which the United States participates, the issuance of regulations, and any other actions designed to carry out the policy set forth in section 3(2)(A) of the Act.

Presentations to Technical Advisory Committee for Review

Because of the important role of the Technical Advisory Committees in advising the Commerce Department concerning the development of proposals to change the control list, interested parties may wish to make presentations to the appropriate Technical Advisory Committees in addition to filing comments during the proper 30-day review period. The CCL entries that are assigned to each Technical Advisory Committee are listed below. For more information on the Technical Advisory Committees, including current membership, gaining membership, schedules for public meetings, and making presentations, you may contact the Bureau of Export Administration by calling Betty Ferrell at (202) 377–2583.

Because the United States controls exports in cooperation with other countries, Commerce may require the Technical Advisory Committees to complete their recommendations well in advance of the time that Commerce will make control list proposals for interagency review and introduction at international negotiations.

The Western allies schedule regular reviews of each entry only once every four years. Commerce will review each item every year and will make appropriate recommendations for

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multilateral changes in controls. However, it is especially important for interested parties to comment in advance of the regularly scheduled multilateral review. The dates that items are scheduled for regular multilateral review by the Western allies are indicated on the following quarterly review cycle lists.

After the end of each quarterly review cycle, Commerce shall consult—within thirty days—with the Departments of State and Defense and other concerned agencies and determine what revisions should be made in the CCL unilaterally or proposed for multilateral review. Additional time will be required to implement these changes. In particular, determinations to recommend changes in multilateral controls will require that negotiating proposals be submitted by the U.S. Government to the Western allies for consideration in the multilateral control process.

Quarterly Review Cycle Lists:

Technical advisory committees (TACs) identified in the lists include:

AME—Automated Manufacturing Equipment
BIO—Biotechnology
CP—Computer Peripherals, Components, and Related Test Equipment
CS—Computer Systems
EI—Electronic Instrumentation
MAT—Materials
MI—Militarily Critical Technology List Implementation
SEMI—Semiconductors
TE—Telecommunications Equipment
T&RE—Transportation and Related Equipment.

A. Quarterly Review Cycle Number One

Quarterly Review Cycle Number One began on October 1, 1989 and will continue until January 18, 1990. The comment period will open on December 19, 1989, and will close on January 18, 1990. The following Export Control Commodity Numbers (ECCNs) in the Commodity Control List (Supplement No. 1 to § 799.1 of the Export Administration Regulations) will be subject to review during Quarterly Review Cycle Number One, and are scheduled for regular review by the Western allies beginning in September 1990.

ECCN	TAC
1110A—Equipment for the production of liquid fluorine.	MAT
1129A—Vacuum pump systems	MAT
1131A—Pumps	MAT
1145A—Containers (jacketed only)	MAT
1203A—Electric furnaces	MAT
1305A—Metal rolling mills	AME
1356A—Equipment for continuous coating of polyester based magnetic recording tape controlled by ECCN 1572A.	CP
1358A—Equipment for the manufacture or testing of certain devices, assemblies, or magnetic recording media.	CP
1514A—Pulse modulators	EI
1516A—Receivers and specially designed components.	TE
1517A—Radio transmitters, except radio relay communications equipment.	TE
1519A—Telecommunications and transmission equipment.	TE
1520A—Radio relay communications equipment.	TE
1521A—Solid state amplifiers	EI
1527A—Cryptographic equipment and specially designed components.	TE
Cryptographic equipment in computer systems.	CS
1531A—Frequency synthesizers [paragraphs (a) and (b) only].	EI
Airborne communication equipment, digitally-controlled radio receivers, and radio transmitters using frequency synthesizers [paragraphs (c) through (e) only].	TE
1532A—Precision linear and angular measuring systems.	AME
1534A—Flatbed microdensitometers.	EI
1541A—Cathode-ray tubes	EI
1542A—Cold cathode tubes and switches.	EI
1553A—Flash discharge type X-ray system.	EI
1565A—Electronic computers	CS (also TE, EI, T&RE)
Peripheral equipment and related equipment only.	CP
1568A—Software and technology not covered in other entries.	CS (also CP)
1572A—Recording or reproducing equipment.	CP
Optical/magnetic recording equipment only.	CS
1588A—Materials composed of crystals.	MAT
1001A—Technology for metal-working manufacturing.	MAT
1075A—Spin-forming and flow-forming machines.	AME
1080A—Tooling and fixtures for gas turbines and vanes.	AME
1081A—Specially designed machinery for aircraft manufacturing.	AME
1066A—Specially designed machinery for jet engine manufacturing.	AME
1068A—Gear Making or finishing machinery	AME
1091A—Machine tools	AME
1093A—Machine tool parts and components	AME
1301A—Equipment and technology for production of super alloys.	MAT
1312A—Isostatic presses	AME
1353A—Equipment specially designed for the manufacture of optical fiber and optical cable.	TE
1357A—Equipment specially designed for the manufacture of fibers.	AME
1359A—Specially designed tooling and fixtures for the manufacture of fiber-optic connectors and couplers.	TE
1370A—Machine tools for generating optical quality surfaces.	AME
1371A—Anti-friction bearings	AME
1391A—Robots, robot controllers	AME
1399A—Software and technology for automotive industrial systems.	AME
1518A—Telemetering and telecontrol equipment.	TE
1526A—Optical cable and optical fibers	TE
Sensors only	EI
1567A—Stored program-controlled communication equipment.	TE
1568A—Equipment as specified (A/D, D/A converters).	TE
1601A—Inert gas and vacuum atomizing technology.	MAT
1602A—Pyrolitic deposition technology	MAT
1635A—Iron and steels	MAT
1648A—Cobalt-based alloys	MAT
1661A—Nickel-based alloys	MAT
1672A—Aluminides of titanium	MAT
1733A—Base materials	MAT
1734A—Thermal insulating materials	MAT
1763A—Fibrous and filamentary materials	MAT
1767A—Preforms of glass	TE

B. Quarterly Review Cycle Number Two

Quarterly Review Cycle Number Two will begin on January 1, 1990. The comment period will open on the same date and will close on January 31, 1990. The quarterly review cycle will end on March 31, 1990. The following Export Control Commodity Numbers (ECCNs) in the Commodity Control List (Supplement No. 1 to § 799.1 of the Export Administration Regulations) will be subject to review during Quarterly Review Cycle Number Two, and are scheduled for regular review by the Western allies beginning in September 1991.

C. Quarterly Review Cycle Number Three

Quarterly Review Cycle Number Three will begin on April 1, 1990. The comment period will open on the same date and will close on May 1, 1990. The quarterly review cycle will end on June 29, 1990. The following Export Control Community Numbers (ECCNs) in the Commodity Control List (Supplement No. 1 to § 799.1 of the Export Administration Regulations) will be subject to review during Quarterly Review Cycle Number Three, and are scheduled for regular review by the Western allies beginning in September 1992.

ECCN	TAC
1361A—Test facilities and equipment for the design or development of aircraft or gas turbine aero-engines.	T&RE
1362A—Vibration test equipment	T&RE
1363A—Specially designed water tunnel equipment.	T&RE
1364A—Machinery and equipment for the manufacture of hydrofoil vessels.	T&RE
1365A—Equipment specially designed for in-service monitoring.	EI
1372A—Technology for industrial gas turbine engines.	T&RE
1385A—Specially designed production equipment for compasses, gyroscopes accelerometers, and inertial equipment controlled by ECCN 1485A.	T&RE
1386A—Specially designed equipment for deposition.	AME
1389A—Materials and coatings	MAT
1401A—Diesel engine development and production technologies.	T&RE
1416A—Vessels, surface effect vehicles.	T&RE
1417A—Submersible systems	T&RE
1418A—Deep submergence vehicles.	T&RE
1425A—Floating docks	T&RE
1431A—Marine gas turbine engines.	T&RE
1460A—Aircraft, helicopters, aeroengines, aircraft and helicopter equipment.	T&RE
1465A—Spacecraft and launch vehicles.	T&RE
1485A—Compasses and gyroscopes.	T&RE
1501A—Airborne communication equipment [paragraph (a) only].	TE
Navigation/direction-finding equipment [paragraphs (b) & (c) only].	T&RE
1502A—Communication, detection or tracking equipment.	T&RE
1510A—Marine or terrestrial acoustic or ultrasonic systems.	T&RE
1529A—Electronic equipment for testing, measuring, calibrating or counting, or for microprocessor/microcomputer development.	EI (also TE)
1533A—Signal analyzers	EI (also TE)
1549A—Photomultiplier tubes	EI
1555A—Electron tubes	EI
1556A—Optical elements	EI
1571A—Magnetometers	T&RE
1584A—Cathode-ray oscilloscopes	EI
1585A—Photographic equipment	EI (also MAT)
1587A—Quartz crystals	MAT
1595A—Gravity meters	T&RE
1759A—Syntactic foam	T&RE
2018A—Specialized machinery, equipment, and gear for the examination, manufacture, testing, and checking of arms, appliances, machines, and implements of war.	AME (also T&RE)
2120A—Cryogenic equipment	AME (also MAT)
2317A—Miscellaneous equipment and materials.	T&RE
2319A—Environmental chambers capable of pressures below 10^{-4} Torr, and specially designed components.	T&RE
22406A—Vehicles specially designed for military purposes and specially designed components therefor.	T&RE
22408A—Naval equipment	T&RE
2410A—Equipment specially designed for military purposes.	T&RE
2414A—Specialized military training equipment.	T&RE (also EI)
2418A—Manned submersible vehicles.	T&RE
2460A—Military trainer aircraft	T&RE
2603A—Specially designed components and parts for ammunition.	MAT
2616A—Gilding metal clad steel, munitions materials.	MAT
2708A—Explosives, propellants, and fuels.	MAT
2901A—Military equipment	MAT
2913A—Military helmets equipped with or designed or modified to accept any type of accessory device.	MAT

D. Quarterly Review Cycle Number Four

Quarterly Review Cycle Number Four will begin on July 1, 1990. The comment period will open on the same date and will close on July 31, 1990. The quarterly review cycle will end on September 28, 1990. The following Export Control Commodity Numbers (ECCNs) in the Commodity Control List (Supplement No. 1 to § 799.1 of the Export Administration Regulations) will be subject to review during Quarterly Review Cycle Number Four, and are scheduled for regular review by the Western allies beginning in September 1993.

ECCN	TAC
1205A—Electrochemical devices	AME
1206A—Electric arc and equipment	AME
1352A—Nozzles, dies, and extruder barrels for processing fluorocarbon materials.	SEMI
1354A—Equipment for the manufacture or testing of printed circuit boards.	SEMI
1355A—Equipment for the manufacture or testing of semiconductor devices.	SEMI
1360A—Equipment capable of the orientation and correction of SC quartz crystals.	SEMI
1522A—Lasers and equipment containing lasers.	EI
Equipment containing lasers [paragraph (b) only].	TE
1537A—Microwave equipment	EI (also TE)
1544A—Semiconductor diodes	SEMI
1,545A—Transistors	SEMI
1547A—Thyristors	SEMI
1548A—Photosensitive components.	SEMI
1556A—Electronic vacuum tubes and cathodes.	EI
1559A—Hydrogen/hydrogen isotope thyratrons of ceramic-metal construction.	SEMI
1561A—Materials specially designed and manufactured for use as absorbers of electromagnetic waves.	MAT
1564A—Assemblies of electronic components, printed circuit boards, and integrated circuits.	SEMI
1570A—Thermoelectic materials and devices.	MAT
1573A—Superconductive electromagnets and solenoids.	MAT
1574A—Electronic devices, circuits and systems made from superconducting materials.	EI
1586A—Acoustic wave devices	SEMI
1631A—Magnetic metals	MAT
1675A—Superconductive materials	MAT
1702A—Hydraulic fuels	MAT
1715A—Boron	MAT
1746A—Polymeric substances	MAT
1749A—Polycarbonate sheet	MAT
1754A—Fluorinated compounds, materials, manufactures.	MAT
1755A—Silicone fluids and greases	MAT
1757A—Compounds and materials	AME
1760A—Compounds of tantalum and niobium.	MAT
1781A—Synthetic lubricating oils and greases.	MAT
3131A—Valves and specially designed parts and accessories.	T&RE
3261A—Neutron generator systems.	EI
3336A—Plants specially designed for the production of uranium hexafluoride.	T&RE
3362A—Power generating and/or propulsion equipment specially designed for use with military nuclear reactors.	T&RE
3363A—Electrolytic cells for the productin oil fluroine.	MAT
3604A—Zirconium metal/allows/compounds.	MAT
3605A—Nickel powder and porous nickel metal.	MAT
3607A—Lithium	MAT
3608A—Hafnium metal/alloys/compounds.	MAT
3609A—Beryllium	MAT
3709A—Beryllium oxide ceramic and refractory tubes, pipes, crucibles, and other shapes in semi-fabricated or fabricated form.	MAT
3711A—Chlorine trifluoride	MAT

Submission of Comments

The Department of Commerce encourages interested parties to submit comments on the entries covered by the quarterly review of the Commodity Control List. Comments should be limited to the entries that are being covered during the quarterly review in process (see the lists of entries for each of the quarterly review cycles).

Comments are also solicited concerning the annual review of the technical performance levels used to determine export eligibility under existing special licensing procedures and general licenses, and those PRC Advisory Notes and QWY Advisory Notes that permit exports with only notification to COCOM. These comments should be submitted during the 30-day comment periods provided for the quarterly review of CCL entries and should address only those performance levels that are contained in the entries being reviewed during a particular quarter.

All comments will become a matter of public record and will be available for

public inspection and copying. In the interest of accuracy and completeness,

Commission proposes to add several additional categories of natural gas

Commission is proposing technical amendments to the Commission's regulations to conform with the

as defined in section 102(c), certain new onshore production wells as defined in section 103(c), and some intrastate gas was deregulated on January 1, 1985.[9]

MMBtu for gas produced from "tight formations" under section 107.

III. The Decontrol Act

sales contract on July 26, 1989, which the parties renegotiate, in writing, after March 23, 1989, to provide that the gas will be price deregulated (but

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public inspection and copying. In the interest of accuracy and completeness, comments in written form are required. If oral comments are received, they must be followed by written memoranda that will be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments are welcome, but will not routinely be made available for public inspection.

The public record concerning these comments will be maintained in the Freedom of Information Records Inspection Facility, Room 4886, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copies made in accordance with the regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at this facility may be obtained from Margaret Cornejo, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202 377–2593.

Dated: December 12, 1989.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 89–29430 Filed 12–18–89; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM89–16–000]

18 CFR Part 272

Proposal Implementing the Natural Gas Wellhead Decontrol Act of 1989

Issued December 13, 1989.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to amend its regulations to reflect provisions of the Natural Gas Wellhead Decontrol Act of 1989 (Pub. L. No. 101–60, 102 Stat. 157 (1989)) that deregulates certain categories of first sales prior to January 1, 1993. Section 272.103 of the Commission's regulations lists the categories of natural gas that are already decontrolled by the Natural Gas Policy Act of 1978. In this notice, the Commission proposes to add several additional categories of natural gas deregulated pursuant to the Natural Gas Wellhead Decontrol Act of 1989.

DATES: An original and 14 copies of the written comments on this proposed rule must be filed with the Commission by January 18, 1990.

ADDRESSES: All filings should refer to Docket No. RM89–16–000 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: David J. Saggau, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357–8141.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357–8997. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this notice of proposed rulemaking will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street NE., Washington, DC 20426.

I. Introduction

On July 26, 1989, the President signed the Natural Gas Wellhead Decontrol Act of 1989 (Decontrol Act or Act), Public Law No. 101–60.[1] The Act takes the final step in the wellhead decontrol of natural gas by removing those price and nonprice controls that remain in place following the partial wellhead decontrol implemented under the Natural Gas Policy Act of 1978 (NGPA).[2] The Commission is proposing technical amendments to the Commission's regulations to conform with the provisions of the new Act.

II. Background

In 1954 the Supreme Court held that independent producer rates were subject to regulation under the Natural Gas Act, which resulted in the regulation of wellhead prices by the Commission's predecessor agency, the Federal Power Commission (FPC).[3] In view of the infeasibility of case-by-case regulation of producer wellhead sales, the FPC between 1960 and 1965 initiated a series of ratemaking proceedings to establish wellhead ceiling prices in various geographical regions. The rates established in those so-called area rate cases ranged from roughly 15 to 20 cents per Mcf. Commencing in the late 1960's consumption of natural gas began to outstrip new reserve additions, resulting in a decline in the total inventory of proved reserves.

In 1973, the FPC began establishing producer rates on a nationwide basis; however, reserves continued to decline, resulting in a severe shortage of gas in the interstate market. In response to the worsening gas supply situation, Congress enacted the Natural Gas Policy Act of 1978 (NGPA). The NGPA, which restructured regulation of natural gas by merging the interstate and intrastate markets into a unified national market, provided for phased deregulation of most "new" (post-enactment) gas and for the continued regulation of "old" gas.

Title I of the NGPA defined various categories of natural gas production and prescribed the maximum lawful price (MLP) that could be charged for "first sales" [4] of each category. Section 121 of the NGPA provided for the phased, partial decontrol of wellhead sales. Certain high-cost natural gas as defined in sections 107(c)(1)–(4) was deregulated on November 1, 1979.[5] New natural gas as defined in section 102(c), certain new onshore production wells as defined in section 103(c), and some intrastate gas was deregulated on January 1, 1985.[6] Gas from new on shore production wells completed at a depth of 5,000 feet or less was deregulated on July 1, 1987 if the gas was not committed or dedicated to interstate commerce on April 20, 1977.[7]

The NGPA provides that price and nonprice controls upon wellhead sales of other categories of natural gas remain in place. In particular, gas dedicated to interstate or intrastate commerce before the NGPA was passed (old gas); [8] gas from new reservoirs on old Outer Continental Shelf (OCS) leases; and certain "incentive gas" under section 107(c)(5)[9] and stripper well gas under section 108 remain regulated at the wellhead.[10]

The NGPA provides that ceiling prices for the various categories (or vintages) automatically rise at the rate of inflation, while some ceiling prices also receive an additional increment as an incentive for production. The statutory ceiling prices for the various categories that remain subject to NGPA controls are widely disparate, ranging from $0.358 per Mcf for "minimum rate" gas under section 104, to almost $7.00 per MMBtu for gas produced from "tight formations" under section 107.

III. The Decontrol Act

Congress acted to repeal the remaining price and nonprice controls because those controls were "not in keeping with the evolution of natural gas markets and the regulatory environment."[11]

Section 2(a) of the Act deregulates certain categories of first sales prior to January 1, 1993, in the following situations: (1) The Act immediately decontrols gas as to which no first sales contract applies on the date of enactment. Gas subject to post-enactment contracts is also decontrolled. (2) The Act decontrols gas under existing contracts that the parties renegotiate, after March 23, 1989, to provide that the gas will not be subject to any maximum lawful price on the date specified by the parties, but not before the date of enactment. (4) The Act decontrols gas from newly spudded (post-enactment) wells on May 15, 1991, or the date on which an existing contract expires or is terminated, whichever is earlier.[12]

Section 2(b) of the Decontrol Act provides for the complete decontrol of wellhead prices of first sales of natural gas as of January 1, 1993 by repealing title 1 of the NGPA.

Section 3 of the Act amends Title IV of the NGPA, which deals with the coordination of the NGPA and the NGA. In essence, these amendments remove NGA jurisdiction from any gas that is price decontrolled, make Alaska Prudhoe Bay gas subject to decontrol the same as any other gas, and continue the authority of individual states to prescribe a ceiling price from the first sale of natural gas produced and consumed in that state.

IV. Discussion

The Commission proposes to amend its regulations to reflect the provisions of the Act that decontrol gas prior to January 1, 1993. Section 272.103 of the Commission's regulations lists the categories of natural gas that have already been decontrolled by the NGPA. To this list the Commission proposes to add the following: (1) Gas not subject to a first sales contract as of July 26, 1989; (2) gas subject to a first sales contract that expires or terminates after July 26, 1989; (3) gas that was subject to a first sales contract on July 26, 1989, which the parties renegotiate, in writing, after March 23, 1989, to provide that the gas will be price deregulated (but deregulation may not take effect prior to July 26, 1989); and (4) gas from wells spudded after July 26, 1989, with decontrol to be effective on May 15, 1991 or the date on which an existing contract expires or is terminated, whichever is earlier. The Commission clarifies that under this proposal no applications for well determination must be filed for gas which was not subject to a first sales contract on July 26, 1989, in order for such gas to be deregulated and decontrolled. However, for gas which was subject to a first sale contract on July 26, 1989, this proposal requires producers to file applications for determinations if they wish to collect a price under sections 102, 103, 107 or 108 until the gas is deregulated. Moreover, under this proposal producers may file applications for well determinations for high-cost gas, such as Devonian shale and coal seam gas.

The Commission requests comments on the desirability of continuing to allow producers to file applications for well determinations after the subject gas has otherwise been decontrolled. Comments should address the appropriateness of this proposal in view of the fact that section 29 of the Internal Revenue Code provides for a tax credit for the production of fuel from non-conventional sources while the Decontrol Act repeals sections of the NGPA that prescribe maximum lawful prices and procedures for qualifying under certain categories of natural gas that are referenced in section 29.

A discrete issue raised by the Decontrol Act is how pipeline production should be treated. The Act does not deal specifically with this category of production, and the Commission would appreciate the views of interested parties concerning whether and if so how under the Decontrol Act pipeline production will be decontrolled prior to January 1, 1993.

V. Written Comment Procedure

The Commission invites all interested persons to submit written data, views, and other information concerning the proposals in this Notice. All comments in response to this Notice should be submitted to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 and should refer to Docket No. RM89–16–000. An original and fourteen copies should be filed with the Commission within 30 days after publication in the **Federal Register**.

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[1] 103 Stat. 157 (1989).

[2] 15 U.S.C. 3301 *et. seq.* (1988).

[3] Phillips Petroleum Co. v. Wisconsin, 347 U.S. 672 (1954).

[4] Section 2(21)(A), 15 U.S.C. 3301(21)(A) (1988), provides that a first sale is generally any sale of any volume of natural gas—(i) to any interstate pipeline or intrastate pipeline; (ii) to any local distribution company; (iii) to any person for use by such person; and (iv) any sale which precedes or follows any of these sales, which is defined as a first sale to avoid circumvention of maximum lawful prices. Sales by interstate pipelines are not "first sales" and the NGPA does not apply to such sales except to the extent that the gas is produced by the pipeline. *See* Public Service Commission of the State of New York v. Mid-Louisiana Gas Co., 463 U.S. 319 (1983) (interstate pipelines' own production entitled to first sale treatment under the NGPA).

[5] 15 U.S.C. 3331(a). *See* Order No. 78, Final Rule Defining and Deregulating Certain High-Cost Gas, Continued

45 FR 23.092 (Apr. 28, 1980), FERC Stats. & Regs. [Regulations Preambles 1977–1981] 30,147 (April 22, 1980).

[6] 15 U.S.C. 331(a). *See* Order No. 406, Deregulation and Other Pricing Changing on January 1, 1985, Under the Natural Gas Policy Act, 49 FR 46.874 (Nov. 29, 1984), FERC Stats. & Regs. [Regulations Preambles 1981–1985] ¶ 30,614 (Nov. 15, 1984).

[7] 15 U.S.C. § 3331(c). Order No. 476, Natural Gas Policy Act; Deregulation and Other Pricing Changes on July 1, 1987, 52 FR 26.473 (July 15, 1987), FERC Stats. & Regs. 30,783 (July 1, 1987). The categories are not mutually exclusive: a particular sale may be "dually qualified" within a "new" or "old" gas category and also a difficult to produce category. In Order No. 406, *supra* n. 5, the Commission held the gas that qualified for both regulated and deregulated treatment would be deemed to be deregulated. The Supreme Court upheld the Commission in FERC v. Martin Exploration Management Co., 108 S.Ct. 1765 (1988).

[8] "Old" gas is generally produced from wells which had been operating before the passage of the NGPA. *See* NGPA section 104, 15 U.S.C. 3314 (sales of natural gas dedicated to interstate commerce at the time of the passage of the NGPA); NGPA section 105, 15 U.S.C. 3315 (sales of gas under intrastate contracts existing at the time of the passage of the NGPA); and NGPA section 109, 15 U.S.C. 3316 (sales of gas under rollover contracts). Any gas under section 105 was decontrolled on January 1, 1985 if the price exceeded $1.00 per MMBtu provided that the price was not established under an indefinite price escalator clause. Gas subject to section 109(b) was decontrolled on January 1, 1985, if the price exceeded $1.00 per MMBtu.

[9] Under NGPA section 107(b), the Commission has the authority to determine what incentive price, if any, should be established for such gas.

[10] Alaskan Prudhoe Bay gas also remained regulated.

[11] S. Rep. No. 39, 101st Cong., 1st Sess. at 2 (1989).

[12] This, however, applies only to newly spudded wells on acreage subject to a contract on the date of enactment. Production from wells not under contract on that date is decontrolled immediately under category (1) above.

Written comments will be placed in the Commission's public files and will be available for inspection in the

persons may obtain information on this proposal's information collection aspects by contacting the Federal

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation

decided to deny the petition. OSM will, instead, propose a different rule that the agency believes would achieve what the

received five comments, all supporting the petition for rulemaking.

of deficient Initial Program performance standards in the preamble to the proposed rulemaking.

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Written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room, 825 North Capitol Street, NE., Washington, DC, during regular business hours.

VI Administrative Findings

A. Regulatory Flexibility Act Statement

The Regulatory Flexibility Act (RFA) [13] requries the Commission to describe the impact that a proposed rule would have on small entities or to certify that the rule will not have a significant economic impact on a substantial number of small entities. The Commission is not required to make an analysis if a proposed rule will not have such an impact.[14]

In general the economic impact of a proposed rule is not "significant" within the meaning of the RFA if the impact on small entities is expected to be beneficial.[15] The proposed rule will exempt certain natural gas producers that may qualify as a small entity [16] from Commission regulation in response to a Congressional mandate. The Commission believes this impact is beneficial and, therefore, certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.[17]

B. Environmental Review

Because this proposal changes the Commission's regulations to conform to the Decontrol Act, the Commission is not preparing an environmental impact statement in this proceeding.[18]

C. Paperwork Reduction Act Statement

Although this proposal which would implement the Decontrol Act reduces reporting burdens on producers of natural gas, the Commission is nonetheless submitting this proposal to the Office of Management and Budget (OMB) for its review under the Paperwork Reduction Act.[19] Interested persons may obtain information on this proposal's information collection aspects by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 (Attention: Michael Miller (202) 357-8205). Comments relating to the Paperwork Reduction Act may be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Building, Washington, D.C. 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).

List of Subjects in 18 CFR Part 272

Natural gas.

In consideration of the foregoing, the Commission proposes to amend part 272, chapter I, title 18, Code of Federal Regulations, as set forth below.

By direction of the Commission.

Lois D. Cashell,

Secretary.

PART 272—DEREGULATED NATURAL GAS

1. The authority citation for Part 272 is revised to read as follows:

Authority: Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432 (1982); Natural Gas Wellhead Decontrol Act of 1989 Pub. L. 101-60, July 26, 1989.

2. In § 272-103, paragraphs (a)(5) through (a)(8) are added to read as follows:

§ 272.103 Definitions.

(a) * * *

(5) Natural gas which was not subject to a first sales contract as of July 26, 1989.

(6) Natural gas which, as of July 26, 1989, was subject to a first sales contract which has expired or been terminated after that date.

(7) Natural gas subject to a first sales contract as of July 26, 1989, where the parties have agreed, in writing, after March 23, 1989, that the gas would not be subject to any maximum lawful price. Such gas is deregulated as of the date specified by the parties, but not before July 26, 1989.

(8) Natural gas produced from a well spudded after July 26, 1989. Such gas is deregulated on May 15, 1991, or the date on which an existing contract expires or is terminated, whichever is earlier.

[FR Doc. 89-29449 Filed 12-18-89; 8:45 am]
BILLING CODE 6717-01-M

[13] 5 U.S.C. 601-12 (1988).

[14] 5 U.S.C. 605-(b) (1988).

[15] Mid-Tex Electric Cooperative, Inc. v. FERC, 773 F.2d 327, 340-43 (D.C. Cir. 1985).

[16] The Act defines a "small entity" as a small business, a small not-for-profit enterprise or a small government jurisdiction. 5 U.S.C. 601(b) (1988). A "small business" is defined by reference to section 3 of the Small Business Act as an enterprise "which is independently owned and operated and which is not dominant in its field of operation." 15 U.S.C. 6.32(a) (1988).

[17] 5 U.S.C. 605(a) (1988).

[18] Section 380.4(a)(1) of the Commission's regulations [18 CFR 380.4 (1989)] exempts from environmental review Commission actions that are "procedural" or "ministerial" in nature.

[19] 44 U.S.C. 3501-3520 (1982).

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 715

Surface Coal Mining and Reclamation Operations; Postmining Use of Land; Denial of Petition

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of decision on petition for rulemaking.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the United States Department of the Interior (DOI) is making available to the public its final decision on a petition for rulemaking from Mr. J. Nathan Noland, President of the Indiana Coal Council. The petition, submitted pursuant to the Surface Mining Control and Reclamation Act (SMCRA), requested that OSM amend its regulations governing the criteria for alternative postmining land use applicable to coal mining operations permitted under the Initial Regulatory Program. The Director has decided to deny the petition.

ADDRESS: Copies of the petition and other relevant materials comprising the administrative record of this petition are available for public review and copying at OSM's administrative Record, Room 5131, 1100 L St., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephen M. Sheffield, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: 202-343-5950 (Commercial or FTS).

SUPPLEMENTARY INFORMATION: Pursuant to section 201(g) of SMCRA, and applicable regulations, 30 CFR 700.12, any person may petition the Director of OSM for a change in OSM's regulations. On June 20, 1989, OSM received a petition dated June 15, 1989, from Mr. J. Nathan Noland, President of the Indiana Coal Council, suggesting that paragraph (d) of 30 CFR 715.13, which contains the criteria for postmining land use applicable to Initial Program sites, be replaced with the language in paragraph (c) of 30 CFR 816.133, which contains the criteria for postmining land use applicable to Permanent Program sites.

OSM announced receipt of the petition in the **Federal Register** with a 30-day comment period on July 6. By the close of the comment period, OSM had received five comments.

Following an analysis of the petition and the public comments, the Director decided to deny the petition. OSM will, instead, propose a different rule that the agency believes would achieve what the petitioner has requested.

In a letter to the petitioner dated December 5, 1989, the Director reported his decision and the basis for that decision, as well as briefly summarizing the comments received during the comment period. That letter appears as an appendix to this notice.

In accordance with the Director's decision on this petition, OSM has initiated rulemaking proceedings. A proposed rule will be published in the **Federal Register** for public comment prior to any final rulemaking.

Dated: December 12, 1989.

Harry M. Snyder,

Director, Office of Surface Mining Reclamation and Enforcement.

Appendix

The text of the Director's letter of December 5, 1989, to Mr. J. Nathan Noland, is as follows:

Mr. J. Nathan Noland,
President, Indiana Coal Council, Inc., 701 Harrison Bldg.—143 W. Market St., Indianapolis, Indiana 46204.

Dear Mr. Noland: This is to inform you of my decision on your June 15, 1989, petition for rulemaking. In that petition, you requested that the Initial Program criteria for approving alternative postmining land use at 30 CFR 715.13(d) be removed and replaced with the Permanent Program criteria found in 30 CFR 816.133(c).

The Office of Surface Mining Reclamation and Enforcement (OSM) announced receipt of the petition in the **Federal Register** with a 30-day comment period on July 6. By the close of the comment period on August 7, OSM had received five comments, all supporting the petition for rulemaking.

Decision on the Petition

Based on the substance of the petition and the comments submitted, I have decided to deny your petition. We will, however, proceed with a proposed rulemaking that we believe will accomplish the goal of the petition. Although we will not be proposing an actual change in 30 CFR 715.13(d), we will propose rule changes that would authorize regulatory authorities to apply the criteria for alternative postmining land use in 30 CFR 816.133(c) to operations permitted under the Initial Program. The proposed rule would also authorize regulatory authorities to apply other Permanent Program performance standards to operations permitted under the Initial Program in lieu of applying the Initial Program standards. This would allow Initial Program sites to be reclaimed to the latest technical and environmental standards of the Permanent Program and would help Initial Program permittees obtain bond release.

I have directed my staff to begin preparation of the proposed rule for publication in the **Federal Register** before the end of 1989. At that time, the public will be given a reasonable opportunity to comment on the proposal prior to final publication.

Although your petition makes a persuasive case for replacing the Initial Program criteria for alternative postmining land use at 30 CFR 715.13(d) with provisions identical to the Permanent Program criteria at 30 CFR 816.133(c), such a proposed rulemaking would address the problem of continued applicability of Initial Program performance standards for postmining land use only. It would not address numerous other areas where the Initial Program standards are similarly deficient, and where application of the Permanent Program standards would result in reclamation superior to that which would be achieved under the Initial Program standards. OSM will discuss some examples of deficient Initial Program performance standards in the preamble to the proposed rulemaking.

Substance of the Petition and Comments

Essentially, the petition cited (1) the confusion of having two different sets of postmining land use provisions in the regulations; (2) the fact that OSM had acknowledged the inadequacy of the Initial Program rules for postmining land use when the current Permanent Program rules were developed in 1982/83 (even though the Initial Program rules were left intact); and (3) the legal basis for such a change, supported by court decisions.

Three of the commenters based their support primarily on a contention that having two sets of postmining land use rules caused confusion, and that the permanent requirements are more logical to apply because they reflect OSM's current policy on postmining land use. One of the commenters noted a situation in Indiana where the U.S. Fish and Wildlife Service continues to assert its authority to approve or disapprove postmining land use changes under 30 CFR 715.13(d)(8)—authority they don't have under the Permanent Program rules at 30 CFR 816.133.

The two remaining commenters presented detailed legal analyses, including citing past OSM stated policies and recent court decisions, in support of the petition.

In addition to providing you with this notification, we will soon announce the decision in the **Federal Register**.

I appreciate your interest in OSM's rulemaking process, and I welcome your suggestions on improvements that we can make in our regulations.

Sincerely,

Harry M. Snyder.

[FR Doc. 89-29435 Filed 12-18-89; 8:45 am]
BILLING CODE 4310-05-M

Notices

Federal Register
Vol. 54, No. 242
Tuesday, December 19, 1989

The Department initiated an investigation on September 29, 1989, under sections 7 and 3(2)(C) of the Act. For further details, see Federal Register notice.

in the rough whether or not stripped of bark or sapwood, or roughly squared, which include: 4403.20.00/25/2 Ponderosa Pine (Pinus ponderosa);

September 29, 1989 Federal Register notice.

In addition, the request to speak should contain a daytime phone number

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Notices

Federal Register
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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Members of Performance Review Boards

AGENCY: Department of Agriculture.

ACTION: Notice.

SUMMARY: This document amends and corrects the list of Performance Review Board members published November 7, 1989, 54 FR 46754.

EFFECTIVE DATE: December 19, 1989.

FOR FURTHER INFORMATION CONTACT: Evelyn White, Chief, Compensation, Employment and Performance Management Staff, Office of Personnel, U.S. Department of Agriculture, 14th Street and Independence Avenue SW., Washington, DC 20250, (202/447–2830).

The membership of the U.S. Department of Agriculture's Performance Review Boards is amended by adding the names of Sally Inge Buikema, Patricia M. Kearney, and Birge S. Watkins.

The following name is also corrected: Adis M. Vila.

Dated: December 8, 1989.

Jack C. Parnell,

Deputy Secretary.

[FR Doc. 89–29452 Filed 12–18–89; 8:45 am]

BILLING CODE 3410–96–M

Animal and Plant Health Inspection Service

[Docket No. 89–167]

National Animal Damage Control Advisory Committee; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: We are giving notice of a meeting of the National Animal Damage Control Advisory Committee.

Place, Dates, and Time of Meeting: The meeting will be held in the Wilson Room, East Wing of the Holiday Inn-Crowne Plaza, 300 Army Navy Drive, Arlington, Virginia 22202, January 23–24, 1990, from 8 a.m. to 5 p.m. each day.

FOR FURTHER INFORMATION CONTACT: Bobby Acord, Acting Deputy Administrator, ADC, APHIS, USDA, Room 1624, South Building, 14th and Independence Avenue SW., Washington, DC 20090–6464, (202) 447–2054.

SUPPLEMENTARY INFORMATION: We are giving notice of a meeting of the National Animal Damage Control Advisory Committee. The purpose of the Committee is to advise the Secretary of Agriculture concerning policies, program issues, and research needed to conduct the Animal Damage Control Program. Committee members will discuss these matters during the meeting. The public is invited to attend the meeting. However, due to time constraints, the public will not be allowed to participate in the Committee's discussion.

Written statements concerning the Animal Damage Control Program can be sent to Bobby Acord at the address listed under **"FOR FURTHER INFORMATION CONTACT."** These statements may be submitted before or after the meeting. Please refer to Docket Number 89–167 when submitting your statements.

This notice is given in compliance with the Federal Advisory Committee Act (Public Law 92–463).

Done in Washington, DC, this 14th day of December 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89–29451 Filed 12–18–89; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket No. 90916–92161]

Short Supply Export Controls: Investigation of Unprocessed Timber Exports From All Public Lands in Oregon and Washington

AGENCY: Office of Industrial Resource Administration, Bureau of Export Administration, Commerce.

ACTION: Notice of public hearings on the Short Supply Investigation.

SUMMARY: Consistent with the U.S. Department of Commerce's commitment to solicit public comment and to involve the public in the review of unprocessed timber export policy, the Bureau of Export Administration is sponsoring public hearings regarding the short supply petition of the Northwest Independent Forest manufacturers. This notice identifies issues on which the Department is interested in obtaining the public's views. It also sets forth the procedures for public participation in the hearings.

DATES: The hearings will be held in Portland, Oregon on January 31, 1990, and in Seattle, Washington on February 1, 1990. Requests to speak are due by December 29, 1989, for the Portland hearing and January 3, 1990, for the Seattle hearing. The hearing in Portland will be held at the Portland Building City Hall Annex, 2nd floor auditorium, 1120 SW. Fifth Avenue, Portland, Oregon, 97204. The hearing in Seattle will be held at the Federal Building, North Auditorium, 4th floor, 915 Second Avenue, Seattle, Washington, 98174–1010.

ADDRESS: Send requests to speak to Brad Botwin, Director, Strategic Analysis Division, Office of Industrial Resource Administration, Room H–3878, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Bernard Kritzer, Senior Policy Advisor, Office of Industrial Resource Administration, Room H–3878, U.S. Department of Commerce, Washington, DC 20230, (202) 377–4060.

SUPPLEMENTARY INFORMATION:

I. Background and specific comments requested
II. Scope of Investigation
III. Public hearings and comment procedures

I. Background and Specific Comments Requested

The Northwest Independent Forest Manufacturers (NIFM), a trade group representing 163 independent forest manufacturers in Oregon and Washington, filed a petition under sections 7 and 3(2)(C) of the Export Administration Act of 1979 (Act) for export restrictions on unprocessed timber harvested from all public lands.

The Department initiated an investigation on September 29, 1989, under sections 7 and 3(2)(C) of the Act. For further details, see Federal Register of September 29, 1989 (54 FR 40152–53).

The presentations at the hearings will assist the Department in learning more about the public perspectives on: (1) Whether or not there is a shortage of unprocessed softwood timber; and (2) whether exports of unprocessed timber result in an excessive drain of scarce materials and produce an inflationary impact on the domestic economy.

In particular, but without limiting the scope of the information requested, we solicit information on the following:

(a) The adequacy of domestic timber supplies in meeting United States unprocessed and processed wood needs. This should include estimates of current and future harvest levels of softwood logs from public (Federal, state, and local) and private lands in the United States in general and in the Pacific Northwest in particular;

(b) The quantity, quality, and retail price of processed wood products available to consumers in the United States in general and in the Pacific Northwest in particular;

(c) The acquisition costs of logs by domestic sawmills in the United States generally and in the Pacific Northwest in particular;

(d) The impact on the United States trade balance of unprocessed and processed wood products exports to Pacific Rim countries;

(e) The financial viability of sectors of the domestic forest products industry (including independent sawmills and processors of finished wood products); and

(f) The impact of timber exports on labor, infrastructure (transportation/ports), and state government responsibilities.

II. Scope of Investigation

This investigation includes logs of tree species harvested from public lands in Oregon and Washington. The Schedule B commodity description includes logs and timber, in the rough, split, hewn, roughly sided or squared, but excludes lumber. The Schedule B commodity numbers are: 200.3504 Ponderosa Pine (Pinus ponderosa); 200.3506 Pine Other; 200.3508 Spruce (Picea spp.); 200.3510 Douglas-fir (psuedotsuga menziesii); 200.314 Western Hemlock (Tsuga heterophylla); 200.316 Western Red Cedar (Thuja plicata); 200.3518 Softwood Other; and 200.3536 Hardwood Other (Alder).

The subject commodities are described in the Harmonized Tariff Schedule of the United States as wood in the rough whether or not stripped of bark or sapwood, or roughly squared, which include: 4403.20.00/25/2 Ponderosa Pine (Pinus ponderosa); 4403.20.00/30/5 Pine Other; 4403.20.00/35/0 Spruce (Picea Spp.); 4403.20.00/40/3 Douglas-fir (Pseudotsuga menziesii); 4403.20.00/50/0 Western Hemlock (Tsuga heterophylla); 4403.20.00/55/5 Western Red Cedar (Thuja plicata); 4403.20.00/60/8 Logs & Timber Other; and 4403.99.00/50/6 Western Red Alder (Alnus Rubra).

In compliance with section 7(i) of the EAA, the Department maintains quantitative restrictions on the export of unprocessed western red cedar logs harvested from Federal and state lands. Western red cedar logs are deemed not to be an agricultural commodity pursuant to section 7(g) of the EAA. However, the commodities subject to this investigation do not fall within that statutory provision and thus will be treated as agricultural commodities. Under section 7(g), the Secretary may not exercise short supply controls with respect to any agricultural commodity without the approval of the Secretary of Agriculture.

III. Public Hearings and Comment Procedures

The public hearings are scheduled to be held in Portland, Oregon on January 31, 1990, and in Seattle, Washington February 1, 1990. The hearings will commence at 8:30 a.m. and end 5:00 p.m. The Portland hearings will be held in Portland Building, City Hall Annex, 2nd floor auditorium, 1120 SW. Fifth Avenue, Portland, Oregon, 97204. The Seattle hearings will be held in the Federal Building, North Auditorium, 4th floor, 915 Second Avenue, Seattle, Washington, 98174–1010.

1. Procedure for Requesting Participation

Interested public participants are encouraged to present their views orally at the hearings. Please submit a written request to participate to the address noted above by December 29, 1989 for the Portland hearing and by January 3, 1990 for the Seattle hearing. In addition, please submit a written synopsis of your remarks simultaneously with your request to speak. If all interested parties cannot be accommodated, these statements will be used to allocate speaking time and ensure that a full range of comments is heard. Please note that the submission of this written summary for the public hearings is separate from any submission of comments in response to the request for written comments contained in the September 29, 1989 Federal Register notice.

In addition, the request to speak should contain a daytime phone number where you may be contacted before the hearing. Since it may be necessary to limit the number of persons making presentations, you should be prepared to describe your interest in the proceeding. If appropriate, please explain why you are a proper representative of a group or class of persons that has such an interest and provide a concise summary of your proposed presentation. If you have already submitted a written presentation in connection with the September 29, 1989 Federal Register notice and want to participate in the hearings, please prepare a statement which addresses the six issues set forth in Part I of the Supplementary Information and avoids repetition of any earlier submission.

The Department of Commerce will notify each person selected to be heard before 5:00 p.m. on January 17, 1990, or January 18, 1990, which is two weeks prior to the January 31st and February 1st hearings. In addition, the Department will arrange the presentation times for the speakers. Attendees will be seated on a first-come, first-served basis. Persons selected to be heard should bring 100 copies of the oral presentation on the day of the hearing to the hearing address indicated in the **"DATES"** section of this notice.

In addition, please submit 10 written copies of your oral presentation to the Bureau of Export Administration's Freedom of Information Records Inspection Facility, Attn: Margaret Cornejo, U.S. Department of Commerce, Room H–4886, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone (202) 377–2593. All comments received will be available for public inspection in the Freedom of Information Records Inspection Facility, between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday.

Identify separately any information you consider to be company confidential and submit it in writing, one copy only. We reserve the right to return information if we do not deem it to be business confidential.

2. Conduct of the Hearing

We reserve the right to select the persons to be heard at this hearing. Each speaker will be limited to 10 minutes and comments must be directly related to the Short Supply Timber Investigation.

A Commerce official will be designated to preside at the hearings. Representatives from the Department of

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Agriculture and Interior will also participate in the hearings. This will not be a judicial or evidentiary-type hearing. Only those conducting the hearing may ask questions, and there will be no cross-examination of persons presenting statements.

Any further procedural rules for the proper conduct of the hearing will be announced by the presiding officer.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 89-29830 Filed 12-15-89; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

[C-122-807]

Countervailing Duty Order: Aluminum Sulfate From Venezuela

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: In its investigation, the U.S. Department of Commerce determined that benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters of aluminum sulfate from Venezuela. In a separate investigation, the U.S. International Trade Commission (ITC) determined that imports of aluminum sulfate from Venezuela are materially injuring a U.S. industry.

As a result of the affirmative findings of the Department and the ITC, pursuant to section 705 (a) and (b) of the Tariff Act of 1930, as amended [19 U.S.C. 1671d (a) and (b)] (the Act), all unliquidated entries of aluminum sulfate from Venezuela, as described in this notice, which were entered, or withdrawn from warehouse, for consumption on or after October 25, 1989, the date on which the Department published its final affirmative countervailing duty determination in the **Federal Register**, will be liable for the possible assessment of countervailing duties.

Furthermore, a cash deposit of the estimated countervailing duties must now be made on all entries or withdrawals from warehouse, of aluminum sulfate from Venezuela, for consumption, made on or after the date of publication of this countervailing duty order in the Federal Register.

EFFECTIVE DATE: December 19, 1989.

FOR FURTHER INFORMATION CONTACT: Michelle L. O'Neill or Carole A. Showers, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-1673, or 377-3217.

SUPPLEMENTARY INFORMATION: To clarify the definition of the scope, this investigation covers both liquid and dry aluminum sulfate. Aluminum sulfate is used in water purification, in waste water treatment, and for other industrial applications and currently provided for under Harmonized Tariff Schedule (HTS) item number 2833.22.00000.

In accordance with section 705(a) of the Act, [19 U.S.C. 1671(a)], on October 18, 1989, the Department made its final determination that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters of aluminum sulfate from Venezuela (54 FR 43440, October 25, 1989).

On December 6, 1989, in accordance with section 705(d) of the Act, the ITC notified the Department that imports of aluminum sulfate from Venezuela are materially injuring a U.S. industry.

Therefore, in accordance with sections 706 and 751 of the Act (19 U.S.C. 1671e and 1675), the Department will direct U.S. Customs officers to assess, upon further advice of the administering authority pursuant to sections 706(a)(1) and 751 of the Act [19 U.S.C. 1671e(a)(1) and 1675], countervailing duties equal to the amount of the estimated net subsidy on all entries of aluminum sulfate from Venezuela. These countervailing duties will be assessed on all unliquidated entries of aluminum sulfate from Venezuela entered, or withdrawn from warehouse, for consumption, on or after October 25, 1989, the date on which the Department published its final affirmative countervailing duty determination notice in the **Federal Register** (54 FR 43440, October 25, 1989).

On and after the date of publication of this notice, U.S. Customs officers must require cash deposit equal to the estimated net subsidy rate noted below for entries of aluminum sulfate from Venezuela:

	Estimated Net Subsidy (percent)
Manufacturers/producers/ exporters:	
Ferroaluminio, C.A	38.40
All Other Companies	19.03

This determination constitutes a countervailing duty order with respect to aluminum sulfate from Venezuela pursuant to section 706 of the Act [19 U.S.C. 1671e(a)(1)]. Interested parties may contact the Central Records Unit, Room B-099, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, for copies of an updated list of orders currently in effect.

Notice of Review

In accordance with section 751(a)(1) of the Act [19 U.S.C. 1675(a)(1)], the Department hereby gives notice that, if requested, it will commence an administrative review of this order. For further information regarding this review, contact Holly Kuga at (202) 377-2786, Office of Countervailing Compliance.

This notice is published in accordance with section 706 of the Act [19 U.S.C. 1671e].

Eric I. Garfinkel,

Assistant Secretary for Import Administration

[FR Doc. 89-29424 Filed 12-18-89; 8:45 am]

BILLING CODE 3510-DS-M

[C-201-406]

Fabricated Automotive Glass From Mexico; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On March 2, 1989, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on fabricated automotive glass from Mexico. We have now completed that review and determine the total bounty or grant for the period January 1, 1986 through December 31, 1986 to be zero.

EFFECTIVE DATE: December 19, 1989.

FOR FURTHER INFORMATION CONTACT: Christopher Beach or Anne D'Alauro, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On March 2, 1989, the Department of Commerce ("the Department") published in the **Federal Register** (54 FR 8763) the preliminary results of its administrative review of the countervailing duty order on fabricated automotive glass from Mexico (50 FR 1906; January 14, 1985). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by this review are shipments of Mexican fabricated automotive glass, including tempered and laminated automotive glass. During the review period, such merchandise was classifiable under items 544.3100 and 544.4120 of the Tariff Schedules of the United States Annotated. Such merchandise is currently classifiable under item numbers 7007.11.00, 7007.19.00, and 7007.21.50 of the Harmonized Tariff Schedule (HTS). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1986 through December 31, 1986 and 14 programs: (1) FOMEX; (2) FICORCA; (3) CEPROFI; (4) FOGAIN; (5) CEDI; (6) FONEI; (7) import duty drawback; (8) National Development Program preferential discounts; (9) Article 15/94 loans; (10) preferential state investment incentives; (11) NAFINSA loans; (12) BANCOMEXT loans; (13) debt/equity swaps; and (14) CEDIs for foreign trade consortia.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. At the request of the petitioner, PPG Industries, Inc. ("PPG"), we held a hearing on May 19, 1989. We received written comments from PPG and the respondents, Vitro Flex, S.A. and CRINAMEX, S.A.

Comment 1: PPG argues that the Department's determination that FICORCA does not provide countervailable benefits is incorrect because the Department has not properly examined whether the program provided benefits to specific enterprises or industries. In its "Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Carbon Steel Wire Rod from Malaysia" (53 FR 13303; April 22, 1988), the Department stated that it will examine (1) the extent to which a foreign government acts to limit the availability of a program; (2) the number of companies using the program and whether particular companies or industries have received disproportionate benefits; and (3) the extent to which the foreign government exercises discretion in the bestowal of benefits. The Department has not obtained the relevant information regarding the application and approval process, as well as the information on the actual distribution of FICORCA benefits. This omission is particularly significant given information submitted showing that FICORCA benefits were provided to a relatively small number of companies in Mexico and that, of these, nine companies or corporate groups accounted for more than 50 percent of all refinancing extended by FICORCA. Therefore, the Department has *prima facie* evidence that FICORCA was bestowed in a disproportionate manner and, therefore, provides countervailable benefits.

Respondents reply that, during this administrative review, the Department did not re-examine its prior determination that the basic FICORCA program is not countervailable. The Department's determination that FICORCA was not countervailable was upheld by the Court of International Trade (CIT) in *PPG Industries, Inc.* v. *United States*, 682 F. Supp. 258 (1987), appeal pending, CAFC No. 88-1175 ("PPG I").

Department's Position: We did not re-evaluate our determinations regarding the FICORCA program during this administrative review. In "Unprocessed Float Glass from Mexico; Final Affirmative Countervailing Duty Determination" (49 FR 23097; June 4, 1984), we determined that the FICORCA program was available to all Mexican firms with foreign indebtedness and that it was not targeted to a specific enterprise or industry, group of enterprises or industries, or to companies located in specific regions. In the "Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Fabricated Automotive Glass from Mexico" (50 FR 1906; January 14, 1985), we stated that we did not initiate an investigation of the FICORCA program because we had previously found it not countervailable and because PPG had not provided new evidence sufficient to warrant reinvestigation. In "Fabricated Automotive Glass from Mexico; Final Results of Countervailing Duty Administrative Review" (51 FR 44652; December 11, 1986), we examined new information provided by PPG regarding the availability and use of FICORCA and reiterated our position that the FICORCA program is not provided to a specific enterprise or industry, or group of enterprises or industries, and that the program is not countervailable. Moreover, the Department's position on FICORCA has been upheld by the CIT in PPG I and *PPG Industries, Inc.* v. *United States* 712 F. Supp. 195 (1989) ("PPG II").

Comment 2: PPG contends that the Department should examine "new" and/or recent countervailable changes in the FICORCA regulations not previously addressed: (1) Enrollment of non-bank debt in FICORCIA; (2) provisional enrollment of unrescheduled debt; and (3) capitalization of unpaid interest.

Although FICORCA covered only debt owed to foreign financial institutions, the Mexican government allowed certain companies to enroll non-bank debt, such as commercial paper, in FICORCA. While the Department's verification report states that FICORCA regulations make clear that FICORCA has never been limited to bank debt only, these regulations were not included as a verification exhibit and have never been included in the administrative record. Therefore, the Department should assume that non-bank debt was not enrollable in FICORCA without special permission, and that coverage of such debt represents the discretionary extension of countervailable benefits.

Under the terms of FICORCA, only long-term debt or debt that had been rescheduled to become long-term by the November 8, 1983 deadline could be enrolled in FICORCA. It appears that the Department accepted a verbal explanation by the Mexican government regarding provisional enrollment of debt in FICORCA and did not obtain any further information regarding the approval process by which FICORCA contracts were concluded to cover debt that was still being rescheduled at the time of the deadline. The Department should conclude that the inclusion of such contracts represents the discretionary extension of benefits, and that if FICORCA as a whole is not countervailable, the benefits accruing to debt provisionally enrolled is countervailable.

Finally, under FICORCA, participants may opt for a minimum payment schedule. Interest payments in the first years do not cover the interest due and the difference is capitalized and treated as an additional loan by FICORCA. Since the inception of the FICORCA program in late 1983, the Mexican economy has experienced severe inflation, with inflation of approximately 65 percent in 1984, 53 percent in 1985, 88 percent in 1986, 135 percent in 1987, and 114 percent in 1988. The interest rate charged on FICORCA loans was approximately 58 percent. This interest rate was at, or below, the inflation rate for every year since FICORCA came into existence. To the extent that the inflation rate exceeds the interst rate, it is clearly in the interest of FICORCA borrowers to capitalize interst at the same below-inflation interest rate, so that they ultimately pay off their debt in

inflated pesos. FICORCA loans were provided to a specific group of enterprises, and the effect of

Therefore, any benefit gained from the sale, trade, or other disposition of a FICORCA contract would be

signed on August 14, 1987 by FICORCA and foreign and domestic creditor banks. According to the new agreement,

insufficient because the Department failed to verify that no company in Mexico received CEDIs based upon

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inflated pesos. FICORCA loans were provided to a specific group of enterprises, and the effect of capitalization of these loans represents further extension of credit at preferential rates. Capitalization of interest rates under FICORCA could in and of itself provide a subsidy if such capitalization features are not normal commercial loan terms in Mexico. There is nothing in the Department's verification report to indicate that this aspect of commercial loan terms was considered.

Respondents reply that the Department's verification report makes clear that none of PPG's allegations involve "new" aspects of FICORCA, but instead were parts of the original FICORCA regulations. The FICORCA regulations were obtained by the Department and were part of the administrative record before the CIT when it upheld the Department's final determination in PPG I. Since PPG's "new" allegations involve aspects that were provided for in the original FICORCA program, the Department's prior determinations that FICORCA was not countervailable necessarily include determinations that the specific allegations raised during the instant review are also not countervailable.

Respondents point out that, in the original FICORCA regulations, the relevant criterion for enrollment in FICORCA was that debt had to be denominated in a foreign currency and payable abroad, clearly broad enough to encompass non-bank debt. Regardless, PPG's allegations are irrelevant because neither Vitro Flex or CRINAMEX enrolled non-bank debt in FICORCA. Second, as stated in the Deaprtment's verification report and discussed in the preliminary results of this review, there was no provisional enrollment of debt in the sense intended by PPG and no selective determination made by FICORCA regarding provisional enrollment. Finally, the capitalization of interest was an inherent part of the FICORCA program from its inception. The FICORCA regulations make it clear that FICORCA does not assume any liability on behalf of the debtor. Capitalization of interest on debt enrolled in FICORCA simply alters the timing sequence of the debtor's payment of its obligation.

Department's Position: PPG requested that the Department evaluate aspects of the FICORCA program that allegedly presented "new" information and/or changes to existing FICORCA regulations. We verified that the alleged new features or changes to FICORCA programs were provided for in the original FICORCA regulations.

It is clear from the regulations that FICORCA was not intended solely for bank debt because Mexican firms having indebtedness denominated in a foreign currency and payable abroad to foreign financial entities, or suppliers, could participate in the FICORCA program. Thus, no special approval was required for non-bank debt. With respect to the provisional enrollment of unrescheduled debt, we discussed this fully in the preliminary results of this review; PPG simply insists on characterizing provisional enrollment in a way not meant by the regulations and not as such enrollment actually occurred.

Finally, the Department need not consider whether commercial loans permit capitalization of interest because firms that capitalize unpaid interest under FICORCA are not relieved of their obligations or provided with any pecuniary benefit. The interest rate on FICORCA contracts is the average of the 3-month and 6-month certificate of deposit rates in effect on the first day of each month. Interest is accrued on the entire outstanding balance and any unpaid interest is added to the principal. The capitalization feature was part of the FICORCA regulations and was intended to provide debt service ratio throughout the life of the loan. However, because high inflation rates in Mexico had a substantial impact on interest rates, continued participation in FICORCA could result in a significant increase in a company's long-term peso liability caused by the capitalization of interest under the terms of the FICORCA agreement. Consequently, the outstanding peso liability under a FICORCA contract would increase and a balloon payment would have to be made at a later stage in the life of the loan. The FICORCA scheme for debt repayment could actually cost a company more than the original foreign debt.

Comment 3: PPG argues that floating rate notes covered by FICORCA are exempt from the 15 percent withholding tax on interest paid to foreign banks. The exemption from the tax has the effect of increasing the rate of return realized by the creditor, as it would receive 100 percent of the interest payments, rather than 85 percent. As a result, creditors can achieve the same rate of return by charging FICORCA participants lower interest rates than they would have had to pay absent the exemption. Information previously submitted shows that foreign lenders who encouraged adoption of this scheme stated that the withholding tax exemption allowed faster repayment of principal. In addition, the issuance of securities to be offered abroad by Mexican companies require government approval. Because the Mexican government controls the issuance of floating rate notes, it also controls access to the foreign interest withholding exemption. Therefore, the exemption from the withholding tax on floating rate notes would provide an additional countervailable benefit.

Respondents reply that the exemption from payment of income tax on interest payable abroad on floating rate notes should not have been included in this administrative review since PPG failed to offer any factual basis in support of its allegation that this constituted a countervailable subsidy. Furthermore, the exemption from payment of income tax for floating rate notes is part of Mexico's general tax law and is not related to, or conditioned in any way by, FICORCA. PPG's supposition that foreign banks would offer reduced interest rates fails to consider that under the tax laws of many countries, taxes paid abroad would be fully creditable toward home country tax liabilities. Accordingly, the interest rate charged by the lenders depend on commercial consideration and not on direction or control from the Mexican government. Mexican debtors are required to pay 100 percent of the interest under both floating rate notes and fixed rate notes. Since the foreign creditor bank receives 100 percent of the interest payments required from the debtors, either 100 percent directly from the debtor or 85 percent in cash, and 15 percent in the form of a tax credit, the Mexican debtor is not receiving any benefit from floating rate notes.

Department's Position: We verified that the exporters of fabricated automotive glass did not convert FICORCA liabilities to floating rate notes. Moreover, in making its allegation, PGG assumes without providing evidence; (1) That the interest on floating rate notes is not taxed either in Mexico or in the bank's home jurisdiction and (2) that the withholding tax exemption on floating rate notes is special to FICORCA contracts and not part of Mexico's general tax law.

Comment 4: PPG argues that FICORCA debt refinancing was available only to a limited number of companies. The fact that FICORCA contracts could be sold only to other Mexican firms with foreign debt registered with the Mexican government is further evidence of the restricted availability of FICORCA benefits.

Therefore, any benefit gained from the sale, trade, or other disposition of a FICORCA contract would be countervailable.

Respondents reply that the Mexican government is not involved with the approval of the sale or transfer of FICORCA contracts. Parties participating in a transfer or sale of a FICORCA contract are merely required to notify FICORCA of any changes in the parties to the contracts for record keeping purposes. It is also evident that the sale or transfer of a FICORCA contract does not constitute a countervailable bounty or grant, because the contract itself is not countervailable.

Department's Position: We verified that Vitro Flex sold a FICORCA contract because it was prohibitively expensive to service the increasing peso liability. The FICORCA contract that was sold carried an interest rate that was the average of the 3-month and 6-month certificate of deposit rates in effect on the first day of each month, not a fixed below-market rate as assumed by PPG. Furthermore, there was no government involvement or approval required for this sale. Consequently, we determine that the sale of this FICORCA contract does not provide a countervailable benefit.

Comment 5: PPG contends that, in 1987, the Mexican government entered into a new agreement with foreign banks whereby the Mexican government guaranteed repayment of debt enrolled in FICORCA. The Department did not address the additional benefit the guarantee of FICORCA debts provides to participants by the Mexican government in its preliminary results in this review. The provision of such a guarantee is clearly inconsistent with commercial considerations.

Respondents reply that since PPG admits that the "guarantee" of FICORCA contracts is part of a revised program which was only available as of the fall of 1987, it should not be addressed by the Department in the context of this review. Any possible benefit from such a guarantee, if utilized, could only have been obtained or utilized after the period of this administrative review. Furthermore, the record establishes that neither of the exporters of automotive glass entered into any modification or alteration of their FICORCA contracts.

Department's Position: The so-called "guarantee" referred to by PPG and the respondents is not a guarantee by the Mexican government to pay off the Mexican firms' foreign debt. As part of a general rescheduling of Mexico's external debt, a new agreement was signed on August 14, 1987 by FICORCA and foreign and domestic creditor banks. According to the new agreement, firms enrolled in FICORCA continue to pay their FICORCA liabilities according to the terms and conditions agreed upon in the original (1983) contract. FICORCA, in turn, complies with the payment terms of the 1983 contract. When FICORCA makes a payment, the creditor bank frees FICORCA and the enterprise from the obligations of the original loan. At the same time, the creditor bank issues a new loan to FICORCA, in the amount of the payment made by FICORCA, on a 20-year term with a 7-year grace period. In short, the Mexican firm pays the debt as scheduled and, on this basis, FICORCA is able to obtain a new loan. During the period of review, this program was non-operational.

Comment 6: PPG contends that the Department failed to address the current status of the CEDI program and failed to determine whether the exporters of fabricated automotive glass benefitted, either directly or indirectly, from the receipt of CEDIs. PPG states: (1) The Department has not been able to determine if export consortia or other members of the Vitro group continue to receive CEDIs; (2) the Department has not made the distinction between the benefit derived from the direct receipt of CEDIs by Vitro Flex and CRINAMEX and the indirect benefit resulting from CEDIs received by other members of the Vitro group based on exports of this merchandise to the United States; (3) during verification, the Department was refused access to computer printouts which would indicate if any members of the Vitro group, other than Vitro Flex and CRINAMEX, received CEDIs; (4) during verification, the Department established that the majority of CEDIs issued during the review period were "global" CEDIs which are paid to export consortia and are not tied to any specific industry; and (5) during verification, the Department was denied access to documents which would indicate whether export consortia related to the export of automotive glass received "global" CEDIs. Having been denied important information during verification regarding this program, the Department should, based on the best information available, impose a countervailing duty on imports of automotive glass from Mexico of 4 percent *ad valorem*, the CEDI rate paid to export consortia.

Respondents reply that PPG has finally acknowledged that neither CRINAMEX or Vitro Flex directly received CEDIs. PPG's argument that the Department's verification was insufficient because the Department failed to verify that no company in Mexico received CEDIs based upon exports of automotive glass is without merit.

Department's Position: We verified that CRINAMEX and Vitro Flex did not receive CEDIs directly on the exports of automotive glass to the United States. We also verified that no automotive glass was exported to the United States through export consortia during the period of review. With respect to PPG's concern of possible indirect benefits, CEDIs are earned on a shipment-specific basis and are not transferable; any benefits received from them can only be used by the exporting company.

Comment 7: PPG argues that the Mexican government's policy of selling natural gas to domestic industries at controlled prices confers a countervailable benefit upon the production or manufacture of automotive glass. The CIT in *Cabot Corp v. United States*, 694 F. Supp. 949 (1988), held that the Department's determination regarding the countervailability of the Mexican natural gas program was based upon an impermissible application of the specificity test. Because the Department's determination on natural gas was based upon the improper use of the specificity test, the Department should reconsider this determination regarding the automotive glass producers.

Respondents reply that the Department's determination that natural gas pricing practices were not countervailable was upheld by the CIT in PPG I. Since the Department previously determined that PPG's allegations were without merit, the Department's administrative review properly did not involve a re-examination of this program.

Department's Position: PPG has not provided any new evidence that natural gas provided at government-controlled prices to all industrial users confers a countervailable benefit. We have repeatedly held that the provision of natural gas on these terms does not confer countervailable benefits. *See, e.g.*, "Final Negative Countervailing Duty Determination: Anhydrous and Aqua Ammonia from Mexico" (48 FR 28522; June 22, 1983), and "Unprocessed Float Glass from Mexico; Final Results of Countervailing Duty Administrative Review" (51 FR 44503; December 10, 1986). Moreover, the Department's position was upheld in PPG I, PPG II, *Can-Am* v. *United States* 664 F. Supp. 1444 (1987) and *Cabot Corp.* v. *United*

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States (Judgment for the Department) Court No. 86-09-01109.

Comment 8: PPG and the respondents contend that the Department must address the issue of revocation in the final results of this administrative review. They claim that, in "Fabricated Automotive Glass from Mexico; Final Results of Countervailing Duty Administrative Review" (51 FR 44652; December 11, 1986) and the Motion to Dismiss in *PPG Industries, Inc.* v. *United States*, 696 F. Supp. 650 (1988), the Department committed itself to addressing this issue in the context of the 1986 review since entries after August 24, 1986 would be affected.

Vitro Flex and CRINAMEX argue that, absent an injury determination, the United States' international obligations within the meaning of section 303(a)(2) of the Tariff Act require the Department to revoke the countervailing duty order on fabricated automotive glass from Mexico, effective August 24, 1986, the date of Mexico's accession to the General Agreement on Tariffs and Trade (GATT). Automotive glass from Mexico is duty-free, and the GATT is considered an international obligation within the meaning of section 303(a)(2). Since the Department has acknowledged that it does not have the authority to assess countervailing duties on post-August 24, 1986 entries of duty-free merchandise without an affirmative injury determination, and since the International Trade Commission (ITC) stated that it did not have the authority to conduct an injury investigation on outstanding orders under Title VII of the Tariff Act, the Department has no choice but to revoke the order effective August 24, 1986. Furthermore, respondents argue that a section 332 investigation is not a legally valid surrogate for the ITC investigation required under Title VII.

PPG contends that at the time of the investigation in this case no "international obligation" under section 303(a)(2) existed to provide an injury determination on duty-free automotive glass from Mexico because Mexico was not a contracting party to the GATT. No document associated with Mexico's GATT accession indicates that Mexico has a right to an injury determination on outstanding countervailing duty orders. Finally, the question of revocation is not relevant, regardless of the level of subsidy found in this review, since the Department lacks the authority to consider this issue outside of a changed circumstances administrative review.

Department's Position: In both the last administrative review and the Motion to Dismiss, the Department stated that it was currently considering "whether the accession of the Government of Mexico to the GATT on August 24, 1986 precludes the United States Government from levying countervailing duties on duty-free entries after the date of accession in the absence of an affirmative injury determination."

The merchandise covered by this review is afforded duty-free status under the Generalized System of Preferences. Section 303(a)(2) prohibits the imposition of countervailing duties on duty-free products absent an affirmative injury determination when the United States has an "international obligation" to provide such a test. Mexico's accession to the GATT imposes such an international obligation on the United States with respect to duty-free merchandise entered into the United States after the date of Mexico's accession.

Assessment of duties is not an issue at this time because the total bounty or grant for the period January 1, 1986 through December 31, 1986, is zero. Moreover, we are currently pursuing means by which an injury determination could be made concerning imports of Mexican automotive glass entered on or after August 24, 1986, the date of Mexico's accession to the GATT.

Final Results of Review

After reviewing the comments received, we determine the total bounty or grant for the period January 1, 1986 through December 31, 1986 to be zero.

Therefore, the Department will instruct the Customs Service to liquidate, without regard to countervailing duties, all entries of this merchandise exported on or after January 1, 1986 and on or before December 31, 1986.

Further, the Department will instruct the Customs Service to waive deposits of estimated countervailing duties on all shipments of this merchandise entered, or without from warehouse, for consumption on or after the date of publication of this notice. The deposit waiver shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1) and 19 CFR 355.22).

Dated: December 5, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-29437 Filed 12-18-89; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of issuance of an export trade certificate of review, application No. 89-00015.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to Airborne Business Cargo, Inc. ("ABC"). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: Douglas J. Aller, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing title III are found at 15 CFR part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the Federal Register. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

DESCRIPTION OF CERTIFIED CONDUCT:

Export Trade

Products

General aviation aircraft, parts, components and materials.

Export Trade Facilitation Services (as They Relate to the Export of Products)

All trade-facilitating services in connection with the export of Products, including consulting, financing, insurance, advertising, foreign exhibiting and demonstration, trade documentation, countertrade and offsetting services, packing and crating, assembly, customs brokerage, market research and coordination.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

ABC may:

1. Coordinate the participation of various domestic Suppliers in foreign trade exhibitions through the sharing of trade information that is generally available to the public.

2. Provide Export Trade Facilitation Services to domestic Suppliers.

3. Enter into exclusive agreements with domestic Suppliers to arrange for the export of Products to foreign customers in response to foreign invitations to bid.

"Exclusive" means that ABC may agree not to represent any competitors of the Supplier without the Supplier's authorization, and the Supplier may agree not to otherwise sell, directly or indirectly, into Export Markets in which ABC serves the Supplier.

4. Enter into exclusive agreements with foreign customers to select domestic Suppliers of Products in order to match foreign buyer specifications. "Exclusive" means that ABC may agree to sell Products only to that foreign customer, and that foreign customer may agree not to buy those Products from anyone other than ABC.

5. Establish export prices for domestic Suppliers seeking to respond to a foreign bid opportunity.

6. Contract with other Export Intermediaries and consultants for the arrangement of the export of the Products of domestic Suppliers to the Export Markets.

7. Meet and negotiate with domestic Suppliers concerning the terms of their participation in each bid, invitation or request to bid, or other sales opportunity in the Export Markets.

Definitions

1. "Export Intermediary" means a person who acts as a distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions, including providing or arranging for the provision of Export Trade Facilitation Services.

2. "Supplier" means a person who produces, provides, or sells Products.

A copy of the Certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: December 13, 1989.

Douglas J. Aller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 89-29425 Filed 12-18-89; 8:45 am]

BILLING CODE 3510-DR-M

[C-201-505]

Porcelain-on-Steel Cookingware From Mexico; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on porcelain-on-steel cookingware from Mexico. We preliminarily determine the net subsidy to be 2.18 percent *ad valorem* during the period January 1, 1988 through December 31, 1988. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: December 19, 1989.

FOR FURTHER INFORMATION CONTACT: Anne Driscoll or Michael Rollin, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On March 30, 1989, the Department of Commerce ("the Department") published in the **Federal Register** (54 FR 13093) the final results of its last administrative review of the countervailing duty order on porcelain-on-steel cookingware from Mexico (51 FR 44827; December 12, 1986). On December 13, 1988, the Mexican exporters requested an administrative review of the order. We published the initiation of the administrative review on January 31, 1989 (54 FR 4871). The Department has now conducted this administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by this review are shipments of porcelain-on-steel cookingware from Mexico. The products are porcelain-on-steel cookingware (except teakettles), which do not have self-contained electric heating elements. All of the foregoing are constructed of steel, and are enameled or glazed with vitreous glasses. During the review period, such merchandise was classifiable under item number 654.0818 of the Tariff Schedule of the United States Annotated. This merchandise is currently classifiable under item number 7323.94.0030 of the Harmonized Tariff Schedule (HTS). The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period from January 1, 1988 through December 31, 1988 and 10 programs.

Analysis of Programs

(1) FOMEX

The Fund for the Promotion of Exports of Mexican Manufactured Products ("FOMEX") is a trust of the Mexican Treasury Department, with the National Bank of Foreign Trade acting as trustee for the program. The National Bank of Foreign Trade, through financial institutions, makes FOMEX loans available at preferential rates to Mexican manufacturers and exporters for two purposes: pre-export financing and export financing. Export loans are also available to U.S. importers. We consider benefits from these loans to U.S. importers as benefits to the corresponding Mexican exporters.

We consider both pre-export and export FOMEX loans to be export subsidies since these loans are given at preferential rates only on merchandise destined for export. We found that the annual interest rate that financial institutions charged borrowers for peso-denominated FOMEX pre-export financing outstanding during the period of review ranged from 37 to 130 percent. The annual interest rate for dollar-denominated pre-export and export FOMEX financing ranged from 7.20 to 9.50 percent during the period of review.

We consider the benefit from loans to occur when the interest is paid. Interest on FOMEX pre-export loans is paid at maturity, and those that matured during the period of review were obtained between November 1987 and October 1988. Since interest on FOMEX export loans is pre-paid, we calculated benefits from all FOMEX export loans received during the period of review.

The Banco de Mexico stopped publishing data on nominal and effective commercial lending rates in Mexico after 1984. Therefore, as the basis for our benchmark, we have relied in part on the rates for the years 1981 through 1984, as published in the Banco de Mexico's Indicadores Economicos y Moneda (I.E.). We calculated the

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average difference between the I.E. effective interest rates and the Costo Porcentual Promedio (CPP) rates, the average cost of short-term funds to banks, for the years 1981 through 1984. We added this average difference to the 1987 and 1988 CPP rates. Because the CPP rates published monthly in the first quarter of 1988 were substantially higher than those during the remainder of 1988, we determine that a benchmark for peso-denominated loans calculated on a quarterly basis is more appropriate than an annual average. Hence, we calculated a benchmark of 11.06 percent per month for pre-export peso loans received in the first quarter of 1988, and 5.88 percent, 3.99 percent and 4.18 percent for those received in the second, third and fourth quarters, respectively.

To determine the effective interest rate benchmark for 1988 dollar loans, we used the quarterly weighted-average effective interest rates published in the Federal Reserve Bulletin, which resulted in an annual average benchmark of 10.53 percent in 1988.

The two known exporters of this merchandise, as well as their U.S. importers, used this program during the period of review. Because we found that the exporters were able to tie their FOMEX loans to exports to specific countries, we measured the benefit only from FOMEX loans tied to shipments to the United States. We allocated each company's FOMEX benefit over the value of its total exports of the subject merchandise to the United States during the period of review. We then weight-averaged the resulting benefits by each company's proportion of exports of the subject merchandise to the United States during the period of review. On this basis, we preliminarily determine the benefit from this program to be 2.14 percent *ad valorem*.

(2) FONEI

The Fund for Industrial Development ("FONEI"), administered by the Banco de Mexico, is a specialized financial development fund that provides long-term loans at below-market rates. FONEI loans are available under various provisions having different eligibility requirements. The plant expansion provision is designed for the creation, expansion, or modernization of enterprises in order to promote the efficient production of goods capable of competing in the international market or to meet the objectives of the national Development Plan (NDP), which include industrial decentralization. We consider this FONEI loan provision to confer a subsidy because it restricts loan benefits to those enterprises located outside Zone IIIA.

One firm had a variable-rate, peso-denominated FONEI loan for an industrial mortgage outstanding during the period of review. We treated this variable-rate loan as a series of short-term loans. To calculate the benefit, we used the same benchmarks as for the FOMEX peso-denominated pre-export loans and compared them with the preferential interest rates in effect for each FONEI loan payment made during the period of review. We allocated the benefits over the firm's total sales to all markets during the period of review. We then weight-averaged the resulting benefit by the firm's proportion of exports of this merchandise to the United States during the period of review. On this basis, we preliminarily determine the benefit from this program to be 0.04 percent *ad valorem*.

(3) Other Programs

We also examined the following programs and preliminarily determine that exporters of cookingware did not use them during the review period:

(A) Certificates of Fiscal Promotion (CEPROFI);
(B) Guarantee and Development Fund for Medium and Small Industries (FOGAIN);
(C) Bancomext preferential financing;
(D) Import duty reductions and exemptions;
(E) Energy subsidies (NDP preferential discounts);
(F) Article 15 loans;
(G) State tax incentives; and
(H) Debt/equity swaps.

Preliminary Results of Review

As a result of our review, we preliminarily determine the net subsidy to be 2.18 percent *ad valorem* during the period January 1, 1988 through December 31, 1988.

Therefore, the Department intends to instruct the Customs Service to assess countervailing duties of 2.18 percent of the f.o.b. invoice price on all shipments of this merchandise exported on or after January 1, 1988 and on or before December 31, 1988.

The Department also intends to instruct the Customs Service to collect a cash deposit of estimated countervailing duties of 2.18 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

Parties to the proceeding may request disclosure of the calculations methodology and interested parties may request a hearing not later than 10 days after date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 355.38(c), are due.

The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: December 8, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-29432 Filed 12-18-89; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of issuance of an amended export trade certificate of review, application no. 88-A0012.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted to the National Tooling & Machining Association on October 18, 1988. Notice of issuance of the Certificate was published in the **Federal Register** on October 25, 1988 (53 Fed. Reg. 43140).

FOR FURTHER INFORMATION CONTACT: Douglas J. Aller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5153. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4011-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing title III are found at 15 CFR part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the Federal Register. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

DESCRIPTION OF AMENDED CERTIFICATE:

Export Trade Certificate of Review No. 88-00012 was issued to the National Tooling & Machining Association ("NTMA") on October 18, 1988. Notice of issuance of the Certificate was published in the **Federal Register** on October 25, 1988 (53 Fed. Reg. 43140).

The listing of "Members" named in NTMA's Export Trade Certificate of Review has been amended to include the following changes:

1. Each company listed in Appendix A has been added as a "Member" of the Certificate. See Appendix A.

2. Each company listed in Appendix B has been deleted as a "Member" of the Certificate. See Appendix B.

Pursuant to section 304(a)(2) of the ETC Act, 15 USC section 4014(a)(2), and 15 CFR 325.7, the amended Certificate is effective from September 6, 1989, the date on which the application for an amendment was deemed submitted.

A copy of the amended Certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: December 8, 1989.

Douglas J. Aller,

Director, Office of Export Trading Company Affairs.

A & D Engineering
A. T. S. Steels, Inc.
Accurate Grinding & Mfg. Corp.
Ace Clearwater Enterprises
Acme Precision Products, Inc.
Advanced Honing Company
Aero Comm Machining
Aircraft Gear Corporation
Allendale Machine Company, Inc.
A M G Engineering & Machining, Inc.
Abernathy Tool & Die, Inc.
Machining Excellence, Inc.
Ackrit Tool
Acutorn Machining
Advantage Engineering
Aero Machine Company, Inc.
Albright Tool & Manufacturing, Inc.
Alloy Tool Steel, Inc.
Alltech Tool & Mold
Anchor Tool & Die Company
Arum Precision Tool & Die, Inc.
Arden Engineering, Inc.
Arnett Tool, Inc.
Arrow Fabricating Company
Associated Toolmakers
Austin Machine Company, Inc.
B & L Machine Company
B-Y Machine Company, Inc.
Barrett Firearms Manufacturing.
Benish Tool and Manufacturing Co.
Bohn Engineering, Inc.
Brittain Machine, Inc.
Burgess & Associates Manufacturing.
C & C Machine Company
C M S Welding and Machining Corp.
Cam Tool Co., Inc.
Cavaform, Inc.
Certified Welding & Engineering.
Clark Engineering & Manufacturing
Colonial Machine & Tool Co., Inc.
Component Repair Technologies, Inc.
Comtech Machine Corporation
Corfu Machine Co., Inc.
Creative Machining & Manufacturing
Crown Machine, Inc.
Cutco, Inc.
D & D Gear, Inc.
D C D Company
Dadson Manufacturing Corporation
Dayton Machine Tool Company
Dependable Machine Company, Inc.
Diamond Tool & Engineering
Diversamation, Inc.
Douglas Machine & Engineering Co.
Eagle Precision Company
Eastern Rochester Manufacturing
Elba Electronetics, Inc.
Engineered Pump Services, Inc.
EWT-REF, Inc.
Express Machine Products, Inc.
F M Industries
Fayette Tool & Engineering, Inc.
Forgash Precision Products Corp.
Frog Hollow Works
American Grinding & Machine Company
Anglo-American Mold, Inc.
Arbiser Machine Building Company
Arizona Gear & Mfg. Co.
Aro Metal Stamping Company, Inc.
Associated Machine
Astro-Cut Engineering Company
Automation Devices, Inc.
B K Tool & Manufacturing Co., Inc.
Ball Glide Products
Bear Machine
Bernal's M.B.G.
Breiner Machine Company, Inc.
Brooks Machine & Tooling Company
Burn-A-Rod
C & R Grinding, Inc.
California Mold
Cardinal Tool Corporation
Century Die Casting
Charmilles Technologies
The Cleveland Steel Tool Company
Commercial Tooling, Inc.
Componex Corporation
Connection Mold
Cover Engineering Company, Inc.
Crenshaw Die & Manufacturing Corp.
Custom Jig Grinding Company
D & B Tool & Engineering
D & T Products
Dace & Dace, Inc.
Danex Industries, Inc.
Delta Design & Mfg. Co., Inc.
Dexter Magnetic Materials
Dickerson Machine and Tool, Inc.
Diversified Techniques
E D M of Garland, Inc.
Eagle Tool & Manufacturing, Inc.
Ecko Tool & Die, Inc.
Engineered Machine & Tool Co., Inc.
Everest Valve Company
Exacta Tech Inc.
F & F Surface Grinding, Inc.
Fay & Quartermaine
Florida Machining Center
Fortville Feeders, Inc.
Fulton Industries, Inc.
G. H. Tool & Mold, Inc.
Gallard Industries
Gear Manufacturing, Inc.
Gilmore Valve Company
Graham Tool & Machine, Inc.
Grand Rapids Metal Tek, Inc.
H & H Dynamics
H & H Machine & Tool Company
Hofley Manufacturing Company
Hauck & Eller Tool & Die
Hi-Ridge Manufacturing Company
Hood Precision Machine Products
Houston Boring & Machine
Huetter Machine & Tool Co., Inc.
Injection Transfer Compression
J & L Tool & Manufacturing Co., Inc.
J P Machine
Jori Machine, Inc.
Johnson Manufacturing Company
Jorgensen Machining Corporation
K A F Manufacturing
K. M. S. Machine Works, Inc.
Kaga (U.S.A.) Inc.
Karrais Machine & Tool Co., Inc.
Kelley Industries, Inc.
Kleine Steel Fabrication, Inc.
Koch Systems, Inc.
L & L Works
L M E
Lakewood Precision Corporation
Lavelle Machine & Tool Co., Inc.
Lemco Machine, Inc.
Leopold Machine and Tool Co., Inc.
Lindquist Machine Corporation
M C M
M P Technologies, Inc.
Machine Turning, Inc.
Maness Engineering
Marts Systems Design, Inc.
Master Tool Company, Inc.
McFerron Tool & Machine Co., Inc.
McLellan Page, Inc.
Mercury Gage Company
Micro Matic Tool, Inc.
Mikulin Machine, Inc.
Cage Grinding Company
Gardner Machine Products
Gear Supply and Broaching, Inc.
L K Goodwin Company Inc.
Granby Mold
Grover Gundrilling, Inc.
H & H Engineering, Inc.
H & M Machine & Mechanical Works
Hartwick Metal Fabricators, Inc.
Hawkins Manufacturing, Inc.
Hi-Tech Tool & Cutter Sharpening
Horizon Carbide Tool, Inc.
Hudson Hune & Machine, Inc.
The Hutchinson Corporation
J & L Machining, Inc.
J. E. Engineering
Jakobsen Tool Company, Inc.
Jet Stream Water Cutting
Joint Venture Tool & Mold
K & G Manufacturing
K M G Tool & Machine Co., Inc.
K-Ter Imagineering, Inc.
Kepco Tool & Engineering, Inc.
Kedco Enterprises, Inc.
Klean Cut Tool & Engineering
Knise & Krick, Inc.
Krav Precision Tool & Die Corp.
L & W Engineering Co., Inc.
L S Technologies
Langenau Manufacturing Company
Leever's Grinding, Inc.
LenSen Machine, Inc.
Lindenmaier Precision Company
Little Rhody Machine & Electric
M C Mold & Machine, Inc.
Machine Center, Inc.
Maine Parts & Machine, Inc.
Manufacturing Solutions, Inc.
Mars Manufacturing
Mc Roberts Machine, Inc.
McCough & Kilgus
Mechanical Designs of Virginia
Mercury Tool & Mold
Micro Precision Deburring
Mineco

Mires Machine Company, Inc.
Mold & Machine Company
Modern Innovation, Inc.
Moldex Tool & Design Company
Star Precision Machine Company
Stefan Sydor Optics, Inc.
Stevenson Machine Shop
State Industrial Repair, Inc.
Stellar Engineering
Summit Machine
Arrow Tool, Inc.
Ayers Gear & Machine
Associated Tool & Die, Inc.
B & G Machine Company

Design Tool & Machine Company
Die-Tech Manufacturing, Inc.
Die Supply Corporation
Die-Tron-Die-Cam, Inc.
The Hutchinson Corporation
Hytrol Manufacturing, Inc.
Hyland Machine Company
Ideal Engineering, Inc.
Maurer Metalcraft, Inc.
Mayday Manufacturing Company
Maxwell Boiler Corporation
Mayfield Machine Shop, Inc.

Mires Machine Company, Inc.
Mold & Machine Company
Jim Monahan Company
Morison Engineering
N C Dynamics, Inc.
National Chain Company
New Technology Machining, Inc.
Nibarger Tool Service, Inc.
Omega Corporation
Parcon Technology Inc.
Patkus Machine Company
Peninsula Metal Fabrication, Inc.
Pittsfield Machine/Tool & Welding
Portage Mold & Die Company
Precision Engineering
Precision Machine & Instrument Co.
Precision Machine Specialist
Precision Products Performance
Precision Slicing Company
Premier Tool & Die, Inc.
Professional Machine & Tool, Inc.
Progressive Metallizing & Machine
Progressive Turnings, Inc.
Puehler Tool Company
Quality Tool & Mold, Inc.
R. I. Technical Plating, Inc.
Ram Tool, Inc.
Ranic Machine & Tool, Inc.
REHCO, Inc.
Reliance Machine Works, Inc.
Reynolds Manufacturing Co., Inc.
Richland Machine & Pump Company
Rocky's Wire E.D.M.
Rozal Industries, Inc.
S & F Machine Company, Inc.
SafeWay Hydraulics, Inc.
Schottz Engineering, Inc.
Seneca Metal Products, Inc.
Service Metal Fabricators, Inc.
Shepherd Precision, Inc.
Silver Tool, Inc.
Smokey Mountain Machine, Inc.
Southern Tool & Machine Company
Spring Engineers, Inc.
Spur Gear, Inc.
Modern Innovation, Inc.
Moldex Tool & Design Company
Monark Design and Mfg., Inc.
Morach Machine Works
Nardon Acquisition Corp.
New England Honing Specialists
New World Machining Inc.
Nor-Cal Machining
Owens Specialty Company, Inc.
Parker Manufacturing
The Pearson Manufacturing Co., Inc.
Perfekta, Inc.
Pivot Punch Corporation
Precision Deburring Services
Precision Industrial Products, Inc.
Precision Machine Co., Inc.
Precision Mold & Tool Company, Inc.
Precision Products
Precision Tooling
Production Attachment, Co., Inc.
Progressive Design & Machine
Progressive Tool & Die Co., Inc.
Proton Stamping
Quad City Engineering Company
Quick Turn Machine Company
R W Machine, Inc.
Ramer Engineering, Inc.
Rapidie Corporation
Reliable Tool & Die Corporation
Repco Tool & Machine Co., Inc.
Rhode Island Centerless, Inc.
River City Machine
Rohder Machine & Tool, Inc.
S & B Machine Works, Inc.
S. C. T., Inc.
Samax Tool
Seminole Mold of Florida, Inc.
Service & Sales, Inc.
Sheets Tool & Manufacturing, Inc.
Sherlock Machine Company
Smith Welding Works, Inc.
Southern California Metals Joining
Southwest Replacement Parts
Spun Metals, Inc.
Standard Die Supply, Inc.
Star Precision Machine Company
Stefan Sydor Optics, Inc.
Stevenson Machine Shop
Sun Coast Design Service, Inc.
Suncoast Tool & Gage Industries.
T R B Precision Machine Corp.
Talsco, Inc.
Teachman-Perry, Inc.
Technical Sales, Inc.
Thompson Industries
Tool Technology, Inc.
Turbine Controls, Inc.
Ugm, Inc.
Union Tool & Die Company
United Technical Industries, Inc.
V R C, Inc.
Venture Tool & Die, Inc.
W M C Grinding, Inc.
Walker Spring & Stamping Corp.
Watertown Jig Bore
Welding Metallurgy, Inc.
Williams Machine, Inc.
Wilson Greatbatch
Wolverine Tool & Engineering
Zinola Manufacturing
State Industrial Repair, Inc.
Stellar Engineering
Summit Machine Company
Sun Valley Tool, Inc.
Superior Electromechancial
Talent Tool & Die, Inc.
Tasco Molds, Inc.
Techmetals, Inc.
Texas Enterprise Manufacturing & Machine, Inc.
Tool Tech, Inc.
Tracer Tool & Die Company
U F E Incorporated
Uni-Hydro, Inc.
United Stainless & Alloy Corp.
V. H. Machine & Welding
Valley Tool Room, Inc.
Viking Machine & Design, Inc.
W W G, Inc.
Walworth Machine & Mfg. Co., Inc.
Welch Machine, Inc.
Weltec
Willyard Company, Inc.
Winchester Industries, Inc.
Wyatt Automatic Products

Attachment B

A & H Machine & Tool Company
A M I Industries, Inc.
A R Industries, Inc.
Accu-Prompt Manufacturing
Acrodie, Inc.
Advanced Machine Service
Aim Incorporated
Al-Tech
Alco Machine Corporation
Aldan, Inc.
All Mold, Inc.
Allegheny Tool & Manufacturing Co.
Alloy Machine & Tool Company, Inc.
Alloy Tool Steel, Inc.
Alpine Manufacturing, Inc.
American Dies, Inc.
American Engraving, Inc.
American Mold Corporation
Amrein Machine Shop, Inc.
Andrews Machine Works
Anru Metals Manufacturing
Apex Corporation
Argus Manufacturing Company
A B C Manufacturing
A M Precision Machining, Inc.
Able Fabricating & Company
Accurate Grinding Corporation
Adams Russell Elec.-Braxonics Div.
Aeromold Plastics, Inc.
Aircraft Welding & Manufacturing
Al's Tool & Die Enterprises
Alco Manufacturing, Inc.
Alfa Foundry, Inc.
All-Con Tool & Mold, Inc.
Allied Atlantic Industries, Inc.
Alloy Tool and Engineering
Alpe Centerless Products
Alpine Tool & Die
American E D M & Tooling, Inc.
American Machine & Supply, Inc.
American Precision Machining, Inc.
Anderson Precision, Inc.
Animatics Corporation
Anthony Machine
Aponte Tool & Manufacturing, Inc.
Arizona Plasma Welding
Arrow Tool, Inc.
Ayers Gear & Machine
B & G Machine Products
B & H Tool & Machine Corporation
B H Instrument Company, Inc.
Ball Glide Products
Ballos Precision Machine
Beaulieu Tool & Die Co., Inc.
J L Behmer Corporation
Bernal Rotary Systems, Inc.
Birmingham Benders Company
Blanchard Metals Processing Company
Blandford Machine & Tool Co., Inc.
Bollinger Tool & Die, Inc.
Boos Products
Breiner Machine Company, Inc.
Broadway Mold, Inc.
Bruce Machine & Tool Co., Inc.
Bulgrin Mold & Machine
C and L Custom Tooling
Cal-Disc Grinding Company
Calcortec, Inc.
California Gundrilling, Inc.
Cambridge Special
Caval Tool & Machine Company
Charlotte Cutting Tool
Charmilles Technologies
Checker Machine, Inc.
Clifford Manufacturing Company
Cloud Company
Columbia Screw Co., Inc.
Composite Mold Corporation
Computerized Machining Services.
Controlled Turning, Inc.
Convex Mold, Inc.
Cook Tool & Die, Co.
Co-Op Machine & Tool
Corfu Machine Co., Inc.
Cox Machine Company, Inc.
Cramers Precisinn Grinding, Inc.
Cyma Tool Corporation
D C Machine Shop
D/A Machine Products
Dap Tool & Mold Inc.
Darotek, Inc.
Dayton Machine Tool Company
Delto Tool Company
Demark Industries, Inc.
Associated Tool & Die, Inc.
B & G Machine Company
B & H Machine, Inc.
B A K Precision Industries
B. T. C. Production
Ballard Machine Tool Service
Barronccast, Inc.
Beckwith Grinding, Inc.
Berg Tool & Machine Company, Inc.
Bernal's M.B.G.
Blanchard Grinding Service, Inc.
Blands, Incorporated
Blitz Tool & Die
BoMar Machine
Breeze's Precision Boring Company
Brighton N C Machine Corporation
Brown Manufacturing Company, Inc.
Buchanan Products, Inc.
C & C Manufacturing Company
C. M. I. Product Development
Cal-Royal Aerotech
California Fineblanking Corporation
Cam Basic
Cavaform, Inc.
Century Tool & Manufacturing Co.
Charlton Engineering Corporation
Chase Machine Company, Inc.
Cleveland Punch & Die Company
Clifton Automatic Screw
Colmar Corporation
Component Repair Technologies, Inc.
Compu Die, Inc.
Contract Products
Converse, Inc.
J L Cook Company, Inc.
Cooney Tool, Inc.
Cordell Machine Corporation
Correa Machine & Tool Company, Inc.
Coy Machine Company
Custom Etch Inc.
D C Design, Inc.
D M C International, Inc.
Damen Tool & Engineering Co., Inc.
Dar Machine & Manufacturing, Inc.
Dayton Drill Bushing Company
Deep South Automotive, Inc.
Demaich Industries, Inc.
Demmer Corporation

Design Tool & Machine Company
Die-Tech Manufacturing, Inc.
Dillon Industries, Inc.
Ditool-Division of Foundary
Diversified Tool Corporation
Double Disc Grinding of Hauppauge,
Dynacorp, Inc.
Dynamic Tool & Die Company
E K Machine Tool, Inc.
E S L Corporation
Edel-Brown Tool & Die Company
Edinger Manufacturing, Inc.
Electro Mold Company
Elgin Machine Corporation
Everest Valve Company
F & M Machine Corporation
Fabro Engineering, Inc.
Ferriot Inc.
Fischer Tool & Die Corporation
Flying Machines
Formative Products
J F Fredericks Tool Company, Inc.
G & H Mechanical Laboratory, Inc.
G & L Machine, Inc.
G & R Enterprises
G & W Tool & Die Company, Inc.
G B Tool Company
G M Tool Corporation
G P Precision Metal West
General Machine Products
General Machine Works
Geyer Precision Machining Company
Goffs Industrial Aid Machining Inc.
Great Lakes Grinding, Inc.
Gremco Machine & Tool
Grind-All, Inc.
H & K Tool & Machine Company
H P A S Inc.
Hallum Tooling, Inc.
Hammond and Harrie
Harrington Machine & Tool, Inc.
Heise Industries, Inc.
Helio, Inc.
Herzog Tool & Die Company, Inc.
Hi-Tech Mold & Tool, Inc.
Hilton Industries
Holland Engineering Company
Hone Lap Company, Inc.
R. D. Hopkin Machine Corporation
Husky Cutter Grinding, Inc.
Die Supply Corporation
Die-Tron-Die-Cam, Inc.
Discovery Tool & Manufacturing
Diversamation, Inc.
Dot Machine & Tool Company
Dyko Tool Corporation
Dynamic Tool and Die, Inc.
E F S Fabrication, Inc.
E R I Division
Eastford Tool & Die Co.
Edgerton Machine & Gear, Inc.
Electro Machine & Tool, Inc.
Electronics Tool & Die
Empire Machine Shop, Inc.
Excel Tech Machine Repair &
Fabritek Company, Inc.
Farrus Industries
Fiantech, Inc.
Fluke Metal Products, Inc.
Fordees Engineering
Frederick's Machine Shop
G & G Machine Technology's Inc.
G & J Machine Shop, Inc.
G & L Machining, Inc.
G & W Industries, Inc.
G & Z N/C Machining Company
G. H. Tool & Mold, Inc.
G N R Plastic Co., Inc.
Galger Engineering & Manufacturing
General Machine & Tool
Genesee Tool & Engineering, Inc.
Global Flange & Mfg., Inc.
Goguen Industries
Greenwell Machine & Tool, Inc.
Grimes Walker, Inc.
H & H Machine
H M Dunn Company, Inc.
Haemer Tool & Die
Hamden Tool & Die Co., Inc.
Hammond Tool, Inc.
Heacock Metal and Machine, Inc.
Helac Corporation
Hellebusch Tool & Die, Inc.
Hess Die Mold, Inc.
Hi-Tech Mold & Engineering, Inc.
Holden Machine Company, Inc.
Hollis Industries, Inc.
Hopco
Hopwood Tool & Die
Roy A. Hutchins Company
The Hutchinson Corporation
Hytrol Manufacturing, Inc.
Ideal Thread & Gage Company, Inc.
IndTool, Inc.
Industrial Engravers, Inc.
Industrial Machine Company
Industrial Park Rebuild
Innovative Concept Engineering &
Isimac Machine Company, Inc.
J & L Machining, Inc.
J & R Boring & Machine
J G R Manufacturing Corporation
J W Tool & Die Company, Inc.
Jimco, Inc.
Johnson Controls, Inc.
Johnson's Machine & Tool, Inc.
K & K Grinding Company, Inc.
K & S Tool & Die, Inc.
Karman Tool & Plastic Manufacturing
Karsten Engineering
Kay's Precision Manufacturing Corp.
Keegan's Machine & Fabricating.
KENLAB
Kindex, Inc.
Knise & Krick, Inc.
Koch's Machine & Tool Company
Kreichbaum Machine & Tool
Krizman, Inc.
L A B Quality Machining
Lamson Products Company
Lane Punch Corporation
Laneko Precision Corporation
Leblanc Grinding Company.
Lewis Machine & Fabricating Company
Lloyd Tool & Manufacturing Corp.
Lonner Industries, Inc.
Lorenzen's Tool & Dies, Inc.
M & H Precision/ Christech
M G W Precision Small Parts
Mac Machine Company, Inc.
Mackenzie Machine & Marine Works
Macor, Inc.
Manda Machine Company, Inc.
Mardon Enterprises, Inc.
Marquardt Engineering, Inc.
Martin Machine, Inc.
Hyland Machine Company
Ideal Engineering, Inc.
Imperial Machine & Tool, Inc.
Industrial Bearings & Supply, Inc.
Industrial Equipment Repair Co.
Industrial Molds, Inc.
Industrial Tooling, Inc.
Inter-City Manufacturing, Inc.
J & B Tool
J & M Machine Products, Inc.
J & R Machine Company
J T Machine Company
Jandi Machine & Tool
Josal Tool Company, Inc.
Johnson Precision Machining, Inc.
Jomar Machining, Inc.
K & R Machine Company, Inc.
K A F Manufacturing
Karrels Machine & Tool Co., Inc.
Kasco Metal Products Corporation
Kaye Engineering
Keun Machine Company
Keyes Machine Works, Inc.
Kinematic Corporation
Koeller Machine Company
Koning Machine & Tool Company
Kremin, Inc.
L & S Corporation
Lakeland Tool & Enginering, Inc.
Landry Specialty Welding, Inc.
L-B-L Corporation
Laser Fare, Ltd.
Leemax Mfg. Corp.
Linke Tool Die & Engineering Co.,
Long-Stanton Manufacturing Company
Look Precision, Inc.
Louisville Machine Mfg. Corporation
M & S Welding Company, Inc.
Mac Law Tool & Aircraft
Machine Turning, Inc.
Macnab Manufacturing, Inc.
Manco, Inc.
Mar-Tech Industries, Inc.
Mark Concepts, Inc.
Marteo, Inc.
Master Metal Engineering, Inc.
Maurer Metalcraft, Inc.
Mayday Manufacturing Company
Mc Roberts Machine, Inc.
McNeal Enterprises, Inc.
Melvin Tool & Die, Inc.
Meridian Products Corporation
Metal Hans, Inc.
Micro-Tech Production Machine Co.,
Mid-Central Manufacturing, Inc.
Mil-Tech Machine, Inc.
Mo-Tech Corporation
Modern Molds, Inc.
Monarch Valve Corporation
Monterey Precision, Inc.
Morris Machine Company, Inc.
Morsch Machine Works
Moulding Specialists, Inc.
N C S, Inc.
Nelson Brothers & Strum Co., Inc.
New Age Manufacturing Co., Inc.
New Ulm Precision Tool
Newport Controls, Inc.
Nicolson Cutter
North Coast Machining
Numeric Machine Products
Numerical Productions, Inc.
Nutmeg Precision Company
Ohlinger Industries, Inc.
Osborn Fabricators, Inc.
P & D Machine Company
P & M Screw Machine Products
Pacific Sky Supply, Inc.
Palmer Custom Machinery Corp.
Pan-Tec, Inc.
Parcon Technology Inc.
Pegasus, Inc.
Peraza Tool and Mold, Inc.
Perfect-A-Tec Corporation
Perry Tool & Research Company
Phillips Bros. Tool & Die, Inc.
Piedmont Tool & Mfg. Co., Inc.
Pivot Punch Corporation
POFCO
Polyphase Machine Company, Inc.
Prese Tool Company, Inc.
Precise Products Company
Maxwell Seiler Corporation
Mayfield Machine Shop, Inc.
McLellan Pugs, Inc.
McPherson Implement, Inc.
Meriden Manufacturing
Merlone Metal Spinning, Inc.
Metal-Tech Machine, Inc.
Mid West Mold
Midwest Machine & Manufacturing Co.
Minnotte Cleveland Corporation
Modern Metal Manufacturing, Inc.
Moldex Tool & Design Company
Monroe Tool & Die Company
Montgomery Brothers Machine Company
Morris Precision
Morton & Company, Inc.
Mountain Machine Services
Nardon Manufacturing Company, Inc.
Nelson Engineering Company, Inc.
New England Tool Company
Newington Manufacturing, Inc.
Newport Tool & Die, Inc.
Norris Precision Manufacturing
North Star Design, Inc.
Numerical Precision, Inc.
NuTec Tooling Systems, Inc.
O - A, Inc.
Olmsted Engineering Company
OTMI, Inc.
P & K Tool & Production Company
P T L Manufacturing, Inc.
Pak Devices, Inc.
Palmetto Fine Machining
Paragon Machine, Inc.
J C Parry & Sons Co., Inc.
Pentagon Die & Manufacturing, Inc.
Perfect Mold Company, Inc.
Performance Plastics East
Petersen Precision Engineering Co.
Piece-Maker Company
Pier Tool & Die, Inc.
Pivot Punch Corporation
Pol-Tek Industries, Ltd.
Practical Mechanics Inc.
Precise Jig Grinding, Inc.
Precision Aerospace Manufacturing

Precision Deburring Services
Precision Electronic Metal
Precision Drilling & Tapping
Precision Engineering & Mfg. Co.
Sparro Machine Products, Inc.
Spaulding Machine Co.
Spartan Carbide, Inc.
Spearhead Automated Systems, Inc.
Witte Machine Products, Inc.
Youngwood Electric Metals West
Y Tec Manufacturing, Inc.

Mammal Protection Act (MMPA), the U.S. Congress amended the Act to add new import requirements for nations

TABLE 1.—PERCENT OBSERVER COVERAGE BY NATION, 1986–1989—Contin-

total U.S. dolphin mortality on an annual basis since 1979. A CV of 20 percent also is the acceptable level of

Precision Deburring Services	Precision Drilling & Tapping	Sparro Machine Products, Inc.	Spartan Carbide, Inc.	Witte Machine Products, Inc.
Precision Electronic Metal	Precision Engineering & Mfg. Co.	Spaulding Machine Co.	Spearhead Automated Systems, Inc.	Y Tec Manufacturing, Inc.
Precision Fabricating, Inc.	Precision Fluid Power, Inc.	Special Machine & Engineering, Inc.	St. George Machine Tool	Youngwood Electric Metals West
Precision Industrial Products, Inc.	Precision Machine & Welding	St. Mary Manufacturing Corporation	Star S Manufacturing	
Precision Machine Co., Inc.	Precision Machine Specialist	Steel Products Corp Of Akron, Inc.	Stefco Precison, Inc.	
Precision Machine & Tool Co., Inc.	Precision Manufacturing Company	Jack Stewart Kellering Stines Machine	Stillion Industries Stinson Machine & Manufacturing Inc.	
Precision Metalcraft	Precision Mold & Tool Company, Inc.	Stinson Manufacturing Company	Stuart Industries, Inc.	
Precision Mold Welding, Inc.	Precision Molds, Inc.	Stugart Industries, Inc.	Stuhr Manufacturing Company	
Precision Products Performance	Precision Technology Corp.	Sun Up Wireforms, Inc.	Sutco Manufacturing Company	
Precision Tubedraw & Machining,	Production Metal Cutting, Inc.	Syn-Tech Mold, Inc.	T M F Tool Company	
Progressive Die Company	Quality Circle Corporation	Talan Machine & Tool, Inc.	Taurus Machine, Inc.	
Quality Die & Mold Corporation	Quality Plus, Inc.	Taylor Tool & Die Company, Inc.	Teachman-Perry, Inc.	
Quality Precision Machine Works,	Quality Tool & Die Inc.	Tech Ridge, Inc.	Tennessee Precision, Inc.	
R & D Machine Corporation	R & R Machine	Terrill Motor Machine, Inc.	Teston Machine Corporation	
R & R Tool & Machine, Inc.	R and R Machine Company	Tex-Tool Company	Thompson Industries	
R. L. Barry, Inc./Amic Division	Ralco Engineering Company	Three D Manufacturing Tiburzi Machine & Tool Company	Thurm-A-Matic Tiger Enterprises, Inc.	
Rams Rockford Products, Inc.	Ramsay Welding Research Co., Inc.	Tiger Industires, Inc.	Tiller Tool & Die, Inc.	
Ran-Bro Tool Company	Randolph Machine Company	Tomco Die & Kellering Company	Tool & Die Specialties, Inc.	
Raybon Manufacturing Co, Inc.	Rayco Machine Company	Tool Tech, Inc. Toolex Manufacturing Corporation	Toolcraft, Inc. Tri City Tool & Die Company	
Red Line Base, Inc.	Rehrig Pacific Company	Tri-State Tool & Saw, Inc.	Tri-Wire, Inc.	
Reid Industries, Inc.	Reidville Tool & Manufacturing Co.,	Tricon Machine & Tool, Inc.	Trimetric Specialties, Inc.	
Reliable E D M Company	Reliable Sharpening Service, Inc.	Trisan Manufacturing, Inc.	Trowbridge Machine	
Reliable Tool & Die Corporation	Reliable Tool & Die, Inc.	True Precision, Inc.	Trueline Tool & Machine, Inc.	
Reliance Machine Works, Inc.	Reliance Mold & Tool, Inc.	Twoson Tool Mfg. Company, Inc.	TYMAR Machining	
Riggins Engineering, Inc.	Ripley Machine Company, Inc.	U F E Incorporated	U. S. Axle, Inc.	
Ritchie Brothers Research & Ritsema Grinding Company	Rite-Way Tool & Engineering Company	U S Die & Mold Company, Inc.	Ultimate Precision, Inc.	
River City Machine	Rival Precision, Inc.	The Ultimate Tool & Gage Company	Ultra Cut, Inc.	
Riverside Tool & Die, Inc.	Riverpoint Tool Company, Inc.	Ultra Engraving & Machining	Union Machine	
Rockford Engineered Products Co.	Rochester Precision, Inc.	Universal Machine Rebuilders, Inc.	Universal Machine Products	
Rodak Plastics Company, Inc.	Rocon Manufacturing Corporation	Vanguard Technology Corporation	Variety Stamping Corporation	
Rosen Plastics, Inc.	Carl Rogers	Variety Tool & Die, Inc.	Varispace Division	
Royal Manufacturing Company	Royal Industries, Inc.	Versa-Mil, Inc.	Vi-Tec Manufacturing	
S & F Machine Company, Inc.	J Ryall Machine Works	Victory Machine Tools	Voshage Machine, Inc.	
Samson Manufacturing Company	Saginaw Tool & Die & Precision	Voss Manufacturing, Inc.	W B Tool & Die	
Schafer Gear Works, Inc.	Satellite Tool & Machine Co., Inc.	Wacker Development, Inc.	Waggoner Brighton, Inc.	
Sharp Grinding Company, Inc.	Schucker-Deco Machine, Inc.	Walbrun Tool, Inc.	Waltz Brothers, Inc.	
Sibo Tool & Die Company	Shell Die Mold, Inc.	Washington Scientific Industries	Weaver Machine & Tool Company, Inc.	
Skyline Manufacturing Corporation	Sidney Machine Service, Inc.	Weld Lab	Welding Metallurgy, Inc.	
Skyway Precision Inc.	Skylock Industries, Inc.	Weldments of Florida	Wells Machine Company, Inc.	
Slantco Machine & Tool	Slankers, Inc.	West Georgia Tool & Die, Inc.	West Point Foundry and Machine	
Smith-West	Smith Welding Works, Inc.	West Warwick Machine Company, Inc.	Westco Manufacturing Co., Inc.	
Space Craft Manufacturing Co., Inc.	Southern Numerics, Inc.	Western Machine & Manufacturing	Westwood Precision, Inc.	
Spalding & Day Tool & Die Company	Spaceonics Industries	Wesval, Inc.	Wetmore Cutting Tools	
	Spark Technologies, Inc.	Whip's Tool & Cutter Grinding	Whitco Manufacturing	
		Whitehead Tool & Die, Inc.	The Will-Burt Company	
		Will-Mor Engineering Company, Inc.	Williams Machine Company, Inc.	

[FR Doc. 89-29433 Filed 12-18-89; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

[Docket No. 91287-9257]

Taking and Importing of Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of proposed determination to accept an alternative international observer program.

SUMMARY: The Under Secretary for Oceans and Atmosphere proposes to extend the current determination that the international observer program which is administered by the Inter-American Tropical Tuna Commission (IATTC) on behalf of Ecuador, Mexico, Panama, Vanuatu, Venezuela, and any subsequent harvesting nation which applies to NOAA for a positive finding, is acceptable at a level of 33 percent observer coverage for all fishing trips of nations with ten or more vessels, and proposes to modify the determination to require 50 percent observer coverage for all fishing trips of nations with from five to nine vessels. This level of observer coverage will provide sufficiently reliable documentary evidence of the average dolphin mortality rate for each participating harvesting nation. The notice also requests comments on two methods that can be used to determine whether the estimated dolphin mortality rates for foreign nations are comparable to U.S. rates. This finding will apply to the foreign observer program during 1990 only and may be modified during the year by further notice.

DATE: Comments on this proposed determination are invited and must be postmarked on or before January 18, 1990. After comments have been considered, a final determination will be published.

ADDRESS: Comments may be mailed to E.C. Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Room 2005, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: E.C. Fullerton, Regional Director, or J. Gary Smith, Deputy Regional Director, Southwest Region, NMFS, at (213) 514-6196.

SUPPLEMENTARY INFORMATION: In the 1988 reauthorization of the Marine Mammal Protection Act (MMPA), the U.S. Congress amended the Act to add new import requirements for nations exporting yellowfin tuna to the United States that were caught with purse seine nets in the eastern tropical Pacific Ocean (ETP). Among other things, Congress required that the average rate of incidental marine mammal mortality by vessels of harvesting nations be no more than 2.0 times that of the U.S. vessels during the same time period by the end of 1989 and no more than 1.25 times that of the United States during subsequent years.

Congress further required that the rate of incidental mortality be monitored by observers under the IATTC dolphin program or an equivalent international program in which the United States participates and which achieves an observer coverage rate equal to that achieved by the U.S. fleet. Congress, however, provided that the Secretary may approve an alternative observer program 60 days after publishing the alternative proposal in the **Federal Register** along with the reasons it will provide sufficiently reliable documentary evidence of the average marine mammal mortality rate by each harvesting nation.

On May 10, 1989, NMFS published (54 FR 20171) a proposed determination that, for the 1989 fishing year, 33 percent coverage of a harvesting nation's purse seine fleet's fishing trips during the year by IATTC observers would provide sufficiently reliable estimates of the average dolphin mortality rates of those fleets. That notice described fully the domestic and international observer programs. The proposed determination became effective on July 10, 1989. NMFS accepted 33 percent observer coverage for 1989 because in general that level produced a mortality rate estimate with a coefficient of variation (a measure of the precision of the estimate) that is similar to that of the U.S. dolphin mortality rate estimate during recent years. Currently, the level of observer coverage maintained by harvesting nations in the IATTC program remains at or above the 33 percent level (Table 1.)

TABLE 1.—PERCENT OBSERVER COVERAGE BY NATION, 1986-1989

[Source: NMFS]

Nation	Percent of vessel trips observed			
	1986	1987	1988	1989[1]
Ecuador	7.9	9.5	35.9	32.6
Mexico	26.1	27.0	38.2	37.2
Panama	42.8	13.3	30.0	44.4
Vanuatu	31.6	34.5	30.0	34.5

TABLE 1.—PERCENT OBSERVER COVERAGE BY NATION, 1986-1989—Continued

[Source: NMFS]

Nation	Percent of vessel trips observed			
	1986	1987	1988	1989[1]
Venezuela	21.7	21.5	31.0	37.0

[1] Preliminary data from IATTC as of 9/30/89.

In a legal challenge to the May 10, 1989 approval of an alternative foreign observer program with less than 100 percent coverage for 1989, the Federal District Court for the Northern District of California ruled that the Secretary of Commerce has the discretion to accept an alternative observer program as long as the program provides sufficiently reliable documentary evidence of the average rate of the incidental taking of dolphin.

Following further review of observer data and considering the more stringent mortality rate standard of 1.25 times the U.S. rate to be applied to the observer data collected on foreign fleets in 1990 and beyond, NMFS statisticians have reexamined the foreign observer coverage requirements and the statistical methods used in the 1989 determination to determine comparability of mortality rates.

Acceptable Level of Observer Coverage

The Under Secretary for Oceans and Atmosphere proposes to extend the present determination approved for 1989 (54 FR 20171-20174) which accepted a level of foreign observer coverage of 33 percent for Mexico and Venezuela which have fleets of 10 vessels or greater and to modify the determination to require 50 percent observer coverage for Ecuador, Panama, and Vanuatu which have fleets of five to nine vessels. The determination is based on a finding by NMFS statisticians that at these levels of observer coverage sufficiently reliable documentary evidence of the average rate of incidental taking by a harvesting nation can be obtained within a relative measure of variability, coefficient of variation (CV), that does not exceed 20 percent. While the NMFS does not have a direct responsibility to estimate the total mortality of the international fleet, the NMFS considers it necessary to continue to monitor total dolphin mortality on a stock by stock basis to ensure that any stock is not adversely affected by the incidental taking by all fleets. As a matter of policy, the NMFS has used a CV of 20 percent or less as the acceptable level of precision for establishing the observer sample size necessary to estimate the total U.S. dolphin mortality on an annual basis since 1979. A CV of 20 percent also is the acceptable level of precision used by the NMFS to estimate the size of individual dolphin stocks.

This determination of acceptable observer coverage is made in the absence of a quantifiable means of accounting for any "observer effect", if one exists, and is based on the assumption that the unobserved mortality rate is the same as the mortality rate from observed vessels. However, there is concern that the mortality on observed vessels is less than that on unobserved vessels.

Although observer coverage of 33 percent and 50 percent are statistically acceptable to determine comparability of average mortality rates, there are several benefits from 100 percent coverage that make a higher level of coverage more desirable. First, the larger observer coverage improves the accuracy of the overall estimates of the mortality rates by reducing the uncertainty due to any "observer effect". Observer coverage at the 100 percent level also provides the most accurate basis to determine whether or not no more than 15 percent eastern spinner or no more than 2 percent of coastal spotted dolphin are taken annually as required by the MMPA. It also makes more data available to foreign governments and industry that is desirable for the most effective implementation of their vessel operator performance system and enforcement programs that were required in the 1988 amendments to obtain import findings under the MMPA.

A 100 percent foreign observer program will require time to implement and resources that are not presently available. The IATTC estimates that an additional $1.23 million will be necessary to implement a 100 percent observer program. It also estimates that it would take about 8 months to establish a 100 percent observer program as formal agreements must be made with member and non-member governments to establish a program and to recruit, train, and place qualified observers aboard the nation's vessels. Presently, sources of funding have not been determined to initiate an expanded program as Panama and the United States are the only IATTC member nations which purse seine tuna in the ETP; other member nations, France, Japan, and Nicaragua do not purse seine for tuna in the ETP. The other harvesting nations which purse seine for tuna in the ETP, Ecuador, Mexico, Vanuatu, and Venezuela, are not members of the

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IATTC but participate in the IATTC observer program voluntarily.

addition, any intermediary nation that trades in yellowfin tuna with an

In this case, the kill-per-set of the foreign fleet would have to be less than

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NMFS statisticians have only had a preliminary look at the problem of determining whether a fleet's annual

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IATTC but participate in the IATTC observer program voluntarily.

In the absence of an institutional arrangements to expand the foreign observer program at this time, NMFS is proposing to accept an alternative foreign observer program with less than 100 percent observer coverage while continuing to pursue an institutional arrangement which will provide for an expanded program. The proposed determination to accept an alternative foreign observer program will extend to the end of 1990 or to such earlier time as arrangements can be made to expand the level of observer coverage.

Mortality Rate Measure

Since the May 10, 1989, determination was made accepting an alternate foreign observer program for 1989, NMFS statisticians have continued to examine the best methods for comparing foreign and domestic dolphin mortality rates. Further analysis indicates that the best criterion for comparing U.S. and foreign mortality rates is the number of dolphins killed-per-set rather than the number of dolphins killed-per-ton of tuna caught on dolphin that was used in the 1989 determination. They found that either kill-per-ton or kill-per-set are statistically valid measures of a fleet mortality rate. In the past, NMFS used kill-per-ton as a measure of the cost of incidental taking of dolphin associated with tuna. Under the 1988 amendments to the MMPA, new provisions were added that require the measurement of the performance of skippers in both the domestic and foreign fleets according to their proficiency in reducing dolphin mortality. A kill-per-set standard more appropriately measures the success of a skipper in reducing dolphin mortality and does not require an observer to correctly estimate the tons of tuna taken in a set. Therefore, kill-per-set will be the standard for measuring the comparability of mortality rates.

Determination of Comparability

The primary purpose of this notice is to propose the alternative international observer program as discussed above. However, an important adjunct to this proposal is how the estimated mortality rates will be used to compare the U.S. rate to the rates of foreign fleets. The method used for mortality rate comparisons is important because the results determine whether a harvesting nation will continue to have its yellowfin tuna enter the United States. If a harvesting nation fails the comparability test and is embargoed, it may determine that its fleet no longer has a commitment to reduce dolphin mortality according to U.S. standards. In addition, any intermediary nation that trades in yellowfin tuna with an embargoed nation must itself embargo further trade in yellowfin tuna from that harvesting nation within 60 days or be embargoed from exporting yellowfin tuna to U.S. markets. Both harvesting nations and intermediary nations which are embargoed and fail to correct negative findings after six months are subject to certification under provisions of the Pelly Amendment which could lead to embargoes of all their fish and fish products.

Two methods for determining comparability of foreign and U.S. dolphin mortality rates, each with potentially different results, have been examined. Although it is not necessary to decide which of the two methods should be adopted at this time, NMFS considers it prudent to seek comments on which method seems most consistent with the purposes and policies of the MMPA. For this reason, a description and discussion of the benefits and limitations of both methods are presented for public comment.

Direct Method to Determine Comparability

The direct method uses the actual point estimates calculated from observer data and applies them directly to the tests in the 1988 amendments to the MMPA (i.e., no more than 1.25 times, 15 percent and 2 percent, etc.). Under this method, the dolphin mortality rates of harvesting nations are compared to the U.S. rate, regardless of fleet size. If the average rate of dolphin mortality is more than 1.25 times the weighted average rate of the U.S. fleet for the same time period or the annual mortality limitations for either eastern spinner or coastal spotted dolphin exceeds 15 or 2 percent, respectively, the harvesting nation is embargoed.

(a) Mortality Rate of Comparison—This is the simplest approach because it only involves a determination of the average observed mortality rate for a nation's fleet and a mathematical calculation as to whether that rate exceeds 1.25 times the U.S. weighted rate. This approach guarantees that no nation whose observed dolphin mortality rate in 1990 is greater than the statutory limits in the MMPA would be found comparable to the U.S. rates.

As an example of how this method would be applied, if a foreign fleet had an observed kill-per-set of 6.0 dolphins and if the weighted average kill-per-set of the U.S. fleet (See 54 FR 9438, March 7, 1989) were 4.0 dolphins, the foreign nation would fail the comparability test because 6.0 is greater than 1.25*4.0 (5.0). In this case, the kill-per-set of the foreign fleet would have to be less than or equal to 5.0 dolphins to be found comparable.

The direct method, however, fails to take into account Type I and Type II statistical errors in making a determination. A Type I statistical error is made in this instance with a fleet's dolphin mortality rate is rejected when it was actually equal to or less than the U.S. rate; a Type II error is made when a fleet's mortality rate is accepted when it actually was greater than the U.S. rate. Based on an analysis of data from the U.S. fleet in 1987, if 1.25 times the U.S. weighted average mortality rate is used as the threshold for passing the comparability test, a fleet with 10 vessels at 33 percent observer coverage and a mortality rate from the same underlying distribution as the observed U.S. fleet would fail the comparability test by *chance alone*, 18 percent of the time. If the same fleet had kill rates that were from a distribution with mean of 1.25 times and 1.5 times the weighted U.S. rate, it would be found comparable (i.e., a Type II error would be made), 56 percent of the time and 33 percent of the time, respectively. Error rates of this magnitude in making comparisons between fleets of different sizes are generally considered unacceptable in the management of marine resources.

(b) Species Composition Comparisons—This comparison under the direct method also involves a simple mathematical calculation to determine whether the percentage of the actual observed mortality of eastern spinner and coastal spotted dolphins is 15 percent and 2 percent respectively of the total take of dolphins by a fleet in a given year. As with the comparison of mortality rates, using the direct method for determining species composition does not take into account statistical variations due to differences in fleet size. For example, a nation with a small fleet whose annual mortality of dolphins is 1,000 animals may take no more than 150 eastern spinner and 20 coastal spotted dolphin in order to comply with the 15 and 2 percent test. A single problem set by a small fleet involving either stock of dolphin could likely cause that fleet's nation to fail the test and lead to the embargo of its tuna products. However, a nation with a larger fleet which has an annual mortality of 30,000 dolphin may take up to 4,500 eastern spinner and 600 coastal spotted dolphin thereby avoiding the possibility of being embargoed based on a single problem set.

For both of these comparisons, the problems of statistical variation in comparing fleets of different sizes can be reduced somewhat by increasing observer coverage, but even with a 100 percent observer coverage the probability of rejecting a nation on chance alone remains.

Statistical Method to Determine Comparability

The statistical method recognizes the variation that exists for estimates of mortality rates and other parameters that are based on data from sampling schemes having less than 100 percent observer coverage or variation among estimates due to differences in fleet size. While differences in fleet sizes were explicitly recognized in the legislative history of previous MMPA amendments, the current legislative history provides no guidance on how to treat the variation known to exist from comparisons made between dissimilar fleet sizes. This is of particular concern when comparing the U.S. fleet with the smaller fleets currently purse seining in the ETP (i.e., the fleets of Ecuador, Panama, and Vanuatu which are about one third the size of the U.S. fleet (Table 2.)).

TABLE 2.—NUMBER OF TUNA PURSE SEINE VESSELS (CAPACITY>400 TONS) OPERATING IN THE ETP BY NATION, 1986–1989

[Source: NMFS]

Flag	Number of vessels, by year			
	1986	1987	1988	1989
Large Fleets				
Mexico	41	50	48	51
United States	34	34	34	27
Venezuela	15	25	22	26
Subtotal	90	109	104	104
Percent	89.1	87.9	87.4	84.6
Small Fleets				
Ecuador	4	4	4	8
Panama	3	5	5	6
Vanuatu	3	5	5	5
Subtotal	11	15	15	19
Percent	10.9	12.1	12.6	15.4
Total Vessels	101	124	119	123

To adopt the statistical method approach, NMFS would have to assume that, in comparing rates of mortality, Congress intended that any inequities created by variation in fleet sizes could be addressed through the discretionary authority of the Secretary of Commerce in adopting appropriate and reliable statistical methodology consistent with the purpose and policies of the MMPA. Two statistical approaches are examined for comparing the rates of large fleet sizes with small fleet sizes: the coefficient of variation and probability of error methods.

Coefficient of Variation

The coefficient of variation (CV) of dolphin mortality is the relative measure of variability that was initially used to establish 33 percent as the acceptable level of foreign observer coverage in 1989. It describes the precision of the estimated mortality rates for different fleet sizes and different observer coverage levels. As a matter of policy, the NMFS has used a CV of 20 percent or less as the acceptable level of precision for establishing the U.S. observer sample size necessary to estimate the total U.S. dolphin mortality on an annual basis since 1979.

(a) Mortality Rate Comparison—In using the CV approach to compare mortality rates, it is necessary to assume that the distribution of the mean kill-per-set for a foreign fleet approximates a normal distribution and that the variance of the weighted average kill-per-set of the U.S. fleet is negligible. As an example of how this method would be applied, if a foreign fleet had a kill-per-set of 6.0 dolphins per set and an estimated CV of 20 percent (based on data provided by the foreign nation), a 90 percent confidence interval would be estimated by taking 6.0± 1.64*.20*6.0 (90 percent confidence interval: 4.0–8.0). In this case, if the U.S. weighted average kill-per-set were 4.0 dolphins per set, the foreign nation would pass the comparability test because the 90 percent confidence interval includes 1.25*4.0 (=5.0). If the foreign fleet had a mortality rate that was distributed equal to the U.S. fleet, under a 33 percent rate of observer coverage, the foreign fleet would be expected to fail the comparability test by chance alone, 10 percent of the time.

(b) Species Composition Comparisons—The underlying variability referred to in the section above on mortality rate comparisons also exists when determing whether a nation's take of eastern spinner and coastal spotted dolphin exceeds 15 and 2 percent, respectively, of the fleets' total annual mortality. As discussed above under the direct method, this is particularly important for nations having small fleets whose lower annual observed mortality is much more sensitive to changes in the absolute number of coastal spotted dolphin killed compared to larger fleets which are alowed a mortality several times that amount because their total kill is much larger.

NMFS statisticians have only had a preliminary look at the problem of determining whether a fleet's annual mortality of eastern spinner dolphins and coastal spotted dolphins is significantly greater than 15 percent and 2 percent of their total mortality (Table 3).

TABLE 3.—PERCENT OF EASTERN SPINNER DOLPHIN (ES) AND COASTAL SPOTTED DOLPHIN (CS) IN TOTAL ANNUAL MORTALITY OF ETP NATIONS, 1986–1988

[Source: NMFS]

Country	1986		1987		1988	
	ES	CS	ES	CS	ES	CS
United States	7	0	19	0	14	0
Ecuador	2	*	0	*	4	*
Mexico	19	*	13	*	32	*
Panama	2	*	19	*	1	*
Vanuatu	0	*	1	*	1	*
Venezuela	3	*	5	*	10	*

*=No data available as coastal spotted dolphin were not reported as a separate stock prior to 1989.

As there are so few coastal spotted dolphin reportedly taken by the U.S. fleet, there is no way of determining what the distribution around the percentage of coastal spotted dolphin in the total mortality would be. The NMFS is considering the merit of calculating a confidence interval around the percent kill of eastern spinner and coastal spotted dolphin in the incidental take based on the CV of the percent kill of these two stocks. However, the calculations will require that the following data be provided by nations to the United States for each trip observed: (1) Number of easter spinner dolphin killed, (2) number of coastal spotted dolphin killed, and (3) total number of dolphins killed.

Probability of Error

The probability of error method addresses the variability of fleet size in another way. There are two basic approaches to apply the probability of error method: (a) The Multiplier option, and (b) the direct comparison option.

(a) Multiplier Option—This approach evaluates the probability of obtaining a value as large or larger than the observed kill-per-set of the foreign fleet from a normal distribution with a mean based on a 1.25 multiplier of the weighted average kill-per-set of the U.S. fleet giving equal consideration to the Type I and Type II statistical errors. This 1.25 multiplier is

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based on the comparability standard set forth in the 1988 MMPA amendments. The variance of the distribution is estimated by the variance of the distribution of a simulated U.S. fleet of equal size at 100 percent observer coverage. Using this approach it is necessary to assume that: (1) The variance of the distribution of the foreign fleet's kill-per-set can be approximated by the estimated variance of a simulated distribution of the U.S. fleet, and (2) the variability of the weighted average kill-per-set of the U.S. fleet due to observer coverage of slightly less than 100 percent is negligible. It is generally believed that the variance between sets for a foreign fleet will be greater than the variance between sets for the U.S. fleet (i.e., the percentage of sets where more than 15 dolphins are killed is greater for a foreign fleet than for the U.S. fleet). If this assumption is true, there is impetus for the foreign nation whose fleet has a mortality rate similar to the U.S. fleet to increse its observer coverage because of the increased probability of failing the comparability test by chance alone.

The NMFS is aware that the underlying variability in the distribution of kill-per-set may change as the species composition of the kill changes. The NMFS is considering the merit of using the variability from simulated distributions of the U.S. fleet at 100 percent observer coverage to represent the variability of a foreign fleet of different size that may fish in different areas than the U.S. fleet and is likely to have observer coverage less than 100 percent. If the proposed approach is considered inadequate, the only other option for estimating this variability would be to require foreign nations to submit all data collected by observers to the United States for analysis. NMFS is requesting the data to perform this analysis. NMFS is aware that the distribution of the kill-per-set statistic for small fleets may not be normally distributed. The NMFS is requesting comments on the merit of using a nonparametric approach to assess comparability in mortality rates between the U.S. fleet and a foreign fleet.

Because making a Type I error (i.e., rejecting a fleet's mortality rate when it should be accepted) could be construed as disadvantaging a foreign fleet, and while making a Type II error (i.e., accepting a fleet's mortality rate when it should be rejected) could be construed as disadvantaging dolphin stocks, it is recommended in applying this approach that the Type I and II errors be made equal and fixed for all fleet sizes. It is also recommended that the Type I and II error rates be set at 0.1. This is the same error rate that was used in the experimental design of the NMFS dolphin monitoring program. In determining an appropriate error level, it should be kept in mind that as the specified level of making a Type I statistical error is reduced (given they are set equal), it will require a greater difference between the mortality rates of the U.S. and foreign fleet to be detectable at a specified error rate.

As an example of how this method could be applied, if the U.S. fleet had a weighted average mortality rate of 4.0 dolphins per set and a foreign fleet consisted of 10 vessels, the mortality rate of the foreign fleet would have to be greater than or equal to 6.0 dolphins per set to fail the comparability test. Given the same kill rate and a fleet size of 45 vessels, the mortality rate of the foreign fleet would have to be greater than 5.45 to fail the comparability test. In the above examples, there is a chance (albeit 10 percent or less, or one time in 10 years as determinations are made annually) that mortality rates for 10 vessel fleets that are normally distributed with a mean mortality rate that is 1.9 times the U.S. weighted mortality rate (7.6 dolphins per set in the example) would be found comparable. Similarly, for 45 vessel fleets or greater, there is a 10 percent chance that mortality rates that are normally distributed with a mean mortality rate of 1.5 times the weighted U.S. rate (6.0 dolphins per set in the example) would be found comparable under this approach.

The probability of making a Type II error can be reduced somewhat by using the smaller error margin of 0.05. Doing this gives greater consideration toward the probability of appropriately rejecting a foreign fleet. It thus attempts to err more on the side of conservation (i.e., in the face of uncertainty, errors in management should favor the marine mammal population).

For example, if the Type II error is set at 0.05 (one chance is 20 that a fleet's mortality would be accepted when it should have been rejected), and if the U.S. weighted mortality rate was 4.0 dolphins per set and if the Type I error were set at 0.10 (one chance in 10 of rejecting a fleet's mortality when it should have not been rejeted), a 10 vessel fleet with a mortality rate that was normally distributed with mean 2.0 times the weighted U.S. mortality rate would be appropriately rejected 95 percent of the time. If the Type I error rate were increased to 0.4, a 10 vessel fleet with a mortality rate that was normally distributed with a mean of 1.7 times the weighted U.S. mortality rate would be appropriately rejected 95 percent of the time. For a 45 vessel fleet with normally distributed mortality rates of 1.56 times and 1.45 times the U.S. weighted mortality rate, the Type II error would be 0.05, given a Type I error of 0.1 and 0.4, respectively.

(b) Direct Comparison Option—The direct comparison option uses an estimate of the probability of obtaining a value as large or larger than the observed foreign mortality rate from a normal distribution with a mean equal to (1.0 times) the U.S. weighted average mortality rate rather than 1.25 times the U.S. weighted rate.

Based on 1987 U.S. data, if the direct comparison approach were used for a 45 vessel fleet or greater, a mortality rate that was from a normal distribution with mean of 1.25 times the U.S. weighted mortality rate would be appropriately rejected 90 percent of the time (Table 4.). For a 10 vessel fleet, a mortality rate from a normal distribution with mean of 1.6 times the U.S. weighted mortality rate would be appropriately rejected 90 percent of the time. Operationally, this approach would cause a fleet of 10 or more vessels to fail the comparability test if its mortality rate were greater than 5.0 dolphins-per-set, given the U.S. weighted mortality rate was 4.0 dolphins-per-set. For a five vessel fleet, a kill-per-set of 5.4 or greater, given the same weighted mortality rate for the U.S. fleet, would fail the comparability test.

TABLE 4.—APPROXIMATE MORTALITY THRESHOLDS FOR DIFFERENT FLEET SIZES USING DIRECT COMPARISON METHOD WITH MULTIPLIER = 1.0 AND TYPE I ERROR AND TYPE II ERROR = 0.10. [1]

Size of fleet	Type I error threshold	Type II error threshold
1–9	1.35	1.90
10–19	1.25	1.80
20–44	1.20	1.40
45 or more	1.15	1.25

[1] Thresholds are based on a U.S. weighted average mortality rate of 3.4 dolphins per set.

The multiplier option determines whether the mortality rate of a foreign fleet is significantly different from 1.25 times the weighted mortality rate of the U.S. fleet. While this option accounts for Type I and Type II errors, it may potentially create an unacceptably high probability of allowing a nation to pass the comparability test when in fact it does not. This is an unavoidable result of the effects of the variability in kill-per-set and setting the Type I and Type II errors at 0.1 and using the 1.25 times the weighted average mortality rate as the mid-point of the range of acceptable mortality rates. Unfortunately, increasing the rate of coverage does very little to improve this situation. While NMFS believes that the multiplier option may be statistically more defensible than the direct method to determine comparability between fleets of different sizes, it may be biased in the direction of large Type II errors, which may be perceived to be to the disadvantage of dolphin stocks.

The direct comparison test, on the other hand, is based on the statistical significance between the actual mortality rates from a foreign fleet and the U.S. fleet. The NMFS believes that this approach avoids an unfair bias in applying the comparability test against small vessel fleets, while still rejecting most of the fleets with mortality rates actually above 1.25 times the weighted mortality rate of the U.S. fleet.

The probability of error method is not considered appropriate to determine whether a fleet's annual mortality of eastern spinner is significantly greater than 15 percent of their total mortality because the percent of eastern spinner dolphins in the total mortality of a fleet is symmetrically distributed around the mean. Therefore, a simpler, yet, statistically reliable comparison can be made based on the CV method. Data for coastal spotted dolphin are presently not available for the U.S. fleet due to no observed mortalities; reporting of coastal spotted dolphin by foreign fleet was not required prior to 1989. Further application of this method to eastern spinner dolphin and coastal spotted dolphin will be considered pending the availability of additional data from foreign fleets.

Therefore, if the statistical method is adopted, NMFS would recommend the Probability of Error, Direct Comparison Option in comparing the kill-per-set data of the U.S. fleet with a foreign fleet to determine the average overall rate of incidental taking in conducting the comparability test specified in the MMPA. In addition, NMFS would recommend the Coefficient of Variation option in comparing the percentage of eastern spinner and coastal spotted dolphins taken to the legislatively mandated levels of 15 percent and 2 percent. To perform these analyses a foreign fleet will have to provide the following data during each observed trip for a given calendar year: (1) Number of sets made on dolphins in each of three areas and for two species groupings, (2) number of eastern spinner dolphin killed, (3) number of coastal spotted dolphin killed, and (4) total number of dolphins killed.

Proposed Determination

The Under Secretary for Oceans and Atmosphere, NOAA, proposes to extend the current determination effective January 1, 1990 that the international observer program of the IATTC will provide sufficiently reliable documentary evidence of the average mortality rate of marine mammals by an individual harvesting nation if the observer coverage for a nation with ten or more vessels operating in the ETP is no less than 33 percent of the fishing trips during the year or 50 percent of the trips for a nation with from five to nine vessels operating in the ETP. An alternative observer program for a nation with fewer than five vessels is not proposed to be found acceptable under this determination.

This proposed determination is for 1990 unless modified by another notice.

Dated: December 11, 1989.

James E. Douglas, Jr.,

Acting Assistant Administrator for Fisheries.

[FR Doc. 89-29403 Filed 12-18-89; 8:45 am]

BILLING CODE 3510-22-M

National Fish and Seafood Promotional Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

Time and Date: The meeting will convene at 9:00 a.m. on Wednesday, January 10, and adjourn approximately 5:30 p.m. on Thursday, January 11, 1990.

Place: Ilikai Hotel, 1777 Alan Moana Boulevard, Honolulu, Hawaii 96815.

Status: NOAA announces a meeting of the National Fish and Seafood Promotional Council (NFSPC). The NFSPC, consisting of 15 industry members and the Secretary of Commerce as a non-voting member, was established by the Fish and Seafood Promotion Act of 1986 to carry out programs to promote the consumption of fish and seafood and to improve the competitiveness of the U.S. fishing industry.

The NFSPC is required to submit an annual marketing plan and budget to the Secretary of Commerce for his approval that describes the marketing the promotion activities the NFSPC intends to carry out.

Funding for NFSPC activities is provided through Congressional appropriations.

Matters To Be Considered

Portion Opened to the Public

January 10, 1990

9:00 a.m.–12 noon—Briefing on the HACCP program and status of legislation for mandatory seafood inspection, briefing by the State of Hawaii on fisheries programs; and update and decision on the Council's participation in the omnibus seafood consumption study. 12:30 p.m.–1:30 p.m.—Lunch. 1:30 p.m.–5:30 p.m.—Update on trade and export marketing; American Seafood Challenge; Long-range planning committee report; and general business including the International Seafood Conference, Astoria, Oregon project and upcoming meetings.

Portion Closed to the Public: None.

FOR FURTHER INFORMATION CONTACT: Jeanne M. Grasso, Program Manager, National Fish and Seafood Promotional Council, 1825 Connecticut Avenue NW., Room 620, Washington, DC 20235. Telephone: (202) 673–5237.

Dated: December 12, 1989.

James E. Douglas, Jr.,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 89-29455 Filed 12-18-89; 8:45 am]

BILLING CODE 3510-22-M

South Atlantic Fishery Management Council; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearings and request for comments.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a series of public hearings and provide a comment period to solicit public input into proposed Amendment 1 to the Atlantic Swordfish Fishery Management Plan (FMP).

DATES: Written comments will be accepted until February 9, 1990. See **SUPPLEMENTARY INFORMATION** for dates, times, and locations of the hearings.

ADDRESS: Written comments should be sent to Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699.

FOR FURTHER INFORMATION CONTACT: Carrie R.F. Knight, Public Information Officer, South Atlantic Fishery Management Council, 803–571–4366.

SUPPLEMENTARY INFORMATION: Amendment 1 to the FMP was prepared

by the Council, in consultation with the New England, Mid-Atlantic, Caribbean,

2. January 4, 1990, 7:00 p.m.—Port Isabel Community Center, Corner of

National Technical Information Service

Organic Nitriles as Insect Antifeedants
SN 7-371,881
Automated Excision of Undesirable

SN 7-315,590
Method of Synthesis of Hydroxy-Subsistuted-4-Alkoxyphenylacetic Acids

Generic Microcomputer Interface to Walters Interlink Communications Network

VOL 54 ISS 242 DEC 19 1989 UMI

by the Council, in consultation with the New England, Mid-Atlantic, Caribbean, and Gulf of Mexico Fishery Management Councils, and affects fishermen in the Atlantic Ocean, including the Caribbean and Gulf of Mexico. The western North Atlantic stock of swordfish is considered to be severely overfished. The most recent stock assessment indicates that the adult spawning stock biomass in 1987 was about 40 percent of the 1978 level and has continued to decline. The Councils determined that the principal management measure of Amendment 1 would be an overall quota to be determined by an acceptable biological catch (ABC) based on the spawning stock biomass.

Amendment 1 to the FMP will address the following measures: (1) ABC in the initial year (1991) will be 3.83 million pounds dressed weight stock-wide; (2) total allowable catch (TAC) for the U.S. fishery is 1.85 million pounds dressed weight for the initial year (1991); (3) directed fishing for swordfish is prohibited until the TAC for the upcoming year exceeds the projected bycatch potential by at least 10 percent; (4) use of artificial lights and/or lightsticks on longlines is prohibited until the directed fishery is re-opened; (5) the TAC will be allocated entirely to the bycatch fishery in the initial year using a two-tiered bycatch allocation system (The initial bycatch allocation will be 6 swordfish per trip. If the vessel carries and pays for an observer, all dead swordfish may be retained if the observer certifies that they were a legitimate bycatch of directed tuna fishing.); (6) nighttime longlining would be prohibited after the quota (TAC) is reached (this regulation is to apply to both foreign and domestic longline fisheries inside the exclusive economic zone); (7) imports of swordfish from the same stock will be prohibited after the quota is taken and the U.S. fishery is closed; (8) recreational fishing allocation will be 110 fish subject to the following restrictions: (a) Sale is prohibited; (b) minimum size of 150 lb. whole weight (no minimum size and 75 lb. minimum size is also being considered); (c) rod and reel only; (d) a permit or stamp may be issued to track the quota; (9) a control date of August 16, 1989, is established as a benchmark for possible limited entry; and (10) drift entanglement gill net fishing is prohibited in the swordfish fishery.

The hearings are scheduled as follows:

1. January 3, 1990, 7:00 p.m.—Freeport Community House, 1300 W. 2nd Street, Freeport, Texas.

2. January 4, 1990, 7:00 p.m.—Port Isabel Community Center, Corner of Yturria and Maxan, Port Isabel, Texas.

3. January 8, 1990, 7:00 p.m.—NMFS Panama City Lab, 3500 Delwood Beach Road, Panama City, Florida.

4. January 9, 1990, 7:00 p.m.—Palm Aire Hotel Spa, 2501 Palm Aire Drive North, Pompano Beach, Florida.

5. January 10, 1990, 7:00 p.m.—Madiera Beach City Auditorium, 300 Municipal Drive, Madiera Beach, Florida.

6. January 10, 1990, 7:00 p.m.—Howard Johnson Hotel, 6401 Veterans Boulevard, Metairie, Louisiana.

7. January 16, 1990, 7:00 p.m., N.C. Division of Marine Fisheries, 3411 Arendell Street, Morehead City, North Carolina.

8. January 17, 1990, 7:00 p.m.—S.C. Wildlife & Marine Resources Center, Fort Johnson Road, Charleston, South Carolina.

9. January 22, 1990, 7:00 p.m.—Quality Inn—Lake Wright, 6280 N. Hampton Boulevard, Norfolk, Virginia.

10. January 23, 1990, 7:00 p.m.—Sheraton Inn, Route 13, Salisbury, Maryland.

11. January 23, 1990, 2:00 p.m.—Colegio de Ingenieros, Antolin Nin and Skerret Street, Roosevelt Dev., Hato Rey, Puerto Rico.

12. January 24, 1990, 7:00 p.m.—South Wall Township Fire Company, West Atlantic Avenue (Route 34), Wall, New Jersey.

13. January 24, 1990, 2:00 p.m.—Mayaguez Hilton Hotel, Salon Hostos, Mayaguez, Puerto Rico.

14. January 25, 1990, 7:30 p.m.—Holiday Inn, Ronkonkoma, 3845 Veterans Memorial Highway, Long Island, New York.

15. January 25, 1990, 7:30 p.m.—Legislature Building, Conference Room, Charlotte Amalie, St. Thomas, United States Virgin Islands.

16. January 30, 1990, 7:00 p.m.—Holiday Inn, 88 Spring Street, Portland, Maine.

17. January 31, 1990, 7:00 p.m.—Skipper's Inn, 10010 Middle Street, Fair Haven, Massachusetts.

18. February 1, 1990, 7:00 p.m.—Dutch Inn, Great Island Road, Galilee, Rhode Island.

Dated: December 12, 1989.

Richard H.Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-29460 Filed 12-18-89; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Government-Owned Inventions; Notice of Availability for Licensing

December 5, 1989.

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Licensing information and copies of patent applications bearing serial numbers with prefix E may be obtained by writing to: Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151. All other patent applications may be purchased, specifying the serial number listed below, by writing NTIS, 5285 Port Royal Road, Springfield, Virginia or by telephoning the NTIS Sales Desk at (703) 487-4650. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

Department of Agriculture

SN 7-7-189,979
(4,842,884) Formulated Milk Concentrate and Beverage
SN 7-192,085
(4,837,399) Naphthoquinone Antibiotics for Fusarium solani
SN 7-289,907
Novel Pyrrolizidine Alkaloid
SN 7-359,172
Attractants for the Rose Chafer Macrodactylus subspinsus (F.)
SN 7-359,174
Green Leaf Volatiles as Synergists for Insect Pheromones
SN 7-366,702
System for Producing Core/Wrap Yarn
SN 7-366,844
Trichinella Spiralis Antigens for Use As Immunodiagnostic Regents or Vaccines
SN 7-366,963
Campylobacter jejuni Colonization Factor
SN 7-369,587
Enzymatic Deamidation of Food Proteins for Improved Food Use
SN 7-369,975
Genetically Engineered Microorganisms Containing a Gene Segment Coding for a Lipase from Rhizopus delemar
SN 7-371,879
Organic Nitriles as Insect Antifeedants
SN 7-371,881
Automated Excision of Undesirable Material and Production of Starting Matererial for Restriction Meat
SN 7-373,545
System for Producing Yarn
SN 7-373,977
More Virulent Biotype Isolated from Wild-Type Virus
SN 7-373,978
Oat Soluble Dietary Fiber Compositions
SN 7-376,479
Cross dyeable Cotton Fabrics With Removable Warp Size
SN 7-385,518
Stable Crystalline Cellulose III Polymorphs
SN 7-385,752
Hybridomas and Monoclonal Antibodies Therefrom Having Specific Reactivity Toward Heavy Chain Immunoglobulin from Catfish
SN 7-389,090
Adherent, Autoencapsulating Spray Formulations of Biocontrol Agents
SN 7-389,194
Adventitious Citrus Juice Vesicles from Pre-Existing Juice Vesicles
SN 7-393,604
Production of Fructan(Levan) Polyfructose Polymers Using Bacillus polymyxa

Department of Commerce

SN 7-063,558
(4,838,145) Multiple Actuator Hydraulic System and Rotary Control Valve Therefore

Department of Health and Human Services

SN 7-377,987
Human Liver Epithelial Cell Line and Culture Media Therefor
SN 7-376,687
Rapid, Versatile and Simple System For Expressing Genes In Eukaryotic Cells
SN 7-019,185
(4,836,206) Method and Device for Determining Viability of Intact Teeth
SN 7-064,631
(4,837,311) Anti-Retroviral Compounds
SN 7-126,995
Arabinosyl-5-Azacytosine as an Antitumor Agent
SN 7-234,092
Thin Film Environmental Monitor
SN 7-258,417
Inhibitors for Replication of Viruses
SN 7-286,652
Acid Stable Purine Dideoxynucleosides Active Against The Cytopathic Effects of Human Immunodeficiency Virus
SN 7-305,286
Breath Sampler
SN 7-311,048
Purification and Characterization of a Novel Monocyte Chemotactic and Activating Factor Produced by a Human Myelomonocytic Cell Line
SN 7-313,056
Acid Stable Pyrimidine Dideoxynucleosides Active Against the Cytopathic Effects of Human Immunodeficiency Virus
SN 7-315,911
Method for the Treatment of Cancer by Use of the Cooper Complex of S-(Methylthio)-DL-Homocysteine
SN 7-315,590
Method of Synthesis of Hydroxy-Substituted-4-Alkoxyphenylacetic Acids
SN 7-330,435
Hydrolysis of Proteins, Peptides and Carbohydrates in a Hermetically Sealed Microcapillary Tube or Similar Container Having a Small Cross-Sectional Area About One of its Axis
SN 7-330,435
Automated or Manual Hydrolysis of Proteins, Peptides and Carbohydrates in a Hermetically Sealed Microcapillary Tube or Similar Container Having a Small Cross-Sectional Area About One of its Axis
SN 7-349,187
5-Aminocarbonyl-5H-Dibenzo[a,d]Cyclohepen-5, 10-Imines for Treatment of Epilepsy and Cocaine Addition
SN 7-350,895
Treatment of HIV Infection with Immunotoxin and Immunotoxin for Use Therein
SN 7-351,042
Avidin & Streptavidin Modified Water-Soluble Polymers Such As Polacrylamide, and the Use Thereof in the Construction of Soluble Multivalent Macromolecular Conjugates
SN 7-355,073
New Class of Compounds Having a Variable Spectrum of Activities for Capsaicin-Like Responses, Compositions and Uses Thereof
SN 7-361,850
A Sensitive Diagnostic Test for Lyme Disease
SN 7-365,715
Neutralizing Monoclonal Antibody to Human Platelet Derived Growth Factor Hetero-and Homo-Dimers
SN 7-365,735
Evaluative Means for Detecting Inflammatory Reactivity
SN 7-365,772
Monoclonal Antibody Against Complement Regulatory Protein
SN 7-368,270
Diagnostic Test for Pineal Cell Tumors
SN 7-370,819
Efficient Method For Identifiable Expression of Non-Selectable Genes
SN 7-372,607
Use of Calcium Channel Blocker to Prevent Cocaine Induced Craving and Reinforcement
SN 7-372,815
Method for Protecting Bone Marrow Against Chemotherapeutic Drugs and Radiation Therapy Using Transforming Growth Factor Beta 1
SN 7-373,863
D-Propranolol as a Selective Adenosine Antagonist
SN 7-375,535
Reagents for Detecting SIV and HIV-2
SN 7-386,095
Antigen-Specific Composition and in Vivo Methods for Detecting and Localizing an Antigenic Site and for Radiotherapy
SN 7-386,114
Method Preventing Graft Rejection in Solid Organ Transplantation
SN 7-387,036
Generic Microcomputer Interface to Walters Interlink Communications Network
SN 7-390,745
Partial Agonists of the Strychnine Insensitive Glycine Modulatory Site of the N-Methl-D-Aspartate Receptor Complex as Neuropsychopharmacological Agents
SN 7-393,780
Antiviral Compositions Containing Sulfoquinovosyl Glycerol Derivatives and Analogues Thereof and Methods for Using the Same
SN 7-398,528
Tumor Infiltrating Lymphocytes as a Treatment Modality for Human Cancer
SN 7-398,458
Automated Peptide Design and Synthesis
SN 7-398,564
Grooming and/or Foraging Apparatus for Reduction of Stress in Caged Animals
SN 7-399,079
Human T Cell Line Chronically Infected with HIV
SN 7-400,870
Cell Attachment Peptides Derived from Amyloid P Component
SN 7-401,141
A Method for the Treatment of Dopaminergic Neurodegenerative Disorders
SN 7-401,412
Immunotoxins for Treatment of Intracranial Lesions and as Adjunct to Chemotherapy
SN 7-407,317
Antigen and Immunoassay for Human Immunodeficiency Virus Type 2 (HIV-2)
SN 7-408,815
Molecular Clones of Bovine Immunodeficiency-Like Virus and Applications Thereof
SN 7-409,552
Anti-Hypertensive Compositions of Secondary Amine-Nitric Oxide Adducts and Use Thereof
SN 7-409,557
Phenylcycloalkylamine Compounds as Anatiepileptics
SN 7-412,802
Human Esophageal Epithelial Cell Lines
SN 7-415,710
Method for the Sulfurization of Phosphorous Groups in Compounds
SN 7-425,587
Type I Transglutaminase DNA

Department of the Interior

SN 7-356,049
Method of Detecting Oil Spills at Sea Using a Shipborne Navigational Radar
SN 7-367,846
High Strength Particulate Ceramics
SN 7-375,549
Method of Locating Underground Mine Fires
SN 7-383,111
Method of Effecting Expanding Chemical Anchor/Seals for Rock Cavities
SN 7-401,390
Radial Arm Strike Rail
SN 7-408,586
Method of Extracting Coal from a Coal Refuse Pile

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Department of the Army

SN 7-374,122
High Power Solid State RF Pulse Generators
SN 7-355,582
Method of Using a Ferromagnetic Material Having a High Permeability and Saturation Magnetization at Low Temperatures
SN 7-355,582
Method of Using a Ferromagnetic Material Having a High Permeability and Saturation Magnetization at Low Temperatures
SN 7-367,901
Saw Grating-Waveguide for Reduced Filter Diffraction
SN 7-367,901
Saw Grating-Waveguide for Reduced Filter Diffraction
SN 7-373,537
Saw Slanted Array Correlator (SAC) With Separate Amplitude Compensation
SN 7-373,537
Saw Slanted Array Correlator (SAC) With Separate Amplitude Compensation
SN 7-374,122
High Power, Solid State RF Pulse Generators
SN 7-374,125
Method of Modifying the Dielectric Properties of an Organic Polymer Film
SN 7-374,125
Method of Modifying the Dielectric Properties of an Organic Polymer Film
SN 7-375,218
Periodic Permanent Magnet Structures
SN 7-375,218
Periodic Permanent Magnet Structures
SN 7-379,031
Single Fiber Optical Telephone Set
SN 7-379,031
Single Fiber Optical Telephone Set
SN 7-379,033
High Energy Product Radially Oriented Toroidal Magnet and Method of Making
SN 7-379,033
High Energy Product Radially Oriented Toroidal Magnet and Method of Making
SN 7-393,610
Null Offset Voltage Compensator for Operational Amplifer
SN 7-393,610
Null Offset Voltage Compensator for Operational Amplifier
SN 7-401,202
Method of Making a Cathode from Tungsten and Iridium Powders Using a Reaction Product from Reacting Barium Peroxide with an Excess of Tungsten as the Impregnant
SN 7-405,822
Method of Preparing of Quartz Surface for Sweeping
SN 7-406,930
Method of Identifying the Composition of a Material Sample
SN 7-406,933
Method of Making a Resonator from a Boule of Lithium Tetraborate and Resonator so Made
SN 7-411,752
High Resolution, Wide Bank Chirp-Z Signal Analyzer
SN 7-412,054
Saw Transducer with Improved Bus-Bar Design

Environmental Protection Agency

SN 7-158,966
(4,842,748) Methods for Removing Volatile Substances from Water Using Flash Vaporization

[FR Doc. 89-29423 Filed 12-18-89; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Deduction of Charges Made to Certain Man-Made Fiber Textile Products Produced or Manufactured in Thailand

December 14, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs deducting charges and re-opening a limit.

EFFECTIVE DATE: December 21, 1989.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to deduct 195,955 kilograms from the charges made to Category 607pt. for 1989. As a result, the limit for Categories 301pt./607pt., which is currently filled, will re-open. The current limit for Categories 310pt./607pt., remains the same (see 54 FR 20912, published on May 15, 1989).

A description of the textile and apparel categories in terms of HTS numbers is available, in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988).

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 14, 1989.

Commissioner of Customs, Department of the Treasury, Washington, DC 20229.

Dear Commissioner: On May 10, 1989, a directive was issued to you by the Chairman, Committee for the Implementation of Textile Agreements, establishing a limit for cotton/polyester yarn in Categories 301pt./607pt.,[1] produced or manufactured in Thailand and exported during the period January 30, 1989 through January 29, 1990.

To facilitate implementation of the textile and apparel import restraint program, I request that, effective on December 21, 1989, you deduct 195,955 kilograms from the charges made to Category 607pt.

This letter will be published in the **Federal Register.**

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-29557 Filed 12-15-89; 8:45 am]

BILLING CODE 3510-DR-M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 90-C0002]

ETNA Products Co., a Corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional acceptance of a settlement agreement under the Consumer Product Safety Act.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR part 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with ETNA Products Co., a corporation.

DATE: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by January 3, 1990.

ADDRESS: Persons wishing to comment on this Settlement Agreement should send written comments to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: William J. Moore, Jr., Directorate for Compliance and Administrative Litigation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492-6626.

SUPPLEMENTARY INFORMATION:

[1] In Categories 301pt./607pt., only HTS numbers 5206.21.0000, 5206.22.0000, 5206.23.0000, 5206.24.0000, 5206.25.0000, 5208.41.0000, 5208.42.0000, 5208.43.0000, 5208.44.0030 and 5208.45.0000 in Category 301pt.; and 5509.53.030 and 5509.53.0060 in Category 607pt.

Dated: December 12, 1989.

Sheldon D. Butts,

Deputy Secretary.

Settlement Agreement and Order

In the matter of ETNA Products Co., Inc. a Corporation.

1. This Settlement Agreement and Order is made by and between Etna Products Co., Inc. (hereinafter, "Etna") and the Staff of the Consumer Product Safety Commission (hereinafter, "Staff") to resolve the Staff's allegations described herein.

2. The provisions of the Agreement and Order shall apply to Etna and to each of its successors and assigns.

I. The Parties

3. Etna is a corporation organized and existing under the laws of the State of New Jersey, with its principal place of business located at 53 W. 23rd Street, New York, N.Y. 10010.

4. The "Staff" is the Staff of the Consumer Product Safety Commission, an independent regulatory Commission of the United States of America (hereinafter, "Commission") created pursuant to section 4 of the Consumer Product Safety Act (CPSA), as amended, 15 U.S.C. 2053.

II. Statement of Facts

5. From 1985 through 1987, Etna imported and sold in the United States approximately 24,000 electric mouse traps (hereinafter, "Products"). Etna sold the Products primarily to its customer, Hanover House, under catalogue number G597823.

6. On November 19, 1987, the Wisconsin Department of Agriculture, Trade and Consumer Protection commenced an action against Hanover House by service of a complaint and other papers seeking to enjoin the sale of the Products in the State of Wisconsin, alleging that the Products presented a risk of electrocution or fire. Such papers further summarily banned all sales and distribution of the Product by Hanover House in the State of Wisconsin, subject to Hanover House's right to a hearing. On November 30, 1987, Hanover House filed an answer in which it denied all material allegations of the Department's petition and raised various affirmative defenses.

7. On November 19, 1987, having been informed of the fact of the commencement of the Wisconsin proceeding, Staff conducted an on-site inspection of Hanover House for the purpose of obtaining a sample Product.

8. On January 19, 1988, Hanover House, without admitting the product safety allegations of the Wisconsin Department of Agriculture, Trade and Consumer Protection, voluntarily agreed to institute a recall program for the Products in the State of Wisconsin in full and final settlement of the action commenced against Hanover House. Thereafter, Hanover House sent safety notices to known Wisconsin consumers of the Products, warning them of potential product dangers and suggesting they immediately unplug the Product and return the Product to Hanover House for a full refund.

9. Etna, through Hanover House, was aware of the proceedings instituted in the States of Wisconsin, the allegations made therein with respect to the Products, and the foregoing recall program. Etna was further aware, through Hanover House, that as of November 19, 1987, the Commission was conducting its own safety investigation of the products.

10. Etna did not report pursuant to 15(b) of the CPSA, any of the information it had received about the State of Wisconsin recall, or about the potential hazard posed by the electric mouse traps, to the U.S. Consumer Product Safety Commission.

III. Allegations of the Staff

11. Staff alleges that the Products imported by Etna contained a design defect(s) which could create a substantial risk of injury and/or electrocution upon removal of the bait container.

12. The Staff further alleges that Etna possessed sufficient information by November 18, 1987, to reasonably support the conclusion that the Products contained a defect which could create a substantial product hazard but failed to report that information to the Commission in a timely manner as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b).

IV. Allegations of Etna

13. Etna denies Staff's allegation that the Products contained a design defect which could create a substantial risk of injury. Etna is without knowledge of a single incident in the sale of the Products where a consumer ever received a shock or any injury as the result of use of the Products.

14. Etna denies that it was ever required to report information to the Commission regarding possible product hazards involving use of the Products. Etna contends that (a) until November 19, 1987, and to this day, it has not been informed of any injury or accident arising out of the use of the Products, (b) as of the day of commencement of the Wisconsin proceeding, Etna was actually aware that the Commission was adequately informed of allegations made in such proceeding that the Products contained a defect which could create a substantial product hazard, which awareness, under section 15(b) of the CPSA, 15 U.S.A. 2064(b), relieved Etna of any reporting requirement to the Commission, and (c) the allegations made in the Wisconsin proceeding were contested, and to this day remain unproven.

V. Agreement of The Parties

15. Etna and the Staff agree that the Commission has jurisdiction in this matter over Etna and the Products.

16. Etna agrees to pay the Commission a civil penalty in the amount of $5,000.00 within 30 days fo final acceptance of this Settlement Agreement by the Commission and service of the Commission's Order on Etna. This payment is made in full and final settlement of allegations by the Staff, based on information presently held by the Staff, that Etna violated the reporting requirements of section 15(b) of the CPSA, 15 U.S.C. 2064(b), with regard to the Products described in paragraph 5 of this Settlement Agreement, supra. Etna makes no admission of any fault or liability with respect to such allegations and expressly denies any fault or liability.

17. Upon final acceptance of this Settlement Agreement by the Commission, Etna knowingly, voluntarily and completely, waives any rights it may have in this matter (1) to an administrative or judicial hearing, (2) to judicial review or other challenge or contest of the validity of the Commission's actions, (3) to a determination by the Commission whether a violation has occurred, and (4) to a statement of the findings of fact and conclusions of law.

Provided, however, that if the Staff should initiate a new action, based on new information obtained independently of this proceeding, seeking the assessment of an additional civil penalty in this matter, Etna shall not be bound by the waiver in this paragraph in its defense of the new action.

18. For purposes of section 6(b) of the CPSA, 15 U.S.C. 2055(b), this matter shall be treated as if a complaint had issued and the Agreement and Order will be made available to the public.

19. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be published in the **Federal Register** in accordance with the procedure set forth in 16 CFR 1115.20(b) and 1118.20(e). If the Commission does not receive any

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written request not to accept the Settlement Agreement and Order within 15 days, the Settlement Agreement and Order will be deemed finally accepted on the 16th day after the date it is published in the **Federal Register**, in accordance with 16 CFR 1118.20(f).

20. This Settlement Agreement is binding upon the Staff and Etna and, with the exception of Etna's successors and assigns, does not bind or limit others not party to this Settlement Agreement.

21. The parties further agrees that the incorporated Order be issued under the CPSA, 15 U.S.C. 2051 *et seq.*, and that a violation of the Order will subject Etna to appropriate legal action.

22. No agreement, understanding, representation, or interpretation not contained in this Settlement Agreement and Order may be used to vary or to contradict its terms.

Consented to by: Etna Products Company, Inc. Dated: February 6, 1989.
By Jeffrey Snyder, *President.*

Consented to by: David Schmeltzer, *Associate Executive Director, Directorate for Compliance and Administrative Litigation. Alan H. Schoem, Director, Division of Administrative Litigation.* William J. Moore, Jr., *Trial Attorney, Division of Administrative Litigation.*

Order

Upon consideration of the Settlement Agreement of the parties, dated February 20, 1989, it is hereby

Ordered that Etna Products Company, Inc. shall pay, within 30 days of final acceptance of this Consent Agreement and service of this Order, a civil penalty in the sum of $5,000.00 to the Consumer Product Safety Commission.

Provisionally accepted on the 12th day of December 1989.
By Order of the Commission
Sadye E. Dunn,
Consumer Product Safety Commission.

[FR Doc. 89-29368 Filed 12-18-89; 8:45 am]
BILLING CODE 6355-01-M

[CPSC Docket No. 90-C0003]

K mart Corporation, Inc., a Corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional acceptance of a Settlement Agreement under the Consumer Product Safety Act.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR part 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with K mart Corporation, Inc., a corporation.

DATE: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by January 3, 1990.

ADDRESS: Persons wishing to comment on this Settlement Agreement should send written comments to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Ronald G. Yelenik, Directorate for Compliance and Administative Litigation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301)492-6626.

SUPPLEMENTARY INFORMATION:

Dated: December 12, 1989.
Sheldon D. Butts,
Deputy Secretary.

In the matter of K mart Corporation, a corporation.

Settlement Agreement and Order

1. This Settlement Agreement and Order, entered into between K mart Corpration, a corporation (hereinafter, "K mart"), and the staff of the Consumer Product Safety Commission (hereinafter, "staff"), is a compromise resolution of the matter described herein, without a hearing or determination of issues of law and fact.

I. The Parties

2. K mart is a corporation organized and existing under the laws of the State of Michigan with its principal corporate offices located at 3100 West Big Beaver Road, Troy, Michigan 48084.

3. The "Staff" is the staff of the Consumer Product Safety Commission (hereinafter, "Commission"), an independent federal regulatory agency established by Congress pursuant to section 4 of the Consumer Product Safety Act (hereinafter, "(CPSA"), 15 U.S.C. 2053.

II. Jurisdiction

4. K mart imported certain School Days Scissors Desk Sets identified further in paragraphs 6 and 7 below (hereinafter, "desk sets"), (a) for sale to a consumer for use in or around a permanent or temporary household or residence, or (b) for the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence. These desk sets are "consumer products" within the meaning of section 3(a)(1) of the CPSA, 15 U.S.C. 2052(a)(1).

5. K mart imported and sold these desk sets at its stores throughout the United States. K mart, therefore, is a "manufacturer" of a "consumer product" which is "distributed in commerce," as those terms are defined in sections 3(a)(1), (4) and (11) of the SPSA, 15 U.S.C. 2052(a)(1), 94) and (11).

III. The Product

6. In July, 1988, K mart imported nationwide approximately 48,000 desk sets.

7. The Subject desk sets contain three components, a scissors, a pencil sharpener and a razor blade cutting knife.

IV. Staff Allegations Concerning Desk Sets and of a Failure by K mart to Comply With the Reporting Requirements of Section 15(b) of the CPSA.

8. The defect in the desk sets is the inclusion of the razor blade cutting knife component. This sharp retractable cutting knife is inappropriate for children under ten years of age because youngsters do not possess the requisite physical dexterity to use this tool n a safe manner.

9. The reference cutting knife presents a severe laceration hazard to young children. In addition, since the packaging of the dest set neither indicates that the set includes a razor blade cutting knife nor provides a cautionary warning as to the appropriate age of the intended user, it is unlikely that an unsuspecting purchaser would realize that a razor like blade is included and that it pesents a danger to young children.

10. K mart first because aware of the alleged defect on July 5, 1988, when the Area Merchandise and Marketing Coordinator of K mart's Southwestern Regional Office informed one of K mart's buyers tha the produce in question could pose a potential safety problem.

11. On July 7, 1988, after revewing the potential safety problem, K mart instructed all stores to remove the subject product from sale. A similar notice was sent out on August 5, 1988. The general public, however, was not advised of the corrective action undertaken by K mart.

12. On or about July 13, 1988, K mart received a complaint from a consumer who indicated that her three year old grandson was given the desk set as a present. The customer informed the company of the inappropriateness of including the razor blade component in a children's desk set.

13. On or about August 1, 1988, K mart was advised of an incident in which siblings, ages seven and ten, each lacerated a finger while using the razor blade cutter of the desk set.

14. K mart knew or should have known by July 7, 1988, that the inclusion of razor blade cutting knives in the desk sets could result in children sustaining severe lacerations.

15. K mart had received sufficient information by July 7, 1988, to reasonably support the conclusion that the stationery sets described in paragraphs 6 and 7 thereof, contained a defect which could create a substantial product hazard, but the company failed to report such information to the Commission as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b), until September 23, 1988. Section 15(b) requires a manufacturer of consumer products who obtains information that reasonably supports the conclusion that its product contains a defect which could create a substantial product hazard to immediately inform the Commission of the defect.

V. Response of K mart

16. K mart denies that its desk sets contain a defect which creates or which could create a substantial product hazard within the meaning of section 15(a) of the CPSA, 15 U.S.C. 2064(a), and further specifically denies an obligation to report information to the Commission under section 15(b) of the CPSA, 15 U.S.C. 2064(b) with respect to these desk sets.

VI. Agreement of the Parties

17. K mart and the Staff agree that the Commission has jurisdiction in this matter for purposes of entry and enforcement of this Settlement Agreement and Order.

18. K mart agrees to pay the Commission a civil penalty in the amount of sixty thousand dollars ($60,000), payable within ten (10) days after service of the Final Order of the Commission accepting this Settlement Agreement.

19. K mart expressly denies any fault, liability or statutory violation in this matter.

20. For purposes of section 6(b) of the CPSA, 15 U.S.C. 2055(b), this matter shall be treated as if a complaint had issued.

21. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedure set forth in 16 CFR 1118.20(e). If the Commission does not receive any written request not to accept the Settlement Agreement and Order within 15 days, the Settlement Agreement and Order will be deemed finally accepted on the 16th day after the date it is published in the **Federal Register**, in accordance with 16 CFR 1118.20(f).

22. Upon final acceptance of this Settlement Agreement by the Commission, K mart knowingly, voluntarily and completely waives any rights it may have (1) to an administrative or judicial hearing with respect to the Commission's claim for a civil penalty, (2) to judicial review or other challenge or contest of the validity of the Commission's action with regard to its claim for a civil penalty, (3) to a determination by the Commission as to whether a violation of section 15(b) of the CPSA, 15 U.S.C. 2064(b), has occurred; and (4) to a statement of findings of fact and conclusions of law with regard to the Commission's claim for a civil penalty.

23. Upon final acceptance of this Settlement Agreement and Order by the Commission and payment of the sixty thousand dollars ($60,000) settlement amount by K mart, the Commission agrees to waive its right to pursue any penalty proceeding for a violation of section 15(b) of the CPSA, 15 U.S.C. 2064(b), relating to the matters encompassed by this Settlement Agreement and Order.

24. The parties further agree that the incorporated Order be issued under the CPSA, 15 U.S.C. 2051 *et seq.*, and that a violation of the Order will subject K mart to appropriate legal action.

25. No agreement, understanding, representation, or interpretation not contained in this Settlement Agreement and Order may be used to vary or to contradict its terms.

K mart Corporation.
Dated: April 22, 1989.
By:
Joseph E. Antonini,
Chairman of the Board, President and Chief Executive Officer, K mart Corporation.

The Consumer Product Safety Commission.
David Schmeltzer,
Associate Executive Director, Directorate for Compliance and Administrative Litigation.

Dated: May 4, 1989.
Ronald G. Yelenik,
Trial Attorney, Division of Administrative Litigation, Counsel for the Commission Staff.

Order

Upon consideration of the Settlement Agreement of the parties, it is hereby

Ordered that K mart Corporation shall pay within ten (10) days of final acceptance of this Settlement Agreement and service of this Order, a civil penalty in the sum of sixty thousand dollars ($60,000) to the Consumer Product Safety Commission.

Previously accepted on the 12th day of December 1989.

By Order of the Commission.
Sadye E. Dunn,
Secretary, Consumer Product Safety Commission.

[FR Doc. 89-29369 Filed 12-18-89; 8:45 am]
BILLING CODE 6355-01-M

[CPSC Docket No. 90-C0001]

Toys "R" Us, Inc., a corporation; Provisional acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional acceptance of a Settlement Agreement under the Consumer Product Safety Act.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Toys "R" Us, Inc., a corporation.

DATE: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by January 3, 1990.

ADDRESS: Persons wishing to comment on this Settlement Agreement should send written comments to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Ronald G. Yelenik, Directorate for Compliance and Administrative Litigation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492-6626.

SUPPLEMENTARY INFORMATION: (attached)

Dated: December 12, 1989.
Sheldon D. Butts,
Deputy Secretary.

Settlement Agreement and Order

In the matter of Toys "R" Us, Inc., a corporation.

[CPSC Docket No. 90-C0001]

1. This Settlement Agreement and

up, is the inclusion of the razor blade cutting knife component. This sharp

information to the Commission under section 15(B) of the CPSA, 15 U.S.C.

22. Upon final acceptance of this Settlement Agreement and Order by the

information collection requests as required by the Paperwork Reduction

Reporting Burden: Responses: 4,370 Burden Hours: 13,110

[CPSC Docket No. 90-C0001]

1. This Settlement Agreement and Order, entered into between Toys "R" Us, Inc., a corporation (hereinafter, "Toys 'R' Us"), and the staff of the Consumer Product Safety Commission (hereinafter, "staff"), is a compromise resolution of the matter described herein, without a hearing or determination of issues of law and fact.

I. The Parties

2. Toys "R" Us is a corporation organized and existing under the laws of the State of Delaware with its principal corporate offices located at 461 From Road, Paramus, New Jersey 07652.

3. The "staff" is the staff of the Consumer Product Safety Commission (hereinafter, "Commission"), an independent federal regulatory agency established by Congress pursuant to section 4 of the Consumer Product Safety Act (hereinafter, "CPSA"), 15 U.S.C. 2053.

II. Jurisdiction

4. Toys "R" Us imported certain Submarine Stationery Sets identified further in paragraphs 6 and 7 below (hereinafter, "stationery sets"), (a) for sale to a consumer for use in or around a permanent or temporary household or residence, or (b) for the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence. These stationery sets are "consumer products" within the meaning of section 3(a)(1) of the CPSA, 15 U.S.A. 2052(a)(1).

5. Toys "R" Us imported and sold these stationery sets at its stores throughout the United States. Toys "R" Us, therefore, is a "manufacturer" of a "consumer product" which is "distributed in commerce," as those terms are defined in sections 3(a)(1), (4) and (11) of the CPSA, 15 U.S.C. 2052(a)(1), (4) and (11).

III. The Product

6. Between October and November, 1987, Toys "R" Us imported nationwide approximately 9,600 stationery sets.

7. The subject stationery sets are constructed of plastic in the shape of a submarine, measuring seven inches long and four inches wide. They contain drawers and attachments which house a tape dispenser, pencil sharpener, scissors and razor blade cutting knife.

IV. Staff Allegations Concerning Stationery Sets and of a Failure by Toys "R" Us To Comply With the Reporting Requirements of Section 15(b) of the CPSA

8. The defect in the stationery sets, which are labeled for children five and up, is the inclusion of the razor blade cutting knife component. This sharp retractable cutting knife is inappropriate for children under ten years of age because such youngsters do not possess the requisite physical dexterity to use this tool in a safe manner.

9. The referenced cutting knife presents a severe laceration hazard to young children. In addition, since it is unusual to include a cutting knife in a children's product of this kind, an unwary purchaser is not likely to realize that a razor-like blade is contained therein and that it presents a danger.

10. Toys "R" Us first became aware of the alleged defect on December 4, 1987, when store personnel advised corporate headquarters that the stationery sets could pose a potential safety hazard.

11. On December 14, 1987, after reviewing the potential safety problem, Toys "R" Us engaged in a stop sale and recall program at the retail level. At that time, however, the general public was not advised of the corrective action undertaken by Toys "R" Us. (A public recall program was subsequently approved by the Commission and implemented by Toys "R" Us.)

2. On or about January 8, 1988, Toys "R" Us received a complaint from a consumer who indicated that her children had used the razor blade cutting knives from several stationery sets to destroy furniture and other property in her home.

13. Toys "R" Us knew or should have known by December 14, 1987, that the inclusion of razor blade cutting knives in the stationery sets could result in children sustaining severe lacerations.

14. Toys "R" Us had received sufficient information by December 14, 1987, to reasonably support the conclusion that the stationery sets described in paragraphs 6 and 7 thereof, contained a defect which could create a substantial product hazard, but the company failed to report such information to the Commission as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b). Section 15(b) requires a manufacturer of consumer products who obtains information that reasonably supports the conclusion that its product contains a defect which could create a substantial product hazard to immediately inform the Commission of the defect.

V. Response of Toys "R" Us

15. Toys "R" Us denies that its stationery sets contain a defect which creates or which could create a substantial product hazard within the meaning of section 15(a) of the CPSA, 15 U.S.C. 2064(a), and further specifically denies an obligation to report information to the Commission under section 15(B) of the CPSA, 15 U.S.C. 2064(b) with respect to these stationery sets.

VI. Agreement of the Parties

16. For purposes of section 6(b) of the CPSA, 15 U.S.C. 2055(b), this matter shall be treated as if a complaint had been issued.

17. Toys "R" Us and the staff agree that the Commission has jurisdiction in this matter for purposes of entry and enforcement of this Settlement Agreement and Order.

18. Toys "R" Us makes no admission of any fault, liability or statutory violation and expressly denies any fault, liability or statutory violation. The Commission does not make any determination that the stationery sets contain a defect which could create a substantial product hazard or that a violation of the CPSA has occurred.

19. To avoid costly litigation and to otherwise effect a compromise resolution of this matter, Toys "R" Us agrees to pay the Commission a civil penalty in the amount of sixty thousand dollars ($60,000), payable within ten (10) days after service of the Final Order of the Commission accepting this Settlement Agreement.

20. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedure set forth in 16 CFR 1118.20(e). If the Commission does not receive any written request not to accept the Settlement Agreement and Order within 15 days, the Settlement Agreement and order will be deemed finally accepted on the 16th day after the date it is published in the **Federal Register**, in accordance with 16 CFR 1118.20(f).

21. Upon final acceptance of this Settlement Agreement by the Commission, Toys "R" Us knowingly, voluntarily and completely waives any rights it may have (1) to an administrative or judicial hearing with respect to the Commission's claim for a civil penalty, (2) to judicial review or other challenge or contest of the validity of the Commission's action with regard to its claim for a civil penalty, (3) to a determination by the Commission as to whether a violation of Section 15(b) of the CPSA, 15 U.S.C. 2064(b), has occurred, and (4) to a statement of findings of fact and conclusions of law with regard to the Commission's claim for a civil penalty.

22. Upon final acceptance of this Settlement Agreement and Order by the Commission and payment of the sixty thousand dollars ($60,000) settlement amount by Toys "R" Us, the Commission knowingly, voluntarily and completely waives its right to pursue any penalty proceeding for a violation of section 15(b) of the CPSA, 15 U.S.C. 2064(b), relating to the matters encompassed by this Settlement Agreement and Order.

23. The parties further agree that the incorporated Order be issued under the CPSA, 15 U.S.C. 2051 *et seq.*, and that a violation of the Order will subject Toys "R" Us to appropriate legal action.

24. No agreement, understanding, representation, or interpretation not contained in this Settlement Agreement and Order may be used to vary or to contradict its terms.

Toys "R" Us, Inc.

Dated: February 2, 1989.

Michael Goldstein,

Vice Chairman—Chief Financial and Administrative Officer.

The Consumer Product Safety Commission

David Schmeltzer,

Associate Executive Director Directorate for Compliance and Administrative Litigation.

Dated: February 6, 1987.

Ronald G. Yelenik,

Tribal Attorney, Division of Administrative Litigation—Counsel for the Commission Staff.

Order

Upon consideration of the Settlement Agreement of the parties it is hereby

Ordered that Toys "R" Us, Inc. shall pay within ten (10) days of final acceptance of this Settlement Agreement and service of this Order, a civil penalty in the sum of sixty thousand dollars ($60,000) to the Consumer Product Safety Commission.

Provisionally accepted on the 12th day of December, 1989.

By Order of the Commission.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 89-29367 Filed 12-18-89; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before January 18, 1990.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to George P. Sotos, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: George P. Sotos, (202) 732-2174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from George Sotos at the address specified above.

Dated: December 12, 1989.

Carlos Rice,

Director for Office of Information Resources Management.

Office of Postsecondary Education

Type of Review: Revision.

Title: Application for Institutional Eligibility and Certification.

Frequency: On occasion.

Affected Public: Businesses or other for-profit; non-profit institutions.

Reporting Burden: Responses: 4,370 Burden Hours: 13,110

Recordkeeping Burden: Recordkeepers: 0 Burden Hours: 0

Abstract: This form will be used by the postsecondary institutions to apply for funding under the Higher Education Act of 1965, as amended. The Department uses the information to determine the eligibility and the administrative and financial capability of the institution for certification.

[FR Doc. 89-29385 Filed 12-18-89; 8:45 am]

BILLING CODE 4000-01-M

Direct Grant Programs and Fellowship Programs; Notice Inviting Applications for New Awards for Fiscal Year 1990.

ACTION: Notice; correction.

On September 15, 1989, the Secretary published in the **Federal Register** at 54 FR 38324 a notice inviting applications for new awards for fiscal year 1990 for certain direct grant programs and fellowship programs. In Chart 3 on page 38329 of that notice, the dates in the column labeled "Deadline for Intergovernmental Review" were incorrectly stated for the New State Facilitator Project (for Palau only) and New Developer Demonstrator Projects under the National Diffusion Network. Therefore, the following changes are made: (1) The deadline date of 2/15/90 for Intergovernmental Review for the New State Facilitator Project (for Palau only) is removed and replaced with "NA"; and (2) The deadline date of 2/12/90 for Intergovernmental Review for New Developer Demonstrator Projects is changed to 4/17/90.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Evans, Program Officer, Office of Educational Research and Improvement, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 510, Washington, DC 20208-5645. Telephone: (202) 357-6134.

Dated: December 11, 1989.

Christopher T. Cross,

Assistant Secretary, Educational Research and Improvement.

[FR Doc. 89-29396 Filed 12-18-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Financial Assistance Award to the State of Washington Department of Community Development

AGENCY: U.S. Department of Energy (DOE), Richland Operations Office.

ACTION: Notice of intent to make a noncompetitive financial assistance award.

State Oil and Gas Board's order issued November 8, 1989, finding that the

considered by the Commission in determining the appropriate action to be

[Docket No. TM90-2-21-001]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

filing Second Substitute 139th Revised Sheet No. 16.1, Second Substitute 139th Revised Sheet No. 16.2, Second

omitted the word "survive" from Paragraph 17(h).

Any person desiring to protest said

VOL 54 ISS 242 DE 19 1989 UMI

ACTION: Notice of intent to make a noncompetitive financial assistance award.

SUMMARY: The DOE, Richland Operations Office, Safety and Environment Division in accordance with 10 CFR 600.7(b)(2), gives notice of its plan to award a noncompetitive grant to the State of Washington Department of Community Development (DCD) and Department of Health (DOH). Under the terms of the award, the DCD will conduct an emergency preparedness program and the DOH will conduct an environmental monitoring progam in support of DOE's activities at the Hanford Site. This award will implement certain elements of an Agreement in Principle dated February 27, 1989, between the State of Washington and DOE, Richland Washington Operations Office, regarding remedial work at the site.

DOE has determined that award on a noncompetitive basis is appropriate because the recipient is a unit of government and the activities to be supported are related to the performance of governmental functions within the jursidiction of that unit, thereby precluding DOE provisionn of support to another entity. DOE and the State of Washington shall negotiate as to the final amount of the grant, which shall not exceed $500,000.

FOR FURTHER INFORMATION CONTACT: Marcia N. Roske, U.S. Department of Energy, Richland Operation Office, P.O. Box 550, Richland, WA 99352, Telephone: (509) 376-7265.

Dated: December 18, 1989.

P.E. Rasmussen,

Contracting Officer, Procurement Division, Richland Operations Office.

[FR Doc. 89-29467 Filed 12-18-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. JD9002199T]

Designation of Tight Formation Campbell County, TN

Issued December 7, 1989.

Take notice that on November 27, 1989, the Tennessee State Oil and Gas Board (Tennessee) submitted to the Commission its determination that the Mississippian Monteagle Formation, located in Campbell County, Tennessee, qualifies as a tight formation under section 107(c)(5) of the Natural Gas Policy Act of 1978. The application includes the State Oil and Gas Policy Act of 1978. The application includes the State Oil and Gas Board's order issued November 6, 1989, finding that the proposed addition meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

Any person desiring to be heard or to protest Tennessee's determination should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with the Rules of Practice and Procedure (18 CFR 385.211, 385.214 (1987)). All such comments should be filed within 20 days after publication of this notice in the **Federal Register.** Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29384 Filed 12-18-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP95-169-047]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

December 11, 1989.

Take notice that CNG Transmission Corporation ("CNG"), on December 5, 1989, pursuant to section 4 of the Natural Gas Act, and the Commission's May 2, 1989 and October 10, 1989, orders in this proceeding filed the following revised tariff sheet to Original Volume No. 1 of its FERC Gas Tariff:

Fourth Substitute Thirteenth Revised Sheet No. 31

The filing is proposed to become effective on November 1, 1989, and would implement the Commission's decision on GSS issues prospectively.

CNG states that the cost of service and throughput quantities that support this filing are the same as those contained in CNG's limited general rate increase application which was conditionally accepted for filing in Docket No. RP90-27-000 *et al.* by order issued November 29, 1989.

Copies of the filing were served upon CNG's customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR §§ 385.214 and 385.211). All motions or protests should be filed on or before December 18, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29385 Filed 12-18-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-47-000]

Colorado Interstate Gas Co.; Request for Waiver

December 8, 1989.

Take notice that on November 28, 1989, Colorado Interstate Gas Company (CIG) filed a request of the provisions of section 27.5 of the General Terms and Conditions of CIG's Tariff which require that within 30 days of the end of a specific customer's amortization period for payment of allocated buyout and buydown costs, CIG is to submit a final "true-up" adjustment filing to define any residual amounts due and payable from or refundable to the affected customer.

CIG states that without this waiver it would be required to make three adjustment filings within a two to three-month period for the same customers. Since each affected customer will be entitled to any indicated refunds, plus interest, CIG submits that no customer will be harmed by granting this waiver.

And person desiring to be heard or to protest said filing should filed a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.214, 385.211 (1989)). All such motions or protests should be filed on or before December 15, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29383 Filed 12-18-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-2-21-001]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

December 11, 1989.

Take notice that on November 30, 1989, Columbia Gas Transmission Corporation (Columbia Transmission) tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1:

One hundred and forty-third Revised Sheet No. 16
Thirty-first Revised Sheet No. 16A2

The foregoing revised tariff sheets bear an issue date of November 30, 1989 and a proposed effective date of December 1, 1989.

The filing incorporates the changes reflected in the tariff rate sheets in Columbia's November 20, 1989 compliance filing, as well as incorporates the change to the Order No. 500 Volumetric Surcharge Adjustment to reflect the rate of 4.80¢ per Dth filed October 31, 1989 to become effective December 1, 1989.

Copies of the filing were served by the company upon each of its wholesale customers, interested state commissions and to each of the parties set forth on the Official Service List in the consolidated proceedings.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 18, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia Transmission's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29386 Filed 12-18-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-1-21-002]

Columbia Gas Transmission Corp.; Correction to Previously Filed Proposed Changes in Rates

December 11, 1989.

Take notice that on November 30, 1989, Columbia Gas Corporation (Columbia Transmission) submitted for filing Second Substitute 139th Revised Sheet No. 16.1, Second Substitute 130th Revised Sheet No. 16.2, Second Substitute 139th Revised Sheet No. 16.3 and Second Substitute 27th Revised Sheet No. 16A2 to its FERC Gas Tariff, Original Volume No. 1, with a proposed effective date of November 1, 1989.

Columbia states that the tariff sheets are filed to administratively correct certain clerical errors in the compliance filing made on November 20, 1989, in Docket No. TQ90-1-21-001. Columbia also states that the fuel retainage percentage, shown as 2.70 percent on the previously filed sheet, is corrected to 2.63 percent.

Columbia states that copies of this filing are also being mailed to each of Columbia's jurisdictional customers, interested state commissions and to each of the parties set forth on the official service list.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such protests should be filed on or before December 18, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29387 Filed 12-18-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-167-014]

Columbia Gulf Transmission Co.; Filing

December 11, 1989.

Take notice that on December 4, 1989, Columbia Gulf Transmission Company (Columbia Gulf) filed Substitute Original Sheet No. 169C to its FERC Gas Tariff, Original Volume No. 1, to be effective November 1, 1989.

Columbia Gulf states that this tariff sheet is filed in accordance with the provisions of Article XVII of the Stipulation and Agreement contained in the Offer of Settlement filed on June 29, 1989, and which was approved by Commission order of October 19, 1989. Columbia Gulf states that this tariff sheet corrects previously filed Original Sheet No. 169C which inadvertently omitted the word "survive" from Paragraph 17(h).

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989). All such protests should be filed on or before December 18, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29386 Filed 12-18-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP88-587-000]

Distrigas of Massachusetts Corp.; Filing of Compliance Tariff Sheets

December 11, 1989.

Take notice that on November 22, 1989, Distrigas of Massachusetts Corporation ("DOMAC"), 200 State Street, Boston, Massachusetts 02109, filed, pursuant to the Commission's November 7, 1989 Letter Order in this docket, compliance tariff sheets to implement a rate of $0.125 per MMBtu for storage service currently rendered to Boston Gas Company ("Boston Gas") under DOMAC's Rate Schedule SS.

Specifically, DOMAC has filed as compliance tariff sheets new Original Sheet No. 132 and Original Sheet No. 133. These tariff sheets reflect an amendment to the Storage Service Agreement between DOMAC and Boston Gas. The Amendatory Agreement replaces the rate of $0.16 per MMBtu agreed to by DOMAC and Boston Gas in the Storage Service Agreement with the rate of $0.125 per MMBtu imposed by the Commission. DOMAC represents that the $0.125 per MMBtu rate provided for in the Amendatory Agreement will remain in effect until the Commission authorizes use of the originally agreed-to $0.16 per MMBtu rate.

DOMAC states that a copy of this filing has been mailed to each party on the official service list in Docket No. CP88-587.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal

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Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214. All such motions or protests must be filed on or before December 18, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29392 Filed 12-18-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-193-009]

North Penn Gas Co.; Compliance Filing Regarding Refund Report

December 11, 1989.

Take notice that on December 4, 1989, North Penn Gas Company (North Penn) filed supplemental information to comply with the Commission's November 17, 1989 Order On Appeal From Staff Action in Docket No. RP85-193-006. The supplemental information pertains to North Penn's refund obligation to Corning Natural Gas Corporation, as filed in an August 4, 1988 refund report in Docket No. RP85-193-007.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such protests should be filed on or before December 27, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29393 Filed 12-18-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-1-38-000]

Ringwood Gathering Co.; Tariff Filing

December 11, 1989.

Take notice that on December 1, 1989, Ringwood Gathering Company (Ringwood), submitted for filing Substitute Fifty-Second Sheet Quarterly PGA-1 to its FERC Gas Tariff, Original Volume 1 with the effective date of January 1, 1990. Ringwood states that Fifty-Second Sheet Quarterly PGA-1 and the accompanying explanatory schedules constitute its quarterly PGA filing submitted in accordance with the Commission's purchased gas adjustments regulations.

Ringwood states that copies of the filing have been mailed to Williams Natural Gas Company, Oklahoma Natural Gas Company, and interested state regulatory agencies.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214 (1989)). All such motions to protests should be filed on or before December 18, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29389 Filed 12-18-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-52-000]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

December 11, 1989.

Take notice that on December 1, 1989, Texas Gas Transmission Corporation (Texas Gas) tendered for filing the certain revised tariff sheets to its FERC Gas Tariffs, Original Volume Nos. 1, 2-A, 2, and 3.

The revised tariff sheets are being filed pursuant to Section 4 of the Natural Gas Act and the "Order Rejecting Tariff Sheets" issued in Docket No. RP89-228 issued September 29, 1989, in order to effect a change in rates associated solely with changes in the level of Texas Gas's Account 858 costs.

Copies of the revised tariff sheets are being mailed to Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 18, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29390 Filed 12-18-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-183-004]

Williams Natural Gas Co.; Changes in FERC Gas Tariff

December 11, 1989.

Take notice that on November 30, 1989, Williams Natural Gas Company (WNG) filed revised tariff sheets to its FERC Gas Tariff, Original Volume Nos. 1 and 2. A list of revised tariff sheets is included in Appendix A, attached to the filing. The revised tariff sheets are proposed to be effective December 1, 1989.

WNG states that this filing is being made in compliance with the Commission order issued June 30, 1989 in Docket No. RP89-183.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such protests should be mailed on or before December 18, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29391 Filed 12-18-89; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 89-65-NG]

Amoco Energy Trading Corp.; Order Granting Blanket Authorization To Export Natural Gas to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order granting blanket authorization to export natural gas to Canada.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Amoco Energy Trading Corporation (AETC) blanket authorization in FE Docket No. 89-65-NG to export up to 146 Bcf of natural gas from the United States to Canada over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 12, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89-29468 Filed 12-18-89; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 89-57-NG]

Enron Gas Marketing, Inc.; Order Amending and Extending Blanket Authorization To Import and Export Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order amending and extending blanket authorization to import natural gas from Canada and to export natural gas to Mexico.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Enron Gas Marketing Inc. (EGM) blanket authorization in FE Docket No. 89-57-NG to import up to 300 Bcf of Canadian natural gas and to export to Mexico up to 300 Bcf of domestically produced natural gas over a two-year beginning January 1, 1990, through December 31, 1992.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 12, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89-29469 Filed 12-18-89; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59279; FRL-3685-6]

Certain Chemical; Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME 90-1. The marketing conditions are described below.

EFFECTIVE DATES: December 7, 1989. Written comments will be received until May 3, 1990.

ADDRESS: Written comments, identified by the document control number '[OPTS-59279]' and the specific TME number '[TME-90-1]' should be sent to: Document Control Officer (TS-790), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Room E-201, 401 M Street, SW., Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Darlene Jones, New Chemicals Branch, Chemcial Control Division (TS-794), Environmental Protection Agency, Rm. E-613, 401 M Street, SW., Washington, DC 20460, (202) 382-2279.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves TME-90-1. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present an unreasonable risk of injury to health or the enviornment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

Inadvertently, notice of receipt of the application was not published upon receipt of the TME application. Therefore, an opportunity to submit comments is being offered at this time. The complete nonconfidential document is available in the Public Reading Room NE G004 at the above address between 8 a.m. and 4 p.m., Monday through Friday, excluding legal holidays. EPA may modify or revoke the test marketing exemption if comments are received which cast significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury.

The following additional restrictions apply to TME-90-1. A bill of lading accompanying each shipment must state that the use of the substances is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substances produced and the date of manufacture.

2. Records of dates of the shipments to each customer and the quanitities supplied in each shipment.

3. Copies of the bill of lading that accompanies each shipment of the TME substance.

TME-90-1.

Date of Receipt: October 19, 1989.

Applicant: Confidential.

Chemical: (G) Alkylated Naphtalenes.

Use: (G) Additive package.

Production Volume: (Confidential).

Number of Customers: (Confidential).

Test Marketing Period: Six months, commencing on first day of manufacture.

Risk Assessment: EPA identified no significant health or environmental concerns for the test market substance. Therefore, the market substance will not

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present an unreasonable risk of injury to health or the enviornment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: December 7, 1989.

John W. Melone,

Director, Chemical Control Division, Office of Toxic Substances.

[FR Doc.89-29487, Filed 12-18-89;8:45am]

BILLING CODE 6560-50-D

Science Advisory Board

[FRL-3698-5]

Under Public Law 92-463, notice is hereby given that the Executive Committee of the Science Advisory Board will hold a meeting on January 8 from 8:30 a.m. to 5:00 p.m. and on January 9 from 8:30 a.m. to 1:00 p.m. at the Holiday Inn, 550 C Street SW., Washington, DC 20024. The purpose of the meeting is to enable the Executive Committee to act on reports from its subcommittees and standing committees that have been completed since the last meeting and receive status reports from each of the committees. Some action items include: the Environmental Engineering Committee's Saturated Zone Model report and the Municipal Ash Solidification/Stabilization Research report; the Environmental Health Committee's letter report on Modifying Factors in Deriving Reference Doses (RfD); the Ecological Processes and Effects Committee's Report on the Equilibrium Partitioning Approach to Estimating Sediment Criteria; and the Global Climate Research Subcommittee's report prepared by a subcommittee of the Executive Committee.

The Relative Risk Reduction Strategies Committee will meet on January 10 from 9:00 a.m. to 5:00 p.m. and January 11 from 8:30 until 1:00 p.m. at the Holiday Inn, 550 C Street SW., Washington, DC. The Committee will meet to discuss the progress of the three Subcommittees: Environmental Risk; Relative Risk; and Health Risk. For further information concerning this project, please refer to the notices contained in 54 FR 38282, September 15, 1989.

The meetings are open to the public. Any member of the public wishing to attend or submit written comments should notify Joanna Foellmer or Dr. Donald G. Barnes, Director, Science Advisory Board, at 202-382-4126, by January 3, 1989.

Dated: December 7, 1989.

Donald G. Barnes,

Director, Science Advisory Board.

[FR Doc. 89-29445 Filed 12-18-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35).

Type: Extension of 3067-0090.

Title: Emergency Management Assistance Staffing Profile.

Abstract: The Federal Emergency Management Agency's (FEMA's) Emergency Management Assistance (EMA) Program provides funds to States, and through the States to local governments, for personnel, travel, and other administrative expenses. The funds are distributed annually through FEMA's Comprehensive Cooperative Agreement (CCA). The financial contributions are authorized by the Federal Civil Defense Act of 1950, as amended, and provides 50-50 matching funds to the States for necessary and essential State and local civil defense personnel and administrative expenses. FEMA Form 85-17 is used by the States to provide information on each individual personnel position funded under the EMA Program.

Type of Respondents: State and local governments.

Estimate of Total Annual Reporting and Recordkeeping Burden: 916.

Number of Respondents: 2,750.

Estimated Average Burden Hours Per Response: .333 Hour.

Frequency of Response: Annually.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C Street SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to the FEMA Clearance Officer at the above address; and to Gary Waxman, (202) 395-7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Dated: December 4, 1989.

Gail L. Kercheval,

Acting Director, Office of Administrative Support.

[FR Doc. 89-29427 Filed 12-18-89; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 207-009973-014.

Title: Johnson ScanStar Joint Service Agreement.

Parties:

Blue Star Line Limited
The East Asiatic Company Ltd. A/S
Johnson Line AKtiebolag

Synopsis: The proposed modification implements the withdrawal of Johnson Line AB from the joint service and makes compensating adjustments in the responsibilities of the remaining parties. The parties have requested a shortened review period.

Agreement No.: 203-011038-002.

Title: Southeastern Caribbean Discussion Agreement.

Parties:

United States Atlantic and Gulf/ Southeastern Caribbean Conference
Trailer Marine Transport Corporation
Tecmarine Lines, Inc.

Synopsis: The proposed amendment would add Bernuth Lines as a party to the Agreement. The parties have requested a shortened review period.

Agreement No.: 212-011213-013.

Title: Spain-Italy/Puerto Rico Island Pool Agreement.

Parties:

Compania Trasatlantica Espanola, S.A.
Nordana Line A/S
Sea-Land Service, Inc.

Synopsis: The proposed modification corrects the Pool Period dates filed in Article 5.F.4(d)—Authority of the Agreement. The parties have requested a shortened review period.

Agreement No.: 203-011232-002.

Title: USA—South African Discussion Agreement.

Parties:

South Africa Group of the U.S. South and East Africa Conference
South and East Africa/U.S.A. Conference
Mediterranean Shipping Company SA
P&O Containers Ltd.

Synopsis: The proposed amendment would add Nedlloyd Lines as an independent carrier party to the Agreement.

By Order of the Federal Maritime Commission.

Dated December 14, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 29430 Filed 12-18-89; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.7 and/or 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 003-010071-008.

Title: The Cruise Lines International Association Agreement.

Parties:

Admiral Cruises
American Hawaii Cruises
Bermuda Star Line
Carnival Cruise Lines
Chandris Fantasy Cruises
Clipper Cruise Line
Commodore Cruise Line, Ltd.
Costa Cruises
Crown Cruise Line
Crystal Cruises
Cunard Line, Ltd.
Cunard/Norwegian American Cruises
Cunard Sea Goddess
Delta Queen Steamboat Co.
Dolphin Cruise Line
Dolphin Hellas Cruises
Epirotiki Lines, Inc.
Holland America Line
Norwegian Cruise Line
Ocean Quest International
Oceanic Cruises
Ocean Cruise Lines, Inc.
Pearl Cruises of Scandinavia, Inc.
Premier Cruise Lines
Princess Cruises/(Sitmar Cruises)
Regency Cruises
Royal Caribbean Cruise Line, Inc.
Royal Cruise Line
Royal Viking Line
Seabourn Cruise Line
Society Expeditions Cruises
Sun Line Cruises
Windstar Sail Cruises
World Explorer Cruises

Synopsis: The proposed amendment would adjust the manner in which costs for the Agreement's operating budget are allocated and assessed and would change certain provisions concerning the administration and Management of the Agreement. It would also make changes in the Agreement's membership options and voting provisions.

Filing Party: Edward Schmeltzer, Esquire, Schmeltzer, Aptaker & Sheppard, P.C., 2600 Virginia Avenue, NW., Suite 1000, Washington, DC 20037-1905.

By Order of the Federal Maritime Commission.

Dated: December 14, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-29461 Filed 12-18-89; 8:45 am]

BILLING Code 6730-01-M

FEDERAL RESERVE SYSTEM

First Interstate Bancorp, Los Angeles, CA; Application To Provide Asset Management, Loan Portfolio Management, Asset Valuation and Cash Flow Modeling, and Marketing of Loans and Foreclosed Property

First Interstate Bancorp, Los Angeles, California ("Applicant"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) ("BHC Act") and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), for prior approval to engage *de novo* through a subsidiary in providing asset management, loan portfolio management, asset valuation and cash flow modeling, and marketing of loans and foreclosed property, for the accounts of third-party clients and for affiliates of Applicant on a nationwide basis. A significant portion of the portfolio that will be managed by Applicant may consist of substandard assets acquired from insolvent financial institutions by the Federal Deposit Insurance Corporation and the Resolution Trust Corporation. The Board has approved a similar proposal to provide certain management and consulting services to failed savings and loan associations under the Federal Home Loan Bank Board's management consignment program. *First Florida Banks, Inc.*, 74 Federal Reserve Bulletin 771 (1988).

Applicant defines asset management to include analysis of appraisals and of the capacity of local markets to absorb assets of the types under management and other market conditions; review and implementation of leasing programs related to managed assets; providing advice regarding alternatives for a managed asset's best use; preparation of manage asset budgets; and formulation and implementation of business and marketing plans for managed assets. Applicant will not participate as an equity investor or lender with respect to the assets under management.

Applicant defines loan portfolio management to include rendering advice to depository institutions regarding loan quality grading categories and establishment of specific reserves for individual loans, and adequate total reserves for loan portfolios; formulation and implementation of business plans related to managed loans including loan restructuring proposals and loan collection efforts; supervision of the foreclosure process, when applicable; management of bankruptcy and other proceedings involving managed assets;

and administration of participated loans.

Applicant defines asset valuation and cash flow modeling to include cash flow valuation for possible asset acquisition or disposition by third-party clients; analysis of the impact of a loan/property portfolio on a company's portfolio; analysis of an institution's loan/OREO loss reserve adequacy; and estimation of the overall "cost to carry" on a cash-flow basis for both performing and non-performing assets.

Applicant also proposes to engage through a subsidiary in providing data processing services, arranging third-party equity financing, and providing tax planning advice. Data processing, equity financing, and tax planning are permissible activities for bank holding companies under Regulation Y. 12 CFR 225.25(b)(7), (14), and (21).

Section 4(c)(8) of the BHC Act provides that a bank holding company may engage in any activity that the Board has determined to be "so closely related to banking or managing or controlling banks as to be a proper incident thereto." A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks have generally provided the proposed activity; that banks generally provide services that are operationally or functionally similar to the proposed activity so as to equip them particularly well to provide the proposed activity; or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized forum. *National Courier Ass'n* v. *Board of Governors*, 516 F.2d 1229, 1237 (D.C. Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 **Federal Register** 806 (1984).

In determining whether an activity meets the second, or proper incident to banking, test of section 4(c)(8), the Board must consider whether the performance of the activity by an affiliate of a holding company "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices."

As proposed by Applicant, the combination of activities for which approval is requested has not previously been approved by the Board. Application maintains that the asset management activities described above include traditional asset management activities of the type conducted by a bank's trust department, management loan department, or special assets department, and as such are permissible for bank holding companies pursuant to § 225.25(b)(3) of Regulation Y (12 CFR 225.25(b)(3)). Applicant also maintains that such activities are similar to loan servicing activities, encompass providing investment and financial advice, and include providing management consulting advice, all of which are permissible pursuant to Regulation Y. 12 CFR 225.25(b)(1), (4), and (11). The Board also has by order previously approved asset management activities similar to those proposed by Applicant. First Florida Banks, Inc., 74 Federal Reserve Bulletin 771 (1988).

Applicant contends that the loan portfolio management activities described above include traditional depository management consulting advice and traditional asset management activities of the type conducted by a bank's trust department or special assets department, and as such are permissible for bank holding companies pursuant to § 225.25(b)(3). Additionally, Applicant states that the loan portfolio management activities are permissible because a significant portion of these activities would include collection agency functions which are permissible for bank holding companies pursuant to § 225.25(b)(23).

Applicant believes that the asset valuation and cash flow modeling activities described above fit within real estate and personal property appraisal services, and such services are permissible for bank holding companies pursuant to § 225.25(b)(13).

Finally, Applicant maintains that the marketing of loans and foreclosed property activities described above include traditional asset management activities of the type conducted by a bank's trust department or special assets department, and are thus permissible for a bank holding company pursuant to § 225.25(b)(3).

Any views or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC, 20551, not later than January 12, 1990. Any request for a hearing must, as required by section 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how that party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of San Francisco.

Board of Governors of the Federal Reserve System, December 13, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-29404 Filed 12-18-89; 8:45 am]

BILLING CODE 6210-01-M

The Yasuda Trust & Banking Company, Ltd., Tokyo Japan, Application to Provide Certain Financial Advisory Services

The Yasuda Trust & Banking Company, Limited, Tokyo, Japan ("Applicant"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (the "Act") and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), for prior approval to acquire a 50 percent interest in MASI, Ltd., Deerfield, Illinois, a *de novo* company ("Company"), and thereby establish a joint venture with Thomas J. Smith of Deerfield, Illinois and S. Jack Campbell of Barrington, Illinois, and to engage through Company in the following activities:

(i) Providing advice in connection with mergers, acquisitions and divestitures for financial and nonfinancial institutions;

(ii) Providing financial feasibility studies for specific projects of private corporations, including an evaluation of economic conditions, sales and earning statements, balance statements and cash flow data;

(iii) Providing advice in connection with financing transactions, including public and private financings, loan syndications, and general financial matters;

(iv) Providing valuations for financial and nonfinancial institutions; and

(v) Providing fairness opinions in connection with mergers, acquisitions and similar transactions for financial and nonfinancial institutions.

Applicant contends that the Board has previously determined by Order that all of the activities listed above are permissible under the Act.[1]

[1] *Canadian Imperial Bank of Commerce*, 74 Federal Reserve Bulletin 571 (1988); *The Bank of Montreal*, 74 Federal Reserve Bulletin 500 (1988); *SunTrust Banks, Inc.*, 74 Federal Reserve Bulletin 256 (1988); *The Bank of Nova Scotia*, 74 Federal Reserve Bulletin 249 (1988); *Sovran Financial Corporation*, 73 Federal Reserve Bulletin 744 (1987); *Signet Banking Corporation*, 73 Federal Reserve Bulletin 89 (1987); *Security Pacific*, 71 Federal Reserve Bulletin 118 (1985).

Section 4(c)(8) of the Act provides that a bank holding company may, with prior Board approval, engage directly or indirectly in any activities "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." A particular activity may be found to meet the "closely related to banking" test if it is demonstated that banks have generally provided the proposed activity; that banks generally provide services that are operationally or functionally so similar to the proposed activity so as to equip them particularly well to provide the proposed activity; or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n* v. *Board of Governors*, 516 F.2d 1229, 1237 (DC Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 **Federal Register** 806 (1984).

In determining whether an activity meets the second, or proper incident to banking, test of section 4(c)(8), the Board must consider whether the performance of the activity by an affiliate of a holding company "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices."

Applicant agrees to conduct its activities in accordance with certain limitations imposed by the Board in the Orders cited above, and accordingly makes the following commitments:

(a) Company's financial advisory activities will not encompass the performance of routine tasks or operations for a client on a daily or continuous basis;

(b) Disclosure will be made to each potential client of Company that Company is an affiliate of Applicant;

(c) advice rendered by Company on an explicit fee basis will be without regard to correspondent balances maintained by a client of Company at Applicant or any of Applicant's depository subsidiaries;

(d) Company will not make available to Applicant or any of Applicant's subsidiaries confidential information received from Company's clients, except with the client's consent; and

(e) Applicant will inform its clients that they are not obligated to engage the Company to provide financial advisory services, and the Company will inform its clients that they are not obligated to accept any services offered by Applicant.

Interested persons are requested to express their views in writing on whether consummation of the proposal can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices.

In publishing the proposal for comment, the Board does not take any position on issues raised by the proposal under the Act. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the board that the proposal meets or is likely to meet the standards of the Act.

Any views or requests for a hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than January 18, 1990. Any request for a hearing must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, December 13, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-29405 Filed 12-18-89; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

[Docket No. 9150]

The B.F. Goodrich Company et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modified final order.

SUMMARY: This modified final order, issued pursuant to a Stipulation between the Commission and B.F. Goodrich and a joint motion granted in the court of appeals, requires Goodrich to divest its Calvert City, Ky. facility, for the production of vinyl cloride monomer (VCM) and ethylene dichloride, instead of the LaPorte VCM plant.

DATES: Final Order issued March 15, 1988. Modified Final Order issued July 18, 1989.[1]

FOR FURTHER INFORMATION CONTACT: Rhett Krulla, FTC/S-3302, Washington, DC (202) 326-2608.

SUPPLEMENTARY INFORMATION: In the Matter of The B.F. Goodrich Company, et al. The prohibited trade practices and/or corrective actions, as set forth at 53 FR 12379, remain unchanged.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Modified Final Order

Commissioners: Daniel Oliver, Chairman, Terry Calvani, Mary L. Azcuenaga, Andrew J. Strenio, Jr., Margot E. Machol.

In the matter of the B.F. Goodrich Company, a corporation, Diamond Shamrock Chemicals Company, a corporation, and Diamond Shamrock Plastics Corporation, a corporation.

The Commission issued a Final Order in this proceeding on March 15, 1988, and respondent, The B.F. Goodrich Company ("Goodrich"), subsequently filed a petition for review of that Order in the United States Court of Appeals for the Second Circuit. On April 5, 1989, the Commission and Goodrich filed a joint motion asking that court to modify the Commission's Final Order pursuant to a Stipulation between the Commission and Goodrich. The parties expressly agreed that entering into the Stipulation did not "constitute an admission of any liability or of any issue of law or fact." Commissioner Azcuenaga issued the attached dissent to the Commission's entry into the Stipulation, later joined by Commissioner Strenio. On April 25, 1989, the court of appeals granted the parties' joint motion and entered its order modifying the Commission's Final Order of March 15, 1988.

Now therefore, it is hereby ordered that the aforesaid "Final Order" be, and hereby is, modified in accordance with the order of the Court of Appeals to read as follows:

[1] Copies of the Complaint, Initial Decision, Final Order, etc. are available from the Commission's Public Reference Branch, H-130, 6th & Pa. Ave. NW., Washington, DC 20580.

BEST COPY AVAILABLE

Final Order

I.

Goodrich shall provide to the acquirer of the Calvert City VCM Plant, on a nonexclusive basis, all VCM technology

accomplish the divestiture. If, however, at the end of the twelve-month period, the trustee has submitted a plan of

F. Promptly upon appointment of the trustee and subject to the approval of

Goodrich and the acquirer over the price, terms, and conditions at which

condition the ethylene, chlorine, utilities, and service facilities that it owns and

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Final Order

I.

Definitions

It is ordered that for purposes of this Order the following definitions shall apply:

A. "Goodrich" means The B.F. Goodrich Company, a corporation organized under the laws of New York with its principal place of business in Akron, Ohio, and its directors, officers, agents, and employees, and its subsidiaries, divisions, affiliates, successors, and assigns.

B. "Calvert City VCM Plant" means the manufacturing facility for the production of VCM and ethylene dichloride ("EDC") owned by Goodrich and located at Calvert City, Kentucky, and all of the VCM and EDC assets, titles, properties, interests, rights and privileges, tangible and intangible, located at this facility.

C. "VCM" means vinyl chloride monomer, a gaseous, reactive, acyclic intermediate chemical, with chemical identity $CH_2=CHCl$, also called chloroethylene or monochloroethylene.

II.

It is ordered that within twelve (12) months from the date this Order becomes final, Goodrich shall divest, absolutely and in good faith, at no minimum price, the Calvert City VCM Plant. At the option of the acquirer Goodrich shall also divest to the acquirer, at an appraised fair market value, up to 58 acres of land adjacent to the Calvert City VCM Plant, as well as all necessary or appropriate easements and rights-of-way. The purpose of the divestiture is to establish the Calvert City VCM Plant as a viable competitor in VCM, by insuring its continuation as an ongoing, viable enterprise in the VCM industry; and to remedy the lessening of competition resulting from the acquisition of certain VCM assets by Goodrich. The divestiture shall be made only to an acquirer or acquirers, and only in a manner, that receives the prior approval of the Federal Trade Commission.

Pending divestiture, Goodrich shall take all measures necessary to maintain the Calvert City VCM Plant in its present condition and to prevent any deterioration, except for normal wear and tear, of any part of the Calvert City VCM Plant, so as not to impair the Calvert City VCM Plant's present operating viability or market value.

III.

It is further ordered that at the time of the divestiture required by this Order, Goodrich shall provide to the acquirer of the Calvert City VCM Plant, on a nonexclusive basis, all VCM technology (including patent licenses and know-how) used by Goodrich, or developed by Goodrich for use, in the Calvert City VCM Plant; and

For a period of one (1) year following the divestiture required by this Order, Goodrich shall provide the acquirer of the Calvert City VCM Plant, if the acquirer so requests, such additional know-how as may reasonably be required to enable such acquirer to manufacture and sell VCM. Goodrich shall charge the acquirer no more than its own costs for providing such additional know-how.

IV.

It is further ordered that at the time of the divestiture required by this Order, Goodrich shall assign to the acquirer of the Calvert City VCM Plant all VCM supply, sales, toll, or exchange agreements pertaining to the Calvert City VCM Plant, except for those agreements describing Goodrich's VCM supply arrangements with Occidental Chemical Corporation; and Goodrich shall make available to the acquirer all customer records and files (other than those describing its VCM supply arrangements with Occidental Chemical Corporation) relating to merchant sales of VCM (at any time since January 1, 1985) from the Calvert City VCM Plant, and Goodrich shall deliver to the acquirer such of those records and files as the acquirer may request.

V.

It is further ordered that if Goodrich has not divested the Calvert City VCM Plant within the twelve-month period provided in Paragraph II of this Order, the Federal Trade Commission may appoint a trustee to effect the divestiture. The trustee shall be a person with experience and expertise in acquisitions and divestitures. Neither the appointment of a trustee nor a Commission decision not to appoint a trustee under this Paragraph V of the Order shall preclude the Commission from seeking civil penalties and other relief available to it, including a courtappointed trustee, for any failure by Goodrich to comply with this Order.

Any trustee appointed by the Commission pursuant to this Paragraph V shall have the following powers, authority, duties, and responsibilities:

A. The trustee shall have the exclusive power and authority, subject to the prior approval of the Commission, to divest the Calvert City VCM Plant. The trustee shall have twelve (12) months from the date of appointment to accomplish the divestiture. If, however, at the end of the twelve-month period, the trustee has submitted a plan of divestiture or believes that divestiture can be accomplished within a reasonable time, the divestiture period may be extended by the Commission.

B. The trustee shall have full and complete access to the personnel, books, records and facilities of the Calvert City VCM Plant, and Goodrich shall develop such financial or other information relevant to the Calvert City VCM Plant as the trustee may reasonably request. Goodrich shall cooperate with the trustee, and shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by Goodrich shall extend the time for divestiture under this Paragraph V in an amount equal to the delay, as determined by the Commission.

C. The power and authority of the trustee to divest shall be at the most favorable price and terms available consistent with this Order's absolute and unconditional obligation to divest at no minimum price, and with the purposes of the divestiture as stated in Paragraph II of this Order, subject to the prior approval of the Commission.

D. The trustee shall serve, without bond or other security, at the cost and expense of Goodrich on such reasonable and customary terms and conditions as the Commission may set. The trustee shall have authority to retain, at the cost and expense of Goodrich, such consultants, attorneys, investment bankers, business brokers, accountants, appraisers, and other representatives and assistants as are reasonably necessary to assist in the divestiture. The trustee shall account for all monies derived from the divestiture and for all expenses incurred. After approval by the Commission of the account of the trustee, including fees for his or her services, all remaining monies shall be paid to Goodrich, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee divesting the Calvert City VCM Plant.

E. Goodrich shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, or liabilities arising in any manner out of, or in connection with, the trustee's duties under this Order, unless the Commission determines that such losses, claims, damages, or liabilities arose out of the misfeasance, gross negligence, or the willful or wanton acts or bad faith of the trustee.

F. Promptly upon appointment of the trustee and subject to the approval of the Federal Trade Commission, Goodrich shall, subject to the Federal Trade Commission's prior approval and consistent with provisions of this Order, transfer to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this Order.

G. If the trustee ceases to act or fails to act diligently, the Commission may appoint a substitute trustee.

H. The Commission may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

I. The trustee shall have no obligation or authority to operate or maintain the Calvert City VCM Plant.

J. The trustee shall report in writing to Goodrich and to the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

VI.

It is further ordered that for a period of ten (10) years from the date the Calvert City VCM Plant is divested, Goodrich shall, at the acquirer's request, contract with the acquirer to provide to the Calvert City VCM Plant such utilities and services as are necessary for the operation of the Calvert City VCM Plant and such commercially reasonable quantities of ethylene and chlorine as the acquirer desires, up to the average 1986–1988 practical production capacity of Goodrich's ethylene and chlorine production facilities located at, or near, Calvert City. The price, terms, and conditions Goodrich shall offer the acquirer of the Calvert City VCM Plant for ethylene and chlorine shall be not greater than the prevailing market price, terms, and conditions for comparable domestic sales of chlorine and ethylene to Gulf Coast EDC/VCM producers, adjusted for a freight differential to Calvert City (such freight differential for chlorine shall be no greater than the lowest available price for transportation of chlorine by barge from a mid-point location on the Gulf Coast; such per pound freight differential for ethylene shall be no greater than the then current average actual per pound cost which Goodrich incurs for the transportation of propane to Calvert City). The prices, terms, and conditions Goodrich shall offer the acquirer of the Calvert City VCM Plant for utilities and services shall not be greater than an amount that would be sufficient to allow Goodrich to recover its fully allocated costs, including a fair return on its investment. In the event of any dispute between Goodrich and the acquirer over the price, terms, and conditions at which Goodrich shall offer such utilities and services to the Calvert City VCM Plant, Goodrich shall submit to binding arbitration to resolve the dispute. Goodrich shall also supply to the acquirer, f.o.b. Gulf Coast manufacturing location, until November 30, 1991, at Goodrich's acquisition cost, such quantities of EDC as requested by the acquirer for use in the Calvert City VCM Plant.

VII.

It is further ordered that, at the acquirer's request, and on fourteen (14) months' notice prior to the expiration of Goodrich's then current supply contract(s) for ethylene and/or chlorine for use in VCM manufacture at its La Porte, Texas plant, Goodrich shall exchange with the acquirer on a pound-for-pound basis with no differential payment by either party, such quantities as the acquirer may designate (not to exceed the amount under the contract then expiring and in total not to exceed the average 1986–1988 practical production capacity of Goodrich's ethylene and/or chlorine (as applicable) production facilities located at, or near, Calvert City) of ethylene, chlorine or both, by delivery by Goodrich to the Calvert City VCM Plant in exchange for delivery by the acquirer, or by such person(s) as the acquirer may designate, to Goodrich's La Porte VCM Plant. The length of such exchange shall be commercially reasonable, but in any event no less than the length of the common practice in the industry and shall not extend more than ten (10) years from the date of divestiture without Goodrich's consent. Goodrich shall notify the acquirer of the termination date(s) and quantities of each of its ethylene and chlorine supply contracts, subject to, in all instances, appropriate confidentiality agreements negotiated between Goodrich and the acquirer. In the case of an ethylene or chlorine supply contract that by its term requires Goodrich to give notice in order for the contract to terminate, the acquirer may give the notice required by this paragraph six (6) months prior to any date such notice by Goodrich may be given. Goodrich's obligation to effect an exchange pursuant to such notice by the acquirer shall commence on the date the underlying contract would expire if Goodrich gave timely notice of cancellation to its supplier.

VIII.

It is further ordered that Goodrich shall take all reasonable measures necessary to maintain in good operating condition the ethylene, chlorine, utilities, and service facilities that it owns and that are located at, or near, the Calvert City VCM Plant so long as Goodrich has any supply obligations pursuant to Paragraphs VI or VII of this Order; provided, however, Goodrich shall have no obligation to maintain in good operating condition the particular facilities used to provide ethylene, chlorine, utilities, and services if the acquirer permits the utilities contract(s), service contract(s), supply contract(s) or exchange agreement(s) pertaining to that particular utility, service, or feedstock to lapse without requesting renewal or if the acquirer does not, at the time of the divestiture, enter into utilities contract(s), service contract(s), supply contract(s), or exchange agreement(s) pertaining to that particular utility, service, or feedstock. Goodrich shall give the acquirer a right of first refusal on the purchase of the aforesaid ethylene facilities, chlorine facilities, utilities and service facilities located at or near the Calvert City VCM Plant; and Goodrich shall take no action that may unreasonably interfere with any plan, or attempt, by the acquirer to build or acquire ethylene, chlorine, utilities, service, or any other facility related to the production, sale, or distribution of VCM at or near the Calvert City VCM Plant.

IX.

It is further ordered that, for a period of ten (10) years from the date this Order becomes final, Goodrich shall not directly or indirectly acquire—other than the acquisition of manufactured product in the ordinary course of business—all or any part of the stock or assets of, or any interest in, any producer of VCM located in the United States without the prior approval of the Federal Trade Commission.

X.

It is further ordered that Goodrich shall, within sixty (60) days after the date this Order becomes final and every sixty (60) days thereafter until it has fully complied with the provisions of Paragraph II of this Order, submit in writing to the Commission a report setting forth in detail the manner and form in which it intends to comply, is complying, or has complied with that provision. Such compliance reports shall include, among other things that may be required from time to time, a full description of all contacts and negotiations relating to the divestiture of the Calvert City VCM Plant, including the name and address of all parties contacted, copies of all written

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communications to and from such parties, and all internal memoranda, reports and recommendations concerning divestiture; and

Goodrich shall submit such further written reports of its compliance as the staff of the Commission may from time to time request in writing.

XI.

It is further ordered that Goodrich, upon written request and on reasonable notice, for the purpose of securing compliance with this Order, and subject to any legally recognized privilege, shall permit duly authorized representatives of the Commission or of the Director of the Bureau of Competition:

A. Reasonable access during the office hours of Goodrich, which may have counsel present, to inspect and copy books, ledgers, accounts, correspondence, memoranda, reports, and other records and documents in the possession or control of Goodrich that relate to any matter contained in this Order; and

B. Subject to the reasonable convenience of Goodrich, an opportunity to interview officers or employees of Goodrich, who may have counsel present, regarding such matters.

XII.

It is further ordered that Goodrich shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed corporate change, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation, which may affect compliance with the obligations arising out of this Order."

By the Commission.

Donald S. Clark,

Secretary.

Dissenting Statement of Commissioner Azcuenaga in the B.F. Goodrich Co.

The Commission now joins, by a vote of 3 to 2, in a settlement to resolve the appeal of The B.F. Goodrich Co. from the Commission's order in this matter, which required a divestiture to restore competition in the vinyl chloride monomer ("VCM") market. Under the settlement, B.F. Goodrich will divest its Calvert City, Kentucky, VCM plant instead of divesting the LaPorte, Texas, VCM plant, as required by the Commission's order. I dissent.

With this settlement, the Commission relinquishes a procompetitive divestiture for a substantially less efficacious remedy. Indeed, the Calvert City plant is unlikely to be an independent competitive force in the industry for the long term, primarily because Goodrich will control essential raw materials. In agreeing to this settlement, the Commission also casts aside a substantial investment of time and resources, both public and private, in litigating and adjudicating this case, for no compelling reason and in haste.

This settlement perversely secures the worst of two worlds. On one hand, the settlement is insufficient to eliminate the competitive concerns at the heart of this case. On the other hand, the settlement, which requires detailed Commission review of complex pricing decisions for an extended time, is highly regulatory and usually would be rejected on that ground alone. The settlement establishes the Commission as a kind of "Office of Price Administration," intrusively monitoring and policing pricing decisions for years.

What is the rationale for this extraordinary "compromise"? Nothing has changed since the Commission issued its opinion and final order except that the case has been briefed and argued before the court. Does the Commission have second thoughts about its opinion and order? (One of the three commissioners who now supports the relief imposed by the settlement found no violation of law on which to predicate any relief whatsoever when the Commission issued its opinion and order.[1] Presumably, this commissioner now believes that Goodrich has indeed violated the law.) If we made a mistake in fact or in law, vacating the order would be the appropriate remedy. If we continue to believe that we have applied the law correctly, then prosecution of the appeal, rather than evisceration of the order, would seem to be consistent with the public interest.

I believe that the Commission's original opinion and order with respect to the VCM market are correct. Acceptance of this settlement with its inadequate remedy and regulatory format most assuredly is not in the public interest.[2]

[FR Doc. 89-29472 Filed 12-18-89; 8:45 am]

BILLING CODE 6750-01-M

[Docket No. C-3254]

Ujena, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, the Mountain View, Ca. corporation from misrepresenting the terms and conditions of a money-back guarantee, from failing to provide a full refund of the amount stated in the money-back guarantee within the time specified in the offer, and from failing to transmit a credit statement to the consumer's credit card issuer within seven business days of accepting the return of merchandise.

DATE: Complaint and Order issued June 14, 1989.[1]

FOR FURTHER INFORMATION CONTACT: Jerome M. Steiner, Jr., San Francisco Regional Office, Federal Trade Commission, 901 Market St., Suite 570, San Francisco, Ca. 94103. (415) 995-5220.

SUPPLEMENTARY INFORMATION: On Tuesday, March 28, 1989, there was published in the **Federal Register**, 54 FR 12648, a proposed consent agreement with analysis In the Matter of Ujena, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 82 Stat. 146, 147; 15 U.S.C. 45, 1601, *et seq.*)

Donald S. Clark,

Secretary.

[FR Doc. 29473 Filed 12-18-89; 8:45 am]

BILLING CODE 6750-01-M

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 11/27/89 AND 12/08/89

Name of acquiring person, Name of acquired person, Name of acquired entity	PMN number	Date terminated
Johnson & Johnson Corporation, Great Lakes Chemical Corporation, GLI, Inc.	90-0063	11/27/89
The Equitable Life Assurance Society of the U.S., GTECH Corporation, GTECH Corporation	90-0203	11/27/89
Brierley Investments Limited, Russ Togs, Inc., Russ Togs, Inc.	90-0223	11/27/89
James A. Daley, John Hancock Mutual Life Insurance Company, John Hancock Life Insurance Company	90-0337	11/27/89
HCA-Hospital Corporation of America, Total Health Systems, Inc. Total Health Systems, Inc.	90-0338	11/27/89
The President and Fellows of Harvard College, John Hancock Mutual Life Insurance Company, John Hancock Mutual Life Insurance Company	90-0340	11/27/89
Burlington Resources, Inc., Mobil Corporation, Mobil Producing Texas & New Mexico Inc.	90-0357	11/27/89
Mr. David J. Stone and Mrs. Sara G. Stone, Primerica Corporation, PennCorp Financial, Inc.	90-0378	11/27/89
Stoneridge Resources Inc., Acceptance Insurance Holdings, Inc., Acceptance Insurance Holdings, Inc.	90-0383	11/27/89
Society Corporation, Bank South Corporation, Bank South, N.A.	90-0392	11/27/89
Jose Liberman, George G. Beasley, Beasley Broadcast Group	90-0394	11/27/89

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 11/27/89 AND 12/08/89—Continued

Name of acquiring person, Name of acquired person, Name of acquired entity	PMN number	Date terminated
E-L Financial Corporation Limited, New England Mutual Life Insurance Company, GRENEL Financial Corporation	90-0404	11/27/89
CoreStates Financial Corp, Itel Corporation, Signal Capital Corp.	90-0409	11/27/89
Corporate Capital Limited, Catherines Holding Corp., Catherines Holding Corp.	90-0411	11/27/89
TWC Corporation, Control Data Corporation, Ticketron Sports & Entertainment	90-0412	11/27/89
Mellon Bank Corporation, Security Pacific Corporation, Security Pacific Automotive Financial Services Corp.	90-0423	11/27/89
Telenova, Inc., Memorex Telex N.V., Memorex Telex Corporation	90-0425	11/27/89
Nippon Oil Company, Limited, USX Corporation, Pan Ocean Oil Corporation	90-0426	11/27/89
Corroon & Black Corporation, Kendall Insurance, Inc., Kendall Insurance, Inc.	90-0439	11/27/89
Bessemer Securities Corporation, Dallas Corporation, Dallas Corporation	90-0450	11/27/89
Philip Morris Companies Inc., Fassetts Bakery, inc., Fassetts Bakery, Inc.	90-0393	11/28/89
Vickers Plc, Ross Catherall Group Plc, Ross Catherall Group Plc	90-0221	11/29/89
CEA Industries, Canberra Industries, Inc.	90-0224	11/29/89
Canberra Industries, Inc., N.V. Philips, A&M Records, Inc., A&M Records, Inc.	90-0228	11/29/89
Werner Holding Co. (PA), Inc., National Intergroup, Inc., National Aluminum Corporation	90-0256	11/29/89
FPI Limited, J.H. Hollingsworth, Clouston Foods Canada Limited	90-0308	11/29/89
Intermark, Inc., Triton Group Ltd., Triton Group Ltd.	90-0323	11/29/89
Charles H. and Margaret M. Dyson, United Technologies Corporation, Hamilton Standard Controls, Inc., Spectrol Reliance Ltd.	90-0325	11/29/89
FAI Insurances Limited, Foremost Corporation of America, Foremost Corporation of America	90-0382	11/29/89

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 11/27/89 AND 12/08/89—Continued

Name of acquiring person, Name of acquired person, Name of acquired entity	PMN number	Date terminated
William J. Yung, Del Webb Corporation, Del Webb Corporation	90-0436	11/29/89
Loews Corporation, The Travelers Corporation, The Travelers Insurance Company	90-0443	11/29/89
American Distributors PLC, Alpert Bros., Inc., Alpert Bros., Inc.	90-0300	11/30/89
The Kassar Family Trust, The Vista Organization Partnership, L.P., The Vista Organization Partnership, L.P.	90-0336	11/30/89
Novo—Nordisk Foundation, Bristol-Myers Squibb Company, Bristol-Myers Squibb Company	90-0363	11/30/89
Cain & Bultman, Inc., United Technologies Corporation, Florida Air Conditioners, Inc.	90-0424	12/01/89
Compagnie Financiere Ehrber, Rothmans International PCS, Rothmans International PLC	90-0460	12/01/89
Wells Fargo & Company, Imperial Corporation of America, Imperial Savings Association	90-0310	12/04/89
The Equitable Life Assurance Society of the U.S., Total Health Systems, Inc., Total Health Systems, Inc.	90-0339	12/04/89
Norwest Corporation, Lincoln Financial Corporation, 11 Lincoln Subsidiary Banks	90-0366	12/04/89
Comtrin Holding A.G., TOL Acquisition Corporation, TOL Acquisition Corporation	90-0369	12/04/89
ERLY Industries Inc., American Rice, Inc., American Rice, Inc.	90-0370	12/04/89
QP Corporation, Henningsen Foods, Inc., Henningsen Foods, Inc.	90-0391	12/04/89
The British Petroleum Company p.l.c., The Louisiana Land and Exploration Company, The Louisiana Land and Exploration Company	90-0400	12/04/89
John Hancock Mutual Life Insurance Company, Crown Pacific, Ltd., Crown Pacific, Ltd.	90-0402	12/04/89
PepsiCo, Inc., Anthony J. Nickert, Pizza Huts of Cincinnati, Inc.	90-0437	12/04/89
The Atlantic Foundation	90-0440	12/04/89

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[1] *See* Separate Statement of Chairman Daniel Oliver in The B.F. Goodrich Co., FTC Docket No. 9159.

[2] I also dissent from the decision to file the settlement under seal.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

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TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 11/27/89 AND 12/08/89

Name of acquiring person, Name of acquired person, Name of acquired entity	PMN number	Date terminated
John T. Mellin Western Athletic Clubs, Inc/ Western Athletic Properties		
First Chicago Corporation, The Goldman Sachs Group, L.P. Skyhigh Corporation	90-0441	12/04/89
E-L Financial Corporation Limited, Guardian Royal Exchange plc, GRENEL Financial Corporation	90-0444	12/04/89
Harcourt Brace Jovanovich, Inc., American Pioneer, Inc., American Pioneer Life Insurance Company and American	90-0448	12/04/89
Norwest Corporation, Barclays PLC, Barclays Bank of Delewere, National Association	90-0457	12/04/89
PepsiCo, Inc., Alan W. Lee, Tri-L Pizza Huts, Inc.	90-0458	12/04/89
E. I. du Pont de Nemours and Company, Freeport-McMoRan Inc., FMP Operating Company, a Limited Partnership	90-0467	12/04/89
18th Street Associates, Sears, Roebuck and Co., Sears Catalog Distribution Center	90-0468	12/04/89
Leonard S. Mandor, c/o Concord Assets Group, Inc., Milestone Properties, Inc., Milestone Properties, Inc.	90-0470	12/04/89
PepsiCo, Inc., Peter C. Toigo, Winchell's Donut House Operating Company, L. P.	90-0472	12/04/89
Charterhouse Equity Partners, L.P., Torstar Corporation, Miles Kimball Company	90-0473	12/04/89
All Nippon Airways Co., Ltd., Aoki Corporation, The Westin Hotel, Washington, D.C.	90-0484	12/04/89
Sonat Inc., Carlile and Howell, Inc., Carlile and Howell, Inc.	90-0485	12/04/89
International Business Machines Corporation, Dayton Partners (Ohio Partnership) Dayton & Associates Partnerships	90-0486	12/04/89
George Macomber, Sears, Roebuck and Co., Sears Catalog Distribution Center	90-0491	12/04/89
Dow Jones & Company, Inc., American Telephone and Telegraph Company, AT&T Development Corporation	90-0511	12/04/89
VAALCO Energy Inc., The Australian Gas Light Company, TMOC Petroleum Inc., c/o Corporation Trust Company	90-0513	12/04/89
Nacolah Holding Corporation, Amoco Corporation, Amoco Life Insurance Company	90-0518	12/04/89
Richard Fanslow, Greenbrier Acquisition, Inc., Greenbrier Acquisition, Inc.	90-0520	12/04/89
Comdisco, Inc., Centel Corporation, Centel Credit Corporation	90-0539	12/04/89
Comdisco, Inc., North American Computer Equipment, Inc., North American Computer Equipment, Inc.	90-0540	12/04/89
PacifiCorp, UtiliCorp United Inc, PSI, Inc.	90-0542	12/04/89
PacifiCorp William T. Bright, Land Use Corporation, Bright Coal Corporation,	90-0367	12/04/89
Ashland Oil Inc., Olin Corporation, Olin Corporation	90-0398	12/05/89
Hyperion Partners, L. P., The Travelers Corporation, Travelers Mortgage Services, Inc.	90-0398	12/05/89
The Louisiana Land and Exploration Company, The British Petroleum Company p.l.c., BP Exploration Inc.	90-0401	12/05/89
Merrill Lynch & Co., Inc., Bitrix N.V., Pangborn Holdings, Inc.	90-0420	12/05/89
Merrill Lynch & Co., Inc., Daniel J. Sullivan, Pangborn Holdings, Inc.	90-0421	12/05/89
Brierley Investments Limited, La Quinta Motor Inns, Inc., La Quinta Motor Inns, Inc.	90-0438	12/05/89
Sumitomo Realty & Development Co., Ltd., Liberty/Manhattan Beach Limited Partnership, The Residence Inn By Marriott	90-0453	12/05/89
Mr. Yoshiyuki Nakayama, Liberty/Manhattan Beach Limited Partnership, The Residence Inn by Marriott, Inc.	90-0454	12/05/89
Canyon Resources Corporation, Addington Resources, Inc., Addwest Gold, Inc.	90-0482	12/05/89
Sunshine Mining Company, Montana Reserves Company, Montana Reserves Company	90-0483	12/05/89
Sony Corporation, Time Warner Inc., Lot, Inc.	90-0492	12/05/89
Center for Independent Living, Beverly Enterprises, Inc., Beverly Enterprises-Massachusetts, Inc.	90-0347	12/06/89
J. B. Poindexter, Elton E. Mountz, Morgan Trailer Mfg. Co.	90-0431	12/06/89
Toyota Motor Corporation, Robert J. Bodine, Bodine Aluminum Inc., Lucile Investment Company, Inc.	90-0474	12/06/89
TriMas Corporation, Charles O. Hiler & Son, Inc., Charles O. Hiler & Son, Inc.	90-0493	12/06/89
TriMas Corporation, Accurate Castings, Inc., Accurate Castings, Inc.	90-0507	12/06/89
Syntrex Incorporated, Harris Corporation, Lanier Business System Division	90-0564	12/06/89
Burnham Pacific Properties, Inc., Pan Pacific Development Corporation, Pan Pacific Development (California), Inc.	90-0660	12/06/89
The 1964 Simmons Trust, Lockheed Corporation, Lockheed Corporation	90-0469	12/07/89
Societe de Diffusion Internationale Agro-Alimentaire, Borden, Inc., Meadow Gold Dairies, Inc.	90-0489	12/07/89
Cardinal Communications, Inc., Donald G. Jones, Star Midwest Indiana Group	90-0523	12/07/89

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Federal Trade Commission, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326-3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 89-29471 Filed 12-18-89; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89N-0519]

Drug Export; Antihemophilic Factor (Human), Liquid Heat Treated

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Armour Pharmaceutical Co. has filed an application requesting approval for the export of the biological product Antihemophilic Factor (Human), Liquid Heat Treated to Belgium, Denmark, The Federal Republic of Germany, France, Ireland, Italy, Luxembourg, The Netherlands, Portugal, Spain, and The United Kingdom.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Boyd Fogle, Jr., Inspections and Surveillance Staff (HFB-120), Center for Biologics Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8191.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Armour Pharmaceutical Co., Suite 200, 920A Harvest Dr., Blue Bell, PA, 19422, has filed an application requesting approval for the export of the biological product Antihemophilic Factor (Human), Liquid Heat Treated, to Belgium, Denmark, The Federal Republic of Germany, France, Ireland, Italy, Luxembourg, The Netherlands, Portugal, Spain, and The United Kingdom. Antihemophilic Factor (Human), Liquid Heat Treated is indicated for treatment of classical hemophilia (Hemophilia A). The application was received and filed in the Center for Biologics Evaluation and Research on November 27, 1989, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by December 29, 1989, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Biologics Evaluation and Research (21 CFR 5.44).

Dated: December 4, 1989.

Thomas S. Bozzo,

Director, Office of Compliance Center for Biologics Evaluation and Research.

[FR Doc. 89-29442 Filed 12-18-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 89C-0480]

CIBA Vision Corp.; Filing of Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba Vision Corp. has filed a petition proposing that the color additive regulations be amended to provide for the safe use of six vinyl sulfone reactive dyes to color contact lenses prepared from a copolymer that is the reaction product of the dye and a polyvinyl alcohol/methyl methacrylate copolymer. The dyes are as follows:

(1) C.I.Reactive Black 5 (2,7-naphthalenedisulfonic acid, 4-amino-5-hydroxy-3,6-bis[(4-((2-(sulfooxy)ethyl)sulfonyl)-phyenyl)azo)-, tetrasodium salt, CAS Reg. No. 17095-24-8);

(2) C.I. Reactive Blue 21 (cooper, (29*H*,31*H*-phthalocyanina(2-)-N^{29}, N^{30}, N^{31}, N^{32})-, sulfo((4-((2-(sulfooxy)ethyl)sulfonyl)phenyl)amino) sulfonyl derivatives, CAS Reg. No. 73049-92-0);

(3) C.I. Reactive Orange 78 (2-naphthalenesulfonic acid, 7-(acetylamino)-4-hydroxy-3-((4-((2-(sulfooxy)ethyl)sulfonyl)phenyl)azo)-, CAS Reg. No. 68189-39-9);

(4) C.I. Reactive Yellow 15 (benzenesulfonic acid, 4-(4,5-dihydro-4-((2-methoxy-5-methyl-4-((2-(sulfooxy)ethyl)sulfonyl)azo)-3-methyl-5-oxo-1*H*-pyrazol-1-yl)-, CAS Reg. No. 60958-41-0);

(5) C.I. Reactive Blue No. 19 (2-anthracenesulfonic acid, 1-amino-9,10-dihydro-9,10-dioxo-4-((3-((2-(sulfooxy)ethyl)sulfonyl)phenyl)amino)-, disodium salt, CAS Reg. No. 2580-78-1);

(6) C.I. Reactive Red 180 (5-(benzoylamino)-4-hydroxy-3-((1-sulfo-6-((2-sulfooxy)ethyl)sulfonyl)-2-naphthalenyl)azo)-2, 7-naphthalenedisulfonic acid, tetrasodim salt, CAS Reg. No. 98114-32-0).

FOR FURTHER INFORMATION CONTACT: Sandra L. Varner, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 706(d)(1) (21 U.S.C. 376(d)(1))), notice is given that a petition (CAP 9C0217) has been filed by Ciba Vision Corp., P.O. Box 105069, Atlanta, GA 30348, proposing that 21 CFR Part 73 of the color additive regulations be amended to provide for the safe use of six vinyl sulfone reactive dyes to color contact lenses prepared from a copolymer that is the reaction product of the dye and a polyvinyl alcohol/methyl methacrylate copolymer. The dyes are as follows:

(1) C.I. Reactive Black 5 (2,7-naphthalenedisulfonic acid, 4-amino-5-hydroxy-3,6-bis[(4-((2-(sulfooxy)ethyl)sulfonyl)-phenyl)azo)-, tetrasodium salt, CAS Reg. No. 17095-24-8);

(2) C.I. Reactive Blue 21 (cooper, (29*H*,31*H*-phthalocyaninato(2-)-N^{29}, N^{30}, N^{31}, N^{32})-, sulfo((4-((2-(sulfooxy)ethyl)sulfonyl)phenyl)amino) sulfonyl derivatives, CAS Reg. No. 73049-92-0);

(3) C.I. Reactive Orange 78 (2-naphthalenesulfonic acid, 7-(acetylamino)-4-hydroxy-3-((4-((2-(sulfooxy)ethyl)sulfonyl)phenyl)azo)-, CAS Reg. No. 68189-39-9);

(4) C.I. Reactive Yellow 15 (benzenesulfonic acid, 4-(4,5-dihydro-4-((2-methoxy-5-methyl-4-((2-(sulfooxy)ethyl)sulfonyl)azo)-3-methyl-5-oxo-1*H*-pyrazol-1-yl)-, CAS Reg. No. 60958-41-0);

(5) C.I. Reactive Blue No. 19 (2-anthracenesulfonic acid, 1-amino-9,10-

dihydro-9,10-dioxo-4-((3-((2-(sulfooxy)ethyl)sulfonyl)phenyl)amino)-, disodium salt, CAS Reg. No. 2580-78-1);

(6) C.I. Reactive Red 180 (5-(benzoylamino)-4-hydroxy-3-((1-sulfo-6-((2-sulfooxy)ethyl)sulfonyl)-2-naphthalenyl)azo)-2, 7-naphthalenedisulfonic acid, tetrasodim salt, CAS Reg. No. 98114-32-0).

The petitioner has requested that the color additive regulations be amended to provide for the safe use of six vinyl sulfone reactive dyes to color contact lenses prepared from a copolymer that is the reaction product of the dye and a polyvinyl alcohol/methyl methacrylate copolymer. The dyes are as follows:

(1) C.I. Reactive Black 5 (2,7-naphthalenedisulfonic acid, 4-amino-5-hydroxy-3,6-bis[(4-((2-(sulfooxy)ethyl)sulfonyl)-phyenyl)azo)-, tetrasodium salt, CAS Reg. No. 17095-24-8);

(2) C.I. Reactive Blue 21 (cooper, (29*H*,31*H*-phthalocyanina(2-)-N^{29}, N^{30}, N^{31}, N^{32})-, sulfo((4-((2-(sulfooxy)ethyl)sulfonyl)phenyl)amino) sulfonyl derivatives, CAS Reg. No. 73049-92-0);

(3) C.I. Reactive Orange 78 (2-naphthalenesulfonic acid, 7-(acetylamino)-4-hydroxy-3-((4-((2-(sulfooxy)ethyl)sulfonyl)phenyl)azo)-, CAS Reg. No. 68189-39-9);

(4) C.I. Reactive Yellow 15 (benzenesulfonic acid, 4-(4,5-dihydro-4-((2-methoxy-5-methyl-4-((2-(sulfooxy)ethyl)sulfonyl)azo)-3-methyl-5-oxo-1*H*-pyrazol-1-yl)-, CAS Reg. No. 60958-41-0);

(5) C.I. Reactive Blue No. 19 (2-anthracenesulfonic acid, 1-amino-9,10-

SUMMARY: The Public Health Service (PHS) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program. The Secretary publish in the **Federal Register** a notice of each petition filed. Set forth below is a list of petitions received by

3. Joseph and Juanita Stotts on behalf of Benjamin Stotts, Orange, California, Claims Court Number 89-108 V

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dihydro-9,10-dioxo-4-((3-((2-(sulfooxy)ethyl)sulfonyl)phenyl)amino)-, disodium salt, CAS Reg. No. 2580-78-1); and

(6) C.I. Reactive Red 180 (5-(benzoylamino)-4-hydroxy-3-((1-sulfo-6-((2-(sulfooxy)sulfonyl)-2-naphthalenl)azo-2,7-naphthalenedisulfonic acid, tetrasodium salt, CAS Reg. No. 98114-32-0).

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Dated: December 4, 1989.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-29372 Filed 12-18-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 89F-0453]

PPG Industries, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that PPG Industries, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of *a N, N, N', N', N'', N''*-hexakis(methoxymethyl)-1,3,5-triazine-2,4,6-triamine polymer with stearyl alcohol, α-octadecenyl-Ω-hydroxypoly(oxy-1,2-ethanediyl) and alkyl ($C_{30}+$) alcohols as a component of paper and paperboard in contact with aqueous food.

FOR FURTHER INFORMATION CONTACT: Edward J. Machuga, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 9B4172) has been filed by PPG Industries, Inc., Pittsburgh, PA 15146, proposing that § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) be amended to provide for the safe use of *a N, N, N', N', N'', N''*-hexakis(methoxymethyl)-1,3,5-triazine-2,4,6-triamine polymer with stearyl alcohol, α-octadecenyl-Ω-hydroxypoly(oxy-1,2-ethanediyl) and alkyl ($C_{30}+$) alcohols as a component of paper and paperboard in contact with aqueous food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Dated: December 11, 1989.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-29443 Filed 12-18-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 89N-0518]

Drug Export: HTLV-1 Elisa Test Kit

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Cellular Products, Inc., has filed an application requesting approval for the export of the biological product HTLV-1 Elisa Test Kits to Italy.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Boyd Fogle, Jr., Inspections and Surveillance Staff (HFB-120), Center for Biologics Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8191.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the Federal Register within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Cellular Products, Inc., 668 Main St., Buffalo, NY, 14202, has filed an application requesting approval for the export of the biological products HTLV-1 Elisa Test Kits to Italy. HTLV-1 Elisa Test Kit is an enzyme linked immunosorbent assay for the detection of antibodies to Human T-Cell Lymphotropic Virus Type 1 (HTLV-1) in human plasma or serum. The application was received and filed in the Center for Biologics Evaluation and Research on November 8, 1989, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by December 26, 1989, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Biologics Evaluation and Research (21 CFR 5.44).

Dated: December 4, 1989.

Thomas S. Bozzo,

Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 89-29373 Filed 12-18-89; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

National Vaccine Injury Compensation Program List of Petitions Received

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Public Health Service (PHS) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program ("the Program"), as required by section 2112(b)(2) of the PHS Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Claims Court is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program generally, contact the Clerk, United States Claims Court, 717 Madison Place, NW., Washington, DC 20005, (202) 633-7257. For information on the Public Health Service's role in the Program, contact the Administrator, Vaccine Injury Compensation Program, Parklawn Building, 5600 Fishers Lane, Room 7-90, Rockville, MD 20857, (301) 433-6593.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa-10 *et seq.*, provides that those seeking compensation are to file a petition with the U.S. Claims Court and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated his responsibility under the Program to PHS. The Claims Court is directed by statute to appoint special masters to take evidence, conduct hearings as appropriate, and to submit to the Court findings of fact and conclusions of law.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table set forth at section 2114 of the PHS Act. This Table lists for each covered childhood vaccine the conditions which will lead to compensation and, for each condition, the time period for occurrence of the first sympton or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested after the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa-12(b)(2), requires that the Secretary publish in the Federal Register a notice of each petition filed. Set forth below is a list of petitions received by PHS from November 1 through December 8, 1989. Section 2112(b)(2) also provides that the special master "shall afford all interested persons an opportunity to submit relevant, written information" relating to the following:

1. The existence of evidence "that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition," and

2. Any allegation in a petition that the petitioner either:

(a) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table (see section 2114 of the PHS Act) but which was caused by" one of the vaccines referred to the table, or

(b) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine" referred to in the Table.

This notice will also serve as the special master's invitation to all interested persons to submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Claims Court at the address listed above (under the heading "For Further Information Contact"), with a copy to PHS addressed to Acting Director, Bureau of Health Professions, 5600 Fishers Lane, Room 8-05, Rockville, MD 20857. The Court's caption (Petitioner's Name v. Secretry of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission.

Chapter 35 of Title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

List of Petitions

1. Clarence and Lanita Anderson on behalf of Mary Jane Anderson, Los Angeles, California, Claims Court Number 89-106 V
2. First Commercial Bank, Guardian of the Estate of Carla Hardcastle, Little Rock, Arkansas, Claims Court Number 89-107 V
3. Joseph and Juanita Stotts on behalf of Benjamin Stotts, Orange, California, Claims Court Number 89-108 V
4. Sharon and Donald Schumacher, Sr. on behalf of Donald Schumacher, Jr., Leominster, Massachusetts, Claims Court Number 89-109 V
5. Carla Wilson-Alford on behalf of Jeremy Alford, Wichita, Kansas, Claims Court Number 89-110 V
6. John Baker and Elynn Bautz on behalf of Christopher Brown, Milwaukee, Wisconsin, Claims Court Number 89-111 V
7. Paul and Stefania Crum on behalf of Elyse Crum, Philadelphia, Pennsylvania, Claims Court Number 89-112 V
8. Raymond and Rebecca Skidmore on behalf of Isaiah Skidmore, Boca Raton, Florida, Claims Court Number 89-113 V
9. Philip Sartore, Evansville, Indiana, Claims Court Number 89-114 V
10. James King, Jr. on behalf of Benjamin A. King, Tuscaloosa, Alabama, Claims Court Number 89-115 V
11. Stephen Cheek, Houston, Texas, Claims Court Number 89-116 V
12. Ronald Harmon on behalf of Sarah Elizabeth Harmon, Deceased, Philadelphia, Pennsylvania, Claims Court Number 89-117 V
13. Ruthie Robbins on behalf of Amanda Robbins, Albuquerque, New Mexico, Claims Court Number 89-118 V
14. Juan Hernandez on behalf of Geraldo Hernandez, Minneapolis, Minnesota, Claims Court Number 89-119 V
15. Susan Devore on behalf of Michael Devore, Greenville, South Carolina, Claims Court Number 89-120 V
16. Beverly Perry, Kenmore, New York, Claims Court Number 89-121 V
17. Lenita and Mark Schafer on behalf of Melissa Schafer, Scituate, Massachusetts, Claims Court Number 89-122 V

Dated: December 12, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89-29444 Filed 12-18-89; 8:45 am]

BILLING CODE 4160-15-M

Office of Human Development Services

Family Violence Prevention and Services

AGENCY: Office of Human Development Services (HDS), HHS.

ACTION: Notice of the availability of FY 1990 funds for State and Indian Tribal grants for family violence prevention and services.

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SUMMARY: FY 1990 funds will be available for grants to States (including Territories and Insular Areas) and Indian Tribes and Tribal organizations to assist in establishing, maintaining, and expanding programs and projects to prevent family violence and to provide immediate shelter and related assistance for victims of family violence and their dependents. This Notice sets forth the application process and requirements for these grants.

DATE: Applications must be received by February 20, 1990.

ADDRESS: Address applications to: Office of Human Development Services, Office of Policy, Planning and Legislation, Attn: William D. Riley, Room 312–F, Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: William D. Riley, (202) 245–2892.

SUPPLEMENTARY INFORMATION:

A. Background

Title III of the Child Abuse Amendments of 1984 (Pub. L. 98–457, 42 U.S.C. 10401 et seq.) is entitled the "Family Violence Prevention and Services Act" (the Act). It was first implemented in FY 1986 and was reauthorized by Congress in April 1988 by Pub. L. 100–294.

The purposes of this legislation are to assist States in their efforts to prevent family violence and provide immediate shelter and related assistance for victims of family violence and their dependents; and to carry out coordination, research, training, technical assistance, documentation, and evaluation activities. Also, the Secretary may make demonstration grants directly to Indian Tribes and Tribal organizations to prevent family violence and provide immediate shelter and related assistance.

During FY 1989, 121 grants under the Act were made to States and Indian Tribes. Grants to the States are based on population, with a minimum of $50,000 specified in the Act. In FY 1989, State grants ranged from $50,000 to $736,000. Grants to eligible Indian Tribes are based on tribal population and were either $5, 497 or $14,194, with the exception of the Navajo Nation which received $48,029.

Both State and Indian Tribal grantees are required to use not less than 60 percent of these funds for immediate shelter and related assistance (section 303(g)). States and Indian Tribes have met this requirement with the majority of the States and Tribes exceeding the 60 percent requirement.

A major new activity supported by States during FY 1989 was the establishment of transitional housing services. Because of the limited amount of time a family or individual may remain in an emergency shelter, a small number of States are supporting transitional housing for family violence victims and their dependents.

The Department also funds the operation of the National Clearinghouse on Family Violence; supports reearch efforts, documentation projects, and regionally based training and technical assistance for State and local law enforcement personnel through the Department of Justice; and made grants for technical assistance and training for State and local agencies administering this program.

B. Reporting Requirements

Program Reports

States and Indian Tribes are reminded that annual program activity reports are due December 29, 1989.

Fiscal Reports

A Financial Status Report, Standard Form 269 (SF–269), is due on an annual basis for each fiscal year award. The SF–269 must be submitted within 90 days after the end of each fiscal year. Thus, SF–269s are due on December 29, 1989.

C. Expenditure Period

We want to call to your attention the extended expenditure period beginning with FY 1990 funds. Grantees must expend these funds not later than September 30, 1992. Previous to FY 1990, States and Indian Tribes had 2 years to expend these funds.

D. Funds Available

Depending on Congressional action, we estimate that approximately $8.219 million may be available for distribution in FY 1990. Of this amount, the Department will make 85 percent of total funds available for grants to States (section 310(b) of the Act). Estimates of States allocations are listed at the end of this Notice and have been computed based on the formula in section 304.

We estimate that approximately $600,000 may be available for direct grants to Indian Tribes or Tribal organizations. These estimates, however, are subject to change based on Congressional appropriations.

The remaining funds will be used to carry out the research, evaluation, coordination, training, clearinghouse, and documentation activities required by the Act.

E. Eligibility: States

"States" as defined in section 309(6) of the Act are eligible to apply for funds. The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the remaining eligible entity previously a part of the Trust Territory of the Pacific Islands—the Republic of Palau. In the past, Guam, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands have applied for family violence funds as a part of their Consolidated Grant under the Social Services Block Grant.

F. Eligibility: Indian Tribes and Tribal Organizations

In FY 1986, the first year of this program, Indian tribal eligibility was limited to those Federally recognized Tribes that had established social services program as evidenced by receipt of "638" contracts for social services with the Bureau of Indian Affairs (BIA).

In FY 1987 we expanded eligibility to include Indian Tribes and Tribal organizations which had received FY 1986 grants under the Indian Child Welfare Act from the BIA.

We limited Indian tribal eligibility in FY 1988 to those Indian Tribes and Tribal organizations which had received FY 1987 family violence grants. We again limited eligibility in FY 1989, because of funding limitations, to those Indian Tribes and Tribal organizations who received grants in FY 1987.

For FY 1990, we are expanding eligibility to solicit applications from those Indian Tribes and Tribal organizations which are FY 1989 grantees under Title IV–B of the Social Security Act, as well as the Indian Tribes and Tribal organizations who received family violence prevention grants in FY 1987. We believe that we can accommodate this expansion with the limited funds we have available. The Title IV–B tribal grantees were included because their recent grant awards indicate an operational social services infrastructure and delivery system. Should additional funds become available, a supplemental announcement will be published. As in previous years, Indian Tribes may apply singly or as a consortium. A list of the eligible Indian Tribes and Tribal organizations is found at the end of this Notice.

Because section 304(a) specifies a minimum base amount for State allocations, we have set likewise a base amount for Indian Tribal allotments since FY 1986. We have found, over the last four years, that the establishment of such a minimum allocation, based on population, has facilitated our efforts to make a fair and equitable distribution of limited grant funds.

Tribes which meet the application requirements and whose reservation and surrounding tribal trust lands population is less than 3,000 will receive a minimum of $3,000; Tribes which meet the application requirements and whose reservation and surrounding tribal trust lands population exceeds 3,000 will receive a minimum of $8,000, except for the Navajo Tribe which will receive a minimum of $24,000 because of its population. We have used these population and grant award figures since the beginning of the program.

In computing Indian Tribal allocations, we will use the best available population figures from the Census Bureau. Where Census Bereau data are unavailable, we will use figures from the BIA Indian Population and Labor Force Report.

If not all eligible Tribes apply, the available funds will be divided proportionally among the Tribes which apply and meet the requirements.

G. Matching Requirements

States and Indian Tribes and Tribal organizations are not required to furnish matching funds, but sub-State grantees must meet the requirements in section 303(f) as follows:

In the first year, the required match for a sub-State grantee is 35 percent of the funds received under this Act. If the same sub-State grantee receives a second year grant, the required match is 55 percent of the funds received under this Act. In the third and subsequent years, if the same sub-State grantee receives a grant, the required match will be 65 percent of the funds received under the Act.

If a different sub-State grantee receives funds for the first or second time under the Act, then the match is computed at 35 or 55 percent, respectively. The required match, in any case, should not be computed against total project funds or any amount other than the amount of funds received by the sub-State grantee under this Act.

H. Change in the Law Regarding Funding of Sub-State Grantees

Public Law 100–294 amended the Act to allow sub-State grantees to receive funds for more than three years but limited to $150,000, the total amount of grant funds that may be awarded to any sub-State grantee.

I. State Application Requirements

The application requirements for these grants do not go beyond the requirements in the statute. We have cited each requirement to the specific section of the law.

Please note the new assurance in paragraph (3)(e) below that limits the funds an entity may receive from the State in any one fiscal year to $50,000 and provides that no entity will receive more than a total of $150,000 under this Act (section 303(c)).

Please note also that in order to apply for these FY 1990 funds, a State must have or have under consideration a procedure for the eviction of an abusing spouse from a shared residence. (See the assurance in paragraph (3)(l) below.)

The Secretary will approve any application that meets the requirements of the Act and this Notice, and will not disapprove an application unless the State has been given reasonable notice of the Department's intention to disapprove and an opportunity to correct any deficiencies (section 303(a)(3)).

All applications must meet the following requirements:

The State's application must be signed by the Chief Executive of the State or the Chief Program Official designated as responsible for the administration of the Act.

The application must contain the following information

(1) The name of the State agency and the Chief Program Official designated as responsible for the administration of State programs and activities related to family violence carried out under the Act and for the coordination of related State programs, and the name of a contact person if different from the Chief Program Official (section 303(a)(2)(D)).

(2) The procedures designed to involve knowledgeable individuals and interested organizations and assure an equitable distribution of grants and grant funds within the State and between rural and urban areas in the State (section 303(a)(2)(C)). (For example, knowledgeable individuals and interested organizations may include but are not limited to: State Advisory Committees on Family Violence, law enforcement officials, or Coalitions of Directors of Family Violence Shelters.)

(3) The application must contain the following assurances:

(a) That funds under the Act will be distributed as demonstration grants to local public agencies and non-profit private organizations for programs and projects within the State to prevent incidents of family violence and to provide immediate shelter and related assistance for victims and their dependents (section 303(a)(2)(A)).

(b) That not less than 60 percent of the funds distributed shall be used for immediate shelter and related assistance (section 303(g)).

(c) That not more than 5 percent of the funds will be used for State administrative costs (section 303(a)(2)(B)(i)).

(d) That in distributing the funds, the States will give special emphasis to the support of community-based projects of demonstrated effectiveness carried out by non-profit private organizations (particularly those projects the primary purpose of which is to operate shelters for victims of family violence and their dependents) and those which provide counseling, alcohol and drug abuse treatment, and self-help services to abusers and victims (section 303(a)(2)(B)(ii)).

(e) That no entity funded by the State will receive more than $50,000 in any one fiscal year, and no entity will receive more than a total of $150,000 under this Act (section 303(c)).

(f) That demonstration grants funded by the State will meet the matching requirements in section 303(f), i.e., 35 percent of the total funds provided under this title in the first year, 55 percent in the second year, and 65 percent in the third or subsequent year(s); that except in the case of a public entity, not less than 50 percent of the local matching share shall be raised from private sources; that the local share may be cash or in-kind; and that the local share may not include any Federal funds provided under any authority other than this title (section 303(f)).

(g) That demonstration grants funded by the State may not be used as direct payment to any victim or dependent of a victim of family violence (section 303(d)).

(h) That no income eligibility standard will be imposed on individuals receiving assistance or services supported with funds appropriated to carry out the Act (section 303(e)).

(i) That procedures will be developed to assure the confidentiality of records pertaining to persons receiving assistance or services from any program assisted under the Act as specified in section 303(a)(2)(E).

(j) That the address or location of any shelter-facility assisted under the Act will not be made public, except with written authorization of the person or persons responsible for the operation of such shelter (section 303(a)(2)(E)).

(k) That all demonstration grants made by the State under the Act must

(5) Each application must contain the following assurances:

FAMILY VIOLENCE AND PREVENTION SERVICES 1990 STATE AND TERRITORY AL-

Aberdeen Area Office

Cheyenne River Sioux tribe of the Cheyenne River Reservation, South

Reno-Sparks Indian Colony, Nevada

Salt River Pima-Maricopa Indian Community of the Salt River

Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, South Dakota

(k) That all demonstration grants made by the State under the Act must prohibit discrimination on the basis of age, handicap, sex, race, color, national origin or religion (section 307).

(l) That the State has, or has under consideration, a procedure for the eviction of an abusing spouse from a shared residence (section 303(a)(2)(F)).

(m) That States will comply with Departmental recordkeeping and reporting requirements and general requirements for the administration of grants under 45 CFR part 92.

J. Indian Tribe and Tribal Organization Application Requirements

The application requirements for these grants do not go beyond the requirements in the statute. We have cited each requirement to the specific section of the law.

The Secretary will approve any application that meets the requirements of the Act and this Notice, and will not disapprove an application unless the Indian Tribe or Tribal organization has been given reasonable notice of the Department's intention to disapprove and an opportunity to correct any deficiencies (section 303(a)(3)).

The application from the Indian Tribe or Tribal organization must be signed by the Chief Executive Officer of the Indian Tribe or Tribal organization and must contain the following information:

(1) The name of the organization or agency designated as responsible for the administration of this program (section 303(a)(D)), and the name of a contact person in the designated organization or agency.

(2) A copy of a current resolution stating that the designated organization or agency has the authority to submit an application on behalf of the Indian individuals in the Tribe(s) (section 303(a)(2)(G)).

(3) A description of the procedures designed to involve knowledgeable individuals and interested organizations in providing services under the Act (section 303(a)(2)(C)). (For example, knowledgeable individuals and interested organizations may include: Tribal officials or social services staff involved in child abuse or family violence prevention, Tribal law enforcement officials, State Coalitions Against Domestic Violence, and Directors of Family Violence Shelters.)

(4) A brief description of how the Indian Tribe or Tribal organization plans to use the grant funds to prevent incidents of family violence and to provide immediate shelter and related assistance to victims of family violence and their dependents (section 303(a)(2)(G)).

(5) Each application must contain the following assurances:

(a) That not less than 60 percent of the funds shall be used for immediate shelter and related assistance (section 303(g)).

(b) That no funds under the Act will be used as direct payment to any victim or dependent of a victim of family violence (section 303(d)).

(c) That no income eligibility standard will be applied to individuals receiving assistance or services supported with funds appropriated to carry out the Act (section 303(e)).

(d) That procedures will be developed to assure the confidentiality of records pertaining to persons receiving assistance or services from any program assisted under the Act as specified in section 303(a)(2)(E).

(e) That the address or location of any shelter-facility assisted under the Act will not be made public, except with written authorization of the person or persons responsible for the operation of such shelter (section 303(a)(2)(E)).

(f) That Indian grantees will comply with Departmental recordkeeping and reporting requirements and general grant administration requirements of 45 CFR part 92.

K. Notification Under Executive Order 12372

For States, this program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs" for State plan consolidation and simplification only—45 CFR 100.12. The review and comment provisions of the Executive Order and Part 100 do not apply. Federally recognized Indian Tribes are exempt from all provisions and requirements of E.O. 12372.

L. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the application requirements contained in this notice have been approved by the Office of Management and Budget under control number 0980–0175.

(Catalog of Federal Domestic Assistance number 13.671, Family Violence Prevention and Services)

Dated: December 13, 1989.

Mary Sheila Gall,

Assistant Secretary for Human Development Services.

FAMILY VIOLENCE AND PREVENTION SERVICES 1990 STATE AND TERRITORY ALLOTMENTS

AL	Alabama	$107,933
AK	Alaska	50,000
AS	American Samoa	8,732
AZ	Arizona	92,813
AR	Arkansas	62,889
CA	California	735,662
CO	Colorado	87,782
CT	Connecticut	84,769
DE	Delaware	50,000
DC	District of Columbia	50,000
FL	Florida	320,970
GA	Georgia	167,285
GU	Guam	8,732
HI	Hawaii	50,000
ID	Idaho	50,000
IL	Illinois	303,544
IN	Indiana	144,933
IA	Iowa	73,449
KS	Kansas	64,806
KY	Kentucky	97,949
LA	Louisiana	118,100
ME	Maine	50,000
MD	Maryland	120,511
MA	Massachusetts	153,265
MI	Michigan	241,887
MN	Minnesota	111,916
MS	Mississippi	69,726
MO	Missouri	134,477
MT	Montana	50,000
NE	Nebraska	50,000
NV	Nevada	50,000
NH	New Hampshire	50,000
NJ	New Jersey	203,236
NM	New Mexico	50,000
NY	New York	465,248
NC	North Carolina	170,639
ND	North Dakota	50,000
MP	Northern Mariana Islands	8,732
OH	Ohio	282,450
OK	Oklahoma	86,158
OR	Oregon	71,614
PA	Pennsylvania	310,776
PR	Puerto Rico	86,262
RI	Rhode Island	50,000
SC	South Carolina	90,769
SD	South Dakota	50,000
TN	Tennessee	128,162
TX	Texas	450,495
TT	Trust Territories of the Northern Pacific	8,732
UT	Utah	50,000
VT	Vermont	50,000
VI	Virgin Islands	8,732
VA	Virginia	156,620
WA	Washington	119,594
WV	West Virginia	50,000
WI	Wisconsin	125,699
WY	Wyoming	50,000
	Total	$6,966,150

Indian Tribal Eligibility

Below is the list of Indian Tribes which are eligible for fiscal year 1990 Family Violence Prevention and Services grants. Tribes are listed by BIA Area Office based on Census Bureau population data or, where that is not available, BIA data.

Tribes Under 3,000 Population

Eastern Area Office

Miccosukee Tribe of Indians of Florida

Aberdeen Area Office

Cheyenne River Sioux tribe of the Cheyenne River Reservation, South Dakota
Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota
Devil's Lake Sioux Tribe of the Devil's Lake Sioux Reservation, North Dakota
Yankton Sioux tribe of South Dakota
Winnebago Reservation of Nabraska

Minneapolis Area Office

Grand Traverse Band of Ottawa and Chippewa Indians of Michigan
Menominee Indian Tribe of Wisconsin
Michigan Inter-Tribal Council on behalf of: Keweenah Bay Indian Community
Saginaw Chippewa Indian Tribe of Isabella Reservation, Michigan
Sault Saint Marie Tribe of Chippewa Indians of Michigan
Lac du Flambeau Reservation of Wisconsin
Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin
Bad River Tribal Council, Wisconsin
Minnesota Chippewa:
Nett Lake Reservation (Bois Fort)
Fond du Lac Reservation
Grand Portage Reservation
Mille Lac Reservation

Anadarko Area Office

Apache Tribe of Oklahoma
Cheyenne-Arapaho Tribes of Oklahoma
Comanche Indian Tribe of Oklahoma
Kiowa Indian Tribe of Oklahoma
Four Tribes of Kansas
Kickapoo Tribe of Kansas
Otoe-Missouria Tribes Oklahoma
Wichita Indian Tribe of Oklahoma

Billings Area Office

Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana
Fort Belknap Indian Tribe of Montana

Phoenix Area Office

Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California
Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada
Elko Band Council
Ft. McDermitt Paiute and Shoshone Tribes of the Ft. McDermitt Indian Reservation, Nevada
Ft. McDowell Mohave-Apache Indian Community, Arizona
Hualapai Tribe of the Hualapai Reservation, Arizona
Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada
Pasqua—Yaqui Tribe of Arizona
Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada
Reno-Sparks Indian Colony, Nevada
Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona
Shoshone Paiute Tribes of the Duck Valley Reservation, Nevada
Havasupai Tribe of Arizona
Yavapai-Prescott Tribe, Arizona
Ute Indian Tribe of the Unitah and Ouray Reservation, Utah
Walker River Paiute Tribe of the Walker River Reservation, Nevada
Washoe Tribe of Nevada and California

Albuquerque Area Office

Pueblo of Acoma, New Mexico
Pueblo of Isleta, New Mexico
Pueblo of Santo Domingo, New Mexico
Ramah Navajo Community
Southern Ute Indian Tribe of the Southern Ute Indian Reservation, Colorado
Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico and Utah

Portland Area Office

Confederated Tribes of the Warm Springs Reservation, Oregon
Confederated Tribes of the Grand Ronde, Oregon
Nez Perce Tribe of Idaho
Nisqually Tribe of Washington
Upper Skagit Indian Tribes of Washington
Skokomish Tribe of Washington
Muckleshoot Tribe of Washington
Puyallup Tribe of Washington
Squaxin Island Tribe of Washington

Juneau Area Office

Ketchikan Indian Corporation, Alaska
United Crow Band, Alaska
Northern Pacific Rim Association, Alaska

Sacremento Area Office

Big Lagoon Rancheria, California
Coastal Indian Community of the Resighina Rancheria
Trinidad Rancheria
La Jolla Indian Band of Mission Indians

Tribes Over 3,000 Population

Eastern Area Office

Eastern Band of Cherokee Indians of North Carolina
Mississippi Band of Choctaw Indians, Mississippi

Aberdeen Area Office

Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota
Standing Rock Sioux Tribe of the Standing Rock Reservation, North and South Dakota
Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, South Dakota
Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota
Turtle Mountain Band of Chippewa Indians, Turtle Mountain Indian Reservation, North Dakota

Billings Area Office

North Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana
Shoshone-Arapahoe Tribes of Wyoming (Wind River Reservation)

Phoenix Area Office

Gila River Pima-Maricopa Indian Community of the Gila River Reservation, Arizona
Hopi Tribe of Arizona
San Carlos Apache Tribe of the San Carlos Reservation, Arizona
Tohono O'Odham Nation, Arizona
White Mountain Apache Tribe of the Fort Apache Indian Reservation, Arizona

Navajo Area Office

Navajo Tribe of Arizona, New Mexico and Utah

Albuquerque Area Office

Pueblo of Laguna, New Mexico
Zuni Tribe of the Zuni Reservation, New Mexico

Portland Area Office

Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana
Confederated Tribes of the Colville Reservation, Washington

Juneau Area Office

Association of Village Council Presidents, Alaska
Central Council of the Tlingit and Haida Indians of Alaska
Tanana Chiefs Conference, Alaska
Sitka Community Association, Alaska
Bristol Bay Native Association of Alaska
Fairbanks Native Association, Alaska

Muskogee Area Office

Cherokee Nation of Oklahoma
Choctaw Nation of Oklahoma
Mustogee Creek Nation of Oklahoma

Minneapolis Area Office

Minnesota Chippewa:
Leech Lake Reservation

[FR Doc. 89–29438 Filed 12–18–89; 8:45 am]
BILLING CODE 4130–01–M

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Meeting

Open: February 20, 8 a.m.–8:30 a.m.
Closed: February 20, 8:30 a.m.–recess;

open discussion and evaluation of individual journals by the Committee

Mrs. Ann Dieffenbach, Public Information Officer, National Institute of

20892, Telephone: (301) 496–9469 will

Mr. Robert B. Mehnert, Chief, Office of Inquiries and Publications

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National Institutes of Health

National Institute of Neurological Disorders and Stroke; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meetings of the Committees of the National Institute of Neurological Disorders and Stroke.

These meetings will be open to the public to discuss program planning, program accomplishments and special reports or other issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, for the review, discussion and evaluation of individual grant applications. These applications and discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of meetings, rosters of committee members, and other information pertaining to the meetings can be obtained from the Executive Secretary indicated.

Name of Committee: National Advisory Neurological Disorders and Stroke Council and Its Planning Subcommittee
Date: January 31, 1990 (Planning Subcommittee)
Place: National Institutes of Health, Building 31, Conference Room 8A28, 9000 Rockville Pike, Bethesda, Maryland 20892
Open: 1 p.m.–3 p.m.
Closed: 3 p.m.–5 p.m.
Dates: February 1–2, 1990 (Council)
Place: National Institutes of Health, Building 31C, Conference Room 10, 9000 Rockville Pike, Bethesda, Maryland 20892
Open: February 1, 9 a.m.–1 p.m.
Closed: February 1, 1 p.m.–recess; February 2, 8:30 a.m.–adjournment
Executive Secretary: John C. Dalton, Ph.D., Associate Director for Extramural Activities, NINDS, National Institutes of Health, Bethesda, Maryland 20892, Telephone: 301/496-9248
Name of Committee: Neurological Disorders Program Project Review A Committee
Dates: February 20–22, 1990
Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland 20814
Open: February 20, 8 a.m.–8:30 a.m.
Closed: February 20, 8:30 a.m.–recess; February 21, 8 a.m.–recess; February 22, 8 a.m.–adjournment
Executive Secretary: Dr. Herbert Yellin, Federal Building, Room 9C-14, National Institutes of Health, Bethesda, Maryland 20892, Telephone: 301/496-9223
Name of Committee: Neurological Disorders Program Project Review B Committee
Dates: February 28–March 3, 1990
Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland 20892
Open: February 28, 8 a.m.–8:30 a.m.
Closed: February 28, 8:30 a.m.–recess; March 1, 8 a.m.–recess; March 2, 8 a.m.–recess; March 3, 8 a.m.–adjournment
Executive Secretary: Dr. A. Beau White, Federal Building, Room 9C-14, National Institutes of Health, Bethesda, Maryland 20814, Telephone: 301/496-9223

(Catalog of Federal Domestic Assistance Program No. 13.853, Clinical Basis Research; No. 13.854, Biological Basis Research)

Dated: December 6, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-29397 Filed 12-18-89; 8:45 am]

BILLING CODE 4140-01-M

National Library of Medicine; Notice of Meeting of the Literature Selection Technical Review Committee

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the Literature Selection Technical Review Committee, National Library of Medicine, on February 1–2, 1990, convening at 9 a.m. on February 1 and at 8:30 a.m. on February 2 in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting on February 1 will be open to the public from 9 a.m. to 10 a.m. for the discussion of administrative reports and program developments. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sec. 552b(c)(9)(B), Title 5, U.S.C., Pub. L. 92-463, the meeting will be closed on February 1 from approximately 10 a.m. to 5 p.m. and on February 2 from 8:30 a.m. to adjournment for the review and discussion of individual journals as potential titles to be indexed by the National Library of Medicine. The presence of individuals associated with these publications could hinder fair and open discussion and evaluation of individual journals by the Committee members.

Mrs. Lois Ann Colaianni, Executive Secretary of the Committee, and Associate Director, Library Operations, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone number: 301-496-6921, will provide a summary of the meeting, rosters of the committee members, and other information pertaining to the meeting.

Dated: December 6, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 29398 Filed 12-18-89; 8:45 am]

BILLING CODE 4140-01-M

National Institute of General Medical Sciences; Notice of Meeting of the National Advisory General Medical Sciences Council

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Advisory General Medical Sciences Council, National Institute of General Medical Sciences, National Institutes of Health, on January 25 and 26, 1990, Building 31, Conference Room 10, Bethesda, Maryland.

This meeting will be open to the public on January 25, in Building 31, Conference Room 10, from 8:30 a.m. to 11 a.m. for open remarks; report of the Director, NIGMS; and other business of the Council. Attendance by the public will be limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5 U.S.C. and sec. 10(d) of Pub. L. 92-463, the meeting will be closed to the public on January 25 from 11 a.m. to 6 p.m., and on January 26 from 8:30 a.m. until adjournment, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

In addition to the regular meeting of the National Advisory General Medical Sciences Council, the Council will be meeting on January 25, 1990, at the Guest Quarters Hotel, 7335 Wisconsin Avenue, Bethesda, Maryland, from 6:30 p.m. to 10 p.m., in a closed session for the review, discussion, and evaluation of individual grant applications for the National Center for Human Genome Research.

Mrs. Ann Dieffenbach, Public Information Officer, National Institute of General Medical Sciences, National Institutes of Health, Building 31, Room 4A52, Bethesda, Maryland 20892, Telephone: (301) 496-7301 will provide a summary of the meeting and roster of council members. Dr. W. Sue Shafer, Executive Secretary, NAGMS Council, National Institutes of Health, Westwood Building, Room 953, Bethesda, Maryland 20892, Telephone: (301) 496-7061 will provide substantive program information upon request.

(Catalog of Federal Domestic Assistance Program Nos. 13-821, Biophysics and Physiological Sciences; 13-859, Pharmacological Sciences; 14-862, Genetics Research; 13-863, Cellular and Molecular Basis of Disease Research; 13-880, Minority Access Research Careers [MARC]; and 13-375; Minority Biomedical Research Support [MBRS]).

Dated: December 6, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-29399 Filed 12-18-89; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Dental Research; Notice of the Meeting of National Advisory Dental Research Council

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the National Advisory Dental Research Council, National Institute of Dental Research, to be held January 22–23, 1990, Conference Room 10, Building 31, National Institutes of Health, Bethesda, Maryland. This meeting will be open to the public from 9 a.m. to recess on January 22 for general discussion and program presentations. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, the meeting of the Council will be closed to the public on January 23 from 9 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Preston A. Littleton, Executive Secretary, National Advisory Dental Research Council, and Deputy Director, National Institute of Dental Research, National Institutes of Health, Building 31, Room 2C39, Bethesda, Maryland 20892, Telephone: (301) 496-9469 will furnish a roster of committee members, a summary of the meeting, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program Nos. 13.121—Diseases of the Teeth and Support Tissues; Caries and Restorative Materials; Periodontal and Soft Tissue Diseases; 13.122—Disorders of Structure, Function, and Behavior: Craniofacial Anomalies, Pain Control, and Behavioral Studies; 13.845—Dental Research Institutes; National Institute of Health)

Dated: December 6, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-29400 Filed 12-18-89; 8:45 am]

BILLING CODE 4140-01-M

National Library of Medicine; Notice of Meetings of the Board of Regents and Subcommittees

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Regents of the National Library of Medicine on January 18–19, 1990, in the Board Room of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland. The Subcommittees will meet on January 17 as follows:

Research and Development and Planning Subcommittees, 7th-floor Conference Room, Building 38A, 3:30 p.m. to approximately 4:30 p.m.; and the Extramural Programs Subcommittee, 5th-floor Conference Room, Building 38A, 2 p.m. to 3:30 p.m. All, but the Extramural Programs Subcommittee, will be open to the public.

The meeting of the Board will be open to the public from 9 a.m.to approximately 4:30 p.m. on January 18 and from 9 a.m. to approximately 12:00 noon on January 19 for administrative reports and program discussions. Attendance will be limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4), 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, the entire meeting of the Extramural Programs Subcommittee on January 17 will be closed to the public, and the regular Board meeting on January 18 will be closed from approximately 4:30 p.m. to adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Robert B. Mehnert, Chief, Office of Inquiries and Publications Management, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, Telephone Number: 301-496-6308, will furnish a summary of the meeting, rosters of Board members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 13.879—Medical Library Assistance, National Institutes of Health)

Dated: December 6, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-29401 Filed 12-18-89; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-940-00-4214-11; Nev-013347, N-36588]

Order Providing for Opening of Lands in Nevada

December 7, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Opening order.

SUMMARY: This order will open 263.12 acres of public land to the operation of the public land laws, including the mining laws, the mining leasing laws, and material sale laws. The land was reconveyed to the United States through two private exchanges.

EFFECTIVE DATE: January 18, 1990.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, BLM, Nevada State Office, P.O. Box 12000, Reno, Nevada 89520, 702-328-6326.

SUPPLEMENTARY INFORMATION:

1. The following described lands were reconveyed to the United States on March 30, 1944, through an exchange with the Church of Jesus Christ of Latter-day Saints:

Mount Diablo Meridian

T. 1 N., R. 67 E.,
Sec. 12, N½NE¼SW¼, N½SW¼NE¼ SW¼.
T. 1 N., R. 68 E.,
Sec. 7, Lots 1, 2, E½NW¼.

2. The following described lands were reconveyed to the United States on September 13, 1956, through an exchange with Samuel A. and Ellen Hollinger:

Mount Diablo Meridian

T. 2 N., R. 70 E.,
Sec. 7, NW¼NE¼.
T. 3 N., R. 70 E.,

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Sec. 20, SW¼NE¼.

The areas described aggregate 263.12 acres in Lincoln County.

All minerals in the lands were reconveyed to the United States.

At 10:00 a.m. on January 18, 1990, the lands will be open to the operation of the public land laws, subject to valid existing rights, existing classifications and withdrawals, and requirements of applicable law. All valid applications received prior to or at 10:00 a.m. on January 18, 1990, will be considered as simultaneously filed. All other applications received will be considered in order of filing.

At 10:00 a.m. on January 18, 1990, the lands will also be open to the operation of the mining laws. Appropriation of lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law.

The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 89-29374 Filed 12-18-89; 8:45 am]

BILLING CODE 4310-HC-M

Bureau of Land Management

[ID-942-00-4730-12]

Filing of Plats of Survey; Idaho

The plat of survey of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 10:00 a.m., December 8, 1989.

The plat representing the dependent resurvey of a portion of the Sixth Standard Parallel North (south boundary, T. 30 N., R. 8 E.), portions of the west boundary and subdivisional lines, and the subdivision of certain sections, T. 29 N., R. 8 E., Boise Meridian, Idaho, Group No. 699, was accepted December 7, 1989.

This survey was executed to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706.

Dated: December 8, 1989

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 89-29461 Filed 12-18-89; 8:45 am]

BILLING CODE 4310-66-M

National Park Service

Delta Region Preservation Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Delta Region Preservation Commission will be held at 7 p.m., on January 24, 1990, at the Joseph Yenni Building, 1221 Elmwood Park Boulevard, Harahan, Louisiana.

The Delta Region Preservation Commission was established pursuant to section 907 of Public Law 95-625 (16 U.S.C. 230f), as amended, to advise the Secretary of the Interior in the selection of sites for inclusion in Jean Lafitte National Historical Park and Preserve, and in the implementation and development of a general management plan and of a comprehensive interpretive program of the natural, historic, and cultural resources of the Region.

The matters to be discussed at this meeting include:

—General Management Plan Amendment Scoping Session with the National Park Service, Denver Service Center and Southwest Region staff.

—Old Business

—New Business

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come-first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with the Superintendent, Jean Lafitte National Historical Park and Preserve.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact M. Ann Belkov, Superintendent, Jean Lafitte National Historical Park and Preserve, U.S. Customs House, 423 Canal Street, Room 210, New Orleans, Louisiana 70130-2341, telephone 504/589-3882. Minutes of the meeting will be available for public inspection four weeks after the meeting at the office of Jean Lafitte National Historical Park and Preserve.

Dated: December 5, 1989

Richard W. Marks,

Acting Regional Director, Southwest Region.

[FR Doc. 89-29478 Filed 12-18-89; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 29, 1989. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by January 3, 1990.

Carol D. Shull,

Chief of Registration, National Register.

CALIFORNIA

Los Angeles County

Clark Estate, 10211 Pioneer Blvd., Santa Fe Springs, 89002287

Highland Park Masonic Temple, 104 N. Avenue 56, Los Angeles, 89002268

Monterey County

Porter—Vallejo Mansion, 29 Bishop St., Pajaro, 89002273

CONNECTICUT

New London County

Pequot Fort, Address Restricted, Groton vicinity, 89002294

GEORGIA

Gwinnett County

Hudson—Nash House and Cemetery, 3490 Five Forks Trickum Rd., Lilburn, 89002264

Habersham County

Glen-Ella Springs Hotel, SW of Tallulah Falls on Co. Rd. 218, Turnerville vicinity, 89002270

Hall County

Logan Building, 119 E. Washington St., Gainesville, 89002266

Thomas County

Melrose and Sinkola Plantations, SW of Thomasville on US 13, Thomasville vicinity, 89002275

IDAHO

Washington County

Jewell Building, 15 N. Superior, Cambridge, 89002263

MASSACHUSETTS

Middlesex County

Ashland Dam and Spillway (Water Supply System of Metropolitan Boston MPS), N end of Ashland Reservoir in Ashland State Park, Ashland, 89002289

Central Square Historic District (Stoneham MRA), Roughly bounded by Main, Central, Church, Winter and Common Sts., Stoneham, 89002177

Framingham Reservoir No. 3 Dam and Gatehouse (Water Supply System of Metropolitan Boston MPS), SE end of Framingham Reservoir No. 3, off MA 9/30, Framingham, 89002261

Framingham Reservoir No. 2 Dam and Gatehouse (Water Supply System of Metropolitan Boston MPS), Between Framingham Reservoirs Nos. 1 and 2, W of jct. of Winter and Fountain Sts., Framingham, 89002290

Framingham Reservoir No. 1 Dam and Gatehouse (Water Supply System of Metropolitan Boston MPS), E end of Framingham Reservoirs No. 1, off Winter St. N of Long Ave., Framingham, 89002291

Hopkinton Dam and Spillway (Water Supply System of Metropolitan Boston MPS), E end of Hopkinton Reservoir in Hopkinton State Park, Ashland, 89002288

Kennedy, F. A., Steam Bakery, 129 Franklin St., Cambridge, 89002285

Lake Cochituate Dam (Water Supply System of Metropolitan Boston MPS), NW side of Lake Cochituate, Framingham, 89002250

Medford Pipe Bridge (Water Supply System of Metropolitan Boston MPS), Over the Mystic River, between S. Court St. and Mystic Ave., Medford, 89002253

Middlesex Fells Reservoirs Historic District (Water Supply System of Metropolitan Boston MPS), Roughly bounded by Pond St., Woodland Rd., I-93, and MA 28, Stoneham, 89002240

Mystic Dam (Water Supply System of Metropolitan Boston MPS), Between Lower and Upper Mystic Lakes, Winchester, 89002282

Mystic Gatehouse (Water Supply System of Metropolitan Boston MPS), E of Edgewater Pl. on SE end of Upper Mystic Lake, Winchester, 89002284

Mystic Pumping Station (Water Supply System of Metropolitan Boston MPS), Alewife Brook Pkwy., Somerville, 89002255

Sudbury Aqueduct Linear District (Water Supply System of Metropolitan Boston MPS), Along Sudbury Aqueduct from Farm Pond at Waverly St. to Chestnut Hill Reservoir, Framingham, 89002293

Sudbury Dam Historic District (Water Supply System of Metropolitan Boston MPS), SE end of Sudbury Reservoir off MA 30, Sudbury, 89002285

Weston Aqueduct Linear District (Water Supply System of Metropolitan Boston MPS), Along Weston Aqueduct from Sudbury Reservoir to Weston Reservoir, Weston, 89002274

Norfolk County

Fisher Hill Reservoir and Gatehouse (Water Supply System of Metropolitan Boston MPS), Fisher Rd. between Hyslop and Channing Rds., Brookline, 89002254

Forbes Hill Standpipe (Water Supply System of Metropolitan Boston MPS), Reservoir Rd., Quincy, 89002252

Suffolk County

Bellevue Standpipe (Water Supply System of Metropolitan Boston MPS), On Bellevue Hill at Washington St. and Roxbury Pkwy., Boston, 89002251

Chestnut Hill Reservoir Historic District (Water Supply System of Metropolitan Boston MPS), Beacon St. and Commonwealth Ave., Boston, 89002271

Worcester County

Marlborough Brook Filter Beds (Water Supply System of Metropolitan Boston MPS), Framingham Rd., Marlborough, 89002286

Quinepoxet River Bridge (Water Supply System of Metropolitan Boston MPS), Thomas St. over the Quinepoxet River at the Wachusett Reservoir, West Boylston, 89002292

Wachusett Aqueduct Linear District (Water Supply System of Metropolitan Boston MPS), Along Wachusett Aqueduct from Wachusett Reservoir to Sudbury Reservoir, Clinton, 89002276

Wachusett Dam Historic District (Water Supply System of Metropolitan Boston MPS), N end of Wachusett Reservoir at Lancaster Millpond, Clinton, 89002269

MISSOURI

Carter County

Chubb Hollow Site, Address Restricted, Van Buren vicinity, 89002272

NEW JERSEY

Burlington County

Moorestown Historic District, Roughly bounded by Maple Ave., Chestnut Ave., Main St. from Zelley Ave. to Locust St., and Mill St., Moorestown, 89002295

Wills, Jacob, House (Evesham Township MPS), Brick Rd., W of Evans Rd., Marlton, 89002296

NEW YORK

New York County

Residences at 5-15 West 54th Street, 5-15 W. 54th St., New York, 89002280

Queens County

La Casina, 90-33 160th St., New York, 89002259

NORTH CAROLINA

Jackson County

Webster Rock School, Main St., Webster, 89002252

PENNSYLVANIA

Bradford County

Methodist Episcopal Church of Burlington, US 6 at Township Rd. 357, West Burlington, 89002280

Chester County

West Chester Boarding School for Boys, 200 E. Biddle St., West Chester, 89002257

Dauphin County

Old Uptown Harrisburg Historic District, Roughly bounded by McClay, N. Third, Reily, N. Second, and Calder, Harrisburg, 89002297

Erie County

Dickson Tavern, 201 French St., Erie, 89002256

Lancaster County

Windsor Forge Mansion, Windsor Rd. S of Bootjack Rd., Churchtown vicinity, 89002283

Monroe County

Academy Hill Historic District, Roughly bounded by Sarah, 8th, Fulmer and 5th Sts., Stroudsburg, 89002258

Montgomery County

Miller's House at Spring Hill, North Ln. and Hector St., Conshohocken, 89002281

Washington County

US Post Office—Charleroi, 638 Fallowfield Ave., Charleroi, 89002287

TEXAS

Schleicher County

Mittel Site, Address Restricted, Eldorado vicinity, 89002278

Terrell County

Wroe Ranch Shelter No. 1, Address Restricted, Sheffield vicinity, 89002279

[FR Doc. 89-29479 Filed 12-18-89; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 486]

Railroad Cost of Capital; 1989

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision instituting a proceeding to determine the railroads' 1989 cost of capital.

SUMMARY: The Commission is instituting a proceeding to determine the railroad industry's cost of capital rate for 1989. The decison solicits comments on: (1) The railroads' 1989 (i.e., current) cost of debt capital; (2) the railroads' 1989 (i.e., current) cost of preferred stock equity capital; (3) the railroads' 1989 cost of common stock equity capital; (4) the 1989 capital structure mix of the railroad industry on a market value basis. With respect to the cost of common equity capital, the decision seeks the use of Institutional Brokers Estimate System (IBES) data to estimate the growth rate component of the discounted cash flow methodology.

DATES: Notices of intent to participate are due December 29, 1989. Statements of railroads are due February 9, 1990. Statements of other interested parties are due March 9, 1990. Rebuttal statements by railroads are due March 23, 1990.

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ADDRESS: Send an original and 15 copies of statements and an original and 1 copy of the notice of intent to participate to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Ward L. Ginn, Jr., (202) 275–7489 (TDD for hearing impaired: (202) 275–1721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, Interstate Commerce Commission, Room 2215, Washington, DC 20423. Telephone: (202) 275–7428. [Assistance for the hearing impaired is available through TDD services (202) 275–1721.]

This action will not significantly affect either the quality of the human environment or energy conservation. Nor will it have a significant economic impact on a substantial number of small entities.

Authority: 49 U.S.C. 10704(a).

Decided: December 11, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Lamboley, Phillips, and Emmett.

Noreta R. McGee,

Secretary.

[FR Doc. 89–29447 Filed 12–18–89; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–3 (Sub-No. 90X)]

Missouri Pacific Railroad Co.; Abandonment Exemption of Railroad Line in Muskogee County, OK

Applicant has filed a notice of exemption under 49 CFR part 1152 subpart F—Exempt Abandonments to abandon its 2.7-mile line of railroad between mileposts 97.5 and 100.2, near Muskogee, Muskogee County, OK.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under "Oregon Short Line R. Co.—Abandonment—Goshen," 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on January 19, 1990 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by January 2, 1990.[3] Petitions for reconsideration or requests for public use conditions under 49 CFR 1152.28 must be filed by January 9, 1990, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Joseph D. Anthofer, Missouri Pacific Railroad Company, Room 830, 1416 Dodge Street, Omaha, NE 68179.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by December 22, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275–7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: December 14, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–29448 Filed 12–18–89; 8:45 am]

BILLING CODE 7035–01–M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See* "Exemption of Out-of-Service Rail Lines," 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See* "Exempt. of Rail Abandonment—Offers of Finan. Assist.", 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that on December 5, 1989, a proposed Consent Decree in *United States* v. *James River Paper Company, Inc.*, Civil Action No. 89–30080–F was lodged with the United States District Court for the District of Massachusetts. The proposed Consent Decree requires the Defendant to pay a civil penalty of $25,000 for a single violation of Section 311 of the Clean Water Act, 33 U.S.C. 1321, and to construct certain facilities to ensure that spills do not occur in the future.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *James River Paper Company, Inc.*, D.J. Ref. No. 90–5–1–1–3339.

The proposed Consent Decree may be examined at the office of the United States Attorney, District of Massachusetts, 1550 Main Street, Springfield, Massachusetts, 01103, Region I Office of the Environmental Protection Agency, John F. Kennedy Federal Building, Boston, Massachusetts, 02203, and at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, 10th Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree can be obtained in person or by mail from the Department of Justice. In requesting a copy, please enclose a check in the amount of $8.80 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–29462 Filed 12–18–89; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503, Telephone (202) 395–6880.

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Form No.	Affected public	Respondents	Frequency	Average time per response
BLS 1810A, B, C, E, and A–F.	Businesses or other for-profit; Federal agencies or employees; and small businesses or organizations.	3,778	One time only	2 hours.
BLS 473P	Businesses or other for-profit; Federal agencies or employees; and small businesses or organizations.	20,099	Monthly	15 minutes.

New Collection

Department of Labor, Bureau of Labor Statistics

Labor Force Questionnaire—Versions A, B and C

CPS Versions A, B and C and Debriefing questions

Monthly

Individuals or households

11,637 "respondents" (each household responds for 4 consecutive months); 11 minutes per response; 8,534 total hours per year; 4 forms.

This test will provide information needed to evaluate the alternative questionnaires and to identify their major effects on labor market estimates. Based on analysis of this information, a single alternative version will be developed, tested, and, if successful, introduced as the new labor force questionnaire.

Revision

Bureau of Labor Statistics

Producer Price Indexes, by Industry

1220–0008; BLS 473P, BLS 1810A, B, C, E, and A–F

290,732 total hours.

The Producer Price Index, which is one of the Nation's leading economic indicators, is used as a measure of price movements, indicator of inflationary trends in the economy, inventory valuation measure for some organizations, and measure of purchasing power of the dollar at the primary market level. It is also used in market research and as a basis for escalation in long-term contracts.

Extension

Employment Standards Administration

Black Lung Program Provider Enrollment Form 1215–0137; CM–1168

On occasion.

Businesses or other for-profit; small businesses or organizations—3,000 respondents; 350 total hours; 7 minutes per response; 1 form.

The CM–1168 request profile information on providers to afford both timely reimbursement for medical services provided to Black Lung claimants and a list of active providers for miner referral.

Application for Federal Certificate of Age

1215–0083;WH–14

On occasion.

Individuals or households; State or local governments; farms; businesses or other for-profit; non-profit institutions; small businesses or organizations.

2,100 respondents; 368 total hours; 10 minutes per response; 1 form.

Section 3(l) of the Fair Labor Standards Act (FLSA) provides that an employer may protect against unwitting employment of oppressive child labor by obtaining a certificate of age certifying that a youth meets the FSLA minimum age requirements. Form WH–14 is an application for a Federal Certificate of Age.

Employer's Report of Injury or Occupational Illness; Physicians Report on Impairment of Vision; Employer's Supplementary Report of Accident or Occupational Illness: 1215–0031; LS–202; LS–205; LS–210.

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Form No.	Affected public	Respondents	Frequency	Average time per response
LS-202	Individuals and households; businesses or other for-profit; small businesses or organizations.	41,000	On occasion	15.0733
LS-205	...do	110	On occasion	15.0733
LS-210	...do	4,300	On occasion	15.0733

11,408 total hours.

Forms are used to report injuries, period of disability, and medical treatment under the Longshore and Harbor Worker's Compensation Act.

Signed at Washington, DC this 14th day of December, 1989.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 89-29459 Filed 12-18-89; 8:45 am]

BILLING CODE 4510-24-M

Employment and Training Administration

[TA-W-23,139]

Delta Apparel, Inc., Knoxville, TN; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 13, 1989 applicable to all workers of Delta Apparel, Inc., Knoxville, Tennessee. The notice was published in the **Federal Register** on October 3, 1989 (54 FR 40755).

Based on new information from the company, additional workers are being retained for close down operations beyond the September 12, 1989 termination date. The intent of the certification is to cover all workers of Delta Apparel, Knoxville, Tennessee. The amended notices applicable to TA-W-23,139 is hereby issued as follows:

All workers and former workers at Delta Apparel, Inc., Knoxville, Tennessee who became totally or partially separated from employment on or after june 29, 1989 and before January 15, 1990 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 7th day of December 1989.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services.

[FR Doc. 89-29457 Filed 12-18-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-22,499, et al.]

Pathfinder Mines Corp.; Riverton, Wyoming, et al.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 18, 1989, applicable to all workers of Pathfinder Mines, Riverton, Wyoming, and St. George, Utah. The notice was published in the **Federal Register** on May 23, 1989 (54 FR 22381).

On July 21, 1989, the Certification was amended to include workers at the San Francisco, California, corporate office. That notice was published in the **Federal Register** on August 2, 1989 (54 FR 31901).

Based on new information from the company some worker separations will occur in the State of Arizona by the end of the year. The amended notice applicable to TA-W-22,499 and TA-W-22,500 is hereby issued as follows:

All workers of Pathfinder Mines Corporation's corporate office in San Francisco, California (TA-W-22, 499A) who became totally or partially separated from employment on or after January 27, 1988, and before November 30, 1988, and all workers of the Riverton, Wyoming office (TA-W-22, 499). St. George, Utah office (TA-W-22,500) and all locations in the State of Arizona (TA-W-22,500A) who became totally or partially separated from employment on after January 27, 1988, are eligible to apply for adjustment assistance under section 222 of the Trade Act of 1974.

Signed at Washington, DC, this 8th day of December 1989.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-29450 Filed 12-18-89; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 89-85]

NASA Advisory Council (NAC), Space Systems and Technology Advisory Committee (SSTAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee, Ad Hoc Review Team on Technology Requirements for Human Performance on Long Space Missions.

DATES: January 11, 1990, 9 a.m. to 5 p.m., and January 12, 1990, 8 a.m. to 2 p.m.

ADDRESSES: National Aeronautics and Space Administration, Lyndon B. Johnson Space Center, Building 1, Room 928, Houston, TX 77058.

FOR FURTHER INFORMATION CONTACT: Dr. James P. Jenkins, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2750.

SUPPLEMENTARY INFORMATION: The NAC Space Systems and Technology Advisory Committee (SSTAC) was established to provide overall guidance to the Office of Aeronautics and Space Technology (OAST) on space systems and technology programs. Special ad hoc review teams are formed to address specific topics. The Ad Hoc Review Team on Technology Requirements for Human Performance on Long Space Missions, chaired by Dr. Gerald P. Carr, is comprised of eight members. The meeting will be open to the public up to the seating capacity of the room (approximately 45 persons including the team members and other participants). It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the participants.

TYPE OF MEETING: Open.

AGENDA: January 11, 1990

9 a.m.—Review of Human Performance Research.

1 p.m.—Demonstration of Technology.

5 p.m.—Adjourn.

January 12, 1990

8 a.m.—Review the Results of Exploration Task Force.

10 a.m.—Group Discussion.

2 p.m.—Adjourn.

Dated: December 14, 1989.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 89-29464 Filed 12-18-89; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL COMMISSION ON ACQUIRED IMMUNE DEFICIENCY SYNDROME

Meetings

AGENCY: National Commission on Acquired Immune Deficiency Syndrome.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463 as amended, the National Commission on Acquired Immune Deficiency Syndrome announces a forthcoming meeting of the Commission.

Date and Time: January 25, 1990, 9:00 a.m.–5:00 p.m.; January 26, 1990, 7:30 a.m.–8:00 p.m.

Place: Hollywood Roosevelt Hotel, 7000 Hollywood Boulevard, Hollywood, California 90028.

Type of Meeting: Open.

FOR FURTHER INFORMATION CONTACT: Maureen Byrnes, Executive Director, the National Commission on Acquired Immune Deficiency Syndrome, 1730 K Street NW., Suite 815, Washington, DC 20006 (202/254-5125).

Agenda: On January 25, 1990 the Commission will hear testimony regarding the regional aspects of the HIV epidemic.

On January 26, 1990 the Commission will make a series of site visits in the Los Angeles area.

Maureen Byrnes,

Executive Director.

[FR Doc. 89-29421 Filed 12-18-89; 8:45 am]

BILLING CODE 6820-CN-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting; Arts in Education Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Arts in Education Advisory Panel (Overview Section) to the National Council on the Arts will be held on January 4, 1990, from 9 a.m.–5 p.m. and on January 5, from 9 a.m.–3 p.m. in Room M07 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topics for discussion will be update on program initiatives and major issues and FY 91 guidelines.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: December 13, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89-29463 Filed 12-18-89; 8:45 am]

BILLING CODE 7537-01-M

Meeting; Office of Public Partnership Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Office of Public Partnership Panel (States Program Section) to the National Council on the Arts will be held on January 17-18, 1990 from 9 a.m.–5:30 p.m. and on January 19 from 9 a.m.–12:30 p.m. in Room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topics for discussions will be grant applications, revised application format, planning session: "Toward a Leadership Agenda for the States Program," and discussion of the site visit program.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/683-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Dated: December 13, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89-29464 Filed 12-18-89; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-245]

Northeast Nuclear Energy Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 41 to Facility Operating License No. DPR-21, issued to Northeast Nuclear Energy Company (the licensee). The amendment revises the Technical Specifications for operation of Millstone Nuclear Power Station, Unit No. 1, located in New London County, Connecticut. The amendment is effective as of the date of issuance, to be implemented within 30 days of issuance.

The amendment revises the Technical Specifications by changing the setpoints for turbine stop valve closure scram bypass, the turbine control value fast closure scram bypass and the APRM flux scram setting to 50% of rated reactor thermal power.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on March 31, 1988 (53 FR 10451). No request for a hearing or petition for leave to intervene was filed following this notice.

The staff has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the staff has concluded that the issuance of the amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action, see (1) the application for amendment dated August 17, 1987, (2) Amendment No. to License No. DPR-21 (3) the staff's related Safety Evaluation and, (4) the staff's Environmental Assessment published on December 6, 1989 (54 FR 50460). All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and the Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385. A copy of

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items (2), (3), and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—I/II.

Dated at Rockville, Maryland this 12th day of December 1989.

For the Nuclear Regulatory Commission.

Michael L. Boyle,

Project Manager, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89–29441 Filed 12–18–89; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards, Subcommittee on Containment Systems; Meeting

The Subcommittee on Containment Systems will hold a meeting on January 10, 1990, Room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, January 10, 1990—8:30 a.m. until 12:00 Noon.

The Subcommittee will discuss the NRC staff's document on Containment Performance Improvements (CPI) Program (all containment types other than the BWR Mark I).

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Dean Houston (telephone 301/492–9521) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: December 11, 1989.

Gary R. Quittschreiber,

Chief, Project Review Branch No. 2.

[FR Doc. 89–29439 Filed 12–18–89; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards, Subcommittee on Regulatory Policies and Practices; Meeting

The Subcommittee on Regulatory Policies and Practices will hold a meeting on January 10, 1990, Room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, January 10, 1990—1:00 p.m. until the conclusion of business.

The Subcommittee will review the approach being suggested by the NRC staff for license renewal along with the staff's proposed resolution of industry's comments on the suggested approach obtained at a November workshop on license renewal.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff and the industry, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Gary Quittschreiber (telephone 301/492–9518) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: December 12, 1989.

Raymond F. Fraley,

Executive Director.

[FR Doc. 89–29440 Filed 12–18–89; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

List of Articles Eligible for Duty-Free Treatment under the U.S. Generalized System of Preferences (GSP), USITC Report Availability and Deadline for Petitions in Special GSP Review for Countries in the Andean Region

As indicated in a previous notice of August 10, 1989 (54 FR 32881), the GSP Subcommittee of the Trade Policy Staff Committee hereby notifies interested parties of the opportunity to comment on the public version of the U.S. International Trade Commission (USITC) report assessing the domestic economic impact of proposed changes in the list of eligible items under the 1989 Annual Review of the Generalized System of Preferences. The report is available from the USITC by calling Cindy Payne at the Office of Industries at (202) 252–1454. The USITC is located at 500 E Street, SW., Washington, DC. The report is also available for review by appointment at the USTR Public Reading Room (101), in Washington, DC. Appointments may be scheduled by calling (202) 395–6186.

All comments concerning the USITC report should be submitted in 20 copies, in English, to the Chairman of the GSP Subcommittee, Trade Policy Staff Committee, Room 517, 600 17th Street, NW., Washington, DC 20506. Comments must be received no later than 5 p.m. Wednesday, January 10, 1990. Information submitted will be subject to public inspection by appointment with the staff of the GSP Information Center, except for information granted "business confidential" status pursuant to 15 CFR 200.7. If the document contains business confidential information, twenty copies of a nonconfidential version of the submission along with twelve copies of the confidential version must be submitted. In addition, the document containing confidential information should be clearly marked "confidential" at the top and bottom of each and every page of the document. The version that does not contain business confidential information (the public version) should also be clearly marked at the top and bottom of each and every page (either "public version" or "nonconfidential").

As indicated in a previous notice of November 14, 1989, (54 FR 47433), the GSP Subcommittee invited requests from the governments of Bolivia, Colombia, Ecuador and Peru to add products to the lists of articles eligible for duty free treatment under the GSP. This notice revises the deadline for the submission of petitions by the four governments. Petitions are now due by 5 p.m. January 16, 1990 at the Office of the Trade Representative, Room 517, 600 17th Street, NW., Washington, DC. All petitions must conform with regulations codified in 15 CFR part 2007, and with the other requirements specified in the above cited Federal Register notice.

Questions concerning the comment period, Special Andean Review, or any other aspect of the GSP program may be directed to the USTR GSP Information Center at (202) 395–6971.

Daniel F. Leahy, Jr.,

Acting Chairman, Trade Policy Staff Committee.

[FR Doc. 89–29509 Filed 12–18–89; 8:45 am]

BILLING CODE 3190–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34–27527; File No. SR–NASD–89–34]

Self-Regulatory Organizations; National Association of Securities Dealers; Order Approving Proposed Rule Change Relating to Buy-In Procedures

The National Association of Securities Dealers ("NASD"), on July 18, 1989, filed a proposed rule change with the Commission pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] As discussed below, the proposal provides for the automation of NASD's buy-in procedures.[2] Notice of the proposal was published in the Federal Register on August 22, 1989 to solicit comment from interested persons.[3] On November 3, 1989, NASD amended the proposal.[4] No comments were received. This order approves the proposal.

I. Description

The proposal would amend section 59 (captioned "Close Out Procedure—Buying In") of the NASD's Uniform Practice Code ("Code").[5] The proposed amendment would modify the requirements for NASD members' handling of buy-ins in order to: (1) describe the existing manual buy-in procedures (*i.e.*, procedures involving hard copy and physical delivery) with greater precision; and (2) authorize the use of electronic communication techniques for buy-ins by expressly permitting electronic buy-in notices through media that provide immediate return for receipt capability, including, but not limited to, such facilities as facsimile transmission and computerized networks.[6] The proposal also includes numerous changes of a conforming and technical nature.[7]

Under the proposal, a broker-dealer intending to effect a buy-in would be required to notice to the selling broker-dealer (*i.e.*, the broker-dealer against whom the security would be bought-in) the following information concerning the contract to be closed: (1) Security issue, (2) quantity of units, (3) contract price, (4) execution date, (5) settlement date, and (6) such other information as necessary to identify the contract. Such notice must advise the selling broker-dealer that unless the selling broker-dealer effects delivery on or before a certain specified date and time, the security may be bought-in on the specified date and time for the account of the seller.[8] The noticing party also must provide the name and telephone number of an individual authorized to pursue further discussions concerning the prospective buy-in. Under the proposal, such a pre-buy-in notice may be in electronic or manual form.

Under the proposal, the party executing a buy-in, immediately upon its execution but, in any case, no later than the close of business, local time where the seller maintains his office, must notify the broker-dealer for whose account the securities were bought as to the quantity purchased and the price paid. Under the proposal, such post-buy-in notice also may be in electronic or manual form.

II. Rationale

The NASD states that the proposed rule change reflects modern electronic methods of communication and the need to modify obsolete Code provisions in accord with the best interests of the securities industry. NASD states that the proposal emanated from a major review of the Code, which NASD began in September 1987, and which involved an effort by NASD to bring key provisions of the Code (such as section 59) into conformity with current industry standards and practices. NASD further states that the proposal is consistent

[1] 15 U.S.C. Sec. 78s(b) (1982).

[2] The term "buy-in procedures," in this context, refers to the procedures that one broker must follow when another broker (the defaulting broker) fails to deliver securities as promised. The non-defaulting broker must buy-in the securities to meet its own obligations, and liability for resulting losses may be imposed on the defaulting broker. The opposite of a buy-in is a "sell-out," where a broker may dispose of securities if another broker defaults by refusing to accept delivery as promised. *See*, M. Thompsett, *Investment & Securities Dictionary*, 36, 237 (1986); D. Scott, *Wall Street Words*, 42 (1988).

All securities markets have such buy-in procedures. *See, e.g.*, New York Stock Exchange Rule 284; American Stock Exchange Rule 971.

[3] *See* Securities Exchange Act Release No. 27142 (August 15, 1989), 54 FR 34644.

[4] The amendment, in essence, deleted certain estimates by NASD about prospective actions by another self-regulatory organization ("SRO") and the availability of a new electronic system developed by that SRO.

[5] Section 59 currently provides that: "A contract which has not been completed by the seller according to its terms may be closed by the buyer not sooner than the third business day following the date delivery was due. . . ." This general provision would remain unchanged by the proposal.

This proposal, NASD states, has the general objective of automating buy-in procedures. It is not directed at (1) short sales; or (2) sell-outs, which are covered by Section 60 of the Code. Telephone conversation between Dorothy Kennedy, Manager, Uniform Practice Department, NASD, and Thomas C. Etter, Attorney, SEC (November 29, 1989).

[6] NASD, at the current time, contemplates the transmission of buy-in communications by facsimile (fax) machines; but NASD expects that within a year at least one existing computerized network will have software capable of transmitting buy-in communications. Telephone conversation between Therese M. Haberle, Special Counsel, NASD, and Thomas C. Etter, Attorney, SEC (November 13, 1989).

[7] The proposal would allow both manual and automated buy-in procedures to exist side-by-side under the Code. While, presumably, the use of traditional buy-in procedures would decline due to their comparative inefficiency, this proposal would not specifically abolish them or limit their use. Telephone conversation between Therese M. Haberle, Special Counsel, NASD, and Thomas C. Etter, Attorney, SEC (November 9, 1989).

[8] The proposal states that: (1) the specified buy-in time may not be prior to 11:30 a.m. local time in the community where the buyer maintains its office; and (2) if the originator of a buy-in, in a depository eligible security, is a participant in a registered securities depository, the buy-in may not be executed prior to 2:30 p.m., Eastern Time.

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with the Act, particularly section 15A(b)(6) of the Act.

III. Discussion

The Commission believes that the proposal is consistent with the Act. The NASD's treatment of buy-in procedures is an important aspect of its procedures for the clearing and settlement of securities transactions.

Section 17A(a)(1) of the Act finds that inefficient procedures for clearance and settlement impose unnecessary costs on investors and persons facilitating transactions on behalf of investors and that the use of automated systems would create the opportunity for financially safer and operationally more efficient clearance and settlement procedures. Additionally, section 15A(b)(6) of the Act mandates that the rules of a national securities association [*i.e.*, the NASD] be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in, securities.

The Commission believes that the proposed modifications to section 59 of the Code will improve the safety and efficiency of the clearance and settlement of securities transactions by: (1) Defining more accurately the procedures that broker-dealers must follow in their handling of buy-ins; and (2) more significantly, providing for the electronic transmission of buy-in communications. The Commission notes that, under existing practices, delivery of a written hard copy buy-in notice is required, which means broker-dealers must use runners to hand deliver them or use the mails. Allowing the replacement of such antiquated, hand delivery procedures by the use of modern, electronic systems will permit reduced labor expenses, improved security, and quicker turnaround times for processing buy-ins. Accordingly, the Commission believes that the proposal warrants approval.

IV. Conclusion

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with the Act, particularly sections 15A(b)(6) and 17A(a) of the Act, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act that the above-mentioned proposed rule change [File No. SR-NASD-89-34] be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Dated: December 11, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-29453 Filed 12-18-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

Bureau of Oceans and International Environmental and Scientific Affairs

[Public Notice 1145]

Conservation Measures for Antarctic Fishing Under the Auspices of the Commission for the Conservation of Antarctic Marine Living Resources

AGENCY: Bureau of Oceans and International Environmental and Scientific Affairs, State.

ACTION: Notice.

SUMMARY: At its Eighth Annual Meeting in Hobart, Tasmania, November 6–17 1989, the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), of which the United States is a member, adopted the conservation measures and resolutions listed below, pending countries' approval, pertaining to fishing in the CCAMLR Convention Area in Antarctic waters. These were agreed upon in accordance with article IX, paragraph 6(A) of the Convention for the Conservation of Antarctic Marine Living Resources. The measures restrict overall catches of certain species of fish, prohibit the taking of certain species of fish, list the fishing seasons, and define reporting requirements.

DATE: Persons wishing to comment on the measures or desiring more information should contact within 30 days.

FOR FURTHER INFORMATION CONTACT: R. Tucker Scully, Director, Office of Marine Science and Polar Affairs (OES/OSP), Room 5801, Department of State, Washington, DC 20520, (202) 647-3262.

SUPPLEMENTARY INFORMATION:

Conservation Measures Adopted at the Eighth Meeting of CCAMLR

In accordance with article IX6(a) of the Convention for the Conservation of Antarctic Marine Living Resources members are hereby notified of the following five Conservation Measures and two Resolutions adopted at the Eighth Meeting of CCAMLR. These five Conservation Measures were adopted in accordance with Conservation Measure 7/V and therefore enter into force immediately.

[9] *See* 17 CFR 200.30-3(a)(12).

Conservation Measure 13/VII

Limitation of the Total Catch of Champsocephalus gunnari in Statistical Subarea 48.3 in the 1989/90 Season.

The Commission, in accordance with Conservation Measure 7/V, hereby adopts the following Conservation Measure in accordance with article IX of the Convention:

1. The total catch of Champsocephalus gunnari in the 1989/90 season shall not exceed 8,000 tonnes in Statistical Subarea 48.3.

2. The by-catch of any of the following species: Notothenia rossii, Notothenia gibberifrons, Chaenocephalus aceratus and Pseudochaenichthys georgianus in Statistical Subarea 48.3 shall not exceed 400 tonnes.

3. The fishery in Statistical Subarea 48.3 shall close if the by-catch of any of the species named in paragraph 2 above reaches 300 tonnes or if the total catch of Champsocephalus gunnari reaches 8,000 tonnes, whichever comes first.

4. If, in the course of the directed fishery for Champsocephalus gunnari, the by-catch of any one haul of any species names in paragraph 2 above exceeds 5%, the fishing vessel shall move to another fishing ground within the subarea.

5. The use of bottom trawls in the directed fishery for Champsocephalus gunnari in Statistical Subarea 48.3 is prohibited.

6. For the purpose of implementing paragraphs 1, 2 and 3 of this Conservation Measure, the Catch Reporting System set out in Conservation Measure 17/VIII shall apply in the 1989/90 season.

Conservation Measure 14/VIII

Prohibited of Directed Fishery on Notothenia gibberifrons, Chaenocephalus aceratus, Pseudochaenichthys georgianus and Notothenia squamifrons in Statistical Subarea 48.3 in the 1989/90 season.

The Commission, in accordance with Conservation Measure 7/V, hereby adopts the following Conservation Measure in accordance with article IX of the Convention:

Directed fishing on Notothenia gibberifrons, Chaenocephalus aceratus, Pseudochaenichthys georgianus and Notothenia squamifrons in Statistical Subarea 48.3 is prohibited in the 1989/90 season.

Conservation Measure 15/VIII

Closed Seasons in the 1989/90 Season in Statistical Subarea 48.3.

The Commission, in accordance with Conservation Measure 7/V, hereby adopts the following Conservation Measure in accordance with article IX of the Convention:

Directed fishing in Champsocephalus gunnari between 20 November 1989 and 15 January 1990 and between 1 April and 4 November 1990 is prohibited. During those periods Champsocephalus gunnari, Notothenia rossii, Notothenia gibberifrons, Chaenocephalus aceratus, Pseudochaenichthys georgianus and Notothenia squamifrons shall not be taken in Statistical Subarea 48.3 except for scientific research purposes.

Conservation Measure 16/VIII

Catch Limit on Patagonotothen brevicauda guntheri in Statistical Subarea 48.3 for the 1989/90 Season.

The Commission, in accordance with Conservation Measure 7/V, hereby adopts the following Conservation Measure in accordance with article XI of the Convention:

The catch of Patagonotothen brevicauda guntheri in Statistical Subarea 48.3 in the 1989/90 season shall be limited to 12,000 tonnes. For the purpose of implementing this Conservation Measure the Catch Reporting System set out in Conservation Measure 17/VIII shall apply in the 1989/90 season.

Conservation Measure 17/VIII

Catch Reporting System in Statistical Subarea 48.3 in the 1989/90 Season.

The Commission, in accordance with Conservation Measure 7/V, hereby adopts the following Conservation Measure in accordance with article IX of the Convention:

1. For the purposes of this Catch Reporting System the calendar month shall be divided into six reporting periods, viz: day 1 to day 5, day 6 to day 10, day 11 to day 15, day 16 to day 20, day 21 to day 25 and day 26 to the last day of the month. These reporting periods are hereinafter referred to as periods, A, B, C, D, E, and F.

2. At the end of each reporting period, each Contracting Party shall obtain from each of its vessels its total catch for that period and shall, by cable or telex, transmit the aggregated catch for its vessels so as to reach the Executive Secretary not later than the end of the next reporting period.

3. Such reports shall specify the month and reporting period (A, B, C, D, E, or F) to which each report refers.

4. Immediately after the deadline has passed for receipt of the reports for each period, the Executive Secretary shall notify all Contracting Parties of the total catch taken during the reporting period, the total aggregate catch for the season to that date, together with an estimate of the date upon which the total allowable catch is likely to be reached for that season. Each estimate shall be based on a projection forward of the average daily catch rate (calculated as the total catch by all contracting parties divided by the number of days in the period) for the most recent period based on the reports received for the period in question, to the point at which the total allowable catch will have been taken.

5. When the Executive Secretary has received reports which show that 90% of the total allowable catch has been taken, the Executive Secretary shall make a final estimate of the date upon which the total allowable catch will be reached. The fishery shall close at the end of the last day of the reporting period within which that date falls.

Resolution 5/VIII

Protection of Seabirds from Incidental Mortality Arising from Longline Fishing.

The Commission took note of the recent introduction of longline fishing in the CCAMLR Convention Area. It expressed its concern that fishing with this technique could cause substantial incidental mortality of seabirds.

In this connection the Commission:

(a) Takes note of the intention of the Soviet Union not to increase, by more than one or two vessels, the number of its vessels engaged in longline fishing on Dissostichus eleginoides in Subarea 48.3 in the 1989/90 season;

(b) Recalls that techniques have been developed and are being used on a trial basis in other longline fisheries, such as in the tuna longline fishery in the South West Pacific, to minimize incidental mortality of seabirds; and

(c) Urges all parties to the Convention conducting longline fishing in the CCAMLR Convention Area to investigate and introduce as soon as possible methods to minimize incidental mortality to seabirds arising from the use of longline fishing techniques.

Resolution 6/VIII

Protection of Notothenia gibberifrons in the Peninsula Area (Statistical Subarea 48.1) and Around South Orkneys (Statistical Subarea 48.2).

The Commission recognized that it was important that fishing mortality in Notothenia gibberifrons should, as a precautionary measure, be minimized. To this end the Commission requests all parties to the Convention to keep the catch of Notothenia gibberifrons in the Peninsula Area (Statistical Subarea 48.1), and around South Orkneys, (Statistical Subarea 48.2), in the season 1989/90 to the lowest possible level.

To this end the Commission requests all parties to the Convention in the 1989/90 season:

(a) To refrain from directed fishing for Notothenia gibberifrons; and

(b) To ensure that by-catch of Notothenia gibberifrons in directed fishing for other species be avoided.

Other Conservation Measures in Force

At the Eighth Meeting of CCAMLR, the Commission agreed that Conservation Measures 2/III, 3/IV, 4/V, 5/V, 6/V and 7/V should remain in force.

Conservation Measure 11/VII and 12/VII expired on 20 November 1989 and the Commission agreed that Conservation Measure 1/III is no longer in force.

Conservation Measure 9/VI, the catch reporting system for Champsocephalus gunnari in statistical subarea 48.3, is superseded by Conservation Measure 17/VIII for the 1989/90 fishing season.

Catch Reporting

In accordance with Conservation Measures 13/VIII and 16/VIII the five day catch reporting system set out in Conservation Measure 17/VIII becomes effective for the Patagonotothen brevicauda guntheri fishery in subarea 48.3 immediately. All catches of this species should be reported to the Executive Secretary in accordance with the deadlines set out in Conservative Measure 17/VIII.

Because of the closed season set out in Conservation Measure 15/VIII, the first fishing period for the fishery directed on Champsocephalus gunnari subarea 48.3, within the five day reporting system detailed in 17/VIII, will be the five days 16–20 January 1990. This will be reporting period D in January. The deadline for reporting catches in this first period will thus be Thursday 25 January 1990.

Dated: December 8, 1989.

Frederick M. Bernthal,

Assistant Secretary for Oceans and International Environmental and Scientific Affairs.

[FR Doc. 89-29422 Filed 12-18-89; 8:45 am]

BILLING CODE 4710-09-M

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DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended December 8, 1989

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.) The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 46643.
Date filed: December 5, 1989.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 2, 1990.
Description: Application of Fine Airlines, Inc. pursuant to section 401(d)(1) of the Act and subpart Q of the Regulations, requests a certificate of public convenience and necessity authorizing interstate and overseas scheduled air transportation of property and mail between any point in any State in the United States or the District of Columbia, or any territory or possession of the United States and any other point in any State of the United States or the District of Columbia.

Docket Number: 46645.
Date filed: December 5, 1989.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 2, 1990.
Description: Application of Fine Airlines, Inc. pursuant to Section 401(d) (1) and (3) of the Act and subpart Q of the Regulations, for a certificate of public convenience and necessity authorizing foreign scheduled air transportation of property and mail between any point in any State in the United States or the District of Columbia, or any territory or possession of the United States and any point outside thereof.

Docket Number: 46648.
Date filed: December 6, 1989.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 3, 1990.
Description: Application of Dairo Air Services Ltd., pursuant to section 402 of the Act and subpart Q of the Regulations, requests a foreign air carrier permit to authorize it to engage in foreign air transport of cargo and mail from points in the United States and points Worldwide and vice versa.

Docket Number: 46652.
Date filed: December 8, 1989.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 5, 1990.
Description: Application of Zuliana de Aviacion C.A., pursuant to section 402 of the Act and subpart Q of the Regulations, applies for a foreign air carrier permit authorizing the carriage of property and mail on a non-scheduled basis between a point or points in Venezuela and the coterminal points Miami/Houston/San Juan/New York.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 89-29376 Filed 12-18-89; 8:45 am]
BILLING CODE 4910-62-M

Office of the Secretary

President's Commission on Aviation Security and Terrorism; Closed Meeting

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of closed meeting of the President's Commission on Aviation Security and Terrorism.

SUMMARY: As previously announced, the Commission will be holding its second public hearing. Before this hearing the Commission will meet in closed session to discuss matters relating to Commission organization, personnel and related matters.

DATE: Monday, December 18, 1989, 9:15 a.m., et.

ADDRESS: Reserve Officers Association Executive Library, Fourth Floor, One Constitution Avenue NE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Harry R. Van Cleve, Commission on Aviation Security and Terrorism, 1825 K Street NW., Suite 519, Washington, DC 20036; telephone (202) 254-3166; FAX (202) 254-3359.

SUPPLEMENTARY INFORMATION: Prior notice of the public portion of the Commission's hearing has already been provided. (November 28, 1989; 54 FR 48971). In accordance with section 10 of the Federal Advisory Committee Act, the executive session before the public hearing will be closed to the public because matters will be discussed that come within the following provisions of 5 USC 552(b)c: (1) Internal personnel rules and practices of the Commission, and (2) matters exempt from mandatory disclosure by statute, namely section 316, Federal Aviation Act of 1958, as amended.

Issued in Washington, DC, on December 12, 1989.

Harry R. Van Cleve,
Commission General Counsel.
[FR Doc. 89-29375 Filed 12-18-89; 8:45 am]
BILLING CODE 4910-62-M

Coast Guard

[CGD 88-096]

Alternatives for Licensing Commercial Fishing Industry Vessel Operators

AGENCY: U.S. Coast Guard, DOT.

ACTION: Notice and request for comments.

SUMMARY: The Commercial Fishing Industry Vessel Safety Act (PL 100-424) requires the USCG to submit to Congress a plan for licensing operators of documented fishing, fish processing, and fish tender vessels. This effort is directed solely toward the commercial fishermen, not the vessels upon which they serve. The Coast Guard invites the public to identify and develop alternatives for licensing persons aboard these vessels. The Coast Guard seeks comments regarding vessel size, crew size, geographic region, fishery, and any other relevant vessel operating criteria that may form the basis for requiring or not requiring a license. Comments are also requested concerning the existing license options in Title 46 Code of Federal Regulations, part 10, for fishing vessel operators.

DATES: Comments should be submitted by January 18, 1990.

ADDRESSES: Written comments may be mailed to Commandant (G-MVP-3), U.S. Coast Guard, 2100 Second Street, SW., Room 1210, Washington, DC 20593-0001.

FOR FURTHER INFORMATION CONTACT: LCDR Bruce Pickard, Project Manager, Office of Marine Safety, Security and Environmental Protection, (G-MVP), phone (202) 267-0219.

SUPPLEMENTARY INFORMATION: Currently, the Coast Guard enforces no personnel license requirements for persons operating fishing vessels, fish processing vessels, or fish tender vessels of less than 200 gross tons. This situation is largely attributed to the Officer's Competency Act which exempts vessels of less than 200 gross tons. Present operator qualifications as to professional competency, experience, age, training, etc., are solely a matter of vessel owner or vessel manager hiring practices. Hiring practices and standards vary greatly between geographic regions and between fisheries. Some commercial fishermen, because of their experiences in other maritime enterprises, already possess Coast Guard licenses such as operators of uninspected towing vessels, masters and mates of vessels of not more than 200 gross tons, masters of vessels of not more than 100 gross tons, and operators of uninspected passenger vessels. These licenses each have different service and examination requirements. The Coast Guard asks whether this type of "traditional" licensing approach may be appropriate for the commercial fishing industry or, if not, what other approach would be better and why.

Signed December 11, 1989.

J.D. Sipes,
Rear Admiral, U.S. Coast Guard Chief, Office of Marine Safety, Security and Environmental Protection.
[FR Doc. 89-29377 Filed 12-18-89; 8:45 am]
BILLING CODE 4910-14-M

Artisan Liens on Aircraft; Recordability

Federal Aviation Administration

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice of legal opinion is issued by the Assistant Chief Counsel for the Aeronautical Center to provide legal advice to the Aircraft Registration Branch, Mike Monroney Aeronautical Center, Oklahoma City, Oklahoma, also identified as the FAA Aircraft Registry. Since December 17, 1981, the Assistant Chief Counsel for the Aeronautical Center has issued opinions in the Federal Register of those states from which artisan liens will be accepted for recordation by the FAA Aircraft Registry. This opinion is to advise interested parties of the addition of the State of North Dakota to that list.

DATE: October 17, 1989.

ADDRESS: Copies of prior opinions on the recordability of artisan liens from states which have statutes authorizing their recording may be obtained from: Assistant Chief Counsel for the Aeronautical Center, AAC-7, P.O. Box 25082, Oklahoma City, OK 73125-4904.

FOR FURTHER INFORMATION CONTACT: R. Bruce Carter, Office of Assistant Chief Counsel, address above, or by calling (405) 680-3296; (FTS 747-3296).

SUPPLEMENTARY INFORMATION: In the December 17, 1981, Federal Register, Vol. 46, No. 242, page 61528, the Federal Aviation Administration, Mike Monroney Aeronautical Center, published its legal opinion on the recordability of artisan liens, with the identification of those states from which artisan liens would be accepted. In the April 23, 1984, Federal Register, Vol. 49, No. 79, page 17112, we advised that Florida, Nevada, and New Jersey had passed legislation which, in our opinion, allows the Aircraft Registry to accept artisan liens from those states. In the June 10, 1986, Federal Register Vol. 51, No. 111, page 21040, we advised that Minnesota and New Mexico had passed legislation which, in our opinion, allows the Aircraft Registry to accept artisan liens from those states. In the June 23, 1988 Federal Register, Vol. 53, No. 121, page 23716, we advised that Missouri had passed legislation which, on our opinion, allows the Aircraft Registry to accept artisan liens from that state. In the September 19, 1989, Federal Register, Vol. 54, No. 180, page 38584, we advised that Texas was identified as a state from which artisan liens will be accepted.

The purpose of this opinion is to advise interested parties in the aviation community that in addition to those states identified in the September 19, 1989 publication, North Dakota is identified as a state from which artisan liens will be accepted.

The complete list of states from which artisan liens on aircraft will be accepted as of this date are:

Alaska	Nevada
Arkansas	New Jersey
Florida	New Mexico
Georgia	North Dakota
Illinois	Oklahoma
Indiana	Oregon
Kansas	South Carolina
Kentucky	South Dakota
Maine	Texas
Minnesota	Virgin Islands
Missouri	Washington
Nebraska	Wyoming

Issued in Oklahoma City, on October 17, 1989.

Joseph R. Standell,
Assistant Chief Counsel for the Aeronautical Center.
[FR Doc. 89-29420 Filed 12-18-89; 8:45 am]
BILLING CODE 4910-13-M

Research and Special Programs Administration

Office of Hazardous Materials Transportation

Applications for Renewal or Modification of Exemptions or Applications To Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for renewal or modification of exemptions or application to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier Federal Register publications, they are not repeated here. Except as otherwise noted, renewal application are for extension of the exemption terms only. Where charges are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before January 3, 1990.

ADDRESS: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street SW., Washington, DC.

Application No.	Applicant	Renewal of exemption
2787-X	U.S. Department of Defense, Falls Church, VA.	2787
3302-X	Airco Industrial Gases—Division of The BOC Group, Murray Hill, NJ.	3302
3941-X	Aerojet Solid Propulsion Company, Sacramento, CA.	3941
3941-X	Kerr-McGee Chemical Corporation, Oklahoma City, OK.	3941
4453-X	Econexpress, Inc., Wheaton, IL.	4453
5643-X	Union Carbide Industrial Gases, Inc., Danbury, CT.	5643
6299-X	Minnesota Valley Engineering, Inc., New Prague, MN.	6299

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Application No.	Applicant	Renewal of exemption
6325-X	Mining Services International Corporation (MSI), Salt Lake City, UT.	6325
6416-X	Cenex—Land O'Lakes AG Services, Vancouver, WA.	6416
6497-X	FMC Corporation, Philadelphia, PA.	6497
6530-X	AGA Gas, Inc., Washington, WV.	6530
6563-X	Mada Medical Products, Inc., Carlstadt, NJ.	6563
6563-X	S.L.O. Health Products, Inc., Baywood Park, CA.	6563
6611-X	Air Products and Chemicals, Inc., Allentown, PA.	6611
6651-X	Heathbath Corporation, Springfield, MO.	6651
6691-X	Industrial Gas Distributors, Inc., Billings, MT.	6691
6765-X	Union Helium Co., Ltd., Minato-ku, Tokyo, Japan.	6765
6805-X	Linde Gases of the South, Inc., Houston, TX.	6805
6805-X	UNIGAS, Inc., Mercadita, PR	6805
6805-X	Linde Gases of the Great Lakes, Inc., Cleveland, OH.	6805
6805-X	Linde Gases of Florida, Inc., Tampa, FL.	6805
6805-X	Linde Gases of the Southeast, Inc., Wilmington, NC.	6805
6921-X	Airco Industrial Gases—Division of The BOC Group, Murray Hill, NJ.	6921
7024-X	Avondale Mills, Sylacauga, AL	7024
7051-X	Advance Research Chemicals, Inc., Catoosa, OK.	7051
7052-X	Pointar, Inc., Tempe, AZ	7052
7052-X	Clifton Precision, Springfield, PA.	7052
7052-X	Power Conversion, Inc., Saddle Brook, NJ.	7052
7052-X	In-Situ, Inc., Laramie, WY	7052
7052-X	Hydril—Production Technology Division, Houston, TX.	7052
7052-X	Medtronic, Inc./Promeon Division, Brooklyn Center, MN.	7052
7052-X	ECO Energy Conversion, Somerville, MA.	7052
7052-X	Crompton Parkinson, Limited, Tyne & Wear, England.	7052
7052-X	Engineered Assemblies & Components Corporation, Teterboro, NJ.	7052
7052-X	DME Corporation, Ft. Lauderdale, FL.	7052
7052-X	Hazeltine Corporation, Braintree, MA.	7052
7052-X	Bren-Tronics, Inc., Commack, NY.	7052
7052-X	Acme Aerospace Products Group, Salt Lake City, UT.	7052
7052-X	DC Battery Products, St. Paul, MN.	7052
7052-X	Siemens, AG, Munchen, West Germany.	7052
7052-X	Interstate Electronics Corporation, Anaheim, CA.	7052
7052-X	ACR Electronics, Inc., Fort Lauderdale, FL.	7052
7052-X	Ballard Battery Systems, North Vancouver, B.C., Canada.	7052
7052-X	Leigh Instruments, Limited, Arlington, VA.	7052
7052-X	ITT Barton Instruments Company, City of Industry, CA.	7052
7060-X	Airborne Express, Inc., Wilmington, OH.	7060
7070-X	American Chemical & Refining Company, Inc., Waterbury, CT	7070
7455-X	Austin Powder Company, Cleveland, OH.	7455
7476-X	Thompson Tank & Manufacturing Company, Inc., Long Beach, CA.	7476
7628-X	Allied Signal, Inc., Morristown, NJ.	7628
7708-X	HTL/Kin-Tech Division, Duarte, CA.	7708
7811-X	Mallinckrodt, Inc., Paris, KY	7811
7811-X	EM Science, Cincinnati, OH	7811
7876-X	Mallinckrodt, Inc., Paris, KY	7876
7909-X	Dow Chemical Company, Midland, MI.	7909
7929-X	C-I-L, Inc., North York, Ontario, Canada.	7929
7945-X	U.S. Department of Defense, Falls Church, VA.	7945
7954-X	Air Products and Chemicals, Inc., Allentown, PA.	7954
7954-X	Jack B. Kelley, Inc., Amarillo, TX.	7954
7991-X	CSX Transportation, Inc., Jacksonville, FL.	7991
7991-X	Norfolk Southern Corporation, Norfolk, VA.	7991
8074-X	Airco Industrial Gases—Division of The BOC Group, Murray Hill, NJ.	8074
8074-X	Matheson Gas Products, Inc., Secaucus, NJ.	8074
8156-X	Cryogenic Rare Gas Laboratories, Inc., Hanahan, SC.	8156
8362-X	Altus Corporation, San Jose, CA (see footnote 1).	8362
8388-X	B.W. Norton Manufacturing Company, Inc., Hayward, CA.	8388
8401-X	ERA Aviation, Inc., Anchorage, AK.	8401
8409-X	EM Science, Cincinnati, OH	8409
8410-X	EM Science, Cincinnati, OH	8410
8426-X	Crosby & Overton, Inc., Long Beach, CA.	8426
8427-X	U.S. Department of Defense, Falls Church, VA.	8427
8697-X	ERA Aviation, Inc., Anchorage, AK.	8697
8706-X	Petro-Steel, Corsica, SD (see footnote 2).	8706
8723-X	IRECO, Incorporated, Salt Lake City, UT (see footnote 3).	8723
8725-X	NCF Industries, Inc. (CNG Cylinder Corp.), Long Beach, CA.	8725
8786-X	Gas Spring Corporation, Colmar, PA (see footnote 4).	8786
8814-X	Structural Composites Industries, Inc., Pomona, CA.	8814
8814-X	Structural Composites Industries, Inc., Pomona, CA.	8814
8859-X	Eastman Kodak Company, Rochester, NY.	8859
8870-X	EM Science, Cincinnati, OH	8870
8871-X	Chase Packaging Corporation, Greenwich, CT.	8871
8915-X	Linde Gases of the South, Inc., Houston, TX.	8915
8915-X	Linde Gases of Florida, Inc., Tampa, FL.	8915
8915-X	Linde Gases of the Great Lakes, Inc., Cleveland, OH.	8915
8915-X	UNIGAS, Inc., Mercadita, PR	8915
9052-X	Chemical Handling Equipment Company, Inc., Toledo OH (see footnote 5).	9052
9118-X	ICI Americas, Inc., Wilmington, DE.	9118
9145-X	Exxon Pipeline Company, Houston, TX.	9145
9168-X	All-Pak, Inc., Pittsburgh, PA	9168
9184-X	Cyanamid Canada, Inc., East Willowdale, Canada.	9184
9211-X	American Overseas Marine Corporation, Quincy, MA.	9211
9230-X	Nuclear Metals, Inc., Concord, MA.	9230
9261-X	GOEX, Inc., Cleburne, TX	9261
9281-X	Jet Research Center, Inc., Alvarado, TX.	9281
9348-X	DURACELL, Inc., Bethel, CT (see footnote 6).	9348
9370-X	Norris Cylinder Company, Longview, TX.	9370
9549-X	GOEX, Inc., Cleburne, TX	9549
9571-X	U.S. Department of Defense, Falls Church, VA.	9571
9606-X	Austin Powder Company, Cleveland, OH.	9606
9739-X	Unocal Corporation, Los Angeles, CA.	9739
9745-X	CMB Enterprises, Inc., Vernona, NJ (see footnote 7).	9745
9819-X	Halliburton Services, Duncan, OK (see footnote 8).	9819
9651-X	Northwest Airlines, Inc., St. Paul, MN.	9651
9651-X	Delta Airlines, Inc., Atlanta, GA.	9651
9685-X	Astro Container Company, Evendale, OH.	9685
9973-X	Thiokol Corporation, Shreveport, LA (see footnote 9).	9973
10134-X	Fluid Systems Div. of Allied-Signal Aerospace Co., Tempe, AZ (see footnote 10).	10134

(1) To renew and authorize a maximum of 10 individual cells or a battery structure comprising 30 cells maximum in a special packaging design.

(2) To authorize modification of cargo tank by allowing increased diameters, varying thickness of metal, and moving head gasket.

(3) To authorize certain cargo units identified under DOT–E 4453 to be included for use under DOT–E 8723 for shipment of certain blasting agents in bulk.

(4) To authorize burst to charge ratio of 3.5 for gas cylinders that contain 30 cubic inches or less of gas.

(5) To authorize a decrease in the minimum wall thickness of non-DOT specification rotationally molded polyethylene portable tanks and to authorize an additional oxidizing material, n.o.s., (solid).

(6) To authorize lithium/manganese dioxide batteries to be raised from 2 grams of lithium to 3 grams of lithium per battery.

(7) To authorize shipment of insecticide, liquified gas (containing no poison A or poison B material) contained in a non-DOT specification container conforming to the DOT spec. 2P except for size.

(8) To authorize additional non-DOT specification stainless steel portable tanks with a capacity of 160 and 345 gallons for shipment of certain flammable or corrosive liquids.

(9) To authorize additional explosive projectile, class A explosive in specially designed packagings.

(10) Request modification to formula used in wall stress calculation for pressure vessels used for shipping argon and helium mixture, classed as nonflammable gas.

Application No.	Applicant	Parties to exemption
3996-P	Rhone-Poulenc Basic Chemicals Company, Shelton, CT.	3996
4338-P	Rhone-Poulenc Basic Chemicals Company, Shelton, CT.	4338
4850-P	Jet Research Center, Inc., Alvarado, TX.	4850
4884-P	Scott Specialty Gases, Inc., Plumsteadville, PA.	4884
6805-P	O'Brien Energy Systems, Inc., Philadelphia, PA.	6805
6874-P	Philpp and Lion Ltd., London, England.	6874
7052-P	Ansul Fire Protection Wormald U.S., Inc., Marinette, WI.	7052
7052-P	Ferranti International Signal, Inc., Lancaster, PA.	7052
7052-P	S&G Photographic, Princeton, NJ.	7052
7052-P	Informatique Electronique Securite Maritime, Guidel, France.	7052
7259-P	Rhone-Poulenc Basic Chemicals Company, Shelton, CT.	7259
7753-P	Rhone-Poulenc Basic Chemicals Company, Shelton, CT.	7753
8267-P	Nalco Chemical Company, Naperville, IL.	8267
8426-P	Hayter Trucking, Inc., Taft, CA	8426
8467-P	Rhone-Poulenc Basic Chemicals Company, Shelton, CT.	8467
8473-P	Baker Performance Chemicals, Inc., Houston, TX.	8473
8518-P	Hayter Trucking, Inc., Taft, CA	8518
9541-P	Exaif SA. (France), 78000 Versailles, France.	9541
9902-P	Rhone-Poulenc Basic Chemicals Company, Shelton, CT.	9902
10022-P	Linde Gases of Southern California, Inc., Santa Ana, CA.	10022
10022-P	Linde Gases of the Mid-Atlantic, Inc., Moorestown, NJ.	10022
10103-P	Du-Laur Products, Inc., Vassar, MI.	10103

Note: Federal Register Vol. 54, No. 219, page 47644 referencing Exemption No. 5861–X should read 7945–X. Page 47645 referencing Exemption No. 8445–P should read 9723–P.

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with part 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on December 11, 1989.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 89–29378 Filed 12–18–89; 8:45 am]

BILLING CODE 4910-60-M

Office of Hazardous Materials Transportation; Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before January 18, 1990.

ADDRESS COMMENTS TO: Docket Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street SW, Washington, DC.

New Exemptions

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof.
10283-N	Hoyer GMBH Internationale Fachspedition, West Germany.	49 CFR 173.316	To authorize shipment of argon, nitrogen, oxygen, and carbon dioxide, (cryogenic liquids) classed as non-flammable gas in IMO type 7 tank containers. (Modes 1, 2, 3.)
10284-N	Hoyer GMBH Internationale Fachspedition West Germany.	49 CFR 173.316	To authorize shipment of argon, nitrogen, and oxygen (cryogenic liquids), classed as non-flammable gas in IMO Type 7 tank Container. (Modes 1, 2, 3.)
10288-N	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.119, 179.101–1(a)	To authorize shipment of various flammable liquids in 105A300W and 112A340W pressure tank cars with the safety relief valve start-to-discharge pressure, psi, at 82.5 per cent of the tank test pressure rating. (Mode 2.)
10289-N	Dart Energy Corporation, Mason, MI	49 CFR 173.119	To authorize use of non-DOT specification cargo tanks for transportation of crude oil and condensate, classed as both combustible liquid and flammable liquid, and 2 diesel fuel, classed as flammable liquid. (Mode 1.)
10290-N	Crown Sheetmetal LTD., Invercargill, New Zealand.	49 CFR 173.304	To authorize manufacture, marking and sale of a non-DOT specification stainless steel cylinder similar to the DOT Specification 4BW cylinder for shipment of liquified petroleum gas classed as flammable gas. (Modes 1, 3.)
10291-N	Tankbouw Rooteslaar B.V., Holland	49 CFR 173.315, 178.245–1(b)	To authorize manufacture, marking and sale of a non-DOT specification portable tank similar to the DOT Specification 51 portable tank for shipment of various non-flammable gases. (Modes 1, 2, 3.)
10292-N	Kerrco Incorporation, Hastings, NE	49 CFR 173.119, 173.125, 173.266, Part 173 Subpart F.	To authorize manufacture, marking and sale of a non-DOT specification rotationally molded polyethylene portable tank, not to exceed 300 gallons capacity for shipment of certain corroive liquids, flammable liquid and hydrogen peroxide solution classed as an oxidizer. (Modes 1, 2, 3.)

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NEW EXEMPTIONS—Continued

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof.
10293-N	Tramco Incorporation, Beachwood, OH.	49 CFR 173.245	To authorize shipment of a corrosive liquid, classed as a corrosive material, in a 5 gallon laminated composite bag containing 4.5 gallons corrosive liquid on top of a non-hazardous material separated by a 3 mil polyethylene sheet, in a non-DOT 55 gallon 18/20 gauge steel drum. (Mode 1.)
10294-N	Great Lakes Chemical, Corporation, El Dorado, AR.	49 CFR 173.314	To authorize shipment of Bromotrifluoromethane, classed as non-flammable gas, in a DOT Specification 110A500W tank car. (Mode 2.)
10295-N	Sherex Chemical Company, Inc., Dublin, OH.	49 CFR 173.134	To authorize shipment of pyrophoric liquid, n.o.s., classed as blasting agent, in collapsible polyethylene lined, woven polypropylene bags, NTE, 250 pounds each, on pallet constructed of 5/8 inch plywood deck with 2 x 5 wooden runners. (Modes 1, 3.)
10296-N	Explosive Technologies, International, Wilmington, DE.	49 CFR 173.14(a)(i)	To authorize shipment of ammonium nitrate—fuel oil mixture, classed as blasting agent, in collapsible polyethylene—lined woven polypropylene bags, with a capacity not to exceed 2,250 pounds each, on pallet constructed of 5/8 inch plywood deck with 2 x 5 wooden runners. (Mode 1.)
10297-N	Tropigas De Puerto Rico, Inc., Caguas, PR.	49 CFR 173.34(1), 175.30, Part 107, Appendix B, Subparagraphs 1, 2, 3.	To authorize the rebuilding, repair, by method other than as prescribed, and sale of DOT Specification 4 series cylinder. (Modes 1, 2, 3, 4, 5.)
10298-N	North Star Air Cargo, Inc., Anchorage, AK.	49 CFR 172.101, column (9)(b), 173.118, 175.320.	To authorize shipment of liquid fuels classed as flammable or combustible liquids in non-DOT specification steel drums (rollagens) up to 600 gallon capacity by cargo aircraft only. (Mode 4.)
10299-N	M&T Chemicals Inc., Woodbridge, NJ.	49 CFR 173.247	To authorize shipment of Tin Tetrachloride anhydrous, classed as a corrosive material in a DOT Specification 6D/2SL container. (Modes 1, 2, 3.)

This notice of receipt of application for new exemptions is published in accordance with part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on December 13, 1989.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 89-29379 Filed 12-18-89; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: December 12, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0610
Form Number: None
Type of Review: Extension
Title: Time for Filing Returns and Other Documents
Description: This regulation tells a taxpayer where in the regulations the dates for filing returns and other documents may be found if the dates are not specified by statute. The information is used to avoid or establish the existence of a failure to file penalty.

Respondents: Individuals or households, State or local governments, Farms, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations
Estimated Number of Respondents: 12,417
Estimated Burden Hours Per Response: 15 minutes
Frequency of Response: As required
Estimated Total Reporting Burden: 3,104 hours
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 89-29382 Filed 12-18-89; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 242
Tuesday, December 19, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board was held at the offices of the Farm Credit Administration in McLean, Virginia, on December 14, 1989, from 11:10 a.m. until such time as the Board concluded its business.

FOR FURTHER INFORMATION CONTACT: David A. Hill, Secretary to the Farm Credit Administration Board, (703) 883-4003, TDD (703) 883-4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: This meeting was closed to the public pursuant to exemptive provisions of the Government in the Sunshine Act. The matter considered at the meeting was:

Closed Session [1]

Jackson FLB/FLBA, in Receivership.

Dated: December 14, 1989.

David A. Hill,

Secretary, Farm Credit Administration Board.

[1] Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c)(4), (8), and (9).

[FR Doc. 89-29562 Filed 12-15-89; 12:43 pm]

BILLING CODE 6705-01-M

FEDERAL COMMUNICATIONS COMMISSION

December 14, 1989.

FCC To Hold Open Meeting, Thursday, December 21, 1989

The Federal Communications Commission will hold a Special Open Meeting on the subject list below on Thursday, December 21, 1989, which is scheduled to commence at 4 p.m. in room 856 at 1919 M Street NW., Washington, DC.

Agenda, Item No., and Subject

Common Carrier—1—Title: Refinement of Procedures and Methodologies for Prescribing Interstate Rates of Return for AT&T Communications and Local Exchange Carriers. (CC Docket No. 87-463).

Summary: The Commission will consider an item relating to the rate of return for interstate services of local exchange carriers.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Sarah Lawrence, Office of Public Affairs, Telephone number (202) 632-5050.

Federal Communications Commission.

Issued: December 14, 1989.

Donna R. Searcy,

Secretary.

[FR Doc. 89-29555 Filed 12-15-89; 11:00 am]

BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the Government in the Sunshine Act (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2 p.m. on Tuesday, December 12, 1989, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency) and Director M. Danny Wall (Director of the Office of Thrift Supervision), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Memorandum and resolution re: Proposed amendments to part 303 of the Corporation's rules and regulations, entitled "Applications, Requests, Submittals, Delegations of Authority, and Notices of Acquisition of Control," which amendments establish, with respect to State and/or Federal savings associations, interim application and notice procedures governing (1) The conduct of, and requests to engage directly in, certain activities; (2) the divestiture of equity investments and junk bonds; and (3) prior notice of the establishment or acquisition of a subsidiary.

By the same majority vote, the Board further determined that no notice earlier than December 7, 1989, of this change in the subject matter of the meeting was practicable; and that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of a policy statement regarding qualified financial contracts.

The Board further determined, by the same majority vote, that no earlier notice of this change in the subject matter of the meeting was practicable.

Dated: December 14, 1989.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 89-29585 Filed 12-16-89; 1:15 pm]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Changes in Subject Matter of Agency Notice

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 3:00 p.m. on Tuesday, December 12, 1989, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman,, seconded by Director C. C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency) and Director M. Danny Wall (Director of the Office of Thrift Supervision), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Requests for Exemption from Cross Guarantee Provision of FIRREA:

1. U.S. Thrift Opportunity Partners, Limited Partnership, Chicago, Illinois.
2. Johnson International Bancorp, Ltd., Racine, Wisconsin.

Recommendation regarding the liquidation of a depository institution's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets: The Bowery Savings Bank, New York City (Manhattan), New York.

Matters relating to the Corporation's assistance agreement with an insured bank.

The Board further determined, by the same majority vote, that no earlier notice of the changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters added to the agenda in a meeting open to public observation; and that the matters added

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to the agenda could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552(b)(c)(4), (c)(6), (C)(8), (C)(9)(A)(ii), (c)(9)(B), and (c)(10)).

Dated: December 14, 1989.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 89-29586 Filed 12-18-89; 1:18 pm]

BILLING CODE 6714-01-M

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: December 11, 1989, 54 FR 50883.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: December 13, 1989, 10:00 a.m.

CHANGE IN THE MEETING: The following Docket Numbers and Companies have been added to the Agenda of December 13, 1989:

Item No., Docket No., and Company

CP-1

RP90-16-000, Northwest Alaskan Pipeline Company

CI89-348-001, Natgas U.S. Inc.

RP87-34-004, Northwest Alaskan Pipeline Company

RP89-109-000, United Gas Pipe Line Company

CP88-382-000, Northern Natural Gas Company, a Division of Enron Corp.

CP-2

CP89-1981-000 and CP89-2001-000, Mississippi River Transmission Corporation

Lois D. Cashell,

Secretary.

[FR Doc. 89-29626 Filed 12-15-89; 3:21 pm]

BILLING CODE 6717-01-M

BOARD FOR INTERNATIONAL BROADCASTING

TIME AND DATE: 9:00 a.m., January 28, 1990.

PLACE: The Willard Intercontinental Hotel, 1401 Pennsylvania Avenue, NW., Washington, DC 20004.

STATUS: Closed, pursuant to 5 U.S.C. 552 (b)(c)(1) 22 CFR 1302.4 (c) and (h) of the Board's rules [42 FR 9386, March 12, 1977].

MATTERS TO BE CONSIDERED: Matters concerning the board foreign policy objectives of the United States Government.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Mark G. Pomar, Deputy Executive Director, Board for International Broadcasting, Suite 400, 1201 Connecticut Avenue, NW., Washington, DC 20036.

Board Meeting

Board for International Broadcasting, Suite 400, 1201 Connecticut Avenue, NW., Washington, DC 20036.

Certification of Closed Meeting

The Executive Director, in accordance with Section 3 (f)(1) of the government in the Sunshine Act (5 U.S.C. 552b (f)(1) and the Board's rules issued under that Act (22 CFR 1302), hereby certifies that the Board meeting of June 28, 1990, at which will be discussed matters concerning the board foreign policy objectives of the United States Government, may properly be closed to the public on the basis of the exemptions set forth in the Board's rules in 22 CFR 1302.4 (c) and (h).

Dated: December 6, 1989.

Mark G. Pomar,

Deputy Executive Director.

[FR Doc. 89-29551 Filed 12-18-89; 11:00 am]

BILLING CODE 8155-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of December 18, 25, 1989 and January 1, and 8, 1990.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of December 18

Tuesday, December 19

10:00 a.m.

Briefing on Risk Communication (Public Meeting)

Wednesday, December 20

2:00 p.m.

Briefing of DOE on Status of Civilian High Level Waste Program (Public Meeting)

Thursday, December 21

2:00 p.m.

Briefing on NRC Actions for Cleanup of Contaminated Sites Under NRC Jurisdiction (Public Meeting)

3:30 p.m.

Affirmation/Discussion and Vote (Public Meeting)

a. Denial of Petitions for Rulemaking that Relate to Emergency Preparedness at Nuclear Power Plants

Friday, December 22

10:00 a.m.

Briefing by Executive Branch (Closed—Ex. 1)

Week of December 25 (Tentative)

There are no Commission meetings scheduled for the Week of December 25.

Week of January 1 (Tentative)

Thursday, January 4

3:30 p.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of January 8 (Tentative)

Tuesday, January 9

10:00 a.m.

Briefing on Status of Development of Updated Source Term (Public Meeting)

Thursday, January 11

2:00 p.m.

Periodic Briefing by Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)

3:30 p.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To verify the status of meetings call (Recording)—(301) 492-0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492-1661.

Dated: December 14, 1989.

William M. Hill, Jr.

Office of the Secretary.

[FR Doc. 89-29560 Filed 12-15-89; 11:24 am]

BILLING CODE 7590-01-M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:10 p.m. on Tuesday, December 12, 1989, the Board of Directors of the Resolution Trust Corporation met in closed session to consider certain matters relating to (1) internal corporate activities and (2) the probable failure of a thrift association.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred by Director M. Danny Wall, (Director of the Office of Thrift Supervision), and Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(8) and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(8) and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: December 14, 1989.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 89-29567 Filed 12-15-89; 1:17 pm]

BILLING CODE 6714-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting.

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of December 18, 1989.

A closed meeting will be held on Tuesday, December 19, 1989, at 3:30 p.m., and an open meeting will be held on Thursday, December 21, 1989, at 10:00 a.m.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Schapiro, duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, December 19, 1989, at 3:30 p.m., will be:

Settlement of injunctive actions.

Settlement of administrative proceedings of an enforcement nature.

Institution of administrative proceedings of an enforcement nature.

Institution of injunctive actions.

The subject matter of the open meeting scheduled for Thursday, December 21, 1989, at 10:00 a.m., will be:

1. Consideration of whether to grant Delta Government Options Corp. registration as a clearing agency pursuant to Section 17A of the Securities Exchange Act of 1934. For further information, please contact Richard Konrath at (202) 272-2388 or Gordon K. Fuller at (202) 272-2414.

2. Consideration of whether to propose for public comment amendments to Form N-1A, the registration form for mutual funds, and related rule changes. The proposed Form N-1A amendments include: (i) revisions of the per share table contained in the prospectus; (ii) two alternative disclosure requirements designed to provide investor with information about fund performance that can be easily understood, including a management's discussion and analysis of investment results; and (iii) required disclosure concerning fund portfolio managers. For further information, please contact Larisa E. Dobriansky at (202) 272-2097.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Anthony Ain at (202) 272-2400.

Johathan G. Katz,

Secretary.

December 14, 1989.

[FR Doc. 89-29504 Filed 12-14-89; 4:56 pm]

BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 54, No. 242

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Corrections

Federal Register
Vol. 54, No. 242
Tuesday, December 19, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Financial Assistance Award—Intent To Renew Grant With the National Association of Regulatory Utility Commissioners (NARUC)

Correction

In notice document 89-28498 beginning on page 50427 in the issue of Wednesday, December 6, 1989, make the following correction:

On page 50428, in the first column, in the eighth line, insert "Information" following "Transferring".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TQ90-2-33-000 and TM90-2-33-000]

El Paso Natural Gas Co.; Proposed Change in Rates

Correction

In notice document 89-28914 beginning on page 51064 in the issue of Tuesday, December 12, 1989, make the following correction:

On page 51064, in the third column, in the heading, the docket numbers should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket 89-72-NG]

Poco Petroleum, Inc.; Application To Extend Blanket Authorization To Import Natural Gas From Canada

Correction

In notice document 89-28892 beginning on page 50814 in the issue of Monday, December 11, 1989, make the following correction:

On page 50814, in the second column, under DATE:, in the fifth line, "January 10, 1989" should read "January 10, 1990".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 167

[CGD 89-019]

RIN 2115-AD22

Traffic Separation Scheme; Galveston Bay Approach

Correction

In rule document 89-15648 beginning on page 28061 in the issue of Wednesday, July 5, 1989, make the following correction:

§ 167.350 [Corrected]

On page 28062, in the third column, in § 167.350(b)(7), in the second column, "94°25.95' W." should read "94°25.80'W.".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-CE-29-AD; Amdt. 39-6387]

Airworthiness Directives; Boeing of Canada Ltd. deHavilland Models DHC-6-1, DHC-6-100, DHC-6-200, and DHC-6-300 Airplanes

Correction

In rule document 89-26767 beginning on page 47511 in the issue of Wednesday, November 15, 1989, make the following correction:

§ 39.13 [Corrected]

On page 47512, in the third column, in § 39.13(a)(3), in the first line, insert "inspect" following "Visually".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 129

[Docket No. 26020; Amdt. Nos. 129-19, 137-13]

RIN 2120-AD24

Organizational Changes and Delegations of Authority

Correction

In rule document 89-22317 beginning on page 39288 in the issue of Monday, September 25, 1989, make the following correction:

§ 129.11 [Corrected]

1. On page 39294, in the first column, in amendatory instruction 107, in the second line, "paragraph (6)" should read "paragraph (b)".

§ 137.77 [Corrected]

2. On the same page, in the third column, in amendatory instruction 126, in the first line, "Section 137.77(c) is amended" should read "Section 137.77 is amended".

BILLING CODE 1505-01-D

federal register

Tuesday
December 19, 1989

Part II

Department of Transportation

Urban Mass Transportation Administration

UMTA Fiscal Year 1990 Formula Grant Apportionments; Notice

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

UMTA Fiscal Year 1990 Formula Grant Apportionments; Notice

AGENCY: Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Notice.

SUMMARY: This notice announces the Fiscal Year 1990 apportionments of funds for the Urbanized Area Formula Program, the Elderly and Handicapped Formula Program, the Nonurbanized Area Formula Program, and the Rural Transportation Assistance Program. The Fiscal Year 1990 apportionments are based on the Department of Commerce's 1980 census data and on the Fiscal Year 1990 appropriation of $2,800,000,000 for the Urbanized Area Formula Program, $50,000,000 for the Elderly and Handicapped Formula Program, $28,000,000 for the Nonurbanized Area Formula Program, and, of this amount, $5,000,000 is available for the Rural Transportation Assistance

year in which the obligation limitation for the Discretionary Grants Program

review. However, funds may be withheld at a future date.

of passenger mile data will be effective for the 1990 Section 15 report year.

in this fashion from its inception, and it parallels UMTA's procedures under the

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DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

UMTA Fiscal Year 1990 Formula Grant Apportionments

AGENCY: Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Notice.

SUMMARY: The Department of Transportation (DOT) and Related Agencies Appropriations Act, 1990, signed into law by President Bush on November 21, 1989, provides Fiscal Year 1990 appropriations for the formula grant programs under Sections 9 and 18 and for the Section 16(b)(2) elderly and handicapped program of the Urban Mass Transportation Act of 1964, as amended (the UMT Act). This Notice includes the distribution of these funds. Limitations on the use of operating assistance also are included in this Notice, as well as other pertinent information.

FOR FURTHER INFORMATION CONTACT: Edward R. Fleischman, Director, Office of Capital and Formula Assistance, Department of Transportation, Urban Mass Transportation Administration, Office of Grants Management, 400 Seventh Street SW., Room 9301, Washington, DC 20590, (202) 366–1662.

SUPPLEMENTARY INFORMATION: Funds appropriated to the Section 9 program are apportioned on a formula basis to provide capital and operating assistance in urbanized areas. Funds appropriated to the Section 18 program are apportioned on a formula basis to provide capital and operating assistance in nonurbanized areas. Funds appropriated to the Section 16(b)(2) program are allocated to the States to provide capital assistance for transportation for elderly and disabled persons.

Formula Program Appropriations

This Notice provides the Fiscal Year 1990 apportionment of sections 9 and 18 funds for urbanized and nonurbanized areas and provides Fiscal Year 1990 allocations for the Section 16(b)(2) program, based on the most recent U.S. Census data. Section 9 apportionments for urbanized areas over 200,000 in population also are based on operating and financial data submitted as part of the Section 15 Reporting System.

Under Title I of the Department of Transportation (DOT) and Related Agencies Appropriations Act, 1990, a total of $1,630,000,000 has been appropriated for Fiscal Year 1990 for the Sections 9 and 18 programs. Of this amount, $5,000,000 is available for the Rural Transportation Assistance Program (RTAP). The Fiscal Year 1990 Appropriations Act directs that, before apportionment of the $1,625,000,000 in formula funds, $16,554,033 shall be made available to the Section 18 program. Of the remaining amount, 97.07 percent is being made available to the Section 9 program and 2.93 percent is being made available to the Section 18 program.

An additional $70,000,000 has been made available under section 9B (the capital only formula program funded from the Mass Transit Account). A total of $35,000,000 was appropriated for Fiscal Year 1990 for the Section 16(b) (2) program. These funds are allocated by an administrative formula.

Part of the Fiscal Year 1990 Appropriations Act, Title IV, Emergency Drug Funding, sets aside 0.3 percent of DOT funding in support of efforts to fight the war on drugs. The budgets of other Federal agencies also reflect reductions for the drug program. Therefore, the total amount appropriated for Sections 9 and 18 is reduced to $1,620,125,000. The total amount allocated under section 9B is reduced to $69,790,000. The total amount appropriated for RTAP is reduced to $4,985,000, and the total amount appropriated for the Section 16(b)(2) program is reduced to $34,895,000.

These programs are not affected by the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (Gramm-Rudman-Hollings), Public Law 100–119.

Additional Section 9 Formula Funding

In addition to the new appropriated Fiscal Year 1990 formula funds of $1,554,590,000, the Section 9 apportionment also includes $9,754,123 in deobligated Sections 5 and 9 funds and Section 9 funds that were never obligated and have become available for reapportionment under the Section 9 Program as provided for under Section 9(o). Included also is $230,532 in Fiscal Year 1986 and Fiscal Year 1987 Section 9 project management oversight funds that were deobligated in Fiscal Year 1989 and also have become available for reapportionment. Thus, the total additional funding amount being apportioned under Section 9 is $9,984,655.

Section 9B Formula Program—Distribution of Mass Transit Account (Trust Fund)

The Surface Transportation and Uniform Relocation Assistance Act of 1987 (the STURA Act) established the Section 9B Program. The Act states that beginning in Fiscal Year 1988, in any year in which the obligation limitation for the Discretionary Grants Program exceeds $1 billion, the funds in excess of that amount are to be allocated half on a discretionary basis and half under a new Section 9B formula program—essentially a capital-only Section 9 program. The obligation limitation for Fiscal Year 1990 is $1,140,000,000. Thus, $70,000,000 has been allocated for Section 9B. However, Title IV, Emergency Drug Funding, reduces the obligation limitation to $69,790,000. These Section 9B funds cannot be used for operating assistance, but are otherwise treated as Section 9 funds. In grant applications, amounts applied for under each Section should be clearly shown.

Project Management Oversight Set Aside

Section 23(a) of the UMT Act allows the Secretary of Transportation to use not more than one-half of one percent of the funds made available for Fiscal Year 1990 under sections 3, 9, 9B, 18, the National Capital Transportation Act of 1969 (Stark Harris), and section 103(e)(4) of title 23, United States Code, (Interstate Transfer) to contract with any person to oversee the construction of any major project under such programs. The Fiscal Year 1990 Appropriations Act added section 23(h) to the UMT Act expanding this authority to include safety, procurement, management and financial reviews and audits. Therefore, one-half of one percent of the funds appropriated for Fiscal Year 1990 under section 9 (including section 9B), or $6,121,900, has been reserved for this purpose. The remaining amount of Fiscal Year 1990 funds is apportioned in this Notice. Funds appropriated under section 18 have not been reserved for project management oversight since adequate funds are available from prior year reservations.

New York Metropolitan Transportation Authority Safety Review

The Fiscal Year 1990 Appropriations Act directs the Secretary to conduct a thorough independent safety review of the New York Metropolitan Transportation Authority, including the New York City Transit Authority, the Long Island Railroad and Metro-North commuter railroads, using available funds or funds withheld from formula money allocated to the New York portion of the New York-Northeast New Jersey urbanized area. The Section 9 apportionment for this area contained in this notice has not been reduced for this review. However, funds may be withheld at a future date.

Total Section 9 Fiscal Year 1990 Apportionments

This Notice provides tables which reflect both the amounts apportioned under the Section 9 program (General Fund) and the Section 9B program (Trust Fund). The amounts appropriated under Section 9 ($1,554,590,000) and Section 9B ($69,790,000) together total $1,624,380,000. The project management oversight reservation of $8,121,900 has been subtracted from this total. Reapportioned funds in the amount of $9,984,655 were then added to the remainder. Thus, the total amount being apportioned for Section 9 (including Section 9B) is $1,626,242,755.

Section 9 Fiscal Year 1989 Apportionment Adjustments

Adjustments have been made to the apportionments for certain urbanized areas because of corrections to data that were used to compute the Fiscal Year 1989 formula grant apportionments published in the **Federal Register** of October 13, 1988 (53 FR 40168). Differences between corrected apportionments and previously published apportionments have been resolved and necessary adjustments have been made by adding to or subtracting, as appropriate, from the apportionments for Fiscal Year 1990. The dollar amounts published in this Notice contain these adjustments, and the affected urbanized areas have been so advised.

Section 15 Data Used for Section 9 Apportionments

Data submitted for the Section 15 Annual Report for 1987 has been used to calculate the Section 9 apportionments for urbanized areas over 200,000 in population.

Passenger Mile Data

Passenger mile data submitted for the 1987 Section 15 Report underwent a special analysis since a large percentage of reporters' passenger mile data was not collected and/or reported in accordance with UMTA definitions and requirements. Some agencies misread UMTA Circular 2710.5A and implemented a procedure that did not meet the statistical requirements. Many reporters implemented alternative techniques prior to receiving written confirmation from UMTA that the technique would result in data that satisfy the required confidence and precision levels.

To assist in resolving reporting problems in the future, self-certification of passenger mile data will be effective for the 1990 Section 15 report year. Specific instructions will be contained in the 1990 Reporting Manual and Sample Forms. The requirement that passenger mile data meet the 95 percent confidence and 10 percent precision levels will not change.

Based on the policy reflected in this new certification process, those agencies that submitted complete Section 15 reports (including passenger mile data) and responded to UMTA's communications on their 1987 data have had their submittals included in the database that is being used to calculate the Fiscal Year 1990 Section 9 apportionments. This inclusion will continue through the 1989 Section 15 report year to allow these reporters additional time to comply with the statistical requirements.

Restored Commuter Rail Service

The Fiscal Year 1990 Appropriations Act adds a new provision to the law which requires the inclusion of directional route miles for restored commuter rail service in the calculation of the Fiscal Year 1990 Section 9 apportionments. The Act states that when a commuter rail service has been suspended for safety reasons, and when a statewide or regional agency or instrumentality commits to restoring such service by the end of 1989, and when the improvements needed to restore such service are funded without Urban Mass Transportation Administration (UMTA) funding, the directional route miles of such service shall be included for the purpose of calculating the Fiscal Year 1990 Section 9 apportionment, as well as the apportionment for subsequent years. If such service is not restored by the end of 1989, the money received as a result of the inclusion of the directional route miles shall be returned to UMTA. This provision of the Act has been taken into account and appropriate directional route miles for restored commuter rail service have been included in the calculation of the Fiscal Year 1990 Section 9 apportionment.

Section 9 Fiscal Year 1990 Apportionments to the Governors

For all urbanized areas under 200,000 in population within each State, one figure is provided for the Governor's apportionment. In accordance with section 9 of the UMT Act, these apportionments are not made to individual urbanized areas but are made to the Governors for use within all urbanized areas between 50,000 and 200,000 in population, as needed. UMTA has administered the Section 9 program in this fashion from its inception, and it parallels UMTA's procedures under the Section 5 program. For technical assistance purposes, and in compliance with the STURA Act, this Notice also contains the amount attributable to each urbanized area above 50,000 in population within the State.

Designation of Davis, California, as an Urbanized Area

The Census Bureau has designated Davis, California, as an urbanized area based upon a May 5, 1989, Special Census of Davis and vicinity. Thus, Davis, California, has been included in the Fiscal Year 1990 Section 9 apportionment calculation. Similarly, the Section 18 apportionment calculation has been adjusted to delete the population attributable to Davis.

Section 9 Operating Assistance Limitations

In addition to the Fiscal Year 1990 apportionments, this Notice includes a listing of the Fiscal Year 1990 limitations on the amount of Section 9 funds that may be used for operating assistance.

The STURA Act made a number of changes in the Section 9 operating assistance limitations. In addition to the changes which were made previously in the limitations, the Act added section 9(k)(2)(B). This section states that on each October 1 after October 1, 1987, the operating assistance limitations for all urbanized areas under 200,000 in population shall be increased to reflect the increase in the Consumer Price Index (CPI) for all urban consumers during the most recent calendar year. The CPI Detailed Report, December 1988, published by the Department of Labor, indicates the calendar year 1988 CPI increase for all urban consumers is 4.4 percent.

This 4.4 percent increase was applied against the base operating assistance limitation calculated under section 9(k)(2)(A). This base was the Fiscal Year 1987 authorized operating assistance limitation of $124,019,004 for urbanized areas under 200,000 in population. The resulting increase in the operating assistance limitation, $5,456,836, sets the overall national Fiscal Year 1990 operating assistance limitation authorized by the UMT Act at $923,914,307.

However, the Fiscal Year 1990 Appropriations Act limits the nationwide availability for operating assistance to a maximum of $804,691,85... (for funds under the Fiscal Year 1990 Appropriations Act).

Title IV, Emergency Drug Funding, further reduces the nationwide

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availability for operating assistance limitation to $802,278,000.

Accordingly, the operating assistance limitations published in this Notice take into account both the UMT Act and the Fiscal Year 1990 Appropriations Act. That is, the higher operating assistance limitation of the UMT Act, $923,914,307, has been reduced to the $802,278,000 required by the Fiscal Year 1990 Appropriations Act by taking a pro rata reduction across all categories of grantees.

Statewide Operating Assistance Limitations

The Fiscal Year 1990 Appropriations Act adds a new provision regarding operating assistance limitations. The Act states that in any case in which a statewide agency or instrumentality is responsible under State laws for the financing, construction and operation, directly by lease, contract or otherwise, of public transportation services, and when such statewide agency or instrumentality is the designated recipient of UMTA funds, and when the statewide agency or instrumentality provides service among two or more urbanized areas, the statewide agency or instrumentality shall be allowed to apply for operating assistance up to the combined total permissible amount of all urbanized areas in which it provides service, regardless of whether the amount for any particular urbanized area is exceeded. In doing so, UMTA will not reduce the amount of operating assistance allowed for any other state, or local transit agency or instrumentality within the urbanized areas affected. In short, this permits the statewide agency to combine all of the operating assistance limitations within the State. This provision takes effect with the Fiscal Year 1990 Section 9 apportionments.

Thus, the operating assistance limitations tables are presented differently from previous years. The tables show the full operating assistance limitations for each urbanized area or State without regard to the availability of general funds for any one particular urbanized area or State.

Section 18 Program

The Fiscal Year 1990 Section 18 apportionment totals $85,867,497. This Notice provides a table which contains the State apportionments.

In addition to the appropriated Fiscal Year 1990 formula funds of $85,535,000, the Section 18 Fiscal Year 1990 apportionment also includes $332,497 in prior year funds which had lapsed to the States to which they were originally apportioned. $323,194 in Fiscal Year 1988 Section 18 funds which had been set aside for project management oversight and have not been used are remaining in reserve for possible use in Fiscal Year 1990. No additional Fiscal Year 1990 Section 18 funds are being set aside for this purpose

The Fiscal Year 1990 Rural Transit Assistance Program (RTAP) allocations to the States totalling $4,247,563 are also included in this Notice. Of the $4,985,000 appropriated for the RTAP program in Fiscal Year 1990, eighty-five percent, or $4,237,250, is allocated to the States to undertake research, training, technical assistance, and other support services to meet the needs of transit operators in nonurbanized areas. In addition, $10,313 in unobligated Fiscal Year 1987 RTAP funds is being reallocated with the Fiscal Year 1990 RTAP funds. These funds are to be used in conjunction with the States' administration of the Section 18 formula assistance program. The remainder of the RTAP funds are made available by UMTA in direct contracts to carry out the RTAP National Program.

Section 16(b)(2) Elderly and Handicapped Program

A total of $35,002,067 is allocated to the States for Fiscal Year 1990 under the Section 16(b)(2) program. This capital assistance program provides funds to nonprofit organizations to provide transportation for elderly and handicapped persons. This Notice includes a table which reflects these state allocations. The allocations include $34,895,000 of the Fiscal Year 1990 appropriation, and $107,087 in funds not obligated in prior fiscal years.

Period of Availability of Funds

The funds apportioned to urbanized areas under section 9 in this notice will remain available to be obligated by UMTA to recipients for three (3) fiscal years following Fiscal Year 1990. Any of these apportioned funds unobligated at the close of business on September 30, 1993, will revert to UMTA for reapportionment under Section 9. Funds apportioned to nonurbanized areas under Section 18, including RTAP funds, will remain available for two (2) fiscal years following Fiscal Year 1990. Any such funds remaining unobligated at the close of business on September 30, 1992, will revert to UMTA for reapportionment among the States. Funds allocated to States under section 16(b)(2) in this Notice must be obligated by September 30, 1990. Any such funds remaining unobligated as of this date will revert to UMTA for reallocation among the States.

Approval of Grants

The Urban Mass Transportation Administration has established quarterly and bimonthly cycles for processing formula grants. Section 9, Interstate Transfer, and Federal-Aid Urban Systems (FAUS) grants are processed on a quarterly basis. Sections 8, 16(b)(2), and 18 grants are processed on a bimonthly basis. Applicants should submit completed applications to the appropriate UMTA Regional Office by the first day of each review cycle. Remaining Fiscal Year 1990 quarterly review cycles begin on January 2, April 2, and July 2. If the application is complete, UMTA will approve and release the grant by the end of the cycle. The only factor which would delay UMTA's approval of the project would be a failure by the Department of Labor (DOL) to issue a 13(c) certification where such certification is a prerequisite to grant approval. Incomplete applications will not be processed but, if the missing components are supplied, will be reconsidered in the next review cycle.

For an application to be considered complete, all appropriate ancillary activities such as inclusion of the project in a locally approved Transportation Improvement Program (TIP), intergovernmental reviews, environmental reviews, all applicable civil rights and 504 program requirements, and submission of all requisite certifications and documentation must be completed, including certification of compliance with UMTA's anti-drug rule by December 21, 1989, for those operators in areas greater than 200,000 in population. The application must be in approvable form with all required documentation and submissions on hand, except for the 13(c) certification which is issued by DOL.

The application submission and approval dates for Fiscal Year 1990 for Section 9, Interstate, and FAUS projects are: for completed applications submitted to UMTA no later than the first business day of the fiscal year quarter, UMTA will award grants by the last business day of the fiscal year quarter. For Sections 8, 16(b)(2), and 18 projects, if completed applications are submitted to UMTA no later than the first business day of the bimonthly periods beginning November, January, March, May and July, UMTA will award grants by the last business day of the bimonthly period.

It is the policy of UMTA to expedite grant application reviews and maximize program delivery by reducing the number of grant actions. To this end, UMTA strongly encourages grant applicants to submit only one application per fiscal year formula per program (i.e., Section 9, Section 18, etc.). The single application should contain the fiscal year's capital, planning and operating elements. During recent years, most grantees have adopted the one grant per fiscal year approach; however, there are a number of grantees who still submit more than one application per fiscal year. While UMTA recognizes that there may be extenuating circumstances which would necessitate an applicant to submit more than one application per year and will process these applications on a case-by-case basis, applicants are encouraged to comply with the one grant per fiscal year approach.

Application Procedures

Applications for Sections 9, 18 and 16(b)(2) funds should be submitted to the appropriate UMTA Regional Office. Section 9 applications should be in conformance with UMTA Circular 9030.1A, published September 18, 1987. Section 18 applications should be in conformance with UMTA Circular 9040.1B, published July 1, 1988. Section 16(b)(2) applications should be in conformance with Circular 9070.1B, published July 1, 1988. Copies of the circulars are available from each UMTA Regional Office.

Discretionary Section 3 Capital Grants

Formula funding is the primary Federal resource for transit capital assistance needs. However, critical bus and rail modernization capital projects that cannot be accommodated under the formula grant program will be considered for funding under the Section 3 discretionary program.

Applications for these discretionary bus and rail modernization capital projects should be submitted to the appropriate UMTA Regional Office by January 15, 1990, for consideration in early 1990.

Issued on December 8, 1989.

Brian W. Clymer,

Administrator.

BILLING CODE 4910-57-M

FISCAL YEAR 1990 UMTA SECTION 9 FORMULA APPORTIONMENTS

FISCAL YEAR 1990 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO URBANIZED AREAS 200,000 TO 1,000,000 IN POPULATION

FISCAL YEAR 1990 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO URBANIZED AREAS OVER 1,000,000 IN POPULATION

URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
Atlanta, Georgia	$20,225,940	$905,090	$21,131,030
Baltimore, Maryland	18,267,741	816,178	19,083,919
Boston, Massachusetts	46,141,855	2,066,611	48,208,466
Buffalo, New York	7,569,795	337,634	7,907,429
Chicago, Illinois-Northwestern Indiana	124,060,136	5,477,189	129,537,325
Cincinnati, Ohio-Kentucky	8,222,052	366,633	8,588,685
Cleveland, Ohio	16,144,095	720,769	16,864,864
Dallas-Fort Worth, Texas	17,257,243	769,561	18,026,804
Denver, Colorado	12,246,689	546,140	12,792,829
Detroit, Michigan	24,571,376	1,095,403	25,666,779
Fort Lauderdale-Hollywood, Florida	6,506,643	290,031	6,796,674
Houston, Texas	19,671,400	877,212	20,548,612
Kansas City, Missouri-Kansas	5,700,091	254,074	5,954,165
Los Angeles-Long Beach, California	96,878,177	4,322,427	101,200,604
Miami, Florida	17,063,822	761,904	17,825,726
Milwaukee, Wisconsin	11,150,570	497,192	11,647,762
Minneapolis-St. Paul, Minnesota	13,406,255	598,043	14,004,298
New Orleans, Louisiana	11,347,132	508,335	11,855,467
New York, N.Y.-Northeastern New Jersey	376,341,709	17,142,584	393,484,293
Philadelphia, Pennsylvania-New Jersey	70,806,296	3,169,875	73,976,171
Phoenix, Arizona	7,844,431	349,644	8,194,075
Pittsburgh, Pennsylvania	21,806,654	973,974	22,780,628
Portland, Oregon-Washington	11,816,252	527,347	12,343,599
St. Louis, Missouri-Illinois	13,588,843	585,830	14,174,673
San Diego, California	17,018,440	760,212	17,778,652
San Francisco-Oakland, California	61,522,969	2,754,095	64,277,064
San Jose, California	14,054,120	627,901	14,682,021
San Juan, Puerto Rico	9,040,077	403,344	9,443,421
Seattle-Everett, Washington	22,798,578	1,019,123	23,817,701
Washington, D.C.-Maryland-Virginia	49,495,859	2,216,563	51,712,422
TOTAL	$1,152,565,240	$51,740,918	$1,204,306,158

FISCAL YEAR 1990 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO URBANIZED AREAS 200,000 TO 1,000,000 IN POPULATION

URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
Akron, Ohio	$3,152,554	$140,505	$3,293,059
Albany-Schenectady-Troy, New York	4,428,760	197,439	4,626,199
Albuquerque, New Mexico	2,519,881	112,312	2,632,193
Allentown-Bethlehem-Easton, Pa.-N.J.	2,230,603	99,434	2,330,037
Ann Arbor, Michigan	1,978,910	88,197	2,067,107
Augusta, Georgia-South Carolina	994,720	44,338	1,039,058
Austin, Texas	4,276,587	190,582	4,467,169
Bakersfield, California	1,698,696	75,711	1,774,407
Baton Rouge, Louisiana	1,858,753	82,874	1,941,627
Birmingham, Alabama	3,042,257	135,602	3,177,859
Bridgeport, Connecticut	3,484,309	155,950	3,640,259
Canton, Ohio	1,257,731	56,055	1,313,786
Charleston, South Carolina	1,629,145	72,641	1,701,786
Charlotte, North Carolina	2,544,881	113,479	2,658,360
Chattanooga, Tennessee-Georgia	1,493,828	66,598	1,560,426
Colorado Springs, Colorado	1,850,621	82,516	1,933,137
Columbia, South Carolina	1,681,981	74,980	1,756,961
Columbus, Georgia-Alabama	1,067,429	47,578	1,115,007
Columbus, Ohio	6,516,423	290,508	6,806,931
Corpus Christi, Texas	1,683,765	75,047	1,758,812
Davenport-Rock Island-Moline, Iowa-Illinois	1,832,411	81,673	1,914,084
Dayton, Ohio	7,594,717	339,686	7,934,403
Des Moines, Iowa	1,670,652	74,472	1,745,124
El Paso, Texas	3,491,590	155,739	3,647,329
Fayetteville, North Carolina	818,105	36,465	854,570
Flint, Michigan	1,997,079	89,010	2,086,089
Fort Wayne, Indiana	1,606,963	71,621	1,678,584
Fresno, California	2,617,160	116,670	2,733,830
Grand Rapids, Michigan	2,304,746	102,729	2,407,475
Greenville, South Carolina	1,170,780	52,181	1,222,961
Harrisburg, Pennsylvania	1,490,541	66,449	1,556,990
Hartford, Connecticut	4,458,288	198,759	4,657,047
Honolulu, Hawaii	12,195,700	544,430	12,740,130
Indianapolis, Indiana	4,772,171	212,735	4,984,906
Jackson, Mississippi	1,204,077	53,665	1,257,742
Jacksonville, Florida	3,943,856	175,837	4,119,693
Knoxville, Tennessee	1,317,139	58,704	1,375,843
Lansing, Michigan	1,701,187	75,822	1,777,009
Las Vegas, Nevada	2,389,814	106,561	2,496,375
Lawrence-Haverhill, Mass.-New Hampshire	2,009,209	89,619	2,099,028
Little Rock-North Little Rock, Arkansas	1,672,152	74,548	1,746,700
Lorain-Elyria, Ohio	611,499	27,251	638,750
Louisville, Kentucky-Indiana	6,318,629	281,734	6,600,363
Madison, Wisconsin	2,682,832	119,645	2,802,477
Melbourne-Cocoa, Florida	1,125,455	50,172	1,175,627

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AMOUNTS APPORTIONED TO URBANIZED AREAS 200,000 TO 1,000,000 IN POPULATION

URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
Memphis, Tennessee-Arkansas-Mississippi	$4,950,596	$220,643	$5,171,239
Mobile, Alabama	1,410,309	62,861	1,473,170
Nashville-Davidson, Tennessee	2,662,406	118,690	2,781,096
New Haven, Connecticut	3,855,845	172,547	4,028,392
Newport News-Hampton, Virginia	1,786,488	79,647	1,866,135
Norfolk-Portsmouth, Virginia	4,916,180	219,132	5,135,312
Ogden, Utah	1,451,048	64,685	1,515,733
Oklahoma City, Oklahoma	2,754,267	122,750	2,877,017
Omaha, Nebraska-Iowa	3,665,156	163,360	3,828,516
Orlando, Florida	4,986,452	222,749	5,209,201
Oxnard-Ventura-Thousand Oaks, California	1,787,102	79,653	1,866,755
Pensacola, Florida	1,066,535	47,536	1,114,071
Peoria, Illinois	1,437,802	64,075	1,501,877
Providence-Pawtucket-Warwick, R.I.-Mass.	9,595,325	429,197	10,024,522
Raleigh, North Carolina	1,246,931	55,583	1,302,514
Richmond, Virginia	3,843,625	171,369	4,014,994
Rochester, New York	4,703,441	209,675	4,913,116
Rockford, Illinois	1,124,776	50,132	1,174,908
Sacramento, California	6,343,773	283,004	6,626,777
St. Petersburg, Florida	5,200,610	231,820	5,432,430
Salt Lake City, Utah	6,027,080	268,741	6,295,821
San Antonio, Texas	10,422,204	464,727	10,886,931
San Bernardino-Riverside, California	4,431,596	197,511	4,629,107
Sarasota-Bradenton, Florida	1,529,915	68,186	1,598,101
Scranton-Wilkes-Barre, Pennsylvania	2,269,843	101,178	2,371,021
Shreveport, Louisiana	1,531,726	68,274	1,600,000
South Bend, Indiana-Michigan	1,456,382	64,914	1,521,296
Spokane, Washington	2,709,996	120,804	2,830,800
Springfield-Chicopee-Holyoke, Mass.-Conn.	3,966,872	176,826	4,143,698
Syracuse, New York	3,463,467	154,382	3,617,849
Tacoma, Washington	4,021,305	179,366	4,200,671
Tampa, Florida	4,412,581	196,748	4,609,329
Toledo, Ohio-Michigan	3,328,480	148,366	3,476,846
Trenton, New Jersey-Pennsylvania	2,416,044	107,877	2,523,921
Tucson, Arizona	4,203,174	187,376	4,390,550
Tulsa, Oklahoma	2,161,134	96,309	2,257,443
West Palm Beach, Florida	2,583,213	115,141	2,698,354
Wichita, Kansas	1,763,084	78,586	1,841,670
Wilmington, Delaware-New Jersey-Maryland	2,387,114	106,402	2,493,516
Worcester, Massachusetts	2,102,140	93,691	2,195,831
Youngstown-Warren, Ohio	1,798,605	80,157	1,878,762
TOTAL	$260,163,208	$11,603,393	$271,766,601

FISCAL YEAR 1990 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
ALABAMA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$3,761,331	$168,655	$3,929,986
Anniston	326,606	14,645	341,251
Auburn-Opelika	203,104	9,107	212,211
Decatur	237,852	10,665	248,517
Dothan	208,504	9,349	217,853
Florence	319,430	14,323	333,753
Gadsden	301,081	13,500	314,581
Huntsville	671,706	30,119	701,825
Montgomery	1,001,740	44,917	1,046,657
Tuscaloosa	491,308	22,030	513,338
ALASKA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$762,708	$34,199	$796,907
Anchorage	762,708	34,199	796,907
ARIZONA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$328,273	$14,720	$342,993
Yuma, Ariz.-Calif	328,273	14,720	342,993
ARKANSAS:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,108,190	$49,690	$1,157,880
Fayetteville-Springdale	263,705	11,824	275,529
Fort Smith, Ark.-Okla	394,238	17,678	411,916
Pine Bluff	361,297	16,200	377,497
Texarkana, Tex.-Ark	88,950	3,988	92,938
CALIFORNIA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$12,110,802	$543,038	$12,653,840
Antioch-Pittsburg	631,109	28,298	659,407
Chico	292,483	13,111	305,514
Davis	515,970	23,136	539,106
Fairfield	398,140	17,852	415,992
Hemet	304,570	13,657	318,227

FISCAL YEAR 1990 UMTA SECTION 9 FORMULA APPORTIONMENTS

FISCAL YEAR 1990 UMTA SECTION 9 FORMULA APPORTIONMENTS

FISCAL YEAR 1990 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
CALIFORNIA--Continued:			
Lancaster	255,064	11,437	266,501
Merced	351,964	15,782	367,746
Modesto	1,195,623	53,611	1,249,234
Napa	416,628	18,681	435,309
Palm Springs	283,207	12,699	295,906
Redding	233,943	10,490	244,433
Salinas	772,816	34,652	807,468
Santa Barbara	1,099,107	49,283	1,148,390
Santa Cruz	626,110	28,074	654,184
Santa Maria	353,948	15,871	369,819
Santa Rosa	874,088	39,193	913,281
Seaside-Monterey	811,060	36,367	847,427
Simi Valley	544,608	24,420	569,028
Stockton	1,428,233	64,041	1,492,274
Visalia	354,247	15,884	370,131
Yuba City	366,511	16,434	382,945
Yuma, Ariz.-Calif	1,453	65	1,518
COLORADO:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$2,484,833	$111,418	$2,596,251
Boulder	615,787	27,612	643,399
Fort Collins	457,713	20,523	478,236
Grand Junction	297,398	13,335	310,733
Greeley	437,437	19,614	457,051
Pueblo	676,498	30,334	706,832
CONNECTICUT:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$10,664,210	$479,389	$11,143,599
Bristol	433,392	19,433	452,825
[a]Danbury, Conn.-N.Y	1,724,854	77,644	1,802,498
Meriden	352,753	15,818	368,571
New Britain	871,511	39,078	910,589
New London-Norwich	715,162	32,067	747,229
[a]Norwalk	1,926,911	86,705	2,013,616
[a]Stamford	2,394,028	107,650	2,501,678
[a]Waterbury	2,245,599	100,994	2,346,593

[a]An appropriate amount for commuter rail from UZA's above 200,000 has been included.

FISCAL YEAR 1990 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
DELAWARE:			
FLORIDA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$5,197,560	$233,054	$5,430,614
Daytona Beach	858,660	38,502	897,162
Fort Myers	682,057	30,582	712,639
Fort Pierce	321,746	14,427	336,173
Fort Walton Beach	403,123	18,076	421,199
Gainesville	573,217	25,703	598,920
Lakeland	553,509	24,819	578,328
Naples	230,263	10,324	240,587
Ocala	229,487	10,290	239,777
Panama City	368,615	16,528	385,143
Tallahassee	616,753	27,655	644,408
Winter Haven	360,130	16,148	376,278
GEORGIA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$2,894,700	$129,796	$3,024,496
Albany	417,635	18,726	436,361
Athens	308,545	13,835	322,380
Macon	743,080	33,319	776,399
Rome	235,275	10,550	245,825
Savannah	898,899	40,306	939,205
Warner Robins	291,266	13,060	304,326
HAWAII:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$741,439	$33,245	$774,684
Kailua-Kaneohe	741,439	33,245	774,684
IDAHO:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,076,347	$48,262	$1,124,609
Boise City	777,212	34,850	812,062
Pocatello	299,135	13,412	312,547

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AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
ILLINOIS:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$7,138,236	$320,072	$7,458,308
Alton	470,164	21,082	491,246
Aurora	943,128	42,289	985,417
Beloit, Wis.-Ill	33,675	1,510	35,185
Bloomington-Normal	613,645	27,515	641,160
Champaign-Urbana	882,587	39,574	922,161
Danville	307,822	13,802	321,624
Decatur	632,082	28,342	660,424
Dubuque, Iowa-Ill	12,842	576	13,418
Elgin	704,246	31,578	735,824
Joliet	1,014,130	45,473	1,059,603
Kankakee	415,951	18,651	434,602
Round Lake Beach	328,161	14,714	342,875
Springfield	779,803	34,966	814,769
INDIANA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$4,396,944	$197,155	$4,594,099
Anderson	400,005	17,936	417,941
Bloomington	451,161	20,230	471,391
Elkhart-Goshen	453,579	20,337	473,916
Evansville, Ind.-Ky	1,018,577	45,672	1,064,249
Kokomo	413,513	18,542	432,055
Lafayette-West Lafayette	646,055	28,969	675,024
Muncie	581,003	26,051	607,054
Terre Haute	433,051	19,418	452,469
IOWA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$2,453,337	$110,005	$2,563,342
Cedar Rapids	767,056	34,394	801,450
Dubuque, Iowa-Ill	411,777	18,464	430,241
Iowa City	326,040	14,619	340,659
Sioux City, Iowa-Nebr.-S. Dak	407,793	18,285	426,078
Waterloo	540,671	24,243	564,914

FISCAL YEAR 1990 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
KANSAS:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,054,390	$47,278	$1,101,668
Lawrence	347,071	15,562	362,633
St. Joseph, Mo.-Kans	5,745	258	6,003
Topeka	701,574	31,458	733,032
KENTUCKY:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$2,230,359	$100,007	$2,330,366
Clarksville, Tenn.-Ky	123,796	5,551	129,347
Evansville, Ind.-Ky	133,403	5,982	139,385
Huntington-Ashland, W.Va.-Ky.-Ohio	314,796	14,115	328,911
Lexington-Fayette	1,217,139	54,575	1,271,714
Owensboro	441,225	19,784	461,009
LOUISIANA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$2,606,207	$116,860	$2,723,067
Alexandria	463,028	20,762	483,790
Houma	301,210	13,506	314,716
Lafayette	687,564	30,829	718,393
Lake Charles	594,656	26,664	621,320
Monroe	559,749	25,099	584,848
MAINE:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,125,410	$50,462	$1,175,872
Bangor	239,018	10,717	249,735
Lewiston-Auburn	283,211	12,699	295,910
Portland	549,186	24,625	573,811
Portsmouth-Dover-Rochester, N.H.-Me	53,995	2,421	56,416
MARYLAND:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$987,561	$44,282	$1,031,843
Annapolis	357,559	16,033	373,592
Cumberland, Md.-W. Va	286,484	12,846	299,330
Hagerstown, Md.-Pa	343,518	15,403	358,921

FISCAL YEAR 1990 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
MICHIGAN:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$3,911,000	$175,400	$4,086,400
Ann Arbor	1,000,000	44,850	1,044,850
Battle Creek	1,000,000	44,850	1,044,850
Bay City	1,000,000	44,850	1,044,850
Benton Harbor	1,000,000	44,850	1,044,850
Flint	1,000,000	44,850	1,044,850
Grand Rapids	1,000,000	44,850	1,044,850
Jackson	1,000,000	44,850	1,044,850
Kalamazoo	1,000,000	44,850	1,044,850
Lansing	1,000,000	44,850	1,044,850
Muskegon	1,000,000	44,850	1,044,850
Saginaw	1,000,000	44,850	1,044,850
MINNESOTA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,000,000	$44,850	$1,044,850
Duluth, Minn.-Wis	1,000,000	44,850	1,044,850
Fargo-Moorhead, Minn.-N. Dak	1,000,000	44,850	1,044,850
St. Cloud	1,000,000	44,850	1,044,850
MISSOURI:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,000,000	$44,850	$1,044,850
Columbia	1,000,000	44,850	1,044,850
Joplin	1,000,000	44,850	1,044,850
St. Joseph, Mo.-Kans	1,000,000	44,850	1,044,850
MONTANA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,000,000	$44,850	$1,044,850
Billings	1,000,000	44,850	1,044,850
Great Falls	1,000,000	44,850	1,044,850
Missoula	1,000,000	44,850	1,044,850
NEBRASKA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,000,000	$44,850	$1,044,850
Lincoln	1,000,000	44,850	1,044,850
Sioux City, Iowa-Nebr.-S. Dak	1,000,000	44,850	1,044,850

FISCAL YEAR 1990 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
NEVADA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,000,000	$44,850	$1,044,850
Las Vegas	1,000,000	44,850	1,044,850
Reno	1,000,000	44,850	1,044,850
NEW HAMPSHIRE:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,000,000	$44,850	$1,044,850
Manchester	1,000,000	44,850	1,044,850
Nashua	1,000,000	44,850	1,044,850
Portsmouth-Dover-Rochester, N.H.-Me	1,000,000	44,850	1,044,850
NEW JERSEY:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,000,000	$44,850	$1,044,850
Atlantic City	1,000,000	44,850	1,044,850
Trenton	1,000,000	44,850	1,044,850
NEW MEXICO:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,000,000	$44,850	$1,044,850
Las Cruces	1,000,000	44,850	1,044,850
Santa Fe	1,000,000	44,850	1,044,850
NEW YORK:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,000,000	$44,850	$1,044,850
Binghamton	1,000,000	44,850	1,044,850
Elmira	1,000,000	44,850	1,044,850
Glens Falls	1,000,000	44,850	1,044,850
Kingston	1,000,000	44,850	1,044,850
Poughkeepsie	1,000,000	44,850	1,044,850
Utica-Rome	1,000,000	44,850	1,044,850
NORTH CAROLINA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,000,000	$44,850	$1,044,850
Asheville	1,000,000	44,850	1,044,850
Fayetteville	1,000,000	44,850	1,044,850
Greenville	1,000,000	44,850	1,044,850
Hickory	1,000,000	44,850	1,044,850
Wilmington	1,000,000	44,850	1,044,850
Winston-Salem	1,000,000	44,850	1,044,850
NORTH DAKOTA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,000,000	$44,850	$1,044,850
Fargo-Moorhead, Minn.-N. Dak	1,000,000	44,850	1,044,850
Grand Forks	1,000,000	44,850	1,044,850
Minot	1,000,000	44,850	1,044,850

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AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
MASSACHUSETTS:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$4,920,169	$220,616	$5,140,785
Brockton	1,168,170	52,380	1,220,550
Fall River, Mass.-R.I.	929,195	41,664	970,859
Fitchburg-Leominster	343,505	15,402	358,907
Lowell, Mass.-N.H.	998,392	44,767	1,043,159
New Bedford	1,005,750	45,097	1,050,847
Pittsfield	262,696	11,779	274,475
Taunton	212,461	9,527	221,988
MICHIGAN:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$4,378,974	$196,350	$4,575,324
Battle Creek	394,204	17,676	411,880
Bay City	452,281	20,280	472,561
Benton Harbor	331,725	14,874	346,599
Jackson	469,943	21,072	491,015
Kalamazoo	854,302	38,306	892,608
Muskegon-Muskegon Heights	563,306	25,258	588,564
Port Huron	340,190	15,254	355,444
Saginaw	973,023	43,630	1,016,653
MINNESOTA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,487,659	$66,705	$1,554,364
Duluth-Superior, Minn.-Wis.	444,035	19,910	463,945
Fargo-Moorhead, N. Dak.-Minn.	210,278	9,429	219,707
Grand Forks, N. Dak.-Minn.	49,878	2,236	52,114
La Crosse, Wis.-Minn.	21,328	956	22,284
Rochester	405,608	18,187	423,795
St. Cloud	356,532	15,987	372,519
MISSISSIPPI:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,411,497	$63,290	$1,474,787
Biloxi-Gulfport	855,488	38,359	893,847
Hattiesburg	260,801	11,694	272,495
Pascagoula-Moss Point	295,208	13,237	308,445

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AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
MISSOURI:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,739,325	$77,990	$1,817,315
Columbia	316,531	14,193	330,724
Joplin	248,430	11,139	259,569
St. Joseph, Mo.-Kans.	408,219	18,305	426,524
Springfield	766,145	34,353	800,498
MONTANA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,258,184	$56,416	$1,314,600
Billings	497,773	22,320	520,093
Great Falls	433,843	19,453	453,296
Missoula	326,568	14,643	341,211
NEBRASKA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,184,068	$53,093	$1,237,161
Lincoln	1,125,018	50,445	1,175,463
Sioux City, Iowa-Nebr.-S. Dak.	59,050	2,648	61,698
NEVADA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$952,515	$42,710	$995,225
Reno	952,515	42,710	995,225
NEW HAMPSHIRE:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,424,415	$63,870	$1,488,285
Lowell, Mass.-N.H.	3,472	156	3,628
Manchester	630,471	28,270	658,741
Nashua	431,575	19,351	450,926
Portsmouth-Dover-Rochester, N.H.-Me.	358,897	16,093	374,990

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AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
NEW JERSEY:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$3,124,000	$140,000	$3,264,000
Atlantic City	1,124,000	50,000	1,174,000
Trenton	2,000,000	90,000	2,090,000
NEW MEXICO:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,000,000	$45,000	$1,045,000
Las Cruces	1,000,000	45,000	1,045,000
NEW YORK:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$4,000,000	$180,000	$4,180,000
Binghamton	1,000,000	45,000	1,045,000
Glens Falls	1,000,000	45,000	1,045,000
Kingston	1,000,000	45,000	1,045,000
Poughkeepsie	1,000,000	45,000	1,045,000
NORTH CAROLINA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,000,000	$45,000	$1,045,000
Fayetteville	1,000,000	45,000	1,045,000
NORTH DAKOTA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,000,000	$45,000	$1,045,000
Fargo-Moorhead, N. Dak.-Minn.	1,000,000	45,000	1,045,000
OHIO:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$4,000,000	$180,000	$4,180,000
Canton	1,000,000	45,000	1,045,000
Lima	1,000,000	45,000	1,045,000
Mansfield	1,000,000	45,000	1,045,000
Springfield	1,000,000	45,000	1,045,000
OKLAHOMA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,000,000	$45,000	$1,045,000
Lawton	1,000,000	45,000	1,045,000
OREGON:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,000,000	$45,000	$1,045,000
Corvallis	1,000,000	45,000	1,045,000
PENNSYLVANIA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$4,000,000	$180,000	$4,180,000
Altoona	1,000,000	45,000	1,045,000
Johnstown	1,000,000	45,000	1,045,000
Lancaster	1,000,000	45,000	1,045,000
Williamsport	1,000,000	45,000	1,045,000
RHODE ISLAND:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,000,000	$45,000	$1,045,000
Fall River, Mass.-R.I.	1,000,000	45,000	1,045,000
SOUTH CAROLINA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,000,000	$45,000	$1,045,000
Florence	1,000,000	45,000	1,045,000
SOUTH DAKOTA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,000,000	$45,000	$1,045,000
Sioux City, Iowa-Nebr.-S. Dak.	1,000,000	45,000	1,045,000
TENNESSEE:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,000,000	$45,000	$1,045,000
Clarksville-Hopkinsville	1,000,000	45,000	1,045,000
TEXAS:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$4,000,000	$180,000	$4,180,000
Beaumont	1,000,000	45,000	1,045,000
Brownsville-Harlingen	1,000,000	45,000	1,045,000
Laredo	1,000,000	45,000	1,045,000
Texarkana, Tex.-Ark.	1,000,000	45,000	1,045,000
UTAH:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,000,000	$45,000	$1,045,000
Ogden	1,000,000	45,000	1,045,000
VERMONT:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,000,000	$45,000	$1,045,000
Burlington	1,000,000	45,000	1,045,000
VIRGINIA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$4,000,000	$180,000	$4,180,000
Charlottesville	1,000,000	45,000	1,045,000
Fredericksburg	1,000,000	45,000	1,045,000
Lynchburg	1,000,000	45,000	1,045,000
Winchester	1,000,000	45,000	1,045,000
WASHINGTON:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,000,000	$45,000	$1,045,000
Bellingham	1,000,000	45,000	1,045,000
WEST VIRGINIA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,000,000	$45,000	$1,045,000
Parkersburg	1,000,000	45,000	1,045,000
WISCONSIN:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$4,000,000	$180,000	$4,180,000
Appleton-Oshkosh	1,000,000	45,000	1,045,000
Eau Claire	1,000,000	45,000	1,045,000
Janesville	1,000,000	45,000	1,045,000
Wausau	1,000,000	45,000	1,045,000
WYOMING:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,000,000	$45,000	$1,045,000
Cheyenne	1,000,000	45,000	1,045,000

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AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
PUERTO RICO:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,000,000	$45,000	$1,045,000
Mayaguez	1,000,000	45,000	1,045,000
VIRGIN ISLANDS:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,000,000	$45,000	$1,045,000
Charlotte Amalie	1,000,000	45,000	1,045,000
GUAM:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,000,000	$45,000	$1,045,000
Agana	1,000,000	45,000	1,045,000
AMERICAN SAMOA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,000,000	$45,000	$1,045,000
Pago Pago	1,000,000	45,000	1,045,000
NORTHERN MARIANAS:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,000,000	$45,000	$1,045,000
Saipan	1,000,000	45,000	1,045,000

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AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
NEW JERSEY:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,117,015	$50,086	$1,167,101
Atlantic City	782,458	35,085	817,543
Vineland-Millville	334,557	15,001	349,558
NEW MEXICO:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$540,102	$24,218	$564,320
Las Cruces	288,076	12,917	300,993
Santa Fe	252,026	11,301	263,327
NEW YORK:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$3,560,133	$159,633	$3,719,766
Binghamton	996,026	44,661	1,040,687
Danbury, Conn.-N.Y.	11,389	511	11,900
Elmira	434,238	19,471	453,709
Glens Falls	257,014	11,524	268,538
Newburgh	318,749	14,292	333,041
Poughkeepsie	701,593	31,459	733,052
Utica-Rome	841,124	37,715	878,839
NORTH CAROLINA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$6,102,743	$273,642	$6,376,385
Asheville	461,220	20,681	481,901
Burlington	327,866	14,701	342,567
Concord	327,063	14,665	341,728
Durham	902,332	40,459	942,791
Gastonia	503,448	22,574	526,022
Goldsboro	255,351	11,450	266,801
Greensboro	1,011,652	45,362	1,057,014
Hickory	272,310	12,210	284,520
High Point	479,882	21,517	501,399
Jacksonville	320,796	14,384	335,180
Wilmington	390,176	17,495	407,669
Winston-Salem	850,649	38,144	888,793

FISCAL YEAR 1990 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
NORTH DAKOTA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,069,525	$47,957	$1,117,482
Bismarck-Mandan	340,899	15,286	356,185
Fargo-Moorhead, N. Dak.-Minn	413,854	18,557	432,411
Grand Forks, N. Dak.-Minn	314,772	14,114	328,886
OHIO:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$3,464,690	$155,354	$3,620,044
Hamilton	627,681	28,145	655,826
Huntington-Ashland, W.Va.-Ky.-Ohio	181,942	8,158	190,100
Lima	399,267	17,903	417,170
Mansfield	395,427	17,731	413,158
Middletown	446,312	20,012	466,324
Newark	268,588	12,043	280,631
Parkersburg, W.Va.-Ohio	44,333	1,988	46,321
Sharon, Pa.-Ohio	26,623	1,194	27,817
Springfield	620,463	27,821	648,284
Steubenville-Weirton, Ohio-W.Va.-Pa.	244,793	10,976	255,769
Wheeling, W. Va.-Ohio	209,261	9,383	218,644
OKLAHOMA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$754,700	$33,840	$788,540
Enid	242,270	10,863	253,133
Fort Smith, Ark.-Okla	9,177	411	9,588
Lawton	503,253	22,566	525,819
OREGON:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$2,410,576	$108,088	$2,518,664
Eugene	1,239,429	55,575	1,295,004
Longview, Wash.-Oreg	6,350	284	6,634
Medford	303,184	13,595	316,779
Salem	861,613	38,636	900,247

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FISCAL YEAR 1990 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
PENNSYLVANIA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$6,902,090	$309,484	$7,211,574
Altoona	532,658	23,884	556,542
Erie	1,360,149	60,988	1,421,137
Hagerstown, Md.-Pa	4,413	198	4,611
Johnstown	560,297	25,123	585,420
Lancaster	951,345	42,658	994,003
Monessen	329,641	14,781	344,422
Reading	1,269,238	56,912	1,326,150
Sharon, Pa.-Ohio	292,295	13,106	305,401
State College	397,898	17,841	415,739
Steubenville-Weirton, Ohio-W.Va.-Pa.	1,218	55	1,273
Williamsport	367,475	16,477	383,952
York	835,463	37,461	872,924
PUERTO RICO:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$4,821,534	$216,193	$5,037,727
Aguadilla	385,863	17,301	403,164
Arecibo	442,038	19,821	461,859
Caguas	1,035,033	46,410	1,081,443
Mayaguez	724,697	32,495	757,192
Ponce	1,702,529	76,340	1,778,869
Vega Baja-Manati	531,374	23,826	555,200
RHODE ISLAND:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$383,788	$17,209	$400,997
Fall River, Mass.-R.I.	83,590	3,748	87,338
Newport	300,198	13,461	313,659
SOUTH CAROLINA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,206,494	$54,098	$1,260,592
Anderson	247,935	11,117	259,052
Florence	261,215	11,713	272,928
Rock Hill	233,779	10,482	244,261
Spartanburg	463,565	20,786	484,351

FISCAL YEAR 1990 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
SOUTH DAKOTA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$766,099	$34,351	$800,450
Rapid City	278,418	12,484	290,902
Sioux City, Iowa-Nebr.-S.Dak	8,017	359	8,376
Sioux Falls	479,664	21,508	501,172
TENNESSEE:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,313,048	$58,876	$1,371,924
Bristol, Tenn.-Bristol, Va	127,375	5,711	133,086
Clarksville, Tenn.-Ky	241,100	10,811	251,911
Jackson	232,859	10,441	243,300
Johnson City	358,912	16,093	375,005
Kingsport, Tenn.-Va	352,802	15,820	368,622
TEXAS:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$12,072,513	$541,321	$12,613,834
Abilene	449,075	20,137	469,212
Amarillo	798,184	35,790	833,974
Beaumont	605,977	27,172	633,149
Brownsville	623,655	27,964	651,619
Bryan-College Station	429,129	19,242	448,371
Galveston	349,017	15,650	364,667
Harlingen-San Benito	335,519	15,045	350,564
Killeen	511,456	22,933	534,389
Laredo	819,449	36,743	856,192
Longview	321,849	14,431	336,280
Lubbock	939,052	42,106	981,158
McAllen-Pharr-Edinburg	975,596	43,745	1,019,341
Midland	394,883	17,706	412,589
Odessa	596,117	26,729	622,846
Port Arthur	538,300	24,137	562,437
San Angelo	403,892	18,110	422,002
Sherman-Dension	249,835	11,202	261,037
Temple	230,607	10,340	240,947
Texarkana, Tex.-Ark	220,477	9,886	230,363
Texas City-La Marque	444,462	19,929	464,391
Tyler	405,779	18,195	423,974
Victoria	316,870	14,208	331,078

FISCAL YEAR 1990 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
UTAH:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,000,000	$45,000	$1,045,000
Ogden	1,000,000	45,000	1,045,000
VERMONT:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,000,000	$45,000	$1,045,000
Burlington	1,000,000	45,000	1,045,000
VIRGINIA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,000,000	$45,000	$1,045,000
Charlottesville	1,000,000	45,000	1,045,000
WASHINGTON:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,000,000	$45,000	$1,045,000
Bellingham	1,000,000	45,000	1,045,000
WEST VIRGINIA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,000,000	$45,000	$1,045,000
Huntington-Ashland, W.Va.-Ky.-Ohio	1,000,000	45,000	1,045,000
WISCONSIN:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,000,000	$45,000	$1,045,000
Appleton-Neenah	1,000,000	45,000	1,045,000
WYOMING:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,000,000	$45,000	$1,045,000
Cheyenne	1,000,000	45,000	1,045,000

FISCAL YEAR 1990 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
GUAM:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,000,000	$45,000	$1,045,000
Agana	1,000,000	45,000	1,045,000
NORTHERN MARIANAS:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,000,000	$45,000	$1,045,000
Saipan	1,000,000	45,000	1,045,000
VIRGIN ISLANDS:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,000,000	$45,000	$1,045,000
Charlotte Amalie	1,000,000	45,000	1,045,000
AMERICAN SAMOA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,000,000	$45,000	$1,045,000
Pago Pago	1,000,000	45,000	1,045,000

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FISCAL YEAR 1990 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
TEXAS--Continued:			
Waco	607,741	27,251	634,992
Wichita Falls	505,592	22,670	528,262
UTAH:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$978,307	$43,867	$1,022,174
Provo-Oren	978,307	43,867	1,022,174
VERMONT:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$381,565	$17,109	$398,674
Burlington	381,565	17,109	398,674
VIRGINIA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$2,734,626	$122,618	$2,857,244
Bristol, Tenn.-Bristol, Va	99,143	4,445	103,588
Charlottesville	405,796	18,196	423,992
Danville	286,071	12,827	298,898
Kingsport, Tenn.-Va	19,167	859	20,026
Lynchburg	400,527	17,959	418,486
Petersburg-Colonial Heights	549,246	24,628	573,874
Roanoke	974,676	43,704	1,018,380
WASHINGTON:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$2,304,587	$103,336	$2,407,923
Bellingham	279,610	12,537	292,147
Bremerton	343,369	15,396	358,765
Longview, Wash.-Oreg	273,786	12,276	286,062
Olympia	345,790	15,505	361,295
Richland-Kennewick	564,084	25,293	589,377
Yakima	497,948	22,329	520,277
WEST VIRGINIA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$2,517,518	$112,883	$2,630,401
Charleston	916,856	41,111	957,967

FISCAL YEAR 1990 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
WEST VIRGINIA--Continued:			
Cumberland, Md.-W. Va	13,626	611	14,237
Huntington-Ashland, W.Va.-Ky.-Ohio	593,469	26,611	620,080
Parkersburg, W. Va.-Ohio	390,347	17,503	407,850
Steubenville-Weirton,Ohio-W.Va.-Pa	154,872	6,944	161,816
Wheeling, W. Va.-Ohio	448,348	20,103	468,451
WISCONSIN:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$5,724,137	$256,665	$5,980,802
Appleton	957,438	42,931	1,000,369
Beloit, Wis.-Ill	249,651	11,194	260,845
Duluth-Superior, Minn.-Wis	112,324	5,037	117,361
Eau Claire	372,959	16,723	389,682
Green Bay	724,341	32,478	756,819
Janesville	302,490	13,563	316,053
Kenosha	691,809	31,020	722,829
La Crosse, Wis.-Minn	401,514	18,004	419,518
Oshkosh	359,597	16,124	375,721
Racine	880,892	39,498	920,390
Sheboygan	375,425	16,834	392,259
Wausau	295,697	13,259	308,956
WYOMING:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$718,874	$32,234	$751,108
Casper	382,972	17,172	400,144
Cheyenne	335,902	15,062	350,964
TOTAL	$143,724,307	$6,445,689	$150,169,996
OVER 1,000,000 IN POPULATION	$1,152,565,240	$51,740,918	$1,204,306,158
200,000-1,000,000 IN POPULATION	260,163,208	11,603,393	271,766,601
50,000-200,000 IN POPULATION	143,724,307	6,445,689	150,169,996
NATIONAL TOTALS	$1,556,452,755	$69,790,000	$1,626,242,755

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FISCAL YEAR 1990 UMTA SECTION 9 OPERATING ASSISTANCE LIMITATIONS

LIMITATION FOR URBANIZED AREAS OVER 1,000,000 IN POPULATION

URBANIZED AREA	LIMITATION
Atlanta, Georgia	$6,178,877
Baltimore, Maryland	9,889,793
Boston, Massachusetts	18,568,034
Buffalo, New York	6,094,728
Chicago, Illinois-Northwestern Indiana	51,425,457
Cincinnati, Ohio-Kentucky	5,357,046
Cleveland, Ohio	9,801,617
Dallas-Fort Worth, Texas	8,789,549
Denver, Colorado	6,000,559
Detroit, Michigan	21,760,171
Fort Lauderdale-Hollywood, Florida	3,854,208
Houston, Texas	9,235,968
Kansas City, Missouri-Kansas	4,539,143
Los Angeles-Long Beach, California	58,038,466
Miami, Florida	8,525,117
Milwaukee, Wisconsin	5,554,521
Minneapolis-St. Paul, Minnesota	7,406,114
New Orleans, Louisiana	6,718,410
New York, N.Y.-Northeastern New Jersey	134,413,023
Philadelphia, Pennsylvania-New Jersey	32,356,789
Phoenix, Arizona	4,785,207
Pittsburgh, Pennsylvania	9,658,458
Portland, Oregon-Washington	4,475,270
St. Louis, Missouri-Illinois	9,750,445
San Diego, California	7,427,186
San Francisco-Oakland, California	19,775,755
San Jose, California	6,718,883
San Juan, Puerto Rico	7,636,525
Seattle-Everett, Washington	6,275,340
Washington, D.C.-Maryland-Virginia	17,167,268
	$508,177,927

LIMITATION FOR URBANIZED AREAS 200,000 TO 1,000,000 IN POPULATION

URBANIZED AREA	LIMITATION
Akron, Ohio	$2,337,596
Albany-Schenectady-Troy, New York	2,267,212
Albuquerque, New Mexico	1,567,541
Allentown-Bethlehem-Easton, Pa.-N.J.	2,370,445
Ann Arbor, Michigan	993,937
Augusta, Georgia-South Carolina	791,775
Austin, Texas	1,491,054
Bakersfield, California	972,218
Baton Rouge, Louisiana	1,299,178
Birmingham, Alabama	2,386,495
Bridgeport, Connecticut	2,071,917
Canton, Ohio	1,144,743
Charleston, South Carolina	1,085,333
Charlotte, North Carolina	1,308,389
Chattanooga, Tennessee-Georgia	986,345
Colorado Springs, Colorado	979,153
Columbia, South Carolina	1,116,531
Columbus, Georgia-Alabama	830,196
Columbus, Ohio	4,410,955
Corpus Christi, Texas	871,246
Davenport-Rock Island-Moline, Iowa-Illinois	1,133,627
Dayton, Ohio	2,935,145
Des Moines, Iowa	1,104,090
El Paso, Texas	1,885,843
Fayetteville, North Carolina	746,697
Flint, Michigan	1,535,835
Fort Wayne, Indiana	1,095,129
Fresno, California	1,473,756
Grand Rapids, Michigan	1,557,701
Greenville, South Carolina	752,915

FISCAL YEAR 1990 UMTA SECTION 9 OPERATING ASSISTANCE LIMITATIONS

LIMITATION FOR URBANIZED AREAS 200,000 TO 1,000,000 IN POPULATION--(CONTINUED)

URBANIZED AREA	LIMITATION
Harrisburg, Pennsylvania	$1,137,097
Hartford, Connecticut	2,307,556
Honolulu, Hawaii	2,857,857
Indianapolis, Indiana	3,839,903
Jackson, Mississippi	907,743
Jacksonville, Florida	2,034,549
Knoxville, Tennessee	904,908
Lansing, Michigan	1,168,124
Las Vegas, Nevada	1,386,639
Lawrence-Haverhill, Mass.-New Hampshire	858,383
Little Rock-North Little Rock, Arkansas	1,041,190
Lorain-Elyria, Ohio	788,514
Louisville, Kentucky-Indiana	3,921,718
Madison, Wisconsin	1,001,792
Melbourne-Cocoa, Florida	707,611
Memphis, Tennessee-Arkansas-Mississippi	3,634,605
Mobile, Alabama	1,012,834
Nashville-Davidson, Tennessee	1,685,148
New Haven, Connecticut	1,869,302
Newport News-Hampton, Virginia	1,145,514
Norfolk-Portsmouth, Virginia	3,112,948
Ogden, Utah	703,686
Oklahoma City, Oklahoma	2,332,325
Omaha, Nebraska-Iowa	2,391,956
Orlando, Florida	1,760,054
Oxnard-Ventura-Thousand Oaks, California	1,364,990
Pensacola, Florida	762,822
Peoria, Illinois	1,062,845
Providence-Pawtucket-Warwick, R.I.-Mass.	$4,777,970
Raleigh, North Carolina	735,056
Richmond, Virginia	1,946,946
Rochester, New York	3,121,004
Rockford, Illinois	978,072
Sacramento, California	3,529,943
St. Petersburg, Florida	3,357,188
Salt Lake City, Utah	2,468,474
San Antonio, Texas	4,644,776
San Bernardino-Riverside, California	2,552,398
Sarasota-Bradenton, Florida	1,274,252
Scranton-Wilkes-Barre, Pennsylvania	1,751,160
Shreveport, Louisiana	1,061,296
South Bend, Indiana-Michigan	1,159,367
Spokane, Washington	1,125,001
Springfield-Chicopee-Holyoke, Mass.-Conn.	2,043,930
Syracuse, New York	1,916,204
Tacoma, Washington	1,566,293
Tampa, Florida	1,940,251
Toledo, Ohio-Michigan	2,262,934
Trenton, New Jersey-Pennsylvania	1,997,996
Tucson, Arizona	1,674,019
Tulsa, Oklahoma	1,584,986
West Palm Beach, Florida	1,668,220
Wichita, Kansas	1,371,199
Wilmington, Delaware-New Jersey-Maryland	2,027,993
Worcester, Massachusetts	1,170,600
Youngstown-Warren, Ohio	1,803,364
TOTAL	$150,636 500

FISCAL YEAR 1990 UMTA SECTION 9 OPERATING ASSISTANCE LIMITATIONS

FISCAL YEAR 1990

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FISCAL YEAR 1990 UMTA SECTION 9 OPERATING ASSISTANCE LIMITATIONS

STATE LIMITATION FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE	LIMITATION	STATE	LIMITATION
ALABAMA	$3,974,156	NEBRASKA	$1,181,288
ALASKA	762,891	NEVADA	835,658
ARIZONA	305,621	NEW HAMPSHIRE	1,396,118
ARKANSAS	1,198,812	NEW JERSEY	1,751,944
CALIFORNIA	10,693,099	NEW MEXICO	511,675
COLORADO	2,491,367	NEW YORK	4,172,356
CONNECTICUT	7,301,806	NORTH CAROLINA	6,160,399
DELAWARE	0	NORTH DAKOTA	1,034,999
FLORIDA	4,792,485	OHIO	3,686,084
GEORGIA	3,123,285	OKLAHOMA	812,292
HAWAII	702,678	OREGON	2,142,185
IDAHO	993,261	PENNSYLVANIA	7,535,231
ILLINOIS	8,142,236	PUERTO RICO	4,492,135
INDIANA	6,592,647	RHODE ISLAND	365,357
IOWA	2,673,664	SOUTH CAROLINA	1,183,104
KANSAS	1,138,945	SOUTH DAKOTA	783,462
KENTUCKY	2,242,217	TENNESSEE	1,326,038
LOUISIANA	2,639,629	TEXAS	11,997,115
MAINE	1,213,113	UTAH	807,809
MARYLAND	927,385	VERMONT	360,877
MASSACHUSETTS	5,877,925	VIRGINIA	2,843,687
MICHIGAN	4,730,837	WASHINGTON	2,149,330
MINNESOTA	1,643,420	WEST VIRGINIA	2,726,668
MISSISSIPPI	1,355,890	WISCONSIN	5,900,727
MISSOURI	1,812,008	WYOMING	681,041
MONTANA	1,298,797		
TOTAL			$143,463,573

OVER 1,000,000 IN POPULATION	$508,177,927
200,000-1,000,000 IN POPULATION	150,636,500
50,000-200,000 IN POPULATION	143,463,573
NATIONAL TOTAL	$802,278,000

FISCAL YEAR 1990

UMTA SECTION 18 FORMULA APPORTIONMENTS AND

RURAL TRANSIT ASSISTANCE PROGRAM (RTAP) ALLOCATIONS

TO THE STATES FOR NONURBANIZED AREAS

STATE	SECTION 18 APPORTIONMENT	RTAP ALLOCATION	STATE	SECTION 18 APPORTIONMENT	RTAP ALLOCATION
ALABAMA	$1,574,903	$89,633	NEBRASKA	692,341	67,423
ALASKA	171,373	54,313	NEVADA	151,934	53,823
AMERICAN SAMOA	23,898	10,601	NEW HAMPSHIRE	464,342	61,685
ARIZONA	595,376	64,983	NEW JERSEY	794,118	69,984
ARKANSAS	1,274,977	82,085	NEW MEXICO	575,356	64,479
CALIFORNIA	2,819,071	120,942	NEW YORK	2,786,381	120,120
COLORADO	645,892	66,254	NORTH CAROLINA	2,870,766	122,243
CONNECTICUT	586,590	64,762	NORTH DAKOTA	352,116	58,861
DELAWARE	167,800	54,223	NORTHERN MARIANAS	12,416	10,312
FLORIDA	1,715,048	93,159	OHIO	3,151,708	129,313
GEORGIA	2,116,117	103,252	OKLAHOMA	1,301,128	82,743
GUAM	78,418	11,973	OREGON	1,009,925	75,415
HAWAII	204,605	55,149	PENNSYLVANIA	3,474,484	137,436
IDAHO	559,160	64,071	PUERTO RICO	1,092,897	77,503
ILLINOIS	2,317,958	108,332	RHODE ISLAND	115,686	52,912
INDIANA	2,137,726	103,796	SOUTH CAROLINA	1,429,667	85,978
IOWA	1,466,521	86,905	SOUTH DAKOTA	408,490	60,280
KANSAS	1,116,659	78,101	TENNESSEE	1,853,267	96,638
KENTUCKY	1,796,639	95,213	TEXAS	3,774,300	144,980
LOUISIANA	1,483,012	87,320	UTAH	304,405	57,669
MAINE	647,809	66,302	VERMONT	321,820	58,099
MARYLAND	795,881	70,028	VIRGIN ISLANDS	71,454	11,798
MASSACHUSETTS	956,252	74,064	VIRGINIA	1,703,596	92,874
MICHIGAN	2,575,219	114,806	WASHINGTON	1,117,822	78,130
MINNESOTA	1,496,177	87,651	WEST VIRGINIA	1,144,140	78,792
MISSISSIPPI	1,429,477	85,973	WISCONSIN	1,752,988	94,114
MISSOURI	1,699,316	92,763	WYOMING	260,340	56,550
MONTANA	427,736	60,764			
TOTAL				$65,867,497	$4,247,563

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FISCAL YEAR 1990 UMTA SECTION 16(b)(2) ALLOCATIONS

AMOUNTS ALLOCATED TO STATES

STATE	ALLOCATION	STATE	ALLOCATION
ALABAMA	$625,523	NEBRASKA	339,745
ALASKA	139,089	NEVADA	196,692
AMERICAN SAMOA	50,934	NEW HAMPSHIRE	233,352
ARIZONA	460,154	NEW JERSEY	1,061,307
ARKANSAS	476,410	NEW MEXICO	253,247
CALIFORNIA	2,776,864	NEW YORK	2,488,051
COLORADO	392,353	NORTH CAROLINA	804,884
CONNECTICUT	511,433	NORTH DAKOTA	207,518
DELAWARE	189,446	NORTHERN MARIANAS	50,489
DISTRICT OF COLUMBIA	208,139	OHIO	1,405,542
FLORIDA	1,919,539	OKLAHOMA	532,384
GEORGIA	715,045	OREGON	445,453
GUAM	127,950	PENNSYLVANIA	1,766,460
HAWAII	208,218	PUERTO RICO	430,615
IDAHO	224,476	RHODE ISLAND	262,266
ILLINOIS	1,500,046	SOUTH CAROLINA	453,250
INDIANA	748,436	SOUTH DAKOTA	219,362
IOWA	529,848	TENNESSEE	712,481
KANSAS	444,542	TEXAS	1,632,599
KENTUCKY	593,800	UTAH	241,874
LOUISIANA	582,695	VERMONT	187,166
MAINE	275,244	VIRGIN ISLANDS	129,421
MARYLAND	564,535	VIRGINIA	679,800
MASSACHUSETTS	910,540	WASHINGTON	586,006
MICHIGAN	1,134,826	WEST VIRGINIA	386,720
MINNESOTA	626,007	WISCONSIN	712,268
MISSISSIPPI	452,532	WYOMING	163,734
MISSOURI	817,027		
MONTANA	213,750		
TOTAL			$35,002,087

[FR Doc. 89-29185 Filed 12-13-89; 3:57 pm]
BILLING CODE 4910-57-C

federal register

Tuesday
December 19, 1989

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 965 and 990

Performance Funding System: Formal Review Process, Energy Conservation Savings, Audit Responsibilities, Definition of Responsible Insurance Company; Proposed Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 905 and 990

[Docket No. R-89-1453; FR-2504-P-01]

RIN 2577-AA49

Performance Funding System: Formal Review Process, Energy Conservation Savings, Audit Responsibilities, Definition of Responsible Insurance Company

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: The proposed rule would implement provisions of section 118 of the Housing and Community Development Act of 1987 that require several modifications of the Performance Funding System (PFS) of calculating operating subsidy eligibility of Public Housing Agencies and Indian Housing Authorities (hereafter, collectively called PHAs) operating public housing and Indian housing rental projects. These revisions deal with:

(1) Sharing of energy rate reductions;

(2) Non-HUD financing of energy conservation measures;

(3) Establishing a formal review process for revision of allowable expense levels (AELs);

(4) Combining of units; and

(5) Funding of audit costs.

In addition, this proposed rule would provide a definition of a "financially sound and responsible insurance company." PHAs are required by their Annual Contributions Contracts (ACCs) with HUD to carry adequate insurance coverage. This definition is being added to clarify HUD's policy on what constitutes adequate insurance coverage under the ACC.

DATE: Comment due date: February 20, 1990.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

As a convenience to commenters, the Rules Docket Clerk will accept brief public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 755-2575. Only public comments of six or fewer total pages will be accepted via FAX transmittal. This limitation is necessary in order to assure reasonable access to the equipment. Comments sent by FAX in excess of six pages will not be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk ((202) 755-7084). (These are not toll-free telephone numbers.)

FOR FURTHER INFORMATION CONTACT: Theodore R. Daniels, Director, Financial Management and Occupancy Division, Office of Public Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 755-8145. A telecommunications device for hearing or speech-impaired persons is available at (202) 245-0850. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Statement

The information collection requirements contained in §§ 905.205, 990.105(c)(5)(i)(B), 990.170 (c)(4) and (g), 990.108(e), 990.110 (c)(1)(i), (e) and (f) of this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 and have been assigned OMB control number 2577-0125. Information on the estimated public reporting burden is provided under the Preamble heading, Findings and Certifications. The public reporting burden for each of these collections of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW., Room 10276, Washington, DC 20410; and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Officer for HUD.

II. Statutory Background

A. Procedure

Section 118 of the Housing and Community Development Act of 1987 (Pub. L. No. 100-242, 100 Stat. 1815) amended section 9(a) of the United States Housing Act of 1937. This provision authorizes the Performance Funding System method of determining operating subsidy eligibility of PHAs operating rental projects, based on a formula representing the operations of a prototype well-managed project.

Section 118 confirmed that the PFS should continue to operate primarily as it has been, based on the system defined in regulations in effect as of February 5, 1988, as modified in accordance with the changes prescribed in the 1987 Act. (February 5, 1988 was the date of approval of the 1987 Act.) Although the 1987 Act prescribed no deadline for implementing the changes it made in section 9(a) of the 1937 Act, it did require that the changes be made by regulation, in consultation with PHAs, before the fiscal year to which they are to be applied. Consequently, the changes can be made prospective only, by rulemaking only (with the exception of the insurance issue, on which action was required in 1988).

The Department anticipates that development of a final rule will take a number of months after the close of the comment period. As a result, we doubt that the rule can be made effective before PHA fiscal years starting in Federal Fiscal Year 1991 (PHA fiscal years begining on or after January 1991).

B. Content

The new provisions added to the 1937 Act by the 1987 Act that are to be implemented by this rulemaking are section 9(a)(3)(B)(i) of the 1937 Act, sharing of energy cost savings; section 9(a)(3)(B)(ii), incentives for private financing of energy conservation measures; section 9(a)(3)(B)(iii), formal review process; section 9(a)(3)(B)(iv), combination of units; and section 9(a)(1), audit responsibilities.

Principal among these is the provision for a formal review process. Section 118(a)(2) of the 1987 Act requires that HUD provide:

> A formal review process for the purpose of providing revisions (either increases or reductions) to the allowable expense level of a public housing agency as necessary—
>
> (I) To correct inequities and abnormalities that exist in the base year expense level of such public housing agency;
>
> (II) To accurately reflect changes in operating circumstances since the initial determination of such base year expense level; and
>
> (III) To ensure that the allowable expense limit accurately reflects the higher cost of operating the project in an economically distressed unit of local government and the lower cost of operating the project in an economically prosperous unit of local government[.]

This formal review process could be interpreted to mean one of at least two things: a review of a PHA's actual expenses or actual types of expenses, as compared with the level of operating subsidy eligibility anticipated under the formula, on a one-time or annual basis; or a revision to the formula in response to the three listed factors, with one opportunity for each PHA to determine whether use of the revised formula indicates that the current Allowable Expense Level is inappropriately high or low. The Department has chosen the latter interpretation for the reasons discussed below.

III. Changes in the Regulation

A. Formal Review Process

The current rule provides, in § 990.105(c), that a formula expense level be computed in accordance with a formula prescribed by HUD, using weights and constants and a local inflation factor assigned each year by HUD. The Formula Expense Level is used in two ways: in establishing the Allowable Expense Level (AEL) for the first year under the PFS by assuring that the base year expense level (as defined in § 990.102) is within a specified range around the Formula Expense Level, and to determine the annual amount of increase or decrease in the AEL when a PHA's projects' characteristics change substantially.

Section 990.105(c) indicates that the formula itself is "subject to updating by HUD annually or at any other time" and that the updating will be accomplished by publication in the **Federal Register** or by direct notification to the PHAs. In the case of implementation of section 118 of the 1987 Act, HUD is choosing to update the formula by publication of a rule that adds a new provision to the section that permits special adjustments to the Allowable Expense Level, and that makes other conforming changes to the existing regulation.

This revised formula has been developed to apply to recent circumstances of a PHA, so as to determine in an equitable way whether a PHA's Allowable Expense Level needs to be adjusted in accordance with the dictates of section 118(a)(2). This system treats all PHAs in accordance with an objective standard, and it is administratively feasible for both the Department and the PHAs.

To understand what the formula can and cannot do, some background is useful. In establishing the PFS system in the mid-1970's, Congress directed that "for purposes of making payments * * * the Secretary shall establish standards for costs of operations * * * or [determine] the costs of providing comparable services as determined in accordance with criteria or a formula * * *." Use of a "standards" approach would have involved reaching agreement on the type and level of maintenance, administrative, and tenant services that should be eligible for reimbursement. Information on how much it costs to achieve these standards would then need to be obtained, preferably based on the experience of well-managed projects that are not part of the public housing system. (Otherwise the cost structure is self-perpetuating, whether too high or too low.) This approach was not adopted, largely because of difficulties in reaching a consensus as to what standards to use and what types of non-PHA projects to select for comparison.

The other approach, which can be thought of as a "comparative" approach, involves obtaining large amounts of comparative data on PHA operating costs and circumstances, and then deriving a formula that predicts typical operating costs for any given type of PHA. This approach also requires collection of large amounts of data covering a significant portion of the public housing inventory and requires considerable analysis, and, consequently is lengthy and costly. However, this comparative approach was adopted by HUD when the PFS system was first implemented.

A comparative approach cannot address the question of whether the overall level of PHA expenditures is adequate, but can be used to determine whether a particular PHA is over-funded or under-funded relative to other PHAs with similar characteristics. The new formula is a major improvement over the one currently in use in terms of the statistical reliability of its predictions. However, given the history of cost controls on PHAs, the fact that the basic approach is of a comparative nature, and that no adjustments have been made for what type and level of services "should" be provided, the Formula Expense Level cost estimate produced by the equation cannot legitimately be said to be an exact indicator of how much a PHA should be permitted to spend. In addition, the formula itself has a range of error.

Based on these considerations and the outcomes of various range tests, HUD has concluded that using less than a 15 percent "range test" in applying the new formula could not be justified. That is, it concluded that PHAs with a current allowed expense level (AEL) no higher than 115 percent of the predicted formula expense level (FEL) under the new formula could not safely be said to be over-funded, just as those with expense levels above 85 percent of the FEL could not be said to be under-funded.

A one-time systematic adjustment to the current Allowable Expense Level makes sense. The factors which have proved to have the most predictive value for PHA expenses in the new formula are PHA inventory and community characteristics. PHA expenditure patterns are closely tied to past Allowable Expense Levels, and the other factors used to derive an equation change little in the short term. HUD intends to study the impacts of changes that would result from introduction of 1990 Census data, but these data will not be available for some time and are not likely to alter the predicted values for most PHAs. Once the new formula has been used by PHAs that want to appeal their current AELs, the Department believes that no additional significant improvement in accuracy of PHA expense levels is feasible using a comparative approach that relies on cost data driven by allowed historic costs.

The new formula would use the following factors:

—Measures of community distress (and need), such as the community's per capita value of the Community Development Block Grant program's Formula B, discussed below (multiplied by the proportion of the PHA's units containing two or more bedrooms);

—Measures of area costs, such as the community's index of local government wage rates and the median rent in the community; and

—Measures of the PHA's operating characteristics, such as, the weighted average height of the PHA's buildings (multiplied by the proportion of its units containing two or more bedrooms), and the total number of the PHA's units containing two or more bedrooms.

These factors contrast with the current formula, which uses the following factors:

—The weighted average number of bedrooms in the PHA's projects;

—The weighted average age of all the PHA's projects;

—The weighted average height of the tallest building in each project; and

—The HUD-supplied index for the relative operating costs of a sample of PHAs in the HUD region.

One advantage of the new formula over the current formula is that the community's median rents and level of

local government wages are more valid indicators of local cost than the regional

change would perform the additional calculation described in paragraph (2)

could decide whether to appeal its current AEL under the revised formula.

resulting from decreased consumption during the PHA fiscal year (as compared

realizing energy cost savings, the first incentive would apply. If the contract

measures as rapidly as possible, consistent with providing incentives for

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local government wages are more valid indicators of local cost than the regional cost indicator now used, because they are based on measures independent of PHA historical spending patterns. Another advantage is that the new formula contains an indicator of economic distress, as required by the 1987 Act provision: the CDBG Formula B, which takes into account the age of the housing stock, loss of population and the number of families below the poverty line. A third advantage is that the new formula is derived by weighting sample PHAs by the number of units they represent rather than by the number of PHAs in each size group, thereby improving the statistical representativeness and precision of the formula. The new formula also gives greater weight to the average building height where the building serves a family population (proportion of two plus bedroom units), as opposed to an elderly population. Building height is a significant indicator of cost when the building serves a family population because of items such as elevator maintenance.

Under the current PFS, there are two ways to calculate the annual adjustment to the Allowable Expense Level for changes in operating conditions:

(1) A simplified calculation is used when the PHA has not experienced enough change in housing stock since the last comprehensive calculation to reach a threshold of net changes in the number of units it manages equal to at least 5 percent or 1,000 units, whichever is less. These PHAs increase their AEL by .5 percent to reflect the higher maintenance costs attributable to the aging of the stock.

(2) A comprehensive calculation is used when the PHA has experienced enough change in housing stock since the last comprehensive calculation to reach a threshold of net changes in the number of units of 5 percent or 1,000 units, whichever is less. These PHAs calculate the impact on the Formula Expense Level of changes in the PHAs housing stock with reference to age of the units, building height, and average number of bedrooms per unit.

After the effective date of the final rule, the usual methods would be followed, substituting the revised formula for the current formula in the comprehensive calculation described in paragraph (2) above (and in § 990.105(e)(5)(ii)(B) of the rule). Because project age no longer would be a factor in the new formula, all PHAs would perform the simplified calculation described in paragraph (1) above, to reflect the aging of their stock. Only the PHAs that meet the threshold of net change would perform the additional calculation described in paragraph (2) above.

If a PHA submitted a budget for FY 1991 before the effective date of the rule that was based on the old formula, the PHA would be given the option of recomputing its adjusted AEL based on the new formula if it submitted a revision to HUD within 60 days after the dissemination of the new formula (and the effectiveness of the final rule). At that point, it could request a formal review of its AEL under the revised formula, as well. Any PHA submitting a budget to HUD more than 60 days after the dissemination of the new formula (and the effectiveness of the final rule) would be required to use the new formula in the calculation of the Formula Expense Level—if it exceeded the threshold of unit change and was required to perform calculation (2), above.

The revised formula also would be used in the formal review required by section 118 of the 1987 Act. Based on the characteristics of the PHA and the community, the revised formula would be used to determine a new Formula Expense Level (as in the procedure described in paragraph (2) above). Then a range of fifteen percent (discussed above) would be applied to determine whether the PHA's Allowable Expense Level should be increased or decreased. The rule would provide that if the PHA's new AEL were below 85 percent of the Formula Expense Level, HUD would raise it to that level, after the formal review. The rule would provide that if a PHA's new AEL were more than fifteen percent above the Formula Expense Level, HUD would adjust its AEL downward to 115 percent of the FEL.

The Department is concerned about whether the formula, even as revised, treats Indian housing authorities equitably, since they experience special problems associated with scattered sites, single family construction, and remoteness. During the development of a final rule, HUD will look at the effect of the revised formula on some sample IHAs.

HUD expects to provide PHAs with a worksheet and a chart of data for each region that would allow each PHA to perform the calculations for itself. Under this system, the PHA would determine whether its Allowable Expense Level for the next budget year would be within the range of fifteen percent below to fifteen percent above the Formula Expense Level. If its new AEL were below the range, a request for formal review of its AEL would produce favorable results. In any event, after making its own calculations, a PHA could decide whether to appeal its current AEL under the revised formula.

The Department estimates that about 720 PHAs (representing 12 percent of the units) might be entitled to increases in their Allowable Expense Levels as a result of this appeals process, at a cost to the government of $20 million. PHAs with fewer than 250 units would be the group most affected. This group is most affected because HUD is permitting more variation from the predicted Allowable Expense Level, and more small PHAs seem to experience greater variation from the prediction. However, since the Department is not requiring PHAs to have their AELs adjusted in accordance with the revised formula unless they appeal their AEL for Fiscal Year 1991, the small PHAs that are affected by the revised formula will probably all benefit. (See the paragraphs in the Findings and Certifications section below that discuss the Regulatory Flexibility Act.)

B. Energy-related Changes

1. Utility Rates

Section 9(a)(3)(B)(i) of the 1937 Act provides a financial incentive for PHAs to negotiate alternative purchase arrangements to obtain their utilities for the lowest possible price, for example, by purchasing natural gas directly from the "well head." This incentive is mentioned in § 990.107 in a new paragraph (b)(2) and in § 990.107(f), and is described in detail in § 990.110(c).

2. Utility Consumption

During fiscal years 1982–1988, HUD provided $756.5 million for energy conservation measures under the modernization program. Nevertheless, much more needs to be and can be done to reduce public housing's billion dollar annual fuel and utility costs. Many PHAs have the ability to reduce their utility costs by relying on their own initiative and using non-HUD funds, i.e., funds other than Comprehensive Improvement Assistance Program funds and operating reserves. However, in some cases, the PFS has not encouraged such initiative either because the PHA's right to retain part of any savings realized through reduced utilities consumption has not been understood, or because the PFS was not designed to cover the capital investments that have more than a one and a half year payback period.

The existing incentive for energy conservation by PHAs under the PFS is the provision in § 990.110(c)(3), permitting a PHA to retain half of any decrease in the utilities expense level resulting from decreased consumption during the PHA fiscal year (as compared to the amount calculated for that year). The PHA calculates a Utilities Expense Level (UEL) as part of its budget submission for a given fiscal year. The UEL is determined using utilities rates in effect at the time, and consumption is estimated based on the average of a three-year "rolling base" (the average consumption in the three years ending one full year before the beginning of the PHA's requested budget year). At the end of a PHA's fiscal year, the actual utility expense and consumption for that year are compared to the UEL. The PHA retains half of any decrease after adjustments for utility rate changes and for the effect of the weather on space heating consumption.

Because of the rolling base provisions, the savings from an energy improvement are gradually phased out. The PHA retains half of the energy savings in the first two years following the improvement, one-third in the third year, and one-sixth in the fourth year. By the fifth year, the energy savings are reflected completely in the three-year rolling base. Over a four year period, therefore, the PHA will generally realize 150 percent of the value of the first year's savings.

Section 9(a)(3)(B)(ii) provides financing incentives to encourage PHAs to undertake physical improvements to reduce energy consumption that are financed either through performance contracts or shared savings agreements with private energy service companies, or through loans from utilities or State or local governmental entities. The incentives include the following:

(1) The freezing of the rolling base and retention by the PHA of 100 percent of cost savings resulting from reductions in energy consumption during the term of the financing agreement; and

(2) The provision of additional operating subsidy, with the PHA retaining the right—as under the current rule—to keep 50 percent of consumption savings.

These incentives are offered to PHAs that undertake energy conservation measures which the PHA demonstrates to the HUD field office will pay for themselves within the contract period (which may not exceed 12 years), *i.e.*, where the PHA's payments are not expected to exceed the anticipated energy cost savings. The incentives are generally described in a new paragraph (g) added to § 990.107, which indicates that the determination of which incentive applies will depend on how the contract negotiated by the PHA is structured. To the extent that a contract makes a PHA's payments dependent on realizing energy cost savings, the first incentive would apply. If the contract does not make payment dependent on savings, the second incentive would apply. (A reference to these incentives would be added to part 965 in the Subpart dealing with energy conservation measures, § 965.307.)

The Department notes that a PHA's selection of a contractor to provide energy-savings services or improvements is a procurement action, subject to the procurement requirements adopted government-wide on Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments. These requirements are found in HUD's regulations at 24 CFR part 85.

Section 85.36(d) of that rule provides that, for procurements costing at least $25,000, there are two generally acceptable methods of procurement: sealed bids (formal advertising) and competitive proposals. The method of noncompetitive proposals is permitted under the rule only where the other procurement methods are infeasible and one of the following circumstances applies: (1) The item is available only from a single source; (2) emergency does not permit the delay involved in competitive selection; (3) the awarding agency (HUD, in this case) authorizes noncompetitive proposals; or (4) competition is determined inadequate after solicitation from a number of sources.

The Department invites public comments on the feasibility of using the procurement methods of sealed bids and competitive proposals for the procurement of energy-saving services or improvements. Public comments also are invited on what types of situations would justify HUD authorization, under the third circumstance stated above, of the noncompetitive proposals method for these procurements.

a. First incentive. The elements of the first incentive would be implemented by revising § 990.107(c) to include a new paragraph (c)(4), to provide that the rolling base could be frozen for the amortization period of the improvement, and by adding a paragraph (c)(2)(ii) to § 990.110, to authorize the retention of 100 percent of cost savings for this type of contract after the PHA receives approval of it under § 990.107(g)(1).

When HUD reviews each proposed contract under § 990.107(g), it will assess its costs and benefits, weighing the amount of capital investment, the extent of savings, and the length of term and risk to the investor. HUD will look for arrangements that pay off the capital investment for the energy savings measures as rapidly as possible, consistent with providing incentives for private investment in PHA energy efficiency. The Department also recognizes that additional costs to a PHA such as staff training and activities promoting tenant cooperation, e.g., energy conservation educational efforts, should be eligible for payback from the energy savings. The rule provides at § 990.110(c)(2)(ii) for savings to be applied to recognized costs in the following order: (1) Payment of the contractor, in accordance with the contract; (2) reimbursement of the PHA's direct costs; (3) retention by the PHA of up to 30 percent of the total savings to use for any eligible expenditure; and (4) prepayment of the PHA's obligation under the contract.

A PHA could negotiate an arrangement that would provide it with anticipated savings greater than those necessary to pay back the energy service contractor's investment plus the additional costs to the PHA, as a further incentive to the PHA to enter into shared savings or other performance contracting arrangements. Under item three above, the PHA could then retain part of the savings. In this proposal, the Department has used a figure of 30 percent, but invites comment on what percentage would be appropriate.

Energy savings in any year could fall short of expectations—and in fact, short of the amount necessary for full payment of any fixed amount due the energy service contractor to cover its investment and an approved return on its investment—in which case, the amount of the actual savings would be paid to the contractor. In anticipation of this possibility, a performance contract may provide that the term be extended automatically to the length necessary to amortize the remaining balance of the payments to the contractor, up to a maximum term of 12 years.

b. Second incentive. The second incentive—provision of additional operating subsidy—would be implemented by revising paragraph (c)(2) of § 990.110 and by adding a paragraph (f) to § 990.110. Paragraph (f) would describe the conditions under which additional operating subsidy would be available and the monitoring that would be necessary to assure that the statutory condition of limiting the subsidy to the amount saved is fulfilled.

The PHA would be eligible for additional operating subsidy to amortize the cost of energy conservation measures under the contract, subject to a maximum annual limit equal to the cost savings for that year. Each year, the

energy cost savings would be determined as follows:

cost of the audit to the PHA by deducting it from any assistance

Traditional insurance companies may qualify (1) by being licensed or duly

selected, considering price and other factors.

that obsolete requirement from § 990.101.

correct inequities and abnormalities that existed in the base year, to accurately

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energy cost savings would be determined as follows:

—The consumption level that would have been expected if the energy conservation measure had not been taken would be adjusted for (1) the Heating Degree Days experience for the year, and (2) any change in utility rate.

—The actual cost of energy (of the type affected by the energy conservation measure) after implementation of the energy conservation measure would be subtracted from the expected energy cost, to produce the energy cost savings for the year. (The PHA would be able to retain 50 percent of this savings under § 990.110(c).)

If the cost savings for any year during the contract period is less than the amount of operating subsidy made available under § 990.110(f) to pay for the energy conservation in that year, HUD would offset the deficiency against the PHA's operating subsidy eligibility for the next PHA fiscal year.

C. Effect of Combining Units

Under the current rule, when a PHA redesigns or rehabilitates a project and combines two or more units into one larger unit, the operating subsidy eligibility amount automatically decreases, because it is based on allowing a set expense level for "unit months available", which is, in turn, based on the number of project units. Section 9(a)(3)(B)(iv) of the 1937 Act, as amended by the 1987 Act, provides that when such a combination of units results in a unit that houses at least the same number of people previously served, the amount of operating subsidy should not be reduced solely as a result of the decrease in number of units.

This provision of the statute would be implemented by the addition of another category of other costs in § 990.106 in the operating subsidy determination that will compensate PHAs with unit reconfigurations. As of the effective date of the final rule, PHAs would be eligible for an additional amount of subsidy calculated as follows: Each unit month not included in the requested year's "unit months available" as a result of these combinations that have occurred since the PHA's base year, multiplied by the per unit month (P.U.M.) Allowable Expense Level for the requested year.

D. Audit Cost Funding

Section 9(a)(1) of the 1937 Act, as amended by section 118 of the 1987 Act, authorizes HUD to arrange an audit if a PHA fails to submit one in accordance with Federal requirements (24 CFR part 44), and authorizes HUD to charge the cost of the audit to the PHA by deducting it from any assistance otherwise payable to the PHA. The authority to have the audit performed includes arranging for any accounting services necessary to place the PHA's books and records into auditable condition. This provision of the statute would be implemented by revising § 990.120, concerning audits.

E. Responsible Insurance Company

PHAs are required, in their Annual Contributions Contracts (ACCs) with HUD, to maintain specified insurance coverage for property and casualty losses that would jeopardize their financial stability. This insurance coverage is required to be obtained from a "financially sound and responsible insurance company" of its substantial equivalent. (See section 305 of the ACC and Article IX of the Mutual Help ACC.)

Since 1982, 97 insurance companies have been liquidated, put into receivership or conservatorship, or have been issued cease and desist orders by various State insurance departments. Of those, HUD is aware of at least three companies that wrote coverage for PHAs, depriving the PHAs of payments to cover their losses and the return of unearned premiums. As a result, the Department emphasizes the need for PHAs to select financially sound and responsible risk protection arrangements to safeguard the PHA's own interests and those of the Department.

The standard is specified in this proposed rule in a formerly "reserved" subpart B of part 965, a part that applies to the maintenance and operation of PHA-owned projects. A new § 965.205 has been created to specify under what conditions various types of risk protection providers will qualify as a "financially sound and responsible insurance company". (Section 965.205 embodies in rule form the types of insurance and risk protection providers that have been permitted by the Department over the last few years.) In each case where insurance is to be obtained, documents must be submitted to establish that the entity satisfies the basic criteria for a financially sound and responsible insurance provider.

Separate subsections of § 965.205 address the criteria applicable to various types of providers. Paragraph (b) describes the requirements for traditional insurance companies, including foreign-based companies. Paragraphs (c) and (d) pertain to non-profit insurance entities and to municipal leagues or pools (including one formed by a single municipality), respectively.

Traditional insurance companies may qualify (1) by being licensed or duly authorized to issue insurance in the State or Indian area and (2) by maintaining adequate reserves. Documentation of this first requirement must be forwarded by the PHA to HUD for review and approval. The second requirement may be evidenced by a rating and classification issued by the A. M. Best Company (a company that has specialized for 83 years in reporting the financial condition of property/casualty insurers licensed to do business in the United States). The rating and classification deemed satisfactory evidence of adequate reserves is a "Class VI" for financial status and at least "B+" for performance. If a company is not rated by Best, it must demonstrate the adequacy of its reserves by submitting an audited financial statement.

An insurance company that is not licensed or duly authorized to issue insurance in the State or Indian area may still qualify as a "financially sound and responsible insurance company" by satisfying seven specific criteria. These criteria are comparable to the criteria used by the Best Company in establishing their ratings and by the various States in the licensing of insurance companies.

PHA non-profit insurance entities and State-authorized municipal league self-insurance pools or trusts, including one formed by a single municipality, may qualify by satisfying most of the seven criteria applicable to non-licensed insurance companies.

The method of selection of risk protection coverage by a PHA is discussed in a new § 965.210. The process is governed by 24 CFR part 85, which governs all procurement of goods and services by State and local governments and Federally recognized Indian tribes, including any public housing agency or Indian housing authority, and numerous cross-references to part 85 are made in this section. (Part 85 is HUD's rule reflecting Federal government-wide procurement policy, requiring competition in the selection of goods and services.) For example, § 85.36 (d)(1) provide that purchases costing less than $25,000 may be made using relatively simple and informal methods, and § 85.36(d)(3) provides that, when formal advertising is inappropriate, competitive proposals may be solicited. Section 85.36(f) requires that some sort of cost or price analysis be performed in every procurement action, consistent with the overall purpose of that section to assure that the most advantageous proposal be selected, considering price and other factors.

Selection of risk protection coverage from a PHA-sponsored non-profit entity (one in which the PHA presumably would be an active participant) or a municipal pool is permissible under part 85. In fact, part 85 includes a reference to the possible economy and efficiency that can be achieved by mutual cooperation of governmental entities in the use of common goods and services (§ 85.36(b)(5)). In order to determine that economy and efficiency would result from such a selection, a PHA would first have to conduct a market search—in accordance with the procedures specified in § 85.36(d)(1) through (d)(3)—to establish competitive costs from all qualified sources (financially sound and responsible insurance companies and their equivalents). If a PHA were particularly concerned about the cyclical nature of insurance premiums from conventional insurance companies and the difficulty of coping with premium costs when the cycle is at its peak, it could include in its evaluation factors in the competitive proposal process the ability of the supplier to provide long-term coverage at a fixed rate, or some similar factor.

Since selection of coverage from any entity for an indefinite period (essentially committing the PHA to perpetual participation) would vitiate the purpose of competitive selection, § 965.210 requires that the risk protection coverage selected be for a fixed term of three years or less, and requires that the PHA must reassess its selection before the expiration of the term. Should a PHA feel that a term greater than three years is necessary to obtain the most advantageous coverage, it may seek a waiver of this provision from HUD, in accordance with part 990 of this chapter, by documenting the facts and grounds.

F. Miscellaneous

In 1981, section 3 of the United States Housing Act of 1937 was amended to prescribe each family's monthly rental payment in terms of the higher of three possible amounts—each of which was based on its montly income (30 percent of adjusted monthly income, 10 percent of gross monthly income, or a welfare allotment for housing expenses), and to authorize HUD to define income. These amendments rendered ineffective the requirement of section 9(b) that a PHA's eligibility for operating subsidy in the public housing program be conditioned on charging aggregate rentals in any year of at least 20 percent of the sum of the monthly incomes of all the families. This rule would remove the reference to that obsolete requirement from § 990.101.

IV. Findings and Certifications

A. Environment

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street SW., Washington, DC 20410.

B. Executive Order 12291

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 issued by the President on February 17, 1981, and therefore no regulatory impact analysis is necessary. At its estimated cost of $30 million, it will not have an annual effect on the economy of $100 million or more. Furthermore, it will not cause a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, nor have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601) the Undersigned hereby certifies that this rule, as distinguished from the statute, would not have a significant economic impact on a substantial number of small entities. The rule would provide for a formal review process to determine, under a revised formula, whether a PHA has an allowable expense level outside a range of 15 percent below or 15 percent above the formula amount; it would permit some modest increase in subsidy for PHA's that undertake certain energy saving measures; and it would specify what criteria an insurance entity must satisfy in order to fulfill the contractual requirement to maintain insurance coverage with a financially sound and responsible company.

The formal appeals process might affect favorably nearly 400 of the PHAs that operate fewer than 100 dwelling units, as a result of the revision of the formula. That result is attributable to the statutorily required modifications to correct inequities and abnormalities that existed in the base year, to accurately reflect changes in operating circumstances since the determination of the base year expense level, and to reflect the relative cost of operating in an economically distressed area or an economically prosperous area. Small PHAs have been more likely than large PHAs to deviate more from the allowable expense level predicted under the current formula. Since the formal review process will affect only PHAs that request a review and they will be able to calculate in advance the impact of the revised formula, the effect on small PHAs of the formal review process is likely to be entirely favorable.

The means chosen to implement the formal review process required by law has been designed to minimize the burden on PHAs. A clerk employed by any PHA, large or small, would be able to compute the PHA's allowable expense level (and associated subsidy eligibility) using a computational table and a chart with data for the various jurisdictions, with the addition of the total number of units operated by the PHA and the number of units with two or more bedrooms. An alternative method of implementing the statute that would involve annual review of each PHA's actual expenses in comparison to estimated expenses of that PHA or to actual expenses of similar PHAs would be more time-consuming and burdensome for small PHAs than the method chosen.

The energy saving measures cost-sharing provisions would be unlikely to have any significant impact on small PHAs. The provisions specifying criteria for a financially sound and responsible insurance company are also unlikely to have any significant impact on small PHAs, since many of them use traditional insurance companies that have been rated by the A.M. Best Company that can easily be determined to satisfy the requirements.

D. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule would not have federalism implications and, thus, are not subject to review under the Order. The rule will provide for additional financial assistance or retained savings to HUD-assisted housing owned and operated by PHAs but will not interfere with State or local government functions.

E. Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The rule involves the amount of funding that a PHA should receive under a formula revised to satisfy statutory requirements.

F. Regulatory Agenda

This rule is listed as sequence number 1112 under the Office of Public and Indian Housing in the Department's semiannual agenda of regulations published on October 30, 1989 (54 FR 44702, 44733), under Executive Order 12291 and the Regulatory Flexibility Act.

G. Catalog

The Catalog of Federal Domestic Assistance Program numbers for this rule are 14.145, 14.146, and 14.147.

H. Information Collection Requirements

The information collection requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Information on the public reporting burden of the sections in this rule that the Department has determined contain information collection requirements is provided as follows:

Description of requirement	Section	No. of respondents	Freq. of response	Est. avg. resp. time	Est. annual burden (Hrs.)
Insurance	965.205	8	1	5	40
Freezing AEL retain savings	990.107 (c)(4) and (g), 990.110(f)	200	1	8	1,600
Sharing of consumption reduction	990.110(c)(1)(i)	100	1	2	200
Formal review process	990.110(e)	720	1	4	2,880
New formula	990.105(c)(5)(ii)(B)	2,500	1	1	2,500
Combin. units	990.105(e)	15	1	1	15
Recordkeeping	990.107 (c)(4) and (g), 990.110(f)	200	1	2	400
Total burden	—	—	—	—	7,635

List of Subjects

24 CFR Part 965

Energy conservation, Loan programs: housing and community development, Public housing, Utilities.

24 CFR Part 990

Grant programs: housing and community development, Low and moderate income housing, Public housing.

Accordingly, 24 CFR parts 965 and 990 would be amended as follows:

PART 965—PHA-OWNED OR LEASED PROJECTS MAINTENANCE AND OPERATION

1. The authority citation for part 965 would continue to read as follows:

Authority: Secs. 2, 3, 6, 9, United States Housing Act of 1937 (42 U.S.C. 1437, 1437a, 1437d, and 1437g); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). Subpart H is also issued under the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846).

2. A new subpart B would replace the currently reserved subpart B, to read as follows:

Subpart B—Required Insurance Coverage

Sec.
965.201 Purpose and applicability.
965.205 Approved sources of required coverage.
965.210 Method of selecting insurance coverage.

Subpart B—Required Insurance Coverage

§ 965.201 Purpose and applicability.

(a) *Purpose.* The purpose of this subpart is to implement policies concerning insurance coverage required under the Annual Contributions Contract (ACC) between the U.S. Department of Housing and Urban Development (HUD) and a Public Housing Agency or an Indian Housing Authority (collectively referred to as PHA) and insurance coverage required under the Mutual Help Annual Contributions Contract (MHACC) between HUD and an Indian Housing Authority.

(b) *Applicability.* The provisions of this subpart apply to all housing owned by PHAs, including Mutual Help and Turnkey III housing. However, these provisions do not apply to section 23 and section 10(c) PHA-leased projects or to section 8 Housing Assistance Payments Program projects.

§ 965.205 Approved sources of required coverage.

(a) *Contractual requirements for insurance coverage.* The Annual Contributions Contract (ACC) and the Mutual Help Annual Contributions Contract (MHACC) between PHAs and the U.S. Department of Housing and Urban Development require (in section 305 of the ACC and Article IX of the MHACC) that PHAs maintain specified insurance coverage for property and casualty losses that would jeopardize the financial stability of the PHAs. The insurance coverage is required to be obtained from a "financially sound and responsible insurance company." To satisfy this requirement, the insurance entity selected must qualify as a "financially sound and responsible insurance company" as described in paragraph (b) of this section or as a substantial equivalent under paragraphs (c) or (d) of this section.

(b) *Financially sound and responsible insurance company.—(1) Licensed insurance company.* (i) HUD will approve an insurance company that is licensed or duly authorized to issue insurance in the State(s) or jurisdiction(s) in which it offers insurance as a financially sound and responsible insurance company if the company maintains adequate reserves for undischarged liabilities of all types—as evidenced by a minimum policyholders' surplus fund of $25 million, or 50 percent of the net annual premiums written, whichever is greater. In the case of a foreign-based insurance company (domiciled outside the United States), the minimum policyholders' surplus fund, which is based on the amount of the gross direct premiums written for the United States policyholders, must be maintained in cash or negotiable securities on deposit with a member bank of the Federal Reserve System.

(ii) An insurance company selected by a PHA to provide coverage must submit a certification to the PHA, which must be sent to HUD, stating that the company satisfies the licensure requirement. HUD Headquarters will verify the company's satisfaction of that requirement with the appropriate State department of insurance. A PHA may accept as satisfactory evidence of adequate reserves a rating from the A.M. Best Company, received within one year before its selection by the PHA, of at least "Class VI" for financial status and at least "B+" for performance. A company not rated by the Best Company must demonstrate the adequacy of its reserves by submitting a current audited financial statement.

(2) *Unlicensed insurance company.* HUD will approve an insurance company that is not licensed or duly authorized to issue insurance in the State(s) or jurisdiction(s) in which it offers insurance under the following conditions:

(i) The insurance company meets all of the following criteria:

(A) Has competent underwriting staff, as evidenced by professionals with an average of at least five years of experience in large risk (exceeding $100,000 in annual premiums) commercial underwriting;

(B) Has efficient and qualified management, evidenced by at least one senior staff person who has a minimum of five years of experience at the management level of Vice President of a property/casualty insurance entity and/or a minimum of five years experience as a senior branch manager of a branch office with annual property/casualty premiums exceeding $5 million;

(C) Has been in the same business for a minimum period of five years;

(D) Maintains internal audit and cost controls over income and expenditures;

(E) Maintains sound investments;

(F) Maintains adequate reserves for undischarged liabilities of all types, as evidenced by a minimum policyholders' surplus fund, as described in paragraph (b)(1)(i); and

(G) Has proper organizational documentation.

(ii) The insurance company submits the following documentation:

(A) Evidence of competent underwriting staff and of efficient and qualified management, including copies of resumes of underwriting staff and of key management personnel responsible for oversight and for the day-to-day operation of the entity;

(B) Evidence that the company has been in the insurance business for a minimum of five years;

(C) Evidence of an annual budget and internal audit and cost controls over income and expenditures;

(D) Evidence that it maintains sound investment practices;

(E) Evidence that the entity will satisfy the requirement for adequate reserves for undischarged liabilities. This evidence must include a current audited financial statement and an actuarial review of all prior incurred losses over a minimum period of four years and a four-year projection of anticipated income, loss payments, loss reserves, loss adjustment, and administrative expenses. (The actuary will recommend the level of funding necessary to pay the expected losses and to establish the policyholders' surplus account.); and

(F) Evidence of proper organization, including copies of the articles of incorporation, the by-laws, and an opinion from legal counsel that establishment of the entity conforms with all legal requirements under State or tribal law.

(c) *Approved PHA non-profit insurance entity.* HUD will approve a non-profit self-funded insurance pool created by PHAs that limits participation to PHAs and that credits PHA payments and investment income to the loss fund as substantially equivalent to a "financially sound and responsible insurance company", as described in paragraph (b), if—

(1) The entity conforms with the requirements of paragraph (b)(2)(i), except for subparagraph (C), and except that, with respect to subparagraph (F), the policyholders' surplus fund part of the adequate reserves requirement need only satisfy the 50 percent of net annual premiums written (but not the $25 million minimum); and

(2) The entity satisfies the requirements of paragraph (b)(2)(ii) (except for subparagraph (B)), including:

(i) with respect to evidence of proper organization (subparagraph (F)), a copy of the business plan;

(ii) with respect to investment policies (subparagraph (D)), its agreement to invest all funds of the entity in accordance with HUD investment management practice requirements for PHAs (see HUD Handbook 7475.1), and its agreement to confine use of all funds to insurance-related expenditures.

(d) *Approved municipal league pool or trust.* HUD will approve a State-authorized municipal league pool or trust (including a trust formed by a single municipality) that is formed to self-insure for various types of insurance coverage as substantially equivalent to a "financially sound and responsible insurance company", as described in paragraph (b) of this section if—

(1) The entity conforms with the requirements of paragraph (b)(2)(i), except for subparagraph (C), and except that, with respect to subparagraph (F), the policyholders' surplus fund part of the adequate reserves requirement need only satisfy the 50 percent of net annual premiums written (but not the $25 million minimum);

(2) The entity satisfies the requirements of paragraph (b)(2)(ii) (except for subparagraph (B)); and

(3) The pool or trust does not insure extra-hazardous risks, *e.g.*, a police department, airport, hospital, etc., without carrying specific reinsurance sufficient to cover such risks.

§ 965.210 Method of selecting insurance coverage.

(a) *General.* (1) Part 85 provides that procurement of services under a Federal grant must be done in accordance with the grantee's (PHA's) procurement procedures, reflecting applicable State and local laws and regulations, provided that they conform to applicable Federal law. Part 85 requires competition in all procurement transactions. Generally, awards are to be made to the responsible firm whose proposal to provide the service is most advantageous to the program, with price and other factors considered. Factors other than price that may be considered in the procurement of insurance are continued availability of coverage and predictability of premium over the long-term. Any selection based on factors other than cost must be supported by the PHA's written determination, in accordance with part 85, that the arrangement will promote economy and efficiency, or that selection factors other than cost make selection of that entity the most advantageous to the PHA.

(2) The methods of selection to be used (specified in § 85.36(d)) include a simple and informal method for small purchases (those not exceeding a cost of $25,000) and the competitive proposal method, as well as formal advertising. The PHA must consider coverage from any qualified entity, i.e., any insurance company that qualifies under § 965.205(b), as well as any entity that qualifies under § 965.205 (c) or (d) as substantially equivalent to a financially sound and responsible insurance company.

(b) *Term of coverage.* Risk protection coverage must be for a fixed term, not to exceed three years, and the PHA must reassess its choice of risk protection coverage before the expiration of the term in accordance with paragraph (a) of this section.

(c) *PHA-created non-profit entities and municipal pools.* Part 85 encourages entities such as PHAs to enter into State and local intergovernmental agreements for procurement or use of common goods

and services to foster greater economy and efficiency (§ 85.36(b)(5)). When a PHA-owned project is leased to a lessee, the lessee is responsible for insurance coverage for the leased property. The PHA must require the lessee to obtain insurance coverage that is consistent with the requirements of this subpart.

(b) *Insurance coverage.* (1) The PHA must require insurance coverage for all risks of physical damage to or loss of project property, in the amount necessary to compensate for the repair or replacement of property damaged or destroyed, up to the property's full insurable value. The PHA must require insurance coverage for boilers and machinery, in the amount necessary to compensate for damage to or destruction of property up to the full insurable value of the boilers and machinery.

(2) The PHA must require insurance coverage for comprehensive general liability, in the amount necessary to compensate adequately any person who may suffer bodily injury or property damage as a result of project operations, up to the full insurable value or a reasonable amount determined by the PHA.

(3) The PHA must require insurance coverage for fidelity bonding and employee dishonesty, in the amount necessary to compensate for theft of project funds, up to the full insurable value or a reasonable amount determined by the PHA.

(4) The PHA must require insurance coverage for workmen's compensation, in accordance with applicable State law.

(5) The PHA must require insurance coverage for any other risks that are normal and customary for comparable properties in the area.

(c) *Flood insurance.* The PHA must require flood insurance coverage for any project located in a flood hazard area identified by the Federal Emergency Management Agency (FEMA), in accordance with the National Flood Insurance Act of 1968 (42 U.S.C. 4001–4128) and the Flood Disaster Protection Act of 1973 (42 U.S.C. 4002–4106).

(d) *Earthquake insurance.* The PHA must require earthquake insurance coverage for any project located in an area designated by FEMA as an area with special earthquake hazards, in accordance with the National Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701–7706).

(e) *Insurance deductibles.* The PHA must require insurance deductibles that are reasonable and customary for comparable properties in the area.

(f) *Insurance proceeds.* The PHA must require that insurance proceeds be used to repair or replace damaged or destroyed property, or be applied to the mortgage debt.

(g) *Self-insurance.* The PHA may self-insure for any risk that is normally self-insured by comparable properties in the area.

PART 990—DWELLING RENTAL INCOME LIMITATION

3. The authority citation for part 990 would continue to read as follows:

Authority: Sec. 9, United States Housing Act of 1937 (42 U.S.C. 1437g); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

4. In § 990.105, paragraph (c)(5)(ii)(B) would be revised to read as follows:

§ 990.105 Operating Expense Level.

(c) * * *

(5) * * *

(ii) * * *

(B) Allowable Expense Level, as provided under § 990.110.

5. In § 990.107, paragraph (b) would be redesignated as paragraph (b)(1) and a new paragraph (b)(2) would be added to read as follows:

§ 990.107 Dwelling Rental Income.

(b) * * *

(2) *Exception.* Dwelling rental income may be increased by one-half of one percent (.5 percent); or

6. In § 990.107, paragraph (b) would be redesignated as paragraph (b)(1) and a new paragraph (b)(2) would be added to read as follows:

§ 990.107 Dwelling Rental Income.

(b) * * *

(2) *Exception.* Dwelling rental income may be increased by one-half of one percent (.5 percent); or

implemented (adjusted for heating degree days in accordance with

savings, as described in § 990.110(c)(2)(ii).

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and services to foster greater economy and efficiency (§ 85.36(b)(5)). When a PHA has the legal authority to enter into an agreement with other PHAs to carry out operating functions, it may execute such an agreement for risk protection coverage to be provided through a PHA non-profit entity, as described in § 965.205(c), or a municipal pool as described in § 965.205(d)—provided that it has complied with the provisions of paragraph (a) of this section.

3. In subpart C—Energy Audits and Energy Conservation Measures, § 965.307 would be amended by designating the existing paragraph as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 965.307 Funding.

* * * * *

(b) If a PHA finances energy conservation measures from sources other than CIAP or operating reserves, such as on the basis of a promise to repay, HUD may agree to provide adjustments in its calculation of the PHA's operating subsidy eligibility under the PFS for the project and utility involved if the financing arrangement is cost-beneficial to HUD. To receive the benefit of this type of adjustment, a PHA's repayments may not exceed the cost of the energy saved as a result of the energy conservation measures during a period not to exceed 12 years. See § 990.107(g) of this chapter.

PART 990—ANNUAL CONTRIBUTIONS FOR OPERATING SUBSIDY

4. The authority citation for part 990 would continue to read as follows:

Authority: Sec. 9, United States Housing Act of 1937 (42 U.S.C. 1437g); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 990.101 [Amended]

5. In § 990.101, paragraph (c)(4) would be amended by removing the third sentence, and the parenthetical sentence that follows it.

6. In § 990.102, the definition of "range" would be revised, to read as follows:

§ 990.102 Definitions.

* * * * *

Range. Fifteen percent below to fifteen percent above the PHA's Formula Expense Level. The range is used in connection with determination of the Allowable Expense Level, as provided in § 990.105; the qualification for transition funding, as provided in § 990.108; and in consideration of requests for adjustments of the Base Year Expense Level or for appeal of the Allowable Expense Level, as provided under § 990.110.

* * * * *

7. In § 990.105, paragraph (c) would be amended by removing the fourth, fifth, and sixth sentences; paragraph (d) would be removed; paragraphs (e), (f), and (g) would be redesignated as paragraphs (d), (e), and (f), respectively; and newly redesignated (f) would be amended by removing the words "paragraphs (a) through (f)" and substituting the words "paragraphs (a) through (e)". In addition, newly redesignated paragraph (d) would be amended by: redesignating paragraph (d)(6) as paragraph (d)(7); adding a new paragraph (d)(6); and revising paragraphs (d)(1)(iii), (d)(2), introductory text, (d)(2)(ii), (d)(4)(iii), (d)(5)(ii), and (d)(5)(iii) [to change cross-references to "paragraph (e)" to reference "paragraph (d)"], to read as follows:

§ 990.105 Computation of allowable expense level.

* * * * *

(d) *Computation of Allowable Expense Level.* * * *

(1) * * *

(iii) The sum of the Base Year Expense Level, and any amounts described in paragraphs (d)(1) (i) and (ii) of this section multiplied by the Local Inflation Factor.

(2) *Allowable Expense Level for first budget year under PFS where Base Year Expense Level is above the top of the Range.* Every PHA whose Base Year Expense Level is above the top of the Range shall compute its Allowable Expense Level for the first budget year under PFS by adding the following to its top limit of the Range (not to its Base Year Expense Level, as in paragraph (d)(1) of this section):

* * * * *

(ii) The sum of the figure equal to the top limit of its Range and the increase (decrease) described in paragaph (d)(2)(i) of this section, multiplied by the Local Inflation Factor. * * *

* * * * *

(4) * * *

(iii) The sum of the AEL for the Current Budget Year and the increase (decrease) described in paragraphs (d)(4)(i) and (ii) of this section, multiplied by the Local Inflation Factor.

(5) * * *

(ii) * * *

(A) If the PHA has not experienced a change in the number of its units in excess of 5 percent or 1,000 units, whichever is less, since the last adjustment to the AEL based on paragraph (d)(4) or paragraph (d)(5)(ii)(B) of this section, the AEL shall be increased by one-half of one percent (.5 percent); or

(B) If the PHA has experienced a change in the number of units in excess of 5 percent or 1,000 units, whichever is less, since the last adjustment to the AEL based on paragraph (e)(4) of this section or this paragraph (e)(5)(ii)(B), it shall use the increase (decrease) between the Formula Expense Level for the Current Budget Year and the Formula Expense Level for the Requested Budget Year. The PHA characteristics that shall be used to compute the Formula Expense Level for the Current Budget Year shall be the same as those that were used for the Requested Budget Year when the last adjustment to the AEL was made based on paragraph (d)(5)(ii)(B), except that the number of interim years in which the .5 percent adjustment was made under paragraph (d)(5)(kk)(A) shall be added to the average age that was used for the last adjustment; and

(iii) The amount computed in accordance with paragraphs (d)(5)(i) and (ii) of this section shall be multiplied by the Local Inflation Factor.

* * * * *

(6) *Allowable Expense Level for budget years after the first budget year under PFS that begin on or after January 1, 1991.* For each budget year after the first budget year under PFS that begins on or after January 1, 1991, the AEL shall be computed as follows:

(i) The Allowable Expense Level shall be increased by any increase to the AEL approved by HUD under § 990.106(c);

(ii) The AEL for the Current Budget Year also shall be adjusted as follows:

(A) Increased by one-half of one percent (.5 percent); and

(B) If the PHA has experienced a change in the number of units in excess of 5 percent or 1,000 units, whichever is less, since the last adjustment to the AEL based on paragraph (d)(4) of this section or this paragraph (d)(6)(ii)(B), it shall use the increase (decrease) between the Formula Expense Level for the Current Budget Year and the Formula Expense Level for the Requested Budget Year when the last adjustment to the AEL was made based on paragraph (d)(5)(ii)(B), except that the number of interim years in which the .5 percent adjustment was made under paragraph (d)(5)(kk)(A) shall be added to the average age that was used for the last adjustment; and

(iii) The amount computed in accordance with paragraphs (d)(6)(i) and (ii) of this section shall be multiplied by the Local Inflation Factor.

* * * * *

8. In § 990.107, paragraph (b) would be redesignated as paragraph (b)(1) and a new paragraph (b)(2) would be added; the introductory language of paragraph (c) would be revised and a new paragraph (c)(4) would be added; paragraph (f) would be revised; and a new paragraph (g) would be added, to read as follows:

§ 990.107 Computation of utilities expense level.

* * * * *

(b) *Utilities rates.* (1) * * *

(2) If a PHA takes action, such as administrative appeals or legal action, to reduce the rate it pays for utilities, then the PHA will be permitted to retain part of the rate savings during the first 12 months that are attributable to its actions. See paragraph (f) of this section and § 990.110(c).

(c) *Computation of Allowable Utilities Consumption Level.* The Allowable Utilities Consumption Level Consumption Level (AUCL) used to compute the Utilities Expense Level of a PHA for the Requested Budget Year generally will be based on the availability of consumption data. For project utilities where consumption data are available for the entire Rolling Base Period, the computation will be in accordance with paragraph (c)(1) of this section. Where data are not available for the entire period, the computation will be in accordance with paragraph (c)(2) of this section, unless the project is a new project, in which case the computation will be in accordance with paragraph (c)(3) of this section. For a project where the PHA has taken special energy conservation measures that qualify for special treatment in accordance with paragraph (g)(1) of this section, the computation of the Allowable Utilities Consumption Level may be made in accordance with paragraph (c)(4). The AUCL for all of a PHA's projects is the sum of the amounts determined using all of these subparagraphs, as appropriate.

* * * * *

(4) *Freezing the Allowable Utilities Consumption Level.* Notwithstanding the provisions of paragraphs (c)(1) and (c)(2), if a PHA undertakes energy conservation measures that are approved by HUD under paragraph (g) of this section, the Allowable Utilities Consumption Level for the project and the utilities involved may be frozen during the contract period. Before the AUCL is frozen, it must be adjusted to reflect any energy savings resulting from the use of modernization funding. The AUCL is then frozen at the level calculated for the year during which the conservation measures initially will be implemented (adjusted for heating degree days in accordance with paragraph (d) of this section), as determined in accordance with paragraph (g). If the AUCL is frozen during the contract period, the annual three-year rolling base procedures for computing the AUCL shall be reactivated after the PHA satisfies the conditions of the contract. The three years of consumption data to be used in calculating the AUCL after the end of the contract period will be as follows:

(i) *First year:* the energy consumption during the year before the year in which the contract ended and the energy consumption for each of the two years before installation of the energy conservation improvements;

(ii) *Second year:* the energy consumption during the year the contract ended, energy consumption during the year before the contract ended, and energy consumption during the year before installation of the energy conservation improvements;

(iii) *Third year:* the energy consumption during the year after the contract ended, energy consumption during the year the contract ended, and energy consumption during the year before the contract ended.

* * * * * *

(f) *Adjustments.* PHAs shall request adjustments of Utilities Expense Levels in accordance with § 990.110(c), which requires an adjustment based upon a comparison between actual experience and estimates of consumption (after adjustment for heating degree days in accordance with paragraph (d) of this section) and of utility rates.

(g) *Incentives for energy conservation improvements.* If a PHA undertakes conservation measures that are financed by an entity other than the Secretary, such as physical improvements financed by a loan from a utility or governmental entity, management of costs under a performance contract, or a shared savings agreement with a private energy service company, the PHA may qualify for one of two possible incentives under this part. For a PHA to qualify for these incentives, HUD approval must be obtained. Approval will be based upon a determination that payments under the contract can be funded from the reasonably anticipated energy cost savings, and the contract period does not exceed 12 years.

(1) If the contract allows the PHA's payments to be dependent on the cost savings it realizes, then the PHA may take advantage of a frozen AUCL under paragraph (c)(4) of this section, and it may retain the full amount of the cost savings, as described in § 990.110(c)(2)(ii).

(2) If the contract does not allow the PHA's payments to be dependent on the cost savings it realizes, then the AUCL will continue to be calculated in accordance with paragraphs (c)(1) through (c)(3), as appropriate; the PHA will be able to retain part of the cost savings, in accordance with § 990.110(c)(2)(i); and the PHA will qualify for additional operating subsidy (above the amount based on the allowable expense level) to cover the cost of amortizing the improvement loan during the term of the contract, in accordance with § 990.110(f).

9. In § 990.108, a new paragraph (e) would be added, to read as follows:

§ 990.108. Other costs.

* * * * *

(e) *Costs resulting from combination of two or more units.* When a PHA redesigns or rehabilitates a project and combines two or more units into one larger unit and the combination of units results in a unit that houses at least the same number of people as were previously served, the AEL for the requested year shall be multiplied by the number of unit months not included in the requested year's unit months available as a result of these combinations that have occurred since the Base Year.

10. In § 990.110, paragraph (a)(1) would be amended by removing from the last sentence the words, "or $10.31"; paragraphs (c)(1) through (4) would be revised; paragraphs (c)(5) through (6) would be removed; paragraph (e) would be redesignated as paragraph (g); and new paragraphs (e) and (f) would be added; to read as follows:

§ 990.110 Adjustments.

* * * * *

(c) *Adjustments to Utilities Expense Level.* * * *

(i) *Rates.* (i) A decrease in the Utilities Expense Level because of decreased utility rates—to the extent funded by operating subsidy—will be deducted by HUD from future operating subsidy payments. However, where the rate reduction is directly attributable to action by the PHA, such as administrtive appeals or legal action (beyond normal public participation in ratemaking proceedings), 50 percent of the decrease will be retained by the PHA for the 12-month period following the decrease (and the other 50 percent will be deducted from operating subsidy otherwise payable).

(ii) An increase in the Utilities Expense Level because of increased

utility rates—to the extent funded by operating subsidy—will be fully funded requested adjustments shall be retained by the PHA pending HUD audit. be put into effect for the PHA's budget year that begins in calendar year 1991.

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utility rates—to the extent funded by operating subsidy—will be fully funded by residual receipts, if available during that fiscal year, or by increased operating subsidy, subject to availability of funds.

(2) *Consumption.* (i) Generally, 50 percent of any decrease in the Utilities Expense Level attributable to decreased consumption (adjusted for Heating Degree Days in accordance with § 990.107(d)), after adjustment for any utility rate change, will be retained by the PHA; 50 percent will be offset by HUD against subsequent payment of operating subsidy.

(ii) However, in the case of a PHA whose energy conservation measures have been approved by HUD as satisfying the requirements of § 990.107(g)(1), the PHA may retain 100 percent of the savings from decreased consumption (adjusted for Heating Degree Days and for any utility rate changes) until the term of the financing agreement is completed, to be applied in the following order:

(A) Payment of the contractor, as prescribed by the contract;

(B) Reimbursement of the PHA's direct costs related to the energy conservation measures;

(C) Retention of up to 30 percent of the total savings from decreased consumption to cover any eligible costs;

(D) Prepayment of the amount due the contractor under the contract.

(iii) An increase in the Utilities Expense Level attributable to increased consumption will be fully funded by residual receipts after provision for reserves, if available. If residual receipts are not available and the increase would result in a reduction of the operating reserve below the authorized maximum, then 50 percent of the amount will be funded by increased operating subsidy payments, subject to the availability of funds.

(3) *Emergency adjustments.* In emergency cases, where a PHA establishes to HUD's satisfaction that a severe financial crisis would result from a utility rate increase, an adjustment covering only the rate increase may be submitted to HUD at any time during the PHA's Current Budget Year. Unlike the adjustments mentioned in paragraphs (c)(1) and (c)(2) of this section, this adjustment shall be submitted to the HUD Field Office by revision of the original submission of the estimated Utility Expense Level for the fiscal year to be adjusted.

(4) *Documentation.* Supporting documentation substantiating the requested adjustments shall be retained by the PHA pending HUD audit.

* * * * *

(3) *Formal review process (1991).—(1)* Eligibility for consideration. Any PHA with an established Allowable Expense Level may request a review of its Allowable Expense Level for its requested budget year that starts during calendar year 1991.

(2) *Eligibility for adjustment.* If a PHA's AEL for the requested budget year that starts during calendar year 1991 would be either less than 85 percent of the Formula Expense Level or more than 115 percent of the Formula Expense Level, as calculated using the revised formula and the characteristics for the PHA and its community, then the PHA's AEL is subject to adjustment. This revised formula is based on the following factors:

(i) Measures of community distress (and need), such as the community's per capita value of the Community Development Block Grant program's Formula B (multiplied by the proportion of the PHA's units containing two or more bedrooms);

(ii) Measures of area costs, such as the community's index of local government wage rates and the median rent in the community; and

(iii) Measures of the PHA's operating characteristics, such as the weighted average height of the PHA's buildings (multiplied by the proportion of its units containing two or more bedrooms), and the number of the PHA's units containing two or more bedrooms.

(3) *Procedure.* If a PHA wants HUD to provide a formal review of its Allowable Expense Level to determine whether it qualifies for an adjustment, the PHA must request a review before its budget for that year is approved. (However, if a PHA's fiscal year that begins during 1991 starts before the effectiveness of this rule, the PHA's request for a formal review under the revised formula must be submitted within 60 days of HUD's provision of the formula and factors.) Each PHA will be provided with a worksheet, a data chart, and instructions for calculating its revised Formula Expense Level. The PHA can then compare its FEL with its AEL for the requested budget year and determine whether its AEL is within the range. If a PHA requests review and its AEL is within the range, HUD will not adjust the AEL. If a PHA requests review and its AEL is not within the range, HUD will increase it to the bottom of the range, or decrease it to the top of the range. The revised Allowable Expense Levels approved by HUD will be put into effect for the PHA's budget year that begins in calendar year 1991.

(f) *Energy conservation financing.* If HUD has approved an energy conservation contract under § 990.107(g)(2), then the PHA is eligible for additional operating subsidy each year of the contract to amortize the cost of the energy conservation measures under the contract, subject to a maximum annual limit equal to the cost savings for that year (and a maximum contract period of 12 years).

(1) Each year, the energy cost savings would be determined as follows:

(i) The consumption level that would have been expected if the energy conservation measure had not been taken would be adjusted for the Heating Degree Days experience for the year, and for any change in utility rate.

(ii) The actual cost of energy (of the type affected by the energy conservation measure) after implementation of the energy conservation measure would be subtracted from the expected energy cost, to produce the energy cost savings for the year. (See also paragraph (c)(2)(ii) of this section for retention of consumption savings.)

(2) If the cost savings for any year during the contract period is less than the amount of operating subsidy to be made available under this paragraph (f) to pay for the energy conservation measure in that year, the deficiency will be offset against the PHA's operating subsidy eligibility for the PHA's next fiscal year.

* * * * *

11. Section 990.120 would be revised to read as follows:

§ 990.120 Audit.

PHA's that receive financial assistance under this part shall comply with the audit requirements in 24 CFR part 44. If a PHA has failed to submit an acceptable audit on a timely basis in accordance with that part, HUD may arrange for, and pay the costs of, the audit. In such circumstances, HUD may withhold, from assistance otherwise payable to the PHA under this part, amounts sufficient to pay for the reasonable costs of conducting an acceptable audit, including, when appropriate, the reasonable costs of accounting services necessary to place the PHA's books and records into auditable condition.

Dated: December 7, 1989.

Michael B. Janis,

General Deputy, Assistant Secretary for Public and Indian Housing.

[FR Doc. 89-29328 Filed 12-18-89; 8:45 am]

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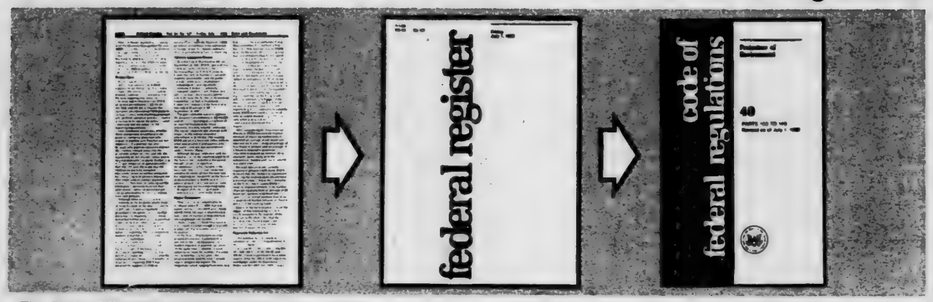

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Rules and Regulations

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

Prevailing Rate Systems

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations which delegate to the Department of Defense (DOD) the responsibility for establishing and issuing the appropriated and nonappropriated fund wage schedules for United States citizen wage employees in foreign areas. The regulations will simplify the process and result in the issuance of wage schedules on a more timely basis.

EFFECTIVE DATE: January 19, 1990.

FOR FURTHER INFORMATION CONTACT: Allan Summers, (202) 632–7630.

SUPPLEMENTARY INFORMATION: On September 11, 1989, OPM published proposed regulations (54 FR 37470) to delegate to DOD the responsibility for computing and issuing the overseas schedules. The proposed regulations provided a 60-day period for public comment. OPM received written comments from one labor organization. The labor organization was in favor of the change.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulations.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they are changes which will affect only employees of the Federal Government.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Government employees, Wages.

U.S. Office of Personnel Management.
Constance Berry Newman,
Director.

Accordingly, OPM is amending 5 CFR part 532 as follows:

PART 532—[AMENDED]

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; sec. 532.707 also issued under 5 U.S.C. 552, Freedom of Information Act, Pub. L. 92–502.

2. In § 532.233, paragraph (a) is revised to read as follows:

§ 532.233 Regular appropriated fund wage schedules in foreign areas and certain U.S. possessions.

(a) The Department of Defense shall establish and issue regular appropriated fund wage schedules for U.S. citizens who are employees in foreign areas and for employees in Guam, Midway, and the U.S. Virgin Islands. The Department of Transportation shall establish and issue wage schedules for employees in American Samoa. These wage schedules will provide rates of pay for nonsupervisory, leader, supervisory, and production facilitating employees.

* * * * *

§ 532.235 [Amended]

3. In § 532.235, paragraph (a) is amended by replacing the term "Office of Personnel Management" with the term "Department of Defense" and by adding the words "establish and" after the word "shall".

[FR Doc. 89–29502 Filed 12–19–89; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Parts 1405, 1421, 1430, 1435, and 1446

Grains and Similarly Handled Commodities, Dairy Products, Peanuts

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final Rule.

SUMMARY: This final rule adopts without change an interim rule published at 54 FR 30714 which amended 7 CFR part 1421 to set forth the manner in which the Commodity Credit Corporation (CCC) will make storage payments with respect to 1985-Crop Farmer-Owned Reserve (FOR) corn and grain sorghum loans which are extended by producers. This interim rule also amended 7 CFR part 1421 to provide that sample grade grain may not be pledged as collateral for CCC price support loans.

This final rule also removes obsolete provisions at 7 CFR parts 1430, 1435, and 1446. In addition, this final rule adopts without change a proposed rule published at 54 FR 34773 which will amend 7 CFR part 1405 to set forth CCC's policy with respect to the mediation of CCC loans.

EFFECTIVE DATE: December 20, 1989.

ADDRESS: The Final Regulatory Impact Analysis describing the options considered in developing this final rule is available from Thomas VonGarlem, Assistant Deputy Administrator, State and County Operations, USDA–ASCS, Room 3096, South Building, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Thomas VonGarlem, (202) 447–6761.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Department Regulation No. 1512–1 and has been designated as "non-major".

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment; therefore, neither an environmental assessment nor an environmental impact statement is needed.

The title and number of the Federal Assistance Program to which this interim rule applies are: Title-Commodity Loans and Purchases, Number 10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that this action will not increase the federal paperwork burden for individual, small businessmen and other persons.

CCC is also not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this final rule. Therefore, the Regulatory Flexibility Act is not applicable.

Keith Bjerke, Executive Vice President, CCC hereby certifies that this rule will not have a significant economic

Subpart—Loan and Purchased Program for 1986 and Subsequent Crops of Oats (7 CFR 1421.245 through

PART 1421—[AMENDED]

1. The interim rule published at 54 FR

§§ 1430.340–1430.351 [Removed]

C. Subpart—Regulations Governing Reductions in the Price of Milk

§ 1405.4 State loan mediation programs.

With respect to farm facility loans made in accordance with 7 CFR

List of Subjects

7 CFR Part 2810

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Keith Bjerke, Executive Vice President, CCC hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities because the action taken in this rule will reduce uncertainty in the operation of the program and will have the effect of stabilizing commodity supply and demand situations.

This activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V published at 48 FR 29115 (June 23, 1983).

On July 24, 1989 (54 FR 30714), CCC published an interim rule which amended 7 CFR part 1421 to provide producers with 1985–1988 corn and sorghum Farmer-Owned Reserve Loans which mature on or after August 31, 1989, the opportunity to extend these loans for six months. The interim rule also, provided that any storage payments which the producer earned would be made at the time of the settlement of the loan. No comments were received in response to the interim rule. Accordingly, the provisions of this interim rule are adopted without change.

Beginning in 1988, CCC has published several rules which amended 7 CFR part 1421 to delete obsolete provisions of the regulations governing several price support programs. However, the modification of these provisions in the 1989 edition of the Code of Federal Regulations erroneously reflects several of these amendments. Accordingly, this final rule again amends 7 CFR part 1421 to delete obsolete program provisions which CCC previously stated would be removed.

On March 1, 1988 (53 FR 6131, 6132), CCC amended the Loan and Purchase Programs for 1986 and Subsequent Crops of oats by deleting references to "1986" and inserting in lieu thereof "1987". Similar amendments were made with respect to the Rice and Farm-Stored Peanut Programs. Subsequently, on June 3, 1988, CCC consolidated the regulations set forth at 7 CFR part 1421 at one subpart and deleted several obsolete subparts. See 53 FR 20280, 20290. The 1989 edition of the Code of Federal Regulations correctly reflects the removal of most of these obsolete subparts except for the subparts which were applicable to the 1986 and subsequent crops of oats, rice, and farm-stored peanuts which were deleted by the June 3, 1988, interim rule. Accordingly, this final rule deletes the following subparts which were erroneously referred to, and included in CFR text of the 1989 edition of the Code of Federal Regulations:

Subpart—Loan and Purchased Program for 1986 and Subsequent Crops of Oats (7 CFR 1421.245 through 1421.254); Subpart—1986 Crop Peanut Farm-Stored Loan and Purchase Program (7 CFR 1421.280 through 1421.291); and Subpart—Loan and Purchase Program for 1985 and Subsequent Crop Rice (7 CFR 1421.300 and 1421.301).

In addition, this final rule deletes in its entirety the regulations in "Subpart—Regulations Governing the Special Producer Storage Loan Program" (7 CFR 1421.900 through 1421.917) since all loans subject to this subpart matured no later than March 31, 1989. Additional changes have also been made in 7 CFR part 1421 to correct erroneous references and for clarity.

On August 22, 1989 (54 FR 34773), CCC issued a proposed rule which would amend 7 CFR part 1405 to set forth CCC's policy with respect to the mediation of CCC loans. No comments were received in response to the proposed rule. Accordingly, the proposed rule is adopted without change.

This final rule also deletes obsolete subparts in 7 CFR parts 1430, 1435, and 1446 with respect to CCC dairy, sugar, and peanut price support programs.

Accordingly, the regulations set forth in the interim rule published at 54 FR 30714 are adopted as a final rule without any changes. The proposed rule published at 54 FR 34773 is also adopted without change. In addition, 7 CFR parts 1421, 1430, 1435 and 1446 are amended to remove obsolete provisions.

List of Subjects

7 CFR Part 1405

Loan program/agriculture, Price support programs.

7 CFR Part 1421

Grains, Loan programs/agriculture, Price support programs, Warehouses.

7 CFR Part 1430

Milk, Agriculture, Price support programs, Dairy products.

7 CFR Part 1435

Loan Program/agriculture, Price support programs, Sugar.

7 CFR Part 1446

Loan Programs/agriculture, Peanuts, Price support programs, Warehouse.

Final Rule

Accordingly, title 7, chapter XIV of the Code of Federal Regulations is amended as follows:

PART 1421—[AMENDED]

1. The interim rule published at 54 FR 30714 is adopted as a final rule without change.

2. The authority citation for part 1421 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, and 1444–1; 15 U.S.C. 714b and 714c; and sec. 501 of Pub. L. 99–198.

3. 7 CFR part 1421 is amended by removing the following subparts:

§§ 1421.245–1421.254 [Removed]

A. Subpart—Loan and Purchase Program for 1986 and Subsequent Crops of Oats (§§ 1421.245 through 1421.254).

§§ 1421.280–1421.291 [Removed]

B. Subpart—1986 Crops Peanut Farm—Stored Loan and Purchase Program

(§§ 1421.280 through 1421.291).

§§ 1421.300–1421.301 [Removed]

C. Subpart—Loan and Purchase Program for 1985 and Subsequent Crop Rice (§§ 1421.300 through 1421.301).

§§ 1421.900–1421.917 [Removed]

D. Subpart—Regulations Governing the Special Producer Storage Loan Program (§§ 1421.900 through 1421.917).

§ 1421.9 [Amended]

4. In § 1421.9(b), the reference to "§ 1421.18(c)" is revised to read "§ 1421.20(c)".

§ 1421.19 [Amended]

5. The heading of 1421.19 is revised to read "*Liquidation of Loans.*".

§ 1421.20 [Amended]

6. In § 1421.20(c)(1)(ii), the reference to "§ 1421.5(b)" is revised to read "§ 1421.4(i)".

PART 1430—[AMENDED]

7. The authority citation for part 1430 is revised to read as follows:

Authority: 7 U.S.C. 1440; 15 U.S.C. 714b and 714c.

8. 7 CFR part 1430 is amended by removing the following subparts:

§§ 1430.291–1430.312 [Removed]

A. Subpart—Regulations Governing Certain Deduction on Milk Marketing of Producers prior to December 1, 1983 (§§ 1430.291 through 1430.312).

§§ 1430.320–1430.331 [Removed]

B. Subpart—Regulations Governing Reduction in the Price of Milk Marketed by Producers, December 1, 1983 to March 31, 1985 (§§ 1430.320 through 1430.331).

§§ 1430.340–1430.351 [Removed]

C. Subpart—Regulations Governing Reductions in the Price of Milk Marketed by producers, January 1, 1988, to December 31, 1988 (§§ 1430.340 through 1430.331).

§§ 1430.400–1430.422 [Removed]

D. Subpart—Milk Diversion Program (§§ 1430.400 through 1430.422).

PART 1435—[AMENDED]

9. The authority citation for part 1435 is revised to read as follows:

Authority: 7 U.S.C. 1421 and 1446; 15 U.S.C. 714b and 714c.

10. 7 CFR part 1435 is amended by removing the following subparts:

§§ 1435.76–1435.86 [Removed]

A. Subpart—Price Support Purchase Agreement Program for 1982-Crop Sugar Beets and Sugarcane (§§ 1435.76 through 1435.86).

§§ 1435.95–1435.107 [Removed]

B. Subpart—Price Support Loan Program for 1982-Crop Sugar Beets and Sugarcane (§§ 1435.95 through 1435.107).

§§ 1435.110–1435.123 [Removed]

C. Subpart—Price Support Loan Program for the 1983 through 1985 Crops of Sugar Beets and Sugarcane (§§ 1435.110 through 1435.123).

PART 1446—[AMENDED]

11. The authority citation for part 1446 continues to read as follows:

Authority: 7 U.S.C. 1421 and 1441; 15 U.S.C. 714b and 714c.

12. 7 CFR part 1446 is amended by removing the following subparts:

§§ 1446.1–1446.17 [Removed]

A. Subpart—General Regulations Governing 1979 through 1981 Crop Peanut Warehouse Storage Loans and Handler Operations (§§ 1446.1 through 1446.17).

§§ 1446.50–1446.67 [Removed]

B. Subpart—General Regulations Governing 1982 through 1985 Crops Peanut Warehouse Storage Loans and Handler Operations (§§ 1446.50 through 1446.67).

PART 1405—[AMENDED]

13. The authority citation for part 1405 is revised to read as follows:

Authority: 15 U.S.C. 714b and 714c.

14. A new § 1405.4 is added to part 1405 to read as follows:

§ 1405.4 State loan mediation programs.

With respect to farm facility loans made in accordance with 7 CFR Part 1474, the Commodity Credit Corporation (CCC) will participate in mediations conducted pursuant to a State's agricultural loan mediation program under the same terms and conditions applicable to agricultural creditors generally and will cooperate in good faith in such mediations by complying with requests for information and analysis, and in presenting and exploring debt restructuring proposals whenever feasible, when that State is and remains a qualifying State as defined in 7 CFR 1946.2(b). CCC will not participate in such mediation programs with respect to commodity price support loans made in accordance with this title.

Signed this 13th, day of November at Washington, DC.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 89–29477 Filed 12–19–89; 8:45 am]

BILLING CODE 3410–05–M

Office of Operations

7 CFR Parts 2810 and 2811

Statement of Agency Organization, Functions, and Availability of Information to the Public

AGENCY: Office of Operations, USDA.

ACTION: Final rule.

SUMMARY: The Office of Operations publishes its statement of organization and functions and availability of information to the public.

EFFECTIVE DATE: December 20, 1989.

FOR FURTHER INFORMATION CONTACT: Bonnie Gray, Office of Operations, U.S. Department of Agriculture, Room 134–W, Administration Building, Washington, DC 20250. Telephone (202) 447–5006.

SUPPLEMENTARY INFORMATION: This rule relates to internal agency management. Therefore, the notice of proposed rulemaking and opportunity for comment required by 5 U.S.C. 553 are not applicable. This rule may be made effective less than 30 days after publication in the Federal Register. This rule does not constitute a "major rule" within the meaning of Executive Order No. 12291 (Improving Government Regulations). Nor will these regulations cause a significant economic impact or other substantial effect on small entities. Therefore, the requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(b), do not apply.

List of Subjects

7 CFR Part 2810

Organization and Functions (Governmetn agencies).

7 CFR Part 2811

Availability of information to the public.

Accordingly, parts 2810 and 2811 are added to read as follows:

PART 2810—ORGANIZATION AND FUNCTIONS—OFFICE OF OPERATIONS

Sec.

2810.1 General Statement.
2810.2 Organization.
2810.3 Functions.

Authority: 5 U.S.C. 301 and 552; 7 CFR 2.76.

§ 2810.1 General Statement.

This part is issued in accordance with 5 U.S.C. 552(a) to provide guidance for the general public as to Office of Operations (OO) organization and functions.

§ 2810.2 Organization.

The Office of Operations (OO) was established January 12, 1982. Delegations of authority to the Director, OO, appear at 7 CFR 2.76. The organization is comprised of six divisions and one staff located at Department headquarters. Description of the functions of these organizational units are in the following section. The organization is headed by a Director.

§ 2810.3 Functions.

(a) *Director.* Provides executive direction for OO. Develops and promulgates overall policies and provides general direction, leadership, oversight, and coordination of USDA management of procurement, real and personal property activities, mail and copier management. Provides executive services to the Office of the Secretary and operates activities providing consolidated USDA administrative functions and services.

(b) *Deputy Director.* Assists the Director, and in the absence of the Director, serves as Acting Director.

(c) *Administrative Unit.* Provides support for agency management regarding budget, accounting, personnel, and other administrative matters.

(d) *Executive Services Division.* Provides executive services to the Office of the Secretary in travel arrangements, supplies, furnishings, communications, equipment, and records. Operates the central USDA DC imprest fund.

(e) *Facilities Management Division.* Operates and maintains the USDA DC

headquarters building complex, including headquarters parking. Oversees management and operation of

made available for public inspection and copying. OO does not maintain any materials within the scope of these

Director, Office of Operations, USDA, Room 113–W Administration Building, Washington, DC 20250.

Veghts, Deputy Director, Office of Examination and Insurance at the above address or telephone (202) 682–9640.

Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort

The FAA has determined that this regulation only involves an established body of technical regulations for which

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headquarters building complex, including headquarters parking. Oversees management and operation of USDA buildings nationwide, and provides DC area labor services.

(f) *Mail and Reproduction Management Division.* Oversees USDA mail, copier, and duplicating programs. Operates DC area central activities in these areas.

(g) *Personal Property Management Division.* Oversees USDA supply, motor vehicle, and personal property programs. Operates centralized warehouse and property rehabilitation facilities.

(h) *Procurement Division.* Oversees USDA procurement programs. Operates centralized purchasing operations for ADP and Washington area activities.

(i) *Real Property Management Division.* Oversees USDA real property management programs.

PART 2811—AVAILABILITY OF INFORMATION TO THE PUBLIC

Sec.

2811.1 General statement.
2811.2 Public inspection and copying.
2811.3 Indexes.
2811.4 Initial request for records.
2811.5 Appeals.
2811.6 Fee schedule.
Appendix A—List of Addresses

Authority: 5 U.S.C. 301 and 552 (as amended); 7 CFR 1.3.

§ 2811.1 General statement.

This part is issued in accordance with 7 CFR 1.3 of the Department of Agriculture regulations governing the availability of records (7 CFR 1.1–1.23 and Appendix A) under the Freedom of Information Act (FOIA), 5 U.S.C. 552. The Department's regulations, as supplemented by the regulations in this part, provide guidance for any person wishing to request records from Office of Operations.

§ 2811.2 Public inspection and copying.

(a) *Background.* 5 U.S.C. 552(a)(2) requires that each agency maintain and make available for public inspection and copying certain kinds of records.

(b) *Procedure.* To gain access to OO records that are available for public inspection, contact the division that maintains them. See Appendix A, List of Addresses, for the location and hours of operation.

§ 2811.3 Indexes.

(a) *Background.* 15 U.S.C. 552(a)(2) also requires that each agency maintain and make available for public inspection and copying current indexes provided identifying information for the public with regard to any records which are made available for public inspection and copying. OO does not maintain any materials within the scope of these requirements.

§ 2811.4 Initial requests for records.

(a) *Background.* The head of each OO division, each OO contracting officer, each OO leasing officer, and the OO FOIA officer is authorized to:

(1) Grant or deny requests for OO records.

(2) Make discretionary release of OO records when it is determined that the public interest in disclosure outweighs the public and/or private ones in withholding.

(3) Reduce or waive fees to be charged where determined to be appropriate.

(4) Refer a request to the OO FOIA Officer for determination.

(b) *Procedures.* Persons wishing to request records from the Office of Operations may do so as follows:

(1) How. Submit each initial request for OO records as prescribed in 7 CFR 1.6.

(2) Where. Submit each initial request to the head of the unit that maintains the records. See Appendix A, List of Addresses. Contact the FOIA Officer for guidance as needed. Or, submit the request to the FOIA Officer for forwarding to the proper officials: FOIA Officer, Office of Operations, USDA, Room 134–W Administration Building, 14th & Independence Avenue SW., Washington, DC 20250.

§ 2811.5 Appeals.

Procedure. Any person whose initial request is denied in whole or in part may appeal that denial, in accordance with 7 CFR 1.6(e) and 1.8, to the Director, Office of Operations, USDA, Room 113–W Administration Building, 14th & Independence Avenue SW., Washington, DC 20250.

§ 2811.6 Fee schedule.

Department regulations provide for a schedule of reasonable standard charges for document search and duplication. See 7 CFR 1.2(b). Fees to be charged are set forth in 7 CFR part 1, subpart A, Appendix A.

Appendix A—List of Addresses

Section 1. General

This list provides the titles and mailing address of officials who have custody of OO records. The normal working hours of these offices are 8:30 a.m. to 5:00 p.m., Monday through Friday, exclusing holidays, during which public inspection and copying of certain kinds of records is permitted.

Section 2. List of Addresses

All of the following addresses are located at 14th Street and Independence Avenue, Washington, DC. Address mail as follows:

Director, Office of Operations, USDA, Room 113–W Administration Building, Washington, DC 20250.
FOIA Officer, Office of Operations, USDA, Room 134–W Administration Building, Washington, DC 20250.
Chief, Administrative Unit, Office of Operations, USDA, Room 134–W, Washington, DC 20250.
Chief, Executive Services Division, Office of Operations, USDA, Room 10–A, Administration Building, Washington, DC 20250.
Chief, Facilities Management Division, Office of Operations, USDA, Room S–313 South Building, Washington, DC 20250.
Chief, Mail and Reproduction Management Division, Office of Operations, USDA, Room 1540 South Building, Washington, DC 20250.
Chief, Personal Property Management Division, Office of Operations, USDA Room 1524 South Building, Washington, DC 20250.
Chief, Procurement Division, Office of Operations, USDA, Room 1550 South Building, Washington, DC 20250.
Chief, Real Property Management Division, Office of Operations, USDA, Room 1566, South Building, Washington, DC 20250.

Signed at Washington, DC. this 14th day of December, 1989.

Frank Gearde, Jr.,

Director, Office of Operations.

[FR Doc. 89-29572 Filed 12-19-89; 8:45 am]

BILLING CODE 3410-98-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 700

Definitions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Correction.

SUMMARY: On November 22, 1989, a final rule was published in the **Federal Register** (54 FR 48231, FR Doc. 89–27241) which amended § 700.1 of the NCUA Rules and Regulations by adding a new paragraph (j), as well as changing several other provisions. The redesignation of § 700.1(l) to § 700.1(m) was inadvertently left out of instruction 2a. in the final rule. This document makes the necessary correction to instruction 2a. so that newly-redesignated § 700.1(m) will appear in the recodification of the Code of Federal Regulations.

EFFECTIVE DATE: December 22, 1989.

ADDRESS: National Credit Union Administration, 1776 G Street NW., Washington 20456.

FOR FURTHER INFORMATION CONTACT: D. Michael Riley, Director, or Nicholas Veghts, Deputy Director, Office of Examination and Insurance at the above address or telephone (202) 682–9640.

By the National Credit Union Administration Board on December 14, 1989.

Becky Baker,

Secretary of the Board.

Accordingly, Instruction 2a. of FR Doc. 89–27241 published in the **Federal Register** on November 22, 1989, in column 2 at page 48234 is corrected to read as follows:

PART 700—DEFINITIONS

§ 700.1 [Corrected]

2. Section 700.1 is amended as follows:

a. Current section 700.1(l) is redesignated as § 700.1(m), current § 700.1(k) is redesignated as § 700.1(l), and current § 700.1(j) is redesignated as § 700.1(k).

[FR Doc. 89–29573 Filed 12–19–89; 8:45 am]

BILLING CODE 7535–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89–ASW–35]

Establishment of Control Zone; Lake Charles Chennault Industrial Airpark, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will establish a part-time control zone at Lake Charles Chennault Industrial Airpark, LA. The action is necessary because there is a part-time nonfederal airport traffic control tower (ATCT) at the Chennault Industrial Airpark and a federally certified weather observer who is qualified to take hourly and special weather observations at the Chennault Industrial Airpark during the times the control zone will be in effect. The intended effect of this amendment is to provide adequate controlled airspace for aircraft executing all standard instrument approach procedures (SIAPs) serving the airpark. The establishment of a control zone will allow the Chennault Industrial Airpark to be used as an alternate airport under instrument flight rules (IFR) weather conditions.

EFFECTIVE DATE: 0901 U.T.C., March 8, 1990.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, System Management Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone (817) 624–5561.

SUPPLEMENTARY INFORMATION:

History

On August 23, 1989, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a control zone at Lake Charles Chennault Industrial Airpark (54 FR 37339).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. One comment was received from a pilot who uses the Chloe Airport, located just north of the Chennault Industrial Airpark, which would be within the new control zone. His concern was that the new control zone will impair his freedom to use the Chloe Airport; however, since he never flies when the weather is less than visual flight rules (VFR) conditions, he did not object to the establishment of the control zone. The only time the control zone would actually affect this commenter's ability to fly into or out of the Chloe Airport would be when the weather is IFR.

No other comments objecting to the same as proposal were received. Except for editorial changes, this amendment is that proposed in the notice. Section 71.171 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E, dated January 3, 1989.

The Rule

This amendment of part 71 of the Federal Aviation Regulations will establish a control zone at Lake Charles Chennault Industrial Airpark. The action is necessary because Chennault Industrial Airpark meets the criteria for the creation of a control zone by the fact that there is a part-time nonfederal ATCT at the Chennault Industrial Airpark and a federally certified weather observer who is qualified to take hourly and special weather observations at the Chennault Industrial Airpark during the times the control zone is in effect. The intended effect of this amendment is to provide adequate controlled airspace for aircraft executing all SIAP's serving the airpark. The establishment of a control zone will allow the Chennault Industrial Airpark to be used as an alternate airport under IFR weather conditions. The new control zone will exclude that portion within the Lake Charles, LA, Control Zone.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Lake Charles Chennault Industrial Airpark, LA [New]

Within a 5-mile radius of the Chennault Industrial Airpark (latitude 30°12'45"N., longitude 93°09'36"W.), excluding that portion within the Lake Charles, LA, Control Zone. This control zone is effective during the specific dates and times established in advance by a notice to airmen. The effective dates and times will thereafter be continuously published in the Airport Facility Directory.

Issued in Fort Worth, TX, on December 4, 1989.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 89–29546 Filed 12–19–89; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 89–ASW–06]

Regulations (14 CFR part 71) to remove the transition area located at Brackettville, TX (54 FR 35666).

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND

designation of a control zone will allow the OU Westheimer Airpark to be used as an alternate airport under instrument

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14

For questions of a technical nature on chemical weapon precursors, call Jo-Anne Jackson, Bureau of Export

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14 CFR Part 71

[Airspace Docket No. 89-ASW-06]

Establishment of Control Zone; Norman, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will establish a control zone at Norman, OK. This action is necessary because the University of Oklahoma (OU) Westheimer Airpark meets the criteria for the establishment of a control zone by the fact that there is a part-time nonfederal airport traffic control tower (ATCT) and a new automated weather observation system (AWOS III), which was commissioned on June 30, 1989, at the OU Westheimer Airpark. The intended effect of this amendment is to provide adequate controlled airspace for aircraft executing the standard instrument approach procedure (SIAP) now serving the OU Westheimer Airpark.

EFFECTIVE DATE: 0901 ut.c., March 8, 1990.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, System Management Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530, telephone (817) 624-5561.

SUPPLEMENTARY INFORMATION:

History

On August 21, 1989, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a control zone at Norman, OK (54 FR 38253).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.171 of part 71 of the Federal Aviation Regulations was published in Handbook 7400.6E, dated January 3, 1989.

The Rule

This amendment to part 71 of the Federal Aviation Regulations will establish a control zone at Norman OK. This action is necessary because the OU Westheimer Airpark meets the criteria for the establishment of a control zone by the fact that there is a part-time nonfederal ATCT at the OU Westheimer Airpark and a new AWOS III, which was commissioned on June 30, 1989. The designation of a control zone will allow the OU Westheimer Airpark to be used as an alternate airport under instrument flight rules (IFR) weather conditions. The intended effect of this amendment is to provide adequate controlled airspace for aircraft executing the standard instrument approach procedure (SIAP) now serving the OU Westheimer Airpark.

Advisory Circular (AC) 150/5220-16, AWOS for Non-Federal Applications, states that AWOS meets the criteria for non-Federal application set forth in the circular and is approved by the National Weather Service as an official source of aviation weather reports. FAA Order 8000.69, paragraph 6d, dated March 23, 1989, states in part that non-Federal AWOS-III's installed, maintained, and operated in accordance with the standards and specifications contained in AC 150/5220-16 are approved for FAR Parts 121 and 135 flight operations, without restrictions. Additionally, FAA Order 8000.69, paragraph 7d, states in part that AWOS-III's established under the guidelines set forth in AC 150/5220-16 are considered the sole official source of weather observations for those airports.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Norman, OK [New]

Within a 5-mile radius of the University of Oklahoma Westheimer Airpark (latitude 35°14'30"N., longitude 97°28'00"W.). This control zone is effective during the specific dates and times established in advance by a notice to airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

Issued in Forth Worth, TX, on December 4, 1989.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 89-29547 Filed 12-19-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 89-ASW-21]

Removal of Transition Area; Brackettville, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will remove the transition area located at Brackettville, TX. On May 1, 1989, the only standard instrument approach procedure (SIAP) serving the Los Medanos Ranch Airport, the RNAV RWY 30 SIAP, was canceled. The cancellation of this SIAP has made this amendment necessary. The intended effect of this amendment is to return to public use that controlled airspace no longer required due to the cancellation of the RNAV RWY 30 SIAP. Coincident with this amendment will be the changing of the status of the Los Medanos Ranch Airport from instrument flight rules (IFR) to visual flight rules (VFR).

EFFECTIVE DATE: 0901 ut.c., March 8, 1990.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, System Management Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530, telephone (817) 624-5561.

SUPPLEMENTARY INFORMATION:

History

On August 17, 1989, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to remove the transition area located at Brackettville, TX (54 FR 33666).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E, dated January 3, 1989.

The Rule

This amendment to part 71 of the Federal Aviation Regulations will remove the transition area located at Brackettville, TX. On May 1, 1989, the only SIAP serving the Los Medanos Ranch Airport, RNAV RWY 30, was canceled. The cancellation of this SIAP has removed the need for this transition area, thus necessitating this amendment. The intended effect of this amendment is to return to public use that controlled airspace no longer required due to the cancellation of the RNAV RWY 30 SIAP. Coincident with this amendment will be the changing of the status of the Los Medanos Ranch Airport from IFR to VFR.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation Safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Brackettville, TX [Removed]

Issued in Fort Worth, TX, on December 4, 1989.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 89-29548 Filed 12-19-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 776 and 799

[Docket No. 91176-9276]

Expansion and Imposition of Foreign Policy Controls on Chemical Weapon Precursors

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Interim rule with request for public comment.

SUMMARY: In support of U.S. foreign policy, and particularly U.S. policies of opposing the proliferation and prohibited use of chemical weapons, the Department of Commerce is revising the foreign policy controls on exports of certain chemical weapon precursors, *i.e.*, chemicals that can be used in the manufacture of chemical weapons. This rule makes several significant revisions which are discussed in detail in **SUPPLEMENTARY INFORMATION.**

DATES: This rule is effective December 20, 1989. Comments must be received by February 20, 1990.

ADDRESSES: Written comments (six copies) should be sent to Sharon Gongwer, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: For questions on the foreign policy export controls, call Toni Jackson, Bureau of Export Administration, Telephone: (202) 377-4531.

For questions of a technical nature on chemical weapon precursors, call Jo-Anne Jackson, Bureau of Export Administration, Telephone: (202) 377-5953 or James Seevaratram, Bureau of Export Administration, Telephone: (202) 377-5695.

SUPPLEMENTARY INFORMATION: First, this rule expands the number of countries to which a license is required for the export of phosphorus trichloride, thionyl chloride, and trimethyl phosphite. A validated license is now required for the export of these three chemicals to all destinations except NATO member countries, Australia, Austria, Ireland, Japan, New Zealand, and Switzerland.

Second, this rule imposes foreign policy controls on ten additional chemicals. To prevent proliferation of chemical weapons, a validated license is now required for export to Iran, Iraq, Syria, and Libya of potassium hydrogen fluoride, ammonium hydrogen fluoride, sodium fluoride, sodium bifluoride, phosporus pentasulfide, sodium cyanide, triethanolamine, diisopropylamine, sodium sulfide, and N,N-diethylethanolamine.

The Department of Commerce has submitted a report to Congress under Section 6 of the Export Administration Act of 1979, as amended, to support the imposition and expansion of the foreign policy controls. The general policy will be to deny exports to Iran, Iraq, Libya, and Syria.

Third, the foreign policy controls imposed by this rule harmonize our controls with other countries with whom the United States consults, such as the Australia Group. This rule adjusts U.S. controls on precursor chemicals to require a validated export license for all countries except NATO, Australia, Austria, Ireland, Japan, New Zealand, and Switzerland for the nine precursors identified on the Australia Group Core List, and to require a validated export license for Country Groups S and Z, Iran, Iraq, and Syria for the forty-one precursors identified on the Australia Group Warning List.

Fourth, this rule revises the Export Administration Regulations (EAR) to require authorization for reexport to Iran, Iraq, Syria and Libya of chemicals controlled under ECCNs 4798B and 5798F. This requirement does not apply to reexports from NATO member countries, Australia, Austria, New Zealand, Ireland, Japan and Switzerland because those countries maintain controls on these precursor chemicals. This action will strengthen U.S. export controls by preventing transfers of U.S.

chemicals to countries that pose proliferation concerns.

In addition, this rule revises 776.19 of the EAR to make needed corrections

Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a

in part 4 of title 15 of the Code of Federal Regulations. Information about the inspection and copying of records may be obtained from Margaret Cornejo,

and by removing "5799C" in the first sentence;

In paragraph (c), by inserting the phrase "from the United States"

whole or in part, to Iran, Iraq, Syria or Libya is prohibited without a validated license.

(k) The provisions of § 776.12 are not

(2) (C.A.S. #868-85-9) Dimethyl phosphite (dimethyl hydrogen phosphite);

(3) (C.A.S. #678-97-1)

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chemicals to countries that pose proliferation concerns.

In addition, this rule revises 776.19 of the EAR to make needed corrections and to require exporters to include the Chemical Abstract Service Registry (C.A.S.) number before the chemical name on the Application for Export License (Form BXA-622P) when requesting authorization to export chemical weapon precursors.

Finally, this rule adds a new "Interpretation 23: Precursor Chemicals" to Supplement No. 1 to § 799.2 (Commodity Interpretations). This new Interpretation provides the C.A.S. number and precursor chemical synonyms, *i.e.*, alternative names for chemicals.

Saving Clause

Shipments of items removed from general license authorizations as a result of this regulation that were on dock for lading, on lighter, laden aboard an exporting carrier, or en route aboard carrier to a port of export pursuant to actual orders for export before December 20, 1989, may be exported under the previous general license provisions up to and including January 8, 1990. Any such items not actually exported before midnight January 8, 1990, require a validated export license in accordance with this regulation.

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule involves collections of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control number 0694-0005 and 0694-0010.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by secton 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. Section 13(a) of the Export Administration Act of 1979 (EAA), as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

However, because of the importance of the issues raised by these regulations, this rule is issued in interim form and, consistent with section 13(b) of the EAA, comments will be considered in the development of final regulations. Publishing this rule in proposed form would impair BXA's ability to impose effective and timely controls.

The period for submission of comments will close February 20, 1990. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The Department will not accept public comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and material to the person submitting the comments and will not consider them in the development of final regulations.

All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, Room 4886, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of title 15 of the Code of Federal Regulations. Information about the inspection and copying of records may be obtained from Margaret Cornejo, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 377-2593. Comments should be submitted to Sharon Gongwer, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Parts 776 and 799

Exports, Reporting and recordkeeping requirements.

Accordingly, the Export Administration Regulations (15 CFR Parts 730-799) are amended as follows:

PART 776—[AMENDED]

1. The authority citation for part 776 is revised to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981; by Pub. L. 99-64 of July 12, 1985; and by Pub. L. 100-418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

2. Section 776.19 paragraph (a) is revised to read as follows:

§ 776.19 Chemical and biological agents.

(a) The following controls are maintained in support of U.S. foreign policy, and particularly the U.S. policies of opposing the proliferation and illegal use of chemical and biological weapons:

(i) Chemicals identified in ECCN 4798B require a validated license for export from the United States to all destinations except Australia, Austria, Belgium, Canada, Denmark, the Federal Republic of Germany, France, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Switzerland, Turkey and the United Kingdom;

(ii) Chemicals identified in ECCN 5798F require a validated license for export from the United States to Iran, Iraq, Libya and Syria;

(iii) Viruses and viroids identified in ECCN 4997B and bacteria, fungi and protozoa identified in ECCN 4998B require a validated license to all destinations except Canada.

* * * * *

3. Section 776.19 is amended as follows:

In paragraph (b), by revising the phrase "paragraph (c), (d) or (e)" to read " paragraphs (c), (d), (e), (f), (g) or (h)" and by removing "5799C" in the first sentence;

In paragraph (c), by inserting the phrase "from the United States" between "the following chemicals" and "to Syria" in the first sentence;

In paragraph (d), by inserting the phrase "from the United States" between "the following chemicals" and "to Iran, Iraq or Syria" in the first sentence;

In paragraph (e), by inserting the phrase "from the United States" between "4998B" and "to Iran, Iraq or Syria" in the first sentence.

4. Section 776.19 is amended by removing paragraph (g), by redesignating paragraph (f) as paragraph (i), and by adding new paragraphs (f), (g), (h), (j), (k), and (l) to read as follows:

* * * * *

(f) Applications to export the following chemicals from the United States to Iran, Iraq, Libya or Syria, in performance of a contract entered into before [Notice To Congress], will generally be approved: potassium hydrogen fluoride, ammonium hydrogen fluoride, sodium fluoride, sodium bifluoride, phosphorus pentasulfide, sodium cyanide, triethanolamine, diisopropylamine, sodium sulfide, and N,N-diethylethanolamine.

(g) Applications to export phosphorus trichloride, trimethyl phosphite, and thionyl chloride from the United States to all destinations, except those described below, in performance of a contract entered into before (Notice to Congress), will generally be approved. This provision does not apply to exports to Country Groups S and Z or to military or police entities in South Africa and Namibia. For exports to Iran, Iraq and Syria, paragraph (d) of this section applies.

(h) Consistent with part 774, the reexport to Iran, Iraq, Libya or Syria of chemicals controlled under ECCNs 4798B and 5798F is prohibited without authorization requirement does not apply to reexports from NATO member countries, Australia, Austria, New Zealand, Ireland, Japan and Switzerland. Applications to reexport to Iran, Iraq, Libya or Syria, in performance of a contract entered into before (Notice to Congress), will generally be approved.

(i) * * *

(j) The reexport provisions of part 774 are not applicable to the foreign policy controls of this section on viruses and viroids identified under ECCN 4997B and bacteria, fungi and protozoa identified under ECCN 4998B. However, the export of those commodities from the United States to any destination with knowledge that they will be reexported directly or indirectly, in whole or in part, to Iran, Iraq, Syria or Libya is prohibited without a validated license.

(k) The provisions of § 776.12 are not applicable to the foreign policy controls of this section.

(l) When preparing a license application for chemicals, applicants shall type the Chemical Abstract Service (C.A.S.) Registry number in Item 9(b) before each chemical name. The C.A.S. numbers are listed with the controlled chemicals in ECCNs 4798B and 5798F under the "List of Chemicals." See Supplement No. 1 to § 799.2, Interpretation 23: Precursor Chemicals, for synonyms of controlled chemicals in ECCNs 4798B and 5798F.

PART 799—[AMENDED]

4a. The authority citation for part 799 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981; by Pub. L. 99-64 of July 12, 1985; and by Pub. L. 100-418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

Supplement No. 1 to § 799.1 [Amended]

5. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), ECCN 4798B is amended by inserting "Austria," between "Australia," and "Belgium" in the Validated License Required paragraph; by revising the Special Foreign Policy Controls paragraph and by revising the "List of Chemicals Controlled by ECCN 4798B" to read as follows:

4798B Precursor and intermediate chemicals used in the production of chemical warfare agents.

* * * * *

Special Foreign Policy Controls: This validated license requirement is maintained to prevent diversion to Iran, Iraq, Syria, and Libya for use in chemical warfare.

List of Chemicals Controlled by ECCN 4798B

(See Supplement No. 1 to § 779.2, Interpretation 23: Precursor Chemicals, for synonyms for the following chemicals)

(1) (C.A.S. #756-79-6) Dimethyl methylphosphonate;

(2) (C.A.S. #868-85-9) Dimethyl phosphite (dimethyl hydrogen phosphite);

(3) (C.A.S. #676-97-1) Methylphosphonyl dichloride;

(4) (C.A.S. #676-99-3) Methylphosphonyl difluoride;

(5) (C.A.S. #10025-87-3) Phosphorus oxychloride;

(6) (C.A.S. #7719-12-2) Phosphorus trichloride;

(7) (C.A.S. #111-48-8) Thiodiglycol;

(8) (C.A.S. #7719-09-7) Thionyl chloride; and

(9) (C.A.S. #121-45-9) Trimethyl phosphite.

6. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), ECCN 5798F is amended by revising the heading, adding a "Special Foreign Policy Controls" paragraph, and adding a "List of Chemicals Controlled by ECCN 5798F" at the end of the entry reading as follows:

5798F Chemicals, as described in this entry.

Controls for ECCN 5798F

* * * * *

Special South Africa and Namibia Controls: * * *

Special Foreign Policy Controls: This validated license requirement is maintained for Iran, Iraq, Syria, and Libya to prevent chemical weapons proliferation.

List of Chemicals Controlled by ECCN 5798F

(See Supplement No. 1 to § 779.2, Interpretation 23: Precursor Chemicals, for synonyms for the following chemicals)

(1) (C.A.S. #1341-49-7) Ammonium hydrogen fluoride;

(2) (C.A.S. #7784-34-1) Arsenic trichloride;

(3) (C.A.S. #76-93-7) Benzilic acid;

(4) (C.A.S. #107-07-3) 2-Chloroethanol;

(5) (C.A.S. #78-38-6) Diethyl ethylphosphonate;

(6) (C.A.S. #15715-41-0) Diethyl methylphosphonite;

(7) (C.A.S. #2404-03-7) Diethyl-N,N-dimethylphosphoroamidate;

(8) (C.A.S. #762-04-9) Diethyl phosphite;

(9) (C.A.S. #100-37-8) N,N-Diethylethanolamine;

(10) (C.A.S. #5842-07-9) N,N-Diisopropyl-.beta.-aminoethane thiol;

(11) (C.A.S. #96-80-0) N,N-Diisopropyl-.beta.-aminoethanol;

(12) (C.A.S. #96-79-7) N,N-Diisopropyl-.beta.-aminoethyl chloride;

(13) (C.A.S. #108-18-9) Diisopropylamine

N,N-Diisopropylamine

.beta.-Diisopropylaminoethyl chloride

(14) (C.A.S. #108-18-9) Diisopropylamine hydrochloride

N,N-Diisopropylamine hydrochloride

.beta.-Diisopropylaminoethyl chloride hydrochloride

(15) (C.A.S. #541-67-9) Dimethyl ethylphosphonate;

(16) (C.A.S. #868-85-9) Dimethyl phosphite (dimethyl hydrogen phosphite);

(17) (C.A.S. #676-97-1) Methylphosphonyl dichloride;

(18) (C.A.S. #676-99-3) Methylphosphonyl difluoride;

(19) (C.A.S. #10025-87-3) Phosphorus oxychloride;

(20) (C.A.S. #7719-12-2) Phosphorus trichloride;

(21) (C.A.S. #111-48-8) Thiodiglycol;

(22) (C.A.S. #7719-09-7) Thionyl chloride; and

(23) (C.A.S. #121-45-9) Trimethyl phosphite.

7. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), ECCN 5799C is removed.

Ethylchlorohydrin

Ethylene chlorhydrin

Ethylene chlorohydrin

Pentachlorophosphorane

Pentachlorophosphorus

Phosphoric chloride

Phosphorus oxychloride

Phosphorus pentachloride

Phosphorus trichloride

Trichlorophosphorus oxide

(6) (C.A.S. 7719-12-2) Phosphorus trichloride

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(12) (C.A.S. #96-79-7) N,N-Diisopropyl-.beta.-aminoethyl chloride;
(13) (C.A.S. #108-18-9) Diisopropylamine;
(14) (C.A.S. #6163-75-3) Dimethyl ethylphosphonate;
(15) (C.A.S. #124-40-3) Dimethylamine;
(16) (C.A.S. #506-59-2) Dimethylamine hydrochloride;
(17) (C.A.S. #57856-11-8) O-Ethyl-2-diisopropylaminoethyl methylphosphonite (QL);
(18) (C.A.S. #1498-40-4) Ethylphosphonous dichloride [Ethylphosphinyl dichloride]; [1]
(19) (C.A.S. #430-78-4) Ethylphosphonus difluoride [Ethylphosphinyl difluoride]; [1]
(20) (C.A.S. #1066-50-8) Ethylphosphonyl dichloride;
(21) (C.A.S. #753-98-0) Ethylphosphonyl difluoride;
(22) (C.A.S. #7664-39-3) Hydrogen fluoride;
(23) (C.A.S. #3554-74-3) 3-Hydroxyl-l-methylpiperidine;
(24) (C.A.S. #76-89-1) Methyl benzilate;
(25) (C.A.S. #676-83-5) Methylphosphonous dichloride [Methylphosphinyl dichloride]; [1]
(26) C.A.S. #753-59-3) Methylphosphonous diflouride [Methylphosphinyl difluoride]; [1]
(27) (C.A.S. #10026-13-8) Phosphorus pentachloride;
(28) (C.A.S. #1314-80-3) Phosphorus pentasulfide;
(29) (C.A.S. #75-97-8) Pinacolone;
(30) (C.A.S. #464-07-3) Pinacolyl alcohol;
(31) (C.A.S. #151-50-8) Potassium cyanide;
(32) (C.A.S. #7789-23-3) Potassium fluoride;
(33) (C.A.S. #7789-29-9) Potassium hydrogen fluoride;
(34) (C.A.S. #1619-34-7) 3-Quinuclidinol;
(35) (C.A.S. #3731-38-2) 3-Quinuclidinone;
(36) (C.A.S. #1333-83-1) Sodium bifluoride;
(37) (C.A.S. #143-33-9) Sodium cyanide;
(38) (C.A.S. #7681-49-4) Sodium fluoride;
(39) (C.A.S. #1313-82-2) Sodium sulfide;
(40) (C.A.S. #102-71-6) Triethanolamine; and
(41) (C.A.S. #122-52-1) Triethyl phosphite.

7. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), ECCN 5799C is removed.

Supplement No. 1 to § 799.2 [Amended]

8. In Supplement No. 1 to § 799.2 (Commodity interpretations), a new "Interpretation 23: Precursor Chemicals" is added to read as follows:

Interpretation 23: Precursor Chemicals

Following is a listing of chemicals controlled by ECCN 4798B and ECCN 5798F that includes their Chemical Abstract Service Registry (C.A.S.) number and synonyms, *i.e.*, alternative names.

(a) The chemicals controlled by ECCN 4798B listed below require a validated license to all countries except Australia, Austria, Belgium, Canada, Denmark, the Federal Republic of Germany, France, Greece, Iceland, Ireland, Italy, Japan, Luxemburg, the Netherlands, New Zealand, Norway, Portugal, Spain, Switzerland, Turkey and the United Kingdom.

(1) (C.A.S. 756-79-6) Dimethyl methylphosphonate (DMMP)
Dimethoxymethyl phosphine oxide
Dimethyl methanephosphonate
Methanephosphonic acid dimethyl ester
Methylphosphonic acid dimethyl ester
(2) (C.A.S. 868-85-9) Dimethyl phosphite
Dimethyoxyphosphine oxide
Dimethyl acid phosphite
Dimethyl hydrogen phosphite
Dimethyl phosphonate
Hydrogen dimethyl phosphite
Methyl phosphonate
(3) (C.A.S. 676-97-1) Methylphosphonyl dichlorids
Dichloromethylphosphine oxide
Methanephosphonodichloridic acid
Methanephosphonyl chloride
Methylphosphonic acid dichloride
Methylphosphonic dichloride
Methylphosphonodichloridic acid
Methylphosphonyl chloride
(4) (C.A.S. 676-99-3) Methylphosphonyl difluoride
Difluoromethylphosphine oxide
Methyl difluorophosphite
Methylphosphonic difluoride
(5) (C.A.S. 10025-87-3) Phosphorus oxychloride
Phosphonyl trichloride
Phosphoric chloride
Phosphoric trichloride
Phosphoroxychloride
Phosphoroxytrichloride
Phosphorus chloride oxide
Phosphorus monoxide trichloride
Phosphorus oxide trichloride
Phosphorus oxytrichloride
Phosphorus trichloride oxide
Phosphoryl trichloride
Trichlorophosphine oxide
Trichlorophosphorus oxide
(6) (C.A.S. 7719-12-2) Phosphorus trichloride
Phosphorus chloride
Trichlorophosphine
(7) (C.A.S. 111-48-8 Thiodiglycol
Bis(2-hydroxyethyl) sulfide
Bis(2-hydroxyethyl) thioether
Di(2-hydroxyethyl) sulfide
Diethanol sulfide
2,2'-Dithiobis-(ethanol)
3-Thiapentane-1,5-diol
2,2'-Thiobisethanol
2,2'-Thiodiethanol
Thiodiethylene glycol
2,2'-Thiodiglycol
(8) (C.A.S. 7719-09-7) Thionyl chloride
Sulfinyl chloride
Sulfinyl dichloride
Sulfur chloride oxide
Sulfur oxychloride
Sulfurous dichloride
Sulfurous oxychloride
Thionyl dichloride
(9) (C.A.S. 121-45-9) Trimethyl phosphite
Phosphorus acid trimethyl ester
Trimethoxyphosphine

(b) The chemicals controlled by ECCN 5798F listed below require a validated license to Country Groups S and Z, Iran, Iraq, Syria, and to South Africa and Namibia if intended for delivery to or for use by or for military or police entities in these destinations, or for use in servicing equipment owned, controlled, or used by or for these entities.

(1) (C.A.S. 1341-49-7) Ammonium hydrogen fluoride
Acid ammonium fluoride
Ammonium bifluoride
Ammonium difluoride
Ammonium hydrofluoride
Ammonium hydrogen bifuoride
Ammonium hydrogen difluoride
Ammonium monohydrogen difluoride
(2) (C.A.S. 7784-34-1) Arsenic trichloride
Arsenic (III) chloride
Arsenous chloride
Fuming liquid arsenic
Trichloroarsine
(3) (C.A.S. 76-93-7) Benzilic acid
.alpha.,.alpha.-Diphenyl-.alpha.-hydroxyacetic acid
Diphenylgloycolic acid
.alpha.,.alpha.-Diphenylglycolic acid
Diphenylhydroxyacetic acid
.alpha.-Hydroxy-2,2-diphenylacetic acid 2-Hydroxy-2, 2-diphenylacetic acid
.alpha.-Hydroxy-.alpha.-phenylbenzeneacetic acid
Hydroxydiphenylacetic acid
(4) (C.A.S. 107-07-3) 2-Chloroethanol
2-Chloro-1-ethanol
Chloroethanol
2-Chloroethyl alcohol
Ethene chlorohydrin
Ethylchlorohydrin
Ethylene chlorhydrin
Ethylene chlorohydrin
Glycol chlorohydrin
Glycol monochlorohydrin
2-Hydroxyethyl chloride
(5) (C.A.S. 78-38-6) Diethyl ethylphosphonate
Ethylphosphonic acid diethyl ester
(6) (C.A.S. 15715-41-0) Diethyl methylphosphonite
Diethoxymethylphosphine
Diethyl methanephosphonite
O,O-Diethyl methylphosphonite
Methyldiethoxyphosphine
Methylphosphonous acid diethyl ester
(7) (C.A.S. 2404-03-7) Diethyl-N,N-dimethylphosphoramidate
N,N-Dimethyl-O,O'-diethyl phosphoramidate
Diethyl dimethylphosphoramidate
Dimethylphosphoramidic acid diethyl ester
(8) (C.A.S. 762-04-9) Diethyl phosphite
Diethoxyphosphine oxide
Diethyl acid phosphite
Diethyl hydrogen phosphite
Diethyl phosphonate
Hydrogen diethyl phosphite
(9) (C.A.S. 100-37-8) N,N-Diethylethanolamine
N,N-Diethyl-2-aminoethanol
Diethyl (2-hydroxyethyl)amine
N,N-Diethyl-N-(.beta.-hydroxyethyl)amine
N,N-Diethyl-2-hydroxyethylamine
Diethylaminoethanol
2-(Diethylamino) ethanol
2-(Diethylamino) ethyl alcohol
N,N-Diethylmonoethanolamine
(2-Hydroxyethyl)diethylamine
N-(2-Hydroxyethyl)diethylamine
2-Hydroxytriethylamine
(10) (C.A.S. 5842-07-9) N,N-Diisopropyl-.beta.-aminoethanethiol
2-(Diisopropylamino) ethanethiol
Diisopropylaminoethanethiol
.beta.-Diisopropylaminoethanethiol
2-(bis(1-Methylethyl)amino) ethanethiol
(11) (C.A.S. 96-80-0) N,N-Diisopropyl-.beta.-aminoethanol
N,N-Diisopropyl-2-aminoethanol
2-(Diisopropylamino) ethanol
(N,N-Diisopropylamino) ethanol
2-(Diisopropylamino) ethyl alcohol
N,N-Diisopropylethanolamine
(12) (C.A.S. 96-79-7) N,N-Diisopropyl-.beta.-aminoethyl chloride
2-Chloro-N,N-diisoproplethanamine
1-Chloro-2-diisopropylaminoethane
2-Chloro-N,N-diisopropylethylamine
N-(2-chloroethyl)-N-(1-methylethyl)-2-propanamine
N-(2-Chloroethyl)diisopropylamine
N,N-Diisopropyl-2-chloroethylamine
1-(Diisopropylamino)-2-chloroethane
2-(Diisopropylamino)ethyl chloridege
Diisopropylaminoethyl chloride
.beta.-Diisopropylaminoethyl chloride
(13) (C.A.S. 108-18-9) Diisopropylamine
N,N-Diisopropylamine
N-(1-Methylethyl)-2-propanamine
(14) (C.A.S. 6163-75-3) Dimethyl ethylphosphonate
Dimethyl ethanephosphonate
Ethylphosphonic acid dimethyl ester
(15) (C.A.S. 124-40-3) Dimethylamine
N-Methyl methanamine
(16) (C.A.S. 506-59-2) Dimethylamine hydrochloride
Dimethylammonium chloride
N-Methyl methanamine hydrochloride
(17) (C.A.S. 57856-11-8) O-Ethyl-2-diisopropylaminoethyl methylphosphonite (QL)
Methylphosphonous acid 2-(bis(1-methylethyl)amino)ethyl ethyl ester
(18) (C.A.S. 1498-40-4) Ethylphosphonous dichloride
Dichloroethylphosphine
Ethyl phosphonous dichloride
Ethyldichlorophosphine
(19) (C.A.S. 430-78-4) Ethylphosphonous difluoride
Ethyldifluorophosphine
(20) (C.A.S. 1066-50-8) Ethylphosphonyl dichloride
Dichloroethylphosphine oxide
Ethanephosphonyl chloride
Ethylphosphinic dichloride
Ethylphosphonic acid dichloride
Ethylphosphonic dichloride
(21) (C.A.S. 753-98-0) Ethylphosphonyl difluoride
Ethyl difluorophosphite
Ethyldifluorophosphine oxide
Ethylphosphonic difluoride
(22) (C.A.S. 7664-39-3) Hydrogen fluoride
Anhydrous hydrofluoric acid
Fluorhydric acid
Fluorine monohydride
Hydrofluoric acid gas
(23) (C.A.S. 3554-74-3) 3-Hydroxy-1-methylpiperidine
3-Hydroxy-N-methylpiperidine
1-Methyl-3-hydroxypiperidine
N-Methyl-3-hydroxypiperidine
1-Methyl-3-piperidinol
N-Methyl-3-piperidinol
(24) (C.A.S. 76-89-1) Methyl benzilate
Benzilic acid methyl ester
.alpha.-Hydroxy-.alpha.-phenylbenzeneacetic acid methyl ester
Methyl .alpha.-phenylmandelate
Methyl diphenylglycolate
(25) (C.A.S. 676-83-5) Methylphosphonous dichloride
Dichloromethylphosphine
Methyldichlorophosphine
Methylphosphorus dichloride
(26) (C.A.S. 753-59-3) Methylphosphonous difluoride
Difluoromethylphosphine
Methyldifluorophosphine
(27) (C.A.S. 10026-13-8) Phosphorus pentachloride
Pentachlorophosphorane
Pentachlorophosphorus
Phosphoric chloride
Phosphorus(V) chloride
Phosphorus perchloride
(28) (C.A.S. 1314-80-3) Phosphorus pentasulfide
Diphosphorus pentasulfide
Phosphoric sulfide
Phosphorus persulfide
Phosphorus sulfide
(29) (C.A.S. 75-97-8) Pinacolone
tert-Butyl methyl ketone
2,2-Dimethyl-3-butanone
3,3-Dimethyl-2-butanone
2,2-Dimethylbutanone
3,3-Dimethylbutanone
1,1-Dimethylethyl methyl ketone
Methyl tert-butyl ketone
Pinacolin
Pinacoline
1,1,1-Trimethylacetone
(30) (C.A.S. 464-07-3) Pinacolyl alcohol
tert-Butyl methyl carbinol
2,2-Dimethyl-3-butanol
3,3-Dimethyl-2-butanol
1-Methyl-2,2-dimethylpropanol
(31) (C.A.S. 151-50-8) Potassium cyanide
(32) (C.A.S. 7789-23-3) Potassium fluoride
Potassium monofluoride
(33) (C.A.S. 7789-29-9) Potassium hydrogen fluoride
Hydrogen potassium difluoride
Hydrogen potassium fluoride
Potassium acid fluoride
Potassium bifluoride
Potassium hydrogen difluoride
Potassium monohydrogen difluoride
(34) (C.A.S. 1619-34-7) 3-Quinuclidinol
1-Azabicyclo(2.2.2)octan-3-ol
3-Hydroxyquinuclidine
(35) (C.A.S. 3731-38-2) 3-Quinuclidone
1-Azabicyclo(2.2.2)octan-3-one
3-Oxyquinuclidine
Quinuclidone
(36) (C.A.S. 1333-83-1) Sodium bifluoride
Sodium hydrogen difluoride
Sodium hydrogen fluoride
Thiophosphoric anhydride
(37) (C.A.S. 143-33-9) Sodium cyanide
(38) (C.A.S. 7681-49-4) Sodium fluoride
Sodium monofluoride
(39) (C.A.S. 1313-82-2) Sodium sulfide
Disodium monosulfide
Disodium sulfide
Sodium monosulfide
Sodium sulphide
(40) (C.A.S. 102-71-6) Triethanolamine
Alkanolamine 244
Nitrilotriethanol
2,2',2''-Nitrilotriethanol
2,2',2''-Nitrilotris(ethanol)
TEA
TEA(amino alcohol)
Tri(2-hydroxyethyl)amine
Triethanolamin

[1] Chemicals name previously used in Supplement No. 1 to § 799.1.

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Tris(.beta.-hydroxyethyl)amine
Tris(2-hydroxyethyl)amine
Trolamine
(41) (C.A.S. 122-52-1) Triethyl phosphite
Phosphorous acid triethyl ester
Triethoxyphosphine
Tris(ethoxy)phosphine

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 89-29429 Filed 12-19-89; 8:45 am]

BILLING CODE 3510-DT-M

FEDERAL TRADE COMMISSION

16 CFR Part 305

RIN 3084-AA26

Rules for Using Energy Cost and Consumption Information Used in Labeling and Advertising of Consumer Appliances Under the Energy Policy and Conservation Act; Ranges of Comparability for Furnaces.

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission announces new ranges of comparability for oil and gas furnaces and boilers based on the revised test procedures published by the Department of Energy (DOE) on February 7, 1989.[1] Ranges of comparability for electric furnaces and boilers, which are not affected by the test revision, will remain unchanged.

EFFECTIVE DATE: March 20, 1990.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney, 202-326-3035, Division of Enforcement, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Section 324 of the Energy Policy and Conservation Act of 1975 (EPCA) [2] requires the Federal Trade Commission to consider labeling rules for the disclosure of estimated annual cost of operation or alternative energy consumption information for at least thirteen categories of appliances. Furnaces are included as one of the categories. Before these labeling requirements may be prescribed, the statute requires the Department of Energy ("DOE") to develop test procedures that measure how much energy the appliances use. In addition, DOE is required to determine the representative average cost a consumer pays for the different types of energy available.

On November 19, 1979, the Commission issued a final rule [3] covering seven of the thirteen appliance categories, including furnaces. The rule requires that energy efficiency, cost of operation and related information be disclosed on fact sheets and in retail sales catalogs for all furnaces presently manufactured. Certain point-of-sale promotional materials must disclose the availability of energy usage information. If a furnace is advertised in a catalog from which it may be purchased by cash, charge account or credit terms, then certain efficiency information concerning the product must be included on each page of the catalog that lists the product. The required disclosures and all claims concerning energy consumption made in writing or in broadcast advertisements must be based on the results of the DOE test procedures.

The rule requires that each fact sheet show a range, or scale, indicating the range of energy efficiencies for all furnace models of a size or capacity comparable to the model to which the fact sheet pertains. These ranges show the highest and lowest energy efficiencies for the various size or capacity groupings of furnaces covered by the rule.

Under § 305.10(a) of the rule, the Commission is empowered to publish new ranges annually in the **Federal Register**, if appropriate. The rule specifies that it is appropriate to publish new ranges whenever the upper or lower limits of the range change by 15% or more from the previously published ranges. Otherwise, the Commission must publish a statement that the prior ranges remain in effect until new ranges are published.[4] However, in other circumstances publication of new ranges also may be applicable.

Today, the Commission is publishing new ranges because DOE has changed part of its test procedure for furnaces and boilers. As a result of this change, the energy efficiency measure (the annual fuel utilization efficiency) for many oil- and gas-fueled furnaces is slightly lower when tested under the revised procedure. With the assistance of the Gas Appliance Manufacturers Association, the Commission's staff has determined that, in most cases, the ranges for these products have been changed because of these new test results.[5] Although these limits have generally changed by less than 15%, the Commission believes that these new ranges, which more accurately reflect the efficiencies of products in the marketplace, should be published. By publishing new ranges, the Commission can ensure that the efficiency ranges, as well as the other required efficiency disclosures appearing in the marketplace that must be based on the DOE procedure, will be derived from the same test procedure.

In consideration of the foregoing, the Commission herewith publishes new ranges for gas-fueled and oil-fueled furnaces and boilers. Since the revisions to the DOE test procedure do not affect that part of the test pertaining to electric furnaces and boilers, the ranges for those products remain unchanged.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

Accordingly, 16 CFR part 305 is amended as follows:

PART 305—[AMENDED]

1. The authority citation for part 305 continues to read as follows:

Authority: Sec. 324 of the Energy Policy and Conservation Act (Pub. L. 94-163) (1975), as amended by the National Energy Conservation Policy Act, (Pub. L. 95-619) (1978), the National Appliance Energy Conservation Act, (Pub. L. 100-12) (1987), and the National Appliance Energy Conservation Amendments of 1988, (Pub. L. 100-357) (1988), 42 U.S.C. 6294; sec. 553 of the Administrative Procedure Act, 5 U.S.C. 553.

Appendices G1 and G3 to Part 305 [Amended]

2. Appendix G1 is revised to read as follows:

1. Range Information:

APPENDIX G1—FURNACES—GAS

Comparability (BTU per hour)	Ranges of energy efficiency ratings	
	Low	High
5,000 to 10,000	(1)	(1)
11,000 to 16,000	(1)	(1)
17,000 to 25,000	66.4	73.7
26,000 to 42,000	58.8	96.6
43,000 to 59,000	58.2	95.0
60,000 to 76,000	58.1	94.9
77,000 to 93,000	59.3	94.0
94,000 to 110,000	60.0	94.0
111,000 to 127,000	63.0	92.6
128,000 to 144,000	61.9	92.6

[1] 54 FR 6002. The DOE test procedures went into effect on September 5, 1989.

[2] Pub. L. 94-163, 89 Stat. 871 (Dec. 22, 1975).

[3] 44 FR 66466, 16 CFR part 305 (Nov. 19, 1979).

[4] In the case of furnaces, the Commission has never found it necessary to change the original ranges that were published on March 25 and April 17, 1980 (45 FR 19520 and 20036).

[5] Some of the upper and/or lower limits of the ranges for these products have increased, however, for reasons unrelated to the new test procedure.

APPENDIX G1—FURNACES—GAS—Continued

Comparability (BTU per hour)	Ranges of energy efficiency ratings	
	Low	High
145,000 to 161,000	62.2	92.6
162,000 to 178,000	(1)	(1)
179,000 to 195,000	(1)	(1)
196,000 and over	(1)	(1)

[1] No data submitted.

3. Appendix G3 is revised to read as follows:

APPENDIX G3—FURNACES—OIL

Comparability (BTU per hour)	Ranges of energy efficiency ratings	
	Low	High
5,000 to 10,000	(1)	(1)
11,000 to 16,000	(1)	(1)
17,000 to 25,000	(1)	(1)
26,000 to 42,000	(1)	(1)
43,000 to 59,000	76.3	86.7
60,000 to 76,000	75.0	88.9
77,000 to 93,000	67.9	89.1
94,000 to 110,000	73.5	86.0
111,000 to 127,000	72.7	86.7
128,000 to 144,000	73.3	83.7
145,000 to 161,000	65.5	86.0
162,000 to 178,000	74.3	82.7
179,000 to 195,000	78.0	81.4
196,000 and over	(1)	(1)

[1] No data submitted.

Donald S. Clark,

Secretary.

[FR Doc. 89-29575 Filed 12-19-89; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF LABOR

Employment Standards Administration

20 CFR Part 10

RIN 1215-AA50

Compensation Payable Under the Federal Employees' Compensation Act, as Amended

AGENCY: Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: The Department of Labor is making a technical change to the regulations implementing the Federal Employees' Compensation Act (FECA), 5 U.S.C. 8101, *et seq.* The change reflects recent legislation (Pub. Law 100-566) amending section 8112 of the FECA to exempt from the provision establishing a maximum amount of monthly compensation payable, certain individuals injured during an assassination attempt against specified government officials. Because the change merely incorporates the new statutory language the rule is published as a final rule, effective immediately.

EFFECTIVE DATE: December 20, 1989.

FOR FURTHER INFORMATION CONTACT: Thomas M. Markey, Director for Federal Employees' Compensation, Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S-3229, Washington, DC, 20010; Telephone: (202) 523-7552.

SUPPLEMENTARY INFORMATION: Section 5 of Public Law 100-566 (approved October 31, 1988, Public Law 100-566, 102 Stat. 2834) amended section 8112 of the Federal Employees' Compensation Act, which establishes maximum (and minimum) monthly compensation payments. The amendment removes the ceiling (75% of the maximum rate of basic pay for GS-15) on the amount of disability compensation payable for "any employee whose disability is a result of an assault which occurs during an assassination or attempted assassination of a Federal official described under section 351(a) or 1751(a) of title 18, and was sustained in the performance of duty."

Section 351 of title 18 of the United States Code refers to Members of Congress, a Cabinet officer or the second ranking official in such a department, the Director or Deputy Director of the Central Intelligence Agency, a major Presidential or Vice Presidential candidate, or a Justice of the United States, including nominees for these positions as defined. Section 1751 of 18 U.S.C., refers to the President, President-elect, Vice President (or if none then the officer next in order of succession) or Vice President-elect, or certain persons employed in the Executive Office of the President or Vice President.

The final rule changes the regulation dealing with compensation rates to conform with the amendment to the Act. This would ensure that the provisions of the law are accurately reflected in the implementing regulations.

Publication in final: The Department of Labor has determined, pursuant to 5 U.S.C. 553(b)(B), that good cause exists for waiving public comment on this amendment to the regulations because the change is mandated by law and involves no interpretation.

The Department has determined that good cause exists for waiving the customary requirement for delay in the effective date of a final rule for 30 days following its publication. Therefore this amendment shall be effective immediately. See 5 U.S.C. 553(d)(3). This finding is made because the change is mandated by a statutory change and involves no discretionary action.

Classification—Executive Order 12291

The Department of Labor does not believe that this regulatory proposal constitutes a "major rule" under Executive Order 12291, as it will not result in: (1) an annual effect on the economy of $100 million or more; (2) a major increase in cost or prices for consumers, individual industries, federal, state or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory analysis is required.

Paperwork Reduction Act

The information collection requirements entailed by the rule will not differ from those currently in effect. No new forms are required.

Regulatory Flexibility Act

The Department believes that the rule will have "no significant economic impact upon a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act. Public Law 96-354, 91 Stat. 1164 (5 U.S.C. 605(c)). The regulation applies solely to benefits administered by the Department of Labor and paid to individual claimants who are or were federal employees or their survivors; no additional burdens are being imposed on small entities. The Secretary of Labor has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Accordingly, no regulatory impact analysis is required.

List of Subjects in 20 CFR Part 10

Claims, Government employees, Archives and records, Health records, Freedom of Information, Privacy, Penalties, Health professions, Workers' Compensation, Employment, Administrative practice and procedure, Wages, Health facilities, Dental health, Medical devices, Health care, Lawyers, Legal services, Student, X-rays, Labor, Insurance, Kidney disease, Lung disease, Tort claim.

For the reasons set out in the preamble, title 20; chapter I, subpart C of the Code of Federal Regulations is amended as follows:

1. The authority citation for 20 CFR part 10 is revised to read as follows:

BEST COPY AVAILABLE

Authority: 5 U.S.C. 301; Reorganization Plan No. 6 of 1950, 15 FR 3174, 64 Stat. 1263; 5 U.S.C. 8145, 8149; Secretary's Order 7-87, 52

On February 2, 1988, the U.S. Court of Appeals for the District of Columbia Circuit upheld the standard in most

issues results in any change to the information collection burden which would require OMB paperwork

why OSHA did not adopt the provisions. The Court also ordered OSHA to clarify the regulatory text for two provisions

to publish rulemaking proposals no later than February 27, 1990, but invited OSHA to attempt to resolve these issues

regarding the spray application of asbestos-containing products.

Based on the record of the 1986

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Authority: 5 U.S.C. 301; Reorganization Plan No. 6 of 1950, 15 FR 3174, 64 Stat. 1263; 5 U.S.C. 8145, 8149; Secretary's Order 7–87, 52 FR 48460; Employment Standards Order 78–1, 43 FR 51469.

2. Section 10.300 is amended by revising paragraph (a) and adding a new paragraph (c) to read as follows:

§ 10.300 Maximum and minimum compensation.

(a) *Disability.* Compensation for disability may not exceed 75 percent of the monthly pay of the highest step of grade 15 of the General Schedule, except insofar as provided in paragraph (c) below. For total disability, it may not be less than 75 percent of the monthly pay of the first step of grade 2 of the General Schedule or actual pay, whichever is less.

* * * * *

(c) *Exclusion from maximum compensation rate.* The provisions in paragraph (a) above concerning the maximum rate of compensation do not apply to any employee whose disability is a result of an assault which occurs during an assassination or attempted assassination of a Federal official described under section 351(a) or 1751(a) of title 18, and was sustained in the performance of duty.

Signed at Washington, DC, this 13th day of December, 1989.

Lawrence W. Rogers,

Director, Office of Workers' Compensation Programs.

[FR Doc. 89–29458 Filed 12–15–89; 8:45 am]

BILLING CODE 4510–27–M

Occupational Safety and Health Administration

29 CFR Parts 1910 and 1926

[Docket No. H–033]

Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Final rule; partial response to court remand.

SUMMARY: On June 20, 1986, at 51 FR 22812, OSHA published revised standards governing occupational exposure to asbestos in general industry (29 CFR 1910.1001) and construction (29 CFR 1926.58). OSHA reduced the 8-hour time weighted average permissible exposure limit to 0.2 f/cc, and adopted provisions for medical surveillance, exposure monitoring, methods of compliance, respirators and record keeping, among others.

On February 2, 1988, the U.S. Court of Appeals for the District of Columbia Circuit upheld the standard in most respects but remanded the case to OSHA on several issues. *Building and Construction Trades Department* v. *Brock*, 838 F. 2d 1258 (D.C. Cir. 1988). In partial response to the decision, on September 14, 1988, OSHA issued a short term exposure limit (STEL) for asbestos of 1 f/cc averaged over a sampling period of 30 minutes (53 FR 35610).

In June and July 1989, the Building and Construction Trades Department of the AFL–CIO (BCTD) and the AFL–CIO petitioned the Court to order OSHA to resolve all remand issues on the record of the 1986 rulemaking proceeding. The Court, on October 30, 1989, ordered OSHA to take action on three of the remand issues by December 14, 1989 (Category I), and the remaining issues by January and February 1990.

This document constitutes OSHA's response on the first three remand issues. OSHA is (1) removing the ban on the spraying of asbestos-containing materials; (2) changing the regulatory text to clarify when construction employers must resume periodic monitoring; and (3) explaining why OSHA is not amending the regulatory text at this time to clarify the limited exemption for "small-scale, short-duration operations" in the construction industry standard.

OSHA intends to publish a notice of its resolution o Category II remand issues by January 28, 1990, and a notice of proposed rulemaking for Category III remand issues by February 27, 1990.

EFFECTIVE DATE: Amendments to the standard will become effective January 19, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, OSHA, U.S. Department of Labor, Office of Public Affairs, room N3647, 200 Constitution Avenue NW., Washington, DC 20210. Telephone (202) 523–8151.

SUPPLEMENTARY INFORMATION:

I. Clearance of Information Collection Requirements

On March 31, 1983, the Office of Management and Budget (OMB) published 5 CFR part 1320, implementing the information collection provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. (48 FR 13666). Part 1320, which became effective on April 30, 1983 and was revised May 10, 1988 (53 FR 16618), sets forth procedures for agencies to follow in obtaining OMB clearance for information collection requirements. OSHA does not believe that the resolution of these remand issues results in any change to the information collection burden which would require OMB paperwork clearance. OMB has approved information collection requests for the existing asbestos standards in accordance with the provisions of the Paperwork Reduction Act under control numbers 1218–0133 and 1218–0134. The changes herein impose no new or additional information collection burdens.

II. Background

On June 17, 1986, OSHA issued revised standards governing occupational exposure to asbestos, tremolite, anthophyllite and actinolite for general industry and construction (51 FR 22612 *et seq.*, June 20, 1986). Effective July 21, 1986, the revised standards amended OSHA's previous asbestos standard issued in 1972. (On October 17, 1986, OSHA published a partial stay of the revised standards insofar as they apply to occupational exposure to non-asbestiform tremolite, anthophyllite and actinolite (51 FR 37002). The stay has been extended to November 30, 1990 (see 54 FR 30704), to enable OSHA to complete rulemaking on these non-asbestiform minerals. The partial stay continues to apply to the 1986 standards and all amendments thereto, including the amendments in this notice.)

Separate comprehensive standards for general industry and construction were issued which shared the same PEL and most ancillary requirements. The standards reduced the TWA permissible exposure limit tenfold to 0.2 f/cc from the previous 2 f/cc limit. Specific provisions were added in the construction standard to cover unique hazards relating to asbestos abatement and demolition jobs.

Several major participants in the rulemaking proceeding including the AFL–CIO, the Building and Construction Trades Department ("BCTD"), and the Asbestos Information Association ("AIA"), challenged various provisions of the revised standards. On February 2, 1988, the U.S. Court of Appeals for the District of Columbia Circuit issued its decision upholding most major challenged provisions, but remanding certain issues to OSHA for reconsideration (*BCTD, AFL–CIO* v. *Brock*, 838 F. 2d 1258). The Court held that where rulemaking participants had recommended regulatory provisions which, on the record, appeared to be feasible and to confer more than a *de minimis* benefit in reducing significant risk, OSHA must either adopt them, refute the evidence of feasibility or benefit, or more persuasively explain

why OSHA did not adopt the provisions. The Court also ordered OSHA to clarify the regulatory text for two provisions and found one provision, a ban on spraying asbestos-containing products, unsupported by the record. In addition, OSHA's failure to adopt a STEL was ordered to be reconsidered within 60 days of the Court's mandate. In partial response, OSHA issued a STEL, called an "excursion limit," of 1 f/cc measured over 30 minutes, on September 14, 1988 (53 FR 35610).

On June 10 and July 18, 1989, BCTD and the AFL–CIO petitioned the Court to enforce its remand order by ordering OSHA to resolve all remand issues on the record of the 1986 rulemaking proceeding within 7 to 60 days. The Court, in an October 30, 1989 order, divided the remand issues into three categories as follows.

With respect to three issues, the Court ordered OSHA to take action by December 14, 1989. These issues are:

(1) Formally delete the ban on the spraying of asbestos-containing materials;

(2) Clarify that periodic monitoring in the construction industry must be resumed after conditions change; and

(3) Clarify the exemption for "small-scale, short-duration operations" from the negative-pressure enclosure requirements of the construction standard to limit the exemption to work operations where it is impractical to construct an enclosure because of the configuration of the work environment.

On these issues, the Court told OSHA that if it determines not to make any of the regulatory changes, it should explain its inaction in a written statement. In addition, the Court noted that OSHA may propose new rules after making the changes in the standard.

With respect to the second group of issues, the Court ordered OSHA to complete its response on the existing record by January 28, 1990. These issues are:

(4) The possibility of further regulations governing employee smoking controls;

(5) The effectiveness levels of various respirators and OSHA's policy of requiring respirators to protect workers at only the PEL level; and

(6) The possibility of bilingual warnings and labels for employers with a significant number of non-English-speaking employees.

The Court stated that if OSHA determines that these issues could not be resolved on the existing record, OSHA may explain why and commence new rulemaking instead.

Finally, as to the three remaining remand issues, the Court allowed OSHA to publish rulemaking proposals no later than February 27, 1990, but invited OSHA to attempt to resolve these issues on the existing record if possible. These issues are:

(7) The establishment of operation-specific permissible exposure limits;

(8) The extension of reporting and transfer requirements;

(9) The expansion of the competent person requirement to all employers engaged in any kind of construction work.

This document constitutes OSHA's response to the first three issues. OSHA is deleting the previously imposed ban on the spraying of asbestos-containing materials (29 CFR 1910.1001(f)(1)(vii), 1926.58(g)(2)(iii); amending the regulatory text of section 1926.58(f)(4) to clarify its intent to require construction employees to resume monitoring when conditions change; and explaining that it has determined not to amend the exemption from the negative pressure enclosure requirements. OSHA will institute rulemaking on this latter issue as part of the rulemaking proceeding to be instituted in response to the Court's order concerning issues 7, 8 and 9.

On these first three issues, because OSHA is merely adding regulatory text to clarify its previously expressed intent and deleting a provision which the Court of Appeals has ruled is invalid, the Agency concludes that advance notice and opportunity for comment are impractical and unnecessary in accordance with the intent of 5 U.S.C. 553(b).

OSHA will reconsider the other issues remanded by the Court pursuant to the terms of the October 30 court order. A notice will be published by January 28, 1990 in the **Federal Register** detailing the Agency's resolution of Issues 4, 5, and 6 based on the existing record. OSHA will further publish a notice of proposed rulemaking on issues 7, 8 and 9, and issue 3, by February 27, 1990.

III. Summary and Explanation of the Remand Issues

1. OSHA's Ban on the Spraying of Asbestos Products

In its 1986 standard, OSHA banned the application of asbestos-containing products through spray techniques. (29 CFR § 1910.1001(f)(1)(vii), 1926.58(g)(2)(iii)). The Court of Appeals reviewed OSHA's findings and concluded that: "The support for the ban plainly fails to meet the 'substantial evidence' standard imposed by section 6(f) of the Act* * *. The ban cannot stand." OSHA, therefore, is amending the regulatory text of the final asbestos standard by deleting the prohibition regarding the spray application of asbestos-containing products.

Based on the record of the 1986 standard, OSHA believes that deleting this prohibition will not significantly increase the risk to employees. Many asbestos-containing products have been banned by EPA, and the remaining ones are formulated by encapsulating any asbestos content which limits releases to undetectable amounts. In addition, the OSHA PEL and excursion limit apply to all asbestos operations, including spraying. Thus, the ban would not have significantly reduced the risk to employees who may be present during the spraying of asbestos-containing products.

2. Resumption of Monitoring in the Construction Industry

The Court ordered OSHA to add to the construction standard the resumption of monitoring requirement found in the general industry standard. In its 1986 decision the Court stated that:

> The regulations allow a construction industry employer to terminate periodic monitoring if the results of monitoring demonstrate that exposures are below the action level, 29 CFR § 1926.58(f)(4). Unlike the equivalent provision for general industry, however, the construction industry standard includes no requirement for the resumption of monitoring when a change in workplace conditions may result in exposures above the action level. Compare 29 CFR § 1910.1001(d)(5). OSHA replies only that this sort of resumption requirement is implicit in the current standard. OSHA Brief at 90. In view of the risk that an employer might infer the opposite from the contrast in language, we believe OSHA should clarify the regulation to conform to the intent expressed in its brief. (838 F. 2d at 1276).

Therefore, OSHA is renumbering the current paragraph (f)(4), Termination of monitoring, as paragraph (f)(4)(i), and is adding the following provision to the regulatory text to clarify its previously expressed intent:

§ 1926.58(f)(4)(ii). *Additional monitoring.* Notwithstanding the provisions of paragraph (f)(4)(i) of this section, the employer shall institute the exposure monitoring required under paragraph (f)(3) of this section whenever there has been a change in process, control equipment, personnel or work practices that may result in new or additional exposures above the action level and/or excursion limit or when the employer has any reason to suspect that a change may result in new or additional exposures above the action level and/or excursion limit. Exception: When all employees within a regulated area are equipped with supplied-air respirators operated in the positive-pressure mode, the employer may dispense with the monitoring required by this paragraph.

OSHA believes that requiring monitoring to be resumed when changed conditions indicate increased exposure

exception as now worded seems to erase the rule." (838 F. 2d at 1279). The Court ordered the Agency to clarify the

effectiveness of worker isolation techniques such as glove bags, and the incidental nature of the removal, would

exposure or of significant asbestos release during renovation and removal.

Third, OSHA has received numerous

IV. State Plan Applicability

Twenty-five states and U.S. territories

PART 1910—[AMENDED]

Subpart Z—[Amended]

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OSHA believes that requiring monitoring to be resumed when changed conditions indicate increased exposure ensures that workplace exposures are accurately assessed. This provision is included in the general industry asbestos standard and in all other substance-specific standards with monitoring requirements. OSHA did not intend to exclude this provision from the construction standard. Especially in construction, where work processes change often, allowing monitoring to be terminated based on the results of one monitoring event showing exposures below the action level and excursion limit would defeat an exposure monitoring scheme and would have been outside OSHA's original intent. This change clarifies that intent.

For purposes of clarity, OSHA is including in the requirement for additional monitoring the same exemption which currently applies to the periodic monitoring requirement. This exempts employers from resuming daily monitoring if all the employees in the regulated area are equipped with supplied-air respirators operated in the positive-pressure mode. OSHA found that such respirator use, the most protective available, was sufficiently protective, so that daily monitoring was not necessary. Additionally, OSHA found that the costs of daily monitoring were sufficiently high, so that exempting employers from that obligation conditioned on providing the most protective respirators would be an effective incentive to providing that degree of respiratory protection. The exemption logically applies equally to the additional monitoring required by paragraph (f)(4)(ii), and has therefore been included.

3. Clarifying the Exemption for "Small-Scale, Short-Duration Operations"

Paragraph (e)(6) of the construction standard requires the employer to establish negative-pressure enclosures wherever feasible, and to designate "competent persons," before commencing asbestos removal, demolition and renovation operations. Paragraph (e)(6)(iv) contains an exception to these requirements for small-scale, short-duration operations. The standard gives as examples such operations as pipe repair, valve replacement, installing electrical conduits, installing or removing drywall, roofing, and other general building maintenance or renovation activities, but does not explicitly define "small-scale, short-duration operations."

In the February 1986 decision, the Court found that the scope of the exception was so unclear that "the exception as now worded seems to erase the rule." (838 F. 2d at 1279). The Court ordered the Agency to clarify the exception by limiting it to operations where it is impractical to construct a negative pressure enclosure because of the configuration of the work environment, and thereby to conform the exemption to OSHA's original representations as to its meaning. (See 838 F. 2d at 1279–80; and Court Order dated October 30, 1989.)

As noted above, the Court further ordered on October 30 that "(i)f OSHA finally determines not to make * * * [this] regulatory change, it shall explain its inaction in a written statement, copies of which it shall send to this court and to the parties." OSHA has determined not to change the regulatory text concerning small-scale, short-duration operations at this time and instead to institute rulemaking on this issue. The reasons for this determination are as follows.

First, the agency believes, based on its experience in enforcing the construction standard, that explicitly limiting the exemption to situations where negative pressure enclosures are impractical might not reduce employee risk from asbestos exposure.

The negative pressure enclosures contemplated by the 1986 standard are area enclosures in which abatement and renovation employee work. The enclosures are required to be placed under negative pressure (a partial vacuum) so that asbestos fibers remain inside even if a leak develops in the enclosure shell. OSHA believes that negative pressure enclosures reduce employee risk primarily by reducing leakage and containing the asbestos material being disturbed. Thus areas outside the work area are not contaminated and bystander employees are protected from exposure. However, the record of the 1986 standard contains no data concerning whether employees working within the negative pressure enclosures also benefit from reduced exposure, whether working inside enclosures may increase exposures, and whether enclosures may introduce other potential work hazards such as heat stress. Further rulemaking is necessary to develop this information.

OSHA believes, therefore, that modifying the exemption in the standard to apply only where the erection of enclosures is impractical would result in the use of such enclosures in operations where they would not necessarily enhance worker protection. It would mean that virtually all removal and renovation jobs, regardless of the amount of asbestos being disturbed, the effectiveness of worker isolation techniques such as glove bags, and the incidental nature of the removal, would have to be performed within enclosures. As noted above, the earlier record does not compel the use of negative pressure enclosures in all cases where they are practical, because the record does not address all pertinent questions about the effects on employees in such enclosures. OSHA believes that employees disturbing only small amounts of asbestos, protected by the controls in appendix G, may not additionally benefit from negative pressure enclosures and thus may not be at increased risk as a result of their absence. Similarly, bystander employees do not always need the protection provided by walk-in enclosures, where glove bags contain fibers released and the amount of asbestos being disturbed is small. OSHA therefore concludes that an expanded negative pressure enclosure requirement is not necessary to protect employees in these restricted situations at this time.

Second, OSHA does not believe that an immediate regulatory limitation on the exception's scope is needed, because the Agency is now enforcing, through interpretation, restrictions of the exception which meet the court's concerns about its potential overbreadth. Until supplementary rulemaking is completed, OSHA needs the flexibility provided by a compliance policy which can accommodate its growing knowledge about asbestos abatement technology. OSHA's instruction to the field (CPL 2–2.40), issued on September 1, 1987, and letters of interpretation, indicate that for the exemption to apply the operation must meet all of the following criteria: (1) The removal of asbestos-containing materials is not the primary goal of the job; (2) employees' exposures to asbestos can be kept below the action level via worker isolation techniques, such as glove bags or other methods described in appendix G; (3) the operation must be included in the employer's asbestos "maintenance program" (as required in appendix G); (4) the operation must be nonrepetitive (i.e., not a series of small-scale jobs, which if performed at one time would have resulted in large-scale removal). Where negative pressure enclosures are practical and effective, their use is required.

OSHA believes, therefore, that its current enforcement policy effectively limits exemptions from negative pressure enclosures to situations where there is little chance of bystander exposure or of significant asbestos release during renovation and removal.

Third, OSHA has received numerous suggestions on how to clarify or amend the definition of small-scale, short-term operations. The agency also is collecting information on experience with negative pressure enclosures and on alternatives which may provide the same degree of protection to employees removing asbestos and to bystander employees. OSHA believes that additional rulemaking is required to compile and assess information on the risk reduction for employees working in negative pressure enclosures.

An interim expansion of the negative pressure enclosure requirement, consistent with the court order, would be confusing in light of possible regulatory approaches in the subsequent rulemaking. In the supplemental rulemaking, OSHA intends to discuss the effectiveness and drawbacks of negative pressure enclosures, glove bags, and alternative control systems; and to specify more clearly under what circumstances various control systems may be used. OSHA will consider allowing new technology unavailable in 1986, such as negative pressure glove bags, which appear to offer improved employee protection in certain circumstances. Thus OSHA's approach in the rulemaking may limit, rather than expand, the walk-in enclosure requirement. After the rulemaking, OSHA intends, if the record permits, to amend the regulatory text and appendices to cover new and future control systems. An interim amendment imposing an expanded negative-pressure enclosure requirement may confuse the public, since the Agency would be taking inconsistent positions concerning the need for these enclosures. Such an interim "clarification" may further contribute to any public uncertainty about the scope of the negative pressure enclosure exemption.

OSHA intends to publish the proposal on this issue by February 27, 1990, along with the remaining three issues for which rulemaking was ordered. OSHA notes that the related issue of the scope of the competent person requirement was included among those issues. The interplay between the negative pressure enclosure and competent person issues (for example, one of the responsibilities of the competent person is to set up the negative pressure enclosure) also supports their combined consideration in the rulemaking scheduled to begin in February.

IV. State Plan Applicability

Twenty-five states and U.S. territories have their own OSHA-approved occupational safety and health plans. These states and territories are: Alaska, Arizona, California, Connecticut (for state and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York (for state and local government employees only), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming. These states and territories are to adopt a standard comparable to that of OSHA's within six months of the effective date of the Federal rule.

List of Subjects

29 CFR Part 1910

Asbestos, Cancer, Health, Labeling, Occupational safety and health, Protective equipment, Respiratory protection, Signs and symbols.

29 CFR Part 1926

Asbestos, Cancer, Construction industry, Hazardous materials, Health, Labeling, Occupational safety and health, Protective equipment, Respiratory protection, Signs and symbols.

V. Authority

This document was prepared under the direction of Gerard F. Scannell, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Accordingly, pursuant to sections 4, 6(b), 8(c) and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), section 107 of the Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333), the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941), 29 CFR part 1911 and Secretary of Labor's Order No. 9–83 (48 FR 35736), 29 CFR parts 1910 and 1926 are hereby amended as set forth below.

Signed at Washington, DC, this 14th day of December, 1989.

Gerard F. Scannell,

Assistant Secretary of Labor.

Amended Standards

Part 1910 of title 29 of the Code of Federal Regulations is hereby amended as follows:

PART 1910—[AMENDED]

Subpart Z—[Amended]

1. The authority citation for subpart Z of part 1910 continues to read as follows:

Authority: Secs. 6, 8, Occupational Safety and Health Act, 29 U.S.C. 655, 657; Secretary of Labor's Orders 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736) as applicable; and 29 CFR part 1911.

All of subpart Z issued under sec. 6(b) of the Occupational Safety and Health Act, 29 U.S.C. 655(b), except those substances listed in the Final Rule Limits columns of Table Z–1–A, which have identical limits listed in the Transitional Limits columns of Table Z–1–A, Table Z–2 or Table Z–3. The latter were issued under Section 6(a) (5 U.S.C. 655(a)).

Section 1910.1000, the Transitional Limits columns of Table Z–1–A, Table Z–2 and Table Z–3 also issued under 5 U.S.C. 533. Section 1910.1000, Tables Z–1–A, Z–2 and Z–3 not issued under 29 CFR part 1911 except for the arsenic, benzene, cotton dust, and formaldehyde listings.

Section 1910.1001 also issued under Sec. 107 of Contract Work Hours and Safety Standards Act, 40 U.S.C. 333.

Section 1910.1002 not issued under 29 U.S.C. 655 or 29 CFR Part 1911; also issued under 5 U.S.C. 553.

Sections 1910.1003 through 1910.1018 also issued under 29 U.S.C. 653.

Section 1910.1025 also issued under 29 U.S.C. 653 and 5 U.S.C. 553.

Section 1910.1028 also issued under 29 U.S.C. 653.

Section 1910.1043 also issued under 5 U.S.C. 551 et seq.

Sections 1910.1045 and 1910.1047 also issued under 29 U.S.C. 653.

Section 1910.1048 also issued under 29 U.S.C. 653.

Sections 1910.1200, 1910.1499 and 1910.1500 also issued under 5 U.S.C. 553.

§ 1910.1001 [Amended]

2. Section 1910.1001 is hereby amended by removing paragraph (f)(1)(vii).

PART 1926—[AMENDED]

Subpart D—[Amended]

3. The authority citation for subpart D of 29 CFR part 1926 continues to read as follows:

Authority: Secs. 4, 6, 8 Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Sec. 107 Contract Work Hours and Safety Standards Act (Construction Safety Act), 40 U.S.C. 333, and Secretary of Labor's Orders 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736) as applicable. Sections 1926.55(c) and 1926.58 also issued under 29 CFR part 1911.

§ 1926.58 [Amended]

4. Section 1926.58 is hereby amended by redesignating paragraph (f)(4),

Termination of monitoring, as paragraph (f)(4)(i), and adding a new paragraph (f)(4)(ii), to read as follows:

§ 1926.58 Asbestos.

* * * * *

(f) * * *

(4) * * *

(ii) *Additional monitoring.*

Notwithstanding the provisions of paragraph (f)(4)(i) of this section, the employer shall institute the exposure monitoring required under paragraph (f)(3) of this section whenever there has been a change in process, control equipment, personnel or work practices that may result in new or additional exposures above the action level and/or excursion limit or when the employer has any reason to suspect that a change may result in new or additional exposures above the action level and/or excursion limit. Exception: When all employees within a regulated area are equipped with supplied-air respirators operated in the positive-pressure mode, the employer may dispense with the monitoring required by this paragraph.

* * * * *

5. Section 1926.58 is hereby amended by removing paragraph (g)(2)(iii).

[FR Doc. 89-29469 Filed 12-19-89; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CCGDTWO 89-06]

Regulated Navigation Area; Upper Mississippi River, Mile 200.0 to 201.5

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is eliminating the Regulated Navigation Area identified in 33 CFR 165.201. Entry into the area was controlled through the provisions of 33 CFR 165.201 to protect the construction of Lock and Dam 26 (Replacement) from hazards associated with passing tows. The construction work was completed on October 19, 1989, making the regulation unnecessary.

EFFECTIVE DATES: This regulation is effective on 01 January 1990. Comments on this regulation must be received on or before February 5, 1990.

ADDRESS: Comments should be mailed to Commander (dl), Second Coast Guard District, 1430 Olive Street, Room 310, St. Louis, MO 63103-2398. Any comments received will be available for inspection and copying at the mailing address. Normal office hours are between 7:30 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: DCC J.P. Burk, project officer, Captain of the Port, St. Louis, Missouri. Commercial (314) 425-5091; FTS 279-5091.

SUPPLEMENTARY INFORMATION: Consistent with 5 U.S.C. 553, publishing a notice of proposed rulemaking and delaying the effective date would have been contrary to the public interest since the immediate action was desired to resume normal navigation to the Upper Mississippi River in the area of the new Lock and Dam 26. Although this regulation is published as a final rule without prior notice, an opportunity for public comments is nevertheless desirable to ensure that the regulation is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed under **"ADDRESS"** in this preamble. Commenters should include their names and addresses, identify the docket number for the regulations, and give reasons for their comments.

Drafting Information

The drafters of this regulation are DCC J. P. Burk, project officer, Captain of the Port, St. Louis, Missouri and LT M. A. Suire, project attorney, Second Coast Guard District Legal Office, St. Louis, Missouri.

Discussion of Regulation

This regulation is canceled due to the completion of a three year construction project on Lock and Dam 26. The regulated navigation area instituted to facilitate the construction project and ensure safe navigation has served its purpose and is no longer necessary.

Economic Assessment and Certification

This regulation is considered to be non-major under executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979.) The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The result of this regulation will be to remove restrictions on interstate commerce and to enhance navigation. Since the economic impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Final Regulation

In consideration of the foregoing part 165 of title 33 Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-6 and 160.5.

§ 165.201 [Removed]

2. Section 165.201 is removed.

Dated: December 8, 1989.

W.J. Ecker,

Rear Admiral, U.S. Coast Guard, Commander, Second Coast Guard District.

[FR Doc. 89-29531 Filed 12-19-89; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3690-4]

Approval and Promulgation of Implementation Plans; North Carolina: SO_2 Revision for Liggett & Myers and Burlington Industries

AGENCY: Enviromental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a source-specific revision to the North Carolina State Implementation Plan (SIP) for sulfur dioxide (SO_2). This will replace the existing federally approved limit of 1.6 lb SO_2/MBTU with the revised limit of 2.3 lbs SO_2/MBTU for two sources. Ambient air quality modeling to support this revision was submitted to EPA by the State on April 2, 1986. The modeling demonstrated that a less stringent SO_2 limit is approvable for Burlington Industries and Liggett & Myers. The national ambient air quality standards (NAAQS) for SO_2 will be protected, and no interstate impacts or attainment problems are expected as a result of approving this SIP revision.

DATES: This action will be effective February 20, 1990 unless notice is received by January 19, 1990 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the State's submittals are available for review at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460;
Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street N.E., Atlanta, Georgia 30365;
Air Quality Section, Division of Environmental Management, North Carolina Department Environment, Health and Natural Resources, Archdale Building, 512 North Salisbury Street, Raleigh, North Carolina 27611.

FOR FURTHER INFORMATION CONTACT: Rosalyn Hughes of the Region IV Air Programs Branch at the above address, telephone (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: On December 7, 1982 (47 FR 54934), EPA approved, for all but 24 sources in the State of North Carolina, a revision to the State's regulation 15 NCAC 2D.0516 which relaxed the SO_2 limit for fuel-burning sources. The original version of 2D.0516 prescribed a stepdown in SO_2 emissions for all fuel-burning sources from 2.3 pounds per million BTU heat input (lb/MBTU) to 1.6 lb/MBTU by July 1, 1990. Air quality dispersion modeling submitted by the State in 1982 indicated that removal of the SO_2 stepdown requirement was approvable for all but 24 sources.

EPA indicated in the December 7, 1982, **Federal Register** notice that if future modeling could show that the relaxed SO_2 limit of 2.3 lb/MBTU was adequate to protect the NAAQS, then the stepdown requirement could be eliminated for other sources as well.

Liggett & Myers and Burlington Industries were two of the sources excluded from EPA's approval of the revised fuel-burning regulation. On April 2, 1986, North Carolina submitted the ambient air quality modeling necessary to show that Ligget & Myers and Burlington Industries could be allowed to emit 2.3 lb/MBTU without jepoardizing the NAAQS.

In order for Ligget & Myers to maintain the 2.3 lb SO_2/MBTU limit a new operating permit had to be issued to restrict the total load capacity to 111.8 MBTU/hr. The new permit (No. 2533R10) falls under an EPA-approved construction/operating permit program and is federally enforceable. Since it was originally submitted, permit No. 2533R10 has expired but a new permit No. 2533R11 containing the same condition as 2533R10 has been issued. To model compliance with the 2.3 lb SO_2/MBTU limit, Burlington replaced an old 61 MBTU/hr boiler with a new 29 MBTU/hr one. The smaller boiler reduced their total load capacity from 162 MBTU/hr to 110 MBTU/hr as stated in permit No. 4119R5. This permit also falls under the EPA-approved construction/operating permit program and is federally enforceable.

Both sources are located in Durham, North Carolina. Based on the block average interpretation of the SO_2 NAAQS, the Industrial Source Complex Short-Term (ISCST) and VALLEY models were used to establish the ambient impact of the allowable SO_2 emission limit. ISCST was used to monitor the downwash effects and VALLEY was used to account for the area's complex terrain. The controlling concentrations were in simple terrain given by ISCST. The modeling techniques (ISCST and VALLEY) which were used in this demonstration were based on modeling guidance in place at the time the analysis was performed, i.e., the EPA Guidance on Air Quality Models (1978). Since that time, revisions to the modeling guidance have been promulgated by EPA on September 9, 1986, 51 FR 32176, and on January 6, 1988, 53 FR 592. Because the modeling analysis was underway prior to promulgation of the revised guidance, EPA accepts the analysis. The results of the analysis, which included building wake effects, show the highest second highest (HSH) total concentration for the 3-hour, 24-hour and annual time periods to be 634, 304, and 45 $\mu g/m^3$, respectively. These values include a HSH background 3 hour (155 $\mu g/m^3$), 24 hour (56 $\mu g/m^3$) and annual arithmatic mean (11 $\mu g/m^3$) concentration for the respective averaging times. All three of these are below the NAAQS for these time periods.

Prevention of significant deterioration (PSD) provisions are not applicable because actual SO_2 emissions at the two facilities have not increased with the elimination of the SO_2 stepdown requirement. Since both sources are located in Durham County, an SO_2 attainment area, PSD requirements were examined and were found not to apply.

EPA's stack height regulations do not apply to this SO_2 SIP revision because the stacks of both sources are below 65 meters. Also, there are no merged plume issues associated with this source-specific SIP revision.

EPA has also reviewed this SIP revision for consistency with section 110(a)(2)(E) of the Clean Air Act, and has found that the interstate impact of this revision is negligible. Due to present limitations on air quality modeling, the ambient analysis was limited to a 50 km radius around the Liggett & Myers and Burlington Industries facilities. Both plants are located further than 50 km from any interstate boundary. Also, as shown in the technical support document for this SIP revision, the valley model demonstrated that the 3-hour and 24-hour ambient SO_2 concentrations resulting from these two sources' emissions would decrease markedly a short distance from the plant and that predicted ambient concentrations would be in every case below the SO_2 standards. Therefore, in EPA's judgement, the revision will not contribute to SO_2 nonattainment in Tennessee, South Carolina, Virginia or more distant states, nor will it interfere with PSD measures in the states surrounding North Carolina.

For further discussion of these issues and the air quality modeling analysis, please consult the technical support document, which is available for public inspection at the EPA Region IV office at the address listed above.

Final Action

EPA is approving the revision to North Carolina regulation 2D.0516, as submitted to EPA on March 22, 1977, as it applies to Liggett & Myers and Burlington Industries. This will replace the existing federally approved limit of 1.6 lb SO_2/MBTU with the limit of 2.3 lb SO_2/MBTU for these two sources.

The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 20, 1990. This action may be challenged later in proceedings to enforce requirements. (See 307 (b)(2)).

Regulatory Process

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA must assess the impact of proposed rules on small entities. (These rules are equivalent to the federally approved State regulations and maintain the status quo.) Sources have not been adversely affected by the State regulations; therefore the conclusions can be drawn that small

sources in Durham County will not be adversely affected by this decision.

40 CFR Part 52

[FRL-3677-1; TN-046]

August 3, 1989 at 54 FR 31953. EPA approved those regulations as a transfer of enforcement authority from the State

action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30

Dated: October 5, 1989.

Joe R. Franzmathes,

Acting Regional Administrator.

standards promulgated after that date. However, the delegation of authority, under this notice, does not apply to the

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sources in Durham County will not be adversely affected by this decision.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 6, 1989. The Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Sulfur oxides.

Note: Incorporation by reference of the State Implementation Plan for the State of North Carolina was approved by the Director of the Federal Register on July 1, 1982.

Lee A. DeHihns III,

Acting Regional Administrator.

Part 52 of chapter I, title 40 Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

Subpart II—North Carolina

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.1770 is amended by adding paragraph (c)(62) to read as follows:

§ 52.1770 Identification of Plan.

* * * * *

(c) * * *

(62) Permits for Liggett & Myers and Burlington Industries which were submitted as State Implementation Plant revisions on April 2, 1986, and resubmitted on October 24, 1989.

(i) Incorporation by reference

(A) Permit No. 2533R11 for Liggett & Myers Tobacco Company issued on May 22, 1989.

(B) Permit No. 4119R5 for Burlington Industries issued on March 3, 1987.

(ii) Additional material—none.

[FR Doc. 89-29579 Filed 12-19-89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[FRL-3677-1; TN-048]

Approval and Promulgation of Implementation Plans, Tennessee; Revision to the Nashville/Davidson County Portion of the State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On October 7, 1986, the State of Tennessee submitted the entire set of regulations for Nashville/Davidson County (Board Order 28–86) as a revision to the State Implementation Plan (SIP). The Nashville/Davidson County regulations were originally approved by EPA in 1972 as an appendix to the Tennessee SIP. Since then, the Nashville regulations have been revised and federally approved several times. Today, EPA is approving that portion of the Nashville regulations submitted in 1986 which has not been federally approved.

DATES: This action will be effective on February 20, 1990, unless notice is received by January 19, 1990, that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of materials submitted by the State may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Environmental Protection Agency, Region IV—Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365

Division of Air Pollution Control, Tennessee Department of Public Control, 4th Floor, Customs House, 701 Broadway, Nashville, Tennessee 37219

Metropolitan Health Department, Air Pollution Control Division, 311 23rd Avenue North, Nashville, Tennessee 37203

FOR FURTHER INFORMATION CONTACT: Rosalyn D. Hughes of the EPA Region IV Air Programs Branch, at the above address and telephone number (404) 347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: Recently, EPA approved the entire set of regulations for two local air pollution control programs in Tennessee, Memphis and Shelby County on June 15, 1989 at 54 FR 25456 and Knox County on August 3, 1989 at 54 FR 31953. EPA approved those regulations as a transfer of enforcement authority from the State to the local program based on the following conditions and conclusions:

1. The local regulations must be equal to the corresponding federally approved State regulations.

2. The local regulations cannot be treated as separable from the SIP, which the State submits and implements, but must be considered part of it.

3. Tennessee State law requires that the local regulations be equivalent to or not less stringent than the corresponding State regulation; therefore, Tennessee must certify to EPA that each regulation has been reviewed by the State and found to meet this requirement.

4. Tennessee must retain overall authority and responsibility for developing and implementing, including enforcing, the SIP.

On October 7, 1986, the State of Tennessee submitted the Nashville regulations, in their entirety, as a revision to the SIP. The regulations along with the Memphis and Shelby County and the Knox County regulations were stayed until Region IV could determine which regulations had previously been approved as part of the Tennessee SIP. Also, EPA had to determine the adequacy of the previous control strategy demonstrations in protecting the National Ambient Air Quality Standards.

Once the review was completed, EPA determined that the only Nashville regulations that were not federally approved were the stack height regulations. Using the aforementioned conditions and conclusions, no action was taken on Nashville stack height regulations, until the state regulations were federally approved. On October 19, 1988 at 53 FR 40881, the State regulations were approved. The definitions of "dispersion technique," "excessive concentration," "good engineering practice," and "nearby," which were added to Section 3–1, Definitions, of Nashville's Regulation No. 3, New Source Review, were found to be equivalent to the federally approved state regulations. Also equivalent to the federally approved state regulations is a paragraph added to Section 3–2, Registration and Permits of Regulation No. 3 pertaining to the application of stack height provisions.

Final Action

Since the Nashville stack height provisions (Board Order 28–86) are consistent with EPA policy and requirements, they are hereby approved. The public should be advised that this action will be effective 60 days from the date of this Federal Register notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 20, 1990. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

Regulatory Process

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA must assess the impact of proposed rules on small entities. These rules are equivalent to the federally approved State regulations and maintain the status quo. Sources have not been adversely affected by the State regulations; therefore the conclusion can be drawn that small sources in Nashville-Davidson County will not be adversely affected by this decision.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

List of Subjects in 40 CFR Part 52

Air Pollution control, Incorporation by reference, Intergovernmental relations.

Note: Incorporation by reference of the State Implementation Plan for the State of Tennessee was approved by the Director of the Federal Register on July 1, 1982.

Dated: October 5, 1989.

Joe R. Franzmathes,

Acting Regional Administrator.

Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

Subpart RR—Tennessee

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.2220 is amended by adding paragraph (c)(98) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(98) Nashville/Davidson County stack height provisions (Board Order 28–86) submitted as revisions to the Tennessee SIP on October 7, 1986.

(i) Incorporation by reference.

(A) Tennessee Air Pollution Control Board Order 28–86 and Nashville/Davidson County Regulation No. 3, Sections 3–1 and 3–2 introductory paragraph which was approved September 17, 1986.

(ii) Other material.

(A) Letter of October 7, 1986, from the Tennessee Department of Health and Environment.

[FR Doc. 89-29506 Filed 12-15-89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Parts 60 and 61

[FRL-3698-7]

Delegation of Authority to Bernalillo County (New Mexico) for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation of authority.

SUMMARY: The Environmental Protection Agency (EPA) announces the delegation of authority to Albuquerque-Bernalillo County Air Quality Control Board ("the Board") and the Albuquerque Environmental Health Department (AEHD) to implement and enforce the New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) in Bernalillo County (New Mexico), including the City of Albuquerque. The provisions of full authority apply to all of the NSPS and NESHAP promulgated by the EPA through December 12, 1988, and partial authority covers all new and amended standards promulgated after that date. However, the delegation of authority, under this notice, does not apply to the sources located on Indian lands within the boundaries of Bernalillo County as specified in the delegation agreement and in this notice. Also, this delegation of authority is not applicable to the NESHAP radionuclide standards specified under 40 CFR part 61.

EFFECTIVE DATE: December 8, 1989.

ADDRESSES: The AEHD's request and delegation agreement may be obtained by writing to one of the following addresses:

Chief, SIP New Source Section (6T–AN), Air Programs Branch, U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202, Telephone: (214) 655–7214;

Manager, Air Pollution Control Division, Albuquerque Environmental Health Department, The City of Albuquerque, P.O. Box 1293, Albuquerque, New Mexico 87103, Telephone: (505) 768–2600.

All other requests, reports, applications, and such other communications which are required to be submitted under 40 CFR part 60 and 40 CFR part 61 (including the notification required under Subpart A of the regulations) for the affected facilities, within the boundaries of Bernalillo County and in areas outside of Indian lands, should be sent directly to the AEHD at the above address. Sources located on Indian lands, in the State of New Mexico including Bernalillo County, should submit the information specified above to the EPA Region 6 Office at the address given in this notice. The sources located in the State of New Mexico, other than those areas specified above, should submit the information cited above to Chief, Air Quality Bureau, New Mexico Environmental Improvement Division, 1190 St. Francis Drive, Santa Fe, New Mexico 87503. All of the inquiries and requests concerning implementation and enforcement of the radionuclide standards under 40 CFR part 61, in the State of New Mexico, should be directed to the EPA Region 6 Office.

FOR FURTHER INFORMATION CONTACT: Mr. J. Behnam, P.E., SIP New Source Section, Air Programs Branch, United States Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone number (214) 655–7214.

SUPPLEMENTARY INFORMATION: Sections 111(c) and 112(d) of the Clean Air Act allow the Administrator of the EPA to delegate EPA's authority to any State or local agency which can submit adequate

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regulatory procedures for implementation and enforcement of the NSPS and NESHAP programs.

The New Mexico Air Quality Control Act (NMAQCA) allows, by ordinance, "A" class counties and any municipality within an "A" class county to create a municipal, county or joint air quality board to administer and enforce the provisions of the NMAQCA. The City of Albuquerque and Bernalillo County have jointly established the "Albuquerque-Bernalillo County Air Quality Control Board" (herein called "the Board") for administration and enforcement of NMAQCA because Bernalillo County is an "A" class county. Under the NMAQCA, the Albuquerque Environmental Health Department (AEHD) is the administrative and enforcement agency of the Board. The AEHD has established a program for the local administration and enforcement of the NMAQCA, in Bernalillo County, in lieu of the New Mexico Environmental Improvement Division (the State agency). Authority for the NSPS and NESHAP programs were delegated to the State of New Mexico (except for sources located in Bernalillo County and Indian lands) on March 15, 1985.

On July 18, 1989, the AEHD requested the U.S. Environmental Protection Agency (EPA) to delegate its authority to the AEHD for the New Source Performance Standards (NSPS) and the National Emissions Standards for Hazardous Air Pollutants (NESHAP) programs through December 12, 1988. The AEHD also requested partial delegation of authority for the technical and administrative review of new or amended NSPS and NESHAP promulgated by the EPA after December 12, 1988. The AEHD's request included (1) Air Quality Control Regulations 30 (NSPS) and 31 (NESHAP), (2) legal authority provided in Joint Air Quality Control Board Ordinances Article XVI and No. 88–45, and (3) the commitments for implementation and enforcement of the programs as documented in the AEHD Director's letter dated July 18, 1989. AQCRs 30 and 31 incorporate the Federal NSPS and NESHAP by reference through December 12, 1988.

The EPA reviewed the AEHD Director's request, Air Quality Control Regulations 30 and 31, and all other information submitted by the AEHD, including its request for implementation of the partial delegation of these programs. The EPA has determined that the Board and the AEHD have adequate authority and effective procedures for implementing and enforcing the NSPS and NESHAP programs in Bernalillo County. Therefore, EPA delegated full authority to the Board and the AEHD through December 12, 1988, and partial authority for the technical and administrative review of new or amended NSPS and NESHAP promulgated by the EPA after December 12, 1988, subject to conditions and limitations of the delegation agreement dated December 8, 1989. No authority was delegated to the Board or AEHD for the radionuclide standards under 40 CFR Part 61 and sources located on Indian lands within the boundaries of Bernalillo County.

Today's notice informs the public that the EPA has delegated full authority to the AEHD for implementation and enforcement of the NSPS and NESHAP promulgated by the EPA through December 12, 1988, and partial authority is delegated for the new and amended standards after that date. All of the required information pursuant to the Federal NSPS and NESHAP (40 CFR part 60 and 40 CFR part 61) by sources located within the boundaries of Bernalillo County and in areas outside of Indian lands, should be submitted directly to the Albuquerque Environmental Health Department, the City of Albuquerque, P.O. Box 1293, Albuquerque, New Mexico 87103. Sources located on Indian lands in the State of New Mexico including Bernalillo County, should apply to the EPA Region 6 office at the address given in this notice. The sources located in the State of New Mexico, other than those areas specified above, should submit all of the required information to Chief, Air Quality Bureau, New Mexico Environmental Improvement Division, 1190 St. Francis Drive, Santa Fe, New Mexico 87503. All of the inquiries and requests concerning implementation and enforcement of the radionuclide standards under 40 CFR part 61, in the State of New Mexico, should be directed to the EPA Region 6 Office.

The Office of Management and Budget has exempted this information notice from the requirements of section 3 of Executive Order 12291.

This delegation is issued under the authority of section 111(c) and 112(d) of the Clean Air Act, as amended (42 U.S.C. 7411(c) and 7412(d)).

List of Subjects

40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Cement industry, Coal, Copper, Electric power plants, Fossil-Fuel fired steam generators, Glass and glass products, Grain, Iron, Lead, Metals, Motor vehicles, Nitric acid plants, Paper and paper industry, Petroleum, Phosphate, Fetilizer, Sewage disposal, Steel, Sulfuric acid plants, Waste treatment and disposal, Zinc.

40 CFR Part 61

Air pollution control, Asbestos, Benzene, Beryllium, Hazardous materials, Mercury, Vinyl Chloride.

Dated: December 8, 1989.

Joe D. Winkle,

Acting Regional Administrator.

Title 40, Parts 60 and 61 of the Code of Federal Regulations are amended as follows:

PART 60—[AMENDED]

1. The authority citation for Part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7414, 7601.

2. Section 60.4 is amended by adding paragraph (b)(GG)(i) to read as follows:

§ 60.4 Address.

* * * * *

(b) * * *

(GG) * * *

(i) The City of Albuquerque and Bernalillo County: Director, The Albuquerque Environmental Health Department, The City of Albuquerque, P.O. Box 1293, Albuquerque, New Mexico 87103.

* * * * *

PART 61—[Amended]

1. The authority citation for Part 61 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7414, 7601.

2. Section 61.04 is amended by adding paragraph (b)(GG)(i) to read as follows:

§ 61.04 Address.

* * * * *

(b) * * *

(GG) * * *

(i) The City of Albuquerque and Bernalillo County: Director, The Albuquerque Environmental Health Department, The City of Albuquerque, P.O. Box 1293, Albuquerque, New Mexico 87103.

* * * * *

[FR Doc. 89–29578 Filed 12–19–89; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF TRANSPORATION

National Highway Traffic Safety Administration

49 CFR Part 541

[Docket No. T84–01; Notice 22]

RIN 2127–AC96

Final Listing of High Theft Lines for 1990 Model Year; Correction

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; correction.

SUMMARY: This notice corrects typographical errors in the final rule published on September 20, 1989 (54 FR 38684). The errors appear in 49 CFR part 541, Appendix A–II "High Theft Lines with Antitheft Devices that are Exempted in Part from the Parts-Marking Requirements of this Standard Pursuant to 49 CFR part 543." Correction of these errors is necessary to avoid a misunderstanding about the beginning of partial exemptions from parts-marking for the car lines listed in Appendix A–II.

EFFECTIVE DATE: December 20, 1989.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara A. Gray, Office of Market Incentives, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Gray's telephone number is (202) 366–4808.

SUPPLEMENTARY INFORMATION:

List of Subjects in 49 CFR Part 541

Administrative practice and procedure, Labeling, Motor vehicles, Reporting and recordkeeping requirements.

PART 541—[AMENDED]

In consideration of the foregoing, 49 CFR part 541 is amended as follows:

1. The authority citation for part 541 continues to read as follows:

Authority: 15 U.S.C. 2021–2024, and 2026; delegation of authority at 49 CFR 1.50.

Appendix A–II [Amended]

1. Footnote 1 reference preceding the sentence at the end of the table is removed.

2. "MY 1989" is replaced by "MY 1990".

Issued on: December 14, 1989.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 89–29484 Filed 12–19–89; 8:45 am]

BILLING CODE 4910–59–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1043

[Ex Parte No. MC–5 (Sub-No. 7A)]

Foreign Motor Carriers and Foreign Private Carriers Evidence of Insurance

AGENCY: Interstate Commerce Commission.

ACTION: Notice of final rules.

SUMMARY: The Commission is amending its existing regulations governing financial responsibility requirements for certain foreign motor carriers and foreign motor private carriers (Mexican) operating under certificates of registration issued under 49 U.S.C. 10530. Specifically, the Commission is revising its regulations at 49 CFR 1043.2(b)(4) to allow Mexican carriers to comply with our insurance requirements by purchasing trip insurance in lieu of certifying evidence of insurance on Forms BMC–91, BMC–91X or BMC–91MX. This action is necessary to bring Commission regulations into conformity with newly prescribed regulations of the United States Department of Transportation (DOT). Mexican carriers will no longer be required to file evidence of insurance with the Commission; however, they will be required to have evidence of insurance in each vehicle operating in the United States.

EFFECTIVE DATE: January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Alice K. Ramsay (202) 275–0854 or Heber P. Hardy (202) 275–7148 [TDD for hearing impaired: (202) 275–1721].

SUPPLEMENTARY INFORMATION: The Motor Carrier Safety Act of 1984 (1984 Act), Pub. L. No. 98–554, Title II, 98 Stat. 2832, required Mexican motor carriers performing certain operations that had been exempt from regulation by the Interstate Commerce Commission to obtain, on an annual basis a certificate of registration, to conduct operations in the United States. This section also required these carriers to provide proof of minimum financial responsibility before the certificate of registration was issued.[1]

On November 18, 1988, Congress enacted the Truck and Bus Safety and Regulatory Reform Act of 1988 (1988 Act),[2] Public Law No. 100–690, 102 Stat. 4527 at 4531. The 1988 Act 1988 requires all Mexican motor carriers that seek to operate commercial motor vehicles in the United States (except those holding certificates or permits issued under 49 U.S.C. 10922 or 10923) to obtain certificates of registration prior to such operation and to maintain specified levels of insurance coverage. Importantly, the Act of 1988 grants the Secretary of Transportation authority to issue regulations which would permit foreign motor carriers and foreign motor private carriers providing transportation of property under a certificate of registration issued under 49 U.S.C. 10530 to meet the minimum levels of financial responsibility only during periods in which these carriers are performing transportation of property in the United States.

The Department of Transportation has now amended its regulations to allow trip insurance for Mexican motor carriers under the certificate of registration program. In Minimum Levels of Financial Responsibility for Motor Carriers: Coverage Requirements for Certain Foreign Carriers; Mexico, 54 FR 49091 (published November 29, 1989), DOT adopted a final rule amending its insurance regulations at 49 CFR 387 to: (1) Exempt Mexican motor carriers from continuous coverage and notice of cancellation requirements; (2) allow those carriers to obtain insurance, in the required amounts, for periods of 24 hours or longer; and (3) require those carriers to have available for inspection in each of its vehicles copies of the following documents: (i) The certificate of registration; (ii) the required insurance endorsement (Form MCS–90); and (iii) an insurance identification card, binder or other document issued by an authorized insurer which specifies both the effective date and the expiration date of the insurance coverage.

The Commission is amending its existing regulations and adopting final rules at 49 CFR 1043.2(b)(4) to implement the 1988 Act regarding the financial responsibility of foreign carriers of property and to conform our regulations with the newly prescribed regulations of the DOT. The amended regulations revise the Commission's current insurance requirements [3] to allow

[1] Regulations implementing this statutory provision were promulgated in Certificates of Registration for Certain Foreign Carriers, 133 M.C.C. 511 (1985). See also Foreign Mot. Private Cars., Inc.-Nonhazardous Commods., 133 M.C.C. 461 (1985).

[2] Title IZ, subtitle B, of the Anti-Drug Abuse Act of 1988.

[3] The Commission's current regulations provide that no motor carrier, foreign or domestic, shall be issued authority to engage in transportation services, without having first obtained evidence of insurance, in the amounts prescribed. This insurance coverage must remain in effect on a continuous basis or the authority will be subject to revocation proceedings. This includes operations conducted for a carrier by other motor carriers.

Mexican carriers to satisfy their certificate of registration security

Regulatory Flexibility Analysis

We certify that this action will not

and the reference to cancellation notice at § 1043.7(d) are not applicable to these carriers.

Regulatory Flexibility Analysis

We reaffirm our prior certification. The rules we are adopting will not have

will issue a certificate of registration authorizing specified operations provided that applicant has

domestic annual processing (DAP), joint venture processing (JVP), and total allowable levels of foreign fishing

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Mexican carriers to satisfy their certificate of registration security requirements by having insurance coverage only during periods when these motor carriers are operating their vehicles in the United States.[4] Mexican carriers will no longer be required to file evidence of insurance with the Commission to obtain a certificate of registration and will no longer be subject to the requirements of 49 CFR 1043.7(a)(6) and 1043.7(d), which relate to continuous coverage and the filing of notices of cancellation.

Our requirements are consistent with DOT's new regulations at 49 CFR 387.7(b)(3) and are necessary to permit Mexican carriers to obtain insurance coverage for periods of 24 hours or longer.

The new rules simplify insurance filing requirements that are already in effect. Therefore, the requirements will be adopted as final rules without public notice and opportunity for comment. The rules promulgated here shall be codified in the Code of Federal Regulations, title 49, part 1043. The Commission is serving a separate decision in Ex Parte No. 55 (Sub-No. 74A), Applications for Certificates of Registration for Certain Foreign Carriers, that amends its regulations at 49 CFR part 1171 to codify revisions in the certificate of registration application process.

To purchase a copy of this notice, write to, call, or pickup in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission, 12th Street and Constitution Avenue, NW., Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD Services at (202) 275–1721.)

Energy and Environmental Considerations

We conclude that these revised rules will not significantly affect the quality of the human environment of the conservation of energy resources.

[4] Effective January 1, 1990, Mexican carriers will be required to meet our minimum certificate of registration financial responsibility requirements by obtaining evidence of security, in the required amounts, for periods of 24 hours or longer, from insurance or surety companies, that meet the requirements of 49 CFR 1043.8. These foreign carriers must have available for inspection, in each vehicle operating in the United States, copies of the following documents: (1) The certificate of registration; (2) the required insurance endorsement (Form MCS–90); and (3) an insurance identification card, binder or other document issued by an authorized insurer which specifies both the effective date and the expiration date of the insurance coverage.

Regulatory Flexibility Analysis

We certify that this action will not have an adverse impact upon any small entities. Although a number of small foreign motor carriers will be affected by this action, the impact will be beneficial because it will reduce their filing requirements.

List of Subjects in 49 CFR Part 1043

Motor Carriers, Insurance, Surety Bonds.

Decided: December 11, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Lamboley, Phillips, and Emmett.

Noreta R. McGee,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1043 of the Code of Federal Regulations is amended as follows:

PART 1043—SURETY BONDS AND POLICIES OF INSURANCE

1. The authority citation for part 1043 continues to read as follows:

Authority: 49 U.S.C. 10101, 10321, 11701 and 10927; 5 U.S.C. 553.

2. Section 1043.2(b)(4) is revised to read as follows:

§ 1043.2 Security for the protection of the public: Minimum limits.

* * * * *

(b) * * *

(4) *Foreign motor carriers and foreign motor private carriers.* Foreign motor carriers and foreign motor private carriers (Mexican), subject to the requirements of 49 U.S.C. 10530 and 49 CFR part 1171 regarding obtaining certificates of registration from the Commission, must meet our minimum financial responsibility requirements by obtaining insurance coverage, in the required amounts, for periods of 24 hours or longer, from insurance or surety companies, that meet the requirements of 49 CFR 1043.8. These carriers must have available for inspection, in each vehicle operating in the United States, copies of the following documents:

(1) The certificate of registration;

(2) The required insurance endorsement (Form MCS–90); and

(3) An insurance identification card, binder, or other document issued by an authorized insurer which specifies both the effective date and the expiration date of the insurance coverage.

Notwithstanding the provisions of § 1043.1(a)(1), the filing of evidence of insurance is not required as a condition to the issuance of a certificate of registration. Further, the reference to continuous coverage at § 1043.7(a)(6) and the reference to cancellation notice at § 1043.7(d) are not applicable to these carriers.

* * * * *

[FR Doc. 89–29581 Filed 12–19–89; 8:45 am]

BILLING CODE 7035–01–M

49 CFR Part 1171

[Ex Parte No. 55 (Sub-No. 74A)]

Applications for Certificates of Registration for Certain Foreign Carriers

AGENCY: Interstate Commerce Commission.

ACTION: Amendment of final rules.

SUMMARY: In a decision served October 18, 1989, and published in the **Federal Register** on October 19, 1989 at 54 FR 42958, the Commission adopted amendments to the rules at 49 CFR part 1171 governing applications for certificates of registration for certain foreign carriers to implement changes in the statutory requirements at 49 U.S.C. 10530 and 10922(l) enacted as part of the Truck and Bus Safety and Regulatory Reform Act of 1988 (Title IX, Subtitle B of the Anti-Drug Abuse Act of 1988; Pub. L. No. 100–690, 102 Stat. 4181). Subsequently, the Department of Transportation adopted a final rule amending its insurance regulations at 49 CFR Part 387 to allow Mexican motor carriers to satisfy insurance requirements through trip insurance. The Commission is here amending its rules to reflect DOT's trip insurance provisions. The revised rules are set forth below.

EFFECTIVE DATE: January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder (202) 275–7691 or Joseph B. O'Malley (202) 275–7928. [TDD for hearing impaired: (202) 275–1721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275–1721].

Energy and Environmental Considerations

These rule revisions will not significantly affect either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

We reaffirm our prior certification. The rules we are adopting will not have significant economic impact on a substantial number of small entities. The proposed modifications will continue an expedited procedure for foreign motor carriers and foreign motor private carriers to obtain certificates or registration consistent with statutory changes.

Paperwork Reduction Analysis

It is estimated that an average of 1 burden hour per response is required to complete the information elicited on the proposed revised licensing Form OP–2. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Comments concerning the accuracy of this burden estimate or suggestions for reducing this burden should be directed to the Section of Administrative Services, Interstate Commerce Commission, and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 3120–0079), Washington, DC 20503.

List of Subjects in 49 CFR Part 1171

Administrative practice and procedure, Motor carriers, and Insurance.

Decided: December 11, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Lamboley, Phillips, and Emmett.

Noreta R. McGee,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1171 of the Code of Federal Regulations is amended as follows:

PART 1171—RULES GOVERNING APPLICATIONS FOR CERTIFICATES OF REGISTRATION BY FOREIGN MOTOR CARRIERS AND FOREIGN MOTOR PRIVATE CARRIERS UNDER 49 U.S.C. 10530

1. The authority citation for 49 CFR Part 1171 continues to read as follows:

Authority: 49 U.S.C. 10922 and 10530, 5 U.S.C. 553.

2. Section 1171.6(b)(2) is revised to read as follows:

§ 1171.6 Commission review of the application.

* * * * *

(b) * * *

(2) If the employee board grants all or part of the application, the Commission will issue a certificate of registration authorizing specified operations provided that applicant has demonstrated compliance with 49 CFR 1044 (designation of process agent). If applicant has not complied with this requirement, the Commission will issue a notice stating that a certificate of registration will be issued upon such compliance. No certificate or registration shall be issued prior to compliance.

* * * * *

[FR Doc. 89–29495 Filed 12–19–89; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 655

[Docket No. 90764–9269]

Atlantic Mackerel, Squid, and Butterfish Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of final initial specifications for the 1990 Atlantic mackerel fishery.

SUMMARY: NOAA issues this notice of final initial specifications for the 1990 fishing year for Atlantic mackerel. Regulations governing this fishery require the Secretary of Commerce (Secretary) to publish specifications for the upcoming fishing year. This action is intended to fulfill this requirement and promote the development of the U.S. Atlantic mackerel fishery.

EFFECTIVE DATE: January 1, 1990.

ADDRESS: Copies of the Mid-Atlantic Fishery Management Council's Analysis and recommendations are available from John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, room 2115, Federal Building, 300 South New Street, Dover, DE 19901.

FOR FURTHER INFORMATION CONTACT: Kathi L. Rodrigues, 508–281–9324 or Richard Seamans, 508–281–9244.

SUPPLEMENTARY INFORMATION: Regulations implementing the Fishery Management Plan for Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP), prepared by the Mid-Atlantic Fishery Management Council (Council), appear at 50 CFR part 655. These regulations stipulate that the Secretary will publish a notice specifying the initial annual amounts of the initial optimum yield (IOY) as well as the amounts for allowable biological catch (ABC) domestic annual harvest (DAH), domestic annual processing (DAP), joint venture processing (JVP), and total allowable levels of foreign fishing (TALFF) for the species managed under the FMP. No reserves are permitted under the FMP for any of these species.

Procedures for determining the initial annual amounts are found in § 655.21. The Secretary published a notice of preliminary initial specifications (preliminary notice) for Atlantic mackerel on August 2, 1989 (54 FR 31662). The comment period ended September 1, 1989. Specifications for *Loligo* and *Illex* squids and butterfish will be published separately.

The following table contains the final initial specifications for Atlantic mackerel. These specifications are based on the recommendations of the Mid-Atlantic and New England Fishery Management Councils and consideration of comments received from the public. The Regional Director, Northeast Region, National Marine Fisheries Service (Regional Director), after considering all of the information available, believes these specifications will stimulate the development of the U.S. mackerel industry, leading to increased benefits to the Nation.

Table 1.—Initial Annual Specifications for Atlantic Mackerel for the 1990 Fishing Year January 1 through December 31, 1990

(Metric tons)

ABC	[1] 368,000
IOY	120,000
DAH	[2] 90,000
DAP	12,000
JVP	54,000
TALFF	[3] 24,000

[1] IOY can rise to this level, according to the FMP.

[2] Includes 15,000 mt projected recreational catch based on the formula contained in 50 CFR 655.21 plus an additional 15,000 mt to promote recreational use.

[3] Foreign partner is required to purchase JVP and U.S. processed product in the ratio 6 mt TALFF to 3 mt JVP and 1 mt U.S. product for applicants requesting directed fishing. Export declaration forms are required as proof of purchase.

Changes to the Preliminary Specifications

New information received by NMFS after publication of the preliminary notice has led to a modification of several of the components. This information involves the specific amounts requested for foreign fishing and detailed contracts between the foreign partners and U.S. vessel owners. The Council and the Regional Director believe that the business relationships being developed at this time are critical to the success of the fishery in 1990 and

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the continued growth in the U.S. sector. The change in specification levels published in the preliminary notice is intended to foster the development of business agreements of mutual benefit to both parties and achieve the objectives of the FMP.

The Council and the Regional Director have repeatedly emphasized the importance of fulfilling the commitments made at the beginning of the fishing year. This point was stressed in the preliminary notice in the Council's eighth recommended condition: "Applications from a particular nation for joint ventures and directed foreign fishing for 1990 should not be considered until that nation's purchase obligations for 1989 have been fulfilled" (condition 8). In addition, this final notice imposes a further condition that no TALFF will be allocated until a foreign nation's purchases of mackerel (in 1989) from U.S. fishing vessels (JVP) and U.S. processors result in conformance to the required 9:3:1 ratio or equivalent ratio authorized by the Regional Director in effect in 1989, based on the actual allocation of TALFF to that nation.

The schedule outlined in the FMP requires the Regional Director to submit his determination of final initial specifications before the 1989 fishery ends on December 31. At the time the Regional Director submitted his determinations in November, none of the nations applying for a 1990 allocation had met their 1989 purchase obligations. A strict interpretation of the Council's condition 8 would not only render each nation ineligible for a 1990 allocation of JVP and TALFF, but would also be premature since historically, mackerel are available to the fishery in December. The Regional Director does not wish to preclude any opportunity to fulfill 1989 obligations. Therefore, the Regional Director has not presupposed that obligations will not be met and has set the final initial specifications to accommodate the applicants should they become eligible for an allocation. In addition, the Regional Director has modified the purchase ratio that was contained in the preliminary notice from 8:3 and 2 to 8:3 and 1. The reasons for this modification are found below in the discussion of "Specification Levels".

Atlantic Mackerel Development Policy

The Council's policy in managing the mackerel fishery has been formulated to stimulate the growth and development of the U.S. industry. This has been accomplished by linking the available TALFF allocation to purchases of JVP and DAP. More recently, the Council and the Regional Director have focused on the "performance record" of a particular joint venture in evaluating the true benefits derived from the IOY and its component parts of DAH and TALFF. Fulfillment of the commitments made at the beginning of the season has been problematic in 1989, consistent with previous years. As a result of inadequate documentation of product sales, NMFS will require the foreign nation or its U.S. representative to supply adequate sales documentation in the form of an export declaration to the Regional Director.

The 1989 fishery purchase obligations have not been achieved thus far in 1989. The actual amounts and ratios of joint venture and processed product commitments and purchases cannot be released because of confidentiality restrictions; however, the level of performance can be expressed as a percentage without revealing confidential information. The following table indicates the level of performance achieved as of November 1, 1989, by nations taking part in the 1989 fishery:

TABLE 2.—Percentage of Commitment Achieved in 1989 [1] By Foreign Nations

East Germany	54
Netherlands	29
Poland	18
USSR	0.4

[1] As of Nov. 1, 1989.

The 1990 applications for foreign fishing were received from two of the countries listed above. For a 1990 mackerel fishery to occur, according to condition 8, the U.S. industry would have to supply additional product to foreign partners during November and December of 1989. U.S. vessel owners entered into contracts with the foreign nations' representatives to supply this product. The Regional Director expects U.S. vessels to supply, and the foreign partners to purchase the amounts contained in the 1989 contracts. Failure of the foreign partner to purchase the required amounts may disqualify a foreign nation from a TALFF allocation for 1990. The failure of U.S. vessels to fulfill their 1989 contracts may result in a more favorable evaluation of the foreign nation demonstrating a "good faith effort" to purchase the amounts specified in the contracts. The Regional Director will closely monitor the fishing activities during December and present his views and recommendations to the allocations board based on the performance records of the particular foreign nation and the domestic industry.

Specification Levels

Benefits accrue to the United States from the purchase of joint venture and processed product in exchange for TALFF. The IOY has been set at a level that results in TALFF and JVP levels to stimulate these purchases. NOAA will recommend to the Department of State that allocations of TALFF in 1990, if any, be released in increments of 25 percent, as they were in 1989. Further increments are to be allocated based on performance. The Secretary of State, if he so decides, may initially release up to 50 percent of a nation's allocation under section 201(e)(1)(C) of the Magnuson Fishery Conservation and Management Act (Act). The amount of TALFF recommended by the Council and adopted by the Regional Director is sufficient to accommodate 50 percent of each nation's request. This does not imply that TALFF will be increased. Increases to TALFF are possible under § 655.21(b)(2)(v) if the Regional Director determines, in consultation with the Council, that increases in the TALFF would provide maximum net benefits to the Nation. Discussion of the remaining IOY components follows.

The Regional Director has projected a DAH of 96,000 metric tons (mt) based on: (1) The unusually high amount of JVP requested by foreign applicants (54,000 mt); (2) the expected U.S. production for the bait market (approximately 6,000 mt); (3) U.S. production necessary to fulfill foreign purchase obligations linked to TALFF (estimated 6,000 mt); and (4) the projected recreational catch recommended by the Council (30,000 mt). Numbers (2) and (3) above represent the projected level of DAP (12,000 mt).

In addition to the above changes to the preliminary notice, the Regional Director has modified the purchase requirements contained in footnote "C" to Table 1.; the requirements are: (1) Foreign partners are required to purchase JVP and U.S. product in the ratio of 8 mt TALFF to 3 mt JVP and 1 mt of U.S. product; and (2) export declarations are required as proofs of purchase. This first modification responds to the comments received during the comment period and to a recent vote of the Council's Foreign Fishing Committee. The original vote of the full Council recommended that purchases be made in the ratio of 8 mt TALFF to 3 mt JVP and 2 mt U.S. processed product.

The high ratio of processed product component is particularly troublesome, as it appears to be a limitation to foreign nations in terms of meeting this requirement and making fishing in U.S. waters profitable. Therefore, an alternative ratio that represents a financially sound package to foreign nations *and* contains leverage that results in purchase of U.S. caught and processed mackerel is one that will be in the best interests of the United States.

The 8:3 and 1 ratio requirement of TALFF, JVP, and processed product in 1989 is a combination that should be sufficient incentive to foreign nations to purchase JV-caught and U.S.-processed mackerel in exchange for TALFF. However, foreign nations have failed to meet it thus far in 1989. This failure is due mostly, in NMFS' opinion, to a lack of commitment by foreign nations, and to much less an extent the lack of availability of product, market, and other contingencies. It may be that the TALFF component is too liberal to stimulate the U.S. purchases we expect.

After consideration of all of the above, the Regional Director believes a purchase ratio 8:3 and 1 is appropriate for the 1990 fishing year. The Council provided flexibility to the venture operations by allowing equivalent ratios of 8:6 and 1 or 8:0 and 3 to its 8:3:2 recommendation. The ratio 8:9 and 0 was rejected by the Council because it did not contain a processed product purchase component. The Council stressed that the absence of a U.S. processed product purchase component, at this stage in the development of the U.S. industry, is not "in a manner keeping with the goals of the FMP and the Council's policy". Consistent with the Council's recommendation for flexibility, the 8:3:1 requirement may be substituted with the equivalent 8:0:2, but not 8:6:0.

A subsequent vote by the Council's Foreign Fishing Committee embraced the concept of a joint-venture-only operation. This type of application would also lack a U.S. processed product purchase, contrary to the full Council's wishes. However, there is no TALFF associated with such a proposal for which processed product would act as a partial *quid pro quo*. The Regional Director has revised the Council's recommended purchase ratio to apply only to those applicants requesting TALFF.

In addition to the specifications in Table 1, the Council recommended that conditions and restrictions be placed on the foreign fishery for mackerel. These recommendations are intended to minimize harvesting conflicts among users and impacts on other regional resources. The recommended conditions were contained in the preliminary notice and are listed below. Changes were made to conditions 2, 4, 7 and 8.

Condition 2 clarifies the language to apply only to applicants requesting TALFF. The Regional Director has modified condition 4 by dropping the imposition that foreign permits should be limited to the number of vessels needed to harvest an allocation. It is economically unreasonable to expect that a foreign nation would send over more vessels than necessary to harvest an allocation. In addition, condition 4 also establishes the requirement that nations receiving foreign fishing allocations dedicate a vessel to receive JVP exclusively. The purpose of this is to prevent the foreign vessel from temporarily abandoning its commitment to purchase JVP in favor of fishing directly for mackerel. A clarification was added to condition 7 that describes the regulatory authority for increasing TALFF. Condition 8 now indicates that the Regional Director will evaluate foreign and domestic performance.

1. Directed foreign fishing for Atlantic mackerel should be prohibited south of 37°30'N. latitude. Joint ventures are allowed, but river herring bycatch south of that latitude may not exceed 0.25 percent of the over-the-side transfers of Atlantic mackerel; directed foreign fishing for Atlantic mackerel (allowed north of 37°30'N. latitude and 20 miles seaward only) should be limited to a 1 percent river herring bycatch; river herring TALFF should be 100 mt with the possibility of an increase to 200 mt.

2. Purchase requirements for foreign nations that request TALFF should be set at a ratio of 8 mt TALFF to 3 mt JVP and 1 mt U.S. processed product. The equivalent 8:0:2 ratio may be substituted to fulfill the purchase requirement, but 8:6:0 is not permitted.

3. Allocations should be distributed in increments in order to ensure compliance with the 8:3 and 1 ratio by the end of the fishing year.

4. Foreign nations participating in the 1990 Atlantic mackerel fishery will be required to dedicate a vessel to receive JVP from U.S. vessels exclusively. This dedicated vessel will not be permitted to conduct directed fishing operations.

5. The Regional Director should do everything within his power to reduce impacts on marine mammals in prosecuting the Atlantic mackerel fisheries.

6. Increases in IOY during the year should not exceed 200,000 mt.

7. TALFF should not exceed 24,000 mt, unless the Regional Director, in consultation with the Council, determines that it is appropriate under § 655.21(b)(2)(v).

8. Applications from a particular nation for joint ventures and directed foreign fishing for 1990 will not be decided on until the Regional Director determines, based on an evaluation of performance, that the nation's purchase obligations for 1989 have been fulfilled.

Responses to Comments

Comments were received from the Embassy Officials of the German Democratic Republic (GDR) and the Polish People's Republic (PPR), European Economic Community (EEC), Marine Resources Company International (MRCI), Scan Ocean, Inc., and Mayflower International Ltd.

Comment: GDR commented that it has the potential to utilize approximately 30,000 metric tons for its domestic market, providing it can be produced competitively with other alternatives. GDR believes the proposed conditions are unrealistic. The GDR believes, given the state of the resource, that 100,000 mt should be harvested from the stock in 1990. GDR also commented that it was inconvenienced by interruptions to their operations in 1989 while waiting for the second increment of their allocation. The GDR urged that the specifications contain sufficient flexibility for foreign vessels to participate in the fishery uninterrupted, should non compliance with the ratios be caused by shortcomings of the domestic industry. The GDR intends to work out mutually beneficial arrangements with the U.S. industry.

Response: The GDR's objective, to produce a product that would yield economic benefits to those involved, is shared by the United States. The Regional Director is also displeased by the lack of coordination among joint venture parties that led to vessels laying idle during the 1989 fishery. The conditions imposed on the fishery are intended to improve coordination and ensure that benefits to all parties are realized. The Regional Director notes the GDR's intention to meet with the U.S. industry, and will consider practical options for achieving the common objective that may arise from this meeting.

The GDR will note that the final specifications contained in this notice provide TALFF and JVP levels that could fulfill its needs.

The specifications provide for a harvest level of 120,000 mt from U.S. waters. Whether or not this level of harvest is achieved largely depends on the success of the joint ventures, domestic and recreational fisheries.

Comment: The EEC commented favorably on the early publication of the proposed specifications. The EEC reiterates its serious concern for reductions in TALFF which it believes to

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be unjustified. The EEC does not understand how reducing the possibilities for cooperation with foreign fishermen by reducing TALFF could contribute toward achievement of full utilization of fisheries by U.S. harvesters and processors. The capacity and intent of the United States to harvest and process does not reflect the IOY set by the Council and reduces the portion which can be made available to TALFF. The EEC protests condition 7 of the proposed specifications that "TALFF should not exceed 24,000 mt" which appears contrary to producing maximum benefits to the United States.

The EEC also states that scientific evidence suggests the quality of fish caught would improve from stock reduction and that the scientific data does not support the gap between ABC and IOY. Higher TALFF would benefit the U.S. industry. The EEC objected to the 8:3 and 2 ratio because it is too difficult to achieve.

Response: The Regional Director is pleased that early publication of the proposed specifications may have a positive effect on business arrangements in 1990. The Regional Director is equally concerned over the misconceptions surrounding the annual determination of IOY. IOY is a modification of ABC, based on the Council's analysis of nine economic factors contained in the FMP for this species. IOY is not simply a biological amount, although it is tied to the biological condition of the fishery and may not exceed the allowable biological catch. The gap between the ABC and IOY reflects the economic condition of the fishery. The economic condition of the fishery has resulted in lower TALFF.

The EEC questioned the reduction in TALFF from the previous year and believes that reducing TALFF diminishes possibilities for cooperation with foreign fishing interests and conflicts with the U.S. goal of full utilization. The view held by the U.S. industry, represented by the Council is that little benefit, if any, is derived from TALFF alone. Substantive benefits to the United States are derived from the cooperative joint ventures that involve purchases of JVP and domestic processed product. For these ventures to take place, cooperation between the foreign nation and U.S. partner must begin prior to the onset of foreign fishing. Furthermore, because TALFF is a component of IOY that provides the least benefit to the United States, the increased interest in JVP over last year has resulted in a lower initial TALFF for 1990.

The recommended condition concerning TALFF states that TALFF *should* not exceed 24,000 mt. The Regional Director agrees that the statement should be clarified to reflect § 655.21(b)(2)(v) of the regulations implementing the Council's FMP for this species. This section provides that the Regional Director may adjust the IOY, in consultation with the Council, if new information or changed circumstances indicate that the IOY should be increased to produce maximum net benefits to the United States, based upon the nine economic factors used to determine the preliminary IOY.

The Regional Director is informed as to the high abundance of the Atlantic mackerel stock and the density dependent factors that appear to be reducing the growth of individuals. The IOY specified in this notice provides the opportunity for large harvests to alleviate this pressure on the resource.

Comment: PPR commented that the ratios of 8 mt TALFF to 3 mt JVP and 2 mt processed product are extremely restrictive and may make any venture with the United States cost prohibitive. The PPR asked if it is possible to change these ratios. In addition, the PPR wanted an indication as to whether it would be required to fulfill its 1989 obligations if the United States is unable to produce a sufficient supply of processed product.

Response: The Regional Director fully expects the PPR to fulfill its 1989 obligations prior to engaging in a fishery for Atlantic mackerel in the exclusive economic zone (EEZ). The Regional Director and the Council are seeking demonstrations of good faith and performance. If 1989 obligations are not met, it is doubtful the United States can expect to derive benefits from a similar arrangement in 1990. The U.S. fleet has the capacity to supply an individual nation or nations with the necessary amounts of JVP and processed product but may not be able to supply all nations wishing to engage in the fishery.

The ratios of 8:3 and 2 have been revised based on the comments received and the anticipated success of the U.S./foreign joint ventures. The Regional Director believes the revised ratios (8:3 and 1) will provide the maximum benefits to the United States.

Comment: Mayflower International, Ltd., expressed concern that the methodology utilized by the Council and the NMFS to "Americanize" the fishery is unsuitable for this species considering its place in the world market. Mayflower states the conditions for foreign participation may be overly rigid and asserts that bilateral negotiations involving U.S. industry and the foreign nations are necessary to maximize U.S. benefits.

Response: The Regional Director is aware that the current U.S. harvest of Atlantic mackerel represents a small portion of the total world harvest and is working with the Council to develop recommendations which enhance opportunities in foreign markets for the U.S. industry. This is the intent of some of the conditions. The Regional Director is interested in other arrangements that may arise from bilateral negotiations with industry. The 8:3 and 2 ratio has been revised to 8:3 and 1 based on the comments received.

Comment: Scan Ocean, Inc. commented that directed foreign fishing should be allowed south of 37°30' N. latitude because foreign vessels may need to fish there due to weather and sea conditions or due to the location of the resource. River herring bycatch would be controlled by the 25 percent cap of allowable bycatch. Scan Ocean also commented that the ratios of 8:3 and 2 increase the cost of the venture by 25 percent. In addition, the less restrictive ratio of the previous year was not met because the U.S. fleet had extreme difficulty supplying foreign fleets. The fishery should have the opportunity to operate under the 9:3 and 1 ratio a second year to determine its feasibility before the ratio is made more restrictive.

Scan Ocean agrees that allocations should be distributed in increments to ensure compliance. Consultations should take place with U.S. partners early so that fishing operations are not interrupted and the costs of having vessels lay idle are minimized.

The number of foreign vessels allowed to fish should be limited. A 24,000 mt cap on TALFF will not maximize benefits to the United States. If fishing is successful, more U.S. vessels will want to engage in joint ventures and sufficient TALFF will not be available to accommodate it. A cap on TALFF also caps U.S. output. Scan Ocean believes foreign nations are very concerned about the fact that 1990 applications will not be considered until 1989 purchase obligations are fulfilled, given that the U.S. industry cannot supply the fish. Scan Ocean believes the foreign nations should not be penalized for this situation. The foreigners believe the contract agreements signed by the United States and foreign nation representatives were sufficient to fulfill their purchase obligations. Foreign nations may have to consider legal action against the U.S. parties for non-fulfillment of contract obligations.

Response: The Council's recommendation to prohibit a directed foreign fishery south 37°30' is based on its concern for river herring bycatch from this area and its observation that the recreational fishery for mackerel appeared to improve with the absence of foreign activity from this area during the 1989 fishing year. U.S. commercial vessel captains and recreational fishermen believe that the large foreign trawlers break up the schools, making it difficult to catch mackerel in the quantities that were caught during periods when no foreign fishing occurred. For the years 1983–1988, 90 percent of the foreign fishing activity for mackerel (JVP & TALFF) occurred north of 37°. Although there is no scientific evidence to support the contention that foreign trawlers break up schools of mackerel, the long-standing concern for river herring bycatch in this area and the fact that the bulk of the foreign fishery is conducted northward, convinces the Regional Director that this requirement is reasonable.

As stated in previous responses, the ratio 8:3 and 2 has been revised to 8:3 and 1.

Allocations are released to foreign nations in increments of up to 50 percent of a nation's allocation in accordance with section 201(e)(1)(C) of the Act. The NMFS agrees that interruptions to fishing operations are costly and wasteful to all involved, whether due to the unpreparedness of a foreign vessel to accept U.S. product over-the-side, or to the inability of a U.S. vessel to deliver to the foreign partner. With this in mind, the Council and NMFS developed and published the specifications for the 1990 fishing year early, August 1989, so that the parties could work out these logistical problems. Both parties to the joint venture have been urged to work out arrangements in advance to ensure that the supply and demand exist in the proper quantities at the proper time on the fishing grounds.

The 24,000 mt TALFF represents the amount the Council and NMFS believe is necessary to provide maximum benefits to the United States. Sufficient flexibility exists in the implementing regulations to adjust TALFF, if appropriate.

The Regional Director expects the U.S. fishermen and foreign vessels to fulfill their contractual obligations. This remains a recommended condition of the 1990 fishery. It is not the intent of NMFS to penalize foreign nations. The responsibility for the success or failure of a joint venture rests on both parties. The loss of opportunity to U.S. vessels could be considered a "penalty" to them. However, the failure of a venture in 1989 is reason to expect the same in 1990. The limited amount of TALFF requires that ventures with the most promise for success be given priority.

Comment: The director of joint venture operations for MRCI reiterated to the Council and the Regional Director his intent to organize a large-scale joint venture for Atlantic mackerel. The venture target amount is 30,000 mt. No TALFF will be requested in conjunction with this venture.

Response: The participation of U.S. vessels in a joint venture of this nature would contribute toward the development of the U.S. industry.

Classification

This action is authorized by 50 CFR part 655 and complies with Executive Order 12291.

Authority: 16 U.S.C. 1801 *et seq.*

List of Subjects in 50 CFR Part 655

Fisheries, Reporting and recordkeeping requirements.

Dated: December 14, 1989.

James E. Douglas, Jr.,

Acting Assistant Administrator for Fisheries.

[FR Doc. 89–29532 Filed 12–15–89; 8:45 am]

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Proposed Rules

Federal Register
Vol. 54, No. 243
Wednesday, December 20, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1421

Price Support and Production Adjustment Programs

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The regulations at 7 CFR part 1421 set forth the terms and conditions of the Commodity Credit Corporation (CCC) price support programs and the Farmer-Owned Reserve (FOR) Program. The amendments made by this proposed rule would provide that only grain which is produced by a participant in CCC price support program could be offered to CCC for price support. In addition, this proposed rule would amend 7 CFR part 1421 to specify the conditions for rotating FOR loan collateral in order to ensure that CCC's interest in the loan collateral is adequately protected.

COMMENTS: Comments must be received on or before January 19, 1990 in order to be assured of consideration.

ADDRESS: Director, Cotton, Grain and Rice Price Support Division, USDA-ASCS, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Harold Connor, Program Specialist, Cotton, Grain and Rice Price Support Division, USDA-ASCS, P.O. Box 2415, Washington, DC 20013. Telephone: (202) 447-8223.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under United States Department of Agriculture (USDA) procedures implementing Executive Order 12291 and Departmental Regulation No. 1512-1 and has been classified as "not major." It has been determined that the provisions of this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since neither the Agricultural Stabilization and Conservation Service (ASCS) nor CCC is required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Background

Historically, producers have been able to obtain price support from CCC only with respect to commodities which they produced. However, in the early to mid-1980's many producers were not able to obtain suitable storage for current year crops on their farms or at commercial warehouses near their farms due to excessively large surpluses of wheat and feed grains already in store in these facilities. These producers were often required to sell these commodities immediately upon harvest at prices below the applicable CCC price support levels. Accordingly, in order to assure producers the opportunity to obtain the full advantages of the CCC price support programs CCC allowed producers to purchase commodities and to pledge these commodities as collateral for price support loans if: (1) The producer had harvested a quantity of grain which was eligible to receive price support; (2) the purchased quantity did not exceed the harvested quantity; and (3) the producer did not obtain price support with respect to the quantity harvested by the producer. The regulations setting forth these provisions are found at 7 CFR 1421.5(c)(3).

The storage situation currently in existence is dramatically different than in previous years as a result of the lowest supplied of wheat and feed grains in approximately 15 years. Accordingly, CCC proposes to amend these regulations to provide that purchased commodities may not be offered to CCC for price support loans or purchases. Similarly, CCC proposes to amend the regulations at 7 CFR 1421.752 to provide that purchased and prior year commodities may not be used to replace existing CCC Farmer-Owned Reserve (FOR) loan collateral.

The FOR is designed to remove surplus stocks of wheat and feed grains from market access until certain price and supply conditions exist. However, in recent years producers have had easy access to FOR loan collateral through the use of "rotation" in which existing loan collateral is replaced with purchased stocks or stocks produced by the producer. Generally, CCC has allowed producers to "rotate" their FOR collateral by selling the collateral and then replacing the grain within 60 days. During this 60-day period the producer continues to earn FOR storage payments. In order to ensure that the existence of FOR stocks does not adversely affect market prices, CCC proposes to amend 7 CFR 1421.752 to provide that the State ASC committee will establish for each county the earliest date that a producer's request to rotate FOR collateral may be approved. Producer's would be allowed to deliver to a CCC-approved warehouse, sell, or feed the original loan collateral during the 60-day period following this date. Since CCC retains a security interest in the collateral, the warehouse receipt for the FOR collateral or any proceeds from the sale of the commodity must be remitted to CCC. CCC would, in turn, release these funds or the receipts to the producer after the replacement stocks are in place. Producers who did not have the replacement stocks in place on the day following the approved rotation period would be subject to liquidated damages and administrative action which are currently applicable to producers who have engaged in the unauthorized disposition of their FOR loan collateral unless the county committee, with the concurrence of a representative of the State committee, determines that the producer has make a good faith effort to harvest such replacement grain and the producer is unable to harvest such eligible grain due to adverse weather conditions or similar conditions beyond the control of the producer as determined by CCC.

These actions would allow producers with FOR loans to rotate their stocks and thus insure enhanced quality of FOR stocks without adversely affecting market prices received by other producers.

List of Subjects in 7 CFR Part 1421

Grains, Loan programs/agriculture, Price support programs, Warehouses.

Proposed Rule

Accordingly, it is proposed that 7 CFR part 1421 be amended as follows:

PART 1421—[AMENDED]

1. The authority citation for 7 CFR part 1421 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1425, 1441, 1444–1, 1444b, 1445–2, 1445c–2, 1445e, 1440, and 1447; 15 U.S.C. 714b and 714c.

§ 1421.3 [Amended]

2. In § 1421.3 paragraph (c) is removed and reserved.

3. Section 1421.752 is amended by revising paragraph (b) and (c) to read as follows:

§ 1421.752 Commingling and replacement of loan collateral.

* * * * *

(b) *Replacement of loan collateral.* (1) A producer may replace existing Grain Reserve Program farm-stored loan collateral only as provided in this paragraph and paragraph (c) of this section. Warehouse-stored loan collateral may not be replaced. A request for approval to replace farm-stored collateral must be made by completion of Form CCC–687–1 or CCC–681 and the filing of the form with the county ASCS office which disbursed the loan. No request may be approved prior to the date established for each county by the State committee. Replacement stocks must be in place within 60 days of the date the request to rotate is approved by the county committee.

(2) Grain which is used to replace existing loan collateral must have been produced by the producer and be eligible to be pledged as collateral for a regular price support loan. Replacement loan collateral must be grain from the crop which is harvested after the date established in accordance with paragraph (b)(1). This grain must not have been purchased and must previously not have been pledged as collateral for a CCC price support loan. With respect to wheat, such replacement stocks must be of the same class as the original loan collateral.

(3) Producers who request to replace existing Grain Reserve Program loan collateral with new stocks must have the replacement stocks in CCC-approved farm storage within the approved 60-day period. A producer may only have replacement stocks in place after this date if the producer notifies the county ASC committee prior to this date of the producer's inability to harvest such stocks and the county committee, with the concurrence of a representative of the State committee, determines that:

(i) The producer has made a good faith effort to harvest such replacement grain; and

(ii) The producer is unable to harvest such eligible grain due to adverse weather conditions, or other similar conditions beyond the control of the producer, as determined by CCC.

(4) A producer who does not have replacement stocks in place by the date specified in paragraph (b)(3) and does not meet the conditions specified in such paragraph shall pay to CCC an amount equal to the sum of:

(i) The principal of the loan plus interest at the rate in effect on the date of the failure to have such stocks in place, as provided in accordance with Part 1405 of this chapter, determined from the date of the disbursement of the loan through the date the stocks were required to be in place;

(ii) Storage payments made in accordance with the loan plus interest from the date payments were made in the manner specified in paragraph (b)(4)(i); and

(iii) Liquidated damages at the rate of 50 percent of the interest rate in the manner specified in paragraph (b)(4)(i) from the date the loan was disbursed.

(5) A producer who is unable to replace the rotated commodity because of the conditions specified in subparagraph (b)(3)(i) and (ii) shall pay to CCC an amount equal to the sum of:

(i) The principal of the loan plus interest at the rate in effect on the date of the failure to have such stocks in place, as provided in accordance with Part 1405 of this chapter, determined from the date of the disbursement of the loan through the date the stocks were required to be in place; and

(ii) Unearned storage payments.

(c) *Procedure for replacement.* (1) A producer who files a Form CCC–687–1 or CCC–681 requesting the approval to replace existing loan collateral with new stocks may after approval of the request:

(i) Feed the grain to the producer's own livestock;

(ii) Deliver the grain to a CCC-approved warehouse; or

(iii) Sell the grain.

(2) A producer who delivers grain to a CCC-approved warehouse in accordance with paragraph (c)(1) shall cause to be delivered to CCC a warehouse receipt with respect to such grain. The warehouse receipt shall show that storage charges have been paid or otherwise provided for through the final date specified to complete the rotation. CCC shall retain control of the receipt until the producer has replaced the original loan collateral with eligible replacement stocks. Except as provided in paragraph (b)(3) of this section, if the producer fails to replace the rotated stocks within the approved rotation period CCC shall retain title to such grain and shall determine the value of the grain represented by the receipt. This value shall be credited to the amount owed by the producer as determined in accordance with paragraph (b)(4) of this section.

(3) A producer who in accordance with paragraph (c)(1), sells the grain which is the collateral for the CCC grain reserve loan shall only sell such grain to the person specified in the Form CCC–681. The purchaser shall make and remit to CCC a check for the full amount of the purchase. CCC shall make these funds available to the producer upon the replacement of the original loan collateral with eligible replacement stocks if such replacement occurs prior to the final date of the approved rotation period.

Except as provided in paragraph (b)(3) of this section, if the producer has not acquired eligible replacement stocks by this date, the producer shall forfeit that sales proceeds to CCC. This amount shall be credited to the amount owed by the producer as determined in accordance with paragraph (b)(4) of this section.

(4) A producer who intends to feed such grain to the producer's own livestock, may only feed the quantity of grain which was approved by the county committee for such purposes.

(5) Any producer who files a Form CCC–687–1 or CCC–681 with the county committee shall not remove the existing loan collateral until written approval has been made by the county committee. The producer shall allow a representative of the county committee to inspect and measure, at the producer's expense, the quantity of grain to be removed and the growing crop

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which will be used as replacement stocks upon harvest.

* * * * *

Signed at Washington, DC on December 12, 1989.

John A. Stevenson,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 89-29570 Filed 12-19-89; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

Alabama Regulatory Program; Regulatory Reform

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior

ACTION: Proposed rule.

SUMMARY: OSM is announcing the receipt of proposed amendments to the Alabama regulatory program (hereinafter referred to as the Alabama program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendments cover a wide variety of topics and are primarily in response to changes in the Federal regulations (30 CFR, Chapter VII) between May 20, 1982 and June 15, 1988 (from the date of conditional approval of the Alabama program through those Federal regulation changes covered by Regulation Reform Review II). In addition, other changes are proposed by the Alabama regulatory authority.

This notice sets forth the times and locations that the Alabama program and proposed amendments to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on January 19, 1990. If requested, a public hearing on the proposed amendments will be held at 1 p.m. on January 15, 1990; requests to present oral testimony at the hearing must be received on or before 4 p.m. on January 4, 1990.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. Robert A. Penn, Director, Birmingham Field Office, at the address listed below. Copies of the Alabama program, the proposed amendments, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendments by contacting OSM's Birmingham Field Office.

Office of Surface Mining Reclamation and Enforcement, Birmingham Field Office, 280 West Valley Avenue, Room 302, Homewood, Alabama 35209, Telephone: (205) 731-0890.

Alabama Surface Mining Commission, First Federal Bank Building, 2nd. Floor, 1811 Second Avenue, Jasper, Alabama 35501, Telephone: (205) 221-4130.

FOR FURTHER INFORMATION CONTACT: Mr. Robert A. Penn, Director, Birmingham Field Office, (205) 731-0890.

SUPPLEMENTARY INFORMATION:

I. Background

On May 20, 1982, the Secretary of the Interior conditionally approved the Alabama program. Information regarding general background on the Alabama program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Alabama program can be found in the May 20, 1982 **Federal Register** (47 FR 22030). Subsequent actions taken with regard to Alabama's program and program amendments can be found in 30 CFR 901.10, 901.15, and 901.30.

II. Discussion of Amendments

Since May 20, 1982 (the date of conditional approval of the Alabama program), a number of changes have been made to the Federal regulations concerning surface coal mining and reclamation operations. Pursuant to the Federal regulations at 30 CFR 732.17, OSM informed Alabama on May 22, 1985, June 9, 1987, and November 28, 1988 that a number of the Alabama regulations are less effective than or inconsistent with the revised Federal requirements.

By letter dated November 22, 1989 (Administrative Record No. AL-446), Alabama submitted to OSM a State program amendment package consisting of approximately 85 revisions to the Alabama program. These revisions address many of the required changes to the Alabama program that were identified in the three letters referred to above. Alabama has also proposed some additional changes which Alabama believes will further improve the Albama program.

The Alabama Surface Mining Commission proposes the following rule making actions:

Rule No. and Title: (Intended Action)

880-X-2A-.06 Definitions. (Amend)
880-X-2B-.01 Applicability. (Amend)
880-X-6A-.06 License application requirements. (Amend)
880-X-7B-.07 Procedures. (Amend)
880-X-7D-.10 Public information. (Amend)
880-X-8A-.07 Coordination with requirements under other laws. (Amend)
880-X-8B-.06 Permit applications—general requirements for format and contents. (Amend)
880-X-8B-.07 Permit fees. (Amend)
880-X-8C-.06 Coal exploration compliance duties. (Repeal and Replace)
880-X-8D-.05 Identification of Interests. (Amend)
880-X-8D-.06 Compliance information. (Amend)
880-X-8D-.07 Right-of-entry information. (Amend)
880-X-8D-.08 Relationship to areas designated unsuitable for mining. (Amend)
880-X-8D-.14 Facilities or structures used in common. (New Rule)
880-X-8E-.05 Cultural, historical and archaeological resources information. (Amend)
880-X-8E-.06 Description of geology and hydrology and determination of the probable hydrologic consequences. (Repeal and Replace)
880-X-8E-.10 Prime farmland investigation. (Repeal and Replace)
880-X-8E-.11 Fish and Wildlife information. (New Rule)
880-X-8FA-.06 Operation plan: Permit map(s). (Amend)
880-X-8F-.14 Protection of public parks and historic places. (Amend)
880-X-8F-.18 Fish and wildlife protection and enhancement plans. (New Rule)
880-X-8G-.05 Identification of Interests. (Amend)
880-X-8G-.06 Compliance information. (Amend)
880-X-8G-.07 Right-of-entry information. (Amend)
880-X-8G-.08 Relationship to areas designated unsuitable for mining. (Amend)
880-X-8G-.14 Facilities or structures used in common. (New Rule)
880-X-8H-.05 Cultural, historical and archaeological resources information. (Amend)
880-X-8H-.06 Description of geology and hydrology and determination of the probable hydrologic consequences. (Repeal and Replace)
880-X-8H-.10 Prime farmland investigation. (Repeal and Replace)
880-X-8H-.11 Fish and wildlife information. (New Rule)
880-X-8I-.07 Operation plan: Permit map(s). (Amend)
880-X-8I-.10 Subsidence control plan. (Repeal and Replace)
880-X-8I-.14 Protection of public parks and historic places. (Amend)
880-X-8I-.18 Fish and Wildlife Protection and Enhancement Plan. (New Rule)
880-X-8J-.04 Experimental Practices Mining. (Amend)
880-X-8J-.08 Soils and Prime Farmlands. (Amend)
880-X-8K-.05 Public Notices of Filing of Permit Applications. (Repeal)
880-X-8K-.05 Public Participation in Permit Processing. (New Rule)
880-X-8K-.06 Opportunity for Submission of Written Comments on Permit Applications. (Repeal)
880-X-8K-.07 Right to File Written Objections. (Repeal)
880-X-8K-.08 Informal Conferences. (Repeal)
880-X-8K-.09 Public Availability of Information in Permit Applications on File with the State Regulatory Authority. (Repeal)
880-X-8K-.10 Review of Permit Applications. (Repeal and Replace)
880-X-8K-.11 Criteria for Permit Approval or Denial. (Repeal)
880-X-8K-.11 Permit Conditions. (New Rule)
880-X-8K-.12 Criteria for Permit Approval or Denial: Existing Structures. (Repeal)
880-X-8K-.12 Permit Issuance and Right of Renewal. (New Rule)
880-X-8K-.13 Permit Approval or Denial Actions. (Repeal)
880-X-8K-.14 Permit Terms. (Repeal)
880-X-8K-.15 Conditions of Permits: General and Right of Entry. (Repeal)
880-X-8K-.16 Conditions of Permits: Environment, Public Health, and Safety. (Repeal)
880-X-8K-.17 Improvidently Issued Permits: Generai Procedures. (New Rule)
880-X-8K-.18 Improvidently Issued Permits: Recision Procedures. (New Rule)
880-X-8M-.07 Permit Renewals: General Requirements. (Repeal)
880-X-8M-.07 Permit Renewals: (New Rule)
880-X-8M-.08 Permit Renewals: Applications. (Repeal)
880-X-8M-.09 Permit Renewals: Terms. (Repeal)
880-X-8M-.10 Permit Renewals: Approval or Denial. (Repeal)
880-X-8M-.11 Transfer, Assignment, or Sale of Permit Rights: General Requirements. (Repeal)
880-X-8M-.11 Transfer, Assignment, or Sale of Permit Rights. (New Rule)
880-X-8M-.12 Transfer, Assignment, or Sale of Permit Rights: Obtaining Approval. (Repeal)
880-X-10B-.04 General Responsibilities of Persons Conducting Other Coal Exploration. (Amend)
880-X-10B-.05 Required Documents. (Amend)
880-X-10B-.06 Performance Standards for Coal Exploration. (Amend)
880-X-10C-.08 Topsoil: Removal. (Amend)
880-X-10C-.12 Hydrologic Balance: General Requirements. (Repeal)
880-X-10C-.12 Hydrologic-Balance Protection. (New Rule)
880-X-10C-.14 Hydrologic-Balance: Diversions and Conveyance of Overland Flow and Shallow Ground Water Flow and Streams. (Repeal)
880-X-10C-.14 Diversions. (New Rule)
880-X-10C-.24 Hydrologic Balance: Transfer of Wells. (Repeal)
880-X-10C-.26 Hydrologic Balance: Discharge of Water in an Underground Mine. (Repeal)
880-X-10C-.28 Hydrologic Balance: Steam Buffer Zones. (Repeal and Replace)
880-X-10C-.37 Protection of Underground Mining. (Amend)
880-X-10C-.38 Coal Processing Waste Banks: General Requirements. (Repeal)
880-X-10C-.38 Coal Mine Waste: General Requirements. (New Rule)
880-X-10C-.39 Coal Processing Waste Banks: Site Inspection. (Repeal)
880-X-10C-.40 Coal Processing Waste Banks: Water Control Measures. (Repeal)
880-X-10C-.40 Coal Mine Waste: Refuse Piles. (New Rule)
880-X-10C-.41 Coal Processing Waste Banks: Construction Requirements. (Repeal)
880-X-10C-.41 Coal Mine Waste: Impounding Structures. (New Rule)
880-X-10C-.42 Coal Processing Waste: Burning. (Repeal)
880-X-10C-.43 Coal Processing Waste: Burned Waste Utilization. (Repeal)
880-X-10C-.43 Coal Mine Waste: Burning and Burned Waste Utilization. (New Rule)
880-X-10C-.44 Coal Processing Waste: Return to Underground Workings. (Repeal)
880-X-10C-.45 Disposal of Non-coal Wastes. (Repeal)
880-X-10C-.45 Disposal of Noncoal Mine Waste. (New Rule)
880-X-10C-.46 Coal Processing Waste: Dams and Embankments: General Requirements. (Repeal)
880-X-10C-.47 Coal Processing Waste: Dams and Embankments: Site Preparation. (Repeal)
880-X-10C-.48 Coal Processing Waste: Dams and Embankments: Design and Construction. (Repeal)
880-X-10C-.49 Protection of Fish, Wildlife, and Related Environmental Values. (Repeal and Replace)
880-X-10C-.52 Backfilling and Grading: Timing. (Amend)
880-X-10C-.53 Backfilling and Grading: General Grading Requirements. (Repeal)
880-X-10C-.53 Backfilling and Grading: General Requirements. (New Rule)
880-X-10C-.54 Backfilling and Grading: Coal and Acid and Toxic-forming Materials. (Repeal)
880-X-10C-.55 Backfilling and Grading: Thin Overburden. (Amend)
880-X-10C-.56 Backfilling and Grading: Thick Overburden. (Amend)
880-X-10C-.56 Backfilling and Grading: Previously Mined Areas. (New Rule)
880-X-10C-.58 Revegetation: General Requirements. (Repeal and Replace)
880-X-10C-.59 Revegetation: Use of Commercial and Introduced Species. (Repeal)
880-X-10C-.60 Revegetation: Time. (Repeal)
880-X-10C-.60 Revegetation: Revegetation Timing and Soil Stabilization Practices. (New Rule)
880-X-10C-.61 Revegetation: Mulching and Other Soil Stabilizing Practices. (Repeal)
880-X-10C-.62 Revegetation: Standards for Success. (Repeal and Replace)
880-X-10C-.63 Revegetation: Tree and Shrub Stocking for Forest Land and Land Used for Fish and Wildlife Habitats. (Repeal)
880-X-10D-.08 Topsoil: Removal. (Amend)
880-X-10D-.12 Hydrologic Balance: General Requirements. (Repeal)
880-X-10D-.12 Hydrologic-Balance Protection. (New Rule)
880-X-10D-.14 Hydrologic-Balance: Diversions and Conveyance of Overland Flow and Shallow Ground Water Flow and Streams. (Repeal)
880-X-10D-.14 Diversions. (New Rule)
880-X-10D-.23 Hydrologic Balance: Transfer of Wells. (Repeal)
880-X-10D-.24 Hydrologic Balance: Discharge of Water into an Underground Mine. (Repeal)

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880–X–10D–.26 Hydrologic Balance: Stream Buffer Zones. (Repeal and Replace)
880–X–10D–.34 Coal Processing Waste Banks: General Requirements. (Repeal)
880–X–10D–.34 Coal Mine Waste: General Requirements. (New Rule)
880–X–10D–.35 Coal Processing Waste Banks: Site Inspection. (Repeal)
880–X–10D–.36 Coal Processing Waste Banks: Water Control Measures. (Repeal)
880–X–10D–.36 Coal Mine Waste: Refuse Piles. (New Rule)
880–X–10D–.37 Coal Processing Waste Banks: Construction Requirements. (Repeal)
880–X–10D–.37 Coal Mine Waste: Impounding Structures. (New Rule)
880–X–10D–.38 Coal Processing Waste: Burning. (Repeal)
880–X–10D–.39 Coal Processing Waste: Burned Waste Utilization. (Repeal)
880–X–10D–.39 Coal Mine Waste: Burning and Burned Waste Utilization. (New Rule)
880–X–10D–.40 Coal Processing Waste: Return to Underground Workings. (Repeal)
880–X–10D–.41 Disposal of Non-Coal Wastes. (Repeal)
880–X–10D–.41 Disposal of NonCoal Mine Wastes. (New Rules)
880–X–10D–.42 Coal Processing Waste: Dams and Embankments: General Requirements. (Repeal)
880–X–10D–.43 Coal Processing Waste: Dams and Embankments: Site Preparation. (Repeal)
880–X–10D–.44 Coal Processing Waste: Dams and Embankments: Design and Construction. (Repeal)
880–X–10D–.45 Protection of Fish, Wildlife, and Related Environmental Values. (Repeal and Replace)
880–X–10D–.48 Backfilling and Grading: General Requirements. (Repeal and Replace)
880–X–10D–.49 Backfilling and Grading: General Grading Requirements. (Repeal)
880–X–10D–.49 Backfilling and Grading: Previously Mined Areas. (New Rule)
880–X–10D–.52 Revegetation: General Requirements. (Repeal and Replace)
880–X–10D–.53 Revegetation: Use of Commercial and Introduced Species. (Repeal)
880–X–10D–.54 Revegetation: Timing. (Repeal)
880–X–10D–.54 Revegetation: Revegetation Timing and Soil Stabilization Practices. (New Rule)
880–X–10D–.55 Revegetation: Mulching and Other Soil Stabilizing Practices. (Repeal)
880–X–10D–.56 Revegetation: Standards for Success. (Repeal and Replace)
880–X–10D–.57 Revegetation: Tree and Shrub Stocking for Forest Land and Land Used for Fish and Wildlife Habitat. (Repeal)
880–X–10D–.58 Subsidence Control: General Requirements. (Repeal)
880–X–10D–.58 Subsidence Control. (New Rule)
880–X–10D–.59 Subsidence Control: Public Notice. (Repeal and Replace)
880–X–10D–.60 Subsidence Control: Surface Owner Protection. (Repeal)
880–X–10D–.61 Subsidence Control: Buffer Zones. (Repeal)
880–X–10F–.03 Auger Mining: Additional Performance Standards. (Amend)
880–X–10G Special Performance Standards—Operations on Prime Farmlands. (Repeal and Replace)
880–X–10I–.06 Steep Slopes: Performance Standards. (Repeal and Replace)
880–X–10I–.04 Steep Slopes: Multiple Seams. (Repeal)
880–X–11A–.06 Availability of Records. (Amend)
880–X–11B–.02 Inspections. (Amend)
880–X–11C–.02 Cessation Orders. (Amend)
880–X–11D–.10 Procedures for Assessment Conference. (Amend)
880–X–11E Individual Civil Penalties. (New Rule)

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendments proposed by Alabama satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Alabama program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Birmingham Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4:00 p.m. on January 4, 1990. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the OSM office listed under "**ADDRESSES**" by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "**ADDRESSES.**" A written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 901

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: December 11, 1989.

Carl C. Close,

Assistant Director, Eastern Field Operations.

[FR Doc. 89–29567 Filed 12–19–89; 8:45 am]

BILLING CODE 4310–05–M

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Ohio Permanent Regulatory Program; Filing, Applicability, and Release of Performance Bond

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing the receipt of proposed Program Amendment Number 42 to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments were initiated by Ohio and are intended to clarify certain requirements for filing performance bond, to clarify the applicability of different types of bond to the permit area, and to adopt a system for release of performance bond according to the type of the bond and the order in which different types of bond were filed.

This notice sets forth the times and locations that the Ohio program and proposed amendments to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 p.m. on January 19, 1990. If requested, a public hearing on the proposed amendments will be held at 1:00 p.m. on January 5, 1990. Requests to present oral testimony at the hearing must be received on or before 4:00 p.m. on January 4, 1990.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Ms. Nina Rose Hatfield, Director, Columbus Field Office, at the address listed below. Copies of the Ohio program, the proposed amendments, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSMRE's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 2242 South Hamilton Road, Room 202, Columbus, Ohio 43232, Telephone: (614) 866–0578.

Ohio Department of Natural Resources, Division of Reclamation, Fountain Square, Building B–3, Columbus, Ohio 43224, Telephone: (614) 265–6675.

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Director, Columbus Field Office, (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982 **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Discussion of the Proposed Amendments

By letter dated December 5, 1989 (Administrative Record No. OH–1243), Ohio submitted proposed Program Amendment No. 42. This proposed amendment was initiated by Ohio to clarify certain requirements for filing performance bond, to clarify the applicability of different types of bond to the permit area, and to adopt a system for release of performance bond according to the type of the bond and the order in which different types of bond were filed. The proposed amendment would revise the Ohio program at Ohio Administrative Code (OAC) section 1501:13–7–01(A) (4), (5), and (6)(a) (i) and (ii) and at OAC section 1501:13–7–05 (A)(1), (A)(2)(b), (A)(2)(b)(iv), (A)(2) (c)(ii), (B)(2)(c), and (B)(4) through (B)(4)(e).

Nonsubstantive changes are proposed throughout these two sections of the OAC to correct paragraph letter notations and to improve the clarity of the regulations.

The substantive changes proposed in Program Amendment No. 42 are discussed briefly below:

(1) General Requirements and Applicability of Bonding for Coal Mining and Reclamation Operations

OAC section 1501:13–7–01 paragraph (A)(4): This paragraph is being rewritten to specify that those areas within a permit which are bonded through the Performance Bond Fund provided for by OAC 1501:13–7–09 may be identified with that specific performance bond.

OAC section 1501:13–7–01 paragraph (A)(5): This paragraph is being rewritten to specify that all types of bonds, certificates of deposit, cash, and letters of credit shall apply to the permit area and to all revisions to the permit except for bond posted through the Performance Bond Fund provided for by OAC 1501:13–7–09. This latter type of bond shall apply only to those areas designated in accordance with OAC 1501:13–7–09(C).

OAC section 1501:13–7–01 paragraphs (A)(6)(a) (i) and (ii): These paragraphs are being rewritten to delete the requirement that permittees or applicants who elect to file incremental performance bond identify on the permit application map where mining will begin and the direction in which mining will proceed. Also, permittees and applicants who elect to file incremental bond shall file the performance bond for the number of acres to be affected in the first permit year before the permit is issued.

(2) Procedures, Criteria, and Schedule for Bond Release

OAC 1501:13–7–05 paragraph (B)(2)(c): This paragraph is being rewritten to include the failure to achieve crop yields for prime farmland required by OAC 1501:13–9–15(F)(5)(f) as a reason to separate and individually bond a portion of the incremental area and to extend reclamation responsibility for that portion of the area.

OAC 1501:13–7–05 paragraph (B)(4): This new paragraph is being added to specify the order of release of different types of performance bond. Certificates of deposit and cash may be released in any manner determined by the Chief of the Division of Reclamation, Ohio Department of Natural Resources. Other types of performance bond shall be released in the order in which they were filed and according to the following order by type of bond:

(1) Bond submitted through the Performance Bond Fund provided for by OAC 1501:13–9–07;

(2) Self bond as provided for by OAC 1501:13–7–04;

(3) Surety bond;

(4) Letters of credit; and

(5) Any remaining collateral bond.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is now seeking comment on whether the amendments proposed by Ohio satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Ohio program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR MORE INFORMATION CONTACT**" by 4:00 p.m. on January 4,

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1990. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the Columbus Field Office by contacting the person listed under the "**FOR FURTHER INFORMATION CONTACT.**" All such meetings shall be open to the public and, if possible, notices of the meetings will be posted at the locations listed under "**ADDRESSES.**" A written summary of each public meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 935

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: December 11, 1989.

Carl C. Close,

Assistant Director, Eastern Field Operations.

[FR Doc. 89-29568 Filed 12-19-89; 8:45 am]

BILLING CODE 4310-05-M

Notices

Federal Register

Vol. 54, No. 243

Wednesday, December 20, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

December 15, 1989.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Public Law 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Revision

Food and Nutrition Service, WIC Quarterly Participation Report, FNS-654, Quarterly, State or local governments; 344 responses; 3,684 hours; not applicable under 3504(h), Maxine McMillian (703) 756-3710.

New Collection

• Food and Nutrition Service

Interim Rule: Special Supplemental Food Program for Women, Infants and Children (WIC): Drug Abuse Information and Referrals, None, Annually, Individual or households; State or local governments; 87 responses; 3,480 hours; not applicable under 3504(h), Mary Porter (703) 756-3730.

Larry K. Roberson,

Acting Departmental Clearance Officer.

[FR Doc. 89-29571 Filed 12-19-89; 8:45 am]

BILLING CODE 3410-01-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Semiconductor Technical Advisory Committee; Closed Meeting

A meeting of the Semiconductor Technical Advisory Committee will be held January 9, 1990, at 8 a.m., in the Herbert C. Hoover Building, Room 1617-F, 14th Street and Constitution Avenue NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to semiconductors and related equipment or technology.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information, call Ruth D. Fitts at 202-377-4959.

Dated: December 15, 1989.

Betty A. Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology and Policy Analysis.

[FR Doc. 89-29556 Filed 12-19-89; 8:45 am]

BILLING CODE 3510-DT-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

December 14, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-6828. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1973, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of February 2, 1988 between the Governments of the United States and the People's Republic of China establishes limits for the 1990 agreement year. The limits for Categories 239, 347/348, 445/446, 611, 643, 845 and 847 and the limits for Groups II and III are being reduced for carryforward used in 1989. The limits for Categories 330/630, 369-S, 633, 643 and 863-S are subject to change pending consultations with the Government of the People's Republic of China.

A copy of the agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647–1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Dated: December 14, 1989.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 14, 1989

Commissioner of Customs, Department of the Treasury, Washington, D.C. 20229.

Dear Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of February 2, 1988 between the Governments of the United States and the People's Republic of China; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1990, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in China and exported during the twelve-month period beginning on January 1, 1990 and extending through December 31, 1990, in excess of the following levels of restraints:

Category	12-month restraint limit
Levels Not Subject to a Group	
200	549,476 kilograms.
218	9,719,666 square meters.
219	1,964,367 square meters.
226	8,919,658 square meters.
237	1,456,609 dozen.
239	2,359,361 kilograms.
300/301	3,335,566 kilograms.
313	36,810,103 square meters.
314	41,413,162 square meters.
315	146,037,719 square meters.
317/326	16,544,264 square meters of which not more than 3,165,244 square meters shall be in Category 326.
331	4,318,810 dozen pairs.
333	73,866 dozen.
334	263,586 dozen.
335	342,787 dozen.
336	137,917 dozen.
338/339	2,116,741 dozen of which not more than 1,806,857 dozen shall be in knit shirts other than T-shirts and tank tops in Categories 338–S/339–S.[1]
340	751,408 dozen of which not more than 375,704 dozen shall be in shirts made from fabric with two or more colors in the warp and/or the filling, excluding napped shirts in Category 340–Z.[2]
341	591,799 dozen of which not more than 355,079 dozen shall be in blouses made from fabric with two or more colors in the warp and/or the filling in Category 341–Y.[3]
342	233,239 dozen.
345	113,558 dozen.
347/348	2,127,960 dozen.
350	125,685 dozen.
351	407,925 dozen.
352	1,562,668 dozen.
359–C [4]	458,328 kilograms.
359–V [5]	717,012 kilograms.
360	6,190,298 numbers of which not more than 4,222,382 numbers shall be in Category 360–P.[6]
361	3,445,060 numbers.
363	26,245,012 numbers.
369–D [7]	4,058,491 kilograms.
369–H [8]	4,006,545 kilograms.
369–L [9]	2,500,428 kilograms.
369–S [10]	564,333 kilograms.
410	1,863,860 square meters of which not more than 1,493,923 square meters shall be in Category 410–A [11] and not more than 1,493,923 square meters shall be in Category 410–B.[12]
433	21,932 dozen.
434	12,496 dozen.
435	22,952 dozen.
436	14,281 dozen.
438	24,992 dozen.
440	35,704 dozen of which not more than 20,402 dozen shall be in men's shirts in Category 440–M.[13]
442	39,784 dozen.
443	126,533 numbers.
444	191,084 numbers.
445/446	267,245 dozen.
447	74,279 dozen.
448	20,850 dozen.
607	2,646,689 kilograms.
611	4,392,177 square meters.
613	5,209,333 square meters.
614	9,757,523 square meters.
615	20,313,386 square meters.
617	14,192,760 square meters.
631	950,062 dozen pairs.
634	504,547 dozen.
635	527,043 dozen.
636	442,682 dozen.
638/639	2,184,840 dozen.
640	1,310,412 dozen.
641	1,138,925 dozen.
642	373,163 dozen.
645/646	758,551 dozen.
647	1,315,516 dozen.
648	953,615 dozen.
649	734,406 dozen.
650	95,801 dozen.
651	620,270 dozen of which not more than 109,203 dozen shall be in Category 651–B.[14]
652	2,105,875 dozen.
659–C [15]	344,940 kilograms.
659–H [16]	2,281,747 kilograms.
659–S [17]	512,893 kilograms.
669–P [18]	1,513,679 kilograms.
670–L [19]	12,755,743 kilograms.
831	411,761 dozen pairs.
833	22,174 dozen.
835	102,950 dozen.
840	400,480 dozen.
842	221,744 dozen.
845	2,197,858 dozen.
846	148,526 dozen.
847	1,049,667 dozen.
863–S [20]	7,093,349 numbers.
Group II	
330, 332, 349, 353, 354, 359–0,[21] 431, 432, 439, 459, 630, 632, 633, 643, 644, 653, 654 and 659–0,[22] as a group.	105,906,651 square meters equivalent.
Sublevels in Group II	
330/630	4,912,250 dozen.
633	38,451 dozen.
643	424,522 numbers.
Group III	
201, 220, 222–225, 227, 229, 362, 369–0,[23] 400, 414, 464–469, 600, 603, 604–0,[24] 606, 618–622, 624–629, 665, 666, 669–0 [25] and 670–0,[26] as a group.	294,435,819 square meters equivalent.
Group IV	
832, 834, 836, 838, 839, 843, 844, 850–852, 858 and 859, as a group.	22,547,345 square meters equivalent.
Sublevel in Group IV	
836	211,000 dozen.

[1] In Categories 338–S/339–S, all HTS numbers except 6109.10.0012, 6109.10.0014, 6109.10.0018, 6109.10.0023, 6109.10.0040, 6109.10.0045, 6109.10.0060 and 6109.10.0065.

[2] In Category 340–Z, only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2050 and 6205.20.2060.

[3] In Category 341–Y, only HTS numbers 6204.22.3060, 6204.22.3010 and 6204.22.3030.

[4] In Category 359–C, only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

[5] In Category 359–V, only HTS numbers 6103.19.2030, 6103.19.4030, 6104.12.0040, 6104.19.2040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.0044, 6110.90.0046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.4030, 6204.12.0040, 6204.19.3040, 6211.32.0070 and 6211.42.0070.

[6] In Category 360–P, only HTS numbers 6302.21.1020, 6302.21.2010, 6302.21.2020, 6302.31.1010, 6302.31.1020, 6302.31.2010 and 6302.31.2020.

[7] In Category 369–D, only HTS numbers 6302.60.0010, 6302.91.005 and 6302.91.0045.

[8] In Category 369–H, only HTS numbers 4202.22.4020, 4202.22.4500 and 4202.22.8030.

[9] In Category 369–L, only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015 and 4202.92.6000.

[10] In Category 369–S, only HTS numbers 6307.10.2005.

[11] In Category 410–A, only HTS numbers 5111.11.1000, 5111.11.6030, 5111.11.6060, 5111.19.2000, 5111.19.6020, 5111.19.6040, 5111.19.6060, 5111.19.6080, 5111.20.6000, 5111.30.6000, 5111.90.3000, 5111.90.6000, 5212.11.1010, 5212.12.1010, 5212.13.1010, 5212.14.1010, 5212.15.1010, 5212.21.1010, 5212.22.1010, 5212.23.1010, 5212.24.1010, 5212.25.1010, 5311.00.2000, 5407.91.0510, 5407.92.0510, 5407.93.0510, 5407.94.0510, 5408.31.0510, 5408.32.0510, 5408.33.0510, 5408.34.0510, 5515.13.0510, 5515.22.0510, 5515.92.0510, 5516.31.0510, 5516.32.0510, 5516.33.0510, 5516.34.0510 and 6301.20.0020.

[12] In Category 410–B, only HTS numbers 5007.10.6030, 5007.90.6030, 5111.11.0030, 5112.11.0060, 5112.19.6010, 5112.19.6020, 5112.19.6030, 5112.19.6040, 5112.19.6050, 5112.19.6060, 5112.20.0000, 5112.30.0000, 5112.90.3000, 5112.90.6010, 5112.90.6090, 5212.11.1020, 5212.12.1020, 5212.13.1020, 5212.14.1020, 5212.15.1020, 5212.21.1020, 5212.22.1020, 5212.23.1020, 5212.24.1020, 5212.25.1020, 5309.21.2000, 5309.29.2000, 5407.91.0520, 5407.92.0520, 5407.93.0520, 5407.94.0520, 5408.31.0520, 5408.32.0520, 5408.33.0520, 5408.34.0520, 5515.13.0520, 5515.22.0520, 5515.92.0520, 5516.31.0520, 5516.32.0520, 5516.33.0520 and 5516.34.0520.

[13] In Category 440–M, only HTS numbers 6203.21.0030, 6203.23.0030, 6205.10.1000, 6205.10.2010, 6205.10.2020, 6205.30.1510, 6205.30.1520, 6205.90.2020, 6205.90.4020 and 6211.31.0030.

[14] In Category 651–B, only HTS numbers 6107.22.0015 and 6108.32.0015.

[15] In Category 659–C, only HTS numbers 6103.23.0055, 6103.43.2020, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.69.1000, 6104.69.3014, 6114.30.3040, 6114.30.3050, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[16] In Category 659–H, only HTS numbers 6502.00.8030, 6504.00.9015, 6504.00.9060, 6505.90.5060, 6505.90.6060, 6505.90.7060 and 6505.90.8060.

[17] In Category 659–S, only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[18] In Category 669–P, only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.

[19] In Category 670–L, only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9020.

[20] In Category 863–S, only HTS numbers 6307.10.2015.

[21] In Category 359–0, all HTS numbers except 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 5204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010 in Category 359–C; and 6103.19.2030, 6103.19.4030, 6104.12.0040, 6104.19.2040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.0044, 6110.90.0046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 5203.19.4030, 6204.12.0040, 6204.19.3040, 6211.32.0070 and 6211.42.0070 in Category 359–V.

[22] In Category 659–0, all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.69.1000, 6104.69.3014, 6114.30.3040, 6114.30.3050, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010 in Category 659–C; 6502.00.8030, 6504.00.9015, 6504.00.9060, 6505.90.5060, 6505.90.6060, 6505.90.7060 and 6505.90.8060 in Category 659–H; and 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 in Category 659–S.

[23] In Category 369–0, all HTS numbers except 6302.60.0010, 6302.91.0005 and 6302.91.0045 in Category 369–D; 4202.22.4020, 4202.22.4500 and 4202.22.8030 in Category 369–H; 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015 and 4202.92.6000 in Category 369–L; and 6307.10.2005 in Category 369–S.

[24] In Category 604–0, all HTS numbers except 5509.32.0000.

[25] In Category 669–0, all HTS numbers except 6305.31.0010, 6305.31.0020 and 6305.39.0000 in Category 669–P.

[26] In Category 670–0, only HTS numbers 4202.22.4030, 4202.22.8050 and 4202.32.9550.

Imports charged to these limits for the period January 1, 1990 through December 31, 1990, including the period April 28, 1990 through December 31, 1990 (Categories 369–S and 863–S), shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established for these periods have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

You are directed to charge 5,000 dozen to the limit established in this directive for Category 237 for overshipments of a previous unilateral restraint limit for Category 637. These charges are the result of an agreement in 1987 between the Governments of the United States and the People's Republic of China.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89–29558 Filed 12–19–89; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF DEFENSE

Department of the Navy

CNO Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Technology Surprise Task Force will meet January 4, 1990 from 9 a.m. to 5 p.m., at 4401 Ford Avenue, Alexandria, Virginia. This session will be closed to the public.

The purpose of this meeting is to discuss the possibility of unexpected technological breakthroughs that vastly change warfighting capabilities. The entire agenda of the meeting will consist of discussions of key issues regarding the potential for unexpected technology breakthroughs that could have an acute impact on naval and other military forces. These matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: Faye Buckman, Secretary to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302–0268, Phone (703) 756–1205.

Dated: December 14, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register, Liaison Officer.

[FR Doc. 89–29490 Filed 12–19–89; 8:45 am]

BILLING CODE 3810–AE

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a revision of a currently approved information collection regarding Contractor Use of Government Supply Sources.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, OMB, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein, Office of Federal Acquisition Policy, GSA, (202) 523–3775

Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a

Interagency Motor Pool Vehicles.

Dated: December 15, 1989.

Obtaining copies of proposals: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041,

Obtaining Copies of Proposals: Requestor may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041,

transportation secured aboard a foreign-flag air carrier if a U.S.-flag carrier is available to provide such services. In the event that the contractor selects a

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FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein, Office of Federal Acquisition Policy, GSA, (202) 523–3775 or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697–7268.

SUPPLEMENTARY INFORMATION:

a. *Purpose.* When it is in the best interest of the Government and when supplies and services are required by a Government contract, contracting officers may authorize contractors to use Government supply sources in performing certain contracts.

Contractors placing orders under Federal Supply Schedules or Personal Property Rehabilitation Price Schedules must follow the terms of the applicable schedule. To place orders, firms will submit the initial FEDSTRIP or MILSTRIP requisitions or the Optional Form 347, a copy of the authorization to order, and a statement regarding authorization to the firm holding the schedule contract.

The information informs the schedule contractor that the ordering contractor is authorized to use this Government supply source and fills the ordering contractor's order under the terms of the Government contract.

b. *Annual reporting burden.* The annual reporting burden is estimated as follows: Respondents, *300;* response per respondent, *7;* total annual responses, *2100;* hours per response, *.25;* and total response burden hours, *525.*

Obtaining Copies of Proposals: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0031, Contractor Use of Government Supply Sources.

Dated: December 15, 1989.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 89–29592 Filed 12–19–89; 8:45 am]

BILLING CODE 6820–JC–M

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a revision of a currently approved information collection regarding Contractor Use of Interagency Motor Pool Vehicles.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, OMB, room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein, Office of Federal Acquisition Policy, GSA (202) 523–3775 or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697–7268.

SUPPLEMENTARY INFORMATION:

a. *Purpose.* If it is the best interest of the Government, the contracting officer may authorize cost-reimbursement contractors to obtain, for official purposes only, interagency motor pool vehicles and related services. Contractor's requests for vehicles must contain two copies of the agency authorization, the number of vehicles and related services required and period of use, a list of employees who are authorized to request the vehicles, a listing of equipment authorized to be serviced, and billing instructions and address.

A written statement that the contractor will assume, without the right of reimbursement from the Government, the cost or expense of any use of the motor pool vehicles and services not related to the performance of the contract is necessary before the contracting officer may authorize cost-reimbursement contractors to obtain interagency motor pool vehicles and related services. The information is used by the Government to determine that it is in the Government's best interest to authorize a cost-reimbursement contractor to obtain, for official purposes only, interagency motor pool vehicles and related services, and to provide those vehicles.

b. *Annual reporting burden.* The annual reporting burden is estimated as follows: Respondents, *70;* responses per respondent, *2;* total annual responses, *140;* hours per response, *.5;* and total response burden hours, *70.*

Obtaining Copies of Proposals: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0032, Contractor Use of Interagency Motor Pool Vehicles.

Dated: December 15, 1989.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 89–29593 Filed 12–19–89; 8:45 am]

BILLING CODE 6820–JC–M

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a revision of a currently approved information collection regarding Claims and Appeals.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, OMB, room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein, Office of Federal Acquisition Policy, GSA (202) 523–3775 or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697–7268.

SUPPLEMENTARY INFORMATION:

a. *Purpose.* It is the Government's policy to try to resolve all contractual issues by mutual agreement at the contracting officer's level without litigation. Contractor's claims must be submitted in writing to the contracting officer for a decision.

Claims exceeding $50,000 must be accompanied by a certification that (1) the claim is made in good faith; (2) supporting data are accurate and complete; and (3) the amount requested accurately reflects the contract adjustment for which the contractor believes the Government is liable. Contractors may appeal the contracting officer's decision by submitting written appeals to the appropriate officials.

The information is to decide the claim.

b. *Annual reporting burden.* The annual reporting burden is estimated as follows: Respondents, *7,500;* responses per respondent, *20;* total annual responses, *150,000;* hours per response, *1;* and total response burden hours, *150,000.*

Obtaining copies of proposals: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0035, Claims and Appeals.

Dated: December 14, 1989.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 89–29594 Filed 12–19–89; 8:45 am]

BILLING CODE 6820–JC–M

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a revision of a currently approved information collection pertaining to Permits, Authorities, or Franchises Certification.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, OMB, room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein, Office of Federal Acquisition Policy, (202) 523–3775 or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697–7268.

SUPPLEMENTARY INFORMATION:

a. *Purpose.* This certification and copies of authorizations are needed to determine that the offeror has obtained all authorizations, permits, etc., required in connection with transporting the material involved.

The contracting officer reviews the certification and any documents requested to ensure that the offeror has complied with all regulatory requirements and has obtained any permits, licenses, etc., that are needed.

b. *Annual reporting burden.* The annual reporting burden is estimated as follows: Respondents, *1,106;* responses per respondent, *3;* total annual responses, *3,318;* hours per response, *.094;* and total response burden hours, *312.*

Obtaining Copies of Proposals: Requestor may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0053, Permits, Authorities, or Franchises Certification.

Dated: December 15, 1989.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 89–29595 Filed 12–19–89; 8:45 am]

BILLING CODE 6820–JC–M

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a revision of a currently approved information collection pertaining to U.S.-Flag Air Carriers Certification.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, OMB, room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein, Office of Federal Acquisition Policy, (202) 523–3775 or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697–7268.

SUPPLEMENTARY INFORMATION:

a. *Purpose.* Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 1517) (Fly America Act) requires that all Federal agencies and Government contractors and subcontractors use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag carrier is available to provide such services. In the event that the contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the contractor shall include a certification on vouchers involving such transportation.

The contracting officer uses the information furnished in the certification to determine whether adequate justification exists for the contractor's use of other than a U.S.-flag air carrier.

b. *Annual reporting burden.* The annual reporting burden is estimated as follows: Respondents, *150;* responses per respondent, *2;* total annual responses, *300;* hours per response, *.25;* and total response burden hours, *75.*

Obtaining Copies of Proposals: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0054, U.S.-Flag Air Carriers Certification.

Dated: December 15, 1989.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 89–29596 Filed 12–19–89; 8:45 am]

BILLING CODE 6820–JC–M

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a revision of a currently approved information collection pertaining to Freight Classification Description.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, OMB, room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein, Office of Federal Acquisition Policy, GSA (202) 523–3775 or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697–7268.

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SUPPLEMENTARY INFORMATION:

a. *Purpose.* When the Government purchases supplies that are new to the supply system, nonstandard, or modifications of previously shipped items, and different freight classifications may apply, offerors are requested to indicate the full Uniform Freight Classification or National Motor Freight Classification. The information is used to determine the proper freight rate for the supplies.

b. *Annual reporting burden.* The annual reporting burden is estimated as follows: Respondents, *2,640;* responses per respondent, *3;* total annual responses. *7,920;* hours per response, *.167;* and total response burden hours, *1,323.*

Obtaining Copies of Proposals: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000-0055, Freight Classification Description.

Dated: December 15, 1989.

Margaret A. Willis,

FAR Secretariat.

[Fk Doc. 89–29507 Filed 12–19–89; 8:45 am]

BILLING CODE 6820-JC-M

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reducton Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a revision of a currently approved information collection pertaining to Report of Shipment.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, OMB, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein, Office of Federal Acquisition Policy, GSA (202) 523-3775 or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697–7268.

SUPPLEMENTARY INFORMATION:

a. *Purpose.* Military (and, as required, civilian agency) storage and distribution points, depots, and other receiving activities require advance notice of large shipments enroute from contractor's plants. Timely receipt of notices by the consignee transportation office precludes the incurring of demurrage and vehicle detention charges.

The information is used to alert the receiving activity of the arrival of a large shipment.

b. *Annual reporting burden.* The annual reporting burden is estimated as follows: Respondents, *250;* responses per respondent, *4,* total annual respsonses, *1,000;* Hours per response, .167; and total response burden hours, *167.*

Obtaining Copies of Proposals: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0056, Report of Shipment.

Dated: December 14, 1989

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 89–29598 Filed 12–19–89; 8:45 am]

BILLING CODE 6820-JC-M

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a revision of a currently approved information collection regarding Evaluation of Export Offers.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, OMB, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein, Office of Federal Acquisition Policy, GSA, (202) 523–3775 or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697–7268.

SUPPLEMENTARY INFORMATION:

a. *Purpose.* Offers submitted in response to Government solicitations must be evaluated and awards made on the basis of the lowest laid down cost to the Government at the overseas port of discharge, via methods and ports compatible with required delivery dates and conditions affecting transportation known at the time of evaluation. Offers are evalauted on the basis of shipment through the port resulting in the lowest cost to the Government. This provision collects information regarding the vendors preference for delivery ports.

The information is used to evaluate offers and award a contract based on the lowest cost to the Government.

b. *Annual report burden.* The annual reporting burden is estimated as follows: Respondents, *100;* responses per respondent, *4;* total annual responses, *400;* hours per response, *.25;* and total response burden hours, *100.*

Obtaining Copies of Proposals: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0057, Evaluation of Export Offers.

Dated: December 15, 1989.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 89–29599 Filed 12–19–89; 8:45 am]

BILLING CODE 6820-JC-M

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of an information collection requirement concerning the interim rule on Drug-Free Workplace.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, OMB, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb, Office of Federal Acquisition Policy, (202) 523–3847 or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697–7268.

SUPPLEMENTARY INFORMATION:

a. *Purpose:* Pub. L. 100–690, the Drug–Free Workplace Act of 1988, mandates that: (1) Government contract employees notify their employer of any criminal drug statute conviction for a violation occurring in the workplace; and (2) Government contractors after receiving notice of such conviction, must notify the Government contracting officer. These requirements were effective as of March 18, 1989.

This information provided to the Government is used to determine contractor compliance with the statutory requirements to maintain a drug-free workplace.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, *100;* responses per respondent, *1,* total annual responses, *100;* hours per response, *.17;* and total response burden hours, *17.*

c. *Annual recordkeeping burden:* The annual recordkeeping burden is estimated as follows: Recordkeepers, *100,* hours per recordkeeper, *.5;* and total recordkeeping burden hours, *50.*

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0101, Drug-Free Workplace.

Dated: December 14, 1989.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 89–29600 Filed 12–19–89; 8:45 am]

BILLING CODE 6820-JC-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as requried by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before January 19, 1990.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to George P. Sotos, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: George P. Sotos (202) 732–2174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from George Sotos at the address specified above.

Dated: December 14, 1989.

Carlos Rice,

Director for Office of Information Resources Management.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.
Title: State Plan under Part B of the Education of the Handicapped Act.
Frequency: Triennial.
Affected Public: State or local governments; Federal agencies or employees.
Reporting Burden:
Responses: 19
Burden Hours: 551
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0

Abstract: States are required to submit a State plan in order to receive funds under the Education of the Handicapped Act, as amended. The Department will use the information as a basis for determining grant eligibility, compliance review and enforcement, and the kinds of technical assistance that States may need.

Office of Elementary and Secondary Education

Type of Review: Extension.
Title: Assistance for School Construction in Areas Affected by Federal Activities.
Frequency: Annually.
Affected Public: State or local governments.
Reporting Burden:
Responses: 10
Burden Hours: 380
Recordkeeping Burden:
Recordkeepers: 25
Burden Hours: 5

Abstract: The collection of this information is to provide assistance for construction of urgently needed minimum elementary and secondary school facilities in area affected by Federal activities. The Department uses this information to make grant awards.

[FR Doc. 89–29536 Filed 12–19–89; 8:45 am]

BILLING CODE 4000-1-M

[CFDA 84.025A4]

Services for Deaf-Blind Children and Youth

Notice inviting applications for new awards for State and Multi-State Projects for Deaf-Blind Children and Youth (CFDA No. 84.025A4) under the Services for Deaf-Blind Children and Youth Program for Fiscal Year 1990

Purpose: To provide support for State and multi-State deaf-blind projects for services to deaf-blind children and youth, and technical assistance to agencies, institutions and organizations as described in 34 CFR 307.11. Potential applicants should use the application forms included in the Consolidated Application Package (CAP) which was published in the Federal Register on July 21, 1989 at 54 FR 30661.

Deadline for Transmittal of Applications: March 30, 1990
Deadline for Intergovernmental Review: May 30, 1990
Available Funds: $1,200,000
Estimated Number of Awards: 12
Project Period: Up to 24 months

Applicable Regulations: (a) The regulations for the Services for Deaf-

maturing in less than one year after the date of issuance, in an aggregate

recertification is requested due to change in ownership structure. The

2. Southwestern Public Service Co.

[Docket No. ER90–66–000]

Take notice that Southwestern Public

contains a calculation breaking down Florida Power's calculation of annual decommissioning expenses for calendar

Comment date: December 29, 1989, in accordance with Standard Paragraph E end of this notice.

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Applicable Regulations: (a) The regulations for the Services for Deaf-Blind Children and Youth Program, CFR part 307; and (b) the Education Department General Administrative Regulations, 34 CFR parts 74, 75, 77, 79, 80, 81, and 85.

FOR FURTHER INFORMATION CONTACT: Joseph Clair, Office of Special Education and Rehabilitative Services, Division of Educational Services, 400 Maryland Avenue SW., Room 4622, Switzer Building, Washington, DC 20202 Telephone: (202) 732-4503.

Authority: 20 U.S.C. 1422.

(Catalog of Federal Domestic Assistance No. 84.025; Services for Deaf-Blind Children and Youth Program)

Dated: December 13, 1989.

Robert R. Davila,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 89-29539 Filed 12-19-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ES90-16-000, et al.]

Cambridge Electric Light Company, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings.

December 7, 1989.

Take notice that the following filings have been made with the Commission:

1. Cambridge Electric Light Co.

[Docket No. ES90-16-000]

Take notice that on December 4, 1989, Cambridge Electric Light Company ("Applicant") filed an application with the Federal Energy Regulatory Commission ("Commission"), pursuant to section 204 of the Federal Power Act, seeking authority to issue not more than $25 million of short-term debt and other borrowings on or before December 31, 1991 with maturities on or before December 31, 1992.

Comment date: December 21, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Orange and Rockland Utilities, Inc.

[Docket No. ES90-17-000]

Take notice that on December 4, 1989, Orange and Rockland Utilities, Inc. ("Applicant") filed an application with the Federal Energy Regulatory Commission ("Commission") pursuant to section 204 of the Federal Power Act, seeking authority to issue and renew short-term unsecured obligations, maturing in less than one year after the date of issuance, in an aggregate principal amount of up to $100 million outstanding at any time.

Comment date: December 21, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29496 Filed 12-19-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF88-188-001]

HL Power Company, a California Limited Partnership; Application for Commission Recertification of Qualifying Status of a Small Power Production Facility

December 12, 1989.

On November 30, 1989, HL Power Company, a California Limited Partnership (Applicant), in care of CMS Generation Honey Lake Company, 330 Town Center Drive, Suite 1040, Dearborn, Michigan 48126, submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to § 202.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in lassen County, California. The facility will consist of a waste wood-fired boiler and an extraction/condensing steam tubine generator. The net electric power production capacity will be approximately 32 megawatts. The primary energy source will be biomas in the form of wood waste.

The certification for the original application was issued on April 15, 1988 (43 FERC ¶ 62,059). The current recertification is requested due to change in ownership structure. The change in ownership has resulted in a general and limited partners interest in the Applicant being held, directly and indirectly, by subsidiaries of CMS Energy Corporation, a Michigan corporation, an electric utility holding company.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29497 Filed 12-19-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ES90-19-000, et al.]

UtiliCorp United Inc., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

December 13, 1989.

Take notice that the following filings have been made with the Commission:

1. UtiliCorp United Inc.

[Docket No. ES90-19-000]

Take notice that on Decmeber 8, 1989, UtiliCorp United Inc. (Applicant) filed an application seeking an order under section 204(a) of the Federal Power Act authorizing the Applicant to issue a corporate guaranty in support of Series E, Secured Debentures in an amount of $15,000,000 (Cdn) to be issued by West Kootenay Power, Ltd. ("WKP") and for exemption from competitive bidding and negotiated placement requirements. WKP is a wholly-owned subsidiary of UtiliCorp British Columbia Ltd., which in turn is a wholly owned subsidiary of Applicant.

Comment date: December 29, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Southwestern Public Service Co.

[Docket No. ER90-66-000]

Take notice that Southwestern Public Service Company (Southwestern) on December 8, 1989, tendered for filing proposed changes in its rates for full requirements services to Lyntegar Electric Cooperative, Inc. (Lyntegar) and Texas-New Mexico Power Company (TNP) and for partial requirements firm services to TNP.

The proposed change results in a 10 percent decrease in overall revenues for the two full requirements rate schedules and results in a 12 percent decrease in overall revenues for the partial requirements rate schedule. The proposed decrease has obtained requisite agreement from Lyntegar and TNP. Southwestern has reached similar agreements with four other full requirements customers which were filed for approval by the Commission in Docket No. ER90-65-000.

The decrease is proposed to become effective January 1, 1990. The purpose of the decrease is to reflect in the customer's base rates Southwestern's lower costs to provide service to its customers as of January 1, 1990. The lower costs of service result primarily from (1) the termination on December 31, 1989 of Southwestern's purchase of surplus energy from Public Service Company of New Mexico of which a portion of the current reservation fee is included in the customer's existing base rates, (2) reduced capital costs, and (3) reduced federal income taxes arising from the Tax Reform Act of 1986.

Copies of the filing were served upon Lyntegar, TNP, the Public Utility Commission of Texas and the New Mexico Public Service Commission.

Comment date: December 29, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Florida Power Corp.

[Docket No. ER89-627-000]

Take notice that on December 11, 1989, Florida Power Corporation tendered for filing a supplement to its August 30, 1989 filing in this docket. This supplement revises the appendix A originally submitted with this filing. Appendix A, the revised rate schedules for each of Florida Power's affected customers, now reflects the application of the 1.391% credit for calendar year 1990, as well as for calendar year 1989.

This supplement also makes a change with respect to First Revised Sheet Nos. 2.106, 2.113 and 5.101, effective January 1, 1990, for Rate Schedule No. 106, to allow the customer's KW allocation to change annually, rather than remain a fixed KW amount. This supplement also contains a calculation breaking down Florida Power's calculation of annual decommissioning expenses for calendar year 1989 and 1990.

Comment date: December 29, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Consolidated Edison Company of New York, Inc.

[Docket No. ER90-63-000]

Take notice that on December 4, 1989, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing, as an initial rate schedule, an agreement to sell firm power and energy to the Connecticut Light and Power Company (CL&P). The agreement provides for a capacity charge of $3 per kilowatt per month and an energy charge of $100 per megawatthour.

Con Edison requests waiver of the notice requirements of Section 35.3 of the Commission's regulations so that the Rate Schedule can be made effective as of November 1, 1989.

Con Edison states that a copy of this filing has been served by mail upon CL&P.

Comment date: December 29, 1989, in accordance with Standard Paragraph E at the end of this notice.

5. Public Service Company of New Hampshire

[Docket No. ER90-04-000]

Take notice that Public Service Company of New Hampshire, on December 5, 1989, tendered for filing proposed changes in its Wholesale for Resale Contracts with New Hampshire Electric Cooperative, Inc. for Total Requirements Service (FERC No. 50) and Partial Requirements Service (FERC No. 71). If accepted, the proposed agreement would provide credits to be applied to bills rendered to New Hampshire Electric Cooperative if certain of the Cooperative's retail customers voluntarily curtail energy intensive loads during periods when Public Service Company of New Hampshire is highly likely to experience a winter system peak.

The proposed changes would reduce Public Service Company of New Hampshire's need for purchasing capacity outside of its system at a cost in excess of the credits paid to New Hampshire Electric Cooperative, Inc.

Public Service Company requests a waiver of the Commission's notice requirements to permit the agreement to take effect on December 1, 1989.

Copies of the filing were served upon New Hampshire Electric Cooperative, Inc. and the New Hampshire Public Utilities Commission.

Comment date: December 29, 1989, in accordance with Standard Paragraph E end of this notice.

6. Bangor Hydro-Eelctric Co.

[Docket No. ER90-32-000]

Take notice that Bangor Hydro-Eelctric Company (Bangor) and UNITIL Power Corporation (UNITIL) on November 22, 1989, tendered for filing as an Initial Rate Schedule, an Electric Generating Capability Sales Agreement. The Agreement provides for the sale by Bangor to UNITIL of 10,000 kw of electric generating capability during November 1, 1989 through October 31, 1990 and the total output associated therewith.

Comment date: December 29, 1989, in accordance with Standard Paragraph E at the end of this notice.

7. United Illuminating Co.

[Docket No. ER90-95-000]

Take notice that on December 7, 1989, United Illuminating Company (UI) tendered for filing as a rate schedule Letter Agreements between UI and Public Service Company of New Hampshire (PSNH) (the PSNH Agreements). The Agreements dated October 22, 1986, April 28, 1987, and August 1, 1988, provided for UI to sell unit capacity and associated energy to PSNH.

The term of the PSNH Agreement dated October 22, 1986 began on November 1, 1986 and continued through April 30, 1987. The term of the PSNH Agreement dated April 30, 1987 began on May 1, 1987 and continued through October 31, 1987. The term of the PSNH Agreement dated August 1, 1988 began on October 1, 1988 and continued through October 31, 1988.

UI requests the Commission to consolidate the Agreements into one rate schedule, to waive its standard 60-day notice period and to allow the rate schedule to become effective on November 1, 1989, and to terminate on October 31, 1989.

UI states that a copy of this rate schedule has been mailed to PSNH.

UI further states that the filing is in accordance with Section 35 of the Commission's regulations.

Comment date: December 29, 1989, in accordance with Standard Paragraph E at the end of this notice.

8. Public Service Company of Indiana

[Docket No. ER62-773-000]

Take notice that Public Service Company of Indiana, Inc. on December 5, 1989, tendered for filing pursuant to the Power Coordination Agreement

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between Public Service Company of Indiana, Inc. (PSI) and Indiana Municipal Power Agency (IMPA) a Fourth Amendment.

The Fourth Amendment modifies the agreement by modifying section 2.01 to transfer the Town of Waynetown, Indiana and the Town of Bainbridge, Indiana from PSI's FERC Electric Tariff-Original Volume No. 1 to the Power Coordination Agreement as members of IMPA.

Copies of the filing were served on Indiana Municipal Power Agency, the Town of Waynetown, Indiana, the Town of Bainbridge, Indiana and the Indiana Utility Regulatory Commission.

PSI has requested waiver of the Commission's notice requirement to permit the filing to become effective January 1, 1990.

Comment date: December 29, 1989, in accordance with Standard Paragraph E at the end of this notice.

9. Montana Power Co.

[Docket No. ER90-89-000]

Take notice that on December 6, 1989, The Montana Power Company tendered for filing as a supplement to its earlier filing in this docket a fixed cost/fixed charge comparison related to the Power Sales Agreement between The Montana Power Company and Puget Sound Power & Light Company filed in this docket.

Comment date: December 27, 1989, in accordance with Standard Paragraph E at the end of this notice.

10. Northeast Utilities Service Co.

[Docket No. ER90-100-000]

Take notice that on December 11, 1989, Northeast Utilities Service Company (NUSCO) tendered for filing a Notice of Termination of the following rate schedules:

Transmission Service Agreement between CL&P, WMECO, HWP, and Norwalk Third Taxing District (Norwalk III), dated July 1, 1985 (CL&P Rate Schedule FERC No. 345, WMECO FERC No. 275, and HWP FERC No. 39),

Transmission Service Agreement between CL&P, WMECO, HWP, and South Norwalk Electric Works (South Norwalk), dated July 1, 1985 (CL&P Rate Schedule FERC No. 346, WMECO FERC 279, and HWP FERC No. 40) (each a "Transmission Agreement" and collectively, the "Transmission Agreements").

NUSCO requests that the Commission allow the termination for the Municipal Systems' Agreement to take effect on January 8, 1990.

Comment date: December 29, 1989, in accordance with Standard Paragraph E at the end of this notice.

11. Wisconsin Power and Light Co.

[Docket No. ER90-99-000]

Take notice that Wisconsin Power and Light Company, on December 11, 1989, tendered for filing new appendix J to the Interconnection Agreement dated July 5, 1966, between Wisconsin Power and Light Company (WPL) and Wisconsin Public Service Corporation (WPS).

Appendix J establishes the new Arpin 115 kV Interconnection between the parties, at WPL's Arpin Substation in Wood County, Wisconsin.

WPL proposes an effective date of July 20, 1989, and therefore requests the Commission to give the appropriate notice period and allow for such effective date.

Comment date: December 29, 1989, in accordance with Standard Paragraph E at the end of this notice.

12. Tampa Electric Co.

[Docket No. ER90-98-000]

Take notice that on December 11, 1989, Tampa Electric Company (Tampa Electric) tendered for filing Service Schedule J, providing for negotiated interchange service between Tampa Electric and the Orlando Utilities Commission (Orlando). The service schedule is submitted as a supplement to the existing agreement for interchange service between Tampa Electric and Orlando, designated as Tampa Electric's Rate Schedule FERC No. 27.

Tampa Electric also tendered for filing, as a supplement to the Service Schedule J, a Letter of Commitment providing for the sale by Tampa electric to Orlando of energy from Tampa Electric's coal-fired generating units, at a maximum hourly delivery rate of 150 megawatts.

Tampa Electric proposes an effective date of November 6, 1989, for the Service Schedule J and Letter of Commitment, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on Orlando and the Florida Public Service Commission.

Comment date: December 29, 1989, in accordance with Standard Paragraph E at the end of this notice.

13. Oklahoma Gas and Electric Co.

[Docket No. ER90-20-000]

Take notice that on December 7, 1989, Oklahoma Gas and Electric Company (OG&E) tendered for filing a revised annex 2 dated December 6, 1989 to appendix a of the Second Amended Dispatch and Load Regulation Agreement OG&E and the Oklahoma Municipal Power Authority (OMPA).

The revised annex 2 dated December 6, 1989 will replace the annex 2 dated June 30, 1989.

Copies of this filing have been served on OMPA, the Corporation Commission of the State of Oklahoma and the Arkansas Public Service Commission.

Comment date: December 29, 1989, in accordance with Standard Paragraph E at the end of this notice.

14. CEI—AMP-Ohio Interconnection Agreement

[Docket No. ER90-97-000]

Take notice that on December 8, 1989, the Cleveland Electric Illuminating Company filed, on behalf of the above listed parties to the CEI—AMP-Ohio Agreement an initial rate schedule between the Cleveland Electric Illuminating Company and American Municipal Power—Ohio, Inc.

This Agreement provides for Short Term Power supplied by CEI. The parties have requested an effective date of October 1, 1989 for this schedule.

Comment date: December 29, 1989, in accordance with Standard Paragraph E end of this notice.

15. Smith Falls Hydropower

[Docket No. ER89-104-000]

Take notice that on December 12, 1989, Smith Falls Hydropower (Smith Falls) (c/o McNeill Watkins II, Bishop, Cook, Purcell & Reynolds, 1400 L Street, NW., Washington, DC 20005) tendered for filing pursuant to 18 CFR 35.12, proposed Smith Falls Hydropower Rate Schedule FERC No. 1, under which Smith Falls will sell the power and energy to be produced by the 38.15 MW Smith Creek Project (FERC No. 8436) to Eugene Water & Electric Board (EWEB), an Oregon municipal utility. The Smith Creed Project is a qualifying small power production facility. The rates set forth in the proposed rate schedule were negotiated.

In connection with its filing, Smith Falls requests waiver of the Commission's regulations regarding the filing of cost support information and regarding all or part of the Commission's accounting, reporting, securities, property transfer, and interlocking director regulations. Smith Falls requests that the Commission make the rate schedule effective on the date on which sales under the rate schedule commence, which is expected to be December 30, 1989.

Comment date: December 27, 1989, in accordance with Standard Paragraph E at end of this notice.

16. Iowa Power and Light Co.

[Docket No. ER89-807-000]

Take notice that on November 11, 1989, Iowa Power and Light Company (Iowa Power) tendered for filing an Amendment to the Interchange Agreement between Iowa Power and the Indianola Waterworks and Electric Light and Power Board or Trustees (Board of Trustees) filed in this docket on September 19, 1989.

Iowa Power states that the Amendment to the Interchange Agreement filing provides a new Service Schedule E to reflect the proper treatment of purchased power. In addition, the amended filing provides information concerning Iowa Power's capacity and energy charge calculations and a description of the mechanics of Iowa Power's energy cost adjustment.

Iowa Power requests an effective date of February 1, 1989, and therefore requests a waiver of the Commission's notice request requirements.

Comment date: December 29, 1989, in accordance with Standard Paragraph E at the end of this notice.

17. Central and South West Services, Inc.

[Docket No. ER90-102-000]

Take notice that on November 30, 1989, Central and South West Services, Inc. ("CSW") tendered for filing its compliance filing in response to Opinion No. 332, issued by the Commission on August 3, 1989. Opinion No. 332, 48 FERC ¶61,197 (1989), resolved issues regarding CSW's filing in Docket No. ER84-31-000. CSW states that in compliance with the Commission's order it has submitted revised calculation of the fixed charge rates used: (a) to equalize the costs borne by each of the CSW Operating Companies in certain Intertransmission Facilities; and (b) to compensate individual Operating Companies for Capacity Commitments made to other CSW Operating Companies. Each revised fixed charge rate is lower than the fixed charge rate previously in the record in Docket No. ER84-31-000. CSW proposes to make these lower fixed charge rates effective from January 1, 1990. The Commission is docketing these revised fixed charge rates in a separate proceeding in Docket No. ER90-102-000.

Comment date: December 27, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29408 Filed 12-19-89; 8:45 am]

BILLING CODE 6717-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP90-320-000, et al.]

K N Energy, Inc., et al.; Natural gas certificate filings

December 8, 1989.

Take notice that the following filings have been made with the Commission:

1. K N Energy, Inc.

[Docket No. CP90-320-000]

Take notice that on December 5, 1989, K N Energy Inc. (K N), P.O. Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP90-320-000 a request pursuant to Sections 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP89-1043-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

K N proposes to transport natural gas on an interruptible basis for Plains Petroleum Operating Company (Plains). K N explains that service commenced November 1, 1989 under Section 284.223(a) of the Commission's Regulations, as reported in Docket No. ST90-769-000. K N further explains that the peak day volume would be 8,500 Mcf and that the annual volume would be 3,102,500 Mcf. K N explains that it would receive natural gas at existing points of receipt on its system and that it would deliver the gas at various delivery points on its system.

Comment date: January 22, 1990, in accordance with Standard Paragraph G at the end of this notice.

2. Natural Gas Pipeline Company of America

[Docket No. CP90-319-000]

Take notice that on December 5, 1989, Natural Gas Pipeline Company of America (Natural) 701 East 22nd Street, Lombard, Illinois 60148 filed in Docket No. CP90-319-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Quantum Chemical Corporation—USI Division (Quantum), under its blanket authorization issued in Docket No. CP86-582-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Natural would perform the proposed firm transportation service for Quantum, an end-user of natural gas, pursuant to a firm transportation service agreement under rate schedule FTS dated August 30, 1989 (Ref No. FGP-1845). The term of the transportation service agreement is from August 30, 1989, and shall continue for a term ending August 31, 1992. Natural proposes to transport on a peak day up to 9,600 MMBtu; on an average day up to 9,600 MMBtu; and on an annual basis 3,504,000 MMBtu for Quantum. Natural proposes to receive the subject gas from points of receipt in Texas and Louisiana for redelivery to points of interconnection with Northern Illinois Gas Company located in Illinois. Natural indicates that it would be using existing facilities to provide the proposed transportation service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Natural commenced such self-implementing service on September 25, 1989, as reported in Docket No. ST90-230-000.

Comment date: January 22, 1990, in accordance with Standard Paragraph G at the end of this notice.

3. K N Energy Inc.

[Docket No. CP90-321-000]

Take notice that on December 5, 1989, K N Energy Inc. (K N), P.O. Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP90-321-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP89-1043-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set

forth in the request on file with the Commission and open to public inspection.

5. Transcontinental Gas Pipe Line Corporation

11,500 MMBtu equivalent of natural gas, 8,625 MMBtu equivalent of natural gas and 4,197,500 MMBtu equivalent of

Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to transport

Natural proposes to transport, on a firm basis, up to 10,000 MMBtu per day for Bethlehem. Natural states that

Lombard, Illinois, 60148, filed in Docket No. CP90-337-000 a request pursuant to § 157.205 of the Commission's

forth in the request on file with the Commission and open to public inspection.

K N proposes to transport natural gas on an interruptible basis for J. A. Baldwin Mfg. Company (Baldwin). K N explains that service commenced October 26, 1989 under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST90-497. K N further explains that the peak day volume would be 257 Mcf and that the annual volume would be 93,805 Mcf. K N explains that it would receive natural gas at existing points of receipt on its system and that it would deliver the gas to Baldwin in Kearney, Nebraska.

Comment date: January 22, 1990, in accordance with Standard Paragraph G at the end of this notice.

4. Transwestern Pipeline Company

[Docket No. CP90-325-000]

Take notice that on December 5, 1989, Transwestern Pipeline Company (Transwestern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP90-325-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport gas on behalf of Cibola Corporation (Cibola), a marketer of natural gas, under Transwestern's blanket certificate issued in Docket No. CP88-133-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Transwestern proposes to transport on an interruptible basis up to 50,000 MMBtu of natural gas equivalent per day on behalf of Cibola pursuant to a transportation agreement dated July 26, 1989, between Transwestern and Cibola. Transwestern would receive the gas at existing delivery points in Arizona, Oklahoma, Texas and New Mexico and redeliver equivalent volumes at existing delivery points in Arizona, Texas, Oklahoma and New Mexico.

Transwestern states that the estimated average daily and annual quantities would be 37,500 MMBtu and 18,250,000 MMBtu, respectively. Service under § 284.223(a) commenced on October 12, 1989, as reported in Docket No. ST90-429-000, it is stated.

Comment date: January 22, 1990, in accordance with Standard Paragraph G at the end of this notice.

5. Transcontinental Gas Pipe Line Corporation

[Docket No. CP90-326-000]

Take notice that on December 6, 1989, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP90-326-000, a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to provide transportation service on behalf of PSI, Inc. (PSI), a marketer of natural gas, under Transco's blanket certificate in Docket No. CP88-328,000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco states that the total volume of gas to be transported for PSI on a peak day would be 70,000 dt; on an average day would be 50,000 dt; and on an annual basis would be 255,000 dt.

Transco further states that it would receive the gas at various receipt points in offshore Texas and redeliver the gas at various existing delivery points in onshore and offshore Texas. Transco also states that it will construct no new facilities in order to provide this transportation service.

Transco states that service for PSI commenced October 12, 1989, in Docket No. ST90-407-000, pursuant to the 120-day automatic authorization provided in the Commission's Regulations.

Comment date: January 22, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. Northern Natural Gas Company

[Docket No. CP90-328-000]

Take notice that on December 5, 1989, Northern Natural Gas Company (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP90-328-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on a firm basis on behalf of Enron Gas Marketing, Inc. (Enron Marketing), a marketer of natural gas, under its blanket certificate issued in Docket No. CP88-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern states that it proposes to transport natural gas on behalf of Enron Marketing between a point of receipt in Finney County, Kansas and a Delivery point located in Winkler County, Texas.

Northern further states that the maximum daily, average daily and annual quantities that it would transport of behalf of Enron Marketing would be 11,500 MMBtu equivalent of natural gas, 8,625 MMBtu equivalent of natural gas and 4,197,500 MMBtu equivalent of natural gas, respectively.

Northern indicates that in Docket No. ST90-440, filed with the Commission on November 8, 1989, it reported that transportation service on behalf of Enron Marketing commenced on November 1, 1989 under the 120-day automatic authorization provisions of section 284.223(a).

Comment date: January 22, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. Northern Natural Gas Company

[Docket No. CP90-330-000]

Take notice that on December 5, 1989, Northern Natural Gas Company (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP90-330-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on an interruptible basis on behalf of Joseph Energy, Inc. (Joseph Energy), a marketer of natural gas, under its blanket certificate issued in Docekt No. CP88-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern states that it proposes to transport natural gas on behalf of Joseph Energy between a point of receipt in Sutton County, Texas and a delivery point located in Pecos County, Taxas.

Northern further states that the maximum daily, average daily and annual quantities that it would transport of behalf of Joseph Energy would be 4,000 MMBtu equivalent of natural gas, 3,000 MMBtu equivalent of natural gas and 1,095,000 MMBtu equivalent of natural gas, respectively.

Northern indicates that in Docket No. ST90-439, filed with the Commission on November 8, 1989, it reported that transportation service on behalf of Joseph Energy commenced on October 21, 1989 under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: January 22, 1990, in accordance with Standard Paragraph G at the end of this notice.

8. Natural Gas Pipeline Company of America

[Docket No. CP90-334-000]

Take notice that on December 6, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP90-334-000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to transport gas on an interruptible basis for PSI, Inc. (PSI), a marketer, under Natural's blanket certificate issued in Docket No. CP86-582-000 pursuant to Section 7 of the Natural Gas Act, all as more set forth in the request which is on file with the Commission and open to public inspection.

Natural states that pursuant to a transportation service agreement dated February 20, 1988, it proposes to transport up to 50,000 million Btu of natural gas for PSI. Natural states that it would receive the gas at specified points in Texas, Offshore Texas, Louisiana, Offshore Louisiana, Oklahoma, Illinois, Arkansas, New Mexico, Kansas, and Iowa and redeliver the gas at specified interconnects with Peoples Gas Light and Coke Company located in the state of Illinois. Natural estimates that the maximum day, average day, and annual volumes would be 50,000 million Btu, 25,000 million Btu, and 9,125,000 million Btu, respectively. It is stated that on October 1, 1989, Natural initiated a 120-day transportation service for PSI under § 284.223(a), as reported in Docket No. ST90-157-000.

Natural further states that no facilities need be constructed to implement the service. Natural indicates that the service would continue for a primary term expiring February 8, 1999, and month to month thereafter unless terminated on five days notice by either party. Natural proposes to charge rates and abide by the terms and conditions of its Rate Schedule ITS.

Comment date: January 22, 1990, in accordance with Standard Paragraph G at the end of this notice.

9. Natural Gas Pipeline Company of America

[Docket No. CP90-335-000]

Take notice that on December 6, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP90-335-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Bethlehem Steel Corporation (Bethlehem), an end user of natural gas, under Natural's blanket certificate issued in Docket No. CP86-582-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Natural proposes to transport, on a firm basis, up to 10,000 MMBtu per day for Bethlehem. Natural states that construction of facilities would not be required to provide the proposed service.

Natural further states that the maximum day, average day, and annual transportation volumes would be approximately 10,000 MMBtu, 10,000 MMBtu and 3,650,000 MMBtu respectively.

Natural advises that service under § 284.223(a) commenced October 1, 1989, as reported in Docket No. ST90-227.

Comment date: January 22, 1990, in accordance with Standard Paragraph G at the end of this notice.

10. Natural Gas Pipeline Company of America

[Docket No. CP90-336-000]

Take notice that on December 6, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP90-336-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Bethlehem Steel Corporation (Bethlehem), under Natural's blanket certificate issued in Docket No. CP86-582-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural requests authorization to transport, on a firm basis, up to a maximum of 10,000 MMBtu of natural gas per day (plus any additional volumes accepted pursuant to the overrun provision's of Natural's Rate Schedule FTS) for Bethlehem from receipt points located in Kansas and Iowa to a delivery point located in Illinois. Natural anticipates transporting, on an average day 10,000 MMBtu and an annual volume of 3,650,000 MMBtu.

Natural states that the transportation of natural gas for Bethlehem commenced October 1, 1989, as reported on Docket No. ST90-232-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Natural in Docket No. CP86-582-000.

Comment date: January 22, 1990, in accordance with Standard Paragraph G at the end of this notice.

11. Natural Gas Pipeline Company of America

[Docket No. CP90-337-000]

Take notice that on December 6, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP90-337-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Mobil Natural Gas Inc. (Mobil), under Natural's blanket certificate issued in Docket No. CP86-582-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural requests authorization to transport, on a firm basis, up to a maximum of 26,500 MMBtu of natural gas per day (plus any additional volumes accepted pursuant to the overrun provision's of Natural's Rate Schedule FTS) for Mobil from receipt points located in Kansas and Oklahoma to delivery points located in Illinois and Indiana. Natural anticipates transporting, on an average day 26,250 MMBtu and an annual volume of 9,561,000 MMBtu.

Natural states that the transportation of natural gas for Mobil commenced October 1, 1989, as reported on Docket No. ST90-228-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Natural in Docket No. CP86-583-000.

Comment date: January 22, 1990, in accordance with Standard Paragraph G at the end of this notice.

12. Natural Gas Pipeline Company of America

[Docket No. CP90-338-000]

Take notice that on December 6, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP90-338-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Texaco Gas Marketing Inc. (Texaco), a marketer of natural gas, under Natural's blanket certificate issued in Docket No. CP86-582-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Natural proposes to transport, on an interruptible basis, up to 80,000 MMBtu per day for Texaco. Natural states that construction of facilities would not be required to provide the proposed service.

Natural further states that the maximum day, average day, and annual transportation volumes would be approximately 80,000 MMBtu, 40,000

MMBtu and 14,600,000 MMBtu respectively.

Natural advises that service under § 284.223(a) commenced October 1, 1989, as reported in Docket No. ST90-266.

Comment date: January 22, 1990, in accordance with Standard Paragraph G at the end of this notice.

13. Natural Gas Pipeline Company of America

[Docket No. CP90-339-000]

Take notice that on December 6, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP90-339-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a firm transportation service for Bethlehem Steel Corporation (Bethlehem), an end-user, under the blanket certificate issued in Docket No. CP86-582-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Natural states that pursuant to a transportation service agreement dated August 9, 1989, under its Rate Schedule FTS, it proposes to transport up to 15,000 MMBtu per day equivalent of natural gas for Bethlehem. Natural states that it would transport the gas (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule FTS) from receipt points located in Louisiana, Texas and Arkansas, and would deliver the gas to delivery points located in Illinois and Texas.

Natural advises that service under § 284.223(a) commenced October 1, 1989, as reported in Docket No. ST90-229. Natural further advises that it would transport 15,000 MMBtu on an average day and 5,475,000 MMBtu annually.

Comment date: January 22, 1989, in accordance with Standard Paragraph G at the end of this notice.

14. Natural Gas Pipeline Company of America

[Docket No. CP90-340-000]

Take notice that on December 6, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP90-340-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas, on a firm basis, for Bethlehem Steel Corporation (Bethlehem), an end-user, under Natural's blanket certificate issued in Docket No. CP86-582-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Natural states that pursuant to a Transportation Service Agreement, dated August 9, 1989, it would transport up to 15,000 MMBtu per day of natural gas for Bethlehem. Natural further states that the receipt points would be located in the states of Texas and Arkansas and the delivery points would be located in the states of Illinois and Texas. Natural indicates that the anticipated average day and annual volumes to be transported would be 15,000 MMBtu and 5,475,000 MMBtu, respectively.

Natural states that it commenced the transportation of natural gas for Bethlehem on October 1, 1989, as reported in Docket No. ST90-231-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations (18 CFR 284.223(a)).

Comment date: January 22, 1989, in accordance with Standard Paragraph G at the end of this notice.

15. United Gas Pipe Line Company

[Docket No. CP90-341-000]

Take notice that on December 6, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP90-341-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Mobil Natural Gas, Inc. (Mobil), a marketer, under the blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

United states that pursuant to a transportation agreement dated July 18, 1988, under its Rate Schedule ITS, it proposes to transport up to 51,500 MMBtu per day equivalent of natural gas for Mobil. United states that it would transport the gas from multiple receipt points as shown in Exhibit "A" of the transportation agreement and would deliver the gas to multiple delivery points shown in Exhibit "B" of the agreement.

United advises that service under § 284.223(a) commenced October 18, 1989, as reported in Docket No. ST90-670 (filed November 18, 1989). United further advises that it would transport 51,500 MMBtu on an average day and 18,797,500 MMBtu annually.

Comment date: January 22, 1989, in accordance with Standard Paragraph G at the end of this notice.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29499 Filed 12-19-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-2-24-000]

Equitrans, Inc.; Proposed Change in FERC Gas Tariff

December 12, 1989

Take notice that Equitrans, Inc. (Equitrans) on December 7, 1989, tendered for filing with the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1, to become effective December 8, 1989.

First Revised Thirteenth Revised Sheet No. 10
First Revised Twelfth Revised Sheet No. 14
First Revised Sixth Revised Sheet No. 34

This filing implements an Out-of-Cycle Purchased Gas Cost Adjustment to reflect an increase in the sales projection, increase in Equitrans' pipeline supplier rates and the recovery of Texas Eastern Transmission Corporation's (TETCO) firm transportation costs under TETCO's Rate Schedule FT-1.

Pursuant to § 154.51 of the Commission's regulations, Equitrans requests that the commission grant any waivers necessary to permit the tariff sheets contained herein to become effective on December 8, 1989.

Equitrans states that a copy of its filing has been served upon its purchasers, interested state commissions, and upon each party on the service list of Docket No. CP86-676-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 20, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29500 Filed 12-19-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA90-1-55-004]

Questar Pipeline Co.; Rate Change

December 12, 1989.

Take notice that on December 6, 1989, Questar Pipeline Company tendered for filing and acceptance certain revised tariff sheets to its FERC Gas Tariff as follows:

Tariff	Proposed effective date
Substitute First Revised Twenty-Sixth Revised Sheet No. 12.	Dec. 1, 1989.
Substitute First Revised Twenty-Seventh Revised Sheet No. 12.	Jan. 1, 1990.

Questar Pipeline states that the purpose of this filing is to revise those tariff sheets submitted on November 22, 1989, in the captioned proceeding to correct three typographical errors.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 384.211, (1988). All such protests should be filed on or before December 20, 1989. Protests will be considered by the Commission in determining the appropriation action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29502 Filed 12-19-89; 8:45 am]

BILLING CODE 6717-01-M

Viking Gas Transmission Co.; Rate Filing

[Docket No. TQ90-1-82-000]

December 12, 1989.

Take notice that on December 7, 1989, Viking Gas Transmission Company (Viking) filed its Third Revised Sheet No. 6 to Original Volume No.1 of its FERC Gas Tariff, to be effective November 1, 1989.

Viking states that the current Purchased Gas Cost Rate Adjustments reflected on Third Revised Sheet No. 6 consist of a .2802 cents per dekatherm adjustment applicable to the gas component of Viking's sales rates and a $5.00 per dekatherm adjustment applicable to the demand component of Viking's sales rates. The need for this adjustment arises from the renegotiation of prices for purchased gas, such renegotiated prices to be effective November 1, 1989.

Viking states that copies of the filing have been mailed to all of its jurisdictional customers on its system and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 20, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29503 Filed 12-19-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA90-3-000]

Wainoco Oil & Gas Co. Petition for Adjustment

December 12, 1989.

On October 25, 1989, Wainoco Oil & Gas (Wainoco) Company filed with the Federal Energy Regulatory Commission (Commission) a petition for adjustment to recover the Btu refund which it has paid and which is uncollectible. Wainoco states that it has paid $12,900.88 to Valero Interstate Transmission Co. (Valero) which represents the Btu refunds required by Order Nos. 399-A and 399-B attributable to certain royalty interests. Wainoco also asserts that it was unable to collect these refunds from the royalty owners and that the statute of limitations for collection under applicable state law has run, so that this refund has become uncollectible. Wainoco has requested Valero to repay the amount, but it has refused to do so. Accordingly, Wainoco petitioned the Commission to issue an order directing Valero to repay the amount.

The procedures applicable to the conduct of this adjustment proceeding are found in subpart K of the Commissions Rules of Practice and Procedure. 18 CFR part 385, Subpart K (1989). Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions of subpart K. All motions to intervene must be filed within fifteen (15) days after publication of this notice in the Federal Register.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29503 Filed 12-19-89; 8:45 am]

BILLING CODE 6717-01-M

Western Area Power Administration

Floodplain/Wetlands Involvement for the Flatiron-Weld 115-Kilovolt Transmission Line Reconductor Project; Larimer and Weld Counties, CO

AGENCY: Western Area Power Administration, DOE.

ACTION: Floodplain/Wetlands involvement and opportunity to comment.

SUMMARY: The Department of Energy (DOE), Western Area Power Administration (Western), is proposing to reconductor its existing 115-kilovolt Flatiron-Weld Transmission Line. The line, located in Larimer and Weld Counties, Colorado, is approximately 25

miles long and extends from the Flatiron Substation, southwest of Loveland, Colorado, near the Flatiron Reservoir, to

Loveland, CO 80539-3700, (303) 490-7200;

Mr. Gary W. Frey, Director of

and this notice serves to notify affected persons.

DOI and its contractors, ASG and

Dated: December 8, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 89-29499 Filed 12-19-89; 8:45am]

amount contributed by USAF does not exceed ten percent (10%) by volume of the known hazardous substances at the site (and represents a much smaller

SUMMARY: This notice meets the requirements of the Privacy Act of 1974 regarding the publication of an agency's notice of systems of records. It

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miles long and extends from the Flatiron Substation, southwest of Loveland, Colorado, near the Flatiron Reservoir, to the Weld Substation, west of Greeley, Colorado. Pursuant to DOE's "Compliance with Floodplain/Wetlands Environmental Review Requirements," 10 CFR part 1022, Western has determined that this proposed project would involve activities within a floodplain area. Approximately 90 percent of the proposed project area has been mapped by the Federal Management Agency (FEMA). Portions of the unincorporated areas have not been mapped. According to FEMA maps, about 5 percent of the existing transmission line in the mapped area lies within identified 100-year floodplains.

Wetlands for the entire project area have been mapped by the U.S. Fish and Wildlife Service's National Wetlands Inventory. The existing line does cross mapped wetlands. Western will prepare a floodplain/wetlands assessment in accordance with Executive Order 11988—Floodplain Management, and Executive Order 11990—Protection of Wetlands. The floodplain/wetlands assessment will be part of the National Environmental Policy Act compliance document which Western is preparing for the subject proposed project. The existing transmission line carries power from the Flatiron Substation to the Weld Substation and is a principal part of Western's northern Colorado transmission system. The existing line was constructed in the 1950's using 477 MCM ACSR conductor supported by wood H-frame structures. The line was reconductored in 1959 with 795 MCM ACSR conductor to accommodate increased loads in the area. The new conductor was strung at higher tension to meet minimum ground clearance criteria. This increased tension has caused the outer strands of the conductor to break at the suspension shoes. The existing conductor will be replaced with 795 MCM ACSR 45/7 conductor. H-frame poles, crossarms, insulators, and hardware will be replaced as necessary at the present locations. No additional right-of-way will be required to accommodate the proposed action.

DATE: Public comments or suggestions concerning the floodplain involvement of Western's proposed action are invited. Any comments are due by January 9, 1990.

ADDRESSES: Comments or suggestions should be sent to:

Mr. Stephen A. Fausett, Area Manager, Loveland Area Office, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539-3700, (303) 490-7200;

Mr. Gary W. Frey, Director of Environmental Affairs, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401, (303) 231-1527.

FOR FURTHER INFORMATION CONTACT:

Mr. William Melander, Environmental Specialist, Loveland Area Office, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539-3700, (303) 490-7231.

Issued at Golden, Colorado, December 6, 1989.

William H. Clagett,

Administrator.

[FR Doc. 89-29589 Filed 12-19-89; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-100070; FRL-3656-3]

U.S. Department of Justice; Automated Sciences Group, Inc.; Octo Inc.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). The U.S. Department of Justice (DOJ) has created a large multi-contract capability to handle a requirement to microfiche their hearing records. Other federal agencies have been invited to use this capability to help normalize the work volumes among the contracts. This DOJ contract capability is accessed by other agencies through an Interagency Agreement (IAG) with DOJ, who administers the contracts. Under the IAG, DOJ and its contractors, Automated Sciences Group, Inc. (ASG) and Octo Inc., will perform work for EPA's Office of Pesticide Programs and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred through DOJ to its contractors, ASG and Octo Inc. consistent with the requirements of 40 CFR 2.209(c) and 2.308(i)(2), respectively. This transfer will enable DOJ and its contractors, ASG and Octo Inc. to fulfill the obligations of an IAG and this notice serves to notify affected persons.

DATE: DOJ and its contractors, ASG and Octo Inc. will be given access to this information no sooner than January 2, 1990.

FOR FURTHER INFORMATION CONTACT:

By mail: Catherine S. Grimes, Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 212, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557-4460.

SUPPLEMENTARY INFORMATION: Under the IAG with DOJ, its contractors, ASG and Octo Inc. will produce and/or quality check archival images of documents on microfiche, of data either produced by or submitted to the Office of Pesticide Programs. Employees of DOJ and its contractors, ASG and Octo Inc. will have access to all data that are filmed, but such access is incidental to their work. They are not in a position to know the actual significance of the data, nor do they use the data within its subject-matter context.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and obtained under sections 408 and 409 of FFDCA.

In accordance with the requirement of 40 CFR 2.209(c) and 2.308(i)(2), the IAG with DOJ and its contractors, ASG and Octo Inc. prohibits use of the information for any purpose other than the purposes specified in the IAG; prohibits disclosure of the information in any form to a third party without prior written approval from the Agency or affected business; and requires that each official and employee sign an agreement to protect the information from unauthorized release. In addition, DOJ's contractors, ASG and Octo Inc. are required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided until the above requirements have been fully satisfied. Records of information provided under the IAG will be maintained by the Project Officer for each task in the EPA Office of Pesticide Programs.

All information supplied to DOJ and its contractors, ASG and Octo Inc. by EPA for use in connection with the IAG will be returned to EPA when ASG and Octo Inc. have completed their work.

Dated: December 8, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 89-29486 Filed 12-19-89; 8:45am]

BILLING CODE 6560-50-D

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3656-6]

De Minimis Settlement and Request for Public Comment; Department of the Air Force

AGENCY: United States Environmental Protection Agency.

ACTION: Notice of de minimis settlement and request for public comment.

SUMMARY: The U.S. Environmental Protection Agency ("U.S. EPA") is proposing to enter into a de minimis settlement with the U.S. Department of Air Force ("USAF") under section 122(g) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9622(g). This proposed settlement is intended to resolve the liability under CERCLA of USAF as a de minimis party for response costs incurred and to be incurred at the Colbert Landfill in Spokane County, Washington.

DATES: Comments must be provided on or before January 19, 1990.

ADDRESS: Comments should be addressed to Cynthia Mackey, Office of Regional Counsel, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, SO-125, Seattle, WA., 98101, and should refer to Colbert Landfill, Spokane County, WA.

FOR FURTHER INFORMATION CONTACT: Cynthia Mackey, U.S. Environmental Protection Agency, Office of Regional Counsel, 1200 Sixth Avenue, SO-125, Seattle, WA., 98101, (206) 442-1777.

SUPPLEMENTARY INFORMATION: In accordance with section 12(i)(1) of CERCLA, notice is hereby given of a proposed administrative settlement concerning the Colbert Landfill in Spokane County, Washington. Subject to review by the public pursuant to this Notice, the agreement has been approved by the U.S. Department of Justice and USAF. U.S. EPA is entering into this agreement under the authority of section 122(g) and section 107 of CERCLA. Section 1222(g) authorizes early settlements with de minimis parties to allow them to resolve their liabilities at Superfund sites without incurring substantial transaction costs. Under this authority, the agreement proposes to settle with USAF. The amount contributed by USAF does not exceed ten percent (10%) by volume of the known hazardous substances at the site (and represents a much smaller percentage of the probable unrecorded site waste). Further, the toxic or other hazardous substances contributed by USAF do not contribute disproportionately to the cumulative toxic or other hazardous effects of the hazardous substances at the site.

Pursuant to the agreement, USAF has agreed to pay one million four hundred fifty thousand dollars ($1,450,000.00). This payment represents a minor portion of the total estimated response costs at this site of approximately fourteen million dollars ($14,000,000.00). U.S. EPA has identified other potentially responsible parties who may be held responsible for some of these costs. In exchange for this settlement payment and subject to an express reservation of rights, U.S. EPA will enter a covenant not to sue for further civil liability for reimbursement of response costs or for injuctive relief pursuant to sections 106 or 107(a) of CERCLA, 42 U.S.C. 9606 or 9607(a), or section 7003 of the Resource conservation and Recovery Act, as amended, 42 U.S.C. 6973, with regard to the Colbert site. Pursuant to CERCLA 122(g)(5), 42 U.S.C. 9622(g)(5) and subject to an express reservation of rights, USAF will not be liable for claims for contribution for Covered Matters by any other person.

U.S. EPA will receive written comments relating to this agreement for thirty (30) days from the date of publication of this notice.

A copy of the proposed administrative settlement agreement may be obtained in person or by mail from U.S. EPA Region 10, Office of Regional Counsel, 1200 Sixth Avenue, Seattle, Washington, 98101. Additional background information relating to the settlement is available for review at U.S. EPA Region 10, Office of Regional Counsel.

Charles Findley,

Acting Regional Administrator

[FR Doc. 89-29580 Filed 12-19-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Privacy Act of 1974; Systems of Records

AGENCY: Federal Communications Commission (FCC).

ACTION: Notices of two proposed new systems of records and an altered system of records.

SUMMARY: This notice meets the requirements of the Privacy Act of 1974 regarding the publication of an agency's notice of systems of records. It documents minor changes to an existing system and proposes to establish two new systems of records. Also, the document republishes for reference certain blanket routine uses which may be made of the information in selected systems of records.

DATES: Written comments on the proposed changes should be received on or before January 19, 1990. All proposals shall be effective after this date unless FCC receives comments that would require a contrary determination. As required by 5 U.S.C. 552a(o) of the Privacy Act, the FCC submitted reports to the Congress and to the Office of Management and Budget (OMB). The system of records will become effective on or before February 20, 1990.

ADDRESSES: Comments should be mailed to Terry D. Johnson, Privacy Act Officer, Information Resources Branch, Room 416, Federal Communications Commission, 1919 M Street NW., Washington, DC 20554. Written comments will be available for inspection at the above address between 9:00 a.m. and 4:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Terry D. Johnson, Privacy Act Officer, Information Resources Branch, Room 416, Federal Communications Commission, 1919 M Street NW., Washington, DC 20554, (202) 634-1535.

SUPPLEMENTARY INFORMATION: As required by the Privacy Act of 1974, 5 U.S.C. 552a(e)(4), this document sets forth notice of the existence and character of the systems of records maintained by the FCC. The agency previously gave complete notice of its systems of records by publication in the **Federal Register** on September 2, 1988, 53 FR 34149. The Commission altered its system of records to reflect minor changes in its inventory of systems of records (54 FR 18592), May 1, 1989. This notice is a summary of more detailed information which may be viewed at the location and hours given in the **"ADDRESSES"** section above.

Prefatory Statement

Altered Systems of Records:

A system of records is being revised. As required by the Privacy Act and OMB Circular No. A-130, an Altered System Report for this system has been submitted to the Office of Management and Budget, the President of the Senate, and the Speaker of the House for the

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following system. The proposed modifications are as follows:

1. For FCC/PERS-4, PER Compliance

contract, or the issuance of a license, grant or other benefit.

3. Routine Use—Disclosure of

records as specified in the following table:

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 47 U.S.C. 301, 303, 309(e), 312,

and from § 0.554–0.557 of the Commission's rules because such parts contain investigatory material compiled

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following system. The proposed modifications are as follows:

1. For FCC/PRB–4, PRB Compliance, the categories of records has been expanded to cover a computer case log.

New Systems of Records:

Two new systems of records are included in this document: FCC/OIG–1, General Investigative Files, is being established by the FCC for the purpose of preventing and detecting alleged waste, fraud and abuse, or conducting and supervising audits and investigations relating to programs and operations.

FCC/FOB–3, Employee Activity System, is being established by the FCC for the purpose of identifying the staffing plan for the bureau, as well as reflecting the current status of personnel actions for each employee.

These systems will be effective 60 days from publication, unless comments received require a contrary determination.

Blanket Routine Uses

The Commission established general or "blanket" routine uses that may be made of the information in its systems of records. The following blanket routine uses may be applied to, and incorporated by reference into, every record system maintained within the Commission. The extent of their application is indicated by a listing of the blanket routine use numbers in each individual system notice. These blanket routine uses are published in this manner in order to avoid unnecessary repetition and in the interest of simplicity and economy, rather than repeating them in each individual system of records notice:

1.Routine Use—Law Enforcement: Where there is an indication of a violation or potential violation of a statute, regulation, rule, or order, the relevant records may be referred to the appropriate Federal, state, or local agency responsible for investigating or prosecuting a violation or for enforcing or implementing the statute, rule, regulation or order.

2. Routine Use—Disclosure When Requesting Information: A record may be disclosed to request information from a Federal, state, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as licenses, if necessary to obtain information relevant to a Commission decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

3. Routine Use—Disclosure of Requested Information to a Federal Agency: A record may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit.

4. Routine Use—Congressional Inquiries: A record on an individual in a system of records may be disclosed to a congressional office in response to an inquiry the individual has made to the congressional office.

5. Routine Use—Disclosure to the General Services Administration (GSA) and the National Archives and Records Administration (NARA): A Record from a system of records may be disclosed to GSA and NARA for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall not be used to make a determination about individuals.

6. Routine Use—Disclosure to a Court or Administrative Body: A record on an individual in a system of records may be disclosed, where pertinent, in any legal proceeding to which the Commission is a party before a court or administrative body.

7. Routine Use—Disclosure to the Department of Justice or a Court for Litigation: A record from a system of records may be disclosed to the Department of Justice or in a proceeding before a court or adjudicative body when:

(a) The United States, the Commission, a component of the Commission, or, when represented by the government, an employee of the Commission is a party to litigation or anticipated litigation or has an interest in such litigation, and

(b) The Commission determines that the disclosure is relevant or neccasary to the litigation and is compatible with the purpose for which the records were compiled.

8. Routine Use—Disclosure to the Office of Personnel Management (OPM): A record in a system of records which concerns information on pay and leave, benefits, retirement deductions, and any other pertinent information may be disclosed to the Office of Personnel Management in order for it to carry out its legally authorized Government-wide functions and duties.

The compatible blanket routine uses are incorporated into FCC systems of records as specified in the following table:

System No.	System name	Blanket routine uses proposed (numbers)
FCC/FOB–3	Employee Activity System.	1 through 7.
FCC/PRB–4	Private Radio Bureau Compliance.	1 through 7.
FCC/OIG–1	General Investigative Files.	1 through 8.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

FCC/FOB–3

SYSTEM NAME:

Employee Activity System.

SYSTEM LOCATION:

Administrative office of the Federal Communications Commission (FCC), Field Operations Bureau (FOB), 1919 M Street NW., Washington, DC 20554.

CATEGORIES OF INDIVIDUALS COVERED BY THIS SYSTEM:

Current employees within FOB at the FCC.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains a person's name, social security number, organizational code, title, grade, salary, date of birth, service computation date, and date employee entered on duty. Included in this system are employees' standards, appraisal information and awards. The system also contains the home address and telephone number of the employee and the name, address, and telephone number of an individual to contact in the event of a medical or other emergency involving the employee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Record serves to identify the staffing plan for the bureau. The record will also reflect the current status of personnel actions for each employee. In addition, the record serves to identify an individual for office officials to contact, should an emergency of a medical or other nature involving the employee occur while the employee is on the job.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are stored in file cabinets. Automated records are on computer media.

RETRIEVABILITY:

Records can be retrieved by name of individual employee.

SAFEGUARDS:

Records are maintained in a secured area and are available only to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

Records are maintained as long as the individual is an employee of FOB. Expired records are destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Office, FOB, FCC, 1919 M Street NW., Washington, DC 20554.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager.

RECORD ACCESS PROCEDURES:

Address requests to the system manager.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Employees and employee's supervisor.

FCC/PRB–4

SYSTEM NAME:

Private Radio Bureau Compliance.

SYSTEM LOCATION:

Federal Communications Commission (FCC), Private Radio Bureau, 2025 M Street NW., Washington, DC 20554.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEMS:

Licensees, applicants, and unlicensed persons under parts 80, 87, 90, 94, 95, and 97 of the rules about whom there are questions of compliance with the Commission's rules or the Communications Act of 1934. Unlicensed persons operating radio equipment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Compliance case history logs; investigatory and hearing files with inspection reports, complaints, correspondence, pleadings, legal memoranda, investigative findings, forfeiture notices.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 47 U.S.C. 301, 303, 309(e), 312, 362, 364, 386, 507, and 510.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Used by bureau employees in compliance, rule waiver, and hearing cases to document, to evaluate, to impose sanctions for noncompliance with the rules or Act, and to grant waivers. Blanket routine uses Nos. 1–7 of the Prefatory Statement are applicable to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Case materials are in file folders. Logs are on cards, paper, and electromagnetic computer tape.

RETRIEVABILITY:

Records are filed and retrieved by name of licensee, applicant or unlicensed individual or call sign.

SAFEGUARDS:

Paper records are maintained on a division level in appropriate file cabinets in offices which are locked at the end of each business day. Access to computer records is controlled by password.

RETENTION AND DISPOSAL:

The documentation portions of these records are retained for 3 years after the case is closed and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Private Radio Bureau, FCC, 2025 M Street NW., Washington, DC 20554.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager.

RECORD ACCESS PROCEDURE:

Address requests to the system manager.

CONTESTING RECORD PROCEDURE:

Same as above.

RECORD SOURCE CATEGORIES:

Information originates from various sources: FCC Field Engineers; private citizens; Department of Justice; other Commission personnel.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Parts of this system of records are exempt from subsections (c)(3), (d), (e)(1), (e)(4) (G), (H) and (I), and (f) of the Privacy Act of 1974, 5 U.S.C. 552(a), and from § 0.554–0.557 of the Commission's rules because such parts contain investigatory material compiled solely for law enforcement purposes pursuant to section 552(k)(2) of the Act.

FCC/OIG–1

SYSTEM NAME:

General Investigative Files.

SECURITY CLASSIFICATION:

Limited Access. Certain records or information in this system may be provided security safeguards equivalent to the protection of Top Secret classified information.

SYSTEM LOCATION:

Office of Inspector General, Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and entities who are or have been the subjects of investigations conducted by the OIG, including present and former FCC employees, and other individuals and entities doing business with FCC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Case files developed during investigations of known or alleged waste, fraud, and abuse, or other irregularities or violations of laws and regulations. Case files related to programs and operations administered or financed by the FCC, including contractors and others doing business with the FCC. Investigative files relating to FCC employees, hotline complaints, and other miscellaneous complaint files. Investigative reports and related documents, such as correspondence, notes, attachments, and working papers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act of 1978, as amended by the Inspector General Act amendments of 1988 (Pub. L. No. 100–504, Oct. 18, 1988).

PURPOSE(S):

For the purpose of preventing or detecting waste, fraud, or abuse, conducting and supervising audits and investigations relating to programs and operations, informing the Chairman about problems and deficiencies in the Commission's programs and operations or suggesting corrective action in reference to identified irregularities, problems or deficiencies.

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(a) A record within this system which includes information which indicates either by itself or in combination with other information within the agency's possession, a violation or potential violation of law, whether criminal, civil or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, may be disclosed as a routine use to the appropriate Federal, State, local or foreign agency or professional organization charged with the responsibility of investigating or prosecuting such violation or charged with enforcing, implementing, investigating, or prosecuting the particular statute, rule, regulation or order at issue.

(b) A record within this system which is derived from another FCC system of records may be disclosed in accord with the routine uses specified in the **Federal Register** notice for the system of records from which the record is derived.

(c) A record within this system may be disclosed, as a routine use, to any Federal agency responsible for considering suspension/debarment actions where such record would be relevant to a determination of the propriety/necessity for such an action.

(d) A record within this system may be disclosed, as a routine use, to any source, either private or governmental, to the extent necessary to secure from such source information relevant to and sought in furtherance of a legitimate investigation or audit.

(e) A record within this system may be disclosed, as a routine use, to a Federal, State, local, foreign or international agency, in connection with such entity's assignment, hiring or retention of an individual, issuance of a security clearance, reporting of an investigation of an individual, letting of a contract or issuance of a license, grant or other benefit, to the extent that the information is relevant and necessary to such agency's decision on the matter.

(f) A record within this system may be disclosed, as a routine use, to the Office of Government Ethics for any purpose consistent with that office's mission, including the compilation of statistical data.

(g) A record within this system may be disclosed, as a routine use, to the U.S. General Accounting Office and to the General Services Administration's Board of Contract Appeals in bid protest cases involving an agency procurement.

(h) A record within this system may be disclosed, as a routine use, to the U.S. Department of Justice in order to obtain that department's advice regarding an agency's disclosure obligations under the Freedom of Information Act.

(i) A record within this system may be disclosed, as a routine use, to the Office of Management and Budget in order to obtain that office's advice regarding an agency's obligations under the Privacy Act.

(j) A record within this system may be disclosed, as a routine use, to a Member of Congress who submits an inquiry on behalf of an individual when the Member of Congress informs the appropriate agency official that the individual to whom the record pertains has authorized the Member of Congress to have access. In such cases, the member has no greater right to the record than does the individual.

(k) A record within this system may be disclosed, as a routine use, to a "consumer reporting agency" as that term is defined in the Fair Credit Reporting Act (15 U.S.C. 1681 a(f)) and the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)), for the purposes of obtaining information in the course of an investigation or audit.

(l) A record within this system may be disclosed in a proceeding before a court or adjudicative body before which the FCC is authorized to appear, or in the course of settlement negotiations with opposing counsel.

(m) A record within this system may be disclosed to the Department of Justice when—(1) the FCC, or any component thereof; or (2) any employee of the FCC in his or her official capacity; or (3) any employee of the FCC in his or her individual capacity, where the Department of Justice has agreed or is considering a request to represent the employee; or (4) the United States, where the FCC determines that litigation is likely to affect the FCC or any of its components—is a party to litigation or has an interest in such litigation, and the FCC determines that the use of such records by the Department of Justice is relevant and necessary to the litigation; provided, however, that in each case, the FCC determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The files are stored in file folders. All records are stored under secure conditions.

RETRIEVABILITY:

Records are filed alphabetically by name.

SAFEGUARDS:

Records are kept in file cabinets in offices that are secured at the end of each business day. Since only one or two staff persons routinely access this records system, unauthorized examination during business hours would be easily detected.

RETENTION AND DISPOSAL:

Records are covered by the National Archives and Records Adminstration's General Records Schedule 22. Investigative files containing information or allegations which are of an investigative nature but do not relate to a specific investigation are destroyed after 5 years from the date the record was established. All other investigative case files are placed in inactive file when case is closed. Files are retained for 10 years, then destroyed if no longer needed. Case files of internal audits of agency programs, operations, and procedures, and of external audits of contractors and grantees are destroyed after 8 years if no longer needed. Index references to investigative files are destroyed when superseded or obsolete. Disposition of records shall be in accordance with FCC Records Maintenance and Disposition System.

SYSTEM MANAGER(S) AND ADDRESS:

Inspector General, Office of Inspector General, Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

NOTIFICATION PROCEDURES:

During an investigation, information from other FCC systems of records may be incorporated into the case file. In certain instances, the incorporated information may be material which the Privacy Act permits an agency to exempt from certain provisions of the Act. *See* 5 U.S.C. 552a (j)(2); (k)(1), (2), (5). To the extent that such exempt material is incorporated into the case file, the Chairman of the Federal Communications Commission has determined that the material as it appears in this system should be exempted from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), (I) and (f), of the Privacy Act, pursuant to 5 U.S.C. 552a (j)(2) and (k)(2); and from subsections (c)(3) and (d) pursuant to 5 U.S.C. 552a (k)(1) and (5). To the extent that this system of records is not subject to exemption, it is subject to notification, access and contesting procedures. A determination as to the applicability of

an exemption as to a specific record shall be made at the time a request for notification, access, or contesting is received. Inquiries should be addressed to the system manager. Written requests should be clearly marked, "Privacy Act Request" on the envelope and letter. Include full name of the individual, some type of appropriate personal identification, and current address.

RECORDS ACCESS PROCEDURE:

Same as notification procedure above.

CONTESTING RECORDS PROCEDURES:

Same as above. The letter should state clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

(1) Federal, State, local or foreign government agencies concerned with the administration of criminal justice and non-law enforcement agencies both public and private; (2) Members of the public; (3) Government employees; (4) Published material; (5) Witnesses and informants.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

During an investigation, information from other systems of records may be incorporated into the case file. In certain instances, the incorporated information may be material which the Privacy Act permits an agency to exempt from certain provisions of the Act. *See* 5 U.S.C. 552a (j)(2); (k)(1), (2), and (5). To the extent that such exempt material is incorporated into the investigative file, the Head of the Federal Communications Commission has determined that the material as it appears in this system should be exempted from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), (I), and (f), of the Privacy Act, pursuant to 5 U.S.C. 552a (j)(2) and (k)(2); and from subsections (c)(3) and (d) pursuant to 5 U.S.C. 552a (k)(1) and (5).

[FR Doc. 89-29255 Filed 12-19-89; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

CCNB Corp.; Aquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 12, 1990.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President), 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *CCNB Corporation*, New Cumberland, Pennsylvania; to acquire Parent Federal Savings Bank, Lancaster, Pennsylvania, and thereby operate a savings association pursuant to § 225.25(b)(9); engage in mortgage banking activities pursuant to § 225.25(b)(1); and residential real estate appraising pursuant to § 225.25(b)(13) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 14, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-29541 Filed 12-19-89; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 5, 1989.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *John A. Coccomo, Sr.*, Windsor, Connecticut; to acquire an additional 10.1 percent of the voting shares of Olde Windsor Bancorp, Inc., Windsor, Connecticut, for a total of 20.0 percent, and thereby indirectly acquire New England Bank and Trust Company, Windsor, Connecticut.

B. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *National Properties, Inc.*, Wayne, Pennsylvania; to acquire 10.13 percent of the voting shares of BCB Financial Services Corporation, Reading, Pennsylvania, and thereby indirectly acquire Berks County Bank, Reading, Pennsylvania.

C. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Don P. Boggs*, Havana, Illinois; to acquire 100 percent of the voting shares of Havana Bancshares, Inc., Havana, Illinois, and thereby indirectly acquire State Bank of Havana, Havana, Illinois.

D. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Donald B. Hayes*, Austin, Texas; to acquire 10.28 percent of the voting shares of Giddings Citizens State Bancshares, Inc., Giddings, Texas, and thereby indirectly acquire Citizens State Bank, Giddings, Texas.

Board of Governors of the Federal Reserve System, December 14, 1989.

Jennifer J. Johnson,

Board of Governors of the Federal Reserve System, December 14, 1989.

Jennifer J. Johnson,

accordance with the Commission's Rules of Practice governing consent order procedures. In accordance

public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and

Mills, Inc., and their respective directors, officers, employees, agents, and representatives, and their respective

emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change that

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Board of Governors of the Federal Reserve System, December 14, 1989.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 89-29542 Filed 12-19-89; 8:45 am]
BILLING CODE 6210-01-M

National Penn Bancshares, Inc., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 5, 1990.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *National Penn Bancshares, Inc.*, Boyertown, Pennsylvania; to acquire 24.9 percent of the voting shares of Valley Community Bank, Kingston, Pennsylvania, a *de novo* bank.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Farmers State Bancorporation, Inc.*, Hoffman, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Farmers State Bank of Hoffman, Hoffman, Illinois.

2. *Sun Financial Corporation*, St. Louis, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of E Corporation, St. Louis, Missouri, and Farmers State Bank of Ellington, Missouri, Ellington, Missouri.

Board of Governors of the Federal Reserve System, December 14, 1989.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 89-29543 Filed 12-19-89; 8:45 am]
BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

[Docket No. 9213]

Illinois Cereal Mills, Inc.; Proposed Consent Agreement with Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a manufacturer and seller of industrial dry corn milling products from acquiring industrial dry corn milling assets in the U.S., or interest in a U.S. industrial dry corn milling company, for a period of ten (10) years, without prior Commission approval.

DATE: Comments must be received on or before February 20, 1990.

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Ronald B. Rowe, FTC/S-3302, Washington, DC 20580. (202) 326-2610.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

The agreement herein, by and between Illinois Cereal Mills, Inc., a corporation, hereinafter sometimes referred to as respondent, by its duly authorized officer, and its attorney; and counsel for the Federal Trade Commission; is entered into in accordance with the Commission's Rules of Practice governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Respondent Illinois Cereal Mills, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 616 South Jefferson Avenue, Paris, Illinois 61944.

2. Respondent has been served with a copy of the complaint issued by the Federal Trade Commission charging it with violation of section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, and section 7 of the Clayton Act, as amended, 15 U.S.C. 18 and has filed answers to said complaint denying said charges.

3. Respondent admits all the jurisdictional facts set forth in the Commission's complaint in this proceeding.

4. Respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

5. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify respondent, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in the complaint issued by the Commission.

7. This agreement contemplates that if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Rule 3.25(f) of the Commission's Rules of Practice, the Commission may without further notice to respondent (1) issue its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to respondent's address as stated in this agreement shall constitute service. Respondent waives any right it might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or to contradict the terms of the order.

8. This agreement recognizes that the rescission ordered by the United States District Court for the Northern District of Illinois, Civil Action No. 88-2494, was accomplished.

9. Respondent has read the complaint and the order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I. Definitions

It is ordered That, for purposes of this Order, the following definitions apply:

1. "Industrial dry corn milling industry" means firms engaged in the United States in the dry milling of yellow corn whereby degermed, milled and sifted grits of different sizes are produced for resale to food processors, brewers and industrial users. Dry corn mills that produce corn products in small packages solely for retail sale or in-the-home use are not in the industrial dry corn milling industry.

2. "Industrial dry corn milling assets" mean dry corn mills, equipment, machinery and rail hopper cars used to mill, sift or transport corn in connection with an industrial dry corn mill, and grain storage elevators that are owned or leased by the operator of an industrial dry corn mill. Corn is not an industrial dry corn milling asset.

3. "Respondent Illinois Cereal Mills, Inc." means Illinois Cereal Mills, Inc., its foreign and domestic parents, predecessors, subsidiaries, divisions, affiliates, partnerships and joint ventures controlled by Illinois Cereal Mills, Inc., and their respective directors, officers, employees, agents, and representatives, and their respective successors and assigns.

II. Prior Approval for Acquisitions

It is further ordered That Respondent Illinois Cereal Mills, Inc., for a period of ten (10) years from the date this order becomes final, shall not acquire or lease, directly or indirectly, without the prior approval of the Commission, industrial dry corn milling assets of any company in the industrial dry corn milling industry, or the whole or any part of the stock, share capital or equity interest of any company in the industrial dry corn milling industry;

Provided, however, That prior approval is not required for the acquisition by Respondent Illinois Cereal Mills, Inc. of industrial dry corn milling assets that are either:

(1) Acquired from a single seller (including all parents, predecessors, subsidiaries, divisions, partnerships, joint ventures and affiliates thereof) if the total price of such assets acquired in any twelve-month period is less than one hundred thousand dollars ($100,000); or

(2) Acquired from a single seller (including all parents, predecessors, subsidiaries, divisions, partnership, joint ventures and affiliates thereof) if the total price of such assets acquired is less than five hundred thousand dollars ($500,000), and thirty (30) days prior written notice of the details of the proposed transaction is given to the Commission. The prior notice shall include the following information: (a) A full description of the assets to be acquired, (b) an identification of the proposed seller, (c) copies of all management documents discussing the proposed acquisition, and (d) copies of all proposed acquisition agreements and all drafts thereof. In the event representatives of the Federal Trade Commission request additional documents or information in writing within the thirty (30) days waiting period, Respondent Illinois Cereal Mills, Inc. shall not consummate the proposed acquisition until twenty (20) days after submitting the requested additional documents or information. Respondent Illinois Cereal Mills, Inc. may request early termination of either waiting period.

III. Other Obligations

It is further ordered That Respondent Illinois Cereal Mills, Inc. shall notify the Commission at least thirty (30) days prior to any proposed change in the respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change that may affect compliance obligations arising out of the Order.

It is further ordered That Respondent Illinois Cereal Mills, Inc., shall file with the Commission a verified report in writing within thirty (30) days after the date this Order becomes final, setting forth in detail:

(1) The manner and form in which it has complied and is complying with this Order; and

(2) The manner and form in which it has complied with the rescission order of the United States District Court for the Northern District of Illinois in Civil Action No. 88-2494.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted for comment from Illinois Cereal Mills, Inc. ("Illinois Cereal") an agreement containing consent order. This agreement has been placed on the public record for sixty (60) days for reception of comments from interested persons.

Comments received during this period will become part of the public record. After sixty days, the Commission will again review the agreement and comments received, and will decide whether it should withdraw from the agreement or make final the order contained in the agreement.

According to the Commission's June 30, 1988, complaint, Illinois Cereal and Elders are competitors nationwide in the manufacture and sale of industrial dry corn milling products. These products include flaking grits, used to make corn flakes; brewer's grits, used as an adjunct in the brewing process; corn meal, used in snack foods and mixes; and corn flour, used in a wide variety of food applications.

The Commission's complaint charged that on June 5, 1988, pursuant to a prior agreement, Illinois Cereal acquired the dry corn milling assets of Elders. The Commission had reason to believe that the acquisition, and the agreement to enter into the acquisition, would have anticompetitive effects and be in violation of section 7 of the Clayton Act and section 5 of the Federal Trade Commission Act.

When the Commission learned of the acquisition on June 6, 1988, it sought an order from the United States District Court for the Northern District of Illinois, Eastern Division, to rescind the acquisition pending the completion of administrative proceedings on the legality of the transaction. The Court

issued a rescission order on June 24, 1988. The order was affirmed by the

Room 5C35, Building 31C, Bethesda, Maryland, 20892, (301) 496-0350.

EFFECTIVE DATE: December 20, 1989.

FOR FURTHER INFORMATION CONTACT:

• You will be required to execute the required certification at the time of or

Albuquerque Area Director, Bureau of Indian Affairs, 615 1st Street NW., Box 26567,

lists of all potential Indian damage claims, which had at any time been

issued a rescission order on June 24, 1988. The order was affirmed by the United States Court of Appeals for the Seventh Circuit on January 30, 1989. Illinois Cereal and Elders rescinded their transaction on March 14, 1989.

The agreement containing consent order recognizes that the court ordered rescission was accomplished. If issued by the Commission, the proposed consent order would guard against possible future anticompetitive acquisitions by Illinois Cereal. Under the terms of the proposed order, for a period of ten (10) years from its effective date, Illinois Cereal may not acquire industrial dry corn milling assets in the United States, or an interest in a United States industrial dry corn milling company, without the prior approval of the Commission. Prior Commission approval is not required for purchases of less than $100,000 worth of equipment of a competitor in any twelve month period. Prior Commission approval is also not required if the acquired assets cost less than $500,000 and the Commission was provided 30 days prior notice of the details of the transaction.

By accepting the consent order subject to final approval, the Commission anticipates that the competitive problems alleged in the complaint will be resolved. The purpose of this analysis is to invite and facilitate public comment concerning the consent order. It is not intended to constitute an official interpretation of the agreement and proposed order or in any way to modify their terms.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 89-29574 Filed 12-19-89; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health, Public Health Service

New Treatment Strategies for Alzheimer's Disease Conference

Notice is hereby given of the "NIA New Treatment Strategies for Alzheimer's Disease" conference co-sponsored by the National Institute on Aging (NIA), the Sigma Tau Foundation and the Alzheimer's Association. The conference will be held on January 9-10, 1990, in Conference Room #10, Building 31C, 6th Floor, at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland, 20892. Information on the program may be obtained from: G. Bohler, NIA/NNA, 9000 Rockville Pike, Room 5C35, Building 31C, Bethesda, Maryland, 20892, (301) 496-9350.

Dated: December 13, 1989.

William F. Raub,

Acting Director, NIH.

[FR Doc. 89-29493 Filed 12-19-89; 8:45 am]

BILLING CODE 4140-01-M

Office of the Assistant Secretary for Health

Establishment; Scientific Integrity Advisory Committee

Pursuant to the Federal Advisory Committee Act, Public Law 92-463 (5 U.S.C. Appendix II), the Office of the Assistant Secretary for Health (OASH) announces the establishment by the Secretary, DHHS, of the Advisory Committee on Scientific Integrity on December 2, 1989, pursuant to 42 U.S.C. 217a, section 222 of the Public Health Service Act, as amended.

Designation: Advisory Committee on Scientific Integrity.

Purpose: Provides advice to the Secretary of Health and Human Services and the Assistant Secretary for Health on issues that relate to the Department's activities in detecting, deterring, investigating, and resolving allegations of misconduct in science.

Unless renewed by appropriate action prior to its expiration, this committee will terminate on December 2, 1991.

Dated: December 7, 1989.

Lyle W. Bivens,

Acting Director, Office of Scientific Integrity Review.

[FR Doc. 89-29565 Filed 12-19-89; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N-89-2092; FR-2719]

Prohibition on Use of Federal Funds for Lobbying; Requirements for Disclosure Statements

AGENCY: Office of the Secretary, HUD.

ACTION: Notice.

SUMMARY: The purpose of this Notice is to advise recipients and subrecipients of Federal contracts, grants, cooperative agreements, and loans of the prohibition recently mandated by Congress regarding the use of Federal funds for lobbying Congress or any Federal agency in connection with the award of a particular contract, grant, cooperative agreement, or loan.

EFFECTIVE DATE: December 20, 1989.

FOR FURTHER INFORMATION CONTACT: Edward L. Girovasi, Jr., Director, Policy and Evaluation Division, Office of Procurement and Contracts, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-3500, telephone (202) 755-5294. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Section 1352 of Public Law 101-121, signed into law on October 23, 1989, imposes new prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans. Certain provisions of the law also apply to Federal commitments for loan guarantees and insurance; however, it provides exemptions for Indian tribes and tribal organizations.

Effective December 23, 1989, current and prospective recipients (and their subtier contractors or subgrantees) will be prohibited from using Federal funds, other than profits from a Federal contract, for lobbying Congress or any Federal agency in connection with the award of a particular contract, grant, cooperative agreement, or loan. In addition, for each award action in excess of $100,000 (or $150,000 for loans) on or after December 23, the law requires recipients and their subtier contractors or subgrantees (1) to certify that they have neither used nor will use any appropriated funds for payment to lobbyists, (2) to disclose the name, address, payment details, and purpose of any agreements with lobbyists whom recipients or their subtier contractors or subgrantees will pay with profits or nonappropriated funds on or after December 23, and (3) to file quarterly up-dates about the use of lobbyists if material changes occur in their use. The law establishes civil penalties for noncompliance.

On or before December 23, the Office of Management and Budget will issue guidance for implementing and complying with the law. Sometime later, the provisions of the law will be put into regulation through the governmentwide common rule process.

If you are a current recipient of Federal funding or have an application, proposal, or bid pending as of December 23:

- You are prohibited from using appropriated funds (other than profits from Federal contracts) on or after December 23 for lobbying Congress or any Federal agency in connection with a particular contract, grant, cooperative agreement, or loan;

- You will be required to execute the required certification at the time of or before any future award action in excess of $100,000 ($150,000 for loans); and
- You will be required to complete the lobbying disclosure form if the disclosure requirements apply to you.

This notification is being published for purposes of information only. You are not required to take any action at this time other than to assure that appropriated funds (other than profits) are not used for lobbying in connection with a particular award on or after December 23, 1989. The Department of Housing and Urban Development will provide you with the appropriate forms if and when an award action or loan in excess of the $100,000/$150,000 thresholds is anticipated.

Dated: December 14, 1989.

Jack Kemp,

Secretary.

[FR Doc. 89-29576 Filed 12-19-89; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

List of Rejected Statute of Limitations Claims

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of rejected claims.

SUMMARY: This notice lists certain potential pre-1966 Indian damage claims which have been rejected for litigation by the Secretary of the Interior pursuant to the Indian Claims Limitation Act of 1982. This notice also contains a list of claims which the Bureau of Indian Affairs considers resolved.

DATE: To file an action in court, on any claim contained on the list of rejected claims, tribes, groups, and individual Indians must file such action no later than December 20, 1990.

FOR FURTHER INFORMATION CONTACT:

Aberdeen Area Director, Bureau of Indian Affairs, 115 4th Avenue SE., Aberdeen, South Dakota 57401-4382, telephone (605) 226-7343;

Albuquerque Area Director, Bureau of Indian Affairs, 615 1st Street NW., Box 26567, Albuquerque, New Mexico 87125-6567, telephone (505) 766-3170;

Anadarko Area Director, Bureau of Indian Affairs, WCD Office Complex, Box 368, Anadarko, Oklahoma 73005-0368, telephone (405) 247-6673;

Billings Area Director, Bureau of Indian Affairs, 316 North 26th Street, Billings, Montana 59101-1397, telephone (406) 657-6315;

Eastern Area Director, Bureau of Indian Affairs, 1951 Constitution Avenue NW., MS 711-Broyhill Building, Washington, DC 20245-0001, telephone (703) 2325-2571;

Juneau Area Director, Bureau of Indian Affairs, Federal Building, P.O. Box 3-8000, Juneau, Alaska 99802-1219, telephone (907) 586-7177;

Minneapolis Area Director, Bureau of Indian Affairs, 15 South 5th Street—10th Floor, Minneapolis, Minnesota 55401-1020, telephone (612) 349-3631;

Navajo Area Director, Bureau of Indian Affairs, P.O. Box M, Window Rock, Arizona 86515-0714, telephone (505) 663-9501;

Phoenix Area Director, Bureau of Indian Affairs, 1 North First Street, P.O. Box 10, Phoenix, Arizona 85001-0010, telephone (602) 241-2305;

Portland Area Director, Bureau of Indian Affairs, Federal Building West, 1002 NE. Holladay Street, P.O. Box 3785, Portland, Oregon 97232-4182, telephone (503) 231-6702;

Sacramento Area Director, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, California 95825-1884, telephone (916) 978-4691.

SUPPLEMENTARY INFORMATION: The Indian Claims Limitation Act of 1982, Pub. L. 97-394 (96 Stat. 1966, 1976) extends the statute of limitations governing pre-1966 Indian damage claims (28 U.S.C. 2415) which was due to expire on December 31, 1982. A claim subject to the statute of limitations is an Indian claim for money damages which arose prior to July 18, 1966. Claims against the United States are not governed by this law, only money damage claims against persons, corporations, States, or any other entities except the Federal Government. Claims for title to land are also not governed by this statute of limitations. This notice is required by section 5(c) of the Act.

Pursuant to sections 3 and 4 of the Indian Claims Limitation Act of 1982, lists of all potential Indian damage claims, which had at any time been identified by or submitted to the Bureau of Indian Affairs under the Department of the Interior's Statute of Limitations Program, were published in the **Federal Register** at 48 FR 13698, on March 31, 1983, amended at 48 FR 15008, on April 6, 1983; and at 48 FR 51204, on November 7, 1983, amended at 49 FR 518, on January 4, 1984. Excluded from these lists were claims which were erroneously identified as claims and those which had no legal merit whatsoever.

When rejecting any claim or category of claims included on the published lists, the Secretary must send a report to the appropriate tribe whose rights or the rights of whose members could be affected by the rejection. The report must identify each separate claim being rejected; list the names of potential plaintiffs and defendants, if known or reasonably ascertainable; and briefly set forth the reason or reasons for rejection. A written notice of rejection must be sent to individual Indian claimants if their identities and addresses are known or reasonably ascertainable from Bureau of Indian Affairs records. After a report has been forwarded to a tribe, the Secretary must publish a notice in the **Federal Register** identifying the claims covered in the report. By the terms of the Indian Claims Limitation Act of 1982, any right of action on any claim appearing on the following list of claims, which have been rejected and reported accordingly by the Secretary, shall be barred unless a complaint is filed in accordance with date established in the "DATE" section of this notice. A list of claims which the Bureau of Indian Affairs considers resolved follows the list of rejected claims.

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: December 12, 1989.

Patrick A. Hayes,

Acting Assistant Secretary—Indian Affairs.

BILLING CODE 4310-02-M

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ABERDEEN AREA REJECTED CLAIMS:
A073451899 A083460253

JUNEAU AREA REJECTED CLAIMS:

E000000005	E000000012	E000000017	E000000037	E000000049	E000000063
E000000008	E000000013	E000000018	E000000043	E000000061	E000000065
E000000010	E000000015	E000000029			

MUSKOGEE AREA REJECTED CLAIMS:

G039060002	G089050019	G089050106	G089050366	G089050222	G089050369
G039060004	G089050021	G089050107	G089050178	G089050223	G089050370
G039060004A	G089050024	G089050110	G089050179	G089050224	G089050376
G039060004B	G089050026	G089050111	G089050180	G089050225	G089050377
G039060009	G089050027	G089050112	G089050181	G089050228	G089050378
G039060027	G089050034	G089050113	G089050182	G089050243	G089050379
G039060027A	G089050036	G089050114	G089050183	G089050244	G089050389
G039060027B	G089050037	G089050115	G089050184	G089050281	G089050391
G039060027C	G089050038	G089050119	G089050185	G089050293	G089050391A
G039060027D	G089050039	G089050120	G089050186	G089050294	G089050391B
G039060031	G089050040	G089050121	G089050187	G089050295	G089050391C
G039060031A	G089050042	G089050127	G089050188	G089050300	G089050392
G079080027	G089050050	G089050128	G089050189	G089050306	G089050393
G079080038	G089050054	G089050129	G089050191	G089050308	G089050398
G079080039	G089050063	G089050132	G089050192	G089050309	G089050403
G079080040	G089050064	G089050133	G089050193	G089050314	G089050423
G079080040A	G089050065	G089050138	G089050194	G089050316	G089050424
G079080040B	G089050066	G089050139	G089050194A	G089050318	G089050448
G079080050	G089050068	G089050140	G089050195	G089050319	G099070005
G079080060	G089050072	G089050141	G089050197	G089050320	G099070014
G079080065	G089050075	G089050143	G089050198	G089050323	G099070018
G079080065A	G089050077	G089050146	G089050200	G089050324	G099070024
G079080065B	G089050079	G089050148	G089050201	G089050325	G099070025
G079080071	G089050080	G089050150	G089050203	G089050325A	G099070049
G079080084	G089050081	G089050151	G089050205	G089050326	G099070063
G079080091	G089050083	G089050152	G089050206	G089050326A	G099070064
G079080092	G089050085	G089050154	G089050207	G089050330	G099070066
G079080102	G089050086	G089050155	G089050208	G089050332	G099070094
G089050003	G089050087	G089050156	G089050209	G089050333	G099070118
G089050004	G089050088	G089050157	G089050210	G089050345	G099070128
G089050007	G089050090	G089050159	G089050211	G089050348	G099070128A
G089050008	G089050091	G089050160	G089050212	G089050349	G099070131
G089050010	G089050093	G089050161	G089050213	G089050350	G099070136
G089050011	G089050094	G089050164	G089050214	G089050351	G099070140
G089050012	G089050095	G089050165	G089050215	G089050352	G099070146
G089050013	G089050097	G089050166	G089050216	G089050353	G099070147
G089050014	G089050098	G089050167	G089050217	G089050354	G099070151
G089050014A	G089050099	G089050168	G089050218	G089050355	G099070152
G089050015	G089050100	G089050171	G089050219	G089050356	G099070153
G089050016	G089050101	G089050174	G089050220	G089050364	G099070154
G089050017	G089050103	G089050176	G089050221	G089050368	G109090005
G089050018	G089050105	G089050177			

PHOENIX AREA REJECTED CLAIMS:

H516030068	H516030071	H516030073	H516030075	H516030169	H686740126
H516030069	H516030072	H516030074	H516030076	H686740125	H686740129
H516030070					

SACRAMENTO AREA REJECTED CLAIMS:
J505400107

PORTLAND AREA REJECTED CLAIMS:

P000000325	P001400052	P001400104	P001400156	P001400208	P001400260
P001400001	P001400053	P001400105	P001400157	P001400209	P001400261
P001400002	P001400054	P001400106	P001400158	P001400210	P001400262
P001400003	P001400055	P001400107	P001400159	P001400211	P001400263
P001400004	P001400056	P001400108	P001400160	P001400212	P001400264
P001400005	P001400057	P001400109	P001400161	P001400213	P001400265
P001400006	P001400058	P001400110	P001400162	P001400214	P001400266
P001400007	P001400059	P001400111	P001400163	P001400215	P001400267
P001400008	P001400060	P001400112	P001400164	P001400216	P001400268
P001400009	P001400061	P001400113	P001400165	P001400217	P001400269
P001400010	P001400062	P001400114	P001400166	P001400218	P001400270
P001400011	P001400063	P001400115	P001400167	P001400219	P001400271
P001400012	P001400064	P001400116	P001400168	P001400220	P001400272
P001400013	P001400065	P001400117	P001400169	P001400221	P001400273
P001400014	P001400066	P001400118	P001400170	P001400222	P001400274
P001400015	P001400067	P001400119	P001400171	P001400223	P001400275
P001400016	P001400068	P001400120	P001400172	P001400224	P001400276
P001400017	P001400069	P001400121	P001400173	P001400225	P001400277
P001400018	P001400070	P001400122	P001400174	P001400226	P001400278
P001400019	P001400071	P001400123	P001400175	P001400227	P001400279
P001400020	P001400072	P001400124	P001400176	P001400228	P001400280
P001400021	P001400073	P001400125	P001400177	P001400229	P001400281
P001400022	P001400074	P001400126	P001400178	P001400230	P001400282
P001400023	P001400075	P001400127	P001400179	P001400231	P001400283
P001400024	P001400076	P001400128	P001400180	P001400232	P001400284
P001400025	P001400077	P001400129	P001400181	P001400233	P001400285
P001400026	P001400078	P001400130	P001400182	P001400234	P001400286
P001400027	P001400079	P001400131	P001400183	P001400235	P001400287
P001400028	P001400080	P001400132	P001400184	P001400236	P001400288
P001400029	P001400081	P001400133	P001400185	P001400237	P001400289
P001400030	P001400082	P001400134	P001400186	P001400238	P001400290
P001400031	P001400083	P001400135	P001400187	P001400239	P001400291
P001400032	P001400084	P001400136	P001400188	P001400240	P001400292
P001400033	P001400085	P001400137	P001400189	P001400241	P001400293
P001400034	P001400086	P001400138	P001400190	P001400242	P001400294
P001400035	P001400087	P001400139	P001400191	P001400243	P001400295
P001400036	P001400088	P001400140	P001400192	P001400244	P001400296
P001400037	P001400089	P001400141	P001400193	P001400245	P001400297
P001400038	P001400090	P001400142	P001400194	P001400246	P001400298
P001400039	P001400091	P001400143	P001400195	P001400247	P001400299
P001400040	P001400092	P001400144	P001400196	P001400248	P001400300
P001400041	P001400093	P001400145	P001400197	P001400249	P001400301
P001400042	P001400094	P001400146	P001400198	P001400250	P001400302
P001400043	P001400095	P001400147	P001400199	P001400251	P001400303
P001400044	P001400096	P001400148	P001400200	P001400252	P001400304
P001400045	P001400097	P001400149	P001400201	P001400253	P001400305
P001400046	P001400098	P001400150	P001400202	P001400254	P001400306
P001400047	P001400099	P001400151	P001400203	P001400255	P001400307
P001400048	P001400100	P001400152	P001400204	P001400256	P001400308
P001400049	P001400101	P001400153	P001400205	P001400257	P001400309
P001400050	P001400102	P001400154	P001400206	P001400258	P001400310
P001400051	P001400103	P001400155	P001400207	P001400259	P001400311

PORTLAND AREA REJECTED CLAIMS (CONTINUED):

P001400312	P001400368	P001400424	P011420042	P011420098	P011420154
P001400313	P001400369	P001400425	P011420043	P011420099	P011420155
P001400314	P001400370	P001410001	P011420044	P011420100	P011420156
P001400315	P001400371	P001410002	P011420045	P011420101	P011420157
P001400316	P001400372	P001410003	P011420046	P011420102	P011420158
P001400317	P001400373	P001410004	P011420047	P011420103	P011420159
P001400318	P001400374	P001410005	P011420048	P011420104	P011420160
P001400319	P001400375	P001410006	P011420049	P011420105	P011420161
P001400320	P001400376	P001410007	P011420050	P011420106	P011420162
P001400321	P001400377	P001410008	P011420051	P011420107	P011420163
P001400322	P001400378	P001410009	P011420052	P011420108	P011420164
P001400323	P001400379	P001410010	P011420053	P011420109	P011420165
P001400324	P001400380	P001410011	P011420054	P011420110	P011420166
P001400325	P001400381	P001410012	P011420055	P011420111	P011420167
P001400326	P001400382	P001410013	P011420056	P011420112	P011420168
P001400327	P001400383	P011420001	P011420057	P011420113	P011420169
P001400328	P001400384	P011420002	P011420058	P011420114	P011420170
P001400329	P001400385	P011420003	P011420059	P011420115	P011420171
P001400330	P001400386	P011420004	P011420060	P011420116	P011420172
P001400331	P001400387	P011420005	P011420061	P011420117	P011420173
P001400332	P001400388	P011420006	P011420062	P011420118	P011420174
P001400333	P001400389	P011420007	P011420063	P011420119	P011420175
P001400334	P001400390	P011420008	P011420064	P011420120	P011420176
P001400335	P001400391	P011420009	P011420065	P011420121	P011420177
P001400336	P001400392	P011420010	P011420066	P011420122	P011420178
P001400337	P001400393	P011420011	P011420067	P011420123	P011420179
P001400338	P001400394	P011420012	P011420068	P011420124	P011420180
P001400339	P001400395	P011420013	P011420069	P011420125	P011420181
P001400340	P001400396	P011420014	P011420070	P011420126	P011420182
P001400341	P001400397	P011420015	P011420071	P011420127	P011420183
P001400342	P001400398	P011420016	P011420072	P011420128	P011420184
P001400343	P001400399	P011420017	P011420073	P011420129	P011420185
P001400344	P001400400	P011420018	P011420074	P011420130	P011420186
P001400345	P001400401	P011420019	P011420075	P011420131	P011420187
P001400346	P001400402	P011420020	P011420076	P011420132	P011420188
P001400347	P001400403	P011420021	P011420077	P011420133	P011420189
P001400348	P001400404	P011420022	P011420078	P011420134	P011420190
P001400349	P001400405	P011420023	P011420079	P011420135	P011420191
P001400350	P001400406	P011420024	P011420080	P011420136	P011420192
P001400351	P001400407	P011420025	P011420081	P011420137	P011420193
P001400352	P001400408	P011420026	P011420082	P011420138	P011420194
P001400353	P001400409	P011420027	P011420083	P011420139	P011420195
P001400354	P001400410	P011420028	P011420084	P011420140	P011420196
P001400355	P001400411	P011420029	P011420085	P011420141	P011420197
P001400356	P001400412	P011420030	P011420086	P011420142	P011420198
P001400357	P001400413	P011420031	P011420087	P011420143	P011420199
P001400358	P001400414	P011420032	P011420088	P011420144	P011420200
P001400359	P001400415	P011420033	P011420089	P011420145	P011420201
P001400360	P001400416	P011420034	P011420090	P011420146	P011420202
P001400361	P001400417	P011420035	P011420091	P011420147	P011420203
P001400362	P001400418	P011420036	P011420092	P011420148	P011420204
P001400363	P001400419	P011420037	P011420093	P011420149	P011420205
P001400364	P001400420	P011420038	P011420094	P011420150	P011420206
P001400365	P001400421	P011420039	P011420095	P011420151	P011420207
P001400366	P001400422	P011420040	P011420096	P011420152	P011420208
P001400367	P001400423	P011420041	P011420097	P011420153	P011420209

PORTLAND AREA CLAIMS (CONTINUED):

P011420210	P011420236	P061170021	P091440015	P091440047	P101110003F
P011420211	P011420237	P061170030	P091440016	P091440048	P101110003G
P011420212	P011420238	P061170031	P091440017	P091440049	P101110004A
P011420213	P011420239	P061170034	P091440019	P091440050	P101110004C
P011420214	P011420240	P061170051	P091440020	P091440051	P101110004D
P011420215	P011420241	P061180004	P091440021	P091440052	P101110004E
P011420216	P011420242	P061180005	P091440022	P091450019	P101110004F
P011420217	P011420243	P061180006	P091440023	P091450020	P101110004G
P011420218	P011420245	P061180007	P091440024	P091450021	P101110004H
P011420219	P011420246	P061200007	P091440025	P091470001	P101110004I
P011420220	P031010010	P061200011	P091440026	P101090013	P101110004J
P011420221	P031010010A	P061200012	P091440027	P101090017	P101110004K
P011420222	P031010263	P061210003	P091440029	P101100003	P101110016
P011420223	P031010265	P061210004	P091440031	P101100008	P101110019
P011420224	P061080004	P061210005	P091440032	P101100013	P101110027
P011420225	P061170008	P061210006	P091440033	P101100015	P101140006
P011420226	P061170009	P061210008	P091440035	P101100017	P101140011
P011420227	P061170010	P061250005	P091440036	P101100018	P101220011
P011420228	P061170011	P061300012	P091440039	P101100019	P101220013
P011420229	P061170012	P071430005	P091440040	P101100021	P101230005
P011420230	P061170013	P071430028	P091440041	P101110003	P101230008
P011420231	P061170015	P071430091	P091440042	P101110003A	P101230014
P011420232	P061170017	P071430092	P091440043	P101110003B	P101230017
P011420233	P061170018	P091440012	P091440045	P101110003C	P101300014
P011420234	P061170019	P091440013	P091440046	P101110003E	P101300015
P011420235	P061170019A	P091440014			

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PORTLAND AREA REJECTED CLAIMS (CONTINUED):

P011420210	P011420236	P061170021	P091440015	P091440047	P101110003F
P011420211	P011420237	P061170030	P091440016	P091440048	P101110003G
P011420212	P011420238	P061170031	P091440017	P091440049	P101110004A
P011420213	P011420239	P061170034	P091440019	P091440050	P101110004C
P011420214	P011420240	P061170051	P091440020	P091440051	P101110004D
P011420215	P011420241	P061180004	P091440021	P091440052	P101110004E
P011420216	P011420242	P061180005	P091440022	P091450019	P101110004F
P011420217	P011420243	P061180006	P091440023	P091450020	P101110004G
P011420218	P011420245	P061180007	P091440024	P091450021	P101110004H
P011420219	P011420246	P061200007	P091440025	P091470001	P101110004I
P011420220	P031010010	P061200011	P091440026	P101090013	P101110004J
P011420221	P031010010A	P061200012	P091440027	P101090017	P101110004K
P011420222	P031010263	P061210003	P091440029	P101100003	P101110016
P011420223	P031010265	P061210004	P091440031	P101100008	P101110019
P011420224	P061080004	P061210005	P091440032	P101100013	P101110027
P011420225	P061170008	P061210006	P091440033	P101100015	P101140006
P011420226	P061170009	P061210008	P091440035	P101100017	P101140011
P011420227	P061170010	P061250005	P091440036	P101100018	P101220011
P011420228	P061170011	P061300012	P091440039	P101100019	P101220013
P011420229	P061170012	P071430005	P091440040	P101100021	P101230005
P011420230	P061170013	P071430028	P091440041	P101110003	P101230008
P011420231	P061170015	P071430091	P091440042	P101110003A	P101230014
P011420232	P061170017	P071430092	P091440043	P101110003B	P101230017
P011420233	P061170018	P091440012	P091440045	P101110003C	P101300014
P011420234	P061170019	P091440013	P091440046	P101110003E	P101300015
P011420235	P061170019A	P091440014			

RESOLVED CLAIMS:

ABERDEEN AREA RESOLVED CLAIMS:

A073450001	A073450027	A073450053	A073450087	A073450112	A073450145
A073450002	A073450028	A073450054	A073450088	A073450113	A073450146
A073450003	A073450030	A073450055	A073450089	A073450114	A073450147
A073450004	A073450031	A073450056	A073450090	A073450115	A073450149
A073450005	A073450032	A073450057	A073450091	A073450116	A073450150
A073450006	A073450033	A073450058	A073450092	A073450117	A073450152
A073450007	A073450034	A073450059	A073450093	A073450118	A073450153
A073450008	A073450035	A073450062	A073450094	A073450119	A073450154
A073450009	A073450036	A073450063	A073450095	A073450120	A073450155
A073450010	A073450037	A073450065	A073450096	A073450122	A073450156
A073450011	A073450038	A073450066	A073450097	A073450123	A073450157
A073450012	A073450039	A073450067	A073450098	A073450125	A073450158
A073450013	A073450040	A073450068	A073450099	A073450126	A073450159
A073450014	A073450041	A073450069	A073450100	A073450128	A073450160
A073450015	A073450042	A073450070	A073450101	A073450129	A073450161
A073450016	A073450043	A073450072	A073450102	A073450131	A073450162
A073450017	A073450044	A073450074	A073450103	A073450132	A073450163
A073450018	A073450045	A073450075	A073450104	A073450133	A073450164
A073450019	A073450046	A073450076	A073450105	A073450134	A073450165
A073450020	A073450047	A073450077	A073450106	A073450135	A073450167
A073450021	A073450048	A073450078	A073450107	A073450136	A073450168
A073450022	A073450049	A073450082	A073450108	A073450137	A073450169
A073450023	A073450050	A073450084	A073450109	A073450139	A073450170
A073450025	A073450051	A073450085	A073450110	A073450140	A073450172
A073450026	A073450052	A073450086	A073450111	A073450142	A073450173

ABERDEEN AREA RESOLVED CLAIMS (CONTINUED):

A073450174	A073450208	A073450237	A073450268	A133800318	A133830123
A073450176	A073450209	A073450238	A073450269	A133800319	A133830125
A073450177	A073450210	A073450239	A073450270	A133800320	A153430002
A073450178	A073450211	A073450240	A073450271	A133800321	A153430003
A073450180	A073450212	A073450241	A073450272	A133800322	A153430004
A073450181	A073450213	A073450242	A073450273	A133800323	A153430005
A073450182	A073450215	A073450243	A073450274	A133800324	A153430006
A073450184	A073450216	A073450244	A073450275	A133800325	A153430007
A073450187	A073450217	A073450246	A073450276	A133820134	A153430010
A073450188	A073450218	A073450247	A073450277	A133820135	A153430011
A073450190	A073450219	A073450248	A073450278	A133820136	A153430012
A073450191	A073450220	A073450249	A073450279	A133820137	A153430013
A073450192	A073450221	A073450252	A073450280	A133820138	A153430014
A073450193	A073450222	A073450254	A073450281	A133820139	A153430016
A073450196	A073450223	A073450255	A073450286	A133820140	A153430017
A073450197	A073450224	A073450256	A073450288	A133830112	A153430018
A073450198	A073450226	A073450257	A073450289	A133830114	A153430019
A073450199	A073450228	A073450258	A073450291	A133830115	A153430020
A073450200	A073450229	A073450259	A073450292	A133830116	A153430021
A073450201	A073450230	A073450260	A073450293	A133830117	A153430022
A073450202	A073450231	A073450261	A073450294	A133830118	A153430024
A073450204	A073450233	A073450263	A073450295	A133830119	A153430026
A073450205	A073450234	A073450265	A133800315	A133830120	A153430027
A073450206	A073450235	A073450266	A133800316	A133830121	A153430028
A073450207	A073450236	A073450267	A133800317	A133830122	

ANADARKO AREA RESOLVED CLAIMS:

B048610208	B048640210	B068020020	B068020278	B068080271	B068080272

BILLINGS AREA RESOLVED CLAIMS:

C512010028	C512010037	C512010045	C512010061	C512010078	C512010084
C512010029	C512010038	C512010049	C512010067	C512010080	C512010086
C512010034	C512010040	C512010054	C512010068	C512010081	C512010091
C512010035	C512010041				

JUNEAU AREA RESOLVED CLAIMS:

E000000019	E000000021	E000000026	E000000044	E000000047	E000000062
E000000020	E000000025	E000000042	E000000045	E000000048	

MINNEAPOLIS AREA RESOLVED CLAIMS:

F554320060	F554320064	F554390097	F554390107	F554390108	F554390109
F554320063					

MUSKOGEE AREA RESOLVED CLAIMS:

G039060022	G069300018	G069300029	G069300040	G079080125	G089050416
G039060032	G069300019	G069300030	G069300041	G079080321	G089050417
G049200004	G069300020	G069300031	G069300042	G079080322	G089050419
G049230005	G069300021	G069300032	G069300043	G089050124	G099070001
G069300001	G069300022	G069300033	G069300046	G089050145	G099070008
G069300002	G069300023	G069300034	G079080004	G089050149	G099070010
G069300004	G069300024	G069300035	G079080005	G089050387	G099070016
G069300012	G069300025	G069300036	G079080044	G089050394	G099070020
G069300015	G069300026	G069300037	G079080053	G089050404	G099070033
G069300016	G069300027	G069300038	G079080085	G089050406	G099070127
G069300017	G069300028	G069300039	G079080124	G089050412	G099070130

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MUSKOGEE AREA RESOLVED CLAIMS (CONTINUED):

					G099070135
G099070141	G099070150	G099070150A	G099070166	G109090013	G109090025

ALBUQUERQUE AREA RESOLVED CLAIMS:

M207030003	M207060015	M207110108	M207170022	M257090038	M257140391
M207030005	M207070013	M207110111	M207170032	M257090039	M257140392
M207030011	M207070015	M207120001	M207170035	M257090040	M257140393
M207030016	M207070032	M207120004	M207170036	M257090046	M257160002
M207030019	M207110001	M207120006	M207170037	M257100007	M257160004
M207030023	M207110006	M207120011	M207170038	M257100145	M257160005
M207040004	M207110007	M207120012	M207170040	M257100146	M257160006
M207040005	M207110014	M207120018	M207170049	M257100147	M257160010
M207040012	M207110030	M207120020	M207170052	M257100148	M257160012
M207040014	M207110032	M207120021	M207170054	M257130067	M257160013
M207040026	M207110034	M207150005	M207170055	M257130068	M257160016
M207040041	M207110035	M207150010	M207170056	M257130070	M257160017
M207050015	M207110036	M207150015	M207170057	M257130135	M257160094
M207050018	M207110037	M207150023	M207200007	M257130142	M257160098
M207050019	M207110038	M207150024	M257080001	M257130143	M257160102
M207050030	M207110039	M207150025	M257080020	M257130144	M257160103
M207050034	M207110040	M207150026	M257080032	M257140072	M257180001
M207060008	M207110047	M207150048	M257080034	M257140073	M257180004
M207060010	M207110060	M207150054	M257080035	M257140074	M257180005
	M207110077	M207150055	M257080036	M257140075	M257180006
	M207110085	M207150057	M257090001	M257140077	M257180009
	M207110087	M207150058	M257090002	M257140079	M257180154
	M207110095	M207170010	M257090003	M257140080	M257180242
	M207110098	M207170011	M257090004	M257140388	M257180262
	M207110102	M207170012	M257090019	M257140389	M257190005
	M207110106	M207170019	M257090023	M257140390	M257190008

PORTLAND AREA RESOLVED CLAIMS:

P041800004	P101100006	P132030031	P132030058	P132030088	P132030157
P041800038	P101110001	P132030032	P132030059	P132030089	P132030158
P041800039	P101110001A	P132030033	P132030061	P132030090	P132030166
P051810050	P101110021	P132030034	P132030062	P132030091	P132030419
P051810100	P101140009	P132030036	P132030063	P132030093	P132030420
P051810102	P101190006	P132030037	P132030064	P132030094	P132030421
P051820031	P101220005	P132030038	P132030065	P132030095	P132030422
P051820043	P111240024	P132030039	P132030066	P132030096	P132030423
P051820045	P111240026	P132030040	P132030067	P132030097	P132030424
P051820103	P111240040	P132030041	P132030068	P132030098	P132030425
P051830004	P111240046	P132030042	P132030069	P132030099	P132030426
P061170016	P132030008	P132030044	P132030070	P132030100	P132030427
P061170020	P132030010	P132030045	P132030071	P132030101	P132030428
P061180003	P132030020	P132030046	P132030073	P132030104	P132030430
P061250004	P132030021	P132030047	P132030074	P132030105	P132030431
P061250004A	P132030022	P132030048	P132030075	P132030106	P132030432
P071430030	P132030024	P132030049	P132030076	P132030107	P132030433
P091470002	P132030025	P132030050	P132030080	P132030109	P132030435
P091470003	P132030026	P132030051	P132030082	P132030117	P132030436
P101090003	P132030027	P132030052	P132030083	P132030119	P132030439
P101090012	P132030029	P132030053	P132030085	P132030149	P132031463
P101090016	P132030030	P132030056	P132030086		

[FR Doc. 89-29483 Filed 12-19-89; 8:45 am]
BILLING CODE 4310-02-C

Bureau of Land Management

[AA-810-00-4112-02]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Office at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget Paperwork Reduction Project (1004-0134), Washington, DC 20503, telephone 202-395-7340.

Title: 43 CFR 3160—Onshore Oil and Gas Operations, Non-form Items.

OMB Approval Number: (1004-0134).

Abstract: Federal and Indian (except Osage) oil and gas operators and operating rights owners are required to retain and/or provide data so that proposed operations may be approved or compliance with granted approvals may be monitored.

Bureau Form Numbers: None.

Frequency: Nonrecurring.

Description of Respondents: Operators and operating rights owners of Federal and Indian (except Osage) oil and gas leases.

Estimate Completion Time: 0.5 hour.

Annual Responses: 191,955.

Annual Burden Hours: 92,790 (Approx.).

Bureau Clearance Officer: (Alternate) Richard Iovaine, 202-653-8853.

Dated: November 21, 1989.

Hillary A. Oden,

Assistant Director, Energy and Mineral Resources.

[FR Doc. 89-29559 Filed 12-19-89; 8:45 am]
BILLING CODE 4310-84-M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337-TA-304]

Certain Pressure Transmitters; Commission Decision Not To Review an Initial Determination Amending the Complaint

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) Order No. 1) issued by the presiding administrative law judge (ALJ) amending the complaint in the above-captioned investigation to add a revised exhibit to correct an inadvertent error in the original exhibit.

ADDRESSES: Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E. Street, SW., Washington, DC 20436, telephone 202-252-1000.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-252-1104.

Hearing-impaired individuals are advised that information about this matter can be obtained by contacting the Commission's TDD terminal, 202-252-1810

SUPPLEMENTARY INFORMATION: This investigation was instituted on October 20, 1989, in response to a complaint filed by Rosemount, Inc. The complaint alleged that respondents SMAR Equipment and SMAR International Corp. were importing and selling pressure transmitters that were made by means of a process that infringed U.S. Letters Patent 3,800,413, owned by Rosemount. On November 10, 1989, the presiding ALJ issued an ID granting the motion of complainant Rosemount Inc. to amend the complaint to add Exhibit I(a) to correct an inadvertent mathematical error that appeared in original Exhibit I.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and § 210.53 of the Commission's Interim Rules of Practice and Procedure (53 FR 33070, Aug. 29, 1988).

By order of the Commission.

Issued: December 12, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-29584 Filed 12-19-89; 8:45 am]
BILLING CODE 7020-02-M

Service Sector Profiles and Barriers to Trade in Services: Supplemental Report on the Telecommunications And Information Processing Services Sector

AGENCY: United States International Trade Commission.

ACTION: Supplemental report; request for written comments.

EFFECTIVE DATE: December 14, 1989.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Kollins (202-252-1441), Office of Industries, U.S. International Trade Commission, Washington, DC 20436.

Background and scope of investigation: On November 27, 1989, the Commission received a request from the United States Trade Representative (USTR) for a supplemental report in connection with the above investigation. The USTR asked that the Commission analyze in the supplemental report certain foreign restrictive measures that USTR has identified involving telecommunications and information processing services. These restrictive measures were not addressed in the report transmitted in September 1989.

As requested by USTR, the Commission will follow the same format in the supplemental report that it followed in phase III of the report submitted in September. The Commission will provide a summary profile of the telecommunications and information processing services sector in selected foreign countries and an assessment of the effect on U.S. service industries of the removal of foreign measures which impede U.S. participation in the respective foreign service markets. The Commission will examine restrictive measures in foreign markets identified through an interagency process coordinated by USTR. As requested, the Commission will submit its report not later than May 28, 1990.

The original report was entitled "Service Sector Profiles and Barriers to Trade in Services." The investigation was instituted on August 10, 1988, following receipt of a letter from the USTR. The original report was submitted in three phases—a summary profile of 11 domestic service sectors was submitted in December 1988, a report on U.S. measures which may impede foreign participation in the U.S. services market was submitted to USTR in March 1989, and a report on selected foreign industry profiles and foreign nontariff measures was submitted in September 1989. Notice of the institution of the investigation was published in the **Federal Register** of August 17, 1988 (53

FR 31111). The Commission's reports in connection with this investigation have

hearing impaired: (202) 275-1721].

has participated in some, but not all, of the cases in which we have received

1990, from 8:30 a.m. to 5:00 p.m. each day.

SECURITIES AND EXCHANGE COMMISSION

be, and is hereby, approved on an accelerated basis until March 31, 1990.

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FR 31111). The Commission's reports in connection with this investigation have been classified by USTR.

Written submissions: No public hearing has been scheduled in this matter. However, interested persons are invited to submit written statements concerning the investigation. Commercial or financial information which a submitting party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rule of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be available for inspection by interested persons. To be assured of consideration by the Commission, written statements should be submitted at the earliest possible date, but no later than March 1, 1990. All submissions should be addressed to the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal at (202) 252–1810.

By order of the Commission.

Issued: December 14, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89–29583 Filed 12–19–89; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. MC–177 (Sub-No. 1)]

Petition To Institute Rulemaking on Negotiated Motor Common Carrier Rates

AGENCY: Interstate Commerce Commission.

ACTION: Notice.

SUMMARY: The Commission announces that, because of personnel and budgetary restraints, it is unable to participate in most private civil actions for undercharges related to Ex Parte No. MC–177, in which the shipper-defendant raises the claim that the carrier engaged in unreasonable practices.

DATE: This notice is effective on December 20, 1989.

FOR FURTHER INFORMATION CONTACT: Robert S. Burk, (202) 275–7312, [TDD for hearing impaired: (202) 275–1721].

SUPPLEMENTARY INFORMATION: In Ex Parte No. MC–177, National Industrial Transportation League—Petition to Institute Rulemaking on Negotiated Motor Common Carrier Rates, 3 I.C.C.2d 99, 51 FR 39595 (Oct. 29, 1986) ("Negotiated Rates I"), and 5 I.C.C.2d 623, 54 FR 27766 (June 30, 1989) ("Negotiated Rates II"), we explained that it may be an unreasonable practice, in violation of 49 U.S.C. 10701, for a motor common carrier to solicit, bill, and accept payment in full for, traffic based upon a rate that it fails properly to file in an appropriate traffic at the ICC, and then later seek retroactive payments of additional amounts to reflect the higher rate that should have been charged under the applicable tariff on file with the ICC.

We stated that we would make individual determinations, in each case brought to us (with or without a court referral in appropriate circumstances), whether a carrier has in fact engaged in an unreasonable practice of this sort. We further explained that an unreasonable practice determination is within our primary jurisdiction, should be deferred to by the courts (unless our finding in a particular case is arbitrary, capricious, or not supported by the evidence), and should preclude the carrier (or its successor in interest) from collecting the higher tariff rate in an undercharge action brought under 49 U.S.C. 10761.

The courts are currently divided on this matter. *Compare Maislin Industries U.S., Inc.* v. *Primary Steel, Inc.*, 879 F.2d 400 (8th Cir. 1989), petition of cert. pending, No. 89–624 (filed Oct. 16, 1989) (upholding referral to ICC and subsequent application of the ICC's unreasonable practice claim) and *INF, Ltd.* v. *Spectro Alloys Corp.*, 881 F.2d 546 (8th Cir. 1989) (reversing lower court's enforcement of tariff rate in the face of an unreasonable practice finding by the ICC) with Matter of Carvavan Refrigerated Cargo, Inc., 864 F.2d 388 (5th Cir. 1989), petition for cert. pending, No. 88–1958 (filed May 30, 1989) (upholding denial of referral request and enforcement of filed rate despite shipper's unreasonable practice allegation). In view of this confusion and the large number of cases involved, the Supreme Court may very well decide to resolve the issue.

In the meantime, we have received numerous requests from shippers for the Commission to participate directly in private civil actions to represent our interests in this area. The Commission has participated in some, but not all, of the cases in which we have received requests. However, we simply do not have sufficient staff and budget resources to participate in all of the private civil actions in which our presence is requested by a party. The small staff of attorneys in our General Counsel's Office would be unable to fulfill its normal functions of advising the Commission and defending Commission decisions on direct judicial review pursuant to 28 U.S.C. 2321 if they were to participate in all such actions in which the Commission has been asked by a party to participate.

Our participation in individual court actions should not be necessary, since our policy and position on the legal issue is a matter of public record, in Negotiated Rates I and II. Courts should refer any reasonable practice claim to us. We can and will exercise our primary jurisdiction to decide those claims when they are brought to us, whether or nor by court referral. Moreover, courts can and should apply our reasonable practice findings in individual cases, by dismissing the undercharge action based on our findings.

In the meantime, while we may choose to appear in some cases to address either a new issue or a circuit that has not yet considered our Negotiated Rates I and II policy, we will generally decline to participate in some court cases on this subject. Parties involved in such litigation may choose to file this general notice of Commission position in their individual cases in which the Commission does not elect to appear or otherwise participate.

Decided: December 11, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Lamboley, Phillips, and Emmett.

Noreta R. McGee,

Secretary.

[FR Doc. 89–29446 Filed 12–19–89; 8:45 am]

BILLING CODE 7035–01–M

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Advisory Committee on Actuarial Examinations; Meeting

Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet in Room 3001, Ariel Rios Federal Building, located on 12th Street, NW., between Constitution and Pennsylvania Avenues in Washington, DC on January 16 and 17, 1990, from 8:30 a.m. to 5:00 p.m. each day.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in Title 29 U.S. Code, section 1242(a)(1)(B) and to review the November 1989 Joint Board examinations in order to make recommendations relative thereto, including the minimum acceptable pass score.

A determination as required by section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) has been made that the subject of the meeting falls within the exceptions to the open meeting requirement set forth in title 5 U.S. Code, section 552b(c)(9)(B), and that the public interest requires that such meeting be closed to public participation.

Dated: December 15, 1989.

Leslie S. Shapiro,

Advisory Committee Management Officer, Joint Board for the Enrollment of Actuaries.

[FR Doc. 89–29591 Filed 12–19–89; 8:45 am]

BILLING CODE 4810–25–M

NATIONAL SCIENCE FOUNDATION

Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice of permits issued.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers, Permit Office, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On October 27, 1989 and November 8, 1989, the National Science Foundation published notices in the **Federal Register** of permit applications received. Permits were issued to the following individuals on December 12, 1989: Stephen L. Burns; William R. Fraser.

Charles E. Myers,

Permit Office, Division of Polar Programs.

[FR Doc. 89–29492 Filed 12–19–89; 8:45 am]

BILLING CODE 7555–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–27516; [File No. SR–DTC–89–01]

Self-Regulatory Organizations; Depository Trust Company; Order Granting Accelerated Approval of a Proposed Rule Change Concerning the Rush Withdrawal Transfer Service

December 7, 1989.

On July 21, 1989, pursuant to section 19(b)(2) of the Securities Exchange Act of 1934,[1] the Securities and Exchange Commission ("Commission") approved, on a temporary basis, a proposed rule change filed by the Depository Trust Company.[2] The temporary approval order authorized DTC to institute, on a pilot basis, a new Rush Withdrawal Transfer ("RWT") service for corporate issues settling in next-day funds that are not full Fast Automated Securities Transfer ("FAST") issues.[3] By letter dated November 21, 1989, DTC requested an extension of the pilot program on an accelerated basis.[4] This order extends the pilot program until March 31, 1990.

The Commission finds good cause for accelerated approval. The terms and substance of DTC's proposal have been noticed in the **Federal Register**,[5] and the Commission has solicited, but not received, comments concerning the proposal. Accelerated approval will allow DTC to gain operational experience on an uninterrupted basis and allow the Commission to continue its review of the proposal.

The Commission further finds that the proposed rule change is consistent with the requirements of section 17A of the Act as it is designed to facilitate the prompt and accurate clearance and settlement of securities transactions by allowing transfer agents to process ownership transfers on an expedited basis.[6]

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR–DTC–89–01) be, and is hereby, approved on an accelerated basis until March 31, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–29504 Filed 12–19–89; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. section 78s(b)(1).

[2] *See* Securities Exchange Act Release No. 27052 (July 21, 1989), 54 FR 31600.

[3] *Id.* at n. 2.

[4] *See* letter from Patricia Trainor, Associate Counsel, DTC, to Jonathan Kallman, Assistant Director, Division of Market Regulation, dated November 21, 1989.

[5] *See* Securities Exchange Act Release No. 26730 (April 14, 1989), 54 FR 16438.

[6] *See* Securities Exchange Act Release No. 27052 (July 21, 1989), 54 FR 31600.

[34–27531; [SR–MBS–89–6]]

Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Broker Give-Up Trade Procedures

December 11, 1989.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 16, 1989, the MBS Clearing Corporation ("MBSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

A copy of the proposed procedures of MBSCC regarding its Broker Give-Up Program are contained in the proposal that is on file with, and available from, the Commission. The proposed procedures assume that the rules and procedures contained in SR–MBS–89–3 (submitted March 29, 1989) have been approved by the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

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(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to revise MBSCC's Procedures regarding Broker "Give-Up Trades." The term Broker Give-Up Trade means an SBO-Destined Trade or Trade for Trade transaction reported by a Broker on behalf of selling and purchasing Dealers (Article I, Rule 1). Pursuant to MBSCC Article II, Rule 2, after the Broker input, the Broker is deleted and the Dealers are substituted as the original Contra-Side Participants after a period (i) prescribed by MBSCC Procedures, or (ii) elected by the Broker ("Broker Give-Up Cycle"). The rules make clear that any Broker submitting a Broker Give-Up Trade represents that it is authorized to do so by the Dealers for which it is acting and the Dealers agree that at all times they shall remain liable as principals.

The proposed revisions to the Procedures allow a Broker to advise MBSCC when or whether to "Give-Up" or disclose the identities of the Contra-Side Dealer to the respective purchasing and selling Dealers. (Dealers employ Brokers to act on their behalf in order to temporarily preserve their anonymity, which is perceived as a competitive advantage.) However, the Procedures make clear that the Dealers must agree on all terms of the transactions including the length of the Give-Up Cycle. (MBSCC rules require Dealers in a Give-Up Trade to notify the Broker of any discrepancies in the Purchase and Sales Reports; Brokers receiving such notification must resolve these discrepancies and submit corrections to MBSCC. Article II, Rule 3, section 5.) MBSCC and the Broker will always know the identity of the Dealers. Currently, under MBSCC Procedures, a Broker must "Give-Up" or disclose the identity of the Dealers within 5 (business) days of Trade Date. Brokers seeking to preserve desired Dealer anonymity for a longer period enter trades on a "Non Give-Up" basis, with the Broker acting as the Original Contra-Side Participant to both Dealers. (The Procedures have no provisions for a Give-Up period of less than 5 days.) The proposed procedural changes now provide that Brokers are no longer restricted by the prior 5-day Give-Up period and may enter trades for Give-Up (disclose Dealer identity) *at any time* within 9 days of Trade Date or not to Give-Up (never disclose Dealer identity), depending on the Dealer's preferences. The result is the same under current rules and Procedures (Dealers are subject to the same rights and obligations; Dealers act as principals and are ultimately liable), but now the Dealers have increased flexibility in retaining anonymity. In addition, by allowing the increased flexibility regarding Dealer anonymity, and removing any artificial incentives for Brokers to delay entering trades, MBSCC will be able to more promptly record these trades and offer the related benefits of margin protection on behalf of both the purchasing and selling Dealers. Brokers will no longer have to delay submitting trade input (because of the prior T+5 automatic Give-Up) to preserve or extend requested Dealer anonymity.

The proposed rule changes are consistent with section 17A of the Act in that they facilitate the prompt and accurate clearance and settlement of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

MBSCC does not believe that any burden will be placed on competition as a result of the proposed rule changes.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

MBSCC has discussed the proposed Procedures regarding the Program with various Participants. Representatives of MBSCC's Broker Advisory Committee requested that the Procedures incorporate a mechanism for the processing of Broker Error Trades, for the processing of Broker Error Trades, specifically those where there is a discrepancy in price. As a result of the Committee's concerns, a provision has been added to the Procedures which specifically provide for the processing of such Broker Error Trades.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Act and subparagraph (e) of Rule 19b-4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference section, 450 Fifth Street, NW. Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to File No. SR-MBS-89-6 and should be submitted by January 10, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-29505 Filed 12-19-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Fitness Determination of YV Services, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of commuter air carrier fitness determination—order 89-12-24, order to show cause.

SUMMARY: The Department of Transportation is proposing to find YV Services, Inc. d/b/a Skyway Airlines fit, willing, and able to provide commuter air service under section 419(e) of the Federal Aviation Act.

RESPONSES: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses by December 29, 1989 with the Air Carrier Fitness Division, P-56, Department of Transportation, 400 Seventh Street, SW., Room 6420, Washington, DC 20590, and serve them on all persons listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Delores King, Air Carrier Fitness Division (P-56, Room 6401), U.S. Department of Transportation, 400

Seventh Street, SW., Washington, DC 20590, [202] 366-2343.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 89-29590 Filed 12-19-89; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

[Summary Notice No. PE-89-46]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption recieved and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: January 9, 1990.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on December 12, 1989.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Docket No.: 25060.

Petitioner: James M. Logsdon.

Sections of the FAR Affected: 14 CFR 91.24.

Description of Relief Sought: To allow petitioner to fly within 30 nautical miles of a terminal control area primary airport without a Mode C transponder.

Docket No.: 26030.

Petitioner: National Business Aircraft Association.

Regulations Affected: 14 CFR 91.35(c) and (d)(2).

Description of Relief Sought: To allow petitioner's members to operate under the provision of § 91.35(a) when cockpit voice recorder and/or flight recorder is temporarily removed for inspection, repair, modification, or replacement to specified conditions.

Docket No.: 26048.

Petitioner: Special Products Aviation, Inc.

Sections of the FAR Affected: 14 CFR 45.29.

Description of Relief Sought: To allow petitioner to complete restoration of its 1965 C-150 E N150TD airplane with 4-inch registration markings instead of the required 12-inch markings.

Docket No.: 26049.

Petitioner: National Agricultural Aviation Association.

Sections of the FAR Affected: 14 CFR 135.1(c) and 135.251.

Description of Relief Sought: To allow petitioner relief from the requirements for an antidrug program.

Docket No.: 062CE.

Petitioner: Caproni Vizzola.

Sections of the FAR Affected: 14 CFR 23.677(b)(2).

Description of Relief Sought: To allow exemption from rudder trim tab stability requirements.

Docket No.: 05010.

Petitioner: The Aviation Standards National Field Office, Federal Aviation Administration.

Regulations Affected: 14 CFR 91.79 (b) and (c), 91.109, 91.116 (a) and (b), and 91.121(b).

Description of Relief Sought/Disposition: To allow Exemption No. 318A that allows petitioner to conduct flight inspections of air navigation facilities and instrument approach procedures. The amendment would reflect organizational changes within the FAA.

GRANT, December 5, 1989, Exemption No. 5118

Docket No.: 25030.

Petitioner: Pan Am Express, Inc.

Regulations Affected: 14 CFR 93.123 and 93.129.

Description of Relief Sought/Disposition: To extend Exemption No. 4777B that authorizes petitioner to conduct ten operations during four of the five high density hours at the John F. Kennedy International Airport using portions of runways and aircraft capable of conducting short takeoff and landing operations.

GRANT, November 9, 1989, Exemption No. 4777C

Docket No.: 25336.

Petitioner: United Airlines.

Regulations Affected: 14 CFR 121.697(a)(3) and 121.709(b)(3).

Description of Relief Sought/Disposition: To allow petitioner to use a computer-printed name of a qualified person in lieu of their physical signature on the maintenance release portion of the aircraft flight log book.

GRANT, December 5, 1989, Exemption No. 5121

Docket No.: 25399.

Petitioner: Airbus Industrie.

Sections of the FAR Affected: 14 CFR 43.3(a), 145.35, 145.71, and 145.73(a).

Description of Relief Sought/Disposition: To allow petitioner to be certificated as a U.S. foreign repair station to perform maintenance, preventive maintenance, repair, and alteration of the aircraft it manufacturers and components thereof, for those aircraft under U.S. registration without limitation as to where such aircraft operate.

GRANT, December 5, 1989, Exemption No. 5120

Docket No.: 25886.

Petitioner: Washoe County (NV) Sheriff's Office.

Sections of the FAR Affected: 14 CFR 91.118.

Description of Relief Sought/Disposition: To allow members of petitioner's Air Squadron to be reimbursed for fuel and oil costs while performing official search and rescue missions.

PARTIAL GRANT, December 5, 1989, Exemption No. 5119

[FR Doc. 89-29550 Filed 12-19-89; 8:45 am]

BILLING CODE 4910-13-M

BEST COPY AVAILABLE

Radio Technical Commission for Aeronautics (RTCA); Special

County Airport, Moses Lake, Washington. Hours of operation will be

highway, on a new location for a distance of about 14 miles.

information collection should be addressed to the OMB reviewer listed

Office of Thrift Supervision

By the Office of Thrift Supervision.

M. Danny Wall,

VOL 54 ISS 243 DE 20 1989 UMI

Radio Technical Commission for Aeronautics (RTCA); Special Committee 174—Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance Systems Airborne Equipment; Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463; 5 U.S.C. App. I), notice is hereby given for the thirty-first meeting of RTCA Special Committee 147 on Minimum Operational Performance Standards for Traffic Alert and Collisions Avoidance Systems Airborne Equipment to be held January 17-19, 1990, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005, commencing at 9 a.m.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) review of meeting agenda; (3) approval of minutes of the thirtieth meeting, RTCA Paper No. XXX-89/SC147-XXX; (4) TCAS Program status reports on legislative and rulemaking update, FAA TCAS Program, and TCAS Transition Program; (5) report of Pilot Working Group Activities; (6) discussion of issues identified by Boeing, RTCA Paper No. 340-89/SC147-373 on CAS logic shortcomings and independent "end-to-end" MOPS review; (7) consideration of proposed change to RTCA/DO-197 (TCAS I), RTCA Paper No. XXX-89/SC147-XXX; (8) review of Mode S issues; (9) review of SC-147 work plan and schedule including proposed change 7; (10) other business; and (11) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC on December 13, 1989.

Geoffrey R. McIntyre,

Designated Officer.

[FR Doc. 89-29549 Filed 12-19-89; 8:45 am]

BILLING CODE 4910-13-M

Radar Approach Control at Moses Lake, WA; Establishment

Notice is hereby given that on or about January 11, 1990, an air traffic control terminal radar approach control facility will be established at Grant County Airport, Moses Lake, Washington. Hours of operation will be 6:30 a.m. to 11 p.m. local time, 7 days per week. This information will be reflected in the FAA Organization Statement the next time it is issued. (Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354.)

Issued in Seattle, Washington, on December 1, 1989.

Lawrence B. Andriesen,

Acting Regional Administrator, Northwest Mountain Region.

[FR Doc. 89-29544 Filed 12-19-89; 8:45 am]

BILLING CODE 4910-13-M

Radar, Approach Control at Pasco, WA; Establishment

Notice is hereby given that on or about January 11, 1990, an air traffic control terminal radar approach control facility will be established at Tri-Cities Airport, Pasco, Washington. Hours of operation will be 5:30 a.m. to 10:30 p.m. local time, 7 days per week. This information will be reflected in the FAA Organization Statement the next time it is issued. (Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354.)

Issued in Seattle, Washington, on December 1, 1989.

Lawrence B. Andriesen,

Acting Regional Administrator, Northwest Mountain Region.

[FR Doc. 89-29545 Filed 12-19-89; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Cumberland County, NC

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in the City of Fayetteville, North Carolina.

FOR FURTHER INFORMATION CONTACT: Robert L. Lee, District Engineer, Federal Highway Administration, P.O. Box 26806, Raleigh, North Carolina 27611, Telephone (919) 790-2856.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the North Carolina Department of Transportation (NCDOT) will prepare an environmental impact statement (EIS) for the extension of U.S. 13 between the I-95/U.S. 13 interchange and the All American Freeway, north of Fayetteville, North Carolina. The proposed action would be the construction of a multi-lane divided highway, on a new location for a distance of about 14 miles. Improvements to the corridor are considered necessary to increase safety and traffic service from I-95 to and around the City of Fayetteville.

Alternatives under consideration include: (1) The "no-build", which includes: Transportation Systems Management Alternative; Mass Transit Alternative; and "do-nothing" alternative, and (2) build alternatives for a controlled access highway on new location.

Solicitation of comments on the proposed action are being sent to appropriate Federal, State and local agencies. A complete public involvement program has been developed for the project to include: the distribution of newsletters to interested parties, along with public meetings and a public hearing to be held in the study area. Information on the time and place of the public hearing will be provided in the local news media. The draft EIS will be available for public and agency review and comment prior to the public hearing. No formal scoping meeting is planned at this time.

To assure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program).

Robert L. Lee,

District Engineer, Raleigh, North Carolina.

[FR Doc. 89-29553 Filed 12-19-89; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: December 14, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0820.
Form Number: None.
Type of Review: Extension.
Title: Incentive Stock Options.
Description: The affected public includes corporations which transfer stock to any person after 1979 pursuant to such person's excercise of a statutory stock option. The corporation must furnish each person receiving such stock with a written statement describing the transfer. The statement will assist such persons in filing their tax returns.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 1.
Estimated Burden Hours Per Response: 1 hour.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 1 hour.
OMB Number: 1545-0985.
Form Number: None.
Type of Review: Extension.
Title: Generation-skipping Transfer Tax Regulations Under the Tax Reform Act of 1986.
Description: This regulation provides rules relating to the effective date, return requirements, definitions, and certain special rules covering the generation-skipping transfer tax.
Respondents: Individuals or households.
Estimated Number of Respondents: 7,500.
Estimated Burden Hours Per Response: 30 minutes.
Frequency of Response: Annually—Form 709; Form 706 is filed within 9 months after a taxpayer dies.
Estimated Total Reporting Burden: 3,750 hours.
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 89-29494 Filed 12-19-89; 8:45 am]

BILLING CODE 4810-25-M

Office of Thrift Supervision

Appointment of Conservator; Arlington Heights Savings Association, F.A. Arlington, Heights, Illinois

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act of 1933, as amended by § 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Arlington Heights Savings Association, F.A., Arlington Heights, Illinois ("Association") on December 7, 1989.

Dated: December 12, 1989.

By the Office of Thrift Supervision.

M. Danny Wall,

Director.

[FR Doc. 89-29507 Filed 12-19-89; 8:45 am]

BILLING CODE 6720-01-M

Brookside Federal Savings and Loan Association Los Angeles, CA; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Brookside Federal Savings and Loan Association, Los Angeles, California ("Association") on November 30, 1989.

Dated: December 12, 1989.

By the Office of Thrift Supervision.

M. Danny Wall,

Director.

[FR Doc. 89-29506 Filed 12-19-89; 8:45 am]

BILLING CODE 6720-01-M

Community Federal Savings Association, Bridgeport, CT; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Community Federal Savings Association, Bridgeport, Connecticut, ("Association") on December 7, 1989.

Dated: December 12, 1989.

By the Office of Thrift Supervision.

M. Danny Wall,

Director.

[FR Doc. 89-29509 Filed 12-19-89; 8:45 am]

BILLING CODE 6720-01-M

First Federal Savings Bank, Diamondville, WY; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for First Federal Savings Bank, Diamondville, Wyoming ("Savings Bank") on November 30, 1989.

Dated: December 12, 1989.

By the Office of Thrift Supervision.

M. Danny Wall,

Director.

[FR Doc. 89-29510 Filed 12-19-89; 8:45 am]

BILLING CODE 6720-01-M

Fortune Financial Federal Savings and Loan Association, Copperas Cove, TX; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Fortune Financial Federal Savings and Loan Institution, Copperas Cove, Texas ("Association") on November 30, 1989.

Dated: December 12, 1989.

By the Office of Thrift Supervision.

M. Danny Wall,

Director.

[FR Doc. 89-29511 Filed 12-19-89; 8:45 am]

BILLING CODE 6720-01-M

The Garnett Savings and Loan Association, Garnett, KS; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for The

Garnett Savings and Loan Association, Garnett, Kansas ("Association") on December 7, 1989.

Dated: December 12, 1989.

By the Office of Thrift Supervision.

M. Danny Wall,

Director.

[FR Doc. 89-29508 Filed 12-19-89; 8:45 am]

BILLING CODE 6720-01-M

Colonial Federal Savings Association, Roselle Park, NJ; Replacement of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Colonial Federal Savings Association, Roselle Park, New Jersey ("Association") on December 7, 1989.

Dated: December 12, 1989.

By the Office of Thrift Supervision.

M. Danny Wall,

Director.

[FR Doc. 89-29512 Filed 12-19-89; 8:45 am]

BILLING CODE 6720-01-M

Fortune Financial Federal Savings and Loan Association, Copperas Cove, TX; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Fortune Financial, a Savings and Loan Institution, Copperas Cove, Texas ("Association") on November 30, 1989.

Dated: December 12, 1989.

By the Office of Thrift Supervision.

M. Danny Wall,

Director.

[FR Doc. 89-29513 Filed 12-19-89; 8:45 am]

BILLING CODE 6720-01-M

Gateway Federal Savings and Loan Association, Bridgeport, CT; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Gateway Federal Savings and Loan Association, Bridgeport, Connecticut, ("Association") on December 7, 1989.

Dated: December 12, 1989.

By the Office of Thrift Supervision.

M. Danny Wall,

Director.

[FR Doc. 89-29514 Filed 12-19-89; 8:45 am]

BILLING CODE 6720-01-M

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Garnett Savings and Loan Association, Garnett, Kansas ("Association") on December 7, 1989.

Dated: December 12, 1989.

By the Office of Thrift Supervision.

M. Danny Wall,

Director.

[FR Doc. 89-29512 Filed 12-19-89; 8:45 am]

BILLING CODE 6720-01-M

Appointment of Receiver; Arlington Heights Federal Savings and Loan Association Arlington Heights, IL

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(A) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Arlington Heights Federal Savings and Loan Association, Arlington Heights, Illinois ("Association") on December 7, 1989.

Dated: December 12, 1989.

By the Office of Thrift Supervision.

M. Danny Wall,

Director.

[FR Doc. 89-29513 Filed 12-19-89; 8:45 am]

BILLING CODE 6720-01-M

Austin Federal Savings and Loan Association, Austin, TX; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Austin Federal Savings and Loan Association, Austin, Texas ("Association") on November 30, 1989.

Dated: December 12, 1989.

By the Office of Thrift Supervision.

M. Danny Wall,

Director.

[FR Doc. 89-29514 Filed 12-19-89; 8:45 am]

BILLING CODE 6720-01-M

Austin Savings Association, Austin, TX; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (C) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Austin Savings Association, Austin, Texas ("Association") on November 30, 1989.

Dated: December 12, 1989.

By the Office of Thrift Supervision.

M. Danny Wall,

Director.

[FR Doc. 89-29515 Filed 12-19-89; 8:45 am]

BILLING CODE 6720-01-M

Brookside Savings and Loan Association, Los Angeles, CA; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (C) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Brookside Savings and Loan Association, Los Angeles, California ("Association") on November 30, 1989.

Dated: December 12, 1989.

By the Office of Thrift Supervision.

M. Danny Wall,

Director.

[FR Doc. 89-29516 Filed 12-19-89; 8:45 am]

BILLING CODE 6720-01-M

Colonial Savings Bank, A Savings and Loan Association, Roselle Park, NJ; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(C) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Colonial Savings Bank, a Savings and Loan Association, Roselle Park, New Jersey ("Association") on November 9, 1989.

Dated: December 12, 1989.

By the Office of Thrift Supervision.

M. Danny Wall,

Director.

[FR Doc. 89-29517 Filed 2-19-89; 8:45 am]

BILLING CODE 6720-01-M

Colonial Federal Savings Association, Roselle Park, NJ; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as Conservator for Colonial Federal Savings Association, Roselle Park, New Jersey ("Association") with the Resolution Trust Corporation as sole Receiver for the Association on November 9, 1989.

Dated: December 12, 1989.

By the Office of Thrift Supervision.

M. Danny Wall,

Director.

[FR Doc. 89-29518 Filed 12-19-89; 8:45 am]

BILLING CODE 6720-01-M

Community Federal Savings and Loan Association, Bridgeport, CT; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(B) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Community Federal Savings and Loan Association, Bridgeport, Connecticut ("Association") on December 7, 1989.

Dated: December 12, 1989.

By the Office of Thrift Supervision.

M. Danny Wall,

Director.

[FR Doc. 89-29519 Filed 12-19-89; 8:45 am]

BILLING CODE 6720-01-M

First Louisiana Federal Savings Banks, Lafayette, LA; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2)(a) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for First Louisiana Federal Savings Bank, Layfayette, Louisiana ("Association") on November 2, 1989.

Dated: December 12, 1989.

By the Office of Thrift Supervision.

M. Danny Wall,

Director.

[FR Doc. 89-29520 Filed 12-19-89; 8:45 am]

BILLING CODE 6720-01-M

First Louisiana Federal Savings Bank, F.A. Lafayette, LA; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for First Louisiana Federal Savings Bank, F.A. Lafayette, Louisiana ("Association") with the Resolution Trust Corporation as sole Receiver for the Association on November 2, 1989.

Dated: December 12, 1989.

By the Office of Thrift Supervision.

M. Danny Wall,

Director.

[FR Doc. 89-29521 Filed 12-19-89; 8:45 am]

BILLING CODE 6720-01-M

First Savings Bank, F.S.B. Diamondville, WY; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(C) of the Home Owner's Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for First Savings Bank, F.S.B. Diamondville, Wyoming ("Savings Bank") on November 30, 1989.

Dated: December 12, 1989.

By the Office of Thrift Supervision.

M. Danny Wall,

Director.

[FR Doc. 89-29522 Filed 12-19-89; 8:45 am]

BILLING CODE 6720-01-M

Fortune Financial, a Savings and Loan Institution, Copperas Cove, TX; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in § 5(d)(2)(C) of the Home Owners' Loan Act of 1933, as amended by § 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision duly appointed the Resolution Trust Corporation as sole Receiver for Fortune Financial, a Savings and Loan Institution, Copperas Cove, Texas ("Association") on November 30, 1989.

Dated: December 12, 1989.

By the Office of Thrift Supervision.

M. Danny Wall,

Director.

[FR Doc. 89-29523 Filed 12-19-89; 8:45 am]

BILLING CODE 6720-01-M

General Bank, a Federal Savings Bank, Miami, FL; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owner's Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for General Bank, a Federal Savings Bank, Miami, Florida ("Savings Bank") on November 16, 1989.

Dated: December 12, 1989.

By the Office of Thrift Supervision.

M. Danny Wall,

Director.

[FR Doc. 89-29524 Filed 12-19-89; 8:45 am]

BILLING CODE 6720-01-M

General Federal Savings Bank, Miami, FL; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for General Federal Savings Bank, Miami, Florida ("Savings Bank") with the Resolution Trust Corporation as sole Receiver for the Association on November 16, 1989.

Dated: December 12, 1989.

By the Office of Thrift Supervision.

M. Danny Wall,

Director.

[FR Doc. 89-29525 Filed 12-19-89; 8:45 am]

BILLING CODE 6720-01-M

Independence Savings & Loan Association, Vallejo, CA; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2)(c) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Independence Savings and Loan Association, Vallejo, California ("Association") on October 20, 1989.

Dated: December 12, 1989.

By the Office of Thrift Supervision.

M. Danny Wall,

Director.

[FR Doc. 89-29526 Filed 12-19-89; 8:45 am]

BILLING CODE 6720-01-M

Sooner Federal Savings & Loan Association, Tulsa, OK; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Sooner Federal Savings and Loan Association, Tulsa, Oklahoma ("Association") on November 16, 1989.

Dated: December 12, 1989.

By the Office of Thrift Supervision.

M. Danny Wall,

Director.

[FR Doc. 89-29527 Filed 12-19-89; 8:45 am]

BILLING CODE 6720-01-M

Sooner Federal Savings Association, Tulsa, OK; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Sooner Federal Savings Association, Tulsa, Oklahoma ("Association") with the Resolution Trust Corporation as sole Receiver for the Association on November 16, 1989.

Dated: December 12, 1989.

By the Office of Thrift Supervision.

M. Danny Wall,

Director.

[FR Doc. 89-29528 Filed 12-19-89; 8:45 am]

BILLING CODE 6720-01-M

Texas Western Federal Savings Association, Houston, TX; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Texas Western Federal Savings Association, Houston, Texas ("Association") on November 30, 1989.

Dated: December 12, 1989.

By the Office of Thrift Supervision.

M. Danny Wall,

Director.

[FR Doc. 89-29529 Filed 12-19-89; 8:45 am]

BILLING CODE 6720-01-M

Sunshine Act Meetings

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Texas Western Federal Savings Association, Houston, TX; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Sooner Federal Savings Association, Tulsa, Oklahoma ("Association") on November 16, 1989.

Dated: December 12, 1989.

By the Office of Thrift Supervision.

M. Danny Wall,

Director.

[FR Doc. 89-29529 Filed 12-19-89; 8:45 am]

BILLING CODE 6720-01-M

Texas Western Federal Savings & Loan Association, Houston, TX; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as Conservator for Texas Western Federal Savings and Loan Association, Houston, Texas ("Association") with the Resolution Trust Corporation as sole Receiver for the Association on November 16, 1989.

Dated: December 12, 1989.

By the Office of Thrift Supervision.

M. Danny Wall,

Director.

[FR Doc. 89-29530 Filed 12-19-89; 8:45 am]

BILLING CODE 6720-01-M

Sunshine Act Meetings

Federal Register

Vol. 54, No. 243

Wednesday, December 20, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

December 12, 1989.

TIME AND DATE: 10:00 a.m., Thursday, December 21, 1989.

PLACE: Room 600, 1730 K Street NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. *Mid-Continent Resources, Inc. and American Mining Congress* v. *Secretary of Labor and United Mine Workers of America,* Docket No. WEST 87-86. (Issues include whether the administrative law judge erred in finding that a union official may be a designated representative of miners for walkaround purposes under Section 103(f) of the Mine Act even though the mine is non-union.)

Any person intending to attend this hearing who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 C.F.R. § 2706.150(a)(3) and § 2706.160(e).

TIME AND DATE: Immediately following oral arguments.

STATUS: Closed [Pursuant to 5 U.S.C § 552b(c)(10)].

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Mid-Continent Resources, Inc., etc.* v. *Secretary of Labor, etc.,* Docket No. WEST 87-88.

It was determined by a unanimous vote of Commissioners that this item be considered in closed session.

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653-5629/(202) 708-9300 for TDD Relay.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 89-29695 Filed 12-18-89; 1:04 pm]

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Part II

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 700 et al.
Surface Coal Mining and Reclamation Operations; Exemption for Coal Extraction Incidental to the Extraction of Other Minerals; Final Rule

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 700, 702, 750, 870, 905, 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947

RIN 1029-AA53

Surface Coal Mining and Reclamation Operations; Exemption for Coal Extraction Incidental to the Extraction of Other Minerals

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the United States Department of the Interior (DOI) is adopting regulations relating to the exemption contained in section 701(28) of the Surface Mining Control and Reclamation Act of 1977 (the Act) concerning the extraction of coal incidental to the extraction of other minerals. This action provides guidance to the coal and noncoal mining industry and coal regulatory authorities concerning implementation of the exemption under section 701(28) and establishes criteria and procedures for determining whether an operation qualifies initially and on a continuing basis for the exemption. This action is necessary to halt and prevent abuse of the exemption. The final rule is intended to provide a fair and consistent basis for determining the applicability of the Act to operations producing both coal and other minerals in order to ensure that the mining of coal is appropriately regulated.

EFFECTIVE DATE: April 1, 1990.

FOR FURTHER INFORMATION CONTACT: Patrick W. Boyd, OSM, Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240; telephone: 202-343-1864 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of Final Rule and Response to Comments
III. Procedural Matters

I. Background

Section 701(28) of the Surface Mining Control and Reclamation Act of 1977 (the Act), 30 U.S.C. 1291, excludes from the definition of surface coal mining operations the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16⅔ percent of the tonnage of minerals removed for purposes of commercial use or sale. Operations meeting the above standard are thereby not subject as surface coal mining operations to provisions of the Act such as permitting, bonding, and abandoned mine reclamation fee payments.

The incidental mining exemption first appeared in S. 425 introduced in the 93rd Congress (See Senate Rept. No. 402, 93rd Cong., 1st 160 (1973).) and was included in every major version of the Act before Congress between 1973 and 1977. The Congressional reports indicate that this provision was aimed at operations, such as limestone quarries, where the primary mineral being sought is something other than coal and comparatively small proportions of coal are recovered incidental to those operations. For example, see *Id.*, p. 74 and Senate Rept. No. 28, 94th Cong., 1st Sess. 224 (1975).

Regulations implementing this section of the Act were originally promulgated in 30 CFR 700.11(e) (44 FR 15315, March 13, 1979). This provision simply repeated the language of the Act. Similarly, for purposes of describing the applicability of the abandoned mine reclamation fee obligations of title IV of the Act, 30 CFR 870.11(d) (1979) also generally recited the language of the proviso.

Because § 700.11 did not contain provisions prescribing how those seeking an exemption from the applicability of the Act could request one from the regulatory authority or prescribing how the regulatory authority, on its own initiative, could make a written determination that an operation is exempt, OSM added such provisions when § 700.11 was reorganized on August 2, 1982 (47 FR 33424). In the reorganization, the incidental mining exemption, formerly § 700.11(e), was shifted to § 700.11(a)(4). New procedures were added at § 700.11(c), which provide that the regulatory authority may make a written determination, when requested, whether the operation is exempt and that the person requesting the exemption has the burden of establishing the exemption. Section 700.11(c) also provides that if a written determination of exemption is reversed through subsequent administrative or judicial action, any person who, in good faith, has made a complete and accurate request for an exemption and relied upon the determination, will not be cited for violations which occurred prior to the date of reversal.

On June 30, 1982, OSM revised 30 CFR 870.11(d), governing abandoned mine land fee obligations, and imposed a tonnage measurement constraint under which operators had to qualify for the exemption during any twelve consecutive months (47 FR 28574, 28594). As discussed below, this final rule revises § 870.11(d).

Because the 1979 and 1982 regulations at 30 CFR 700.11 did not provide specific guidance for determining whether an operation is exempt, OSM published an advance notice of proposed rulemaking and request for public comment on section 701(28) of the Act in the **Federal Register** on May 7, 1984 (49 FR 19336-19340). At the same time, OSM published guidelines intended to assist operators and the States in implementing this exemption pending promulgation of final regulations. The guidelines established a two-part test for the exemption. An operator desiring to qualify for the exemption had the burden of establishing that the extraction of coal (1) is incidental to the extraction of other minerals and (2) does not exceed 16⅔ percent of the mineral tonnage removed for commercial use or sale. Under the guidelines, whether an operation was "incidental" was a question of fact to be determined by the regulatory authority based on information required to be submitted by the operator. The documentation could include information on volumetric calculations, the physical layout of the mine site, stockpiles and production records. Among other provisions, the guidelines also required the operator to request a written exemption from the regulatory authority. For the complete text of the guidelines for implementing the incidental mining exemption issued in 1984, see 49 FR 19338.

After considerable discussion and public comment gathered through a regulatory outreach process, OSM published proposed rules on June 1, 1987 (52 FR 20546-20552). The proposal was characterized by a three-part test for the incidental mining exemption. An operator wishing to obtain the exemption would have the burden of passing (1) the "tonnage" test whereby the tonnage of coal must not exceed 16⅔ percent of the tonnage of minerals removed for reasonable commercial use or bona fide sale over the life of the mining operation, (2) a "stratigraphic" test whereby the coal produced must lie above or immediately below the deepest stratum of other minerals extracted, and (3) a "commercial value" test whereby the other minerals produced must be commercially valuable either at the time of application for the exemption or in the reasonably foreseeable future, not to exceed twelve months. The proposal also required the operator to give notice to the regulatory authority of its intention to rely on the exemption at least 30 days (for new operations) or 60 days (for existing operations that intend to continue operations after the end of the 60-day period) prior to commencement of operations. Please refer to the **Federal Register** notice cited above for detailed coverage of all provisions of the proposed rules. The proposal allowed for a public comment period of 70 days. A public hearing on the proposed rule was held in Columbus, Ohio, on August 3, 1987.

In response to public requests and to provide for proposed modifications to the regulatory text of the proposed rules, the proposed rules were modified and the public comment period was reopened on February 24, 1988, for 30 days (53 FR 5430-5433). Major features of the modifications included requiring application for and approval of the exemption before operations could commence (or continue for more than 90 days after the effective date of the final rule) and an annual reporting requirement related to the tonnage test. Additional aspects of the modified proposal are discussed in the above cited **Federal Register** notice.

Subsequently and in response to comments received on earlier proposals, particularly comments from the House Committee on Interior and Insular Affairs, OSM issued additional modifications to the proposed regulatory text and reopened the public comment period for an additional 30 days (53 FR 13415-13417, April 25, 1988). This set of modifications was characterized by the addition of a fourth test, the revenue test, that an operator would have to pass in order to obtain the incidental mining exemption. The operator would have the burden of establishing that the revenue derived from the coal extracted would not exceed 50 percent of the total revenue derived from the coal and other minerals extracted from the same mining area. In addition, initial and annual reporting requirements for revenue were proposed. Refer to the **Federal Register** notice cited above for a full discussion of the modified proposal. The most recent comment period closed on May 25, 1988. OSM received many comments from public interest groups, industry associations, mining and mining-related firms, and State regulatory authorities. As discussed in the next portion of the preamble to this final rule, OSM gave full consideration to all comments received. Any changes in the final rule from the proposed rules are identified in the following detailed discussion of the final rule.

II. Discussion of Final Rule and Response to Comments

A. Legal Basis for the Final Rule

Activities and areas regulated under the Act are specified in the definition of the term "surface coal mining operations," which contains this important proviso:

> * * * *Provided, however,* that such activities do not include the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16⅔ per centum of the tonnage of minerals removed for purposes of commercial use or sale * * * (30 U.S.C. 1291)

The Act does not define the terms "incidental" or "other minerals" for purposes of this proviso and does not specify the period of time over which the tonnage constraint applies. Thus the Secretary of the Interior (the Secretary) may interpret the Act in a reasonable manner, consistent with whatever Congressional intent that may be inferred. Authority for this rule is also found in sections 201(c)(2), 412(a) and 501 of the Act. The legislative history of the proviso indicates that it is intended "to exclude operations, such as limestone quarries, where coal is found but is not the mineral being sought." Sen. Rept. No. 28, 94th Cong., 1st Sess. 98 (1975). Apart from that sentence, the legislative history provides little guidance on how Congress intended that the exemption be implemented.

The earliest known version of the incidental mining exemption was proposed by a limestone operator, Carbon Limestone Company, based on the fact that its open limestone quarry, which bottomed out 117 feet below the surface, had an overburden that included a 24-inch coal seam above the limestone produced. Hearings, 93rd Cong., 1st Sess. 1680-1 (April 9, 10, 16 and 17, 1973). Carbon Limestone proposed the following exemption:

> Provided that where the extraction of coal is incidental to the extraction of other minerals and the tonnage of coal extracted does not exceed 15% of the total saleable production, the operation shall not be deemed surface mining of coal.

The proviso first appeared in bill language subsequent to the 1973 hearings. OSM has consistently interpreted the statutory language and the legislative history to imply that Congress intended that the incidental mining exemption be based both on tonnage and on whether the coal extraction is incidental to the extraction of other minerals.

It has, however, been argued that if Congress had intended such a two-part test, it would have connected the two statutory phrases "the extraction of coal incidental to the extraction of other minerals" and "coal does not exceed 16⅔ per centum of the tonnage of minerals removed" with the conjunction "and." However, OSM believes that Congress intended more than a simple tonnage test. If Congress had meant for the exemption to be based solely on tonnage, the provision could have been written, "that such activities do not include the extraction of coal where coal does not exceed 16⅔ per centum of the tonnage of minerals removed." OSM believes that Congress included the phrase "incidental to the extraction of other minerals" for a purpose, not merely as superfluous language. That purpose is that the exemption be based both on tonnage and on whether the coal extraction is incidental to the extraction of other minerals.

In recent court decisions and administrative hearings before the DOI, the requirement that the incidental mining exemption is based on more than just the relative tonnages of coal and other minerals extracted has been upheld. In *United States* v. *Beaird Coal Co.*, No. CV-84-V-0650-J slip op. at 9 (N.D. Ala. Mar. 10, 1986), *rev'd on other grounds*, 825 F.2d 1471 (11th Cir. 1987), the court stated that "even though [the defendant's] coal production did not exceed the 16⅔ percent limit," the court was "not reasonably satisfied that the mining of coal by [the defendant] was incidental to its extraction of other mineral." In *S&G Excavating, Inc.* v. *United States*, No. 137-85C, slip op. at 8 (Cl. Ct. July 5, 1988), hereafter *S&G*, the Claims Court was "unable to conclude that OSM's interpretation of the statute is unreasonable," and therefore, applied both the tonnage test and an interpretation of the term "incidental" to the particulars of the case. In *McNabb Coal Co.* v. *OSMRE*, 101 IBLA 282, 289 (March 15, 1988), hereafter *McNabb*, heard before the Interior Board of Land Appeals (IBLA), the administrative judge found that "the statute clearly provides the extraction of coal must be incidental to the mining operation, as well as constituting less than 16⅔ percent of the tonnage produced." On April 28, 1989, the IBLA decision was affirmed. See *McNabb Coal Co.* v. *Lujan*, No. 88-C-281-E (N.D. Okla. 1989).

Although the Secretary has consistently asserted that to be exempt an operator must separately meet the "tonnage" and "incidental" elements, in the absence of a regulation specifying what is meant by "incidental," various approaches have been used. In this rulemaking, OSM has examined the merits of the alternatives, seeking a

clear and practical way to delineate the boundaries of the term "incidental" for varying interpretations. The relative positions of strata can be determined

Thus, for the reasons stated above, OSM believes that the most reasonable

to the extraction of other minerals, includes a cross-reference to 30 CFR part 702, which contains the specific

conducted on the surface of land results in the extraction of coal, the activity is a surface coal mining operation.

administer the provisions of this title." OSM believes that this rulemaking is necessary to carry out the purposes and

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clear and practical way to delineate the boundaries of the term "incidental" for the purposes of applying the incidental mining exemption, consistent with the Act. All of these approaches have been aimed at determining, in accordance with the legislative history, which minerals are primarily being sought.

OSM believes that the "incidental" element of the exemption should be based on specific, objective criteria that clearly distinguish exempt operations from surface coal mining operations for both operators and regulatory authorities. To this end, OSM has decided to employ two straightforward and easily measured criteria to define incidental mining, the stratigraphic test and the revenue test.

OSM believes that the "incidental" element of the exemption should be partly based on the actual physical location of the coal in relation to the other minerals mined. This is an easily administrable primary purpose test. For example, if a person's principal purpose is to extract and sell limestone, but must first mine through a coal seam to reach the limestone, the decision to mine the coal is governed by its physical location in the path of the mining activity. If that coal seam were not present, the person would still conduct the mining activity for the purpose of extracting the limestone. As a further example, if a person were mining limestone that occurred directly on top of a coal seam, that person would be likely to mine the coal as well since it would involve little additional cost. If the coal had not been present, the person may well have mined the limestone anyway. However, if the coal seam were not located in close proximity below the limestone, removal of the intervening, non-commercially valuable strata to reach the coal would tend to establish that the primary purpose, not just of the additional activities, but of the entire operation, was to extract the coal. In this case, the mining operation would not be exempt from the requirements of the Act. The stratigraphic test reveals the intentions of both current and prospective operators by focusing on the outward manifestations of those intentions. Therefore, OSM has interpreted the term "incidental" in this final rule partly in terms of the stratigraphic test whereby coal is produced from a geological stratum lying above or immediately below the deepest stratum from which other minerals are extracted for purposes of bona fide sale or reasonable commercial use.

In addition, the stratigraphic test will not ordinarily be subject to widely varying interpretations. The relative positions of strata can be determined with precision even in the highly transformed Appalachian region. Depending on the direction or planned direction of the mining activity, exempt operations will encounter coal before the other mineral, or the coal will be immediately adjacent to or immediately below the other mineral without a substantial amount of intervening strata. The stratigraphic test also has the advantage of achieving a balance between protection of the environment and full utilization of coal by minimizing the potential for future disturbance of the land to recover coal.

The revenue test, whereby no more than 50 percent of total revenue may be derived from coal, is also an effective tool for identifying the operations where coal extraction is incidental to the extraction of other minerals. The test is objective and easily measured and will complement the stratigraphic test by providing another means of assessing the primary purpose of a mining operation. Clearly, the revenue generated by a mining operation of a vital factor in any kind of economic or financial analysis of the operation and is a key element in determining the primary purpose of an operation.

Previously, in the absence of a definite regulation, several approaches have been taken to determining the financial implications of the term "incidental." Some have interpreted the *McNabb* decision as promoting the use of an economic viability test to determine if an operation is or will be exempt. OSM believes that in the absence of a rule the IBLA was merely applying the 1984 guidelines, which call for an evaluation of all relevant factors, and due to the particular facts of the case, found an economic viability test an appropriate yardstick in that case alone. In *S&G*, the Claims Court acknowledged that the stratigraphic test is "easy to apply," but preferred a "primary purpose test," involving "an analysis of the totality of the circumstances."

OSM believes it would be an essentially unproductive exercise and administratively impractical to set up incidental mining exemption criteria that would be based on the totality of all factors. In contrast, the bright line test established by a revenue test is effective by directly comparing the revenue derived from the coal with that derived from other minerals and by allowing operators to know in advance the yardstick against which compliance will be measured.

Thus, for the reasons stated above, OSM believes that the most reasonable interpretation of the incidental mining exemption provision of the Act includes separate "tonnage" and "incidental" elements and that the most practical and effective way to implement the term "incidental" is to employ the stratigraphic test and the revenue test. The final rule adopted today is faithful to and reflects these principles. Based on an analysis of the issues involved, the legislative history of the Act, applicable court and administrative law decisions, and the administrative record of this rulemaking, including comments received, this final rule is a proper and reasonable interpretation of section 701(28) of the Act.

B. Effect of the Final Rule

The effective date of this rulemaking is April 1, 1990. OSM chose this date in recognition of the fact that many businesses customarily record and report information on a calendar quarter basis, thereby facilitating compliance with the reporting and recordkeeping requirements contained in this rule.

In States with Federal programs and on Indian lands, the entire rule becomes effective on April 1, 1990. In primacy States, the application for exemption process, as well as the substantive standards established by this rule, will be phased in through the adoption of application requirements in the State programs. That is, no exemption application is due until the applicable State program requires such an application. Until a State program is modified by the incorporation of regulations promulgated pursuant to this final rule, operations and regulatory authorities should rely on the 1984 guidelines, as interpreted by recent legal decisions, particularly *McNabb* (discussed above), in implementing the incidental mining exemption.

This rule is not intended retroactively to bring under this Act activities that occurred prior to the effective date of this rule or the effective date of counterpart provisions of the State regulatory programs, which would not qualify for an exemption under the standards of this rule, but that did qualify under previous standards. Such operations would legitimately have relied upon standards in place to qualify for the exemption. Similarly, this rule is not intended retroactively to invalidate 30 CFR 870.11(a), as adopted in 1982.

C. Section 700.11(a)(4) Applicability.

Final § 700.11(a)(4), which is the exemption from the applicability of the Act for the extraction of coal incidental to the extraction of other minerals, includes a cross-reference to 30 CFR part 702, which contains the specific rules implementing the incidental mining exemption in section 701(28) of the Act. The final rule is identical to the June 1, 1987 proposal. No comments were received on the proposed language.

D. Part 702—Exemption for Coal Extraction Incidental to the Extraction of Other Minerals—Section-by-Section Analysis

The final rule adopted today establishes a new part 702 relating to the exemption for coal extraction incidental to the extraction of other minerals.

Section 702.1 Scope

Final § 702.1 explains that part 702 implements the exemption contained in section 701(28) of the Act concerning the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16⅔ percent of the total tonnage of coal and other minerals removed for purposes of commercial use or sale over the life of the mining operation. The operations exempt under section 701(28) of the Act and part 702 are not subject to the environmental protection performance standards of Title V and abandoned mine reclamation fee provisions of title IV of the Act, OSM is, however, authorized to inspect and enter sites to verify the validity of claimed exemptions. Final § 702.1 is identical to the proposal.

One commenter was concerned about situations where coal is overlain by other marketable materials and asked whether coal or non-coal regulations would govern in those cases.

If only noncoal minerals and materials are mined, then the operation is not a surface coal mining operation and not subject to the Act. If, however, the operation is not an exploration activity and is not exempt under section 528 of the Act, and coal is mined along with noncoal minerals and materials, then the operation is a surface coal mining operation unless it qualifies under section 701(28) for a statutory exemption. Section 701(28) of the Act defines surface coal mining operations as not only "activities conducted on the surface of lands in connection with a surface coal mine * * * the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce," but also "the areas upon which such activities occur" to include "holes or depressions". Therefore, subject to the exemptions of section 701(28), whenever a non-exploration activity, which is also not exempt under section 528 of the Act, conducted on the surface of land results in the extraction of coal, the activity is a surface coal mining operation.

Section 702.3 Authority

The June 1, 1987 proposal contained an authority section, proposed § 702.3, which identified sections 201, 412 and 501 of the Act as directing the Secretary to administer the program for controlling coal mining operations and to publish and promulgate such rules and regulations as may be necessary to carry out the purposes and provisions of the Act. Proposed § 702.3 also identified section 701(28) of the Act as providing an exemption to the requirements of the Act for the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16⅔ percent of the total tonnage of coal and other minerals removed for purposes of commercial use or sale. OSM has decided not to include proposed § 702.3 in the final rule because authority for a part in the Code of Federal Regulations (CFR) is cited at the end of the table of contents of the part.

Several commenters stated that OSM has exceeded its statutory authority and is violating the Constitution in promulgating this regulation.

OSM disagrees. The Act has been held to be constitutional and promulgation of this rule is authorized by the Act.

According to these same commenters, OSM is also changing the meaning, verbiage and intent of the legislative enactment, the meaning of which is obvious from the plain and ordinary language of the statute. Other commenters contended that the rule is contrary to case law and administrative decisions.

OSM disagrees with both sets of comments. As discussed above, OSM believes that section 701(28) sets forth a two-part test for the incidental mining exemption. The first part of the test is clear, i.e., coal cannot exceed 16⅔ percent of the tonnage of minerals removed. The second part of the test, i.e., the coal extracted must be "incidental to the extraction of other minerals" was not defined in the statute. Nor did Congress provide guidance as to how the exemption was to be implemented. Congress did, however, direct the Secretary in section 201(c)(2) of the Act to "publish and promulgate such rules and regulations as may be necessary to carry out the purposes and provisions of this Act". Congress also gave the Secretary the authority in section 412(a) of the Act to "engage in any work and to do all things necessary or expedient, including promulgation of rules and regulations, to implement and administer the provisions of this title." OSM believes that this rulemaking is necessary to carry out the purposes and provisions of the Act. As for the comments stating that the rule is contrary to court and administrative decisions, a thorough discussion of pertinent decisions and their relationship to the final rule is provided above.

One commenter requested that the following provision be included: "The Secretary shall indemnify an operation currently operating under a valid exemption in place before the final date of these regulations." The commenter argued that he is entitled to compensation because the regulation is "taking" under the "Glendale Lutheran Church case."

Although no citation was given, OSM believes that the commenter was referring to *First English Evangelical Lutheran Church of Glendale* v. *County of Los Angeles, California*, 107 U.S. 2378 (1987), hereafter *Glendale Lutheran*, which concerned a regulatory taking. OSM disagrees that this final rule will have the effect of a taking under *Glendale Lutheran* or any other case. The *Glendale Lutheran* case did not change substantive "takings" standards. It opened up the possibility that a taking requiring compensation could be established during the time that an invalid rule remains in effect. In the first place, this rule is not invalid. Secondly, it is not retroactive, and thirdly, a person who does not qualify for the exemption under this rule could obtain a permit to commence or continue mining coal. Thus, this rule does not have any significant takings implications and fully implements the Congressional directive to protect the environment from the adverse effects of surface coal mining operations.

Section 702.5 Definitions

Final § 702.5 provides definitions of the terms "cumulative measurement period," "cumulative production," "cumulative revenue," "mining area" and "other minerals."

As explained below, the exemption criteria of final § 702.14 provide that a person must annually satisfy both the tonnage test on a cumulative production basis and the revenue test on the cumulative revenue basis. "Cumulative measurement period" is defined at final § 702.5(a) and means the period of time over which both cumulative production and cumulative revenue are measured.

Production rates of coal and other minerals are usually not consistent over the life of the mining operation. In some years a relatively large amount of coal

may be produced; in other years coal production may be small or nonexistent. Therefore, in many operations, cumulative production and cumulative revenue must be measured over a period of years, rather than annually, to determine if the operation qualifies for the exemption. Under final § 702.14, for annual reporting purposes, the end of the period for which cumulative production and cumulative revenue are measured is the end of the operator's annual reporting period. Thereafter, the period for which cumulative production and cumulative revenue are measured is the period from the end of the previous cumulative measurement period to the end of the operator's annual reporting period. This definition is necessary to prevent an operator from claiming an exemption by combining production from distinct noncoal and coal operations. Each

likely lead to substantial abuse of the exemption.

materials and stated that there are "abundant opportunities for abuse of the

and/or underlay each other, the term "overburden" is confusing. In its

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may be produced; in other years coal production may be small or nonexistent. To avoid making such operations become subject to and not subject to the jurisdiction of the Act, as may occur under the 12 consecutive month test, and to avoid the unacceptable situation of applying the tonnage test after a mine has stopped producing, as may occur under a life-of-mine test, OSM is adopting a rule that measures production, adjusted for legitimate stockpiling, and revenue on a cumulative basis. The annual report required by final § 702.18 will be used by the regulatory authority to evaluate compliance of the operation with the exemption criteria on an annual basis. The cumulative measurement concept evolved in response to numerous comments critical of either the life-of-mine or annual tests, and the definition of this term was added to the final rule in response to those comments.

The definition of "cumulative measurement period" includes in final § 702.5(a)(1) a mechanism for determining the date from which cumulative production and revenue will be measured. For purposes of determining the beginning of the cumulative measurement period, subject to regulatory authority approval, the operator must select and consistently use (1) for mining areas where coal or other minerals were extracted prior to August 3, 1977, the date extraction of coal or other minerals commenced at that mining area or August 3, 1977, or (2) for mining areas where extraction of coal or other minerals commenced on or after August 3, 1977, the date extraction of coal or other minerals commenced at that mining area, whichever is earlier.

This provision is a logical extension of the decision to implement a cumulative standard for production and revenue. The purpose of the provision is to help the operator and the regulatory authority choose a starting date from which to calculate cumulative production and revenue for each mining area. The operator must use the starting date consistently in making production and revenue reports to the regulatory authority. The regulatory authority will be aided in administering the exemption by having a definite and consistent date from which cumulative production and revenue are calculated.

The definition of "cumulative measurement period" also includes a mechanism for determining the end of the period for which cumulative production and revenue are calculated in final § 702.5(a)(2). This provision is necessary for determining the period covered by the annual report required under final § 702.18. For annual reporting purposes, the end of the period for which cumulative production and revenue are calculated is (1) for mining areas where coal or other minerals were extracted prior to April 1, 1990, March 31, 1989, and every March 31 thereafter, or (2) for mining areas where extraction of coal or other minerals commenced on or after April 1, 1990, the last day of the calendar quarter during which coal extraction commenced, and each anniversary of that day thereafter. This provision is necessary to provide appropriate guidance to both operators and regulatory authorities for determining the period covered by the annual report.

"Cumulative production" is defined at final § 702.5(b) and is the basis for measuring whether a mining area meets the tonnage requirement of the exemption in final § 702.14(a)(1). It is defined as the total tonnage of coal or other minerals extracted from a mining area during the cumulative measurement period. The definition explains that the inclusion of stockpiled coal and other mineral tonnages in the total is governed by § 702.16. The final rule provides that a mining area must satisfy the tonnage test on a cumulative production basis when each annual report is submitted.

"Cumulative revenue" is defined at final § 702.5(c) and is the basis for measuring whether an operator meets the revenue test of final § 702.14(a)(3). It is defined as the total revenue derived from the sale of coal or other minerals and the fair market value of coal or other minerals transferred or used, but not sold, during the cumulative measurement period. See the preamble to § 702.14 of the final rule for a discussion of fair market value. The final rule provides that a mining area must satisfy the revenue test on a cumulative basis when each annual report is submitted.

"Mining area" is defined at final § 702.5(d) as an individual excavation site or pit from which coal, other minerals and overburden are removed. The final definition differs from that proposed in June 1987 by substituting the phrase "coal, other minerals and overburden" for the proposed phrase "minerals and overburden." The change is intended to improve the clarity of the definition by employing terms that are themselves defined in the regulations. The primary purpose for the definition being limited to an individual excavation site or pit is to preclude an operator from averaging mineral tonnages from different locations to gain an unwarranted exemption from the Act. The definition also prohibits an operator from claiming an exemption by combining production from distinct noncoal and coal operations. Each excavation site or pit must individually qualify for the exemption in accordance with the requirements for exemption under final § 702.14. OSM recognizes that a single excavation site or pit may, depending on its size, include a number of individual excavation activities. In this context, OSM considers a mining area to include the excavation activities occurring within a single excavation site or pit.

"Other minerals" is defined at final § 702.5(e) as any commercially valuable substance mined for its mineral value, excluding coal, topsoil, waste and fill material. The definition requires that the substance be mined for its mineral value, and therefore allows the regulatory authority the flexibility to consider local conditions in determining whether the mineral has commercial value. The exclusion of waste and soil from the definition of "other minerals" is intended to take into account material which is spoiled or otherwise disposed of without being used for its mineral value. Fill material is also excluded from the definition of other minerals. Including fill material is an "other mineral," or including fill as a valid commercial use of an "other mineral," could result in the inappropriate claiming of an exemption. For example, a person claiming the exemption could haul "overburden" to a site outside the mining area and claim the material is being commercially placed to prepare a site for construction, farming, etc. Allowing such claims could circumvent the provisions of the Act. A more definitive list of materials to be excluded from the definition of other minerals is not provided, as any attempt to list specific materials that are not "other minerals" runs the risk of excluding materials which may serve specialized uses and which may legitimately be exempt.

The definition of "other minerals" found in section 701(14) of the Act is not used in the final rule. It is clear from the legislative history that the section 701(14) definition is intended for use under section 709 of the Act, "Study of Reclamation Standards for Surface Mining of Other Minerals." See, for example, Sen. Rept. 93–402, 93rd Cong., 1st Sess. 75(1973) where the inclusion of the definition of "other minerals" is described in terms of the study "to provide a basis for future legislation to regulate surface mining and reclamation for these minerals." If applied in the context of section 701(28) of the Act, the broad section 701(14) definition could

likely lead to substantial abuse of the exemption.

Several commenters objected to the definition of "mining area" because it is limited to an "individual excavation site or pit." The commenters said the definition will result in "selected small acreage pits across the country suddenly becoming subject to expensive and burdensome reclamation requirements."

OSM did not change the proposed definition in response to these comments. The purpose of limiting the definition to an individual excavation site or pit is to preclude averaging mineral tonnages from different locations to obtain an unwarranted exemption from the Act. For example, if averaging were allowed, a pit from which nothing but coal is mined could be considered exempt because mining is conducted in coordination with another mine several miles distant where a different mineral is extracted. The definition therefore prevents an operator from claiming an exemption by combining production from distinct noncoal and coal operations. Each excavation site or pit may contain more than one area of active excavation, but must individually qualify for the exemption.

Other commenters argued that since section 701(28) of the Act uses the plural in defining surface coal mining operations, e.g., "activities, lands, products," etc., the definition of "mining area" is inconsistent with the Act.

OSM is not aware of a Congressional intent to exempt single mines, operations or activities from the Act. The use of the plural form in section 701(28) is simply an editorial decision. OSM's definition is in keeping with Congressional policy of striking a balance between protection of the environment and the Nation's need for coal.

Several comments were received on the definition of "other minerals." One commenter stated that exclusion of topsoil and fill material is inconsistent with the minerals mining laws of some States. This commenter encouraged OSM to use the commercial sale of the mineral as the basis for the exemption and not exclude topsoil and fill materials simply because of potential abuse. Another commenter asked if his company could continue to provide "fill dirt" to local farmers, developers and highway departments even though it is not a commodity of commercial value under the proposed definition. Several other commenters argued that the definition of "other minerals" should also include "overburden." In contrast, a number of commenters opposed the inclusion of topsoil, waste and fill materials and stated that there are "abundant opportunities for abuse of the exemption if topsoil and/or fill material could be counted in the other mineral tonnage." These commenters believed that any operation can be engineered in such a way that coal constitutes only one-sixth of the total materials removed if overburden is included. The commenters indicated that by eliminating topsoil, subsoil, and overburden from consideration as an "other mineral" a significant window for abuse will be eliminated.

Congress intended this exemption to be limited in nature and to be used where incidental amounts of coal were found while producing other minerals. If fill dirt or overburden material could be used in calculations, coal mining operations could be engineered improperly to meet the 16⅔ tonnage test. The result could be widespread abuse of the exemption resulting in damaged and unreclaimed areas with insufficient material available to ensure reclamation. While topsoil, waste and fill material may have some commercial value in particular instances, to allow these materials to be used in calculating the exemption would allow mining areas that Congress clearly did not intend to be exempt to obtain the exemption. Since opportunities for inflating the tonnage removed for purposes of commercial use or sale would be difficult to regulate, OSM believes that, in order to avoid unnecessary regulatory burdens, it is best to exclude them from the definition of "other minerals." As for the operator who provides area farmers, highway departments, etc., with "fill dirt," nothing in this rule would prevent the operators from continuing to provide this service consistent with applicable provisions of 30 CFR chapter VII. However, the operator cannot use the material transferred for purposes of calculating the tonnage requirements of final § 702.14(a), and if the operator is conducting surface coal mining operations, his activities must be performed in accordance with applicable regulatory requirements.

In response to the commenters who encouraged OSM to include "overburden" in the list of other minerals excluded from the definition of "other minerals," OSM believes that to include overburden would be confusing and is not necessary. While "overburden" has different meanings, OSM, for purposes of this rulemaking, considers it to be material of any nature, consolidated or unconsolidated, that overlies a deposit of useful materials, minerals, ores, or coal. Since this rulemaking addresses multiple strata of coal and other minerals which over and/or underlay each other, the term "overburden" is confusing. In its definitions of "other minerals," OSM excludes topsoil, waste, and fill materials from being considered commercially valuable materials for the purpose of calculating cumulative production. By specifically excluding topsoil, waste, and fill materials and confining "other minerals" to commercially valuable substances mined for their mineral value, OSM intends that only minerals and materials that have a recognized commercial value be used in applying the exemption criteria of final § 702.14. OSM, therefore, believes further definition of "other minerals" to be unnecessary.

One commenter believed that the term "mining operation" needs to be defined, since several sections of the proposed rule (§§ 702.1, 701.2(d), and 702.14) would have evaluated the exemption based upon removal of coal and minerals over the "life of the mining operation." For the commenter, the terms "mining area" and "life of the mining operation" must be co-extensive, or else there will be a conflict. In particular, "life of the mining operation" must refer to all operations in a particular mining area in which both coal and other minerals are being extracted. The commenter further indicated that the "life of the mining operation" might be interpreted to cover several mining areas which are being concurrently or consecutively mined by the same company.

It is not necessary to define "mining operation" as requested by the commenter. By defining "mining area" to mean an individual excavation site or pit and requiring each mining area to be in compliance with all of the requirements of the rule, the physical extent of the overall mining operation is not relevant. No matter how extensive a mining operation may be or how many individual pits or excavation areas it encompasses, each pit and excavation area must comply with all the requirements of this part. Moreover, the rule adopted does not use the life of the mining operation concept about which the commenter was concerned.

Section 702.10 Information Collection

Final § 702.10 explains that the information collections contained in final §§ 702.11, 702.12, 702.13, 702.15 and 702.18 of part 702 have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3301 *et seq.* and assigned clearance number 1029–0089. The information collected will be used to determine the initial and continuing applicability of the incidental

mining exemption to a particular mining operation. Response is mandatory for all those who wish to obtain and maintain

program procedures that apply, not the Federal regulations in this chapter. Under 30 CFR chapter VII, subchapter C,

application for an approval of an exemption. The final rule also differs from the proposal by the insertion of the

under this part, and shall notify the applicant and persons submitting comments on the application of the determination and the basis for the

Numerous comments were received on the issue of whether an operator should file a notice of exemption or be required to submit an application

the coal and other minerals but not allow any disposal of the coal until the application was approved. The commenter noted that a delay of 3–4

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mining exemption to a particular mining operation. Response is mandatory for all those who wish to obtain and maintain the incidental mining exemption in accordance with section 701(28) of the Act. This section was inadvertently omitted from the proposals, but is included in the final rule because it is required by OMB. Inclusion of this section is technical in nature and imposes no requirements not otherwise contained in part 702.

Section 702.11 Application Requirements and Procedures

Final § 702.11 establishes the application requirements and procedures for obtaining the incidental mining exemption. It is based upon the February 24, 1988 proposal.

Final § 702.11(a)(1) states the application requirements. Any person who plans to commence or continue coal extraction in reliance on the incidental mining exemption after April 1, 1990, the effective date of these rules, under a Federal program or on Indian lands, or after the date of counterpart provisions in a State program shall file a complete application for exemption with the regulatory authority for each mining area. Final paragraph (a)(2) provides that once an application process is included in a regulatory program and except as provided in § 702.11(e)(3), an operator may not commence coal extraction based upon the exemption until the regulatory authority approves such application.

Final paragraph (a) differs from the June 1, 1987 proposal due to the change from a notice of exemption filing requirement to a procedure requiring application for and approval of an exemption. OSM believes that section 201(c) of the Act provides the necessary authority to require an application for exemption as opposed to merely a notice of exemption.

The final rule has been somewhat modified from proposed § 702.11(a) of the February 24, 1988 proposal, which only required new operations to file an application for exemption. The final rule states that the requirement to file a complete application for exemption applies to existing as well as new operations. Such a requirement could have been inferred from final § 702.11(b), but for clarity is included in final § 702.11(a). Also, OSM has inserted the phrases "after April 1, 1990 under a Federal program or on Indian lands, or after the date of counterpart provisions in a State program" in final paragraph (a)(1). OSM added these words to the final rule in recognition of the fact that under primacy, in States with approved regulatory programs, it is the State program procedures that apply, not the Federal regulations in this chapter. Under 30 CFR chapter VII, subchapter C, such States have the responsibility of conforming their regulations to be no less effective than the Federal regulations and operators are responsible for complying with the requirements of those State programs.

Final § 702.11(a)(2) is based on the second sentence of § 702.11(a) of the February 24, 1988 proposal. The final rule differs from that proposal by conditioning the prohibition on the commencement of coal extraction prior to exemption application approval on the incorporation of an exemption application approval process into the regulatory program. Such a condition recognizes that operators cannot apply for exemptions unless such a process is provided for in the State program. OSM recognizes that it will take time to incorporate the exemption application process into State programs. If the February 24, 1988 proposal had been adopted as proposed, no new operations could have claimed the exemption until the State program had been changed. To avoid the potential for a temporary taking, OSM modified the proposal accordingly.

Final § 702.11(b) states the application requirement for existing operations. Any person who has commenced coal extraction at a mining area in reliance upon the incidental mining exemption prior to April 1, 1990 in a Federal program State or on Indian lands, or prior to the effective date of counterpart provisions of a State regulatory program may continue mining operations for 60 days after such effective date. Coal extraction may not continue after such 60-day period unless that person files an administratively complete application for exemption with the regulatory authority. If an administratively complete application is filed within 60 days, the person may continue extracting coal in reliance on the exemption beyond the 60-day period until the regulatory authority makes an administrative decision on such application. The 60-day period is intended to provide operators who plan to apply for an exemption time to prepare the application. Any coal extraction that occurs during the 60-day period will be considered a de facto assertion of the exemption and will be subject to the enforcement provisions of § 702.17 of the final rule or its State program counterpart.

Final paragraph (b) differs from § 702.11(b) of the February 24, 1988 proposal due to the change in the final rule from a notice of exemption filing requirement to a procedure requiring application for an approval of an exemption. The final rule also differs from the proposal by the insertion of the words "or the effective date of counterpart provisions of a State program" in the first sentence. These words were added to the final rule by OSM in recognition of the States' regulatory role under primacy and of the fact that an operator cannot file an application for an exemption until such a procedure is embodied in a State program. This change allows existing operations to continue during the interim that certain States may need to amend their programs. The final rule also differs from the February 1988 proposal, but is the same as the June 1987 proposal, in that existing operations are given 60 days, not 90 days, to submit an application for exemption. The 60-day standard was originally proposed, but was changed without explanation to 90 days in the February 1988 proposal. The 60-day standard is being retained in the final rule for consistency with the rules establishing a grace period for surface coal mining operations to apply for a permit (30 CFR 773.11).

Final § 702.11(c) is identical to the February 24, 1988 proposal and states that the regulatory authority shall notify the applicant if the application for exemption is incomplete and may at any time require submittal of additional information. The final rule differs from the June 1, 1987 proposal in providing for notification of the application if the application for exemption is incomplete instead of notification of the persons submitting the notice of exemption if the notice is incomplete. This change makes the notification provision consistent with the requirement for an exemption application in final § 702.11(a).

Final § 702.11(d) is identical to the February 24, 1988 proposal and states that following publication of the newspaper notice required by final § 702.12(i), the regulatory authority shall provide a period of no less than 30 days during which time any person having an interest which is or may be adversely affected by a decision on the application may submit written comments or objections.

Final § 702.11(e) is, with the exceptions described below, identical to the February 24, 1988 proposal and address the exemption determination. Final paragraph (e)(1) states that no later than 90 days after filing of an administratively complete application, the regulatory authority shall make a written determination whether, and under what conditions, the persons claiming the exemption are exempt under this part, and shall notify the applicant and persons submitting comments on the application of the determination and the basis for the determination. OSM decided that persons submitting comments should be notified of the determination and its basis so that they would have the opportunity to file for administrative review of the determination.

Final paragraph (e)(2) provides that the determination of exemption shall be based upon information contained in the application and any other information available to the regulatory authority at that time. This provision was added to the final rule by OSM in order to clarify the basis for the regulatory authority's determination of exemption.

Final paragraph (e)(3) states that if the regulatory authority fails to notify an operator as specified in paragraph (e)(1) of this section, an operator who has not begun may commence coal extraction pending a determination on the application unless the regulatory authority issues an interim finding, together with reasons therefor, that the operator may not begin coal extraction. A change made by OSM to § 702.11(e) of the final rule is to make the 90-day period for decision on the application for exemption begin after the filing of an administratively complete application, not after publication of the required newspaper notice. OSM made this change to ensure that the public has an opportunity to comment on administratively complete applications for exemption.

Final § 702.11(f) provides for administrative review of regulatory authority decisions on applications for exemption. Final paragraph (f)(1) incorporates the substance of § 702.11(f) of the February 24, 1988 proposal and provides that any adversely affected person may request administrative review of exemption application determinations within 30 days of notification of such determination according to Federal or State procedures, whichever are applicable. Final paragraph (f)(2) was added to the final rule by OSM and provides that a petition for administrative review filed either under Federal or State procedures shall not suspend the effect of a determination on an application for exemption. This provision is intended to allow determinations to take effect without the delay required for resolution of an administrative review request. Of course, those seeking administrative review of a determination have the right to seek a temporary stay in accordance with the provisions of the applicable regulatory program.

Numerous comments were received on the issue of whether an operator should file a notice of exemption or be required to submit an application requiring approval of the regulatory authority. Comments received opposing the application requirement offered the following reasons: (1) The existing regulatory scheme which allows for the filing of a voluntary notice is adequate to identify and penalize violators of the exemption, and/or (2) an application requirement would place a significant and unjustified financial and manpower burden on industry without providing commensurate additional protection to human health and the environment. One comment acknowledged that a change from a notice to an application would not make much difference to "legitimate industrial mineral operators mining in a State having regulations controlling the mining and reclamation practices of such companies." The commenter did, however, offer the proviso that the State regulatory authority must effectively blend the reporting requirements of the coal and other minerals regulations in such a manner as to eliminate any additional paperwork. Comments received in favor of an application requirement contended that a formal application is necessary to prevent abuse of the exemption.

After reviewing all comments on the issue, OSM has decided to adopt the proposed requirement that all mining operators claiming the exemption must make application for the exemption as provided in final §§ 702.11 and 702.12. OSM believes that an application requirement is necessary and reasonable as a measure to help assure that the operations claiming the exemption are, in fact, entitled to the exemption. OSM has made the application requirements as free of burden and expense as possible while at the same time providing sufficient information for the regulatory authority to evaluate the claim to exemption. While OSM encourages State regulatory authorities to make every effort to blend the requirement for an exemption application with the requirements of other coal and minerals regulations, the specific method used by each State to ensure that the requirement is met is best determined by the individual State regulatory authority.

One commenter proposed that the term "coal extraction" used in proposed § 702.11 (a) and (b) be replaced with the term "coal sales and use." The purpose of the suggested substitute language was to eliminate the delays in obtaining a new exemption on a site by allowing the applicant to commence the removal of the coal and other minerals but not allow any disposal of the coal until the application was approved. The commenter noted that a delay of 3-4 months in filling a customer's order for other minerals might result while the application for exemption is being processed and thus the operator would suffer economic loss. The delay and economic loss would occur if there were coal overlaying the other mineral being mined. Other commenters contended that if an operator with a permit to mine "other minerals" unexpectedly encounters coal, no coal should be removed until an application for exemption has been approved by the regulatory authority. The commenters reasoned that it would be unlikely that coal would be unexpectedly encountered. These commenters said that it would be likely that other areas of the other mineral operation might be mined while the application for exemption is pending.

The inconvenience addressed by the commenters primarily relates to new operations because existing operations may continue to extract coal if an administratively complete application for exemption has been timely filed. Final § 702.12(j) requires that the application for exemption include test borings or other information to show relative position and approximate thickness of the coal, other minerals and any material not classified as other materials. Such information should allow new operations to avoid coal extraction while their applications for exemption are pending. Because mining procedures are costly, operators do not blindly pursue coal or other minerals but specifically target the substance that they seek. OSM believes that in many instances modern mining methods are sophisticated enough to allow other minerals to be extracted while an application for an incidental mining exemption is being processed. Despite the possibility that certain activities could be delayed, delays are not expected to be excessive because of the provisions of final § 702.11(e)(1) and (3). Therefore OSM does not believe the rule language needs to be changed as requested by the commenters.

One commenter stated that no exemption should be granted to a person who holds or intends to apply for a surface coal mining permit in the same watershed. For this commenter, the potential for abuse of the incidental mining provision is "very similar to that of the two-acre exemption, when carefully engineered sites are strung together in order to subvert the Act and

to cause substantial damage without regard for environmental controls."

OSM disagrees. Since each individual

OSM agrees that the reasons supporting an interim finding under final § 702.11(e)(3) should be sufficiently

questionable or close call situations." The commenters asserted that the provisions require "allocation of agency

exemption or a decision on such an application the opportunity to submit written comments or objections to that

requirement was included in all the proposals.

Estimates of annual production of coal

The requirements of final § 702.12(g) and (h) are, respectively, a description,

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to cause substantial damage without regard for environmental controls."

OSM disagrees. Since each individual pit or excavation site must comply with all the provisions of this part, sites cannot be "strung together" to subvert the Act.

One commenter stated that existing operations that have been considered exempt from surface mining regulations should be provided with a "grandfather clause" exempting them from the application requirements of proposed § 702.11(b).

OSM does not agree. One of the principal purposes of this rule is to identify and then to deny an incidental mining exemption to future activities of existing operations that have claimed the exemption, but whose actual coal extraction is not incidental as intended by Congress. A "grandfather provision" would be counterproductive to this purpose.

One commenter observed that some existing operations may not be able to meet the requirements of this part and obtain an exemption. These operations will then be forced to get a coal permit. Since it takes time to get a permit, the commenter asked whether the coal should continue to be mined in the process of extracting other minerals and simply "spoiled," i.e., treated as overburden. The commenter's concern was that coal is a resource to be utilized, not destroyed, and argued that "philosophically it is not correct, economically it is unsound and environmentally it is absolutely ridiculous to take a potentially usable toxic substance and spoil it."

Under final § 702.11(b), an existing operation may continue to mine coal for 60 days following the effective date of this final rule or counterpart provisions of a State regulatory program. If after that 60-day period, the operation has not applied for an exemption, no further coal extraction may take place. The operator may apply for a coal mining permit at any time, however. The operator will be liable for violations of the appropriate regulatory program in existence after the 60-day period. Application for a coal mining permit does not forestall the reclamation obligation.

One commenter requested that the interim finding of § 702.11(e)(2) of the February 1988 proposal and accompanying reasons should be detailed and sufficiently specific to allow an applicant to attempt to cure any problem set forth in the application and to preclude the regulatory authority from presenting additional reasons for denial after an applicant has responded to an interim finding.

OSM agrees that the reasons supporting an interim finding under final § 702.11(e)(3) should be sufficiently detailed to allow the applicant to understand the basis for the regulatory authority's action. OSM, however, does not agree with the remainder of the comment. An applicant's response to reasons or issues raised by an interim finding may generate new or additional issues relevant to a determination of exemption. To preclude a regulatory authority from ever considering new or additional reasons that might arise out of an applicant's response to an interim finding is not reasonable and would expose the application review process to potential abuse.

Several commenters proposed that a second newspaper notice should be published after receipt of notice from the regulatory authority that the application is deemed administratively complete. They argued that it is in the best interest of the regulatory authority to fully involve the public in the review of the proposed exemption.

OSM agrees that the public should be fully involved in the exemption application process. However, to avoid the expense of two notices, OSM has changed the final rule at § 702.12 to require publication of notice only after an administratively complete application has been received.

Some commenters urged OSM to set forth "interim standards" that must be met by the operator during the period after application for exemption but prior to approval. The commenters argued that this approach will avoid abuse of the exemption or the tacit approval of that abuse resulting from the regulatory authority's failure to make a determination on the application for exemption. The commenters further urged that the interim standards which they propose should include those operations which are still extracting any material, whether it is coal or other mineral, from the mining site. Other commenters disagreed with the provisions of proposed § 702.11 which would allow interim operation while an application is pending if the agency fails to respond within 90 days and urged OSM to affirmatively act to preclude such activity. These commenters believed that the time frame for review must not begin to run until after the application is complete, "lest the applicant be allowed to submit inadequate information and be allowed to operate because of the delay in review that it has created." For these commenters the "interim procedure is contrary to prudent procedure in dealing with applications, since the agency may need additonal time to review more questionable or close call situations." The commenters asserted that the provisions require "allocation of agency resources to making and defending an interim finding which are better spent on substantive review." The commenters suggested that OSM "eliminate the interim operation procedure" and allow sufficient time after submission of an administratively complete application for making exemption determinations.

OSM does not intend for operators to take unfair advantage of the interim finding provisions of final § 702.11(e)(3), and has modified the text with regard to when the regulatory authority must act. Under the provisions of final § 702.11(a), once an application process is included in a regulatory program, persons who plan to commence coal extraction following the effective date of the rules cannot do so until the regulatory authority approves the application. Only if the regulatory authority fails to act in 90 days after filing of an administratively complete application can new operations commence coal extraction. If delay by the applicant in submitting information is the basis for the regulatory authority not being able to make a final determination on the application within 90 days, that certainly would be a sufficient basis for making an interim finding under final § 702.11(e)(3). Moreover, concern should not exist over the standards that apply to operations commencing under final § 702.11(b) or (e)(3). Under final § 702.15(c), such operations may proceed under the exemption only when they conduct their operations in accordance with the standards of part 702 or counterpart provisions of the State regulatory program while their applications are pending before the regulatory authority. For instance, during the period before approval of the application, the applicant must satisfy the cumulative revenue and tonnage requirements of § 702.14. If operators do not comply, they are liable for violations of the Act or the regulatory program and subject to the payment of abandoned mine reclamation fees (final § 702.17(d)). Thus, the final rule sets forth adequate safeguards to prevent abuse.

A commenter stated that a comment period should not be required as part of the exemption because the delay inherent in such a procedure is overly burdensome. In contrast, other commenters urged OSM to retain the provision requiring public comment.

OSM has decided to retain the minimum 30-day public comment period in order to allow perons who may be adversely affected by the application for

exemption or a decision on such an application the opportunity to submit written comments or objections to that application or decision. The receipt of public comments from interested persons is seen as part of the initial phase of a very necessary sequence of reviews conducted during the life of a mining operation to assure that an incidental coal mining exemption is justified and that the applicant is, in fact, an "other mineral" operator. This is consistent with the Congressional purpose of section 102(i) of the Act "to assure that appropriate procedures are provided for the public participation in the development, revision, and enforcement of regulations, standards, reclamation plans, or programs established by the Secretary or any State under this Act." Any administrative delay experienced by an "other mineral" operator in the processing of its application because of the provision for a public comment period will be more than offset by the benefit derived from public comments in assisting the regulatory authority to evaluate the application.

One commenter requested that the public, as well as an operator, have the right to appeal from the regulatory authority's decisions on the exemption.

The right to appeal from the regulatory authority's decisions is specifically granted to adversely affected parties by § 702.11(f) of the final rule.

One commenter argued that preparation and processing of the application annually would be too costly and suggested a five-year interval.

OSM did not accept the comment since an annual application was not intended, proposed or adopted. The information that must be included in the annual report required under final § 702.18 is not as extensive as that which must be included in the application and should be easily assembled based on information gathered for other purposes.

Section 702.12 Contents of Application for Exemption

Final § 702.12 identifies the minimum information that must be included in an application for exemption. The name and address of the applicant are required by § 702.12(a) to enable the regulatory authority to identify and contact the applicant. The term "applicant" is used in final § 702.12(a), rather than "operator" as proposed in June 1987, to reflect that the final rule employs an application process. A list of the minerals sought to be extracted is required by final § 702.12(b). This requirement was included in all the proposals.

Estimates of annual production of coal and other minerals within each mining area over the anticipated life of the mining operation and estimated annual revenues to be derived from bona fide sales of the coal and other minerals to be extracted within the mining area are required by final § 702.12(c) and (d) respectively. Under final § 702.12(e), estimated annual fair market values at the time of projected use must be submitted by the applicant where coal or other minerals to be extracted from the mining area are to be used rather than sold. When the coal or other minerals extracted are used by the operator or a related entity instead of being sold, no revenue is obtained from the material used. The appropriate economic factor to consider in such instances is the fair market value at the time of projected use of the coal and other minerals to be extracted. As quoted in the recent Claims Court case, *Whitney Benefits, Inc., and Peter Kiewit Sons' Co.*, v. *the United States*, No. 499–83L (Cl. Ct. October 13, 1989), slip op. at 17–18, the Supreme Court has defined fair market value as:

> The amount that a willing and informed buyer of mining properties, under no compulsion to buy, will pay, and what a willing an informed owner, under no compulsion to sell, will accept for property, after fair and voluntary dealing, and taking into account all those factors which such willing and well informed persons would consider regarding the property in light of the custom of the industry.

United States v. *Miller*, 317 U.S. 369, 373–74, *reh'g denied*, 318 U.S. 798 (1943).

OSM intends that the above standard be applied in determining the value of coal or other minerals transferred to a related entity or used, rather than sold. The production, revenue and fair market value information will allow the regulatory authority to evaluate whether the operation will be able to comply with the exemption criteria of final § 702.14.

Final § 702.12(f) requires the submittal of the basis for all annual production, revenue and fair market value estimates. By requesting basis of such estimates, in addition to the figures themselves, the regulatory authority will be able to verify independently the applicant's calculations. Final § 702.12(c), (d), (e), and (f) are virtually identical to § 702.12(b) of the April 1988 proposal, except that the final rule incorporates the idea of annual measurement of cumulative production and revenue, a concept that was added in response to comments and is discussed in the preamble to final § 702.14.

The requirements of final § 702.12(g) and (h) are, respectively, a description, including county, township if any, and boundaries of the land, of sufficient certainty that the mining area may be located and distinguished from other mining areas over the anticipated life of the mining operation. This information will enable the regulatory authority to locate and distinguish the sites of proposed and existing operations. These paragraphs were proposed as § 702.12(c) and (d) in June 1987.

Public participation in the application process is provided by final § 702.12(i). This paragraph requires evidence of publication, in a newspaper of general circulation in the county of the mining area, of a public notice of filing of an application for exemption with the regulatory authority. The public notice must identify the persons claiming the exemption and must contain a description of the proposed operation and its locality that is sufficient for interested persons to identify the operation. One public notice may contain information on more than one mining area. Editorial changes were made to final paragraph (i) from the version published on February 24, 1988 as proposed § 702.12(e).

The next three application information requirements of the final rule, § 702.12(j), (k), and (l) are, respectively, representative stratigraphic cross-sections showing relative position and approximate thickness and density of the coal and each other mineral to be extracted for commercial use or sale and the relative position and thickness of any material, not classified as other minerals, that will also be extracted during the conduct of mining activities; a map of appropriate scale which clearly identifies the mining area; and a general description of mining and mineral processing activities for the mining area. This information will allow the regulatory authority to evaluate the tonnage ratio of coal to other minerals. These paragraphs were included in the June 1987 proposal as proposed § 702.12(f), (g) and (h).

In final § 702.12(m), the applicant is required to provide a summary of sales commitments, if any, which the applicant has received for other minerals to be extracted from the mining area or a description of potential markets for such minerals. Final § 702.12(n) requires the applicant to submit a description specifying the use if the other minerals are to be commercially used by the applicant. The regulatory authority will use this information to verify that the other minerals expected to be extracted will

actually be commercially used or sold. These two paragraphs have been edited slightly from proposed § 702.12(i), which

§ 702.12(c) that the newspaper publication contain a description of "sufficient certainty that the mining area

commercial value of the other minerals. In addition, pursuant to final § 702.12 (m) and (n), the applicant must

market for the other mineral. Other commenters urged OSM to require that the other mineral have a "recognized"

the value of the mineral. If the exemption application reflects a local market that varies significantly from the

on current market value, or on another benchmark, provided that the application can convince the regulatory

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actually be commercially used or sold. These two paragraphs have been edited slightly from proposed § 702.12(i), which was contained in the June 1987 proposal.

Additional information requirements for existing operations are set forth in final § 702.12(o), which was proposed as § 702.12(j) in June 1987. In addition to complying with the other requirements for this section for the mining area over the life of the mining operation, existing operations must also submit pursuant to § 702.12(o)(l) any relevant documents the operator has received from the regulatory authority documenting its exemption from the requirements of the Act. The regulatory authority will use this information to verify that past activities of the existing operation are covered by a legitimately approved exemption and to aid in review of the current application. Paragraph (o)(2) requires documentation of the past cumulative production of coal and other minerals from the mining area. This information will be used by the regulatory authority to determine that the operation is entitled to the exemption based on the tonnage of coal and other minerals already extracted in relation to the potentially recoverable tonnages of coal and other minerals. New paragraph (o)(3) requires estimated tonnages of stockpiled coal and other minerals. This paragraph was added so that the regulatory authority may verify that the operation complies with the stockpile provisions of final § 702.16. Finally, as provided for in final § 702.12(p), the regulatory authority may request any other information pertinent to the qualification of the operation as exempt. This provision will enable the regulatory authority to request any information it deems necessary to make a determination of eligibility for the incidental mining exemption. It was proposed as § 702.12(k) on June 1, 1987.

The final rule differs from the June 1, 1987 proposal (1) in that the context within which the information is required is changed from information to be included in a notice of exemption to information to be included in an application for an exemption and (2) in the addition of information necessary to evaluate the operation's potential for compliance with the revenue test. In addition, the June 1987 requirement for two newspaper publications in proposed § 702.12(e) was modified to require only "evidence of publication" in final § 702.12(i). This change was proposed in February 1988. Also, final § 702.12(i) contains a requirement that the newspaper publication contain "a description of the proposed operation" instead of the requirement of proposed § 702.12(c) that the newspaper publication contain a description of "sufficient certainty that the mining area may be located and distinguished from other mining areas and surface coal mining operations." This change was made in response to public comments that requested clarification of the proposed rule. Finally, a new § 702.12(o)(3) was added to the final rule to reflect OSM's rule governing stockpiling contained in final § 702.702.16 and discussed in the preamble thereto.

One commenter requested that in order to avoid unnecessary duplication of paperwork, a single application, newspaper publication, and report be allowed for operations having more than one mining area.

OSM agrees that unnecessary paperwork and expense should be avoided and a single application, newspaper publication, and report could suffice for operations having multiple mining areas. OSM declines, however, to put a requirement in the rule that operations with multiple mining areas should file a single application, newspaper publication, or report. OSM believes that the matter should rest with the administrative discretion of the regulatory authority which is in the best position to determine how applications, publications, and reports should be filed or processed. Where OSM is the regulatory authority, one application will be allowed as long as the required information is specified separately for each mining area.

Several commenters requested that additional information be required in the application for exemption. Some commenters suggested that the application require evidence that the other mineral is sufficient in extent and recoverable in a quantity necessary to make the operation commercially viable without consideration of the additional value of the coal.

OSM did not change the final rule in response to this comment because independent commercial viability is not one of the standards under final § 702.14.

Some commenters suggested OSM require testing and sampling data that the other mineral is of the quality and quantity needed to be commercially valuable.

Since the applicant has the burden under final § 702.12(f) to establish to the regulatory authority's satisfaction the basis for all tonnage projections, the applicant may include, or be required to include by the regulatory authority, in the application for exemption, testing and sampling data to establish the commercial value of the other minerals. In addition, pursuant to final § 702.12 (m) and (n), the applicant must summarize sales commitments or specify commercial uses of the other minerals. Thus, it is not necessary specifically to require testing and sampling to establish the commercial value of the other minerals.

Some commenters suggested that the application include historical data on the applicant regarding past coal and noncoal extraction activities and involvement of the owners, controllers, agents and contractors of the applicant with prior coal mining activities. The commenters argued that the existence of outstanding violations by any owner, controller, agent or contractor of the applicant of surface mining laws should "constitute a strong presumption against allowance of an exemption."

Final § 702.12(o) of the final rule requires that all operations that extracted coal or other minerals prior to filing an application for exemption submit any relevant documents the operator has received from the regulatory authority documenting its exemption, the cumulative production of the coal and other minerals from the mining area, and tonnage estimates of stockpiled minerals. This information will establish the applicant's past history with the exemption. OSM's authority under sections 201(c)(1) and 510 of the Act to withhold mining permits from violators, owners and controllers of violators, and those who are owned and controlled by violators does not extend to activities outside the jurisdiction of the Act, such as mining activities that qualify for the incidental mining exemption. It would be an inappropriate extension of its authority for OSM to withhold an incidental mining exemption due to the applicant's unabated violations because the exemption, by definition, applies to activities outside the scope of the Act. Furthermore, the requirements of final § 702.12 provide sufficient information to judge each applicant's claim to the exemption on its merits. State regulatory authorities can specify additional requirements that fit their local needs provided such additional requirements are no less effective than those contained in this rule.

Several commenters suggested that the application require evidence of the applicant's current ability to market the other mineral. These commenters believed that the allowance of anticipated future markets would create an enormous loophole for abuse. Some commenters wanted historical and current evidence of the existence of a market for the other mineral. Other commenters urged OSM to require that the other mineral have a "recognized" market and provide evidence of a "generally acknowledged" regional, state, or national market. In contrast, another group of commenters noted that established operations might not currently have at the time of application any orders for the other mineral simply because of fluctuations in supply and demand. These commenters believed that allowance should be given for an existing operator's "opinion, past sales, local geographic growth, and economic conditions."

OSM is aware that because of the yearly cyclical nature of the market for many other minerals, applicants at one season of the year may not be able to establish a current "spot" market. They could, however, reasonably anticipate on the basis of the historical spot market that a future spot market will exist, for example, in the spring as is usually the case with the construction business. Final § 702.12(f) requires that the application include the basis for all tonnage projections. If there is no current market for the other mineral, the applicant will have to establish on the basis of a historical market or other evidence that a market for the mineral will exist. The burden is on the applicant. For these reasons, § 702.14(b)(1) of the final rule specifies that a legally binding agreement for the future sale of other minerals is sufficient to demonstrate the existence of markets for other minerals.

Several commenters opposed the consideration of a local market in the determination of the other mineral's commercial value. These commenters asserted that a local market is too susceptible to manipulation to be used as a gauge of commercial value. Kentucky's regulations were cited as an example of a State which excludes consideration of a local market and requires a State, regional or national market (405 KAR7:030, section (3)(1)(e)).

OSM does not agree. While the local market might be more susceptible to manipulation than other markets, the largest market served by many "other minerals" operators is the local market, and, as such, should not be excluded from determining the commercial value of the mineral. Crushed limestone for the local construction industry would be an example of this point. Because of transportation and marketing factors, the actual market served by other mineral operators may not be the State or regional market but some smaller local market. In these cases, therefore, it is the local market that must establish the value of the mineral. If the exemption application reflects a local market that varies significantly from the larger State, regional or national markets for a particular other mineral, then scrutiny of the local market by the regulatory authority is justified.

One commenter recommended that the application include a detailed operational plan with four-month tonnage projections with provision for suspension or revocation of the exemption if the operator fails to meet the four-month plan.

OSM does not agree with a four-month plan concept. To base the continuation of the exemption on compliance with a four-month tonnage plan prepared years before the initiation of mining gives no allowance for the recognized uncertainties of the business world. Additionally, to require the figures to be adjusted every four months would be too burdensome of both the operator and the regulatory authority. The annual production estimates and reporting contained in this part provide a more reasonable basis by which to judge the legitimacy of the exemption.

Several commenters objected to the April 25, 1988 proposal's use of life-of-mine figures based on projected tonnage and market value because of the subjective nature of such projections and the possibility of substantial error.

OSM agrees that it is difficult to accurately project the market value of coal and other minerals. However, the final rule contains two safeguards against inaccurate projections. First, by requiring submittal of the basis for all annual production, revenue and fair market value estimates, the rule allows the regulatory authority to ensure that the estimates are calculated according to a rational, mutually agreeable formula. Secondly, the final rule provides for reassessment of the exemption based on annual reporting of cumulative production and cumulative revenue. This provision will enable the regulatory authority to evaluate compliance with the exemption criteria on an ongoing basis taking into account changes in the market for coal and other minerals.

In response to the April 25, 1988 proposal, several commenters recommended that the applicant require that the current market value of the local and other minerals be used in making life-of-mine revenue projections.

OSM did not specify in the final rule a method for estimating annual production, revenue or fair market value because it did not wish to place any limitation on how such estimates may be developed. Estimates may be based on current market value, or on another benchmark, provided that the application can convince the regulatory applicant can convince the regulatory developed are rational and give a reasonably accurate picture of the mining area's ability to comply with the exemption criteria.

One commenter suggested that the proposed requirement of a newspaper publication providing for public notice of filing of the application for exemption should be modified to provide the site location and information on where the application is located.

While OSM agrees that the public notice must provide sufficient information to enable the public to locate the mining operation, it believes the specific contents of the public notice should be left to the individual regulatory authorities so that there can be consistency in their internal process for public notices in their jurisdictions. The notice provision of final § 702.12(i) has been amended to provide for "a description of the proposed operation and its locality that is sufficient for interested persons to identify the operation." This change should provide sufficient guidance to the regulatory authorities while leaving them the discretion to require any specific information they may need or that is required by their administrative processes.

In regard to proposed § 702.12(f) which would require test boring or other information on the minerals and their positions, several commenters stressed the importance of requiring cross sections based on test borings to show the "exact" position and "precise" thickness and density of coal and each of the other minerals to be mined. The commenters stressed that this would provide the regulatory authority with the specific information about seam thickness and positions which is needed to make accurate evaluation of mineral and tonnage ratios.

It is unnecessary to require exact or precise information in § 702.12(j) of the final rule. The burden of establishing the exemption is on the applicant, and the regulatory authority may decide that an applicant's information is insufficiently precise and accurate to be granted an exemption. No rule change is needed to accomplish this.

In regard to proposed § 702.12(g), which would require a map of "appropriate" scale which clearly identifies the mining area, one commenter wanted OSM to specify a map scale not to exceed 1" = 400', since that scale was seen as the smallest scale that would allow the regulatory

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authority to distinguish and evaluate industrial mining areas.

OSM has established a reasonable and clear standard of map scale, an "appropriate scale which clearly identifies the mining area" in final § 702.12(k). The regulatory authority can specify a scale if it finds it necessary to do so.

Another commenter suggested that the applicant be required to describe how the other minerals will be transported and processed.

Mineral processing activities are covered by final § 702.12(l). The regulatory authority may request additional information pursuant to final § 702.12(p) if circumstances warrant.

Several commenters recommended that the application should require existing operations to submit historical data on production of coal and other minerals for commercial use or sale. These commenters observed that tonnage reporting, in and of itself, does not ensure satisfaction of the requirement that such extraction be for commercial use or sale.

OSM disagrees. The purpose of the requirement in final § 702.12(o)(2) that the applicant submit past production tonnages is to obtain an accurate, objective record of past production upon which future production for commercial use or sale will be based for determining compliance with the exemption criteria. If the final rule were to require historical production for commercial use or sale, an element of subjectivity, and possibly ambiguity, would be injected into the past production figures. Furthermore, the applicant must separately establish the commercial value of the other minerals under final § 702.12(m). If the basis for all annual production projections required under final § 702.12(f) or the summary of sales commitments required under final § 701.12(m) do not establish the operation's eligibility for the exemption, the regulatory authority is free under final § 702.12(p) to request additional pertinent information.

Section 702.13 Public Availability of Information

Final § 702.13 is identical to the June 1, 1987 proposal, except for the changes discussed below. Final § 702.13 provides standards for the availability to the public of information submitted to the regulatory authority under this part.

Final § 702.13(a) states that except as provided in § 702.13(b), all information submitted to the regulatory authority under this part shall be made immediately available for public inspection and copying at the office of the regulatory authority having local jurisdiction over the mining operation claiming the exemption until at least three years after expiration of the period during which the subject mining area is active. The word "immediately" has been added to ensure the timely availability of the application. A requirement has also been added that such application be kept available for a three-year period after an operation is no longer active. This recordkeeping requirement is consistent with section 517(f) of the Act. The exception to this provision, final § 702.13(b), allows the regulatory authority to keep information submitted to the regulatory authority under this part confidential if the person submitting it requests in writing, at the time of submission, that it be kept confidential and the information concerns trade secrets or is privileged commercial of financial information relating to the competitive rights of the persons intending to conduct operations under this part. Final paragraph (b) is changed from the June 1, 1987 proposal, which *required* the regulatory authority to keep information confidential if so requested. Under the final rule, the decision to keep information confidential is discretionary, not mandatory. Final § 702.13(c) states that information requested to be held as confidential under § 702.13(b) shall not be made publicly available until after notice and opportunity to be heard is afforded persons both seeking and opposing disclosure of the information. Determinations by OSM as to the proprietary nature of information will be made in accordance with the Freedom of Information Act (5 U.S.C. 552(b)), Privacy Act (5 U.S.C. 552(a)), and implementing regulations at 43 CFR part 2.

One commenter was concerned about obtaining access to exemption application information without having to go to the agency's central office and suggested that the application should be maintained both in the regional and central agency offices.

Section 702.13(a) provides that all information, except confidential information, shall be available for public inspection and copying at the local offices of the regulatory authority having jurisdiction over the mining operations claiming exemption.

One commenter argued that § 702.12, which specifies the contents of the application, is in conflict with former 30 CFR 786.15, subsequently codified in 30 CFR 773.13(d), which provides for public availability of information in a permit.

OSM disagrees with the comment. A permit application and an exemption application are two separate things. The public availability of permit information provisions at 30 CFR 773.13(d) apply to permit applications, not to applications for exemption submitted pursuant to this part.

Section 702.14 Requirements for Exemption

Final § 702.14 establishes three basic criteria that must be satisfied in order for an operaiton to be determined to be exempt from the requirements of the Act and two other conditions necessary to obtain or maintain the exemption. Paragraph (a) implements the concept that the incidental mining exemption is based on a two-prong test, (1) that the extraction of coal does not exceed 16⅔ percent of the mineral tonnage removed for commercial use or sale, the "tonnage" test, and (2) that the extraction of coal is incidental to the extraction of other minerals, as judged by the "stratigraphic" and "revenue" tests.

Final § 702.14(a)(1) specifies that the cumulative production of coal extracted from the mining area determined annually may not exceed 16⅔ percent of the cumulative production of coal and other minerals removed for purposes of bona fide sale or reasonable commercial use, that is, for every 100 tons of total materials mined (coal and other minerals combined), up to 16⅔ tons of that total may be coal.

Final § 702.14(a)(1) differs from the June 1, 1987 proposal. The final version of paragraph (a)(1) bases the tonnage test on "cumulative production * * * determined annually," whereas the original proposal would have measured "total tonnage" over the life of the mine. The annual determination of cumulative production will be based on the annual report submitted pursuant to final § 702.18.

In response to numerous concerns, OSM reconsidered the time period over which the exemption will be judged. Some commenters felt that the life-of-the-mine time frame was too long and requested OSM to consider a shorter period. In the February 24, 1988 proposal, OSM specifically requested comments on whether it should change the proposed standard, and if so, what period of time would be proper. In addition, commenters were asked to consider whether different time periods should be established for certain types of operations. As discussed below in the response to comments, OSM made this change due to its concern for potential abuse of the incidental mining exemption if the tonnage test were based on life-of-the-mine production with no intermediate compliance dates. By requiring that cumulative production be in compliance annually, OSM has

included intermediate stages for compliance.

Final § 702.14(a)(2) is unchanged from § 702.14(b) of the original proposal and requires coal to be produced from a geological stratum lying above or immediately below the deepest stratum from which other minerals are extracted for purposes of bona fide sale or reasonable commercial use. To satisfy this test, a person must demonstrate that each stratum of other minerals included in cumulative production is extracted for purposes of bona fide sale or reasonable commercial use in accordance with the market requirements of § 702.14(b). For example, if two strata of other minerals are identical, and the deeper stratum, which is immediately above a coal seam, is not needed to satisfy market requirements for that mineral, then removal of the deeper stratum would not be considered extraction for bona fide sale or reasonable commercial use. Similarly, if a larger number of acres of other minerals is removed than is needed for bona fide sale or reasonable commercial use, the standard would not be satisfied.

Final § 704.14(a)(3) is based on § 702.14(d) of the April 1988 proposal and provides that the cumulative revenue derived from the coal extracted from the mining area determined annually shall not exceed 50 percent of the total cumulative revenue derived from the coal and other minerals removed for purposes of bona fide sale or reasonable commercial use. Final paragraph (a)(3) further provides that if the coal extracted or the minerals removed are used by the operator or transferred to a related entity for use instead of being sold in a bona fide sale, then the fair market value of the coal used or other mineral used at the time of the use shall be considered rather than revenue.

The final rule bases the revenue test on "cumulative revenue * * * determined annually," the same basis as the tonnage test. The April 1988 proposal would have measured "revenue * * * over the life of the mining operation." This change was made in response to comments on the proposals and is discussed below. The basis for the annual determination of cumulative revenue will be the annual report submitted pursuant to final § 702.18 and any other available information.

Although other tests for determining whether the extraction of coal is incidental to that of other minerals were considered, the provisions selected achieve a balance between environmental concerns and concerns for the full utilization and conservation of the coal. They will minimize the potential for future disturbance of the land to recover coal.

Final § 702.14(b) establishes two conditions with which persons seeking to obtain or who have obtained an incidental mining exemption must comply. Final § 702.14(b)(1) requires that each of the other minerals upon which an exemption under this part is claimed must be a commercially valuable mineral. This means that either a market presently exists or the mineral is mined in bona fide anticipation that a market will exist in the reasonably foreseeable future, not to exceed twelve months from the end of the current period for which cumulative production is calculated. Other minerals do not have to be sold in a marketplace to meet this standard if they are put to some reasonable commercial use within the structure of a single business entity. For example, a company may mine limestone and provide it to a subdivision of the company for use in construction activities. That limestone is considered a commercially valuable mineral even though it was transferred, rather than sold in the marketplace. Except for the phrase delineating the beginning of the 12-month period for market development, which was added in response to a comment discussed below, this portion of final paragraph (b) is identical to the original proposal.

At the time the original proposal was issued, OSM was concerned that the "bona fide anticipation" standard might provide an area of abuse because it might not be possible to project with precision the future marketability of any mineral. Thus, any expectation might qualify as a "bona fide anticipation." OSM considered adopting a rule that would only allow an exemption if a market exists for the commercial valuable other mineral at the time of the exemption application. Alternatively, if OSM were to allow future marketability to establish that the other mineral is commercially valuable, OSM considered requiring documentary evidence to establish the likelihood that a market for the other mineral will in fact develop during the next 12 months. OSM specifically requested comments on this issue. As discussed below in response to comments, OSM determined that a bona fide anticipation that a market will exist within a 12-month period is a standard that equitably balances the need to prevent abuse with the need to accommodate standard business practices.

Final paragraph § 702.14(b)(1) also provides that a legally binding agreement for the future sale of other minerals is sufficient to satisfy the "commercially valuable mineral" standard of that paragraph. In response to comments, the legally binding agreement provision was added to the final rule by OSM to assist the regulatory authorities in determining when a "bona fide anticipation" exists. The operator must provide evidence documenting the claim to a future market.

Final § 702.14(b)(2) requires that if either coal or other minerals are transferred or sold by the operator to a related entity for its use or sale, the transaction must be made for legitimate business purposes. OSM added this provision in response to commenters' concern for potential abuse of the incidental mining exemption by operators who might transfer or sell quantities of coal or other minerals to other entities for the sole purpose of meeting the criteria of this section.

General Comments

A majority of commenters favored a two-pronged test to determine whether an operation is eligible for the exemption, i.e., an "incidental mining" test as well as a "tonnage" test. In regard to the incidental mining test, it was variously proposed that such a test should include a value or gross revenue test, an economic viability test, a geological incidental or stratigraphic test, or an acreage test that compares the acreage of coal removed to the acreage of other mineral removed for commercial purposes. One commenter stated that although the proposed rule paraphrased the statute, it modified the verbiage to the extent that, contrary to Congressional intent, a two-prong test had been created. This commenter maintains that Congress created a tonnage test which defined incidental production. Another commenter stated that "The basis of the incidental mining exemption should simply be that the primary mineral extracted is valuable and sold or commercially used, and that the amount of coal removed is small in relation to the amount of other mineral extracted."

After careful consideration, OSM has decided upon the exemption criteria and conditions contained in § 702.14 of the final rule. Those criteria implement a cumulative production tonnage test and an incidental mining test as demonstrated by the stratigraphic test and the cumulative revenue test. The conditions require a commercial market for other minerals and good faith in conducting transactions. Comments received on these requirements for exemption will be discussed below. For the reasons discussed earlier in this

preamble, OSM rejects the commenter's interpretation of the statute under which only tonnage need be considered to

a claim, significant environmental and other abuses could be occurring and remain totally uncurbed. At a later date,

annual reporting period under final § 702.18. The commenters have convinced OSM that the life of the mine

Commenters argued for the physical necessity test based on the rationale that the extraction of coal is not

once it is exposed to air it can deteriorate and cause pollution. Coal can also be an aquifer which could

As for those comments that urge that the coal production be allowed below, or regardless of proximity, rather than

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preamble, OSM rejects the commenter's interpretation of the statute under which only tonnage need be considered to qualify for the exemption. (Even if the statute were capable of more than one construction, the rule would be supportable under sections 201(c)(2) and 412(a) of the Act as a reasonable interpretation and necessary to meet the purposes of the Act.) OSM also rejects the comment that OSM need only consider that the amount of coal removed is small in relation to the other minerals extracted. Such a scheme would violate the terms of section 701(28) of the Act, which specifies the acceptable ratio of coal to other minerals production (1:6).

Comments on section 702.14(a)(1)—Tonnage Test

Some commenters objected to the term "bona fide sale" as constituting a new criterion not found in the Act itself. Although they do not have a basic problem with this addition to the final regulation, they believe that the attempt to change the Act by regulation is improper, arbitrary and should not be allowed.

The use of the modifier "bona fide" with the term "sale" is merely an effort to clarify the term "sale" in order to avoid abuse through the elimination of bogus sales in the tonnage calculation. Each bogus sale would artificially inflate or misrepresent the total tonnage of other minerals. To avoid this result, OSM used the modifier "bona fide." This is reasonable, necessary, appropriate, consistent with Congressional intent and within the scope of the Secretary's authority pursuant to sections 201(c) and 412(a) of the Act. Further, this added phrase does not change the Act, but implements the statutory language, as is appropriate for a regulation.

A majority of commenters strongly urged OSM to require that an operation meet the criteia of the incidental mining exemption on an annual rather than life-of-mine basis. One commenter asserted that adoption of a life of the mine test would require regulatory authorities to rely on operators' unreliable, self-serving assertions of their future intentions. Several commenters stated that under a life-of-mine scenario, it would be impossible to take enforcement action against any operator until all mining activities had ceased. In the commenters' view, it would be relatively easy for an operator to mine coal for an indefinite period of time and claim that some time in the future he will mine enough other minerals to compensate for current or past non-complying percentages. During the period while the operator is making such a claim, significant environmental and other abuses could be occurring and remain totally uncurbed. At a later date, the operator could easily disappear and leave the regulatory authority with no entity to hold accountable during enforcement actions. These commenters were therefore of the opinion that it would be reasonable to require an operation to meet the tonnage test during a 12-month period. They believed that if the test could not be met, then it would be reasonable to require the operator to obtain a surface coal mining permit.

In opposition to the above views were the comments received from two brick companies. These commenters stated that the 12-month period is inconsistent with the basic nature of the brick making process. A typical raw material pit would require approximately two years of preparation, i.e. removal of shale, limestone, coal and other material not usable for the brick making process, to serve as a contingency pit. This pit would often sit idle awaiting appropriate other raw materials for blending into the required brick material per a customer order. Total time from initial pit preparation to the yield of usable material per a customer order could be several years. In such a scenario, a typical pit could exceed the 16⅔ coal tonnage limitation during a 12-month period. One of the commenters stated it would have two choices under the 12-month proviso: (1) Mine coal under a surface mining permit or (2) treat the coal as overburden never to be productively used. In the commenter's view, the latter choice would be the most likely outcome, although philosophically it is incorrect and both economically and environmentally it is unsound because "coal is a resource to be utilized not destroyed." As a solution to this quandary, the commenter suggested that the regulatory authority be provided latitude to review not only the quantity of coal and other minerals extracted during a year, but also the estimated future production of coal and minerals to be produced from that mining area along with the potential market for those minerals and coal and the operator's ability to satisfy that market. Such an approach is provided for by at least one State and, the commenter asserted, would allow an incidental coal operator to continue to exist and mine coal in an incidental fashion.

In response to these comments, OSM has not adopted the life-of-mine requirement and has included in its place a cumulative production test which must be met at the end of each annual reporting period under final § 702.18. The commenters have convinced OSM that the life of the mine is too long a period over which to allow compliance and that the potential for abuse is significant. Moreover, if the operation were not in compliance at the end of the life of the mine, there is little remedial action that the regulatory authority could take since the mining process would have displaced much of the material needed to meet the performance standards of the Act. OSM believes a 12-month test under which the tonnage constraint must be met by the total production which occurred during any 12 months is similarly unreasonable because some large operations, such as brick companies, will not be able to comply on an annual basis due to the nature of their production methods. By instead requiring that all operations be in compliance cumulatively at the end of each annual reporting period, operators will count all production that occurred since mineral extraction began. They will not be penalized if in a particular 12-month period coal production exceeds 16⅔ percent of total production as long as cumulatively they remain under that figure at the end of each reporting period. OSM believes that this test achieves a balance between unnecessary burden on the legitimate mining industry and the need to protect the public and the environment. The terms "cumulative production" and "cumulative revenue" are defined in final § 702.5 (b) and (c) and discussed in the preamble to that section. In addition, OSM has made provision for stockpiling in final § 702.16 so that operators entitled to the exemption may, if their industry practices necessitate, temporarily stockpile coal and other minerals. This should satisfy the brick manufacturers' concern for flexibility without jeopardizing the effectiveness of the rule to curb abuses. The provisions on stockpiling of other minerals are contained in § 702.16 and discussed in the preamble to that section.

Comments on section 701.14(a)(2)—Stratigraphic Test

A multitude of comments were received regarding this provision, in addition to proposed variations of the stratigraphic test. Several commenters suggested that coal production be allowed only above the deepest stratum of other minerals extracted for commercial use or sale. This was termed a "physical necessity" test, i.e., removal of only that coal which physically prevents an operator from reaching the sought stratum of other mineral.

Commenters argued for the physical necessity test based on the rationale that the extraction of coal is not incidental to the mining of other minerals if the decision to mine the stratum directly above the coal is based on the decision to mine the coal. These commenters cite the recent IBLA decision in *McNabb* as authority for this position. Other commenters also urged this position, and expanded upon it by suggesting inclusion of a requirement that the deepest stratum of other mineral be entirely removed for commercial use or sale. The commenters asserted that so doing would avoid the abuse of removing negligible quantities of the other mineral which underlies a coal seam, and subsequently claiming that the mineral bottom layer is the prime extraction goal. One commenter strongly urged elimination of the provision that would allow any coal production below the other mineral to be exempt because it could open the exemption to wide abuse. That commenter advocated adoption of the physical necessity test. Other commenters supported the proposal and favorably viewed coal extraction from the stratum below as both environmentally sound and in the interest of national energy conservation and utilization. One commenter suggested that coal production be allowed below, rather than the proposed standard of "immediately below," the deepest stratum from which other minerals are extracted. The basis for this suggestion arises in the context of eastern Ohio geology where multiple seams of coal, limestone and/or clay or shale are present. In the commenter's view, the use of an "immediately below" limit could potentially eliminate certain minerals or coal which would otherwise be extracted. Another commenter proposed that the rule be modified to allow coal to be extracted "adjacent to" as well as immediately below the deepest stratum of other mineral. Other commenters urged a rule which would allow production of other minerals as well as coal from the same pit regardless of the proximity of one to the other so long as the coal production does not exceed 16⅔ percent of total tonnage removed.

OSM has reviewed the issue and decided not to change the proposed language. Although the physical necessity test may be easy to administer, precluding the exempt removal of coal immediately below the other minerals is not environmentally sound nor in the interest of conservation of the nation's natural resources. Coal should not be left as the last strata since once it is exposed to air it can deteriorate and cause pollution. Coal can also be an aquifer which could result in groundwater contamination if disturbed but not removed. While OSM recognizes that the IBLA in *McNabb* discussed the physical necessity of removing the coal to reach the other mineral, the Board was interpreting the term "incidental" based on the facts and circumstances of the situation. The IBLA was not attempting to establish a general rule. By requiring that coal be produced from a geological stratum lying above or immediately below the deepest stratum from which other minerals are extracted for purposes of bona fide sale or reasonable commercial use, OSM believes that the coal may legitimately be characterized as "incidental" to the other mineral and thus satisfy Congressional intent if the other criteria are also met.

OSM did not require that the coal be "adjacent to" the other mineral, as one commenter suggested. Such a phrase is inconsistent with the geology of the coal fields where minor amounts of intervening strata typically separate coal and other minerals. OSM intends "immediately below" to mean that no substantial intervening strata exist between the lowest other mineral stratum and the coal seam. Since in certain areas, such as the Appalachian region, the strata are folded and faulted to the extent that bedding planes are not horizontal, OSM intends that the "immediately below" standard be interpreted that, given the direction of mining, the coal seam is reached closely following the latest stratum of other mineral. Given these variables, OSM intends to provide limited discretion to the regulatory authorities in determining whether coal lies "immediately below" other minerals.

OSM does not believe that it is necessary to require removal of the entire last seam of other mineral, as some commenters urged, as long as a substantial amount of the other mineral overlying the coal is actually removed for purposes of bona fide sale or reasonable commercial use. This latter condition will satisfy the Act's intent. Because of the requirement that the other mineral be removed for purposes of bona fide sale or reasonable commercial use, where two seams of more-or-less identical other mineral are present, with coal immediately below the second, mining of the second seam to reach the coal will not qualify for the exemption if the quantity of the other mineral in the first seam is sufficient to meet the needs of the operator.

As for those comments that urge that the coal production be allowed below, or regardless of proximity, rather than immediately below the deepest stratum of other minerals, OSM believes that allowing operations to qualify for the exemption regardless of the thickness of the intervening strata would lead to non-"incidental" operations qualifying for the exemption and abuse would occur.

Comments on section 702.14(a)(3)—Revenue Test

Many comments were received urging OSM to adopt a revenue test. Some commenters asserted a revenue test is necessary to prevent the other mineral from being "dumped on the market below cost in order to extract and market coal without complying with the tax (i.e., reclamation fee) and environmental constraints of a permitted surface coal mining operation." The commenters believed a revenue test is needed to prevent "unfair competition" and to establish a "level playing field." Other commenters believed that a revenue test is necessary because it defines the primary objectives of any business venture. For these commenters, the "units in which private business measures importance are dollars" and so "no operator can claim to be incidentally extracting coal where his revenues exceed revenues from other minerals." A commenter further stated that his company's financial statements "like everyone else's, are computed in dollars and cents, not tons of material, because money is the bottom line reality of the private sector." The commenter believed that "every operator in the United States can determine from a glance at his tax returns whether he has generated more gross revenue from coal than from limestone." The commenter contended that a "gross revenues test would impose absolutely no reporting burden and could be enforced through the simple expedient of requiring operators who seek the exemption to file an annual sworn statement that their gross revenues from other minerals exceeded their gross revenues from coal." Other commenters stated their belief that a revenue test is "common sense" and do not "see how it is possible to believe that an operator who makes most of his income from coal minng is only incidentally mining that coal." Some commenters believed that a "50 percent standard may be too high," and request the OSM consider a lower threshold for situations where coal revenues as compared to other mineral revenues would make the operation non-exempt.

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One commenter argued for "flexibility" for smaller operations in applying the rule. Another commenter argued against any less stringent requirements for small operators because "Congress did not intend to exempt small coal operators from compliance with the Act."

Some commenters opposed a revenue test. A State regulatory authority argued that it is "not equipped with the staff or resources to review and accept or reject documentation of revenue, bona fide sales, or fair market value." The commenter indicated that based on 1986 production and sales figures compiled by the agency an operator would have to produce 21.3 tons of shale, 5.1 tons of clay, or 7.8 tons of limestone for each ton of coal produced to earn equal revenues for the other mineral and coal. The commenter asserted that if a revenue test is adopted, market decline in any noncoal minerals coupled with an improved coal market during the course of a mining operation could unfairly penalize an operator whose initial operation was clearly exempt. The commenter believed that a fifty percent revenue test applied to currently exempt operations in some States would result in the loss of the exemption for several operations. One commenter contended that an economic test would ignore the decisions in several cases decided on the exemption. One commenter believed that the problem is "not [one of] coming up with more complicated formulas, but of enforcement." The commenter recommended that the Federal and State regulatory agencies "work closer together to do more audits to determine whether or not there is compliance with the current standards." The commenter urged "strict enforcement and follow-up and monitoring industrial mineral operations."

OSM has carefully reviewed the comments received concerning the viability of a revenue test for determining the initial or ongoing qualifications of an operation for an incidental mining exemption and has decided to adopt the final rule as proposed in April 1988 with a change to reflect that cumulative revenue will be determined annually. The proposal stated that revenue would be measured over the life of the mining operation. This change parallels the one made to the tonnage test to make the compliance and measurement methodologies consistent. Evaluation of cumulative production (and revenue) on an annual basis, instead of a life-of-mine basis, was adopted in response to comments. See the preamble discussion of the tonnage test above.

A comparison of coal-derived revenue to total gross revenue is a simple and straightforward tool for determining the primary purpose of an operation. The revenue test, in tandem with the stratigraphic test, gives the regulatory authority an objective way to determine whether coal extraction is incidental to other mining activities. As the commenters pointed out, revenue is the "bottom line" and defines the primary objective of a business venture. No evaluation of the purpose of a commercial activity would be complete without an examination of the revenue it generates. Although some commenters felt that the proposed 50 percent revenue threshold would be too high, OSM adopted the 50 percent standard in the final rule because it believes that taken together with the tonnage and stratigraphic tests, the 50-percent threshold will adequately prevent abuses. OSM is willing to re-examine this issue in the future, if it can be demonstrated that the 50 percent revenue threshold is not effectively preventing abuse of the exemption. Concerning small operations, OSM did not provide any less stringent requirements because there is no authority under the Act to do so.

In regard to the concern about adequate staff and resources to implement the revenue test, OSM believes that there will be relatively few mining areas applying for and obtaining the exemption, requiring a relatively small increment of staff and resources. Subject to appropriations, funds are available in the form of 50:50 matching grants for program administration costs. Regulatory authorities are not prohibited by this final rule from offsetting some of their costs by charging fees for exemption application reviews.

Concerning the uncertainty of maintaining the exemption in view of the possible fluctuations in the market values of coal and other minerals, OSM believes that the final rule contains sufficient flexibility to allow legitimately exempt operations a reasonable amount of certainty of maintaining the exemption. Both the 50 percent revenue threshold and the stockpiling provisions of final § 702.16 provide flexibility.

Comments on Section 702.14(b)(1)—Other Mineral Commercial Market Determination

Final § 702.14(b)(1) requires that each of the other minerals upon which an exemption under part 702 is based is a commercially valuable mineral for which a market exists or which is mined in bona fide anticipation that a market will exist for the mineral in the reasonably foreseeable future, not to exceed 12 months. This was included in the June 1987 proposal as proposed § 702.14(c). In response to a comment, OSM has clarified that the 12-month period in which a market must be developed begins after the annual reporting period during the stockpiled material was extracted. OSM has added a statement in the final rule that a legally binding agreement for the future sale of other minerals is sufficient to demonstrate the above standard.

Numerous comments were received on the proposed rule. Some commenters objected to the provision that allows an applicant to mine "in bona fide anticipation that a market will exist" because they believe the provision opens "an unenforceable loophole." For these commenters, if there is no current market, then the removal is not for commercial use or sale, but rather in anticipation of a future sale or use. Other commenters believed that specific and detailed documentary evidence should be provided to verify that a market actually exists for the mineral, as well as to establish the likelihood of the development of a market in the reasonably foreseeable future. Other commenters asserted that the provision will be difficult to administer, burdensome on applicants and too subjective. The commenters further contended that in "previous regulations, i.e., oil and gas product value rules, the [DOI] has argued that the elimination of such subjective regulatory requirements is a major objective." The commenters argued that by basing the exemption on what is sold or used from the mine each year, the "potential problems associated with determining whether noncoal minerals are commercially valuable can be avoided." Some commenters believed that no allowance should be made for future markets regardless of documentation that could be developed to support such a projection. For these commenters, such documentation is a "mere prediction of commercial value and does not reflect current commercial value as required by the plain language of section 701 of the Act." They asserted that given the strong incentive to gain a competitive advantage over coal producers who "are required to comply with the full panoply of standards of the Act, the likelihood of paper trails of anticipated markets being concocted is great." One commenter suggested language that would require the applicant to establish that the other minerals can be "extracted, removed and marketed at a profit even in the absence of the extraction and sale of incidental coal production." One commenter remarked that the bona fide anticipation of a future market provision is reasonable and effective for operators who have been in the other minerals business for a period of years because there is a basis upon which to make an evaluation of the nature of the business. The problem, according to the commenter, is with new operations that are "under ten acres and all mining would be done in much less than 12 months." The solution for the commenter is for OSM to adopt the "primary purpose test enunciated in the Cordova Clay case." The result would be to require an operator "to prove from the beginning of the operation that there is a legitimate intention to be in some business other than mining coal." The commenter urges that OSM "make clear that an operator is not given a free 12 months" and that "an evaluation of the primary purpose of the operations may be made at any time taking into consideration the totality of the circumstances of each operation."

Other commenters argued that "the bona fide anticipation that a market will exist for the mineral in the reasonably foreseeable future, not to exceed 12 months" is too stringent because 12 months is "arbitrary to the standpoint that it does not give a reasonable period of time to determine if it is a commercially valuable or commercially marketable mineral." Another commenter contended that the 12-month limitation "gives no reality to the depressed markets that might affect the minerals mined." The commenter also believed that the provision is unclear and asks the following questions: does it mean that a market must exist and all of the minerals must be sold within a period of 12 months; and, does the 12 months begin to run on the completion of the application for exemption, at the beginning of the mining, or at some other point? The commenter further argued that the provision gives "no benefit to the miner who is spending his money in mining since he would venture to undertake a mining operation which may suffer economic setbacks because of a turn down in the housing market which easily affects the markets for the sale of clay or similar problems." The commenter further asserted that the proposed rule "seems to be attempting to dismantle the decision reached by Judge David Torbett in the case involving Cordova Clay Company." Another commenter indicated that the 12 months provision is "unworkable" because "our raw materials are so changeable and our blending so complex, to obtain desired color, texture, and size control, that testing and classification of these raw materials cannot occur until they are exposed and [it is] only then that we develop a plan for when, where, and how much a specific raw material from a specific location can be utilized." Another commenter asserted that an operator should be required to prove marketability of the other mineral. The commenter agreed that it should be required that the market exists within the reasonably foreseeable future, but it is "not important that it exists within a specified time period, i.e., not to exceed 12 months." The commenter believed that it is more important that the operation of the company "be conducted in a reasonable commercial fashion." The commenter gave an example: "An operator can show that after mining clay, it is required that the clay weather for six months before it is commercially marketable." The commenter believed that the "commercial reasonableness" of the operation should be a prime consideration in determining the applicability of the exemption and the company must be able to show that it is operating in a "reasonable commercial manner in light of accepted industry practices."

OSM has considered the above comments and has decided to promulgate the language as proposed with some additional language to provide guidance to the regulatory authority. A great variety and diversity of other minerals and materials are being mined by operators who extract coal and come under the provisions of these rules. Moreover, markets change and technology finds new uses for minerals and materials. For these reasons, it would not be good public policy to prohibit other mineral mining in anticipation of a future market. OSM recognizes, however, that the provision can be abused and has attempted to give the regulatory authority the ability to reject spurious claims to a future market by requiring that mining must be in "bona fide anticipation that a market will exist." By retaining a 12-month provision in the final rule, a reasonable standard is established by which the regulatory authority can judge the claim to future market. To further aid the regulatory authority OSM has added a sentence at the end of the provision to read: "A legally binding agreement for the future sale of other minerals is sufficient to demonstrate the above standard." OSM's intent in adding this language is to ensure that the claim to a future market must be demonstrated by the operator by some evidence that the market will exist in the future.

OSM does not agree that, as one commenter contended, the provision is "difficult to administer, burdensome on applicants and too subjective." By providing a specific standard as to what constitutes sufficient documentation of the existence of a commercial market, the provision is simple and objective. OSM does not believe it is burdensome for applicants and existing operations to supply documentation of sales commitments since this is a routine type of documentation. OSM agrees that the elimination of subjective regulatory requirements is a DOI goal. For instance, OSM rejects the suggested standard that a company need only operate in a reasonable commercial manner in light of accepted industry practices because that is a subjective standard that in practice would be subject to abuse. OSM does not believe, however, that the provision as adopted and explained is overly subjective.

OSM does not agree that, as one commenter contended, the "plain language of section 701 of the Act requires current commercial value for the other minerals" because there is no indication in either the language or the legislative history that Congress intended to reject application of the exemption to other minerals having a commercial value in the near future. Absent any specific guidance in the legislative history of the Act, OSM believes it is reasonable to consider a mineral as being commercially valuable if a market will develop in the 12 months immediately following the annual reporting period during which the mineral was extracted. The Act does not use the phrase "commercially valuable," but instead refers to minerals "removed for purposes of commercial use or sale," without expressly stating when such use or sale must occur. OSM's final rule is a reasonable interpretation of the statutory language in the absence of any specific guidance in the legislative history.

As for the commenter who says he knows of operators with ten-acre mines who would complete their mining in less than 12 months, OSM's response is that the regulatory authority can require those operators to demonstrate their future market and reject the applications of those operators who cannot so demonstrate.

As for those commenters who contended that 12 months is not sufficient time in which to allow a future market to develop, OSM believes a 12-month period from the end of the annual reporting period during which the mineral was extracted is a reasonable accommodation between the need to establish a time limitation to prevent

abuse and the need to establish a valid business commitment.

In response to the commenter who suggested that the regulatory authority should be required to prove that the operator is not in bona fide anticipation of a future market, OSM believes that this would be unduly burdensome. The regulatory authority would be required to prove a negative, which is difficult to do. The commenter suggested that the regulatory authority must first prove * * * that it was primarily seeking clay and, secondly, that no more than 16⅔ percent of the

recognizing accepted industry practices and preventing abuse of the exemption.

indicated that the economic viability standard was enunciated by the Interior Board of Land Appeals in *McNabb*. The

the Act. To hold otherwise would bind other members of the public to the results of a decision in which they had

must not exceed allowable limits at the end of the annual reporting period. During the period itself slight overages

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abuse and the need to establish a valid business commitment.

In response to the commenter who was concerned about when the 12 months begins to run and if a market must exist and all of the mineral must be sold within the 12-month period, the 12-month period begins to run from the end of the annual reporting period during which the mineral was extracted. This is specified in final § 702.14(b)(1) to avoid confusion and to ensure consistency as to when the period should run. For example, for minerals that were extracted during an annual reporting period that extends from April 1, 1990 through March 31, 1991, the stockpiled minerals must be sold by March 31, 1992, regardless of whether they were extracted in April 1990 or March 1991. An approval based upon individual accounting for the date of each ton of other mineral removed would impose an unreasonable administrative burden.

The requirement will be satisfied if the operator will either sell or, during that period, enter into a legally binding agreement to sell the other mineral. OSM believes that this provision is flexible enough to allow the operator to adjust to market changes. It should be noted that since cumulative production is calculated annually under this final rule, a ton of other mineral removed shortly after the end of a reporting period (or in the absence of a reporting requirement, shortly after the end of a period for measuring cumulative production) is not subject to the requirement to be sold or have a legally binding agreement to be sold until 12 months after the end of the current period for measuring cumulative production. This period of time could exceed one year from removal, but will not exceed two years. Although one commenter opposed allowing any "free" time for the development of markets, this provision is needed to make the rule work.

As for the comment that the proposed rule "seems to be attempting to dismantle the decision reached by Judge David Torbett in the case involving Cordova Clay Company," the commenter is apparently referring to *Cordova Clay Co.* v. *OSMRE*, NX5–3–R (January 2, 1986), an administrative hearing before the DOI. In this case the administrative law judge (ALJ) stated that "Congress meant the obvious, that is, the term "incidental" means that the coal removed must not exceed 16⅔ per centum of the tonnage of the materials removed for the purposes of commercial use or sale." In the absence of a rule, the ALJ applied a two-part test, stating that "[t]he applicant in this particular case must first prove * * * that it was primarily seeking clay and, secondly, that no more than 16⅔ percent of the material removed for commercial purposes was coal." In seeking to determine what was the operator's primary intention, the ALJ relied on a variety of factors, including the length of time the operator had been in business, his credibility as a witness, and his ability to sell all the clay he removed from the ground. The ALJ discounted the importance of the location of the coal in relation to the clay, stating "[t]he fact that the applicant mines perhaps to greater depth to reach fire clay because of the availability of certain coal which helps to pay expenses does not take the applicant out of primarily being in the business of mining clay." OSM's opinion is that the ALJ was correct in perceiving that the Act requires a two-part test for the incidental mining exemption. However, the ALJ's application of a "primary intention" test in this case points out the benefits of establishing objective criteria. In the *Cordova* case, the ALJ relied on peripheral issues, such as the operator's longevity and credibility as a witness, instead of the fact that the operator mined through relatively worthless rock and clay to reach marketable coal. OSM believes that the rule adopted today will allow for clear and consistent application of the incidental mining exemption and will lessen reliance on subjective factors.

OSM's response to the comment that asserts that the other mineral mined cannot be utilized until it has been exposed and a plan developed to use it is that the 12-month limit should pose no problem as long as the operator has a legally binding agreement to sell the other mineral or its product. OSM agrees with the commenter that the operation "be conducted in a reasonable commercial standard" but that the 12-month requirement is necessary to ensure that the exemption is not subject to abuse. OSM agrees that the regulatory authority cannot be arbitrary in applying the rule and must consider, as the commenter urges, whether the operation is conducted in a "reasonable commercial manner in light of accepted industry practices," but does not agree that such a standard itself is sufficient to prevent abuse. Despite the rejection of these comments, OSM is willing to consider in the context of a specific proposed State program amendment whether the State can demonstrate for specific industries in that State an identifiable time period needed for market development that is no less effective than final § 702.14(b)(1) in recognizing accepted industry practices and preventing abuse of the exemption.

Comments on the Proposed Economic Viability Test

OSM also solicited comments on an "economic viability" test. Several commenters advocated the test, referring to it by various names, such as the "independent viability" test and the "but for" test. The commenters used the terms synonymously. While some commenters preferred this test as an alternative to a revenue test, most commenters who favored adoption of some kind of financial test urged its adoption in addition to the revenue test in order to "avoid the manipulation of revenues in order to achieve exempt status." The test posits that if the other mineral operation would not have "independent viability but for the additional revenues projected from coal removal and sale, the activity is not a legitimate other mineral operation since coal removal is a primary purpose rather than an incidental aspect of the other mineral operation." The commenters indicated that the regulatory authority must have certain basic information in order to make an informed judgment regarding the independent viability of proposed exempt operations. In the commenters' opinion, the applicant must provide estimates of tonnages of other mineral and coal to be removed, and identify the sources of such estimates, including core sampling or other subsurface exploration records. The regulatory authority must also have access to documentation from the applicant establishing the existence of a current market of national, regional or state scope for the other mineral and the range of market values for the mineral. Based on the information provided in the application, other data available to the agency on market values for bona fide coal and other mineral sales, and the tonnages of the coal and other mineral, the regulatory authority must find that the "other mineral" operation would have independent economic viability as a profitable enterprise independent of the coal extraction. The commenters believed that the revenue test alone is an "insufficient protection against abuse of the exemption." The combination of the revenue test and the economic viability test would assess whether the operation would be commercially viable absent projected coal removal and thereby, according to the commenters "lessen potential for abuse and conform to the legislative intent that the exemption apply to cases where coal is found but is not the mineral being sought." One commenter indicated that the economic viability standard was enunciated by the Interior Board of Land Appeals in *McNabb*. The commenter contended that since the Board is the "voice of the Secretary of the Interior, and is authorized to determine as fully and finally as might the Secretary, all matters within the jurisdiction of the Department of the Interior (see 43 CFR 4.1), the adoption of an economic viability regulation amounts to nothing more than the ministerial codification of a standard which the Secretary has already determined to be required by the Congress through the enactment of SMCRA." The commenter argued that the adoption "of any standard less stringent than the economic viability standard would thus be unlawful since OSM has no discretion to allow surface coal mining operations (as defined at section 701(28) of (the Act) to proceed outside (the Act's) regulatory framework (see section 521(a) of (the Act))."

OSM does not believe that an economic viability test in place of or in addition to the revenue test is either needed or desirable. Moreover, the economic viability test proposed by the commenters would be very difficult for the regulatory authority to administer. The test is not needed because the other requirements of this section are sufficient to define "incidental" and to allow the regulatory authority to evaluate all claims to the exemption. In addition, OSM does not believe that it is appropriate that the regulatory authority have to analyze complicated economic factors and make a finding that the "other mineral operation would have independent economic viability as a profitable enterprise independent of the coal extraction." The test is too stringent and impractical to be used as a standard to determine what operations can claim the exemption. And, as discussed earlier in this preamble, an economic viability test is not required by the Act.

OSM does not agree that the Interior Board of Land Appeal's decision in *McNabb* has the effect suggested by the commenters. In the absence of a rule, the Board was interpreting the facts and circumstances of the case in light of the 1984 incidental mining exemption guidelines, which recommended consideration of a variety of factors in determining if the extraction of coal is "incidental" to the extraction of other minerals. The Board resolved a particular controversy in *McNabb*. The Board's decision in that case does not limit the Secretary's authority subsequently to promulgate new rules in accordance with rulemaking requirements that interpret or implement the Act. To hold otherwise would bind other members of the public to the results of a decision in which they had no opportunity to participate.

Other Comments

Several miscellaneous or general comments were received on proposed § 702.14. One commenter recommended a "threshold" test. The commenter indicates that a provision could be included which establishes a "coal production or value threshold above which the exemption would not be granted." The commenter gave the example that "if the information in the exemption application discloses that over the life of the mine more than ⅓ of the time (a ⅓ production threshold) annual coal production exceeds the 16⅔ percent limit, the exemption would not apply and the mine would be considered to (fall under the jurisdiction of the Act.)" The commenter indicated that the ⅓ annual threshold test would also apply to coal value, i.e., in order to obtain an exemption the value of annual coal production could not exceed the value of noncoal production more than ⅓ of the time over the life of the mine. The commenter concluded that "conformance would be easily measured by comparing the annual report data with the information provided in the application."

OSM did not accept this comment. The commenter's suggestion was a means of increasing the enforceability of the life-of-mine tonnage test and a financial test. As discussed earlier in this preamble, OSM decided not to adopt the life of the mine as a time frame for applying the incidental mining exemption criteria. The commenter's suggestion is too complex to be workable. Like the June 1987 proposal, the regulatory authority would have to wait until the life of the mine were over to determine if the mine should have been considered exempt under the ⅓ of the life test.

Two commenters urged OSM to allow the regulatory authority the flexibility to grant specific time extensions to an operator if more time is needed to meet the 16⅔ ratio. One commenter submitted the language of a State regulation that provides the criteria used in deciding whether to grant time extensions.

OSM did not accept this comment. The issue raised is the time frame within which an operator must comply with tonnage requirements. Sufficient flexibility is provided by the cumulative production test and the stockpiling provisions of final § 702.16. Under the cumulative production test, the operator's cumulative coal production must not exceed allowable limits at the end of the annual reporting period. During the period itself slight overages may occur as long as the operator can come into compliance with tonnage requirements at the end of the annual period, and in fact does so. Responsible operators should be able to comply, and no purpose is served by allowing extensions.

One commenter argued that it should be "administratively permissible to switch over to a coal permit for the duration of the coal removal and then switch back to an incidental coal permit for final reclamation—or at least waive the original contour concept."

OSM cannot waive the approximate original contour or any other standard mandated by the Act. OSM believes that the commenter's suggestion of allowing an operator to switch from incidental exemption to regulated surface coal mine to incidental exemption would not only violate the purposes of the Act, but would also cause an inordinate administrative burden on the regulatory authority.

Section 702.15 Conditions of Exemption and Right of Inspection and Entry

Final § 702.15 imposes certain conditions on exempted operations, including the right of entry and inspection.

Final § 702.15(a), which is virtually identical to § 702.15(a)(1) in the original proposal, requires a person conducting activities covered by part 702 to maintain on-site or at other locations available to authorized representatives of the regulatory authority and the Secretary information necessary to verify the exemption including, but not limited to, commercial use and sales information, extraction tonnages, and a copy of the exemption application and exemption approved by the regulatory authority. The final rule differs from the original proposal in that the final rule in two places reflects the change in procedure from the notice of exemption process to the application for exemption process. Pursuant to that changed procedure, the final rule indicates that information "necessary to verify the exemption" be maintained on-site, in contrast to the proposed language which stated that information "relevant to the exemption" be maintained on-site. Secondly, the final rule requires a copy of the "exemption application and exemption approved by the regulatory authority" be maintained on-site, while the proposal only required "a copy of the notice of exemption."

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Final § 702.15(b) requires a person conducting activities covered by this part to notify the regulatory authority upon the completion of the mining operation or permanent cessation of all coal extraction activities. The original proposal only required notification of the regulatory authority upon completion of the mining operation. The requirement for notification of the regulatory authority at the permanent cessation of all coal extraction activities was added to the final rule in recognition of the fact that all coal extraction may cease before completion of the mining operation. If so, the regulatory authority should be notified since the exemption ceases to have any relevance when coal will no longer be mined at the site.

Final § 702.15(c) requires a person to conduct operations in accordance with the approved exemption application. Also, if an operator is authorized under final § 702.11(b) to extract coal prior to submittal or approval of its application for exemption, either because pursuant to final § 702.11(b), it filed an application within 60 days after the effective date of this final rule or because under § 702.11(e)(3), the regulatory authority does not act within 90 days of receipt of an administratively complete application, the operator must conduct operations in accordance with the exemption criteria of part 702 or counterpart provisions of the State regulatory program. This provision is similar to the language at § 702.15(a)(3) of the February 24, 1988 modified proposal, but the good faith standard that was contained in the proposal has not been included in the final rule in response to comments as discussed below.

In the February 24, 1988 notice, OSM included a good faith standard in proposed §§ 702.15 and 702.17. The purpose of the provision in proposed § 702.17 would have been to continue an existing policy whereby a person who received an exemption from the regulatory authority could rely upon the exemption. Under proposed § 702.17, as long as a person was operating in good faith and attempting to comply with the terms of the exemption, the person would not be subject to direct enforcement action under the Act until revocation of the exemption. The good faith standard was included in proposed § 702.17 to prevent persons with an approved exemption from intentionally violating the law without being subject to enforcement under the Act. Section 702.15(a)(3) was proposed as a companion section to § 702.17 to require good faith operation in accordance with the approved application. However, in response to comments pointing out that a good faith standard is difficult to prove, unnecessary and subjective, OSM has not included the standard in the final rule.

Final § 702.15(d) is identical to § 702.15(b) of the original proposal and provides that authorized representatives of the regulatory authority and the Secretary shall have the right to conduct inspections of operations claiming exemption under part 702.

Final § 702.15(e), which is identical to § 702.15(c) of the original proposal, identifies the specific inspection rights of authorized representatives of the regulatory authority and the Secretary. Final paragraph (e)(1) provides that authorized representatives of the regulatory authority and the Secretary shall have a right of entry to, upon, and through any mining and reclamation operations without advance notice or a search warrant, upon presentation of appropriate credentials. Final paragraph (e)(2) states that the authorized representatives of the regulatory authority and the Secretary may, at reasonable times and without delay, have access to and copy any records relevant to the exemption. Finally, paragraph (e)(3) of the final rule specifies that the authorized representatives of the regulatory authority and the Secretary shall have a right to gather physical and photographic evidence to document conditions, practices or violations at a site.

Final § 702.15(f), which is identical to § 702.15(d) of the original proposal, states that no search warrant shall be required with respect to any activity under paragraphs (d) and (e) of this section, except that a search warrant may be required for entry into a building.

Several commenters urged the elimination of the good faith standard of proposed § 702.15(a)(3) of the February 24, 1988 proposal because it is "overly subjective and difficult to prove." Other commenters suggested that good faith is only appropriate in the computation of discretionary civil penalties and not in enforcement actions. The commenters urged that a "strict liability" standard be adopted.

As mentioned above, OSM agrees with the commenters and has not included the good faith standard in § 702.15 or § 702.17 of the final rule.

A commenter objected to the "broad discretion" given to the regulatory authority to review an operator's records. The commenter suggested that the regulatory authority's record search be limited to only those records relevant to the claim for exemption under consideration.

OSM recognizes the merit of the comment. The regulatory authority must have access to all information relevant to the exemption including commercial use and sales information and tonnages of all minerals extracted. OSM believes that final § 702.15 provides the regulatory authority with the right of access only to records relevant to the exemption.

Section 702.16 Stockpiling of Minerals

Final § 702.16 establishes the conditions under which a mining area's tonnage figures of stockpiled coal and other minerals may be used for the purposes of qualifying, initially and annually thereafter, for the incidental mining exemption. This section was not affected by the February 24 and April 25, 1988 modifications to the original proposed rule.

Final § 702.16(a) addresses stockpiling of coal and provides that coal extracted and stockpiled may be excluded from the calculation of cumulative production until the time of its sale, transfer to a related entity or use within the limits specified in paragraphs (a) (1) and (2). Under final paragraph (a)(1), for mining areas that have been extracting coal for at least the two preceding years, coal may be stockpiled and excluded from the cumulative production figures up to an amount equaling a 12-month supply based on the average annual sales, transfer or use from the mining area over the preceding two years. Final paragraph (a)(2) applies to mining areas that have not yet established the two-year track record and provides that an amount of coal that would represent a 12-month supply based on average monthly sales, transfer or use may be stockpiled and excluded from the cumulative production figures. For example, after one year of coal production from a mining area, the operator would be able to stockpile and exclude from cumulative production figures an amount equal to the amount of coal sold, transferred or used during the year of production.

The provisions of final § 702.16(a) were added in response to comments to draw a reasonable standard and to make the final rule more flexible. An example will illustrate why a degree of flexibility is necessary. If a legitimate "other minerals" operator opens a pit where the upper strata contain coal, which must be mined out in order to reach extensive beds of other minerals below, the operator would be penalized by virtue of the fact that in the early

stages of the operation the bulk of production would be coal. This provision allows such an operator to stockpile the coal for a reasonable, but not unlimited, time without including it in the cumulative production totals until the production of other minerals for purposes of bona fide sale or reasonable commercial use reaches a level that would allow the mining area to satisfy the tonnage test.

Final § 702.16(b) addresses stockpiling of other minerals. With the exception of the change described below and a few editorial changes, final § 702.16(b)(1) is the same as § 702.16 of the June 1, 1987 original proposal. Final paragraph (b)(1) provides that the regulatory authority shall disallow all or part of an operator's tonnages of stockpiled other minerals for purposes of meeting the requirements of part 702 if the operator fails to maintain adequate and verifiable records of the mining area of origin, the disposition of stockpiles or if the disposition of the stockpiles indicates the lack of commercial use or market for the minerals. The final rule gives flexibility to the regulatory authority concerning stockpiling of other minerals and is intended to ensure that only verified tonnages of stockpiled other minerals and only stockpiled other minerals for which a commercial use or market exists are included in the calculation of production rations. The word "may" in the proposal was changed to "shall" in the final rule to require disallowance of unverified tonnages. The requirement for maintaining records of the mining area of origin was added because the exemption must be determined for each mining area. This does not require physical segregation of stockpiled other minerals as long as adequate records are maintained.

Final § 702.16(b) (2), (3) and (4) were added to the final rule by OSM in response to comments concerned with the potential for abuse of the incidental mining exemption through manipulation of its stockpiling provisions. Final § 702.16(b)(2) provides that the regulatory authority may only allow an operator to utilize tonnages of stockpiled minerals for purposes of meeting the requirements of part 702 if (i) the stockpiling is necessary to meet market conditions or is consistent with generally accepted industry practices; and (ii) the stockpiled minerals do not exceed a 12-month supply of the mineral required for future sales as approved by the regulatory authority on the basis of the exemption application. Final § 702.16(b)(3) states that the regulatory authority may allow an operator to utilize tonnages of stockpiled minerals beyond the 12-month limit established in paragraph (b)(2) if the operator can demonstrate to the regulatory authority's satisfaction that the additional tonnage is required to meet future business obligations of the operator, such as may be demonstrated by a legally binding agreement for future delivery of the minerals. Final § 702.16(b)(4) allows the regulatory authority to revise the stockpile tonnage limits periodically in accordance with the criteria established by § 702.15(b)(2) and (b)(3) based on additional information available to the regulatory authority.

Numerous comments were received on stockpiling. Some commenters wanted a total prohibition on allowing any stockpiled material to be used in calculating the requirements of the exemption. For these commenters, "operators illegally using the exemption could mine the overburden until either tonnage or gross revenues from the stockpiles of other minerals are high enough, then become a surface coal mining operation for an extended period of time following removal of the other mineral." In the commenters' view, stockpiling would thus allow these operators to avoid the standards of the Act. Other commenters advocated prohibiting stockpiling for a period in excess of that needed to load and transport the minerals for end use or processing. For these commenters, the existence of a stockpile beyond that period of time needed to transport or process the minerals is a "good indicia of the lack of commercial value and/or decline of the marketplace, both of which should trigger further agency inquiry."

In contrast, other commenters opposed any restrictions on stockpiling. For these commenters, any restrictions on stockpiling violate the "rights of operators." Some commenters believed that restrictions on stockpiling are unnecessary because the annual reporting requirements of the rule protect against operations falsely claiming the exemption by selling coal while indefinitely stockpiling or spoiling the other minerals. One commenter believed the rule "totally ignores the condition of the market and gives too much discretion to the enforcement efforts of OSM." Other commenter requested guidelines or indication as to what are the "adequate and verifiable records of the disposition of stockpiles" required to be maintained by the operator pursuant to proposed § 702.16. Another commenter indicated that stockpiling should be allowed only to the extent that it is a "general custom of the industry and only for a limited period of time." This commenter further contended that if stockpiling is not controlled, "a coal operator may remove the unwanted other mineral in order to justify the coal removal without a permit and without bond, only to leave the stockpiled unwanted other mineral once the coal is removed." The result would be "the coal would have been extracted without a permit and the land would be left entirely uncovered by bond." Some commenters believed that, over an annual period, "seasonal stockpiling and subsequent sales will be balanced to address the concerns of entities that legitimately operate under the incidental mining exemption." The commenters "strongly oppose the inclusion of stockpiles in an exemption test made at the end of each year." Another commenter believed that the issue of stockpiling cannot be solved in a rulemaking that is "national in scope." The commenter agreed that some limits are necessary to prevent an operator from using a stockpile that is "actually only a spoil pile that the operator is attempting to use to establish his exemption and thus not to meet Federal and State coal strip mine requirements." The commenter recommended that the solution to the stockpile issue is "best left to the individual States."

OSM, while recognizing the difficulty of the stockpiling issue, believes it is important to ensure that stockpiling is not abused. Therefore, in final § 702.16(a), OSM limited the amount of coal that may be stockpiled without including it in cumulative production. OSM also added to the final rule provisions governing the conditions under which stockpiled other mineral tonnages will be accepted by the regulatory authority. Final § 702.16(b)(2) was added to provide that the regulatory authority may only allow an operator to utilize tonnages of stockpiled minerals if the stockpiling is necessary to meet market conditions or is consistent with generally accepted industry standards and the stockpiled minerals do not exceed a 12 month supply of the mineral required for future sales as approved by the regulatory authority on the basis of the exemption application. Since the exemption application contains estimates of other minerals sales and revenues, it is the appropriate document to rely on for justification of other mineral stockpiling. Final paragraph (b)(3) was added to give the regulatory authority discretion to allow an operator to utilize tonnage figures of stockpiled minerals beyond the 12 month limit established in

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paragraph (b)(2) if the operator can show to the regulatory authority's satisfaction that the additional tonnage is required to meet future business obligations of the operator such as may be demonstrated by a legally binding agreement for future delivery of the minerals. Final paragraph (b)(4) was added to give the regulatory authority the discretion to periodically revise the stockpile tonnage limits based on additional information available to the regulatory authority. OSM believes these additional provisions provide a clear and reasonable standard that is flexible enough to address effectively a variety of mining circumstances.

A total prohibition on stockpiling or a prohibition for a period in excess of that needed to load or transport, as some commenters urged, is not reasonable given the need of many operators to stockpile in order to meet their legitimate business obligations. Nor does OSM believe that restrictions on inclusion of stockpiled minerals violate the rights of operators or that the requirement for compliance with the tonnage and revenue test on an annual basis contained in final § 702.17 sufficiently protects against operations falsely claiming the exemption. OSM does not believe operators have rights to include unlimited and uncontrolled stockpile tonnages when they claim the exemption. Standards for stockpiling must be provided since ordinary marketing practices require some stockpiling, and, without such standards, the exemption could be easily abused by operators stockpiling for markets that do not exist.

In response to the comment that the rule "totally ignores the condition of the market and gives too much discretion," the inclusion of paragraphs (b)(2) through (4) provides guidance to regulatory authorities.

As for the request for guidelines concerning what are "adequate and verifiable records," the regulatory authority has the discretion to decide what records establish an operator's claim to the need for stockpiling. OSM will provide further guidance for Federal program States if needed.

OSM agrees with the commenter who indicated stockpiling should be allowed only to the extent that it is a general custom of the industry and only for a limited time and believes that the final provisions meet the substance of the comment.

In response to the comment that because seasonal stockpiling and subsequent sales will be balanced, there is no need to include stockpiles in an exemption test made at the end of each year, OSM does not believe that such a balance will always occur and the commenter offers no evidence for his contention. Finally, regarding the comment that the issue of stockpiling should be left to the individual States, OSM believes that this approach would not fulfill its responsibility to implement the incidental mining exemption.

Section 702.17 Revocation and Enforcement

Final § 702.17 establishes the regulatory authority's responsibility for annual compliance reviews of exempt operations and for revocation of the incidental mining exemption for mining areas that do not meet the exemption criteria. The final rule also provides for direct enforcement action for violations of the regulatory program in certain circumstances. Section 702.17 of the final rule is similar to the modified proposal issued on February 24, 1988, but is substantially different, for reasons described below, from the original proposal of June 1, 1987.

Final § 702.17(a) requires the regulatory authority to conduct an annual compliance review of each exempt mining area, utilizing the annual report, an on-site inspection and any other information available to the regulatory authority. If any mining area is not in compliance with the requirements of § 702.14, the regulatory authority shall notify the mine operator that the exemption for that mining area may be revoked. This provision was added to the final rule so that the regulatory authority will ensure that each mining area is in annual compliance with the exemption criteria of final § 702.14 on a cumulative basis. The requirement for an annual compliance review for each mining area was added in response to a comment and to ensure that the annual report is analyzed by the regulatory authority and the mining area is inspected at least once each year.

Final § 702.17(b) is based upon § 702.17(a) of the February 24, 1988 proposal. Final paragraph (b) provides that if the regulatory authority has reason to believe that a specific mining area is not exempt, was not exempt under the provisions of this part or counterpart provisions of the State regulatory program at the end of the previous reporting period, or will be unable to satisfy the exemption criteria at the end of the current reporting period, the regulatory authority shall notify the operator that the exemption may be revoked and the reason(s) therefor. The exemption will be revoked unless the operator demonstrates to the regulatory authority within 30 days that the mining area in question should continue to be exempt. The final rule specifies that the possiblity of past, present or future lack of compliance is sufficient to initiate the exemption revocation process. The February 1988 proposal only mentioned possible current lack of compliance as grounds for initiating the process. OSM made this change to avoid placing an unnecessary limitation on the scope of the regulatory authority's powers and to track the requirement for cumulative compliance evaluated annually. For example, the regulatory authority may have evidence that the mining area is currently out of compliance based on a continually applied exemption criterion such as the stratigraphic test. Or, the regulatory authority may have evidence that the mining area was or will be out of compliance with one of the annually applied exemption criteria such as the tonnage or revenue test.

The final rule also differs from the February 1988 proposal by the inclusion of the phrase "counterpart provisions of the State regulatory program" in recognition of the fact that this final rule becomes effective in primacy States only after incorporation into the State regulatory program.

Final § 702.17(c)(1) states that if the regulatory authority finds that an operator has not demonstrated that activities conducted in the mining area qualify for the exemption, the regulatory authority shall revoke the exemption and immediately notify the operator and any intervenors in the application process. If a decision is made not to revoke the exemption, both the operator and any intervenors must be given immediate notice. The notice requirements have been included in the final rule to allow adversely affected persons to seek administrative review.

Final paragraph (c)(2) states that a decision whether to revoke an exemption shall be subject to administrative review under 43 CFR 4.1280 when OSM is the regulatory authority or a State program equivalent when the State is the regulatory authority. A request for administrative review may be filed by any adversely affected person within 30 days of notification of the decision. Paragraph (c)(2) has been modified from the February 24, 1988 proposal to provide for a right of administrative review when the decision is made not to revoke an exemption. The 30-day period to seek review has been included to allow for finality of the decision if no review is sought and is consistent with the period allowed for seeking administrative review of other decisions under the Act, such as permit issuance.

Paragraph (c)(3) states that the filing of a petition for review does not automatically suspend the effect of a

decision. This provision was added to the final rule in order to clarify the effect of the revocation decision.

Final § 702.17(d) specifies that (1) an operator mining in accordance with the terms of an approved exemption shall not be cited for violations of the regulatory program which occurred prior to the revocation of the exemption and that (2) an operator who does not conduct activities in accordance with the terms of an approved exemption and who knows or should know such activities are not in accordance with the approved exemption shall be subject to direct enforcement action for violations of the regulatory program which occur during the period of such activities.

In its original proposal of June 1, 1987, OSM suggested provisions that would have allowed enforcement action to be taken by the regulatory authority or OSM if an operation claiming an exemption was in fact not exempt. Such an approach made sense where operators did not need approval to operate under the exemption. Under proposed § 702.17(a), if the regulatory authority or OSM had cause to believe that the mining operation claiming exemption was not exempt under the provisions of part 702, appropriate enforcement action would have been taken under the relevant inspection, enforcement, and civil penalty provisions of either the applicable provisions of State or Federal regulations. If the regulatory authority or OSM had found that activities conducted in the mining area constituted surface coal mining operations, the regulatory authority or OSM would have, in accordance with proposed § 702.17(b) ordered the payment of abandoned mine reclamation fees in accordance with part 870 of this Chapter. OSM or the regulatory authority would also have ordered the operator to cease surface coal mining operations and either obtain a valid surface coal mining permit or undertake and accomplish within a specified time period remedial reclamation in accordance with the standards of the regulatory program applicable to conditions existing on the mining area. As specified in § 702.17(c) of the June 1, 1987 proposal, the regulatory authority or OSM could have required the operator to submit a reclamation bond pursuant to the regulatory program to ensure the performance of remedial reclamation.

The February 24, 1988 proposal modified the original proposal to reflect the change from a notice of exemption process to an application for exemption process. The February 1988 proposal also would have related direct enforcement liability to the operator's good faith or lack thereof. As discussed in the preamble to final § 702.15, OSM has not included the good faith standard in the final rule because it is subjective and difficult to prove. Instead, OSM has chosen to focus on objective standards of whether the mining area is operated in accordance with the terms of the approved exemption, a question of fact, and if not, whether the operator knew or should have known about the failure to comply. The final rule also differs from the February 1988 proposal by leaving out the reference to the Act in proposed § 702.17(c)(1). As discussed below, this change was made in response to a comment. It should be noted that § 702.17(d)(1) applies only to operators mining under an approved exemption and that direct enforcement action *is* possible against operators who assert the exemption, but have not yet received approval from the regulatory authority.

Final § 702.17(d)(3) states that upon revocation of an exemption or denial of an exemption application, an operator shall stop conducting surface coal mining operations until a permit is obtained and shall comply with the reclamation standards of the applicable regulatory program with regard to conditions, areas and activities existing at the time of revocation or denial. This provision was added by OSM to clarify operators' obligations after revocation of the exemption or denial of an exemption application. Such obligations exist regardless of whether a specific provision is included in part 702. Under the final rule, if an exemption is revoked or an application denied, reclamation must begin immediately (even though the operator does have the option of applying for a coal mining permit). At the time of revocation, the unreclaimed area is not immediately in violation of the applicable program. The operator should be given a reasonable time to reclaim the area. If the reclamation is not accomplished in a timely manner, however, then the regulatory authority should cite violations of the applicable regulatory program. This provision is an outgrowth of the recent IBLA decision in *Cherry Hill Development* v. *OSMRE*, 110 IBLA 165, August 17, 1989.

Several commenters disagreed with § 702.17(a) of the February 24, 1988 proposal, which would have provided that if the regulatory authority has reason to believe that an operation granted an exemption for a specific mining area is not exempt, the regulatory authority shall notify the operator that the exemption may be revoked unless the operator demonstrates to the regulatory authority within 30 days that the mining area in question meets the exemption criteria. These commenters believed the provision "risk grave environmental damage." They argued that after OSM's experience with "the wide-spread abuse of the two acre exemption, one would think the agency would seek to avoid creation of a new generation of unreclaimed surface coal mining sites." The commenters contended that the exemption holder has "full and fair opportunity to defend the exemption status after issuance of an enforcement order." The commenters further argued that to the extent that the operation is "a sham and has operated outside of its boundaries, an imminent harm cessation order is mandatory under the Act and the Secretary's regulations." In summary, these commenters believed that "in no event is non-enforcement appropriate in a situation where the Secretary has reason to believe that the activity may be in violation of the Act."

OSM has determined to retain the provision requiring the regulatory authority to notify an operator of potential revocation of the incidental mining exemption and to require him to demonstrate that he continues to be entitled to the exemption. In effect, this is a kind of "show cause" proceeding and places the burden upon the operator to show he continues to qualify for the exemption. In such situations, allowing the operator 30 days to prepare materials to show that the exemption should not be revoked is a fair procedure. It would be unfair to order cessation of operations until the operator has been given the opportunity to demonstrate that the mining area in question is, in fact, in compliance. In addition, if a person is knowingly not complying with the terms of an approved exemption, final § 702.17(d)(2) does provide for direct enforcement action, including imminent harm cessation orders when justified.

The procedures of final § 702.17 (b) and (c) are consistent with the Act, including section 521. The purpose of these procedures is to establish an orderly method to determine whether a violation of the Act or regulatory program exists. If it is determined that an operation is not entitled to a previously approved exemption, the exemption is revoked and the operator must stop mining coal and reclaim the mining area to the standards of the appropriate regulatory program. The operator may apply for a coal mining permit at this time. If the operator continues to mine coal without a permit, the operator will be subject to the

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issuance of a cessation order under 30 CFR part 843. This is certainly consistent with the spirit of the Act as expressed in the proviso of section 521(b) wherein blameless operators relying upon regulatory authority authorizations are given a reasonable time to come into compliance.

A commenter questioned whether an operator could seek administrative review of the notice required by § 702.17(a) of the February 1988 proposal when the regulatory authority has reason to believe that the operation granted an exemption for a specific mining area is not exempt.

The notice specified in final § 702.17(b) is neither an enforcement sanction nor a penalty provision for which administrative review would be appropriate. It merely initiates an inquiry. If, however, the regulatory authority finds under the proceeding initiated pursuant to § 702.17(b) of the final rule that the activities conducted in the mining area do not qualify for the exemption, then § 702.17(c) of the final rule provides that the regulatory authority shall revoke the exemption. This revocation decision is subject to administrative review under 43 CFR 4.1280 when OSM is the regulatory authority or a State program equivalent when the State is the regulatory authority.

Several commenters urged OSM to specify a minimum inspection frequency for exempt operations and a requirement for periodic review by the regulatory authority of the status of the exemption.

OSM agrees that the regulatory authority should do more than receive annual reports; it should also analyze them and act on any determinations it makes pursuant to them. Thus, § 702.17(a) of the final rule requires regulatory authorities to conduct an annual compliance review of exempt mining areas, utilizing the annual report, an on-site inspection and any other available information. OSM will monitor State compliance review and inspection activities as part of its oversight responsibilities. The State regulatory authorities may require, at their discretion, more frequent reporting or may conduct more frequent inspections.

Several commenters stated that OSM's data shows that "few of the operations using the exemption to date have met even the tonnage test for the exemption." One commenter indicated that OSM "must take immediate enforcement action against those who operated a surface coal mining operation in violation of the Act and the exemption." The commenter urged that the regulatory authority "must issue an imminent harm cessation order against these operations" and, at a mimimum, "ensure that the operators responsible for these sites are placed on the permit block list until the mine site is reclaimed."

OSM is taking appropriate enforcement action against mining areas that may be in violation of the existing regulations. If, subsequent to the effective date of this final rule or the effective date of counterpart provisions of the State regulatory program, a mining area will not qualify for the exemption under the standards of this rule, the operator must reclaim the mining area to the standards of the applicable regulatory program. The operator may also apply for a coal mining permit. If following revocation of an exemption the operator does not meet the reclamation obligation, the operator will be subject to direct enforcement action. As discussed above, this final rule also addresses the problem of operators not acting in accordance with approved exemptions by subjecting them to direct enforcement action for periods when they knew or should have known such activities were not in accordance with the approved exemption.

One commenter requested that the term "Act" be deleted from § 702.17(c)(1) of the February 1988 proposal. The purpose of this change, according to the commenter, is to "conform the section to the remaining portions of the rule, which properly rely upon the applicable State program as the bench mark for compliance." The commenter also contended that the change is consistent with the statute, which designates the State program as the applicable law under which the operator must comply.

OSM agrees with the commenter and has decided not to include the reference to the Act in final § 702.17(d)(1) because the applicable State program is the "bench mark" for compliance. This change will not have any major impacts because, when approved, State programs should reflect the requirements of the Act. Further discussion of this subject appears in OSM's final rule published on July 14, 1988 (52 FR 26728).

Some commenters suggested that, as an alternative to the good faith standard of § 702.17(c) of the February 1988 proposal, OSM "base the collection of abandoned mine reclamation (AML) fees on an annual test and the reclamation requirement on a threshold test which is calculated over the life of the mine."

In OSM's view, AML fees are owed by operators for coal produced from surface coal mining operations subject to the provisions of the Act. See section 402(a), 30 U.S.C. 1232. Once it is determined that a mining area does not qualify for the incidental mining exemption under the criteria established by final § 702.14 or counterpart provisions of a State program, the operator becomes liable for AML fees for all coal produced since October 1, 1977 (except as provided by 30 CFR 870.11). The money is owed to the United States upon a final determination that the mining area does not satisfy the standards of the exemption and must be paid within 30 days from that determination.

Several commenters argued for the removal of the "period of time" language of § 702.17(c)(2) of the February 1988 proposal. The commenters believed that the language was improper in that it suggested that there might exist a period of time after discovery of the violation of the exemption when the operator was not subject to immediate, direct enforcement by the regulatory authority.

OSM agrees with the comment. Since OSM did not intend that the final rule be interpreted this way, it has deleted the phrase "period of time" from final § 702.17(d)(2).

One commenter indicated that § 702.17 should limit the responsibility for ordering payment of abandoned mine reclamation fees for non-exempt operations to OSM. For this commenter, collection of the abandoned mine reclamation fee is a function of OSM, not the State authorities.

OSM agrees that it is responsible for collecting reclamation fees. The language the commenter objected to was included in § 702.17(b)(1) as proposed on June 1, 1987. That language does not appear in final § 702.17.

Section 702.18 Reporting Requirements

Final § 702.18 requires a person who has received an exemption from the regulatory authority for a mining area to file a written report annually for that mining area. Final § 702.18 is based upon reporting requirements proposed in the February 24 and April 25, 1988 notices. Changes from the proposals relate primarily to when the reports must be filed and the periods that they must cover. These changes are necessitated by adoption of the cumulative production standard in final § 702.14, and reflect the calendar quarter approach embodied in that section.

The requirement to file an annual report is set forth in final § 702.18(a)(1). This paragraph provides that following approval by the regulatory authority of an exemption for a mining area, the person receiving the exemption shall, for each mining area, file a written report annually with the regulatory authority containing the information specified in § 702.18(b). The reporting requirement was proposed at § 702.18(a) of both the February and April 1988 proposals.

Final § 702.18(a)(2) specifies that the report shall be filed no later than 30 days after the end of the 12-month period as determined in accordance with the definition of cumulative measurement period in § 702.5(a). This means that for operations in Federal program States or on Indian lands that extracted coal or other minerals prior to April 1, 1990, the effective date of these rules, the report must be filed no later than April 30, 1991, and every April 30 thereafter over the life of the mining area. The period for which the cumulative production and revenue of such operations is calculated ends March 31 of each year. Final § 702.18(a)(2) is similar to § 702.18(b) of both the February and April 1988 proposals, except that the final rule refers to the cumulative measurement period definition for a determination of the period covered by the report.

For mining areas at which the extraction of coal and other minerals begins on or after April 1, 1990, the reporting date is no later than 30 days after the conclusion of the calendar quarter corresponding to the calendar quarter during which extraction of coal or other minerals commenced. In other words, if extraction of coal or other minerals at new mining areas begins between April 1 and June 30, cumulative production is measured for a period ending on June 30, and the report must be filed no later than July 30 of each year.

If extraction of coal or other minerals at new mining areas begins between July 1 and September 30, cumulative production is measured for a period ending on September 30, and the report must be filed no later than October 30 of each year.

If extraction of coal or other minerals at new mining areas begins between October 1 and December 31, cumulative production is measured for a period ending on December 31, and the report must be filed no later than January 30 of each year.

If extraction of coal or other minerals at new mining areas begins between January 1 and March 31, cumulative production is measured for a period ending on March 31, and the report must be filed no later than April 30 of each year.

For mining areas in primacy States that extract coal or other minerals prior to the effective date of counterpart provisions in the State regulatory program, the first annual report does not have to be filed until after the effective date of the State regulations and must cover the appropriate 12-month period as described above.

Final § 702.18(a)(3) provides that the information in the report shall cover (i) annual production of coal and other minerals and annual revenue derived from coal and other minerals during the preceding 12-month period, and (ii) the cumulative production of coal and other minerals and the cumulative revenue derived from coal and other minerals. The annual and cumulative production information required in final paragraph (a)(3) is substantially the same as § 702.18(a)(1) and (2) of the February and April 1988 proposals.

Final § 702.18(b) identifies six items of information that must be included in the annual report for each mining area both on a cumulative and 12-month basis. Final paragraph (b) states that for each period and mining area covered by the report, the report shall specify (1) the number of tons of extracted coal sold in bona fide sales and total revenue derived from such sales, (2) the number of tons of coal extracted and used or transferred by the operator or related entity and the estimated fair market value of such coal, (3) the number of tons of coal stockpiled, (4) the number of tons of other commercially valuable minerals extracted and sold in bona fide sales and the total revenue derived from such sales, (5) the number of tons of other commercially valuable minerals extracted and used or transferred by the operator or related entity and the estimated total fair market value of such minerals, and (6) the number of tons of other commercially valuable minerals removed and stockpiled by the operator. Final paragraphs (b)(1) and (2) are identical to § 702.18(c)(1) and (2) of the April 1988 proposal. Final paragraphs (b)(4) and (5) are identical to § 702.18(c)(3) and (4) of the April 1988 proposal, except that the phrase "or transferred" has been added to each in the final rule to acknowledge that coal and other minerals may be used by or *transferred to* a related entity under final § 702.14. Final paragraphs (b)(3) and (6) were added to the final rule by OSM at the request of commenters to provide information concerning stockpiled minerals. OSM believes that the regulatory authority should have information on stockpiling in order to assess the status of the exemption.

OSM received many comments concerning the time periods for reporting under this rule. Some commenters favored monthly reporting; the large majority of commenters favored annual reporting and still others favored longer periods to coincide with the life-of-mine option. Those favoring the shortest reporting periods stressed the need to ensure that the exemption would not be abused by operators. These commenters stated that operators are likely to maintain these data within their monthly production and sales reports and therefore should have no trouble providing the information to OSM. Moreover, the monthly reporting requirements, they asserted, would alert the regulatory authority quickly so that extensive environmental damage would not occur during an exemption term. Some commenters who favored monthly reporting periods went on to state that, at a minimum, OSM should establish annual reports. In the commenters' view, this should be the longest permissible period. Any reporting period of longer duration, they argued, would be unworkable and unenforceable and would make closure and revocation a sham.

The vast majority of commenters favored an annual reporting requirement regarding tonnages of minerals extracted, documentation of sales or other commercial uses of the minerals, and such other information as the regulatory authority may require. Some of these commenters stated that annual reports would be more practical than life-of-mine or monthly reports. They asserted that allowing the determination to be made over the life of the mine would be too susceptible to manipulation by the operator and could result in widespread abuse of the Act. A period shorter than 12 months, however, was also decried both as an undue burden on the operator and because the sequential removal of strata might skew comparative tonnages. One of the commenters acknowledged that an annual reporting requirement in conjunction with a gross revenues test would not impose a reporting burden on operators since every operator generates such figures in developing its depletion allowance for tax return purposes.

Alternatively, a few commenters favored longer reporting periods to coincide with the life-of-mine standard. These commenters believed that longer reporting periods were absolutely necessary due to the time required for removal of various layers of materials and minerals. They argued that where the coal seam lies near the surface and above other commercial minerals, the excavation of the coal will skew the reporting figures despite the fact that the

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total coal reserves within the mining area are well below the 16⅔ percent of other commercially valuable minerals which will be mined. One commenter stated that OSM should carefully review and consider Ohio's rule which allows the Chief of the Division of Reclamation latitude in determining under which law an operator will be required to perform. Ohio's Chief, the commenter stated, reviews not only the quantity of coal and minerals removed from a mining area during a permit year, but also the estimated future production of coal and minerals to be produced from that mining area, along with the available market for those minerals and coal and the operator's ability to service available markets. Providing for similar discretion would enable the regulatory authority to allow mining to occur even though during one 12-month period the 16⅔ percent tonnage test might not be met. This commenter concluded that if OSM chooses a shorter time period or an alternative less flexible than Ohio's rules, either the smaller incidental operators will cease mining other minerals and attempt to perform as small coal operators, thus spoiling reserves of clay, shale and limestone and driving up the price of other minerals due to higher trucking costs; or the larger incidental coal operators, e.g., many of the clay producing brick companies, will have to decide whether to mine coal under the Act, "which is unworkable for other mineral mining operations" or not to mine coal and treat it as overburden. The commenter believed any of these scenarios would be "philosophically wrong, economically unsound, and environmentally ridiculous."

A number of specific comments were received. One commenter suggested that a "more liberal reporting period would be appropriate for small operators who mine less than, for instance, 10,000 tons of coal per year." One commenter stated that the reporting requirements failed to include any reference to the minerals stockpiled for bona fide commercial sale and failed to specify any method of calculating or reporting such data for the calculation of an operator's claim to exemption. One commenter suggested inclusion of the following additional information in the report: "the total tonnages of coal and other commercially valuable minerals extracted as of the date of the report and the tonnages of coal and other commercially valuable minerals extracted for that month." One commenter suggested "detailed documentation on the disposition of the other minerals and of the coal, including not merely the sale or use but the specific sale, the value per ton of the mineral and the coal, and the amount of other mineral and coal, stockpiled or otherwise extracted but not sold." One commenter suggested that the reporting requirement should be modified to include "the average unit price received or expected for the coal and noncoal materials; the gross value of the coal and noncoal materials sold or used for the report period;" and "estimates of the gross value of the coal and noncoal materials sold or used in each year of the operation's life."

OSM has concluded that an annual report is the best way of apprising the regulatory authority of the status of the exempt operation, while avoiding the burden of paperwork on the regulatory authority and the operator that would result from more frequent reporting requirements. Less frequent reporting, e.g., five years or life-of-mine as some commenters suggested, would cover too long a period of time for, if a violation were established, it would be difficult to reclaim since an operator would have by then displaced considerable overburden and mined through too large an area. By requiring information on "cumulative production" and defining the term, OSM believes that it has established a clear and workable standard as requested by commenters that will neither be subject to abuse nor be an unreasonable burden on operators, the regulatory authority, or the public.

In regard to specific comments on this section, OSM does not believe that a less frequent reporting period for small operators is possible or desirable. Section 701(28) of the Act does not make a distinction between large and small operators and OSM has no other basis for allowing lesser requirements for small operators. OSM agrees with the comment on stockpiling and has included stockpiling among the list of items that the operator needs to report. The pertinent provisions of final §§ 702.14 and 702.16 should provide the requested guidance as to the appropriate method for calculating stockpiles. OSM agrees with the comment requesting the total tonnages of coal and other commercially valuable minerals extracted as of the date of the report be included in the information requirements and has retained this provision in the final rule. The commenter also requested inclusion of monthly production figures in the report. OSM does not see the need for such specificity as long as the operation is in compliance at the end of each 12-month period. Likewise, OSM sees no need to require detailed documentation on the disposition of the other minerals and coal and has therefore not required such detail in the report. The regulatory authorities are, however, free to require or request any documentation necessary to establish or evaluate the status of the exemption. The comments that the report should include the average unit price received or expected or the gross value of coal and noncoal materials sold or used for the report period were not adopted because reporting of cumulative revenue pursuant to final § 702.16(b) allows evaluation of compliance with the revenue test. The comment requesting estimates of gross value of the coal and noncoal materials sold or used in each year of the operations life was not adopted because the exemption application requirements for submittal of estimated revenues and estimated fair market values at final § 702.12 (d) and (e) will provide the same information.

E. Section 750.21 Coal Extraction Incidental to the Extraction of Other Minerals

The final rule adopted today amends 30 CFR part 750 by adding a new § 750.21, which states that 30 CFR part 702 is applicable on Indian lands. This portion of the final rule is identical to the June 1, 1987 proposal.

F. Section 870.11(d) Applicability

Final § 870.11(d) addresses the applicability of the reclamation fee obligation to coal produced from mining areas exempt either under the final rule adopted today or under counterpart provisions of a State program. The final rule provides that for Federal program States and on Indian lands, the extraction of coal in accordance with part 702 of this Chapter is exempt from the applicability of the reclamation fee obligation. In States with approved programs, the final rule retains the any-12-consecutive-months standard until the State incorporates regulations adopted pursuant to part 703 into the State program. Subsequently, the State's counterpart regulations will govern.

The final rule is similar to the June 1, 1987 proposal except that instead of merely cross-referencing part 702, the final rule retains the previous standard for State programs until provisions counterpart to this final rule are approved. Without this change and in the absence of counterpart provisions to part 702, there would have been no exemption standard in primacy States for mining areas where the coal extracted did not exceed the 16⅔ threshold. The final rule does not relieve operators from existing obligations to pay reclamation fees. No comments were received on this part of the final rule.

The justification for removing the any-consecutive-12-month standard from § 807.11(d) once the new rules become effective in a State is the same as for adopting the cumulative production standard in § 702.14. The June 30, 1982 final preamble to the previous § 870.11(d) did not discuss how the 12-month constraint for title IV purposes related to how the exemption should be applied for title V purposes (47 FR 28594). The preamble relied upon section 412(a) of the Act, 30 U.S.C. 1242(a), for authority in promulgating the rule, and did not interpret the proviso in section 701(28) of the Act. The preamble stated that in the absence of the 12-month qualifying period, "incidental production would be subject to quarterly determinations of applicability, because production reports and fee payments are due quarterly, even though the extraction of coal over a longer period (e.g., one year or the life of the project) did not exceed 16⅔ percent of the mineral tonnage removed." 47 FR 28577. Although OSM agrees that an operation must be exempt to avoid reclamation fee liability, OSM does not agree that the quarterly payment obligations in Title IV govern the interpretation of section 702(28) of the Act. On the contrary, section 402(a) imposes reclamation fee obligations upon "coal mining operations subject to the provisions of this Act. * * *" Thus, section 701(28) governs the scope of Title IV obligations, not vice versa. It makes sense for the exemption standards to be established in part 702 or counterpart provisions in State programs, and to be cross-referenced in § 870.11(d).

G. Subchapter T—Programs for the Conduct of Surface Mining Operations within Each State and Effect in Federal Program States

The final rule provides that part 702 will apply through cross-referencing in those States with Federal programs. This includes California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee and Washington. The Federal programs for these States appear at 30 CFR parts 905, 910, 912, 921, 922, 933, 937, 939, 941, 942 and 947 respectively. These cross references are identical to the June 1, 1987 proposal, except that California has been added because a Federal program for California was promulgated on July 13, 1988 (53 FR 26570–26579). In the proposal, OSM specifically requested comment as to whether unique conditions exist in any of these Federal program States or on Indian lands that should be reflected either as changes to the national rules or as State-specific amendments to any or all of the Federal programs or the Indian lands program. No comments were received in response to this request.

H. Effect of the Rule on State Programs

Following promulgation of this rule, OSM will evaluate State programs to determine whether any changes in these programs will be necessary. If the Director determines that any State program provisions should be amended to be made no less effective than the revised Federal rules, the individual States will be notified in accordance with the provisions of 30 CFR 732.17.

III. Procedural Matters

Federal Paperwork Reduction Act

The collections of information contained in §§ 702.11, 702.12, 702.13, 702.15 and 702.18 have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1029–0089.

Executive Order 12291 and Regulatory Flexibility Act

The Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The rule affects a relatively small number of noncoal mineral operations. The rule does not distinguish between small and large entities. The economic effects of the proposed rule are estimated to be minor and no incremental economic effects are anticipated as a result of the rule.

National Environmental Policy Act

OSM has prepared an environmental assessment (EA) on the impacts on the human environment of this rulemaking and has made a finding that the final rule will not significantly affect the quality of the human environment under section 102(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The EA is on file in the OSM Administrative Record, Room 5131, 1100 L Street, NW, Washington, DC.

Executive Order 12630

In accordance with the Attorney General's "Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings," proposals developed and published prior to the issuance of the Executive Order and the guidelines are excluded from coverage under the Executive Order.

Author

The principal author of this rule is Patrick D. Boyd, Division of Regulatory Programs, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Washington, DC 20240; telephone: 202–343–1864.

List of Subjects

30 CFR Part 700

Administrative practice and procedure, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 702

Administrative practice and procedures, Surface mining, Underground mining.

30 CFR Part 750

Indian lands, Reporting and record-keeping requirements, Surface mining, Underground mining.

30 CFR Part 870

Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Parts 905 and 910

Administrative practice and procedure, Environmental protection, Intergovernmental relations, Penalties, Surety bonds, Surface mining, Underground mining.

30 CFR Part 912

Intergovernmental relations, Surface mining, Underground mining.

30 CFR Parts 921 and 922

Administrative practice and procedure, Intergovernmental relations, Penalties, Surface mining, Underground mining.

30 CFR Part 933

Intergovernmental relations, Surface mining, Underground mining.

30 CFR Parts 937 and 939

Administrative practice and procedure, Intergovernmental relations, Penalties, Surface mining, Underground mining.

30 CFR Part 941

Intergovernmental relations, Surface mining, Underground mining.

30 CFR Part 942

Intergovernmental relations, Reporting and recordkeeping

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requirements, Surface mining, Underground mining.

30 CFR Part 947

Intergovernmental relations, Surface mining, Underground mining.

Accordingly, 30 CFR parts 700, 702, 750, 870, 905, 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947 are amended as set forth below:

Dated: November 21, 1989.

Dave O'Neal,

Assistant Secretary, Land and Minerals Management.

PART 700—GENERAL

1. The authority citation for part 700 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended; and Pub. L. 100–34.

2. Section 700.11(a)(4) is revised to read as follows:

§ 700.11 Applicability.

(a) * * *

(4) The extraction of coal incidental to the extraction of other minerals where coal does not exceed 16⅔ percent of the total tonnage of coal and other minerals removed for purposes of commercial use or sale in accordance with part 702 of this chapter.

* * * * *

3. Part 702 is added to read as follows:

PART 702—EXEMPTION FOR COAL EXTRACTION INCIDENTAL TO THE EXTRACTION OF OTHER MINERALS

Sec.

702.1 Scope.
702.5 Definitions.
702.10 Information collection.
702.11 Application requirements and procedures.
702.12 Contents of application for exemption.
702.13 Public availability of information.
702.14 Requirements for exemption.
702.15 Conditions of exemption and right of inspection and entry.
702.16 Stockpiling of minerals.
702.17 Revocation and enforcement.
702.18 Reporting requirements.

Authority: 30 U.S.C. 1201 *et seq.*, as amended.

§ 702.1 Scope.

This part implements the exemption contained in section 701(28) of the Act concerning the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16⅔ percent of the total tonnage of coal and other minerals removed for purposes of commercial use or sale.

§ 702.5 Definitions.

As used in this part, the following terms have the meaning specified, except where otherwise indicated:

(a) *Cumulative measurement period* means the period of time over which both cumulative production and cumulative revenue are measured.

(1) For purposes of determining the beginning of the cumulative measurement period, subject to regulatory authority approval, the operator must select and consistently use one of the following:

(i) For mining areas where coal or other minerals were extracted prior to August 3, 1977, the date extraction of coal or other minerals commenced at that mining area or August 3, 1977, or

(ii) For mining areas where extraction of coal or other minerals commenced on or after August 3, 1977, the date extraction of coal or other minerals commenced at that mining area, whichever is earlier.

(2) For annual reporting purposes pursuant to § 702.18 of this part, the end of the period for which cumulative production and revenue is calculated is either

(i) For mining areas where coal or other minerals were extracted prior to April 1, 1990, March 31, 1990, and every March 31 thereafter; or

(ii) For mining areas where extraction of coal or other minerals commenced on or after April 1, 1990, the last day of the calendar quarter during which coal extraction commenced, and each anniversary of that day thereafter.

(b) *Cumulative production* means the total tonnage of coal or other minerals extracted from a mining area during the cumulative measurement period. The inclusion of stockpiled coal and other mineral tonnages in this total is governed by § 702.16.

(c) *Cumulative revenue* means the total revenue derived from the sale of coal or other minerals and the fair market value of coal or other minerals transferred or used, but not sold, during the cumulative measurement period.

(d) *Mining area* means an individual excavation site or pit from which coal, other minerals and overburden are removed.

(e) *Other minerals* means any commercially valuable substance mined for its mineral value, excluding coal, topsoil, waste and fill material.

§ 702.10 Information collection.

The collections of information contained in §§ 702.11, 702.12, 702.13, 702.15 and 702.18 of this part have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1029–0089. The information will be used to determine the initial and continuing applicability of the incidental mining exemption to a particular mining operation. Response is required to obtain and maintain the incidental mining exemption in accordance with section 701(28) of the Act.

Public reporting burden for this collection of information is estimated to average one hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Information Collection Clearance Officer, OSM Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; and to the Office of Management and Budget, Paperwork Reduction Project (1029–0089), OMB, Washington, DC 20503.

§ 702.11 Application requirements and procedures.

(a)(1) Any person who plans to commence or continue coal extraction after April 1, 1990, under a Federal program or on Indian lands, or after the effective date of counterpart provisions in a State program, in reliance on the incidental mining exemption shall file a complete application for exemption with the regulatory authority for each mining area.

(2) Following incorporation of an exemption application approval process into a regulatory program, a person may not commence coal extraction based upon the exemption until the regulatory authority approves such application, except as provided in paragraph (e)(3) of this section.

(b) Existing operations. Any person who has commenced coal extraction at a mining area in reliance upon the incidental mining exemption prior to April 1, 1990, in a State with a Federal program or on Indian lands, or prior to the effective date of counterpart provisions in a State program, may continue mining operations for 60 days after such effective date. Coal extraction may not continue after such 60-day period unless that person files an administratively complete application for exemption with the regulatory authority. If an administratively complete application is filed within 60 days, the person may continue extracting coal in reliance on the exemption beyond the 60-day period until the regulatory authority makes an

administrative decision on such application.

(c) Additional information. The regulatory authority shall notify the applicant if the application for exemption is incomplete and may at any time require submittal of additional information.

(d) Public comment period. Following publication of the newspaper notice required by § 702.12(g), the regulatory authority shall provide a period of no less than 30 days during which time any person having an interest which is or may be adversely affected by a decision on the application may submit written comments or objections.

(e) Exemption determination. (1) No later than 90 days after filing of an administratively complete application, the regulatory authority shall make a written determination whether, and under what conditions, the persons claiming the exemption are exempt under this part, and shall notify the applicant and persons submitting comments on the application of the determination and the basis for the determination.

(2) The determination of exemption shall be based upon information contained in the application and any other information available to the regulatory authority at that time.

(3) If the regulatory authority fails to provide an applicant with the determination as specified in paragraph (e)(1) of this section, an applicant who has not begun may commence coal extraction pending a determination on the application unless the regulatory authority issues an interim finding, together with reasons therefor, that the applicant may not begin coal extraction.

(f) Administrative review. (1) Any adversely affected person may request administrative review of a determination under paragraph (e) of this section within 30 days of the notification of such determination in accordance with procedures established under 43 CFR 4.1280 when OSM is the regulatory authority or under corresponding State procedures when a State is the regulatory authority.

(2) A petition for administrative review filed under 43 CFR 4.1280 or under corresponding State procedures shall not suspend the effect of a determination under paragraph (e) of this section.

§ 702.12 Contents of application for exemption.

An application for exemption shall include at a minimum:

(a) The name and address of the applicant;

(b) A list of the minerals sought to be extracted;

(c) Estimates of annual production of coal and the other minerals within each mining area over the anticipated life of the mining operation;

(d) Estimated annual revenues to be derived from bona fide sales of coal and other minerals to be extracted within the mining area;

(e) Where coal or the other minerals are to be used rather than sold, estimated annual fair market values at the time of projected use of the coal and other minerals to be extracted from the mining area;

(f) The basis for all annual production, revenue, and fair market value estimates;

(g) A description, including county, township if any, and boundaries of the land, of sufficient certainty that the mining areas may be located and distinguished from other mining areas;

(h) An estimate to the nearest acre of the number of acres that will compose the mining area over the anticipated life of the mining operation;

(i) Evidence of publication, in a newspaper of general circulation in the county of the mining area, of a public notice that an application for exemption has been filed with the regulatory authority (The public notice must identify the persons claiming the exemption and must contain a description of the proposed operation and its locality that is sufficient for interested persons to identify the operation.);

(j) Representative stratigraphic cross-section(s) based on test borings or other information identifying and showing the relative position, approximate thickness and density of the coal and each other mineral to be extracted for commercial use or sale and the relative position and thickness of any material, not classified as other minerals, that will also be extracted during the conduct of mining activities;

(k) A map of appropriate scale which clearly identifies the mining area;

(l) A general description of mining and mineral processing activities for the mining area;

(m) A summary of sales commitments and agreements for future delivery, if any, which the applicant has received for other minerals to be extracted from the mining area, or a description of potential markets for such minerals;

(n) If the other minerals are to be commercially used by the applicant, a description specifying the use;

(o) For operations having extracted coal or other minerals prior to filing an application for exemption, in addition to the information required above, the following information must also be submitted:

(1) Any relevant documents the operator has received from the regulatory authority documenting its exemption from the requirements of the Act;

(2) The cumulative production of the coal and other minerals from the mining area; and

(3) Estimated tonnages of stockpiled coal and other minerals; and

(p) Any other information pertinent to the qualification of the operation as exempt.

§ 702.13 Public availability of information.

(a) Except as provided in paragraph (b) of this section, all information submitted to the regulatory authority under this part shall be made immediately available for public inspection and copying at the local offices of the regulatory authority having jurisdiction over the mining operations claiming exemption until at least three years after expiration of the period during which the subject mining area is active.

(b) The regulatory authority may keep information submitted to the regulatory authority under this part confidential if the person submitting it requests in writing, at the time of submission, that it be kept confidential and the information concerns trade secrets or is privileged commercial or financial information of the persons intending to conduct operations under this part.

(c) Information requested to be held as confidential under paragraph (b) of this section shall not be made publicly available until after notice and opportunity to be heard is afforded persons both seeking and opposing disclosure of the information.

§ 702.14 Requirements for exemption.

(a) Activities are exempt from the requirements of the Act if all of the following are satisfied:

(1) The cumulative production of coal extracted from the mining area determined annually as described in this paragraph does not exceed 16⅔ percent of the total cumulative production of coal and other minerals removed during such period for purposes of bona fide sale or reasonable commercial use.

(2) Coal is produced from a geological stratum lying above or immediately below the deepest stratum from which other minerals are extracted for purposes of bona fide sale or reasonable commercial use.

(3) The cumulative revenue derived from the coal extracted from the mining area determined annually shall not

exceed 50 percent of the total cumulative revenue derived from the

(e) Each authorized representative of the regulatory authority and the Secretary conducting an inspection

authority on the basis of the exemption application.

(3) A petition for administrative review filed under 43 CFR 4.1280 or under corresponding State procedures

revenue derived from coal and other minerals.

(b) For each period and mining area

7. Section 870.11(d) is revised to read as follows:

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exceed 50 percent of the total cumulative revenue derived from the coal and other minerals removed for purposes of bona fide sale or reasonable commercial use. If the coal extracted or the minerals removed are used by the operator or transferred to a related entity for use instead of being sold in a bona fide sale, then the fair market value of the coal or other minerals shall be calculated at the time of use or transfer and shall be considered rather than revenue.

(b) Persons seeking or that have obtained an exemption from the requirements of the Act shall comply with the following:

(1) Each other mineral upon which an exemption under this part is based must be a commercially valuable mineral for which a market exists or which is mined in bona fide anticipation that a market will exist for the mineral in the reasonably foreseeable future, not to exceed twelve months from the end of the current period for which cumulative production is calculated. A legally binding agreement for the future sale of other minerals is sufficient to demonstrate the above standard.

(2) If either coal or other minerals are transferred or sold by the operator to a related entity for its use or sale, the transaction must be made for legitimate business purposes.

§ 702.15 Conditions of exemption and right of inspection and entry.

A person conducting activities covered by this part shall:

(a) Maintain on-site or at other locations available to authorized representatives of the regulatory authority and the Secretary information necessary to verify the exemption including, but not limited to, commercial use and sales information, extraction tonnages, and a copy of the exemption application and exemption approved by the regulatory authority;

(b) Notify the regulatory authority upon the completion of the mining operation or permanent cessation of all coal extraction activities; and

(c) Conduct operations in accordance with the approved application or when authorized to extract coal under § 702.11(b) or § 702.11(e)(3) prior to submittal or approval of an exemption application, in accordance with the standards of this part for Federal programs and on Indian lands or in accordance with counterpart provisions when included in State programs.

(d) Authorized representatives of the regulatory authority and the Secretary shall have the right to conduct inspections of operations claiming exemption under this part.

(e) Each authorized representative of the regulatory authority and the Secretary conducting an inspection under this part:

(1) Shall have a right of entry to, upon, and through any mining and reclamation operations without advance notice or a search warrant, upon presentation of appropriate credentials;

(2) May, at reasonable times and without delay, have access to and copy any records relevant to the exemption; and

(3) Shall have a right to gather physical and photographic evidence to document conditions, practices or violations at a site.

(f) No search warrant shall be required with respect to any activity under paragraphs (d) and (e) of this section, except that a search warrant may be required for entry into a building.

§ 702.16 Stockpiling of minerals.

(a) *Coal.* Coal extracted and stockpiled may be excluded fom the calculation of cumulative production until the time of its sale, transfer to a related entity or use:

(1) Up to an amount equaling a 12-month supply of the coal required for future sale, transfer or use as calculated based upon the average annual sales, transfer and use from the mining area over the two preceding years; or

(2) For a mining area where coal has been extracted for a period of less than two years, up to an amount that would represent a 12-month supply of the coal required for future sales, transfer or use as calculated based on the average amount of coal sold, transferred or used each month.

(b) *Other minerals.* (1) The regulatory authority shall disallow all or part of an operator's tonnages of stockpiled other minerals for purposes of meeting the requirements of this part if the operator fails to maintain adequate and verifiable records of the mining area of origin, the disposition of stockpiles or if the disposition of the stockpiles indicates the lack of commercial use or market for the minerals.

(2) The regulatory authority may only allow an operator to utilize tonnages of stockpiled other minerals for purposes of meeting the requirements of this part if:

(i) The stockpiling is necessary to meet market conditions or is consistent with generally accepted industry practices; and

(ii) Except as provided in paragraph (b)(3) of this section, the stockpiled other minerals do not exceed a 12-month supply of the mineral required for future sales as approved by the regulatory authority on the basis of the exemption application.

(3) The regulatory authority may allow an operator to utilize tonnages of stockpiled other minerals beyond the 12-month limit established in paragraph (b)(2) of this section if the operator can demonstrate to the regulatory authority's satisfaction that the additional tonnage is required to meet future business obligations of the operator, such as may be demonstrated by a legally binding agreement for future delivery of the minerals.

(4) The regulatory authority may periodically revise the other mineral stockpile tonnage limits in accordance with the criteria established by paragraphs (b) (2) and (3) of this section based on additional information available to the regulatory authority.

§ 702.17 Revocation and enforcement.

(a) Regulatory authority responsibility. The regulatory authority shall conduct an annual compliance review of the mining area, utilizing the annual report submitted pursuant to § 702.18, an on-site inspection and any other information available to the regulatory authority.

(b) If the regulatory authority has reason to believe that a specific mining area was not exempt under the provisions of this part or counterpart provisions of the State regulatory program at the end of the previous reporting period, is not exempt, or will be unable to satisfy the exemption criteria at the end of the current reporting period, the regulatory authority shall notify the operator that the exemption may be revoked and the reason(s) therefor. The exemption will be revoked unless the operator demonstrates to the regulatory authority within 30 days that the mining area in question should continue to be exempt.

(c)(1) If the regulatory authority finds that an operator has not demonstrated that activities conducted in the mining area qualify for the exemption, the regulatory authority shall revoke the exemption and immediately notify the operator and intervenors. If a decision is made not to revoke an exemption, the regulatory authority shall immediately notify the operator and intervenors.

(2) Any adversely affected person may request administrative review of a decision whether to revoke an exemption within 30 days of the notification of such decision in accordance with procedures established under 43 CFR 4.1280 when OSM is the regulatory authority or under corresponding State procedures when a State is the regulatory authority.

(3) A petition for administrative review filed under 43 CFR 4.1280 or under corresponding State procedures shall not suspend the effect of a decision whether to revoke an exemption.

(d) *Direct enforcement.* (1) An operator mining in accordance with the terms of an approved exemption shall not be cited for violations of the regulatory program which occurred prior to the revocation of the exemption.

(2) An operator who does not conduct activities in accordance with the terms of an approved exemption and knows or should know such activities are not in accordance with the approved exemption shall be subject to direct enforcement action for violations of the regulatory program which occur during the period of such activities.

(3) Upon revocation of an exemption or denial of an exemption application, an operator shall stop conducting surface coal mining operations until a permit is obtained and shall comply with the reclamation standards of the applicable regulatory program with regard to conditions, areas and activities existing at the time of revocation or denial.

§ 702.18 Reporting requirements.

(a)(1) Following approval by the regulatory authority of an exemption for a mining area, the person receiving the exemption shall, for each mining area, file a written report annually with the regulatory authority containing the information specified in paragraph (b) of this section.

(2) The report shall be filed no later than 30 days after the end of the 12-month period as determined in accordance with the definition of "cumulative measurement period" in § 702.5 of this part.

(3) The information in the report shall cover:

(i) Annual production of coal and other minerals and annual revenue derived from coal and other minerals during the preceding 12-month period, and

(ii) The cumulative production of coal and other minerals and the cumulative revenue derived from coal and other minerals.

(b) For each period and mining area covered by the report, the report shall specify:

(1) The number of tons of extracted coal sold in bona fide sales and total revenue derived from such sales;

(2) The number of tons of coal extracted and used or transferred by the operator or related entity and the estimated total fair market value of such coal;

(3) The number of tons of coal stockpiled;

(4) The number of tons of other commercially valuable minerals extracted and sold in bona fide sales and total revenue derived from such sales;

(5) The number of tons of other commercially valuable minerals extracted and used or transferred by the operator or related entity and the estimated total fair market value of such minerals; and

(6) The number of tons of other commercially valuable minerals removed and stockpiled by the operator.

PART 750—REQUIREMENTS FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS ON INDIAN LANDS

4. The authority citation for part 750 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended; 5 U.S.C. 301; and Pub. L. 100-34.

5. Part 750 is amended by adding § 750.21 as follows:

§ 750.21 Coal extraction incidental to the extraction of other minerals.

Part 702 of this chapter is applicable on Indian lands.

PART 870—ABANDONED MINE RECLAMATION FUND—FEE COLLECTION AND COAL PRODUCTION REPORTING

6. The authority citation for part 870 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended; and Pub. L. 100-34.

7. Section 870.11(d) is revised to read as follows:

§ 870.11 Applicability.

* * * * * *

(d) The extraction of coal incidental to the extraction of other minerals where coal does not exceed 16⅔ percent of the total tonnage of coal and other minerals removed for commercial use or sale

(1) In accordance with part 702 of this chapter for Federal program States and on Indian lands or

(2) In any twelve consecutive months in a State with an approved State program until counterpart regulations pursuant to part 702 of this chapter have been incorporated into the State program and in accordance with such counterpart regulations, thereafter; and

* * * * *

SUBCHAPTER T—PROGRAMS FOR THE CONDUCT OF SURFACE MINING OPERATIONS WITHIN EACH STATE

8. The authority citations for parts 905, 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947 continue to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended; and Pub. L. 100-34.

9. Parts 905, 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947 are amended by adding the following section (the wording for the section added is the same for each affected part.):

§ .702 Exemption for coal extraction incidental to the extraction of other minerals.

Part 702 of this chapter, Exemption for Coal Extraction Incidental to the Extraction of Other Minerals, shall apply to any person who conducts coal extraction incidental to the extraction of other minerals for purposes of commercial use or sale.

* * * * *

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Part III

Environmental Protection Agency

40 CFR Parts 35 and 142
National Primary Drinking Water Regulations Implementation; Primary Enforcement Responsibility; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

SUPPLEMENTARY INFORMATION:

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Section 1413 of the SDWA. EPA first promulgated these regulations on January 20, 1976; since then, the basic

TABLE 1.—SUMMARY OF CHANGES TO 40 CFR PART 142, SUBPART B

Subpart B as revised	Content of revised section	Subpart B previously	Changes made

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 35 and 142

[WH-FRL-3576-9]

RIN 2040-AB26

National Primary Drinking Water Regulations Implementation; Primary Enforcement Responsibility

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action amends the regulations found in subpart B of 40 CFR part 142 that establish requirements for States to obtain primary enforcement responsibility ("primacy") for the Public Water System Supervision (PWSS) Program, authorized under the Safe Drinking Water Act (SDWA) (42 U.S.C. 300f et seq.). This rule establishes the procedures and deadlines for State submission and EPA review and approval or disapproval of primacy program changes, and the actions to be taken by EPA if States with primacy do not adopt the new requirements of the SDWA Amendments of 1986 pursuant to the schedule identified in this rule. This rule also changes the frequency of some State reports to EPA from annual to quarterly, and adds a requirement for States to adopt EPA's determination of best available technology (BAT) for use in granting variances from national primary drinking water regulations (NPDWRs). This rule also amends the State grant regulations found in Part 35 Subpart A to require Indian tribes to use the program grants to demonstrate program capability.

EFFECTIVE DATE: The amendments to 40 CFR parts 35 and 142 contained in this rule will take effect January 19, 1990. In accordance with 40 CFR 23.7, this regulation shall be considered final Agency action for the purpose of judicial review at 1:00 PM eastern time on January 3, 1990.

ADDRESSES: Public documents and supporting documents for the rulemaking are available for review during normal business hours at EPA, Room 1101 East Tower, 401 "M" Street, SW., Washington, DC 20460; telephone (202) 382-5522.

FOR FURTHER INFORMATION, CONTACT: The Safe Drinking Water Hotline, toll-free (800) 426-4791, or in Washington, DC at (202) 382-5533, or Carl Reeverts, Deputy Director, State Programs Division, Office of Drinking Water, 401 "M" Street, SW., Washington, DC 20460, telephone (202) 382-5522.

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I. Statutory Authority

Section 1413 of the Safe Drinking Water Act ("SDWA" or "the Act") establishes requirements a State must meet to obtain primary enforcement responsibility ("primacy") for the Public Water System Supervision (PWSS) Program. These include: (1) adopting drinking water regulations no less stringent than the national primary drinking water regulations (NPDWRs) in effect under sections 1412(a) and 1412(b); (2) adopting and implementing adequate procedures for enforcement; (3) keeping records and making such reports with respect to its activities as EPA may require by regulation; (4) issuing variances and exemptions (if allowed by the State) under conditions no less stringent than allowed by sections 1415 and 1416; and (5) adopting and being capable of implementing an adequate plan for the provision of safe drinking water under emergency situations.

II. Regulatory Background

On August 2, 1988, EPA proposed to amend the regulations setting requirements for State primacy (53 FR 29194). The primacy regulations (40 CFR part 142, Subpart B) set out requirements for States to obtain primacy for the PWSS Program, as authorized by Section 1413 of the SDWA. EPA first promulgated these regulations on January 20, 1976; since then, the basic requirements to obtain primacy have changed little. However, the operation and scope of the PWSS Program have changed considerably since the regulations were first promulgated. With the exception of Wyoming, Indiana, and the District of Columbia all eligible States and territories have obtained PWSS primacy and are implementing PWSS programs. In addition, the SDWA Amendments of 1986 made sweeping changes in the scope and content of the drinking water program, as described in Section IV.B below.

With these extensive changes in the Act and the program, portions of the primacy regulations at 40 CFR part 142, Subpart B have become outdated. In particular, the existing primacy regulations do not contain explicit procedures that States with primacy must follow in order to modify their programs to adopt new or revised EPA NPDWRs. These procedures are added by today's final rule.

III. Public Comments on the Proposal

EPA requested comments on all aspects of the August 2, 1988 proposal, including specific issues identified in the preamble. EPA received 67 written comments on the proposed rule. Fifty-six written comments were received from States or local governments and eleven written comments were received from public or professional organizations. EPA held one public hearing on the proposed rule on August 30, 1988. Two representatives of professional organizations made oral statements at that time.

A summary of the major comments and the Agency's responses to the issues raised are presented in the following section. The Agency's detailed responses to the comments received are presented in a document titled "Response to Comments Received on the Proposed Primary Enforcement Responsibility Requirements of August 2, 1988" which is available in the public docket for this rulemaking.

IV. Summary and Explanation of Today's Action

A. Summary of Changes to Subpart B

Table 1 shows the relationship between the amendments to the PWSS primacy regulations in 40 CFR part 142, subpart B and the existing regulations in that subpart.

TABLE 1.—SUMMARY OF CHANGES TO 40 CFR PART 142, SUBPART B

Subpart B as revised	Content of revised section	Subpart B previously	Changes made
142.2	Definitions	142.2	Adds definitions of "Approved State Primacy Program" and "State Program Revision."
142.10	Requirements for a determination of primary enforcement responsibility.	142.10	Makes conforming and clarifying changes; adds new BAT requirement for variances.
142.11	Initial determination of primacy enforcement authority.	142.11; 152.12(a)	Makes conforming changes and redesignates; adds Attorney General statement requirement.
142.12	Revision of State programs		New section adds schedule and procedures for revision of State programs.
142.13	Public hearing	142.13	Makes conforming changes.
142.14	Records kept by States	142.14	Unchanged.
142.15	Reports by States	142.15	Amended to change some State reporting from annual to quarterly, and redesignate some existing requirements to conform to new format.[1]
142.16	Special primacy requirements	142.16	Unchanged.
142.17	Review of State programs and procedures for withdrawal of approved primacy programs.	142.12(b)	Redesignates and retitles; adds new language to clarify EPA review for maintenance of primacy.

[1] This section was amended by the issuance on June 29, 1989 of the Total Coliforms Rule (54 FR 28544) and the Surface Water Treatment Rule (54 FR 27486). Today's rule redesignates this section to place the new reporting requirements from those rules in the new format specified today.

As indicated in Table 1, this action restructures the current subpart B to add a new section on revision of State programs (new § 142.12), retitles and places in a separate section the requirements for review of State programs and procedures for withdrawal of approved primacy programs (new § 142.17), incorporates revised State reporting requirements (revised § 142.15), and makes other conforming changes in the remaining sections to be consistent with the new state program revision section.

With the exception of State program revisions to adopt the revised Public Notification (PN) Regulation promulgated on October 28, 1987 (52 FR 41534) and new Volatile Organic Chemicals (VOC) Regulations promulgated on July 8, 1987 (52 FR 25690), today's revised primacy regulations will apply to all State program revisions to adopt new and revised NPDWRs submitted to EPA after the effective date of this rule. EPA is making an exception for the PN and VOC Regulations because most States have submitted their revisions and EPA stated in the preamble to the proposed primacy regulation that the new primacy regulation would not apply to State revisions to adopt previously promulgated NPDWRs. EPA is not extending this exception to the Surface Water Treatment Rule or Total Coliforms Rule (54 FR 27486 and 54 FR 27544, June 29, 1989) because no States have submitted program revisions to adopt those regulations. EPA never anticipated the exception would cover these two new rules; nor would it be reasonable to exempt these rules from the new primacy regulations, since they were promulgated only recently and States therefore have ample opportunity to follow the new primacy regulations in adopting them. State requests for approval of program revisions to adopt the requirements of the PN and VOC Regulations are required to comply with the primacy requirements under part 142, subpart B, in effect before today's action, and with any special primacy requirements promulgated in those two rules. At their option, States may follow the procedures in these revised primacy regulations to adopt the requirements of the PN and VOC Rules, but they are not required to.

In responding to the proposed rule, a number of commenters questioned EPA's authority to promulgate revisions to the primacy regulations. A few suggested that EPA has no authority under the amended SDWA to require States to do anything more than adopt drinking water regulations "no less stringent" than the new federal NPDWRs. These assertions are unfounded. Section 1413(b)(1) of the Act explicitly authorizes EPA to prescribe by regulation the manner in which a State may apply to EPA for a determination that primacy requirements are met and the manner in which EPA makes this determination or a determination that the requirements are no longer met. It is clearly within EPA's statutory authority to revise these regulations to establish procedures ensuring that States continue to meet all primacy requirements when new or revised NPDWRs are promulgated.

In addition, some commenters expressed the opinion that a rule to revise primacy regulations is not needed. Most of these commenters believe that the existing primacy regulations, the annual program review, and the annual grant negotiation process work well enough to meet the objective of modifying approved State primacy programs to adopt the requirements of new or revised NPDWRs. To the contrary, EPA believes there are compelling reasons to establish revision and review procedures by regulation. The amendments to the SDWA will result in program changes of unprecedented scope and magnitude; yet, the current primacy regulations are silent on the requirements and procedures for establishing and obtaining EPA approval for program changes. It is thus essential to establish by regulation clear, consistent requirements for the State/EPA revision process. These regulations will serve to ensure that States and the public are clearly informed of what is required in the process. They will also ensure that the many State revisions that will be required in the near future will be completed in an orderly, efficient and consistent manner.

B. New Program Requirements Under 1986 SDWA Amendments

The SDWA Amendments of 1986 greatly increased the scope and content of the PWSS Program. The amendments mandate that EPA promulgate NPDWRs for 83 drinking water contaminants by 1989, for 25 more contaminants by 1991 and for 25 additional contaminants every three years thereafter. In addition, EPA was required to promulgate NPDWRs to specify criteria under which filtration is required as a treatment technique for public water systems supplied by surface water sources and to require disinfection as a treatment technique for all public water systems

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along with criteria for granting variances from the disinfection requirement. EPA also was required to revise its existing public notification procedures. The 1986 SDWA Amendments also increased the Agency's authority to enforce the NPDWRs by raising EPA's maximum civil penalty authority, eliminating the requirement that a violation be willful, and giving EPA authority to issue administrative orders and assess administrative penalties.

Table 2 summarizes EPA regulations that the States will be required to adopt to retain primacy. The list of regulations in Table 2 is subject to change as EPA proceeds to implement the 1986 SDWA Amendments.

Table 2.—Summary and Status of EPA Regulatory Actions Under the SDWA Amendments Enacted June 19, 1986

Final Actions to Date

VOC (52 FR 25690, July 8, 1987).
Public Notification (52 FR 41534, October 28, 1987).
Filtration & Disinfection of Surface Water (54 FR 27486, June 29, 1989).
Total Coliforms (54 FR 27544, June 29, 1989).

Proposed Actions To Date

Lead/Copper, (53 FR 31516, August 18, 1988).
Inorganics/Synthetic Organics, 38 contaminants (54 FR 22062, May 22, 1989).

Additional Contaminants To Be Regulated

Radionuclides.
Additional Inorganics/Synthetic Organics.
Disinfection for Groundwater/Disinfection By-products.
1st Additional 25 Contaminants in 1991.
Additional 25 NPDWRS in 1994 and Every Three Years Thereafter.

To retain primacy, each State with a currently approved primacy program must revise that program to incorporate new and revised NPDWRs promulgated under SDWA sections 1412 (a) and (b), new variance and exemption provisions under sections 1415 and 1416, and the revised public notification requirements promulgated under section 1414 of the SDWA. EPA has maintained a policy of approving only State programs that have adopted the full EPA program (i.e., all requirements of SDWA section 1413 and the implementing regulations in part 142). This policy was established from the beginning of the PWSS Program to avoid split accountability between EPA and the States for direct operations and to ensure that, to the extent possible, public water systems are regulated under a single regulatory scheme. This policy avoids confusion among the regulated community and the public regarding which regulations must be followed to comply with the SDWA requirements and who has the responsibility to implement and enforce them. For the same reasons, EPA intends to continue this "full primacy" policy as it implements the 1986 SDWA Amendments.

The proposed rule maintained EPA's "full primacy" policy by setting an 18-month deadline for States to revise their approved primacy programs to adopt new and revised NPDWRs. The 18-month deadline is based on the SDWA requirement that NPDWRs become effective 18 months after promulgation by EPA. The deadline is further discussed in part IV.D. below. Although the proposal allowed extensions of the deadline for a limited period, some States may not be eligible for the extension or may be unable to adopt the new requirements by the end of the extension period and, thus, would be in violation of the primacy requirements. It is also possible that a primacy State may never agree to or be able to adopt all the new and revised requirements promulgated by EPA. EPA solicited comments on the impact of continuing the "full primacy" policy, what responsibility EPA should assume to implement and enforce new federal requirements where the State has not adopted them, and the practical implications of a program that is partially implemented by both EPA and the State.

The comments that EPA received were strongly in favor of the concept of "full primacy." However, a number of commenters were concerned that primacy requirements might become too broad and difficult with the pending promulgation of so many new and revised NPDWRs. Some suggested that if additional primacy requirements become too difficult for States to meet, EPA might want to reconsider its "full primacy" policy, to prevent the loss of good State programs. Many States indicated that their resources for drinking water programs are barely adequate to meet current program needs, and without appropriate increases in funding they will not be able to implement all of the additional requirements of the upcoming NPDWRs. These States indicated that under a "full primacy" policy they may be forced to relinquish primacy in the near future due to inadequate resources.

EPA agrees with the comments in favor of the "full primacy" concept. Partial primacy would be extremely confusing to the regulated water systems and to the public when they try to determine who is responsible for citizen complaints, inquiries, and enforcement. Redundancy in program operations (such as in laboratory analyses, sanitary surveys, review of design and construction plans, etc.) would be inefficient and costly. For these reasons, EPA will maintain the "full primacy" policy by maintaining in the final rule a deadline for the States to revise their approved primacy programs to adopt new and revised EPA regulations.

EPA understands the State concerns regarding the number and complexity of the recently promulgated and upcoming NPDWRs, and the funding required to implement them. In this final rule, EPA is maintaining the possibility of limited extensions for States that are making good faith efforts to develop the capability to implement the new or revised NPDWRs. This signals EPA's belief that while "full primacy" is the goal, the States operating in good faith with EPA must be given every opportunity to implement new requirements and keep their primacy programs. States have the opportunity to provide comments on the burden and resource requirements imposed by new NPDWRs at the time those regulations are proposed.

Commenters also expressed concern over the transitional split primary situation that would occur if there are States which obtain extensions to the deadline to complete specific program revisions and obtain EPA approval. These comments will be addressed in the discussion of timing and extensions in Section IV.D.

C. Basic Requirements for State Program Revisions (§ 142.12(a))

EPA proposed a new § 142.12 to establish the regulatory requirements, application procedures, and the EPA review and decision process for State program revisions.

Proposed § 142.12(a) required that a State submit a request for EPA approval for all revisions to its approved primacy program to adopt new or revised NPDWRs. It also required that a State notify EPA in writing of any State-initiated modifications, including modifications to State statutory or regulatory authority or program procedures that might affect the approved primacy program, and to notify EPA of a proposed re-delegation of program elements from the approved State agency to any other State agency. The proposal would also have allowed the Administrator to require State submission of materials whenever EPA had reason to believe that the State program might have changed, in the event the State failed to notify the Agency of the change.

Several groups misunderstood the proposed regulations to require States to fully reapply for primacy every time EPA promulgates a new rule. These commenters expressed concern over the burden such a system would impose. EPA does not intend, however, that a State must submit a complete description of its primacy program and reapply for primacy every time the State revises its program to incorporate the requirements of a new or revised NPDWR. The State request for EPA approval of its revisions will only need to address those elements of the approved primacy program that are changed to meet the new regulatory requirements (as well as any special primacy requirements in the specific NPDWRs). The elements of the approved primacy program are those listed in section 142.11(a) that were submitted with the initial State application and approved by EPA, and all EPA-approved program revisions thereafter. Where these elements are unchanged by the program revision request, the State need only check off the element as unchanged. This point has been clarified in the final rule at § 142.12(c)(1)(i), which now states that the request for approval shall include (among other things) "the documentation necessary to update the approved State primacy program, with identification of those elements of the approved primacy program that have not changed because of the program revision."

However, it may be necessary for the State to initially provide EPA with documents that are part of the currently approved primacy program that EPA does not possess (particularly the relevant statutes and regulations) before the State begins revising its program to incorporate new or revised NPDWRs. The State may satisfy this requirement under § 142.12 or § 142.17, whichever applies first, by providing such materials to the EPA Regional office. Subsequent submittals may reference the first, more complete update.

There were several related comments suggesting that EPA clarify the final rule to indicate that State program elements with a greater scope of coverage than the federal program requirements are not subject to federal approval. To indicate which revisions a State would have to submit to EPA for its approval, the proposal defined "State program revision" as a statutory, regulatory, or administrative change to the "approved State primacy program." In turn, the proposal defined the "approved State primacy program" as the program elements submitted with the initial State application for primacy pursuant to § 142.11(a) and subsequently approved by EPA and any EPA-approved revisions to those elements. In other words, under the proposal, only those elements of the State drinking water program that were required to be submitted with the initial primacy application are considered part of the approved State primacy program, and only revisions to those elements are considered "State program revisions."

Many States have programs with a greater scope of coverage than required as part of an approved primacy program. Such program elements include activities such as operator certification programs, construction and operating permit programs for water treatment plants, or regulations governing contaminants for which EPA has not promulgated NPDWRs. These elements are not considered part of the approved primacy program because they have a greater scope of coverage than the primacy requirements established by EPA pursuant to the SDWA. These elements therefore will not be subject to EPA approval. EPA believes this point is made sufficiently clear by the definitions in the proposed regulations, which are retained in the final rule (although the definition of "State program revision" was revised to clarify a related matter, as noted in the following paragraph). A minor change to § 142.12(a)(1) in the final rule (which now refers to EPA approval of revisions to a State's "approved primacy program" rather than "program") clarifies this point further.

A number of commenters felt that EPA should eliminate "administrative" changes from the definition of "State program revision" and limit its review to changes in State statutes and regulations. While we have concluded that eliminating review of all administrative changes would not be appropriate, EPA agrees that certain administrative changes need not be subject to EPA approval. Specifically, EPA approval is only required for changes to those administrative programs that are part of the "approved State primacy program," as discussed above. This includes, for example, changes to administrative programs for lab certification, sanitary surveys, and system inventories, all of which are listed in § 142.11(a) among the 15 program elements that form the core of the "approved State primacy program." In contrast, the regulations are not intended to require EPA approval of administrative changes that are made for purposes other than incorporating the new or revised federal requirements—*i.e.*, those changes (for example, changes to agency staffing levels) that do not affect the approved State primacy program.

To clarify this point in the final rule, EPA has revised the definition of a "State program revision." Specific reference to administrative program changes, as well as statutory and judicial ones, has been eliminated. Instead, the final rule defines a "State program revision" as "a change in the approved State primacy program." In this manner, only those administrative changes that affect a State's approved primacy program will be subject to EPA approval for primacy purposes.

EPA received one comment suggesting that EPA should initially require States to rejustify their entire State PWSS program instead of applying for approval of revisions in a piecemeal fashion. EPA realizes the importance of a basic State program which is operating effectively. However, at this time, EPA is not aware of problems in the approved State primacy programs which would warrant complete program rejustification. States will be significantly revising their primacy programs over the next few years. These programs will be under intense scrutiny through EPA reviews of State program revisions, annual program and grant reviews and special EPA reviews such as the enforcement reviews recently completed. EPA believes that this close scrutiny will identify potential program deficiencies for resolution and will result in approved State primacy programs that are effective in meeting current and future primacy requirements.

One commenter stated that EPA should use an "exceptions" approach to primacy decisions and only require approval of State program revisions when EPA determines that a State is not meeting primacy requirements. EPA disagrees. It is the responsibility of the State primacy agency to inform EPA of all changes to the approved State primacy program. In particular, EPA must be informed of State plans regarding adoption of new or revised NPDWRs as soon as possible after the NPDWRs are promulgated. If the State has not adopted or does not plan to adopt a new or revised NPDWR by its effective date, EPA must be prepared to implement and enforce the new PWSS requirements at that time. Without a process for State requests for approval of revisions, EPA might not know if or when a State revised its program to adopt new or revised NPDWRs until an annual review. Therefore, in the final rule, EPA is maintaining the requirement

that a State must request EPA approval, within the deadlines in § 142.12(b), of changes to adopt the requirements of new or revised NPDWRs.

EPA did find merit, however, in several comments suggesting that notification of State-initiated changes (i.e., changes made other than to adopt new or revised EPA regulations) and transfers of State agency responsibility should be handled through the annual review process. EPA agrees that its oversight of State-initiated changes and transfers of responsibility is a routine part of EPA oversight of the State primacy program and does not require a new and separate administrative process, as was proposed. It remains important that the State notify EPA of State-initiated changes and transfers of responsibility because they may affect the State's authority or capability to implement the program. However, the Agency agrees that these notifications can be handled efficiently through the annual review process, as they are currently. EPA is therefore changing the final rule to eliminate from the new program revisions process (section 142.12) the requirement for States to notify EPA of State-initiated changes and redelegations of State agency responsibility, and to indicate in § 142.17 that notification of such changes and transfers must take place instead during the periodic review of the primacy program by the Administrator.

D. Timing of State Program Revisions and Extension Process (§ 142.12(b))

EPA proposed to add a new § 142.12(b) to require the State to submit to EPA final requests for approval of program revisions to adopt new or revised EPA regulations within 15 months of the promulgation of EPA's regulations. The proposal also required that the Administrator act on such requests within 90 days after receipt of the final and complete State request. The proposal allowed the Administrator to initiate an extension of these deadlines or approve a State request for an extension of the 15-month deadline under certain circumstances.

EPA proposed that a State may request an extension of up to two years. To obtain an extension, the proposal required the State to demonstrate that it meets one or more of the following criteria: (1) The State currently lacks the legislative or regulatory authority to enforce the new requirements or the capability to implement them; (2) the State is taking steps to adopt and implement the new provisions within its existing authority and capabilities; (3) the State is requesting the extension to group two or more program revisions in a single legislative or regulatory action or otherwise cannot meet the original deadline in spite of a good faith effort to do so. The extension request was to include a schedule setting forth when and how the State would be able to adopt and effectively implement the new provisions.

To minimize disruptions in program administration, EPA proposed that the State implement interim measures, as they apply to the new regulations, during extension periods. As conditions to receiving an extension, the proposal required that the State do the following during the extension: inform public water systems of the new requirements and the fact that EPA would be overseeing implementation of the requirement until EPA approves the primacy program revision; collect and store laboratory results and other compliance data; conduct informal follow-up on violations and assist EPA in development of enforcement actions; provide technical assistance to public water systems; and provide EPA with all the information prescribed by § 142.15 on State reporting.

Many commenters suggested that the States should be given a full 18 months to adopt statutes or regulations and make other changes to their approved primacy program. They pointed out that in many States 15 months is not enough time to develop proposed changes, solicit comments on the drafts, have the final changes passed through the legislature or State agency, obtain an Attorney General's statement, and complete whatever other changes are necessary to the remainder of a State's approved primacy program. They believe that an 18-month period to adopt regulations and other program changes would still coincide with the SDWA requirement that NPDWRs become effective 18 months after promulgation by EPA.

EPA agrees that 15 months may not be enough time for a State to complete the changes to its regulations and the remainder of its approved primacy program. Therefore, in the final rule, the deadline in § 142.12(b) for submitting a complete and final request for EPA approval of revisions has been changed to 18 months. EPA will act on such requests within 90 days of receipt of a complete and final request.

One commenter suggested that EPA has no legal authority to grant extensions to the 18-month deadline. This commenter points to section 1412(b)(10) of the Act, which states that NPDWRs "shall take effect eighteen months after the date of their promulgation," and asserts that States therefore must act to allow new drinking water rules to "take effect" within this 18-month period, or else they must lose primacy.

In light of this comment, EPA believes there is a need to clarify the reasons and authority behind this provision for extensions. EPA recognized, in developing this rule, the high likelihood that there will be circumstances beyond the control of States causing them not to be able to meet the 18-month period for implementing new PWS regulations. EPA has always had discretion under the Act and primacy regulations to determine when to initiate program withdrawal from States that no longer meet the requirements for primacy (see existing § 142.12(b)(2)). EPA has therefore determined that a provision for extensions would be appropriate and beneficial as a means of formalizing the criteria and priorities for initiating program withdrawal on the basis of missed deadlines. The extension process would only apply to States that exceed the 18-month deadline despite good faith efforts to comply, and would neither be automatic nor necessarily for the full period allowed. The extension provision will require States to adopt an acceptable plan and schedule for developing program capability necessary to implement the new requirements.

Consequently, in the final rule, EPA has retained the availability of extensions of up to two years. EPA's intention in adding this provision is to better define the factors EPA will consider in the exercise of its discretion to initiate withdrawal procedures. EPA has revised section 142.17(a)(2) (the provision for program withdrawal procedures, as re-numbered) to make clear that the Agency's decision to initiate withdrawal whenever it determines that a State no longer meets primacy requirements (either because a State has not adopted the requirement of new NPDWRs or for other reasons) is discretionary. Further, § 142.17(a)(2) (as revised) now makes it explicit that EPA's decision to initiate withdrawal for failure to revise a State program in a timely manner is tied to whether the State takes appropriate corrective actions under § 142.12(b)(2) by requesting an extension and negotiating with EPA the conditions the State must meet during the extension period to develop the necessary program capability and revisions. EPA is adopting this revision to § 142.17(a) without soliciting comment because it constitutes only a clarification of the Agency's discretion under the Act and existing regulations to initiate withdrawal procedures.

A number of commenters expressed the opinion that the two-year extension is a fair and good faith signal that EPA understands State problems in rapidly promulgating program revisions, but questioned how flexible EPA would be in using the criteria to grant extensions. EPA feels that the three criteria in § 142.12(b)(2) provide States with sufficient latitude to obtain extensions when it is impossible to meet the original 18-month deadline. It must be emphasized, however, that the extensions are not meant to be automatic or necessarily for the entire two-year period. States must demonstrate a good faith effort to meet the original deadline and the reasons for extension requests must be based on at least one of the three criteria. Accordingly, EPA has revised § 142.12(b)(2) in the final rule to emphasize the importance of the "good faith effort" of the States and is maintaining the three extension criteria to provide the States flexibility in negotiating extensions based on demonstrated need.

EPA believes it is reasonable and appropriate to grant these limited extensions to States rather than to initiate withdrawal procedures when a State has not adopted new PWS laws and regulations within 18 months. Program withdrawal would be a lengthy and unnecessary process where a State is taking reasonable steps to come into compliance and would run counter to EPA's objective of working with the States to provide them with the full opportunity to implement new federal requirements and retain their programs. Moreover, during the extension period, public water systems within the State would, in any event, be subject to the new federal regulations, which would be enforced by EPA during that time.

EPA recognizes that granting extensions will result in temporary split primacy during the extension period. However, the Agency concluded that this situation is acceptable in light of its temporary nature and the need to provide limited extensions to States that otherwise have sound programs and that are making good faith efforts to come into compliance with new regulations.

Under the proposed rule, the date being extended was the date for EPA's approval of program revisions (which, under the proposal, was 18 months after EPA's promulgation of new or revised regulations). However, as noted, the final rule has been changed to allow States a full 18 months within which to submit final requests for approval of revisions, and EPA's deadline for approving the revisions (or not) has been moved back correspondingly. Therefore, because extensions are tied to the 18-month period within which NPDWRs become effective, the first sentence of § 142.12(b)(2) in the final rule has been revised so that the date being extended is now the date that the State submits its final request.

Several commenters believed the conditions for the extension in proposed § 142.12(b)(3) were unreasonable and impractical because they require a State, during the extension period, to do everything necessary to implement new EPA rules except enforce them. They felt that States would not be able to meet these conditions for an extension because of their lack of resources and program capability.

EPA proposed the extension conditions to minimize the program confusion and disruption that could occur during the extension period and to ensure that States are involved in program operations during that period to the maximum extent that is reasonable. EPA did not intend that the States would have to be entirely capable of implementing the new or revised rules during the extension period. Neither did the Agency expect that the extension conditions listed in proposed § 142.12(b)(3) would be rigid or all necessarily complied with in every case. Rather, EPA intends that the extent of State participation in implementing the PWSS Program during the extension period can be negotiated with the Region and re-evaluated as part of the annual grant process based on State capabilities at the time. The extension schedule would indicate how the State plans to build capability during the extension. Accordingly, in the final rule, EPA has modified § 142.12(b)(3) to clarify that the conditions a State must meet during the extension period will be decided on a case-by-case basis.

E. Content of a Request for EPA Approval of State Program Revisions § 142.12(c))

EPA proposed to add a new section 142.12(c) to define the contents of a State's request for EPA approval of a revision. The proposal required that the State request must include: (1) An update to the information required in an initial application for primacy, as listed in § 142.11(a), to the extent the items listed have been changed to reflect requirements of the new EPA rules; (2) any additional materials required under future NPDWRs to be part of the State program revision request (these will be specified in § 142.16); and (3) an Attorney General's statement demonstrating that the State has adequate legal authority under its statutes and regulations to meet all EPA requirements to carry out the program revision.

1. *Documentation Required Under § 142.11(a).* The proposal required that each program revision request update the elements included in the approved primacy program. The "approved primacy program" was defined in the proposed § 142.2 to be those elements listed in § 142.11(a): The text of the State's statutes and regulations (and a demonstration that they are no less stringent than the comparable EPA regulations); a description of the State procedures for administration and enforcement of the regulations to demonstrate that the State is implementing adequate procedures for enforcement of the program; a statement that the State will make reports and keep records as required by EPA; a copy of the State variance and exemption statutes and regulations (if any) and a demonstration that they are no less stringent than the corresponding federal laws and regulations; and a description of the State's plan for the provision of safe drinking water under emergency conditions. The proposal did not require the State to include materials listed in § 142.11(a) that are unchanged by the program revision under consideration.

A number of commenters were concerned that the proposal would require States to submit a large amount of documentation that is unnecessary, because most elements of approved primacy programs will be unaffected by primacy revisions. These commenters misunderstood the proposed rule. As indicated in Part IV.C above, the State request for EPA approval of its revisions need include only those approved primacy program documents that have been changed to reflect requirements of the new EPA rules, if an up-to-date approved primacy program (including statutes and regulations) has previously been submitted to the EPA Regional office pursuant to § 142.17(a). The final rule language at § 142.12(c)(1)(i) clarifies this point.

The final rule language of § 142.12(c)(1)(i) was also modified to require the State to include a side-by-side comparison of federal requirements and the corresponding State requirements. The requirement for a side-by-side comparison was added here because it was deleted from the requirements for an Attorney General's statement (see discussion under Part IV.E. 3 below).

2. *Additional Regulation-Specific Materials.* The proposal required that each program revision request include

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any additional materials required in the individual EPA regulation that is the basis for the program revision. These additional required materials will be specified in the individual EPA regulations and will be codified in section 142.16. Currently, section 142.16 contains special primacy requirements for the revised Public Notification Rule promulgated on October 28, 1987 (52 FR 41534), the revised Total Coliforms Rule promulgated on June 29, 1989 (54 FR 27544), and the Surface Water Treatment Rule promulgated on June 29, 1989 (54 FR 27486). Special primacy requirements have also been proposed for the Lead and Copper NPDWRs (53 FR 31516, August 18, 1988) and the NPDWRs for 38 inorganics/organics (54 FR 22062, May 22, 1989).

Several commenters suggested that EPA should not specify special primacy requirements for new NPDWRs. Today's rule, however, does not address the special primacy requirements that may appear in specific NPDWRs. Comments regarding such requirements should be directed to the particular NPDWR at the time it is proposed.

3. *Attorney General's Statement.* The proposed rule required that each initial primacy application and program revision request include an Attorney General's statement demonstrating that the laws and regulations of the State provide adequate authority to carry out the program or program revision submitted to EPA for approval. This statement would demonstrate that the State statutes and regulations meet the requirements of § 142.10 as they apply to the program or program revision. The proposal required an Attorney General's statement for all State requests for approval of programs or program revisions unless EPA specifically waived the requirement in certain circumstances.

EPA also requested comment in the proposal on an alternative approach in which there would be no requirement for an Attorney General's statement to be submitted with State requests for EPA approval of programs or program revisions. Instead, the State primacy agency would submit a side-by-side comparison of the federal requirements and corresponding State statutes and regulations. After reviewing the State applications, EPA would have the opportunity to request an explanation from the Attorney General on any outstanding issues.

Some of the comments received by EPA supported the proposed requirement for an Attorney General's statement as an essential part of the primacy approval process. Many States, however, expressed strong objections to this proposed requirement. Because all but three of the 57 States and territories have already been granted primacy, the States' comments focused on the requirement of an Attorney General's statement for program revisions rather than for initial primacy applications. The States objected primarily on the grounds that an Attorney General's statement would be an unnecessary burden and would cause delays in obtaining EPA's approval of program revisions.

The State commenters in general preferred the alternative approach discussed in the proposal. They predicted that adopting this alternative would allow States to avoid delays of up to one year that would result if they were required to submit an Attorney General statement with their program revision applications.

In light of the States' objections, EPA considered the options of reducing the scope and coverage of the Attorney General's statement or eliminating it as a requirement entirely. EPA focused on the two basic parts that the Attorney General's statement, as proposed, would need to contain in order to demonstrate that the State laws provide adequate authority to carry out the program revisions. First, the statement would certify, as a threshold matter, that the new State statutes or regulations were duly adopted and are enforceable. EPA continues to believe that having this assurance that the State will be able to enforce its laws is crucial to the Agency's primacy determination. Moreover, several States themselves pointed out that their new statutes and regulations routinely receive this type of review by their Attorney General. Therefore, EPA determined it is clearly necessary and will not be unduly burdensome or cause unnecessary delays to retain this portion of the Attorney General's statement requirement in the final rule.

The second part of the Attorney General's statement contemplated in the proposal was a demonstration of State authorities by means of citations to State statutes, regulations or ordinances, and judicial decisions (proposed §§ 142.11(a)(6) and 142.12(c)(1)(iii)). This part of the Attorney General's statement would focus on the meaning of the State laws rather than their enforceability. It would require a discussion of how the State's program meets the standards set forth in § 142.10(a). This would include a side-by-side description of how the revised State statutes and regulations are "no less stringent" than each of EPA's new national primary drinking water regulations ("NPDWRs"). Where a State has simply adopted the federal regulations verbatim, for example, this discussion could be very brief. On the other hand, if the structure or language of State regulations differ significantly from the corresponding federal regulations, a more detailed discussion would be necessary to resolve any ambiguities over whether the State regulations are adequate.

EPA carefully considered whether to retain the requirement for a side-by-side demonstration in the Attorney General's statement in light of the significant State objections to the burden and delays it would impose. For the reasons discussed below, EPA has decided to eliminate this requirement in the final rule. Accordingly, for both initial applications for primacy and State requests for progrm revisions, the final rule requires only that the Attorney General statement contain a certification that the State laws and regulations were duly adopted and are enforceable. The Attorney General statement need not include a side-by-side demonstration of authorities.

Under the final rule, however, a State must nevertheless submit a side-by-side demonstration of authorities; the demonstration simply need not be prepared or signed by the Attorney General. The rule explicitly requires that a side-by-side demonstration be supplied with the initial primacy application (§ 142.11(a)(1), as redesignated). In addition, for program revisions, although the requirement for a side-by-side demonstration has been eliminated from the Attorney General statement provision (§ 142.12(c)(1)(iii)) to accommodate the States' concerns, it has been added as a requirement to § 142.12(c)(1)(i), which prescribes the documents that States must otherwise submit with their requests. EPA concluded that a side-by-side demonstration is necessary in all cases to serve as a "road map" for EPA review of State requests. This part of a State's request will be especially important in light of the large number and complexity of program revisions that States will need to adopt in the near future (see section IV.B). Of course, States are not precluded from having their Attorney General prepare these demonstrations; the Attorney General's involvement is simply no longer a requirement.

In addition, in the final rule, EPA has not altogether excluded the State Attorney General's involvement in the matters addressed in the side-by-side demonstration. As contemplated in the proposed alternative, EPA has added a provision that authorizes the Agency, on a case-by-case basis, to require further involvement by the Attorney General

where necessary to resolve primacy issues. Specifically, the new provisions (§§ 142.11(a)(6)(ii) and 142.12(c)(3)) authorize EPA, once it has reviewed the State initial primacy application or program revision request, to seek a supplemental opinion from the Attorney General addressing any issues that have been raised or unresolved by the State's initial submittal. Given the number and complexity of upcoming program revisions, EPA expects that there may be a need to request the Attorney General's opinion on select issues if EPA cannot reasonably ascertain the adequacy of State authorities without such assistance. Ultimately, then, some State Attorneys General may be significantly involved in matters concerning the adequacy of State authorities for certain rules.

EPA believes that the more limited requirements in the final rule represent an appropriate balance between the need for Attorney General involvement and the need to minimize the burden on States and avoid delays that could result from Attorney General involvement in a program where such involvement has traditionally been minimal. Requiring the States otherwise to submit a side-by-side demonstration and having the ability to involve the Attorney General on issues the Agency later identifies will ensure that EPA receives a detailed discussion of the new State laws. In response to the State concerns, this approach will allow each State the flexibility to decide who it wants to prepare the required materials and thereby will reduce the burden and disruption that could have resulted from the requirements in the proposed rule.

In addition, eliminating the requirement for a detailed Attorney General statement should shorten the times within which the States can submit their applications for program revisions, albeit delays in the EPA approval process can be expected at a later point if EPA needs to obtain a supplemental opinion from the Attorney General. EPA finds that any potential for such delays are justified by the streamlining of the process at an earlier point and consequent reduction in State burden. In sum, the Agency believes that the change from the requirements in the proposed rule to the more limited Attorney General statement in the final rule is warranted in light of the reduction in burden on the States and given that EPA ultimately will obtain the information it may need on interpretations of State law.

The Agency recognizes that the requirement adopted in today's rule is somewhat different from the requirements for an Attorney General statement under other Agency authorities (the Clean Water Act National Pollutant Discharge Elimination System Program (40 CFR 123.23, 123.62(b)(1)), the Resource Conservation and Recovery Act Hazardous Waste Program (40 CFR 271.7, 271.21(b)(1)), and the Safe Drinking Water Act Underground Injection Control Program (40 CFR 145.24, 145.32(b)(1)). Under the PWSS Program as well as these other programs, however, EPA ultimately is able to obtain the information it needs from the State's Attorney General; the primary difference is simply one of timing. Moreover, EPA may at all times enforce its own PWSS regulations in the same manner as if the State had not received primary enforcement authority for the PWSS program. The Agency's authority to overfile and enforce the federal PWSS regulations was an important factor in its decision not to require a detailed Attorney General statement.

One commenter gave detailed reasons in support of the proposed requirement for a full Attorney General statement. This commenter noted first that requiring an Attorney General statement would help weed out legally unsound State regulations. This concern is addressed in the final rule, which requires the Attorney General to address whether the State rules are enforceable and to respond in supplemental opinions to any further issues raised by EPA. In addition, this commenter asserts that a detailed Attorney General statement would increase the efficiency of EPA's program reviews. EPA does not believe, however, that there will be an undue decrease in efficiency from the requirements in the final rule; any such decrease in efficiency and the time to ultimate EPA approval would be justified in light of the decreased burden on the States. This commenter also argues that there would be a substantial benefit to forcing the State primacy agency to work more closely with the State Attorney General's office, paving the way for more cooperation between the two offices in future enforcement efforts. While this may be true, EPA believes there are ways for States to meet this objective other than through the detailed Attorney General statement. Moreover, the more limited Attorney General statement required under today's rule may itself go far toward satisfying this goal.

A number of States commented that the requirement that an Attorney General's statement be submitted with program revision requests would disrupt current State administrative procedures. The proposed rule permitted the statement to be signed only by the Attorney General or an "independent legal counsel," defined as an attorney having "full authority to independently represent the State primacy agency or tribe in court on all matters pertaining to the State or tribal program." The commenters requested that this definition be clarified to include other State offices that may be performing legal reviews of new State statutes and regulations.

EPA understands these concerns, but determined that no change in the definition of "independent legal counsel" was needed. This definition is essentially identical to the definitions in the regulations for the RCRA hazardous waste, NPDES, and UIC primacy programs. It serves to ensure that the Attorney General statement reflects the opinions of the State authority who will actually be enforcing the State laws.

The commenters did provide examples of existing State administrative procedures that place the responsibility for legal review of State regulations with State entities other than the Attorney General or independent legal counsel (as defined here). In no case do these other State entities act as the State's enforcement agent; however, these other State attorneys are responsible for performing functions that would support a State certification that the regulations are legally adopted and enforceable. We encourage States to use existing State procedures to avoid unnecessary, duplicative assessments to the maximum extent possible. Today's rule does not preclude the Attorney General (or "independent legal counsel") from using these existing State procedures, where appropriate, to support the certification that the Attorney General is required to make.

EPA has retained in the final rule the discretion to waive the requirement for an Attorney General's statement in certain circumstances. The final rule requires an Attorney General's statement unless the Administrator waives the requirement on a rule-by-rule basis. The waiver requirement with respect to State-initiated revisions, however, has been deleted since the rule no longer requires States to submit a separate request to EPA for approval of such revisions outside the existing annual review process.

A waiver of the Attorney General's statement will not be available for program revisions to adopt the recently promulgated Surface Water Treatment Rule and Total Coliforms Rule. These

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rules require extensive program revisions; Attorney General involvement is therefore warranted. In addition, while the preamble to the proposal stated that EPA did not intend to waive the requirement for an Attorney General statement for any of the future NPDWRs, EPA has reconsidered this issue and determined that, instead, it will decide whether to waive the Attorney General requirement at the time each new or revised NPDWR is promulgated.

Also, in the final rule, the first clause in proposed § 142.11(a)(6) has been deleted since EPA deemed it unnecessary to define which applications for initial primacy would require Attorney General statements. Under the final rule, each of the few remaining possible initial applications for primacy will require an Attorney General statement.

F. Procedures for Reviewing a Request for EPA Approval of State Program Revisions (§ 142.12(d))

EPA proposed to add a new § 142.12(d) to establish procedures for State submission of requests for approval of program revisions and for EPA review and decision on these program revisions. Proposed § 142.12(d) also established the public notice and public hearing requirements for EPA approval or disapproval of State program revisions.

Section 142.12(d) as proposed established a two-step process for State submission and EPA review of State requests, requiring that the State first submit a preliminary request (containing a draft of the material listed in § 142.12(c)) for EPA review and tentative determination. Under the proposal, EPA's tentative determination would have been subject to public notice and the opportunity to comment (and a public hearing if requested) for revisions deemed "substantial" by the Administrator. The second step would require the State to submit a final request (containing complete and final State materials) for formal EPA approval or disapproval. The final State request would include, for example, State statutory and regulatory changes already promulgated, descriptions of any other changes to the approved State primacy program, and a signed Attorney General's statement. Under proposed § 142.12(d)(2)(iv), if EPA disapproved the revisions, EPA would notify the State that it no longer meets the requirements set forth in the rule for maintenance of primary enforcement authority. This provision also authorized EPA, in this situation, to initiate procedures leading to withdrawal of primacy.

EPA received a number of comments regarding this proposed two-step process. Certain commenters indicated that the two-step process would delay approval of State program revisions and thereby increase the need for extensions. Some of these commenters focused on the notice and opportunity for public hearing at the draft stage as a potentially significant cause of delay. In addition, some commenters asserted that it would not be possible to obtain an Attorney General's statement in 15 months.

EPA believes these comments express valid concerns over the potential for delays in the approval process. Therefore, EPA has revised the final rule to require public notice and opportunity for a hearing on the EPA determination regarding program revisions only after EPA takes action on the complete and final State request. The final rule does not provide for public notice and the opportunity to comment or request a public hearing with respect to the EPA's tentative determination on State preliminary requests for approval of revisions (which, under the final rule, are made at the State's discretion). To effect these changes, the proposed rule sections related to the public notice and hearing requirements for program revisions (§§ 142.12 (d)(1)(iii), (d)(2)(ii), and (d)(2)(v)) have been eliminated. The final rule adds the public notice and hearing requirement in § 142.12(d)(3), titled "EPA's determination on a complete and final request." In place of the separate provisions for notice, comment and hearings under the proposal, however, § 142.12(d)(3) simply incorporates the notice and hearing procedures that are already in the rule under § 142.13 for initial primacy decisions.

As noted, the proposed rule provided for public notice and participation only with respect to EPA's determination to approve or disapprove "substantial" program revisions. In the final rule, EPA has eliminated the term "substantial" and will provide public notice and opportunity to request a hearing on all § 142.12(d)(3) determinations to approve or disapprove program revisions. The Agency made this change because State requests under § 142.12 for approval of revisions are required in the final rule only for State program revisions that adopt new EPA regulations. The Agency always intended that public notice and participation on EPA's determination would be required for most such revisions. In contrast, changes deemed not to be substantial would primarily fall into the category of State-initiated changes, which are no longer subject to the § 142.12 approval process.

In addition, to further respond to comments on potential delays in the preliminary phase of the State program revision process, the final rule has been changed to require a signed Attorney General's statement only with the State's complete and final request for approval, instead of with the preliminary request (§ 142.12(c)(1)(iii)). Also, the procedures in proposed § 142.12(d) relating to State-initiated changes (*i.e.*, changes that do not adopt new or revised EPA regulations) are no longer applicable and have been deleted since the rule no longer requires States to seek separate approval of such changes outside the existing annual review process.

The Agency also received comments regarding EPA's review of draft materials and final submittals. Several commenters stated that a required submittal of draft materials is not always appropriate because the draft materials may not be in a form that is complete enough to merit EPA review and preliminary determination. On the other hand, other commenters stated that it would be very disruptive if EPA reviews the submittals and first raises issues only after a State has promulgated its final regulations.

EPA believes it is crucial for States to receive a full EPA review and tentative determination on a draft package before the State promulgates its rules to ensure that no issues are raised after the State has officially adopted its program changes. EPA agrees with the commenters, however, that requiring a formal preliminary State submission would not always be appropriate and should be left instead to the State's discretion. Therefore, EPA has changed the final rule to allow States the option of whether or not to submit a preliminary request. Under § 142.12(d)(1)(i), a State now "may," instead of "must," submit a request for a preliminary determination, and a State now "should," instead of "must," submit this request as soon as practicable after promulgation of the EPA regulations. In addition, minor changes to § 142.12(d)(2) were made to reflect the fact that preliminary requests are now optional. Whenever a State does submit a preliminary request, however, EPA will make a tentative determination according to § 142.12(d)(1)(ii).

States are strongly encouraged to submit a preliminary request to EPA for a tentative determination, including the draft side-by-side analysis. If they decide not to do so, and submit only a final request for approval of revisions,

they are at risk that issues may be raised after their revisions are final and EPA may be forced to disapprove the State revisions. EPA believes that this risk provides a great incentive to the States to submit draft program revisions in all cases where they are not absolutely certain that the revisions are issue-free.

G. Options for Addressing Minimum State Enforcement Authorities

The Preamble to the proposed rule included an advance notice of proposed rulemaking related to the current EPA primacy requirements for State enforcement authorities. Both the Safe Drinking Water Act and the implementing regulations at § 142.10 require a State to have adequate procedures for the enforcement of its drinking water regulations in order to obtain and maintain primary enforcement responsibility for the PWSS Program. Under § 142.10(b)(6)(vi), adequate procedures for the enforcement of drinking water regulations include authority to assess civil or criminal penalties for violation of the State's primary drinking water regulations.

The current regulations in part 142, however, do not specify any minimum penalty authority. EPA indicated that it is considering whether to amend the current primacy requirements to require States to have enforcement authorities close to or the same as EPA's enforcement authorities under the amended SDWA. The 1986 SDWA Amendments increased EPA's maximum civil penalty authority from $5,000 to $25,000 per day and eliminated the requirement that a violation be "willful" (section 1414(b) of the SDWA).

The 1986 SDWA Amendments also added administrative order authority to EPA's mix of enforcement tools. Section 1414(a) of the Act was amended to give EPA authority to issue administrative orders and to assess administrative penalties of up to $5,000 if the initial administrative order is violated. Most EPA environmental programs currently have some type of administrative order and administrative penalty authority. In the PWSS Program, EPA may assess an administrative penalty only for violation of a compliance order. The States in the PWSS Program, in general, do not currently have administrative order or administrative penalty authority. EPA requested comment on whether it should require States as a condition of primacy to have, first, administrative order authority, and, second, administrative penalty authority equivalent to EPA's authority.

Commenters were divided on the need for additional State enforcement authorities. Some commenters favored minimum State penalty enforcement authority and administrative order authority. Others favored these authorities but not to the extent of forcing withdrawal of primacy if they were not adopted. Still others were opposed to these authorities for the following reasons. Some indicated that their State legislatures are unlikely to approve these authorities, thereby jeopardizing State primacy. Some viewed the imposition of such authorities as removing the State's discretion to define what actions are most appropriate for compliance. Finally, some believe that enforcement authorities alone are ineffective as enforcement tools and that the focus of EPA oversight should be on the effectiveness of a State program instead of the State penalty authorities in place.

At this time, EPA still lacks adequate information to determine what enforcement penalty authorities are most effective, whether a minimum penalty authority is appropriate, and whether administrative order authority should be required. EPA is currently researching State authorities and the effectiveness of State programs and enforcement actions which are in current use. When EPA has finished these assessments, it will determine whether minimum enforcement authorities and administrative order authorities should be required by rulemaking and will decide whether to propose such additional primacy requirements.

H. Other Revisions to Current Regulations (parts 35 and 142)

In the proposed rule, EPA amended other sections of part 142, subpart B in addition to those necessary to restructure and conform the rule language to accommodate the new section on State program revisions. EPA also proposed changes to the grant regulations in part 35. Of these changes, the following four are significant:

1. *State Adoption of BAT.* EPA proposed a revision of the primacy requirements in § 142.10(d), which relates to the variance and exemption procedures. Under the 1986 SDWA Amendments, EPA must promulgate its findings of best available technology (BAT) for the purpose of obtaining variances at the time each new or revised NPDWR is promulgated. EPA proposed to require States that allow variances to adopt requirements no less stringent than EPA's findings of BAT for use in the State's variance process.

One commenter suggested that EPA should allow States to grant variances if a system uses a control technology that is "equivalent" to EPA's finding of BAT. This commenter stated that the equivalent BAT should be allowed because not all BAT is appropriate for all conditions in all facilities.

EPA agrees that BAT may indeed be different based on individual circumstances. However, the Administrator's determination of BAT for variance purposes promulgated with each new and revised NPDWR already takes into account the different conditions that exist for particular systems. Section 1415(a)(1)(A) states that the Administrator's finding of BAT for variances "may vary depending on the number of persons served by the system or for other physical conditions related to engineering feasibility and costs of compliance * * *." While EPA will seriously consider comments regarding equivalent BATs for variance purposes (and how such equivalence can be demonstrated), these comments should be addressed during the review and comment on the individual NPDWR itself.

Accordingly, for purposes of granting variances, States must adopt the BATs that EPA has identified in the individual NPDWRs (as codified in 40 CFR part 142, subpart G) and may not adopt any different technologies as BAT, unless specifically allowed under Subpart G. Because this comment revealed some confusion on this issue, EPA has revised § 142.10(d) in the final rule to clarify this point. Specifically, this subsection now provides directly that States must adopt EPA's findings of BAT for variances, rather than "provisions that are no less stringent" than EPA's findings of BAT.

2. *Revision to State Reporting Requirements.* The proposal included revisions of the current regulations at § 142.15 related to State reporting. These revisions would modify the reports which States make through the Federal Reporting Data System (FRDS). The proposal required States to submit FRDS reports to EPA every quarter. The reports would, at a minimum, contain updates of the State's inventory of public water systems, information on violations and enforcement actions, and a summary of newly granted variances and exemptions. This would revise the current rule, which only requires information to be submitted annually and does not require information on enforcement actions. The proposal also would require the State to notify EPA of any new variances and exemptions granted during the quarter. (The current rule simply requires "prompt"

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notification.) This would put the variance and exemption reporting requirement on the same schedule as the other State reports. Finally, the proposal would add a new paragraph to reserve space for special reports beyond the basic reporting requirements. These special reports may be required in new NPDWRs promulgated subsequent to this rule.

One commenter suggested that the reports regarding violations should be submitted on a real time basis and that the initiation of enforcement actions should be reported immediately upon filing. The commenter further believes EPA should require States to provide EPA with the documents necessary to enable EPA to start keeping compliance files for all public water systems, in order to let EPA carry out the federal enforcement provisions of the 1986 SDWA Amendments. EPA disagrees with the commenter that quarterly reporting is not sufficient to allow EPA to properly implement its enforcement function under the SDWA. Quarterly reporting of violations and State enforcement actions is an essential component of the State/EPA enforcement agreements. It establishes a systematic process for determining when EPA independent enforcement actions are warranted, while giving States an opportunity to respond first to violations in a timely and appropriate manner. EPA also disagrees that EPA should get more information to build separate files for public water system compliance. The requirements in § 142.14 of this part for State record retention of compliance data on each PWS, and EPA's access to those State files, is sufficient.

Many States commented, on the other hand, that changing the current regulatory requirement for annual reporting to quarterly reporting was unnecessary and overly burdensome. Some commenters recommended that information be required through the annual State grant process, or be gathered through EPA on-site visits. EPA believes strongly that violation and State enforcement information is needed quarterly to effectively oversee the State programs and determine timely and appropriate federal enforcement action. Further, quarterly reporting of the violations and State enforcement actions through EPA's Federal Reporting Data System (FRDS) is the most efficient way to gather the necessary information. In fact, all States have been voluntarily submitting the quarterly violation and enforcement information through FRDS for some time. Therefore, in the final rule, EPA is maintaining the requirement for quarterly reporting for violations, State enforcement actions, and new variances and exemptions.

Several commenters objected to the requirement for submitting to EPA information on violations of State requirements, as this would be beyond the scope of the approved State primacy program. Another commenter requested that we only require reporting of new violations and State enforcement actions that occurred during the prior quarter. EPA agrees with both of the comments and has clarified the quarterly reporting requirement in § 142.12(a) to require only submission of new violations of State regulations that adopt the EPA requirements and new State enforcement actions for violation of State regulations implementing EPA requirements taken during the previous quarter.

The other two types of information for which EPA proposed to require quarterly reports are the additions and corrections to the inventory and the summary status report on variances and exemptions. After considering the comments on the proposed rule, EPA now believes it is not critical to update this information quarterly. The final rule has been changed to allow this information to be submitted no less than annually.

EPA has moved the requirements for special reports in the Surface Water Treatment Rule and Total Coliforms Rule to new § 142.15(c). No change to the reporting requirements themselves, however, was made. The Agency expects to further amend § 142.15 in the future to add new special State reporting requirements in connection with other new NPDWRs.

3. *Program Capability Considerations.* EPA proposed to revise the current program grant regulations (40 CFR 35.410 and 35.415) and the existing primacy requirement (§ 142.10(b)) to explicitly consider program capability in the grant and primacy decision process. The proposed grant regulations required a State applying for an initial award under section 1443(a) of the Act to demonstrate that it will be capable of establishing a public water system supervision program within one year of the initial grant award. In the case of Indian Tribes, upon their agreement, at least one year of the grant funding was to be used to demonstrate program capability to implement the requirement of § 142.10. The proposed primacy regulations (§ 142.10(b)) required a State wanting to obtain or retain primacy to demonstrate that it is capable of implementing adequate procedures for the enforcement of the primacy program.

Many commenters questioned EPA's intention regarding the proposed capability requirements. Some indicated that it is unrealistic for EPA to presume that the States have the financial and personnel resources to fully implement every aspect of every drinking water regulation before EPA would approve a State's program revisions. Some also questioned whether EPA would expect such capability even if federal funding were insufficient to immediately implement all existing and new or revised requirements and suggested that program capability and performance should be negotiated through the annual program review and grant planning process only.

The capability of States to implement the large number of upcoming new federal requirements will continue to be of significant concern to EPA. EPA's intention in the proposal was that determinations of capability would be assessed on a case-by-case basis considering a State's management, technical and administrative demands. EPA agrees, however, that capability would be best addressed in the grant negotiation process, where State resources and federal funding can be taken into consideration. Therefore, the final rule retains the existing language in § 142.10(b), deleting the proposed requirement for a demonstration of capability as part of the review for primacy. The final rule also retains the existing language for the State grant regulation under 40 CFR 35.410, to respond to comments that the proposed changes to this provision were confusing and unnecessary to achieve the intent of emphasizing capability. The final rule does, however, retain the proposed addition to § 35.415 for grants awarded to Indian tribes applying for an initial primacy development grant, which is consistent with EPA's intent in administering the Indian Lands provisions of the SDWA amendments (section 1451), as implemented in the Indian primacy rule promulgated on September 26, 1988 (53 FR 37806).

4. *Emergency Plans.* EPA did not propose a change to existing § 142.11(e) (redesignated today as § 142.11(a)(5)), which requires a description of the State's plan for the provision of safe drinking water under emergency circumstances. However, EPA realized it would be helpful to indicate that emergency plans which are a part of the EPA-approved State Wellhead Protection Programs under SDWA section 1428 could be used to satisfy the PWSS emergency plan requirement as it relates to public water supplies from groundwater sources. This eliminates the need for a duplicate plan. Therefore, in the final rule, EPA has indicated in § 142.11(a)(5) that it will accept "contingency plans" which are part of an EPA-approved State Wellhead Protection Program for the emergency plan requirement related to groundwater sources in the State primacy program. EPA is promulgating this change without seeking public comment because it is a minor change which should reduce State burden without interfering with regulatory objectives.

V. Compliance With Executive Order 12291

Executive Order 12291 requires that a regulatory agency determine whether a new regulation will be "major" and, if so, that the Agency conduct a Regulatory Impact Analysis. A major rule is defined as a regulation which is likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal agencies, State agencies, and geographical regions; or

(3) A significant adverse effect on competition, employment, investment, production, innovation, or on the ability of United States-based enterprises to compete in domestic or export markets.

Since this rule does not meet the definition of a major regulation, the Agency has not conducted a Regulatory Impact Analysis.

The proposed rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Comments from OMB to EPA and any response to these comments are available for viewing in the public docket for this rule at EPA, Room 1101, East Tower, Washington, DC 20460.

VI. Paperwork Reduction Act

The information collection requirements (ICR) contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2040-0090.

Public reporting for this collection of information is estimated to total approximately 32,400 burden hours for all States for the three years covered by the ICR. This reporting covers burden hours for States requesting approval of State program revisions to adopt new and revised NPDWRs.

A number of commenters strongly objected to the increased paperwork burden on the States to meet the proposed requirement to request EPA approval of all State program revisions. Specific objections were to the new and separate procedure for program revisions, the new requirement for an Attorney General's statement, and the repetitive nature of submissions for each program revision.

In response to comments, the final rule now requires a separate State request for EPA approval of primacy program revisions only for State adoption of new and revised EPA regulations. Other State-initiated changes will be reviewed by EPA as part of the existing annual review process. Further, the Attorney General statement requirement was narrowed to requiring only a certification that the State rules are legally adopted and enforceable. Finally, the comment that the State request for each program revision was repetitive paperwork was a misunderstanding of the proposal, which required only that changes to the approved primacy program be submitted with each program revision. The language in the rule has been clarified to reaffirm this intent. These changes, and other streamlining actions in the final rule, reduced the paperwork burden estimated in the ICR from 42,000 burden hours to 32,400.

VII. Regulatory Flexibility Act

The Regulatory Flexibility Act requires that federal agencies prepare regulatory flexibility analyses assessing the impacts of proposed rules on entities such as small businesses, small organizations, and small governmental jurisdictions. Such analysis is not required, however, when the head of an agency certifies that a proposed rule would not have a significant effect on a substantial number of small entities.

Today's rule impacts States that apply for or revise programs for primary enforcement authority ("primacy") under section 1413 of the SDWA. By definition under the Regulatory Flexibility Act (5 U.S.C. 601, section 3, chapter 6), States are not small entities covered under the provisions of the Regulatory Flexibility Act. Accordingly, I certify that this rule will not have significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Parts 35 and 142

Administrative practices and procedures, Intergovernmental relations, Reporting and recordkeeping requirements, Water supply, Indians.

Dated: November 30, 1989.

William K. Reilly,

Administrator.

For the reasons set forth in the preamble, title 40, chapter I of the Code of Federal Regulations (CFR) is amended as follows:

PART 35—STATE AND LOCAL ASSISTANCE

1. The authority citation for part 35 continues to read as follows:

Authority: Secs. 105 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7405 and 7601(a)); secs. 106, 205(g), 205(j), 206, and 501(a) of the Clean Water Act, as amended (33 U.S.C. 1256, 1285(g), 1285(j), 1288, and 1361(a)); secs. 1443 and 1450 of the Safe Drinking Water Act (42 U.S.C. 300j–2 and 300j–9); secs. 2002(a) and 3011 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6912(a), 6931, 6947, 6949); and secs. 4, 23, and 25(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136b, 136w, and 136w(a)).

2. Section 35.415(a)(2) is revised to read as follows:

§ 35.415 Indian tribes.

(a) * * *

(2) The applicant has a Public Water System Supervision Program or agrees to establish one within three years of the initial award and agrees to assume primary enforcement responsibility within this period. Upon agreement by the applicant, at least one year of the grant funding will be used to demonstrate program capability to implement the requirements found in § 142.10.

* * * * *

PART 142—NATIONAL PRIMARY DRINKING WATER REGULATIONS IMPLEMENTATION

1. The authority citation for part 142 is revised to read as follows:

Authority: 42 U.S.C. 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, and 300j–9.

2. Section 142.2 is amended by removing the paragraph designations on the existing definitions, by placing the existing definitions in alphabetical order, and by adding, in alphabetical order, definitions for "Approved State primacy program" and "State program revision", to read as follows:

§ 142.2 Definitions.

* * * * *

"Approved State primacy program" consists of those program elements listed in § 142.11(a) that were submitted

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with the initial State application for primary enforcement authority and approved by the EPA Administrator and all State program revisions thereafter that were approved by the EPA Administrator.

* * * * *

"State program revision" means a change in an approved State primacy program.

* * * * *

3. Section 142.10 is amended by revising the introductory paragraph and paragraphs (a) and (d), to read as follows:

§ 142.10 Requirements for a determination of primary enforcement responsibility.

A State has primary enforcement responsibility for public water systems in the State during any period for which the Administrator determines, based upon a submission made pursuant to § 142.11, and submission under § 142.12, that such State, pursuant to appropriate State legal authority:

(a) Has adopted drinking water regulations which are no less stringent than the national primary drinking water regulations (NPDWRs) in effect under part 141 of this chapter;

* * * * *

(d) If it permits variances or exemptions, or both, from the requirements of the State primary drinking water regulations, it shall do so under conditions and in a manner no less stringent than the requirements under sections 1415 and 1416 of the Act. In granting variances, the State must adopt the Administrator's findings of best available technology, treatment techniques, or other means available as specified in Subpart G of this part. (States with primary enforcement responsibility may adopt procedures different from those set forth in Subparts E and F of this part, which apply to the issuance of variances and exemptions by the Administrator in States that do not have primary enforcement responsibility, provided, that the State procedures meet the requirements of this paragraph); and

* * * * *

4. Section 142.11 is amended by redesignating the introductory text of the section and paragraph (a) as paragraph (a) introductory text and paragraph (a)(1), paragraph (b) introductory text and paragraphs (b)(1) through (b)(6) as paragraph (a)(2) introductory text and paragraphs (a)(2)(i) through (a)(2)(vi), and paragraphs (c) through (e) as paragraphs (a)(3) through (a)(5).

5. Section 142.11 is further amended by revising the heading and newly redesignated paragraphs (a) introductory text and (a)(5) and by adding new paragraph (a)(6), to read as follows:

§ 142.11 Initial determination of primary enforcement responsibility.

(a) A State may apply to the Administrator for a determination that the State has primary enforcement responsibility for public water systems in the State pursuant to section 1413 of the Act. The application shall be as concise as possible and include a side-by-side comparison of the Federal requirements and the corresponding State authorities, including citations to the specific statutes and administrative regulations or ordinances and, wherever appropriate, judicial decisions which demonstrate adequate authority to meet the requirements of § 142.10. The following information is to be included with the State application.

* * * * *

(5) A brief description of the State's plan for the provision of safe drinking water under emergency conditions. NOTE: In satisfaction of this requirement, for public water supplies from groundwater sources, EPA will accept the contingency plan for providing alternate drinking water supplies that is part of a State's Wellhead Protection Program, where such program has been approved by EPA pursuant to section 1428 of the SDWA.

(6)(i) A statement by the State Attorney General (or the attorney for the State primacy agency if it has independent legal counsel) or the attorney representing the Indian tribe that certifies that the laws and regulations adopted by the State or tribal ordinances to carry out the program were duly adopted and are enforceable. State statutes and regulations cited by the State Attorney General and tribal ordinances cited by the attorney representing the Indian tribe shall be in the form of lawfully adopted State statutes and regulations or tribal ordinances at the time the certification is made and shall be fully effective by the time the program is approved by EPA. To qualify as "independent legal counsel," the attorney signing the statement required by this section shall have full authority to independently represent the State primacy agency or Indian tribe in court on all matters pertaining to the State or tribal program.

(ii) After EPA has received the documents required under paragraph (a) of this section, EPA may selectively require supplemental statements by the State Attorney General (or the attorney for the State primacy agency if it has independent legal counsel) or the attorney representing the Indian tribe. Each supplemental statement shall address all issues concerning the adequacy of State authorities to meet the requirements of § 142.10 that have been identified by EPA after thorough examination as unresolved by the documents submitted under paragraph (a) of this section.

6. In § 142.12 paragraphs (a)(1) through (a)(3) are redesignated as § 142.11 (b)(1) through (b)(3), and in § 142.11 the newly redesignated paragraph (b)(3) is revised to read as follows:

§ 142.11 Initial determination of primary enforcement responsibility.

* * * * *

(b) * * *

(3) When the Administrator's determination becomes effective pursuant to § 142.13, it shall continue in effect unless terminated pursuant to § 142.17.

7. Section 142.12 is revised to read as follows:

§ 142.12 Revision of State programs.

(a) *General requirements.* Either EPA or the primacy State may initiate actions that require the State to revise its approved State primacy program. To retain primary enforcement responsibility, States must adopt all new and revised national primary drinking water regulations promulgated in part 141 of this chapter and any other requirements specified in this part.

(1) Whenever a State revises its approved primacy program to adopt new or revised Federal regulations, the State must submit a request to the Administrator for approval of the program revision, using the procedures described in paragraphs (b), (c), and (d) of this section. The Administrator shall approve or disapprove each State request for approval of a program revision based on the requirements of the Safe Drinking Water Act and of this part.

(2) For all State program revisions not covered under § 142.12(a)(1), the review procedures outlined in § 142.17(a) shall apply.

(b) *Timing of State requests for approval of program revisions to adopt new or revised Federal regulations.* (1) Complete and final State requests for approval of program revisions to adopt new or revised EPA regulations must be submitted to the Administrator within 18 months after promulgation of the new or revised EPA regulations, unless the State requests an extension and the Administrator has approved the request pursuant to paragraph (b)(2) of this section. If the State expects to submit a final State request for approval of a program revision to EPA more than 18 months after promulgation of the new or revised EPA regulations, the State shall request an extension of the deadline before the expiration of the 18-month period.

(2) The final date for submission of a complete and final State request for a program revision may be extended by EPA for up to a two-year period upon a written application by the State to the Administrator. In the extension application the State must demonstrate it is requesting the extension because it cannot meet the original deadline for reasons beyond its control despite a good faith effort to do so. The application must include a schedule for the submission of a final request by a certain time and provide sufficient information to demonstrate that the State:

(i)(A) Currently lacks the legislative or regulatory authority to enforce the new or revised requirements, or

(B) Currently lacks the program capability adequate to implement the new or revised requirements; or

(C) Is requesting the extension to group two or more program revisions in a single legislative or regulatory action; and

(ii) Is implementing the EPA requirements to be adopted by the State in its program revision pursuant to paragraph (b)(3) of this section within the scope of its current authority and capabilities.

(3) To be granted an extension, the State must agree with EPA to meet certain requirements during the extension period, which may include the following types of activities as determined appropriate by the Administrator on a case-by-case basis:

(i) Informing public water systems of the new EPA (and upcoming State) requirements and that EPA will be overseeing implementation of the requirements until EPA approves the State program revision;

(ii) Collecting, storing and managing laboratory results, public notices, and other compliance and operation data required by the EPA regulations;

(iii) Assisting EPA in the development of the technical aspects of enforcement actions and conducting informal follow-up on violations (telephone calls, letters, etc.);

(iv) Providing technical assistance to public water systems;

(v) Providing EPA with all information prescribed by § 142.15 of this part on State reporting; and

(vi) For States whose request for an extension is based on a current lack of program capability adequate to implement the new requirements, taking steps agreed to by EPA and the State during the extension period to remedy the deficiency.

(c) *Contents of a State request for approval of a program revision.* (1) The State request for EPA approval of a program revision shall be concise and must include:

(i) The documentation necessary (pursuant to § 142.11(a)) to update the approved State primacy program, and identification of those elements of the approved State primacy program that have not changed because of the program revision. The documentation shall include a side-by-side comparison of the Federal requirements and the corresponding State authorities, including citations to the specific statutes and administrative regulations or ordinances and, wherever appropriate, judicial decisions which demonstrate adequate authority to meet the requirements of § 142.10 as they apply to the program revision.

(ii) Any additional materials that are listed in § 142.16 of this part for a specific EPA regulation, as appropriate; and

(iii) For a complete and final State request only, unless one of the conditions listed in paragraph (c)(2) of this section are met, a statement by the State Attorney General (or the attorney for the State primacy agency if it has independent legal counsel) or the attorney representing the Indian tribe that certifies that the laws and regulations adopted by the State or tribal ordinances to carry out the program revision were duly adopted and are enforceable. State statutes and regulations cited by the State Attorney General and tribal ordinances cited by the attorney for the Indian tribe shall be in the form of lawfully adopted State statutes and regulations or tribal ordinances at the time the certification is made and shall be fully effective by the time the request for program revision is approved by EPA. To qualify as "independent legal counsel," the attorney signing the statement required by this section shall have full authority to independently represent the State primacy agency or tribe in court on all matters pertaining to the State or tribal program.

(2) An Attorney General's statement will be required as part of the State request for EPA approval of a program revision unless EPA specifically waives this requirement for a specific regulation at the time EPA promulgates the regulation, or by later written notice from the Administrator to the State.

(3) After EPA has received the documents required under paragraph (c)(1) of this section, EPA may selectively require supplemental statements by the State Attorney General (or the attorney for the State primacy agency if it has independent legal counsel) or the attorney representing the Indian tribe. Each supplemental statement shall address all issues concerning the adequacy of State authorities to meet the requirements of § 142.10 that have been identified by EPA after thorough examination as unresolved by the documents submitted under paragraph (c)(1) of this section.

(d) *Procedures for review of a State request for approval of a program revision.*—(1) *Preliminary request.* (i) The State may submit to the Administrator for his or her review a preliminary request for approval of each program revision, containing the information listed in paragraph (c)(1) of this section, *in draft form.* The preliminary request does not require an Attorney General's statement in draft form, but does require draft State statutory or regulatory changes and a side-by-side comparison of State authorities with EPA requirements to demonstrate that the State program revision meets EPA requirements under § 142.10 of this part. The preliminary request should be submitted to the Administrator as soon as practicable after the promulgation of the EPA regulations.

(ii) The Administrator will review the preliminary request submitted in accordance with paragraph (d)(1)(i) of this section and make a tentative determination on the request. The Administrator will send the tentative determination and other comments or suggestions to the State for its use in developing the State's final request under paragraph (d)(2) of this section.

(2) *Final request.* The State must submit a complete and final request for approval of a program revision to the Administrator for his or her review and approval. The request must contain the information listed in paragraph (c)(1) of this section *in complete and final form,* in accordance with any tentative determination EPA may have issued. Complete and final State requests for program revisions shall be submitted within 18 months of the promulgation of the new or revised EPA regulations, as specified in paragraph (b) of this section.

(3) *EPA's determination on a complete and final request.* (i) The Administrator

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shall act on a State's request for approval of a program revision within 90 days after determining that the State request is complete and final and shall promptly notify the State of his/her determination.

(ii) If the Administrator disapproves a final request for approval of a program revision, the Administrator will notify the State in writing. Such notification will include a statement of the reasons for disapproval.

(iii) A final determination by the Administrator on a State's request for approval of a program revision shall take effect in accordance with the public notice requirements and related procedures under § 142.13.

8. Section 142.13 is amended by revising paragraph (a) to read as follows:

§ 142.13 Public hearing.

(a) The Administrator shall provide an opportunity for a public hearing before a determination pursuant to § 142.11 that the State meets or does not meet the requirements for obtaining primary enforcement responsibility, or a determination pursuant to § 142.12(d)(3) to approve or disapprove a State request for approval of a program revision, or a determination pursuant to § 142.17 that a State no longer meets the requirements for primary enforcement responsibility.

* * * * *

9. Section 142.15(c) is revised to read as follows:

§ 142.15 Reports by States.

* * * * *

(c) *Special Reports.* * * *

(1) *Surface Water Treatment Rule.*

(2) *Total Coliforms.*

10. Section 142.15 is further amended, paragraphs (b)(3) and (b)(4) are redesignated as § 142.15(c)(1)(i)(A) and (c)(1)(i)(B), paragraph (e) is redesignated as § 142.15(c)(1)(ii), and paragraph (b)(5) is redesignated as the text of § 142.15(c)(2) and the heading of § 142.15(c)(2) remains unchanged.

11. Section 142.15 paragraphs (a), (b), and (d) are revised to read as follows:

§ 142.15 Reports by States.

(a) Each State which has primary enforcement responsibility shall submit quarterly reports to the Administrator on a schedule and in a format prescribed by the Administrator, consisting of the following information:

(1) New violations by public water systems in the State during the previous quarter of State regulations adopted to incorporate the requirements of national primary drinking water regulations;

(2) New enforcement actions taken by the State during the previous quarter against public water systems with respect to State regulations adopted to incorporate the requirements of national primary drinking water regulations;

(3) Notification of any new variance or exemption granted during the previous quarter. The notice shall include a statement of reasons for the granting of the variance or exemption, including documentation of the need for the variance or exemption and the finding that the granting of the variance or exemption will not result in an unreasonable risk to health. The State may use a single notification statement to report two or more similar variances or exemptions.

(b) Each State which has primary enforcement responsibility shall submit annual reports to the Administrator on a schedule and in a format prescribed by the Administrator, consisting of the following information:

(1) All additions or corrections to the State's inventory of public water systems;

(2) A summary of the status of each variance and exemption currently in effect.

* * * * *

(d) The reports submitted pursuant to this section shall be made available by the State to the public for inspection at one or more locations within the State.

12. New § 142.17 is added to read as follows:

§ 142.17 Review of State programs and procedures for withdrawal of approved primacy programs.

(a)(1) At least annually the Administrator shall review, with respect to each State determined to have primary enforcement responsibility, the compliance of the State with the requirements set forth in § 142.10 and the approved State primacy program. At the time of this review, the State shall notify the Administrator of any State-initiated program changes (i.e., changes other than those to adopt new or revised EPA regulations), and of any transfer of all or part of its program from the approved State agency to any other State agency.

(2) When, on the basis of the Administrator's review or other available information, the Administrator determines that a State no longer meets the requirements set forth in § 142.10, and the State has failed to request or has been denied an extension under § 142.12(b)(2) of the deadlines for meeting those requirements, or has failed to take other corrective actions required by the Administrator, the Administrator may initiate proceedings to withdraw program approval. The Administrator shall notify the State in writing of EPA's intention to initiate withdrawal proceedings and shall summarize in the notice the information available that indicates that the State no longer meets such requirements.

(3) The State notified pursuant to paragraph (a)(2) of this section may, within 30 days of receiving the Administrator's notice, submit to the Administrator evidence demonstrating that the State continues to meet the requirements for primary enforcement responsibility.

(4) After reviewing the submission of the State, if any, made pursuant to paragraph (a)(3) of this section the Administrator shall either determine that the State no longer meets the requirements of § 142.10 or that the State continues to meet those requirements, and shall notify the State of his or her determination. Any determination that the State no longer meets the requirements of § 142.10 shall not become effective except as provided in § 142.13.

(b) If a State which has primary enforcement responsibility decides to relinquish that authority, it may do so by notifying the Administrator in writing of the State's decision at least 90 days before the effective date of the decision.

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Wednesday
December 20, 1989

Part IV

Department of Education

Graduate Assistance in Areas of National Need Program, Inviting Applications for New Awards for Fiscal Year (FY) 1990; Notice

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DEPARTMENT OF EDUCATION

[CFDA No.: 84.200]

Graduate Assistance in Areas of National Need Program; Inviting Applications for New Awards for Fiscal Year (FY) 1990

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), the notice contains information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of Program: To provide—through academic departments and programs of institutions of higher education—fellowships to assist graduate students of superior ability who demonstrate financial need, in order to sustain and enhance the capacity for teaching and research in areas of national need.

Deadline for Transmittal of Applications: January 29, 1990.

Available Funds: $15,793,000.

Estimated Range of Awards: $100,000–$500,000.

Estimated Average Size of Awards: $250,000.

Estimated Number of New Awards: 15.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), 34 CFR part 75 (Direct Grant Programs), 34 CFR part 77 (Definitions that Apply to Department Regulations), 34 CFR part 85 (Government-wide Debarment and Suspension) (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)).

Description of Program: The Graduate Assistance in Areas of National Need Program is authorized under part D of title IX of the Higher Education Act of 1965, as amended by Public Law 99-498, the Higher Education Amendments of 1986 (20 U.S.C. 1134l–1134q).

Eligibility: (a)(1) Any academic department, program or unit (hereafter referred to as "academic department") of an institution of higher education, as defined in section 1201(a) of the Higher Education Act of 1965, as amended, that offers a program of post-baccalaureate study leading to a graduate degree in an area of national need as established in the Priorities section of this notice and that has been in existence for at least four years at the time of applications is eligible to apply for a grant.

(2) An academic department, as described in paragraph (a)(1) of this section, may submit a joint application with one or more nondegree granting institutions which have formal arrangements for the support of doctoral dissertation research with degree-granting institutions. For the purposes of this program, a nondegree granting institution is any organization which—

(i) Is described in section 501(c)(3) of the Internal Revenue Code of 1954, and is exempt from tax under section 501(a) of the Code;

(ii) Is organized and operated substantially to conduct scientific and cultural research and graduate training programs;

(iii) Is not a private foundation;

(iv) Has academic personnel for instruction and counseling who meet the standards of the institution of higher education; and

(v) Has necessary research resources not otherwise readily available in the institution of higher education.

(b) An individual is eligible to receive an award from an academic department participating in this program if the individual—

(1) Has financial need, as determined under criteria developed by the institution of higher education;

(2) Has an excellent academic record in the individual's previous program or programs of study;

(3) Plans a teaching or research career;

(4) Plans to pursue the highest possible degree available in the individual's course of study; and

(5)(i) Is a citizen or national of the United States;

(ii) Is a permanent resident of the United States;

(iii) Provides evidence from the Immigration and Naturalization Service that he or she is in the United States for other than temporary purposes with the intention of becoming a citizen or permanent resident; or

(iv) Is a permanent resident of the Republic of Palau or the Commonwealth of the Northern Mariana Islands.

(c) An institution must provide assurances that it will seek talented students from traditionally underrepresented backgrounds. The Secretary suggests that applicants consider "traditionally underrepresented backgrounds" to mean minorities and other groups, including women, who historically have been underrepresented in the specific area of graduate study for which a fellowship is awarded.

(d) The academic department of the institution of higher education is responsible for making accurate determination concerning the criterion in paragraph (b) of this section.

Priorities: The Secretary gives an absolute preference to applications that propose to provide fellowships in one or more of the following areas of national need: Chemistry, Engineering, Mathematics, and Physics. Under 34 CFR 75.105(c)(3), the Secretary funds under this competition only applications that meet one or more of these absolute priorities.

Selection Procedures: (a) Geographically balanced review panels of nationally recognized scholars will use the selection criteria to evaluate, score, and rank applications.

(b) Consistent with an allocation of awards based on quality of competing applications, an equitable geographic distribution among public and private institutions of higher education will be promoted.

Selection Criteria:

(a)(1) The Secretary uses the following selection criteria to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) *The criteria.*—(1) *Meeting the purposes of the authorizing statute.* (30 points) The Secretary reviews each application to determine how well the project will meet the purpose of 20 U.S.C. 1134l–1134q, including consideration of—

(i) The objectives of the project; and

(ii) How the objectives of the project further the purposes of the authorizing statute.

(2) *Extent of need for the project.* (20 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the statute that authorizes the program, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective;

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition; and

(vi) For grants under a program that requires the applicant to provide an opportunity for participation of students enrolled in private schools, the quality of the applicant's plan to provide that opportunity.

(4) *Quality of key personnel.* (13 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraph (b)(4)(i) (A) and (B) will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age or handicapping condition.

(ii) To determine personnel qualifications under paragraphs (b)(4)(i) (A) and (B), the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: see 34 CFR 75.590 Evaluation by the grantee.)

(7) *Adequacy of resources.* (7 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

Funding Requirements: (a) No grant to an academic department of an institution of higher education shall be less than $100,000 nor greater than $500,000 for any fiscal year.

(b) From at least 60 percent of the funds received under this program, an academic department of an institution of higher education shall, consistent with the limitations in this paragraph, make commitments to graduate students at any point of their graduate study to provide stipends for applicable expenses, except for tuition and fees, for the length of time necessary to complete the course of graduate study. Because original awards to an academic department of an institution of higher education may not be made for longer than three years, an academic department of an institution of higher education may not make a commitment to a graduate student for more than three calendar years of support under the Graduate Assistance in Areas of National Need Program.

(**Note:** The institution could make a commitment for more than three years using institutional funds for years beyond the first three years.) If an institution successfully competes for a new award in a subsequent competition, a student may receive additional support, but in no case shall a student receive more than five calendar years of support.

(c) The size of the stipend awarded to students each year shall be determined by the institution, except that no annual stipend award under this program may exceed $10,000, or the demonstrated level of need, determined on the basis of criteria developed by the institution, whichever is less.

(d) From the remainder of the funds, the academic department or program may award fellowship recipients amounts to pay tuition, fees and other costs of education not included in student stipends. No grant funds may be used for the general operational overhead of the academic department.

Matching Requirements: An academic department must provide from non-Federal sources an amount at least equal to 25 percent of the grant. The matching funds must be used for the same purposes as the grant funds, as specified in paragraphs (a) through (d) of the Funding Requirements section of this notice.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.200), Washington, DC 20202-4725, or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.200), Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

(b) An application must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a date postmark. Before relying on this method, an applicant should check with its local post office.

(2) A "Grant Application Receipt Acknowledgement" will be mailed by the Application Control Center to each applicant. If you fail to receive the notification of application receipt within fifteen (15) days from the date you mailed the application, call: U.S. Department of Education, Application Control Center, (202) 732–2495.

Application Instructions and Forms

The appendix to this application is divided into three parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

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Part II: Budget Information—Non-Construction Programs Budget Form and Instructions.

Part III: Application Narrative Statutory Assurances

Additional Materials

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certification Regarding Debarment, Suspension, and Other Responsibility Matters: Primary Covered Transactions (ED Form GCS–008) and instructions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form GCS–009) and instructions. (Note: ED Form GCS–009 is intended for the use of primary participants and should not be transmitted to the Department.)

One or both of the following, as appropriate:

Certification Regarding Drug-Free Workplace Requirements: Grantees Other than Individuals (ED 80–0004).

Certification Regarding Drug-Free Workplace Requirements: Grantees Who Are Individuals (ED 80–0005).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an *original signature.* No grant may be awarded unless a completed application form has been received.

FOR FURTHER INFORMATION CONTACT: Dr. Allen P. Cissell, U.S. Department of Education, Division of Higher Education Incentive Programs, 400 Maryland Avenue, SW., Washington, DC 20202–5251. Telephone: (202) 732–4415.

Program Authority: 20 U.S.C., 11341–q.

Dated: December 11, 1989.

Roberta B. Dunn,

Acting Assistant Secretary for Postsecondary Education.

Appendix

BILLING CODE 4000–01–M

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☒ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State; B. County; C. Municipal; D. Township; E. Interstate; F. Intermunicipal; G. Special District; H. Independent School Dist.; I. State Controlled Institution of Higher Learning; J. Private University; K. Indian Tribe; L. Individual; M. Profit Organization; N. Other (Specify) _____

8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award; B. Decrease Award; C. Increase Duration; D. Decrease Duration; Other (specify) _____

9. NAME OF FEDERAL AGENCY: U. S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 2 0 0

TITLE: Graduate Assistance in Areas of National Need

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date; Ending Date

14. CONGRESSIONAL DISTRICTS OF: a. Applicant; b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

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INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

FORM APPROVED: 4/89
OMB NO.: 1840-0604
EXPIRATION DATE: 12/91

PART II

BUDGET INFORMATION

GRADUATE ASSISTANCE IN AREAS OF NATIONAL NEED

FISCAL YEAR 1990

SECTION A - SUMMARY OF FELLOWSHIPS

AREA OF APPLICATION	NUMBER OF FELLOWSHIPS REQUESTED

SECTION B - FUNDS REQUESTED AND COST SHARING

1. Federal Funds Requested for Student Stipends	$
2. Federal Funds Requested for Tuition, Fees and Other Costs of Education Not Included in Student Stipends.	$
3. Total Federal Funds Requested	$
4. Non-Federal Funds	$
Total Program Funds	$

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Instructions for Part II—Budget Information

Heading Information: Enter the current fiscal year. Section A—Summary of Fellowships

Enter the number of fellowships requested for area of application.

Section B—Funds Requested and Costs Sharing

1. Federal Funds Requested for Student Stipends: Enter the dollar amount of Federal funds requested for student stipends for applicable expenses except for tuition and fees. (At least 60% of the funds received under this program must be used to provide stipends.) See "Funding Requirements."

2. Federal Funds Requested for Tuition, Fees and Other Costs of Education Not Included in Student Stipends: Enter the dollar amount of Federal funds requested for tuition, fees and other costs of education not included in student stipends.

3. Total Federal Funds Requested: Enter the total Federal funds requested (sum of 1 and 2). Total Federal funds requested must not be less than $100,000 nor greater than $500,000 per year.

4. Non-Federal Funds: Enter the dollar amount of funds to be provided from other sources, e.g., state governments, local governments, private organizations, etc., which must equal at least 25 percent of the amount of Federal funds requested.

5. Total Program Funds: Enter the total program funds (sum of 3 and 4).

Instructions for Part III—Application Narrative

Before preparing the Application Narrative, an applicant should read carefully the information regarding priorities, and the Selection Criteria the Secretary uses to evaluate applications.

The narrative should—

1. Begin with an Abstract; that is, a summary of the proposed project;

2. Describe the current academic program and the proposed project in light of each of the selection criteria in the order in which the criteria are listed in this application package;

3. Set forth policies and procedures to ensure that Federal funds made available under this program will be used to supplement and, to the extent practical, increase the funds that would otherwise be made available for the purpose of the program and in no case to supplant those funds;

4. Set forth policies and procedures to assure that, in making fellowship awards under this part, the institution will make awards to individuals who—

(A) Have financial need, as determined under criteria developed by the institution;

(B) Have excellent academic records in their previous programs of study;

(C) Plan teaching or research careers;

(D) Plan to pursue the highest possible degree available in their course of study; and

(E) To the extent possible, are from traditionally underrepresented backgrounds. The Secretary suggests that applicants consider that "traditionally underrepresented backgrounds" mean minorities and other groups, including women, who historically have been underrepresented in the specific area of graduate study for which a fellowship is awarded; and

5. Include any other pertinent information that might assist the Secretary in reviewing the application.

Please limit the Application Narrative to no more than 25 doublespaced, typed pages (on one side only).

Statutory Assurances

1. In the event that funds made available to the academic department under the program are insufficient to provide the assistance due a student under the commitment entered into between the academic department and the student, the academic department will endeavor, from any funds available to it, to fulfill the commitment to the student.

2. The applicant will ensure that no student shall receive an award except during periods in which such student is maintaining satisfactory progress in, and devoting essentially full time to, study or research in the field in which such fellowship was awarded, or if the student is engaging in gainful employment other than part-time employment involved in teaching, research, or similar activities determined by the institution to be in support of the student's progress towards a degree.

3. The applicant will comply with the matching and funding requirements contained in the **Funding Requirements** and **Matching Requirements** sections of this application notice.

Signature of Authorized Certifying Official
Title

Applicant Organization
Date Submitted

Estimated Public Reporting Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden for this collection of information. Public reporting burden for this collection of information is estimated to average five hours of response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project 1840-0004, Washington, DC 20503.

(Information collection approved under OMB control number 1840-0004. Expiration date: December, 1991.)

BILLING CODE 4000-01-M

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Certification Regarding
Debarment, Suspension, and Other Responsibility Matters
Primary Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the U.S. Department of Education, Grants and Contracts Service, 400 Maryland Avenue, S.W. (Room 3633 GSA Regional Office Building No. 3), Washington, D.C. 20202, telephone (202) 732-2505.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph(1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Name And Title Of Authorized Representative

Signature Date

Certification Regarding
Debarment, Suspension, and Other Responsibility Matters
Primary Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the U.S. Department of Education, Grants and Contracts Service, 400 Maryland Avenue, S.W. (Room 3633 GSA Regional Office Building No. 3), Washington, D.C. 20202, telephone (202) 732-2505.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph(1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

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Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (Telephone Number).

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntary excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the person to which this proposal is submitted.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature Date

Certification Regarding Drug-Free Workplace Requirements Grantees Other Than Individuals

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Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Drug-Free Workplace Requirements Grantees Other Than Individuals

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988, 34 CFR Part 85, Subpart F. The regulations, published in the January 31, 1989 Federal Register, require certification by grantees, prior to award, that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the agency determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or government wide suspension or debarment (see 34 CFR Part 85, Sections 85.615 and 85.620).

The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about--

(1) The dangers of drug abuse in the workplace;
(2) The grantee's policy of maintaining a drug-free workplace;
(3) Any available drug counseling, rehabilitation, and employee assistance programs; and
(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will--

(1) Abide by the terms of the statement; and
(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination; or
(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

Organization Name PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature Date

Certification Regarding Drug-Free Workplace Requirements

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Certification Regarding Drug-Free Workplace Requirements
Grantees Who Are Individuals

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988, 34 CFR Part 85, Subpart F. The regulations, published in the January 31, 1989 Federal Register, require certification by grantees, prior to award, that their conduct of grant activity will be drug-free. The certification set out below is a material representation of fact upon which reliance will be placed when the agency determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment (see 34 CFR Part 85, Sections 85.615 and 85.620).

The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conducting any activity with the grant.

Organization Name (As Appropriate) PR/Award Number or Project Name

Printed Name

Signature Date

[FR Doc. 89-29540 Filed 12-19-89; 8:45 am]
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federal register

Wednesday
December 20, 1989

Part V

Environmental Protection Agency

Ethylene Bisdithiocarbamates; Notice of Preliminary Determination to Cancel Certain Registrations, Notice of Availability of Technical Support Document and Draft Notice of Intent to Cancel

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ENVIRONMENTAL PROTECTION AGENCY

[OPP-30000/53B; FRL 3685-7]

Ethylene Bisdithiocarbamates; Notice of Preliminary Determination to Cancel Certain Registrations, Notice of Availability of Technical Support Document and Draft Notice of Intent to Cancel

AGENCY: Environmental Protection Agency (EPA, the Agency).

ACTION: Notice of Preliminary Determination.

SUMMARY: This Notice sets forth EPA's preliminary determination regarding the continued registration of pesticide products containing ethylene bisdithiocarbamates (EBDCs) and sets forth the Agency's assessment of the risks and benefits associated with EBDC pesticides. This Notice announces the Agency's preliminary determination to propose cancellation of certain registrations of EBDC products and to propose modifications to those registrations which would not be cancelled. In addition, this Notice announces the availability of the EBDC Special Review Technical Support Document and the Draft Notice of Intent to Cancel. The Technical Support Document and accompanying scientific reviews constitute the technical documents in support of the proposed action.

DATE: Written comments must be received on or before March 20, 1990.

ADDRESS: Submit three copies of written comments, bearing the document control number "OPP-30000/53" by mail to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA. Information submitted in any comment concerning this Notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked CBI may be publicly disclosed by EPA without prior notice to the submitter. The EBDC docket, which contains all non-CBI written comments and the correspondence index, will be available for public inspection and copying in Rm. 246 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Karia L. North, Special Review Branch, Special Review and Reregistration Division (H7508C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1006, CM #2, 1921 Jefferson Davis Highway, Arlington, VA. 22202, (703-557-7400). Copies of the EBDC Technical Support Document and draft Notice of Intent to Cancel are available from the contact person at the address given above.

SUPPLEMENTARY INFORMATION: This Notice is organized into six units. Unit I is the Introduction and provides background information related to the EBDC pesticides and ethylenethiourea (ETU), which is a common contaminant, metabolite and degradation product of the EBDCs. The unit also gives background information concerning the initiation of the EBDC Special Review. The availability of the Technical Support Document and the draft Notice of Intent to cancel are also discussed. Unit II summarizes the risk and benefits assessments. Information related to the hazard to humans from all formulations of EBDCs and ETU and alternatives to the EBDC pesticides is also provided. Unit III contains the risk/benefit analysis and proposed regulatory decision. Procedures related to the referral to the U.S. Department of Agriculture and the Scientific Advisory Panel are discussed in Unit IV. This Notice concludes with Units V and VI summarizing the opportunity for public comment and the availability of the public docket, respectively.

I. Introduction

A. Summary

EPA has reviewed the registered EBDC fungicides (maneb, mancozeb, metiram, nabam and zineb) and concluded that the risks from continued use of the EBDCs outweigh the benefits. Accordingly, the Agency is proposing to cancel many of the uses of the existing EBDCs. A sixth EBDC (amobam) was voluntarily cancelled several years ago. EPA's review included the use of EBDCs on food crops and other agricultural crops (chiefly ornamental plants), and also addresses industrial and homeowner uses. Risks result from exposure to ethylenethiourea (ETU), a common contaminant, metabolite, and degradation product of these pesticides. The EBDCs pose carcinogenic risks to consumers from dietary exposure and risks of carcinogenic, developmental and thyroid effects to mixers, loaders, and applicators of these pesticides.

1. *Food Uses.*— a. *Background.* In determining the appropriate regulatory action, the Agency considered (1) the risks posed by the EBDCs from lifetime dietary exposure, (2) the estimated excess lifetime cancer risks resulting from exposure during the time it will take to complete the Special Review process, (3) the extent to which registered uses are supported by registrants, (4) the risks and benefits of individual uses, where appropriate, (5) the risks associated with alternative fungicides that likely would be used if EBDC registrations are cancelled, and (6) the likelihood that additional data and information might result in a different final decision.

Based on its analysis, EPA has determined that dietary risks from a lifetime of exposure are unreasonable, and therefore, the Agency proposes to cancel many of the food uses of the EBDCs. At the same time, EPA is convinced that risks from exposure during the time needed to complete the Special Review process are negligible since registrants have acted to sharply restrict pesticide usage beginning in 1990. (See Unit III.C.1.) Thus, more severe action is not necessary to protect the American public in the short-run.

To ensure that risks from short-term exposure are negligible, the Agency will proceed with certain actions to reduce exposure. These actions involve deleting uses from certain registrant labels pursuant to requests by those registrants and tolerance revocations to reduce exposure on both domestic and imported crops. In addition, EPA should be receiving additional data including monitoring data from registrants which will provide data on actual residue levels; the Agency will take further action if estimated risks during the pendency of its deliberation are unacceptable.

EPA also recognizes that the EBDC pesticides provide important benefits to consumers and the agricultural community by controlling the development of fungal diseases on crops. In addition to these benefits, the Agency believes additional data and information may show that actual exposure and hence risks are overestimated and that changes in use practices may lead to further reductions in risks. For these reasons, the Agency has required registrants to provide additional data, and strongly urges affected parties to provide other data and information to enable EPA to make the most appropriate final decision.

The Agency is interested in obtaining a variety of information and data before making a final decision on the EBDCs. Data which the Agency considers potentially very useful will be generated by a market basket survey currently being conducted by the EBDC registrants. If properly conducted, this grocery store survey will provide residue data which should more accurately characterize dietary exposure than data EPA currently possesses. The survey data are due by September 1990, and the Agency tentatively plans to issue its final decision on the EBDCs in the spring of 1991, which will allow time to fully analyze available market basket data.

While the Agency believes it is reasonable to allow sufficient time for the industry to develop market basket data, EPA does not consider it appropriate to delay proposed action until that time. EPA has tentatively planned a final decision for spring 1991. However, the Agency will not hesitate to take more immediate action if new information or data demonstrate such steps are warranted. Issuing its proposed decision now gives EPA the flexibility of issuing a final decision earlier than the spring of 1991 if appropriate. In addition, EPA believes all interested parties should have an early opportunity to evaluate EPA's analyses of risks and benefits of existing uses of these chemicals so that they may begin now to develop the most useful input to the final decisionmaking process.

The following sections provide a brief summary of EPA's proposed action concerning the EBDCs.

b. *Nabam.* The sole registrant holding registrations for agricultural uses of nabam requested voluntary cancellation of all agricultural food uses in March 1989. The Agency's acceptance of this request is imminent. Registrants holding nabam registrations on industrial sites requested voluntary cancellation of sugar beet and sugarcane transport and flume water nabam uses in 1987, but have retained the use of nabam in sugar mill grinding, crusher or diffuser systems.

c. *Zineb.* Considering the existing zineb market and apparent lack of current benefits, EPA is proposing to cancel all zineb uses. All zineb uses are currently suspended, and the only technical registrant has requested voluntary cancellation of its registrations. The Agency's acceptance of this request is imminent. EPA is in the process of determining whether any existing end use product registrant wishes to attempt to support any of the currently suspended uses.

d. *Mancozeb, Maneb and Metiram.* EPA is proposing to cancel 45 of the 55 registered uses of mancozeb, maneb and metiram. On September 6, 1989, the four major registrants of maneb, mancozeb and metiram requested EPA to delete 42 uses from their registrations. They planned to retain 13 uses. Their action would decrease estimated long-term carcinogenic risk from 4×10^{-4} to 2×10^{-6}. The 13 uses proposed to be retained by these registrants are almonds, asparagus, bananas, cranberries, figs, grapes, onions, peanuts, potatoes, sugar beets, sweet corn, tomatoes and wheat. The Agency's acceptance of this request is imminent.

Because all 55 uses remain on registrations of some formulators, the Agency must address all 55 uses in this Preliminary Determination pending final action by all maneb, mancozeb and metiram registrants. The Agency is proposing to cancel the 42 uses dropped by the technical registrants on the basis of unacceptable risk and a lack of support by the registrants. EPA believes that the action of these major registrants has altered the market sufficiently that it is appropriate to conduct a use-by-use risk/benefit analysis focused only on the use of mancozeb, maneb and metiram on the 13 crops listed above.

EPA considered the estimated dietary risk following the registrants' action and concluded that the aggregate long-term risk still was unreasonable. Therefore, EPA proposes to retain the use of mancozeb, maneb and metiram on only 10 of the 13 crops (almonds, asparagus, cranberries, figs, grapes, onions, peanuts, sugar beets, sweet corn and wheat), and proposes to cancel use on three of these crops (potatoes, tomatoes and bananas). Based on existing data, the estimated upper-bound, long-term risks resulting from the ten retained crops would be 3×10^{-6} and estimated benefits would be $13 to $26 million in producer impacts. See Table 3 for a list of crops proposed to be retained and cancelled.

e. *Dietary Exposure Data.* In calculating the estimated dietary risks which are presented in this Notice, EPA used field trial residue data resulting from use of the EBDC at maximum application rates, minimum preharvest intervals and at least the number of applications that are typically applied as long as they are within the number of applications allowed on the label. Residues were analyzed at the time of harvest. Since the Agency has indications that EBDCs are not typically applied at maximum rates, and since EBDC and ETU residues degrade from the time of harvest to the dinner plate, the residue data may tend to overstate exposure and, thus, estimated risk. EPA believes it is possible that if more representative data were available, risk estimates could possibly be outweighed by the benefits for more crops. EPA has required EBDC registrants to generate such data. However, if these data are not submitted, or are not the product of a well conducted study, the Agency will rely on currently available residue data or other appropriate data submitted to it in making its final decision.

Commenters are urged to consider risk reduction measures short of cancellation, such as reductions in application rates or frequencies or increases in preharvest intervals, as ways of reducing exposure from particular crops. Commenters will need to provide data or other analyses to demonstrate the impact of such modifications on actual residue levels. EPA will consider this information when the Agency develops its final decision concerning the EBDCs. EPA urges interested parties to seek technical guidance from the Agency early on so that the most useful, valid data are developed.

f. *Tolerances.* Within 90 days of the issuance of this document, the Agency intends to propose tolerance revocations for the 45 food uses of maneb, mancozeb and metiram and all (58) food uses of zineb proposed for cancellation in this Preliminary Determination. The Agency presently intends to finalize the tolerance actions, reflecting consideration of public comments, when all products for particular uses are voluntarily cancelled, or the Agency issues the Final Determination, whichever occurs earlier.

2. *Worker and homeowner risks.* For commercial agriculture and industrial workers applying EBDC pesticides, EPA is proposing a requirement to wear coveralls over a long-sleeved shirt and long pants, chemical-resistant gloves, shoes, socks and goggles or a face shield. Additionally, during mixing and loading, a chemical-resistant apron must be worn. For agricultural workers, where completely enclosed cabs with positive pressure filtration, or an enclosed cockpit for aerial application are used, a long-sleeve shirt and long pants may be worn in place of the protective clothing described above. Chemical-resistant gloves must be available in the cab or cockpit and worn upon exiting. During aerial application, human flaggers are prohibited unless in totally enclosed vehicles. For most uses, these requirements reduce exposure to ETU to acceptable levels.

The Agency proposes a label language requirement that homeowners applying

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EBDC pesticides wear a long-sleeved shirt and long pants and rubber gloves. Gloves must be washed thoroughly with soap and water befor removing; clothes must be changed immediately after using the EBDC product and laundered separately from other laundry items before reuse. Homeowners applying EBDCs must shower immediately after use.

For a few uses including homeowner uses (i.e., maneb on homeowner vegetables, ornamentals, fruit trees, and turf sites, mancozeb on homeowner fruit trees and turf sites, maneb on grapes, maneb on commercial ornamentals, and nabam use in paper and sugar mills), no practical requirements reduce estimated risks to reasonable levels; consequently, these uses are proposed for cancellation.

B. The Statute

A pesticide product may be sold or distributed in the United States only if it is registered or exempt from registration under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (7 U.S.C. 136 et seq.). Before a product can be registered unconditionally, it must be shown that it can be used without "unreasonable adverse effects on the environment" (FIFRA section 3(c)(5)), that is, without causing "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of the pesticide" (FIFRA section 2 (bb)). The burden of proving that a pesticide meets this standard for registration is, at all times, on the proponent of initial or continued registration. If at any time the Agency determines that a pesticide no longer meets this standard for registration. then the Administrator may cancel the registration under section 6 of FIFRA.

C. Regulatory Background

The ethylene bisdithiocarbamates (EBDCs) are a group of fungicides consisting of five registered pesticide active ingredients: mancozeb, maneb, metiram, nabam and zineb. A sixth EBDC fungicide, amobam, is now cancelled. The pesticide products containing EBDCs are most commonly formulated as wettable powders, flowables, dusts and concentrates. Approximately 12 to 18 million pounds of EBDCs are used in the United States annually, primarily on potatoes, apples, cucurbits, tomatoes, onions, sweet corn and small grains.

The EBDC pesticides are intended as protectants against fungal pathogens and are used on a wide variety of commercial and home garden fruit, vegetable and ornamental crops and turf, as seed piece treatments, as soil treatments, and industrially as an antimicrobial in water cooling systems (towers and airwashers), oil well drilling rigs and in pulp, paper and sugar mills. The registrants of nabam have requested voluntary cancellation of agriculture food and feed uses and sugar beet and sugarcane transport and flume water uses.

The first use of this class of chemicals as fungicides was in 1935, when nabam was used for the control of fungal disease on tomatoes. In 1943, zinc sulfate was added to nabam suspensions to improve the fungicidal activity, and then the reaction product (zineb) became widely used to control fungal diseases on plants. The manganese salt (maneb) was developed in 1950. Since 1950, the zinc manganese complex of ethylene bisdithiocarbamates (mancozeb), the diammonium salt (amobam) and zinc ammoniates (metiram) have been developed as fungicides.

In 1986, all amobam registrants voluntarily cancelled their registrations in response to a Data Call-In Notice requiring the submission of additional data to support their product registrations.

In 1986 the zineb technical registrants cancelled their registrations. At that time, the Agency notified end use suppliers of their lack of a registered supplier. After the first notification in 1986, one end use formulator agreed to support a number of uses. All uses of zineb were suspended by the Agency in July, 1988 when that formulator failed to submit data required under FIFRA section 3(c)(2)(B). In July 1989, that formulator notified the Agency that he wanted to voluntarily cancel his registrations and the Agency issued a second notice about the lack of a registered supplier to the remaining formulators in October 1989. At the time this document was signed, no formulator had agreed to support zineb registrations. Zineb was used primarily on citrus, apples, mushrooms and pears.

Approximately 225 pesticide products containing mancozeb, maneb, metiram and nabam are federally registered. The technical materials are produced by Pennwalt Chemical Company (maneb), BASF (metiram), Rohm and Haas, Pennwalt Corporation and E.I. duPont de Nemours (mancozeb) and Alco Chemical Corporation and Vinings Chemical Corporation (nabam).

Maneb is primarily used for control of early and late blight diseases of potatoes and tomatoes and for control of scab and other fungal diseases of apples. Mancozeb is registered on 28 food crops; the major ones being apples, grapes, potatoes, sweet corn, tomatoes and onions. The majority of metiram is applied to apples.

In March 1989, Rohm and Haas, the sole registrant holding nabam agricultural uses, requested that all their agricultural food uses be cancelled. There are no raw agricultural commodity tolerances for nabam (all expressed as zineb). Regulations have been established by the Food and Drug Administration under 21 CFR 173.320 for nabam residues following application to sugar mill grinding, crusher, and/or diffuser systems (secondary direct food additive); and under 21 CFR 176.300 for the use of nabam alimicide added to the process water for the production of paper and paperboard which will contact food (indirect food additive). Nabam is also registered for use as a biocide at several industrial sites such as in oil drilling fluids and pulp/paper and sugar mills.

On September 6, 1989, the four major registrants of maneb, mancozeb and metiram (Rohm and Haas, duPont de Nemours, Pennwalt and BASF) requested the Agency to amend their registrations to remove 42 of the 55 registered food uses. As to registrations controlled by these registrants, these registrants will label all their EBDC technical and end use materials manufactured after September 6, 1989 and all existing EBDC technical stocks and end use product stock not in the hands of growers, as of January 1, 1990 to specify for use only on food commodities as follows: maneb (almonds, bananas, potatoes, sugar beets and sweet corn), mancozeb (asparagus, bananas, cranberries, figs, grapes, onions, peanuts, potatoes, sugar beets, sweet corn, tomatoes and wheat) and metiram (potatoes).

The effect of relabeling the technical products is that it will become unlawful for downstream formulators to use these sources of technical materials in end use products labeled for use on these 42 commodities. The manufacturers have also petitioned the Agency to reduce tolerances for mancozeb on wheat, grapes, peanuts, potatoes and sugar beets. They also notified the Agency that they would not object if the Agency proposed to revoke tolerances for the above-mentioned 42 food uses. Once the registrants' action becomes final, the deleted food uses cannot be reinstated by them until such time as the Agency determines risks associated with these uses are found to be reasonable.

Once the zineb registrations are formally cancelled and the 42 food uses are formally removed from the technical registrants' mancozeb, maneb and metiram labels, the Agency will notify the respective formulators that there is no longer a registered source of technical material for these uses. The Agency's acceptance of these requests is imminent. No use of zineb is likely to remain. If the mancozeb, maneb and metiram formulators want to retain any of the 42 uses, they must both locate an alternative source for the technical and fulfill all data requirements for that technical and the particular end use retained, including those data requirements which are presently the subject of a Data Call-In under FIFRA section 3(c)(2)(B). Failure to take these steps will result in issuance of suspension notices under FIFRA section 3(c)(2)(B). Additionally, in order to get back on the market, any currently suspended registration must be found to comply with the basis for such suspension. In summary, at this time, 55 uses of maneb, mancozeb and metiram remain legally registered by the formulators. If no one supports the 42 uses the technical registrants have deleted from their registrations, eventually only 13 uses will remain. This process to determine how many uses will remain registered may take several months.

The regulatory history of the EBDCs includes a full Special Review. The Special Review process, formerly called the Rebuttable Presumption Against Registration (RPAR), is a mechanism by which the Agency collects information on the risks and benefits associated with the uses of pesticides to determine whether any use causes unreasonable adverse effects to human health or the environment. See 40 CFR part 154. In 1977, the Agency initiated a Rebuttable Presumption Against Registration or RPAR process, based on the presumption that the EBDCs and ETU posed three potential risks to humans and/or the environment: carcinogenicity, developmental toxicity and acute toxicity to aquatic organisms. Three additional areas of concern were identified as thyroid toxicity, mutagenicity and skin sensitization.

In 1982, the Agency concluded this Special Review by issuing a Final Determination PD 4 which adopted risk reduction measures to preclude unreasonable adverse effects pending development of additional data needed to arrive at a more realistic assessment of the risks. The Agency concluded that the potential risk of acute toxicity to aquatic organisms could be reduced through the addition of a label statement warning users of a hazard to fish. Potential risks to applicators from developmental and thyroid effects coul l be adequately reduced by requiring protective clothing. Potential dietary exposure resulting from consumption of EBDC-treated home grown produce was addressed by a label statement highlighting preharvest intervals on labels of home use products. The Agency also concluded that there were insufficient exposure data to reach any regulatory conclusions regarding the potential risk of carcinogenic effects to humans. Additional data were required to be submitted to address mutagenic effects. The skin sensitization effect was determined not to meet the criteria for an RPAR.

On July 17, 1987, the Agency issued a second Notice of Initiation of Special Review of the ethylene bisdithiocarbamate (EBDC) pesticides (mancozeb, maneb, metiram, nabam and zineb) because of carcinogenic, developmental and thyroid effects caused by ethylenethiourea (ETU), a common contaminant, metabolite and degradation product of these pesticides. This document, also referred to as a Position Document 1 or PD 1, detailed the basis for the Agency's decision to initiate the Special Review (52 FR 27172). The Agency had determined that registrations containing the EBDC pesticides met or exceeded the 40 CFR 154.7 (a)(2) and (a)(6) risk criteria relating to carcinogenicity to humans from dietary exposure and a risk to applicators and mixer/loaders for thyroid and developmental effects. Data available at that time led the Agency to conclude that the continued registration of EBDC products for use on certain food crops, commercial ornamentals and home garden sites, and in some industrial uses, might result in unreasonable adverse effects to humans. The Notice invited comments from the registrants as well as from the public. The comment period lasted 45 days and all rebuttal comments received during the comment period were evaluated.

Based on information received in public comments and on additional analyses performed since the Special Review process began, EPA is now issuing this Notice of Preliminary Determination. Issuance of this Notice means that the Agency has assessed the potential adverse effects and the benefits associated with the use of pesticide products containing mancozeb, maneb, metiram, nabam and zineb and that the Agency has preliminarily determined that, unless the terms and conditions of registration are modified as proposed in this Notice, the risks from mancozeb, maneb, metiram, nabam and zineb outweigh the benefits of their continued use.

EPA's position and a summary of the rationale underlying that position are set forth in this Notice. The basis for EPA's action is explained more fully in the EBDC Special Review Technical Support Document. Copies of the Technical Support Document are available upon request from the contact person listed at the beginning of this Notice. The Technical Support Document also contains references, background information and other information pertinent to the registration of pesticide products containing mancozeb, maneb, metiram, nabam and zineb.

In addition, copies of a draft Notice of Intent to Cancel EBDC products are also available from the contact person listed above. Preparation of the draft Notice of Intent to Cancel is required by 40 CFR 154.31(b)(1). This draft Notice is being forwarded to the Scientific Advisory Panel (SAP) and the Secretary of Agriculture to permit their review of the Agency' proposed action. The draft Notice of Intent to Cancel, along with the EBDC Technical Support Document and other notices and analyses prepared pursuant to 40 CFR 154.31, will be sent to all registrants and applicants for registration of pesticide products containing mancozeb, maneb, metiram, nabam and zineb. The draft Notice of Intent to Cancel is not now legally effective but is intended only to provide a basis for comment by the SAP, U.S. Department of Agriculture, registrants, and the public. The draft Notice discusses requesting a cancellation or denial hearing after issuance of a final Notice of Intent to Cancel. Comments on the Draft Notice of Intent to Cancel, this Notice and the Technical Support Document must be filed within 90 days of the issuance of this Notice.

II. Summary of Risk and Benefit Assessments

This section contains a detailed description of the risks and the benefits involved in the use of the EBDCs. Additional information is contained in the Technical Support Document. The focus of this section is on four of the EBDCs (mancozeb, maneb, metiram and nabam) because these chemicals are presently marketable. A fifth EBDC, zineb, while registered, is currently suspended and it is unlikely that any registrant will seek to support its registration. Accordingly, EPA is not presenting in this document quantified risks and benefits of zineb.

In conducting its risk assessment, the Agency used the best data available at this time. However, the Agency recognizes that additional data could

help to refine the risk assessment and thus more accurately reflect actual risk.

A number of studies have been

treatment with EBDC pesticides. These data will be used to calculate potential risks and to set appropriate times at

practices. Worker exposure data for use by the Agency to make a final determination has been required in a

Determination PD-4. Depending on the results of this study, adjustments to the cancer potency factor (Q_1^*) may be

separately, do not meet current test standards for the evaluation of carcinogenicity, but are adequate when

Virtually all males exhibited tumors at the high dose (2 percent with adenomas, 98 percent of them with carcinomas)

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help to refine the risk assessment and thus more accurately reflect actual risk.

A number of studies have been required under FIFRA section 3(c)(2)(B) to better characterize risk. Included are a number of toxicity and exposure studies. Studies which have been required to assess the carcinogenic potential of the EBDCs include carcinogenicity testing in both the rat and mouse for mancozeb (due June 1991), maneb (due November 1991), metiram (due June 1990) and nabam (due June 1991). Registrants are required under FIFRA section 6(a)(2) to immediately report any adverse effect observed in connection with these studies. Such reporting has already occurred for the ongoing mancozeb study.

Although not required by the Agency, new carcinogenicity studies for ETU in the rat and mouse have recently been completed by the National Toxicology Program (NTP). Some of the results of this testing have been incorporated into the risk assessment for this document; analysis of other results will be available in the near future.

The Agency has also required a number of studies to better determine the levels of EBDCs and ETU to which people are exposed through the diet. In order to better assess dietary exposure, a market basket monitoring study has been required which should provide better estimates of actual residues of parent EBDC and ETU which are consumed. The final results of this study are due in September 1990; however, interim reporting of the results of the monitoring will be provided periodically.

In order to better assess the exposure to workers applying or handling the EBDC pesticides, additional studies also have been required. Dermal absorption data for maneb and its ETU component will be submitted in May 1990. These data will be useful to calculate how much of the pesticide on the skin is absorbed into the body. Currently, the risks may be overestimated because the best available surrogate data is being used, in lieu of actual data.

The Agency has also required tank mix stability data to allow a more accurate estimate of the amount of ETU, expressed as a percent of the parent EBDC compound, in spray mixtures. These data are due in December 1989.

Worker exposure studies for some industrial uses of nabam have been required. These studies, which will measure the dermal exposure to persons handling nabam, are due in March 1990.

Finally, the Agency has required data to assess the exposures to workers entering fields treated following treatment with EBDC pesticides. These data will be used to calculate potential risks and to set appropriate times at which workers may enter treated fields. These data are due in July 1990.

All of the above studies, with the exception of the carcinogenicity studies for the parent EBDC compounds, should be available in time for the Agency to incorporate into the final decision making process. If available, results of the carcinogenicity studies also will be considered in the final decision.

A. Risk Assessment

1. *Synopsis of Risk Assessment.* Exposure to the EBDCs and ETU can occur through application of the pesticides to food crops and eating foods containing residues of EBDCs and ETU. Exposure to EBDCs and ETU can also occur from application to non-food crops and from industrial application of these pesticides. The Agency does not have adequate carcinogenicity studies on any of the individual EBDCs, although these studies have been required. At the present time, the Agency does have several studies on the carcinogenicity of ETU, a contaminant, degradate and metabolite of the EBDCs. Based upon the data from these studies, the Agency has concluded that ETU meets the criteria of a Group B_2 carcinogen (probable human carcinogen). ETU has been shown to induce thyroid tumors in rats and thyroid and liver tumors in mice.

The EBDCs and ETU have been tested for mutagenicity in several assay systems. Evidence of mutagenicity from these studies provide supportive evidence of the carcinogenic effect. Available data demonstrate ETU's potential to cause developmental/fetotoxic effects in rats with a NOAEL (No Observable Adverse Effect Level) :5 mg/kg/day. In addition, mancozeb has been shown to be developmentally toxic in rats and nabam to cause developmental effects in rabbits. Other studies with ETU and mancozeb have demonstrated thyroid effects (hyperplasia) in rats with a dietary LEL (Lowest Observable Effect Level) of 5 ppm of ETU.

In conjunction with determining the hazard posed by ETU, the EPA considered the dietary and mixer/loader/applicator exposures to ETU. Dietary exposure to ETU was estimated using anticipated residue data, percent crops treated data and food consumption data. Margins-of-Safety/Margins-of-Exposure (MOS/MOE) were estimated for mixer/loader/applicator exposures using the best available data, which in some cases were surrogate data for other chemicals or other use practices. Worker exposure data for use by the Agency to make a final determination has been required in a March, 1989 Data-Call-In Notice.

Using the ETU hazard data and exposure estimates, EPA has estimated the dietary and worker exposure risks from ETU and EBDC derived ETU. The estimated long-term dietary risk from all 55 registered mancozeb, maneb and metiram food uses is 4×10^{-4} and the estimated dietary risk from the 13 crops proposed to be retained by the major registrants of mancozeb, maneb and metiram is 2×10^{-6}. If the uses of zineb were allowed to continue, the estimated dietary risk would be higher. There are also risks of concern to applicators due to carcinogenicity, and thyroid and developmental effects. Risks of concern for mixer/loaders and applicators remain after incorporation of appropriate protective clothing for: (1) Maneb use on grapes and commercial ornamentals, and on homeowner turf, fruit trees, ornamentals and vegetables. (2) mancozeb use on homeowner turf and fruit trees, and (3) nabam use in sugar and paper mills.

2. *Effects of concern*—a. *Carcinogenicity.* The carcinogenicity risk assessment process consists of four steps. In the first step, hazard identification, all relevant toxicity information is presented and a qualitative weight-of-evidence judgment is reached on the likelihood that the pesticide is a human carcinogen. In the second step, dose-response assessment, experimental data are used in conjunction with certain assumptions and a mathematical model to extrapolate the likely upper-bound of excess human cancer risk at the low dose range. The third step is exposure assessment in which human exposures via various routes and sources are estimated. Finally, in the fourth step, risk characterization, the results of the exposure and dose-response assessments are coupled to project the plausible upper-bound of the excess cancer risk under different conditions of exposures. This step also includes a summary of the strength of the qualitative evidence, plus a treatment of the uncertainties in the final assessment.

i. *Hazard identification.* Despite its comprehensive data base on ETU, the Agency currently does not have adequate carcinogenicity studies for any of the EBDC parent compounds. Earlier this year, the Agency received preliminary results of a rat carcinogenicity study on mancozeb. Once the final results have been received and evaluated they will be considered in the Agency's Final Determination PD–4. Depending on the results of this study, adjustments to the cancer potency factor (Q_1^*) may be necessary. Carcinogenicity studies with both the rat and mouse have been required for each of the EBDCs through Registration Standards and/or Data Call-In Notices. Metiram carcinogenicity studies are due in June 1990; mancozeb and nabam studies are due in June of 1991; and maneb studies are due in November of 1991. The registrants conducting the mancozeb carcinogenicity studies have indicated that the final study results should be available well before the June 1991 deadline, probably in time to be included in the PD 4. If any of these carcinogenicity studies indicate there are additional unacceptable risks, the Agency is prepared to take further regulatory action.

A number of studies are available to assess the carcinogenic potential of the EBDCs and ETU including five positive studies on maneb, zineb and ETU. These studies are summarized as follows. In the first study, increased numbers of lung adenomas were observed in mice fed weekly doses of maneb (500 mg/kg/body weight) by stomach tube for 6 weeks. In the second study, increased occurrence of lung adenomas were observed in mice fed weekly doses of zineb (3500 mg/kg/body weight) by stomach tube for 6 weeks. When weekly doses of zineb were reduced to 1750 mg/kg/body weight but continued for 11 weeks, lung adenomas were again observed in treated animals but not in control groups. In a third study, marked increases in liver tumors (hepatomas) were observed in mice fed single daily doses of ETU (646 ppm) for over 80 weeks. In the fourth study, rats fed two different doses of ETU (350 or 175 ppm) daily for 16 months developed thyroid carcinomas at both dose levels. No thyroid tumors developed in controls. In the fifth study, thyroid effects were observed in rats fed ETU at doses of 500, 250, 25 or 5 ppm for nearly 2 years. A dose-related increase in thyroid follicular cell carcinomas and adenocarcinomas was observed at 500 and 250 ppm; thyroid follicular cell adenomas at 250 ppm; and thyroid follicular cell hyperplasia at 250, 125, 25 and 5 ppm.

Several deficiencies in the two mouse studies on maneb and zineb discussed above make the studies unreliable for use in a quantitative risk assessment and in reaching any conclusions regarding the potential for EBDCs to cause carcinogenic effects to humans.

The three ETU carcinogenicity studies discussed above, when considered separately, do not meet current test standards for the evaluation of carcinogenicity, but are adequate when considered collectively along with the results from the new NTP studies and with other ancillary information to conclude that ETU is carcinogenic in rats and mice.

Recently, the National Toxicology Program (NTP) made data available on ETU in studies conducted in rats and mice. These studies were of an unusually complex design when compared with the usual NTP carcinogenicity bioassay. Besides including treatment groups which received the traditional pattern of exposure (beginning at about 8 weeks of age and continuing until the end of the experiment at 2 years), there also were treatment groups in which animals were exposed *in utero*, essentially from the moment of conception, continuing throughout their lifetimes. While preliminary evaluation of data from these additional exposure scenarios indicate tumor responses somewhat different from those seen in the standard treatment groups, only data from the standard treatment groups have been used in this current risk assessment since the remaining data are still under review. It is anticipated that all of the data from this complex exposure paradigm will be evaluated thoroughly in the next few months. This evaluation will be incorporated into the final risk assessment which will accompany the final regulatory decision on the EBDCs.

In the mouse study using the standard protocol, animals were fed doses of 0, 333 or 1000 ppm ETU in the diet for up to 2 years. The results were as follows: In the female mice, treated at the low dose, 30 percent of the animals exhibited liver adenomas only while an additional 58 percent showed liver carcinomas for a combined total of 88 percent. At the high dose, only 2 percent exhibited adenomas while 98 percent were diagnosed with carcinomas. This contrasts sharply with a total of only 8 percent of the females in the control group exhibiting either adenomas (4 percent) or carcinomas (4 percent). These data for the female liver tumors provided the basis for the preliminary carcinogenic potency factor (Q_1^*) used in the risk assessment for this preliminary determination. Males also showed dose-related effects in the liver. Although the incidences of liver adenomas (16 percent) and carcinomas (30 percent) (total of 47 percent of animals with tumors) was obviously higher in male than female controls, the treated males showed significantly higher tumor rates when compared against their concurrent controls. Virtually all males exhibited tumors at the high dose (2 percent with adenomas, 98 percent of them with carcinomas) while a total of 66 percent of the males at the low dose had tumors (adenomas = 28 percent; carcinomas = 40 percent). Centrilobular cytomegaly (scattered giant cells in the area of the central portion of the liver lobe which are generally recognized as potential precursors to carcinogenicity) was evident in both treated groups of both sexes but not observed in the controls Cellular necrosis was not observed in any group. The thyroid gland in female mice showed dose related increases in follicular cell hyperplasia when compared to controls (4 percent, 26 percent, 94 percent). Male mice showed follicular cell hyperplasia only at the high dose tested (0 percent, 0 percent, 88 percent). Female mice showed statistically significant increases in follicular cell multiple adenomas and carcinomas at the high dose only. No thyroid carcinomas or adenomas were observed in controls. In males, follicular cell adenomas and carcinomas appeared to a greater extent in the high dose group total (62 percent) than in controls (2 percent) or the low dose group (2 percent).

In the new NTP bioassay conducted on rats, the thyroid gland was the principal target organ for ETU. Animals were fed ETU in their diet at levels of 0, 83 or 250 ppm for up to 2 years. Hyperplasia ranged between 0 to 9 percent for control groups, whereas hyperplasia in all treated groups was between 18 and 64 percent. Follicular cell adenocarcinomas occurred in 58 percent of the high dose group of males compared to 2 percent in controls. In females, it was 16 percent for adenocarcinomas at the high dose compared with 4 percent for controls.

ii. *Mutagenicity.* ETU and the EBDCs have been tested for mutagenicity in several assay systems. Although the results of the available studies were both positive and negative, the body of evidence for ETU and EBDC suggests that they are capable of inducing a variety of genotoxic endpoints. These include responses in gene mutation assays, structural chromosomal assays, and other genotoxic effects. Published studies add additional information to support a mutagenic concern.

A major consideration that should be taken into account when examining the genotoxicity of ETU is the magnitude of the positive responses. While ETU induces a variety of genotoxic endpoints, it does not appear to be a relatively potent genotoxic agent. Since ETU does not appear to be very potent,

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and is not extremely toxic to test cells and organisms, it is not surprising to find that ETU does not induce effects in many of the assays reviewed. Therefore, altering DNA in a variety of test systems. ETU has been shown to produce thyroid tumors in the rat and liver and thyroid tumors in the mouse. It same effect on the thyroid gland *in vivo*. Iodide peroxidase catalyzes the iodination of tyrosine and the coupling

adenomas and carcinomas) in mice and thyroid tumors (hyperplasia and

(e.g., thiouracil and thiourea) have been found to induce liver and/or thyroid

clearly dose-related and at higher rates than in controls and appears to be a

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and is not extremely toxic to test cells and organisms, it is not surprising to find that ETU does not induce effects in many of the assays reviewed. Therefore, in many instances, positive and negative results in the same assay are reported from different investigators, but these results may be dependent upon the test conditions in each individual laboratory. Often there are problems with many of the negative assays in protocol or reporting and in many studies the concentration levels are not high enough for an adequate test.

An additional concern for ETU may be the aspect of nitrosation of ETU. There are suggestions that ureas (such as ethylenethioureas) can be nitrosated with sodium nitrite at appropriate acidities. Many ethylene bisdithiocarbamate-treated products are cooked and eaten. With ETU as a metabolite along with a contaminant as a nitrosating source, humans could be exposed to conditions where nitrosation in the stomach may occur. Nitrosated ETU and ETU in combination with sodium nitrite have been demonstrated to induce potent genotoxic effects in gene mutation assays and in *in vivo* micronucleus and chromosomal aberration assays. Therefore, this aspect of ETU genotoxicity should be a concern if humans are exposed to ETU above certain amounts.

In many instances, the induced genotoxic effects by the EBDCs are not particularly striking; however, in some instances, the response is significantly large. Also, there is no single assay where all the EBDCs provide consistently elevated and substantial positive responses. This demonstrates that these compounds apparently are not consistent in their genetic activity with many negative results found in addition to the positive results. An in depth examination is necessary to ascertain their potential genotoxicity. Of the five EBDCs tested, mancozeb induced a larger number of positive effects that would provide the most evidence among the EBDCs for a mutagenicity concern. (It should be noted that mancozeb had more test results available than the other EBDCs.) Overall, therefore, it appears that the EBDCs do present a genotoxicity concern with each of the individual compounds inducing enough of a variety of genetic effects to elicit such a concern.

It is well recognized that a correlation exists between genotoxic agents and carcinogenicity in that many, but not all, mutagenic agents contribute to or induce tumor formation. Experimental evidence has shown that ETU is capable of altering DNA in a variety of test systems. ETU has been shown to produce thyroid tumors in the rat and liver and thyroid tumors in the mouse. It can, therefore, be said that the positive mutagenicity findings provide general support for the carcinogenic observations of ETU in both rats and mice. However, if it can be shown that the positive results in these mutagenicity studies have no direct relevance to the initiation of thyroid tumors in the rat, one might argue that the thyroid tumors in the rat may be the result of a positive physiological feedback mechanism resulting from the inhibition of thyroid hormone production. If only thyroid tumors were observed following exposure to these substances, valid evidence supporting a hormonally based mechanism of activity might lead the Agency to modify the way it views the carcinogenic potential of ethylenethiourea and introduce the concept of threshold into the quantification of carcinogenic risk. However, these chemicals also induce liver tumors and no supportable or adequate scientific argument has been put forth to persuade the Agency to alter its current policy for the quantitative assessment of this endpoint.

iii. *Non-Genotoxic Tumor Formation (Threshold Concept).* The physiological relationship between the pituitary gland and thyroid gland is well known. Decreased levels of thyroid hormones which threaten homeostasis results in the enhanced secretion of thyroid stimulating hormone (TSH) from the anterior pituitary with a subsequent rise in thyroid hormone levels. The return of thyroid hormone levels to acceptable levels results in a negative feedback mechanism with decreased levels of thyroid stimulating hormone being secreted by the anterior pituitary and a subsequent decrease in the production of thyroid hormone. An imbalance in this relationship where decreased thyroid hormone levels cannot be compensated for results in the chronic stimulation of the thyroid with attendant changes in thyroid gland morphology (follicular cell neoplasia). This positive feed-back mechanism is well documented and can be induced experimentally by a variety of proven means. Thyroid gland follicular cell neoplasia has been experimentally induced by low iodine diets, subtotal thyroidectomy, intrasplenic transplants of thyroid tissue and transplantation of anterior pituitary tumors producing thyroid stimulating hormone. Ethylenethiourea (ETU) has been demonstrated to inhibit iodide peroxidase *in vitro* and may have the same effect on the thyroid gland *in vivo*. Iodide peroxidase catalyzes the iodination of tyrosine and the coupling of the resultant iodotyrosyl residues to produce the active thyroid hormones. Thus, ETU interferes with the biosynthesis of thyroid hormones by inhibiting iodide peroxidase with the resultant effect of positive feedback to the pituitary for as long as is sufficient to maintain decreased thyroid hormone levels. In animal experiments, ETU induces thyroid tumors under test conditions of chronic administration and adequate dosing. The argument can therefore be advanced that at dose levels of ETU that do not interfere with iodide peroxidase or interfere with it at some non-critical level, ETU should not cause thyroid tumors since the dose of ETU will be at a level below which an exacerbated positive feedback would not occur. This argument has been presented to the Agency's FIFRA Scientific Advisory Panel and the Science Advisory Board. Each has given its cautious approval to this approach. Although the approach has been sanctioned, the threshold concept itself is still being considered by the Agency and will be presented to the FIFRA Scientific Advisory Panel in 1990.

iv. *Summary of ETU metabolic and pharmacokinetic properties.* Animal metabolism of the EBDCs is rapid; ETU and ethylene bisdiisothiocyanato sulfide (EBIS) are major metabolites. ETU may be formed by diverse pathways from the parent compounds and may be further metabolized giving rise to several byproducts, not all of which are characterized.

v. *Structure-activity-relationships.* The common EBDC degradate and metabolite ETU is structurally related to the EBDCs and several other thyroid inhibitors. Chronic studies on thiourea have shown that it induces hepatomas and thyroid enlargement in rats. Methimazole, propylthiouracil and thiouracil all induce thyroid tumors in rats. Propylthiouracil also induces thyroid tumors in hamsters and guinea pigs and pituitary adenomas in mice. Thiouracil induces hepatomas and thyroid tumors in mice.

vi. *Human studies.* The Agency is not aware of any valid human epidemiology studies which evaluate exposure to ETU or any of the EBDCs.

vii. *Weight-of-evidence for carcinogenicity.* The Agency considers the following facts regarding the toxicology data on ETU to be important in the weight-of-evidence determination of the carcinogenic potential of ETU.

(1) ETU has been shown to induce liver tumors (single and multiple adenomas and carcinomas) in mice and thyroid tumors (hyperplasia and follicular cell adenomas and carcinomas) in mice and rats. Pituitary adenomas were also increased in female mice.

(2) Exposure to ETU has yielded both positive and negative results in a variety of mutagenicity studies. However, there is enough of a mutagenicity concern to provide supportive evidence of the carcinogenic effect.

Nabam, metiram, maneb and mancozeb also have been shown to be positive in a number of mutagenicity studies.

(3) ETU is structurally related to, and a degradate and metabolite of, the EBDCs. Maneb and zineb have been shown to cause carcinogenic effects (lung adenomas) in mice; however, the results of these studies were considered inconclusive due to faulty study design and considered unreliable for use in a quantitative risk assessment. The Agency now has preliminary information submitted under FIFRA section 6(a)(2) on mancozeb. Evaluation of thyroid tissues from rats indicates that, at the high dose (750 ppm) tested, there is a statistically significant increase in follicular cell adenomas and carcinomas in male rats and a statistically significant increase in females when follicular cell adenomas and carcinomas are combined. The incidence of follicular cell lesions in all other groups appear comparable to control values.

(4) ETU is also structurally similar to thiourea, methimazole, propylthiouracil and thiouracil. Thiourea and thiouracil induce hepatomas in rats and mice, respectively. Methimazole, propylthiouracil and thiouracil all induce thyroid tumors in rats. Propylthiouracil also induces pituitary adenomas in mice.

viii. *Dose response.* The Agency concludes, based upon the available evidence, that ETU meets the criteria of a Group B_2 Carcinogen (probable human carcinogen), according to its Guidelines for Carcinogen Risk Assessment. This classification is based on evidence that ETU induced an increased incidence of thyroid follicular cell adenomas and adenocarcinomas in mice and two strains of rats (three separate studies) and of liver adenomas and carcinomas in three strains of mice. ETU induced thyroid tumors in rats after 1 year or less of treatment. It also induced a high incidence of both thyroid tumors in rats and hepatomas in mice to an unusual degree in a single experiment.

This classification is also supported by positive structure-activity data since ETU and several other thyroid inhibitors (e.g., thiouracil and thiourea) have been found to induce liver and/or thyroid tumors in rodents. Results of the available mutagenicity studies on ETU also provide supportive evidence of the carcinogenic effect.

While the Agency agrees that most of the ETU carcinogenicity studies considered were not carried out in strict accordance with current Guidelines for Carcinogen Risk Assessment studies, it considers the studies collectively to be adequate to conclude that ETU is carcinogenic to rats and mice due to the magnitude of the dose-response seen.

ix. Determination of Carcinogen Potency Factor (Q_1^*) for Risk Calculations. The original Q_1^* for ETU was derived by the Agency's Cancer Assessment Group (CAG) from a mouse study. It was calculated to be 0.14 $(mg/kg/day)^{-1}$. At that time, it was chosen over other possible outcomes because it gave the highest Q_1^*. The new preliminary Q_1^* [0.6 $(mg/kg/day)^{-1}$] which is being used in this document to calculate risks is based on data on female mouse liver tumors observed in the new NTP study on ETU. Although NTP data on the rat thyroid were made available to the Agency to calculate a new Q_1^*, the mouse data were chosen because they provided a slightly higher potency factor.

As stated earlier, the new NTP studies included a number of unique exposure scenarios. Data associated with the *in utero* exposure will be reviewed to determine if these data would provide a more valid basis from which to derive a quantitative estimate of hazard/risk. In that case, the preliminary Q_1^* used in this current risk assessment could change in either direction depending upon the dose rate to the fetus determined during the *in utero* phase of the animal's lifetime exposure.

b. *Developmental effects.* The no-observable-adverse-effect level (NOAEL) for developmental toxicity resulting from exposure to ETU may be:5.0 mg/kg based on a rat study. ETU was shown to be developmentally toxic at dose levels lower than those that produced no apparent maternal toxicity or fetal lethality. At 5.0 mg/kg/day, which was the lowest dose tested, developmental toxicity was observed in the form of delayed ossification of the parietal bone (in the skull). Although the author indicated that this observation was limited to a few large-sized litters and involved small areas, the effect was observed in offspring of dams treated prior to pregnancy through day 15 of gestation as well as in dams treated only during days 6–15 of gestation in a separate experiment. In both experiments, delayed ossification was clearly dose-related and at higher rates than in controls and appears to be a sensitive indicator of exposure to ETU. It would therefore appear that there is no no-observable effect-level in this study. It was also stated in the publication that the ETU was detected in term fetuses at concentrations comparable to those found in maternal tissues following oral treatment with 20 or 40 mg/kg of ETU from days 7 to 20 of pregnancy and it could therefore not be determined whether or not the malformations arose as a result of direct action on the fetus or indirectly by altering maternal thyroid or other functions. In the previously-mentioned new NTP study conducted on rats and mice, results indicated that ETU affected thyroid function as manifested by thyroid hyperplasia in both species. However, a mouse study showed no developmental toxicity at doses as high as 800 mg/kg/day by gavage (0, 200, 400, 800 ppm). It would appear that simple inhibition of the thyroid gland may not necessarily be the mechanism by which developmental effects are manifested in rats. Although a no-observable-effect level (NOEL) was not established in the rat study, the Agency believes the NOAEL is close to the NOEL and could be used for the purpose of calculating Margins-of-Safety/Margins-of-Exposure.

A rabbit study conducted with nabam has recently been submitted to the Agency. The available data show nabam to be a developmental toxicant eliciting major malformations and other manifestations of developmental toxicity in a dose-related manner and at all tested dose levels. The findings include hydrocephaly (confirmed after visceral examination with soft spot and/or domed cranium observed externally), frontals and parietals incompletely ossified, increased incidence of resorptions and an overall increased incidence of malformed fetuses per litter. In addition, the data did not uncover any apparent maternal toxicity at the lowest dose, 3 mg/kg/day nabam. An increased incidence of abortions and other effects were apparent at the high dose level, 60 mg/kg/day nabam. It was the opinion of the reviewer that, even though the study did contain some deficiencies, the rabbit study is a valid study and the results support the conclusion that nabam is a developmental toxicant in the rabbit.

c. *Thyroid effects.* Two subchronic ETU toxicity studies can be found in the open literature. The purpose of both studies was to examine in some detail the subchronic effects of ETU on the thyroid. In the first study, levels of 50, 100, 500 or 750 ppm were fed in the diets

to male Osborne-Mendel rats for 30, 60, 90 and 120 days. A NOEL was not

treated with mancozeb. The average residues of mancozeb and ETU were

ETU to estimate the potential carcinogenic effect, and compared to the

children and infants are not the same as is this ratio for adults, and thus an additional correction factor is included

from residue field trial data from studies conducted close to the maximum rate, minimum PHIs, and at least the number

reduction factor determined in processing studies required to support tolerances. For potatoes, no

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to male Osborne-Mendel rats for 30, 60, 90 and 120 days. A NOEL was not determined in this study due to significant effects of ETU seen on thyroid weights at all dosage levels at 120 days. In the second rat study, a NOEL of 5 ppm was determined for the effects of ETU on the thyroid of Charles River Sprague-Dawley rats. Thyroid toxicity seen at levels above 5 ppm consisted of thyroid hyperplasia, decreased uptake of 125 I (radioactive iodine) by the thyroid and decreased serum levels of T3 and T4. The LEL (lowest effect level) was 25 ppm or 0.25 mg/kg/day. Similar effects were observed in the mouse and rat subchronic studies done prior to the new NTP bioassays in those species.

d. *Other Effects.* Although not a subject of this Special Review, the Agency is concerned about aquatic organisms and avian toxicity as well as the potential for the EBDCs to contaminate ground water. Additional data have been required to more fully assess the potential of the EBDCs to cause reproductive effects in birds and chronic and acute toxicity effects in aquatic organisms. Additionally, a small scale retrospective study for each of the EBDC parent compounds has been required to assess the potential for ground water contamination.

3. *Exposure analysis.* Because of the EBDCs' broad spectrum of use on food crops, the entire U.S. population may be exposed to EBDC and ETU residues through the diet. Also, mixer/loader/applicators may be exposed to the EBDCs and ETU primarily from dermal contact and, to a lesser degree, from inhalation of the substance when applied to crop and non-crop sites, including nabam's use in cooling towers, oil rigs, and sugar and pulp and paper mills.

a. *Dietary exposure.* Dietary exposure is both chronic and acute. When EBDC fungicides are used on food crops, the Agency is concerned about chronic exposure to ETU due to the carcinogenic and thyroid effects of ETU, and acute exposure to ETU due to the developmental toxicity of ETU. Both chronic and acute exposure to ETU may occur through direct exposure by eating EBDC treated food with ETU residues and by *in vivo* conversion of EBDC residues to ETU residues.

i. *Background.* When the Special Review was initiated in 1987, the Agency estimated dietary exposure only to mancozeb and ETU from commodities treated with mancozeb, as it only had acceptable residue data on this EBDC fungicide. The exposure estimates were based on average residues of mancozeb and ETU from residue data on crops treated with mancozeb. The average residues of mancozeb and ETU were adjusted to take into account percent of crop treated. At that time, percent of crop treated data were available for EBDCs as a group, but not for each individual EBDC fungicide.

Since this time, the Agency has received additional data for mancozeb as well as data for maneb and metiram (and ETU derived from maneb and metiram). The Agency has also obtained updated percent of crop treated information, listed by individual EBDC chemical. Some data were also available for effects of washing, cooking, and other processing (e.g. peeling and trimming). In addition, cooking and processing studies on leafy greens were received from the National Food Processors Association (NFPA) and other interested groups. These data and information have been incorporated into the Agency's current Dietary Exposure Assessment.

One registrant submitted market basket type monitoring data for EBDCs and ETU conducted in the late 1970's. Monitoring data were also obtained from FDA and the States. These data suggest that residues of EBDCs and ETU may substantially degrade between harvest and consumption. Due to the limited number of samples tested, these data were considered too limited to use for a quantitative dietary exposure estimate in this document. Therefore, for use in further refining dietary exposure estimates, EPA has required EBDC registrants to conduct and submit a residue monitoring study (Market Basket Study). Data have been required for one major crop in each crop group for which EBDCs are registered, for major processed commodities, and for meat and milk. Extrapolations will be made within crop groupings to other commodities. All data are due to be received in September 1990. If the market basket survey is not received or produces invalid results, the Agency will make its final determination of dietary risk using the best available data it has at that time.

ii. *Carcinogenicity and thyroid effects.* For chronic exposure, the Agency attempts to estimate the average residue in food at the time of consumption (Anticipated Residue). The anticipated residue is then multiplied by an average lifetime food consumption estimate (based on average consumption estimates derived from the 1977–1978 USDA Nationwide Food Consumption Survey for the U. S. population) and the percent of crop treated to yield the Anticipated Residue Contribution (ARC). The ARC is then multiplied by the carcinogen potency factor (Q_1^*) for ETU to estimate the potential carcinogenic effect, and compared to the ETU Reference Dose (RfD) to estimate potential for non-carcinogenic thyroid effects.

Carcinogenic risk was estimated as a combination of several factors: (1) ETU exposure both from direct exposure (in or on EBDC-treated food commodities) and from indirect exposure (resulting from metabolic conversion of EBDC residues to ETU in the body after consumption of EBDC-treated food commodities), (2) a time factor, and (3) a body surface correction factor. Assessing carcinogenic risk in this manner provides an upper-bound estimate of average individual lifetime risk which applies to 240 million people.

Since food commodities treated with EBDC pesticides contain both EBDC residues and ETU residues, two exposure estimates are necessary to calculate total ETU dietary exposure. A direct ETU exposure estimate is calculated from ETU residues found in or on food commodities. An indirect ETU exposure estimate is calculated from EBDC residues on food commodities that metabolically convert to ETU in the body (also referred to as *in vivo* conversion). To calculate indirect ETU exposure, EBDC exposure is multiplied by a metabolic conversion factor. Total estimated ETU exposure is the sum of estimated exposure from these two sources.

Time is another factor to be considered when estimating carcinogenic risk. Estimates of upper-bound lifetime carcinogenic risks for adults are based on assumed exposure over a 70-year lifespan. For the overall U.S. population, exposure is assumed to continue over an entire lifetime. When estimating carcinogenic risks for children and infants, adjustments are made to estimate exposure for the time period they remain in a specific age subgroup (e.g., infants who are 0 to 1 year olds and younger children who are 1 to 6 year olds). Consideration is also taken into account for the specific types of foods typically consumed by each age subgroup.

Currently, the Agency also incorporates body surface correction factors when calculating carcinogenic risks. The carcinogen potency factor (Q_1^*) for ETU is based upon studies in which animals are dosed over virtually their entire lives. Usually, EPA makes a correction of the dose comparing the ratio of body weight to surface area of the adult animal tested versus the ratio of body weight to surface area of adult humans. However, the ratios of body surface areas to body weight for

children and infants are not the same as is this ratio for adults, and thus an additional correction factor is included to more accurately estimate the risk to these two subgroups. The preliminary Q_1^* of 0.6 $(mg/kg/day)^{-1}$ used to estimate dietary risk for the overall population was further adjusted to account for infants by a factor of 0.51 and for children aged 1 to 6 by a factor of 0.64. This additional body weight to surface area adjustment to the "adult" Q_1^* to estimate carcinogenic risk to children and infants has not been done previously by the Agency for other pesticides. The Agency invites comment on this approach.

There are two basic approaches to estimating anticipated residues. The first uses field or "farm gate" data provided to the Agency as a requirement in the tolerance setting process. For chronic exposure, the average residue from field trial data may be multiplied by processing and degradation factors to yield the anticipated residue estimate. Processing factors may include factors to account for commercial processing, washing, cooking or other food preparation methods. The second approach bases the estimate on monitoring data for raw and processed commodities. Monitoring data potentially reflect the effect of different application rates and frequencies, preharvest intervals (PHIs), storage times and conditions, and percent of crop treated. The estimate from monitoring data could be adjusted for the effects of washing, cooking and other food preparation methods. Commercial processing may increase or decrease residue levels. For the EBDCs, cooking and/or processing may convert parent EBDC residues to ETU.

Finally, whichever process for estimating residues is used, *in vivo* conversion of EBDCs to ETU must be taken into account. Since final carcinogenicity studies for the EBDCs are unavailable, the Agency's exposure and risk assessment for each EBDC chemical includes the ability of the EBDC chemicals to be converted metabolically to ETU. EBDC data available to the Agency indicate that the ETU metabolic conversion rate for all parent EBDC compounds is approximately 7.5 percent of the amount of EBDC consumed. The Agency has multiplied the exposure estimates for each EBDC parent compound by 7.5 percent to account for the ability of EBDCs to metabolically convert to ETU *in vivo* on a weight-to-weight basis.

To estimate "farm gate" residues for maneb, metiram and mancozeb, the Agency used the average EBDC residues from residue field trial data from studies conducted close to the maximum rate, minimum PHIs, and at least the number of applications that are typically applied as long as they are within the number of applications allowed on the label. If residues from a lower application rate than the maximum application rate were used, then the residue estimate was increased proportionally to determine the maximum residue which might occur. For ETU residue estimates, the Agency used the average ETU residue from field trial data, corrected for the degradation of ETU in frozen sample storage when that degradation in storage in that commodity or a similar commodity exceeded 20 percent. To correct for degradation in frozen storage, the Agency divided the ETU level as determined in field studies by the fraction of ETU remaining as determined in controlled frozen storage stability studies.

Farm gate residue estimates were further refined to take into account some of the effects of treatment of the commodity after harvest, such as commercial processing, washing, peeling, trimming and cooking. Processing factors were determined for each of these effects. Rohm and Haas submitted a study which indicated that an estimated 99 percent of restaurants, households and food processors use some type of preparation procedure (e.g., washing, soaking, rinsing, peeling, trimming) for foods. The study indicated one exception in that an estimated 93 percent of restaurants use a processing procedure on apples. EBDC residue estimates were reduced by up to 93 percent when the effects of washing were taken into account. ETU residue estimates were increased by up to 12.5 percent of the EBDC residue estimate to account for the effects of cooking. Peeling and trimming factors were determined for a few commodities. The effects of cold or ambient storage used in normal channels of trade could not be quantitatively factored into the analysis since no data were available for these effects. However, based on available data on freezing EBDC-treated crops immediately after harvest, it is known that residues of EBDCs and ETU decline during frozen storage and, therefore, would also be expected to decline in ambient and/or cold storage.

For EBDC anticipated residue estimates in commercial processed commodities of apples, sugar beets, tomatoes, snap beans, grapes, corn, peanuts, barley and wheat, the Agency multiplied the anticipated residue estimate for the raw agricultural commodity by a concentration/reduction factor determined in processing studies required to support tolerances. For potatoes, no concentration of mancozeb or metiram was observed and no conversion of EBDC to ETU was observed, since all samples had non-detectable residue levels. Residue estimates for potatoes and potato products were made based on limits of detection.

For ETU anticipated residue estimates in processed commodities of apples, sugar bood processors use some type of preparation procedure (e.g., washing, soaking, rinsing, peeling, trimming) for foods. The study indicated one exception in that an estimated 93 percent of restaurants use a processing procedure on apples. EBDC residue estimates were reduced by up to 93 percent when the effects of washing were taken into account. ETU residue estimates were increased by up to 12.5 percent of the EBDC residue estimate to account for the effects of cooking. Peeling and trimming factors were determined for a few commodities. The effects of cold or ambient storage used in normal channels of trade could not be quantitatively factored into the analysis since no data were available for these effects. However, based on available data on freezing EBDC-treated crops immediately after harvest, it is known that residues of EBDCs and ETU decline during frozen storage and, therefore, would also be expected to decline in ambient and/or cold storage.

For EBDC anticipated residue estimates in commercial processed commodities of apples, sugar beets, tomatoes, snap beans, grapes, corn, peanuts, barley and wheat, the Agency multiplied the anticipated residue estimate for the raw agricultural commodity by a concentration/reduction factor determined in processing studies required to support tolerances. For potatoes, no concentration of mancozeb or metiram was observed and no conversion of EBDC to ETU was observed, since all samples had non-detectable residue levels. Residue estimates for potatoes and potato products were made based on limits of detection.

For ETU anticipated residue estimates in processed commodities of apples, sugar beets, tomatoes, snap beans, and grapes, barley and wheat, the Agency multiplied the EBDC anticipated residue estimate for the raw agricultural commodity by the percent conversion (parent EBDC to ETU) determined in processing studies, and added the ETU residue estimate from the raw agricultural commodity.

For EBDCs, washing and cooking factors were applied where available. FDA and State monitoring data (1985–

it appears that exposure results primarily from dermal contact. Respiratory exposure is 1 to 2 percent of

to the parent compound for mancozeb and maneb and has re-estimated exposure for workers who apply these

only the water cooling systems (tower) and oil well drilling fluids use an open pour-loading system in addition to

The DRES can estimate dietary exposure and risk for the U.S. population and 22 subgroups of the U.S.

Based on the exposure assumptions described in Unit II.B of the Technical Support Document, EPA has estimated

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For EBDCs, washing and cooking factors were applied where available. FDA and State monitoring data (1985–1989) were not used because of the insufficient number of samples that were collected and analyzed for EBDCs and/or ETU; thus, the representativeness of the samples of the distribution of ETU in the food supply is unknown. EBDCs and ETU are not detected by FDA's PAM I multiresidue analytical methodology. Far fewer samples were analyzed by FDA and the States for EBDCs and/or ETU than for other pesticide chemicals (such as captan) which are detected by FDA's PAM I multiresidue methodology. In those studies, no more than 15 samples per commodity were analyzed for EBDC parent compounds and ETU derived from these compounds. The available monitoring data were too limited and were not used for the dietary exposure assessment. The registrant's monitoring data were not used because those data were determined to be invalid for several reasons such as the limited number of samples tested and the lack of valid storage stability studies. However, the average ETU residues found in the FDA and State monitoring studies and the registrant's studies are generally 1 to 2 orders of magnitude lower than the Agency's current exposure estimates. For these reasons, the Agency believes that current residue estimates are likely to overestimate cumulative dietary risk and individual risk on many crops. Market Basket survey data have been required under the authority of FIFRA section 3(c)(2)(B).

iii. *Developmental Effects.* For acute exposure, the Agency attempts to estimate the maximum likely residue distribution of single day exposures for certain population subgroups. Anticipated residues for acute exposure were based on the maximum residues or 95th percentile residues from residue field trials, along with processing factors for washing, cooking and commercial processing, as described above for chronic exposure analysis. Adjustment for percent of crop treated is not appropriate for an acute analysis and is not done, because an acute effect may result from a residue in a single serving. Acute analyses were performed for developmenatal effects of ETU from the use of each parent EBDC compound.

b. *Worker Exposure*—i. *Methodology.* Agricultural workers, commercial applicators and homeowners are potentially exposed to ETU through mixing, loading and applying EBDC persticide products to food and non-food crops and conducting field labor in treated areas. Based on available data, it appears that exposure results primarily from dermal contact. Respiratory exposure is 1 to 2 percent of the total exposure for non-dust formulations which is considered negligible.

The Agency estimated exposure based on surrogate data bases for other pesticides with similar application methods and published literature for dermal and respiratory exposure. For estimating total daily exposure to ETU, respiratory exposure is added to dermal exposure after each has been corrected by individual EBDC absorption factors. Dermal absorption factors of 9 percent for nabam and 6 percent for netiram were used based on actual measurements in studies on those chemicals. The dermal absorption factor for mancozeb was changed from 1 percent (used in the PD 1) to an upper-bound of 10 percent because of limitations in dosages in the currently available study. For maneb, and upper-bound dermal absorption factor of 30 percent (based on an ETU dermal absorption study) was used in the absence of adequate data. Based on limited data, the Agency assumes that mixer/loader/applicator exposure to ETU is dependent on the percent of ETU present which has been expressed as a percentage of the parent EBDC. In order to more accurately predict mixer/loader/applicator exposure for the ETU breakdown product for each EBDC and respective formulation type, the Agency has required EBDC registrants to submit tank mix stability data for representative end-use products of all formulation types through FIFRA section 3(c)(2)(B). These data are due to EPA in December, 1989.

ii. *Agricultural uses.* The EBDCs are applied to fruit and vegetable crops to prevent damage by fungi and to protect harvested crops from deterioration. The majority of these uses are pre-harvest. The EBDCs are also used as a seed piece (chunk of potato used for propagation) treatment for potatoes. Application methods include ground boom, airblast and pressure sprayers.

In the PD 1, the Agency evaluated non-dietary exposure to applicators of mancozeb to apples, onions, potatoes and tomatoes by a variety of application methods. The exposure to mixer/loaders wearing long-sleeved shirts, long pants and chemical-resistant gloves was estimated to be 0.28 mg/lb. a.i. by the dermal route and 4.3 ug/lb. a.i. by the inhalation route of exposure when handling wettable powders.

Since the PD 1 was issued, the Agency has received additional information regarding the percent of ETU in relation to the parent compound for mancozeb and maneb and has re-estimated exposure for workers who apply these EBDC products. Based on this information, the assumptions previously used by the Agency that ETU exposure to the mixer/loader is 0.5 percent of exposure to the parent compound and for the applicator is 0.6 percent has been changed to reflect this new data for maneb and mancozeb. Because of the many different crops for which EBDC products can be applied, and certain similarities among them, the Agency selected four crops which it believes represent exposures associated with all other crops and types of application. They are sweet corn, grapes, apples and potato seed pieces. Sweet corn represents row crops and ground boom application, grapes represent airblast application to trellised crops, apples represents orchard crops and airblast application, and potato seed pieces represents preplant treatment of seed pieces. Exposure estimates assume the use of long-sleeved shirts and long pants during mixing/loading and application, and the use of chemical-resistant gloves during mixing and loading. The exposure estimates were based on surrogate data bases and published literature and adjusted for dermal absorption when estimating risks.

Commercial ornamentals. Mancozeb and maneb are applied to commercial ornamental trees, plants and shrubs by tractor-mounted power handheld spray guns. The Agency estimates that these pesticides are applied 10 times a year to approximately 6 acres of nursery stock in those nurseries that apply EBDC pesticide products. Two acres are sprayed daily requiring 3 days to treat the nursery once and 30 days to treat it 10 times.

The applicator exposure was estimated to be 43 mg/lb. a.i. by the dermal route and 33 ug/lb. a.i. by the inhalation route. The mixing/loading exposure during commercial ornamental spray operations is expected to be similar to mixer/loader exposure during agricultural uses in that the EBDCs are being added to spray tanks.

iv. *Homeowner lawns and gardens.* Exposure estimates were developed for homeowners applying maneb, mancozeb and metiram to vegetables, strawberries, ornamentals, fruit trees and turf by either a compressed air hand-held sprayer or a hose-end sprayer.

v. *Industrial.* The Agency has limited use information on nabam's industrial uses. Two types of loading systems are used: open pour-loading and closed-loading. Of the industrial uses of nabam, only the water cooling systems (tower) and oil well drilling fluids use an open pour-loading system in addition to closed loading systems. All other industrial uses of nabam including use in paper mills, sugar mills and in metal working coolants employ closed loading systems. Although the Agency has no exposure data on nabam used in industrial settings, information received from two registrants was used in estimating exposure. To estimate worker exposure to nabam, the Agency used its surrogate data base for mixers/loaders using open-pour liquid formulation agricultural pesticides and using closed loading systems. Product labels state operators must wear long pants, long-sleeved shirts, boots, a face shield and rubber gloves when handling the product. Exposure is considered minimal when closed loading systems are used.

According to experts in industrial biocides contacted by the Agency, nabam is not used as an additive for metal working coolants. An alternative chemical, methylene bisthiocyanate, is being used.

4. *Risk estimation—Dietary.* To estimate dietary exposure and then compare that estimate to a previously determined Reference Dose (RfD) or to estimate potential carcinogenic effects by multiplying exposure times the carcinogen potency factor (Q_1^*) to estimate risk, the Agency has developed the Dietary Risk Evaluation System, DRES, formerly known as the Tolerance Assessment System (TAS). This computer-based tool uses estimates derived from a survey conducted by the U.S. Department of Agriculture (1977–78) which involved 3-day dietary records for 30,770 individuals and 3734 food items. The DRES can estimate dietary exposure and risk for the U.S. population and 22 subgroups of the U.S. population. DRES is capable of using "anticipated residues" combined with consumption data as a means of generating a realistic risk assessment. Anticipated residues and percent of crop treated estimates were used in the DRES to estimate dietary risks from residues of EBDCs and ETU in foods.

i. *Carcinogenic risk.* Carcinogenic risk due to ETU from dietary exposure is the combination of risk from direct ETU residues plus the risk from ETU formed by *in vivo* metabolic conversion of the parent EBDC residue. Risks from each of these exposures were estimated for ETU derived from each EBDC parent compound.

In the PD 1, the dietary risk from ETU derived from mancozeb only was estimated because no adequate data were available for other EBDCs. The potential direct dietary risk (not including effects of *in vivo* conversion) from exposure to ETU based on mancozeb field residue data was estimated to be 5×10^{-6}. This was obtained by multiplying the daily estimated exposure to ETU [3.6×10^{-8} mg/kg/day] by the cancer potency factor for ETU designated as the Q_1^* [0.14 $(mg/kg/day)^{-1}$]. In addition, the Agency also estimated dietary risk of 1.7×10^{-6} from exposure to ETU from conversion of mancozeb, *in vivo*, after eating food containing mancozeb residues. The total potential dietary risk from exposure to ETU from the use of mancozeb on food crops was estimated in the PD 1 to be 2.2×10^{-5}, which was obtained by adding 5×10^{-6} and 1.7×10^{-5}.

Based on the exposure assumptions described in Unit II.B of the Technical Support Document, EPA has estimated dietary risks for ETU exposure from maneb and metiram in this PD 2/3 and reestimated dietary risk to ETU from the use of mancozeb. These risk estimates differ from those presented in the PD 1 in that: (1) They are based on crop residue data from maneb and metiram also and additional crop residue data for mancozeb, (2) the *in vivo* conversion rate used is 7.5 percent calculated on a weight-to-weight basis, (as compared to 12 percent calculated on a mole basis used in the PD 1) based on a recently submitted rat metabolism study and using a molecular weight conversion factor, (3) adjustments were made for commercial processing, washing, trimming and cooking, (4) the new preliminary Q_1^* of 0.6 $(mg/kg/day)^{-1}$ was employed and (5) zineb risk estimates are not included. The combined ETU dietary risk based on direct exposure to ETU residues (not including *in vivo* conversion) in foods from maneb, mancozeb and metiram fungicides with registered food uses is now estimated to be 1×10^{-4} to the general population. To better approximate actual ETU dietary risk from consumption of foods treated with the EBDCs, the dietary risk estimates from *in vivo* conversion of EBDCs to ETU were added to the dietary risk estimates for direct dietary exposures to ETU, which results in a combined total risk of 4×10^{-4} to the general population. The following table (Table 1) presents ETU risk estimates from direct exposure, *in vivo* conversion and total estimated risks (direct exposure plus *in vivo* conversion) from the use of EBDCs:

TABLE 1.—ETU DIETARY CARCINOGENIC RISK ESTIMATES FROM THE USE OF EBDC PESTICIDES

Chemical	Parent exp.	*In vivo* ETU exp.	*In vivo* risk	Direct ETU exp.	Direct risk	Total risk
Mancozeb	.00165	.00091	5.9E-05	.00089	4.0E-05	9.9E-05
Maneb	.00365	.00034	2.0E-04	.00132	6.0E-05	2.6E-04
Metiram	.00038	.00044	2.7E-05	.00017	7.7E-06	3.5E-05
Totals			2.9E-04		1.1E-04	4.0E-04

Exp = exposure estimates in mg/kg body weight/day.

Although there are currently no food tolerances established for nabam under 40 CFR part 180, FDA established a secondary direct food additive regulation (21 CFR 173.320), which permits nabam residues of 3 ppm on raw sugar beets or sugarcane from the use of nabam in sugar mill grinding, crusher or diffuser systems. The registrants of nabam have requested voluntary cancellation of all agricultural food and feed uses and sugar beet and sugarcane transport and flume water use.

Because the source of the ETU contribution from individual EBDC chemicals cannot be determined unless the EBDC pesticide used is known, and currently available analytical methods cannot distinguish among the various EBDC fungicides and the EBDC fungicides are often substitutes for one another, dietary risk is considered by the Agency in this risk assessment to be the total estimated risk from ETU (from direct exposure and *in vivo* conversion) from the use of all EBDCs on the individual crops. See the Technical Support Document, Table II–17, for a listing of ETU dietary carcinogenic risk estimates by individual crop from direct exposure to ETU and *in vivo* conversion

ii. *Developmental toxicity.* In the PD 1 developmental toxicity risk from dietary exposure was not discussed. However, a developmental toxicity risk assessment

for this effect was conducted for the Mancozeb Registration Standard. Both direct exposure to ETU residues on the old). The estimate of the total ETU exposure for the 13 registrant-retained crops was equivalent to 35 percent for because of the lack of refined use data (except in the case of wheat where the Agency has data showing one percent of

exposure to calculate the MOSs/MOEs. Thyroid MOSs/MOEs also were calculated using seasonal exposure present "worst case" risks because they assume a high level of exposure over a short period of time. This is compared to

a. *Carcinogenicity—Rebuttal comment.* ETU should not be classified as a Group B_2 carcinogen since the

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for this effect was conducted for the Mancozeb Registration Standard. Both direct exposure to ETU residues on the crops and *in vivo* conversion of mancozeb to ETU were considered. To estimate maximum exposure on a given day, maximum residues of mancozeb and ETU were estimated. It was assumed that 100 percent of the crop was treated using all available residue data (not necessarily at the maximum rate). Label PHIs were factored into the analysis. All dietary margins of exposure were found to be above 100 (based on a NOAEL for ETU of :5 mg/kg for developmental effects) for the U.S. population of pregnant women from exposure to ETU from the use of mancozeb on crops.

In this PD 2/3, developmental risk from dietary exposure to ETU from consumption of food treated with EBDC pesticides is estimated by comparing the maximum exposure estimates of each EBDC chemical (mg/kg body wt./day) to the NOAEL for ETU (:5 mg/kg/day) from a rat teratology study. A maximum exposure estimate represents the maximum amount of ETU ingested by a consumer on any given day. The comparison between exposure and the NOAEL is expressed as a Margin-of-Safety (MOS) or Margin-of-Exposure (MOE). An acute dietary exposure analysis using anticipated ETU residues from each EBDC chemical was used to estimate the distribution of single-day exposure for certain population subgroups, which in this case are females of child-bearing age. The analysis assumes that ETU levels occur uniformly within each food commodity at the anticipated residue levels. The estimated average MOSs/MOEs ranged from 770 for maneb to 4985 for mancozeb. For more information see the Technical Support Document.

iii. *Thyroid effects.* In this PD 2/3, the toxicology endpoint used in calculating the oral (dietary) Reference Dose (RfD) for ETU derived from the parent EBDCs was based on thyroid effects at a Lowest Effect Level (LEL) of 0.25 mg/kg of body weight/day from a 2-year rat feeding study. Exposure estimates from direct ETU exposure and conversion of EBDC to ETU were calculated from the anticipated residue estimates and corrected for percent of crop treated. Total estimated ETU exposure from each EBDC parent was compared to the RfD for thyroid hyperplasia. The estimate of total ETU exposure for all 55 mancozeb, maneb and metiram food crops was equivalent to 825 percent of the RfD for the general U.S. population, 3313 percent for infants and 1837 percent for young children (1 to 6 years old). The estimate of the total ETU exposure for the 13 registrant-retained crops was equivalent to 35 percent for the general population, 40 percent for infants and 71 percent for young children.

iv. *Conclusions.* Although the current estimates of dietary risk are based on the best available data, the Agency believes that the currently available residue data base may overestimate dietary exposure and risk for two possible reasons: (1) The residue estimates for some crops are likely to be higher than those on the dinner plate, and (2) the percent of crop treated is not accurately known for certain sites with low usage. The exposure estimates are based on residue data submitted to support tolerances with some corrections for the effects of commercial processing, washing and cooking.

Field trial data at the maximum registered rate and the minimum PHI required to support tolerances represent "farm gate" exposure. However, foods are not always treated at the maximum rate (especially in the early part of the season) nor are they always harvested at the specified PHI; in many cases, crops are treated at less than the specified rate, or are harvested several days after the minimum PHI. Additionally, the limited amount of FDA and State monitoring data available to the Agency suggest the possibility of lower levels of residues than those found in field studies even after taking into consideration expected reductions due to commercial processing, washing, cooking and percent of crop treated. The Agency expects that a well-designed and well conducted residue monitoring study could in some cases more accurately estimate ETU residues "at the dinner plate" and could conceivably support different risk estimates which may be as much as one to two orders of magnitude lower than current risk estimates. These data were required in a March 31, 1989 Data Call-In Notice and are due to be submitted to the Agency in September, 1990.

EBDC and ETU residues have both been shown to degrade in frozen storage. Frozen storage stability data and limited data on commodities harvested at different PHIs show a decline in EBDC and ETU residues with time in frozen storage and in the field. Ambient and cold storage degradation data for EBDCs and ETU in normal channels of trade could enable the Agency to model degradation rates.

In cases where percent of crop treated was believed to be less than 10 percent, the Agency used a constant percent of crop treated estimate of 10 percent because of the lack of refined use data (except in the case of wheat where the Agency has data showing one percent of the crop is treated). Where the actual percent of crop treated may be less than 1 percent, the estimated risk for that commodity could be possibly inflated by as much as one order of magnitude. The residue monitoring study could more closely reflect actual usage patterns and may help to further define percent of crop treated in some cases. To the extent that these data are available, they will be considered in the Agency's Final Determination along with any other residue data which the Agency currently has or obtains in response to this or other documents.

b. *Mixer/loader/applicator risks*—i. *Carcinogenic risks.* ETU carcinogenic risk estimates for persons mixing, loading and applying EBDC pesticides range from 10^{-3} to 10^{-7}. These risk estimates are based on current specified label requirements for mixer/loaders (long pants, long-sleeve shirts, gloves, hats and boots). The addition of protective clothing (coveralls over long-sleeved shirt and long pants, chemical-resistant gloves, shoes, socks and goggles or a face shield and a chemical-resistant apron) may reduce risks to mixers/loaders in excess of 40 percent and applicators in excess of 65 percent. When such protective clothing requirements as specified in the mancozeb, maneb, metiram and nabam Registration Standards and as proposed in this document for maneb, mancozeb, metiram and nabam are factored into these risk estimates, one carcinogenic risk estimate remains above 10^{-4} (maneb on commercial ornamentals). In addition, all homeowner uses for maneb and homeowner use of mancozeb on fruit trees and turf have estimated risks which exceed 10^{-6}.

ii. *Developmental and thyroid effects.* Margins-of-safety/exposure (MOSs/MOEs) were calculated for agricultural workers, commercial applicators, industrial workers and homeowners who may be exposed to EBDC pesticide products. Developmental and thyroid MOSs/MOEs were calculated using daily exposure estimates. For mancozeb and metiram where information was available on the parent compound, the developmental NOEL for the parent and the NOEL for ETU were used to calculate the MOS/MOE resulting from exposure to either mancozeb or metiram and to the ETU derived from those parent compounds. For maneb and nabam, the Agency used the developmental study NOEL for ETU (:5 mg/kg/day) and used *in vivo* conversion of the parent to ETU plus direct ETU exposure to calculate the MOSs/MOEs. Thyroid MOSs/MOEs also were calculated using seasonal exposure estimates for those sites which the Agency considers as having high consecutive exposure scenarios (i.e., grapes, apples and commercial ornamentals). For mancozeb, maneb and metiram, information was available on the parent compound and, therefore MOSs/MOEs were calculated based on exposure to the parent plus direct exposure to ETU (0.25 mg/kg/day). For nabam where there was no information available on the parent, MOSs/MOEs were calculated based on direct exposure to ETU and an *in vivo* conversion. The Agency believes that although thyroid MOSs/MOEs based on repeated daily exposures represent "worst case", it is prudent to calculate them in this manner due to the fact that these workers may not have time to recover from thyroid effects before their next exposure. The Agency's current data base does not provide a definitive basis for determining a likely recovery period for thyroid effects.

Several MOSs/MOEs were below 100. With incorporation of additional protective clothing requirements as specified in the mancozeb, maneb, metiram and nabam Registration Standards and as proposed as requirements in this document for mancozeb, maneb, metiram and nabam (coveralls over long-sleeved shirts and long pants, chemical-resistant gloves, shoes, socks and goggles or a face shield and a chemical-resistant apron), most MOSs/MOEs increased to 100 or higher.

iii. *Conclusions.* Assumptions surrounding mixer/loader/applicator developmental and thyroid risks are:

(a) Due to the lack of dermal absorption data on the parent compound, an upper-bound estimate of 30 percent absorption factor was used for maneb based on an ETU dermal absorption study. This may possibly overestimate exposure by 3-fold because dermal absorption for maneb is expected to be closer to mancozeb and metiram (between 6 to 10 percent) as they are structurally similar chemicals. This would increase most MOSs/MOEs (with additional protective clothing) to over 100. See Tables II–20 in the Technical Support Document. Dermal absorption data have been required for maneb and its ETU degradate under the authority of FIFRA section 3(c)(2)(B). These data are required to the Agency in May, 1990, and will be used to further refine mixer/loader/applicator carcinogenic, developmental and thyroid risk estimates.

(b) Daily exposure estimates used to calculate thyroid MOSs/MOEs may present "worst case" risks because they assume a high level of exposure over a short period of time. This is compared to seasonal MOSs/MOEs which assume a lower level of exposure over a longer period of time.

(c) Exposure to ETU was assumed to be linearly proportional to that of the parent EBDC. Based on limited data, the amount of ETU, expressed as a percent of the parent EBDC after 4 hours in a tank mix, varied from 0.1 percent to 0.2 percent for mancozeb to 6 percent for maneb wettable powder formulations. Given the similar pattern of use for the various EBDCs on a given commodity, the difference could, in some cases, result in a difference of up to 60-fold in mixer/loader/applicator exposure and risk, depending on which EBDC product was used for a particular use. Tank mix stability data required by the Agency's March 1989 Data Call-In will be helpful to refine estimates of the ETU breakdown in EBDC products and more accurately define risk estimates. These data are due to EPA in December 1989.

(d) Due to the lack of nabam exposure data on industrial uses, exposure estimates for nabam's industrial uses were based on agricultural closed and open-pour systems. The open pour method of transferring agricultural pesticides into spray tanks produces significant dermal exposure even with the use of protective clothing. The less sophisticated and more variable equipment used in agricultural settings makes its applicability for estimating exposure to these sites limited. The use of antimicrobials with closed, metered loading in industrial settings (pulp and paper mill systems, cooling water systems and metalworking fluids) suggest that worker exposure is minimal. The Agency believes that risk estimates based on agricultural exposure data may possibly overestimate exposure for nabam's industrial uses. The March 1989 Data Call-In has required dermal exposure data on oil well drilling (open-pour systems) and sugar/paper mills (closed systems). These data are due to EPA in March 1990. The Agency will refine worker exposure nabam risk estimates upon evaluation of the required exposure studies.

iv. *Rebuttal analysis.* The Agency received comments relating to risks in response to the PD 1. Rebuttal comments are on file in the EBDC Public Docket and a full discussion of rebuttal comments is given in the Technical Support Document. The following is a summary of the major comments. Some recently submitted comments will be addressed in the PD 4.

a. *Carcinogenicity—Rebuttal comment.* ETU should not be classified as a Group B_2 carcinogen since the effect only occurs above an exposure threshold.

Agency response. Since ETU induces an increased incidence of thyroid follicular cell adenomas and adenocarcinomas in rats and hepatomas in mice, it has been placed in Group B_2 (probable human carcinogen) as defined in criterion "a" of the Agency's Cancer Risk Assessment Guidelines. This classification is also supported by positive structure-activity data since several other thyroid inhibitors (i.e. thiouracil and thioures) have been found to induce hepatomas and/or thyroid tumors in rodents. Scientific evidence does not currently justify a threshold level for both types of tumors. If the Agency develops a policy on the classification of "threshold" carcinogens and if the registrant is able to show that the induction of thyroid and liver tumors is a threshold phenomenon, the Agency would reevaluate the weight-of-evidence and the appropriateness of the currently employed method for quantitative risk assessment.

Rebuttal comment. Since mouse data were used for calculating the Q_1^*, the conversion rate of mancozeb to ETU in the mouse, not the rat, should be used in determining the risk of exposure by various routes to ETU.

Agency response. The Agency used the conversion factor for mancozeb to ETU derived from a rat metabolism study for the purposes of risk assessment. This was the only available metabolism study on mancozeb. For the purposes of risk assessment for humans, the conversion factor that should be used is the one that would best approximate the conversion factor applicable to humans. The Agency believes it is more appropriate to use the available rat metabolism data rather than to estimate the conversion factor for the mouse.

Rebuttal comment. A surface area correction should not be done when determining the Q_1^* for ETU.

Agency response. The Agency's current Cancer Risk Assessment Guidelines support using surface area correction when determining a Q_1^* for any substance. The Cancer Risk Assessment Guidelines state "in the absence of comparative toxicological, physiological, metabolic, and pharmacokinetic data for a given suspect carcinogen, the Agency takes the position that the extrapolation on the basis of surface area is considered to be appropriate because certain pharmacological effects commonly scale

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according to the surface area." The interspecies extrapolation for carcinogenic effects is accounted for by expressing the dose as mg/squared meter body surface area/day. To modify the rodents' experimental dose to the adult human equivalent dose by surface area assumes that different sized animals are not equally sensitive to equal concentrations. This is based on the observation that smaller animals are more efficient eliminators of the parent compound and/or its metabolites than larger animals. This difference in elimination ability is accounted for by the difference between the species surface area to volume ratio. An additional correction factor is included to more accurately estimate the risk to infants (0 to 1 year olds) and younger children (1 to 6 year olds) because the ratios of body surface areas to body weight for infants and children are not the same as is this ratio for adults. These correction factors were 0.64 for children and 0.51 for infants. This additional body weight to surface area adjustment to the "adult" Q_1^* to estimate carcinogenic risk to children and infants has not been done previously by the Agency for other pesticides. The Agency invites comment on this approach.

b. *Mutagenicity—Rebuttal comment.* ETU is not mutagenic. In 1986, a battery of mutagenicity assays on ETU were submitted to the EPA Toxicology Branch Peer Review Committee for consideration. In addition, results of mutagenicity assays with maneb, metiram, mancozeb and nabam were summarized by the Committee to further evaluate the mutagenic risks associated with ETU exposure. The committee determined that results of available mutagenicity data could not be used as supportive information regarding the carcinogenic potential of ETU.

Agency response. The Agency has performed a more recent evaluation of available information on ETU for genetic activity. It was concluded that the body of evidence for ETU suggests that ETU is capable of inducing a variety of genotoxic endpoints. These include responses in gene mutation assays (e.g., Salmonella and mouse lymphoma assays), structural chromosomal assays (e.g., aberrations in cultured mammalian cells as well as a dominant lethal assay) and other genotoxic effects (e.g., bacterial rec assay and yeast conversion assay). It must be noted that while ETU does induce a variety of genotoxic endpoints which serve as support for mutagenicity concern, ETU does not appear to be a relatively potent genotoxic agent For example, there are instances where positive and negative results in the same type of mutagenicity assay are reported from different investigators; however, these results may be dependent upon the test conditions in each individual laboratory (e.g., problems in protocol, reporting or use of low concentration levels). Overall, it appears that ETU produces a spectrum of genotoxic effects which provide a basis for a mutagenicity concern for ETU. The mutagenicity concern would provide support in the weight-of- evidence determination of ETU's carcinogenic potential. The Agency therefore disagrees with the commenter that ETU is not mutagenic.

c. *Developmental effects—Rebuttal comment.* The differences in developmental toxicity potential of ETU in various species can be explained by different rates or extent of metabolism in these species.

Agency response. The Agency agrees that differences in the response of various species to the developmental effects of ETU could be due to different rates or extent of metabolism of ETU in these species. If the mouse metabolizes ETU at a faster rate than the rat, one would expect that ETU would more likely be shown to be developmentally toxic in the rat than in the mouse. The commenter also states that the half-life for elimination of ETU in the cat is 3.5 hours and that the cat possesses a metabolic pathway for ETU not present in the rat. ETU is not developmentally toxic to the cat. The Agency is not certain of the point of the registrant's discussion. If the registrant is suggesting that human metabolism may be more like the cat than the rat, and that differences in metabolism explain the different developmental responses in various species, the Agency does not believe there is sufficient information available to conclude either point. The Agency, as noted, used a metabolic conversion rate which best approximated that factor applicable to humans. As explained earlier, it believes the rat metabolism data to be appropriate in this case.

d. *Thyroid effects—Rebuttal comment.* A threshold exists for the effects of ETU in the thyroid of rats and in the liver of mice.

Agency response. The Agency agrees that a threshold may exist for the noncarcinogenic effects of ETU on the thyroid and that a threshold mechanism may exist for the formation of thyroid adenomas and carcinomas in the rat. However, the Agency does not believe that a NOEL for the non-carcinogenic chronic effects of ETU on the thyroid of rats has been demonstrated. Although the Agency agrees that a NOEL for the non-carcinogenic effects of ETU on mouse liver has been established, it does not agree that a threshold mechanism by which ETU causes liver tumors has been demonstrated. Definitive evidence has not been presented on the mechanism by which ETU causes mouse liver tumors. In the absence of such evidence, the Agency believes it is prudent to assume that mouse liver tumors observed following exposure to ETU lack a threshold for this phenomenon.

Rebuttal comment. Rohm and Haas commented that the Agency used the wrong toxicological endpoint for determining the ratio of NOELs for the liver effects of ETU versus mancozeb. "EPA calculated the potential carcinogenic risk for mancozeb based on mouse liver tumor induction by ETU. However, it established metabolic conversion of mancozeb to ETU based on data from another species, the rat."

Agency response. The registrant is correct in that the Agency used different endpoints for determining the ratio of NOELs of ETU to mancozeb in the mouse. Nevertheless, the ratio of NOELs for the liver effects of ETU versus mancozeb calculated by the Agency are identical to those reported by Rohm and Haas from the CD–1 mice study. The ratios for thyroid hyperplasia were stated as ETU:mancozeb at 10 ppm:100 ppm and the ratios for increased liver weights as ETU:mancozeb at 100 ppm:1000 ppm.

Using these same NOELs determined for the effects of each of these chemicals on the thyroid, the Agency has estimated the same ratios for thyroid and liver effects of ETU and mancozeb.

Rebuttal comment. The Agency is not correct in its determination of a NOEL for the effects of ETU on the thyroid in the subchronic ETU rat study conducted by Freudenthal. The commenter states that the NOEL for thyroid effects due to ETU reported in the Freudenthal subchronic study was 25 ppm.

Agency response. The Agency disagrees with the commenter. An Agency review dated March 7, 1986 set the NOEL for thyroid effects at 5 ppm based upon an increase in the incidence of thyroid hyperplasia, scored as moderate, seen at the 25 ppm dose level at 60 days but not at 90 days. The Agency believed that the effect at 25 ppm was treatment related due to the scoring of the lesion as moderate, since the effect was not seen in the control group nor seen in the animals sacrificed at 90 days.

Rebuttal comment. ETU does not solicit the same magnitude of an effect

in man on thyroid function that it does in the rat. The maneb registrant states that man has a reservoir of T_4 that "is always available to counteract stimulation of the thyroid, while in rodents, inhibition of T_4 synthesis and/or release causes immediate stimulation of the thyroid."

Agency response. While the Agency agrees that thyroid function may be controlled somewhat differently in humans and the rat, a United Kingdom factory worker study concluded that T_4 levels in workers were lowered due to ETU exposure. Since the effect of ETU on thyroid function in the human (including its impact on T_4 recovery) is not known definitively, the Agency is relying on the results of rodent studies to extrapolate to the human.

e. *Exposure—Rebuttal comment.* Due to the distinctions among the different EBDCs (chemical structure and use pattern), dietary exposure data regarding one of the EBDCs cannot always be generally extended to the other EBDCs.

Agency response. The Agency agrees that there are differences among the different EBDCs both in terms of the chemical structure and, sometimes, the use pattern. As a result of the Storage Stability Data Call-In Notices of March 31, 1987, the Agency now has crop residue data for maneb and metiram and for ETU derived from these two pesticides. These data have been used to assess dietary exposure to these chemicals. Based on the residue data received, some differences in residue levels of EBDC parent and ETU in foods are noted. Maneb and maneb-derived ETU residues were generally significantly higher than mancozeb or metiram ETU residue levels. Metiram and metiram-derived ETU residues were generally higher than mancozeb or mancozeb-derived residue levels. Differences in residue levels were generally within 1 order of magnitude.

There are also similarities among the different EBDCs both in terms of chemical structure and use pattern. The EBDCs all degrade to ETU and can be determined by analytical methods based on carbon disulfide evolution. Additionally, the formula weights for the monomers of all EBDCs are similar.

Although it perhaps would be preferable to base dietary exposure estimates on residue data from each individual EBDC chemical, when residue data were unavailable for one EBDC, data from other EBDCs were used because the differences in residue levels among the various EBDCs were generally less than 1 order of magnitude. In this analysis, this type of extrapolation was done for metiram and metiram-derived ETU on several crops.

f. *Additional comments—Rebuttal comment.* The Natural Resources Defense Council (NRDC) suggests that if residue chemistry data submitted by EBDC registrants in response to Data Call-Ins are inadequate, the Agency should suspend the use of those registrations.

Agency response. It is the Agency's general policy to suspend product registrations for failure to take appropriate steps in response to a Data Call-In Notice, including but not limited to failure to submit adequate data in response to FIFRA section 3 (c)(2)(B) requirements. In examining issues relating to whether a registrant has taken the appropriate steps to meet data requirements or the adequacy of data submissions, EPA considers a number of factors, including but not limited to the nature and origin of the problems with the data, the extent to which studies were conducted according to Agency requirements, and the nature of the registrants efforts to generate the data, even if the data turn out to be unacceptable for risk assessment purposes. The Agency did not issue Notices of Intent to Suspend to some EBDC registrants for failure to submit data sufficient for risk assessment purposes based upon its assessment of the registrants' efforts to generate the data. However, some Notices of Intent to Suspend were issued in instances where no data at all were submitted or the effort and/or the conduct of the study was deemed not to be adequate.

Rebuttal comment. NRDC argued that the Federal Government has not protected consumers from EBDC residues in the diet. The multiresidue methods used by FDA to identify pesticide residues in food cannot detect the EBDCs or ETU, and the methods available for specialized tests are time consuming, of questionable accuracy, and unsuitable for enforcement purposes. In addition, very few samples have been tested for the EBDCs using the specialized methods currently available. GAO indicated that FDA had analyzed only 154 domestic samples for EBDCs between 1978 and 1987. Additionally, the Agency has stated in the mancozeb Registration Standard that the available methods are inadequate for enforcement purposes because none are specific for mancozeb. EPA should not allow the widespread continued use of EBDCs in agriculture when FDA is unable to detect the presence of these residues in food and enforce EPA's tolerances.

Agency response. Methodologies for EBDCs and ETU are available in The Food and Drug Administration's Pesticide Analytical Manual, Volume II (PAM II). The available methodology for EBDCs analyzes them as a group by degradation to carbon disulfide (Keppel method) and thus can be considered a multiresidue method. EPA has received reports of difficulties in using the EBDC and ETU methodology from the State of California Department of Food and Agriculture (CDFA). Although there are some drawbacks to the Keppel method, the Keppel method is the best method known to the Agency for tolerance establishment and enforcement purposes. This method was collaboratively studied and is designated as the official, final action method by AOAC for certain dithiocarbamate formulations. The method is listed as Method III in PAM II and is used by FDA for enforcement purposes. The Agency believes that the Keppel method provides satisfactory results and good reproducible recoveries when used by analysts experienced with the method. For ETU, the Agency recommends the Onley method. The Onley method for ETU has been studied collaboratively, is the official, final action method for potatoes, spinach, applesauce and milk and provides acceptable results when properly validated with recovery and control data.

The Agency agrees that the FDA multiresidue methods available in the Pesticide Analytical Manual Volume I (PAM I) do not detect EBDCs or ETU, and thus FDA and the States analyzed fewer samples for EBDCs than for pesticides which were capable of being detected by the PAM I Multiresidue methods. However, no current policy exists requiring that a pesticide be capable of being analyzed by a multiresidue method. The registrants have been required to test the EBDCs and ETU using the FDA PAM II multiresidue methods. The results of some of those tests are now available. Mancozeb, maneb, metiram and ETU were not detected by the PAM I methods.

Regarding the suitability of analytical methods for enforcement purposes, the Agency has required, from the registrants, methodology which is specific for each EBDC pesticide. These data have been required through the Registration Standards and/or Comprehensive Data Call-In Notices for each of the EBDCs. The registrants have reported difficulties in developing specific analytical methodology. In the absence of such specific methodology, the Agency recommends the use of the Keppel method for enforcement

purposes. Additionally, the Agency is conducting a Special Review of all

the EBDCs, but in most cases the alternatives are more expensive,

producer impacts and efficiency (societal) impacts. Producer impacts

them relatively important and widely used fungicides. EBDCs also have a

no longer available as a result of the action) are estimated at $20 to $225

that for all uses, the burden would be

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purposes. Additionally, the Agency is conducting a Special Review of all EBDC pesticides as a group, partially because of the difficulties of distinguishing among the various EBDCs and because ETU is a common metabolite and degradate of all of the EBDCs and is of significant toxicological concern.

Existence of specific enforcement methodology and ease of use of analytical methodology are not the only criteria used by the Agency in determining registration status or initiation of Special Review. If specific analytical methods are developed and replace the Keppel method as the official enforcement method for the EBDCs, then FDA will need to use five different methods instead of the one analytical method currently used.

Rebuttal comment. A nabam registrant requested that the Agency terminate the Special Review process for nabam. They contended that nabam is used exclusively as an industrial microbicide and that Margins-of-Safety/Margins-of-Exposure associated with these uses are acceptable. They submitted two reports: "Exposure and Risk Assessment for Applicators of Nabam Containing Microbiocides" and "Benefits of Nabam Containing Microbiocides."

Agency response: The Agency disagrees with the registrant's request to terminate a Special Review of nabam. Nabam has registered industrial uses. The Agency has reviewed the registrant's applicator exposure study and noted that a NOEL of 0.25 mg/kg/day was used in their risk assessment for thyroid toxicity. The Agency disagrees with Margins-of-Safety/Margins-of-Exposure calculated using a NOEL of 0.25 mg/kg/day and points out that, in its opinion, a NOEL for the effects of ETU on the thyroid has not been determined. In this study, an LEL (Lowest Effect Level) was established at 5 ppm (0.25 mg/kg/day).

The information submitted on the benefits of nabam were incorporated into the Agency's risk benefit analysis of nabam.

B. Benefits Assessment

1. *Synopsis of benefits assessment.* If all EBDC registrations on all food crops were cancelled, estimated direct losses to growers (producer impacts) would be approximately $46 to $75 million per year and projected loss to society (efficiency impacts), at least in the short term, would range from approximately $90 to $305 million per year. Efficiency impacts are concentrated on three crops: lettuce, peppers and celery. Registered alternatives exist for almost all uses of the EBDCs, but in most cases the alternatives are more expensive. However, for some food crops, projected increased production costs are offset by estimated increases in yields. The estimated impact of cancellation on non-food uses is $5 to $15 million of producer/user impacts, chiefly for commercial ornamentals. For certain industrial sites, nabam is more expensive to use than certain alternatives and costs to industrial users could decrease with a shift to alternative biocides.

2. *Method of analysis.* The information used to evaluate the benefits of the EBDCs was derived from several sources. These sources include: public comments in response to the PD 1, the registrants, USDA/State Extension Service and research personnel, published State pest control recommendations, scientific literature including the American Phytopathological Society's Fungicide and Nematicide Test Results for the years 1955 to 1987, National Pesticide Information Retrieval System (NPIRS), the USDA/State/EPA 1978 Assessment of EBDC Fungicide Uses in Agriculture, analyses prepared by the Agency staff, a Cooperative Agreement between the Agency and the University of Georgia, and an Agency contractor.

The general approach of this analysis was to evaluate, on the basis of available information, the possible economic impacts of a range of regulatory options including the cancellation of some or all registered uses for EBDC fungicides or modifications to current methods of use of EBDC fungicides. Cancellation options included an analysis of alternative pest control technologies including non-chemical methods. Chemical alternatives were determined from a listing of registered pesticides. The most probable alternatives to EBDCs were chosen on the bases of cost, efficacy, market availability and the suggested uses by State experts and the Cooperative Extension Service. Future Agency actions and marketing decisions by registrants or users could change the availability and use of certain alternatives. The analyses were conducted on major use sites/commodities. Analyses on individual sites/commodities which were conducted, considered scenarios involving cancellation of combinations of fungicides. These quantitative analyses provide the basis for the benefits assessment presented here and are available from the EBDC public docket.

Economic impacts from the loss of EBDCs were calculated in terms of producer impacts and efficiency (societal) impacts. Producer impacts were based on projected changes in production costs, changes in crop yield and reduction in quality. Efficiency impacts were calculated for three crops where there are potential substantial impacts beyond the grower level. Efficiency impacts are defined as society costs, or the loss to society (growers, distributors, consumers or others) of the dollar value of goods and services no longer available as a result of the action.

The limits of this analysis included assumptions which were made based on the limited usage information available, limited comparative data available on yield and quality factors associated with the use of alternative fungicides and non- chemical control measures, and the limited information available on minor use crops. In addition, the Agency assumed that only registered chemical alternatives would be available as chemical replacements for EBDCs if their registrations were cancelled. This is a conservative approach because new fungicides are being developed and tested on many crops for which EBDCs are registered. For some crops such as fennel and many ornamental crops, the Agency has no information on use or on comparative performance. However, the Agency recognizes the potential importance of EBDC use on such minor crops and encourages factual data in support of EBDC benefits or information on other control methods (chemical or otherwise) be submitted in response to this document.

3. *Benefits assessment.* The EBDCs are registered to prevent crop damage caused by fungal pathogens to certain fruit, nut, vegetable, field and ornamental (including turfgrass) crops. They are also registered for use as seed treatments for selected field and vegetable crops, as pre-plant treatments for potato seed pieces, as soil treatments and for home gardens. The sole registrant still holding registrations for use of nabam agricultural sites has recently requested voluntary cancellation of all nabam agricultural food sites; all agricultural use registrations have been suspended for several years and there is no known use of nabam on any agricultural crops. Nabam is registered for use as an antimicrobial pesticide in recirculating water systems, sugar mills, pulp and paper mills, oil recovery systems, adhesives, glues, coatings and paints.

EBDCs are registered for use on over 150 food, non-food and industrial sites. Their broad spectrum of activity and relatively low cost appear to have made them relatively important and widely used fungicides. EBDCs also have a multi-site mode of action (affecting two or more enzyme systems) and are used in some cases to slow or prevent the development of fungal resistance to other fungicides with more limited modes of action. Total usage of the EBDCs in the United States is estimated at 12 to 18 million pounds active ingredient (a.i.) per year. The largest crop uses by volume of EBDC applied are apples, cucurbits (cucumbers, melons, squash), onions, potatoes, small grains, sweet corn and tomatoes. The largest crop uses in terms of proportion of the crop treated are apples, cucurbits, lettuce, onions, potatoes and spinach.

Cancellation of all currently registered uses is projected to result in first year foregone benefits to producers of approximately $46 to $75 million from changes in the costs of disease control and losses due to possibly reduced yields. In addition to those losses, efficiency losses (losses to society of the dollar value of the goods and services no longer available as a result of the action) are estimated at $90 to $305 million per year. Losses are not always borne equally and some severe localized losses may be incurred by current users of EBDC fungicides and by some processors of these growers' crops. Because of the uncertain impact on yield and quality, these estimated losses in production are somewhat more difficult to predict than the projected increased costs of disease control resulting in a larger range in numerical values. The estimated impacts due to yield and quality losses possibly represent an overestimation because in the long term the grower sector may increase acreage to compensate for expected yield losses; such grower losses may be partially offset by increased commodity prices and alternative fungicides may become registered which would replace the EBDCs. In calculating these impacts, it is assumed that only currently registered alternatives or currently accepted non-chemical technology would be available at the time of cancellation. It is expected that for all uses, the burden would be largely borne by the user and/or consumer.

The above quantified benefits are found on the uses of mancozeb, maneb, metiram and nabam. As discussed earlier, all zineb uses have been suspended, the registrant for the technical product has requested voluntary cancellation of all zineb uses, and to date, no other registrants have accepted the responsibility to support the registrations. Therefore, EPA concludes that the benefits from zineb use are low and no further quantitative assessment of benefits is presented.

4. *Summary of EBDC uses.* A site-by-site summary of EBDC usage on selected food crops, non-food crops and industrial sites is presented in the following Table 2. Estimated economic benefit gained by the use of EBDCs for individual food crops is given in Tables 3 to 5 A full discussion of these uses and estimates of benefits are provided in Chapter III of the EBDC Technical Support Document.

TABLE 2.—SUMMARY OF USAGE OF EBDCS FOR SELECTED SITES

Use	Extent of usage		Key pests	Availability of viable alternative
	AI/Year/1000lbs.	Percent of site treated		
Major Food Crops:				
Apples	3,500	46	Rust	captan
			Scab	benomyl
			Summer diseases	fenarimol
				triforine
				triadimefon
Bananas	53	44	Sigatoka disease	Petroleum oils
				propiconazole
				tridemorph
Carrots	25	20–25	Alternaria leaf spot	chlorothalonil
			Cercospora leaf spot	triphenyltin hydroxide
				copper fungicides
Celery	175	27–35	Early blight	chlorothalonil
			late blight	benomyl
				anilazine
				coppers
				thiophanate-methyl
Cole crops (cabbage, broccoli, cauliflower, Brussels Sprouts).	270	10	Downy mildew	chlorothalonil
Cranberries	15	15	Alternaria	chlorothalonil
			Fruit rot	copper hydroxide
			Twig blight	ziram
Cucurbits (cucumbers and melons).	2,000	40	Downy mildew	chlorothalonil
			Gummy stem blight	benomyl
			Alternaria	coppers
			Anthracnose	metalaxyl + chlorothalonil
			Cercospora leaf spot	triadiemfon
Grapes	300	22	Black rot	captan
			Phomopsis	benomyl
			Downy mildew	triademifon
				ferbam
				coppers
				iprodione
Leafy greens	150 [1]	90	Downy mildew	none
			Alternaria	-Do-
Lettuce	540	60	Downy mildew	captan
				coppers
				metalaxyl
Onions	810	75	Botrytis leaf blight	chlorothalonil
			Downy mildew	metalaxyl + chlorothalonil
			Purple blotch	iprodione

TABLE 2.—SUMMARY OF USAGE OF EBDCS FOR SELECTED SITES—Continued

Use	Extent of usage		Key pests	Availability of viable alternative
	AI/Year/1000lbs.	Percent of site treated		
Peaches & Nectarines	32	3	Brown rot	chlorothalonil
			Twig blight	captan
			Leaf curl	benomyl
				dichloran
Peanut	250	4	Leaf spot	benomyl
			Rust	chlorothalonil
				coppers
				thiophanate-methyl
Peppers	550	56	Anthracnose	Ziram
			Fruit rot	
			Frog eye spot	
Potatoes	3,544	43	Early blight	chlorothalonil
			Late blight	TPTH
				anilazine
				coppers
Seed treatments	630	8–10	Smuts, bunt,	carboxin + thiram
			Damping-off	captan
			Seedling blights	triadimenol
Small grains	650	0.4	Leaf spot	triadimefon
			Leaf rust	propiconazole
			Stem rust	
			Tan spot	
			Glume blotch	
Spinach	80	50	Downy mildew	None
			White rust	-do-
Sweet corn	700	19	Helmintho-sporium leaf blight	chlorothalonil for fresh corn; none for sweet corn grown for processing
			Rust	
Tomatoes	1,350	25	Early blight	chlorothalonil
			Late blight	anilazine
				coppers
				ziram
Non-food crops:				
Ornamental plants	150	15–20	Leaf spots	benomyl
			Downy mildew	chlorothalonil
			Rust	dichloran
				fenarimol
				iprodione
				thiophanate-methyl
				triadimefon
				triforine
				vinclozolin
Turfgrass	516	<10[2]	Helmintho-sporium	benomyl
		1[3]	Brown patch	chlorothalonil
			Pythium	chloroneb
				iprodione
Industrial Sites:				
Paper mills	250	4	Slime-forming Fungi and Bacteria.	MBT
				DMTT
				isothiazolone
Water cooling	N/A[4]	5-20	-do-	DBNPA
			Algae	MBT
				isothiazolone
Sugar mills	200	50-60	Slime-forming fungi and bacteria.	Busan
			Fungi	DBNPA
			Bacteria	Heat sterilization
Oil well	<5	5	Spoilage bacteria	acrolin
			Fungi	DBNPA
			Slime-forming bacteria	formaldehyde
				isothiazolone
				quaternary ammonium compounds
				triazine

[1] Leafy green have beenremoved from maneb labels until additional residue data is provided by the registrants and reviewed by the Agency; estimates are given for use when these sites were still on the label.
[2] Estimate for golf courses.
[3] Residential lawns treated by homeowners.
[4] Not available.

5. *Analysis of rebuttal comments.* Use and benefit related rebuttal comments submitted to the Agency in response to the Initiation of Special Review (PD 1) issued in July, 1987 were reviewed and the Agency's full responses are provided in the Technical Support Document.

Rebuttal comments are on file in the EBDC Public Docket.

The Agency received approximately 100 responses pertaining to the benefits

of EBDC fungicides. Most of these comments were undocumented testimonials stating that the EBDCs were useful in controlling diseases on a wide variety of agricultural crops, were cost effective compared to alternatives, prevented potential yield and quality reduction on many crops, and aided in prevention of significant resistance problems. Comments submitted by manufacturers of EBDC products used on agricultural crops were incorporated, where appropriate, into the benefits assessment presented in the Technical Support Document.

Rebuttal comment. Pennwalt Chemical Corporation submitted an analysis of economic welfare impacts of a maneb cancellation.

Agency response. The Agency agrees with the approach used in the submission to assess the economic impact of cancellation of these EBDC products. However, the analysis was dependant on the input data and assumptions made about the effect that maneb and alternative pesticides have on the production of a given commodity. The specific data that are used to reflect the market characterization also are crucial. The Agency concludes that the submission relied on comparative efficacy and product performance assumptions that were not well documented, as well as estimates of supply and transmission elasticities that do not appear to be plausible. Therefore, the specific quantitative results cannot be accepted as correct on their face value.

Rebuttal comment. Alco Chemical Corporation and Vinings Industries submitted benefits information on industrial uses of nabam. They concluded that for cooling water systems, pulp/paper mills and cane/sugar beet mills, nabam products are more cost-effective (dollars per treated volume of protected material) than were alternative chemicals. For petroleum recovery operations, they found alternative chemicals to be more cost-effective on a comparative basis.

Agency response: The Agency's analysis found that on all sites analyzed, alternatives to nabam were more cost-effective. These differences can be accounted for by different assumptions on likely treatment rates, probable alternative chemicals used and the use of wholesale product prices (Alco and Vinings) as opposed to end-user cost estimates.

III. Risk/Benefit Analysis and Proposed Regulatory Decision

FIFRA requires the Agency to weigh the risks against the benefits of the use of a pesticide in order to determine whether continued registration would cause unreasonable adverse effects on the environment. This section identifies the regulatory options available to the Agency to reduce the unreasonable risks from the registered uses of the EBDCs. Each option has been evaluated for its impact on the risks and benefits of the registered uses of the EBDCs and the most appropriate regulatory options have been proposed. There are four basic options for regulating the uses of EBDC pesticides:

Option 1—Continuation of Registration Without Changes
Option 2—Continuation of Registration with Modifications to the Terms and Conditions of Registration
Option 3—Partial Cancellation
Option 4—Cancellation of All Registrations

Option 1, Continuation of Registration without Change and Option 4, Cancellation of All Registrations, are at the opposite ends of the risk/benefit spectrum. Adoption of Option 1 would be appropriate when the Agency has concluded that the level of risk is reasonable in light of the pesticide's benefits and that further risk reduction measures are not necessary to assure that the use of the pesticide meets the standard for continued registration. Adoption of Options 3 or 4, Partial or Total Cancellation, would be appropriate when the Agency has concluded that the risks outweigh the benefits for some or all uses, respectively, and that these risks cannot be mitigated to a reasonable level, in light of the benefits, by any other measure short of cancellation. Cancellation may affect all uses of a compound, only specific uses or specific formulations, or specific application methods. Option 2 is appropriate when the risks of a pesticide use can be reduced to a level where the benefits of use outweigh the risks. This risk reduction is accomplished by modifying the terms and conditions of the pesticide's registration. These modifications, which are expressed through the pesticide labeling are, for the most part, changes in the way the pesticide is used or the amount of the pesticide that may be used. These changes are designed to reduce exposure to the pesticide and thereby reduce or eliminate the risk from the pesticide. Risk reduction measures were considered and evaluated for their potential effectiveness and feasibility.

A. Regulatory Options Considered

1. *Measures to reduce dietary exposure.* Amounts of pesticide residues on food crops are affected by such factors as quantity of active ingredient used, the solvents used for dilution, mode and schedule of application, preharvest interval, and soil and weather conditions. Several measures were considered as means by which potential dietary exposure to the EBDCs and ETU through residues on food crops might be reduced. The Agency specifically requests comments on the analysis presented below and what measures the Agency should consider for reducing risks from use on various crops.

a. *Preharvest interval.* The preharvest interval is the number of days that must elapse between the final application of a pesticide and actual harvest of the crop. Lengthening this interval provides more time for dissipation of residues before crops are harvested and ultimately consumed. Additionally, lengthening the preharvest interval can serve as a means of lowering tolerances. The practicality of extending the preharvest interval for the EBDCs cannot be evaluated at this time due to lack of efficacy data, but the Agency believes that extending the preharvest interval could be equivalent to cancellation on some crops because the crop could be unprotected from disease during the extended preharvest interval.

b. *Modify application practices.* Three modified application practices were considered to reduce EBDC and ETU exposure and risk through reduction in crop residues: (1) reducing the amount of active ingredient in the formulations, (2)reducing the amount of formulation applied per season and (3) reducing the amount of active ingredient applied per acre. Use rates, and the number of applications per season are based on field evaluations carried out under various degrees of disease pressure, varying environmental conditions and in diverse geographic regions. The limited field trials available comparing efficacy at different application rates of EBDCs were reviewed by the Agency. These trials indicate that under the conditions tested, the higher rates tested tended to be more efficacious and for the very few trials that included a range of application rates and yield data, the higher rates seemed to provide higher yields. Fewer applications and lower rates can be used in some instances where predictive management models are available which take into account local climatic and disease conditions. However, such models are currently available for only a small number of crops. Therefore, based on the information available, the Agency believes that mandated modification in application practices could potentially adversely impact the efficacy of EBDCs as plant disease control agents and

could, for some crops, be equivalent to cancellation in terms of potential

agricultural workers using EBDC fungicides. Presently, the Registration

by multiplying the estimated exposure by a carcinogenic potency factor, the

ommercial ornamentals. The estimated rcinogenic risk to mixer/loader/ pplicators from the risk of maneb

agricultural workers to EBDCs and ETU without imposing significant costs to the agricultural industry. Workers in

mancozeb would be registered for use on asparagus, bananas, cranberries, figs (caprifig only), grapes, onions, peanuts,

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could, for some crops, be equivalent to cancellation in terms of potential economic impact.

2. *Measures to reduce exposure to applicators, mixer/loaders and fieldworkers.* The potential risks to persons mixing and loading EBDC formulations, applying the pesticide to crops and working in the fields treated with the pesticides were estimated and are summarized in the Technical Support Document. Specific risk reduction measures were considered by the Agency.

a. *Protective clothing.* Dermal and inhalation exposure to the EBDCs and ETU can occur when mixing, loading, maintaining application equipment, during application and at the time field workers enter treated fields to cultivate, apply other pesticides and harvest.

The Agency has evaluated the level of risk reduction gained and the costs of requiring protective clothing for all agricultural workers using EBDC fungicides. Protective clothing, comprised of coveralls worn over a long-sleeved shirt and long pants, chemical-resistant gloves, shoes, socks, goggles or a face shield and a chemical-resistant apron is expected to reduce dermal exposure to mixer/loaders by 40 percent. Protective clothing, comprised of coveralls worn over a long-sleeved shirt and long pants, chemical-resistant gloves, shoes, socks and goggles or a face shield is expected to reduce exposure to applicators by 65 percent. The coveralls are not intended to be chemical-resistant. Since inhalation exposure is estimated to be 1 to 2 percent of the total exposure and therefore considered negligible, the need for respirators was not considered.

The costs of protective clothing for workers (mixers, loaders and applicators) applying maneb, mancozeb and metiram to agricultural crops are estimated to be $25 to $37 per worker for approximately 30,000 to 40,000 workers or $0.75 to $1.5 million in total. However, the Agency believes that most persons applying EBDC fungicides probably use other pesticides which require the use of similar or even more restrictive protective equipment. Therefore, the Agency believes that the actual cost of requiring protective clothing of all agricultural workers applying EBDCs is considerably lower than $1.5 million.

b. *Reentry intervals.* Establishing a reentry interval would allow time for further breakdown of EBDC residues into ETU and ETU into metabolites or compounds of less concern. EBDCs meet both the chronic toxicity and exposure criteria specified in 40 CFR 158.990 for reentry data. The Agency considered requiring a reentry interval for all agricultural workers using EBDC fungicides. Presently, the Registration Standards for maneb, mancozeb, metiram and nabam specify an interim 24-hour reentry interval be placed on labels of all maneb, mancozeb, metiram and nabam end-use products registered for agricultural use. This interim level will remain in effect until dislodgeable foliar residue data required in the Registration Standards, and as required in the March 1989 EBDC Data Call-In are submitted, reviewed and the Agency announces any change in this reentry interval. These data are due to EPA in July 1990. Since the Agency does not currently have data on degradation of the EBDCs or ETU over time, it has no additional basis on which to propose a specific reentry interval other than the interim reentry interval previously discussed.

The Agency has few data available on the costs imposed on agriculture from requiring a reentry interval for agricultural workers. However, the Agency believes that there would be little if any impact from a 24-hour reentry interval because workers could reenter a treated area within 24-hours if they wore the protective clothing required for applicators.

3. *Measures to reduce industrial worker exposure.* The nabam Registration Standard specified protective clothing requirements of long-sleeved shirts, long pants, chemical-resistant gloves, shoes, socks and goggles or a face shield while mixing, loading or applying as well as a chemical-resistant apron when mixing and loading. Although low MOSs/MOEs for thyroid effects were calculated for nabam's use in sugar and paper mills, they were calculated based on surrogate agricultural data which may yield higher exposure estimates. Because the surrogate data may overestimate exposure, the Agency believes that once nabam- specific exposure data are submitted, all thyroid MOSs/MOEs for nabam may increase above 100.

B. Risk/benefit Analysis of Regulatory Options

1. *Analysis of options—Option 1—Continuation of registration without changes.* If the registrations for mancozeb, maneb, metiram and nabam for use on food crops, non-food crops and industrial sites were continued without restriction, the estimated total upper-bound ETU dietary risk would be 10^{-4} with cumulative forgone benefits of $46 to $75 million in producer impacts and $90 to $305 million in efficiency impacts. This risk would be higher if uses of zineb also were allowed to continue. The total risk was estimated by multiplying the estimated exposure by a carcinogenic potency factor, the Q_1^*. Exposure was estimated using anticipated residue data, percent of crop treated data, and food consumption data from the USDA 1977–78 Nationwide Food Consumption Survey. (See Unit II.A.3.)

Also, there would be low MOS/MOEs (below 100) for thyroid and developmental effects and/or high cancer risks for mixer/loaders and applicators using maneb on grapes and commercial ornamentals, and on homeowner turf, fruit trees, vegetables and ornamentals; mancozeb on homeowner turf and fruit trees; and nabam in sugar and paper mills. Benefits are low for these uses because of the availability of alternatives.

Option 2—Continuation of registrations with modifications to the terms and conditions of registration. Because of the lack of data, the Agency does not know whether amending the terms and conditions of registration by extending pre-harvest intervals or modifying application rates or practices would reduce the total dietary risk to a significant extent. The Agency believes that such modifications possibly may reduce the versatility and efficacy of EBDC products and thereby reduce their potential benefits. The March 1989 Data Call-In Notice required use information on the EBDCs which was submitted in August, 1989. Information on the percent of crop treated was used along with other available data in conducting the analyses used for the preliminary determination; most of the submitted data on comparative efficacy previously were available to the Agency, but any new information will be included in the final decision. This information and any other available information will be used to further refine the risk estimates for the Agency's Final Determination PD 4. Users and other groups are also encouraged to submit data demonstrating that application rate, frequency or other exposure variables can be modified to reduce overall exposure and still retain the efficacy of the products.

When estimating exposure to mixer/loader/applicators using EBDCs on agricultural sites, the Agency took into consideration protective clothing comprised of coveralls worn over a shirt and pants, chemical-resistant gloves, shoes, socks, goggles or a face shield for applying plus a chemical-resistant apron when mixing and/or loading EBDC pesticides. With incorporation of these additional protective clothing requirements, a few maneb MOSs/MOEs remained under 100: grapes and

commercial ornamentals. The estimated carcinogenic risk to mixer/loader/applicators from the risk of maneb products used on commercial ornamentals is 10^{-3}. No additional protective clothing or equipment appear practical to reduce these exposures further.

The Agency finds it impractical to enforce a requirement for such protective clothing for homeowner uses as the Agency believes that homeowners are not likely to go to the added expense of buying, for example, gloves and goggles or a face shield considering the small amount of EBDC products used on home gardens and turf. MOS/MOEs for homeowners applying maneb on turf are below 100. Estimated carcinogenic risks to homeowners using maneb are greater than 10^{-6} for all uses; estimated risks to homeowners using mancozeb are greater than 10^{-6} for turf and fruit tree uses.

OSHA regulations, 29 CFR 1910.132, already require industrial workers to use protective clothing and protective clothing requirements specified in the nabam Registration Standard are on nabam labels. MOS/MOEs for workers using nabam in sugar and paper mills are estimated to remain below 100 even when protective clothing is used. However, these estimates are based on exposure estimates which may need some refinement. The Agency's March 1989 EBDC Data Call-In Notice will provide nabam dermal exposure data for oil well drilling fluids and paper and sugar mills. These data are due to be received in March, 1990. To the extent that these data are available, they will be used to further refine the risk estimates for the Agency's Final Determination PD 4.

The interim 24-hour reentry interval for agricultural workers which is specified in the Registration Standards for maneb, mancozeb, metiram and nabam should reduce exposure of agricultural workers to EBDCs and ETU without imposing significant costs to the agricultural industry. Workers in greenhouses or field situations can reenter the treated area if they wear clothing specified for applicators. EBDC labels for products used on golf courses state that workers can reenter the treated area after the spray has dried. The Agency expects to receive dislodgeable foliar residue data in July 1990 which should allow the Agency to fully evaluate this risk reduction measure and determine whether any refinements are necessary.

Option 3—Partial cancellation. This option would propose cancellation of certain food and non-food uses. The goal of the option would be to reduce aggregate risks from EBDCs to a level that provides an appropriate overall balance of risks and benefits. In evaluating which uses should be cancelled, the Agency initially focussed on those uses which registrants seem unwilling to support. At the time this document was signed, no registrant of zineb has indicated an interest in supplying the outstanding data for this chemical. All zineb uses currently are suspended (and have been for some time) and the only technical registrant has requested that the Agency cancel its registrations. Given the apparent lack of support for zineb, which the Agency believes is evidence of a lack of benefits provided by zineb, zineb uses were deemed least deserving of retention. Thus, under this option, the Agency would propose to cancel all zineb uses.

The Agency next turned to an examination of the 55 registered uses of maneb, mancozeb, and metiram. As noted earlier, the major technical registrants of mancozeb, maneb and metiram, recently requested that the Agency delete 42 of the 55 uses from their registrations. Maneb would be registered for use on almonds, bananas, potatoes, sugar beets and sweet corn; mancozeb would be registered for use on asparagus, bananas, cranberries, figs (caprifig only), grapes, onions, peanuts, potatoes, sugar beets, sweet corn, tomatoes and wheat; and metiram would be registered for use on potatoes. The registrants' action would decrease estimated upper-bound, carcinogenic risks from 4×10^{-4} to 2×10^{-4}. This action effectively places these 42 uses in a similar situation to the zineb uses—uses which appear to have been dropped by industry while technically remaining on the registrations of various formulators—and thus, under this option, these 42 uses would be proposed for cancellation.

Therefore, following the registrants' requested deletion of 42 uses, the Agency's analysis focussed on the risks and benefits of the 13 crops retained by the registrants. These 13 crops have an estimated upper-bound, cumulative excess lifetime risk of 2×10^{-6} and a cumulative benefit of $14 to $27 million in producer impacts. The Agency considered a risk-benefit balancing of each crop to determine whether the estimated dietary risk is reasonable. Using this analysis, EPA identified three crops (potatoes, tomatoes and bananas) with an unfavorable risk-benefit balance and accordingly, under this option, EPA would propose to cancel these three crops. This action would reduce the estimated lifetime cancer risk to 3×10^{-6} and would retain the maximum amount of benefits. The following Table 3 summarizes the crops which would be proposed for cancellation and retention under an option which assumed only the 13 registrant retained crops remain registered.

In summary, under this option the Agency would propose to cancel all uses of zineb and 45 uses of mancozeb, maneb and metiram reducing estimated upper-bound, lifetime cancer risk to 3×10^{-6} and retaining benefits of $13 to $26 million.

TABLE 3.—ESTIMATED RISKS AND BENEFITS OF CROPS WHICH WOULD BE PROPOSED FOR CANCELLATION AND RETENTION

Food crop	Estimated excess Carcinogenic risk	Benefits
A. 13 Crops Proposed to be Retained by Major EBDC Registrants:		
Proposed for Retention by EPA:		
Almonds	7×10^{-9}	Not enough data to quantify; potential impacts
Asparagus	2×10^{-9}	-do-
Caprifigs	0	-do-
Corn, sweet	3×10^{-7}	$2.1 to $2.5 million producer impacts
Cranberry	5×10^{-7}	$0.1 million producer impacts
Grapes	9×10^{-7}	$1 to $3 million producer impacts
Onions	5×10^{-7}	$6.5 million producer impacts
Peanuts	2×10^{-9}	$2.4 million producer impacts
Sugar Beet	1×10^{-8}	Not enough data to quantify; potential impacts
Wheat	1×10^{-7}	$1.6 to $11.7 million producer impacts
Total	3×10^{-6}	$13 TO $26 million in producer impacts
Proposed for Cancellation by EPA:		
Banana	1×10^{-6}	$0.3 million producer impacts in U.S.

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TABLE 3.—ESTIMATED RISKS AND BENEFITS OF CROPS WHICH WOULD BE PROPOSED FOR CANCELLATION AND RETENTION—Continued

Food crop	Estimated excess Carcinogenic risk	Benefits
Potatoes	2×10^{-6}	$0.4 million producer impacts
Tomato	2×10^{-6}	$0.1 million producer impacts
B. Crops Proposed to be Deleted from Registrations by Major EBDC Registrants which also are proposed for cancellation by EPA:		
Apples	1×10^{-4}	$0.3-$12.3 million producer impacts
Apricot	7×10^{-6}	Not enough data to quantify; minimal impacts expected
Barley	3×10^{-7}	$0.3 to $2.1 million producer impacts
Beans	3×10^{-5}	$1.9 to $ 2.1 million producer impacts
Beans, Lima	2×10^{-6}	$0.7 million producer impacts
Broccoli	1×10^{-5}	No impact expected
Brussel Sprouts	4×10^{-7}	-do-
Cabbage	1×10^{-6}	-do-
Cantaloups	3×10^{-7}	$0.3 million producer impacts
Casaba melons	6×10^{-6}	Not enough data to quantify; impacts expected
Crenshaw melons	$<1\times10^{-10}$	-do-
Carrot	2×10^{-5}	$0.13 million producer impacts
Cauliflower	3×10^{-7}	No impact expected
Celery	2×10^{-5}	$1.3 to 3.4 million efficiency impacts
Collards	1×10^{-5}	Not enough data to quantify; impacts expected
Corn, field	7×10^{-9}	Not enough data to quantify; no impact expected
Cotton	6×10^{-6}	-do-
Crabapple/quince	6×10^{-7}	-do-
Cucumbers	9×10^{-7}	$4.0 to $4.9 million producer impacts
Eggplant	3×10^{-6}	Not enough data to quantify; potential impacts
Endive	3×10^{-6}	-do-
Fennel	1×10^{-5}	Not enough data to quantify; no impacts expected
Honeydew	1×10^{-7}	Not enough data to quantify; melon impacts expected
Lettuce	3×10^{-6}	$40 to $204 million efficiency impacts
Kale	7×10^{-7}	Not enough data to quantify; impacts expected
Kohlrabi	1×10^{-5}	-do-
Mustard green	2×10^{-5}	-do-
Nectarines	1×10^{-6}	Negligible producer impacts
Oats	6×10^{-6}	$0.1 to $0.5 million producer impacts for oats & rye
Papaya	2×10^{-7}	Not enough data to quantify; no impacts expected
Peaches	4×10^{-5}	$15,000 producer impacts
Pear	2×10^{-6}	Not enough data to quantify; minimal impacts expected
Pecan	4×10^{-10}	-do-
Peppers	3×10^{-6}	$49 to $98 million in efficiency impacts
Pineapple	$<1\times10^{-10}$	Not enough data to quantify; potential impacts
Pumpkin	1×10^{-5}	$77,000 producer impacts
Rhubarb	7×10^{-7}	Not enough data to quantify; no impacts expected
Rye	4×10^{-9}	$0.1 to $0.5 million producer impact for oats & rye combined
Spinach	2×10^{-6}	$19 million producer impacts
Squash	3×10^{-7}	$3.4 to $4.8 million producer impacts
Turnip	2×10^{-5}	Not enough data to quantify; impacts expected
Watermelon	2×10^{-6}	$0.8 million producer impacts
Total	3×10^{-4}	$32 to $58 million in producer impacts and $90 to $305 million in efficiency impacts

If the mancozeb, maneb and metiram registrants had not deleted 42 of 55 registered uses, the Agency would have pursued regulatory action based on a risk-benefit analysis of the 55 crop universe. While EPA believes it is appropriate to consider only the 13 remaining uses in its proposed action, the Agency is presenting its 55 crop analysis to (1) provide a fuller description of the risks and benefits of the EBDCs and (2) enable all affected parties to have the best information possible for purposes of commenting on the Agency's analysis and proposed action.

In assessing the risks and benefits of the 55 crops, 10 crops yielded an estimated upper-bound, cumulative lifetime risk of 1×10^{-7} and benefits of $2.4 million. The crops are: almonds, asparagus, casaba melons, crenshaw melons, eggplant, endive, figs, peanuts, pineapple and pumpkin. Since these crops have some benefit and very low risk, they would have been proposed for retention had the registrants taken no action. The remaining crops were then ranked in order of lowest risk/highest benefit or cost effectiveness ratios (See Technical Support Document). The two crops with the highest benefits, lettuce and peppers, each have an estimated risk of 3×10^{-6}. The benefits from lettuce are $40 to $204 million in efficiency impacts and the benefits from peppers are $49 to $98 million in efficiency impacts. However, if both crops were retained, the cumulative estimated dietary risk from the two crops alone is 6×10^{-6}. Of the two, lettuce has the higher estimated benefit. The other two crops which have a favorable risk/benefit ratio are onions (with an estimated excess risk of 5×10^{-7} and $6.5 million in producer impacts) and cucumbers (with an estimated risk of 9×10^{-7} and $4 to $4.9 million in producer impacts). The cumulative estimated upper-bound lifetime risk from the ten negligible risk crops as well as lettuce, onions and cucumbers is 5×10^{-6}. The cumulative estimated benefits are $13 to $14 million in producer impacts and $40 to $204 in efficiency impacts.

If peppers were included, the total estimated risk would be 8×10^{-6}. Total estimated benefits would be $13 to $14 million in producer impacts and $89 to $302 million in efficiency impacts. Even though the individual benefits for peppers were high, the Agency was concerned that the risk contribution of peppers to the aggregate dietary risk was excessive.

The Agency also considered retaining spinach since the benefits are high with an estimated 70 percent of the winter spinach crop potentially affected and economic impacts projected to be $19 million. However, the Agency decided that although benefits appeared to be high for this relatively minor crop, the estimated ETU dietary risk of 10^{-6} for spinach outweighed the benefits.

Forty-two food crops or crop groupings would have been proposed for cancellation in the absence of the registrants' action. The following Table 4 summarizes the estimated dietary risks and benefits of the food crops which would have been proposed for cancellation.

TABLE 4.—ESTIMATED RISKS AND BENEFITS OF EBDC CROPS WHICH WOULD HAVE BEEN PROPOSED FOR CANCELLATION IN THE ABSENCE OF REGISTRANT ACTION

Food crop	Estimated excess carcinogenic risk	Benefits
Apples	1×10^{-4}	0.3 to $12.3 million producer impacts
Apricot	7×10^{-6}	Not enough data to quantify; minimal impacts expected
Banana	1×10^{-6}	0.3 producer impacts in U.S.
Barley	3×10^{-7}	$0.3 to $2.1 million producer impacts
Beans	3×10^{-5}	$1.9 to $ 2.1 million producer impacts
Beans, Lima	2×10^{-6}	0.7 million producer impacts
Broccoli	1×10^{-5}	No impact expected
Brussel Sprouts	4×10^{-7}	-do-
Cabbage	1×10^{-6}	-do-
Cantaloupe	3×10^{-7}	$0.3 million producer impacts
Carrot	2×10^{-5}	$0.13 million producer impacts
Cauliflower	3×10^{-7}	No impact expected
Celery	2×10^{-5}	$1.3 to 3.4 million efficiency impacts
Collards	1×10^{-5}	Not enough data to quantify; impacts expected
Corn, field	7×10^{-9}	Not enough data to quantify; no impact expected
Corn, sweet	3×10^{-7}	$2.1 to $2.5 million producer impacts
Cotton	6×10^{-6}	Not enough data to quantify; no impact expected
Crabapple/quince	6×10^{-7}	-do-
Cranberry	5×10^{-7}	$0.1 million producer impacts
Fennel	1×10^{-5}	Not enough data to quantify; no impacts expected
Grapes	9×10^{-7}	$1 to $3 million in producer impacts
Honeydew melons	1×10^{-7}	Not enough data to quantify; impacts expected
Kale	7×10^{-7}	-do-
Kohlrabi	1×10^{-5}	-do-
Mustard greens	2×10^{-5}	-do-
Nectarines	1×10^{-6}	Negligible producer impacts
Oats	6×10^{-6}	$0.1 to $0.5 million producer impacts for oats & rye
Papaya	2×10^{-7}	Not enough data to quantify; no impacts expected
Peaches	4×10^{-5}	<$15,000 producer impacts
Pear	2×10^{-5}	Not enough data to quantify; minimal impacts expected
Pecan	4×10^{-10}	-do-
Peppers	3×10^{-6}	$49 to $98 million in efficiency impacts
Potatoes	2×10^{-6}	$0.4 million producer impacts
Rhubarb	7×10^{-7}	Not enough data to quantify; no impacts expected
Rye	4×10^{-9}	$0.1 to $0.5 million producer impact for oats & rye combined
Spinach	2×10^{-6}	$19 million producer impacts
Squash	3×10^{-7}	$3.4 to $4.8 million producer impacts
Sugar Beet	1×10^{-6}	Not enough data to quantify; potential impacts
Tomato	2×10^{-6}	$0.1 million producer impacts
Turnip	2×10^{-5}	Not enough data to quantify; impacts expected
Watermelon	2×10^{-6}	$0.8 million producer impacts
Wheat	1×10^{-7}	$1.6 to $11.7 million producer impacts
Total	4×10^{-4}	$33 to $61 million in producer impacts and $50 to $101 million in efficiency impact

The following Table 5 summarizes the estimated dietary risks and benefits of the food crops which would have been proposed for retention had the registrants taken no action.

TABLE 5.—Estimated Risks and Benefits of EBDC Crops which would have been Proposed for Retention in the Absence of Registrant Action

Food crop	Estimated excess carcinogenic risk	
Almonds	7×10^{-9}	Not enough data to quantify; potential impacts
Asparagus	2×10^{-9}	-do-
Caprifigs	0[1]	-do-
Casaba melons	6×10^{-9}	Not enough data to quantify; impacts expected
Crenshaw melons	$<1\times10^{-10}$	-do-
Cucumbers	9×10^{-7}	$4.0 to $4.9 million producer impacts
Eggplant	3×10^{-6}	Not enough data to quantify; potential impacts
Endive	3×10^{-6}	-do-

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TABLE 5.—Estimated Risks and Benefits of EBDC Crops which would have been Proposed for Retention in the Absence of Registrant Action—Continued

Food crop	Estimated excess carcinogenic risk	
Lettuce	3×10^{-6}	$40 to $204 million efficiency impacts
Onions	5×10^{-7}	$8.5 million producer impacts
Peanuts	2×10^{-6}	$2.4 million producer impacts
Pineapple	$<1\times10^{-10}$	Not enough data to quantify; potential impacts
Pumpkin	1×10^{-6}	$77,000 producer impacts
Total	5×10^{-6}	$13 to $14 million in producer impacts and $40 to $204 million in efficiency impacts

[1] Registrant has voluntarily cancelled use directly on food crop; only use remaining is on caprifig which is unlikely to result in any residue.

For all crops proposed for cancellation and particularly for lettuce, peppers and spinach, the Agency requests comments on its risk/benefit analysis. In addition, EPA seeks information or whether changes in use practices could reduce risk to an acceptable level.

For risks to mixer/loaders and applicators, the Agency would also propose cancellation of all sites associated with unacceptable MOSs/MOEs (those under 100 with low benefits) after incorporation of additional protective clothing requirements for workers and without additional protective clothing for homeowners which EPA considers impractical. In these cases, EPA believes risks outweigh benefits. In addition, the Agency would propose cancellation of all sites with estimated upper-bound, carcinogenic risks to mixer/loader/applicators exceeding 10^{-4} for workers after incorporation of additional protective clothing and exceeding 10^{-6} for homeowners without additional protective clothing. Additional protective clothing requirements are not considered practical for homeowners. Registrations bearing the following uses would be affected: (1) maneb on homeowner vegetables, ornamentals, fruit trees and turf sites and on grapes and commercial ornamentals; (2) mancozeb on homeowner fruit trees and turf sites; and (3) nabam in sugar and paper mills. Again, the Agency believes risks outweigh benefits.

Option 4—Cancellation of all registrations. If the registrations of the EBDCs for all food uses were cancelled, all dietary carcinogenic risks to persons from the consumption of EBDC-treated foods would be eliminated and all developmental and thyroid risks to mixer/loader/applicators from the use of EBDCs on food crops would be eliminated. The cancellation of the registrations for maneb, mancozeb, metiram, and nabam would have an estimated $46 to $75 million in producer impacts and $90 to $305 million in efficiency impacts the first year following cancellation. Benefits from zineb are assumed to be minimal based on the lack of support for these uses. With full cancellation, EPA also would revoke all food tolerances so that residues in imported as well as domestic crops would be unlawful. Under this option, uses on many crops with negligible estimated risks (10^{-10} to 10^{-7}) would be treated the same as uses on crops with high estimated risks. In addition, cancellation of EBDC registrations on many minor crops with no alternatives would result in some growers experiencing severe impacts.

If registrations of the EBDCs for non-food crops, commercial, homeowner and industrial uses were cancelled, all mixer/loader/applicator carcinogenic, thyroid and developmental risks from EBDCs or ETU exposure would be eliminated. Cancellation of maneb, mancozeb, metiram, and nabam on these use sites would have a $5 to $15 million impact in the first year following cancellation.

C. Proposed Regulatory Actions

The Agency believes that the estimated aggregate risk from all of the EBDCs is unacceptably high. The level of estimated benefits, $46 to $75 million in producer impacts and $90 to $305 million in efficiency impacts in the first year, cannot justify an estimated dietary risk in the range of 10^{-4}. At the same time, the Agency does not think that full cancellation is warranted in light of the estimated benefits of continued maneb, mancozeb and metiram use on some crops, and the low estimated carcinogenic, developmental and thyroid risks associated with certain of the individual crops. Consequently, the Agency proposes a partial cancellation of EBDC registrations combining options 2 and 3—partial cancellation of registrations and continuation of other registrations with modifications to the terms and conditions of registration. The goal of this proposal is to reduce aggregate risks from EBDCs to a level that provides an appropriate overall balance of risks and benefits. Specific proposed regulatory actions are outlined below.

Unless new data or information demonstrate that more immediate action is required, EPA plans not to issue a final decision until the Agency has had the opportunity to examine market basket data due to be submitted in September 1990. Dietary risk estimates presented in this document were based on field residue data which may overestimate actual dietary risk. The Agency believes that a well designed and properly conducted food residue monitoring study may more accurately estimate ETU residues "at the dinner plate" and could support risk estimates of as much as one or two orders of magnitude lower than our current risk estimates for some crops, at which point estimated benefits could exceed risks for additional food crops than those currently proposed for retention.

Due to lack of more refined data, developmental and thyroid MOSs/MOEs for mixer/loaders and applicators were based on upper-bound exposure estimates. Although many of the resulting MOSs/MOEs are of concern (<100), and risks are unreasonable because benefits are low, the Agency believes that actual dermal exposure and absorption data may increase these MOSs/MOEs. However, as to both dietary and mixer/loader/applicator risk issues, in the absence of data sufficient to demonstrate lower exposure, currently available data will be used to make the Final Determination risk estimates. In that event, as discussed in this document, estimated risks outweigh estimated benefits for many uses.

Due to the assumptions surrounding dietary and mixer/loader/applicator risks, the Agency has required additional data through FIFRA section 3(c)(2)(B) to further refine risk estimates. The Agency tentatively plans to issue the PD 4 in the spring of 1991 to allow review and consideration of new exposure data that should become available which the Agency currently believes could result in a more refined

risk/benefit assessment of the EBDCs and ETU.

1. *Food crop uses.* In deciding which food uses to retain, the Agency considered a range of factors. Where the market situation has indicated a lack of support for a particular use, the Agency is proposing to cancel that use without further detailed analysis. Cancellation is necessary despite the actions by the technical registrants because the uses the technical registrants have requested deleted remain on the registrations of various formulators. For uses which the technical registrants have retained, the Agency has examined the risks and benefits of each use, to the extent that information is available, in evaluating which uses should be cancelled and which retained.

All zineb uses and the 42 uses dropped by the technical registrants of mancozeb, maneb, and metiram are proposed for cancellation on the basis of unacceptable risk and a lack of support by registrants. It will be difficult for end use formulators to retain the uses dropped by the technical registrants. Not only will the formulators need to arrange an alternate source of supply, but they will also need to generate a substantial amount of data to support registration of these uses. The Agency believes the action taken by the technical registrants has altered the market sufficiently that it is appropriate to consider that only the 13 crops will remain. Thus, the Agency's proposed cancellation, in a practical sense, reflects what has, by and large, already taken place.

Cancelling all zineb uses and the 42 uses of mancozeb, maneb and metiram dropped by the registrants leaves 13 food crop uses: tomatoes, potatoes, bananas, grapes, wheat, cranberries, onions, sugar beets, sweet corn, peanuts, almonds, asparagus and figs. These crops have an estimated upper-bound, cumulative lifetime risk of 2×10^{-5} and an estimated cumulative benefit of $14 to $27 million in producer impacts (see Table 3).

The Agency believes the level of estimated upper-bound risk associated with these 13 crops outweighs the associated benefits. Thus, the Agency finds that action beyond that taken by the registrants is necessary to reduce risks to acceptable levels. The Agency considered a risk-benefit balancing of each crop to determine which crops had estimated benefits which exceeded the estimated risks and yielded an acceptable cumulative dietary risk. The Agency determined that 10 crops met this test. These are: grapes, wheat, cranberries, onions, sugar beets, sweet corn, peanuts, almonds, asparagus and figs. These 10 crops have an estimated upper- bound, cumulative risk of 3×10^{-6} and cumulative benefits of $13 to $26 million in producer impacts. Therefore, the Agency proposes to cancel three more crops in addition to the 42 already discussed. These three crops are tomatoes, potatoes and bananas. Tomatoes have an estimated risk of 2×10^{-6} and estimated benefits of only $0.1 million. Potatoes and bananas each have estimated risks in the 1×10^{-6} range but less than $0.5 million in estimated benefits. None of the three crops appears to have sufficient benefits to exceed these levels of estimated risks, particularly when it is recognized that these risks need to be added to risks from other crops to estimate total dietary risk.

In determining the appropriate regulatory action, the Agency considered the interim dietary risk while the Special Review is being conducted. When estimating excess lifetime cancer risk over a 70 year lifespan, EPA calculates only one risk number (for the general population). This estimate takes into account that a person moves from infancy through childhood to adulthood, and that consumption patterns change over these different stages. However, when considering a time period of just a few years, EPA calculates risk numbers for both the overall population and the most sensitive subpopulations. These estimates reflect potential lifetime cancer risks resulting from exposure during the shorter time period, and take into account the different types and amounts of food typically consumed by each subgroup.

EPA has estimated the interim dietary risks for three groups—overall population, non-nursing infants and younger children (1 to 6 years of age). In estimating the risks, the Agency used the following assumptions: (1) the time period to complete the Special Review will be two years (the PD 4 is now scheduled for the spring of 1991); (2) no zineb use will occur during this period (all registrations are suspended and the one technical registrant has requested voluntary cancellation); and (3) mancozeb, maneb and metiram will be used on only 13 crops (the four technical registrants control over 90 percent of the market and all their products will be labeled for only 13 uses after January 1, 1990).

If all 13 crops are available for two more years, EPA estimates the incremental risk to the general population would be 7×10^{-7}. The risk to infants would be about 1×10^{-6} and the risk to children aged one to six would be approximately 1×10^{-5}. Given that these estimates are upper-bound risk numbers, EPA believes these interim risks are acceptable.

The interim risks would increase slightly if EPA's final decision is delayed by a cancellation hearing. At the same time, EPA's risk numbers may be overestimates because they are based on field trial data rather than market basket data. Existing monitoring data, while not a sufficient basis for regulatory decisions, suggest that residue data from market basket monitoring may be as much as one to two orders of magnitude less than field trial data for a substantial number of crops. EPA has required registrants to conduct a market basket survey in an effort to show that residue levels on fruits and vegetables sampled from the grocery store are lower than those determined in field trials.

If other registrants attempt to support and maintain any of the 42 food uses which the four technical registrants have dropped from their label, EPA will consider these uses and determine whether any additional risks are acceptable. The Agency plans to closely monitor the marketplace over the next two years and will take whatever action is necessary to maintain acceptable interim risks.

As soon as some or all of the 42 crops are cancelled by all registrants, EPA will finalize tolerance revocations on those uses to remove exposure from imported crops as well as domestic ones. Prior to revocation, the uses of EBDCs on imported food would increase interim risk to a degree.

Additional data from toxicological and exposure studies are expected to be received by EPA. If any of this information raises concerns about interim risk, the Agency is prepared to initiate prompt, further regulatory action.

In identifying crops for retention of registration, the Agency considered the feasibility of modifications to reduce dietary risk, such as lengthening pre-harvest intervals, limiting application frequencies, or lowering application rates. However, due to the lack of information, the Agency could not assess the feasibility of these measures. Without data, it is difficult to determine if the pesticide would be efficacious under these varying conditions. The Agency is interested in comments and data which will help the Agency consider this option more carefully in the Final Determination. Commenters need to specify label modifications and provide either data or analysis to show that the EBDC pesticides could be used efficaciously in accordance with such rates and practices. Even though the

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comment period ends 90 days after publication of this Notice, the Agency will likely accept residue data through the summer of 1990 when the Market Basket survey is due. Residue data showing residues resulting from differing application rates or frequencies or pre-harvest intervals will be needed to show the risk reduction impact of these measures. To ensure that studies provide adequate, valid data, EPA urges that protocols and study parameters be discussed with the Agency before studies are initiated.

In conducting the risk-benefit analysis for each crop, the Agency considered the estimated risks posed by alternatives, based on currently available data. In preparing the Final Determination, the Agency will consider not only new data received on the EBDCs but also new data received on the significant alternatives and consider the estimated risks and benefits of EBDC use on each crop in light of the estimated risks and benefits posed by alternative pesticides. The Agency specifically requests comment on the benefits for each crop and on which alternatives are likely to be used.

2. *Tolerances.* Within 90 days of the issuance of this document, the Agency intends to propose tolerance revocations for the 45 food uses of maneb, mancozeb and metiram and all (58) food uses of zineb proposed for cancellation in this Preliminary Determination. The Agency presently intends to finalize the tolerance actions, reflecting consideration of public comments, when all products for particular uses are voluntarily cancelled, or the Agency issues the Final Determination, whichever occurs earlier. In issuing final rules to revoke tolerances, the Agency will set tolerance expiration dates which take into consideration any crops which were treated legally before the effective date of the cancellation. Tolerances for retained uses will be reevaluated once the Agency receives metabolism and residue data required under the EBDC Comprehensive Data Call-Ins and Registration Standards. Any necessary adjustments to raise or lower existing tolerances will be proposed at that time.

3. *Non-industrial uses.* The Agency proposes a label language requirement that commercial agricultural workers (M/L/A) applying EBDC pesticides wear coveralls over long-sleeved shirt and long pants, chemical-resistant gloves, shoes, socks, and goggles or a face shield. Additionally, during mixing and loading, a chemical-resistant apron must be worn. For agricultural workers, where completely enclosed cabs with positive pressure filtration, or an enclosed cockpit for aerial application are used, a long-sleeve shirt and long pants may be worn in place of the protective clothing described above. Chemical-resistant gloves must be available in the cab or cockpit and worn upon exiting. During aerial application, human flaggers are prohibited unless in totally enclosed vehicles. With incorporation of the above-mentioned protective clothing requirements, MOSs/MOEs for workers using EBDC products on agricultural sites would all increase above 100 except for maneb use on grapes and ornamentals which are proposed for cancellation because EPA has determined that risks exceed benefits.

The Agency estimates that the cost of the above protective clothing would range from $0.75 to $1.5 million if every commercial agricultural user of EBDC pesticides needed to buy the protective equipment. However, the Agency believes the costs of this requirement would actually be much lower because most growers already own such equipment as it is required for use when applying a number of other agricultural chemicals.

The Agency proposes a label language requirement establishing an interim reentry interval of 24 hours for all EBDC products used on agricultural sites. This interim reentry interval will remain in effect until dislodgeable foliar residue data (showing EBDC and ETU exposure to agricultural workers reentering treated fields for the purposes of hand harvesting, pruning, weeding, etc.) required in the EBDC Registration Standards and as required in the March 1989 EBDC Data Call-In Notice are submitted and evaluated. These data are due to be submitted in July 1990. The Agency believes that there would be little if any economic impact from this requirement.

The Agency proposes a label language requirement that homeowners applying EBDC pesticides wear a long-sleeved shirt and long pants and rubber gloves. Gloves must be washed thoroughly with soap and water befor removing; clothes must be changed immediately after using the EBDC product and laundered separately from other laundry items before reuse. Homeowners applying EBDCs must shower immediately after use. The Agency did not consider that additional protective clothing requirements for homeowners would be a viable means of reducing risks because the Agency believes that homeowners will not go to the expense of purchasing or wearing protective clothing. Therefore, EPA proposes to cancel the use of maneb on turf by homeowners where MOSs/MOEs are under 100, and risks outweigh benefits.

In addition, because millions of households have gardens and many more have lawns which could be treated, the Agency is concerned about estimated cancer risks which exceed 10^{-6} for homeowners applying EBDCs. EPA believes such risks exceed the benefits of use. Homeowner sites which have estimated risks exceeding 10^{-6} are: (1) mancozeb on fruit trees and turf and (2) maneb on vegetables, ornamentals, fruit trees and turf. See Table II-19 in the Technical Support Document. Little or no economic impact is expected because home gardeners can switch from maneb to mancozeb for vegetables and ornamentals and can use captan on fruit trees instead of EBDCs. The Agency estimates that less than 1 percent of residential lawns are treated with EBDCs and any impact would be negligible. Therefore, EPA proposes to cancel homeowner use of mancozeb on fruit trees and turf, and homeowner use of maneb on vegetables, ornamentals, fruit trees and turf.

4. *Industrial uses.* The Agency proposes a label language requirement that all industrial workers (M/L/A) applying EBDC pesticides wear coveralls over long-sleeved shirt and long pants, chemical-resistant gloves, shoes, socks, and goggles or a face shield. Additionally, during mixing and loading, a chemical-resistant apron must be worn. Similar label language already appears on nabam labels and OSHA requires protective clothing when applying hazardous chemicals under 29 CFR 1910.132; therefore, the Agency believes there would be minimal costs resulting from this requirement.

The Agency proposes cancellation of nabam use in paper mills and sugar mills based on thyroid MOSs/MOEs below 100 due to occupational exposure after incorporation of protective clothing requirements listed above and carcinogenic dietary risk from nabam use in sugar mills. EPA has determined that risks outweigh benefits in these cases. If nabam's use were cancelled, the cost to the paper industry would increase by $700,000. There are three alternatives for nabam's use in sugar mills. The most viable alternative (Busan) possibly would increase production costs between $400,000 to 500,000 if it replaced nabam.

IV. Procedural Matters

As required by FIFRA sections 6(b) and 25(d), and 40 CFR 154.31(b), EPA has transmitted copies of a draft Notice of Intent to Cancel based on this Notice, together with the support documents, to

the Secretary of Agriculture and the Scientific Advisory Panel for comment. EPA will publish any comments received from the Secretary or the Panel, and EPA's responses, in the Notice of Final Determination.

V. Public Comment Opportunity

The Agency is providing a 90-day period for the public to comment on this Notice and on the EBDC Special Review Document. Comments must be submitted by (insert date 90 days after date of publication in the Federal Register). While the Agency has specifically requested comment on certain matters, the Agency is seeking comment on all aspects of this proposal. All comments and information should be submitted in triplicate to the address given in this Notice under "ADDRESS". The comments and information should bear the identifying notation OPP-30000/53. All comments, information, and analyses which come to the attention of EPA may serve as a basis for final determination of regulatory action during the Special Review.

VI. Public Docket

Pursuant to 40 CFR 154.15, the Agency has established a public docket (OPP-30000/53) for the EBDC Special Review. This public docket will include (1) this Notice; (2) any other notices pertinent to the EBDC Special Review; (3) non-CBI documents and copies of written comments or other materials submitted to the Agency in response to this Notice or any other Notice, and any other documents regarding the EBDC pesticides submitted at any time during the Special Review process by any person outside the government; (4) a transcript of any public meeting held by the Agency for the purpose of gathering information on the EBDCs; (5) memoranda describing each meeting held during the Special Review process between Agency personnel and any person outside government pertaining to the EBDCs; and (6) a current index of materials in the public docket.

On a monthly basis, the Agency will distribute a compendium of indices for newly received comments and documents that have been placed in the public docket for this Special Review. This compendium will be distributed by mail to those members of the public who have specifically requested such material for this Special Review, pursuant to 40 CFR 154.15(f)(3).

Dated: December 4, 1989.

Linda J. Fisher,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 89-29488 Filed 12-19-89; 8:45 am]

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Part VI

Environmental Protection Agency

40 CFR Parts 60, 51 and 52

Air Pollution Standards, of Performance for New Stationary Sources; Rule and Proposed Rules

ENVIRONMENTAL PROTECTION AGENCY

either at the same time or after the corresponding standard of performacne

draft guidelines at the same time or after standards of performance are proposed

instances where small business impacts are possible. Because this rulemaking imposes no adverse economic impacts,

1. The authority citation for 40 CFR part 60 continues to read:

Authority: 42 U.S.C. 7401, 7411, 7414, 7419,

information pertinent to control of the designated pollutant form designated facilities. Notice of the availability of

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-3694-1]

Standards of Performance for New Stationary Sources; State Plans for Designated Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On April 20, 1988 (53 FR 12962), EPA proposed to amend the existing requirement in 40 CFR 60.22(a) to allow a draft or final emission guideline document to be published pursuant to Section 111(d) of the Clean Air Act at the same time as standards of performance for similar new sources are proposed or promulgated pursuant to section 111(b). Today's action promulgates this amendment.

EFFECTIVE DATE: December 20, 1989.

Under section 307(b)(1) of the Clean Air Act, judicial review of the actions taken by this notice is available *only* by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: *Docket.* Docket No. A-87-21, containing materials relevant to this rulemaking, is available for public inspection on copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket (LE-131), Room M-1500, 1st Floor, Waterside Mall, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Alice H. Chow or Fred Dimmick, Standards Development Branch (MD-13), Emission Standards Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-5624.

SUPPLEMENTARY INFORMATION:

I. The Rulemaking

Currently, standards of performance for control of new sources of a designated air pollutant must be promulgated before the Administrator can publish a draft emission guideline document for control of that designated pollutant from existing facilities. This rulemaking would allow flexibility in publishing the draft emission guideline either at the same time or after the corresponding standard of performacne for a new source is proposed.

II. Public Participation

The opportunity to hold a public hearing on May 24, 1988 at 10:00 a.m., was presented in the proposal notices, but no one desired to make an oral presentation. The public comment period was from April 20, 1988 to June 24, 1988. Two letters were received.

III. Summary of Public Comments

The two comment letters received by EPA on the proposed amendment supported the proposed amendment. One commenter suggested that EPA should also allow publication of any draft guideline even *before*, as well as at the same time, EPA proposes the standards of performance. This commenter reasoned that since such standards are supposed to consider costs, energy impacts, etc., it would be useful for the regulated public to provide EPA with the available estimates for particular control methods under consideration. The commenter added that cost and cost effectiveness information for existing sources may be very different than with the construction of an entirely new source. Therefore, EPA would need the information prior to setting any standards.

The second commenter said that it was appropriate for the proposal to provide EPA the opportunity to receive comment on the guidance document simultaneously with receiving comment on the NSPS since it would result in EPA getting a better database to make final decisions on both the standards of performance and the guidelines. The commenter urged EPA to make available for public comment the draft guidance document at the same time, or very shortly thereafter.

Both commenters cautioned that draft guidelines, while not an enforceable instrument, have been used by state and local regulatory agencies as if they were regulation. One commenter said that the draft guideline should not be used in any regulatory decisions at any level until after a thorough public review and that it should be clearly stated that the guideline is not enforceable as a regulation. The second commenter urged EPA to finalize the draft guideline at or near the promulgation date for the standards of performance to alleviate potential enforcement actions that may be taken using a draft document.

IV. EPA Responses

The amendment on revising the requirements of 40 CFR 60.22(a) provides EPA the flexibility to publish draft guidelines at the same time or after standards of performance are proposed or promulgated. After considering the comments on the proposed amendments, EPA concluded that the amendments should be promulgated as proposed.

The two commenters indicated that important information could be attained by EPA if the draft guidelines were made available for the regulated public to review prior to promulgation of the standards. The EPA believes that by providing early draft information which characterizes the existing source constitutes better technology transfer of such information to the public. The EPA agrees it would be useful, in most cases, to receive comments on the draft guidelines at the same time as the standards of performance are proposed, thereby alleviating any unnecessary delay of controls of existing source categories.

Both commenters were concerned that the draft guidelines may be used as an enforcement tool if they were not finalized in a timely manner. The EPA will try to finalize the draft guidelines in an expeditious fashion.

V. Administrative

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to identify readily and locate documents so that they can effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated test method revisions and EPA responses to significant comments, the contents of the docket, except for interagency review materials, will serve as the record in case of judicial review (section 307(d)(7)(A).

Under Executive Order 12291, EPA is required to judge whether a regulation is a "major rule" and, therefore, subject to the requirements of a regulatory impact analysis. The EPA has determined that this regulation would result in none of the adverse economic effects set forth in section 1 of the Order as grounds for finding a regulation to be a "major rule." The EPA has, therefore, concluded that this regulation is not a "major rule" under Executive Order 12291.

The Regulatory Flexibility Act (RFA) of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of a RFA analysis in those instances where small business impacts are possible. Because this rulemaking imposes no adverse economic impacts, an analysis has not been conducted.

List of Subjects in 40 CFR Part 60

Air Pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Incorporation by reference, Incinerators, Kraft pulp mills.

Dated: November 30, 1989.

William K. Reilly,

Administrator.

PART 60—[AMENDED]

It is proposed that 40 CFR part 60 be amended as follows:

1. The authority citation for 40 CFR part 60 continues to read:

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, and 7601.

2. Section 60.22 is amended by revising paragraph (a) to read as follows:

§ 60.22 Publication of guideline documents, emission guidelines, and final compliance times.

(a) Concurrently upon or after proposal of standards of performance for the control of a designated pollutant from affected facilities, the Administrator will publish a draft guideline document containing information pertinent to control of the designated pollutant form designated facilities. Notice of the availability of the draft guideline document will be published in the **Federal Register** and public comments on its contents will be invited. After consideration of public comments and upon or after promulgation of standards of performance for control of a designated pollutant from affected facilities, a final guideline document will be published and notice of its availability will be published in the **Federal Register.**

* * * * *

[FR Doc. 89-28724 Filed 12-19-89; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

Standards of Performance for New Stationary Sources; Appendix A—Addition of Methods for Measurement of Polychlorinated Dibenzo-p-Dioxins, Polychlorinated Dibenzofurans, and Hydrogen Chloride Emissions From Stationary Sources

[AD-FRL-3684-2]

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: The purpose of this proposed rule is to add Method 23, "Determination of Polychlorinated Dibenzo-p-Dioxins (PCDDs) and Polychlorinated Dibenzofurans (PCDFs) from Stationary Sources," and Method 26, "Determination of Hydrogen Chloride Emissions from Stationary Sources" to Appendix A of CFR part 60. These methods are being proposed to determine compliance with subparts Ca and Ea of part 60.

A public hearing will be held, if requested, to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed rule.

DATES: *Comments.* Comments must be received on or before March 5, 1990.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by January 10, 1990, a public hearing will be held February 7, 1990, beginning at 10 a.m. Persons interested in attending the hearing should call the contact mentioned under **ADDRESSES** to verify that a hearing will be held.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact EPA by January 10, 1990.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Air Docket (LE–131), Attention: Docket Number A–89–11, U.S. Environmental Protection Agency, room M–1500, 1st Floor, Waterside Mall, 401 M Street SW., Washington, DC 20460.

Public Hearing. If anyone contacts EPA requesting a public hearing, it will be held at EPA's Emission Measurement Laboratory Building, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Gary McAlister, Emission Measurement Branch (MD–19), Technical Support Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–1062.

Docket. Docket No. A–89–11, containing materials relevant to this rulemaking, is available for public inspection and copying between 8 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket, room M–1500, 1st Floor, Waterside Mall, 401 M Street SW., Washington, DC. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Gary McAlister or Roger Shigehara, Emission Measurement Branch (MD–19), Technical Support Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–1062.

SUPPLEMENTARY INFORMATION:

I. The Rulemaking

Under subparts Ca and Ea, the EPA is proposing to regulate emissions from municipal waste combustors (MWCs) which will include setting emission limits for polychlorinated dibenzo-p-dioxins (PCDDs, CDDs, or dioxins), polychlorinated dibenzo furans (PCDFs, CDFs, or furans), and hydrochloric acid (HCl). There are presently no methods published in 40 CFR part 60, appendix A, to measure any of these pollutants. This action would propose one method to measure the PCDDs and PCDFs and another method to measure the HCl.

Summary of Reference Methods

Method 23 is used to measure the emission of PCDDs and PCDFs from MWCs. A sample is withdrawn isokinetically from the stack through a probe, a filter, and a trap packed with a solid adsorbent. The PCDDs and PCDFs are collected in the probe, on the filter, and on the solid adsorbent. The PCDDs and PCDFs are extracted from the particulate matter and the adsorbent with a hot organic solvent. The extracted PCDDs and PCDFs are separated by capillary gas chromatography and then each isomer is identified and measured with mass spectrometry (GC/MS). The total PCDDs and PCDFs are the sum of the individual isomers. Toxicity factors are not used in the calculation.

Method 26 is used to measure the emission of HCl from MWCs. A sample is withdrawn at a constant rate from the stack through a probe and impingers filled with a dilute acid. The HCl is collected in the impinger solution. The chloride ion is separated by ion chromatography and measured by a conductivity detector.

Background

In 1983, the American Society of Mechanical Engineers (ASME) recognized that the testing for PCDDs and PCDFs needed to be standardized. In February of 1984, the ASME convened a committee of government representatives, testing consultants, equipment manufacturers, and incinerator operators to write a standard procedure for PCDDs and PCDFs. This eventually distributed as a draft ASME protocol in December of 1984. The procedure that we are proposing was derived from this draft ASME protocol. We are proposing significant changes in the quality assurance requirements and the solvents used to recover the sample. Because more labeled compounds are available, the proposed method will require additional labeled internal standards and surrogate compounds which will provide better representation of the entire range of PCDDs and PCDFs. Under the proposal the filter and solid adsorbent would be extracted in the laboratory with toluene to assure a high PCDD and PCDF recovery efficiency. Additionally the proposed sample recovery solvents used for rinsing the sample train glassware in the field would be acetone followed by methylene chloride with a final quality assurance rinse using toluene. EPA will continue to review the toluene field rinse quality assurance results and continue to evaluate the desirability of replacing methylene chloride with toluene for field rinsing sample glassware.

II. Administrative Requirements

A. Public Hearing

A public hearing will be held, if requested, to discuss the proposed test methods in accordance with section 307(d)(5) of the Clean Air Act. Persons wishing to make oral presentations should contact EPA at the address given in the **ADDRESSES** section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement with EPA before, during, or within 30 days after the hearing. Written statements should be addressed to the Air Docket address given in the **ADDRESSES** section of this preamble.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Air Docket in Washington, DC (see **ADDRESSES** section of this preamble).

B. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process and (2) to serve as the record in case of judicial review (except for interagency review materials) [section 307(d)(7)(A)].

C. Office of Management and Budget Review

Executive Order 12291 Review. Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a regulatory impact analysis. The proposal of these test methods is not major because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices; and there will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. Any burden resulting from the use of these methods is considered in the burden estimate for the regulation requiring the use of these methods.

D. Regulatory Flexibility Act Compliance

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this attached rule, if promulgated, will not have an economic impact on small entities because no additional costs will be incurred from this action.

This proposal does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 60

Air pollution control, Municipal waste combustors, MWCs, Polychlorinated dibenzo-p-dioxins, Polychlorinated dibenzofurans, Hydrogen chloride.

Dated: November 30, 1989.

William K. Reilly,

Administrator.

The EPA proposes to amend title 40, part 60 of the Code of Federal Regulations as follows:

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, 7601.

2. Appendix A is amended by adding Methods 23 and 26 to read as follows:

Appendix A—Reference Methods

* * * * *

Method 23—Determination of Polychlorinated Dibenzo-p-Dioxins Polychlorinated Dibenzofurans From Stationary Sources

1. Applicability and Principle

1.1 Applicability. This method is applicable to the determination of polychlorinated dibenzo-p-dioxins (PCDDs) and polychlorinated dibenzofurans (PCDFs) from stationary sources.

1.2 Principle. A sample is withdrawn from the gas stream isokinetically and collected in the sample probe, on a glass fiber filter, and on a packed column of adsorbent material. The PCDDs and PCDFs are extracted from the sample, separated by high resolution gas chromatography, and measured by high resolution mass spectrometry.

2. Apparatus

2.1 Sampling. A schematic of the sampling train used in this method is shown in Figure 23–1. The train is identical to that described in Section 2.1 of Method 5 of this appendix with the following additions:

2.1.1 Nozzle. The nozzle shall be made of nickel, nickel plated stainless steel, quartz, or borosilicate glass.

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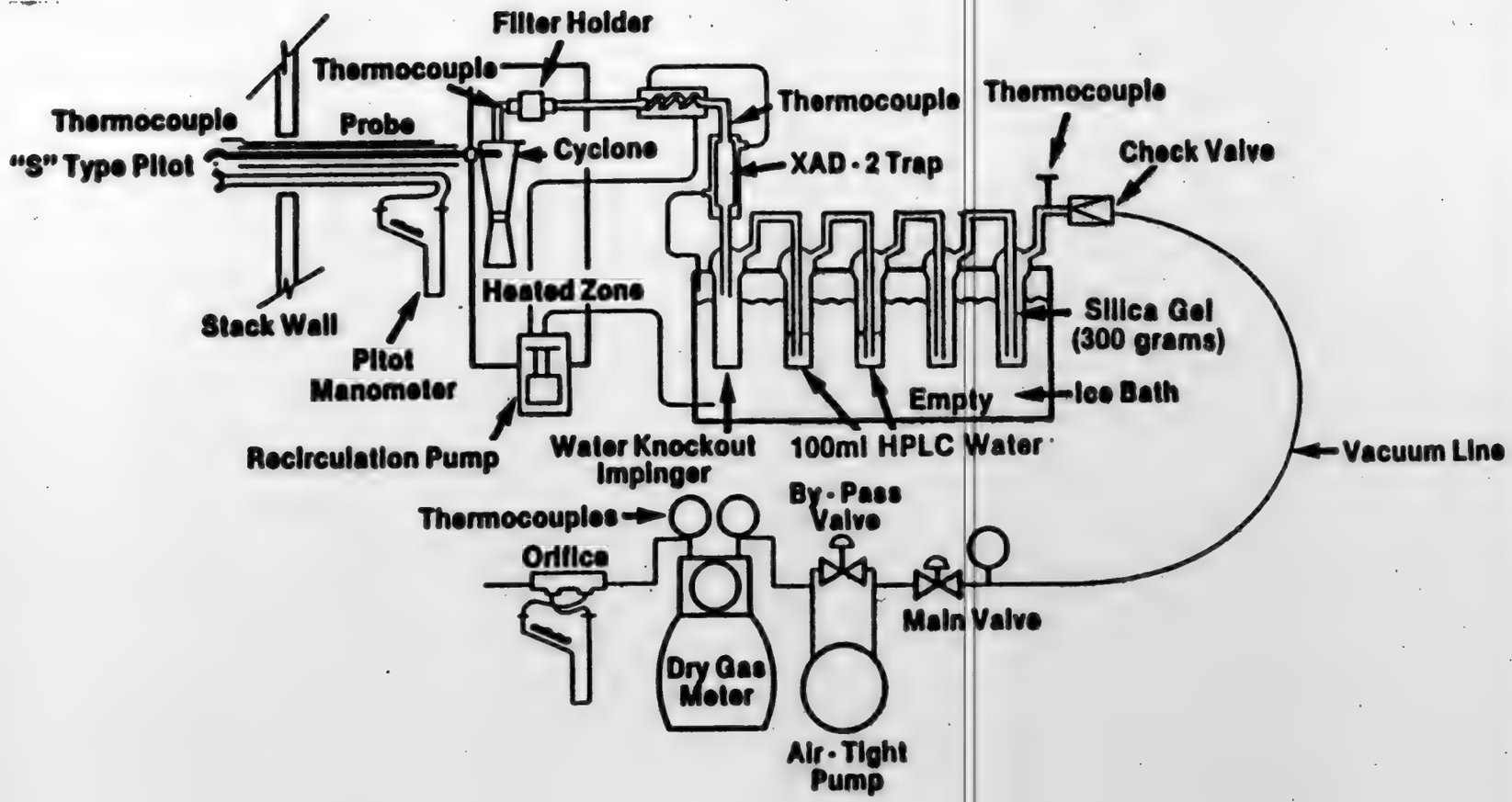

Figure 1. CDD/CDF Sampling Train Configuration

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2.1.2 Sample Transfer Lines. The sample transfer lines, if needed, shall be heat traced, heavy walled TFE (½ in. OD with ⅛ in wall) with connecting fittings that are capable of forming leak-free, vacuum-tight connections without using sealing greases. The line shall be as short as possible and must be maintained at 120 °C.

2.1.1 Filter Support. Teflon or Teflon coated wire.

2.1.2 Adsorbent Module. Glass container to hold the solid adsorbent. A schematic diagram is shown in Figure 23–2. Other physical configurations of the resin trap/condenser assembly are acceptable. The connecting fittings shall form leak-free, vacuum tight seals. No sealant greases shall be used in the sampling train. A coarse glass frit is included to retain the adsorbent.

2.1.3 Condenser. Glass, coil type with compatible fittings. A schematic diagram is shown in Figure 23–2.

2.1.4 Water Bath. Thermostatically controlled to maintain the gas temperature exiting the condenser at <20 °C (68 °F).

2.2 Sample Recovery.

2.2.1 Fitting Caps. Ground glass, Teflon or aluminum foil to cap off the sample exposed sections of the train.

2.2.2 Wash Bottle. Teflon, 500-ml.

2.2.3 Probe Liner and Probe-Nozzle Brushes. Inert bristle brushes with precleaned stainless steel or Teflon handles. The probe brush shall have extensions of stainless steel or Teflon, at least as long as the probe. The brushes shall be properly sized and shaped to brush out the probe liner and nozzle.

2.2.4 Filter Storage Container. Sealed filter holder, wide-mouth amber glass jar with Teflon-lined cap, or aluminum foil.

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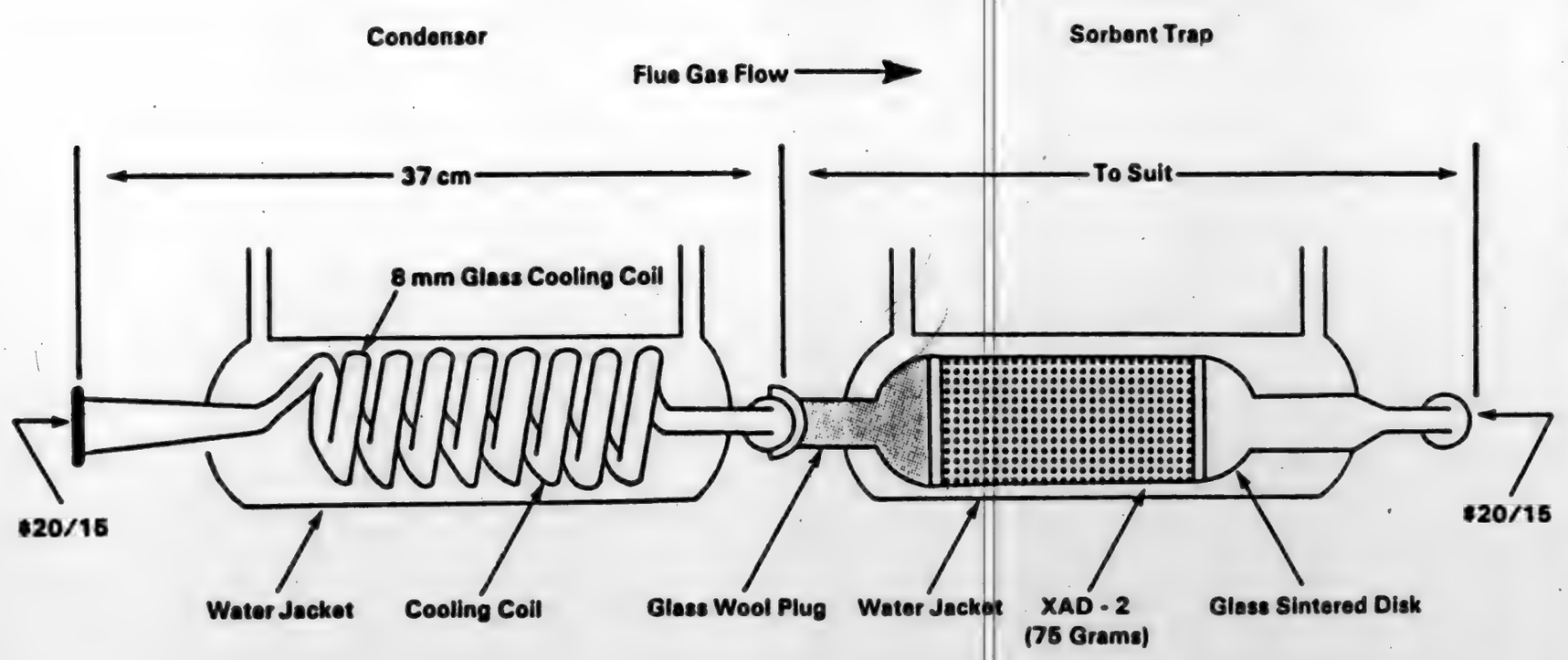

FIGURE 2. CONDENSER AND SORBENT TRAP FOR COLLECTION OF GASEOUS PCDDs AND PCDFs

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2.2.5 Balance. Triple beam.

2.2.6 Aluminum Foil. Heavy duty, hexane-rinsed.

2.2.7 Metal Storage Container. Air tight container to store silica gel.

2.2.8 Graduated Cylinder. Glass, 250-ml

After extraction, allow the Soxhlet to cool, remove the toluene extract, and retain it for analysis. Remove the filters and dry them under a clean N_2 stream. Store the filters tightly wrapped in cleaned aluminum foil.

3.1.1.2 Quality Control Check. Analyze

Column: 6 ft x ⅛ in stai
containing 10% OV-101 o
Supelcoport.

Carrier Gas: Helium at

Detector: Flame ionizat
operated at a sensitivity o

2.2.5 Balance. Triple beam.
2.2.6 Aluminum Foil. Heavy duty, hexane-rinsed.
2.2.7 Metal Storage Container. Air tight container to store silica gel.
2.2.8 Graduated Cylinder. Glass, 250-ml with 2-ml graduation.
2.2.9 Glass Sample Storage Container. Amber glass bottle for sample glassware washes, 500- or 1000-ml, with leak free Teflon-lined caps.
2.3 Analysis.
2.3.1 Sample Container. 125- and 250-ml flint glass bottles with Teflon-lined caps.
2.3.2 Test Tube. Glass.
2.3.3 Soxhlet Extraction Apparatus. Capable of holding 43×123 mm extraction thimbles.
2.3.4 Pasteur Pipettes. For preparing liquid chromatographic columns.
2.3.5 Reacti-vials. Amber glass, 2-ml, silanized prior to use.
2.3.6 Rotary Evaporator. Buchi/Brinkman RF-121 or equivalent.
2.3.7 Nitrogen Evaporative Concentrator. N-Evap Analytical Evaporator Model III or equivalent.
2.3.8 Separatory Funnels. Glass, 2-liter.
2.3.9 Gas Chromatograph. Consisting of the following components:
2.3.9.1 Oven. Capable of maintaining the separation column at the proper operating temperature ±1°C and performing programmed increases in temperature at rates of at least 3°C/min.
2.3.9.2 Temperature Gauge. To monitor column oven, detector, and exhaust temperatures ±1°C.
2.3.9.3 Flow System. Gas metering system to measure sample, fuel, combustion gas, and carrier gas flows.
2.3.9.4 Capillary Columns. A fused silica column, 60 m×25 mm inside diameter (ID), coated with DB-5 and a fused silica column, 30 m×25 mm ID coated with SP-2331.
2.3.10 Mass Spectrometer. Capable of routine operation at a resolution of 1:10000 with a stability of ±5 ppm.
2.3.11 Data System. Compatible with the mass spectrometer and capable of monitoring at least five groups of 25 ions.
2.3.12 Analytical Balance. To measure within 0.1 mg.

3. Reagents

3.1 Sampling.
3.1.1 Filters. Glass fiber filters, without organic binder, exhibiting at least 99.95 percent efficiency (<0.05 percent penetration) on 0.3-micron dioctyl phthalate smoke particles. The filter efficiency test shall be conducted in accordance with ASTM Standard Method D2986-71 (Reapproved 1978) (incorporated by reference—see § 60.17).
3.1.1.1 Precleaning. All filters shall be cleaned before their initial use. Place a glass extraction thimble and 1 g of silica gel and a plug of glass wool into a Soxhlet apparatus, charge the apparatus with toluene, and reflux for a minimum of three hours. Remove the toluene and discard it, but retain the silica gel. Place no more than 50 filters in the thimble onto the bed of silica gel and top with the cleaned glass wool. Charge the Soxhlet with toluene and reflux for 16 hours. After extraction, allow the Soxhlet to cool, remove the toluene extract, and retain it for analysis. Remove the filters and dry them under a clean N_2 stream. Store the filters tightly wrapped in cleaned aluminum foil.
3.1.1.2 Quality Control Check. Analyze the toluene extract from Section 3.1.1.1 as described in Sections 5.2 and 5.3. If any TCDD or TCDF is present at a concentration above the minimum detectable level, repeat the cleaning procedure and reanalyze the extract until no TCDD or TCDF is detectable.
3.1.2 Adsorbent Resin. Amberlite XAD-2 resin. Thoroughly cleaned before initial use.
3.1.2.1 Cleaning Procedure. This procedure may be carried out in a giant Soxhlet extractor. An all-glass filter thimble containing an extra-coarse frit is used for extraction of XAD-2. The frit is recessed 10-15 mm above a crenellated ring at the bottom of the thimble to facilitate drainage. The resin must be carefully retained in the extractor cup with a glass wool plug and a stainless steel ring because it floats on methylene chloride. This process involves sequential extraction in the following order.

Solvent	Procedure
Water	Initial rinse: Place resin in a beaker, rinse once with water, and discard. Fill with water a second time, let stand overnight, and discard.
Water	Extract with water for 8 hours.
Methanol	Extract for 22 hours.
Methylene chloride	Extract for 22 hours.
Methylene chloride (fresh).	Extract for 22 hours.

3.1.2.2 Drying.
3.1.2.2.1 Drying Column. Pyrex pipe, 10.2 cm ID by 0.6 m long, with suitable retainers as shown in Figure 23-3.
3.1.2.2.2 Procedure. The adsorbent must be dried with clean inert gas. Liquid nitrogen from a standard commercial liquid nitrogen cylinder has proven to be a reliable source of large volumes of gas free from organic contaminants. Connect the liquid nitrogen cylinder to the column by a length of cleaned copper tubing, 0.95 cm ID, coiled to pass through a heat source. A convenient heat source is a water bath heated from a steam line. The final nitrogen temperature should only be warm to the touch and not over 40 °C. Continue flowing nitrogen through the adsorbent until all the residual solvent is removed. The rate of flow should be high enough to gently agitate the particles but not high enough to cause the particles to fracture.
3.1.2.3 Quality Control Check. The adsorbent must be checked for residual methylene chloride as well as TCDDs and TCDFs.
3.1.2.3.1 Methylene Chloride Residue.
3.1.2.3.1.1 Extraction. Weigh a 1.0 g sample of dried resin into a small vial, add 3 ml of toluene, cap the vial, and shake it well.
3.1.2.3.1.2 Analysis. Inject a 5μ l sample of the extract into a gas chromatograph operated under the following conditions:

Column: 6 ft x ⅛ in stainless steel containing 10% OV-101 on 100/120 Supelcoport.
Carrier Gas: Helium at a rate of 30 ml/min.
Detector: Flame ionization detector operated at a sensitivity of 4×10^{-11} A/mV.
Injection Port Temperature: 250 °C.
Detector Temperature: 305 °C.
Oven Temperature: 30 °C for 4 min; programmed to rise at 40 °C until it reaches 250 °C; return to 30 °C after 1000 seconds.

Compare the results of the analysis to the results from the reference solution. Prepare the reference solution by injecting 2.5 μl of methylene chloride into 100 ml of toluene. This corresponds to 100 μg of methylene chloride per g of adsorbent. The maximum acceptable concentration is 1000 μg/g of adsorbent. If the adsorbent exceeds this level, drying must be continued until the excess methylene chloride is removed.
3.1.2.3.2 TCDDs and TCDFs. Extract the sample as described in Section 5.1.1. Analyze the extract as described in §§ 5.2 and 5.3. If any of the TCDDs or TCDFs are present at concentrations above the MDL, the adsorbent must be recleaned by repeating the last step of the cleaning procedure. The MDL can be calculated as ½ of the theoretical minimum quantifiable level (TMQL). The TMQL is calculated in § 9.8.
3.1.2.4 Storage. The adsorbent must be used within four weeks of cleaning. After cleaning, it may be stored in a wide mouth amber glass container with a Teflon-lined cap or placed in one of the glass adsorbent modules tightly sealed with Teflon film and elastic bands.
3.1.3 Glass Wool. Cleaned by sequential immersion in three aliquots of hexane, dried in a 110 °C oven, and stored in a hexane-washed glass jar with a Teflon-lined screw cap.
3.1.4 Water. Deionized distilled and stored in a hexane-rinsed glass container with a Teflon-lined screw cap.
3.1.5 Chromic Acid Cleaning Solution. Dissolve 20 g of sodium dichromate in 15 ml of water, and then carefully add 400 ml of concentrated sulfuric acid.
3.2 Sample Recovery.
3.2.2 Acetone. Pesticide quality.
3.2.2 Methylene Chloride. Pesticide quality.
3.2.3 Toluene. Pesticide quality.
3.3 Analysis.
3.3.1 Potassium Hydroxide. Reagent grade.
3.3.2 Sodium Sulfate. Granulated, reagent grade. Purify prior to use by rinsing with methylene chloride and oven drying. Store the cleaned material in a glass container with a Teflon-lined screw cap.
3.3.3 Sulfuric Acid. Reagent grade.
3.3.4 Sodium Hydroxide. 1.0 N. Weigh 40 g of sodium hydroxide into a 1-liter volumetric flask. Dilute to 1 liter with water.
3.3.5 Hexane. Pesticide grade.
3.3.6 Methylene Chloride. Pesticide Grade.
3.3.7 Benzene. Pesticide Grade.
3.3.8 Ethyl Acetate.
3.3.9 Methanol. Pesticide Grade.
3.3.10 Toluene. Pesticide Grade.
3.3.11 Isooctane. Pesticide Grade.

3.3.12 Cyclohexane. Pesticide Grade.

3.3.13 Basic Alumina. Activity grade 1, 100–200 mesh. Prior to use, activate the alumina by heating for 16 hours at 130 °C before use. Store in a desiccator.

3.3.14 Silica Gel. Bio-Sil A, 100–200 mesh. Prior to use, activate the silica gel by heating for at least 30 minutes at 160 °C. After cooling rinse the silica gel sequentially with methanol and methylene chloride. Heat the rinsed silica gel at 50 °C for 10 minutes, then increase the temperature gradually to 160 °C over 25 minutes and maintain it at this temperature for 90 minutes. Cool at room temperature and store in a glass container with a Teflon-lined screw cap.

3.3.15 Silica Gel Impregnated with Sulfuric Acid. Combine 100 g of silica gel with 44 g of concentrated sulfuric acid in a screw capped glass bottle and agitate thoroughly. Disperse the solids with a stirring rod until a uniform mixture is obtained. Store the mixture in a glass container with a Teflon-lined screw cap.

3.3.16 Silica Gel Impregnated with Sodium Hydroxide. Combine 39 g of 1 N sodium hydroxide with 100 g of silica gel in a screw capped glass bottle and agitate thoroughly. Disperse solids with a stirring rod until a uniform mixture is obtained. Store the mixture in glass container with a Teflon-lined screw cap.

3.3.17 Carbon/Celite. Combine 10.7 g of AX–21 carbon with 124 g of Celite 545 in a 250-ml glass bottle with a Teflon-lined screw cap. Agitate the mixture thoroughly until a uniform mixture is obtained. Store in the glass container.

3.3.18 Nitrogen. Ultra high purity.

3.3.19 Hydrogen. Ultra high purity.

3.3.20 Internal Standard Solution. Prepare a stock standard solution containing the isotopically labelled PCDDs and PCDFs at the concentrations shown in Table 1 under the heading "Internal Standards" in 10 ml of isooctane.

3.3.21 Surrogate Standard Solution. Prepare a stock standard solution containing the isotopically labelled PCDDs and PCDFs at the concentrations shown in Table 1 under the heading "Surrogate Standards" in 10 ml of isooctane.

3.3.22 Recovery Standard Solution. Prepare a stock standard solution containing the isotopically labelled PCDDs and PCDFs at the concentrations shown in Table 1 under the heading "Recovery Standards" in 10 ml of isooctane.

4. Procedure

4.1 Sampling. The complexity of this method is such that, in order to obtain reliable results, testers should be trained and experienced with the test procedures.

4.1.1 Pretest Preparation.

4.1.1.1 Cleaning Glassware. All glass components of the train upstream of and including the adsorbent module shall be cleaned as described in section 3A of the Manual of Analytical Methods for the Analysis of Pesticides in Human and Environmental Samples. Special care shall be devoted to the removal of residual silicone grease sealants on ground glass connections of used glassware. Any residue shall be removed by soaking the glassware for several hours in a chromic acid cleaning solution prior to cleaning as described above.

4.1.1.2 Adsorbent Trap. The traps must be loaded in a clean area to avoid contamination. They should not be loaded in the field. Fill a trap with 20 to 30 g of XAD–2. Follow the XAD–2 with glass wool and tightly cap both ends of the trap.

4.1.1.3 Sample Train. It is suggested that all components be maintained according to the procedure described in APTD–0576.

4.1.1.4 Silica Gel. Weigh several 200 to 300 g portions of silica gel in an air tight container to the nearest 0.5 g. Record the total weight of the silica gel plus container, on each container. As an alternative, the silica gel may be weighed directly in its impinger or sampling holder just prior to sampling.

4.1.1.5 Filter. Check each filter against light for irregularities and flaws or pinhole leaks. Pack the filters flat in a clean glass container or wrapped in aluminum foil.

4.1.2 Preliminary Determinations. Same as section 4.1.2 of Method 5.

4.1.3 Preparation of Collection Train.

4.1.3.1 During preparation and assembly of the sampling train, keep all train openings where contamination can enter sealed until just prior to assembly or until sampling is about to begin.

Note: Do not use sealant grease in assembling the train.

4.1.3.2 Place approximately 100 ml of water in each of the first two impingers, leave the third impinger empty, and transfer approximately 200 to 300 g of preweighed silica gel from its container to the fourth impinger.

4.1.3.3 Place the container in a clean place for later use in the sample recovery. Alternatively, the weight of the silica gel plus impinger may be determined to the nearest 0.5 g and recorded.

4.1.3.4 Assemble the train as shown in Figure 23–1.

4.1.3.5 Turn on the adsorbent module and condenser coil recirculating pump and begin monitoring the adsorbent module gas entry temperature. Ensure proper sorbent temperature gas entry temperature before proceeding and before sampling is initiated. It is extremely important that the XAD–2 adsorbent resin temperature never exceed 50.C because thermal decomposition will occur. During testing, the XAD–2 temperature must not exceed 20 °C for efficient capture of the TCDDs and TCDFs.

4.1.4 Leak-Check Procedure. Same as Method 5, § 4.1.4.

4.1.5 Sample Train Operation. Same as Method 5, § 4.1.5.

4.2 Sample Recovery. Proper cleanup procedure begins as soon as the probe is removed from the stack at the end of the sampling period. Seal the nozzle end of the sampling probe with Teflon tape or aluminum foil.

When the probe can be safely handled, wipe off all external particulate matter near the tip of the probe. Remove the probe from the train and close off both ends with aluminum foil. Seal off the inlet to the train with Teflon tape, a ground glass cap, or aluminum foil.

Transfer the probe and impinger assembly to the cleanup area. This area shall be clean and enclosed so that the chances of losing or contaminating the sample are minimized. Smoking which could contaminate the sample shall not be allowed in the cleanup area.

Inspect the train prior to and during disassembly and note any abnormal conditions, e.g., broken filters, colored impinger liquid, etc. Treat the samples as follows:

4.2.1 Container No. 1. Either seal the filter holder or carefully remove the filter from the filter holder and place it in its identified container. Use a pair of cleaned tweezers to handle the filter. If it is necessary to fold the filter, do so such that the particulate cake is inside the fold. Carefully transfer to the container any particulate matter and/or filter fibers which adhere to the filter holder gasket, by using a dry inert bristle brush and/or a sharp-edged blade. Seal the container.

4.2.2 Absorbent Module. Remove the module from the train, tightly cap both ends, label it, cover with aluminum foil, and store it on ice for transport to the laboratory.

4.2.3 Cyclone Catch. If the optional cyclone is used, quantitatively recover the particulate into a glass container and cap.

4.2.4 Container No. 2. Quantitatively recover material deposited in the nozzle, probe transfer lines, the front half of the filter holder, and the cyclone, if used, first by brushing while rinsing three times each with acetone and then by rinsing the probe three times with methylene chloride. Collect all the rinses in Container No. 2.

Rinse the back half of the filter holder, the connecting line between the filter and the condenser, and the condenser, if using a separate condenser and absorbent trap, sequentially, three times each, with acetone and methylene chloride. Collect all the rinses in Container No. 2 and mark the level of the liquid on the container.

4.2.5 Container No. 3. Repeat the rinsing described in section 4.2.4 using toluene as the rinse solvent. Collect the rinses in Container No. 3 and mark the level of the liquid on the container.

4.2.6 Impinger Water. Measure the liquid in the first three impingers to within ±1 ml by using a graduated cylinder or by weighing it to within ±0.5 by using a balance. Record the volume or weight of liquid present. This information is required to calculate the moisture content of the effluent gas.

Discard the liquid after measuring and recording the volume or weight. 4 2.7 Silica Gel. Note the color of the indicating silica gel to determine if it has been completely spent and make a mention of its condition. Transfer the silica gel from the fourth impinger to its original container and seal. A funnel may make it easier to pour the silica gel without spilling. A rubber policeman may be used as an aid in removing the silica gel from the impinger.

5. Analysis

5.1 Sample Extraction.

5.1.1 Container No. 1. Place a glass extraction thimble and 1 g of silica gel and a plug of glass wool into the Soxhlet apparatus, charge the apparatus with toluene, and reflux for a minimum of 3 hours. Remove the toluene and discard it, but retain the silica gel. Suspend the adsorbent module directly over the extraction thimble described in section 5.1.1. The glass frit of the module should be in the up position. The thimble is contained in a clean beaker, which will serve to catch the solvent rinses. Using a Teflon squeeze bottle, flush the XAD–2 into the thimble onto the bed of cleaned silica gel. Thoroughly rinse the glass module with toluene into the beaker containing the thimble. Add the XAD–2 glass wool plug to the thimble, add the contents of container No. 1, and add the concentrate from Section 5.1.2. For low level samples, add 20 ul of the internal standard solution (section 3.3.20), for high level samples, add 100 ul of the solution. Low level samples are those samples that contain less than 200 pg of any TCDD of TCDF. Cover the XAD–2 in the thimble with the cleaned glass wool plug to prevent the resin from floating into the solvent reservoir of the extractor. If the resin is wet, effective extraction can be accomplished by loosely packing the resin in the thimble. The thimble is placed in the extractor, and the toluene contained in the beaker is added to the solvent reservoir. Additional toluene is added to make the reservoir approximately two—thirds full. Add Teflon boiling chips and assemble the apparatus. Adjust the heat source to cause the extractor to cycle 5–6 times per hour. Extract the resin for 16 hours. After extraction, allow the Soxhlet to cool. Transfer the toluene extract and three 10-ml rinses to the rotary evaporator. Concentrate the extract to approximately 8 ml. Use nitrogen evaporation to further reduce the sample to about 1 ml. Split the sample in half. Store one half and analyze the other according to the procedures in sections 5.2 and 5.3.

5.1.2 Container No. 1. Transfer the contents directly to the glass thimble of the extractor and extract them simultaneously with the XAD–2 resin.

5.1.3 Container No. 2. Concentrate the sample to a volume of about 1–5 ml using the rotary evaporator apparatus, at a temperature of less than 37 °C. Rinse the sample container three times with small portions of methylene chloride and add these to the concentrated solution and concentrate further to near dryness. This residue contains particulate matter removed in the rinse of the train probe and nozzle. Add the concentrate to the filter and the XAD–2 resin in the Soxhlet apparatus as described in section 5.1.1.

5.1.4 Container No. 3. Concentrate the sample to a volume of about 1–5 ml using the rotary evaporator apparatus, at a temperature of less than 37°C. Rinse the sample container three times with small portions of toluene and add these to the concentrated solution and concentrate further to near dryness. Analyze the extract according to the procedures in sections 5.2 and 5.3.

5.2 Sample Cleanup and Fractionation.

5.2.1 Silica Gel Column. Pack one end of a glass column, 20 mm x 230 mm, with glass wool. Add in sequence, 1 g silica gel, 2 g of sodium hydroxide impregnated silica gel, 1 g silica gel, 4 g of acid-modified silica gel, and 1 g of silica gel. Wash the column with 30 ml of hexane and discard it. Add the sample extract, dissolved in 5 ml of hexane to the column with two additional 5-ml rinses. Elute the column with an additional 90 ml of hexane and retain the entire eluate. Concentrate this solution to a volume of about 1 ml using the nitrogen evaporative concentrator (section 2.3.7).

5.2.2 Basic Alumina Column. Shorten a 25-ml disposable Pasteur pipette to about 16 ml. Pack the lower section with glass wool and 12 g of basic alumina. Transfer the concentrated extract from the silica gel column to the top of the basic alumina column and elute the column sequentially with 120 ml of 0.5 percent methylene chloride in hexane followed by 120 ml of 35 percent methylene chloride in hexane. Discard the first 120 ml of eluate. Collect the second 120 ml of eluate and concentrate it to about 0.5 ml using the nitrogen evaporative concentrator.

5.2.3 AX–21 Carbon/Celite 545 Column. Remove the bottom 0.5 inch from the tip of a 9-ml disposable Pasteur pipette. Insert a filter paper disk in the top of the pipette 2.5 cm from the constriction. Add sufficient carbon/celite mixture to form a 2 cm column. Top with a glass wool plug. Rinse the column in sequence with 2 ml of 50 percent benzene in ethyl acetate, 1 ml of 50 percent methylene chloride in cyclohexane and 2 ml of hexane. Discard these eluates. Transfer the concentrate in 1 ml of hexane from the basic alumina column to the carbon/celite column along with 1 ml of hexane rinse. Elute the column sequentially with 2 ml of 50 percent methylene chloride in hexane and 2 ml of 50 percent benzene in ethyl acetate and discard these eluates. Invert the column and elute in the reverse direction with 4 ml of toluene. Collect this eluate. Concentrate the eluate in a rotary evaporator at 50 °C to about 1 ml. Transfer the concentrate to a Reacti-vial using a toluene rinse and concentrate to a volume of 200 µl using a stream of N_2. Store extracts in a freezer, shielded from light, prior to analysis.

5.3 Analysis. Analyze the sample using a gas chromatograph coupled to a mass spectrometer (GC/MS) using the instrumental parameters in sections 5.3.1 and 5.3.2. A 1 to 5 µl aliquot of the extract is injected into the GC. Sample extracts are first analyzed using the DB–5 capillary column to determine the concentration of each isomer of PCDDs and PCDFs (tetra-through octa-). If tetra-chlorinated dibenzofurans are detected in this analysis, then another aliquot of the sample is analyzed in a separate run, using the SP 2331 column to measure the 2,3,7,8 tetra-chlorodibenzofuran isomer.

5.3.1 Gas Chromatograph Operating Conditions.

5.3.1.1 Injector. Configured for capillary column, splitless, 250 °C.

5.3.1.2 Carrier Gas. Helium, 1–2 ml/min.

5.3.1.3 Oven. Initially at 180 °C. Raise ballistically to 190 °C and then at 3 °C/min up to 300 °C.

5.3.2 High Resolution Mass Spectrometer.

5.3.2.1 Resolution. 8000–10000 m/e.

5.3.2.2 Ionization Mode. Electron impact, 70 eV.

5.3.2.3 Source Temperature 250 °C.

5.3.2.4 Monitoring Mode. Selected ion monitoring. A list of the various ions to be monitored is summarized in Table 4.

5.3.2.5 Identification Criteria. The following identification criteria shall be used for the characterization of polychlorinated dibenzodioxins and dibenzofurans.

1. The integrated ion-abundance ratio (M+/M+2 or M+2/M+4) shall be within 15 percent of the theoretical value. The acceptable ion-abundance ratio ranges for the identification of chlorine-containing compounds are given in Table 5.

2. The retention time for the analytes must be within 3 seconds of the corresponding ^{13}C-labeled internal standard, surrogate or alternate standard.

3. The monitored ions shown in Table 4 for a given analyte shall reach their maximum within 2 seconds of each other.

4. The identification of specific isomers that do not have corresponding ^{13}C-labeled standards is done by comparison of the relative retention time (RRT) of the analyte to the nearest internal standard retention time with reference (i.e., within 0.005 RRT units) to the comparable RRTs found in the continuing calibration.

5. The signal to noise for all monitored ions must be greater than 2.5.

6. The confirmation of 2,3,7,8-TCDD and 2,3,7,8-TCDF shall satisfy all of the above identification criteria.

7. For the identification of PCDFs, no signal may be found in the corresponding PCDPE channels.

5.3.2.6 Quantification. The peak areas for the two ions monitored for each analyte are summed to yield the total response for each analyte. Each internal standard is used to quantify the indigenous PCDDs or PCDFs in its homologous series. For example the $^{13}C_{12}$-1,2,3,4-tetra chlorinated dibenzodioxin is used to calculate the concentrations of all other tetra chlorinated isomers. Recoveries of the tetra- and penta- internal standards are calculated using the $^{13}C_{12}$-1,2,3,4-TCDD. Recoveries of the hexa- through octa- internal standards are calculated using $^{13}C_{12}$-1,2,3,7,8,9-HxCDD. Recoveries of the surrogate standards are calculated using the corresponding homolog from the internal standard.

6. Calibration

Same as Method 5 with the following additions.

6.1 GC/MS System.

6.1.1 Initial Calibration. Calibrate the GC/MS system using the set of five standards shown in Table 2 for low level samples or Table 3 for high level samples. The relative standard deviation for the mean response factor from each of the unlabeled analytes (Table 2) and of the internal, surrogate, and alternate standards shall be less than or equal to the values in Table 6. The signal to noise ratio for the GC signal present in every selected ion current profile shall be greater than or equal to 2.5. The ion abundance ratios shall be within the control limits in Table 5.

6.1.2 Daily Performance Check.

6.1.2.1 Calibration Check. Inject one µl of solution number 4 from Table 2 or solution number 3 from Table 3. Calculate the relative

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response factors (*RRF's*) for each compound and compare each of them to the corresponding mean RRF obtained during the initial calibration. The analyzer performance is acceptable if the measured RRF's for the labeled and unlabeled compounds for the daily run are within the limits of the mean values shown in Table 6. In addition the ion-abundance ratios shall be within the allowable control limits shown in Table 5.

6.1.2.2 Column Separation Check. Inject a solution of a mixture of PCDDs and PCDFs that documents resolution between 2,3,7,8-TCDD and other TCDD isomers. Resolution is defined as a valley between peaks that is less than 25% of the lower of the two peaks.

7. Quality Control

7.1 Sampling Train Collection Efficiency Check. Add 100 µl of the surrogate standards in Table 1 to the adsorbent cartridge of each train before each test.

7.2 Internal Standard Percent Recoveries. Recoveries of the internal standards must be between 40 to 130% for the tetrathrough hexachlorinated compounds while the range is 25 to 130% for the higher hepta- and octachlorinated homologues. If the internal standards do not meet the recovery requirements, the data will still be acceptable provided that the signal is equal to or greater than ten times the noise level.

7.3 Surrogate Recoveries. The surrogate recoveries are measured relative to the internal standards and are a measure of collection efficiency. All recoveries shall be between 70 and 130%. Poor recoveries for all the surrogates may be an indication of breakthrough in the sampling train. If the recovery of all standards is below 70%, the sampling runs must be repeated. As an alternative the sampling runs do not have to be repeated if the final results are divided by the fraction of surrogate recovery. Poor recoveries of isolated surrogate compounds should not be grounds for rejecting an entire set of samples.

7.4 Toluene Quality Assurance Rinse. Report the results of the toluene quality assurance rinse separately from the total sample catch. Do not add it to the total sample.

8. Quality Assurance

8.1 Applicability. When the method is used to analyze samples to demonstrate compliance with a source emission regulation, an audit sample must be analyzed.

8.2 Audit Procedure. The audit sample contains tetra through octa isomers of PCDD and PCDF. Concurrently, analyze the audit sample and a set of compliance samples in the same manner to evaluate the technique of the analyst and the standards preparation. The same analyst, analytical reagents, and analytical system shall be used both for the compliance samples and the EPA audit sample. If this condition is met, auditing of subsequent compliance analyses for any enforcement agency within seven days is not required.

8.3 Audit Sample Availability. The audit sample may be obtained by writing:

Source Test Audit Coordinator (MD–77B), Quality Assurance Division, Atmospheric Research and Exposure Assessment Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711 or by calling the Source Test Audit Coordinator (STAC) at (919) 541–7834. The request for the audit sample must be made at least 30 days prior to the scheduled compliance sample analysis.

8.4 Audit Results. Calculate the audit sample concentration according to the calculation procedure described in the audit instructions included with the audit sample. Fill in the audit sample concentration and the analyst's name on the audit response form included with the audit instructions. Send one copy to the EPA regional office or the appropriate enforcement agency. The STAC will return the EPA response to the laboratory being audited. Include this EPA response with the results of the compliance samples in appropriate reports to the EPA regional office or the appropriate enforcement agency. Include this information with subsequent analyses for any enforcement agency during the seven-day period.

9. Calculations

Same as Method 5, section 6 with the following additions.

9.1 Nomenclature.

A_{di} = Integrated ion current of the two ions characteristic of compound i in the calibration standard.

A^*_{di} = Integrated ion current of the two ions characteristic of the internal standard i in the calibration standard.

A^*_{sdi} = Integrated ion current of the two ions characteristic of surrogate compound i in the calibration standard.

Ai = Integrated ion current of the two ions characteristic of compound i in the sample.

A^*_i = Integrated ion current of the two ions characteristic of internal standard i in the sample.

A_{ss} = Integrated ion current of the two ions characteristic of the recovery standard.

A_{si} = Integrated ion current of the two ions characteristic of surrogate compound i in the sample.

C_o = Concentration of the compound of interest in the most dilute calibration solution, pg/µl.

m_{di} = Mass of compound i in the calibration standard injected into the analyzer, pg.

m^*_{di} = Mass of labeled compound i in the calibration standard injected into the analyzer, pg.

m^*_i = Mass of internal standard i added to the sample, pg.

m_{ss} = Mass of recovery standard in the calibration standard injected into the analyzer, pg.

m_{si} = Mass of surrogate compound i in the calibration standard.

RRF_i = Relative response factor.

RRF_{ss} = Recovery standard response factor.

V = Final extract volume, µl.

9.2 Relative Response Factor.

$$RRF = 1/n \sum^{n} A_{di} m^*_{di} / (A^*_{di} m_{di}) \quad \text{Eq. 23–1}$$

9.3 Concentration of the PCDDs and PCDFs.

$$C_i = m^*_i A_i / (A^*_i RRF_i V_{solution}) \quad \text{Eq. 23–2}$$

9.4 Recovery Standard Response Factor.

$$RRF_{ss} = A^*_{di} m_{ss} / (A_{ss} m^*_{di}) \quad \text{Eq. 23–3}$$

9.5 Recovery of Internal Standards (R*).

$$R^* = (A^*_i m_{ss} / A_{ss} RF_{ss} m^*_i) \times 100\% \quad \text{Eq. 23–4}$$

9.6 Surrogate Compound Response Factor.

$$RRFs = A^*_{di} m_{si} / (A_{si} m^*_{di}) \quad \text{Eq. 23–5}$$

9.7 Recovery of Surrogate Compounds (R_s).

$$R_s = (A_{si} m^*_i / A^*_i RRF_i m_{si}) \times 100\% \quad \text{Eq. 23–6}$$

9.8 Theoretical Minimum Quantifiable Level (TMQL).

$$TMQL = C_o V / R^* \quad \text{Eq. 23–7}$$

9. Bibliography

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TABLE 1.—COMPOSITION OF THE SAMPLE FORTIFICATION AND RECOVERY STANDARDS SOLUTIONS

Analyte	Concentration (pg/µl)
Internal standards:	
$^{13}C_{12}$-2,3,7,8-TCDD	100
$^{13}C_{12}$-1,2,3,7,8-PeCDD	100
$^{13}C_{12}$-1,2,3,6,7,8-HxCDD	100
$^{13}C_{12}$-1,2,3,4,6,7,8-HpCDD	100
$^{13}C_{12}$-2,3,7,8-TCDF	100
$^{13}C_{12}$-1,2,3,7,8-PeCDF	100
$^{13}C_{12}$-1,2,3,6,7,8-HxCDF	100
$^{13}C_{12}$-2,3,1,6,7,8 HpCDF	100
Surrogate Standards:	
$^{37}Cl_4$-2,3,7,8-TCDD	100
$^{13}C_{12}$-1,2,3,4,7,8-HxCDD	100
$^{13}C_{12}$-2,3,1,7,8-PeCDF	100
$^{13}C_{12}$-1,2,3,4,7,8-HxCDF	100
$^{13}C_{12}$-1,2,3,4,7,8,9-HpCDF	100
Recovery standards:	
$^{13}C_{12}$-1,2,3,4-TCDD	500
$^{13}C_{12}$-1,2,3,7,8,9-HxCDD	500

TABLE 2.—COMPOSITION OF THE INITIAL CALIBRATION SOLUTIONS (LOW)

Compound	Concentrations (pg/µL)—Solution No.—				
	1	2	3	4	5
Unlabeled analytes:					
2,3,7,8-TCDD	0.5	1	5	50	100
2,3,7,8-TCDF	0.5	1	5	50	100
1,2,3,7,8-PeCDD	2.5	5	25	250	500
1,2,3,7,8-PeCDF	2.5	5	25	250	500
2,3,4,7,8-PeCDF	2.5	5	25	250	500
1,2,3,4,7,8-HxCDD	2.5	5	25	250	500
1,2,3,6,7,8-HxCDD	2.5	5	25	250	500
1,2,3,7,8,9-HxCDD	2.5	5	25	250	500
1,2,3,4,7,8-HxCDF	2.5	5	25	250	500
1,2,3,6,7,8-HxCDF	2.5	5	25	250	500
1,2,3,7,8,9-HxCDF	2.5	5	25	250	500
2,3,4,6,7,8-HxCDF	2.5	5	25	250	500
1,2,3,4,6,7,8-HpCDD	2.5	5	25	250	500
1,2,3,4,6,7,8-HpCDF	2.5	5	25	250	500
1,2,3,4,7,8,9-HpCDF	2.5	5	25	250	500
OCDD	5	10	50	500	1000
OCDF	5	10	50	500	1000
Internal standards:					
$^{13}C_{12}$-2,3,7,8-TCDD	100	100	100	100	100
$^{13}C_{12}$-1,2,3,7,8-PeCDD	100	100	100	100	100
$^{13}C_{12}$-1,2,3,6,7,8-HxCDD	100	100	100	100	100
$^{13}C_{12}$-1,2,3,4,6,7,8-HpCDD	100	100	100	100	100
$^{13}C_{12}$-OCDD	200	200	200	200	200
$^{13}C_{12}$-2,3,7,8-TCDF	100	100	100	100	100
$^{13}C_{12}$-1,2,3,7,8-PeCDF	100	100	100	100	100
$^{13}C_{12}$-1,2,3,6,7,8-HxCDF	100	100	100	100	100
$^{13}C_{12}$-1,2,3,4,6,7,8-HpCDF	100	100	100	100	100
Surrogate standards:					
$^{37}Cl_4$-2,3,7,8-TCDD	0.5	1	5	50	100
$^{13}C_{12}$-2,3,4,7,8-PeCDF	2.5	5	25	250	500
$^{13}C_{12}$-1,2,3,4,7,8-HxCDD	2.5	5	25	250	500
$^{13}C_{12}$-1,2,3,4,7,8-HxCDF	2.5	5	25	250	500
$^{13}C_{12}$-1,2,3,4,7,8,9-HpCDF	2.5	5	25	250	500
Alternate standard:					
$^{13}C_{12}$-1,2,3,7,8,9-HxCDF	2.5	5	25	250	500
Recovery standards:					
$^{13}C_{12}$-1,2,3,4-TCDD	100	100	100	100	100
$^{13}C_{12}$-1,2,3,7,8,9-HxCDD	100	100	100	100	100

TABLE 3.—COMPOSITION OF THE INITIAL CALIBRATION SOLUTIONS (HIGH)

Compound	Concentrations (pg/µL)—Solution No.—				
	1	2	3	4	5
Unlabeled analytes:					
2,3,7,8-TCDD	5	50	100	500	1000
2,3,7,8-TCDF	5	50	100	500	1000
1,2,3,7,8-PeCDD	25	250	500	2500	5000
1,2,3,7,8-PeCDF	25	250	500	2500	5000
2,3,4,7,8-PeCDF	25	250	500	2500	5000
1,2,3,4,7,8-HxCDD	25	250	500	2500	5000
1,2,3,6,7,8-HxCDD	25	250	500	2500	5000
1,2,3,7,8,9-HxCDD	25	250	500	2500	5000
1,2,3,4,7,8-HxCDF	25	250	500	2500	5000
1,2,3,6,7,8-HxCDF	25	250	500	2500	5000
1,2,3,7,8,9-HxCDF	25	250	500	2500	5000
2,3,4,6,7,8-HxCDD	25	250	500	2500	5000
1,2,3,4,6,7,8-HpCDD	25	250	500	2500	5000
1,2,3,4,6,7,8-HpCDF	25	250	500	2500	5000
1,2,3,4,7,8,9-HpCDF	25	250	500	2500	5000
OCDD	50	500	1000	5000	10000

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TABLE 3.—COMPOSITION OF THE INITIAL CALIBRATION SOLUTIONS (HIGH)—Continued

Compound	Concentrations (pg/μL)—Solution No.—				
	1	2	3	4	5
OCDF	50	500	1000	5000	10000
Internal standards:					
$^{13}C_{12}$-2,3,7,8-TCDD	100	100	100	100	100
$^{13}C_{12}$-1,2,3,7,8-PeCDD	100	100	100	100	100
$^{13}C_{12}$-1,2,3,6,7,8-HxCDD	100	100	100	100	100
$^{13}C_{12}$-1,2,3,4,6,7,8-HpCDD	100	100	100	100	100
$^{13}C_{12}$-OCDD	200	200	200	200	200
$^{13}C_{12}$-2,3,7,8-TCDF	100	100	100	100	100
$^{13}C_{12}$-1,2,3,7,8-PeCDF	100	100	100	100	100
$^{13}C_{12}$-1,2,3,6,7,8-HxCDF	100	100	100	100	100
$^{13}C_{12}$-1,2,3,4,6,7,8-HpCDF	100	100	100	100	100
Surrogate standards:					
$^{37}Cl_4$-2,3,7,8-TCDD	5	50	100	500	1000
$^{13}C_{12}$-2,3,4,7,8-PeCDF	25	250	500	2500	5000
$^{13}C_{12}$-1,2,3,4,7,8-HxCDD	25	250	500	2500	5000
$^{13}C_{12}$-1,2,3,4,7,8-HxCDF	25	250	500	2500	5000
$^{13}C_{12}$-1,2,3,4,7,8,9-HpCDF	25	250	500	2500	5000
Alternate standard:					
$^{13}C_{12}$-1,2,3,7,8,9-HxCDF	5	50	100	500	1000
Recovery standards:					
$^{13}C_{12}$-1,2,3,4-TCDD	100	100	100	100	100
$^{13}C_{12}$-1,2,3,7,8,9-HxCDD	100	100	100	100	100

TABLE 4.—ELEMENTAL COMPOSITIONS AND EXACT MASSES OF THE IONS MONITORED BY HIGH RESOLUTION MASS SPECTROMETRY FOR PCDDS AND PCDFS

Descriptor No.	Accurate mass	Ion type	Elemental composition	Analyte
1	303.9016	M	$C_{12}H_4{}^{35}Cl_4O$	TCDF
	305.8987	M+2	$C_{12}H_4{}^{35}Cl^{37}O$	TCDF
	315.9419	M	$^{13}C_{12}H_4{}^{35}Cl_4O$	TCDF (S)
	317.9389	M+2	$^{13}C_{12}H_4{}^{35}Cl_3{}^{37}ClO$	TCDF (S)
	319.8965	M	$C_{12}H_4{}^{35}Cl_3O_2$	TCDD
	321.8936	M+2	$C_{12}H_4{}^{35}Cl_3{}^{37}ClO$	TCDD
	327.8847	M	$C_{12}H_4{}^{37}Cl_4O_2$	TCDD (S)
	331.9368	M	$^{13}C_{12}H_4{}^{35}Cl_4O_2$	TCDD (S)
	333.9339	M+2	$^{13}C_{12}H_4{}^{35}Cl^{37}ClO_2$	TCDD (S)
	375.8364	M+2	$C_{12}H_4{}^{35}Cl_5{}^{37}ClO$	HxCDPE
	354.9792	LOCK	C_8F_{16}	PFK
2	339.8597	M+2	$C_{12}H_3{}^{35}Cl_4{}^{37}ClO$	PECDF
	341.8567	M+4	$C_{12}H_3{}^{35}Cl_3{}^{37}Cl_2O$	PeCDF
	351.9000	M+2	$^{13}C_{12}H_3{}^{35}Cl_4{}^{37}ClO$	PeCDF (S)
	353.8970	M+4	$^{13}C_{12}H_3{}^{35}Cl_3{}^{37}Cl_2O$	PeCDF (S)
	355.8546	M+2	$C_{12}H_3{}^{35}Cl_5{}^{37}ClO_2$	PeCDD
	357.8516	M+4	$C_{12}H_3{}^{35}Cl_4{}^{37}Cl_2O_2$	PeCDD
	367.8949	M+2	$^{13}C_{12}H_3{}^{35}Cl_5{}^{37}ClO_2$	PeCDD (S)
	369.8919	M+4	$^{13}C_{12}H_3{}^{35}Cl_4{}^{37}Cl_2O_2$	PeCDD (S)
	409.7974	M+2	$C_{12}H_3{}^{35}Cl_6{}^{37}ClO$	HpCPDE
	354.9792	LOCK	C_8F_{16}	PFK
3	373.8208	M+2	$C_{12}H_3{}^{35}Cl_5{}^{37}ClO$	HxCDF
	375.8178	M+4	$C_{12}H_3{}^{35}Cl_4{}^{37}Cl_2O$	HxCDF
	383.8639	M	$^{13}C_{12}H_3{}^{35}Cl_6O$	HxCDF (S)
	385.8610	M+2	$^{13}C_{12}H_3{}^{35}Cl_5{}^{37}ClO$	HxCDF (S)
	389.8157	M+2	$C_{12}H_3{}^{35}Cl_5{}^{37}ClO_2$	HxCDD
	391.8127	M+4	$C_{12}H_3{}^{35}Cl_4{}^{37}Cl_2O_2$	HxCDD
	401.8559	M+2	$^{13}C_{12}H_3{}^{35}Cl_5{}^{37}ClO_2$	HxCDD (S)
	403.8529	M+4	$^{13}C_{12}H_3{}^{35}Cl_4{}^{37}Cl_2O$	HxCDD (S)
	445.7555	M+4	$C_{12}H_2{}^{35}Cl_6{}^{37}Cl_2O$	OCDPE
	430.9729	LOCK	C_9F_{18}	PFK
4	407.7818	M+2	$C_{12}H^{35}Cl_6{}^{37}ClO$	HpCDF
	409.7789	M+4	$C_{12}H^{35}Cl_5{}^{37}Cl_2O$	HpCDF
	417.8253	M	$^{13}C_{12}H^{35}Cl_7O$	HpCDF (S)
	419.8220	M+2	$^{13}C_{12}H^{35}Cl_6{}^{37}ClO$	HpCDF (S)
	423.7766	M+2	$C_{12}H^{35}Cl_6{}^{37}ClO_2$	HpCDD
	425.7737	M+4	$C_{12}H^{35}Cl_5{}^{37}Cl_2O_2$	HpCDD
	435.8169	M+2	$^{13}C_{12}H^{35}Cl_6{}^{37}ClO_2$	HpCDD (S)
	437.8140	M+4	$^{13}C_{12}H^{35}Cl_5{}^{37}Cl_2O_2$	HpCDD (S)
	479.7165	M+4	$C_{12}H^{35}Cl_7{}^{37}Cl_2O$	NCPDE
	430.9729	LOCK	C_9F_{17}	PFK
5	441.7428	M+2	$C_{12}{}^{35}Cl_7{}^{37}ClO$	OCDF
	443.7399	M+4	$C_{12}{}^{35}Cl_6{}^{37}Cl_2O$	OCDF
	457.7377	M+2	$C_{12}{}^{35}Cl_7{}^{37}ClO_2$	OCDD
	459.7348	M+4	$C_{12}{}^{35}Cl_6{}^{37}Cl_2O_2$	OCDD
	469.7779	M+2	$^{13}C_{12}{}^{35}Cl_7{}^{37}ClO_2$	OCDD (S)
	471.7750	M+4	$^{13}C_{12}{}^{35}Cl_6{}^{37}Cl_2O_2$	OCDD (S)

TABLE 4.—ELEMENTAL COMPOSITIONS AND EXACT MASSES OF THE IONS MONITORED BY HIGH RESOLUTION MASS SPECTROMETRY FOR PCDDS AND PCDFS—Continued

Descriptor No.	Accurate mass	Ion type	Elemental composition	Analyte
	513.6775	M+4	$C_{12}{}^{35}Cl_8{}^{37}Cl_2O_2$	DCDPE
	442.9728	LOCK	$C_{10}F_{17}$	PFK

(a) The following nuclidic masses were used: H = 1.007825 C = 12.000000 ^{13}C = 13.003355 F = 18.9984 O = 15.994915 ^{35}Cl = 34.968853 ^{37}Cl = 36.965903 S = Labeled Standard

TABLE 5.—ACCEPTABLE RANGES FOR ION-ABUNDANCE RATIOS OF PCDDS AND PCDFS

Number of chlorine atoms	Ion type	Theoretical ratio	Control limits	
			Lower	Upper
4	M/M+2	0.77	0.65	0.89
5	M+2/M+4	1.55	1.32	1.78
6	M+2/M+4	1.24	1.05	1.43
6[1]	M/M+2	0.51	0.43	0.59
7[2]	M/M+2	0.44	0.37	0.51
7	M+2/M+4	1.04	0.88	1.20
8	M+2/M+4	0.89	0.76	1.02

[1] Used only for ^{13}C-HxCDF.
[2] Used only for ^{13}C-HpCDF.

TABLE 6.—MINIMUM REQUIREMENTS FOR INITIAL AND DAILY CALIBRATION RESPONSE FACTORS

Compound	Relative Response Factors	
	Initial calibration RSD	Daily calibration percentage difference
Unlabeled Analytes:		
2,3,7,8-TCDD	25	25
2,3,7,8-TCDF	25	25
1,2,3,7,8-PeCDD	25	25
1,2,3,7,8-PeCDF	25	25
2,3,4,7,8-PeCDF	25	25
1,2,4,5,7,8-HxCDD	25	25
1,2,3,6,7,8-HxCDD	25	25
1,2,3,7,8,9-HxCDD	25	25
1,2,3,4,7,8-HxCDF	25	25
1,2,3,6,7,8-HxCDF	25	25
1,2,3,7,8,9-HxCDF	25	25
2,3,4,6,7,8-HxCDF	25	25
1,2,3,4,6,7,8-HpCDD	25	25
1,2,3,4,6,7,8-HpCDF	25	25
OCDD	25	25
OCDF	30	30
Internal standards:		
^{13}C$_{12}$-2,3,7,8-TCDD	25	25
^{13}C$_{12}$-1,2,3,7,-PeCDD	25	25
^{13}C$_{12}$-1,2,3,6,7,8-HxCDD	25	25
^{13}C$_{12}$-1,2,3,4,6,7,8-HpCDD	30	30
^{13}C$_{12}$-OCDD	30	30
^{13}C$_{12}$-2,3,7,8-TCDF	30	30
^{13}C$_{12}$-1,2,3,7,8-PeCDF	30	30
^{13}C$_{12}$-1,2,3,6,7,8-HxCDF	30	30
^{13}C$_{12}$-1,2,3,4,6,7,8-HpCDF	30	30
Surrogate standards:		
^{37}Cl$_4$-2,3,7,8-TCDD	25	25
^{13}C$_{12}$-2,3,4,7,8-PeCDF	25	25
^{13}C$_{12}$-1,2,3,4,7,8-HxCDD	25	25
^{13}C$_{12}$-1,2,3,4,7,8-HxCDF	25	25

TABLE 6.—MINIMUM REQUIREMENTS FOR INITIAL AND DAILY CALIBRATION RESPONSE FACTORS—Continued

Compound	Relative Response Factors	
	Initial calibration RSD	Daily calibration percentage difference
^{13}C$_{12}$-1,2,3,4,7,8,9-HpCDF	25	25
Alternate Standard:		
^{13}C$_{12}$-1,2,3,7,8,9-HxCDF	25	25

* * * * *

Method 26—Determination of Hydrogen Chloride Emissions From Stationary Sources

1. Applicability, Principle, Interferences, Precision, Bias, and Stability

1.1 Applicability. This method is applicable for determining hydrogen chloride (HCl) emissions from stationary sources.

1.2 Principle. An integrated sample is extracted from the stack and passed through dilute sulfuric acid. In the dilute acid, the HCl gas is dissolved and forms chloride (Cl^-) ions. The Cl^- is analyzed by ion chromatography (IC).

1.3 Interferences. Volatile materials which produce chloride ions upon dissolution during sampling are obvious interferences. Another likely interferent is diatomic chlorine (Cl_2) gas which reacts to form HCl and hypochlorous acid (HOCl) upon dissolving in water. However, Cl_2 gas exhibits a low solubility in water and the use of acidic, rather than neutral or basic collection solutions, greatly reduces the chance of dissolving any chlorine present. This method does not experience a significant bias when sampling a 400 ppm HCl gas stream containing 50 ppm Cl_2. Sampling a 220 ppm HCl gas stream containing 180 ppm Cl_2 results in a positive bias of 3.4 percent in the HCl measurement.

1.4 Precision and Bias. The within-laboratory relative standard deviations are 6.2 and 3.2 percent at HCl concentrations of 3.9 and 15.3 ppm, respectively. The method does not exhibit a bias to Cl_2 when sampling at concentrations less than 50 ppm.

1.5 Stability. The collected samples can be stored for up to 4 weeks before analysis.

1.6 Detection Limit. The analytical detection limit of the method is 0.1 μg/ml.

2. Apparatus

2.1 Sampling. The sampling train is shown in Figure 26–1, and component parts are discussed below.

2.1.1 Probe. Borosilicate glass, approximately ⅝-in. (9-mm) I.D. with a heating system to prevent moisture condensation. A ⅝-in. I.D. Teflon elbow should be attached to the inlet of the probe and a 1-in. (25-mm) length of ⅝-in. I.D. Teflon tubing should be attached to the open end of the elbow to permit the opening of the probe to be turned away from the gas stream. This reduces the amount of particulate entering the train. This probe configuration should be used when the concentration of particulate matter in the emissions is high. When high concentrations are not present, the Teflon elbow is not necessary, and the probe inlet may be perpendicular to the gas stream. A glass wool plug should *not* be used to remove particulate matter since a negative bias in the data could result. Instead, a Teflon filter (see § 2.1.5) should be installed at the inlet (for

stack temperatures <300 °F) or outlet (for stack temperatures >300 °F) of the probe.

2.1.2 Three-way Stopcock. A borosilicate, three-way glass stopcock with a heating

stack temperatures <300 °F) or outlet (for stack temperatures >300 °F) of the probe.

2.1.2 Three-way Stopcock. A borosilicate, three-way glass stopcock with a heating system to prevent moisture condensation. The heated stopcock should connect directly to the outlet of the probe and the inlet of the first impinger. The heating system should be capable of preventing condensation up to the inlet of the first impinger. Silicone grease may be used, if necessary, to prevent leakage.

2.1.3 Impingers. Four 30-ml midget impingers with leak-free glass connectors. Silicone grease may be used, if necessary, to prevent leakage.

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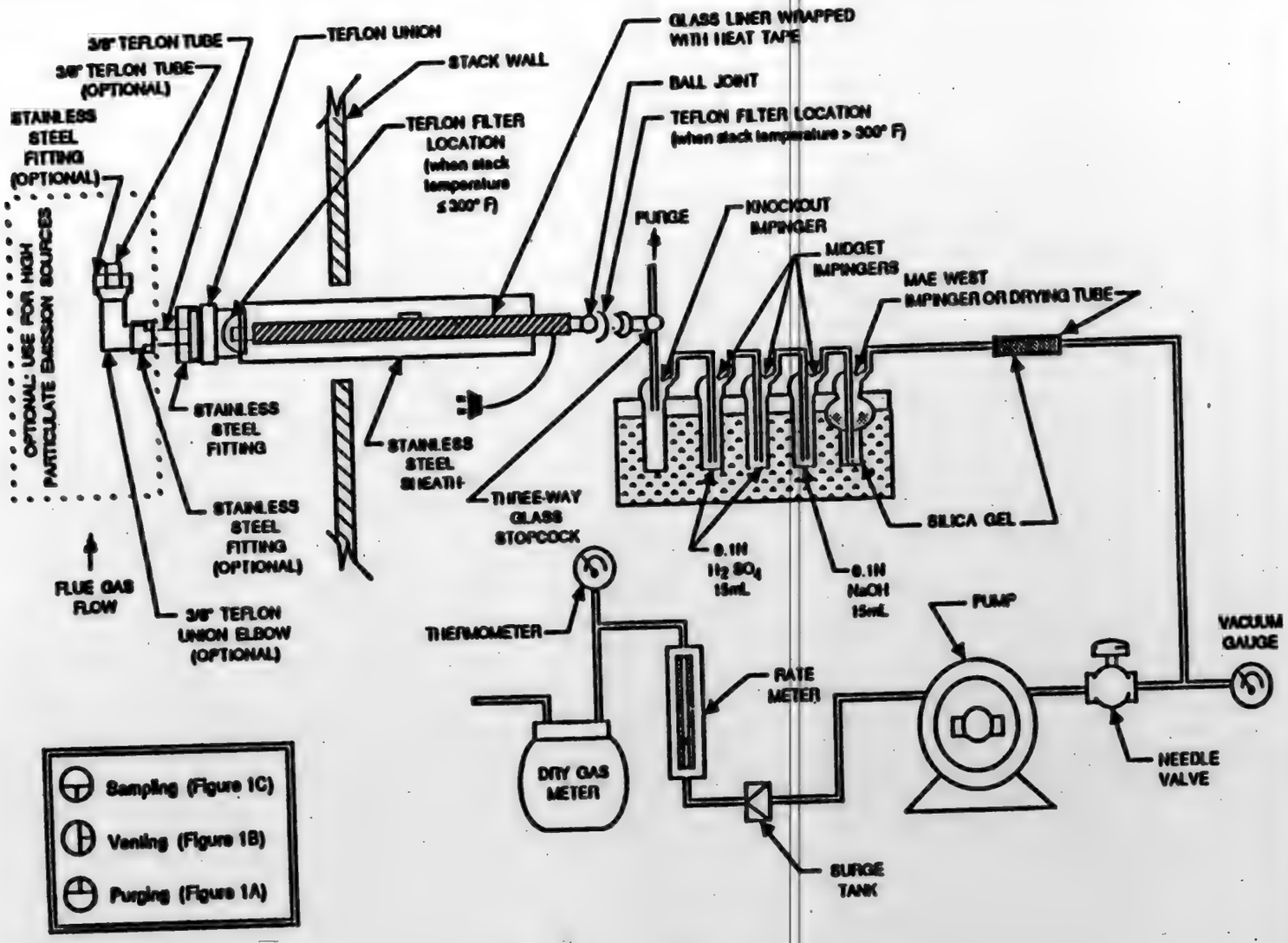

Figure 26-1. Sampling Train

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For sampling at high moisture sources or for sampling times greater than one hour, a midget impinger with a shortened stem (such that the gas sample does not bubble through the collected condensate) should be used in front of the first impinger.

2.1.4 Drying Tube or Impinger. Tube or impinger, of Mae West design, filled with 6- to 16-mesh indicating type silica gel, or equivalent, to dry the gas sample and to protect the dry gas meter and pump. If the silica gel has been used previously, dry at 175 °C (350 °F) for 2 hours. New silica gel may be used as received. Alternatively, other types of desiccants (equivalent or better) may be used.

2.1.5 Filter. A 25-mm Teflon mat, Pallflex TX40HI75 or equivalent. Locate between the probe liner and Teflon elbow in a glass or quartz filter holder in a filter box heated to 250 °F.

2.1.6 Sample Line. Leak-free, with compatible fittings to connect the last impinger to the needle valve.

2.1.7 Rate Meter. Rotameter, or equivalent, capable of measuring flow rate to within 2 percent of the selected flow rate of 2 liters/min.

2.1.8 Purge Pump, Purge Line, Drying Tube, Needle Valve, and Rate Meter. Pump capable of purging the sampling probe at 2 liters/min, with drying tube, filled with silica gel or equivalent, to protect pump, and a rate meter capable of measuring 0 to 5 liters/min.

2.1.9 Stopcock Grease, Valve, Pump, Volume Meter, Barometer, and Vacuum Gauge. Same as in Method 6, §§ 2.1.4, 2.1.7, 2.1.8, 2.1.10, 2.1.11, and 2.1.12.

2.2 Sample Recovery.

2.2.1 Wash Bottles. Polyethylene or glass, 500-ml or larger, two.

2.2.2 Storage Bottles. 100-ml glass, with Teflon-lined lids, to store impinger samples (two per sampling run). During clean-up, the two front impinger contents (0.1 N H_2SO_4) should be combined. The contents of the two rear impingers (0.1 N NaOH) may be discarded, as these solutions are included only to absorb Cl_2, and thus protect the pump.

2.3 Sample Preparation and Analysis. The materials required for volumetric dilution and chromatographic analysis of samples are described below.

2.3.1 Volumetric Flasks. Class A, 100-ml size.

2.3.2 Volumetric Pipets. Class A, assortment. To dilute samples into the calibration range of the instrument.

2.3.3 Ion Chromatograph. Suppressed or non-suppressed, with a conductivity detector and electronic integrator operating in the peak area mode. Other detectors, strip chart recorders, and peak height measurements may be used provided the 5 percent repeatability criteria for sample analysis and the linearity criteria for the calibration curve can be met.

3. Reagents

Unless otherwise indicated, all reagents must conform to the specifications established by the Committee on Analytical Reagents of the American Chemical Society (ACS reagent grade). When such specifications are not available, the best available grade shall be used.

3.1 Sampling.

3.1.1 Water. Deionized, distilled water that conforms to ASTM Specification D 1193–77, Type 3.

3.1.2 Absorbing Solution, 0.1 N Sulfuric Acid (H_2SO_4). To prepare 100 ml of the absorbing solution for the front impinger pair, slowly add 0.28 ml of concentrated H_2SO_4 to about 90 ml of water while stirring, and adjust the final volume to 100 ml using additional water. Shake well to mix the solution.

3.1.3 Chlorine Scrubber Solution, 0.1 N Sodium Hydroxide (NaOH). To prepare 100 ml of the scrubber solution for the back pair of impingers, dissolve 0.40 g of solid NaOH in about 90 ml of water, and adjust the final solution volume to 100 ml using additional water. Shake well to mix the solution.

3.2 Sample Preparation and Analysis.

3.2.1 Water. Same as in Section 3.1.1.

3.2.2 Blank Solution. A separate blank solution of the absorbing reagent should be prepared for analysis with the field samples. Dilute 30 ml of absorbing solution to 100 ml with water in a separate volumetric flask.

3.2.3 Sodium Chloride (NaCl) Stock Standard Solution. Solutions containing a nominal certified concentration of 1000 mg/l are commercially available as convenient stock solutions from which working standards can be made by appropriate volumetric dilution. Alternately, concentrated stock solutions may be produced from reagent grade NaCl. The NaCl should be dried at 110 °C for 2 or more hours and cooled to room temperature in a desiccator immediately before weighing. Accurately weigh 1.8 to 1.7 g of the dried NaCl to within 0.1 mg, dissolve in water, and dilute to 1 liter. The exact Cl^- concentration can be calculated using Eq. 26–1.

$$\mu g\ Cl^-/ml = g\ of\ NaCl \times 10^3 \times 35.453/58.44 \quad \text{Eq. 26–1}$$

Refrigerate the stock standard solution and store no longer than one month.

3.2.4 Chromatographic Eluent. Effective eluents for non-suppressed IC using a resin- or silica-based weak ion exchange column are a 4 mm potassium hydrogen phthalate solution, adjusted to pH 4.0 using a saturated sodium borate solution, and a 4 mm 4-hydroxy benzoate solution, adjusted to pH 8.6 using 1 N NaOH. An effective eluent for suppressed ion chromatography is a solution containing 3 mm sodium bicarbonate and 2.4 mm sodium carbonate.Other dilute solutions buffered to a similar pH and containing no interfering ions may be used. When using suppressed ion chromatography, if the "water dip" resulting from sample injection interferes with the chloride peak, use a 2 mm NaOH/2.4 mm sodium bicarbonate eluent.

4. Procedure

4.1 Sampling.

4.1.1 Preparation of Collection Train. Prepare the sampling train as follows: Pour 15 ml of the absorbing solution into each of the first two impingers, and add 15 ml of scrubber solution to the third and fourth impingers. Connect the impingers in series with the knockout impinger first, followed by the two impingers containing absorbing solution and the two containing the scrubber solution. Place a fresh charge of silica gel, or equivalent, in the drying tube or Mae West impinger.

4.1.2 Leak-Check Procedures. Leak-check the probe and three-way stopcock before inserting the probe into the stack. Connect the stopcock to the outlet of the probe, and connect the sample line to the needle valve. Plug the probe inlet, turn on the sample pump, and pull a vacuum of at least 250 mm Hg (10 in. Hg). Turn off the needle valve, and note the vacuum gauge reading.The vacuum should remain stable for at least 30 seconds. Place the probe in the stack at the sampling location, and adjust the probe and stopcock heating system to a temperature sufficient to prevent water condensation. Connect the first impinger to the stopcock, and connect the sample line to the last impinger and the needle valve. Upon completion of a sampling run, remove the probe from the stack and leak-check as described above. If a leak has occurred, the sampling run must be voided. Alternately, the portion of the train behind the probe may be leak-checked between multiple runs at the same site as follows: Close the stopcock to the first impinger (see Figure 1A of Figure 26–1), and turn on the sampling pump. Pull a vacuum of at least 250 mm Hg, turn off the needle valve, and note the vacuum gauge reading. The vacuum should remain stable for at least 30 seconds. Release the vacuum on the impinger train by turning the stopcock to the vent position to permit ambient air to enter (see Figure 1B of Figure 26–2). If this procedure is used, the full train leak-check described above must be conducted following the final run, and all preceding sampling runs must be voided if a leak has occurred.

4.1.3 Purge Procedure. Immediately before sampling, connect the purge line to the stopcock, and turn the stopcock to permit the purge pump to purge the probe (see Figure 1A of Figure 26–1). Turn on the purge pump, and adjust the purge rate to 2 liters/min. Purge for at least 5 minutes before sampling.

4.1.4 Sample Collection. Turn on the sampling pump, pull a slight vacuum of approximately 25 mm Hg (1 in. Hg) on the impinger train, and turn the stopcock to permit stack gas to be pulled through the impinger train (see Figure 1C of Figure 26–3). Adjust the sampling rate to 2 liters/min, as indicated by the rate meter, and maintain this rate to within 10 percent during the entire sampling run. Take readings of the dry gas meter volume and temperature, rate meter, and vacuum gauge at least once every five minutes during the run. A sampling time of one hour is recommended. Shorter sampling times may introduce a significant negative bias in the HCl concentration. At the conclusion of the sampling run, remove the train from the stack, cool, and perform a leak-check as described in Section 4.1.2.

4.2 Sample Recovery. Disconnect the impingers after sampling. Quantitatively transfer the contents of the first three impingers (the knockout impinger and the two absorbing solution impingers) to a leak-free storage bottle. Add the water rinses of each of these impingers and connecting glassware to the storage bottle. The contents of the scrubber impingers and connecting glassware rinses may be discarded. The

sample bottle should be sealed, shaken to mix, and labeled. The fluid level should be marked so that if any sample is lost during transport, a correction proportional to the lost volume can be applied.

4.3 Sample Preparation for Analysis. Check the liquid level in each sample, and determine if any sample was lost during shipment. If a noticeable amount of leakage has occurred, the volume lost can be determined from the difference between the initial and final solution levels, and this value can be used to correct the analytical results. Quantitatively transfer the sample solution to a 100-ml volumetric flask, and dilute the solution to 100 ml with water.

4.4 Sample Analysis.

4.4.1 The IC conditions will depend upon analytical column type and whether suppressed or non-suppressed IC is used. An example chromatogram from a non-suppressed system using a 150-mm Hamilton PRP–X100 anion column, a 2 ml/min flow rate of a 4 mM 4-hydroxy benzoate solution adjusted to a pH of 8.6 using 1 N NaOH, a 50 µl sample loop, and a conductivity detector set on 1.0 µS full scale is shown in Figure 26–2.

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4.4.2 Before sample analysis, establish a stable baseline. Next, inject a sample of water, and determine if any Cl^- appears in

for the audit samples must be made at least 30 days prior to the scheduled compliance sample analyses.

Methodology for Determination of Hydrogen Chloride Emissions from Municipal and Hazardous Waste Incinerators," U.S. Environmental Protection Agency, Office of

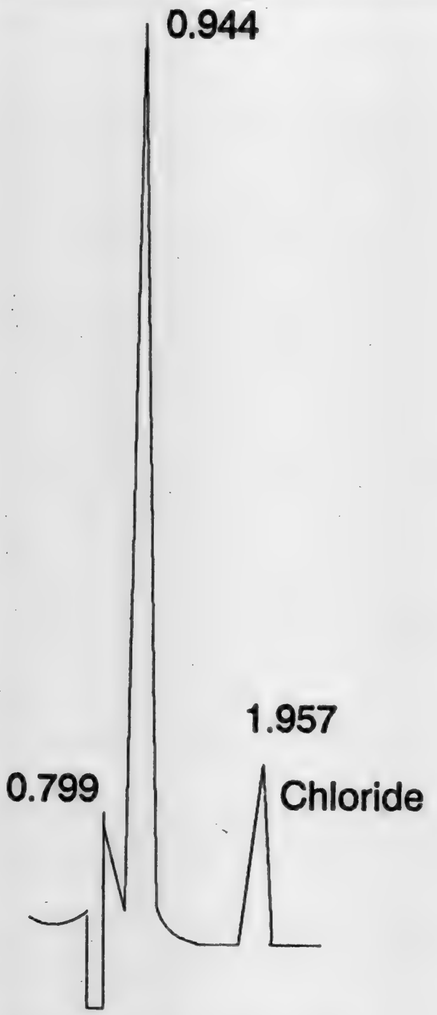

Figure 26-2. Example Chromatogram

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4.4.2 Before sample analysis, establish a stable baseline. Next, inject a sample of water, and determine if any Cl^- appears in the chromatogram. If Cl^- is present, repeat the load/injection procedure until no Cl^- is present. At this point, the instrument is ready for use.

4.4.3 First, inject the calibration standards covering an appropriate concentration range, starting with the lowest concentration standard. Next, inject in duplicate, a QC sample followed by a water blank and the field samples. Finally, repeat the injection of calibration standards to allow compensation for any drift in the instrument during analysis of the field samples. Measure the Cl^- peak areas or heights of the samples. Use the average response from the duplicate injections to determine the field sample concentrations using a linear calibration curve generated from the standards.

4.5 Audit Analysis. There is currently no validated audit sample for this method. It is recommended to analyze a QC sample along with the field samples as described above.

5. Calibration

5.1 Dry Gas Metering System, Thermometers, Rate Meter, and Barometer. Same as in Method 6, sections 5.1, 5.2, 5.3, and 5.4.

5.2 Calibration Curve for Ion Chromatograph. To prepare calibration standards, dilute given volumes (1.0 ml or greater) of the stock standard solution, with 0.1 N H_2SO_4 (section 3.1.2) to convenient volumes. Prepare at least four standards that are within the linear range of the instrument and which cover the expected concentration range of the field samples. Analyze the standards as instructed in section 4.4.3, beginning with the lowest concentration standard. Determine the peak measurements, and plot individual values versus Cl^- concentration in µg/ml. Draw a smooth curve through the points. Use linear regression to calculate a formula describing the resulting linear curve.

6. Quality Assurance

6.1 Applicability. When the method is used to analyze samples to demonstrate compliance with a source emission regulation, a set of two audit samples must be analyzed.

6.2 Audit Procedure. The audit samples are chloride solutions. Concurrently analyze the two audit samples and a set of compliance samples in the same manner to evaluate the technique of the analyst and the standards preparation. The same analyst, analytical reagents, and analytical system shall be used both for compliance samples and the EPA audit samples. If this condition is met, auditing of subsequent compliance analyses for the same enforcement agency within 30 days is not required. An audit sample set may not be used to validate different sets of compliance samples under the jurisdiction of different enforcement agencies, unless prior arrangements are made with both enforcement agencies.

6.3 Audit Sample Availability. The audit samples may be obtained by writing or calling the EPA regional office or the appropriate enforcement agency. The request for the audit samples must be made at least 30 days prior to the scheduled compliance sample analyses.

6.4 Audit Results. Calculate the concentrations in mg/dscm using the specified sample volume in the audit instructions.

Note: Indication of acceptable results may be obtained immediately by reporting the audit results in mg/dscm and compliance results in total µg HCl/sample to the responsible enforcement agency.

Include the results of both audit samples, their identification numbers, and the analyst's name with the results of the compliance determination samples in appropriate reports to the EPA regional office or the appropriate enforcement agency. Include this information with subsequent analyses for the same enforcement agency during the 30-day period.

The concentrations of the audit samples obtained by the analyst shall agree within 10 percent of the actual concentrations. If the 10 percent specification is not met, reanalyze the compliance samples and audit samples, and include initial and reanalysis values in the test report.

Failure to meet the 10 percent specification may require retests until the audit problems are resolved. However, if the audit results do not affect the compliance or noncompliance status of the affected facility, the Administrator may waive the reanalysis requirement, further audits, or retests and accept the results of the compliance test. While steps are being taken to resolve audit analysis problems, the Administrator may also choose to use the data to determine the compliance or noncompliance status of the affected facility.

7. Calculations

Retain at least one extra decimal figure beyond those contained in the available data in intermediate calculations, and round off only the final answer appropriately.

7.1 Sample Volume, Dry Basis, Corrected to Standard Conditions. Calculate the sample volume using Eq. 6-1 of Method 6.

7.2 Total µg HCl Per Sample.

$$m = (S - B)(100)(36.46)/(35.453) = (102.84)(S - B) \quad \text{Eq. 26-2}$$

Where:

m = Mass of HCl in sample, µg.
S = Concentration of sample, µg Cl^-/ml.
B = Concentration of blank, µg Cl^-/ml.
100 = Volume of filtered and diluted sample, ml.
36.46 = Molecular weight of HCl, µg/µg-mole.
35.453 = Atomic weight of Cl, µg/µg-mole.

7.3 Concentration of HCl in the Flue Gas.

$$C = K\,m/V_{m(std)} \quad \text{Eq. 26-3}$$

Where:

C = Concentration of HCl, dry basis, mg/dscm.
$K = 10^{-3}$ mg/µg.
m = Mass of HCl in sample, µg.
$V_{m(std)}$ = Dry gas volume measured by the dry gas meter, corrected to standard conditions, dscm.

7. Bibliography

1. Steinsberger, S.C. and J.H. Margeson, "Laboratory and Field Evaluation of a Methodology for Determination of Hydrogen Chloride Emissions from Municipal and Hazardous Waste Incinerators," U.S. Environmental Protection Agency, Office of Research and Development, Report No. 600/3-89/064, April, 1989.

2. State of California, Air Resources Board, Method 421, "Determination of Hydrochloric Acid Emissions from Stationary Sources," March 18, 1987.

3. Entropy Environmentalists Inc., "Laboratory Evaluation of a Sampling and Analysis Method for Hydrogen Chloride Emissions from Stationary Sources: Interim Report," EPA Contract No. 68-02-4442, Research Triangle Park, North Carolina, January 22, 1988.

* * * * *

[FR Doc. 89-28723 Filed 12-19-89; 8:45 am]

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40 CFR Part 60

[AD-FRL-3683-6]

Standards of Performance for New Stationary Sources; Revision of Procedure 1 of Appendix F and Addition of Performance Specification 4A to Appendix B

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: The purpose of this proposed rule is to revise Procedure 1 of Appendix F to make it applicable without further revision for all regulated pollutants, as was intended originally. In addition, Performance Specification 4A is being added to Appendix B to allow the performance testing of carbon monoxide continuous emissions monitoring systems (CEMS) at municipal waste combustion facilities.

A public hearing will be held, if requested, to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed rule.

DATES: *Comments.* Comments must be received on or before March 12, 1990.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by January 10, 1990, a public hearing will be held February 5, 1990 beginning at 10:00 a.m. Persons interested in attending the hearing should call the contact mentioned under **ADDRESSES** to verify that a hearing will be held.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact EPA by January 10, 1990.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Air Docket (LE-131), the hearing. Written statements should be addressed to the Air Docket address given in the **ADDRESSES** section of this

List of Subjects in 40 CFR Part 60

Air pollution control,

Appendix B—Performance Specifications—Performance

shall use the alternative interference trap specified in section 10.1 of the method. Method 10A or 10B is an acceptable

before January 15, 1990, for the Boston hearing; January 18, 1990, for the Detroit

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ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Air Docket (LE–131), Attention: Docket Number A–89–15, U.S. Environmental Protection Agency, Room M–1500, 1st Floor, Waterside Mall, 401 M Street, SW., Washington, DC 20460.

Public Hearing. If anyone contacts EPA requesting a public hearing, it will be held at EPA's Emission Measurement Laboratory, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Gary McAlister, Emission Measurement Branch (MD–19), Technical Support Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–1062.

Docket. Docket No. A–89–15, containing materials relevant to this rulemaking, is available for public inspection and copying between 8:00 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket, Room M–1500, 1st Floor, Waterside Mall, 401 M Street, SW., Washington DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Gary McAlister or Roger Shigehara, Emission Measurement Branch (MD–19), Technical Support Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–1062.

SUPPLEMENTARY INFORMATION:

I. The Rulemaking

Under Subparts Ca and Ea, EPA is proposing to require the use of CEMS as the performance test method for carbon monoxide and other gases. When the CEMS is the designated performance test method, the source owner is required to conduct a performance test of the CEMS and implement the Quality Assurance provisions of Appendix F, Procedure 1. This action proposes the performance specifications to be used for the performance test and the revisions to Procedure 1 to include carbon monoxide CEMS.

II. Administrative Requirements

A. Public Hearing

A public hearing will be held, if requested, to discuss the proposed rule in accordance with section 307(d)(5) of the Clean Air Act. Persons wishing to make oral presentations should contact EPA at the address given in the **ADDRESSES** section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a writen statement with EPA before, during, or within 30 days after the hearing. Written statements should be addressed to the Air Docket address given in the **ADDRESSES** section of this preamble.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Air Docket in Washington DC (see **ADDRESSES** section of this preamble).

B. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this proposed rulemaking. The principal purposes of the docket are to: (1) Allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process, and (2) serve as the record in case of judicial review (except for interagency review materials) [section 307(d)(7)(A)].

C. Office of Management and Budget Review

Executive Order 12291 Review. Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a regulatory impact analysis. This rulemaking would not result in any of the adverse economic effects set forth in section 1 of the Order as grounds for finding a regulation to be a "major rule." It will not have an annual effect on the economy of $100 million or more, nor will it result in a major increase in costs or prices. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

D. Regulatory Flexibility Act Compliance

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this attached rule, if promulgated, will not have an economic impact on small entities because no additional costs will be incurred.

This rule does not change any information collection requirements currently approved by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Information requirements contained in Appendices B and F of 40 CFR Part 60 are cleared under OMB control number 2060–0022.

List of Subjects in 40 CFR Part 60

Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Incorporation by reference, and Incinerators.

Dated: November 30, 1989.

William K. Reilly,

Administrator.

It is proposed that 40 part 60 be amended as follows:

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, 7601.

Appendix F [Amended]

2. In Appendix F, by revising section 5.2 and adding a new paragraph 5.2.3 to Procedure 1 to read as follows:

5.2 Excessive Audit Inaccuracy. If the RA, using the RATA, CGA, or RAA exceeds the criteria in section 5.2.3, the CEMS is out-of-control. If the CEMS is out-of-control, take necessary corrective action to eliminate the problem. Following corrective action, the source owner or operator must audit the CEMS with a RATA, CGA, or RAA to determine if the CEMS is operating within the specifications. A RATA must always be used following an out-of-control period resulting from a RATA. The audit following corrective action does not require analysis of EPA performance audit samples. If audit results show the CEMS to be out-of-control, the CEMS operator shall report both the audit showing the CEMS to be out-of-control and the results of the audit following corrective action showing the CEMS to be operating within specifications.

* * * * *

5.2.3 Criteria for Excessive Audit Inaccuracy. **Unless specified otherwise in the applicable subpart, the criteria for excessive inaccuracy are:**

(1) For the RATA, the allowable RA in the applicable PS in Appendix B.

(2) For the CGA, ±15 percent of the average audit value or ± 5 ppm, whichever is greater.

(3) For the RAA, ±15 percent of the three run average or ±7.5 percent of the applicable standard, whichever is greater.

* * * * *

3. In Appendix F, by revising entry 11 of Figure 1 of Procedure 1 to read as follows:

CEMS span values as per the applicable regulation: _____ (e.g., SO_2 _____ ppm, NO_x _____ ppm).

4. By adding Performance Specification 4A to Appendix B to read as follows:

* * * * *

Appendix B—Performance Specifications—Performance Specification 4A—Specifications and Test Procedures for Carbon Monoxide Continuous Emission Monitoring Systems in Stationary Sources

1. Applicability and Principle

1.1 Applicability.

1.1.1 This specification is to be used for evaluating the acceptability of carbon monoxide (CO) continuous emission monitoring systems (CEMS) at the time of or soon after installation and whenever specified in an applicable subpart of the regulations.

1.1.2 This specification is not designed to evaluate the installed CEMS performance over an extended period of time nor does it identify specific calibration techniques and other auxiliary procedures to assess CEMS performance. The source owner or operator, however, is responsible to calibrate, maintain, and operate the CEMS. To evaluate CEMS performance, the Administrator may require, under section 114 of the Act, the source owner or operator to conduct CEMS performance evaluations at other times besides the initial test. See 60.13(c).

1.1.3 The definitions, installation specifications, test procedures, data reduction procedures for determining calibration drifts (CD) and relative accuracy (RA), and reporting of Performance Specification 2 (PS 2), sections 2, 3, 5, 6, 8, and 9 apply to this specification.

1.2 Principle. Reference method (RM), CD and RA tests are conducted to determine that the CEMS conforms to the specification.

2. Performance and Equipment Specifications

2.1 Instrument Zero and Span. This specification is the same as section 4.1 of PS 2.

2.2 Interference Check. The CEMS must be shown to be free from the effects of any interferences.

2.3 Calibration Drift. The CEMS calibration must not drift or deviate from the reference value of the calibration gas, gas cell, or optical filter by more than 5 percent of the established span value for 6 out of 7 test days.

2.4 Relative Accuracy. The RA of the CEMS shall be no greater than 10 percent of the mean value of the RM test data in terms of the units of the emission standard or 5 ppm, whichever is greater. Under conditions where the average CO emissions are less than 10 percent of the standard, a cylinder gas audit may be performed in place of the RA test. In this case, the cylinder gas shall contain CO in 12 percent carbon dioxide as an interference check.

3. Relative Accuracy Test Procedure

3.1 Sampling Strategy for RM Tests, Correlation of RM and CEMS Data, Number of RM Tests, and Calculations. These are the same as PS 2, sections 7.1, 7.2, 7.3, and 7.5, respectively.

3.2 Reference Methods. Unless otherwise specified in an applicable subpart of the regulation, Method 10 is the RM for this PS. When evaluating nondispersive infrared continuous emission analyzers, Method 10 shall use the alternative interference trap specified in section 10.1 of the method. Method 10A or 10B is an acceptable alternative to Method 10.

4. Bibliography

4.1 Same as in Performance Specification 4, section 4.

[FR Doc. 89–28725 Filed 12–15–89; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 60

[AD–FRL–3694–5]

Emission Guidelines; Municipal Waste Combustors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed guidelines and notice of public hearing.

SUMMARY: This notice proposes emission guidelines and compliance schedules for use by States in developing State regulations to control emissions from existing municipal waste combustors (MWC's). The proposed emission guidelines implement section 111(d) of the Clean Air Act (CAA) and are based on the Administrator's determination that MWC emissions cause, or contribute significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare. The intent of the proposed emission guidelines is to initiate State action to develop State regulations controlling MWC emissions from existing MWC's to the level achievable by applying the best demonstrated system of continuous emission reduction, considering costs, nonair quality health and environmental impacts, and energy requirements.

These are proposed rather than final guidelines, and comments are requested. The EPA will consider all comments and new information received during the public comment period, and will make changes to the guidelines, where appropriate, based on these comments.

If requested, a public hearing will be held to provide interested parties an opportunity for oral presentations of data, views, or arguments concerning the proposed emission guidelines.

DATES: *Comments.*—Comments must be received on or before March 1, 1990.

Public Hearings.—Public hearings will be held in Boston, Massachusetts, on January 22 and 23, 1990; in Detroit, Michigan, on January 25 and 26, 1990; and in Seattle, Washington, on January 30 and 31, 1990. All hearings will start at 9:00 a.m. Persons wishing to present oral testimony at the public hearings must call Ms. Ann Eleanor at (919) 541–5578 before January 15, 1990, for the Boston hearing; January 18, 1990, for the Detroit hearing; and January 23, 1990, for the Seattle hearing. Each speaker will be allowed up to 10 minutes, and each group or organization will be allowed a maximum of 20 minutes to speak. If no one requests to speak at a hearing before these dates, the hearing may be cancelled. Persons interested in attending the hearings should also call Ms. Ann Eleanor at (919) 541–5578 to verify that a hearing will be held.

ADDRESSES: *Comments.*—Comments should be submitted (in duplicate if possible) to: Air Docket (LE–131), Attention Docket No. A–89–06, Room M1500, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Public Hearing.—The three scheduled public hearings, if requested, will be held at the following locations:

1. Presidents Ballroom, Hyatt Regency, 575 Memorial Drive, Cambridge, Massachusetts;
2. Cobo Hall, Cobo Convention Center, One Washington Boulevard, Detroit, Michigan;
3. Rainier Room, Seattle Center, 305 Harrison Street, Seattle, Washington.

Persons interested in attending a hearing or wishing to present oral testimony should notify Ms. Ann Eleanor, Standards Development Branch (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5578.

Draft Guideline Documents.—The draft guideline document for the proposed emission guidelines consists of one guideline document and this **Federal Register** preamble and proposed guideline. There are also five other background reports used in development of the proposed guidelines. See **SUPPLEMENTARY INFORMATION** for a listing of these documents. Copies of this **Federal Register** notice, the draft guideline document, and the five other background reports, have been provided to State air pollution control agencies, owners and operators of existing MWC's, and interested trade, professional, and environmental organizations for review and distribution. Others interested in reviewing these documents should contact their respective trade, professional, or environmental organization.

Docket.—Docket No. A–89–06, containing the draft guideline document and other supporting information used in developing the proposed emission guidelines, is available for public

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inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at the EPA's Air Docket, Room M1500, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Walter Stevenson [(919) 541-5264] or Mr. Fred Porter [(919) 541-5251], Standards Development Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: The draft guideline document is entitled, "Municipal Waste Combustors—Background Information for Proposed Guidelines for Existing Facilities", EPA-450/3-89-27e, August 1989. The five other key technical documents used in developing the proposed guidelines are as follows:

1. "Municipal Waste Combustors—Background Information for Proposed Standards: Post-Combustion Technology Performance", EPA-450/3-89-27c, August 1989;

2. "Municipal Waste Combustion Assessment: Combustion Control at Existing Facilities", EPA-600/8-89-057, August 1989;

3. "Municipal Waste Combustion Assessment, Technical Basis for Good Combustion Practice", EPA-600/8-89-063, August 1989;

4. "Municipal Waste Combustors—Background Information for Proposed Standards: Cost Procedures", EPA-450/3-89-27a, August 1989; and

5. "Economic Impact of Air Pollutant Emission Guidelines for Existing MWC's", EPA-450/3-89-006, August 1989.

This draft guideline document and other listed background reports are being provided at no cost to State air pollution control agencies, owners and operators of existing MWC's, and interested trade, professional, and environmental organizations upon request. However, because of the number and size of the reports involved and the associated printing and distribution costs, only a limited number of sets were printed. The reports are being provided to trade groups, and professional and environmental organizations with the understanding that they will allow members access to their document sets. Persons wishing to review the documents should contact their respective State agency or organization. If the agency or organization does not have the documents, a set will be provided to the organization for the use of their membership.

The following outline is provided to aid in reading the preamble to the proposed emission guidelines.

I. Introduction

A. Summary of Regulatory Decision
B. Emission Guidelines—General Goals
C. Emission Guidelines Decision Summary
D. Overview of This Preamble

II. Summary of the MWC Guidelines

A. Source Category to be Regulated
B. Pollutants to be Regulated
C. Best Demonstrated Technology
D. Format for the Guidelines
E. Proposed Guidelines
F. Performance Testing and Monitoring Guidelines
G. Reporting and Recordkeeping Guidelines
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III. Impacts of the Guidelines

A. Air
B. Water and Solid Waste
C. Energy
D. Control Costs
E. Economic Effects

IV. Rationale for the Guidelines for MWC Emissions

A. Background
B. Selection of Source Category
C. Modification or Reconstruction of Existing MWC's
D. Selection of Designated Pollutant
E. Selection of Designated Facilities
F. Selection of Best Demonstrated Technology
G. Selection of Format for the Proposed Guidelines
H. Performance Test Methods and Monitoring Guidelines
I. Reporting and Recordkeeping Guidelines
J. Malfunction Provision
K. Compliance Times and Enforcement Considerations

V. Rationale for Guidelines for Materials Separation

A. Background
B. Selection of Regulatory Alternative for Materials Separation
C. Rationale for Materials Separation Guidelines
D. Materials Separation Methods
E. Legal Authority to Issue Materials Separation Guidelines
F. Cost Impacts of the Proposed Guidelines
G. Overall Agency Strategy to Promote Municipal Solid Waste (MSW) Reduction and Recycling
H. Compliance Provisions
I. Reporting and Recordkeeping Guidelines
J. Solicitation of Comments on Materials Separation Guidelines
K. Solicitation of Comments on Alternative Phase-in of Materials Separation Guidelines
L. Spokane and Huntington Remands

VI. Combined Impacts of the Proposed Guidelines

VII. Considerations for Prevention of Significant Deterioration

VIII. Administrative Requirements

A. Public Hearing
B. Docket
C. Clean Air Act Procedural Requirements

I. Introduction

A. Summary of Regulatory Decision

Several studies were performed to determine whether municipal waste combustor (MWC) emissions should be regulated and, if so, under what section of the Clean Air Act (CAA). As set forth in the advance notice of proposed rulemaking (ANPRM) (52 FR 25399, July 7, 1987), the Agency has decided to regulate air emissions from MWC's under Section 111. This notice therefore proposes emission guidelines for regulation by the States of existing MWC's under section 111(d) of the CAA. Under a separate regulatory action in today's Federal Register, standards for new MWC's are being proposed pursuant to section 111(b) of the CAA. The Agency has developed an overall agenda to address other municipal solid waste (MSW) disposal issues, and today's air emission guidelines are just one component.

B. Emission Guidelines—General Goals

The CAA requires the promulgation of standards of performance under Section 111(b) for categories of new sources which may contribute to the endangerment of public health or welfare. When standards of performance have been promulgated under section 111(b) for a designated pollutant, the CAA, under section 111(d), requires that States submit plans which establish emission standards for existing sources and provide for implementation and enforcement of emission standards for the designated pollutant. In general, this means that control under section 111(d) is appropriate when the pollutant may cause or contribute to endangerment of public health or welfare but is not known to be "hazardous" within the meaning of section 112 and is not controlled under sections 108-110 because, for example, it is not emitted from "numerous or diverse" sources as required by section 108.

For ease of discussion, pollutants which have been regulated pursuant to the above conditions are defined in the proposed regulations as "designated pollutants," and existing facilities which emit these pollutants are defined in the proposed regulations as "designated facilities." Designated pollutants can, at a later time, be listed as criteria pollutants under section 108(a) or as hazardous air pollutants under section 112(b)(1)(A). As specified in 40 CFR 60.23, States shall adopt and submit to the Administrator a plan implementing the section 111(d) guidelines within 9 months after the promulgation of the guidelines. Assuming that the final guidelines will be promulgated in December 1990, all States would have to adopt and submit a plan by September 1991. The CAA further requires that the procedure for State submission of a plan shall be similar to the procedure for submission of State implementation plans under section 110 and mandates that EPA shall prescribe a plan according to procedures similar to those in section 110(c) if the State fails to submit a "satisfactory plan."

Section 111(d) requires EPA to approve State emission standards only if they reflect application of the best systems of emission reduction that are reasonably available for designated facilities. Accordingly, EPA has published guideline documents (discussed above) which describe available systems of emission control, identify the best demonstrated systems considering costs, nonair quality health and environmental impacts, and energy requirements, and identify the emission limitations that reflect the application of such systems. State plans will be approved if they include an emission standard equal to or more stringent than that specified in the guideline. For health-related pollutants, as is the case for MWC emissions, State emission standards must ordinarily be at least as stringent as the corresponding EPA guidelines to be approved (section 60.24(c)).

It is recognized, however, that application of today's proposed guidelines, may be unreasonable in some situations (e.g., little useful facility life left, replacement in progress) and justify some relief on a case-by-case basis, provided that a compelling justification is demonstrated in each case. Few such exceptions are expected in the case of MWC's for several reasons. First, the guidelines reflect the EPA's judgment of the degree of control that can be attained by various classes of sources without unreasonable costs, including considerations of retrofit costs, and without unreasonable nonair quality health and environmental impacts, or unreasonable energy requirements. In fact, particular sources within a class may be able to achieve greater control than the presumptive emission guidelines. Second, the development of the emission guidelines was carried out in the context of a nationwide program encompassing an entire class of sources without consideration of the local air quality conditions that must be considered in nonattainment areas or in prevention of significant deterioration (PSD) in accordance with permitting activities associated with the CAA. In some cases, State standards may be more stringent than these presumptive emission guidelines in order to address concerns which are specific to a particular localized air quality situation. Moreover, States that believe additional control is necessary or desirable will be free under Section 116 of the CAA to require more extensive controls, which might have the effect of closing otherwise marginal facilities, or to ban particular categories of sources outright.

C. Emission Guidelines Decision Summary

Emission guidelines for existing sources are the product of a series of decisions related to certain key elements for the source category being considered for regulation. The elements in this "decision" are generally the following:

1. Identification of source category to be regulated—usually an emission source category, but can be a process or group of processes within an industry.

2. Definition of designated facility—the piece or pieces of equipment that comprise the sources to which the guidelines apply.

3. Selection of designated pollutant(s)—the particular substance(s) emitted by the designated facility that the new source performance standards (NSPS) and guidelines control.

4. Identification of "best demonstrated technology"—the technology on which the guidelines are based, i.e.,

> * * * application of the best system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated for that source category. [Section 111(a)(1)(C).]

5. Selection of format for the guidelines—the form in which the guidelines are expressed, i.e., as a percent reduction in emissions, as emission limits, as pollutant concentrations, or as equipment or work practice guidelines.

6. Development of actual guidelines—generally emission limits based on what "best demonstrated technology" can achieve. Only in unusual cases do guidelines require that a specific technology be used. In general, the source owner or operator may select any method for complying with the guidelines.

7. Other considerations—in addition to emission limits, emission guidelines usually include: guidelines for visible emissions, modification/reconstruction provisions, monitoring requirements, performance test methods and compliance procedures, and reporting and recordkeeping requirements.

D. Overview of This Preamble

This preamble will:

1. Summarize the important features of these proposed guidelines by discussing the conclusions reached with respect to each of the elements in the decision summary.

2. Describe the environmental, energy, and economic impacts of these guidelines.

3. Present a rationale for each of the decisions in the decision summary.

4. Present a regulatory flexibility analysis.

5. Discuss administrative requirements relevant to this action.

II. Summary of the MWC Guidelines

A. Source Category To Be Regulated

The proposed guidelines would require States to develop standards of performance for the control of air pollutant emissions from existing municipal waste combustors (MWC's). An MWC is defined as any combustion facility used for burning municipal solid waste (MSW). The MSW burned in the MWC's is refuse, more than 50 percent of which is waste consisting of a mixture of paper, wood, yard wastes, food wastes, plastics, leather, rubber, and other combustible materials, and noncombustible materials such as glass, metal, and rock. The MSW definition includes household wastes as well as municipal-type wastes from institutional, commercial, municipal, and some industrial sources, but does not include industrial process wastes, or medical wastes. The MSW also includes refuse-derived fuel (RDF), which is solid waste that is shredded and classified by size before combustion.

B. Pollutants To Be Regulated

The pollutant to be regulated by the States under the proposed guidelines is "MWC emissions." Constituents of MWC emissions represent a broad range of pollutants that can generally be categorized into three subclasses: MWC organics (including dioxins/furans), MWC metals (including trace metals which are condensible on particulate matter [PM]), and MWC acid gases (sulfur dioxide [SO_2] and hydrogen

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chloride [HCl]). The composite pollutant ... which applies to new sources. New ... the proposed guidelines establish limits

furans would be calculated as a concentration (ng/Nm^3 [gr/billion dscf]) ... the combustion of lead-acid vehicle batteries weighing more than 5 ... in all MWC's located at small and large MWC plants meeting a PM emission

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chloride [HCl]). The composite pollutant "MWC emissions" is designated for regulation under section 111(d), which applies to existing sources (the subject of this notice), and under section 111(b), which applies to new sources. New source performance standards (NSPS) proposed under section 111(b) are published in a separate notice in today's **Federal Register**. As shown in table 1, the proposed guidelines establish limits and operating standards to control MWC emissions.

TABLE 1. SUMMARY OF REGULATED POLLUTANT AND GUIDELINES

Pollutant regulated	Pollutant subclasses	Proposed guidelines[a]
1. MWC Emissions ("designated" for control under Section 111).	MWC Organics	● Dioxin/furan emission level ● Combustor operational guidelines: —CO Level —Load —Flue Gas Temperature —MWC Operator Training
	MWC Metals	● PM emission level ● Opacity level
	MWC Acid Gases	● HCl emission level ● SO_2 emission level

[a] Materials separation guidelines are also proposed. These guidelines would result in additional reduction of MWC emissions.

C. Best Demonstrated Technology

The proposed guidelines for MWC's located at small MWC plants (those plants that have an aggregate capacity to combust up to 225 megagrams/day [Mg/day] [250 tons/day] of MSW) are based on the conclusion that the best demonstrated technology for reducing MWC emissions includes: good combustion practices (GCP) for MWC organics control, and an electrostatic precipitator (ESP) for control of MWC metals and PM. This combination of controls can achieve the following emission levels (corrected to 7 percent oxygen [O_2] on a dry basis):

1. MWC organics control: dioxin/furan control to 500 nanograms per normal cubic meter (ng/Nm^3) (200 grains per billion dry standard cubic feet [gr/billion dscf]) total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans.

2. MWC metals control: PM control to 69 milligrams per dry standard cubic meter (mg/dscm) (0.030 grains per dry standard cubic foot [gr/dscf]).

The proposed guidelines for MWC's located at large MWC plants (those plants that have an aggregate capacity to combust greater than 225 Mg/day [250 tons/day] but less than or equal to 2,000 Mg/day [2,200 tons/day] of MSW) are based on the conclusion that the best demonstrated technology for reducing MWC emissions includes: GCP for MWC organics control and dry sorbent injection (DSI) followed by an ESP or a fabric filter (FF) to achieve additional control of MWC organics as well as MWC metals and PM, and MWC acid gases. This combination of controls can achieve the following emission levels (corrected to 7 percent O_2 on a dry basis):

1. MWC organics control: dioxin/furan control to 125 ng/Nm^3 (50 gr/billion dscf) total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans for all types of MWC's except RDF combustors. For RDF combustors, the dioxin/furan control level would be 250 ng/Nm^3 (100 gr/billion dscf);

2. MWC metals control: PM control to 69 mg/dscm (0.030 gr/dscf); and

3. MWC acid gas control including:

a. HCl emissions reduction of 50 percent or an HCl emission level of 25 parts per million, by volume (ppmv), and

b. SO_2 emissions reduction of 50 percent or an SO_2 emission level of 30 ppmv.

The proposed guidelines for MWC's that are located at regional MWC plants (those plants that have an aggregate capacity to combust greater than 2,000 Mg/day [2,200 tons/day] of MSW) are based on the conclusion that the best demonstrated technology for reducing MWC emissions includes: GCP for MWC organics control and a spray dryer (SD) followed by an FF to achieve additional control of MWC organics as well as MWC metals and PM, and MWC acid gas. This combination of controls can achieve the following emission levels (corrected to 7 percent O_2 on a dry basis):

1. MWC organics control: dioxin/furan control to a level in the range of 5 to 30 ng/Nm^3 (2 to 12 gr/billion dscf) total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans (the precise level within this range will be determined between proposal and promulgation);

2. MWC metals control: PM control to 34 mg/dscm (0.015 gr/dscf); and

3. MWC acid gas control:

(a) HCl emissions reduction of 95 percent or an HCl emission level of 25 ppmv, and

(b) SO_2 emissions reduction of 85 percent or an SO_2 emission level of 30 ppmv.

The EPA is also including materials separation provisions (i.e., separation of certain materials from MSW prior to combustion) in the proposed guidelines as part of best demonstrated technology. The proposed guidelines for materials separation would apply to all MWC's. The proposed guidelines would require MSW to be processed before combustion to achieve an overall 25 percent or greater reduction (by weight) through separating for recovery some or all of the following materials: paper and paperboard; ferrous metals; nonferrous metals; glass; plastics; household batteries; and yard waste. However, a maximum of 10 percent of the overall weight of reduction could be attributed to yard waste; the other 15 or more percent would come from the other separated materials. Additionally, the guidelines would preclude the combustion in MWC's of lead-acid vehicle batteries weighing more than 5 kg (11 lbs), and a program to remove household batteries prior to combustion would be required.

D. Format For The Guidelines

Since it is not possible to establish and measure stack levels of "MWC emissions" as a whole, guidelines are set for a subset of pollutants that will ensure control of the three subclasses of MWC emissions (MWC organics, MWC metals, and MWC acid gases). The proposed guidelines for MWC emissions would control MWC organics by establishing an emission guideline for dioxins/furans. Emissions for dioxins/furans would be calculated as a concentration (ng/Nm^3 [gr/billion dscf]) at 7 percent O_2. The proposed guidelines for MWC metals would establish an emission level for PM and an opacity level. Emissions for PM would be calculated as a concentration (gr/dscf) at 7 percent O_2. Since MWC metals are associated with PM in the flue gas and are removed by PM control devices, achieving the specified levels of PM control would ensure 97 percent or greater control of the range of MWC metals (except mercury, for which a lower percent control would be achieved). This approach is more practical than setting guidelines for each individual metal. The opacity guideline allows continuous monitoring, since there are no systems for continuous monitoring of PM. The proposed guidelines for MWC acid gases (SO_2 and HCl) would establish both a percent reduction (by weight or volume) requirement and a concentration level. The MWC owner/operator may comply with either of these two methods for acid gas compliance. The concentration guideline for HCl and SO_2 are calculated as ppmv (at 7 percent O_2).

In addition to controlling stack emissions, the proposed guidelines would establish combustor operating guidelines for MWC's. These operating guidelines are part of GCP and would ensure that MWC organic (dioxin/furan) control is achieved on a continuous basis. They include guidelines on combustor exhaust carbon monoxide (CO) level, maximum MWC load level, and flue gas temperature at the PM control device inlet.

The proposed guidelines also would require that States require the certification of the chief facility operator and shift supervisors by the American Society of Mechanical Engineers (ASME) and development of a training manual to be used for training other MWC personnel. Training is an integral part of the implementation of GCP.

The proposed guidelines would also require States to require that all existing MWC's incorporate materials separation procedures to process MSW prior to combustion. All MWC's would have to process MSW to achieve an overall 25 percent or greater reduction by weight (annual average) of MSW through separating for recovery some or all of the following materials: paper and paperboard; ferrous metals; nonferrous metals; glass; plastics; household batteries; and yard waste. In calculating the 25 percent overall weight reduction, a maximum credit of 10 percent would be allowed for yard waste separation. In addition, the guidelines would prohibit the combustion of lead-acid vehicle batteries weighing more than 5 kilograms (kg) (11 lbs), and all household batteries. The materials separation requirements could be achieved by mechanical separation or manual separation at the MWC site, or by an off-site community source reduction or materials separation (recycling) program, or a combination thereof.

E. Proposed Guidelines

The proposed guidelines are subdivided into three sets of requirements, one for MWC's located at small MWC plants (those with the aggregate capacity to combust up to 225 Mg/day [250 tons/day] of MSW), one for MWC's located at large MWC plants (those with the aggregate capacity to combust greater than 225 Mg/day [250 tons/day] but less than or equal to 2,000 Mg/day [2,200 tons/day] of MSW), and one for MWC's located at regional MWC plants (those with the aggregate capacity to combust greater than 2,000 Mg/day [2,200 tons/day] of MSW). The aggregate capacity of all existing MWC's at one site would be added together to define aggregate MWC plant capacity.

MWC Emissions

The proposed guidelines for control of each subclass of MWC emissions are summarized below. Stack guidelines are discussed first, followed by combustor operational guidelines.

MWC Organics.—The proposed guidelines for MWC organics would result in all MWC's at small MWC plants meeting a dioxin/furan emission level of 500 ng/Nm^3 (200 gr/billion dscf), except for RDF combustors. While it is unlikely that RDF combustors would be constructed at small MWC plants, they would have a dioxin/furan guideline level of 1,000 ng/Nm^3 (400 gr/billion dscf).

At large MWC plants, the guideline would result in all MWC's meeting a dioxin/furan level of 125 ng/Nm^3 (50 gr/billion dscf), except for RDF combustors; RDF combustors at large MWC plants would have a guideline level of 250 ng/Nm^3 (100 gr/billion dscf).

At regional MWC plants, the guideline would result in all MWC's meeting a dioxin/furan level in the range of 5 to 30 ng/Nm^3 (2 to 12 gr/billion dscf) (at 7 percent O_2). The precise level within this range will be determined between proposal and promulgation. These guideline levels apply to total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans.

MWC Metals.—The proposed guidelines for MWC metals would result in all MWC's located at small and large MWC plants meeting a PM emission level of 69 mg/dscm (0.030 gr/dscf). All MWC's at regional MWC plants would meet a PM emission level of 34 mg/dscm (0.015 gr/dscf) at 7 percent O_2. These PM guideline levels would ensure good control of MWC metals, and are a more practical approach than setting individual guideline levels for every metal. The guidelines would also result in MWC's being subject to an opacity level of 10 percent (6-minute average, measured continuously).

MWC Acid Gases.—The proposed guidelines would not specify acid gas emission levels or percent reduction levels for MWC's located at small MWC plants.

The proposed guidelines for MWC acid gases would result in all existing MWC's at large MWC plants achieving HCl and SO_2 emission reductions. A 50 percent reduction in HCl emissions or a 25 ppmv HCl emission level measured during a compliance test and annual performance tests would be achieved at large plants. All existing MWC's at large MWC plants would also achieve a 50 percent reduction in SO_2 emissions or a 30 ppmv SO_2 emission level (measured on a daily (block) 24-hour average basis, measured continuously).

The proposed acid gas guidelines for MWC's at regional MWC plants would result in a 95 percent reduction in HCl emissions or a 25 ppmv HCl emission limit measured during a compliance test and annual performance tests. Those MWC's at regional MWC plants would also achieve an 85 percent reduction in SO_2 emissions or a 30 ppmv SO_2 emissions level on a daily (block) 24-hour average basis, measured continuously.

Combustion Control.—The guidelines would also specify MWC operating parameters, which are part of GCP and would ensure that MWC organic emissions are minimized on a continuous basis. These operating parameters would include CO emission limits, combustor load levels, and flue gas temperatures at the PM control device inlet.

For modular starved air and modular excess air types of MWC's, the CO emission guideline would be 50 ppmv (at 7 percent O_2 on a block 4-hour average basis). For mass burn waterwall, mass burn refractory, and fluidized-bed types of MWC's, the CO emission guideline would be 100 ppmv (at 7 percent O_2 on a 4-hour block average basis). For mass burn rotary waterwall, RDF, and coal/RDF co-fired MWC's, the CO emission guideline would be 150 ppmv (at 7

percent O_2 on a 4-hour block average basis).

F. Performance Testing and Monitoring Guidelines

Compliance with the proposed MWC acid gas guidelines for HCl would be determined by HCl performance tests to

Compliance would be based on an average of 12 monthly measurements of the total weight of MSW received, the weight of MSW combusted, and the

available to enforcement personnel upon request.

MWC Emissions

by December 31, 1992. However, the initial demonstration of compliance with the materials separation provisions

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percent O_2 on a 4-hour block average basis).

The guidelines would preclude MWC's operating above 100 percent of maximum demonstrated capacity as measured during a compliance test (1-hour average basis). Municipal waste combustor load would be measured by steam output level. Municipal waste combustors that do not generate steam are exempt from maximum load level requirements because it is not feasible to measure load level for these MWC's.

Under the proposed guidelines, all MWC's would maintain a flue gas temperature of 230 °C (450 °F) or less (4-hour block average) at the PM control device inlet to minimize dioxin/furan formation.

ASME Certification and Operator Training.—As part of GCP, the proposed guidelines would result in certification of the shift supervisor and MWC chief facility operator by ASME. In addition, under the proposed guidelines each MWC owner or operator would develop a site-specific training manual to be reviewed by all employees associated with the operation of the MWC. The manual and training would be updated annually.

Materials Separation

Under the proposed guidelines, all existing MWC's would incorporate materials separation procedures to process MSW prior to combustion. All MWC's would process MSW to achieve a 25 percent or greater reduction in MSW by weight (annual average) through separation for recovery of some or all of the following materials: paper and paperboard; ferrous metals (including "white goods," or household appliances), nonferrous metals; glass; plastics; household batteries; and yard waste. In calculating the 25 percent weight reduction, a maximum credit of 10 percent would be allowed for yard waste separation. In addition, all MWC's would be prohibited from combusting wet lead-acid vehicle batteries weighing more than 5 kilograms (kg) (11 lbs), and a program to remove household batteries prior to combustion would be required. The materials separation requirements could be achieved by on-site mechanical separation, on-site manual separation, a community source reduction or materials separation (recycling) program, or a combination thereof. Under the proposed guidelines, materials separation systems or programs capable of achieving the materials separation requirements would be implemented by December 31, 1992.

F. Performance Testing and Monitoring Guidelines

MWC Emissions

Performance testing and monitoring guidelines are being proposed under the guidelines to ensure control of each subclass of MWC emissions. All guideline emission levels are corrected to 7 percent O_2 on a dry basis. However, an MWC owner or operator may request to correct to an equivalent percent CO_2. In these cases, the correlation between O_2 and CO_2 would be established during the compliance test.

MWC Organic Emissions.—The proposed MWC organic emissions guidelines would result in a requirement for performance tests to be conducted in accordance with Method 23 to determine compliance with the dioxin/furan emission limit. Method 23 is proposed today in a separate section of this **Federal Register**. Annual retests would be required by the guidelines for all MWC's. However, if three performance tests in a row indicate compliance with the dioxin/furan emission limit, the guidelines would allow an MWC to skip the annual performance test for the next 2 years. If the next test (after skipping 2 years) shows compliance with the limits, another 2-year period may be skipped. At a minimum, each MWC would be tested at least once every 3 years.

MWC Metals.—Performance tests to determine compliance with the PM emission guidelines (which ensure metals control) would be based on Method 5. Method 1 would be used for selecting the sampling points, and Method 3 would be used for gas analysis. Method 9 (a 6-minute average of 24 observations) would be used to determine compliance with the opacity guideline. Subsequent annual performance tests would be required for all MWC's. However, as with dioxin/furan emissions, if three performance tests in a row indicate compliance with the PM limit, the guideline would allow an MWC to skip the annual performance test for the next 2 years. At a minimum, each MWC would be tested every 3 years.

MWC Acid Gases.—The proposed MWC acid gas guidelines would result in continuous monitoring of SO_2 emissions for existing MWC's at large and regional MWC plants. Compliance with the percent reduction requirement or the emission limit would be determined on a daily (block) 24-hour basis as measured by the continuous emissions monitoring system (CEMS). Quality assurance for the CEMS would be conducted in accordance with Appendix F.

Compliance with the proposed MWC acid gas guidelines for HCl would be determined by HCl performance tests to be conducted in accordance with Method 26 to determine compliance with the HCl percent reduction requirements or emission limits. Method 26 is proposed in a separate notice in today's **Federal Register**. Subsequent annual performance tests would be required for existing MWC's at large and regional MWC plants. However, if three performance tests in a row indicate compliance with the HCl percent reduction requirement or emission limit, an MWC may skip the annual performance test for the next 2 years. At a minimum, each MWC at a large or regional MWC plant must be tested every 3 years.

Operating Guidelines.—Continuous monitoring of certain operating parameters would ensure that GCP are implemented on a continuous basis. These parameters are flue gas CO level, MWC load level, and flue gas temperature at the PM control device inlet. Compliance with the CO guideline would be determined on a block 4-hour average basis as measured by a CEMS. Calculations to determine compliance would be made in accordance with Method 10. Quality assurance would be maintained in accordance with Appendix F. Load level (percent of full load) would be measured using steam flowrate, and a 1-hour average used to determine compliance. Compliance with the temperature guideline would be determined through continuous monitoring and a 4-hour averaging period.

Requirements for CEMS.—A minimum data requirement applicable to all CEMS is also proposed as part of the guideline. Data would have to be collected for a minimum of 75 percent of the MWC operating hours per day for 75 percent of the operating days per month.

Materials Separation

The proposed guidelines provide that all existing MWC's would submit a description of procedures for achieving: (1) The 25 percent overall separation requirement, (2) the lead-acid vehicle battery removal requirement, and (3) the household battery removal requirement. If an off-site or community program is used to comply in whole or in part with the requirements, a plan describing the separation program and the method(s) to be used to measure compliance would be submitted to the State agency for approval.

Compliance with the provision for the 25 percent overall MSW reduction would be determined annually.

Compliance would be based on an average of 12 monthly measurements of the total weight of MSW received, the weight of MSW combusted, and the weight of materials separated for recovery during each month. The first report of the annual percent reduction achieved would be required at the end of calendar year 1993, but this report would not be used to determine compliance. Demonstration of compliance with the annual average percent MSW reduction would not be required until December 31, 1994 (which is the end of the second calendar year after implementation of the separation systems or programs). Annual average calculations would be required for each calendar year thereafter.

Separation procedures could include mechanical separation, manual sorting, or curbside separation programs. If an off-site source reduction or materials separation (recycling) program is used to meet the materials separation requirements, the MWC and the party responsible for off-site separation may enter into a contractual relationship. The contractual relationship could designate the MWC and the off-site separator as co-operators of the MWC regarding compliance with the materials separation requirements. The contract could also specify the responsibilities of each party and the actions the off-site separator will take to meet the requirements for the 25 percent MSW reduction and/or removal of vehicle batteries and/or household batteries, as applicable.

The proposed materials separation requirements would also include a combustion permit provision that would be renewable on an annual basis. The permit would be available for MWC's that separate combustible material (e.g., paper, plastics) for recycle but for which there are no markets for the separated material. When a permit had been issued, the separated material could be combusted in the MWC.

G. Reporting and Recordkeeping Guidelines

Under the proposed guidelines, all MWC owners or operators would submit the results of the initial performance test and performance evaluation of the CEMS.

The proposed guidelines also provide for quarterly reports of CEMS drift tests and accuracy determinations in accordance with Appendix F, and reports of any periods when the minimum data requirements for CEMS are not met.

Records of all data, including results of emission tests and CEMS data, must be maintained for 2 years and made available to enforcement personnel upon request.

MWC Emissions

Under the proposed guidelines, all MWC's would submit quarterly compliance reports for MWC operating parameters (CO, load, and temperature). Quarterly excess emission reports would be submitted for opacity for all MWC's, and MWC's at large and regional MWC plants would submit quarterly compliance reports for SO_2. Annual compliance reports for dioxin/furan and PM would be submitted for all MWC's, and annual compliance reports for HCl would also be submitted for MWC's at large and regional MWC plants. However, if MWC's have met the criteria allowing them to skip annual compliance tests for dioxin/furan, PM, or HCl, they would submit a simplified annual report.

Materials Separation

Annual compliance reports for materials separation would be submitted under the proposed guidelines. The first report would be submitted at the end of calendar year 1993 (which is 1 year after separation programs are to be implemented), however, this report would not be used to determine compliance. This interim report would be used to observe progress made toward the materials separation requirements. Reports submitted beginning at the end of calendar year 1994 would be used to determine compliance. Records of the weight of MSW received at the MWC, the weight combusted, and the weights of each material separated for recovery (on a monthly basis) would be kept. Additionally, records would be maintained of the weight of vehicle batteries and household batteries removed.

H. Compliance Times

The proposed emission guidelines would stipulate that existing MWC's should achieve compliance with the guidelines within 3 years from the time of promulgation of State regulations. Some MWC's may already be in compliance with the guidelines and not require 3 years to comply, but in most cases 3 years is expected to be required. However, in some cases, compliance times beyond 3 years may be necessary according to the extent of retrofitting that an MWC requires. State plans could address this issue on a site-specific basis. The proposed guidelines include a different compliance time for materials separation. Equipment and procedures capable of attaining the materials separation provisions would be in place by December 31, 1992. However, the initial demonstration of compliance with the materials separation provisions (annual average basis) would not occur until the end of calendar year 1994.

III. Impacts of the Guidelines

A. Air

MWC Emissions

Under the proposed guidelines, nationwide emissions of dioxins/furans would be decreased by about 190 kilograms/year (kg/year) (420 lbs/year) compared with emission levels under the regulatory baseline. This represents a reduction of over 90 percent. Nationwide emissions of particulate matter (PM) would be decreased by about 8,300 Mg/year (9,100 tons/year) compared with emission levels under the regulatory baseline. Under the proposed guidelines, overall municipal waste combustor (MWC) metal emission reductions of about 97 percent for all metals except mercury would be achieved by the air pollution control systems. Nationwide emissions of sulfur dioxide (SO_2) and hydrogen chloride (HCl) would be decreased by about 37,000 Mg/year (41,000 tons/year) and 86,000 Mg/year (95,000 tons/year), respectively. This represents a reduction of over 50 percent in acid gas emissions.

Materials Separation

The proposal for materials separation would reduce the overall amount of waste combusted by about 25 percent and would reduce overall MWC emissions; however, the amount of emissions reduction cannot be predicted accurately since limited data exist relating materials separation to MWC emissions when materials separation occurs in conjunction with at-the-stack air pollution control devices. Additional reductions in emissions of MWC organics, MWC metals and mercury, and MWC acid gases are expected.

B. Water and Solid Waste

MWC Emissions

Under the proposed guidelines, no significant water pollution impacts are projected because none of the emission control technologies that were considered in developing these guidelines would produce a wastewater stream.

No significant solid waste impacts are projected from these proposed guidelines. Requirements for good combustion practices (GCP) tend to reduce the quantity of ash generated by MWC's, whereas addition of acid gas control slightly increases the quantity of ash generated due to addition of sorbent

solids. Overall, the proposed guidelines would increase the net amount of MWC

waste and ash to be disposed of in MWC's or landfills. Any national

Cost increases for typical large and regional MWC plants would range from

not projected to be severe. Under the proposed guidelines, over 90 percent of the MWC service areas examined are

toxic organics or other components of MWC emissions.

In section 102 of the 1984 Hazardous

under section 112, (3) section 112 could not be used to address particular constituents or subgroups of emissions

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solids. Overall, the proposed guidelines would increase the net amount of MWC ash generated by roughly 3 percent or 250,000 Mg/year (280,000 tons/year) relative to baseline. However, the combustion of municipal solid waste (MSW) as opposed to direct landfilling reduces the volume of waste to be disposed of in landfills (by about 90 percent) and extends landfill life. Even with the increased ash, combustion would still reduce the volume of waste by about 80 percent.

It is unclear what, if any, effect acid gas control would have on ash quality. However, increased scrutiny and control over waste disposal in municipal waste landfills should result in environmentally adequate ash disposal practices. The EPA is required, under the Resource Conservation and Recovery Act (RCRA) section 4010(c), to develop criteria for sanitary landfills that receive household hazardous waste and small quantity generated hazardous waste, which criteria are to protect human health and the environment taking into account the practicable capability of such facilities. These criteria may ultimately be Federally enforceable if States do not adopt adequate programs to implement them. RCRA section 4005(c). The EPA has proposed criteria for all MSW landfills pursuant to these provisions. These criteria would require such controls as groundwater monitoring, closure, financial responsibility, and corrective action standards for existing MSW landfills, and require in addition risk-based performance standards for new landfills or lateral expansions of existing MSW landfills. 53 FR 33314 (August 30, 1988). Pending legislation, although at an early stage of the legislative process, would require even more stringent controls, and in some bills, a whole separate regulatory system for MWC ash. The EPA thus believes that ash disposal will ultimately be adequately addressed by waste disposal management standards so that considerations of ash quality need not play a significant role in this rulemaking. However, to the extent that future EPA or Congressional action increases the stringency of controls and thereby cost of MWC ash disposal, the increased cost of ash disposal will be considered as part of this rulemaking. The EPA solicits comment regarding the effect of potential future MWC ash disposal standards on this rule.

Materials Separation

The proposed materials separation guidelines would encourage source reduction and recycling of materials, thereby reducing the volume of solid waste and ash to be disposed of in MWC's or landfills. Any national strategy adopted by Congress and implemented at the State and local level would be credited toward the material separation requirement in this guideline.

C. Energy

MWC Emissions

An MWC regulated under the proposed guidelines would require additional energy to operate the control equipment used to comply with the proposed guidelines. Total national usage of electrical energy would increase by about 73,000 megawatt hours per year (MW-hrs/year), and natural gas use for auxiliary fuel would increase by 610 terajoules (TJ) (7.7×10^{11} Btu) per year. Many of the MWC's that would be affected are cogeneration MWC's that combust MSW and produce steam that is used to generate electricity for sale. For example, a large mass burn MWC would generate about 410,000 MW-hrs per year of electricity. Although these MWC's would require additional energy to operate control equipment, the additional energy would only be about 11,000 MW-hrs of electricity per year at a typical large MWC, which has a very small overall impact on energy generated at the plant (a net reduction in energy generation of 2.6 percent). No other energy impacts would be associated with these proposed guidelines.

Materials Separation

A small additional amount of energy would be used if mechanical materials separation procedures are practiced at the MWC plant. However, on a national basis, positive energy benefits are expected as a result of the materials separation requirements. The recycling of separated materials reduces overall energy use since the combined extraction and development of equivalent virgin raw materials is relatively energy-intensive.

D. Control Costs

The total annualized cost of control would be about $320 million/year, and the overall national average annualized cost per unit of waste combusted would be $10.90/Mg ($9.90/ton) of MSW combusted. This includes the cost of control for MWC emissions and materials separation. For perspective, typical costs incurred by the general public for disposal of MSW range from $40 to over $100/Mg ($36 to over $90/ton) of MSW, including collection, transportation, combustion, and ash disposal.

Cost increases for typical large and regional MWC plants would range from about $4 to $15/Mg ($4 to $14/ton) of MSW combusted. Cost increases for typical small MWC plants would range from a negligible cost to about $19/Mg (negligible to about $17/ton) of MSW combusted.

The portion of the national cost and model plant impacts attributable to each of the guidelines is summarized below.

MWC Emissions

As a result of implementing the guidelines for MWC emissions, the overall average projected increase in nationwide annualized costs for controlling MWC emissions (using GCP and acid gas/PM control) is projected to be about $10.90/Mg ($9.90/ton) of MSW combusted. The nationwide projected increase in capital costs for controlling MWC emissions would be about $1.2 billion.

On a per plant basis, the annual disposal cost for a typical large or regional MWC would increase by between $4 and $15/Mg ($4 and $14/ton) of MSW combusted, depending on the size and design of the MWC. Under the guidelines, the annual disposal cost for a typical small MWC would increase by between a negligible cost and $19/Mg (negligible and $17/ton) of MSW combusted, depending on the size and design of the MWC.

Materials Separation

Over the long term, the proposed guidelines for materials separation are not expected to result in an increase in national annualized costs. While some costs will be initially incurred to purchase and operate materials separation systems, as markets develop and stabilize, these costs will be offset by credits for sale of separated materials, reduced landfill disposal costs (due to reduced amount of MWC ash generated and disposed of in landfills), and other monetary benefits described in section V.

Annualized disposal cost increases or decreases for materials separation could occur at individual plants depending on material sales assumptions. At typical existing MWC's, materials separation costs could vary from a cost of about $17/Mg ($15/ton) of MSW combusted to a net savings of about $19/Mg ($17/ton) of MSW combusted when markets for separated materials develop and the materials are sold.

E. Economic Effects

MWC Emissions

The economic effects of the proposed guidelines on individual households are not projected to be severe. Under the proposed guidelines, over 90 percent of the MWC service areas examined are projected to have household impacts of less than $30/year and less than 0.15 percent of median household income. Likewise, the increase in waste disposal costs from the proposed guidelines would not result in severe economic impacts on any city or county government units.

Materials Separation

The costs of materials separation, when added to the cost of the other MWC emissions controls, would not cause severe impacts on households or government units. Costs may increase slightly in the short term in some instances where local markets for separated materials are not yet well developed. Also, households will experience some inconvenience in those areas which adopt a curbside separation program. However, as markets develop and stabilize, EPA believes the sale of materials for recovery will offset MSW disposal costs for households and government units. In general, materials separation guidelines and other Agency programs to encourage reuse will reduce the amount of MSW that must be disposed of, thereby reducing the overall costs of MSW disposal.

IV. Rationale for the Guidelines for MWC Emissions

A. Background

The regulatory interest in municipal waste combustors (MWC's) can be traced to the 1971 new source performance standard (NSPS) for particulate matter (PM) emissions from new municipal incinerators larger than 50 tons/day capacity under Section 111(b) of the Clean Air Act (CAA) (40 CFR part 60 subpart E). Similarly, in 1986 a PM standard was promulgated for new industrial-commerical-institutional steam generating units larger than 29 MW (100 million Btu/hour) heat input capacity combusting a number of fuels including municipal solid waste (MSW) (40 CFR part 60 subpart Db). The 1986 PM standard was more restrictive than the 1971 standard. New MWC's that are equipped with steam generating units and process roughly 225 Mg/day (250 tons/day) or more of municipal waste per MWC (which is approximately equivalent to 100 million Btu/hour) are subject to the 1986 NSPS. The Subpart E and Db standards for new MWC's, however, were developed to control emissions of PM and do not address control of toxic organics or health concerns specific to toxic organics or other components of MWC emissions.

In section 102 of the 1984 Hazardous and Solid Waste Amendments (HSWA) to the Resource Conservation and Recovery Act (RCRA), Congress directed EPA to prepare a report on the magnitude of dioxin risks from MWC's and to identify ways in which dioxin emissions could be minimized. In addition, during 1984 and 1985, the EPA's Office of Air and Radiation (OAR), in the course of assessing candidate air toxics, identified MWC's as a potential source category of concern. In June 1985, the Administrator announced the National Air Toxics Strategy, which included the commitment to regulate source categories of widespread national concern and give high priority to those that emit multiple pollutants such as MWC's. In addition to the above-mentioned regulatory activities, on August 5, 1986, the Natural Resources Defense Council (NRDC) and the States of New York, Rhode Island, and Connecticut petitioned the Administrator of EPA to regulate air emissions from new and existing MWC's under sections 111 and 112 of the CAA.

In response to the Congressional directive and as part of the OAR's air programs, EPA prepared a Report to Congress that was issued in June 1987. This nine-volume report presented a compilation of the available information on MWC's including industry characteristics, emission data, health risks, control technologies, and costs of control. It provided the technical basis for the decision to regulate air emissions from MWC's.

On July 7, 1987, an advanced notice of proposed rulemaking (ANPRM) was published in the Federal Register (52 FR 25339) where EPA announced its preliminary determination to regulate new and existing MWC's under sections 111(b) and 111(d) of the CAA, respectively. The schedule announced in the Federal Register for these actions called for proposal of NSPS for new MWC's and issuance of draft 111(d) emission guidelines for existing MWC's by November 1989 and promulgation by December 1990. The Administrator determined that MWC's would be regulated under sections 111(b) and 111(d) because: (1) MWC emissions may reasonably be anticipated to contribute to the endangerment of public health and welfare, (2) the range of health and welfare effects and the range and uncertainties of estimated cancer risks do not warrant listing of MWC emissions as a hazardous air pollutant under section 112, (3) section 112 could not be used to address particular constituents or subgroups of emissions including lead and hydrogen chloride (HCl), and (4) the development of emission guidelines for existing MWC's under section 111(d) would permit a more thorough evaluation of existing MWC's at the State level than would be feasible in a general rulemaking at the Federal level. (Under section 111(d), States develop standards based on the EPA guidelines.) Some States already have adopted or are developing their own MWC regulations.

An Agency MSW Task Force was formed in 1988 to address the full range of problems associated with MSW. Today's air emission guidelines are only one component of the plan developed by the MSW Task Force, entitled "The Solid Waste Dilemma: An Agenda for Action" (EPA/530-SW-88-052). Other ongoing and planned activities include regulations for new and existing MSW landfills proposed under RCRA, Subtitle D (53 FR 33314, August 30, 1988). Standards to control air emissions from municipal landfills are currently being developed. In addition, as stated in the "Agenda for Action," EPA encourages the use of recycling programs and source reduction activities to reach the goal of achieving a nationwide waste reduction of 25 percent by 1992. The Agency has also encouraged the development of State and local planning strategies to manage rates.

Today's proposal would apply to all facilities that combust municipal-type solid wastes or mixtures containing municipal-type solid wastes. Certain types of waste incinerators would not be covered by the guidelines for MWC's because they do not combust MSW. These other types of incinerators are regulated elsewhere. For example, hazardous wastes such as industrial sludges and chemical wastes are not covered under these guidelines for MWC's. However, hazardous waste incineration is regulated under RCRA authority (40 CFR 264 and 265 subpart 0). The incineration of sewage sludge is regulated by an NSPS (40 CFR 60 subpart 0) and also by regulations being developed under the Clean Water Act (40 CFR 503 subchapter 0). Medical waste incineration or incineration of infectious wastes from hospitals are not covered by today's proposal, but are being investigated for regulation under a separate standard.

B. Selection of Source Category

As mentioned above, PM emissions from new MWC's constructed after 1971 and 1986, respectively, are presently

regulated under subparts E and Db of 40 CFR 60. In addition, new source review (NSR) and prevention of significant deterioration (PSD) permits for new MWC's are subject to EPA operational guidance. However, because of the increasing trend toward combustion of MSW in the U.S., the large existing population of MWC's, the complex mixture of MWC emissions, and potential public health impacts, a more comprehensive approach to MWC's is necessary. Greater emphasis is being placed on controlling the entire range of emissions from MWC's and on controlling existing as well as new MWC's. This new approach has been adopted for several reasons.

A large amount of MSW is currently combusted by existing MWC's, and additional capacity will be added in the future due to increasing restrictions and limited availability for landfilling. At present, there are over 200 existing MWC plants (over 450 individual MWC's) with a total existing MWC capacity of about 95,000 Mg/day (100,000 tons/day) that would be subject to the emission guidelines.

On a national basis, MWC's would remain a major source of emissions if not adequately controlled. Without the guidelines proposed today, emissions of all pollutants from existing MWC's are approximately 230,000 Mg/year (260,000 tons/year). These emissions include 11,000 Mg/year (12,000 tons/year) of PM, 194,000 Mg/year (210,000 tons/year) of MWC acid gases (sulfur dioxide [SO_2] and HCl combined), and 26,000 Mg/year (29,000 tons/year) of carbon monoxide (CO). In addition, existing MWC's would emit about 55,000 Mg/year (60,000 tons/year) of nitrogen oxide (NO_x).

Existing MWC's are also significant sources of air pollution at the individual plant level. For example, in the absence of additional regulation, a typical 140 Mg/day (150 tons/day) modular starved-air MWC would emit about 78 g/year (0.17 lbs/year) of dioxins/furans, about 15 Mg/year (16 tons/year) of PM, about 180 Mg/year (200 tons/year) of MWC acid gases (SO_2 and HCl), and about 16 Mg/year (16 tons/year) of CO. A typical existing large mass burn MWC with a design capacity of 2,000 Mg/day (2,200 tons/day) would emit about 1,500 g/year (3.3 lbs/year) of dioxins/furans, about 130 Mg/year (150 tons/year) of PM, about 4,000 Mg/year (4,400 tons/year) of MWC acid gases (SO_2 and HCl), and about 170 Mg/year (190 tons/year) of CO.

Finally, due to their nature and magnitude, emissions from existing MWC's, if not adequately controlled, can pose health risks to the public. Both MWC organics and MWC metals include carcinogens. Ranges of cancer risk estimates for MWC emissions were published in the 1987 ANPRM (52 FR 25339). A recent review of risks using data and information gathered to support development of NSPS found that cancer risks for MWC's are likely at the lower end of the earlier estimated ranges cited in the ANPRM, although there remain significant uncertainties in the risk assessment. Therefore, there is no reason to review the 1987 decision to regulate MWC's under section 111 of the CAA.

In addition to these cancer risks, HCl emissions are also of concern because short-term modeling using the actual reasonable worst-case plant approach showed that, in the absence of further regulation, ambient HCl exposures near some existing MWC plants may exceed the interim short-term health effects level for HCl. The interim long-term welfare effects (materials damage) ambient concentration level of 3.0 micrograms per cubic meter (ug/m^3) (1.3 gr/million dscf) (annual average) may also be exceeded by some existing MWC plants.

For the above reasons, MWC's have been determined to be a major source of air pollution which may reasonably be anticipated to endanger public health and welfare. As a result, MWC's have been selected for regulation.

C. Modification or Reconstruction of Existing MWC's

Those MWC's for which construction, modification, or reconstruction commenced before today's date would be subject to the proposed guidelines, while those MWC's for which construction, modification, or reconstruction commenced on or after today's date would be affected by the Subpart Ea NSPS proposed elsewhere in today's **Federal Register**. "Construction" is defined by 40 CFR 60.2 to mean "fabrication, erection or installation of an designated facility." *Sierra Pacific Power Co.* v. *EPA*, 647 F.2d 60 (9th Cir. 1981). The designated facility for these emission guidelines is the MWC as defined in the proposed emission guidelines (Section 60.31a). "Commenced" is defined by 40 CFR 60.2 to mean "that an owner or operator has undertaken a continuous program of construction or modification or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or modification." The phrase "contractual obligation" means a contractual obligation that cannot be cancelled without incurring significant liability. *Potomac Electric Power Co.* v. *EPA*, 650 F.2d 509, 513–515 (4th Cir. 1981).

If an existing MWC is modified for the purpose of meeting the requirements of the proposed guidelines for existing MWC's or State regulations developed to implement these guidelines, then the MWC would not be considered "modified" or "reconstructed" and would not be subject to Subpart Ea. A special provision is being proposed in the MWC NSPS that would establish this waiver. However, if the existing facility is modified or reconstructed in ways not required to meet the emission guidelines, for example if MWC capacity is increased, then the MWC may be considered modified or reconstructed, and could become subject to subpart Ea.

In general, "modification" refers to "any physical or operational change to an existing facility which results in an increase in the emission rate to the atmosphere of any pollutant to which a standard applies * * *" as described in the general NSPS provisions (40 CFR 60.14). "Reconstruction" generally includes "the replacement of components of an existing facility to such an extent that: (1) The fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable new facility, and (2) it is technologically feasible to meet the applicable standards * * *" (40 CFR 60.15), however, reconstruction is determined on a case-by-case basis. As mentioned above, where such an expenditure is required to meet the proposed emission guidelines, this would not be considered a modification or reconstruction, and the MWC will not be subject to subpart Ea.

D. Selection of Designated Pollutant

The collection of compounds emitted by MWC's, referred to as "MWC emissions", has been selected as the designated pollutant for regulation under sections 111(b) and 111(d) of the CAA. This approach was selected because of the large number of compounds emitted by MWC's that create potential health problems.

Emissions from MWC's are a complex mixture of numerous pollutants that affect public health. There are three general subclasses of pollutants within MWC emissions. These are MWC organics, MWC metals, and MWC acid gases. Organic emissions from MWC's, in particular dioxins/furans, are potentially carcinogenic. Emissions of MWC metals contain various metals that have carcinogenic and noncarcinogenic health impacts. The great majority of MWC metal emissions are condensed on PM emissions. These include cadmium, chromium, lead, beryllium, and arsenic. Emissions of MWC acid gases (specifically HCl and SO_2) pose several health and welfare-related problems. Of specific concern are emissions of HCl where short-term ambient exposure levels around some existing large MWC's may exceed short-term health effects levels. Also, long-term ambient concentrations may exceed welfare-effects levels for materials damage. Furthermore, MWC acid gases are precursors in the formation of acid deposition (acid rain), which adversely affects vegetation, surface water quality, and aquatic life. In combination, these effects support a health-based designation of MWC emissions under Section 111, although there are also welfare considerations.

The EPA has determined that it is unnecessary to measure MWC emissions as an entity and that it makes far more sense to develop guideline levels for certain component parts of MWC emissions. However, MWC emissions contain 100 or more components (many diverse metals and organics, for example). Although it is theoretically possible to measure all of these components, such a task would be extremely burdensome, expensive, and quite impractical. The guidelines EPA is proposing provide a high level of control of total MWC emissions, and do so in a way that avoids the administrative burden and expense associated with monitoring and measuring all components of MWC emissions.

E. Selection of Designated Facilities

For the proposed emission guidelines, the designated facility, an MWC, is defined as any combustion device used to burn MSW (including refuse-derived fuel [RDF]). The proposed guidelines would apply to incinerators (with and without heat recovery) and all types of MSW-fired steam generating units.

An MWC would be covered by this guideline if it burns MSW (including RDF) or a mixture of wastes or fuels containing MSW. The MSW is defined as refuse, more than 50 percent of which is municipal-type waste consisting of a mixture of paper, wood, yard wastes, food wastes, plastics, leather, rubber, and other combustibles, and noncombustible materials such as glass, metal, and rock. The MSW burned in the MWC's includes municipal-type waste from households as well as institutional, commercial, municipal, and industrial sources. These wastes can be characterized in a number of ways. Household wastes include municipal-type wastes generated by single and multiple-family dwelling units (including garbage, trash, and yard wastes). Wastes from multiple-family units are usually collected in large containers and removed by commercial haulers. These wastes are also covered by today's guidelines. Institutional wastes include mixtures of municipal-type wastes generated by schools and colleges, and similar public buildings. Nonpathogenic wastes from medical institutions such as hospitals and nursing homes (e.g., wastes from their cafeterias and administrative offices) are also covered by these guidelines. Commercial MSW includes municipal-type waste mixtures generated by retail stores, shopping centers, office buildings, restaurants, hotels, airports, wholesalers, and other commercial establishments. The guidelines also cover municipal-type wastes generated by municipal public works or industries—such as mixtures containing corrugated boxes and other packing materials, tree and brush trimmings, cafeteria wastes, and paper towels. These guidelines do not cover any hazardous or nonhazardous industrial process wastes. They also do not cover infectious hospital wastes. It should be noted that MSW can be mixed with and combusted with sewage sludge from publicly-owned treatment works, and such combustion would be covered by the proposed guidelines. However, combustion of sewage sludge alone would not be covered.

Municipal solid waste also includes RDF. To produce RDF, the solid waste is shredded and classified by size prior to combustion.

As noted in the preceding paragraph, a source burning any amount of MSW would be classified as an MWC for purposes of these guidelines, and would consequently have to meet the State standards for MWC's which result from the promulgation of these guidelines. If a unit were classified under more than one set of standards (for example, a boiler burning MSW which also burns fossil fuel), it would have to meet both State and federal standards, and the more stringent standard in the event of an overlap. The EPA believes this is appropriate given that the source has chosen to burn MSW and therefore should have to meet the demonstrated standards for burning that material. The EPA realizes, however, that this reading would discourage burning of small amounts of MSW in units other than dedicated MWC's, and solicits comments on whether this is a desirable result. Commenters advocating some type of *de minimis* feed exception in the MSW definition should justify their choice of the cutoff.

The proposed emission guidelines are subdivided into three sets of requirements, one for MWC's located at small MWC plants with aggregate capacities to combust up to 225 Mg/day (250 tons/day) of MSW, one for MWC's located at large MWC plants with aggregate capacities to combust greater than 225 Mg/day (250 tons/day) but less than or equal to 2,000 Mg/day (2,200 tons/day) of MSW, and one for MWC's at regional MWC plants with aggregate capacities to combust greater than 2,000 Mg/day (2,200 tons/day) of MSW. For purposes of determining the regulatory size category of an existing MWC plant, the capacity of all existing MWC's at the same location would be aggregated (i.e., added together). Municipal waste combustor capacity is defined as the maximum demonstrated charging rate for each MWC, as measured in Mg/day (tons/day) of MSW combusted. Only existing MWC's that commenced construction prior to today's date would be considered in determining existing MWC capacity. Any MWC's that commenced construction on or after today's date would not be considered in existing MWC capacity calculations, but would instead be subject to the proposed NSPS under section 111(b) of the Act.

As mentioned above, the proposed capacity aggregation provision under the guidelines would apply to all existing MWC's that have been constructed at the same location. For the purpose of these proposed guidelines, "same location" refers to the same or contiguous property that is under common ownership or control. Properties are considered contiguous if they are directly adjoining or are separated only by a street, road, highway, or other public right-of-way. Properties are considered under the same ownership or control if owned or operated by the same entity, a parent entity, a subsidiary, or subdivision, or any combination. Included are properties owned or leased by a business, government, or quasi-governmental entity (e.g., a public utility district or regional waste disposal authority).

The proposed capacity aggregation provision is necessary because of the common practice within the MWC industry of constructing multiple MWC's at the same location. This aggregation ensures that similar MWC plants with similar emission potential are subject to the same emission guidelines regardless of the number of individual MWC's at the plants. Because multiple MWC's can have the same emission quality impacts as a larger single MWC, it is reasonable

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to apply the proposed emission guidelines to all existing MWC's at the same location, regardless of the exact timing of their construction. However, as noted above, new MWC's (i.e., those not covered under the guideline) would be subject to separate proposed standards under section 111(b) of the CAA published elsewhere in today's Federal Register.

As discussed in section IV.C., changes and additions made to existing MWC's for the purposes of complying with today's proposed guidelines would not be considered "modifications" or "reconstructions," and these MWC's would remain subject to the guidelines rather than to Subpart Ea.

F. Selection of Best Demonstrated Technology

Types of Combustors

There are three main types of technologies that can be used to combust MSW: mass burn, modular, and RDF. In addition, less prevalent unique designs are found at a few existing MWC plants. Although these are the main types of MWC technologies, there are variations within these categories, and there are designs that incorporate features of more than one type.

Mass burn MWC's are field-erected units covering a wide size range with individual MWC's ranging in size from 45 to 900 Mg/day (50 to 1,000 tons/day) of MSW combusted. There are typically two or three MWC's per plant, and MWC plant capacities range from about 90 to 2,700 Mg/day (100 to 3,000 tons/day) of MSW. The technology is called mass burn because the waste is combusted without any preprocessing other than removal of items too large to go through the feed system. Typical mass burn MWC's use hydraulic rams or pusher grate sections to push the refuse from the fuel chute onto the grate. Additional grates or rams are used to move the waste through the MWC and to promote complete combustion by agitation of the thick fuel bed. Many of the more recently constructed mass burn MWC's are constructed of waterwalls, which is a method used for cooling the combustion chamber and recovering heat. Some of the older mass burn MWC's are refractory wall MWC's which do not have heat recovery capability.

Modular MWC's also burn waste without preprocessing, but are usually shop-fabricated, small MWC's ranging in size from 5 to 110 Mg/day (5 to 120 tons/day) of MSW. Plants typically have one to four MWC's (although a few have more), and plant capacities typically range from about 14 to 360 Mg/day (15 to 400 tons/day) of MSW.

To allow shop fabrication size restrictions while also providing sufficient flue gas residence time to complete combustion, modular MWC's employ two or more combustion chambers. Depending on the design, combustion air is supplied to the primary chamber either in excess of the stoichiometric amount required for complete combustion (modular excess-air MWC) or at substoichiometric levels (modular starved-air MWC). In the excess-air designs, excess air (above stoichiometric levels) is introduced into the primary chamber. Additional air needed to promote mixing and complete burnout may be added in the secondary chamber. In this design, the secondary chamber provides additional residence time for mixing and for completing of combustion. This is functionally similar to larger mass burn MWC's. In the starved-air designs, sufficient air is supplied to the primary combustion chamber to volatilize combustible materials in the waste while minimizing entrainment of fuel particles and ash in the flue gas. The incomplete combustion products and particulates then pass into the secondary combustion chamber where additional air is added to complete combustion. Most modular MWC's have refractory-lined combustion chambers. Although many of the more recently constructed modular MWC's recover heat with waste heat boilers, some of the older and smaller existing modular MWC's do not have heat recovery.

The third class of MWC burns pretreated and shredded municipal waste, broadly referred to as RDF. The degree of processing used in RDF production can vary from simple removal of bulky items accompanied by shredding of the remaining waste to extensive pretreatment to produce a finely divided fuel containing relatively little noncombustible material. The RDF is generally fed with a stoker onto a moving grate. Some RDF MWC's are designed to combust only RDF, while others combust a mixture of RDF and other fuels such as wood or coal. In addition, a few boilers initially designed to combust pulverized coal may add some RDF as a supplemental fuel. Most RDF MWC's are medium to large sized MWC's with individual MWC's ranging in size from 270 to 900 Mg/day (300 to 1,000 tons/day) capacity. Plants typically have two to four MWC's, and RDF plant sizes range from 550 to 3,600 Mg/day (600 to 4,000 tons/day) capacity. In general, RDF MWC's are constructed of waterwalls and employ heat recovery.

The last class of MWC's is comprised of various unique MWC designs that are found only at existing plants. For example, there are eight batch-fed refractory wall MWC's of various types currently in operation. However, these MWC's are generally 15 to 20 years old and no new ones are being built. Another unique design, the refractory kiln MWC, consists of a rotary kiln only, with no grate sections. This MWC is equipped with a waste heat boiler. However, only one of these MWC's is known to exist. There are also three plants with fluidized-bed MWC's.

Emission Control Technologies for MWC Emissions

There are basically three methods to controlling emissions from MWC's. The first method involves separation of materials prior to combustion, and exclusion of certain materials from combustion. Another method is to alter the combustion process to reduce emissions of MWC organics [referred to as good combustion practices (GCP)]. The third method is adding pollution control equipment after the MWC to control emissions of MWC metals and MWC acid gases, and to obtain additional MWC organics control. These control methods can be applied separately or in combination. The GCP and add-on methods are described in this section. Materials separation is described in section V of this preamble.

Good Combustion Practices: Good combustion practices include the proper design, construction, operation, and maintenance of an MWC. Municipal waste combustor emissions may originate from the feed waste or fuel, reactions occurring in the combustion chamber, or reactions on the surface of PM at temperatures from 250 to 400 °C (480 to 750 °F). The use of GCP reduces MWC organic emissions, including emissions of dioxins/furans and their precursors, by promoting more thorough combustion of these pollutants. Generally, newer existing MWC's have incorporated GCP features in their initial design, whereas older facilities may have to retrofit various components of GCP.

Important factors in MWC design and operation that reduce MWC organic emissions include: maintaining uniform waste feed rates and conditions; the use of pretreated air to combust wet or difficult to combust materials; maintaining adequate combustor temperature and residence time; providing proper total combustion (excess) air levels; supplying proper

amounts and distributions of primary (underfire) and secondary (overfire) air; minimizing PM carryover; monitoring degree of waste burnout; and the use of auxiliary fuel during startup and shutdown.

Carbon monoxide concentration in the combustor flue gas is a good indicator of combustion efficiency, and high MWC organic (i.e., dioxin/furan) emissions are associated with poor combustion. Thus, if high levels of CO are present in combustor flue gases, it is likely that significant quantities of MWC organic emissions are also present.

The techniques employed to minimize CO are closely related to those employed to minimize MWC organic emissions. Combustor load is also related to MWC organic emissions. At loads above 100 percent, PM carryover would increase and furnace residence times would decrease, contributing to increased MWC organic (i.e., dioxin/furan) emissions at high loads. The maximum load would be established for each MWC during its compliance test.

According to available information, MWC organics (i.e., dioxins/furans) form on fly ash in the presence of excess oxygen at temperatures in the range of 250 to 400 °C (480 to 750 °F), with maximum formation rates occurring at about 300 °C (570 °F). Available data indicate that cooling flue gases and operating the PM control device at temperatures of 230 °C (450 °F) or less prevents formation of MWC organics (i.e., dioxins/furans) in the flue gas. Flue gas cooling is typically accomplished by the economizer at MWC's with heat recovery capability, but could also be accomplished by other methods such as humidification.

Proper operation of MWC's is key to GCP. Operation of MWC's is complex and, as mentioned above, there are many interrelated parameters that influence emissions. Since only a few parameters such as combustor CO emissions, load, and flue gas temperature, can be specified and measured in emission guidelines, operator certification and training is another element of GCP. The emission guidelines would allow flexibility concerning time requirements for existing MWC's to implement operating certification and training programs.

The American Society of Mechanical Engineers (ASME) has developed a certification program that consists of an initial provisional certification followed by full operator certification. To obtain provisional certification, a candidate must demonstrate that certain requirements of experience and education have been met and must pass a written examination covering the basics of municipal waste combustion. The initial provisional certificate, which is valid for 5 years, is not specific for any particular MWC technology or jurisdiction.

After attaining a provisional certification and gaining 6 months of experience at a particular MWC facility, a chief facility operator or shift supervisor may pursue an operator certification. This certificate is issued upon passing a site-specific oral examination on the operation, maintenance, and safety procedures at the facility. Operator certificates are valid only for facilities of similar size and technology. They are valid for 3 years and may be renewed upon demonstration that the operator has maintained knowledge of the particular MWC and permit requirements. New certificates are required upon transfer to a facility of a different size or technology. The ASME certification will ensure national consistency and will allow individuals to transfer their certification from one State to another.

In addition, all plant personnel who are in positions associated with the combustion process—including the control room operators, ash handlers, personnel involved with MWC maintenance, and crane/load operators, and any other persons associated with MWC operation should receive training in MWC operation on a yearly basis. Such training is best provided through use of a training manual which focuses on how each subject area, or component of MWC operation, can impact MWC performance and emissions. In addition, the manual should specify remedial measures that are effective in regaining good performance during startups, shutdowns, and malfunctions of the MWC. As with any routine training program, the training manual should be revised as appropriate from time to time to reflect any changes.

The following training elements should be included in any training manual developed under the emission guidelines.

Introduction. This portion of the manual should include an explanation of the regulation applicable to MWC emissions and how certain MWC operating procedures (which would be discussed in detail later in the manual) should be followed in order to maintain compliance with the guidelines and to achieve GCP.

Basic Combustion Theory. This portion of the manual should address the interrelationships of temperature, residence time, and fuel/air mixing and their effects on combustion performance and destruction of trace organics including dioxins/furans.

Procedures for Receiving, Handling, and Feeding Waste. This portion of the manual would address which specific types of MSW should be eliminated from the waste stream because of their physical and chemical characteristics (e.g., oversized, bulky wastes that can jam feed hoppers; explosive or hazardous wastes, such as propane tanks) and materials that cannot be combusted. These wastes may contribute to upsets which result in excessive CO or MWC organic (i.e., dioxin/furan) emissions. Because the loader/crane operator can affect the stability of the combustion process by thoroughly mixing incoming feed material to blend wastes with high and low moisture contents and heating values, this portion of the manual also should include a discussion of the proper waste feed rates and feed uniformity, and their effect on combustion stability. Maintaining combustion stability would aid in achieving continuous reductions in MWC organic emissions.

Start-up and Shutdown Procedures. Because higher levels of MWC organic emissions can occur during startup and shutdown due to low combustion temperatures and poor mixing, the training manual should set forth specific procedures for minimizing the effects of these episodes.

Auxiliary Fuel Use. Some MWC's fire auxiliary fuel during conditions other than start-up and shutdown (e.g., to maintain steam load during waste feed interruptions). Thus, this portion of the manual should address how changes in operation, such as combustion airflow rates and distributions, may be necessary when firing auxiliary fuels.

Maintaining Proper Combustion Air Supply Levels. Providing the proper amount and distribution of underfire (or primary) air is important in maintaining proper MWC temperatures and stoichiometries and in reducing emissions of organics and particulates from the MWC. This is especially important for modular MWC's with primary chambers designed to operate at substoichiometric conditions. As feed rates and waste properties change, it is sometimes necessary to adjust primary air distributions to maintain local stoichiometries. This portion of the manual should address what adjustments are needed depending on the specific MWC design type. In addition, this portion of the manual should also highlight the need for proper design and operation of overfire (or secondary) air because it plays a major role in the mixing process and in the destruction of MWC organics. Again,

secondary air design and operating practices will vary depending on the

flat plates rather than wires as the discharge electrode.

considered in developing regulatory alternatives. These are dry sorbent

systems. Greater levels of HCl control may be achieved by duct injection, which preferentially controls HCl over

°C (240 °F) is required to control agglomeration of PM and sorbent by calcium chloride.

because there is little carbon in the fly ash onto which mercury can adsorb for subsequent removal by the FF. Other

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secondary air design and operating practices will vary depending on the specific MWC design type. Because air preheat (used to assist in the combustion of high moisture, low heating value wastes) can affect the ability of an MWC to achieve good combustion, this portion of the manual should also instruct the operator to anticipate this potential problem and how to adjust or initiate air preheat as a corrective action.

Upset or Off-Specification Conditions. This portion of the manual should provide the operator with guidance on implementing corrective action in response to a number of periodic process upsets, including, but not limited to, low (or excessive) furnace temperatures, high CO levels, high (or low) operating load, high (or insufficient) flue gas cleaning device inlet temperatures, and poor waste burnout conditions.

Minimization of Particulate Matter Carryover. This portion of the manual should address the problem of PM carryover and instruct the operator how to minimize PM carryover within normal operating parameters. High levels of PM carryover may increase PM concentrations in the flue gas and may contribute to downstream formation of MWC organics (i.e., dioxins/furans).

Performance of GCP: Use of GCP, including exhaust gas cooling to 230 °C (450 °F), in conjunction with PM control can generally achieve dioxin/furan emission levels of 500 ng/Nm³ (200 gr/billion dscf) or less for existing MWC's except RDF MWC's, taking into account retrofitting the existing MWC. Levels of 1,000 ng/Nm³ (400 gr/billion dscf) can be achieved at existing RDF combustors.

Add-on Controls: The most frequently used PM control devices for existing MWC's are electrostatic precipitators (ESP's) and, less commonly, fabric filters (FF's). Other PM control technologies (such as cyclones, electrified gravel beds, and venturi scrubbers) have been used to a much lesser extent.

In ESP's, flue gas flows between a series of high voltage discharge electrodes and grounded metal plates. Negatively charged ions formed by this high voltage field (known as a "corona") attach to PM in the flue gas, causing the charged particles to migrate toward the grounded plates. Once the charged particles are collected on the grounded plates, the resulting dust layer is removed from the plates by rapping, washing, or some other method, and collected in a hopper. The most common types of ESP's used by MWC's are: (1) Plate-wire units in which the discharge electrode is a bottom-weighted or rigid wire and (2) flat plate units which use flat plates rather than wires as the discharge electrode.

Fabric filters (also called baghouses) are used at some existing MWC's for particulate control, particularly when used in combination with acid gas control. Fabric filters are of two basic designs, reverse-air and pulse jet. In a reverse-air FF, flue gas flows through unsupported filter bags, leaving the particulate on the inside of the bags. The particulate builds up to form a particulate filter cake. When the pressure drop across the filter cake reaches a defined limit, flue gas flow is stopped and clean air is directed through the filter in the opposite direction, the filter bag collapses, and the filter cake falls off and is collected at the bottom of the hopper. Following cleaning, flue gas is again directed through the clean filter bags and the cycle is repeated. In a pulse jet FF, flue gas flows through supported filter bags leaving particulate on the outside of the bags. To remove the built-up particulate filter cake, a pulse of compressed air is introduced inside of the filter bag, the filter bag expands and the filter cake falls off and is collected. The pulse jet system may be cleaned while on-line or off-line.

Well-designed and operated ESP's or FF's are highly efficient PM collectors and can reduce total PM emission levels to 34 mg/dscm (0.015 gr/dscf) or less (at 7 percent O_2) at new or retrofit installations. Available data indicate that upgrades of existing ESP's can achieve PM emission levels of 69 mg/dscm (0.030 gr/dscf) or less (at 7 percent oxygen (O_2)).

Municipal waste combustor metals emissions include arsenic, beryllium, cadmium, chromium, lead, mercury, and nickel. All of these metals, except mercury, are removed with the fine particulates collected by ESP's or FF's. Well-designed ESP's or FF's operated at 230 °C (450 °F) or less remove over 97 percent of arsenic, cadmium, and lead and about 99 percent of beryllium, chromium, and nickel from MWC exhaust.

In general, little or no mercury control is observed at MWC's with PM control alone (i.e., no acid gas controls).

Control of MWC acid gases (including SO_2 and HCl) can be achieved by reaction of dry or slurried alkali sorbents (e.g., lime) into the flue gas. This technology would have to be retrofitted at most existing MWC's. Available acid gas control technologies include addition of dry sorbents into the flue gas duct or into the combustor, and spray drying. Acid gas controls are typically followed by an ESP or a FF. Two levels of acid gas control were considered in developing regulatory alternatives. These are dry sorbent injection (DSI)/PM control (ESP or FF) systems that provide an intermediate level of acid gas control (approximately 50 percent), and spray dryer (SD)/FF systems that provide higher efficiency control (approximately 90 percent). These two levels are discussed below.

Dry sorbent injection technologies have been developed primarily to control acid gas emissions. However, when DSI is combined with flue gas cooling and an upgraded ESP or a FF, control of MWC organic (dioxin/ furan), MWC metal, and MWC acid gas emissions are achieved. Dry sorbent injection/ESP systems are an attractive retrofit control option for existing plants and allow use of the existing (upgraded) ESP. The DSI/ESP technology, is therefore, frequently less expensive than DSI/FF technology for existing plants. Two primary subsets of DSI technologies exist, duct sorbent injection and furnace sorbent injection.

In duct sorbent injection, powdered sorbent is pneumatically injected into either a separate reaction vessel or a section of flue gas duct located downstream of the combustor economizer or quench tower. The sorbent reacts with acid gases to form alkali salts. By lowering the acid content of the flue gas, downstream equipment can be operated at reduced temperatures while minimizing the potential for acid corrosion of equipment. Reaction products, fly ash, and unreacted sorbent are collected with the ESP. Available sorbents include hydrated lime ($CaOH_2$), soda ash (NaOH), and sodium bicarbonate ($NaHCO_3$).

Furnace sorbent injection generally takes less space than duct injection (a major consideration in retrofit). Furnace sorbent injection technology involves the injection of powdered alkali sorbents into the furnace section of an MWC. This can be accomplished by addition of sorbent to the overfire air, injection through separate ports, or mixing with the waste prior to feeding to the MWC. As with duct sorbent injection, reaction products, fly ash, and unreacted sorbent are collected using the existing (upgraded) ESP or FF.

Both types of DSI systems (duct or furnace injection) followed by an upgraded ESP or FF can achieve a 50 percent reduction in SO_2 emissions or an outlet SO_2 concentration of 30 ppmv at 7 percent O_2 (daily 24-hour average basis). A 50 percent reduction in HCl emissions or an outlet concentration of 25 ppmv is achievable (daily 24-hour average basis) by furnace sorbent injection/ESP or FF systems. Greater levels of HCl control may be achieved by duct injection, which preferentially controls HCl over SO_2. The site-specific configuration of existing MWC's will determine whether furnace or duct injection technology is more feasible to retrofit. All types of existing MWC's except RDF's applying either a DSI/ESP or DSI/FF system can meet a dioxin/furan emission level of 125 ng/Nm³ (50 gr/billion dscf) (at 7 percent O_2). Existing RDF's with DSI/ESP or DSI/FF systems can meet a dioxin/furan emission level of 250 ng/Nm³ (100 gr/billion dscf) (at 7 percent O_2).

A PM emission guideline level of 69 mg/dscm (0.030 gr/dscf) can be achieved for existing MWC's equipped with DSI/ESP or DSI/FF. Dry sorbent injection/ESP or DSI/FF systems achieve 97 percent or greater removal of arsenic, cadmium, and lead, and 99 percent removal of beryllium, chromium, and nickel. In addition, DSI/ESP systems typically achieve about 30 percent control of mercury and DSI/FF systems typically achieve a higher percent removal of mercury. However, the data on mercury emissions and control levels are highly variable among MWC's.

Lime spray drying followed by FF is a higher performance technology than current DSI/ESP or DSI/FF technology and was initially developed to control acid gas emissions. However, the system also controls emissions of MWC organics (dioxins/furans), and MWC metal emissions. In the spray drying process, atomized lime slurry is injected into a SD vessel; the water in the lime slurry evaporates to cool the flue gas and the lime reacts with acid gases to form dry sulfate/sulfite salts that are removed by the FF. The key design and operating parameters that significantly affect the performance of the system are the temperature of the spray dryer reaction/drying vessel and lime-to-acid gas stoichiometric ratio. The outlet temperature is controlled by the amount of water in the slurry. As more water is added, the temperature is lowered.

More effective acid gas removal occurs at lower temperatures, but the temperature must be kept high enough to ensure that the slurry and reaction products are adequately dried prior to collection in the FF. Otherwise, caking will occur and the system may have to be removed from service for removal of the cake. Spray dryer systems generally operate at flue gas discharge temperatures of 150 °C (300 °F) or less. For MWC flue gases containing significant chlorine, a minimum spray dryer outlet temperature of around 115 °C (240 °F) is required to control agglomeration of PM and sorbent by calcium chloride.

Spray dryer/FF systems on existing MWC's can achieve either an 85 percent reduction in SO_2 emissions or an outlet SO_2 concentration of 30 ppmv at 7 percent O_2 (24-hour average basis). Either a 95 percent reduction in HCl emissions or an outlet HCl concentration of 25 ppmv is also achievable by SD/FF systems on existing MWC's. Spray dryer/FF systems also achieve outlet dioxin/furan concentrations in the range of 5 ng/Nm³ (2 gr/billion dscf) to about 30 ng/Nm (12 gr/billion dscf) (at 7 percent O_2). The SD/FF systems are the most effective add-on control systems for dioxins/furans, and achieve 99 percent control and low outlet emission levels, however, the exact performance level has not been specified in the proposed guidelines. Measured emission levels vary among MWC's, and additional test data from MWC's with SD/FF controls are currently being collected and analyzed. The exact dioxin/furan emission level achievable by SD/FF controls will be determined prior to promulgation of these guidelines, and a single emission level will be included in the promulgated guidelines. Specific comments are solicited on the achievable emission level.

A PM emission guideline level of 34 mg/dscm (0.015 gr/dscf) is achievable by all MWC's equipped with SD/FF systems. At this PM emission level, SD/FF systems achieve 99 percent removal of all metals except mercury.

The observed removal efficiencies for mercury vary widely among MWC's. Tests at three MWC's with SD/FF controls showed over 70 percent mercury removal rates and outlet concentrations below 200 μg/dscm (85 gr/million dscf). On the other hand, compliance test data from three other MWC's with SD/FF systems indicated little or no mercury control. One of these three MWC's, however, was retested later and results indicated over 75 percent control. It has been postulated that mercury emissions may be related to NO_x control, and that use of ammonia injection for NO_x control may reduce mercury control in some cases. However, another possibility is that the adsorption and removal of mercury may be dependent on carbon in the fly ash. Review of data from tests of MWC's with and without NO_x control tend to show that combustors with very good combustion and very low concentrations of organics and PM in the flue gas upstream of the SD/FF filter achieve lower mercury removal. This may be because there is little carbon in the fly ash onto which mercury can adsorb for subsequent removal by the FF. Other explanations for the observed variation in mercury control are also possible. A joint EPA/industry task force is being established to investigate mercury emissions and controls. Their finding will be considered in development of the final emission guidelines.

Spray dryer/ESP systems have been used on a few MWC's. Available data indicate that these systems may achieve less removal of MWC acid gas, MWC organic, and mercury emissions than SD/FF systems. However, SD/ESP systems may be an attractive retrofit technology because MWC plants could make use of an existing ESP and would only have to retrofit a SD. This would result in lower costs compared to retrofitting both a SD and a FF. This issue will continue to be investigated, following proposal, and comments on the performance of SD/ESP systems are requested.

A third MWC control method includes MSW materials separation, which is the separation of certain components from the waste stream prior to combustion in an MWC. Additional reductions in MWC emissions, including mercury, may be achieved with application of materials separation as discussed in section V.

Regulatory Alternatives for MWC Emissions

Five regulatory alternatives were considered in selecting MWC emissions guidelines for proposal. A baseline alternative is also presented which represents the emission level expected in the absence of the proposed guidelines. For existing MWC's, the baseline level of GCP and add-on emission control varies depending on the type, unit size, and age of the individual combustors.

The five regulatory alternatives considered in developing guidelines for MWC's represent varying levels of control for MWC organics (dioxins/furans), MWC metals (as indicated by PM), and MWC acid gases (including HCl and SO_2). Some of the regulatory alternatives also subdivide MWC plants into two size categories. Categorization of MWC's into small and large plants was initially considered because: (1) Control cost increases associated with the various control technologies, on the bases of percent of MWC capital cost and dollars per ton of MSW combusted, are greater for small plants, and (2) large plants generally have greater emissions potential and account for over 90 percent of existing capacity.

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Therefore, some of the regulatory alternatives require less stringent control of small plants, while others apply the same level of control to all MWC plants. The regulatory alternatives define small MWC plants as those with aggregate existing MWC plant capacities of 225 Mg/day (250 tons/day) of MSW or below, and large plants as those with aggregate MWC capacities greater than 225 Mg/day (250 tons/day) of MSW. The EPA requests comment on whether another size category cutoff might be more appropriate. The aggregate capacity of all existing combustors at the MWC facility is used to determine if the MWC meets the large or small plant definition.

Table 2 presents the five regulatory alternatives in terms of control technologies. Table 3 presents these five regulatory alternatives in terms of the emission limits for dioxins/furans, PM, and acid gases that would be specified in the actual guidelines. Table 4 presents GCP operating guidelines (see section V for a separate discussion of materials separation).

TABLE 2.—TECHNOLOGICAL BASIS FOR REGULATORY GUIDELINES ALTERNATIVES FOR EXISTING MWC UNITS

Regulatory alternative	Control guidelines by total MWC plant capacity Mg MSW/day (tons MSW/day)	
	Small plants <225 Mg/day (<250 tons/day)	Large plants >225 Mg/day (>250 tons/day)
I	GCP. PM control to 0.060.	GCP. PM control to 0.030.
IIA	GCP. PM control to 0.060.	GCP. MWC acid gas by DSI. PM control to 0.030.
IIB	GCP. MWC acid gas by DSI. PM control to 0.030.	GCP. MWC acid gas by DSI. PM control to 0.030.
III	GCP. PM control to 0.060.	GCP. MWC acid gas by SD/FF. PM control to 0.015.
IV	GCP. MWC acid gas by DSI. PM control to 0.030.	GCP. MWC acid gas by SD/FF. PM control to 0.015.

TABLE 3. POTENTIAL EMISSION LIMITS ASSOCIATED WITH 111(D) REGULATORY GUIDELINE ALTERNATIVES

Regulatory alternative		Control levels by plant capacity	
		Small plants <225 Mg/day (<250 tons/day)	Large plants <225 Mg/day (<250 tons/day)
I	Dioxins/furans	500 ng/Nm³ (1,000 ng/Nm³) *	500 ng/Nm³ (1,000 ng/Nm³).
	PM	0.060 gr/dscf	0.030 gr/dscf.
	HCl	no limit	no limit.
	SO_2	no limit	no limit.
	GCP/Operating Standards	See Table 4	See Table 4.
IIA	Dioxins/furans	500 ng/Nm³ (1,000 ng/Nm³)	125 ng/Nm³ (250 ng/Nm³).
	PM	0.060 gr/dscf	0.030 gr/dscf.
	HCl	no limit	50% or 25 ppmv.
	SO_2	no limit	50% or 30 ppmv.
	GCP/Operating Standards	See Table 4	See Table 4.
IIB	Dioxins/furans	125 ng/Nm³ (250 ng/Nm³)	125 ng/Nm³ (250 ng/Nm³).
	PM	0.030 gr/dscf	0.030 gr/dscf.
	HCl	50% or 25 ppmv	50% or 25 ppmv.
	SO_2	50% or 30 ppmv	50% or 30 ppmv.
	GCP/Operating Standards	See Table 4	See Table 4.
III	Dioxins/furans	500 ng/Nm³ (1,000 ng/Nm³)	5 to 30 ng/Nm³.
	PM	0.060 gr/dscf	0.015 gr/dscf.
	HCl	no limit	95% or 25 ppmv.
	SO_2	no limit	85% or 30 ppmv.
	GCP/Operating Standards	See Table 4	See Table 4.
IV	Dioxins/furans	125 ng/Nm³ (250 ng/Nm³)	5 to 30 ng/Nm³.
	PM	0.030 gr/dscf	0.015 gr/dscf.
	HCl	50% or 25 ppmv	95% or 25 ppmv.
	SO_2	50% or 30 ppmv	85% or 30 ppmv.
	GCP/Operating Standards	See Table 4	See Table 4.

* Emission levels in ( ) are for RDF MWC's.

TABLE 4. EMISSION AND OPERATING PARAMETER LIMITS FOR GCP

Pollutant or parameter	Limit
Maximum load level	100% of demonstrated capacity.
Maximum temperature at PM control device inlet.	230 °C (450 °F).
CO Emissions:	
Modular MWC's	50 ppmv.
Mass burn waterwall	100 ppmv.
Mass burn refractory	100 ppmv.
Fluidized bed combustor.	100 ppmv.

TABLE 4. EMISSION AND OPERATING PARAMETER LIMITS FOR GCP—Continued

Pollutant or parameter	Limit
Mass burn rotary waterwall.	150 ppmv.
RDF spreader stoker	150 ppmv.
Coal/RDF cofired	150 ppmv.
Operator certification and training.	All operators certified by ASME. Training manual and training for other personnel.

Regulatory Alternative I, the least stringent nonbaseline regulatory alternative shown in Table 2, requires reductions in MWC emissions to levels achievable with GCP for plants of all sizes, as well as various levels of PM control upgrade depending on plant size. For small plants (i.e., those MWC's located at plants with aggregate capacities equal to or below 225 Mg/day [250 tons/day] of MSW), PM emission limits correspond to a level of 180 mg/dscm (0.080 gr/dscf). Under Regulatory Alternative I, this same level would be applied to all existing small MWC plants with no lower size cutoff. Municipal waste combustors located at large MWC plants (i.e., those with aggregate capacities of greater than 225 Mg/day [250 tons/day] of MSW) would be required to achieve PM control to 69 mg/dscm (0.030 gr/dscf). No add-on acid gas controls would be required for any MWC under this alterative. Based on use of GCP and PM control, emissions of dioxins/furans would be reduced to 1,000 ng/Nm³ (400 gr/billion dscf) at RDF MWC's and to 500 ng/Nm³ (200 gr/billion dscf) at all other types of MWC's. The PM controls required would achieve significant reductions in metals emissions, and the higher costs of acid gas controls would not be incurred.

Regulatory Alternative IIA is more stringent than Regulatory Alternative I. Municipal waste combustors at large MWC plants would be required to reduce emissions to levels achievable with moderate acid gas add-on control (based on DSI/ESP or DSI/FF control). Control requirements and emission levels for MWC's at small MWC plants are the same as Regulatory Alternative I. For large MWC plants, MWC acid gas control based on DSI/ESP or DSI/FF (50 percent SO_2 and 50 percent HCl control) and PM control to 69 mg/dscm (0.030 gr/dscf) by ESP upgrade are required, and emissions of dioxin/furan would be reduced to 250 ng/Nm³ (100 gr/billion dscf) at RDF MWC's and 125 ng/Nm³ (50 gr/billion dscf) at all other types of MWC's. Under Regulatory Alternative IIA, small MWC plants are allowed a lower cost and less efficient control, which would avoid the greater costs of add-on acid gas controls for smaller MWC plants.

Regulatory Alternative IIB requires MWC emission reductions to levels achieveable with GCP, acid gas control based on DSI/ESP or DSI/FF, and PM control to 69 mg/dscm (0.030 gr/dscf) for all MWC plants (both large and small). This alternative would result in reduction of dioxin/furan emissions as well as reductions in acid gas emissions for all MWC plants, but has higher costs for small plants than Regulatory Alternative I or IIA.

Regulatory Alternative III is similar to Regulatory Alternative IIA by not requiring acid gas control or small MWC plants, but it would require emission levels based on GCP, acid gas control based on SD/FF (85 percent SO_2 and 95 percent HCl control), and PM control to 0.015 gr/dscf on MWC's at large MWC plants, reducing dioxin/furan emissions to a level in the range of 5 to 30 ng/Nm³ (2 to 12 gr/billion dscf) for large MSW plants. The exact emission level within this range that is achievable with SD/FF controls will be determined prior to promulgation. Compared to Regulatory Alternative IIB, this alternative would require more stringent control of large MWC plants, but less stringent control of small PWC plants. Municipal waste combustors at small MWC plants would be required to achieve emission levels based on use of GCP plus PM control to 80 mg/dscm (0.08 gr/dscf), but no acid gas controls.

Regulatory Alternative IV is the most stringent alternative analyzed. Like Regulatory Alternative III, Regulatory Alternative IV is based on MWC emission levels achieveable with GCP, acid gas control based on SD/FF (85 percent SO_2 and 95 percent HCl control), and PM control to 34 mg/dscm (0.015 gr/dscf) for large MWC plants. For small plants, MWC emission levels corresponding to GCP, acid gas control based on DSI/ESP or DSI/FF (50 percent SO_2 and 50 percent HCl control), and PM control to 69 mg/dscm (0.030 gr/dscf) would be required. The requirements for small MWC plants are, therefore, more stringent than under Regulatory Alternative III. Regulatory Alternative IV has the lowest emissions but the highest cost of any of the regulatory alternatives presented.

Model Plant Impacts of the Regulatory Alternatives for MWC Emissions

Table 3 shows the air pollutant emission concentration or present reduction limits for small and large MWC plants under each regulatory alternative, and Table 4 shows GCP operating requirements. Tables 5 and 6 present the ranges of individual small and large model MWC plant emissions and emission reductions of PM, dioxins/furans, and MWC acid gases (SO_2 and HCl) under the baseline and the regulatory alternatives. These emission estimates were derived by applying the different control technologies to small and large MWC plants as specified by the regulatory alternatives. They are expressed as ranges to represent the different types and sizes of MWC's within the small and large MWC plant categories.

TABLE 5.—RANGE OF MWC EMISSIONS FOR INDIVIDUAL SMALL MWC PLANTS UNDER THE BASELINE AND REGULATORY ALTERNATIVES FOR MWC EMISSIONS

Regulatory alternative	MWC metals PM Mg/yr	MWC organics Dioxin/Furan g/yr	MWC acid gases	
			SO_2 Mg/yr	HCl Mg/yr
Baseline	15–190	21–850	30–150	41–210
I	5–46	21–130	30–148	41–210
IIA	5–46	21–130	30–150	41–210
IIB	1–6	5–32	18–89	8–42
III	5–46	21–130	30–150	41–210
IV	1–6	5–32	18–89	8–42

TABLE 6.—RANGE OF MWC EMISSIONS FOR INDIVIDUAL LARGE MWC PLANTS UNDER THE BASELINE AND REGULATORY ALTERNATIVES FOR MWC EMISSIONS

Regulatory alternative	MWC metals PM Mg/yr	MWC organics Dioxin/Furan g/yr	MWC acid gases	
			SO_2 Mg/yr	HCl Mg/yr
Baseline	22/146	109–9,600	300–2,400	420–2,400
I	12–73	109–580	300–2,400	420–2,400
IIA	12–73	27–150	160–1,400	84–480
IIB	12–73	27–150	160–1,400	84–480
III	12–73	2.7–16	31–240	13–73
IV	12–73	2.7–16	31–240	13–73

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As shown in Table 5, PM emissions from small MWC plants (i.e., those with capacities equal to or less than 225 Mg/day [250 tons/day] of MSW) range from 15 to 190 Mg/year (16 to 210 tons/year) at baseline. Regulatory Alternatives I, IIA, and III require small MWC plants to achieve PM levels of 180 mg/dscm (0.08 gr/dscf). Under Regulatory Alternatives I, IIA, and III some small model MWC plants would be required to add additional PM controls to meet this emission level, but other existing MWC plants would already be controlled to a PM level of 180 mg/dscm (0.08 gr/dscf) or below at baseline. Under Regulatory Alternatives I, IIA, and III, PM emission reductions of up to 76 percent over baseline would be achieved for individual model MWC plants, and emissions would range from 6 to 46 Mg/year (7 to 51 tons/year). Under Regulatory Alternatives IIB and IV, which require MWC's at small MWC plants to achieve PM emission levels of 69 mg/dscm (0.030 gr/dscf), all small MWC plants would apply additional controls, resulting in PM emissions ranging from 1 to 6 Mg/year (1 to 7 tons/year). These emissions represent reductions of 80 to 97 percent in PM emissions as compared to baseline emissions for the model MWC plants.

At baseline, dioxin/furan emissions at small MWC plants range from 21 to 890 g/year (0.05 to 2.0 lbs/year). Some small MWC plants incorporate GCP at baseline and would not achieve additional dioxin/furan control under Regulatory Alternatives I, IIA, and III. For those MWC plants which do not employ GCP at baseline, dioxin/furan emission reductions of up to 93 percent can be achieved by the addition of GCP. Under Regulatory Alternatives I, IIA, and III dioxin/furan emissions range from 21 to 130 g/year (0.05 to 0.3 lbs/year). Under Regulatory Alternatives IIB and IV, acid gas controls are required for small MWC plants. The controls required for existing small MWC plants under Regulatory Alternatives IIB and IV reduce dioxin/furan emissions by 75 to 99 percent relative to baseline (depending upon whether the plant employs GCP at baseline) resulting in emissions ranging from 5 to 32 g/year (0.01 to 0.07 lbs/year).

At baseline, SO_2 emissions at small MWC plants range from 30 to 150 Mg/year (33 to 160 tons/year), and HCl emissions range from 41 to 210 Mg/year (45 to 290 tons/year). Since MWC acid gas controls are not required for small MWC plants under Regulatory Alternatives I, IIA, or III, no reductions in MWC acid gases are achieved under these alternatives. Municipal waste combustor-acid gas controls based on DSI/ESP or DSI/FF technology are required for small MWC plants under Regulatory Alternatives IIB and IV, and emissions of MWC acid gases (SO_2 and HCl combined) would be reduced by over 50 percent. Under Regulatory Alternatives IIB and IV, SO_2 emissions at small MWC plants range from 18 to 89 Mg/year (20 to 98 tons/year), and HCl emissions range from 8 to 42 Mg/year (9 to 46 tons/year).

Table 6 shows the ranges of emission impacts for large MWC plants (i.e., those with aggregate capacities greater than 225 Mg/day [250 tons/day] of MWS) under the baseline and the regulatory alternatives. At baseline PM emissions at large MWC plants range from 22 to 150 Mg/year (24 to 160 tons/year). Municipal waste combustors at large MWC plants are required to meet PM emission levels of 69 mg/dscm (0.030 gr/dscf) under Regulatory Alternatives IIA and IIB, and 34 mg/dscm (0.015 gr/dscf) under Regulatory Alternatives III and IV. A few large MWC plants already meet these levels of control and would not need additional PM controls under the regulatory alternatives. Other large MWC plants would have to retrofit additional PM control under the regulatory alternatives. Under Regulatory Alternatives I through IV, PM emissions at large MWC plants would range from 12 to 73 Mg/year (13 to 80 tons/year) resulting in PM emission reductions for individual model MWC plants of up to 88 percent relative to baseline emissions.

Baseline emissions of dioxins/furans at large MWC plants range from 110 to 9,600 g/year (0.24 to 21 lbs/year). Under Regulatory Alternative I dioxin/furan reductions of up to 90 percent would be achieved at plants which do not employ GCP at baseline. No reductions in dioxin/furan emissions relative to baseline emissions would be achieved at large plants which employ GCP at baseline since no acid gas controls are required under Regulatory Alternative I. Under Regulatory Alternative I, dioxin/furan emissions at large MWC plants would range from 110 to 580 g/year (0.24 to 1.3 lbs/year). Emissions of dioxins/furans would be reduced by 75 to 98 percent (depending on whether the MWC plant employs GCP at baseline) at large model plants under Regulatory Alternatives IIA and IIB due to the requirement of acid gas controls based on DSI/ESP or DSI/FF. Under Regulatory Alternatives IIA and IIB, dioxin/furan emissions at large MWC plants would range from 27 to 150 g/year (0.06 to 0.33 lbs/year). Under Regulatory Alternatives III and IV, which require acid gas controls based on SD/FF technology, dioxin/furan emissions would be reduced by 98 to greater than 99 percent relative to baseline emissions (depending upon whether the plant employs GCP at baseline) for large MWC plants. Under the two most stringent alternatives, dioxin/furan emissions at large MWC plants would range from 2.7 to 16 g/year (0.006 to 0.035 lbs/year).

At baseline, emissions of SO_2 at large MWC plants range from 300 to 2,400 Mg/year (340 to 2,700 tons/year), and emissions of HCl range from 420 to 2,400 Mg/year (460 to 2,700 tons/year). No reductions in MWC acid gases would be achieved under Regulatory Alternative I since MWC acid gas controls are not required. Under Regulatory Alternatives IIA and IIB, MWC acid gas controls based on DSI/ESP or DSI/FF technology are required for all large MWC plants. Under Regulatory Alternatives IIA and IIB, MWC acid gas emissions would be reduced by over 50 percent resulting in emissions of SO_2 ranging from 180 to 1,400 Mg/year (200 to 1,800 tons/year) and emissions of HCl ranging from 84 to 480 Mg/year (92 to 530 tons/year). Under the most stringent alternatives, Regulatory Alternatives III and IV, large MWC plants are required to control MWC acid gas emissions to levels based on SD/FF technology. Under Regulatory Alternatives III and IV, SO_2 emissions would be reduced by about 90 percent relative to baseline emissions resulting in emissions ranging from 31 to 240 Mg/year (34 to 270 tons/year). This 90 percent long-term average emission reduction level is consistent with a minimum 24-hour average percent reduction of 85 percent. Emissions of HCl would be reduced 97 percent relative to baseline emissions and would range from 13 to 73 Mg/year (14 to 80 tons/year).

Tables 7 and 8 present the ranges of increased (over baseline) capital costs for retrofit air pollution controls, increased total annualized costs, and increased total annualized cost per Mg MSW combusted for small and large MWC plants under each regulatory alternative.

TABLE 7.—RANGES OF INDIVIDUAL SMALL PLANT CONTROL COSTS UNDER THE REGULATORY ALTERNATIVES FOR MWC EMISSIONS

Regulatory alternative	Capital cost ($1,000)	Total annualized cost ($1,000/yr)	Total annualized cost per Mg MSW combusted ($/Mg)
I	<1–5,700	<1–1,200	<1–19
IIA	<1–5,700	<1–1,200	<1–19
IIB	1,600–7,400	660–2,000	10–46
III	<1–5,700	<1–1,200	<1–19
IV	1,600–7,400	660–2,000	10–46

TABLE 8.—RANGES OF INDIVIDUAL LARGE PLANT CONTROL COSTS UNDER THE REGULATORY ALTERNATIVES FOR MWC EMISSIONS

Regulatory alternative	Capital cost ($1,000)	Total annualized cost ($1,000/yr)	Total annualized cost per Mg MSW combusted ($/Mg)
I	<1–15,000	<1–1,900	<1–7
IIA	2,200–18,000	1,000–4,300	4–13
IIB	2,200–18,000	1,000–4,300	4–13
III	7,000–33,000	2,000–13,000	<12–28
IV	7,000–33,000	2,000–13,000	12–28

Table 7 shows that under Regulatory Alternatives I, IIA, and III, capital costs of retrofit air pollution controls at individual small MWC plants could increase by less than $1,000 to $5.7 million and additional cost per unit of MSW combusted ranges from a negligible increase to an increase of $19/Mg MSW ($17/ton MSW). For perspective on the increase in the annual cost of MSW, typical costs for MSW combustion including collection, transportation, combustion, and MWC ash disposal currently range from $40/Mg ($36/ton) to over $100/Mg (over $90/ton) of MSW collected.

Under Regulatory Alternatives IIB and IV, small plants must add acid gas controls (based on DSI/ESP or DSI/FF), and control costs increase. For Regulatory Alternatives IIB and IV, increased capital costs (relative to baseline) for retrofit air pollution controls at small MWC's range from $1.6 million to $7.4 million. Increased annualized costs of control range from $660,000 to $2.0 million, and the increased cost per unit of waste combusted ranges from $10 to $46/Mg MSW ($9 to $44/ton MSW).

Table 8 shows the increased costs of control (relative to baseline) for individual large MWC plants under the regulatory alternatives. Under Regulatory Alternative I, all large plants must incorporate GCP and meet a PM level of 69 mg/dscm (0.030 gr/dscf). Some existing large MWC plants meet this level of control by design at baseline and incur a negligible control cost, but other MWC plants must add GCP and/or additional PM controls to meet this level of control. Under Regulatory Alternative I, increased capital costs for retrofit air pollution controls (relative to baseline) would range from negligible amounts to $15 million. Increased annualized costs (relative to baseline) would range from negligible amounts to $1.9 million, and increased cost per unit of MSW combusted would range from less than $1 to $7/Mg MSW (less than $1 to $6/ton MSW). Under Regulatory Alternatives IIA and IIB, large MWC plants must add MWC acid gas controls based on DSI/ESP or DSI/FF technology. For Regulatory Alternatives IIA and IIB, increased capital costs (relative to baseline) for retrofit air pollution controls would range from $2.2 million to $18 million, total increased annualized costs would range from $1.0 million to $4.3 million, and increased cost per unit of MSW combusted would range from $4 to $13/Mg MSW ($4 to $12/ton MSW). Control costs would increase under Regulatory Alternatives III and IV for large MWC plants since MWC acid gas controls based on SD/FF technology must be added. Under Regulatory Alternatives III and IV, increased capital costs (relative to baseline) for retrofit air pollution controls for large MWC plants would range from $7.0 million to $33 million. Increased annualized costs would range from $2.0 million to $13 million, and increased cost per unit of waste combusted would range from $12 to $28/Mg MSW ($11 to $25/ton MSW).

National Impacts of the Regulatory Alternatives for MWC Emissions

The national annual emissions of PM, dioxins/furans, and MWC acid gases (SO_2 and HCl) under the baseline and each of the regulatory alternatives are shown in Table 9. Acid gas (SO_2 and HCl) emissions account for the great majority of the total emission reduction for all alternatives, except Regulatory Alternative I.

TABLE 9.—NATIONAL MWC EMISSIONS UNDER BASELINE AND THE REGULATORY ALTERNATIVES FOR MWC EMISSIONS

Regulatory alternative	MWC metals PM Mg/yr	MWC organics dioxin/furan kg/yr	MWC acid gases	
			SO_2 Mg/yr	HCl Mg/yr
Baseline	11,000	200	86,000	110,000
I	4,900	54	86,000	110,000
IIA	4,900	18	55,000	33,000
IIB	3,100	13	52,000	22,000
III	4,900	7	17,000	17,000
IV	3,100	2	14,000	6,000

As shown in Table 9, PM emissions at baseline are 11,000 Mg/year (12,500 tons/year). Reductions of 57 percent are achieved under Regulatory Alternatives I, IIA, and III, resulting in national emissions of about 4,900 Mg/year (5,400 tons/year). Slightly greater PM emissions reductions (73 percent relative to baseline) are achieved under Regulatory Alternatives IIB and IV since additional PM control must be added to small MWC plants to meet a PM level of 69 mg/dscm (0.030 gr/dscf). All alternatives would achieve a high degree of metals control.

Baseline emissions of dioxins/furans are 200 kg/year (440 lbs/year). Dioxin/furan emissions are reduced 73 percent under Regulatory Alternative I due to the incorporation of GCP at all MWC plants, and reductions of dioxins/furans are increased further under Regulatory Alternatives IIA, IIB, III, and IV since MWC acid gas control requirements become more stringent with each successive alternative. Under Regulatory Alternative IIB, national emissions of dioxin/furans for MWC plants would be reduced by 94 percent, resulting in emissions of 13 kg/year (29 lbs/year). The most stringent alternative (IV) represents a 99-percent reduction in dioxins/furan emissions relative to baseline emotions.

At baseline, national emissions of SO_2 and HCl are 86,000 Mg/year (95,000 tons/year), and emissions of HCl are 110,000 Mg/year (120,000 tons/year). No reductions in these MWC acid gases are achieved under Regulatory Alternative I. Increasing reductions of MWC acid gases are achieved under Regulatory Alternatives IIA, IIB, III, and IV as acid gas control requirements become more stringent. Under Regulatory Alternative IIB, based on DSI/ESP or DSI/FF Control for all MWC's, overall emissions of MWC acid gases are reduced by over 50 percent. National emissions of SO_2 are reduced to 52,000 Mg/year (56,900

tons/year), and emissions of HCl are reduced to 22,000 Mg/year (24,000 tons/year). Regulatory Alternatives III and IV, which are based on SD/FF for large MWC's, reduce SO_2 emissions by 80 to 85 percent and HCl emissions by 85 to 95 percent relative to baseline.

Table 10 shows the national total increased (over baseline) capital costs for retrofit air pollution controls, total increased annualized cost, and overall increased annualized cost per unit of MSW combusted for each of the regulatory alternatives. National increased costs given in this table are for existing MWC plants and plants that are operating or have commenced construction prior to proposal of the NSPS (subpart Ea proposed in today's **Federal Register**).

TABLE 10.—NATIONAL CONTROL COSTS UNDER THE REGULATORY ALTERNATIVES FOR MWC EMISSIONS

Regulatory alternative	Total Capital Cost (10^6)	Total annualized cost (10^6/yr)	Annualized cost per Mg MSW ($/Mg)
I	510	100	5.50
IIA	930	260	9.00
IIB	1,100	340	11.60
III	2,200	570	19.40
IV	2,400	640	21.80

As shown in Table 10, national total increased capital cost (relative to baseline) ranges from $510 million under Regulatory Alternative I to $2.4 billion under Regulatory Alternative IV. Total increased annualized cost ranges from $100 million/year under Regulatory Alternative I to $640 million/year under Regulatory Alternative IV. National costs of Regulatory Alternatives III and IV, which require retrofit of SD/FF controls, are approximately double the costs of Regulatory Alternatives IIA and IIB which represent a less stringent level of acid gas control based on retrofit of DSI and use of the existing upgraded ESP. Annualized cost per unit of waste combusted ranges from $5.50/Mg ($5.00/ton) for Regulatory Alternative I, to $11.60/Mg ($10.50/ton) for Regulatory Alternative IIB, to $21.80/Mg ($19.80/ton) for Regulatory Alternative IV. For perspective, tipping fees currently charged at MWC's for MSW received average about $44/Mg ($40/ton) of MSW and range from less than $10/Mg ($9/ton) to over $100/Mg (over $90/ton). Disposal costs incurred by the general public (including MSW collection, transportation, combustion, and ash disposal), however, typically range from $40/Mg ($36/ton) to over $100/Mg (over $90/ton) of MSW.

Economic Impacts of Regulatory Alternatives for MWC Emissions

Other studies have considered impacts on households to be "severe" if annual compliance cost per household exceeds $220, or if annual compliance cost per household exceeds 1 percent of median household income. Using these criteria, household impacts are not considered severe under any of the regulatory alternatives for MWC emissions. Under the most stringent alternative (Regulatory Alternative IV), over 90 percent of the household impacts were less than $60 per year, and less than 0.3 percent of median household income. None of the household impacts in the communities examined were above $100 per year or 0.5 percent of median household income under any of the regulatory alternatives for MWC emissions.

Economic impacts on government units (counties and municipalities) have been considered "severe" in other studies if both of the following two conditions are met: (1) The sum of total current debt service and additional debt service associated with compliance with the regulation as a percent of total general revenues exceeds 15 percent, and (2) the sum of the average sewerage and sanitation cost per household and the control cost per household as a percent of median household income exceeds 1 percent. Government units have also been considered to be severely affected if a third condition is met: (3) control costs as a percent of total general expenditures exceed 1 percent. Using these criteria, the analyses indicate that the increased costs imposed by any of the regulatory alternatives for control of MWC emissions do not result in severe economic impacts on government units.

The EPA believes that these studies, which were also used by EPA in assessing impacts of the proposed RCRA Subtitle D standards, provide a reasonable measure for evaluating impacts, since the studies are specifically designed to gauge impacts on households and governmental entities.

It is difficult to estimate the impact of cost increases on actual tipping fees at MWC's. This is because these fees, which are payments to MWC's for permission to dump MSW at the MWC, are set by local governments and may include subsidies. However, for our analysis, if it is assumed that all increased costs are passed through to the tipping fee, then tipping fees for the various size plants would increase by the amounts shown in Tables 7 and 8. Under the least stringent alternative (Regulatory Alternative I), tipping fees for the various MWC plants would increase by less than $1 to $13/Mg (less than $1 to $12/ton) of MSW combusted, and under the most stringent alternative (Regulatory Alternative IV), tipping fees would increase by $8 to $47/Mg ($7 to $43/ton) of MSW combusted. For comparison, the average MWC tipping fee is currently about $44/Mg ($40/ton) MSW, although tipping fees charged at individual sites can range from negligible to over $100/Mg ($90/ton) of MSW.

Partial Benefits Analysis

Table 11 presents partial total and incremental national benefits, benefit to cost ratios, and an implicit valuation of acid gas emission reduction under each of the five regulatory alternatives.

TABLE 11.—PARTIAL NATIONAL BENEFITS OF THE REGULATORY ALTERNATIVES FOR MWC EMISSIONS

Regulatory alternative	Partial benefits for PM control (10^6/yr)		Annualized costs (10^6/yr)		Overall B/G ratio	Incremental B/C ratio	Value of MWC acid gas control resulting in incremental B/C = 1.0 ($/Mg)
	Total	Incremental	Total	Incremental			
I	100	100	100	100	1.0	1.0	0
IIA	100	0	260	160	0.4	NA	1,600
IIB	130	27	340	80	0.4	0.3	3,200
III	100	0	570	230	0.2	NA	6,000
IV	130	0	640	300	0.2	NA	5,800

The benefits shown are only for emission reductions of PM. Benefits are calculated based primarily on reduced mortality, morbidity, and property deterioration. The benefits of PM emissions reduction are valued at $16,000/Mg ($14,000/ton). This figure is significantly greater than previous Agency estimates for PM. The EPA requests comment on the methodology and data used to derive these estimates.

Under Regulatory Alternative I, the incremental benefit to cost ratio is equal to 1, and incremental net benefits are equal to incremental costs. Under the remaining alternatives acid gas control is applied. The MWC acid gas (HCl and SO_2) emissions would have to be valued at $3,200/Mg ($2,900/ton) or more for the incremental benefit/cost ratio for Regulatory Alternatives IIA and IIB to be greater than 1. Acid gas emissions would have to be valued at more than $5,800/Mg ($5,300/ton) for the incremental benefit/cost ratio to exceed 1 under Regulatory Alternatives III and IV.

While EPA benefit estimates for SO_2 emissions reduction are generally about $1,250/tons HCl emission reduction benefits have not been qualified. Emissions reductions of HCl are greater than for other pollutants, and modeling indicates that some plants have ambient HCl concentrations that exceed the HCl welfare effects level of 3 $\mu g/m^3$ (1.3 gr/million dscf) (annual average) at baseline. Regulatory Alternatives IIA, IIB, III, and IV would reduce HCl emissions by from 50 to 95 percent, and reduce ambient concentrations to below the welfare effects level for all model plants. Despite these potential benefits, no monetary evaluation of HCl emissions is possible at this time. A dose-response function relating health and welfare effects to reduced emissions of HCl is not currently available. Thus, potential benefits associated with these alternatives in terms of reduced HCl emissions are not considered by the benefits analysis.

There are also other benefits not included in the analysis. Health effects benefits for dioxins/furans control were not included. Health effects benefits from reduced exposure to metals were also not included, but have been at least partially counted via the PM benefits analysis. In addition, benefits from reduced landfilling and reduced emissions of acid gases which contribute to acid rain have not been included in the analysis. The benefits analysis does not take into consideration the reductions of MWC organics, MWC metals, and MWC acid gases resulting from the materials separation requirements nor the nonair quality environmental benefits achieved by materials separation; however, these benefits are discussed in section V.

The EPA requests comment on all parts of the benefits analysis. The EPA is especially interested in comment regarding the benefit estimates for PM and SO_2, the appropriate benefits for HCl and dioxin/furan control, and other benefit(s) not included in this analysis.

Regulatory Alternative Selected.—Under the proposed guidelines, the selected alternative for control of MWC emissions from existing MWC's encompasses features of Regulatory Alternatives IIB and III. The selected alternative is based on the determination that the combination of GCP and an ESP to control PM emissions to a level of 69 mg/dscm (0.030 gr/dscf) is best demonstrated technology for controlling MWC emissions from existing MWC's at small MWC plants with the aggregate capacities of up to 225 Mg/day (250 tons/day) of MSW.

For MWC's located at large MWC plants with aggregate capacities to combust greater than 225 Mg/day (250 tons/day) but less than or equal to 2,000 Mg/day (2,200 tons/day), the selected alternative is based on the determination that the combination of GCP and DSI/ESP or DSI/FF is best demonstrated technology for controlling MWC emissions from existing MWC's in this size range.

The alternative selected for control of MWC emissions from existing MWC's at regional MWC plants with aggregate capacities greater than 2,000 Mg/day (2,200 tons/day) is based on the determination that the combination of GCP and SD/FF is best demonstrated technology for controlling MWC emissions from MWC's in this very large plant size range.

While the emission levels are based on performance of the technologies, the owner or operator of an MWC could use other technologies to comply with the emission guidelines. In particular, EPA will continue to investigate performance of SD/ESP systems after proposal.

The regulatory alternatives selected for each of the three size categories of MWC's represent best demonstrated technology considering cost, nonair quality health, and environmental impacts and energy requirements. The combinations of control technologies identified as best demonstrated technology have been demonstrated at MWC's in the U.S., and no severe cost or economic impacts are expected to result from their application.

Relative to the regulatory baseline, the alternatives selected achieve over 90 percent reduction in MWC organic emissions, about 70 percent reduction in emissions of PM, and over 50 percent reduction in emissions of MWC acid gases. The annualized costs for these alternatives for controlling MWC emissions are about $10.90/Mg ($9.90/ton) of MSW, which is comparable to the cost increase for the NSPS proposed in today's **Federal Register**.

Application of controls based on SD/FF were chosen for regional existing MWC plants with capacities above 2,000 mg/day (2,200 tons/day) since these plants have very large MWC emissions potential and they account for about 25 percent of the total existing MWC capacity. As shown in Table 12, 8 plants currently operating and 7 plants under construction would be subject to the regional MWC plant guidelines. The average age of the eight currently opeating regional MWC's is about 4 years, so they are very new and will likely be in service for several decades. In addition, 5 of these 15 existing regional MWC's already either have installed or are currently planning to install SD/FF emission control systems. Most of the plants without SD/FF control have provided space to retrofit a SD/PM control system. The EPA requests comments concerning the proposal to require more stringent emission controls (i.e., based on GCP and SD/FF) for regional MWC's. Comments on the specific level of dioxion/furan control that should be specified in the guideline are also requested. As mentioned previously, a range of 5 to 30 ng/Nm^3 (2 to 12 gr/billion dscf) is being proposed, while additional data from MWC's with SD/FF systems are being collected and analyzed. At promulgation, a single emission level will be adopted. Another control option that could be considered for regional MWC's is a SD/ESP system. However, as previously discussed, available data indicate performace of these systems is not as good as SD/FF performance. The EPA will continue to investigate performance of SD/ESP systems after proposal, and requests comments on this control option. The EPA solicits comment on the proposed 2,000 Mg/day [2,200 tons/day] cutoff for the very large MWC's (regional MWC's) and whether another cutoff level may be more appropriate.

TABLE 12.—EXISTING MWC'S LARGER THAN 2,000 MG/DAY CAPACITY

City/County	State	Capacity (Mg/day)	Acid gas Control	Best acid gas control (SD/FF)
Operating				
Baltimore (Resco).	MD	2,050	No	No.
Bridgport	CT	2,050	Yes	Yes.
Columbus.	OH	2,750	No	No.
Dade County.	FL	2,750	No	No.
Detroit	MI	3,000	No	No.
Indianapolis.	IN	2,150	Yes	Yes.
Pinellas County.	FL	2,750	No	No.
Westchester County	NY	2,050	No	
Under Construction				
Bergen County (Ridgefield).	NJ	2,750	Yes	No.
Broward County (South).	FL	2,050	Yes	No.
Delaware Co.	PA	2,450	Yes	Yes.
Essex County.	NJ	2,050	Yes	No.
Fairfax	VA	2,750	Yes	Yes.
Hempstead.	NY	2,050	Yes	Yes.
Honolulu	HI	2,550	Yes	No.

Although additional reductions of about 5 percent for MWC organic emissions, and 30 percent for MWC acid gases could be achieved by application of SD/FF systems to all MWC's at plants with aggregate capacities above 225 Mg/day (250 tons/day) of MSW (Regulatory Alternatives III and IV), the cost impacts would be unreasonable. The average cost (over baseline) of retrofitting SD/FF systems on typical large MWC plants (MWC plants with aggregate capacities greater than 225 Mg/day [250 tons/day] but less than or equal to 2,000 Mg/day [2,200 tons/day] of MSW) would be about $23/Mg ($21/ton) of MSW compared to an average of about $10/Mg ($9/ton) for retrofitting DSI alone. Thus, the average cost for application of DSI systems to large MWC plants is close to the national average disposal cost increase for the selected alternative ($10.90/Mg [$9.90/Mg] of MSW), but the average cost of retrofitting SD/FF systems would be more than twice this amount. In addition, application of SD/FF systems to all MWC's at plants with capacities above 225 Mg/day (250 tons/day) of MSW could roughly double the total national annualized cost (see Table 10).

The costs for retrofitting SD/FF systems on large MWC plants are high because fewer than 10 percent of these plants already have SD/FF systems, so a large number of plants would have to remove their existing ESP's, and retrofit both a SD and a FF. Under the selected alternative, large plants could use or upgrade existing ESP's, and would only have to retrofit DSI acid gas control. Also, MWC's at plants in this size range tend to be older than those at regional MWC's. The average age of MWC's at large plants is about a decade, and some have been in service for 2 to 3 decades. Since these plants tend to be older than the regional plants, there are likely to be greater retrofit constraints.

The selected regulatory alternative includes GCP and PM control but no acid gas control for small MWC plants with capacities of up to 225 Mg/day (250 tons/day) of MSW. Although additional reductions of about 3 percent for MWC organic emissions and about 8 percent for MWC acid gases could be achieved by application of acid gas controls to small MWC plants, the cost impacts would be unreasonable. As shown in Figure 1, disposal costs (over baseline) for applying DSI/ESP controls increase greatly for small MWC plants. The increased disposal cost for adding DSI/PM control would be as much as $22 to $58/Mg ($20 to $53/ton) of MSW for typical small MWC plants compared to an increase of about $4 to $17/Mg ($4 to $15/ton) of MSW for most large MWC plants. Figure 2 shows that application of GCP and PM controls to small plants can result in disposal cost increases of about $5 to $28/Mg ($4 to $25/ton) of MSW; however, these increases are not as great as those resulting from application of acid gas controls and are more comparable to the $/Mg cost increases incurred by large plants under the selected alternative. Application of GCP and PM control would result in good control of MWC organic and MWC metals emissions from small plants. Considering the cost impacts and relatively small potential emissions reduction, EPA believes that control of acid gas emissions from small MWC plants would be unreasonable, and that application of GCP and PM control is best demonstrated technology.

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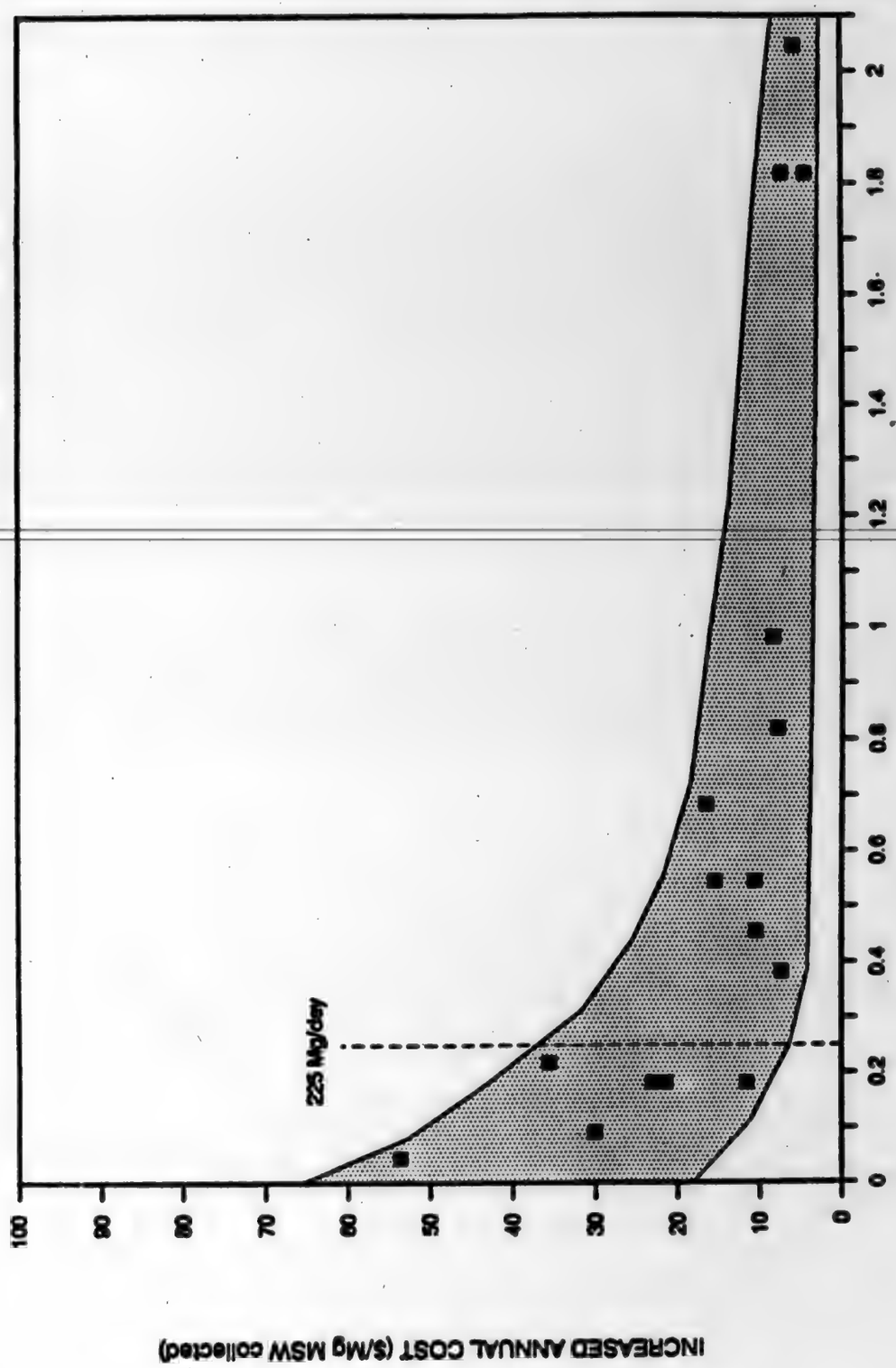

Figure 1. Increased annual cost of GCP and DSI/ESP control vs. MMC plant size for existing MMC's.

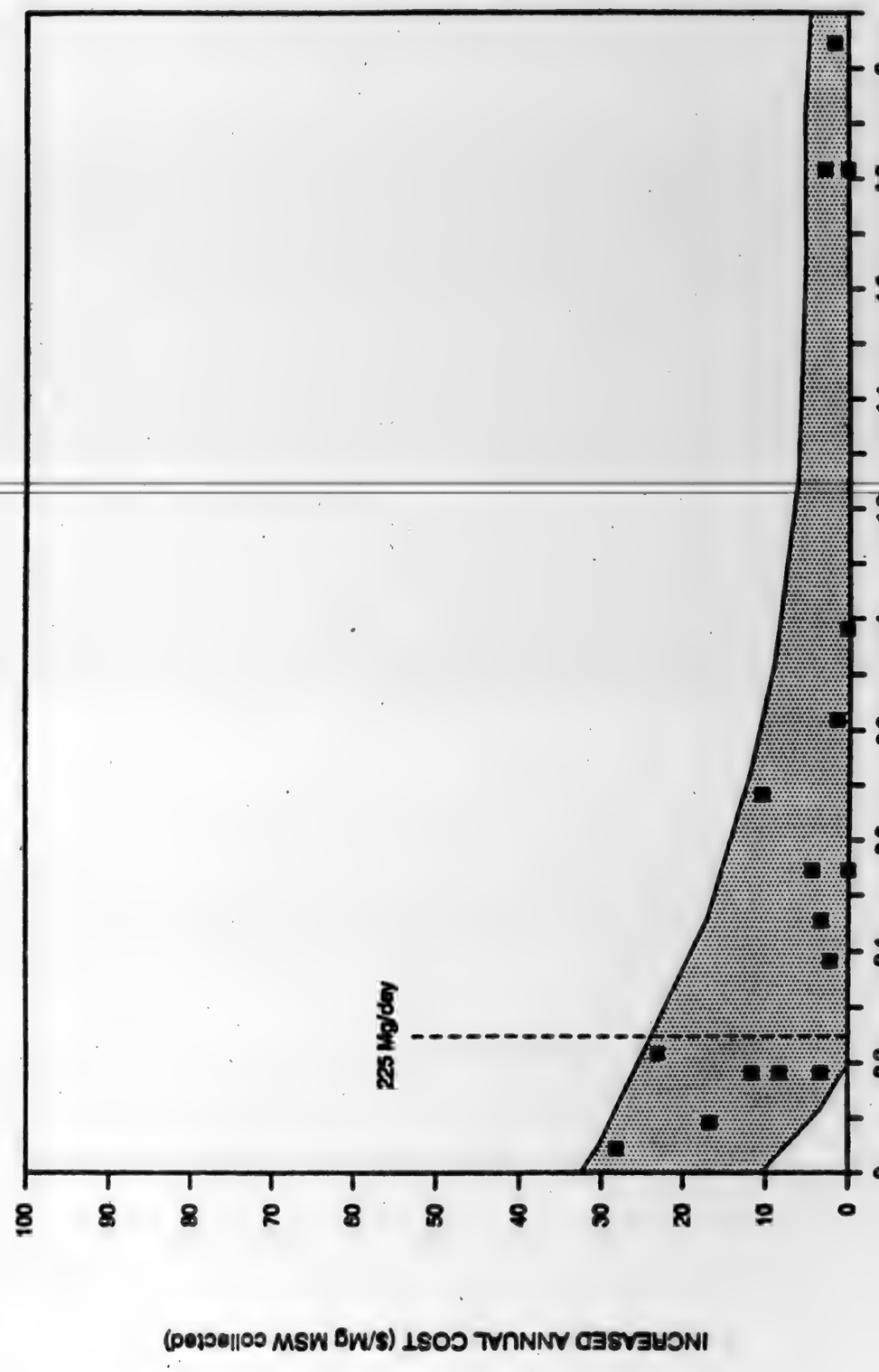

Figure 2. Increased annual cost of GCP and PM control vs. MWC plant size for existing MWC's.

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A mercury emission guideline was also considered, but is not proposed today. As explained previously, available data indicate wide variation in mercury collection efficiency and emission rates, even for MWC's with GCP and SD/FF controls. The reasons for this variability and the mechanisms affecting mercury emissions and collection are not understood. Therefore, an emission level cannot be specified at this time. The EPA and industry are establishing a joint task force to investigate mercury emissions and control. The results of this investigation will be used to determine what action is appropriate with regard to mercury issues.

Although today's proposal does not include a mercury emission guideline, it does include a prohibition on the combustion of household batteries as part of the materials separation provisions. As discussed in Section V, household batteries (including mercury oxide, alkaline manganese, silver oxide, and zinc carbon batteries) are thought to be a major source of mercury in MSW, and removal of these batteries would reduce mercury emissions.

At promulgation, based on information that becomes available and the results of the task force investigation, it will be decided whether a mercury emission guideline is appropriate. It will also be decided whether it is appropriate to maintain the prohibition on combustion of household batteries (possibly in combination with a mercury emission level) or whether the prohibition should be removed.

G. Selection of Format for the Proposed Guidelines

Several formats could be selected for regulating MWC emissions. Section 111 of the CAA requires that standards of performance be prescribed for existing sources unless, in the judgment of the Administrator, it is not feasible to prescribe or enforce such standards of performance.

For purposes of regulating MWC emissions, the format selected for the proposed guidelines would be a combination of emission limits, percent reduction guidelines, and operational and work practice guidelines to ensure control of each subclass of MWC emissions. The specific format of the guidelines proposed for each pollutant or operational practice and the reasons for selection are discussed below.

MWC Organics

Under the proposed guidelines, MWC organic emissions are measured in units of total tetra- through octa-chlorinated dibenzo-p-dioxins (CDD) and chlorinated dibenzofurans (CDF). To arrive at the total CDD/CDF emission level, the emissions of each tetra- through octa-CDD and CDF homologue are added together. This calculation results in total CDD/CDF emissions in units of ng/Nm^3.

Another way of reporting CDD/CDF emissions is in units of toxic equivalents. This approach involves the use of toxic equivalence factors (TEF), which are assigned to specific CDD's and CDF's to express toxicity in terms of an "equivalent amount of 2,3,7,8-TCDD." If toxic equivalents were used as the basis for the emission limits, the emission of each CDD/CDF isomer or homologue would be multiplied by its TEF and the products added together.

The total CDD/CDF emission level format was selected for several reasons. Studies have shown a direct relationship between total CDD/CDF and toxic equivalency, so reduction in dioxin/furan-related health risks would be achieved using either approach. A problem with the use of a toxic equivalency approach is that there are several different TEF schemes in use worldwide and the factors for individual CDD's/CDF's are subject to change. In addition to the TEF scheme that was adopted by EPA in 1987 (EPA/5625/3–87–012), several other organizations have developed their own schemes (e.g., Switzerland, New York, California, Food and Drug Administration). Furthermore, EPA is considering the adoption of a new International TEF (I–TEF) scheme, but like the current EPA factors, this new set of TEF's will be considered interim and will continue to be revised as necessary.

The disadvantage to using a toxic equivalent scheme for the emission guidelines is that the guidelines would need to be revised by EPA as TEF's are updated. Setting an emission level for total CDD/CDF is a more simple and straightforward approach and is entirely in keeping with the technology-based regime of section 111. Because the guidelines proposed today are technology-based, EPA considers the total CDD/CDF approach more appropriate for specifying the emission levels in these guidelines.

MWC Metals

Establishing emission limits for each of the numerous metals emitted from MWC's was considered but was not adopted as a reasonable format for regulating MWC metals because the types and amounts of metals emitted from an MWC are highly variable and site-specific. In addition, this method might not be practical economically because of the expense of monitoring and measuring for specific metals. Establishing an emission limit for PM as an indicator of all the metals emissions from MWC's ensures adequate control of metal emissions. Therefore, the format selected for regulating MWC metals is a PM emission limit (expressed as mg/dscm or gr/dscf).

Because a continuous monitoring methodology does not exist for measuring PM emission rates directly, an opacity guideline was also selected to provide an indirect means of monitoring PM emissions. The format selected for regulating opacity is a percentage format.

MWC Acid Gases

For SO_2 or HCl emissions, the emission limit is a combined weight- or volume-percent reduction guideline or a volume concentration guideline.

A percent reduction guideline was selected because it is the most accurate and representative measure of the performance of acid gas control systems. A percent reduction guideline is generally appropriate for MWC's. However, in cases where inlet SO_2 or HCl levels are very low and the specified percent reductions would result in concentration levels below 30 ppmv SO_2 or 25 ppmv HCl, these percent reductions may not be achievable because of limitations in SO_2/HCl emission measurement control loop feedback systems. Therefore, the proposed SO_2 emission limits would require either a percent reduction in SO_2 emissions or a 30 ppmv SO_2 outlet concentration, whichever results in the higher emission concentration level, using a daily 24-hour average. Similarly, the HCl emission limits would require either a percent reduction in emissions or a concentration level of 25 ppmv.

Good Combustion Practices

The format selected for GCP is a mix of several operational and work practice guidelines since measurement technologies for measuring and continuously monitoring MWC organic emissions leaving the MWC are not available or are not practical. These operational and work practice guidelines consist of limits on CO emissions, MWC load, flue gas temperature at the inlet to the PM control device, and operator certification and training requirements. Each of these items can be related to the level of MWC organic emissions in the gases leaving the MWC, and compliance with the requirements associated with each of these items can easily be monitored.

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H. Performance Test Methods and Monitoring Guidelines

The performance testing and emission monitoring guidelines included in the proposed guidelines would apply to all MWC's subject to the proposed guidelines for MWC organics, MWC metals, and MWC acid gases, except as noted below. An initial compliance test would, unless otherwise specified in the guidelines, consist of three separate runs using the applicable test method, and the arithmetic mean of the three runs shall be used to determine compliance. The same test methods would be used under the guidelines and the NSPS.

All emission guidelines for MWC emissions are corrected to 7 percent O_2 (dry basis). Some MWC's may have carbon dioxide (CO_2) monitors rather than O_2 monitors, or may prefer to correct to an equivalent percent CO_2. Owners or operators may request an equivalent emission limit corrected to CO_2 rather than O_2. Generally, a correction to 7 percent O_2 is equivalent to a correction to 11 or 12 percent CO_2. However, there is not an exact conversion that is universally applicable because of variations in the carbon content of MSW. The owner or operator making the request must establish the relationship between O_2 and CO_2 for an individual MWC during compliance testing.

MWC Organic Emissions

An initial performance test would be required for all MWC's to determine compliance with the proposed dioxins/furans emission guideline. The emission level pertains to total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans. The performance test would be conducted in accordance with Method 23. Following the initial performance test, an annual performance test would be required for all existing MWC's. However, if three performance tests in a row indicate compliance with the dioxin/furan limit, the guidelines provide that an MWC would be exempt from the annual performance test for the next 2 years. However, at a minimum, each MWC must be tested every 3 years.

MWC Metals

An initial performance test would be required for all MWC's to determine compliance with the proposed MWC metals (i.e., PM) emission limit. The performance test would be conducted in accordance with Method 5. Method 1 would be used for determining the number and location of sampling points. Method 3 would be used for flue gas analysis. All performance tests would consist of a minimum of three runs using Method 5 conducted under representative operating conditions (e.g., full load). The average PM emission rate of the three runs would be used to determine compliance.

Following the initial performance test, an annual performance test would be required for all existing MWC's. However, if three performance tests in a row indicate compliance with the PM limit, an MWC would be exempt from the annual performance test for the next 2 years. However, at a minimum, each MWC must be tested every 3 years.

Under the guidelines, compliance with the opacity limit would be determined using Method 9 for visible emissions. As stated in section 60.11, for the purposes of determining initial compliance, the minimum total time of observations would be 3 hours (30 six-minute averages). A transmissometer would be installed to monitor continuously the opacity and to alert MWC owners and operators of any occurrences of excess emissions requiring corrective action. Opacity data would be recorded and reduced to 6-minute averages using Method 9.

MWC Acid Gases

The proposed emission guidelines for MWC acid gases include provisions for both SO_2 and HCl emissions.

Sulfur Dioxide.— Continuous monitoring of SO_2 emissions would be required for all existing MWC's at large and regional MWC plants to demonstrate continuous compliance with the emission guidelines. Installation and operation of continuous emission monitoring systems (CEMS) at the inlet and outlet of the SO_2 control device would be required for MWC's to demonstrate compliance with the percent reduction or outlet concentration requirement. Those MWC's that elect to demonstrate continuous compliance solely with the 30 ppmv SO_2 emission limit may install and operate CEMS only at the outlet of the control device. Data collected by the CEMS would be used to determine compliance with the SO_2 percent reduction requirements and emission limits.

Compliance with the SO_2 percent reduction guideline and emission levels would be determined using a 24-hour daily (block) average based on CEMS. All valid data in each 24-hour period must be used to determine compliance. The first 24-hour average percent reduction and emission values calculated after initial start-up would serve as the initial performance test required under section 60.8.

Hydrogen Chloride.—Although EPA is requiring SO_2 monitoring as an indication of performance of control of MWC acid gases, the Agency is also proposing to require periodic monitoring of HCl to corroborate SO_2 monitoring as an indicator of HCl emission control. An initial performance test for all existing MWC's at large and regional MWC plants would be required under the guidelines to demonstrate compliance with the proposed HCl emission levels. Compliance with the HCl percent reduction requirements and emission limits would be conducted in accordance with Method 26. Following the initial performance test, an annual performance test would be required for all MWC's at large and regional MWC plants. However, if three performance tests in a row indicate compliance with the HCl guideline, an MWC may skip the annual performance test for the next 2 years. At a minimum, each MWC at a large or regional MWC plant must be tested every 3 years.

Guidelines for CEMS

When establishing guidelines that require the use of CEMS for determining compliance, it is necessary to consider that monitors undergo periods of downtime and, thus, are not available 100 percent of the time. Well-maintained CEMS have little downtime. However, minimum data requirements would be established that limit the amount of data permitted to be lost before use of an alternative monitoring method is required. These minimum data requirements would provide the owner or operator with time to maintain and calibrate the CEMS, correct minor malfunctions, and, if necessary, arrange for an alternative monitoring method. The minimum data requirements also would prevent the possibility of a designated facility operating for unreasonably long periods without collecting emission data.

Under the guidelines, CEMS data would be collected during 75 percent of the MWC operating hours per day for 75 percent of the operating days per month. These requirements apply to all CEMS needed to determine compliance with the guidelines (SO_2, opacity, CO, O_2, or CO_2). Collection of this amount of data has been determined to be achievable using a well-operated and properly maintained CEMS. However, this requirement is separate from the compliance test requirements where all valid data would be used to determine compliance even where more than 75 percent of the data is available (e.g., no valid data may be deleted from the calculations to determine compliance).

From an enforcement point of view, not operating CEMS is equivalent to not conducting a required performance test.

In order to ensure that CEMS provide accurate data, daily calibration drift checks and quarterly accuracy audits would be required to be performed on each CEMS. These quality assurance checks would be performed in accordance with 40 CFR part 60, Appendix F, Procedure 1, "Quality Assurance Requirements for Gas Continuous Emission Monitoring Systems Used for Compliance Determination." Appendix F, Procedure 1 applies to all CEMS used for continuous compliance determination under 40 CFR Part 60, Subpart Ca.

Combustor Operating Practice Guidelines

As part of GCP, to minimize reduction in MWC organic emissions from the combustor, CO emission limits and specifications for MWC load level and flue gas temperature at the PM control device inlet are proposed.

Carbon Monoxide.—The CO emission guidelines are specified for each common type of MWC. Each MWC would be required to install a CEM at the combustor outlet to monitor continuous compliance with the applicable CO emission limit. Compliance would be determined using 4-hour block averages. All valid data would be used to compute each average.

Operating Load.—An operating load guideline level of 100 percent of full demonstrated load is specified for all MWC's that generate steam. The full load level would be defined during the initial compliance test, but could be raised if an MWC owner or operator can demonstrate during a subsequent performance test that all other applicable guidelines for MWC organics, MWC metals, MWC acid gases, and the CO emission limit can be met while operating at a higher load.

All MWC's subject to load limits would be required to install monitors to continuously measure steam flow, and compliance would be determined by calculating 1-hour averages. This requirement would not apply to MWC's that do not generate steam.

Temperature. Temperature would be continuously monitored at the inlet to the PM control device to determine compliance with the 230°C (450 °F) temperature limit. A block 4-hour average would be used to determine compliance.

Operator Certification and Training

Operator certification and site-specific training of MWC operating personnel would also be required by the proposed guidelines. There are no test methods pertinent to operator training, but all MWC plants would have to keep records of certification and training as described in section IV.I.

I. Reporting and Recordkeeping Guidelines

The proposed guidelines would require owners and operators of all designated facilities to submit notification of the anticipated date of demonstration of the initial performance test and performance evaluation of the CEMS.

After the initial performance test has been completed, the proposed guidelines would require the submission of quarterly compliance reports for the combustor operating parameters that are continuously monitored (CO, load level, and flue gas temperature) for all MWC's. In addition, quarterly compliance reports for SO_2 would be submitted for all MWC's at large and regional MWC plants. Quarterly excess emission reports for opacity must also be submitted for all MWC's. The proposed guidelines would also require that annual compliance reports for dioxins/furans and PM be submitted for all MWC's. Annual compliance reports for HCl would also be submitted for all MWC's at large and regional MWC plants. However, if three performance tests in a row indicate compliance with the dioxin/furan, PM, or HCl emission limits, an MWC would be exempt from the annual tests for that pollutant and a simplified annual report may be submitted for the next 2 years.

These quarterly and annual reports would include, as applicable for the period covered by the report: (1) Any period where emissions exceeded guidelines, or where values of monitored operating parameters were in violation of the guidelines; (2) results of all annual performance tests; (3) all 24-hour average SO_2 emission rates and percent reduction values (except for MWC's at small MWC plants) and 4-hour block average CO emission rates calculated during the reporting period; and (4) identification of any periods for which data were excluded from these calculations. In addition, each quarterly report would include the results of the daily CEMS drift tests and quarterly accuracy determinations as required under Appendix F, Procedure 1.

If the minimum amount of data were not obtained for a 24-hour average period, reasons for failure to obtain sufficient data (e.g., CEMS malfunction), and a description of corrective action taken would also be included, along with all information used to calculate the 24-hour average values. Also, if the minimum amount of data (75 percent of the operating hours per day and 75 percent of operating days per month) were not obtained, this must be included in the quarterly reports and reasons specified.

The proposed guidelines would also require that certain types of records be maintained. Records to be maintained include all data outputs of the CEMS; all quarterly and annual reports submitted under this rulemaking; and all records required under Appendix F, Procedure 1. The required operating manual must be updated annually and be kept readily accessible. Records of operator certification and training of MWC operating personnel are required. All required records would be maintained for 2 years following the date of such records, after which they could be discarded.

The reporting and recordkeeping requirements in the proposed guidelines are necessary to provide enforcement personnel with the data and information necessary to ensure that existing MWC's achieve continued compliance with the proposed guidelines. At the same time, these requirements would not impose an unreasonable burden on MWC owners or operators.

J. Malfunction Provision

The MWC guidelines being proposed today apply at all times, except during periods of startup, shutdown, and malfunction. A special provision is being added to these proposed guidelines which places a limit of 3 hours per occurrence on the time that a plant can claim an exemption from the guidelines due to start-up, shut-down, or malfunction. This provision does not change the definitions of start-up, shut-down, and malfunction in the General Provisions nor does it change any of the requirements in the General Provisions. Malfunction is defined as "any sudden and unavoidable failure of air pollution control equipment or process equipment or of a process to operate in a normal or usual manner. Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions" (40 CFR 60.2). As specified in 40 CFR 60.7, records must be maintained of the occurrence and duration of any start-up, shut-down, or malfunction, any emission levels occurring during such times, the nature and cause of any malfunction, and corrective action taken or preventive measures adopted. These records must support a determination, on a case-by-case basis, that a period of

emissions above the allowable limit should be considered as start-up, shut-down, or malfunction. The compliance

any malfunction would take more than 3 hours to repair, the MWC would shut down to complete the repair.

V. Rationale for Guidelines for Materials Separation

emissions above the allowable limit should be considered as start-up, shut-down, or malfunction. The compliance provisions in 40 CFR 60.8 also specify that "at all times, including periods of start-up, shut-down, and malfunction," owners or operators shall operate and maintain the designated facility and air pollution controls to minimize emissions.

Most MWC's are base-loaded and operate either continuously or on a Monday through Friday schedule, so the time spent to start up and shut down these MWC's is minimal, with only one start-up and shut-down per week. Furthermore, the proposed MWC guidelines apply only while MSW is being combusted. Since most MWC's fire fuel oil or natural gas during warm-up and then switch to firing MSW once the MWC is at operating temperature, the proposed MWC guidelines usually would not apply during warm-up, but would become applicable as soon as MSW is introduced into the MWC. Similarly, shutdowns would not take more than 3 hours while MSW is being fired.

Due to the configuration of most control systems, maintenance can be performed on line to repair most malfunctions. In some cases, such as replacing a rotary atomizer or spray nozzle, the load must be reduced while maintenance is being performed, but the time spent operating at reduced load would be short. For DSI/ESP or DSI/FF systems (which are likely to be used by many plants under the proposed guidelines) most repairs to the DSI as well as to the ESP or FF system can also be performed on-line, but some ESP malfunctions may require a shutdown. If any malfunction would take more than 3 hours to repair, the MWC would shut down to complete the repair.

K. Compliance Times and Enforcement Considerations

The amount of time required for an existing MWC plant to retrofit its current control system to comply with the proposed emission guidelines will depend on the individual characteristics of the plant. Some important plant characteristics are the MWC design type, the MWC size, the controls currently in place, and the amount of available space near the MWC. These characteristics will influence such considerations as the time needed to design the retrofit system, the time delay anticipated when ordering necessary equipment, and time needed to construct, install, and start up the retrofitted system.

As an example, a typical large MWC plant with two MWC's (each with 910 Mg/day [1,000 tons/day capacity]) would have to install dry sorbent injection equipment to reduce both HCl and SO_2 emissions by 50 percent. Assuming ESP's are already in place that reduce PM emissions to 69 mg/dscm (0.030 gr/dscf), downtime is expected to be 3 months per MWC. Total compliance time is expected to be about 19 months based on 7 months for front-end engineering and 12 months from the time the contract is awarded until startup. If significant space limitations exist, an additional 6 months (or a total of 25 months) could be required. Compliance times, therefore, should normally be under 3 years. Thus, a compliance time of 3 years is included in the emission guidelines.

V. Rationale for Guidelines for Materials Separation

A. Background

Currently, the U.S. generates about 150 million Mg (160 million tons) of municipal solid waste (MSW) per year, and under current waste management practices, this amount is expected to grow steadily through the year 2000. Much of the waste stream is attributed to disposable products that are used for a short time and thrown away. These products include "convenience" packaging suited to a fast-paced lifestyle, such as fast food containers and microwavable food packaging. Figure 3 shows the percent contribution (on a mass basis) of each of the major classes of waste materials to the total MSW stream. As shown in Figure 3, more than 40 percent of the solid waste stream consists of paper and paper products discarded in houses, offices, and factories. Yard waste makes up another 18 percent of the total. The other major components are metals (8.7 percent), glass (8.2 percent), plastics (6.5 percent), and food wastes (7.9 percent). At present, about 80 percent of the total MSW is landfilled, about 10 percent is combusted in municipal waste combustors (MWC's), and about 10 percent is recycled. The "Agenda for Action" indicates that by 1992, 25 percent of the MSW stream should be diverted by source reduction and recycling. Also, the percent landfilled should decrease from 80 percent to 55 percent, and the amount of MSW combusted in MWC's should increase from 10 percent to 20 percent.

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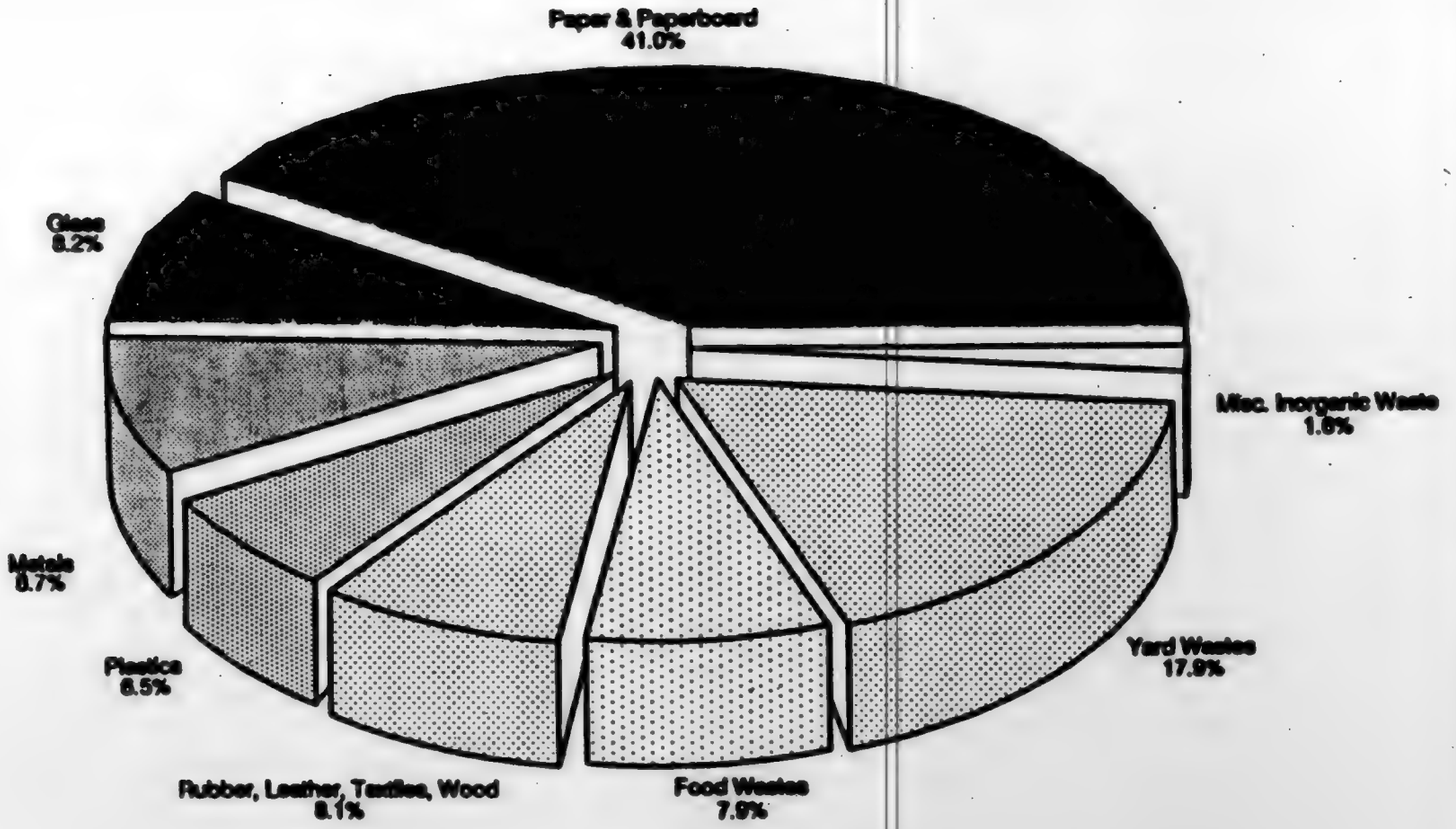

Figure 3. Gross discharges, by weight, of MSW materials.

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B. Selection of Regulatory Alternative for Materials Separation Selection of Alternative

As discussed in this proposal, materials separation refers to the separation and removal of certain components from MSW prior to combustion in an MWC. In many cases, materials separated from MSW can be recycled, thereby preserving natural resources. Recycling these materials would also reduce the amount of waste to be combusted or landfilled, and could provide funds ($) to offset separation costs. By reducing the amount of waste to be combusted, overall MWC emissions can be reduced. In addition, emissions of specific constituents of MWC emissions can be reduced by separating certain classes of waste materials. Materials separation technology is applicable to all types of MWC technology including, but not limited to, mass burn MWC's, refuse derived fuel-fired (RDF) MWC's, and modular MWC's.

The proposed guidelines would require that all MWC's achieve an overall 25 percent or greater reduction (annual average by weight) of MSW through separation for recovery of one or more of the following materials: paper and paperboard; ferrous metals (including white goods); nonferrous metals; glass; plastics; household batteries; and yard wastes. In calculating the 25 percent weight reduction, a maximum credit of up to 10 percent would be allowed for yard waste separation. The remainder of the 25 percent would come from the other listed materials.

The proposed guidelines would also prohibit the combustion of large lead-acid vehicle batteries (wet lead-acid batteries weighing more than 5 kg [11 lbs] that are manufactured for use in motor vehicles, vessels, or aircraft, or any other use). A program to remove household batteries prior to combustion would also be required.

Separation of the materials discussed above may be achieved by mechanical or manual separation at the MWC, or off-site mechanical or manual separations, or by community source reduction or materials separation (recycling) programs, or a combination thereof.

Processing of MSW to remove these types of materials prior to combustion yields benefits in terms of reduced emissions potential for all components of MWC emissions including: MWC organics, MWC metals, and MWC acid gases. Emissions of nitrogen oxide (NO_x) would also be reduced. In addition, MWC steam generation efficiency and MWC operating availability have been shown to increase at MWC's that are practicing materials separation.

In addition to the expected emissions reduction achieved by materials separation, additional nonair quality environmental benefits are also expected, including improved MWC ash quality and reductions in pollution and energy requirements associated with extracting and processing virgin materials. The reduction in emissions will also contribute to a reduction in global warming.

The Agency considers recovery of materials from the MSW stream to be consistent with the goals and principles of its policy on pollution prevention (54 FR 3845). In particular, the proposed materials separation provisions would encourage pollution prevention through source reduction and recycling. Community separation would be used in many areas to comply with these provisions, resulting in increased public participation in the pollution prevention program. Furthermore, involving the public in materials separation and recycling programs may result in increased environmental awareness and development of an environmental ethic by the general public. This would have long-range environmental benefits.

The overall 25 percent weight reduction level is consistent with the goals of the "Agenda for Action," the Agency's overall strategy for dealing with MSW. The "Agenda for Action" goals include reducing the Nation's total MSW stream by 25 percent through source reduction and recycling by 1992. The overall percent reduction format included in the proposal will allow MWC's flexibility to tailor their program to fit regional markets for recovered materials and seasonal variations in MSW composition.

Selection of Implementation Schedule

The proposed guidelines specify that MWC's be in compliance with the materials separation provisions (i.e., a materials separation program must be implemented) by December 31, 1992. Time will be required for existing MWC's to design and implement a separation program. This may include design, purchase, and installation of on-site separation equipment, and/or negotiations and development of contracts with third parties to implement off-site community separation programs. Putting a program in place to achieve the separation requirements is a relatively complex process which could take up to 2 years, and the December 31, 1992, date provides this amount of time after promulgation of the guidelines to design and implement a materials separation program. This date is also consistent with the "Agenda for Action," which called for achieving a 25 percent MSW reduction by 1992.

The initial demonstration of compliance with the materials separation provisions is required at the end of the second calendar year following implementation of materials separation (i.e., the end of calendar year 1994).

Whenever any new process or control system is first started, it frequently does not perform exactly as expected. Despite careful design and planning, time is often needed to observe actual performance and make the necessary adjustments or refinements to the system to achieve design performance. This is true whether the new system is a piece of air pollution control equipment or a community materials separation program.

The General Provisions in 40 CFR 60.8 recognize this fact by allowing up to 180 days after start up of an affected facility for conducting the initial performance test. This allows time to test and adjust the air pollution control hardware and its operation before conducting a stack test that is submitted to the enforcement agency to demonstrate compliance.

Similarly, time is likely to be needed to see how well a specific materials separation program is performing and make changes in the program, if necessary, to comply with the materials separation provisions. Whether the program involves on-site or off-site mechanical or manual processing facilities, curbside materials separation programs, or some combination, it is difficult to predict in advance the actual percent separation that a specific program will initially achieve. The owners or operators of MWC's may very well need time to measure the actual performance of the new systems or programs, determine how they can best be operated, and make various changes or adjustments to the program before initial compliance is demonstrated.

Because of seasonal variation in the content of MSW, the guideline for 25 percent weight reduction of MSW through separation is based on an annual average. Therefore, MWC owners and operators will not know the percent separation their new system or program is achieving on an annual average basis until the end of the first year of operation; a few months of operation may not be descriptive of annual performance. In order to allow them time to adjust or fine-tune their materials separation program to ensure compliance, the materials separation provisions provid.. the time necessary to determine the performance of the materials separation program on an annual average basis before compliance must be demonstrated. Compliance demonstration is, therefore, required at the end of the second calendar year of operation of the materials separation program, which is December 1994.

C. Rationale for Materials Separation Guidelines

Recovery of each of the targeted categories of materials from the waste stream prior to combustion is expected to yield specific air emissions, energy, and collateral benefits. The Agency expects that separation of the specified categories of material would yield the following benefits:

Paper and Paperboard

Reductions in MWC metal emissions would result from reduced combustion of paper impregnated with lead-based inks and mercury-based fungicides. Also reduction in carbon dioxide (CO_2) concentration would result due to the decreased mass of paper combusted and the increased amount of forest due to reduced timber demand for virgin paper production. A reduction in MWC acid gas emissions would result from reduced combustion of paper impregnated with chlorine-based bleach (i.e., hydrogen chloride [HCl]) and reduced combustion of sulfur-laden paperboard (i.e., sulfur dioxide [SO_2]). Indirect reduction in CO_2 and other emissions would also result from reduced energy consumption resulting from increased paper and paperboard recycling and the corresponding reduction in virgin paper and paperboard production.

Ferrous Metals

Reductions in MWC metal emissions (especially lead) would result from separation of ferrous materials assembled with lead solder or plated with lead, zinc, or cadmium. Emissions from coke oven batteries would be reduced based on increased use of recycled steel, thereby reducing benzene-soluble organic emissions. Also an indirect reduction in emissions associated with energy consumption would result from increased ferrous metal recycling and the corresponding reduction in virgin steel production.

Nonferrous Metals

Since nonferrous metals (aluminum cans in particular) are readily recyclable, not only would MWC emissions be reduced through separation, but reductions in energy consumption would also result from increased aluminum recycling and the corresponding reduction in primary aluminum smelting. Also, reductions in the amount of litter along roadsides and in public places could result.

Glass

Reductions in MWC metal emissions (especially lead) would result from separating glass materials containing lead (such as television picture tubes). Also, indirect reductions in emissions associated with energy consumption would result from increased glass recycling and the reduction of virgin materials in glass production.

Plastics

Reductions in MWC metal emissions (especially cadmium and lead) would result from reduced combustion of plastics, which contain such metals as stabilizers and/or in pigments. Potential reductions in emissions of acid gases and chlorinated MWC organics could result from decreased combustion of polyvinyl chloride plastics. Also, reductions in CO_2 emissions and energy consumption would result from increased plastics recycling and the corresponding reduction in virgin plastics production.

Household Batteries

Reductions in mercury emissions and other MWC metal emissions (including cadmium and nickel) would result from separating household batteries prior to combustion. Add-on control systems typically achieve a lower percent removal of mercury than other metals. As described in section IV, mercury emission data are highly variable and the mechanisms of mercury emissions and controls are not currently understood. A task force is being formed to investigate mercury emissions and controls. However, much of the mercury oxide in MSW is contained in household batteries. Mercury oxide batteries are the type of battery with the highest mercury content, containing about 35 percent mercury, by weight. Common alkaline manganese batteries contain 7 percent mercury, and small silver oxide batteries contain about 1 percent mercury. The widely-used zinc carbon batteries may also contain small amounts of mercury. Therefore, in lieu of a mercury emission guideline, it is proposed that a program be established to remove household batteries from MSW.

Although the Agency is proposing inclusion of a program to remove household batteries, it is recognized that very little information is available on the economic impacts or environmental benefits of such a program. The Agency solicits comments on whether the program should be required or not, what type of program should be required, what problems will be faced in implementing a program, and how effective a program would be in removing batteries and reducing mercury emissions. The Agency intends to include on the task force representatives from owners and operators of MWC's, State and local governments, and household battery manufacturers.

Lead-acid Vehicle Batteries

Removal of lead-acid vehicle batteries would result in a direct reduction in MWC metal emissions (especially lead). Also a reduction in MWC acid gas emissions (especially sulfuric acid), and reduction in MWC emissions associated with combustion of plastic lead-acid battery casings would be achieved. Indirect reductions in emissions will also result from the reduced demand for lead from primary lead smelters.

Yard Waste

Reductions in NO_x emissions and increased combustion stability would result from a decrease in the nitrogen content and moisture of the MSW. Emissions of MWC organics would be reduced due to improved combustion stability since yard waste often has a high moisture content and exhibits inconsistent combustibility. Also, energy consumption would be reduced due to a decreased need for auxiliary fuel.

The overall 25 percent MSW reduction and vehicle battery and household battery removal can be achieved by demonstrated technologies, including mechanical and/or manual methods or deposit/return programs for removal of each of the specified materials. The EPA's estimated costs of compliance assume that some manual separation at the MWC will be necessary.

Additional information supporting the above conclusions is contained in the docket.

The goal of the materials separation requirements is to encourage removal of multiple materials to achieve reductions in MWC emissions. The typical yard waste content of MSW is 18 percent (by weight), but some communities will have over 25 percent yard wastes. In calculating the 25 percent overall MSW reduction, a maximum credit of 10 percent would be given for yard waste separation to ensure the goal of the materials separation requirements is met.

The EPA believes that materials separation, used in conjunction with good combustion practices, and add-on

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controls, will result in further reductions of emissions from MWC's. It is simply common sense, and the Agency's expectation, that reductions in the amount of pollution-generating materials combusted in an MWC will reduce the amount of pollutants in its air emissions. In addition, materials separation should improve the combustion efficiency of MWC's, and thus reduce MWC emissions, by removing noncombustibles like metals, glass, and water-saturated yard wastes from the feed stream to the unit. In fact, there are a number of studies (which are part of the record for this rulemaking) documenting significant reductions in MWC emissions as a result of application of materials separation technologies.

The Agency is, at this time, unable to reliably quantify the emission reductions attributable to materials separation when an MWC is equipped with highly efficient at-the-stack air pollution control devices. Not only are the limited existing test data insufficient to make this quantification, but other difficulties exist as well. First, the composition of waste received at MWC's varies depending on the types of waste generated in the service area and the season of the year. Therefore, the proportion of each separable material in the waste feed will vary among MWC's. Because of this variability, and economic factors, MWC's will choose different ways of accomplishing materials separation, and the percent reduction of specific materials will vary among MWC's. While MWC emissions as a whole will be reduced, it is difficult to predict the specific reduction in each component of MWC emissions (e.g., MWC metals, MWC organics, and MWC acid gases). Second, because of the substantial removals achieved by air pollution control devices, the remaining pollution being measured is small, and it becomes increasingly difficult to measure and interpret reliably with available test methods. In some cases, normal variability in the amount of metals, organics, and acid gas precursors in the incoming feed could make it difficult to interpret emission reductions attributable to materials separation. That is, it will not be possible to determine which reduction is attributable to variable waste feed and which to materials separation.

The processing of MSW to remove specified types of materials prior to combustion will also produce benefits associated with reduced quantities of ash to be landfilled and reduced levels of toxic materials in the ash. The proposed requirement for an overall 25 percent MSW reduction and the prohibitions on the combustion of vehicle batteries and household batteries will yield an appreciable tonnage reduction in the quantities of MWC residues (both bottom ash and flyash) disposed of in landfills. It is expected that the 25 percent MSW reduction coupled with the prohibitions on batteries would result in an approximate reduction of 80 percent in ferrous and nonferrous metals, and glass. This would reduce the tonnage of ash requiring disposal by 30 percent. With respect to ash quality or toxicity, the entire range of air toxics in ash is of concern with regards to fugitive emissions associated with the handling, storage, and transportation of ash. The principal toxic components of ash with respect to groundwater contamination are lead and cadmium. The requirement for materials separation and related prohibitions will produce ashes characterized by substantially lower metals content (especially lead, cadmium, and mercury) and thus, lower toxicity. As with air emissions, the Agency is, however, unable at this time to reliably quantify the actual improvement in ash quality (lower toxicity) to be produced by these requirements.

The Agency believes that the long-term viability of markets for recovered materials would be significantly enhanced by ensuring a stable supply of recovered materials. The Agency believes that a stable market supply would result from the proposed guidelines. Such stable supplies would tend to encourage long-term contracts with materials recovery firms and further the development of alternative end-uses. This same principle was recognized by the Congress in enacting the 1976 Resource Conservation and Recovery Act (RCRA) when it provided that State solid waste management plans shall not preclude States of local governments from entering into long-term contracts for supplying solid waste to resource recovery facilities, operating such facilities, and securing long-term markets for recovered materials and energy [RCRA Section 4003(a)(5)]. See also H. Rep. No. 94-1491, 94th Cong. 2d Sess. 10 (1976) ("Resource recovery facilities cannot be built unless they are guaranteed a supply of discarded material"). The Agency is also aware that the economics of materials recovery is in many cases driven more by avoided landfill or MWC disposal cost than by potential revenues from sales of recovered materials.

D. Materials Separation Methods

Separation of materials from MSW is accomplished in two ways: household separation (including deposit/return programs) and centralized processing. Household separation is the separation of recyclable materials from the waste by the generator (i.e., household or business); it is presently the primary method of separation in the U.S. At the household level, separation is accomplished by placing waste items (e.g., glass, paper, aluminum, etc.) in segregated containers. These containers are either picked up at the curbside or taken to local recycling bins or buyback centers. Deposit/return systems are also used to encourage separation and recycling of beverage bottles and cans. The homeowners would return the items to the point of purchase. Household separation of yard waste can be accomplished either by backyard composting or by segregating it for separate curbside pick-up where it is transported to a community composting site. Separation of lead-acid vehicle batteries could be achieved by a deposit/return system where the batteries are returned to the battery recycler, battery retailer, service station, or other recycling center. The separation of household batteries could be achieved through a deposit/return system and/or a prohibition on household disposal of batteries with MSW and implementation of separate community collections for batteries. The success of community programs depends on many factors including the level of planning, community participation rate (which may vary depending on whether the program is voluntary or mandatory), and local market demand for separated materials.

An increasing amount of MSW separation is accomplished at centralized processing facilities which operate at MSW transfer stations, landfills, or MWC's. At centralized processing facilities, recyclable items are removed from the waste stream by mechanical separation systems, manual handpicking, or a combination of both. A wide variety of automated processes may be used to separate the various components of MSW.

Ferrous metals are generally removed magnetically, except for white goods (appliances such as stoves, refrigerators, and air conditioners) which are visually identified and removed as waste is unloaded. Household batteries generally use ferrous metal (e.g., steel) casings and can be removed with the ferrous metal fraction. Nonferrous metals are separated by eddy current (electromagnetic) separation, electrostatic separation (which separates conductors such as metals and paper from nonconductors such as plastic and glass), or by a variety of wet and dry methods which separate metals according to density. Methods for glass removal include wet and dry density methods, pulverization/screening, and optical sorting (by automatic photocells). Mechanical systems currently processing MSW in the U.S. achieve about 80 to 90 percent ferrous metal recovery, 60 to 70 percent aluminum recovery, and 70 to 80 percent glass recovery. Some fractions of yard waste can be removed mechanically. For example, grass clippings and other heavy materials may be gravity separated after screening out larger items. However, the product is not pure, and may contain broken glass and other contaminants. Mechanical systems can separate some paper and plastics from the waste stream using air classification or electrostatic separation, but these systems normally do not separate the various types of paper and plastic into specific material types (e.g., paper grade or plastic resin type). In many cases some manual sorting is performed along with mechanical separation to increase separation efficiency and to remove residual contaminants from the separated fractions.

Currently there are no fully-automated mechanical systems for removing lead-acid vehicle batteries from MSW. At centralized processing facilities, a specialized metal detector, which selectively detects large lead objects, is available and can be used to identify and locate the batteries in the waste traveling on a conveyor belt, and then the battery can be manually removed.

E. Legal Authority to Issue Materials Separation Guidelines

In this rule, the EPA's proposed determination of the "best technological system of continuous emission reduction", which Section 111 standards of performance must reflect, includes determinations for the precombustion, combustion, and post-combustion stages of MWC operation. Best demonstrated technology for precombustion would include a requirement that new and existing MWC's remove noncombustible, toxic, recyclable, and compostable materials from their feed materials prior to combustion (referred to as "materials separation" in this preamble). The EPA believes that it possesses legal authority to require precombustion materials separation pursuant to section 111. Such requirements are necessary to address the "nonair quality health and environmental impacts and energy requirements" that Congress requires the Agency to take into account in making a best demonstrated technology determination. Clean Air Act (CAA) section 111(a)(1)(C). The EPA construes this language as requiring it to consider not only the adverse impacts on other environmental media and energy use of Section 111 standards, but also that EPA may consider the nonair health and environmental benefits and energy benefits that can result. Consideration of nonair and energy impacts are an important part of determining what constitutes a "best" technology. (See H. Rep. No. 95-564, 95th Cong. 1st Sess. 128, 129 (Conf. Rep.); H. Rep. No. 95-294, 95th Cong. 1st Sess. 187.)

As noted above, EPA believes that there will be a reduction in MWC air emissions of toxic gases and other pollutants harmful to health as a result of materials separation. These reductions include not only criteria pollutants, but toxics such as lead, mercury, and cadmium. Moreover, as noted in detail in section V.C. above, the Agency also expects the nonair health and environmental benefits from materials separation to be very great. Materials separation will improve MWC ash quality by removing noncombustibles from the unit's fuel stream, thus allowing better thermal destruction in the combustor and so keeping pollutants out of the combustion residues (ash). Materials separation should facilitate growth of markets for recycling by assuring adequate supplies of feed materials for recycling facilities. Recycling of separated materials will reduce the amount of waste ultimately disposed, saving critically scarce landfill capacity and reserving it for wastes for which land disposal is the best management alternative. Recycling of separated materials will also lessen the demand for raw materials, resulting in overall conservation of resources, and other environmental benefits. For example, recycling of newsprint and other paper products reduces the demand for raw timber, which preserves existing forests, a consideration in combatting global warming. Reducing demand for raw materials can also require fewer imports of raw materials. See Section 1002(c)(3) of RCRA where Congress found that "the recovery and conservation of such materials [separated from solid waste] can reduce the dependence of the United States on foreign resources and reduce the deficit in its balance of payments." Congress went on to find that "millions of tons of recoverable materials which could be used are needlessly buried each year," and that "methods are available to separate usable materials from solid waste." RCRA section 1002(c)(1)(2). The EPA further anticipates that there will be energy savings associated with increased utilization of recycling. For example, the recycling processes of secondary aluminum, lead, and glass are much less energy-intensive than the corresponding processes that use virgin raw materials. In short, the removal of recyclables and other materials from MWC feed streams advances the national policy "to promote the protection of human health and the environment and to conserve valuable material and energy resources by promoting a national research and development program for * * * new and improved methods of collection, separation, and recovery, and recycling of solid wastes * * * ." RCRA section 1003(a)(9).

Congress authorized EPA to consider nonair quality environmental and energy benefits such as these as an important component of a Section 111 best technology determination. These significant nonair quality environmental and energy benefits cannot be assured without including a materials separation requirement as part of the standard of performance of MWC's. The EPA believes that Congressional intent would be best effectuated by reading the CAA as authorizing EPA to require removal of toxics and compostable and recyclable portions of the MWC feed stream prior to combustion. The statutory language does not prohibit such a standard (indeed, it would be incongruous for it to do so, given the statutory requirement to include nonair and energy considerations in the best technology determination), and appears broad enough to encompass the materials separation requirement.

Thus, a "standard of performance," which EPA establishes for new and existing sources pursuant to section 111, is defined to include not only conventional emission limitations measured at the stack, but also other forms of emission restriction, including operating requirements and precombustion fuel conditioning requirements. See CAA section 302(1) (a "standard of performance" includes "*any* requirement *relating to* the operation or maintenance of a source to assure continuous emission reduction.") (emphasis added). Standards of performance must reflect the degree of "emission limitation" achievable, and an "emission limitation" is defined to include "any requirement relating to the operation or maintenance of a source to assure continuous emission reduction."

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CAA Section 302(k). Under these provisions, removal of noncombustibles, toxics, recyclables, and compostables may be a "means of operating" an MWC in order to assure continuous emission reduction, and thus can be adopted as part of the section 111 standard of performance.

Other sections of the statute also support the EPA's interpretation that a Section 111 standard of performance may include requirements expressed as other than traditional at-the-stack emission limits where necessary to achieve important air and nonair quality environmental and energy benefits. Section 111(a)(7)(B), for example, authorizes EPA to include "precombustion cleaning or treatment of fuels" as part of new source performance standards. See also H. Rep. No. 95–294 at 189

(There may doubtlessly be many pretreatment techniques and/or process modifications capable of achieving comparable or improved degrees of emissions control in fossil-fired boilers as well as in most fuel-burn[ing] industrial sources * * *. To this end, the Administrator should take into consideration *all of the processing steps performed on a material from its natural state through to final usage* in determining the requirements under this section for a technological continuous emission reduction system.) (emphasis supplied)

Separating noncombustibles like metals and glass from the feed stream to an energy-recovering MWC is indeed a type of precombustion cleaning of fuel, and consequently furthers the Congressional intent that EPA consider such measures as part of the section 111 standards of performance.

Some persons commenting on draft versions of this proposal suggested that the materials separation requirement could only be authorized as a "design, equipment, work practice, or operational standard" pursuant to CAA section 111(h). They went on to maintain that section 111(h) does not give EPA the authority to require removal of certain constituents from the MWC feed stream. The EPA questions whether the proposed materials separation requirement is a "work practice or operational standard." Certainly, the proposed requirement does not have the degree of mandated operating specificity that Congress sought to avoid in limiting the scope of work practice standards. The proposal does not require an MWC to carry out the proposed materials separation requirement in any particular way (by using particular types of equipment, for example). Rather, the proposal merely describes a minimal level of precombustion feed conditioning which can be achieved in many different ways (for instance, by relying on a variety of different community source separation programs, or by separating certain recyclables at the MWC while a community separates others).

Even assuming that the proposed materials separation requirement were considered to be a "work practice standard," however, EPA believes that it would be within the Agency's section 111(h) authority. The EPA may promulgate a work practice standard when "it is not feasible to prescribe or enforce a standard of performance." CAA section 111(h)(1). One statutory example of when it is not feasible to prescribe or enforce a standard of performance is when "the application of measurement methodology to a particular class of sources is not practicable due to technological or economic limitations." CAA section 111(h)(2). The legislative history indicates that Congress intended EPA to have authority to promulgate work practice standards when it finds that it is not feasible to develop or measure numerical concentration limits at the stack. See S. Rep. No. 95–127, 95th Cong., 1st Sess. 43, 44 (even though asbestos is capable of measurement, a work practice standard for asbestos was acceptable because of the impossibility of developing a numerical emissions standard).

In this case, EPA is presently unable to measure reliably the reductions in MWC emissions attributable to the removal of noncombustibles, recyclables, and compostables from MWC feed, and so is unable to reliably correlate at-the-stack measurements to materials separation technology. Thus, EPA is unable to develop numerical emissions standards reflecting the performance of materials separation technology. Since stack measurements and numerical standards would be technically impractical, EPA would be empowered to promulgate a "work practice" standard. The EPA also believes that it would be economically and technically impracticable to monitor separately each of the toxics that are in the MWC feed stream (which potentially include each toxic in consumer use in an industrialized society) in order to document the toxics removal achieved by materials separation. The EPA requests comment on these issues.

More fundamentally, EPA also questions whether it is "feasible" to prescribe or enforce a numerical standard of performance within the meaning of section 111(h) where prescribing solely a top-of-stack numerical limitation would preclude obtaining significant nonair environmental and energy benefits which Congress has directed EPA to consider. The Agency solicits comment on how to interpret the interplay of these statutory provisions. The EPA also requests comment on the related question of how nonair quality and energy considerations are to be taken into account in assessing section 111(h)(3) equivalency demonstrations.

Several interested parties have also argued that the Agency is without authority to promulgate a work practice or operational standard if it also establishes a numerical at-the-stack emission limit for a pollutant. The EPA's current view is that this argument is not persuasive. The statute contains no express command preventing the Agency from adopting a fuel pretreatment or work practice standard as well as a numerical emission limit. Nor does the legislative history state that Congress meant to forbid such a two-part standard of performance. Under these circumstances, EPA may adopt reasonable interpretations of the statutory language that effectuate statutory goals, see *Chemical Manufacturers Association* v. *Natural Resources Defense Council*, 470 U.S. 1102, 1108 (1985), particularly where the interpretation assures important nonair and energy benefits and also assured an additional reduction in a pollutant regulated by a numerical standard.

F. Cost Impacts of the Proposed Guidelines

In the long run, the monetary benefits of separated materials are expected to outweigh the costs, resulting in no net annualized cost increase. However, the initial costs of materials separation at individual MWC plants will be highly variable. Depending on whether local markets are established for resale of materials, and other site-specific factors, the disposal cost at typical existing MWC plants could vary from a net annualized cost of about $17/Mg ($15/ton) of MSW combusted to a net credit (savings) of $19/Mg ($17/ton) of MSW combusted. Net annualized costs for a small MWC plant (180 Mg/day [200 tons/day] capacity) could range from a cost of $900,000/yr if no separated materials can be sold to a savings of $1.0 million/yr if all separated materials are sold; and for a regional plant (2,050 Mg/day [2,250 tons/day]) costs could range from $9.5 million/yr to a savings of $11.4 million/yr. Even at the higher cost, the materials separation provisions are acceptable. Higher costs would only be temporary and would decrease over time as markets for separated materials are established.

The estimated costs include annualized capital costs for materials separation equipment and annual operating and maintenance costs. Other costs and credits considered include: credits for reduced landfilling of ash; cost of lost energy revenues (since less steam and electrical energy will be produced by the MWC if less MSW is combusted); and materials sales revenues. At the lower end of the cost ranges, credits are taken for 100 percent sale of the following separated materials: glass, ferrous metals, aluminum, and high density polyethylene and polyethylene terephthalate plastics, while it is assumed the MWC pays a recycler to accept separated paper. At the higher end of the cost ranges, it is assumed that separated materials cannot be sold and must be landfilled. The no-sale assumption is a worst-case assumption. Markets for separated materials are already established in many locations. The proposed guidelines for materials separation and other Federal, State, and local actions will promote stable supplies of separated materials and will encourage development and stabilization of markets. Additionally, the flexibility provided sources by the form of the 25 percent materials separation requirement would allow sources to focus on the recycling of materials with the highest market value. Thus, the Agency believes that there will not be a significant cost for materials separation over the long run.

Thus, despite the range of net costs and credits estimated for individual plants, the national net annualized cost of materials separation is estimated to be negligible ($0/Mg of MSW) or a net savings over the long run. While no severe economic impacts on households or government units are expected to result from the proposed materials separation guidelines, States would be allowed flexibility in implementing the guidelines, and may consider site-specific difficulties when establishing State regulations. (Also, see "Materials Separation—Combustion Permit" in Section H, "Compliance Provisions".)

G. Overall Agency Strategy to Promote Municipal Solid Waste (MSW) Reduction and Recycling

As discussed in Section IV.A. of this notice, in February 1988, EPA created an MSW Task Force to specifically address the problem of increasing waste generation and decreasing management capacity. The Task Force was given the assignment of assessing the solid waste problem, examining alternatives for solving it, and developing a well-coordinated strategy of action for improving the Nation's management of MSW.

In developing the strategy, the Task Force held public meetings and solicited comments from the public and interested environmental groups, trade organizations, and government organizations. The Task Force's recommendations are presented in the report, "The Solid Waste Dilemma: An Agenda for Action" (EPA/530–SW–88–052), and information supporting the recommendations can be found in a supplemental document entitled, "Background Document for Solid Waste Dilemma: An Agenda for Action" (EPA/530–SW–88–054A).

As stated in the "Agenda for Action," EPA "recommends using 'integrated waste management' systems to solve municipal solid waste generation and management problems at the local, regional, and national levels. * * * A key element of integrated waste management is the hierarchy, which favors source reduction (including reuse) to first decrease the volume and toxicity and increase the useful life of products in order to reduce the volume and toxicity of waste. Recycling (including composting) is the preferred waste management option to further reduce potential risks to human health and the environment, divert waste from landfills and combustors, conserve energy, and slow the depletion of nonrenewable natural resources." In the "Agenda for Action," EPA set a near-term "goal of managing 25 percent of our Nation's municipal solid waste through source reduction recycling by 1992." Furthermore, EPA expects the percentage of MSW reduction and recycling to continue to increase after 1992. A number of cities are already achieving 25 percent materials separation. Source reduction and recycling help prevent many of the problems associated with MSW, including the difficulty of siting new landfills and MWC's to handle the large volumes of waste being generated. Preventing generation of wastes and diverting waste components from landfills and MWC's into reuse, recycling, or composting helps to alleviate siting problems and potential risks to human health and the environment attributable to improper management. Waste reduction and recycling also conserve natural resources by reducing the amount of virgin materials needed to produce new products. As the Congress found in promulgating RCRA in 1976, "Methods are available to separate usable materials from solid waste; and the recovery and conservation of such materials can reduce the dependence of the United States on foreign resources and reduce the deficit in its balance of payments." 42 U.S.C. 6902(c) (2) and (3). Thus, planning and implementing these activities now yields benefits in managing wastes and conserving natural resources in the years to come. The "Agenda for Action" strategy for implementing the Agency's national waste management goals are briefly summarized below.

The "Agenda for Action's" recommendations for recycling include fostering the implementation of existing Federal procurement guidelines (as well as evaluating guidelines for additional commodities), and creating an interagency working group to develop pilot and full-scale projects for separating recyclables in Federal agencies. Markets for secondary materials and recycled goods must be stimulated and stabilized; thus EPA will conduct market development studies for different commodities, will examine economic and regulatory incentives for using secondary or recycled materials, and will foster the formation of regional marketing councils for the exchange of market information. A National Recycling Council will be formed with members from all sectors of waste management to track recycling issues and problems and to recommend actions. Finally, EPA will study how to foster the recycling of lead-acid batteries, including examining the current incentives and disincentives associated with liability. Today's proposed guidelines, which prevent the combustion of lead-acid batteries will encourage their recycle. Also, in keeping with the "Agenda for Action," industry should step up its efforts in fostering the recycling of plastics and paper. State and local governments should encourage separation of recyclable materials, conduct waste exchanges, and provide incentives for stable markets for recycled goods.

During the development of this proposed rule, EPA contacted members of the MWC industry, State and local government organizations, and the environmental community in an effort to obtain their views and ideas regarding materials separation requirements as part of best demonstrated technology under section 111. By today's action, the Agency is affirming its current position that materials separation is part of best demonstrated technology. However, during these discussions, a number of ideas and suggestions were discussed with respect to alternative approaches and strategies for incorporating materials separation as best

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demonstrated technology which the Agency wishes to discuss in an interactive policy forum. This forum will be scheduled to take place in early February 1990 during the public comment period for today's proposed rulemaking. The Agency anticipates that this forum will result in a series of suggestions and recommendations for Agency consideration during the development of the final rule.

While today's proposed materials separation guidelines apply only to MSW being combusted in MWC's, as other related Federal standards or guidelines are developed, the appropriateness of including materials separation provisions will be considered.

The EPA requests comments or recommendations on other actions that could be initiated by EPA to promote recycling and source reduction through the EPA's regulatory programs for MWC's.

H. Compliance Provisions

Methodology Overview

A number of alternative compliance methods were considered in developing the methods for determining compliance with the materials separation provisions. As proposed, compliance with the percent reduction requirement would be determined by comparing the amount of material recovered with the amount of incoming waste. The MWC would be required to weigh all MSW received and combusted and to weigh the materials separated for recovery, and keep monthly records. At the end of each calendar year (January through December), the annual average percent reduction of MSW (by weight) would be calculated from the monthly totals. The weights of vehicle and household batteries separated would also be recorded. The monthly recordkeeping and annual calculations to demonstrate compliance were determined to be reasonable because this approach would provide assurance that the separation provisions continue to be met on an ongoing basis. Furthermore, centralized MSW processing facilities and communities that are currently practicing separation generally keep such records. Therefore, the added reporting and recordkeeping burden of the proposal would be minimal. The alternative of not including an annual compliance demonstration in the guidelines was considered, but not selected for proposal.

In calculating compliance with the 25 percent or greater MSW weight reduction, a maximum credit of 10 percent would be given for yard waste separation, even if the separated yard waste weighs more than 10 percent of the weight of the MSW. The remainder of the required 25 percent MSW reduction would have to be achieved by separation of one or more of the other specified materials.

In calculating the weight of ferrous metals separated, white goods such as stoves, refrigerators, and air conditioners could be included; however, whole automobiles and other vehicles could not be included. Additionally, in calculating the weight of MSW received and combusted and the weight of separated materials, construction and demolition wastes would not be included.

See section I, "Reporting and Recordkeeping" for information on the schedules for compliance demonstration. Also, see "Materials Separation—Combustion Permit" in this section for a discussion of combustion permit provisions.

Materials Separation Plan

A description of the separation procedures (whether on-site or off-site) would be submitted with the initial demonstration of compliance. Off-site materials separation programs will generally be more complex to monitor than on-site programs.

If an off-site source reduction or separation program is used to comply in whole or in part with the materials separation requirements, the adequacy of the separation program and associated reporting procedures would be reviewed for approval on a site-specific basis. The off-site plan should provide a specific description of the program, including program elements related to the control of MSW flow, legal requirements and sanctions, and recordkeeping.

The plan should include a description of all procedures used to ensure control of the MSW flow. The following topics should be addressed, as applicable:

- The boundaries of the MSW service area(s) and any portions of the area(s) for which the MSW is delivered to landfills;
- The ownership of waste from the time it is deposited at curbside to the time it is delivered to the MWC, landfill, materials recovery facility, recycling facility, or other treatment or disposal facility;
- Materials separation methods and destination of the MSW and each separated material (e.g., materials recovery or recycling facility, broker, MWC, landfill);
- Contractual arrangements, if applicable, between the MWC and the off-site party responsible for separation, and contractual arrangements between other involved parties, such as contracts between municipalities and private haulers of MSW;
- Any economic incentives for household participation in separation such as deposit/return systems on beverage bottles and cans or on batteries;
- Any economic incentives for active MSW hauler participation in the separation program (e.g., differential fees for carter deposit of waste at a recycling center versus an MWC);
- Any curbside separation requirements; and
- Provisions for separate collection of recoverable materials, and collection schedules (e.g., schedules for separate curbside collection of yard waste, glass, cans, white goods, etc.; location of community bins for drop-off of such materials).

The plan should also describe any legal requirements or sanctions that may be part of the off-site separation program. For example, copies of any local or State regulations requiring homeowners to separate yard wastes or other specified recoverable materials should be included. Copies of legislation (e.g., bottle bills) instituting deposit/return systems should also be included. Any penalties or sanctions for not following separation program requirements that can be applied to residences, private waste haulers, or other parties should be described.

The plan should also specify method(s) of demonstrating compliance with the materials separation provisions in the guidelines and should describe recordkeeping procedures. The following topics should be addressed as applicable:

- Method(s) for determining the amount (by weight) of the recoverable materials specified in the guidelines, vehicle batteries, and/or household batteries (as applicable) that are separated on a monthly and annual average basis. Methods could include actual measurements using scales or calculational procedures;
- Method(s) for determining the amount (by weight) of MSW combusted (excluding construction and demolition waste) on a monthly and annual average basis. Methods could include actual measurement using scales or calculational procedures;
- Location(s) where weight determinations are made and which party is responsible (e.g., MWC, off-site materials separation facility, transfer station, recycling facility, landfill);
- Recordkeeping procedures including type and frequency of information recorded, who is responsible for keeping records, location of records;
- Auditing procedures and frequency of audits; and
- Schedule and procedures for reporting monthly and annual weights of separated materials and other information to the MWC and the State regulatory agency or EPA.

Contractual Arrangements

In addition to developing a separation plan and submitting annual demonstrations of compliance, the proposed guidelines also allow the MWC owner or operator to enter into a contract with the governing body of any community or any other party whose action is required to maintain compliance.

Under section 111 of the CAA, the owner or operator, which in the case of today's proposed guidelines is the owner or operator of the MWC, is responsible for demonstrating compliance with the guidelines. As discussed previously, in some cases, the owner or operator of the MWC may depend on another party to comply with some or all of the materials separation requirements at an "off-site" location. This does not prevent the owner or operator of the MWC from demonstrating compliance with these requirements by obtaining the necessary records from the off-site separator which show the weight of materials separated from the MSW and either the weight of MSW received by the off-site separator or the weight of processed MSW shipped by the off-site separator to the MWC. By this means, the owner or operator of the MWC can monitor compliance with the materials separation requirements and based on this information take whatever steps are necessary to ensure continued compliance with these requirements. It does, however, make it more difficult and impose an additional administrative burden on the owner or operator of the MWC than if compliance with the materials separation requirements is achieved "on-site" at the MWC.

To minimize this administrative burden on the owner or operator of the MWC, in cases where the owner or operator of the MWC is depending on another party to demonstrate compliance with some or all of the materials separation requirements, today's proposal includes provisions and would allow other parties responsible for materials separation to become "co-operators" with the owner or operator of the MWC for purposes of demonstrating compliance with the materials separation requirements. These provisions apply only to the materials separation requirements and do not apply to other requirements or emission limits in today's guidelines. In addition, these provisions do not require parties performing off-site separation to enter into this relationship, they only provide the opportunity for this relationship where desired by both the owner or operator of the MWC and the other party performing off-site separation.

Materials Separation—Combustion Permit

The EPA is also proposing that best demonstrated technology for combustible MSW or RDF include a combustion permit for some of the separated materials under limited circumstances. In cases where a recycling market is shown to be unavailable for the separated combustible material, and the owner or operator of the MWC cannot recover or recycle other materials in the MSW or RDF, an application could be made for a combustion permit. A recycling market would be considered to be unavailable if, after separating the combustible material and searching for 120 days, an owner or operator could demonstrate either that no recycler will accept the material, or that the price the recycler is charging (including transportation costs) is equal to or exceeds the cost of landfilling (including transportation costs). The materials separation requirement would remain in force whether or not a combustion permit was granted. That is, materials would be separated whether or not a combustion permit were issued. For the material(s) covered by the combustion permit, records would be maintained of the amount of material(s) separated (prior to combustion), and that would be the amount of separated (and combusted) material(s) credited toward the overall 25 percent MSW reduction requirement contained in the definition of "processed MSW" in the guideline. The amount of other separated materials (not covered by the combustion permit) would have to be sufficient in combination with the separated (combusted) materials to achieve the overall 25 percent MSW reduction requirement (annual average). The combustion permit could be granted for a maximum of 1 year (without prejudice to filing petitions at later dates if recycling markets for combustibles continue to be unavailable).

The reason for this part of the proposal is that a large part of the reason EPA considers materials separation to be part of best demonstrated technology is to obtain environmental benefits from actually recycling the separated materials. If separated combustible materials actually prove to be unrecyclable after the owner or operator spends reasonable time and efforts to find a recycling market and the materials separation requirement cannot be satisfied by separating other materials, then the nonair environmental benefits from separating the material would no longer be demonstrated. Under such circumstances, it would not make sense to continue to preclude combustion of the separated materials, and to force their landfilling. The EPA believes it is preferable to burn the combustible materials in an MWC than to landfill them. Not only is landfilling a disfavored waste management option (see RCRA section 1002(b)(8)), but it is sound policy to recover the energy value of the combustibles rather than burying them (see CAA section 111(a)(1)(C) and RCRA section 1002(c)(1)). (The same is not necessarily true for noncombustible recoverables. If these are burned, the incinerator ash will contain the metals and other noncombustibles which will end up being land disposed in any case. This is why the proposal is limited only to combustible recoverables.)

The Agency is proposing that the test for unavailability of a recycling market for a particular material turn on a comparison of the cost of landfilling versus the cost of recycling. This test appears to be the relevant comparison because once combustion is precluded, these are the two principal management options for the separated material. If a material can be recycled for less expense than landfilling, it would be economically rational (as well as environmentally preferable) to recycle the material, even if the recycler has to be paid to take the material.

The EPA is also proposing that the owner or operator would demonstrate that recycling markets are unavailable. This demonstration would include documentation of the recyclers that the owner or operator of the MWC has contacted, and a documentation of the costs of recycling versus the costs of landfilling. The EPA is proposing that a market be unavailable for at least 120 days before an exception from the separation requirements could be considered because market fluctuations can be a short-term phenomenon and because owners or operators appear to be able to store combustibles for greater than this amount of time while seeking recycling markets. A petition would be approved by the State before the combustibles could be burned and the duration of the exception would not exceed 1 year. (If markets continue to be unavailable after 1 year, another petition could be made.) Both of these

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conditions appear necessary to EPA to ensure maximum effort to comply with the materials separation requirement and to actually recycle separated combustible materials.

Permits may be renewed for an additional year if the Regional Administrator determines it is appropriate and the conditions specified in § 60.56a(h)(1) continue to be met.

Comments are also specifically solicited on whether, under certain circumstances, the requirement to separate materials for which a combustion permit has been granted under 40 CFR § 60.56a(h) should be dropped. The Agency specifically solicits comments on what criteria could be used to determine whether a source or community would not have to separate materials for which they receive a permit to burn the waste.

The following example illustrates how EPA envisions the exception would operate:

A community operating an MWC separates newspapers from the MSW burned in its MWC. During a 4-month period, the community is unable to recycle the newspapers because the best arrangement they can make involves paying a recycler $40 per ton to take the newspapers (including transportation cost). (Other recyclers will not take the newspapers for any price.) The cost of landfilling the newspapers is $30 per ton (including transportation cost). Newspapers comprise 8 percent of the materials that are separated from the MSW and the community can demonstrate that it is unable to separate 8 percent of recoverables other than newspapers (in order to achieve an overall 25 percent materials separation). Under these circumstances, the State agency could grant the combustion permit for newspaper for up to 1 year. Upon grant of the permit, the MWC could burn newspapers and would achieve credit for the newspaper separation based on the weight of newspaper separated, just as if they had been recycled.

Enforcement Guidance

Following adoption of standards or guidelines, the Agency frequently develops enforcement guidance for use in enforcement actions to ensure consistent and uniform enforcement of the standards or guidelines. This enforcement guidance outlines the steps the Agency will likely follow, depending on the merits of the situation in question, in taking enforcement actions when violations of the guidelines and associated State standards occur. In this enforcement guidance, the Agency balances the seriousness of the violation against the potential impacts associated with various remedies. Thus, in the case of today's proposed guidelines, the Agency would consider the impacts of any remedy to a violation on waste management in a community, particularly the potential for waste not to be collected or to be diverted to a less desirable disposal alternative than combustion.

One of the primary objectives of an enforcement action is to prevent further noncompliance, and this is often achieved by negotiating a settlement agreement with the noncomplying source that ensures that the source will come into compliance with the State standards developed pursuant of the EPA's guidelines. In the case of today's proposed guidelines, this could involve working with the owners or operators of the source to identify those actions necessary to achieve compliance and the time required to implement such actions.

If, as an example, the owner or operator of the MWC failed to comply with the materials separation requirements in today's guidelines and associated State standards, and the owner or operator is dependent on another party to provide processed waste, a review of the reason for noncompliance may indicate that the materials separation system utilized by this other party needs to be altered in some manner to ensure achieving the 25 percent separation requirement. This could necessitate installation of additional separation equipment or changes in local waste management practices, such as purchase of additional trucks and hiring of additional personnel for waste collection, or the adoption of local ordinances with financial incentives or fines to ensure more intensive curbside separation efforts.

Such changes would require time to implement. One remedy to a violation of the materials separation requirements might well be a consent agreement between the enforcement agency and the owner or operator of the MWC and/or other party responsible for separation, where the other party has agreed to be a co-operator for purposes of compliance with the materials separation requirements. The consent decree might permit the MWC to burn unprocessed waste for a limited period of time if the necessary additional equipment or changes to the waste management system are made to ensure compliance with the materials separation requirements at the end of a specified period of time.

Of course, in cases of continued and repeated noncompliance, enforcement actions seeking shutdown of the MWC may be taken. In any event, the Agency solicits comments on enforcement guidance that might be developed following promulgation of today's guidelines and on possible remedies that might be sought in response to various violations.

I. Reporting and Recordkeeping Guidelines

At the time of submittal of the initial compliance demonstration for materials separation (i.e., at the end of calendar year 1994), an MWC facility would be required to submit a description of the procedures for separating materials for recovery to achieve the overall MSW reduction requirement and a description of the procedures for ensuring that lead-acid vehicle batteries would not be combusted at the designated facility. The facility would also submit a description of the collection program for household batteries. If an off-site separation program is used, the plan describing the program and compliance methods would be submitted for approval at the time of submittal of the initial compliance demonstration.

The proposed guidelines would require all designated facilities to submit annual compliance reports to show the overall percent reduction of MSW achieved by separation of the specific materials. The annual percent reduction would be calculated for each calendar year (January through December) from the monthly total weight of MSW received and the weight of materials separated for recovery each month, including any credits for a community source reduction or separation program. The first annual report submitted at the end of calendar year 1993 would not be used to determine compliance with the materials separation requirements, but would be used to review progress made toward the materials separation requirements. The initial compliance demonstration with the materials separation requirements would not be calculated and reported until the end of calendar year 1994. The annual percentage MSW reduction would be calculated and reported at the end of all following years.

The proposed guidelines would also require that certain types of records be maintained, beginning in January 1993. Records to be maintained include: the amount (by weight) of MSW received on a monthly basis at the designated facility; the amount (by weight) of MSW combusted on a monthly basis in the designated facility; the amount of materials (by type and weight) on a monthly basis that is separated for

recovery; the amounts (by weight) of vehicle batteries and household batteries on a monthly basis that are separated for recovery; the estimated amount (by type and weight) of materials reduced or separated for recovery on a monthly basis through an off-site or community source reduction or materials separation (recycling) program; and the calculations of the annual average percentage reduction in MSW achieved for each calendar year (January through December).

J. Solicitation of Comments on Materials Separation Guidelines

The EPA welcomes comments on all aspects of the proposed materials separation provisions, and has specifically identified several topics on which comments and information are requested.

First, the Agency solicits comments on the proposed 25 percent materials reduction level and associated air emission and other environmental benefits expected to result from materials separation. The EPA requests information on potential separation techniques and on whether a higher or lower percent reduction is more reasonable.

In particular, during development of the proposed guidelines, it was suggested by some that 15 percent MSW reduction would be more reasonable, however others have suggested that 40 percent would be preferable. Those who support a lower percent reduction (e.g., 15 percent) should provide information on specific difficulties in achieving the 25 percent reduction as defined in the proposal, and describe their basis for stating that 15 percent (or some other number) is more reasonable than 25 percent. Those supporting a higher percent reduction (e.g., 40 percent) should provide specific information showing the 40 percent (or another number above 25 percent) is achievable using demonstrated technologies, and is reasonable.

Comments are requested on the proposed prohibition on combustion of vehicle batteries and the plan to remove household batteries, and the practicality of on-site or off-site separation programs for battery removal.

The EPA is aware that different areas have different MSW disposal problems. Accordingly, comments are solicited on the following questions. Should the 25 percent MSW reduction be uniformly applied to all areas of the country, or should there be different requirements for urban areas, residential areas, metropolitan areas, and rural areas? Should the stringency of the materials separation requirements vary for different MWC's depending on the type of area, but still be designed to achieve an overall 25 percent reduction on a national basis? How would the areas be defined?

Another approach to separation that was considered, but not selected for proposal, was specification of a percent reduction (by weight) for each individual recoverable material in MSW (e.g., a certain percent of the paper in MSW must be separated for recovery, a certain percent of ferrous metals, etc). For reasons stated previously, the overall 25 percent weight reduction was chosen for proposal. However, comments are requested on the material-specific percent reduction approach. Commenters should include the reasons they favor or do not favor this approach, and submit information on the percent separation achievable for specific materials. Supporters of a material-specific percent reduction approach are also asked to suggest methods of demonstrating compliance. It would be more difficult to demonstrate compliance with material-specific percent reductions because the weight of each material (e.g., paper, plastics, etc.) in the unseparated MSW would need to be known in order to determine the percent of the material that was separated. The content of unprocessed MSW is variable depending on factors such as climate, type and number of residences, and type and number of commercial businesses that produce MSW in the community. There is also seasonal variation in MSW content. Commenters should address how the owner or operator of the MWC could determine the weight of each specific material in the unprocessed MSW.

The Agency further solicits comments on whether other types of materials should be included in the list of recoverable materials that can be separated. The Agency is aware of arguments that recovering and stockpiling recovered materials, such as batteries, may create a separate environmental hazard.

The Agency is aware of arguments that separation and recovery of materials from the MSW stream may result in the landfilling of some separated materials, and could potentially increase the amount of waste disposed of in landfills. The Agency is also aware, however, that once separated, there is an economic incentive to recycle the separated materials which ranges up to the cost of alternative disposal at a landfill. Since landfill costs are substantial, this economic incentive to recycle is also substantial. The Agency solicits comment on this issue. In particular, the Agency is interested in receiving comments concerning the relative multimedia environmental impacts of MSW disposal by landfilling versus combustion.

Suggestions are also requested on ways to implement the materials separation guidelines to minimize the burden for MWC owners or operators and the communities they serve. For example, what compliance schedule is most reasonable? (An alternative approach that would phase in separation requirements is discussed in the next section.)

There are several implementation issues associated with off-site separation programs. The proposed guidelines would allow off-site source reduction or source separation programs to be used to comply, in whole or in part, with the materials separation requirements. For example, if the MWC service area collected yard waste, paper, glass, aluminum cans, and/or other materials separately and did not combust these collected materials, credit toward the 25 percent MSW reduction would be given. The prohibition on combustion of lead-acid vehicle batteries could also be achieved through off-site programs. In these cases, MWC's would be required to submit a plan describing the community program and the means of verifying compliance. Section H describes the type of information that should be included in such plans. Comment is requested on how to structure such plans, how to determine compliance where community programs are used, what type of measurement methods could be used, and what types of records should be kept. Comments are specifically requested on how to give credit for source reduction programs (e.g., where commercial businesses or households reduce the amount of waste generated) and for backyard composting of yard waste at the household level.

Finally, EPA requests comments concerning the contractual provisions previously discussed in Section H. The proposed guidelines allow the MWC and parties performing off-site separation to enter into a contractual agreement designating the party performing off-site separation as a co-operator of the MWC regarding compliance with the materials separation requirements. In this way, where off-site materials separation programs are used, enforcement actions for noncompliance with the materials separation provisions could be taken against the off-site MSW processor responsible for the violation. The EPA requests comment on the feasibility of

such contract provisions, and on other approaches for the enforcement of

L. Spokane and Huntington Remands

The Administrator has recently

not presented to EPA by petitioners in the respective PSD appeals) showing

waste disposal costs, and, therefore, no severe economic impacts on households or government units are anticipated. In

program. For noncriteria pollutants, the significance numbers were based on a percentage of the emissions of a well-

pollutants, the Agency is aware of other potential PSD issues caused by the Section 111(d) guidelines. More

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such contract provisions, and on other approaches for the enforcement of materials separation provisions.

K. Solicitation of Comments on Alternative Phase-in of Materials Separation Guidelines

The "Agenda for Action" requires a 25 percent MSW reduction through source reduction and recycling by 1992, but also calls for increasing the percent reduction level to higher levels after 1992. The proposed MWC guidelines would also establish a 25 percent reduction level. However greater percent removals may be achievable. As markets for separated materials strengthen and expand, higher percent separation levels will become more feasible technically and economically. The Agency solicits comments on whether materials separation guidelines for MWC's should require phasing-in of more stringent requirements over time.

One alternative that was considered and rejected was a three-step phase-in of the materials separation requirements. This approach would be similar to the proposed guidelines in that all MWC's would be prohibited from combusting MSW unless the MSW had been processed to separate materials for recovery achieving a specified percent overall reduction (by weight) of the MSW. However, the percent reduction of MSW would be less than 25 percent through 1992; after 1992 it would be 25 percent, consistent with the "Agenda for Action;" and after some later date (e.g., 1995) a higher percent reduction (e.g., 40 percent) would be required. After consideration, it was determined that there is no need to specify a reduction level lower than 25 percent prior to 1992. If these emission guidelines are promulgated in December 1990, as currently scheduled, it is expected that State plans would be submitted within 9 months (by September 1991). Retrofit of materials separation systems could begin in 1991, but would probably not be complete until 1992. Thus, specifying a different percent reduction before 1992 would be of little use.

The proposed guidelines, therefore, start with the requirement for a 25 percent reduction of MSW. The Agency requests comments on whether the guidelines should become effective at a different date from the 1992 proposed, and on whether higher performance levels should be established in subsequent years and if they should be phased-in with one or two steps. Specifically, comments are requested on the desirability of increasing the 25 percent separation level to 40 percent by December 1995.

L. Spokane and Huntington Remands

The Administrator has recently denied two appeals involving (in part) the issue of whether materials separation is part of the best available control technology (BACT) in the prevention of significant deterioration (PSD) permits issued to MWC's. Spokane Regional Waste-to-Energy Project, PSD Appeal No. 88-12 (June 9, 1989) and Huntington Mass-Burn Incinerator, PSD Appeal No. 89-2 (August 2, 1989). The EPA denied both appeals, concluding that the petitioners had failed to show that materials separation was part of BACT for the facilities at issue.

The EPA does not view these petition denials as precluding inclusion of materials separation as part of the Section 111 NSPS and guidelines for existing sources. In the first place, all that was at issue in these appeals was whether petitioners had met their burden of showing that the PSD permit determination not to include a separation requirement was clearly erroneous. Spokane Appeal at p. 3. The EPA is under no such burden in the present rulemaking. Further points of distinction are that the Agency was not asked to review the relation of materials separation to all MWC emissions and thus did not consider certain types of pollutant emission reductions (for example, petitioners made no specific assertions regarding the overall life cycle benefits of materials separation, and also did not consider the nonair quality environmental benefits of materials separation in detail, an important factor in making section 111 determinations). Furthermore, although BACT determinations can have national precedential effect, EPA believes that a proposed decision of national import to require MWC's to perform materials separation can be more appropriately made in the context of a national rulemaking even if the Administrator declines to do so in deciding an individual PSD appeal.

The Administrator further stated that in denying these appeals that petitioners had failed to show that materials separation technologies were "available" (within the meaning of the definition of BACT contained in section 169(3) of the CAA) for MWC's because petitioners had failed to show that use of materials separation in combination with other air pollution control technology would lead to a demonstrable reduction in emissions of regulated pollutants. Spokane Appeal at p. 22. The EPA has included as part of the record of this proposed rulemaking a series of studies (most of which were not presented to EPA by petitioners in the respective PSD appeals) showing reduction in emissions of MWC emissions through use of materials separation. Although these studies do not deal with situations where materials separation was used along with the best demonstrated technology-type of air pollution control technology, it is the Agency's engineering judgment that a reduction of pollutant input into an MWC will result in the MWC emitting fewer of these pollutants. Given that separation technologies are demonstrated for all of the types of materials considered in today's guidelines, that materials separation results in documented reduction in MWC emissions regulated under the proposal, and the Agency's judgment that these reductions would continue even if the MWC is also equipped with at-the-stack air pollution control technology, the Agency believes that materials separation is a demonstrated technology for existing MWC's under section 111.

VI. Combined Impacts of the Proposed Guidelines

The impacts of the proposed municipal waste combustor (MWC) emissions guidelines (based on good combustion practices [GCP] and particulate matter [PM] or acid gas/PM control systems), and the proposed materials separation guidelines are additive. The combined national emission impacts of these two types of guidelines are summarized in table 13.

TABLE 13.—COMBINED NATIONAL EMISSION REDUCTIONS FOR THE SELECTED REGULATORY ALTERNATIVE

Pollutant	Annual total emission reduction
MWC emissions	
MWC organics:	
Dioxins/Furans	160 kg/yr
MWC metals:	
PM	8,300 Mg/yr
MWC acid gases:	
SO_2	37,000 Mg/yr
HCl	86,000 Mg/yr
Materials separation	Additional reductions in MWC emissions

As shown in Table 14, the combined national total annualized cost for the two proposed guidelines would be about $320 million/year, and the combined unit cost would be about $10.90/Mg ($9.90/ton) of municipal solid waste (MSW) combusted.

As discussed in section V, in most cases the materials separation guidelines would not result in increased waste disposal costs, and, therefore, no severe economic impacts on households or government units are anticipated. In some cases the materials separation guidelines would result in net benefits (reduced costs) for households and government units.

TABLE 14.—COMBINED NATIONAL CONTROL COSTS FOR THE SELECTED REGULATORY ALTERNATIVE

Guideline	Total annualized cost (10^6/yr)	Annualized cost per Mg MSW ($/Mg)
MWC emissions	320	10.90
Materials separation	0	0
Combined total	320	10.90

VII. Considerations for Prevention of Significant Deterioration

Today's rulemaking under section 111(d) would establish a new classification of pollutants subject to regulation under the Act: "MWC emissions." The components of MWC emissions are MWC metals, MWC organics, and MWC acid gases. A consequence of this action is that prevention of significant deterioration (PSD) rules will now apply to all subject major stationary sources that have significant increases in this pollutant. Absent any significance levels in the regulations to exempt *de minimis* emission increases, review of PSD would be triggered by an increase in MWC emissions (see, e.g., 40 CFR 52.21(b)(23)(ii)).

In order to maintain a manageable review process which focuses resources on environmental priorities, EPA is proposing in today's Federal Register significance thresholds for these pollutants in a manner similar to those promulgated on August 7, 1980, for other regulated pollutants. At that time, EPA established emissions thresholds, expressed in tons per year, below which emissions would be considered *de minimis* and not be made subject to review. The Agency established these thresholds for 15 pollutants—the six criteria pollutants plus the four pollutants addressed at that time by national emission standards for hazardous air pollutants (NESHAP) and the five addressed in the new source performance standards (NSPS) (see, e.g., 40 CFR 52.21(b)(23)(i)).

The current significance levels were established in 1980 as simple indicators of what emission levels could appropriately be considered *de minimis*. These emission levels have proven to be reasonable in implementing the PSD program. For noncriteria pollutants, the significance numbers were based on a percentage of the emissions of a well-controlled facility of modest size. For NESHAP pollutants, this level was 10 percent of allowable emissions from the subject facility; for NSPS, it was 20 percent. Projected impacts from emissions at this rate were compared to available health and welfare data to assure avoiding appreciable adverse effects.

For the purpose of establishing what amount of MWC emissions would be significant, a 225 Mg/day (250 tons/day) capacity MWC plant was evaluated. This capacity level was chosen since it is typical of many of the moderately sized MWC plants and represents that threshold capacity where a 90 Mg/year (100 tons/year) emission rate would qualify an MWC plant as being major under PSD. An MWC of this size typically would have the potential after controls to emit 90 Mg/year (100 tons/year) of MWC emissions. Because MWC emissions have carcinogenic components, EPA believes that a significance threshold of no higher than 10 percent of that emission rate is appropriate. Thus, the Agency proposes a significance emission level of 9 Mg/year (10 tons/year) of MWC emissions as a trigger for PSD review.

The August 1980 Federal Register also provided exemptions from the otherwise required PSD air quality monitoring data analyses for these sources which could demonstrate that their maximum expected air quality impact could be less than the values indicated in, e.g., 40 CFR 52.21(i)(8)(i) (45 FR 52676, 52709). Those air quality values were generally set at levels reflecting five times the lowest detectable ambient concentrations that could be measured by available monitoring equipment. The MWC emissions being regulated today present a somewhat different situation in that no ambient monitoring methods exist to measure these MWC-specific classifications of pollutants. For this reason, the Administrator will not at this time require PSD permit applicants to monitor specifically for MWC emissions. Applicants for MWC permits will, of course, continue to be responsible for performing appropriate monitoring for other regulated pollutants.

The EPA recognizes that the determination of significance thresholds for review of increases in MWC emissions is important. Comment on the proposed threshold and the approach to defining it is therefore solicited and will be carefully reviewed.

In addition to those PSD concerns related to the newly regulated pollutants, the Agency is aware of other potential PSD issues caused by the Section 111(d) guidelines. More specifically, it is possible that the installation of pollution controls to comply with the guideline levels of performance may trigger PSD review. For example, installing and operating combustion-related controls to reduce emissions of dioxins and furans could result in a physical change or a change in the method of operation at the MWC plant and may increase NO_x emissions in significant amounts, thereby resulting in a major modification for PSD purposes. Similarly, the addition of controls might subject a complying MWC to PSD review where the new potential emissions of the MWC would be significantly larger in amount than the actual emissions of the MWC prior to section 111(d) compliance.

The EPA in general does not believe that the intent of Congress in Part C of the Act was to have sources that are attempting to comply with Section 111(d) requirements trigger PSD review. As such, the Agency solicits comments on whether and to what extent a source should trigger PSD by installing and operating emission reduction systems for the purpose of achieving the guideline limits of performance. Comments on this issue should provide useful input to the Administrator in deciding whether to modify the current PSD rules and to resolve this issue.

VIII. Administrative Requirements

A. Public Hearing

Three public hearings are planned. Each will discuss the proposed guidelines in accordance with section 307(d)(5) of the Clean Air Act (CAA). Persons wishing to make oral presentations should contact EPA at the address given in the **ADDRESSES** section of this preamble. Oral presentations should be limited to 15 minutes each. Any member of the public may file a written statement before, during, or within 30 days after the hearings. Written statements should be mailed to the Air Docket Section at the address given in the **ADDRESSES** section of this preamble.

A verbatim transcript of the hearings and written statements will be available for public inspection and copying during normal working hours at the EPA's Air Docket Section in Washington, DC (see **ADDRESSES** section of this preamble).

B. Docket

The docket is an organized and complete file of all the information

submitted to or otherwise considered in the development of this proposed rulemaking. The principal purposes of

Reporting and recordkeeping, Municipal waste combustors, Municipal solid waste.

§ 60.31a Definitions.

Terms used but not defined in this subpart have the meaning given them in

MWC plant capacity	Guideline, ng/normal m^3	Emission level (gr/billion dscf)

of equipment capable of attaining the level of the emission guidelines established under this subpart are

ACTION: Proposed rule and notice of public hearing.

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submitted to or otherwise considered in the development of this proposed rulemaking. The principal purposes of the docket are: (1) to allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process, and (2) to serve as the record in case of judicial review (except for interagency review materials [Section 307(d)(7)(A)]). The docket number for this rulemaking is A-89-08.

C. Clean Air Act Procedural Requirements

1. Administrator Listing—section 111. As prescribed by Section 111 of the CAA, as amended, establishment of emission guidelines for MWC's is based on the Administrator's determination (52 FR 25399, dated July 7, 1987) that these sources contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare.

2. Periodic Review—section 111. The guidelines will be reviewed 4 years from the date of promulgation as required by the CAA. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technology, and reporting requirements.

3. External Participation—section 117. In accordance with Section 117 of the CAA, publication of this proposal was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. The Administrator will welcome comments on all aspects of the proposed guidelines, including economic and technological issues.

4. Economic Impact Assessment—section 317. Section 317 of the CAA requires the Administrator to prepare an economic impact assessment for any emission guidelines promulgated under section 111(d) of the Act. An economic impact assessment was prepared for the proposed guidelines and for other regulatory alternatives. All aspects of the assessment were considered in the formulation of the proposed guidelines to ensure that the proposed guidelines would represent the best system of emission reduction considering costs. Portions of the economic impact assessment are included in the background information documents (BID's) and additional information is included in the docket.

List of Subjects in 40 CFR Part 60

Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping, Municipal waste combustors, Municipal solid waste.

Dated: November 30, 1989.

William K. Reilly,

Administrator.

PART 60—GUIDELINES AND COMPLIANCE TIMES FOR EXISTING STATIONARY SOURCES

For the reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7414, 7416 and 7601.

2. Subpart C of part 60 is amended by revising § 60.30 to read as follows:

§ 60.30 Scope.

The following subparts contain emission guidelines and compliance times for the control of certain designated pollutants in accordance with section 111(d) of the Act and subpart B.

(a) Subpart Ca—Municipal Waste Combustors.

(b) Subpart Cb—Sulfuric Acid Production Plants.

3. Part 60 is further amended by adding subpart Ca to read as follows:

Subpart Ca—Emissions Guidelines and Compliance Times for Municipal Waste Combustors

Sec.

60.30a Scope.
60.31a Definitions.
60.32a Designated facilities.
60.33a Emission guidelines for MWC metals.
60.34a Emission guidelines or MWC organics.
60.35a Emission guidelines for MWC acid gases.
60.36a Emission guidelines for MWC operating practices.
60.37a MWC operator certification and training.
60.38a Compliance and performance testing and compliance times.
60.39a Reporting and recordkeeping guidelines.

Subpart Ca—Emissions Guidelines and Compliance Times for Municipal Waste Combustors

§ 60.30a Scope.

This subpart contains emission guidelines and compliance times for the control of certain designated pollutants from certain municipal waste combustors (MWC's) in accordance with Section 111(d) of the Act and Subpart B.

§ 60.31a Definitions.

Terms used but not defined in this subpart have the meaning given them in the Act and subparts A, B and Ea of this part.

"MWC plant" means one or more MWC units at the same location for which construction, modification, or reconstruction is commenced before December 20, 1989.

"MWC plant capacity" means the aggregate MWC unit capacity of all MWC units at an MWC plant for which construction, modification, or reconstruction is commenced before December 20, 1989.

"Regional MWC" means an MWC plant with an MWC plant capacity greater than 2,000 megagrams per day (2,200 tons per day) of MSW.

§ 60.32a Designated facilities.

(a) The designated facility to which the guidelines apply is each MWC unit for which construction, modification, or reconstruction is commenced before December 20, 1989.

(b) Physical or operational changes made to an existing MWC unit to comply with an emission guideline are not considered a modification or reconstruction and would not bring an existing MWC unit under the provisions at subpart Ea [see § 60.50a(b)].

§ 60.33a Emission guidelines for MWC metals.

For approval, a State plan shall include the emission guidelines for MWC metals listed below, except as provided for under § 60.24. The emission guidelines for MWC metals expressed as particulate matter contained in gases discharged to the atmosphere from any designated facility are as follows:

MWC plant capacity	Guideline emission level mg/dscm (gr/dscf)	Opacity (percent)
Regional	34 (0.015)	10 (6-min.)
Large	69 (0.030)	10 (6-min.)
Small	69 (0.030)	10 (6-min.)

Note: All emission levels corrected to 7 percent O_2.

§ 60.34a Emission guidelines for MWC organics.

For approval, a State plan shall include the emission guidelines for MWC organics listed below, except as provided for under § 60.24. The emission guidelines for the concentration of the dioxin/furan component of MWC organics discharged into the atmosphere from any designated facility are as follows:

MWC plant capacity	Guideline, ng/normal m^3	Emission level (gr/billion dscf)
Regional (including regional RDF)	[5-30]	([2-12])
Large (except RDF)	125	(50)
Large RDF	250	(100)
Small (except RDF)	500	(200)
Small RDF	1,000	(400)

Note: All levels corrected to 7 percent O_2.

§ 60.35a Emission guidelines for MWC acid gases.

For approval, a State plan shall include the emission guidelines for MWC acid gases for MWC's located at large and regional MWC plants listed below, except as provided for under § 60.24. The emission guidelines for MWC acid gases expressed as sulfur dioxide and hydrogen chloride contained in gases discharged to the atmosphere from any designated facility are as follows:

MWC plant capacity	Guideline emission level (% reduction or ppmv)	
	SO_2	HCl
Regional	85% or 30 ppmv	95% or 25 ppmv
Large	50% or 30 ppmv	50% or 25 ppmv

Note: All ppmv levels corrected to 7 percent O_2.

Either the applicable percent reduction or the ppmv guideline, whichever is less stringent, is the guideline limit for a designated facility.

§ 60.36a Emission guidelines for MWC operating practices.

For approval, a State plan shall include the requirements for MWC operating practices listed in § 60.56a of Subpart Ea including the materials separation requirement under § 60.56a, except as provided for under § 60.24.

§ 60.37a MWC operator certification and training.

For approval, a State plan shall include the requirements listed in § 60.57a of Subpart Ea, except as provided for under § 60.24.

§ 60.38a Compliance and performance testing and compliance times.

(a) For approval, a State plan shall include, for small, large, and regional MWC's, the compliance and performance testing methods listed in § 60.58a for small MWC plants, as applicable, except as provided for under § 60.24.

(b) Except as provided for under paragraph (c) of this section, planning, awarding of contracts, and installation of equipment capable of attaining the level of the emission guidelines established under this subpart are expected to be accomplished within 36 months after the effective date of State emission standards for MWC units.

(c) Planning, awarding of contracts, and installation of equipment and procedures capable of attaining the level of materials separation specified in the emission guidelines under 60.36a are expected to be accomplished by no later than December 31, 1992. The initial demonstration of compliance with the materials separation provisions in § 60.36a is expected to be accomplished at the end of calendar year 1994.

§ 60.39a Reporting and recordkeeping guidelines.

For approval, a State plan shall include the reporting and recordkeeping provisions listed in § 60.59a, as applicable, except as provided for under § 60.24.

4. Subpart C of part 60 is amended by removing §§ 60.32, 60.33, and 60.34; and Subpart Cb is added as follows:

Subpart Cb—Emission Guidelines and Compliance Times for Sulfuric Acid Production Units

§ 60.30b Designated facilities.

(a) Sulfuric acids production units. The designated facility to which §§ 60.31b and 60.32b apply is each existing "sulfuric acid production unit" as defined in § 60.81(a) of subpart H.

§ 60.31b Emission guidelines.

(a) Sulfuric acid production units. The emission guideline for designated facilities is 0.25 gram sulfuric acid mist (as measured by Method 8, of Appendix A) per kilogram of sulfuric acid produced (0.05 lb/ton), the production being expressed as 100 percent H_2SO_4.

60.32b Compliance times.

(a) Sulfuric acid production units. Planning, awarding of contracts, and installation of equipment capable of attaining the level of the emission guideline established under § 60.33(a) can be accomplished within 17 months after the effective date of a State emission standard for sulfuric acid mist.

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40 CFR Parts 51, 52, and 60

[AD-FRL-3646-1]

RIN 2060-AC26

Standards of Performance for New Stationary Sources; Municipal Waste Combustors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: This proposal would add Subpart Ea to 40 CFR part 60. Subpart Ea would limit emissions from new, modified, and reconstructed municipal waste combustors (MWC's). The proposed standards implement Section 111(b) of the Clean Air Act (CAA) and are based on the Administrator's determinations that emissions from MWC's cause, or contribute significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare. The intent of the proposed standards is to require new MWC's to control emissions to the level achievable by applying the best demonstrated system of continuous emission reduction, considering costs, nonair quality health and environmental impacts, and energy requirements.

These are proposed rather than final standards, and comments are requested. The EPA will consider all comments and new information received during the public comment period, and will make changes to the standards, where appropriate, based on these comments.

If requested, a public hearing will be held to provide interested parties an opportunity for oral presentations of data, views, or arguments concerning the proposed emission guidelines.

DATES: *Comments* must be received on or before March 1, 1990.

Public Hearings. Public hearings will be held in Boston, Massachusetts, on January 22 and 23, 1990; in Detroit, Michigan, on January 25 and 26, 1990; and in Seattle, Washington, on January 30 and 31, 1990. All hearings will start at 9:00 a.m. Persons wishing to present oral testimony at the public hearings must call Ms. Ann Eleanor at (919) 541-5578 before January 15, 1990, for the Boston hearing; January 18, 1990, for the Detroit hearing; and January 23, 1990, for the Seattle hearing. Each speaker will be allowed up to 10 minutes, and each group or organization will be allowed a maximum of 20 minutes to speak. If no one requests to speak at a hearing before these dates, the hearing may be cancelled. Persons interested in attending the hearings should also call Ms. Ann Eleanor at (919) 541-5578 to verify that a hearing will be held.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Air Docket (LE-131), Attention Docket No. A-89-08, Room M1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington DC 20460.

Public Hearing. The three scheduled public hearings, if requested, will be held at the following locations:

Standards: Cost Procedures", (EPA-450/3-89-27a, August 1989);
A. "Economic Impact of Air Pollutant

V. Rationale for the Standards for Materials Separation

today's air emission standards are just one component.

B. New Source Performance Standards

* * * application of the best technological system of continuous emission reduction which (taking into consideration the cost of

reconstructed municipal waste combustors (MWC's). Emission guidelines for existing MWC's are being

Public Hearing. The three scheduled public hearings, if requested, will be held at the following locations:

1. Presidents Ballroom, Hyatt Regency, 575 Memorial Drive, Cambridge, Massachusetts.
2. Cobo Hall, Cobo Convention Center, One Washington Boulevard, Detroit, Michigan.
3. Rainier Room, Seattle Center, 305 Harrison Street, Seattle, Washington.

Persons interested in attending a hearing or wishing to present oral testimony should notify Ms. Ann Eleanor, Standards Development Branch (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5578.

Background Information Documents. The background information documents (BID's) for the proposed standards consist of seven documents. See **SUPPLEMENTARY INFORMATION** for a listing of these documents. Persons wishing to review the BID's should contact their respective trade, professional, or environmental organization.

Docket. Docket No. A–89–08, containing supporting information used in developing the proposed standards, is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at the EPA's Air Docket, Room M1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Walter Stevenson [(919) 541–5264] or Mr. Fred Porter [(919) 541–5251], Standards Development Branch, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: The BID's for the proposed standards consist of seven documents as follows:

1. "Municipal Waste Combustors—Background information for Proposed Standards: 111(b) Model Plant Description and Costs of Control", (EPA–450/3–89–27b, August 1989);
2. "Municipal Waste Combustors—Background information for Proposed Standards: Post-Combustion Technology Performance", (EPA–450/3–89–27c, August 1989);
3. "Municipal Waste Combustion Assessment, Combustion Control at New Facilities", (EPA–600/8–89–057, August 1989);
4. "Municipal Waste Combustion Assessment, Technical Basis for Good Combustion Practice", (EPA–600/8–89–063, August 1989);
5. "Municipal Waste Combustors—Background Information for Proposed Standards: Cost Procedures", (EPA–450/3–89–27a, August 1989);
6. "Economic Impact of Air Pollutant Emission Standards for New MWC's", (EPA–450/3–89–006, August 1989); and
7. "Municipal Waste Combustors—Background Information for Proposed Standards: Control of NO_x Emissions", EPA–450/3–89–27d, August 1989.

These reports are being provided at no cost to the public through interested trade, professional, and environmental organizations upon request. However, because of the number and size of volumes involved and the associated printing and distribution costs, only a limited number of sets were printed. The reports are being provided to trade groups, and professional and environmental organizations, with the understanding that they will allow members access to their document sets. Persons wishing to review the BID's should contact their respective organization. If the organization does not have the BID's, a set will be provided to the organization for the use of their membership.

The following outline is provided to aid in locating information in the preamble to the proposed regulation.

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E. Regulatory Flexibility Act Compliance
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I. Introduction

A. Summary of Regulatory Decision

Several studies were performed to determine whether municipal waste combustor (MWC) emissions should be regulated and, if so, under what sections of the Clean Air Act (CAA). As set forth in the advance notice of proposed rulemaking (ANPRM) (52 FR 25399, July 7, 1987), the Agency has decided to regulate air emissions from MWC's under section 111. This notice, therefore, proposes standards of performance for new MWC's under section 111(b) of the CAA. A separate regulatory action in today's **Federal Register** proposes emission guidelines for existing MWC's under section 111(d). Today's proposals address only air emissions from MWC's. The Agency has developed an overall agenda to address other municipal solid waste (MSW) disposal issues, and today's air emission standards are just one component.

B. New Source Performance Standards (NSPS)—General Goals

New source performance standards (NSPS or "standards") implement section 111(b) of the CAA. New source performance standards are issued for categories of sources which cause, or contribute significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare. They apply to new stationary sources of emissions, i.e., sources whose construction, modification, or reconstruction begins after a standard is proposed. An NSPS requires these sources to control emissions to the level achievable by "best demonstrated technology" considering costs and any nonair quality health and environmental impacts and energy requirements. The control technology used to achieve the standards is not specified. Only the emission limits achievable by the "best demonstrated technology" are included in the standards. Any control technology that will comply with the emission limits can be used.

C. NSPS Decision Summary

An NSPS is the end product of a series of decisions related to certain key elements for the source category being considered for regulation. The elements in this "decision" are generally the following:

1. Identification of source category to be regulated—usually an emission source category, but can be a process or group of processes within an industry.
2. Definition of affected facility—the piece or pieces of equipment that comprise the sources to which the standards apply.
3. Selection of pollutant(s) to be regulated—the particular substance(s) emitted by the affected facility that the standards control.
4. Identification of "best demonstrated technology"—the technology on which the standards will be based, i.e., • • • application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated. [Section 111(a)(1)]
5. Selection of format for the standards—the form in which the standards are expressed, i.e., as pollutant concentration emission limits, as a percent reduction in emissions, or as equipment or work practice standards.
6. Development of actual standards—generally emission limits based on what the best demonstrated technology can achieve. Only in unusual cases do standards require that a specific technology be used. In general, the source owner or operator may select any method for complying with the standards.
7. Other considerations—in addition to emission limits, NSPS usually include: standards for visible emissions, modification/reconstruction provisions, monitoring requirements, performance test methods and compliance procedures, and reporting and recordkeeping requirements.

D. Overview of This Preamble

This preamble will:

1. Summarize the important features of this proposed NSPS by discussing the conclusions reached with respect to each of the elements in the decision summary.
2. Describe the environmental, energy, and economic impacts of this NSPS.
3. Present a rationale for each of the decisions in the decision summary.
4. Present a regulatory flexibility analysis.
5. Discuss administrative requirements relevant to this action.

II. Summary of the Standards

A. Source Category To Be Regulated

The proposed standards would limit air emissions from new, modified, or reconstructed municipal waste combustors (MWC's). Emission guidelines for existing MWC's are being proposed elsewhere in today's **Federal Register**. An MSW is defined as any combustion facility used for burning municipal solid waste (MWC). The MSW burned in the MWC's is refuse, more than 50 percent of which is waste consisting of a mixture of paper, wood, yard wastes, food wastes, plastics, leather, rubber, and other combustible materials, and noncombustible materials such as glass, metal, and rock. The MSW definition includes household wastes as well as municipal-type wastes from institutional, commercial, municipal, and some industrial sources, but does not include industrial process wastes, or medical wastes. The MSW also includes refuse-derived fuel (RDF), which is solid waste that is shredded and classified by size before combustion.

B. Pollutants To Be Regulated

Two pollutants would be regulated under the proposed standards: (1) "MWC emissions" and (2) nitrogen oxides (NO_x). *MWC Emissions:* Constituents of MWC emissions represent a broad range of pollutants that can generally be categorized into three subclasses: MWC organics (including dioxins/furans), MWC metals (including trace metals which are condensible on particulate matter [PM]), and MWC acid gases (sulfur dioxide [SO_2] and hydrogen chloride [HCl]). The composite pollutant, "MWC emissions", is designated for regulation under section 111(b) which applies to new sources (the subject of this notice). Under section 111(d), "MWC emissions" would be regulated at existing MWC's (emission guidelines). Emission guidelines proposed under section 111(d) are published in a separate notice in today's **Federal Register**. As shown in Table 1, the proposed standards would establish emission limits and operating standards to control MWC emissions.

TABLE 1.—SUMMARY OF REGULATED POLLUTANT AND STANDARDS

Pollutant regulated	Pollutant subclasses	Proposed standards
1. MWC Emissions ("designated" for control under Section 111)	MWC Organics	• Dioxin/furan emission limit • Combustion operational standards: —CO Limit —Load —Flue Gas Temperature —MWC Operator Training
	MWC Metals	• PM emission limit • Opacity limit
	MWC Acid Gases	• HCl emission limit • SO_2 emission limit
2. NO_x (criteria pollutant)	NO_x	• NO_x emission limit

*Materials separation requirements are also proposed. These requirements would result in additional reduction of MWC emissions.

NO_x Emissions: The second pollutant to be regulated under these proposed standards is NO_x. Nitrogen oxide

weighing more than 5 kg (11 lbs) and all household batteries. The materials separation requirements could be

control of metals, and would be a more practical approach than setting individual limits for every metal

hour block average) at the PM control device inlet to minimize dioxin/furan formation

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NO_x Emissions: The second pollutant to be regulated under these proposed standards is NO_x. Nitrogen oxide emissions would be regulated under Section 111(b). Consequently, as shown in Table 1, the proposed standards would establish an emission limit for NO_x emissions from new MWC's.

C. Best Demonstrated Technology

MWC Emissions: The proposed standards for MWC's located at large MWC plants (those plants that have an aggregate capacity to combust greater than 225 megagrams/day [Mg/day] [250 tons/day] of MSW) are based on the conclusion that the best demonstrated technology for reducing MWC emissions includes: good combustion practices (GCP) for MWC organics control and a spray dryer (SD) followed by a fabric filter (FF) to achieve additional control of MWC organics as well as MWC metals and PM, and MWC acid gas. This combination of controls can achieve the following emission limits (corrected to 7 percent oxygen [O_2] on a dry basis):

1. MWC organics control: dioxin/furan control to a level in the range of 5 to 30 nanograms per normal cubic meter (ng/Nm^3) (2 to 12 grains per billion dry standard cubic feet [gr/billion dscf]) total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans (the precise level within this range will be determined between proposal and promulgation);
2. MWC metals control: PM control to 34 milligrams per dry standard cubic meter (mg/dscm) (0.015 grains per dry standard cubic foot [gr/dscf]); and
3. MWC acid gas control: (a) HCl emissions reduction of 95 percent or an HCl emission limit of 25 parts per million by volume (ppmv), and (b) SO_2 emissions reduction of 85 percent or an SO_2 emission limit of 30 ppmv.

The proposed standards for MWC's located at small MWC plants (those plants that have an aggregate capacity to combust 225 Mg/day [250 tons/day] or less of MSW) are based on the conclusion that the best demonstrated technology for reducing MWC emissions includes: GCP for MWC organics control and dry sorbent injection (DSI) followed by an electrostatic precipitator (ESP) or FF to achieve additional control of MWC organics as well as MWC metals and PM, and MWC acid gas. This combination of controls can achieve the following emission limits (corrected to 7 percent O_2 on a dry basis):

1. MWC organics control: dioxin/furan control to 75 ng/Nm^3 (30 gr/billion dscf) total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans for all types of MWC's except RDF combustors. For RDF's the dioxin/furan limit would be 250 ng/Nm^3 (100 gr/billion dscf);
2. MWC metals control: PM control to 34 mg/dscm (0.015 gr/dscf); and
3. MWC acid gas control: (a) HCl emissions reduction of 80 percent or an HCl emission limit of 25 ppmv, and (b) SO_2 emissions reduction of 50 percent or an SO_2 emission limit of 30 ppmv.

The EPA is also including materials separation requirements (i.e., separation of certain materials from MSW prior to combustion) in the proposed standards as part of best demonstrated technology. The proposed materials separation standards would apply to all MWC's. The proposed standards would require MSW to be processed before combustion to achieve an overall 25 percent or greater reduction (by weight) of MSW through separating for recovery some or all of the following materials: paper and paperboard; ferrous metals; nonferrous metals; glass; plastics; household batteries; and yard wastes. However, a maximum of 10 percent of the overall weight reduction could be attributed to yard waste; the other 15 or more percent would come from the other specified materials. Additionally, the standards would preclude the combustion in MWC's of lead-acid vehicle batteries weighing more than 5 kg (11 lb), and a program to remove household batteries prior to combustion would be required.

NO_x Emissions: The proposed standards for NO_x emissions from MWC's located at large MWC plants (plants with the aggregate capacity to combust greater than 225 Mg/day [250 tons/day] of MSW) are based on the conclusion that selective noncatalytic reduction (SNCR) or achievement of NO_x emission levels comparable to the use of SNCR represents best demonstrated technology for reducing NO_x emissions. This technology can achieve a NO_x emission limit in the range of 120 to 200 ppmv (corrected to 7 percent O_2 on a dry basis), on a 24-hour average basis. The precise limit will be determined between proposal and promulgation. Control of NO_x is not required for small MWC's.

D. Format For The Standards

MWC Emissions: Since it is not possible to establish or measure stack levels of "MWC emission" as a whole, standards are set for a subset of pollutants that will ensure control of the three subclasses of MWC emissions (MWC organics, MWC metals, and MWC acid gases). The proposed standards for MWC emissions would control MWC organics by establishing a dioxin/furan emission limit. Emissions for dioxins/furans would be calculated as a concentration (ng/Nm^3) (gr/billion dscf) at 7 percent O_2. The proposed standards would control MWC metals by establishing an emission limit for PM and an opacity limit. Emissions for PM would be calculated as a concentration (gr/dscf) at 7 percent O_2. Since MWC metals are associated with PM in the flue gas and are removed by PM control devices, achieving the specified levels of PM control would result in greater than 97 percent control of the full range of MWC metals (except mercury, for which a lower percent control would be achieved). This approach is more practical than setting limits for each individual metal. The opacity standard allows continuous monitoring, since there are no systems for continuous monitoring of PM mass emissions (gr/dscf). The proposed standards for MWC acid gases (HCl and SO_2) would establish both a percent reduction requirement and a concentration limit. The MWC owner/operator may comply with either of these two methods for acid gas compliance. The concentration limits for SO_2 and HCl are calculated as ppmv (at 7 percent O_2).

In addition to controlling stack emissions, the proposed standards would establish combustor operating standards for MWC's.These operating standards are part of GCP and would ensure that MWC organic (dioxin/furan) control is achieved on a continuous basis. They include limits on combustor carbon monoxide (CO) level, maximum MWC load level, and flue gas temperature at the PM control device inlet.

The proposed standards would also require certification of the chief facility operator and shift supervisors by the American Society of Mechanical Engineers (ASME), and development of a training manual to be used for training other MWC personnel. Training is an integral part of the implementation of GCP.

The proposed standards would also require that all MWC's incorporate materials separation procedures to process MSW prior to combustion. All MWC's would be required to process MSW to achieve an overall 25 percent or greater reduction by weight (annual average) of MSW through separating for recovery some or all of the following materials: paper and paperboard; ferrous metals; nonferrous metals; glass; plastics; household batteries; and yard wastes. In calculating the 25 percent overall weight reduction, a maximum credit of 10 percent would be allowed for yard waste separation. In addition, all MWC's would be prohibited from combusting lead-acid vehicle batteries weighing more than 5 kg (11 lbs) and all household batteries. The materials separation requirements could be achieved by on-site mechanical separation, on-site manual separation, an off-site community source reduction or material separation (recycling) program, or a combination thereof.

NO_x Emissions: The proposed standards establish maximum emission limits for NO_x emissions from MWC's. The emission limit is calculated as a concentration (ppmv) at 7 percent O_2 on a dry basis.

E. Proposed Standards

The proposed standard is subdivided into two sets of requirements, one for MWC's located at large MWC plants and one for MWC's located at small MWC plants. The aggregate capacity of all new MWC's at one site would be added together to define aggregate MWC plant capacity. If the aggregate capacity of all new, modified, and reconstructed MWC's at one site is above 225 Mg/day (250 tons/day), then all new, modified, or reconstructed MWC's at the plant would be subject to the large MWC plant standard. Municipal waste combustors whose construction commenced prior to proposal of this standard are considered to be existing MWC's and would not be covered by the proposed standards and are not considered in calculating aggregate capacity for new MWC's. (See the separate notice in today's Federal Register that proposes emission guidelines for existing MWC's.)

MWC Emissions: The proposed standards for control of each subclass of MWC emissions are summarized below. Stack standards are discussed first, followed by combustor operational standards.

MWC Organics. The proposed standards for MWC organics would require MWC's at large MWC plants to meet a dioxin/furan emission limit in the range of 5 to 30 ng/Nm^3 (2 to 12 gr/billion dscf). The precise limit within this range will be determined between proposal and promulgation. The MWC's located at small MWC plants would have to meet a dioxin/furan emission limit of 75 ng/Nm^3 (30 gr/billion dscf) at 7 percent O_2 unless they use RDF-type MWC's. At small plants, RDF-type MWC's would have to comply with a limit of 250 ng/Nm^3 (100 gr/billion dscf). These limits would apply to total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans.

MWC Metals. The proposed standard for MWC metals would require all MWC's to meet a PM emission limit of 34 mg/dscm (0.015 gr/dscf) at 7 percent O_2. This PM limit would ensure good control of metals, and would be a more practical approach than setting individual limits for every metal. Municipal waste combustors would also be required to meet an opacity limit of 10 percent (6-minute average, measured continuously).

MWC Acid Gases. The proposed MWC acid gas standards establish limits for HCl and SO_2. All MWC's located at large MWC plants would be required to achieve a 95 percent reduction in HCl emissions or a 25 ppmv HCl emission limit measured during a compliance test and annual performance tests. Large MWC plants would also be required to achieve an 85 percent reduction in SO_2 emissions or a 30 ppmv SO_2 emission limit on a daily (block) 24-hour average basis, measured continuously.

The proposed standards for MWC acid gases would require all MWC's located at small MWC plants to achieve either an 80 percent reduction in HCl emissions or a 25 ppmv HCl emission limit measured during the compliance test and subsequent performance tests. Small MWC plants would also be required to achieve either a 50 percent reduction in SO_2 emissions or a 30 ppmv SO_2 emission limit on a daily (block) 24-hour average basis, measured continuously.

Combustion Control. The standards would also specify MWC operating parameters, which are part of GCP, and would ensure that MWC organics emissions are minimized on a continuous basis. These operating parameters would include CO emission limits, combustor load levels, and flue gas temperatures.

For modular starved air and modular excess air types of MWC's, the CO emission limit would be 50 ppmv (at 7 percent O_2 on a block 4-hour average basis). For mass burn waterwall, mass burn refractory, and fluidized-bed types of MWC's, the CO emission limit would be 100 ppmv (at 7 percent O_2 on a block 4-hour average basis). For mass burn rotary waterwall, RDF, and coal/RDF co-fired MWC's, the CO emission limit would be 150 ppmv (at 7 percent O_2 on a block 4-hour average basis).

Municipal waste combustors would not be allowed to operate above 100 percent of the maximum capacity, as measured during a compliance test (1-hour average basis). Municipal waste combustors that do not generate steam would be exempt from maximum load level requirements because these types of MWC's cannot feasibly measure load level.

The proposed standards would require all MWC's to maintain a flue gas temperature of 230° C (450° F) or less (4-hour block average) at the PM control device inlet to minimize dioxin/furan formation.

ASME Certification and Operator Training. As part of GCP, the proposed standard would require certification of the MWC shift supervisor and MWC chief facility operator by ASME. In addition, the proposed standard would require each MWC owner or operator to develop a site-specific training manual to be reviewed by all employees associated with the operation of the MWC. The manual and training would be updated annually.

Materials Separation: The proposed standards would require all MWC's to incorporate materials separation procedures to process MSW prior to combustion. All MWC's would be required to process MSW to achieve a 25 percent or greater reduction in MSW by weight (annual average) through separation for recovery of some or all of the following materials: paper and paperboard; ferrous metals (including "white goods", or household appliances); nonferrous metals; glass; plastics; household batteries; and yard wastes. In calculating the 25 percent weight reduction, a maximum credit of 10 percent would be allowed for yard waste separation. In addition, all MWC's would be prohibited from combusting wet lead-acid vehicle batteries weighing more than 5 kg (11 lbs), and a program to remove household batteries prior to combustion would be required. The materials separation requirements could be acheived by on-site mechanical seperation, on-site manual separation, a community source reduction or material separation (recycling) program, or a combination thereof. A materials separation system or program capable of achieving these requirements must be implemented at initial start-up for MWC's that commerce construction after promulgation of this standard. For MWC's that commerce construction between proposal and promulgation, the materials separation program would be implemented on December 31, 1992, or at initial start-up, whichever is later.

NO_x Emissions: The proposed standards for NO_x emissions would require all MWC's located at MWC plants with the capacity to combust greater than 225 Mg/day (250 tons/day) of MSW to meet a NO_x emission limit in the range of 120 to 200 ppmv (corrected to 7 percent O_2) on a 24-hour daily (block) average basis. The precise limit will be determined between proposal and promulgation. Different limits may be set for different subcategories of MWC technologies, and a percent

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reduction format may also be considered.

F. Performance Testing and Monitoring Requirements

MWC Emissions: Testing and monitoring requirements are being proposed to ensure control of each subclass of MWC emissions. All emission limits are corrected to 7 percent O_2 on a dry basis. However, an MWC owner or operator may request to correct to an equivalent percent carbon dioxide (CO_2). In these cases, the correlation between O_2 and CO_2 would be established during the compliance test.

MWC Organic Emissions. The proposed MWC organic emissions standard would require performance tests to be conducted in accordance with Method 23 to determine compliance with the dioxin/furan emission limit. Method 23 is also proposed today in a separate notice in this **Federal Register**. An annual retest would be required for all MWC's. However, at small MWC plants, if three annual performance tests in a row indicate compliance with the dioxin/furan emission limit, small MWC's may skip the annual performance test for the next 2 years. If the next test (after skipping 2 years) shows compliance with the limits, another 2-year period may be skipped. At a minimum, an MWC performance test must be performed by small MWC plants every 3 years. Municipal waste combustors at large MWC plants must test every year.

MWC Metals. Performance tests to determine compliance with the PM emission limits (which ensure metals control) would be based on Method 5. Method 1 would be used for selecting the sampling points, and Method 3 would be used for gas analysis. Method 9 (a 6-minute average of 24 observations) would be used to determine compliance with the opacity standard. Subsequent annual performance tests for PM would be required for all MWC's. However, as with dioxin/furan emissions, if three performance tests in a row indicate compliance with the PM limit, small MWC's may skip the annual performance test for the next 2 years. At a minimum, an MWC performance test must be performed by small MWC's every 3 years. Large MWC's must test every year.

MWC Acid Gases. The proposed MWC acid gas standards would require continuous monitoring of SO_2 emissions for all MWC's. Compliance with the percent reduction requirement or the emission limit would be determined on a daily (block) 24-hour basis as measured by the continuous emissions monitoring system (CEMS). Calculations to determine compliance would be made in accordance with Method 19. Quality assurance would be maintained in accordance with Appendix F.

The proposed MWC acid gas standards for HCl would require performance tests to be conducted in accordance with Method 26 to determine compliance with the HCl percent reduction requirements or emission limits. Method 26 is proposed in a separate notice in today's **Federal Register**. Subsequent annual performance tests would be required for all MWC's. However, at small MWC plants, if three performance tests in a row indicate compliance with the HCl limit, the MWC's may skip the annual performance test for the next 2 years. At a minimum, an MWC performance test must be performed by small MWC's every 3 years. Large MWC's must test every year.

Operating Standards. Continuous monitoring of certain MWC operating parameters would be required to ensure GCP are implemented on a continuous basis. These parameters are flue gas CO level, MWC load level, and flue gas temperature at the PM control device inlet. Compliance with the CO limit would be determined on a block 4-hour average basis as measured by a CEMS. Calculations to determine compliance would be made in accordance with Method 10. Quality assurance would be maintained in accordance with Appendix F. Load level (percent of full load) would be measured using steam flowrate, and a 1-hour average used to determine compliance. Compliance with the temperature standard is determined through continuous monitoring and a 4-hour averaging period.

Requirements for CEMS. A minimum data requirement applicable to all CEMS is also proposed. Data must be collected for a minimum of 75 percent of the MWC operating hours per day for 75 percent of the operating days per month.

Materials Separation: The proposed standards would require that all MWC's document that materials separation procedures are in place which meet: (1) the 25 percent overall separation requirement, (2) the lead-acid vehicle battery removal requirement, and (3) the household battery removal requirement. If an off-site or community program is used to comply in whole or in part with the requirements, a plan describing the separation program and the methods to be used to measure compliance would be submitted to EPA or the State agency for approval.

Compliance with the 25 percent overall MSW reduction requirement would be determined annually. Compliance would be based on an average of 12 monthly measurements of the total weight of MSW received, the weight of MSW combusted, and the weight of materials separated for recovery during each month. Demonstration of compliance with the annual average percent MSW reduction would not be required until the end of the second complete calendar year (January through December) after the initial start-up of the MWC. A report of the percent reduction achieved would be submitted at the end of the first calendar year, but would not be used to determine compliance. For MWC's that commence construction between proposal and promulgation, initial demonstration of compliance is required at the end of calendar year 1994 or at the end of the second calendar year after initial start-up, whichever is later.

Separation procedures could include mechanical separation, manual sorting, or curbside separation programs. If an off-site source reduction or materials separation (recycling) program is used to meet the materials separation requirements, the MWC and the party responsible for off-site separation may enter into a contractual relationship. The contractual relationship could designate the MWC and the off-site separator as co-operators of the MWC regarding compliance with the materials separation requirements. The contract could also specify the responsibilities of each party and the actions the off-site separator would take to meet the requirements for the 25 percent MSW reduction and/or removal of vehicle batteries and/or household batteries, as applicable.

The proposed materials separation requirements would also include a combustion permit provision that would be renewable on an annual basis. The permit would be available for MWC's that separate combustible material (e.g., paper, plastics) for recycle but for which there are no markets for the separated material. When a permit had been issued, the separated material could be combusted in the MWC. As proposed, application for the combustion permit must be made to EPA.

NO_x Emissions: The proposed NO_x standards would require continuous monitoring of NO_x emissions for all MWC's located at MWC plants with aggregate capacities to combust greater than 225 Mg/day (250 tons/day) of MSW. An initial compliance test for NO_x would be required during the first 24 consecutive unit operating hours at full load. Compliance with the emission limit would be determined on a daily (block) 24-hour average basis as measured by the CEMS. Calculations to determine compliance would be made in accordance with Method 19. Quality assurance would be maintained in accordance with Appendix F. The proposed minimum data requirements for CEMS would also apply.

G. Reporting and Recordkeeping

The proposed standard would require all MWC owners or operators to submit a notification of the intent to construct and to initiate operation of a new, modified, or reconstructed MWC, as well as the results of the initial performance test and performance evaluation of the CEMS.

The proposed standards also require quarterly reports of CEMS drift tests and accuracy determinations in accordance with Appendix F, and reports of any periods when the minimum data requirements for CEMS were not met.

Records of all data, including results of emission tests and CEMS data, must be maintained for 2 years and made available to enforcement personnel upon request.

MWC Emissions: Quarterly continuous compliance reports for SO_2 and combustor operating parameters (CO, load, and temperature) would be required under the proposed standards. Quarterly excess emission reports would be required for opacity. Annual compliance reports for dioxins/furans, PM, and HCl would also be required under the proposed standards. However, if small MWC's have met the criteria allowing them to skip the annual compliance tests for dioxins/furans, PM, or HCl, they would submit a simplified annual report.

Materials Separation: Annual compliance reports for materials separation would be required under the proposed standards. The first report would be submitted at the end of the first calendar year after start-up of an MWC, but would not be used to determine compliance. This interim report would be used to observe progress made toward the materials separation requirements. Reports submitted beginning the end of the second calendar year after start-up (or the end of 1994 for MWC's that commence construction between proposal and promulgation) would be used to determine compliance. Records of the weight of MSW received at the MWC, the weight combusted, and the weight of each material separated for recovery (on a monthly basis) would also be kept. Additionally, records would be maintained of the weights of vehicle batteries and household batteries removal.

NO_x Emissions: Quarterly compliance reports for NO_x would also be required under the proposed standards.

III. Impacts of the Standards

A. Air

MWC Emissions: In the fifth year after adoption, the standards would reduce nationwide emissions of dioxins/furans from municipal waste combustors (MWC's) by about 15 kilograms/year (kg/year) (34 lbs/year) compared with projected emission levels under the regulatory baseline. This represents a reduction of over 90 percent. Emissions of particulate matter (PM) would be decreased by about 6,000 Mg/year (6,600 tons/year) compared with projected emission levels under the regulatory baseline. Overall MWC metal emission reductions of about 99 percent for all metals except mercury would be achieved by the air pollution control system. Nationwide emissions of SO_2 would be decreased by about 36,000 Mg/year (39,000 tons/year) compared with projected emission levels under the regulatory baseline. Nationwide emissions of HCl would be decreased by about 47,000 Mg/year (52,000 tons/year) compared with projected emission levels under the regulatory baseline. This represents a reduction of over 90 percent in MWC acid gas emissions.

Materials Separation: The proposed requirements for materials separation would reduce the overall amount of waste combusted by about 25 percent and would reduce overall MWC emissions; however, the amount of emissions reduction cannot be accurately predicted since there are little data relating materials separation to MWC emissions when materials separation occurs in conjunction with at-the-stack air pollution control. Additional reductions in emissions of MWC organics, MWC metals and mercury, MWC acid gases, and NO_x are expected.

NO_x Emissions: In the fifth year after this new source performance standard (NSPS) becomes applicable, nationwide emissions of NO_x would be reduced by about 12,000 Mg/year (13,000 tons/year) compared with projected emission levels under the regulatory baseline. This is roughly a 40 percent reduction.

B. Water and Solid Waste

MWC Emissions: Under the proposed standards for MWC emissions, no significant water pollution impacts are projected because none of the emission control technologies that were considered in developing these standards would produce a wastewater stream.

No significant solid waste impacts are projected from these proposed standards for MWC emissions. Requirements for good combustion practices (GCP) tend to reduce the quantity of ash generated by MWC's, whereas addition of acid gas control slightly increases the quantity of ash generated due to addition of lime scrubber solids. Overall, the proposed standards would increase the net amount of MWC ash generated by roughly 9 percent or 330,000 Mg/year (363,000 tons/year) relative to baseline. However, combustion of MSW as opposed to direct landfilling greatly reduces the volume of waste to be disposed of in landfills (by approximately 90 percent) and extends landfill life. Even with the increased ash, combustion would still reduce the volume of waste by about 90 percent.

It is unclear what, if any, effect acid gas control would have on ash quality. However, increased scrutiny and control over waste disposal in municipal waste landfills should result in environmentally adequate ash disposal practices. The EPA is required, under the Resource Conservation and Recovery Act (RCRA) Section 4010(c), to develop criteria for sanitary landfills that receive household hazardous waste and small quantity generated hazardous waste, which criteria are to protect human health and the environment, taking into account the practicable capability of such facilities. These criteria may ultimately be Federally enforceable if States do not adopt adequate programs to implement them. RCRA Section 4005(c). The EPA has proposed criteria for all MSW landfills pursuant to these provisions. These criteria would require such controls as groundwater monitoring, closure, financial responsibility, and corrective action standards for existing MSW landfills, and also would require risk-based performance standards for new landfills or lateral expansions of existing MSW landfills. 53 FR 33314 (August 30, 1988). Pending legislation, although at an early stage of the legislative process, would require even more stringent controls and, in some bills, a whole separate regulatory system for MWC ash. The EPA thus believes that ash disposal will ultimately be adequately addressed by waste disposal management standards so that considerations of ash quality need not play a significant role in this rulemaking. However, to the extent that future EPA or Congressional action increases the stringency of controls and thereby cost of MWC ash disposal, the increased cost of ash disposal will be

considered as part of this rulemaking. The EPA solicits comment regarding the

development of equivalent virgin raw materials is relatively energy-intensive.

Materials Separation: Over the long term, the proposed materials separation

MWC types or the amount of MSW combusted.

Materials Separation: The costs of

Act (RCRA), Congress directed EPA to prepare a report on the magnitude of dioxin risks from MWC's and to identify

MWC's at the State level than would be feasible in a general rulemaking at the Federal level. (Under Section 111(d),

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considered as part of this rulemaking. The EPA solicits comment regarding the effect of potential future MWC ash disposal standards on this rule.

Materials Separation: The proposed materials separation standards would encourage source reduction and recycling of materials, thereby reducing the volume of solid waste and ash to be disposed of in MWC's or landfills. Any national strategy adopted by Congress and implemented at the State and local level would be credited toward the material separation requirement in this rule.

NO_x Emissions: Under the proposed standards for NO_x, no significant water pollution impacts are projected because none of the NO_x emission control technologies that were considered in developing these standards would produce a wastewater stream.

No significant solid waste impacts are projected from these proposed NO_x standards. The NO_x emission control technologies considered in developing these standards do not affect ash quality or quantity.

C. Energy Impacts

MWC Emissions: An MWC regulated under the proposed standard for MWC emissions would require additional energy to operate the control equipment used to comply with the standards. Total national usage of energy would increase by about 210,000 megawatt hours per year (MW-hrs/year). The majority of MWC's that would be affected by the proposed standards are cogeneration MWC's that combust municipal solid waste (MSW) and produce steam that is used to generate electricity for sale. For example, a typical large mass burn MWC would generate about 410,000 MW-hrs/year of electricity. Although these MWC's would require additional energy to operate control equipment, the additional energy use would only be about 11,000 MW-hrs/year at a typical large MWC, which has a very small impact on overall energy generated at the plant (a net reduction in energy generation of 2.6 percent). No other energy impacts would be associated with these proposed standards for MWC emissions.

Materials Separation: A small additional amount of energy would be used if mechanical materials separation procedures are practiced at the MWC plant. However, on a national basis, positive energy benefits are expected as a result of the materials separation requirements. The recycling of separated materials reduces overall energy use since the combined extraction and development of equivalent virgin raw materials is relatively energy-intensive.

NO_x Emissions: An MWC regulated under the proposed standards for NO_x would require a small amount of additional energy to operate the NO_x control equipment used to comply with the standard. For example, a large mass burn MWC would require about 3,200 MW-hrs/year of electrical energy for selective noncatalytic reduction (SNCR) NO_x control. The combined additional electrical energy requirement for control of both MWC emissions and NO_x would equate to a reduction in energy generation of only 3.3 percent. No other energy impacts would be associated with these proposed NO_x standards.

D. Control Costs

The total annualized costs of control in the fifth year after proposal of the standards would be about $190 million/year, and the overall national average annualized cost per unit of MSW combusted would be $12.90/Mg ($11.70/ton) of MSW combusted. This includes the costs of control for MWC emissions, materials separation, and NO_x control. For perspective, typical costs incurred by the general public for disposal of MSW range from $40 to over $100/Mg ($36 to over $90/ton) of MSW, including collection, transportation, combustion, and ash disposal.

Cost increases for typical large MWC plants would range from about $10 to $22/Mg ($9 to $20/ton) of MSW combusted. Cost increases for typical small MWC plants would range from $9 to $47/Mg ($8 to $43/ton) of MSW combusted. The MWC's located at small MWC plants would not be required to control NO_x emissions. The portion of the national cost and model plant impacts attributable to each standard are summarized below.

MWC Emissions: During the fifth year of applicability of the proposed standards, the overall average projected increase in nationwide annualized costs for controlling MWC emissions would be about $10.90/Mg ($9.90/ton) of MSW combusted. The nationwide projected increase in capital costs for controlling MWC emissions would be about $500 million.

On a per plant basis, the annual disposal cost for a typical large MWC would increase by between $8 and $19/Mg ($7 and $15/ton) of MSW combusted, depending on the size and design of the MWC. The annual disposal cost for a typical small MWC would increase by between $9 and $47/Mg ($8 and $43/ton) of MSW combusted, depending on the size and design of the MWC.

Materials Separation: Over the long term, the proposed materials separation requirements are not expected to result in an increase in national annualized costs. While some costs will be initially incurred to purchase and operate materials separation systems, as markets develop and stabilize, these costs will be offset by credits for sale of separated materials, reduced landfill disposal cost (due to reduced amounts of MWC ash generated and disposed of in landfills), and other monetary benefits described in section V.

Annual disposal cost increases or decreases for materials separation could occur at individual plants depending on materials sales assumptions. At typical large MWC plants materials separation costs could vary from a net cost of about $20/Mg ($18/ton) of MSW combusted without materials sales to a net savings of about $20/Mg ($18/ton) of MSW combusted when markets for separated materials develop and the materials are sold. For a typical small MWC plant, annual costs for materials separation could range from a net cost of about $11/Mg ($10/ton) to a net savings of about $25/Mg ($23/ton) of MSW.

NO_x Emissions: During the fifth year of applicability of the proposed NO_x standards, the overall average projected increase in nationwide annualized costs for controlling NO_x emissions would be about $2.00/Mg ($1.80/ton) of MSW processed. By the fifth year of applicability of the proposed standards, the nationwide projected increase in capital costs for controlling NO_x emissions would be about $97 million.

Under the proposed standards, the cost of NO_x controls for a typical large MWC could increase the cost of disposing of MSW through combustion by between $1.70 and $3.60/Mg ($1.50 and $3.30/ton) of MSW processed, depending on the size and design of the combustor.

E. Economic Effects

MWC Emissions: The economic effects of the proposed standards for MWC emissions on individual households are not projected to be severe.

Under the proposed standards for MWC emissions, over 90 percent of the MWC service areas examined are projected to have household impacts of less than $30/year. Likewise, the increase in waste disposal costs from the proposed standards would not result in severe economic impacts on any city or county government units. Furthermore, the proposed standards would not noticeably affect the mix of

MWC types or the amount of MSW combusted.

Materials Separation: The costs of materials separation, when added to the cost of the other MWC emissions controls, would not cause severe impacts on households or government units. Costs may increase slightly in the short term in some instances where local markets for separated materials are not yet well developed. Also, households will experience some inconvenience in those areas which adopt a curbside program. However, as markets develop and stabilize, EPA believes the sale of materials for recovery will offset MSW disposal costs for households and government units. In general, materials separation standards and other Agency programs to encourage reuse will reduce the amount of MSW that must be disposed of, thereby reducing the overall costs of MSW disposal.

NO_x Emissions: The costs to control NO_x emissions are much lower than the costs to control MWC emissions and would not cause combined impacts on households or government units to become severe.

IV. Rationale for the Standards for MWC Emissions

A. Background

The regulatory interest in municipal waste combustors (MWC's) can be traced to the 1971 new source performance standard (NSPS) for particulate matter (PM) emissions from municipal incinerators larger than 45 Mg/day (50 tons/day) capacity under section 111(b) of the Clean Air Act (CAA) (40 CFR part 60, subpart E). Similarly, in 1986 a PM standard was promulgated for industrial-commercial-institutional steam generating units larger than 29 MW (100 million Btu/hour) heat input capacity combusting a number of fuels including municipal solid waste (MSW) (40 CFR part 60, subpart Db). The 1986 PM standard was more restrictive than the 1971 standard. New MWC's that are equipped with steam generating units and process roughly 225 Mg/day (250 tons/day) or more of municipal waste per MWC (which is approximately equivalent to 100 million Btu/hour) are subject to the 1986 NSPS. The subpart E and Db standards, however, were developed to control emissions of PM and do not address control of toxic organics or health concerns specific to toxic organics or other components of MWC emissions.

In section 102 of the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act (RCRA), Congress directed EPA to prepare a report on the magnitude of dioxin risks from MWC's and to identify ways in which dioxin emissions could be minimized. In addition, during 1984 and 1985, the EPA's Office of Air and Radiation (OAR), in the course of assessing candidate air toxics, identified MWC's as a potential source category of concern. In June 1985, the Administrator announced the National Air Toxics Strategy, which included the commitment to regulate source categories of widespread national concern and give high priority to those that emit multiple pollutants such as MWC's. In addition to the above-mentioned regulatory activities, on August 5, 1986, the Natural Resources Defense Council (NRDC) and the States of New York, Rhode Island, and Connecticut petitioned the Administrator of EPA to regulate air emissions from MWC's under sections 111 and 112 of the CAA.

In response to the Congressional directive, and as part of the OAR's air programs, EPA prepared a Report to Congress that was issued in June 1987. This nine-volume report presented a compilation of the available information on MWC's including industry characteristics, emission data, health risks, control technologies, and costs of control. It provided the technical basis for the 1987 decision to regulate air emissions from MWC's.

On July 7, 1987, an advanced notice of proposed rulemaking (ANPRM) was published in the Federal Register (52 FR 25339) where EPA announced its preliminary determination to regulate new and existing MWC's under Sections 111(b) and 111(d) of the CAA, respectively. The schedule announced in the Federal Register for these actions called for proposal of NSPS for new MWC's and issuance of draft 111(d) emission guidelines for existing MWC's by November 1989 and promulgation by December 1990. The Administrator determined that MWC's would be regulated under Sections 111(b) and 111(d) because: (1) MWC emissions may reasonably be anticipated to contribute to the endangerment of public health and welfare, (2) the range of health and welfare effects and the range and uncertainties of estimated cancer risks do not warrant listing of MWC emissions as a hazardous air pollutant under Section 112, (3) Section 112 could not be used to address particular constituents or subgroups of emissions including lead and hydrogen chloride (HCl), and (4) the development of emission guidelines for existing MWC's under Section 111(d) would permit a more thorough evaluation of existing MWC's at the State level than would be feasible in a general rulemaking at the Federal level. (Under Section 111(d), States develop standards based on the EPA guidelines.) Some States already have adopted or are developing their own MWC regulations.

In a concurrent action, the EPA's Office of Air Quality Planning and Standards (OAQPS) issued operational guidance to State and local agencies for best available control technology (BACT) determinations for permitting of new and modified MWC's pursuant to the prevention of significant deterioration (PSD) and new source review (NSR) provisions of the Act. The purpose of the guidance was to resolve questions over the selection of appropriate controls to satisfy minimum legal requirements and thereby facilitate the permitting process for new MWC's.

An Agency MSW Task Force was formed in 1988 to address the full range of problems associated with MSW. Today's air emission standards are only one component of the plan developed by the MSW Task Force entitled, "The Solid Waste Dilemma: An Agenda for Action" (EPA/530-SW-88-052). Other ongoing and planned activities include regulations for new and existing NSW landfills proposed under RCRA, Subtitle D (53 FR 33314, August 30, 1988). Standards to control air emissions from municipal landfills are currently being developed. In addition, as stated in the "Agenda for Action," EPA encourages the use of recycling programs and source reduction activities to reach the goal of achieving a nationwide waste reduction of 25 percent by 1992. The Agency has also encouraged the development of State and local planning strategies to manage waste.

Today's proposal would apply to all facilities that combust municipal-type solid wastes or mixtures containing municipal-type solid wastes. Certain types of waste combustors would not be covered by this NSPS for MWC's because they do not combust MSW. These other types of combustors are regulated elsewhere. For example, hazardous wastes such as industrial sludges and chemical wastes are not covered under this NSPS for MWC's. However, hazardous waste combustion is regulated under RCRA authority (40 CFR 264 and 265 subpart O). The combustion of sewage sludge is regulated by an NSPS (40 CFR 60 subpart O) and also by regulations being developed under the Clean Water Act (40 CFR 503 Subchapter O). Medical waste combustion or combustion of infectious wastes from hospitals are not covered by today's proposal, but are

being investigated for regulation under a separate standard.

Register or State regulations developed to implement these guidelines, then the MWC would not be considered

plant would emit about 24 Mg/year (26 tons/year) of PM, about 170 Mg/year (190 tons/year) of MWC acid gases (SO_x

controlling risks to human health and the environment posed by emissions from these sources. In the 1987 ANPRM,

related problems. Of specific concern are emissions of HCl where short-term ambient exposure levels exceed some

wastes are also covered by today's standards. Institutional wastes include

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being investigated for regulation under a separate standard.

B. Selection of Source Category

As mentioned above, PM emissions from MWC's are presently regulated under Subparts E and Db. In addition, NSR and PSD permits for new MWC's are subject to EPA operational guidance. However, because of the increasing trend toward combustion of MSW in the U.S., the complex mixture of MWC emissions, and potential public health impacts, a more comprehensive approach to MWC's is necessary. Greater emphasis is being placed on controlling the entire range of emissions from MWC's. This new approach has been adopted for several reasons.

The number of new MWC's and amount of waste combusted is expected to grow significantly in the future due to increasing restrictions and limited space availability for landfilling. Municipal waste combustors reduce landfill requirements and extend landfill life, although they do not replace landfills. While 80 percent of the Nation's MSW is currently disposed of in roughly 6,000 landfills, many of these facilities are nearing capacity and the siting of new landfills, particularly in urban areas, has become increasingly difficult. Up to one-third of existing landfills are expected to become full and then close within the next 5 years.

Because of the difficulty in siting new landfills in many areas, it is expected that construction will commence on over 60 MWC plants (over 150 individual MWC's) in the next 5 years alone. This equates to a new MWC capacity of about 50,000 Mg/day (54,000 tons/day) in the next 5 years. This is a substantial increase compared to the roughly 210 MWC plants (450 individual MWC's) with a capacity of 95,000 Mg/day (105,000 tons/day) that are currently operating or under construction. Many of the new MWC's will be located at large MWC plants and some will be located in heavily populated areas.

On a national basis, MWC's, if not adequately controlled, could be a major source of emissions. Without the standards proposed today, emissions of all pollutants from MWC's would increase by over 100,000 Mg (110,000 tons) per year by 1994. This includes increases of over 7,500 Mg (8,300 tons) of PM, 91,000 Mg (100,000 tons) of MWC acid gases (sulfur dioxide [SO_2] and HCl combined), and almost 5,600 Mg (6,200 tons) of carbon monoxide (CO).

Municipal waste combustors are also significant sources of air pollution at the individual plant level. For example, in the absence of regulation, a typical 90 Mg/day (100 ton/day) modular MWC plant would emit about 24 Mg/year (26 tons/year) of PM, about 170 Mg/year (190 tons/year) of MWC acid gases (SO_2 and HCl), about 8 Mg/year (9 tons/year) of CO, and about 40 g (0.09 lbs) per year of dioxins/furans. A typical large mass burn MWC plant with a design capacity of about 2,000 Mg/day (2,200 tons/day) would emit about 330 Mg/year (360 tons/year) of PM, about 3,900 Mg/year (4,300 tons/year) of MWC acid gases (SO_2 and HCl), about 170 Mg/year (190 tons/year) of CO, and about 600 g/year (1.3 lbs/year) of dioxins/furans.

Finally, due to their nature and magnitude, emissions from MWC's, if not adequately controlled, can pose health risks to the public. Both MWC organics and MWC metals include carcinogens. Ranges of cancer risk estimates for MWC emissions were published in the 1987 ANPRM (52 FR 25339). A recent review of risks using data and information gathered to support development of NSPS, found that cancer risks for MWC's are likely at the lower end of the ranges cited in the ANPRM, although there remain significant uncertainties in the risk assessment. Therefore, there is no reason to review the 1987 decision to regulate MWC's under Section 111 of the CAA.

In addition to cancer risks, HCl emissions are also of concern because short-term modeling has shown that, in the absence of further regulation, ambient HC1 exposures near some MWC plants may exceed the short-term interim health effects level for HCl. The long-term interim welfare effects (materials damage) ambient concentration of 3 micrograms per dry standard cubic meter (ug/dscm) (1.3 gr/million dscf) (annual average) may also be exceeded by some model plants.

For the above reasons, MWC's have been determined to be a major source of air pollution which may reasonably be anticipated to endanger public health and welfare. As a result, MWC's have been selected for regulation.

On August 5, 1986, the NRDC and the States of New York and Florida (collectively "Petitioners") filed administrative petitions with the Agency requesting that EPA list specified pollutants emitted from MWC's as "hazardous" under Section 112(b)(1)(A) of the CAA; that EPA establish national emission standards under Section 112(b)(1)(B) for such hazardous pollutants; and that EPA regulate, under Section 111, nonhazardous pollutants emitted from MWC's. The EPA reiterates its tentative conclusion, first advanced in the July 7, 1987, ANPRM, that regulation of MWC's under Section 111 is the most appropriate means of controlling risks to human health and the environment posed by emissions from these sources. In the 1987 ANPRM, EPA stated that regulation under Section 111 was most appropriate due to the need to control the range of pollutants found in MWC emissions, and the inappropriateness of controlling many of the components of MWC emissions under Section 112, given that many of the components do not meet the criteria for listing and regulation under Section 112. (52 FR 25406). The EPA also indicated that uncertainties in assessing risks posed by emissions of chlorinated dioxins and dibenzofurans emitted by these sources made Section 112 a less appropriate regulatory vehicle.

Further study reinforces all of these conclusions. In particular, the EPA's best estimate is that risks posed by dioxin and furan emissions from MWC's are in the low end of the range EPA estimated in the 1987 ANPRM. Thus, EPA continues to believe that the best regulatory approach is to use its Section 111 regulatory authorities. Accordingly, the Administrator is hereby proposing to deny the administrative petition filed by Petitioners to the extent they seek to have emissions from MWC's regulated under Section 112.

C. Modification or Reconstruction of Existing MWC's

Only those MWC's for which construction, modification, or reconstruction is commenced after today's date would be affected by the proposed standards. "Construction" is defined by 40 CFR 60.2 to mean "fabrication, erection or installation of an affected facility." *Sierra Pacific Power Co.* v. *EPA*, 647 F.2d 60 (9th Cir. 1981). The affected facility for this standard is the MWC as defined in the proposed standards (Section 60.51a). "Commenced" is defined by 40 CFR 60.2 to mean "that an owner or operator has undertaken a continuous program of construction or modification or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or modification." The phrase "contractual obligation" means a contractual obligation that cannot be cancelled without incurring significant liability. *Potomac Electric Power Co.* v. *EPA*, 650 F.2d 509, 513–515 (4th Cir. 1981).

If an existing MWC (which commenced construction before today's date) is modified for the purpose of meeting the requirements of the proposed guidelines for existing MWC's (40 CFR part 60, Subpart Ca), which are proposed elsewhere in today's Federal Register or State regulations developed to implement these guidelines, then the MWC would not be considered "modified" or "reconstructed" and would not be subject to this NSPS. A special provision to clarify this has been included in the proposed NSPS and 111(d) emission guidelines. However, if the existing facility is modified or reconstructed in ways not required to meet the emission guidelines, for example if MWC capacity is increased, then the MWC may be considered modified or reconstructed and subject to the NSPS.

In general, "modification" refers to "any physical or operational change to an existing facility which results in an increase in the emission rate to the atmosphere of any pollutant to which a standard applies . . ." as described in the general NSPS provisions (40 CFR 60.14). "Reconstruction" generally includes "the replacement of components of an existing facility to such an extent that: (1) The fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable new facility, and (2) it is technologically feasible to meet the applicable standards . . ." (40 CFR 60.15); however, reconstruction is determined on a case-by-case basis. As mentioned above, cases where such an expenditure is required to meet the 111(d) emission guidelines in 40 CFR part 60, Subpart Ca, would not be considered a modification or reconstruction under this NSPS.

D. Selection of Designated Pollutant

The collection of compounds emitted by MWC's, referred to as "MWC emissions", has been selected as the designated pollutant for regulation under Section 111(b) of the CAA. This approach was selected because of the large number of compounds emitted by MWC's that create potential health problems.

Emissions from MWC's are a complex mixture of numerous pollutants that affect public health. There are three general subclasses of pollutants within MWC emissions. These are MWC organics, MWC metals, and MWC acid gases. Organic emissions from MWC's, in particular dioxin/furans, are potentially carcinogenic. Emissions of MWC metals contain various metals that have carcinogenic and noncarcinogenic health impacts. The great majority of MWC metal emissions are condensed on PM emissions. These include cadmium, chromium, lead, beryllium, and arsenic. Emissions of MWC acid gases (specifically HC1 and SO_2) pose several health- and welfare-related problems. Of specific concern are emissions of HC1 where short-term ambient exposure levels around some MWC's may exceed short-term health effects levels. Also, long-term ambient concentrations may exceed welfare-effects levels for materials damage. Furthermore, MWC acid gases are precursors in the formation of acid deposition (acid rain), which adversely affects vegetation, surface water quality, and aquatic life. In combination, these effects support a health-based designated of MWC emissions under Section 111, although there are also welfare considerations.

The EPA has determined that it is unnecessary to measure MWC emissions as an entity and that it makes far more sense to develop standards for certain component parts of MWC emissions. However, MWC emissions contain 100 or more components (many diverse metals and organics, for example). Although it is theoretically possible to measure all of the components, such a task would be extremely burdensome, expensive, and quite impractical. The standards that EPA is proposing provide a high level of control for total MWC emissions, and do so in a way that avoids the administrative burden and expense associated with monitoring and measuring all components of MWC emissions.

E. Selection of Affected Facilities

For the proposed NSPS, the affected facility, an MWC, is defined as any combustion device used to burn MSW (included refuse-derived fuel [RDF]). The proposed standards would apply to incinerators (with and without heat recovery) and all types of MSW-fired steam generating units.

An MWC would be covered by this regulation if it burns MSW (including RDF) or a mixture of wastes or fuels containing MSW. The MSW is defined as refuse, more than 50 percent of which is municipal-type waste consisting of a mixture of paper, wood, yard wastes, food wastes, plastics, leather, rubber, and other combustibles, and noncombustible materials such as glass, metal, and rock. The MSW burned in the MWC's includes municipal-type waste from households as well as institutional, commercial, municipal, and industrial sources. These wastes can be characterized in a number of ways. Household wastes include municipal-type wastes generated by single- and multiple-family dwelling units (including garbage, trash, and yard wastes). Wastes from multiple-family units are usually collected in large containers and removed by commercial haulers. These wastes are also covered by today's standards. Institutional wastes include mixtures of municipal-type wastes generated by schools and colleges, and similar public buildings. Nonpathogenic wastes from medical institutions, such as hospitals and nursing homes (e.g., wastes from their cafet rias and administrative offices), are also covered by these standards. Commercial MSW includes municipal-type waste mixtures generated by retail stores, shopping centers, office buildings, restaurants, hotels, airports, wholesalers, and other commercial establishments. The standards also cover municipal-type wastes generated by municipal public works or industries—such as mixtures containing corrugated boxes and other parking materials, brush and tree trimmings, cafeteria wastes, and paper towels. These standards do not cover any hazardous or nonhazardous industrial process wastes. They also do not cover infectious hospital wastes. It should be noted that MSW can be mixed with and combusted with sewage sludge from publicly owned treatment works, and such combustion would be covered by the proposed standards. However, combustion of sewage sludge alone would not be covered.

Municipal solid waste also includes RDF. To produce RDF, the solid waste is shredded and classified by size prior to combustion.

As noted in the preceding paragraph, a source burning any amount of MSW would be classified as an MWC for purposes of this regulation and, consequently, would have to meet the standards for MWC's. If a unit were classified under more than one set of standards (for example, a boiler burning MSW which also burns fossil fuel), it would have to meet both sets of standards, and the more stringent set of standards in the event of an overlap. The EPA believes this requirement is appropriate given that the source has chosen to burn MSW and, therefore, it should have to meet the demonstrated standards for burning that material. The EPA realizes, however, that this reading would discourage burning small amounts of MSW in units other than dedicated MWC's, and solicits comments on whether this is a desirable result. Commenters advocating some type of *de minimis* feed exception in the MSW definition should justify their choice of the cutoff.

The proposed standard is subdivided into two sets of requirements, one for MWC's located at large MWC plants and one for MWC's located at small MWC plants. For purposes of determining if an MWC is subject to the

small plant or large plant requirements under the NSPS, the capacity of all new

believes that the total plant capacity is known at the time of initial construction,

system. Typical mass burn MWC's use hydraulic rams or pusher grate sections

is generally fed with a stoker onto a moving grate. Some RDF MWC's are designed to combust only RDF, while

design, construction, operation, and maintenance of an MWC. Municipal waste combustor organic emissions may

are many interrelated parameters that influence emissions. Since only a few parameters such as combustor CO

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small plant or large plant requirements under the NSPS, the capacity of all new MWC's constructed after today's date at the same location would be aggregated (i.e., added together). All new MWC's at the plant would then be subject to the large or small plant requirements depending on whether this aggregate capacity were greater than or less than 225 Mg/day (250 tons/day). Municipal waste combustor capacity is defined as the maximum design charging rate for each MWC, as measured in Mg/day (tons/day) of MSW combusted. Municipal waste combustors constructed prior to proposal of today's NSPS but located at the same MWC plant would not be added to MWC plant capacity for the purpose of determining whether a new MWC is subject to the large or small plant requirements under the NSPS.

For example, if five new 80 Mg/day (90 ton/day) modular MWC's were constructed simultaneously at the same location they would be subject to the same requirements as a single 400 Mg/day (450 ton/day) MWC.

Total capacity of new MWC plants is usually planned in advance, but MWC's may be built at different times so that planned capacity is not reached immediately. If, for example, two 200 Mg/day (220 tons/day) MWC's are built at the same location but at different times, when the first 200 Mg/day (220 tons/day) MWC is constructed after today's date, the new MWC aggregate plant capacity would be 200 Mg/day (220 tons/day). This capacity is less than the 225 Mg/day (250 tons/day) definition of a large MWC plant, so the new MWC would be subject to the standards for MWC's at small MWC plants. However, when the second 200 Mg/day (220 tons/day) MWC is built later at that same location, then the new MWC aggregate plant capacity would be 400 Mg/day (450 tons/day), and both MWC's would become subject to the standards for large plants, just as if one 400 Mg/day (450 tons/day) MWC had been built. This aggregation ensures that new MWC capacity at MWC plants is subject to the same standards from plant to plant, whether this new capacity is built in stages or is built at one time. As another example, if a new 200 Mg/day (220 tons/day) MWC is built at an existing plant of one 200 Mg/day (220 tons/day) MWC, the new MWC aggregate capacity would be 200 Mg/day (220 tons/day), and the new MWC would be subject to the standards for new MWC's at small MWC plants.

The EPA is proposing this approach to determining new MWC size classification because the Agency believes that the total plant capacity is known at the time of initial construction, even if some of that capacity is constructed years in the future.

As mentioned above, the proposed capacity aggregation provision applies to all new MWC's constructed at the same location. For the purpose of the proposed standards, "same location" refers to the same or contiguous property that is under common ownership or control. Properties are considered contiguous if they are directly adjoining or are separated only by a street, road, highway, or other public right-of-way. Properties are considered under the same ownership or control if owned or operated by the same entity, a parent entity, a subsidiary, or subdivision, or any combination. Included are properties owned or leased by a business, government, or quasi-governmental entity (e.g., a public utility district or regional waste disposal authority).

The proposed capacity aggregation provision is included in the standards because of the common practice within the MWC industry of constructing multiple MWC's at the same location. Because multiple small MWC's can have the same emission impacts as a single large MWC, EPA believes it would be reasonable to apply the proposed standards to all new MWC's otherwise subject to this subpart at the same location, regardless of the exact timing of their construction. The EPA solicits comment on the proposed definition of affected facility and the aggregation provision for new MWC's constructed at the same location.

F. Selection of Best Demonstrated Technology

Types of Combustors: There are three main types of technologies used to combust MSW: mass burn, modular, and RDF. A fourth type, employing fluidized-bed combustion (FBC) technology, is less common and can be considered a subset of RDF technology. Although these are the main types of MWC technologies, there are variations within these categories, and there are designs that incorporate features of more than one type.

Mass burn MWC's are field-erected MWC's covering a wide size range with individual MWC's ranging in size from 45 to 900 Mg/day (50 to 1,000 tons/day) of MSW combusted. There are typically two or three MWC's per plant, and plant capacities range from about 90 to 2,700 Mg/day (100 to 3,000 tons/day) of MSW. The technology is called mass burn because the waste is combusted without any preprocessing other than removal of items too large to go through the feed system. Typical mass burn MWC's use hydraulic rams or pusher grate sections to push the refuse from the fuel chute onto the grate. Additional grates or rams are used to move the waste through the MWC and to promote complete combustion by agitation of the thick fuel bed. Most mass burn MWC's are constructed of waterwalls, which is a method used for cooling the combustion chamber and recovering heat.

Modular MWC's also burn waste without preprocessing, but are usually shop-fabricated, small MWC's ranging in size from 5 to 110 Mg/day (5 to 120 tons/day) of MSW. Plants typically have one to four MWC's (although a few have more), and plant capacities typically range from about 14 to 360 Mg/day (15 to 400 tons/day) of MSW.

To allow shop fabrication size restrictions while also providing sufficient flue gas residence time to complete combustion, modular MWC's employ two or more combustion chambers. Depending on the design, combustion air is supplied to the primary chamber either in excess of the stoichiometric amount required for complete combustion (modular excess-air MWC) or at substoichiometric levels (modular starved-air MWC). In the excess-air designs, excess air (above stoichiometric levels) is introduced into the primary chamber. Additional air needed to promote mixing and complete burnout may be added in the secondary chamber. In this design, the secondary chamber provides additional residence time for mixing and for completing combustion. This design is functionally similar to larger mass burn MWC's. In the starved-air designs, sufficient air is supplied to the primary combustion chamber to volatilize combustible materials in the waste while minimizing entrainment of fuel particles and ash in the flue gas. The incomplete combustion products and particulates then pass into the secondary combustion chamber where additional air is added to complete combustion. Most modular MWC's have refractory-lined combustion chambers. Although many existing modular MWC's do not have heat recovery, the majority of new modular MWC's are expected to recover energy with waste heat boilers.

The third class of MWC burns pretreated and shredded municipal waste, broadly referred to as RDF. The degree of pretreatment used in RDF production can vary from simple removal of bulky items accompanied by shredding of the remaining waste to extensive pretreatment to produce a finely divided fuel containing relatively little noncombustible material. The RDF is generally fed with a stoker onto a moving grate. Some RDF MWC's are designed to combust only RDF, while others combust a mixture of RDF and other fuels such as wood or coal. In addition, a few boilers initially designed to combust pulverized coal may add some RDF as a supplemental fuel. Most RDF MWC's are medium to large size MWC's ranging in size from 270 to 900 Mg/day (300 to 1,000 tons/day) capacity. Plants typically have two to four MWC's, and RDF plant sizes range from 550 to 3,600 Mg/day (600 to 4,000 tons/day) capacity. Virtually all new RDF MWC's are constructed of waterwalls and employ heat recovery.

The last class of MWC's is FBC MWC's. In FBC, the waste burns in a turbulent bed of heated noncombustible material (generally sand or limestone). There are two basic types of FBC systems: bubbling-bed combustors and circulating-bed MWC's. Both burn RDF, sometimes mixed with other fuels. With bubbling-bed MWC's, most of the fluidized solids are maintained near the bottom of the MWC by using relatively low fluidization velocities. This helps prevent the entrainment of solids from the bed into the flue gas. Circulating-bed MWC's operate at relatively high fluidization velocities to promote entrainment of solids into the upper section of the MWC. Combustion occurs in both the bed and upper section of the MWC. The entrained fraction of the bed material enters a cyclone separator which recycles most of the unburned waste and inert particles to the lower bed. Typical FBC MWC sizes for planned units are 180 to 450 Mg/day (200 to 500 tons/day), and plant sizes range from 270 to 900 Mg/day (300 to 1,000 tons/day) capacity. As with other RDF MWC's, new FBC MWC's employ heat recovery.

Emission Control Technologies for MWC Emissions: There are basically three methods of controlling emissions from MWC's. One method involves separation of materials prior to combustion, and exclusion of certain materials from combustion. A second method is to alter the combustion process to reduce emissions of MWC organics [referred to as good combustion practices (GCP)]. The third method is adding pollution control equipment after the MWC to control emissions of MWC metals and MWC acid gases, and to obtain additional MWC organics control. The use of GCP and add-on air pollution control devices (APCD's) is discussed below. Materials separation is described in Section V of this preamble.

Good Combustion Practices: Good combustion practices include the proper design, construction, operation, and maintenance of an MWC. Municipal waste combustor organic emissions may originate from the feed waste or fuel, reactions occurring in the combustion chamber, or reactions on the surface of PM at temperatures from 250° to 400 °C (480° to 750 °F). The use of GCP reduces MWC organic emissions, including emissions of dioxins/furans and their precursors, by promoting more thorough combustion of thee pollutants.

Important factors in MWC design and operation that reduce MWC organic emissions include: maintaining uniform waste feed rates and conditions; the use of preheated air to burn wet or difficult to combust materials; maintaining adequate combustor temperature and residence time; providing proper total combustion (excess) air levels; supplying proper amounts and distributions of primary (underfire) and secondary (overfire) air; minimizing PM carryover; monitoring degree of waste burnout; and the use of auxiliary fuel during startup and shutdown.

Carbon monoxide concentration in the combustor flue gas is a good indicator of combustion efficiency and high MWC organic (i.e., dioxin/furan) emissions are associated with poor combustion. The techniques employed to minimize CO are closely related to those employed to minimize MWC organic emissions. Thus, if high levels of CO are present in combustor flue gases, it is likely that significant quantities of MWC organic emissions are also present.

Combustor load is also related to MWC organic emissions. At loads above 100 percent, PM carryover would increase and furnace residence times would decrease, contributing to increased MWC organic (i.e., dioxin/furan) emissions at high loads. The maximum load would be established for each MWC during its compliance test.

According to available information, MWC organics (i.e., dioxins/furans) form on fly ash in the presence of excess oxygen at temperatures in the range of 250 to 400 °C (480 to 750 °F), with maximum formation rates occurring at about 300 °C (570 °F). Available data indicate that cooling flue gases and operating the PM control device at temperatures of 230 °C (450 °F) or less prevents formation of MWC organics (i.e., dioxins/furans) in the flue gas. Flue gas cooling is typically accomplished by the economizer at MWC's with heat recovery capability, but could also be accomplished by other methods such as humidification.

Proper operation of combustors is key to GCP. Operation of MWC's is complex, and as mentioned above, there are many interrelated parameters that influence emissions. Since only a few parameters such as combustor CO emissions, load, and flue gas temperature, can be specified and measured in emission standards, operator certification and training is another element of GCP. The American Society of Mechanical Engineers (ASME) has developed a certification program that consists of an initial provisional certification followed by full operator certification. To obtain provisional certification, a candidate must demonstrate that certain requirements of experience and education have been met and must pass a written examination covering the basics of municipal waste combustion. The initial provisional certificate, which is valid for 5 years, would not be specific for any particular MWC technology or jurisdiction.

After attaining a provisional certification and gaining 6 months of experience at a particular MWC facility, a chief facility operator or shift supervisor may pursue an operator certification. This certificate would be issued upon passing a site-specific oral examination on the operation, maintenance, and safety procedures at the facility. Operator certificates would be valid only for facilities of similar size and technology. They would be valid for 3 years and may be renewed upon demonstration that the operator has maintained knowledge of the particular MWC and permit requirements. New certificates would be required upon transfer to a facility of a different size or technology. The ASME certification would ensure national consistency and would allow individuals to transfer their certification from one State to another. In addition, all plant personnel who are in positions associated with the combustion process—including the control room operators, ash handlers, personnel involved with MWC maintenance, crane/load operators, and any other persons associated with MWC operation should receive training in MWC operation on a yearly basis. Such training is best provided through use of a training manual which focuses on how each subject area, or component of combustor operation, can impact combustor performance and emissions. In addition, the manual should specify remedial measures that are effective in regaining good performance during startups, shutdowns, and malfunctions of the MWC. As with any routine training program, the training manual should be revised as appropriate from time to time to reflect any changes.

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The following training elements should be included in any training manual.

amount and distribution of underfire (or primary) air is important in maintaining proper combustor temperatures and

electrified gravel beds, and venturi scrubbers) have been used, they are infrequently applied on current systems,

chromium, and nickel from MWC exhaust.

In general, little or no mercury control

combustor. As with duct sorbent injection, reaction products, fly ash, and unreacted sorbent are collected using an

the FF. Spray dryer systems generally operate at temperatures of 150°C (300°F) or less. For MWC flue gas containing

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The following training elements should be included in any training manual.

Introduction. This portion of the manual should include an explanation of the regulation applicable to MWC emissions and how certain MWC operating procedures (which would be discussed in detail later in the manual) would be followed in order to maintain compliance with the standards and to achieve GCP.

Basic Combustion Theory. This portion of the manual should address the interrelationships of flue gas, temperature, residence time, and fuel/air mixing and their effects on combustion performance and destruction of trace organics including dioxins/furans.

Procedures for Receiving, Handling, and Feeding Waste. This portion of the manual should address which specific types of MSW should be eliminated from the waste stream because of their physical and chemical characteristics (e.g., oversized, bulky wastes that can jam feed hoppers; explosive or hazardous wastes such as propane tanks) and materials that cannot be combusted. These wastes may contribute to upsets which result in excessive CO or MWC organic (i.e., dioxin/furan) emissions. Because the loader/crane operator can help maintain the stability of the combustion process by thoroughly mixing incoming feed material to blend wastes with high and low moisture contents and heating values, this portion of the manual also should include a discussion of the proper waste feed rates and feed uniformity, and their effect on combustion stability. Maintaining combustion stability would aid in achieving continuous reductions in MWC organic emissions.

Startup and Shutdown Procedures. Because higher levels of MWC organic emissions can occur during startup and shutdown due to low combustion temperatures and poor mixing, the training manual should set forth specific procedures for minimizing the effects of these episodes. This portion of the manual should include the requirement to fire auxiliary fuel during startup and shutdown.

Auxiliary Fuel Use. Some MWC's fire auxiliary fuel during conditions other than startup and shutdown (e.g., to maintain steam load during waste feed interruptions). Thus, this portion of the manual should address how changes in operation, such as combustion airflow rates and distributions, may be necessary when firing auxiliary fuels.

Maintaining Proper Combustion Air Supply Levels. Providing the proper amount and distribution of underfire (or primary) air is important in maintaining proper combustor temperatures and stoichiometries and reducing emissions of organics and particulates from the combustor. This is especially important for modular MWC's with primary chambers designed to operate at substoichiometric conditions. As feed rates and waste properties change, it is sometimes necessary to adjust primary air distributions to maintain local stoichiometries. This portion of the manual should address what adjustments are needed depending on the specific MWC design type. In addition, this portion of the manual should also highlight the need for proper operation of overfire (or secondary) air because it plays a major role in the mixing process and the destruction of MWC organics. Again, secondary air design and operating practices will vary depending on the specific MWC design type. Because air preheat (used to assist in the combustion of high moisture, low heating value wastes) can affect the ability of a combustor to achieve good combustion, this portion of the manual should also instruct the operator to anticipate this potential problem and how to adjust or initiate air preheat as a corrective action.

Upset or Off-Specification Conditions. This portion of the manual should provide the operator with guidance on implementing corrective action in response to a number of periodic process upsets, including, but not limited to, low (or excessive) furnace temperatures, high CO levels, high (or low) operating load, high (or insufficient) flue gas cleaning device inlet temperatures, and poor waste burnout conditions.

Minimization of Particulate Matter Carryover. This portion of the manual should address the problem of PM carryover and instruct the operator how to minimize PM carryover within normal operating parameters. High levels of PM carryover may increase PM concentrations in the flue gas and may contribute to downstream formation of MWC organics (i.e., dioxins/furans).

Performance of GCP: Use of GCP, including exhaust gas cooling to 230 °C (450 °F), in conjunction with PM control can achieve dioxin/furan emission levels of 300 ng/Nm³ (120 gr/billion dscf) or less for new MWC's, except RDF combustors. Levels of 1,000 ng/Nm³ (400 gr/billion dscf) can be achieved at RDF combustors.

Add-on Controls: The most frequently used PM control devices for MWC's are electrostatic precipitators (ESP's) and fabric filters (FF's). Although other PM control technologies (such as cyclones, electrified gravel beds, and venturi scrubbers) have been used, they are infrequently applied on current systems, and they are not expected to be used in future MWC systems.

In ESP's, flue gas flows between a series of high voltage discharge electrodes and grounded metal plates. Negatively charged ions formed by this high voltage field (known as a "corona") attach to PM in the flue gas, causing the charged particles to migrate toward the grounded plates. Once the charged particles are collected on the grounded plates, the resulting dust layer is removed from the plates by rapping, washing, or some other method and collected in a hopper. The most common types of ESP's used by MWC's are: (1) plate-wire units in which the discharge electrode is a bottom-weighted or rigid wire and (2) flat plate units which use flat plates rather than wires as the discharge electrode.

Fabric filters (also called baghouses) are becoming increasingly common for particulate control at MWC's, particularly when used in combination with acid gas control. Fabric filters are of two basic designs, reverse-air and pulse jet. In a reverse-air FF, flue gas flows through unsupported filter bags, leaving the particulate on the inside of the bags. The particulate builds up to form a particulate filter cake. When the pressure drop across the filter cake reaches a defined limit, flue gas flow is stopped and clean air is directed through the filter in the opposite direction, the filter bag collapses, and the filter cake falls off and is collected at the bottom of the hopper. Following cleaning, flue gas is again directed through the clean filter bags and the cycle is repeated. In a pulse jet FF, flue gas flows through supported filter bags leaving particulate on the outside of the bags. To remove the built-up particulate filter cake, a pulse of compressed air is introduced inside of the filter bag, the filter bag expands and the filter cake falls off and is collected. The pulse jet system may be cleaned while on-line or off-line.

Well-designed and operated ESP's or FF's can reduce total PM emission levels to 34 mg/dscm (0.015 gr/dscf) or less at 7 percent oxygen (O_2).

Municipal waste combustor metals emissions include arsenic, beryllium, cadmium, chromium, lead, mercury, and nickel. All of these metals, except mercury, are removed with the fine particulates collected by ESP's or FF's. Well-designed ESP's or FF's operated at 230 °C (450 °F) or less remove over 97 percent of arsenic, cadmium, and lead and about 99 percent of beryllium, chromium, and nickel from MWC exhaust.

In general, little or no mercury control has been observed at MWC's with particulate matter controls alone (i.e., no acid gas controls).

Control of acid gases (SO_2 and HCl) can be achieved by injection of dry or slurried alkali sorbents (e.g., lime) into the flue gas.

Available acid gas control technologies include addition of dry sorbents into the flue gas duct or into the combustor, and spray drying. Acid gas controls are typically followed by an ESP or a FF. Two levels of acid gas control were considered in developing regulatory alternatives. These are dry sorbent injection (DSI)/PM control (ESP or FF) systems that provide an intermediate level of control, and spray dryer (SD)/FF systems that provide greater control. These two levels are discussed below.

Dry sorbent injection technologies have been developed primarily to control acid gas emissions. However, when DSI is combined with flue gas cooling to 150 °C (300 °F) or below an ESP or FF, control of MWC organics (dioxins/furans), MWC metals, and MWC acid gas emissions is achieved. If new plants apply DSI technology, it is expected that DSI/FF systems rather than DSI/ESP systems will be more commonly used, since the emission control performance of DSI/FF systems is generally better than that of DSI/ESP systems, and the costs of DSI/FF's are similar to, and in some cases lower than, the costs of DSI/ESP systems. Two primary subsets of DSI technologies exist, duct sorbent injection and furnace sorbent injection.

In duct sorbent injection, powdered sorbent is pneumatically injected into either a separate reaction vessel or a section of the flue gas duct located downstream of the combustor economizer or quench tower. The sorbent reacts with acid gases to form alkali salts. By lowering the acid content of the flue gas, downstream equipment can be operated at reduced temperatures while minimizing the potential for acid corrosion of equipment. Reaction products, fly ash, and unreacted sorbent are collected with the ESP or FF. Available sorbents include hydrated lime ($CaOH_2$), soda ash (NaOH), and sodium bicarbonate ($NaHCO_3$).

Furnace sorbent injection involves the injection of powdered alkali sorbents into the furnace section of a combustor. This can be accomplished by addition of sorbent to the overfire air, injection through separate ports, or mixing with the waste prior to feeding to the combustor. As with duct sorbent injection, reaction products, fly ash, and unreacted sorbent are collected using an ESP or FF. Furnace sorbent injection is not expected to be widely used for new MWC's, and is mainly a retrofit option for existing MWC's that may have limited space for a duct injection system.

Dry sorbent injection/fabric filter or DSI/ESP systems can achieve either a 50 percent reduction in SO_2 emissions or an outlet SO_2 concentration of 30 ppmv at 7 percent O_2 (24-hour average basis). Either an 80 percent reduction in HC1 emissions or an outlet concentration of 25 ppmv is also achievable by DSI/FF or DSI/ESP systems on new MWC's (based on duct sorbent injection). Furnace sorbent injection systems may achieve a lower percent HC1 removal relative to SO_2 removal.

All types of new MWC's (except RDF's) with DSI/FF or DSI/ESP systems can meet a dioxin/furan emission limit of 75 ng/Nm³ (30 gr/billion dscf) (at 7 percent O_2). New RDF's with DSI/FF or DSI/ESP systems can meet a dioxin/furan emission limit of 250 ng/Nm³ (100 gr/billion dscf) (at 7 percent O_2).

A PM emission limit of 34 mg/dscm (0.015 gr/dscf) is achieveable for new MWC's equipped with DSI/ESP or DSI/FF. Dry sorbent injection/ESP or FF systems achieve 97 percent or greater removal of arsenic, cadmium, and lead, and 99 percent removal of beryllium, chromium, and nickel. In addition, DSI/ESP systems typically achieve about 30 percent removal of mercury and DSI/FF systems typically achieve a higher percent removal of mercury. However, the data on mercury emissions and control levels are highly variable among MWC's.

Lime spray drying followed by a FF is a higher performance technology than current DSI/ESP or DSI/FF technology and was initially developed to control acid gas emissions. However, the system also controls emissions of MWC organics (dioxins/furans) and MWC metals. In the spray drying process, atomized lime slurry is injected into a SD vessel; the water in the slurry evaporates to cool the flue gas and the lime reacts with acid gases to form salts that can be removed by the FF. The key design and operating parameters that significantly affect SD performance are SD outlet temperature and lime-to-acid gas stoichiometric ratio. The SD outlet temperature is controlled by the amount of water in the slurry. More effective acid gas removal occurs at lower temperatures, but the temperature must be kept high enough to ensure that the slurry and reaction products are adequately dried prior to collection in the FF. Spray dryer systems generally operate at temperatures of 150°C (300°F) or less. For MWC flue gas containing significant amounts of chlorine, a minimum SD outlet temperature of around 115°C (240°F) is required to control agglomeration of PM and sorbent by calcium chloride.

Spray dryer/FF systems on new MWC's can achieve either an 85 percent reduction in SO_2 emissions or an outlet SO_2 concentration of 30 ppmv at 7 percent O_2 (24-hour average basis). Either a 95 percent reduction in HC1 emissions or an outlet HC1 concentration of 25 ppmv is also achievable by SD/FF systems on new MWC's.

Spray dryer/FF systems also achieve outlet dioxin/furan concentrations in the range of 5 ng/Nm³ (2 gr/billion dscf) to about 30 ng/Nm³ (12 gr/billion dscf) (at 7 percent O_2). The SD/FF systems are the most effective add-on control systems for dioxins/furans, and achieve 99 percent control and low outlet emission levels, however, the exact performance level has not been specified in the proposed standards. Measured emission levels vary among MWC's, and additional test data from new MWC's with SD/FF controls are currently being collected and analyzed. The exact dioxin/furan emission level achievable by SD/FF controls will be determined prior to promulgation, and a single emission level will be included in the promulgated standards. Specific comments ae solicited on what the final emission limit should be.

A PM emission limit of 34 mg/dscm (0.015 gr/dscf) is achievable by all MWC's equipped with SD/FF systems. At this PM emission level, SD/FF systems achieve 99 percent removal of all metals except mercury.

The observed removal efficiencies for mercury vary widely among MWC's with SD/FF controls showed over 70 percent mercury removal rates and outlet concentrations below 200 micrograms (ug)/dscm (85 gr/million dscf). On the other hand, compliance test data from three other MWC's with SD/FF systems indicated little or no mercury control. One of these three MWC's, however, was retested later and results indicated over 75 percent control. It has been postulated that mercury emissions may be related to nitrogen oxide (NO_x) control, and that use of ammonia injection for NO_x control may reduce mercury control in some cases. However, another possibility is that the adsorption and removal of mercury may be dependent on carbon in the fly ash. Review of data from tests of MWC's with and without NO_x control tend to

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show that combustors with very good combustion and very low concentrations of organics and PM in the flue gas upstream of the SD/FF filter achieve lower mercury removal. This may be because there is little carbon in the fly ash onto which mercury can adborb for subsequent removal by the FF. Other explanations for the observed variation in mercury control are also possible. A joint EPA/industry task force is being established to investigate mercury emissions and controls. Their finding will be considered in development of the final standards.

Spray dryer/ESP systems have been used on a few MWC's. Available data indicate that these systems may achieve less removal of MWC acid gas, MWC organic, and mercury emissions than SD/FF systems. This issue will continue to be investigated, following proposal, and comments on the performance of SD/ESP systems are requested.

A third MWC control method includes MSW materials separation, which is the separation of certain components from the waste stream prior to combustion in an MWC. This technique is less commonly used than GCP or add-on air pollution control. Additional reductions in MWC emissions, including mercury emissions, may be achieved with application of materials separation as discussed in Section V.

Regulatory Alternatives for MWC Emissions: Five regulatory alternatives were considered in selecting MWC emissions standards for proposal. A baseline alternative is also presented which represents the level of emissions control expected in the absence of the proposed NSPS. For all new NWC's, the baseline control level would include GCP and, except for MWC's with capacities below 45 Mg/day (50 tons/day), PM control of 115 or 180 mg/dscm (0.050 or 0.080 gr/dscf) as required by Subpart Db or E, respectively.

The five regulatory alternatives considered in developing standards for MWC's represent varying levels of control for MWC organics (dioxins/furans), MWC metals (as indicated by PM), and MWC acid gases (including HCl and SO_2). These regulatory alternatives also subdivide MWC plants into two size categories. It is reasonable to categorize MWC's into large and small plants because: (1) large plants have greater emissions potential and account for over 90 percent of planned capacity and (2) control cost increases associated with the various control technologies are noticeably greater on the bases of percent of MWC capital cost and dollars per ton of MSW combusted for small plants. Therefore, some of the regulatory alternatives require less stringent control of small plants. The proposed standards would define small MWC plants as those with aggregate capacities below 225 Mg/day (250 tons/day). The EPA requests comment on whether another size category cutoff might be more appropriate.

Table 2 presents the five regulatory alternatives in terms of control technologies that serve as the basis for selecting the alternative. Table 3 presents these five regulatory alternatives in terms of the emission limits for dioxins/furans, PM, and acid gases that could be specified in a regulation, and Table 4 presents GCP operating standards. (See Sections V and VI for discussion of materials separation and NO_x regulatory alternatives, respectively).

TABLE 2.—TECHNOLOGICAL BASIS FOR REGULATORY ALTERNATIVES FOR MWC EMISSIONS FROM NEW MWC UNITS

Regulatory alternative	Control requirements by total MWC plant capacity Mg MSW/day (tons MSW/day)	
	Small plants <225 Mg/day <250 tons/day)	Large plants >225 Mg/day (>250 tons/day)
I	GCP	GCP
	PM control to 0.080	PM control to 0.015
IIA	GCP	GCP
	PM control to 0.080	MWC acid gas by DSI
		PM control to 0.015
IIB	GCP	GCP
	MWC acid gas by DSI	MWC acid gas by DSI
	PM control to 0.015	PM control to 0.015
III	GCP	GCP
	PM control to 0.080	MWC acid gas by SD/FF
		PM control to 0.015
IV	GCP	GCP
	MWC acid gas by DSI	MWC acid gas by SD/FF
	PM control to 0.015	PM control to 0.015

TABLE 3.—POTENTIAL MWC EMISSION LIMITS ASSOCIATED WITH 111(B) REGULATORY ALTERNATIVES

Regulatory alternative		Control levels by plant capacity	
		Small plants <225 Mg/day (<250 tons/day)	Large plants <225 Mg/day (<250 tons/day)
I	Dioxins/furans	300 ng/Nm³ (1,000 ng/Nm³)	300 ng/Nm³ (1,000 ng/Nm³)
	PM	0.080 gr/dscf	0.015 gr/dscf
	HCl	no limit	no limit
	SO_2	no limit	no limit
	GCP/Operating Standards	See Table 4	See Table 4
IIA	Dioxins/furans	300 ng/Nm³ (1,000 ng/Nm³)	75 ng/Nm³ (250 ng/Nm³)
	PM	0.080 gr/dscf	0.015 gr/dscf
	HCl	no limit	80 percent or 25 ppmv
	SO_2	no limit	50 percent or 30 ppmv
	GCP/Operating Standards	See Table 4	See Table 4
IIB	Dioxins/furans	75 ng/Nm³ (250 ng/Nm³)	75 ng/Nm³ (250 ng/Nm³)
	PM	0.015 gr/dscf	0.015 gr/dscf
	HCl	80 percent or 25 ppmv	80 percent or 25 ppmv
	SO_2	50 percent or 30 ppmv	50 percent or 30 ppmv
	GCP/Operating Standards	See Table 4	See Table 4
III	Dioxins/furans	300 ng/Nm³ (1,000 ng/Nm³)	5 to 30 ng/Nm³

TABLE 3.—POTENTIAL MWC EMISSION LIMITS ASSOCIATED WITH 111(B) REGULATORY ALTERNATIVES—Continued

Regulatory alternative		Control levels by plant capacity	
		Small plants <225 Mg/day (<250 tons/day)	Large plants <225 Mg/day (<250 tons/day)
IV	PM	0.080 gr/dscf	0.015 gr/dscf
	HCl	no limit	95 percent or 25 ppmv
	SO_2	no limit	85 percent or 30 ppmv
	GCP/Operating Standards	See Table 4	See Table 4
	Dioxins/furans	75 ng/Nm³ (250 ng/Nm³)	5 to 30 ng/Nm³
	PM	0.015 gr/dscf	0.015 gr/dscf
	HCl	80 percent or 25 ppmv	95 percent or 25 ppmv
	SO_2	50 percent or 30 ppmv	85 percent or 30 ppmv
	GCP/Operating Standards	See Table 4	See Table 4

[a] Emission levels in ( ) are for RDF MWC's.

TABLE 4.—EMISSION AND OPERATING PARAMETER LIMITS FOR GCP

Pollutant or parameter	Limit
Maximum load level	100 percent of demonstrated capacity
Maximum temperature at PM control device inlet.	230°C (450°F)
CO Emissions:	
Modular MWC's	50 ppmv
Mass burn waterwall	100 ppmv
Mass burn refractory	100 ppmv
Fluidized bed combustor.	100 ppmv
Mass burn rotary waterwall.	150 ppmv
RDF spreader stoker.	150 ppmv
Coal/RDF cofired	150 ppmv
Operator certification and training.	All operators certified by ASME. Training manual and training for other personnel.

Regulatory Alternative I, the least stringent nonbaseline regulatory alternative shown in Table 2, would require emission reductions to levels achievable with GCP for plants of all sizes and various levels of PM control depending on plant size. For small plants (i.e., those MWC's located at plants with aggregate capacities equal to or less than 225 Mg/day [250 tons/day] of MSW), PM emission limits correspond to a level of 180 mg/dscm (0.080 gr/dscf). This is the same level currently required under subpart E for MWC's larger than 45 Mg/day (50 tons/day) capacity. However, under Regulatory Alternative I this same level would be applied to all MWC's located at small MWC plants with no lower size cutoff. Municipal waste combustors located at large MWC plants (i.e., those with aggregate capacities of greater than 225 Mg/day [250 tons/day] of MSW) would be required to achieve PM control to 34 mg/dscm (0.015 gr/dscf). No add-on acid gas controls would be required for any plant under this alternative. Based on use of GCP and PM control, emissions of dioxins/furans would be reduced to 1,000 ng/Nm³ (400 gr/billion dscf) at RDF MWC's and to 300 ng/Nm³ (120 gr/billion dscf) at all other types of MWC's. The PM controls required would achieve significant reductions in metals emissions (with the exception of mercury), and the higher costs of acid gas controls would not be incurred.

Regulatory Alternative IIA is more stringent than Regulatory Alternative I. Municipal waste combustors at large MWC plants would be required to reduce emissions to levels achievable with moderate acid gas add-on control (based on DSI/FF or DSI/ESP control). Control requirements and emission levels for MWC's located at small MWC plants would be the same as Regulatory Alternative I. For MWC's at large MWC plants, which have greater annual emissions potential, MWC acid gas control based on DSI/FF or DSI/ESP (50 percent SO_2 and 80 percent HCl control) and PM control to 34 mg/dscm (0.015 gr/dscf) would be required, reducing dioxin/furan emissions to 250 ng/Nm³ (100 gr/billion dscf) for RDF MWC's at large plants and to 75 ng/Nm³ (30 gr/billion dscf) for all other types of MWC's at large plants. Under Regulatory Alternative IIA, small plants would be allowed a lower cost and less efficient dioxins/furans control (GCP), which would avoid the relatively greater cost impacts of add-on acid gas controls for smaller MWC plants.

Regulatory Alternative IIB would require emission reductions to levels achievable with GCP, acid gas control based on DSI/FF or DSI/ESP, and PM control to 34 mg/dscm (0.015 gr/dscf) for all MWC plants (both large and small). This alternative would result in reduction of dioxins/furans emissions as well as reductions in acid gas emissions for all MWC plants, but has higher costs for small plants than Regulatory Alternatives I or IIA.

Regulatory Alternative III is similar to regulatory Alternative IIA by not requiring acid gas control at small MWC plants; but it would require emission levels based on GCP, acid gas control based on SD/FF (85 percent SO_2 and 95 percent HCl control), and PM control to 34 mg/dscm (0.015 gr/dscf) on MWC's at large MWC plants, reducing dioxin/furan emissions to a level in the range of 5 to 30 ng/Nm³ (2 to 12 gr/billion dscf) for large plants. The exact emission limit within this range that is achievable with SD/FF control will be determined prior to promulgation. Compared to Regulatory Alternative IIB, this alternative would require more stringent control of large MWC plants, but less stringent control of small MWC plants. Municipal waste combustors at small plants would be required to achieve emission levels based on use of GCP plus PM control to 180 mg/dscm (0.080 gr/dscf), but no acid gas controls.

Regulatory Alternative IV is the most stringent alternative analyzed. Like Regulatory Alternative III, Regulatory Alternative IV is based on MWC emission levels achievable with GCP, acid gas control based on SD/FF (85 percent SO_2 and 95 percent HCl control), and PM control to 34 mg/dscm (0.015 gr/dscf) for large MWC plants. For small plants, MWC emission levels corresponding to GCP, acid gas control based on DSI/FF or DSI/ESP (50 percent SO_2 and 80 percent HCl control), and PM control to 34 mg/dscm (0.015 gr/dscf) would be required. The requirements for small MWC plants are, therefore, more stringent than under Regulatory Alternative III. Regulatory Alternative IV has the lowest emissions but the highest cost of any of the regulatory alternatives presented.

Model Plant Impacts of the Regulatory Alternatives for MWC Emissions: Table 3 shows the air pollutant emission concentration or percent reduction limits for small and large MWC plants under each regulatory alternative and Table 4 shows GCP operating requirements. In Tables 5 and 6, the ranges of individual small and large model plant emissions and emission reductions of PM, dioxins/furans, and MWC acid gases (SO_2 and HCl) under the baseline and the regulatory alternatives are presented.

These emission impacts were derived by applying the different control requirements to model MWC plants as specified by the regulatory alternatives. They are expressed as

and sizes of MWC's within the small and large MWC plant categories.

Alternatives IIA and IIB due to the requirement of acid gas controls based

Mg/year (550 to 2,700 tons/year). No reductions in MWC acid gases would be

levels based on SD/FF technology. Under Regulatory Alternatives III and

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These emission impacts were derived by applying the different control technologies to small and large MWC plants as specified by the regulatory alternatives. They are expressed as ranges to represent the different types and sizes of MWC's within the small and large MWC plant categories.

TABLE 5.—RANGE OF MWC EMISSIONS FOR INDIVIDUAL SMALL MWC PLANTS UNDER THE BASELINE AND REGULATORY ALTERNATIVES FOR MWC EMISSIONS

Regulatory alternative	Annual emissions			
	MWC metals PM Mg/year	MWC organics dioxin/furan g/year	MWC acid gases	
			SO_2 Mg/year	HCl Mg/year
Baseline	9–57	12–62	23–170	31–240
I	7–57	12–62	23–170	31–240
IIA	7–57	12–62	23–170	31–240
IIB	1–7	3–16	14–100	6–48
III	7–57	12–62	23–170	31–240
IV	1–7	3–16	14–100	6–48

TABLE 6.—RANGE OF MWC EMISSIONS FOR INDIVIDUAL LARGE MWC PLANTS UNDER THE BASELINE AND REGULATORY ALTERNATIVES FOR MWC EMISSIONS

Regulatory alternative	Annual emissions			
	MWC metals PM Mg/Year	MWC organics dioxin/furan g/year	MWC acid gases	
			SO_2 Mg/year	HCl Mg/year
Baseline	33–360	29–640	364–2,400	497–2,400
I	15–73	29–690	364–2,400	497–2,400
IIA	15–73	22–160	57–1,400	99–480
IIB	15–73	22–160	57–1,400	99–480
III	15–73	3.2–16	36–240	15–73
IV	15–73	3.2–16	36–240	15–73

As shown in Table 5, PM emissions from small MWC plants (i.e., those with capacities equal to or less than 225 Mg/day [250 tons/day]) range from 9 to 57 Mg/year (10 to 63 tons/year) at baseline. Regulatory Alternatives I, IIA, and III require small plants to achieve PM levels of 180 mg/dscm (0.080 gr/dscf). Under Regulatory Alternatives I, IIA, and III only those model plants with MWC capacities less than 45 Mg/day (50 tons/day) would be required to add additional PM controls since MWC's greater than or equal to 45 Mg/day (50 tons/day) would already be controlled to a PM level of 180 mg/dscm (0.080 gr/dscf) at baseline under subpart E. The additional PM controls required under Regulatory Alternatives I, IIA, and III for MWC's with capacities less than 45 Mg/day (50 tons/day) would result in PM reductions of about 22 percent for those very small MWC's. Under Regulatory Alternatives IIB and IV, which require all MWC plants to achieve PM emission levels of 34 mg/dscm (0.015 gr/dscf), all small plants would apply traditional controls, resulting in PM emissions ranging from 1 to 7 Mg/year (1 to 8 tons/year). These emissions represent about 90 percent reduction in PM emissions as compared to baseline emissions.

At baseline, dioxin/furan emissions at small MWC plants would range from 12 to 62 g/year (0.026 to 0.14 lbs/year). No reductions would be achieved for small plants under Regulatory Alternatives I, IIA, or III since GCP are employed at baseline and there are no MWC acid gas control requirements for small plants under these alternatives. Under Regulatory Alternatives IIB and IV, acid gas controls would be required for small plants, thereby reducing dioxin/furan emissions by 75 percent and resulting in emissions ranging from 3 to 16 g/year (0.007 to 0.035 lbs/year).

At baseline, SO_2 emissions at small MWC plants would range from 23 to 170 Mg/year (25 to 190 tons/year), and HCl emissions would range from 31 to 240 Mg/year (34 to 260 tons/year). Since MWC acid gas controls are not required for small plants under Regulatory Alternatives I, IIA, or III, no reductions in MWC acid gases would be achieved under these alternatives. Municipal waste combustor acid gas controls based on DSI technology would be required for small MWC plants under Regulatory Alternatives IIB and IV. Municipal waste combustor acid gas emissions (SO_2 and HCl combined) would be reduced by almost 70 percent. Under Regulatory Alternatives IIB and IV, SO_2 emissions at small MWC plants range from 14 to 100 Mg/year (15 to 120 tons/year), and HCl emissions range from 6 to 48 Mg/year (7 to 53 tons/year).

Table 6 shows the ranges of emission impacts for large MWC plants (i.e., those with aggregate capacities of greater than 225 Mg/day [250 tons/day]) under the baseline and the regulatory alternatives. At baseline, PM emissions at large MWC plants would range from 33 to 360 Mg/year (36 to 400 tons/year). This is an emission level equivalent to about 115 mg/dscm (0.050 gr/dscf) for most plants as required by subpart Db. Large MWC plants would be required to meet PM emission levels of 34 mg/dscm (0.015 gr/dscf) under each of the regulatory alternatives. Under Regulatory Alternatives I through IV, PM emissions would range from 15 to 73 Mg/year (16 to 80 tons/year) resulting in PM emission reductions of about 80 percent relative to baseline emissions for most large MWC plants.

Baseline emissions of dioxins/furans at large MWC plants range from 29 to 640 g/year (0.06 to 0.7 lbs/year). No dioxin/furan reductions would be achieved under Regulatory Alternative I since GCP are employed at baseline, and no acid gas controls would be required under Regulatory Alternative I. Emissions of dioxins/furans would be reduced by about 75 percent at typical large MWC plants under Regulatory Alternatives IIA and IIB due to the requirement of acid gas controls based on DSI. Under Regulatory Alternatives IIA and IIB, dioxin/furan emissions at large MWC plants would range from 22 to 160 g/year (0.05 to 0.36 lbs/year). Under Regulatory Alternatives III and IV, which require acid gas controls based on SD/FF technology, dioxin/furan emissions would be reduced by 99 percent relative to baseline emissions for typical MWC plants. Under the two most stringent alternatives, dioxin/furan emissions at large MWC plants would range from 3.2 to 16 g/year (0.007 to 0.036 lbs/year).

At baseline, emissions of SO_2 at large MWC plants range from 360 to 2,400 Mg/year (400 to 2,700 tons/year), and emissions of HCl range from 500 to 2,400 Mg/year (550 to 2,700 tons/year). No reductions in MWC acid gases would be achieved under Regulatory Alternative I since MWC acid gas controls are not required. Under Regulatory Alternatives IIA and IB, MWC acid gas controls based on DSI technology would be required for all large MWC plants. Under Regulatory Alternatives IIA and IIB, MWC acid gas emissions would be reduced by almost 70 percent relative to baseline. Sulfur dioxide emissions would range from 57 to 1,400 Mg/year (63 to 1,600 tons/year) and HCl emissions would range from 99 to 480 Mg/year (110 to 530 tons/year). Under the most stringent alternatives, Regulatory Alternatives III and IV, large MWC plants would be required to control MWC acid gas emissions to levels based on SD/FF technology. Under Regulatory Alternatives III and IV, SO_2 emissions would be reduced by about 90 percent relative to baseline emissions, resulting in emissions ranging from 36 to 240 Mg/year (40 to 270 tons/year). This 90 percent long-term average emission reduction level is consistent with a minimum 24-hour average percent reduction of 85 percent. Emissions of HCl would be reduced 97 percent relative to baseline emissions and would range from 15 to 73 Mg/year (16 to 80 tons/year).

Tables 7 and 8 present the ranges of increased (over baseline) capital costs, total annualized costs, and total annualized cost per Mg MSW combusted for small and large MWC plants under each regulatory alternative.

TABLE 7.—RANGES OF INDIVIDUAL SMALL PLANT CONTROL COSTS UNDER THE REGULATORY ALTERNATIVES FOR MWC EMISSIONS

Regulatory Alternative	Capital cost ($1,000)	Total annualized cost ($1,000/yr)	Total annualized cost per Mg MSW combusted ($/Mg)
Baseline	1,300–20,000	600–5,300	40–>100
I	<1–530	<1–140	<1–13
IIA	<1–530	<1–140	<1–13
IIB	1,100–1,400	510–680	8–47
III	<1–530	<1–140	<1–13
IV	1,100–1,400	510–680	8–47

TABLE 8.—RANGES OF INDIVIDUAL LARGE PLANT CONTROL COSTS UNDER THE REGULATORY ALTERNATIVES FOR MWC EMISSIONS

Regulatory alternative	Capital cost ($1,000)	Total annualized cost ($1,000/yr)	Total annualized cost per Mg MSW combusted ($/Mg)
Baseline	40,000–150,000	13,000–37,000	40–>100
I	<1–1,300	<1–260	<1
IIA	450–7,800	1,100–4,800	4–12
IIB	450–7,800	1,100–4,800	4–12
III	8,600–20,000	2,600–6,500	8–17
IV	8,600–20,000	2,600–6,500	8–17

Table 7 shows that the base cost of the MWC's and control equipment included in the baseline would range from about $1.3 million to $20 million. Under Regulatory Alternatives I, IIA, and III, capital costs at individual small MWC plants could increase by less than $1,000 to $530,000; and additional annualized cost per unit of MSW combusted would range from a negligible increase to an increase of $13/Mg MSW ($12/ton MSW). Under these three alternatives, most small MWC plants would incur little or no additional costs; only those with capacities less than 45 Mg/day (50 tons/day) would incur increased control costs (relative to baseline) since these MWC's must add PM controls to meet the PM level of 180 mg/dscm (0.080 gr/dscf). For these very small plants, the capital costs of control represent an increase of about 42 percent relative to baseline combustor costs. For perspective on the increase in the annual cost of MSW combusted, typical costs for MSW combustion including collection, transportation, combustion, and MWC ash disposal currently range from about $40/Mg ($36/ton) to over $100/Mg ($90/ton) of MSW collected.

Under Regulatory Alternatives IIB and IV, small plants must add acid gas controls (based on DSI), and control costs increase. For Regulatory Alternatives IIB and IV, increased capital costs (relative to baseline) at small MWC's range from $1.1 million to $1.4 million or a percent increase of about 6 to 110 percent. Increased annualized costs of control range from $510,000 to $680,000, and the increased cost per unit of waste combusted ranges from $9 to $47/Mg MSW ($8 to $43/ton MSW).

Table 8 shows the increased costs of control (relative to baseline for individual large MWC plants under the regulatory alternatives. Under Regulatory Alternative I, all large plants must meet a PM level of 34 mg/dscm (0.015 gr/dscf). Most plants would not achieve this level under the regulatory baseline and would have to add additional PM controls to meet this level. Under Regulatory Alternative I, increased capital costs (relative to baseline) range from negligible amounts to $1.3 million, or an increase in capital cost of up to 2 percent. Increased annualized costs (relative to baseline) range from negligible to $280,000, and increased cost per unit of MSW combusted is less than $1/Mg MSW ($1/ton MSW). Under Regulatory

Alternatives IIA and IIB, large MWC plants must add MWC acid gas controls

plants since MWC acid gas controls based on SD/FF technology must be

National Impacts of the Regulatory Alternatives for MWC Emissions: The

ton) of MSW and range from less than $10/Mg to over $100/Mg. Disposal costs incurred by the general public (including

units have also been considered severely impacted if a third condition is met: (3) control costs as a percent of

comparison, the average MWC tipping fee is currently about $44/Mg ($40/ton) MSW, although tipping fees charged at

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Alternatives IIA and IIB, large MWC plants must add MWC acid gas controls based on DSI technology. For Regulatory Alternatives IIA and IIB, increased capital costs (relative to baseline) range from $450,000 to $7.8 million, increased annualized costs range from $1.1 million to $4.6 million, and increased cost per unit of MSW combusted ranges from $4 to $12/Mg MSW ($4 to $11/ton MSW). Control costs increase under Regulatory Alternatives III and IV for large MWC plants since MWC acid gas controls based on SD/FF technology must be added. Under Regulatory Alternatives III and IV, increased capital costs (relative to baseline) for large MWC plants range from $8.6 million to $19.7 million, which is an increase of 11 to 22 percent. Increased annualized costs range from $2.6 million to $6.6 million, and increased cost per unit of waste combusted ranges from $8 to $17/Mg MSW ($7 to $15/ton MSW).

National Impacts of the Regulatory Alternatives for MWC Emissions: The national annual emissions (and the emission reductions relative to baseline emissions) of PM, dioxins/furans, and MWC acid gases (SO_2 and HCl) under the baseline and each of the regulatory alternatives are shown in Table 9. Acid gas (SO_2 and HCl) emissions account for the great majority of the total emission reduction for all alternatives except Regulatory Alternative I.

TABLE 9.—NATIONAL MWC EMISSIONS UNDER BASELINE AND THE REGULATORY ALTERNATIVES FOR MWC EMISSIONS

Regulatory alternative	Annual Emissions			
	MWC metals PM Mg/year	MWC Organics Dioxin/Furan kg/year	MWC Acid Gases	
			SO_2 Mg/year	HCl Mg/year
Baseline	7,500	15	42,000	49,000
I	2,300	15	42,000	49,000
IIA	2,300	5	24,000	13,000
IIB	1,600	4	23,000	10,000
III	2,300	1	6,600	4,900
IV	1,600	<1	5,600	2,100

As shown in Table 9, PM emissions at baseline are 7,500 Mg/year (8,300 tons/year). Reduction of 70 percent above baseline would be achieved under Regulatory Alternatives I, IIA, and III. Slightly greater PM emissions reductions (79 percent relative to the baseline) would be achieved under Regulatory Alternatives IIB and IV due to the addition of PM controls on small MWC plants. Under Regulatory Alternatives IIB and IV, national PM emissions would be reduced to 1,600 Mg/year (1,800 tons/year). All alternatives would achieve a high degree of metals control.

Baseline emissions of dioxins/furans are 15 kg/year (33 lbs/year). There would be no reductions of dioxins/furans under Regulatory Alternative I, but increasing reductions of dioxins/furans would be achieved under Regulatory Alternatives IIA, IIB, III, and IV since MWC acid gas control requirements become more stringent with each successive alternative. Under Regulatory Alternative IV, national emissions of dioxins/furans for MWC plants would be 0.6 kg/year (1.4 lbs/year). This level represents a 96-percent reduction in dioxin/furan emissions relative to baseline emissions.

At baseline, national emissions of SO_2 and HCl are 42,000 Mg/year (46,000 tons/year), and emissions of HCl are 49,000 Mg/year (54,000 tons/year). No reductions in these MWC acid gases would be achieved under Regulatory Alternative I. Increasing reductions of MWC acid gases would be achieved under Regulatory Alternatives IIA, IIB, III, and IV as acid gas control requirements become more stringent. Under Regulatory Alternative IV, SO_2 emissions would be reduced by 87 percent resulting in national SO_2 emissions of 5,600 Mg/year (6,200 tons/year). Emissions of HCl would be reduced by 96 percent resulting in national HCl emissions of 2,100 Mg/year (2,300 tons/year).

Table 10 shows the national total increased (over baseline) capital costs, total increased annualized cost, and overall increased annualized cost per unit of MSW combusted for each of the regulatory alternatives.

TABLE 10.—NATIONAL CONTROL COSTS UNDER THE REGULATORY ALTERNATIVES FOR MWC EMISSIONS

Regulatory alternative	Total capital cost ($10 ^{6})	Total annualized cost ($10 ^{6}/yr)	Annualized cost per Mg MSW ($/Mg)
I	28	6	0.44
IIA	170	96	6.90
IIB	200	110	7.80
III	470	140	10.40
IV	500	160	10.90

National increased costs given in this table are for new MWC plants that would be operating or under construction by the end of the fifth year of implementation of the NSPS. As shown in Table 10, national total increased capital cost (relative to baseline) ranges from $28 million under Regulatory Alternative I to $500 million under Regulatory Alternative IV. Total increased annualized cost ranges from $6 million/year under Regulatory Alternative I to $170 million/year under Regulatory Alternative IV. Increased annualized cost per unit of waste combusted ranges from $0.45/Mg ($0.40/ton) for Regulatory Alternative I to $11/Mg ($10/ton) for Regulatory Alternative IV. For perspective, tipping fees currently charged at MWC's for MSW received average about $44/Mg ($40/

ton) of MSW and range from less than $10/Mg to over $100/Mg. Disposal costs incurred by the general public (including MSW collection, transportation, combustion, and MWC ash disposal), however, typically range from $40/Mg to over $100/Mg.

Economic Impacts of Regulatory Alternatives for MWC Emissions: Other studies have considered impacts on households to be "severe" if annual compliance cost per household exceeds $220 or if annual compliance cost per household exceeds 1 percent of median household income. Using these criteria, household impacts are not considered severe under any of the regulatory alternatives for MWC emissions. Under the most stringent alternative (Regulatory Alternative IV), over 90 percent of the household impacts were less than $30 per year and less than 0.2 percent of median household income, although some of the household impacts in the smallest communities examined were near $100 per year.

Economic impacts on government units (counties and municipalities) have been considered "severe" in other studies if both the following two conditions are met: (1) The sum of total current debt service and additional debt service associated with compliance to the regulation as a percent of total general revenues exceeds 15 percent, and (2) the sum of the averge sewerage and sanitation cost per household and the average control cost per household as a percent of median household income exceeds 1 percent. Government units have also been considered severely impacted if a third condition is met: (3) control costs as a percent of total general expenditures exceed 1 percent. Using these criteria, the analyses indicate that the increased costs imposed by any of the regulatory alternatives for control of MWC emissions do not result in severe economic impacts on the government units planning to construct new MWC facilities.

The EPA believes that these studies, which are also used by EPA in assessing impacts of the proposed RCRA Subtitle D standards, provide a reasonable measure for evaluating impacts, since the studies are specifically designed to gauge impacts on households and governmental entities.

It is difficult to estimate the impact of cost increases on tipping fees at MWC's. This is because these fees, which are payments to MWC's for permission to dump MSW at the MWC, are set by local governments and may include subsidies. However, if it is assumed that all increased costs are passed through to the tipping fee, then tipping fees for the various size plants would increase by the amounts shown in Tables 7 and 8. Under the least stringent alternative (Regulatory Alternative I), tipping fees for the various MWC plants would increase by less than $1 to $13/Mg (less than $1 to $12/ton) of MSW combusted, and under the most stringent alternative (Regulatory Alternative IV), tipping fees would increase by $8 to $47/Mg ($7 to $43/ton) of MSW combusted. For comparison, the average MWC tipping fee is currently about $44/Mg ($40/ton) MSW, although tipping fees charged at individual sites can range from negligible to over $100/Mg MSW.

Preliminary results of an analysis of how an NSPS might effect the selection of technology by the industry, including whether some municipalities might scrap their planned incinerators in favor of landfilling, indicate that the regulatory alternative selected would have very little effect on the mix of MWC types that will be used over the next 5 years. However, even taking into account potential costs of controlling air emissions from landfills and meeting RCRA Subtitle D regulations, there may be a slight reduction in the growth rate for MWC's, with the MSW that would have been combusted being landfilled instead.

Partial Benefits Analysis: Table 11 presents partial total and incremental national benefits, benefit to cost ratios, and an implicit valuation of acid gas control under each of the five regulatory alternatives. The benefits shown are for emission reductions of PM. Benefits are calculated based primarily on reduced mortality, morbidity, and property deterioration. The benefits of PM emissions reduction are valued at $16,000/Mg ($14,000/ton). This figure is significantly greater than previous Agency estimates for PM. The EPA requests comment on the methodology and data used to derive these estimates.

TABLE 11.—PARTIAL NATIONAL BENEFITS OF THE REGULATORY ALTERNATIVES FOR MWC EMISSIONS

Regulatory alternative	Partial benefits for pm control ($10 ^{6}/yr)		Annualized Costs ($10 ^{6}/yr)		Overall B/C ratio	Incremental B/C ratio	Value of MWC acid gas control resulting in incremental B/C=1.0 ($/Mg)
	Total	Incremental	Total	Incremental			
I	88	88	6	6	14.8	14.8	0
IIA	86	0	96	90	0.9	(NA)	1,800
IIB	99	11	114	18	0.9	0.6	1,500
III	88	0	145	31	0.6	(NA)	1,900
IV	99	11	163	18	0.6	0.6	1,800

Under Regulatory Alternative I, the incremental benefit to cost ratio is greater than 1, and incremental net benefits are realized. Under the remaining alternatives, acid gas control is applied. The MWC acid gas (SO_2 and HCl) emissions would have to be valued at $1,900/Mg ($1,700/ton) or more for the incremental benefit/cost ratio for Regulatory Alternatives IIA through IV to be greater than 1. Although previous NSPS have required control of SO_2 at costs of as much as $3,300/Mg ($3,000/ton) of SO_2 emission reduction, generally average cost-effectiveness levels have been less that $1,000/ton.

While EPA benefit estimates for SO_2 emissions reduction are generally about $1,250/ton, HCl emission reduction benefits have not been quantified. Emissions reductions of HCl are greater than for other pollutants, and modeling indicates that some plants have ambient HCl concentrations that exceed the HCl welfare effects level of 3 μg/dscm (1.3 gr/million dscf) (annual average) at baseline. Regulatory Alternatives IIA, IIB, III, and IV would reduce HCl emissions by about 75 to 95 percent, and would reduce ambient concentrations to below the welfare effects level for all model plants. Despite these potential benefits, no monetary evaluation of HCl emissions is possible at this time. A dose-response function relating health and welfare effects to reduced

emissions of HCl is not currently available. Thus, potential benefits associated with these alternatives in terms of reduced HCl emissions are not considered by the benefits analysis.

There are also other benefits not included in the analysis. Health effects benefits for dioxins/furans control were not included. Health effects benefits from reduced exposure to metals were not included, but have been at least partially counted via the PM benefits analysis. In addition, benefits from reduced landfilling and reduced emissions of acid gases contributing to acid rain have not been included in the analysis. The benefits analysis does not take into consideration the reductions of MWC organics, MWC metals, MWC acid gases, and NO_x resulting from materials separation and NO_x control requirements nor the nonair quality environmental benefits achieved by materials separation; however, these benefits are discussed in Sections V and VI.

The EPA requests comment on all parts of the benefits analysis. The EPA is especially interested in comments regarding the benefit estimates for PM and SO_2, the appropriate benefits for HCl and dioxin/furan control, and other benefit(s) not included in this analysis.

Regulatory Alternative Selected: Regulatory Alternative IV was selected for control of MWC emissions from new MWC's based on the determination that: (1) the combination of GCP and SD/FF control is the best demonstrated technology for MWC emissions for large plants [>225 Mg/day (250 tons/day) capacity] and (2) GCP and DSI/FF or DSI/ESP is the best demonstrated technology for small plants [< 225 Mg/day (< 250 tons/day) MSW capacity]. While the emission limits are based on performance of these technologies, the owner or operator of an MWC could use other technologies to comply with the emission standards.

The control technologies identified as best demonstrated technology have been demonstrated at several MWC plants. Manufacturers are currently designing MWC's to include GCP. There are over 15 MWC plants in the U.S. (which contain over 30 individual MWC's) with SD/FF that are either operating, under construction, or have been permitted. Since issuance of the PSD and NSR permitting operational guidance in June 1987, permits for new large MWC's have required SD/FF control. The best demonstrated technology for smaller MWC's DSI/FF and DSI/ESP systems, have been demonstrated in tests at five MWC plants in the U.S. Similar systems have also been used in Europe and Japan. As described previously, no adverse cost or economic impacts were identified for Regulatory Alternative IV. Impacts on households and government units were determined not to be severe, and the regulations are not expected to significantly affect the proportion of MSW that is combusted versus landfilled.

Although additional reductions of MWC emissions would be achieved by applying the most stringent controls to all MWC's, regardless of size, the reductions attributable to small plant emissions would be relatively small, and the cost impacts would be unreasonably high. Application of acid gas controls based on SD/FF to small MWC's would achieve an additional 2 percent reduction in national acid gas emissions relative to use of acid gas controls based on DSI/ESP or DSI/FF. Disposal costs (compared to baseline) for small MWC plants would increase as much as about $80/Mg ($72/ton) of MSW compared to less than $12/Mg ($11/ton) of MSW for most large MWC's. The cost effectiveness of best acid gas control would be about $4,600/Mg ($4,200/ton) of acid gas removed for a typical small MWC plant, compared to a cost effectiveness of about $1,500/Mg ($1,400/ton) of acid gas removed for a typical large MWC. Considering the cost impacts and relatively small potential emissions reduction, EPA believes that control of acid gas emissions from small MWC's with best acid gas control would be unreasonable, and that application of good acid gas control technology is the best demonstrated technology.

The EPA further believes that the 225 Mg/day (250 tons/day) capacity is a reasonable dividing line between small and large MWC's. As can be seen in Figure 1, at capacities below this point annual disposal costs begin to increase sharply. In addition, the existing NSPS (Subpart Db) for this industry and operating guidelines for NSR permits use the same dividing line for large and small facilities, so that the action proposed today is consistent with the existing regulatory framework.

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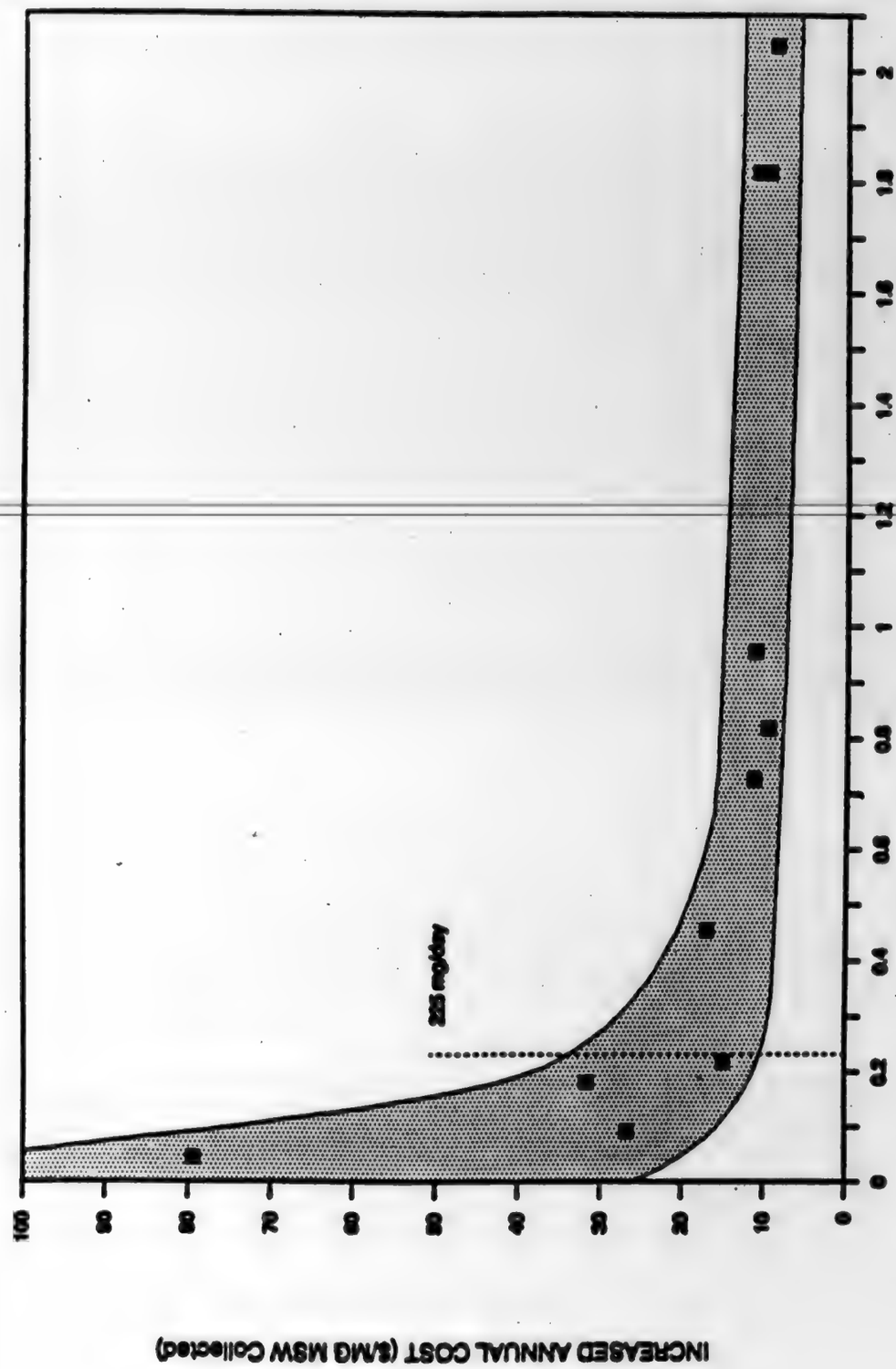

Figure 1. Increased annual cost of SD/FF control v. MWC plant size for new MWC's.

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A mercury emission limit or percent reduction requirement was also considered, but is not proposed today. As previously explained, available data indicate wide variation in mercury collection efficiency and emission rates, even for MWC's with GCP and SD/FF controls. The reasons for this variability and the mechanisms affecting mercury emissions and collection are not understood. Therefore, an emission limit cannot be specified at this time. The EPA and industry are establishing a joint task force to investigate mercury emissions and control. The results of this investigation will be used to determine what action is appropriate with regard to mercury issues.

Although today's proposal does not include a mercury emission limit, it does, however, include a prohibition on the combustion of household batteries as part of the materials separation provisions. As discussed in Section V, household batteries (including mercury oxide, alkaline manganese, silver oxide, and zinc carbon batteries) are thought to be a major source of mercury in MSW, and removal of these batteries would reduce mercury emissions.

At promulgation, based on the information that becomes available and the results of the task force investigation, it will be decided whether a mercury standard is appropriate. It will also be decided whether it is appropriate to maintain the prohibition on combustion of household batteries (possibly in combination with a mercury emission standard) or whether the prohibition should be removed.

G. Selection of Format for the Proposed Standards

For purposes of regulating MWC emissions, the format selected for the proposed standards would be a combination of emission limits, percent reduction requirements, and operational and work practice standards to ensure control of each subclass of MWC emissions. The specific format of the standard proposed for each pollutant or operational practice and the reasons for selection are discussed below.

MWC Organics: Under the proposed standards, MWC organic emissions are measured in units of total tetra- through octa-chlorinated dibenzo-p-dioxins (CDD) and chlorinated dibenzofurans (CDF). To arrive at the total CDD/CDF emission level, the emissions of each tetra- through octa-CDD and CDF homologue are added together. This calculation results in total CDD/CDF emissions in units of ng/Nm^3.

Another way of reporting CDD/CDF emissions is in units of toxic equivalents. This approach involves the use of toxic equivalence factors (TEF), which are assigned to specific CDD's and CDF's to express toxicity in terms of an "equivalent amount of 2,3,7,8-TCDD." If toxic equivalents were used as the basis for the emission limits, the emission of each CDD/CDF isomer or homologue would be multiplied by its TEF and the products added together.

The total CDD/CDF emission limit format was selected for several reasons. Studies have shown a direct relationship between total CDD/CDF and toxic equivalency, so reduction in dioxin/furan-related health risks would be achieved using either approach. A problem with the use of a toxic equivalency approach is that there are several different TEF schemes in use worldwide and the factors for individual CDD's/CDF's are subject to change. In addition to the TEF scheme that was adopted by EPA in 1987 (EPA/5625/3-87-012), several other organizations have developed their own schemes (e.g., Switzerland, New York, California, the Food and Drug Administration). Furthermore, EPA is considering the adoption of a new International TEF (I-TEF) scheme, but like the current EPA factors, this new set of TEF's will be considered interim and will continue to be revised as necessary.

The disadvantage to using a toxic equivalent scheme for the emission standards is that the standards would need to be revised by EPA as TEF's are updated. Setting an emission limit for total CDD/CDF is a more simple and straightforward approach and is entirely in keeping with the technology-based regime of Section 111. Because the standards proposed today are technology-based, EPA considers the total CDD/CDF approach more appropriate for specifying the emission limits in these standards.

This proposal identifies a range of total CDD/CDF emission limits for large MWC's. As explained previously, the best demonstrated technology for large MWC's includes a SD/FF system; however, the exact performance level of this technology is still under study. At promulgation, a single emission limit will be adopted, and it is expected to be in the range of 5 to 30 ng/Nm^3 (2 to 12 gr/billion dscf). Specific comment is requested on what the final emission limit should be.

MWC Metals: Establishing emission limits for each of the numerous metals emitted from MWC's was considered but was not adopted as a reasonable format for regulating MWC metals because the types and amounts of metals emitted from an MWC are highly variable and site-specific. In addition, this method might not be practical economically because of the expense of monitoring and measuring for specific metals. Establishing an emission limit for PM as an indicator of all the metals emissions from MWC's ensures control of metal emissions. Therefore, the format selected for regulating MWC metals is a PM emission limit (expressed as mg/dscm or gr/dscf).

Because a continuous monitoring methodology does not exist for measuring PM emission rates directly, an opacity standard was also selected to provide an indirect means of monitoring PM emissions. The format selected for regulating opacity is a percentage format, which is the format used to regulate PM in previous NSPS.

MWC Acid Gases: For SO_2 or HCl emissions, the emission limit format is a combined percent reduction standard (by weight or volume) or a volume concentration standard.

A percent reduction standard was selected because it is the most accurate and representative measure of the performance of acid gas control systems. A percent reduction standard is generally appropriate for MWC's. However, in cases where inlet SO_2 or HCl levels are very low and the specified percent reductions would result in concentration levels below 30 ppmv SO_2 or 25 ppmv HCl, these percent reductions may not be achievable because of limitations in SO_2/HCl emission measurement and control loop feedback systems. Therefore, the proposed SO_2 emission limits would require either a percent reduction in SO_2 emissions or a 30 ppmv SO_2 outlet concentration, whichever results in the higher emission concentration level, using a daily 24-hour average. Similarly, the HCl emission limits would require either a percent reduction in emissions or a concentration level of 25 ppmv.

Good Combustion Practices: The format selected for GCP is a mix of several operational and work practice standards, since measurement technologies for measuring and continuously monitoring MWC organic emissions leaving the MWC are not available or practical. These operational and work practice standards consist of limits on CO emissions, MWC load, flue gas temperature at the inlet to the PM control device, and operator certification and training requirements. Each of these items can be related to the level of MWC organic emissions in the gases leaving the MWC, and compliance with the requirements associated with each of these items can easily be monitored.

H. Performance Test Methods and Monitoring Requirements

The performance testing and emission monitoring requirements included in the proposed regulation would apply to all MWC's subject to the proposed standards for MWC organics, MWC metals, and MWC acid gases, except as noted below. As stated in the NSPS General Provisions (40 CFR 60.8) initial compliance tests must, unless otherwise specified in the regulation, consist of three separate runs using the applicable test method, and the arithmetic mean of the three runs shall be used to determine compliance.

All emission limits for MWC emissions are corrected to 7 percent O_2 (dry basis). Some MWC's may have CO_2 monitors rather than O_2 monitors, or may prefer to correct to an equivalent percent CO_2. Owners or operators may request an equivalent emission limit corrected to CO_2 rather than O_2. Generally, a correction to 7 percent O_2 is equivalent to a correction to 11 or 12 percent CO_2. However, there is not an exact conversion that is universally applicable because of variations in the carbon content of MSW. The owner or operator making the request must establish the relationship between O_2 and CO_2 for an individual MWC during compliance testing.

MWC Organic Emissions: An initial performance test would be required for all MWC's subject to the proposed MWC organic emission (i.e., dioxin/furan) standard. The emission limit pertains to total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans. The performance test would be conducted in accordance with Method 23. Following the initial performance test, subsequent annual performance tests would be required for all MWC's. However, if three performance tests in a row (three annual tests) indicate compliance with the MWC organic emissions limit, MWC's located at small MWC plants may skip the annual performance test for the next 2 years. At a minimum, an MWC performance test must be performed for MWC's at small MWC plants every 3 years. Those MWC's located at large MWC plants must be tested every year.

MWC Metals: An initial performance test would be required for all MWC's subject to the proposed MWC metals (i.e., PM) emission limit. The performance test would be conducted in accordance with Method 5. Method 1 would be used for determining the number and location of sampling points. Method 3 would be used for flue gas analysis. All performance tests would consist of a minimum of three runs using Method 5 conducted under representative operating conditions (i.e., at full load). The average PM emission rate of the three runs would be used to determine compliance. Following the initial performance test, a subsequent annual performance test would be required for all MWC's. However, if three performance tests in a row indicate compliance with the PM limit, MWC's located at small MWC plants may skip the annual performance test for the next 2 years. At a minimum, an MWC performance test must be performed for MWC's at small MWC plants every 3 years. Those MWC's located at large MWC plants must be tested every year.

Compliance with the opacity standard would be determined using Method 9 for visible emissions. As stated in section 60.11, for the purpose of determining initial compliance, the minimum total time observations would be 3 hours (30 6-minute averages). A transmissometer would be installed to monitor continuously the opacity and to alert MWC owners and operators of any occurrences of excess emissions requiring corrective action. Data would be recorded and reduced to 6-minute averages using Method 9.

MWC Acid Gases: The proposed regulation for MWC acid gases includes provisions for both SO_2 and HCl emissions.

Sulfur Dioxide. Continuous monitoring of SO_2 emissions would be performed by MWC's to demonstrate continuous compliance with the standards. Installation and operation of continuous emission monitoring systems (CEMS) at the inlet and outlet of the SO_2 control device would be required for MWC's demonstrating compliance with the percent reduction or outlet concentration standard. Those MWC's that elect to demonstrate continuous compliance solely with the 30 ppmv SO_2 emission limit may install and operate CEMS only at the outlet of the control device. Data collected by the CEMS would be used to determine compliance with the SO_2 percent reduction requirements and emission limits.

Compliance with the SO_2 percent reduction requirements and emission limits would be determined using a 24-hour daily (block) average based on CEMS. All valid data in each 24-hour period must be used to determine compliance. The first daily 24-hour average percent reduction and emission values calculated after initial startup would serve as the initial performance test required under § 60.8.

Hydrogen chloride. An initial performance test would be required for all MWC's subject to the proposed HCl emission standard. Compliance with the HCl percent reduction requirements and emission limits would be conducted in accordance with Method 26. Following the initial performance test, subsequent annual performance tests would be required for all MWC's. However, if three performance tests (three annual tests) in a row indicate compliance with the HCl limit, MWC's located at small MWC plants may skip the annual performance test for the next 2 years. At a minimum, an MWC performance test must be performed for MWC's at small MWC plants every 3 years. Those MWC's located at large MWC plants must be tested every year.

Requirements for CEMS: When establishing standards that require the use of CEMS for determining compliance, it is necessary to consider that monitors undergo periods of downtime and, thus, are not available 100 percent of the time. Well-maintained CEMS have little downtime. However, minimum data requirements would be established that limit the amount of data permitted to be lost before use of an alternative monitoring method is required. These minimum data requirements would provide the owner or operator with time to maintain and calibrate the CEMS, correct minor malfunctions, and, if necessary, arrange for an alternative monitoring method. The minimum data requirements also would prevent the possibility of an affected facility operating for unreasonably long periods without collecting emission data.

Overall, the standards would require CEMS data to be collected during 75 percent of the MWC operating hours per day for 75 percent of the operating days per month. These requirements apply to all CEMS needed to determine compliance with the standards (SO_2, opacity, CO, O_2, or CO_2). Collection of this amount of data has been determined to be achievable using a well-operated and properly maintained CEMS. However, this requirement is separate from the compliance test requirements where all valid data would be used to determine compliance even where more than 75 percent of the data is available (e.g., no valid data may be deleted from the calculations to determine compliance). From an enforcement point of view, not operating CEMS is equivalent to not conducting a required performance test.

In order to ensure that CEMS provide accurate data, daily calibration drift checks and quarterly accuracy audits would be required to be performed on each CEMS. These quality assurance

checks would be performed in accordance with 40 CFR part 60, Appendix F, Procedure 1, "Quality Assurance Requirements for Gas Continuous Emission Monitoring

anticipated startup, date of actual startup, and anticipated date of demonstration of the CEMS (if applicable), as required under the General Provisions (40 CFR 60.7).

The required operating manual must be updated annually and be readily accessible. Records of operator certification and training of MWC operating personnel are required. All

Most MWC's are base-loaded and operate either continuously or on a Monday through Friday schedule, so the

performed, but the time spent operating at reduced load would be short. If any malfunction would take more than 3

classes of waste materials to the total MSW stream. As shown in Figure 2, more than 40 percent of the solid waste

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checks would be performed in accordance with 40 CFR part 60, Appendix F, Procedure 1, "Quality Assurance Requirements for Gas Continuous Emission Monitoring Systems Used for Compliance Determination." Appendix F, Procedure 1 applies to all CEMS used for continuous compliance determination under 40 CFR part 60, Subpart Ea.

Combustor Operating Practice Standards: As part of GCP, to minimize reduction in MWC organic emissions from the combustor, CO emission limits and specifications for MWC load level and flue gas temperature at the PM control device inlet are proposed.

Carbon Monoxide. The CO emission limits are specified for each common type of MWC. Each MWC would be required to install a CEMS at the combustor outlet to monitor continuous compliance with the applicable CO emission limit. Compliance would be determined using 4-hour block averages. All valid data would be used to compute each average.

Operating Load. An operating load limit of 100 percent of full demonstrated load is specified for all MWC's. The full load level would be defined during the initial compliance test, but could be raised if an MWC owner or operator can demonstrate during a compliance or subsequent performance test that all other applicable standards for MWC organics, MWC metals, MWC acid gases, and the CO emission limit can be met while operating at a higher load.

All MWC's subject to load limits would be required to install monitors to continuously measure steam flow, and compliance would be determined by calculating 1-hour averages. This requirement would not apply to MWC's that did not generate steam.

Temperature. Temperature would be continuously monitored at the inlet to the PM control device to determine compliance with the 230 °C (450 °F) temperature limit. A block 4-hour average would be used to determine compliance.

Operator Certification and Training. Operator certification and site-specific training of MWC operating personnel would also be required by the proposed standards. There are no test methods pertinent to operator training, but all MWC plants would have to keep records of certification and training as described in Section IV.I.

1. Reporting and Recordkeeping Requirements

The proposed standards would require owners and operators of all affected facilities to submit notifications of construction or reconstruction, date of anticipated startup, date of actual startup, and anticipated date of demonstration of the CEMS (if applicable), as required under the General Provisions (40 CFR 60.7).

After the initial performance test has been completed, the proposed regulation would require the submission of quarterly compliance reports for SO_2 and the combustor operating parameters that are continuously measured (CO, load level, and flue gas temperature) for all MWC's. Quarterly excess emission reports for opacity must also be submitted for all MWC's. The proposed standards would also require that annual compliance reports for dioxins/furans, PM, and HCl be submitted for all MWC's. However, if three performance tests in a row indicate compliance with the dioxin/furan, PM, or HCl emission limits, MWC's located at small MWC plants would be exempt from the next two annual tests of that pollutant, and simplified annual reports may be submitted for the next 2 years. Full annual reports must be submitted every year for MWC's located at large MWC plants. These reports would include, as applicable for the period covered by the report: (1) Any period where emissions exceeded the standards, or where values of monitored operating parameters were in violation of the standards; (2) results of all annual performance tests; (3) all 24-hour average SO_2 emission rates and percent reduction values, 4-hour average CO emission rates and temperatures, and 1-hour average load levels calculated during the reporting period; and (4) identification of any periods for which data were excluded from these calculations. In addition, each quarterly report would include the results of the daily CEMS drift tests and quarterly accuracy determinations as required under Appendix F, Procedure 1.

If the minimum amount of data were not obtained for a 24-hour average period, reasons for failure to obtain sufficient data (e.g., CEMS malfunction), and a description of corrective action taken would also be included, along with all information needed to calculate the 24-hour average values according to Method 19. Also, if the minimum amount of data (75 percent of the operating hours per day and 75 percent of operating days per month) were not obtained, this must be included in the quarterly reports and reasons specified.

The proposed regulation would also require that certain types of records be maintained. Records to be maintained include all data outputs of the CEMS; all quarterly and annual reports submitted under this rulemaking; and all records required under Appendix F, Procedure 1. The required operating manual must be updated annually and be readily accessible. Records of operator certification and training of MWC operating personnel are required. All required records would be maintained for 2 years following the date of such records, after which they could be discarded.

The reporting and recordkeeping requirements in the proposed regulation are necessary to inform enforcement personnel of the compliance status of new MWC's that initiate operation. In addition, they would provide the data and information necessary to ensure continued compliance of these MWC's with the proposed regulation. At the same time, these requirements would not impose an unreasonable burden on MWC owners or operators.

J. Malfunction Provision

The MWC standards being proposed today apply at all times, except during periods of startup, shutdown, and malfunction. A special provision is being added to these proposed standards which places a limit of 3 hours per occurrence on the time that a plant can claim an exemption from standards due to startup, shutdown, or malfunction. This provision does not change the definitions of startup, shutdown, and malfunction in the General Provisions nor does it change any of the requirements in the General Provisions. Malfunction is defined as "any sudden and unavoidable failure of air pollution control equipment or process equipment or of a process to operate in a normal or usual manner. Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions" (40 CFR 60.2). As specified in 40 CFR 60.7, records must be maintained of the occurrence and duration of any startup, shutdown, or malfunction, any emission levels occurring during such times, the nature and cause of any malfunction, and corrective action taken or preventive measures adopted. These records must support a determination, on a case-by-case basis, that a period of emissions above the allowable limit should be considered as startup, shutdown, or malfunction. The compliance provisions in 40 CFR 60.8 also specify that "at all times, including periods of startup, shutdown, and malfunction," owners or operators shall operate and maintain the affected facility and air pollution controls to minimize emissions.

Most MWC's are base-loaded and operate either continuously or on a Monday through Friday schedule, so the time spent to start-up and shut-down these MWC's is minimal, with only one startup and shutdown period required per week. Furthermore, the proposed MWC standards apply only while MSW is being combusted. Since most MWC's fire fuel oil or natural gas during warm-up and then switch to firing MSW once the MWC is at operating temperature, the proposed MWC standards usually would not apply during MWC warm-up, but would become applicable as soon as MSW is introduced into the MWC. Similarly, shutdowns would not take more than 3 hours while MSW is being fired.

Due to the configuration of SD/FF systems, maintenance can be performed on line to repair most malfunctions. In some cases, such as replacing a rotary atomizer or spray nozzle, the load must be reduced while maintenance is being performed, but the time spent operating at reduced load would be short. If any malfunction would take more than 3 hours to repair, the MWC could shut down to complete the repair.

V. Rationale for Standards for Materials Separation

A. Background

Currently, the U.S. generates about 150 million Mg (160 million tons) of municipal solid waste (MSW) per year, and under current waste management practices, this amount is expected to grow steadily through the year 2000. Much of the waste stream is attributed to disposable products that are used for a short time and thrown away. These products include "convenience" packaging suited to a fast-paced lifestyle, such as fast food containers and microwavable food packaging. Figure 2 shows the percent contribution (on a mass basis) of each of the major classes of waste materials to the total MSW stream. As shown in Figure 2, more than 40 percent of the solid waste stream consists of paper and paper products discarded in houses, offices, and factories. Yard waste makes up another 18 percent of the total. The other major components are metals (8.7 percent), glass (8.2 percent), plastics (6.5 percent), and food wastes (7.9 percent). At present, about 80 percent of the total MSW is landfilled, about 10 percent is combusted in municipal waste combustors (MWC's), and about 10 percent is recycled. The "Agenda for Action" indicates that by 1992, 25 percent of the MSW stream should be diverted by source reduction and recycling. Also, the percent landfilled should decrease from 80 percent to 55 percent, and the amount of MSW combusted in MWC's should increase from 10 percent to 20 percent.

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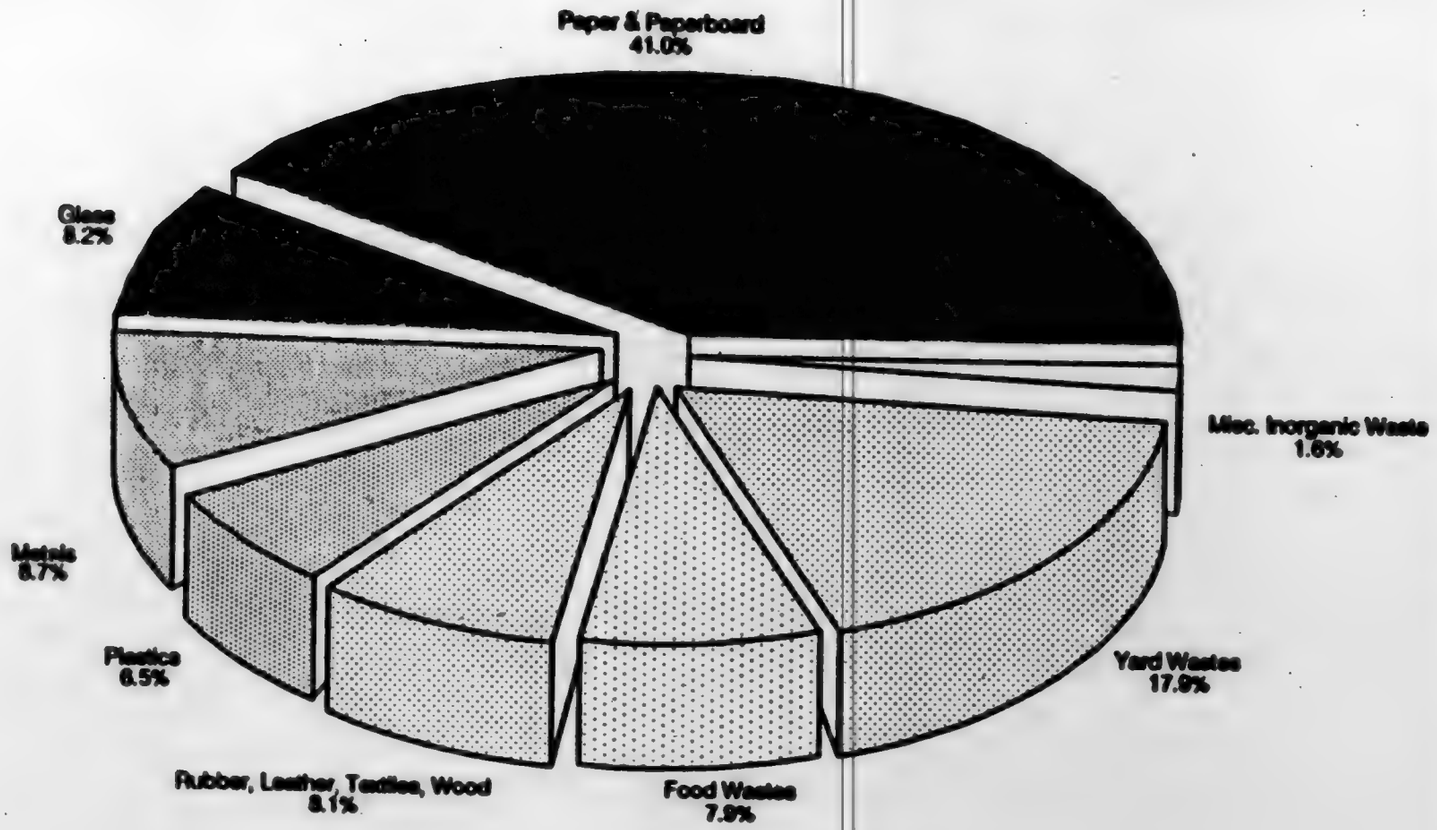

Figure 2. Gross discharges, by weight, of MSW materials.

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B. Selection of Regulatory Alternative for Materials Separation Selection of Alternative

As discussed in this proposal, materials separation refers to the separation and removal of certain components from MSW prior to combustion in an MWC. In many cases, materials separated from MSW can be recycled, thereby preserving natural resources. Recycling these materials would also reduce the amount of waste combusted or landfilled, and could provide funds ($) to offset separation costs. By reducing the amount of waste to be combusted, overall MWC emissions can be reduced. In addition, emissions of specific constituents of MWC emissions can be reduced by separating certain classes of waste materials. Materials separation technology is applicable to all types of MWC technology including, but not limited to, mass burn MWC's, refuse derived fuel-fired (RDF) MWC's, and modular MWC's.

The proposed standards would require all new MWC's to process the MSW prior to combustion to achieve an overall 25 percent or greater reduction (annual average, by weight) of MSW through separation for recovery of one or more of the following materials: paper and paper-board combined; ferrous metals (including white goods); nonferrous metals; glass; plastics; household batteries; and yard wastes. In calculating the 25 percent weight reduction, a maximum credit of up to 10 percent would be allowed for yard waste separation. The remainder of the 25 percent would come from the other listed materials.

The proposed standards would prohibit the combustion of large lead-acid vehicle batteries (wet lead-acid batteries weighing more than 5 kg [11 lbs] that are manufactured for use in motor vehicles, vessels, or aircraft, or any other use). A program to remove household batteries prior to combustion would also be required.

Separation of the materials discussed above may be achieved by mechanical or manual separation at the MWC site, by off-site mechanical or manual separation, or by community source reduction or materials separation (recycling) programs, or a combination thereof.

Processing of MSW to remove these types of materials prior to combustion yields benefits in terms of reduced emissions potential for all components of MWC emissions including: MWC organics, MWC metals (including mercury), and MWC acid gases. Emissions of nitrogen oxide (NO_x) would also be reduced. In addition, MWC steam generation efficiency and MWC operating availability have been shown to increase at MWC's that are practicing materials separation.

In addition to the expected emissions reduction achieved by materials separation, additional nonair quality environmental benefits are also expected, including improved MWC ash quality and reductions in pollution and energy requirements associated with extracting and processing virgin materials. The reduced emissions also will contribute to a reduction in global warming.

The Agency considers recovery of materials from the MSW stream to be consistent with the goals and principles of its policy on pollution prevention (54 FR 3845). In particular, the proposed materials separation provisions would encourage pollution prevention through source reduction and recycling. Community separation would be used in many areas to comply with these provisions, resulting in increased public participation in the pollution prevention program. Furthermore, involving the public in materials separation and recycling programs may result in increased environmental awareness and development of an environmental ethic by the general public. This would have long-range environmental benefits.

The overall 25 percent weight reduction level is consistent with the goals of the "Agenda for Action," the Agency's overall strategy for dealing with MSW. The "Agenda for Action" goals include reducing the Nation's total MSW stream by 25 percent through source reduction and recycling by 1992. The overall percent reduction format included in the proposal will allow MWC's flexibility to tailor their program to fit regional markets for recovered materials and seasonal variations in MSW composition.

Selection of Implementation Schedule: The materials separation requirements would be effective (i.e., a materials separation program must be initiated or implemented) upon start up for MWC's that commence construction after promulgation of this new source performance standard (NSPS). However, owners or operators of MWC's that commence construction after today's date, but on or before the date of promulgation would be required to implement the materials separation program by December 31, 1992, or at start up, whichever is later. This is the same date by which existing MWC's must initiate materials separation programs under the guidelines proposed in today's Federal Register notice. It is also consistent with the Agenda for Action, which called for achieving 25 percent MSW reduction by 1992.

Those MWC's that commence construction between proposal and promulgation of the NSPS, however, are in a situation similar to existing MWC's with regard to materials separation. They will already be under construction or operating when the NSPS is finalized, and additional time will be required to design and implement a separation program. This may include design, purchase, and installation of on-site separation equipment, and/or negotiations and development of contracts with third parties to implement off-site or community separation programs. Putting a program in place to achieve the separation requirements is a relatively complex process which could take up to 2 years, and the December 31, 1992, date provides this amount of time to design and implement a materials separation program. The EPA believes that this is a reasonable means of subcategorizing these sources pursuant to the authority of Section 111(b)(2).

The initial demonstration of compliance with the materials separation provisions is required at the end of the second calendar year following implementation of materials separation. This would be the end of the second full calendar year after start-up for MWC's that commence construction after promulgation. For MWC's that commence construction between proposal and promulgation, compliance demonstration would be required at the end of calendar year 1994 or two calendar years after start-up of the MWC, whichever is later.

Whenever any new process or control system is first started, it frequently does not perform exactly as expected. Despite careful design and planning, time is often needed to observe actual performance and make the necessary adjustments or refinements to the system to achieve design performance. This is true whether the new system is a piece of air pollution control equipment or a community materials separation program.

The General Provisions in 40 CFR 60.8 recognize this fact by allowing up to 180 days after start up of an affected facility for conducting the initial performance test. This allows time to test and adjust the air pollution control hardware and its operation before conducting a stack test that is submitted to the enforcement agency to demonstrate compliance.

Similarly, time is likely to be needed to see how well a specific materials separation program is performing and make changes in the program, if

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necessary, to comply with the materials separation provisions. Whether the program involves on-site or off-site mechanical or manual processing facilities, curbside materials separation programs, or some combination, it is difficult to predict in advance the actual percent separation that a specific program will initially achieve. The owners or operators of MWC's may very well need time to measure the actual performance of the new systems or programs, determine how they can best be operated, and make various changes or adjustments to the program before initial compliance is demonstrated.

Because of seasonal variation in the content of MSW, the requirement for 25 percent weight reduction of MSW through separation is based on an annual average. Therefore, MWC owners and operators will not know the percent separation their new system or program is achieving on an annual average basis until the end of the first year of operation; a few months of operation may not be descriptive of annual performance. In order to allow them time to adjust or fine-tune their materials separation program to ensure compliance, the materials separation provisions provide the time necessary to determine the performance of the materials separation program on an annual average basis before compliance must be demonstrated. Compliance demonstration is, therefore, required at the end of the second calendar year of operation of the materials separation program.

C. Rationale for Materials Separation Requirements

Recovery of each of the targeted categories of materials from the waste stream prior to combustion is expected to yield specific air emissions, energy, and collateral benefits. The Agency expects that separation of the specified categories of material would yield the following benefits:

Paper and paperboard: Reductions in MWC metal emissions would result from reduced combustion of paper impregnated with lead-based inks and mercury-based fungicides. Also reduction in carbon dioxide (CO_2) concentration would result due to the decreased mass of paper combusted and the increased amount of forest due to reduced timber demand for virgin paper production. A reduction in MWC acid gas emissions would result from reduced combustion of paper impregnated with chlorine-based bleach (i.e., hydrogen chloride [HCl]) and reduced combustion of sulfur-laden paperboard (i.e., sulfur dioxide [SO_2]). Paper separation can result in an overall downsizing of MWC's enabled by a reduction in the total combustible fraction of MSW. Indirect reduction in CO_2 and other emissions would also result from reduced energy consumption resulting from increased paper and paperboard recycling and the corresponding reduction in virgin paper and paperboard production.

Ferrous metals: Reductions in MWC metal emissions (especially lead) would result from separation of ferrous materials assembled with lead solder or plated with lead, zinc, or cadmium. Emissions from coke oven batteries would be reduced based on increased use of recycled steel, thereby reducing benzene-soluble organic emissions. Also indirect reduction in emissions associated with energy consumption would result from increased ferrous metal recycling and the corresponding reduction in virgin steel production.

Nonferrous metals: Since nonferrous metals (aluminum cans in particular) are readily recyclable, not only would MWC emissions be reduced through separation, but reductions in energy consumption would also result from increased aluminum recycling and the corresponding reduction in primary aluminum smelting. Also, reductions in the amount of litter along roadsides and in public places could result.

Glass: Reductions in MWC metal emissions (especially lead) would result from separating glass materials containing lead (such as television picture tubes). Also, indirect reductions in emissions associated with energy consumption would result from increased glass recycling and the reduction of virgin materials in glass production.

Plastics: Reductions in MWC metal emissions (especially cadmium and lead) would result from reduced combustion of plastics, which contain such metals as stabilizers and/or in pigments. Potential reductions in emissions of acid gases and chlorinated MWC organics could result from decreased combustion of polyvinyl chloride plastics. An overall reduction in MWC emissions would result from downsizing MWC's enabled by a reduction in the total combustible fraction of MSW. Also, a reduction in CO_2 emissions and energy consumption would result from increased plastics recycling and the corresponding reduction in virgin plastics production.

Household batteries: Reductions in mercury emissions and other MWC metal emissions (including cadmium and nickel) would result from separating household batteries prior to combustion. Add-on control systems typically achieve a lower percent removal of mercury than other metals. As described in Section IV, mercury emission data are highly variable and the mechanisms of mercury emissions and control are not currently understood. A task force is being formed to investigate mercury emissions and controls. However, much of the mercury in MSW is contained in household batteries. Mercury oxide batteries are the type of battery with the highest mercury content, containing about 35 percent mercury, by weight. Common alkaline manganese batteries contain 7 percent mercury, and small silver oxide batteries contain about 1 percent mercury. The widely-used zinc carbon batteries may also contain small amounts of mercury. Therefore, in lieu of a mercury emission limit, it is proposed that a program be established to remove household batteries from MSW.

Although the Agency is proposing inclusion of a program to remove household batteries, it is recognized that very little information is available on the economic impacts or environmental benefits of such a program. The Agency solicits comments on whether the program should be required or not, what type of program should be required, what problems will be faced in implementing a program, and how effective a program would be in removing batteries and reducing mercury emissions. The Agency intends to include on the task force representatives from owners and operators of MWC's, State and local governments, and household battery manufacturers.

Lead-acid vehicle batteries: Removal of lead-acid vehicle batteries would result in a direct reduction in MWC metal emissions (especially lead). Also a reduction in MWC acid gas emissions (especially sulfuric acid), and reduction in MWC emissions associated with combustion of plastic lead-acid battery casings would be achieved. Indirect reductions in emissions will also result from the reduced demand for lead from primary lead smelters.

Yard waste: Reductions in NO_x emissions and increased combustion stability would result from a decrease in the nitrogen content and moisture of the MSW. Emissions of MWC organics would be reduced due to improved combustion stability since yard waste often has a high moisture content and exhibits inconsistent combustibility. Also, energy consumption would be reduced due to a decreased need for auxiliary fuel.

The overall 25 percent MSW reduction and vehicle battery and household battery removal can be achieved by demonstrated technologies, including mechanical and/or manual methods or deposit/return programs for removal of each of the specified materials. The EPA's estimated costs of compliance assume that some manual separation at the MWC will be necessary.

Additional information supporting the above conclusions is contained in the docket.

The goal of the materials separation requirements is to encourage removal of multiple materials to achieve reductions in MWC emissions. The typical yard waste content of MSW is 18 percent (by weight), but some communities will have over 25 percent yard wastes. In calculating the 25 percent overall MSW reduction, a maximum credit of 10 percent would be given for yard waste separation to ensure that the goal of the materials separation requirements is met.

The EPA believes that materials separation, used in conjunction with good combustion practices, and add-on controls, will result in further reductions of emissions from MWC's. It is simply common sense, and the Agency's expectation, that reductions in the amount of pollution-generating materials combusted in an MWC will reduce the amount of pollutants in its air emissions. In addition, materials separation should improve the combustion efficiency of MWC's, and thus reduce MWC emissions, by removing noncombustibles like metals, glass, and water-saturated yard wastes from the feed stream to the unit. In fact, there are a number of studies (which are part of the record for this rulemaking) documenting significant reductions in MWC emissions as a result of application of materials separation technologies.

The Agency is, at this time, unable to reliably quantify the emission reductions attributable to materials separation when an MWC is equipped with highly efficient at-the-stack air pollution control devices. Not only are the limited existing test data insufficient to make this quantification, but other difficulties exist as well. First, the composition of waste received at MWC's varies depending on the types of waste generated in the service area and the season of the year. Therefore, the proportion of each separable material in the waste feed will vary among MWC's. Because of this variability, and economic factors, MWC's will choose different ways of accomplishing materials separation, and the percent reduction of specific materials will vary among MWC's. While MWC emissions as a whole will be reduced, it is difficult to predict the specific reduction in each component of MWC emissions (e.g., MWC metals, MWC organics, and MWC acid gases). Further incremental reductions thus cannot be reliably measured. Second, because of the substantial removals achieved by air pollution control devices, the remaining pollution being measured is small, and it becomes increasingly difficult to measure and interpret reliably with available test methods. In some cases, normal variability in the amount of metals, organics, and acid gas precursors in the incoming feed could make it difficult to interpret emission reductions attributable to materials separation. That is, it will not be possible to determine which reduction is attributable to variable waste feed and which to materials separation.

The processing of MSW to remove specified types of materials prior to combustion will also produce benefits associated with reduced quantities of ash to be landfilled and reduced levels of toxic materials in the ash. The proposed requirement for an overall 25 percent MSW reduction and the prohibitions on the combustion of vehicle batteries and household batteries will yield an appreciable tonnage reduction in the quantities of MWC residues (both bottom ash and flyash) disposed of in landfills. It is expected that the 25 percent MSW reduction coupled with the prohibitions on batteries would result in an approximate reduction of 80 percent in ferrous and nonferrous metals, and glass. This would reduce the tonnage of ash requiring disposal by 30 percent. With respect to ash quality or toxicity, the entire range of air toxics in ash is of concern with regards to fugitive emissions associated with the handling, storage, and transportation of ash. The principal toxic components of ash with respect to groundwater contamination are lead and cadmium. The requirement for materials separation and related prohibitions will produce ashes characterized by substantially lower toxicity.

The Agency believes that the long-term viability of markets for recovered materials would be significantly enhanced by ensuring a stable supply of recovered materials. The Agency believes that a stable market supply would result from the proposed standards. Such stable supplies would tend to encourage long-term contracts with materials recovery firms and further the development of alternative end-uses. This same principle was recognized by the Congress in enacting the 1976 Resource Conservation and Recovery Act (RCRA) when it provided that State solid waste management plans shall not preclude States of local governments from entering into long-term contracts for supplying solid waste to resource recovery facilities, operating such facilities, and securing long-term markets for recovered materials and energy [RCRA Section 4003(a)(5)]. See also H. Rep. No. 94–1491, 94th Cong. 2d Sess. 10 (1976) ("Resource recovery facilities cannot be built unless they are guaranteed a supply of discarded material"). The Agency is also aware that the economics of materials recovery is in many cases driven more by avoided landfill or MWC disposal cost than by potential revenues from sales of recovered materials.

D. Materials Separation Methods

Separation of materials from MSW is accomplished in two ways: household separation (including deposit/return programs) and centralized processing. Household separation is the separation of recyclable materials from the waste by the generator (i.e., household or business); it is presently the primary method of separation in the U.S. At the household level, separation is accomplished by placing waste items (e.g., glass, paper, aluminum, etc.) in segregated containers. These containers are either picked up at the curbside or taken to local recycling bins or buyback centers. Deposit/return systems are also used to encourage separation and recycling of beverage bottles and cans. The homeowner would return the items to the point of purchase. Household separation of yard waste can be accomplished either by backyard composting or by segregating it for separate curbside pick-up where it is transported to a community composting site. Separation of lead-acid vehicle batteries could be achieved by a deposit/return system where the batteries are returned to the battery recycler, battery retailer, service station, or other recycling center. The separation of household batteries could be achieved through a deposit/return system and/or a prohibition on household disposal of batteries with MSW and implementation of separate community collections for batteries. The success of community programs depends on many factors including the level of planning, community participation rate (which may vary depending on whether the program is voluntary or mandatory), and local market demand for separated materials.

An increasing amount of MSW separation is accomplished at centralized processing facilities which operate at MSW transfer stations,

landfills, or MWC's. At centralized processing facilities, recyclable items are removed from the waste stream by

system of continuous emission reduction", which Section 111 standards of performance must reflect, includes

overall conservation of resources, and other environmental benefits. For example, recycling of newsprint and

existing sources pursuant to section 111, is defined to include not only conventional emission limitations measured at the stack, but also other forms of emission restriction, including

authority to require removal of certain constituents from the MWC feed stream. The EPA questions whether the proposed materials separation requirement is a "work practice or

believes that it would be economically and technically impracticable to monitor separately each of the toxics that are in the MWC feed stream (which potentially include each toxic in consumer use in an

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landfills, or MWC's. At centralized processing facilities, recyclable items are removed from the waste stream by mechanical separation systems, manual handpicking, or a combination of both. A wide variety of automated processes may be used to separate the various components of MSW.

Ferrous metals are generally removed magnetically, except for white goods (appliances such as stoves, refrigerators, and air conditioners) which are visually identified and removed as waste is unloaded. Household batteries generally use ferrous metal (e.g., steel) casings and can be removed with the ferrous metal fraction. Nonferrous metals are separated by eddy current (electromagnetic) separation, electrostatic separation (which separates conductors such as metals and paper from nonconductors such as plastic and glass), or by a variety of wet and dry methods which separate metals according to density. Methods for glass removal include wet and dry density methods, pulverization/screening, and optical sorting (by automatic photocells). Mechanical systems currently processing MSW in the U.S. achieve about 80 to 90 percent ferrous metal recovery, 60 to 70 percent aluminum recovery, and 70 to 80 percent glass recovery. Some fractions of yard waste can be removed mechanically. For example, grass clippings and other heavy materials may be gravity separated after screening out larger items. However, the product is not pure, and may contain broken glass and other contaminants. Mechanical systems can separate some paper and plastics from the waste stream using air classification or electrostatic separation, but these systems normally do not separate the various types of paper and plastic into specific material types (e.g., paper grade or plastic resin type). In many cases, some manual sorting is performed along with mechanical separation to increase separation efficiency and to remove residual contaminants from the separated fractions.

Currently, there are no fully-automated mechanical systems for removing lead-acid vehicle batteries from MSW. At centralized processing facilities, a specialized metal detector, which selectively detects large lead objects, is available and can be used to identify and locate the batteries in the waste traveling on a conveyor belt, and then the battery can be manually removed.

E. Legal Authority to Issue Materials Separation Standards for MWC's

In this rule, the EPA's proposed determination of the "best technological system of continuous emission reduction", which Section 111 standards of performance must reflect, includes determinations for the pre-combustion, combustion, and post-combustion stages of MWC operation. Best demonstrated technology for pre-combustion would include a requirement that new and existing MWC's remove noncombustible, toxic, recyclable, and compostable materials from their feed materials prior to combustion (referred to as "materials separation" in this preamble). The EPA believes that it possesses legal authority to require precombustion materials separation pursuant to Section 111. Such requirements are necessary to address the "nonair quality health and environmental impacts and energy requirements" that Congress requires the Agency to take into account in making a best demonstrated technology determination. Clean Air Act (CAA) section 111(a)(1)(C). The EPA construes this language as requiring it to consider not only the adverse impacts on other environmental media and energy use of Section 111 standards, but also that EPA may consider the nonair health and environmental benefits and energy benefits that can result. Consideration of nonair and energy impacts are an important part of determining what constitutes a "best" technology. (See H. Rep. No. 95–564, 95th Cong. 1st Sess. 128, 129 (Conf. Rep.); H. Rep. No. 95–294, 95th Cong. 1st Sess. 187.)

As noted above, EPA believes that there will be a reduction in MWC air emissions of toxic gases and other pollutants harmful to health as a result of materials separation. These reductions include not only criteria pollutants, but toxics such as lead, mercury, and cadmium. Moreover, as noted in detail in Section V.C. above, the Agency also expects the nonair health and environmental benefits from materials separation to be very great. Materials separation will improve MWC ash quality by removing noncombustibles from the unit's fuel stream, thus allowing better thermal destruction in the combustor and so keeping pollutants out of the combustion residues (ash). Materials separation should facilitate growth of markets for recycling by assuring adequate supplies of feed materials for recycling facilities. Recycling of separated materials will reduce the amount of waste ultimately disposed, saving critically scarce landfill capacity and reserving it for wastes for which land disposal is the best management alternative. Recycling of separated materials will also lessen the demand for raw materials, resulting in overall conservation of resources, and other environmental benefits. For example, recycling of newsprint and other paper products reduces the demand for raw timber, which preserves existing forests, a consideration in combatting global warming. Reducing demand for raw materials can also require fewer imports of raw materials. See section 1002(c)(3) of RCRA where Congress found that "the recovery and conservation of such materials [separated from solid waste] can reduce the dependence of the United States on foreign resources and reduce the deficit in its balance of payments." Congress went on to find that "millions of tons of recoverable materials which could be used are needlessly buried each year," and that "methods are available to separate usable materials from solid waste." RCRA section 1002(c)(1)(2). The EPA further anticipates that there will be energy savings associated with increased utilization of recycling. For example, the recycling processes of secondary aluminum, lead, and glass are much less energy-intensive than the corresponding processes that use virgin raw materials. In short, the removal of recyclables and other materials from MWC feed streams advances the national policy "to promote the protection of human health and the environment and to conserve valuable material and energy resources by promoting a national research and development program for * * * new and improved methods of collection, separation, and recovery, and recycling of solid wastes * * *." RCRA section 1003(a)(9).

Congress authorized EPA to consider nonair quality environmental and energy benefits such as these as an important component of a Section 111 best technology determination. These significant nonair quality environmental and energy benefits cannot be assured without including a materials separation requirement as part of the standard of performance of MWC's. The EPA believes that Congressional intent would be best effectuated by reading the CAA as authorizing EPA to require removal of toxics and compostable and recyclable portions of the MWC feed stream prior to combustion. The statutory language does not prohibit such a standard (indeed, it would be incongruous for it to do so, given the statutory requirement to include nonair and energy considerations in the best technology determination), and appears broad enough to encompass the materials separation requirement.

Thus, a "standard of performance," which EPA establishes for new and existing sources pursuant to section 111, is defined to include not only conventional emission limitations measured at the stack, but also other forms of emission restriction, including operating requirements and precombustion fuel conditioning requirements. See CAA section 302(1) (a "standard of performance" includes "*any* requirement *relating to* the operation or maintenance of a source to assure continuous emission reduction.") (emphasis added). Standards of performance must reflect the degree of "emission limitation" achievable, and an "emission limitation" is defined to include "any requirement relating to the operation or maintenance of a source to assure continuous emission reduction." CAA section 302(k). Under these provisions, removal of noncombustibles, toxics, recyclables, and compostables may be a "means of operating" an MWC in order to assure continuous emission reduction, and thus can be adopted as part of the section 111 standard of performance.

Other sections of the statute also support the EPA's interpretation that a section 111 standard of performance may include requirements expressed as other than traditional at-the-stack emission limits where necessary to achieve important air and nonair quality environmental and energy benefits. Section 111(a)(7)(B), for example, authorizes EPA to include "precombustion cleaning or treatment of fuels" as part of NSPS. See also H. Rep. No. 95–294 at 189.

(There may doubtlessly be many pretreatment techniques and/or process modifications capable of achieving comparable or improved degrees of emissions control in fossil-fired boilers as well as in most fuel-burn[ing] industrial sources * * *. To this end, the Administrator should take into consideration *all of the processing steps performed on a material from its natural state through to final usage* in determining the requirements under this section for a technological continuous emission reduction system.) (emphasis supplied)

Separating noncombustibles like metals and glass from the feed stream to an energy-recovering MWC is indeed a type of precombustion cleaning of fuel, and consequently furthers the Congressional intent that EPA consider such measures as part of the section 111 standards of performance.

Some persons commenting on draft versions of this proposal suggested that the materials separation requirement could only be authorized as a "design, equipment, work practice, or operational standard" pursuant to CAA section 111(h). They went on to maintain that Section 111(h) does not give EPA the authority to require removal of certain constituents from the MWC feed stream. The EPA questions whether the proposed materials separation requirement is a "work practice or operational standard." Certainly, the proposed requirement does not have the degree of mandated operating specificity that Congress sought to avoid in limiting the scope of work practice standards. The proposal does not require an MWC to carry out the proposed materials separation requirement in any particular way (by using particular types of equipment, for example). Rather, the proposal merely describes a minimal level of precombustion feed conditioning which can be achieved in many different ways (for instance, by relying on a variety of different community source separation programs, or by separating certain recyclables at the MWC while a community separates others).

Even assuming that the proposed materials separation requirement were considered to be a "work practice standard," however, EPA believes that it would be within the Agency's section 111(h) authority. The EPA may promulgate a work practice standard when "it is not feasible to prescribe or enforce a standard of performance." CAA section 111(h)(1). One statutory example of when it is not feasible to prescribe or enforce a standard of performance is when "the application of measurement methodology to a particular class of sources is not practicable due to technological or economic limitations." CAA section 111(h)(2). The legislative history indicates that Congress intended EPA to have authority to promulgate work practice standards when it finds that it is not feasible to develop or measure numerical concentration limits at the stack. See S. Rep. No. 95–127, 95th Cong., 1st Sess. 43, 44 (even though asbestos is capable of measurement, a work practice standard for asbestos was acceptable because of the impossibility of developing a numerical emissions standard).

In this case, EPA is presently unable to measure reliably the reductions in MWC emissions attributable to the removal of noncombustibles, recyclables, and compostables from MWC feed, and so is unable to reliably correlate at-the-stack measurements to materials separation technology. Thus, EPA is unable to develop numerical emissions standards reflecting the performance of materials separation technology. Since stack measurements and numerical standards would be technically impractical, EPA would be empowered to promulgate a "work practice" standard. The EPA also believes that it would be economically and technically impracticable to monitor separately each of the toxics that are in the MWC feed stream (which potentially include each toxic in consumer use in an industrialized society) in order to document the toxics removal achieved by materials separation. The EPA requests comment on these issues.

More fundamentally, EPA also questions whether it is "feasible" to prescribe or enforce a numerical standard of performance within the meaning of section 111(h) where prescribing solely a top-of-stack numerical limitation would preclude obtaining significant nonair environmental and energy benefits which Congress has directed EPA to consider. The Agency solicits comment on how to interpret the interplay of these statutory provisions. The EPA also requests comment on the related question of how nonair quality and energy considerations are to be taken into account in assessing section 111(h)(3) equivalency demonstrations.

Several interested parties have also argued that the Agency is without authority to promulgate a work practice or operational standard if it also establishes a numerical at-the-stack emission limit for a pollutant. The EPA's current view is that this argument is not persuasive. The statute contains no express command preventing the Agency from adopting a fuel pretreatment or work practice standard as well as a numerical emission limit. Nor does the legislative history state that Congress meant to forbid such a two-part standard of performance. Under these circumstances, EPA may adopt reasonable interpretations of the statutory language that effectuate statutory goals, see *Chemical Manufacturers Association* v. *Natural Resources Defense Council*, 47D U.S. 1102, 1108 (1985), particularly where the interpretation assures important nonair and energy benefits and also assures an additional reduction in a pollutant regulated by a numerical standard.

F. Cost Impacts of the Proposed Standards

In the long run, the monetary benefits of materials separation and resale of separated materials are expected to outweigh the costs, resulting in no net annualized cost increase. However, the initial costs of materials separation at individual MWC plants will be highly variable. Depending on whether local markets are established for resale of materials, and other site-specific factors, disposal cost increases at typical new MWC plants could vary from a net

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annualized cost of about $20/Mg ($18/ton) of MSW to a net credit (savings) of $25/Mg ($23/ton) of MSW (see Table 12). Even at the higher cost, the

provided sources by the form of the 25 percent materials separation requirement would allow sources to focus on the recycle of materials with

slow the depletion of nonrenewable natural resources." In the "Agenda for Action," EPA set a near-term "goal of managing 25 percent of our nation's

actions. Finally, EPA will study how to foster the recycling of lead-acid

weigh all MSW received and combusted, and to weigh the materials

associated reporting procedures will be reviewed for approval on a site-specific

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annualized cost of about $20/Mg ($18/ton) of MSW to a net credit (savings) of $25/Mg ($23/ton) of MSW (see Table 12). Even at the higher cost, the standards are acceptable. Higher costs would only be temporary and would decrease over time as markets for separated materials are established.

TABLE 12.—RANGES OF INDIVIDUAL PLANT CONTROL COSTS FOR THE PROPOSED MATERIALS SEPARATION ALTERNATIVE

Plant size (Mg/day)	Net annualized cost range (in $1,000/yr and $/Mg of MSW)	
	"Best" case: 100% sale of separated materials (net savings)	"Worst" case: No sale, land disposal of separated materials (net cost)
180	−1,400 *	580
	−$25/Mg	$11/Mg
730	−4,200	2,300
	−$20/Mg	$11/Mg
2,050	−5,400	12,100
	−$9/Mg	$20/Mg

* Negative costs indicate net savings by materials separation.

Table 12 shows estimated ranges of net annualized costs and credits of materials separation for three different size MWC plants. These values include annualized capital costs for materials separation equipment and annual operating and maintenance costs. Other costs and credits included are: credits for reduced landfilling of ash; credits for reduced incineration costs due to downsizing of new MWC's (since separation would result in less waste to be combusted and would allow communities to build smaller MWC's); costs resulting from lost energy revenues (since less steam and electrical energy would be produced by the MWC due to reduced combustion of MSW); and credits for materials sales revenues. At the lower end of the cost ranges shown on Table 12, credits are taken for 100 percent sale of the following materials: glass, ferrous metals, aluminum, and high density polyethylene and polyethylene terephthalate plastics, while it is assumed the MWC pays a recycler to accept separated paper. At the higher end of the cost ranges, it is assumed that separated materials cannot be sold and must be landfilled. The no-sale assumption is a worst-case assumption. Markets for separated materials are already established in many locations. The proposed requirements for materials separation and other Federal, State, and local actions will promote stable supplies of separated materials and will encourage development and stabilization of markets. Additionally, the flexibility provided sources by the form of the 25 percent materials separation requirement would allow sources to focus on the recycle of materials with the highest market value. Thus, the Agency believes there will not be a significant cost for materials separation over the long run.

Thus, despite the range of net costs and credits shown for individual plants in Table 12, the national net annualized cost of materials separation is estimated to be negligible ($0/Mg of MSW) or a net savings over the long run. No severe economic impacts on households or government units are expected to result from the proposed materials separation provisions. (Also, see "Materials Separation—Combustion Permit" in Section H, "Compliance Provisions".)

G. Overall Agency Strategy to Promote MSW Reduction and Recycling

As discussed in Section IV.A. of this notice, in February 1988, EPA created an MSW Task Force to specifically address the problem of increasing waste generation and decreasing management capacity. The Task Force was given the assignment of assessing the solid waste problem, examining alternatives for solving it, and developing a well-coordinated strategy of action for improving the Nation's management of MSW.

In developing the strategy, the Task Force held public meetings and solicited comments from the public and interested environmental groups, trade organizations, and government organizations. The Task Force's recommendations are presented in the report, "The Solid Waste Dilemma: An Agenda for Action" (EPA/530–SW–88–052), and information supporting the recommendations can be found in a supplemental document entitled, "Background Document for Solid Waste Dilemma: An Agenda for Action" (EPA/530–SW–88–054A).

As stated in the "Agenda for Action," EPA "recommends using "integrated waste management" systems to solve municipal solid waste generation and management problems at the local, regional, and national levels." * * * A key element of integrated waste management is the hierarchy, which favors source reduction (including reuse) to first decrease the volume and toxicity and increase the useful life of *products* in order to reduce the volume and toxicity of *waste*. Recycling (including composting) is the preferred waste management option to further reduce potential risks to human health and the environment, divert waste from landfills and combustors, conserve energy, and slow the depletion of nonrenewable natural resources." In the "Agenda for Action," EPA set a near-term "goal of managing 25 percent of our nation's municipal solid waste through source reduction and recycling by 1992." Furthermore, EPA expects the percentage of MSW reduction and recycling to continue to increase after 1992. A number of cities are already achieving the 25 percent materials separation requirements.

Source reduction and recycling help prevent many of the problems associated with MSW, including the difficulty of siting new landfills and MWC's to handle the large volumes of waste being generated. Preventing generation of wastes and diverting waste components from landfills and MWC's into reuse, recycling, or composting helps to alleviate siting problems and potential risks to human health and the environment attributable to improper management. Waste reduction and recycling also conserve natural resources by reducing the amount of virgin materials needed to produce new products. As the Congress found in promulgating RCRA in 1976, "Methods are available to separate usable materials from solid waste; and the recovery and conservation of such materials can reduce the dependence of the United States on foreign resources and reduce the deficit in its balance of payments." 42 U.S.C. 6902(c) (2) and (3). Thus, planning and implementing these activities now yields benefits in managing wastes and conserving natural resources in the years to come. The "Agenda for Action" strategy for implementing the Agency's national waste management goals are briefly summarized below.

The "Agenda for Action's" recommendations for recycling include fostering the implementation of existing Federal procurement guidelines (as well as evaluating guidelines for additional commodities), and creating an interagency working group to develop pilot and full-scale projects for separating recyclable materials in Federal agencies. Markets for secondary materials and recycled goods must be stimulated and stabilized; thus EPA will conduct market development studies for different commodities, will examine economic and regulatory incentives for using secondary or recycled materials, and will foster the formation of regional marketing councils for the exchange of market information. A National Recycling Council will be formed with members from all sectors of waste management to track recycling issues and problems and to recommend

actions. Finally, EPA will study how to foster the recycling of lead-acid batteries, including examining the current incentives and disincentives associated with liability. Today's proposed standards which prevent the combustion of lead-acid batteries will encourage their recycle. Also, in keeping with the "Agenda for Action," industry should step up its efforts in fostering the recycling of plastics and paper. State and local governments should encourage separation of recyclable materials, conduct waste exchanges, and provide incentives for stable markets for recycled goods.

During the development of this proposed rule, EPA contacted members of the MWC industry, State and local government organizations, and the environmental community in an effort to obtain their views and ideas regarding materials separation requirements as part of best demonstrated technology under Section 111. By today's action, the Agency is affirming its current position that materials separation is part of best demonstrated technology. However, during these discussions, a number of ideas and suggestions were discussed with respect to alternative approaches and strategies for incorporating materials separation as best demonstrated technology which the Agency wishes to discuss in an interactive policy forum. This forum will be scheduled to take place in early February 1990 during the public comment period for today's proposed rulemaking. The Agency anticipates that this forum will result in a series of suggestions and recommendations for Agency consideration during the development of the final rule.

While today's proposed materials separation requirements apply only to MSW being combusted in MWC's, as other related Federal standards are developed, the appropriateness of including materials separation provisions will be considered.

The EPA requests comments or recommendations on other actions that could be initiated by EPA to promote recycling and source reduction through the EPA's regulatory programs for MWC's.

H. Compliance Provisions

Methodology Overview: A number of alternatives were considered in developing the methods for determining compliance with the materials separation provisions. As proposed, compliance with the percent reduction requirement would be determined by comparing the amount of material recovered with the amount of incoming waste. The MWC would be required to weigh all MSW received and combusted, and to weigh the materials separated for recovery, and keep monthly records. At the end of each calendar year (January through December), the annual average percent reduction of MSW (by weight) would be calculated from the monthly totals. The weights of vehicle and household batteries separated would also be recorded. The monthly recordkeeping and annual calculations to demonstrate compliance were determined to be reasonable because this approach would provide assurance that the separation provisions continue to be met on an ongoing basis. Furthermore, centralized MSW processing facilities and communities that are currently practicing separation generally keep such records. Therefore, the added reporting and recordkeeping burden of the proposal would be minimal. The alternative of not requiring an annual compliance demonstration was considered, but not selected for proposal.

In calculating compliance with the 25 percent or greater MSW weight reduction, a maximum credit of 10 percent would be given for yard waste separation, even if the separated yard waste weighs more than 10 percent of the weight of the MSW. The remainder of the required 25 percent MSW reduction would have to be achieved by separation of one or more of the other specified materials.

In calculating the weight of ferrous metals separated, white goods such as stoves, refrigerators, and air conditioners could be included; however, whole automobiles and other vehicles could not be included. Additionally, in calculating the weight of MSW received, and combusted and the weight of materials separated, construction and demolition wastes would not be included.

See Section I, "Reporting and Recordkeeping" for information on the schedules for compliance demonstration. Also, see "Materials Separation—Combustion Permit" in this section for a discussion of combustion permit provisions.

Materials Separation Plan: A description of the separation procedures (whether on-site or off-site) must be submitted along with the initial demonstration of compliance. Off-site materials separation programs will generally be more complex to monitor than on-site programs.

If an off-site source reduction or separation program is used to comply in whole or in part with the materials separation requirements, the adequacy of the separation program and associated reporting procedures will be reviewed for approval on a site-specific basis. The off-site separation plan should provide a specific description of the program, including program elements related to the control of MSW flow, legal requirements and sanctions, and recordkeeping.

The plan should include a description of all procedures used to ensure control of the MSW flow. The following topics should be addressed, as applicable:

- The boundaries of the MSW service area(s) and any portions of the area(s) for which the MSW is delivered to landfills rather than an MWC;
- The ownership of waste from the time it is deposited at curbside to the time it is delivered to the MWC, landfill, materials recovery facility, recycling facility, or other treatment or disposal facility;
- Materials separation methods and destination of the MSW and each separated material (e.g., materials recovery or recycling facility, broker, MWC, landfill);
- Contractual arrangements, if applicable, between the MWC and the off-site party responsible for separation, and contractual arrangements between other involved parties, such as contracts between municipalities and private haulers of MSW;
- Any economic incentives for household participation in separation such as deposit/return systems on beverage bottles and cans or on batteries;
- Any economic incentives for active MSW haulers participation in the separation program (e.g., differential fees for deposit of waste at a recycling center versus an MWC);
- Any curbside separation requirements; and
- Provisions for separate collection of recoverable materials, and collection schedules (e.g., schedules for separate curbside collection of yard waste, glass, cans, white goods, etc.; location of community bins for drop-off of such materials).

The plan should also describe any legal requirements or sanctions that may be part of the off-site separation program. For example, copies of any local or State regulations requiring homeowners to separate yard wastes or other specified recoverable materials should be included. Copies of legislation (e.g., bottle bills) instituting deposit/return systems should also be included. Any penalties or sanctions for not following separation program requirements that can be applied to residences, private waste haulers, or other parties should be described.

The plan should also specify method(s) of demonstrating compliance with the materials separation provisions or operator of the MWC can monitor compliance with the materials separation requirements and based on maintained of the amount of material(s) separated (prior to combustion), and that would be the amount of separated

environmentally preferable) to recycle the material, even if the recycler has to be paid to take the material.

6 percent of recoverables other than newspapers (in order to achieve an overall 25 percent materials separation).

incentives or fines to ensure more intensive curbside separation efforts.

Such changes would require time to

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The plan should also specify method(s) of demonstrating compliance with the materials separation provisions in the standards and should describe recordkeeping procedures. The following topics should be addressed, as applicable:

- Method(s) of determining the amount (by weight) of the recoverable materials specified in the standards, vehicle batteries, and/or household batteries (as applicable) that are separated on a monthly and annual average basis. Methods could include actual measurements using scales or calculational procedures;
- Method(s) for determining the amount (by weight) of MSW combusted (excluding construction and demolition waste) on a monthly and annual average basis. Methods could include actual measurements using scales or calculational procedures;
- Location(s) where weight determinations are made and which party is responsible (e.g., MWC, off-site material separation facility, transfer station, recycling facility, landfill);
- Recordkeeping procedures including type and frequency of information recorded, who is responsible for keeping records, location of records;
- Auditing procedures and frequency of audits; and
- Schedule and procedures for reporting monthly and annual weights of separated materials and other information to the MWC and the State regulatory agency or EPA.

Contractual Arrangements: In addition to developing a separation plan and submitting annual demonstrations of compliance, the proposed standards also allow the MWC owner or operator to enter into a contract with the governing body of any community or any other party whose action is required to maintain compliance.

Under Section 111 of the CAA, the owner or operator, which in the case of today's proposed standards is the owner or operator of the MWC, is responsible for demonstrating compliance with the standards. As discussed previously, in some cases, the owner or operator of the MWC may depend on another party to comply with some or all of the materials separation requirements at an "off-site" location. This does not prevent the owner or operator of the MWC from demonstrating compliance with these requirements by obtaining the necessary records from the off-site separator which show the weight of materials separated from the MSW and either the weight of MSW received by the off-site separator or the weight of processed MSW shipped by the off-site separator to the MWC. By this means, the owner or operator of the MWC can monitor compliance with the materials separation requirements and based on this information take whatever steps are necessary to ensure continued compliance with these requirements. It does, however, make it more difficult and impose an additional administrative burden on the owner or operator of the MWC than if compliance with the materials separation requirements is achieved "on-site" at the MWC.

To minimize this administrative burden on the owner or operator of the MWC, in cases where the owner or operator of the MWC is depending on another party to demonstrate compliance with some or all of the materials separation requirements, today's proposal includes provisions that would allow other parties responsible for materials separation to become "co-operators" with the owner or operator of the MWC for purposes of demonstrating compliance with the materials separation requirements. These provisions apply *only* to the materials separation requirements and do not apply to other requirements or emission limits in today's standards. In addition, these provisions do not require parties performing off-site separation to enter into this relationship, they only provide the opportunity for this relationship where desired by both the owner or operator of the MWC and the other party performing off-site separation.

Materials Separation—Combustion Permit: The EPA is also proposing that best demonstrated technology for combustible MSW or RDF include a combustion permit for some of the separated materials under limited circumstances. In cases where a recycling market is shown to be unavailable for the separated combustible material, and the owner or operator of the MWC cannot recover or recycle other materials in the MSW or RDF, an application could be made for a combustion permit. A recycling market would be considered to be unavailable if, after separating the combustible material and searching for 120 days, an owner or operator could demonstrate to the Administrator either that no recycler will accept the material, or that the price the recycler is charging (including transportation costs) is equal to or exceeds the cost of landfilling (including transportation costs). The materials separation requirement would remain in force whether or not the Administrator granted a combustion permit. That is, materials would be separated whether or not a combustion permit were issued. For the material(s) covered by the combustion permit, records would be maintained of the amount of material(s) separated (prior to combustion), and that would be the amount of separated (and combusted) material(s) credited toward the overall 25 percent MSW reduction requirement contained in the definition of "processed MSW" in the standard. The amount of other separated materials (not covered by the combustion permit) would have to be sufficient in combination with the separated (combusted) materials to achieve the overall 25 percent MSW reduction requirement (annual average). The combustion permit could be granted for a maximum of 1 year (without prejudice to filing petitions at later dates if recycling markets for combustibles continue to be unavailable).

The reason for this part of the proposal is that a large part of the reason EPA considers materials separation to be part of best demonstrated technology is to obtain environmental benefits from actually recycling the separated materials. If separated combustible materials actually prove to be unrecyclable after the owner or operator spends reasonable time and efforts to find a recycling market and the materials separation requirement cannot be satisfied by separating other materials, then the nonair environmental benefits from separating the material would no longer be demonstrated. Under such circumstances, it would not make sense to continue to preclude combustion of the separated materials, and to force their landfilling. The EPA believes it is preferable to burn the combustible materials in an MWC than to landfill them. Not only is landfilling a disfavored waste management option (see RCRA section 1002(b)(8)), but it is sound policy to recover the energy value of the combustibles rather than burying them (see CAA section 111(a)(1)(C) and RCRA section 1002(c)(1)). (The same is not necessarily true for noncombustible recoverables. If these are burned, the incinerator ash will contain the metals and other noncombustibles which will end up being land disposed in any case. This is why the proposal is limited only to combustible recoverables.)

The Agency is proposing that the test for unavailability of a recycling market for a particular material turn on a comparison of the cost of landfilling versus the cost of recycling. This test appears to be the relevant comparison because once combustion is precluded, these are the two principal management options for the separated material. If a material can be recycled for less expense than landfilling, it would be economically rational (as well as environmentally preferable) to recycle the material, even if the recycler has to be paid to take the material.

The EPA is also proposing that the owner or operator must demonstrate to the Administrator that recycling markets are unavailable. The authority to issue combustion permits will not be delegated. This demonstration would require documentation of the recyclers that the owner or operator of the MWC has contacted, and a documentation of the costs of recycling versus the costs of landfilling. The EPA is proposing that a market be unavailable for at least 120 days before a petition could be considered because market fluctuations can be a short-term phenomenon and because owners or operators appear to be able to store combustibles for greater than this amount of time while seeking recycling markets. A petition would have to be approved by the Agency before the combustibles could be burned and the duration of the exception could not exceed 1 year. (If markets continue to be unavailable after 1 year, another petition could be made.) Both of these conditions appear necessary to EPA to ensure maximum effort to comply with the materials separation requirement and to actually recycle separated combustible materials.

Permits may be renewed for an additional year if the Regional Administrator determines it is appropriate and the conditions specified in § 60.56a(h)(1) continue to be met.

Comments are also specifically solicited on whether, under certain circumstances, the requirement to separate materials for which a combustion permit has been granted under 40 CFR 60.56a(h) should be dropped. The Agency specifically solicits comments on what criteria could be used to determine whether a source or community would not have to separate materials for which they receive a permit to burn the waste.

The following example illustrates how EPA envisions the exception would operate:

A community operating an MWC separates newspapers from the MSW burned in its MWC. During a 4-month period, the community is unable to recycle the newspapers because the best arrangement they can make involves paying a recycler $40 per ton to take the newspapers (including transportation cost). (Other recyclers will not take the newspapers for any price.) The cost of landfilling the newspapers is $30 per ton (including transportation cost). Newspapers comprise 8 percent of the materials that are separated from the MSW and the community can demonstrate that it is unable to separate 8 percent of recoverables other than newspapers (in order to achieve an overall 25 percent materials separation). Under these circumstances, the Administrator could grant the combustion permit for newspapers for up to 1 year. Upon grant of the permit, the MWC could burn newspapers and would achieve credit for the newspaper separation based on the weight of newspaper separated, just as if they had been recycled.

Enforcement Guidance: Following adoption of standards, the Agency frequently develops enforcement guidance for use in enforcement actions to ensure consistent and uniform enforcement of the standards. This guidance outlines the steps the Agency will likely follow, depending on the merits of the situation in question, in taking enforcement actions when violations of the standards occur. In this guidance, the Agency balances the seriousness of the violation against the potential impacts associated with various remedies. Thus, in the case of today's proposed standards, the Agency would consider the impacts of any remedy to a violation on waste management in a community, particularly the potential for waste not to be collected or to be diverted to a less desirable disposal alternative than combustion.

One of the primary objectives of an enforcement action is to prevent further noncompliance, and this is often achieved by negotiating a settlement agreement with the noncomplying source that ensures that the source will come into compliance with the standards. In the case of today's proposed standards, this could involve working with the owners or operators of the source to identify those actions necessary to achieve compliance and the time required to implement such actions.

If, as an example, the owner or operator of the MWC failed to comply with the materials separation requirements in today's standards, and the owner or operator is dependent on another party to provide processed waste, a review of the reason for noncompliance may indicate that the materials separation system utilized by this other party needs to be altered in some manner to ensure achieving the 25 percent separation requirement. This could necessitate installation of additional separation equipment or changes in local waste management practices, such as purchase of additional trucks and hiring of additional personnel for waste collection, or the adoption of local ordinances with financial incentives or fines to ensure more intensive curbside separation efforts.

Such changes would require time to implement. One remedy to a violation of the materials separation requirements might well be a consent agreement between the enforcement agency and the owner or operator of the MWC and/or other party responsible for separation, where the other party has agreed to be a co-operator for purposes of compliance with the materials separation requirements. The consent decree might permit the MWC to burn unprocessed waste for a limited period of time if the necessary additional equipment or changes to the waste management system are made to ensure compliance with the materials separation requirements at the end of a specified period of time.

Of course, in cases of continued and repeated noncompliance, enforcement actions seeking shutdown of the MWC may be taken. In any event, the Agency solicits comments on enforcement guidance that might be developed following promulgation of today's standards and on possible remedies that might be sought in response to various violations.

I. Reporting and Recordkeeping Requirements

The proposed standards would require that the Administrator be notified of the initial MWC startup for all affected facilities. At the time of submittal of the initial compliance demonstration for materials separation (i.e., at the end of the second calendar year after initial start-up) an MWC facility would be required to submit a description of the procedures for separating materials for recovery to achieve the overall MSW reduction requirement and a description of the procedures for ensuring that lead-acid vehicle batteries would not be combusted at the affected facility. The facility must also submit a description of the collection program for household batteries. If an off-site separation program is used, the plan describing the program and compliance methods would be submitted for approval at the time of submittal of the initial compliance demonstration.

The proposed standards would require all affected facilities to submit annual compliance reports to show the overall percent reduction of MSW achieved by separation of the specified materials. The annual percent reduction would be calculated for each calendar year (January through December) from the monthly total weight of MSW received and weight of materials

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separated for recovery each month, including any credits for a community source reduction or separation program. The first annual report submitted at the end of the first full calendar year (January through December) after start-up of an MWC would not be used to determine compliance with the materials separation requirements, but would be used to review progress made toward the materials separation requirements. The initial demonstration of compliance with the materials separation requirements would not be calculated and reported until the end of the second full calendar year (January through December) after start-up. For MWC's that commence construction between proposal and promulgation, the initial compliance demonstration (annual average) would not be calculated and reported until the end of calendar year 1994 or the second full calendar year after start-up, whichever is later. The annual average percentage MSW weight reduction would be calculated and reported at the end of all following years.

The proposed standards would also require that certain types of records be maintained, beginning at the initial start-up of an MWC (or in January 1993 for MWC's that commenced construction between proposal and promulgation). The records to be maintained include: the amount (by weight) of MSW received on a monthly basis at the affected facility, the amount (by weight) of MSW combusted on a monthly basis in the affected facility, and the amount of materials (by type and weight) on a monthly basis that is separated for recovery; the amounts (by weight) of vehicle batteries and household batteries on a monthly basis that are separated for recovery; the estimated amount (by type and weight) of materials reduced or separated for recovery on a monthly basis through an off-site or community source reduction or materials separation (recycling) program; and the calculations of the annual average percentage reduction in MSW achieved for each calendar year (January through December).

J. Solicitation of Comments on Materials Separation Requirements

The EPA welcomes comments on all aspects of the proposed materials separation provisions, and has specifically identified several topics on which comments and information are requested.

First, the Agency solicits comments on the proposed 25 percent materials reduction level and the associated air emission and other environmental benefits expected to result from materials separation. The EPA requests information on potential separation techniques and on whether a higher or lower percent reduction is more reasonable.

In particular, during development of the proposed standards, it was suggested by some that 15 percent MSW reduction would be more reasonable, however others have suggested that 40 percent would be preferable. Those who support a lower percent reduction (e.g., 15 percent) should provide information on specific difficulties in achieving the 25 percent reduction as defined in the proposal, and describe their basis for stating that 15 percent (or some other number) is more reasonable than 25 percent. Those supporting a higher percent reduction (e.g., 40 percent) should provide specific information showing the 40 percent (or another number above 25 percent) is achievable using demonstrated technologies, and is reasonable.

Comments are requested on the proposed prohibition on combustion of vehicle batteries and the plan to remove household batteries, and the practicality of on-site or off-site separation programs for battery removal.

The EPA is aware that different areas have different MSW disposal problems. Accordingly, comments are solicited on the following questions. Should the 25 percent MSW reduction be uniformly applied to all areas of the country, or should there be different requirements for urban areas, residential areas, metropolitan areas, and rural areas? Should the stringency of the materials separation requirements vary for different MWC's depending on the type of area, but still be designed to achieve an overall 25 percent reduction on a national basis? How would the areas be defined?

Another approach to separation that was considered, but not selected for proposal, was specification of a percent reduction (by weight) for each individual recoverable material in MSW (e.g., a certain percent of the paper in MSW must be separated for recovery, a certain percent of ferrous metals, etc). For reasons stated previously, the overall 25 percent weight reduction was chosen for proposal. However, comments are requested on the material-specific percent reduction approach. Commenters should include the reasons they favor or do not favor this approach, and submit information on the percent separation achievable for specific materials. Supporters of a material-specific percent reduction approach are also asked to suggest methods of demonstrating compliance. It would be more difficult to demonstrate compliance with material-specific percent reductions because the weight of each material (e.g., paper, plastics, etc.) in the unseparated MSW would need to be known in order to determine the percent of the material that was separated. The content of unprocessed MSW is variable depending on factors such as climate, type and number of residences, and type and number of commercial businesses that produce MSW in the community. There is also seasonal variation in MSW content. Commenters should address how the owner or operator of the MWC could determine the weight of each specific material in the unprocessed MSW.

The Agency further solicits comments on whether other types of materials should be included in the list of recoverable materials that can be separated. The Agency is aware of arguments that recovering and stockpiling recovered materials, such as batteries, may create a separate environmental hazard.

The Agency is aware of arguments that separation and recovery of materials from the MSW stream may result in delay or cancellation of MWC projects and/or the landfilling of some separated materials, thereby potentially increasing the amount of waste disposed of in landfills. The Agency is also aware, however, that once materials are separated, there is an economic incentive to recycle the separated materials which ranges up to the cost of alternative disposal at a landfill. Since landfill costs are substantial, this economic incentive to recycle is also substantial. The Agency solicits comments on these issues. In particular, the Agency is interested in receiving comments concerning the relative multimedia environmental impacts of MSW disposal by landfilling versus combustion.

Suggestions are also requested on ways to implement the materials separation requirements to minimize the burden for MWC owners or operators and the communities they serve. For example, what compliance schedule is most reasonable? (An alternative approach that would phase in separation requirements is discussed in the next section.)

There are several implementation issues associated with off-site separation programs. The proposed standards would allow off-site source reduction or source separation programs to be used to comply, in whole or in part, with the materials separation requirements. For example, if the MWC service area collected yard waste, paper, glass, aluminum cans, and/or other materials separately and did not combust these collected materials, credit toward the 25 percent MSW reduction would be given. The prohibition on combustion of lead-acid vehicle batteries could also be achieved through off-site programs. In these cases, MWC's would be required to submit a plan describing the off-site or community program and the means of verifying compliance. Section H describes the type of information that should be included in such plans. Comment is requested on how to structure such plans, how to determine compliance where community programs are used, what type of measurement methods could be used, and what types of records should be kept. Comments are specifically requested on how to give credit for source reduction programs (e.g., where commercial businesses or households reduce the amount of waste generated) and for backyard composting of yard waste at the household level.

The EPA also solicits comment on the timing for submitting a materials separation plan. It may make more sense to submit the plan at the time of initial start-up rather than as part of the initial compliance demonstration so that there is time to evaluate the adequacy of the procedures described in the plan.

Finally, the EPA requests comments concerning the contractual provisions previously discussed in Section H. The proposed standards allow the MWC and parties performing off-site separation to enter into a contractual agreement designating the party performing off-site separation as a co-operator of the MWC regarding compliance with the materials separation requirements. In this way, where off-site materials separation programs are used, enforcement actions for noncompliance with the materials separation provisions could be taken against the off-site MSW processor responsible for the violation. The EPA requests comment on the feasibility of such contract provisions, and on other approaches for the enforcement of materials separation provisions.

K. Solicitation of Comment on Alternative Phase-in of Materials Separation Requirements

The "Agenda for Action" requires a 25 percent MSW reduction through source reduction and recycling by 1992, but also calls for increasing the percent reduction level to higher levels after 1992. The proposed MWC standards would also establish a 25 percent reduction level. However, greater percent removals may be achievable. As markets for separated materials strengthen and expand, higher percent separation levels will become more feasible technically and economically. The Agency solicits comments on whether materials separation standards for MWC's should require phasing-in of more stringent requirements over time.

One alternative that was considered and rejected was a three-step phase-in of materials separation requirements. This approach would be similar to the proposed standards in that all MWC's would be prohibited from combusting MSW unless the MSW had been processed to separate materials for recovery achieving a specified percent overall reduction (by weight) of the MSW. However, the percent reduction of MSW would be less than 25 percent through 1992; after 1992 it would be 25 percent, consistent with the "Agenda for Action;" and after some later date (e.g., 1995) a higher percent reduction (e.g., 40 percent) would be required. After consideration, it was determined that there is no need to specify a reduction level lower than 25 percent prior to 1992. Only new MWC's, which commence construction after today's date would be subject to this NSPS. Given that for MWC's there is generally a 2-year or longer time period from commencement of construction until facility start-up, most of these new MWC's would not be operating until 1992 or later, and would not have to demonstrate compliance with the materials separation provisions until the second year of operation of the materials separation system. Thus, specifying a different percent reduction before 1992 would be of little use.

The proposed regulations, therefore, start with the requirement for a 25 percent reduction of MSW. The Agency requests comments on whether the 25 percent separation requirement should be phased-in under some other schedule and on whether higher performance levels should be established in subsequent years and if they should be phased-in with one or two steps. Specifically, comments are requested on the desirability of increasing the 25 percent separation level to 40 percent by December 1995.

L. Potential Alternative Approach for Requiring Materials Separation

The Agency also considered an alternative approach for requiring materials separation from MWC's. Rather than including materials separation directly in the NSPS, the Agency could issue new source permitting guidance which would require States to consider and include materials separation requirements in new MWC permits unless there is a site-specific reason that separation is not appropriate. This operational guidance would then be used by States and local agencies in making best available control technology (BACT) determinations for prevention of significant deterioration (PSD) permitting and lowest achievable emission rate (LAER) determinations for new source review (NSR) permitting. This approach would allow more flexibility in regulating individual MWC's, and the economic implications of applying materials separation to new MWC's could be judged on a case-by-case basis. Under this permitting approach, if local markets for separated materials are poor, a new MWC might not be required to apply materials separation.

However, under the current CAA (1977), once an NSR permit is issued, it is final unless the method of MWC operation is changed. This would mean that if a local materials separation market did not exist at the time of initial operation and separation was not required, the NSR permit could not be changed to require separation when a market did develop. This would not encourage market development. Under some of the CAA amendments under consideration, NSR permits would be reviewed every 5 years. If such provisions were included in the CAA, the feasibility of materials separation could be reevaluated at each 5 year renewal. The EPA requests comments on the alternative approach of implementing materials separation at new MWC's through NSR permitting.

M. Spokane and Huntington Remands

The Administrator has recently denied two appeals involving (in part) the issue of whether materials separation is part of BACT in PSD permits issued to MWC's. *Spokane Regional Waste-to-Energy Project*, PSD Appeal No. 88-12 (June 9, 1989) and *Huntington Mass-Burn Incinerator*, PSD Appeal No. 89-2 (August 2, 1989). The EPA denied both appeals, concluding that the petitioners had failed to show that materials separation was part of BACT for the facilities at issue.

The EPA does not view these petition denials as precluding requiring materials separation as part of the Section 111 NSPS and guidelines for existing sources. In the first place, all that was at issue in these appeals was whether petitioners had met their burden of showing that the PSD permit determination not to include a separation requiremen. was clearly erroneous. *Spokane* Appeal at p. 3. The EPA is under no such burden in the present rulemaking. Further points of

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distinction are that the Agency was not asked to review the relation of materials separation to all MWC emissions and thus did not consider certain types of pollutant emission reductions (for example, petitioners made no specific assertions regarding the overall life cycle benefits of materials separation, and also did not consider the nonair quality environmental benefits of materials separation in detail, an important factor in making Section 111 determinations.) Furthermore, although BACT determinations can have national precedential effect, EPA believes that a proposed decision of national import to require MWC's to perform materials separation can be more appropriately made in the context of a national rulemaking even if the Administrator declines to do so in deciding an individual PSD appeal.

The Administrator further stated that in denying these appeals that petitioners had failed to show that materials separation technologies were "available" (within the meaning of the definition of BACT contained in Section 169(3) of the CAA) for MWC's because petitioners had failed to show that use of materials separation in combination with other air pollution control technology would lead to a demonstrable reduction in emissions of regulated pollutants. *Spokane* Appeal at p. 22. The EPA has included, as part of the record of this proposed rulemaking, data (some of which were not presented to EPA by petitioners in the respective PSD appeals) showing reduction in MWC emissions through use of materials separation. Although these studies do not deal with situations where materials separation was used along with the best demonstrated technology-type of air pollution control technology, it is the Agency's engineering judgment that a reduction of pollutant input into an MWC will result in the MWC emitting fewer of these pollutants. Furthermore, with respect to new sources, materials separation will allow for downsizing of MWC's (because a lower volume of material will need to be combusted), which will in turn lead to a reduced mass of MWC emissions, cf. RCRA Section 4003(d) ("it is the intention of this chapter and the planning process established pursuant to this chapter that in determining the size of the waste-to-energy facility, adequate provision shall be given to the present and reasonably anticipated future needs of the recycling and resource recovery interest within the area encompassed by the planning process"). In contrast, the option of downsizing the MWC's at issue in Spokane and Huntington was not available. Given that separation technologies are demonstrated for all of the types of materials considered in today's rule, that materials separation results in documented reduction in MWC emissions regulated under the proposal, and the Agency's judgment that these reductions would continue even if the MWC is also equipped with at-the-stack air pollution control technology, the Agency believes that materials separation is a demonstrated technology for new MWC's under Section 111.

VI. Rationale for the Standards for Nitrogen Oxides (NO_x)

A. Selection of NO_x

Municipal waste combustors (MWC's) are a significant source of NO_x emissions. As the number of MWC's increases (over 150 new MWC's are projected to be built in the next 5 years), there is increasing concern over NO_x emissions, and control of NO_x is being considered in new source permitting decisions.

From an environmental perspective, NO_x emissions are of increasing concern. Furthermore, minimizing the increase in NO_x from this source category is consistent with Administration policies embodied in the President's Clean Air Act legislation and the International NO_x Protocol. Reasons for concern include: acid deposition; increased regional/global ozone background concentrations (which may be NO_x limited); untold nutrient effects on some natural waters, including estuaries; visibility/PM_{10} problems in western cities; and potential effects of transformation products of NO_x. Current regulations do not prevent projected increases in NO_x emissions, and total U.S. emissions of NO_x are already almost equal to emissions of sulfur oxides (SO_x). Although insufficient information is available to design a strategy for major reductions in NO_x, a growing consensus supports establishing limits to prevent continued increases in emissions. The possibility of using cost-effective controls on existing sources appears limited; therefore, controls for new sources must be the basis for any strategy to further restrict increased emissions. The EPA is also concerned about other major sources of NO_x. As standards for these other sources are established or reviewed, EPA will consider a similar approach for controlling NO_x.

Municipal waste combustors are significant sources of NO_x emissions. For example, in the absence of additional regulation, a typical large mass burn MWC with a design capacity of 2,040 Mg/day (2,250 tons/day) will emit about 1,180 Mg (1,300 tons) of NO_x each year. A medium-size 950 Mg/day (1,050 tons/day) MWC plant will emit about 550 Mg (610 tons) of NO_x each year. Without the NO_x standards proposed today, national emissions of NO_x from MWC's could increase by almost 30,000 Mg/year (33,000 tons/year) by 1994.

National ambient air quality standards have been established for NO_x because of known adverse effects on public health and welfare. Impacts of NO_x have been documented in criteria documents prepared under section 108 of the Clean Air Act (CAA). These effects are the primary basis for determining that NO_x emissions from new MWC's constitute a potential danger to public health and welfare. Consequently, NO_x emissions are also selected for control under new source performance standards (NSPS) for MWC's.

B. Selection of Best Demonstrated Technology for NO_x Control

Types of Combustors: Nitrogen oxides are formed during combustion through oxidation of fuel-bound nitrogen (i.e., nitrogen contained in municipal solid waste [MSW]) and fixation of atmospheric nitrogen. Conversion of fuel-bound nitrogen occurs at relatively low temperatures (less than 1,100°C or 2,000°F), while fixation of atmospheric nitrogen generally occurs at higher temperatures. Most of the NO_x formed during normal operation of MWC's is associated with fuel-bound nitrogen. All types of MWC's produce NO_x emissions, and emission levels are similar for the four types of MWC's (mass burn, modular, refuse-derived fuel [RDF], and fluidized-bed combustion [FBC]).

Emission Control Techniques for NO_x: Two basic approaches are used to control NO_x emissions: (1) Combustion modifications and (2) add-on controls. Combustion modifications include staged combustion, low excess air, and flue gas recirculation. Combustion modification techniques reduce NO_x emissions by controlling the amount of oxygen and the temperature in the combustion zone. Two combustion modification NO_x control techniques, low excess air and staged combustion, can be used separately or together. With low excess air, the amount of air (oxygen) supplied to the combustor is reduced, lowering the oxygen (O_2) concentration in the flame zone and reducing the formation of thermal NO_x. With staged combustion, the amount of underfire air at the grate is reduced, generating a starved-air region. Secondary air to complete combustion is added as overfire air after the combustion gas has partially cooled. By creating a starved-air zone, fuel-bound nitrogen is converted to nitrogen (N_2) instead of NO_x. When the O_2 for completing combustion is provided, the reduced temperature slows the formation of NO_x. This technique can reduce formation of fuel NO_x. Consistent and quantifiable NO_x reductions, however, have not been demonstrated for low excess air or staged combustion technologies applied to MWC's.

Another combustion modification technique is flue gas recirculation. In flue gas recirculation, cooled flue gas is mixed with combustion air, thereby reducing the O_2 content of the combustion air supply. The flame temperature is lowered and less O_2 is present in the flame zone, reducing thermal NO_x generation. At one mass burn MWC in California, where flue gas recirculation is used to supply 10 percent of the underfire air, reductions of about 15 percent in NO_x emissions have been observed. Reductions of 10 to 25 percent were reported for a Japanese MWC using flue gas recirculation.

Combustion modifications for NO_x control generally do not increase emissions of other pollutants. However, if the modifications are not properly applied, higher emissions of carbon monoxide (CO), hydrocarbons, and products of incomplete combustion may result. For example, if the excess air is decreased too much, visible emissions and higher CO concentrations may result. If too much flue gas is recirculated, the flame zone can become unstable, causing poor combustion and higher CO and organic emissions.

Potential add-on controls for MWC's include selective noncatalytic reduction (SNCR), selective catalytic reduction (SCR), and natural gas reburning techniques. Selective noncatalytic reduction refers to add-on NO_x control techniques which reduce NO_x to N_2 without the use of catalysts. These techniques include Thermal DeNO$_x$™, which uses injection of ammonia into the combustor as the reducing agent; the NO$_x$OUT process, which injects urea and chemical additives; and a two-stage urea/methanol injection process. To date, only Thermal DeNO$_x$™ has been demonstrated on full-scale MWC's in the U.S., and it is in use at three MWC plants in California.

In Thermal DeNO$_x$™, ammonia is injected into the convection section of the combustor where temperatures are between 860°C (1,600°F) and 970°C (1,800°F) (the optimum reaction temperature range). Based on short-term testing and continuous emission monitoring data from the three MWC plants in California with Thermal DeNO$_x$™ controls and other information, removal efficiencies of about 45 percent or more and NO_x emission levels in the range of 120 to 200 ppmv (24-hour average) are achievable. However, the precise level within this range has not yet been specified. Emission levels vary among MWC's and may differ for different types of MWC technologies. Additional long-term NO_x emission data are currently being collected and analyzed. The emission level(s) and/or percent reductions achievable by SNCR will be determined prior to promulgation, and a single emission limit will be promulgated. Alternatively, there may be different limits promulgated for different subcategories of MWC technologies.

One potential concern associated with noncatalytic ammonia injection technology is the potential for formation of detached ammonium chloride plumes. At two of the facilities, visible plumes have sometimes formed, which are believed to be caused by the reaction of residual ammonia and chloride after the flue gas exits the stack. The formation of such plumes appears to depend on site-specific factors involving the design and operation of the combustor, the efficiency of the acid gas and particulate matter (PM) control devices at removing HCl and ammonia from the flue gas, the NO_x control equipment, and meteorological conditions.

In SCR, ammonia is injected into the flue gas downstream of the combustor where it is mixed with the NO_x contained in the flue gas and passed through a catalyst bed. In the catalyst bed, NO_x is reduced to N_2 at temperatures much lower than the 860 °C (1,600 °F) required for the reactions to occur without a catalyst. Depending on the type of catalyst, these reactions occur at temperatures of 190 to 400 °C (375 to 750 °F). Tests of SCR systems at two MWC's in Japan and at coal- and oil-fired facilities in the U.S. indicate potential NO_x removal rates well above 45 percent, but these systems have not been applied to MWC's in the U.S. One concern is that performance can be detrimentally affected by catalyst poisoning by either metals or acid gases. Furthermore, these systems are more expensive than SNCR control systems. In some cases, since ammonia is injected into the flue gas rather than the combustor, and catalyst beds may be located after economizers on PM control devices, flue gas reheat may be necessary to reach the desired catalyst operating temperature. This can be a significant expense.

Natural gas reburning is an add-on NO_x control technique that overlaps combustion modification techniques. Low excess air is provided at the combustor grate, with recirculated flue gas introduced above the grate. Natural gas is added to this low excess air zone to generate a fuel-rich zone. Air is supplied above the fuel-rich zone to complete combustion. This process is designed to reduce NO_x formation without generating CO emissions.

Natural gas reburning at MWC's is a new technology. A pilot-scale test of an MWC indicated average NO_x removal efficiencies of about 50 percent and NO_x emissions below about 150 ppmv. There are also pilot-scale data on reburning for coal-fired (pulverized coal-type) boilers. However, this technology has not been commercially applied on either MWC's or coal-fired boilers in the U.S. Reburning with oil has been used on coal-fired boilers in Japan.

Regulatory Alternatives for NO_x Control: A regulatory baseline and three NO_x control regulatory alternatives were analyzed in selecting standards for proposal. The baseline alternative reflects the level of emissions control expected in the absence of an NSPS. In this case, the baseline alternative assumes no NO_x control on any new MWC's.

The three NO_x regulatory alternatives represent application of NO_x control to some or all MWC plants. Controlled NO_x emission levels are based on SNCR technology, because this technology is considered to be well demonstrated. As described previously, the use of SNCR for NO_x control will achieve a NO_x emission limit in the range of 120 to 200 ppmv on a 24-hour daily (block) average basis. The exact emission limit(s) or percent reduction requirements will be determined prior to promulgation, and a single emission limit will be promulgated. Alternatively, there may be different emission limits for different subcategories of MWC technologies. An owner or operator could comply with the applicable emission limit using any technology.

Table 13 presents the three regulatory alternatives. The first two alternatives include a size cutoff, and would only require control of larger plants. This is because: (1) Smaller plants have lower annual NO_x emissions and account for a relatively small percentage of the new MWC population, and (2) capital cost increases, annual costs (in terms of $/Mg MSW combusted), and cost effectiveness of control ($/Mg NO_x removed) are greater for smaller MWC's than for large MWC's. Previous NSPS for NO_x emissions from combustion

sources have been less than $1,000/Mg ($900/ton) NO_x based on the use of combustion modifications.

Under Regulatory Alternative 1, a NO_x emission limit of 120 to 200 ppmv would be proposed for MWC units located at

the lowest emissions, but the highest costs.

Model Plant Impacts of the

TABLE 15. RANGES OF INDIVIDUAL PLANT CONTROL COSTS UNDER THE REGULATORY ALTERNATIVES FOR NO_x CONTROL—Continued

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sources have been less than $1,000/Mg ($900/ton) NO_x based on the use of combustion modifications.

TABLE 13.—REGULATORY ALTERNATIVES FOR NO_x CONTROL FOR NEW MWC PLANTS

Regulatory alternative	MWC plant sizes regulated	Percent of national MWC capacity affected
1	>800 Mg/day	70
2	>225 Mg/day	90
3	All plants	100

Under Regulatory Alternative 1, a NO_x emission limit of 120 to 200 ppmv would be proposed for MWC units located at MWC plants with aggregate capacities greater than 800 Mg/day (880 tons/day) of MSW. This limit would affect about 70 percent of national new MWC capacity. Under Regulatory Alternative 2, a NO_x emission limit of 120 to 200 ppmv would be proposed for MWC units at plants with capacities above 225 Mgf/day (250 tons/day) of MSW. This limit would affect about 90 percent of new MWC capacity. Regulatory Alternative 3, the most stringent alternative, would require NO_x control for all MWC plants regardless of size. This alternative has the lowest emissions, but the highest costs.

Model Plant Impacts of the Regulatory Alternatives for NO_x Control: Under the regulatory alternatives shown in Table 13, those plants that are affected would emit NO_x in concentrations below the emission limit (120 to 200 ppmv). In Table 14, the ranges of annual NO_x emissions for individual model plants under the baseline and the regulatory alternatives are presented. These emission impacts were estimated by applying NO_x control technology (SNCR) to the various size groups of MWC plants as specified by the regulatory alternatives.

TABLE 14.—RANGE ON NO_x EMISSIONS FOR INDIVIDUAL MWC PLANTS UNDER THE BASELINE AND REGULATORY ALTERNATIVES FOR NO_x CONTROL

Regulatory alternative	MWC plant sizes regulated	NO_x Emission (Mg/year)		
		Very large plants	Large plants	Small plants
Baseline	None	550–1,300	260–420	16–130
1	>800 Mg/day	300–710	260–420	16–130
2	>225 Mg/day	300–710	140–230	16–130
3	All plants	300–710	140–230	9–70

As shown in Table 14, baseline NO_x emissions at very large MWC plants (i.e., MWC plants with aggregate capacities greater than 800 Mg/day [880 tons/day] of MSW) range from 550 to 1,300 Mg/year (600 to 1,400 tons/year). Under each of the three regulatory alternatives, very large plants are required to control NO_x emissions, resulting in NO_x emissions ranging from 300 to 710 Mg/year (330 to 780 tons/year).

At those large MWC plants that combust greater than 225 Mg/day (250 tons/day) of MSW but equal to or less than 800 Mg/day (880 tons/day) of MSW, baseline NO_x emissions range from 260 to 420 Mg/year (290 to 460 tons/year). These intermediate-size large plants would not be required to control NO_x emissions under Regulatory Alternative 1, but would be required to meet the NO_x emission limit under Regulatory Alternatives 2 and 3. Under Alternatives 2 and 3, NO_x emissions at these large MWC plants would range from 140 to 230 Mg/year (150 to 250 tons/year).

Baseline NO_x emissions at small MWC plants (i.e., MWC plants with aggregate capacities equal to or less than 225 Mg/day [250 tons/day] of MSW) are low relative to large plants and range from 16 to 130 Mg/year (18 to 140 tons/year). Small plants would not be required to control NO_x emissions under Regulatory Alternatives 1 or 2, but under Regulatory Alternative 3, NO_x emissions at small MWC plants would be reduced to a range of 9 to 70 Mg/year (10 to 77 tons/year).

Table 15 presents the ranges of increased capital costs (relative to baseline), increased annualized costs, and increased (over baseline) annualized cost per Mg of MSW combusted for small, large, and very large MWC plants under each regulatory alternative. The cost per Mg of MSW is a measure which can be used to compare impacts for different size plants on a common basis. For perspective, MSW disposal costs incurred by the general public tyically range from about $40/Mg ($36/ton) to over $100/Mg ($90/ton) of MSW, including collection, transportation, combustion, and ash disposal.

TABLE 15.—RANGES OF INDIVIDUAL PLANT CONTROL COSTS UNDER THE REGULATORY ALTERNATIVES FOR NO_x CONTROL

	Capital cost ($1,000's)	Annualized cost ($1,000's)	Annualized cost per Mg MSW ($/Mg)
Regulatory Alternative 1:			
Very large plants	2,200–3,700	660–1,200	1.70–2.40
Large plants	0	0	0
Small plants	0	0	0
Regulatory Alternative 2:			
Very large plants	2,200–3,700	660–1,200	1.70–2.40
Large plants	2,000	550–580	2.40–3.60
Small plants	0	0	0
Regulatory Alternative 3:			
Very large plants	2,200–3,700	660–1,200	1.70–2.40
Large plants	2,000	550–580	2.40–3.60

TABLE 15. RANGES OF INDIVIDUAL PLANT CONTROL COSTS UNDER THE REGULATORY ALTERNATIVES FOR NO_x CONTROL—Continued

	Capital cost ($1,000's)	Annualized cost ($1,000's)	Annualized cost per Mg MSW ($/Mg)
Small plants	620–1,000	190–280	7.40–20.10

Under each of the three alternatives, increased cost per unit of MSW combusted at very large MWC plants (i.e., those combusting greater than 800 Mg/day [880 tons/day] of MSW) ranges from $1.70 to $2.40/Mg ($1.50 to $2.20/ton) of MSW.

Under Regulatory Alternative 1, intermediate-size large plants (i.e., those with aggregate capacities greater than 225 Mg/day [250 tons/day] but equal to or less than 800 Mg/day [880 tons/day] of MSW) would incur no increased costs over baseline since they are not required to install NO_x controls. These large plants would be required to install NO_x controls under Regulatory Alternatives 2 and 3, and increased cost ranges from $2.40 to $3.60/Mg ($2.20 to $3.30/ton) of MSW.

Small MWC plants (i.e., those with aggregate capacities equal to or less than 225 Mg/day [250 tons/day] of MSW) would incur no increased costs (over baseline) under Regulatory Alternatives 1 or 2. Under Regulatory Alternative 3, small plants would be required to control NO_x emissions, and increased annualized cost per unit of MSW combusted would be significantly higher than for 1arge plants, ranging from $7.40 to $20.10/Mg ($6.70 to $18.30/ton) of MSW.

National Impacts of the Regulatory Alternatives for NO_x Control: The national annual NO_x emissions (and the emission reductions relative to baseline emissions) from MWC plants under the baseline and each of the regulatory alternatives are shown in Table 16. As shown in the table, national baseline NO_x emissions from MWC plants are 29,000 Mg/year (32,000 tons/year).

Under the three regulatory alternatives, national emissions would be reduced by 37 to 45 percent, and national emissions would range from 19,000 Mg/year (21,000 tons/year) under Alternative 1 to 16,000 Mg/year (18,000 tons/year) under Alternative 3. The table shows that by controlling the large plants (under Alternative 1 or 2) most of the achievable emission reduction is realized, and control of small plants under Alternative 3 would result in little additional emission reduction.

TABLE 16.—NATIONAL NO_x EMISSIONS UNDER BASELINE AND THE REGULATORY ALTERNATIVES FOR NO_x CONTROL

	NO_x emissions (Mg/year)	Percent reduction relative to baseline emissions
Baseline	29,000	0
1	19,000	37
2	17,000	42
3	16,000	45

Table 17 shows the national total increased capital costs (relative to baseline), increased total annualized cost, total increased annualized cost per unit of MSW combusted and incremental cost effectiveness (cost per Mg of NO_x emission reduction) for each of the regulatory alternatives. National costs given in this table are for new MWC plants that will be operating or under construction by the end of the fifth year of implementation of the NSPS. As shown in Table 17, national increased capital cost ranges from $77 million under Regulatory Alternative 1 to $123 million under Regulatory Alternative 3. Total increased annualized cost ranges from $24 million under Regulatory Alternative 1 to $37 million under Regulatory Alternative 3. Average increased annualized cost per unit of MSW combusted (relative to baseline) ranges from $1.60/Mg ($1.50/ton) for Regulatory Alternative 1 to $2.50/Mg ($2.30/ton) for Regulatory Alternative 3. The incremental cost effectiveness (incremental cost per Mg of NO_x emission reduction relative to the next less stringent regulatory alternative) ranges from $2,200/Mg ($2,000/ton) NO_x for Regulatory Alternative 1, to $3,400/Mg ($3,100/ton) NO_x for Regulatory Alternative 2, up to $9,200/Mg ($8,400/ton) for Regulatory Alternative 3.

TABLE 17.—NATIONAL NO_x CONTROL COSTS UNDER THE REGULATORY ALTERNATIVES FOR NO_x CONTROL

Regulatory alternative	Total capital cost ($10 ^{6}/yr)	Total annualized cost ($10 ^{6}/yr)	Total annualized cost per Mg MSW ($/Mg)	Incremental cost effectiveness ($/ton of NO_x)
1	77	24	1.60	2,200
2	97	30	2.00	3,400
3	123	37	2.50	9,200

Regulatory Alternative Selected: Regulatory Alternative 2 was selected for the proposed standard for NO_x and represents best demonstrated technology for MWC units at large MWC plants considering cost, nonair quality health and environmental impacts, and energy requirements. The proposed standards can be complied with through the use of any technology (e.g., post-combustion controls such as SNCR, SCR, or natural gas reburning, or by combustion modifications such as staged combustion, low excess air, flue gas recirculation, etc.).

The NO_x control technology that served as the basis for Regulatory Alternative 2 (i.e., SNCR by ammonia injection) is demonstrated on three MWC's in the U.S., and both SNCR and SCR technologies are demonstrated on additional MWC's in Japan and Europe, and no severe cost, economic, or energy impacts are expected to result from its application.

Relative to the regulatory baseline, NO_x standards based on Regulatory Alternative 2 would achieve about a 42 percent reduction in NO_x emissions from MWC's on a national basis. About 90 percent of new MWC's would be covered. The increase in MSW disposal cost (relative to baseline) would be about $2.00/Mg ($1.80/ton) of MSW processed, which is low relative to typical baseline disposal costs of $40/Mg ($36/ton) to over $100/Mg ($90/ton) of MSW.

While additional NO_x reductions would be achieved by applying the standard to all MWC's (Regulatory Alternative 3), these reductions would

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be small, and the cost impacts would be unreasonably high for MWC's located at small MWC plants. Application of NO_x controls to small MWC's would achieve an additional 3 percent reduction in national NO_x emissions relative to Alternative 2. Cost impacts are about 4 to 5 times higher for small MWC's than for large MWC's. At an individual MWC level, the cost effectiveness of NO_x control of such a standard would be about $10,500/Mg ($9,500/ton) of NO_x removed for a typical small MWC plant, compared to a cost effectiveness of about $2,200/Mg ($2,000/ton) of NO_x removed for a typical large MWC plant. The increase in disposal costs for a typical small plant would be about $8.20/Mg ($7.40/ton) compared to less than $2.00/Mg ($1.80/ton) for a typical large MWC. Considering the cost impacts and relatively small potential emissions reduction, control of NO_x emissions from MWC's with capacities equal to or less than 225 Mg/day (250 tons/day) is not considered reasonable.

It has been contended that SNCR technology for NO_x control should not serve as the basis for the standard because it is more expensive than NO_x controls imposed in other industries. Such inter-industry comparisons cannot control this decision. The existence of less expensive or more expensive controls in other categories does not govern the decisions in this category. *Portland Cement Ass'n* v. *Ruckelshaus*, 486 F.2d 375, 389 (D.C. Cir. 1973), cert. denied, 417 U.S. 921 (1974); and cf. *American Meat Inst.* v. *EPA*, 526 F.2d 442, 466 (7th Cir. 1975). The EPA must review the statutory factors and arrive at an independent conclusion on whether to base NO_x standards on SNCR or any other technology on a category-by-category basis.

The EPA also solicits comment on the applicability of other types of NO_x emission control technologies to MWC's, including flue gas recirculation, natural gas reburn, and SCR. Comments in this area should address the performance capabilities of these technologies (i.e., the emission levels that can be achieved) and the costs associated with their use.

C. Performance Testing and Monitoring Requirements for NO_x

The proposed standards would require continuous monitoring of NO_x emissions using a continuous emission monitor (CEMS) for all MWC's with capacities greater than 225 Mg/day (250 tons/day) of MSW. An initial compliance test for NO_x would be required during the first 24 consecutive unit operating hours at full load. Compliance with the emission limit would be determined using a block 24-hour average as measured by the CEMS. All valid data must be used in calculating emission rates, even if the minimum CEMS data requirement is met. Calculations to determine compliance would be made using Method 19.

The CEMS for NO_x are subject to the same minimum data collection requirements as described for other CEMS in Section IV.H. The minimum CEMS data requirement would be 75 percent of the hours per day and 75 percent of the days per month the unit is operated. Quality assurance would be maintained in accordance with Appendix F.

D. Reporting and Recordkeeping for NO_x

As described under "Rationale for the Standards for MWC Emissions" (Section IV.I.), the proposed standards would require that the Administrator be notified of the initial MWC unit startup for all affected facilities located within large MWC plants and of the planned date for initial compliance testing. Following the initial compliance tests for NO_x, a report would be submitted summarizing the compliance test results and the performance evaluation of the CEMS.

After the initial compliance test has been completed, the proposed standards would require that quarterly compliance reports for NO_x be submitted for all affected facilities located within large MWC plants. The quarterly report would need to include, as applicable, for the period covered by the report: (1) any period where emissions exceeded the applicable standard; (2) results of all annual performance tests; (3) all 24-hour average NO_x emission rates calculated during the period; and (4) identification of any periods for which data were excluded from these calculations. In addition, each quarterly report for NO_x would include the results of the daily CEMS drift tests and quarterly accuracy determinations as required under Appendix F, Procedure 1.

If the minimum amount of NO_x data was not obtained for a 24-hour averaging period, reasons for failure to obtain sufficient data and a description of corrective action taken would also be included, along with all information needed to calculate the 24-hour average values according to Method 19. Any failure to obtain the minimum amount of data for CEMS (75 percent of operating hours per day and 75 percent of operating days per month) must be reported in the quarterly reports along with reasons.

The proposed standards would also require that certain types of records be maintained. Records to be maintained include all data outputs of the CEMS; all quarterly reports submitted under this rulemaking; and all records required under Appendix F, Procedure 1. All required records would be maintained for 2 years following the date of such records, after which they could be discarded.

The reporting and recordkeeping requirements in the proposed NO_x standards are necessary to provide enforcement personnel with the data and information necessary to ensure that existing MWC's achieve continued compliance with the NO_x standards. At the same time, these requirements would not impose an unreasonable burden on MWC owners or operators.

VII. Combined Impacts of the Proposed Standards

The impacts of the proposed municipal waste combustor (MWC) emissions standard (based on good combustion practices [GCP] and acid gas/particulate matter [PM] control systems), the proposed materials separation standard, and the proposed nitrogen oxide (NO_x) emission standard are additive. The combined national emission impacts for these types of standards are summarized in Table 18.

As shown in Table 19, the combined national total annualized cost for the three proposed standards would be about $190 million/year, and the combined annualized cost per unit of municipal solid waste [MSW] combusted would be $12.90/Mg ($11.70/ton) of MSW combined.

TABLE 18.—COMBINED NATIONAL EMISSION REDUCTIONS FOR THE SELECTED REGULATORY ALTERNATIVES

Pollutant (regulatory alternative selected)	Annual total emission reduction
MWC emissions (regulatory alternative IV).	
MWC organics:	
Dioxins/Furans	15 kg/year
MWC metals:	
Particulate matter	6,000 Mg/year
MWC acid gases:	
Sulfur dioxide	36,000 Mg/year
Hydrogen chloride	47,000 Mg/year
Materials separation	Additional reductions in MWC emissions
Nitrogen oxide (NO_x) (regulatory alternative 2).	12,000 Mg/year

TABLE 19.—COMBINED NATIONAL CONTROL COSTS FOR THE SELECTED REGULATORY ALTERNATIVES

Standard (regulatory alternative selected)	Total annualized cost (10^6/yr)	Annualized cost per Mg MSW ($/Mg)
MWC emissions (regulatory alternative IV)	160	10.80
Materials separation	0	0
NO_x (regulatory alternative 2)	30	2.00
Combined total	190	12.90

The standards for materials separation and NO_x would add to the economic impacts on households and government units discussed for the MWC emission standards in section IV.F. However, as discussed in section V, the materials separation standards could result in net benefits (reduced costs) for waste disposal for some households and government units. Although households in some communities could incur disposal costs increase of over $100/year for the combination of the three standards, no severe economic impacts are anticipated.

VIII. Miscellaneous

A. Prevention of Significant Deterioration Considerations

Today's rulemaking under section 111(b) would establish a new classification of pollutants subject to regulation under the Act: "Municipal waste combustor (MWC) emissions." The components of MWC emissions are MWC metals, MWC organics, and MWC acid gases. A consequence of this action is that prevention of significant deterioration (PSD) rules will now apply to all subject major stationary sources that have significant increases in this pollutant. Absent any significance levels in the regulations to exempt *de minimis* emission increases, PSD review would be triggered by any increase in MWC emissions (see, e.g., 40 CFR 52.21(b)(23)(ii)).

In order to maintain a manageable review process which focuses resources on environmental priorities, EPA is proposing in today's notice significance thresholds for these pollutants in a manner similar to those promulgated on August 7, 1980, for other regulated pollutants. At that time, EPA established emissions thresholds, expressed in tons per year, below which emissions would be considered *de minimis* and not be made subject to review. The Agency established these thresholds for 15 pollutants—the six criteria pollutants plus the four pollutants addressed at that time by national emission standards for hazardous air pollutants (NESHAP) and the five addressed by the new source performance standards (NSPS) (see, e.g., 40 CFR 52.21(b)(23)(i)).

The current significance levels were established in 1980 as simple indicators of what emission levels could appropriately be considered *de minimis*. These emission levels have proven to be reasonable in implementing the PSD program. For noncriteria pollutants, the significance numbers were based on a percentage of the emissions of a well-controlled facility of modest size. For NESHAP pollutants, this level was 10 percent of allowable emissions from the subject facility; for NSPS, it was 20 percent. Projected impacts from emissions at this rate were compared to available health and welfare data to assure avoiding appreciable adverse effects.

For the purpose of establishing what amount of MWC emissions would be significant, a 225 Mg/day (250 tons/day) capacity MWC plant was evaluated. This capacity level was chosen since it is typical of many of the moderately sized MWC plants and represents that threshold capacity where a 90 Mg/year (100 tons/year) emission rate would qualify an MWC plant as being major under PSD. An MWC of this size typically would have the potential after controls to emit 90 Mg/year (100 tons/year) of MWC emissions. Because MWC emissions have carcinogenic components, EPA believes that a significance threshold of no higher than 10 percent of that emission rate is appropriate. Thus, the Agency proposes a significance emission level of 9 Mg/year (10 tons/year) of MWC emissions as a trigger for PSD review.

The August 1980 **Federal Register** also provided exemptions from the otherwise required PSD air quality monitoring data analyses for these sources which could demonstrate that their maximum expected air quality impact could be less than the values indicated in, e.g., 40 CFR 52.21(i)(B)(i) (45 FR 52676, 52709). Those air quality values were generally set at levels reflecting five times the lowest detectable ambient concentrations that could be measured by available monitoring equipment. The MWC emissions being regulated today present a somewhat different situation in that no ambient monitoring methods exist to measure these MWC-specific classifications of pollutants. For this reason, the Administrator will not at this time require PSD permit applicants to monitor specifically for MWC emissions. Applicants for MWC permits will, of course, continue to be responsible for performing appropriate monitoring for other regulated pollutants.

The EPA recognizes that the determination of significance thresholds for review of increases in MWC emissions is important. Comment on the proposed threshold and the approach to defining it is therefore solicited and will be carefully reviewed.

B. Permitting Operational Guidance

On June 28, 1987, the EPA's Office of Air Quality Planning and Standards issued operational guidance for use by State and local agencies with PSD or nonattainment area new source review (NSR) permitting authority. The operational guidance was intended to be followed by State and local agencies in reviewing best available control technology determinations in PSD permits and lowest achievable emission rate determinations under NSR. These programs apply to MWC plants larger than 225 Mg/day (250 tons/day) capacity.

Today's proposal also would establish NO_x standards for large MWC plants and require materials separation, which were not included in the 1987 operational guidance. The NSPS would thus set more stringent emission control requirements for new MWC's than was urged under the 1987 operational guidance, and future permitting decisions under PSD and NSR programs must comply with this NSPS, if EPA adopts it as a final rule.

IX. Administrative Requirements

A. Public Hearing

Three public hearings are planned. Each will discuss the proposed standards in accordance with section 307(d)(5) of the Clean Air Act (CAA). Persons wishing to make oral presentations should contact EPA at the address given in the **ADDRESSES** section of this preamble. Oral presentations should be limited to 15 minutes each. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements should be mailed to the Air Docket Section at the address given in the **ADDRESSES** section of this preamble.

A verbatim transcript of the hearings and written statements will be available for public inspection and copying during normal working hours at the EPA's Air Docket Section in Washington, DC (see **ADDRESSES** section of this preamble).

B. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered in

the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested

D. Office of Management and Budget Reviews

significant economic impact on (2) a substantial number of small entities. For the RFA, the question is whether

entities will be mitigated. First, the standards contain mitigation measures. Several of the requirements are less restrictive for smaller MWC's. To the extent the proportion of small entity

Authority: Secs. 101(b)(1), 110, 160–169, 171–178, and 301(a) of the Clean Air Act: 42 U.S.C. 7401(b)(1), 7410, 7470–7479, 7501–7508, and 7601(a).

(b) Physical or operational changes made to an existing MWC unit to comply with emission guidelines under Subpart Ca are not considered a

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the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process, and (2) to serve as the record in case of judicial review (except for interagency review materials (section 307(d)(7)(A))). The docket number for this rulemaking is A-89-08.

C. Clean Air Act Procedural Requirements

1. *Administrator Listing—Section 111.* As prescribed by section 111 of the CAA, as amended, establishment of standards of performance for municipal waste combustors (MWC's) is based on the Administrator's determination (52 FR 25399, dated July 7, 1987) that these sources contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare.

2. *Periodic Review—Section 111.* The regulation will be reviewed 4 years from the date of promulgation as required by the CAA. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technology, and reporting requirements.

3. *External Participation—Section 117.* In accordance with section 117 of the CAA, publication of this proposal was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. The Administrator will welcome comments on all aspects of the proposed regulation, including economic and technological issues.

4. *Economic Impact Assessment—Section 317.* Section 317 of the CAA requires the Administrator to prepare an economic impact assessment for any new source performance standard (NSPS) promulgated under section 111(b) of the Act. An economic impact assessment was prepared for the proposed standards and for other regulatory alternatives. All aspects of the assessment were considered in the formulation of the proposed standards to ensure that the proposed standards would represent the best system of emission reduction considering costs. Portions of the economic impact assessment are included in the background information documents and additional information is included in the docket.

D. Office of Management and Budget Reviews

1. *Paperwork Reduction Act.* The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs, OMB, 726 Jackson Place NW, Washington, DC 20503, marked "Attention: Desk Officer for EPA." Copies of these comments should also be submitted to Air Docket Section (LE-131), Attention: Docket No. A-89-08, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. The final rule will reflect consideration of any comments on the information collection requirements.

The average annual burden of the reporting and recordkeeping requirements associated with the proposed regulation during the first 3 years of the NSPS would be 65 person-years, based on an average of 26 respondents per year.

2. *Executive Order 12291 Review.* This regulation was submitted to the OMB for review as required by Executive Order 12291. Any written comments from OMB and any responses to those comments will be included in Docket No. A-89-08. This docket is available for public inspection at the EPA's Air Docket Section, which is listed under the **ADDRESSES** section of this notice.

E. Regulatory Flexibility Act Compliance

The Regulatory Flexibility Act (RFA) (Public Law 96-354, September 19, 1980, requires consideration of the impacts of proposed regulations on small entities including small businesses, organizations, and jurisdictions. As described in section IV.F., no households or local governments would experience severe economic impacts as a result of the proposed NSPS. The RFA, however, requires a broader look into whether there will be significant adverse economic effects and, if so, how those impacts will be distributed among small entities. The major purpose of the RFA is to keep paperwork and regulatory requirements from getting out of proportion to the scale of the entities being regulated, without compromising the objectives of, in this case, the CAA. Another purpose is to involve the small entities in the regulatory development process.

The RFA specifies that a regulatory flexibility analysis must be prepared if a proposed regulation will have: (1) A significant economic impact on (2) a substantial number of small entities. For the RFA, the question is whether impacts are significant—not severe. One criterion that EPA has used specifies that economic impacts are significant whenever compliance costs will increase production costs by more than 5 percent. As a result of the proposed standards, the combustion costs per Mg of municipal solid waste (MSW), as well as tipping fees, may increase by more than 5 percent.

Will these significant economic impacts be felt by a substantial number of small entities? For NSPS regulations, EPA often has applied a 20 percent rule; if more than 20 percent of small entities are significantly impacted, the specific concerns of the RFA must be addressed. Unfortunately, it is rarely clear what the 20 percent should be of. In this case it could be 20 percent of the small entities with MWC's—but almost by definition 100 percent of those entities will be significantly impacted—or 20 percent of small entities in the "industry." Regardless of how the criterion is viewed, EPA finds only a few small businesses and only a handful of small governments that will own or operate MWC's.

The EPA has taken appropriate steps to involve small entities in the regulatory development process, and to mitigate potential adverse effects for small entities. In the spring of both 1988 and 1989 EPA presented status reports on the standards at a public meeting of the National Air Pollution Control Techniques Advisory Committee (NAPCTAC). The function of NAPCTAC is to serve as a forum for involving industry and the public in the regulatory development process for air pollution emission controls. Owners of all existing MWC's, all firms involved in owning or operating MWC's, and a wide selection of public interest groups were invited to attend and participate in the NAPCTAC meeting. In the autumn of 1988 EPA mailed a package of about a dozen documents covering most aspects of development of the standards. The mailing went to substantially the same parties—over 300 in total. Recipients were invited to comment on all aspects of the development of the standards.

In compliance with the RFA, measures to mitigate effects on small entities were also considered. Small entities that own or operate MWC's most likely will have small modular MWC's. For that reason the mitigation measures discussed in this section focus on small MWC's as surrogates for small entities. There are several ways potentially significant adverse economic impacts on small

entities will be mitigated. First, the standards contain mitigation measures. Several of the requirements are less restrictive for smaller MWC's. To the extent the proportion of small-entity owners and operators of small MWC's exceeds the proportion of small-entity owners and operators of large MWC's, the proposal provision for small MWC's translates into an easing of the economic burden on small entities relative to large entities.

Second, there are several things small governments can do in the face of steep compliance costs. In almost all cases these governments have available to them an alternative waste disposal technology—landfilling—and many ways to expand source reduction, materials separation, and recycling programs. Small governments have the opportunity to join in, or join in forming, intergovernmental service districts, or to contract with neighboring waste disposal operations for disposal services. Whenever intergovernmental agreements lead to the construction of MWC's of larger capacity than otherwise would have been constructed, air pollution control costs per Mg of MSW will shrink. Governments also can exercise monopoly market power to restrict competition among landfills and MWC's to improve the financial viability of particular MWC's. Finally, small governments that want to combust MSW have the option of building and operating MWC's as public ventures, or arranging for the MWC's to be built and operated as private ventures. The small governments can investigate both financial markets and then select whichever approach offers the best terms.

F. List of Subjects in 40 CFR Parts 51, 52 and 60

Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping, Municipal waste combustors, Municipal solid waste.

Dated: November 30, 1989.

William K. Reilly,

Administrator.

For the reasons set forth in the preamble, it is proposed that part 51, 52, and 60, chapter I, title 40 of the Code of Federal Regulations, be amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

1. The authority citation for part 51 continues to read as follows:

Authority: Secs. 101(b)(1), 110, 160-169, 171-178, and 301(a) of the Clean Air Act: 42 U.S.C. 7401(b)(1), 7410, 7470-7479, 7501-7508, and 7601(a).

§ 51.166 [Amended]

2. In § 51,166 paragraph (b)(23)(i) the "Pollutant and Emission Rate" is amended by adding an entry to the end to read as follows:

Municipal waste combustor emissions: 10 tpy

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

3. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7462.

§ 52.21 [Amended]

4. In § 52.21, paragraph (b)(23)(i) the "Pollutant and Emission Rate" is amended by adding an entry to the end to read as follows:

Municipal waste combustor emissions: 10 tpy

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

5. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C 7401, 7411, 7414, 7416 and 7601.

6. Part 60 is amended by adding a Subpart Ea, consisting of §§ 60.50a through 60.59a, as follows:

Subpart Ea—Standards of Performance for Municipal Waste Combustors

Sec.
60.50a Applicability and delegation of authority.
60.51a Definitions.
60.52a Standard for MWC metals.
60.53a Standard for MWC organics.
60.54a Standard for MWC acid gases.
60.55a Standard for nitrogen oxides.
60.56a Standard for MWC operating practices.
60.57a MWC operator certification and training.
60.58a Compliance and performance testing.
60.59a Reporting and recordkeeping requirements.

Subpart Ea—Standards of Performance for Municipal Waste Combustors

§ 60.50a Applicability and delegation of authority.

(a) The affected facility to which this subpart applies is each municipal waste combustor (MWC) unit for which construction, modification, or reconstruction is commenced after December 20, 1989.

(b) Physical or operational changes made to an existing MWC unit to comply with emission guidelines under Subpart Ca are not considered a modification or reconstruction and do not bring an existing MWC unit under this subpart.

(c) The following authorities shall be retained by the Administrator and not transferred to a State.

§ 60.56a(h)

§ 60.51a Definitions.

"ASME" means the American Society of Mechanical Engineers.

"Bubbling fluidized bed combustor" means a fluidized bed combustor in which the majority of the bed material remains in the primary combustion zone.

"Chief facility operator" means the person in direct charge and control of the operation of an MWC and who is responsible for daily on-site supervision, technical direction, management, and overall performance of the facility.

"Circulating fluidized bed combustor" means a fluidized bed combustor in which the majority of the bed material is carried out of the primary combustion zone and is transported back to the primary zone through a recirculation loop.

"Coal/RDF co-fired combustor" means a combustor that is designed to fire coal and refuse-derived fuel (RDF) simultaneously.

"Continuous emission monitoring system" or "CEMS" means a monitoring system for continuously measuring the emissions of a pollutant from an affected facility.

"Dioxin/furan" means total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans.

"Ferrous metals" means metals and alloys containing iron. Ferrous metals include, but are not limited to, pieces of scrap metal and household appliances made of iron-containing metals, including stoves, refrigerators, air conditioners, and other appliances. Ferrous metals do not include whole automobiles or other vehicles or vehicle bodies.

"Four-hour block average" or "4-hour block average" means the average of all hourly emission rates when the affected facility is operating and combusting MSW measured over 4-hour periods of from 12:00 midnight to 4 a.m., 4 a.m. to 8 a.m., 8 a.m. to 12:00 noon, 12:00 noon to 4 p.m., 4 p.m. to 8 p.m., and 8 p.m. to 12:00 midnight.

"Large MWC plant" means an MWC plant with an MWC plant capacity greater than 225 megagrams per day (250 tons per day) of municipal-type solid waste (MSW).

"Mass burn refractory MWC" means a combustor that combusts MSW in a refractory wall furnace.

"Mass burn rotary waterwall MWC"

units for which construction, modification, or reconstruction is commenced before December 20, 1989 are not included for determining

combusts RDF in a semi-suspension firing mode using air-fed distributors.

"Same location" means the same or contiguous property that is under

(0.015 grains per dry standard cubic foot), corrected to 7 percent oxygen (dry basis).

volume) or 30 parts per million by volume, corrected to 7 percent oxygen (dry basis), whichever is less stringent.

TABLE 1.—MWC OPERATING STANDARDS

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"Mass burn refractory MWC" means a combustor that combusts MSW in a refractory wall furnace.

"Mass burn rotary waterwall MWC" means a combustor that combusts MSW in a cylindrical rotary waterwall furnace.

"Mass burn waterwall MWC" means a combustor that combusts MSW in a conventional waterwall furnace.

"Maximum MWC unit load" means the maximum 1-hour MWC unit load achieved during the initial compliance test or during any subsequent test demonstrating compliance at a higher unit load.

"Modular excess air MWC" means a combustor that combusts MSW and that is not field-erected and has multiple combustion chambers, all of which are designed to operate at conditions with combustion air amounts in excess of theoretical air requirements.

"Modular starved air MWC" means a combustor that combusts MSW and that is not field-erected and has multiple combustion chambers in which the primary combustion chamber is designed to operate at substoichiometric conditions.

"Municipal waste combustor" or "MWC" or "MWC unit" means any device that combusts MSW including, but not limited to, field-erected incinerators (with or without heat recovery), modular incinerators (starved air or excess air), boilers (i.e., steam generating units), and furnaces (whether suspension-fired, grate-fired, mass-fired, or fluidized bed-fired).

"Municipal-type solid waste" or "MSW" means refuse, more than 50 percent of which is waste consisting of a mixture of paper, wood, yard wastes, food wastes, plastics, leather, rubber, and other combustible materials, and noncombustible materials such as metal, glass, and rock. RDF is considered to be MSW. Construction/demolition waste is not considered to be MSW.

"MWC acid gases" means sulfur dioxide and hydrogen chloride gases emitted from MWC units.

"MWC metals" means condensible metals associated with particulate matter emissions from MWC units.

"MWC organics" means organic compounds emitted from MWC units and includes total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans.

"MWC plant" means one or more MWC units at the same location for which construction, modification, or reconstruction is commenced after December 20, 1989.

"MWC plant capacity" means the aggregate MWC unit capacity of all MWC units at an MWC plant. MWC units for which construction, modification, or reconstruction is commenced before December 20, 1989 are not included for determining applicability under this subpart.

"MWC unit capacity" means the maximum design charging rate of an MWC unit expressed in megagrams per day (tons per day) of MSW combusted.

"MWC unit load" means volume of steam produced expressed in kilograms per hour (pounds per hour) of steam.

"Particulate matter" means total particulate matter emitted from MWC units as measured by Method 5 (see § 60.58a).

"Potential hydrogen chloride emission rate" means the hydrogen chloride emission rate that would occur from combustion of MSW in the absence of any hydrogen chloride emissions control.

"Potential sulfur dioxide emission rate" means the sulfur dioxide emission rate that would occur from combustion of MSW in the absence of any sulfur dioxide emissions control.

"Processed MSW or RDF" means MSW or RDF that has been processed to separate materials for recovery prior to combustion in an MWC unit. MSW or RDF is considered to be processed MSW or RDF if an overall 25 percent or greater reduction by weight (annual average) of MSW is achieved through separation for recovery of some or all of the following recoverable materials:

Paper and paperboard combined;
Ferrous metals;
Nonferrous metals;
Glass;
Plastics;
Household batteries; and
Yard waste.

A maximum of 10 percent reduction (by weight) of the overall MSW shall be attributed to separation of yard waste. The 25 percent or greater overall reduction requirement may be achieved by on-site mechanical separation, on-site manual separation, off-site mechanical separation, off-site manual separation, or a curbside source reduction or materials separation (recycling) program, or a combination thereof.

"Recoverable materials" means paper and paperboard combined; ferrous metals; nonferrous metals; glass; plastics; household batteries; and yard waste.

"Refuse-derived fuel" or "RDF" means a type of MSW produced by processing MSW through shredding and size classification. This includes all classes of RDF including low density fluff RDF through densified RDF fuel pellets.

"Refuse-derived fuel spreader stoker" means a steam generating unit that combusts RDF in a semi-suspension firing mode using air-fed distributors.

"Same location" means the same or contiguous property that is under common ownership or control, including properties that are separated only by a street, road, highway, or other public right-of-way. Common ownership or control includes properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, subdivision, or any combination thereof, including any municipality or other governmental unit, or any quasi-governmental authority (e.g., a public utility district or regional waste disposal authority).

"Shift supervisor" means the person in direct charge and control of the operation of an MWC and who is responsible for on-site supervision, technical direction, management, and overall performance of the facility during an assigned shift.

"Small MWC plant" means an MWC plant with an MWC plant capacity of 225 megagrams per day (250 tons per day) or less of MSW.

"Twenty-four hour daily average" or "24-hour daily average" means the average of all hourly emission rates when the affected facility is operating and firing MSW measured over a 24-hour period between 12:00 midnight and the following midnight.

"Unprocessed MSW or RDF" means MSW or RDF that has not been processed to separate materials for recovery prior to combustion or for which less than a 25 percent reduction by weight (annual average) of MSW is achieved as specified under "processed MSW or RDF."

"Vehicle batteries" means any wet lead-acid battery weighing more than 5 kilograms (11 pounds) that is manufactured for use in motor vehicles, vessels, or aircraft, or for any other (nonvehicular) use.

"Yard waste" means vegetative matter removed as a result of outdoor maintenance practices from residential and commercial yards, municipal parks, gardens, golf courses, and other similar areas, and includes, but is not limited to, grass trimmings, tree branches, straw, and leaves.

§ 60.52a Standard for MWC metals.

(a) On and after the date on which the initial compliance test is completed or is required to be completed under § 60.8, no owner or operator of an affected facility shall cause to be discharged into the atmosphere from that affected facility any gases that contain particulate matter in excess of 34 milligrams per dry standard cubic meter

(0.015 grains per dry standard cubic foot), corrected to 7 percent oxygen (dry basis).

(b) On and after the date on which the initial compliance test is completed or is required to be completed under § 60.8, no owner or operator of an affected facility subject to the particulate matter emission limit under paragraph (a) of this section shall cause to be discharged into the atmosphere from that affected facility any gases that exhibit greater than 10 percent opacity (6-minute average).

§ 60.53a Standard for MWC organics.

(a) On and after the date on which the initial compliance test is completed or is required to be completed under § 60.8, no owner or operator of an affected facility located within a small MWC plant shall cause to be discharged into the atmosphere from that affected facility any gases that contain dioxin/furan emissions that exceed 75 nanograms per normal cubic meter (30 grains per billion standard cubic feet), corrected to 7 percent oxygen (dry basis), except as provided under paragraph (b) of this section.

(b) On and after the date on which the initial compliance test is completed or is required to be completed under § 60.8, no owner or operator of an affected facility combusting RDF and located within a small MWC plant shall cause to be discharged into the atmosphere from that affected facility any gases that contain dioxin/furan emissions that exceed 250 nanograms per normal cubic meter (100 grains per billion standard cubic feet), corrected to 7 percent oxygen (dry basis).

(c) On and after the date on which the initial compliance test is completed or is required to be completed under § 60.8, no owner or operator of an affected facility located within a large MWC plant shall cause to be discharged into the atmosphere from that affected facility any gases that contain dioxin/furan emissions that exceed (5 to 30) nanograms per normal cubic meter ([2 to 12] grains per billion standard cubic feet), corrected to 7 percent oxygen (dry basis).

§ 60.54a Standard for MWC acid gases.

(a) On and after the date on which the initial compliance test is completed or is required to be completed under § 60.8, no owner or operator of an affected facility located within a small MWC plant shall cause to be discharged into the atmosphere from that affected facility any gases that contain sulfur dioxide in excess of 50 percent of the potential sulfur dioxide emission rate (50 percent reduction by weight or volume) or 30 parts per million by volume, corrected to 7 percent oxygen (dry basis), whichever is less stringent.

(b) On and after the date on which the initial compliance test is completed or is required to be completed under § 60.8, no owner or operator of an affected facility located within a large MWC plant shall cause to be discharged into the atmosphere from that affected facility any gases that contain hydrogen chloride in excess of 20 percent of the potential hydrogen chloride emission rate (80 percent reduction by weight or volume) or 25 parts per million by volume, corrected to 7 percent oxygen (dry basis), whichever is less stringent.

(c) On and after the date on which the initial compliance test is completed or is required to be completed under § 60.8, no owner or operator of an affected facility located within a large MWC plant shall cause to be discharged into the atmosphere from that affected facility any gases that contain sulfur dioxide in excess of 15 percent of the potential sulfur dioxide emission rate (85 percent reduction by weight or volume) or 30 parts per million by volume, corrected to 7 percent oxygen (dry basis), whichever is less stringent.

(d) On and after the date on which the initial compliance test is completed or is required to be completed under § 60.8, no owner or operator of an affected facility located within a large MWC plant shall cause to be discharged into the atmosphere from that affected facility any gases that contain hydrogen chloride in excess of 5 percent of the potential hydrogen chloride emission rate (95 percent reduction by weight or volume) or 25 parts per million by volume, corrected to 7 percent oxygen (dry basis), whichever is less stringent.

§ 60.55a Standard for nitrogen oxides.

On and after the date on which the initial compliance test is completed or is required to be completed under § 60.8, no owner or operator of an affected facility located within a large MWC plant shall cause to be discharged into the atmosphere from that affected facility any gases that contain nitrogen oxides in excess of (120 to 200) parts per million by volume, corrected to 7 percent oxygen (dry basis).

§ 60.56a Standards for MWC operating practices.

(a) On and after the date on which the initial compliance test is completed or is required to be completed under § 60.8, no owner or operator of an affected facility shall cause such facility to exceed the carbon monoxide standards shown in Table 1.

TABLE 1.—MWC OPERATING STANDARDS

MWC technology	Carbon monoxide emission limit (parts per million by volume)*
Mass burn waterwall	100
Mass burn refractory	100
Mass burn rotary waterwall	150
Modular starved air	50
Modular excess air	50
Refuse derived fuel spreader stoker	150
Bubbling fluidized bed combustor	100
Circulating fluidized bed combustor	100
Coal/RDF co-fired combustors	150
Other Technologies	150

*Measured at the combustor outlet in conjunction with a measurement of oxygen concentration, corrected to 7 percent oxygen (dry basis), using a 4-hour block average.

(b) No owner or operator of an affected facility that generates steam shall cause such facility to operate at a load level greater than 100 percent of the maximum MWC unit load. Any owner or operator of an affected facility who wishes to operate at a load level greater than the maximum MWC unit load may do so by conducting a repeat test to establish a higher maximum MWC unit load.

(c) No owner or operator of an affected facility shall cause such facility to operate at a temperature exceeding 230°C (450°F) measured at the particulate matter control device inlet.

(d) Except as provided under paragraphs (g) and (h) of this section, on and after the date of initial start-up, no owner or operator of an affected facility shall cause unprocessed MWC or RDF to be combusted in such facility.

(e) Except as provided under paragraph (g) of this section, on and after the date of initial start-up, no owner or operator of an affected facility shall cause vehicle batteries to be combusted in such facility.

(f) Except as provided under paragraph (g) of this section, on and after the date of initial start-up, a program to remove household batteries from MWC prior to combustion shall be established.

(g) The owner or operator of an affected facility that commenced construction, modification, or reconstruction after December 20, 1989, but before (date of promulgation), shall meet the requirements of paragraphs (d), (e), and (f) of this section on and after December 31, 1992, or on and after the date of initial start-up, whichever is later.

(h)(1) The owner or operator of an affected facility may apply to the Administrator for a materials

separation/combustion permit for any combustible material designated for separation under the materials

(b) The owner or operator of an affected facility shall cause an ASME-certified shift supervisor to be on duty at

§ 60.58a Compliance and performance testing.

(a) The standards under this subpart

completed under § 60.8 for an affected facility located within a small MWC

(5) An owner or operator may request that compliance with the dioxin/furan emissions standard be determined using

only if compliance is based on an emission limit.

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separation/combustion permit for any combustible material designated for separation under the materials separation plan under § 60.59a(d) for which a market is unavailable for the separated material for 120 days. A market is considered to be unavailable for such combustibles if the Administrator determines that: the cost of recycling such combustibles exceeds the cost of landfilling them, and that the 25 percent reduction in the weight of MWC or RDF contained in the definition of "processed MSW or RDF" cannot be obtained through separation of other recoverable materials. An owner or operator wishing to demonstrate that a recycling market is unavailable for recoverable combustibles must submit a demonstration to the Administrator that includes: a list of recycling facilities and facility officials contacted, a written discussion of why he was not able to obtain recycling for the combustible wastes, and/or a list of landfill facilities and facility individuals contacted and a documented comparison of the costs of recycling versus the costs of landfilling. The MWC owner or operator must also provide to the Administrator the following certification:

I certify under penalty of law that a recycling market is unavailable for the following combustible recoverables as defined in 40 CFR 60.51a. I believe that the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment.

(2) If a materials separation/combustion permit has been issued, separated material(s) covered under the materials separation/combustion permit may be combusted in the affected facility and are credited toward the overall 25 percent materials separation requirement under the definition of "processed MSW or RDF" under § 60.51a.

(3) If a materials separation/combustion permit is granted by the Administrator, it shall be valid for a maximum of 1 year. Reapplication may be made for subsequent materials separation/combustion permits within 60 days before expiration of such a permit and may be renewed for 1 year.

§ 60.57a MWC operator certification and training.

(a) Within 24 months from the date that ASME adopts a certification program for MWC unit (resource recovery facility) operators, each chief facility operator and shift supervisor of an affected facility shall obtain and keep current either a provisional or operator certification from ASME.

(b) The owner or operator of an affected facility shall cause an ASME-certified shift supervisor to be on duty at the affected facility at all times during periods of MWC unit operation. This requirement shall take effect 24 months after the date that ASME adopts a certification program for MWC unit (resource recovery facility) operators.

(c) The owner or operator of an affected facility shall develop and update on a yearly basis a site-specific operating manual that shall, at a minimum, address the following elements of MWC unit operation:

(1) Summary of the applicable standards under this subpart;

(2) Description of basic combustion theory applicable to an MWC unit;

(3) Procedures for receiving, handling, and feeding MSW;

(4) MWC unit startup, shutdown, and malfunction procedures;

(5) Procedures for maintaining proper combustion air supply levels;

(6) Procedures for operating the MWC unit within the standards established under this subpart;

(7) Procedures for responding to periodic upset or off-specification conditions;

(8) Procedures for minimizing particulate matter carryover;

(9) Procedures for monitoring the degree of MSW burnout;

(10) Procedures for handling ash;

(11) Procedures for monitoring MWC unit emissions; and

(12) Reporting and recordkeeping procedures.

(d) The owner or operator of an affected facility shall establish a program for reviewing the operating manual annually with each person who has responsibilities affecting the operation of an affected facility including, but not limited to, chief facility operators, shift supervisors, control room operators, ash handlers, maintenance personnel, and crane/load handlers.

(e) The initial review of the operating manual, as specified under paragraph (d) of this section, shall be conducted prior to assumption of responsibilities affecting MWC unit operation by any person required to undergo training under paragraph (d) of this section. Subsequent reviews of the manual shall be carried out annually by each such person.

(f) The operating manual shall be kept in a readily accessible location for all persons required to undergo training under paragraph (d) of this section. The operating manual and records of training shall be available for inspection by EPA upon request.

§ 60.58a Compliance and performance testing.

(a) The standards under this subpart apply at all times, except during periods of startup, shutdown, or malfunction: *Provided, however,* That the duration of startup, shutdown, or malfunction shall not exceed 3 hours per occurrence.

(b) The following procedures and test methods shall be used to determine compliance with the emission standards for PM under § 60.52a:

(1) Method 1 shall be used to select sampling site and number of traverse points.

(2) Method 3 shall be used for gas analysis.

(3) Method 5 shall be used for determining compliance with the particulate matter emission standard. The minimum sample volume shall be 3.4 cubic meters (120 cubic feet). The temperature of the sample gas in the probe and filter holder shall be 160 °C (320 °F). An oxygen or carbon dioxide measurement shall be obtained simultaneously with each Method 5 run.

(4) For each Method 5 run, the emission rate shall be determined using:

(i) Oxygen or carbon dioxide measurements,

(ii) Dry basis F factor, and

(iii) Dry basis emission rate calculation procedures in Method 19.

(5) An owner or operator may request that compliance be determined using carbon dioxide measurements corrected to an equivalent of 7 percent oxygen. The relationship between oxygen and carbon dioxide levels for the affected facility shall be established during the initial compliance test.

(6) The owner or operator of an affected facility shall conduct an initial compliance test for particulate matter and opacity as required under § 60.8.

(7) Method 9 shall be used for determining compliance with the opacity standard.

(8) The owner or operator of an affected facility shall install, calibrate, maintain, and operate a continuous emission monitoring system (CEMS) for measuring opacity and record the output of the system.

(9) Following the date the initial compliance test for particulate matter is completed or is required to be completed under § 60.8 for an affected facility located within a large MWC plant, the owner or operator shall conduct a performance test for particulate matter on an annual basis (no more than 12 calendar months following the previous compliance test).

(10) Following the date the initial compliance test for particulate matter is completed or is required to be completed under § 60.8 for an affected facility located within a small MWC plant, the owner or operator shall conduct a performance test for particulate matter on an annual basis (no more than 12 calendar months following the previous compliance test). If all three performance tests for a 3-year period indicate compliance with the particulate matter standard, the owner or operator may forego a performance test for the subsequent 2 years. At a minimum, a performance test for particulate matter shall be conducted every third year (no more than 36 months following the previous compliance test). If a performance test conducted every third year indicates compliance with the particulate matter standard, the owner or operator may forego a performance test for an additional 2 years.

(c) The following procedures and test methods shall be used to determine compliance with the standards for dioxin/furan emissions under § 60.53a:

(1) Method 23 shall be used for determining compliance with the dioxin/furan emission standards.

(2) The owner or operator of an affected facility shall conduct an initial compliance test for dioxin/furan emissions as required under § 60.8.

(3) Following the date of the initial compliance test or the date on which the initial compliance test is required to be completed under § 60.8, the owner or operator of an affected facility located within a large MWC plant shall conduct a performance test for dioxin/furan emissions on an annual basis (no more than 12 calendar months following the previous compliance test).

(4) Following the date of the initial compliance test or the date on which the initial compliance test is required under § 60.8, the owner or operator of an affected facility located within a small MWC plant shall conduct a performance test for dioxin/furan emissions on an annual basis (no more than 12 calendar months following the previous compliance test). If all three performance tests in a 3-year period indicate compliance with the dioxin/furan emissions standard, the owner or operator may forego a performance test for the subsequent 2 years. At a minimum, a performance test for dioxin/furan emissions shall be conducted every third year (no more than 36 months following the previous compliance test). If a performance test conducted every third year indicates compliance with the dioxin/furan emissions standard, the owner or operator may forego conducting a performance test for an additional 2 years.

(5) An owner or operator may request that compliance with the dioxin/furan emissions standard be determined using carbon dioxide measurements corrected to an equivalent of 7 percent oxygen. The relationship between oxygen and carbon dioxide levels for the affected facility shall be established during the initial compliance test.

(d) The following procedures and test methods shall be used for determining compliance with the sulfur dioxide standards under § 60.54a:

(1) The percentage reduction in the potential sulfur dioxide emissions ($\%P_{SO2}$) is computed using the following formula:

$$\%P_{SO2} = \frac{(E_i - E_a)}{E_i} \times 100$$

where:

E_i is the daily potential sulfur dioxide emission rate.

E_a is the daily sulfur dioxide emission rate measured at the outlet of the acid gas control device.

(2) Method 19 shall be used for determining the sulfur dioxide emission rate.

(3) An owner or operator may request that compliance with the sulfur dioxide emissions standard be determined using carbon dioxide measurements corrected to an equivalent of 7 percent oxygen. The relationship between oxygen and carbon dioxide levels for the affected facility shall be established during the initial compliance test.

(4) The owner or operator of an affected facility shall conduct an initial compliance test for sulfur dioxide as required under § 60.8. The sulfur dioxide compliance test shall be conducted over 24 consecutive unit operating hours at maximum MWC unit load. Compliance with the sulfur dioxide standard shall be determined using a 24-hour daily average.

(5) The owner or operator of an affected facility shall install, calibrate, maintain, and operate a CEMS for measuring sulfur dioxide emissions discharged to the atmosphere and record the output of the system.

(6) Following the date of the initial compliance test or the date on which the initial compliance test is required to be completed under § 60.8, compliance with the sulfur dioxide standard shall be determined based on the arithmetic average of the hourly emission rates during each 24-hour daily period measured between 12:00 midnight and the following midnight using CEMS inlet and outlet data, if compliance is based on a percentage reduction, or outlet data only if compliance is based on an emission limit.

(7) At a minimum CEMS data shall be obtained for 75 percent of the hours per day for 75 percent of the days per month the unit is operated and combusting MSW.

(8) The 1-hour averages required under paragraph (d)(5) of this section shall be expressed in nanograms per hour (pounds per hour) and used to calculate the 24-hour daily average emission rates. The 1-hour averages shall be calculated using the data points required under § 60.13(b). At least two data points shall be used to calculate each 1-hour average.

(9) All valid CEMS data shall be used in calculating emission rates and percent reductions even if the minimum CEMS data requirements of paragraph (d)(7) of this section are met.

(10) The procedures under § 60.13 shall be followed for installation, evaluation, and operation of the CEMS.

(11) The CEMS shall be operated according to Performance Specification 1, 2, and 3 (Appendix B).

(12) Quarterly accuracy determinations and daily calibration drift tests shall be performed in accordance with Procedure 1 (Appendix F).

(13) The span value of the CEMS at the inlet to the sulfur dioxide control device is 125 percent of the maximum estimated hourly potential sulfur dioxide emissions of the MWC unit, and the span value of the CEMS at the outlet to the sulfur dioxide control device is 50 percent of the maximum estimated hourly potential sulfur dioxide emissions of the MWC unit.

(14) When sulfur dioxide emissions data are not obtained because of CEMS breakdowns, repairs, calibration checks and zero and span adjustments, emissions data shall be obtained by using other monitoring systems as approved by the Administrator or Method 19 to provide as necessary emission data for a minimum of 75 percent of the hours per day for 75 percent of the days per month the unit is operated and combusting MSW.

(e) The following procedures and test methods shall be used for determining compliance with the hydrogen chloride standards under § 60.54a:

(1) The percentage reduction in the potential hydrogen chloride emissions ($\%P_{HCl}$) is computed using the following formula:

$$\%P_{HCl} = \frac{(E_i - E_a)}{E_i} \times 100$$

(2) An owner or operator may request that compliance with the nitrogen oxides emissions standard be

(11) When nitrogen oxides emissions data are not obtained because of CEMS breakdowns, repairs, calibration checks,

(9) Quarterly accuracy determinations and daily calibration drift tests for carbon monoxide CEMS shall be

through December) after the initial start-up of the affected facility, except as provided under paragraph (g)(10)(iv) of

(d), (e) or (f) and a description of the specific actions that will be implemented to comply with these

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$$\%P_{HCl} = \frac{(E_i - E_o)}{E_i} \times 100$$

where:
E_i is the daily potential hydrogen chloride emission rate.
E_o is the daily hydrogen chloride emission rate measured at the outlet of the acid gas control device.

(2) Method 26 shall be used for determining the hydrogen chloride emission rate.

(3) An owner or operator may request that compliance with the hydrogen chloride emissions standard be determined using carbon dioxide measurements corrected to an equivalent of 7 percent oxygen. The relationship between oxygen and carbon dioxide levels for the affected facility shall be established during the initial compliance test.

(4) The owner or operator of an affected facility shall conduct an initial compliance test for hydrogen chloride as required under § 60.8.

(5) Following the date of the initial compliance test or the date on which the initial compliance test is required under § 60.8, the owner or operator of an affected facility located within a large MWC plant shall conduct a performance test for hydrogen chloride on an annual basis (no more than 12 calendar months following the previous compliance test).

(6) Following the date of the initial compliance test or the date on which the initial compliance test is required under § 60.8, the owner or operator of an affected facility located within a small MWC plant shall conduct a performance test for hydrogen chloride on an annual basis (no more than 12 calendar months following the previous compliance test). If all three performance tests in a 3-year period indicate compliance with the hydrogen chloride standard, the owner or operator may forego a performance test for the subsequent 2 years. At a minimum, a performance test for hydrogen chloride shall be conducted every third year (no more than 36 months following the previous compliance test). If a performance test conducted every third year indicates compliance with the hydrogen chloride standard, the owner or operator may forego conducting a performance test for an additional 2 years.

(f) The following procedures and test methods shall be used to determine compliance with the nitrogen oxides standard under § 60.55a:

(1) Method 19 shall be used for determining the nitrogen oxides emission rate.

(2) An owner or operator may request that compliance with the nitrogen oxides emissions standard be determined using carbon dioxide measurements corrected to an equivalent of 7 percent oxygen. The relationship between oxygen and carbon dioxide levels for the affected facility shall be established during the initial compliance test.

(3) The owner or operator of an affected facility subject to the nitrogen oxides standard under § 60.55a shall conduct an initial compliance test for nitrogen oxides as required under § 60.8. The initial compliance test for nitrogen oxides shall be conducted over 24 consecutive hours of unit operation using a CEMS for measuring nitrogen oxides to determine compliance with the nitrogen oxides standard. Compliance with the nitrogen oxides standard shall be determined using a 24-hour daily average.

(4) The owner or operator of an affected facility subject to the nitrogen oxides emissions standard of § 60.55a shall install, calibrate, maintain, and operate a CEMS for measuring nitrogen oxides discharged to the atmosphere and record the output of the system.

(5) Following the initial compliance test or the date on which the initial compliance test is required to be completed under § 60.8, compliance with the emission limits for nitrogen oxides required under § 60.55a shall be determined based on the arithmetic average of the hourly emission rates during each 24-hour daily period measured between 12:00 midnight and the following midnight using CEMS data.

(6) At a minimum CEMS data shall be obtained for 75 percent of the hours per day for 75 percent of the days per month the unit is operated and combusting MSW.

(7) The 1-hour averages required by paragraph (f)(6) of this section shall be expressed in parts per million volume (dry basis) and used to calculate the 24-hour daily average emission rates under § 60.55a. The 1-hour averages shall be calculated using the data points required under § 60.13(b). At least two data points shall be used to calculate each 1-hour average.

(8) All valid CEMS data must be used in calculating emission rates even if the minimum CEMS data requirements of paragraph (f)(7) of this section are met.

(9) The procedures under § 60.13 shall be followed for installation, evaluation, and operation of the CEMS.

(10) Quarterly accuracy determinations and daily calibration drift tests shall be performed in accordance with Procedure 1 (Appendix F).

(11) When nitrogen oxides emissions data are not obtained because of CEMS breakdowns, repairs, calibration checks, and zero and span adjustments, emission data calculations to determine compliance shall be made using other monitoring systems as approved by the Administrator or Method 19 to provide as necessary emission data for a minimum of 75 percent of the hours per day for 75 percent of the days per month the unit is operated and combusting MSW.

(g) The following procedures shall be used for determining compliance with the operating standards under § 60.56a:

(1) Compliance with the carbon monoxide emission limits in § 60.56a(a) shall be determined using a 4-hour block average.

(2) The owner or operator of an affected facility shall install, calibrate, maintain, and operate a CEMS for measuring carbon monoxide at the combustor outlet and record the output of the system.

(3) An owner or operator may request that compliance with the carbon monoxide emission limit be determined using carbon dioxide measurements corrected to an equivalent of 7 percent oxygen.

(4) The owner or operator of an affected facility shall install, calibrate, maintain, and operate a steam flow meter and measure steam flow in kilograms per hour (pounds per hour) steam on a continuous basis and record the output of the monitor. Steam flow shall be calculated in 1-hour block averages.

(5) The owner or operator of an affected facility shall install, calibrate, maintain, and operate a device for measuring temperature and measure the temperature of the flue gas stream at the inlet to the particulate matter air pollution control device on a continuous basis and record the output of the device. Temperature shall be calculated in 4-hour block averages.

(6) Maximum MWC unit load shall be determined during the initial compliance test. Maximum MWC unit load shall be the maximum 1-hour load achieved during the initial compliance test or any subsequent tests.

(7) The minimum data requirement under this section is 75 percent of the hours per day for 75 percent of the days per month the MWC unit is operated and combusting MSW.

(8) All valid data must be used in calculating the parameters specified under paragraph (g) of this section even if the minimum data requirements of paragraph (g)(6) of this section are met.

(9) Quarterly accuracy determinations and daily calibration drift tests for carbon monoxide CEMS shall be performed in accordance with Procedure 1 (Appendix F).

(10) (i) Except as provided under paragraph (g)(10)(iv) of this section, the initial demonstration of compliance with the percent reduction requirement (annual average) contained in the definition of "processed MSW or RDF" in § 60.51a and the provisions of §§ 60.56a (d), (e), and (f) shall be required at the end of the second full calendar year (January through December) after the date of initial start-up of an affected MWC. The annual average percent MSW reduction calculated and reported at the end of the first full calendar year after initial start-up shall not be used to determine compliance.

(ii) Compliance with the percent reduction requirement contained in the definition of "processed MSW or RDF" in § 60.51a shall be determined by calculating the percentage difference between the weight of MSW received at the affected facility (as defined in § 60.51a) and the weight of MSW combusted in the MWC unit or the weight of separated recoverable materials. Except as provided under paragraph (iv) of this section, beginning the month after the date of the initial start-up for new MWC's, the percent reduction in MSW shall be calculated on a monthly basis using the monthly total weights recorded in compliance with §§ 60.59a (8) and (9). At the end of each full calendar year (January through December) the annual average percent MSW reduction (by weight) shall be calculated. In calculating the percent MSW reduction, a maximum of 10 percent MSW weight reduction shall be attributed to separation of yard waste. If the annual average percentage reduction requirement contained in the definition of "processed MSW or RDF" in § 60.51a is not achieved, the MSW or RDF is not considered to be processed MSW or RDF.

(iii) An owner or operator who elects to achieve, either wholly or partially, the percent reduction requirement contained in the definition of "processed MSW or RDF" in § 60.51a or the prohibition of vehicle batteries in § 60.56a (e) or the removal of household batteries in § 60.56a (f) through an off-site source reduction or materials separation (recycling) program shall submit a separation plan which contains sufficient information to measure the performance of the off-site separation program on an annual basis beginning the first full calendar year (January through December) after the initial start-up of the affected facility, except as provided under paragraph (g)(10)(iv) of this section. The off-site separation plan shall be submitted along with the initial compliance demonstration results.

(iv) The owner or operator of an affected facility that commenced construction after December 20, 1989, but on or before (date of publication of final rule), shall meet the requirements of paragraphs (g)(10)(ii) and (g)(10)(iii) of this section beginning the month after start-up or January 1993, whichever is later. For such affected facilities, the initial demonstration of compliance with the percent reduction requirement (annual average) contained in the definition of "processed MSW or RDF" in § 60.51a and the provisions of §§ 60.56a (d), (e), and (f) shall be required at the end of the second full calendar year (January through December) after the date of initial start-up of the affected MWC or at the end of calendar year 1994, whichever is later.

(v) The owner or operator of an affected facility is responsible for operating the affected facility in compliance with all provisions of the standards including the prohibition on combustion of unprocessed MSW and vehicle batteries under §§ 60.56a (d) and (e) and the implementation of a program for removal of household batteries under § 60.56a (f). In cases where another party provides processed MSW, or removes vehicle batteries or removes household batteries, the provider of the service may become a co-operator of the affected facility. If the party providing the off-site processing of MSW, removal of vehicle batteries or removal of household batteries elects to become a co-operator for purposes of demonstrating compliance with the provisions of §§ 60.56a (d), (e) or (f), the owner or operator of the affected facility shall submit, at the time of submittal of the initial compliance demonstration related to the requirements under §§ 60.56a (d), (e) and (f):

(A) A copy of a validly executed contract between the owner and operator of the affected facility and the party providing the processing of MSW, removal of vehicle batteries, or removal of household batteries which contain the following provisions:

(*1*) An undertaking by the party that is co-operator or sole operator of the affected facility within the meaning of § 111 of the Clean Air Act, 42 U.S.C. 7411, regarding compliance with the requirements under §§ 60.56a (d), (e) or (f); and

(*2*) An undertaking by the party to meet the requirements under §§ 60.56a (d), (e) or (f) and a description of the specific actions that will be implemented to comply with these requirements; and

(B) A certified statement signed by an authorized official representing the party that they agree to become a co-operator, or sole operator, for the purpose of demonstrating compliance with the requirements under §§ 60.56a (d), (e) or (f) and recognizing that enforcement actions, including penalties, may be taken against the party for failure to demonstrate compliance with these requirements.

§ 60.59a Reporting and recordkeeping requirements.

(a) The owner or operator of an affected facility shall provide notification of intent to construct and of planned initial start-up date. The MWC unit capacity and MWC plant capacity shall be provided at the time of the notification of construction.

(b) The owner or operator of an affected facility subject to the standards under § 60.52a, § 60.53a, § 60.54a, § 60.55a, or § 60.56a shall maintain records of the following information for each affected facility:

(1) Calendar date.

(2) The emission rates and parameters measured.

(3) Identification of the operating days when the calculated sulfur dioxide and nitrogen oxides emission rates or when the operating parameters exceeded the applicable standards, with reasons for such exceedances as well as a description of corrective actions taken.

(4) Identification of operating days for which sulfur dioxide or nitrogen oxides emissions or operational data have not been obtained, including reasons for not obtaining sufficient data and a description of corrective actions taken.

(5) Identification of the times when sulfur dioxide or nitrogen oxides emission or operational data have been excluded from the calculation of average emission rates or parameters and the reasons for excluding data.

(6) The results of daily sulfur dioxide, nitrogen oxides, and carbon monoxide CEMS drift tests and accuracy assessments as required under Appendix F, Procedure 1.

(7) The results of all annual performance tests conducted to determine compliance with the particulate matter, dioxin/furan, hydrogen chloride, and mercury standards.

(8) Except as provided under paragraph (b)(13) of this section, beginning the month after the date of the initial start-up, the amount (by weight)

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of MSW or RDF received on a monthly basis at the affected facility, the amount (by weight) of MSW or RDF combusted on a monthly basis, and the amount of recoverable materials (by type and weight) separated on a monthly basis. Separated paper and paperboard are to be stored in a covered area and protected from rain and moisture, so that the moisture content of the paper and paperboard when weighed is similar to their moisture content when received in the MSW or RDF.

(9) Except as provided under paragraph (b)(13) of this section, beginning the month after the date of the initial start-up, the estimated amount (by type and weight) of recoverable materials reduced or separated for recovery on a monthly basis through an off-site or community source reduction or materials separation (recycling) program.

(10) Except as provided under paragraph (b)(13) of this section, beginning at the end of the first full calendar year after the date of initial start-up, the calculations of the annual average percentage reduction in MSW achieved for the previous calendar year.

(11) Except as provided under paragraph (b)(13) of this section, beginning the month after the date of the initial start-up, the amount (by weight) of vehicle batteries on a monthly basis that is separated for recovery.

(12) [Reserved]

(13) The owner or operator of an affected facility that commenced construction after December 20, 1989 but on or before (date of promulgation), shall meet the requirements of paragraphs (b) (8), (9), (10), (11), and (12) of this section beginning the month after initial start-up or January 1993, whichever is later.

(c) The owner or operator of an affected facility shall submit the initial compliance test data, the performance evaluation of the CEMS using the applicable performance specifications in Appendix B, and the maximum MWC unit load.

(d) A plan describing the procedures for separating materials for recovery to achieve the 25 percent or greater MSW reduction requirement contained in the definition of "processed MSW or RDF" in § 60.51a and describing the procedures for ensuring that vehicle batteries are not combusted in the affected facility and a description of the program for removal of household batteries shall be provided at the time of submittal of the initial demonstration of compliance with the requirements of §§ 60.58a (d), (e), and (f). For affected facilities that commenced construction after December 20, 1989 but on or before (date of promulgation), such information shall be provided by the 30th day following the end of calender year 1994 or the end of the second full calendar year after initial start-up, whichever is later. For all other affected facilities, such information shall be provided by the 30th day following the end of the second full calendar year after initial start-up.

(e) The owner or operator of an affected facility shall submit quarterly compliance reports for sulfur dioxide, nitrogen oxide (if applicable), carbon monoxide, load level, and temperature to the Administrator containing the information recorded under paragraph (b) of this section for each pollutant or parameter. Such reports shall be postmarked by the 30th day following the end of each calendar quarter.

(f) The owner or operator of an affected facility shall submit quarterly excess emission reports containing the information recorded under paragraph (b) of this section, as applicable, for opacity. Suchexcess emission reports shall be postmarked by the 30th day following the end of each calendar quarter.

(g) The owner or operator of an affected facility shall submit annual reports to the Administrator containing the information recorded under paragraph (b) of this section for all pollutants regulated under this subpart, as applicable, to the affected facility. Such reports shall be postmarked by the 30th day following the end of each calendar year.

(h) Records of CEMS, steam flow, and temperature data shall be maintained for at least 2 years after date of recordation and be made available for inspection upon request.

(i) Records showing the names of persons who have completed review of the operating manual, including the date of the initial review and all subsequent annual reviews, shall be maintained for at least 2 years after date of manual review and be made available for inspection upon request.

(j) A description of the procedures employed for ensuring that unprocessed MSW or RDF is not combusted in an affected facility shall be maintained, along with associated records to demonstrate use of such procedures, and made available for inspection upon request.

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December 20, 1989

Part VII

Office of Management and Budget

Governmentwide Guidance for New Restrictions on Lobbying; Interim Final Guidance

OFFICE OF MANAGEMENT AND BUDGET

Governmentwide Guidance for New Restrictions on Lobbying

that all such regulations shall be uniform and shall comply with the government-wide guidance issued by the Director of the Office

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OFFICE OF MANAGEMENT AND BUDGET

Governmentwide Guidance for New Restrictions on Lobbying

AGENCY: Office of Management and Budget

ACTION: Interim Final Guidance

SUMMARY: This interim final guidance is called for by Section 319 of Public Law 101-121. Section 319 generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. Section 319 also requires that each person who requests or receives a Federal contract, grant, cooperative agreement, loan, or a Federal commitment to insure or guarantee a loan, must disclose lobbying.

DATE: This guidance is effective December 23, 1989. Comments on OMB's interim final guidance must be in writing and must be received by [60 days from publication]. Late-filed comments will be considered to the extent practicable.

ADDRESS: Office of Management and Budget, 10300 New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For contracts, contact Richard C. Loeb, Office of Federal Procurement Policy, OMB (telephone: 202-395-3300). For grants and loans, contact Barbara F. Kahlow, Financial Management Division, OMB (telephone: 202-395-3053).

SUPPLEMENTARY INFORMATION:

A. Background.

On October 23, 1989, the President signed into law the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990 ("the Act"). Section 319 of the Act amends title 31, United States Code, by adding a new Section 1352, entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions." Section 1352 takes effect with respect to Federal contracts, grants, loans, cooperative agreements, loan insurance commitments, and loan guarantee commitments that are entered into or made more than 60 days after the date of the enactment of the Act, i.e., December 23, 1989.

Section 1352 requires the Director of the Office of Management and Budget to issue governmentwide guidance for agency implementation of, and compliance with, the requirements of this section. The Conference Report indicates that the conferees "expect that all agencies shall expeditiously promulgate regulations to implement the requirements of this section, and

that all such regulations shall be uniform and shall comply with the government-wide guidance issued by the Director of the Office of Management and Budget pursuant to paragraph (b)(7). Also, major agencies, as designated by OMB, shall issue a common rule complying with the guidance issued by OMB."

B. Interim Final Guidance.

OMB's interim final guidance is prepared in regulation format to facilitate its use by the executive departments and agencies in preparing the common rule called for in the Conference Report. There will be two common rules issued by the executive departments and agencies as interim final rules within 90 days of this interim final guidance: a common rule to appear in the Federal Acquisition Regulation (FAR) for most contracts; and a common rule for contracts not subject to the FAR, grants, loans, cooperative agreements, loan insurance commitments, and loan guarantee commitments ("nonprocurement"). The FAR common rule will contain the same substance as the OMB guidance, without elaboration, but will be reformatted, with additional instructions. The nonprocurement common rule will be verbatim to the OMB guidance. All three documents (OMB's interim final guidance and the two interim final common rules) will share a public docket. The final versions of all three will be published simultaneously.

The FAR common rule will be co-signed by the three agencies (the Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration) authorized to issue the FAR rulemaking, effective for all executive departments and agencies. The nonprocurement common rule will be signed by the following 29 major agencies: Departments of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Housing and Urban Development, Interior, Justice, Labor, State, Transportation, Treasury, Veterans Affairs; ACTION, Agency for International Development, Environmental Protection Agency, Export-Import Bank of the United States, Federal Emergency Management Agency, General Services Administration, National Aeronautics and Space Administration, National Endowment for the Arts, National Endowment for the Humanities, National Science Foundation, Overseas Private Investment Corporation, Peace Corps, Small Business Administration, Tennessee Valley Authority and United States Information Agency.

The following Circulars of the Office of Management and Budget (OMB) will be revised to indicate a cross reference to the requirements in the OMB guidance: OMB Circular A-21, "Cost Principles for Educational Institutions;" OMB Circular A-87, "Cost Principles for State and Local Governments;" and, OMB Circular A-122, "Cost Principles for Nonprofit Organizations." Costs made specifically unallowable by the requirements in the guidance are not made allowable under any of the provisions of

these Circulars. Conversely, costs that are specifically unallowable under the provisions of these Circulars are not made

PART ____ - NEW RESTRICTIONS ON LOBBYING

Subpart A - General

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these Circulars. Conversely, costs that are specifically unallowable under the provisions of these Circulars are not made allowable under the requirements in the guidance.

Costs made specifically unallowable by the requirements in the OMB guidance will not be made allowable under any of the provisions of the FAR. Conversely, costs that are specifically unallowable under the provisions of the FAR are not made allowable under the requirements in the OMB guidance.

The guidance calls for an annual report to be prepared by each Inspector General and to be submitted to Congress. Copies of these reports should be forwarded to the Financial Management Division of OMB as well.

The guidance also calls for semi-annual compilations of disclosure reports to be prepared by each agency and to be submitted to Congress. Agencies shall submit a "negative" report if no disclosure reports were received.

C. Paperwork Reduction Act.

This interim final guidance contains information collection requirements. Accordingly, a Paperwork Reduction Act emergency approval was requested pursuant to 44 U.S.C. 3507(g) and 5 C.F.R. 1320.18 and was granted under OMB control number 0348-0046. OMB estimates the reporting burden for this information collection to average 30 minutes per response. The time necessary for filing the first disclosure may differ from that for the subsequent disclosures. However, in the absence of experience with such reporting, OMB does not have sufficient data to determine the universe of total covered Federal actions or the volume of activity that will be affected by this guidance. Therefore, an estimate of the total burden of this information collection requirement is not provided at this time. Public comment is requested to assist in accurately estimating the burden of this information collection, including: (1) estimates of the amount of time required to comply with this reporting requirement, (2) estimates of the number of expected disclosure reports, and (3) the basis for these estimates. OMB is also interested in comments on the feasibility of electronic or other methods for filing the information on the disclosure standard form to the Federal Government.

Richard G. Darman
Director.

PART ____ - NEW RESTRICTIONS ON LOBBYING

Subpart A - General

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Appendix A to Part ___ - Certification Regarding Lobbying

Appendix B to Part ___ - Disclosure Form to Report Lobbying

Appendix C to Part ___ - Contract Clause

Authority: Section 319, Public Law 101-121 (31 U.S.C. 1352); [citation to Agency rulemaking authority].

Subpart A - General

(___.100 Conditions on use of funds.

(a) No appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal,

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amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(b) Each person who requests or receives from an agency a Federal contract, grant, loan, or cooperative agreement shall file with that agency a certification, set forth in Appendix A, that the person has not made, and will not make, any payment prohibited by paragraph (a) of this section.

(c) Each person who requests or receives from an agency a Federal contract, grant, loan, or a cooperative agreement shall file with that agency a disclosure form, set forth in Appendix B, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (a) of this section if paid for with appropriated funds.

(d) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a statement, set forth in Appendix A, whether that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

(e) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a disclosure form, set forth in Appendix B, if that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

(___.105 Definitions.

For purposes of this part:

(a) Agency, as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1).

(b) Covered Federal action means any of the following Federal actions:

(1) The awarding of any Federal contract;
(2) The making of any Federal grant;
(3) The making of any Federal loan;
(4) The entering into of any cooperative agreement; and,
(5) The extension, continuation, renewal, amendment, or

modification of any Federal contract, grant, loan, or cooperative agreement.

Covered Federal action does not include receiving from an agency a commitment providing for the United States to insure or guarantee a loan. Loan guarantees and loan insurance are addressed independently within this part.

(c) Federal contract means an acquisition contract awarded by an agency, including those subject to the Federal Acquisition Regulation (FAR), and any other acquisition contract for real or personal property or services not subject to the FAR.

(d) Federal cooperative agreement means a cooperative agreement entered into by an agency.

(e) Federal grant means an award of financial assistance in the form of money, or property in lieu of money, by the Federal Government or a direct appropriation made by law to any person. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, loan insurance, interest subsidies, insurance, or direct United States cash assistance to an individual.

(f) Federal loan means a loan made by an agency. The term does not include loan guarantee or loan insurance.

(g) Indian tribe and tribal organization have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B). Alaskan Natives are included under the definitions of Indian tribes in that Act.

(h) Influencing or attempting to influence means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

(i) Loan guarantee and loan insurance mean an agency's guarantee or insurance of a loan made by a person.

(j) Local government means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

(k) Officer or employee of an agency includes the following individuals who are employed by an agency:

(1) An individual who is appointed to a position in the Government under title 5, U.S. Code, including a position

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under a temporary appointment;
(2) A member of the uniformed services as defined in section 101(3), title 37, U.S. Code;
(3) A special Government employee as defined in section 202, title 18, U.S. Code; and,
(4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, U.S. Code appendix 2.

(l) Person means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

(m) Reasonable compensation means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

(n) Reasonable payment means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

(o) Recipient includes all contractors, subcontractors at any tier, and subgrantees at any tier of the recipient of funds received in connection with a Federal contract, grant, loan, or cooperative agreement. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

(p) Regularly employed means, with respect to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement or a commitment providing for the United States to insure or guarantee a loan, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract, grant, loan, cooperative agreement, loan insurance commitment, or loan guarantee commitment. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

(q) State means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or

possession of the United States, an agency or instrumentality of a State, and a multi-State, regional, or interstate entity having governmental duties and powers.

(___.110 Certification and Disclosure.

(a) Each person shall file a certification, and a disclosure form, if required, with each submission that initiates agency consideration of such person for:
(1) Award of a Federal contract, grant, or cooperative agreement exceeding $100,000; or
(2) An award of a Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding $150,000.

(b) Each person shall file a certification, and a disclosure form, if required, upon receipt by such person of:
(1) A Federal contract, grant, or cooperative agreement exceeding $100,000; or
(2) A Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding $150,000,
unless such person previously filed a certification, and a disclosure form, if required, under paragraph (a) of this section.

(c) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraphs (a) or (b) of this section. An event that materially affects the accuracy of the information reported includes:
(1) A cumulative increase of $25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
(2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or,
(3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(d) Any person who requests or receives from a person referred to in paragraphs (a) or (b) of this section:
(1) A subcontract exceeding $100,000 at any tier under a Federal contract;
(2) A subgrant, contract, or subcontract exceeding $100,000 at any tier under a Federal grant;
(3) A contract or subcontract exceeding $100,000 at any tier under a Federal loan exceeding $150,000; or,
(4) A contract or subcontract exceeding $100,000 at any tier under a Federal cooperative agreement,

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shall file a certification, and a disclosure form, if required, to the next tier above.

(e) All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in paragraphs (a) or (b) of this section. That person shall forward all disclosure forms to the agency.

(f) Any certification or disclosure form filed under paragraph (e) shall be treated as a material representation of fact upon which all receiving tiers shall rely. All liability arising from an erroneous representation shall be borne solely by the tier filing that representation and shall not be shared by any tier to which the erroneous representation is forwarded. Submitting an erroneous certification or disclosure constitutes a failure to file the required certification or disclosure, respectively. If a person fails to file a required certification or disclosure, the United States may pursue all available remedies, including those authorized by section 1352, title 31, U.S. Code.

(g) For awards and commitments in process prior to December 23, 1989, but not made before that date, certifications shall be required at award or commitment, covering activities occurring between December 23, 1989, and the date of award or commitment. However, for awards and commitments in process prior to the December 23, 1989 effective date of these provisions, but not made before December 23, 1989, disclosure forms shall not be required at time of award or commitment but shall be filed within 30 days.

(h) No reporting is required for an activity paid for with appropriated funds if that activity is allowable under either Subpart B or C.

Subpart B - Activities by Own Employees

(___.200 Agency and legislative liaison.

(a) The prohibition on the use of appropriated funds, in (___.100 (a), does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(b) For purposes of paragraph (a) of this section, providing any information specifically requested by an agency or Congress is allowable at any time.

(c) For purposes of paragraph (a) of this section, the following agency and legislative liaison activities are allowable at any

time only where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and,

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(d) For purposes of paragraph (a) of this section, the following agency and legislative liaison activities are allowable only where they are prior to formal solicitation of any covered Federal action:

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and,

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507 and other subsequent amendments.

(e) Only those activities expressly authorized by this section are allowable under this section.

(___.205 Professional and technical services.

(a) The prohibition on the use of appropriated funds, in (___.100 (a), does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement or an extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract, grant, loan, or cooperative agreement or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract, grant, loan, or cooperative agreement.

(b) For purposes of paragraph (a) of this section, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a

licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they

directly in the preparation, submission, or negotiation of any commitment providing for the United States to insure or guarantee a loan.

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licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(d) Only those services expressly authorized by this section are allowable under this section.

(___.210 Reporting.

No reporting is required with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

Subpart C - Activities by Other than Own Employees

(___.300 Professional and technical services.

(a) The prohibition on the use of appropriated funds, in (___.100 (a), does not apply in the case of any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action, if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract, grant, loan, or cooperative agreement or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract, grant, loan, or cooperative agreement.

(b) The reporting requirements in (___.110 (a) and (b) regarding filing a disclosure form by each person, if required, shall not apply with respect to professional or technical services rendered

directly in the preparation, submission, or negotiation of any commitment providing for the United States to insure or guarantee a loan.

(c) For purposes of paragraph (a) of this section, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(d) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(e) Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(f) Only those services expressly authorized by this section are allowable under this section.

Subpart D - Penalties and Enforcement

(___.400 Penalties.

(a) Any person who makes an expenditure prohibited herein shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such expenditure.

(b) Any person who fails to file or amend the disclosure form (see Appendix B) to be filed or amended if required herein, shall

Subpart E - Exemptions

(b) Any person who fails to file or amend the disclosure form (see Appendix B) to be filed or amended if required herein, shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

(c) A filing or amended filing on or after the date on which an administrative action for the imposition of a civil penalty is commenced does not prevent the imposition of such civil penalty for a failure occurring before that date. An administrative action is commenced with respect to a failure when an investigating official determines in writing to commence an investigation of an allegation of such failure.

(d) In determining whether to impose a civil penalty, and the amount of any such penalty, by reason of a violation by any person, the agency shall consider the nature, circumstances, extent, and gravity of the violation, the effect on the ability of such person to continue in business, any prior violations by such person, the degree of culpability of such person, the ability of the person to pay the penalty, and such other matters as may be appropriate.

(e) First offenders under paragraphs (a) or (b) of this section shall be subject to a civil penalty of $10,000, absent aggravating circumstances. Second and subsequent offenses by persons shall be subject to an appropriate civil penalty between $10,000 and $100,000, as determined by the agency head or his or her designee.

(f) An imposition of a civil penalty under this section does not prevent the United States from seeking any other remedy that may apply to the same conduct that is the basis for the imposition of such civil penalty.

(___.405 Penalty procedures.

Agencies shall impose and collect civil penalties pursuant to the provisions of the Program Fraud and Civil Remedies Act, 31 U.S.C. sections 3803 (except subsection (c)), 3804, 3805, 3806, 3807, 3808, and 3812, insofar as these provisions are not inconsistent with the requirements herein.

(___.410 Enforcement.

The head of each agency shall take such actions as are necessary to ensure that the provisions herein are vigorously implemented and enforced in that agency.

Subpart E - Exemptions

(___.500 Secretary of Defense.

(a) The Secretary of Defense may exempt, on a case-by-case basis, a covered Federal action from the prohibition whenever the Secretary determines, in writing, that such an exemption is in the national interest. The Secretary shall transmit a copy of each such written exemption to Congress immediately after making such a determination.

(b) The Department of Defense may issue supplemental regulations to implement paragraph (a) of this section.

Subpart F - Agency Reports

(___.600 Semi-annual compilation.

(a) The head of each agency shall collect and compile the disclosure reports (see Appendix B) and, on May 31 and November 30 of each year, submit to the Secretary of the Senate and the Clerk of the House of Representatives a report containing a compilation of the information contained in the disclosure reports received during the six-month period ending on March 31 or September 30, respectively, of that year.

(b) The report, including the compilation, shall be available for public inspection 30 days after receipt of the report by the Secretary and the Clerk.

(c) Information that involves intelligence matters shall be reported only to the Select Committee on Intelligence of the Senate, the Permanent Select Committee on Intelligence of the House of Representatives, and the Committees on Appropriations of the Senate and the House of Representatives in accordance with procedures agreed to by such committees. Such information shall not be available for public inspection.

(d) Information that is classified under Executive Order 12356 or any successor order shall be reported only to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives or the Committees on Armed Services of the Senate and the House of Representatives (whichever such committees have jurisdiction of matters involving such information) and to the Committees on Appropriations of the Senate and the House of Representatives in accordance with procedures agreed to by such committees. Such information shall not be available for public inspection.

(e) The first semi-annual compilation shall be submitted on May 31, 1990, and shall contain a compilation of the disclosure reports received from December 23, 1989 to March 31, 1990.

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(f) Major agencies, designated by the Office of Management and Budget (OMB), are required to provide machine-readable compilations to the Secretary of the Senate and the Clerk of the House of Representatives no later than with the compilations due on May 31, 1991. OMB shall provide detailed specifications in a memorandum to these agencies.

(g) Non-major agencies are requested to provide machine-readable compilations to the Secretary of the Senate and the Clerk of the House of Representatives.

(h) Agencies shall keep the originals of all disclosure reports in the official files of the agency.

(___.605 Inspector General report.

(a) The Inspector General, or other official as specified in paragraph (b) of this section, of each agency shall prepare and submit to Congress each year, commencing with submission of the President's Budget in 1991, an evaluation of the compliance of that agency with, and the effectiveness of, the requirements herein. The evaluation may include any recommended changes that may be necessary to strengthen or improve the requirements.

(b) In the case of an agency that does not have an Inspector General, the agency official comparable to an Inspector General shall prepare and submit the annual report, or, if there is no such comparable official, the head of the agency shall prepare and submit the annual report.

(c) The annual report shall be submitted at the same time the agency submits its annual budget justifications to Congress.

(d) The annual report shall include the following: All alleged violations relating to the agency's covered Federal actions during the year covered by the report, the actions taken by the head of the agency in the year covered by the report with respect to those alleged violations and alleged violations in previous years, and the amounts of civil penalties imposed by the agency in the year covered by the report.

Appendix A to Part ___ - Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

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Statement for Loan Guarantees and Loan Insurance
The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Appendix B to Part ___ - Disclosure Form to Report Lobbying.

[See attached.]

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:
☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Status of Federal Action:
☐ a. bid/offer/application
b. initial award
c. post-award

3. Report Type:
☐ a. initial filing
b. material change
For Material Change Only:
year _____ quarter ____
date of last report _____

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee
Tier ____, *if known:*
Congressional District, *if known:*

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
Congressional District, *if known:*

6. Federal Department/Agency:

7. Federal Program Name/Description:
CFDA Number, *if applicable:* _____

8. Federal Action Number, *if known:*

9. Award Amount, *if known:*
$

10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI):*

b. Individuals Performing Services *(including address if different from No. 10a)* *(last name, first name, MI):*

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply):*
$ _____ ☐ actual ☐ planned

12. Form of Payment *(check all that apply):*
☐ a. cash
☐ b. in-kind; specify: nature _____
value _____

13. Type of Payment *(check all that apply):*
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: _____

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ **Date:** _____

Federal Use Only:

Authorized for Local Reproduction
Standard Form - LLL

BEST COPY AVAILABLE

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

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INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 mintues per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

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Appendix C to Part ___ - Contract Clause

NEW RESTRICTIONS ON LOBBYING

(a) Definitions. As used in this clause,

"Agency", as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1).

"Covered Federal action" means any of the following Federal actions:

(1) The awarding of any Federal contract;
(2) The making of any Federal grant;
(3) The making of any Federal loan;
(4) The entering into of any cooperative agreement; and,
(5) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

Covered Federal action does not include receiving from an agency a commitment providing for the United States to insure or guarantee a loan.

"Indian tribe" and "tribal organization" have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B). Alaskan Natives are included under the definitions of Indian tribes in that Act.

"Influencing or attempting to influence" means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government" means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Officer or employee of an agency" includes the following individuals who are employed by an agency:

(1) An individual who is appointed to a position in the Government under title 5, U.S. Code, including a position under a temporary appointment;
(2) A member of the uniformed services as defined in section 101(3), title 37, U.S. Code;
(3) A special Government employee as defined in section 202, title 18, U.S. Code; and,

(4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, U.S. Code appendix 2.

"Person" means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Reasonable compensation" means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

"Reasonable payment" means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

"Recipient" includes all contractors and subcontractors at any tier in connection with a Federal contract. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed" means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State, regional, or interstate entity having governmental duties and powers.

(b) Prohibition.

(1) Section 1352 of title 31, U.S. Code provides in part that no appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay

any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or

(b)(2) (E) Only those activities expressly authorized by paragraph (b)(2) (i) of this section are allowable under paragraph (b)(2)

any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) The prohibition does not apply as follows:

(i) Agency and legislative liaison by Own Employees.

(A) The prohibition on the use of appropriated funds, in paragraph (b)(1) of this section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(B) For purposes of paragraph (b)(2)(i)(A) of this section, providing any information specifically requested by an agency or Congress is allowable at any time.

(C) For purposes of paragraph (b)(2)(i)(A) of this section, the following agency and legislative liaison activities are allowable at any time only where they are not related to a specific solicitation for any covered Federal action:

1 (1) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and,

2 (2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(D) For purposes of paragraph (b)(2)(i)(A) of this section, the following agency and legislative liaison activities are allowable only where they are prior to formal solicitation of any covered Federal action:

1 (1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

2 (2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and,

3 (3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507 and other subsequent amendments.

(E) Only those activities expressly authorized by paragraph (b)(2)(i) of this section are allowable under paragraph (b)(2)(i).

(ii) Professional and technical services by Own Employees.

(A) The prohibition on the use of appropriated funds, in paragraph (b)(1) of this section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract or an extension, continuation, renewal, amendment, or modification of a Federal contract if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract.

(B) For purposes of paragraph (b)(2)(ii)(A) of this section, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(C) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

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(b)(2) (D) Only those services expressly authorized by paragraph (ii) of this section are allowable under paragraph (b)(2)(ii).

(iii) Reporting for Own Employees.

No reporting is required with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(iv) Professional and technical services by Other than Own Employees.

(A) The prohibition on the use of appropriated funds, in paragraph (b)(1) of this section, does not apply in the case of any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action, if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract.

(b)(2)(iv) (B) For purposes of paragraph (A) of this section, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(C) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(D) Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(b)(2) (E) Only those services expressly authorized by paragraph (iv) of this section are allowable under paragraph (b)(2)(iv).

(c) Disclosure.

(1) Each person who requests or receives from an agency a Federal contract shall file with that agency a certification, set forth in ____, that the person has not made, and will not make, any payment prohibited by paragraph (b) of this clause.

(2) Each person who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, Standard Form-LLL, "Disclosure of Lobbying Activities," if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (b) of this clause if paid for with appropriated funds.

(3) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraph (c)(2) of this section. An event that materially affects the accuracy of the information reported includes:

(i) A cumulative increase of $25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(ii) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or,

(iii) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(4) Any person who requests or receives from a person referred to in paragraph (c)(1) of this section a subcontract exceeding $100,000 at any tier under a Federal contract shall file a certification, and a disclosure form, if required, to the next tier above.

(5) All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred

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(5) All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in paragraph (c)(1) of this section. That person shall forward all disclosure forms to the agency.

(d) Agreement. In accepting any contract resulting from this solicitation, the person submitting the offer agrees not to make any payment prohibited by this clause.

(e) Penalties.

(1) Any person who makes an expenditure prohibited under paragraph (b) of this clause shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such expenditure.

(2) Any person who fails to file or amend the disclosure form to be filed or amended if required by this clause, shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

(3) Contractors may rely without liability on the representations made by their subcontractors in the certification and disclosure form.

(f) Cost allowability. Nothing in this clause is to be interpreted to make allowable or reasonable any costs which would be unallowable or unreasonable in accordance with Part 31 of the Federal Acquisition Regulation. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any of the provisions of Part 31 of the Federal Acquisition Regulation.

(End of Clause)

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H.R. 1/Pub. L. 101–235

Department of Housing and Urban Development Reform Act of 1989. (Dec. 15, 1989; 103 Stat. 1987; 73 pages) Price: $2.25

H.R. 3671/Pub. L. 101–236

To amend the Federal Aviation Act of 1958 to extend the civil penalty assessment demonstration program. (Dec. 15, 1989; 103 Stat. 2060; 2 pages) Price: $1.00

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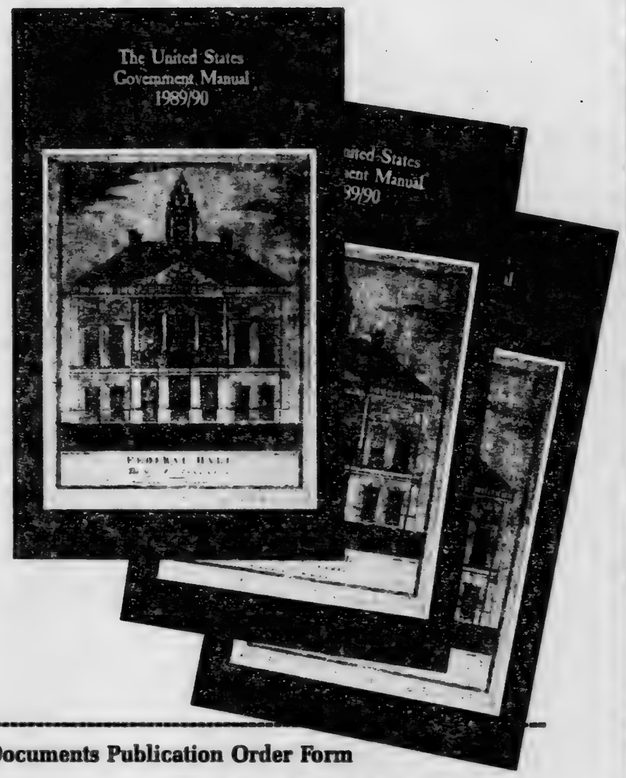

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Rules and Regulations

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206-AD66

Federal Employees Health Benefits Program—Temporary Continuation of Coverage

AGENCY: Office of Personnel Management.

ACTION: Interim regulations with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to implement title II of Public Law 100-654, the "Federal Employees Health Benefits Amendments Act of 1988." Title II of Public Law 100-654 adds section 8905a to title 5, U.S. Code, which provides for the temporary continuation of coverage under the Federal Employees Health Benefits (FEHB) Program for (1) certain employees who separate from Federal service, (2) children of Federal employees and annuitants who lose their status as family members, and (3) certain former spouses of employees and annuitants who would not otherwise be eligible for continued FEHB coverage.

DATES: Interim regulations are effective January 1, 1990. Comments must be received on or before January 22, 1990.

ADDRESS: Written comments may be sent to Reginald M. Jones, Jr., Assistant Director, Office of Retirement and Insurance Policy, Retirement and Insurance Group, Office of Personnel Management, P.O. Box 57, Washington, DC 20044, or delivered to OPM, room 4351, 1900 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Margaret Sears, (202) 632-4634.

SUPPLEMENTARY INFORMATION: The interim regulations identify the individuals who are eligible to temporarily continue their FEHB coverage and explain the circumstances of the temporary continuation. The interim regulations also revise the current regulations to include this new type of coverage and new type of enrollee in all the appropriate existing provisions.

Individuals Who May Temporarily Continue Coverage

Under the interim regulations, the following individuals can temporarily continue their health benefits coverage:

1. Employees who (1) are separated from service, voluntarily or involuntarily, unless the separation is for "gross misconduct"; and (2) would not otherwise be eligible for continued coverage (not counting the 31-day extension of coverage or conversion right).

2. Children who (1) have been covered under an employee's or annuitant's enrollment because they meet the requirements for unmarried dependent children of the employee or annuitant; (2) stop meeting the requirements for unmarried dependent children of the employee or annuitant; and (3) would not otherwise be eligible for coverage or conversion right.

This group includes children who marry before reaching age 22, children who lose coverage because they reach age 22, children who lose their status as stepchildren or foster children, children who no longer meet coverage requirements as recognized natural children, and disabled children age 22 or older who marry, recover from their disability, or become able to support themselves. Also included are children who receive survivor annuities and whose regular coverage had continued after the death of the employee or annuitant because they had been covered family members of the deceased employee or annuitant.

3. Former spouses who meet the requirement in 5 U.S.C. 8901(10) of having been enrolled in an FEHB plan as a covered family member at some time during the 18 months before the marriage ended, but do not meet one or both of the other two requirements of 5 U.S.C. 8901(10) because they have either remarried before reaching age 55 or are not entitled to a portion of the employee or annuitant's annuity benefit or a survivor benefit based on the employee or annuitant's service.

Note: Public Law 100-654 also provides for temporary continuation of coverage for spouses whose coverage as a family member ends because of a legal separation. Under FEHB, legal separation does not end the coverage of a spouse; therefore, this provision of law has no practical effect.

Determining Gross Misconduct

Under Public Law 100-654, temporary continuation of health benefits coverage is not available to an employee who is involuntarily separated due to "gross misconduct." The law requires OPM to define "gross misconduct" through regulation.

The term "gross misconduct" does not have a specific definition in law; therefore, we are providing a definition that conforms closely with the meaning the term is generally understood to have in the legal community. OPM will provide guidance on how to apply the definition through the Federal Personnel Manual (FPM) issuance system. Generally, an offense punishable as a felony is considered gross misconduct, but lesser offenses may also be gross misconduct depending on the circumstances. There are also elements in the determination of gross misconduct that go beyond the seriousness of the offense itself. For example:

- There must be a nexus between the offense and the employee's job. Also, some individuals, such as judges, are held to a higher standard of conduct than others.
- The employee must have the ability to understand the gravity of his or her conduct.
- The offense must be affirmative and willful, not simply negligent.

The interim regulations also provide administrative procedures similar to those used for adverse actions under chapter 75 of title 5, U.S.C.—written notice of the reason(s) for the denial of the benefit, the right of the employee to reply orally or in writing, and the right of representation. In most cases, these administrative requirements could be merged with the adverse action proceedings that triggered the need for the gross misconduct determination. Under these regulations, the agency is responsible for issuing any final decision, which is not subject to review by OPM. The former employee may file

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suit in a district court if he or she wants to challenge the agency directly.

Although these determinations are similar to determinations to remove an employee under adverse action procedures, the gross misconduct standard is more serious than the minimum standards for removal. Some removals under adverse action procedures are not even disciplinary in nature; for example, refusal to transfer with one's function. Therefore, determinations for removal are not synonymous with gross misconduct.

If the Merit Systems Protection Board, an arbitrator, or another third party were to reverse a removal, any determination the agency might have made concerning whether an offense constituted gross misconduct would become void because there would be no involuntary separation causing a loss of health benefits coverage.

Election of Temporary Continuation of Coverage

The interim regulations require employing offices to notify separating employees of their opportunity to elect temporary continuation of coverage within 30 days after their coverage would otherwise end, including the 31-day extension of coverage for conversion. (Regular health benefits coverage ends on the last day of the pay period in which the employee separated. The 31-day extension begins on the next day.) The employee has 60 days after receiving the notice (or after separation, if later) to elect continued coverage.

In the case of children who are eligible to continue coverage under this provision, the employee or annuitant enrollee has the responsibility of notifying the employing office of the change in the child's status within 60 days after the change. The employing office then has 14 days to notify the child of his or her rights. Under the law, if the enrollee does not notify the agency within the time limit, the child's opportunity to elect temporary continuation of coverage ends 60 days after the change in status. The regulations also allow the employing office to notify the child of his or her rights after having learned of the child's change in status by some means other than written notice from the enrollee; however, in this case, the child's opportunity to make the election does not extend beyond 60 days after the change in status.

In the case of former spouses who are eligible to continue coverage under this provision, either the employee or the former spouse may notify the employing office within 60 days after the termination of the marriage. The employing office then has 14 days to notify the former spouse of his or her rights. If neither the employee nor the former spouse notified the employing agency within the 60-day period, the opportunity to elect temporary continuation of coverage ends 60 days after the marriage ended.

Special Eligibility Provision for Former Spouses

These regulations clarify that a former spouse who did not meet the requirement for continuation of health benefits coverage under the spouse equity provisions (5 CFR part 890, subpart H), including the requirement to provide acceptable documentation of a qualifying court order, may continue coverage under the temporary continuation provisions. In this way, the former spouse's continued coverage can begin with no break in coverage as a former spouse under temporary coverage provisions. If he or she later supplies the required documentation, the enrollment can be changed to an enrollment under spouse equity provisions. The spouse equity provisions allow coverage to continue for so long as the former spouse does not marry before reaching age 55. Also, the 2 percent administrative charge does not apply to spouse equity enrollments.

Paying the Premiums

The interim regulations provide that the former employee, child, or former spouse who elects temporary continuation of coverage must pay, on a current basis, both the employee and agency contributions, plus a 2 percent charge for administrative expenses. These payments must be made to the employing office, unless the employing office chooses to use a centralized collection service sponsored by OPM, if available, to collect the payments and provide some of the administrative services.

Coverage and premiums begin on the day after the 31-day extension of coverage ends. If the former employee, child, or former spouse submits the election after that date, coverage and premiums are retroactive.

Enrolling for Temporary Continuation of Coverage

Under the interim regulations, former employees, children, and former spouses who temporarily continue health coverage are not limited to the plan, option, or type of enrollment of the covering enrollment at the time of the qualifying event. They may enroll in any plan in which they are otherwise eligible to enroll. However, children and former spouses may enroll for continued coverage in the employee organization plan that was the covering enrollment at the time of the qualifying event without the requirement for paying membership dues.

Under Public Law 100-654, when a child enrolls for family coverage, covered family members are his or her spouse and children. However, under the interim regulations, covered family members of a former spouse who enrolls for family coverage are limited to those who are children of both the employee and the former spouse. This is consistent with existing regulations regarding family members of former spouses who continue health benefits coverage under the spouse equity provisions.

Length of Temporary Continuation of Coverage

Under the law, a former employee's temporary continuation of coverage ends no later than 18 months after the date of separation from service. The regulations clarify that the coverage can continue the full 18 months unless some other event, such as cancellation causes it to end earlier.

A child is eligible for temporary continuation of coverage for 36 months after the child's change in status if the change in status occurs while the parent is an employee or annuitant. If the child's change in status occurs while the child is covered as a family member during a period of temporary continuation of coverage following an employee's separation, the child's coverage can continue for 36 months after the date of the employee's separation.

A former spouse is eligible for temporary continuation of coverage for 36 months after the marriage ends if it ends while he or she is covered as a family member of an employee or annuitant. If the marriage ends while the former spouse is covered as a family member during a period of temporary continuation of coverage following an employee's separation, the former spouse's coverage can continue for 36 months after the employee's separation.

The temporary continuation of coverage ends earlier if the enrollee does not pay the premiums or cancels. It also ends earlier if the enrollee again acquires coverage under the regular FEHB provisions.

Under the interim regulations, if an enrollee's coverage ends before the period of temporary continuation expires, he or she generally is not allowed to reenroll. However, if temporary enrollment ends because the enrollee acquires other FEHB coverage

(for example, becomes covered as the spouse of an employee), and that coverage ends before the period of temporary continuation expires, the individual may reenroll within 31 days after the other FEHB coverage ends. The period of reenrollment cannot extend beyond the expiration date of the original 18- or 36-month period of temporary continuation of coverage.

Changes in Enrollment

Under Public Law 100-654, former employees, children, and former spouses with temporary continuation of coverage can change their enrollment during open season, within 60 days after a change in family status, or at other times as OPM regulates. The interim regulations provide opportunities for these individuals to change their enrollment, based on the same events as employees and annuitants, except for events that are inappropriate to a nonemployee.

Conversion to a Nongroup Contract

When the temporary continuation of coverage ends (except by cancellation of coverage or nonpayment of premiums) a former employee, child, former spouse, or family member is entitled to a temporary extension of coverage and an opportunity to convert to a nongroup contract just as are other FEHB enrollees.

Effect of Temporary Continuation of Coverage on Future Entitlement During Retirement

Under the FEHB Program, a retiring employee must have been covered under FEHB for the 5 years of Federal service immediately before retirement (or, if less than 5 years, for all periods of service during which he or she was eligible for coverage) in order to continue coverage after retirement. The interim regulations clarify that a former employee's enrollment or eligibility for enrollment under the temporary continuation of coverage provisions is not considered in determining whether the retiring employee meets these participation requirements. This is because the person is not a Federal employee at that time. However, an employee who is covered as a family member under the temporary continuation of coverage of another person is considered to be participating in the FEHB Program.

Notifying Current Employees about Temporary Continuation of Coverage

Public Law 100-654 requires OPM to ensure that all employees eligible to enroll in FEHB (including those not actually enrolled) be informed of the rights afforded under this law. Therefore, the regulations require employing offices to distribute informational material provided by OPM to employees before the regular Fall open season.

Workers' Compensation Cases

For most enrollees, the "employing office" that notifies individuals of their eligibility for temporary continuation of coverage, takes care of administrative matters for the enrollee (such as determining whether an enrollee is eligible to change plans due to an event other than open season), and arranges for collection of premiums is the office having the authority to approve payment of pay or annuity at the time the qualifying event occurs. However, in the case of employees who are receiving recurring benefits from the Office of Workers' Compensation Programs (OWCP) when the qualifying event occurs, the regulations provide that the "employing office" is the office actually employing the individual. Most employees who are receiving recurring benefits from OWCP do so on a temporary basis. When they recover, they return to work and health benefits withholding from pay resumes. On the other hand, most compensationers who have been separated from service are unlikely to return to Federal employment and will continue to receive compensation indefinitely. For these compensationers, the regulations provide that OWCP serves as the employing office for family members who become eligible for temporary continuation of coverage.

Miscellaneous

The interim regulations also revise § 890.301(k) to allow OPM to set a time for enrollees to change plans when a plan terminates at the end of a contract year, but the fact that the termination will occur is not known in time for employees to make changes during the open season.

The interim regulations revise § 890.401 to reflect a policy change published as interim regulations on April 28, 1986, at 51 FR 15744. These interim regulations specify that a change to self only does not act as cancellation for covered family members. This allows the spouse and children of an employee or annuitant who changes to self only coverage to convert to a nongroup contract.

These regulations also clarify that nonpayment of premiums is considered a voluntary cancellation of continued coverage under the spouse equity provisions (5 CFR, subpart H). Therefore, if coverage ends because of nonpayment, there is no premium-free 31-day temporary extension of coverage for conversion and no right to convert because the law excludes those who voluntarily cancel from this provision. Often, people who no longer need FEHB coverage find it easier to simply stop making payments than to write a letter or complete a form to cancel the coverage. This clarification places those whose coverage terminates by inaction to pay premiums on the same footing as those who file a request to cancel.

Waiver of Notice of Proposed Rulemaking

Pursuant to section 553(b)(3)(B) of title 5 of the U.S. Code, I find that good cause exists for waiving the general notice of proposed rulemaking. OPM must issue regulations to implement title II of Public Law 100-654, which is effective on January 1, 1990. In addition, employing offices need a certain amount of lead time in order to implement the regulations by the effective date. These concerns make it impractical to publish proposed regulations.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect, for a limited period of time, former Federal employees and former dependents of Federal employees and annuitants.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, Health insurance, Retirement.

Constance B. Newman,

Director, U.S. Office of Personnel Management.

Accordingly, OPM is amending 5 CFR part 890 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for part 890 is revised to read as follows:

Authority: 5 U.S.C. 8913; § 890.102 also issued under 5 U.S.C. 1104 and Pub.L. 100-654; § 890.803 also issued under sec. 303 of Pub. L. 99-569, 100 Stat. 3190, sec. 188 of Pub. L. 100-204, 101 Stat. 1331, and sec. 204 of Pub. L. 100-238, 101 Stat. 1744; Subpart K also issued under title II of Pub. L. 100-654.

2. Section 890.101(a) is amended as follows:

a. By revising the definitions of "cancellation," "change of enrollment," the introductory text and paragraph (7)

of "employing office," "foster child," and "pay period" as set forth below.

annuitants, former employees, former spouses, or children who are enrolled

child may request OPM to reconsider a decision of an employing office that

all contracts of this class, except that it may be canceled for fraud.

§ 890.202 Minimum standards for health benefits carriers.

a former spouse who is continuing coverage under subpart H or subpart K

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of "employing office," "foster child," and "pay period" as set forth below.

b. By adding alphabetically the definitions of "collection service," "covered family member," and "enrollee" as set forth below.

§ 890.101 Definitions; time computations.

(a) * * *

"Cancellation" means the act of filing a health benefits registration form terminating enrollment in a health benefits plan and electing not to be enrolled for the future by an enrollee who is eligible to continue enrollment.

"Change of enrollment" means the registration of an enrollee to be enrolled for a different plan or option, or for a different type of coverage (self alone or self and family), from that for which then enrolled.

* * * * *

"Collection service" means a service sponsored by OPM for collecting direct health benefits payments from enrollees who are not also employees and for providing limited administrative services.

* * * * *

"Covered family member" means a member of the family of an enrollee with a self and family enrollment who meets the requirements of §§ 890.302, 890.804, or 890.1106(a), as appropriate to the type of enrollee.

* * * * *

"Employing office" means the office of an agency to which jurisdiction and responsibility for health benefits actions for an employee, an annuitant, a former spouse eligible for continued coverage under subpart H of this part, or an individual eligible for temporary continuation of coverage under subpart K of this part, have been delegated. The term "employing office" includes a collection service with regard to those functions that it is performing for an employing office.

* * * * *

(7) For a former employee, child, or former spouse entitled to continued coverage under subpart K of this part, the "employing office" is the agency that employs the employee at the time the qualifying event occurs or the office having the authority to approve payment of the annuity or basic death benefit at the time the qualifying event occurs. In the case of the family members of a compensationer who is not a current employee at the time the qualifying event occurs, the "employing office" is the Office of Workers' Compensation Programs.

"Enrollee" means the individual in whose name the enrollment is carried. The term includes employees, annuitants, former employees, former spouses, or children who are enrolled after completing a valid registration form under the provisions of §§ 890.301, 890.601(c), 890.803, or 890.1103 or have continued an enrollment as an annuitant or survivor annuitant under 5 U.S.C. 8905(b) or § 890.303(c).

"Foster child" means a child who:

(1) Lives with an employee, former employee, or annuitant or with a child enrolled under § 890.1103(a)(2) in a regular parent-child relationship and

(2) Is expected to be raised to adulthood by the enrollee.

* * * * *

"Pay period" means the biweekly pay period established pursuant to section 5504 of title 5, United States Code, for the employees to whom that section applies and the regular pay period for employees not covered by that section. "Pay period," as it relates to a former spouse or annuitant who is not actively receiving an annuity, including surviving spouses receiving a basic employee death benefit, and enrollees temporarily continuing coverage under subpart K of this part, means any regular pay period for employees of the agency to which jurisdiction and responsibility for health benefits actions for the enrollee have been delegated as provided under the definition of "employing office" in this section. "Pay period" for annuitants in active receipt of annuity means the period for which a single installment of annuity is customarily paid. For enrollees who are paying directly to a collection service, the "pay period" is the period specified by the collection service.

* * * * *

3. In § 890.103, paragraph (c) is revised to read as follows:

§ 890.103 Correction of errors.

* * * * *

(c) OPM may order the termination of an enrollment in any comprehensive medical plan described in section 8903(4) of title 5, United States Code, and permit the individual to enroll in another health benefits plan for purposes of this part, upon a showing satisfactory to OPM that the furnishing of adequate medical care is jeopardized by a seriously impaired relationship between a patient and the comprehensive medical plan's affiliated health care providers.

4. In § 890.104, paragraphs (a) and (c) are revised to read as follows:

§ 890.104 Initial decisions and reconsideration.

(a) *Who may file.* Except as provided under § 890.1112, an employee, former employee, annuitant, former spouse, or child may request OPM to reconsider a decision of an employing office that denies coverage or change of enrollment.

* * * * *

(c) *Initial decision.* An OPM decision for an annuitant, former spouse, or child is considered an initial decision when rendered by OPM in writing and stating the right to reconsideration. However, an initial decision rendered at the highest level of review available within OPM is not subject to reconsideration.

* * * * *

5. In § 890.201, paragraphs (a) (2) through (5), paragraph (a)(9) and paragraph (b)(4) are revised to read as follows:

§ 890.201 Minimum standards for health benefits plans.

(a) * * *

(2) Accept the enrollment, in accordance with this part, and without regard to age, race, sex, health status, or hazardous nature of employment, of each eligible employee, annuitant, former spouse, former employee, or child, except that a plan that is sponsored or underwritten by an employee organization may not accept the enrollment of a person who is not a member of the organization, but it may not limit membership in the organization on account of the prohibited factors (age, race, sex, health status, or hazardous nature of employment). The carrier may terminate the enrollment of an enrollee other than a survivor annuitant, a former spouse continuing coverage under § 890.803, or person continuing coverage under § 890.1103(a)(2) or (3), in a health benefits plan sponsored or underwritten by an employee organization on account of termination of membership in the organization. A carrier that wants to terminate the enrollment of an enrollee under this paragraph may do so by notifying the employing office in writing, with a copy of the notice to the enrollee. The termination is effective at the end of the pay period in which the employing office receives the notice. A comprehensive medical plan need not enroll an employee, annuitant, former employee, former spouse, or child residing outside the geographic areas specified by the plan.

(3) Provide health benefits for each enrollee and covered family member wherever they may be.

(4) Provide for conversion to a contract for health benefits regularly offered by the carrier, or an appropriate affiliate, for group conversion purposes, which must be guaranteed renewable, subject to such amendments as apply to

all contracts of this class, except that it may be canceled for fraud, overinsurance, or nonpayment of periodic charges. A carrier must permit conversion within the time allowed by the temporary extension of coverage provided under § 890.401 for each enrollee and covered family member entitled to convert. When an employing office gives an enrollee written notice of his or her privilege of conversion, the carrier must permit conversion at any time before 31 days after the date of notice or 91 days after the enrollment is terminated, whichever is earlier. Belated conversion opportunities as provided in § 890.401(c) must also be permitted by the carrier. When OPM requests an extension of time for conversion because of delayed determination of ineligibility for immediate annuity, the carrier must permit conversion until the date specified by OPM in its request for extension. On conversion, the contract becomes effective as of the day following the last day of the temporary extension, and the enrollee or covered family member, as the case may be, must pay the entire cost thereof directly to the carrier. The nongroup contract may not deny or delay any benefit covered by the contract for a person converting from a plan approved under this part except to the extent that benefits are continued under the health benefits plan from which he or she converts.

(5) Provide that each enrollee receive an identification card or cards or other evidence of enrollment.

* * * * *

(9) Provide for continued enrollment to the end of the current pay period, or termination date, if earlier, of each enrollee enrolled at the effective date of termination of a contract. The carrier is entitled to subscription charges for this continued enrollment.

* * * * *

(b) * * *

(4) Have an initiation, service, enrollment, or other fee or charge in addition to the rate charged for the plan, except that a comprehensive medical plan may impose an additional charge to be paid directly by the enrollee for certain medical supplies and services, if the supplies and services on which additional charges are imposed are clearly set forth in advance and are applicable to all enrollees. This subparagraph does not apply to charges for membership in employee organizations sponsoring or underwriting plans.

* * * * *

6. In § 890.202, paragraphs (e) and (f) are revised to read as follows:

§ 890.202 Minimum standards for health benefits carriers.

* * * * *

(e) It must accept, subject to adjustment for error or fraud, in payment of its charges for health benefits for all enrollees in its plan, the enrollment charges received by the Employees Health Benefits (EHB) Fund less amounts set aside for the administrative and contingency reserves prescribed in § 890.503. OPM makes available or pays the amounts within 30 days of receipt by the EHB Fund.

(f) A carrier that is an employee organization must continue coverage, without requirement of membership, of any eligible survivor annuitants, former spouses continuing coverage with the carrier under § 890.803, children temporarily continuing coverage with the carrier under § 890.1103(a)(2), or former spouses temporarily continuing coverage with the carrier under § 890.1103(a)(3).

7. In § 890.203, the first sentence of paragraph (a)(2) is revised to read as follows:

§ 890.203 Application for approval of, and proposal of amendments to, health benefit plans.

(a) * * *

(2) OPM may approve such comprehensive medical plans as, in the judgment of OPM, may be in the best interest of enrollees in the Program. * * *

* * * * *

8. Section 890.301 is amended as follows:

a. By revising paragraphs (d)(3)(ii), (e), (f)(1), (h), (i), (k), (n), (r), and (u) to read as set forth below.

b. By adding paragraph (g)(5) as set forth below.

§ 890.301 Opportunities to register to enroll and change enrollment.

* * * * *

(d) * * *

(3) * * *

(ii) An enrollee may change to another plan, another option, or from self alone to self and family, or may make any combination of these changes.

(e) *Change in family status.* (1) Other than a former spouse who is continuing coverage under subpart H or subpart K of this part or a remarried survivor annuitant, an enrollee may register to change enrollment from self alone to self and family, or from one plan or option to another, or both; and an employee, if not registered to be enrolled, may register to be enrolled at any time during the period beginning 31 days before a change in marital status and ending 60 days after the change in marital status. Other than a former spouse who is continuing coverage under subpart H or subpart K of this part or a remarried survivor annuitant, an enrollee may change enrollment from self alone to self and family within 60 days after any other change in family status.

(2) A former spouse who is continuing coverage under subpart H or subpart K of this part may register to change enrollment from self alone to self and family, or from one plan or option to another, or both, within 60 days after the birth or acquisition of a child who meets the requirements to be a covered family member under § 890.804(a) or § 890.1106(a)(2) of this part.

(f) *Change to self alone.* (1) An enrollee may register at any time to change enrollment from self and family to self alone.

* * * * *

(g) * * *

(5) A former employee, former spouse, or a child whose continued coverage under subpart K of this part terminates because of the provisions of § 890.1110(a)(3) of this part (termination due to other coverage under this part) may reenroll in the same plan and option within 31 days after the other coverage under this part ends, but not later than the expiration of the period described in § 890.1107. If the individual is not eligible to enroll in the plan from which coverage was lost under § 890.1110(a)(3), he or she may enroll in the same option of any available plan. Coverage does not extend beyond the expiration of the period described in § 890.1107 of this part.

(h) *Move from area served by comprehensive medical plan.* If a comprehensive medical plan limits full service to a geographic area, an enrollee in that plan who moves outside the full service area or, if already living outside the full service area, moves further from the full service area, may register at any time after the move to enroll in another health benefits plan.

(i) *Termination by employee organization plan.* An enrollee in a health benefits plan sponsored or underwritten by an employee organization whose membership in the employee organization is terminated may register to enroll in another plan under the following conditions:

(1) Health benefits enrollment is terminated by the plan; and,

(2) Registration to enroll in another plan is submitted within 31 days after termination of enrollment in the employee organization plan. The enrollee may not change enrollment

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from self alone to self and family under this paragraph.

* * * * *

(k) *Termination of plan in which enrolled.* If a plan is discontinued in whole or in part, each enrollee whose enrollment is thereby terminated may enroll in another plan. If the discontinuance is at the end of a contract period that is immediately preceded by an open season, the time for enrollment is the open season, unless OPM establishes a different time for enrollment. If the discontinuance is at a time other than the end of the contract year, OPM must establish a time and effective date for enrollment. Enrollees who fail to change enrollment within the time set are considered to have canceled the plan in which enrolled, except that if one option of a plan is discontinued, enrollees who do not change plans are considered to be enrolled in the remaining option of the plan.

* * * * *

(n) *On becoming eligible for coverage under title XVIII of the Social Security Act.* An enrollee may register, at any time beginning on the 30th day before he or she is eligible for coverage under title XVIII of the Social Security Act (Medicare), to change enrollment to any option of any available plan under this part. A change of enrollment under this paragraph may be made only once.

* * * * *

(r) *Registration by proxy.* In the discretion of the employing office, a representative of an enrollee or individual eligible to enroll under this part, having written authorization to do so, may register for the individual.

* * * * *

(u) *Child's coverage ends.* An enrollee may register to change enrollment from self alone to self and family within 31 days after an eligible child loses coverage under another enrollment under this part.

* * * * *

9. In § 890.302, paragraph (a)(1), the introductory text to (b)(1), paragraphs (b)(1)(iii), (b)(1)(v), (b)(2) introductory text, (b)(2) (ii) and (iii), (c), (d) introductory text, (d)(3), and (e) are revised to read as follows:

§ 890.302 Coverage of family members.

(a)(1) An enrollment for self and family includes all family members who are eligible to be covered by the enrollment. Except as provided in paragraphs (a) (2), (3), and (4) of this section, no employee, former employee, annuitant, child, or former spouse may enroll or be covered as a family member if he or she is covered under another person's self and family enrollment in the FEHB Program.

* * * * *

(b) *Proof of dependency.* (1) A child is considered to be dependent on an enrolled employee or annuitant or a former employee or child enrolled under § 890.1103 of this part if he or she is:

* * * * *

(iii) A stepchild, foster child, or recognized natural child who lives with the enrollee in a regular parent-child relationship.

* * * * *

(v) A recognized natural child to whose support the enrollee makes regular and substantial contributions.

(2) The following are examples of proof of regular and substantial support. More than one of the following proofs may be required to show support of a recognized natural child who does not live with the enrollee in a regular parent-child relationship and for whom a judicial determination of support has not been obtained.

* * * * *

(ii) Proof of inclusion of the child as a dependent on the enrollee's income tax returns;

(iii) Canceled checks, money orders, or receipts for periodic payments from the enrollee for or on behalf of the child.

* * * * *

(c) *Exceptions.* Coverage as a family member may be denied:

(1) If evidence shows that the enrollee did not recognize the child as his or her own, despite a willingness to support the child, or

(2) If evidence calls the child's paternity or maternity into doubt, despite the enrollee's recognition and support of the child.

(d) *Child incapable of self-support.* When an individual enrolls for a family that includes a child who has become 22 years of age and is incapable of self-support, the employing office must require such enrollee to submit a physician's certificate verifying the child's disability. The certificate must—

* * * * *

(3) Be signed by the physician and show the physician's office address. The employing office must require the enrollee to submit the certificate on or before the date the child becomes 22 years of age. However, the employing office may accept otherwise satisfactory evidence of incapacity that is not timely filed.

(e) *Renewal of certificates of incapacity.* The employing office must require an enrollee who has submitted a certificate of incapacity to renew that certificate on the expiration of the minimum period of disability certified.

* * * * *

10. Section 890.303 is revised by adding new paragraphs (a)(4) and (h) to read as follows:

§ 890.303 Continuation of enrollment.

(a) * * *

(4) Enrollment or eligibility for enrollment under subparts H or K of this part of an individual who is not an employee eligible for coverage under other provisions of this part is not considered in determining whether a retiring employee has met the participation requirements of § 8905(b) of title 5, U.S. Code. Coverage under subparts H or K of this part of an individual who is an employee eligible for coverage under other provisions of this part may be considered in determining whether a retiring employee has met the participation requirements.

* * * * *

(h) *Temporary continuation of coverage.* Certain former employees who lose coverage because of a separation from Federal service, certain children who lose coverage because they cease to meet the requirements for coverage as children, and certain former spouses who lose coverage because their marriage to the enrollee ends and who are not eligible for coverage under subpart H of this part may elect temporary continuation of coverage under the provisions of subpart K of this part.

11. Section 890.304 is amended as follows:

a. By revising paragraphs (c) and (d) to read as set forth below.

b. By adding paragraph (e) as set forth below.

§ 890.304 Termination of enrollment.

* * * * *

(c) *Coverage of family members.* The coverage of a family member of an enrollee terminates, subject to the temporary extension of coverage for conversion, at midnight of the earlier of the following dates:

(1) The day on which he or she ceases to be a family member;

(2) The day the enrollee ceases to be enrolled, unless the family member is entitled, as a survivor annuitant, to continued enrollment, or is entitled to continued coverage under the enrollment of another.

(d) *Cancellation.* Except as provided in § 890.807(d) of this part, an enrollee may register to cancel his or her enrollment at any time by filing with the employing office a properly completed health benefits registration form. The cancellation becomes effective on the last day of the pay period in which the health benefits registration form canceling the enrollment is received by the employing office, except that the cancellation of an enrollee having a monthly or 4-weekly pay period becomes effective at the end of the pay period in which the health benefits registration form is received if the form is received not less than 15 days before the end of the pay period. The enrollee and covered family members are not entitled to the temporary extension of coverage for conversion or to convert to an individual contract for health benefits.

(e) *Temporary continuation of coverage.* Employees and family members are entitled to temporary continuation of coverage only as provided under subpart K of this part.

12. In § 890.401, paragraphs (a) and (c)(1) are revised to read as follows:

§ 890.401 Temporary extension of coverage and conversion.

(a) *Thirty-one day extension and conversion.* (1) An enrollee whose enrollment is terminated other than by cancellation of the enrollment or discontinuance of the plan, in whole or part, and a covered family member whose coverage is terminated other than by cancellation of the enrollment or discontinuance of the plan, in whole or in part, is entitled to a 31-day extension of coverage for self alone or self and family, as the case may be, without contributions by the enrollee or the Government, during which period he or she is entitled to exercise the right of conversion provided for by this part. The 31-day extension of coverage and the right of conversion for any person ends on the effective date of a new enrollment under this part covering the person.

(2) Termination of an enrollment under this subpart for failure to pay premiums is considered a cancellation of the enrollment for the purposes of this section.

* * * * *

(c)(1) The employing agency must notify the enrollee of the termination of the enrollment and of the right to convert to an individual policy within 60 days after the date the enrollment terminates.

* * * * *

13. In § 890.503, paragraph (a) is revised to read as follows:

§ 890.503 Reserves.

(a) The enrollment charge consists of the rate approved by OPM for payment to the plan for each enrollee, plus 4 percent, of which one part is for an administrative reserve and 3 parts are for a contingency reserve for the plan.

* * * * *

14. Section 890.504 is revised to read as follows:

§ 890.504 Disposition of contingency reserves upon reorganization or merger of plans.

Upon reorganization or merger of a plan, OPM must credit to the surviving plan the reserves of the reorganized or merged plan. If more than one plan survives, the reserves must be divided among the surviving plans in proportion to the number of enrollees continuing to subscribe to the surviving plans.

15. In part 890, a new subpart K is added to read as follows:

Subpart K—Temporary Continuation of Coverage

Sec.

890.1101 Purpose.
890.1102 Definitions.
890.1103 Eligibility.
890.1104 Notification by agency.
890.1105 Elections.
890.1106 Coverage.
890.1107 Length of temporary continuation of coverage.
890.1108 Effective date of coverage.
890.1109 Premium payments.
890.1110 Termination of enrollment or coverage.
890.1111 Employing office responsibilities.
890.1112 Denial of continuation of coverage due to involuntary separation for gross misconduct.
890.1113 The administrative charge.

Subpart K—Temporary Continuation of Coverage

§ 890.1101 Purpose.

This subpart identifies the individuals who may temporarily continue coverage after the coverage would otherwise terminate under this part and sets forth the circumstances of their enrollment.

§ 890.1102 Definitions.

In this subpart—

"Gross misconduct" means a flagrant and extreme transgression of law or established rule of action for which an employee is separated and concerning which a judicial or administrative finding of gross misconduct has been made.

"Qualifying event" means any of the following events that qualify an individual for temporary continuation of coverage under subpart K of this part:

(1) A separation from Government service.

(2) A divorce or annulment.

(3) A change in circumstances that causes an individual to become ineligible to be considered an unmarried dependent child under this part.

§ 890.1103 Eligibility.

(a) Except as provided by paragraph (b) of this section, individuals described by this section are eligible to elect temporary continuation of coverage under this subpart. Eligible individuals are as follows:

(1) Former employees whose coverage ends because of a separation from Federal service under any circumstances except an involuntary separation for gross misconduct.

(2) Individuals whose coverage as children under the family enrollment of an employee, former employee, or annuitant ends because they cease meeting the requirements for being considered unmarried dependent children. For the purpose of this section, children who are enrolled under this part as survivors of deceased employees or annuitants are considered to be children under a family enrollment of an employee or annuitant at the time of the qualifying event.

(3) Former spouses of employees, of former employees having continued family coverage under this subpart, or of annuitants, if the former spouse would be eligible for continued coverage under subpart H of this part except for failure to meet the requirement of § 890.803(a) (1) or (3) of this part or the documentation requirements of § 890.806(a) of this part, including former spouses who lose eligibility under subpart H within 36 months after termination of the marriage because they ceased meeting the requirement of § 890.803(a) (1) or (3) of this part.

(b) An individual who is otherwise eligible for benefits under this part (excluding the temporary extension of coverage and conversion privilege set forth in subpart D of this part) is not entitled to continued coverage under this subpart.

§ 890.1104 Notification by agency.

(a) In the case of a former employee who is eligible to elect temporary continuation of coverage under § 890.1103(a)(1), the employing office must notify the former employee concerning his or her rights under this subpart no later than 30 days after the end of the temporary extension of coverage provided under § 890.401.

(b)(1) In the case of a child who is eligible to elect temporary continuation of coverage under § 890.1103(a)(2), the enrollee may, within 60 days after the qualifying event, provide written notice to the employing office of the child's change in status and requesting information about temporary continuation of coverage. The written notice must include the child's name and

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address and the date of the terminating event.

(2) If the notice described in paragraph (b)(1) is received by the employing office within 60 days after the date on which the child ceased meeting the requirements for being considered an unmarried dependent child, the employing office must notify the child of his or her rights under this subpart within 14 days after receiving the notice.

(3) This paragraph does not preclude the employing office from notifying the child of his or her rights based on oral or written notification by the child, another family member, or any other source that the child no longer meets the requirements for being considered an unmarried dependent child.

(c)(1) In the case of a former spouse who is eligible to elect temporary continuation of coverage under § 890.1103(a)(3), the employee or the former spouse may, within 60 days after the termination of the marriage or the loss of coverage under subpart H of this part, notify the employing office of the terminating event and request information about temporary continuation of coverage. The notice must include the name and address of the former spouse and the date of the terminating event.

(2) The employing office must notify the former spouse of his or her rights under this subpart within 14 days after receiving the notice described in paragraph (c)(1) of this section.

(d) The employing office may give the notice required by this section directly to the employee, child, or former spouse. If the notice is not given directly to the individual, it must be sent by certified mail, return receipt requested.

§ 890.1105 Elections.

(a) The election of temporary continuation of coverage may be in the form of a Standard Form 2809, letter, or written statement to the employing office.

(b) A former employee's election under this subpart must be submitted to the employing office within 60 days after the later of—

(1) The date of separation; or

(2) The date the former employee received the notice from the agency.

(c) A child's election under this subpart must be submitted to the employing agency within 60 days after the later of—

(1) The date of the qualifying event; or

(2) If the employee notified the employing agency within the 60-day time period specified under § 890.1104(b)(1) of this part, the date the child received the notice from the employing agency. If the employee did not notify the employing agency within the specified time period, the child's opportunity to elect continued coverage ends 60 days after the qualifying event.

(d) A former spouse's election must be received by the employing office within 60 days after the later of—

(1) The date of the qualifying event; or

(2) The date coverage under subpart H of this part was lost because of remarriage or loss of qualifying court order, if the loss of coverage under subpart H occurred before the expiration of the 36-month period specified in § 890.1107(c) of this part; or

(3) If the employee or former spouse notified the agency of the termination of the marriage within the time period specified in § 890.1104(c)(1), the date the former spouse received the notice from the agency described in § 890.1104(c)(2). If neither the employee nor the former spouse notified the agency within the specified time period, the former spouse's opportunity to elect continued coverage ends 60 days after the qualifying event.

(e) If an individual who is eligible for temporary continuation of coverage under this section is unable to file an election on his or her own behalf because of a mental or physical disability, an election may be filed by a court-appointed guardian.

(f) Except as provided in paragraphs (c)(2) and (d)(3), when an employing office determines that an eligible individual was unable, for cause beyond his or her control, to register to be enrolled within the time limits prescribed by this section, that office must accept the registration within 31 days after it advises him or her of that determination.

§ 890.1106 Coverage.

(a) *Type of enrollment.* An individual who enrolls under this subpart may elect coverage for self alone or self and family.

(1) For an enrollee who is eligible for continued coverage under § 890.1103(a)(1) or (2), a covered family member is an individual whose relationship to the enrollee meets the requirements of 5 U.S.C. 8901(5) and who meets any applicable requirements of 5 CFR 890.302 of this part.

(2) For a former spouse who is eligible for continued coverage under § 890.1103(3) of this part, a covered family member is an individual who meets the requirements of § 890.804 of this part.

(b) *Plans and options.* An individual who elects to continue coverage under this subpart may enroll in a plan or option different from the plan or option covering the individual at the time of the qualifying event.

§ 890.1107 Length of temporary continuation of coverage.

(a) In the case of a former employee who is eligible for continued coverage under § 890.1103(a)(1), the temporary continuation of coverage ends on the date that is 18 months after the date of separation, unless it is terminated earlier under the provisions of § 890.1110.

(b)(1) Except as provided in paragraph (b)(2) of this section, in the case of individuals who are eligible for continued coverage under § 890.1103(a)(2) of this part, the temporary continuation of coverage ends on the date that is 36 months after the date the individual first ceases to meet the requirements for being considered an unmarried dependent child, unless it is terminated earlier under the provisions of § 890.1110.

(2) The temporary continuation of coverage ends on the date that is 36 months after the date of the separation from service on which the former employee's continuation of coverage is based, unless it is terminated earlier under the provisions of § 890.1110, in the case of individuals who—

(i) Are eligible for continued coverage under § 890.1103(a)(2); and

(ii) As of the day before ceasing to meet the requirements for being considered unmarried dependent children, were covered family members of a former employee receiving continued coverage under this subpart; and

(iii) Cease meeting the requirements for being considered unmarried dependent children before the end of the 18-month period specified in paragraph (a) of this section.

(c)(1) Except as provided in paragraph (c)(2) of this section, in the case of former spouses who are eligible for continued coverage under § 890.1103(a)(3), the temporary continuation of coverage ends on the date that is 36 months after the former spouse ceased meeting the requirements for coverage as a family member, unless it is terminated earlier under the provisions of § 890.1110.

(2) The temporary continuation of coverage ends on the date that is 36 months after the date of the separation from service on which the former employee's continuation of coverage is based, unless it is terminated earlier under the provisions of § 890.1110, in the case of a former spouse—

(i) Who is eligible for continued coverage under § 890.1103(a)(3); and

(ii) Whose marriage to the former employee terminates after the former employee's separation but before the expiration of the 18-month period specified in paragraph (a) of this section.

§ 890.1108 Effective date of coverage.

The effective date of coverage is the day after other coverage under this part expires, including temporary extension of coverage under § 890.401 of this part. If an individual registers for temporary continuation of coverage before the expiration of the election period under § 890.1105, but after the temporary extension of coverage expires, coverage is restored retroactively, with appropriate contributions and claims, to the same extent and effect as though no break in coverage occurred.

§ 890.1109 Premium payments.

(a) Except as provided in paragraph (b) of this section, the enrollee must pay the full enrollment charge as determined under § 890.503(a), including both the Government contributions and employee withholdings, plus the administrative charge described under § 890.1113, for every pay period during which the enrollment continues, exclusive of the 31-day temporary extension of coverage for conversion provided under § 890.401 of this part.

(b) If the enrollee is not covered under this subpart for the full pay period, he or she pays the premium charge for only the days actually covered. The daily premium rate is an amount equal to the monthly rate (including the administrative charge) multiplied by 12 and divided by 365.

(c) The enrollee must make the payment after the pay period during which he or she is covered in accordance with a schedule established by the employing office. If the employing office does not receive the payment by the date due, the employing office must notify the enrollee by certified mail, return receipt requested, that continuation of coverage depends upon payment being made within 15 days (45 days for enrollees residing overseas) after receipt of the notice, or, if the employing office does not receive certification of the receipt of the notice, 60 days after the date of the notice (90 days for enrollees residing overseas). An enrollee whose coverage terminates because of nonpayment may not reenroll or reinstate coverage under this subchapter, except as provided under paragraph (d) of this section.

(d)(1) If the enrollee was prevented by circumstances beyond his or her control from making payment within the timeframe specified in paragraph (c) of this section, he or she may request reinstatement of coverage by writing to the employing office. The request must be filed within 30 calendar days from the date of termination and must be accompanied by verification that the enrollee was prevented by circumstances beyond his or her control from paying within the time limit.

(2) The employing office determines whether the individual is eligible for reinstatement of coverage. If the determination is affirmative, coverage is reinstated retroactively to the date of termination. If the determination is negative, the individual may request a review of the decision from OPM under the provisions of § 890.104 of this part.

§ 890.1110 Termination of enrollment or coverage.

(a) *General.* An enrollment under this subpart terminates at midnight of the earlier of the following dates:

(1) The date the temporary continuation of coverage expires as set forth in § 890.1107, subject to the temporary extension of coverage for conversion.

(2) The last day of the pay period in which the enrollee dies.

(3) The day before the effective date of coverage under another provision of this part.

(4) The date provided under paragraphs (b) or (c) of this section.

(b) *Failure to pay premiums.* Termination of enrollment for failure to pay premiums within the timeframe established under § 890.1109 of this part is retroactive to the end of the last pay period for which payment was timely received. The enrollee and covered family members, if any, are not entitled to the temporary extension of coverage for conversion or to convert to an individual contract for health benefits.

(c) *Cancellation.* An enrollee may cancel his or her enrollment as provided under § 890.304(d) of this part.

(d) *Family member coverage.* The coverage of a family member terminates under the conditions set forth in § 890.304(c). Covered family members of former employees and former spouses are entitled to temporary continuation of coverage only as set forth under § 890.1103.

§ 890.1111 Employing office responsibilities.

(a) *Providing information to employees.* Employing offices are responsible for providing employees who are eligible to enroll under this part with literature developed by OPM that sets forth their rights under this subpart. This literature must be distributed to employees prior to each open season occurring under § 890.301.

(b) *Administration of the enrollment process.* The employing office must establish procedures for notifying the former employee, child, or former spouse about his or her eligibility to enroll, including what documents are needed to determine eligibility, and for accepting enrollment registrations.

(c) *Collecting premiums.* (1) Collection of the contributions is the responsibility of the employing office of the employee or annuitant at the time of the qualifying event. The employing office may choose to use a collection service, if available, instead of its own payroll office.

(2) The employing office must submit all premium payments collected from enrollees along with its regular health benefits payments to OPM in accordance with procedures established by that Office.

(d) *Health benefits file.* The employing office must maintain a health benefits file for the enrollee as a file separate from the personnel records of the employee or former employee. This file may be destroyed 2 years after the end of the calendar year during which the 18- or 36-month period described in § 890.1107 (a) or (b)(1) expires.

§ 890.1112 Denial of continuation of coverage due to involuntary separation for gross misconduct.

(a) *Notice of denial.* (1) When an employing office determines that the offense for which an employee is being removed constitutes gross misconduct for the purpose of this subpart, the employing office must notify the employee in writing of its intention to deny temporary continuation of coverage. The notice must set forth the reason for the denial and give the employee a reasonable amount of time to respond. The notice must be made no later than the date of separation.

(2) If the employee is being removed under the authority of part 752 of this chapter (or other law, Executive Order, or regulation that prescribes procedures for removing employees because of misconduct), the notification requirement of paragraph (a)(1) of this section may be combined with the notification requirement of such authority.

(b) *Employee's response.* (1) The employee must be allowed a reasonable time for response, but not less than 7 days. The employee may respond orally or in writing and is entitled to be represented by an attorney or other representative.

(2) The agency must designate an official to hear the employee's oral answer who has the authority either to make or recommend a final decision on

the denial. The right to answer orally

Commission, Washington, DC 20555, Telephone: 301-492-7715

miles west-northwest of San Francisco,

National Marine Sanctuary, 25 Weekly Comp. Pres. Doc. 1230 (Aug. 14, 1989)).

exploration for, or the development or production of, oil, gas, or minerals

Environmental Impact Statement was prepared for this amendment

the denial. The right to answer orally does not include the right to a formal hearing with examination of witnesses.

(c) *Final decision.* If the employee responds to the notice of denial, the employing office must issue a final decision in writing that fully sets forth its findings and conclusions. The agency's decision is not subject to reconsideration by OPM.

(d) *Resignation in lieu of involuntary separation.* If an employee resigns after receiving the employing office's notification of intent to separate the employee involuntarily but before the scheduled separation date, his or her separation is considered involuntary for the purpose of this subpart.

§ 890.1113 The administrative charge.

(a) OPM has determined that the administrative charge as provided under 5 U.S.C. 8905a(d)(1)(A)(ii) is 2 percent of the enrollment charge described in § 890.503(a).

(b) It is OPM's responsibility to establish procedures for receiving the administrative payment into the Employees Health Benefits Fund and for making this amount available to the employing office or collection service, as appropriate.

[FR Doc. 29663 Filed 12-20-89; 8:45 am]
BILLING CODE 6325-01-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 21

RINs 3150-AC61 and 3150-AD37

Amendatory Instructions: Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule published April 18, 1989 (54 FR 15372), which provides for issuance of early site permits, standard design certifications, and combined construction permits and operating licenses with conditions for nuclear power reactors. This document also corrects a final rule published on October 16, 1989 (54 FR 42287), which changes the commercial telephone number for the Region III Office. This action is necessary to correct incomplete or erroneous amendatory instructions.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules Review Section, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-492-7758.

SUPPLEMENTARY INFORMATION:

1. In the **Federal Register** of April 18, 1989, in the second column of page 15398, amendatory instruction number 11 is corrected to read as follows:

§ 2.501 [Amended]

11. In the heading and paragraphs (a), (b)(1)(vii), and (b)(3), the references to Appendix M of part 50 are amended to refer to Appendix M of part 52.

2. In the **Federal Register** of October 16, 1989, in the second column of page 42288, amendatory instruction number 4 is corrected to read as follows:

§ 21.2 [Amended]

4. In footnote 1 to § 21.2, the commercial telephone number for the NRC Region III Office (Chicago) is changed from "(312) 790-5500" to "(708) 790-5500".

Dated at Bethesda, Maryland, this 15th day of December 1989.

For the Nuclear Regulatory Commission.

Donnie H. Grimsley,

Director, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 89-29688 Filed 12-20-1989; 8:45 am]
BILLING CODE 7590-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 942

[Docket No. 90238-9293]

RIN 0648-AB50

Cordell Bank National Marine Sanctuary Regulations

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce (DOC).

ACTION: Final rule.

SUMMARY: The National Oceanic and Atmospheric Administration, by this notice, is revising its regulations governing the conduct of activities in the Cordell Bank National Marine Sanctuary (15 CFR part 942) to prohibit the exploration for, or the development or production of, oil, gas, or minerals in any area of the Sanctuary. The Sanctuary is an area of marine waters encompassing 397.05 square nautical miles surrounding Cordell Bank, which is located approximately 50 nautical miles west-northwest of San Francisco, California. Since August 9, 1989, exploring for, or developing or producing, oil, gas, or minerals in any area of the Sanctuary has been prohibited by federal statute (section 2(a) of H.J. Res. 281; Pub. L. No. 101-74, 103 Stat. 554 (1989)). This regulatory amendment merely conforms the existing Sanctuary regulations to the statutory ban as required by that statute (section 2(b) of H.J. Res. 281).

EFFECTIVE DATE: This regulatory amendment is effective December 21, 1989.

FOR FURTHER INFORMATION CONTACT: Joseph A. Uravitch, Chief, Marine and Estuarine Management Division, OCRM, NOS, NOAA, 1825 Connecticut Avenue NW., Washington, DC 20235, (202/673-5126).

SUPPLEMENTARY INFORMATION: Title III of the Marine Protection, Research, and Sanctuaries Act, as amended (16 U.S.C. 1431 *et seq.*) ("Act") authorizes the Secretary of Commerce ("Secretary") to designate discrete areas of the marine environment possessing conservation, recreational, ecological, historical, research, educational, or esthetic qualities that give them special national significance as National Marine Sanctuaries. The primary purpose of a designation is to promote comprehensive and coordinated conservation and management of the area.

The authority of the Secretary to designate National Marine Sanctuaries has been delegated to the Under Secretary of Commerce for Oceans and Atmosphere by DOC Organization Order 10-15, § 3.01(z) (Jan. 11, 1988). On May 19, 1989, the Under Secretary signed the designation document for the Cordell Bank National Marine Sanctuary. The notice of designation and the final regulations implementing the designation and regulating the conduct of certain activities were published in the **Federal Register** on May 24, 1989 (54 FR 22417-22425). While Congress attempted to disapprove the part of the designation authorizing but not requiring the Secretary to regulate oil and gas activities in the Sanctuary by passing H.J. Res. 281, the joint resolution was not presented by Congress to the President for approval until after the 45 day period of continuous session allowed by the Act. Thus, although the joint resolution was approved by the President on August 9, 1989 (Pub. L. No. 101-74, 103 Stat. 554), section 1, the disapproval provision, has no effect (President's Statement on Signing a Joint Resolution Concerning the Cordell Bank National Marine Sanctuary, 25 Weekly Comp. Pres. Doc. 1230 (Aug. 14, 1989)). Accordingly, the self-executing designation became final at the end of the 45-day period and the Sanctuary regulations became final. Section 2 of the joint resolution, however, which did take effect upon Presidential approval of the joint resolution, accomplished essentially the same objective of section 1. Section 2(a) prohibits the exploration for, or the development or production of, oil, gas, or minerals in any area of the Sanctuary and section 2(b) requires the Secretary to revise the Sanctuary regulations to conform within 120 days of enactment.

The regulatory amendment issued today revises section 942.6(a)(3) of the Sanctuary regulations to prohibit the exploration for, or the development or production of, oil, gas, or minerals in any area of the Sanctuary. This prohibition is identical to the one imposed statutorily by section 2(a) of H.J. Res. 281 effective August 9, 1989 and is required by section 2(b) of H.J. Res. 281.

The authority for regulating oil and gas activities within the Sanctuary is title III of the Act and paragraph (c) of section 1 of Article 4 of the Designation Document for the Cordell Bank National Marine Sanctuary, 54 FR 22417, 22420 (1989). Because the Designation Document did not authorize the regulation of mineral activities, the authority for regulating mineral activities is title III of the Act and section 2(a) of H.J. Res. 281, Pub. L. No. 101-74, 103 Stat. 554 (1989). The regulatory amendment issued today amends the authority section for 15 CFR part 942 accordingly.

Additional Information

Executive Order 12291

NOAA has concluded that this regulatory amendment is not a "major rule" within the meaning of section 1(b) of Executive Order 12291 because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies or geographic regions; or,

(3) Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Administrative Procedure Act

Section 2(a) of H.J. Res. 281 placed a ban on all activities related to the exploration for, or the development or production of, oil, gas, or minerals within the Sanctuary effective August 9, 1989. Section 2(b) is a directive to the Secretary to amend the Sanctuary regulations to conform to the ban. As stated by the Committee on Merchant Marine and Fisheries of the United States House of Representatives,

[T]his subsection does not provide the Secretary any discretion with regard to a prohibition and is intended simply as a directive to promulgate conforming regulations. Since the Secretary is afforded no discretion in this matter, the Committee intends that the normal notice and comment rulemaking procedures [of section 553 of the Administrative Procedure Act] will be waived. In addition, no [Environmental Impact Statement] or environmental assessment is necessary. The Committee expects the Secretary to proceed directly with issuance of a final rule within 120 days of enactment. H.R. Rep. No. 110, 101st Cong., 1st Sess. 11 (1989).

Since section 2(b) of H.J. Res. 281 affords the Secretary no discretion regarding imposition of the ban, the Under Secretary of Commerce for Oceans and Atmosphere, pursuant to section 553(b)(B) of the Administrative Procedure Act (APA), for good cause found that it is unnecessary to provide notice of and opportunity for comment on this regulatory amendment. Since the ban imposed by this regulatory amendment has been imposed by statute since August 9, 1989, the Under Secretary, pursuant to section 553(d)(3) of the APA, found that good cause exists for making this regulatory amendment immediately effective.

Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this regulatory amendment because it was not required to be published as a proposed rule before issuance as a final rule by section 553 of the APA or by any other law. As a result, neither an initial nor final Regulatory Flexibility Analysis was prepared.

Paperwork Reduction Act

This amendment does not contain a collection of information requirement subject to the requirements of the Paperwork Reduction Act.

National Environmental Policy Act

Because the activities prohibited by this amendment are already prohibited by statute, the Department of Commerce has determined that this amendment will not significantly affect the quality of the human environment. (See discussion under Administrative Procedure Act, above). Therefore, no draft or final Environmental Impact Statement was prepared for this amendment.

Executive Order 12612

This rule does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612.

Executive Order 12630

This rule does not have takings implications sufficient to require preparation of a Takings Implications Assessment under Executive Order 12630.

List of Subjects in 15 CFR Part 942

Environmental protection, marine resources, natural resources.

Dated: December 6, 1989.

Virginia K. Tippie,

Assistant Administrator for Ocean Services and Coastal Zone Management.

Accordingly, for the reasons set forth in the preamble, 15 CFR part 942 is amended by:

PART 942—CORDELL BANK NATIONAL MARINE SANCTUARY

1. Revising the authority section for 15 CFR part 942 to read as follows:

Authority: Sections 303, 304, 305, and 307 of Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1433, 1434, 1435, and 1437; section 2 of Pub. L. No. 101-74, 103 Stat. 554; Designation Document for the Cordell Bank National Marine Sanctuary, Article 4, § 1(c).

2. Revising § 942.6(a)(3) to read:

§ 942.6 Prohibited activities.

(a) * * *

(3) *Exploring for, or developing or producing, oil, gas, or minerals.* Exploration for, or development or production of, oil, gas, or minerals in any area of the Sanctuary.

* * * * * *

[FR Doc. 89-29664 Filed 12-20-89; 8:45 am]
BILLING CODE 3510-08-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1501

Method for Identifying Toys and Other Articles Intended for Use by Children Under 3 Years of Age Which Present Choking, Aspiration, or Ingestion Hazards Because of Small Parts; Interpretation

AGENCY: Consumer Product Safety Commission.

ACTION: Revocation of Statement of Interpretation.

In accordance with the Court's decision, the Commission is revoking its

charge. Second, the final rule modifies the crediting rules prospectively to

500 interim rule,[1] in response to the mandates of the United States Court of Appeals for the District of Columbia

The final rule continues in effect, with two modifications, the provisions of Order No. 500 requiring that a producer

competitive wellhead market. The Commission also believes that section 5 action would improperly interfere with

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ACTION: Revocation of Statement of Interpretation.

SUMMARY: On May 27, 1988, the Consumer Product Safety Commission issued a Statement of Interpretation clarifying that its "small parts" regulation for children's articles included components made of fabric and certain other materials. On May 9, 1989, the U.S. Court of Appeals set aside that Interpretation. The Commission is therefore revoking it from the Code of Federal Regulations.

EFFECTIVE DATE: The revocation is effective December 21, 1989.

FOR FURTHER INFORMATION CONTACT: *On the court case:* Alan Shakin, Assistant General Counsel, CPSC, Washington, D.C. 20207; telephone (301) 492–6980. On enforcement of the small parts regulation: Christine Nelson, Compliance Directorate, CPSC, Washington, DC 20207; telephone (301) 492–6400.

SUPPLEMENTARY INFORMATION: In 1979 the Commission issued a regulation classifying as a banned hazardous substance any toy or other article intended for use by children under three years of age that presents a choking, aspiration, or ingestion hazard because of small parts. 16 CFR part 1501. This regulation states that "[a]ny components or pieces (excluding paper, fabric, yarn, fuzz, elastic, and string) which have become detached from the article as a result of the use and abuse testing shall be placed into the [small parts test] cylinder, one at a time. If any such components or pieces fit entirely within the cylinder, in any orientation and without being compressed, the article fails to comply with the test procedure." 16 CFR 1501.4(b)(2).

On May 27, 1988, the Commission issued a Statement of Interpretation which concluded that the parenthetical exclusion applied only to "pieces" and not to "components." Because this Interpretation represented a change in enforcement policy from an earlier staff interpretation, the Commission decided to stay enforcement of the Interpretation until November 23, 1989.

A number of industry representatives challenged the Commission's Interpretation in the U.S. Court of Appeals for the Fourth Circuit. On May 9, 1989, the Court issued an opinion ordering that the Interpretation be set aside. *Jerri's Ceramic Arts, Inc., et al.* v. *Consumer Product Safety Commission*, 874 F.2d 205 (4th Cir. 1989). The Court held that the Commission had improperly issued a legislative rule without complying with the applicable procedural requirements.

In accordance with the Court's decision, the Commission is revoking its May 1988 Interpretation. Accordingly, pursuant to the Federal Hazardous Substances Act, 74 Stat. 372, 378, 80 Stat. 1303–1304, 83 Stat. 187, 189; 15 U.S.C. 1261, 1262, 1269; and under authority vested in the Commission by the Consumer Product Safety Act (Pub. L. 573, 30(a), 86 Stat. 1231, 15 U.S.C. 2079(a)), 16 CFR part 1501 is amended as follows:

PART 1501—[AMENDED]

1. The authority citation for part 1501 continues to read as follows:

Authority: Secs. 2(f)(1)(D), (q)(1)(A), (s), 3(e)(1), and 10; 74 Stat. 372, 374, 375 as amended; 80 Stat. 1304–05, 83 Stat. 187–89 (15 U.S.C. 1261, 1262, 1269).

Subpart A—[Amended]

2. Remove subpart A heading immediately preceding § 1501.1.

Subpart B—[Removed]

3. Remove subpart B.

Dated: December 12, 1989.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 89–29370 Filed 12–20–89; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2 and 284

[Docket No. RM87–34–000]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol

Issued December 13, 1989.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is issuing a final rule responding to the decisions of the United States Court of Appeals for the District of Columbia Circuit in *Associated Gas Distributors* v. *FERC*, 824 F.2d 981 (D.C. Cir. 1987), and *American Gas Association* v. *FERC*, (issued October 16, 1989). The final rule continues in effect the take-or-pay crediting regulations adopted by Order No. 500, with two modifications. First, the final rule establishes a new sunset date for crediting of the earlier of December 31, 1990, or the date a pipeline accepts a certificate for a gas inventory charge. Second, the final rule modifies the crediting rules prospectively to provide that a pipeline may, upon 30 days notice, apply credits against any must-take obligation, including for casinghead gas, but must release the gas not purchased.

The final rule states that the Commission will not take action under NGA section 5 to modify producer-pipeline contracts. Since the Commission lacks authority to modify contracts for the sale of non-jurisdictional gas, section 5 action would be ineffective or inequitable or both, and, in any event, pipelines are resolving their take-or-pay problems through settlements.

The final rule establishes a new sunset date for the Order No. 500 alternative passthrough mechanism of December 31, 1990. The final rule also states that, if the U.S. Court of Appeals for the D.C. Circuit has not completed judicial review of this final rule by that date, the Commission will extend the sunset dates for both the alternative passthrough mechanism and crediting until 30 days after the date of issuance of the court's mandate upon completion of judicial review.

The final rule states that the Commission has decided not to restore the contract demand option on a generic basis but will require parties to address this issue in individual rate cases. The final rule does, however, amend the Commission's regulations to provide for automatic abandonment of pipeline sales obligations upon a customer's conversion to transportation.

Finally, the final rule seeks information from Tennessee and its customers necessary to address the AGA court's concerns regarding the Commission's failure to retroactively eliminate the contract demand reduction provision.

EFFECTIVE DATE: January 22, 1990.

FOR FURTHER INFORMATION CONTACT: Richard Howe, Jr., Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357–8274.

SUPPLEMENTARY INFORMATION:

[Order No. 500–H]

Before Commissioners: Martin L. Allday, Chairman; Charles A. Trabandt, Elizabeth Anne Moler and Jerry J. Langdon.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is adopting this final rule, superseding the Order No. 500 interim rule,[1] in response to the mandates of the United States Court of Appeals for the District of Columbia Circuit in *Associated Gas Distributors* v. *FERC (AGD)*,[2] and *American Gas Association* v. *FERC (AGA)*.[3] The final rule continues, with certain modifications, the open access transportation program originally adopted in Order No. 436[4] and kept in place on an interim basis by Order No. 500.

The *AGD* decision generally upheld the substance of Order No. 436. The court, however, vacated and remanded Order No. 436 to the Commission for it to, among other things, "more convincingly address" the effects of various provisions of Order No. 436 on pipeline take-or-pay problems.[5] The *AGA* decision held that the Order No. 500 interim rule, issued in response to the *AGD* decision, did not comply with the court's mandate in that decision. The court identified a number of areas where the Commission had not adequately explained its actions, including its failure to take action under section 5 of the Natural Gas Act (NGA)[6] to modify producer-pipeline take-or-pay contracts. The court also held that the Commission improperly established a sunset date for proposals to pass through take-or-pay settlement costs under the alternative passthrough mechanism established in Order No. 500 which took place before the Commission had taken a final, reasoned position on how this should be done.

[1] Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 52 Fed. Reg. 30,334 (Aug. 14, 1987), FERC Stats. & Regs., Regulations Preambles ¶30,761, *extension granted*, Order No. 500–A, FERC Stats. & Regs., Regulations Preambles ¶30,770, *modified*, Order No. 500–B, FERC Stats. & Regs., Regulations Preambles ¶30,772, *modified further*, Order No. 500–C, FERC Stats. & Regs., Regulations Preambles ¶30,786 (1987), *modified further*, Order No. 500–D, FERC Stats. & Regs., Regulations Preambles ¶30,800, *reh'g denied*, Order No. 500–E, 43 FERC ¶61,234, *modified further*, Order No. 500–F, FERC Stats. & Regs., Regulations Preambles ¶30,841 (1988), *reh'g denied*, Order No. 500–G, 45 FERC ¶61,148 (1988).

[2] 824 F.2d 981 (D.C. Cir. 1987), *cert. denied sub nom.* Southern California Gas Co. v. FERC, 108 S. Ct. 1468 (1988).

[3] No. 87–1588, *et al.*, (D.C. Cir., Oct. 16, 1989).

[4] Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Order No. 436), 50 Fed. Reg. 42,408 (Oct. 18, 1985), FERC Stats. & Regs., Regulations Preambles 1982–1985 ¶30,665 (Oct. 9, 1985), *modified*, Order No. 436–A, 50 Fed. Reg. 52,217 (Dec. 23, 1985), FERC Stats. & Regs., Regulations Preambles 1982–1985 ¶30,675 (Dec. 12, 1985), *modified further*, Order No. 436–B, 51 Fed. Reg. 6398 (Feb. 14, 1986), *reh'g denied*, Order No. 436–C, 34 FERC ¶61,404 (Mar. 28, 1986), *reh'g denied*, Order No. 436–D, 34 FERC ¶ 61,405 (Mar. 28, 1986), *reconsideration denied*, Order No. 436–E, 34 FERC ¶61,405 (Mar. 28, 1986).

[5] 824 F.2d at 1044.

[6] 15 U.S.C. 717 (1982).

The final rule continues in effect, with two modifications, the provisions of Order No. 500 requiring that a producer offer to credit gas transported by a pipeline against that pipeline's take-or-pay liability to the producer accruing under certain pre-June 23, 1987 gas purchase contracts. The final rule provides that crediting will cease on the earlier of December 31, 1990,[7] or the date on which a pipeline accepts a gas inventory charge certificate (GIC). The final rule eliminates prospectively the provision that pipelines may not apply credits against minimum take obligations for casinghead gas, but provides that a pipeline must release the casinghead gas not taken so that it can be marketed to another purchaser. Similarly, the final rule provides that a pipeline must release any other gas not taken as a result of applying credits against a must-take obligation.

In response to the court's concern about the sunset date for the Order No. 500 alternative passthrough mechanism, the final rule extends the sunset deadline until December 31, 1990, the same date as crediting will terminate. If the United States Court of Appeals for the District of Columbia Circuit has not completed judicial review of this final rule by that date, the Commission will further extend the sunset date for the alternative passthrough mechanism until 30 days after the date of issuance of the court's mandate upon completion of judicial review. The final rule makes no other changes in the Order No. 500 policy statement concerning pipelines' passthrough of take-or-pay settlement costs. The Commission will continue to develop its policies on the passthrough of these costs in individual cases.

The final rule does not take action under NGA section 5 to modify producer-pipeline take-or-pay contracts. After a full review of the record in this case, including the data obtained through the Commissions's Order No. 500 take-or-pay data request, the Commission concludes that section 5 action would be ineffective or inequitable or both. Because the Commission's section 5 authority is limited, section 5 action could not bring about, and could discourage, the complete restructuring of all pipeline-producer contracts necessary to resolve fully the pipeline's take-or-pay problems and complete the transition to a competitive wellhead market. The Commission also believes that section 5 action would improperly interfere with the ability of parties to rely on private contracts as a tool for structuring basic economic relationships. Accordingly, since pipelines have substantially resolved the bulk of their take-or-pay problems through individually negotiated settlements and since the provisions of the final rule discussed above should enable pipelines to settle the remainder of their take-or-pay problems, the Commission will not take section 5 action.

The Commission is also continuing in effect, unchanged, the policy statement on GICs as a means of avoiding a future recurrence of the pipeline take-or-pay problems of the 1980s. The Commission intends to develop further its GIC policy in individual cases addressing pipeline proposals to institute GICs.

The Commission has decided not to restore contract demand reduction on a generic basis. However, restructuring of the pipelines' relationship with their customers continues to be an essential element of the Commission's attempt to foster competition in the natural gas industry. Therefore, although the Commission will not restore the contract demand reduction option here, the Commission will require parties to address contract demand reduction mechanisms in conjunction with rate design proposals to implement pricing schemes to ration capacity (including seasonal rates and one-part demand rates) in individual rate cases,[8] and in conjunction with pipeline proposals for GICs. The Commission will, however, amend its regulations to provide for automatic abandonment of pipeline sales obligations upon a customer's conversion to transportation.

The final rule also seeks information from Tennessee Gas Pipeline Company and its customers in order to enable the Commission to address the *AGA* court's concerns regarding the Commission's decision in the Order No. 500 interim rule not to eliminate retroactively the contract demand reduction provision.

II. The Record Upon Which the Final Rule is Based

A voluminous record of comments and data submissions by parties representing all segments of the natural gas industry has been compiled in this proceeding. Comments were filed by numerous parties in connection with all issues arising under Order No. 500 and

[7] If the United States Court of Appeals for the District of Columbia has not completed judicial review of this final rule by that date, the Commission will further extend the December 31, 1990, deadline until 30 days after the date of issuance of the court's mandate upon completion of judicial review.

[8] *See* Interstate Natural Gas Pipeline Rate Design, 47 FERC ¶ 61,295, *order on reh'g*, 48 FERC ¶ 61,122 (1989).

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its several orders on rehearing and modifications.[9] In Order No. 500–C, the Commission specifically requested that

studies. The Commission has used that material in its analysis here as well.

On April 28 and May 19, 1989, in

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new additions to gas reserves actually exceeded current production, having

Similarly, the average residential cost of gas rose from $5.17 in 1982 to $6.06 in

During 1985, with a deliverability surplus of about 2 Tcf, or 16.5 percent of

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its several orders on rehearing and modifications.[9] In Order No. 500–C, the Commission specifically requested that the parties file, among other things, information concerning the effects on pipeline crediting rights of the various provisions adopted in that order. The comments filed in response to these requests have provided the Commission useful information. The parties have also provided some additional information in their rehearing requests of Order Nos. 500 and 500–C and in various other miscellaneous filings.

Additional information available to the Commission with respect to the status of the take-or-pay problem and the pipelines' outstanding take-or-pay exposure consists of a large amount of data compiled from a variety of sources. First, as indicated in Order No. 500, the Commission, on August 26, 1987, issued a Take-or-Pay Data Request (FERC Form No. 593) to 43 interstate natural gas pipelines regarding their contracts with producers. Producers were invited to file similar data. In response, 31 pipelines submitted data on about 10,500 individual contracts. Seven producers also voluntarily filed data. For the reporting period covered by the data requests, January 1, 1983 through June 30, 1987, the pipelines reported on outstanding take-or-pay exposure, settlements, prepayments, contracts subject to take-or-pay and their categories under the Natural Gas Policy Act of 1978 (NGPA),[10] and other related data. Attached as Appendix A to this rule is a summary of the responses to the Commission's take-or-pay data request. With these data, the Commission has been able to evaluate the developments in the take-or-pay situation through the four and a half year period immediately preceding the issuance of Order No. 500.

On April 11 and 12, 1988, the Commission convened a public hearing on the Order No. 500 final rule. In connection with that hearing both the Interstate Natural Gas Association of America (INGAA) and the Natural Gas Supply Association (NGSA) submitted studies to the Commission concerning pipelines' take-or-pay exposure through 1987. On April 22, 1988, the Commission issued a notice setting forth the questions each Commissioner had asked at the hearing and allowing all interested parties to file written responses by May 27, 1988. Included among the questions were a number concerning the INGAA and NGSA studies. The Commission has used that material in its analysis here as well.

On April 28 and May 19, 1989, in orders addressing the March 31, 1989 filings made under Order No. 500's alternative mechanism for recovery of settlement costs, the Commission requested additional information from 20 of the 22 pipelines passing through take-or-pay settlement costs under the alternative passthrough mechanism. The information was not requested from Southern Natural Gas Company, since it had an already approved settlement concerning its take-or-pay recovery. Also, because Valero Transmission Company did not make a March 31, 1989 filing to recover take-or-pay costs, no information was requested from it at that time. Specifically, the Commission ordered each pipeline to file:

> supporting documentation of its claimed take-or-pay buyout and buydown costs and interest calculation, including copies of all its settlements with its producer suppliers with an explanation of the take-or-pay exposure for each year settled and the amount of exposure that was eliminated through the settlements.[11]

In response, the 20 pipelines provided the Commission substantial information concerning their settlements and the amount of relief obtained under them. That information has been used in the analysis here. The two pipelines not subject to this data request had filed similar information earlier.

Additional data have also been obtained in pleadings, at technical conferences, and in formal testimony in a variety of individual cases for specific pipelines involving Order No. 500 prudence reviews and reviews of buyouts and buydowns alleged to be eligible for Order No. 500 direct billing treatment.

The Commission has also reviewed 10–K and 10–Q forms filed by interstate pipelines with the Securities and Exchange Commission concerning their financial situations. Finally, the Commission has had available to it significant information concerning take-or-pay contained in various trade and financial publications, including a September 1989 update by INGAA of its take-or-pay study.

III. The Factual Background

A. The Development of the Take-or-Pay Issue

The interstate pipelines' take-or-pay problems of the 1980's arose from the market distortions originally set in motion by various policies of the 1960's and early to mid-1970's. The artificially low controlled gas prices of those years encouraged consumers to use natural gas, thereby increasing demand, while at the same time discouraging producers from exploring and drilling for new supplies, thereby reducing supply. The resulting severe gas shortages in the interstate market led to enactment of the NGPA in 1978, in which Congress determined "that a new system of natural gas pricing was needed to balance supply and demand. . . ."[12] Accordingly, the NGPA provided for a phased, partial decontrol of most new gas prices. The NGPA also established increased (and increasing) ceiling prices for first sales of new gas that remained controlled and for some categories of old gas.

However, while the NGPA provided needed market incentives for new gas production and deliveries to the interstate market, it also caused, at least in the short-term, artificially high prices for new gas supplies. Because it took time for producers to find and to produce new gas supplies in response to the higher natural gas prices, and for consumers also to respond to higher gas prices by, for example, installing equipment in order to switch to lower priced alternative supplies, the increased prices could not immediately bring supply and demand into balance. As a result, prices were bid to higher levels than they would have reached had prices not been kept artificially low in the first place. This was exacerbated by the fact that the NGPA continued low ceiling prices on most old gas supplies, so that only new gas prices could respond to the market. As a result, the overall wellhead price of natural gas increased from 91 cents in 1978 to $2.43 in 1982, with new gas prices going even higher.[13]

The artificially high prices of the late 1970's and early 1980's caused producers to increase greatly their exploration and drilling for new gas supplies.[14] By 1981,

[9] See n. 1, supra.

[10] 15 U.S.C. § 3301 (1988).

[11] See, e.g., United Gas Pipe Line Co., 47 FERC ¶ 61,155 at 61,501 (1989); Williams Natural Gas Co., 47 FERC ¶ 61,155 at 61,506 (1989).

[12] Transcontinental Gas Pipe Line Corp. v. State Oil and Gas Board of Mississippi, 474 U.S. 409, 427 (1986).

[13] United States Energy Information Administration (EIA), Natural Gas Monthly, July 1983, Table 10 at 23.

[14] Gas well completions jumped from 12,129 in 1977 to 19,510 in 1981. EIA, Monthly Energy Review, Table 5.2 (May 1988). As a result, while reserve additions in the lower-48 states averaged only 46 percent of annual production during the 10 years before the NGPA, they increased to 90 percent of production in the period 1978–1984. See Ceiling Prices: Old Gas Pricing Structure (Order No. 451), 51 Fed. Reg. 22,168 (June 18, 1986), FERC Stats. & Regs., Regulations Preambles ¶ 30,701 at 30,295–30,298.

new additions to gas reserves actually exceeded current production, having averaged only 46 percent of current production during the 10 years preceding enactment of the NGPA. At the same time, pipelines, expecting demand to continue at high levels and even increase, and recalling their recent experience with curtailments, continued to enter into long-term contracts to purchase additional gas supplies at high prices and subject to high take-or-pay requirements.

However, by 1982, demand for gas was falling. High natural gas prices, combined with decreasing oil prices, led to increased fuel switching, particularly as customers who did not already have the necessary equipment to burn alternative fuels installed it. The recession of the early 1980's and warmer than normal weather further decreased demand. These factors combined to create an excess of the supply of natural gas (i.e., current deliverability from the nation's gas wells) over the demand for natural gas. The deliverability surplus persisted for the remainder of the 1980's. In 1982 the deliverability surplus was about 1.5 Tcf, or 8.3 percent of total deliverability. By 1983, with the demand for natural gas 17 percent below its 1979 level,[15] the deliverability surplus was about 4 Tcf, or nearly 20 percent of total deliverability.[16]

As a result of the reduced demand for gas, pipelines began to incur significant take-or-pay liabilities under the contracts entered into with the expectation of continued high demand. The responses to the Commission's 1987 take-or-pay data request indicate that, by year-end 1983, pipeline take-or-pay exposure was $5.15 billion. Take-or-pay exposure increased to $6.04 billion by year-end 1984, and $9.34 billion by year-end 1985.[17]

However, in spite of the deliverability surplus, the average price paid at the wellhead continued to increase, rising from $1.98 in 1981, to $2.43 in 1982, $2.59 in 1983 and $2.66 in 1984.[18] The pipelines' weighted average cost of gas (WACOGs) also continued to increase, averaging $2.01 in 1981, $2.46 in 1982, $2.76 in 1983, and $2.78 in 1984.[19] Similarly, the average residential cost of gas rose from $5.17 in 1982 to $6.06 in 1983 to $6.12 in 1984.[20] While these price increases during a time of oversupply were partly due to the automatic escalations in NGPA ceiling prices, the more fundamental cause was the inflexible supply arrangements between producers, pipelines, LDCs, and consumers which had arisen in the earlier era of a tightly price-controlled wellhead market.

Under these arrangements, most users of natural gas could obtain gas only through purchases from a pipeline. The pipelines generally exercised their monopoly power over transportation by refusing to transport gas in competition with their own sales (except where the customer desiring the transportation could switch to alternative fuels at little or no cost). Local distribution companies (LDCs) were further discouraged from purchasing from sellers other than the pipeline by minimum bills which required them to pay a part of the pipeline's demand and commodity costs, including its gas costs, even if they did not purchase gas from the pipeline. These practices frustrated the move toward a competitive wellhead market initiated by Congress in the NGPA, since purchasers could not obtain access to cheaper sources of supply than those provided by the pipelines, for example, by purchasing directly from the producer. The result was unnecessarily high costs for consumers of natural gas.

The Commission's first major action to address these supply arrangements was the issuance of Order No. 380 on May 25, 1984, requiring pipelines to eliminate commodity costs from their minimum bills.[21] The Commission has subsequently, on a case-by-case basis, eliminated pipeline minimum bills altogether.[22]

During 1985, with a deliverability surplus of about 2 Tcf, or 16.5 percent of total deliverability,[23] the average wellhead price of gas fell for the first time since the gas shortages of the 1970's began, decreasing from $2.66 to $2.51.[24] However, pipelines' WACOGs averaged only slightly less in 1985 than in 1984 ($2.75, instead of $2.78),[25] and average residential prices remained at the same level as in 1984, $6.12.[26]

Furthermore, even though many gas purchasers were seeking to purchase gas directly in the field at prices lower than the pipelines' WACOGs, pipelines continued to refuse to transport gas where such transportation might displace the pipelines' own sales. This displacement, the pipelines reasoned, could cause them to incur even greater take-or-pay liability, under the take-or-pay contracts entered into during the 1970's and early 1980's, than they were already incurring.

In addition, while the Commission authorized special programs under which pipelines were given blanket certificates to transport gas, the Commission limited the purchasers to whom this gas could be transported to fuel switchable, non-high priority end-users. The U.S. Court of Appeals for the D.C. Circuit vacated the Commission orders authorizing these programs, on the ground that the Commission had failed to explain why requiring pipelines to extend the benefits of these services to LDCs and captive customers would not increase the benefits to these customers.[27]

B. Order No. 436

In response to these events, the Commission, on October 9, 1985, issued Order No. 436, taking even more fundamental action to address the pipelines' continued exercise of their market power over transportation than the Commission had taken in Order No. 380. In Order No. 436, the Commission found that the pipelines' refusal to transport gas in displacement of their own sales was unduly discriminatory because it caused increased costs to consumers by denying them access to gas at the lowest reasonable prices. The

[15] Order No. 451, FERC Stats. & Regs., Regulations Preambles at 30,208.

[16] Executive Enterprises Publications Co., Inc., The 1988 Natural Gas Yearbook, Figure XI.

[17] INGAA, based on a study published in September 1989, reports that pipelines' outstanding take-or-pay exposure was $4.7 billion at year-end 1984, $8.1 billion at year-end 1985, and $10.0 billion at year-end 1986.

[18] EIA, Natural Gas Monthly, July 1983, Table 10 at 23; June 1989, Table 4, at 14.

[19] EIA, Natural Gas Monthly, June 1989, Table 5 at 18; EIA, Natural Gas Monthly, December 1983, Table 24 at 44.

[20] EIA, Natural Gas Monthly, April 1986, Table 4 at 20.

[21] Elimination of Variable Costs From Certain Natural Gas Pipeline Minimum Commodity Bill Provisions, 49 Fed. Reg. 22,778 (June 1, 1984), FERC Stats. & Regs., Regulations Preambles 1982–1985 ¶ 30,571; *reh'g denied and stay granted in part,* Order No. 380–A, 49 Fed. Reg. 31,259 (Aug. 6, 1984), FERC Stats. & Regs., Regulations Preambles 1982–1985 ¶ 30,584; *reh'g denied and order clarified,* Order No. 380–B, 29 FERC ¶ 61,076; *reh'g denied,* Order No. 380–C, 49 Fed. Reg. 43,625 (Oct. 31, 1984), FERC Stats. & Regs., Regulations Preambles 1982–1985 ¶ 30,607; *reh'g denied,* Order No. 380–D, 29 FERC ¶ 61,332 (1984); *aff'd in part, remanded in part sub nom.* Wisconsin Gas Co. v. FERC, 770 F.2d 1144 (D.C. Cir. 1985), *cert. denied sub nom.* Transwestern Pipeline Co. v. FERC, 476 U.S. 1114 (1986); *order on remand,* Order No. 380–E, 35 FERC ¶ 61,384 (1986); *reh'g denied,* Order No. 380–F, 40 FERC ¶ 61,100 (1987).

[22] *E.g.,* East Tennessee Natural Gas Co., 40 FERC ¶ 61,201, *reh'g denied,* 41 FERC ¶ 61,271 (1987), *aff'd in part and rev'd in part,* 863 F.2d 932 (D.C. Cir. 1988); Transwestern Pipeline Co., 32 FERC ¶ 61,009 (1985), *reh'g denied,* 36 FERC ¶ 61,175 (1986), *aff'd,* 820 F.2d 733 (5th Cir. 1987), *cert. denied,* 108 Sup. Ct. 696 (1988).

[23] 1988 Natural Gas Yearbook, Figure XI.

[24] EIA, Natural Gas Monthly, June 1989, Table 4 at 14.

[25] EIA, Natural Gas Monthly, June 1989, Table 5 at 18.

[26] EIA, Natural Gas Monthly, June 1989, Table 4 at 14.

[27] Maryland People's Counsel v. FERC, 761 F.2d 780 and 768 F.2d 450 (D.C. Cir. 1985).

Commission found that the refusal to transport was adversely affecting the ...

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TABLE 1.—RESOLUTION OF REPORTED TAKE-OR-PAY—ALL PIPELINES

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Commission found that the refusal to transport was adversely affecting the economy and the nation. The refusal to transport was also frustrating the goal of the NGPA of relying on a competitive wellhead market.

In light of these findings, the Commission exercised its broad jurisdiction over transportation of natural gas under the NGA and the NGPA to revise its regulations governing the interstate transportation of natural gas. First, the Commission required that all pipelines performing self-implementing transportation, either pursuant to blanket NGA section 7(c) certificates or NGPA section 311 (other than certain transportation under grandfathered authorizations), provide such transportation on a nondiscriminatory basis, and thereby become open-access transporters. Second, the Commission held that a pipeline's refusal to transport gas, because it would displace its own sales or because it had not obtained relief from its take-or-pay contracts with producers, would be unduly discriminatory.

Third, the Commission required open-access pipelines to agree to allow their firm sales customers to adjust their "contract demand" (CD) (the maximum amount of gas the customer is contractually entitled to purchase on any day), either to reduce the level or convert it from firm sales to a right to firm transportation. These options were intended to allow full requirements and other customers of a pipeline to take advantage of transportation by purchasing gas from another supplier and have it transported either over that or another pipeline. The CD reduction option was also intended to reduce the pipeline's presently contracted firm capacity so that the transmission capacity could be available to other shippers.

Fourth, the Commission adopted optional procedures in Order No. 436 for granting certificates for new facilities, services, and operations intended to facilitate a pipeline's entry into and exit from new markets to compete with existing suppliers and thereby give local distribution companies and other customers, previously limited to one supplier, access to other suppliers. The Commission also provided for expedited abandonment of gas supplies (*i.e.*, producer supplies), subject to reduced takes, in order that those supplies could be made available to different customers.

Last, the Commission did not take specific new action in Order No. 436 to relieve pipelines from their take-or-pay contracts. The Commission did not take action to modify producer-pipeline contracts largely because it believed that such action "would raise extremely serious questions regarding the ability of private parties in the gas production industry to rely on private contracts as a tool for structuring basic economic relationships" [38] and thus could adversely affect the move toward a deregulated gas commodity market started by the NGPA. The Commission did, however, reaffirm its April 1985 policy statement and interpretative rule on payments to settle the take-or-pay liabilities under those contracts. In that policy statement and interpretative rule, the Commission held, among other things, that settlement payments do not violate NGPA Title I ceiling prices and that the Commission would evaluate the pipeline's recovery of settlement costs in individual rate filings. The Commission stated that, pursuant to these policies, pipelines had "made progress in renegotiating their contracts and substantial liabilities have been settled." [39] The Commission also stated that it would consider any requests for abandonment necessary to carry out a settlement of a take-or-pay obligation on an expedited basis.[40] Finally, the Commission stated that it lacked authority to modify contracts for the sale of non-jurisdictional gas and that it would be inequitable to modify only the contracts still subject to the Commission's NGA jurisdiction.

C. Economic Developments After Order No. 436

In 1986, the first full year following issuance of Order No. 436, pipelines for the first time transported for others more gas than they sold. *See* Table 3. Pipeline sales decreased from about 11 Tcf to under 8 Tcf, while transportation increased from 3.6 Tcf to 9.5 Tcf.[41] With the deliverability surplus continuing and, indeed, increasing from 16.5 percent of total deliverability in 1985 to 19.5 percent in 1986,[42] wellhead prices declined even more sharply than they had in 1985, decreasing from an average of $2.51 to $1.94.[43] Furthermore, *for the first time*, the decrease in wellhead prices began to flow through to residential consumers, with residential prices finally dropping from an average of $6.12 during 1985 to an average of $5.83 during 1986.[44] Prices to commercial and industrial users fell even more steeply, from an average of $5.50 during 1985 to $5.08 during 1986 for commercials and an average of $3.95 to $3.23 for industrials.[45] Thus, in 1986, consumers and other users began to realize the benefits of competition in the natural gas industry.

During 1986, pipelines also continued to accrue take-or-pay liabilities. With pipeline sales decreasing by even more than they had in 1985, pipelines' outstanding take-or-pay obligations continued to increase, although at a slower pace than in 1985. While pipeline take-or-pay exposure had increased from $6 billion to $9.34 billion in 1985, it increased to $10.7 billion in 1986. Although pipelines' take-or-pay exposure was increasing, pipelines were also entering into significant take-or-pay settlements with producers. In fact, according to the responses to the Commission's 1987 take-or-pay data request, by mid-1987, pipelines had resolved nearly $14 billion of take-or-pay exposure through settlements which in no year averaged more than 17 cents on the dollar. *See* Table 1.[46] The take-or-pay exposure so resolved was about 56 percent of the over $24 billion take-or-pay liability incurred by pipelines through the middle of 1987. Pipelines received additional take-or-pay relief through release agreement credits. By mid-1987 pipelines had released 1,831 TBtu of gas in return for such credits.

[38] Order No. 436-A, FERC Stats & Regs., Regulations Preambles 1982-86 ¶ 30,665 at 31,482-3 (1985).

[39] Order No. 436-A, *Id.* at 31,481. The Commission included in Order No. 436-A a table showing that pipelines had filed with the Commission to recover about $80 million in settlement payments. In return for these payments, the producers had given the pipelines over $470 million of take-or-pay relief.

[40] 18 C.F.R. § 270, 50 Fed. Reg. 10,070 (Apr. 26, 1985), FERC Stats. & Regs., Regulations Preambles 1982-1985 ¶ 30,537.

[41] EIA, Statistics of Interstate Natural Gas Pipeline Companies 1987, Table 12 at 48.

[42] 1988 Natural Gas Yearbook, Figure XI.

[43] EIA, Natural Gas Monthly, June 1989, Table 4 at 14.

[44] EIA, Natural Gas Monthly, June 1989, Table 4 at 14.

[45] EIA, Natural Gas Monthly, June 1989, Table 4 at 14.

[46] The data set forth in Tables 1 and 5 and in Appendices A and B are based on information supplied to the Commission by the pipelines in response to Commission data requests. The reported dollar amounts were derived according to the format and methodology specified by the Commission in the data request for standardizing the data or were estimates and may not reflect the actual take-or-pay liability or benefit obtained by a pipeline under a particular take-or-pay contract.

TABLE 1.—RESOLUTION OF REPORTED TAKE-OR-PAY—ALL PIPELINES

Year	Prepayments [1]			Released gas volumes [2]	Take-or-pay settlements					Amount paid per dollar of relief
					Take-or-pay relief received for each year			Settlement payments		
	TBTU [3]	$ bill	$/MMBTU	TBTU	TBTU	$ bill	$/MMBTU	$ bill	$/MMBTU	
1983	25	0.08	3.01	63	222	0.70	3.14	0.01	0.05	0.02
1984	66	0.18	2.73	295	1039	3.19	3.07	0.30	0.28	0.09
1985	72	0.21	2.89	401	585	1.95	3.34	0.20	0.34	0.10
1986	36	0.12	3.47	541	1680	5.09	3.03	0.61	0.36	0.12
1987	33	0.12	3.50	541	1077	3.00	2.79	0.51	0.47	0.17
		0.71		1,841		13.93		1.69		0.12

[1] Prepayments are payments made to producers in the expectation of the pipeline receiving at some future time a volume of gas associated with the prepayment.
[2] Released gas volumes are volumes released in return for a take-or-pay credit attributable to the released volumes.
[3] 1 TBTU = 1,000,000 MMBTU.

Some of the data provided in this table are based on information supplied to the Commission by the pipelines in response to Commission data requests. The reported dollar amounts were derived according to the format and methodology specified by the Commission in the data requests for standardizing the data, or were estimates and may not reflect the actual take-or-pay liability or benefit obtained by a pipeline under a particular take-or-pay contract.

Source: FERC Form No. 593 (Also see attached Appendix A and discussion therein of qualifications of data displayed above.)

During 1986 and the first half of 1987 the amount of take-or-pay exposure pipelines were able to resolve through settlements and credits increased dramatically over the amount similarly resolved in 1985, although the cents on the dollar paid for these settlements also increased. In 1986 pipelines settled $5.09 billion in take-or-pay exposure compared to $1.95 billion in 1985. During the first half of 1987, pipelines settled another $3 billion in take-or-pay exposure. The cents on the dollar paid for these settlements increased from 10 cents in 1985 to 12 cents in 1986 and 17 cents in the first half of 1987. As was the case with take-or-pay relief through settlements, take-or-pay relief through release agreement credits also increased. Volumes released with credits increased from 401 TBtu in 1985 to 541 TBtu in 1986 and 541 TBtu in just the first half of 1987.

While the deliverability surplus resulting from the market distortions of the 1970's and early 1980's continued to cause pipelines to incur take-or-pay liabilities under their contracts, by 1985 and 1986 it was also causing many producers significant problems. The average wellhead price for gas, which had decreased from its $2.66 peak in 1984 to $2.51 in 1985, decreased even more to $1.94 in 1986.[47] Total consumption, which had fallen in 1985, continued to fall in 1986; consumption in 1986 was about 16 Tcf as compared to about 18 Tcf in 1984.[48] After 1983, pipelines reduced their take levels substantially below take-or-pay requirements in their contracts,[49] and did not honor the bulk of their resulting take-or-pay claims. The responses to the Commission's 1987 take-or-pay data request indicate that although pipelines had incurred total take-or-pay exposure of over $24 billion or more during the period January 1, 1983 through June 30, 1987, during the same period they made take-or-pay payments for gas totalling only $700 million or $.7 billion.[50]

Perhaps the primary purpose of take-or-pay clauses is to guarantee producers a minimum level of income in order to pay off loans and cover current operating expenses.[51] Producers must make substantial investments in order to explore for, and produce, natural gas. Often, the necessary private financing would be unavailable in the absence of a take-or-pay or similar clause providing for revenue to pay off loans. The take-or-pay clause thus serves as a legitimate, bargained-for risk allocation mechanism and requires pipelines and their customers to compensate the producer in part for the risks the producer incurs in making substantial investments in order to meet the supply needs of these pipelines and their customers. Producers thus made substantial investments and banks and others made substantial loans in reliance on the take-or-pay clauses in their contracts with pipelines. Pipeline failure to make prepayments meant that producers were not receiving the revenue they had anticipated.

The loss of revenue to producers during the mid- and late 1980's as a result of falling gas prices, falling sales, and few take-or-pay payments, combined with a simultaneous decrease in oil prices, has had serious adverse effects not only on producers, but on the entire economies of the producing regions of the nation. Many producers, particularly small producers, went bankrupt, defaulting on loans from banks secured in part on the basis of minimum revenue levels provided for by the take-or-pay clauses in their sales contracts. This in turn caused numerous banks in the producing regions to fail, with the result that the Federal Deposit Insurance Corporation (FDIC), through foreclosures of producer properties, is now a substantial oil and gas lease owner.[52] As the effects of producers' loss of revenue spread through the economies of the producing regions of the nation, the unemployment levels in those regions rose significantly above the national average.[53]

While these adverse effects have for the most part been limited to producing states, the collapse in exploration for new gas supplies, if continued, could create the potential over the long term

[47] EIA, Natural Gas Monthly, June 1989, Table 4 at 14.

[48] 1988 Natural Gas Yearbook, Table XI.

[49] The responses to the Commission's take-or-pay data request show that, in the aggregate, during the period 1983 through 1986 pipelines took about 44 percent of deliverability while their take-or-pay obligations were about 66 percent of deliverability.

[50] Another $14 billion of exposure was settled by payments of 17 cents on the dollar during 1987 and lesser amounts during earlier years.

[51] Take-or-pay clauses have also been included in producer-pipeline contracts for other purposes. For example, the ultimate amount of natural gas recoverable from some reservoirs is greater if the gas is produced at a high rate. This is true of the large number of water-drive reservoirs in the Outer Continental Shelf (OCS). In many of those reservoirs, unless the gas is produced at a rapid and relatively constant rate, water can entrap a part of the gas in the reservoir, making it impossible to produce the entrapped gas. A take-or-pay clause serves to encourage the necessary takes of gas.

[52] *See* Petition of FDIC, filed December 31, 1987.

[53] *See* Table 2 comparing the unemployment rates in Texas and Louisiana from 1975 to 1989 to the national average unemployment rates during the same period.

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for new gas shortages, with all the same adverse effects for the nation as the shortage of the 1970s.

D. The AGD Decision

Numerous parties appealed Order No. 436 to the United States Court of Appeals for the District of Columbia Circuit. On June 23, 1987, the court issued its decision in *Associated Gas Distributors* v. *FERC (AGD)*. The court generally upheld the substance of Order No. 436. The court observed that the Commission had found: "(a) that pipelines continue to possess substantial market power; (b) that they have exercised that power to deny their own sales customers, and others without fuelswitching capability, access to competitively priced gas; and (c) that this practice has denied consumers access to gas at the lowest reasonable rates." [44] The court found that these findings were basically unchallenged by the parties seeking to overturn the Commission's order. The court upheld the Commission's authority under the NGA and the NGPA to require that all pipelines performing self-implementing transportation must do so on a not unduly discriminatory basis. The court also upheld the rate provisions of Order No. 436, the optional certificate procedures, and the Commission's earlier policy statement relating to buyouts of take-or-pay obligations.

[44] 824 F.2d at 999.

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TABLE 2

CIVILIAN UNEMPLOYMENT RATES
1975 - JUNE, 1989

SOURCE: BUREAU OF LABOR STATISTICS

BILLING CODE 6717-01-C

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The court, however, remanded Order No. 436 to the Commission for it, among other things, to "more convincingly address" the take-or-pay issue.[45] The court concluded that the Commission had failed to give reasoned consideration to claims that open-access transportation would deny pipelines the bargaining power necessary to settle their take-or-pay liability with producers and would have the effect of decreasing pipelines' gas sales and imposing the resulting increase in take-or-pay costs on those customers unable, or unwilling, to buy gas from non-pipeline suppliers. The court, however, specifically declined to "require that FERC reach any particular conclusion" with respect to the take-or-pay issue, stating that it "merely mandate[d] that [the Commission] reach its conclusion by reasoned decisionmaking." [46]

E. Order No. 500

On August 7, 1987, to coincide with the issuance of the court's mandate in the *AGD* case, the Commission issued Order No. 500, entitled "Interim Rule and Statement of Policy." Order No. 500 was issued in order: (1) To ensure that open-access transportation arrangements "remain intact," [47] and (2) to meet the court's concerns regarding, *inter alia*, the take-or-pay liability of the pipelines resulting from open-access transportation. The Commission explained that it was taking a "series of interrelated actions designed to substantially mitigate the effects of * * * [its open-access] rule on pipeline take-or-pay problems and to provide some relief from take-or-pay problems not related to or aggravated by the [open-access] transportation regulations." [48]

Stressing that "all segments of the industry should shoulder some of the burden of resolving the [take-or-pay] problem," [49] the Commission took the following actions: (1) The adoption of a crediting requirement, as a condition on open-access transportation, designed to minimize aggravation of take-or-pay problems and assist pipelines in the negotiation of take-or-pay obligations; and (2) the issuance of two policy statements, one announcing a method of allocating take-or-pay settlement costs equitably among pipelines and their customers and the other announcing standards for a new gas inventory charge designed to prevent future accumulation of unfunded take-or-pay costs.[50]

The Commission's crediting rule required producers to make an offer of credits for transported volumes against take-or-pay liability as part of a request for transportation services.[51] Specifically, a pipeline would have no obligation to transport a particular producer's gas unless that producer offered to credit the volumes to be transported against the pipeline's existing take-or-pay liability under any pre-June 23, 1987 contract with the producer.[52] The Commission explained that this crediting requirement was intended to help prevent aggravation of take-or-pay liability particularly because it would permit credits to be applied against any such contracts, including high-cost contracts, and a pipeline would not have to show any displacement of its own sales volumes in order to obtain this credit.[53] Following Order No. 500, the Commission made various adjustments to the crediting mechanism in Order Nos. 500-B[54] and 500-C.[55] These adjustments addressed concerns raised in comments on and requests for rehearing of Order No. 500.

The Commission's two policy statements dealt with the allocation of take-or-pay costs between pipelines and their customers. The first dealt with the passthrough mechanisms, and related procedures, that pipelines could utilize to recover the costs of buying out or buying down existing take-or-pay obligations, *i.e.*, the costs of settling claimed liabilities under existing contracts with producers and/or reforming take-or-pay and other provisions in those contracts. The mechanism and procedures were, as the Commission stressed,[56] adopted in light of comments received in response to the proposed take-or-pay policy statement issued in FERC Docket No. PL87-3-000.[57]

The buyout, buydown policy statement reiterated that all pipelines—whether or not they agreed to open-access transportation—would be permitted to pass through all prudently incurred settlement costs in their sales commodity charge. The Commission also provided for an alternative, equitable sharing mechanism, under which open-access pipelines, if they agreed to absorb between 25 percent and 50 percent of their take-or-pay costs, could apply to recover an equal share of the costs through a fixed charge. If a pipeline were to elect to absorb less than 50 percent, the costs remaining after an equal amount were assigned to the fixed charge could be assigned for recovery through a volumetric surcharge applied to both sales and transportation throughput.[58]

As part of this policy statement, the Commission also adopted a rebuttable presumption that, where a pipeline agreed to absorb at least 25 percent of its take-or-pay costs, the remaining costs that could be passed through were prudently incurred. The Commission stated its intent not to initiate prudence reviews on its own motion in such circumstances. Intervening parties would be permitted, however, to challenge the passthrough on grounds of imprudence. In that event, the pipeline could then recover from such intervening party whatever amount (up to 100 percent) that the pipeline proved was prudent.[59]

In addition, the Commission adopted a "sunset" provision providing that the equitable sharing mechanism would be available for a year and a half from the effective date of Order No. 500—*i.e.*, until December 31, 1988—in order to resolve take-or-pay problems and recover the resulting costs.[60] In subsequent orders on rehearing, the Commission, *inter alia*, adopted an extension, from the December 31, 1988 date to March 31, 1989, "for the filing of final tariff sheets including all take-or-pay buyout and buydown costs eligible for recovery under the [equitable sharing] mechanism." [61] The Commission also adopted the "litigation exception" to the sunset provision. For producer-pipeline contracts that were in litigation or arbitration on March 31, 1989, "the Commission will permit a pipeline to file by that date to include in its tariff language permitting the pipeline to pursue the litigation to its natural end of judgment and final appeal or settlement and then to file to recover eligible costs resulting from these contracts under the equitable sharing mechanism." [62]

In its second policy statement, the Commission adopted certain principles to avoid the recurrence of unfunded take-or-pay costs in the future, by "establish[ing] the parameters in which pipelines may file to recover the costs of maintaining supply for their customers." [63] To that end, the Commission stated it would allow any open-access pipeline to adopt, in its tariff, a Gas Inventory Charge (GIC) for "standing ready" to satisfy its firm sales customers' contract requirements.[64] The Commission explained that this policy was intended to allow pipelines to require firm sales customers to pay on a current basis, through this charge, the non-facilities costs of maintaining gas supply for the system.[65] The Commission stated that, by contrast, under existing one-part purchase gas rates, a pipeline must contract for supplies and stand ready to satisfy its sales customers' contract requirements, but its customers are not required to pay for this service on a current basis. In existing sales rates, the demand component consists only of costs for transportation facilities. The gas sales reservation component is paid, perhaps years later, in the form of passed-through take-or-pay charges.

The Commission reasoned that the GIC would have the dual effects of making a pipeline's customers "careful in nominating their demand because they will pay on a current basis for excessive nominations" and making a pipeline "more careful in contracting for long-term supplies" because customers would be unwilling to pay on a current basis the costs of maintaining excessive supplies.[66] The Commission explained that, through the GIC, it was "seeking to establish a rational, efficient pricing structure for the pipeline merchant function with emphasis on reciprocity and consideration of service obligations under the increased options available to a pipeline's sales customers." [67]

F. Economic Developments after Order No. 500

In 1987 and 1988, transportation by pipelines increased from about 9.6 Tcf during 1986 [68] to over 15 Tcf during 1988.[69] Pipeline sales continued to decline, although at a slower rate than during the two preceding years. Sales decreased from about 7.8 Tcf during 1986 [70] to about 5 Tcf during 1988.[71] Both wellhead prices and pipeline WACOGs fell significantly in 1987 and then stabilized in 1988. In 1987, wellhead prices fell from an average of $1.94 in 1986 to an average of $1.67,[72] and WACOGs fell from an average of $2.32 in 1986 to an average of $2.05.[73] In 1988, wellhead prices and WACOGs remained essentially the same, at $1.71 and $2.04 respectively. A survey by the American Gas Association of 55 LDCs found that by 1988, LDCs' customers had benefitted significantly from the spot gas purchases made possible by open access transportation. The survey showed that in 1984 an average residential gas customer paid $594 for 100 Mcf of gas, but in 1988 the same customer paid $530. Adjusted for inflation, and shown in 1984 constant dollars, the cost for 100 Mcf of gas fell 21 percent, from $594 to $471.[74]

Until 1987, as transportation by pipelines increased and their sales decreased (reducing the pipelines' ability to take gas) the pipelines' take-or-pay liabilities had also grown. However, as illustrated by the graph in Table 3,[75] this pattern reversed dramatically beginning in 1987. Although pipeline sales continued to decline, outstanding take-or-pay exposure fell at an increasing rate. By March 1989, pipeline take-or-pay exposure was less than 25 percent of its level at the end of 1986, the last full year before Order No. 500. The responses to the Commission's take-or-pay data request indicate that, at the end of 1988, pipelines had accrued take-or-pay "exposure" of $10.7 billion. A survey by INGAA of its member pipelines representing over 90 percent of total pipeline throughput similarly showed take-or-pay exposure at the end of 1988 to be $10.0 billion. However, INGAA, in its September 1989 take-or-pay study, has reported that during 1987 take-or-pay exposure fell to $8.2 billion, during 1988 to $3.8 billion, and by March 31, 1989 was $2.4 billion. The INGAA data are consistent with the Commission's own information, and are further confirmed by a report prepared by NGSA, an association of producers. The NGSA report declared that "take-or-pay liability problems * * * have been substantially resolved and are now a thing of the past." [76] The NGSA study, based on an analysis of take-or-pay obligations of 23 interstate pipelines to 18 producers, shows that 95 percent of the pipelines' outstanding take-or-pay obligations to those producers had been resolved by the end of 1988.

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[45] 824 F.2d at 1044.
[46] 824 F.2d at 1030.
[47] FERC Stats. & Regs. at 30,790.
[48] FERC Stats. & Regs. at 30,779.
[49] FERC Stats. & Regs. at 30,779.
[50] FERC Stats. & Regs. at 30,780.
[51] FERC Stats. & Regs. at 30,780.
[52] FERC Stats. & Regs. at 30,847.
[53] FERC Stats. & Regs. at 30,780.
[54] FERC Stats & Regs., Regulations Preambles ¶30,772 (1987).
[55] FERC Stats. & Regs., Regulations Preambles ¶30,788 (1987).
[56] FERC Stats. & Regs. at 30,784.
[57] Fed. Reg. 7478 (1987), 36 FERC ¶61,230.
[58] FERC Stats. & Regs. at 30,789-90.
[59] The Commission has subsequently decided in individual passthrough cases that any additional amounts to be recovered by the pipeline would be recovered through a fixed take-or-pay charge.
[60] FERC Stats. & Regs. at 30,792.
[61] FERC Stats. & Regs. at 31,267.
[62] FERC Stats. & Regs. at 31,268.
[63] FERC Stats. & Regs. at 30,792.
[64] FERC Stats. & Regs. at 30,792.
[65] FERC Stats. & Regs. at 30,793.
[66] FERC Stats. & Regs. at 30,793.
[67] FERC Stats. & Regs. at 30,794.
[68] EIA, Statistics of Interstate Natural Gas Pipeline Companies 1988, Table 12 at 46 (November 1989).
[69] EIA, Statistics of Interstate Natural Gas Pipeline Companies 1988, Table 12 at 46 (November 1989).
[70] EIA, Statistics of Interstate Natural Gas Pipeline Companies 1988, Table 12 at 46 (November 1989).
[71] EIA, Statistics of Interstate Natural Gas Pipeline Companies 1988, Table 12 at 46 (November 1989).
[72] EIA, Natural Gas Monthly, June 1989, Table 4 at 14.
[73] EIA, Natural Gas Monthly, June 1989, Table 5 at 15.
[74] State Treatment of Take-or-Pay Settlement Costs, 17 Gas Energy Review 2, 3 (September 1989).
[75] In Tables 3 and 4, year-end data for one year is attributed to the beginning of the subsequent year. For example, 1986 year-end take-or-pay exposure is treated as 1/87 take-or-pay exposure.
[76] Natural Gas Supply Association, A Status Report on the Interstate Pipeline Take-or-Pay Situation: Substantial Resolution Through Year-End 1988, at 1 (May 1989). *See also* a report recently issued by NGSA, Natural Gas Supply Association, A Status Report on Current Interstate Pipeline Take-or-Pay Liabilities for Jurisdictional and Non-Jurisdictional Gas and the Prospects for Future Liability Accrual Associated with Jurisdictional Gas at 8-9 (November 30, 1989). NGSA reports that the total take-or-pay liability to these producers as of August 1, 1989 was $608 million. Similar to the other trade association take-or-pay surveys mentioned throughout this order, the Commission notes, without endorsing, the wide disparity in the various estimates for the remaining take-or-pay problem.

TABLE 3

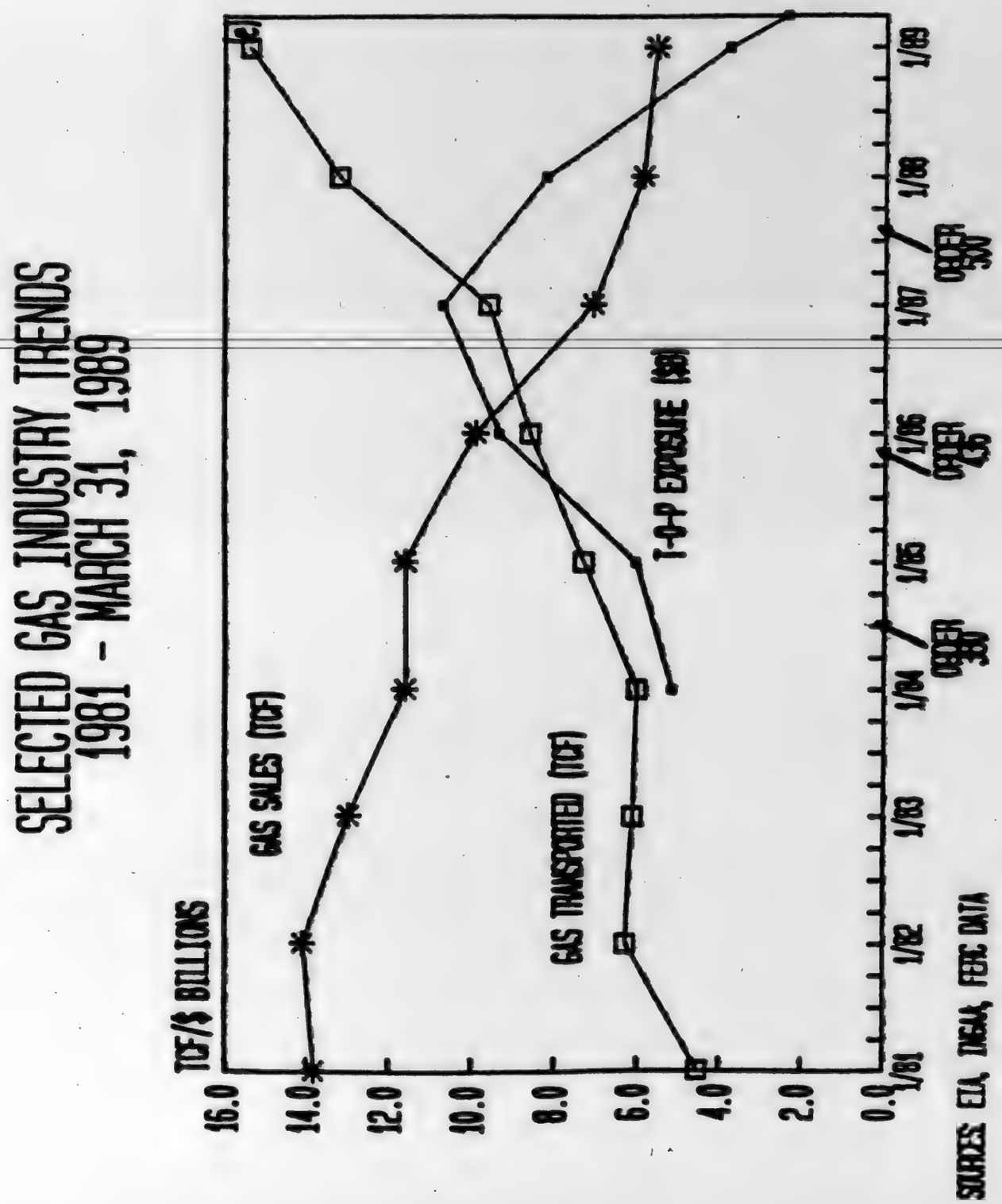
SELECTED GAS INDUSTRY TRENDS
1981 - MARCH 31, 1989
TCF/$ BILLIONS
GAS SALES (TCF)
GAS TRANSPORTED (TCF)
I-O-P EXPOSURE ($B)
16.0
14.0
12.0
10.0
8.0
6.0
4.0
2.0
0.0
1/81
1/82
1/83
1/84
1/85
1/86
1/87
1/88
1/89
OCTOBER 1987
OCTOBER 1986
OCTOBER 1984
SOURCES: EIA, INGAA, FERC DATA

TABLE 4

GAS PRICES AND TAKE-OR-PAY EXPOSURE
1980 - MARCH 31, 1989

SOURCES: EIA, INGAA, FERC DATA

BILLING CODE 6717-01-C

Given pipelines' continued loss of sales and resultant lower takes of gas, the simultaneous dramatic decrease in their take-or-pay exposure could only have occurred as a result of a fundamental restructuring of pipelines' contractual arrangements with producers and settlement of previous take-or-pay exposure. In fact, since the issuance of Order No. 500, all but two of the pipelines reporting take-or-pay exposure at year-end 1988 [77] have filed to pass through, under the Order No. 500 equitable sharing mechanism, their costs of renegotiating and settling already accrued take-or-pay costs and reforming take-or-pay contracts for the future.[78] The 22 pipelines using the alternative mechanism have reported, in response to the Commission's data requests in its April 28 orders concerning the pipelines' March 31, 1989 passthrough filings, that these settlements have reduced their outstanding take-or-pay obligations by over $16 billion.[79] The pipelines further stated that their settlements with producers have reformed the contracts under which they will purchase gas in the future and have reduced the future potential for incurrence of unfunded take-or-pay costs. According to the pipelines, these features of their settlements with producers will reduce their future take-or-pay costs by about $12.2 billion[80] and reduce other future costs by about $15.4 billion,[81] for total future relief of nearly $28 billion.[82]

Thus, pipelines have received total relief under their settlements with producers worth approximately $44 billion ($16 billion plus $28 billion).[83] As shown in detail in Appendix B, these settlements have substantially resolved the existing take-or-pay liabilities of most pipelines, and all the pipelines have made significant progress in resolving their problems. For example, the President of El Paso Natural Gas Company, on July 6, 1989, in a letter to the Chairman of the Commission, stated, "[e]xcluding a single, large take-or-pay case presently in litigation, about 95 percent of El Paso's take-or-pay exposure has been fully resolved through settlements, and almost all of the remainder is in litigation. Thus, as the Commission hoped in Order No. 500, El Paso has effectively reformed its gas supply base and is now only dealing with those relatively few residual matters that remain in the courts." [84]

The substantial progress described above in resolving both past and potential future take-or-pay exposure appears to have been accomplished, for the most part, in a manner consistent with the Commission's goal that all segments of the industry shoulder the burden of resolving the take-or-pay problem. *See* Table 5. While, as discussed above, pipelines' past exposure has been reduced by over $16 billion, and future take-or-pay and other costs by nearly $28 billion, for total relief of $44 billion, pipelines have paid producers $8.2 billion under the settlements.[85] The settlement payments to producers represent only 18.6 percent of the total relief they have given pipelines.[86] Producers' agreements to receive an average of 18.6 cents on the dollar appear to represent real and substantial concessions in light of the fact that, where producers have pursued their claims in court, courts have almost uniformly ordered pipelines to pay producers the full amount of their take-or-pay obligations under the applicable contract.

TABLE 5.—COMPANY REPORTED RELIEF FROM ORDER NO. 500 SETTLEMENT PAYMENTS

(1) Company	(2) Company reported settlement costs [1]	(3) Accrued take-or-pay received	(4) Avoided future take-or-pay	(5) Benefits of contract reformation [2]	(6) Other reported relief [3]	(7) Total future-oriented relief (Cols. 4+5+6)	(8) Total relief (Cols. 3+7)	(9) Costs as a percent of total relief (Col. 3/8) (percent)
AnR	$266,888,583	$884,340,000	$326,718,000	$794,379,000		$1,121,097,000	$2,005,437,600	13.3
ArkLA	350,929,280	827,855,500	1,595,299,000			1,595,299,000	2,223,154,500	15.8
CIG	27,422,303	288,948,000					288,948,000	9.5
CnG	8,227,544	8,805,570	23,992,499			23,992,499	32,598,068	25.2
Columbia	846,739,962	249,257		7,194,313,000		7,194,313,000	7,194,562,257	11.6
El Paso	774,191,512	1,170,267,589	927,863,412	209,861,148	1,582,595	1,139,335,155	2,309,602,724	38.5
Natural	1,182,277,294	1,336,051,000		4,361,757,000		4,361,757,000	5,697,808,000	20.6
Northern	355,032,564	1,180,070,079		632,633,575		632,633,575	1,812,703,654	19.6
Northwest	76,930,232	92,555,055	129,550,802	203,492,489		333,043,291	425,598,346	18.1
Panhandle [4]	390,373,187	572,787,957	1,107,007,029	305,830,092	124,068,218	1,536,895,339	2,109,683,296	16.5
Questar	3,331,315	11,815,091					11,815,091	28.7
Sea Robin	161,598,813	623,620,698					623,620,698	25.9
Southern [5]	119,524,118	572,500,000	213,900,000	271,400,000		485,300,000	1,057,800,000	11.3
Tennessee	1,112,058,901	1,731,238,465	2,175,100,000			2,175,100,000	3,906,338,465	28.5
Texas Gas	146,416,171	743,000,000					743,000,000	19.7
Transco	947,544,715	1,441,702,683	4,420,895,595			4,420,895,595	5,862,598,278	16.2
Transwestern	220,695,494	528,509,754		595,613,762		595,613,762	1,124,123,516	19.6
Trunkline [4]	397,815,477	2,318,955,439		706,793,137		706,793,137	3,025,748,576	13.1

[77] The two pipelines which reported take-or-pay exposure but have not filed to recover costs under the Order No. 500 alternative mechanism are Florida Gas Transmission Co. and Mid-Louisiana Gas Co. Florida Gas reported exposure of only $26 million at year-end 1988 and Mid-Louisiana reported exposure of only $2 million.

[78] The Commission has issued approximately 300 orders on over 50 proposals by these 22 pipelines to recover the costs of their take-or-pay settlements with producers and on over 60 proposals by downstream pipelines to pass those costs through to their customers.

[79] The derivation of this figure is shown in column 3 of Table 5. This figure is greater than the approximately $19 billion in outstanding exposure at the end of 1988, because pipelines have settled not only their outstanding obligations as of the end of 1988, but also exposure which they appear to have incurred from 1987 to the present.

[80] The derivation of this figure is shown in column 4 of Table 5.

[81] This figure is the sum of columns 5 and 6 in Table 5.

[82] The derivation of this figure is shown in column 7 of Table 5.

[83] The derivation of the $44 billion figure is shown in column 8 of Table 5. Southern has not filed information with the Commission concerning the relief it obtained in exchange for the $700 million in settlement payments it has made to producers. Southern settled all take-or-pay issues with its customers and that settlement was approved by the Commission prior to the April 28, 1989 data request. If the relief obtained by Southern were included, the $44 billion figure would be higher.

[84] Letter of William A. Wise, President and Chief Operating Officer, El Paso Natural Gas Company to then-Chairman Hesse, Docket No. TA89-1-35-000, *et al.*, July 7, 1989, at 3.

[85] The derivation of this figure is shown in column 2 of Table 5.

[86] The derivation of these figures is shown in column 9 of Table 5.

TABLE 5.—COMPANY REPORTED RELIEF FROM ORDER NO. 500 SETTLEMENT PAYMENTS—Continued

(1) Company	(2) Company reported settlement costs [1]	(3) Accrued take-or-pay received	(4) Avoided future take-or-pay	(5) Benefits of contract reformation [2]	(6) Other reported relief [3]	(7) Total future-oriented relief (Cols. 4+5+6)	(8) Total relief (Cols. 3+7)	(9) Costs as a percent of total relief (Col. 3/8) (percent)
United	760,422,270	2,468,961,388	1,266,764,299			1,266,764,299	3,735,125,687	20.9
Valero	2,650,000	8,491,251					8,491,251	31.2
Williams	43,877,935	36,009,599	41,357,241	28,400,964	2,848,764	72,606,969	108,610,568	49.4
W. Texas Gath.	3,409,376	30,693,677					30,693,677	11.2
	8,227,566,126	16,676,562,632	12,228,467,877	15,304,464,187	128,807,577	27,661,439,621	44,337,801,853	16.6

[1] Indicates the amount to which the reported relief relates. This amount may not match take-or-pay amounts reported elsewhere.

[2] Where contract reformation could not be separately identified from future take-or-pay relief, the total amount was shown in the future take-or-pay column.

[3] Other relief, as reported, consists of the following items (listed in order by dollar amount): Third party transportation costs, avoided transportation costs, royalty indemnification, cost of service net of transport revenue, termination of construction and operating agreement, system operation, well connection requirements, loss of reserves, production related costs, diversion to spot market, gas processing obligations.

[4] Panhandle and Trunkline have indicated that their total reported take-or-pay relief, as shown on this chart, may be understated by as much as $500 million and $1.1 billion, respectively.

[5] Southern filed data for only $119 million of $802 million in settlement payments; it was not required to file additional information as it settled before the informational requirement was generically imposed.

Some of the data provided in this table are based on information supplied to the Commission by the pipelines in response to Commission data requests. The reported dollar amounts were derived according to the format and methodology specified by the Commission in the data requests for standardizing the data, or were estimates and may not reflect the actual take-or-pay liability or benefit obtained by a pipeline under a particular take-or-pay contract.

Although under most of the settlements the producers retain the gas for which the pipelines had been obligated to make take-or-pay payments, and thus the producers can sell that gas to other purchasers, the take-or-pay contracts generally provided that the pipelines forfeited after five years any right to take the gas for which prepayments were made. Thus, without the settlements, the producers would have been able to sell any gas not made up upon expiration of the contract in addition to retaining the prepayments. In light of the producers' significant concessions in their settlements with pipelines, it appears that producers have continued to shoulder a substantial portion of the burden of resolving the take-or-pay problems.

Pipelines have also shouldered a significant part of the burden of resolving the take-or-pay problem, rather than passing all the costs through to their customers.[87] Under Order No. 500's equitable sharing mechanism, the pipelines are absorbing 39.3 percent of the $8.6 billion in payments to producers included in Order No. 500 filings or about $3.4 billion, while recovering through a fixed take-or-pay charge another 39.3 percent, and assessing the remainder through volumetric surcharges to both sales and transportation customers.[88] In addition, pipelines may recover the part to be recovered through the volumetric surcharge only to the extent market forces permit them to raise their prices sufficiently to recover the volumetric surcharge.

Based on an American Gas Association (AGA) survey of 55 LDCs reported in September 1989,[89] the AGA concluded that, assuming the average U.S. residential gas heating customer uses 100 Mcf annually, most LDCs will charge those customers less than $11 a year in take-or-pay costs, although of course households using more than an average amount of gas will pay more. The AGA survey observes that residential customers' average annual payments of take-or-pay costs are significantly less than the benefits received by those customers as a result of LDCs' spot purchases of gas under the open access transportation program, since the average cost of 100 Mcf of gas to residential customers fell by $64 between 1984 and 1988, from $594 to $530. Thus, it appears that pipelines, producers, and consumers have been sharing in the burden of resolving the take-or-pay problem.[90]

[87] The AGD court admonished against pipelines "simply moving costs downstream to customers." *See* 824 F.2d at 1025.

[88] Thus, to the extent producers ship gas over a pipeline charging a volumetric surcharge, the producers are assessed a portion of the pipelines' take-or-pay settlement costs.

[89] 17 Gas Energy Review at 3.

[90] It is not clear, however, whether LDCs, as distinguished from consumers, have been sharing in the burden of resolving the take-or-pay problem. The AGA survey shows that most of the LDCs surveyed are passing through the take-or-pay settlement costs billed to them in volumetric surcharges (which apparently are designed to recover 100 percent of the costs paid by the LDCs). These surcharges are usually assessed against both the LDCs' sales and transportation customers, but in some cases are assessed only against their sales customers. Eighty percent of the LDCs reported recovering the costs through a volumetric surcharge on both sales and transportation. The average surcharge is under $0.11 per Mcf. Only two of the LDCs surveyed reported recovering the take-or-pay costs in deficiency-based fixed charges similar to those the Commission has approved for interstate pipelines under the alternative passthrough mechanism.

G. The AGA Decision

On October 16, 1989, the United States Court of Appeals for the District of Columbia Circuit issued its opinion in *American Gas Association* v. *FERC (AGA)*, holding that the Order No. 500 interim rule did not comply with the court's mandate in *AGD*. The court, while retaining jurisdiction, remanded the record for the Commission to issue a final rule within 60 days of the court's decision.

Specifically, the court identified several areas in the Order No. 500 interim rule where the Commission had failed to comply with the mandate of *AGD*. First, the court found that the Commission had yet to reassess in a final rule the Commission's decision not to act under NGA section 5 and to explain its reasons clearly enough for the court to determine the reasonableness of the Commission's decision. The court held further that the Commission had failed to identify its authority under NGA section 7 or any other authority to apply the crediting mechanism to contracts governed by the NGA. In addition, the court found that the Commission had failed to adequately support its authority to require credits for gas transported on the Outer Continental Shelf. The court also held that the Commission had not adequately supported the casinghead gas exception to the crediting

mechanism. Finally, with respect to crediting, the court noted that it was not deciding whether the crediting

negotiating increasingly significant settlements with producers, and suggests that pipelines had a certain

of December 31, 1990, or the date on which a pipeline accepts a GIC certificate. The Commission will also

evidence summarized above shows) lies somewhere in between.

The court in *AGD* was concerned that

pipeline's agreement to transport gas without credits.

Under pre-Order No. 500 release

regardless of subsequent assignments or other property transfers. The assignee is unlikely to take the assignment unless it

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mechanism. Finally, with respect to crediting, the court noted that it was not deciding whether the crediting "mechanism as a whole, given its exceptions and limitations, adequately responds to the mandate of *AGD*." [91] With respect to the elimination of the contract demand reduction provision, the court held that the Commission had failed to overcome the legal presumption that the court's *vacatur* in *AGD*, of the contract demand reduction provision should be applied retroactively.

With respect to Order No. 500's alternative passthrough mechanism, the court set aside the March 31, 1989 sunset provision and held that the Commission may not impose any deadline upon applications to use the alternative passthrough mechanism at least until judicial review of this final rule has been completed. On the basis of its action with respect to the sunset provision, the court found that challenges to the substantive aspects of the alternative passthrough mechanism were not ripe for judicial review. It likewise held that the GIC policy in Order No. 500 was not ripe for judicial review.

IV. The Rationale for the Final Rule

A. Actions with respect to Producer-Pipeline Contracts

In the Commission's judgment, the actions taken in Order No. 500 have worked well to enable the natural gas industry to resolve, in an equitable manner, the take-or-pay problems arising under the gas purchase contracts entered into by pipelines in the late 1970's and early 1980's. As discussed above, since the issuance of Order No. 500, pipelines have reduced their outstanding take-or-pay exposure to less than a quarter of its level as of year-end 1988 despite a continued loss of sales; they have done this by settling the bulk of their outstanding take-or-pay exposure and significantly reforming the contracts under which they purchase gas. Furthermore, the settlements have resulted in producers, pipelines, and consumers sharing in the burden of resolving this problem.

Based upon these facts and the Commission's view of the current state of the natural gas industry, the Commission has determined to take the following actions in order to address what remains of the take-or-pay problems faced by pipelines. The Commission will continue in effect the Order No. 500 crediting provisions (with one modification concerning casinghead and other must-take gas) until the earlier of December 31, 1990, or the date on which a pipeline accepts a GIC certificate. The Commission will also extend the sunset provision for the Order No. 500 alternative passthrough mechanism until December 31, 1990. The Commission will otherwise continue in effect unchanged the policy statement concerning the passthrough of take-or-pay settlement costs. If on December 31, 1990, the D.C. Circuit has not completed judicial review of this final rule, the Commission will further extend the final sunset date for crediting and the sunset date for the alternative passthrough mechanism until 30 days after the date of issuance of the court's mandate upon completion of judicial review.

The Commission will not take action under NGA section 5 to modify producer-pipeline take-or-pay contracts, since pipelines are able to resolve their take-or-pay problems through settlements. Resolution through settlements is more compatible with Congress' decision to rely on competitive markets and provides a more complete resolution than is possible under section 5, under which the Commission cannot modify take-or-pay provisions covering non-jurisdictional gas.

1. Continuation of Crediting

The continuation of crediting, until the newly established sunset date, should maintain pipeline bargaining power in negotiations to settle whatever remaining take-or-pay problems exist without disrupting transportation. (Transportation as a percentage of total throughput has continued to increase after the implementation of crediting. *See* Table 3.) In designing the crediting requirement, the Commission has sought to achieve a balance: on the one hand, it has taken account of the need to offset the potential, discussed in *AGD*, for open-access transportation to aggravate pipelines' take-or-pay problems; and, on the other hand, the Commission, by crafting exceptions to the crediting requirement, has placed appropriate limits on the pipelines' exercise of their monopoly power resulting from their control of transportation facilities so as to avoid undue disruption in the transportation of gas to market. Otherwise, the consumer benefits brought about by competitive wellhead markets and open-access transportation could not have been realized.

While producers contend that the Commission granted the pipelines overly broad power to deny transportation to producers, and pipeline and LDC petitioners argue that crediting is not extensive enough, the fair balance, as the Commission found (and as the evidence summarized above shows) lies somewhere in between.

The court in *AGD* was concerned that open-access transportation may adversely affect pipelines' take-or-pay problems in two ways. First, the court expressed concern that producers may be less likely to be willing to compromise on pipelines' take-or-pay obligations because the pipelines cannot validly deny them transportation if they refuse to compromise.[92] Second, existing customers may be able to reduce their purchases from the pipelines by converting from sales to transportation service and purchasing from other suppliers. With declining sales to existing customers, a pipeline is less likely to be able to sell the volumes that it must take or pay for under contracts with producers.[93]

The primary purpose of crediting was to give pipelines additional bargaining power to negotiate reasonable settlements of their take-or-pay contracts. Order No. 500 specifically provided that pipelines could agree to transport gas without an offer of credits so that pipelines could give up their crediting rights as part of a take-or-pay settlement, and in Order No. 500–C the Commission "emphasize[d] that the pipeline and the shipper or producer may agree that the pipeline will transport the gas without the submission of an offer of credits. This enables pipelines and producers to settle take-or-pay liabilities outside the Order No. 500 crediting procedures." [94]

The evidence summarized above clearly demonstrates that pipelines do have sufficient bargaining power to negotiate reasonable settlements resolving their take-or-pay problems. As discussed above, pipelines have entered settlements which have reduced their past take-or-pay exposure by over $16 billion and reduced future take-or-pay and other costs by nearly $28 billion, for total relief of $44 billion. In return for this relief, pipelines have paid producers about $8.2 billion, or 18.6 cents on the dollar. As shown in detail in Appendix B, these settlements have substantially resolved the take-or-pay liabilities of most major interstate pipelines, and all pipelines have made significant progress in settling their take-or-pay problems. Much of this could not have happened if pipelines lacked bargaining power in their negotiations with producers.

The evidence summarized above indicates that, even before Order No. 500 was issued, pipelines were negotiating increasingly significant settlements with producers, and suggests that pipelines had a certain amount of bargaining power even without crediting. It stands to reason that, with pipelines for the most part refusing to make payments under their contracts, many producers, particularly those having financial difficulties, preferred receiving some money immediately in a settlement rather than waiting for the potentially greater rewards of pursuing litigation.[95]

After Order No. 500, pipelines have been even more successful at resolving their take-or-pay problems, reducing outstanding take-or-pay exposure to less than a quarter of its level at year-end 1988, the last full year before issuance of Order No. 500. While the Commission cannot know the producers' motivations in agreeing to these post-Order No. 500 settlements, the Commission believes that it is a reasonable inference that the pipelines' ability to demand offers of credits in the absence of a settlement was a significant factor in producers' willingness to settle take-or-pay. In any event, since pipelines are resolving their take-or-pay problems through settlements, the Commission does not believe more intrusive action by the Commission to resolve take-or-pay, such as action under NGA section 5, is justified regardless of the reasons for producers to have agreed to those settlements. (The Commission's reasons for declining to take section 5 action are discussed in detail below.)

The Commission believes it reasonable to infer that crediting has provided pipelines additional bargaining power for a number of reasons. First, contrary to pipeline contentions that crediting gives them no significant rights beyond those they received under pre-Order No. 500 release agreements, crediting does give pipelines substantially greater rights than they generally received under release agreements negotiated before Order No. 500. Furthermore, there are substantial advantages to producers in obtaining a pipeline's agreement to transport gas without credits.

Under pre-Order No. 500 release agreements, pipelines were generally entitled to credits only when they transported gas that had been released, and pipelines could apply those credits only against take-or-pay obligations under the contract from which the gas was released. Under Order No. 500, however, pipelines may receive credits when they transport non-released gas as well as released gas and may, at their sole discretion, apply those credits against their take-or-pay obligations under any contract with the producer whose gas is being transported. Thus, pipelines are entitled to credits in more situations under Order No. 500, and the credits are significantly more valuable since they may be applied against the pipeline's highest priced contract with the producer.

Experience has shown that these provisions make producers reluctant to offer credits to the pipeline. Even apart from the fact that pipelines may apply credits against higher-priced contracts with the producer under cross-crediting, there are other reasons why these provisions make it advantageous for the producers to obtain the pipelines' agreement to transport the gas without an offer of credits. Order No. 500 does not require pipelines to inform producers before gas is transported which contract the pipeline intends to apply the credits against. Rather, the pipeline can wait until the end of the contract year under the contract against which it intends to apply the credits before informing the producer that it is applying the credits against the pipeline's take-or-pay obligations under that contract. While the producer can assume that the pipeline will apply the credits against one of its highest priced contracts, this can still leave the producer somewhat uncertain about the revenue it will receive under its various contracts and thereby make planning difficult. Also, the producer may be concerned that, since the pipeline may apply the credits against a contract covering leases other than those from which the gas to be transported is produced, the pipeline's use of credits will subject the producer to suits by royalty owners whose royalty payments are reduced but who receive no benefit from the sale of the gas transported.

Another reason that producers prefer to have their gas transported without an offer of credits is that crediting may make property transfers more difficult. This is because pipelines' rights to credits are based on producer ownership of leases as of June 23, 1987, regardless of subsequent assignments or other property transfers. The assignee is unlikely to take the assignment unless it can obtain transportation of any gas it produces. But, under the crediting rules, the assignee can only obtain transportation if the assignor offers the pipeline credits against its take-or-pay obligations to the assignor. This the assignor may be reluctant to do since it receives no benefit from the sale of gas produced by the assignee. However, the ability to freely purchase and sell leases is an important part of a producer's business.[96]

Finally, a substantial amount of gas is transported in large packages which include the gas of many producers. Under the crediting rules, 85 percent of this gas must be covered by offers of credits from the actual working interest owners of the leases in question or the pipeline can refuse to transport the gas. Since many leases have multiple working interest owners and gas from a number of leases may be transported in a single package, obtaining the pipeline's agreement to transport the gas without an offer of credits enables the producers to avoid the administrative difficulties of obtaining signed offers of credits from all the interest owners. It may also be the only way to obtain transportation of the gas where the owners of more than 15 percent of the gas are unwilling to provide offers of credits.

Because of these aspects of crediting and others, there are substantial advantages to producers in not having to provide the pipeline offers of credits. However, unless a pipeline agrees to transport gas without an offer of credits, producers cannot have their gas transported to market in the absence of an offer of credits.[97] Thus, producers have a substantial incentive to settle their take-or-pay claims with pipelines so that they can obtain the pipeline's agreement to transport their gas without credits. As discussed above, producers have in fact entered into many such settlements.

Pipelines point to the various situations in which they must transport gas without receiving credits and contend that these exceptions have impeded the crediting mechanism's

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[91] Slip op at 27.

[92] 824 F.2d at 1023.

[93] 824 F.2d at 1023.

[94] FERC Stats. & Regs. at 30,964.

[95] During the Senate debate on the Natural Gas Wellhead Decontrol Act, Pub. L. No. 101–60, 103 Stat. 157 (1989) (Wellhead Decontrol Act), Senator Johnston, the floor manager of the bill, stated, in explaining why the bill did not take action with respect to take-or-pay, 135 Cong. Rec. S6365 (daily ed. June 8, 1989):

> The process of the market started working, Tenneco, for example, said to all of their producers with whom they had take-or-pay contracts, we are not going to take your gas. If you will not renegotiate, we are just not going to take your gas and you can sue us. In the meantime, the producers do not have any cash flow. In the meantime we have all of these lawyers, and we are going into this discovery. You might win but it is going to take 2, 3 years or something to win.

[96] While the Commission recognizes the difficulties for property transfers caused by this aspect of crediting, the Commission in this rule denies the producers' request to modify this provision since it is necessary to avoid circumvention of crediting. *See* discussion in section IV(A)(6)(a)(xx), *infra*.

[97] This is true even if the transportation will not actually generate credits because of an exception to crediting.

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effectiveness to provide take-or-pay relief.[98] For example, INGAA, in its September 1989 report, has stated that 15 pipelines representing 71 percent of the market reported that less than three percent of the volumes they transported in 1988 resulted in identified credits under Order No. 500. This data, even assuming its validity, does not contradict the Commission's belief that crediting has increased pipelines' bargaining power to obtain settlements. For the reasons discussed above, it appears that producers have preferred to enter into settlements in order to obtain transportation without an offer of credits, rather than to actually give the pipeline an offer of credits. This is vividly demonstrated by the case of Texas Gas Transmission Corporation. As discussed below, Texas Gas asserted in its Order No. 500–C comments that it anticipated earning credits in the first quarter of 1988 that would cover only four percent of the take-or-pay obligations it expected to incur during that period. However, Texas Gas has since reported to the Commission that it has settled accrued take-or-pay liability of $743 million through payments to producers of $146 million, or 19.7 cents on the dollar and it withdrew its judicial appeal of Order No. 500.

Because pipelines are resolving their take-or-pay problems, the Commission rejects commenters' proposals (discussed *infra*) to give pipelines a broader right to condition access to transportation than that contained in the crediting regulations. Specifically, pipelines and LDCs have proposed that the Commission give pipelines the discretion to refuse to transport a producer's gas unless the producer offers to settle the pipeline's take-or-pay liability to it in a manner acceptable to the pipeline. Granting pipelines such a broad right to refuse to transport gas would vitiate the open access condition in the Commission's regulations. Since the pipeline would have sole discretion to determine whether the producer had offered adequate take-or-pay relief, the pipeline would, for all practical purposes, have an unlimited opportunity to exercise its monopoly power over transportation to refuse to transport gas. This would be inconsistent with Congress' intent, expressed in connection with the adoption of the Wellhead Decontrol Act, that the Commission continue to encourage and broaden open access transportation. The increased competition in the interstate pipeline industry resulting from open access transportation "has brought lower prices to all consumers, including captive residential customers." [99] These benefits could be lost if pipelines are now given an unconstrained right to refuse transportation of gas which competes with their sales. Such a right could have particularly adverse consequences in today's market in which two-thirds, or more, of gas sold in the interstate market is transported by pipelines, rather than purchased and sold by them.

By contrast, under the crediting rules, pipelines' ability to refuse transportation is carefully circumscribed. This is because the crediting rules require the pipeline to transport a producer's gas if the producer offers credits as provided in Order No. 500. Since pipelines have been resolving their take-or-pay problems under the present rule while all consumers receive the benefits of lower prices brought about by open access transportation, the Commission sees no reason to amend the rule to give pipelines additional rights to refuse transportation.

2. Changes to Crediting Provisions

The final rule makes two changes to the crediting provisions adopted in Order No. 500. First, the final rule provides for the elimination of the crediting provisions by the earlier of December 31, 1990,[100] or the date a pipeline accepts a GIC certificate. The downward trend in take-or-pay exposure under Order No. 500 indicates that by the end of 1990 pipeline take-or-pay problems should be reduced to the point that the advantages of any further continuation of crediting will be outweighed by the burdens of crediting on the transportation and production of gas. As discussed above, in the two and one quarter years from year-end 1986 to March 31, 1989, pipelines were able to reduce their outstanding take-or-pay liability by more than three-quarters. Accordingly, the Commission believes that the year and three-quarters, from March 31, 1989 to December 31, 1990, is sufficient time for pipelines to substantially resolve the remainder of their take-or-pay problems. Indeed, it appears that since March 31, 1989, pipelines have already made significant progress in settling their remaining take-or-pay problems. Since that date, pipelines have filed with the Commission to recover about $250 million in settlement costs under the litigation exception.[101]

Acceptance of a GIC certificate would also terminate crediting, since continued crediting after implementation of a GIC would be inconsistent with the Commission's policy that a GIC should be the pipeline's only mechanism for the recovery of take-or-pay costs.[102] Any take-or-pay or similar costs incurred by the pipeline would be recoverable in the GIC itself, thereby eliminating the need for crediting. By the final December 31, 1990 sunset date for crediting, the Commission expects that a significant number of pipelines will have GICs. Nearly half of the pipelines reporting significant take-or-pay costs at year-end 1988 have applied to the Commission for GICs. Two of those pipelines have been issued and accepted GIC certificates.[103] Another has been issued a certificate and acceptance is pending.[104]

In addition, the Commission has approved an interim GIC for Transco for use until the Commission resolves Transco's permanent GIC application, which is currently being considered in a paper hearing.[105] Finally, the Commission has established formal or paper hearings on the GIC applications of another four of the pipelines that reported significant take-or-pay problems at year-end 1988 (Natural,[106] Northern,[107] Southern,[108] and Tennessee [109]).

In addition to creating a sunset provision for crediting, the Commission is making another change to the regulations concerning take-or-pay crediting. In Order No. 500, the Commission provided that pipelines may apply credits against their take-*and*-pay obligations to producers, as well as against their take-or-pay obligations. Under a take-*and*-pay clause, unlike a take-or-pay clause, a pipeline must not only pay for a minimum quantity of gas, it must actually take that gas. These must-take provisions are generally negotiated because of special production needs of producers. For example, where a contract covers casinghead gas, a must-take clause may be included in order to assure that the pipeline takes enough of the casinghead gas so that the producer does not have to shut in the accompanying oil production or flare the casinghead gas. Must-take provisions also serve to assure that the pipeline takes a sufficient quantity of gas to avoid loss of the lease under lease forfeiture clauses, drainage of the reservoir by other producers, or reduction in ultimate recoverable gas reserves recoverable through damage to the reservoir.

In Order No. 500–C, the Commission expressed concern that pipelines' application of credits against their must-take obligations for casinghead gas could require producers to shut in oil production or flare gas, thereby either increasing U.S. dependence on foreign oil or wasting natural gas. Accordingly, the Commission provided that pipelines could not apply credits against their must-take obligations for casinghead gas [110] until the Commission could further consider the effect of this crediting on the public interest and the Commission requested comment on this issue. The Commission did not, however, limit the pipelines' right to apply credits against other must-take provisions, but requested comment on the effect of such crediting. In its *AGA* decision, the court held that the Commission had not sufficiently addressed contentions by some parties that applying credits against minimum take obligations for casinghead gas would not have the adverse effects discussed in Order No. 500–C, because the producer could sell on the open market whatever casinghead gas is not purchased by the pipeline.[111]

In determining the treatment of casinghead and other must-take gas under the Order No. 500 crediting provisions, the Commission must balance the pipelines' need for take-or-pay relief against the possible adverse effects of applying credits against must-take obligations for casinghead or other gas. It appears from pipeline comments in response to Order No. 500–C that applying credits against must-take obligations for casinghead gas could give at least some pipelines significant take-or-pay relief. A number of pipelines [112] stated that casinghead gas represents a significant proportion of their system supply, particularly with regard to take-or-pay obligations.

However, when the Commission issued Order No. 500–C, producers' opportunities to market any casinghead gas not taken because of credits were more limited than they are today. This is primarily true because at that time the ability of producers to obtain transportation of the casinghead gas to alternative purchasers was more limited. In early 1988, over half the pipelines performing transportation under part 284, and therefore eligible to require offers of credits, were performing transportation only under NGPA section 311 and did not have blanket certificates.[113] The purchasers to whom a producer could obtain access over such a pipeline are limited by the fact that section 311 transportation by interstate pipelines must be on behalf of intrastate pipelines or LDCs. Furthermore, a significant number of pipelines were not performing any form of open-access transportation.[114] Thus, to the extent reaching an alternative purchaser required transportation over such a pipeline in addition to, or instead of, the transportation over the pipeline taking the credit against the casinghead gas, the producer might not have been able to sell to that purchaser. Given the uncertainty of the producer's ability to market casinghead gas to a purchaser other than the pipeline when Order No. 500–C was issued, there appeared to be a significant risk that any casinghead gas not taken by a pipeline could not be marketed to an alternative purchaser and thus could be shut in.[115]

By contrast, today open-access transportation is much more widely available. Twenty-two of 23 major pipelines have accepted blanket certificates.[116] Accordingly, with open-access transportation widely available, it appears most producers could market to other purchasers casinghead gas not taken by the pipeline, thus limiting the adverse effects of allowing crediting against must-take obligations for casinghead gas. However, since casinghead gas is contractually committed to the pipeline, the producer can only market it to others if the pipeline releases the gas not taken.

In these circumstances, the Commission has decided to modify the crediting regulations prospectively to provide that the pipeline may apply credits against its must-take obligations for casinghead gas, as long as the pipeline releases the gas not taken as a result of the application of credits. In addition, to the extent the gas is subject to the Commission's NGA jurisdiction, this rule provides the necessary blanket abandonment and certificate authority to permit the release and resale of the gas to others. The change in the crediting regulations adopted here should enhance the take-or-pay relief afforded to pipelines through crediting by allowing credits to be applied against burdensome must-take obligations for casinghead gas, while minimizing the adverse effects of so applying these credits.

In light of the fact that pipelines will now be entitled to apply credits against all must-take obligations, including those for casinghead gas,[117] the Commission believes that balance requires that the new release requirement also apply when credits are applied against any must-take obligations, not just those for casinghead gas. Allowing the pipeline to apply credits against must-take gas other than casinghead gas without releasing the gas enables the pipeline to shut in that gas, since the gas is contractually committed to the pipeline. As producers have argued,[118] this could

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[98] The Commission will discuss each of these exceptions below when it addresses the specific comments of the parties.

[99] H. R. Rep. No. 101, 101st Cong. 1st Sess. at 3 (1989).

[100] If on December 31, 1990, the D.C. Circuit has not completed judicial review of this final rule, the Commission will further extend the December 31, 1990 deadline until the date of issuance of the court's mandate upon completion of judicial review.

[101] *See* ANR Pipeline Co., 48 FERC ¶ 61,013 (1989); Natural Gas Pipeline Co. of America, 48 FERC ¶ 61,010 (1989); Northwest Pipeline Co., 49 FERC ¶ 61,056 (1989); Texas Gas Transmission Corp., 48 FERC ¶ 61,246 (1989); Transcontinental Gas Pipeline Co., 47 FERC ¶ 61,300 (1989); Williams Natural Gas Co., 48 FERC ¶ 61,066 (1989); Williams Natural Gas Co., 49 FERC ¶ 61,395 (1989); ANR Pipeline Co., 49 FERC ¶ 61,229 (1989); Natural Gas Pipeline Co. of America, 49 FERC ¶ 61,285 (1989). In addition, proposals to recover costs under the litigation exception by ANR and Transwestern are currently pending in Docket Nos. RP89–46–000 and RP90–25–000.

[102] Transcontinental Gas Pipe Line Corp., 47 FERC ¶ 61,344 at 61,852 (1989).

[103] Transwestern Pipeline Co., 45 FERC ¶ 61,340 (1988), *order on reh'g.* 44 FERC ¶ 61,104 (1988); Columbia Gas Transmission Corp., 49 FERC ¶ 61,071 (1989).

[104] El Paso Natural Gas Co., 49 FERC ¶ 61,382 (order issued November 29, 1989).

[105] 48 FERC ¶ 61,300 (1989).

[106] 49 FERC ¶ 61,137 (1989).

[107] 49 FERC ¶ 61,027 (1989).

[108] 49 FERC ¶ 61,131 (1989).

[109] 47 FERC ¶ 61,108 (1989).

[110] However, the Commission emphasized that, to the extent pipelines transport casinghead gas, transportation of that gas would still generate credits under Order No. 500. Thus, the pipeline would continue to receive the same number of credits it would have received in the absence of the casinghead gas provision. Only the contractual obligations against which those credits could be applied were affected.

[111] Slip op. at 28.

[112] Colorado Interstate Gas Company, Consolidated Gas Transmission Corporation, Columbia Gas Transmission Corporation, El Paso, Enron Interstate Pipeline Group, Natural Gas Pipeline Company of America, Panhandle Eastern Pipe Line Company, Tennessee, Texas Eastern Transmission Corporation, Texas Gas, Transcontinental Gas Pipe Line Company, United Gas Pipe Line Company, Williston Basin Interstate Pipeline Company and INGAA.

[113] For example, in March 1988, 10 of the 18 major pipelines performing open-access transportation were performing only section 311 transportation. (Of these 10, three had been issued blanket certificates but had not yet accepted them.)

[114] In March 1988, five of the 23 major pipelines were performing no open-access transportation.

[115] The alternative of flaring the gas appears in most cases to be prohibited by resource conservation laws.

[116] The one major pipeline without a blanket certificate, Florida Gas Transmission Company, is performing no Part 284 transportation and thus would not be eligible to require offers of credits in any event.

[117] As discussed above, Order No. 500–C only prohibited application of credits against must-take obligations for casinghead gas and not against other must-take obligations.

[118] *See* section IV (A)(6)(a)(xiv), *infra*.

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cause the producer serious adverse consequences such as loss of its lease under a lease forfeiture clause or loss of gas through drainage of the reservoir by other producers. Loss of the lease could cause the producer to lose its entire investment in drilling for and producing gas from the lease and could subject the producer to damage suits from the lease owner. Shutting in of the well could also cause loss of associated natural gas liquids production and have adverse downstream consequences by preventing the producer from meeting its commitment to supply gas to processing plants and gas products (*e.g.*, liquified natural gas products such as ethane, propane, butanes, etc.) to petrochemical plants and refineries.

Furthermore, shutting in of gas production is not in the public interest, since it reduces the amount of gas available on the open market, thereby reducing competitive pressures holding down the price of gas. In addition, shutting in of gas production may result in violation of state or Federal conservation regulations requiring particular levels of production in order, among other things, to maximize the amount of gas recoverable from a reservoir.

Requiring the pipeline to release any must-take gas not taken because of the application of credits should avoid these adverse consequences by enabling the producer to market the gas to other purchasers. At the same time, however, since the pipeline can continue to apply credits against any must-take obligation to a producer, this change in the regulations should not significantly reduce the take-or-pay relief afforded pipelines by the crediting mechanism. Accordingly, the Commission will amend the crediting regulations to require that a pipeline applying credits against a must-take obligation release the gas which, as a result, it does not take. In order to assure that the producer will have sufficient time to find an alternative purchaser for the released gas, the Commission will require that the pipeline give the producer 30 days notice (or such other notice as the parties may agree to) of its intent to apply credits against a must-take obligation.

In some cases the must-take obligation may arise from a state or Federal regulation, rather than a take-and-pay provision in the producer-pipeline contract. Since, as discussed above, these regulations are adopted for purposes such as resource conservation, the release requirement will apply when a pipeline applies credits against a take-*and*-pay provision in its contract, and also when it applies credits against a contractual obligation to take *or* pay for gas required to be produced by a rule or regulation promulgated by a state or Federal conservation agency on or before December 15, 1989.

The Commission recognizes that requiring the pipeline to release the casinghead or other must-take gas against which the credit is applied may result in the producer selling that gas to a purchaser that otherwise might have purchased from the pipeline. However, the pipeline's transportation of the released gas will generate additional credits for the pipeline to apply against its take-or-pay obligations to the producer, thereby mitigating any adverse effect on the pipeline's take-or-pay liability by the possible displacement of its sale. These additional credits obtained by the pipeline do not result in the pipeline receiving unfair "double" credits. The pipeline is simply receiving one credit for each unit of gas transported for the producer. The producer having obtained transportation of both (1) the gas which generated the credit applied against the released gas, and (2) the released gas against which the original credits were applied, it is appropriate that the pipeline also receive credits from both transportation transactions.

The Commission is making the changes to the crediting rules concerning casinghead and other must-take gas effective prospectively only. Thus, these changes will apply only with respect to credits generated by transportation occurring after the effective date of this rule. Retroactive application would be inappropriate for several reasons.

First, these changes to the crediting regulations have been made possible only by the increased availability of transportation since the issuance of Order No. 500–C. As discussed above, when the Commission adopted, in Order No. 500–C, the provision that credits could not be applied against must-take obligations for casinghead gas, open access transportation was not sufficiently available to assure that producers could market the casinghead gas to alternative purchasers. Since the provision was therefore necessary when adopted to minimize the possibility that the producer could be required to shut in oil production, it would not be appropriate to give retroactive effect to this change in the crediting regulations.

Second, producers may have relied on the provision that pipelines may not apply credits against must-take obligations for casinghead gas in allowing their gas to be transported subject to an offer of credits. The producer might prefer not to have its gas transported rather than allow the pipeline to take a credit against a must-take obligation for casinghead gas, thus requiring the producer to find an alternative purchaser for that gas. Furthermore, pipelines have presumably already applied most credits which they have received from transportation previously performed in accordance with the crediting regulations under the interim rule, and producers have made production decisions in reliance on that application of credits. In these circumstances, it would be inequitable now to allow the pipeline to apply credits generated by past transportation against must-take obligations for casinghead gas.

Third, the Commission does not believe that retroactive application of these changes is necessary to achieve the primary purpose of crediting—giving pipelines additional bargaining power to negotiate reasonable settlements of their take-or-pay contracts. As discussed in the previous section, pipelines have had sufficient bargaining power to negotiate reasonable settlements under the crediting regulations in effect before the amendments adopted here.

Finally, the Commission observes that it does not intend that these changes in the crediting regulations shall, in any way, affect settlements which producers and pipelines have already entered into, unless the parties expressly reserved in the settlement the right to modify that settlement to reflect subsequent changes in the regulations adopted in Order No. 500.

3. Extension of Sunset Provision

The court, in *AGA*, held that the Commission may not impose a sunset date for the alternative passthrough mechanism that is effective before completion of its judicial review of the final rule.[119] The court held that any earlier sunset date could pressure the participants in the natural gas industry to dispose of much of the take-or-pay problem without the Commission having taken a final, reasoned position on how this should be done. The court also expressed concern that the March 31, 1989 sunset date "may have been highly prejudicial to the bargaining power of pipelines which, unlike the producers, were facing the deadline."[120]

In view of the court's decision, the Commission is extending until December 31, 1990, the March 31, 1989 sunset date for the Order No. 500 alternative passthrough mechanism.

[119] Slip op. at 30.

[120] Slip op. at 29.

Given the court's statement in *AGA* that it will consider expediting the briefing and argument on any petitions for review of the final rule,[121] the Commission expects that the D.C. Circuit will have completed judicial review of this final rule by December 31, 1990. If, however, judicial review of this final rule is still pending in the U.S. Court of Appeals for the D.C. Circuit on that date, the Commission will further extend the sunset date until 30 days after the date of issuance of the court's mandate upon completion of judicial review. Until the new sunset date, pipelines will be able to use the alternative mechanism to pass through all eligible take-or-pay settlement costs, not just those arising under contracts in litigation on March 31, 1989.[122] However, for the reasons discussed below, the Commission is not expanding the litigation exception to the sunset date permitted in Order No. 500–F. Thus, after December 31, 1990, pipelines will be permitted to use the alternative mechanism to recover only eligible costs arising under contracts which were in litigation on March 31, 1989.

In *AGA*, the court also expressed concern that, if the Commission decides to impose a deadline calculated to fall sometime after judicial review, "pipelines will still be unable to appeal Commission decisions rejecting their take-or-pay passthrough proposals because review will come after the new filing deadline."[123] A sunset date after judicial review of the final rule would only affect a pipeline's ability to appeal the rejection of a take-or-pay filing if: (1) The Commission rejects a pipeline's filing to recover take-or-pay settlement costs, (2) the pipeline seeks judicial review of the rejection and does not make a new filing consistent with the Commission's policies,[124] and (3) following the sunset date the court upholds the Commission's rejection of the filing.

To date, every pipeline that has had a proposal to recover take-or-pay costs rejected has made a subsequent filing which the Commission has accepted.[125] Thus, the circumstances about which the court expressed concern have not yet arisen. However, if the circumstance arises that was of concern to the court, the Commission will then consider what steps, if any, to take in light of the concerns expressed by the court.

The Commission believes that it is important to maintain a sunset date and that the extension of the March 31, 1989 sunset provision to December 31, 1990 preserves as much as possible the important benefits of the original sunset provision, while at the same time being responsive to the court's concern that pipelines should not be pressured into resolving their take-or-pay problems before issuance of a final rule and judicial review thereof. When Order No. 500 was originally issued on August 7, 1987, it established a sunset of December 31, 1988 for the passthrough mechanism in order to encourage pipelines and producers to resolve their take-or-pay problems without unnecessary or undue delay. The Commission observed that take-or-pay represents the last and most significant deterrent to the realization of the Commission's goal of establishing orderly competitive markets for natural gas sales and services, and that "it goes almost without saying that it is desirable that the take-or-pay deterrent to competitive natural gas markets be eliminated as quickly as possible."[126]

Perhaps more importantly, the Commission also believes that the sunset date serves to protect consumers, consistent with the court's admonition in *AGD* that passing take-or-pay costs downstream to customers "must at some point conflict with the Commission's duty to adequately attend [ ] to the agency's prime constituency—the consumers whom the [NGA] was designed to protect."[127] The fixed take-or-pay charge, unlike commodity treatment, guarantees the pipelines' recovery of a portion of the costs instead of subjecting recovery to market forces. Thus, a sunset date avoids giving pipelines an indefinite right to a guaranteed recovery of a portion of their take-or-pay settlement costs through a fixed take-or-pay charge, without subjecting that recovery to market forces. It is also important to complete the passthrough of these costs as soon as practicable in order to bring to an end any market distortions resulting from pipelines' continued collection of these costs, particularly through volumetric surcharges. However, while the sunset deadline terminates the pipelines' right to a guaranteed recovery of a portion of these costs, it does not deprive pipelines of the opportunity to seek recovery of all prudently incurred costs. Pipelines can, after the sunset deadline, continue to file for recovery of take-or-pay costs in their commodity rates.

While the Commission is extending the sunset date, the information available to the Commission does not substantiate the pipelines' allegations to the court in *AGA*, that the March 31, 1989 sunset date pressured pipelines into making unfavorable settlements. The Commission has been concerned from the outset that the sunset date not harm consumers by forcing pipelines into unfavorable settlements. When the Commission issued Order No. 500, it believed that the year and a half, approximately, allowed for negotiations was sufficient. However, on June 30, 1988, the Commission held that it would not apply the sunset date to contracts that were in litigation on the sunset date. The Commission explained that "for contracts that are in litigation the Commission is reluctant to press the parties into hasty (and therefore more expensive) settlements and foreclose the parties' abilities to fully pursue their avenues for legal redress."[128]

As the December 31 sunset date for contracts that were not in litigation approached, INGAA and a number of pipelines requested an extension of that date on the ground that the pipelines were still engaged in numerous settlement negotiations, and the December 31 deadline might force them to agree to less favorable settlement terms than they could otherwise obtain. NGSA, an organization of producers, also supported extension of the December 31 deadline, stating that a limited extension was necessary to permit pipelines and producers to

[121] Slip op. at 33–34.

[122] The September 1989 INGAA study reported that $1.1 billion of pipelines' $2.4 billion take-or-pay liability as of March 31, 1989, did not arise under contracts in litigation on that date.

[123] Slip op. at 30.

[124] The only circumstance in which the Commission has not permitted a pipeline to recover costs while judicial review of the rejection of an earlier filing is pending is where the pipeline has sought to recover 100 percent of its costs through a direct bill and appeals the requirement that it absorb a portion of the costs. *See* Natural Gas Pipeline Co., 43 FERC ¶ 61,194 at 61,515–6 (1988).

[125] The Commission has rejected filings by three pipelines to recover take-or-pay costs where the pipeline has not agreed to absorb a portion of those costs. Natural Gas Pipeline Co., 43 FERC ¶ 61,194 (1988); Texas Gas Transmission Corp., 43 FERC ¶ 61,324 (1988), *reh'g*, 44 FERC ¶ 61,184 (1988); Transwestern Pipeline Co. (letter order issued August 12, 1988 in Docket No. RP88–198–000). However, the Commission accepted subsequent or contemporaneous filings by these pipelines which were consistent with Commission policy. Natural Gas Pipeline Co., 43 FERC ¶ 61,194 (1988); Texas Gas Transmission Corp., 44 FERC ¶ 61,141 (1989); Transwestern Pipeline Co., 45 FERC ¶ 61,427 (1988). The Commission also rejected filings by Columbia Gas Transmission Co. in which some of the settlement costs to be recovered related to contracts which the Commission had previously found abusive, and ineligible for passthrough. Columbia Gas Transmission Co., 42 FERC ¶ 61,121 and ¶ 61,328 (1988). However, the Commission subsequently accepted a filing by Columbia to recover the costs that had not been found ineligible. Columbia Gas Transmission Co., 44 FERC ¶ 61,177 (1988).

[126] FERC Stats. & Regs. ¶ 30,761 at 30,782.

[127] *AGD*, 824 F.2d at 1025 (*quoting* Maryland People's Counsel, 761 F.2d at 781).

[128] El Paso Natural Gas Co., 43 FERC ¶ 61,376 at 62,437 (1988).

complete their negotiations.[129] The Commission again recognized that this

in its September 1989 study that the cents paid for each dollar of relief

passthrough mechanism. All 22 pipelines which have filed to recover take-or-pay settlement costs under the alternative

Order No. 436 not to invoke its power under NGA section 5 to modify or set aside troublesome take-or-pay

Commission authority both (1) with respect to the "rate, charge, or classification" demanded in a sale

gas. The NGPA further provided for the automatic escalation of these ceiling prices and the phased elimination of the

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complete their negotiations.[129] The Commission again recognized that this was a legitimate concern and, accordingly, issued Order No. 500–F, granting an extension of the sunset date to March 31, 1989, "to permit pipelines and producers to bring to an orderly conclusion their settlement negotiations." [130] The Commission further provided that the March 31, 1989 sunset date would not apply to contracts in litigation on that date as long as the pipeline filed tariff language before that date providing for a litigation exception.[131]

No pipeline, or any other party, requested rehearing of Order No. 500–F on the ground that the extension to March 31, 1989, together with the litigation exception, gave pipelines insufficient time to negotiate their remaining settlements or would pressure them into agreeing to unfavorable terms. To the contrary, the only rehearing requests received opposed the extension, either for a particular pipeline or generally, on the ground that the pipelines' customers would be harmed by a continued ability of the pipeline to recover settlement costs through a fixed take-or-pay charge.[132] Nor did any party thereafter request an extension of the March 31 date. The Commission believes that the failure of the pipelines who were actually engaged in the negotiations with producers to seek any further extension of the March 31, 1989 sunset date, either by seeking rehearing of Order No. 500–F or by filing a later motion for an extension of time, is particularly significant. It is a reasonable inference from these facts that they did not consider the March 31, 1989 sunset date, combined with the litigation exception, to place them in an unfavorable bargaining position.

The only evidence of which the Commission is aware that even remotely suggests otherwise is INGAA's estimate in its September 1989 study that the cents paid for each dollar of relief increased during the first quarter of 1989 to 39 cents on the dollar, having gradually increased from 11 cents in 1985 to 22 cents in 1988. However, as INGAA concedes in its study, its figures do not take into account any future relief received by the pipelines as a result of contract reformations provided for in the settlements, including future take-or-pay relief. As Table 5 shows, the pipelines' own reports to the Commission show that they have received nearly $28 billion in future benefits. This future relief accounts for over 60 percent of the total relief which the pipelines have reported receiving in all their settlements. In addition, the Commission assumes that contract reformation has become a more significant part of the recent settlements, because when pipelines entered into the earlier settlements they may not have expected the reduced demand for gas to last as long as it has. Therefore, the need for permanent contract reformation was not then as apparent. If future benefits of the magnitude shown in Table 5 were included in the INGAA study, its cents on the dollar figure for January-March 1989 settlements would be reduced to a level comparable to the overall 18.6 cents on the dollar figure that has resulted for all settlements contained in the Order No. 500 filings.

Thus, it appears that the March 31, 1989 sunset date appropriately encouraged pipelines and producers to negotiate seriously and to resolve promptly their take-or-pay problems, without adversely affecting the pipelines' bargaining positions. That the deadline spurred settlement negotiations is demonstrated by INGAA's own statement that during the first three months of 1989 pipeline negotiating teams completed negotiations involving over 3,800 additional take-or-pay contracts. In the absence of the sunset date to spur the parties to agreement, many settlement negotiations likely would have dragged on, the take-or-pay problem would not have been as near to resolution as it is today, and the most significant barrier to an efficient gas market would still remain.

In Order No. 500–F, issued on December 9, 1988, the Commission stated that, for contracts in litigation on March 31, 1989, it would permit pipelines to file by that date to include language in their tariffs permitting them to pursue the litigation to its natural end (of judgment and final appeal or settlement) and then to file to recover eligible costs resulting from these contracts under the alternative passthrough mechanism. All 22 pipelines which have filed to recover take-or-pay settlement costs under the alternative recovery mechanism have filed such tariff language. As stated above, the Commission will not expand the litigation exception to include costs arising under contracts which become subject to litigation during the period April 1, 1989 through December 31, 1990.

As discussed above, the sunset date (1) protects consumers from an indefinite guaranteed right of the pipeline to recover a portion of its take-or-pay costs without subjecting that recovery to market forces, (2) encourages parties to promptly resolve their take-or-pay problems, and (3) helps bring to an end as soon as practicable any market distortions resulting from pipelines' continued collection of these costs. Allowing costs arising under contracts which become subject to litigation during the period April 1, 1989 through December 31, 1990 to qualify for the litigation exception would reduce these benefits by limiting the effectiveness of the sunset date.

Furthermore, pipeline bargaining power should not be adversely affected by not changing the litigation exception adopted in Order No. 500–F. As discussed above, after Order No. 500–F established a litigation exception based on March 31, 1989, no pipeline or any other party claimed, either in a request for rehearing of Order No. 500–F or a subsequent motion, that applying the March 31, 1989 sunset date to all contracts, not just those in litigation as of March 31, 1988, improperly reduced pipeline bargaining power with respect to those contracts. On the contrary, the only parties seeking rehearing of Order No. 500–F were concerned that consumers would be harmed by the extension of the pipelines' guaranteed recovery of a portion of their take-or-pay costs through the extension of the sunset date from December 31, 1988 to March 31, 1989, and the establishment of the March 31, 1989 litigation exception. In any event, the further extension of the sunset date to December 31, 1990 gives pipelines an additional year and nine months to negotiate settlements of contracts not covered by the litigation exception. This should allow the pipelines sufficient time to settle the bulk of their remaining take-or-pay liability under contracts not in litigation on March 31, 1989.

4. Action under NGA Section 5

The court in *AGD* [133] directed the Commission to reassess its decision in Order No. 436 not to invoke its power under NGA section 5 to modify or set aside troublesome take-or-pay provisions in jurisdictional contracts. In *AGA*, the court again emphasized that the Commission must provide a reasoned basis for its decision whether to take action under section 5.

Subsequent to the issuance of Order No. 500, the Commission directed interstate natural gas pipeline companies to file detailed data on their take-or-pay contracts in order to assist the Commission in assessing whether action under NGA section 5, or any other action (such as rescinding the incentive ceiling for tight formation gas established under NGPA section 107(c)(5)), would contribute to solving pipeline take-or-pay problems. The Commission also invited producers to file similar data. In addition, numerous parties have filed comments with respect to both the Commission's legal authority to take such action and the factual necessity of doing so.

The Commission has considered all the comments and evaluated the information received pursuant to its data requests. As it did in Order No. 436, the Commission concludes, based on its evaluation of its statutory responsibilities and its assessment of the current state of the natural gas industry, that it will not take action under NGA section 5 in the final rule to modify producer-pipeline take-or-pay contracts.

a. *Scope of Commission's Jurisdiction.* The Commission's analysis must start with a consideration of its legal authority under NGA section 5 to modify producer-pipeline contracts. As discussed below, the Commission concludes that it cannot take section 5 action to modify producer-pipeline contracts for the sale of gas removed from the Commission's NGA jurisdiction by NGPA section 601. In addition, the Commission concludes that it cannot modify the price terms of contracts for the sale of gas which remains subject to the Commission's NGA jurisdiction.

The statutory provisions relevant to determining the Commission's authority under NGA section 5 are sections 1(b) and 5 of the NGA and section 601 of the NGPA. NGA section 1(b) gives the Commission jurisdiction over three things: (1) Sales for resale of natural gas in interstate commerce, (2) transportation of gas in interstate commerce, and (3) natural gas companies engaged in the above two activities.[134] NGA section 5 gives the Commission authority both (1) with respect to the "rate, charge, or classification" demanded in a sale subject to the Commission's jurisdiction under NGA section 1(b) and (2) with respect to any "rule, regulation, practice, or contract affecting" the rate, charge or classification demanded in a jurisdictional sale.[135]

In 1954, the United States Supreme Court held that all sales for resale by producers in interstate commerce were sales subject to the Commission's jurisdiction under NGA section 1(b) and that the producers making those sales were "natural gas companies" subject to the Commission's NGA jurisdiction. *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672 (1954). This meant that the Commission had authority under NGA section 5 to modify the contracts under which those sales were made, since the contracts both set forth and affected the "rate, charge, or classification" demanded by a "natural gas company" (the producer) in a jurisdictional sale. Accordingly, following the *Phillips* decision, the Commission commenced establishing just and reasonable rates for producer sales in interstate commerce under NGA section 5.

In 1978, Congress enacted the NGPA. "The NGPA reflects a Congressional belief that a new system of natural gas pricing was needed to balance supply and demand." [136] In order to address the gas shortages of the late 1970's, Congress decided "to move toward a less regulated natural gas market" and, with respect to new gas, "to leave determination of supply and first-sale price to the market." [137] The NGPA replaced the then effective producer rates, established generically by the Commission under NGA section 5, with a system of statutorily established ceiling prices, set forth in NGPA Title I, for various categories of gas. The NGPA further provided for the automatic escalation of these ceiling prices and the phased elimination of the ceiling prices for certain categories of gas. Finally, the NGPA provided for the complete removal from the Commission's NGA jurisdiction of producer sales of new gas [138] and certain other high cost gas. The removal of these sales from the Commission's NGA jurisdiction meant that, not only did the Commission no longer establish the price charged in these sales (beyond enforcing any applicable ceiling price), but also the producers no longer needed Commission authorization under NGA section 7 to make or abandon sales of this gas.

The specific provisions of the NGPA removing first sales of new and high cost gas from the Commission's NGA jurisdiction are found in NGPA section 601. NGPA Section 601(a)(1)(A) provides that "for purposes of section 1(b) of the Natural Gas Act, the provisions of such Act and the jurisdiction of the Commission under such Act shall not apply" to natural gas which was not committed or dedicated to interstate commerce before enactment of the NGPA "solely by reason of any first sale of such natural gas." NGPA section 601(a)(1)(B), in similar language, removes from NGA jurisdiction first sales of gas committed to interstate commerce upon enactment of the NGPA which qualifies for NGPA sections 102(c), 103(c), and 107(c)(1) through (4) ceiling prices. NGPA section 601(a)(1)(D) provides that "for purposes of the Natural Gas Act, the term 'natural gas company' * * * shall not include any person by reason of, or with respect to, any sale of natural gas if the provisions of the Natural Gas Act and the jurisdiction of the Commission do not apply to such sale solely by reason of" NGPA sections 601(a)(1)(A) and (B). For convenience, the gas covered by NGPA sections 601(a)(1)(A) and (B) hereafter will be referred to as "new gas."

NGPA section 601(b) further limited the Commission's authority under the NGA by providing,

For purposes of sections 4 and 5 of the Natural Gas Act, any amount paid in any first sale of natural gas shall be deemed to be just and reasonable if—

(1) Such amount does not exceed the applicable maximum lawful price established under title I of this Act; or

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[129] Amoco Production Company, United Distribution Companies (UDC), and, jointly, the Process Gas Consumers Group, the American Iron and Steel Institute and the Association of Business Advocating Tariff Equity opposed any extension on the ground that an extension would delay the prompt resolution of the take-or-pay problem to the detriment of the entire industry.

[130] FERC Stats. & Regs. ¶ 30,842 at 31,288.

[131] *All* pipelines which have filed to pass through costs under Order No. 500 have filed litigation exception tariff language.

[132] UDC and the State of Michigan and the Michigan Public Service Commission contended that the Commission should not have granted any extension. Rochester Gas and Electric Corporation and Connecticut Natural Gas Corporation and CNG Transmission Corporation complained only that the Commission should not have granted any extension to Tennessee, arguing that an extension for Tennessee violated that pipeline's take-or-pay passthrough settlement. *See* Order No. 500–G, 46 FERC ¶ 61,146 (1989).

[133] 824 F.2d at 1023.

[134] Section 1(b) of the NGA provides, The provisions of this act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas.

[135] NGA section 5 provides, Whenever the Commission * * * shall find that any rate, charge, or classification demanded, observed, charged, or collected by any natural-gas company in connection with any * * * sale of natural gas, subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory, or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed.

[136] Transcontinental Pipe Line Co. v. State Oil & Gas Board, 374 U.S. 409, 421 (1988).

[137] *Id.* at 422, 423.

[138] Gas not committed to interstate commerce on the day before enactment of the NGPA. In the parlance of the NGPA, the producer's sale of natural gas is referred to as a "first sale." Pipeline sales for resale of gas purchased from producers generally are not "first sales."

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(ii) There is no applicable maximum lawful price by reason of the elimination of price controls pursuant to subtitle B of title I of this Act.

While NGPA section 601(b) deems any price paid in a first sale to be just and reasonable so long as it does not exceed an applicable ceiling price, the Commission may deny the pipeline the right to pass through its costs under contracts for the purchase of non-jurisdictional and jurisdictional gas. However, NGPA section 601(c)(2) limits the availability of this option by stating that the Commission "may not deny any interstate pipeline recovery of any amount with respect to any purchase of natural gas if" the amount has been deemed just reasonable "except to the extent the Commission determines that the amount paid was excessive due to fraud, abuse, or similar grounds."

Various parties argue that, despite the removal of jurisdiction over first sales of new gas, the Commission may continue to take section 5 action to modify take-or-pay clauses in the contracts providing for the sale of the new gas. The Commission, however, concludes that NGPA section 601's removal of first sales of new gas from the Commission's NGA jurisdiction means that the Commission can no longer take section 5 action to modify any provision in the producer-pipeline contract under which those first sales are made, including the take-or-pay clause. Before NGPA section 601, the Commission had authority under NGA section 5 to modify any provision of the producer-pipeline contract, since that contract both set forth and affected the "rate, charge, or classification" demanded in the jurisdictional sale by the producer, a "natural gas company" subject to the Commission's jurisdiction. However, since the sale by the producer is no longer subject to the Commission's NGA jurisdiction and the producer is no longer a "natural gas company" subject to the Commission's jurisdiction (except to the extent it makes sales which remain jurisdictional), the Commission no longer has authority to modify the first sale contract as a contract that sets forth or affects the rate demanded by the producer in its sale to the pipeline.

The fact that section 601 speaks in terms of removing from the Commission's NGA jurisdiction the first sale of the relevant gas does not leave the Commission any residual NGA jurisdiction over those parts of the producer-pipeline contract, such as the take-or-pay provision, which may be considered to relate to something other than a "first sale" of natural gas. Section 601 removes not only the first sale of the gas from Commission jurisdiction, it also provides that the producer shall no longer be a "natural gas company" subject to the Commission's NGA jurisdiction. This indicates Congress' intent that all the producer's activities with respect to the new gas be removed from the Commission's jurisdiction.

Section 1(b) of the NGA gives the Commission jurisdiction only over sales for resale in interstate commerce, the interstate transportation of natural gas, and natural gas companies engaged in these activities. Therefore, prior to the NGPA, the only basis for Commission jurisdiction over any provisions in the producer-pipeline contract, including those which deal with matters other than the sale itself, was the fact that the contract provided for the producer's jurisdictional sale for resale. Once that sale is no longer jurisdictional and the producer is no longer a "natural gas company" subject to the Commission's NGA jurisdiction, there is nothing in NGA sections 1(b) or 5(a) to give the Commission jurisdiction over any provisions in the contract, since either a sale or transportation in interstate commerce by a natural gas company is a necessary prerequisite to a finding of jurisdiction under NGA section 1(b) or the exercise of jurisdiction under section 5(a).

That Congress understood section 601's removal of first sales of new gas from NGA jurisdiction to remove the entire producer-pipeline transaction from Commission jurisdiction is shown by the legislative history of both the NGPA and the Wellhead Decontrol Act of 1989 providing for the phased removal all "those price and non-price controls that remain in place following the partial Wellhead decontrol carried out under the NGPA." The Joint Statement of Managers accompanying the Conference Committee Report on the NGPA states that under the NGPA "new gas is never made subject to the Commission's jurisdiction under sec. 1(b) of the NGA." [139] Furthermore, both the Senate and House Committee reports on the more recent Natural Gas Wellhead Decontrol Act of 1989 (the Wellhead Decontrol Act) describe the NGPA as bringing about the "complete removal of Federal controls on new gas." [140] Any attempt to claim section 5 authority over take-or-pay clauses with respect to new gas would be contrary to these statements. In addition, the Wellhead Decontrol Act uses the same language to remove the Commission's NGA jurisdiction with respect to old gas which NGPA section 601 used to remove the Commission's NGA jurisdiction with respect to new gas.[141] Congress clearly intended by the Wellhead Decontrol Act to remove completely the Commission's authority to regulate producer-pipeline contracts, it must have understood NGPA section 601 to completely remove that authority with respect to new gas. For example, the report of the Senate Committee on Energy and Natural Resources stated,

> Once the "underbrush" of price and non-price regulation (and the resulting impact of such regulation upon gas purchase contracts) is cleared away, natural gas producers will be inclined to maximize profits by producing gas that is the least expensive to drill and produce. . . . Over time, competition among efficient producers will help to keep natural gas commodity prices at the lowest reasonable price necessary to summon forth sufficient gas supplies to meet consumer demand.[142]

Pipelines and LDCs use the fact that pipelines' resale of the gas remains jurisdictional to argue that the Commission retains section 5 authority over the producer-pipeline contract since that contract "affects" the "rate, charge, or classification" demanded by the pipeline in its jurisdictional resale. However, the most natural reading of the NGA is that the statute only conveys jurisdiction over entities that are "natural gas companies" and does not give the Commission authority to modify contracts under which entities that are not "natural gas companies" make sales to natural gas companies.

While the Supreme Court in *FPC* v. *Conway* stated that the rules, practices, or contracts "affecting" a jurisdictional rate are not themselves limited to the jurisdictional context, the Supreme Court has interpreted the Commission's section 5 authority with respect to non-jurisdictional contracts as limited to considering such contracts in establishing the just and reasonable rates and contracts for a jurisdictional transaction. The Supreme Court has expressly stated that the Commission cannot modify a non-jurisdictional contract. Thus, in *Panhandle Pipe Line Co.* v. *FPC*, 324 U.S. 635, 639–649 (1945), the Supreme Court held that a pipeline's contracts for non-jurisdictional direct sales of gas are contracts "affecting" the pipeline's jurisdictional sale for resale rates within the meaning of NGA section 5. However, while the court stated that the Commission may therefore "take the direct sales rate into consideration when it fixes the rates for interstate wholesale sales which are subject to its jurisdiction," [143] the court stated that the Commission "lacks authority to fix rates for direct industrial sales." [144]

Here, pipelines and LDCs would have the Commission go beyond considering the pipeline-producer contracts in establishing the pipeline's jurisdictional rates, such as the pipeline's sale for resale rates. They would have the Commission exercise its section 5 authority with respect to contracts "affecting" jurisdictional rates to directly modify the contract for the non-jurisdictional first sale from the producer to the pipeline. However, this contract is analogous to the contracts for the non-jurisdictional direct sales involved in *Panhandle*. Just as in *Panhandle*, section 5 did not give the Commission authority to modify directly the contract for the non-jurisdictional direct sale, so also section 5 does not give the Commission authority to modify the contract for the non-jurisdictional new gas sales here involved.

Indeed, there is even less justification for the Commission to claim section 5 authority to modify the producer-pipeline contracts than there would be to claim authority to modify the direct sale contracts involved in *Panhandle*. The direct sale contract in *Panhandle* was at least a contract for a sale by a "natural gas company," the pipeline. Here, however, at least to the extent that the producer makes no jurisdictional sales, the contract is for a sale by an entity that is not a "natural gas company," the producer.

Thus, to hold that section 5's language concerning contracts "affecting" jurisdictional rates allows the Commission to modify contracts for the sale of non-jurisdictional gas, simply because those contracts affect a pipeline's jurisdictional rates, would mean that the Commission could directly modify any non-jurisdictional contract which affected a pipeline's jurisdictional rates, including labor contracts between the pipeline and its employees, contracts for the purchase of office equipment, and leases of office space. The Commission has never claimed, nor has any court suggested, that section 5 gives the Commission authority to directly modify such contracts.

As discussed above, the Commission may, of course, deny the pipeline the right to pass through its costs under its contract with the producer, based upon a finding of fraud and abuse in the case of gas costs or a finding of imprudence in the case of other costs. However, if the Commission does exercise this authority to deny the pipeline passthrough of costs paid to a producer, the denial of passthrough does not modify the contract between the pipeline and the producer. As the Commission stated in Opinion No. 317, *Texas Gas Transmission Corp.*, 45 FERC ¶ 61,004 at 61,018–9,

> Under 601(c)(2), the only consequence of a Commission finding that the amount paid by a pipeline "was excessive due to fraud, abuse, or similar grounds," is that the Commission may "deny any interstate pipeline recovery of any amount paid with respect to any purchase of natural gas." Section 601(c)(2) does not give the Commission any authority to alter the amounts paid by the pipeline to the producer.

See also Columbia Gas Transmission Corp., 42 FERC ¶ 61,021 at 61,121 (1988).

That the Commission lacks section 5 authority to modify producer-pipeline contracts for the sale of non-jurisdictional gas is consistent with Congress' intent in enacting the NGPA "to move toward a less regulated natural gas market." [145] Congress removed first sales of new gas from the Commission's NGA jurisdiction and further provided for the phased elimination of NGPA price ceilings for this gas in order to permit supply and first sale price of new gas to be determined by the market. However, to the extent the Commission retained its section 5 authority to modify contracts covering non-jurisdictional gas, the Commission rather than the market would be determining aspects of the producer-pipeline transaction.

The purpose of removing only first sales from the Commission's NGA jurisdiction—rather than removing new gas altogether from the Commission's jurisdiction—was not to allow the Commission some continued jurisdiction over non-sale or non-price parts of producer-pipeline transactions with respect to new gas. Rather, the purpose was to ensure that the Commission continued to have jurisdiction over an interstate pipeline's transportation and sale for resale of the new gas. Since these are non-first sales over which NGA section 1(b) previously gave the Commission jurisdiction, removal of only first sales leaves the Commission's preexisting jurisdiction over those transactions in place.

That the Commission lacks authority under section 5 to modify non-jurisdictional producer-pipeline contracts is also consistent with the *AGD* decision and the decision of the 5th Circuit in *Pennzoil Co.* v. *FERC*, 645 F.2d 360, 380-383, (5th Cir. 1981), *cert. denied*, 454 U.S. 1142 (1982). In *AGD*, the court stated, "The Commission has no power under section 5 to set aside or modify clauses in producer contracts relating to nonjurisdictional gas." 624 F.2d 981, 1027 n. 30 (D.C. Cir. 1987). The *AGD* decision cites *Pennzoil* for this statement. In *Pennzoil*, the court expressly held that the Commission lacks authority to interpret or modify contracts for the sale of gas removed from its jurisdiction by NGPA section 601(a)(1).

In *Office of Consumers' Counsel, Ohio* v. *FERC*, 826 F.2d 1136, 1139 n. 2 (D.C. Cir. 1987) (*OCC II*), a second panel of the D.C. Circuit refused to be bound by the *AGD* decision's statements concerning the Commission's section 5 authority. The court stated, "The initial panel [in *OCC I*] clearly assumed, without question or objection from any party, that in imposing remedies under section 5 FERC had the power to modify * * * illegal take-or-pay provisions. The * * * footnote in *Associated Gas Distributors* is clearly dictum and it in no way affects the law of this case." However, *OCC II* did not actually reach the issue of whether the Commission has section 5 authority to modify contracts for the sale of non-jurisdictional gas, but simply stated, in effect, that for purposes of that case the court would treat the Commission as having that authority since all parties in their original arguments to the court had assumed that the Commission had that authority. The Commission thus concludes that it has no power under NGA section 5 to set aside, modify, or regulate clauses in producer contracts relating to the first sales removed from NGA jurisdiction by NGPA section 601.

With respect to contracts (for the sale of old gas) that remain subject to Commission jurisdiction under NGA section 5, the Commission may modify a non-price term, including the take-or-pay provision, of such a jurisdictional contract. The Commission may not, however, utilize NGA section 5 to modify the price terms of jurisdictional contracts. The Commission could only

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[139] H.R. Conf. Rep. No. 1752, 95th Cong., 2d Sess. 123 (1978), *reprinted in* 1978 U.S. Code Cong. & Admin. News 8500, 9040.

[140] H.R. Rep. No. 29, 101st Cong., 1st Sess. 4 (1989); S. Rep. No. 30, 101st Cong., 1st Sess. 7 (1989).

[141] The Wellhead Decontrol Act amends section 601(a)(1)(A) of the NGPA to read as follows:

> For purposes of section 1(b) of the Natural Gas Act, the provisions of the Natural Gas Act and the jurisdiction of the Commission under such Act shall not apply to any natural gas solely by reason of any first sale of such natural gas.

See 103 Stat. 159.

[142] S. Rep. No. 30, 101st Cong., 1st Sess. 10–11 (1989).

[143] Panhandle, 324 U.S. at 649.

[144] *Id.* Similarly, in FPC v. Conway, *supra*, the Supreme Court held that the Commission may consider a company's non-jurisdictional retail electric rates in establishing jurisdictional wholesale electric rates, but the Commission "has no power to prescribe the rates for retail sales of power companies." 426 U.S. at 276.

[145] Transco, 374 U.S. at 422.

exercise its section 5 authority to modify the price term in a jurisdictional

The court stated, "Even for jurisdictional contracts * * *. Congress has provided

approximately $4.2 billion of existing take-or-pay exposure related to NGPA

provisions relating to jurisdictional gas still required to be taken would be unaffected and the take-or-pay and price

insertion of a market-out clause would mean that the producer no longer had any contractual assurance of some

disproportionately. This would be particularly true, if the Commission eliminated altogether take requirements

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exercise its section 5 authority to modify the price term in a jurisdictional contract upon a finding that the price is unjust and unreasonable. However, under NGPA section 601(b), all prices paid in first sales of natural gas are deemed to be just and reasonable so long as they do not exceed on applicable maximum lawful price.[146] Therefore, the Commission could not make the necessary finding to take section 5 action with respect to the price term in jurisdictional contracts. The *AGD* decision similarly found that the Commission lacked authority to modify the price term of jurisdictional contracts. The court stated, "Even for jurisdictional contracts * * *. Congress has provided that prices at or below the NGPA ceilings are 'just and reasonable.' Thus FERC is clearly barred from setting sub-NGPA ceilings on jurisdictional wellhead sales." *AGD* 824 F.2d at 1028.

Finally, NGA section 5 action can only operate prospectively.[147]

b. *Basis for the Commission's decision.* Pursuant to the *AGD* court's direction,[148] the Commission has accumulated and evaluated data that make clear the extent to which contracts for jurisdictional gas account for the basic problem. As of the end of 1988, approximately $4.2 billion of existing take-or-pay exposure related to NGPA categories of gas subject to the Commission's NGA jurisdiction. This represented 45.5 percent of the total reported contract-by-contract take-or pay exposure of $9.2 billion which the Commission was able to identify as relating to jurisdictional or non-jurisdictional gas. Year-end 1988 take-or-pay exposure for the different jurisdictional NGPA categories of gas, together with the December 1988 price ceilings for these categories, was as follows:

CHART I

NGPA category	Total (million $)	Percentage of total exposure	Price ceilings
102 (d)	$1,708	18.5	$4.431
104 Pre '73	461	5.0	[149] .527
104 '73–74 Biennium	238	2.6	[150] 1.685
104 Post '74	1,205	13.0	2.809
104 Other	228	2.5	[150] .737
106 (a)	186	2.0	.970
106 Jurls.	173	1.9	4.746
Totals	$4,202	45.5	

[149] The number shown in the table is the ceiling price for large producers. The ceiling price for small producers is $.627.
[150] The number shown in the table is the ceiling price for large producers. The ceiling price for small producers is $2.206.
[150] Or less.

Nearly one-third of pipelines' year-end 1988 take-or-pay obligations for jurisdictional gas were incurred under contracts which also cover non-jurisdictional gas.[151] Since 1986, pipelines have settled a large percentage of their $4.2 billion take-or-pay liability for jurisdictional gas. Between 1986 and March 1989, pipelines reduced their overall take-or-pay liability by over 75 percent. The result is that their total take-or-pay liability, including that for non-jurisdictional gas, was $2.4 billion by March 1989, substantially less than the $4.2 billion year-end 1988 liability for just the jurisdictional gas, albeit not fully resolved.

As the above chart illustrates, action under NGA section 5 could give at least some pipelines some take-or-pay relief. An important difficulty with acting generically under section 5, however, is that such action would only reach take-or-pay obligations for jurisdictional gas and could not reach the price provision in contracts for the sale of jurisdictional gas or any provisions in contracts for the sale of non-jurisdictional gas. Because of these limits on the Commission's authority under section 5, and because pipeline take-or-pay problems result from the combination of high take and high price provisions for both jurisdictional and non-jurisdictional gas, in the Commission's judgment any action it could take under section 5 would be ineffective or inequitable, or both.

Almost all of the proposals made to the Commission for section 5 action involve reducing or eliminating the take requirements in take-or-pay contracts or allowing the pipeline not to take gas under the contract unless the producer agrees to modify the price to a market responsive level (in other words requiring the insertion of a market-out clause).[152] Given the fact that these proposed actions could be taken only with respect to jurisdictional gas, the Commission believes that they would not be effective to bring about, and could discourage, the complete restructuring of all the pipeline-producer contracts necessary to fully resolve the pipelines' take-or-pay problems and complete the transition to a competitive wellhead market.

If the Commission simply reduced pipeline take requirements for jurisdictional gas to a level sufficient to avoid the incurrence of take-or-pay liability for that gas,[153] the high price

[146] The Commission does have authority to increase, but not decrease, NGPA sections 104, 106 and 109 ceiling prices. *See* NGPA sections 104(b)(2), 106(c), and 109(b)(2).

[147] 15 U.S.C. § 717d(a). *See* Atlantic Ref. Co. v. Public Serv. Comm'n, 360 U.S. 378, 389 (1959) (CATCO). In this regard, some parties have argued that the Commission could make any action under section 5 effective as of the issuance of Order No. 436 in 1985, since the Commission allegedly erred in failing to act under section 5 when it issued Order No. 436. We need not decide whether we could invoke section 5 as of 1985, since even assuming we could, we will not do so for the reasons stated in this section.

[148] 824 F.2d at 1028.

[151] Of the 4.2 billion of take-or-pay exposure attributable to jurisdictional gas, $3.05 billion, or 33 percent of total take-or-pay exposure of $9.2 billion, arose under contracts covering only jurisdictional gas. The remaining $1.15 billion, or 12.5 percent of total take-or-pay exposure, arose under contracts covering both jurisdictional and non jurisdictional gas. Any section 5 action with respect to these contracts could apply only to the $1.15 billion attributable to jurisdictional gas and not to the additional $1.42 billion in take-or-pay exposure under these contracts attributable to non-jurisdictional gas.

[152] *See* section IV(A)(6)(b) for a more detailed summary of these proposals.

[153] The responses to the Commission's 1987 take-or-pay data request show that between 1983 and mid-1987 pipelines actually took about 44 percent of the deliverability subject to their contracts, while the take requirements in those contracts averaged 66 percent. Assuming subsequent takes of jurisdictional gas continued at about these levels, reduction of the take requirement for this gas to 44 percent of deliverability would presumably allow the pipeline to avoid take-or-pay liability for this gas.

provisions relating to jurisdictional gas still required to be taken would be unaffected and the take-or-pay and price provisions for all non-jurisdictional gas would also be unaffected. As a result, even assuming the Commission's reduction of the take requirements could be applied retroactively so as to eliminate all accrued take-or-pay liability for jurisdictional gas, the pipeline could nonetheless continue to have significant take-or-pay problems. Because the pipeline would be required to continue to pay the high prices in its contracts for both jurisdictional and non-jurisdictional gas and to take high levels of non-jurisdictional gas, and some level of jurisdictional gas, the pipeline could have difficulty competing for sales with lower-priced spot market gas. The resulting continued loss of sales could cause the pipeline renewed take-or pay problems. Furthermore, in order to achieve an equitable balance the Commission would likely need to require the pipeline to release the jurisdictional gas not taken as a result of the reduced take requirements for jurisdictional gas and permit the producer to sell that gas on the market. Otherwise, the producer could not market the gas which the pipeline would not take as a result of Commission action. These actions, however, could merely exacerbate pipeline take-or-pay problems if the producer sells the released gas at market responsive prices to the pipeline's sales customers.

Thus, section 5 action to reduce take requirements for jurisdictional gas, by itself, would not resolve pipeline take or-pay problems. That can only be accomplished by a complete restructuring of the pipeline's contractual relationships with the producers, reforming both the take and price provisions of all the pipeline's gas purchase contracts.

Section 5 action to eliminate altogether the take requirement for jurisdictional gas or insert market-out clauses in contracts for the purchase of such gas could avoid the problem of continued high price requirements for jurisdictional gas. Either action would enable the pipeline to stop taking the gas altogether and thereby make no payments to the producer. However, contractual provisions to ensure producers some minimum level of revenue to cover operating and other expenses are reasonable. Producers make substantial investments in order to drill for and produce gas; in many cases they must borrow the money necessary to make these investments. However, complete elimination of the take requirement in take-or-pay clauses or insertion of a market-out clause would mean that the producer no longer had any contractual assurance of some minimum level of income where the original bargain between the producer and pipeline had contemplated some level of assured income. Accordingly, the Commission cannot make the necessary finding under section 5 that a minimum take provision at any level is unjust and unreasonable to justify adjusting contracts to totally eliminate take provisions or modify the contracts to include a market-out clause such that there would no longer be any minimum level of income assured to the producer.[154]

In any event, complete removal of the take requirements for jurisdictional gas or the addition of market out clauses to all contracts for the sale of such gas would not reach the high price and high take requirements in contracts for the sale of non-jurisdictional gas. As discussed above, these contractual provisions could continue to cause the pipeline take-or-pay problems, yet the more stringent section 5 action with respect to contracts for the sale of jurisdictional gas would likely make the producer even less likely to agree to the voluntary restructuring of the contracts for the sale of the non-jurisdictional gas necessary to avoid a continuation of take-or-pay problems. Having been forced to accept reduced take requirements under its contracts for the sale of jurisdictional gas, the producer might well be less willing to make voluntary concessions with respect to contracts for sale of non-jurisdictional gas and the price provisions in contracts for the sale of jurisdictional gas, which section 5 action cannot reach.

The result of any of the above actions would be an uneven resolution of the take-or-pay problem, with inequitable and market distorting effects. Pipelines with less jurisdictional gas under contract would receive less benefit than pipelines with more under contract. Similarly, producers that sell a greater amount of jurisdictional gas than average would be affected disproportionately. This would be particularly true, if the Commission eliminated altogether take requirements for jurisdictional gas or required market-out clauses with respect to such gas. Such action would put the entire burden of resolving pipeline take-or-pay problems with respect to jurisdictional gas on the producers selling that gas. The contracts covering jurisdictional gas would be modified to resolve the pipeline's take-or-pay problems with respect to such gas without any compensation to the producer. This would be inconsistent with the Commission's goal that all participants in the natural gas industry should share in the burden of resolving the take-or-pay problem, for which no one segment of the industry is at fault. The contracts were generally entered into at a time when all participants in the natural gas industry, including regulators, expected continued high demand for gas at relatively high prices. The contracts became a problem only because that expectation, reasonable at the time, proved incorrect. Furthermore, such a resolution would not recognize the fact, discussed above, that the changed economic conditions which caused these contracts to be uneconomic have affected not only the pipelines but also the producers.

An additional problem with the proposed section 5 actions with respect to jurisdictional gas is that about one quarter of the take-or-pay obligations incurred for jurisdictional gas are for gas that has been priced at or below prevailing market levels.[155] These take-or-pay obligations have, in many cases, been incurred so that the pipeline can take higher cost, non-jurisdictional gas under other contracts and thereby minimize its take-or-pay obligations for the higher cost gas. In such cases, the true problem take-or-pay contract is not the contract covering the low cost jurisdictional gas, but the contract covering the higher cost, non-jurisdictional gas. However, section 5 action would not reach the latter contract, since that contract covers non-jurisdictional gas. While a significant portion of take-or-pay obligations were for jurisdictional gas, all problem take-or-pay contracts must be restructured for a complete and effective resolution of the take-or-pay problem which does

[154] Producers have voluntarily agreed to the inclusion of market-out clauses in some contracts with pipelines, and the Commission encourages such clauses as a means of making prices more market responsive. However, where a producer voluntarily agrees to a market-out clause, the producer may consider its own individual circumstances—including its need for current income, other contracts it may have which do assure a minimum level of income, and its expectation concerning the amount of gas which the purchaser will take regardless of a minimum take provision. Thus, the facts that producers voluntarily agree to market-out clause and the Commission encourages such clauses do not support a Commission requirement under section 5 that all contracts must have such clauses.

[155] These include NGPA section 104 Pre-1973 gas, section 104 1973–74 Biennium gas, section 104 other gas, and section 106(a) gas. As shown in Chart I in this section these categories of gas accounted for 12.1 percent of pipelines' total take-or-pay obligations at year end 1988 or 26.6 percent of the 45.5 percent of total take-or-pay obligations attributable to jurisdictional gas.

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not distort the competitive wellhead market.

A further difficulty with section 5 action is that, unless the Commission were to undertake the administratively difficult task of addressing each of the thousands of contracts covering jurisdictional gas individually, section 5 action must be generic and cannot be tailored to fit the varying circumstances of each contract. For example, the parties to the contracts have varying needs and characteristics. Some pipelines may have a greater need for gas than others. Smaller producers with less financial revenues and possibly less ability to sell to purchasers other than the pipeline may have different needs than larger producers with greater financial resources. Some gas reservoirs may require high rates of production to maximize the proportion of reserves recovered, whereas other reservoirs can be produced at lower rates without affecting ultimate levels of recoverability.[156] All these factors may affect what terms are appropriate for any particular producer-pipeline contract. Yet it would not be practicable for the Commission to consider the appropriate section 5 action for each contract individually in light of these factors.

Further, as the Commission stated in Order No. 436, section 5 action to directly modify producer-pipeline contracts would interfere with the ability of parties to rely on private contracts as a tool for structuring basic economic relationships. The ability to rely on contracts for these purposes is particularly significant in light of the move toward a deregulated wellhead market, commenced under the NGPA and to be completed on January 1, 1993 under the Wellhead Decontrol Act of 1989. The Court in *AGD* stated that in Order No. 436 the Commission "rightly we think, placed great weight on the congressional determination that market forces should operate freely at the wellhead." [157]

In an unregulated market, transactions are governed by private contracts. For the market to function properly, the parties need the security of knowing that they can rely on their contracts without unwarranted government intervention. Parties use these contracts to control and decide the allocation of risks between the parties to the contract. If parties believe that the government may upset their private decisions about risk allocation in order to relieve one party from the consequences of its actions, then the parties will be less likely to act in the manner of firms in a competitive industry. Producers might be less willing to take the risks which are always involved in exploring and drilling for gas,[158] and pipelines might be less careful in negotiating for long-term commitments to purchase gas.

By contrast, individually negotiated settlements have none of the disadvantages discussed above inherent in section 5 action. Because they are agreed to by the parties themselves rather than being imposed by a government agency, settlements do not interfere with private contracting and reliance on those contracts in the same way that section 5 action would. Settlements can reach, if the parties choose, take-or-pay obligations for non-jurisdictional, as well as jurisdictional, gas and thus can be used to restructure a pipeline's total contractual arrangements and should not have an uneven effect. In addition, the parties can individually tailor their settlements to fit the varying circumstances and operational considerations underlying each contract.

Furthermore, not taking section 5 action is consistent with Congress' desire in the Wellhead Decontrol Act not to disturb parties' reliance on private contracts—reflected in the transition period to full wellhead decontrol. The Wellhead Decontrol Act provided that deregulation will not take place until January 1, 1993 (or May 15, 1991 in the case of newly spudded wells), unless the contract expires or is voluntarily renegotiated before those dates.[159] The purpose of this transition period was "for equity purposes to permit parties to adapt their gas purchase arrangements to a fully decontrolled environment." [160] Congress was specifically concerned about producers' reliance on their existing contractual arrangements. For example, the report of the Senate Committee on Energy and Natural Resources stated that the House Bill's proposal for immediate decontrol of newly spudded wells would be "unfair" and explained that the transition period "offers some protection to investors who committed capital to natural gas production under the expectation of continued price control." [161] The conference committee report agreed upon a transition period for this gas extending until May 15, 1991, stating that this transition period "provides a period for transition and equity purposes to both sellers and buyers of gas under existing contracts." [162] Accordingly, Commission action under section 5 would be inconsistent with the Congressional desire to allow parties to arrange their own affairs.

Thus, assuming that pipelines have the bargaining power to negotiate reasonable settlements that resolve their take-or-pay problems (and all the evidence suggests that they do), there seems little doubt that settlements are a preferable solution to the take-or-pay problem than action under section 5. As discussed in the preceding section, pipelines have been able to negotiate settlements substantially resolving the bulk of their take-or-pay problems, particularly since Order No. 500 established the crediting program and the alternative passthrough mechanism. Given the success achieved in diminishing take-or-pay exposure under the Order No. 500 interim rule and the disadvantages of section 5 action discussed above, it is the Commission's judgment that its decision not to take action under section 5 is consistent with the court's statement in *AGD* that such action might prove unnecessary if other actions (such as taken in the interim rule) address the problem. Since the implementation of the Order No. 500 crediting mechanism in August 1987, take-or-pay exposure has declined by three-fourths—from $10.7 billion at the end of 1986 [163] to $2.4 billion at the end of March 1989. Based upon what has taken place under Order No. 500, there is every expectation that take-or-pay exposure will continue to decline so that any section 5 action would be unnecessary.

In determining the actions to take with respect to producer-pipeline contracts, the Commission has tried to follow both the mandates of the court in *AGD* and *AGA* and our statutory responsibilities under the NGA, NGPA, and the Wellhead Decontrol Act. When Congress enacted the Wellhead Decontrol Act it stressed the importance of the Commission's open access regulations to making a deregulated wellhead market work. For example, the

[156] *See* n. 41, *supra*.

[157] 824 F.2d at 1028.

[158] When deregulation is completed in 1993 under the Wellhead Decontrol Bill, the Commission will no longer have authority to act under section 5 over wellhead contracts.

[159] Pub. L. No. 101-60, § 2, 103 Stat. 157 (1989).

[160] S. Rep. No. 38, 101st Cong., 1st Sess. 8 (1989).

[161] S. Rep. No. 39, 101st Cong., 1st Sess. 8 (1989).

[162] H.R. Conf. Rep. No. 100, 101st Cong., 1st Sess. 4 (1989), *reprinted in* 1989 U.S. Code Cong. & Admin. News 78, 77.

[163] Of the $2.2 billion of year-end 1988 take-or-pay exposure for which the Commission has data allowing an attribution to NGPA pricing category, $1.7 billion arose in connection with off-shore gas under section 102(d) of the NGPA.

Report of the House Committee on Energy and Commerce on the Wellhead Decontrol Act stated:

> The Committee stresses that these new rules [including Order No. 436], and especially the wide adoption of blanket certificates for non-discriminatory open access interstate transportation of non-pipeline gas, are essential to its decision to complete the decontrol process. All sellers must be able to reasonably reach the highest-bidding buyer in an increasingly national market. All buyers must be free to reach the lowest-selling producer, and obtain shipment of its gas to them on even terms with other supplies. Both the FERC and the courts are strongly urged to retain and improve this competitive structure in order to maximize the benefits of decontrol.[164]

The Commission believes that the adoption of this final rule, repromulgating its open access regulations and providing generally for the continuation of the provisions of Order No. 500, is consistent with both this Congressional direction to retain and improve the competitive structure fostered by the open access program, while at the same time addressing the concerns of the *AGD* and *AGA* Courts, including the concern about the effects of open access transportation on pipeline take-or-pay problems. In the Commission's judgment, section 5 action would interfere with the development of a competitive wellhead market for the reasons discussed above. The Commission recognizes, however, that it has to address the take-or-pay issue before a truly competitive market can mature and to be responsive to the *AGD* and *AGA* mandates. As discussed above, the provisions of Order No. 500 have permitted the industry to resolve its take-or-pay problems in an equitable manner, while open-access transportation as a percentage of total throughput has increased. The resolution of take-or-pay problems and increased open-access transportation have fostered continued maturation of a competitive wellhead market. The Commission expects this process to continue under the final rule.

5. Other Actions

The Commission indicated in Order No. 500 that, upon analysis of the pipelines' responses to the 1987 data requests the Commission would decide whether any action, such as rescinding the incentive ceiling price for tight formation gas established under NGPA section 107(c)(5), other than action under NGA section 5, would contribute to solving pipeline take-or-pay problems. However, subsequently in *Williams Natural Gas Co.* v. *FERC*,[165] the court remanded to the Commission an order in which the Commission had terminated an ongoing rulemaking which would have rescinded the NGPA section 107(c)(5) incentive ceiling price, thus leaving the ceiling price intact. In these circumstances, the Commission has decided that the more appropriate procedural vehicle for carefully considering and resolving this issue is in the *Williams* remand, and so the Commission will take no action here with respect to possible rescission of the NGPA section 107(c)(5) incentive ceiling price. The Commission expects to issue an order on the *Williams* remand within 60 days of the issuance of this order.

6. Comments Received and the Commission's Response

a. *Comments on Crediting.* The Commission will now address the specific comments of the parties on the crediting provisions in Order No. 500. In a nutshell, pipelines and LDCs contend that crediting as adopted by the Commission provides little effective take-or-pay relief. They urge the Commission either to broaden substantially the pipelines' rights to obtain credits or to provide direct take-or-pay relief by taking action under NGA section 5 to modify their take-or-pay contracts. Producers, on the other hand, oppose the continuation of any crediting. They assert that the Commission lacks authority to impose the crediting requirement for pipeline transportation and that, in any event, the crediting requirement in Order No. 500 has no supporting rationale and is overly broad and burdensome.

i. Producer Comments on Legality of Crediting. A number of producers [166] assert that the Commission lacks legal authority to impose crediting. They contend that crediting may not be adopted pursuant to the Commission's NGA section 7(e) conditioning authority. They argue that with respect to jurisdictional gas, crediting modifies the producer's sales contract with the pipeline without the necessary section 5 hearing and finding that the contracts are unjust and unreasonable. With respect to contracts for the sale of non-jurisdictional gas, the producers argue that crediting improperly modifies contracts for the sale of gas which the NGPA removes from the Commission's jurisdiction. In support, they argue that the take-or-pay problem is a price problem, that the Commission cannot directly order reductions in wellhead prices below the price ceilings set by the NGPA, and that, since the crediting requirement is aimed at reducing take-or-pay liability, it represents an unlawful attempt by the Commission to do indirectly what it cannot do directly.

The court in *AGA* found that the Commission had failed to support its legal authority to permit pipelines to require producers to offer credits for (1) transportation service provided pursuant to a pipeline's Order No. 500 blanket certificate and (2) transportation service on the Outer Continental Shelf (OCS) governed by the Outer Continental Shelf Lands Act (OCSLA).[167]

First, the court found that the Commission had failed to answer the argument made by several producers that crediting, as applied to transportation pursuant to a blanket certificate, is an improper exercise of the Commission's conditioning power under section 7(e) of the Natural Gas Act, 15 U.S.C. 717f(e).[168] The producers rely upon *Panhandle Eastern Pipeline Co.* v. *FERC*,[169] which held that the Commission may not exercise its section 7(e) conditioning authority to require adjustments in previously approved rates for services not before it in the relevant certificate proceeding. The producers argue that the Commission cannot lawfully base the crediting mechanism upon NGA section 7 because the take-or-pay contracts are not before the Commission when it grants a blanket certificate to a pipeline under the provisions of Order No. 436.[170] The court held in *AGA* that if the Commission relies on section 7(e) as its legal authority to allow pipelines to require credits for blanket certificate transportation, the Commission must explain why the *Panhandle* doctrine does not apply.

The authority for crediting rests upon the Commission's NGA section 7(e)

[164] H.R. Rep. No. 29, 101st Cong., 1st Sess. 6 (1989), *reprinted in* 1989 U.S. Code Cong. & Admin. News 51, 56.

[165] 872 F.2d 438 (D.C. Cir. 1989).

[166] Amoco, Apache Corporation, Anadarko Petroleum Corporation, Mobil Oil Corporation and NGSA.

[167] 43 U.S.C. § 1334 (1982).

[168] Section 7(e) provides: "The Commission shall have the power to attach to the issuance of the certificate and to the exercise of the rights granted thereunder such reasonable terms and conditions as the public convenience and necessity may require."

[169] 613 F.2d 1120, 1127, 1138 (D.C. Cir. 1979), *cert. denied*, 449 U.S. 889 (1980). *See also, Northern Natural Gas Co.* v. *FERC*, 827 F.2d 779 (D.C. Cir. 1987).

[170] The producers made a similar argument with respect to transportation performed under NGPA section 311, contending that the Commission's conditioning authority under that statute is limited in the same way as its conditioning authority under NGA section 7(e). However, the court in *AGA*, quoting its *AGA* opinion, held that "the premises of the *Panhandle* doctrine are absent here." Slip op. at 25 (*quoting* 824 F.2d at 1015).

conditioning authority. NGA section 7 is an essential part of the statutory scheme

pipeline take-or-pay credits under Order No. 500, but permits the pipeline to

pipeline to exercise its control over transportation to pressure producers to

negotiated contracts are just and reasonable and, if not, to fix just and

Producers also contend that the Commission lacks authority to permit

Sea Robin may no longer have a significant need for the rights given it by

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conditioning authority. NGA section 7 is an essential part of the statutory scheme established by the NGA to "afford consumers a complete, permanent and effective bond of protection from excessive rates and charges." [171] Under section 7, a natural gas company may not initiate a jurisdictional service until the Commission has determined that the service will be in the "present or future public convenience and necessity." [172] Under section 7(e), the Commission may attach conditions to the issuance of the certificate so as to ensure that the rates and terms under which the service is initially provided are consistent with the public interest.

After the service has been certificated, the natural gas company may file at any time pursuant to section 4, new tariff sheets to revise the rate or terms of service. The changes will become effective upon 30 days notice, unless the Commission acts to suspend the change for up to five months and then the change may take effect subject to a refund obligation if the Commission later determines the rates to be unjust and unreasonable. In addition, under section 5, the Commission may, *sua sponte* or otherwise, initiate an investigation into existing rates, terms, and conditions and order changes so that they will be just and reasonable. However, the Commission may only exercise this authority prospectively.

"In view of this framework in which the Commission is authorized and directed to act, the initial certificating of a proposal under section 7(e) of the Act as being required by the public convenience and necessity becomes crucial." [173] This is true because thereafter the Commission can only order changes prospectively under section 5. Thus, as the Supreme Court stated in *CATCO*, the Commission must under section 7(e) evaluate all factors bearing on the public interest in determining whether to issue a certificate and what conditions to attach to the certificate.[174] That is what the Commission has done here in conditioning the issuance of blanket certificates for open access transportation on the crediting provisions of Order No. 500.

The condition established here governs when the pipeline must perform (or may decline to perform) the open access transportation service being certificated. Specifically, the condition requires the pipeline to transport the gas of any producer which has offered the pipeline take-or-pay credits under Order No. 500, but permits the pipeline to refuse to transport the gas of producers who have not offered such credits. The purpose of giving pipelines this limited ability to refuse to transport a producer's gas is to address the Court's concern in *AGD* that requiring pipelines to transport a producer's gas regardless of take-or-pay relief deprives pipelines of the bargaining power necessary to negotiate reasonable settlements of their take-or-pay problems. However, as explained above, the Commission believes that giving pipelines unlimited discretion to refuse to transport gas in the absence of take-or-pay relief acceptable to the pipelines would seriously undermine the purpose of open access transportation to make competitively priced gas available to a wide array of consumers. This is because pipelines would, in effect, be able to exercise their monopoly power over transportation to refuse to transport any gas which displaced their own sales. Crediting avoids this result by requiring pipelines to transport a producer's gas if the producer offers the particular take-or-pay relief set forth in the Commission's crediting regulations.

The *Panhandle* doctrine is inapposite in this context because the condition imposed here does not directly modify any rates which are not before the Commission in the certificate proceeding. The condition is instead a condition on the pipeline's performance of the very transportation service being certificated. In both *Panhandle* and *Northern Natural*, the Commission required the pipeline, through conditions attached to a certificate for a new service to be performed by the pipeline, to modify rates for other services by crediting revenues received for the newly certificated service to the rates paid by customers receiving services performed under other certificates. By contrast, the condition on the blanket certificate involved here does not require the pipeline receiving the certificate to modify its rates for any service, but, as discussed above, determines when the pipeline must perform, or may decline to perform, the very transportation service being certificated.

It is of course true that this limited right to refuse to transport enhances a pipeline's ability to negotiate modifications to its contracts with producers. That, however, is the whole purpose of the crediting mechanism. The issue whether crediting constitutes a legal section 7(e) condition thus revolves around the question whether the Commission may legally authorize a pipeline to exercise its control over transportation to pressure producers to modify contracts which are either deregulated or, if regulated, have been filed with the Commission as rate schedules. The court in *AGD* addressed this issue, at least with respect to deregulated contracts. In response to producer contentions that, by allowing pipelines to condition access, the Commission would be doing indirectly what it is forbidden to do directly—*i.e.*, regulate wellhead prices, the court stated:

> That access-conditioning and wellhead price controls might have somewhat similar effects (lower wellhead prices) does not make them the same thing at all. Order No. 436 mandates access in order to solve unprecedented problems in the natural gas market. That access will give producers entirely new market opportunities not because the statute expressly mandates that producers should enjoy them, but because the Commission believes that such access is a well-designed corrective for practices that it finds unduly discriminatory. If it is appropriate for the Commission to bar refractory producers from the benefits of Order No. 436 in order to fulfill the underlying statutory mandate, then the fact that this constitutes a form of government pressure to reduce prices is itself no barrier.[175]

The Commission does not believe that a different result should be reached where the producer-pipeline contracts remain subject to the Commission's NGA jurisdiction. Since the Commission is simply providing pipelines the bargaining power to negotiate changes to their contracts, rather than directly requiring changes in rates for other services, as in *Panhandle* and *Northern Natural*, the concerns expressed by the court in those cases, about the Commission using its section 7(e) conditioning authority to emasculate NGA section 5, are not applicable here.

The limited right given pipelines to refuse to transport gas is designed, not as a substitute for Commission action under NGA sections 4 or 5 to determine whether new or existing contracts are unjust and unreasonable and to fix just and reasonable contractual provisions, but to assure that pipelines and producers have appropriate bargaining power when they negotiate voluntary modifications to their existing contracts or replacement contracts. The NGA presumes private contracting between producers and pipelines. Thus, the NGA contemplated that parties would continue to negotiate private contracts which would thereafter be subject to Commission review under NGA sections 4 and 5 to determine whether the

[171] CATCO, 360 U.S. at 388.
[172] 15 U.S.C. § 717f(e) (1988).
[173] CATCO, 360 U.S. at 385.
[174] 360 U.S. at 391.
[175] 824 F.2d at 1029-30.

negotiated contracts are just and reasonable and, if not, to fix just and reasonable contractual terms. The condition to the blanket certificate addresses the parties' bargaining power in the private negotiation of contracts which takes place before any Commission review under the NGA. The condition does not itself fix just and reasonable contractual terms as section 5 action would, but requires the pipeline to perform the very transportation service being certificated if the producer offers credits.

On the one hand, the Commission is concerned that pipelines not have an unlimited right to refuse to provide transportation since that would vitiate the benefits of open access transportation. On the other hand, the Commission seeks to avoid depriving pipelines of one of their primary bargaining chips in negotiating take-or-pay relief—the ability to condition access to transportation. Since these concerns arise in connection with the very transportation service being authorized by the blanket certificate, it is appropriate that the Commission address them through its NGA section 7(e) conditioning authority when issuing the blanket certificate.

The producers have also argued that crediting is unduly discriminatory under section 5 of the NGA. The Commission finds that crediting does not violate the undue discrimination provisions of the NGA. Crediting allows pipelines to refuse to transport a producer's gas so as to preserve pipeline bargaining power to resolve take-or-pay problems. The court in *AGD* stated, "It eludes us why pipeline denial of access to producers that stand on the letter of their contract rights should be viewed as unduly discriminatory." [176] Furthermore, the right given pipelines to refuse to transport is carefully circumscribed precisely to assure that no undue discrimination occurs. The crediting regulations set forth a specific offer of credits which any producer may submit to a pipeline in order to require the pipeline to transport gas. There is, of course, a possibility that a pipeline could agree to transport gas without an offer of credits for one producer and not another in an unduly discriminatory manner. However, the Commission believes that such instances of undue discrimination are best addressed on a case-by-case basis as they arise.[177]

Producers also contend that the Commission lacks authority to permit pipelines to implement the crediting mechanism with respect to the transportation of gas on the Outer Continental Shelf.[178] The producers contend that giving pipelines a right to refuse to transport gas in the absence of an offer of credits conflicts with the provisions in sections 5(e) and 5(f)(1) of the OCSLA[179] requiring pipelines on the OCS to transport gas on a nondiscriminatory basis in such proportionate amounts as the Commission may require.[180] The Court in *AGA* specifically directed that the Commission address the producers contentions concerning the OCSLA.

This issue should first be put in its factual context. With one exception, the pipelines which transport gas solely on the OCS are transportation-only pipelines which neither purchase nor sell gas. Such pipelines have no take-or-pay contracts against which to apply credits and thus crediting is irrelevant with respect to them. The one pipeline transporting gas solely on the OCS which also purchases and resells gas is Sea Robin Pipeline Company. Sea Robin's responses to the Commission's 1987 take-or-pay data request show that as of year-end 1988 it had incurred substantial take-or-pay liabilities under its gas purchase contracts. However, it appears that Sea Robin has substantially resolved its take-or-pay problems. *See* Appendix B. Accordingly, Sea Robin may no longer have a significant need for the rights given it by the crediting provisions of Order No. 500.

A number of pipeline companies have transportation facilities both on the OCS and onshore. Where such a pipeline transports gas from the OCS to a point beyond the first onshore interconnection, the onshore transportation would generate credits even if the offshore transportation did not, making credits for the offshore transportation unnecessary. Where the pipeline only transported the gas to the first onshore interconnection,[181] the gas would not reach the pipeline's sales market and thus presumably would not displace its own sales. Again, therefore, the pipeline would have little need for credits with respect to the offshore transportation. The Commission thus believes that the issue whether crediting conflicts with the non-discriminatory access provisions of the OCSLA is of limited practical significance.

In any event, the Commission does not believe that crediting conflicts with those provisions. Section 5(f)(4) of the OCSLA preserves the Commission's NGA section 7 authority with respect to transportation on the OCS.[182] As discussed above, NGA section 7 gives the Commission authority to implement crediting, and the Commission has, in fact, implemented crediting pursuant to that authority. Furthermore, the Commission does not believe that crediting violates the non-discriminatory access provisions of OCSLA sections 5 (e) and (f), but is a reasonable condition to assist pipelines making the transition from being merchant-only pipelines to performing open access transportation to restructure their contractual arrangements and avoid exacerbation of take-or-pay problems.

Section 5(e), in language which appeared in the OCSLA as enacted in 1953, requires that pipelines "transport or purchase without discrimination * * * natural gas produced from" the OCS "in such proportionate amounts" as the Commission may direct. This

[176] 824 F.2d at 1035.
[177] Since crediting went into effect, no producer has filed a complaint that a pipeline has waived crediting in an unduly discriminatory fashion.
[178] Order No. 500 did not authorize pipelines to require offers of credits in connection with transportation on the OCS. However, when the Commission issued Order No. 509 to implement the OCSLA, it extended the crediting provisions of Order No. 500 to transportation on the OCS. Order No. 509, 53 Fed. Reg. 50,925 (Dec. 19, 1988), FERC Stats. & Regs., Regulations Preambles ¶ 30,842 (1988); *order on reh'g*, Order No. 509–A, 54 Fed. Reg. 8301 (Feb. 28, 1989), FERC Stats. & Regs., Regulations Preambles ¶ 30,848 (1989). Order No. 509 became effective on December 9, 1988.
[179] 43 U.S.C. 1334 (e)(f)(1) (1982).
[180] Section 5(e) of the OCSLA states, in relevant part, that:

> Rights-of-way . . . may be granted . . . for pipeline purposes for the transportation of oil [and] natural gas . . . upon the express condition that oil or gas pipelines shall transport or purchase without discrimination oil and natural gas produced from . . . Outer Continental Shelf lands in the vicinity of the pipelines in such proportionate amounts as the Federal Energy Regulatory Commission . . . may . . . determine to be reasonable. . . .

Section 5(f)(1) of the OCSLA states, in relevant part, that:

> (1) Except as provided in Paragraph [2], every permit, license, easement, right-of-way, or other grant of authority for the transportation by pipeline on or across the Outer Continental Shelf of oil or gas shall require that the pipeline be operated in accordance with the following competitive principles:
>
> (A) The pipeline must provide open and nondiscriminatory access to both owner and nonowner shippers.

[181] For example, the gas might enter a processing plant at the first onshore interconnection and then be sold into the intrastate market.
[182] Section (5)(f)(4) of the OCSLA provides that "nothing in this subsection shall be deemed to limit, abridge, or modify any authority of the United States under any other provision of law with respect to pipelines on or across the outer Continental Shelf." This provision makes clear that the OCSLA does not "alter present authority, under any other provision of law, of any agency of the United States with respect to pipelines on or across the OCS." H.R. Conf. Rep. No. 1474, 95th Cong., 2d Sess. 89 (1978), *reprinted in* 1978 U.S. Code Cong. & Admin. News 1674, 1688.

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language did not, however, mandate that pipelines provide transportation service, but simply required that, if a pipeline did offer such service, it do so on a non-discriminatory basis. Alternatively, if a pipeline performed a merchant service, it was required to purchase gas from producers on a non-discriminatory basis.[183] Section 5(f), added in 1978, however, added a requirement that pipelines "provide open and nondiscriminatory access to both owner and non-owner shippers." This requirement, mandating the performance of transportation service, was "to prevent 'bottleneck monopolies' and other anticompetitive situations involving OCS pipelines."[184]

The requirement for open access transportation on the OCS did not immediately cause those pipelines operating on the OCS which traditionally performed a merchant function any take-or-pay problems. The increasing demand for gas in the late 1970's prevented that. Furthermore, the lack of open access transportation onshore prevented most pipeline sales customers from obtaining access to alternate sources of supply in any event. However, the changed economic conditions of the mid- to late 1980's caused take-or-pay problems for traditionally merchant pipelines operating on the OCS, and, with the advent of open access transportation onshore, the OCSLA open access transportation provisions may have exacerbated those problems.

In these circumstances, the Commission believes that the carefully limited right given OCS pipelines to refuse to transport gas in the absence of an offer of credits is a reasonable exercise of the Commission's NGA section 7 authority in tandem with its OCSLA section 5(e) and 5(f) authority. The purpose of giving OCS pipelines this right is to assist them in their transition from performing primarily a merchant function to performing the open access transportation mandated by the 1978 amendment to the OCSLA; crediting does this by minimizing exacerbation of take-or-pay problems as a result of sales displacement arising from open access transportation on the OCS combined with open access transportation onshore. The Commission does not believe that Congress intended the non-discriminatory access provisions of OCSLA sections 5 (e) and (f) to prevent the Commission, in implementing those provisions, from taking actions under NGA section 7 reasonably designed, as the crediting provisions are, to facilitate the implementation of these provisions by minimizing potential adverse effects during the transition. Finally, exempting producers on the OCS from the crediting provisions of Order No. 500 while subjecting onshore producers to those provisions would give unduly preferential treatment to OCS producers in violation of NGA section 5. This would be contrary to OCSLA section 5(f)(4), which provides that nothing in the OCSLA abridges or modifies existing provisions of law concerning OCS pipelines.

The Commission concludes that the imposition of the crediting requirement in Order No. 500 and its retention here in this final rule are a reasonable exercise of the Commission's authority under NGA section 7 and NGPA section 311 to condition transportation service and are not in conflict with the provisions of the OCSLA.

ii. *Producer Comments on Crediting in General.* Certain producer commenters (Apache, Amoco, Indicated Producers) and others (Process Gas Consumers Group, Tennessee, and Peoples Gas Light and Coke Company and North Shore Gas Company) assert that crediting has resulted in severe administrative burdens because of the record-keeping complications of crediting. Some commenters (including Apache, NGSA, Bass Enterprises, Chemical Manufacturers Association, Governor Clements of Texas, Sabine Corporation, and the Railroad Commission of Texas) assert that the burdens of crediting have caused disruptions in the transportation, production, and enduser supply of natural gas. Finally, several commenters (Tenneco Oil Company, Chevron U.S.A. Inc., the Texas Railroad Commission, and Producer Associations) argue that crediting, if retained in the final rule, should have a sunset provision.

These comments do not require extended discussion. As discussed above, the Commission is adopting a sunset date for crediting. Given the significant increase in transportation since crediting became effective, it is clear that crediting has not significantly disrupted transportation of natural gas. The Commission recognizes that crediting does involve some administrative burden in that lease owners must execute offers of credits in order to obtain transportation of gas, unless the pipeline agrees to transport without an offer of credits. However, as discussed above, the provisions concerning crediting are necessary to ensure that open access transportation does not adversely affect pipeline bargaining power in resolving take-or-pay problems.

iii. *Pipeline and LDC Comments on the Effectiveness of Crediting.* Pipelines, LDCs, and their associations (including Consolidated, Enron, CIG, Arkla, Inc., Cincinnati Gas and Electric Company and The Union Light, Heat and Power Company, Public Utilities Commission of the State of California, and the American Public Gas Association) generally contend that the crediting mechanism adopted in Order No. 500 fails to give pipelines any significant relief from their take-or-pay obligations. They state that the Commission has failed to present any substantial evidence showing that crediting would provide significant take-or-pay relief, or by how much it would reduce take-or-pay liabilities. Accordingly, the pipelines and LDCs claim that crediting is not responsive to the court's concerns in *AGD* (AGA, CIG, El Paso, INGAA, Natural, Panhandle, Texas Gas, and Williams).

Pipelines and LDCs (*e.g.* AGA, Cincinnati Gas & Electric, Baltimore Gas and Electric Company, Columbia Gas Distribution Companies, INGAA, Natural, UDC, United, Laclede Gas Company, Memphis Light, Gas and Water Division, Michigan Consolidated Gas Company, Northern Illinois Gas Company, Pacific Gas and Electric Company, and Panhandle) contend that the crediting mechanism adopted in Order No. 500 is ineffective in part because of the many situations in which pipelines do not receive credits or are limited in the way they may apply the credits they do receive. The commenters refer to, among other things, the requirements that pipelines transport without credits (1) gas formerly purchased by the pipeline under a terminated contract, (2) gas formerly purchased under a contract containing a market-out clause giving the pipeline discretion to stop purchasing the gas, (3) certain new gas, (4) the up to 15 percent of a package of gas which need not be covered by an offer of credits under the 85 percent rule, and (5) certain gas released by intrastate pipelines. The commenters also point to the provisions that pipelines (1) may not apply credits against must-take obligations for casinghead gas or against pre-1986 take-or-pay liabilities, (2) must apply credits solely against take-or-pay obligations of producers whose gas they transport, (3) must share a single credit with other pipelines which transport the same gas, and (4) are limited in the way in which they may apply credits generated by gas sold under percentage of proceeds contracts to processing plants.

In addition to complaining about the exceptions to crediting and the limitations on the application of credits, pipelines and LDCs argue that crediting gives pipelines little more relief than they previously got under voluntary, pre-Order No. 500 release agreements; several observe that a recent NGSA study showed that 98.5 percent of producer-pipeline release agreements provide for a volume-for-volume credit against take-or-pay liability when the pipeline transports the released gas (AGD, Cincinnati Gas and Electric, Consolidated, El Paso, Texas Gas, Laclede, Memphis Light, National Fuel Gas Supply Corporation, Northern Distributor Group). El Paso notes that the additional gas exempted from crediting under amendments to the crediting provisions adopted in Order No. 500–C, is gas generally not previously subject to take-or-pay contracts between interstate pipelines and producers, including new gas, gas sold to processing plants, and gas released by intrastate pipelines. This newly exempted gas is, El Paso says, the only gas as to which Order No. 500, as originally adopted, gave significant relief, since pipelines already obtain take-or-pay relief when they transport released gas.

A number of pipelines (including CIG, Columbia, El Paso, Enron, Panhandle, Tennessee, Transco, Williams, Natural, and INGAA) assert that, in order to provide meaningful take-or-pay relief, the Commission must provide pipelines a broader right to condition access to transportation than is provided by crediting. Generally, they propose that pipelines be allowed to refuse transportation unless the producer cooperates in resolving both already accrued and future accruing take-or-pay liabilities. Some state that the *AGD* court suggested the Commission consider this type of conditioning program and that Order No. 500 failed to satisfy the requirements of reasoned decision making when it gave no reasons for rejecting this alternative in favor of crediting (Enron, INGAA). Pipelines further urge that the existing limitations on crediting should be cured by such devices as trading of credits, buying and selling of credits, banking of credits for future years, permitting downstream pipelines to get credits against liability to upstream pipelines, and granting credits for transportation performed in the past.

The Commission has already discussed in detail above why it believes that crediting has enhanced pipelines' ability to resolve their take-or-pay problems through settlements. In that discussion, the Commission addressed the pipelines' contentions that crediting under Order No. 500 has not given pipelines significantly greater rights than they received under pre-Order No. 500 release agreements. The Commission also addressed, and rejected, pipeline proposals that the Commission give them unlimited discretion to refuse to transport gas, unless the producer offers take-or-pay relief satisfactory to them. This unlimited right by pipelines to exercise their monopoly power over transportation to refuse to transport gas would be inconsistent with Congress' intent that the Commission continue to encourage and broaden open access transportation.

While pipelines point to the various limits on their crediting rights as rendering crediting ineffective, the Commission does not believe that these limits have impeded the effectiveness of crediting in giving pipelines additional bargaining power. The Commission believes that the evidence summarized above that pipelines have, in fact, settled the bulk of their take-or-pay problems shows that pipelines have sufficient bargaining power to resolve their take-or-pay problems, whether because of crediting or for some other reason. Furthermore, as discussed in detail in subparts (iv) through (xiii) of this section, the Commission believes that all the limits are justified either (1) on the ground that, in the situations in which the limits apply, the pipelines have already received significant take-or-pay relief or (2) on the ground that the limit is necessary to avoid disruptions in the production or transportation of gas which would cause greater adverse effects on consumers than any resultant reduction in the take-or-pay relief afforded pipelines. The Commission also notes that, of the various limits on pipeline crediting rights, only five—the provisions concerning terminated contracts, market-out clauses, new gas, certain gas released by intrastate pipelines and the 85 percent rule—provide that the pipeline's transportation of gas will not generate credits for application against any take-or-pay liability the pipeline may have to the producer in question. The Commission discusses these limits in subparts (iv) through (viii) below. The remaining limits simply limit how the pipeline can apply the credits generated by the transportation. The Commission discusses these limits in subparts (ix) through (xiii) below.

iv. *The Terminated Contract Exception.* Pipelines and LDCs complain that the exception from crediting for gas formerly committed to a pipeline under a terminated contract significantly reduces the effectiveness of crediting. They state that the gas covered by the exception displaces the pipeline's sales and thus adversely affects its take-or-pay problems, just like any other gas. Furthermore, they observe that the Commission's rationale for the exception was that it would encourage producers to settle take-or-pay claims in order to avoid credits. However, they assert that the exception applies in many situations where the producer has not settled any take-or-pay claims. In particular, many rehearing applicants (including AGA, INGAA, El Paso, NI-Gas, Texas Gas, Williams, Columbia Gas, California PUC, Cascade Natural Gas Company, Columbia, and AGD) point out that the Commission has ruled that terminated contracts include: (1) Contracts which have simply expired by their own terms; and (2) contracts terminated under Order No. 451's good faith negotiation procedures.

The Commission believes that the exception from crediting for gas from terminated contracts further encourages settlements, since it assures that if a producer and pipeline agree to terminate a contract as part of a settlement, the gas can be transported to market without credits.[185] Moreover, since a settlement terminating a take-or-pay contract gives the pipeline substantial and permanent take-or-pay relief by releasing the pipeline from all future take-or-pay obligations under the contract, including but not limited to those for the gas being transported, it is appropriate that the producer not be required to give the pipeline additional take-or-pay relief through credits to be applied against take-or-pay obligations under other contracts. Also, to the extent that the settlement terminating the contract was entered into before Order No. 500, the exception avoids the inequity of giving the pipeline a unilateral right to modify that settlement by taking credits not contemplated in the settlement. To the extent the settlement is entered into after Order No. 500, the pipeline can decide whether to enter the settlement in light of the effect on the pipeline's crediting rights.

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[183] The Mineral Leasing Act, upon which the OCSLA was modeled, originally required natural gas pipelines to provide common carriage, but, before passage of the OCSLA, was amended to exempt natural gas pipelines from that requirement. *See* 30 U.S.C. § 163(r) 3(a) (1982). This exemption was not altered when the OCSLA was adopted.

[184] H.R. Conf. Rep. No. 1474 at 67, *reprinted in* 1978 U.S. Code Cong. & Admin. News at 1660.

[185] The Commission notes that the contract must be completely terminated and the gas no longer committed to the pipeline for the exception to apply. Also, the exception only applies where the gas is transported on the pipeline which was party to the terminated contract.

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It is true that the terminated contract exception is available not only when the pipeline and the producer enter into a settlement terminating a contract before the end of its term, but also when the contract expires by its own terms. However, that is appropriate since expiration of the contract gives the pipeline take-or-pay relief by releasing it from the take-or-pay obligations contained in the contract. In any event, the data from the Commission's 1987 take-or-pay data request indicates that relatively few take-or-pay contracts terminated by their own terms during the period when pipelines were negotiating the settlements resolving the bulk of take-or-pay problems. Contracts accounting for 9 percent of total take-or-pay exposure as of year-end 1986 expired by June 30, 1988. This increased to 11 percent by the end of 1988. It is true that contracts accounting for an additional portion of the year-end 1986 take-or-pay exposure will expire in the future. However, even by the December 31, 1990 sunset date, these expired contracts will still account for less than a quarter of pipelines' year-end 1986 take-or-pay liability. By the end of 1989, contracts accounting for 20 percent of year-end 1986 take-or-pay exposure will have expired. This will increase somewhat to 23 percent by the end of 1990, the sunset date for crediting.[186] However, expiration of these additional contracts should itself give pipelines take-or-pay relief, reducing their need for credits.

v. *The Market-out Exception.* Second, pipelines and LDCs (United, AGA, Baltimore Gas and Electric, and Natural) complain that the crediting rule requires pipelines to transport without credits gas formerly sold under a contract with a market-out clause giving the pipeline discretion to terminate the contract. These commenters state that transporting gas formerly sold under contracts with the relevant market-out clauses displaces sales, just as does transporting other gas. Accordingly, there allegedly is still a need for credits for transporting that gas. Furthermore, pipelines will allegedly be discouraged from exercising the market-out clause, if they know they must transport without credits (AGA, Columbia Gas), and producers will have less incentive to offer the pipeline a lower price when it exercises the market-out clause, since they know they can obtain transportation without credits (Cincinnati Gas and Electric, Texas Gas).

The exception from crediting for gas from contracts with market-out clauses giving the pipeline discretion to terminate the contract was added in order to give producers a further incentive to agree to such contract terms. Such clauses would enable pipelines to avoid all take-or-pay obligations under such contracts, since the pipeline could at any time exercise its market-out and end its obligations to the producer. In any event, the exception does not significantly reduce pipeline crediting rights, since market-out clauses of the type triggering the exception were virtually non-existent when Order No. 500 was adopted. In order to trigger the exception, a market-out clause must give the pipeline absolute discretion to terminate the contract at any time. Thus, a market-out clause which the pipeline could only exercise at specified intervals or which would require the pipeline to continue to take the gas if the producer offered the pipeline a lower price at some specified level would not qualify. Most market-out clauses at the time included these or some other conditions on the pipelines' ability to cease taking the gas.

vi. *The 85 Percent Rule.* In Order No. 500–B,[187] the Commission provided that if a pipeline receives offers of credits that account for at least 85 percent of the volumes to be transported, the pipeline must transport all the gas tendered. However, if at any time subsequent to the commencement of that transaction, any member of the 15 percent (or less) volumetric minority should tender an offer of credits in order to obtain the transportation of other volumes which they produce, the pipeline will be entitled to credits for the volumes transported for that person in the original transaction as well as the new transaction.[188] The purpose of these provisions was to prevent owners of small minority working interests from preventing the transportation of the majority working interest owners' gas.

Pipelines and LDCs[189] state that the Commission erred in Order No. 500–B when it created the 85 percent rule. These commenters assert that this requirement reduces the take-or-pay relief afforded by Order No. 500 by allowing 15 percent of transported gas to escape crediting. They also state that the 85 percent rule is unnecessary, since owners of a minority working interest allegedly cannot prevent the majority working interest owners from obtaining transportation. These commenters state that an individual working interest owner can tender its gas separately for transportation with an offer of credits, and the rights of the other working interest owners whose gas is not transported could be protected through sale of their gas to a customer not requiring interstate transportation or through a balancing agreement.

Some producers[190] state that Order No. 500–B's 85 percent rule is insufficient to remove the impediments to transportation under Order No. 500 when multiple working interest owners own the gas to be transported. For example, they state that the refusal of a 16 percent working interest owner to offer credits could prevent the owners of the other 84 percent of the gas from obtaining transportation.

The Commission continues to believe that the 85 percent rule is a necessary pragmatic adjustment to the crediting regulations to prevent small minority owners from preventing the transportation of gas. As the Commission stated in Order No. 500–B, many leases are owned by more than one working interest owner, and sometimes there is a multiplicity of working interest owners with extremely small ownership interests. Furthermore, gas from a number of leases is often aggregated, for example by marketers, and transported and sold as a package. In these situations, the number of working interest owners involved can be very large. While it is true that the working interest owners could enter into a balancing agreement permitting the gas of the majority working interest owners to be transported subject to an offer of credits by those owners, such balancing agreements must be voluntarily negotiated among the working interest owners. A minority working interest owner might be unwilling to enter into a balancing agreement which would result in the gas of the other owners being marketed while its gas is not. Furthermore, sale of the minority working interest owner's gas into the intrastate market, without transportation over an interstate pipeline, might not be practicable. For example, the well may be connected only to an interstate pipeline.

Furthermore, the Commission does not believe that the 85 percent rule significantly reduces the take-or-pay relief afforded pipelines by the crediting

[186] *See* Appendix A, Table XII. By 1995, contracts accounting for 47 percent of take-or-pay liability as of year-end 1986 will have expired.

[187] 41 FERC ¶ 61,124 (1987).

[188] In order that the pipeline can know which minority working interest owners have had gas transported without an offer or credits, the 85 percent rule requires that the majority working interest owners obtaining transportation provide the pipeline, with their offer of credits, a list of the minority owners not providing an offer of credits.

[189] AGA, INGAA, ANR, El Paso, Transco, and Texas Eastern.

[190] Tenneco and Union Texas.

mechanism. First, the 85 percent rule only defers the pipeline's right to credits for transporting the minority working interest owner's gas. If that owner owns a greater than 15 percent working interest in a second lease, it cannot obtain transportation of volumes associated with that working interest unless it offers the pipeline credits for the transportation of the gas from both working interests. Since producers who own less than 15 percent working interests in one lease may well own a greater than 15 percent working interest in another lease, such producers continue to be under pressure either to offer the pipeline credits or negotiate a settlement of take-or-pay problems with the pipeline.

Second, as the Commission stressed in Order No. 500–B, a single working interest cannot be split for the purpose of Order No. 500 credit offers. If a producer owns a 100 percent working interest in the volumes to be transported, the producer cannot split that interest and only offer credits on 85 percent of the volumes to be transported. Similarly, the 85 percent rule cannot be used where five owners own equal 20 percent working interests. Thus, the 85 percent rule does not act to defer credits for 15 percent of all gas being transported. Since in many cases 15 percent, or less, of a lease is not owned by a separate working interest owner or group of owners, the 85 percent rule should defer credits for significantly less than 15 percent of all gas transported.

vii. *Gas Released by an Intrastate Pipeline.* In Order No. 500–C, the Commission provided that an interstate pipeline must transport, without credits, gas which an intrastate pipeline has released from its system supply under a release agreement providing the intrastate pipeline credits when it transports the gas. The Commission further provided that this exemption would only apply where both the intrastate and the interstate pipelines transport the gas in transactions which were commenced on or before November 15, 1987, and were reported to the Commission by each pipeline pursuant to 18 CFR 284.126(a) and 284.106. Finally, the Commission stated that the exemption may in no case cover more than the average daily quantities transported by the interstate pipeline in November 1987.

The purpose of this exemption was to minimize the possibility that producers would be required to provide "double" credits where an intrastate pipeline releases and transports gas and an interstate pipeline also transports the gas. This could occur because the intrastate pipeline ordinarily would require the producer to provide credits as part of the release agreement. In addition, the producer would have to provide the interstate pipeline credits under Order No. 500. The Commission stated that such double credits could discourage producers from selling gas released by intrastate pipelines into the interstate market and that this would be contrary to the NGPA's goal of integrating the intrastate and interstate markets. The various limits on the availability of the exemption were designed to limit the exemption to situations where the producer actually would provide double credits and to minimize any opportunity for circumvention of interstate pipelines' crediting rights. Circumvention could occur if gas were contracted to an intrastate pipeline solely for the purpose of having the intrastate pipeline release the gas, thus qualifying the gas for the exemption.

Pipelines and LDCs contend that this exemption improperly reduces the amount of take-or-pay relief afforded by crediting. They assert that, when an interstate pipeline transports to its market gas released by an intrastate pipeline, that transportation displaces the interstate pipeline's own sales, causing it to incur take-or-pay liability.

Producers, marketers, and intrastate pipelines contend that the various limits on the availability of the exemption are too restrictive. They state that the provision limiting the exemption to transactions commenced on or before November 15, 1987 fails to allow for future releases. They also state that limiting the volumes covered by the exemption to those transported during November 1987 fails to recognize monthly fluctuations in volumes transported under any given transaction.

The Commission believes that the exemption from crediting for system supply released by intrastate pipelines properly minimizes disincentives to the achievement of the NGPA's goal of integrating the intrastate and interstate markets without significantly affecting the take-or-pay relief afforded intrastate pipelines by crediting. As discussed in Order No. 500–C, requiring producers to provide "double credits" when an intrastate pipeline releases gas—one to the intrastate pipeline and a second to the interstate pipeline—could discourage producers from selling gas released by intrastate pipelines into the interstate market.

However, the Commission placed strict limits on the availability of the exemption in order to avoid any possibility that the exemption could be used to circumvent Order No. 500's crediting provisions. These limits should assure that the exemption does not significantly affect the take-or-pay relief afforded interstate pipelines by crediting. In particular, the requirements that both the intrastate and interstate pipelines transport the gas in transactions commenced before November 15, 1987 and that the volumes subject to the exemption be limited to the amount of gas transported in November 1987 should mean that the gas covered by the exemption will decrease as the November 1987 transportation transactions expire. Indeed, since many transportation transactions are for relatively short periods, a large proportion of any gas which originally qualified for the exemption should no longer do so.

viii. *New Gas.* Fifth, in Order No. 500–C, the Commission created an exemption from crediting for certain new gas. Under this exemption, pipelines must transport without credits gas produced from wells spudded after June 23, 1987, which are: (1) 2.5 miles or more from the nearest Order No. 500 marker well; (2) at least 1000 feet below the deepest completion location of each marker well within 2.5 miles; or (3) in a reservoir from which natural gas was not produced in commercial quantities before June 23, 1987. In addition, interstate pipelines may not apply credits arising from the transportation of other gas against their take-or-pay obligations for this new gas. The purpose of the new gas exemption was to minimize any adverse effect of crediting on the exploration for, and development of, new gas supplies. The various limits on eligibility of gas for the exemption are designed to assure that eligible gas truly is new gas and avoid exempting from crediting gas from new wells producing from already discovered sources such as infill wells.

In requests for rehearing and comments filed in response to Order No. 500–C, pipelines [191] generally oppose the new gas exemption. The pipelines state that the exemption reduces needed take-or-pay relief, and that transportation of new gas without receiving credits will lead to sales displacement without the mitigating effect of take-or-pay credits. These pipelines also state that the exemption will reduce a producer's incentive to renegotiate its pre-June 23, 1987 take-or-pay contracts covering old gas, by allowing producers to hold pipelines to

[191] Including INGAA, El Paso, Natural, Texas Eastern, Tennessee, and Transco.

those contracts while selling new gas to other purchasers and obtaining transportation of that gas without

sales. Some producers [194] also suggest that all new gas produced from acreage not subject to an existing contract with

which is not truly new gas does not qualify for the exemption. The definition thus limits any reduction in take-or-pay

In light of these facts, and in light of pipelines' success in settling their take-or-pay problems under Order No. 500 as

(AGA, El Paso, American Public Gas Association, NI-Gas).

The provision that where more than

and resold at the tailgate of the plant, will be made eligible for transportation under Part 284 by the submission to the

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those contracts while selling new gas to other purchasers and obtaining transportation of that gas without offering credits. Some pipelines [193] further state that the Commission failed to show, based on substantial evidence, that the exemption is necessary to encourage new production and that the benefits of the exemption outweigh the reduction of take-or-pay relief caused by the exemption. The commenting pipelines assert that the exemption will lead to market distortions and improper price signals to producers. The commenters contend, for example, that the exemption will encourage the exploration for and development of expensive new gas and the shutting in of existing production and discourage the development of proven reserves.

Some pipelines request that, if the Commission does not eliminate the exemption, it should at least narrow it to cover only new gas; which is not subject to a pre-June 23, 1987 take-or-pay contract with the pipeline. This would permit pipelines to continue to apply credits against their pre-June 23, 1987 take-or-pay obligations for new gas, and to receive credits for transporting new gas which they have released from a pre-June 23, 1987 contract. The pipelines contend that if the exemption is not so narrowed, producers will be encouraged to drill for and produce new gas which is subject to existing uneconomic contracts with pipelines, thereby exacerbating their take-or-pay problems.

The commenting producers [193] generally support the exemption from crediting for new gas. Most, however, would expand the exemption to cover all gas produced from wells drilled after June 23, 1987, in order to avoid discouraging new extension or development wells in existing reservoirs. The producers allege that state conservation rules would prevent them from drilling unnecessary in-fill wells solely to circumvent crediting. Arco notes that, since many farm-outs are on acreage near existing production areas, this change is necessary to enable new wells on farmed-out acreage to qualify for the exemption. It alleges this change also would greatly simplify the definition of new gas, since it would not be necessary to define marker wells and new reservoirs. Bass claims that the exemption, as modified, would not exacerbate pipeline take-or-pay problems because new gas replaces existing reserves and does not displace sales. Some producers [194] also suggest that all new gas produced from acreage not subject to an existing contract with a pipeline should be exempt from crediting regardless of whether the marker well test is met, arguing that this gas is not the source of pipeline take-or-pay problems.

The requirement that gas from newly discovered sources must be transported without credits reflects the Commission's concern that producers would have less incentive to explore for and develop new sources of gas if the potential financial reward for finding new reserves were reduced by credits against that producer's take-or-pay for its existing gas reserves. The Commission continues to believe that the new gas exemption is appropriate in order to avoid adversely affecting the level of new gas exploration and development, and consequently reducing the domestic supplies that would otherwise be available. This is particularly true in light of current reduced levels of drilling activity. The Commission realizes that this exemption reduces to some extent the amount of take-or-pay relief afforded by the crediting provisions. However, as the Commission stated in Order No. 500–C, the amount of gas exempted from crediting should be relatively small during the first several years, since only a small proportion of production during that period is likely to be from wells spudded after June 23, 1987, and to otherwise meet the definition of new gas. Given the pipelines' success in settling take-or-pay obligations, the need for credits will be substantially reduced, if not eliminated, by the time significant quantities of gas that qualify for the exemption are sought to be transported. Thus, in balancing the competing goals of affording take-or-pay relief and not restricting the production of domestic energy sources, the Commission finds that the new gas exemption should not be rescinded.

The Commission will, however, reject producer proposals to expand the definition of new gas. The Commission narrowly defined "new gas" to "assure that the gas exempt from crediting * * * truly is new gas" and not gas "from already discovered sources." [195] While the Commission recognizes that the definition adopted in Order No. 500–C may exclude some production that could legitimately be considered new, the Commission believes that the existing definition provides an administratively feasible means of ensuring that gas which is not truly new gas does not qualify for the exemption. The definition thus limits any reduction in take-or-pay relief to only those situations where it is necessary to avoid discouraging exploration and drilling for gas.

The Commission has now considered the commenters concerns about the various provisions in the Order No. 500 crediting rules which prevent transportation from generating credits for application against any take-or-pay liability which the pipeline may have to the producer whose gas is being transported. The Commission will now consider the commenters concerns about the various provisions of the crediting rules which limit the pipeline's discretion in applying those credits.

ix. *Application of Credits Only Against Liability to Producer Whose Gas Is Transported.* Pipelines state that the fact that a pipeline may apply credits only against its take-or-pay obligations under contracts with the producer whose gas is being transported seriously limits the take-or-pay relief afforded by the crediting rule. The commenters state that many producers have access to a number of pipelines. Accordingly, they state, producers will transport their gas over pipelines with whom they have no take-or-pay contracts and avoid pipelines with whom they do. The former pipelines would then have to transport the gas without credits even though their sales are displaced. Some pipelines and LDCs suggest that this problem could be avoided by permitting pipelines to trade credits against one producer's take-or-pay contracts for credits that another pipeline has against another producer's take-or-pay contracts.

However, in many cases producers have access to only one pipeline. More importantly, even if the producer does have the option of transporting gas only over a pipeline which does not owe it take-or-pay, doing so is not without significant costs to the producer. Generally, the different pipelines over which the producer could transport gas lead to different markets. Thus avoiding transportation over a particular pipeline would significantly reduce the buyers to whom the producer could market its gas and might require selling the gas at less advantageous terms than would be available if the producer were free to transport its gas over any pipeline. The ability to obtain access to as many potential purchasers as possible is particularly significant in a natural gas market characterized by excess deliverability and competitive markets such as have existed over the last several years.

[193] Panhandle, El Paso, Texas Eastern, and Transco.

[194] Including NGSA, Arco, Bass Enterprises Production Co., Indicated Producers, Pogo Producing Company, Producer Associations, and Tenneco.

[195] NGSA, Tenneco, and Producer Associations. [196] FERC Stats. & Regs. at 30,999.

In light of these facts, and in light of pipelines' success in settling their take-or-pay problems under Order No. 500 as presently in effect, the Commission will not amend the Order No. 500 crediting regulations to permit trading of credits. Such increased crediting rights do not appear necessary to enable pipelines to resolve their take-or-pay problems and would increase the administrative burdens of crediting.

x. *Pre-1988 Take-or-pay Liability.* Second, many pipelines and LDCs (including AGA, CIG, Columbia Gas, Consolidated, Enron, INGAA, Natural, NI-Gas, Peoples Gas Light, Arkla, Baltimore Gas and Electric, and Memphis Light) contend that, since credits may not be applied against pre-1988 take-or-pay liability, crediting provides little or no relief from the large amount of already accrued take-or-pay liability which accounts for a large part of the take-or-pay problem. They observe that no credits are given for transportation performed before Order No. 500, and credits for transportation thereafter can at most be applied against past liability accrued after January 1, 1988. In any event, since new take-or-pay obligations continue to accrue, the volume-for-volume credit is allegedly only sufficient at most to cancel out currently accruing liability.

While pipelines cannot apply credits against take-or-pay obligations which accrued before 1988, those take-or-pay obligations accrued before pipelines began transporting gas under Order No. 436. Thus those take-or-pay problems could not have been caused by open access transportation. In any event, pipelines have resolved most of the take-or-pay claims which accrued before 1988.

xi. *Sharing of Credits Where Several Pipelines Transport the Same Gas.* AGA, INGAA, ANR, and CIG criticize the fact that, where several pipelines transport the same gas, the pipelines must share a single credit for each unit of gas transported. They state that this means that the pipeline whose sale was displaced probably will not receive the full credit necessary to compensate it for the lost sale. They express particular concern about the requirement that for released gas only the pipeline which released the gas gets the credit. They observe that it may well be the downstream pipeline whose sale is displaced, yet it will get no credit, while the releasing pipeline may have little or no take-or-pay liability against which to apply the credit. The rehearing applicants and commenters suggest that in the multiple pipeline situation each pipeline should receive a full credit (AGA, El Paso, American Public Gas Association, NI-Gas).

The provision that where more than one pipeline transports gas those pipelines must divide up a single credit for each unit of gas transported was necessary for simple fairness to producers. If the transportation and sale of one unit of gas resulted in more than one credit, the producer would lose far more in the transaction than it would gain. This would make sales requiring transportation over more than one pipeline uneconomic and thereby reduce competition for supplies and markets. This would reduce the consumer benefits of open access transportation.

The provision that, where the gas has been released by one of the transporting pipelines, that pipeline gets the entire Order No. 500 credit is also necessary to avoid the possibility of "double" credits. This is because most release agreements provide for the pipeline releasing the gas to receive credits for each unit of gas transported. Without the provision that only the releasing pipeline can receive credits under Order No. 500, the releasing pipeline could take the credits provided for under the release agreement rather than the Order No. 500 credit, leaving the other pipelines to use the entire Order No. 500 credit. The resulting requirement that the producer give one credit to the releasing pipeline and another credit to the other pipelines could render sales requiring transportation over the releasing pipeline and other pipelines uneconomic for the same reasons described above. Furthermore, the fact that the releasing pipeline has released gas from a contract with the producer suggests that it does have take-or-pay obligations to that producer which the credit would assist in reducing.

xii. *Special Rule for Processing Plants.* Before the issuance of Order No. 500–C, many comments and emergency petitions were filed concerning the treatment of processing plants under the crediting provisions of Order No. 500. The commenters requested that the Commission permit gas which processing plants purchase from behind-the-plant producers and resell, to be transported without any offer of credits. Alternatively, they suggested that the Commission give processing plants which purchase and then resell gas the option of themselves making an offer of credits instead of the behind-the-plant producers.

In Order No. 500–C the Commission provided that gas purchased by a processing plant operator under percentage-of-proceeds contracts entered into on or before June 23, 1987, and resold at the tailgate of the plant, will be made eligible for transportation under Part 284 by the submission to the pipeline of an offer of credits signed only by the processing plant operator. Although the transportation of that gas will generate take-or-pay credits, the pipeline may apply those credits only against a pre-June 23, 1987 contract with the plant operator from which the pipeline has released that gas. If the gas has not been released from such a contract, the pipeline will not receive any credits. The Commission requested comments on the effect of these modifications on the take-or-pay relief afforded pipelines by the crediting mechanism and whether these changes with respect to processing plants should be continued. The Commission also solicited comments on other ways of treating processing plants under Order No. 500 which would avoid the administrative burden on such plants without exacerbating pipeline take-or-pay problems.

In response to Order No. 500–C, numerous producer commenters [196] ask that these special rules for processing plants be made permanent. Some commenters [197] ask that the special rules be broadened to include all gas purchased and resold by processing plants, not just that gas which the plant purchases under percentage-of-proceeds contracts.

Many interstate pipeline commenters, on the other hand, assert that the special rules for processing plants are arbitrary, capricious, and unnecessary, in that they rest on untested acceptance of the plant operators' allegations of burden. They also contend that the special rules lessen incentives for producers to settle their take-or-pay obligations, and are inconsistent with the treatment of other middlemen. These commenters generally state that the processing plants' arguments of administrative burden do not outweigh the goal of take-or-pay relief; that processors could have taken steps by now to obtain the needed signatures as have other middlemen (e.g., gatherers and marketers); and that, if 16 percent of behind the plant producers will not sign an offer of credits, their gas should not be entitled to transportation.

Some interstate pipelines [198] also object to the requirement that the plant

[196] Including Union Pacific Resources Company, Pogo, Bass, Mesa Operating Limited Partnership, Indicated Producers, and Arco Oil and Gas Company.

[197] Sun Exploration and Production Company, NGSA, Producer Associations, Amoco, Arco, Phillips Petroleum Company.

[198] *E.g.*, El Paso, ANR, CIG, INGAA, United, Panhandle, Texas Gas, Tennessee, Enron.

operator's offer of credits only generates credits against the pre-June 23, 1987 contract with the plant operator from working interest population with the pipeline's list and deal with the problem outweighs the benefit of take-or-pay

impose a disproportionate burden on the plant operator. The plant operator pay liability, and consequently they oppose an extension of the limit.[204] minimum take obligations for casinghead gas.

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operator's offer of credits only generates credits against the pre-June 23, 1987 contract with the plant operator from which the pipeline has released the gas. The commenters argue that, if the gas has not been released from such a contract, the pipeline will not receive any credits, and that this exempts plant owners from having credits applied against other contracts they may have with the pipeline. The interstate pipelines also assert that there is no logical justification on administrative burden grounds to shield the operator's own gas from cross-crediting. Some commenters (Transco, Natural) point out that a number of plants have two or more pipelines connected to the plant outlet, and the pipeline which is delivering the gas to market, thereby displacing its own sales, may not have the purchase contract with the operator and will be ineligible for credits under the existing exemption.

UDC opposes anything more than a temporary exemption for processing plant operators. AGA requests that the Commission clarify that the exemption provision was not intended to cover a processing plant operator's own gas, even if that gas is covered by a percentage-of-proceeds contract. One commenter (NI-Gas) contends that processing plants should not be exempted merely because they, like everyone else, will incur administrative expense, and suggests that individual problems should be resolved by negotiation between the processing plant and the transporting pipeline.

Processors, marketers, gatherers and other middlemen (including Citizens Gas Fuel Company, Tejas Power Corporation, and Hadson Gas Systems, Inc.) generally ask that the Commission continue the special rules for processing plants and expand them. Commenting processors (Indicated Plant Operators) request that the exemption be modified to apply to all gas purchased and resold by the plant operator, whether in a percentage-of-proceeds contract or not, resold at the tailgate of the plant or elsewhere, and subject to a pre-June 23, 1987 contract or later. Otherwise, they allege, plant operators will be unable to replace reserves that become depleted over time without the extraordinary burden and expense associated with applying the crediting mechanism to behind-the-plant producers. A processor (Gulf Energy Gathering and Processing Corporation) requests that if the exception cannot be made permanent, there should be an exception system based on pipeline lists of producers with which it has take-or-pay problems so the processor could then compare its working interest population with the pipeline's list and deal with the problem producers accordingly on an exception basis.

The processors [199] stress that the accounting system required for plant owners and operators to track behind-the-plant credits is a burden that far exceeds any potential benefit to be gained in take-or-pay relief. They argue that they are middlemen caught between pipelines and producers, and that the viability of their beneficial operations (which transform low volume or low quality gas, otherwise unmarketable, into saleable components) are at stake, although they have no control over the pipeline and producer actions which affect them. The commenters (Gas Company of New Mexico, Sunterra Gas Gathering Company) suggest that the Commission should eliminate the administrative burden of the 85 percent rule by providing that, where an intrastate pipeline, gatherer, LDC or plant operator acquires gas from multiple suppliers under existing contracts, only the pipeline, gatherer, LDC or plant operator should be required to provide credits.

The Commission has determined to continue in effect the rules adopted in Order No. 500–C concerning the application of crediting in the context of processing plants. As discussed in Order No. 500–C, the Commission believes that the processing plant owners have persuasively demonstrated that it is extremely difficult to secure offers of credits from sufficient behind-the-plant producers with pre-June 23, 1987 percentage-of-proceeds contracts to satisfy the 85 percent rule. There may be thousands of such producers. Even assuming that the plant operator incurs the administrative expense of contacting and requesting offers of credits from all the producers, more than 15 percent may be unwilling to offer credits. However, the processing plant operator may lack contractual authority to stop purchasing and processing the gas of such producers. Thus, requiring offers of credits from producers with pre-June 23, 1987 percentage-of-proceeds contracts with the processing plant operator could seriously disrupt the operation of processing plants across the nation. Those processing plants perform an essential function in improving the quality of natural gas in order to enable it to be transported and sold. Accordingly, the Commission believes that the risk of shutting these plants in outweighs the benefit of take-or-pay relief foregone by this exemption.

Furthermore, the special rules concerning processing plants adopted in Order No. 500–C apply only to gas sold by producers to processing plants under percentage-of-proceeds contracts entered into on or before June 23, 1987. Accordingly, as those contracts expire the special rules apply to less and less gas, thereby reducing any adverse impact on the take-or-pay relief afforded to pipelines by crediting. In this connection, the Commission rejects suggestions that the special rules be expanded to cover gas sold to processing plants under post-June 23, 1987 percentage-of-proceeds contracts. This would enable producers to circumvent the usual requirement that they offer credits by arranging to sell their gas to a processing plant. Such circumvention is not a danger under the pre-June 23, 1987 percentage-of-proceeds contracts since those contracts predated the *AGD* decision and Order No. 500. Additionally, the administrative burdens of complying with the usual Order No. 500 crediting requirements are not as great with respect to post-June 23, 1987 percentage-of-proceeds contracts. At least since the issuance of Order No. 500, the processing plant operators have been able to seek offers of credits from their producers at the time of the execution of new percentage-of-proceeds contracts, and may refuse to enter into such contracts in the absence of an offer of credits.

The Commission also rejects the suggestion that Order No. 500 be amended so that the pipeline may apply credits against take-or-pay obligations under all contracts for the purchase of the plant operators' own gas, and not just the pipelines' contract with the plant operator from which the percentage-of-proceeds gas to be transported has been released. The Commission believes it would be unfair to require the plant operator to offer the pipeline credits against the pipeline's obligation to take or pay for the plant operator's own gas in order to obtain transportation of gas the plant operator purchased under percentage-of-proceeds contracts. When the plant operator sells gas it purchases under percentage-of-proceeds contracts, it must share the proceeds with the behind-the-plant producers. Therefore, the plant operator's revenue from the sale of such gas is less than its revenue from the sale of its own gas, since it may keep the entire proceeds from sales of that gas. Thus, permitting the pipeline to take credits against obligations to take or pay for the plant operator's own gas would

[199] Indicated Plant Operators, Western Gas Processors, and Gulf Energy.

impose a disproportionate burden on the plant operator. The plant operator would incur the entire cost of the credit but receive only part of the benefit from the sale made possible by the credit. As the processor's gas is often commingled with the gas of other producers, the processor would be unfairly forced to offer credits in order to get the plant's gas transported.

xiii. *Casinghead Gas.* As discussed above, in Order No. 500–C the Commission provided that pipelines could not apply credits against their minimum take obligations for casinghead gas because failure to take casinghead gas could result in serious harm to gas and oil production.[200] The Commission requested comments on the effect of prohibiting pipelines from applying credits against must-take obligations for casinghead gas.

The commenting interstate pipelines [201] oppose this limit on the application of credits, and producers, producer associations, end-users, marketers, gatherers, and distributors [202] support it. Of those supporting the limit, most state that the reasons expressed by the Commission in Order No. 500–C, *i.e.*, the possibility of shut-in or flaring of the gas, are compelling reasons for continuing the limit. Some producers also state that reinjection of casinghead gas, as an alternative to shutting in the production or flaring the gas, is generally not technically or economically feasible.[203]

The pipelines, LDCs, and their associations generally contend that the limit in applying credits against obligations to take casinghead gas is an over-reaction to the concerns expressed by producers about the possibility of shut-in or flaring of the gas. They state that application of credits against these obligations does not necessarily lead to shut-in or flaring and that there are intermediate alternatives. Several pipelines also express the view that casinghead gas represents a significant proportion of their system supply, particularly with regard to their take-or-pay liability, and consequently they oppose an extension of the limit.[204]

Consequently, many commenters who oppose the casinghead gas limit on credits propose alternatives to the exemption as set forth in Order No. 500–C. Some [205] would support partial exemption for casinghead gas, if the producers of casinghead gas were compelled to make the contracts market responsive, such as allowing the pipeline to apply credits against casinghead gas if the price of the gas is higher than the pipeline's average cost of gas (CNG), or on the condition that the producer offers to put a market-out clause in the contract (AGA). They add that these contracts are a large source of the take-or-pay problem, and that the Commission should be providing incentives to assure that the contracts are market responsive and competitively priced. These commenters note that exempting casinghead gas from the crediting provisions lessens the producer's incentive to renegotiate these contracts. CIG suggests that casinghead gas contracts should be amended to provide for market responsive prices or to allow the pipeline to abandon the purchase so casinghead gas can compete on the spot market or, alternatively, that two credits be given for transportation of casinghead gas. Consolidated suggests that the rule be modified so that the pipeline, before applying credits against casinghead gas, must offer to temporarily release the gas and transport it without accruing credits. Enron suggests that casinghead gas should not be exempt from crediting in those situations where a producer can reinject the gas.

As discussed above, the Commission has determined to prospectively modify its regulations concerning the application of credits against minimum take obligations for casinghead gas. The Commission will allow a pipeline to apply credits against its minimum take obligation for casinghead gas so long as the pipeline releases the gas not taken from the contract with the producer. This modification to the crediting rules addresses the concerns of pipelines and others that the Order No. 500–C provisions concerning casinghead gas reduced the take-or-pay relief afforded by crediting. At the same time, the release provision minimizes the adverse effects of applying credits against the minimum take obligations for casinghead gas.

The Commission has now discussed all the limits on how pipelines may apply credits. The Commission will now discuss other issues raised concerning crediting, primarily contentions by producers that crediting is unduly burdensome.

xiv. *Other Must-Take Gas.* Take-*and*-pay contracts require pipelines to take minimum quantities of gas. Aside from casinghead gas which must be taken to prevent shut-in of oil wells which also produce gas, must-take contracts also apply, among other things, to gas which must be taken to avoid violations of state conservation laws, well damage, drainage, or loss of leases. While the Commission, in Order No. 500–C, provided that credits may not be applied against minimum take obligations for casinghead gas, it determined that it would not eliminate the pipelines' right to apply credits against their minimum take obligations for gas other than casinghead gas, because it had not been shown that there would be a severe effect on the public interest as a result of this crediting. In Order No. 500–C, the Commission requested comments on the effect of this crediting.

Several producers [206] suggest that the casinghead gas exemption (which the Commission is eliminating in this rule) be expanded to apply to all minimum take requirements. They state that failure of the pipeline to comply with minimum take obligations may cause irreparable harm to the producer whether or not casinghead gas is involved. They note that gas contracts with minimum take provisions were generally negotiated because of the special production needs of the producers and that the crediting provisions of Order No. 500 should not interfere with the previously negotiated solution to the production problem.[207] The Texas Railroad Commission suggests that the Commission allow state commissions to determine the minimum production levels necessary to promote conservation and protect correlative rights, and provide that credits can not be applied to reduce a well's production below that level. Pipelines, LDCs, and their associations, on the other hand, argue that Order No. 500 is not adequately providing them with needed take-or-pay relief, and that

[200] FERC Stats. & Regs. at 30,957.

[201] Including AGD, Consolidated, Columbia, El Paso, Natural, NI-Gas, Pacific Gas & Electric, Tennessee, Texas Gas, Williston, Yankee Gas Company, Panhandle, Northwest Pipeline Company, and INGAA.

[202] Transok, TXO Production Corp., Texas Railroad Commission, AGA, Amoco, Producer Associations, Huffco Petroleum Corporation, McMoRan Oil & Gas Co., NGSA, Phillips Petroleum Company, Pogo, Sun, Industrial Groups (Process Gas Consumers Group, *et al.*), Tejas.

[203] Pogo, Industrial Groups, Sun, and TXO Production.

[204] CIG, AGD, Consolidated, Columbia, El Paso, Enron, INGAA, Natural, NI-Gas, Pacific Gas & Electric, Panhandle, Tennessee, Texas Eastern, Texas Gas, Transco, United, and Williston.

[205] CIG, Consolidated, Natural, PG&E, Panhandle, Tennessee, Transco, United, Williston.

[206] Amoco, Producer Associations, Huffco Petroleum Corporation, Indicated Producers, McMoRan, NGSA, Pogo, Industrial Groups, Tejas, and the Texas Railroad Commission.

[207] McMoRan, Industrial Groups, Tejas, TXO Production.

any additional exception to crediting would create another loophole for producers and offer that much less relief

the proposal, arguing that the limitation of crediting to those pipelines that have accepted blanket certificates would

Most producers, marketers, and end users [213] favor the use of pipeline and producer lists. They argue that this

no need to limit crediting only to those pipelines that have "significant" take-or-pay obligations in order to avoid such

pipeline has more than one qualifying contract with the producer, the pipeline may select the qualifying contract to be

comment on whether pipelines should be required to disclose this information in a timely manner. At least one

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any additional exception to crediting would create another loophole for producers and offer that much less relief to pipelines.[208]

As discussed above, the Commission will not exempt must-take gas from crediting, but it is modifying its regulations to provide that if a pipeline applies credits against a must-take obligation for any gas, whether or not the gas is casinghead gas, the pipeline must release the gas not taken. This should minimize the possibility that the pipeline's application of credits against must-take obligations could cause such adverse effects for the producer as loss of lease or drainage of the reservoir. The release of the gas should permit the producer to market the gas to another purchaser. At the same time, the take-or-pay relief afforded pipelines by crediting should not be significantly affected. Pipelines can continue to apply credits against all their must-take obligations. Furthermore, if the released gas is transported over the pipeline which applied the credit and released the gas, that transportation will generate credits for the pipeline.

xv. *Limiting Crediting to Pipelines with Blanket Certificates.* The Commission has determined that crediting should not be limited only to those pipelines which have accepted open access blanket certificates. In Order No. 500–C, the Commission stated that it was considering limiting the pipelines which must be offered credits under Order No. 500 to interstate pipelines which have accepted blanket certificates to provide open access transportation and the Commission requested comments on that proposal. The Commission suggested that such a limitation might be necessary in order to discourage pipelines from implementing NGPA section 311 transportation only to discontinue the open access transportation after obtaining the credits needed to eliminate take-or-pay obligations. Requiring a pipeline to obtain a blanket certificate would have eliminated this potential problem because transportation under a blanket certificate may not be terminated by a pipeline prior to receiving abandonment authority from the Commission.

Several producers,[209] marketers,[210] and end users [211] responded in favor of the proposal, arguing that the limitation of crediting to those pipelines that have accepted blanket certificates would encourage more interstate pipelines to accept blanket certificates. We find, however, that because 22 of the 23 major pipelines and a total of 50 jurisdictional pipelines have already accepted blanket certificates, there is little reason to restrict crediting so as to induce pipelines to offer open access transportation.

In addition, even where a pipeline has not accepted a blanket certificate, there is little realistic possibility that it would cease such transportation simply because it had received all the credits it needed. This is because in *Algonquin Gas Transmission Co.*,[212] decided after the issuance of Order No. 500–C, the Commission held that once a pipeline performing section 311 transportation permits customers to exercise their conversion rights, it must continue to provide open-access transportation for all shippers for the duration of the longest contracts. Finally, any form of open access transportation, whether offered pursuant to a blanket certificate or under NGPA section 311, subjects a pipeline to the same risk of incurring take-or-pay liability. This is because either type of transportation can displace the pipeline's own sales of gas, thereby reducing its ability to take gas under its purchase contracts with producers.

Accordingly, the Commission concludes that, on balance, the need to assist those pipelines providing only section 311 transportation in obtaining take-or-pay relief outweighs any benefits of determining that such pipelines are not entitled to credits. Accordingly, the crediting rule will not be modified to limit crediting to pipelines with blanket certificates.

xvi. *Limiting Crediting to Particular Producers or Pipelines.* In Order No. 500–C, the Commission requested comment on two proposals designed to limit offers of credits only to those situations where the pipeline actually needs take-or-pay relief. Under the first proposal, pipelines would be required to publish lists of producers with which they have significant take-or-pay obligations. Only those producers on the list would be required to offer the pipeline credits in order to obtain transportation. Under the second proposal, the Commission would publish a list of pipelines without significant take-or-pay obligations to producers. Pipelines on this list would be required to transport without offers of credits.

Most producers, marketers, and end users [213] favor the use of pipeline and producer lists. They argue that this selective approach to determining onerous take-or-pay obligations is superior to the current mechanism, which considers virtually every contract between producers and pipelines to be a problem. In addition, commenters in favor of the lists argue that targeting crediting relief to only those pipelines that have "significant" take-or-pay obligations would prevent pipelines from using crediting as a means of limiting access to their systems, ensuring open-access transportation, and minimizing disruption to the industry. They contend that it will also let all parties to a transaction know whether crediting is involved and to what extent.

The Commission finds, however, that the requirement of pipeline and producer lists would present serious difficulties in deciding what constitutes a "significant" take-or-pay problem. Due to the varying factual circumstances among pipelines and producers and the differences that led to development of take-or-pay problems on individual pipeline systems, it is unlikely that any one definition of the term "significant take-or-pay problem" would produce equitable results on all pipeline systems. Any fixed dollar amount or other definition applied across the board would result in an arbitrary standard. For example, a particular amount of take-or-pay liability could be a serious problem for a relatively small pipeline with limited financial resources but an insignificant problem for a large pipeline with greater financial resources. In addition, the lists could provide a road map to producers allowing them to reroute gas transactions so as to avoid offering pipelines credits pursuant to the provisions of Order No. 500.

The Commission suggested the option of using lists in an effort to find ways to minimize the disruptions to transportation that appeared possible as a result of crediting. Crediting, however, does not appear to be causing any significant disruption in the transportation of gas.[214] Thus, there is no need to limit crediting only to those pipelines that have "significant" take-or-pay obligations in order to avoid such disruption.

Finally, the Commission believes that the goal of limiting crediting to pipelines with significant take-or-pay problems and the producers with which they have those problems can be accomplished through settlements between producers and pipelines. The Commission's regulations expressly authorize pipelines to transport gas without credits, and the Commission assumes that producers request such an agreement as part of their take-or-pay settlements.

xvii. *Amending Crediting Rule to Eliminate Cross-Crediting.* Order No. 500 provided that a pipeline may apply credits generated by the transportation of a producer's gas against the pipeline's take-or-pay obligations under any pre-June 23, 1987 contracts with that producer. The take-or-pay obligations must accrue either in the contract year in which the gas was transported or in any previous calendar year commencing on or after January 1, 1988, as long as the pipeline performed open access transportation during some portion of that year.

Order No. 500 provided that where there is more than one pre-June 23, 1987 take-or-pay contract against which credits generated by the transportation of particular gas could be applied, the pipeline may at its sole discretion choose the contract against which the credits will be applied. In addition, the choice of applying credits against present or past liabilities is solely that of the pipeline. Order No. 500 recognized that, as part of an agreement by the pipeline to release gas from a contract with a producer, the parties may have negotiated a crediting arrangement that may, for example, have provided for credits only against take-or-pay obligations under the contract from which the gas was released. Nevertheless, Order No. 500 required the producer to offer the pipeline credits under Order No. 500, including the right to apply credits against any qualifying contract. These features permit the pipeline to apply the credits against its take-or-pay liability under its highest priced contract with the producer in question, regardless of the provisions of any pre-existing release agreements.

Several producers and an industrial group [215] object to the fact that where a pipeline has more than one qualifying contract with the producer, the pipeline may select the qualifying contract to be credited. They argue that when the transported gas is gas which the pipeline has released from a contract with the producer, the pipeline should be required to apply the credits first against the contract from which the transported gas was released. If credits are not exhausted by initial application against take-or-pay obligations under the contract from which the gas is released, producers urge that the pipeline be prohibited from using the excess credits, or that some limitations be placed on the pipeline's decision as to how to allocate surplus credits. Producers argue that these changes in crediting are necessary to avoid interference with settlement agreements already negotiated between the pipeline and producer.

The Commission recognizes that Order No. 500 gives pipelines more generous crediting rights than provided for under typical release agreements. However, the Commission believes that this is necessary to give pipelines meaningful take-or-pay relief, and thereby comply with the mandate of the Court in *AGD.* Where a release agreement limiting the pipeline's application of credits to obligations under the contract from which the gas was released was negotiated before the issuance of Order No. 500, it was negotiated at a time when pipelines may have lacked sufficient bargaining power to obtain effective take-or-pay relief.[216] Accordingly, it is appropriate that the Commission permit the pipeline to refuse to transport the producer's gas in the absence of an offer of more effective credits under Order No. 500 which can be applied against a higher priced contract than the one from which the gas was released. Where a release agreement is negotiated after the issuance of Order No. 500, the parties may negotiate the release agreement in light of the pipeline's rights under Order No. 500 and the pipeline may, in return for appropriate other relief, waive or limit its rights under Order No. 500 to credits which can be applied against higher priced contracts.

xviii. *Amending Crediting Rule to Require Pipelines to Disclose to Producers the Contract against which the Pipeline will Apply Credits.* In response to concern among producers that they must present offers of credits to pipelines without knowing against which of their contracts the credits will be applied, the Commission requested comment on whether pipelines should be required to disclose this information in a timely manner. At least one producer (Arco) argues that uncertainty regarding the contracts against which a pipeline intends to apply accumulated credits adversely affects producer plans for further development of existing fields and for new exploration. Requiring the pipeline to disclose how it intends to apply credits, Arco argues, would reduce this uncertainty, thereby assisting producers in their exploration and drilling activities.

As previously discussed in section IV(A)(2) above, the Commission is modifying its regulations to require that pipelines give producers 30 days notice before applying credits against any obligation to take and pay or take or pay for must-take gas. This should give the producer sufficient time to find an alternative purchaser for must-take gas so as to minimize the possibility that this gas could be shut in, with the various adverse effects described above.

However, the Commission will not require prior notice of the application of credits in situations not involving must-take gas. The Commission recognizes that the pipeline's ability to wait until the end of a contract year before informing the producer how it intends to apply credits can cause producers difficulties in making production plans, even where must-take gas is not involved. However, producers can assume that pipelines will apply credits against their higher priced take-or-pay contracts in order to maximize the dollar benefit of credits. Thus, while producers do not know for certain against which contracts the pipeline will apply credits, they can make an educated guess. Furthermore, it cannot be expected that a pipeline will always predict accurately the credits it will accumulate. Thus, as a practical matter a pipeline may have to wait until the end of each contract year before deciding which contracts to apply the credits against.

To prevent delays in crediting where must-take gas is not involved, the Commission finds that the matter of how to apply credits is best left to the producers and pipelines themselves, rather than imposing a prior notice requirement. For example, while crediting remains in effect, pipelines and producers can agree to a voluntary "prior notice" arrangement as part of an agreement on transportation services, which the Commission would encourage in order to reduce uncertainty and improve operational planning. Accordingly, the Commission will not amend the rule to require pipelines to

[208] Natural, Northwest, PG&E, Transco, UDC, United, Panhandle, CIG, AGU.

[209] Amoco, Bass, Huffco, Mesa, NGSA, Producer Associations, Phillips, and Texaco Inc.

[210] Entrade Corporation, Hadson, Natural Gas Clearinghouse, Tejas, and Yankee.

[211] Columbia Nitrogen Corporation, Industrial Groups, and Petrochemical Energy Group.

[212] 44 FERC ¶61,076 at 61,234–36 (1988).

[213] Including American Paper Institute, Amoco, Bass, Citizens, Entrade, Huffco, Indicated Producers, and Industrial Groups.

[214] Pipeline throughput in 1988 increased 11 percent compared to the 1987 total. Moreover, in the fourth quarter of 1988, interstate pipelines transported more gas than in any previous quarter. Transportation on behalf of distributors, end users, and marketers during that quarter increased 18 percent over the final quarter of 1987. *See* Interstate Natural Gas Association of America, *Carriage Through 1988* (May 1989) (report on the extent of contract carriage in the interstate natural gas market).

[215] Indicated Producers, Fertilizer Institute, Arco, Bass, Sabine, NGSA, Apache, Phillips, and Producer Associations.

[216] *See AGD* v. *FERC*, 824 F.2d at 1023.

disclose to producers the contract or contracts against which they will apply credits where must-take gas is not involved. Producers can assume that pipelines will apply credits against their higher priced take-or-pay contracts in order to maximize the dollar benefit of credits. Thus, while producers do not know for certain against which contracts the pipeline will apply credits, they can make an educated guess. Furthermore, it cannot be expected that a pipeline will always predict accurately the credits it will accumulate. Thus, as a practical matter a pipeline may have to wait until the end of each contract year before deciding which contracts to apply the credits against.

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pipelines and LDCs [218] similarly argue that crediting should not be applied to the downstream transportation of

such a situation would penalize those pipelines and LDCs who have worked within the framework of section 311

some cases the transportation would not displace a sale by the upstream pipeline. However, that is equally true in many

Several commenters [219] request that, if the transfer rule on assignments is retained, the effective date be changed

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disclose to producers the contract or contracts against which they will apply credits where must-take gas is not involved.

xix. *Interstate and Intrastate Pipeline System Supply Gas Transported on Another Pipeline.* In Order No. 500–C, the Commission stated its concern about the administrative burdens imposed by Order No. 500 on interstate and intrastate pipelines seeking to have their system supply gas transported on another pipeline. Under the crediting rules as currently in effect, a pipeline can refuse to transport another pipeline's system supply unless producers representing at least 85 percent of the gas to be transported have offered it credits. The Commission requested comment on what changes in the crediting provisions it might make to reduce administrative burdens on the transportation of system supply gas caused by these provisions.

Several commenters [217] suggest various exemptions from crediting for system supply. First, some producers and an interstate pipeline propose exempting from crediting an interstate pipeline's downstream transportation of another pipeline's system supply from that pipeline to an off-system purchaser of the system supply. These commenters state that pipelines have performed such downstream transportation for one another for years and that there is no evidence such transportation has contributed to take-or-pay liability. The producers contend that this would eliminate the administrative burden of obtaining offers of credits from the numerous producers and working interest owners who sold gas to the pipeline; prevent double crediting, since otherwise the pipeline purchasing the gas for system supply would receive a credit under the gas purchase contract while the transporting pipeline would receive credits under Order No. 500; and prevent two pipelines from arranging to transport one another's system supply for the sole purpose of obtaining Order No. 500 credits. The pipeline (National Fuel) argues that credits should not be required for its off-system sales since such sales would be discouraged and, while small, those sales help to alleviate both its take-or-pay liability and that of the pipelines from which it purchases its system supply.

Several interstate pipelines also contend that the administrative burden of obtaining offers of credits for system supply would frustrate the benefits of open-access transportation. Intrastate pipelines and LDCs [218] similarly argue that crediting should not be applied to the downstream transportation of intrastate pipeline or LDC system supply to off-system customers under section 311(a) or sales of that gas under section 311(b), claiming that it hinders the intrastate pipelines' or LDCs' ability to serve their markets and creates the need for duplicative facilities. The commenters state that curtailment of such transactions will result, since it is virtually impossible to obtain the required offers of credit from 85 percent of the working interests, and that guarantor status will not help due to the uncertain and large potential liability resulting from such status.

Several commenters (*e.g.*, Transok and Valero Transmission Company) suggest that intrastate pipelines at least should be compensated for the administrative burden of aggregating credits by allowing them to be recipients of credits. They point out that, while the Commission has no jurisdiction over the intrastate pipeline's purchase contracts, it does have general authority to impose the conditions under which the intrastate pipeline's NGPA section 311(a)(2) transportation is carried out. Some producers further suggest that at least gas which is sold to an interstate pipeline for system supply but which must be transported from the wellhead to the purchasing pipeline by another pipeline should be exempted from crediting. These producers [219] state that such transportation cannot exacerbate the take-or-pay liability of the purchasing pipeline or the transporting pipeline since transportation of gas purchased for system supply cannot displace the sales of either pipeline. They contend that such transportation is generally made pursuant to long-term contracts which must be honored by producers, and the producer would have no choice but to offer credits. One commenter (Bass) would limit this exemption to existing purchases for system supply so as to avoid creating an opportunity for circumvention.

Along similar lines, an LDC and gathering company (Gas Company of New Mexico and Sunterra) assert that crediting should not be required where gas which an intrastate pipeline or LDC purchases from producers for system supply is transported to that entity by an interstate pipeline pursuant to section 311 of the NGPA. They argue that these transactions do not aggravate the take-or-pay problem and that crediting in such a situation would penalize those pipelines and LDCs who have worked within the framework of section 311.

One interstate pipeline (Natural) opposes any exemption for system supply, contending that such exemptions could provide an opportunity for circumvention of crediting. This pipeline disputes the claim that there would be an administrative burden in obtaining the necessary offers of credits. Some other commenters, including a consumer state agency (Virginia State Corporation Commission), are also concerned that an exemption for intrastate sales of system supply may allow producers to avoid crediting by simply using the intrastate pipeline network to access the interstate market.

The Commission has determined not to modify the crediting regulations in order to reduce potential burdens on either inter- or intrastate pipelines in obtaining transportation of their system supply over other pipelines either upstream or downstream of them. The Commission recognizes that it may be difficult for a pipeline to obtain the necessary offer of credits covering 85 percent of their system supply in order to have that system supply transported over a downstream pipeline to an off-system sales customer. However, there appears to be no means of reducing this burden short of exempting pipeline system supply from the Order No. 500 crediting requirements. This would significantly dilute the take-or-pay relief afforded interstate pipelines by crediting. An off-system sale of system supply could displace a sale of the downstream pipeline and thereby cause the downstream pipeline to incur take-or-pay costs. Accordingly, in order to avoid an adverse effect on the downstream pipeline, it is necessary that a pipeline receive an offer of credits before it is required to transport the gas.

There is even less reason to exempt from crediting upstream transportation of gas purchased for system supply from the producer to the pipeline. This transportation appears to require offers of credits from relatively few producers since the transportation occurs before the gas has been commingled in the purchasing pipeline's system supply. Thus, unlike the case of downstream transportation of system supply, there appear to be no unusual or additional practical difficulties in obtaining offers of credits. Furthermore, to the extent the upstream pipeline formerly purchased the gas and resold it to the downstream pipeline, the transportation could displace a sale of the upstream pipeline, thereby causing the upstream pipeline to incur take-or-pay costs. It is true that in some cases the transportation would not displace a sale by the upstream pipeline. However, that is equally true in many other situations. The Commission has purposely chosen not to require any showing of sales displacement as a prerequisite to a pipeline's obtaining credits, since that would cause constant disputes concerning the pipeline's entitlement to credits and render the crediting program difficult to administer. There is no more reason to require a showing of sales displacement here than in any other context.

xx. *Determining a Pipeline's Crediting Rights Based on Lease Ownership as of June 23, 1987.* In Order No. 500, the Commission established that the credits received by the pipeline would be determined based on ownership of the gas as of June 23, 1987. Thus the pipeline may apply credits generated by the transportation of particular gas against its take-or-pay obligations to the producer who owned the transported gas on June 23, 1987, even though the transported gas was subsequently transferred to another producer. The crediting mechanism was structured in this way "in order to avoid the possibility that producers could circumvent the credit requirement by transferring the leases to others." [220] In Order No. 500–C, the Commission also requested comments on whether it should take action to reduce impediments to property transfers.

A number of producer and marketer commenters [221] state that this rule was established without a hard look at its potential impact, absent record support of the alleged circumvention danger, and that it will have a "chilling effect" on normal property transfers, and create a substantial administrative burden. They argue that new title searches will be required to evidence changes in ownership so that gatherer/ purchasers may be fully apprised of the working interest owners from whom offers of credit must be obtained, and that this places an unreasonable restraint on the alienation of property. The commenters [222] contend that it is preferable that credits be applied against the pipeline's take-or-pay liabilities to the producer selling the transported gas, rather than the producer who owned it on June 23, 1987, who may have no connection with the gas being transported.

Several commenters [223] request that, if the transfer rule on assignments is retained, the effective date be changed from June 23, 1987 to either August 7, 1987, the date of issuance of Order No. 500, or August 14, 1987, the date Order No. 500 was published in the Federal Register. Other commenters ask for certain clarifications or suggest ways to narrow the transfer rule to exempt certain assignments. Some producers (Bass, *et al.*) state that for the time period on or after August 7, 1987, the Commission should establish a presumption of good faith assignment for non-affiliate transactions. Still another commenter (Hadson) suggests an exemption from the credit requirement for a producer who can demonstrate via affidavits or other supporting documents that the post-June 23, 1987 transfer: (a) was substantially commenced prior to June 23, 1987 and (b) was at a fair market value and not designed to circumvent the crediting rule.

Producer commenters [224] argue that Order No. 500 unnecessarily restricts the free and fair exchange of property for *bona fide* business reasons. These commenters claim that the Commission's crediting requirements will impede exploration and development of reserves by discouraging farm-outs and other property transfers which are the basis for much exploration and that impediments to transfers of properties should be removed, not merely reduced. Several commenters (including NGSA and Indicated Producers) assert that the prior owner of any transferred property would have little incentive to offer credits to enable a subsequent owner to transport its gas, but no one would be willing to take an assignment unless the prior owner did offer credits.

Several commenters (including NGSA) note that while assignments of gas contracts by producers have been addressed, Order No. 500 contains no prohibition of assignments of gas contracts by purchasers, who could utilize such assignments to derive take-or-pay credits where there would otherwise be none. Certain producers therefore suggest that the Commission remove from crediting the transportation of any gas sold under any contract assigned by an interstate carrier to another buyer.

Pipeline and LDC commenters [225] assert that the Commission should not modify the anti-circumvention rules of Order No. 500, since it is essential to minimize circumvention through assignments. Otherwise, there could be large losses of credits and an aggravation of the take-or-pay problem. These commenters recognize that the crediting requirement may inhibit the transfer of properties, but they state that crediting is a limited mechanism which will terminate at some point in the future and that any inconvenience attached to property transfers will be of limited duration. These commenters believe that such problems can be resolved by negotiations among the parties.

The Commission recognizes that basing crediting on property ownership as of June 23, 1987, may discourage some lease transfers, and thereby can, in some situations, adversely affect exploration and development of new gas. However, the Commission finds that modification of the interim rule is not warranted. In light of the producers' strong economic incentive to circumvent the application of credits against take-or-pay obligations, the provision as it presently exists is necessary to prevent circumvention of the crediting provisions, thereby reducing the take-or-pay relief afforded to pipelines by crediting. The danger of this circumvention outweighs any claim that crediting will inhibit the assignment of leases.[226]

In addition, there are only speculative arguments that implementation of the current rule is interfering with property transfers. Producers can avoid interference with property transfers by entering into take-or-pay settlements with pipelines under which the pipeline agrees to transport gas without an offer of credits. Given the large number of settlements, the Commission believes that this has in fact occurred and accordingly the crediting rules are not substantially interfering with property transfers. Furthermore, the Commission believes that the producers' concern that the anti-circumvention rules will impede exploration and development of

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[217] Amoco, Bass, National Fuel, Indicated Producers.

[218] Including Texas Intrastate Natural Gas Pipelines, Gas Company of New Mexico, and Sunterra.

[219] Amoco, Bass, and the Indicated Producers.

[220] Order No. 500, FERC Stats. & Regs. at 30,782.

[221] NGSA, Indicated Producers, Sabine, Tenneco, Mobil, Union Oil Company of California, Tejas, and ANG.

[222] ANG, Frank A. Schultz, Sun, Tenneco.

[223] Including Bass, Indicated Producers, and McMoRan.

[224] Natural Gas Clearinghouse, NGSA, Producer Associations, Indicated Producers.

[225] Tennessee, NI-Gas, United, and AGA.

[226] In this connection, the Commission rejects suggestions that it change the governing date from June 23, 1987, the date of issuance of the *AGD* decision, to some later date, such as August 7, 1987, the date of issuance of Order No. 500. That the Commission was considering creating a crediting mechanism became publicly known at least as early as July 28, 1987 when the Commission considered Order No. 500 at a public meeting. In addition, it is possible some producers anticipated this even earlier, since the *AGD* decision expressly discussed the possibility of conditioning producer access to pipeline transportation. Therefore, the Commission believes that use of the date of June 23, 1987 is the best way to ensure that no circumvention took place.

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reserves by discouraging farm-outs and similar property transfers is mitigated by the exception from crediting for new gas. To the extent that this exception

find other factors unlawful (aside from price) and order relief. AGD also asserted that the use of the term "first sale" evinces the intent to remove NGA

that once the Commission finds an existing contract term unjust and unreasonable, it must prescribe

(7) Reform contract pricing provisions, reduce take-or-pay minimum take provisions, and establish market-out provisions. Make availability of contract

costs in their sales commodity rates, because they will be making fewer sales as they transport more gas. Accordingly,

and guidelines that have been articulated in the individual passthrough cases.

The primary benefit of codifying these

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reserves by discouraging farm-outs and similar property transfers is mitigated by the exception from crediting for new gas. To the extent that this exception applies, only the current owner of the lease from which the gas is produced, and not any former owners, need provide an offer of credits. The 85 percent rule and the guarantor provisions of Order No. 500-C should further mitigate impediments to property transfers. Therefore, the Commission will not change the provision that a pipeline's crediting rights are determined based on lease ownership as of June 23, 1987.

Finally, the Commission is not aware of any significant number of assignments by one pipeline to another of take-or-pay contracts with producers. By contrast, assignments of leases by one producer to another are common. Accordingly, the Commission sees no need to remove from crediting the transportation of gas sold under any contract assigned by a pipeline to another buyer.

b. *Comments on Action under NGA Section 5.* Generally, producers vehemently oppose any action by the Commission under NGA section 5 in the final rule, while the pipelines, LDCs, and consumer groups favor it. Indicated Producers and Anadarko have argued that the NGPA limits the Commission's NGA jurisdiction over much gas under NGPA Titles I, V, and VI, and that the NGPA prohibits the Commission from lowering the just and reasonable maximum lawful price directly or indirectly, by condition. Alternatively, Anadarko asserts that no sale or provision of any of its jurisdictional contracts is unjust, unreasonable, unduly discriminatory, or preferential so as to violate section 5 of the NGA, that section 5 sanctions can only be applied prospectively, not retroactively, and that the "fraud, abuse, or similar grounds" standard in NGPA section 601 was mandated by Congress as the new and exclusive remedy for the protection of consumers. Bass, Sabine, Shell Western, Inc., Chevron, NGSA, Phillips, and the Industrial Groups also commented along the same lines against the Commission's invocation of Section 5.

AGD, favoring Commission action under section 5, commented that section 5 remedial authority is extremely broad with respect to both "so-called" jurisdictional and non-jurisdictional contracts. AGD stated that the only limit on NGA section 5 in NGPA section 601 focuses on whether an "amount paid" was just and reasonable, and does not affect the Commission's section 5 power to examine contracts and practices to find other factors unlawful (aside from price) and order relief. AGD also asserted that the use of the term "first sale" evinces the intent to remove NGA price regulation from producers, but not to absolve pipelines' contracting practices from scrutiny. Next, AGD asserted that the argument against section 5 authority over so-called "non-jurisdictional" gas is unfounded because it overlooks the fact that the term "natural gas company" as used in section 5 encompasses all interstate pipelines, as well as some gas producers, and covers all "contract[s] affecting [the] rate[s]" charged by interstate pipelines "in connection with" their transportation and sale of natural gas, in support of which they cite *FPC* v. *Conway Corp.*, 426 U.S. 271 (1976) (Commission may take nonjurisdictional, retail rates into account when setting jurisdictional, wholesale rates). AGD further commented that the producers' argument that NGPA section 601(a) removed certain gas from NGA jurisdiction is misleading because all section 601(a) removes is NGA regulation over the producer's first sale of such "non-jurisdictional" gas, but does not remove NGA regulation over the transportation and sale of that gas. Citing *Wisconsin Gas* v. *FERC*,[227] AGD argued that the Commission's section 5 authority can be invoked either after a hearing on a case-by-case basis or generically through rulemaking proceedings, as long as there is a finding that some existing practice or contract provision is "unjust, unreasonable, unduly discriminatory, or preferential," which they noted was the central finding underlying Order Nos. 436 and 500.

UDC commented that section 5 remedial authority covers any unjust and unreasonable rates and contracts affecting such rates of "any natural gas company in connection with any transportation or sale of natural gas subject to the jurisdiction of the Commission * * *," but the NGPA section 601 exemption from NGA jurisdiction for certain "first sales" does not extend to subsequent pipeline resales, or extinguish section 5 authority over the contracts "affecting" the pipeline's rates and charges. Peoples Gas Light commented that the "sanctity of contract" rationale is no bar to section 5 action because the essence of section 5 is the authority of the Commission to modify contracts when required to protect gas consumers. Moreover, Peoples Gas Light pointed out that once the Commission finds an existing contract term unjust and unreasonable, it must prescribe substitute terms that are just and reasonable.[228] Several other commenters argued generally that the Commission should invoke section 5.

Specific proposals for action under section 5 include the following:

(1) Find that take-or-pay clauses are unjust and unreasonable unless the contract is market-responsive.[229] A market-responsive contract presumably would be one with a market-out clause meeting certain criteria. Make this rule effective six months after issuance, to encourage voluntary renegotiation.[230]

(2) Eliminate take-or-pay clauses from any contract so long as the pipeline offers to terminate that contract. If the producer accepts the offer to terminate, any necessary abandonment authorization would be automatically granted.[231]

(3) Give producers the option of either (a) waiving future take-or-pay liability but retaining current price provisions in their contracts, or (b) retaining take-or-pay requirements but agreeing to annual price redetermination. Where parties could not agree on a new price, the pipeline would have the right of first refusal.[232]

(4) Stay all future accrual of take-or-pay liability; void take-or-pay liabilities where gas cannot be made up; and void minimum physical take requirements.[233] As an alternative to voiding take-or-pay liabilities where gas cannot be made up, require the producer to either repay prepayments or deliver other gas.[234]

(5) Invalidate all take-or-pay provisions in jurisdictional contracts and allow pipelines to condition takes of jurisdictional gas on resolution of take-or-pay and other problems with respect to non-jurisdictional contracts.[235]

(6) Require inclusion in all producer-pipeline contracts of a market-out clause exercisable at the pipeline's option. Under the clause, the pipeline would nominate a price each month that the producer could accept or reject, and if the producer rejected, it could then resell the released volume to others.[236]

[227] 770 F.2d 1144 (D.C. Cir. 1985), *cert. denied*, 479 U.S. 1114 (1986).

[228] *Citing* Office of Consumers' Counsel, Ohio v. FERC, 783 F.2d 206, 238-39 (D.C. Cir. 1986).

[229] Transco, Tennessee.

[230] Enron.

[231] El Paso, California.

[232] UDC, ICC.

[233] AGA, PGL, UDC, PG&E.

[234] Transco, Texas Gas.

[235] PSCW.

[236] National Fuel.

(7) Reform contract pricing provisions, reduce take-or-pay minimum take provisions, and establish market-out provisions. Make availability of contract reformation contingent upon pipeline becoming an open access transporter.[237]

As discussed in detail above, the Commission will not take any action under NGA section 5 to modify prospectively existing take-or-pay clauses in the producer-pipeline contracts, since such action would be ineffective or inequitable or both in light of the limits on the Commission's section 5 authority. Furthermore, pipelines have substantially resolved the bulk of their take-or-pay problems through individually negotiated settlements, and the provisions of the final rule should enable pipelines to resolve the remainder of their take-or-pay problems without section 5 action.

B. The Passthrough of Settlement Costs

In the Order No. 500 policy statement concerning the passthrough of pipelines' take-or-pay settlement costs, the Commission adopted two acceptable passthrough mechanisms. Under the basic mechanism, permitted for all pipelines, a pipeline may include all prudently incurred settlement costs in its commodity rates. This basic mechanism is consistent with the Commission's longstanding policy that take-or-pay settlement costs are expenses related to the acquisition of gas supplies and should therefore be classified as production-related and recovered through the pipeline's commodity rates.

Recovery through commodity rates exposes the pipeline to the risk of undercollecting its settlement costs due to the effect of market forces. While this provides an incentive for the pipeline to minimize its settlement costs and is consistent with the Commission's finding in Order No. 500 that all segments of the industry should share in the costs of resolving the take-or-pay problem for which no single segment was at fault, the Commission recognized in Order No. 500 that another mechanism may be justified for pipelines transporting under Part 284.[238] The Commission stated that these pipelines, which are making the transition from merchants to transporters, may find it more difficult to recover their take-or-pay settlement costs in their sales commodity rates, because they will be making fewer sales as they transport more gas. Accordingly, the Commission adopted an alternative passthrough mechanism for these pipelines under which they are permitted to recover a portion of their settlement costs through a fixed take-or-pay charge. Under the alternative mechanism, if a pipeline is willing to absorb from 25 to 50 percent of its take-or-pay settlement costs, then it will be allowed to recover, through a fixed charge, an amount equal to the percentage it is willing to absorb. The remainder may be recovered through a volumetric surcharge on all throughput.

Recovery of production-related costs through a fixed charge is an extraordinary mechanism which the Commission has rarely permitted. Because a fixed charge guarantees the pipeline recovery of the costs included in the fixed charge, it is inconsistent with the Commission's general policy that recovery of production-related costs should be subject to market forces. Furthermore, allowing a pipeline to recover 100 percent of its settlement costs through a fixed charge would be inconsistent with the Commission's holding in Order No. 500 that all segments of the natural gas industry should share in the burden of resolving the take-or-pay problem, since no single segment of the industry was to blame for its take-or-pay problems. Accordingly, the Commission believes it appropriate to require pipelines that wish to avail themselves of the alternative, fixed charge mechanism to absorb a portion of the costs as described above. The Commission is not required to guarantee a pipeline's recovery of its costs; the Commission need only provide a pipeline a reasonable opportunity to recover its prudently incurred costs. The basic passthrough mechanism, under which pipelines may include in their commodity rates all prudently incurred settlement costs, gives pipelines this opportunity.

As already discussed, the Commission will, in response to the court's *AGA* decision, modify the policy statement by extending the March 31, 1989 sunset date for the alternative, equitable sharing passthrough mechanism until December 31, 1990. If the D.C. Circuit has not completed judicial review of the final rule by that date, the Commission will further extend the sunset date until 30 days after the D.C. Circuit issues its mandate on review of the final rule. However, the Commission will not, in the final rule, make any other changes in the policy statement or codify the policy and guidelines that have been articulated in the individual passthrough cases.

The primary benefit of codifying these policies would be that all of the Commission's various policies would be assembled in one place. However, after the Commission has reviewed both the positive and negative factors associated with this issue, the Commission finds that it should not codify the policies in the final rule. The Commission's policy on the passthrough of settlements costs, as well as its GIC policy, was announced in a statement of policy. Statements of policy reflect the Commission's position on various issues. They are not binding. Binding precedent is established as the Commission applies its policy in individual cases.[239] In other words, by deciding to act through a policy statement, the Commission contemplated that its policy would be developed and refined on a case-by-case basis, and it has been. All of the pipelines that reported significant take-or-pay exposure at year-end 1986 have already made at least one filing to use the equitable sharing passthrough mechanism of Order No. 500, and the details of their passthrough mechanisms are being resolved in case-specific orders and settlements. Consequently, it is unnecessary to codify the policy developed in the individual cases to date.

On October 3, 1989, Process Gas Consumers Group, American Iron and Steel Institute, and the Georgia Industrial Group (Industrial Groups) requested that the Commission clarify that state and local regulatory agencies may require LDCs to absorb a portion of any take-or-pay settlement costs billed to them by interstate pipelines under the alternative passthrough mechanism. Industrial Groups contend that such absorption is necessary in order to achieve the Commission's goal of requiring all segments of the natural gas industry to share in the costs of resolving the industry's take-or-pay problems. AGA, UDC, and a number of individual LDCs oppose the Industrial Groups' requested clarification. They argue generally that LDCs' passthrough of these costs is beyond the Commission's jurisdiction and therefore the Commission should not address the issue of whether state and local regulatory agencies may require LDCs to absorb a portion of the settlement costs.

The Commission reaffirms its view stated in Order No. 500 that there should be an equitable sharing of take-or-pay

[237] AGD, Baltimore Gas and Electric.

[238] Following issuance of Order No. 500, the Commission limited availability of the alternative mechanism to pipelines which have accepted blanket certificates under Part 284. *See* United Gas Pipe Line Co., 42 FERC ¶61,197 at 61,684 (1988).

[239] *See* AGA, slip op. at 30-32.

costs among *all* segments of the industry. As the Commission stated in Order No. 500, state regulators may consider reclassifying, as commodity costs, take-or-pay costs billed to an LDC as a fixed charge and incorporating such costs into LDC sales or transportation rates, or both, thereby spreading such costs to the maximum extent possible and subjecting them to market forces.[240] Furthermore, state regulatory agencies may implement, as some have,[241] an equitable sharing mechanism similar to that established by the Commission which requires LDCs to absorb a portion of the costs if they desire to assess a fixed charge.

The Commission also reaffirms its conclusion that the Supreme Court's decisions in *Nantahala Power and Light Co.* v. *Thornburg*, [242] or subsequent cases, do not preclude state regulators from reviewing the prudence of LDCs' purchasing decisions insofar as they affect take-or-pay costs. While *Nantahala* held that "a State may not conclude in setting retail rates that the FERC-approved wholesale rates are unreasonable," [243] the Court did not decide the issue whether a state agency can inquire into an LDC's prudence in choosing to pay the FERC-approved wholesale rate of one supplier, as opposed to the lower rate of another supplier.[244] Subsequently, in *Kentucky West Virginia Gas Co.* v. *Pennsylvania Public Utility Comm'n.*, [245] the Third Circuit reached this issue and held that a state agency may indeed review the prudence of an LDC's decision to purchase gas from one supplier, rather than another supplier charging a lower price, even though the Commission had approved the rate charged by the first supplier. It follows that a state regulatory agency can also review an LDC's purchasing practices which led to the incurrence of fixed take-or-pay charges assessed by an interstate pipeline. Since these charges are allocated based on purchase deficiencies, the prudence inquiry is essentially the same as in the above cases: whether the LDC prudently chose to purchase from one supplier rather than another.

The Commission believes that this result is consistent with Congress' intent in enacting the NGA to close all gaps in the regulation of the resale and transportation of natural gas.[246] The Commission lacks jurisdiction to review the prudence of LDCs' purchasing practices, and accordingly does not do so. Therefore, if state regulatory agencies also lacked such authority, the LDCs' purchasing practices leading to the incurrence of these fixed take-or-pay charges would escape any prudence review, contrary to Congress' intent.

The above discussion is intended only to express the views of the Commission, the Federal agency entrusted with implementing the NGA and the NGPA, concerning the extent of its jurisdiction under those statutes and the regulatory authority which accordingly remains with the states. The Commission in no way intends to trespass on the states' rights to determine whether, how, and to what extent to exercise the authority which the states retain.

C. Gas Inventory Charges

In Order No. 500, the Commission adopted a permissive policy, codified in § 2.105 of the Commission's regulations, with respect to a new rate design of gas supply or inventory charges (GICs). The Commission believes that in the current economic and regulatory environment, it is in the public interest to implement GICs as soon as possible to prevent a reoccurrence of the take-or-pay problems of the past. At present, pipelines do not reflect the cost of maintaining gas supplies in their rates on a current basis. Speedy implementation of GICs will solve that problem and will benefit both pipelines and their customers by enabling them to plan and coordinate their relationships with each other and their relationships with third parties pursuant to current needs, and to contract for a portfolio of gas supplies within the framework of a rational, efficient pricing system. In this vein, § 2.105 of the Commission's regulations provides that in connection with a gas supply or inventory charge, a pipeline must allow its sales customers to freely nominate levels of service at regular intervals and must announce prior to nominations a firm price or pricing formula for the service. This provision permits pipeline customers to reduce their levels of service in response to pipeline prices. In addition, § 2.105 permits a pipeline to seek abandonment of the difference between a customer's current level of service and the nominated level. Hence, the pipeline will be able to realistically plan its supply needs.

The Commission reaffirms its commitment to implement GICs as speedily as possible. The Commission will retain the principles set forth for GICs in § 2.105 without change. As discussed above, those principles are necessary to ensure that GICs reflect current costs and current needs of both the pipeline and its customers. The Commission believes that further refinements to its GIC policy should be developed on a case-by-case rather than on a generic basis.

First, the Commission is not yet certain what all the necessary elements of a properly structured GIC should be for specific situations beyond the general criteria originally laid out in Order No. 500. The Commission has been learning from each case that has come before it and continually refining its criteria for a properly structured and workable GIC. Further development of the criteria as part of the final rule would delay issuance of this rule unnecessarily. Second, the current record is not adequate for the development of a permanent GIC policy here. Third, the processing and implementation of GICs on a case-by-case basis is going forward without the need for additional generic principles. (*See* discussion *infra*). Fourth, the fashioning of GICs on a case-by-case basis is appropriate because factual circumstances vary from pipeline to pipeline. For example, pipelines will have different sales and transportation markets, customer demand profiles, and gas supply contracts with varying terms and conditions. Accordingly, the Commission believes that case-by-case treatment will afford the flexibility needed to deal with the particular needs of a pipeline and its customers.

At the same time, the Commission recognizes that the establishment of GICs involves an inquiry that can be quite time consuming. Accordingly, the Commission, as part of its effort to implement GICs as quickly as possible, has taken steps to speed up the process wherever possible. For example, the Commission approved a GIC for Transwestern without a hearing because there were no material issues of fact in dispute.[247] In addition, the Commission has established "paper hearings" in five GIC proceedings in lieu of referral of the proposals to formal hearings before administrative law judges. The five proceedings involve El Paso,[248] Tennessee,[249] Transco,[250] Southern,[251] and Natural.[252] The Commission has also phased the five proceedings so that the Commission can decide whether the pipeline's markets are sufficiently competitive to justify a market-based GIC before deciding other issues. If a market-based GIC is justified, this will expedite the processing of the GIC application by reducing the number of issues that need to be considered. On November 20, 1989, the Commission granted El Paso a certificate of public convenience and necessity, subject to its complying with certain conditions, for a permanent GIC.[253] The Commission also strongly supports the use of settlement procedures, where appropriate, to implement GICs expeditiously. For example, the Commission approved GICs for Texas Eastern,[254] Natural,[255] and Columbia [256] through the settlement process.

The GIC program has been moving forward. Twelve interstate pipelines have filed for GICs. As noted, the Commission has already approved GICs for Transwestern, Texas Eastern, and Columbia, and those pipelines have accepted their GIC certificates. In addition, as stated, the Commission has established "paper hearings" to resolve five GIC applications. The other applications for GICs are either being reviewed by the Commission to determine appropriate action [257] or have been set for hearing before an administrative law judge because the "paper hearing" procedure was not appropriate in particular circumstances.[258] Lastly, the Commission has approved an interim GIC for Transco for use until the Commission resolves Transco's permanent GIC application.[259] Several other pipelines have interim GIC proposals before the Commission.[260]

Finally, the Commission reaffirms its determination to implement GICs as quickly as possible. The actions discussed above were motivated by this objective. The Commission will consider additional steps to speed implementation of GICs, if necessary.

D. Contract Demand Reduction

In *AGD*, the court found that the Commission did not adequately support its adoption of the contract demand (CD) reduction option because the Commission did not provide evidence showing that access to transportation through pipelines other than those from which they traditionally purchased was necessary to permit local distribution companies to purchase competitively priced gas. In addition, the court found that the Commission had not adequately supported the broad remedy of giving all firm sales customers of pipelines the CD reduction option in order to free up committed pipeline capacity. Finally, the court held that the Commission had not considered the possibility that cost-shifting resulting from CD reductions might constitute a problem for certain captive customers.

In Order No. 500, the Commission emphasized that it considered the original objectives of the CD reduction option valid but decided not to repromulgate the option in the interim rule, in light of the court's finding that the record as it then existed did not support CD reduction on a generic basis. The record did not contain enough information concerning the amount of cost-shifting to captive customers that might occur from CD reduction to allow the Commission to assess whether the potential gains would outweigh the potential negative impact. The record was also insufficient to demonstrate that implementation of the CD reduction option would ultimately bring about lower rates.

1. Comments on CD Reduction

The Commission has received numerous comments concerning contract demand reductions. Most distribution customers [261] commenting on this issue favor the permanent reinstatement of CD reduction rights. However, APGA argues that CD reductions should not be allowed because the severe harm they would cause to captive customers on certain pipeline systems outweighs the benefits. APGA states that if the Commission nonetheless allows CD reductions it should (1) require exit fees and (2) make those customers who reduce CDs responsible for their allocated share of take-or-pay buyout costs.

Baltimore Gas and Electric and Laclede argue that the Commission has the requisite authority under section 5 of the NGA to require CD reduction. Delta and Great River contend that there is adequate support to justify CD reduction. Delta argues that evidence of market operation and the relative operating efficiencies of different pipeline companies demonstrate that pipeline-to-pipeline competition would be beneficial to consumers. Columbia Gas maintains that CD reduction is needed so that LDCs can have firm transportation to alternate pipelines without having to maintain excess firm entitlements in the aggregate.

A number of distributors contend that CD reduction should be permitted where and to the extent a pipeline customer has sustained load loss attributable to pipeline bypass. AGD contends that a limited CD reduction option can be justified on the basis of conservation alone. In addition, it argues that pipelines' exercise of monopoly power, along with the nonreducible nature of existing sales contracts, has denied LDCs the chance to acquire long-term gas from other suppliers.

Baltimore Gas and Electric reasons that by offering reductions to customers having unused or unwanted capacity, a pipeline gains the opportunity to increase transportation and sales volumes by offering capacity to new customers and additional capacity to existing customers. Similarly, others [262] maintain that the CD reduction option is necessary to promote competition, which will result in lower cost sales and transportation.

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[240] It appears that most state regulatory agencies have, in fact, pursued some variant of this option. As discussed above, of 58 LDCs surveyed by the AGA in a recent study of LDC passthrough of take-or-pay costs, 52 reported that they were recovering these costs through some form of volumetric surcharge. Eighty percent of these LDCs were charging this surcharge to transportation, as well as sales, customers. Only two were recovering costs in a deficiency-based fixed charge similar to that allowed for interstate pipelines under Order No. 500.

[241] For example, the Public Service Commission of the State of New York has accepted agreements by three LDCs to absorb 12.5 percent of the take-or-pay settlement costs of interstate pipelines. *See* Foster Report No. 1747 at 20 (Nov. 2, 1989).

[242] 476 U.S. 953 (1986).

[243] 476 U.S. at 966.

[244] Specifically, the Court, at 972, stated,

> Without deciding this issue, we may assume that a particular *quantity* of power procured by a utility from a particular source could be deemed unreasonably excessive if lower-cost power is reasonably available elsewhere, even though the higher-cost power actually purchased is obtained at a FERC-approved, and therefore reasonable, *price*.

[245] 837 F.2d 600 (3rd Cir. 1988), *cert. denied*, 109 S. Ct. 365 (1988). *See also* Pike County Light and Power Co. v. Pennsylvania Public Utility Comm'n., 465 A.2d 735, 737–738 (1983).

[246] FPC v. Transcontinental Gas Pipe Line Corp., 365 U.S. 1, 20 (1961).

[247] Transwestern Pipeline Co., 43 FERC ¶ 61,240 (1988), *order on reh'g*, 44 FERC ¶ 61,104 (1988).

[248] 47 FERC ¶ 61,108 (1989), *order on reh'g*, 48 FERC ¶ 61,202 (1989).

[249] 47 FERC ¶ 61,245 (1989), *order on reh'g*, 48 FERC ¶ 61,188 (1989).

[250] 47 FERC ¶ 61,244 (1989), *order on reh'g*, 48 FERC ¶ 61,189 (1989).

[251] 49 FERC ¶ 61,131 (1989).

[252] 49 FERC ¶ 61,137 (1989).

[253] 49 FERC ¶ 61,252 (1989).

[254] 44 FERC ¶ 61,413 (1988), *reh'g denied*, 47 FERC ¶ 61,103 (1989).

[255] 44 FERC ¶ 61,189 (1988) (certificate not accepted and Natural subsequently filed a revised GIC proposal).

[256] 49 FERC ¶ 61,071 (1989).

[257] The other GIC applications pending before the Commission are those filed by Natural, Northwest, Texas Gas, Southern, and Kentucky West Virginia Gas Company.

[258] National Fuel Gas' and Northern's GIC applications have been set for hearing.

[259] 48 FERC ¶ 61,309 (1989).

[260] Northern, Texas Gas, Kentucky West Virginia Gas, and Natural.

[261] Including AGD, Baltimore Gas and Electric, Cascade, Delta Natural Gas Company, Iowa-Illinois Gas and Electric Company, Laclede, Memphis Light, NI-Gas, Columbia Gas, Great River Gas Company.

[262] AGD, Cascade, Delta, Iowa-Illinois, Laclede, Memphis Light, and NI-Gas.

UGI Corporation argues that the Commission should issue a final rule

considerations. CD conversion rights alone do not constitute an adequate remedy for an LDC with excess CD. A

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Several major rate cases currently involve this issue. These were matters of particular concern to the court in *AGD*,

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UGI Corporation argues that the Commission should issue a final rule proposing CD reduction for local distribution companies which can make a *prima facie* showing that: (a) Reduction would free up capacity which might be utilized by users of a particular pipeline; (b) the LDCs possess unrealistically high CD levels based on certificated levels of service; and (c) the reductions would be unlikely to create an inequitable cost-shifting on the affected pipeline.

Cascade, Delta, and NI-Gas argue that CD reduction is essential because conversion has the effect of extending the monopoly power of the pipelines. Minnegasco, Inc. and Northern Distributor Group, however, believe that CD reductions can best be handled in individual rate cases. They also state that the Commission must recognize that CD adjustment programs necessitate corresponding demand rate adjustments agreed to by the parties. Delta states that if the Commission cannot justify an industry-wide CD reduction rule, it should tailor the availability of reduction to appropriate circumstances.

Finally, Baltimore Gas and Electric and Iowa-Illinois contend that CD reduction will mitigate any potential for incurring future take-or-pay costs. Southern Union Gas Company argues that retaining outdated CD volumes is inherently inconsistent with the principles of the inventory holding charge by which a customer is entitled to freely nominate its desired level of service. However, if the Commission decides not to restore the CD reduction option, Southern Union suggests that the LDCs be allowed to broker the unwanted excess capacity.

Several pipelines [263] maintain that the reduction option should not be repromulgated. Columbia states that CD reduction rights as part of the rulemaking constitute little more than contract abrogation. These commenters contend that: (1) The Commission should not reinstate CD reduction because first year reductions caused a substantial shift in annual demand revenue (Columbia); (2) CD reductions should be left to negotiations between pipelines and their customers where compensating adjustments involving mutual obligations can be achieved (CIG); (3) CD reductions are unfair to some customers and give others a windfall by allowing those customers which are large and financially strong to walk away and shift costs to the weaker customers and the pipelines (CIG); (4) the Commission should permit pipelines to immediately effectuate all abandonments of service instituted by its customers through reductions by reporting requirements rather than a certificate or abandonment application (Columbia); (5) the Commission should permit pregranted abandonment and levying of exit fees (Northwest); (6) the Commission properly did not reinstate CD reduction but should also restore CDs which were reduced under the remanded provisions of Order No. 436 (Tennessee, Northwest); and (7) the Commission should not adopt the same abandonment procedures as proposed in the rulemaking in Docket No. RM87–16–000, because of the cost allocation issues which will be presented in the context of pipeline-customer abandonment proceedings.

State agencies generally support the adoption of the CD reduction option.[264] The Arizona Corporation Commission states that LDCs should be allowed to utilize their current requirements to establish CD levels, not those existing prior to open-access transportation. To the extent LDCs are not allowed to reduce their CDs, Arizona argues that they should be allowed to broker their excess capacity.

The California commission points out that, in situations where pipeline customers have CD provisions which account for 100 percent of capacity, conversion will not free up capacity for new firm sales or transportation customers. While interruptible transportation may be available, it would still be insufficient because no long term arrangements can be established because of reliability.

The Illinois Commerce Commission contends that the absence of CD reduction will result in cost shifting to captive customers. It contends that it is inequitable to leave an LDC with firm contract demand for which it has no use, while allowing end-users for whom that demand was obtained to use that unneeded and essentially firm capacity at interruptible rates. Similarly, the Pennsylvania Public Utility Commission maintains that linking the CD reduction option to the mitigation of bypass could be used to support the retention of CD reduction.

The Maryland People's Counsel contends that the Commission can easily address the Court's concern by emphasizing the interrelationship between CD reduction and other portions of Order No. 500. In addition, Maryland People's Counsel argues the Commission could: (1) Direct its staff to ascertain whether competitive wellhead prices are subject to important regional variations; (2) discuss the possibility that competition among pipelines might be expected to bring about lower prices; (3) link the asserted obsolescence of CD levels to the broad class of purchasers to be made eligible for open access; and (4) show that reductions in commodity costs due to competitively priced gas will outweigh the cost-shifting which may occur as a result of CD reductions. Finally, it states that the Commission should allow LDCs to receive credits against their CD for volumes transported by their former customers.

The Process Gas Consumers Group was the only end user entity to file comments on this issue. It argues that CD reduction rights are essential to provide access to shippers other than existing firm sales customers, and to permit some LDCs to interconnect economically with additional pipeline suppliers. It suggests that individual customers should be permitted to reduce CDs up to 50 percent over the next three years provided that the aggregate reduction on any system does not exceed 15 percent annually. It contends that CD reduction is supported by the existing record and is the only means for providing reasonable access to firm transportation for shippers other than firm sales customers.

2. CD Reduction in General

The Commission continues to believe that the objectives of the CD reduction option are valid. The reduction option would allow those customers whose CDs were unrealistically high to free up contracted firm capacity that they no longer wish to reserve. This would make firm capacity available to parties who want to purchase that capacity. Sales customers should also be able to adjust their required service levels, allowing them to use other pipelines and giving them more service options.

CD reduction allows those LDCs who want to make arrangements with a new pipeline supplier the opportunity to do so. LDCs can achieve firm entitlements access to alternative pipeline suppliers without being required to maintain excess firm entitlements in the aggregate. If an LDC cannot reduce its CD levels with existing pipeline suppliers, it will continue to pay demand charges even though it may not purchase any gas.

Many LDCs currently have CD levels that are too high. These circumstances have been brought about by a number of factors: conservation, underpricing of pipeline capacity, and other economic

[263] Including Columbia, Enron, Natural, Northwest, and Tennessee.

[264] California, Illinois, Iowa, Michigan, Minnesota, Pennsylvania.

considerations. CD conversion rights alone do not constitute an adequate remedy for an LDC with excess CD. A conversion would do little to relieve an LDC of excess demand charges. Only CD reduction can effectively allow LDCs to reduce costs by reducing service levels to those required to serve customer needs. CD reductions would allow customers to bring their contracts in line with present needs. A conversion of CD to firm transportation entitlements also does not free up capacity for other customers who want to use the capacity. Potential customers are excluded from firm service solely by virtue of existing contracts which may not be fully utilized by current customers.

CD reductions may also be important to the extent that an LDC has sustained loss directly attributable to pipeline bypass. As a result of increased transportation by end users, LDCs no longer may be required to provide system supply gas to those end users. Consequently, an LDC would no longer need the CD associated with that portion of the market that has switched to transportation. CD reductions provide a mechanism to recognize the increase in transportation by end users and corresponding decrease in sales requirements of LDCs.

The option for CD reductions is also a necessary and critical element with respect to the assessment of gas inventory charges. Sales customers must be allowed to renominate levels of service (including reductions) as gas inventory charges are implemented. Pipeline service obligations may be adjusted simultaneously to reflect the newly nominated levels, as authorized by Section 2.105 of the Commission's regulations, if the pipeline seeks such an adjustment.

Despite the continuing importance of CD reduction in the process of rationalizing and negotiating current pipeline/customer relations, the Commission has decided not to restore the CD reduction option generically in the final rule. The issue of CD reduction is being addressed in individual pipeline cases where the Commission has a better opportunity to assess the impact of the CD reductions that concerned the court in *AGD*.

In some cases, pipelines and their customers have been voluntarily renegotiating contracts that have unrealistically high contract demand, particularly as existing sales contracts have expired. In other instances, pipeline customers have been able to get comparable relief through settlements. In Order No. 500, the Commission observed that several pipelines had made filings with the Commission to reallocate to new customers firm capacity previously held by existing customers as part of settlements.[265]

Pipeline customers also will be able to reduce their CDs as pipelines implement GICs. Section 2.105 of the Commission's regulations, which establishes guidelines for GICs, provides that the pipeline must allow its sales customers to nominate levels of service freely within their firm sales entitlements or otherwise employ a mechanism for the renegotiation of levels of service at regular intervals. This is another vehicle by which CDs are being reduced. By nominating a new level of service, the customer consents to any abandonment sought by the pipeline commensurate with the difference between the current level of service and the nominated level.

Finally, in the Commission's Policy Statement Providing Guidance with Respect to the Designing of Rates,[266] parties were directed to pursue the issue of CD adjustment in connection with the implementation of seasonal rates in individual cases. The use of peak and off-peak rates, or a change in cost classification, might result in a shifting of a substantial amount of costs to the charge for peak service. The Commission's goal in any shifting of costs to peak service is to ration capacity to those who value it most. Consequently, participants in those proceedings must explore ways to concurrently provide for CD adjustment (including reductions), especially in connection with increased charges for peak service due to the implementation of seasonal rates or cost classification changes to achieve the capacity rationing goal. The Commission has recently clarified that a contract demand adjustment mechanism is equally appropriate when a pipeline seeks to implement rates with a one-part demand charge.[267] The Commission has also encouraged the parties to explore capacity brokering and capacity assignment as a means of addressing CD cost apportionment.

The Commission believes that a case-by-case approach, rather than the generic approach, is a better manner in which to implement CD reductions. In that way, the Commission will be able to assess the amount of cost shifting to captive customers that may occur from CD reduction, and whether CD reduction will bring about lower rates. Several major rate cases currently involve this issue. These were matters of particular concern to the court in *AGD*. The Commission will be able to assess the impact of reductions on specific pipelines, which will allow it to fashion the most appropriate remedy for a particular pipeline. This process is ongoing as pipelines and their customers negotiate long-term service arrangements and as pipelines continue to file proposals for the implementation of GICs. In addition, with the expiration of many of the firm service agreements approaching, the Commission expects that voluntary renegotiations will increasingly take place.

3. Contract Demand Reductions on Tennessee's System

The Commission decided to apply its decision in Order No. 500 not to repromulgate the contract demand reduction option prospectively only.[268] Thus, the contract demand reductions, for which customers had opted before the *AGD* decision, continued in effect. The subsequent *AGA* opinion, however, found that the Commission had not addressed satisfactorily the claim of Tennessee that the Commission improperly failed to relieve Tennessee of the CD reductions for which its customers had opted prior to the *AGD* decision.[269] The court held that, in order to overcome the legal presumption that the *AGD* court's *vacatur* of the CD reduction provision should be applied retroactively, the Commission must consider the specific standards identified by the Supreme Court in *Chevron* v. *Huson*.[270] Under those standards, the Commission must (1) consider whether the court's decision in *AGD* established a new principle of law, either by overruling clear past precedent or by deciding an issue of first impression whose resolution was not clearly foreshadowed, (2) weigh the merits and demerits by looking to the prior history of the rule in question, its purpose and effect, and consider whether retrospective operation will further or retard its operation, and (3) weigh the inequity imposed by retroactive application. The court noted specifically that "weighing the equities under the third prong of the *Huson* test will necessarily require the Commission

[265] FERC Stats. & Regs. at 30,795.

[266] 47 FERC ¶61,295 at 62,055–56 (1989).

[267] Alabama-Tennessee Natural Gas Co., 49 FERC ¶61,127 (1989); ANR Pipeline Co., 49 FERC ¶61,123 (1989); Trunkline Gas Company, 49 FERC ¶61,126 (1989).

[268] The Commission first announced that the elimination of the CD reduction provision would be of prospective effect only in Interstate Power Co. v. Natural Gas Pipeline Co. of America, 41 FERC ¶61,036 (1987), *reh'g denied*, 42 FERC ¶61,049 (1988).

[269] Tennessee was the only party to argue the need for retroactive *vacatur* of the CD reduction option.

[270] *See* AGA, slip op. at 27–28 (1989) (*quoting* Chevron Oil Co. v. Huson, 404 U.S. 97, 106–08 (1971).

to consider whether individual customers in fact relied upon Order No. 436 by taking on alternative gas

disputed CD reductions on Tennessee's system can be based. Parties are also requested to state whether they believe

for abandonment [278] while both the pipeline and the Commission face decreased administrative burdens. Upon

unnecessary constraints and protections for only a certain customer class. As the Commission has noted before: [281]

description and analysis of final rules that will have "a significant economic impact on a substantial number of small

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to consider whether individual customers in fact relied upon Order No. 436 by taking on alternative gas purchase obligations."[271] The court held that, should the facts indicate such reliance, the Commission must then consider "whether there is any reason in equity to bind Tennessee Gas Pipeline to a provision that this court vacated and that the Commission was unable to support on the record before it."[272]

The Commission currently lacks the information necessary to complete the analysis required by the *AGA* decision. When the Commission issued the Order No. 500 interim rule, it requested comments from the public "as to how the [*AGD*] court's concerns [about record support for CD reduction] may be met, including what information may be necessary to support CD reduction."[273] Review of the comments submitted by Tennessee and its customers indicates the presence in the record of legal and policy arguments in support of and against CD reduction generally, but no factual information about specific decisions by Tennessee customers to exercise contract demand reduction rights under Order No. 436, the alternative purchase arrangements entered into by those customers, or the effect of the reductions on Tennessee and its other customers.[274]

Accordingly, the Commission is requesting Tennessee and any of its customers with interests affected by the issue concerning the retroactive elimination of the CD reduction option to submit, within 15 days of this order's issuance, responses to the questions posed in Appendix C. The purpose of the inquiry is to provide facts upon which the *Chevron* analysis of the disputed CD reductions on Tennessee's system can be based. Parties are also requested to state whether they believe a formal hearing is required for the Commission to complete its *Chevron* analysis. Upon submission of responses, the Commission will review them and consider in a separate order, to be issued within 45 days of the filing of the responses, whether the pre-*AGD* CD reductions by Tennessee's customers should have been allowed to stay in effect. The Commission believes this approach to be responsive to the court's directive, which the Commission does not understand to require a review of the factual circumstances surrounding the pre-*AGD* CD reduction decisions made by customers of pipelines other than Tennessee, the sole complaining pipeline.

E. Contract Demand Conversion

Since the CD conversion option has been retained in the final rule, the question arises as to whether the Commission should provide for the automatic abandonment of pipelines' sales obligations upon a customer's conversion and whether the Commission should retain pregranted abandonment of the firm transportation service converted from firm sales service.

The relationship between CD conversion rights and pipeline service obligations will be clarified in two specific respects. First, pipelines should be freed from the obligation to maintain gas supplies to serve customers that convert from sales service to transportation. Under Order No. 436, the effect of a customer's notice of intent to convert under § 284.10(c) was not an automatic abandonment of the pipeline's sales service commensurate with the conversion.[275] Rather, the pipeline was provided the opportunity to file under § 157.18 to abandon sales service to the extent of the conversion.[276] The Commission has recently granted a pipeline the authorization to abandon firm sales service to the extent its customers have elected or elect in the future to convert from firm sales to firm transportation service, and has concluded that the requirements of section 7(b) of the NGA were met even when the pipeline filed for abandonment authority prior to the actual conversion.[277] The key underlying factor—the exercise of conversion rights by the customer—remains the same and thus satisfies the statutory requirements for abandonment[278] while both the pipeline and the Commission face decreased administrative burdens. Upon review, the Commission believes the wiser course is to make automatic the grant of abandonment upon, and to the extent of, the exercise of conversion rights by pipeline customers. This approach involves little change in current policy but relieves pipelines of needless filing burdens and improves their ability to manage their systems and market their services based on a clearer picture of what jurisdictional responsibilities do and do not remain to be fulfilled. The Commission is amending §§ 284.10(d) (1) and (2) to reflect this change.

Second, the impact of customer conversions must be delineated clearly in the context of the firm transportation service provided by the pipeline to the converting customer. Section 284.221(d) provides for the abandonment of transportation services "upon the expiration of the contractual term of each individual transportation arrangement authorized under a [blanket] certificate" granted a pipeline under that section. Despite the language of that provision of Order No. 436, which the court approved in relevant part, local distributors[279] have claimed that only since certain Commission decisions in 1988[280] have they become aware that § 284.221(d) is properly read to apply to firm transportation service converted from firm sales service. The Commission reaffirms that pre-granted abandonment of firm (converted) transportation service remains appropriate for a number of reasons. First, LDCs are not the only beneficiaries of open-access pipeline operation under Part 284 and, absent the pre-granted, automatic abandonment for converted firm transportation, the capacity needed by other purchasers, including industrial end users, may never practically become available. Further, the Commission's policies underlying Part 284 and encouraging open gas transportation markets in which pipelines and shippers can respond to market signals in a timely, efficient fashion do not support unnecessary constraints and protections for only a certain customer class. As the Commission has noted before:[281]

> The terms and conditions of these converted service agreements are not dictated by the Commission. Presumably, the length of the FT [firm transportation] agreement is freely negotiated, although any customer converting its CD would have a right to a term no less than the remaining term of its eligible firm sales service agreement. This should provide the customer opting for conversion the ability to provide itself with any amount of contract stability or protection it wishes.

Further, pipelines should make capacity available to those who value that capacity the most. In order to do so, pipelines should be able, in these circumstances, to market their capacity unencumbered by the need to obtain abandonment approval in order to make desired capacity available. At the same time, firm sales customers converting to firm transportation are protected adequately by the transportation contracts negotiated between the parties and by the Commission's consideration in individual proceedings of the parties' needs both in the growing numbers of proceedings involving GICs and in pipeline rate and service proceedings.

For instance, in *Natural Gas Pipeline Company of America*,[282] the Commission considered and approved a settlement agreement establishing rights to continued transportation service. under a negotiated evergreen contractual provision as long as the customer gave Natural six-months notice of the customer's exercise of the settlement's option to continue firm service. In Transco's GIC proceeding, the Commission determined that the pipeline must provide 100 percent conversion rights from sales to transportation service and set for hearing, by means of written submissions, the issue of whether pregranted abandonment of transportation service upon the expiration of the service agreements should be limited if the pipeline adopts a GIC.[283] The same pipeline agreed, in a settlement approved by the Commission in Docket No. RP88–68, *et al.*, to waive the right to abandon firm transportation resulting from conversions by sales customers. Consequently, while the meaning and propriety of § 284.221(d) remain clear, parties have substantial opportunities to deal with its unwanted application on a case-by-case basis in their individual contracts.

V. National Environmental Policy Act Review

Under section 102(2)(C) of the National Environmental Policy Act of 1969,[284] (NEPA), Federal agencies must prepare an environmental analysis of "major Federal actions significantly affecting the quality of the human environment." NEPA requires that such an analysis, known as an Environmental Impact Statement (EIS), be made part of any record of decision on such major Federal actions. In order to determine the need for an EIS, agencies prepare an Environmental Assessment (EA). An EA, which is a general overview of the nature and probable effects of the action, provides the basis for a Finding of No Significant Impact (FONSI) when an EIS is not necessary, or facilitates the preparation of an EIS when it is required. In preparing an EA, the agency is also able to identify potential adverse impacts and to recommend or devise mitigating measures that will enable it to make a FONSI.

In its Notice of Proposed Rulemaking for Order No. 436, the Commission directed staff to prepare an EA. The EA concluded that the part of the proposed program regarding a policy for relieving take-or-pay obligations does not provide authorization to construct or abandon facilities. Despite some significant economic effects, these rules and policies have no foreseeable effect on the natural and physical environment. NEPA does not require analysis of exclusively economic or social effects that may arise from a Federal action. Although the Commission has given detailed consideration to the effect of these aspects of the rule, it has not done so in the context of NEPA review. Based upon its review of the EA, the record in this proceeding, and the changes made in this final rule, the Commission concludes that issuance of the final rule is not a major Federal action significantly affecting the quality of the human environment. Therefore, an Environmental Impact Statement for the final rule is not required.

VI. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA)[285] generally requires a description and analysis of final rules that will have "a significant economic impact on a substantial number of small entities."[286] Specifically, if an agency promulgates a final rule under the Administrative Procedure Act (APA),[287] a final regulatory flexibility analysis may be appropriate. Each final regulatory flexibility analysis must contain (1) a statement of need for and objective of the rule, (2) a description of significant alternatives to the rule consistent with the stated objectives of the applicable statute that the agency considered and ultimately rejected, and (3) a summary of the issues raised by the public comments in response to the initial regulatory flexibility analysis, and the agency response to those comments. An agency is not required to make an RFA analysis, however, if it certifies that a proposed rule will not have "a significant economic impact on a substantial number of small entities."[288]

In Order No. 436, the Commission certified that the proposed take-or-pay remedies of the rule would not have a "significant economic impact on a substantial number of small entities," since most companies that must comply with this rule do not fall within the RFA's definition of small entity. In light of that certification, the Commission was not required to prepare an initial RFA analysis.

This was equally true in Order No. 500. Although the regulations promulgated in Order No. 500 affect small producers in that all producers seeking to transport in return for credits have to provide an offer of credit to ensure that their gas is transported, the impact of this requirement is not so significant as to require the preparation of a flexibility analysis. The main burden of the offer of credits falls on the aggregators of gas which must solicit those offers from the individual producers. Each producer does no more than agree to provide credits in return for the transportation of gas. There is no lesser level of compliance with the rule that the Commission could make available to small entities without nullifying the effect of the final rule.

For these reasons, the Commission concludes that there is no provision of the RFA that requires an analysis of the impact of this final rule on small producers. Accordingly, the Commission affirms that, pursuant to section 605(b) of the RFA, this rule will not have a "significant economic impact on a

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[271] AGA, slip op. at 28. Section 284.10 of the Commission's regulations, which permitted both reduction and conversion prior to the *AGD* decision, became effective July 1, 1988. The Comission granted certain pipelines, for specified reasons, a waiver from the applicability of that section. Upon issuance of the *AGD* decision on June 23, 1987, the Commission, on July 2, 1987, stayed the effectiveness of section 284.10 pending further Commission action. *See* Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, FERC Stats. & Regs., Regulations Preambles ¶30,754 (1987). The universe of pipelines exposed, and the duration of such exposure, to the operation of the contract demand reduction provisions of section 284.10(c) was thus limited.

[272] AGA, slip op. at 28.

[273] FERC Stats. & Regs. at 30,794–95.

[274] On brief before the *AGA* court, three customers of Tennessee—Columbia, National Fuel Gas, and the Inland Gas Company, Inc.—claimed that they and four other unidentified Tennessee customers exercised their rights to reduce their contract demand by 15 percent in January, 1987. The three customers alleged that Tennessee ignored the CD reductions and has overbilled these customers more than $34 million for unused services. However, the Commission has nothing before it to substantiate such claims.

[275] FERC Stats. and Regs. at 31,526–527.

[276] 18 C.F.R § 284.10(d)(1) (1989).

[277] Williston Basin Interstate Pipeline Company, 48 FERC ¶61,068 at 61,330 (1989).

[278] *See* AGD, 824 F.2d at 1015. (Commission properly "identified circumstances under which pipelines are automatically entitled to abandonment of service—namely, when the customer exercises the election provided.")

[279] AGD filed, on November 7, 1988, a motion for clarification of Order No. 500 requesting that the Commission confine the application of § 284.221(d) to interruptible transportation service or firm transportation service to which a pre-grant of abandonment authority was attached when the service began. AGD renewed its motion on November 3, 1989.

[280] Transcontinental Gas Pipeline Corporation, 43 FERC ¶61,199, *reh'g denied*, 44 FERC ¶61,105 (1988).

[281] Transcontinental Gas Pipeline Corporation, 44 FERC at 61,298.

[282] 48 FERC ¶61,306 (1989).

[283] 47 FERC ¶61,244 at 61,849 (1989). *See also* Texas Eastern Transmission Corporation, 49 FERC ¶61,378 (1989) (parties not prohibited from negotiating a waiver of pregranted abandonment of the individual brokering transactions authorized).

[284] 42 U.S.C. 4321, *et seq.*

[285] 5 U.S.C. 601–22 (1988).

[286] 5 U.S.C. 603(a) (1988).

[287] 5 U.S.C. 553 (1988).

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substantial number of small entities." [289]

VII. Paperwork Reduction Act Statement

This final rule does not change any reporting requirements in the regulation adopted under the interim rule. The Commission is informing the Office of Management and Budget (OMB) of this fact.

VIII. Further Procedures

In *AGA*, the Court retained jurisdiction of the case and remanded only the record to the Commission for issuance of a "final rule" within 60 days of the court's decision.[290] The issuance of this final rule is intended to comply with the court's requirement that the Commission issue a final rule within 60 days. However, this final rule, like other orders of the Commission, is subject to rehearing under section 19(a) of the NGA. Accordingly, parties may file requests for rehearing of the final rule, and the Commission will file with the court a motion requesting permission to retain the record until the Commission has addressed those requests in a subsequent order.

This procedure is the same as that followed by the Commission in responding to the decision of the U.S. Court of Appeals for the D.C. Circuit in *Mid-Tex*. The Commission addressed requests for rehearing of the final rule in that proceeding, which was also issued after an interim rule.[291] In addition, this order is based on the comments received in this proceeding to date. However, the parties have not had an opportunity to file comments with the Commission since they filed written responses to the Commissioners' questions at the April 1988 hearing. Thus, to the extent parties would make different arguments about the direction that should be taken in the final rule as a result of developments in the industry since that time, rehearing will provide parties with an opportunity to so inform the Commission.

IX. Effective Date

This final rule is effective January 22, 1990.

[289] 5 U.S.C. 605(b) (1988).

[290] Mid-Tex Electric Cooperative, Inc. v. FERC, 773 F.2d 327 (D.C. Cir. 1984) (Mid-Tex). (No RFA analysis is necessary when the agency determines that the rule will not have a significant economic impact on a substantial number of small entities that are subject to the requirements of the rule.)

[291] Slip op. at 11, 33.

List of Subjects

18 CFR Part 2

Administrative practice and procedure, Electric power, Environmental impact statement, Natural gas, Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 284

Continental shelf, Natural gas, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends parts 2 and 284, Chapter I, Title 18 of the *Code of Federal Regulations*, as set forth below.

By the Commission.

Lois D. Cashell,

Secretary.

PART 2—GENERAL POLICY AND INTERPRETATIONS

Sections 2.104 and 2.105, promulgated on an interim basis in 53 FR 30,334 (Aug. 14, 1987), are adopted as final with the following changes:

1. The authority citation for part 2 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Federal Power Act, 16 U.S.C. 792–825r (1988) as amended by Electric Consumers Protection Act of 1986, 100 Stat. 1243 (1986); Natural Gas Act, 15 U.S.C. 717–717w (1988); Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601–2645 (1988); and the National Environmental Policy Act, 42 U.S.C. 4321–4361 (1982).

§ 2.104 [Amended]

2. In § 2.104, in the first sentence of paragraph (c), the phrase "on or before March 31, 1989" is removed and the phrase "on or before December 31, 1990" is inserted in its place.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

3. The authority citation for part 284 is revised to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1988), as amended; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1988); Outer Continental Shelf Lands Act of 1953, 43 U.S.C. 1331–1356 (1982) as amended; Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142.

4. In § 284.8, paragraph (f), which was adopted on an interim basis in 52 FR 30,334 (Aug. 14, 1987), is adopted as final and paragraph (f)(1) introductory text and paragraph (f)(4)(ii) are revised to read as follows:

§ 284.8 Firm transportation service.

* * * * * *

(f)(1) *Transportation credits.* Until the earlier of December 31, 1990, or the date on which an interstate pipeline accepts a gas inventory charge certificate, natural gas is eligible for transportation by interstate pipelines under this part only if:

* * * * *

(4) * * *

(ii)(A) The selection of the contracts against which the credits will apply will be at the discretion of the pipeline. However, the pipeline may not apply credits arising from transportation performed before January 22, 1990 against its obligation under a take-and-pay contract to take gas which under state law in effect on June 23, 1987, was defined as casinghead gas. If the pipeline applies credits arising from transportation performed after January 22, 1990 against its obligation either to take or pay or take and pay for "must-take" gas, the pipeline must release that must-take gas from the contract. The producer and pipeline are granted all necessary abandonment and certificate authority to permit the sale for resale to another purchaser of any must-take gas released pursuant to this subsection.

(B) "Must-take" gas shall include all gas subject to a take-and-pay contract and all categories of gas produced or producible subject to rules and regulations promulgated by a state or Federal conservation agency having jurisdiction, as they existed on December 15, 1989, which establish a priority mechanism requiring the production of these categories of gas in preference to all other gas produced or producible.

(C) The pipeline must give the producer 30 days notice (or such other notice as the parties may agree to) before applying a credit against an obligation either to take or pay or take and pay for "must-take" gas.

* * * * *

5. In § 284.9, paragraph (f), which was adopted on an interim basis in 52 FR 30,334 (Aug. 14, 1987), is adopted as final and paragraph (f)(1) introductory text and paragraph (f)(4)(ii) are revised to read as follows:

§ 284.9 Interruptible transportation service.

* * * * *

(f)(1) *Transportation credits.* Until the earlier of December 31, 1990, or the date on which an interstate pipeline accepts a gas inventory charge certificate,

natural gas is eligible for transportation by interstate pipelines under this part only if:

* * * * *

(4) * * *

(ii)(A) The selection of the contracts against which the credits will apply will be at the discretion of the pipeline. However, the pipeline may not apply credits arising from transportation performed before January 22, 1990 against its obligation under a take-and-pay contract to take gas which under state law in effect on June 23, 1987, was defined as casinghead gas. If the pipeline applies credits arising from transportation performed after January 22, 1990 against its obligation either to take or pay or take and pay for "must-take" gas, the pipeline must release that must-take gas from the contract. The producer and pipeline are granted all necessary abandonment and certificate authority to permit the sale for resale to another purchaser of any must-take gas released pursuant to this subsection.

(B) "Must-take" gas shall include all gas subject to a take-and-pay contract and all categories of gas produced or producible subject to rules and regulations promulgated by a state or federal conservation agency having jurisdiction, as they existed on December 15, 1989, which establish a priority mechanism requiring the production of these categories of gas in preference to all other gas produced or producible.

(C) The pipeline must give the producer 30 days notice (or such other notice as the parties may agree to) before applying credits against an obligation to take or pay or take and pay for "must-take" gas.

* * * * *

6. In § 284.10, paragraph (d)(1) is revised to read as follows:

§ 284.10 Conversion to firm transportation.

* * * * *

(d) * * *

(1) If a firm sales customer exercises a conversion option under paragraph (c) of this section, abandonment of the pipeline's sales service obligation is approved to the extent of the conversion.

* * * * *

7. In § 284.10, paragraph (d)(2) is amended by removing the word "proposed".

Note: Appendix A, B and C will not be published in the **Federal Register**, but are available for inspection and copying in the Commission's Reference and Information Center, 825 North Capitol St., NE., Washington, DC 20426.

[FR Doc. 89-29450 Filed 12-20-89; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 801

[Docket No. 88N-0389]

Medical Devices; Hearing Aid Devices; Technical Data Amendments

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the technical data sections of the agency's regulations on hearing aid devices' professional and patient labeling to incorporate by reference an updated standard. FDA is incorporating the revised standard to introduce technical clarifications.

DATES: The final rule becomes effective on or after June 19, 1990. The Director of the Office of the Federal Register approves the incorporation by reference in accordance with 5 U.S.C. 552(a) of a certain publication in 21 CFR 801.420(c)(4) effective on June 19, 1990.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4674.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 22, 1989 (54 FR 11743), FDA proposed to amend the technical data sections of the agency's regulations on hearing aid devices' professional and patient labeling to incorporate by reference an updated standard approved in 1987 by the American National Standards Institute's (ANSI) standards committee.

Interested persons were asked to submit their written comments by May 22, 1989. Two comments were received. One supported the proposal and the other one commented that the tolerance limits in section 6 of the 1987 standard were too lenient.

FDA disagrees with the second comment. FDA believes that the tolerance limits in section 6 are reasonable, especially given the limitations of the measuring equipment available to small manufacturers.

FDA is now updating § 801.420(c)(4) (21 CFR 801.420(c)(4)) by incorporating by reference into the regulation the test procedures established by the Acoustical Society of America (ASA) in the American National Standard "Specification of Hearing Aid Characteristics," ANSI S3.22–1987 (ASA 70–1987) (Revision of S3.22–1982), and thereby requiring, as a minimum, that the User Instructional Brochure or other such hearing aid labeling include the appropriate values or information for the technical data elements specified in § 801.420(c)(4) (i) through (xii) as those elements are defined or used in ANSI S3.22–1987 (ASA 70–1987). The amendment will not affect any other provisions of 21 CFR 801.420 or 21 CFR 801.421. Copies of the revised standard are available from the American National Standards Institute, 1430 Broadway, New York, NY 10018, or are available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC.

In accordance with Executive Order 12291, FDA has carefully analyzed the economic effects of this final rule and has determined that it is a major rule as determined by the Order. Although minor changes in testing will be necessary, manufacturers and distributors will not need to purchase new equipment. New testing equipment would make the testing slightly faster, but all required measurements can be made with existing equipment. Even if all of the approximately 20 major and 30 minor manufacturers purchase new equipment, their total cost is estimated to be about $50,000 ($1,000 each). It is highly unlikely that any of the approximately 1,000 distributors will purchase new equipment. Therefore, the worst-case total cost estimate is slightly over $1 million if all manufacturers and distributors purchase new testing equipment. The final rule will apply to hearing aid devices introduced or delivered for introduction into interstate commerce on or after June 19, 1990. The 180-day phase-in period for the revised User Instructional Brochure should allow the transition to the new labeling to be virtually cost-free. Therefore, a regulatory impact analysis is not required.

FDA, in accordance with the Regulatory Flexibility Act, has considered the effect that this final rule would have on small entities, including small businesses, and has determined that the maximum cost of meeting the revised regulation for a manufacturer or distributor is $1,000. Therefore, FDA certifies in accordance with section 605(b) of the Regulatory Flexibility Act that no significant economic impact on a substantial number of small entities will derive from this action.

List of Subjects in 21 CFR Part 801

Incorporation by reference, Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 801 is amended as follows:

PART 801—LABELING

1. The authority citation for 21 CFR part 801 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 507, 519, 520, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 357, 360i, 360j, 371, 374).

2. Section 801.420 is amended by revising the second sentence in paragraph (c)(4) to read as follows:

§ 801.420 Hearing aid devices; professional and patient labeling.

* * * * *

(c) * * *

(4) * * * The determination of technical data values for the hearing aid labeling shall be conducted in accordance with the test procedures of the American National Standard "Specification of Hearing Aid Characteristics," ANSI S3.22–1987 (ASA 70–1987) (Revision of S3.23–1982), which is incorporated by reference in accordance with 5 U.S.C. 552(a). * * *

* * * * *

Dated: December 4, 1989.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–29668 Filed 12–20–89; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 90

[Docket No. R–89–1455; FR–2386–X–06]

RIN 2506–AA96

Comprehensive Homeless Assistance Plan; Announcement of Effective Date

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of announcement of effective date for final rule.

SUMMARY: This document announces the effective date for a recently published final rule that codified the requirements for the Comprehensive Homeless Assistance Plan, as authorized by subtitle A of title IV of the Stewart B. McKinney Homeless Assistance Act (the McKinney Act). The effective date provision of the published rule stated that the rule would become effective upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, and announced that future notice of the rule's effectiveness would be published in the **Federal Register**. However, under section 7(o) of the Department of Housing and Urban Development Act, as amended by section 123 of the Department of Housing and Urban Development Reform Act of 1989, approved December 15, 1989, the rule's effectiveness is no longer dependent on congressional session days and can become effective at any time after the expiration of thirty calendar days, beginning on the day after the date of the rule's publication.

Thirty calendar days have now expired since this rule was published.

EFFECTIVE DATE: The effective date for the final rule published November 3, 1989 (54 FR 46566), is December 21, 1989.

FOR FURTHER INFORMATION CONTACT: Grady J. Norris, Assistant General Counsel for Regulations, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 755–7055. (This is not a toll-free number.)

Dated: December 15, 1989.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 89–29720 Filed 12–20–89; 4:25 pm]

BILLING CODE 4210–32–M

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 576

[Docket No. R–89–1434; FR–2562–X–06]

RIN 2506–AA95

Emergency Shelter Grants Program; Stewart B. McKinney Homeless Assistance Act, Final Rule; Announcement of Effective Date and OMB Control Number

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule; Announcement of effective date and OMB control number.

SUMMARY: This document announces the effective date for a recently published final rule that codified the amendments to the Emergency Shelter Grants (ESG) program contained in the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100–628, approved November 7, 1988). In addition, the effective date provision of the rule stated that the rule would become effective upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, and announced that future notice of the rule's effectiveness would be published in the **Federal Register**. However, under section 7(o) of the Department of Housing and Urban Development Act, as amended by section 123 of the Department of Housing and Urban Development Reform Act of 1989, approved December 15, 1989, the rule's effectiveness is no longer dependent on congressional session days and can become effective at any time after the expiration of thirty calendar days, beginning on the date of the rule's publication. Thirty calendar days have now expired since this rule was published.

In addition, certain sections of the rules contained information collection requirements and were submitted to the Office of Management and Budget (OMB), in accordance with the Paperwork Reduction Act of 1989 (Pub. L. 96–511). Therefore, the rule is also being amended to include OMB control numbers at the places where current information collection requirements are described.

EFFECTIVE DATE: The effective date for the final rule published November 7, 1989 (54 FR 46794), is December 21, 1989.

FOR FURTHER INFORMATION CONTACT: Grady J. Norris, Assistant General Counsel for Regulations, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 755–7055. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The information collection requirements contained in the regulatory sections listed below were approved by the Office of Management and Budget, under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and assigned the control numbers listed.

List of Subjects in 24 CFR Part 576

Reporting and recordkeeping requirements.

Accordingly, 24 CFR part 576 is amended by adding the effective date to the preamble and by adding at the end of §§ 576.21, 576.51, and 576.80, the following statement:

PART 576—EMERGENCY SHELTER GRANTS PROGRAM; STEWART B. McKINNEY HOMELESS ASSISTANCE ACT

1. The authority citation for part 576 continues to read as follows:

Authority: Sec. 416 of the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100–77, approved July 22, 1987); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 576.21, 576.51 and 576.80 [Amended]

2. Sections 576.21, 576.51, and 576.80 are amended by adding at the end of each section, the following statement:

(Approved by the Office of Management and Budget under OMB Control Number 2506–0069).

Dated: December 15, 1989.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 89–29721 Filed 12–20–89; 4:29 pm]

BILLING CODE 4210–29–M

24 CFR Part 579

[Docket No. R–89–1435; FR–2535–X–04]

RIN 2506–AA97

Supplemental Assistance for Facilities to Assist the Homeless (SAFAH), Final Rule; Announcement of Effective Date and OMB Control Number

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule; announcement of effective date and OMB control number.

SUMMARY: This document announces the effective date for a recently published rule that made final the guidelines for the Supplemental Assistance for Facilities to Assist the Homeless (SAFAH) program, which were published for effect on October 19, 1987 (54 FR 38880), and amended by Notice, for immediate effect, on January 11, 1989 (54 FR 1006). The effective date provision of the published rule affected by this document stated that the rule would become effective upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, and announced that future notice of the rule's effectiveness would be published in the **Federal Register**. However, under section 7(o) of the Department of Housing and Urban Development Act, as amended by section 123 of the Department of Housing and Urban Development Reform Act of 1989, approved December 15, 1989, the rule's effectiveness is no longer dependent on Congressional session days and can become effective at any time after the expiration of thirty calendar days, beginning on the date of the rule's publication. Thirty calendar days have now expired since this rule was published.

In addition, certain sections of the Department's regulation contained information collection requirements and were submitted to the Office of Management and Budget (OMB), in accordance with the Paperwork Reduction Act of 1989 (Pub. L. 96–511). Therefore, the rule is also being amended to include OMB control numbers at the places where current information collection requirements are described.

EFFECTIVE DATE: The effective date for the final rule published November 7, 1989 (54 FR 46812), is December 21, 1989.

FOR FURTHER INFORMATION CONTACT: Grady J. Norris, Assistant General Counsel for Regulations, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 755–7055. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The information collection requirements contained in the regulatory sections listed below were approved by the Office of Management and Budget, under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and assigned the control numbers listed.

List of Subjects in 24 CFR Part 579

Grant programs—housing and community development, Housing, Homeless, Reporting and recordkeeping requirements.

Accordingly, part 579 of title 24 of the Code of Federal Regulations is amended as follows:

PART 579—SUPPLEMENTAL ASSISTANCE FOR FACILITIES TO ASSIST THE HOMELESS

1. The authority citation for part 579 continues to read as follows:

Authority: Sec. 485 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (42 U.S.C. 11301 note); sec. 7(d) of the Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 579.210 [Amended]

2. Section 579.210 is amended by adding at the end of the section, the following statement:

(Approved by the Office of Management and Budget under OMB Control Number *2506–0111)*

Dated: December 15, 1989.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 89–29723 Filed 12–20–89; 4:27 pm]

BILLING CODE 4210–29–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88–591; RM–6457]

Radio Broadcasting Services; Fruithurst, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 274A to Fruithurst, Alabama, as that community's first local broadcast service, in response to a petition filed by Steven L. Gradick. The coordinates for Channel 274A at Fruithurst, Alabama, are 33–43–57 and 85–28–08. *See* 54 FR 03821, January 26, 1989. With this action, the proceeding is terminated.

DATES: Effective January 29, 1990; The window period for filing applications on Channel 274A at Fruithurst, Alabama, will open on January 30, 1990, and close on March 1, 1990.

FOR FURTHER INFORMATION CONTACT: Ordee Pearson, (202) 634–6530. Questions related to the window applicaton filing process at Fruithurst, Alabama, should be addressed to the Audio Service Division, FM Branch, Mass Media Bureau, (202) 632–0394.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88–591, adopted November 29, 1989, and released December 14, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transportation Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

effectiveness of the emergency interim rule published September 29, 1989 (54 FR

At its 99th meeting in Portland, Oregon on November 15–17, 1989, the

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§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Alabama by adding Fruithurst, Channel 274A.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-29707 Filed 12-20-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 662

[Docket No. 90775-9215]

Northern Anchovy Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule; extension of effective date.

SUMMARY: The Secretary of Commerce (Secretary) extends an emergency interim rule now in effect to allow a 5,000 metric ton (mt) reduction harvest of northern anchovy that otherwise would be prohibited. This action allows a reduction fishery for northern anchovy during the 1989–1990 fishing season, which otherwise would be unnecessarily denied due to a low estimated spawning biomass resulting from atypical environmental conditions during the period of peak spawning.

EFFECTIVE DATE: This document is effective December 21, 1989. The effectiveness of the emergency interim rule published September 29, 1989 (54 FR 40112) is extended from 0001 hours Pacific Standard Time (PST) December 24, 1989, to 2400 hours PST March 23, 1990.

ADDRESS: A copy of the environmental assessment prepared for the emergency rule may be obtained from E.C. Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: James J. Morgan, Fisheries Management and Analysis Branch, Southwest Region, NMFS, 213-514-6667.

SUPPLEMENTARY INFORMATION: Under the emergency action authority of section 305(e) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), the Secretary issued an emergency interim rule (54 FR 40112, September 29, 1989) amending the Northern Anchovy Fishery Management Plan (FMP) and its implementing regulations. The emergency interim rule, which was effective from 0001 hours PDT September 25, 1989, until 2400 hours PDT December 23, 1989, permitted a 5,000 mt quota for the reduction fishery under conditions that ordinarily would prohibit such a fishery. Unusually low water temperatures during the period of peak spawning contributed to low estimates of spawning biomass; however, estimates of total biomass are very high. Additional rationale for taking the emergency action was presented in the preamble of the emergency interim rule.

At its 99th meeting in Portland, Oregon on November 15–17, 1989, the Pacific Fishery Management Council directed its Anchovy Management Team to proceed with an amendment to the FMP that will redefine the allocation formulas in line with the Council's decision under the emergency rule; therefore, the amendment to the FMP would make emergency action unnecessary under similar circumstances in the future. Because the Council has decided to allow a reduction fishery during the 1989–1990 fishing season, and because the circumstances in the fishery at the time of implementation of the emergency interim rule still exist, the Secretary extends for 90 days the effective dates of the emergency interim rule under section 305(e)(3)(B) of the Magnuson Act.

The emergency interim rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that Order. This rule was reported to the Director of the Office of Management and Budget with an explanation of why following the procedures of that Order was not possible.

List of Subjects in 50 CFR Part 662

Fisheries.

Dated: December 15, 1989.

James E. Douglas, Jr.,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 89-29643 Filed 12-20-89; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
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Thursday, December 21, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 330 and 331

RIN 3064-AB01

Deposit Insurance Coverage

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Notice of proposed revision of regulations.

SUMMARY: The FDIC is proposing to amend its existing deposit insurance regualtions [12 CFR parts 330, 331) which clarify and define the extent of insurance coverage afforded by the FDIC to deposit accounts maintained with FDIC-insured banks. These amendments are being proposed pursuant to section 402(c)(3) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, which requires the FDIC to promulgate uniform deposit insurance regulations for deposits in all insured depository institutions, taking into account the regulations, principles and interpretations for deposit insurance coverage established by the former Federal Savings and Loan Insurance Corporation ("FSLIC"). In addition, the FDIC is proposing other amendments to its deposit insurance regulations which the FDIC believes are necessary due to the increased complexity of financial transactions, the proliferation of new banking products and the problems which have confronted the FDIC in making insurance payments on deposits of closed banks, since the regulations were first adopted in 1967. These proposed revisions are intended to: (1) restate some existing regulations so as to make them easier to understand and apply; (2) broaden the scope of the regulations to encompass a wider variety of deposit accounts offered by financial institutions and to take into account more complicated forms of deposit ownership; (3) codify longstanding FDIC and/or FSLIC staff interpretations of the Federal Deposit Insurance Act and the National Housing Act; (4) simplify the process of determining the extent to which deposit accounts are entitled to deposit insurance coverage; and (5) provide answers to some of the most frequently asked questions about deposit insurance.

DATES: Comments must be received by February 20, 1990.

ADDRESSES: Send comments to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. Comments may be hand delivered to Room 6108 on business days between 8:30 a.m. and 5 p.m. Comments may also be inspected in Room 6108 between 8:30 a.m. and 5 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Roger A. Hood, Assistant General Counsel, (202-898-3681), or Claude A. Rollin, Senior Attorney, (202-898-3985), Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are contained in this notice. Consequently, no information has been submitted to the Office of Management and Budget for review.

DISCUSSION

A. Resolution of Differences Between FDIC and FSLIC Rules

Section 402(c)(3) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (the "FIRRE Act") requires the FDIC to promulgate uniform deposit insurance regulations for deposits in all depository institutions whose deposits are insured pursuant to the Federal Deposit Insurance Act (the "FDI Act"), including foreign banks having insured branches and savings institutions that were insured by the former FSLIC on August 8, 1989 (hereinafter collectively referred to as "insured depository institutions"). In promulgating such uniform regulations, section 402(c)(3) of the FIRRE Act requires the FDIC to take into account the regulations, principles and interpretations for deposit insurance coverage which were utilized by the former FSLIC. Prior to the enactment of the FIRRE Act, there were certain differences between the regulations, principles and interpretations for deposit insurance coverage which governed deposits in FDIC-insured banks and those governed deposits in FSLIC-insured savings associations. The following is a summary of the major differences and the manner in which the FDIC is proposing to resolve those differences with these proposed amendments:

Authorized Signers on Single Ownership Accounts

Under its existing regulations, the FDIC has taken the position that if deposit account records provide that more than one individual has the right to withdraw funds from a deposit account (except by way of a Power of Attorney) then the account would be treated as a joint account even if the account was intended to be, and was operated as, a single ownership account with a second individual serving as an "authorized signer" on the account solely for convenience purposes. The FSLIC treated such accounts, which are commonly referred to as "convenience accounts," as single ownership accounts so long as the named accountholder provided an affidavit indicating that the account was comprised solely of funds owned by that individual (that the authorized signer had no ownership interest in the funds). The FDIC is proposing to amend its single ownership account regulation to, *inter alia*, codify the FDIC's existing staff position with respect to convenience accounts. Accordingly, the amended regulation would expressly provide that if more than one person has the right to withdraw funds from an individual account (except by way of a Power of Attorney), the account will be treated as a joint ownership account, rather than as a single ownership account, and it will be insured in accordance with the provisions governing the deposit insurance afforded to joint ownership accounts.

Custodial Accounts for the Benefit of American Indians

The Bureau of Indian Affairs of the United States Department of the Interior (the "BIA") often invests the funds of various American Indian tribes and individual American Indians pursuant to 25 U.S.C. 162(a). Some of those funds

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have been deposited by the BIA acting in a custodial capacity, on behalf of the tribes and the individual American Indians, in insured depository institutions. Both the FDIC and the former FSLIC insured any funds held by the BIA on behalf of an American Indian tribe as funds being held by an official custodian (the BIA) on behalf of a public unit (the tribe). *See*, 12 CFR 564.6 and 12 U.S.C. 1821(a)(2)(A)(v)). The FDIC and the FSLIC did not, however, insure funds held by the BIA on behalf of individual American Indians in the same manner. The FDIC has insured funds held by the BIA on behalf of individual American Indians separately from any single ownership accounts maintained by those individuals with the same insured bank. By contrast, the FSLIC aggregated, for deposit insurance purposes, the interests of individual American Indians in accounts maintained by the BIA with any single ownership accounts maintained by those individuals at the same FSLIC-insured savings institution.

The FDIC is proposing to continue to insure funds deposited by the BIA in custodial accounts for the benefit of individual American Indians separately from any other single ownership accounts maintained by those individual American Indians with the same insured depository institution. Such insurance coverage, which is outlined in a new paragraph of the proposed amended regulations (§ 330.6(e)), would also be provided for custodial accounts maintained on behalf of individual American Indians by any other disbursing agent of the United States.

Joint Account Signature Card Requirement

An existing FDIC regulation (12 CFR 330.9) requires that, in order to obtain separate insurance coverage for a joint ownership account, each co-owner must personally execute a deposit account signature card and possess withdrawal rights, unless the joint deposit is evidenced by a certificate of deposit or negotiable instrument (in which case the deposit must, in fact, be jointly owned). The FSLIC had, prior to the enactment of the FIRRE Act, revised its joint account regulation (12 CFR 564.9) to, *inter alia*, rescind the FSLIC's signature card requirement for joint accounts. *See*, 53 FR 8167 (March 14, 1988). The FSLIC's revised regulation provided that if funds were held in an account in the names of two or more persons and each person possessed equal withdrawal rights, the account would be insured as a joint account. The FDIC is proposing to retain its current signature card requirement for joint accounts since the FDIC believes that signature cards (which specify who has the right to withdraw funds from an account) are generally reliable indicators of deposit ownership. Therefore, the FDIC's existing signature card requirement is retained in the proposed amended regulation governing the deposit insurance afforded to joint ownership accounts.

Accounts Held by Fiduciaries on Behalf of Two or More Persons

A former FSLIC regulation (12 CFR 564.9(f)) provided that a deposit account held by an agent, nominee, guardian, custodian, conservator or loan servicer, on behalf of two or more persons, would be insured as a joint account provided that the account was identified as an agency account and the FSLIC's recordkeeping requirements were satisfied. The FDIC's existing regulations do not address the manner in which this type of account would be insured and the FDIC has not rendered any formal opinions or interpretive regulations on this subject. The FDIC believes that the position of the FSLIC with respect to such accounts was sound and thus the FDIC is proposing to amend its regulations to adopt the FSLIC's position with respect to this type of account. The proposed provision (§ 330.6(c)) provides that funds held by an agent, nominee, guardian, custodian, conservator or loan servicer, on behalf of two or more persons jointly, shall be treated as a joint ownership account and insured in accordance with the provisions governing such accounts.

Custodial Accounts Maintained by Mortgage Servicers

Mortgage servicers for the Government National Mortgage Association ("Ginnie Mae"), the Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac"), as well as other (private) mortgage servicers, have maintained deposit accounts at numerous insured depository institutions. Two basic types of accounts have been maintained by the mortgage servicers. One type of account is comprised of principal and interest ("P&I") payments received by the mortgage servicer from numerous mortgagors (borrowers). The P&I payments are generally held in the deposit account until they are remitted by the mortgage servicer, on a designated date, directly to the holders of Ginnie Mae, Fannie Mae and Freddie Mac securities or to the owners of the mortgages (mortgagees). The other type of account is comprised of tax and insurance ("T&I") payments received by the mortgage servicer from numerous mortgagors. The T&I payments are held in the deposit account until they are used to pay, on behalf of the mortgagors, taxes and insurance premiums due on the properties securing the pooled mortgages.

The FCIC's existing regulations do not expressly indicate the manner in which such accounts would be insured by the FDIC. Since the accounts are custodial in nature, the FDIC has treated them as custodial accounts and has taken the position that each individual owner (mortgagee, investor or holder of Ginnie Mae, Fannie Mae or Freddie Mac securities) has an ownership interest in the P&I accounts for deposit insurance purposes. Therefore, the FDIC has taken the position that P&I accounts are insured in the amount of up to $100,000 for the interest of each owner or investor (security holder) in such accounts, provided that the FDIC's current recordkeeping requirements (12 CFR 330.1(b)) are satisifed. The FDIC has further indicated that if an owner or investor has interests in more than one P&I account, those interests would normally be aggregated for insurance purposes. In addition, if an owner maintains individually owned (single ownership) accounts at the same insured institution, his/her interests in the P&I account(s) would also be aggregated with those single ownership accounts for deposit insurance purposes.

With respect to the T&I accounts, the FDIC has taken the position that such accounts are insured up to $100,000 for the interest of each individual mortgator in the accounts, provided that the FDIC's current recordkeeping requirements (12 CFR § 330.1(b)) are satisfied. However, if a single mortgagor has interests in more than one T&I account at the same insured bank, those interests would be aggregated for insurance purposes. Moreover, to the extent that a mortgagor maintains individually owned (single ownership) accounts at the same insured institution, his/her interests in the T&I account(s) would be added to those single ownership accounts, for deposit insurance purposes, prior to applying the $100,000 insurance limit.

The FSLIC had a specific regulation (12 CFR 564.3(b)(2)) which provided that "[a] loan servicer who receives loan payments and places or maintains such payments in an insured institution prior to remittance to the lender or other parties entitled to the funds shall, for insurance-of-accounts purposes, be considered an agent of each borrower." Pursuant to that regulation, P&I and T&I accounts were insured by the FSLIC in the amount of up to $100,000 for the interest of each individual mortgagor in

such accounts. Such insurance coverage was provided, however, only if certain recordkeeping regulations (12 CFR 564.2(b)) were satisfied. Moreover, if a mortgagor had interests in more than one mortgage servicing account or had any other individually owned (single ownership) accounts, those interests/accounts were all aggregated for deposit insurance purposes.

Section 402(d) of the FIRRE Act requires the FDIC to insure both P&I and T&I accounts maintained at all insured depository institutions in the amount of up to $100,000 per mortgage borrower, on an interim basis, until the effective date of these proposed uniform regulations. Accordingly, the deposit insurance for both P&I and T&I accounts provided by the FDIC for deposits in FDIC-insured banks since the date of enactment of the FIRRE Act has been the same as that provided by the FSLIC for deposits in FSLIC-insured savings institutions prior to the enactment of the FIRRE Act. The proposed regulation would expressly provide that custodial accounts maintained by mortgage servicers which are comprised of P&I payments will be insured in the amount of up to $100,000 per owner (mortgagee, investor or security holder) and those comprised of T&I payments shall be insured in the amount of up to $100,000 per mortgage borrower, provided that the FDIC's proposed amended recordkeeping requirements are satisfied. This proposed provision is based on the FDIC's belief that the mortgagees, investors or security holders, and not the mortgagors (borrowers), have an ownership interest in P&I accounts, and mortgagors have an ownership interest in T&I accounts, which are maintained by mortgage servicers for their benefit at various insured depository institutions. Since the accounts are custodial in nature, any interests that an individual has in those accounts would be aggregated with any individually owned (single ownership) account(s) that the individual may have at the same insured depository institution, under the proposed amended regulations.

Testamentary (Revocable Trust) Accounts Established by and for Husband and Wife

The FDIC has interpreted its existing regulations as providing that when a husband and wife establish a testamentary (revocable trust) account naming themselves as the sole beneficiaries (*i.e.* H & W in trust for H & W), the account is not a valid testamentary account and thus should be treated as a joint ownership account of H & W and insured up to $100,000. The FSLIC treated such accounts as two separate testamentary accounts and insured them in the amount of up to $100,000 for each account, for a total of up to $200,000.

The FDIC is proposing to amend its regulation governing the deposit insurance provided for testamentary trust accounts to formally adopt, *inter alia*, the FDIC's existing staff position which is that when a husband and wife establish a revocable trust account naming themselves as the sole beneficiaries, the account will not be treated as a testamentary account, but rather, it will be treated as a joint ownership account and insured in accordance with the provisions governing the insurance provided for such accounts. This proposal is based on an FDIC staff opinion that when a husband and wife place funds in a trust account and name themselves as the sole beneficiaries thereof, they cannot be said to be holding funds in a "separate right and capacity" since the account has the same attributes as a joint account with right of survivorship. The amended regulation would, however, expressly recognize testamentary accounts established by more than one owner (settlor) when the owners are not the beneficiaries of the accounts (*e.g.* H & W in trust for Son & Daughter). Such accounts would be insured according to the respective interests of each owner (which are presumed to be equal unless otherwise stated in the insured depository institution's deposit account records) held for the benefit of each beneficiary, in the amount of up to $100,000 for the interest of each owner as to each beneficiary. Such insurance coverage would be separate from any insurance coverage provided for other accounts maintained by the owners or the beneficiaries with the same insured depository institution. For instance, with respect to the aforementioned example (H & W in trust for Son & Daughter), the account would be insured in the amount of up to $400,000. This proposal, if adopted, would codify existing staff interpretations of both the FDIC and the former FSLIC.

Pension Plan Accounts

Retirement plans often allow a participant to make voluntary contributions on an after-tax basis. The FSLIC treated such contributions, for insurance purposes, as the individually owned funds of the participant and aggregated them with any other single ownership accounts of the participant, rather than treating them as part of the participant's interest in the pension plan deposit. The FSLIC also treated rollover contributions (amounts which a participant receives as a distribution from a qualified retirement plan and has elected to roll into a different qualified plan) as the individually owned funds of the participant for deposit insurance purposes. The FDIC treats voluntary employee contributions and rollover contributions as part of a participant's interest in the pension plan deposit. The FDIC has not made any distinctions between employer contributions, voluntary employee contributions made on an after-tax basis, rollover contributions and other types of employee contributions, in determining or providing insurance coverage for pension plan accounts.

The FDIC is proposing to continue its policy of insuring the deposits of most trusteed pension plans in the amount of up to $100,000 for the interest of each pension plan participant therein, regardless of whether the funds are derived from employer contributions, employee contributions made on a before-tax or after-tax basis, or rollover contributions. The amended regulation would provide that deposited funds representing the determinable interest of a beneficiary in an employee benefit plan would be insured up to $100,000. Moreover, the regulation would provide that any interests of the same beneficiary in any other employee benefit plans established by the same employer or employee organization would be aggregated for insurance purposes. Under the proposed amended regulation, the value of an employee's interest in a defined contribution plan would be deemed to be the beneficiary's account balance as of the date the insured depository institution is closed. The value of an employee's interest in a defined benefit plan would be deemed to be present value of the beneficiary's interest in the plan, as of the date of default of the insured depository institution.

There has also been a difference in the manner which the FDIC and the FSLIC have treated deposits of "overfunded" pension plans. Pension plans are frequently "overfunded," which is to say that their assets exceed the total present value of all participants' accrued benefits under the plan. Consequently, a portion of a pension plan's deposit is often attributable to the overfunded portion of the pension plan rather than to the participants' interests under the plan. The FDIC has looked to the pension plan documentation to determine who has a greater ownership interest (the corporation or the employees) in the overfunded portion of the pension plan

deposit and has treated the overfunded portion as being owned in accordance with that determination. If it was

that the interest of each 457 Plan participant in the deposits of the plan would be insured up to $100,000.

purposes, of IRA and Keogh accounts. Under the proposed amended regulations, IRA and Keogh accounts

depositing funds in an insured depository institution in the state

liabilities of another insured depository institution. The proposed new provision

$100,000 for the interest of each beneficiary in the deposits. The

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deposit and has treated the overfunded portion as being owned in accordance with that determination. If it was deemed to be owned by the corporation, the FDIC aggregated the overfunded portion of the deposit with other corporate funds for insurance purposes. If it was deemed to be owned by the employees, each employee's share was aggregated with his/her other interests in the pension plan deposit. The FSLIC treated the overfunded portion of a pension plan deposit as a trust estate and insured that portion up to $100,000, separately from any other funds owned or attributed to the corporation or its employees.

The FDIC is proposing to adopt the FSLIC's position on this issue since, in the the FDIC's experience, it is often extremely difficult to determine whether the employer or employees have a greater ownership interest in the overfunded portion of a pension plan deposit. In addition, the FDIC believes that adopting the FSLIC's position will simplify the deposit insurance determinations on pension plan deposits and thus will enable the FDIC to expedite the payment of the insured portions of such deposits. For these reasons, the proposed provision provides that the overfunded portion of a pension plan deposit would be insured in the amount of up to $100,000 and that such deposit insurance would be separate from the insurance provided for any other funds owned by, or attributed to, the corporation or its employees.

Deposits of Deferred Compensation Plans

The FDIC has taken the psoition that deposit accounts established pursuant to a deferred compensation plan for the employees of a state government, local government or tax-exempt organization, which qualifies under section 457 of the Internal Revenue Code ("IRC"), 26 U.S.C 457 (a "457 Plan"), are entitled to insurance coverage of up to $100,000 in the aggregate, but that such accounts are not entitled to insurance coverage on a per-participant basis. The FSLIC had insured such accounts on a per-participant basis. An FSLIC regulation provided, in relevant part, that "* * * all trust estates as defined in 561.4(b) of this subchapter shall be added together and insured separately up to an additional $100,000." 12 CFR 564.10(c). The term "trust estate" was defined to include "the interest of a participant in a deferred compensation plan, which plan shall be considered a trust for purposes of applying 564.10 of this subchapter." 12 CFR 561.4(b). The staff of the FSLIC had interpreted those provisions to mean that the interest of each 457 Plan participant in the deposits of the plan would be insured up to $100,000, separately from any other deposits maintained by the employer or plan participant at the same insured institution.

The FDIC is proposing to codify its existing staff position which is that 457 Plan deposits will be insured in the amount of up to $100,000 in the aggregate, but will not be insured on a per-participant basis. This proposed provision is based on the fact that the funds of such plans are required, by section 457 of the IRC, to "remain (until made available to the participant or other beneficiary) solely the property and rights of the employer * * * subject only to the claims of the employer's general creditors." 26 U.S.C. 457(b)(6). Since the employer, rather than the employees, is deemed to be the sole owner of the funds until they are distributed, the FDIC believes that the employees (the participants) do not have any ownership interests in the funds upon which insurance coverage could be based and thus the funds cannot be insured on a per-participant basis. In addition, since the funds deposited pursuant to a 457 Plan belong to the employer (*i.e.*, the state government, local government or tax-exempt organization) those funds would be combined for insurance purposes, under the proposed amended regulations, with any other deposits of a like kind (*i.e.*, demand deposits or time and savings deposits, as the case may be) maintained by the same official custodian of a state or local government at the same insured depository institution or, in the case of a tax-exempt organization, with any other deposits of the organization at the same insured depository institution.

Aggregation of IRA and Keogh Accounts

Under existing regulation, the FDIC has taken the position that deposits of Individual Retirement Accounts ("IRA accounts") and Keogh accounts maintained at the same insured bank would be, in most cases, separately insured up to $100,000 each. However, in cases where the depositor is an employer (owner-employee) who has set up a Keogh account in the same bank where he/she maintains an IRA account, the FDIC has aggregated the IRA and Keogh accounts for insurance purposes. The FSLIC maintained the position that IRA and Keogh accounts would be, in all cases, insured separately up to $100,000 per account.

The FDIC is proposing to adopt the FSLIC's position with respect to the aggregation, for deposit insurance purposes, of IRA and Keogh accounts. Under the proposed amended regulations, IRA and Keogh accounts would, in all cases, be separately insured from each other and from all other accounts maintained by the settlors, trustees and beneficiaries of such plans at the same insured depository institution. This proposal is being made in the interest of uniformity and because the FDIC believes that the proposed change would simplify, and thus expedite, the deposit insurance determination for such accounts.

Public Unit Accounts

The FDIC's current regulation concerning the deposit insurance afforded to public unit accounts (12 CFR 330.8) provides that each official custodian of a public unit depositing funds in an insured bank in the state comprising the public unit or wherein the public unit is located will be separately insured for (1) up to $100,000 in the aggregate for all time and savings deposits; and (2) up to $100,000 in the aggregate for all demand deposits. For deposits in an insured bank outside of the state comprising the public unit or wherein the public unit is located, the existing regulation provides that each official custody will be insured for up to $100,000 in the aggregate for all deposits, regardless of whether they are time, savings or demand deposits. This regulation has been based on section 11(a) of the FDI Act (12 U.S.C. 1821(a)), which the FDIC staff has interpreted as mandating the aforementioned deposit insurance coverage for public unit accounts maintained with FDIC-insured banks.

An FSLIC regulation (12 CFR 564.8) provided that each official custodian of a public unit is entitled to deposit insurance coverage of up to $100,000 in the aggregate for all of the custodian's deposits in an FSLIC-insured savings institution, regardless of the type of deposit or the location of the insured institution. This regulation was based on section 1724 of Title IV of the National Housing Act (12 U.S.C. 1724) which the FSLIC had interpreted as requiring the above-noted insurance coverage.

Section 407 of the FIRRE Act repealed Title IV of the National Housing Act (12 U.S.C. 1724 *et seq.*). Moreover, section 211 of the FIRRE Act, in conjunction with section 201 of the FIRRE Act, amended section 11(a) of the FDI Act (12 U.S.C. 1821(a)) so that it now applies to deposits in all insured depository institutions. As amended, the FDIC believes that section 11(a) of the FDI Act (12 U.S.C. 1821(a)) requires that each official custodian of a public unit depositing funds in an insured depository institution in the state comprising the public unit or wherein the public unit is located must be separately insured for (1) up to $100,000 in the aggregate for all time and savings deposits; and (2) up to $100,000 in the aggregate for all demand deposits. For deposits in an insured depository institution outside of the state comprising the public unit or wherein the public unit is located, the statutory provision mandates that each official custodian be insured for up to $100,000 in the aggregate for all deposits, regardless of whether they are time, savings or demand deposits. Accordingly, the proposed amended public unit regulation provides for such insurance coverage for public unit accounts maintained at any insured depository institution.

Separate Insurance for Deposits in Merged Institutions

Prior to the enactment of the FIRRE Act, section 8(q) of the FDI Act (12 U.S.C. 1816 (q)) provided that whenever an insured bank assumed the deposit liabilities of another insured bank, the separate insurance of the assumed deposits continued for six months from the date of the assumption, or in the case of a time deposit, the earliest maturity date after the expiration of the six-month period. A FSLIC statutory provision (12 U.S.C. 1728(a)) contained virtually identical language. With respect to time deposits that mature within the six-month period, the FDIC staff has interpreted section 8(q) of the FDI Act (12 U.S.C. 1818(q)) to mean that if such deposits are renewed for the same term and in the same dollar amount (either with or without accrued interest), then the separate insurance would continue until the first maturity date after the six-month period. By contrast, the FSLIC interpreted its statutory provision (12 U.S.C. 1728(a)) to mean that the separate insurance for time deposits in a merger situation terminated upon the first maturity date following the merger. Threfore, if a time deposit matured within the six-month period following a merger, the FSLIC maintained that the depositor could not extend the separate insurance coverage by renewing the deposit on the same terms and conditions.

The FDIC is proposing to adopt and incorporate its existing staff interpretation concerning the continuation of separate insurance for time deposits that mature within the six-month period into a new provision which explains the separate insurance provided when one insured depository institution assumes the deposit liabilities of another insured depository institution. The proposed new provision expressly provides that if a time deposit matures within six months of the date the deposit liabilities of an insured depository institution are assumed, and it is renewed at the same dollar amount (either with or without accrued interest having been added to the principal amount) and for the same term as the original deposit, the separate insurance continues until the first maturity date after the expiration of the six-month period. Moreover, the proposed new provision provides that time deposits which mature within the six-month period and are renewed on any other basis, or that are not renewed and thereby become demand deposits, would be separately insured only until the end of the six-month period.

Unit Investment Trust Deposits

A current FDIC regulation governing the deposit insurance provided for corporate accounts (12 CFR 330.5(b)) provides that trusts which are registered or subject to registration under section 8 of the Investment Company Act of 1940 (the "40 Act") shall be treated as corporations for the purpose of determining insurance coverage on the trust's accounts. Unit investment trusts, which usually consist of a pool of securities including time deposits of the same or nearly the same maturity dates, are generally registered or subject to registration under the 40 Act and thus have been treated as corporations for insurance purposes. Consequently, a unit investment trust's deposits in an FDIC-insured bank have been added together and insured up to $100,000 in the aggregate.

The FSLIC did not have a comparable regulation governing the deposits of entities registered or subject to registration under the 40 Act. The FSLIC treated deposit accounts of unit investment trusts as revocable or irrevocable trust accounts and insured them in the amount of up to $100,000 for the interest of *each* beneficiary of (investor in) such trusts. However, to the extent that a beneficiary maintained other individually owned (single ownership) accounts at the same insured institution, the FSLIC aggregated the beneficiary's interest in the unit investment trust deposit with those other accounts for deposit insurance purposes.

Pursuant to a petition for rulemaking, the FDIC published a proposed rule on October 12, 1988 (at 53 FR 39746) which, had it been adopted, would have resulted in unit investment trust deposits being insured on a "pass-through" basis in the amount of up to $100,000 for the interest of each beneficiary in the deposits. The comments received by the FDIC provided no compelling reasons why the FDIC should afford pass-through deposit insurance coverage to unit investment trust deposits at FDIC-insured banks. Moreover, Congress has recently expressed concern about such an expansion of the scope of deposit insurance coverage. For these reasons, the FDIC is proposing to maintain the current level of deposit insurance for unit investment trust deposits at FDIC-insured banks (which is up to $100,000 in the aggregate) and, for the sake of uniformity, apply this rule to deposits at all FDIC-insured depository institutions (including savings institutions that were previously insured by the FSLIC).

It also should be noted that section 220(b)(2) of the FIRRE Act requires the FDIC to prepare a report for Congress containing the FDIC's findings and recommendations concerning, *inter alia*, the pass-through of deposit insurance to individual investors in unit investment trusts. The report must contain the FDIC's assessment of the potential effects of broadening deposit insurance coverage on the safety of the insurance funds and the operation of capital markets. In light of this required study and report on "pass-through" insurance coverage, the FDIC believes that it would be inappropriate, at this time, to proceed with the proposal to change the amount of deposit insurance which is provided for deposits of unit investment trusts at FDIC-insured banks. Accordingly, the FDIC is proposing to withdraw the proposed rule. Upon completion of the study and report, the FDIC may propose a rule which would change the deposit insurance provided for unit investment trust deposits at all insured depository institutions based upon the conclusions of the study.

Certificates of Deposit Used to Fund Life Insurance or Annuity Contracts

Life insurance companies maintain deposit accounts at insured depository institutions in order to fund various life insurance or annuity contracts. Many states have enacted statutes which specifically govern deposit accounts intended to fund life insurance or annuity contracts. These statutes are known as "separate account" statutes because they require that insurance companies establish separate accounts for the purpose of funding obligations arising from certain life insurance or annuity contracts. Typically, these statutes require not only separate accounts, but also provide that the insurance company is deemed to hold

legal title to the funds in such separate accounts and may not act as trustee right and capacity at the same insured institution.

insurance regulations, rewrite many of the existing provisions to simply and/or

adjudication or other official determination by any court of competent

which has the same definition as provided under section 3(p) of the FDI

section which explains the difference between the deposit insurance afforded

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legal title to the funds in such separate accounts and may not act as trustee with respect to such funds.

The FSLIC had issued an interpretive rule (12 CFR 570.13) codifying earlier staff interpretations, which provided that funds credited to a separate account pursuant to an annuity contract would not be treated as trust funds for deposit insurance purposes. In an interpretive letter, a staff member of the Federal Home Loan Bank Board stated the FSLIC's position that the insurance company was the insured party and thus such accounts would be aggregated with all other corporate or unincorporated association accounts held by the same company at the same institution and insured up to $100,000.

The FDIC staff has taken the position that certificates of deposit used to fund annuity contracts are entitled to insurance coverage in the amount of up to $100,000 per annuitant, according to the interest of each annuitant therein. This position has been based on the fact that the typical state law requires that insurance companies maintain separate deposit accounts which cannot be charged with liabilities arising out of any other business of the insurance company and cannot be invaded by other creditors of the insurance company in the event that the company becomes insolvent and its assets are liquidated. These characteristics have served as the basis for the FDIC's position that such deposits are held in a separate "right and capacity" and thus are eligible for insurance coverage on a per-annuitant basis.

For these reasons, the FDIC is proposing to formally adopt its existing staff position with respect to the deposit insurance afforded for accounts established to fund life insurance or annuity contracts. The proposed new provision provides that funds deposited by a life insurance company or other corporation for the sole purpose of funding life insurance or annuity contracts and any benefits incidental to such contracts shall be insured in the amount of up to $100,000 per annuitant, provided that, pursuant to a state statute, (1) the corporation establishes a separate account for such funds; (2) the account cannot be charged with the liabilities arising out of any other business of the corporation; and (3) the account cannot be invaded by other creditors of the corporation in the event that the corporation becomes insolvent and its assets are liquidated. In addition, the proposed new subsection indicates that such insurance shall be separate from the insurance provided for any other accounts maintained in a different right and capacity at the same insured institution.

Accounts held by Insured Depository Institutions in Fiduciary Capacities

Prior to the enactment of the FIRRE Act, section 7(i) of the FDI Act (12 U.S.C. 1817(i)) provided that funds held by an insured bank in a fiduciary capacity (e.g. as trustee, executor, administrator, guardian or agent), whether held in its trust department, any other department of the fiduciary bank or in another insured bank, would be insured in the amount of up to $100,000 for each trust estate represented. Section 7(i) further provided that such insurance coverage would be separate from, and additional to, the insurance provided for any other deposits of the owners or beneficiaries of such funds. Although such separate insurance coverage has been provided by the FDIC for deposits in FDIC-insured banks, no such insurance coverage was provided by the FSLIC for deposits in FSLIC-insured savings institutions. This was most likely because there was no statutory provision, comparable to section 7(i) of the FDI Act, which provided for separate insurance coverage when a savings institution acted in a fiduciary capacity. Section 208 of the FIRRE Act amended section 7(i) of the FDI Act so that it now applies to deposits in all insured depository institutions. Consequently, the FDIC is proposing to adopt a new regulation which provides separate insurance coverage, in the amount of up to $100,000 for each owner or beneficiary represented, when funds are held by any insured depository institution in a fiduciary capacity.

B. Summary of Other Amendments

In addition to the amendments being proposed to resolve the differences between the FDIC's regulations, principles and interpretations for deposit insurance coverage and those of the former FSLIC (which are outlined above), the FDIC is proposing numerous other amendments to its existing deposit insurance regulations. The FDIC believes that these other amendments are necessary to, in essence, update the FDIC's regulations which have not been substantially modified or revised since they were initially adopted in 1967. Since the regulations were initially adopted, the complexity of financial transactions has increased markedly, there has been a proliferation of new products offered by financial institutions, and the FDIC has gained considerable experience in paying off insured deposits at failed financial institutions. For these reasons, the FDIC is proposing to reorganize its deposit insurance regulations, rewrite many of the existing provisions to simply and/or clarify their meanings and add certain new provisions. The FDIC is also proposing to use gender-neutral language throughout its deposit insurance regulations. The existing regulations contain numerous references to "he," "him," "his" and other terms which refer to males. The proposed amended regulations employ only gender-neutral terms or refer to both males and females (e.g. his or her). The following is a section-by-section analysis of the other major proposed amendments to the deposit insurance regulations, excluding the proposed amendments discussed above:

Definitions

The FDIC is proposing to define the phrase "deposit account records." This phrase has been utilized throughout the existing regulations and would continue to be used in the amended regulations, to describe the type of records maintained by an insured depository institution that the FDIC will consider when determining ownership of funds for deposit insurance purposes. The FDIC has been relying on staff interpretations of that phrase and the proposed definition would be a codification of those interpretations. Under the proposed amended regulations, the phrase "deposit account records" is defined to mean account ledgers, signature cards, certificates of deposit, passbooks, corporate resolutions authorizing accounts and other books and records of an insured depository institution, including records maintained by computer, which relate to the insured depository institution's deposit taking function. The proposed definition would, however, expressly exclude account statements, deposit slips, items deposited or cancelled checks from the definition of "deposit account records." This is because the FDIC believes that when other records of an insured depository institution clearly and unambiguously establish the ownership of deposited funds, the excluded records (which show the manner in which an account was used) should not be permitted to contradict those other records of the depository institution.

The FDIC is also proposing to use the term "default" throughout the proposed amended regulation and to define that term, which does not appear in the existing regulations. The term "default" is utilized throughout the FDI Act, as amended by the FIRRE Act, and it is defined in the new section 3(x) of the FDI Act (12 U.S.C. 1813(x)) to mean "any

adjudication or other official determination by any court of competent jurisdiction, the appropriate Federal banking agency, or other public authority pursuant to which a conservator, receiver, or other legal custodian is appointed for an insured depository institution or, in the case of a foreign bank having an insured branch, for such branch." In the proposed amended regulations, the term "default" is defined to have the same meaning as provided under section 3(x) of the FDI Act, 12 U.S.C. 1813(x).

Another new phrase employed throughout the FIRRE Act and these proposed amended regulations is the phrase "insured depository institution." consistent with the definition of that term under section 204(c) of the FIRRE Act, the proposed amended regulations define "insured depository institution" to mean any bank or savings association whose deposits are insured pursuant to the FDI Act, including a foreign bank having an insured branch.

The FDIC is also proposing to use and define the term "natural person" in the proposed amended regulations. That term is defined in the Definitions Section of the proposed amended regulation to mean a human being. The purpose of utilizing and defining this term is to make clear that corporations, partnerships and other entities are not entitled to separate insurance coverage for any funds they may hold in single ownership or joint ownership accounts.

The FDIC is also proposing to codify an existing staff interpretation of the term "trust estate," which appears in section 7(i) of the FDI Act (12 U.S.C. 1817(i)). The proposed amended regulations define the term "trust estate" to mean the determinable and beneficial interest of a beneficiary or principal in trust funds. The proposed provision expressly excludes from the definition of "trust estate" the beneficial interest of an heir or devisee in a decendent's estate. The FDIC believes that this proposed new definition is necessary to eliminate uncertainties as to the meaning of the term "trust estate" and to carry out the intent of Congress in enacting section 7(i) of the FDI Act (12 U.S.C. 1817(i)).

Other newly defined terms are from the FDI Act and their definitions are simply re-iterated in the proposed amended regulations. These include the term "deposit," which is defined as having the same meaning as provided under section 3(*l*) of the FDI Act (12 U.S.C. 1813(*l*)); the term "insured deposit," which is defined as having the same meaning as that provided under subsection 3(m)(1) of the FDI Act (12 U.S.C. 1813(m)(1)); the term "trust funds" which has the same definition as provided under section 3(p) of the FDI Act (12 U.S.C. 1813(p)); and the term "insured branch" which has the same definition as provided under section 3(s) of the FDI Act (12 U.S.C. 1813(s)).

Authority and Purpose

The proposed amended regulations contain a new section which outlines the FDIC's authority for, and the purpose of, its deposit insurance regulations. This new section (§ 330.2) recites the requirement of section 402(c)(3) of the FIRRE Act that the FDIC promulgate uniform deposit insurance regulations for deposits in all insured depository institutions. This section also cites the FDIC's general authority, which is derived from sections 3(m) and 12(c) of the FDI Act (12 U.S.C. 1813(m), 1822(c)), to clarify and define, by regulation, the extent of deposit insurance coverage resulting from certain provisions of the FDI Act. The general purpose of the deposit insurance regulations is stated in the proposed new section as follows: to clarify the rules and define the terms employed in affording deposit insurance coverage under the FDI Act and provide rules for the recognition of deposit ownership in various circumstances.

General Principles

The FDIC is proposing to add a new paragraph to the section which enumerates general principles for deposit insurance coverage to more fully describe the concept of "ownership rights and capacities." That concept has served as the fundamental basis for insuring some accounts separately from other accounts and it is mentioned, although not defined, in § 330.1(a) of the current regulations (12 CFR 330.1(a)). The proposed new paragraph provides that deposits maintained in the same right and capacity are those maintained by or for the benefit of the same depositor or depositors. With respect to deposits maintained in the same right and capacity, the proposed paragraph provides that they shall be added together and insured up to $100,000 in the aggregate. The different rights and capacities in which deposits may be held, for deposit insurance purposes, are only those which are outlined in the proposed amended regulations. With respect to deposits held in different rights and capacities, the proposed provision states that they shall be separately insured. This proposed new paragraph merely codifies existing FDIC staff interpretations of the phrase "rights and capacities."

The FDIC is also proposing to add a new paragraph to the general principles section which explains the difference between the deposit insurance afforded to deposits in two or more separately chartered and insured depository institutions and that which is afforded to deposits in two or more offices or branches of the same insured depository institution. This section explains that when a depositor maintains deposits at two or more separately chartered and insured depository institutions, the deposits will be separately insured but when deposits are maintained at two or more offices or branches of the same insured depository institution they will be aggregated for insurance purposes. The subject of this new paragraph is among the most frequently asked questions about deposit insurance coverage and thus the FDIC is proposing to include an explanation of the subject in its regulations.

Another new paragraph being proposed concerns deposits maintained by foreigners and deposits denominated in foreign currency. This new paragraph is being proposed to explain that deposits maintained by any person or entity (regardless of nationality) and deposits maintained in freely convertible foreign currency are insured deposits and thus are entitled to the deposit insurance coverage provided by the FDI Act and the regulations promulgated pursuant thereto. This proposed provision also specifies the exchange rates to be used for the purpose of converting deposits denominated in foreign currency. The proposed rates to be used are the 12 p.m. rates (the "noon buying rates for cable transfers") quoted for major currencies by the Federal Reserve Bank of New York on the date of default of the insured depository institution.

The FDIC is also proposing to incorporate a new paragraph into the general principles section which concerns deposits payable solely outside the United States and its territories/possessions. This new paragraph, which basically reiterates the provisions of section 3(1)(5)(A) of the FDI Act (12 U.S.C. 1813(1)), excludes any obligation of an insured depository institution which is payable solely at an office of such institution located outside the States of the United States, the District of Columbia, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, the Trust Territory of the Pacific Islands, and the Virgin Islands, from being a "deposit" for purposes of the regulations. The FDIC believes that this result is mandated by section 3(1)(5)(A) of the FDI Act (12 U.S.C. 1813(1)(5)(A)).

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The FDIC is similarly proposing to

state law is applicable in deposit

which the funds are owned for deposit

institution. This new requirement can be satisfied by using the terms "trustee,"

the manner in which the FDIC treats deposits evidenced by negotiable

"administrator" of the decedent's estate. The proposed new paragraph expressly

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The FDIC is similarly proposing to incorporate a new paragraph into the General Principles section which excludes an "international banking facility time deposit" from being a "deposit" for the purposes of the regulations. The term "international banking facility time deposit" is defined by reference to the definition of that phrase prescribed by the Board of Governors of the Federal Reserve System in Regulation D (12 CFR 204.8(a)(2)). This proposed new paragraph essentially reiterates the provisions of section 3(*l*)(5)(B) of the FDI Act (12 U.S.C. 1813(*l*)(5)(B)) and the FDIC believes that the proposed exclusion of international banking facility time deposits is mandated by the statutory provision.

The proposed amended regulations also inlcude a new paragraph to explain the provisions of section 8(q) of the FDI Act (12 U.S.C. 1818(q) and to codify existing staff interpretations of that statutory provision. Section 8(q) provides that whenever the deposit liabilities of one or more insured depository institutions are assumed by another insured depository institution, the separate insurance of the deposits so assumed continues for six months from the date such assumption takes effect or, in the case of a time deposit, the earliest maturity date after the six-month period. 12 U.S.C. 1818(q). The FDIC staff has interpreted this provision to provide for the continuation of such separate insurance, under certain circumstances, for certificates of deposit that mature and are renewed during the six-month period (said interpretations are outlined above). The FDIC is proposing to add this new paragraph explaining the separate insurance coverage provided in merger situations because its staff receives numerous inquiries concerning the application of section 8(q) of the FDI Act (12 U.S.C. 1818(q) in such situations.

The FDIC is proposing to change the current statement in its regulations concerning the application of state of local law to deposit insurance determinations. The current statement, which appears in § 330.1(a) of the FDIC's existing regulations (12 CFR 330.1(a)), provides that "[i]nsofar as rules of local law enter into such determinations, the law of the jurisdiction in which the insured bank's principal office is located shall govern, except where the insured bank is an insured branch of a foreign bank, in which case the law of the jurisdiction where the insured branch is located shall govern." The FDIC is proposing to modify this statement to describe, with greater precision, the extent to which state law is applicable in deposit insurance determinations. Specifically, the proposed provision indicates that ownership under state law may be a necessary condition, but not always a sufficient condition, for deposit insurance. Moreover, the provision expressly recognizes that the deposit account records of an insured depository institution, recordkeeping requirements, other regulations, and the need for uniform national rules, are partially preemptive of state law. This proposed revised statement on the application of state or local law to deposit insurance determinations constitutes a codification of the FDIC's current staff position on the subject.

A restatement of the FDIC's existing regulation which governs determinations of the amounts of deposits (12 CFR 330.15) is also being proposed. This restatement is being proposed to clarify the basis upon which interest will be calculated by the FDIC in determining the amount of a deposit prior to determining the deposit insurance which will be afforded to the deposit. This proposed restatement is written so as to exclude, from the amount of a deposit, any amount of interest which an insured depository institution in default would not have been obligated to pay if the deposit had matured on the date of default of the insured depository institution and said institution had not failed.

Recognition of Deposit Ownership and Recordkeeping Requirements

The FDIC's existing deposit insurance regulations do not clearly specify the types of evidence that the FDIC will consider in determining the manner in which deposits are owned for purposes of making insurance determinations. A new paragraph is being proposed to outline the FDIC's existing policies concerning the types of evidence that the FDIC will consider in determining the manner in which deposits are owned for deposit insurance purposes. The FDIC's basic persumption has been that funds are owned in the manner indicated on the deposit account records of the depository institution. In cases where such records are clear and unambiguous, the FDIC has not permitted depositors to present any other records to prove that the ownership of funds is, in reality something other than what is indicated on the deposit account records. In cases where the deposit account records have been ambiguous or unclear as to the manner in which funds are owned, the FDIC has permitted depositors to present evidence other than the deposit account records to prove the manner in which the funds are owned for deposit insurance purposes. Moreover, in case where the FDIC has had reason to believe that the deposit account records misrepresented the actual ownership of deposited funds and such misrepresentation would have increased the amount of deposit insuance to which the depositors were entitled, the FDIC has considered evidence other than the deposit account records to establish ownership of the funds and has paid claims for insured deposits on the basis of the actual, rather than the mispresented, ownership. The FDIC is proposing to continue, and codify into these proposed amended regulations, its policies concerning the type of evidence that the FDIC will take into account in determining the ownership of deposits of purposes of determining insurance coverage.

The FDIC is also proposing a revision of its interpretive regulation regarding the methods by which ownership interests in custodial accounts may be calculated for deposit insurnace purposes (12 CFR 330.101). The existing provision, which interprets the requirements of § 330.1 of the FDIC's existing regulations (12 CFR 330.1), permits ownership interests in custodial accounts to be calculated on a fractional or percentage basis. The proposed provision, which is a paragraph in the new section entitled "Recognition of Deposit Ownership and Recordkeeping Requirements," is intended to be substantively identical to the existing rules. The proposed provision is, however, more abbreviated than the existing provision. Since certain parts of the existing interpretive regulation have been incorporated elsewhere in the proposed amended regulations, the FDIC believes that it is unnecessary to include such parts in this proposed provision.

The FDIC is also proposing to modify its existing recordkeeping regulations which require the disclosure of fiduciary relationships and the maintenance of certain records, in order for a depositor to obtain what is known as "pass-through" insurance coverage for the beneficial owners of funds being held by a fiduciary (e.g., a trustee, agent, nominee, guardian, executor or custodian). One paragraph of the current deposit insurance regulations (12 CFR 330.1(b)(1)) requires that the existence of fiduciary relationships be disclosed on the deposit account records of an insured bank. The FDIC is proposing to modify that provision so as to provide that fiduciary relationships must be expressly disclosed, by way of specific references, on the deposit account records of an insured depository institution. This new requirement can be satisfied by using the terms "trustee," "agent," "nominee," "guardian," "executor," "custodian" or similar terms in the title of an account. Although it is not expressly stated, the proposed provision will adopt the FDIC's existing staff position with respect to deposit account records which misstate the fiduciary relationship involved in an account (e.g. deposit account records indicating that X is acting as trustee under a trust for the benefit of Y, when in fact, X is merely an agent for Y). The FDIC currently permits depositors to prove the actual relationships involved and insures the funds in accordance with those relationships notwithstanding the fact that the actual nature of the fiduciary relationships are improperly stated on the deposit account records.

Another paragraph of the existing deposit insurance regulations (12 CFR 330.1(b)(2)) requires that the details of fiduciary relationships and the interests of other parties in fiduciary accounts must be ascertainable from deposit account records or from records maintained by the depositor in good faith and in the regular course of business. The FDIC is proposing to modify this provision to codify the current FDIC staff position which is that such records may also be maintained by some person or entity that has undertaken (by contract or otherwise) to maintain such records on behalf of the depositor. Such arrangements are common in the case of pension plans, where pension plan trustees (who are the depositors) contract with actuarial firms or plan administrators to maintain records on behalf of the pension plans.

A new paragraph is also being proposed to codify existing staff interpretations of the FDIC's recordkeeping requirements in situations where there are multiple levels of fiduciary relationships. The proposed paragraph provides two alternative methods of satisfying the recordkeeping requirements. The first method is to indicate, on the deposit account records of the insured depository institution, the existence of each level of the fiduciary relationships and to disclose, at each such level, the name(s) and interest(s) of the person(s) on whose behalf the party at that level is acting. The alternative method permits the existence of some fiduciary relationships to be revealed on records other than the deposit account records of the insured depository institution under limited circumstances.

The proposed amended regulations also retain the existing rules concerning the manner in which the FDIC treats deposits evidenced by negotiable instruments and deposit obligations for payment of items forwarded by an insured depository institution acting as an agent. With respect to deposits evidenced by negotiable instruments, the FDIC is proposing to clarify its existing rule and to codify a staff interpretation of that rule. Under the existing provision, the FDIC staff has expressed the opinion that receipt of a negotiable instrument directly from the insured bank that failed will not be considered a negotiation of the instrument for deposit insurance purposes. The proposed amended provision codifies this staff position for deposits evidenced by negotiable instruments in all insured depository institutions. The existing provision concerning deposit obligations for payment of items forwarded for collection by an insured bank acting as agent (12 CFR 330.12) has been rewritten, for clarification purposes, and included in the proposed amended regulations without any substantive changes.

Single Ownership Accounts

The FDIC is proposing to continue the basic rule that each person is entitled to insurance coverage of up to $100,000 for the total of all individually owned funds deposited in his or her name in one insured depository institution. Under existing regulations, the FDIC staff has taken the position that sole proprietorship accounts would be treated as individual or single ownership accounts and thus the FDIC has added such accounts to any other individual accounts maintained by the sole proprietor at the same insured depository institution prior to applying the $100,000 limit. The proposed amended regulation concerning the deposit insurance provided for single ownership accounts formally adopts this staff position. Moreover, the proposed amended regulation defines the term "sole proprietorship" to mean a form of business in which one person owns all of the assets of the business, in contrast to a partnership or corporation.

In addition, the FDIC is proposing to incorporate its current regulation governing the deposit insurance afforded to accounts held by executors or administrators of a decedent's estate (12 CFR 330.4) into the single ownership accounts regulation. The existing rule is restated and additional language is added in recognition that an individual may be acting as the personal representative of a decedent's estate despite the fact that he or she was not appointed as the "executor" or "administrator" of the decedent's estate. The proposed new paragraph expressly provides the same insurance coverage for a personal representative holding funds for a decedent's estate as is provided, under the existing regulation, for an executor or administrator holding funds on behalf of a decedent's estate.

Accounts Held by an Agent, Nominee, Guardian, Custodian or Conservator

Under the current regulations, the provisions relating to accounts held by agents or nominees and those held by guardians, custodians or conservators appear as part of the single ownership accounts regulation (12 CFR 330.2). The proposed amended regulations restate the existing rules, with only slight modifications, in a regulation which is separate from the regulation governing the deposit insurance provided for single ownership accounts.

Joint Ownership Accounts

The FDIC's existing joint ownership account regulation (12 CFR 330.9) provides that qualifying joint accounts shall be insured separately from the individually owned (single ownership) accounts of the co-owners. Under the existing regulation, there are two requirements for joint accounts to be deemed as valid or qualifying joint accounts: (1) each co-owner must execute a deposit account signature card; and (2) each co-owner must possess withdrawal rights. The existing regulation further provides that the signature card requirement does not apply to certificates of deposit or to deposits evidenced by negotiable instruments but such deposits must, in fact, be jointly owned. Under the proposed amended regulation, the two requirements and the exception are continued but a third requirement is added which is that all of the co-owners of the funds in joint accounts must be natural persons. The FDIC is proposing to add this new requirement to make clear that corporations, partnerships and other business entities cannot establish single ownership or joint ownership accounts to increase the amount of the deposit insurance which would otherwise be afforded to their accounts.

The proposed amended joint account regulation also expressly codifies a current FDIC staff position which is that a deposit account will be considered as a joint ownership account regardless of whether the conjunction "and" or "or" is used in the title of the account, and even when both terms are used, such as in the case of a joint ownership account with three or more co-owners.

Revocable Trust Accounts

The FDIC's existing regulation for

maintained by corporations, partnerships or unincorporated associations (12 CFR 330.5, 330.6, 330.7).

engaged in an activity other than one directed solely at increasing insurance coverage. Under the proposed modified

330.1(c)). As under the existing regulations (§ 330.1(c)), in order for the interests of the beneficiaries in

accordance with whatever method of calculation such plan ordinarily uses, as of the date of default of the insured

separate insurance coverage. For instance, where a participant's interest has been partitioned pursuant to a

Revocable Trust Accounts

The FDIC's existing regulation for testamentary (revocable trust) accounts (12 CFR 330.3) addresses the deposit insurance provided for accounts wherein the owner intends that, upon his or her death, the funds in the account shall belong to a named spouse, child or grandchild. The proposed amended regulation requires that the owner of a revocable trust account expressly manifest the required intention (that, upon his or her death, the funds shall belong to the owner's spouse, child or grandchild) by using such terms as "in trust for," "as trustee for," or "payable-on-death" in the title of the account. Moreover, the proposed amended regulation would mandate that the beneficiaries of such accounts be specifically named in the deposit account records of the insured depository institution. These changes are being proposed to simplify the deposit insurance determination process for revocable trust accounts and thus to expedite the payment of the insured portions of such accounts.

The FDIC is also proposing to define the terms "child" and "grandchild" which are utilized in the existing and the proposed amended revocable trust account regulation. These terms are not defined in the current regulations. Under the proposed definitions, a "child" is defined as being the natural, adopted or step- child of the owner and a "grandchild" is defined as being the natural, adopted or step- child of any of the owner's children. This represents a codification of the longstanding position that was maintained by both the FDIC staff and the FSLIC staff in interpreting their respective regulations. The FDIC staff has, in the past, suggested that the FDIC might amend its regulations to exclude step-children and step-grandchildren from the definitions and thus provide no separate deposit insurance for revocable trust accounts established for the benefit of step-children or step-grandchildren. Upon further reflection, the FDIC has determined that it would be inappropriate to distinguish between natural-born, adopted and step- children or grandchildren in providing deposit insurance for revocable trust accounts. Accordingly, the proposed amended regulation includes all such individuals within the definitions of "child" and "grandchild."

Accounts of a Corporation, Partnership or Unincorporated Association

The FDIC is proposing to modify its existing regulations which govern the deposit insurance provided for accounts maintained by corporations, partnerships or unincorporated associations (12 CFR 330.5, 330.6, 330.7). The corporate account regulation would be modified to explain the current FDIC position that separately incorporated entities are entitled to separate deposit insurance for their accounts so long as they are engaged in some "independent activity" (discussed below) but that divisions or units of one corporation, which are not separately incorporated, are not entitled to separate deposit insurance coverage for their accounts. In addition, the proposed amended regulation expressly recognizes that corporations sometimes maintain accounts in a representative or fiduciary capacity and provides that such accounts would not be insured as if owned by the corporation, but rather, they would be insured as agency accounts, according to the interests of the principals/beneficial owners therein.

In addition, the proposed amended regulations are intended to clarify the deposit insurance provided for accounts maintained by partnerships (which is currently outlined in 12 CFR 330.5(a)). The proposed provision makes clear that accounts maintained by a partnership would be separately insured from any individual (single ownership) accounts maintained by the partners within the same insured depository institution. Moreover, the proposed provision includes a new definition of the term "partnership" which is as follows: an association of two or more persons or entities formed to carry on, as co-owners, an unincorporated business for profit.

The existing regulation governing the deposit insurance afforded to unincorporated association accounts (12 CFR 330.6) would also be modified, under the proposed amended regulations, to clarify that such accounts are insured separately from any accounts maintained by the person(s) or entity(ies) comprising the unincorporated association so long as the unincorporated association is engaged in an "independent activity" (discussed below). In addition, the term "unincorporated association" is defined, for purposes of this regulation, as an association of two or more persons formed for some religious, educational, charitable, social or other noncommercial purpose.

Finally, the proposed amended regulations would modify the existing definition of the term "independent activity" (which appears at 12 CFR 330.7). Under the current definition, a corporation is deemed to be engaged in an "independent activity" when it is engaged in an activity other than one directed solely at increasing insurance coverage. Under the proposed modified definition, a corporation, partnership or unincorporated association would be deemed to be engaged in an "independent activity" as long as it was primarily operated for some purpose other than to increase deposit insurance. This change in the definition is being proposed to make it clear that entities must have some function and be engaged in some activity in order for their accounts to be separately insured; they cannot simply be "shells" created for the purpose of increasing deposit insurance coverage.

Accounts Held by Depository Institutions in Fiduciary Capacities

The FDIC is proposing to adopt a new regulatory provision to govern the deposit insurance provided for funds held by insured depository institutions which are acting in fiduciary capacities. As noted above, section 7(i) of the FDI Act (12 U.S.C. 1817(i)) provides for separate insurance coverage whenever an insured depository institution holds funds in an agency or other fiduciary capacity, whether held or deposited in any other department of the fiduciary institution, or deposited by the fiduciary institution in another depository institution.

Under section 7(i) such deposits must be insured in the amount of up to $100,000 for the interest of each owner or beneficiary represented. 12 U.S.C. 1817(i). The proposed regulation also provides methods for determining the amount of insurance coverage which would be provided for such deposits for both funds which are allocated, and those which are unallocated, by the fiduciary. If the funds are allocated to each owner or beneficiary on the books or records of the fiduciary institution, then the deposit insurance will be determined in accordance with that allocation. If the funds are unallocated (all the funds are commingled) then a particular trust estate's percentage interest in the deposit would be equal to the particular trust estate's percentage interest in the total assets held by the fiduciary institution.

Irrevocable Trust Accounts

The proposed amended regulations restate the existing regulations concerning the insurance afforded to deposit accounts established pursuant to irrevocable trust agreements for purposes of clarification. The proposed provision addresses issues which are currently addressed in two sections of the existing regulations (12 CFR 330.10, 330.1(c)). As under the existing regulations (§ 330.1(c)), in order for the interests of the beneficiaries in irrevocable trust accounts to be separately insured from any other accounts maintained by the beneficiaries with the same insured depository institution, those interests must be determinable without evaluation of any contingencies except for those covered by certain present worth tables and rules of calculation for their use as set forth in the Federal Estate Tax Regulations or any similar present worth or life expectancy tables. This rule is incorproated into the proposed regulations by providing that the only interest of a beneficiary in an irrevocable trust which qualifies for separate insurance coverage is a "non-contingent trust interest," which is defined to mean "a trust interest capable of determination without evaluation of contingencies except for those covered by the present worth tables and rules of calculation for their use set forth in § 20.2031–7) or any similar present worth or life expectancy tables which may be adopted by the Internal Revenue Service."

Employee Benefit Plan Accounts

The FDIC is proposing a new regulatory provision to codify the existing FDIC policy which is to provide deposit insurance coverage for the deposits of most trusteed employee benefit plans in the amount of up to $100,000 for each participant's interest, so long as certain recordkeeping requirements are satisifed. Heretofore, the deposits of most trusted employee benefit plans have been treated by the FDIC as deposits of an irrevocable trust. The FDIC believes that, in light of the exponential growth in the number and type of employee benefit plans as well as the increased complexities of employee benefit plans, it is necessary to create a separate regulatory provision to govern the deposit insurance provided for deposits of employee benefit plans.

The proposed provision prescribes the manner in which an employee's interest in a pension plan is to be determined, for deposit insurance purposes, in the case of either a defined contribution plan or a defined benefit plan. In the case of a defined contribution plan, the value of an employee's intereat in the plan would be deemed to be the beneficiary's account balance as of the date of default of the insured depository institution. In the case of a defined benefit plan, the value of an employee's interest in the plan would be deemed to be the present value of the beneficiary's interest in the plan, evaluated in accordance with whatever method of calculation such plan ordinarily uses, as of the date of default of the insured depository institution.

In addition, the proposed provision codifies the current FDIC staff position concerning the treatment of contingent interests. The current staff position is that if the employees' interests in an employee benefit plan are not capable of determination without evaluation of contingencies, or an account established for a plan includes amounts for future participants in the plan, the deposits of the plan would be aggregated and insured up to $100,000. Such deposits would not be insured on a per-participant basis.

Under the proposed amended regulations the term "employee benefit plan" is defined to mean any pension, profit-sharing or stock bonus plan established by an employer or employee organization, including plans qualifying under sections 401(a) and 401(k) of the Internal Revenue Code of 1954 (26 U.S.C. 401(a), 401(k)) but excluding any plans qualifying under section 457 of the Internal Revenue Code (26 U.S.C. 457). This definition reflects the current FDIC policy with respect to the types of employee benefit plans whose deposits have been afforded insurance coverage on a pass-through or per-participant basis. The FDIC's reasons for not providing pass-through insurance coverage for deposits of 457 Plans are outlined above.

Other terms employed in the proposed amended regulations which are specifically defined in the regulations are the terms "employee organization" and "non-contingent interest." The term "employee organization" is defined broadly in the proposed amended regulations to include, in essence, any entity which represents employees with respect to an employee benefit plan. The term "non-contingent interest" is defined as any interest in an employee benefit plan which is capable of determination without evaluation of any contingencies except for those covered by the present worth tables and the rules of calculation for their use set forth in § 20.2031–7 of the Federla Estate Tax Regulations (26 CFR 20.2031–7) or any similar present worth or life expectancy tables which may be adopted by the Internal Revenue Service.

Finally, while the FDIC believes that separate deposit insurance coverage should generally be limited to the interests of participating employees in employee benefit plan accounts, there are circumstances where it might be argued that the interests of non-participants should also qualify for separate insurance coverage. For instance, where a participant's interest has been partitioned pursuant to a qualified domestic relations order issued in connection with a divorce proceeding, it may be appropriate to insure the non-participant spouse's interest separately from the interest retained by the participant spouse. Similarly, in situations where a participant has died and the employee benefit plan holds the participant's interest for future distribution to a designated non-participant beneficiary, it may be appropriate to insure the interest of the non-participant beneficiary as a benefit plan interest. Recognizing the vast array of employee benefit plan provisions and the pervasive impact that the provisions of the Internal Revenue Code have on employee benefit plans, the FDIC seeks comments on the extent to which the interests of non-participants in employee benefit plan accounts should be recognized, in the circumstances described above, for deposit insurance purposes.

IRA and Keogh Accounts

The existing provisions which outline the deposit insurance coverage provided by the FDIC for IRA and Keogh Accounts are included as part of the regulation governing the deposit insurance provided for trust accounts (12 CFR 330.10). The FDIC is proposing to adopt a separate regulatory provision to outline the rules governing the deposit insurance provided for IRA and Keogh accounts. The only substantive change in the current rules concerns the aggregation of IRA and Keogh accounts for deposit insurance purposes. As explained above, under the proposed amended regulations IRA and Keogh accounts would, in all situations, be separately insured from each other and from all other accounts maintained by the settlors, trustees and beneficiaries of such plans at the same insured depository institution. This is a change from the FDIC's rationale for proposing this change in the aggregation rules is outlined above.

Public Unit Accounts

The FDIC is proposing to modify the existing regulatory provision which enumerates the deposit insurance provided for accounts maintained by the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, or Guam, or any county, municipality, or political subdivision thereof (12 CFR 330.8(a)(4)). The proposed modification involves adding the Trust Territory of the Pacific Islands and the Commonwealth of the Northern Mariana

Islands to the list of countries, territories and possessions that are entitled to the

unit which that person is appointed or elected to serve. Moreover, the FDIC

the date the uniform regulations become final. In accordance with that provision,

statements of account of each depositor

List of Subjects

(f) "Insured deposit" has the same

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Islands to the list of countries, territories and possessions that are entitled to the insurance coverage provided for the deposits of the United States and other public units which are entitled to the same deposit insurance provided for the funds of the United States. The reference to "The Trust Territory of the Pacific Islands" was added after the existing regulatory provision (12 CFR 330.8(a)(4)) was adopted. The FDIC is now proposing to conform the regulation to the existing provisions of the Federal Deposit Insurance Act by adding that public unit to the list of U.S. territories and possessions which qualify for the same deposit insurance which is provided for the funds of the United States and public units located within the United States. In addition, the FDIC is proposing to add the Commonwealth of the Northern Mariana Islands to the list of public units that qualify for such insurance. This is being proposed pursuant to a Congressional Resolution which provides that the federal banking laws of the United States shall apply to the Commonwealth of the Northern Mariana Islands to the same extent as they apply to Guam (*See, Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America*, Pub. L. No. 94–241, 90 Stat. 263 (1976), *amended by* Pub. L. No. 98–213, 97 Stat. 1461 (1983); Pub. L. No. 99–396, 100 Stat. 837 (1986)).

The proposed amended regulations also include a new paragraph which basically reiterates the statutory provision which treats American Indian tribes as public units for deposit insurance purposes (12 U.S.C. 1821(a)(2)(A)(v)). The proposed provision states that each official custodian of funds of an Indian tribe (as defined in 25 U.S.C. 1452(c)), including an agency of the tribe that has official custody of tribal funds, would be separately insured in the amount of up to $100,000 in the aggregate for all time and savings deposits, and up to $100,000 in the aggregate for all demand deposits, which are lawfully deposited in an insured depository institution. The FDIC believes that this result is mandated by 12 U.S.C. 1821(a) and it is unclear why this provision was not included in the existing regulations.

In addition, the FDIC is also proposing to amend its public unit account regulation by adding a new paragraph to codify an existing FDIC staff interpretation of the term "official custodian." The FDIC staff has interpreted that term to mean a person who has plenary authority, including control, over funds owned by the public unit which that person is appointed or elected to serve. Moreover, the FDIC staff has expressed the opinion that a person can be said to have "control" of public funds when he or she has possession of such funds, the authority to establish deposit accounts with such funds as well as the authority to make deposits, withdrawals and disbursements of such funds. These FDIC staff positions are incorporated into the proposed amended regulations in a paragraph outlining the qualifications for a person to be deemed an "official custodian" of public unit funds for deposit insurance purposes.

Finally, the proposed amended public unit account regulation includes a new paragraph which addresses situations where there is a split of authority or control over public unit funds. Under the proposed new paragraph, if two or more persons have authority or control over the funds of a public unit (e.g. disbursement of funds requires action/consent of two or more persons), they will be treated as one "official custodian" for deposit insurance purposes. This proposed provision constitutes the formal adoption of the existing FDIC staff position with respect to the division of authority or control over public unit funds.

Revocation of Part 331

The FDIC is proposing to revoke part 331 of its Rules and Regulations (12 CFR 331) and incorporate the provisions thereof into Part 330 of the FDIC's Rules and Regulations. Under the proposed amended regulations, the allocation provisions of part 331 are incorporated, with some slight modifications, into § 330.10. In addition, the FDIC is proposing to apply the allocation provisions to funds of banks or trust companies held in a fiduciary capacity under a type of trust Created to facilitate the issuance, distribution, or servicing or corporate bonds, debentures or stock issues (commonly known as "corporate trusts"). The allocation rules are currently inapplicable to such deposits pursuant to § 331.1(c) of the existing regulations. Upon further consideration, however, the FDIC believes that there is no compelling reason why the same allocation rules that apply to other trusts should not apply to corporate trusts.

Proposed Effective Date of Amended Regulations and Proposed Grandfather Provision

Section 402(c)(5)(B) of the FIRRE Act requires that the uniform deposit insurance regulations mandated by the FIRRE Act take effect on or before the end of the 90-day period beginning on the date the uniform regulations become final. In accordance with that provision, the FDIC intends to establish an effective date for the final regulations which will be 90 days from the date that the final regulations are published in the **Federal Register**. Delaying the effective date for the maximum amount of time permitted under the statute, maximizes the time that depositors will have to learn about the changes in the deposit insurance rules and to make whatever changes in their accounts are necessary to avoid being in an uninsured position. The FDIC realizes, however, that some depositors who are adversely affected by the changes in the deposit insurance rules will have time deposits with maturity dates beyond the effective date of the amended regulations. Such depositors would then most likely be forced to choose between continuing to maintain their deposits which, as a result of the amended regulations, would be partially or wholly uninsured, or withdrawing the uninsured funds and paying a substantial early withdrawal penalty. In order to avoid placing depositors in such a difficult position, the FDIC is proposing to adopt some type of "grandfather" provision for time deposits. The FDIC is inclined to provide in the final regulations that any time deposit which is issued by an insured depository institution on or before the date that the final uniform regulations are published in the **Federal Register** would be entitled to the deposit insurance provided under the regulations currently in existence (the "old rules") or that which is provided under the amended regulation (the "new rules"), whichever is more favorable to the depositor, until the first maturity date of the time deposit. The FDIC is interested in receiving comments on the subject of what would constitute an appropriate "grandfather" provision.

Notice to Depositors of Changes in Deposit Insurance

Section 402(c)(5)(A) of the FIRRE Act requires that the uniform regulations promulgated by the FDIC must provide for effective notice to depositors of any change in deposit insurance coverage resulting from such regulations. The FDIC is proposing to require one of the following methods of notifying depositors in insured depository institutions of the changes in deposit insurance coverage which will result from the adoption of the uniform regulations.

Each depository institution could be required to include a notice stating that changes in deposit insurance coverage have been made in the two monthly statements of account of each depositor immediately following the effective date of this rule (for which the FDIC is proposing a 90-day delayed effective date). The notice would further state that depositors interested in obtaining more information about the extent of the changes may call their depository institution or the FDIC, and the notice would provide telephone numbers for that purpose.

Alternatively, each depository institution could be required to include a pamphlet or brochure which describes the deposit insurance coverage changes in the two monthly statements of account of each depositor immediately following the effective date of this rule. The required pamphlet or brochure could be one developed by the depository institution, could be one developed by the depository institution according to a prototype provided by the FDIC, or could be one provided distribution by the FDIC.

The FDIC would additionally like comment on the following: (1) whether the FDIC should require each depository institution to designate one individual who would respond to deposit insurance coverage inquiries, be the contact person for such inquiries in the notice to depositors, and assume responsibility for keeping abreast of a deposit insurance coverage matters; and, (2) whether any notice to depositors concerning changes in deposit insurance coverage should be differentiated according to the type of depositor, e.g. depositors whose combined accounts exceed $100,000, and depositors whose account balances are less than $100,000 in the aggregate.

Regulatory Flexibility Act Statement

The Board of Directors of the FDIC hereby certifies that the proposed amended regulations will not, if promulgated, have a significant economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The proposed amended regulations modify the rules governing the deposit insurance coverage provided for certain depositors in banks and savings institutions of all sizes. The proposed amendments do not, however, impose any additional regulatory burdens on banks or savings institutions of any size. In light of the above-noted certification, the Regulatory Flexibility Act requirements (at 5 U.S.C. 603, 604) to prepare initial and final regulatory flexibility analyses do not apply.

List of Subjects

12CFRPart 330

Bank deposit insurance, Banks, banking, Savings and loan associations.

12 CFR Part 331

Bank deposit insurance, Banks, banking, Trusts and trustees, Savings and loan associations.

The Board of Directors of the Federal Deposit Insurance Corporation proposes to amend part 330 and part 331 of title 12 of the Code of Federal Regulations as follows:

PART 331—[REMOVED AND RESERVED]

1. Part 331 is removed and reserved.

2. Part 330 is revised to read as follows:

PART 330—DEPOSIT INSURANCE COVERAGE

Sec.

330.1 Definitions.
330.2 Authority and purpose.
330.3 General principles.
330.4 Recognition of deposit ownership and recordkeeping requirements.
330.5 Single ownership accounts.
330.6 Accounts held by an agent, nominee, guardian, custodian or conservator.
330.7 Joint ownership accounts.
330.8 Revocable trust accounts.
330.9 Accounts of a corporation, partnership or unincorporated association.
330.10 Accounts held by insured depository institutions in fiduciary capacities.
330.11 Irrevocable trust accounts.
330.12 Employee benefit plan accounts.
330.13 IRA and Keogh accounts.
330.14 Public unit accounts.

Authority: 12 U.S.C. 1813, 1817, 1821, 1822.

§ 330.1 Definitions.

For the purposes of this part:

(a) "Act" means the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*).

(b) "Default" has the same meaning as provided under section 3(x) of the Act (12 U.S.C. 1813(x)).

(c) "Deposit" has the same meaning as provided under section 3 (*l*) of the Act (12 U.S.C. 1813(*l*)).

(d) "Deposit account records" means account ledgers, signature cards, certificates of deposit, passbooks, corporate resolutions authorizing accounts in the possession of the insured depository institution and other books and records of the insured depository institution's deposit taking function, but does not mean account statements, deposit slips, items deposited or cancelled checks.

(e) "FDIC" means the Federal Deposit Insurance Corporation.

(f) "Insured deposit" has the same meaning as that provided under subsection 3(m)(1) of the Act (12 U.S.C. 1813(m)(1)).

(g) "Insured depository institution" is any depository institution whose deposits are insured pursuant to the Act, including a foreign bank having an insured branch.

(h) "Insured branch" means a branch of a foreign bank any deposits in which are insured in accordance with the provisions of the Act.

(i) "Natural person" means a human being.

(j) "Trust funds" means funds held by an insured depository institution as trustee, executor, administrator, guardian, agent or in any other fiduciary capacity.

(k) "Trust estate" means the determinable and beneficial interest of a beneficiary or principal in trust funds but does not include the beneficial interest of an heir or devisee in a decedent's estate.

§ 330.2 Authority and purpose.

Section 402(c)(3) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. 101–73, 103 Stat. 183 (the "FIRRE Act"), requires the FDIC to promulgate uniform deposit insurance regulations for deposits in all insured depository institutions, taking into account the regulations, principles and interpretations for deposit insurance coverage established by the former Federal Savings and Loan Insurance Corporation ("FSLIC"). In addition, subsection 3(m) of the Act (12 U.S.C. § 1813(m)) vests the Board of Directors of the FDIC with the authority to clarify and define, by regulation, the extent of deposit insurance coverage resulting from subsections 3(m)(1), 3(p), 7(i) and 11(a) of the Act (12 U.S.C. 1813(m)(1), 1813(p), 1817(i), 1821(a)), and to define the terms used in those sections. Section 12(c) of the Act (12 U.S.C. 1822(c)) authorizes the Board of Directors, by regulation, to recognize as the owner of any portion of a deposit appearing on the records of an insured depository institution in default under the name other than that of the claimant, any person whose name or interest as such owner is not disclosed on the records of the institution as part owner of the deposit. The purpose of this part is to clarify the rules and define the terms employed in affording deposit insurance coverage under the Act and provide rules for the recognition of deposit ownership in various circumstances.

§ 330.3 General principles.

(a) *Ownership rights and capacities.*

determining the amount of insurance available to each depositor, the FDIC shall presume that deposited funds are

branch of a foreign bank which are payable by contract in the United States

and thereby become demand deposits, are separately insured only until the end

(2) *Details of fiduciary relationships.* If the deposit account records of an

obligation for all purposes of claim for insured deposits to the same extent as if

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§ 330.3 General principles.

(a) *Ownership rights and capacities.* The insurance coverage provided by the Act and the regulations in this part is based upon the ownership rights and capacities in which deposit accounts are maintained at insured depository institutions. All deposits in an insured depository institution which are maintained in the same right and capacity (by or for the benefit of a particular depositor or depositors) shall be added together and insured in accordance with the regulations in this part. Deposits maintained in different rights and capacities, as recognized under this part, shall be insured separately from each other.

(b) *Deposits maintained in separate insured depository institutions or in separate branches of the same insured depository institution.* Any deposit accounts maintained by a depositor at one insured depository institution are insured separately from, and without regard to, any deposit accounts that the same depositor maintains at any other separately chartered and insured depository institution, even if two or more separately chartered and insured depository institutions are affiliated through common ownership. The deposit accounts of a depositor maintained in the same right and capacity at different branches or offices of the same insured depository institution are not separately insured; rather they shall be added together and insured in accordance with the regulations in this part.

(c) *Deposits maintained by foreigners and deposits denominated in foreign currency.* The availability of deposit insurance is not limited to citizens and residents of the United States. Any person or entity that maintains deposits in an insured depository institution is entitled to the deposit insurance provided by the Act and the provisions of this part. In addition, deposits denominated in a foreign currency shall be insured in accordance with the provisions of this part. Deposit insurance for such deposits shall be determined and paid in the amount of American dollars that is equivalent in value to the amount of the deposit denominated in the foreign currency as of close of business on the date of default of the insured depository institution. The exchange rates to be used for such conversions are the 12 p.m. rates (the "noon buying rates for cable transfers") quoted for major currencies by the Federal Reserve Bank of New York on the date of default of the insured depository institution.

(d) *Deposits in insured branches of foreign banks.* Deposits in an insured branch of a foreign bank which are payable by contract in the United States shall be insured in accordance with the provisions of this part, except that any deposits to the credit of the foreign bank, or any office, branch, agency or any wholly owned subsidiary of the foreign bank, shall not be insured. All deposits held by a depositor in the same right and capacity in more than one insured branch of the same foreign bank shall be added together for the purpose of determining the amount of deposit insurance.

(e) *Deposits payable solely outside of the United States.* Any obligation of an insured depository institution which is payable solely at an office of such institution located outside the States of the United States, the District of Columbia, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, the Trust Territory of the Pacific Islands, and the Virgin Islands, is not a deposit for the purposes of this part.

(f) *International banking facility deposits.* An "international banking facility time deposit," as defined by the Board of Governors of the Federal Reserve System in Regulation D (12 CFR 204.8(a)(2)), or in any successor regulation, is not a deposit for the purposes of this part.

(g) *Continuation of separate deposit insurance after merger of insured depository institutions.* Whenever the liabilities of one or more insured depository institutions for deposits shall have been assumed by another insured depository institution, whether by merger, consolidation, other statutory assumption, or contract:

(1) The insured status of the institution whose liabilities have been so assumed terminates on the date of receipt by the FDIC of satisfactory evidence of such assumption; and

(2) The separate insurance of deposits so assumed continues for six months from the date of such assumption takes effect or, in the case of a time deposit, the earliest maturity date after the six-month period.

In the case of time deposits which mature within six months of the date such deposits are assumed and which are renewed at the same dollar amount (either with or without accrued interest having been added to the principal amount) and for the same term as the original deposit, the separate insurance is applicable to the renewed deposits until the first maturity date after the six-month period. Time deposits that mature within six months of the deposit assumption and that are renewed on any other basis, or that are not renewed and thereby become demand deposits, are separately insured only until the end of the six-month period.

(h) *Application of state or local law to deposit insurance determinations.* In general, deposit insurance is for the benefit of the owner or owners of funds on deposit. However, while ownership under state law of deposited funds is a necessary condition for deposit insurance, ownership under state law is not sufficient for, or decisive in, determining deposit insurance coverage. Deposit insurance coverage is also a function of the deposit account records of the insured depository institution, of recordkeeping requirements, and of other provisions of this part, which, in the interest of uniform national rules for deposit insurance coverage, are controlling for purposes of determining deposit insurance coverage.

(i) *Determination of the amount of a deposit.* (1) *General rule.* The amount of a deposit is the balance of principal and interest unconditionally credited to the deposit account as of the date of default of the insured depository institution, plus the ascertainable amount of interest to that date, accrued at the contract rate (or the anticipated or announced interest or dividend rate), which the insured depository institution in default would have paid if the deposit had matured on that date and the insured depository institution had not failed. In the absence of any such announced or anticipated interest or dividend rate, the rate for this purpose shall be whatever rate was paid in the immediately preceding payment period.

(2) *Discounted certificates of deposit.* The amount of a certificate of deposit sold by an insured depository institution at a discount from its face value is its original purchase price plus the amount of accrued earnings calculated by compounding interest annually at the rate necessary to increase the original purchase price to the maturity value over the life of the certificate.

(3) *Waiver of minimum requirements.* In the case of a deposit with a fixed payment date, fixed or minimum term or a qualifying or notice period that has not expired as of such date, interest thereon to the date of closing shall be computed according to the terms of the deposit contract as if interest had been credited and as if the deposit could have been withdrawn on such date without any penalty or reduction in the rate of earnings.

§ 330.4 Recognition of deposit ownership and recordkeeping requirements.

(a) *Recognition of deposit ownership.* (1) *Evidence of deposit ownership.* In determining the amount of insurance available to each depositor, the FDIC shall presume that deposited funds are actually owned in the manner indicated on the deposit account records of the insured depository institution. If the FDIC, in its sole discretion, determines that the deposit account records of the insured depository institution are clear and unambiguous, those records shall be considered binding on the depositor, and no other records shall be considered, as to the manner in which the funds are owned. If the deposit account records are ambiguous or unclear as to the manner in which the funds are owned, then the FDIC may, in its sole discretion, consider evidence other than the deposit account records of the insured depository institution for the purpose of establishing the manner in which the funds are owned. Notwithstanding the foregoing, if the FDIC has reason to believe that the insured depository institution's deposit account records misrepresent the actual ownership of deposited funds and such misrepresentation would increase deposit insurance coverage, the FDIC may consider all available evidence and pay claims for insured deposits on the basis of the actual rather than the misrepresented ownership.

(2) *Recognition of deposit ownership in custodial accounts.* In the case of custodial deposits, the interest of each beneficial owner may be determined on a fractional or percentage basis. This may be accomplished in any manner which indicates that where the funds of an owner are commingled with other funds held in a custodial capacity and a portion thereof is placed on deposit in one or more insured depository institutions without allocation, the owner's insured interest in such a deposit in any one insured depository institution would represent, at any given time, the same fractional share as his or her share of the total commingled funds.

(b) *Recordkeeping requirements.* (1) *Disclosure of fiduciary relationships.* The deposit account records of an insured depository institution must expressly disclose, by way of specific references, the existence of any fiduciary relationship including, but not limited to, relationships involving a trustee, agent, nominee, guardian, executor or custodian, pursuant to which funds in an account are deposited and on which a claim for insurance coverage is based. No claim for insurance coverage based on a fiduciary relationship will be recognized if no fiduciary relationship is evident from the deposit account records of the insured depository institution.

(2) *Details of fiduciary relationships.* If the deposit account records of an insured depository institution disclose the existence of a relationship which might provide a basis for additional insurance, the details of the relationship and the interests of other parties in the account must be ascertainable either from the deposit account records of the insured depository institution or from records maintained, in good faith and in the regular course of business, by the depositor or by some person or entity that has undertaken to maintain such records for the depositor.

(3) *Multi-tiered fiduciary relationships.* In deposit accounts where there are multiple levels of fiduciary relationships, there are two alternative methods of satisfying paragraphs (b)(1) and (b)(2) of this section so as to obtain insurance coverage for the interests of the true beneficial owners of a deposit account.

(i) One method is to:

(A) Expressly indicate, on the deposit account records of the insured depository institution, the existence of each and every level of fiduciary relationships; and

(B) Disclose, at each level, the name(s) and interest(s) of the person(s) on whose behalf the party at that level is acting.

(ii) An alternative method is to:

(A) Expressly indicate, on the deposit account records of the insured depository institution, that the depositor is acting in a fiduciary capacity on behalf of certain persons or entities who may, in turn, be acting in a fiduciary capacity for others;

(B) Disclose the existence of additional levels of fiduciary relationships in records, maintained in good faith and in the regular course of business, by parties at subsequent levels; and

(C) Disclose, at each of the levels, the name(s) and interest(s) of the person(s) on whose behalf the party at that level is acting.

No person or entity in the chain of parties will be permitted to claim that they are acting in a fiduciary capacity for others unless the possible existence of such a relationship is revealed at some previous level in the chain.

(4) *Exceptions to recordkeeping requirements.* (i) *Deposits evidenced by negotiable instruments.* If any deposit obligation of an insured depository institution is evidenced by a negotiable certificate of deposit, negotiable draft, negotiable cashier's or officer's check, negotiable certified check, negotiable traveler's check, letter of credit or other negotiable instrument, the FDIC will recognize the owner of such deposit obligation for all purposes of claim for insured deposits to the same extent as if his or her name and interest were disclosed on the records of the insured depository institution: *Provided,* That the instrument was in fact negotiated to such owner prior to the date of default of the insured depository institution. The owner must provide affirmative proof of such negotiation, in a form satisfactory to the FDIC, to substantiate his or her claim. Receipt of a negotiable instrument directly from the insured depository institution in default shall, in no event, be considered a negotiation of said instrument for purposes of this provision.

(ii) *Deposit obligations for payment of items forwarded for collection by depository institution acting as agent.* Where an insured depository institution in default has become obligated for the payment of items forwarded for collection by a depository institution acting solely as agent, the FDIC will recognize the holders of such items for all purposes of claim for insured deposits to the same extent as if their name(s) and interest(s) were disclosed as depositors on the deposit account records of the insured depository institution, when such claim for insured deposits, if otherwise payable, has been established by the execution and delivery of prescribed forms. The FDIC will recognize such depository institution forwarding such items for the holders thereof as agent for such holders for the purpose of making an assignment to the FDIC of their rights against the insured depository institution in default and for the purpose of receiving payment on their behalf.

§ 330.5 Single Ownership accounts.

(a) *Individual accounts.* Funds owned by a natural person and deposited in one or more deposit accounts in his or her own name shall be added together and insured up to $100,000 in the aggregate. If more than one natural person has the right to withdraw funds from an individual account (excluding persons who have the right to withdraw by virtue of a Power of Attorney) the account shall be treated as a joint ownership account and shall be insured in accordance with the provisions of § 330.7 of this part.

(b) *Sole proprietorship accounts.* (1) Funds owned by a business which is a sole proprietorship and deposited in one or more deposit accounts in the name of the business, shall be treated as the individual account(s) of the person who is the sole proprietor, added to any other individual accounts of that person, and insured up to $100,000 in the aggregate.

(2) The term "sole proprietorship" means a form of business in which one

accordance with the provisions of § 330.7 of this part.

as tenants by the entirety, shall be insured separately from any individually

joint accounts held as tenants in common, shall be deemed equal, unless otherwise stated in the insured

account naming themselves as the sole beneficiaries, such account shall not be insured according to the provisions of

any independent activity shall be added together and insured up to $100,000 in the aggregate, separately from the

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(2) The term "sole proprietorship" means a form of business in which one person owns all the assets of the business, in contrast to a partnership or corporation.

(c) *Single-name accounts containing community property funds.* Community property funds deposited into one or more deposit accounts in the name of one member of a husband-wife community shall be treated as the individual account(s) of the named member, added to any other individual accounts of that person, and insured up to $100,000 in the aggregate.

(d) *Accounts of a decedent and accounts held by executors or administrators of a decedent's estate.* Funds held in the name of a decedent or in the name of the executor, administrator, or other personal representative of his or her estate and deposited into one or more deposit accounts shall be added together and insured up to $100,000 in the aggregate. Such deposit insurance shall be separate from any insurance coverage provided for the individual deposit accounts of the executor, administrator, other personal representative or the beneficiaries of the estate.

§ 330.6 Accounts held by an agent, nominee, guardian, custodian or conservator.

(a) *Agency or nominee accounts.* Funds owned by a principal or principals and deposited into one or more deposit accounts in the name of an agent, custodian or nominee, other than an insured depository institution, shall be insured to the same extent as if deposited in the name of the principal(s). When such funds are deposited by an insured depository institution acting in a fiduciary capacity, the insurance coverage shall be governed by the provisions of § 330.10 of this part.

(b) *Guardian, custodian or conservator accounts.* Funds held by a guardian, custodian, or conservator for the benefit of his or her ward, or for the benefit of a minor under the Uniform Gifts to Minors Act, and deposited into one or more accounts in the name of the guardian, custodian or conservator shall, for purposes of this part, be deemed to be agency or nominee accounts and shall be insured in accordance with paragraph (a) of this section.

(c) *Accounts held by fiduciaries on behalf of two or more persons.* Funds held by an agent, nominee, guardian, custodian, conservator or loan servicer, on behalf of two or more persons jointly, shall be treated as a joint ownership account and shall be insured in accordance with the provisions of § 330.7 of this part.

(d) *Mortgage servicing accounts.* Accounts maintained by a mortgage servicer, in a custodial or other fiduciary capacity, which are comprised of payments by mortgagors of principal and interest, shall be added together and insured in the amount of up to $100,000 for the interest of each owner (mortgagee, investor or security holder) in such accounts. Accounts maintained by a mortgage servicer, in a custodial or other fiduciary capacity, which are comprised of payments by mortgagors of taxes and insurance premiums shall be added together and insured in the amount of up to $100,000 for the ownership interest of each mortgagor in such accounts.

(e) *Custodial accounts for American Indians.* Paragraph (a) of this section shall not apply to any interest an individual American Indian may have in funds deposited by the Bureau of Indian Affairs of the United States Department of the Interior (the "BIA") on behalf of that person pursuant to 25 U.S.C. 162(a), or by any other disbursing agent of the United States on behalf of that person pursuant to similar authority, in an insured depository institution. The interest of each American Indian in all such accounts maintained at the same insured depository institution shall be added together and insured, up to $100,000, separately from any other accounts maintained by that person in the same insured depository institution.

(f) *Annuity Contract Accounts.* Funds held by an insurance company or other corporation in a deposit account for the sole purpose of funding life insurance or annuity contracts and any benefits incidential to such contracts, shall be insured in the amount of up to $100,000 per annuitant, provided that, pursuant to a state statute:

(1) The corporation establishes a separate account for such funds; and

(2) The account cannot be charged with the liabilities arising out of any other business of the corporation; and

(3) The account cannot be invaded by other creditors of the corporation in the event that the corporation becomes insolvent and its assets are liquidated.

Such insurance coverage shall be separate from the insurance provided for any other accounts maintained in a different right and capacity by the corporation or the annuitants at the same insured depository institution.

§ 330.7 Joint ownership accounts.

(a) *Separate insurance coverage.* Qualifying joint accounts, whether owned as joint tenants with right of survivorship, as tenants in common or as tenants by the entirety, shall be insured separately from any individually owned (single ownership) deposit accounts maintained by the co-owners. Qualifying joint accounts in the names of both husband and wife which are comprised of community property funds shall be added together and insured up to $100,000, separately from any funds deposited into accounts bearing their individual names.

(b) *Determination of insurance coverage.* All qualifying joint accounts owned by the same combinatin of individuals shall first be added together and insured up to $100,000 in the aggregate. The interests of each co-owner in all qualifying joint accounts, whether owned by the same or different combinations of persons, shall then be added together and the total shall be insured up to $100,000.

(c) *Qualifying joint accounts.* A joint deposit account shall be deemed to be a qualifying joint account, for purposes of this section, only if:

(1) All co-owners of the funds in the account are natural persons; and

(2) Each co-owner has personally signed a deposit account signature card; and

(3) Each co-owner possesses withdrawal rights on the same basis.

The requirement of paragraph (c)(2) of this section relating to account signature cards shall not apply to certificates of deposit, to any deposit obligation evidenced by a negotiable instrument, or to any account maintained by an agent, nominee, guardian, custodian or conservator on behalf of two or more persons, but all such deposits must, in fact, be jointly owned. The signatures of two or more persons on a deposit account signature card shall be conclusive evidence that the account is a joint account unless there is a contrary ownership capability stated on the signature card.

(d) *Nonqualifying joint accounts.* A deposit account held in two or more names which is not a qualifying joint account, for purposes of this section, shall treated as being owned by each named owner, as an individual, corporation, partnership, or unincorporated association, as the case may be, and the actual ownership interest of each individual or entity in such account shall be added to any other single ownership accounts of such individual or other accounts of such entity, and shall be insured in accordance with the provisions of this part governing the insurance of such accounts.

(e) *Determination of Interests.* (1) The interests of the co-owners of qualifying joint accounts held as tenants in common, shall be deemed equal, unless otherwise stated in the insured depository institution's deposit account records.

(2) The rule set forth in paragraph (e)(1) of this section shall apply regardless of whether the conjunction "and" or "or" is used in the title of a joint deposit account, even when both terms are used, such as in the case of a joint deposit account with three or more co-owners.

§ 330.8 Revocable trust accounts.

(a) *General rule.* Funds owned by an individual and deposited into any account commonly referred to as a tentative or "Totten" trust account, "payable-on-death" account, revocable trust account, or similar account evidencing an intention that upon the death of the owner, the funds shall belong to such owner's spouse, or to one or more children or grandchildren of the owner, shall be insured in the amount of up to $100,000 in the aggregate as to each such named beneficiary, separately from any other accounts of the owner or the beneficiaries. Such intention must be manifested in the title of the account using commonly accepted terms such as, but not limited to, "in trust for," "as trustee for," "payable-on-death to," or any acronym therefor, and the beneficiaries of the account must be specifically named in the deposit account records of the insured depository institution. The settlor of a revocable trust account shall be presumed to own the funds deposited into the account.

(b) *Interests of nonqualifying beneficiaries.* If a named beneficiary of such an account is not a spouse, child, or grandchild of one or more owners, the funds corresponding to that beneficiary, who is not within the qualifying degree of kinship, shall be treated as individually owned (single ownership) accounts of such owner(s), aggregated with any other single ownership accounts of such owners, and insured up to $100,000 per owner.

(c) *Joint revocable trust accounts.* Where an account described in paragraph (a) of this section is established by more than one owner and held for the benefit of others, some or all of whom are within the qualifying degree of kinship, the respective interests of each owner (which shall be deemed equal unless otherwise stated in the insured depository institution's deposit account records) held for the benefit of each qualifying beneficiary shall be separately insured up to $100,000. However, where a husband and a wife establish a revocable trust account naming themselves as the sole beneficiaries, such account shall not be insured according to the provisions of this section but shall instead be insured in accordance with the provisions of section 330.7 of this part.

(d) *Definition of "children" and "grandchildren".* For the purpose of establishing the qualifying degree of kinship set forth in paragraph (a) of this section, the term "children" includes any natural-born, adopted and step-children of the owner and the term "grandchildren" includes natural-born, adopted, or step-children of any of the owner's children.

§ 330.9 Accounts of a corporation, partnership or unincorporated association.

(a) *Corporate accounts.* (1) The deposit accounts of a corporation engaged in any independent activity shall be added together and insured up to $100,000 in the aggregate. If a corporation has divisions or units which are not separately incorporated, the deposit accounts of those divisions or units shall be added to any other deposit accounts of the corporation. If a corporation maintains deposit accounts in a representative or fiduciary capacity, such accounts shall not be treated as the deposit accounts of the corporation but shall be treated as fiduciary accounts and insured in accordance with the provisions of § 330.6 of this part.

(2) Notwithstanding any other provision of this part, any trust or other business arrangement which has filed or is required to file a registration statement with the Securities and Exchange Commission pursuant to section 8 of the Investment Company Act of 1940 or that would be required so to register but for the fact it is not created under the laws of the United States or a state or but for sections 2(b), 3(c)(1), or 6(a)(1) of that act shall be deemed to be a corporation for purposes of determining deposit insurance coverage.

(b) *Partnership accounts.* The deposit accounts of a partnership engaged in any independent activity shall be added together and insured up to $100,000 in the aggregate. Such insurance coverage shall be separate from any insurance provided for individually owned (single ownership) accounts maintained by the individual partners. A partnership shall be deemed to exist, for purposes of this paragraph, anytime there is an association of two or more persons or entities formed to carry on, as co-owners, an unincorporated business for profit.

(c) *Unincorporated association accounts.* The deposit accounts of an unincorporated association engaged in any independent activity shall be added together and insured up to $100,000 in the aggregate, separately from the accounts of the person(s) or entity(ies) comprising the unincorporated association. An unincorporated association shall be deemed to exist, for purposes of this paragraph, whenever there is an association of two or more persons formed for some religious, educational, charitable, social or other noncommercial purpose.

(d) *Definition of "independent activity".* A corporation, partnership or unincorporated association shall be deemed to be engaged in an "independent activity," for purposes of this section, if the entity is operated primarily for some purpose other than to increase deposit insurance. The deposit accounts of an entity which is not engaged in an independent activity shall be deemed to be owned by the person or persons owning the corporation or comprising the partnership or unincorporated association, and, for deposit insurance purposes, the interest of each person in such a deposit account shall be added to any other deposit accounts individually owned by that person and insured up to $100,000 in the aggregate.

§ 330.10 Accounts held by depository institutions in fiduciary capacities.

(a) *Separate insurance coverage.* Funds held by an insured depository institution in an agency or other fiduciary capacity, whether held in its trust department, held or deposited in any other department of the fiduciary institution, or deposited by the fiduciary institution in another insured depository institution, shall be insured up to $100,000 for each owner or beneficiary represented. This insurance shall be separate from, and in addition to, the insurance provided for any other deposits of the owners or the beneficiaries.

(b) *Determination of interest.* The insurance for funds held by an insured depository institution in a fiduciary capacity shall be determined in accordance with the following rules:

(1) *Allocated funds of a trust estate.* If trust funds of a particular trust estate are allocated by the fiduciary and deposited, the insurance with respect to such trust estate shall be determined by ascertaining the amount of its funds allocated, deposited and remaining to the credit of the claimant as fiduciary at the insured depository institution in default.

(2) *Interest of a trust estate in unallocated trust funds.* If funds of a particular trust estate are commingled

with funds of other trust estates and deposited by the fiduciary institution in but does not include any interest retained by the settlor.

shall not exceed $100,000 in the aggregate.

Regulations (26 CFR 20.2031-7) or any similar present worth or life expectancy tables as may be published by the

regardless of whether they are time, savings or demand deposits.

"official custodian". In order to qualify as an "official custodian" for the

with funds of other trust estates and deposited by the fiduciary institution in one or more insured depository institutions to the credit of the depositing institution as fiduciary, without allocation of specific amounts from the particular trust estate to an account in such institution(s), the deposit with respect to such estate in any insured depository institution in default will be the amount which will bear the same ratio to all unallocated funds of the trust estate for which the fiduciary is accountable as the entire unallocated trust funds to the credit of the fiduciary institution or trust company in the insured depository institution in default will bear to the entire amount of such funds so deposited by the fiduciary in all depositories (including unallocated trust funds in the fiduciary institution).

(c) *Limitation on applicability.* This section shall not apply to deposits of trust funds belonging to a trust which is classified as a corporation under § 330.9(b) of this part.

§ 330.11 Irrevocable trust accounts.

(a) *General rule.* Funds representing the non-contingent trust interest(s) of a beneficiary deposited into one or more deposit accounts established pursuant to one or more irrevocable trust agreements created by the same settlor(s) (grantor(s)) shall be added together and insured up to $100,000 in the aggregate. Such insurance coverage shall be separate from the coverage provided for other accounts maintained by the settlor(s), trustee(s) or beneficiary(ies) of the irrevocable trust(s) at the same insured depository institution. Each trust interest in any irrevocable trust established by two or more settlors shall be deemed to be derived from each settlor pro rata to his or her contribution to the trust.

(b) *Treatment of contingent trust interests.* In the case of any trust in which certain trust interests do not qualify as non-contingent trust interests, the funds representing those interests shall be added together and insured up to $100,000 in the aggregate. Such insurance coverage shall be in addition to the coverage provided for the funds representing non-contingent trust interests which are insured pursuant to paragraph (a) of this section.

(c) *Definitions of "trust interest" and "non-contingent trust interest".* For the purposes of this section:

(1) The term "trust interest" means the interest of a beneficiary in an irrevocable express trust (other than an employee benefit plan) created either by written trust instrument or by statute, but does not include any interest retained by the settlor.

(2) The term "non-contingent trust interest" means a trust interest capable of determination without evaluation of contingencies except for those covered by the present worth tables and rules of calculation for their use set forth in § 20.2031-7 of the Federal Estate Tax Regulations (26 CFR 20.2031-7) or any similar present worth or life expectancy tables which may be adopted by the Internal Revenue Service.

§ 330.12 Employee benefit plan accounts.

(a) *General rule.* Funds representing the non-contingent interest of a beneficiary in an employee benefit plan, which are deposited in one or more deposit accounts, shall be aggregated with any other deposited funds representing such interests of the same beneficiary in other employee benefit plans established by the same employer or employee organization and the total shall be insured up to $100,000. Such insurance coverage shall be separate from the coverage provided for other types of accounts maintained by the employer, employee organization, trustee, administrator, or beneficiary of such plan(s) at the same insured depository institution.

(b) *Determination of interests.*—(1) *Defined contribution plans.* The value of an employee's non-contingent interest in a defined contribution plan shall be deemed to be the beneficiary's account balance as of the date of default of the insured depository institution, regardless of whether said amount was derived, in whole or in part, from contributions of the employee and/or the employer to the account.

(2) *Defined benefit plans.* The value of an employee's non-contingent interest in a defined benefit plan shall be deemed to be the present value of the beneficiary's interest in the plan, evaluated in accordance with the method of calculation ordinarily used under such plan, as of the date of default of the insured depository institution.

(3) *Presumption of vested interests.* For the purposes of this section, all interests of beneficiaries in an employee benefit plan shall be deemed to be fully vested as of the date of default of the insured depository institution.

(c) *Treatment of contingent interests.* In the event that employees' interests in an employee benefit plan are not capable of evaluation in accordance with the rules contained in this section, or an account established for any such plan includes amounts for future participants in the plan, payment by the FDIC with respect to all such interests shall not exceed $100,000 in the aggregate.

(d) *Overfunded pension plan deposits.* Any portion(s) of an employee benefit plan's deposits which are not attributable to the interests of the beneficiaries under the plan shall be deemed attributable to the overfunded portion of the plan's assets and shall be aggregated and insured up to $100,000, separately from any other deposits.

(e) *Deposits of deferred compensation plans sponsored by state or local governments, or tax-exempt organizations.* Funds representing the interests of employees under a deferred compensation plan of a state or local government, or a tax-exempt organization, which plan qualifies under section 457 of the Internal Revenue Code of 1954 (26 U.S.C. 457), shall be added together and insured up to $100,000 in the aggregate. Such insurance coverage shall be separate from the insurance provided for any other accounts maintained by the state government, local government or tax-exempt organization at the same insured depository institution. Notwithstanding any other provision of this part, the interests of the individual participants in such plans shall not be separately insured.

(f) *Definitions of "employee benefit plan," "employee organization" and "non-contingent interest".* For the purposes of this section:

(1) The term "employee benefit plan" means a pension, profit-sharing or stock bonus plan established by an employer or employee organization for the benefit of employees, including plans qualifying under sections 401(a) or 401(k) of the Internal Revenue Code of 1954 (26 U.S.C. 401(a), 401(k)), but does not include any plans qualifying under section 457 of the Internal Revenue Code of 1954 (26 U.S.C. 457).

(2) The term "employee organization" means any labor union, organization, employee representation committee, association, group, or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning an employee benefit plan, or other matters incidental to employment relationships; or any employees' beneficiary association organized for the purpose, in whole or in part, of establishing such a plan.

(3) The term "non-contingent interest" means an interest capable of determination without evaluation of contingencies except for those covered by the present worth tables and rules of calculation for their use set forth in § 20.2031-7 of the Federal Estate Tax Regulations (26 CFR 20.2031-7) or any similar present worth or life expectancy tables as may be published by the Internal Revenue Service.

§ 330.13 IRA and Keogh accounts.

(a) *Individual Retirement Account.* All vested interests, excluding remainder interests, of any one natural person in time and savings deposits in an insured depository institution which qualify under section 408(a) of the Internal Revenue Code of 1954 (26 U.S.C. 408(a)) shall be added together and insured up to $100,000 in the aggregate, separately from any other accounts held by, or any other interests in such accounts owned by, the beneficiary, trustee, or custodian at the same insured depository institution.

(b) *Keogh Plan accounts.* All vested interests, excluding remainder interests, of any one natural person in time and savings deposits in an insured depository institution which qualify under section 401(d) of the Internal Revenue Code of 1954 (26 U.S.C. 401(d)) shall be added together and insured up to $100,000 in the aggregate, separately from any other accounts held by, or other interests in accounts owned by, the beneficiary, trustee, or custodian at the same insured depository institution.

§ 330.14 Public unit accounts.

(a) *Extent of insurance coverage.* (1) *Accounts of the United States.* Each official custodian of funds of the United States lawfully depositing such funds in an insured depository institution shall be separately insured in the amount of:

(i) Up to $100,000 in the aggregate for all time and savings deposits; and

(ii) Up to $100,000 in the aggregate for all demand deposits.

(2) *Accounts of a state, county, municipality or political subdivision.* Each official custodian of funds of any state of the United States, or any county, municipality, or political subdivision thereof, lawfully depositing such funds in an insured depository institution in the state comprising the public unit or wherein the public unit is located (including any insured depository institution having a branch in said state) shall be separately insured in the amount of:

(i) Up to $100,000 in the aggregate for all time and savings deposits; and

(ii) Up to $100,000 in the aggregate for all demand deposits.

In addition, each such official custodian depositing such funds in an insured depository institution outside of the state comprising the public unit or wherein the public unit is located, shall be insured in the amount of up to $100,000 in the aggregate for all deposits, regardless of whether they are time, savings or demand deposits.

(3) *Accounts of the District of Columbia.* Each official custodian of funds of the District of Columbia lawfully depositing such funds in an insured depository institution in the District of Columbia (including an insured depository institution having a branch in the District of Columbia) shall be separately insured in the amount of:

(i) Up to $100,000 in the aggregate for all time and savings deposits; and

(ii) Up to $100,000 in the aggregate for all demand deposits.

In addition, each such official custodian depositing such funds in an insured depository institution outside of the District of Columbia shall be insured in the amount of up to $100,000 in the aggregate for all deposits, regardless of whether they are time, savings or demand deposits.

(4) *Accounts of the Commonwealth of Puerto Rico and other government possessions and territories.* Each official custodian of funds of the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, Guam, or The Commonwealth of the Northern Mariana Islands, or of any county, municipality, or political subdivision thereof lawfully depositing such funds in an insured depository institution in Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, Guam, or The Commonwealth of the Northern Mariana Islands, respectively, shall be separately insured in the amount of:

(i) Up to $100,000 in the aggregate for all time and savings deposits; and

(ii) Up to $100,000 in the aggregate for all demand deposits.

In addition, each such official custodian depositing such funds in an insured depository institution outside of the commonwealth, possession or territory comprising the public unit or wherein the public unit is located, shall be insured in the amount of up to $100,000 in the aggregate for all deposits, regardless of whether they are time, savings or demand deposits.

(5) *Accounts of an Indian tribe.* Each official custodian of funds of an Indian tribe (as defined in 25 U.S.C. 1452(c)), including an agency thereof having official custody of tribal funds, lawfully depositing the same in an insured depository institution shall be separately insured in the amount of:

(i) Up to $100,000 in the aggregate for all time and savings deposits; and

(ii) Up to $100,000 in the aggregate for all demand deposits.

(b) *Rules relating to the "official custodian".* (1) *Qualification for an "official custodian".* In order to qualify as an "official custodian" for the purposes of paragraph (a) of this section, such custodian must have plenary authority, including control, over funds owned by the public unit which the custodian is appointed or elected to serve. Control of public funds includes possession, as well as the authority to establish accounts for such funds in insured depository institutions and to make deposits, withdrawals, and disbursements of such funds.

(2) *Official custodian of the funds of more than one public unit.* For the purposes of paragraph (a) of this section, if the same person is an official custodian of the funds of more than one public unit, he or she shall be separately insured with respect to the funds held by him or her for each such public unit, but shall not be separately insured by virtue of holding different offices in such public unit or, except as provided in paragraph (c) of this section, holding such funds for different purposes.

(3) *Split of authority or control over public unit funds.* If the exercise of authority or control over the funds of a public unit requires action by, or the consent of, two or more officers, employees, or agents of such public unit, then they will be treated as one "official custodian" for the purposes of this section.

(c) *Public bond issues.* Where an officer, agent or employee of a public unit has custody of certain funds which by law or under a bond indenture are required to be set aside to discharge at maturity a debt owed to the holders of notes or bonds issued by the public unit, any deposit of such funds in an insured depository institution shall be deemed to be a deposit by a trustee of trust funds of which the noteholders or bondholders are pro rata beneficiaries, and the beneficial interest of each noteholder or bondholder in the deposit shall be separately insured up to $100,000.

(d) *Definition of "political subdivision".* The term "political subdivision" includes drainage, irrigation, navigation, improvement, levee, sanitary, school or power districts, and bridge or port authorities and other special districts created by state statute or compacts between the states. It also includes any subdivision of a public unit mentioned in paragraphs (a)(2), (a)(3) and (a)(4) of this section or any principal department of such public unit:

(1) The creation of which subdivision on department has been expressly authorized by the law of such public unit;

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(2) To which some functions of government have been delegated by such law; and

(3) Which is empowered to exercise exclusive control over funds for its exclusive use.

By order of the Board of Directors.

Dated at Washington, DC., this 5th day of December 1989.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 89-29536 Filed 12-20-89; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 942

[Docket No. 902 39-9121]

RIN 0648-AB50

Cordell Bank National Marine Sanctuary Regulations

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce (DOC).

ACTION: Notice of withdrawal of proposed regulations.

SUMMARY: The National Oceanic and Atmospheric Administration, by this notice, is withdrawing its proposal to amend its regulations governing the conduct of activities in the Cordell Bank National Marine Sanctuary to prohibit hydrocarbon (*i.e.*, oil and gas) exploration, development, and production activities in any area of the Sanctuary (54 FR 22449, May 24, 1989). The Sanctuary is an area of marine waters encompassing 307.05 square nautical miles surrounding Cordell Bank, which is located approximately 50 nautical miles west-northwest of San Francisco, California. This proposal was superseded by section 2(a) of H.J. Res. 281 when it was signed into law by the President on August 9, 1989 (Pub. L. No. 101-74; 103 Stat. 554). Section 2(a) bans all oil, gas, or mineral activities in the Sanctury effective upon enactment. Section 2(b) requires the Secretary of Commerce to revise the regulations governing the conduct of activities in the Cordell Bank National Marine Sanctuary to conform to the legislative ban within 120 days of August 9. Since section 2 supersedes the previous discretionary notice-and-comment rulemaking and leaves the Secretary no discretion but to conform the existing regulations to the language of the statutory ban, no purpose would be served by allowing the notice-and-comment rulemaking to run its course. Within the 120-day allowed period, NOAA will issue a final rule making the required conforming change. The Secretary would like to thank all who have submitted written comments on the proposed rule.

FOR FURTHER INFORMATION CONTACT: Joseph A. Uravitch, Chief, Marine and Estuarine Management Division, OCRM, NOS, NOAA, 1825 Connecticut Avenue, NW., Washington, DC 20235, (202/673-5126).

Dated: December 13, 1989.

Virginia K. Tippie,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 89-29663 Filed 12-20-89; 8:45 am]

BILLING CODE 3510-08-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1500

Test Methods for Simulating Use and Abuse of Toys, Games, and Other Articles Intended for Use by Children

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to amend regulations prescribing apparatus and procedure for tests to simulate use and abuse of toys and children's articles. These tests include an impact test, which consists of dropping the object to be tested from a specified height onto a specified surface a specified number of times. Existing provisions of the regulations describing the surface for the impact test specify that a ⅛-inch thickness of vinyl-asbestos tile over a base of concrete at least 2.5 inches thick will be used by the Commission when it conducts compliance testing. Vinyl-asbestos tile is no longer generally available. The Commission proposes to amend those regulations to specify a commercially available material, asbestos-free vinyl-composition tile, as the covering of the surface used for the impact test. The Commission is proposing this amendment to enable manufacturers, importers, and sellers of toys and children's articles to duplicate the surface to be used by the Commission for the impact test.

DATE: Written comments and submissions in response to this notice must be received by the Commission by March 6, 1990, to be considered in this proceeding.

ADDRESS: Comments should be mailed, preferably in five (5) copies to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 492-6800, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 528, 5401 Westbard Avenue, Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: Elaine A. Tyrrell, Project Manager, Office of Program Management and Budget, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492-6554.

SUPPLEMENTARY INFORMATION:

A. Background

Provisions of the Federal Hazardous Substances Act (FHSA) (15 U.S.C. 1261 *et seq.*) authorize the Commission to issue rules banning toys and children's articles which present a "mechanical hazard" during normal use or when subjected to "reasonably foreseeable damage or abuse." See sections 2(f)(1)(D), 2(q)(1)(A), 2(s), and 3(e) of the FHSA (15 U.S.C. 1261(f)(1)(D), (q)(1)(A), (s), and 1262(e)).

In 1975, the Commission issued regulations which prescribe tests to simulate normal use and reasonably foreseeable abuse to which toys and children's articles may be subjected. These regulations were issued by a notice published in the **Federal Register** of January 7, 1975 (40 FR 1480), and are codified at 16 CFR 1500.50 through 1500.53.

These regulations specify the apparatus and procedure which the Commission will use for a series of tests to expose potential hazards resulting from normal use or the reasonably foreseeable abuse of the item being tested. Provisions of 16 CFR 1500.51 apply to toys and other articles intended for use by children 18 months of age or less. Provisions of § 1500.52 apply to toys and other articles intended for use by children over 18 months but less than 36 months of age. Provisions of § 1500.53 apply to toys and articles intended for children over 36 months of age not over 96 months of age.

The regulations codified at 16 CFR 1500.50 through 1500.53 do not contain pass/fail criteria, and do not by themselves ban any toy or children's article. Instead, they are used in conjunction with specific banning regulations issued under the authority of the FHSA to identify toys and children's articles which present a particular mechanical hazard.

For example, toys and other articles intended for children under three years of age which present a choking, aspiration, or ingestion hazard because of small parts are banned by provisions of 16 CFR 1501.18 and part 1501. Part 1501 prescribes a test to determine whether an article is hazardous to children younger than three years of age because the article or any of its components is too small. The test for small parts, set forth at 16 CFR 1501.4, requires the article being tested to be subjected to specified provisions of the "use and abuse" tests codified at 16 CFR 1500.51 and 1500.52. The article being tested must pass the test for small parts both before and after "use and abuse" testing. See 16 CFR 1501.4(b).

B. Impact Test

The "use and abuse" tests for each age group include an impact test. See 16 CFR 1500.51(b), 1500.52(b), and 1500.53(b). The impact test consists of dropping the article being tested from a specified height onto a specified surface a specified number of times. The surface specified for the impact tests is a ⅛-inch thickness of "type IV vinyl-asbestos tile, as specified in Federal Specification SS-T-312A," over a concrete base at least 2.5 inches thick. See 16 CFR 1500.51(b)(2), 1500.52(b)(2), and 1500.53(b)(2).

Neither the small parts regulation nor the "use and abuse" tests require manufacturers, importers, distributors, or retailers to conduct premarket testing of toys and children's articles. Instead, the FHSA and these rules provide that products must meet all applicable requirements if tested by the Commission. However, many firms that import, manufacture, or sell toys and children's articles conduct tests of the products they handle to ensure that those items comply with all applicable requirements issued under provisions of the FHSA. Additionally, many independent laboratories offer testing services to toy manufacturers and importers.

Vinyl-asbestos tile is no longer generally available. Consequently, importers and manufacturers of toys, laboratories, and other firms which test toys and children's articles are not able to construct or replace the surface specified for the impact test by 16 CFR 1500.51(b), 1500.52(b), and 1500.53(b).

The Commission has conducted a series of tests and analyses to find a commercially available material to replace vinyl-asbestos tile as a component of the surface specified for the impact test. These tests and analyses demonstrate that an impact surface consisting of vinyl-composition tile over a concrete base has the same resilience as an impact surface of vinyl-asbestos tile over concrete. Consequently, impact tests conducted by dropping an object onto a surface of vinyl-composition tile over a concrete base will yield the same results as those obtained by dropping the same object onto an impact vinyl-asbestos tile over concrete. The tests and analyses conducted by the Commission are described in a memorandum from John Preston, ESMT, to Alan Schoem, CAAL, entitled "Response to PSA Request No. 3802, Change Specification for Floor Tile Referenced in Use & Abuse Test," dated June 20, 1988; a memorandum from Carl A. Fenstermacher, ESEL, to John T. Preston, ESMT, entitled "Impact Studies on Tile Samples," dated April 27, 1987; and Engineering Laboratory Report 546403, dated April 27, 1987. These documents are available for inspection in the Office of the Secretary, Consumer Product Safety Commission, Room 528B, 5401 Westbard Avenue, Bethesda, Maryland, from 8:30 a.m. to 5 p.m., Monday through Friday.

The vinyl-composition tile tested by the Commission is described as "Type IV—Vinyl-composition, Composition 1—Asbestos-free" tile in Paragraphs 1.2 and 3.1.4 of the Federal Specification, entitled Tile, Floor: Asphalt, Rubber, Vinyl, Vinyl-Asbestos, SS-T-312B, issued on October 10, 1974, as amended by Interim Amendment-1(YD), issued on November 14, 1979. These documents may be ordered from the General Services Administration, Specifications Unit, Room 6654, 7th and D Streets SW., Washington, DC 20407. The price of the specification and amendment is currently $1.00.

For this reason, the Commission proposes to amend provisions of 16 CFR 1500.51(b)(2), 1500.52(b)(2), and 1500.53(b)(2) to specify that the surface used for the impact test shall consist of a ⅛-inch thickness of asbestos-free vinyl-composition tile, as described in the 1979 amendment of Federal Specification SS-T-312B, over a concrete base at least 2.5 inches thick.

C. Statutory Authority

Sections 10(a) of the FHSA (15 U.S.C. 1269(a)) and 30(a) of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2079(a)) authorize the Commission to issue regulations for the "efficient enforcement" of the FHSA. The Commission is conducting this proceeding under the authority of section 10(a) of the FHSA in accordance with the rulemaking procedures specified by the Administrative Procedure Act (APA) (5 U.S.C. 553). Those procedures consist of publishing a notice of proposed rulemaking in the **Federal Register**; soliciting written comments from all interested parties; and issuing a final rule with an effective date at least 30 days after publication of the final rule in the **Federal Register**. As noted above, the "use and abuse" tests, set forth in 16 CFR 1500.50 through 1500.53, do not ban any toy or children's article. For that reason, provisions of section 3(e) of the FHSA (15 U.S.C. 1262(e)) for issuance of a rule to ban a toy or children's article presenting an electrical, mechanical, or thermal hazard are not applicable to this proceeding.

D. Impact on Small Businesses

Section 603 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 603) requires agencies to prepare and make available for public comment an initial regulatory flexibility analysis of the impact of a proposed rule on small entities, including small businesses. Section 605(b) of the RFA provides that an agency is not required to prepare a regulatory flexibility analysis when the agency certifies that the rule will not, if issued, have a significant economic impact on a substantial number of small entities. In accordance with section 605(b) of the RFA, the Commission certifies that the amendment proposed below, if issued on a final basis, will not have a significant economic impact on a substantial number of small entities.

The proposal published below would substitute commercially available vinyl-composition tile for a material which is generally unavailable as a component of the surface used for the impact tests specified by 16 CFR 1500.51(b), 1500.52(b), and 1500.53(b). The Commission's purpose in this proceeding is to enable manufacturers, importers, and sellers of toys and children's articles to duplicate the impact surface to be used by the Commission when performing the "use and abuse" tests, specified by 16 CFR 1500.51 through 1500.53, if those firms elect to conduct any of those tests. As noted above, provisions of the FHSA and 16 CFR 1500.50 through 1500.53 do not require any person or firm to conduct premarket tests of any toy or children's article. Toys and children's articles must comply with applicable requirements when tested by the Commission.

If the amendment proposed below is issued on a final basis, firms which have constructed the impact surface using the vinyl-asbestos tile specified by existing provisions of the "use and abuse" tests

will not be required to replace that tile with the asbestos-free vinyl-composition tile described in this proposal. As noted above, tests and analyses performed by the Commission demonstrate that impact tests conducted by dropping objects onto a surface covered with vinyl-asbestos tile will yield the same results as those obtained dropping the same objects onto a surface covered with asbestos-free vinyl-composition tile. If the proposed amendment is issued on a final basis, the Commission will recognize impact tests conducted on a surface covered with vinyl-asbestos tile meeting the requirements of Federal Specification SS–T–312A as equivalent to impact tests conducted on a surface covered with asbestos-free vinyl composition tile.

E. Environmental Considerations

The proposed amendments fall within the categories of Commission actions described at 16 CFR 1021.5(c) that have little or no potential for affecting the human environment. The only purpose of the proposed amendments is to modify the apparatus used by the Commission to conduct one of the "use and abuse" tests, specified by 16 CFR 1500.51 through 1500.53. Because the proposal, if issued on a final basis, will not require any person or firm to change or replace the tile used to conduct the impact test, the proposed action does not have the potential for producing significant environmental effects, and neither an environmental assessment nor an environmental impact statement is required.

[Note: Although not required to do so by the proposed amendment, any firm contemplating removal of vinyl-asbestos tile should not sand that tile or its backing. Sanding vinyl-asbestos tile or its backing can place fine particles of asbestos in the air. These asbestos particles, if inhaled, may cause cancer. If removal is contemplated, contact a certified asbestos removal consultant or contractor. Do not remove tile without appropriate precautions.]

F. Effective Date

If the amendment proposed below is issued on a final basis, the Commission proposes to establish an effective date 60 days after issuance of the final amendment. That period of time will be adequate to allow the Commission to install the non-asbestos title specified by the proposed amendment, and to allow any firm or laboratory desiring to duplicate the Commission's test facility to obtain and install the same kind of tile.

G. Conclusion and Proposal

In summary, existing regulations which prescribe the apparatus to be used by the Commission when conducting "use and abuse" testing of toys and children's articles require vinyl-asbestos tile as the surface for impact tests. Firms and laboratories desiring the equipment used by the Commission for impact testing may be unable to purchase vinyl-asbestos tile. The Commission proposes to amend the regulations to prescribe a non-asbestos vinyl composition tile as the surface to be used by the Commission for impact tests.

If the amendment proposed below is issued on a final basis, the Commission will use a non-asbestos vinyl composition tile as the impact surface when conducting compliance tests of toys and children's articles. Firms and laboratories which perform "use and abuse" testing will then be able to purchase the same type of tile as that used by the Commission's laboratory. Firms and laboratories which now have facilities with an impact test surface made with vinyl-asbestos tile will not be required to purchase non-asbestos vinyl composition tile if the proposed amendment is issued on a final basis. The Commission has performed tests and analyses which demonstrate that impact tests conducted by dropping an object onto a surface of vinyl-asbestos tile will yield the same results as those obtained by dropping the same object onto a surface covered with non-asbestos composition tile.

PART 1500—[AMENDED]

Therefore, in accordance with provisions of the Federal Hazardous Substances Act (15 U.S.C. 1279(a)) and under the authority of the Consumer Product Safety Act (15 U.S.C. 2079(a)), the Commission hereby proposes to amend chapter II, subchapter C, part 1500 of title 16 of the Code of Federal Regulations, as follows:

1. The authority citation for part 1500 continues to read as follows:

Authority: 15 U.S.C. 1261–1276.

2. Section 1500.51(b)(2) is proposed to be revised as follows:

§ 1500.51 Test methods for simulating use and abuse of toys and other articles intended for use by children 18 months of age or less.

* * * * *

(b) *Impact test* * * *

(2) *Impact medium.* The impact medium shall consist of a ⅛-inch (0.3-centimeter) nominal thickness of type IV vinyl-composition tile, composition 1-asbestos free, as specified by paragraphs 1.2 and 3.1.4 of Interim Amendment–1 (YD), dated November 14, 1979, to the Federal Specification entitled Tile, Floor: Asphalt, Rubber, Vinyl, Vinyl-Asbestos, SS-T-312B, dated October 10, 1974,[1] over at least a 2.5-inch (6.4 centimeter) thickness of concrete. The impact area shall be at least 3 square feet (0.3 square meter).

3. Section 1500.52(b)(2) is proposed to be revised as follows:

§ 1500.52 Test methods for simulating use and abuse of toys and other articles intended for use by children over 18 but not over 36 months of age.

* * * * *

(b) *Impact test.* * * *

(2) *Impact medium.* The impact medium shall consist of a ⅛-inch (0.3-centimeter) nominal thickness of type IV vinyl composition tile, composition 1-asbestos-free, as specified by paragraphs 1.2 and 3.1.4 of Interim Amendment–1 (YD), dated November 14, 1979, to the Federal Specification entitled tile, Floor: Asphalt, Rubber, Vinyl, Vinyl-Asbestos, SS-T-312B, dated October 10, 1974,[1] over at least a 2.5-inch (6.4 centimeter) thickness of concrete. The impact area shall be at least 3 square feet (0.3 square meter).

4. Section 1500.53(b) (2) is proposed to be revised as follows:

§ 1500.53 Test methods for simulating use and abuse of toys and other articles intended for use by children over 36 but not over 96 months of age.

* * * * *

(b) Impact test* * *

(2) *Impact medium.* The impact medium shall consist of a ⅛-inch (0.3-centimeter) nominal thickness of type IV vinyl composition tile, composition 1-asbestos-free, as specified by paragraphs 1.2 and 3.1.4 of Interim Amendment–1 (YD), dated November 14, 1979, to the Federal Specification entitled Tile, Floor: Asphalt, Rubber, Vinyl, Vinyl-Asbestos, SS-T-312B, dated October 10, 1974,[1] over at least a 2.5-inch (6.4 centimeter) thickness of concrete. The impact area shall be at least 3 square feet (0.3 square meter).

Interested persons are invited to submit written comments by March 6, 1990. Comments may be accompanied

[1] These documents may be ordered from the General Services Administration, Specifications Unit, Room 6654, 7th and D Streets SW., Washington, DC 20407. The price of the specification and amendment is $6.00.

by written data, views, and arguments and should be addressed to the Secretary, Consumer Product Safety Commission, Washington, DC 20207. (15 U.S.C. 1269(a); 15 U.S.C. 2079(a)).

Dated: December 12, 1989.

Sadye E. Dunn,

Secretary Consumer Product Safety Commission.

[FR Doc. 89-29371 Filed 12-20-89; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 226

[Docket No. 89N-0390]

Current Good Manufacturing Practice for Type A Medicated Articles; Laboratory Controls

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing a conforming amendment for a provision of its current good manufacturing practice regulations for Type A medicated articles. The provision currently states "* * * expiration dates shall appear on the labels of the Type A medicated article(s) when needed * * *." FDA is proposing to remove the phrase "when needed" to make the provision of the regulations consistent with the agency's intent, with its interpretation that expiration dates must always appear on the labels of Type A medicated articles, and with other provisions of the regulations.

DATES: Comments by February 20, 1990.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Andrew J. Beaulieu, Center for Veterinary Medicine (HFV–210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3044.

SUPPLEMENTARY INFORMATION: In the Federal Register of March 3, 1986 (51 FR 7382), FDA published the "Second Generation" final rule which revised the procedures and requirements concerning conditions of approval for the manufacture of animal feeds containing new animal drugs. That document unequivocally states in its preamble (51 FR 7382 at 7386) that § 226.58 of the current good manufacturing practice (CGMP) regulations (21 CFR 226.58) requires expiration dates for Type A medicated articles. Currently, however, § 226.58(d) states that "Suitable expiration dates shall appear on the labels of the Type A medicated article(s) when needed to assure that the articles meet the appropriate standards of identity, strength, quality, and purity at the time of use." The "Second Generation" final rule inadvertently failed to revise § 226.58(d) by removing the phrase "when needed." Although the section contains that phrase, the agency has in several instances made clear its interpretation of § 226.58(d) as requiring that the labels of Type A medicated articles always bear expiration dates.

The "Second Generation" final rule (51 FR 7382 at 7391) did revise 21 CFR 514.1(b)(5)(x) to include the statement "Expiration dates shall be proposed for finished pharmaceutical dosage forms and Type A medicated articles." Accordingly, the agency is proposing, through notice and comment rulemaking, to amend § 226.58(d) by removing the phrase "when needed" so that the regulation conforms to the clear intent of the "Second Generation" preamble and 21 CFR 514.1(b)(5)(x). The agency has decided to rectify the discrepancy through informal rulemaking not because it feels such procedures are required but to provide additional notice and opportunity for concerned parties to comment.

Interested persons may, on or before February 20, 1990, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 226

Animal drugs, Animal feeds, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 226 be amended as follows:

PART 226—CURRENT GOOD MANUFACTURING PRACTICE FOR TYPE A MEDICATED ARTICLES

1. The authority citation for 21 CFR part 226 continues to read as follows:

Authority: Secs. 501, 502, 512, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 360b, 371, 374).

§ 226.58 [Amended]

2. Section 226.58 *Laboratory controls* is amended in paragraph (d) by removing the phrase "when needed".

Dated: November 17, 1989.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-29667 Filed 12-20-89; 8:45 am]

BILLING CODE 4160-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-564, RM-7016]

Radio Broadcasting Services; Forrest City, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Forrest City Broadcasting Company, licensee of Station KBFC(FM), Channel 228A, Forrest City, Arkansas, seeking the substitution of FM Channel 228C3 for Channel 228A and modification of its license accordingly. Coordinates for this proposal are 34–52–36 and 90–55–00.

DATES: Comments must be filed on or before February 2, 1990, and reply comments on or before February 20, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Eugene T. Smith, Esq., 715 G Street, SE., Washington, DC 20003.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–564 adopted November 29, 1989, and released December 12, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also by purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800,

2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory

Chasse consistent with the Commission's minimum distance separation requirements at a site 9.2

47 CFR Part 73

[MM Docket No. 89-571, RM-7033]

List of Subjects in 47 CFR Part 73:

Radio Broadcasting.

2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-29708 Filed 12-20-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-565, RM-6950]

Radio Broadcasting Services; Tahoe City, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Mid-South Broadcasting Company, licensee of Station KRZQ–FM, Channel 243C2, Tahoe City, California, seeking the substitution of FM Channel 243C1 for Channel 243C2 and modification of its license accordingly. Coordinates for this proposal are 39–16–22 and 119–42–13.

DATES: Comments must be filed on or before February 2, 1990, and reply comments on or before February 20, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: William R. Richardson, Jr., Esq., Wilmer, Cutler & Pickering, 2445 M Street, NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–565 adopted November 29, 1989, and released December 12, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-29709 Filed 12-20-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-566, RM-7013]

Radio Broadcasting Services; Good Hope, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Community Broadcasting Company, Inc., proposing the allotment of Channel 222A to Good Hope, Georgia, as that community's first local FM service. The coordinates for the proposal are North Latitude 33–45–54 and West Longitude 83–33–45.

DATES: Comments must be filed on or before February 2, 1990, and reply comments on or before February 20, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Samuel Miller, Miller & Fields, P.C., P.O. Box 33003, Washington, DC 20033 (Attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–566, adopted November 29, 1989, and released December 12, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-29710 Filed 12-20-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-569, RM-7025]

Radio Broadcasting Services; Belle Chasse, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by First Belle Chasse Media Group, proposing the substitution of Channel 275C3 for Channel 275A at Belle Chasse, Louisiana, and the modification of its construction permit accordingly. Channel 275C3 can be allotted to Belle Chasse consistent with the Commission's minimum distance separation requirements at a site 9.2 kilometers (5.7 miles) east of the city, at coordinates 29–52–06 and 89–53–38.

DATES: Comments must be filed on or before February 5, 1990, and reply comments on or before February 20, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: David D. Oxenford, Esquire, Fisher, Wayland, Cooper & Leader, 1255 23rd Street, NW., Suite 800, Washington, DC 20037 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–569, adopted November 30, 1989, and released December 14, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, *all ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-29711 Filed 12-20-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-571, RM-7033]

Radio Broadcasting Services; Benton, Tn

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Stonewood Communications Corporation proposing the allotment of Channel 226A to Benton, Tennessee, as that community's first local FM service. A site restriction of 0.9 kilometers (0.6 miles) southwest of the city is required. The coordinates are 35–09–54 and 84–39–35.

DATES: Comments must be filed on or before February 5, 1990, and reply comments on or before February 20, 1990.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Stanley G. Emert, Jr., Esquire, Lockridge & Becker, P.C., Post Office Box 107, Knoxville, TN 37901 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Particia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of proposed Rule Making, MM Docket 89–571, adopted November 30, 1989, and released December 14, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contractors are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73:

Radio Broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-29712 Filed 12-20-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-570, RM-7061]

Radio Broadcasting Services; Lafayette, TN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Ivan Davis proposing the allotment of Channel 281A to Lafayette, Tennessee, as that community's first local FM service. The proposed channel allotment can be made in compliance with § 73.207 of the Commission's Rules at the city reference coordinates. The coordinates are 36–31–24 and 86–01–36.

DATES: Comments must be filed on or before February 5, 1990, and reply comments on or before February 20, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel of consultant, as follows: Timothy K. Brady, Esquire, Post Office Box 986, Brentwood, TN 37027–0986 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–570, adopted November 30, 1989, and released December 14, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do no apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed

Rule Making is issued until the matter is no longer subject to Commission

area FM service. Channel 231C3 can be allotted to Canaan consistent with the Commission's minimum distance

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety

March 21, 1990. The proposed effective date is 30 days after the date of publication of the final rule.

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Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-29713 Filed 12-20-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR 73

[MM Docket No. 89-568, RM-7024]

Radio Broadcasting Services; Clifton, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Bosque Broadcasting Corp., proposing the substitution of Channel 277C3 for Channel 277A at Clifton, Texas, and the modification of its construction permit for Station KWOW (FM) to specify Channel 277C3. Channel 277C3 can be allotted to Clifton consistent with the Commission's minimum distance separation requirements at a site 12.7 kilometers (7.9 miles) east of the city, at coordinates 31-47-30 and 97-26-35.

DATES: Comments must be filed on or before February 2, 1990, and reply comments on or before February 20, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Arthur Blooston, Esquire, Caressa L. Davison, Esquire, Blooston, Mordkofsky, Jackson and Dickens, 2120 L Street, NW., Washington, DC 20037 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-568, adopted November 29, 1989, and released December 12, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73.

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-29714 Filed 12-20-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-567, RM-7029]

Radio Broadcasting Services; Electra, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Albert L. Crain, proposing the substitution of Channel 235C2 for Channel 236A at Electra, Texas, and the modification of his construction permit for Station KWTA(FM) at Electra to specify operation on the higher powered channel. Channel 235C2 can be allotted to Electra consistent with the Commission's minimum distance separation requirements at coordinates 34-06-03 and 98-57-15.

DATES: Comments must be filed on or before February 2, 1990, and reply comments on or before February 20, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Albert L. Crain, Route 5, Box 755-1, Byhalia, MS 38611.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is synopsis of the Commission's Notice of Proposed Rule Making, MM Docket 89-567, adopted November 29, 1989, and released December 12, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocated Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-29715 Filed 12-20-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-572; RM-7020]

Radio Broadcasting Services; Canaan, VT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Four Seasons Communications, Inc., proposing the substitution of Channel 231C3 for Channel 231A at Canaan, Vermont, and the modification of its construction permit for Station WKQC(FM) to specify operation on the higher powered channel. The proposal could provide the community with its first wide coverage area FM service. Channel 231C3 can be allotted to Canaan consistent with the Commission's minimum distance separation requirements at the station's current transmitter site. The coordinates are 45-01-20 and 71-25-05.

DATES: Comments must be filed on or before February 5, 1990, and reply comments on or before February 20, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Timothy D. Martz, President, Four Seasons Communications, Inc., P.O. Box 36, Fairfield, CT 06430 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-572, adopted November 30, 1989, and released December 14, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-29716 Filed 12-20-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 572

[Docket No. 89-11; Notice 01]

RIN 2127-AC10

Anthropomorphic Test Dummies; 9-Month-Old Child

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to establish design and performance specifications for a test dummy representing a 9-month old child. NHTSA currently sets specifications for test dummies representing a 6-month old infant and 3-year-old child, and has published proposed specifications earlier this year for a 6-year-old child dummy. NHTSA tentatively believes this array of test devices is needed to evaluate in a satisfactory manner the performance of appropriate child restraint systems when subjected to the crash forces generated by a certain group of child occupants, and the impact responses of a child restrained in a system. Research has indicated that restraint systems can differ significantly in their crash protection depending on the height and weight of the child occupant.

The specifications proposed in this notice are intended to facilitate the evaluation of crash protection afforded to children of the height and weight of an average 9-month-old. Any research into crash protection systems must have available a test instrument that provides accurate and reliable data on the level of protection provided by the system. That instrument must also be representative of the human occupant, so that researchers can understand the degree to which the system would protect its occupant in an actual crash. NHTSA tentatively concludes that the dummy described in this notice satisfies those criteria for a 9-month-old.

NHTSA is issuing this notice to solicit public comments on its tentative choice of a test dummy. If the agency adopts the dummy for research purposes, NHTSA will be able to develop test data using the dummy that would assist the agency in determining whether the dummy should be used in agency compliance testing of child restraint systems.

DATE: Comments on this notice must be received by the agency no later than March 21, 1990. The proposed effective date is 30 days after the date of publication of the final rule.

ADDRESSES: Comments should refer to the docket number and notice number and be submitted in writing to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-5267. Docket hours are 9:30 a.m. to 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Stan Backaitis, Office of Vehicle Safety Standards, NRM-12, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. Telephone: (202) 366-4912.

SUPPLEMENTARY INFORMATION: This notice proposes to establish design and performance specifications for a test dummy representing a 9-month-old child. NHTSA currently sets specifications for test dummies representing a 6-month old infant and 3-year-old child (49 CFR part 572), and published proposed specifications earlier this year for a 6-year-old child dummy (54 FR 13901; April 6, 1989). NHTSA tentatively concludes an array of test devices is needed to evaluate in a satisfactory manner the capability of child restraint systems to withstand the loads generated by occupants in a crash, and the impact responses of a child restrained in a system. Research has indicated that child restraint systems can differ significantly in their occupant crash protection depending on the height and weight of the child occupant.

Background

Currently, Standard No. 213 specifies only two dummies for conducting compliance testing of child restraint systems. Selection of either of the dummies depends on the weight of the child for whom the restraint is recommended. Restraint systems that are recommended for use by children in a weight range that includes children weighing 20 pounds or less are tested by the agency with an uninstrumented dummy representing a 6-month-old infant (weighing 17.4 pounds and standing 26 inches tall). Restraints recommended for children weighing more than 20 pounds are tested with an instrumented dummy representing a 3-year-old (weighing approximately 33 pounds and standing 38 inches tall). The agency tentatively believes a 9-month old-child dummy is needed to provide information on a restraint system's effectiveness in preventing or reducing injuries for children between 18 and 25 pounds. Moreover, the proposed dummy

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would be NHTSA's first instrumented test surrogate representing a child younger than 3 years old. The agency believes that the ability to measure the effects of forces imposed on a child during a crash would provide a fuller evaluation of the actual safety performance of the system.

NHTSA is issuing this proposal to acquire general information about the performance of child restraint systems for a previously-unexamined child occupant age group. In proposing to use the dummy, the agency also wishes to obtain information specific to comments NHTSA received in connection with a 1986 rulemaking amending Standard No. 213. The amendment requires most child restraint systems equipped with a tether strap to pass the 30 mile per hour (mph) compliance test with the tether strap unattached. (51 FR 5335; February 13, 1986.) A number of commenters on the proposed amendment expressed concern that, with respect to a shield-type booster seat restraint system (which is tested with the NHTSA-specified 3-year-old (33 pounds) child dummy), the shield does not provide any crotch restraint. Thus, commenters believed that it is possible that small children could submarine under the short shields on booster seats (i.e., slide too far downward underneath the shield and forward, legs first), leaving these children completely unrestrained in a crash. NHTSA stated its intention to investigate this concern about some booster seats. This notice is intended as a step toward that goal. The agency also wishes to study other potential safety problems (e.g., structural failures; dummy ejections and excessive excursions) that could arise when the restraint is occupied by a child in the weight class recommended for the restraint, but which are not readily apparent during tests using the currently-specified NHTSA child dummies. In order to explore and resolve these safety concerns, the agency needs a child surrogate, such as the proposed dummy, whose human dimensions and dynamic responses correspond to those of small children. The dummy could be used to develop improved restraints for children.

Summary of the Proposed Rule

NHTSA has tentatively chosen the design and performance specifications developed and used by the United Nations Economic Commission of Europe (ECE) for its 9-month-old child test dummy. As described in detail below in this notice, NHTSA has conducted a substantial number of tests to determine the suitability of the ECE dummy as an instrument in child protection research. The agency believes that the resulting test data shows that the ECE dummy is suitable for use.

The specifications for the 9-month-old child dummy would consist of the following two elements: a drawing package containing all of the technical details of the dummy parts and dummy assembly; and a set of master patterns for all molded and cast parts of the dummy. Those patterns make possible the rapid reproduction of those parts. In addition, there would be a user's manual, containing instructions for assembly, disassembly, use, adjustment, calibration and maintenance of dummies. These drawings and specifications would ensure that the dummies would vary little in their construction and use. Performance criteria would serve as calibration checks and further assure the uniformity of dummy assembly, construction, and instrumentation. As a result, the repeatability of performance in dynamic tests would be ensured.

The dummy would be instrumented with accelerometers for measurement of accelerations in the head and chest during impacts. The proposal specifies the manner and location of installation of the instrumentation to reduce variability in their measurements resulting from differences in location and mounting.

Drawings and specifications for the 9-month-old child dummy are available for examination in NHTSA's Docket Section. Copies of those materials and an operation and maintenance manual can be obtained from Rowley-Scher Reprographics, Inc., 1216 K St., NW., Washington, DC 20002, telephone (202) 628-6667. In addition, patterns for all cast and molded parts are available on a loan basis from NHTSA's Office of Vehicle Safety Standards.

Description

As noted above, the proposed 9-month-old child dummy is identical to the existing ECE dummy specified in ECE Regulation No. 44. The dummy has been used in dynamic compliance tests in ECE member countries since 1981. The dummy weighs approximately 20 pounds and stands 28 inches tall (its sitting height is approximately 17.7 inches). The dummy is instrumented for chest acceleration and is capable of measuring abdominal intrusion, and the accelerometer mount in the head is suitable for installation of acceleration sensors. The dummy's weight can be adjusted from 20 up to 25 pounds. It is designed and manufactured by Institunt Voor Wegtransportmiddelen (TNO), Delft, Netherlands.

NHTSA tentatively concludes that the proposed dummy's specifications are similar to those of the existing part 572 subpart B and C test dummies, in that the proposed specifications describe a dummy that is complete in its design details, can adequately withstand the test load imposed during impact testing, has accurately described body parts and size (anthropometry) and mass distribution, and can be easily instrumented for testing. It simulates the inertial and kinematic responses of a child during impact testing and produces consistent head and chest acceleration measurements during impact testing. NHTSA also tentatively concludes that adoption of the proposed dummy, as designed and manufactured by TNO, would be cost efficient since the cost of developing a new, alternative test dummy would be substantially reduced or eliminated. Adopting the ECE-specified dummy would also be consistent with NHTSA's goals of promoting international harmonization to the extent possible.

Biofidelity

Biofidelity is a measure of how human-like a test dummy would be in an impact NHTSA's evaluation of the biofidelity of the ECE dummy included examinations of the dummy's anthropometry and its kinematics and response measurements in dynamic tests. Available anthropometric data indicate that the proposed dummy corresponds well to a 50th percentile 9-month-old child. ("Physical Characteristics of Children," Report PB-242-221, Consumer Product Safety Commission; "Source Data of Infant and Child Measurements Interim Data, 1972," Bureau of Product Safety, Food and Drug Administration.) NHTSA's evaluation of the ECE dummy included high-speed motion picture photography of a dynamic test of the part 572 specified 3-year-old and 6-month-old dummies and the 9-month-old dummy. A comparison of kinematic responses of these dummies indicates that the 9-month-old surrogate is as representative of human responses as are the child dummies currently specified in part 572.

Further, the head and chest acceleration measurements of the 9-month-old dummy are reasonably equivalent to measurements obtained with the part 572 3-year-old dummy. Given the firmer and stiffer skeletal structure of a 3-year-old as compared to a 9-month-old, the acceleration pulse duration for the older surrogate should be shorter, reflecting the stiffer structure. In pendulum impact tests the pulse width of the head acceleration response at the 20g level is 3.5 to 4.5 milliseconds for the 3-year-old dummy and 5.0 to 5.5 milliseconds for the 9-month-old dummy. For chest acceleration at the 30g level, the pulse duration for the 3-year-old is 2.5 to 4 milliseconds; for the 9-month-old, 5 to 6 milliseconds. These test results reflect directionally correct responses, and establish a reasonable correspondence between impact responses of the two dummies.

Repeatability and Reproducibility

NHTSA studied the control of the variation of dummy responses for the same device (repeatability) and among different devices (reproducibility) by comparing the coefficient of variation for a sample of data obtained by testing two dummies in five sled impacts. (Repeatability and Reproducibility of the TNO P3/4 Dummy in Frontal Impacts, [Docket 89-11, General Reference].) The dummies were each secured in a child restraint, and tested according to the conditions and procedures set forth in ECE Regulation No. 44. In these tests, the variabilities from mean values for each dummy were not greater than ±5.8 percent for head peak resultant acceleration, and ±6.5 percent for chest peak resultant acceleration measurements. The variabilities for both dummies were not greater than ±7.4 percent for head acceleration and ±5.6 percent for chest acceleration measurements. These tests show that the variability of the ECE dummy in compliance-type testing is good given that other commercially available dummies have a variability of ±10 percent, and the variability of the instrumentation system in use is about ±5 percent. Also, these results compare favorably with the measurements for the 3-year-old dummy, which has a repeatability of ±6.7 percent for the head and ±4.1 percent for the chest, and reproducibility of ±5.6 for the head and ±4.1 percent for the chest (Report DOT-HS-805-071, June 1979). The agency notes that the 3-year-old child dummy's repeatability and reproducibility have been considered fully acceptable by NHTSA and the industry for testing child restraints since 1980.

Qualification Tests

Before a test dummy can be used in a dynamic test, the dummy must be examined to determined whether it conforms to all of the specifications set out in the blueprints for the dummy. In addition, the dummy must be carefully examined to ensure that it has been correctly assembled. Finally, the test dummy must pass qualification tests to measure the performance of the test dummy in a controlled laboratory impact test. These tests ensure that the dummy responds in an accurate and reliable manner.

The agency is proposing qualification procedures that are virtually identical to those set forth for the existing 3-year-old dummy. The proposed qualification test would use readily available compliance test equipment, instrumentation and procedures that are already used in qualification testing of other part 572 test dummies. Information on part 572 testing indicates that those qualification procedures reflect well expected kinematic impact responses of the dummy in a crash environment and are also good indicators of the uniformity of performance response of individual test dummies. In tests of the 9-month-old dummy involving five tests of one dummy measuring head and chest acceleration, the calibration test data showed that the results were repeatable within 1.8 percent for head acceleration and 3.5 percent for chest acceleration. (Performance Characteristics of the Economic Commission of Europe (ECE) 9-Month-Old-Child Test Dummy (UM-HSRI-82-7.) These repeatability values are well within the repeatability norms of the other currently specified part 572 dummies.

Impact Analyses

NHTSA has considered costs and other factors associated with this proposal, and concludes that this proposed rule is neither major within the meaning of Executive Order 12291 nor significant within the meaning of the Department of Transportation's regulatory policies and procedures.

The specifications proposed in this notice are intended to facilitate the evaluation of crash protection afforded to children of the height and weight of an average 9-month-old. If this proposed rule becomes final, manufacturers would not be required to use the dummy. The rule would affect only those businesses that choose to manufacture child restraints and/or test them with the dummy. If a manufacturer wishes to use the dummy, the agency tentatively believes the tests would provide more useful data on the safety of restrained children in the 18-25 pound weight range than using any other currently-specified part 572 dummies in tests.

However, in the event NHTSA adopts the proposed dummy and finds through its use that some child restraint systems are deficient in protecting children, NHTSA would consider amending Standard 213 to use this dummy in compliance tests. The agency will evaluate the costs and other impacts of such rulemaking at that time.

NHTSA estimates the cost of a 9-month-old child test dummy to be about $4,500, based on current monetary exchange rates. The cost of the specified 3-year-old dummy is about $9,700. Currently, testing laboratories buy the dummy with the associated instrumentation, and then charge child seat manufacturers about $1800 per test for compliance-type testing. If the agency adopts the proposed 9-month-old child dummy, a child restraint or vehicle manufacturer may voluntarily use the dummy for purposes of evaluating child restraint systems. However, they would not be required by the rule to do so. NHTSA believes that the use of the specified dummy should not increase costs of child restraints, since most, if not all, restraint manufacturers already test their products with other currently-specified part 572 and other unspecified child dummies. Because the total impacts of this proposal are minimal, a preliminary regulatory evaluation is not necessary.

NHTSA has considered the impact of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. There are only two child anthropomorphic test device developers/manufacturers currently operating in this country. While both are small businesses, neither are involved in the manufacture of dummies of the type and size of the one proposed in this notice. The proposed dummy is currently made in the Netherlands. If the proposal is adopted, NHTSA anticipates that the number of dummies purchased in the U.S. for the first two years following the final rule should not exceed 10 per year. Thereafter, the agency expects only two to four units would be purchased in this country per year. NHTSA believes this number is so small that it would be unlikely that U.S. companies, including small businesses, would find production of this dummy in this country profitable. NHTSA also believes that use of the proposed dummy would not affect the sales or use of other currently-specified part 572 child dummies, since the latter ones would continue to be used in testing child restraint systems. Small organizations and small governmental jurisdictions that deal with automotive child safety should not be significantly affected since the potential cost increments associated with this proposed action should have nearly negligible effects on the purchase price of applicable child restraint systems, if at all. In view of the above, the agency

has not prepared an initial regulatory flexibility analysis.

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant effect on the quality of the human environment.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Comments

NHTSA solicits public comments on this notice. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the advance proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments on the advance proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 572

Motor vehicle safety.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR part 572 as follows:

PART 572—[AMENDED]

1. The authority citation for part 572 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, and 1407; delegation of authority at 49 CFR 1.50.

2. 49 CFR part 572 would be amended by adding a new subpart H, consisting of §§ 572.60 through 572.66, to read as follows:

Subpart H—9-Month-Old Child

Sec.
572.60 Incorporated materials.
572.61 General description.
572.62 Head.
572.63 Head-Neck.
572.64 Thorax.
572.65 Lumbar spine and pelvis.
572.66 Test conditions and instrumentation.

Subpart H—9-Month-Old Child.

§ 572.60 Incorporated materials.

(a) The drawings and specifications referred to in this regulation that are not set forth in full are hereby incorporated in this part by reference. These materials are thereby made part of this regulation. The Director of the Federal Register has approved the materials incorporated by reference. For materials subject to change, only the specific version approved by the Director of the Federal Register and specified in the regulation are incorporated. A notice of any change will be published in the **Federl Register** as a convenience to the reader, the materials incorporated by reference are listed in the Finding Aid Table found at the end of this volume of the Code of Federal Regulations.

(b) The drawings, specifications, and assembly manual incorporated in this part by reference are available for examination in the general reference section of Docket 89–11, Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC. Copies may be obtained from Rowley-Scher Reprographics, Inc., 1216 K Street, NW., Washington, DC 20002, telephone (202) 628–6667.

§ 572.61 General description.

(a) The dummy consists of:

(1) The assembly specified in drawing LP 1049/A, which is described in its entirety by means of approximately 54 separate drawings and specifications, 1049/1 through 1049/54; and

(2) A parts list LP 1049/0 (5 sheets); and,

(3) A Construction Manual dated January 1979 ("The TNO Child Dummies P3/4, P3, P6 and P10").

(b) Adjacent dummy segments are joined in a manner such that throughout the range of motion and also under simulated crash-impact conditions there is no contact between metallic elements except for contacts that exist under static conditions.

(c) The structural properties of the dummy are such that the dummy conforms to the part in every respect both before and after being used in dynamic tests such as that specified in Standard No. 213 of this chapter (§ 571.213).

§ 572.62 Head.

(a) The head impact is carried out on the head of a complete dummy assembly as shown in drawing LP 1049/A.

(b) When the head of an upright seated dummy is impacted in accordance with paragraph (c) of this section by a test probe conforming to § 572.21(a) at 7 fps, the peak resultant acceleration measured by the acceleration sensors mounted in the headform in accordance with § 572.66(b) shall be not less than 50.0g and not more than 58.0g. The recorded acceleration-time curve for this test shall be unimodal at, or above the 20.0g level and shall lie at, or above that level for an interval not less than 5.0 and not more than 6.5 milliseconds. The lateral acceleration vector shall not exceed 7.0g.

(c) *Test procedure.* (1) Seat the dummy on a seating surface having a back support as specified in § 572 66(h)(1), orient the dummy in accordance with § 572.66(h)(2), and adjust the joints of the limbs in accordance with § 572.66(f).

(2) Adjust the test probe so that its longitudinal centerline is at the forehead at the point of orthogonal intersection of the head midsagittal plane and the transverse plane which is perpendicular to the "Z" axis of the head (longitudinal centerline of the skull anchor) and is 2.9±0.2 inches below the top of the head measured along the head's "Z" axis.

(3) Adjust the dummy so that the surface area on the forehead immediately adjacent to the projected

longitudinal centerline of the test probe is vertical.

(4) Impact the head with the test probe so that at the moment of impact the probe's longitudinal centerline falls within 2 degrees of a horizontal line in the dummy's midsagittal plane.

(5) Guide the probe during impact so that it moves with no significant lateral, vertical, or rotational movement.

(6) Allow a time period of at least 20 minutes between successive tests of the head.

§ 572.63 Head-Neck.

(a) The head-neck assembly shown in drawing 1049/A consists of parts specified as items 1 through 16 and 58.

(b) When the head-neck assembly is tested in accordance with paragraph (c) of this section, the head shall rotate in reference to the pendulum's longitudinal centerline a total of 85 degrees ± 6 degrees about its center of gravity, with the chordal displacement measured at its center of gravity not less than 4.0 inches and not more than 5.6 inches at maximum rotation. The chordal displacement at time T is defined as the straight line distance between: (1) The position relative to the pendulum arm of the head center of gravity at time zero, and (2) the position relative to the pendulum arm of the head center of gravity at time T as illustrated in Figure 3 (49 CFR 572.11). The peak resultant acceleration recorded at the location of the accelerometers mounted in the headform in accordance with § 572.66(b) shall not exceed 55g. The pendulum shall not reverse direction until the head's center of gravity returns to the original zero time position relative to the pendulum arm.

(c) *Test procedure.* (1) Mount the head and neck assembly on a rigid pendulum as specified in Figure 4 (§ 572.11), so that the head's midsagittal plane is vertical and coincides with the plane of motion of the pendulum's longitudinal centerline. Mount the neck directly to the pendulum as shown in Figure 15 (§ 572.21).

(2) Release the pendulum and allow it to fall freely from a height such that the velocity at impact is 17.00 ± 1.0 feet per second (fps), measured at the center of the accelerometer specified in Figure 4 (§ 572.11).

(3) Decelerate the pendulum to a stop with an acceleration-time pulse described as follows:

(i) Establish 5g and 20g levels on the a-t curve.

(ii) Establish T_1 at the point where the rising a-t curve first crosses the 5g level; t_3 at the point where the rising a-t curve first crosses the 20g level; t_5 at the point where the decaying a-t curve first crosses the 20g level; and t_4 at the point where the decaying a-t curve first crosses the 5g level.

(iii) t_5-t_3, shall be not more than 3 milliseconds.

(iv) t_5-t_3, shall be not less than 16 and not more than 20 milliseconds.

(v) t_4-t_3, shall be not more than 7 milliseconds.

(vi) The average deceleration between t_3 and t_5 shall be not less than 22g and not more than 40g.

(4) Allow the neck to flex without contact of the head or neck with any object other than the pendulum arm.

(5) Allow a time period of at least 30 minutes between successive tests of the head and neck.

§ 572.64 Thorax.

(a) The thorax impact is carried out on the sternum of a complete dummy assembly as shown in drawing LP 1049/A.

(b) When impacted by a test probe conforming to § 572.21(a) at 13.0 ± .3 fps in accordance with paragraph (c) of this section, the peak resultant accelerations at the location of the accelerometers mounted in the chest cavity in accordance with § 572.66(c) shall be not less than 65g and not more than 75g. The acceleration-time curve for the test shall be unimodal at or above the 30g level, and shall lie at or above the 30g level for an interval not less than 5 milliseconds, and not more than 6 milliseconds. The lateral acceleration shall not exceed 7g.

(c) *Test procedure.* (1) With the completely assembled dummy seated without back support on a surface as specified in § 572.66(h)(1) and oriented as specified in § 572.66(h)(2), adjust the dummy's arms and legs until they are extended horizontally forward parallel to the midsagittal plane. The joints of the limbs are adjusted in accordance with § 572.66(f).

(2) Establish the impact point on the sternum at the chest midsagittal plane so that the impact point is 8.2 inches above the seating surface when the back surface of the dummy's thoracic spine is vertical.

(3) Adjust the dummy so that the tangent plane at the surface on the thorax immediately adjacent to the designated impact point is vertical and parallel to the face of the test probe.

(4) Place the longitudinal center line of the test probe to coincide with the designated impact point and align the test probe so that at impact the probe's longitudinal centerline coincides within 2 degrees with the line formed by intersection of the horizontal and midsagittal planes passing through the designated impact point.

(5) Impact the thorax with the test probe so that at the moment of impact the probe's longitudinal centerline falls within 2 degrees of a horizontal line in the dummy midsagittal plane.

(6) Guide the probe during impact so that it moves with no significant lateral, vertical, or rotational movement.

(7) Allow a time period of at least 30 minutes between successive tests of the chest.

§ 572.65 Lumbar spine and pelvis.

(a) The lumbar spine flexure test is conducted on a partial dummy assembly as shown in drawing LP 1049/A, but with removed arms which consist of parts identified as items 17 through 30 and all head-neck parts described as items 1 through 13 and 59 through 63.

(b) When subjected to continuously applied force in accordance with paragraph (c) of this section, the lumbar spine assembly shall flex by an amount that permits the thoracic spine to rotate from its initial position in accordance with Figure No. 18 of § 572.21 (49 CFR part 572) by 40 degrees at a force level of not less than 16 pounds and not more than 22 pounds, and straighten upon removal of the force to within 5 degrees of its initial position.

(c) *Test procedure.* (1) The dummy is positioned in an upright seated position on a seat as indicated in Figure No. 18 of § 572.21 (lower legs do not need to be removed, but must be clamped firmly to the seating surface), ensuring that all dummy component surfaces are clean, dry and untreated unless otherwise specified.

(2) The dummy is firmly affixed to the seating surface through the pelvis at the hip joints by suitable clamps that also prevent any relative motion with respect to the upper legs during the test in § 572.65(c)(3). A pull attachment is installed at the neck to torso juncture as shown in Figure 18 of § 572.21.

(3) Flex the thorax forward 50 degrees and then rearward as necessary to return it to its initial position.

(4) Apply a forward pull force in the midsagittal plane at the top of the neck adapter so that at 40 degrees of the lumbar spine flexion the applied force is perpendicular to the thoracic spine box. Apply the force at any torso deflection rate between 0.5 and 1.5 degrees per second up to 40 degrees of flexion but no further; continue to apply for 10 seconds the force necessary to maintain 40 degrees of flexion, and record the highest applied force at that time. Release all force as rapidly as possible and measure the return angle three minutes after release.

§ 572.66 Test conditions and instrumentation.

(a) The test probe used for head and

not exceed 2g throughout the range of limb motion.

(g) Performance tests are conducted at

ACTION: Notice of finding on petition.

SUMMARY: The Fish and Wildlife Service

"the temporary declaration by the Secretaries of a new specie/sub-specie (sic) of the *Pinus* species pending the

The charcteristics that Mr. Littlejohn ascribes to the old pines in north Atlanta are typical of trees

present substantial information indicating that the action requested may be warranted.

§ 572.68 Test conditions and instrumentation.

(a) The test probe used for head and thoracic impact tests is a cylinder three inches in diameter, 13.8 inches long and weighs 10 lbs., 6 ozs. Its impacting end has a flat right face that is rigid and that has an edge radius of 0.5 inches.

(b) Accelerometer assembly Part No. SA 572.S1 is mounted in the head on the accelerometer mount (shown in Drawing LP 1049/A and identified as item 2) so that their sensitive axes intersect within 0.2 inches at the point of the intersection of a line connecting the longitudinal centerlines of two screws (LP 1049/A, item 3) attaching the accelerometer mount in the dummy head with the midsagittal plane of the head. One accelerometer is aligned with its sensitive axis perpendicular to the horizontal bulkhead in the midsagittal plane, another accelerometer is aligned with its sensitive axis parallel to the horizontal bulkhead and perpendicular to the midsagittal plane, and a third accelerometer is aligned with its sensitive axis parallel to the horizontal bulkhead in the midsagittal plane.

(c) Accelerometer assembly part No. SA 572.S1 is mounted in the chest cavity on the provided mount located on the vertical anterior surface (item 16 detail "A" of drawing LP 1049/A) within 0.2 inches of the mid-point of the mounting bracket in the thorax midsagittal plane located within 0.65 inches anterior to the frontal vertical surface of the mounting bracket (detail A of item 16). One accelerometer has its sensitive axis oriented parallel to the attachment surface in the midsagittal plane, another accelerometer has its sensitive axis oriented parallel to the attachment surface and perpendicular to the midsagittal plane and a third accelerometer has its sensitive axis oriented perpendicular to the attachment surface in the midsagittal plane.

(d) The outputs of acceleration devices installed in the dummy and in the test apparatus specified by this part are recorded in individual data channels that conform to the requirements of SAE Recommended Practice J211, June 1980. with channel classes as follows:

(1) Head acceleration—Class 1000
(2) Pendulum acceleration—Class 60
(3) Thorax acceleration—Class 180

(e) The mountings to which the acceleration sensors are attached shall have no resonance frequency within a range of 3 times the frequency range of the applicable channel class.

(f) Limb joints are set at lg. barely restraining the weight of the limb when it is extended horizontally. The force required to move a limb segment does not exceed 2g throughout the range of limb motion.

(g) Performance tests are conducted at any temperature from 60 °F to 78 °F and at any relative humidity from 10 percent to 70 percent after exposure of the dummy to these conditions for a period of not less than 4 hours.

(h) For the performance tests specified in §§ 572.62, 572.64, and 572.65, the dummy is positioned in accordance with Figures No. 16, 17 and 18 of § 572.21 (49 CFR part 572) as follows:

(1) The dummy is seated on a flat, rigid, clean, dry, horizontal surface of teflon sheeting with a smoothness of 40 microinches and whose length and width dimensions are not less than 16 inches, so that the dummy's midsagittal plane is vertical and centered on the test surface. For head tests, the seat has a vertical back support whose top is 10.3 ± 0.2 inches above the seating surface. The rear surfaces of the dummy's back and buttocks are touching the back support as shown in Figure No. 16 of § 572.21. For thorax and lumbar spine tests, the seating surface is without the back support as shown in Figures No. 17 and 18 of § 572.21.

(2) The dummy is adjusted for head and thorax impact tests and for lumbar flexion tests so that the rear surfaces of the shoulders and buttocks are tangent to a transverse vertical plane.

(3) The arms and legs are positioned so that their centerlines are in planes parallel to the midsagittal plane.

(4) Performance tests of the same component, segment, assembly or fully assembled dummy are separated in time by a period of not less than 20 minutes unless otherwise specified.

(5) Surfaces of the dummy components are not painted except as specified in this part or in drawings subtended by the part.

Issued on December 13, 1989.

Barry Felrice,
Associate Administrator for Rulemaking.
[FR Doc. 89-29485 Filed 12-20-89; 8:45 am]
BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Finding on a Petition to List an Undescribed Southern Pine

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of finding on petition.

SUMMARY: The Fish and Wildlife Service announces a 90-day petition finding for a petition to amend the List of Endangered and Threatened Plants. The Service finds that the petitioner has not presented substantial information to show that the pine trees in question represent a potentially valid new species, or that their listing as an endangered or threatened species may otherwise be warranted.

DATES: The finding announced in this notice was made in October 1989. Comments and information may be submitted until further notice.

ADDRESSES: Information, comments, or questions should be sent to the Field Supervisor, Jacksonville Field Office, U.S. Fish and Wildlife Service, 3100 University Boulevard South, Suite 120, Jacksonville, Florida 32216.

FOR FURTHER INFORMATION CONTACT: David J. Wesley, Field Supervisor, at the above address (telephone: 904/791-2580 or FTS 946-2580).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973 (Act), as amended in 1982 (16 U.S.C. 1531 *et seq.*) requires that the U.S. Fish and Wildlife Service (Service) make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If the finding is positive, the Service is also required to promptly commence a review of the status of the species.

On August 14, 1989, the Fish and Wildlife Service received two letters from Mr. Charles E. Littlejohn of Atlanta, Georgia, on dated July 26 and addressed to the Secretaries of Agriculture, Commerce, Interior, and Transportation; the second dated July 28 and addressed to the Secretary of Agriculture. The first letter pointed out to the Federal government "the existence of a rare and threatened specie (sic) or sub-specie (sic) of Southern Pine believed to be of the *Pinus taeda* or *Pinus virginiana*, or more likely, an ancient genetic form of one or both of those species, which I shall refer to as the hypothetical *Pinus petitjonii*, subject to Federal research and determination." Mr. Littlejohn sought

"the temporary declaration by the Secretaries of a new specie/sub-specie (sic) of the *Pinus* species pending the determination of the need to place this hypothetical *Pinus petitjonii* specie (sic) and its habitat under protection of the ESA (Endangered Sepcies Act) as appropriate to preserve the specie (sic)."

Mr. Littlejohn noted that a recently deceased pine tree in his yard had been 255 years old, that other equally old trees existed in the area, that they grew very slowly, with dense ring counts, and he claimed that the timber of these old trees had superior structural strength and, because of its heavy resin content, had great resistance to insect and fungus damage both as living trees and as timber. He further claimed that such "primitive" trees are genetically superior to younger trees of the same species, and that the development of "managed forests" and genetic research may have genetically degraded the native species of pine. He also noted that an expressway to be built through northern Atlanta would destroy old pines.

The characteristics that Mr. Littlejohn ascribes to the old pines in north Atlanta are typical of trees growing under high density conditions and do not indicate any unique genetic features. Even if tree breeding and/or natural selection has caused changes in gene frequency in younger pine trees, as compared to older trees, the different age classes still belong to the same population. Members of the same population are always assigned to the same variety, subspecies, or species. There are no known taxonomic references that support Mr. Littlejohn's suggestion that older trees should be treated as a distinct subspecies or variety from younger living trees. The older pine trees in northern Atlanta are not eligible for protection under the provisions of the Endangered Species Act because they do not meet the Act's definition of "species" (which includes subspecies or varieties).

On the basis of the best scientific and commercial information available, the Service found that this petition did not present substantial information indicating that the action requested may be warranted.

Author

This notice was prepared by Mr. David Martin, Jacksonville Field Office, U.S. Fish and Wildlife Service, 3100 University Boulevard South, Suite 120, Jacksonville, Florida 32216 (904/791-2580 or FTS 946-2580).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531-1543).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Fish, Marine mammals, Plants (agriculture).

Dated: December 12, 1989.

Richard N. Smith,
Acting Director, Fish and Wildlife Service.
[FR Doc. 89-29663 Filed 12-20-89; 8:45 am]
BILLING CODE 4310-55-M

Notices

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FOR FURTHER INFORMATION: Direct questions about the proposed action and environmental impact statement to Kurt Beach Ranger District, 1225 S. Ellensburg, #7, Gold Beach, Oregon 97444 [telephone: (503) 247-6651].

SUPPLEMENTARY INFORMATION: The proposed actions are listed in Appendices B and C of the Forest Plan

Notices

Federal Register
Vol. 54, No. 244
Thursday, December 21, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Feed Grain Donations for the Three Affiliated Tribes, Fort Berthold Indian Reservation in North Dakota

Pursuant to the authority set forth in section 407 of the Agricultural Act of 1949, as amended (7 U.S.C. 1427) and Executive Order 11336, I have determined that:

1. The chronic economic distress of the needy members of the Three Affiliated Tribes, Fort Berthold Indian Reservation in North Dakota has been materially increased and become acute because of severe and prolonged drought, thereby creating a serious shortage of feed and causing increased economic distress. This reservation is designated for Indian use and is utilized by members of the Three Affiliated Tribes for grazing purposes.

2. The use of feed grain or products thereof made available by the Commodity Credit Corporation (CCC) for livestock feed for such needy members of the Tribe will not displace or interfere with normal marketing of agricultural commodities.

3. Based on the above determinations, I hereby declare the reservation and grazing lands of the Tribe to be acute distress areas and authorize the donation of feed grain owned by the CCC to livestock owners who are determined by the Bureau of Indian Affairs, United States Department of the Interior, to be needy members of the Tribe utilizing such lands. These donations by the CCC may commence upon December 15, 1989, and shall be made available through May 15, 1990, or such other date as may be stated in a notice issued by the USDA.

Signed at Washington, DC on December 14, 1989.

John A. Stevenson,
Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 89-29664 Filed 12-20-89; 8:45 am]
BILLING CODE 3410-05-M

Feed Grain Donations for the Cheyenne River Sioux Tribe in South Dakota

Pursuant to the authority set forth in section 407 of the Agricultural Act of 1949, as amended (7 U.S.C. 1427) and Executive Order 11336, I have determined that:

1. The chronic economic distress of the needy members of the Cheyenne River Sioux Tribe in South Dakota has been materially increased and become acute because of severe and prolonged drought, thereby creating a serious shortage of feed and causing increased economic distress. This reservation is designated for Indian use and is utilized by members of the Cheyenne River Sioux Tribe for grazing purposes.

2. The use of feed grain or products thereof made available by the Commodity Credit Corporation (CCC) for livestock feed for such needy members of the tribe will not displace or interfere with normal marketing of agricultural commodities.

3. Based on the above determinations, I hereby declare the reservation and grazing lands of the tribe to be acute distress areas and authorize the donation of feed grain owned by the CCC to livestock owners who are determined by the Bureau of Indian Affairs, United States Department of the Interior, to be needy members of the tribe utilizing such lands. These donations by the CCC may commence upon December 8, 1989, and shall be made available through May 15, 1990, or such other date as may be stated in a notice issued by the USDA.

Signed at Washington, DC, on December 14, 1989.

John A. Stevenson,
Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 89-29665 Filed 12-20-89; 8:45 am]
BILLING CODE 3410-05-M

Forest Service

Shasta Costa Creek Timber Sales and Other Projects, Siskiyou National Forest, Curry County, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Notice is hereby given that the Forest Service, USDA will prepare an environmental impact statement (EIS) for a set of proposals to implement three timber sales and other related projects. The EIS will tier to the final EIS and Land and Resource Management Plan (Forest Plan) for the Siskiyou National Forest.

The proposed projects to be implemented are all located in the Shasta Costa drainage and develop or use some common road systems. The specific projects include: (1) Harvest of timber from three timber sales; (2) development of associated road systems; (3) provide two vista overlooks; and (4) other related projects.

The proposed projects will be in compliance with the direction in the Forest Plan which provides the overall guidance for management of the area and the proposed projects. The proposed projects would be implemented within the Shasta Costa Creek drainage from Fiscal Years 1991 through 1993 on the Gold Beach and Galice Ranger Districts. The Shasta Costa Creek drainage is located approximately 35 miles northeast of Gold Beach. The Siskiyou National Forest invites written comments and suggestions on the scope of the analysis in addition to comments already received as a result of local public participation activities.

The agency also gives notice of the full environmental analysis and decision-making proces that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATE: Comments concerning the scope and implementation of this proposal must be received by January 22, 1990.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Susan Mathison, Public Information Assistant, Gold Beach Ranger District, 1225 S. Ellensburg, #7, Gold Beach, Oregon 97444.

FOR FURTHER INFORMATION: Direct questions about the proposed action and environmental impact statement to Kurt Wiedenmann, Project Coordinator, Gold Beach Ranger District, 1225 S. Ellensburg, #7, Gold Beach, Oregon 97444 [telephone: (503) 247-6651].

SUPPLEMENTARY INFORMATION: The proposed actions are listed in Appendices B and C of the Forest Plan and include the following:

TIMBER SALES AND ASSOCIATED ROADS

Fiscal year	Sale name	Legal description	Acres	Net MMBF	Road miles C	Road miles R	Harvest method	Yarding system
1992	Shasta Costa	S31,T34S, R10W, WM	330	10.3	2.0	5.0	HCC/HSM	S
1993	Top Shasta	S09,T34S, R10W, WM	120	4.2	1.0	0.0	HCC	S
1993	Tipsy Squirrel	S21,T34S, R10W, WM	44	1.1	0.0	0.0	HSH	HEC

Abbreviations used above
S: section; *T:* Township; *R:* Range; *W:* West; *WM:* Willamette Meridian; *MMBF:* Million Board Feet; *C:* Construction; *R:* Reconstruction; *HCC:* Harvest, Clearcut; *HSM:* Harvest, Streamside Management Cut; *HSH:* Harvest, Shelterwood Cut; *S:* (yarding system): Skyline; *HEC:* Helicopter.

SCENIC OVERLOOKS

Project name	Fiscal year	Measure	Unit M $
Shasta Costa Overlook.	1990-91	PAOT	20.0 25.0
Bear Camp Overlook.	1991-91	PAOT	20.0 25.0

Abbreviations used above
PAOT: Persons at one time; *M $:* Thousands of 1989 dollars.

Other Related Projects—
Recreation Enhancement resource-interpretive signing trail construction
Fuels Reduction
Wildlife Enhancement
Fisheries Enhancement
Soils Enhancement
Water Enhancement
Seral Stage Management
Hardwood Stand Conversion

This EIS will tier to the Final EIS and Forest Plan (3/10/89). The Forest Plan provides goals and objectives, forest-wide standards and guidelines, management area standards and guidelines, and management area prescriptions for the various lands on the Forest. This direction provides for management practices that will be utilized during the implementation of the Forest Plan.

The Shasta Costa area contains about 25,000 acres. It is allocated to the following Management Areas (MA):

—1 per cent of the 25,000 acres is in the Wild Rogue Wilderness (MA 1);

—2 per cent is in the Bear Camp Botanical Area (MA 4), to be managed to feature and protect special botanical and geological resources;

—6 per cent is in the Supplemental Resource area flanking Shasta Costa Creek (MA 7) designed to provide high-quality fish and wildlife habitat, and protect sensitive watershed areas and recreation values;

—7 per cent is in Designated Wildlife Habitat for the pileated woodpecker and pine marten (MA 8);

—7 percent is in Special Wildlife Sites (MA 9), including meadows/meadow buffers, a small botanical area, a general wildlife site, a pond/bog, dispersed old-growth sites, rock outcrops, and hardwood areas;

—1 per cent is in Scenic/Recreation River (MA 10) designed to maintain the recreation and scenic values accorded the Rogue Wild and Scenic River;

—6 per cent is in Riparian ecosystems (MA 11) where multiple uses are allowed while maintaining water, fisheries, and other streamside values;

—9 per cent is in Retention Visual (MA 12), designed to provide for a visually pleasing level of scenery while management activities occur;

—60 per cent is in Partial Retention Visual (MA 13), where management activities will be more evident to the average forest visitor than in Retention Visual, but where their presence will be visually subordinate to the landscape; and,

—1 per cent is in General Forest (MA 14), where multiple-use activities occur and timber management is programmed for full, sustained yield.

The analysis will consider a range of alternatives. Along with the proposed action, the analysis will consider a no-action alternative in the Shasta Costa Creek drainage.

Public participation will be especially important at several points during the analysis, beginning with the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, local agencies and other individuals or organizations who may be interested in or affected by the proposed project. This input will be used in preparation of the draft EIS. The scoping process includes:

1. Identifying potential issues.

2. Identifying major issues to be analyzed in depth.

3. Identifying issues which have been covered by a relevant previous environmental analysis.

4. Exploring additional alternatives based on themes which will be derived from issues recognized during scoping activities.

5. Identifying potential environmental effects of this project and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).

6. Determining potential cooperating agencies and task assignments.

7. Notifying interested publics of opportunities to participate through meetings, personal contacts, or written comment. Keeping the public informed through the media and/or written material (i.e., newsletters, correspondence, etc.).

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by April, 1990. At that time EPA will publish a notice of availability of the draft EIS in the **Federal Register.**

The Forest Service believes it is important to give reviewers notice of this early stage of public participation and of several court rulings related to public participation in the environmental review process.

First, reviewers of environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could have been raised at the draft stage may be waived or dismissed by the court if not raised until after completion of the final EIS. *City of Angoon* v. *Hodel*, 803 F.2d. 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490

F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final EIS.

To be the most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merit of the alternatives discussed (see Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

The final EIS is scheduled to be completed by September, 1990. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal. Ron McCormick, Forest Supervisor, Siskiyou National Forest, P.O. Box 440, Grants Pass, Oregon 97526, is the Responsible Official. As the Responsible Official he will decide which, if any, of the proposed projects will be implemented. The Responsible Official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations (36 CFR part 217).

Dated: December 11, 1989.

Ronald J. McCormick,

Forest Supervisor.

[FR Doc. 89-29609 Filed 12-20-89; 8:45 am]

BILLING CODE 3410-11-M

Etolin Island Implementation Analysis, Strikine Area, Tongass National Forest, Petersburg, AK; Revised Notice of Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service, will prepare an Environmental Impact Statement (EIS) on timber standards proposed to be harvested in one or more timber sales on the North Etolin Island Management Area S23, Value Comparison Units (VCUs) 464, 467, and 468 on the Wrangell Ranger District. The deicsions required to be made are: (1) How and where would timber sales be scheduled in the immediate future to best address the issues and concerns to be identified as a result of the scoping process; (2) where and how should resource protection constraints suggested by the Tongass Land Management Plan land allocation, be site specifically identified.

This Notice of Intent (NOI) is a revision of a previous NOI published in the **Federal Register** on January 5, 1987. There has been a signficant change in the analysis approach from one of area analysis that included all of Etolin Island and surrounding islands, to one of a more project specific implementation analysis for a specified area on Etolin Island.

The Tongass Land Management Plan allocated North Etolin Island to Land Use Designations (LUDs) III, and IV, providing for a balanced mix of commodity and non-commodity uses. The implementation analysis will consider a range of alternative road and harvest unit locations and designs, including a "no action" alternative. The proposed harvest scenarios will examine the entire road network needed to access commerical timber stands and meet various resource objectives. Multi-entry harvest unit layouts will also be examined within the analysis area.

Major issues to be considered appear to be associated with the timber, wildlife, fisheries, visual and recreation resources.

The EIS will include a cumulative effects analysis within the analysis area and on the remaining VCUs 462, 463, 465, 566, and 470 within North Etolin Management Area S23, along with the South Etolin Island Management Area S24 VCUs 471, 472, 473, and 474. Wilderness designation (LUD I) was recommended for the southern portion of the island in the Tongass Land Management Plan, however, the area was not designated wilderness by the Alaska National Interest Lands Conservation Act. This area is presently managed to maintain its natural condition.

Previous analysis on Etolin Island has resulted in an Environmental Impact Statement and Record of Decision on timber harvest at Olive Cove under the Pacific Northern Timber long term contract; Environmental Assessments and Decison Notices on timber harvest near Anita Bay and Quite Harbor under the Granite and Quiet Timber Sale contracts; and an Environmental Analysis for the proposed Canoe Passage Blowdown Tiber Sale. Initial scoping has begun. Federal, state, and local agencies, along with other individuals or organizations who have been or may be interested in or affected by the decision, are invited to participate in the scoping process.

The implementation analysis will take approximately 5 months. The Draft EIS should be available for public review by May , 1990. The Final EIS is scheduled for completion by July, 1990.

The responsible official for the decision is Ronald R. Humphrey, Forest Supervisor, Stikine Area, Tongass National Forest, Petersburg, Alaska.

Written comments and suggestions concerning the implementation analysis and Environmental Impact Statement should be sent to Richard Strauss, ID Team Leader, Supervisor's Office, strikine Area, Tongass National Forest, P.O. Box 309, Petersburg, Alaska, 99833, phone (907) 772-3841, by January 14, 1990.

Dated: December 4, 1989.

Ronald R. Humphrey,

Forest Supervisor.

[FR Doc. 89-29637 Filed 12-20-89; 8:45 am]

BILLING CODE 3410-11-M

Rural Electrification Administration

Jackson Electric Membership Corp.; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Finding of no significant impact relating to the construction of an engineering, operations and maintenance facility in Hall County, Georgia.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, as amended, the Council on Environmental Quality Regulations (40 CFR parts 1500-1508), and REA Environmental Policies and Procedures (7 CFR part 1794), has made a Finding of No Significant Impact (FONSI) with respect to the construction of an engineering, operations and maintenance facility in Hall County, Georgia. Jackson Electric Membership Corporation (EMC) has requested REA's approval to construct the project.

FOR INFORMATION CONTACT: Alex M. Cockey, Jr., Director, Southeast Area—Electric, Room 0270, South Agriculture Building, Rural Electrification Aldministration, Washington, DC 20250, telephone (202) 382-8436.

SUPPLEMENTARY INFORMATION: REA, in accordance with its environmental policies and procedures, required that Jackson EMC develop a Borrower's Environmental Report (BER) reflecting the potential impacts of the proposed facility. The BER, which includes input from certain local and state agencies, has been adopted as REA's Environmental Assessment (EA) for the projects in accordance with 7 CFR 1794.61. REA has concluded that the BER represents an accurate assessment of the environmental impacts of the project. The project will allow Jackson EMC to expand its office, storage and maintenance facilities to meet the needs of its growing service area.

The engineering and operations facility will consist of a building that will house 9,360 square feet of office space, 12,250 square feet of warehouse space, 3,500 square feet of covered storage and 16,960 square feet of covered parking. There will also be an 8,250 square foot truck maintenance building, a transformer storage area and pole racks. The entire facility will require 12 acres of a 34 acre site owned by Jackson EMC.

REA has concluded that the proposed project will have no impact on wetlands, prime farmlands, floodplains, threatened or endangered species or critical habitat, property listed or eligible for listing in the National Register of Historic Places, or water quality.

Alternatives examined for the proposed project were no action and alternative sites. REA determined that there is a demonstrated need for the project and constructing it at the preferred site will have no significant impact to the environment.

REA has concluded that its approval to allow Jackson EMC to construct the proposed project does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, REA has reached a FONSI with respect to its action related to the project.

Copies of the EA and FONSI can be obtained from REA at the address provided herein or at the office of Jackson Electric Membership Corporation, P.O. Box 38, Jefferson, Georgia 30549-0038.

In accordance with REA Environmental Policies and Procedures, 7 CFR part 1794, Jackson EMC published a notice and advertisement in the Gainesville Times which has a general circulation in Hall County, Georgia. The notice appeared in the October 27, 1989, issue. The notice described the project, announced the availability of the BER and gave information where the BER could be obtained for review and where comments could be sent. The advertisement appeared in the same issue of the newspaper and briefly described the project and referred the reader to the legal notice. The public was given at least 30 days to respond to the notice. No responses to the notice were received by Jackson EMC or REA.

Dated: December 15, 1989.

John H. Arnesen,

Assistant Administrator—Electric.

[FR Doc. 89-29660 Filed 12-20-89; 8:45 am]

BILLING CODE 3410-15-M

CIVIL RIGHTS COMMISSION

Iowa Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Iowa Advisory Committee to the Commission will convene at 10 a.m. and adjourn at 2 p.m., on January 17, 1990, at the Urban Campus, Des Area Community Colleges, 1100 7th Street, room 112, Des Moines, Iowa. The purpose of the meeting is to review the status of current Committee projects and discuss issues which are possible planning subjects for future activities.

Persons desiring additional information should contact Committee Chairperson, Dr. Lenola Allen-Sommerville, or Ascension Hernandez, Civil Rights Analyst of the Central Regional Division, (816) 426-5253 (TDD 816/426-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 14, 1989.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 89-29657 Filed 12-20-89; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Plant and Equipment Expenditures Survey.

Form Number(s): PE-1, -2, -3, -4, -4(P), PE-5, -5(P), -5(T), -6, PA.

Agency Approval Number: 0607-0641.

Type of Request: Revision of a currently approved collection.

Burden: 30,175 hours.

Number of Respondents: 15,000.

Avg Hours Per Response: 43 minutes.

Needs and Uses: The Plant and Equipment (P&E) Expenditures Survey obtains data quarterly on planned and actual capital spending of nonagricultural business firms. These estimates are one of the most important indicators used by business and public officials in assessing near-term economic activity. The P&E Survey also collects data on annual capital expenditures for pollution abatement. These data are used to adjust total capital expenditures by industry to obtain a better measure of real capital stock used for expansion and modernization of pollution abatement equipment.

Affected Public: Businesses or other for-profit organizations, non-profit institutions, and small businesses or organizations.

Frequency: Quarterly: PE-1, -2, -3, -4, -4(P), Annually: PE-5, -5(T), -6, -PA.

Respondent's Obligation: Voluntary (quarterly forms), Mandatory (annual forms).

OMB Desk Officer: Don Arbuckle, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: December 18, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-29696 Filed 12-20-89; 8:45 am]

BILLING CODE 3510-07-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: School Project Evaluation—Instructional Staff Questionnaire.

Form Number(s): D-1403, D-1403-L1.

Agency Approval Number: None.

Type of Request: New collection.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Porcelain-On-Steel Cooking Ware (A-570-506)—12/01/88—11/30/89

Commerce Regulations, that the Department of Commerce ("the

only in the implementation of certain of its provisions.

Category	12-month restraint limits

Agency Approval Number: None.
Type of Request: New collection.
Burden: 900 hours.
Number of Respondents: 3,600.
Avg Hours Per Response: 15 minutes.
Needs and Uses: This survey as well as the Administrator Questionnaire portion of the School Project Evaluation (currently pending OMB approval) will be used by the Census Bureau to evaluate and improve the Census Education Project and associated materials that are targeted for school children. Data will be collected from a sample of primary and secondary school teachers on the effectiveness of the 1990 Census Education Project.
Affected Public: Individuals or households and non-profit institutions.
Frequency: One time only.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Don Arbuckle, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: December 18, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-29697 Filed 12-20-89; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of opportunity to request administative review of antidumping or countervailing duty order, finding, or suspended investigation.

BACKGROUND: Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with section 353.22 or 355.22 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

OPPORTUNITY TO REQUEST A REVIEW: Not later than December 31, 1989, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in December for the following periods:

Antidumping Duty Proceeding and Period

Brazil: Certain Carbon Steel Butt-Weld Pipe Fittings
(A-351-602)—12/01/88-11/30/89
Canada: Elemental Sulphur
(A-122-047)—12/01/88-11/30/89
Hong Kong: Photo Albums and Filler Pages
(A-582-501)—12/01/88-11/30/89
Italy: Clear Sheet Glass
(A-475-025)—12/01/88—11/30/89
Japan: Cellular Mobile Telephones and Subassemblies
(A-588-405)—12/01/88-11/30/89
Japan: Certain Electric Motors of 150-500 HP
(A-588-091)—12/01/88-11/30/89
Japan: Polychloroprene Rubber
(A-588-046)—12/01/88-11/30/89
Japan: Steel Wire Strand for Prestressed Concrete
(A-588-068)—12/01/88-11/30/89
Japan: Tuners (of the type used in consumer electronic products)
(A-588-014)—12/01/88-11/30/89
Mexico: Porcelain-On-Steel Cooking Ware
(A-201-504)—12/01/88—11/30/89
Netherlands: Animal Glue and Inedible Gelatin
(A-421-060)—12/01/88—11/30/89
New Zealand: Low-Fuming Brazing Copper Rod and Wire
(A-614-502)—12/01/88—11/30/89
Sweden: Animal Glue and Inedible Gelatin
(A-401-061)—12/01/88—11/30/89
Sweden: Certain Carton-Closing Staples and Staple Machines
(A-401-004)—12/01/88—11/30/89
Sweden: Seamless Stainless Steel Hollow Products
(A-401-603)—12/01/88—11/30/89
Taiwan: Certain Carbon Steel Butt-Weld Pipe Fittings
(A-583-605)—12/01/88—11/30/89
Taiwan: Porcelain-On-Steel Cooking Ware
(A-583-508)—12/01/88—11/30/89
The People's Republic of China: Porcelain-On-Steel Cooking Ware
(A-570-506)—12/01/88—11/30/89
The Republic of Korea: Photo Albums and Filler Pages
(A-580-501)—12/01/88—11/30/89
West Germany: Animal Glue and Inedible Gelatin
(A-428-062)—12/01/88—11/30/89
Yugoslavia: Animal Glue and Inedible Gelatin
(A-479-063)—12/01/88—11/30/89

Suspended Investigation and Period

Mexico: Pectin
(C-201-007)—01/01/88—12/31/88
Mexico: Polypropylene Film
(C-201-006)—01/01/88—12/31/88

Countervailing Duty Proceeding and Period

Mexico: Litharge, Red Lead and Lead Compounds
(C-201-005)—01/01/88—12/31/88
Mexico: Porcelain-On-Steel Cooking Ware
(C-201-505)—01/01/89—12/31/89
Mexico: Toy Balloons and Playballs
(C-201-004)—01/01/88—12/31/88

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, DC 20230.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review," for requests received by December 31, 1989.

If the Department does not receive by December 31, 1989 a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: December 27, 1989.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 89-29699 Filed 12-20-89; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Macau

December 15, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6495. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current bilateral textile agreement between the Governments of the United States and Macau establishes limits for the period January 1, 1990 through December 31, 1990. The limits for Categories 333/334/335/833/834/835, 338, 339, 340, 341, 345, 347/348/847, 641/840 and 445/446 have been reduced for carryforward used in 1989.

A copy of the agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647-1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 15, 1989.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further amended on July 31, 1986; pursuant to the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated December 28, 1983 and January 9, 1984, as amended and extended, between the Governments of the United States and Macau; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1990, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Macau and exported during the twelve-month period beginning on January 1, 1990 and extending through December 31, 1990, in excess of the following restraint limits:

Category	12-month restraint limits
200-239, 300-359, 400-469, 600-670 and 800-899, as a group.	81, 384, 126 square meters equivalent.
Group I	
200-239, 300-359, 600-670 and 800-899, as a group.	78, 369, 656 square meters equivalent.
Sublevels within Group I	
237	61,000 dozen.
239	93,387 Kilograms.
331/831	300,000 dozen pairs.
333/334/335/833/834/835	156,179, dozen of which not more than 87,192 dozen shall be in categories 333/335/833/835.
336/836	23,000 dozen.
338	201,055 dozen.
339	842,148 dozen.
340	190,299 dozen.
341	122,739 dozen.
342	39,326 dozen.
345	33,952 dozen.
347/348/847	475,892 dozen.
350/850	18,000 dozen.
351/851	27,000 dozen.
352	66,536 dozen.
359/859	132,892 Kilograms.
631	231,386 dozen pairs.
633/834/835	350,515 dozen.
638	15,453 dozen.
638/639/838	1,091,511 dozen.
640	77,807 dozen.
641/840	125,854 dozen.
642/842	77,712 dozen.
645/646	181,918 dozen.
647/648	396,866 dozen.
649	145,833 dozen.
651	13,482 dozen.
652/852	160,000 dozen.
659	89,762 kilograms.
670	340,194 kilograms.
845/846	203,015 dozen.
Group II	
400-469, as a group	1,291,520 square meters equivalent.
Sublevels within Group II	
434	1,852 dozen.
438	6,667 dozen.
442	5,556 dozen.
445/446	70,563 dozen.

Imports charged to these category limits for the period January 1, 1989 through December 31, 1989 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such good shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future according to the provisions of the current bilateral agreement between the Governments of the United States and Macau.

The conversion factors are listed below:

Category	Conversion factor
333/334/335/833/834/835	34.2
333/335/833/835	34.2
359/859	8.5
633/634/635	34.5
638/639/838	12.9
641/840	12.1
652/852	13.4

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-29661 Filed 12-20-89; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Taiwan

December 15, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting

Category	Adjusted 12 month limit [1]

[1] determined that this Advisory Group meeting concerns matters listed in 5

FOR FURTHER INFORMATION: Suzanne Schwartz of the Environmental Protection Agency at the address given

to amend an existing system of records, DOE-19 Accounts Receivable Financial System, was published in the Federal

Federal Energy Regulatory Commission

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 22, 1989.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–8791. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories in Group II are being adjusted for special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (See **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 49345, published on December 7, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreement

December 15, 1989.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 2, 1988 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Taiwan and exported during the period which began on January 1, 1989 and extends through December 31, 1989.

Effective on December 22, 1989, the directive of December 2, 1988 is amended further to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement of November 18, 1982, as amended and extended:

Category	Adjusted 12 month limit [1]
Sublevels in Group II:	
239	3,253,224 kilograms.
350	100,662 dozen.
351	374,927 dozen.
650	56,461 dozen.
651	445,877 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1988.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89–29662 Filed 12–20–89; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Advisory Group on Electron Devices; Committee Meeting

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Tuesday, 9 January 1990.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, Suite 307, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: David Slater, AGED Secretariat, 201 Varick Street, New York, 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economic and effective research and development programs in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Public Law No. 92–463, as amended, (5 U.S.C. App. II 10(d)(1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1)(1982), and that accordingly, this meeting will be closed to the public.

Dated: December 18, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89–29675 Filed 12–20–89; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Environmental Protection Agency

[FRL 3698–8]

Memorandum of Agreement

AGENCIES: Environmental Protection Agency, Department of the Army, DOD.

ACTION: Notice.

SUMMARY: On November 15, 1989, the Assistant Administrator for Water of the Environmental Protection Agency (EPA) and the Assistant Secretary of the Army for Civil Works (Civil Works) signed a Memorandum of Agreement (MOA or Agreement) which articulates the policy and procedures to be used in determining the type and level of mitigation necessary to demonstrate compliance with the guidelines under section 404(b)(1) of the Clean Water Act. Under the terms of the MOA, the Agreement was to become effective 30 days after signature (December 15, 1989).

We have heard from a number of Federal agencies which have expressed concern regarding the wording of the MOA. In order for us to provide these agencies an opportunity for further discussion, we will delay implementation for a period of 30 days (i.e., January 16, 1990).

DATE: With this extension, the effective date of the Memorandum of Agreement is January 16, 1990.

ADDRESSES: Copies of the MOA are available from:

Office of Wetlands Protection (A–104F), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office of the Assistant Secretary of the Army, Department of the Army, Room 2E569, The Pentagon, Washington, DC 20310–0103.

Headquarters, U.S. Army Corps of Engineers, (CECW–OR), 20 Massachusetts Ave., NW., Washington, DC 20314–1000.

FOR FURTHER INFORMATION: Suzanne Schwartz of the Environmental Protection Agency at the address given above; telephone 202/475–7799, (FTS) 475–7799; or David Barrows of the Department of the Army at the address given above; telephone 202/695–1376, (FTS) 695–1376.

SUPPLEMENTARY INFORMATION: Under paragraph III.C. of the EPA-Army Memorandum of Agreement, the MOA was to become effective on December 15, 1989. EPA and Army hereby amend the first sentence of paragraph III.C. to read as follows:

This MOA shall take effect on January 16, 1990, and will apply to those completed standard permit applications which are received on or after that date.

LaJuana S. Wilcher,

Assistant Administrator for Water.

Robert W. Page,

Assistant Secretary of the Army (Civil Works).

[FR Doc. 89–29690 Filed 12–20–89; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Privacy Act of 1974; Proposed Amendment to Existing Systems of Records

AGENCY: Department of Energy (DOE).

ACTION: Correction.

SUMMARY: This document corrects a notice that appeared in the Federal Register on Thursday, October 13, 1988 (53 FR 40119), to clarify a routine use for an existing system of records, DOE–19 Accounts Receivable Financial System. The routine use involves the disclosure of information to other Federal agencies, consumer reporting agencies, and collection agencies to assist in the collection of delinquent debts owed to the Federal Government. This correction clarifies the purposes of disclosing information to credit reporting agencies to aid in the collection of outstanding debts.

EFFECTIVE DATE: November 14, 1988.

FOR FURTHER INFORMATION CONTACT:

U.S. Department of Energy, John H. Carter, Chief, Freedom of Information and Privacy Act, MA–203.41, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–5955

or

U.S. Department of Energy, Abel Lopez, Office of General Counsel, GC–43, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6618.

SUPPLEMENTARY INFORMATION: On October 13, 1988, a notification of intent to amend an existing system of records, DOE–19 Accounts Receivable Financial System, was published in the Federal Register (53 FR 40119). The amendment, which was effective November 14, 1988, allows as a rountine use the disclosure of information maintained in the system of records to other Federal agencies, consumer reporting agencies, and collection agencies to assist the Department in the collection of debts owed to the Federal Government. This revision is to distinguish between two types of disclosure of information from the sytem of records to consumer reporting agencies. Disclosure of bad debt information will follow the procedures of section (b)(12) of the Privacy Act of 1974 (5 U.S.C. 552a). Disclosure of information not containing bad debt information (e.g., information needed to identify a person and obtain a credit report thereon) will remain a routine use of the system of records.

Dated: November 11, 1989.

Charles R. Tierney,

Director of Administration.

Accordingly, the systems of records amendment published on October 13, 1988, (53 FR 40119) is corrected as follows:

1. The Routine Uses section is revised as follows:

Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses:

Other Federal Agencies, Consumer Reporting Agencies (only for the purpose of acquiring credit information), and Collection Agencies—To aid in the collection of outstanding debts owed to the Federal Government.

Additional routine uses as listed in Appendix B of the Department of Energy; Privacy Act of 1974; Annual Publication of System Notices (47 FR 14333, April 2, 1982).

2. A new section is added as follows:

Disclosures to Consumer Reporting Agencies:

Disclosure Pursuant to 5 U.S.C. 552a(b)(12):

Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

[FR Doc. 89–29701 Filed 12–20–89; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project No. 8765–001 Utah]

Big Sand Wash Dam; Availability of Environmental Assessment

December 12, 1989.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for minor license for the proposed Big Sand Wash Dam Hydroelectric Project, which would be located on the Big Sand Wash in Duchesne County, near Upalco, Utah, and prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff analyzes the potential environmental impacts of the proposed project and concludes that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 89–29611 Filed 12–20–89; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 10503–000 Utah]

Lower Boulder Creek; Availability of Environmental Assessment

December 12, 1989.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for minor license for the proposed Lower Boulder Creek Hydroelectric Project located on the Lower Boulder Creek in Garfield County, near Boulder, Utah, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigation measures, would not constitute a major federal action

significantly affecting the quality of the human environment.

Copies of the EA are available for

proposed project. In the EA, the Commission's staff analyzes the potential environmental impacts of the

abandon service as described herein, all as more fully described in the respective applications which are on file with the

[Docket No. G–5145–001, et al.]

Exxon Corp., et al; Applications for

which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to

appropriate action to be taken but will not serve to make the protestants

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significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's office at 825 North Capitol Street NE., Washington, DC 20426.

Lois Cashell,

Secretary.

[FR Doc. 89-29612 Filed 12-20-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 503-006 Idaho]

Swan Falls; Availability of Environmental Assessment

December 12, 1989.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing reviewed the application for an amendment to the license for the Swan Falls Hydroelectric Project, which is located on the Snake River in Ada and Owhyee Counties, near Kuna, Idaho, and prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff analyzes the potential environmental impacts of the proposed amendment and concludes that approval of the proposed amendment, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 2200, of the Commission's offices at 825 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29613 Filed 12-20-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI90-5-000, et al.]

Conoco Inc., et al. Applications for Certificates and Abandonment of Service [1]

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

December 14, 1989.

Any person desiring to be heard or to make any protest with reference to said applications should on or before January 2, 1990, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Description
CI90-5-000, (CI84-421) B, 10-20-89.	Conoco Inc., P.O. Box 2197, Houston, TX 77252.	Texas Eastern Transmission Corporation, West Cameron Block 459, Offshore Louisiana.	Well was plugged and abandoned on 5-5-89.
CI90-18-000, E, 11-30-89	Mitchell Energy Corporation, P.O. Box 4000, The Woodlands, TX 77387-4000.	Natural Gas Pipeline Company of America, Boonsville Field, Wise County, Texas.	Acreage acquired 12-1-88 from Carlson Petroleum Company and the Carlson 1979 Program.
CI90-19-000, (CI72-440) F, 12-4-89.	TOC-Rocky Mountains Inc., 1670 Broadway, Rm. 1754, Denver, CO 80202.	Panhandle Eastern Pipe Line Company, Norden Field, Weld County, Colorado, and Sweetwater County, Wyoming.	Acreage acquired 12-7-88 from Amoco Production Company.
CI90-20-000, (CI71-425) F, 12-4-89.	TOC-Rocky Mountains Inc.	Panhandle Eastern Pipe Line Company, Richfield Field, Morton County, Kansas.	Acreage acquired 12-7-88 from Amoco Production Company.
CI90-21-000, (CI65-750) F, 12-5-89.	TOC-Rocky Mountains Inc.	Arkla Energy Resources, a division of Arkla, Inc. Wilburton Field, Pittsburg County, Oklahoma.	Acreage acquired 12-7-88 from Amoco Production Company.
CI90-22-000, (CI64-23) F, 12-5-89.	TOC-Rocky Mountains Inc.	Arkla Energy Resources, a division of Arkla, Inc. Lacy Area, Kingfisher and Blaine Counties, Oklahoma.	Acreage acquired 12-7-88 from Amoco Production Company.
CI90-23-000, B, 11-29-89	Conoco Inc.	Warren Petroleum Corporation, Pauls Valley Penn Unit, Pauls Valley Field, Garvin County, Oklahoma.	Wells plugged and abandoned.
CI90-24-000, B, 11-29-89	Conoco Inc.	Warren Petroleum Corporation, Pauls Valley Penn Unit, Garvin County, Oklahoma.	Wells plugged and abandoned.
CI90-25-000, (CI64-148) F, 12-6-89.	TOC-Rocky Mountains Inc.	Arkla Energy Resources, a division of Arkla, Inc. Lacy Area, Kingfisher and Blaine Counties, Oklahoma.	Acreage acquired 12-7-88 from Amoco Production Company.
CI90-26-000, (CI68-842) F, 12-6-89.	TOC-Rocky Mountains Inc.	Northern Natural Gas Company, Division of Enron Corp. 42 Township Field, Woodward County, Oklahoma.	Acreage acquired 12-7-88 from Amoco Production Company.
CI90-27-000, (CI78-628) F, 12-7-89.	Marathon Oil Company, P.O. Box 3128, Houston, TX 77253.	United Gas Pipe Line Company, High Island Block 480, Offshore Texas.	Acreage acquired 1-1-89 from LLOXY Holdings, Inc.
CI90-28-000, (CI81-102) F, 12-7-89.	Marathon Oil Co.	Texas Eastern Transmission Corporation, Vermilion Blocks 369 and 386, Offshore Louisiana.	Acreage acquired 1-1-89 from LLOXY Holdings, Inc.

Filing code. A—Initial Service. B—Abandonment. C—Amendment to add acreage. D—Assignment of acreage. E—Succession. F—Partial Succession.

[FR Doc. 89-29615 Filed 12-20-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-5145-001, et al.]

Exxon Corp., et al; Applications for Termination or Amendment of Certificates [1]

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to terminate or amend certificates as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before January 2, 1990, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

Docket no. and date filed	Applicant	Purchaser and location	Description
G-5145-001, D, 11-17-89	Exxon Corporation, P.O. Box 2180, Houston, TX 77252-2180.	El Paso Natural Gas Company, Spraberry Field, Upton County, Texas.	Assigned 3-23-87 to John L. Cox.
G-6355-004, D, 11-27-89	Conoco Inc., P.O. Box 2197, Houston, TX 77252.	El Paso Natural Gas Company, Arrowhead Field, Lea County, New Mexico.	Assigned 9-1-89 to Morexco, Inc.
G-6342-028, D, 11-13-89	Conoco Inc.	El Paso Natural Gas Company, Monument Area, Lea County, New Mexico.	Assigned 9-1-89 to Lewis B. Burleson.
G-10202-000, D, 11-27-89	Texaco Inc., P.O. Box 52332, Houston, TX 77052-2332.	Colorado Interstate Gas Company, Mocane-LaVerne Field, Beaver County, Oklahoma.	Assigned 6-1-89 to Mesa Operating Limited Partnership.
CI62-1251-017, D, 11-15-89	Oryx Energy Company, P.O. Box 2960, Dallas, TX 75221-2560.	Arkla Energy Resources, a Division of Arkla, Inc., Kinta Field, Pittsburg County, Oklahoma.	Assigned 5-5-87 to Exxon Corporation, Eberly & Mead, Inc., ARCO Oil & Gas Co., James Allen Clark and Robert T. Priddy.
CI63-1585-000, D, 10-26-89.	Marathon Oil Company, P.O. Box 3128, Houston, TX 77253.	Panhandle Eastern Pipe Line Company, Avard Area, Woods County, Oklahoma.	Assigned 3-1-89 to Plains Resources, Inc.
CI76-323-003, D, 11-17-89.	Enron Oil & Gas Company, 1400 Smith Street, Houston, TX 77002.	El Paso Natural Gas Company, Allison Parks Field, Hemphill County, Texas.	Assigned 4-1-89 to Kerr-McGee Corporation.
CI90-7-000, (CI67-123), D, 10-23-89.	BHP Petroleum Company, Inc., 5847 San Felipe, Suite 3600, Houston, TX 77057.	El Paso Natural Gas Company, San Juan County, New Mexico, San Juan County, Utah, and Apache County, Arizona.	Assigned 4-1-87 to Cross Creek Corporation.
CI90-8-000, (CI73-4), D, 10-23-89.	BHP Petroleum (Americas) Inc., 5847 San Felipe, Suite 3600, Houston, TX 77057.	El Paso Natural Gas Company, San Juan County, New Mexico, San Juan County, Utah, and Apache County, Arizona.	Assigned 4-1-87 to Cross Creek Corporation.
CI90-16-000, (CI64-49), D, 11-3-89.	Enron Oil & Gas Company	El Paso Natural Gas Company, Basin Pool Field, San Juan County, New Mexico.	Assigned 9-1-88 to Meridian Oil Production, Inc.

Filing Code: A—Initial service; B—Abandonment; C—Amendment to add acreage; D—Assignment of acreage; E—Succession; F—Partial succession.

[FR Doc. 89-29616 Filed 12-20-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CS90-8-000, et al.]

Amoven Oil Co., et al.; Applications for Small Producer Certificates [1]

December 13, 1989.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the Commission's regulations thereunder for a small producer certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before January 2, 1990, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

Docket No.	Date filed	Applicant
CS90-6-000	11-13-89	AMOVEN OIL COMPANY, P.O. Box 670663, Houston, TX 77267.
CS90-5-000	11-24-89 [1]	RAMCO Oil & Gas, Inc., *et al.*, Two Warren Place, Suite 1700, 6120 South Yale, Tulsa, OK 74136.
CS90-9-000	11-28-89	Eclipse Services, Inc., P.O. Box 837, La Grange, TX 78945.
CS90-10-000	11-29-89	Renegade Oil and Gas Company, P.O. Box 440963, Aurora, CO 80044-0963.
CS90-11-000	11-30-89 [2]	Main Energy, Inc., 1100 Louisiana, Suite 4650, Houston, TX 77002.
CS90-12-000	12-15-89	DAR-LON OPERATING, P.O. Box 158, Lamont, OK 74643.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No.	Date filed	Applicant

Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such protests should be filed

[Docket No. TQ90-1-38-002]

Ringwood Gathering Co.; Revised Tariff Sheets

November 15, 1989, the Commission issued a letter order requiring Seagull to make certain revisions in its tariff

Docket No.	Date filed	Applicant
CS90-13-000	12-8-89	A. G. MIKELL, P.O. Box 702675, Tulsa, OK 74170.

[1] The *et al.* parties are: RAMCO-NYL 1987 Limited Partnership; RAM Reserve Consolidation, Inc.; and RB Operating Company.
[2] The application was received on November 8, 1989. The filing date is the date of receipt of the filing fee.

[FR Doc. 89-29614 Filed 12-20-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP86-41-007 & Docket No. RP87-14-007]

Algonquin Gas Transmission Co.; Compliance Filing

December 13, 1989.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on December 7, 1989, in compliance with the Federal Energy Regulatory Commission's "Order Accepting, Suspending and Rejecting Tariff Sheets" issued November 24, 1989, tendered for filing to its FERC Gas Tariffs, Second Revised Volume No. 1 and Original Volume No. 2 certain tariff sheets to be effective November 1, 1989.

Algonquin states that this instant filing (1) eliminates the transmission and compressions tracking provisions which the Commission directed be removed from Algonquin's tariff; (2) reflects the rates under the RP87-14 settlement cost of service including the negotiated level of transmission and compression expenses which the Commission observed were necessary for inclusion in lieu of the tracker; (3) includes the revision required by the Commission to section 2.4 of Rate Schedule AFT-1; and (4) modifies section 17 of the General Terms and Conditions of its tariff.

Algonquin further states that additional workpapers were submitted as requested by the Commission to provide further explanation supporting said filing.

Algonquin notes that copies of this filing were served upon all parties on the official service list, each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 21, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,
Secretary.

List of Tariff Sheets

Second Revised Volume No. 1

Second Substitute Thirty-sixth Revised Sheet No. 201 (Page 1 of 2)
Second Substitute Thirty-sixth Revised Sheet No. 201 (Page 2 of 2)
Second Substitute Thirty-seven Revised Sheet No. 203
Second Substitute Thirty-third Revised Sheet No. 204
Third Substitute Thirtieth Revised Sheet No. 205
Substitute Ninth Revised Sheet No. 221
Substitute Second Revised Sheet No. 301
Substitute Eighth Revised Sheet No. 311
Substitute First Revised Sheet No. 321
Substitute Eleventh Revised Sheet No. 324
Substitute First Revised Sheet No. 331
Substitute Fourth Revised Sheet No. 361
Substitute Fourth Revised Sheet No. 371
Substitute Second Revised Sheet No. 382
Substitute First Revised Sheet No. 435
Substitute First Revised Sheet No. 562
Substitute Seventh Revised Sheet No. 600
Substitute Fifth Revised Sheet No. 629
Substitute Third Revised Sheet No. 630
Substitute Sixth Revised Sheet No. 631
Substitute Fifth Revised Sheet No. 631-A
Substitute Fourth Revised Sheet No. 632
Substitute Third Revised Sheet No. 633
Substitute Fourth Revised Sheet No. 634
Substitute Third Revised Sheet No. 635
Substitute Third Revised Sheet No. 636
Substitute Second Revised Sheet No. 637
Original Sheet Nos. 664-667

Original Volume No. 2

Substitute Third Revised Sheet No. 266

[FR Doc. 89-29621 Filed 12-20-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP90-13-003]

Colorado Interstate Gas Co., Compliance Filing

December 14, 1989.

Take notice that on December 6, 1989, Colorado Interstate Gas Company (CIG) filed Substitute Original Sheet No. 31 to its FERC Gas Tariff, Second Revised Volume No. 1-A, to be effective August 1, 1988.

CIG states that the purpose of this filing is to reinstate section 3.2(f)(ii) of its tariff in compliance with the Commission's order issued November 16, 1989 in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such protests should be filed on or before December 21, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 89-29604 Filed 12-20-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TM90-2-5-001]

Midwestern Gas Transmission Co.; Tariff Filing

December 14, 1989.

Take notice that on December 11, 1989 Midwestern Gas Transmission Company (Midwestern) submits for filing in the referenced docket Original Sheet Nos. 6, 8 and 9 (Reserved for Future Use) and Original Sheet No. 7 to its FERC Gas Tariff, First Revised Volume 1, to be effective August 1, 1989, and First Revised Sheet No. 7, Superseding Original Sheet No. 7, to be effective January 1, 1990.

Midwestern has also included for filing Original Sheet Nos. 88, 89 and 90 through 109 (Reserved for Future Use) to its FERC Gas Tariff, First Revised Volume No. 1. The above sheets are provided to reflect an August 1, 1989 effective date.

Midwestern also states that copies of the tariff filing has been mailed to all affected customers and state regulatory commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such protests should be filed on or before December 21, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 89-29622 Filed 12-20-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP90-44-001]

Northern Border Pipeline Co.; Proposed Change in F.E.R.C. Gas Tariff

December 14, 1989.

Take notice that on Dec. 6, 1989, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of Northern Border Pipeline Company's FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheet:

Substitute Seventh Revised Sheet No. 157

On November 21, 1989, Northern Border filed in Docket No. RP90-44-000 to revise certain tariff sheets. In that filing, Seventh Revised Sheet No. 157 stated an erroneous effective time period for the revised Maximum Rate. Substitute Seventh Revised Sheet No. 157 was filed to correct that error.

Northern Border has requested that this revised tariff sheet be effective January 1, 1990. Copies of this filing have been sent to all of Northern Border's contracted shippers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such protests should be filed on or before Dec. 21, 1989. Protests will be considered but not have to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter.

Copies of this filing are on file with the Commission and are available for public inspection.

Lois Cashell,
Secretary.

[FR Doc. 89-29605 Filed 12-20-89; 8:45]
BILLING CODE 6717-01-M

[Docket No. TQ90-1-38-002]

Ringwood Gathering Co.; Revised Tariff Sheets

December 14, 1989.

Take notice that on December 11, 1989, Ringwood Gathering Company (Ringwood) filed revisions to its December 1, 1989 quarterly PGA filing. Ringwood states that Fifty-Second Sheet Quarterly PGA-1 has been resubmitted and changed to reflect the elimination of the word "Substitute" from the description only and Schedule Q0101, which was omitted from the December 1, 1989 filing is also filed.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989). All such protests should be filed on or before December 21, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 89-29623 Filed 12-20-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP90-11-001]

Seagull Interstate Corp.; Compliance Filing

December 13, 1989.

Take notice that on December 4, 1989, Seagull Interstate Corporation ("Seagull"), 1001 Fannin, Suite 1700, Houston, Texas 77002, filed pursuant to Federal Energy Regulatory Commission ("Commission") letter order dated November 15, 1989, tariff sheets to Original Volume No. 1 of its FERC Gas Tariff. The tariff sheets filed by Seagull are:

To Be Effective April 1, 1989

Second Revised Sheet No. 54B
First Revised Sheet No. 54C

Seagull states that these tariff sheets are filed, as required by Order No. 509, issued December 9, 1988, as amended by Order No. 509-A issued February 21, 1989. On October 16, 1989, Seagull filed tariff sheets to reflect revisions in its tariff pursuant to the requirements of Order Nos. 509 and 509-A. On November 15, 1989, the Commission issued a letter order requiring Seagull to make certain revisions in its tariff sheets. This compliance filing reflects the revisions requested by the Commission. Seagull has also redesignated "Second Revised Sheet No. 54C" as "First Revised Sheet No. 54C". In its October 16, 1989 filing, Seagull had mistakenly identified the sheet. Seagull requests that the Commission grant any and all waivers necessary to permit these tariff sheets to become effective April 1, 1989.

Seagull states that copies of its compliance filing have been served upon all of its shippers. Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 on or before December 21, 1989, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Persons who are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 89-29606 Filed 12-20-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP90-4-002]

Transwestern Pipeline Co.; Compliance Filing

December 13, 1989.

Take notice that Transwestern Pipeline Company ("Transwestern") on December 4, 1989, tendered for filing, as part of its FERC Gas Tariff Second Revised Volume No. 1, the following tariff sheets:

Effective November 1, 1989

Substitute 71st Revised Sheet No. 5
Substitute 6th Revised Sheet No. 38

The above referenced tariff sheets are being filed to comply with Commission's order issued November 3, 1989. On October 4, 1989, Transwestern Pipeline Company (Transwestern) filed revised tariff sheets requesting changes to the maximum and minimum rates for service under Rate Schedule IS-1. In addition, Transwestern requested authority to determine the priority of IS-1 Service in the event of a supply shortage based upon the economic value where the maximum IS rate is not charged. Finally, Transwestern requested three related technical revisions to the IS-1 Service Agreement. The November 3, 1989 order accepted in part, effective November 1, 1989, and rejected in part the tariff sheets filed October 4, 1989. The Commission's order

the December 1, 1989 filing. Transwestern discovered the revised GRI Surcharge was incorrectly stated.

to Alabama-Tennessee, that is the maximum amortization period allowed by this Commission in FERC Docket No.

acceptance of the underlying filings in Docket Nos. RP90-13-000 and RP86-41-000, and that should the Commission

[Docket No. RP89-230-014]

Boundary Gas, Inc.; Compliance Filing

Carnegie states that it has served the filing upon the company's jurisdicitonal customers, applicable state

part, effective November 1, 1989, and rejected in part the tariff sheets filed October 4, 1989. The Commission's order accepted Transwestern's tariff provisions concerning the maximum IS rate and the three technical revisions to the IS-1 Service Agreement and rejected Transwestern's tariff provisions concerning the minimum IS rate and interruption of IS service. Pursuant to, and in compliance with Ordering Paragraphs A and B of the November 3, 1989 order, Transwestern submited the above referenced tariff sheets.

Transwestern respectfully requests that the Commission grant any and all waivers of it rules, regulations, and orders as may be necessary so as to permit the above-listed tariff sheets to become effective on November 1, 1989, as approved in the November 3, 1989 Commission order.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 N. Capitol Stret, NW., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before December 20, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29607 Filed 12-20-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-4-42-001]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

December 14, 1989.

Take notice that Transwestern Pipeline Company ("Transwestern") on December 11, 1989, tendered for filing, as part of its FERC Gas Tariff Second Revised Volume No. 1, the following tariff sheets:

Substitute 73rd Revised Sheet No. 5
Substitute 40th Revised Sheet No. 6
Substitute 8th Revised Sheet No. 37

On December 1, 1989 Transwestern filed the above referenced tariff sheets to adjust Transwestern's Gas Research Institute (GRI) surcharge rate pursuant to the Commission's Opinion No. 334, issued October 10, 1989 approving a GRI surcharge rate of $0.0130/Mcf, to be effective January 1, 1990. Subsequent to the December 1, 1989 filing, Transwestern discovered the revised GRI Surcharge was incorrectly stated. The instant filing is being made to reflect the correct GRI Surcharge of $0.0126/dth, as approved in Opinion No. 334.

Transwestern requests that the Commission grant any and all waivers of its rules, regulations, and orders as may be necessary so as to permit the above-listed tariff sheets to become effective on January 1, 1990.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 N. Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 21, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29624 Filed 12-20-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-2-1-000]

Alabama-Tennessee Natural Gas Co.; Proposed Changes in FERC Gas Tariff

December 14, 1989.

Take notice that on December 11, 1989, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), Post Office Box 918, Florence, Alabama 35631, tendered for filing Third Revised Sheet No. 4A to its FERC Gas Tariff, First Revised Volume No. 1. Such tariff sheet is proposed to become effective January 1, 1990.

Alabama-Tennessee states that the filing is to adjust the currently effective take-or-pay surcharge rates to its customers to reflect increases in the amount being billed to by Tennessee Gas Pipeline Company. Alabama-Tennessee asserts that the allocation methodology utilized is that approvd by the Commission in Docket Nos. RP88-205-001, TM89-1-1-000 and TM89-5-1-000. Alabama-Tennessee further states that such filing is being made pursuant to § 28.1(a) of its tariff.

Alabama-Tennessee is amortizing the increased take-or-pay costs over a thirty-six (36) month period. According to Alabama-Tennessee, that is the maximum amortization period allowed by this Commission in FERC Docket No. RP88-191.

Alabama-Tennessee has requested any necessary waivers of the Commission's Regulations in order to permit the tariff sheets to become effective as proposed.

Alabama-Tennessee states that copies of the tariff filing have been mailed to all of its jurisdictional customers and affected State Regulatory Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 or Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before December 21, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspections.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29617 Filed 12-20-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-1-20-002]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

December 13, 1989.

Take notice that Algonquin Gas Transmision Company ("Algonquin") on December 7, 1989, tendered for filing proposed changes in its FERC Gas Tariff, Second Revised Volume No. 1, as set forth in the revised tariff sheets:

Proposed to be effective November 1, 1989

Third Substitute Thirty-sixth Revised Sheet No. 201
Third Substitute Thirty-seventh Revised Sheet No. 203
Third Substitute Thirty-third Revised Sheet No. 204
Fourth Substitute Thirtieth Revised Sheet No. 205

Algonquin states that on October 30, 1989 in Docket No. TQ90-1-20-000 and 001, Algonquin filed and Out-of-Cycle Purchased Gas Adjustment ("Out-of-Cycle PGA") to be effective on November 1, 1989. Algonquin states that in its Out-of-Cycle PGA that such filing was predicated upon the Commission's acceptance of the underlying filings in Docket Nos. RP90-13-000 and RP88-41-000, and that should the Commission reject or modify those filings, Algonquin would refile to reflect the Commission's actions. The Commission accepted Algonquin's Out-of-Cycle PGA in its Letter Order issued November 30, 1989, subject to certain conditions. The Commission's acceptance of the Out-of-Cycle PGA was subject to the outcome and all orders issued in Docket No. RP88-41-000 and subject to Algonquin filing within fifteen days of the date of the November 30 Letter Order, revised rates consistent with the November 16 Letter Order.

Algonquin further maintains that the listed tariff sheets, which are proposed to be effective November 1, 1989, are filed pursuant to Algonquin's section 17, PGA Provision and in compliance with the Commission's Letter Order of November 30, 1989 reflecting the following:

(i) The conditions set forth in the Commission's Letter Order of November 16, 1989 which permits the incorporation of Standby charges as a PGA trackable item and

(ii) Incorporation of the conditions of acceptance found in the Commission's November 24, 1989 Order in Algonquin's Docket Nos. RP88-41-006 and RP87-14-005 Compliance filing.

Algonquin notes that copies of the filing were served upon each of the affected parties and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 21, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29616 Filed 12-20-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-230-014]

Boundary Gas, Inc.; Compliance Filing

December 13, 1989.

Take notice that on December 6, 1989, Boundary Gas, Inc. (Boundary) filed Second Revised Tariff Sheet No. 43 to its FERC Gas Tariff, First Revised Volume No. 1, to the effective December 6, 1989.

Boundary states that, pursuant to the Commission's letter order issued on October 25, 1989, this filing replaces First Revised Sheet No. 43 which stated incorrectly that National Fuel Supply Corporation (National Fuel) would pay the Gas Research Institute surcharge directly to the Commission. Boundary states that Second Revised Sheet No. 43 corrects this error, stating that National Fuel will pay the surcharge directly to the Gas Research Institute.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such protests should be filed on or before December 20, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29634 Filed 12-20-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-253-004]

Carnegie Natural Gas Co.; Compliance Filing

December 14, 1989.

Take notice that Carnegie Natural Gas Company ("Carnegie"), on December 12, 1989, refiled certain tariff sheets reflecting the removal of proposed section 26 of the General Terms and Conditions of its FERC Gas Tariff. Carnegie submitted this refiling in compliance with the letter order issued in this docket on November 29, 1989. Carnegie also refiled on December 12 the tariff sheets originally filed on November 15 in Docket Nos. RP89-253-000 and RP89-253-001 which do not pertain to section 26. Carnegie states that these non-section 26 tariff sheets are identical to those filed on November 15.

Carnegie states that it has served the filing upon the company's jurisdicitonal customers, applicable state commissions, and other parties that have intervened in these dockets.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commissions, 825 N. Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commissions Rules and Regulations. All such motions or protests should be filed on or before December 21, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29635 Filed 12-20-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-56-000]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

December 13, 1989

Take notice that CNG Transmission Corporation ("CNG"), on December 8, 1989, pursuant to section 4 of the Natural Gas Act, part 154 and § 2.104 of the Commisson's Order No. 500, as amended, and § 12.10 of the General Terms and Conditions of CNG's FERC Gas Tariff, filed the following revised tariff sheets to Original Volume No. 1 of its FERC Gas Tariff:

Substitute Fifteenth Revised Sheet No. 31
Substitute Eighth Revised Sheet No. 32
Second Revised Sheet No. 39

The filing is proposed to become effective on January 1, 1990.

CNG states that this filing reflects in rates take-or-pay-related payments made by CNG to its producer suppliers pursuant to settlement agreements entered into through November 30, 1989. These amounts were subject to litigation on March 31, 1989. CNG states that this filing is made in accordance with the terms and conditions of the Stipulation and Agreement approved by the Commission in Docket No. RP88-217, *et al.* by order issued October 6, 1989.

Copies of the filing were served upon CNG's customers as well as interested State commissions.

BEST COPY AVAILABLE

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such protests should be filed on or before December 20, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29633 Filed 12-20-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-55-000]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

December 13, 1989.

Take notice that Columbia Gas Transmission Corporation ("Columbia"), on December 8, 1989, tendered for filing proposed changes in its FERC Gas Tariff, Original Volume No. 1, to be effective January 1, 1990.

Columbia states that the purpose of this filing is to implement the settlement reached in Docket No. RP88-217, *et al.* Columbia states that this filing reflects in rates take-or-pay-related payments made by Columbia to its producer suppliers pursuant to settlement agreements entered into through November 30, 1989. These amounts were subject to litigation on March 31, 1989. Columbia states that this filing is made in accordance with the terms and conditions of the Stipulation and Agreement approved by the Commission in Docket No. RP88-217, *et al.* by order issued October 6, 1989.

Columbia states that copies of the filing were served upon Columbia's customers as well as interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 21, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29632 Filed 12-20-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-57-000]

Columbia Gulf Transmission Co.; Proposed Changes in FERC Gas Tariff

December 13, 1989.

Take notice that Columbia Gulf Transmission Company ("Columbia Gulf"), on December 8, 1989, tendered for filing proposed changes in its FERC Gas Tariff, Original Volume No. 1, to be effective January 1, 1990.

Columbia Gulf states that the purpose of this filing is to implement the settlement reached in Docket No. RP88-217, *et al.* Columbia Gulf states that this filing reflects in rates take-or-pay-related payments made by Columbia Gulf to its producer suppliers pursuant to settlement agreements entered into through November 30, 1989. These amounts were subject to litigation on March 31, 1989. Columbia Gulf states that this filing is made in accordance with the terms and conditions of the Stipulation and Agreement approved by the Commission in Docket No. RP88-217, *et al.* by order issued October 6, 1989.

Columbia Gulf states that copies of the filing were served upon Columbia Gulf's customers as well as interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 21, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29631 Filed 12-20-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-58-000]

Columbia Gulf Transmission Co.; Proposed Changes in FERC Gas Tariff

December 13, 1989.

Take notice that Columbia Gulf Transmission Company ("Columbia Gulf"), on December 8, 1989, tendered for filing proposed changes in its FERC Gas Tariff, Original Volume No. 1, to be effective January 1, 1990.

Columbia Gulf states that the purpose of this filing is to implement the settlement reached in Docket No. RP88-217, *et al.* Columbia Gulf states that this filing reflects in rates take-or-pay-related payments made by Columbia Gulf to its producer suppliers pursuant to settlement agreements entered into through November 30, 1989. These amounts were subject to litigation on March 31, 1989. Columbia Gulf states that this filing is made in accordance with the terms and conditions of the Stipulation and Agreement approved by the Commission in Docket No. RP88-217, *et al.* by order issued October 6, 1989.

Columbia Gulf states that copies of the filing were served upon Columbia Gulf's customers as well as interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 21, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29630 Filed 12-20-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-59-000]

Columbia Gulf Transmission Co.; Proposed Changes in FERC Gas Tariff

December 13, 1989.

Take notice that Columbia Gulf Transmission Company ("Columbia Gulf"), on December 8, 1989, tendered for filing proposed changes in its FERC Gas Tariff, Original Volume No. 1, to be effective January 1, 1990.

Columbia Gulf states that the purpose of this filing is to implement the settlement reached in Docket No. RP88-217, *et al.* Columbia Gulf states that this filing reflects in rates take-or-pay-related payments made by Columbia Gulf to its producer suppliers pursuant to settlement agreements entered into through November 30, 1989. These amounts were subject to litigation on March 31, 1989. Columbia Gulf states that this filing is made in accordance with the terms and conditions of the Stipulation and Agreement approved by the Commission in Docket No. RP88-217, *et al.* by order issued October 6, 1989.

Columbia Gulf states that copies of the filing were served upon Columbia Gulf's customers as well as interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 21, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29629 Filed 12-20-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-60-000]

Columbia Gulf Transmission Co.; Proposed Changes in FERC Gas Tariff

December 13, 1989.

Take notice that Columbia Gulf Transmission Company ("Columbia Gulf"), on December 8, 1989, tendered for filing proposed changes in its FERC Gas Tariff, Original Volume No. 1, to be effective January 1, 1990.

Columbia Gulf states that the purpose of this filing is to implement the settlement reached in Docket No. RP88-217, *et al.* Columbia Gulf states that this filing reflects in rates take-or-pay-related payments made by Columbia Gulf to its producer suppliers pursuant to settlement agreements entered into through November 30, 1989. These amounts were subject to litigation on March 31, 1989. Columbia Gulf states that this filing is made in accordance with the terms and conditions of the Stipulation and Agreement approved by the Commission in Docket No. RP88-217, *et al.* by order issued October 6, 1989.

Columbia Gulf states that copies of the filing were served upon Columbia Gulf's customers as well as interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 21, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29628 Filed 12-20-89; 8:45 am]

BILLING CODE 6717-01-M

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR §§ 385.214 and 385.211). All motions or protests should be filed on or before December 20, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29606 Filed 12-20-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-166-019]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

December 14, 1989.

Take notice that on December 11, 1989, Columbia Gas Transmission Corporation (Columbia) filed certain revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1, to be effective on November 1, 1989.

Columbia states that these tariff sheets are filed to administratively correct certain errors in its compliance filing of November 20, 1989. It states that the tariff sheets correct an ambiguity in the FTS Rate Schedule provisions, correct a typographical error in the CAP Rate Schedule, and modify the GIC provisions of the tariff to make two sentences consistent and avoid any possibility of ambiquity.

Columbia states that copies of the filing were served upon its jurisdictional customers, interested state regulatory commissions, and all parties on the official service list.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before December 21, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29627 Filed 12-20-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-4-4-000]

Granite State Gas Transmission, Inc.; Proposed Changes in Rates

December 14, 1989.

Take notice that on December 11, 1989, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021 tendered for filing with the Commission Revised Thirty-First Revised Sheet No. 7 in its FERC Gas Tariff, First Revised Volume No. 1, containing changes in rates for effectiveness on December 8, 1989.

According to Granite State, it has experienced increased purchase gas costs not reflected in its current rates filed in Docket No. TQ89-3-4-000. It is stated that the current rates reflect substantial volumes of spot market purchases for system supply and now Granite State projects no further spot market purchases during the remainder of the fourth quarter and that it will purchase only from its firm supply sources during the period. Also, Granite State further states that the current costs for its firm supplies have increased since it made its last purchased gas cost adjustment filing and that it is exposed to undercollecting purchased gas costs, unless it adjusts its rates to reflect its current gas costs.

Granite State further states that copies of its filing were served upon its customers, Bay State Gas Company and Northern Utilities, Inc., and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 21, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29619 Filed 12-20-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-2-46-000]

Kentucky West Virginia Gas Co.; Proposed Change in FERC Gas Tariff

December 13, 1989.

Take notice that Kentucky West Virginia Gas Company (Kentucky West) on December 11, 1989, tendered for filing with the Federal Energy Regulatory Commission (Commission) Second Revised Sheet No. 44 to its FERC Gas Tariff, Second Revised Volume No. 1, to become effective January 1, 1990.

The revised tariff sheet amends Kentucky West's Gas Research Institute (GRI) funding charge to place into effect on January 1, 1990, the new Gas Research Institute funding unit of 12.6 mills per dekatherm as approved by FERC in Opinion No. 334, issued Octobrer 10, 1989, under Docket No. RP89-187-000. Kentucky West Virginia states that, by its filing, or any request or statement made therein, it does not waive any rights to collect amounts, nor the right to collect carrying charges applicable thereto, to which it is entitled pursuant to the mandate of the United States Court of Appeals for the Fifth Circuit issued on March 6, 1986, in Kentucky West Virginia Gas Co. v. FERC, 780 F.2d 1231 (5th Cir. 1986), or to which it becomes entitled pursuant to any other judicial and/or administrative decisions.

Kentucky West Virginia states that a copy of its filing has been served upon each of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 21, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29620 Filed 12-20-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP86-82-006, RP86-52-007, and RP86-109-003]

Kentucky West Virginia Gas Co.; Informal Settlement Conference

December 14, 1989.

Take notice that a conference will be convened in the above-captioned proceeding on December 21, 1989, at 11 a.m. at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, 20426, for the purpose of exploring the possible settlement of the above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact James Pederson at (202) 357-8570 or Joanne Leveque at (202) 357-5418.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29625 Filed 12-20-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-191-010]

Northwest Pipeline Corp.; Proposed Change in FERC Gas Tariff

December 14, 1989.

Take notice that on December 11, 1989, Northwest Pipeline ("Northwest") tendered for filing and acceptance the following tariff sheets to be a part of its FERC Gas Tariff.

Original Volume No. 1-A

Third Revised Sheet No. 304
First Revised Sheet No. 305
Second Revised Sheet No. 316
First Revised Sheet No. 316-A

Northwest states that this filing revises its tariff provisions so that Northwest may install new taps, valves, and measurement equipment at its own expense as long as the estimated annual revenue to be generated by such facilities exceeds the annual cost of service associated with such facilities.

Northwest has determined that it would be beneficial to resolve the Commission's concerns that the determination of which party will pay for facilities at receipt and delivery points is made on a non-discriminatory basis as quickly as possible without regard to the ultimate disposition of the request for rehearing on lateral lines. Therefore, Northwest requests that the Commission treat the instant submission as a filing in compliance with the Commission's July 6, 1989 order in Docket No. RP89-191 and grant any waivers it may deem necessary to permit a July 1, 1989 effective date for the tendered tariff sheets.

A copy of this filing is being mailed to all jurisdictional sales customers and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 21, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29631 Filed 12-20-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-47-026]

Northwest Pipeline Corp.; Amended Compliance Filing

December 14, 1989.

Take notice that on December 6, 1989, Northwest Pipeline Corporation (Northwest) filed certain tariff sheets to its FERC Gas Tariff as an amendment to its November 17, 1989 compliance filing.

Northwest states that this filing accommodates the change in the design of rates in compliance with the Commission's order of October 17, 1989.

Northwest states that a copy of this filing is being served on all parties of record and on all jurisdictional customers and affected state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such protests should be filed on or before December 21, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29626 Filed 12-20-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-70-007]

Stingray Pipeline Co.; Compliance Filing

December 13, 1989.

Take notice that Stingray Pipeline Company (Stingray) on December 4, 1989 tendered for filing certain revised tariff sheets as listed in appendix A to the filing in compliance with Ordering Paragraph (2) of the Federal Energy Regulatory Commission's (Commission) order dated November 2, 1989.

Stingray states that copies of its filing have been served on all parties and customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Regulations. All such protests should be filed on or before December 20, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29628 Filed 12-20-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-113-002]

Tennessee Gas Pipeline Co.; Filing

December 13, 1989.

Take notice on December 6, 1989, Tennessee Gas Pipeline Company (Tennessee) tendered for filing the following revised tariff sheets in Second

Revised Volume No. 1 of its FERC Gas Tariff to be effective on September 26, 1989:

Third Substitute Second Revised Sheet No. 109
Third Substitute Original Sheet No. 109A
Original Sheet No. 109B
Second Substitute Alternate Fourth Revised Sheet No. 115
Second Substitute Alternate First Revised Sheet No. 115A.

Tennessee states that this filing complies with the Commission's order on November 21, 1989, which directed Tennessee (1) to provide that Tennessee will construct facilities for its shippers on a non-discriminatory basis in accordance with the criteria set forth in the tariff, (2) to provide that Tennessee will only construct facilities when the rate of return generated by the DCF analysis is the greater of three percentage points above Tennessee's allowed overall rate of return or 15 percent, and (3) to clarify the criteria which Tennessee will use to determine if a project is economical.

Tennessee stated that it was making the filing subject to its interpretation that the information required to be filed in future rate cases pursuant to Ordering Paragraph (B) of the Commission's November 21st order must only be filed for a particular facility in the first rate case in which Tennessee attempted to include the costs in its rate base and not in any subsequent rate case. Tennessee requested that the Commission rejected this compliance filing if the Commission interprets the condition in that ordering paragraph differently, and issue an order to refile the tariff sheets in accordance with the Commission's interpretation.

Tennessee states that copies of its filing are available for inspection at its principal place of business in the Tenneco Building, Houston, Texas, and have been mailed to all affected customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such protests should be filed on or before December 20, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29630 Filed 12-20-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-55-000]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

December 13, 1989.

Taken notice that Transwestern Pipeline Company (Transwestern) on December 7, 1989, tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

5th Revised Sheet No. 30
5th Revised Sheet No. 33

Transwestern states that the above listed tariff sheets were filed to revise its presently effective tariff to remove the restriction under Rate Schedules FTS-1 and ITS-1 that a shipper is required to reimburse Transwestern the cost of any facilities required to be installed in order to provide transportation service to the shipper. Transwestern would have an additional tool available to assist in maintaining throughput on its system from sources which, under the present tariff provision, would not be connected. It also provides a shipper or producer an outlet for its gas which was not previously available. The proposed tariff changes would allow Transwestern to evaluate each situation based on the factual circumstances and allow Transwestern to determine the amount of costs, if any, which would be required to be reimbursed. The proposed effective date is January 7, 1990.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before Dec. 20, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29632 Filed 12-20-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-185-005]

Williams Natural Gas Co., Proposed Changes in FERC Gas Tariff

December 14, 1989.

Take notice that Williams Natural Gas Company (WNG) on December 7, 1989, tendered for filing Revised Original Sheet No. 5A to its FERC Gas Tariff, Original Volume No. 1.

The proposed effective date of this tariff sheet is December 1, 1989.

WNG states that revised Original Sheet No. 5A is being filed to conform identification numbers for WNG gathering areas shown on this sheet with those used in WNG's Interruptible Master Receipt Point List which has been provided to several hundred potential customers on WNG's system. WNG hereby amends the November 30 compliance filing made by WNG in this docket with this Revised Original Sheet No. 5A which replaces Original Sheet No. 5A, so that WNG's and its Master Receipt Point List conform, thereby eliminating any potential confusion to our customers.

Any person desiring to protest said motion should file a protest with the Federal Regulatory Commission, 825 N. Capitol St., NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such protests should be filed on or before December 21, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29633 Filed 12-20-89; 8:45 am]

BILLING CODE 6717-01-M

Federal Energy Regulatory Commission

[Docket No. RP89-140-006 & RP89-195-003]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

December 14, 1989.

Take notice that on December 6, 1989, Williams Natural Gas Company (WNG) tendered for filing the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Effective May 1, 1989
Original Sheet Nos. 6E1 and 6E2
First Revised Original Sheet No. 6F
Effective July 1, 1989
First Revised Sheet Nos. 6E1 and 6E2
First Revised Sheet No. 6F

WNG states that these tariff sheets are being filed in compliance with the Commission's Order issued November 21, 1989 in Docket Nos. RP89-140-005 and RP89-195-002.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such protests should be filed on or before December 21, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29609 Filed 12-20-89; 8:45 am]

BILLING CODE 6717-01-M

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543B, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received.

I. Test Data Submissions

EPA received test data for oleylamine, submitted by the Chemical Manufacturers Association Oleylamine Panel pursuant to a test rule at 40 CFR 799.3175, on November 28 and 29, 1989. The November 28th submission describes acute in vivo cytogenetics assay in mice. The November 29th submission describes teratology studies in rats and rabbits with oleylamine. Cytogenetic and Developmental toxicity testing is required by this test rule.

EPA received test data for commercial hexane, submitted by the American Petroleum Institute pursuant to a test rule at 40 CFR 799.2155, on November 28, 1989. The submissions describe the developmental toxicity study of commercial hexane vapor in rats and mice. Developmental toxicity testing is required by this test rule.

EPA received test data for Cresols, submitted by the Chemical Manufacturers Association on behalf of the test sponsors and pursuant to a test rule at 40 CFR 799.1250, on December 7, 1989. The submissions describe the two-generation reproduction studies of o-,m-, and p-cresols administered by gavage to sprague-dawley (CD) rats. Two-generation reproductive effects studies are required by this test rule.

EPA received test date for chloranil, submitted by the Hoechst Celanese Corporation pursuant to a test rule at 40 CFR 766.25, on December 6, 1989. The submission describes the levels of 2,3,7,8-substituted tetra - through hepta chlorinated dibenzo-p-dioxins and dibenzofurans in chloranil. High resolution gas chromatography/ highresolution mass spectrometry is required by this test rule.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS-44544). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. NE-G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: December 15, 1989.

Carl Mazza,

Acting Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 89-29691 Filed 12-20-89; 8:45 am]

BILLING CODE 6560-50-D

[OPTS-51743; FRL-3684-8]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA)requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1)premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of 120 such PMNs and provides a summary of each.

DATES: Close of Review Periods:

P 90-23, January 8, 1990.
P 90-24, 90-25, 90-26, January 9, 1990.
P 90-27, January 14, 1990.
P 90-28, 90-29, January 13, 1990.
P 90-30, 90-31, 90-32, 90-33, 90-34, January 14, 1990.
P 90-35, January 15, 1990.
P 90-36, 90-37, 90-38, 90-39, 90-40,90-41, January 16, 1990.
P 90-42, 90-43, January 17, 1990.
P 90-45, 90-46, 90-47, 90-48, 90-49, 90-50, 90-51, January 20, 1990.
P 90-52, 90-53, January 21, 1990.
P 90-54, January 22, 1990.
P 90-55, 90-56, 90-57, 90-58, January 21, 1990.
P 90-59, 90-63, January 22, 1990.
P 90-64, 90-65, 90-66, 90-67, 90-68, 90-69, 90-70, 90-71, 90-72, 90-73, January 23, 1990.
P 90-74, January 24, 1990.
P 90-75, 90-76, 90-77, 90-78, 90-79, 90-80, 90-81, 90-82, January 27, 1990.

P 90-83, 90-84, 90-85, 90-86, 90-87, January 28, 1990.
P 90-129, 90-130, January 7, 1990.
P 90-131, January 8, 1990.

irritation: slight species (Rabbit). Skin irritation: moderatespecies (Rabbit).

Use/Production. (S) Industrial coating application. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity:

P 90-36

Importer. Confidential.

Chemical. (S) Random copolymer of 1,3-butadiene with 2-propenenitrile alpha-(4-cyano-4-methylbutyricacid)-

P 90-83, 90-84, 90-85, 90-86, 90-87, January 28, 1990.
P 90-88, January 29, 1990.
P 90-89, 90-90, 90-91, 90-92, 90-93, 90-94, 90-95, January 30, 1990.
P 90-97, 90-98, January 31, 1990.
P 90-110, 90-111, February 3, 1990.
P 90-112, 90-113, 90-114, 90-115, 90-116, 90-117, 90-118, February 4, 1990.
P 90-119, February 3, 1990.
P 90-120, 90-121, 90-122, 90-123, 90-124, February 4, 1990.
P 90-125, 90-126, February 6, 1990.
P 90-127, 90-128, February 5, 1990.
P 90-129, 90-130, February 6, 1990.
P 90-131, February 5, 1990.
P 90-132, February 6, 1990.
P 90-133, 90-134, 90-135, 90-136, 90-137, 90-138, 90-139, 90-140, 90-141, February 5, 1990.
P 90-142, February 6, 1990.
P 90-143, February 3, 1990.
P 90-145, February 6, 1990.
P 90-146, 90-147, 90-148, February 10, 1990.
P 90-149, 90-150, 90-152, 90-153, 90-154, 90-155, 90-157, February 11, 1990.
P 90-158, 90-159, 90-160, 90-161, February 12, 1990.

Written comments by:

P 90-23, December 9, 1989.
P 90-24, 90-25, 90-26, December 10, 1989.
P 90-27, December 15, 1989.
P 90-28, 90-29, December 14, 1989.
P 90-30, 90-31, 90-32, 90-33, 90-34, December 15, 1989.
P 90-35, December 16, 1989.
P 90-36, 90-37, 90-38, 90-39, 90-40, 90-41, December 17, 1989.
P 90-42, 90-43, December 18, 1989.
P 90-45, 90-46, 90-47, 90-48, 90-49, 90-50, 90-51, December 21, 1989.
P 90-52, 90-53, December 22, 1989.
P 90-54, December 23, 1989.
P 90-55, 90-56, 90-57, 90-58, December 22, 1989.
P 90-59, 90-63, December 23, 1989.
P 90-64, 90-65, 90-66, 90-67, 90-68, 90-69, 90-70, 90-71, 90-72, 90-73, December 24, 1989.
P 90-74, December 25, 1989.
P 90-75, 90-76, 90-77, 90-78, 90-79, 90-80, 90-81, 90-82, December 28, 1989.
P 90-83, 90-84, 90-85, 90-86, 90-87, December 29, 1989.
P 90-88, December 30, 1989.
P 90-89, 90-90, 90-91, 90-92, 90-93, 90-94, 90-95, December 31, 1989.
P 90-97, 90-98, January 1, 1990.
P 90-110, 90-111, January 4, 1990.
P 90-112, 90-113, 90-114, 90-115, 90-116, 90-117, 90-118, January 5, 1990.
P 90-119, January 4, 1990.
P 90-120, 90-121, 90-122, 90-123, 90-124, January 5, 1990.
P 90-125, 90-126, January 7, 1990.
P 90-127, 90-128, January 6, 1990.
P 90-129, 90-130, January 7, 1990.
P 90-131, January 6, 1990.
P 90-132, January 7, 1990.
P 90-133, 90-134, 90-135, 90-136, 90-137, 90-138, 90-139, 90-140, 90-141, January 6, 1990.
P 90-142, January 7, 1990.
P 90-143, January 4, 1990.
P 90-145, January 7, 1990.
P 90-146, 90-147, 90-148, January 11, 1990.
P 90-149, 90-150, 90-152, 90-153, 90-154, 90-155, 90-157, January 12, 1990.
P 90-158, 90-159, 90-160, 90-161, January 13, 1990.

ADDRESS: Written comments, identified by the document control number "(OPTS-51743)" and the specific PMN number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M Street, SW., Room L-100, Washington, DC, 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M Street, SW., Washington, DC 20460 (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE-G004 at the above address between 8 a.m. and 4 p.m., Monday through Friday, excluding legal holidays.

P 90-23

Manufacturer. Confidential.
Chemical. (G) Alkylphenol, phenol and formaldehyde copolymer.
Use/Production. (G) Paraffin depoait inhibitor. Prod.range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 < 5.0 g/kg species(Rat). Acute dermal toxicity: LD50 < 2.0 g/kg species (Rabbit). Eye irritation: slight species (Rabbit). Skin irritation: slight species (Rabbit). Skin sensitization: negative species (Guinea pig).

P 90-24

Manufacturer. Confidential.
Chemical. (G) Copper organic acid salt.
Use/Production. (G) Petroleum additive. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 < 5,000 mg/kg species (Rat). Static acute toxicity: LC50 87.6 mg/l time 96 h species (Fathead minnow). Eye irritation: slight species (Rabbit). Skin irritation: moderatespecies (Rabbit).

P 90-25

Manufacturer. Confidential.
Chemical. (G) Copper organic acid salt.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 156-625 mg/kg species (Rat). Acute dermal toxicity: LD50 < 2,000 mg/kg species (Rabbit). Eye irritation: slight species (Rabbit). Skin irritation: moderate species (Rabbit).

P 90-26

Manufacturer. Confidential.
Chemical. (G) Copper organic acid salt.
Use/Production. (G) Petroleum additive. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 < 5,000 mg/kg species (Rat). Static acute toxicity: LC50 87.6 mg/l time 96 h species (fathead minnow). Eye irritation: slight species (Rabbit). Skin irritation: slightspecies (Rabbit).

P 90-27

Manufacturer. Monsanto Chemical Co.
Chemical. (G) Polyolefin modified polyamide.
Use/Production. (S) Tubing automative parts. Prod. range: Confidential.

P 90-28

Manufacturer. Monsanto Chemical Co.
Chemical. (G) Polyolefin modified polyamide.
Use/Production. (S) Tubing and automotive parts. Prod. range: Confidential.

P 90-29

Importer. Hitachi Chemical Company America, Inc.
Chemical. (G) Acrylonitrile copolymer A.
Use/Import. (S) Used to produce molded parts for electronic, automotive, and construction applications. Import range: 40,000-60,000 kg/yr.

P 90-30

Manufacturer. Confidential.
Chemical. (G) Modified neutralized urethane polymer.
Use/Production. (G) Industrial coating. Prod. range: Confidential.

P 90-31

Manufacturer. Confidential.
Chemical. (G) Diaryl iodonium hexafluoroantimonate.
Use/Production. (S) Industrial coating application. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 < 5,000 mg/kg species (Rat). Mutagenicity: negative.

P 90-32

Manufacturer. Confidential.
Chemical. (G) Aryl iodoso tosylate.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 156-625 mg/kg species (Rat). Acute dermal toxicity: LD50 < 2,000 mg/kg species (Rabbit). Mutagenicity: negative.

P 90-33

Manufacturer. Confidential.
Chemical. (G) Diaryl iodionium tosylate.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 1,254 mg/kg species (Rat). Mutagenicity: negative.

P 90-34

Manufacturer. Westinghouse Electric Corporation.
Chemical. (G) Epoxy modified fatty acid polyester.
Use/Production. (S) Electric insulting varnish. Prod. range: 16,000-56,000 kg/yr.

P 90-35

Manufacturer. Unocal Chemicals Division.
Chemical. (G) Carbamide, carbonyl diamide.
Use/Production. (S) Pollution control ink. Prod. range: Confidential.

P 90-36

Importer. Sumitomo Chemical America, Inc.
Chemical. (G) Cyclohexyl substituted silicic acod ester.
Use/Import. (G) Catalyst for polymerization. Import range:Confidential.

P 90-37

Manufacturer. Chemco, Inc.
Chemical. (G) Amino resin.
Use/Production. (S) A flame retardant for pressure treating of wood for exterior purposes. Prod. range: 2,177,280-2,6,12,736 kg/yr.

P 90-38

Manufacturer. Confidential.
Chemical. (G) Polymer of ethenylbenzene, acrylates, methacrylates, an aliphatic acid and 2,2'-azobis(2-methylbutanenitrile).
Use/Production. (G) Dispesrively used in coating. Prod. range: 250,000-500,000 kg/yr.

P 90-39

Importer. Confidential.
Chemical. (G) Diester of pyridine dicarboxylic acid.
Use/Import. (G) Mining chemical. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 < 2 g/kg species (Rat). Acute dermal toxicity: LD50 < 2 ml/kg species (Rabbit). Eye irritation: slightspecies (Rabbit). Skin irritation: slight species (Rabbit). Skin sensitization: positive species (Guinea pig).

P 90-40

Importer. Confidential.
Chemical. (G) Mixed sodium/potassium salt of substituted naphthalene disulphonic acid.
Use/Import. (G) Dye. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 < 2000 g/kg species (Rat). Acute dermal toxicity: LD50 < 2000 mg/kg species (Rat). Static acute toxicity: LC < 100 mg/l 96h species: (Rainbow trout). Eye irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit). Mutagenicity positive. Skin sensitization: negative species (Guinea pig).

P 90-41

Importer. Confidential.
Chemical. (G) Polyoxypropylene-polyoxyethylene block copolymer ester acyl caprolactum.
Use/Import. (S) Plastic parts made by reactive processing. Import range: Confidential.

P 90-42

Manufacturer. Confidential.
Chemical. (G) Potassium salt of organic acids.
Use/Production. (G) Anticorrosion agent. Prod. range: Confidential.

P 90-43

Manufacturer. Confidential.
Chemical. (G) Polybasic fatty acids.
Use/Production. (S) The function is a ph neutralizer for use with amido-amine corrosion inhibitor bases for oil and gas. Prod. range: Confidential.

P 90-45

Manufacturer. The Dow Chemical Company.
Chemical. (G) Unsaturated aromatic hydrocarbon.
Use/Production. (S) Intermediate for manufacturing a polymer that will be used in composites. Prod. range: Confidential.

P 90-46

Manufacturer. The B F Goodrich Company, SP&C Division.
Chemical. (S) Random copolymer of 1,3-butadiene with 2-propenenitrile alpha-(4-cyano-4-methylbutyricacid)-w-2,2- dimethylanenitrile.
Use/Production. (G) Elastromeric modifier for thermoset resins. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 < 34,600 mg/kg species (Rat). Acute dermal toxicity: LD50 < 3,000 mg/kg species (Rabbit). Eye irritation: moderate species (Rabbit). Skin irritation: slight species (Rabbit).

P 90-47

Manufacturer. The B F Goodrich Company, SP&C Division.
Chemical. (S) Random copolymer of 1,3-butadiene with 2-propenenitrile-alpha-(4-cyano-4-methylbutyricacid)-w-2,2- dimethylbutyronitrile.
Use/Production. (G) Elastromeric modifier for thermoset resins. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 < 34,600 mg/kg species (Rat). Acute dermal toxicity: LD50 < 3,000 mg/kg species(Rabbit). Eye irritation: moderate species (Rabbit). Skin irritation: slight species (Rabbit).

P 90-48

Manufacturer. The B F Goodrich Company SP&C Division.
Chemical. (S) Random copolymer of 1,3-butadiene with 2-propenenitrile a-N-(2-(1-piperaryl-ethyl)4-ayano-4-ethylbutyramide-w-2,2-dimethylethane-nitrile.
Use/Production. (G) Elastromeric modifier for thermoset resins. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 < 34,600 mg/kg species (Rat). Acute dermal toxicity: LD50 < 3,000 mg/kg species (Rabbit). Eye irritation: moderate species (Rabbit). Skin irritation: slight species (Rabbit).

P 90-49

Manufacturer. The B F Goodrich Company, Sp&C Division.
Chemical. (S) Random copolymer of 1,3-butadiene with 2-propenenitrile a-N(2-(1-piperaryl))ethyl)4-cyano-4-methylbutyronitrile.
Use/Production. (G) Elastromeric modifier for thermoset resins.Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 < 34,600 mg/kg species(Rat). Acute dermal toxicity: LD50 < 3,000 mg/kg species(Rabbit). Eye irritation: moderate species (Rabbit). Skin irritation: slight species (Rabbit).

P 90-50

Manufacturer. The B F Goodrich Company SP&C Division.
Chemical. (S) Random copolymer of 1,3-butadiene with 2-propenenitrile alpha-(4-cyano-4-methylbutyricacid)-w-2,2- dimethylanenitrile.
Use/Production. (G) Elastromeric modifier for thermoset resins. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 < 34,600 mg/kg species (Rat). Acute dermal toxicity: LD50 < 3,000 mg/kg species (Rabbit). Eye irritation: moderate species (Rabbit). Skin irritation: slight species (Rabbit).

P 90-51

Manufacturer. The B F Goodrich Company, SP&C Division.
Chemical. (S) Random copolymer of 1,3-butadiene with 2-propenenitrile-alpha-(4-cyano-4-methylbutyricacid)-w-2,2- dimethylbutyronitrile.
Use/Production. (G) Elastromeric modifier for thermoset resins. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 < 34,600 mg/kg species (Rat). Acute dermal toxicity: LD50 < 3,000 mg/kg species(Rabbit). Eye irritation: moderate species (Rabbit). Skin irritation: slight species (Rabbit).

P 90-52

Manufacturer. The B F Goodrich Company SP&C Division.
Chemical. (S) Random copolymer of 1,3-butadiene with 2-propenenitrile a-N-(2-(1-piperaryl-ethyl)4-ayano-4-ethylbutyramide-w-2,2-dimethylethane-nitrile.
Use/Production. (G) Elastromeric modifier for thermoset resins. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 < 34,600 mg/kg species (Rat). Acute dermal toxicity: LD50 < 3,000 mg/kg species (Rabbit). Eye irritation: moderate species (Rabbit). Skin irritation: slight species (Rabbit).

P 90-53

Manufacturer. The B F Goodrich Company, Sp&C Division.
Chemical. (S) Random copolymer of 1,3-butadiene with 2-propenenitrile a-N(2-(1-piperaryl))ethyl)4-cyano-4-methylbutyronitrile.
Use/Production. (G) Elastromeric modifier for thermoset resins.Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 < 34,600 mg/kg species(Rat). Acute dermal toxicity: LD50 < 3,000 mg/kg species(Rabbit). Eye irritation: moderate species (Rabbit). Skin irritation: slight species (Rabbit).

P 90-54

Manufacturer. Confidential.
Chemical. (G) Diphenylmethane phosphorous acid(1-methylethylidene) di-4,1-phenyleneteraisodocyl ester.
Use/Production. (S) Polymer stabilizer

P 90-57

Manufacturer. Confidential.
Chemical. (G) Diphenylmethane

P 90-75

Manufacturer. Milliken & Company.
Chemical. (G) Cyanoacetic acid ester.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 90-68

Importer. Basf Corporation.
Chemical. (G) Monobalosubstituted

P 90-50

Manufacturer. The B F Goodrich Company SP&C Division.
Chemical. (S) Homopolymer of 1,3-butadiene with 0c-(4-cyano-4-methylbutyric acid)-w-2,2-dimethylethanenitrile.
Use/Production. (G) Elastromeric modifier for thermoset resins.Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 < 34,600 mg/kg species (Rat). Acute dermal toxicity: LD50 < 3,000 mg/kg species(Rabbit). Eye irritation: moderate species (Rabbit). Skin irritation: slight species (Rabbit).

P 90-51

Manufacturer. The B F Goodrich Company, SP&C Division.
Chemical. (S) Homopolymer of 1,3-butadiene 0c-(4-cyano-4-methylbutyric acid)-W-2-butyronitrile.
Toxicity Data. Acute oral toxicity: LD50 < 34,600 mg/kg species (Rat). Acute dermal toxicity: LD50 < 3,000 mg/kg species(Rabbit). Eye irritation: moderate species (Rabbit). Skin irritation: slight species (Rabbit).

P 90-52

Importer. Confidential.
Chemical. (G) Tricarbomonocyclic substituted heteromonocycle.
Use/Import. (G) Light stabilizer. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 < 1,000 mg/kg species (Rat). Acute dermal toxicity: LD50 < 2,000 mg/kg species (Rabbit). Static acute toxicity: LC50 < 1,000 mg/l time 96 h species (Zebra fish). Eye irritation: none species (Rabbit). Mutagenicity: negative. Skin sensitization: negative species (Guinea pig).

P 90-53

Manufacturer. Confidential.
Chemical. (G) Polymeric alpha, omega dicarboxylic acid.
Use/Production. (G) Epoxy toughener. Prod. range: Confidential.

P 90-54

Manufacturer. Dover Chemical Corporation.
Chemical. (S) Tetrakis(isodecyl) 4,4'-isopropylidene diphenyl diphosphate or phosphorous acid(1-methylethyidene)di-phenylene tetraisodecyl ester.
Use/Production. (S) Polymer stabilizer plastic processing. Prod. range: 23,200 kg/yr.

P 90-55

Manufacturer. Confidential.
Chemical. (S) Tekrakis(isodecyl)4,4'-isopropylidene diphenyl diphosphite or phosphorous acid(1-methylethylidene) di-4,1-phenylenetetraisodocyl ester.
Use/Production. (S) Polymer stabilizer for plastic processing. Prod. range: 23,000 kg/yr.

P 90-56

Importer. Ricoh Corporation.
Chemical. (G) Polyol resin.
Use/Import. (G) Binder for photocopying toner. Import range: Confidential.

P 90-57

Manufacturer. Dow Corning Corporation.
Chemical. (G) Alkoxy-functional poly(organo)siloxane.
Use/Production. (S) Adhesive promoter. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 < 5,000 mg/kg species(Rat). Eye irritation: slight species (Rabbit). Skin irritation: negligible species (Rabbit).

P 90-58

Manufacturer. Confidential.
Chemical. (G) Polyol ester of mixed normal and branched monocarboxylic acids.
Use/Production. (G) Dispersive use. Prod. range: Confidential.

P 90-59

Importer. Confidential.
Chemical. (G) Acrylic resin.
Use/Import. (G) Dispersive use. Import range: Confidential.

P 90-63

Importer. Kanedo Zeolite U.S.A., Inc.
Chemical. (G) Modified zeolite.
Use/Import. (G) Polymer for contained use. Import range: 1,000-10,000 kg/yr.

P 90-64

Manufacturer. Confidential.
Chemical. (G) Heterocyclic substituted amino triazole.
Use/Production. (G) Chemical intermediate. Prod. range: 250-1,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 < 5,000 mg/kg species (Rat). Skin irritation: slight species (Guinea pig).

P 90-65

Importer. Confidential.
Chemical. (G) Polyethersiloxane.
Use/Production. (G) Open, nondispersive use. Import range: Confidential.

P 90-66

Importer. Confidential.
Chemical. (G) Polyoxyalkylene polyester.
Use/Import. (G) Open, nondispersive use. Import range: Confidential.

P 90-67

Manufacturer. Confidential.
Chemical. (G) Diphenylmethane diisocyanate prepolymer.
Use/Production. (G) Electromeric systems. Prod. range: Confidential.

P 90-68

Manufacturer. Confidential.
Chemical. (G) Acrylic copolymer.
Use/Production. (G) Intermediate. Prod. range: Confidential.

P 90-69

Manufacturer. Confidential.
Chemical. (G) Acrylate arcylic polymer.
Use/Production. (G) Resin coating. Prod. range: Confidential.

P 90-70

Manufacturer. Air Products and Chemicals, Inc.
Chemical. (G) Modified alkyl acrylate polymer.
Use/Production. (S) Binder. Prod. range: Confidential.
Toxicity Data. Static acute toxicity: LC50 < 750 mg/l time 96 hspecies (Fathead minnow). Skin irritation: slight species (Rabbit).Skin sensitization: negative species (Human).

P 90-71

Manufacturer. The Dow Chemical Company.
Chemical. (G) Magnesium salt.
Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

P 90-72

Manufacturer. Confidential.
Chemical. (G) Organosilazane.
Use/Production. (G) Contained use. Prod. range: Confidential.

P 90-73

Manufacturer. Confidential.
Chemical. (G) Aromatic isocyanate-based urethane prepolymer.
Use/Production. (S) Urethane adhesive for industrial laminating. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 2,200 mg/kg species (Rat). Acute dermal toxicity: LD50 < 7,900 mg/kg species (Rabbit). Inhalationtoxicity: LC50 178 mg/m3 species (Rat).

P 90-74

Importer. Confidential.
Chemical. (G) Sulfonic acids, alkyl benzenes, calcium salts, overbased.
Use/Import. (G) Rust preventative. Import range: Confidential.
Toxicity Data. Eye irritation: moderate species (Rabbit). Skin irritation: slight species (Rabbit).

P 90-75

Manufacturer. Milliken & Company.
Chemical. (G) Cyanoacetic acid ester.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

P 90-76

Manufacturer. Milliken & Company.
Chemical. (G) Substituted polyoxyethylene aniline diacetyl ester.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 90-77

Manufacturer. GE Plastics.
Chemical. (G) Biphenol aromatic diether diimide.
Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

P 90-78

Manufacturer. GE Plastics.
Chemical. (G) Phenolate sodium salt.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

P 90-79

Manufacturer. Confidential.
Chemical. (S) Cyclohexanemethanol, 2-methyl-4-(1-methyl)-1-(4-isopropylcyclohexyl)ethanol.
Production. (G) Dispersive use. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 < 5,000 mg/kg species (Rat). Eye irritation: moderate species(Rabbit). Skin irritation: moderate species (Rabbit). Skin sensitization: negative species (Guinea pig).Phototoxicity: positive.

P 90-80

Manufacturer. Monsanto Company.
Chemical. (G) Adduct of styrene/allyl alcohol. Use/Production. (G) Crosslinking coating resin. Prod. range: Confidential.

P 90-81

Manufacturer. R.T. Vanderbilt Company.
Chemical. (G) Thiadiazole derivative.
Use/Production. (S) Accelerate for synthetic rubber.
Prod.range:Confidential.
Toxicity Data. Acute oral toxicity: LD50 0.83 g/kg species (Rat). Eye irritation: strong species (Rabbit). Skin sensitization: negative species (Guinea pig).

P 90-82

Manufacturer. E.I. Du Pont & De Nemours & Co., Inc.
Chemical. (G) Waterborne poly acrylourethane.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 90-83

Manufacturer. Confidential.
Chemical. (G) Modified methylene diphenyldiisocyanate.
Use/Production. (G) Polymeric MDI additive. Prod. range: Confidential.

P 90-84

Manufacturer. Moses Lake Industries.
Chemical. (G) Quaternary ammonium compounds.
Use/Production. (G) For use in the production of a photo resist developer. Prod. range: 200,000-300,000 kg/yr.

P 90-85

Importer. Mitsubishi Yuka America, Inc.
Chemical. (G) Toluendiisocyanate, ethylene oxide, propylene oxidepolymer blocked with amine.
Use/Import. (S) Propolymer for perfume fixture. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 < 1,000 mg/kg species (Rat). Static acute toxicity: LC50 < 1,000 mg/l time 48 h species (Killfish). Skin irritation: moderate species (Rabbit). Mutagenicity: negative.

P 90-86

Manufacturer. Allied-Signal, Inc.
Chemical. (G) Modified olefin/carboxylic acid copolymer.
Use/Production. (S) Prepolymer for-fixative. Prod. range: 50,000-100.000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 < 1,000 mg/kg species (Rat). Static acute toxicity: LC50 < 1,000 mg/l time 48H species (Killfish). Skin irritation: moderate species (Rabbit). Mutagenicity: negative.

P 90-87

Manufacturer. Allied-Signal, Inc.
Chemical. (G) Modified olefin/carboxylic acid copolymer.
Use/Production. (G) Component for color concentrates. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 < 2,500 mg/kg species (Rat). Eye irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit).

P 90-88

Importer. Confidential.
Chemical. (G) Titanium containing phosphate and pyrophoshate reaction product.
Use/Import. (G) Metal pretreatment agent. Import range:Confidential.

P 90-89

Importer. Basf Corporation.
Chemical. (G) Monohalosubstituted polyheteromonocyclic derivative of a sulfonated bis-azo-dyestaff.
Use/Import. (S) Textile dye. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 < 2,200 mg/kg species (Rat). Acute dermal toxicity: LD50 < 2,000 mg/kg species (Rabbit). Static acute toxicity: EC50 < 500 mg/l time species (Daphnia magna). Eye irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit). Mutagenicity: negative. Skin sensitization: negative species (Guinea pig).

P 90-90

Manufacturer. Confidential.
Chemical. (G) Alkaline stillbene condensation product.
Use/Production. (S) Liquid paper dye. Prod. range: Confidential.

P 90-91

Importer. Confidential.
Chemical. (G) Aryl novolac resin.
Use/Import. (G) Resin as a raw material for electrical devices. Import range: Confidential.

P 90-92

Importer. Confidential.
Chemical. (G) Quarternary bromide.
Use/Import. (G) Contained use. Import range: Confidential.

P 90-93

Importer. Huls America Inc.
Chemical. (G) Reaction product of aryl and alkyl dicarboxylicacids/alkanediol/ester polyester with an acrylate adduct.
Use/Import. (S) Radiation curable adhesive resins. Import range: 1,000-10,000 kg/yr.

P 90-94

Importer. Huls America Inc.
Chemical. (G) Reaction product of aryl and alkyl dicarboxylicacids/alkanediol/ester polyester with an acrylate adduct.
Use/Import. (S) Radiation curable adhesive resin. Import range: 1,000-10,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 < 5,000 mg/kg species (Rat). Skin irritation: slight species (Rabbit).

P 90-95

Importer. Huls America, Inc.
Chemical. (G) Reaction product of aryl and alkyl dicarboxylicacids/alkanediol/ester polyester with an acrylate adduct.

Use/Import. (S) Radiation curable adhesive resin. Import range: 1,000-

Use/Production. (G) Use items include mechanical and electrical components

Use/Production. (S) Raw material for flexible mold foam production. Prod.

Chemical. (G) Hydroxy functional acrylic resin.
Use/Production. (S) Coatings. Prod.

Chemical. (G) Hydroxy functional acrylic resin.
Use/Production. (S) Coatings. Prod.

Toxicity Data. Acute oral toxicity: LD50 < 2,000 mg/kg species (Rat). Eye irritation: none species (Rabbit).

Use/Import. (S) Radiation curable adhesive resin. Import range: 1,000–10,000 kg/yr.
Toxicity Data. Skin irritation: slight species (Rabbit).

P 90–97

Manufacturer. Confidential.
Chemical. (G) Dithiophosphate amine salt.
Use/Production. (G) Metallic corrosion inhibitor. Prod. range: Confidential.

P 90–98

Manufacturer. Confidential.
Chemical. (G) Modified maleated rosin salts.
Use/Production. (S) The function is as a binder; the application is in publication gravure printing inks. Prod. range: Confidential.

P 90–110

Manufacturer. 3(M).
Chemical. (G) Fluoro chemical epoxide.
Use/Production. (G) Site-limited isolated intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 < 5 gm/kg species (Rat). Eye irritation: slight species (Rabbit). Skin irritation: slight species (Rabbit). Mutagenicity: negative.

P 90–111

Manufacturer. 3(M).
Chemical. (G) Fluorochemical urethane derivative.
Use/Production. (G) Anti soiling treatment. Prod. range:Confidential.
Toxicity Data. Acute oral toxicity: LD50 < 5 gm/kg species (Rat). Static acute toxicity: LC50 < 1,000 mg/l time 48 h species (Daphnia magna). Eye irritation: slight species (Rabbit). Skin irritation: negligible species (Rabbit).

P 90–112

Manufacturer. Confidential.
Chemical. (G) Aromatic chloroformate.
Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

P 90–113

Manufacturer. Telechemische, inc.
Chemical. (G) Toluene sulfonamide A epoxy adduct.
Use/Production. (G) Solid plasticizer for inks, paints, and varnishes. Prod. range: Confidential.

P 90–114

Manufacturer. The Polymer Corporation.
Chemical. (G) Poly(amine–1,4 butanediylimino (1.6–dioxo–1.6–hexanediyl).
Use/Production. (G) Use items include mechanical and electrical components such as gears & fasteners,. Prod. range: Confidential.

P 90–115

Manufacturer. Confidential.
Chemical. (G) Halogen substituted hexahydro pentaalkyl substitutedindene.
Use/Production. (S) Site-limited intermediate. Prod. range:Confidential.

P 90–116

Importer. Huls America Inc.
Chemical. (G) Reaction product of allydicarboxylic acids/alkanediol/ester polyester with anacrylate adduct.
Use/Import. (S) Radiation curable adhesive resins. Import range: 1,000–10,000 kg/yr.

P 90–117

Manufacturer. Confidential.
Chemical. (G) Modified epoxy polymer.
Use/Production. (G) Protective & decorative coatings. Prod. range: Confidential.

P 90–118

Importer. Basf Corporation Chemicals Division.
Chemical. (S) Cyclohexanemethanol, 4–((ethanyloxy)methyl).
Use/Import. (S) Monomers. Import range: Confidential.

P 90–119

Importer. Confidential.
Chemical. (G) Heterocyclic dispersive dyestuff.
Use/Import. (S) Monomers. Import range: Confidential.

P 90–120

Importer. Cray Valley Products, Inc.
Chemical. (S) Thixatropically modified tall oil fatty acid alkyd resin.
Use/Import. (G) Paint additive. Import range: 3,500–11,800 kg/yr.

P 90–121

Importer. Ciba-Geigy Corporation.
Chemical. (G) Amines, alkyl, compounds with (2–benzolylthio)–butanedioic acids.
Use/Import. (S) Corrosion inhibitor. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 < 1,000–2,000 mg/kg species (Rat). Acute dermal toxicity: LD50 < 2,000 mg/kg species (Rat). Skin irritation: strong species (Rabbit). Skin sensitization: positive species (Guinea pig).

P 90–122

Manufacturer. Confidential.
Chemical. (G) Polyether polyol.
Use/Production. (S) Raw material for flexible mold foam production. Prod. range: Confidential.

P 90–123

Importer. Ciba-Ciegy Corp.
Chemical. (S) 2,2'(oxybis(methane)bis(2–ethyl)1,3–propanediol; chloromethyloxirane.
Use/Import. (S) Protective coatings for exterior exposure. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 < 2,000 mg/kg species (Rat). Acute dermal toxicity: LD50 <2,000 mg/kg species (Rabbit). Skin irritation: negligible species (Rabbit). Mutagenicity: positive.

P 90–124

Importer. Cuer-Tin Bros. Polymers.
Chemical. (G) Acrylate urethane cross linking polymer.
Use/Import. (S) A crosslinking agent for nco-free urethane coatings. Import range: 12,500–60,000 kg/yr.

P 90–125

Manufacturer. Confidential.
Chemical. (G) Disubstituted phenylaminobenzene azo substituted phenol.
Use/Production. (S) Crosslinking polymer. Prod. range: 100,000–500,000 kg/yr.

P 90–126

Manufacturer. Confidential.
Chemical. (G) Disubstituted phenylaminobenzene azo substituted phenol.
Use/Production. (S) Crosslinking polymer. Prod. range: 100,000–500,000 kg/yr.

P 90–127

Manufacturer. Confidential.
Chemical. (G) Hydroxy functional acrylic resin.
Use/Production. (S) Coatings. Prod. range: Confidential.

P 90–128

Manufacturer. Confidential.
Chemical. (G) Hydroxy functional acrylic resin.
Use/Production. (S) Coatings. Prod. range: Confidential.

P 90–129

Manufacturer. Confidential.
Chemical. (G) Hydroxy functional acrylic resin.
Use/Production. (S) Coatings. Prod. range: Confidential.

P 90–130

Manufacturer. Confidential.

Chemical. (G) Hydroxy functional acrylic resin.
Use/Production. (S) Coatings. Prod. range: Confidential.

P 90–131

Manufacturer. Confidential.
Chemical. (G) Hydroxy functional acrylic resin.
Use/Production. (S) Coatings. Prod. range: Confidential.

P 90–132

Manufacturer. Confidential.
Chemical. (G) Hydroxy functional acrylic resin.
Use/Production. (S) Coatings. Prod. range: Confidential.

P 90–133

Manufacturer. Confidential.
Chemical. (G) Hydroxy functional acrylic resin.
Use/Production. (S) Coatings. Prod. range: Confidential.

P 90–134

Manufacturer. Confidential.
Chemical. (G) Hydroxy functional acrylic resin.
Use/Production. (S) Coatings. Prod. range: Confidential.

P 90–135

Manufacturer. Confidential.
Chemical. (G) Hydroxy functional acrylic resin.
Use/Production. (S) Coatings. Prod. range: Confidential.

P 90–136

Manufacturer. Confidential.
Chemical. (G) Hydroxy functional acrylic resin.
Use/Production. (S) Coatings. Prod. range: Confidential.

P 90–137

Manufacturer. Confidential.
Chemical. (G) Hydroxy functional acrylic resin.
Use/Production. (S) Coatings. Prod. range: Confidential.

P 90–138

Manufacturer. Confidential.
Chemical. (G) Hydroxy functional acrylic resin.
Use/Production. (S) Coatings. Prod. range: Confidential.

P 90–139

Manufacturer. Confidential.
Chemical. (G) Hydroxy functional acrylic resin.
Use/Production. (S) Coatings. Prod. range. Confidential.

P 90–140

Manufacturer. Confidential.
Chemical. (G) Hydroxy functional acrylic resin.
Use/Production. (S) Coatings. Prod. range: Confidential.

P 90–141

Manufacturer. Confidential.
Chemical. (G) Hydroxy functional acrylic resin.
Use/Production. (S) Coatings. Prod. range: Confidential.

P 90–142

Manufacturer. Confidential.
Chemical. (G) Tris(disubstitutedalkyl)heterocycle.
Use/Production. (S) Minor component of photoresist forulations, used during manufacture of integrated circuits. Prod. range: Confidential.

P 90–143

Manufacturer. Confidential.
Chemical. (G) Cresol-aldehyde-aromatic reaction mixture.
Use/Production. (S) Resin for use in photoresist during the manufacture process of microelectronics circuits. Prod. range: Confidential.

P 90–145

Manufacturer. Confidential.
Chemical. (G) Disubstituted phenylaminobenzene azo substitued phenol compound with ammonia derivative.
Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 90–146

Importer. Cuer-Tin Bros. Polymers.
Chemical. (G) Acrylated urethane oligomer.
Use/Import. (S) Crosslinking agent. Import range: 12,500–60,000 kg/yr.

P 90–147

Manufacturer. Confidential.
Chemical. (G) Alkenyl phosphate ester.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 90–148

Manufacturer. Interplastic Corporation.
Chemical. (G) Unsaturated polyester resin.
Use/Production. (S) Molding resin. Prod. range: 1,000,000–14,000,000 kg/yr.

P 90–149

Importer. Confidential.
Chemical. (G) Metal, 4–[(substituted phenyl)azoaaa0–4,5–dihydro–5–oxo–1–phenyl–1H–pyrazole–3–carboxylato(z–)–, hydrogen.
Use/Import. (G) Dye. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 < 2,000 mg/kg species (Rat). Eye irritaition: none species (Rabbit). Mutagenicity: negative. Skin sensitization: negative species (Guinea pig).

P 90–150

Importer. Confidential.
Chemical. (G) 2–napthalene carboxamide, N<N'–substituted–1,4–phenylene)bis(1,4–(subtitutedphenyl)azo)–3–hydroxy–.
Use/Import. (S) Pigment for coloring of polyester. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 < 5,000 mg/kg species (Rat). Eye irritaition: none species (Rabbit). Skin irritation: negligible species (Rabbit). Mutagenicity: negative.

P 90–152

Manufacturer. Confidential.
Chemical. (G) Acrylate copolymer.
Use/Production. (G) Coatings additive. Prod. range: Confidential.

P 90–153

Importer. NOF America Corporation.
Chemical. (G) Alkyl acrylate.
Use/Import. (G) Open, nondispersive use (solid). Import range: Confidential.

P 90–154

Importer. NOF America Corporation.
Chemical. (G) Modified polyethylene copolymer.
Use/Import. (G) Open, nondispersive use (solid). Import range: Confidential.

P 90–155

Manufacturer. Confidential.
Chemical. (G) Polyether MDI prepolymer.
Use/Production. (G) Molded flexible urethane foams. Prod. range: Confidential.

P 90–157

Importer. Confidential.
Chemical. (S) 1,4–Benzenedicarboxylic acids, polymer with 1,1'[(1–methylidene)bis(4,1–phenyleneoxy)]bis–2–propanol.
Use/Import. (G) Thermal print transfer chemical. Import range: Confidential.

P 90–158

Importer. Ameribrom Inc.
Chemical. (S) 1,2,4–Tribromo–5–ethenyl benzene.
Use/Import. (S) Flame retardant. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 < 4 g/kg species (Rat). Eye irritaition: none species (Rabbit). Skin

irritation: negligible species (Rabbit). Mutagenicity: negative.

P 90–159

Importer. Confidential.
Chemical. (S) Modified acrylic polymer.
Use/Production. (S) Processing

polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 10 such PMN(s) and provides a summary of each.

DATES: Close of Review Periods:

Use/Production. (G) Emulsions for polishes.
Prod. range: Confidential.

submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573,

irritation: negligible species (Rabbit). Mutagenicity: negative.

P 89-159

Importer. Ameribrom Inc.
Chemical. (S) N-(2,4,6-tribromophenyl)maleimide.
Use/Import. (S) Flame retardant. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 < 5,000 mg/kg. Eye irritaition: strong species (Rabbit). Skin irritation: negligible species (Rabbit).

P 89-160

Manufacturer. Confidential.
Chemical. (G) An alkanolamine.
Use/Production. (G) Contrast promoting agent in film developer. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 < 1,845 mg/kg species (Rat). Acute dermal toxicity: < 2,000 mg/kg species (Rabbit). Skin irritation: strong species (Rabbit). Mutagenicity: negative.

P 89-161

Importer. Confidential.
Chemical. (G) Metal chlorides, methacrylate complex.
Use/Import. (G) Catalyst used in a closed system. Import range: Confidential.

Date: November 28, 1989.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 89-29692 Filed 12-20-89; 8:45 am]

BILLING CODE 6560-50

[OPTS-59579; FRL-3686-8]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 48066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 10 such PMN(s) and provides a summary of each.

DATES: Close of Review Periods:

Y 90-17, 90-18, 90-19, 90-20, 90-21, November 26, 1989.
Y 90-22, 90-23, November 27, 1989.
Y 90-24, November 28, 1989.
Y 90-25, December 3, 1989.
Y 90-26, December 4, 1989.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-545, 401 M Street, SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 90-17

Manufacturer. Confidential.
Chemical. (G) Acrylic polymer.
Use/Production. (G) Dispersive use.
Prod. range: Confidential.

Y 90-18

Importer. C. Itoh Co. (America), Inc.
Chemical. (S) Epsilon-caprolactone-terephthalic acid-tetramethylene glycol copolymer.
Use/Import. (S) Extrusion molding process.
Import range: Confidential.

Y 90-19

Manufacturer. Air Product and Chemicals, Inc.
Chemical. (G) Styrene-acrylic acid polymer.
Use/Production. (G) Polymer modifiers.
Prod. range: Confidential.

Y 90-20

Manufacturer. Air Product and Chemicals, Inc.
Chemical. (G) Styrene-acrylic acid polymer.
Use/Production. (G) Polymer modifiers.
Prod. range: Confidential.

Y 90-21

Manufacturer. Air Product and Chemicals, Inc.
Chemical. (G) Styrene-acrylic acid polymer.
Use/Production. (G) Polymer modifiers.
Prod. range: Confidential.

Y 90-22

Manufacturer. Rohm & Haas Company.
Chemical. (S) Modified acrylic polymer.
Use/Production. (S) Processing additive for polyolefins.
Prod. range: Confidential.

Y 90-23

Manufacturer. Rohm & Haas Company.
Chemical. (S) Modified acrylic polymer.
Use/Production. (S) Processing additive for polyolefins.
Prod. range: Confidential.

Y 90-241

Manufacturer. Interplastic Corp.
Chemical. (G) Saturated polyester resin.
Use/Production. (S) Molding resin.
Prod.range: 1000,000–1,000,000 kg/yr.

Y 90-25

Manufacturer. Confidential.
Chemical. (G) Blocked polyether polyurethane.
Use/Production. (S) Open, nondispersive.
Prod. range: Confidential.

Y 90-26

Manufacturer. Confidential.
Chemical. (G) Polymer of aromatic diacid, cycloaliphatic diacidand diol.
Use/Production. (G) Polymer for coating application.
Prod. range: Confidential.

Dated: December 8, 1989.

Douglas W. Sellers,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 89-29693 Filed 12-20-89; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59580; FRL-3686-9]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 48066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 10 such PMN(s) and provides a summary of each.

DATES: Close of Review Periods:

Y 90-27, December 7, 1989.
Y 90-28, 90-29, December 14, 1989.
Y 90-30, 90-31, 90-32, 90-33, Y 90-34, 90-35, 90-36, December 18, 1989.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-545, 401 M Street, SW, Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE-G004 at the above address between 8 a.m. and 4 p.m., Monday through Friday, excluding legal holidays.

90-27

Manufacturer. Freeman Chemical Corporation.
Chemical. (G) Long oil alkyd resin.
Use/Production. (S) Resin component for trade sales applications-paint.
Prod. range: 1200,000–400,000 kg/yr.

Y 90-28

Manufacturer. Freeman Chemical Corporation.
Chemical. (G) Unsaturated polyester resin.
Use/Production. (S) Resin component for water reducible paint.
Prod. range: 1200,000–400,000 kg/yr.

Y 90-29

Manufacturer. Freeman Chemical Corporation.
Chemical. (G) Unsaturated polyester resin.
Use/Production. (S) Resin component for peroxide cured paints.
Prod. range: 144,000–55,000 kg/yr.

Y 90-30

Importer. Confidential.
Chemical. (G) Ethylene acrylic terpolymer salt.
Use/Import. (G) Molded and extruded products, packing, textile,adhesives.
Import range: Confidential.

Y 90-31

Manufacturer. Allied-Signal, Inc.
Chemical. (G) Modified olefin carboxylic acid copolymer.
Use/Production. (G) Emulsions for polishes.
Prod. range: Confidential.
Toxicity Data. Acute oral toxicity LD50 >5 g/kg species (Rat).

Y 90-32

Manufacturer. Allied-Signal, Inc.
Chemical. (G) Modified olefin carboxylic acid copolymer.
Use/Production. (G) Emulsions for polishes.
Prod. range: Confidential.
Toxicity Data. Acute oral toxicity LD50 >5 g/kg species (Rat).

Y 90-33

Manufacturer. Allied-Signal, Inc.
Chemical. (G) Modified olefin carboxylic acid copolymer.
Use/Production. (G) Emulsions for polishes.
Prod. range: Confidential.
Toxicity Data. Acute oral toxicity LD50 >5 g/kg species (Rat).

Y 90-34

Manufacturer. Allied-Signal, Inc.
Chemical. (G) Modified olefin carboxylic acid copolymer.
Use/Production. (G) Emulsions for polishes.
Prod. range: Confidential.
Toxicity Data. Acute oral toxicity LD50 <5 g/kg species (Rat).

Y 90-35

Manufacturer. Confidential.
Chemical. (G) Polyester.
Use/Production. (G) Coating intermediate.
Prod. range: Confidential.

Y 90-36

Manufacturer. Confidential.
Chemical. (G) Polyester resin.
Use/Production. (G) Coating.
Prod. range: Confidential.

Dated: December 8, 1989.

Douglas W. Sellers,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 89-29694 Filed 12-20-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-011049-004.
Title: Tampa Port Authority Terminal Agreement.
Parties:
Tampa Port Authority
Seagull Terminal & Stevedoring Co.
Synopsis: The Agreement extends the term of the basic lease Agreement (Agreement No. 224-011049 as amended) for an additional three (3) month period from January 1, 1990, through March 31, 1990. It also provides that either party may cancel the Agreement during the three (3) month period by giving a minimum of fifteen (15) day advance written notice.

Agreement No.: 224-200054-004.
Title: Tampa Port Authority Terminal Agreement.
Parties:
Tampa Port Authority
G & C Stevedoring Company (G&C).
Synopsis: The Agreement amends the term of the basic agreement. The term of the agreement shall be on a month-to-month basis commencing January 1, 1990, until March 31, 1990. G & C will pay the Port $25 per month commencing January 1, 1990, as consideration for the demised premises.

Agreement No.: 224-200057-003.
Title: Tampa Port Authority Terminal Agreement.
Parties:
Tampa Port Authority
Tampa Bay International Terminals (TBIT).
Synopsis: The Agreement amends the basic agreement and extends the lease term for three months, commencing January 1990, through March 31, 1990. Rent, dockage, wharfage and Minimum Annual Guarantee (MAG) shall remain in effect on a pro rata basis for the extended period. TBIT will be invoiced for MAG shortages or provided cash rebates for MAG excesses, however, cash rebates shall not exceed $12,500 during the pro rata period as adjusted.

Agreement No.: 224-200270-002.

Title: Port of Oakland Terminal Agreement.
Parties:
Port of Oakland
Mitsui OSK Lines, Ltd.
Nippon Liner System (North America, Inc.).
Synopsis: The Agreement amends the basic agreement to provide that if 500 export automobiles are handled on the terminal premises in a twelve month period, for the purposes of the TEU schedule in paragraph 4 of the basic agreement, two TEUs will be counted for every three automobiles loaded to 40 foot containers.
Agreement No.: 224–200309.
Title: South Carolina State Ports Agreement.
Parties:
South Carolina State Ports Authority (Port)
Associated Container Transportation (USA)(ACT)
Columbus Line, Inc. (Columbus).
Synopsis: The Agreement provides for ACT and Columbus to use 8 acres (4 acres each) of North Charleston Terminal for their container terminal operations. It also provides for a guaranteed minimum of 100,000 short tons of container cargo and discount wharfage for accumulated tonnage. This Agreement shall terminate on September 30, 1991.
Agreement No.: 224–200310.
Title: Puerto Rico Ports Authority Terminal Agreement.
Parties:
Puerto Rico Ports Authority
Antilles Shipping Corporation.
Synopsis: The Agreement provides for the three year lease and preferential use of terminal facilities at Pier 6, San Juan, Puerto Rico to be used for the berthing and loading/discharging of vessels, handling of cargo and passengers, and temporary storage of cargo.
Agreement No.: 224–200311.
Title: South Carolina State Ports Authority Terminal Agreement.
Parties:
South Carolina State Ports Authority
Lykes Bros. Steamship Co., Inc. (Lykes).
Synopsis: The Agreement provides Lykes with tariff discounts for wharfage and certain container/chassis terminal services. Lykes guarantees 50,000 short tons of cargo throughput per year. The Agreement's term is for three years.
Agreement No.: 224–200308–001.
Title: Strachan Shipping Company Terminal Handling Agreement.
Parties:
Strachan Shipping Company (Strachan)
South Atlantic Cargo Shipping N.V. (SACS).
Synopsis: The Agreement amends the basic agreement to add rates for certain specified cargoes handled at Port Everglades.
Agreement No.: 224–200052–004.
Title: Tampa Port Authority Terminal Agreement.
Parties:
Tampa Port Authority Terminal Agreement
Bay Terminal & Stevedoring Co., Inc.
Synopsis: The Agreement extends the term of the basic lease agreement on a month-to-month basis for a maximum of three months from January 1, 1990, through March 31, 1990.

By Order of the Federal Maritime Commission.

Dated: December 15, 1989.

Joseph C. Polking,
Secretary.

[FR Doc. 89–29644 Filed 12–20–89; 8:45 am]
BILLING CODE 6730–01–M

[Docket No. 89–26]

Government of the Territory of Guam v. Sea-Land Service, Inc. and American President Lines, Ltd.; Filing of Complaint and Assignment

Notice is given that a complaint filed by the Government of the Territory of Guam ("Complainant") against Sea-Land Service, Inc. and American President Lines, Ltd. (hereinafter referred to collectively as "Respondents") was served December 15, 1989. Complainant alleges that Respondents engaged in violations of sections 14 (Fourth), 16, 17, and 18(a) of the Shipping Act, 1916, U.S.C. app. 812, 815, 816 and 817, and sections 1, 2 and 4 of the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 843, 844, and 845, by charging unjust and unreasonable rates for the transportation of cargo between ports in the United States and Guam, varying rates and charges for similarly situated shippers and commodities and thus causing preferences to certain shippers and commodities and prejudice to others, charging unjustly and unreasonably for demurrage charges assessed at the port of Guam, assessing demurrage charges and engaging in practices resulting in preferences to certain shippers and commodiites and prejudice to others, and overcharging Complainant through unjust and unreasonable rate increases. In addition, Complainant charges respondent Sea-Land Service, Inc. with operating as an untariffed common carrier, charging unjust and unreasonable rates and assessing and collecting unjust and unreasonable charges for service from Hawaii to Guam and between the U.S. west coast and Guam, and varying untariffed charges for similarly situated shippers and commodities resulting in preferences to certain shippers and commodities and prejudice to others in the Hawaii-Guam and U.S. west coast-Guam trades.

This proceeding has been assigned to Administrative Law Judge Joseph N. Ingolia ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by December 17, 1990, and the final decision of the Commission shall be issued by April 17, 1991.

Joseph C. Polking,
Secretary.

[FR Doc. 89–29610 Filed 12–20–89; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Forms under Review

December 13, 1989.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR § 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 C.F.R. § 1320.9." Board-approved collection of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following report, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATE: Comments must be received by December 26, 1989.

ADDRESS: Comments, which should refer to the OMB Docket number, should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or delivered to room B–2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B–1122 between 8:45 a.m. and 5:15 p.m. except as provided in section 261(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the request for clearance (SF 83), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Federal Reserve Board Clearance Officer—Frederick J. Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3822).

Proposal to approve under OMB delegated authority the discontinuance of the following report

1. Report title: Daily Report of When-Issued Commitments Outstanding.
Agency form number: FR 2080.
OMB Docket number: 7100–0164.
Frequency: Daily.
Reporters: Primary dealers in U.S. government securities.
Annual reporting hours: 4,320.
Estimated average hours per response: 0.3.
Number of respondents: 40.
Small businesses are not affected.
General description of report: This information collection is authorized by law (12 U.S.C. 248(a)(2) and 353–359(a)) and is given confidential treatment (5 U.S.C. 552(b)(4)).

This report collects information on significant "when-issued" commitments of the primary dealers that deal in U.S. government securities with the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, December 13, 1989.
William W. Wiles,
Secretary of the Board.

[FR Doc. 89–29647 Filed 12–20–89; 8:45 am]
BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration; Advisory Committee Meetings in January

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration, HHS.

ACTION: Notice of Meetings.

SUMMARY: This notice sets forth the schedule and proposed agendas of the forthcoming meetings of the agency's advisory committees in the month of January 1990.

The Extramural Science Advisory Board, NIMH, will discuss molecular genetics. Attendance by the public will be limited to space available.

The Advisory Panel on Alzheimer's Disease meeting will be open for discussion of the Panel's initial report and other business before the Panel. Attendance by the public will be limited to space available.

The initial review committee will be performing the initial review of applications for Federal assistance. Therefore, portions of the meeting will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 552(b)(6) and 5 U.S.C. app. 2 10(d).

Notice of these meetings is required under the Federal Advisory Committee Act, Public Law 92–463.

Committee Name: Extramural Science Advisory Board, NIMH.
Date and Time: January 22–23: 8:30 a.m.
Place: National Institutes of Health, Building 31, Conference Room 4, Bethesda, MD 20892.
Status of Meeting: Open.
Contact: Tony Pollitt, room 17C–26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3657.
Purpose: The Committee advises the Secretary of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute of Mental Health, on the direction, scope, balance, and emphasis of the Institute's extramural science programs.

Committee Name: Advisory Panel on Alzheimer's Disease, NIMH.
Date and Time: January 29: 8:00 a.m., January 30: 8:30 a.m.
Place: Sheraton Washington Hotel, Nathan Hale Room, 2660 Woodley Road, NW., Washington, DC 20008.
Status of Meeting: Open.
Contact: George Niederehe, room 11C–03, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–1185.
Purpose: The Advisory Panel on Alzheimer's Disease assists the Secretary of Health and Human Services and the Council on Alzheimer's Disease in the identification of priorities and emerging issues with respect to Alzheimer's disease and related dementias and the care of individuals with such disease and dementias.

Committee Name: Epidemiology Research Subcommittee of the Epidemiologic and Services Research Review Committee, NIMH.
Date and Time: January 29–31: 9:00 a.m.
Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Status of Meeting: Open—January 29: 9:00–10:00 a.m.; closed—Otherwise.
Contact: Gloria Yockelson, room 9C–14, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–1367.
Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities as they relate to mental health epidemiology, mental health service systems research, and evaluation of clinical mental health services, with recommendations to the National Advisory Mental Health Council for final review.

Substantive information, summaries of the meetings, and rosters of committee members may be obtained from Ms. Joanna Kieffer, NIMH Committee Management Officer, room 9–105, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4333.

Dated: December 15, 1989.

Peggy W. Cockrill,
Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 89–29665 Filed 12–20–89; 8:45 am]
BILLING CODE 4160–20–M

Health Resources and Services Administration

and approaches to the problems and issues of the under representation of Black Americans, Native Americans

Maryland 20857, Telephone (301) 443–

Name: Council on Graduate Medical

DEPARTMENT OF THE INTERIOR

Performance Review Board

received. Tribal application and selection will be made under criteria and terms and conditions as provided

under the Indian School Equalization formula pursuant to title XI of Public Law 95–561, as amended, or for other

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Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory bodies scheduled to meet during the month of January 1990,

Name: Subcommittee on Physician Manpower of the Council on Graduate Medical Education.

Time: January 29, 1990, 2:00 p.m.–6:00 p.m.

Place: Parklawn Conference Center, Conference Room G, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open for entire meeting.

Purpose: The subcommittee reviews and analyzes currently applicable studies of under and oversupply of physician manpower giving special attention to number and distribution of specialists, primary care physicians and residents. It also is concerned with studies and recommendations regarding the number of undergraduate medical students as well as the need for improving physician manpower data.

Agenda: Briefing of contractor activities on project to reexamine the adequacy of physician personnel supply made in 1980 by GMENAC for six physician specialties. Briefing on DHHS request to State Governors for Health Manpower shortage information. In addition, the Subcommittee will hold a panel discussion on aging and physician manpower.

Anyone requiring information regarding the subject Subcommittee should contact Jerald M. Katzoff, Subcommittee Principal Staff Liaison, Division of Medicine, Bureau of Health Professions, room 4C-18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-6326.

Name: Subcommittee on Minority Representation in Medicine of the Council on Graduate Medical Education.

Time: January 29, 1990, 9:00 a.m.–12:00 p.m.

Place: Parklawn Conference Center, Conference Room G, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open for entire meeting.

Purpose: To provide a forum for discussing participation of minority group members in medicine, to guard against regression from what has been achieved, and to expand efforts where possible.

Agenda: Develop an action plan for the next 1 to 3 years involving solutions and approaches to the problems and issues of the under representation of Black Americans, Native Americans, Mexican Americans and Mainland Puerto Ricans in medicine. These issues will relate to pathway problems, recruitment, enrollment, retention and graduation of under represented minorities in medical education. In addition, the Subcommittee will discuss the socioeconomic factors related to increasing the representation of minority physicians.

Anyone requiring information regarding the subject Subcommittee should contact Ronald L. Craig, Subcommittee Principal Staff Liaison, Division of Medicine, Bureau of Health Professions, room 4C-18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-6326.

Name: Subcommittee on Medical Education Programs and Financing of the Council on Graduate Medical Education.

Time: January 29–31, 1990, 8:30 a.m.–5:00 p.m.

Place: Parklawn Conference Center, Conference Room G or H, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open for entire meeting.

Purpose: The subcommittee identifies the issues and problems in current methods of financing and support. Assesses the implications of alternative financing polices on medical education programs, service delivery, cost containment, physician supply & distribution, and shortages and excesses of physicians.

Analyzes existing information and data on current and alternative medical education programs of hospitals, schools of medicine and osteopathy, and accrediting bodies; federal policies regarding medical education programs; and their impact on the supply and distribution of physicians.

Agenda: January 29: Review of a draft proposed special report of the Council on the financial status of teaching hospitals in the United States, including review and discussion of extant narrative, conclusions and recommendations.

January 31: Medical education in the ambulatory setting and or financing of medical education.

Anyone requiring information regarding the subject Subcommittee should contact F. Lawrence Clare, M.D. Subcommittee Principal Staff Liaison, Division of Medicine, Bureau of Health Professions, room 4C-18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-6328.

Name: Council on Graduate Medical Education.

Time: January 30–31, 1990, 8:30 a.m.–5:00 p.m.

Place: Parklawn Conference Center, Conference Rooms G & H, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open for entire meeting.

Purpose: Provides advice and recommendations to the Secretary and to the Committees on Labor and Human Resources, and Finance of the Senate and the Committees on Energy and Commerce and Ways and Means of the House of Representatives, with respect to (A) the supply and distribution of physicians in the United States: (B) current and future shortages of physicians in medical and surgical specialties and subspecialties: (C) issues relating to foreign medical graduates; (D) appropriate Federal policies regarding (A), (B), and (C) above; (E) appropriate efforts to be carried out by medical and osteopathic schools, public and private hospitals and accrediting bodies regarding matters in (A), (B), and (C) above; (F) deficiencies in the needs for improvements in, existing data bases concerning supply and distribution of, and training programs for physicians in the United States.

Agenda: The Council will receive legislative updates from HRSA, HCFA, and the VA. On January 30, the Council will focus on a proposed draft special report on "The Financial Status of Teaching Hospitals." There will be a report from the Physician Manpower Subcommittee, the Minority Representation in Medicine Subcommittee, and the Subcommittee on Medical Education Programs and Financing.

Anyone requiring information regarding the subject Council should contact Marilyn H. Gaston, M.D., Executive Secretary, Council on Graduate Medical Education, Health Resources and Services Administration, room 4C-18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301)443-6190.

Agenda Items are subject to change as priorities dictate.

Dated: December 15, 1989.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 89-29002 Filed 12-20-89; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

Performance Review Board Appointment

AGENCY: Department of the Interior.

ACTION: Notice of change in Performance Review Board Membership.

SUMMARY: This notice provides the name of the replacement individual to serve on one of the Department of the Interior Performance Review Boards. The publication of this appointment is required by section 405(a) of the Civil Service Reform Act of 1978 (Public Law 95-454, U.S.C. 4314(c)(4)).

DATE: This appointment is effective upon publication in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Morris A. Simms, Director of Personnel, Office of the Secretary, Department of the Interior, 1800 C Streets, NW., Washington, DC 20240. Telephone Number: 343-5761.

Department of the Interior, Performance Review Board (PRB), Changes as of December 6, 1989.

Assistant Secretary for Land and Minerals Management

Scott Sewell, LMM, (NC) (replaces Thomas Allen)
James Hughes, LMM, (NC)
Dean Stepanek, LLM, (CA)
Carson Culp, LLM, (CA)
Ed Cassidy, LMS, (NC)
Thomas Gernhofer, LMS, (CA)
Robert Fagin, LSM, (CA)

Dated: December 12, 1989.

Charles E. Kay,

Principal Deputy Assistant Secretary-Policy Budget and Administration.

[FR Doc. 89-29059 Filed 12-20-89; 8:45 am]

BILLING CODE 4310-10-M

Bureau of Indian Affairs

Office of Tribal Services; Tribal Self-Governance Demonstration Project

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Announcement to invite applications from federally recognized Indian tribes to participate in a five-year research and demonstration project.

SUMMARY: The Bureau of Indian Affairs by this announcement invites Indian tribes to participate in a multi-year demonstration project. Twenty tribes reflecting, to the greatest extent practicable, geographic representation will be selected to participate in this project from among all tribal applicants received. Tribal application and selection will be made under criteria and terms and conditions as provided for in the amendments to the Indian Self-Determination and Education Assistance Act of 1975, Public Law 93-638. The Act, amended on October 5, 1988, contains a new section 209, entitled "Title III—Tribal Self-Governance Demonstration Project," which establishes and authorizes the project. The purpose of this title is to enhance the ability of tribal governments to plan for and deliver services appropriately designed to meet the needs of their members and to enhance the effectiveness and long-term financial stability of tribal governments. Participation is strictly voluntary for those tribes wishing to participate in a project which allows tribes to redesign programs and services as well as determine the level of services to be provided to their members. This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM8

DATES: The date for submission of applications under this announcement is February 20, 1990.

FOR FURTHER INFORMATION CONTACT: George Clark (202) 343-1706 or Mitchell L. Parks (202) 343-1705, Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior, Room 4627, 18th and C Streets, NW., Washington, DC 20240.

SUPPLEMENTARY INFORMATION:

A. Purpose of the Project.

The purpose of this project is to invite proposals which reflect the requirements of title III of the Act and which may result in the redesign of programs, activities, and functions or services that the Secretary is authorized to administer for the benefit of Indians, and the reallocation of funds from such programs, activites or services based on the needs and priorities of the communities to be served. Selection of participants made pursuant to this announcement will allow approximately 20 tribal governing bodies to develop proposals for negotiation of possible funding agreements with the Bureau of Indian Affairs to plan, conduct, consolidate, and administer programs, services, and functions authorized under the Act of April 16, 1934 (48 Stat. 596), as amended, and this Act of November 2, 1921 (42 State. 208).

Project proposals received may not address funds provided pursuant to the Tribally Controlled Community College Assistance Act (Pub. L. 95-471), for elementary and secondary schools under the Indian School Equalization formula pursuant to title XI of Public Law 95-561, as amended, or for either the Flathead Agency Irrigation Division or the Flathead Agency Power Division. Nothing in this announcement affects the contractibility of such divisions under section 102 of the Act.

Project proposals received may be for a period not to exceed five years following the enactment of Public Law 100-472, and selection for the project awards will be based on meeting the eligibility criteria as set forth in title III of the Act and as contained in this announcement. In addition, while the project proposal may reflect a five-year plan of operation, the need for annual negotiations to complete funding and other ancillary activities with the Bureau of Indian Affairs must be reflected in the proposals received.

Selection of project participants shall be made competitively from a pool of qualified applicants, and to the greatest extent practicable in a manner so as to achieve geographic representation among tribes: except that;

1. tribes that successfully complete a Self-Governance Planning Grant, authorized by Conference Report 100-499 to accompany House Joint Resolution (H.J. Res.) 395, One Hundredth Congress, first session shall be selected to participate in the demonstration project without further competition; and

2. to achieve geographic representation a tribe in an area with no representation or an area with under-representation may be selected for participation in the demonstration project even though its application scores below a tribe from an area that is adequately represented or over-represented in the program, geographically.

B. Eligibility Criteria.

To qualify for the demonstration project, an applicant must be a federally recognized Indian tribe, and, either have successfully completed a Self-Governance Planning Grant as authorized by Conference Report 100-498 to accompany H.J. Res. 395, One Hundredth Congress, first session, or be in a pool of otherwise qualified applicants. In order to be included in a pool of qualified applicants:

The governing body of the applicant tribe shall request participation in this demonstration project through the execution of a tribal resolution that is specific to this announcement;

Such tribe shall have operated two or more mature contracts as defined in

Public Law 100-473, section 103(h) Definitions; and

Such tribe shall have demonstrated, or have the potential to demonstrate, financial stability and financial management capability during the 3 years immediately preceding participation in this project as evidenced by the annual trust evaluation and the tribe's annual audit conducted pursuant to the Single Agency Audit Act of 1984; and

Such tribe shall not be subject to the provisions of section 103(a) of the Act, except that such tribe shall be eligible for new programs on the same basis as other tribes; and

Such tribe shall have requested participation in this project through the adoption of a tribal resolution.

C. Project Planning and Negotiation.

Participating tribes will be required to develop a comprehensive plan for the operation of programs, services, functions and activities to be assumed under the project. Planning activities may be supported with grants, if funds are available, and may include the review of existing and proposed programs, services, functions and activities to be assumed under the project. Planning activities may be supported with grants, if funds are available, and may include the review of existing and proposed programs, services, functions and activities to be assumed under the project.

Negotiations between participating tribes and the Bureau of Indian Affairs will be conducted to develop a negotiated agreement which will specify the programs, services, functions and activities to be assumed by the tribe, and the funds which will be transferred to the tribe to support the assumption. Negotiations may also address any Bureau of Indian Affairs regulations proposed for waiver by the tribe.

D. Project Duration.

The project will be for a period of five years. Participating tribes will be required to submit annual reports to the Secretary of the Interior and to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Indian Affairs of the Senate.

E. Project Evaluation.

The Secretary of the Interior will monitor the project and will conduct a financial audit of the project. The Secretary will also conduct a review of the project to determine whether the project has resulted in:

Reduction in the Federal bureaucracy;

Increased tribal control over Federal programs;

Flexibility in the administration of funds;

Cost savings; and

Elimination of duplication and waste.

F. Project Reporting Requirements.

Participating tribes will be required to submit annual reports to the Secretary of the Interior and to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Indian Affairs of the Senate.

G. Project Funding.

Funds will be provided to participating tribes in accordance with negotiated agreements. Funds will be transferred to participating tribes in accordance with the provisions of section 108 of the Act.

H. Application Procedures.

Tribes wishing to participate in the project must submit a resolution of the governing body requesting participation in the project. The resolution must be submitted to the Bureau of Indian Affairs, Office of Tribal Services, Mail Stop 4627, 18th and C Streets, NW., Washington, DC 20240, by February 20, 1990.

Dated: November 30, 1989.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[ID-020-00-4212-08]

Burley District; Intent to Prepare a

ownership. They could also be offered to private lands that would adjoin and

Public Law 100–473, section 103(h) Definitions; and

Such tribe shall have demonstrated, for the previous three fiscal years, financial stability and financial management capability as evidenced by such tribe having no significant and material audit exceptions in the required annual audit of its self-determination contracts.

C. Content of Project Application

In addition to the authorizations provided by, or excluded, in paragraphs A and B, above, applications shall be submitted on a SF–424 and as otherwise provided by OMB Circular A–102. In addition, applications shall contain a proposal for a Self-Governance Demonstration project which includes:

1. The goals and objectives to be achieved through the demonstration project, and at a minimum:

a. Specify the services to be provided, the functions to be performed, and the responsibilities of the tribe and the Secretary pursuant this announcement;

b. Demonstrate that the benefits to be derived through the proposed activities, functions, and programs in the application are clearly measurable and provide a tool(s) to be used for measurement purposes;

2. The objectives, activities, and functions proposed may be accomplished within the resources that could be made available:

a. The objectives, activities, and functions correlate directly with the proposed costs associated with carrying out the demonstration project; and

b. The proposed costs associated with carrying out the objectives, activities, and functions are reasonable, allowable, and allocable to the demonstration project as defined by OMB Circular A–87 standards;

3. The objectives contain milestones and identify, by title, responsible individuals within the tribe who are responsible for meeting such milestones; and

4. The applications contain the position descriptions of key project staff, resumes of responsible tribal employees to fill those positions, if available, or the knowledge, skills, and abilities that a successful applicant for such positions must possess in order to be hired by the tribe for this project.

D. Other Conditions

For the year in which, and to the extent to which, funding is provided to a tribe pursuant to and agreement negotiated under this announcement, such tribe:

1. Shall not be eligible to contract with the Secretary for such funds under section 102 of the Act, except that such tribe shall be eligible for new programs on the same basis as other tribes; and

2. Shall be responsible for the administration of programs, services and activities pursuant to agreements awarded through this announcement.

Further, each agreement subsequently awarded must clearly:

1. Specify the authority of the tribe and the Secretary, and the procedures to be used, to reallocate funds or modify budget allocations within any project year;

2. Provide for the payment by the Secretary to the tribe of funds from one or more programs exclusive of funds as may be identified in Public Law 100–472, section 303(a)(1)–(2), from one or more programs, services, functions, or activities in an amount equal to that which the tribe would have been eligible to receive under contracts and grants under this Act, including direct and indirect costs, and for funds which are specifically related to the provision by the Secretary of services and benefits to the tribe and its members:

a. Provided, however, that funds for trust services to individual Indians are available under the project proposal only to the extent that the same services which would have been provided by the Secretary are provided to individual Indians by the tribe;

b. Shall not cause the Secretary to waive, modify or diminish in any way the trust responsibility of the United States with respect to Indian tribes and individual Indians which exist under treaties, Executive orders, and Acts of Congress;

3. Shall allow for retrocession of programs or portions of programs pursuant to section 105(e) of the Act.

E. Incomplete Applications

Applications received with specific sections and/or documentations; e.g., tribal resolution missing, will not be considered under this announcement. An incomplete application will be returned to the applicant with a full explanation of the deficiency(ies) which caused the application to be refused. The applicant with an incomplete application shall have no appeal rights.

F. Rating Criteria

The following criteria shall be used by the Bureau of Indian Affairs in rating each application received through this announcement:

1. Statement of goals and objectives, 0–15 points;

2. Description of program activities to be accomplished, 0–10 points;

3. Descriptions of methodologies, including listing of key staff and their qualifications as well as a schedule of activities to be used to successfully accomplish the goals and objectives, 0–35 points;

4. Resource allocation, 0–5 points; and

5. Measurable benefits to be derived to tribal members, 0–35 points.

Each application received through this announcement will be reviewed by the Bureau of Indian Affairs for completeness, eligibility, content, and adherence ot title III of the Act and the conditions of this announcement.

Each application judged incomplete will be returned to the applicant with an explanation of why it did not meet minimum completion requirements. Each application not rated at 75 or more points, overall, will not be considered for acceptance and award.

Unsuccessful applicants will be notified of any deficiencies associated with the applications which kept each from being selected. The Bureau reserves the right to negotiate final conditions of a proposal with otherwise successful applicants including, but not limited to, the rewrite of specific functional or activity statements.

G. Appeals

Alleged violations of the receipt and processing provisions of this announcement are appealable to the Deputy to the Assistant Secretary—Indian Affairs (Tribal Services) whose findings are final for the Department. Such appeals shall be filed within 30 days of the actions that precipitated the appeal and shall be filed directly with the Office of the Deputy to the Assistant Secretary at:

Department of the Interior, Bureau of Indian Affairs, MS–4600–MIB, 18th and C Streets, NW., Washington, DC 20240.

Section 110 of the Act only applies to appeals generated from the actions taken on awarded agreements.

H. Submission of Applications

Applications received under this announcement must be:

1. Postmarked no later than midnight (February 20, 1990) if mailed;

2. Received in the Division of Self-Determination Services no later than the close of business (February 20, 1990) if hand-delivered.

Applications shall be mailed or hand-delivered to:

Department of the Interior, Bureau of Indian Affairs, Attention: Division of Self-Determination Services, MS–4627–MIB, 18th & C Streets, NW., Washington, DC 20240

Dated: November 30, 1989.
Eddie F. Brown,
Assistant Secretary—Indian Affairs.
[FR Doc. 89–29980 Filed 12–20–89; 8:45 am]
BILLING CODE 4310–02–M

Bureau of Land Management

[CA–060–09–4232–10]

California Desert District, Emergency Closure of Sections 29, 32, 33, and E½ 31, T. 2 N., R. 5 E., San Bernardino County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Emergency closure notice for 3½ sections of public land in the Barstow Resource Area of San Bernardino County.

SUMMARY: This emergency closure notice affects 3½ sections of land in the southeast portion of the Bighorn Mountain Wilderness Study Area (WSA, CDCA #217), San Bernardino County, California under the administrative responsibility of the Barstow Resource Area, California Desert District. The closed area is located west of the community of Flamingo Heights and includes sections 29, 32, 33, and E½ 31, T. 2 N., R. 5 E., SBN. The area is closed to all motor vehicles under the authority of 43 CFR 8341.2 in order to protect cultural resources and wilderness values.

This emergency closure order is in affect and shall remain in effect until such time as it is determined that the adverse effects have been eliminated, other measures have been implemented to prevent recurrence, or formal route designation under 43 CFR 8342 is completed.

The closed area will be posted with "closed area" signs and the access routes leading into it will be fenced and posted with "closed route" signs. Access into the area will be permitted only to specifically authorized persons. A copy of the closure order and map showing the location of the closed area and routes is available from the Bureau of Land Management, 150 Coolwater Lane, Barstow, California 92311.

Any person who fails to comply with this closure order may be subject to a fine of up to $1,000.00 or imprisonment of up to 12 months, or both, under 43 CFR 8340.0–7.

Dated: December 8, 1989.
Gerald E. Hillier,
District Manager, California Desert District.
[FR Doc. 89–29639 Filed 12–20–89; 8:45 am]
BILLING CODE 4310–40–M

[ID–020–00–4212–08]

Burley District; Intent to Prepare a District—wide Land Use Plan Amendment for Land Tenure Adjustments

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare a land use plan amendment for land tenure adjustments.

SUMMARY: The Burley District is proposing to amend the Twin Falls and Malad Management Framework Plans (MFP) and the Cassia and Monument Resource Management Plans (RMP) to allow greater flexibility in making land tenure adjustments, especially land exchanges. The amendment would establish two land tenure areas; an adjustment area (potential disposal area), and a mangement area (retention area) for those portions of the public lands located in Jerome, Lincoln, Blaine, Minidoka, Power, Bannock, Twin Falls, Cassia, and Oneida Counties that lie within the Burley District.

DATES: The public, state and local governments, and other Federal agencies are invited to participate in the amendment process. Identification of issues, concerns or other written comments pertaining to this notice will be accepted until January 31, 1990. In addition, written or oral comments will be taken during public meetings that may be held at a later date.

SUPPLEMENTARY INFORMATION: The proposed plan amendment would designate the public lands in the Burley District as either a management area or an adjustment area. This would give management more flexibility in making land tenure adjustments, especially land exchanges in the Twin Falls and Malad MFP areas and the Cassia and Monument RMP areas.

Public lands identified as management areas would be retained in public ownership for the long term and managed under the principles of multiple use and sustained yield. These public lands are generally large blocks of public land in consolidated land patterns. They include, but are not limited to, lands having high natural resource value, lands having special designations such as Area of Critical Environmental Concern, Wilderness Study Areas, lands containing properly recorded mining claims, and lands withdrawn for BLM or other agencies.

Public lands identified as adjustment areas would be those lands that could potentially be transferred into private ownership. They could also be offered to private individuals in exchange for private lands that would adjoin and enhance the resource values of the management areas. Public lands within the adjustment area are generally fragmented, are difficult and uneconomical to manage as part of the public lands, are relatively inaccessible to the public, and do not contain any known important natural resource values.

The general types of issues anticipated as a result of the amendment process would be:

(1) Would there be a loss of important wildlife, recreation or other natural resource values on lands identified for transfer into private ownership.

(2) What studies would have to be done to assure that all resource values were considered prior to actual transfer into private ownership.

(3) What impacts would the two designations have on property values adjacent to adjustment areas or private land that would be identified as potential acquisition areas within or adjacent to the management areas.

Disciplines that will be used in the preparation and review of the plan amendment consist of natural resource specialists including, but not limited to, lands, recreation, wildlife, range, watershed, and cultural resource specialists.

Public participation in the amendment process will include publication of this notice in the Federal Register and local newspapers, letters to state and local governments, private idnividuals that were involved in the planning process, and other interested parties. Depending on the public interest, meetings may be held in Malad, Burley, American Falls, and Twin Falls, Idaho.

ADDRESS: Any comments on this notice should be mailed by January 31, 1990 to Bureau of Land Mangement, Burley District Office, Route 3, Box 1, Burley, ID 83318.

FOR FURTHER INFORMATION CONTACT: Karl Simonson, Burley District Realty Specialist, (208) 678–5514.

Dated: December 11, 1989.
Gerald L. Quinn,
District Manager.
[FR Doc. 89–29648 Filed 12–20–89; 8:45 am]
BILLING CODE 4310–84–M

[AZ–020–00–4212–13; A–23677]

Exchange of Public Lands, Lavapai County, AZ

The following described federal lands have been determined to be suitable for

disposal by exchange to Wayne and Sheree Pitrat or their nominees pursuant to section 209 of the Federal Land Policy

remain closed to surface entry and mining, but have been and will remain open to mineral leasing.

Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and if so,

Dated: October 20, 1989.
Annetta L. Cheek,

SUMMARY: This notice announces the decision of the Office of Surface Mining

The lands consisted of five properties known as "The McMullen Property",

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disposal by exchange to Wayne and Sheree Pitrat or their nominees pursuant to section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Gila and Salt River Meridian, Arizona

T. 16 N., R. 1 W., Sec. 1, lots 1–8, S½NW¼, SW¼, SW¼SE¼.
Comprising 585.65 acres, more or less.

In exchange for these public lands, the United States will acquire all of the following described private lands from Wayne and Sheree Pitrat.

Gila and Salt River Meridian, Arizona

T. 10 N., R. 14 W., Sec. 6, lots 6 and 7, E½SW¼, W½SE¼.
Comprising 235.94 acres of land owned by Mr. and Mrs. Pitrat.

The exchange is consistent with the Bureau's land use planning objectives.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this Notice will segregate the affected public lands from appropriation under the public land laws, including the mining laws.

The United States will reserve a right-of-way for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

Segregation of the above-described lands shall terminate upon issuance of a document conveying such lands or upon publication in the Federal Register of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

For a period of forty-five (45) days, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Dated: December 12, 1989.

Henri R. Bisson,

District Manager.

[FR Doc. 89-29717 Filed 12-20-89; 8:45 am]

BILLING CODE 4310-32-M

[NV-930-00-4214-11; N-4593]

Proposed Continuation of Withdrawals; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Forest Service proposes that 606.78 acres of a withdrawal comprising 2,664.26 acres for the protection of campgrounds, a geological area and a cultural area be continued for an additional period of time. All the lands are within the Toiyabe National Forest. The lands will remain closed to surface entry and mining, but have been and will remain open to mineral leasing.

DATE: Comments should be received by March 21, 1990.

ADDRESS: Comments should be sent to: Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 12000, Reno, Nevada 89520.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, Nevada State Office, 702–328–6326.

The U.S. Forest Service proposes that the existing land withdrawal made by Public Land Order 5073 be modified and continued in part pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, the land is described as follows:

Mount Diablo Meridian

T. 16 N., R. 46 E.,
sec. 33, SW¼NE¼.

The area described (Toquima Petroglyph Cave) contains 40 acres in Lander County.

T. 8 N., R. 47 E.,
sec. 30, Lots 2–4, SE¼NW¼, W½SE¼, E½SW¼;
sec. 31, Lots 1–4, E½W½.

The area described (McCann Canyon Geological Area) contains 626.78 acres in Nye County.

All the lands are within the Toiyabe National Forest.

The withdrawal was made in aid of Department of Agriculture programs. The withdrawal is utilized to protect natural resource values in the Toquima Petroglyph Cave and the McCann Canyon Geological Area. The continuation of the withdrawal for Toquima is proposed for 50 years, the continuation for McCann is proposed for 40 years. The withdrawal segregates the land from operation of the public land laws generally, including the mining but not the mineral leasing laws. Mineral leases will not be approved without the concurrence of the U.S. Forest Service.

The remainder of the withdrawal is proposed for revocation.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed continuation of the withdrawal, may present their views in writing to the Chief, Branch of Lands and Minerals Operations, in the Nevada State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 89-29640 Filed 12-20-89; 8:45 am]

BILLING CODE 4310-HC-M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related form may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029–0027), Washington, DC 20503, telephone 202–395–7340.

Title: General Requirements for Surface Coal Mining and Reclamation Operations on Federal Lands.

OMB Approval Number: 1029–0027.

Abstract: Section 522 of the Surface Mining Control and Reclamation Act of 1977 (Act) requires that a Federal lands program be established to govern surface coal mining and reclamation operations on Federal lands. The information requested is needed to assist the regulatory authority in determining compliance with the requirements of the Federal lands program.

Bureau Form Number: None.

Frequency: On occasion.

Description of Respondents: Coal mine operators and State regulatory authorities.

Estimated Completion Time: 41.

Annual Responses: 20.

Annual Burden Hours: 815.

Bureau Clearance Officer: Andrew F. DeVito, (202) 343–5054.

Dated: October 20, 1989.

Annetta L. Cheek,

Chief, Regulatory Development and Issues Management.

[FR Doc. 89-29650 Filed 12-20-89; 8:45 am]

BILLING CODE 4310-05-M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related form may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029–0097), Washington, DC 20503, telephone 202–395–7340.

Title: State Enforcement Activities, 30 CFR part 720.

OMB Approval Number: 1029–0097.

Abstract: Information collected in part 720 is used to monitor State permitting and inspection activities and to provide the Office of Surface Mining Reclamation and Enforcement with necessary information for purposes of conducting Federal mine inspection and enforcement activities under the initial regulatory program.

Bureau Form Number: None.

Frequency: On occasion.

Estimated Completion Time: One hour.

Description of Respondents: State regulatory authorities.

Annual Responses: One.

Annual Burden Hours: One.

Bureau Clearance Officer: Andrew F. DeVito, (202) 343–5054.

Dated: November 21, 1989.

Annetta L. Cheek,

Chief, Regulatory Development and Issues Management.

[FR Doc. 89-29650 Filed 12-20-89; 8:45 am]

BILLING CODE 4310-05-M

Valid Existing Rights Determination Within the Wayne National Forest, Ohio

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of decision.

SUMMARY: This notice announces the decision of the Office of Surface Mining (OSM) regarding a determination of Valid Existing Rights (VER) under the provisions of section 522(e)(2) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

ADDRESSES: Documents comprising the administrative record are available for public review and copying during regular business hours at the Administrative Record Room, room 5131L, Office of Surface Mining, Department of the Interior, 1100 L Street NW., Washington, DC 20240. Copies of the Director's decision and of relevant notices may be obtained at the same location.

FOR FURTHER INFORMATION CONTACT: Richard Miller, Office of the Deputy Director for Operations and Technical Services Policy, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Ave. NW., Washington, DC 20240 (202) 343–3218.

SUPPLEMENTARY INFORMATION:

Background

I. VER Required

Section 522(e) of SMCRA provides that—

> After the enactment of this Act and subject to valid existing rights no surface coal mining operations except those which exist on the date of enactment of this Act shall be permitted * * * on any federal lands within the boundaries of any national forest: * * *.

Under the Federal regulations at 30 CFR 740.4(a)(4) and 745.13(o), the Secretary of the Interior retains responsibility for making VER determinations on Federal lands within the boundaries of any areas specified in section 522 (e)(1) or (e)(2) of SMCRA. Under these rules, the Secretary may not delegate this responsibility to a State.

Consequently, the Office of Surface Mining must make determinations regarding whether parties seeking to undertake surface mining on Federal lands within the areas specified in sections 522(e)(1) and 522(e)(2) have VER to conduct surface coal mining operations within these areas. Under 30 CFR 740.11(a), the approved State regulatory program is applicable to Federal lands in a State. Therefore, OSM uses the State program definition of VER on section 522(e) (1) and (2) Federal lands in States within approved programs.

II. The Belville Mining Company VER Application

On September 4, 1985, BMC submitted an application for a VER determination on lands in the Wayne National Forest. The lands consisted of five properties known as "The McMullen Property", "The Jenkins Property", "The Bauer Property", "The Simmering Property" and "The Culbertson Property".

OSM reviewed the material submitted by BMC in support of its VER application and on December 3, 1986, notified BMC that based on the information provided, OSM was unable to grant VER on the lands applied for. The letter also requested BMC to provide additional information should it wish to pursue the matter further.

On August 15, 1988, BMC requested OSM to reconsider its December 3, 1986 decision. On December 23, 1988 OSM notified BMC that it had determined that BMC had a valid existing right (VER) to conduct surface coal mining activities on the five properties listed above. This decision effectively reversed the December 3, 1986 determination by OSM that earlier submissions by BMC were insufficient to establish VER for the five properties in question.

Following its December 23, 1988 determination that BMC had a valid existing right to mine on these properties, OSM reviewed recent actions it had taken concerning VER determinations and concluded that the administrative record of the December 23, 1988 VER determination did not provide sufficient information to assure that OSM's determination regarding BMC's possession of VER had been properly made. Consequently, OSM made the decision to review and reconsider its December 23, 1988 determination on BMC's VER application.

On August 24, 1989, OSM sent a letter to BMC outlining the reasons for reconsidering the determination of VER. In the letter, OSM stated that based on its review of OSM VER matters, indications existed that OSM may not have followed its own internal procedures for processing VER requests, that the December 23, 1988 decision was made without the development of a sufficient administrative record, and that there was no record of any opportunity for other parties to assert any competing property rights, claims, or interests in this matter.

The letter further stated that the record did not indicate the extent to which OSM considered substantive issues regarding the nature of the rights reserved in the deeds for the five properties or whether the agency had correctly applied the State standard for VER and whether OSM had expressly considered the issue of whether VER is transferable under Ohio law.

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The letter also informed BMC that the effect of OSM's action to reconsider the decision of December 23, 1988 was to stay that decision and that OSM would consider the VER application as a whole, and would proceed with a determination regarding the land known as the "McMullen property" on an expedited basis. VER determinations for the remaining four properties would follow the initial decision on the McMullen property.

In a notice appearing in the **Federal Register** on August 30, 1989 (54 FR 35945), OSM announced its reconsideration of the 1988 VER determination and the reopening of the administrative record to receive additional information from the public. Any additional information received would be used to develop an administrative record which will support a final determination regarding Belville's VER.

Reopening the record did not have the effect of reinstating the original determination of December 3, 1988 which had denied BMC's request for VER.

On September 8, 1989, OSM requested BMC to provide additional information regarding its application for VER. At the same time, OSM requested that the United States Forest Service (USFS) and the Ohio Department of Natural Resources (ODNR) also provide additional information for the administrative record. On October 20, 1989, BMC provided additional information which has been included in the administrative record of this decision. (BMC Submission October 20, 1989.) On November 1, 1989, ODNR provided additional information concerning the Ohio VER standard (ODNR Nov. 1, 1989) and on November 13, 1989, the Forest Service provided a title opinion and report concerning BMC's interest in the McMullen and Culbertson properties. (USFS Title Report November 13, 1989.)

By further notice appearing in the **Federal Register** on November 14, 1989, (54 FR 4741) OSM extended the period in which the public could submit relevant information until such time as OSM made a determination regarding BMC's VER. Subsequently, a notice appeared in the **Federal Register** on November 17, 1989 which stated that the period for the public to submit information submitted on the BMC VER application would close on November 29, 1989 (54 FR 47861).

As stated in the August 30, 1989 **Federal Register** notice, OSM has expedited its decision concerning the "McMullen property", for which permit application No. D0773-1 is currently pending with the Ohio state regulatory authority and for which the underlying mineral reservation will expire on March 24, 1989. OSM has also reached a decision concerning the "Culbertson property," which was discussed in the USFS title opinion.

This determination addresses the request by BMC for a determination of VER on the "McMullen Property" and the "Culbertson Property." OSM's determination is based on the totality of the evidence, including SMCRA and its legislative history, the approved Ohio regulatory program, and the documents constituting the administrative record for this decision, including all information timely received. The determination takes into account both the inferences that may reasonably be drawn from those documents and the weight that may reasonably be assigned to those documents.

This notice constitutes the decision of OSM in the matter of VER on the McMullen and Culbertson properties and copies have been sent to Belville Mining Company, the U.S. Forest Service, and the State of Ohio. Subsequent OSM determinations will address the remaining lands for which BMC has requested a VER determination.

III. Property Descriptions

A. The McMullen Property

BMC seeks a VER determination for the McMullen property for which the legal description is: section 22 Township 4N Range 18 W the east half of the Northwest Quarter containing 81.32 acres, more or less, in Lawrence County, Ohio within the boundaries of the Wayne National Forest.

B. The Culbertson Property

The legal description of the Culbertson property is: All that certain parcel of land situated in the Township of Symmes, County of Lawrence, State of Ohio, being a part of the Ohio River Survey, and more particularly described as follows:

In section Five (5), N. Range Seventeen (17) W, the whole of the northeast quarter, the whole of the northwest quarter, the northest quarter of the southwest quarter (NE¼SW¼), the northwest quarter of the southwest quarter (NW¼SW¼), the southeast quarter of the southwest quarter (SE¼SW¼), the northwest quarter of the southeast quarter (NW¼SE¼), the southeast quarter of the southeast quarter (SW¼SE¼) containing in all Five Hundred Ninety-Two and Eighty Hundredth acres (592.80), more or less.

In section Six (6), Township Five (5) N. Range Seventeen (17), W., the whole of the northeast quarter, the whole of the northwest quarter, the northeast quarter of the southwest quarter, the southwest quarter of the southwest quarter, containing in all Four Hundred Twenty-One and Seventy Hundredths acres (411.70), more or less.

In section Seven (7), Township Five (5), N. Range Seventeen (17) W. the northwest quarter of the northeast quarter, the whole of the northwest quarter, the northeast quarter of the southwest quarter, the northwest quarter of the southwest quarter, the southwest quarter of the southwest quarter, the northwest quarter of the southeast quarter, the southwest quarter of the southwest quarter, containing in all Four Hundred Twenty-One and Seventy Hundredths acres (421.70) more or less.

In section Eight (8) township Five (5), N. Range Seventeen (17) W. the whole of the northeast quarter, the northeast quarter of the northwest quarter, the southeast quarter of the northwest quarter, containing in all Two Hundred Fifty-nine and Ninety-three Hundredths (259.93) acres, more or less.

In section Nine (9), Township Five (5) N. Range Seventeen (17), W. the southwest quarter of the northwest quarter, the southeast quarter of the northwest quarter, the whole of the southwest quarter, the northeast quarter of the southeast quarter, the northwest quarter of the southeast quarter, the southwest quarter of the southeast quarter, containing in all Three Hundred Ninety-One and Fourteen Hundredths (391.14) acres, more or less.

In section Ten (10), Township Five (5), N. Range Seventeen (17) West, the northwest quarter of the southwest quarter, containing Forty-Three and Five Hundredths (43.05) acres, more or less.

In section Eighteen (18) Township (5), Range Seventeen (17) W., the Northwest quarter of the northeast quarter, the southwest quarter of the northwest quarter, the northwest quarter of the southwest quarter, the southwest quarter of the southwest quarter, the southeast quarter of the southwest quarter, containing in all Two Hundred Nine and Eighty-Six Hundredths (209.86) acres, more or less.

The combined acreage of the above described parcels of land being Two Thousand, Three Hundred Forty-Eight and Eighty Hundredths (2,348.80) acres, more or less.

Said reservations of coal and oil and gas are for a period of Ninety-Nine (99) years from February 26, 1936, and subject to the rules and regulations set out in the said deed, Volume 147, pages 346 through 349.

Also being the coal rights in and to the following described property, as reserved in the deed of E.S. and Alice C. Culbertson to the United States of America by deed of February 26, 1936, Volume 147, Page 350, of the Record of Deeds of Lawrence County, Ohio.

All that parcel of land situated in the Townships of Decatur and Washington, County of Lawrence, State of Ohio, being a part of the Ohio River Survey, and more particularly described as follows:

In section One (1), Township Three (3) N., Range Eighteen (18) W., the whole of the northeast quarter (NE¼), the whole of the northwest quarter (NW¼), the whole of the southwest quarter (SW¼), the northeast quarter of the southeast quarter (NE¼SE¼), the northwest quarter of the southeast quarter (NW¼SE¼) and the southeast quarter of the southeast quarter (SE¼SE¼), containing in all five hundred seventy-nine and fifty-three hundredths (579.53) acres, more or less.

In section Twenty-Five (25), Township Four (4) N., Range Eighteen (18) W., the northwest quarter of the northwest quarter (NW¼NW¼), the Southwest quarter of the northwest quarter (SW¼NW¼), the whole of the southwest quarter (SW¼), the northwest quarter of the southeast quarter (NW¼SE¼), the southwest quarter of the southeast quarter (SW¼SE¼), the southeast quarter of the southeast quarter (SE¼SE¼), containing in all three hundred ninety-six and forty-three hundredths (306.43) acres, more or less.

In section Twenty-Six (26) Township Four (4) N., Range Eighteen (18) W., the whole of the section, containing six hundred twenty-five and thirty hundredths (625.30) acres, more or less.

In section Twenty-Seven (27), Township Four (4) N., Range Eighteen (18) W., the whole of the section, containing six hundred twenty-two and sixty-four hundredths (622.64) acres, more or less. Less 70 A. conveyed to Charles A. Jenkins D.B. 147, Page 63, 7/30/36, net 552.64 acres.

In section Thirty-Five (35), Township Four (4) N., Range Eighteen (18) W., the whole of the northeast quarter (NE¼), the whole of the northwest quarter (NW¼), the whole of the southwest quarter (SW¼); the whole of the southeast quarter (SE¼), excepting the following described parcels:
EXCEPTION #1: A parcel of land more particularly described as follows: beginning at a point which bears from the Section corner common to Sections Thirty-Five (35) and Thirty-Six (36), Township Four (4) N., Range Eighteen (18) W., Ohio River Survey and on the line dividing Township Three (3) N., and Township Four (4) N., both in Range Eighteen (18) W: North fifty-one degrees and fifty-nine minutes West (N 51o-59'W), thirty three and sixty seven hundredths chains (33.67), thence North twenty-one degrees West (N 21o-00'W), sixty-eight hundredths chains (0.68), thence North forty-seven degrees East (N 47o 00'E), two and twenty-six hundredths chains (2.26), thence North Seventy-one degrees East (N 71o 00'E), eight and three hundredths chains (8.03), thence North fifty-four degrees East (N 54o-00'E), two and forty-one hundredths chains (2.41), thence South thirty-six degrees East (S 36o 00'E), four and seventy-hundredths chains (4.70), thence South fifty-five degrees West (S 55o 00'W), five and ninety-eight hundredths chains (5.98), thence South sixty-eight degrees West (S 68o 00'W), nine and twenty-seven hundredths chains (9.27), to the point of beginning, all of which contains seven and twenty-eight hundredths (7.28) acres, more or less.
EXCEPTION #2: The Southwest quarter of the southeast quarter (SW¼SE¼) which contains thirty-nine and fifty-four hundredths (39.54) acres, more or less.
The total acreage in section Thirty-Five (35) after deducting the Exceptions being five hundred eighty-five and eighty-two hundredths (585.82) acres, more or less.

In section Thirty-six (36), Township Four (4) N., Range Eighteen (18) W, the whole of the northeast quarter (NE¼), the whole of the northwest quarter (NW¼), the whole of the southwest quarter (SW¼), the northeast quarter of the southeast quarter (NE¼SE¼), the northwest quarter of the southeast quarter (NW¼SE¼), the southwest quarter of the southeast quarter (SW¼SE¼), containing in all six hundred four and sixty-two hundredths (604.62) acres, more or less.

The combined acreage of the above described parcels of land being three thousand three hundred forty-four and thirty-four hundredths (3,344.34) acres, more or less, and being part of the same premises as conveyed by Certificate of Transfer from Alice C. Culbertson, Deceased, to Emily Lucy C. Burch aka Emily Lucy C. Wingert, dated May 12, 1964, recorded in Deed Book 304, Page 532, Deed Records of Lawrence County, Ohio.

IV. The Deeds

Copies of the deeds in the abstracts of title concerning the McMullen and Culbertson properties have been entered in the administrative record and were reviewed by the USFS.

V. USFS Title Reports

A. McMullen Property

In response to the August 30, 1989 **Federal Register** notice concerning BMC's request for a determination of VER on the McMullen property, the USFS prepared a title report dated November 13, 1989 and submitted it to OSM. Based on review of the title records and related documents, a legal opinion from the Department of Agriculture Office of General Counsel, and interviews with Agency employees involved in acquiring lands for the Forest Service in Ohio, the Forest Service title report stated that the minerals reservation on the McMullen property includes the right to surface mine.

This title report and accompanying documents from the Forest Service has been included in the Administrative Record for this determination.

B. Culbertson Property

The Culbertson property was acquired by the Forest Service in 1936 under two deed conveyances that year from E.S. Culbertson, one for 2348.80 acres and one for 3414.34 acres. The lands were acquired under the Authority of the Weeks Act and contained reservations of mineral rights which were subject to certain provisions in the deeds, including the 1911 rules and regulations of the Secretary of Agriculture.

The Forest Service report concluded that based on an examination of the reservations in the deeds, and the fact that surface mining was not practiced in Lawrence County at the time of the conveyance, it was not the intent of the grantor to allow surface mining, and that therefore the minerals reservations on the Culbertson property did not include the right to surface mine coal.

VI. Applicable VER Standard

As indicated above, the approach OSM now uses for the determination of VER may be summarized as follows:

As stated in OSM's Suspension Notice of November 20, 1986 (51 FR 47146), OSM will approach each VER determination on a case by case basis, and will examine the particular circumstances which surround individual determinations. With respect to VER determinations on Federal lands, OSM will use the definition of VER in the approved State regulatory program. In states which have an all permits test, OSM will apply the test to include the good faith modification suggested by the district court In Re: Permanent Surface Mining Regulation Litigation, No. 79-1144, Mem. Op. at 20 (D.D.C. February

28, 1980) (hereafter, In Re). In the case of the Ohio regulatory program, this means

(4) Interpretation of the terms of the document relied upon to establish valid existing rights shall be based upon the usage

Ohio regulatory program. This VER determination does not reach the issue

coal, (2) Mining or appropriate special use permit from the Forest Service, (3)

Clearly, BMC did not satiafy the requirement under Ohio's

Assessment or an Environmental Impact Statement will be required.

26, 1980) (hereafter, In Re). In the case of the Ohio regulatory program, this means that OSM will apply all good faith-all permits test to the BMC requests. Use of the Ohio VER standard is also required by Article IV of OSM's cooperative agreement with Ohio, codified at 30 CFR 935.30.

VII. State VER Provisions

A. Ohio Regulatory Program History

On August 10, 1982, the Secretary of Interior conditionally approved the permanent program submission of the State of Ohio. This approval and the background on the Ohio program submission appeared in the **Federal Register** on August 10, 1982. (47 FR 34688–35718). The conditional approval stated that the Ohio regulation defining VER (ORC 1501:13–3–02(A)(1))20, as modified by the State, was consistent with the two-part test established under the Federal rules at 30 CFR 761.5, and no less effective than the Federal regulation.

Ohio resubmitted its regulatory program for approval on May 16, 1986 and on July 17, 1987, OSM reapproved the Ohio regulatory program (52 FR 26972), including the VER test.

B. The Ohio Regulatory Program Definition of VER

1. Ohio's definition of VER, which is currently codified at ORC 1501:13–1–02(FFFFFF) is as follows:

"Valid Existing Rights" means;
(1) Except for haul roads
(a) Those property rights of the applicant in existence on August 3, 1977 that were created by a legally binding conveyance, lease, deed, contract, or other document which authorizes the applicant, any subsidiary, affiliate or persons controlled by or under common control with the applicant, to produce coal by a mining operation; and
(b) The persons proposing to conduct surface coal mining operations on such lands either:
(i) Had been validly issued, on or before August 3, 1977, all state and federal permits necessary to conduct such operations on those lands; or
(ii) Can demonstrate to the chief that the coal is both needed for, and immediatley adjacent to, an ongoing surface coal mining operation for which all mine plan approvals and permits were obtained prior to August 3, 1977.
(2) For haul roads;
(a) A right-of-way or easement recorded prior to August 3, 1977, 1977 or a coal mining permit issued prior to August 3, 1977; or
(b) any road in existence as of August 3, 1977.
(3) Where an area comes under the protection of Division (d) of Section 1513.073 of the Revised Code, valid existing rights shall be found if, on the date the protection comes into existence, a validly authorized coal mining operation exists on that area.

(4) Interpretation of the terms of the document relied upon to establish valid existing rights shall be based upon the usage and custom at the time and place where it came into existence and upon a showing by the applicant that the parties to the document actually contemplated a right to conduct the same underground or surface mining activities for which the applicant claims a valid existing right.
(5) "Valid Existing Rights" does not mean mere expectation of a right to conduct surface coal mining operations or the right to conduct underground coal mining. Examples of rights which alone do not constitute valid existing rights include, but are not limited to, coal exploration permits or licenses, applications or bids for leases, or when a person has only applied for a permit.

C. Ohio Policy on Transferability of VER

In its letter responding to OSM's letter of September 8, 1989 requesting information on the current interpretation and application of the State of Ohio rule for determining VER, the Ohio Department of Natural Resources replied that:

The Ohio Department of National Resources, Division of Reclamation has always taken the position that VER is not transferrable.

ODNR also stated that

Although at first glance VER may appear to be solely a property right, careful reading of the entire definition indicates that VER is a personal right in existence on August 3, 1977, which right runs to the applicant. Such a right is evaluated only at the time the potential coal operator becomes an applicant for a permit which, again, is based on a clear reading of the above language. [the language in the Ohio definition of VER] (ODNR Nov. 1, 1989)

Ohio argues that its "interpretation of its regulatory language is consistent with earlier OSM comments (See 44 FR 14991, March 1979) and is entirely consistent with legislative concern with the taking of property which could have occurred at the time of the enactment of SMCRA." Under Ohio's interpretation of its program, Ohio

Conceptualizes prohibitions and VER as it would zoning restrictions and nonconforming uses. An owner who possesses VER but does not exercise it could be viewed as having abandoned the nonconforming use. Once abandoned, any subsequent property owner must comply with the land use restrictions imposed by Chapter 1513.
(ODNR Nov. 1, 1989)

OSM will accept the Ohio policy on transferability of VER as a policy which may be more stringent than the analogous Federal provision, as provided in SMCRA sec. 505; and as an interpretation which is not inconsistent with the terms of the Ohio provision or with the Secretary's approval of the Ohio regulatory program. This VER determination does not reach the issue of whether VER is transferable under SMCRA sec. 522(e) and the Federal regulations. Ohio has requested an opinion from the Ohio Attorney General as to the States Authority for the policy of nontransferability. Because the McMullen mineral rights expire on March 24, 1990, OSM is issuing this determination immediately. However, OSM does not foresee the need to revisit this specific issue, whether or not the Ohio Attorney General opinion is that VER is lawfully nontransferable. That finding is unlikely to affect the outcome of this determination, as discussed below, because the determination for both tracts is supportable on alternative bases.

VII. Application of VER Standard To Properties

OSM has determined that the appropriate criteria for VER with respect to BMC's current request is the standard in the approved Ohio program, except that OSM intends to apply the Ohio VER test on Federal lands consistent with the District Court's 1980 suggestion in In re that a good faith effort to obtain all permits should suffice for meeting the VER test.

To meet the property rights portion of the test, BMC submitted copies of deeds and maps for the McMullen and Culbertson properties which it represents as property rights to surface mine coal that were in existence on August 3, 1977. For both the McMullen and Culbertson properties, OSM relies on the determinations by the USFS as the Federal agency with jurisdiction to make such determinations.

A. The McMullen Property

The USFS title opinion states that BMC has the property right to surface mine coal on the McMullen Property under the relevant deeds and conveyances. OSM therefore finds that BMC has demonstrated that it now has the necessary property rights to surface mine coal on the McMullen property. However, current property rights alone are insufficient to establish VER based on the Ohio State Program. Ohio's policy is that VER is nontransferable. Therefore, Belville must also demonstrate that (1) it had the property rights on August 3, 1977; and that (2) it either had obtained or had made a good faith effort to obtain the necessary permits to conduct surface coal mining operations on the properties identified by the deeds prior to August 3, 1977. Such permits probably would have included: (1) A State permit to mine coal, (2) Mining or appropriate special use permit from the Forest Service, (3) National Pollutant Discharge Elimination System (NPDES) permit if point source discharges were planned, and (4) permit from the Corps of Engineers for discharge of dredge and fill material into navigable waters.

In this case, BMC does not claim and the record does not indicate that BMC, as of the date of the passage of SMCRA, owned the property rights, or possessed the necessary permits or had made a good faith effort to obtain permits for the McMullen or Culbertson properties.

BMC did not acquire the reserved mineral rights for the McMullen property until 1983. Accordingly, under the applicable VER standard, BMC has not demonstrated VER for the McMullen property because (1) BMC did not own the necessary property rights on August 3, 1977; (2) BMC had not applied for or obtained the necessary permits for a surface coal mining operation by August 3, 1977; and (3) even if VER were transferable under the Ohio VER provisions, BMC has not demonstrated that its predecessors in interest had obtained or attempted to obtain the necessary permits for a surface coal mining operation by August 3, 1977.

Consequently, OSM has determined that under the applicable VER standard, Belville has not demonstrated a valid existing right to surface mine coal on the McMullen property.

B. Culbertson Property

Although Belville asserts that the USFS is incorrect, the USFS title opinion states that BMC does not have the property right to surface mine coal on the Culbertson property under the relevant deeds and conveyances. It appears that a dispute exists between Belville and the USFS as to the nature of the property rights held by Belville on the Culbertson property. OSM is not authorized by SMCRA to adjudicate property rights disputes. Therefore, until this dispute is resolved, OSM finds that BMC has not demonstrated that BMC or its predecessor in interest now owns or owned on August 3, 1977 the property right to surface mine the coal on the Culbertson property. In addition, OSM concludes that even if BMC had demonstrated the necessary property rights to surface mine coal on the Culbertson property, BMC has not demonstrated that it or its predecessor in interest had obtained or had made a good faith effort to obtain the necessary permits for a surface coal mining operation as of the date of passage of SMCRA. Moreover, BMC did not acquire its interest in the coal rights on the Culbertson property until 1984 and 1988. Clearly, BMC did not satisfy the requirement under Ohio's nontransferability policy, that BMC own the property rights on August 3, 1977.

IX. Appeals

Any person who is or may be adversely affected by this decision may appeal to the Interior Board of Land Appeals under 43 CFR 4.1390 *et seq.* (1988). Notice of the intent to appeal must be filed within 30 days from the date of publication of this notice of decision in a local newspaper in the area of the Wayne National Forest.

Dated: December 14, 1989.

Harry M. Snyder,
Director.

[FR Doc. 89–29603 Filed 12–20–89; 8:45 am]
BILLING CODE 4310–05–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Public Information Collection Requirements Submitted to OMB for Review

The agency for International Development (A.I.D.) submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry no later than ten days after publication. Comments may also be addressed to, and copies of the submissions obtained from the Reports Management Officer, John H. Elgin, (703) 875–1608, IRM/PE, Room 1100B, SA–14, Washington, DC 20523.

Date Submitted: December 7, 1989.
Submitting Agency: Agency for International Development.
OMB Number: 0412–0513.
Type of Submission: Renewal.
Title: Environmental Procedures 22 CFR part 216.
Purpose: A.I.D. has established policy to ensure that the enviromental consequences of A.I.D.-financed activities are identified and considered by A.I.D. and the host country prior to a final decision to proceed and that appropriate enviromental safeguards are adopted. An Initial Enviromental Examination (IEE) is the first review of the reasonably foreseeable effects of a proposed action of the environment. Its function is to provide a brief statement of the factual basis for a formal decision as to whether an Environmental Assessment or an Environmental Impact Statement will be required.

Reviewer: Donald Arbuckle (202) 395–7340, Office of Management and Budget, Room 3201, New Executive Office Building, Washington, DC 20503.

Dated: December 7, 1989.

Wayne H. Van Vehcten,
Planning and Evaluation Division.

[FR Doc. 89–29651 Filed 12–20–89; 8:45 am]
BILLING CODE 6116–01–M

Overseas Private Investment Corporation

Agency Report Forms Under OMB Review

AGENCY: Overseas Private Investment Corporation.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the Agency has made such a submission. The proposed form under review is summarized below.

DATE: Comments must be received within 14 calendar days of this notice. If you anticipate commenting on the form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Submitting Officer of your intent as early as possible.

ADDRESSES: Copies of the subject form and the request for review submitted to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the Agency Submitting Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

OPIC Agency Submitting Officer

L. Jacqueline Brent, Office of Personnel and Administration, Overseas Private Investment Corporation, 1615 "M" Street NW., Suite 461, Washington, DC 20527, (202) 457–7151.

OMB Reviewer

Donald Arbuckle, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, (202) 395–7340.

Summary of Form(s) Under Review

Type of Respondent: Business or other institutions (except farms).

Standard Industrial Classification Codes: All.
Frequency of Report: Annually.
Number of Respondents: 1,000.
Estimated Burden Hours: 1,000.
Estimated Burden Hours per Response: 1.
Frequency of Response: 1.
Estimated Number of Responses: 1,000.

Additional Information or Comments

Copies of the form and supporting documents may be obtained from the Agency Submitting Officer. Comments regarding the burden estimate or any other aspect of the collection of information, including suggestions for reducing the burden, should be directed to the Agency Submitting Officer and the OMB Reviewer.

Dated: December 15, 1989.

Bruce Earnest,
Agency Submitting Officer.

[FR Doc. 89–29652 Filed 12–20–89; 8:45 am]
BILLING CODE 6116–01–M

Sunshine Act Meeting

Federal Register
Vol. 54, No. 244
Thursday, December 21, 1989

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proceeding were to be filed by January 19, 1990. Because of the importance of

Washington, DC 20530. All comments should refer to United States v.

for damages caused by the Oil Spill to natural resources under the trusteeship

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Standard Industrial Classification Codes: All.
Description of Affected Public: U.S. companies investing overseas.
Type of Request: New.
Form No. & Title: OPIC—01; Franchising Questionnaire.
Frequency of Use: Other—once per investor per project.
Number of Responses: 140.
Reporting Hours: 15 minutes.
Federal Cost: $150.00.
Authority for Information Collection: Section 234(a) of the Foreign Assistance Act of 1961, as amended.
Abstract (Needs and Uses): The Franchising Questionnaire will be used to determine the political risk insurance requirements for franchisors and to help OPIC develop an investment insurance program that meets those needs. The questionnaire will be sent to franchisors with international investments.

Dated: December 15, 1989.

James R. Offutt,
Office of the General Counsel.

[FR Doc. 89-29640 Filed 12-20-89; 8:45 am]
BILLING CODE 6116-01-M

INTERSTATE COMMERCE COMMISSION

Motor Passenger Carrier or Water Carrier Finance Applications Under 49 U.S.C. 11343-11344

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties of, or acquire control of motor passenger carriers or water carriers pursuant to 49 U.S.C. 11343-11344. The applications are governed by 49 CFR part 1182, as revised in *Pur., Merger & Cont.-Motor Passenger & Water Carriers*, 5 I.C.C. 2d 786 (1989). The findings for these applications are set forth at 49 CFR 1182.18. Persons wishing to oppose an application must follow the rules under 49 CFR 1182, subpart B. If no one timely opposes the application, this publication automatically will become the final action of the Commission.

MC-F-19558, filed December 7, 1989. J & M Holding Co., Inc.—Control—United Limo, Inc. Applicants' representative: Robert B. Walker, Suite 875, 1275 K Street NW., Washington, DC 20005. Applicant J & M Holding Co., Inc. (J & M), a noncarrier controlled by applicants John Shoup and Margaret Shoup (the Shoups), noncarrier individuals, seek approval for J & M's acquisition of control of United Limo, Inc. (United), through purchase of all its outstanding stock. As previously approved by the Commission, the Shoups are in control: (1) Of Tri-State Coach Lines, Inc. (MC-129038); (2) Shoup Buses, Inc. (MC-70384); and (3) Cardinal Buses, Inc. (MC-187339); common and contract carriers of passengers. United is primarily a common carrier of passengers, in interstate commerce, under No. MC-150365 and sub-nos thereto, and in intrastate commerce, under Indiana certificate No. 14290-A, 2. Approval of the transaction insofar as it involves the acquisition of control of intrastate authority is effected under 49 U.S.C. 11341(a). The business address of J & M Holding is 201 Winslow, P.O. Box 271, Middlebury, IN 46540 and the business address of United is P.O. Box, 287, Osceola, IN 46561. Upon consummation of the stock purchase transaction, the Shoups will be in control of four passenger carriers.

Decided: December 14, 1989.

By the Commission, the Motor Carrier Board.

Noreta R. McGee,
Secretary.

[FR Doc. 89-29679 Filed 12-20-89; 8:45 am]
BILLING CODE 7035-01-M

[Ex Parte No. 394 (Sub-No. 6)]

Cost Ratio for Recyclables—1989 Determination

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed determination of maximum rate ceiling for rates on nonferrous recyclable commodities for the year 1989.

SUMMARY: The Commission has calculated the proposed 1989 revenue-to-variable cost (R/VC) ratio for rates on nonferrous recyclables under the statutory standard of 49 U.S.C. 10731(e). The calculation was made in accordance with the procedures outlined in our decision in Ex Parte No. 394 (Sub-No. 1), Cost Ratio for Recyclables—1983 determination, 3 I.C.C.2d 407 (1985). The proposed R/VC ratio for 1989 is 145.1 percent. That R/VC ratio was calculated using the new Uniform Railroad Costing System (URCS) as adopted in Ex Parte No. 431 (Sub-No. 1), Adoption of the Uniform Railroad Costing System As A General Purpose Costing System For All Regulatory Purposes, 5 I.C.C.2d 894 (1989) and modified by Ex Parte No. 477, Modifications To General Purpose Costing System—GPCS, 5 I.C.C.2d 680 (1989). Since URCS has replaced Rail Form A as a costing system for all regulatory purposes including the Cost Ratio for Recyclables, all future determinations including compliance must be made using URCS. The new ratio will apply to all nonferrous recyclables during the 1989 calendar year.

EFFECTIVE DATE: January 10, 1990, unless within that time comments are received challenging the accuracy of the new ratio, in which case an additional decision will be issued.

ADDRESSES: An original and 10 copies of comments should be sent to: Case Control Branch, Office of the Secretary, Interstate Commerce Commission, 12th St. and Constitution Avenue, NW., Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: William T. Bono (202) 275-7354 (TDD for hearing impaired (202) 275-1721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to, call or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or telephone (202) 289-4357 or 4359. Assistance for the hearing impaired is available through TDD services (202) 275-1721.

This decision will not significantly affect the quality of the human environment or the conservation of energy resources.

This decision will not have a significant economic impact on a substantial number of small enitities because it does not change any rules but merely updates the rate ceiling calculated under existing rules. Thus, the impact on small business remains unchanged.

Authority: 49 U.S.C. 10321(a), 10731, 5 U.S.C. 553.

Decided: December 13, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Lamboley, Phillips, and Emmett.

Noreta R. McGee,
Secretary.

[FR Doc. 89-29681 Filed 12-20-89; 8:45 am]
BILLING CODE 7035-01-M

[Finance Docket No. 30186 (Sub No. 2)]

Tongue River Railroad Co.—Construction and Operation of Additional Rail Line From Ashland to Decker, in Rosebud and Big Horn Counties, MT

AGENCY: Interstate Commerce Commission.

ACTION: Extension of time.

SUMMARY: Comments on the scope of the environmental impact statement (EIS) to be prepared by the ICC in this proceeding were to be filed by January 19, 1990. Because of the importance of the scoping process in establishing the foundation and parameters of the EIS, the public has requested an extension of time for filing comments.

DATES: The time for filing comments on the scope of the EIS has been extended to February 1, 1990.

ADDRESSES: Written comments should be sent to: Dana White, Section of Energy and Environment, Interstate Commerce Commission, Room 3214, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Dana White (202) 275-6869 or Elaine K. Kaiser, Section Chief, (202) 275-7684. (TDD for hearing impaired: (202) 275-1721).

By the Commission, John F. Hennigan, Jr., Director, Office of Transportation Analysis.

Noreta R. McGee,
Secretary.

[FR Doc. 89-29682 Filed 12-20-89; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that a complaint was filed on May 11, 1987, in *United States* v. *Roberson Enterprises, Inc., et al.*, Civil Action No. 87-4054, in the United States District Court for the Western District of Arkansas. On October 23, 1989, a proposed consent decree between the United States and the defendants was lodged with the court. This consent decree settles the claims alleged in the complaint pursuant to the Clean Water Act, 33 U.S.C. 1251 *et seq.*, for injunctive relief and civil penalties for violations of the Clean Water Act resulting from unpermitted discharges of pollutants to navigable waters of the United States.

Under the terms of the proposed consent decree, the defendants have agreed to cease all discharges of pollutants into navigable waters, to attain and maintain compliance with the Clean Water Act, to submit non-compliance reports to EPA, and to pay a civil penalty of $20,000 for past violations of the Clean Water Act.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. All comments should refer to United States v. *Roberson Enterprises, Inc., et al.*, D.J. Ref. 90-5-1-1-2530.

The proposed consent decree may be examined at the following offices of the United States Attorney and the Environmental Protection Agency ("EPA"):

EPA Region VI
Contact: Jim Collins,
Office of Regional Counsel,
U.S. Environmental Protection Agency,
1445 Ross Avenue,
Dallas, Texas 75202,
(214) 655-2129.
United States Attorney's Office
Claude S. Hawkins, Jr.,
Assistant United States Attorney,
U.S. Post Office and Courthouse,
6th & Rogers,
Fort Smith, Arkansas 72901,
(501) 783-5125.

Copies of the proposed consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, room 1515, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy of the decree, please enclose a check for copying costs in the amount of $2.00 payable to Treasurer of the United States.

George W. Van Cleve,
Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-29666 Filed 12-20-89; 8:45 am]
BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Water Act and State Law

Notice is hereby given that on November 29, 1989 a proposed consent decree in *United States et al.* v. *Shell Oil Company*, Civil Action No. C-89-4220-CAL, was lodged with the United States District Court for the Northern District of California. The complaint was filed for causes of action arising from a 1988 oil spill from Shell Oil Company's ("Shell") facility in Martinez, California by the United States, the State of California, Contra Costa and Solano Counties, the cities of Benicia and Martinez, and the East Bay Regional Park. Pursuant to Section 311 of the Clean Water Act, as amended, The United States, on behalf of the U.S. Department of Commerce, the U.S. Department of Interior, and the U.S. Department of the Navy, seeks recovery for damages caused by the Oil Spill to natural resources under the trusteeship of these departments. On behalf of the U.S. Environmental Protection Agency ("EPA"), the United States seeks assessment of penalties under section 309 of the Act for National Pollutant Discharge Elimination System ("NPDES") permit violations caused by the Oil Spill. The State of California seeks recovery of natural resource damages pursuant to section 311 of the Act and various state law claims, as well as penalties, costs, and damages under state law claims. The counties, cities, and East Bay Regional Park District seek recovery of penalties, costs, and damages under various state law claims.

The Complaint alleges that on or about April 22 through April 23, 1988 Shell negligently, and without a permit, discharged at least 432,264 gallons of crude oil from its on shore oil refinery complex in Martinez, California ("Complex") on to the lands and waters, including wetlands, surrounding the Complex ("the Oil Spill"). The Complaint further alleges that the Oil Spill inundated Shell Marsh and entered the waters of the San Francisco Bay/Delta Estuary and caused damage to the natural resources of the Estuary. The Complaint also alleges that the plaintiffs incurred costs and damages and that Shell is liable for penalties.

The Consent Decree, which would settle the action, requires that Shell pay the plaintiffs a total of $19.75 million upon lodging of the decree. $11,588,000 plus all interest accrued during the lodging period represents compensation for damages to natural resources, and $1,312,000 will pay for studies relating to oil spills. This settlement amount also includes $4,500,000 in penalties. Shell will pay: to the United States, $50,000 for penalties for NPDES permit violations and $2,000,000 to settle an administrative action initiated by EPA for violations of SPCC regulations; to the State of California, $2,100,000 in civil penalties; and to Solano and Contra Costa Counties, $500,000. Shell will also pay $500,000 to reimburse plaintiffs for response costs and $1,700,000 in damages to local governments. Under the consent decree each plaintiff will provide Shell a covenant not to sue.

The U.S. Department of Justice and the California Attorney General's office will receive, for a period of forty five (45) days from the date of this publication, comments relating to the proposed consent decree. Comments should refer to *United States, et al.* v. *Shell Oil Company*, (Shell Oil Spill) D.J. Ref. 90-5-1-1-3177 and should be

addressed to the Chief, Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044, or Sara Russell, Deputy Attorney General, California Attorney General's Office, 455 Golden Gate Avenue, 6th Floor, San Francisco, California, 94102.

A copy of the proposed consent decree may be examined at the California Attorney General's Office, c/o Sara Russell, Deputy Attorney General, 455 Golden Gate Avenue, Room 6000, San Francisco, California, 94102 and at the Environmental Enforcement Section, Land and Natural Resources Division, U.S. Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC. A copy of the proposed consent decree may be obtained in person from the California Attorney General's Office or from the U.S. Department of Justice at the above addresses. Copies may also be obtained by mail from California Attorney General's Office at the address noted above, or from the U.S. Department of Justice at the following address: Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044. When requesting a copy from the California Attorney General's Office, please refer to *United States et al.* v. *Shell Oil Company,* (Shell Oil Spill) D.J. Ref. 90-5-1-1-3177 and enclose a check in the amount of $19.20 (30 cents per page reproduction cost) payable to the California Department of Justice. When requesting a copy from the U.S. Department of Justice, please refer to *United States et al.* v. *Shell Oil Company,* (Shell Oil Spill) D.J. Ref. 90-5-1-1-3177 and enclose a check in the amount of $6.40 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-29655 Filed 12-20-89; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[Docket No. M-89-172-C]

Arch of Kentucky, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Arch of Kentucky, Inc., P.O. Box 787, Lynch, Kentucky 40855 has filed a petition to modify the application of 30 CFR 75.1100-2(b) (belt conveyors) to its 37 Mine (I.D. No. 15-04670) located in Harlan County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that waterlines be installed parallel to the entire length of belt conveyors and be equipped with firehose outlets with valves at 300-foot intervals along each belt conveyor and at tailpieces.

2. The intake airway which is also the travelway for the mine is adjacent to the belt entry. The belt entry air movement is restricted and vented to the return. If a fire occured on the beltline, it would be difficult to get to the fire outlets. Also, the waterline could be damaged by the fire.

3. As an alternate method, petitioner proposes to have the entire waterline, including the fire outlets, located in the intake travelway with mandoors installed in the permanent stoppings directly across from the fire outlets.

4. In support of this request, petitioner states that this method would isolate the beltline from the intake travelway and allow direct access to the beltline at fire outlet locations.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 22, 1990. Copies of the petition are available for inspection at that address.

Dated: December 14, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-29705 Filed 12-20-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-176-C]

Hansford Smokeless Collieries, Inc., Petition for Modification of Application of Mandatory Safety Standard

Hansford Smokeless Collieries, Inc., 41 Eagles Road, Beckley, West Virginia 25801 has filed a petition to modify the application of 30 CFR 75.1103-4(a)(1) (automatic fire sensor and warning device systems; installation; minimum requirements) to its No. 4 Mine (I.D. No. 46-04388) located in Raleigh County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that automatic fire sensor and warning device systems be installed at the beginning and end of each belt flight.

2. The ventilating current being coursed across both sensors is common, thus creating a duplication in sensors at each location where one belt flight ends and the other begins.

3. As an alternate method, petitioner proposes to place one sensor at a point on the inby belt head at locations where one belt ends and the other begins, above the elevation of the top belt, thus eliminating the duplicate sensors.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 22, 1990. Copies of the petition are available for inspection at that address.

Dated: December 14, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-29706 Filed 12-20-89; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[89-86]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee and the Aerospace Research and Technology Subcommittee.

DATES: January 23, 1990, 8:30 a.m. to 5:15 p.m.; January 24, 1990, 8 a.m. to 5 p.m.; and January 25, 1990, 8 a.m. to 2:30 p.m.

ADDRESSES: National Aeronautics and Space Administration, Ames Research Center, Building 201, Moffett Field, CA 94035.

FOR FURTHER INFORMATION CONTACT: Ms. Catherine L. Smith, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2367.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee (AAC) was established to provide overall guidance to the Office of Aeronautics and Space Technology (OAST) on aeronautics research and technology activities. The Aerospace Research and Technology Informal Subcommittee was formed to provide technical support for the AAC and to conduct ad hoc interdisciplinary studies and assessments. The Committee, chaired by Mr. Philip M. Condit, is comprised of 23 members. The Subcommittee is comprised of 43 members. The meeting will be open to the public up to the seating capacity of the room (approximately 150 persons including the Subcommittee members and other participants).

Type of meeting: Open.

Agenda

January 23, 1990

8:30 a.m.—Opening Remarks.
8:50 a.m.—Welcome/Center Overview by Center Director.
9:35 a.m.—Aeronautics Overview.
10:30 a.m.—Parallel Vehicle Program Overviews.
1 p.m.—Facility Tour.
2 p.m.—Wrap-up of Vehicle Program Overviews.
3:15 p.m.—Parallel Discipline Program Reviews.
5:15 p.m.—Adjourn.

January 24, 1990

8 a.m.—Discipline Program Reviews Continued.
1 p.m.—Facility Tour.
2 p.m.—Discipline Program Reviews Continued.
4:30 p.m.—Plenary Session.
5 p.m.—Adjourn.

January 25, 1990

8 a.m.—Opening Remarks.
8:20 a.m.—Update of Aeronautics and National Aerospace Plane Budget and Planning Issues.
8:45 a.m.—Discussion of Key Points from Aeronautics Advisory Committee/ Aerospace Research and Technology Subcommittee Meeting.
10:30 a.m.—Progress Report of Advanced Cockpit Technology.
10:50 a.m.—NASA Responses to Ad Hoc Team Recommendations.
1 p.m.—Discussion of Issues and Recommendations.
2 p.m.—Summary Session.
2:30 p.m.—Adjourn.

Dated: December 15, 1989.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 89-29668 Filed 12-20-89; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting; Media Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Film/Video Production Pre-screening #1 Section) to the National Council on the Arts will be held on January 9-11, 1990, from 9 a.m.-5:30 p.m. in Room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: December 15, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89-29652 Filed 12-20-89; 8:45 am]

BILLING CODE 7537-01-M

Meeting; Media Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Film/Video Production Pre-screening #2 Section) to the National Council on the Arts will be held on January 23-25, 1990, from 9 a.m.-5:30 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: December 15, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89-29653 Filed 12-20-89; 8:45 am]

BILLING CODE 7537-01-M

National Foundation on the Arts and the Humanities

Meeting; Music Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Chamber Music/New Music Ensembles Section) to the National Council on the Arts will be held on January 9-11, 1990 from 9 a.m.-6 p.m. and on January 12 from 9 a.m.-4 p.m. in room M14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on January 12, 1990, from 2 p.m.-4 p.m. The topics for discussion will be policy issues and guideline revisions.

The remaining portions of this meeting on January 9-11, 1990, from 9 a.m.-6 p.m. and on January 12, 1990, from 9 a.m.-2 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended,

including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: December 13, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89-29654 Filed 12-20-89; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-277 and 50-278]

Philadelphia Electric Co., Peach Bottom Atomic Power Station, Units 2 and 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR-44 and DPR-56, issued to Philadelphia Electric Company (the licensee), for operation of the Peach Bottom Atomic Power Station, Units 2 and 3, located in York County, Pennsylvania.

Environmental Assessment

Identification of Proposed Action

The proposed amendments would change the Technical Specifications to allow the use of a new type of fuel assembly, the GE8B, in the Peach Bottom Units 2 and 3 reactors. The proposed amendments would also change the Technical Specifications to allow the use of the Single-Loop Operation (SLO) Licensing Basis Methodology for Limiting Condition for Operation (LCO) determination.

The proposed action is in accordance with the licensee's application for amendments dated November 17, 1989.

The Need for the Proposed Action

The proposed amendments are needed to allow the licensee to use the GE8B fuel assembly in the Peach Bottom Units 2 and 3 reactors. The GE8B fuel assembly is a new type of fuel assembly which is similar to the GE8 fuel assembly currently in use in the Peach Bottom reactors. The GE8B fuel assembly is designed to be compatible with the GE8 fuel assembly. The proposed amendments are also needed to allow the licensee to use the SLO Licensing Basis Methodology for LCO determination. The SLO Licensing Basis Methodology is a new methodology which is similar to the methodology currently in use in the Peach Bottom reactors.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that there will be no significant increase in the amounts of any effluents that may be released offsite, and no significant increase in occupational or public radiation exposure. With regard to potential accidents, the Commission has determined that the proposed amendments do not increase the probability or consequences of accidents previously considered in the Final Environmental Statement. The proposed amendments do not affect non-radiological plant effluents and have no other environmental impact.

Alternatives to the Proposed Action

As an alternative to the proposed action, the Commission considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement for the Peach Bottom Atomic Power Station, Units 2 and 3.

Agencies and Persons Consulted

The Commission consulted with the Pennsylvania State official regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's application for amendments dated November 17, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Government Publications Section, State Library of Pennsylvania, (Education Building), Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Dated at Rockville, Maryland, this 15th day of December 1989.

For the Nuclear Regulatory Commission.

John W. Craig,

Project Director, Project Directorate III-2, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

limits from the Technical Specifications. The first action requires the addition of a formal report that includes the values with standards and regulations to maintain occupational exposure levels

including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Dated: December 15, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89–29654 Filed 12–20–89; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting; Media Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (American Film Institute Section) to the National Council on the Arts will be held on January 10, 1990, from 9:00 a.m.–5:30 p.m. in Room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: December 13, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89–29641 Filed 12–20–89; 8:45 am]

BILLING CODE 7537–01–M

Meeting; Visual Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Advancement Section) to the National Council on the Arts will be held on January 11, 1990, from 9:30 a.m.–5:30 p.m. and on January 12, 1990, from 9:30 a.m.–2:30 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on January 12, 1990, from 1:00 p.m.–2:30 p.m. The topics for discussion will be policy issues, guidelines, and recommendations regarding the Advancement Program.

The remaining portions of this meeting on January 11, 1990, from 9:30 a.m.–5:30 p.m. and on January 12, 1990, from 9:30 a.m.–1:00 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: December 13, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89–29642 Filed 12–20–89; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Illinois Power Co., et al.; Environmental Assessment and Finding of No Significant Impact

[Docket No. 50–461]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to the Illinois Power Company (IP), and Soyland Power Cooperative, Inc. (the licensees) for Clinton Power Station, Unit 1, located in DeWitt County, Illinois.

Environmental Assessment

Identification of Proposed Action

The licensees have requested a license amendment that would revise the Technical Specifications (TS) to remove the cycle-specific parameter limits from the Technical Specifications. These cycle-specific limits will be maintained in a "Core Operating Limits Report," and the Technical Specifications will be revised to reference this report. The Technical Specifications will also be revised to add administrative controls for the Core Operating Limits Report. These administrative controls will require that that value in the report be established using NRC approved methodologies, and that copies of the report be supplied to the NRC upon issuance. This action is in response to NRC Generic Letter 88–16.

This revision to the Clinton Power Station license would be made in response to the licensees' application for amendment dated June 12, 1989 as amended August 17, 1989.

The Need for the Proposed Action

Under the current Technical Specifications, a facility must have a license amendment processed to support each refueling (and the subsequent cycle of reactor operation) due to changes in cycle-specific parameters. NRC Generic Letter 88–16, "Removal of Cycle-Specific Parameter Limits from Technical Specifications," proposed an alternative which eliminates the need to process a license amendment to support each refueling. Generic Letter 88–16 lists three actions which are required to support the removal of cycle-specific parameter limits from the Technical Specifications. The first action requires the addition of a formal report that includes the values of cycle-specific parameter limits that have been established using an NRC-approved methodology and that are consistent with all applicable limits of the safety analysis. The second requires the addition of an administrative reporting requirement to submit the formal report of cycle-specific parameter limits to the NRC. The third requires the modification of the individual Technical Specifications to note that cycle-specific parameters shall be maintained within the limits provided in the defined formal report. Pursuant to 10 CFR 50.90, IP, et al., have proposed an amendment to Facility Operating License No. NPF–62 which consists of changes to the Technical Specifications. The changes establish a "Core Operating Limits Report," provide administrative controls for that report, and modify the TS that contain cycle-specific parameters to reference that report.

Environmental Impacts of the Proposed Action

The proposed changes provide an acceptable response to the NRC guidance provided in NRC Generic Letter 88–16 on modifying cycle-specific parameter limits in TS. Plant operations will continue to be limited to accordance with the values of cycle-specific parameter limits that are established using NRC approved methodologies. The change is administrative in nature and has no impact on plant safety.

The Commission has concluded that these changes do not significantly increase the probability or consequences of any accident and that potential radiological releases during normal operations or transients would not be increased. With regard to non-radiological impacts, the proposed amendment involves systems located within the restricted area as defined in 10 CFR part 20. They do not affect non-radiological plant effluents and have no other environmental impact. Therefore, the staff also concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

Accordingly, the Commission findings in the "Final Environmental Statement related to the operation of Clinton Power Station, Unit No. 1" dated May 1982 regarding radiological environmental impacts from the plant during normal operation or after accident conditions, are not adversely altered by this action. IP is committed to operate Clinton, Unit 1 in accordance with standards and regulations to maintain occupational exposure levels "as low as reasonably achievable."

Alternative to the Proposed Actions

Since the Commission has concluded that there are no significant environmental effects that would result from the proposed action, any alternative with equal or greater environmental impact need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement for the Clinton Station, Unit 1, dated May 1982.

Agencies and Persons Consulted

The NRC staff reviewed the licensees' request of June 12, 1989 as amended August 17, 1989 and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon this environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on August 2, 1989 (54 FR 31900). No request for hearing or petition for leave to intervene was filed following this notice.

For further details with respect to this action, see the request for amendment dated June 12, 1989 as amended August 17, 1989 and the Final Environmental Statement for the Clinton Power Station dated May 1982, which are available for public inspection at the Commission Public Document Room, 2120 L Street, NW., Washington, DC 20555 and at the Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Dated at Rockville, Maryland this 14th day of December 1989.

For the Nuclear Regulatory Commission.

John W. Craig,

Project Director, Project Directorate III–2, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 89–29689 Filed 12–20–89; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee on Advanced Pressurized Water Reactors; Meeting

The Subcommittee on Advanced Pressurized Water Reactors will hold a meeting on January 9, 1990, Room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Tuesday, January 9, 1990—8:30 a.m. until the Conclusion of Business.*

The Subcommittee will continue its review of the Westinghouse Evolutionary Light Water Reactor SP/90 design.

Oral statements may be presented by members of he public with the concurrence of he Subcommittee Chairman, written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on reqests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Medhat Mr. El-Zeftawy (telephone 301/492–9901) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are

urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: December 14, 1989.

Gary R. Quittschreiber,

Project Review Branch No. 2.

[FR Doc. 89-29676 Filed 12-20-89; 8:45 am]

BILLING CODE 7510-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-27537; File No. SR-OCC-85-13]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Withdrawal of a Proposed Rule Change Regarding International Foreign Currency Options

On August 9, 1985, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,[1] a proposal to establish a system for the clearance and settlement of internationally traded foreign currency options.

Notice of the proposal was published in the **Federal Register** on August 30, 1985 to solicit comments from interested parties.[2] No comments were received. On December 6, 1989, OCC withdrew the proposal.[3]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: December 14, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-29677 Filed 12-20-89; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-7463]

Issuer Delisting; Notice of Application to Withdraw from Listing and Registration; Jacobs Engineering Group, Inc., Common Stock, $1.00 Par Value

December 15, 1989.

Jacobs Engineering Group Inc. ("Company"), has filed an application with the Securities and Exchange Commission ("Commission") pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("AMEX").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The Company's common stock recently was listed on the New York Stock Exchange ("NYSE"). Trading in the Company's stock on the NYSE commenced on December 15, 1989. In making the decision to withdraw its common stock from listing on the AMEX, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its common stock on the NYSE and the AMEX. The Company does not see any particular advantage in the dual trading of its stock and believes that dual listing would fragment the market for its common stock.

And interested person may, on or before January 9, 1990, submit by letter to the Secretary of the Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-29676 Filed 12-20-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

Office of International Conferences

[Public Notice 1144]

Participation of Private-Sector Representatives on U.S. Delegations

As announced in Public Notice No. 655 (44 FR 17648), March 23, 1979, the Department is submitting its January-November 1989 list of U.S. accredited Delegations which included private-sector representatives.

Publication of this list is required by Article III(c)(5) of the guidelines published in the **Federal Register** on March 23, 1979.

Dated: December 4, 1989.

Frank R. Provyn,

Director, Office of International Conferences.

United States Delegation to the International Telecommunication Union (ITU), International Telegraph and Telephone Consultative Committee (CCITT), Study Group XVIII (Digital Networks, Including ISDN), Meeting of Experts on Broadband Aspects of ISDN and ISDN, San Diego, California, January 23–February 2, 1989

Representative

William F. Utlaut, Director, Institute for Telecommunication Sciences, National Telecommunications and Information Administration, Department of Commerce, Boulder, Colorado

Alternate Representative

Gary M. Fereno, Deputy Director, Telecommunications and Information Standards, Bureau of International Communications and Information Policy, Department of State

Advisers

Earl S. Barbely, Director, Telecommunications and Information Standards, Bureau of International Communications and Information Policy, Department of State

Gerald T. Keeler, Office of International Affairs, National Telecommunications and Information Administration, Department of Commerce

Frank M. McClelland, Office of Technical Standards, National Communications System

Private Sector Advisers

William Buckley, Vice President, Verilink Corporation, San Jose, California

David Cairns, Director of Technology, Northern Telecom Inc., Mountain View, California

James A. Dahl, U.S. West, Englewood, Colorado

Michael W. Durrwachter, Computer Sciences Corporation, Falls Church, Virginia

Gary Fishman, District Manager, Technical Industry Standards, AT&T, Bedminster, New Jersey

Steven Klonsky, Pulsecom Division, Harvey Hubbell Incorporated, Herndon, Virginia

Demosthenes J. Kostas, Manager, Technical Standards, GTE Service Corporation, Stamford, Connecticut

Kenneth R. Krechmer, Consultant, Action Consulting, Palo Alto, California

Carl A. Sederquest, Principal Standards Engineer, COMSAT Corporation, Clarksburg, Maryland

Randall Spusta, Manager, Network Standards, Bell Communications Research, Inc., Red Bank, New Jersey

Michael E. Varrassi, Technical Adviser, Federal Express Corporation, Memphis, Tennessee

United States Delegation to the International Telecommunication Union (ITU), International Telegraph and Telephone Consultative Committee (CCITT), Study Group II (Network Operation), Geneva, Switzerland, February 21–March 1, 1989

Representative

Gerard T. Keeler, Telecommunications Policy Specialist, National Telecommunications and Information Administration, Department of Commerce

Private Sector Advisers

Lawrence F. Chesto, Director, Telecommunications Systems, Aeronautical Radion, Inc., Annapolis, Maryland

Robert G. Keevers, District Manager, Special Switching Requirements, Bellcore, Red Bank, New Jersey

Robert W. Madden, Manager, American Telephone and Telephone Company, Morristown, New Jersey

Mark Neibert, Manager, International Digital and Protocol Standards, COMSAT, Washington, DC

United States Delegation to the World Intellectual Property Organization, First Session of the Committee of Experts on Model Provisions for Legislation in the Field of Copyright, Geneva, Switzerland, February 20—March 3, 1989

Representative

Ralph Oman, Register of Copyrights, Library of Congress

Alternative Representatives

Lewis Flacks, Policy Planning Adviser, Copyright Office, Library of Congress

Dorothy Schrader, General Counsel, Library of Congress

Congressional Staff Adviser

Ed Baxter, Chief Counsel/Staff Director, Subcommittee on Patents, Copywrights and Trademarks, Judiciary Committee, United States Senate

Advisers

Richard Owens, Attorney Adviser, Office of Legislation and International Affairs, Patent and Trademark Office, Department of Commerce

Emery Simon, Director of Intellectual Property, Office of the United States Trade Representative, Executive Office of the President

Private Sector Adviser

Jon Baumgarten, Proskauer, Rose, Goetz, and Mendolsohn, Washington, D.C.

United States Delegation to the Sixth Annual Meeting of the North American Commission of the North Atlantic Salmon Conservation Organization (NASCO), Hilton Head, South Carolina, February 14–16, 1989

Commissioners

The Honorable Allen E. Peterson, Jr., Director, Northeast Fisheries Center, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, Woods Hole, Massachusetts

The Honorable Richard A. Buck, Chairman, Restoration of Atlantic Salmon in America, Inc., Hancock, New Hampshire

The Honorable Frank E. Carlton, Vice President, National Coalition for Marine Conservation, Inc., Savannah, Georgia

Advisers

Vaughn C. Anthony, Northeast Fisheries Center, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce

Williams Gibbons-Fly, Foreign Relations Officer, Office of International Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce

Howard N. Larsen, Special Advisor to the Regional Director, U.S. Fish and Wildlife Service, Department of the Interior, Gainesville, Florida

H. Stetson Tinkham, Atlantic Fisheries Officer, Office of Fisheries Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State

James Weaver, U.S. Fish and Wildlife Service, Department of the Interior

Private Sector Advisers

Edward T. Baum, Program Analyst, Maine Atlantic Sea Run Salmon Commission, Bangor, Maine

Davis F. Egan, Chairman, Connecticut River Atlantic Salmon Commission, Hartford, Connecticut

United States Delegation to the International Telecommunication Union (ITU), International Telegraph and Telephone Consultative Committee (CCITT), Study Group XI (ISDN and Telephone Switching and Signalling), Geneva, Switzerland, March 29—April 11, 1989

Representative

Otto J. Gusella, Executive Director, Exchange Carrier Standards Association, Bethesda, Maryland

Alternative Representative

Milton Weiner, Lead Engineer, The Mitre Corporation, McLean, Virginia

Private Sector Advisers

Catherine P. Addison, Associate Research Engineer, Bell South Services, Atlanta, Georgia

Diwaker G. Gan, Department Manager, Computer Sciences Corporation, Falls Church, Virginia

Elmer R. Hapeman, Bellcore, Red Bank, New Jersey

Jay R. Hilton, Engineering Manager, GTE Service Corporation, D/FW Airport, Texas

Ben C. Levitan, COMSAT Corporation, Washington, D.C. COMSAT Corporation, Washington, D.C.

Vladimir G. Nikanorov, Computer Sciences Corporation, Falls Church, Virginia

Michael E. Varrassi, Technical Adviser, Federal Express Corporation, Memphis, Tennessee

United States Delegation to the Council and Committee Meetings, International Natural Rubber Organization (INRO), Kuala Lumpur, March 28—April 6, 1989

Meeting of the INRO Council and Committee on Buffer Stock Operations, Committee on Statistics, and Committee on Other Measures

Representative

Frederic W. Siesseger, Director, Primary Commodities Division, Department of Commerce

Alternate Representative

Jeffrey Cunningham, Industrial and Strategic Materials Division, Office of International Commodities, Bureau of Economic and Business Affairs, Department of State

Adviser

David Miller, Economic Officer, U.S. Embassy, Kuala Lumpur

Private Sector Advisers

Harold Ross Miller, Managing Director, Goodrich Company Private, Ltd., Singapore

Charles B Pettit, Manager, Firestone Singapore Private Ltd., Singapore

Robert D. Till, Technical Program Manager, Airborne Systems

Co-Chairman of Delegation

The Honorable Steny H. Hoyer, U.S.

Michael Pistor, Counselor of the Agency, U.S. Information Agency

United States Delegation to the Commission on Plant Genetic

United States Delegation to the International Communication Union

[1] 15 U.S.C. 78s(b)(1) (1981).

[2] *See* Securities Exchange Act Release No. 22354 (August 23, 1985), 50 FR 35240.

[3] *See* letter from James C. Yong, Deputy General Counsel, OCC, to Judith C. Poppelardo, Branch Chief, Division of Market Regulation, Commission, dated December 6, 1989.

Charles B Pettit, Manager, Firestone Singapore Private Ltd., Singapore
Peter W. C. Tan, Managing Director, Goodyear Orient Private Ltd., Singapore
James N. Walsh, Purchasing, Manager, Goodyear Tire and Rubber Company, Akron, Ohio

Committees on Administration

Representative

Jeffrey Cunningham, Industrial and Strategic Materials Division, Office of International Commodities, Bureau of Economic and Business Affairs, Department of State

Alternate Representative

David Miller, Economic Officer, U.S. Embassy, Kuala Lumpur

Private Sector Advisers

Harold Ross Miller, Managing Director, Goodrich Company Private, Ltd., Singapore
Charles B Pettit, Manager, Firestone Singapore Private Ltd., Singapore
Peter W. C. Tan, Managing Director, Goodyear Orient Private Ltd., Singapore
James N. Walsh, Purchasing, Manager, Goodyear Tire and Rubber Company, Akron, Ohio

United States Delegation to the Second Meeting of the Aeronautical Mobile-Satellite Service Panel, International Civil Aviation Organization (ICAO), Montreal, March 28–April 7, 1989

Member

Clyde A. Miller, Manager, Requirements and Concepts Development Division, Advanced System Design Service, Federal Aviation Administration, Department of Transportation

Alternate Member

Keith McDonald, Program Manager, Satellite Technology and Application, Requirements and Concepts Branch, Advanced System Design Service, Federal Aviation Administration, Department of Transportation

Advisers

Victor E. Foose, Manager, Frequency Engineering Branch, Federal Aviation Administration, Department of Transportation
Larry Reed, Electronics Engineer, International Liaison Staff, Private Radio Bureau, Federal Aviation Administration, Department of Transportation
George K. Sakai, Acting Manager, Spectrum Engineering, Federal Aviation Administration
Robert D. Till, Technical Program Manager, Airborne Systems Technology Branch, Federal Aviation Administration, Department of Transportation, Atlantic City, New Jersey

Private Sector Advisers

Richard L. Bowers, Manager, Navigation and Flight Systems, Air Transportation Association of America, Washington, D.C.
Walter Scales, MITRE Corporation, McLean, Virginia

United States Delegation to the 28th Session of the Working Party on Facilitation of International Trade Procedures, Economic Commission For Europe (ECE), Geneva, March 13–17, 1989

Representative

Bruce Butterworth, Chief, Trade, Facilitation and Technical Issues Division, Office of International Transportation and Trade, Department of Transportation

Advisers

Vicki Hodziewich, Acting Director, Day One Task Force, United States Customs Service, Department of the Treasury
William H. Kenworthey, Jr., Data Systems Manager, Office of the Deputy Assistant Secretary of Defense for Management Systems, Department of Defense
Donna Jean Leiber, Office of Data Systems, United States Customs Service, Department of the Treasury
Alice Rigdon, Customs Attache, United States Mission to the European Communities, Brussels

Private Sector Advisers

Earl J. Bass, IDI, Inc., Gaithersburg, Maryland
Eugene A. Hemley, Executive Director, National Council on International Trade Documentation, New York, New York
Robert Hurd, International Project Manager, Data Interchange Standards Association, Alexandria, Virginia
Jennifer Kandel, Vice President, ACS Network Systems, Concord, California
Jeff Sturrock, Director, EDI Systems, Texas Instruments, Inc., Plano, Texas
Nicole Willenz, Price Waterhouse, Chicago, Illinois

United States Delegation to the CSCE Information Forum, London, April 18–May 12, 1989

Chairman of Delegation

The Honorable Leonard H. Marks, Washington, DC

Co-Chairman of Delegation

The Honorable Steny H. Hoyer, U.S. House of Representatives

Deputy Head of Delegation

Rudolf V. Perina, Bureau of European and Canadian Affairs, Department of State

Senior Adviser

The Honorable, Henry E. Cotto, Ambassador, U.S. Embassy, London

Members of Congress

The Honorable Benjamin L. Cardin, U.S. House of Representatives
The Honorable Peter H. Kostmayer, U.S. House of Representatives
The Honorable Edward J. Markey, U.S. House of Representatives
The Honorable Louise M. Slaughter, U.S. House of Representatives

Congressional Staff Advisers

Jane Sharp Fisher, Deputy Staff Director, Commission on Security and Cooperation in Europe
Judith Ingram, Staff Assistant, Commission on Security and Cooperation in Europe
Mary Sue Hafner, Deputy Director & General Counsel, Commission on Security and Cooperation in Europe
Ronald J. McNamara, Staff Assistant, Commission on Security and Cooperation in Europe
Beth L. Ritchie, Press Officer, Commission on Security and Cooperation in Europe
Samuel G. Wise, Staff Assistant, Commission on Security and Cooperation in Europe

Advisers

Joan K. Benziger, Senior Policy Officer, U.S. Information Agency
Sigmund Cohen, Public Affairs Adviser, U.S. Information Agency
Charles E. Courtney, Public Affairs Officer, U.S. Information Service, London
Bruce S. Gelb, Director Designate, U.S. Information Agency
Henry E. Hockeimer, Associate Director, U.S. Information Agency
James J. Hogan, Deputy Public Affairs Officer, U.S. Information Service, London
J. Michael Lekson, Political Officer, U.S. Embassy, London
John A. Lindberg, General Counsel, Board for International Broadcasting
Cynthia J. Miller, Deputy Director, Office of European Affairs, U.S. Information Agency
Joseph A. Mussomeli, Bureau of European and Canadian Affairs, Department of State

Michael Pistor, Counselor of the Agency, U.S. Information Agency
Mark G. Pomar, Deputy Executive Director, Board for International Broadcasting
Bruce D. Porter, Executive Director, Board for International Broadcasting
Charla Saylor-Hatton, Assistant Information Officer, U.S. Information Service, London
Raymond Sietz, Minister Counselor, U.S. Embassy, London
Bernard F. Shinkman, Country Affairs Officers, Office of European Affairs, U.S. Information Agency
Lester P. Slezak, Labor Attache, U.S. Embassy, London
Daniel B. Smith, Country Officer for Czechoslovakia, Bureau of European and Canadian Affairs, Department of State
Marvin L. Stone, Deputy Director, U.S. Information Agency
Richard H. Swan, Assistant General Counsel, U.S. Information Agency
John C. Thomson, Policy Officer, Office of European Affairs, U.S. Information Agency

Private Sector Advisers

Dana R. Bullen, II, Executive Director, World Press Freedom Center, Washington, DC
Paul E. Feffer, Chairman, Baker and Taylor International, New York, NY
Edwin J. Feulner, Jr., President, Heritage Foundation, Washington, DC
Alan R. Finberg, The Washington Post Company, Washington, DC
Malcolm Forbes, Jr., Chairman, Board for International Broadcasting, Washington, DC
Murray Fromson, Center for International Journalism, University of Southern California, Los Angeles, California
K. Prescott How, Publisher, The Partriot Ledger, Quincy, Massachusetts
Harlan Glenn Moen, Motion Picture Export Association of America, London
Ernest Eugene Pell, President, Radio Free Europe, Munich, West Germany
Charles A. Perlik, Former President, American Newspaper Guild, Washington, DC
William Reed, Senior Vice President, Education Public Broadcasting Service, Alexandria, Virginia
Anthony Salvia, Executive Assistant to the President, Radio Free Europe, Munich, West Germany
Leonard R. Sussman, Senior Scholar in International Communciations, Freedom House, New York City, NY
The Honorable Nicholas A. Veliotes, President, Association of American Publishers, Inc., Washington, DC
Gerald Warren, Editor, San Diego Union, San Diego, California

United States Delegation to the Commission on Plant Genetic Resources, Third Session Food and Agriculture Organization, Rome, April 17–21, 1989

Principal Observer

E. Wayne Denney, International Relations Adviser, International Organization Affairs, Office of International Cooperation and Development, Department of Agriculture.

Observers

Henry L. Shands, National Program Leader for Plant Germplasm, Agricultural Research Service, Department of Agriculture
Roberta van Haeften, Agricultural Attache, United States Mission to the United Nations Agencies for Food and Agriculture, Rome

Private Industry Observer

William T. Schapaugh, Executive Vice President, American Seed Trade Association, 1030 15th Street, NW., Washington, DC

United States Delegation to the International Telecommunication Union (ITU), Follow-Up of WATTC–88 Resolution PL/3 "Apportionment of Revenues in Providing International Telecommunication Services," Geneva, Switzerland, April 17–18, 1989

Representative

Earl S. Barbely, Director, Office of Telecommunications and Information Standards, Bureau of International Communications and Information Policy, Department of State

Private Sector Advisers

Wanda G. Glanzman, Regulatory Manager, Telenet Communications Corporation, Reston, Virginia
Michael L. Goetz, President, PNR and Associates, Inc., Jenkintown, Pennsylvania
Thomas Luciano, District Manager, American Telephone and Telegraph Company, Morristown, New Jersey
Marcel Scheidegger, Manager, International Finance, MCI International Telecommunications
Francis S. Urbany, Director, International and Agency Relations, BellSouth Corporation, Washington, DC

United States Delegation to the International Communication Union (ITU), International Telegraph and Telephone Consultative Committee (CCITT), Study Group VIII, Geneva, Switzerland, April 12–20, 1989

Representative

Gary M. Fereno, Deputy Director, Office of Telecommunications and Information Standards, Bureau of International Communications and Information Policy, Department of State

Advisers

Dennis Bodson, Manager, Technical Standards, National Communications System
Douglas V. Davis, Attorney/Advisor, Common Carrier Bureau, Federal Communications Commission
Stephen Perschau, Technical Standards Engineer, National Communications System

Private Sector Advisers

Ralph E. Grant, 3M Corporation, St. Paul, Minnesota
Herman R. Silbiger, Supervisor, Standards Planning, AT&T Bell Laboratories, Holmdel, New Jersey
Cornelius J. Starkey, IV, Vice President, Databeam Corporation, Lexington, Kentucky
Charles F. Touchton, Manager, Information Systems Planning, IBM Corporation, Tampa, Florida
Stephen J. Urban, Vice President, Delta Information Systems, Horsham, Pennsylvania

United States Delegation to the Fourth Meeting of the Secondary Surveillance Radar Improvements and Collision Avoidance Systems Panel (SICASP), International Civil Aviation Organization (ICAO), Montreal, April 10–28, 1989

Panel Member

Joseph J. Fee, Manager ACADS Program Branch, Federal Aviation Administration, Department of Transportation

Advisers

Dennis B. Cooper, International Technical Staff, Federal Aviation Administration, Department of Transportation
Ronald Jones, ACADS Program Branch, Federal Aviation Administration, Department of Transportation
Hugh McLaurin, ACADS Program Branch, Federal Aviation Administration, Department of Transportation

Frank Rock, Aircraft Engineering Division, Federal Aviation

Private Sector Advisers

Henry L. Marchese, AT&T

Andrew Scholtz, Cargill & Company, 45 Atrium, New York, New York

Defense for International Security Affairs, Department of Defense
Brian J. Hoyle, Director, Office of Ocean

Mary Sue Hafner, Deputy Staff Director, Commission on Security and

United States Delegation to the Insurance Committee and It's Working

Frank Rock, Aircraft Engineering Division, Federal Aviation Administration, Department of Transportation
James P. Witeck, Program Management Division, Federal Aviation Administration, Department of Transportation

Private Sector Advisers

Ann Drumm, Lincoln Laboratory, Massachusetts Institute of Technology, Lexington, Massachusetts
David J. Lubkowski, MITRE Corporation, McLean, Virginia
Vincent Orlando, Lincoln Laboratory, Massachusetts Institute of Technology, Lexington, Massachusetts
Ronald Sandholm, Lincoln Laboratory, Massachusetts Institute of Technology, Lexington, Massachusetts
Jerry Welch, Lincoln Laboratory, Massachusetts Institute of Technology, Lexington, Massachusetts

United States Delegation to the World Intellectual Property Organization (WIPO), Diplomatic Conference for the Conclusion of a Treaty on the International Registration of Audiovisual Works, Geneva, Switzerland, April 10–21, 1989

Representative

Harvey J. Winter, Director, Office of Business Practices, Bureau of Economic and Business Affairs, Department of State

Alternate Representative

Marybeth Peters, Policy Planning Adviser, Copyright Office, Library of Congress

Advisers

David Patterson, United States Mission, Geneva, Switzerland
Joseph Richardson, United States Mission, Geneva, Switzerland

Private Sector Advisers

Lorin Brennan, Counsel, American Film Marketing Association, Los Angeles, California
Jonas Rosenfield, President, American Film Marketing Association, Culver City, California

United States Delegation to the International Telecommunication Union (ITU), World Numbering Zone 1 Committee, 1st Session, Orlando, Florida, April 10–12, 1989

Representative

Earl S. Barbely, Director, Office of Telecommunications and Information Standards, International Communications and Information Policy, Department of State.

Private Sector Advisers

Henry L. Marchese, AT&T Communications, Bedminster, New Jersey
Robert J. Smith, NYNEX Corporation, Boston, Massachusetts
Mary Ann Sullivan, Bellcore, Livingston, New Jersey

United States Delegation to the Council Meeting and the Conference on the Renegotiation on the International Coffee Agreement (ICA), International Coffee Organization (ICO), London, April 3–14, 1989

Representative

Jon Rosenbaum, Assistant U.S. Trade Representative, Office of the U.S. Trade Representative, Executive Office of the President

Alternate Representative

Ralph Ives, Director for Commodity Policy, Office of U.S. Trade Representative, Executive Office of the President

Advisers

William R. Brew, Director, Office of Food Policy Programs, Bureau of Economic and Business Affairs, Department of State
James Burkhart, Resources Officer, U.S. Embassy, London
Caterina Littleton, Primary Commodities Division, Department of Commerce
Scott Monier, Resource Officer, U.S. Embassy, London

Private Sector Advisers

John Berderka, Woodhouse, Drake and Carey, 127 John Street, New York, New York
George Boecklin, National Coffee Association, 110 Wall Street, New York, New York
Dave Brown, General Foods Corporation, 120 Wall Street, New York, New York
John C.K. Buckley, Nestle Foods Corporation, 100 Manhattanville Rd., Purchase, New York
Kenneth R. Dunnivant, Procter & Gamble Company, P.O. Box 599, Cincinnati, Ohio
John T. Hays, President, Coffees of Hawaii, P.O. Box 1855, Honolulu, Hawaii
John Heuman, Dine-mor Foods, 790 Merus Court, Fenton, Missouri
Howard Katz, J. Aron & Company, 85 Broad Street, New York, New York
Buford Kindred, Pontiac Foods/Kroeger Company, 231 Bookman Rd., Elgin, South Carolina
William Lifland, Cahill, Gordon & Reindel, 80 Pine Street, New York, New York
Andrew Scholtz, Cargill & Company, 45 Atrium, New York, New York
Jack Sutherland, Continental Coffee Products, Quaker Tower, 321 N. Clark Street, Chicago, Illinois

United States Delegation to the 10th Session of the Commission for Climatology, World Meteorological Organization (WMO), Lisbon, April 3–14, 1989

Principal Delegate

David R. Rodenhuis, Director, Climate Analysis Center, National Weather Service, National Oceanic and Atmospheric Administration, Department of Commerce

Alternate Principal Delegate

Kenneth D. Hadeen, Director, National Climatic Data Center, National Environmental Satellite, Data and Information Service, National Oceanic and Atmospheric Administration, Department of Commerce

Delegates

Jay Fein, Program Director, Climate Dynamics Program, National Science Foundation
Sharon LeDuc, Atmospheric Research and Exposure Assessment Laboratory, Environmental Protection Agency

Private Sector Adviser

Kenneth Kunkel, Director, Midwest Regional Climatic Center, Illinois State Water Survey, Champaign, Illinois

United States Delegation to the 57th Session of the Maritime Safety Committee, International Maritime Organziation (IMO), London, April 3–13, 1989

Representative

Joel D. Sipes, Rear Admiral, Chief, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation

Alternate Representative

Daniel F. Sheehan, Technical Adviser, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation

Advisers

Michael C. Grace, Captain, Chief, International Affairs Staff, United States Coast Guard, Department of Transportation
David M. Hardy, Commander, Special Assistant for Oceans Policy Affairs, Office of the Assistant Secretary of Defense for International Security Affairs, Department of Defense
Brian J. Hoyle, Director, Office of Ocean Law and Policy, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State
James W. MacDonald, Captain, Chief, Merchant Vessel Inspection Division, Office of Marine Safety, Security, and Environmental Protection, United States Coast Guard, Department of Transportation
John S. Spencer, Chief, Naval Achitecture Branch, Marine Technical and Hazardous Materials Division, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard, Department of Transportation

Private Sector Advisers

Joseph J. Cox, Vice President, American Institute of Merchant Shipping, Washington, DC
William S. Griffin, Jr., Phillips Petroleum Company, Bartlesville, Oklahoma
Donald C. Hintze, Captain, USCG (Ret.), National Ocean Industries Association, Washington, DC

United States Delegation to the CSCE—First Conference on the Human Dimension, Paris, May 30–June 23, 1989

Representative

The Honorable Morris B. Abram, Ambassador, United States Representative to the European Office of the United Nations and other International Organziations, Geneva

Alternate Representative

Rudolf Perina, Bureau of European and Canadian Affairs, Department of State

Congressional Representatives

The Honorable Dennis DeConcini, United States Senate
The Honorable Steny H. Hoyer, United States House of Representatives

Senior Adviser

Mark Lissfelt, Charge d' Affaires, A.I., United States Embassy, Paris

Congressional Advisers

Ann Banchoff, Staff Member, Commission on Security and Cooperation in Europe
Catherine Coeman, Staff Member, Commission in Security and Cooperation in Europe
Orest Deychakiwsky, Staff Member, Commission on Security and Cooperation in Europe
Jane Sharp Fisher, Deputy Staff Director, Commission on Security and Cooperation in Europe
Stephen Goldfein, Major, U.S. Air Force, Air Force Liaison, United States Senate
Mary Sue Hafner, Deputy Staff Director, Commission on Security and Cooperation in Europe
Robert Hand, Staff Member, Commission on Security and Cooperation in Europe
Jesse Jacobs, Staff Member, Commission on Security and Cooperation in Europe
Spencer Oliver, Senior Staff Consultant, Commission on Security and Cooperation in Europe
Erika Schlager, Staff Member, Commission on Security and Cooperation in Europe
Maritin Sletzinger, Staff Member, Committee on Foreign Affairs, United States House of Representatives
Ceceli Swensen, Staff Member, Office of Senator Dennis DeConcini
Howard L. Walgren, Staff Member, Office of Senator Dennis DeConcini
Samuel Wise, Staff Director, Commission on Security and Cooperation in Europe

Advisers

Frederick Becker, Office of Eastern European and Yugoslav Affairs, Department of State
Paula Dobriansky, Deputy Assistant Secretary, Bureau of Human Rights and Humanitarian Affairs, Department of State
John Evans, Deputy Director, Office of Soviet Union Affairs, Department of State
Patricia McMahon, Public Affairs Adviser, United States Information Agency
Susan Richwagen, Office of European Security and Political Affairs, Department of State
Steven Vanous, Captain, U.S. Air Force, Air Force Liaison Inquiries, Department of Defense

Private Sector Advisers

Ludmilla Alexeeva, Consultant, Helsinki Watch, Washington, DC
John Elliott, Senior Partner, Baskin, Flaherty, Elliott & Mannino, Philadelphia, Pennsylvania
Alice Henkin, Director, Justice and Society Program, Aspen Institute, New York, New York
Max Kampelman, Fried, Frank, Harris, Shriver and Jacobson, Washington, DC
Frank Koszorus, Lexalt, Washington, Perito and Dibuc, Washington, DC

United States Delegation to the Insurance Committee and It's Working Group on Statistics, Organization for Economic Cooperation and Development (OECD), Paris, May 24–26, 1989

Representative

Wray O. Candilis, Director, Finance and Management Industries Division, Office of Service Industries, Department of Commerce

Adviser

Appropriate USOECD, Mission Officer, Paris

Private Sector Advisers

Harold Skipper, Georgia State University, Center for Insurance Research, Atlanta, Georgia
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John Washburn, Director of Insurance, State of Illinois, Springfield, Illinois
Steve A. Schleisman, Chief Executive Officer, AIG Companies Europe, Tour American International, France
L. Oakley Johnson, Vice President, International Affairs, American International Group, Washington, DC

United States Delegation to the United Nations, Commission on International Trade Law (Uncitral), 22nd Plenary Session, Vienna, Austria, May 16–June 2, 1989

Representative

Peter H. Pfund, Assistant Legal Adviser for Private International Law, Office of the Legal Adviser, Department of State

Alternate Representatives

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Joseph C. Sweeney, Professor, School of Law, Fordham University, New York, New York

Private Sector Advisers

David G. Davies, Ray, Robinson, Hanninen, & Carle, Cleveland, Ohio
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United States Delegation to the 131st Session of the Executive Board, United Nations Educational, Scientific and Cultural Organizations (UNESCO), Paris, May 17 to June 23, 1989

Principal Observer

Richard T. Miller, United States Observer to the United Nations

Educational, Scientific and Cultural Organization, Paris

Observers

Elizabeth Kimber, United States Observer to the United Nations Educational, Scientific and Culutral Organization, Paris
Hazel Reitz, United States Observer to the United Nations Educational, Scientific and Cultural Organization, Paris

Private Sector Observer

Jacques Torczyner, New York

United States Delegation to the International Telecommunications Union (ITU), Plenipotentiary Conference, Nice, France, May 23–June 29, 1989

Representative

The Honorable, C. Travis Marshall (Chairman), Ambassador, Senior Vice President, Motorola, Inc., Washington, DC

Alternate Representatives

Daniel H. Clare (Vice Chairman), Executive Director, Bureau for International Communication and Information Policy, Department of State
Michael Fitch (Vice Chairman), Senior Adviser to the Chairman, Federal Communications Commission
Harold G. Kimball (Vice Chairman), Deputy Director, Office of International Affairs, National Telecommunications and Information Administration, Department of Commerce
Frances S. Urbany (Vice Chairman), BellSouth, Washington, DC

Senior Adviser

The Honorable, Sonia Landau, Ambassador, Coordinator for Communications and Information Policy, Bureau of International Communications and Information Policy, Department of State

Advisers

Dexter Anderson, Voice of America, United States Information Agency
Earl S. Barbely, Director, Office of Telecommunications and Information Standards, Bureau of International Communications and Information Policy, Department of State
Bohdan Bulawka, Office of the Coordinator, Bureau of International Communications and Information Policy, Department of State
William J. Cook, Director, Electromagnetic Spectrum Management, Office of the Chief of Naval Operations, Department of the Navy
Douglas V. Davis, Senior Attorney Adviser, Common Carrier Bureau, International Conference Staff, Federal Communications Commission
James D. Earl, Attorney Adviser, Office of the Assistant Legal Adviser for Economic Business and Communications Affairs, Office of the Legal Adviser, Department of State
Wendell R. Harris, Assistant Bureau Chief-International, Common Carrier Bureau, Federal Communications Commission
William H. Jahn, Deputy Director, Office of Radio Spectrum Policy, Bureau of International Communications and Information Policy, Department of State
Barbara Miller, Office of Industrial and Communications Programs, Bureau of International Organizations Affairs, Department of State
William Moran, Office of International Affairs, National Telecommunications and Information Administration, Department of Commerce
Clark Norton, Office of Diplomatic and Public Initiatives, Bureau of International Communications and Information Policy, Department of State
Larry Palmer, Program Manager, Radio Conferences, National Telecommunications and Information Administration, Department of Commerce
Richard Parlow, Associate Administrator, Spectrum Management, National Telecommunications and Information Administration, Department of Commerce
Anne Patterson, United States Mission, Geneva, Switzerland
Richard E. Shrum, Director, Office of Radio Spectrum Policy, Bureau of International Communication and Information Policy, Department of State
Francis K. Williams, Treaty Branch, Federal Communications Commission

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Ben C. Fisher, Partner, Fisher, Wayland, Cooper & Leader, Washington, DC
Richard J. Holleman, Director of Standards Practices, IBM Corporation, Purchase, New York
Anita F. Kaufman, MCI International, Inc., Rye Brook, New York
Philip C. Onstad, Director, Telecommunications and Information Policy, Control Data Corporation, Edison, New Jersey
Samuel E. Probst, Atlantic Research Corporation, Inc., Herndon, Virginia
Lee Schmidt, Vice President, Industry Affairs, GTE, Stamford, Connecticut.
Robert Smith, Associate Director, NYNEX Corporation, White Plains, New York

United States Delegation to the International Tropical Timber Council and Committees, International Tropical Timber Organization (ITTO), Abidjan, May 16, 1989

Representative

John Medeiros, Director, Office of International Commodities, Bureau of Economic and Business Affairs, Department of State

Alternate

Diana Tasnadi, Primary Commodities Division, Department of Commerce

Advisers

Simon Henshaw, Political/Economic Officer, American Embassy, Abidjan
Samuel H. Kunkle, International Forestry, USDA Forest Service, Department of Agriculture

Private Sector Advisers

Robert Buschbacher, Director, International Forestry, World Wildlife Fund, Washington, DC.
Frank Sheridan, President, Afrasian Woods, 39 E. Jericho Turnpike, Mineola, New York

United States Delegation to the Group on Urban Affairs—14th Session Organization for Economic Cooperation and Development (OECD), Paris, May 17–19, 1989

Representative

The Honorable Theodore R. Britton, Jr., Assistant to the Secretary for International Affairs, Department of Housing and Urban Development

Adviser

Appropriate USOECD, Mission Officer, Paris

Private Sector Adviser

Richard Zelinski, Vice President, Public Technology, Inc., Washington, DC.

United States Delegation to the International Telecommunication Union (ITU), International Radio Consultative Committee (CCIR), Extraordinary Meeting of Study Group 11, Geneva, Switzerland, May 10–16, 1989

Representative

Warren G. Richards, Office of Radio Spectrum Policy, Bureau of International Communications and Information Policy, Department of State

Alternate Representative

John Reiser, Mass Media Bureau, Federal Communications Commission

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Charles Rush, Chief Scientist, National Telecommunications and Information Administration, Department of Commerce

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Craig D. Cuttner, Home Box Office, New York, New York
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Richard C. Gould, Telecommunications Systems, Washington, DC.
Richard R. Green, Cable Television Laboratories, Inc., Cambridge, Massachusetts
Robert S. Hopkins, Jr., Executive Director, Avanced TV Systems Committee, Washington, DC.
Richard J. Iredale, The Del Ray Group, Thousand Oaks, California
Donald M. Jansky, Jansky-Barmat, Washington, DC.
Bronwen L. Jones, CBS Technology Center, Stamford, Connecticut
Bernard J. Lechner, Princeton, New Jersey
Louis Libin, National Broadcasting Company, New York, New York
Andrew B. Lippman, MIT Media Laboratory, Cambridge, Massachusetts
William Loveless, Bonneville International, Salt Lake City, Utah
Robert McFarlane, Philips Laboratories, Brier Cliff Manor, New York
James C. McKinney, Chairman, Advanced TV Systems Committee, Washington, DC.
Suzanne C. Neil, MIT Media Laboratory, Cambridge, Massachusetts
Edward E. Reinhart, Telecommunications Consultant, McLean, Virginia
Bruce Sidran, BELCORE, Red Bank, New Jersey
Richard J. Solomon, MIT Media Laboratory, Cambridge, Massachusetts
Victor Tawil, MST, Washington, DC.
Antoon G. Uyttendaele, Capital Cities-ABC, Inc., New York, New York
Roland J. Zavada, Eastman Kodak Company, Rochester, New York

United States Delegation to the Intergovernmental Group on Tea, 7th Session Food, and Agriculture Organization (FAO), Rome, May 9–12, 1989

Representative

Roberta van Haeften, Agricultural Attache, United States Mission to the United Nations Agencies for Food and Agriculture, Rome

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United States Delegation to the World Intellectual Property Organization (WIPO), Diplomatic Conference for the Conclusion of a Treaty on the Protection of Intellectual Property in Respect of Integrated Circuits, Washington, DC, May 8–26, 1989

Representative

Ralph Oman (U.S. Delegate), Register of Copyrights, Library of Congress

Alternate Representatives

Michael Keplinger (U.S. Alternate Delegate), Attorney Adviser, Office of Legislation and International Affairs, Patent and Trademark Office, Department of Commerce
Dorothy Schrader (U.S. Alternate Delegate), General Counsel, Copyright Office, Library of Congress

Congressional Advisers

The Honorable Hamilton Fish, Jr., Judiciary Committee, United States House of Representatives
The Honorable Robert W. Kastenmeier, Chairman, Subcommittee on Courts, Civil Liberties and the Administration of Justice, Judiciary Committee, United States House of Representatives
The Honorable Carlos J. Moorhead, Subcommittee on Courts, Civil Liberties and the Administration of Justice, Judiciary Committee, United States House of Representatives
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Michael Remington, Counsel, Subcommittee on Courts, Civil Liberties and the Administration of Justice, Judiciary Committee, United States House of Representatives
Joseph Wolfe, Associate Counsel, Subcommittee on Courts, Civil Liberties and the Administration of Justice, Judiciary Committee, United States House of Representatives

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Hilton Lee Graham, Office of Business Practices, Bureau of Economic and Business Affairs, Department of State
Richard Owens, Attorney Adviser, Office of Legislation and International Affairs, Patent and Trademark Office, Department of Commerce
William Patry, Policy Planning Adviser, Copyright Office, Library of Congress
Emery Simon, Director for Intellectual Property, Office of the United States Trade Representative, Executive Office of the President
William H. Skok, Office of Business Practices, Bureau of Economic and Business Affairs, Department of State
George Taft, Office of the Assistant Legal Adviser for Treaty Affairs, Office of the Legal Adviser, Department of State
Harvey J. Winter (Executive Secretary of the U.S. Delegation), Director, Office of Business Practices, Bureau of Economic and Business Affairs, Department of State

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Edward W. Brown, Computer and Business Equipment Manufacturer's Association, Washington, DC.
William C. Cray, Semiconductor Industry Association, Washington, DC.
R. Michael Gadbaw, Semiconductor Industry Association, Washington, DC.

United States Delegation to the Forty-Second World Health Assembly of the World Health Organization (WHO)

Dennis O. Johnsen, International Health and Science Attache, U.S. Mission, Geneva

United States Delegation to the International Telecommunication Union (ITU), International Telegraph and

Aviation Administration, Department of Transportation, Atlanta, Georgia

Advisers

Private Sector Advisers

Frank Penton, Vice President, International Trade and Economics,

International Development, Washington
Edward J. Ramotowski, American

United States Delegation to the Forty-Second World Health Assembly of the World Health Organization (WHO), Geneva, May 8–19, 1989

Delegates

The Honorable Louis W. Sullivan, M.D. (Chief Delegate), Secretary, Department of Health and Human Services
James O. Mason, M.D. (Deputy Chief Delegate), Assistant Secretary for Health, U.S. Public Health Service, Department of Health and Human Services
John R. Bolton (Deputy Chief Delegate), Assistant Secretary of State-Designate, for International Organization Affairs, Department of State

Alternate Delegates

The Honorable C. Everett Koop, M.D., Surgeon General, U.S. Public Health Service, Department of Health and Human Services
The Honorable Joseph C. Petrone, Ambassador, United States Permanent Representative to the United Nations Office and the Other International Organizations, Geneva,
Neil A. Boyer, Director, Health and Transportation Programs, Bureau of International Organization Affairs, Department of State
Nyle C. Brady, Senior Assistant Administrator, Bureau for Science and Technology, U.S. Agency for International Development
Frank E. Young, M.D., Commissioner of Food and Drugs, Food and Drug Administration, U.S. Public Health Service, Department of Health and Human Services

Advisers

Kenneth j. Bart, M.D., Director for Health, Bureau for Science and Technology, U.S. Agency for International Development
Rose Belmont, Associate Director for Multilateral Programs, Office of International Health, U.S. Public Health Service, Department of Health and Human Services
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Billy Griggs, Assistant Director for International Health, Centers for Disease Control, U.S. Public Health Service, Department of Health and Human Services
Marie Henry, D.N.Sc., Chief Nurse Officer, U.S. Public Health Service, Department of Health and Human Services
Dennis O. Johnsen, International Health and Science Attache, U.S. Mission, Geneva
Thomas A. Johnson, Counsellor for Legal Affairs, U.S. Mission, Geneva
Stuart H. Lippe, Counsellor for Political Affairs, U.S. Mission, Geneva
William H. Marsh, Minister Counsellor, Deputy Chief of Mission, Geneva
Anne W. Patterson, First Secretary, U.S. Mission, Geneva
Joseph P. Richardson, International Resources Management Officer, U.S. Mission, Geneva
Philip Schambra, Director, Fogarty International Center, National Institutes of Health, U.S. Public Health Service, Department of Health and Human Services
Harold P. Thompson, Director, Office of International Health, U.S. Public Health Service, Department of Health and Human Services
Sandra L. Vogelgesang, Deputy Assistant Secretary, International Organization Affairs, Department of State

Private Sector Advisers

Vivian W. Pinn-Wiggins, M.D., President-elect, National Medical Association, Howard University College of Medicine, Washington, DC.
William Walsh, M.D., Director, Project Hope, Washington, DC.

United States Delegation to the Preparatory Meeting for the Fifteenth Antarctic Treaty Consultative Meeting, Paris, May 8–12, 1989

Representative

R. Tucker Scully, Director, Office of Oceans and Polar Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State

Advisers

Raymond V. Arnaudo, Office of Oceans and Polar Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State
Grace Bay, United States Embassy, Paris
Robert Hofman, Scientific Program Director, Marine Mammal Commission
Thomas Laughlin, National Oceanic and Atmospheric Administration, Department of Commerce
Jack Talmadge, Division of Polar Programs, National Science Foundation

Private Sector Adviser

Lee Kimball, World Resources Institute, Washington, DC.

United States Delegation to the International Telecommunication Union (ITU), International Telegraph and Telephone Consultative Committee (CCITT), Study Group I (Services), Geneva, Switzerland, May 2–12, 1989

Representative

Douglas V. Davis, Attorney-Adviser, International Common Carrier Bureau, International Conference Staff, Federal Communications Commission

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Robert Smith, Associate Director, NYNEX Corporation, Boston, Massachusetts
Blake L. Wattenbarger, Supervisor, Consumer Products, Consumer Products Laboratories, American Telephone and Telegraph Company, Holmdel, New Jersey

United States Delegation to the Second Caribbean/South American Regional Air Navigation Meeting of the International Civil Aviation Organization (ICAO), Santiago, May 2–20, 1989

Chief Delegate

Garland P. Castleberry, Regional Administrator, Southern Region, Federal Aviation Administration, Department of Transportation, Atlanta, Georgia

Alternate Delegate

Bill F. Jeffers, Manager, International Staff, Southern Region, Federal Aviation Administration, Department of Transportation, Atlanta, Georgia

Advisers

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Calvin T. Betz, Lieutenant Colonel, Air Force Representative, Federal Aviation Administration (Southern Region), Department of the Air Force, Atlanta, Georgia
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D.E. Lemon, Chief, Search and Rescue Coordination, United States Coast Guard, Department of Transportation
Thomas T. Martin, International Field Office, Federal Aviation Administration, Department of Transportation, Miami, Florida
Gerald L. Richard, International Program Specialist, Federal Aviation Administration Department of Transportation
William H. Titus, International Program Analysis, Federal Aviation Administration, Department of Transportation
Jerald Uecker, International Aviation Program Leader, National Weather Service, National Oceanic and Atmospheric Administration, Department of Commerce

Private Sector Advisers

Richard K. Covell, Manager, Air Ground Operations, Aeronautical Radio, Inc., Annapolis, Maryland
Paul C. Leonard, Regional Vice President, Air Transport Association of America, Chicago, Illinois

United States Delegation to the Steel Committee Working Party Organization For Economic Cooperation and Development (OECD), Paris, April 25–28, 1989

Representative

Ralph Thompson, Director, Iron and Steel Division, Bureau of Industrial Economics, International Trade Administration, Department of Commerce

Advisers

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John J. Sheehan, Assistant to the President and Director of Legislative Affairs, United Steelworkers of America, Washington, DC

United States Delegation to the Steel Committee Working Party Organization For Economic Cooperation and Development (OECD), Paris, April 25–28, 1989

Representative

Ralph Thompson, Director, Iron and Steel Division, Bureau of Industrial Economics, International Trade Administration, Department of Commerce

Advisers

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United States Delegation to the 12th Session of the UN Commission on Human Settlements, Cartagena, Colombia, April 24–May 3, 1989 (Amendment #3)

Representative

Fredrik A. Hansen, Deputy Director, Office of Housing and Urban Programs, US Agency for International Development, Washington

Alternate Representatives

Daniel W. Figgins, Jr., US Permanent Representative to the U.N. Center for Human Settlements, Nairobi, Kenya

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Edward J. Ramotowski, American Embassy, Bogota, Colombia

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Miriam Meyer, National Association of Realtors, Washington
Ralph W. Pritchard, Chairman, International Policy Committee, National Association of Realtors, Washington

United States Delegation to the International Telecommunication Union, International Telegraph and Telephone Consultative Committee (CCITT) Study Group III (Tariff Principles, Including Accounting), Geneva, Switzerland, April 24–28, 1989

Representative

Earl S. Barbely, Director, Office of Telecommunications and Information Standards, Bureau of International Communications and Information Policy, Department of State

Advisers

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William Kirsch, Deputy Assistant Chief/International, Common Carrier Bureau, Federal Communications Commission

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Marcel Scheidegger, Manager, International Finance, MCI International Telecommunications, Rye Brook, New York

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United States Delegation to the International Conference on Salvage, International Maritime Organization

Alternate Representative

Claudine B. Cox, Alternate United States Representative to UNICEF,

United States Delegation to the Third Session of the Technical Committee for Ocean Processes and Climate,

United States Delegation to the International Telecommunication Union (ITU), International Telegraph

Alternate Representatives

The Honorable Ivan Selin, Under

James B. Foster, District Director, Immigration and Naturalization Service, Department of Justice,

United States Delegation to the International Conference on Salvage, International Maritime Organization (IMO), London, April 17–28, 1989

Representative

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Alternate Representative

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Thomas L. Jones, Senior Admiralty Counsel, Civil Division, Department of Justice
Frederick M. Rosa, Jr., Lieutenant Commander, Maritime and International Law Division, Office of Chief Counsel, United States Coast Guard, Department of Transportation
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Geoffrey C. Jones, Senior Vice President, American International Marine Agency, New York, New York
Edward C. Kalaidjian, Legal Consultant, Vero Beach, Florida
Sam V. Tranchina, American Institute of Marine Underwriters, New York, New York

United States Delegation to the Executive Board Meeting United Nations Children's Fund (UNICEF), New York, April 17–28, 1989 (Amendment #1)

Representative

Rita DiMartino, United States Representative to UNICEF, New York

Alternate Representative

Claudine B. Cox, Alternate United States Representative to UNICEF, Springfield, Missouri
Sandra L. Vogelgesang, Deputy Assistant Secretary for International Development and Technical Specialized Agency Affairs, Bureau of International Organization Affairs, Department of State, Washington

Advisers

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Mary Louise Becker, Office of Donor Coordination, Bureau for Program and Policy Coordination, US Agency for International Development, Washington
Gordon MacArthur, United States Mission to the UN, New York
Susan Shearouse, United States Mission to the UN, New York
Sylvia Stanfield, Office of International Development Assistance, Bureau of International Organization Affairs, Department of State, Washington
Linda Vogel, Associate Director for Management and Program Coordination, Office of International Health, Public Health Service, Department of Health and Human Services, Washington

Public Sector Adviser

Lawrence E. Bruce, Jr., President, US Committee for UNICEF, New York

United States Delegation to the Working Group of the Maritime Transport Committee and the Maritime Transport Committee, Organization for Economic Cooperation and Development (OECD), Paris, June 27–29, 1989

Representative

Thomas J. Wajda, Director, Office of Maritime and Land Transport, Bureau of Economic Affairs, Department of State

Alternate Representative

Greg Hall, Office of International Affairs, Maritime Administration, Department of Transportation

Adviser

Appropriate USOECD, Mission Office, Paris

Private Sector Advisers

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Peter D. Prowitt, Director, Government Affairs, American President Lines, Washington, DC

United States Delegation to the Third Session of the Technical Committee for Ocean Processes and Climate, Intergovernmental Oceanographic Commission (IOC)/United Nations Educational, Scientific and Cultural Organization (UNESCO), Paris, June 27–29, 1989

Representative

Thomas Spence, Program Director, National Science Foundation

Alternate Representative

David Goodrich, Director, Ocean Circulation Studies, National Ocean.c and Atmospheric Administration, Department of Commerce

Advisers

Louis Brown, Science Associate, Division of Ocean Sciences, National Science Foundation
William Woodward, Chief, Ocean Observations Division, National Ocean Service, National Oceanic and Atmospheric Administration, Department of Commerce

Private Sector Adviser

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United States Delegation to the Committee on Information, Computers and Communications Policy (ICCP), and Working Party on Telecommunications and Information Services Policy (TISP), Organization for Economic Cooperation and Development (OECD), Paris, June 20–21, 1989

Representative

Lucy H. Richards, Director, Office of Industrialized Country Policy, Bureau of International Communications and Information Policy, Department of State

Advisers

Timothy C. Finton, Office of Industrialized Country Policy, Bureau of International Communications and Information Policy, Department of State
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Kathy Slesinger, NYNEX Corporation, Washington, DC
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United States Delegation to the International Telecommunications Union (ITU), International Telegraph and Telephone Consultative Committee (CCITT), Study Group XVIII (Digital Networks, Including ISDN), Geneva, Switzerland, June 19–30, 1989

Representative

William F. Utlaut, Director, Institute for Telecommunications Sciences, National Telecommunications and Information Administration, Department of Commerce, Boulder, Colorado

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Michael E. Varrassi, Standards Engineer, Federal Express Corporation, Memphis, Tennessee
Richard E. Weadon, Senior Technologist, Southwestern Bell Corp., St. Louis, Missouri

United States Delegation to the International Conference on Indochinese Refugees, United Nations High Commissioner for Refugees (UNHCR) Geneva, June 13–14, 1989

Representative

The Honorable Lawrence S. Eagleburger, Deputy Secretary, Department of State

Alternate Representatives

The Honorable Ivan Selin, Under Secretary for Management, Department of State
The Honorable Jonathan Moore, United States Coordinator for Refugee Affairs and Ambassador-at-Large, Director, Bureau for Refugee Programs, Department of State
The Honorable John R. Bolton, Assistant Secretary of State for International Organization Affairs, Department of State
The Honorable Joseph C. Petrone, Permanent Representative to the International Organizations in Geneva, United States Mission, Geneva
Sichan Siv, Deputy Assistant to the President, Office of the President

Congressional Advisers

The Honorable Robert K. Dornan, United States House of Representatives

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Nora Engel, Staff Member, Committee on the Judiciary, United States House of Representatives
Lisa Heyes, Staff Member, Committee on Foreign Affairs, United States House of Representatives
Leslie Megyeri, Staff Member, Committee on the Judiciary, United States House of Representatives
Kennon Nakamura, Staff Member, Committee on Foreign Affairs, United States House of Representatives
Eric Schwartz, Staff Member, Committee on Foreign Affairs, United States House of Representatives
Jerry M. Tinker, Staff Member, Subcommittee on Immigration and Refugee Affairs, Committee on the Judiciary, United States Senate

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Lisa Carty, Office of Asian Refugee Assistance, Bureau for Refugee Programs, Department of State
Nancy Searg Dyke, Staff Member, National Security Council
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Robert L. Funseth, Senior Deputy Assistant Secretary, Bureau for Refugee Programs, Department of State
Douglas R. Hunter, Director, Office of Policy and Program Coordination, Bureau for Refugee Programs, Department of State
Jeffrey D. Kovar, Assistant Legal Adviser for Human Rights and Refugees, Office of the Legal Adviser, Department of State
David Lambertson, Deputy Assistant Secretary, Bureau of East Asian and Pacific Affairs, Department of State
Joyce Leader, United States Mission, Geneva
Mary Chi Ray, Deputy Director, Office of Refugee Resettlement, Family Support Administration, Department of Health and Human Services
Lee Richardson, National Security and International Affairs Division, General Accounting Office
David Walker, Office of Regional Affairs, Bureau of East Asian and Pacific Affairs, Department of State

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Donald Larsen, Executive Director, Lutheran Immigration and Refugee Service, Chairman, Inter-Action Committee on Refugee and Migration Affairs, New York, New York
Susan Molinari, Councilwoman, New York City Council, New York, New York
Frank Vinh Noan, President, Vietnam Resettlement Organization, Washington, DC
Anthony T. K. Vang, Indochina Resource Action Center, Fresno, California

United States Delegation to the Fifth Session of the Operations Panel, International Civil Aviation Organization (ICAO), Montreal, June 12–23, 1989

Panel Member

Thomas Imrich, National Resource Specialist, Air Carrier Operations, Northwest Mountain Region, Federal Aviation Administration, Department of Transportation, Seattle, Washington

Advisers

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Federal Aviation Administration, Department of Transportation
James P. Witeck, Program Management

Michael F. Tillman, Senior Scientist, Office of Protected Resources, National Marine Fisheries Service,

Kirsten Emigholz, Cahill, Gordon and Reindel, New York, New York
Andrew Scholtz, Cargill & Company,

Atmospheric Administration, Department of Commerce
Melvin N.A. Peterson, Chief Scientist,

Richard Podgorny, Chief, International Affairs, National Ocean Service, National Oceanic and Atmospheric

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Private Sector Advisers

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William M. Russell, Air Carrier Representative, Air Transport Association of America, Washington, D.C.

United States Delegation to the 41st Annual Meeting and Associated Meetings, International Whaling Commission (IWC), San Diego, June 5–16, 1989

Representative

The Honorable William E. Evans, United States Commissioner and Under Secretary of Commerce for Oceans and Atmosphere, Department of Commerce

Alternate Representative

The Honorable Norman Roberts, Deputy United States Commissioner

Congressional Staff Adviser

Lori Williams, Staff Member, Committee on Merchant Marine and Fisheries, United States House of Representatives

Advisers

Daniel Bodandsky, Office of the Legal Adviser, Department of State
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Joseph Casper, Deputy Assistant to the Chief of Staff, Office of the Secretary, Department of Commerce
Kevin Chu, Office of Science and Techology Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State
Anne Crichton, Office of the Solicitor, Department of the Interior
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Claudia Kendrew, Office of Economic Policy, Bureau of East Asian and Pacific Affairs, Department of State
Eileen Sobeck, Wildlife and Marine Resource Services Unit, Department of Justice
Dean Swanson, Office of International Affairs, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce
Michael F. Tillman, Senior Scientist, Office of Protected Resources, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce

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Richard Ellis, Oceanic Society, New York, New York
Jeff Haun, International Marine Animals Trainers Association, Kaneohe Place, Hawaii
Edward Hopson, Chairman, Alaska Eskimo Whaling Commission, Barrow Alaska
John Prescott, American Association of Zoological Parks and Aquariums, Weston, Massachusetts
LKee J. Weddig, Executive Vice President, National Fisheries Institute, Washington, D.C.

United States Delegation to the Special Meeting of the Council on the Renegotiation of the International Coffee Agreement (ICA), International Coffee Organization (ICO), London, June 5–12, 1989

Representative

Jon Rosenbaum, Assistant U.S. Trade Representative for Latin America, the Caribbean, Africa and Commodity Policy, Office of the U.S. Trade Representative, Executive Office of the President

Alternate Representative

Ralph Ives, Director for Commodity Policy, Office of the U.S. Trade Representative, Executive Office of the President

Advisers

William R. Brew, Director, Office of Food Policy and Programs, Bureau of Economic and Business Affairs, Department of State
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Andrew Scholtz, Cargill & Company, New York, New York
Henry Grady Tiller, Maryland Club Foods, Inc., Houston, Texas

United States Delegation to the Working Party Number Six on Shipbuilding Organization for Economic Cooperation and Development (OECD), Paris, June 5–6, 1989

Representative

Thomas J. Wajda, Director, Office of Maritime and Land Transport, Bureau of Economic Affairs, Department of State

Adviser

Appropriate USOECD, Mission Officer, Paris

Private Sector Adviser

David Klinges, President, Marine Construction Group, Bethlehem Steel Corporation, Bethlehem, Pennsylvania

United States Delegation to the 22nd Session of the Executive Council and the 15th Assembly of the International Oceanographic Commission of the United Nations Educational, Scientific and Cultural Organization (UNESCO/IOC), Paris, July 3–19, 1989

Representative

Robert Corell, Assistant Director for Geosciences, National Science Foundation

Alternate Representatives

William Erb, Director, Office of Marine Science and Technology Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State
Thomas Maginnis, Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration, Department of Commerce

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Dorothy Bergamashci, Office of Marine Science and Technology Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State
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Sharon Smith, Biological Oceanography Program, National Science Foundation
Gregory Withee, Director, National Oceanographic Data Center, Northeastern District, National Oceanic and Atmospheric Administration, Department of Commerce

Private Sector Advisers

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United States Delegation to the 22nd Session of the Executive Council and the 15th Assembly of the Intergovernmental Oceanographic Commission of the United Nations Educational, Scientific and Cultural Organization (UNESCO/IOC), Paris, July 3–19

Representative

Robert Corell, Assistant Director for Geosciences, National Science Foundation

Alternate Representatives

William Erb, Director, Office of Marine Science and Technology Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State
Thomas Maginnis, Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration, Department of Commerce

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Private Sector Advisers

D. James Baker, President, Joint Oceanographic Institutions, Inc., Washington, DC
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United States Delegation to the International Telecommunication Union (ITU), International Telegraph and Telephone Consultative Committee (CCITT), Study Group XVII, Geneva, Switzerland, July 3–July 13, 1989

Representative

Gary M. Fereno, Deputy Director, Telecommunications and Information Standards, Bureau of International Communications and Information Policy, Department of State

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Ronald A. Wheeler, Technology Consultant, Pacific Bell, San Ramon, California

United States Delegation to the International Telecommunication Union (ITU), International Telegraph and Telephone Consultative Committee (CCITT), Meeting of the Plan Committee For Latin America, San Jose, Costa Rica, August 30–September 6, 1989

Representative

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United States Delegation to the Group of Experts on the Transport of Perishable Foodstuffs, 45th Session, Economic Commission for Europe (ECE), Geneva, September 25–28, 1989

Representative

Brian M. McGregor, ATP Manager, Office of Transportation, Department of Agriculture

Advisers

David Patterson, United States Mission, Geneva
James A. Truran, United States Mission, Geneva

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United States Delegation to the World Tourism Organization (WTO), Thirty Sixth Session of the Executive Council, Eighth Session of the General Assembly, Paris, August 25-September 2, 1989

Representative

The Honorable Rockwell A. Schnabel, Undersecretary of Commerce for Travel and Tourism, Department of Commerce

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United States Delegation to the 61st Session of the Legal Committee, International Maritime Organization (IMO), London, September 28–29, 1989

Representative

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Alternate Representatives

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Private Sector Adviser

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United States Delegation International Telecommunication Union (ITU), International Telegraph and Telephone Consultative Committee (CCITT), Study Group XVII (Data Transmission Over the Telephone Network), and its Working Parties, Geneva, Switzerland, September 26–29, 1989

Representative

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United States Delegation to the 33rd Session of the General Conference of the International Atomic Energy Agency (IAEA), Vienna, September 25–29, 1989

Representatives

The Honorable Richard T. Kennedy, Ambassador, United States Representative to the IAEA, Department of State

Alterate Representative

The Michael H. Newlin, Ambassador, United States Representative to the IAEA, Vienna

Senior Advisers

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The Honorable John Easton, Principal Deputy Assistant Secretary, International Affairs and Energy Emergencies, Department of Energy

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United States Delegation to the Joint Intergovernmental Group of Experts on Maritime Liens and Mortgages and Related Subjects, International Maritime Organization (IMO), London, September 25–29, 1989

Representative

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United States Delegation to the International Telecommunication Union (ITU), International Radio Consultative Committee (CCIR), Study Group 9, Fixed Service/Radio-Relay Systems, Geneva, Switzerland, September 20–October 5, 1989

Representative

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Richard P. Slade, AT&T Bell Laboratories, North Andover, Massachusetts

United States Delegation to the International Telecommunication Union (ITU), International Radio Consultative Committee (CCIR), Study Group 5, Propagation in Non-Ionized Media, Geneva, Switzerland, September 19–October 5, 1989

Representative

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Howard J. Sartori, Consultant, Garland, Texas

United States Delegation to the International Telecommunication Union (ITU), International Radio Consultative Committee (CCIR), Study Group 4, Fixed Satellite Service, Geneva, Switzerland, September 20–October 6, 1989

Representatives

Richard E. Parlow, Associate Administrator, National Telecommunications and Information Administration, Department of Commerce
Hans J. Weiss, Vice President, Technical Policy, Communications Satellite Corporation, Washington, D.C.

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James B. Potts, Consultant, Gaithersburg, Maryland
David E. Weinreich, Department Manager, Communications Satellite Corporation Laboratories, Clarksburg, Maryland

United States Delegation to the Twenty Seventh (Ordinary) Session of the Triennial Assembly of the International Civil Aviation Organization (ICAO), Montreal, September 19–October 6, 1989

Chief Delegate

Edmund P.C. Stohr, United States Representative to the International Civil Aviation Organization, Montreal, Canada

Delegates

Anthony J. Broderick, Associate Administrator for Aviation Standards, Federal Aviation Administration, Department of Transportation
James J. Gansle, Office of International Aviation, Department of Transportation
Joan S. Gravatt, Ofice of Aviation Programs and Policy, Bureau of Economic and Business Affairs, Department of State
Robert K. Harris, Office of the Legal Adviser, Department of State
Irene E. Howie, Assistant Chief Counsel, International Affairs and Legal Policy Staff, Office of the Chief Council, Federal Aviation Administration, Department of Transportation
J. Stuart Jamison, Alternate United States Representative to the International Civil Aviation Organization and Member of the ICAO Air Navigation Commission, Montreal, Canada
John H. Kiser, Office of International Aviation, Department of Transportation
David C. Leach, Special Assistant to the Deputy Director, Office of Civil Aviation Security, Federal Aviation Administration, Department of Transportation
David A. Leis, Office of UN System Budgets, Bureau of International Organization Affairs, Department of State
David L. Schiele, United States Member of the International Civil Aviation Organization Finance Committee, Montreal, Canada

Private Sector Adviser

Thomas V. Lydon, Manager, International Services, Air Transport Association of America, Washington, D.C.

United States Delegation to the 30th Session of the Working Party on Facilitation of International Trade

United States Delegation to the 19th Session of the Subcommittee on Bulk Chemicals, International Maritime

United States Delegation to the International Telecommunication Union (ITU), International Radio Consultative

Space Administration, Greenbelt, Maryland
David Strube, Manager, Spectrum

Information Policy, Department of State

Affairs, Contact International, Inc., Portland, Oregon

United States Delegation to the 30th Session of the Working Party on Facilitation of International Trade Procedures Economic Commission for Europe (ECE), Geneva, September 18–22, 1989

Representative

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Alice Rigdon, Customs Attache, United States Mission to the European Communities, Brussels
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Jeffrey Sturrock, Director, EDI Systems, Texas Instruments, Inc., Plano, Texas
Hans Weiting, Sea-Land Service, Inc., Elizabeth, New Jersey
Nicole Willenz, Price Waterhouse, Chicago, Illinois

United States Delegation to the 50th Session, Committee on Housing, Building, and Planning Economic Commission for Europe (ECE), Geneva, September 12–15, 1989

Representative

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United States Delegation to the 19th Session of the Subcommittee on Bulk Chemicals, International Maritime Organization (IMO), London, September 11–15, 1989

Representative

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Alternate Representative

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Michael D. Morrissette, Chief, Hazard Evaluation Section, Marine Technical and Hazardous Materials Division, Office of Safety, Security, and Environmental Protection, United States Coast Guard, Department of Transportation
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United States Delegation to the Intergovernmental Group on Citrus Fruit, Food and Agriculture Organization (FAO), Montevideo, September 11–15, 1989

Representative

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Private Sector Adviser

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United States Delegation to the International Telecommunication Union (ITU), International Radio Consultative Committee (CCIR), Study Group 6, Propagation in Ionized Media, Geneva, Switzerland, September 6–19, 1989

Representative

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Advisers

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United States Delegation to the International Telecommunication Union (ITU), International Radio Consultative Committee (CCIR), Study Group 2, Space Research and Radioastronomy, Geneva, Switzerland, September 6–19, 1989

Representative

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Advisers

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John W. Kiebler, National Aeronautics and Space Administration
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Robert Taylor, National Aeronautics and Space Administration

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Anthony R. Thompson, Systems Engineer and Frequency Coordinator, National Radio Astronomy Observatory, Charlottesville, Virginia

United States Delegation to the International Telecommunication Union (ITU), International Radio Consultative Committee (CCIR), Study Group 7, Standard Frequencies and Time-Signals, Geneva, Switzerland, September 5–12, 1989

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United States Delegation to the 7th Session of the Assembly of Parties, International Maritime Satellite Organization (Inmarsat), Lisbon, October 31–November 2, 1989

Representative

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United States Delegation to the International Tropical Timber Organization, Yokohama, October 30–November 7, 1989

Representative

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Alternate Representative

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United States Delegation to the 85th Session of the Coal Committee Economic Commission For Europe (ECE), Geneva, October 30–November 2, 1989

Representative

George Ziegler, Office of International Affairs, Department of Energy

Alternate Representative

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Adviser

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Private Sector Advisers

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United States Delegation to the International Telecommunication Union (ITU), International Radio Consultative Committee (CCIR), Study Group 1 (Spectrum Utilization and Monitoring), Geneva, Switzerland, October 26–November 8, 1989

Representatives

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Richard E. Shrum, Director, Office of Radio Spectrum Policy, Bureau of International Communications and Information Policy, Department of State

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United States Delegation to the Insurance Committee and the Working Group on Statistics, Organization For Economic Cooperation and Development (OECD), Paris, October 25–27, 1989

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Adviser

Appropriate USOECD, Mission Officer, Paris

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United States Delegation to the International Telecommunication Union (ITU), International Telegraph & Telephone Consultative Committee (CCITT), Study Group II, Working Paties 1, 2, and 3, Geneva, Switzerland, October 24–November 3, 1989

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Robert W. Madden, Manager, American Telephone & Telegraph Company, Morristown, New Jersey

United States Delegation to the International Telecommunication Union (ITU), International Radio Consultative Committee (CCIR), Study Group 8 (Mobile, Radiodetermination and Amateur Services), Geneva, Switzerland, October 23–November 8, 1989

Representatives

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United States Delegation to the International Telecommunication Union (ITU), International Radio Consultative Committee (CCIR), Study Group 1 (Rapporteur Groups of Working Party 1/3), Boston, Massachusetts, October 23–November 1, 1989

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United States Delegation to the 25th General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO), Paris, October 17–November 16, 1989

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Patrick Johnson, United States Embassy, Paris
Elizabeth Kimber, U.S. Observer Mission at UNESCO, Paris
Hazel M. Reitz, U.S. Observer Mission at UNESCO, Paris

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Jacques Torczyner

United States Delegation to the Intergovernmental Group on Bananas, 11th Session Food and Agriculture Organization (FAO), Rome, October 18–20, 1989

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Unites States Delegation to the International Telecommunication Union (ITU), International Radio Consultative Committee (CCIR), Study Group 11 (Broadcasting Service—Television), Geneva, Switzerland, October 9–23, 1989

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United States Delegation to the International Telecommunications Union (ITU), International Radio Consultative Committee/International Telegraph and Telephone Consultative Committee (CCIR/CCITT), Joint Study Group for Television and Sound Transmission (CMITT), Geneva, Switzerland, October 9–23, 1989

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United States Delegation to the International Telecommunication Union (ITU), International Radio Consultative Committee (CCIR), Study Group 10, Broadcasting Service (Sound), Geneva, Switzerland, October 9–23, 1989

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United States Delegation to the Group of Experts on Periodic Survey of the Chemical Industry, 15th Session, and

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United States Delegation to the 16th Session of the Assembly and 28th Session of the Marine Environment Protection Committee, International Maritime Organization (IMO), London, October 9–20, 1989

16th Session of the Assembly, (October 9–20, 1989)

Representative

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28th Session of the Marine Environment Protection Committee, (October 17, 1989)

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United States Delegation to the Fifteenth Antarctic Treaty Consultative Meeting, Paris, France, October 9–20, 1989

Representative

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United States Delegation to the 12th Meeting of the Dangerous Goods Panel, International Civil Aviation Organization (ICAO), Montreal, October 9–20, 1989

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United States Delegation to the Standing Committee and Seventh Meeting of the Conference of Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), Lausanne, October 9–20, 1989

Standing Committee, (October 8, 1989)

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Seventh Meeting of the Conference of Parties to the Convention on International Trade in Endangered Species of Wild Flora and Fauna, (October 9–20, 1989)

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United States Delegation to the Committee For the Coordination of Offshore Prospecting For Mineral Resources in the South Pacific (CCOP/SOPAC), 18th Session, Economic and Social Commission for Asia and the Pacific (ESCAP), Canberra, October 2–13, 1989

Representative

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United States Delegation to the Group of Experts on Periodic Survey of the Chemical Industry, 15th Session, and Chemical Industry Committee Meeting, 22nd Session, Economic Commission For Europe (ECE), Geneva, October 2–6, 1989

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United States Delegation to the International Telecommunications Union (ITU), International Radio Consultative Committee (CCIR), Interim Working Party 11/6, Geneva, Switzerland, October 2–6, 1989

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United States Delegation to the 4th Meeting With International Organizations and the 25th Session of

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United States Delegation to the International Telecommunication Satellite Organization (INTELSAT), Fifteenth Assembly of Parties, Amsterdam, October 2–5, 1989

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United States Delegation to the International Telecommunication Union, International Telegraph and Telephone Consultative Committee (CCITT), Study Group III (General Accounting), Working Parties 1, 2, 3, 5, and 6, Geneva, Switzerland, October 10–20, 1989

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United States Delegation to the 4th Meeting With International Organizations and the 25th Session of the Administrative and Legal Committee, Union For the Protection of New Plant Varieties (UPOV), Geneva, October 9–13, 1989

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United States Delegation to the International Council For the Exploration of the Sea (ICES), 77th Statutory Meeting, the Hague, Netherlands, October 5–13, 1989

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United States Delegation to the International Lead and Zinc Study Group (ILZSG), Vienna, October 5–12, 1989

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United States Delegation to the Plenary Meeting, 48th Session of the International Cotton Advisory Committee (ICAC), Scottsdale, October 2–6, 1989

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Jesse F. Moore, Director, Cotton Division, Agricultural Marketing Service, Department of Agriculture

United States Delegation to the Tenth Inter-American Indian Congress Organization of American States (OAS), San Martin De Los Andes, Argentina, October 2–6, 1989

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United States Delegation to the 12th Regular Meeting of the International Commission For the Conservation of Atlantic Tunas (ICCAT), Madeira, Portugal, November 13–17, 1989

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The Honorable Michael B. Montgomery, San Marino, California
The Honorable Leon J. Weddig, National Fisheries Institute, Washington, DC.

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Bradford E. Brown, Southeast Fisheries Center, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce
Brian S. Hallman, Deputy Director, Office of Fisheries Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State
Walter Nelson, Southeast Fisheries Center, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce
Katherine Rodriquez, Northeast Region, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce
Rebecca Rootes, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce
Richard Stone, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce

Private Sector Adviser

Gordon C. Broadhead, Living Marine Resources, Incorporated, San Diego, California
Frank Carlton, National Coalition for Marine Conservation, Savannah, Georgia

United States Delegation to the 12th Regular Meeting of the International Commission For the Conservation of Atlantic Tunas (ICCAT), Madeira, Portugal, November 13–17, 1989

Commissioners

The Honorable Carmen J. Boldin (Head of Delegation), Deputy Assistant Secretary for International Trade, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce
The Honorable Michael B. Montgomery, San Marino, California
The Honorable Leon J. Weddig, National Fisheries Institute, Washington, D.C.

Congressinal Staff Advisers

James K. McCallum, Staff Member, Merchant Marine and Fisheries Committee, United States House of Representatives
Jeffrey R. Pike, Staff Member, Merchant Marine and Fisheries Committee, United States House of Representatives

Advisers

Bradford E. Brown, Southeast Fisheries Center, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce
Brian S. Hallman, Deputy Director, Office of Fisheries Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State
Walter Nelson, Southeast Fisheries Center, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce
Katherine Rodriquez, Northeast Region, National Marine Fisheries Serivce, National Oceanic and Atmospheric Administration, Department of Commerce
Rebecca Rootes, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce
Richard Stone, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce

Private Sector Adviser

Gordon C. Broadhead, Living Marine Resources, Incorporated, San Diego, California

United States Delegation to the Council and Committee Meetings International Natural Rubber Organization (OECD), Kuala Lumpur, November 8–10, 1989

INRO Council and the Committee on Administration Representative

Jeffrey Cunningham, Deputy Director, Office of International Commodities, Bureau of Economic and Business Affairs, Department of State

Alternate Representative

Fredric W. Siesseger, Director, Primary Commodities Division, Department of Commerce

Adviser

David Miller, Economic Officer, U.S. Embassy, Kuala Lumpur

Committee on Buffer Stock Operations, Statistics, and Other Measures Representative

Fredic W. Siesseger, Director, Primary Commodities Division, Department of Commerce

Alternative Representative

Jeffrey Cunningham, Deputy Director, Office of International Commodities, Bureau of Economic and Business Affairs, Department of State

Adviser

David Miller, Economic Officer, U.S. Embassy, Kuala Lumpur

Private Sector Advisers

Peter W.C. Tan, Managing Director, Goodyear Orient Private Ltd., Singapore
Charles B. Petit, Manager, Firestone Singapore Ltd., Singapore

Harold Ross Miller, Managing Director, Goodrich Co. Pvt., Ltd., Singapore

United States Delegation to the 36th Annual Meeting of the International North Pacific Fisheries Commission (INPFC), Seattle, Washington, November 6–10, 1989

Commissioners

The Honorable (Head of Delegation) Richard B. Lauber, Chairman, U.S. Section, Homer, Alaska
The Honorable Alec W. Brindle, Ward's Cove Packing Company, Seattle, Washington
The Honorable Steven Pennoyer, Regional Director for Alaska, National Oceanic and Atmospheric Administration, Department of Commerce, Juneau, Alaska
The Honorable Clement V. Tillion, Fisherman, Halibut Cove, Alaska

Adviser

Jeffrey A. Miotke, Office of Fisheries Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State

Private Sector Advisers

David L. Allison, Attorney, Juneau, Alaska
Joan L. Bergy, Consumer Adviser, Mercer Island, Washington
Alvin P. Burch, Fisherman, Kodiak, Alaska
Mark T. Coles, Alaska Fisherman's Union, Seattle, Washington
Sam Cotton, U.S. Advisory Committee, International North Pacific Fisheries Commission, Juneau, Alaska
George P. Easley, Fisherman, Astoria, Oregon
John Gilbert, Vice Chairman, U.S. Adivsory Committee, International North Pacific Fisheries Commission, Seattle, Washington
William E. Gilbert, Fisherman, Bainbridge Islands, Washington
Adelheid Herrmann, U.S. Advisory Committee, International North Pacific Fisheries Commission, Juneau, Alaska
M.E. Islieb, Fisherman, Juneau, Alaska
Richard Jacobson, Fisherman, Sand Point, Alaska
Gordon Jensen, Petersburg Vessel Owners Association, Petersburg, Alaska
Mark T. Lundsten, Fisherman, Seattle, Washington
Charles H. Meacham, Fisheries Consultant, Anchorage, Alaska
Henry Mitchell, Director, Bering Sea Fishermen's Association, Anchorage, Alaska
Dean Paddock, U.S. Advisory Committee, International North Pacific Fisheries Commission, Seattle, Washington
Hugh Reilly, III, President, Westward Trawlers, Inc., Seattle, Washington
Jeffrey R. Stephan, United Fishermen's Marketing Association, Kodiak, Alaska
Arliss Sturgulewski, Senator, Alaska State Legislature, Anchorage, Alaska
Fred Zharoff, Senator, Alaska State Legislature, Kodiak, Alaska

United States Delegation to the World Intellectual Property Organization, Second Session of the Committee of Experts on Model Provisions for Legislation in the Field of Copyright, Geneva, Switzerland, November 6–10, 1989

Representative

Ralph Oman, Register of Copyrights, Library of Congress

Alternate Representative

Lewis Flacks, Policy Planning Adviser, Copyright Office, Library of Congress
Harvey J. Winter, Director, Office of Business Practices, Bureau of Economic and Business Affairs, Department of State

Adviser

Richard Owens, Attorney Adviser, Office of Legislation and International Affairs, Patent and Trademark Office, Department of Commerce

Private Sector Adviser

Morton David Goldberg, Schwab, Goldberg, Price, and Dannay, New York, New York

United States Delegation to the 98th Session of the Council, Food and Agriculture Organization (FAO), Rome, November 6–10, 1989

Representative

Gerald Monore, United States Representative to the United Nations Agencies for Food and Agriculture, Rome

Alternates

E. Wayne Denney, International Relations Advisor, International Organization Affairs, Office of International Cooperation and Development, Department of Agriculture
Joan Dudick-Gayoso, Director, Office of International Development Assistance, Bureau of International Organization Affairs, Department of State

Advisers

Dawson Ahalt, Agricultural Attache, United States Mission to the United Nations Agencies for Food and Agriculture, Rome
Steven Hill, United States Mission to the United Nations Agencies for Food and Agriculture, Rome
Teresa D. Hobgood, Office of United States System Budgets, Bureau of International Organization Affairs, Department of State
David Joslyn, United States Mission to the United Nations Agencies for Food and Agriculture, Rome
David McGaffey, Deputy Director, Office of International Development Assistance, Bureau of International Organization Affairs, Department of State
Richard Seifman, United States Mission to the United Nations Agencies for Food and Agriculture, Rome

Private Sector Adviser

Daniel G. Amstutz (former Under Secretary of Agriculture for International Affairs and Commodity Programs), Arlington, Virginia

United States Delegation to the CSCE Meeting on the Protection of the Environment, Sofia, October 16–November 3, 1989

Representative

Richard J. Smith, Principal Deputy Assistant Secretary, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State

Alternative Representative

Joshua Gilder, Deputy Assistant Secretary, Bureau of Human Rights and Humanitarian Affairs, Department of State

Senior Adviser

The Honorable Sol Polansky, United States Ambassador, Sofia

Advisers

Susan Biniaz, Attorney-Advisor, Office of the Assistant Legal Advisor for Oceans, International Environmental and Scientific Affairs, Department of State
Orest Deychakiwsky, Staff Member, Commission on Security and Cooperation in Europe
Jane Sharp Fisher, Deputy Staff Director, Commission on Security and Cooperation in Europe
John Gustafson, Chemical Emergency Preparedness and Prevention, Office of Solid Waste and Emergency Response, Environmental Protection Agency
Robert Hand, Staff Member, Commission on Security and Cooperation in Europe

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Ronald A. Kreizenbeck, Deputy Director, Office of Marine and Estuarine Protection Water Office, Environmental Protection Agency
James L. Makris, Director, Chemical Emergency Preparedness and Prevention, Office of Solid Waste and Emergency Response, Environmental Protection Agency
Breck Milroy, Office of Environmental Protection, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State
Maria Pavlova, Expert on Toxicology, Region II, Environmental Protection Agency
Susan Richwagen, Office of European Security and Political Affairs, Bureau of European and Canadian Affairs, Department of State
Jerry Scott, Public Affairs Adviser, U.S. Information Agency
Harlan Strauss, Special Assistant to the Deputy Under Secretary, office of the Secretary of Defense
Gary R. Waxmonsky, Acting Director, Bilateral Branch, Office of International Activities, Environmental Protection Agency
Samuel Wise, Staff Director, Commission on Security and Cooperation in Europe

Public Sector Advisers

Joni Lynn Bosh, Consultant, Phoenix, Arizona
Stephen C. Braverman, Attorney, Baskin, Flaherty, Elliott and Maninno, Philadelphia, Pennsylvania
Penn Kemble, Senior Associate, Freedom House, Washington, D.C.

[FR Doc. 89-29552 Filed 12-20-89; 8:45 am]
BILLING CODE 4710-10-M

DEPARTMENT OF THE TREASURY

Office of Tax Analysis

Intent to Examine Depreciation of Cars and Light Trucks, Crop-Bearing Vines, Assets Used in the Manufacture of Chemical and Allied Products, and Assets Used to Provide Telecommunications Services, and Notice of Public Meetings

The Depreciation Analysis Division of the Office of Tax Analysis, U.S. Department of the Treasury, intends to initiate studies of cars and light trucks, crop-bearing vines, assets used in the manufacture of chemical and allied products, and assets used to provide telecommunications services.

Pursuant to the mandates of the Tax Reform Act of 1986 (Pub. L. 99-514), the Depreciation Analysis Division will solicit information relating to the anticipated useful life and anticipated decline in economic value of the above assets from owners of these assets. This information, together with additional information such as the depreciation methods used in accounting for such assets in financial reports, and the terms under which such assets are financed or leased, will be used to determine appropriate class lives for these assets.

The Depreciation Analysis Division will hold public meetings with all interested parties to discuss the precise definition of the assets to be included in these studies, the specific nature of the information sought, and other related issues. The meetings are scheduled for:

Cars and light trucks: Tuesday, January 23, 1990, from 10:00 a.m. to 12:00 noon.

Crop-bearing vines: Thursday, January 25, 1990, from 10:00 a.m. to 12:00 noon.

Assets used to provide telecommunications services: Tuesday, February 13, 1990, from 10:00 a.m. to 12:00 noon.

Assets used in the manufacture of chemicals and allied products: Tuesday, February 27, 1990, from 10:00 a.m. to 12:00 noon.

Each of these meetings will be held in Room 4125 of the Treasury Department, 15th Street and Pennsylvania Avenue, Washington, DC.

Names of those wishing to attend the meeting, and any inquiries, comments, or requests for materials relating to these studies should be sent to: Depreciation Analysis Division, Office of Tax Analysis, Room 1051, Department of the Treasury, 15th & Pennsylvania Avenue, NW., Washington, DC 20220. The telephone number is (202) 566-8784.

Dated: December 6, 1989.

Kenneth W. Gideon,
Assistant Secretary (Tax Policy).

[FR Doc. 89-29718 Filed 12-20-89; 8:45 am]
BILLING CODE 4810-25-M

Fiscal Service

Surety Companies Acceptable on Federal Bonds; Liquidation; First California Property and Casualty Insurance Co.

First California Property and Casualty Insurance Company, a California Corporation, formerly held a Certificate of Authority as an acceptable surety on Federal bonds and was last listed as such at 50 FR 27114, July 1, 1985. The company's authority was terminated by the Department of the Treasury effective June 30, 1986. Notice of the termination was published in the Federal Register of July 11, 1986, on page 25287.

On October 30, 1989, upon a petition by the Insurance Commissioner of the State of California, the Los Angeles Superior Court issued an Order of Liquidation with respect to First California Property and Casualty Insurance Company. Mrs. Roxani Gillespie, the Insurance Commissioner, was appointed as the Liquidator of First California Property and Casualty Insurance Company. All persons having claims against First California Property and Casualty Insurance Company must file their claims, by May 14, 1990, or be barred from sharing in the distribution of assets.

All claims must be filed in writing and shall set forth the amount of the claim, the facts upon which the claim is based, any priorities asserted, and any other pertinent facts to substantiate the claim. It is recommended that Federal Agency claimants asserting priority status under 31 U.S.C. 3713 who have not yet filed their claim should do so, in writing, to: Commercial Litigation Branch, Civil Division, Department of Justice, P.O. Box 875, Ben Franklin Station, Washington, DC 20044-0875, Attn: Ms. Sandra P. Spooner, Deputy Director.

The above office will be consolidating any and all claims against First California Property and Casualty Insurance Company, on behalf of the United States Government. Any questions concerning filing of claims may be directed to Ms. Spooner at (202 or FTS 724-7194).

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20227, Telephone 202-287-3921.

Dated: December 15, 1989.

Mitchell A. Levine,
Assistant Commissioner, Comptroller, Financial Management Service.

[FR Doc. 89-29674 Filed 12-20-89; 8:45 am]
BILLING CODE 4810-35-M

Bureau of the Public Debt; Reorganization to Establish an Office of Public Debt Accounting

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Notice of reorganization.

SUMMARY: This notice announces to the Public that the Bureau of the Public Debt will establish an Office of Public Debt Accounting (OPDA). The establishment was undertaken to provide a more appropriate organizational structure and a more responsive and controlled debt accounting program.

EFFECTIVE DATE: December 31, 1989.

FOR FURTHER INFORMATION CONTACT: Van Zeck, Deputy Commissioner, Bureau of the Public Debt, E Street Building, Washington, DC 20239-0001, 202-376-4302.

SUPPLEMENTARY INFORMATION: The new OPDA will consist of the Office of the Assistant Commissioner and two divisions. One of the divisions will be responsible for accounting operations, and the other will be responsible for accounting policy and development.

Currently, accounting for the public debt is performed by a division within the Office of Securities and Accounting Services (OSAS). OSAS is responsible for the direction of two other major programs—the issuing, servicing, and redemption of direct-access marketable securities and special purpose securities.

The mission of the Bureau of the Public Debt is to borrow money needed to operate the Federal Government when expenditures exceed revenues, and to account for the resulting public debt. The outstanding public debt currently stands at over $2.9 trillion. Public debt cash deposit and withdrawal transactions amount to $1.2 trillion annually—over one-half of the Government's yearly cash flow. The $240 billion in annual interest on the debt constitutes over 20 percent of total Government outlays and the third largest individual component of the Federal Government's budget.

Under the general authority vested in the Secretary of the Treasury in 5 U.S.C. sec. 301 and 31 U.S.C. sec. 321, approval for the reorganization was granted on December 7, 1989, by the Assistant Secretary of the Treasury (Management).

Dated: December 18, 1989.

Richard L. Gregg,
Commissioner.

[FR Doc. 29702 Filed 12-20-89; 8:45 am]
BILLING CODE 4810-40-M

Office of Thrift Supervision

Application for Real Estate for Office and Related Facilities

Date: December 15, 1989.

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice.

SUMMARY: The public is advised that the Office of Thrift Supervision ("OTS") has submitted a request for a new information collection entitled "Application for Real Estate for Office and Related Facilities" to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35).

The information collected enables the OTS to comply with the requirements of § 545.77 of the Federal Savings Association Regulations. The information will be used to determine whether the institution's rate of asset growth and potential for earnings growth support the investment at this time. We estimate that it will take approximately 4 hours per respondent to complete the information collection.

DATE: Comments on the information collection request are welcome and should be received on or before January 2, 1990.

ADDRESS: Comments regarding the paperwork-burden aspects of the request should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503. Attention: Desk Officer for the Office of Thrift Supervision.

The OTS would appreciate commenters sending copies of their comments to the information contact provided below.

Request for copies of the proposed information collection requests and supporting documentation are obtainable at the Office of Thrift Supervision address given below:

Director, Information Services Division, Communications Services, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552. Phone: 202-416-2751.

FOR FURTHER INFORMATION CONTACT: Kathleen O. Willard, (202) 906-6789, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

By the Office of Thrift Supervision.

M. Danny Wall,
Director.

[FR Doc. 89-29670 Filed 12-20-89; 8:45 am]
BILLING CODE 6720-01-M

Application for Response to Notice of Intent to Issue Capital Directives

Date: December 15, 1989.

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice.

SUMMARY: The public is advised that the Office of Thrift Supervision ("OTS") has submitted a request for a new information collection entitled "Application for Response to Notice of Intent to Issue Capital Directives" to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35).

The information collected enables the OTS to comply with the requirements of § 567.4 of the Savings Association Regulations. The information will be used to determine whether the savings association's response to the notice of intent to issue a capital directive is adequate. The savings association must submit its own compliance plan, or may propose an alternative plan. The response should include any information that the savings association wishes the Director of Enforcement to consider and the Senior Deputy Director for Supervision Operations to review in deciding whether to recommend the OTS issue a capital directive. The appropriate state supervisor may also submit a response to the Director of Enforcement. These responses must be in writing and delivered to the Director of Enforcement within 30 days after receipt of the notices. We estimate that it will take approximately 8 hours per respondent to complete the information collection.

DATE: Comments on the information collection request are welcome and should be received on or before January 2, 1990.

ADDRESS: Comments regarding the paperwork-burden aspects of the request should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Officer for the OTS.

The OTS would appreciate commenters sending copies of their comments to the information contact provided below.

Request for copies of the proposed information collection requests and supporting documentation are obtainable at the OTS address given below:

Director, Information Services Division, Communications Services, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552, Phone: 202-416-2751.

FOR FURTHER INFORMATION CONTACT: Kathleen O. Willard, (202) 906-6789, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

By the Office of Thrift Supervision.

M. Danny Wall,
Director.

[FR Doc. 89-29671 Filed 12-20-89; 8:45 am]
BILLING CODE 6720-01-M

Application for Management Official Interlocks

Date: December 15, 1989.

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice.

SUMMARY: The public is advised that the Office of Thrift Supervision ("OTS") has submitted a request for a new information collection entitled "Application for Management Official Interlocks" to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35).

The information collected enables the OTS to comply with the requirements of § 563.43 of the Savings Association Regulations. The information will be used to determine whether the proposed interlock is consistent with applicable law and regulation and is not inconsistent with any provision of the applicant's charter, constitution, or

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Application for Management Official Interlocks

Date: December 15, 1989.

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice.

SUMMARY: The public is advised that the Office of Thrift Supervision ("OTS") has submitted a request for a new information collection entitled "Application for Management Official Interlocks" to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35).

The information collected enables the OTS to comply with the requirements of section 563f of the Savings Association Regulations. The information will be used to determine whether the management official interlock would be beneficial to the institution in question. We estimate that it will take approximately 4 hours per respondent to complete the information collection.

DATE: Comments on the information collection request are welcome and should be received on or before January 2, 1990.

ADDRESS: Comments regarding the paperwork-burden aspects of the request should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503. Attention: Desk Officer for the Office of Thrift Supervision.

The OTS would appreciate commenters sending copies of their comments to the information contact provided below.

Request for copies of the proposed information collection requests and supporting documentation are obtainable at the Office of Thrift Supervision address given below:

Director, Information Services Division, Communications Services, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552, Phone: 202–416–2751.

FOR FURTHER INFORMATION CONTACT: Kathleen O. Willard, (202) 906–6789, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

By the Office of Thrift Supervision.

M. Danny Wall,

Director.

[FR Doc. 89–29672 Filed 12–20–89; 8:45 am]

BILLING CODE 6720–01–M

Application for Mutual Capital Certificates

Date: December 15, 1989.

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice.

SUMMARY: The public is advised that the Office of Thrift Supervision ("OTS") has submitted a request for a new information collection entitled "Application for Mutual Capital Certificates" to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35).

The information collected enables the OTS to comply with the requirements of § 563.74 of the Savings Association Regulations. The information will be used to determine whether the institution has complied with the requirements contained in the aforesaid § 563.74 and that the issuance of the certificates is authorized by applicable law and regulation and is not inconsistent with any provision of the applicant's charter, constitution, or bylaws. In addition, the OTS must ensure that the certificate is in the proper form. We estimate that it will take approximately 6 hours per respondent to complete the information collection.

DATE: Comments on the information collection request are welcome and should be received on or before January 2, 1990.

ADDRESS: Comments regarding the paperwork-burden aspects of the request should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503. Attention: Desk Officer for the Office of Thrift Supervision.

The OTS would appreciate commenters sending copies of their comments to the information contact provided below.

Request for copies of the proposed information collection requests and supporting documentation are obtainable at the Office of Thrift Supervision address given below:

Director, Information Services Division, Communications Services, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552. Phone: 202–416–2751.

FOR FURTHER INFORMATION CONTACT: Kathleen O. Willard, (202) 906–6789, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

By the Office of Thrift Supervision.

M. Danny Wall,

Director.

[FR Doc. 29673 Filed 12–20–89; 8:45 am]

BILLING CODE 6720–01–M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 244
Thursday, December 21, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

NATIONAL MEDIATION BOARD

TIME AND DATE: 2:00 P.M., Wednesday, January 10, 1990.

PLACE: Board Hearing Room 8th Floor, 1425 K Street, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of the Board actions taken by notation voting during the month of December, 1989.

2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Director's office following the meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Charles R. Barnes, Executive Director, Tel: (202) 523–5920.

Date of Notice: December 15, 1989.

Charles R. Barnes,

Executive Director, National Mediation Board.

[FR Doc. 89–29702 Filed 12–19–89; 1:09 pm]

BILLING CODE 7550–01–M

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Corrections

Federal Register
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This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Rescheduling Unfair Labor Practice Hearings

Correction

In rule document 89-29172 beginning on page 51196 in the issue of Wednesday, December 13, 1989, make the following correction:

§ 102.16 [Corrected]

On page 51197, in the second column, in § 102.16(b), in the first line, "Where" should be removed.

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 24, 132, 141, 142, and 143

[T.D. 89-104]

RIN 1515-AA72

Customs Regulations Amendments Concerning Statement Processing and Automated Clearinghouse

Correction

In rule document 89-28513 beginning on page 50493 in the issue of Thursday, December 7, 1989, make the following corrections:

1. On page 50493, in the third column, under **SUPPLEMENTARY INFORMATION**, in the first paragraph, in the ninth line from the bottom, "filter" should read "filer".

2. On page 50494, in the first column, in the first *Response*, in the third line from the bottom, after "largest" insert "possible".

3. On the same page, in the same column, in the second *Comment*, in the fifth line, "can" was misspelled.

BILLING CODE 1505-01-D

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Part II

Small Business Administration

13 CFR Part 121

Small Business Size Standards; Final and Interim Final Rules

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards

AGENCY: Small Business Administration.

ACTION: Final and interim final rules.

SUMMARY: The proposed regulation published August 31, 1987 (52 FR 32870) governing the procedural rules relative to SBA's size determination program is now promulgated in final form, except for §§ 121.403 and 121.1202(a) which define "business concern or concern" for the purpose of Small Business Administration (SBA) programs. Sections 121.403 and 121.1202(a) are promulgated as interim final rules.

The final rule is intended to improve the conceptual framework of small business size standards by reorganizing the current rules to obtain a more logical progression, by clarifying existing ambiguities in the current rules, by conforming these rules to present SBA policies and precedents, and by providing slight substantive modifications where necessary. The reorganized rules are intended to be easier to utilize and should make more sense to the public. The final rule specifically identifies how a business entity can be considered small for each of SBA's programs and separates the size eligibility requirements for each program into separate sections for ease of use. The final rule incorporates several changes made to the Small Business Act by the Continuing Resolution for Fiscal Year 1987, Public Law 99–591, and the National Defense Authorization Act for Fiscal Year 1987, Public Law 99–661, and makes the procedures for small business size protests and size appeals more understandable. This final rule does not, however, change the specific size standards which apply to particular industries and Standard Industrial Classification Codes. SBA published a complete revision to the substantive size standards themselves on February 9, 1984, 49 FR 5024, and a final rule which conformed the size standards to the newly revised SIC system on May 25, 1988, 53 FR 18821 (interim final version was published January 6, 1987, 52 FR 397).

The interim final rule found at § 121.403 restates the existing definition of "business concern or concern" without adding a 51 percent United States ownership requirement, which was included in the proposed rule. This longstanding definition requires a "business concern" to be organized for profit, to have a place of business located in the United States, and to make a significant contribution to the United States economy through payment of taxes and/or use of American products, material and/or labor. The interim final rule found at § 121.1202(a) adopts the definition of "concern" used by SBA for the Small Business Innovation Research Program since August, 1983. This definition includes a 51 percent U.S.-ownership requirement.

DATES: *Effective date:* The provisions of this final and interim final rule shall be effective January 1, 1990. Comments on the interim final rules (§§ 121.403 and 121.1202(a)) should be submitted on or before February 20, 1990.

ADDRESS: Written comments on the interim final rules (§§ 121.403 and 121.1202(a)) may be sent to Gene VanArsdale, Director, Office of Procurement Policy and Liaison, Small Business Administration, Room 624, 1441 L Street NW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Gene F. VanArsdale, Director, Office of Procurement Policy and Liaison, (202) 653–6568.

SUPPLEMENTARY INFORMATION: Pursuant to subsection 3(a) of the Small Business Act, 15 U.S.C. 632(a), the Small Business Administration is charged with the responsibility of setting size standards by which a business entity may be judged to be small. SBA published these rules as one proposed rule on August 31, 1987 (52 FR 32870) and solicited public comment on that proposal for sixty days. During the public comment period SBA received 39 separate comment letters from a wide range of interested parties including individuals, small businesses, trade associations and other representatives of small businesses, other Federal agencies, and representatives of the Canadian government. An overview of the comments, SBA's responses thereto and other changes to the proposed regulations are provided below.

These rules do not change the substantive (numerical) size standards which are applicable to particular industries or Standard Industrial Classification (SIC) Codes. SBA had published a major revision to its substantive size standards in the **Federal Register** on February 9, 1984, 49 FR 5024. Therefore, SBA did not solicit and did not receive any comments on individual size standards. This regulation reorganizes the current procedural size rules to obtain a more logical progression, clarifies ambiguities in the previous rules, conforms the rules to present SBA policies and precedents, and provides slight substantive modifications where necessary. The previous regulations combined multiple rules and concepts in a single section. These regulations provide separate regulatory sections for each rule, for ease in citation and location.

These rules also provide a new numbering system for SBA's size regulations (13 CFR Part 121). The new numbering system is designed to: (1) Provide greater ease in locating rules; (2) provide a more accurate system for citation and reference to specific provisions; (3) rearrange substantive provisions in a more logical sequence; (4) eliminate single regulatory sections containing a multiplicity of rules; (5) eliminate large paragraph provisions in which significant rules were stated consecutively, making citation and location of such rules difficult; and (6) provide a numbering system that is more adaptable to future expansion and amendments.

Overview of Public Comments, SBA's Responses Thereto and a Description of Changes to the Proposed Rule

Section 121.101, which sets forth the Congressional policy that the Government should ensure that a fair proportion of the Government's procurements are placed with small businesses, elicited comments asking for a more detailed discussion of the definition of "fair proportion" as it relates to the "30 percent rule" mandated by Public Laws 99–591 and 99–661. Section 921 of Public Laws 99–591 and 99–661 was repealed by Public Law 100–656. Therefore, all references to the requirements of that section have been deleted in the final rule.

Section 121.201 states the purpose of the SBA size program. It is derived from §§ 121.1(a) and 121.1(e) of the previous regulations which were clarified for easier use. The concept of "cradle to the grave" in the previous regulation has been removed from this rule to avoid the inference that trying to remain small is something illicit. Some commenters urged SBA to amend this section to strengthen the idea that small business assistance should not be regarded as permanent in nature. SBA believes that the section, with minor editorial changes to the proposal, clearly expresses the purposes of SBA's size program.

Sections 121.301 through 121.305 set forth the functions and responsibilities of SBA offices as they relate to the size program. As a result of comments received, SBA has added a requirement to § 121.301(b) that a request for a new size standard or a size standard change must specify how such change would further the purposes of the Small Business Act in addition to presenting other specific reasons and justifications for changing or adding a new size standard. SBA has also amended § 121.302 to clarify that the Office of General Counsel represents the agency in size matters before the Comptroller General and other agencies.

Sections 121.401 through 121.407 contain definitions of various terms used throughout the size regulations. Within these definitions are included substantive provisions of size eligibility. Definitions of the following terms, among others, are included in these sections: Affiliation; annual receipts; business concerns or concern; employees; key employees; not dominant in field of operations; and number of employees. Section 121.401 sets forth detailed rules on affiliation. Exclusions from the affiliation rule are described separately in § 121.401(b).

The exclusion relating to Small Business Investment Companies (SBICs) is identical to the former regulation and is based on an earlier SBA regulation, which prohibited SBICs from controlling the small businesses which they help finance. The limitation in the former exclusionary rule to "State" development companies is deleted. Section 121.401(b) includes both State and local development companies within the exclusion because there is no substantive reason to limit the exclusion to State development companies only. In addition, concerns owned by Indian tribes or Alaska Regional or Village Corporations are added to the exclusion. This is consistent with the statutory preferences accorded Indian tribes.

SBA received several comments which suggested that SBA clarify the exclusion with regard to tribally owned concerns. The commenters advocated that, as is required for other SBA programs, concerns that are at least 51 percent owned and controlled by Indian Tribes or Alaskan Regional or Village Corporations should be considered tribally owned concerns and therefore, excluded from the affiliation requirements of this section. SBA has adopted this comment and has revised § 121.401(b) accordingly.

The rule concerning Nature of Control is repeated in this final rule, with clarifying language. The concept has been revised in § 121.401(d) to emphasize "Identity of Interest" as a basis of "control" and "affiliation."

In proposed § 121.401(e), SBA proposed to revise its earlier rule on control through stock ownership to require minority interest holders owning holdings which are large as compared with any other stock holding to have an "identity of interest" in order for SBA to presume that each has the power to control the concern. One commenter expressed the view that this change would permit a business concern owned by three giant companies to be considered small if such companies did not share an identity of interest. SBA considered the comment and has amended § 121.401 to delete the requirement of an identity of interest. The amended section also clarifies that, in such a case, each firm would individually be presumed to control the concern and the employees or receipts of each owner firm would be aggregated with those of the concern to determine the concern's size. Therefore, where three large companies (X, Y and Z) own equal shares of concern G, each would be presumed to control G. In turn, G would be determined to be large because the aggregate of its employees and those of X, Y or Z would exceed the applicable size standard.

Proposed § 121.401(k) (affiliation through contractual relationships) is a new provision which defines affiliation to also include a situation where one concern is dependent upon another for contracts and business to such a degree that its economic viability would be threatened without such contracts or business. SBA received a comment suggesting that SBA consider permitting a concern to be considered small despite such dependence if it is a start-up concern. SBA considered the comment but has decided to retain the provision unchanged. Regardless of the amount of time a concern has been in business, such a degree of dependence on another concern is appropriately treated as an affiliation.

Section 121.401(l)(1) concerns affiliation under joint venture arrangements. The proposed rule defined "joint venture" as an association of "concerns." One commenter pointed out that, because individuals are not "concerns," associations among individuals are excluded from the definition. SBA agrees with this comment and has added the word "individuals" to "concerns" in this section. A sentence has also been added to clarify that joint ventures may be no more than 49 percent owned or controlled by foreign business entities or individuals.

Another commenter was concerned that this section would prohibit Canadian firms from controlling or significantly participating in small business joint ventures. Except as related to the SBIR Program, these rules do not impose such a prohibition because the interim final rule defining "business concern" continues existing rules governing affiliation by joint venture. Joint ventures which are owned and controlled by one or more Canadian individuals or concerns and which meet the definition of "business concern" and the appropriate size standard may receive small business benefits.

Section 121.402 defines "annual receipts" for the purpose of computing size. A number of comments were received on this section. One commenter recommended that receipts of prime contractors collected on behalf of subcontractors should be excluded from the calculation of "receipts." This comment was considered and rejected. The definition of "annual receipts" has always included receipts on behalf of subcontractors. SBA believes the amount of such receipts is a factor in determining the size of a concern and, therefore, should not be excluded. Moreover, such exclusion could encourage concerns to subcontract large percentages of set-aside contracts, frequently to large concerns, in order to remain small, thereby defeating the purpose of the set-aside program.

Another commenter stated that it was unclear whether expenses incurred directly in performance of the contract should be subtracted when calculating gross receipts. Because such costs are not listed under the exclusions, they may not be subtracted. We do not believe the rule is unclear on this issue and therefore, have retained the original language in the final rule.

Another commenter stated that all non-fee/profit bearing revenue should be excluded from the calculation of "receipts" for purposes of determining a firm's size. SBA has rejected this comment because concerns might then manipulate their fee/profit arrangements to circumvent the small business size standard.

Another commenter objected to the exclusion of short years from the calculation of annual receipts as inappropriate in light of a new Internal Revenue Service requirement for subchapter S corporations which will create short years for many of such corporations. SBA considered this comment and has amended this final regulation to require short years to be included. The new calculation for average annual receipts involving short years would require the concern to look to its most recent three fiscal years, to take the sum of the receipts for the short year and the receipts for the two full fiscal years and to divide that sum by the number of weeks in the short year plus 104 (52 weeks times 2) to arrive at an average weekly receipts figure. This figure would then be multiplied by 52 to arrive at an (average) annual receipts

figure. SBA believes this method provides accurate and fair treatment of receipts where short years are involved. SBA believes this method applies to all small business programs, except SBA's Small Business Innovation Research (SBIR) Program. This

of the preamble dealing with this section. The Statement of General Policy listed 11 factors to be considered in

code. (This standard is effective December 20, 1989. See 54 FR 47966.) A single table of size standards based on

Thus, individuals seeking size determinations in connection with a disaster loan should submit a request for

makes the "size standard for the item accounting for the greatest percentage of the contract value" in a multiple item

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figure. SBA believes this method provides accurate and fair treatment of receipts where short years are involved.

Another commenter objected to the requirement that the accrual basis of accounting be used for purposes of determining size. The decision to impose this requirement was made after considerable research and discussion. SBA believes that requiring all concerns to use the accrual basis of accounting will result in a fairer and more equitable method for determining size. Furthermore, the smaller firms (those with annual receipts less than 75 percent of the size standard) are exempt from the requirement under paragraph (d)(2) of this section.

SBA did amend this section in one respect, however. In order to reduce confusion and avoid charges of vagueness, the language excluding amounts collected as an agent for another has been deleted. In its place new language has been inserted excluding only income received by real estate agents and travel agents in the form of gross bookings to be remitted to third parties. In such cases, only the commissions earned from such gross bookings are to be counted as income.

Section 121.403 defines "business concern or concern" for size purposes. A number of commenters objected to various aspects of this definition. One commenter urged that the definition be amended to include businesses which are U.S. citizens. Another commenter expressed the view that the requirement that 50 percent of the contract cost be performed in the United States was not practical. A number of commenters pointed out that the meaning of the language "including affiliates" in the first sentence of the proposed section was unclear and potentially overbroad. Contrary to the intent of the drafters, this language could be interpreted to prohibit concerns from having any non-profit affiliates. Several commenters, including representatives from the Canadian government, objected to the requirement that a "business concern" be 51 percent owned and controlled by U.S. citizens or lawfully admitted permanent resident aliens.

SBA has decided to retain the status quo with respect to the definition of "concern" in order to permit further review of the issues raised by public comment and by the passage of the Canada-United States Free Trade Agreement (approved and implemented on September 28, 1988, as Pub. L. 100-449, 102 Stat. 1851). Therefore, SBA is publishing this section and § 121.1202(a) as interim final rules. This section restates SBA's definition of "concern" previously found at 13 CFR 121.3(b) and applies to all small business programs, except SBA's Small Business Innovation Research (SBIR) Program. This longstanding definition requires a "business concern" to be organized for profit, to have a place of business located in the United States, and to make a significant contribution to the United States economy through payment of taxes and/or use of American products, material and/or labor.

The interim rule found at § 121.1202(a) adds a 51 percent U.S. ownership requirement to the definition of concern for purposes of the SBIR program that the concern be at least 51 percent owned. This is consistent with paragraph 4(g) of SBA's SBIR Program Policy Directive which has been in effect since 1983. The SBIR Program definition reflects congressional intent, as expressed in the legislative history to the SBIR Program authorizing legislation, that the SBIR Program assist U.S.-owned firms in developing innovations which could be used to bring the United States into technological parity with other countries (S. Rept. No. 194, 97th Cong., 1st Sess. (1981), H. Rept. No. 349, Part I, 97th Cong., 1st Sess. (1981), Cong. Rec. H. 3586, *et seq.*, June 17, 1982). SBA invites public comment on these interim final rules for 60 days from the date of this publication.

Section 121.404 defines the term "employees." One commenter was concerned that this definition was overly restrictive and suggested that temporary employees be counted only after they are employed by the contractor for a specific amount of time. SBA has rejected this comment for a number of reasons. First, if an employee is contributing his or her skill and labor to a concern, his or her status as a temporary or permanent worker is irrelevant in determining the firm's size. Second, if short-term temporary employees are not counted, many contractors could easily evade the size standard by employing a large labor force of temporary workers and firing those employees as they approach the time where they would have to be counted. Finally, the amount of time a temporary worker is employed by a contractor is factored into the calculation of number of employees since the calculation is based on employees during each pay period.

SBA is amending this section in the final rule to incorporate the principles set forth in its "Statement of General Policy," Feb. 20, 1986, 51 FR 6099. The proposed rule did not specifically include the factors listed in the policy statement; however, the policy statement was referred to in the portion of the preamble dealing with this section. The Statement of General Policy listed 11 factors to be considered in determining whether an employee of an employment agency hired by the contractor on a temporary basis should be considered an employee of the contractor. In the interests of clarity and for ease of reference, SBA has decided to list these 11 factors in the final rule.

Section 121.406 defines the term "Not dominant in field of operation." The proposed rule provided that a business concern falling within SBA's size standards is deemed not dominant in its industry or field of operation. Many commenters disagreed with this provision and suggested that SBA return to the former treatment of the term (13 CFR 121.3(c) (1988)). The majority felt that dominance was a separate issue from size and, therefore, should be treated separately. The commenters believed that a firm could be small and, nevertheless, still be dominant in its field of operation. SBA has considered these comments and has returned to the former interpretation of dominance in this final rule.

Section 121.501 provides that any proposed size standard change will be published in the **Federal Register** and will include a description of the various factors considered in devising the size standard. One commenter suggested that this section list the various factors SBA will consider in revising a size standard. It would be impractical and potentially misleading to list such factors in this section because the particular factors considered vary depending on the size standard being revised.

Section 121.502 of the proposed rule discussed the methodology for changing the size standards in four specific industry categories. This methodology was mandated by section 921 of Public Laws 99-591 and 99-661. Section 921 was repealed by Public Law 100-656. Therefore, the content of this section has been deleted and this section has been designated as reserved in the final rule.

Section 121.503 lists the basic sources of data used in establishing size standards. Two commenters noted that the Census Bureau's "Census of Service Industries" was not listed. This was an inadvertent error. The "Census of Service Industries" has been added to the list in this section in the final rule.

Section 121.601 contains the actual size standards by standard industrial classification (SIC) code. The table of size standards reflect current size standards to date, including the residual size standard of $3.5 million in annual receipts for industries not listed by SIC

code. (This standard is effective December 20, 1989. See 54 FR 47906.) A single table of size standards based on the 1987 SIC system is incorporated into this final rule replacing two tables of size standards in the previous regulation. Table 1 of the previous regulation listed size standards by 1972 SIC codes with corresponding 1987 SIC codes and size standards. Since the 1987 SIC codes have been in effect for three years and are no longer applicable to SBA programs, this table is not included in this regulation. Table 2 from the previous regulation is identical to the size standard table incorporated into this final rule.

The sections following § 121.700 in the proposed rule set forth the procedures for reviewing any size standard adjustments made pursuant to section 921 of Public Laws 99-591 and 99-661. Section 921 was repealed by Public Law 100-656. Therefore the requirements and procedures in these sections are no longer necessary and have been deleted in the final rule. Section 121.701 has been reserved in the final rule.

Sections 121.801 through 121.806 specify the size eligibility requirements for SBA's financial assistance programs. The reference to SBA's section 8(a) program in financial assistance programs in the predecessor size regulations is removed in this final rule. Size eligibility for the section 8(a) program is addressed separately in this revision.

Section 121.802 explains the establishment of the size standard for SBA's financial assistance programs. A dual size standard (must meet the size standard for the primary business of the applicant concern including its affiliates and for the applicant concern alone) is substituted for the predecessor rule (must meet the size standard only for the applicant, including affiliates). SBA was concerned with the inequity which arose under the previous regulation where a concern, without affiliates, would not qualify for assistance under its primary business size standard, whereas another applicant, in the same industry category, would qualify for the assistance because it has affiliates which place it in a different primary business category with a higher size standard.

SBA received only one comment concerning the entire size procedures for financial assistance programs, and this was an internal comment from an SBA official. Section 121.804(e) of this final regulation has been clarified in response to this comment to note that size determinations for disaster loans are the function of the SBA Disaster Assistance Divisions and not SBA Regional Offices. Thus, individuals seeking size determinations in connection with a disaster loan should submit a request for a formal size determination to the appropriate Disaster Area Office.

A new § 121.806, entitled "Size Eligibility for Business Loans Relating to Particular Procurements," has been added to reinstate and expand upon prior SBA policy. This provision allows a concern which received a particular procurement as a small business to be deemed small for purposes of size eligibility for financial assistance relating to that procurement. This policy is intended to eliminate potential conflicts between size standards for procurement purposes, which are based on the industry to which the procurement relates, and size standards for financial assistance, which are based on the primary industry of the applicant for financial assistance. Moreover, this policy is currently in place for the section 8(a) program. To the extent possible, SBA treats size standards issues the same for the small business set-aside and section 8(a) programs.

No other changes have been made to the financial assistance size procedures as they appeared in the proposed rule. The supplementary information to the proposed rule explains these procedures in detail, indicating the changes in the rules from the predecessor size regulations and the reasons for such changes. As such, this information is not repeated in this supplementary information to the final rule.

Sections 121.901 through 121.911 specify the rules concerning size eligibility for Government procurement programs, including the small business set aside program, SBA's Certificate of Competency program, and the Small Business Subcontracting Program authorized under section 8(d) of the Small Business Act, 15 U.S.C. 637(d). These rules are basically the same as those that were contained in § 121.5 of the former regulations, with clarifying language. The specific rules are separated from the multipurpose provisions of the former regulations and made independent sections for ease of location and citation. The rules are also repositioned to reflect a more orderly regulatory sequence.

Sections 121.902(b) and 121.906 clarify the apparent inconsistency between §§ 121.5(b)(1) and 121.5(c) of the former regulations. The apparent conflict stems from the wording in former § 121.5(b)(1) of this part which considered "the relative value of items in the procurement" as a factor in determining the appropriate SIC Code for a procurement, whereas former § 121.5(c) makes the "size standard for the item accounting for the greatest percentage of the contract value" in a multiple item procurement the appropriate size standard. In one instance, value is merely one of several factors to consider, while in the second it is the only factor.

SBA received five comments concerning these sections. Three commenters suggested minor word changes. For example, one commenter recommended that "the primary purpose of the contract" should be a factor in selecting the proper SIC Code under proposed § 121.902(b), while another suggested that the factor should be "the principal purpose" of the contract. SBA has selected the phrase "principal purpose" of the procurement as the key factor in selecting the proper SIC Code. SBA has also made one or two other minor wording changes in response to these comments.

One commenter asked for clarification as to how a procurement requiring more than one service should be treated if each has a different size standard (i.e., whether § 121.902(b) or § 121.907 should apply).

Section 121.902(b) applies to procurements of one end item (which may or may not contain more than one component). Section 121.907 applies to procurements which call for more than one end item. The commenter noted that § 121.907 seemed applicable, but that the supplementary information to the proposed rule stated that § 121.907 would not apply to true service contracts since the Government is really purchasing only one item.

Section 121.907 (derived from current § 121.5(c)) applies where there is more than one end item (e.g., military shirts and military boots) being procured. It was meant to apply also to the situation where more than one type of service is being procured, each having a different size standard, and it is desirable for all services to be performed by one contractor. Accordingly, § 121.907 has been clarified by adding a new paragraph (b). The supplementary information to the proposed rule did not intend to exclude multi-service contracts from the application of § 121.907. It merely intended to indicate that where one service is being procured, § 121.907 would not apply.

Similarly, § 121.907 has no application where the Government requires only one specific end item, which may or may not be comprised of more than one component. In a situation where only one end item is being procured (e.g., the procurement of a specific type of defense weapon made up of many parts,

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the construction of a building, or even 1000 military coats), § 121.902(b) (derived from former 13 CFR 121.5(b)(1)) applies. The purpose of § 121.902(b) is to characterize or classify the nature of the procurement as either being one for services, supplies, or construction. The contracting officer must have the flexibility to consider the "principal purpose of the procurement" and what the Government is really purchasing in determining the proper SIC Code for such a procurement. While the value of the components is an important factor in determining the "principal purpose" of a single end item procurement, it is not the controlling factor in all cases. However, the contracting officer must have a good reason to classify a single end item procurement in a way that is inconsistent with the item accounting for the greatest percentage of the contract value.

The same clarifying language of §§ 121.902(b) and 121.907 has also been added to §§ 121.1102(b) and 121.1107, respectively, for application to section 8(a) awards.

Proposed § 121.902(d) would have permitted SBA, in connection with a formal size determination or size appeal, not only to clarify or complete an unclear or incomplete SIC Code designation (as permitted under former § 121.5(d)), but also to supply a missing SIC Code designation and to correct an incorrect designation in such context. In this final regulation, SBA has abandoned this proposal and has reinstated the former scope of authority which permits SBA only to clarify; complete or supply an unclear or incomplete SIC code designation in connection with a formal size determination or size appeal.

Section 121.904 clarifies the time at which size is determined for Government procurement programs. Except for applicants for Certificates of Competency (COC) relating to unrestricted procurements, size would still be determined as of the date of the concern's written self-certification as a small business. The concern would be required to certify that it is small for a particular contract at the time that it submits its initial offer which includes price to the procuring activity for that contract. This final rule states that the size status for COC applicants, where the COC relates to an unrestricted procurement, is determined as of the date of the COC application. Prior to that time, the size of the bidding concern is not relevant. Since SBA only issues COC to small businesses, the date of the application is the concern's first assertion of its size for the purpose of eligibility. Therefore, it is appropriate that the size status of that concern be determined as of the date of its application.

SBA received one comment concerning § 121.904. The commenter believed that paragraphs (a) and (c) could be read to be contradictory because a written request for best and final offers could constitute a modification and, therefore paragraph (c) could be interpreted to mean that size is determined as of the date of the latest best and final offer. SBA did not intend such an interpretation. Size is determined as of the date of the initial offer which includes price. The normal negotiation process and request for best and final offers was not intended to affect the time at which size is determined. Paragraph (c) requires a new size certification only in the situation where the original solicitation has been fundamentally modified so that the initial offer would now be non-responsive.

Proposed § 121.906 which set forth limitations on subcontracting under contracts set aside for small business has been deleted in this final rule. SBA will treat subcontracting requirements separately at a later date.

New § 121.906 (proposed § 121.907) amends the provisions relating to manufactured products under small business set-aside procurements. The rule specifies that in order to qualify as a small business for the procurement of manufactured products, an offeror must first be either a "manufacturer" or a "regular dealer" within the meaning of the Walsh-Healey Act. This clarification concerning the Walsh-Healey Act was added to clear up the confusion that was caused by § 121.5(b)(2) of the former regulations. The former provision provided: "Whether a bidder on a particular procurement is the manufacturer or a nonmanufacturer for the purpose of a size determination need not be consistent with whether such concern is or is not a manufacturer for the purpose of the Walsh-Healey Act." The intent of the provision was that a concern would not automatically qualify as a small business manufacturer simply because it qualified as a manufacturer under the Walsh-Healey Act. The concern would have to meet the requirements of SBA's size regulations in addition to the Walsh-Healey Act. However, the "need not be consistent * * * with the Walsh-Healey Act" language was interpreted by some concerns to override the Walsh-Healey Act. That was never SBA's intention. This rule corrects that misinterpretation.

In order to receive a small business set-aside for manufactured products, a concern must not only qualify under the Walsh-Healey Act for a Government procurement, it also must be the manufacturer of the end item being procured, or must be a nonmanufacturer, a kit assembler, or a supplier under Small Purchase Procedures in compliance with the requirements under paragraphs (b), (c) or (d) of this section.

The rule retains the requirement of the former regulations that a nonmanufacturer must supply the product of a small business manufacturer in order for the nonmanufacturer itself to qualify as a small business concern for a small business set-aside contract, and adds a limited exception. Pursuant to § 121.906(b)(3), a nonmanufacturer need not provide the product of a small business manufacturer where the Administrator determines that there are no small manufacturers of the class of items being procured in the Federal market. SBA received several comments in support of this limited exception as it appeared in the proposed rule.

The wording of this exception has been amended slightly from that appearing in the proposed rule (former § 121.907(a)(2)(iii) as a result of the enactment of Public Law 100-656. Section 303(h) of that law amends section 8(a) of the Small Business Act to authorize the Administrator to waive the requirement that a nonmanufacturer must supply the product of a small business "for any class of products for which there are no small business manufacturers or processors in the Federal market." In the near future, SBA intends to publish a rule relating to such waivers in new subpart B of this part.

Two commenters objected to the requirement that a small business nonmanufacturer be required to supply the product of a small business manufacturer that was manufactured in the United States. The commenters felt that this requirement was unnecessary to protect American businesses in light of the new definition of "concern," which would require both manufacturers and nonmanufacturers to be United States concerns.

This comment was carefully considered but ultimately rejected. If a product is manufactured abroad, foreign labor would be used and foreign equipment would likely be purchased. Therefore, in order to comport with Congress' intent that small business set-asides be used to strengthen the U.S. economy, SBA has retained the requirement that the end product be manufactured in the United States.

This final rule also adopts a 500 employee size standard for nonmanufacturers, kit assemblers and suppliers under Small Purchase Procedures. Such size standard was established in a final rule published in the Federal Register on March 31, 1989 (54 FR 13160).

New § 121.906(c), formerly § 121.907(d), adds clarifying language to the rule concerning the acquisition of kits. Generally, where the Government is Procuring kits with a small business set-aside, more than 50 percent of the total value of the contents of the kit must be manufactured by small businesses. However, where the Government has specified an item for a kit which is not produced by small business concerns, this rule would exclude the value of such item in the calculation of total value (i.e., brand items or other items produced only by large businesses would be excluded from the total value calculation and would not count against the 50% requirement). SBA received several comments supporting this change.

New § 121.907, formerly proposed § 121.908, gives guidance concerning the correct size standard to use for a procurement where the procurement requires that more than one end item be supplied to the Government. (See the discussion above relating to § 121.902(b).) Where an offeror is required to submit an offer on all end items in a multiple item procurement, the offeror will qualify as a small business under § 121.907 (formerly § 121.908) if it meets the size standard of the end items the value of which accounts for the greatest percentage of the total contract value (e.g., two end items each having a size standard of 500 employees together account for the greatest percentage of the total contract value).

Section 121.908 (proposed § 121.909) sets forth the size procedures relating to SBA's Certificate of Competency (COC) program. This section does not make any substantive changes in the size procedures affecting the COC program, but, for the first time, specifically spells them out in the size regulations. This section has been clarified in the final rule. The proposed rule stated that a formal size determination would be performed whenever a COC application was received by the SBA. SBA does not have the resources to perform "formal size determinations" for every COC application. Every COC applicant is required to submit a completed SBA Application for Small Business Size Determination (currently SBA Form 355) as part of its COC application package. SBA reviews the firm's completed SBA Form 355 to determine the firm's size eligibility for the COC process. SBA will perform a formal size determination where Form 355 indicates that the firm is other than small or where the size of the firm is otherwise called into question.

New § 121.909 (proposed § 121.910) adds clarifying language to the provision concerning manufactured products in an unrestricted procurement for COC purposes (former § 121.5(b)(2)(iv)). One commenter objected to the use of the wholesaler size standard in the case of a COC in an unrestricted procurement for manufactured products. SBA has deleted the reference to the wholesaler size standard and has added the requirement that a small business nonmanufacturer furnish domestically produced or manufactured products. The rationale for the deletion of the reference to the wholesaler size standard is contained in the final rule published by the SBA that makes the applicable size standard for nonmanufacturers 500 employees. See 54 FR 13160 (March 31, 1989). SBA mistakenly omitted the requirement that nonmanufacturers furnish domestically produced products in the proposed rule. Such requirement was in the former size regulations and therefore, does not impose any new restrictions on small business nonmanufacturers.

Sections 121.1001 through 121.1012 set forth the size eligibility requirements for the sale or lease of Government property, including the Timber Sales Program, the Special Salvage Timber Sales Program, and the sale of Government petroleum, coal and uranium. The rule does not make any substantive changes from the former regulations (§ 121.6). In addition, SBA received no comments concerning these sections. As such, no changes are made from the proposed rule aside from minor wording changes in §§ 121.1002 and 121.1003 for clarification.

Sections 121.1101 through 121.1108 describe the size eligibility requirements for SBA's section 8(a) program. The rule keeps the dual size determination of § 121.4(g) of the former regulations (i.e., an initial size determination at the time of admission to the program based upon the primary business of the applicant, and a second size determination for the award of each section 8(a) contract). The rules pertaining to size eligibility for the award of 8(a) contracts are similar to the rules relating to size eligibility for SBA's procurement assistance programs §§ 12.901 through 121.911. The rules covering the proper SIC Code designation for the goods or services being procured and the clarification, completion, supply, or correction of unclear, incomplete, missing, or incorrect SIC Code designations (proposed § 121.1102 (b)(2), (c) and (d)) are identical to those rules in the procurement assistance sections (§ 121.902 (b), (c) and (d)). These rules have been changed in the final rule in the same way as those pertaining to the procurement assistance programs discussed above.

Proposed § 121.1105 sets forth limitations on subcontracting, by requiring a firm to perform a certain percentage of a section 8(a) award with its own employees, in order to qualify as a small business for that 8(a) award. The content of this section has been deleted in the final rule and will appear, instead, in part 124, subpart A, of SBA's regulations. See § 124.314 of the proposed regulation published in the Federal Register on March 23, 1989, 54 FR 12054. Section 121.1105 is designated as reserved in the final rule.

The language contained in §§ 121.1106 and 121.1107 regarding manufactured products (the nonmanufacturer rule) and multiple item procurements is similar to that contained in the procurement assistance sections (§§ 121.906 and 121.907). SBA received several favorable comments, and no objections, concerning these sections. Again, however, in order to make the size rules pertaining to the 8(a) program consistent with those applicable to the small business set-aside program, SBA has made similar changes to the 8(a) nonmanufacturer and multiple end item provisions as were made in §§ 121.906 and 121.907 in response to comments concerning the applicability of those rules to the small business set-aside program.

Section 121.1106, "Eligibility of Section 8(a) Concern For Other SBA Assistance," was a new provision in the proposed rule. This provision confers automatic size eligibility for other SBA assistance (e.g., business loans) to an 8(a) concern which qualifies as a small business for a particular procurement where the assistance directly and primarily relates to the performance of the 8(a) contract. This provision is added to the 8(a) size eligibility rules because it supports one of the primary purposes of the 8(a) program (i.e., business development). SBA also believes that an 8(a) contractor should be given the tools necessary to effect proper contract performance. One commenter objected to the provision because the automatic size eligibility for other SBA assistance for 8(a) firms is limited to instances where it would relate directly to the performance of 8(a)

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contracts and urged that such assistance should be available to 8(a) concerns whenever not provided in the marketplace. SBA disagrees. Section 121.1106 does not mean to imply that 8(a) firms are precluded from receiving other SBA (i.e., non-8(a)) assistance unless the assistance directly and primarily relates to the performance of an 8(a) contract. An 8(a) firm is always able to apply for other SBA assistance and may receive such assistance (e.g., a guaranteed SBA loan) when it is deemed eligible under the applicable eligibility criteria pertaining to that program. That basic proposition is unchanged by the rule added in this section.

On the other hand, the provision added in § 121.1106 merely confers *size* eligibility on an 8(a) firm where such firm is seeking other SBA assistance and such assistance would relate to the performance of an 8(a) contract. The mere fact that an 8(a) firm is deemed to be small for such other SBA assistance does not mean that it has met all of the eligibility criteria needed to receive such assistance. What this section will do, for example, is to automatically determine an 8(a) firm to be a small business for an SBA guaranteed loan, whether or not the firm meets the financial assistance size standard, where such loan is needed for the 8(a) firm to successfully perform an 8(a) contract. It will not make the firm eligible to receive the loan. The same credit and other program eligibility criteria must still be met.

Sections 121.1201 through 121.1205 set forth the size eligibility requirements for SBA's Small Business Innovation Research (SBIR) Program. The order and language of the former regulations (former § 121.7) are altered somewhat for clarity. Section 121.1204 codifies the time of size policy of the SBIR Program. The SBIR Policy Directive, published in the **Federal Register** on January 6, 1985, 50 FR 917, specifies that the size of a concern for the purpose of a funding agreement under Phase I and Phase II of the SBIR Program is determined as of the date of the award. The reason for the departure from the rule applicable to other SBA programs (time of self-certification [with the offer]) is the concern that potential SBIR offerors often are affiliated with large concerns or non-profit institutions (e.g., universities) at the time of their initial proposal and, thus, would be precluded from the SBIR Program by a "time of offer" rule. These offerors typically leave their positions with the affiliated entity upon approval of their proposal and prior to award. This rule makes the date of award the time at which size is determined for both Phase I and Phase II. A concern having more than 500 employees at the date of award will be ineligible for award. Section 121.1205 incorporates the general self-certification and protest procedures into the SBIR Program. No comments were received within the comment period concerning these sections. Thus, the size rules pertaining to the SBIR program in this final rule are the same as those in the proposed rule.

Sections 121.1301 through121.1305 set forth the size eligibility requirements for paying reduced patent fees. SBA received no comments concerning these sections. As such, they are unchanged from the proposed rule.

Sections 121.1401 through 121.1405 set forth the size eligibility requirements for financial institutions for purposes of sections 8(d) and 15(g) of the Small Business Act. Pub. L. 85–536, 72 Stat. 384 (1958). The final rule makes minor changes to the former regulations (former § 121.13) for added clarity. The proposed rule changed the size standard from $100 million "for the preceding fiscal year" to $100 million "at the end of its preceding completed fiscal year." Four commenters believed that the $100 million size standard was too low and recommended a $500 million size standard. The purpose of the change in the proposed rule was not to change the size standard, but to clarify what was to be measured in determining if a financial institution met the size standard.

As SBA has previously stated in this final rule and in the proposed rule, the purpose of this revision to part 121 is to clarify the size rules, making them easier to understand and to use. The proposed rule also noted that this revision would not be used as a vehicle for changing specific size standards, and specifically stated that comments should not be made concerning specific size standards. Thus, the comments recommending a change in the financial institution size standard are not being considered in this revision. Such a change would require a study of the financial institution industry and formal rulemaking concerning the specific change.

One commenter also asserted that basing a size standard on one specific day of the year (i.e., the last day of a financial institution's preceding completed fiscal year) may be misleading as to the financial institution's real asset size if for instance a large amount is deposited at the end of the year and is withdrawn a few days later. SBA agrees that such a standard could give a skewed picture of a financial institution's real asset value. Therefore, this provision has been changed so that the $100 million size standard will be an average of the financial institution's assets during the preceding fiscal year. This average can be determined by comparing the assets of the financial institution as reported on its four quarterly statements.

Sections 121.1501 through 121.1505 set forth the size eligibility requirements for compliance with programs of other agencies. Except for minor language changes for clarification purposes, these rules have not been changed from the proposed rule since no comments were received concerning them.

Section 121.1601 sets forth the entities that may protest the size of a concern or request a formal size determination with respect to designated SBA programs. Paragraph (a)(4) of this section makes clear that SBA shall make size determinations with respect the Department of Defense's Small Disadvantaged Business (SDB) program established in section 1207 of the National Defense Authorization Act of 1987 (Pub. L. 99–661) or any other similar program administered by another agency. The paragraph provides that any offeror for the specific SDB requirement, the contracting officer or SBA official may protest size determinations. This paragraph has not previously been in any SBA size regulation because the SDB program is new. SBA believes that it needs a separate authority paragraph for size protests relating to specific SDB contracts.

Paragraph (a)(5) of this section establishes SBA authority to make size determinations with respect to any other Government procurement in which status as a small business may be beneficial. The Small Business set-aside program is not the only program in which status as a small business has advantages. Advantages accruing to small businesses in the context of unrestricted procurements include the award of a contract to a small business where there is a tie bid and the opportunity to seek a Certificate of Competency by a small business in an unrestricted procurement. SBA believes that other interested parties should be able to protest the size of a concern claiming to be a small business in such instances. This section makes clear that SBA will entertain size protests in these instances.

Paragraph (b)(2) of this section revises the regulations to provide that, with respect to size determinations for SBA's section 8(a) program, the 8(a) concern or SBA officials may request a formal size determination for purposes of initial 8(a) eligibility and individual contract awards. The former regulations expressly authorized formal size determinations only with respect to particular 8(a) applicant contracting opportunities. SBA also believes that an 8(a) applicant that was denied admission to the 8(a) program on the basis of size should have the right to request a formal size determination at the appropriate SBA Regional Office. Although this right has not been explicitly stated in the regulations previously, it has been SBA's informal policy to permit such determinations.

Section 121.1602 identifies the specific offices which make the formal size determinations. One commenter noted that this section incorrectly omitted reference to size determinations made by SBA's Disaster Offices for purposes of disaster loans. In response to this comment, SBA has amended this section to state that for purposes of determining size in relation to disaster loans, the Disaster Office responsible for the area in which the disaster occurred shall make the formal size determination.

Section 121.1603 sets forth the procedures for protesting size. Two comments were received on this section. One comment proposed that paragraph (c) be amended to clarify that when the contracting officer receives a protest filed by the SBA, he or she does not need to refer the protest back to the SBA, as is required for other protests filed by other parties. In response to this comment, a sentence has been added to paragraph (c)(1) specifying that, in the case of SBA protests, the contracting officer is not required to refer the protest back to the SBA.

The other comment on this section questioned whether the lack of a timeliness requirement for SBA protests would adversely affect the procurement at issue. The lack of such a timeliness requirement will not directly affect the procurement at issue because there is no requirement that the contracting officer stay the procurement pending the size determination. As is the case with all size protests, the decision to stay award of the contract is at the discretion of the contracting officer once the ten-day time limit has expired. (*See* § 121.1608.)

Section 121.1606(a) sets forth the time period in which SBA must make a size determination. One commenter expressed the view that it was unclear whether the 10 working days within which the decision must be made is triggered by receipt of the protest or receipt of the responses. In response to the comment, this section is amended to clarify that the 10-day period is triggered by SBA's receipt of the protest.

Section 121.1606(c) addresses the basis for the size determination and specifies that the SBA may base its decision on facts other than those supplied by the parties. The comment was made that this provision denies small businesses their confrontation rights and their rights to address concerns SBA has which do not appear in the filings. For the following reasons, no change was made to the regulations as a result of this comment. First, the above rights do not exist in the context of administrative adjudications. Moreover, because the rule expressly provides that the decision shall be based primarily on facts and allegations supplied by the protestor and protested concern, as a practical matter, any such denial would rarely affect the result reached. Finally, if a party feels that it did not have adequate opportunity to confront the evidence against it at the initial decision level and that, as a result, the decision reached was incorrect, it may appeal the decision to SBA's Office of Hearings and Appeals (OHA) in accordance with §§ 121.1701 through 121.1722 of this rule.

Section 121.1607 addresses recertifications. SBA received three comments on this section, two of which advocated that OHA make recertification decisions under certain circumstances. After careful consideration, SBA has decided not to adopt these comments. SBA believes that OHA is not an appropriate forum for making recertification decisions. The third commenter expressed the view that the original protester should be notified before a recertification decision is made. This is not necessary because such protester has the opportunity to protest the size of the concern at the time it bids on a set aside contract if it believes that the concern was improperly recertified.

One commenter suggested that a provision on intervention be added to § 121.1600. This suggestion was rejected as impractical because of the short time period within which the decision must be made (10 days). If an interested party is harmed by the decision, such party can file an appeal with the Office of Hearings and Appeals pursuant to §§ 121.1701 through 121.1722 of this rule.

Sections 121.1701 through 121.1722 set forth the procedures for size and SIC Code Appeals. Section 121.1702 contains a new paragraph (c) which defines the term "file" for purposes of initiating proceedings before the Office of Hearings and Appeals.

Section 121.1703 specifies the parties that may appeal. One commenter objected to this section that it does not permit 8(a) contractors to appeal SIC Code designations for 8(a) contracts. That commenter felt the denial of this appeal right to 8(a) contractors was discriminatory and arbitrary. This provision is not new. 8(a) contractors have never had the right to appeal SIC Code determinations under SBA regulations. Moreover, since the SBA represents the interests of the 8(a) participants in dealings with procurement agencies under the 8(a) program, it is appropriate to vest the right to appeal in the SBA.

Section 121.1705 sets forth the time limit for appeals. Paragraph (b)(1) of this section provides that appeals from SIC code designations must be filed no later than ten days before the bid opening day or deadline for submitting proposals as specified in the solicitation, taking into account any modifications to such dates. One commenter stated that the meaning of the phrase "taking into account any modifications to such dates" was unclear. SBA agrees with this comment and has amended this provision to state that if a solicitation is modified to extend the bid opening day or deadline for submitting proposals or quotations, the ten day period for filing shall be calculated based on the date designated in the modification. A similar amendment allowing an extension from the modified date has been made to paragraph (b)(2) for appeals when the bid opening date is less than 30 days after the issuance of the invitation for bids or request for proposals or quotations. Paragraphs (c) and (d) of § 121.1705 have been deleted because their provisions are contained in the definition of "file" at § 121.1702(c).

Section 121.1706 addresses the initiation of an appeal and the notice requirements for appeals. One commenter objected to the requirement in this section that the Appellant send a copy of the Notice of Appeal to SBA's Office of the General Counsel. This requirement has been retained in the final rule. Size determinations are precedent-setting and, therefore, it is important for the SBA to be aware of potentially important policy issues in order to determine whether to intervene to protect the Agency's interests.

Section 121.1707 addresses the scope of appeal and burden of proof. It was suggested that this section be reworded to place an affirmative burden on the SBA to investigate misuse of the Small Business Act each time a protest is filed. The SBA does not have the resources to conduct such investigations. Moreover, the underlying motivation behind the protest is irrelevant if the protest is valid on its face.

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Section 121.1709 addresses intervention in appeals to the Office of Hearings and Appeals. One commenter objected to SBA's authority to intervene in appeals. Decisions by the Office of Hearings and Appeals are precedent-setting. Therefore, SBA must have the authority to intervene in order to protect the Agency's interests and to insure that important questions of policy are appropriately addressed. Therefore, this comment was not adopted.

Section 121.1712 sets forth the rules that apply to filing and service of pleadings and other documents. Section 121.1712(e) addresses time limitations on filings and the circumstances under which filing dates may be extended by the Administrative Judge. The proposed rule contained a new provision permitting the time limit for appeal of a size determination to be extended in extraordinary situations. The only comment received by SBA on this provision opposed the grant of discretion to the Administrative Judge to extend this time limit. The commenter argued that this provision could jeopardize pending procurements and was unnecessary with regard to future procurements because of the long period of time in which to appeal (30 days) in those cases. SBA agrees with this comment and has amended this provision to return to the language in the current regulation which prohibits extension of the time limit in which to appeal size determinations.

Section 121.1713(c) addresses access to and disclosure of materials to parties. SBA had proposed to permit an appeal to the Assistant Administrator for the Office of Hearings and Appeals of any denial of a request for disclosure of *in camera* documents. Such appeal is inconsistent with the Presiding Judge's authority to make a final decision. Therefore, SBA has deleted appeal authority from this final rule.

Section 121.1721 addresses reopenings and reconsiderations of decisions by the Office of Hearings and Appeals. One commenter objected to the expansion of the jurisdiction of the Office of Hearings and Appeals to reopen decisions. This change was made after a careful study of other agency administrative appeal processes and responds to specific needs which were not addressed in the former regulations. Such needs include the authority of OHA to correct inadvertent errors in decisions and its need to be able to revise decisions based on new facts absent a request for reopening by one of the parties.

Compliance with the Regulatory Flexibility Act, Executive Orders 12291 and 12612, and the Paperwork Reduction Act

This final rule could be considered a major rule within the meaning of Executive Order 12291 because it contains several substantive provisions which determine whether a concern in any industry may be considered small for purposes of Federal assistance. For instance, changes in the definition of a concern and in the rules on affiliation could affect a concern's eligibility for small business assistance. The economic impact on concerns no longer eligible for such assistance as a result of this final rule combined with the impact on concerns which will become eligible for assistance because of the rule could exceed $100 million. In addition, this rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Consequently, SBA offers the following regulatory impact analysis and regulatory flexibility analysis for the purpose of compliance with the pertinent requirements of those two measures:

(1) *Description of potential benefits of the rule:* This revision taken as a whole provides SBA, other Federal agencies, and concerns seeking Federal assistance as small businesses with size procedures which are easier to use and understand. The restructured part 121 clearly identifies all the applicable size rules for each specific small business assistance program. Confusion as to whether a general rule applies to a specific program is eliminated. The revision also provides clearer guidance concerning the procedures by which a concern may protest the size of another concern and appeal the decision in a formal size determination. The rule clarifies how the size procedures, established over time, will be applied. It is our belief that SBA will benefit by the revision since its purpose is to clarify the regulatory framework governing the size program and thus provide for more efficient administration.

(2) *Description of potential costs of the rule:* There should be no costs inherent in the revision which are not presently involved in the administration of the size program. The procedures contained in the rule are basically the same rules currently contained in part 121 of SBA's regulations. The rule is, for the most part, a reorganization of the current rules into a format which is easier to use and understand. The rule does not impose monetary or other types of costs upon SBA, other Federal agencies, or those entities seeking small business status. The rule does not change the specific size standards which apply to particular industries and SIC Codes and, thus, would not directly affect who is and who is not eligible for specific assistance programs. However, as a result of changes in the rules on affiliation and in certain definitions such as the definition of concern, the eligibility of certain concerns could be affected. The loss of eligibility for small business assistance could result in costs to affected concerns.

(3) *Description of the net benefits of the rule:* This revision, taken as a whole, should clarify existing ambiguities in and provide a more logical progression to SBA's size regulations.

(4) *Description of reasons why this action is being considered and objectives of the rule:* The reasons why this rule is being promulgated and its ojectives are contained above in the Supplementary Information to this final rule and in the Supplementary Information to the proposed rule which was published on August 31, 1987 in the Federal Register, 52 F.R. 32870.

(5) *Legal basis for final rule:* The legal basis of this final rule is sections 3(a) and 5(b)(6) of the Small Business Act, 15 U.S.C. 632(a) and 634(b)(6), and Pub. L. 100-656, 102 Stat. 3853 (1988).

(6) *Description of entities to which the rule applies:* The rule clarifies the methodology of establishing size standards, clarifies the procedures by which a concern may protest the size of another concern or request that a formal size determination be performed by SBA, and amends certain provisions having substantive effect on whether a concern is considered small. Any entity wishing to be considered small or to protest size or request a formal size determination may be affected by the rule.

(7) *Federal rules:* There are no Federal rules which duplicate, overlap or conflict with this final rule. SBA has statutorily been given exclusive jurisdiction in establishing size standards. These procedures are part of that exclusive jurisdiction.

(8) *Significant alternatives to the final rule:* The changes set forth in these final regulations from the former size regulations clarify existing ambiguities and conform the size regulations to SBA policies and precedents. Thus, there are no significant alternatives which would accomplish the stated objectives of this final rule.

SBA certifies that this final rule does not add any new reporting or recordkeeping requirements under the Paperwork Reduction Act of 1980, 44

U.S.C. chap. 355. SBA Form 355, appearing in §§ 121.1605 and 121.1607 of this rule, has been approved by the Office of Management and Budget under number 3245-0101. SBA Form 723, appearing in § 121.1006(d) of this rule, has been approved by the Office of Management and Budget under number 0596-0021.

SBA certifies that this rule will not have federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

List of Subject in 13 CFR Part 121

Small businesses, Standard Industrial Classification Codes.

Accordingly, pursuant to the authority set forth in sections 3(a) and 5(b)(6) of the Small Business Act, 15 U.S.C. 632(a) and 634(b)(6), and Public Law 100-656, 102 Stat. 3853 (1988), SBA hereby revises part 121 of Title 13 of the Code of Federal Regulations to read as follows:

PART 121 - SMALL BUSINESS SIZE REGULATIONS

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121.911 Size procedures under SBA's Section 8(d) Subcontracting Program.

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121.1007 Special Salvage Timber Sales (SSTS).
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121.1010 Sales of Government owned petroleum.
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121.1106 Manufactured products under section 8(a) contracts.
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Size Eligibility for the Small Business Innovation Research Program

121.1201 Program covered.
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Size Eligibility for Paying Reduced Patent Fees

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Size Eligibility for Financial Institutions for Purposes of Sections 8(d) and 15(g) of the Small Business Act

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Subpart B—Other Eligibility Provisions [Reserved]

Authority: Sections 3(a) and 5(b)(6) of the Small Business Act, as amended (15 U.S.C. 632(a), 634(b)(6)), and Pub. L. 100-656, 102 Stat. 3853 (1988).

Subpart A—Size Eligibility Provisions and Standards

(see §§ 121.1601 through 121.1608 for the procedures concerning size protests and

(1) Develop and recommend small business size standards;

(2) The Associate Administrator for Finance and Investment;

(§§ 121.1101 through 121.1108). Formal determinations shall also be made by the Regional Offices in connection with

(3) In determining whether affiliation exists, consideration shall be given to all appropriate factors, including common

Subpart A—Size Eligibility Provisions and Standards

Statutory Provisions

§ 121.101 Congressional policy.

Section 2(a) of the Small Business Act, 15 U.S.C. 631(a), sets forth the Congressional policy that the Government should ensure that a fair proportion of the Government's procurement needs be placed with small business enterprises.

§ 121.102 Authority to set size standards.

Sections 3(a) and 5(b)(6) of the Small Business Act, 15 U.S.C. 632(a) and 634(b)(6), authorize the Small Business Administration (SBA) to determine which business enterprises are to be designated "small business concerns" within any industry.

General Provisions

§ 121.201 Purpose of the SBA Size Program.

(a) To implement statutory policy, Congress established the Small Business Administration (SBA) in 1953 and gave it the responsibility to administer a range of programs designed to achieve specified economic goals. Generally, eligibility for assistance under SBA programs requires that a firm be "small." In addition, other Federal agencies may implement programs for which a "small" size is an eligibility criterion. Both the actual setting of size standards (i.e., the size specification of "small") and the determination of which concerns fall within these standards and accordingly qualify as "small" are powers authorized to the Administrator of the SBA.

(b) Federal assistance should not be regarded as permanent nor as the primary source of a firm's receipts. It should be used to assist a firm to compete in the regular business world, without becoming dependent on continuing Government aid. Small businesses should plan for the day when they can compete without assistance.

§ 121.202 General outline of SBA's Size Program.

The basic operation of SBA's Size Program is as follows:

(a) SBA establishes the appropriate size standards applicable to particular Standard Industrial Classification (SIC) codes (see § 121.601).

(b) SBA determines which concerns qualify as "small" under the appropriate size standard. This process often includes a self-certification procedure by which a concern certifies its size eligibility and may involve a protest or request for a formal size determination (see §§ 121.1601 through 121.1608 for the procedures concerning size protests and requests for formal size determinations). This process is separately explained for each assistance program (see §§ 121.801 through 121.1505).

(c) An adversely affected concern or other interested party may obtain a review of the size determination by SBA's Office of Hearings and Appeals (see §§ 121.1701 through 121.1722).

§ 121.203 Notification by concern of adverse size determination.

If a concern has been determined by SBA to be ineligible as a small business under a particular size standard, and it has already certified itself to be a small business on a pending Government procurement or on another assistance application, subject to the same or a lower size standard, it shall immediately notify the contracting officer or the appropriate Government official of such adverse size determination. (See § 121.1607 for the Recertification Procedure.)

§ 121.204 Effect of adverse size determination and recertification.

If SBA has made a formal size determination that a particular concern is not small, the concern will be deemed ineligible within such applicable size standard for any assistance under the Small Business Act, the Small Business Investment Act of 1958 or other applicable law, unless it is thereafter recertified by SBA as a small business. A change in circumstances may provide a basis for an application for recertification. (See §§ 121.1608(h) and 121.1607 for specific provisions as to the effect of and procedures for recertification.)

§ 121.205 Effective date.

The provisions set forth in this regulation shall be effective January 1, 1990. Except as related to non-competitive 8(a) contracts, these provisions will apply to any solicitation issued on or after the effective date of the regulation. The provisions of this regulation will also apply to any non-competitive requirement offered for the 8(a) program which has been accepted by SBA subsequent to the effective date of these regulations. This regulation will apply to any application for financial assistance, including an application for participation in the 8(a) program, received by SBA on or after the effective date.

Functions and Responsibilities of SBA Offices

§ 121.301 Size Standards Staff.

(a) SBA's Size Standards Staff shall:

(1) Develop and recommend small business size standards;

(2) Consider and take appropriate action on written requests to change existing size standards or establish new size standards;

(3) Conduct industry hearings pertaining to size standards, when necessary;

(4) Perform other related functions (e.g., industry studies) as may be appropriate to administer the SBA size standards program.

(b) Requests to change the existing or establish new size standards should be addressed to the Director, Size Standards Staff, 1441 L Street NW., Washington DC 20416. These requests should include information relative to the economic conditions and structure of the entire national industry, as well as specific reasons and justifications for the change or new size standard. Any request to change an existing size standard should provide information concerning the effect such a change would have on the Federal procurement process and information demonstrating how the proposed change would promote the purposes of the Small Business Act (15 U.S.C. 631 *et seq.*).

(c) If no size standard for an industry has been established in this Part, then SBA, upon request, may issue a temporary size standard for the industry in question by publishing an interim emergency rule in the **Federal Register** with an opportunity for public comment in accordance with the Administrative Procedure Act. 5 U.S.C. 553 (1976).

§ 121.302 Office of General Counsel.

The Office of General Counsel shall:

(a) Develop, coordinate, and recommend regulations and procedures to assist in implementing the size standards;

(b) Upon motion or other appropriate pleadings, represent the Agency in proceedings before the Office of Hearings and Appeals in order to present the position of the SBA;

(c) Represent the Agency in connection with any matter arising out of this part 121 before the Comptroller General, and other agencies.

§ 121.303 The Size Policy Board.

(a) The SBA Size Policy Board considers and makes recommendations relating to improvements in SBA regulations, procedures and directives concerning size matters, including size standards.

(b) The members of the SBA Size Policy Board are:

(1) The Associate Administrator for Procurement (Chairperson);

(2) The Associate Administrator for Finance and Investment;

(3) The Associate Administrator for Minority Small Business/Capital Ownership Development;

(4) The Assistant Administrator for Innovation, Research & Technology;

(5) The Director of the Size Standards Staff;

(6) The Chief Counsel for Advocacy;

(7) One Regional Administrator, designated by the Administrator;

(8) The General Counsel (non-voting, advisory member);

(9) The Assistant Administrator for Hearings and Appeals (non-voting, advisory member);

§ 121.304 The Office of Hearings and Appeals.

Pursuant to the provisions of §§ 121.1701 through 121.1722, SBA's Office of Hearings and Appeals will review appeals and make final decisions affirming, reversing or modifying:

(a) Determinations by the SBA Regional Offices, made pursuant to §§ 121.1601 through 121.1608, as to a concern's small business size status (size status determinations);

(b) Designations by contracting officers, appealed to SBA pursuant to §§ 121.1701 through 121.1722 or supplied by SBA pursuant to § 121.902(d) or § 121.1102(d), as to the Standard Industrial Classification (SIC) code into which the product or service is classified and/or as to the Small Business Administration size standard applicable thereto, (product or service classifications).

§ 121.305 Regional Offices.

(a) The Regional Offices of SBA shall make:

(1) Formal size determinations pursuant to a protest (§§ 121.1601 through 121.1608) against the self-certification of a concern in connection with eligibility for government set-asides (§§ 121.901 through 121.911), eligibility for sales or leases of government property (§§ 121.1001 through 121.1012), or eligibility for SBA's Small Business Innovation Research Program (§§ 121.1201 through 121.1205).

(2) Product or service classifications and/or size standard designations where an unclear, incomplete or missing classification/designation has been made by the contracting officer where necessary in connection with a size determination or size appeal.

(3) Formal size determinations (§§ 121.1601 through 121.1608) pursuant to a request by a section 8(a) participant whose status as a small business is not verified by SBA in connection with a particular section 8(a) procurement (§§ 121.1101 through 121.1108). Formal determinations shall also be made by the Regional Offices in connection with such applications for section 8(a) assistance upon request by the Associate Administrator for Minority Small Business and Capital Ownership Development (AA/MSB&COD) or his or her designee (See § 124.102(b)).

(4) Formal size determinations (§§ 121.1601 through 121.1608 of this part) pursuant to a request therefore by an applicant for any assistance program of SBA not otherwise provided for, adversely affected by a size status finding made by an official of SBA, or by a size status finding made by a participating financial institution or a small business investment company in connection with an application for financial assistance §§ 121.801 through 121.806. Formal size determinations shall also be made by the Regional Office in connection with applications for program assistance upon request by the appropriate program official of SBA, a participating financial institution or a small business investment company.

(b) Except for SBA's small business set-aside program and SBA's Small Business Innovation Research program, formal size determinations shall be made by the SBA Regional Office serving the geographical area in which the principal office of the protested concern or applicant concern, excluding its affiliates, is located. Formal size determinations in the small business set-aside program and SBA's Small Business Innovation Research program shall be made by the SBA Regional Office serving the geographical area of the headquarters of the offeror, regardless of the location of parent companies or affiliates.

(c) The Regional Administrator may request a formal size determination whenever he/she deems it appropriate.

Definitions

§ 121.401 Affiliation.

(a) *General rule.* (1) Except as otherwise noted, size determinations shall include the applicant concern and all its domestic and foreign affiliates. Moreover, all affiliates, regardless of whether organized for profit, must be included.

(2) Except as otherwise provided in this section, concerns are affiliates of each other when either directly or indirectly

(i) One concern controls or has the power to control the other, or

(ii) A third party or parties controls or has the power to control both, or

(iii) An "identity of interest" between or among parties exists such that affiliation may be found.

(3) In determining whether affiliation exists, consideration shall be given to all appropriate factors, including common ownership, common management, and contractual relationships.

(b) *Exclusion from affiliation coverage.* Portfolio or client concerns owned in whole or substantial part by investment companies licensed, or development companies qualifying under the Small Business Investment Act of 1958, as amended, or by Investment Companies registered under the Investment Company Act of 1940, as amended, concerns owned and controlled by Indian Tribes, or concerns owned and controlled by Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601, *et seq.*) are not considered affiliates of such investment companies, development companies, tribes or Alaska Regional or Village Corporations.

(c) *Nature of control in determining affiliation.* (1) Every business concern is considered to have one or more parties who directly or indirectly control or have the power to control it. Control may be affirmative or negative and it is immaterial whether it is exercised so long as the power to control exists.

Example. A party owning 50 percent of the voting stock of a concern would have negative power to control such concern since such party can block any action of the other stockholders. Also, the bylaws of a corporation may permit a stockholder with less than 50 percent of the voting stock to block any actions taken by the other stockholders. Affiliation exists when one or more parties have the power to control a concern while at the same time another party, or other parties, may be in control of the concern at the will of the party with the power to control.

(2) Control can arise through stock ownership; occupancy of director, officer or key employee positions; contractual or other business relations; or combinations of these and other factors.

(3) Control can arise through management positions where a concern's voting stock is so widely distributed that no effective control can be established.

Example. In a corporation where the officers and directors own various size blocks of stock totaling 40 percent of a concern's voting stock, but no officer or director has a block sufficient to give him control or the power to control and the remaining 60 percent is widely distributed with no individual stockholder having a stock interest greater than 10 percent, management has the power to control.

(d) *Identity of interest between and among persons as an affiliation*

However, an affiliate cannot use such options and debentures to appear to

(j) *Affiliation with a newly organized concern.* Affiliation generally arises

vital requirements of a contract may have such a controlling role that it must

affiliates, proceeds from payments of notes receivable and accounts

necessary pursuant to paragraph (d)(1) of this section to reflect the percentage of completion method, shows its annual

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(d) *Identity of interest between and among persons as an affiliation determinant.* Affiliation can arise between or among two or more persons with an identity of interest, such as members of the same family or persons with common investments in more than one concern. In determining who controls or has the power to control a concern, persons with an identity of interest may be treated as though they were one person.

(e) *Affiliation through stock ownership.*(1) A person is presumed to control or have the power to control a concern if he or she owns or controls or has the power to control 50 percent or more of its voting stock.

(2) A person is presumed to control or have the power to control a concern even though he or she owns, controls or has the power to control less than 50 percent of the concern's voting stock, if the block of stock he or she owns, controls or has the power to control is large as compared with any other outstanding block of stock.

(3) If two or more persons each owns, controls or has the power to control less than 50% of the voting stock of a concern, such minority holdings are equal or approximately equal in size, and the aggregate of these minority holdings is large as compared with any other stock holding, the presumption arises that each such person individually controls or has the power to control the concern; however, such presumption may be rebutted by a showing that such control or power to control, in fact, does not exist.

Example: Assume that Firms A and B each own 40 percent of Firm C. Assume further that Firm A has 200 employees, Firm B has 400 employees, Firm C alone has 50 employees and that the applicable size standard is 500 employees. This subsection requires that both Firm A and Firm B be considered to individually control Firm C and that their employees be aggregated with those of Firm C to determine Firm C's size. Therefore, Firm C would be considered small because Firm A's employees plus its employees (200 + 50) would fall short of the 500 employee size standard as would the total of Firm B's employees plus its employees (400 + 50).

(f) *Affiliation arising under stock options, convertible debentures, and agreements to merge.* Stock options, convertible debentures, and agreements to merge (including agreements in principle) are generally considered to have a present effect on the power to control the concern. Therefore, in making a size determination, such options, debentures, and agreements are generally treated as though the rights held thereunder had been exercised. However, an affiliate cannot use such options and debentures to appear to terminate its control over another concern before it actually does so.

Example 1. If company "A" holds an option to purchase a controlling interest in company "B," the situation is treated as though company "A" had exercised its rights and had become owner of a controlling interest in company "B." The employees or annual receipts, as the case may be, of both concerns must be taken into account in determining size.

Example 2. If large company "A" holds 70% (70 of 100 outstanding shares) of the voting stock of company "B" and gives a third party an option to purchase 25 shares of concern "B", company "B" will be deemed to be an affiliate of company "A" until the third party actually exercises its option to purchase such shares. In order to prevent large company "A" from circumventing the intent of the regulation which gives present effect to stock options, the option is not considered to have present effect in this case.

Example 3. If company "A" has entered into an agreement to merge with company "B" in the future, the situation is treated as though the merger has taken place.

(g) *Affiliation under voting trusts.* (1) If the primary purpose of a voting trust, or similar agreement, is to separate voting power from beneficial ownership of voting stock for the purpose of shifting control of or the power to control a concern in order that such concern or another concern may qualify as a small business within the size regulations, such voting trust shall not be considered valid for this purpose regardless of whether it is or is not recognized within the appropriate jurisdiction. However, if a voting trust is primarily entered into for a legitimate purpose other than that described above, and it is recognized within the appropriate jurisdiction, it may be considered valid for the purpose of a size determination.

(2) Agreements to divest (including agreements in principle) are not considered to have a present effect on the power to control the concern.

(h) *Affiliation through common management.* Affiliation generally arises where officers, directors, or key employees serve as the majority or otherwise as the controlling element of the board of directors and/or the management of another concern.

(i) *Affiliation through common facilities.* Affiliation generally arises where one concern shares office space and/or employees and/or other facilities with another concern, particularly where such concerns are in the same or related industry or field of operations, or where such concerns were formerly affiliated.

(j) *Affiliation with a newly organized concern.* Affiliation generally arises where former officers, directors, principal stockholders, and/or key employees of one concern organize a new concern in the same or a related industry or field of operation, and serve as its officers, directors, principal stockholders, and/or key employees, and the one concern is furnishing or will furnish the other concern with subcontracts, financial or technical assistance, bid or performance bond indemnification, and/or other facilities, whether for a fee or otherwise.

(k) *Affiliation through contractual relationships.* Affiliation generally arises where once concern is dependent upon another concern for contracts and business to such a degree that its economic viability would be in jeopardy without such contracts/business.

(l) *Affiliation under joint venture arrangements.* (1) A joint venture for size determination purposes is an association of concerns and/or individuals, with interests in any degree or proportion, formed by contract, express or implied, to engage in and carry out a single, specific business venture for joint profit for which purpose they combine their efforts, property, money, skill and knowledge, but not on a continuing or permanent basis for conducting business generally. The determination whether an entity is a joint venture is based upon the facts of the business operation, regardless of how the business operation may be designated by the parties involved. An agreement to share profits/losses proportionate to each party's contribution to the business operation is a significant factor in determining whether the business operation is a joint venture.

(2) For the purpose of financial assistance to a joint venture, the parties thereto are considered to be affiliated with each other. Where the financial assistance, however, is to a concern for its own use, outside the joint venture, an affiliation determination shall not automatically arise from the existence of the joint venture arrangement. In this latter situation, the existence of affiliation shall be determined under these regulations.

(3) Concerns bidding on a particular procurement or property sale as joint venturers are affiliated with each other with regard to performance of the contract. This determination of affiliation does not extend to other contracts or business outside the joint venture arrangement.

(4) An ostensible subcontractor which performs or is to perform primary or vital requirements of a contract may have such a controlling role that it must be considered a joint venturer affiliated on the contract with the prime contractor. In determining whether subcontracting rises to the level of affiliation as a joint venture, SBA considers whether the prime contractor has unusual reliance on the subcontractor.

(5) Even though a concern might not be an affiliate of its joint venturers for the purpose of operations apart from the joint venture, it nevertheless must include its proportionate share of the joint venture receipts or employees in determining its eligibility under the size standards.

(m) *Affiliation under franchise and license agreements.* In determining whether the franchisor controls or has the power to control and, therefore, is affiliated with the franchisee, the restraints, relating to standardized quality, advertising, accounting format and other provisions, imposed on a franchisee by its franchise agreement shall generally not be considered, provided that the franchisee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Alternatively, even though a franchisee may not be controlled by the franchisor by virtue of such provisions in the franchise agreement, control and, thus, affiliation could arise through other means, such as common ownership, common management or excessive restrictions upon the sale of the franchise interest.

§ 121.402 Annual receipts.

(a) In size determinations where the standard is "annual receipts," size eligibility requires that the concern may not exceed the "annual receipts" in that standard.

(b) *Definitions.* For the purpose of determining annual receipts of a concern:

(1) *Accrual basis* means a method of accounting in which accounts and notes receivable are recorded in the regular books of account for the period in which the firm first has a claim of right to them. "Claim of right" has the meaning attributed to it by the U.S. Internal Revenue Service (IRS).

(2) *Receipts* is defined to include all revenue in whatever form received or accrued from whatever source, including from the sales of products or services, interest, dividends, rents, royalties, fees, or commissions, reduced by returns and allowances. However, the term "receipts" excludes proceeds from sales of capital assets and investments, proceeds from transactions between a concern and its domestic and foreign affiliates, proceeds from payments of notes receivable and accounts receivable, amounts collected for another by a travel agent or real estate agent, and taxes collected for remittance to a taxing authority.

(3) *Regular books of account* means the general ledger or other book of final entry and, if used, the journals or other books of original entry.

(4) *Completed fiscal year* means a taxable year including any short period. "Taxable year" and "short period" have the meaning attributed to them by the IRS.

(5) Unless otherwise defined in this section, all terms shall have the meaning attributed to them by the IRS.

(c) *Period of measurement.* "Annual Receipts" of a concern which has been in business for 3 or more completed fiscal years means the arithmetic annual average revenue of the concern over its last 3 completed fisca1 years (total revenue compiled over the entire 3-year period would be divided by three). "Annual Receipts" of a concern which has been in business for less than 3 fiscal years means the arithmetic annual average revenue over the time period the concern has been in business. (Total revenues compiled over the period the concern has been in business, divided by the number of weeks, including fractions of a week, the concern has been in business, multiplied by 52). "Annual receipts" of a concern which has been in business three or more years but has a short year in the last three years will be the arithmetic annual average revenue over the two full years and the short year. See paragraph (d)(3) of this section. The short period may appear at the beginning, middle or end of the three year calculation period.

(d)(1) *Method of determining annual receipts.* Revenue may be taken from the regular books of account of the concern. If the concern so elects, or has not kept regular books of account, or the IRS has found such records to be inadequate and has reconstructed income of the concern, then revenue as shown on the Federal Income Tax return of the concern may be used in determining annual receipts, *Provided* That subject to the exception in paragraph (d)(2) of this section, revenue shown on the regular books of account or the Federal Income Tax return on a basis other than accrual is restated to show revenue on an accrual basis. Further, where the completed contract method of determining income has been used, revenue must be restated to a percentage of completion method prior to determining annual receipts.

(2) Where the Federal Income tax return of a concern, restated if necessary pursuant to paragraph (d)(1) of this section to reflect the percentage of completion method, shows its annual receipts to be less than 75 percent of the applicable size standard, the concern need not restate its revenue to an accrual basis prior to determining annual receipts.

(3) Where a short period is included in the concern's most recent three years, "annual receipts" are calculated by dividing the sum of the receipts of the short year and the receipts of the two full fiscal years by the sum of the number of weeks in the short fiscal year and the number of weeks in the two full fiscal years, and multiplying that figure (the weekly average receipts) by 52.

Example: If the short year were 12 weeks and X represents the receipts from the short year, the calculation would be:

[(X + receipts for the two full fiscal years) ÷ (12 + 52 + 52)] × 52 = Average annual receipts for the three year period including the short year.

(e) *Annual receipts of affiliates.* (1) If a concern has acquired an affiliate or been acquired as an affiliate during the applicable averaging period, the "annual receipts" in determining size status include the receipts of both the applicant and the affiliate. Furthermore, this aggregation of the receipts of both the applicant and its affiliate applies during the entire period used in computing size (usually the preceding three complete fiscal years) rather than only for the period after the affiliation arose.

(2) The "annual receipts" of a concern which had been an affiliate of the applicant during part of the period used in determining size (usually the preceding three completed fiscal years), but was not an affiliate at the time of self-certification for the assistance in question, are not included within the computation of "annual receipts" in making size determinations. This exclusion of "annual receipts" of a former affiliate applies during the entire period used in computing size, rather than only for the period after which the affiliation ceased.

§ 121.403 Business concern or concern.

(a) A business concern eligible for assistance as a small business is a business entity organized for profit, with a place of business located in the United States and which makes a significant contribution to the U.S. economy through payment of taxes and/or use of American products, materials and/or labor.

(b) Such business entity may be in the legal form of an individual proprietorship, partnership, corporation,

joint venture, association, trust or a cooperative, except that where the form is a joint venture there can be no more than 49 percent participation by foreign business entities in the joint venture.

§ 121.404 Employees.

The term "employees" means all individuals employed on a full-time, part-time, temporary, or other basis. Such other basis may exist, for example, where individuals are provided by an independent employment contractor in an apparent effort to circumvent these regulations. The totality of the circumstances should be considered in determining whether employees of an independent contractor are employed on an "other basis" including, but not limited to, the following factors:

(a) Did the company engage and select the employees?

(b) Does the company pay the employees wages and/or withhold employment taxes and/or provide employment benefits?

(c) Does the company have the power to dismiss the employees?

(d) Does the company have the power to control and supervise the employees' performance of their duties?

(e) Did the company procure the services of the employees from any employment contractor involved in close proximity to the date of self-certification as a small business?

(f) Did the company dismiss employees from its own payroll and replace them with the employees from any employment contractor involved. Were they replaced soon after their dismissal?

(g) Are the individual employees supplied by any employment contractor, the same individuals that were dismissed by the company?

(h) Do the employees possess a type of expertise or skill that other companies in the same or similar lines of business normally employ in-house (as opposed to procuring by sub-contract or through an employment contractor)?

(i) Do the employees perform tasks normally performed by the regular employees of the business or which were previously performed by the company's own employees?

(j) Were the employees procured through an employment contractor to do more than fill in for regular employees of the company who are temporarily absent?

(k) Does the contract with the independent contractor have a term based on the term of an existing Government contract?

§ 121.405 Key employee.

A key employee is an employee who, because of his/her position in the concern, has a critical influence in or substantive control over the operations or management of the concern.

§ 121.406 Not dominant in field of operation.

A concern is "not dominant in its field of operation" when it does not exercise a controlling or major influence on a national basis in a kind of business activity in which a number of business concerns are primarily engaged. In determining whether dominance exists, consideration shall be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity.

§ 121.407 Number of employees.

In size determinations where the standard is "number of employees," size eligibility requires that the concern may not exceed the number of employees in that standard.

(a) "Number of employees" means the average employment of the concern, including the employees of its domestic and foreign affiliates, based upon employment during each of the pay periods for the preceding completed 12 calendar months.

(b) In computing average employment, part-time and temporary employees are counted as full-time employees for each applicable pay period.

(c) If a concern has not been in business for 12 months, "number of employees" means the average employment of the concern, including its affiliates, during each of the pay periods during which it has been in business.

(d) If a concern has acquired an affiliate or has been acquired as an affiliate during the applicable averaging period, the "number of employees" in determining size status includes both the employees of the applicant and the affiliate. Furthermore, this aggregation of the employees of both the applicant and its affiliate applies during the entire period used in computing size (usually, the preceding 12 months) rather than only for the period after the affiliation arose.

(e) The employees of a concern which had been an affiliate of the applicant during part of the period used in determining size (usually the preceding 12 months), but was no longer an affiliate at the time of self-certification for the assistance in question, are not included within the computation of "number of employees" in making size determinations. This exclusion of employees of a former affiliate applies during the entire period used in computing size.

Changes in Size Standards

§ 121.501 General.

Any proposed size standard change will be published in the **Federal Register** and will include a description of the various factors considered in devising the size standard. Such proposal will also identify the number of small businesses which would be affected by the change in the size standard.

§ 121.502 [Reserved]

§ 121.503 Sources of data.

The basic sources of data used in establishing size standards include: "The Standard Industrial Classification Manual", which is used as a guide in defining industries; U.S. Bureau of the Census, Economic Censuses including "Concentration Ratios in Manufacturing" and "Enterprise Statistics"; special tabulations of the "Enterprise Statistics" (prepared for SBA by the U.S. Bureau of the Census); "Census of Service Industries" (prepared by the Bureau of the Census); Annual Survey of Manufacturers"; U.S. Department of Commerce, U.S. Industrial Outlook", "Survey of Current Business", and County Business Patterns"; Internal Revenue Service, "Statistics of Income"; Dun and Bradstreet, "DMI Market Profile"; and SBA's small business data base (USEEM tabulations); "Federal Procurement Data System" statistics; SBA's own extensive files of articles and correspondence; information provided by trade associations; and other appropriate sources.

Standard Industrial Classification Codes and Size Standards

§ 121.601 Standard Industrial Classification codes and size standards.

The following industry size standards apply to all SBA programs except the sale of Government property (§§ 121.1001 through 121.1012); physical disaster loans (no size standards); and non-physical disaster loans, Small Business Investment Companies, Development Companies, and Pollution Control Bonds (*see* §§ 121.801 through 121.806). The Standard Industrial Classification (SIC) codes and corresponding industry size standards are set forth in the table following this section. Their relationship to the various SBA programs is set forth in §§ 121.801 through 121.806; 121.901 through 121.911;

121.1101 through 121.1108; 121.1201 through 121.1205 and 121.1401 through 121.1405. The table column labeled "SIC" refers to the Standard Industrial Classification (SIC) codes as published by the U.S. Government respectively in the current version of the "Standard Industrial Classification Manual", Office of Management and Budget, Executive Office of the President. The "Standard Industrial Classification Manual" is intended to cover the entire field of economic activities. It classifies and defines activities by industry categories and is the source used by SBA as a guide in defining industries for size standards. (It is available for sale from the U.S. Government Printing Office [1] and is in the reference room of most libraries.) The number of employees or annual receipts indicates the maximum allowed for a concern (including its affiliates) to be considered small.

SIZE STANDARDS BY SIC INDUSTRY

SIC (* = New SIC Code in 1987, Not Used in 1972)	Description (N.E.C. = Not Elsewhere Classified)	Size standards in number of employees or millions of dollars
For all industries not specifically listed in this table, except for those in Divisions I and J of the SIC System, the size standard is $3.5 million in annual receipts.		
DIVISION A—AGRICULTURE		
Major Group 01—Agricultural Production—Crops		
0111–0191		[1] $0.5
Major Group 02—Agricultural Production—Livestock and Animal Specialties		
0211	Beef Cattle Feedlots (Custom).	$1.0
0212–0291	Livestock and Animal Specialties, Except 0211 and 0252.	$0.5
0252	Chicken Eggs	$1.0
Major Group 07—Agricultural Services		
All SICs		$3.5
Major Group 08—Forestry		
All SICs		$3.5
Major Group 09—Fishing, Hunting, and Trapping		
All SICs		$2.0
DIVISION B—MINING		
Major Group 10—Metal Mining		
1011	Iron Ores	500
1021	Copper Ores	500
1031	Lead and Zinc Ores	500
1041	Gold Ores	500
1044	Silver Ores	500
1061	Ferroalloy Ores, Except Vanadium.	500
1081	Metal Mining Services	$3.5
1094	Uranium-Radium-Vanadium Ores.	500
1099	Miscellaneous Metal Ores, N.E.C.	500
Major Group 12—Coal Mining		
1221*	Bituminous Coal and Lignite Surface Mining.	500
1222*	Bituminous Coal Underground Mining.	500
1231*	Anthracite Mining	500
1241*	Coal Mining Services	$3.5
Major Group 13—Oil and Gas Extraction		
1311	Crude Petroleum and Natural Gas.	500
1321	Natural Gas Liquids	500
1381	Drilling Oil and Gas Wells	500
1382	Oil and Gas Field Exploration Services.	$3.5
1389	Oil and Gas Field Services, N.E.C.	$3.5
Major Group 14—Mining and Quarrying of Nonmetallic Minerals, Except Fuels		
1411	Dimension Stone	500
1422	Crushed and Broken Limestone.	500
1423	Crushed and Broken Granite.	500
1429	Crushed and Broken Stone, N.E.C.	500
1442	Construction Sand and Gravel.	500
1446	Industrial Sand	500
1455	Kaolin and Ball Clay	500
1459	Clay, Ceramic, and Refractory Minerals, N.E.C.	500
1474	Potash, Soda, and Borate Minerals.	500
1475	Phosphate Rock	500
1479	Chemical and Fertilizer Mineral Mining, N.E.C.	500
1481	Nonmetallic Minerals Services, Except Fuels.	$3.5
1499	Miscellaneous Nonmetallic Minerals, Except Fuels.	500
DIVISION C—CONSTRUCTION		
Major Group 15—Building Construction—General Contractors and Operative Builders		
1521	General Contractors—Single-Family Houses.	$17.0
1522	General Contractors—Residential Buildings, Other Than Single-Family.	$17.0
1531	Operative Builders	$17.0
1541	General Contractors—Industrial Buildings and Warehouses.	$17.0
1542	General Contractors—Nonresidential Buildings, Other Than Industrial Buildings and Warehouses.	$17.0
Major Group 16—Heavy Construction Other Than Building Construction—Contractors		
1611	Highway and Street Construction, Except Elevated Highways.	$17.0
1622	Bridge, Tunnel, and Elevated Highway Construction.	$17.0
1623	Water, Sewer, Pipeline, and Communications and Power Line Construction.	$17.0
1629	Heavy Construction, Except Dredging, N.E.C.	$17.0
1629	Dredging and Surface Cleanup Activities.	$13.5 [2]
Major Group 17—Construction—Special Trade Contractors		
1711	Plumbing, Heating, and Air-Conditioning.	$7.0
1721	Painting and Paper Hanging.	$7.0
1731	Electrical Work	$7.0
1741	Masonry, Stone Setting, and Other Stone Work.	$7.0
1742	Plastering, Drywall, Acoustical and Insulation Work.	$7.0
1743	Terrazzo, Tile, Marble, and Mosaic Work.	$7.0
1751	Carpentry Work	$7.0
1752	Floor Laying and Other Floor Work, N.E.C.	$7.0
1761	Roofing, Siding, and Sheet Metal Work.	$7.0
1771	Concrete Work	$7.0
1781	Water Well Drilling	$7.0
1791	Structural Steel Erection	$7.0
1793	Glass and Glazing Work	$7.0
1794	Excavation Work	$7.0
1795	Wrecking and Demolition Work.	$7.0
1796	Installation or Erection of Building Equipment, N.E.C.	$7.0
1799	Special Trade Contractors, N.E.C.	$7.0
	Base Housing Maintenance [10].	$7.0
DIVISION D—MANUFACTURING [3]		
Major Group 20—Food and Kindred Products		
2011	Meat Packing Plants	500
2013	Sausages and Other Prepared Meat Products.	500

[1] Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

SIZE STANDARDS BY SIC INDUSTRY—Continued

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SIZE STANDARDS BY SIC INDUSTRY—Continued

SIC (* = New SIC Code in 1987, Not Used in 1972)	Description (N.E.C. = Not Elsewhere Classified)	Size standards in number of employees or millions of dollars
2015*	Poultry Slaughtering and Processing	500
2021	Creamery Butter	500
2022	Natural, Processed, and Imitation Cheese	500
2023	Dry, Condensed, and Evaporated Dairy Products	500
2024	Ice Cream and Frozen Desserts	500
2026	Fluid Milk	500
2032	Canned Specialties	1,000
2033	Canned Fruits, Vegetables, Preserves, Jams, and Jellies *	500
2034	Dried and Dehydrated Fruits, Vegetables, and Soup Mixes	500
2035	Pickled Fruits and Vegetables, Vegetable Sauces and Seasonings, and Salad Dressings	500
2037	Frozen Fruits, Fruit Juices, and Vegetables	500
2038	Frozen Specialties, N.E.C.	500
2041	Flour and Other Grain Mill Products	500
2043	Cereal Breakfast Foods	1,000
2044	Rice Milling	500
2045	Prepared Flour Mixes and Doughs	500
2046	Wet Corn Milling	750
2047	Dog and Cat Food	500
2048	Prepared Feeds and Feed Ingredients for Animals and Fowls, Except Dogs and Cats	500
2051	Bread and Other Bakery Products, Except Cookies and Crackers	500
2052	Cookies and Crackers	750
2053*	Frozen Bakery Products, Except Bread	500
2061	Cane Sugar, Except Refining	500
2062	Cane Sugar Refining	750
2063	Beet Sugar	750
2064*	Candy and Other Confectionery Products	500
2066	Chocolate and Cocoa Products	500
2067	Chewing Gum	500
2068*	Salted and Roasted Nuts and Seeds	500
2074	Cottonseed Oil Mills	500
2075	Soybean Oil Mills	500
2076	Vegetable Oil Mills, Except Corn, Cottonseed, and Soybean	1,000
2077	Animals and Marine Fats and Oils	500
2079	Shortening, Table Oils, Margarine, and Other Edible Fats and Oils, N.E.C.	750
2082	Malt Beverages	500
2083	Malt	500
2084	Wines, Brandy, and Brandy Spirits	500
2085	Distilled and Blended Liquors	750
2086	Bottled and Canned Soft Drinks and Carbonated Waters	500
2087	Flavoring Extracts and Flavoring Syrups, N.E.C.	500
2091	Canned and Cured Fish and Seafoods	500
2092	Prepared Fresh or Frozen Fish and Seafoods	500
2095	Roasted Coffee	500
2096*	Potato Chips, Corn Chips, and Similar Snacks	500
2097	Manufactured Ice	500
2098	Macaroni, Spaghetti, Vermicelli, and Noodles	500
2099	Food Preparations, N.E.C.	500
	Major Group 21—Tobacco Products	
2111	Cigarettes	1,000
2121	Cigars	500
2131	Chewing and Smoking Tobacco and Snuff	500
2141	Tobacco Stemming and Redrying	500
	Major Group 22—Textile Mill Products	
2211	Broadwoven Fabric Mills, Cotton	1,000
2221	Broadwoven Fabric Mills, Manmade Fiber and Silk	500
2231	Broadwoven Fabric Mills, Wool (including Dyeing and Finishing)	500
2241	Narrow Fabric and Other Smallwares Mills: Cotton, Wool, Silk and Manmade Fiber	500
2251	Women's Full-Length and Knee-Length Hosiery, Except Socks	500
2252	Hosiery, N.E.C.	500
2253	Knit Outerwear Mills	500
2254	Knit Underwear and Nightwear Mills	500
2257	Weft Knit Fabric Mills	500
2258	Lace and Warp Knit Fabric Mills	500
2259	Knitting Mills, N.E.C.	500
2261	Finishers of Broadwoven Fabrics of Cotton	1,000
2262	Finishers of Broadwoven Fabrics of Manmade Fiber and Silk	500
2269	Finishers of Textiles, N.E.C.	500
2273*	Carpets and Rugs	500
2281	Yarn Spinning Mills	500
2282	Yarn Texturizing, Throwing, Twisting, and Winding Mills	500
2284	Thread Mills	500
2295	Coated Fabrics, Not Rubberized	1,000
2296	Tire Cord and Fabrics	1,000
2297	Nonwoven Fabrics	500
2298	Cordage and Twine	500
2299	Textile Goods, N.E.C.	500
	Major Group 23—Apparel and Other Finished Products Made From Fabrics and Similar Materials	
2311	Men's and Boys' Suits, Coats and Overcoats	500
2321	Men's and Boys' Shirts, Except Work Shirts	500
2322	Men's and Boys' Underwear and Nightwear	500
2323	Men's and Boys' Neckwear	500
2325*	Men's and Boys' Separate Trousers and Slacks	500
2326*	Men's and Boys' Work Clothing	500
2329	Men's and Boys' Clothing, N.E.C.	500
2321	Women's, Misses', and Juniors' Blouses and Shirts	500
2335	Women's, Misses', and Juniors' Dresses	500
2337	Women's, Misses', and Juniors' Suits, Skirts, and Coats	500
2339	Women's, Misses', and Juniors' Outerwear, N.E.C.	500
2341	Women's, Misses', Children's, and Infants' Underwear and Nightwear	500
2342	Brassieres, Girdles, and Allied Garments	500
2353*	Hats, Caps, and Millinery	500
2361	Girls', Children's, and Infants' Dresses, Blouses, and Shirts	500
2369	Girls', Children's, and Infants' Outerwear, N.E.C.	500
2371	Fur Goods	500
2381	Dress and Work Gloves, Except Knit and All-Leather	500
2384	Robes and Dressing Gowns	500
2385	Waterproof Outerwear	500
2386	Leather and Sheep-Lined Clothing	500
2387	Apparel Belts	500
2389	Apparel and Accessories, N.E.C.	500
2391	Curtains And Draperies	500
2392	Housefurnishings, Except Curtains and Draperies	500
2393	Textile Bags	500
2394	Canvas and Related Products	500
2395	Pleating, Decorative and Novelty Stitching, and Tucking for the Trade	500
2396	Automotive Trimmings, Apparel Findings, and Related Products	500
2397	Schiffli Machine Embroideries	500
2399	Fabricated Textile Products, N.E.C.	500
	Major Group 24—Lumber and Wood Products, Except Furniture	
2411	Logging	500
2421	Sawmills and Planing Mills, General	500
2426	Hardwood Dimension and Flooring Mills	500
2429	Special Product Sawmills, N.E.C.	500
2431	Millwork	500
2434	Wood Kitchen Cabinets	500
2435	Hardwood Veneer and Plywood	500
2436	Softwood Veneer and Plywood	500
2439	Structural Wood Members, N.E.C.	500
2441	Nailed and Lock Corner Wood Boxes and Shook	500
2448	Wood Pallets and Skids	500
2449	Wood Containers, N.E.C.	500
2451	Mobile Homes	500
2452	Prefabricated Wood Buildings and Components	500
2491	Wood Preserving	500
2493*	Reconstituted Wood Products	500
2499	Wood Products, N.E.C.	500
	Major Group 25—Furniture and Fixtures	
2511	Wood Household Furniture, Except Upholstered	500
2512	Wood Household Furniture, Upholstered	500
2514	Metal Household Furniture	500
2515	Mattresses, Foundations, and Convertible Beds	500
2517	Wood Television, Radio, Phonograph, and Sewing Machine Cabinets	500
2519	Household Furniture, N.E.C.	500
2521	Wood Office Furniture	500
2522	Office Furniture, Except Wood	500
2531	Public Building and Related Furniture	500
2541	Wood Office and Store Fixtures, Partition, Shelving, and Lockers	500
2542	Office and Store Fixtures, Partitions, Shelving, and Lockers, Except Wood	500
2591	Drapery Hardware and Window Blinds and Shades	500
2599	Furniture and Fixtures, N.E.C.	500
	Major Group 26—Paper and Allied Products	
2611	Pulp Mills	750
2621	Paper Mills	750
2631	Paperboard Mills	750
2652	Setup Paperboard Boxes	500
2653	Corrugated and Solid Fiber Boxes	500
2655	Fiber Cans, Tubes, Drums, and Similar Products	500
2656*	Sanitary Food Containers, Except Folding	750
2657*	Folding Paperboard Boxes, Including Sanitary	750
2671*	Packaging Paper and Plastics Film, Coated and Laminated	500
2672*	Coated and Laminated Paper, N.E.C.	500
2673*	Plastics, Foil, and Coated Paper Bags	500
2674*	Uncoated Paper and Multiwall Bags	500
2675*	Die-Cut Paper and Paperboard and Cardboard	500
2676*	Sanitary Paper Products	500
2677*	Envelopes	500
2678*	Stationery, Tablets, and Related Products	500
2679*	Converted Paper and Paperboard Products, N.E.C.	500
	Major Group 27—Printing, Publishing, and Allied Industries	
2711	Newspapers: Publishing, or Publishing and Printing	500
2721	Periodicals: Publishing, or Publishing and Printing	500
2731	Books: Publishing, or Publishing and Printing	500
2732	Book Printing	500
2741	Miscellaneous Publishing	500
2752	Commercial Printing, Lithographic	500
2754	Commercial Printing, Gravure	500
2759*	Commercial Printing, N.E.C.	500
2761	Manifold Business Forms	500
2771	Greeting Cards	500
2782	Blankbooks, Looseleaf / Binders and Devices	500
2789	Bookbinding and Related Work	500
2791	Typesetting	500
2796*	Platemaking and Related Services	500
	Major Group 28—Chemicals and Allied Products	
2812	Alkalies and Chlorine	1,000
2813	Industrial Gases	1,000
2816	Inorganic Pigments	1,000
2819	Industrial Inorganic Chemicals, N.E.C.	1,000
2821	Plastics Materials, Synthetic Resins, and Nonvulcanizable Elastomers	750
2822	Synthetic Rubber (Vulcanizable Elastomers)	1,000
2823	Cellulosic Manmade Fibers	1,000
2824	Manmade Organic Fibers, Except Cellulosic	1,000
2833	Medicinal Chemicals and Botanical Products	750
2834	Pharmaceutical Preparations	750
2835*	In Vitro and In Vivo Diagnostic Substances	500
2836*	Biological Products, Except Diagnostic Substances	500
2841	Soap and Other Detergents, Except Specialty Cleaners	750
2842	Specialty Cleaning, Polishing, and Sanitation Preparations	500
2843	Surface Active Agents, Finishing Agents, Sulfonated Oils, and Assistants	500
2844	Perfumes, Cosmetics, and Other Toilet Preparations	500
2851	Paints, Varnishes, Lacquers, Enamels, and Allied Products	500
2861	Gum and Wood Chemicals	500
2865	Cyclic Organic Crudes and Intermediates, and Organic Dyes and Pigments	750
2869	Industrial Organic Chemicals, N.E.C.	1000
2873	Nitrogenous Fertilizers	1,000
2874	Phosphatic Fertilizers	500
2875	Fertilizers, Mixing Only	500
2879	Pesticides and Agricultural Chemicals, N.E.C.	500
2891	Adhesives and Sealants	500
2892	Explosives	750
2893	Printing Ink	500
2895	Carbon Black	500
2899	Chemicals and Chemical Preparations, N.E.C.	500
	Major Group 29—Petroleum Refining and Related Industries	
2911	Petroleum Refining *	1,500
2951	Asphalt Paving Mixtures and Blocks	800
2952	Asphalt Felts and Coatings	750
2992	Lubricating Oils and Greases	500
2999	Products of Petroleum and Coal, N.E.C.	500

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SIZE STANDARDS BY SIC INDUSTRY—Continued

SIC (* = New SIC Code in 1987, Not Used in 1972)	Description (N.E.C. = Not Elsewhere Classified)	Size standards in number of employees or millions of dollars
Major Group 30—Rubber and Miscellaneous Plastics Products		
3011	Tires and Inner Tubes 6	1,000
3021	Rubber and Plastics Footwear.	1,000
3052*	Rubber and Plastics Hose and Belting.	500
3053*	Gaskets, Packing, and Sealing Devices.	500
3061*	Molded, Extruded, and Lathe-Cut Mechanical Rubber Goods.	500
3069	Fabricated Rubber Products, N.E.C.	500
3081*	Unsupported Plastics Film and Sheet.	500
3082*	Unsupported Plastics Profile Shapes.	500
3083*	Laminated Plastics Plate, Sheet, and Profile Shapes.	500
3084*	Plastics Pipe	500
3085*	Plastics Bottles	500
3086*	Plastics Foam Products	500
3087*	Custom Compounding of Purchased Plastics Resins.	500
3088*	Plastics Plumbing Fixtures	500
3089*	Plastics Products, N.E.C.	500
Major Group 31—Leather and Leather Products		
3111	Leather Tanning and Finishing.	500
3131	Boot and Shoe Cut Stock and Findings.	500
3142	House Slippers	500
3143	Men's Footwear, Except Athletic.	500
3144	Women's Footwear, Except Athletic.	500
3149	Footwear, Except Rubber, N.E.C.	500
3151	Leather Gloves and Mittens.	500
3161	Luggage	500
3171	Women's Handbags and Purses.	500
3172	Personal Leather Goods, Except Women's Handbags and Purses.	500
3199	Leather Goods, N.E.C.	500
Major Group 32—Stone, Clay, Glass, and Concrete Products		
3211	Flat Glass	1,000
3221	Glass Containers	750
3229	Pressed and Blown Glass and Glassware, N.E.C.	750
3231	Glass Products, Made of Purchased Glass.	500
3241	Cement, Hydraulic	750
3251	Brick and Structural Clay Tile.	500
3253	Ceramic Wall and Floor Tile.	500
3255	Clay Refractories	500
3259	Structural Clay Products, N.E.C.	500
3261	Vitreous China Plumbing Fixtures and China and Earthenware Fittings and Bathroom Accessories.	750
3262	Vitreous China Table and Kitchen Articles.	500
3263	Fine Earthware (Whiteware) Table and Kitchen Articles.	500
3264	Porcelain Electrical Supplies.	500
3269	Pottery Products, N.E.C.	500
3271	Concrete Block and Brick	500
3272	Concrete Products, Except Block and Brick.	500
3273	Ready Mixed Concrete	500
3274	Lime	500
3275	Gypsum Products	1,000
3281	Cut Stone and Stone Products.	500
3291	Abrasive Products	500
3292	Asbestos Products	750
3295	Minerals and Earths, Ground or Otherwise Treated.	500
3296	Mineral Wool	750
3297	Nonclay Refractories	750
3299	Nonmetallic Mineral Products, N.E.C.	500
Major Group 33—Primary Metal Industries		
3312	Steel Works, Blast Furnaces (Including Coke Ovens), and Rolling Mills.	1,000
3313	Electrometallurgical Products, Except Steel.	750
3315	Steel Wiredrawing and Steel Nails and Spikes.	1,000
3316	Cold-Rolled Steel Sheet, Strip, and Bars.	1,000
3317	Steel Pipe and Tubes	1,000
3321	Gray and Ductile Iron Foundries.	500
3322	Malleable Iron Foundries	500
3324	Steel Investment Foundries.	500
3325	Steel Foundries, N.E.C.	500
3331	Primary Smelting and Refining of Copper.	1,000
3334	Primary Production of Aluminum.	1,000
3339	Primary Smelting and Refining of Nonferrous Metals, Except Copper and Aluminum.	750
3341	Secondary Smelting and Refining of Nonferrous Metals.	500
3351	Rolling, Drawing, and Extruding of Copper.	750
3353	Aluminum Sheet, Plate, and Foil.	750
3354	Aluminum Extruded Products.	750
3355	Aluminum Rolling and Drawing, N.E.C.	750
3356	Rolling, Drawing, and Extruding of Nonferrous Metals, Except Copper and Aluminum.	750
3357	Drawing and Insulating of Nonferrous Wire.	1,000
3363*	Aluminum Die-Castings	500
3364*	Nonferrous Die-Castings, Except Aluminum.	500
3365*	Aluminum Foundries	500
3366*	Copper Foundries	500
3369	Nonferrous Foundries, Except Aluminum and Copper.	500
3398	Metal Heat Treating	750
3399	Primary Metal Products, N.E.C.	750
Major Group 34—Fabricated Metal Products, Except Machinery and Transportation Equipment		
3411	Metal Cans	1,000
3412	Metal Shipping Barrels, Drums, Kegs, and Pails.	500
3421	Cutlery	500
3423	Hand and Edge Tools, Except Machine Tools and Handsaws.	500
3425	Saw Blades and Handsaws.	500
3429	Hardware, N.E.C.	500
3431	Enameled Iron and Metal Sanitary Ware.	750
3432	Plumbing Fixture Fittings and Trim.	500
3433	Heating Equipment, Except Electric and Warm Air Furnaces.	500
3441	Fabricated Structural Metal.	500
3442	Metal Doors, Sash, Frames, Molding, and Trim.	500
3443	Fabricated Plate Work (Boiler Shops).	500
3444	Sheet Metal Work	500
3446	Architectural and Ornamental Metal Work.	500
3448	Prefabricated Metal Buildings and Components.	500
3449	Miscellaneous Structural Metal Work.	500
3451	Screw Machine Products	500
3452	Bolts, Nuts, Screws, Rivets, and Washers.	500
3462	Iron and Steel Forgings	500
3463	Nonferrous Forgings	500
3465	Automotive Stampings	500
3466	Crowns and Closures	500
3469	Metal Stampings, N.E.C.	500
3471	Electroplating, Plating, Polishing, Anodizing, and Coloring.	500
3479	Coating, Engraving, and Allied Services, N.E.C.	500
3482	Small Arms Ammunition	1,000
3483	Ammunition, Except for Small Arms.	1,500
3484	Small Arms	1,000
3489	Ordnance and Accessories, N.E.C.	500
3491*	Industrial Valves	500
3492*	Fluid Power Valves and Hose Fittings.	500
3493	Steel Springs, Except Wire.	500
3494	Valves and Pipe Fittings, N.E.C.	500
3495	Wire Springs	500
3496	Miscellaneous Fabricated Wire Products.	500
3497	Metal Foil and Leaf	500
3498	Fabricated Pipe and Pipe Fittings.	500
3499	Fabricated Metal Products, N.E.C.	500
Major Group 35—Industrial and Commercial Machinery and Computer Equipment		
3511	Steam, Gas, and Hydraulic Turbines, and Turbine Generator Set Units.	1,000
3519	Internal Combustion Engines, N.E.C.	1,000
3523	Farm Machinery and Equipment.	500
3524	Lawn and Garden Tractors and Home Lawn and Garden Equipment.	500
3531	Construction Machinery and Equipment.	750
3532	Mining Machinery and Equipment, Except Oil and Gas Field Machinery and Equipment.	500
3533	Oil and Gas Field Machinery and Equipment.	500
3534	Elevators and Moving Stairways.	500
3535	Conveyors and Conveying Equipment.	500
3536	Overhead Traveling Cranes, Hoists, and Monorail Systems.	500
3537	Industrial Trucks, Tractors, Trailers, and Stackers.	750
3541	Machine Tools, Metal Cutting Types.	500
3542	Machine Tools, Metal Forming Types.	500
3543*	Industrial Patterns	500
3544	Special Dies and Tools, Die Sets, Jigs and Fixtures, and Industrial Molds.	500
3545	Cutting Tools, Machine Tool Accessories, and Machinists' Precision Measuring Devices.	500
3546	Power-Driven Handtools	500
3547	Rolling Mill Machinery and Equipment.	500
3548*	Electric and Gas Welding and Soldering Equipment.	500
3549	Metalworking Machinery, N.E.C.	500
3552	Textile Machinery	500
3553	Woodworking Machinery	500
3554	Paper Industries Machinery.	500
3555	Printing Trades Machinery and Equipment.	500
3556*	Food Products Machinery	500
3559	Special Industry Machinery, N.E.C.	500
3561	Pumps and Pumping Equipment.	500
3562	Ball and Roller Bearings	750
3563	Air and Gas Compressors	500
3564	Industrial and Commercial Fans and Blowers and Air Purification Equipment.	500
3565*	Packaging Machinery	500
3566	Speed Changers, Industrial High-Speed Drives, and Gears.	500
3567	Industrial Process Furnaces and Ovens.	500
3568	Mechanical Power Transmission Equipment, N.E.C.	500
3569	General Industrial Machinery and Equipment, N.E.C.	500
3571*	Electronic Computers	1,000
3572*	Computer Storage Devices.	1,000
3575*	Computer Terminals	1,000
3577*	Computer Peripheral Equipment, N.E.C.	1,000
3578*	Calculating and Accounting Machines, Except Electronic Computers.	1,000
3579	Office Machines, N.E.C.	500
3581	Automatic Vending Machines.	500
3582	Commercial Laundry, Drycleaning, and Pressing Machines.	500
3585	Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment.	750
3586	Measuring and Dispensing Pumps.	500
3589	Service Industry Machinery, N.E.C.	500
3592	Carburetors, Pistons, Piston Rings, and Valves.	500
3593*	Fluid Power Cylinders and Actuators.	500
3594*	Fluid Power Pumps and Motors.	500
3596*	Scales and Balances, Except Laboratory.	500
3599	Industrial and Commercial Machinery and Equipment, N.E.C.	500
Major Group 36—Electronic and Other Electrical Equipment and Components, Except Computer Equipment		
3612	Power, Distribution, and Specialty Transformers.	750
3613	Switchgear and Switchboard Apparatus.	750
3621	Motors and Generators	1,000
3624	Carbon and Graphite Products.	750
3625*	Relays and Industrial Controls.	750
3629	Electrical Industrial Apparatus, N.E.C.	500
3631	Household Cooking Equipment.	750
3632	Household Refrigerators and Home and Farm Freezers.	1,000
3633	Household Laundry Equipment.	1,000
3634	Electric Housewares and Fans.	750
3635	Household Vacuum Cleaners.	750
3639	Household Appliances, N.E.C.	500
3641	Electric Lamp Bulbs and Tubes.	1,000
3643	Current-Carrying Wiring Devices.	500
3644	Noncurrent-Carrying Wiring Devices.	500
3645	Residential Electric Lighting Fixtures.	500
3646	Commercial, Industrial, and Institutional Electric Lighting Fixtures.	500
3647	Vehicular Lighting Equipment.	500
3648	Lighting Equipment, N.E.C.	500
3651	Household Audio and Video Equipment.	750
3652	Phonograph Records and Prerecorded Audio Tapes and Disks.	750
3661	Telephone and Telegraph Apparatus.	1,000
3663*	Radio and Television Broadcasting and Communications Equipment.	750
3669*	Communications Equipment, N.E.C.	750
3671	Electron Tubes	750
3672*	Printed Circuit Boards	500
3674	Semiconductors and Related Devices.	500
3675	Electronic Capacitors	500
3676	Electronic Resistors	500
3677	Electronic Coils, Transformers, and Other Inductors.	500
3678	Electronic Connectors	500
3679	Electronic Components, N.E.C.	500

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3691	Storage Batteries	500
3692	Primary Batteries, Dry and Wet.	1,000
3694	Electrical Equipment for Internal Combustion Engines.	750
3695*	Magnetic and Optical Recording Media.	1,000
3699	Electrical Machinery, Equipment, and Supplies, N.E.C.	750
Major Group 37—Transportation Equipment		
3711	Motor Vehicles and Passenger Car Bodies.	1,000
3713	Truck and Bus Bodies	500
3714	Motor Vehicles Parts and Accessories.	500
3715	Truck Trailers	500
3716	Motor Homes	1,000
3721	Aircraft	1,500
3724	Aircraft Engines and Engine Parts.	1,000
3728	Aircraft Parts and Auxiliary Equipment, N.E.C [11].	1,000
3731	Shipbuilding and Repair of Nuclear Propelled Ships.	1,000
	Shipbuilding of Nonnuclear Propelled Ships and Nonpropelled Ships.	1,000
	Ship Repair (Including Overhauls and Conversions) Performed on Nonnuclear Propelled and Nonpropelled Ships East of the 108 Meridian.	1,000
	Ship Repair (Including Overhauls and Conversions) Performed on Nonnuclear Propelled and Nonpropelled Ships West of the 108 Meridian.	1,000
3732	Boat Building and Repairing.	500
3743	Railroad Equipment	1,000
3751	Motorcycles, Bicycles, and Parts.	500
3761	Guided Missiles and Space Vehicles.	1,000
3764	Guided Missiles and Space Vehicle Propulsion Units and Propulsion Unit Parts.	1,000
3769	Guided Missile and Space Vehicle Parts and Auxiliary Equipment, N.E.C.	1,000
3792	Travel Trailers and Campers.	500
3795	Tanks and Tank Components.	1,000

SIZE STANDARDS BY SIC INDUSTRY—Continued

SIC (*=New SIC Code in 1987, Not Used in 1972)	Description (N.E.C.=Not Elsewhere Classified)	Size standards in number of employees or millions of dollars
3799	Transportation Equipment, N.E.C.	500
Major Group 38—Measuring, Analyzing, and Controlling Instruments; Photographic, Medical, and Optical Goods; Watches and Clocks		
3812*	Search, Detection, Navigation, Guidance, Aeronautical, and Nautical Systems and Instruments.	750
3821*	Laboratory Apparatus and Furniture.	500
3822	Automatic Controls for Regulating Residential and Commercial Environments and Appliances.	500
3823	Industrial Instruments for Measurement, Display, and Control of Process Variables, and Related Products.	500
3824	Totalizing Fluid Meters and Counting Devices.	500
3825	Instruments for Measuring and Testing of Electricity and Electrical Signals.	500
3826*	Laboratory Analytical Instruments.	500
3827*	Optical Instruments and Lenses.	500
3829	Measuring and Controlling Devices, N.E.C.	500
3841	Surgical and Medical Instruments and Apparatus.	500
3842	Orthopedic, Prosthetic, and Surgical Appliances and Supplies.	500
3843	Dental Equipment and Supplies.	500
3844*	X-Ray Apparatus and Tubes and Related Irradiation Apparatus.	500
3845*	Electromedical and Electrotherapeutic Apparatus.	500
3851	Ophthalmic Goods	500
3861	Photographic Equipment and Supplies.	500
3873	Watches, Clocks, Clockwork Operated Devices, and Parts.	500
Major Group 39—Miscellaneous Manufacturing Industries		
3911	Jewelry, Precious Metal	500
3914	Silverware, Plated Ware, and Stainless Steel Ware.	500
3915	Jewelers' Findings and Materials, and Lapidary Work.	500
3931	Musical Instruments	500
3942	Dolls and Stuffed Toys	500

SIZE STANDARDS BY SIC INDUSTRY—Continued

SIC (*=New SIC Code in 1987, Not Used in 1972)	Description (N.E.C.=Not Elsewhere Classified)	Size standards in number of employees or millions of dollars
3944	Games, Toys, and Children's Vehicles, Except Dolls and Bicycles.	500
3949	Sporting and Athletic Goods, N.E.C.	500
3951	Pens, Mechanical Pencils, and Parts.	500
3952	Lead Pencils, Crayons, and Artists' Materials.	500
3953	Marking Devices	500
3955	Carbon Paper and Inked Ribbons.	500
3961	Costume Jewelry and Costume Novelties, Except Precious Metal.	500
3965*	Fasteners, Buttons, Needles, and Pins.	500
3991	Brooms and Brushes	500
3993	Signs and Advertising Specialties.	500
3996	Linoleum, Asphalted-Felt-Base, and Other Hard Surface Floor Coverings, N.E.C.	750
3999	Manufacturing Industries, N.E.C.	500
DIVISION E—TRANSPORTATION, COMMUNICATIONS, ELECTRIC, GAS, AND SANITARY SERVICES		
Major Group 40—Railroad Transportation		
4011	Railroads, Line-Haul Operating.	1,500
4013	Railroad Switching and Terminal Establishments.	500
Major Group 41—Local and Suburban Transit and Interurban Highway Passenger Transportation		
4111	Local and Suburban Transit.	$3.5
4119	Local Passenger Transportation, N.E.C.	$3.5
4121	Taxicabs	$3.5
4131	Intercity and Rural Bus Transportation.	$3.5
4141	Local Bus Charter Service	$3.5
4142	Bus Charter Service, Except Local.	$3.5
4151	School Buses	$3.5
4173*	Terminal and Service Facilities for Motor Vehicle Passenger Transportation.	$3.5
Major Group 42—Motor Freight Transportation and Warehousing		
4212	Local Trucking Without Storage [9].	$12.5
4213	Trucking, Except Local	$12.5
4214	Local Trucking With Storage.	$12.5
4215*	Courier Services, Except by Air.	$12.5
4221	Farm Product Warehousing and Storage.	$12.5

SIZE STANDARDS BY SIC INDUSTRY—Continued

SIC (*=New SIC Code in 1987, Not Used in 1972)	Description (N.E.C.=Not Elsewhere Classified)	Size standards in number of employees or millions of dollars
4222	Refrigerated Warehousing and Storage.	$12.5
4225	General Warehousing and Storage.	$12.5
4226	Special Warehousing and Storage, N.E.C.	$12.5
4231	Terminal and Joint Terminal Maintenance Facilities for Motor Freight Transportation.	$3.5
Major Group 44—Water Transportation [8]		
4412	Deep Sea Foreign Transportation of Freight.	500
4424*	Deep Sea Domestic Transportation of Freight.	500
4432*	Freight Transportation on the Great Lakes—St. Lawrence Seaway.	500
4449*	Water Transportation of Freight, N.E.C.	500
4481*	Deep Sea Transportation of Passengers, Except by Ferry.	500
4482*	Ferries	500
4489*	Water Transportation of Passengers, N.E.C.	500
4491*	Marine Cargo Handling	$12.5
4492*	Towing and Tugboat Services.	$3.5
4493*	Marinas	$3.5
4499*	Water Transportation Services, N.E.C.	$3.5
Major Group 45—Transportation by Air [8]		
4512	Air Transportation, Scheduled.	[8] 1,500
4513*	Air Courier Services	[8] 1,500
4522*	Air Transportation, Nonscheduled.	[8] 1,500
4581*	Airports, Flying Fields, and Airport Terminal Services.	$3.5
Major Group 46—Pipelines, Except Natural Gas		
4612	Crude Petroleum Pipelines.	1,500
4613	Refined Petroleum Pipelines.	1,500
4619	Pipelines, N.E.C	$17.0
Major Group 47—Transportation Services		
4724*	Travel Agencies	[16] $0.5
4725*	Tour Operators	$3.5
4729*	Arrangement of Passenger Transportation, N.E.C.	$3.5
4731*	Arrangement of Transportation of Freight and Cargo.	$12.5
4741*	Rental of Railroad Cars	$3.5
4783	Packing and Crating	$12.5

SIZE STANDARDS BY SIC INDUSTRY—Continued

SIC (*=New SIC Code in 1987, Not Used in 1972)	Description (N.E.C.=Not Elsewhere Classified)	Size standards in number of employees or millions of dollars
4785*	Fixed Facilities and Inspection and Weighing Services for Motor Vehicle Transportation.	$3.5
4789	Transportation Services, N.E.C.	$3.5
Major Group 48—Communications		
4812*	Radiotelephone Communications.	1,500
4813*	Telephone Communications, Except Radiotelephone.	1,500
4832	Radio Broadcasting Stations.	$3.5
4833	Television Broadcasting Stations.	$7.0
4841*	Cable and Other Pay Television Services.	$7.5
4899	Communications Services, N.E.C.	$7.5
Major Group 49—Electric, Gas, and Sanitary Services		
4911	Electric Services	4 million megawatt hrs.
4924	Natural Gas Distribution	500
4941	Water Supply	$3.5
4952	Sewerage Systems	$3.5
4953	Refuse Systems	$6.0
4959	Sanitary Services, N.E.C.	$3.5
4961	Steam and Air-Conditioning Supply.	$6.0
4971	Irrigation Systems	$3.5
DIVISION F—WHOLESALE TRADE (Not Applicable to Government procurement of supplies. The nonmanufacturer size standard of 500 employees shall be used for purposes of Government procurement of supplies)		
Major Group 50—Wholesale Trade—Durable Goods		
5012	Automobiles and Other Motor Vehicles.	100
5013	Motor Vehicle Supplies / and New Parts.	100
5014	Tires and Tubes	100
5015*	Motor Vehicle Parts, Used	100
5021	Furniture	100
5023	Homefurnishings	100
5031	Lumber, Plywood, Millwork, and Wood Panels.	100
5032*	Brick, Stone, and Related Construction Materials.	100
5033*	Roofing, Siding, and Insulation Materials.	100
5039	Construction Materials, N.E.C.	100
5043	Photographic Equipment and Supplies.	100
5044*	Office Equipment	100
5045*	Computers and Computer Peripheral Equipment and Software.	100

SIZE STANDARDS BY SIC INDUSTRY—Continued

SIC (*=New SIC Code in 1987, Not Used in 1972)	Description (N.E.C.=Not Elsewhere Classified)	Size standards in number of employees or millions of dollars
5046*	Commercial Equipment, N.E.C.	100
5047*	Medical, Dental, and Hospital Equipment and Supplies.	100
5048*	Ophthalmic Goods	100
5049*	Professional Equipment and Supplies, N.E.C.	100
5051	Metals Service Centers and Offices.	100
5052	Coal and Other Minerals and Ores.	100
5063	Electrical Apparatus and Equipment, Wiring Supplies, and Construction Materials.	100
5064	Electrical Appliances, Television and Radio Sets.	100
5065	Electronic Parts and Equipment, N.E.C.	100
5072	Hardware	100
5074	Plumbing and Heating Equipment and Supplies (Hydronics).	100
5075	Warm Air Heating and Air-Conditioning Equipment and Supplies.	100
5078	Refrigeration Equipment and Supplies.	100
5082	Construction and Mining (Except Petroleum) Machinery and Equipment.	100
5083	Farm and Garden Machinery and Equipment.	100
5084	Industrial Machinery and Equipment.	100
5085	Industrial Supplies	100
5087	Service Establishment Equipment and Supplies.	100
5088	Transportation Equipment and Supplies, Except Motor Vehicles.	100
5091*	Sporting and Recreational Goods and Supplies.	100
5092*	Toys and Hobby Goods and Supplies.	100
5093	Scrap and Waste Materials.	100
5094	Jewelry, Watches, Precious Stones, and Precious Metals.	100
5099	Durable Goods, N.E.C.	100
Major Group 51—Wholesale Trade—Nondurable Goods		
5111	Printing and Writing Paper	100
5112	Stationery and Office Supplies.	100
5113	Industrial and Personal Service Paper.	100
5122	Drugs, Drug Proprietaries, and Druggists' Sundries.	100
5131*	Piece Goods, Notions, and Other Dry Goods.	100

SIZE STANDARDS BY SIC INDUSTRY—Continued

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SIZE STANDARDS BY SIC INDUSTRY—Continued

SIZE STANDARDS BY SIC INDUSTRY—Continued

SIC (* = New SIC Code in 1987, Not Used in 1972)	Description (N.E.C. = Not Elsewhere Classified)	Size standards in number of employees or millions of dollars
5136	Men's and Boys' Clothing and Furnishings.	100
5137	Women's, Children's, and Infants' Clothing and Accessories.	100
5139	Footwear	100
5141	Groceries, General Line	100
5142	Packaged Frozen Foods	100
5143	Dairy Products, Except Dried or Canned.	100
5144	Poultry and Poultry Products.	100
5145	Confectionery	100
5146	Fish and Seafoods	100
5147	Meats and Meat Products	100
5148	Fresh Fruits and Vegetables.	100
5149	Groceries and Related Products, N.E.C.	100
5153	Grain and Field Beans	100
5154	Livestock	100
5159	Farm-Product Raw Materials, N.E.C.	100
5162*	Plastics Materials and Basic Forms and Shapes.	100
5169*	Chemical and Allied Products, N.E.C.	100
5171	Petroleum Bulk Stations and Terminals.	100
5172	Petroleum and Petroleum Products Wholesalers, Except Bulk Stations and Terminals.	100
5181	Beer and Ale	100
5182	Wine and Distilled Alcoholic Beverages.	100
5191	Farm Supplies	100
5192*	Books, Periodicals, and Newspapers.	100
5193*	Flowers, Nursery Stock, and Florists' Supplies.	100
5194	Tobacco and Tobacco Products.	100
5198	Paints, Varnishes, and Supplies.	100
5199	Nondurable Goods, N.E.C.	100

DIVISION G—RETAIL TRADE (Not Applicable to Government procurement of supplies. The nonmanufacturer size standard of 500 employees shall be used for purposes of Government procurement of supplies)

Major Group 52—Building Materials, Hardware, Garden Supply, and Mobile Home Dealers

5211	Lumber and Other Building Materials Dealers.	$3.5
5231	Paint, Glass, and Wallpaper Stores.	$3.5
5251	Hardware Stores	$3.5
5261	Retail Nurseries, Lawn and Garden Supply Stores.	$3.5
5271	Mobile Home Dealers	$6.5

Major Group 53—General Merchandise Stores

5311	Department Stores	$13.5
5331	Variety Stores	$5.5
5399	Miscellaneous General Merchandise Stores.	$3.5

Major Group 54—Food Stores

5411	Grocery Stores	$13.5
5421*	Meat and Fish (Seafood) Markets, Including Freezer Provisioners.	$3.5
5431	Fruit and Vegetable Markets.	$3.5
5441	Candy, Nut, and Confectionery Stores.	$3.5
5451	Dairy Products Stores	$3.5
5461*	Retail Bakeries	$3.5
5499	Miscellaneous Food Stores.	$3.5

Major Group 55—Automotive Dealers and Gasoline Service Stations

5511	Motor Vehicle Dealers (New and Used).	$11.5
5521	Motor Vehicle Dealers (Used Only).	$11.5
5531	Auto and Home Supply Stores.	$3.5
5541	Gasoline Service Stations	$4.5
5551	Boat Dealers	$3.5
5561	Recreational Vehicle Dealers.	$3.5
5571	Motorcycle Dealers	$3.5
5599	Automotive Dealers, N.E.C [18].	$3.5

Major Group 56—Apparel and Accessory Stores

5611	Men's and Boys' Clothing and Accessory Stores.	$4.5
5621	Women's Clothing Stores	$4.5
5632*	Women's Accessory and Specialty Stores.	$3.5
5641	Children's and Infants' Wear Stores.	$3.5
5651	Family Clothing Stores	$4.5
5661	Shoe Stores	$4.5
5699	Miscellaneous Apparel and Accessory Stores.	$3.5

Major Group 57—Home Furniture, Furnishings, and Equipment Stores

5712	Furniture Stores	$3.5
5713	Floor Covering Stores	$3.5
5714	Drapery, Curtain, and Upholstery Stores.	$3.5
5719	Miscellaneous Homefurnishings Stores.	$3.5
5722	Household Appliance Stores.	$4.5
5731*	Radio, Television, and Consumer Electronics Stores.	$4.5
5734*	Computer and Computer Software Stores.	$4.5
5735*	Record and Prerecorded Tape Stores.	$3.5
5736*	Musical Instrument Stores	$3.5

Major Group 58—Eating and Drinking Places

5812	Eating Places, Except Food Service, Institutional.	$3.5
5812	Food Service, Institutional	$10.0
5813	Drinking Places (Alcoholic Beverages).	$3.5

Major Group 59—Miscellaneous Retail

5912	Drug Stores and Proprietary Stores.	$3.5
5921	Liquor Stores	$3.5
5932*	Used Merchandise Stores	$3.5
5941	Sporting Goods Stores and Bicycle Shops.	$3.5
5942	Book Stores	$3.5
5943	Stationery Stores	$3.5
5944	Jewelry Stores	$3.5
5945	Hobby, Toy, and Game Shops.	$3.5
5946	Camera and Photographic Supply Stores.	$3.5
5947	Gift, Novelty, and Souvenir Shops.	$3.5
5948	Luggage and Leather Goods Stores.	$3.5
5949	Sewing, Needlework, and Piece Goods Stores.	$3.5
5961	Catalog and Mail-Order Houses.	$12.5
5962	Automatic Merchandising Machine Operators.	$3.5
5963	Direct Selling Establishments.	$3.5
5983	Fuel Oil Dealers	$6.0
5984	Liquefied Petroleum Gas (Bottled Gas) Dealers.	$3.5
5989*	Fuel Dealers, N.E.C.	$3.5
5992	Florists	$3.5
5993	Tobacco Stores and Stands.	$3.5
5994	News Dealers and Newsstands.	$3.5
5995*	Optical Goods Stores	$3.5
5999	Miscellaneous Retail Stores, N.E.C.	$3.5

DIVISION H—FINANCE, INSURANCE, AND REAL ESTATE [19]

Major Group 60—Depository Institutions

6021*	National Commercial Banks	$100 [14]
6022	State Commercial Banks	$100 [14]
6029*	Commercial Banks, N.E.C.	$100 [14]
6035*	Savings Institutions, Federally Chartered.	$100 [14]
6036*	Savings Institutions, Not Federally Chartered.	$100 [14]

Major Group 62—Security and Commodity Brokers, Dealers, Exchanges, and Services

6221	Commodity Contracts Brokers and Dealers.	$3.5

SIZE STANDARDS BY SIC INDUSTRY—Continued

SIC (* = New SIC Code in 1987, Not Used in 1972)	Description (N.E.C. = Not Elsewhere Classified)	Size standards in number of employees or millions of dollars
6331	Fire, Marine, and Casualty Insurance.	$1,500

Major Group 64—Insurance Agents, Brokers, and Service

6411	Insurance Agents, Brokers, and Service.	$3.5

Major Group 65—Real Estate

6515	Operators of Residential Mobile Home Sites.	$3.5
	Leasing of Building Space to Federal Government by Owners.	$10.0
6531	Real Estate Agents and Managers.	$1.0 [16]

DIVISION I—SERVICES

Major Group 70—Hotels, Rooming Houses, Camps, and Other Lodging Places

7011	Hotels and Motels	$3.5
7021	Rooming and Boarding Houses.	$3.5
7032	Sporting and Recreational Camps.	$3.5
7033	Recreational Vehicle Parks and Campsites.	$3.5
7041	Organization Hotels and Lodging Houses, on Membership Basis.	$3.5

Major Group 72—Personal Services

7211	Power Laundries, Family and Commercial.	$7.0
7212	Garment Pressing, and Agents for Laundries and Drycleaners.	$3.5
7213	Linen Supply	$7.0
7215	Coin-Operated Laundries and Dry cleaning.	$3.5
7216	Drycleaning Plants, Except Rug Cleaning.	$2.5
7217	Carpet and Upholstery Cleaning.	$2.5
7218	Industrial Laundrers	$7.0
7219	Laundry and Garment Services, N.E.C.	$3.5
7221	Photographic Studios, Portrait.	$3.5
7231	Beauty Shops	$3.5
7241	Barber Shops	$3.5
7251	Shoe Repair Shops and Shoeshine Parlors.	$3.5
7261	Funeral Service and Crematories.	$3.5
7291*	Tax Return Preparation Services.	$3.5
7299	Miscellaneous Personal Services, N.E.C.	$3.5

Major Group 73—Business Services

7311	Advertising Agencies	$3.5
7312	Outdoor Advertising Services.	$3.5
7313	Radio, Television, and Publishers' Advertising Representatives.	$3.5
7319	Advertising, N.E.C.	$3.5
7322*	Adjustment and Collection Services.	$3.5
7323*	Credit Reporting Services	$3.5
7331	Direct Mail Advertising Services.	$3.5
7334*	Photocopying and Duplicating Services.	$3.5
7335*	Commercial Photography	$3.5
7336*	Commercial Art and Graphic Design.	$3.5
7338*	Secretarial and Court Reporting Services.	$3.5
7342	Disinfecting and Pest Control Services.	$3.5
7349	Building Cleaning and Maintenance Services, N.E.C.	$6.0
7352*	Medical Equipment Rental and Leasing.	$3.5
7353*	Heavy Construction Equipment Rental and Leasing.	$3.5
7359*	Equipment Rental and Leasing, N.E.C.	$3.5
7361	Employment Agencies	$3.5
7363*	Help Supply Services	$3.5
7371*	Computer Programming Services.	$7.0
7372	Prepackaged Software	$7.0
7373*	Computer Integrated Systems Design.	$7.0
7374	Computer Processing and Data Preparation and Processing Services.	$7.0
7375*	Information Retrieval Services.	$7.0
7376*	Computer Facilities Management Services.	$7.0
7377*	Computer Rental and Leasing.	$12.5
7378*	Computer Maintenance and Repair.	$12.5
7379	Computer Related Services, N.E.C.	$12.5
7381*	Detective, Guard, and Armored Car Services.	$6.0
7382*	Security Systems Services.	$6.0
7383*	News Syndicates	$3.5
7384*	Photofinishing Laboratories.	$3.5
7389*	Business Services, N.E.C.	$3.5

Major Group 75—Automotive Repair, Services, and Parking

7513	Truck Rental and Leasing, Without Drivers.	$12.5
7514*	Passenger Car Rental	$12.5
7515*	Passenger Car Leasing	$12.5
7519	Utility Trailer and Recreational Vehicle Rental.	$3.5
7521*	Automobile Parking	$3.5
7532*	Top, Body, and Upholstery Repair Shops and Paint Shops.	$3.5
7533*	Automotive Exhaust System Repair Shops.	$3.5
7534	Tire Retreading and Repair Shops.	$7.0
7536*	Automotive Glass Replacement Shops.	$3.5
7537*	Automotive Transmission Repair Shops.	$3.5
7538	General Automotive Repair Shops.	$3.5
7539	Automotive Repair Shops, N.E.C.	$3.5
7542	Carwashes	$3.5
7549	Automotive Services, Except Repair and Carwashes.	$3.5

Major Group 76—Miscellaneous Repair Services

7622	Radio and Television Repair Shops.	$3.5
7623	Refrigeration and Air-Conditioning Service and Repair Shops.	$3.5
7629	Electrical and Electronic Repair Shops, N.E.C.	$3.5
7631	Watch, Clock, and Jewelry Repair.	$3.5
7641	Reupholstery and Furniture Repair.	$3.5
7692	Welding Repair	$3.5
7694	Armature Rewinding Shops.	$3.5
7699	Repair Shops and Related Services, N.E.C. [17]	$3.5

Major Group 78—Motion Pictures

7812*	Motion Picture and Video Tape Production.	$14.5
7819	Services Allied to Motion Picture Production.	$14.5
7822*	Motion Picture and Video Tape Distribution.	$14.5
7829	Services Allied to Motion Picture Distribution.	$3.5
7832	Motion Picture Theaters, Except Drive-In.	$3.5
7833	Drive-In Motion Picture Theaters.	$3.5
7841*	Video Tape Rental	$3.5

Major Group 79—Amusement and Recreation Services

7911	Dance Studios, Schools, and Halls.	$3.5
7922	Theatrical Producers (Except Motion Picture) and Miscellaneous Theatrical Services.	$3.5
7929	Bands, Orchestras, Actors, and Other Entertainers and Entertainment Groups.	$3.5
7933	Bowling Centers	$3.5
7941	Professional Sports Clubs and Promoters.	$3.5

SIZE STANDARDS BY SIC INDUSTRY—Continued

SIC (* = New SIC Code in 1987, Not Used in 1972)	Description (N.E.C. = Not Elsewhere Classified)	Size standards in number of employees or millions of dollars
7948	Racing, Including Track Operation.	$3.5
7991	Physical Fitness Facilities	$3.5
7992	Public Golf Courses	$3.5
7993	Coin-Operated Amusement Devices.	$3.5
7996	Amusement Parks	$3.5
7997	Membership Sports and Recreation Clubs.	$3.5
7999	Amusement and Recreation Services, N.E.C.	$3.5

Major Group 80—Health Services

8011	Offices and Clinics of Doctors of Medicine.	$3.5
8021	Offices and Clinics of Dentists	$3.5
8031	Offices and Clinics of Doctors of Osteopathy.	$3.5
8041	Offices and Clinics of Chiropractors.	$3.5
8042	Offices and Clinics of Optometrists.	$3.5
8043	Offices and Clinics of Podiatrists.	$3.5
8049	Offices and Clinics of Health Practitioners, N.E.C.	$3.5
8051	Skilled Nursing Care Facilities	$6.0
8052	Intermediate Care Facilities	$6.0
8059	Nursing and Personal Care, N.E.C.	$6.0
8062	General Medical and Surgical Hospitals.	$13.5
8063	Psychiatric Hospitals	$13.5
8069	Specialty Hospitals, Except Psychiatric.	$13.5
8071	Medical Laboratories	$3.5
8072	Dental Laboratories	$3.5
8082	Home Health Care Services	$3.5
8092	Kidney Dialysis Centers	$3.5
8093	Specialty Outpatient Clinics, N.E.C.	$3.5
8099	Health and Allied Services, N.E.C.	$3.5

Major Group 81—Legal Services

8111	Legal Services	$3.5

Major Group 82—Educational Services

8211	Elementary and Secondary Schools.	$3.5
8221	Colleges, Universities, and Professional Schools.	$3.5
8222	Junior Colleges and Technical Institutes.	$3.5
8231	Libraries	$3.5
8243	Data Processing Schools	$3.5
8244	Business and Secretarial Schools.	$3.5
8249	Vocational Schools, N.E.C.	$3.5
8299	Schools and Educational Services, N.E.C.	$3.5

Major Group 83—Social Services

8322	Individual and Family Social Services.	$3.5
8331	Job Training and Vocational Rehabilitation Services.	$3.5
8351	Child Day Care Services	$3.5
8361	Residential Care	$3.5
8399	Social Services, N.E.C.	$3.5

Major Group 84—Museums, Botanical, Zoological Gardens

8412	Museums and Art Galleries	$3.5
8422	Arboreta and Botanical or Zoological Gardens.	$3.5

Major Group 86—Membership Organizations

8611	Business Associations	$3.5
8621	Professional Organizations	$3.5
8631	Labor Unions and Similar Labor Organizations.	$3.5
8641	Civic, Social, and Fraternal Associations.	$3.5
8651	Political Organizations	$3.5
8661	Religious Organizations	$3.5
8699	Membership Organizations, N.E.C.	$3.5

Major Group 87—Engineering, Accounting, Research, Management, and Related Services

8711	Engineering Services	$3.5
8712	Architectural Services	$3.5
8713	Surveying Services	$3.5
8721	Accounting, Auditing, and Bookkeeping Services.	$3.5
8731	Commercial Physical Research	$3.5
8732	Commercial Economic, Sociological, and Educational Research.	$3.5
8733	Noncommercial Research Organizations.	$3.5
8734	Testing Laboratories	$3.5
8741	Management Services	$3.5
8742	Management Consulting Services.	$3.5
8743	Public Relations Services	$3.5
8744	Facilities Support Management Services.	$3.5
8748	Business Consulting Services, N.E.C.	$3.5

Major Group 88—Private Households

8811	Private Households	$0.5

DIVISION J—PUBLIC ADMINISTRATION

Major Group 91—Executive, Legislative, and General Government, Except Finance

9111	Executive Offices	$5.0
9121	Legislative Bodies	$5.0
9131	Executive and Legislative Offices, Combined.	$5.0
9199	General Government, N.E.C.	$5.0

Major Group 92—Justice, Public Order, and Safety

9211	Courts	$5.0
9221	Police Protection	$5.0
9222	Legal Counsel and Prosecution	$5.0
9223	Correctional Institutions	$5.0
9224	Fire Protection	$5.0
9229	Public Order and Safety, N.E.C.	$5.0

Major Group 93—Public Finance, Taxation, and Monetary Policy

9311	Public Finance, Taxation, and Monetary Policy.	$5.0

Major Group 94—Administration of Human Resource Programs

9411	Administration of Educational Programs.	$5.0
9431	Administration of Public Health Programs.	$5.0
9441	Administration of Social, Human Resource and Income Maintenance Programs.	$5.0

Major Group 95—Administration of Environmental Quality and Housing Programs

9511	Air, Water, and Solid Waste Management.	$5.0
9512	Land, Mineral, Wildlife, and Forest Conservation.	$5.0
9531	Administration of Housing Programs	$5.0
9532	Administration of Urban Planning and Community and Rural Development.	$5.0

Major Group 96—Administration of Economic Programs

9611	Administration of General Economic Programs.	$5.0
9621	Regulation and Administration of Transportation Programs.	$5.0
9631	Regulation and Administration of Communications, Electric, Gas, and Other Utilities.	$5.0
9641	Regulation of Agricultural Marketing and Commodities.	$5.0
9651	Regulation, Licensing, and Inspection of Miscellaneous Commercial Sectors.	$5.0

Major Group 97—National Security and International Affairs

9711	National Security	$5.0
9721	International Affairs	$5.0

Major Group 99—Nonclassifiable Establishments

9999	Nonclassifiable Establishments	$3.5

[18] *SIC code 5599:* The component "Automotive Dealers, N.E.C." shall have a size standard of $3.5 million. This is the base maintenance size standard.

"Base Maintenance" constitutes three or more

[19] *SIC code 4212:* The component "Garbage and Refuse, Collecting and Transporting, Without Disposal" shall have a size standard of $6.0 million. This is the base maintenance size standard.

"Base Maintenance" constitutes three or more

shall be that for the particular industry, and not the base maintenance size standard.

primarily engaged. These size standards are set forth in § 121.601.

SIZE STANDARDS BY SIC INDUSTRY—Continued

SIC (* = New SIC Code in 1987, Not Used in 1972)	Description (N.E.C. = Not Elsewhere Classified)	Size standards in number of employees or millions of dollars
7991*	Physical Fitness Facilities	$3.5
7993	Coin-Operated Amusement Devices	$3.5
7996	Amusement Parks	$3.5
7997	Membership Sports and Recreation Clubs	$3.5
7999	Amusement and Recreation Services, N.E.C.	$3.5
	Major Group 80—Health Services	
8011	Offices and Clinics of Doctors of Medicine	$3.5
8021	Offices and Clinics of Dentists	$3.5
8031	Offices and Clinics of Doctors of Osteopathy	$3.5
8041	Offices and Clinics of Chiropractors	$3.5
8042	Offices and Clinics of Optometrists	$3.5
8043*	Offices and Clinics of Podiatrists	$3.5
8049	Offices and Clinics of Health Practitioners, N.E.C.	$3.5
8051	Skilled Nursing Care Facilities	$3.5
8052*	Intermediate Care Facilities	$3.5
8059	Nursing and Personal Care Facilities, N.E.C.	$3.5
8062	General Medical and Surgical Hospitals	$3.5
8063	Psychiatric Hospitals	$3.5
8069	Specialty Hospitals, Except Psychiatric	$3.5
8071	Medical Laboratories	$3.5
8072	Dental Laboratories	$3.5
8082*	Home Health Care Services	$3.5
8092*	Kidney Dialysis Centers	$3.5
8093*	Specialty Outpatient Facilities, N.E.C.	$3.5
8099*	Health and Allied Services, N.E.C.	$3.5
	Major Group 81—Legal Services	
8111	Legal Services	$3.5
	Major Group 82—Educational Services	
8211	Elementary and Secondary Schools	$3.5
8221	Colleges, Universities, and Professional Schools	$3.5
8222	Junior Colleges and Technical Institutes	$3.5
8231	Libraries	$3.5
8243	Data Processing Schools	$3.5
8244	Business and Secretarial Schools	$3.5
8249	Vocational Schools, N.E.C.	$3.5
8299	Schools and Educational Services, N.E.C.	$3.5
8299	Flight Training Services	$12.5

SIZE STANDARDS BY SIC INDUSTRY—Continued

SIC (* = New SIC Code in 1987, Not Used in 1972)	Description (N.E.C. = Not Elsewhere Classified)	Size standards in number of employees or millions of dollars
	Major Group 83—Social Services	
8322*	Individual and Family Social Services	$3.5
8331	Job Training and Vocational Rehabilitation Services	$3.5
8351	Child Day Care Services	$3.5
8361	Residential Care	$3.5
8399	Social Services, N.E.C	$3.5
	Major Group 84—Museums, Art Galleries, and Botanical and Zoological Gardens	
8412*	Museums and Art Galleries	$3.5
8422*	Arboreta and Botanical or Zoological Gardens	$3.5
	Major Group 86—Membership Organizations	
8611	Business Associations	$3.5
8621	Professional Membership Organizations	$3.5
8631	Labor Unions and Similar Labor Organizations	$3.5
8641	Civic, Social, and Fraternal Associations	$3.5
8651	Political Organizations	$3.5
8661	Religious Organizations	$3.5
8699	Membership Organizations, N.E.C.	$3.5
	Major Group 87—Engineering, Accounting, Research, Management, and Related Services	
8711*	Engineering Services: Military and Aerospace Equipment and Military Weapons	$13.5
	Marine Engineering and Naval Architecture	$9.0
	Other Engineering Services	$2.5
8712*	Architectural Services (Other Than Naval)	$2.5
8713*	Surveying Services	$2.5
8721*	Accounting, Auditing, and Bookkeeping Services	$4.0
8731*	Commercial Physical and Biological Research[10]	
	Aircraft	1,500
	Aircraft Parts, and Auxiliary Equipment, and Aircraft Engines and Engine Parts	1,000
	Space Vehicles and Guided Missiles, their Propulsion Units, their Propulsion Units Parts, and their Auxiliary Equipment and Parts	1,000
	Other Commercial Physical and Biological Research	500
8732*	Commercial Economic, Sociological, and Educational Research	$3.5
8733*	Noncommercial Research Organizations	$3.5
8734*	Testing Laboratories	$3.5
8741*	Management Services	$3.5

SIZE STANDARDS BY SIC INDUSTRY—Continued

SIC (* = New SIC Code in 1987, Not Used in 1972)	Description (N.E.C. = Not Elsewhere Classified)	Size standards in number of employees or millions of dollars
8742*	Management Consulting Services	$3.5
8743*	Public Relations Services	$3.5
8744*	Facilities Support Management Services[10]	$3.5
	Base Maintenance[20]	$13.5
8748*	Business Consulting Services, N.E.C.	$3.5
	Major Group 89—Services, Not Elsewhere Classified	
8999	Services, N.E.C	$3.5

[1] Size standards preceded by a dollar sign ($) are in millions of dollars of annual receipts. All others are in number of employees unless specified otherwise.

[2] *SIC code 1629—Dredging:* To be considered small, a firm must perform the dredging of at least 40 percent of the yardage with its own dredging equipment or equipment owned by another small dredging concern.

[3] *SIC Division D—Manufacturing:* "Rebuilding on a factory basis or equivalent." For rebuilding machinery or equipment on a factory basis, use SIC code applicable for new manufactured product. The appropriate size standard is not limited to manufacturers. Ordinary repair services or preservation operations, however, are not considered rebuilding activities.

[4] *SIC code 2033:* For purposes of Government procurement for food canning and preserving under SIC code 2033, the standard of 500 employees shall be exclusive of agricultural labor as defined in Section (k) of the Federal Unemployment Tax Act, 68A, Stat. 454, 26 U.S.C. (I.R.C. 1954) 3306.

[5] *SIC code 2911:* For purposes of Government procurement, the firm may not have more than 1,500 employees, nor may it have more than 60,000 barrels per day capacity. This capacity may be measured in terms of either crude oil or bona fide feedstocks or both, but the sum total of the various petroleum-based inputs into the process may not exceed 50,000 barrels. In addition to the direct owned capacity of the concern in question, counted capacity will include any leased facilities or any facilities made available to the concern under an arrangement such as (but not limited to) an exchange agreement or a throughput, or other form, or processing agreement (whereby another party processes the concern's own crude or feedstocks). Such an arrangement would have the same effect as though such facilities had been leased, and this would have to be included in the concern's own capacity. The total product to be delivered in the performance of the contract must be at least 90 percent refined by the successful bidder from either crude oil or bona fide feedstocks.

[6] *SIC code 3011:* For purposes of Government procurement, a firm is small for bidding on a contract for pneumatic tires within Census Classification codes 30111 and 30112, provided that: (1) the value of tires within Census Classification codes 30111 and 30112 which it manufactured in the United States during the previous calendar year is more than 50 percent of the value of its total worldwide manufactures, (2) the value of pneumatic tires within Census Classification codes 30111 and 30112 which it manufactured worldwide during the preceding calendar year was less than 5 percent of the value of all such tires manufactured in the United States during said period, and (3) the value of the principal product which it manufactured or otherwise produced, or sold worldwide during the preceding calendar year is less than 10 percent of the total value of such products manufactured or otherwise produced or sold in the United States during said period.

[7] *SIC code 4212:* The component "Garbage and Refuse, Collecting and Transporting, Without Disposal" shall have a size standard of $6.0 million. This is the same size standard as SIC code 4953, Refuse Systems.

[8] *Offshore Marine Services:* The applicable size standard shall be $14 million for firms furnishing specific transportation services to concerns engaged in offshore oil and/or natural gas exploration, drilling production, or marine research; such services, encompass passenger and freight transportation, anchor handling, and related logistical services to and from the work site or at sea.

[9] *SIC codes 4512, 4513, and 4522:* Includes passenger or cargo transportation requiring the use of one or more helicopters or fixed-wing aircraft. This does not include offshore marine transportation services as defined in footnote 8.

[10] *SIC codes 4724 and 6531:* As measured by total revenues, but excluding funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions. The Commissions received would be included as revenue.

[11] *SIC code 4953:* "Garbage and Refuse, Collecting and Transporting, Without Disposal," a component of SIC code 4212, has the same size standard as SIC code 4953.

[12] *SIC code 5599:* For retail firms whose principal line of business is the retail sale of aircraft, a $5 million size standard shall apply.

[13] Most industries in Division H:—Finance, Insurance, and Real Estate—are excluded from SBA assistance.

[14] *Major Group 60:* As measured by total assets.

[15] *Major Group 65—Leasing of building space to the Federal Government by owners:* For the purpose of Government procurement, a size standard of $10 million in gross receipts is established for owners of building space that is leased to the Federal Government. The standard for these procurements shall apply to the owner of the property and not to those acting as an agent for the owner. There is no size standard concerning the agent in a leasing arrangement.

[16] *Division J—Services:* For all industries not specifically listed in this division, the size standard is $3.5 million.

[17] *SIC codes 7699 and 3728:* Contracts for the rebuilding or overhaul of aircraft ground support equipment on a contract basis will be classified under SIC code 9728.

[18] *SIC code 8731:* For research and development contracts requiring the delivery of a manufactured product, the appropriate size standard to use is that of the manufacturing industry in which the specific products is classified.

Research and Development, as defined in the SIC Manual, means laboratory or other physical research and development on a contractor fee basis. Research and development for purposes of size determinations does not include the following: economic, educational, engineering, operations, systems, or other nonphysical research; or computer programming, data processing, commercial and/or medical laboratory testing.

For purposes of the Small Business Innovation Research (SBIR) program only, a different definition has been established by law. See § 121.7 of these regulations.

Research and development for guided missiles and space vehicles includes evaluation and simulation, and other services requiring thorough knowledge of complete missiles and spacecraft.

[19] *Facilities Management, a component of SIC code 8744,* has the following definition: Establishments, not elsewhere classified, which provide overall management and the personnel to perform a variety of related support services in operating a complete facility in or around the specific building, or within another business or Government establishment. Facilities management means furnishing three or more personnel supply services which may include, but are not limited to, secretarial services, typists, telephone answering, reproduction or Mimeograph service, mailing services, financial or business management, public relations, conference planning, travel arrangements, word processing, maintaining files and/or libraries, switchboard operation, writers, bookkeeping, minor office equipment maintenance and repair, use of information systems (not programming), etc.

[20] *SIC code 8744:* If one of the activities of *base maintenance,* as defined below, can be identified with a separate industry, and that activity (or industry) accounts for 50 percent or more of the value of an entire contract, then the proper size standard shall be that for the particular industry, and not the base maintenance size standard.

"Base Maintenance" constitutes three or more separate activities. The activities may be either service or special trade construction related activities. As services, these activities must each be in a separate industry. These activities may include, but are not limited to, such separate maintenance activities as Janitorial and Custodial Service, Protective Guard Service, Commissary Service, Fire Prevention Service, Safety Engineering Service, Messenger Service, and Grounds Maintenance and Landscaping Service. If the contract involves the use of special trade contractors (plumbing, painting, plastering, carpentering, etc.), all such specialized special trade construction activities will be considered a single activity, which is Base Housing Maintenance. This is only one activity of base maintenance and two additional activities must be present for the contract to be considered base maintenance. The size standard for Base Housing Maintenance is $7 million, the same size standard as for Special Trade Contractors.

§ 121.701 [Reserved]

Size Eligibility for SBA Financial Assistance

§ 121.801 Programs covered.

These sections apply to small size determinations for the purpose of SBA financial assistance, including assistance under the Business Loan Programs, the Disaster Loan Programs (except physical disaster assistance), the Small Business Investment Company Program, the Development Company Programs, the Surety Bond Guaranty Program and the Pollution Guaranty Program.

§ 121.802 Establishment of the size standard.

(a)(1) An applicant concern for an SBA Business Loan, Disaster Loan (other than physical disaster loans), and Pollution Control Guaranty assistance must meet a two-fold size standard. It must meet the size standard designated for the industry in which the applicant, including its affiliates, is primarily engaged *and* the size standard designated for the industry in which the applicant concern, not including its affiliates, is primarily engaged. These size standards are set forth in § 121.601 of this regulation.

(2) For financial and/or management/technical assistance under the Small Business Investment Company Program and the Development Company Programs, an applicant concern must meet one of the following standards:

(i) Together with its affiliates, it does not have net worth in excess of $6 million, and does not have average net income after Federal income taxes (excluding any carry-over losses) for the preceding 2 completed fiscal years in excess of $2 million; or

(ii) Together with its affiliates, it meets the size standard for the industry in which it is primarily engaged and, excluding its affiliates, meets the size standard for the industry in which it is primarily engaged. These size standards are set forth in § 121.601.

(3) An applicant, including its affiliates, for Surety Bond Guaranty assistance must not have average annual receipts for its preceding three completed fiscal years in excess of $3.5 million.

(b) In determining what is the primary industry in which a concern applying for financial assistance is engaged, primary consideration shall be given to the distribution of receipts, employees and costs of doing business among differing industries in which a concern is operating for the most recently completed fiscal year of the concern. Other factors (e.g., patents, contract awards, assets) may be considered.

(c) Where the size standard relates to the applicant and its affiliates, the determination of the appropriate primary business and, accordingly, the appropriate size standard of the applicant, must include the aggregates for the concern and its affiliates. Furthermore, the application of size criteria (i.e., number of employees or annual receipts) to the size standard is not confined to the operations of the primary business of the concern, but must measure all operations of the concern.

(d) Labor Surplus Area & Redevelopment Area Differentials: The applicable size standards for the purpose of all SBA financial programs, excluding the Surety Bond Guarantee Program, are increased by 25 percent whenever the concern agrees to use the assistance within a "labor surplus area," or "redevelopment area."

"Redevelopment area" is defined in the Public Works Economic Development Act of 1965 (Pub. L. 89-136, 79 Stat. 570, 42 U.S.C. 3211). "Labor surplus areas" are listed monthly in the Department of Labor publication "Area Trends."

§ 121.803 Time at which size is determined.

(a) Except in the case of Disaster Loan assistance, the size of an applicant for SBA financial assistance is determined as of the date of its application for such financial assistance. Subsequent changes in size between the date of application and the extension of SBA financial assistance will not affect a firm's size status.

(b) Agreements to merge, including agreements in principle, stock options, or convertible securities and other business arrangements affecting possible future affiliation of the concern with another concern or change of control of the concern are considered as executed on the date of the application.

(c) In the case of applicable disaster loan assistance (i.e., disaster assistance

§§ 121.1601 through 121.1608, except that the time limitations shall not apply and

the product or service description in the solicitation and attachments thereto, the

or 121.1701 through 121.1722, are advisory in nature and not binding size

reserved for small business (i.e., small business set-asides) for the procurement

(3) The Administrator may waive the requirement set forth in paragraph

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(c) In the case of applicable disaster loan assistance (i.e., disaster assistance other than physical disaster loans), the size status of concerns and the relevant size standards are determined as of the time the disaster commenced, as set forth in the Disaster Declaration.

§ 121.804 Procedures prior to a formal size determination.

(a) An applicant for SBA financial assistance shall be deemed to certify as part of its application that it is small under the applicable SBA size standard.

(b) In processing such application, SBA shall consider the size of the applicant in determining eligibility. Where applications with accompanying materials contain credible information indicating that the applicant may not be small, the processing official shall cause a determination to be made as to program size eligibility based on information supplied in the application and any other information requested.

(c) In the absence of credible information indicating otherwise, a participating financial institution, a small business investment company, a development company, a surety bond company, or a pollution control guaranty issuing authority may accept at face value the information provided by the applicant for the particular financial assistance involved.

(d) The SBA program official with authority to take final action on the assistance requested has the authority to make a program size eligibility determination, except that such a determination is not a formal size determination as described in §§ 121.1601 through 121.1608. Where he or she deems it appropriate, such a formal size determination may be requested prior to a determination to deny eligibility for such assistance on the grounds of size.

(e) When an applicant has been denied assistance for size ineligibility because the SBA program official has found it to be other than small, the applicant may request a formal size determination (pursuant to §§ 121.1601 through 121.1608 of these regulations). Except for disaster loan eligibility, such a request shall be made with the SBA Regional Office serving the geographical area in which the SBA office denying the assistance is located. In the case of an application for disaster loan assistance, the request for a size determination shall be made to the appropriate Disaster Area Office.

(f) When requested pursuant to paragraphs (d) or (e) of this section, the SBA Regional Office shall make a formal size determination in accordance with the procedures set forth in §§ 121.1601 through 121.1608, except that the time limitations shall not apply and notification of the request and the formal size determination shall be provided to requesting officials and/or SBA program officials interested in the matter.

§ 121.805 Business loan to refinance existing loan.

A concern which applies for an SBA loan or guarantee to refinance an existing SBA loan or guarantee but which, since the date of the original financing, has by natural growth (as distinguished from e.g., merger or acquisition) grown to a size which exceeds the applicable size standard, is considered as small for the purpose of refinancing. However, SBA must determine administratively that refinancing is necessary to protect the Government's financial interest.

§ 121.806 Size eligibility for business loans relating to particular procurements.

A concern which has qualified as small for a particular procurement, will be deemed small for purposes of size eligibility for financial assistance relating to that procurement.

Size Eligibility For Government Procurement

§ 121.901 Programs covered.

These sections apply to size for the purpose of government procurement programs, including government procurement reserved for small business (i.e., the small business set-aside program), SBA's Certificate of Competency Program and the Small Business Subcontracting Program authorized under section 8(d) of the Small Business Act. The contracting aspects of SBA's Minority Small Business and Capital Ownership Development Program (the section 8(a) program) are separately covered under §§ 121.1101 through 121.1108 of this Part.

§ 121.902 Establishment of the size standard.

(a) Except as provided in § 121.911(a), a concern which submits an offer on a Government procurement as a small business must meet the size standard determined by reference to the SIC code as specified in the solicitation or as clarified, completed, or supplied by SBA pursuant to paragraph (d) of this section. These standards are set forth in § 121.601.

(b) The proper SIC code designation for the goods or services being procured is that which best describes the principal purpose of the procurement, giving primary consideration to the industry descriptions in the SIC Manual, the product or service description in the solicitation and attachments thereto, the relative value and importance of each of the components in the procurement (if in fact there is more than one component which makes up the end item being procured) and the function of the goods or services being purchased. Consideration may also be given to previous Government procurement classifications of the same or similar products or services, additional information on the industries and on the product or service procured, and to evaluations on which industry classification would best serve the purposes of the Small Business Act. Generally, a procurement will be classified according to the component which accounts for the greatest percentage of the contract value. A contracting officer must have a good reason to classify a procurement in a way that is inconsistent with this general rule.

(c) The determination of the appropriate SIC code designation shall be made by the contracting officer of the procuring agency or his authorized representative. Both the SIC code designation and the applicable size standard (i.e., number of employees or annual receipts) shall be set forth in the solicitation and such determination of the contracting officer shall be final unless appealed to SBA's Office of Hearings and Appeals in the manner provided in §§ 121.1701 through 121.1722 or assigned by SBA pursuant to paragraph (d) of this section.

(d) An unclear, incomplete or missing SIC code designation and/or size standard by the contracting officer or his representative in the solicitation may be clarified, completed or supplied by SBA, if necessary, in connection with a formal size determination or size appeal.

(e) Any offeror or other interested party adversely affected by a SIC code designation and/or size standard designation by the contracting officer or the appropriate SBA official may appeal such designation to SBA's Office of Hearings and Appeals under the procedures set forth in §§ 121.1701 through 121.1722.

§ 121.903 Binding size determinations.

Size and SIC code determinations are formal actions by the appropriate SBA officials, pursuant to §§ 121.1601 through 121.1722, based upon a specific Government procurement and are binding upon the parties. Opinions provided by SBA to contracting officers or others, not relating to a specific government procurement and not given pursuant to § 121.1601 through 121.1608 or 121.1701 through 121.1722, are advisory in nature and not binding size determinations under these sections, and are not appealable.

§ 121.904 Time at which size is determined.

(a) Except for applicants for Certificates of Competency (COC) relating to unrestricted procurements, the size status of a concern (including its affiliates) is determined as of the date of its written self-certification as a small business. The concern shall certify that it is a small business for the purpose of performing a particular contract at the time it submits its initial offer which includes price to the procuring agency for that contract. For applicants for COC's relating to unrestricted procurements, size status is determined as of the date of its application to SBA for a COC.

(b) Agreements to merge, including agreements in principle, stock options, convertible securities and other business arrangements affecting possible future affiliation of the concern with another concern or change of control of the concern are considered executed as of the date of the certification. (*See* § 121.401(f).)

(c) Where a solicitation is modified so that initial offers are no longer responsive to the solicitation, the concern must recertify that it is a small business at the time it submits a responsive offer which includes price to the modified solicitation.

§ 121.905 Self-certification.

(a) A concern must self-certify itself to be small under the appropriate size standard as specified in the solicitation or as clarified, completed or supplied by SBA pursuant to § 121.902(d) (i.e., number of employees or average annual receipts) in the submission of its initial offer including price relating to a Government procurement.

(b) In the absence of a written protest by other offerors or other credible information which would cause a contracting officer or SBA to question the veracity of the self-certification, a contracting officer may accept the self-certification at face value for the particular procurement involved.

(c) Protests against the self-certification of an offeror by another offeror, the contracting officer, SBA, or other interested parties shall be made under the procedures set forth in §§ 121.1601 through 121.1606.

§ 121.906 Manufactured products under small business set-aside procurements.

(a) *General.* In order to qualify as a small concern in Government contracts reserved for small business (i.e., small business set-asides) for the procurement of manufactured products, an offeror must be either a "manufacturer" or a "regular dealer" under the Walsh-Healey Act (unless specifically exempted under § 124.304 of this title) and, in addition, must manufacture the end item being produced, or must comply with the requirements of paragraphs (b), (c) or (d) of this section as a nonmanufacturer, a kit assembler or a supplier under Small Purchase Procedures.

(b) *Nonmanufacturers.* (1) A concern need not be the manufacturer of the item(s) being acquired under a manufacturing contract, if the concern:

(i) Is a small business concern under this Part under a 500 employee size standard;

(ii) Is primarily engaged in the wholesale or retail trade;

(iii) Represents that it will supply the product of a small business concern that is the manufacturer of the end product, as defined in paragraph (b)(2) of this section, or obtains a waiver of such requirement under paragraph (b)(3) of this section; and

(iv) Represents that it will furnish an end product that was manufactured or produced in the United States.

(2) For size determination purposes, there can be only one manufacturer of the end item being acquired. The manufacturer for the purposes of this provision is the concern which, with its own facilities, performs the primary activities in transforming inorganic or organic substances, including the assembly of parts and components, into the end item being acquired. The end item of a manufacturer possesses characteristics which, as a result of mechanical, chemical or human action, it did not possess before the original substances, parts or components were assembled or transformed. The end item of a manufacturer may be finished in the sense that it is ready for utilization or consumption, or it may be semifinished to become a raw material for a concern engaged in further manufacturing. Firms which perform only minimal operations upon the item being procured do not qualify as manufacturers. The following factors are evaluated in determining whether a concern is the manufacturer for the procurement:

(i) The proportion of total value in the end item added by the efforts of the concern, excluding costs of overhead, testing, quality control, and profit; and

(ii) The importance of the elements added by the concern to the function of the end item, regardless of their relative value.

(3) The Administrator may waive the requirement set forth in paragraph (b)(1)(iii) of this section that the end item must be manufactured by a small business manufacturer, for any class of products for which there are no small business manufacturers or processors in the Federal market.

(c) *Kit assemblers.* (1) Where the manufactured item being acquired is a kit of supplies or other goods provided by the offeror for a special purpose, the offeror must meet the applicable size standard of 500 employees and 50 percent of the total value of the contents of the kit must be manufactured by small business concerns under the size standard for the SIC code of the item being acquired. Under this provision, the offeror need not itself be the manufacturer of any of the items acquired.

(2) Where the Government has specified an item (or items) for the kit which is (are) not produced by small business concerns, then such item(s) shall be excluded from the determination of total value for the purposes of this subsection.

(d) *Small Purchase Procedures.* Where the procurement of a manufactured item is processed under Small Purchase Procedures, as defined in the Federal Acquisition Regulation (FAR) (48 CFR 13.101), the offeror need not supply the end product of a small business concern so long as the product acquired is manufactured or produced in the United States and so long as the offeror is a small business concern under the applicable size standard of 500 employees. Under this provision, the offeror need not itself be the manufacturer of any of the items acquired.

§ 121.907 Multiple item procurements.

(a) If a procurement calls for two or more specific end items with different size standards and the offeror may submit an offer on any or all end items, the offeror must meet the size standard for each end item for which it submits an offer. If the procurement calls for more than one specific end item and an offeror is required to submit an offer on all end items, the offeror may qualify as a small business for such procurement if it meets the size standard of the end item(s) which account(s) for the greatest percentage of the total contract value.

Example. A solicitation requires an item costing $2 million with a SIC code of 3613 (750 employee size standard), an item costing $4 million with a SIC Code of 3621 (1,000 employee size standard), and an item costing $3 million with a SIC Code of 3622 (750 employee size standard.). In order to qualify

as a small business for the procurement, an offeror must meet the 750 employee size

determined as of the date of such concern's application for a COC

Salvage Timber Sales Program and the sale of Government petroleum, coal and

business arrangements affecting

for determining number of employees

pursuant to a small business set-aside

as a small business for the procurement, an offeror must meet the 750 employee size standard because the greatest percentage of the total contract value has a 750 employee size standard ($5 million out of the $9 million contract), despite the fact that the largest single item has a 1,000 employee size standard.

(b) If a procurement calls for two or more specific types of services to be performed with different size standards and the offeror may submit an offer on any or all of the service items, the offeror must meet the size standard for each service item for which it submits an offer. If the procurement calls for more than one specific type of service to be performed and an offeror is required to submit an offer on all service items, the offeror may qualify as a small business for such procurement if it meets the size standard of the service(s) having the same numerical standard which account(s) for the greatest percentage of the total contract value.

§ 121.908 Size procedures under SBA's Certificate of Competency Program.

(a) Upon receipt of a referral for a Certificate of Competency (COC) from a procuring agency contracting officer, SBA shall review the size of the concern to determine whether the concern is eligible to receive COC. SBA will review the concern's completed SBA "Application for Small Business Size Determination" (Size Determination Application) to make such a program size eligibility determination. If the Size Determination Application indicates that the firm is small under the applicable size standard and does not raise questions concerning the firm's size status, the firm is deemed a small business for purposes of a COC and the COC application is processed. If the Size Determination Application indicates that the firm is other than small or raises issues concerning the firm's size status, SBA will initiate a formal size determination.

(b) Where a firm's size is called into question in connection with a COC, a formal size determination shall be made in accordance with the procedures set forth in §§ 121.1601 through 121.1608 of these regulations. Such formal size determination must be made prior to the issuance of a COC.

(c)(1) Pursuant to § 121.904(a), the size of such concern, except for those concerns bidding on unrestricted procurements, is determined as of the date of its written certification that it is a small business for the purpose of performing a particular contract.

(2) When the size determination relates to a concern which has bid on an unrestricted procurement size is determined as of the date of such concern's application for a COC.

(d) A firm will be deemed ineligible for a COC if the SBA determines it to be other than small.

§ 121.909 Manufactured products in an unrestricted procurement for Certificate of Competency purposes.

For the purpose of receiving a Certificate of Competency in an unrestricted procurement for a manufactured product, a concern is a qualified small business nonmanufacturer if it meets the size standard for nonmanufacturers (500 employees) and furnishes any domestically produced or manufactured product, regardless of the size status of the manufacturer thereof. Under this provision the offeror need not be the manufacturer of any of the items acquired.

§ 121.910 Size standards under SBA's Section 8(d) Subcontracting Program.

For subcontracting purposes pursuant to section 8(d) of the Small Business Act, a concern is small:

(a) In connection with subcontracts of $10,000 or less which relate to Government procurements, if its number of employees (including its affiliates) does not exceed 500 persons; and

(b) In connection with subcontracts exceeding $10,000 which relate to Government procurements, if its number of employees or average annual receipts, (including its affiliates), does not exceed the size standard for the product or service it is providing on the subcontract as set forth in § 121.601. (Subcontracting for financial services under section 8(d) of the Small Business Act is addressed by §§ 121.1401 through 121.1405.)

§ 121.911 Size procedures under SBA's Section 8(d) Subcontracting Program.

(a) A concern must self-certify its small size as a section 8(d) subcontractor. The basis for such self-certification is set forth in § 121.905(a).

(b) The self-certification of a concern subcontracting or proposing to subcontract under section 8(d) of the Small Business Act may be protested pursuant to §§ 121.1601 through 121.1608 by the contracting officer, the prime contractor, the appropriate SBA official or any other interested party.

Size Eligibility for Sales or Lease of Government Property.

§ 121.1001 Programs covered.

These provisions apply to size status for the purpose of the sale or lease of Government property. This includes the Timber Sales Program, the Special Salvage Timber Sales Program and the sale of Government petroleum, coal and uranium.

§ 121.1002 Establishment of the size standard.

(a) Size status for the purposes of Government sales and leases under these sections is determined by reference to the primary industry of the applicant business concern, except for the lease of Government land for the purpose of coal mining or uranium prospecting and mining where the nature of the sales contract is controlling. (*See* §§ 121.1006 and 121.1009.) In the case of sales of Government timber, in addition to the business characteristics of the applicant business concern, there are further conditions relating to the implementation of the executed contract that must be met (*See* §§ 121.1006 and 121.1007).

(b) In determining what is the primary industry in which a concern is engaged, primary consideration shall be given to the distribution of receipts, employees and costs of doing business among differing industries in which a concern is operating for the most recently completed fiscal year of the concern. All other relevant factors (e.g., patents, contract awards, assets) will be considered.

§ 121.1003 Binding size determinations.

Size determinations for the purpose of Government sales and leases are formal actions by the appropriate SBA officials pursuant to §§ 121.1601 through 121.1722, based upon a specific Government sale or lease and are binding upon the parties thereto, as provided by law. A size determination may also be performed when no contract is at issue if another Government agency requests such a determination pursuant to §§ 121.1501 through 121.1505 of these regulations. Opinions provided by SBA to contracting officers or others not relating to a specific sale or lease and not given pursuant to §§ 121.1601 through 121.1608 or 121.1701 through 121.1722 are advisory in nature and not binding size determinations under these sections, and are not appealable.

§ 121.1004 Time at which size is determined.

(a) The size status of a concern, including its affiliates, is determined as of the date of its written self-certification as a small business as part of the concern's submission of an offer.

(b) Agreements to merge, including agreements in principle, stock options, convertible securities and other business arrangements affecting possible future affiliation of the concern with another concern or change of control of the concern are considered executed as of the date of the self-certification.

§ 121.1005 Self-certification.

(a) A concern shall, as and when required by the sale solicitation, self-certify itself to be small in the submission of an offer to purchase or lease Government property, based upon its reasonable, good faith application of the size criteria set forth in these sections and the absence of a previous, still outstanding determination by SBA that the concern is ineligible under the same or a lower size standard. This self-certification includes both the measurement criteria (i.e., number of employees or average annual receipts) and acceptance of the restrictions upon the resale or exchange of the property purchased, as contained in these regulations.

(b) In the absence of a written protest by other offerors or other credible information which would cause a contracting officer to question the veracity of a concern's self-certification as a small business, a contracting officer may accept the self-certification at face value.

(c) Protests against the self-certification of an offeror as a small business by another offeror, by the contracting officer or by SBA shall be made under the procedures set forth in §§ 121.1601 through 121.1608. In addition, requests for formal size determinations may be made (pursuant to §§ 121.1601 through 121.1608) by SBA or another Federal agency, in accordance with §§ 121.1501 through 121.1505, for the purpose of the administration of a Federal property sales program.

§ 121.1006 Sales of Government owned timber other than Special Salvage Timber sales (SSTS).

(a) A concern which submits an offer as a small business for the purchase of Government owned timber, other than SSTS timber, qualifies as small when:

(1) It is primarily engaged in the logging or forest products industry ("Forest Products Industry" means logging, wood preserving, and the manufacture of lumber and wood related products such as veneer, plywood, hardboard, particle board, or wood pulp, and of products of which lumber or wood related products are the principal raw materials); and

(2) Together with its affiliates, does not have over 500 employees. (The rules for determining number of employees are set forth in § 121.407.)

(b) In addition to the requirements of paragraph (a) of this section, where the sale of the Government timber is pursuant to a small business set-aside and the offeror does not intend at the time of the offer to resell the timber, a concern qualifies as small when:

(1) It agrees that, in manufacturing sawlogs cut from the Government timber, it will do so only with its own facilities or those of concerns that qualify under paragraph (a) of this section as small businesses.

"Manufacture of logs" means, at a minimum, a breakdown of the log into a rough cut of the finished product; and

(2) It agrees, if standing timber or sawlogs acquired in good faith from the small business set-aside sale is to be resold, not to sell more than 30% of the advertised sawtimber volume, whether in the form of standing timber or sawlogs, therefrom, to other concerns which do not qualify as small business under paragraph (a) of this section (the term "sell" includes but is not limited to the exchange of sawlogs for sawlogs on a product-for-product basis, with or without monetary adjustment, and an indirect transfer, such as the sale of the assets of a concern after it has been awarded one or more set-aside sales of timber); and,

(3) It agrees that if, after award of a set-aside sale(s), the small business concern sells out to, becomes controlled by, or merges with a large business, the resulting entity shall sell an amount of sawtimber volume from each of the set-aside sales to one or more small businesses to comply with the (30%) volume distribution rule. Any agreement for return, directly or indirectly, of logs from small to large concerns which exceeds the distribution rule shall constitute noncompliance. The sawtimber volume distribution restriction shall not apply to the manufacture of preferential timber by a small business concern that purchases the set-aside sale, and at a later date exceeds the applicable small business size standard due to internal growth. Internal growth includes an increase in number of employees without change of control. Also, the distribution restriction shall not apply to a concern which certified itself to be a small business at the time of sale award, but was later determined to be other than small. This applies, provided that a large business did not purchase, assume control of, or merge with the small business after sale award date.

(c) In addition to the requirements of paragraph (a) of this section, where the sale of the Government timber is pursuant to a small business set-aside and the offeror intends to resell the timber, a concern qualifies as small when:

(1) It agrees that it will not sell to a concern which is not a small business within the meaning of paragraph (a) of this section more than 30 percent (50 percent in Alaska) of such timber. The term "sell" includes but is not limited to the exchange of sawlogs for sawlogs on a product-for-product basis with or without monetary adjustment, and an indirect transfer, such as the sale of the assets of a concern after it has been awarded one or more set-aside sales of timber; and

(2) It agrees that if, after award of a set-aside sale(s), the small business concern sells out to, becomes controlled by, or merges with a large business, the resulting entity shall sell an amount of sawtimber volume from each of the set-aside sales to one or more small businesses to comply with the (30%) volume distribution rule. Any agreement for return, directly or indirectly, of logs from small to large concerns which exceeds the distribution rule shall constitute noncompliance.

(d) In order to monitor compliance with the resale restrictions of this section, the offeror must maintain, for a period of 3 years, the name, address, and size status of each concern to which the timber or sawlogs were sold and the log species, grades and volumes involved. Such concern, and any subsequent small business concern that acquires the sawlogs, also shall require its small business purchasers to maintain similar records for a period of 3 years. Further, if the timber purchased is not to be resold in the form of sawlogs, but is to be manufactured into lumber or timber by a concern other than the offeror, the offeror must maintain records to show the name, address, and the size of the concern manufacturing the sawlogs into lumber or timber.

§ 121.1007 Special Salvage Timber Sales (SSTS).

(a) A concern which submits an offer as a small concern for the purchase of Government owned special salvage timber from the United States Forest Service or the Bureau of Land Management qualifies as small when it:

(1) Is primarily engaged in the logging or forest product industry (See § 121.1006(a) for definition of "Forest Product Industry"); and

(2) Together with its affiliates, has not had over 25 employees during any pay period for the last 12 months.

(b) In addition to the requirements of paragraph (a) of this section, where the

§ 121.1010 Sales of Government owned petroleum.

§ 121.1102 Establishment of the size standard.

a section 8(a) contract shall initially be

annual financial statements and other

124.304 of this title) and, in addition,

(b) In addition to the requirements of paragraph (a) of this section, where the sale of the special salvage timber is pursuant to a small business set-aside and the offeror does not intend at the time of the offer to resell the timber, a concern qualifies as small when:

(1) It agrees that it will manufacture a significant portion of the logs with its own employees. Manufacture of logs means, at the minimum, a breakdown of the log into the rough cut of the finished product; and

(2) It further agrees that it will accomplish the logging of SSTS timber, exclusive of hauling, with its own employees, or will subcontract such logging only to concerns eligible for preferential award of an SSTS. Logging means felling and bucking, yarding, and loading.

(c) In addition to the requirements of paragraph (a) of this section, where the sale of the special salvage timber is pursuant to a small business set-aside and the offeror intends to resell the timber, a concern qualifies as small when it agrees that it will accomplish a significant portion of the logging operation, exclusive of hauling, with its own employees. Significant logging of timber means using its own employees to accomplish two or more of the following elements: felling and bucking, yarding, and loading. It further agrees that such SSTS logging elements not accomplished with its own employees will be subcontracted only to concerns eligible for preferential award of an SSTS.

§ 121.1008 Leasing Government land for coal mining.

A concern which submits an offer as a small business for the lease of Government land for the purpose of mining coal qualifies as small when it:

(a) Together with its affiliates, does not have over 250 employees (number of employees is defined in § 121.407;

(b) Maintains management and control of the actual mining operations at the tract; and

(c) Agrees that any transfer of the lease from the holder of the original set aside must be to another small business within the meaning of this subpart.

§ 121.1009 Leasing of Government land for uranium mining.

A concern which submits an offer as a small concern for the lease of Government land for the purpose of prospecting for or mining uranium qualifies as small when it, together with its affiliates, does not have over 100 employees (number of employees is defined in § 121.407).

§ 121.1010 Sales of Government owned petroleum.

A concern which submits an offer as a small business for the purchase of Government owned petroleum qualifies as small when it:

(a) Together with its affiliates, does not have over 1,500 employees (number of employees is defined in § 121.407);

(b) Is primarily engaged in petroleum refining (SIC Industry 2911); and

(c) Does not have more than 50,000 barrels per day crude oil or bona fide feed stock capacity from owned and/or leased facilities, or from facilities made available to such concern under an agreement such as, but not limited to, an exchange agreement (except one on a refined-product-for-refined-product basis) or a throughput or other form of processing agreement, with the same effect as though such facilities had been leased.

§ 121.1011 Stockpile purchases.

Any concern primarily engaged in the purchase of materials which are not domestic products is small if its average annual receipts for its preceding three fiscal years do not exceed $42 million.

§ 121.1012 Sale or lease of Government property other than property subject to §§ 121.1006 through 121.1011

A concern which submits an offer as a small business for the purchase or lease of Government property other than property subject to §§ 121.1006 through 121.1010 qualifies as small when it:

(a) Together with its affiliates, does not have over 500 employees (rules for determining "number of employees" are set forth in § 121.407), if it is primarily engaged in manufacturing; or

(b) Together with its affiliates, has average annual receipts for its preceding three completed fiscal years not exceeding $2 million (rules for determining "annual receipts" are set forth in § 121.402), if it is primarily engaged in an industry other than manufacturing.

Size Eligibility for the Minority Small Business and Capital Ownership Development (Section 8(a)) Program

§ 121.1101 Programs covered.

These sections apply to small size status for the purpose of contract assistance pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a)) and management/technical assistance available to section 8(a) concerns pursuant to section 7(j) of the Small Business Act (15 U.S.C. 636(j)).

§ 121.1102 Establishment of the size standard.

(a) For purposes of the Minority Small Business and Capital Ownership Development Assistance (section 8(a)) program:

(1) In order to be eligible to participate in the section 8(a) program, an applicant concern must qualify as a small business concern as defined for purposes of Government procurement in § 121.601. The particular size standard to be applied will be based on the primary industry classification of the applicant concern. (See also § 124.102).

(2) In order to obtain section 8(a) contracts once a concern is admitted to the section 8(a) program, the concern must certify to SBA that it is a small business for the purpose of performing each individual contract. SBA, in turn, must verify each such certification.

(b)(1) In determining what is the primary industry in which an applicant, including its affiliates, is engaged, primary consideration shall be given to the distribution of receipts and employees and the costs of doing business among differing industry areas in which a concern is operating for the most recently completed fiscal year of the concern. Other factors (e.g., patents, contract awards, assets) may be considered.

(2) The proper SIC Code designation for the goods or services being procured is that which best describes the principal purpose of the procurement, giving primary consideration to the industry descriptions in the SIC Manual, the product or service description in the solicitation and attachments thereto, the relative value and importance of each of the components in the procurement (if in fact there is more than one component which makes up the end item being procured), and the function of the goods or services being purchased. Consideration may also be given to previous government procurement classifications of the same or similar products or services, to additional information on the industries and on the product or service procured, and to evaluations on which industry classification would best serve the purposes of the Small Business Act. Generally, a procurement will be classified according to the component which accounts for the greatest percentage of the contract value. A contracting officer must have a good reason to classify a procurement in a way that is inconsistent with this general rule.

(c) The determination of the appropriate SIC code designation for the product or service being procured under a section 8(a) contract shall initially be made by the procuring agency contracting officer. Such designation shall be accepted by SBA unless the AA/MSB&COD elects to appeal to SBA's Office of Hearings and Appeals in the manner provided in §§ 121.1701 through 121.1722 (See § 124.308(b)). A designation may also be made by SBA pursuant to paragraph (d) of this section.

(d) An unclear, incomplete or missing SIC code designation and/or size standard by the contracting officer or his representative may be clarified, completed or supplied by SBA, if necessary, in connection with a formal size determination or size appeal.

§ 121.1103 Time at which size is determined.

The size of a concern, including its affiliates, for sections 8(a) and 7(j) assistance is determined:

(a) As of the date of the application for program eligibility for the purposes of general program eligibility (this determination will not confer subsequent size eligibility for the award of section 8(a) contracts or of section 7(j) assistance);

(b) As of the date of the concern's written self-certification as a small business as part of its initial offer including price to the procuring agency for a particular section 8(a) contract; and

(c) As of the date of application for section 7(j) management or technical assistance (such a 7(j) application may be in the form of a letter to the appropriate SBA officer or as otherwise directed by the proper SBA official).

§ 121.1104 Section 8(a) self-certification.

(a) After SBA has notified a procuring agency in writing that it has accepted a procurement for the 8(a) program in support of the approved business plan of a particular 8(a) concern, the 8(a) concern shall certify that it is a small business for the purpose of performing that particular contract (by certifying that it is small for a particular SIC code or codes) at the time it submits its initial offer including price to the procuring agency for that contract. A copy of the 8(a) concern's offer, including its self-certification as to size, shall be provided to the appropriate SBA district office upon submission to the procuring agency.

(b) The SBA district office involved with the procurement shall verify, within 30 days of its receipt of the selected 8(a) concern's self-certification of size, if possible, that the selected concern is small.

(1) In verifying the selected 8(a) concern's size, SBA will review the annual financial statements and other relevant material regarding the number of employees submitted by the concern to SBA pursuant to part 124 of these regulations. Such financial statements and materials should be present in the 8(a) concern's business plan file. Verification cannot occur unless these financial statements and materials are available to and reviewed by SBA.

(2) Where SBA verifies that the selected 8(a) concern is small for a particular procurement, subsequent changes in size up to the date of award, except those due to merger with or acquisition by another business concern, will not affect the firm's size status as it relates to that procurement.

(i) Where the selected 8(a) concern has merged with or been acquired by another business concern between the date of its certification and the date of award, the concern must recertify its size status, and SBA must verify that new certification, before award can occur.

(ii) An award of an 8(a) contract will be voidable where the selected 8(a) concern does not so recertify its size status.

(c) SBA may, in its discretion, request a formal size determination (pursuant to §§ 121.1601 through 121.1608) with the SBA regional office serving the geographical area in which the principal office of the selected 8(a) concern is located.

(d) Where SBA cannot verify that the selected 8(a) concern is small for a particular procurement, the concern will be ineligible for that procurement, unless a formal size determination is made in favor of the 8(a) concern.

(e) The selected 8(a) concern may request a formal size determination (pursuant to §§ 121.1601 through 121.1608) with the SBA regional office serving the geographical area in which the principal office of the 8(a) concern is located within 5 working days of its receipt of SBA's denial of verification.

(f) Where the selected 8(a) concern does not timely request a formal size determination, SBA may accept the procurement in support of another 8(a) concern, or may return the procurement from the 8(a) program, as appropriate.

§ 121.1105 [Reserved]

§ 121.1106 Manufactured products under section 8(a) contracts.

(a) *General.* In section 8(a) contracts for the procurement of manufactured products, in order to qualify as a small concern, the section 8(a) concern must be either a "manufacturer" or a "regular dealer" under the Walsh-Healey Act (unless specifically exempted under 124.304 of this title) and, in addition, must manufacture the end item being produced, or must comply with the requirements of paragraph (b), (c) or (d) of this section as a nonmanufacturer, a kit assembler or a supplier under Small Purchase Procedures.

(b) *Nonmanufacturers.* (1) A concern need not be the manufacturer of the item(s) being acquired under a manufacturing contract, if the concern:

(i) Is a small business concern under this part under a 500-employee size standard;

(ii) Is primarily engaged in the wholesale or retail trade;

(iii) Represents that it will supply the product of a small business concern that is the manufacturer of the end product, as defined in paragraph (b)(2) of this section, or obtains a waiver of such requirement under paragraph (b)(3) of this section; and

(iv) Represents that it will furnish an end product that was manufactured or produced in the United States.

(2) For size determination purposes, there can be only one manufacturer of the end item being acquired. The manufacturer for the purposes of this provision is the concern which, with its own facilities, performs the primary activities in transforming inorganic or organic substances, including the assembly of parts and components, into the end item being acquired. The end item of a manufacturer possesses characteristics which, as a result of mechanical, chemical or human action, it did not possess before the original substances, parts or components were assembled or transformed. The end item of a manufacturer may be finished in the sense that it is ready for utilization or consumption, or it may be semifinished to become a raw material for a concern engaged in further manufacturing. Firms which perform only minimal operations upon the item being procured do not qualify as manufacturers. The following factors are evaluated in determining whether a concern is the manufacturer for the procurement:

(i) The proportion of total value in the end item added by the efforts of the concern, excluding costs of overhead, testing, quality control, and profit; and

(ii) The importance of the elements added by the concern to the function of the end item, regardless of their relative value.

(3) The Administrator may waive the requirement set forth in paragraph (b)(1)(iii) of this section that the end item must be manufactured by a small business manufacturer, for any class of products for which there are no small

business manufacturers or processors in the Federal market.

Size Eligibility for the Small Business Innovation Research Program

binding size determinations under these sections, and are not appealable.

determining "number of employees" are set forth in § 121.407); and

the applicant is small, the applicant for the patent may request a formal SBA

§ 121.1406 Self-certification.

(a) The financial services

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business manufacturers or processors in the Federal market.

(c) *Kit assemblers.* Where the manufactured item being acquired is a kit of supplies or other goods provided by the offeror for a special purpose, the offeror must meet the applicable size standard of 500 employees and 50 percent of the total value of the contents of the kit must be manufactured by small business concerns under the size standard for the SIC code of the item being acquired. Under this provision, the offeror need not itself be the manufacturer of any of the items acquired.

§ 121.1107 Multiple item procurements.

(a) If a procurement calls for two or more specific end items with different size standards and the section 8(a) concern may submit an offer on any or all end items, the section 8(a) concern must meet the size standard for each end item for which it contracts with SBA. If a procurement calling for two or more specific end items with different size standards requires performance by a single contractor, the section 8(a) concern qualifies as a small business if it meets the size standard of the end item(s) which account(s) for the greatest percentage of total contract value. *See* example under §121.907(a).

(b) If a procurement calls for two or more specific types of services to be performed with different size standards and the section 8(a) concern may submit an offer on any or all of the service items, the section 8(a) concern must meet the size standard for each service item for which it contracts with SBA. If a procurement calls for more than one specific type of service to be performed with different size standards, and an offeror is required to submit an offer on all service items, the offeror may qualify as a small business for such procurement if it meets the size standard of the service(s) having the same numerical standard which account(s) for the greatest percentage of the total contract value.

§ 121.1108 Eligibility of section 8(a) concern for other SBA assistance.

A concern which is eligible under these size regulations for the award of a section 8(a) contract, shall be deemed eligible under the size regulations for assistance, as described in § 121.801 through 121.808; 121.1001 through 121.1012 and 121.1301 through 121.1305 where the latter assistance directly and primarily relates to the performance of the section 8(a) contract in question.

Size Eligibility for the Small Business Innovation Research Program

§ 121.1201 Program covered.

(a) These sections apply to size status for the purpose of award of a "funding agreement" pursuant to the Small Business Innovation Development Act of 1982 (Pub. L. 97-219, 15 U.S.C. 638(e) thru (k)).

(b) The term "funding agreement officer" for purposes of §§ 121.1201 through 121.1205 is defined to include a contracting officer, a grants officer, or a cooperative agreement officer.

§ 121.1202 Establishment of the size standard.

(a) To be eligible to compete for award of funding agreements in SBA's Small Business Innovation Research (SBIR) program, a business concern must be at least 51 percent owned and controlled by an individual(s) who is (are) citizens of or lawfully admitted permanent resident aliens in the United States, and, including affiliates, may not have more than 500 employees. The rules for determining "number of employees" are set forth in 121.407.

(b) A "funding agreement" is any contract, grant or cooperative agreement entered into between any Federal agency and any small business for the Performance of experimental, developmental, or research work funded in whole or in part by the Federal Government. Such work is defined in the SBIR legislation as any "* * * activity which is (1) a systematic, intensive study directed toward greater knowledge or understanding of the subject studied; (2) a systematic study directed specifically toward applying new knowledge to meet a recognized need; or (3) a systematic application of knowledge toward the production of useful materials, devices, and systems or methods, including design, development, and improvement of prototypes and new processes to meet specific requirements"—15 U.S.C. 638, as amended by section 4(e)(5) of Pub. L. 97-219, 96 Stat. 217.

§ 121.1203 Binding size determinations.

Size determinations are formal actions by SBA officials, pursuant to §§ 121.1601 through 121.1722 of these regulations, based upon a specific "funding agreement", as described herein, and are binding upon the parties thereto. Opinions provided by SBA to funding agreement officers or others not relating to a specific "funding agreement" and not given pursuant to §§ 121.1601 through 121.1608 or 121.1701 through 121.1722 are advisory in nature and not binding size determinations under these sections, and are not appealable.

§ 121.1204 Time at which size is determined.

The size status of a concern for the purpose of a "funding agreement" under the SBIR program is determined as of the date of the award for both Phase I and Phase II SBIR awards. A concern having more than 500 employees at the date of award (as determined pursuant to § 121.407) is ineligible for award.

§ 121.1205 Self-certification.

(a) A firm submitting a proposal for award of an SBIR funding agreement must certify itself to be a small business as part of its proposal.

(b) In the absence of a written protest by other offerors or other credible information which would cause the funding agreement officer or SBA to question the veracity of the self-certification, the funding agreement officer may accept the self-certification at face value for the "funding agreement" in question.

(c) Protests against the self-certification of an offeror by another offeror or prospective offeror, by the funding agreement officer or by SBA shall be made under the procedures set forth in §§ 121.1601 through 121.1608.

Size Eligibility for Paying Reduced Patent Fees

§ 121.1301 Program covered.

These sections apply to size status for the purpose of paying reduced patent fees pursuant to Public Law 97-247. This statute provides for the payment of reduced patent fees "by independent inventors and nonprofit organizations as defined in regulations established by the Commissioner of Patents and Trademarks, and by small business concerns as defined in section 3 of the Small Business Act and by regulations established by the Small Business Administration." These regulations deal with eligibility for the latter category, that is, small business concerns. Eligibility for the former categories, that is, independent inventors and nonprofit organizations, is set forth in the regulations of the Patent and Trademark Office, Department of Commerce, 37 CFR 1.9, 1.27, 1.28.

§ 121.1302 Establishment of the size standard.

A concern eligible for reduced patent fees is one

(a) Whose number of employees, including those of its affiliates, does not exceed 500 persons (the rules for determining "number of employees" are set forth in § 121.407); and

(b) Which has not assigned, granted, conveyed, or licensed, and is under no obligation under contract or law to assign, grant, convey or license, any rights in the invention to any person who could not be classified as an independent inventor, if that person had made the invention, or to any concern which would not qualify as a non-profit organization or as a small business concern under this section.

§ 121.1303 Binding size determinations.

Size determinations are formal actions by SBA officials pursuant to §§ 121.1601 through 121.1722 of these regulations, based upon a specific patent application pursuant to the rules of the Patent and Trademark Office, Department of Commerce, and are binding upon the parties thereto. Opinions provided by SBA to patent applicants or others not relating to a specific patent application and not given pursuant to §§ 121.1601 through 121.1608 or 121.1701 through 121.1722 are advisory in nature and not binding size determinations under this section, and are not appealable.

§ 121.1304 Time at which size is determined.

The size status of a concern, including its affiliates, for the purpose of reduced patent fees is determined as of the date of the written verification as a small business as part of the patent application pursuant to 37 CFR 1.27 of the regulations of the Patent and Trademark Office of the Department of Commerce.

§ 121.1305 Self-certification.

(a) A concern may verify its small size in the submission of a patent application to the Patent and Trademark Office pursuant to 37 CFR 1.27 of the regulations of that office.

(b) Any attempt to improperly establish small size status—fraudulently, through gross negligence or otherwise—could result in remedial action by the Patent and Trademark and Office (*see* 37 CFR 1.28, 1.56(d) and 1.555).

(c) In the absence of credible information indicating otherwise, the Patent and Trademark Office may accept the verification by the concern as a small business at face value for the patent application in question.

(d) Questions concerning the verification by a concern as a small business in connection with a patent application shall be resolved, in the first instance, by the Patent and Trademark Office. In the event that the Patent and Trademark Office does not verify that the applicant is small, the applicant for the patent may request a formal SBA size determination pursuant to §§ 121.1601 through 121.1608 of this part.

Size Eligibility of Financial Institutions for Purposes of Sections 8(d) and 15(g) of the Small Business Act

§ 121.1401 Programs covered.

The statutory directives of section 8(d) and 15(g) of the Small Business Act, 15 U.S.C. 637(d) and 644(g), include subcontracting opportunities in connection with Government procurements for "small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals." These sections of this regulation apply to size status for the purpose of subcontracting requirements for financial services to commercial banks and savings and loan associations.

§ 121.1402 Establishment of the size standard.

(a) For the purposes of financial services subcontracting under sections 8(d) and 15(g) of the Small Business Act, a small business, including its affiliates, is a commercial bank or savings and loan association, the assets of which do not exceed $100 million. A financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding fiscal year.

(b) "Assets" for the purposes of this regulation means the assets defined according to the Federal Financial Institutions Examination Council 034 call report form.

§ 121.1403 Binding size determinations.

Size determinations are formal actions by SBA officials, pursuant to §§ 121.1601 through 121.1722 based upon specific subcontracts and are binding upon the parties thereto. Opinions provided by SBA to prime contractors, contracting officers or others, not relating to a specific subcontract and not given pursuant to §§ 121.1601 through 121.1608 or 121.1701 through 121.1722, are advisory in nature and not binding size determinations under these sections, and are not appealable.

§ 121.1404 Time at which size is determined.

The size status of a concern for the purpose of financial services subcontracting is determined as of the date of the written self-certification as a small business as part of the subcontractor's initial offer including price.

§ 121.1405 Self-certification.

(a) The financial services subcontractor will self-certify its small size status in the submission of its offer to the prime contractor.

(b) In the absence of a written protest by offerors for the prime contract or for the subcontract or other credible information which would cause the prime contractor, the Government contracting officer or SBA to question the veracity of the self-certification, the prime contractor and the government contracting officer may accept the self-certification at face value for the subcontract in question.

(c) Protests against the self-certification of a subcontractor or an offeror or other interested party for a subcontract by other offerors for the prime contract or the subcontract, by the prime contractor, by the government contracting officer or by SBA shall be made under the procedures set forth in §§ 121.1601 through 121.1608.

Size Eligibility for Compliance With Programs of Other Agencies

§ 121.1501 Programs covered.

SBA will provide size determinations, under its rules, standards and procedures, for the purpose of compliance with small business requirements of statutes, regulations or programs of other government agencies. These size determinations are provided upon request by the other agencies and have binding effect to the extent determined by the relevant statute, regulation or program of such other agencies. SBA size determinations under these regulations are solely findings regarding the size status of a concern and do not affect other regulatory, compliance, contractual or administrative matters.

§ 121.1502 Size standards of other agencies.

Federal agencies considering and promulgating regulations relating to small businesses generally utilize small business size criteria developed pursuant to the Small Business Act. However, SBA size standards sometimes may not be appropriate for the particular regulation involved. In such cases where a Federal agency decides the SBA size standard is not appropriate, the agency may, after consultation with the SBA Office of Advocacy, establish a small business definition which is more appropriate to the activities of the agency.

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§ 121.1503 Establishment of the size standard.

For purposes of size determinations made pursuant to this section, the size standards for compliance with programs of other agencies are those set forth in these regulations for SBA programs which are most comparable to the programs of such other agencies, unless otherwise agreed by the agency and SBA.

§ 121.1504 Time at which size is determined.

For the purpose of compliance with programs of other agencies, SBA will base its size determination on the size of the concern as of a definite time, as set forth in the request of such other agency.

§ 121.1505 Procedures for SBA size determinations.

SBA size determinations for other Government agencies will be made under the procedures set forth in §§ 121.1601 through 121.1606. Appeals from these SBA determinations, pursuant to §§ 121.1701 through 121.1722, are available to the concern whose size is in issue; the Government agency requesting the size determination; or to other interested parties as identified by the other Government agency.

Procedures for Size Protests and Requests for Formal Size Determinations

§ 121.1601 Who may initiate.

(a) *Protests of small business status.* Entities may protest the size of a concern with respect to designated SBA programs as identified below.

(1) With respect to SBA's Small Business Set-Aside Program, including the Property Sales Program, the following entities, in connection with a particular procurement or sale, may protest:

(i) Any offeror;

(ii) The contracting officer;

(iii) The SBA Regional Administrator in the region serving the geographical area of the headquarters of the protested offeror, regardless of the location of parent companies or affiliates, or the Associate Administrator for Procurement Assistance;

(iv) Other interested parties. Other interesed parties may include large businesses where only one concern submitted an offer for the specific procurement in question. A protest challenging the size of a concern which does not pertain to a particular procurement or sale shall not be acted upon by the SBA.

(2) With respect to SBA's Subcontracting Program (including the Minority Bank Subcontracting Program), the following entities may protest:

(i) The prime contractor;

(ii) The contracting officer;

(iii) Other potential subcontractors;

(iv) The SBA Regional Administrator of the region serving the geographical area of the headquarters of the protested offeror, regardless of the location of parent companies or affiliates, or the Associate Administrator for Procurement Assistance;

(v) Other interested parties.

(3) With respect to SBA's Small Business Innovation Research Program, the following entities may protest:

(i) A prospective offeror;

(ii) The funding agreement officer;

(iii) The SBA Regional Administrator in the region serving the geographical area of the headquarters of the protested offeror, regardless of the location of parent companies or affiliates, or the Assistant Administrator for Innovation, Research and Technology;

(iv) Other interested parties.

(4) With respect to the Department of Defense's Small Disadvantaged Business (SDB) Program, and any other similar program by another agency, the following entities, in connection with a particular SDB procurement may protest:

(i) Any offeror for the specific SDB requirement;

(ii) The contracting officer;

(iii) The SBA Regional Administrator in the region serving the geographical area of the headquarters of the protested offeror, regardless of the location of parent companies or affiliates, the Associate Administrator for Procurement Assistance, or the Associate Administrator for Minority Small Business and Capital Ownership Development.

(5) With respect to any other Government procurement in which status as a small business may be beneficial, including the award of a contract to a small business where there are tie bids, the opportunity to seek a Certificate of Competency by a small business in an unrestricted procurement, and Small Disadvantaged Business (SDB) price evaluation preferences in unrestricted procurements, the following entities, in connection with a particular procurement may protest:

(i) Any offeror;

(ii) The contracting officer;

(iii) The SBA Regional Administrator in the region serving the geographical area of the headquarters of the protested offeror, regardless of the location of parent companies or affiliates, the Associate Administrator for Procurement Assistance, or the Associate Administrator for Minority Small Business and Capital Ownership Development.

(b) *Requests for size determinations.* Entities may request a formal size determination for a concern with respect to designated SBA programs as identified below. In making a formal size determination, the procedures of §§ 121.1602, 121.1605, and 121.1606 shall apply.

(1) With respect to SBA's Financial Assistance Programs, the following entities may request a formal size determination:

(i) The applicant for assistance;

(ii) The SBA program official in the relevant SBA District Office with authority to take final action on the assistance requested;

(iii) The SBA Regional Administrator of the region serving the geographical area in which the principal office of the applicant concern, excluding parent companies and affiliates, is located, or the Associate Administrator for Finance and Investment.

(2) With respect to SBA's section 8(a) program,

(i) For purposes of initial 8(a) eligibility, the following entities may request a formal size determination:

(A) The 8(a) applicant concern; or

(B) The SBA Regional Administrator of the region serving the geographical area in which the principal office of the applicant concern, excluding parent companies and affiliates, is located, the Director of the Division of Program Certification and Eligibility, or the Associate Administrator for Minority Small Business and Capital Ownership Development.

(ii) For purposes of individual 8(a) contract awards, whether sole source or competitive, the following entities may request a formal size determination:

(A) The section 8(a) concern nominated by SBA for the particular procurement;

(B) The SBA program official in the relevant SBA office with authority to execute the section 8(a) contract;

(C) The SBA Regional Administrator of the region serving the geographical area in which the principal office of the 8(a) concern, excluding parent companies and affiliates, is located, or the Associate Administrator for Minority Small Business and Capital Ownership Development.

(3) With respect to SBA's Certificate of Competency Program, the following entities may request a formal size determination:

(i) The offeror who has applied for a Certificate of Competency;

(ii) The SBA Regional Administrator in the region serving the geographical area in which the principal office of the offeror, excluding parent companies and affiliates, is located, or the Associate Administrator for Procurement Assistance.

(4) With respect to SBA's sale or lease of government property, the following entities may request a formal size determination:

(i) The SBA Regional Administator in the region serving the geographical area in which the principal office of the offeror, excluding parent companies and affiliates, is located, or the Associate Administrator for Procurement Assistance;

(ii) Other Federal agencies for the purpose of administration of a property sales program.

(5) With respect to eligibility for paying reduced patent fees, the following entities may request a formal size determination:

(i) The applicant for the reduced patent fees;

(ii) The Patent and Trademark Office.

(6) Additionally, SBA will make a formal size determination when requested by another Government agency for purposes of eligibility for a non-SBA program.

§ 121.1602 Who makes formal size determinations.

(a) In response to either a protest or a request for a formal size determination, the Regional Administrator or his or her delegate shall make all formal size determinations under this Part with the exception of size determininations for purposes of the Disaster Loan Program. Size determinations for purposes of receiving disaster loans shall be made by the Disaster Area Office responsible for the area in which the disaster occurred.

(b) For protest purposes, the appropriate Regional Administrator shall be the one in the SBA region serving the geographical area of the headquarters of the protested offeror, regardless of the location of parent companies or affiliates.

(c) In cases of a request for a formal size determination, the Regional Administrator determining size shall be the one in the SBA region serving the geographical area in which the principal office of the applicant fo assistance or potential recipient of the Government program benefits involved, excluding parent companies and affiliates, is located.

§ 121.1603 Protest procedures.

(a) *Filing.* (1) A protest in connection with a government procurement or sale shall be directed to the contracting officer responsible for the particular procurement or sale involved. Except as provided below with respect to contracting officers or SBA, in order to apply to the procurement or sale in question, such protest must be received prior to the close of business on the 5th day, exclusive of Saturdays, Sundays, and legal holidays, after bid or proposal opening.

(2) With respect to negotiated procurements, a protest must be received within 5 days, exclusive of Saturdays, Sundays, and legal holidays, after receipt from the contracting officer of notification of the identity of the prospective awardee being protested, except as provided below with respect to protests made by contracting officers or SBA. A protest filed within such five day period shall apply to the procurement in question even though a contracting officer may have awarded the contract prior to receipt of the protest.

(3) Such protest must be delivered to the contracting officer by hand, telegram, or mail within the 5-day period allotted; however, a protest shall be considered timely if made by telephone to the contracting officer within the 5-day period allotted and the contracting officer thereafter receives a confirming letter either within such 5-day period or postmarked no later than one day after the date of such telephone protest.

(4) At any time after bid opening, a contracting officer may question the size of any offeror for the purpose of a particular procurement or sale by filing a protest with the SBA Regional Office serving the area in which the headquarters of the offeror is located, regardless of the location of parent companies or affiliates.

(b) *Timeliness of protest.* (1) A protest received after the time limits set forth above shall not apply to the procurement or sale in question. A concern determined other than small as a result of such late protest, however, shall be precluded from self-certifying in any other procurement or sale in which the size standard is the same or lower than the standard in the procurement or sale in question.

(2) A protest by a contracting officer shall be timely for the purpose of the procurement or sale in question whether filed before or after award.

(3) A protest by SBA shall be timely for the purpose of the procurement or sale in question whether filed before or after award. SBA protests, like other protests, must initially be filed with the contracting officer.

(4) On a multiple award schedule procurement set aside for small business, protests will be deemed timely if received by SBA at any time prior to the expiration of the contract period (including renewals).

(5) Protests filed by any person before bid opening or notification of intended award shall be considered premature and shall be dismissed.

(c) *Referral to Regional Office.* (1) Any contracting officer who receives a protest shall promptly forward such protest to the Regional Office serving the geographical area in which the headquarters of the offeror is located, regardless of the location of parent companies or affiliates. Contracting officers need not refer a Protest to SBA, however, when SBA is the protesting party.

(2) When a contracting officer receives a protest and refers it to the SBA, such referral shall contain the following:

(i) The protest and any accompanying materials;

(ii) A copy of the self-certification as to size;

(iii) Identification of the applicable size standard;

(iv) A copy of the solicitation;

(v) Identification of the date of bid opening; and

(vi) The date on which the protest was received.

§ 121.1604 Form of protest.

(a) *Required specificity.* No specific form is required for a protest. However, a protest must be sufficiently specific to provide reasonable notice as to the grounds upon which the protested concern's size is questioned. A protest merely alleging that the protested concern is not small or is affiliated with unnamed other concerns will not be deemed to specify adequate grounds for the protest. Some basis for the belief stated in the protest must be given. For the purpose of illustrating required specificity, set forth below are 3 examples which provide sufficient specificity and 3 examples which lack sufficient specificity.

Example 1: An allegation that firm X is large because it employs more than 500 employees (where 500 employees is the applicable size standard) without setting forth a basis for the allegation is unspecific.

Example 2: An allegation that firm X is large because it exceeds the 500 employee size standard (where 500 employees is the applicable size standard) because a higher employment figure was published in publication Y is sufficiently specific.

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Example 3: An allegation that firm X is affiliated with firm Y without setting forth any basis for the allegation is unspecific.

Example 4: An allegation that firm X is affiliated with firm Y because officer A is an officer of both companies is sufficiently specific.

Example 5: An allegation that firm X has revenues in excess of $2 million (where the applicable size standard is $2 million) without setting forth a basis for the allegation is unspecific.

Example 6: An allegation that firm X exceeds the size standard (where the applicable size standard is $2 million) because it received Government contracts in excess of $2 million last year is sufficiently specific.

The examples given above in this subsection are stated in the briefest possible fashion, but protestors should provide as much detail as is available to them in order to facilitate making expeditious and accurate size determinations. Materials supporting the protest should be submitted where possible.

(b) *Non-specific protests.* Protests which do not contain sufficient specificity shall be dismissed by SBA.

(c) *Appeal of dismissals.* A dismissal by the applicable SBA Regional Office of a protest for lack of specificity may be appealed to SBA's Office of Hearings and Appeals pursuant to §§ 121.1701 through 121.1722.

§ 121.1605 Notification of protest and filing of the application for small business size determinations.

(a) Upon receipt of the protest, the SBA Regional Administrator or his or her delegate shall immediately notify the contracting officer and the protestor of the date such protest was received and whether it will be processed or dismissed for lack of specificity. Where a protest is filed pertaining to SBA's Small Business Innovation Research Program, notification shall also be made to SBA's Assistant Administrator for Innovation, Research and Technology. In cases where the protest is sufficiently specific, the Regional Administrator or his or her delegate shall also advise the protested offeror of the receipt of the protest and shall forward to the protested offeror a copy of the protest and a blank SBA Application for Small Business Size Determination (Size Determination Application assigned OMB Control No. 3245–0101), and where appropriate, SBA's Size Determination Application Supplement, by certified mail, return receipt requested.

(b) Such offeror must file the completed Form 355 within 3 working days as directed by SBA, and must attach thereto its answers to the allegations contained in the protest, together with any supporting material.

(c) If such offeror does not submit the completed SBA Form 355 and its answers to the allegations within 3 working days, or within any additional period of time provided by SBA for good cause, SBA may assume that disclosure of the form or any missing part thereof or any missing answer to the allegations would be contrary to the interests of the protested concern, and SBA may determine that the protested concern is other than a small business.

§ 121.1606 Making the size determination.

(a) *General.* After receipt of a protest or a request for a formal size determination, SBA shall make a formal size determination. The size determination shall be made within 10 working days after receipt of the protest, if possible.

(b) *Withdrawal of request for formal size determination or protest.* Once properly instituted by the filing of a request for a formal size determination or a protest, the size determination may be completed by SBA even if the particular application, proposal, or offer is withdrawn or the Government procurement or sale is cancelled or awarded. This continuation of the size determination process is discretionary with SBA and will be used to prevent the misuse of small business assistance programs and this part 121.

(c) *Basis for determination.* Once the protest or request for a formal size determination is found to be sufficiently specific, such size determination may be based on other grounds not raised in the protest/request. The size determination shall be based primarily on facts and allegations supplied by the protestor and protested concern (or by the entity requesting the size determination). If deemed necessary or appropriate, SBA may utilize other information in its files and may make inquiries including requests to the protestor, the protested concern and any alleged affiliates, or other persons for additional specific information.

(d) *Burden of persuasion.* The burden of establishing its small business size by submitting full information to SBA shall be upon the concern whose size is under consideration.

(e) *Weight of evidence.* Specific signed factual evidence will be weighed more heavily by SBA than general unsupported allegations or opinions. In the case of refusal or failure to furnish requested information within a required time period, SBA may assume that disclosure would be contrary to the interests of the party failing to make disclosure.

(f) *Formal size determination.* The SBA shall base its formal size determination upon the record, including reasonable inferences therefrom, and shall state in writing the basis for its findings and conclusions.

(g) *Notification of determination.* After making its determination, SBA shall immediately notify the contracting officer, the protestor and the protested offeror and each affiliate or alleged affiliate of its determination. Such notification shall be by certified mail, return receipt requested.

(h) *Results of an SBA size determination.* (1) A formal size determination becomes effective immediately and remains in full force and effect unless and until reversed upon appeal to SBA's Office of Hearings and Appeals pursuant to §§ 121.1701 through 121.1722, or unless the concern is recertified as a small business pursuant to § 121.1607.

(2) After SBA has determined that a protested concern is other than small for purposes of a particular procurement, such concern cannot thereafter become eligible for such procurement by affirmatively reducing its size.

(3) If SBA has made a formal size determination that a particular concern is not small, the concern will be deemed ineligible within such applicable size standard for any assistance under the Small Business Act or the Small Business Investment Act of 1958, unless it is thereafter recertified by SBA as a small business as provided in § 121.1607. After such an adverse size determination, the concern shall not self-certify as small within the same or a lower employee or annual receipts size standard (whichever is applicable) unless it is recertified.

§ 121.1607 Recertifications.

(a) An application for recertification may be made at any time to the SBA Regional Office which made the original size determination. Such application must be accompanied by a current completed Form 355 (assigned OMB Control No. 3245–0101) and any other information sufficient to show a significant change in its ownership, management, contractual relations, or in other factors bearing on its status as a small concern.

(b) Recertification shall not be required nor will the prohibition against future self-certification apply if the adverse SBA size determination is based solely on a finding of affiliation due to a joint venture (e.g., ostensible subcontracting) limited to a particular Government procurement or property sale, or is based on an ineligible manufacturer where the eligible small business bidder or offeror is a nonmanufacturer on a particular Government procurement.

(c) If SBA denies an application for recertification, such denial shall be deemed a formal size determination. Except as to timber sales size determinations, denials are appealable only by the concern in question to the SBA Office of Hearings and Appeals pursuant to §§ 121.1701 through 121.1722. With respect to timber sales size determinations, SBA may also appeal a denial to the Office of Hearings and Appeals.

(d) The granting of an application for recertification shall have future effect only and shall be deemed a formal size determination, except that the notice requirements of § 121.1606(g) to entities other than the applicant shall not apply.

§ 121.1608 SIC Appeals.

The Office of Hearings and Appeals exclusively shall determine all SIC Code Appeals. Procedures for filing appeals from SIC Code designations are set forth in §§ 121.1701 through 121.1722.

Procedures for Size and SIC Code Appeals

§ 121.1701 Jurisdiction of Office of Hearings and Appeals.

The jurisdiction of the Office of Hearings and Appeals under this part shall be limited, as specified in paragraphs (a) and (b) of this section, to appeals from formal size determinations and appeals from SIC Code designations. No appeal will be permitted from an informal or advisory size opinion. The Office of Hearings and Appeals will review appeals and make final decisions pursuant to the provisions of this subpart, affirming, reversing or modifying:

(a) Formal size determinations made by SBA Regional Offices, pursuant to §§ 121.1601 through 121.1608, and size determinations made by Disaster Area Offices in connection with an application for a disaster loan, as to a concern's small business size status; and

(b) Designations by contracting officers, as made by the contracting officer, or as assigned by SBA pursuant to § 121.902(d) or § 121.1102(d) of this part, regarding classifications of the Standard Industrial Classification (SIC) code and/or the Small Business Administration size standard applicable to a product or service for the purpose of Government procurements and sales.

§ 121.1702 Definitions.

The following definitions shall apply to §§ 121.1701 through 121.1722:

(a) *Person* means an individual, partnership, corporation, association, or other business entity.

(b) *Party* means the appellant, the concern whose size is at issue and all alleged affiliates of such concern that participate or are specifically afforded the opportunity to participate in the proceeding by the Presiding Judge, the contracting officer in a SIC code designation appeal, the SBA in section 8(a) size appeals and other size appeals in which there is initially no other adverse party to the concern whose size is at issue in the case or where admitted by motion, and any other person so designated by the Presiding Judge. Parties have full rights of participation in the proceeding and are bound by the decision of the panel.

(c) *File* means to deliver personally or to send by U.S. certified mail, return receipt requested or by any other mail service that provides proof of mailing and receipt. The filing date will be determined by reference to the postmark date.

§ 121.1703 Who may appeal.

Appeals from size determinations and SIC Code designations may be filed with the Office of Hearings and Appeals by any of the following:

(a) Any interested person who was a party to or has been adversely affected by a formal size determination made pursuant to §§ 121.1601 through 121.1608;

(b) Any interested person who has been adversely affected by a SIC code designation; however, with respect to a particular 8(a) contract, only the AA/MSB&COD or the procuring agency contracting officer may appeal a SIC code designation;

(c) The SBA Associate or Assistant Administrator for the SBA program involved or the SBA Regional Administrator in the region which made the formal size determination.

(d) SBA appeals shall be made through SBA's Office of General Counsel to the Office of Hearings and Appeals.

§ 121.1704 Where to appeal.

Written Notices of Appeal, conforming to § 121.1706 may be mailed to the Office of Hearings and Appeals, Small Business Administration, Washington, DC 20416, or may be personally delivered to the Office of Hearings and Appeals at 2100 K Street NW., Washington, DC.

§ 121.1705 Time limits for appeals.

(a)(1) Except as provided in paragraph (a)(2) of this section, a written appeal from a size determination must be filed with the Office of Hearings and Appeals no later than thirty (30) calendar days after the date of receipt of such determination.

(2) A written appeal from a size determination in a pending procurement or a pending Government property sale must be filed with the Office of Hearings and Appeals no later than five (5) days (exclusive of Saturdays, Sundays, and legal holidays) after the date of receipt of such determination. Unless written notice of such an appeal is filed within the prescribed time limit, the appellant will be deemed to have waived all rights of appeal regarding size insofar as the pending procurement or sale is concerned; however, an appeal which is untimely under this paragraph (a)(2) may, if timely under paragraph (a)(1) of this section, proceed to final determination and shall apply to future procurements and sales.

(b)(1) Except as provided in paragraph (b)(2) of this section, an appeal from a SIC code designation must be filed with the Office of Hearings and Appeals no later than 10 days (exclusive of Saturdays, Sundays, and legal holidays) before the bid opening day or deadline for submitting proposals or quotations as specified in the solicitation. If a solicitation is modified to extend the bid opening day or deadline for submitting proposals or quotations, the 10 day period for filing shall be from the date designated in the modification.

(2) Where the bid opening day or deadline for submitting proposals or quotations is less than 30 days after the issuance of the invitation for bids or request for proposals or quotations, the appeal must be filed with the Office of Hearings and Appeals no later than 5 days (exclusive of Saturdays, Sundays, and legal holidays) before the bid opening day or deadline for submitting proposals or quotations. If a solicitation is modified to extend the bid opening day or deadline for submitting proposals or quotations, the 5-day period for filing shall be from the date designated in the modification.

(3) An untimely appeal of a SIC code designation will be dismissed.

§ 121.1706 Initiation of appeal.

(a) The appeal is initiated by filing the Notice of Appeal. No particular form is prescribed for the Notice of Appeal. The appellant shall file the Notice of Appeal with the Office of Hearings and Appeals, in writing. A telegraphic or texefaxed notice shall be confirmed by next day mailing of a written Notice. In accordance with § 121.1712, the Notice of Appeal shall be certified and a copy shall be concurrently served by the appellant upon those parties and persons specified in paragraph (a)(6) of

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this section. The Notice of Appeal shall include the following information:

(1) Name, address and telephone number of the party filing the appeal, and identification of the person to be contacted for service of correspondence, notices, orders, pleadings and requests for information pertaining to the appeal;

(2) The substance and date of the size determination or SIC code designation from which the appeal is taken, including identification of the concern whose size is being determined, or the SIC or SBA size standard being appealed;

(3) If applicable, the solicitation or contract number and date, and the name, address and telephone number of the contracting officer;

(4) A full and specific statement of the reasons why the size determination or SIC code designation appealed is alleged to be erroneous;

(5) Presentation of arguments in support of such allegations; and

(6) A statement certifying that copies of the Notice of Appeal have been served upon the following, as applicable:

(i) The contracting officer where a procurement or sale is involved;

(ii) The SBA official whose formal size determination is appealed;

(iii) The concern whose size status is at issue;

(iv) All persons, other than the appellant, who filed protests at the SBA Regional Office level; and

(v) Each concern alleged to be affiliated with the concern whose size is at issue, to the extent that the address of such concern is reasonably identifiable;

(vi) SBA's Office of General Counsel, attention: Associate General Counsel for General Law.

(b) Upon receipt of a copy of the Notice of Appeal, the SBA Regional Office shall immediately, by express mail or other appropriate next day delivery, send the entire case file to the Office of Hearings and Appeals.

(c) The Office of Hearings and Appeals will notify the parties and persons specified in paragraph (a)(6) of this section, and any other interested persons as determined by the Presiding Judge, of the date it received the Notice of Appeal and the docket number assigned.

§ 121.1707 Scope of appeal and burden of proof.

The Office of Hearings and Appeals will not consider issues not previously presented to the Small Business Administration official whose size determination is being appealed unless such consideration is determined to be necessary to prevent manifest injustice to a party and such omission was not due to the fault of such party. The appellant shall have the burden of proof, by a preponderance of the evidence, in both size and SIC code appeals.

§ 121.1708 Response to notice of appeal.

After a Notice of Appeal has been filed, any interested person may file a signed statement supporting or opposing the appeal and presenting argument and evidence with the Office of Hearings and Appeals. Such statement must be filed with the Office of Hearings and Appeals no later than five (5) calendar days after receipt of such Office's notification of the filing of an Appeal (pursuant to § 121.1706(c)), unless otherwise specified by the Presiding Judge. Such statement shall also, in accordance with § 121.1712, be certified and concurrently served upon all parties and persons specified in § 121.1706(a)(6), and upon other persons determined to be interested by the Presiding Judge. In the discretion of the Presiding Judge, the appellant may be permitted to reply to any such response submitted.

§ 121.1709 Intervention.

(a) *Intervention by SBA.* The SBA may, upon motion and for good cause, intervene in any proceeding covered under this Part. Such motion shall be filed on behalf of the SBA by SBA's Office of the General Counsel. Such motion shall be concurrently served on all parties and persons specified in § 121.1706(a)(6), and upon other persons determined to be interested by the Presiding Judge.

(b) *Intervention by interested persons.* Other persons may move to intervene in an appeal before the Office of Hearings and Appeals by filing a motion containing a brief statement of the movant's interest in the proceeding. Such motion shall be concurrently served on all parties and persons specified in § 121.1706(a)(6), and upon other persons determined to be interested by the Presiding Judge. The Presiding Judge may permit a person to intervene to such extent and upon such terms as appropriate, if:

(1) The movant's interest will not be adequately represented by the existing parties;

(2) The movant's participation in the appeal may reasonably be expected to assist in the development of a proper record; and

(3) The movant's participation will not broaden the issues, resulting in prejudicial delay of the proceeding.

§ 121.1710 Docket file.

(a) *Contents.* Upon the receipt of a Notice of Appeal, the case is assigned a docket number. The docket file will consist, as applicable, of the Notice of Appeal, any responses thereto, the case file submitted by the Small Business Administration Regional Office, any materials submitted by the contracting officer, including the related written determination of the official or officer, any additional pleadings, motions and other documents submitted pursuant to these sections, unless expressly excluded from the docket file or not received into evidence by the Presiding Judge, the transcript or recording of any oral hearing or telephone conference, and any orders and decisions issued in the proceeding.

(b) *Public access to docket file.* The following rules apply regarding public access to the docket file for a proceeding:

(1) Except as provided in paragraph (b) (2) and (3) of this section, the docket file is available for public inspection in the Office of Hearings and Appeals during normal business hours and copies of such material may be obtained upon payment of the applicable charges.

(2) The following information in the docket file shall not be subject to public inspection or copying:

(i) Information which cannot be disclosed according to law;

(ii) Information subject to an *in camera* order issued pursuant to § 121.1717 of these regulations; and

(iii) Any proprietary information the withholding of which is provided pursuant to § 121.1712 or which is identified and contained in the case file submitted by the Small Business Administration official or the contracting officer.

(3) The case file submitted by the Small Business Administration Regional Office shall be returned to such office upon termination of the proceeding. The remainder of the docket file shall be retained and disposed of in accordance with general principles of Government records management.

§ 121.1711 Assignment of three judge panel.

Upon receipt of a Notice of Appeal, the Assistant Administrator for the Office of Hearings and Appeals will assign the appeal to a panel of three Judges, one of whom (the Presiding Judge) will be designated to preside over the panel. The panel will have jurisdiction to conduct proceedings relative to and to decide the controversy and to take such further appropriate action as may be necessary to issue a decision in the matter in accordance with applicable agency policy, precedent and law. A decision agreed upon by a majority of the panel will be the final decision of the Small Business Administration.

§ 121.1712 Filing and service of pleadings.

The following rules apply to all pleadings (including the Notice of Appeal), motions, responses, and other documents filed pursuant to these sections.

(a) Except as provided in paragraph (c) of this section, all pleadings, motions, and other documents filed with the Office of Hearings and Appeals pursuant to these sections shall be served upon all parties to the proceeding or their respective counsel or other representative in the proceeding, personally or by registered or certified mail, and shall be accompanied by certification of such service.

(b) Any pleading, motion, response, and other document filed with the Office of Hearings and Appeals shall include a signed certificate which states how and when service was made.

(c) Tax returns, confidential data on SBA Form 355 and any other document that constitutes proprietary information need not initially be served, so long as such deletions are identified and described in the copies served upon all parties to the proceeding pursuant to paragraph (a) of this section. In addition, if such proprietary information is received in evidence by the Presiding Judge, the offering party must petition for an *in camera* order, pursuant to § 121.1717, in order to withhold such information from the public and from other parties.

(d) Any pleading, motion, response, or other document filed pursuant to these sections shall be signed by an authorized person, who shall certify as follows:

I have read this document and, under penalty of perjury and the sanctions imposed under 18 U.S.C. 1001, of which I am aware, I certify that, to the best of my knowledge, the statements made herein are true and correct, and that this document is not being filed for the purpose of delay or harassment.

(e) Time limitations on all filings are strictly enforced. Late filings, and filings not specifically provided for in this subpart, may be disregarded to avoid delay in disposing of the appeal. Untimely appeals will be dismissed. Motion for an extension of any other time limit must be filed within the time period to which it applies.

§ 121.1713 Authority and functions of Presiding Judge.

The Presiding Judge of the panel to which the appeal is assigned is authorized to act upon and to dispose of all relevant motions, petitions, responses, and other pleadings; to obtain such competent and relevant facts as the Presiding Judge may deem necessary to a proper and just determination of the matters at issue, including, for example, by oral hearing or telephone conferences, through judge's interrogatories, or by other appropriate means; and to fix the time and place of any oral hearing or telephone conference. The Presiding Judge is also authorized to:

(a) Administer oaths and affirmations;

(b) Request the attendance of Small Business Administration employees;

(c) Examine witnesses;

(d) Permit discovery upon motion;

(e) Issue protective orders in the context of discovery and, as specified in § 121.1716, in the context of subpoenas;

(f) Issue subpoenas as provided in § 121.1716;

(g) Issue *in camera* orders pursuant to § 121.1717;

(h) Rule upon questions of procedure, evidence, policy and law, including the designation of party status in a proceeding and the nature and extent of participation for all other participants;

(i) Regulate the course of any oral hearing, maintain decorum, and exclude from such hearing any person engaging in disruptive conduct;

(j) Require the filing of memoranda and the presentation of oral argument with respect to any question upon which the Presiding Judge is required to rule during the course of the proceeding;

(k) Hold conferences for the settlement, explanation or simplification of the issues or for other appropriate purposes;

(l) Dispose of procedural requests and similar matters;

(m) Take action and make decisions in conformity with applicable law, policy, and procedures of the Small Business Administration;

(n) Act on motions to enlarge, modify, or delete issues in the proceedings;

(o) Extend the time limits for filing pleadings for good cause, except the time limits for initiating appeals set forth in § 121.1705 (a) and (b); and

(p) Impose appropriate sanctions if any party fails to comply with an order of the Presiding Judge to produce certain information, including but not limited to:

(1) Drawing an inference against the party who has failed to comply with the order as to facts in dispute;

(2) Prohibiting the party who has failed to comply with the order from introducing, or otherwise relying upon, evidence relating to the information sought;

(3) Permitting any opposing party to introduce secondary evidence concerning the information sought;

(4) Striking any part of the pleadings of the party failing to comply with such order; or

(5) Taking such other appropriate action in accordance with applicable law, policy, and procedures of the SBA.

§ 121.1714 Oral hearings and telephone conferences.

The following rules apply to oral hearings and telephone conferences:

(a) The Presiding Judge generally decides the appeal upon the written record, without an oral hearing or oral argument. An oral hearing shall be held only when the Presiding Judge determines, upon examination of the docket file and consideration of such additional facts as may be acquired on notice to the parties, that there is a genuine dispute as to any material fact of decisional significance which cannot be resolved except by confrontation of witnesses.

(b) If the Presiding Judge determines that there is a matter that cannot be resolved other than by a telephone conference or an oral hearing, he or she will fix a time and place for such conference or hearing to resolve such matter.

(c) Any oral hearing will be set at a site reasonably convenient to the parties and notice thereof will set forth:

(1) A statement as to the purpose of the oral hearing; and

(2) A statement as to the matters of fact and law involved and the issues that will be heard.

(d) The Office of Hearings and Appeals will provide a means for recording oral hearings and telephone conferences at which evidence is taken. A transcript or record, as applicable, may be obtained upon payment of the applicable charges.

§ 121.1715 Prohibited ex parte communications.

Except to the extent required for the disposition of *ex parte* matters as authorized by law or regulation, no person may consult a Judge on a question of fact or law at issue in an appeal except on notice and opportunity for all parties to participate.

§ 121.1716 Subpoenas.

The following rules apply to subpoenas:

(a) Subpoenas are authorized at the discretion of the Presiding Judge. Only parties to the proceeding may request subpoenas. No subpoenas may be issued against Small Business Administration personnel or for documents in the custody or control of the Small Business Administration.

(b) Subpoenas requiring the attendance and testimony of witnesses, and subpoenas requiring the production

(k) In case of failure to make service, the reasons for the failure shall be stated on the original subpoena by the

accordance with paragraph (c)(2) of this section.

(2) Any person seeking disclosure of

the transcript, together with all exhibits, will be certified by the Presiding Judge and filed in the docket file in the Office

findings proposed, with citations to the transcript, where appropriate, and to other portions of the record relied on for

(b) Within 20 calendar days after issuance of a written decision and upon notice to all parties and persons

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(b) Subpoenas requiring the attendance and testimony of witnesses, and subpoenas requiring the production of any books, papers, records, contracts, agreements, and other documents relating to an appeal under this section shall be signed and issued by the Presiding Judge.

(c) Unless submitted on the record while an oral hearing is in progress, requests for a subpoena *ad testificandum* shall be submitted in writing, under oath, identifying the person to be subpoenaed and showing the relevance, materiality, and the basis for requiring the testimony of such person.

(d) Requests for a subpoena *duces tecum* shall be submitted in writing, under oath, and shall specify with particularity the books, papers and documents desired and the facts expected to be proved thereby. A showing shall also be made as to the relevance and materiality of the evidence sought.

(e) Requests for subpoenas shall be submitted by a party in triplicate and may be made *ex parte*.

(f) Any person or entity against whom a subpoena is directed may, prior to the return date, file with the Presiding Judge a motion to quash or limit the subpoena, setting forth the reasons the subpoena should not be complied with or should be limited in scope. Notwithstanding the requirements of § 121.1712(a), such motion need only be served upon the party requesting the subpoena.

(g) Notice, including a brief statement of the reasons therefor, will be given for the denial, in whole or in part, of a request for subpoena or of a motion to quash.

(h) A subpoena may be served by any person who is not a party to or participant in the proceeding and who is not less than 18 years of age.

(i) Service of a subpoena upon the person named therein shall be made by exhibiting the original subpoena to such person, by reading the original subpoena if such person is unable to read, by delivering a duplicate of the subpoena to such person, and by tendering the fees for one day's attendance at the proceeding to which such person is summoned and the mileage allowed by law. If the subpoena is issued on behalf of the United States or an officer or agency thereof, attendance fees and mileage need not be tendered, but will be paid upon filing of an appropriate claim therefor.

(j) The person effecting service of a subpoena shall sign an affidavit thereof, stating the date, time, and manner of service.

(k) In case of failure to make service, the reasons for the failure shall be stated on the original subpoena by the person who attempted to make service.

(l) The original subpoena, bearing or accompanied by the required affidavit or statement, shall be returned immediately to the Office of Hearings and Appeals.

(m) The attendance of witnesses and the production of documentary evidence may be required from any place in the United States to any designated place of hearing. In case of disobedience of a subpoena, the SBA may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence.

(n) Witnesses who are subpoenaed and respond thereto are entitled to the same fees, including mileage, as are paid for like service in the courts of the United States. Fees shall be paid by the party at whose instance the subpoena is issued.

(o) In the exercise of discretion, the Presiding Judge authorizing and issuing any subpoena may, upon request or upon his or her own motion, devise and provide such protective order(s) as may be necessary and appropriate to protect against harassment, undue expense or breach of confidentiality of information and data reasonably concluded to require protection from general disclosure.

§ 121.1717 In camera orders.

(a) *Definition. In camera* materials are documents, testimony, or other data which by order of the Presiding Judge are kept confidential and excluded from disclosure to any person except as provided in this section.

(b) *In camera treatment of documents and testimony.* Upon motion and a showing of good cause, the Presiding Judge shall have the authority to order documents or oral testimony to be received *in camera*. The order will specify the date on which *in camera* treatment is expected to expire and will include:

(1) A description of the documents and/or testimony, or portion(s) thereof, being received *in camera;*

(2) A full statement of the reasons for granting *in camera* treatment; and

(3) The terms and conditions imposed by the Presiding Judge limiting access to or use of the *in camera* material.

(c) *Access and disclosure to parties.* (1) Administrative Judges, their designated staffs and other Office of Hearings and Appeals personnel, as appropriate, shall have complete access to *in camera* materials. Any party to the proceedings may seek access only in accordance with paragraph (c)(2) of this section.

(2) Any person seeking disclosure of *in camera* documents or access to testimony shall make a written request to the Presiding Judge who issued the *in camera* order. The Presiding Judge may grant or deny the request in whole or in part. The Presiding Judge will examine the *in camera* materials and may excise any portions prior to disclosure of the materials to the requester consistent with his or her ruling on the request.

(d) *In camera* materials shall be segregated from the docket file and protected from public disclosure until the termination of *in camera* treatment, either by expiration of the order or a successful appeal. After the termination of such *in camera* treatment, the materials shall be open to the public to the extent permitted by law.

(e) Proposed findings, conclusions, briefs, or other documents may not include specific details of *in camera* materials. However, general references to such materials may be made. To the extent that parties consider necessary the inclusion of specific details of *in camera* materials, those references shall be segregated and marked and shall become part of the *in camera* record. Those documents shall be served only on parties accorded access to the *in camera* material by the Presiding Judge.

§ 121.1718 The record.

The following rules apply to the record compiled in the proceeding:

(a) A transcript or recording of any testimony and exhibits, and any other documents included in the docket file pursuant to this provision shall constitute the exclusive record for decision. Where the decision is based on official notice of a material fact not appearing in the record, any party may file a petition for reconsideration no later than 20 calendar days following the issuance of the decision served pursuant to § 121.1721(b) advocating a contrary factual proposition and setting forth the factual or legal basis for the challenge.

(b) The record in a proceeding in which an oral hearing has been held will be closed on the date designated by the Presiding Judge when the taking of testimony has been concluded. When no oral hearing has been held, the record in a proceeding will be closed upon receipt of the last-filed timely response to the Notice of Appeal made pursuant to § 121.1706, unless the Presiding Judge, in his or her discretion, amends the date that the record is closed. In any case where an evidentiary transcript has been prepared following an oral hearing, the transcript, together with all exhibits, will be certified by the Presiding Judge and filed in the docket file in the Office of Hearings and Appeals. A copy of such certification will be served on all parties to the proceeding.

(c) At any time during the course of the proceeding, or as directed by the Presiding Judge, but no later than ten (10) calendar days after the issuance of notice of certification of the record made pursuant to paragrah (b) of this section, any party to the proceeding may file with the Presiding Judge a motion requesting the correction of a transcript, if any, which shall be accompanied by proof of service thereof upon all other parties to the proceeding. No later than five (5) calendar days after the receipt of such a motion, other parties may file a response in support of, or in opposition to, such motion. Thereafter, the Presiding Judge will issue an order specifying the corrections, if any, to be made in the transcript. A copy of the order shall be served upon all parties and will be made a part of the record. The Presiding Judge may, on his or her own motion, specify on notice to the parties corrections to be made in the transcript. Objection to any such proposed correction(s) shall be filed within three (3) days after receipt of such notice and such objection(s) will be the subject of appropriate rulings by the Presiding Judge.

§ 121.1719 Post-hearing procedures.

The following rules will apply to proposed findings and conclusions:

(a) After the conclusion of any oral hearing, any party may, with the concurrence of the Presiding Judge, file proposed findings of fact and conclusions, briefs and memoranda of law; provided, that the Presiding Judge may, in any proceeding, direct any party to file proposed findings of fact and conclusions, briefs and memoranda of law. Any proposed findings of fact, conclusions, briefs, and memoranda of law shall be filed within fifteen (15) calendar days after the issuance of notice of certification of the record pursuant to paragraph (b) of this section unless the Presiding Judge specifies otherwise.

(b) Proposed findings of fact shall be set forth in serially numbered paragraphs and shall set out with particularity all decisionally significant evidentiary facts developed on the record that are deemed to support the findings proposed, with citations to the transcript, where appropriate, and to other portions of the record relied on for each evidentiary fact. Proposed conclusions shall also be separately stated in serially numbered paragraphs. Proposed findings and conclusions may be limited to those issues that affect the interests of their proponent and may be accompanied by supporting briefs.

(c) In the absence of a showing of good cause therefor, the failure to file proposed findings of fact, conclusions, briefs and memoranda of law, when directed to do so by the Presiding Judge, will be deemed to constitute a waiver of the right to object to the findings and conclusions of the panel.

§ 121.1720 Decision.

(a) Following receipt of proposed findings and conclusions authorized or directed pursuant to § 121.1719 or default in the making of such filings, or upon closing the record when such filings have not been authorized or directed, the Presiding Judge will prepare a proposed decision containing findings of fact and conclusions, as well as the reasons therefor, with respect to all the decisionally significant material issues of fact and law presented on the record. The proposed decision will be circulated among the panel members for consideration and concurrence. Upon approval of that decision or a different decision by a majority of the panel, the decision will be issued.

(b) The decision is the final decision of the Small Business Administration, becomes effective immediately, and binds all parties to the proceeding. However, a party may petition for reconsideration pursuant to § 121.1721.

(c) The Office of Hearings and Appeals shall serve the decision upon all parties to the proceeding by certified mail. Where time is of the essence, notice of the ultimate determination may be communicated in a telegram or by telephone to the parties, to be followed by service of the full text.

§ 121.1721 Reconsideration of decision.

(a) At any time after a written decision has been issued and upon notice to all parties and persons specified in § 121.1706(a)(6), and upon other persons determined to be interested by the Presiding Judge, the panel may, on its own initiative, reopen the proceeding and enter a new decision confirming, modifying, or setting aside the decision in whole or in part.

(b) Within 20 calendar days after issuance of a written decision and upon notice to all parties and persons specified in § 121.1706(a)(6), and upon other persons determined to be interested by the Presiding Judge, any party may file a petition for reconsideration of such decision, setting forth the relief sought and the grounds in support of the petition. Such grounds must be confined to new questions raised by the decision concerning which the petitioner had no previous opportunity to present evidence or argument.

(c) In cases where SBA has not previously appeared in the case as a party, and was not so asked to appear by the Presiding Judge, SBA's Office of the General Counsel may, within 20 calendar days after issuance of a written decision and upon notice to all parties and persons specified in § 121.1706(a)(6), and upon other persons determined to be interested by the Presiding Judge, file a petition for reconsideration where the decision presents significant issues of precedential importance.

(d) Any party may oppose a petition filed pursuant to paragraph (b) or (c) of this section by filing an answer thereto within 10 days after receipt of service of the petition upon such party.

(e) The filing of a petition for reconsideration shall not stay the effect of the decision unless explicitly ordered by the panel.

§ 121.1722 Delegation of authority when Judge not available.

In the event of the absence or unavailability of the Presiding Judge or other member of the panel to which the appeal is assigned, where such action is necessary, any Judge in the Office of Hearings and Appeals may be authorized by the Assistant Administrator of the Office of Hearings and Appeals to participate in rendering a final decision and to dispose of any motions or other interlocutory matters, as appropriate, pertaining to such appeal.

Subpart B—Other Eligibility Provisions [Reserved]

Dated: September 12, 1989.

Susan Engeleiter,

Administrator.

[FR Doc. 89-29401 Filed 12-20-89; 8:45 am]

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Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Alteration of the Seattle, WA, Terminal Control Area; Final Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89-AWA-10]

Alteration of the Seattle, WA, Terminal Control Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the Seattle, WA, Terminal Control Area (TCA). This action will raise the upper limits of the TCA to 10,000 feet mean sea level (MSL) to enable air traffic control (ATC) to provide terminal ATC service to arriving and departing turbojet aircraft in a TCA environment throughout transition to and from the en route structure. Additionally, this action will extend the lateral limits of the TCA north and south to 30 nautical miles, east and west to 18 nautical miles from the airport, to provide an area wherein ATC can provide TCA control and services throughout critical maneuvering phases of flight operations in the terminal area. This action redefines several existing subareas which will enhance air traffic procedures and simplify visual flight rules (VFR) transient operations outside TCA airspace.

EFFECTIVE DATE: 0901 u.t.c., January 11, 1990.

FOR FURTHER INFORMATION CONTACT: Alton D. Scott, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9252.

SUPPLEMENTARY INFORMATION:

Background

The TCA program was developed to reduce the midair collision potential in the congested airspace surrounding airports with high density air traffic by providing an area in which all aircraft will be subject to certain operating rules and equipment requirements.

The density of traffic and the type of operations being conducted in the airspace surrounding major terminals increase the probability of midair collisions. In 1970, an extensive study found that the majority of midair collisions occurred between a general aviation (GA) aircraft and an air carrier, military or another GA aircraft. The basic causal factor common to these conflicts was the mix of uncontrolled aircraft operating under visual flight rules (VFR) and controlled aircraft operating under instrument flight rules (IFR). TCA's provide a method to accommodate the increasing number of IFR and VFR operations. The regulatory requirements of TCA airspace afford the greatest protection for the greatest number of people by providing ATC with an increased capability to provide aircraft separation service, thereby minimizing the mix of controlled aircraft.

To date, the FAA has established a total of 26 TCA's. The FAA is proposing to take action to modify or implement the application of these proven control techniques to more airports to provide greater protection of air traffic in the airspace regions most commonly used by passenger-carrying aircraft.

User Group Participation

The TCA modified by this amendment is the product of discussions with a broad representation of the aviation community. In conjunction with this action, the FAA will continue to work cooperatively with local user groups to ensure that the TCA is effective for all users by identifying any adjustments or modifications that appear necessary. Through joint FAA and user cooperation, any problems that arise can then be identified and corrective action taken with necessary.

The TCA configuration adopted in this final rule has been developed through substantial public participation. Informal airspace meetings were held on November 29, 30, and December 2, 1988, to allow local aviation interests and airspace users an opportunity to present input on the alteration of this TCA. An additional opportunity for public participation was provided by a Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** on August 28, 1989 (54 FR 35564). Fifty-seven comments were received in response to the Notice. Due consideration has been given to these comments as well as the comments received at the various meetings.

Discussion of Comments

The FAA received fifty-seven comments pertaining to the TCA proposal. All comments were considered fully before developing the final design contained in this rule. The FAA believes that the final TCA design contained herein promotes the safe and efficient use of airspace while satisfying ATC and user requirements.

Some comments received were not relevant to this rulemaking action and, therefore, will not be discussed. Those subject areas included controller staffing, pilot education, waivers and rules enforcement.

The Air Transport Association of America and the Air Line Pilots Association wrote to concur with the alteration as proposed.

Several other commenters also wrote to concur with the TCA alteration and commended the FAA for incorporating user recommendations; they stated that the alteration will enhance safety by providing an environment which will better serve the increased amount of traffic in the Seattle terminal area.

Some commenters wrote stating that the present TCA configuration is sufficient to handle all operations at the Seattle-Tacoma International Airport.

Since the Seattle TCA's implementation in 1974, the increased volume of traffic and revised operational procedures dictate a need to modify the TCA. The Seattle TCA alteration takes these factors into consideration and provides necessary TCA airspace for increased IFR operations, while allowing nonparticipating VFR aircraft sufficient airspace to circumnavigate the TCA.

The majority of commenters opposing the TCA alteration complained about the design around the Renton Airport, Boeing Field, and the areas east of the Seattle-Tacoma International Airport. These commenters believe that this portion of the TCA design has the potential for compressing nonparticipating aircraft too close to each other and the mountainous terrain.

The FAA finds that this airspace is necessary to contain the flight paths of aircraft operating to and from the Seattle-Tacoma International Airport. The additional airspace contained in this alteration is limited to include only that airspace necessary to contain such operations. The FAA believes that sufficient airspace exists to accommodate nonparticipating aircraft.

Some commenters wrote stating that the TCA design is too complex for aircraft desiring to circumnavigate the area. The TCA is designed to allow ample airspace for nonparticipating VFR aircraft. Charts depicting VFR flyways will be distributed throughout the Northwest Mountain Region prior to the TCA modification effective date and will appear on the Seattle VFR terminal area chart in future publications.

The Aircraft Owners and Pilots Association wrote to concur with altering the Seattle TCA, but submitted the following suggestions: lower the ceiling to 7,000 feet MSL; reduce all 30-mile extensions to 25; reduce the east and west boundaries to 15 miles, and adopt a more standardized TCA design.

In designing the Seattle TCA alteration, the FAA utilized that airspace needed to encompass updated procedures which will enhance the flow of traffic in the terminal area. The design adopted incorporates users' suggestions to the extent possible without compromising the FAA's safety requirements. The design includes areas that extend to 30 nautical miles over arrival gates or on final approach segments. These areas are needed to protect aircraft in critical stages of flight. Since the design is based on users' needs, updated procedures, FAA safety requirements, and area terrain, a more standardized TCA was not feasible.

Two cities wrote expressing concern that the TCA alteration may increase the present noise level in their areas.

Along with the alteration of the Seattle TCA, new procedures have been developed to enhance the flow of traffic and enable aircraft the opportunity to climb more rapidly on departure, thereby reducing the potential for adverse noise effects.

A parachute club wrote requesting the FAA to raise the TCA floor from 6,000 feet MSL to 8,000 feet MSL in the vicinity of the Kapowsin Airport. This will allow sufficient airspace to conduct jumps without TCA involvement.

The FAA finds that during periods of adverse weather or traffic saturation, it becomes necessary to extend the final approach segment of Runway 34. When this extension is required, the airspace in the vicinity of the parachuting club's operating area is affected from 6,000 feet MSL and above, thus precluding parachuting activity. Jump operations will, however, be available during favorable weather and lighter traffic periods.

The Puget Sound Soaring Association wrote suggesting to extend Area K to the southwest; reduce Area N from 18 miles to 15 miles, and reduce Area S from 30 miles to 25 miles. These changes would allow the soaring aircraft more airspace to conduct operations without fear of penetrating the TCA.

The airspace in Areas K, N, and S is needed for aircraft transitioning to the final approach course from downwind and base legs. The FAA has designed the TCA in this area to contain IFR operations, leaving sufficient airspace for nonparticipating aircraft to maneuver.

Some commenters wrote expressing concern that the TCA alteration is not designed to protect approach procedures used at various airports inside the TCA airspace. The modified TCA airspace design considered new procedures and provides protection for all IFR aircraft operating to and from airports contained within TCA airspace.

The Washington Air National Guard wrote stating that the FAA proposal was too complex and large. They recommended a smaller, corridor-type design.

The FAA finds that the Washington Air National Guard's proposal does not take into consideration new procedures. Therefore, their proposal does not insure containment of all aircraft operating to and from the primary airport.

The Rule

This amendment to part 71 of the Federal Aviation Regulations modifies the Terminal Control Area (TCA) at Seattle, WA. This action will raise the upper limits of the TCA to 10,000 feet mean sea level (MSL) to enable air traffic control (ATC) to provide terminal ATC service to arriving and departing turbojet aircraft in a TCA environment throughout transition to and from the en route structure. Additionally, this action will extend the lateral limits of the TCA north and south to 30 nautical miles, east and west to 18 nautical miles from the airport, to provide an area wherein ATC can provide TCA control and services throughout critical maneuvering phases of flight operations in the terminal area. This action redefines several existing subareas which will enhance air traffic procedures and simplify visual flight rules (VFR) transient operations outside TCA airspace.

The total number of enplaned passengers at the Seattle-Tacoma International Airport has increased to 7,178,491 which dictates a need to alter the present TCA configuration. This alteration will better serve the users, as well as the FAA, by providing airspace configured to handle new procedures and the increased amount of operations. The FAA has determined that modifying the TCA at the Seattle-Tacoma International Airport is in the interest of flight safety and will result in a greater degree of protection for the greatest number of people during flight in the terminal area.

Regulatory Evaluation Summary

The FAA is required to examine the potential benefits and costs of each proposed rulemaking action to ensure that the public is not burdened with rules where costs outweigh benefits. This section of the preamble evaluates both quantitatively and qualitatively, to the maximum possible extent, the potential costs and benefits expected to accrue from modification of the Seattle TCA.

Costs-Benefits Analysis

a. Costs

The FAA believes that there will be no costs associated with the implementation of this final rule either to the agency or to aircraft operators for the reasons discussed below.

In terms of the FAA, the rule will not impose any additional administrative cost in terms of either personnel or equipment. The additional operations workload generated by the rule will be absorbed by current personnel and equipment resources which are already in place at the Seattle TCA

In terms of aircraft operators, the rule will not impose any additional cost either in the form of avionics equipment or circumnavigation. The rule will not adversely impact aircraft operators operating under instrument flight rules (IFR). Aircraft operators operating routinely under IFR conditions primarily consist of large air carrier, business jet, commuter, and air taxi operators. Thus, the rule will potentially impact aircraft operators operating routinely under visual flight rules (VFR). Those aircraft operators operating routinely under VFR conditions primarily consist of small, general aviation (GA) (single-engine, piston) operators and other GA aircraft operators such as glider and balloon operators. Other airspace user groups operating within the proximity of the Seattle TCA will also be potentially impacted by the rule. Such user groups consist of sport parachutists and some student pilots.

Under the final rule, the TCA ceiling will be raised from 7,000 feet MSL to 10,000 feet MSL. Since GA airplane operators such as glider pilots, balloonists, and sport parachutists do not operate directly above the TCA ceiling of 7,000 feet MSL, they are not expected to incur adverse impacts from expansion of the TCA ceiling. However, some of the small GA airplane operators (such as single-engine, piston types) do operate under VFR directly above the TCA ceiling of 7,000 feet MSL. Under these conditions, such operators are not expected to incur adverse impacts because they will be allowed to enter the TCA, provided they request clearance from air traffic control (ATC). This situation should not present a problem for either ATC or small GA airplane operators. These operators are already equipped with transponders with automatic altitude reporting capability (Mode C) and they communicate regularly with ATC when operating under VFR directly above the subject airspace of 7,000 feet MSL. Therefore, in view of the discussion

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above, the focus of potential cost impact falls on the expanded segments of the TCA floor. As the result of the rule, expanded segments of the TCA floor will range from 5,000 feet to 8,000 feet MSL. While enhancing aviation safety, the expanded segments of the TCA floor will be adopted with all due consideration to small GA airplane operators, glider pilots, and balloonists.

The rule will allow such aircraft operators to circumnavigate the Seattle TCA in a manner that will not require much deviation from current flying practices. Thus, this rule will permit such operators to operate their respective aircraft beneath the expanded segments of the TCA floor. This assessment also holds true for sport parachutists. The expanded segments of the TCA floor will be adopted at 8,000 feet MSL to provide sufficient airspace for jumps on the part of sport parachutists without TCA involvement. The rule will not have an adverse impact on student pilots because Boeing Field, where most flight instruction is conducted, will remain outside of the TCA.

b. Benefits

The final rule is expected to generate potential benefits primarily in the form of enhanced safety to the aviation community and the flying public. Such safety will take the form of reduced casualty losses (namely, aviation fatalities and property damage) as a result of the lowered likelihood of midair collisions due to the increase in positive control airspace for the Seattle TCA.

The expansion of the Seattle TCA will restrict more of the airspace to controlled aircraft operations from 7,000 feet to 10,000 feet MSL, and along the northern, southern, western, and eastern lateral boundaries. Due to the proactive nature of the rule, the potential safety benefits are extremely difficult, if not impossible, to quantify in monetary terms. The rule is proactive in the sense that the FAA is taking action to prevent a safety problem from occurring. In this case the symptom is increased complexity (or density) of aircraft operations in the vicinity of the present ceilings and lateral boundaries of the Seattle TCA. As the result of the increased complexity of aircraft operations, the controlled airspace will be expanded in the aforementioned areas of the TCA.

Up to now, safety has been maintained in the vicinity of the existing Seattle TCA in the face of steady growth in activity by such measures as traffic management and procedural changes. While the FAA believes that these measures will not be adequate in the future, they have been successful in the past as evidenced by a record of no midair collisions in the TCA. Without documented evidence of a midair collision in the Seattle TCA, estimating the probability of a potential occurrence in the absence of this rule cannot be determined with a reliable degree of certainty. Despite this difficulty, the FAA believes that certain measures must be taken to maximize aviation safety. In the absence of this rule, aviation safety in the vicinity of the TCA will be expected to become critical and lead to potentially catastrophic consequences.

Ordinarily, the potential safety benefits of the rule will be an incremental reduction in the likelihood of all midair collisions caused by the TCA modification as opposed to the existing TCA configuration. However, with the adoption of FAA regulations requiring the use of a transponder with automatic altitude reporting capability (Mode C, FAR § 91.24) and, for certain aircraft operators, installation of a traffic alert and collision avoidance system (TCAS, FAR §§ 91.26, 121.356, 125.224, 129.18, and 135.180), the number of potential midair collisions avoided by this rule is expected to be significantly lower. Nevertheless, this rule is still expected to accrue benefits in terms of enhanced aviation safety, though on a much smaller scale. Thus, the potential safety benefits of this rule and the Mode C and TCAS rules are considered to be inextricably linked.

In view of the estimated zero cost of compliance and enhanced aviation safety, the FAA firmly believes the final rule is cost-beneficial.

The regulatory evaluation that has been placed in the docket contains additional detailed information related to the costs and benefits that are expected to accrue from implementation of this rule.

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires agencies to review rules which may have a "significant economic impact on a substantial number of small entities."

The small entities which could be potentially affected by the implementation of this rule are unscheduled operators of aircraft for hire owning nine or fewer aircraft.

Only those unscheduled aircraft operators without the capability to operate under IFR conditions will be potentially impacted by the rule. The FAA believes that all of the potentially impacted unscheduled aircraft operators are already equipped to operate under IFR conditions. This is because such operators fly regularly around airports where radar approach control services have been established. Therefore, the FAA believes this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The final rule will neither have an effect on the sale of foreign aviation products or services in the United States, nor will it have an effect on the sale of U.S. products or services in foreign countries. This is because the rule will neither impose costs on aircraft operators nor aircraft manufacturers (U.S. or foreign).

Federalism Implications

This regulation will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, preparation of a Federalism assessment is not warranted.

Conclusion

For the reasons discussed under "Regulatory Evaluation," the FAA has determined that this regulation (1) is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). It is certified that this regulation will not have a significant economic impact on a substantial number of small entities.

The FAA has determined that the users of the Seattle-Tacoma International Airport and surrounding area will benefit from the implementation of the TCA. In order to maximize the benefit at the earliest time, the FAA will have the TCA charted on the next available charting date, which is January 11, 1990, and is making the implementation of the TCA effective on that charting date. Therefore, due to the need to implement the TCA at the earliest possible time, the FAA finds good cause for making this amendment effective in less than 30 days from the date of the publication of this amendment.

List of Subjects in 14 CFR Part 71

Aviation safety, Terminal control areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.403 [Amended]

2. Section 71.403 is amended as follows:

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.403 [Amended]

2. Section 71.403 is amended as follows:

Seattle, WA [Revised]

Primary Airport
Seattle-Tacoma International Airport (lat. 47°26'57" N., long. 122° 18'29" W.).

Boundaries. Based on Seattle VORTAC (SEA) (lat. 47°28'08" N., long. 122°18'30" W.) arcs, DME distances, radials, lines of longitude, and the Puget Sound shoreline.

Area A. That airspace extending upward from the surface to and including 10,000 feet MSL within an area bounded by a line beginning at the 2-mile DME on the SEA 012° radial to a point on the 4-mile arc of the SEA 007° radial, then counterclockwise along the 4-mile arc of the SEA 007° radial to the Puget Sound shoreline then south along the Puget Sound shoreline to the 2-mile arc of the SEA VORTAC then counterclockwise along the 2-mile arc of the SEA VORTAC to the SEA 192° radial extending to the 6-mile arc of the SEA 192° radial then counterclockwise along the 6-mile arc of the SEA VORTAC to the SEA 163° radial extending to the 2-mile arc of the SEA 192° radial then counterclockwise along the 2-mile arc of the Seattle VORTAC to the point of beginning.

Area B. That airspace extending upward from 1,100 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at the 4-mile DME point on the SEA 007° radial extending to the 6-mile arc of the SEA 007° radial then counterclockwise along the 6-mile arc of the SEA VORTAC to the SEA 342° radial to the 4-mile arc of the SEA 342° radial then clockwise along the 4-mile arc of the SEA VORTAC to the point of beginning.

Area C. That airspace extending upward from 1,800 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at the 6-mile DME on the SEA 192° radial to the 12-mile arc of the SEA 192° radial then counterclockwise along the 12-mile arc of the SEA VORTAC to the SEA 163° radial to the 6-mile arc of the SEA 163° radial then clockwise along the 6-mile arc of the SEA VORTAC to the point of beginning.

Area D. That airspace extending upward from 1,800 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at the 6-mile arc of the SEA 007° radial then counterclockwise along the 6-mile arc of the SEA VORTAC to the SEA 342° radial to the 12-mile arc of the SEA 342° radial then clockwise along the 12-mile arc of the SEA VORTAC to the SEA 007° radial to the point of beginning.

Area E. That airspace extending upward from 2,000 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at the 4-mile arc of the SEA 192° radial then clockwise along the 4-mile arc of the SEA VORTAC to the Puget Sound shoreline then south along the Puget Sound shoreline to the 2-mile arc of the SEA VORTAC counterclockwise along the 2-mile arc of the SEA VORTAC to the SEA 192° radial to the point of beginning.

Area F. That airspace extending upward from 2,000 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at the 4-mile DME on the SEA 342° radial and extending north on the 342° radial to the Puget Sound shoreline then south along the Puget Sound shoreline to the 4-mile arc of the SEA VORTAC then clockwise along the 4-mile arc of the SEA VORTAC to the point of beginning.

Area G. That airspace extending upward from 2,000 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at the 2-mile arc of the SEA 012° radial then clockwise along the 2-mile arc of the Seattle VORTAC to the SEA 163° radial to the 4-mile arc of the SEA 163° radial then counterclockwise along the 4-mile arc of the Seattle VORTAC to the SEA 022° radial to the 12-mile arc of the SEA 022° radial then counterclockwise along the 12-mile arc of the Seattle VORTAC to the SEA 007° radial to the 4-mile DME of the SEA 007° radial to the point of beginning.

Area H. That airspace extending upward from 3,000 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at the 18-mile arc of the SEA 322° radial then clockwise along the 18-mile arc of the Seattle VORTAC to the SEA 032° radial then southwest along the SEA 032° radial to a point at lat. 47°39'17" N., long. 122°06'20" W.; to lat. 47°17'14" N., long. 122°06'20" W.; then southeast on the SEA 137° radial to the 18-mile arc of the SEA 137° radial then clockwise along the 18-mile arc of the Seattle VORTAC to the SEA 232° radial then northeast on the SEA 232° radial to a point at lat. 47°18'52" N., long. 122°32'10" W.; to lat. 47°37'56" N., long. 122°32'10" W.; to the point of beginning, excluding that airspace in the Areas A through G.

Area I. That airspace extending upward from 5,000 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at the 18-mile arc of the SEA 322° radial then clockwise along the 18-mile arc of the Seattle VORTAC to the SEA 032° radial extending to the 22-mile arc of the SEA 032° radial then counterclockwise along the 22-mile arc of the Seattle VORTAC to the SEA 322° radial to the point of beginning.

Area J. That airspace extending upward from 5,000 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at the 18-mile arc of the SEA 032° radial then clockwise along the 18-mile Arc of the Seattle VORTAC to the SEA 052° radial to a point at lat. 47°32'34" N., long. 122°06'20" W.; to lat. 47°39'17" N., long. 122°06'20" W.; to the point of beginning.

Area K. That airspace extending upward from 5,000 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at the 18-mile arc of the SEA 117° radial then clockwise to the SEA 137° radial then northwest on the SEA 137° radial to a point at lat. 47°17'14" N., long. 122°06'20" W.; to lat. 47°21'55" N., long. 122°08'20" W.; then southwest on the SEA 117° radial to the point of beginning.

Area L. That airspace extending upward from 5,000 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at the 18-mile arc of the SEA 192° radial then counterclockwise along the 18-mile arc of the SEA 163° radial extending to the 25-mile arc of the SEA 163° radial then clockwise along the 25-mile arc of the Seattle VORTAC to the SEA 192° radial to the point of beginning.

Area M. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at the 18-mile arc of the SEA 322° radial then counterclockwise along the 18-mile arc of the Seattle VORTAC to the SEA 232° radial then northeast on the SEA 232° radial to a point at lat. 47°18'52" N., long. 122°32'10" W.; to lat. 47°37'56" N., long. 122°32'10" W.; to the point of beginning.

Area N. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at the 18-mile arc of the SEA 052° radial then clockwise along the 18-mile arc of the Seattle VORTAC to the SEA 117° radial then northwest on the SEA 117° radial to a point at lat. 47°21'55" N., long. 122°06'20" W.; to lat. 47°32'34" N., long. 122°06'20" W.; then northeast on the SEA 052° radial to the point of beginning.

Area O. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at the 22-mile arc of the SEA 342°

radial then clockwise along the 22-mile arc of the Seattle VORTAC to the SEA 032° radial to the 30-mile arc of the SEA 032° radial then

feet MSL within an area bounded by a line beginning at the 18-mile arc of the SEA 163° radial then counterclockwise along the 18-

Area U. That airspace extending upward from 8,000 feet MSL to and including 10,000 feet MSL within an area bounded by a line

SEATTLE TACOMA
TERMINAL CONTROL AREA

radial then clockwise along the 22-mile arc of the Seattle VORTAC to the SEA 032° radial to the 30-mile arc of the SEA 032° radial then counterclockwise along the 30-mile arc of the Seattle VORTAC to the SEA 342° radial to the point of beginning.

Area P. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at the 18-mile arc of the SEA 232° radial then counterclockwise along the 18-mile arc of the Seattle VORTAC to the SEA 192° radial to the 25-mile arc of the SEA 192° radial then clockwise along the 25-mile arc of the Seattle VORTAC to the SEA 232° radial to the point of beginning.

Area Q. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at the 25-mile arc of the SEA 192° radial then counterclockwise along the 25-mile arc of the Seattle VORTAC to the SEA 163° radial to the 30-mile arc of the SEA 163° radial then clockwise along the 30-mile arc of the Seattle VORTAC to the SEA 192° radial to the point of beginning.

Area R. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at the 18-mile arc of the SEA 163° radial then counterclockwise along the 18-mile arc of the Seattle VORTAC to the SEA 137° radial to the 25-mile arc of the SEA 137° radial then clockwise along the 25-mile arc of the Seattle VORTAC to the SEA 163° radial to the point of beginning.

Area S. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at the 18-mile arc of the SEA 137° radial then counterclockwise along the 18-mile arc of the Seattle VORTAC to the SEA 117° radial to the 30-mile arc of the SEA 117° radial then clockwise along the 30-mile arc of the Seattle VORTAC to the SEA 137° radial to the point of beginning.

Area T. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at the 18-mile arc of the SEA 032° radial then clockwise along the 18-mile arc of the Seattle VORTAC to the SEA 052° radial to the 30-mile arc of the SEA 052° radial then counterclockwise along the 30-mile arc of the Seattle VORTAC to the SEA 032° radial to the point of beginning.

Area U. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at the 22-mile arc of the SEA 342° radial then counterclockwise along the 22-mile arc of the Seattle VORTAC to the SEA 322° radial to the 30-mile arc of the SEA 322° radial then clockwise along the 30-mile arc of the Seattle VORTAC to the SEA 342° radial to the point of beginning.

Area V. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at the 25-mile arc of the SEA 232° radial then counterclockwise along the 25-mile arc of the Seattle VORTAC to the SEA 219° radial extending to the 30-mile arc of the SEA 219° radial then clockwise along the 30-mile arc of the Seattle VORTAC to the SEA 232° radial to the point of beginning.

Issued in Washington, DC, on December 15, 1989.

James B. Busey,
Administrator.

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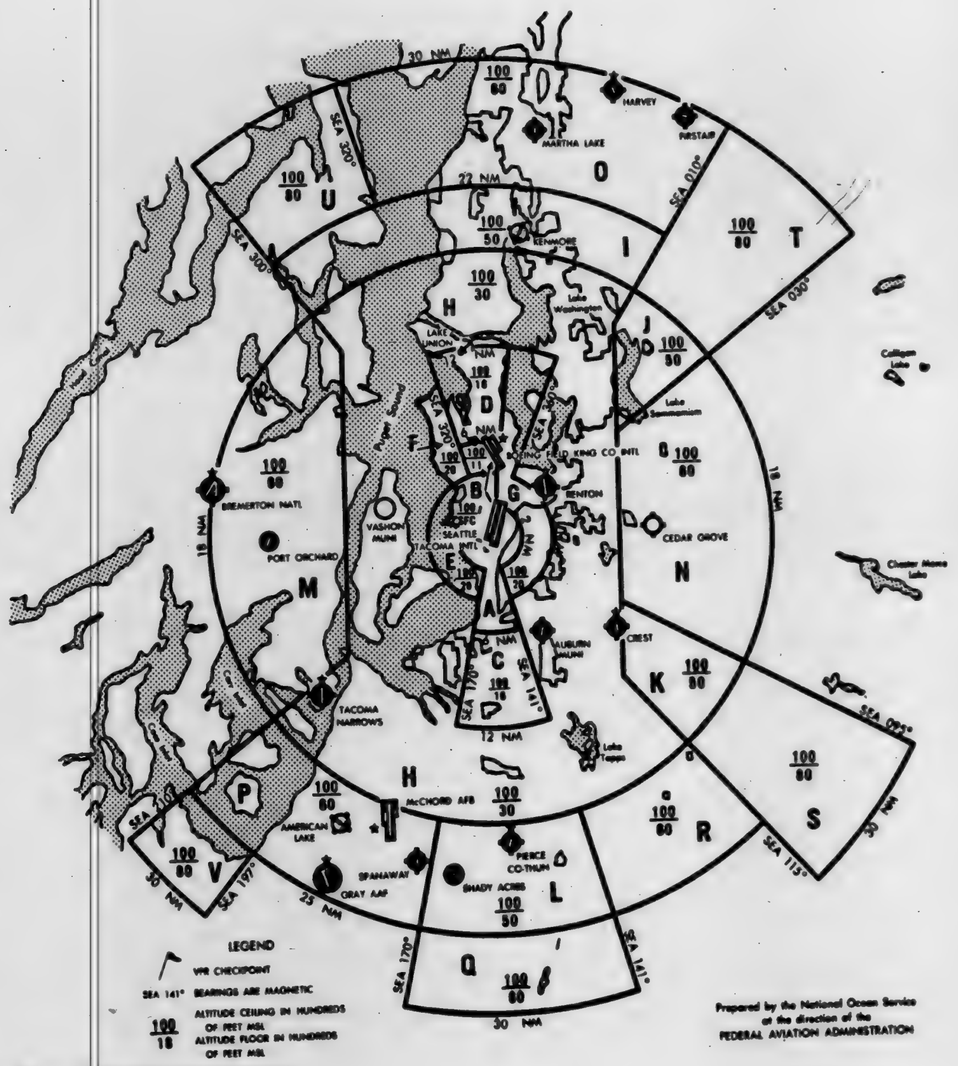
SEATTLE TACOMA TERMINAL CONTROL AREA



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Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 968

Revisions to Public Housing Comprehensive Improvement Assistance Program (CIAP); Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

final rule. A subpart C will not be promulgated until the Congress approves the method of allocating

New	New section heading	Current
968.255	Fiscal closeout of a	968.10

requirements that apply to the part, including civil rights, environmental, wage rate, and lead-based paint

Streamlining the application process by requiring only one, complete application up-front, followed by Joint Review,

is found in the current regulation in order to make it easier to make changes to these requirements by handbook. The

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 968

[Docket No. R-89-1423; FR-2488-F-02]

RIN 2577-AA86

Revisions to Public Housing Comprehensive Improvement Assistance Program (CIAP)

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This rule streamlines the current CIAP program by authorizing (1) a one-stage application process and (2) PHA certifications with respect to budget revisions and management improvement contracts. The rule also provides for the execution of a Declaration of Trust by the PHA to protect certain rights and interests of HUD. Provisions establishing a new Comprehensive Grant program, contained in the earlier proposed rule, are not contained in this final rule.

EFFECTIVE DATE: January 22, 1990.

FOR FURTHER INFORMATION CONTACT: Pris P. Buckler, Public and Indian Housing, Department of Housing and Urban Development, Room 4130, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 755-6640. Hearing or speech impaired individuals may call HUD's TDD number (202) 245-0850. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Background

24 CFR part 968 sets out regulations for the Public Housing Comprehensive Improvement Assistance Program (CIAP program). This program applies to all public housing, including housing owned and operated by Indian housing authorities (IHAs). This rule revises part 968 to (1) rename the part as "Public Housing Modernization," and (2) reorganize the part by establishing a subpart A, containing generally applicable provisions; and a subpart B, setting forth the current CIAP program contained in part 968, as revised by this final rule. The revised part continues to apply to all PHAs without regard to the number of units they own and operate. Subpart C, a proposal contained in the proposed rule published on October 27, 1988 (53 FR 43648) which set forth a new Comprehensive Grant program for the larger PHAs, is not contained in this final rule. A subpart C will not be promulgated until the Congress approves the method of allocating assistance under the new Comprehensive Grant program. Until that time, subparts A and B, which cover the existing CIAP program, will apply to all PHAs. The public comments on specific provisions in the proposed subpart C are therefore not covered in this Preamble.

Subparts A and B are retained from the proposed rule. Any revisions made from the proposed rule and HUD's response to public comments made with respect to specific provisions in those subparts will be found in the following part II of this Preamble headed "Description of Final Rule."

The new section designations, contained in the proposed rule, are adopted in this final rule. The following chart shows both the current and new section numbers for the various provisions.

New	New section heading	Current
	Subpart A—General	
968.101	Purpose and applicability.	968.1 and .2
968.105	Definitions	968.3
968.110	Other program requirements.	968.9
968.115	Modernization and energy conservation standards.	968.18
968.120	Preemption of State prevailing wage requirements.	968.9(h)
	Subpart B—Comprehensive Improvement Assistance Program	
968.201	Purpose	968.1 and .2
968.203	Definitions	968.3
968.205	Eligible costs	968.4
968.210	Procedures for obtaining approval of a modernization program.	968.5
968.215	Modernization project	968.6
968.220	Tenant participation	968.7
968.225	Homebuyer participation.	968.8
968.230	Special requirements for homeownership projects.	968.11
968.235	Special requirements for section 23 leased housing bond-financed projects.	968.12
968.236	Additional requirements for special purpose modernization.	968.10
968.240	Contracting requirements.	968.13
968.245	Fund requisitions	968.14
968.246	Progress reporting	968.15
968.250	Budget revisions	968.16
968.251	On-site inspections	968.17
968.255	Fiscal closeout of a modernization program.	968.18

II. Description of Final Rule

A. Subpart A—General Provisions Applicable to Part 968

1. Purpose and Applicability

Section 968.101 sets forth general statements of purpose and applicability for the revised part 968. The purpose of the Public Housing Modernization program is to provide financial assistance to PHAs to improve the physical condition and upgrade the management and operation of public housing projects, to assure that they continue to serve lower income families. Subpart A applies to all modernization under part 968.

Part 968 applies to PHA-owned public housing (including Lanham Act and Public Works Administration projects) and to section 23 Leased Housing Bond-Financed projects. It does not apply to projects under the section 23 Leased Housing Non-Bond Financed or section 10(c) Leased Housing programs, or the section 23 or section 8 Housing Assistance Payments programs.

The Department is planning to consolidate all public housing regulations for Indian Housing in part 905 (see proposed rule, 53 FR 24554, published on June 29, 1988). When the planned consolidation takes effect, Indian Housing will no longer be subject to this part. Until that time, Indian Housing continues to be covered under this part.

This section is the same as the proposed rule, except that (1) references to the proposed subpart C—Comprehensive Grant program are deleted and (2) references to Indian Housing Authorities (IHAs) are added. Unless otherwise noted, the term PHA includes IHA.

2. Definitions

Section 968.105 contains certain key definitions necessary for an understanding of subparts A and B, including definitions of the U.S. Housing Act of 1937, ACC, CIAP program, Federal Fiscal Year, HUD, IHA, and PHA. This section is unchanged from the proposed rule, except that the term PHA includes IHA. (Subpart B also contains its own definitions section.)

3. Other Program Requirements

Section 968.110 sets forth general Federal statutory and regulatory requirements that apply to the part, including civil rights, environmental, wage rate, and lead-based paint requirements. There are three changes from the proposed rule. First, paragraph (g) provides that, beginning on April 2, 1989, modernization under part 968 is subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended by the Uniform Relocation Act Amendments of 1987, and implementing regulations published on March 2, 1989 (54 FR 8912). Second, in paragraphs (a) and (e) (3) and (4), there is a technical incorporation of references to IHAs and in paragraphs (a), (b), and (h), there is a correction of statutory and executive order references. Finally, in the proposed rule, lead-based paint requirements would have been extensively revised to be consistent with the final rule on lead-based paint published on June 6, 1988 (53 FR 20790). However, Congressional actions have made it clear that HUD is not to implement the June 6, 1988 rule until (1) technical guidelines are developed and (2) revisions are made to reflect changes mandated by the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100-628, approved Nov. 7, 1988). Until such time, existing statutory, regulatory and HUD notice provisions apply. In this final rule, a paragraph (k) is being reserved for the future inclusion of the revised lead-based paint requirements. The Department anticipates early action on publication of both the guidelines and the revised regulations.

4. Modernization and Energy Conservation Standards

Section 968.115 requires all modernization under part 968 to meet HUD's modernization standards and HUD's energy conservation standards for cost-effective conservation measures. This section is unchanged from the proposed rule.

5. Preemption of State Prevailing Wage Requirements

Section 968.120 contains the provisions preempting State prevailing wage requirements as published on August 10, 1988 (53 FR 30206). This section is unchanged from the proposed rule, except that references to tribal law are added.

B. Subpart B—CIAP Simplifications

Subpart B sets forth the regulations specifically applicable to the CIAP. This subpart is largely based on the existing part 968. However, it makes two changes designed to simplify program administration, which are: (1) Streamlining the application process by requiring only one, complete application up-front, followed by Joint Review, budget submission, HUD funding decisions and fund reservation; and (2) allowing HUD-established thresholds under which PHA certifications on budget revisions and management improvement contracts are allowed without prior HUD approval. In addition, the Subpart provides for the execution of a Declaration of Trust by the PHA to protect certain rights and interests of HUD and makes minor technical changes, as discussed below.

1. Streamlining of Application Process

The new § 968.210 simplifies the application process by eliminating the current two-part (preliminary and final) application process and requiring only one CIAP application. With the exception of the budget, information which is now submitted with the final application will be submitted at the front-end with the single CIAP application.

This section is substantially the same as that found in the proposed rule. While PHAs are required to submit a more complete application up-front, the selected applications will be able to reach the implementation stage faster.

The application (§ 968.210(c)) will contain:

a. A 5-year funding request plan, which is the PHA's estimate of the funds to be requested over a 5-year period to meet the needs of its projects;

b. A preliminary assessment of the total physical and management needs of each project for which the PHA is requesting comprehensive, modernization and of the specialized physical improvement needs of each project for which the PHA is requesting special purpose, emergency or homeownership modernization in the current fiscal year.

c. For each project proposed for comprehensive modernization, an identification of and an estimate of the total costs of replacement of equipment, systems, or structural elements that would normally be replaced (assuming routine and timely maintenance is performed) over the remaining period of the ACC or during the 30-year period beginning on the date of submission of the application, whichever period is longer;

d. A resolution by the PHA Board of Commissioners approving the application and containing various certifications; and

e. Other data related to the operation of the program, as required by HUD. The rule sets forth the required contents of the application with less specificity than is found in the current regulation in order to make it easier to make changes to these requirements by handbook. The Department intends to continue to require PHAs to submit an organization and staffing plan and a statement on the locality's compliance with the cooperation agreement.

Following HUD review of the CIAP applications, HUD will select PHAs for Joint Review. To prepare for Joint Review, PHAs will conduct the detailed comprehensive needs assessments. After Joint Review, PHAs will prepare and submit the modernization budget. HUD then will make funding decisions. Selected PHAs are required to submit an implementation schedule (§ 968.210(j)) for each project in the approved modernization program.

Public Comment on One-Stage Application Process. Of the 20 public comments received, nine commented on Subpart B. Eight commented on streamlining the application process and all favored such an approach. The eight commenters were composed of two interest groups, two extra-large PHAs (more than 6600 units), two large PHAs (1250-6600 units), one medium-sized PHA (250-1249 units), and one small PHA (less than 250 units). One housing authority stated, "Any effort by HUD to streamline procedures in modernization programs could only have a positive impact on PHAs." Another authority pointed out, however, that "the current application process takes eight months from the time we submit the preliminary application until the field office approves the ACC amendments. However, before we can review the advantages, we would have to review in detail how much work is involved in the new one-stage application process. There appears to be new forms and new requirements that could effectively not change the overall time frame from submission to approval."

HUD Response. The statutory requirement for a five-year plan, currently met through the preliminary application, would be met in a new, simplified form, resulting in less duplication with the program budget. The one-step application process will require more PHA preparation up-front, because it requires the submission of documents that would, under the current process, be submitted at final application. Somewhat more time will be required by the HUD Field Offices to review the expanded applications and by the HUD Regional Offices to make Joint Review selections. However, this additional review time early in the processing cycle will be more than offset by the reduction of time required after

Joint Review. Under the one-step application process, a reduced amount of time will be required after Joint

permits a PHA to comply with HUD requirements either to (a) submit the

4. Declaration of Trust

Section 968.215(c) requires a PHA to

major increase in costs or prices for consumers, individual industries,

44735), under Executive Order 12291 and the Regulatory Flexibility Act.

Information collections for the CIAP program in subpart B of this rule, except

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Joint Review. Under the one-step application process, a reduced amount of time will be required after Joint Review for PHA submission of the program budget before HUD funding decisions and HUD fund reservation.

Additional Comment on One-Step Application Proposal. Of the eight commenters who addressed the one-step application process, four stated that HUD should get funds obligated much earlier in the year, rather than waiting to the middle to end of September.

HUD Response. It is anticipated that the total processing cycle, from PHA application submission to HUD fund reservation and obligation, will be shorter under the new one-step application process.

2. PHA Certifications

To continue the Department's efforts to reduce burdensome program requirements, §§ 968.240(i), (Management Improvement Contracts) and 968.250, (Budget Revisions) of this final rule amend the current regulations to permit the use of certifications of compliance for PHAs with proven modernization capability. This section is unchanged from the proposed rule.

Management Improvement Contracts Certification. Section 968.240(i), Management Improvement Contracts, is modified to become consistent with §§ 968.240 (b), (e), and (g), which permit either prior HUD approval or PHA certification of compliance, depending on the modernization capability and past modernization performance of the PHA. Section 968.240(i) requires the PHA to comply with HUD requirements either to (a) submit for prior HUD approval contracts for management improvements, as well as contract changes, or (b) certify that the contracts accurately reflect HUD-approved work, do not exceed the HUD-approved budget amount, and have received HUD clearance under previous participation procedures.

Public Comments on Management Improvement Contracts Certification. Only one commenter, a PHA, addressed the management improvement certification. It stated that, "simplification of language concerning management improvement contracts * * * will improve the efficiency of the program."

Budget Revisions Certification. Section 968.250, Budget Revisions, is modified to become consistent with §§ 968.240 (b), (e), (g), and (i), which permit either prior HUD approval or PHA certification of compliance, depending on the modernization capability and past modernization performance of the PHA. Section 968.250 permits a PHA to comply with HUD requirements either to (a) submit the proposed budget revision for prior HUD approval if the PHA plans to delete or substantially revise approved work items, add new work items, or incur modernization costs in excess of the approved budget amount for a work item, or (b) certify that the revisions are necessary to carry out the approved work and do not result in the approved budget amount for any project being exceeded.

Public Comments on Budget Revisions Certification. There were two public comments concerning budget revisions certification. One was a general, favorable comment by a PHA. However, another commenter objected to such a certification, stating that "HUD approval is necessary to assure fiscal accountability, program integrity, and oversight by the area office. To eliminate HUD approval could greatly change a previously approved plan, result in unacceptable materials, methods and procurement while overriding the established program controls of the threshold and change order procedures."

HUD Response. Depending on the modernization capacity and past modernization performance of a PHA, the regulation would permit either prior HUD approval or PHA certification of compliance for budget revisions. In essence, the regulation permits a threshold approach.

3. Miscellaneous Provisions

Section 968.14, Progress Reporting, and § 968.16, On-Site Inspections, of the existing regulations were not included in the proposed rule. Section 968.9(i), Insurance, was also omitted. Section 968.245, Fund Requisitions, was made more general. The proposed rule stated HUD's intention to cover these matters in program handbooks.

There were no public comments about eliminating provisions in the current regulation on progress reporting, on-site inspections, and insurance, or on generalizing the fund requisition section. Upon reconsideration, however, HUD has decided to retain the provisions of §§ 968.14 (Progress Reporting) and 968.16 (On-Site Inspections) in the regulations. They are reflected as new §§ 968.246 and 968.251 in the final rule. HUD believes those provisions to be of sufficient importance to PHA implementation and HUD monitoring of approved modernization that they should be included in the permanent regulations.

4. Declaration of Trust

Section 968.215(c) requires a PHA to execute and file for record a Declaration of Trust to protect the rights and interests of HUD. This is currently a handbook requirement that merits inclusion in the regulations as an important legal requirement. This section is unchanged from the proposed rule.

Public Comment on Trust Requirement. Three commenters stated that requiring a PHA to execute and file for record a Declaration of Trust appears as additional and unnecessary paperwork.

HUD response. The Declaration of Trust is necessary to implement the statutory requirement that the ACC remain in effect for 20 years for any project receiving the benefit of a grant. Therefore, the requirement is retained in the final rule. However, the Department is revising the Declaration of Trust to cover all future modernization so that additional filings will not be necessary.

5. Special Purpose Modernization

The amendments made by section 120 of the Housing and Community Development Act of 1987, amending provisions governing special purpose modernization, were implemented by a final rule published on March 3, 1989, at 54 FR 9039. These amendments are incorporated in this final rule in §§ 968.203, 968.210 and 968.236.

6. Homeownership Modernization

A technical correction has been made to § 968.230(b)(2)(ii) to reflect that for Mutual Help projects funded through grants (FY 1987 and subsequent years), no interest rate is used when computing the new purchase price schedule.

III. Findings and Certifications

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours (7:30 a.m. to 5:00 p.m. weekdays) in the Office of the Rules Docket Clerk, Room 10272, 451 Seventh Street SE., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order 12291 on Federal Regulations issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, or innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The rule was listed as sequence number 1120 under the Office of Public and Indian Housing in the Department's Semiannual Regulatory Agenda published October 30, 1989 (54 FR 44702, 44735), under Executive Order 12291 and the Regulatory Flexibility Act.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule simplifies the current CIAP for the modernization of public housing. HUD does not anticipate a significant economic impact on small entities, since PHAs will continue to carry out their modernization activities by entering into contracts for the work as they now do. There may be some beneficial effects, to the extent the rule simplifies and streamlines the process.

Information collections for the CIAP program in subpart B of this rule, except for CIAP application, are identical to or less burdensome than ones contained in the current CIAP program requirements. The approved paperwork control numbers assigned by the Office of Management and Budget appear in the text of subpart B. The collection of revised information requirements for the CIAP application have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Information on these revised requirements is provided as follows:

TABULATION OF ANNUAL REPORTING BURDEN PUBLIC HOUSING COMPREHENSIVE IMPROVEMENT ASSISTANCE PROGRAM (CIAP), 24 CFR PART 968 SUBPART B APPLICATION REQUIREMENTS UNDER OMB NO. 2577-0044

Description of information collection	Section of 24 CFR affected	Number of respondents	Number of responses per respondents	Total annual responses	Hours per response	Total hours
Management needs assessment	968.210(c)(2)	1,100	1.5	1,650	4.00	6,600
HUD-52824, Five-year funding request plan	968.210(c)(1)	1,600	1.0	1,600	3.00	4,800
HUD-52825, Comprehensive assessment/program budget.	968.210(c)(2)	1,600	1.0	1,600	10.00	16,000
Narrative statement addressing technical review factors.	968.210(c)(6)	1,600	1.0	1,600	2.00	3,200
Replacement reserves estimate	968.210(c)(3)	1,100	1.5	1,650	1.00	1,650
HUD-52823, project financial forecast	968.210(c)(4)	1,100	1.5	1,650	2.00	3,300
List of participating homeownership units/costs	968.210(c)(5)	50	4.0	240	1.00	240
Modernization organization and staffing plan	968.210(c)(5)	1,400	1.0	1,400	2.00	2,800
PHA report on local compliance with cooperation agreement.	968.210(c)(5)	1,600	1.0	1,600	.50	800
HUD-50070, certification for a drug-free workplace	968.210(c)(5)	1,600	1.0	1,600	.25	400
HUD-52820, PHA/IHA board resolution approving CIAP application.	968.210(c)(5)	1,600	1.0	1,600	.25	400
Total annual burden						40,190

The length of time for each requirement will vary according to the size and complexity of the modernization. The hours per requirement are estimated to be a reasonable average, based on program experience.

This has been developed in accordance with Executive Order 12612, Federalism, and determined not to have substantial, direct effects on PHAs. The rule relates to the CIAP program. It streamlines the application process, making it easier for PHAs to obtain modernization assistance. The changes are consistent with Federalism principles since they reduce unnecessary burdens on PHAs. The nature and purpose of the program does not change.

This rule has been developed in accordance with Executive Order 12606, The Family. It does not have potential significant impact on family formation, maintenance, or general well-being. The rule changes the application process for the CIAP program. Families are not affected, since PHAs will continue to carry out modernization activities at public housing projects.

(The Catalog of Domestic Assistance numbers for the programs affected by this rule are 14.850, 14.851, and 14.852.)

List of Subjects in 24 CFR Part 968

Loan programs—housing and community development, public housing, reporting and recordkeeping requirements.

Grant programs—housing and community development, Indians.

For the reasons set forth in the preamble, part 968 of title 24 of the Code of Federal Regulations is revised to read as follows:

PART 968—PUBLIC HOUSING MODERNIZATION

Subpart A—General

Sec.

968.101 Purpose and applicability.
968.105 Definitions.
968.110 Other program requirements.
968.115 Modernization and energy conservation standards.
968.120 Preemption of State prevailing wage requirements.

Subpart B—Comprehensive Improvement Assistance Program

968.201 Purpose.
968.203 Definitions.
968.205 Eligible costs.
968.210 Procedures for obtaining approval of a modernization program.
968.215 Modernization project.
968.220 Tenant participation.
968.225 Homebuyer participation.
968.230 Special requirements for homeownership projects.
968.235 Special requirements for section 23 leased housing bond-financed projects.
968.236 Additional limitations for special purpose modernization.
968.240 Contracting requirements.
968.245 Fund requisitions.
968.246 Progress reporting.
968.250 Budget revisions.
968.251 On-site inspections.
968.255 Fiscal closeout of a modernization program.

Authority: Secs. 6 and 14, United States Housing Act of 1937 (42 U.S.C. 1434d, 1437*l*); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

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Subpart A—General

§ 968.101 Purpose and applicability.

(a) *Purpose.* Section 14 of the Act established the Public Housing Modernization program, authorizing HUD to provide financial assistance to public housing agencies (PHAs), including Indian Housing Authorities (IHAs), to improve the physical condition and upgrade the management and operation of existing public housing projects, to assure that such projects continue to be available to serve lower income families. These physical and management improvements are funded under section 5(c) of the Act. This part prescribes the requirements and procedures for the Public Housing Modernization program.

(b) *Applicability.* (1) Subpart A applies to all modernization under this part. Subpart B sets forth the requirements and procedures for the Comprehensive Improvement Assistance Program (CIAP).

(2) This part applies to PHA-owned lower income public housing projects, including conveyed Lanham Act and Public Works Administration (PWA) projects, and to section 23 Leased Housing Bond-Financed projects, for which PHAs, including IHAs, request assistance under the CIAP. This part also applies to the implementation of modernization programs which were approved before FY 1989. This part does not apply to projects under section 23 Leased Housing Non-Bond Financed program, the section 10(c) Leased Housing program, or the section 23 of section 8 Housing Assistance Payments programs.

§ 968.105 Definitions.

As used in this part:

Act. The United States Housing Act of 1937, as amended, (42 U.S.C. 1437 et seq.).

Annual contributions contract (ACC). A contract under the Act between HUD and the PHA containing the terms and conditions under which the Department assists the PHA in providing decent, safe, and sanitary housing for lower income families. The ACC must be in a form prescribed by HUD under which HUD agrees to provide assistance in the development, modernization, and/or operation of a lower income housing project under the Act, and the PHA agrees to develop, modernize, and operate the project in compliance with all provisions of the ACC and the Act, and all HUD regulations and implementing requirements and procedures.

CIAP program. The Comprehensive Improvement Assistance Program.

FFY. Federal fiscal year.

HUD. The Department of Housing and Urban Development, including the regional and field offices that have been delegated authority to perform functions pertaining to this part for the area in which the PHA is located.

IHA. Indian housing authority.

PHA. Public housing agency, including IHA.

§ 968.110 Other program requirements.

The PHA shall comply with the following program requirements:

(a) *Civil rights compliance.* The PHA shall comply with the title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4), 24 CFR part 1; Fair Housing Act (42 U.S.C. 3601–3620), 24 CFR part 100; Executive Orders 11063 (Equal Opportunity in Housing), 11246 (Equal Employment Opportunity), and 12138 (Women's Business Enterprise); section 3 of the HUD Act of 1968 (12 U.S.C. 1701u); the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), 24 CFR part 146; and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), 24 CFR part 8. (For IHAs, see 24 CFR 905.106, applicability of civil rights statutes, and 24 CFR 905.204, Preferences, opportunities, and nondiscrimination in employment and contracting.)

(b) *Minority and women's business enterprise opportunity.* In conformance with Executive Orders 11625, 12432, and 12438, the PHA shall take every action to meet Departmental goals for awarding modernization contracts to minority business enterprises. The PHA shall take appropriate affirmative action to assist women's business enterprises.

(c) *Environmental clearance.* Before approving a proposed project, HUD will comply with the requirements of 24 CFR part 50, implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4332 et seq.) and related requirements of 24 CFR 50.4.

(d) *Flood insurance.* HUD will not approve for acquisition, construction, or improvement, a building located in an area that has been identified by the Federal Emergency Management Agency as having special flood hazards, unless the following conditions are met:

(1) Flood insurance on the building is obtained in compliance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et seq.); and

(2) The community in which the area is situated is participating in the National Flood Insurance Program in accord with 44 CFR parts 59–79, or less than one year has passed since FEMA notification regarding flood hazards.

(e) *Wage rates*—(1) *Davis Bacon.* With respect to modernization work or contracts over $2,000 (except for nonroutine maintenance work), all laborers and mechanics employed by the PHA or its contractors shall be paid not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a through 276c).

(2) *HUD-determined.* With respect to all nonroutine maintenance work or contracts, all laborers and mechanics employed by the PHA or its contractors shall be paid not less than the wages prevailing in the locality, as determined or adopted by HUD pursuant to section 12 of the United States Housing Act of 1937.

(3) *State.* Prevailing wage rates determined under State or tribal law are inapplicable under the circumstances set forth in § 968.120.

(f) *Technical wage rates.* All architects, technical engineers, draftsmen, and technicians employed in the development of a project, shall be paid not less than the wages prevailing in the locality, as determined or adopted (subsequent to a determination under applicable State or local law) by HUD.

(g) *Relocation and acquisition*—(1) *Temporary relocation.* The following policies cover residential tenants who are moved temporarily due to rehabilitation or demolition of a project assisted under this part, but are offered the opportunity to return to the same project at the same site, although not necessarily the same unit or building in the project. The PHA shall provide such tenants:

(i) All actual reasonable moving and related costs incurred in connection with the temporary relocation, by either undertaking the move itself or reimbursing for such costs; and

(ii) Appropriate advisory services, including reasonable advance written notice of: the date and approximate duration of the temporary relocation; the suitable, decent, safe and sanitary temporary housing which will be made available; and the provisions of paragraph (1)(i) of this section.

(2) *Relocation assistance for displaced persons.* A displaced person, defined in paragraph (6)(i) of this section, shall be provided relocation assistance at the levels described in, and in accordance with the requirements of, 49 CFR part 24, which implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. 4601).

(3) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the URA and the requirements described in 49 CFR part 24, subpart B.

(4) *Responsibility of PHA.* The PHA shall certify compliance with the URA, the regulations at 49 CFR part 24 and the requirements of this section. Such certification shall be included in the agreement between HUD and the PHA. The cost of assistance required by this section may be paid from local public funds, funds provided in accordance with this part, or funds available from other sources.

(5) *Appeals.* A person who disagrees with the PHA's determination concerning a payment or other assistance required by this section may file a written appeal of that determination with the PHA. The appeal procedures to be followed are described in 49 CFR 24.10.

(6) *Definition of displaced person.* (i) The term "displaced person" means a person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently and involuntarily, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under this part. Permanent, involuntary moves for an assisted project include:

(A) A permanent move from the real property (project/site) following notice by the PHA to move permanently from the property, if the move takes place on or after the date that HUD approves the PHA's application for assistance;

(B) A permanent move from the real property that occurs before HUD's approval of the PHA's application, if the PHA or HUD determines that the displacement resulted directly from acquisition, rehabilitation or demolition for a project;

(C) A permanent move from the real property by a tenant-occupant of a dwelling unit that occurs after the execution of the ACC between the PHA and HUD if

(*1*) The tenant has not been provided a reasonable opportunity to lease and occupy a suitable, decent, safe and sanitary dwelling in the same project/site following the completion of the project at a rent, including estimated average utility costs, that does not exceed the greater of the tenant's rent and estimated average utility costs before the initiation of negotiations (as defined in 49 CFR 24.2(k), or 30 percent of gross household income; or

(*2*) The tenant has been required to relocate temporarily as described in paragraph (g)(1) of this section, but the tenant is not offered payment for all actual reasonable moving and related expenses incurred in connection with the temporary relocation or other conditions of the temporary relocation are not reasonable; or

(*3*) The tenant is required to move to another unit in the same project/site, but is not offered reimbursement for all moving and related expenses incurred in connection with the move.

(ii) A person shall not qualify as a displaced person, if:

(A) The person has been evicted for cause based upon a serious or repeated violation of material terms of the lease or occupancy agreement and the PHA determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(B) The person moved into the property after PHA approval of the application and, before commencing occupancy, received written notice of the expected displacement;

(C) The person is ineligible under 49 CFR 24.2(g)(2); or

(D) The PHA determines and HUD concurs that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

(iii) The PHA may, at any time, request a HUD determination as to whether a displacement is or would be covered by 49 CFR part 24.

(h) *Physical accessibility.* The PHA shall comply with the Architectural Barriers Act of 1968 (42 U.S.C. 4151–4157), 24 CFR part 40; section 504 of the Rehabilitation Act of 1973, 24 CFR part 8; and the Fair Housing Act, 24 CFR part 100.

(i) *Audits.* Under the Single Audit Act of 1984 (31 U.S.C. 7501–7507), all PHAs that receive assistance under this part must comply with the audit requirements of 24 CFR part 44. The Secretary of Housing and Urban Development, the Inspector General of the Department of Housing and Urban Development, and the Comptroller General of the United States shall have access to all books, documents, papers, or other records that are pertinent to the activities carried out under this section in order to make audit examinations, excerpts, and transcripts.

(j) *Uniform administrative requirements.* The Uniform Administrative Requirements for Grants and Cooperative Agreements to States, Local, and Federally Recognized Indian Tribal Governments, as set forth in 24 CFR part 85, are applicable to grants under this part, except as specified in this part and in 24 CFR 990.103(c) and 24 CFR 990.201.

(k) *Lead-based paint poisoning prevention.* [Reserved]

[Note: Although this paragraph is reserved, PHAs are required to comply with existing statutory, regulatory and HUD notice requirements.]

(l) *Energy conservation.* The PHA shall comply with 24 CFR part 965, subpart C, regarding the conduct or update of an energy audit and the undertaking of cost-effective energy conservation measures. The cost of performing or updating an energy audit is an eligible modernization cost.

§ 968.115 Modernization and energy conservation standards.

(a) All improvements funded under this part, which may include alterations, betterments, additions, replacements, or non-routine maintenance, shall meet the HUD modernization standards, described in paragraph (b) of this section and established to provide decent, safe, and sanitary living conditions in PHA-owned and PHA-operated public housing, and the HUD energy conservation standards for cost-effective energy conservation measures in such projects, described in paragraphs (c) and (d) of this section.

(b) The modernization standards are standards which will provide decent, safe, and sanitary living conditions in public housing, including corrections of violations of basic health and safety codes, and address all deficiencies, including those related to deferred maintenance, in order to meet the intent of HUD's minimum property standards as they could reasonably be applied to existing housing. In addition, these standards cover improvements relating to site and building security. The modernization standards are contained in HUD Handbook 7485.2, as revised, Public and Indian Housing Modernization Standards, and in other documents cited in the Handbook. (This handbook is available from any HUD office).

(c) The energy conservation standards are standards for the installation of cost-effective energy conservation measures, including solar energy systems. The energy conservation standards provide for the conducting or updating of energy audits, including cost-benefit analyses of energy saving opportunities, in order to determine which measures will be cost-effective in conserving energy. The energy conservation standards are contained in the HUD Workbook, Energy Conservation for Housing, and in other documents cited in the Workbook.

(d) Life-cycle cost-effective energy performance standards established by HUD to reduce the operating costs of public housing projects over the

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estimated life of the building shall apply to projects modernized under this part. These standards are contained in HUD

(1) Any solicitation of bids or proposals issued by the PHA and any contract executed by the PHA for

choose to pay independent of State or tribal law.

(d) The provisions of this section shall

Homeownership modernization. A modernization program for a project that is under the Turnkey III Homeownership

would otherwise materially distort the level trend of maintenance expenses. Replacement of equipment and

If demolition is proposed, the PHA shall comply with 24 CFR part 970.

(b) *Management improvement*

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estimated life of the building shall apply to projects modernized under this part. These standards are contained in HUD Handbook 7418.1, as revised, Life-Cycle Cost Analysis for Utility Combinations. (This handbook is available from any HUD office).

§ 968.120 Preemption of State prevailing wage requirements.

(a) A prevailing wage rate (including basic hourly rate and any fringe benefits) determined under State or tribal law shall be inapplicable to the modernization of a project whenever:

(1) The modernization of the project is otherwise subject to State or tribal law requiring the payment of wage rates determined by a State or local government or agency to be prevailing; and

(2) The wage rate determined under State or tribal law to be prevailing with respect to an employee in any trade or position employed in the modernization of a project exceeds whichever of the following Federal wage rates is applicable:

(i) The wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a et seq.) to be prevailing in the locality with respect to such trade;

(ii) An applicable apprentice wage rate based thereon specified in an apprenticeship program registered with the Department of Labor or a DOL-recognized State Apprenticeship Agency;

(iii) An applicable trainee wage rate based thereon specified in a DOL-certified trainee program; or

(iv) In the case of non-routine maintenance, the wage rate determined by the Secretary of HUD to be prevailing in the locality with respect to such trade or position.

(v) For the purpose of ascertaining whether a wage rate determined under State or tribal law for a trade or position exceeds the Federal wage rate:

(A) Where a rate determined by the Secretary of Labor or an apprentice or trainee wage rate based thereon is applicable, the total wage rate determined under State or tribal law, including fringe benefits (if any) and basic hourly rate, shall be compared to the total wage rate determined by the Secretary of Labor or apprentice or trainee wage rate; and

(B) Where at a rate determined by the Secretary of HUD is applicable, any fringe benefits determined under State or tribal law shall be excluded from the comparison with the rate determined by the Secretary of HUD.

(b) Whenever paragraph (a)(1) is applicable:

(1) Any solicitation of bids or proposals issued by the PHA and any contract executed by the PHA for modernization of the project shall include a statement that any prevailing wage rate (including basic hourly rate and any fringe benefits) determined under State or tribal law to be prevailing with respect to an employee in any trade or position employed under the contract is inapplicable to the contract and shall not be enforced against the contractor or any subcontractor with respect to employees engaged under the contract whenever either of the following occurs:

(i) Such nonfederal prevailing wage rate exceeds:

(A) The applicable wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a et seq.) to be prevailing in the locality with respect to such trade;

(B) An applicable apprentice wage rate based thereon specified in an apprenticeship program registered with the Department of Labor or a DOL-recognized State Apprenticeship Agency; or

(C) An applicable trainee wage rate based thereon specified in a DOL-certified trainee program; or

(ii) Such nonfederal prevailing wage rate, exclusive of any fringe benefits, exceeds the applicable wage rate determined by the Secretary of HUD to be prevailing in the locality with respect to such trade or position.

Failure to include this statement may constitute grounds for requiring resolicitation of the bid or proposal;

(2) The PHA itself shall not be required to pay the basic hourly rate or any fringe benefits comprising a prevailing wage rate determined under State or tribal law and described in paragraph (a)(2) of this section to any of its own employees who may be engaged in the modernization of the project; and

(3) Neither the basic hourly rate nor any fringe benefits comprising a prevailing wage rate determined under State or tribal law and described in paragraph (a)(2) of this section shall be enforced against the PHA or any of its contractors or subcontractors with respect to employees engaged in the modernization of the project.

(c) Nothing in this section shall affect the applicability of any wage rate established in a collective bargaining agreement with a PHA or its contractors or subcontractors where such wage rate equals or exceeds the applicable Federal wage rate referred to in paragraph (a)(2) of this section, nor does this section impose a ceiling on wage rates a PHA or its contractors or subcontractors may choose to pay independent of State or tribal law.

(d) The provisions of this section shall be applicable to work performed under any prime contract entered into as a result of a solicitation of bids or proposals issued on or after October 6, 1988 and to any worked performed by employees of a PHA on or after October 6, 1988.

Subpart B—Comprehensive Improvement Assistance Programs

§ 968.201 Purpose.

The purpose of this subpart is to set forth the policies and procedures for the CIAP program under which PHAs receive financial assistance for the modernization of public housing projects, including comprehensive, emergency, homeownership, and special purpose modernization.

§ 968.203 Definitions.

In addition to the definitions in § 968.105, the following definitions apply to this subpart:

Comprehensive modernization. A modernization program for a project which provides for all needed physical and management improvements. Under CIAP, all modernization programs are comprehensive modernization, except those defined as emergency, homeownership or special purpose.

Emergency modernization. A modernization program for a project that is limited to physical work items of an emergency nature, posing an immediate threat (*i.e.*, must be corrected within one year of funding approval) to tenant life, health, or safety or related to fire safety. Under emergency modernization, management improvements are not eligible modernization costs.

Financial feasibility. The cost (excluding the cost of management improvements, administration, architectural and engineering fees, and other fees) of the modernization program does not exceed 62.5 percent (for a nonelevator structure) or 69 precent (for an elevator structure) of the total cost guidelines for a new project with the same structure type and number and size of units in the market area.

Financially distressed PHA. A PHA that has an operating reserve level of 20 percent or less of its authorized maximum or other level as determined by HUD, as shown on the latest year-end financial statement.

Homebuyer Agreement. A Mutual Help and Occpancy Agreement or Turnkey III Homebuyer's Ownership Opportunity Agreement.

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Homeownership modernization. A modernization program for a project that is under the Turnkey III Homeownership Opportunities Program or the Mutual Help Homeownership Opportunities Program. Unde homeownership modernization, limited physical improvements are eligible modernization costs, but management improvements are not eligible modernization costs.

Lack of management capability. The PHA

(a) Has inadequate management practices, as determined by HUD on the basis of regular monitoring and performance of on-site reviews, audits, and surveys, and

(b) Has not taken appropriate corrective action.

Management practices which are to be considered include, but are not limited to: management, financial, and accounting controls; tenant programs and services; tenant and project security; tenant selection and eviction; occupancy; rent collection; maintenance; and administration of equal opportunity requirements.

Lack of modernization capability. The PHA

(a) Has previously approved, but unobligated, modernization funds that are over one year old for emergency modernization and over three years old (or older, where HUD has approved a longer period) for comprehensive, special purpose, or homowonership modernization, and that HUD has determined that the failure to obligate the funds is due to reasons within the PHA's control; or

(b) Has spent modernization funds so that the quality of the work does not assure the long-term social and physical viability of the modernized units.

Modernization funds. Funds derived from an allocation of budget authority for the purpose of funding physical and management improvements under an approved modernization program.

Modernization program. A PHA's program for carrying out modernization, as set forth in the approved application for modernization funds.

Modernization project. The improvement of one or more existing public housing projects under a new project number designated for modernization purposes. The term "project" or "public housing project" means a development project with a unique project number.

Non-routine maintenance. Work items that ordinarily would be performed on a regular basis in the course of upkeep of a property, but have become substantial in scope because they have been put off, and that involve expenditures that would otherwise materially distort the level trend of maintenance expenses. Replacement of equipment and materials rendered unsatisfactory because of normal wear and tear by items of substantially the same kind does qualify, but reconstruction, substantial improvement in the quality or kind of original equipment and materials, or remodeling that alters the nature or type of housing units does not qualify.

Special purpose modernization. A modernization program for a project that is limited to any one or more of the following types of physical improvements otherwise eligible for CIAP funding under this part, subject to a HUD determination that the physical improvements are necessary and sufficient to extend substantially the useful life of the project, beyond that which it would have if such improvements were not made (examples cited in each category are for illustration only):

(1) Physical improvements to replace or repair major equipment systems (such as elevators and heating, cooling, electrical, and water and sewer systems) or structural elements (such as roofs, walls, and foundations);

(2) Physical improvements to upgrade security, such as installation of additional lighting, security screens on windows, better locks, or design changes to enhance security (excluding non-physical improvements, such as security staffing and services);

(3) Physical improvements to increase accessibility for elderly and handicapped families, according to the applicable standards of 24 CFR part 8;

(4) Physical improvements to reduce the number of units which are vacant and substandard, including any improvements necessary to meet local code requirements and return the units to occupancy; and

(5) Cost-effective physical improvements to increase the energy efficiency of the project.

Work item. Any separately identifiable unit of work constituting a part of a modernization program.

§ 968.205 Eligible costs.

(a) *Physical improvements.* Physical improvements eligible for modernization funding include alterations, betterments, additions, replacements, and non-routine maintenance that are necessary to meet the modernization and energy conservation standards prescribed in § 968.115. These standards may be exceeded only when necessary or highly desirable for the long-term physical and social viability of the individual project. If demolition is proposed, the PHA shall comply with 24 CFR part 970.

(b) *Management improvement costs.*—(1) *Eligibility.* Management improvements that are project-specific or PHA-wide in nature are eligible modernization costs only under comprehensive modernization, subject to all of the following conditions:

(i) The management improvements are necessary to correct identified management problems and to sustain the physical improvements at the project to be comprehensively modernized;

(ii) The management improvements require additional funds for implementation and the funds are not available from other sources;

(iii) The combined costs for management improvements and planning under paragraph (d) of this section do not exceed 10 percent of the total estimated physical improvement costs for a project (from all fiscal years), unless specifically approved by HUD. Under paragraph (d) of this section, planning costs shall not exceed 5 percent of the funds available to a HUD regional office in a particular FFY;

(iv) Management improvement costs are funded only for the implementation period of the physical improvements. In rare cases, HUD may approve a longer period, up to a maximum of five years where it is clearly shown to be necessary to complete the initial installation and demonstrate that the management work item will bring about needed management improvements; and

(v) Where an approved modernization program includes management improvements which involve ongoing costs, HUD is not obligated to provide continued funding or additional operating subsidy after the end of the implementation period of the management improvements. The PHA is responsible for finding other funding sources, reducing its ongoing management costs, or terminating the management activities.

(2) *Eligible management areas.* Subject to the conditions set forth in paragraph (b)(1) of this section, management improvements may involve or upgrade the following areas:

(i) Management, financial, and accounting control systems of the PHA that are related to the project to be modernized;

(ii) Adequacy and qualifications of personnel employed by the PHA in the management and operation of the project to be modernized, for each significant category of employment;

(iii) Adequacy and efficacy of the following for the project to be modernized:

(A) Tenant programs and services;

(B) Tenant and project security;

(g) *Resident management corporations.* Eligible modernization

estimate of the total costs of replacement of the equipment, systems,

(4) Reviewing the other factors to be covered during the joint review as

satisfactory progress in obligating prior stage funds, whether it has submitted

any FFY, as determined by HUD to be necessary to assure that special purpose

(A) Tenant programs and services;
(B) Tenant and project security;
(C) Tenant selection and eviction;
(D) Occupancy;
(E) Rent collection;
(F) Maintenance; and
(G) Equal opportunity; and
(iv) Resident management corporations under paragraph (i) of this section.

(c) *Tenant moving costs.* See § 968.110(g).

(d) *Planning costs.* Planning costs necessary for developing the application (*i.e.*, costs incurred before modernization program approval) are eligible modernization costs. These costs may be reimbursed after application approval. Financially distressed PHAs may request approval from HUD for upfront funding of planning costs where HUD determines that developing the application would otherwise present an undue financial hardship. Not more than 5 percent of the funds available to the HUD regional office in a particular FFY shall be used for planning costs.

(e) *Administrative costs.* Administrative costs necessary for the additional design and implementation of the physical and management improvements (*i.e.*, costs to be incurred after modernization program approval) are eligible modernization costs, as follows:

(1) *Nontechnical and technical salaries.* The salaries of nontechnical and technical PHA personnel assigned full-time or part-time to the modernization program are eligible modernization costs. Any proration of salaries shall be justified by the PHA, authorized by HUD, and reflected by an appropriate revision to the PHA's operating budget.

(2) *Employee benefit contributions.* PHA contributions to employee benefit plans on behalf of nontechnical and technical PHA personnel are eligible modernization costs in proportion to the amount of salary charged to the modernization program.

(f) *Homeownership projects.* For homeownership projects only, eligible physical improvements are limited to work items that are not the responsibility of the homebuyer families and that are related to health and safety, correction of development deficiencies, physical accessibility, and cost-effective energy conservation measures. Nonroutine maintenance or replacements, additions, items that are the responsibility of the homebuyer families, and management improvements are not eligible modernization costs for homeownership projects.

(g) *Resident management corporations.* Eligible modernization costs include use of management improvement funds to assist a resident management corporation, as defined in § 964.7 of this chapter, to develop its management capabilities and carry out management improvements identified as PHA-wide or project-specific in nature, under the terms of a management contract between the PHA and the resident management corporation. (See part 964 of this chapter for information on the establishment and functions of resident management corporations.) Such funding is subject to the limitations indicated in paragraph (b) of this section.

§ 968.210 Procedures for obtaining approval of a modernization program.

(a) *HUD notification.* As soon as possible after modernization funds for a particular FFY become available, HUD shall give written notification of the availability of such funds and the time frame for submission of the application.

(b) *PHA consultation with local officials and tenants/homebuyers.* The PHA shall develop the application in consultation with local officials and tenants/homebuyers at the project to be modernized, as set forth in § 968.220 and § 968.225. Before developing the application, the PHA shall consult with local government officials as to whether the proposed comprehensive, special purpose, or homeownership modernization is financially feasible and will result in long-term physical and social viability of the project.

(c) *Application.* The PHA shall submit to HUD an application, in a form prescribed by HUD, which shall include, but not be limited to:

(1) A five-year funding request plan, which includes the PHA's estimate of the comprehensive modernization funds to be requested over a five-year period to meet the total physical and management improvement needs of its projects sufficient to meet the modernization and energy conservation standards in § 968.115, including any special purpose and homeownership needs, as well as any emergency needs in the current FFY.

(2) A preliminary assessment of the total physical and management needs of each project for which the PHA is requesting comprehensive modernization and of the specialized needs of each project for which the PHA is requesting special purpose, emergency or homeownership modernization in the current FFY.

(3) For each project proposed for comprehensive modernization in the current FFY, an identification of and an estimate of the total costs of replacement of the equipment, systems, or structural elements that would normally be replaced (assuming routine and timely maintenance is performed) over the remaining period of the ACC or during the 30-year period beginning on the date of submission of the application, whichever period is longer.

(4) A resolution by the PHA Board of Commissioners, approving the application and containing certifications as required by HUD.

(5) Other data related to the operation of the program, as may be required to comply with other Federal laws and regulations.

(d) *HUD screening and review.* HUD shall screen and review the applications, and select application for further processing, on the basis of such factors as the extent and urgency of the need and the PHA's management and modernization capability.

(e) *PHA preparation for joint review.* The PHA shall prepare for the joint review by:

(1) Reaching agreement with HUD on the specific project(s) to be covered during the joint review;

(2) Completing an assessment of the needs of each project for which the PHA is requesting funds in the current FFY. The PHA will complete a detailed, comprehensive assessment, in a form prescribed by HUD, of the total physical and management needs of each project for which the PHA is requesting comprehensive or special purpose modernization; except that if the request for a particular project is limited to physical improvements to increase accessibility for elderly and handicapped families and to increase energy efficiency, a specialized assessment will be completed unless HUD determines that there is evidence indicating that the project has major problems that justify a comprehensive assessment. An assessment of specialized physical improvement needs will be completed for each project for which the PHA is requesting emergency or homeownership modernization;

(3) For each project proposed comprehensive modernization, completing:

(i) A project operating budget for each 12-month period covered by the plan, excluding modernization costs;

(ii) An estimate of the financial resources to be available from all sources and the amount of modernization funds to be requested for each 12-month period covered by the plan; and

(4) Reviewing the other factors to be covered during the joint review as prescribed by HUD.

(f) *Joint review.* The PHA and HUD shall conduct an on-site review to discuss the proposed modernization program, as set forth in the application, and reach tentative agreement on the PHA needs. The joint review shall include an on-site inspection of the property and resolution of the relevant issues as prescribed by HUD.

(g) *Comprehensive modernization approach.* HUD will fund proposed comprehensive modernization in one stage, or, on an exception basis, in more than one stage—not to exceed a total of five stages, subject to future fund availability. Grounds for exception include a PHA's lack of modernization or management capability (which necessitates multi-stage funding).

(1) *One-stage funding.* Under one-stage funding, the total amount of modernization funds for all required physical and management improvements at the project shall be approved at one time, from funds for a single FFY, under one application.

(2) *Multi-stage funding.* Under multi-stage funding, the total amount of modernization funds for all required physical and management improvements at the project shall be approved in the fewest number of stages that are feasible, over several different FFYs, with the total number of stages not to exceed five. The first stage will include funds for architectural/engineering work and/or a portion of the physical improvements. Management improvements may be included in the first stage to the extent they are eligible costs under § 968.205(b).

(i) *First stage.* At the first stage of funding, the application shall include a comprehensive assessment of the project's physical and management improvement needs and a plan under paragraph (c)(2) of this section addressing only the work items to be completed during this stage. When approving the first stage, HUD will indicate the approximate balance of the funds required to complete the comprehensive modernization, but also will indicate that future funding will be subject to all of the following conditions: the availability of funds, satisfactory progress by the PHA in obligating first stage and subsequent stage funds, PHA submission of additional documents, and PHA compliance with HUD regulatory and statutory requirements.

(ii) *Subsequent stages.* Where the PHA is requesting funds for a subsequent stage of a multi-stage comprehensive modernization, HUD will determine whether the PHA has made satisfactory progress in obligating prior stage funds, whether it has submitted necessary additional documents, and whether it has complied with HUD regulatory and statutory requirements. If the PHA has not satisfied these conditions, HUD will not approve that subsequent stage of funding at this time. The PHA submission for any subsequent stage should not duplicate items previously submitted.

(3) *Implementation.* After the application for each stage is approved, the PHA and HUD shall agree on an implementation period that is appropriate for that funding stage, not to exceed five years for any stage from the date on which that stage is first funded.

(h) *HUD funding decisions.* After all of the joint reviews, HUD will determine whether the PHA will be approved for funding and whether any further modifications are required to the application, including PHA submission of the budget. HUD will give preferences to PHAs which request assistance for:

(1) Group 1, projects having emergency conditions that pose an immediate threat (*i.e.*, must be corrected within one year of funding approval) to tenant life, health, or safety or related to fire safety. Funding is limited to correction of emergency conditions and may not be used for substantial rehabilitation.

(2) Group 2, projects:

(i) Having conditions which threaten tenant life, health, or safety or having a significant number (10 percent or more) of vacant or substandard units; and

(ii) Located in PHAs having demonstrated a capability of carrying out the proposed modernization activities (comprehensive, special purpose, and homeownership modernization); or

Within this group, the Secretary may also give priority to additional factors, such as the correction of physical disparities under the nondiscrimination preference, the project is at the second or subsequent stage of comprehensive modernization, cost benefit, and the need for lead-based paint testing and hazard abatement.

(3) Group 3, other projects located in PHAs having demonstrated a capability of carrying out the proposed modernization activities (comprehensive, special purpose, and homeownership modernization). The Secretary may give priority to factors which demonstrate that the modernization will result in the greatest cost benefit.

(4) HUD may set aside for special purpose modernization a portion of the total modernization funds available for any FFY, as determined by HUD to be necessary to assure that special purpose needs are appropriately addressed.

(i) *ACC amendment.* After HUD approval of the application and budget, HUD and the PHA shall enter into an ACC amendment to obtain modernization funds.

(j) *Implementation schedule.* After HUD executes the ACC, the PHA shall submit for HUD approval an implementation schedule for each project in the approved modernization program.

(The information collection requirements contained in paragraph (b) were approved by the Office of Management and Budget under OBM control number 2577-0046. The information collection requirements contained in paragraph (c) were approved under OMB control numbers 2577-0044 and 2577-0047. The information collection requirements contained in paragraph (j) of this section were approved under OMB control number 2577-0065).

§ 968.215 Modernization project.

(a) *Modernization projects.* For purposes of funding modernization, each modernization program approved for a PHA shall be treated as a separate modernization project. The modernization project may include improvements to one or more public housing projects. Improvements to a single public housing project may be included in more than one modernization project.

(b) *ACC.* HUD and the PHA shall enter into an ACC amendment for each modernization project. The ACC amendment shall require lower income use of the housing for not less than 20 years from the date of the ACC amendment (subject to sale of homeownership units in accordance with the terms of the ACC).

(c) *Declaration of trust.* The PHA shall execute and file for record a Declaration of Trust as provided under the ACC to protect the rights and interest of HUD throughout the 20-year period during which the PHA is obligated to operate the individual projects receiving modernization grant funds in accordance with the ACC, the Act, and HUD regulations and requirements.

§ 968.220 Tenant participation.

For a rental project only, before submission of the application, the PHA shall consult with the tenants (including, for purposes of this section, tenant organizations and resident management corporations (see § 964, Subpart C of this Chapter), if any) regarding its intent to submit an application for modernization funds. Before the joint review, the PHA shall notify the tenants

of the project to be modernized of the proposed modernization program, give tenants a reasonable opportunity to

modernization program, and the amount of the cost to be attributed to its home.

(d) If the homebuyer family decides to

homebuyer's purchase price. The new purchase price schedule shall:

(i) Show monthly amortization of the

number of years to be used as the period for the modernization amortization

physical improvements which are necessary to meet local code

85.36(g)(2)(i) through (iv). In all other instances, the PHA shall make the award without HUD approval after the

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of the project to be modernized of the proposed modernization program, give tenants a reasonable opportunity to present their views on the proposed program and alternatives to it, and give full and serious consideration to tenant recommendations. At the joint review, the PHA shall provide the tenants and HUD with a copy of, and an evaluation of, tenant recommendations, indicating the reasons for PHA acceptance or rejection, consistent with HUD requirements and the PHA's own determination of efficiency, economy, and need. After HUD approval of the modernization program, the PHA shall inform the tenants of the approved work items. The provisions of this section do not apply to proposed work items of an emergency nature affecting the life, health, and safety of tenants, which are processed in a "fast track" mode outside the normal processing schedule. However, the PHA shall inform tenants of approved emergency work items.

(Approved by the Office of Management and Budget under OMB control number 2577–0048.)

§ 968.225 Homebuyer participation.

(a) For a homeownership project only, before the joint review, the PHA shall discuss the modernization program with the homebuyer families of the project to be modernized and advise them of the effect of the modernization on the terms of the homebuyer agreements. The PHA shall give the homebuyer families a reasonable opportunity to present their views on the proposed program and give full and serious consideration to their recommendations consistent with HUD requirements and the PHA's own determination of efficiency, economy, and need.

(b) The PHA shall inform each homebuyer family that:

(1) To participate, it must be in substantial compliance with the terms of its homebuyer agreement;

(2) It will have an opportunity to express its views and preferences with respect to the modernization of its home;

(3) The purchase price and the amortization period will be increased as provided in § 968.230;

(4) It will have an opportunity to participate in the final inspection of the work to determine completion in accordance with the requirements; and

(5) Participation in the program is optional.

(c) The PHA shall provide each homebuyer family with a copy of the PHA's evaluation of its recommendations, the tentative decisions reached on the modernization program to be submitted to HUD, the estimated cost of the proposed modernization program, and the amount of the cost to be attributed to its home.

(d) If the homebuyer family decides to participate in the modernization program with respect to any of the proposed work items, it must agree in writing that its homebuyer agreement will be amended upon approval of the application to provide that, as a result of the amount of modernization cost attributed to its home, the purchase price and the amortization period will be increased as provided in § 968.230.

(e) Any homebuyer family may decline to participate without risk to its homebuyer status.

(f) Before HUD approval of the application, the PHA shall obtain a signed agreement from each participating homebuyer family that it will amend its homebuyer upon approval of the application. The PHA shall retain copies of the signed agreements in its files for inspection by HUD.

(g) The provisions of paragraphs (b) through (f) of this section do not apply where modernization work is limited to correction of development deficiencies, conduct of energy audits, or undertaking of cost-effective energy conservation measures.

(Approved by the Office of Management and Budget under OMB control number 2577–0048.)

§ 968.230 Special requirements for homeownership projects.

(a) Promptly after HUD approval of the application, each homebuyer family shall execute an amendment to its Homebuyer Agreement, reflecting an increase in the purchase price of its home and an extension of the amortization period in accordance with paragraphs (b) and (c) of this section, except where the modernization work is limited to the correction of development deficiencies, conduct of energy audits, or undertaking of cost-effective energy conservation measures.

(b) For Turnkey III projects that have purchase price schedules and for Mutual Help projects placed under ACC from March 9, 1976 or converted in accordance with 24 CFR 905.428:

(1) The amount of estimated modernization cost attributable to the home, as shown in the HUD-approved application, shall be added to the homebuyer's purchase price as initially determined under 24 CFR 904.113(a) or 904.113(b) for Turnkey III projects or under 24 CFR 905.422 (b) or (c) for Mutual Help projects.

(2) The period of the homebuyer's current purchase price schedule shall be extended by the same percentage as the percentage of increase in the homebuyer's purchase price. The new purchase price schedule shall:

(i) Show monthly amortization of the new purchase price over a period commencing on the same day as the original purchase price schedule and terminating at the end of the extended period; and

(ii) Be computed on the basis of the same interest rate as used for the current purchase price schedule. (For Mutual Help projects where the original development cost was funded through grants, no interest rate is used when computing the new purchase price schedule.)

(3) If a modernization program is approved for a project after one or more earlier modernization programs for the same project, the total amount of modernization cost attributable to the home under the prior modernization program(s) shall be included as part of the homebuyer's initial purchase price in applying the provisions of paragraphs (b)(1) and (2) of this section.

(c) For Turnkey III projects that do not have purchase price schedules and for Mutual Help projects placed under ACC before March 9, 1976, and not converted in accordance with 24 CFR 905.428:

(1) These projects do not involve purchase price schedules for amortization of the homebuyer's purchase price over a fixed period of time because the homebuyer's purchase price in these projects is based on the unamortized balance of the portion of the project's development debt attributable to the home. Consequently, it is necessary to establish a separate schedule for the amortization of the estimated modernization cost attributable to the home, as shown by the HUD-approved application.

(2) The PHA shall furnish to the homebuyers a schedule showing monthly amortization of the estimated modernization cost attributable to the home, at the minimum loan interest rate specified in the ACC for the modernization project, over a period commencing on the first day of the month after the date of original occupancy of the home by the homebuyer and terminating at the end of the period determined as follows:

(i) Divide the amount of the estimated modernization cost attributable to the home (including the total amount of modernization cost attributable to the home under prior modernization programs, if any) by the amount of the current HUD-approved estimated replacement cost of the home.

(ii) Multiply this amount by 25, round the result to the next higher number, and add that number to 25. This is the number of years to be used as the period for the modernization amortization schedule.

(iii) The purchase price for the unit shall be the sum of (A) the balance of the debt attributable to the home and (B) the amount remaining on the modernization schedule at the time of settlement.

§ 968.235 Special requirements for section 23 leased housing bond-financed projects.

(a) A section 23 Leased Housing Bond-Financed project is eligible for modernization only if HUD determines that the project has met the following conditions:

(1) The project was financed by the issuance of bonds;

(2) Clear title to the project will be conveyed to or vested in the PHA at the end of the section 23 lease term;

(3) There are no legal obstacles affecting the PHA's use of the property as public housing during the 20-year period of the modernization;

(4) After completion of the modernization, the project will have a remaining useful life of at least 20 years and it is in the financial interest of the Federal Government to improve the project; and

(5) The project is covered by a cooperation agreement between the PHA and local governing body during the 20-day period of the modernization.

(b) A section 23 Leased Housing Bond-Financed project which has been conveyed to the PHA after the bonds have been retired is similarly eligible for modernization if the conditions specified under paragraph (a) of this section have been satisfied.

§ 968.236 Additional limitations for special purpose modernization.

(a) For each of the three types of special purpose modernization relating to major equipment systems or structural elements, security, and reduction of vacant, substandard units, a PHA may obtain special purpose modernization funding only once for a project that has not been comprehensively modernized. Subsequent funding for the same project for any additional physical improvements of these types may be provided only as a part of a program which addresses all of the physical and management improvement needs of the project under a comprehensive modernization program. This limitation does not apply to a project which has been comprehensively modernized.

(b) Special purpose modernization to reduce the number of vacant, substandard units will be limited to physical improvements which are necessary to meet local code requirements and return such units to a condition that is comparable to the condition of occupied units in the same project.

§ 968.240 Contracting requirements.

(a) *Compliance with State and local law and Federal requirements.* The PHA shall comply with State and local laws and Federal requirements applicable to bidding and contract awards. (See § 968.110(e) and (f) and § 968.120 for wage rate requirements.)

(b) *PHA agreement with architect/engineer.* The PHA shall obtain architectural/engineering services through the competitive negotiation process. Notwithstanding 24 CFR 85.36(g), the PHA shall comply with HUD requirements either to

(1) Submit the contract for prior HUD approval before execution, or

(2) Certify that the scope of work is consistent with any agreements reached with HUD, and that the fee is appropriate and does not exceed the HUD-approved budget amount.

(c) *Sealed bid (formal advertising) requirements.* For each construction or equipment contract over $25,000, and lead-based paint testing services over $25,000, the PHA shall conduct formal advertising as required in § 85.36(d)(2) of this chapter, except for procurement under the HUD Consolidated Supply Program, 24 CFR part 965, supart G.

(d) *Assurance of completion.* For each construction or equipment contract over $25,000, the contractors shall furnish a performance and payment bond for 100 percent of the contract price or, notwithstanding 24 CFR 85.36(h) and as may be required by law, separate performance and payments bonds, each for 50 percent or more of the contract price, or a 20 percent cash escrow, or a 25 percent letter of credit.

(e) *Construction and bid documents.* Notwithstanding 24 CFR 85.36(g), the PHA shall comply with HUD requirements either to

(1) Submit complete construction and bid documents for prior HUD approval before inviting bids, or

(2) Certify to receipt of the required architect's/engineer's certification that the construction documents accurately reflect HUD-approved work and that the bid documents are complete and include all mandatory items.

(f) *Contract award.* The PHA shall obtain HUD approval of the proposed award of modernization construction and equipment contracts if the bid amount exceeds the HUD-approved budget amount or if the procurement meets the criteria set forth in 24 CFR 85.36(g)(2)(i) through (iv). In all other instances, the PHA shall make the award without HUD approval after the PHA has certified that:

(1) The bidding procedures and award were conducted in compliance with State or local laws and Federal requirements;

(2) The award does not exceed the approved budget amount and does not meet the criteria in § 85.36(g)(2)(i) through (iv) for prior HUD approval; and

(3) HUD clearance has been obtained for the award under previous participation procedures, including absence of the contractor from the Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs.

(g) *Contract modifications.* Notwithstanding 24 CFR 85.36, except in an emergency endangering life or property, the PHA shall comply with HUD requirements either to

(1) Submit the proposed contract modifications for prior HUD approval, or

(2) Certify that such modifications are within the scope of the contract and that any additional costs are within the latest HUD-approved budget or otherwise approved by HUD.

(h) *Construction requirements.* The PHA shall submit to HUD periodic progress reports and shall submit all contract settlement documents for prior HUD approval.

(i) *Management improvement contracts.* The PHA shall obtain consultant services through the competitive proposal process. The PHA shall comply with HUD requirements either to

(1) Submit contracts for management improvements, as well as contract changes, for prior HUD approval, or

(2) Certify that the contracts accurately reflect HUD-approved work, do not exceed the HUD-approved budget amount, and have received HUD clearance under previous participation procedures.

In the case of contract changes, the PHA also shall certify that the changes are within the scope of the contract and that any additional costs are within the latest HUD-approved budget or otherwise are approved by HUD.

(The information collection requirement contained in paragraph (b) was approved by OMB under control number 2577–0015. The information collection requirements contained in paragraphs (e), (f), (g), and (h) were approved by OMB under control number 2577–0033. The information requirements in paragraph (i) were approved under OMB control number 2577–0049.)

§ 968.245 Fund requisitions.

To request modernization funds

total approved modernization budget) to incur modernization costs in excess of

§ 968.255 Fiscal closeout of a modernization program.

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§ 968.245 Fund requisitions.

To request modernization funds against the total approved modernization budget, the PHA shall submit a request to HUD in accordance with HUD requirements.

(Approved by the Office of Management and Budget under OMB control number 2577–0104.)

§ 968.246 Progress reporting.

For each quarter until completion of the modernization program, the PHA shall submit, in a form prescribed by HUD, to the HUD Field office:

(a) A report on modernization fund expenditures; and

(b) A narrative report on management improvement progress, where applicable.

(Approved by the Office of Management and Budget under OMB control number 2577–0049.)

§ 968.250 Budget revisions.

The PHA shall not incur any modernization cost in excess of the total approved budget. The PHA shall submit a budget revision, in a form prescribed by HUD, if the PHA plans (within the total approved modernization budget) to incur modernization costs in excess of the approved budget amount for any project. The PHA also shall comply with HUD requirements either to

(a) Submit the proposed budget revision for prior HUD approval if the PHA plans to delete or substantially revise approved work items, add new work items, or incur modernization costs in excess of the approved budget amount for a work item, or

(b) Certify that the revisions are necessary to carry out the approved work and do not result in the approved budget amount for any project being exceeded.

(Approved by the Office of Management and Budget under OMB control number 2577–0044.)

§ 968.251 On-site inspections.

The PHA shall provide, by contract or otherwise, adequate and competent supervisory and inspection personnel during modernization, whether work is performed by contract or force account labor and with or without the services of an architect/engineer, to assure work quality and progress.

§ 968.255 Fiscal closeout of a modernization program.

Upon completion of a modernization program, the PHA shall submit the actual modernization cost certificate, in a form prescribed by HUD, to HUD for review, audit verification, and approval. The PHA shall immediately remit any excess funds provided by HUD. The audit shall follow the guidelines prescribed in 24 CFR part 44, Non-Federal Government Audit Requirements. If the audited modernization cost certificate indicates that there are still excess funds, the PHA shall remit the excess funds as directed by HUD. If the audited modernization cost certificate discloses unauthorized expenditures, the PHA shall take such corrective actions as HUD may direct.

(Approved by the Office of Management and Budget under OMB control number 2577–0049.)

Dated: December 7, 1989.

Thomas Sherman,

Acting General Deputy, Assistant Secretary for Public and Indian Housing.

[FR Doc. 89–29577 Filed 12–20–89; 8:45 am]

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Part V

Office of Management and Budget

Revision to Circular No. A–125, "Prompt Payment"

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OFFICE OF MANAGEMENT AND BUDGET

Revision to Circular No. A–125, "Prompt Payment"

AGENCY: Office of Management and Budget.

ACTION: Final circular.

SUMMARY: This notice revises OMB Circular No. A–125, "Prompt Payment," originally published on August 19, 1982, to implement provisions of the Prompt Payment Act, Pub. L. 97–177. A notice of proposed revision was published April 14, 1989. This revision is being made to:

- Implement changes made by Pub. L. 100–496, the Prompt Payment Act Amendments of 1988; and
- Clarify and reorganize existing provisions of the circular.

The revisions will strengthen OMB Circular No. A–125 and provide for equitable treatment of vendors who provide necessary goods and services to the Federal Government. This final circular incorporates suggestions received through public comment.

EFFECTIVE DATE: Unless otherwise noted, the Act is effective for payments under contracts awarded, contracts renewed, and contract options exercised on or after April 1, 1989. Two provisions are effective with respect to all obligations incurred on or after January 1, 1989, including:

- Application of the Prompt Payment Act to the United States Postal Service; and
- Requirements for payments to farm producers.

Effective for payments under contracts awarded on or after October 1, 1989, agencies must notify vendors of the amount of interest penalty, rate of interest, and period for which the penalty was computed.

The Amendments did not prescribe an effective date for the new requirement to pay an additional penalty when interest should have been paid by law. Since this provision requires OMB to issue regulations, the provision is effective 30 days after publication of the final circular.

FOR FURTHER INFORMATION CONTACT: Suzanne Duval and Marvin Saunders, (202) 395–6107, Credit and Cash Management Branch, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC 20503.

SUPPLEMENTARY INFORMATION: Since implementation of the Prompt Payment Act in 1982, Federal agencies have made significant improvements in their bill-paying performance. Nevertheless, concern in Congress was such that on October 14, 1988, major new provisions were enacted to clarify the Prompt Payment Act and provide new guidance for improving timeliness of payments to vendors. The revised circular implements the legislation and reorganizes the circular to clarify its provisions. Additional changes were made to respond to questions raised by agencies and contractors. This final circular incorporates changes made in response to comments from the public received in response to publication of the proposed revision on April 14, 1989. The circular has been reorganized to place sections 4, 5, 7 through 17, and 19 from the proposed circular in an attachment. The discussion of comments follows the structure used in the proposed circular.

Analysis of comments: Comments were received from 53 private firms, industry associations, Federal agencies, and Members of Congress. The issues raised in these comments are discussed in the order they appear in the circular.

In the supplementary material published April 14, 1989, OMB noted that agencies were free to apply the new provisions to payments under contracts awarded, renewed, or for which options were exercised before April 1, 1989. The context of this statement was that most of the provisions were beneficial to contractors. Further, a number of agencies had complained that the cost of creating and maintaining dual payment systems—pre-April 1 and post-April 1—outweighed by far the increased cost of paying interest penalties on payments made during the grace period. We recognize that the amendments did nothing to affect the obligations of existing contracts. Nevertheless, if an agency determines that it is in the best interest of the Federal government to eliminate the grace period for all payments regardless of the date of award of the contract, recognizing that interest penalty costs may temporarily increase, that agency may operate such a system. Similarly, agencies may also retroactively apply other new provisions through an appropriate contract modification.

Section 3. Policy

One agency commented that the proposed language on temporary unavailability of funds could lead to coverage of all types of payments. We have revised the sentence to specify only payments for property or services.

The proposed circular was in error in stating that "For contracts awarded after October 1, 1989, agencies shall pay an additional penalty under specified circumstances." Three comments noted this error. The effective date for this provision is 30 days after publication of this circular.

Section 4. Definitions

d. Applicable interest rate

One comment noted that the reference to the Renegotiation Board Interest Rate is confusing and recommended dropping the term because the Renegotiation Board is no longer in existence. We have not dropped this term because some Federal agencies are accustomed to request the interest rate under this title. We have added the other terms used by Treasury to characterize this rate—Prompt Payment Interest Rate and Contracts Disputes Act Interest Rate—and agencies may use any of three terms.

e. Contract

The Department of Agriculture recommended that the definition of contract be expanded to bring contracts between the Commodity Credit Corporation (CCC) and agricultural producers under the definition. OMB concurs and this change has been made.

Two industry associations requested clarification of the application of new requirements to orders placed on or after April 1, 1989, against GSA Federal Supply Schedule (FSS) contracts awarded before April 1, 1989. The circular includes delivery orders in the definition of a contract. Delivery orders are the mechanism by which an agency obligates funds under indefinite-delivery contracts, including GSA FSS contracts. The circular has been clarified.

1. Payment date

The new legislation defines the date a payment is made as the date a check is dated or an electronic fund transfer is made. In the proposed circular, we further defined the date an Electronic Fund Transfer (EFT) is made as the date of receipt of the funds in the contractor's financial institution. We proposed this definition on the recommendation of Treasury's Financial Management Service (FMS). This definition is intended to establish an unambiguous date for payment in an electronic environment. The definition is also intended to create an incentive for contractors to agree to accept payment through EFT rather than by check because in most cases they should have use of the funds somewhat sooner.

Six agencies, one bank, and a network opposed this provision, recommending that the payment date be the date an EFT payment is originated. One industry association supported the definition, noting that using the date of origination of the payment message would in effect create a new grace period not authorized by law.

Some agencies are concerned that they must currently deliver EFT vendor payments to the Treasury Regional Finance Center two days earlier than they deliver check payment requests. FMS has assured OMB that this schedule will be compressed. In FY 1990, FMS will arrange for a "next-day" settlement schedule with the Federal Reserve System. This schedule will permit agencies to deliver EFT vendor payment requests one day prior to the due date; settlement will occur the following day (payment date).

The industry standard on which the entire EFT payment system is built assumes that settlement date is the date on which a payment is made—debit, credit, return, dispute, and reclamation. To define origination date as the date payment is made contradicts 31 CFR 210 and the Federal Reserve Operating Circular. In fact, the date of settlement is used as payment date in other categories of Federal payments. For example, Social Security benefits and Federal employee salaries are in fact originated several days prior to the payment date so as to be received by the recipient on the payment date.

Some comments view the check date as equal to the "origination date" for EFT. In fact the two dates are not equal. Once a check is printed and dated, it is a negotiable instrument and carries immediate value to the payee. For example, many defense contractors routinely pick up checks at disbursing sites on the check date and immediately deposit them. Origination of an EFT payment merely begins the EFT payment process; the EFT payment file carries no value to the payee until settlement occurs.

One agency was concerned that it might be liable for events in the EFT process beyond its control while they are not liable for any inability of the Postal Service to deliver mail. The circular has been clarified to protect agencies from such liability.

Taking all these factors into consideration, we have retained the definition provided by Treasury.

Two agencies asked for clarification of settlement date—the date the receiving financial institution's Federal Reserve account is credited or the date the contractor has use of funds. Treasury regulations at 31 CFR 210 require these two actions to occur on the same day.

n. Receipt of invoice

One agency recommended that invoices received after normal business hours be deemed as officially received on the following business day. OMB disagrees with this suggestion because the payment date must be the actual date of receipt.

Section 5. Application

Two agencies asked for clarification of the applicability of the Prompt Payment Act to utility payments or to other payments regulated by State governments. Subsection 4.d. of the proposed circular specified that where the interest rate is specified by other governmental authority (e.g., tariffs), that rate prevails. We have broadened the scope of this provision. Utility services are ordinarily subject to Federal, state, or other governmental regulations which set not only the late payment interest penalty rate but also the payment period. Agencies may acquire utility services either through contracts or by purchase order or other written request for services. Section 5, Application, has been amended to clarify that where there is a contract, the terms of that contract prevail. Where no contract exists or the contract is silent about payment terms, the applicable tariff prevails.

The proposed circular prohibited payment of late payment interest penalties on periodic or interim payments under cost reimbursement contracts unless the contracts defined these payments as partial payments for property or services furnished. Three industry associations recommended that interest be paid on such late payments. The intent of the proposed restriction was to prohibit payment of interest on contract financing payments. The FAR (32.907–2) prohibits payment of interest penalties on "contract financing payments" and defines contract financing payments (32.902) as authorized disbursement of monies prior to acceptance of supplies or services. Contract financing payments do not include invoice payments or payments for partial deliveries. Contract financing payments include:

—Advance payments
—Progress payments based on cost
—Progress payments (other than under construction contracts or architect-engineer contracts) based on a percentage or stage of completion
—Interim payments on cost-type contracts

The 1988 amendments require that interest penalties be paid on late payments when a contractor makes a partial delivery of supplies or periodic performance of service, performance has been accepted, and a proper invoice submitted under a contract where periodic payments are not prohibited.

OMB finds that the proposed circular was unclear. We have eliminated the definition of partial payments in section 4 and substituted a definition of contract financing payments based on the definition in the FAR. Subsection 5.a. has been clarified by referencing the definition of contract financing payments.

We received comments from three agencies, one industry association, and a foreign government agency, asking for clarification or complaining about precluding applicability to foreign vendors outside the United States for work performed outside the United States. We have conferred with the FAR Council, the Office of the U.S. Trade Representative, and a number of affected agencies and concluded that the proposed exclusion should be removed to avoid possible discrimination on the basis of nationality.

Section 6. Responsibilities

The proposed circular added a new responsibility that agency heads publish lists of designated agency contacts within their payment centers or finance offices to provide contractors assistance in determining the status of invoices. One industry association expressed support for this requirement and asked for information on where and how the lists may be obtained. One agency recommended that agencies report agency contacts to OMB and that OMB publish lists. The circular will continue to require that agency heads are responsible for publishing these lists, which is necessary to ensure that contractors have access to current information. Agencies will be required to report annually to OMB on where the lists will be available and the publication schedule. OMB will include this information in its annual report on prompt payment.

In May 1988, the President's Council on Integrity and Efficiency (PCIE) recommended that OMB require agencies to perform quality control reviews over their payment systems to ensure that bills are being paid promptly. OMB asked agencies to submit, along with their prompt payment data for FY 1988, descriptions of any quality control systems which assessed prompt payment. The proposed circular added a new agency responsibility—to establish a quality control program to assess performance of payment systems and provide a reliable way to estimate payment performance. No comments were received on this provision. After

review of agency descriptions of their quality control programs, OMB has concluded that no new requirement is necessary. Agencies may continue to submit descriptions of their quality control systems, but OMB does not believe that a change in the circular is required.

Agencies may split payments, paying separately for each category to meet the

invoice should be used for computing the discount period. OMB concurs.

Section 8. Required documentation

The documentation required by this

b. In invoices

One agency recommended adding that

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review of agency descriptions of their quality control programs, OMB has concluded that more guidance is needed. General requirements for quality control systems have been included in the circular.

Section 7. Standards for Prompt Payment

a. Documentation

A number of comments noted that the circular needs to address more completely advances in technology permitting transactions through electronic media. OMB agrees that the circular must permit the use of electronic media where it is consonant with protecting the integrity of the procurement and payment processes. One agency commented that maintaining copies of awarded contracts in the payment office is not practical. OMB notes that the circular does not require that contracts be maintained in payment offices but that they be forwarded to payment offices. The purpose of this requirement is to ensure that payment offices have access to critical payment information that may be maintained in any form that meets the payment office needs. Agencies have discretion in the location at which they maintain copies of contracts for purposes of complying with the Prompt Payment Act. The FAR requires payment offices to maintain copies of contracts and modifications, invoices and supporting documentation, and records of payment.

b. Review of invoices

One industry assocation and two agencies recommended that the payment period should begin on the date of delivery of an invoice to the designated billing office, fixing responsibility for date stamping invoices upon receipt. OMB agrees and has amended the circular to say that invoices shall be stamped or otherwise annotated by the designated billing office with the date on the day they are delivered to that office.

One agency asked for latitude to contact the contractor by telephone and correct invoices informally. OMB encourages agencies and contractors to use the most efficient means available to resolve discrepancies. The Act requires an agency to promptly return a defective invoice to a contractor to permit corrective action. The Act neither requires nor prohibits agency action to take the necessary corrective action (with or without assistance from the contractor) to render the invoice a proper invoice suitable for payment. OMB does not believe that a change in the circular is required.

c. Receipt and acceptance

One industry association recommended that the circular incorporate language from the supplementary material that commercial items and services should not be subject to extended acceptance periods. OMB concurs.

d. Starting the payment period

One agency recommended that the circular be clarified to reference requirements for progress payment requests under construction contracts. OMB concurs.

e. Determining the payment due date

The Prompt Payment Act has set different payment schedules for different categories of products based on industry practice. The proposed circular gave no guidance on paying promptly when items with different statutory due dates are invoiced together.

We received comments from one agency, two private firms, and two industry associations. The agency recommended paying mixed invoices on the latest date. The two private firms asked for flexibility in policy so that they would not be required to split invoices. One of these firms also complained that an agency's practice of making timely but separate payment for mixed invoices was causing confusion in the firm's accounts receivable department. The firm asked that the Prompt Payment Act be amended to eliminate payment for cooking oils from the 10-day policy because such products do not have a short shelf life. One industry association recommended that mixed invoices be accepted and agencies agree to pay on the earliest date. The other association said that firms should not be denied prompt payment for certain items because an agency chooses to write a mixed order. The circular addresses this issue as follows: Agencies should specify their proposed payment practices for contracts (or individual orders under requirements-type contracts, blanket ordering agreements, or similar contractual arrangements) in the solicitations for the contracts. Contractually-specified payment terms for items covered by statutorily specified maximum payment periods may not exceed those payment periods. If payments are not made on time (in accordance with statutorily or contractually specified payment terms applicable to various items included in a single order), agencies *must* pay interest. Agencies may split payments, paying separately for each category to meet the statutory requirements. Finally, the circular notes that contractors may be encouraged to submit separate invoices for the product categories, but that they cannot be required to do so. It is clear that separate invoices for products with different payment periods would simplify recordkeeping for both contractors and agencies. If agencies wish to avoid invoices containing items with different payment terms, they are free to place orders so as to assure that only one payment period applies to each order. A new subsection g. is inserted. The succeeding subsections are re-designated.

Two agencies asked that the starting date be defined when an agency ratifies unauthorized commitments. The Federal Acquisition Regulation (48 CFR 1.602-3) provides policy and procedures for such ratification and strongly discourages agencies from making unauthorized commitments. In the process of ratifying an unauthorized commitment, the agency should establish the payment due date.

f. Determining the payment due date for certain commodities

One private firm, one industry association, and three Members of Congress expressed concern that a government agency has begun limiting the application of the amendment requiring 10-day payment on dairy products to those which require refrigeration. Nothing in the Act or legislative history supports this limitation. The circular has been amended to make this clear.

One industry association recommended that agencies determine industry practice before deciding to exclude any product from coverage of special payment periods for certain commodities. Based on the legislative history, OMB concurs and has added this to section 7.f.(3).

h. Determining the payment due date when discounts are taken

Five agencies opposed using the date on the invoice, rather than the date of receipt of the invoice, to determine the payment date when discounts are taken. OMB disagrees that any change can be made because of the clear language of the statute.

Two agencies asked whether discount terms based on something other than the date of the invoice can be used. This is permissible. One agency recommended that if no date is placed on the invoice by the contractor, the date of receipt of invoice should be used for computing the discount period. OMB concurs.

k. Timely payment

Comments were mixed on the new provision permitting payments more than 7 days before the due date if the agency head or designee has determined, on a case-by-case basis for specific payments, that earlier payment is necessary. One agency expressed strong concern that such discretion could lead to impropriety and would undermine the incentive for contractors to offer time discounts. Three agencies asked for more explicit flexibility; one agency stated its intention to set a dollar limit and pay all invoices under that level immediately. This comment suggests a misunderstanding of the legislative history of this provision. The House Committee on Government Operations Report clearly indicates congressional concern that agencies were making some payments late in order to avoid making them three or more days before due. The seven-day payment window is intended to permit agencies to assure payment not later than the due date but as close as possible to it, balancing the need to pay promptly with the need to manage cash wisely. Nothing in the legislative history indicates an intention to pay classes of invoices early. OMB believes that payments should be made early only when it is in the clear interest of the Federal Government to do so. Further, OMB has serious concerns about agencies' ability to ensure the integrity of the payment process when agencies pay without receiving reports or other required documentation. No change will be made to the circular.

m. Making the payment

One agency and two industry associations objected to permitting mailing checks "on or about the same day for which the check is dated" and recommended more precise language to require same-day mailing. OMB concurs.

One industry association objected to agencies making payments which fall due on Saturday or Sunday on the next business day without paying interest. The proposed circular adopted this policy because it is standard business practice and was recommended by the General Accounting Office.

n. Partial payments

One agency recommended that partial payment be contingent upon submission of an invoice if an invoice is required by the contract. OMB concurs.

Section 8. Required documentation

The documentation required by this circular will, upon implementation in the Federal Acquisition Regulation (FAR), result in a collection of information from the public. In accordance with the Paperwork Reduction Act of 1980, OMB approved the information collection contained in the December 23, 1988, proposed FAR rule, "Prompt Payment," and assigned OMB approval number 9000-0102 to that collection.

One agency recommended that agencies be allowed to maintain physical records certifying receipt at a site other than the payment center. The circular does not limit agencies' authority to store and maintain records so long as appropriate internal controls are in place to ensure the security and reliability of data. Payments must be supported by basic payment documents, either in hard-copy form or machine-readable records, showing sufficient information to adequately account for the payments. The documentation should link supporting records and enable audit of the payments.

a. In contracts

Comments indicated some confusion over the information to be included in contracts. OMB has decided that the FAR should prescribe the content of contracts; the circular will prescribe information to be derived from the contract as documentation for payments.

One agency complained that paragraph 8.a(2) is unclear. OMB concurs and has amended the circular to state that the requirement is that a notation is required when partial payments are prohibited under the contract.

One agency commented that the exclusion of contracts to procure brand-name commercial items for authorized resale appears to conflict with the seven-day acceptance period. OMB concurs and has clarified this provision.

Two agencies commented that the requirement that contracts should provide for payment of multiple invoices with one payment is unclear. OMB agrees. The intent of this paragraph was to encourage agencies and contractors to operate efficiently by minimizing frequent small invoices resulting in agencies paying a contractor daily. Invoicing and payment frequency should be established by the contract. This material has been dropped from the circular.

b. In invoices

One agency recommended adding that information must be correct to constitute a proper invoice. OMB concurs.

One agency recommended that for EFT payments, contractors be required to provide the receiving correspondent and financial institution(s) routing/transit number(s) and account information or other data sufficient to permit proper transmission through the Federal Reserve System and correct posting to the contractor's account. OMB finds this to be unnecessary and cites in the FAR (48 CFR 52.232-28) rules governing the method for providing this information and the required data.

That agency also recommended that the circular require that the description, price, and quantity of property or services be exactly as on the contract or purchase order. OMB disagrees with this suggestion because there may be good reasons for a difference.

One agency complained that contractors routinely date invoices well in advance of postmark dates because of the time needed to sort by zip code to get reduced postage rates. The agency recommended that the definition of "proper invoice" require an appropriate and reasonable date in relation to the postmark. OMB concurs and the circular has been amended to encourage contractors to date invoices as close to the date of mailing as possible.

One agency suggested requiring or recommending that contractors include the invoice number to allow agencies to cite the invoice number on the payment. OMB concurs that the invoice number will facilitate agency processing. The invoice number will be a suggested data element for contractors to provide to assist the agencies in paying promptly.

c. In receiving reports

Two agencies recommended that the requirement for a signature on receiving reports be modified to permit an electronic alternative when supported by appropriate internal controls, *e.g.*, a unique alpha/numeric signature code. A third agency recommended that the definition of acceptance specify that acceptance be in writing and usually in the form of a receiving report. OMB agrees that electronic alternatives should be permitted. The requirement in section 8.c(5) has been modified accordingly. One agency requested that the circular address electronic invoicing. OMB agrees that the benefits of electronic processing will save taxpayer funds and reduce costs to business. Electronic invoicing is one component of a much larger Electronic Data

Interchange initiative, and policy governing electronic invoicing must be coordinated with the Federal Acquisition

requires the prime contractor merely to annotate its itemized request for payment (often referred to as a

One agency noted a discrepancy between paragraph 10.a(6), which did not include the provision that interest is

the level as excessive. Twelve private sector comments strongly supported the 100 percent additional penalty.

fact, the 1988 amendments were silent as to the effective date; as a result, the provision is effective 30 days after

is appropriate for the FAR. The association recommended that the circular adopt language from the FAR requiring that justification for extending

Interchange initiative, and policy governing electronic invoicing must be coordinated with the Federal Acquisition Regulation. While the circular will not explicitly address electronic invoicing, agencies are encouraged to use this technology so long as they maintain internal controls. If the contractor, contract officer, and paying office agree, electronic invoicing may be used.

d. In requests for progress payments under construction contracts

The draft circular required an itemization of amounts requested related to the elements of work required by the contract but did not require copies of payment requests to be submitted to the agency as substantiation. Four industry associations commented on the proposed policy to require limited subcontractor substantiation in construction contracts. Three of the associations recommended that the copies of payment requests from subcontractors and suppliers be required by the circular; one association opposed inclusion of this material. One agency recommended that the contracting officer have authority to specify necessary details.

The circular's provision relating to the substantiation of progress payment requests under construction contracts has been expanded to conform to explicit statements of Congressional intent, while fully addressing concerns relating to paperwork burdens, which were expressed by the Department of Defense. The report accompanying the House amendments to S. 328 specified that the implementation of the statutory provision requires that the prime contractor's payment request include copies of "the various payment requests submitted by the subcontractors that have been incorporated into the contractor's payment request." The Committee report made clear that substantiation requirements were needed to protect the government from fraudulent payment requests for funds in excess of those actually due. Further, without minimum standards regarding substantiation, the Act's certification requirements would be essentially unenforceable, thus frustrating the explicit Congressional objective of deterring inflated or fraudulent contractor payment requests, which was statutorily expressed in both the Senate and House bills, as well as the final enactment.

To address paperwork burdens inherent in the submission of complete copies of all payment requests from each subcontractor along with the prime contractor's request, the circular now requires the prime contractor merely to annotate its itemized request for payment (often referred to as a "schedule of values") with certain specified information. The prime contractor's progress payment request must list: (a) the amounts included for each subcontractor; (b) the total amount reflected in the agreement between the contractor and its subcontractor; and (c) the total payments already made to each subcontractor under the contract. The requested information is readily available to any prime contractor responsibly discharging its contract management obligations on behalf of the government. In addition, the method of getting this essential information into the contracting officer's hands will be accomplished through minor additions to paperwork currently submitted to the government. To ensure that agencies have flexibility to process billings effectively, the circular requires submission of additional supporting data in a form and detail required by the contracting officer.

Section 9. Required notices to contractors

One agency noted the omission of deadlines for return of invoice for meat, meat food products, perishable agricultural commodities, dairy products, and edible fats or oils. OMB concurs.

Section 10. Late payment interest penalties

a. Calculation

Three agencies recommended using the interest rate in effect at the time the invoice is paid because of the impact on payment systems of maintaining multiple interest rates. OMB disagrees because the legislation is clear in requiring the rate in effect at the time the interest became due. One industry association recommended that interest paid should be the Treasury rate plus points to cover contractor expenses. OMB disagrees because the legislation clearly specifies the interest rate to be paid.

One agency noted a discrepancy between section 10.a(4), which says that interest penalties will accrue until paid, and section 10.a(5), which says that interest will not accrue after a claim is filed under the Contract Disputes Act or for more than one year. OMB concurs and has corrected section 10.a(4).

One agency asked whether the phrase "penalties will not continue to accrue for more than one year" means that penalties do not have to be paid. Clearly, interest penalties must be paid.

One agency noted a discrepancy between paragraph 10.a(6), which did not include the provision that interest is due only if the agency fails to repay the improperly taken discount before the payment due date, and subsection 7.1, which did include this provision. OMB concurs and has used the language of subsection 7.1. in both places.

One agency recommended that the minimum amount of interest should be higher than $1.00 because processing costs are much larger. OMB disagrees because this is a statutory requirement.

One agency recommended that "or incomplete" be inserted after "incorrect" in paragraph 10.a(9). OMB concurs.

Five agencies suggested various ways to clarify procedures when EFT transactions are returned. The primary concern was the start date for the seven-day notice period. OMB concurs and has added that the seven-day period begins when the agency is notified of defective information. Two of these agencies requested a seven-day grace period to originate payment after correct information is received. Since payment should be made as quickly as possible upon receipt of correct information, OMB finds no basis for this grace period.

One agency recommended that the circular explain that interest computations are based on a 360-day year. OMB concurs.

b. Payment

One industry association recommended that section 10.b(4) be made consistent with section 9.a. in recommending that contract and invoice numbers be included in the notice. OMB concurs.

c. Penalties not due

The Department of Agriculture recommended minor changes to section 10.c. to clarify the status of payments made under CCC programs. OMB concurs.

Section 11. Additional penalties

The 1988 amendments required OMB to set the percent level for the new additional penalty imposed when an agency fails to pay the interest due on late payment as required by law. The amendments also permit OMB to set a dollar cap on each additional penalty payment. The proposed circular set the additional penalty at 100 percent of the interest penalty due but unpaid, set no cap, and requested suggestions and supporting data.

Seven agencies commented on the 100 percent additional penalty; all opposed the level as excessive. Twelve private sector comments strongly supported the 100 percent additional penalty.

Five agencies commented on the cap, recommending upper limits of $100, $250, $500, and $1,000. Only one agency provided data on the impact of a cap. Agencies also recommended lower limits—one at $25 and one adequate to reimburse the contractor for the cost of having to request the interest. We investigated private sector costs of collecting overdue bills and found that $25–35 is a typical cost for collecting a bill 30 days in arrears. An industry association recommended that OMB should not set a maximum on the additional penalty because: (1) the legislation permits but does not require OMB to set a maximum; (2) the contract disputes act sets no maximum; (3) a maximum is set by the one-year limit; (4) once the limit is reached the agency will have no incentive to pay; and (5) reporting and monitoring will increase. OMB finds these arguments cogent but believes that to fail to set a maximum would neglect OMB's responsibility to exercise due care over taxpayer funds.

OMB has set the additional penalty at 100 percent of the interest owed (as proposed). We have established a cap of $2,500 on the additional penalty for the first two years after the effective date of the circular, increasing to $5,000 after two years. We have added a minimum $25 additional penalty payment to the circular. The additional penalty will continue to accrue indefinitely. If the contractor submits multiple invoices under a contract which are then paid together in a single payment, the maximum and minimum additional penalty amounts apply to that payment. We believe this approach should balance three important factors: The need to levy an appropriate penalty against agencies which fail to comply with the law, the need to assure contractors some compensation for time spent in collecting bills in arrears, and the need to conserve scarce taxpayer dollars. OMB intends to review this action carefully based on data collected by the agencies during FY 1990 and has modified the reporting requirements accordingly. If the review indicates that the effectiveness of the additional penalty in deterring the egregious practice of denying contractors their rightful late payment interest has been blunted, we will modify this provision to ensure the additional penalty serves the legislative intent.

Three comments noted a discrepancy in effective dates. The proposed circular erroneously stated that the additional penalty is effective October 1, 1988. In fact, the 1988 amendments were silent as to the effective date; as a result, the provision is effective 30 days after publication of the final circular in the Federal Register.

One agency asked whether the 40th day for the contractor to request the additional penalty is the date placed on the contractor's request or the date the agency receives the request. The 40th day shall be the date the request is postmarked. If there is no postmark, the 40th day shall be the date the request is received by the agency and annotated. If the agency fails to annotate the contractor's request for the additional penalty with the date of receipt at the time of receipt, the 40th day shall be the date placed on the request by the contractor.

An industry association recommended that documentation needed for contractors to qualify for the additional penalty be specified. OMB concurs. The contractor must send a written request asking for payment of late payment interest and of the additional penalty. The request must be accompanied by a copy of the original invoice with the date of the invoice and certification that payment for the principal had been received and the date of receipt. No other information is required.

Section 12. Interest penalties due farm producers

The Department of Agriculture recommended that the circular be clarified to show that interest payments owed by CCC to producers on a farm due to late payments under agreements entered into under the Agricultural Act of 1949 are exempted from the Contract Disputes Act. OMB concurs.

Section 13. Interest penalties under construction contracts

One agency recommended that the term "solicitation" be replaced by "contract" because payments will be made in accord with the contract. OMB has decided to make no change in the circular because the legislation is explicit and the legislative history discusses the need for the longer period to be announced in the solicitation in order to give competing contractors the opportunity to make bidding decisions based on this information. Any longer period specified in the solicitation will also be contained in the resulting contract.

One industry association recommended that any progress payment period longer than 14 days be approved by the agency head and that the justification be contained in the contract file and explained in the solicitation and contract. This material is appropriate for the FAR. The association recommended that the circular adopt language from the FAR requiring that justification for extending the acceptance period be included in the solicitation, contract and contract file. While OMB agrees with this policy, the circular does not need to restate purely procurement requirements.

One industry association recommended that section 13.a(3) be revised to read "The 30th day from the date on which the designated billing office receives a proper invoice" because the proposed wording extends the payment period by one day. OMB concurs. The association also recommended that this section repeat the requirement that the billing office is the point designated in the contract to first receive the invoice because problems remain with agencies interpreting receipt as occurring after first receipt. OMB believes that the definition in subsection 4.i. should suffice. Agencies must take particular care to implement fully the plain language of the statute regarding receipt of invoice.

The association expressed concern that the term "billing office" might cause confusion when the first office designated to receive the invoice is a procurement office. OMB recognizes the potential for confusion but believes that any possible confusion should be minimized by emphasizing that the payment period starts on receipt in the office designated in the contract.

Section 14. Grant recipients

One industry association recommended that the circular acknowledge that the Prompt Payment Act does not extend to payment practices of Federal grantees. While OMB agrees, it sees no need to add this material.

Section 16. Relationship to other laws

An industry association recommended that the circular specify that the additional penalty for nonpayment of interest may be recovered under the Contract Disputes Act. OMB concurs.

Section 17. Reporting requirements

Eight agencies objected to the November 15 due date for reports to OMB for the annual report to Congress due January 28th. OMB concurs and has changed the due date to November 30 in order to assure accurate reporting by agencies.

Agencies have asked how the reporting form will treat pre- and post-April 1 reports. In order to minimize reporting burden on agencies during this

transition year, only one report will be required.

One agency opposed the requirement

without this determination. Without such a distinction agencies might be reluctant to experiment with earlier

discounts only when payments are made on or before the discount date; if agencies take discounts after the

States Government, whether or not it is within or subject to review by another agency, and excludes the Congress, the

contracts or architect-engineer contracts) based on a percentage or stage of completion, and interim

acceptance date shall substitute for the seventh day after the delivery date), or

ii. A longer acceptance period is

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transition year, only one report will be required.

One agency opposed the requirement that the agency report to OMB be certified by the agency official with authority over both procurement and payment. Many problems with prompt payment arise because of internal control problems. OMB believes that a good way to ensure that serious payment problems are addressed effectively is to require that those problems be brought to the attention of senior officials in both procurement and finance. The certification requirement is intended to ensure that communication between the key offices occurs.

One agency recommended combining the description of agency payment practices and an updated description of quality control. After review of agency descriptions of their quality control systems, OMB has determined that most agencies need to place more emphasis on this tool; the quality control requirements will be kept separate. This agency also recommended that data on the grace period be clarified to indicate that the requirement is only for existing contracts which continue to have grace periods; OMB concurs.

An agency recommended that a new item be added under data reported on discounts to show discounts not taken because not economically justified. OMB concurs.

Three agencies recommended eliminating the requirement for a list of agency contracts. Section 6.f. requires agencies to publish lists of designated agency contacts within their payment centers or finance offices to provide contractors assistance in determining the status of their invoices. As a result, OMB has changed the reporting requirement: the major agencies will provide OMB annually with the address of a single contact point where the agency list may be obtained and the frequency of its publication. OMB will include the list of contact points in its annual report to Congress.

Four agencies recommended that reporting on the grace period be dropped because the grace period was eliminated for contracts awarded, contracts renewed, and contract options exercised on or after April 1, 1988. Because data are needed for the first six months of FY 1989 and because a number of invoices will continue to be paid for some time under contracts pre-dating April 1, 1989, OMB will retain this reporting requirement for FY 1989 and 1990.

One industry association recommended that the reporting requirements show separately invoices paid early because of a determination by the agency head and those paid early without this determination. Without such a distinction agencies might be reluctant to experiment with earlier payment dates within the seven-day payment window. OMB concurs.

Section 19. Effective dates

One industry association recommended that section 19.c(6) be dropped because the policy was in effect before enactment of the amendments. OMB concurs.

Section 20. Inquiries

One industry association recommended that the circular include information on where and how the lists of agency contacts can be obtained and where and how often they are published. Because this information is likely to change frequently, OMB has decided not to include it in the circular, but to add it to the reporting requirements and include the information in the annual report.

OMB Circular No. A-125 (Revised)

To: THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

Subject: Prompt Payment

Purpose. Circular A-125 (Revised) prescribes policies and procedures to be followed by Executive departments and agencies in paying for property and services acquired under Federal contracts pursuant to the Prompt Payment Act of 1982, as amended, and for entitlement payments under the Agricultural Act of 1949 (7 U.S.C. 1421 *et seq.*). The Prompt Payment Act, originally enacted as P.L. 97-177 on May 21, 1982, was amended on October 17, 1988, as P.L. 100-496.

Background. The Prompt Payment Act (the Act), as amended (Chapter 39 of Title 31, U.S.C.), requires Executive departments and agencies to make payments on time, to pay interest penalties when payments are late, and to take discounts only when payments are made on or before the discount date. Section 3903(a) of the Act requires the Director of the Office of Management and Budget to issue implementing regulations. These regulations provide for timely payment, better relationships with contractors, improved competition for Government business, and reduced costs to the Government for property and services.

Policy. Agencies must make payments under contracts as prescribed in the Act and the circular but not later than the due date, or, if appropriate, the discount date. Payment must be based on receipt of proper invoices or progress payment requests and satisfactory performance of contract terms. Agencies may take discounts only when payments are made on or before the discount date; if agencies take discounts after the discount date, or if they fail to make timely payment, interest penalties must be paid. Checks must be mailed and electronic fund transfers made on the payment date. Agencies must pay interest penalties automatically, without contractors having to request them, and must absorb the cost of interest penalty payments into funds available for the administration of the program for which the penalty was incurred. Temporary unavailability of funds does not relieve agencies of the obligation to pay interest penalties. Agencies must pay an additional penalty under specified circumstances. Agency implementation must be consistent with sound cash management practices, related Treasury regulations (*Treasury Financial Manual*, I TFM 6-8000, section 8040), and the Federal Acquisition Regulation (48 CFR 32.9 and 52.232).

Requirements and Responsibilities. The specific requirements and responsibilities of Executive departments and agencies are set forth in the attachment.

Additional Requirements. Additional procurement guidelines and requirements are set forth in applicable acquisition regulations (48 CFR 32.9 and 52.232).

Inquiries. Inquiries concerning this circular may be directed to the Office of Management and Budget, Credit and Cash Management Branch, Financial Management Division, Washington, DC 20503, telephone 202/395-3066. For information about specific inquiries, see the attachment.

Effective Date. Unless otherwise specified, this circular is effective 30 days after final publication. For specific effective dates, see the attachment.

Sunset Review Date. Three years from the date of issue of this circular, there will be an independent policy review to ascertain its effectiveness.

Richard G. Darman,

Director.

OMB Circular A-125 (Revised)—Prompt Payment

Attachment

1. *Definitions.* For the purposes of this circular, the following definitions apply:

a. *Acceptance*—acknowledgement by the Government that property and services received conform with the requirements of the contract.

b. *Agency*—has the same meaning as the term "agency" in Section 551(1) of Title 5, United States Code, which includes each authority of the United States Government, whether or not it is within or subject to review by another agency, and excludes the Congress, the United States courts, governments of territories or possessions, the District of Columbia government, courts martial, military commissions, and military authority exercised in the field in time of war or in occupied territory. Agency also includes any entity (1) that is operated exclusively as an instrumentality of such an agency for the purpose of administering one or more programs of that agency, and (2) that is so identified for this purpose by the head of such agency. The term agency includes military post and base exchanges and commissaries. The Prompt Payment Act exempts the Tennessee Valley Authority from coverage by this circular. The Act exempts the United States Postal Service (USPS) from the reporting requirements of the Act and circular. The Postmaster General is responsible for issuing the implementing procurement regulations, solicitation provisions, and contract clauses for the USPS.

c. *Agency payment office*—the office or employee responsible for scheduling invoices for payment.

d. *Applicable interest rate*—the interest rate established by the Secretary of the Treasury for interest payments under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) which is in effect on the day after the due date, except where the interest penalty is prescribed by other governmental authority (e.g., tariffs). The rate established under the Contract Disputes Act is referred to as the "Renegotiation Board Interest Rate," the "Contract Disputes Act Interest Rate," and the "Prompt Payment Act Interest Rate" and is published semiannually in the Federal Register on or about January 1 and July 1.

e. *Contract*—any enforceable agreement, including rental and lease agreements, purchase orders, delivery orders (including obligations under Federal Supply Schedule contracts), requirements-type (open-ended) service contracts, and blanket purchase agreements between an agency and a contractor for the acquisition of property or services and agreements entered into under the Agricultural Act of 1949 (7 U.S.C. 1421 *et seq*). Contracts must meet the requirements of Section 5.a of this circular.

f. *Contract financing payments*—authorized disbursement of monies prior to acceptance of supplies or services including advance payments, progress payments based on cost, progress payments (other than under construction contracts or architect-engineer contracts) based on a percentage or stage of completion, and interim payments on cost-type contracts. Contract financing payments do not include invoice payments or payments for partial deliveries.

g. *Contractor*—any person, organization, or business concern engaged in a profession, trade, or business and any not-for-profit entity operating as a contractor (including State and local governments but excluding Federal entities).

h. *Day*—calendar day(s), including weekends and holidays, unless otherwise indicated.

i. *Designated billing office*—the office or employee—governmental or non-governmental—designated in the contract to first receive invoices.

j. *Discount date*—the date by which, if payment is made, a specified invoice payment reduction, or discount, can be taken.

k. *Due date*—the date on which Federal payment should be made. Determination of such dates is discussed in section 4 of this circular.

l. *Invoice*—a bill or written request for payment provided by a contractor for property or services rendered. A proper invoice must meet the requirements of section 5.b. of this circular. The term invoice includes requests for progress payment under construction contracts which must meet the requirements of section 5.d. of this circular.

m. *Payment date*—the date on which a check for payment is dated or the date of an electronic fund transfer (EFT) payment (settlement date). Payments made by EFT mechanism will be made so as to be received by the contractor's financial institution by the established due date. Agencies should contact their Treasury Regional Finance Center (RFC) to establish the necessary delivery time needed to process payments.

n. *Receipt of invoice*—for the purposes of determining a payment due date and the date on which interest will begin to accrue, an invoice shall be deemed to be received:

(1) On the later of:

—The date a proper invoice is actually received by the designated billing office if the agency annotates the invoice with date of receipt at the time of receipt; or

—The seventh day after the date on which the property is actually delivered or performance of the services is actually completed; unless:

i. The agency has actually accepted the property or services before the seventh day (in which case the acceptance date shall substitute for the seventh day after the delivery date), or

ii. A longer acceptance period is specified in the solicitation and included in the contract to afford the agency a practicable opportunity to inspect, test, and accept the property or evaluate the services (in which case the date of actual acceptance or the date on which such longer acceptance period ends shall substitute for the seventh day after the delivery date—note that extended acceptance periods should not be a routine agency practice but should be included only when necessary to permit proper Government inspection and testing of the property delivered or services rendered); or

(2) On the date placed on the invoice by the contractor, in any case in which the agency fails to annotate the invoice with date of receipt at the time of receipt (such invoice must be a proper invoice).

o. *Receiving report*—written evidence of acceptance of property or services by a Government official. Receiving reports must meet the requirements of Section 5.c. of this circular.

2. *Application.*

a. This circular applies to all types of Federal contracts for the procurement of property or services (except contract financing payments as defined in subsection 1.f.) awarded by:

(1) All executive branch agencies except:

—The Tennessee Valley Authority, which is subject to the Prompt Payment Act but is not covered by this circular; and

—Agencies specifically exempted under 5 U.S.C. 551(1).

(2) The United States Postal Service, except for the reporting requirements. The Postmaster General is responsible for issuing implementing procurement regulations, solicitation provisions, and contract clauses for the United States Postal Service.

(3) The Commodity Credit Corporation pursuant to:

—Section 4(h) of the Act of June 29, 1948 (15 U.S.C. 714b(h)) relating to the procurement of property and services, and

—Payments to producers on a farm under the terms of an agreement entered into under the Agricultural Act of 1949 (7 U.S.C. 1421 *et seq.*).

b. Where agencies acquire utility services under terms required by other governmental authorities not subject to the Act (e.g., tariffs) this circular does not apply. If agencies acquire these services through contracts or other written request, payment terms should be specified and will prevail. If there is no contract or the contract is silent

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about payment terms, the applicable tariff prevails.

c. For effective dates see section 15.

3. *Responsibilities.* Each agency head is responsible for the following:

a. Assuring timely payments and the payment of interest penalties where required.

b. Issuing internal instructions, as necessary, to implement this circular. Such instructions will include provisions for monitoring the causes of any interest penalties incurred, taking necessary corrective or disciplinary action; reporting accurately each year to OMB; and dealing with inquiries.

c. Assuring that effective internal control systems are established and maintained as required by OMB Circular A–123, "Internal Control Systems," to provide reasonable assurance that administrative activities required under Circular A–125 are effectively and efficiently carried out. In particular, internal management controls over receipt and acceptance should be strengthened.

d. Assuring that Inspectors General and internal auditors periodically review implementation, as they and the agency head deem appropriate. Copies of reports on audits and reviews should be provided to OMB upon issuance.

e. Establishing a quality control (QC) program to assess performance of payment systems and provide a reliable way to estimate payment performance. Agency QC programs must fulfill the following requirements:

(1) QC must be a systematic performance measurement system in place throughout the agency which provides managers information about problems and assists in targeting corrective action. QC data must be accurate to within established tolerances and should be used to fulfill the annual reporting requirements in section 14.

(2) Data should be gathered as frequently as needed by managers to identify and correct errors. Rapidly changing situations may require frequent data collection.

(3) Information must be collected through a process at least as thorough as the original payment decision process. QC reviewers must use original documents and repeat the original calculations.

(4) Where the number of payment actions is too numerous to permit a total review, data should be gathered on the basis of a statistically valid sample sufficient to assure the reliability of QC reviews conducted, without unduly burdening agency resources.

(5) Data must be collected by individuals who are independent from the original payment decision. Thus, supervisory reviews, while an excellent way to improve processing, are not QC reviews.

(6) Analysis of QC data will result in remedial action targeted to correct objectively determined error causes.

f. Publishing lists of designated agency contacts within their payment centers or finance offices to provide contractors assistance in determining the status of their invoices.

4. *Standards for Prompt Payment.* Agency payment practices shall conform to the following standards:

a. *Documentation.* Agencies will maintain documentation required in section 5. Copies of awarded contracts will be forwarded to the agency payment office immediately upon award.

b. *Review of invoices.* Agencies will use the following procedures in reviewing invoices:

(1) Invoices received by the designated billing office will be stamped or otherwise annotated with the date on the day they are received in that office;

(2) Each invoice will be reviewed as soon as practicable after receipt to determine whether the invoice is a proper invoice as defined in section 1 of this circular;

(3) Any invoice determined not to be a proper invoice shall be returned as soon as practicable, but not later than seven days (three days for meat or meat food products and five days for perishable agricultural commodities, dairy products, and edible fats and oils) after receipt, identifying the defects that prevent payment; and

(4) The number of days available to an agency to make a timely payment of an invoice without incurring an interest penalty shall be reduced by the number of days by which an agency exceeds the requirement to return the defective invoice.

c. *Receipt and acceptance.* Agencies will ensure that receipt and acceptance are executed as promptly as possible. Commercial items and services should not be subject to extended acceptance periods. Receiving reports will be forwarded in time to be received by the agency payment office by the fifth working day after acceptance, unless other arrangements are made. Receiving reports and invoices will be stamped or otherwise annotated with the date upon receipt in the agency payment office.

d. *Starting the payment period.* The period available to an agency to make a timely payment of an invoice without incurring an interest penalty shall begin on the date of receipt of invoice as defined in sections 1.n., 9, or 10 (except where no invoice is required, e.g., some periodic lease payments).

e. *Determining the payment due date.* Unless otherwise specified, the payment is due either:

(1) On the date(s) specified in the contract; or

(2) If a payment due date is not specified in the contract, 30 days after the start of the payment period as specified by paragraph 4.d.

f. *Determining the payment due date for certain commodities.* The payment due dates are as follows:

(1) For meat or meat food products, as defined in Section 2(a)(3) of the Packers and Stockyard Act of 1921 (7 U.S.C. 182(3)), including any edible fresh or frozen poultry meat, any perishable poultry meat food product, fresh eggs, and any perishable egg product, payment will be made as close as possible to, but not later than, the seventh day after the date of delivery.

(2) Payment for perishable agricultural commodities, as defined in section 1(4) of the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(4)), will be made as close as possible to, but not later than, the 10th day after the date of delivery, unless another date is specified in the contract.

(3) For dairy products (as defined in section 111(e) of the Dairy Production Stabilization Act of 1983, 7 U.S.C. 4502(e), and including, at a minimum, liquid milk, cheese, certain processed cheese products, butter, yogurt, and ice cream), edible fats or oils, and food products prepared from edible fats or oils (including, at a minimum, mayonnaise, salad dressings, and other similar products), payment will be made not later than 10 days after the date on which a proper invoice for the amount due has been received by the agency acquiring such dairy products, fats, oils, or food products. Nothing in the Act permits limitation to refrigerated products. When questions arise about coverage of a specific product, prevailing industry practices should be followed in specifying a contractual payment due date.

g. *Determining the payment due date for mixed invoices.* When an invoice is received which contains items with different payment periods, agencies:

(1) Should pay in accordance with the contractual payment provisions (which may not exceed the statutorily mandated periods specified in section 4.f.);

(2) Must pay interest if payment is made so that some items are paid for after their due dates;

(3) May split payments, making payment by the due date applicable to each category;

(4) May not require contractors to submit multiple invoices for payment of individual orders by the agency; and

(5) May encourage but may not require contractors to submit separate invoices for categories of products with different payment periods.

h. *Determining the payment due date when making certain payments to farm products.* Payment due dates shall be determined as specified in section 9.b.

i. *Determining the payment due date when discounts are taken.* When a time discount is taken, payment will be made as close as possible to, but not later than, the discount date. The period for taking the discount is calculated from the date placed on the proper invoice by the contractor to the discount date. If no date has been placed on the invoice by the contractor, the discount period will begin on the date a proper invoice is actually received by the designated billing office if the agency annotates the invoice with date of receipt at the time of receipt.

j. *Determining the payment due date for progress payments under construction contracts.* Payment due dates shall be determined as specified in section 10.

k. *Late payment.* When payments are made after the due date interest will be paid automatically in accordance with the procedures in sections 7, 8, 9, and 10 of this circular.

1. *Timely payment.* An agency shall make payments no more than seven days prior to the payment due date, unless the agency head or designee of such officer has determined, on a case-by-case basis for specific payments, that earlier payment is necessary. This authority must be used cautiously, weighing the requirement to make timely payment against the good stewardship inherent in effective cash management practices. Agencies are encouraged to experiment with the timing for release of their payments so as to pay proper invoices as close as possible to the due date without exceeding it.

m. *Taking discounts.* An agency offered a discount by a contractor from an amount due under a contract for property or services in exchange for payment within a specified time may pay the discounted amount only if payment is made within the specified time. Discounts will be taken whenever economically justified, but only after acceptance has occurred. (See I *Treasury Financial Manual* 6–8040.30.) If the agency takes the discount after the end of the specified time and does not repay it before the payment due date (as defined in paragraph 4.e), the agency shall pay an interest penalty on any amount remaining unpaid as prescribed in section 7.a.(6).

n. *Making the payment.* Checks will be mailed or transmitted on the same day for which the check is dated. Whenever possible, agencies should seek to enter into agreements with contractors for transmission of payments by electronic funds transfer (EFT). On Saturdays, Sundays, and legal holidays, when Federal government offices are closed and government business is not expected to be conducted, payments falling due may be made on the following business day without incurring late payment interest penalties.

o. *Partial payments.* Agencies shall pay for partial delivery of supplies or partial performance of services unless specifically prohibited by the contract. Payment is contingent upon submission of an invoice if an invoice is required by the contract.

p. *Paying interest penalties.* Agencies shall pay an interest penalty, without a request from the contractor, for late payments and improperly taken discount payments. Agencies shall use the procedures for paying penalties as prescribed in sections 7, 8, 9, and 10.

q. *Other regulations.* Agencies will make payments consistent with Treasury regulations (I *Treasury Financial Manual* 6–8040) and with the Federal Acquisition Regulation (48 CFR subparts 32.9 and 52.232).

5. *Required Documentation.* Agencies are required to ensure that the following documentation is established to support payment of invoices and interest penalties:

a. The following information from the contract is required as payment documentation:

(1) Payment due date(s);

(2) A notation that partial payments were prohibited in the contract, if applicable;

(3) For construction contracts, payment due dates for approved progress payments or milestone payments for completed phases, increments, or segments of the project;

(4) If applicable, a statement that the special payment provisions of the Packers and Stockyard Act of 1921 (7 U.S.C. 182(3)) or the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(4)) apply;

(5) Where considered appropriate by the agency head, the specified acceptance period following delivery to inspect and/or test property furnished or to evaluate services performed;

(6) Name (where practicable), title, telephone number, and complete mailing address of officials of the Government's designated billing office and of the contractor receiving the payments; and

(7) Reference to requirements under the Prompt Payment Act including the payment of interest penalties on late invoice payments (including progress payments under construction contracts).

b. The following correct information constitutes a proper invoice and is required as payment documentation:

(1) Name of contractor and invoice date (contractors are encouraged to date invoices as close as possible to the date of mailing or transmission);

(2) Contract number, or other authorization for delivery of property or services (assignment of an invoice number by the contractor is recommended);

(3) Description, price, and quantity of property and services actually delivered or rendered.

(4) Shipping and payment terms.

(5) Other substantiating documentation or information as required by the contract.

(6) Name (where practicable), title, telephone number, and complete mailing address of responsible official to whom payment is to be sent.

c. The following information from the receiving report is required as documentation:

(1) Contract or other authorization number;

(2) Product or service description;

(3) Quantities received, if applicable;

(4) Date(s) property or services delivered and accepted; and

(5) Signature (or electronic alternative when supported by appropriate internal controls), printed name, title, telephone number, and mailing address of the receiving official.

d. The following information must be included in each request for a progress payment under a constructive contract:

(1) Substantiation of the amount(s) requested including:

—An itemization of the amounts requested related to the various elements of work required by the contract covered by the payment request;

—A listing of the amount included for work performed by each subcontractor under the contract;

—A listing of the total amount of each subcontract under the contract;

—A listing of the amounts previously paid to each such subcontractor under the contract; and

—Additional supporting data in a form and detail required by the contracting officer.

(2) Certification by the prime contractor, to the best of the contractor's knowledge and belief, that:

—The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;

—Payments to subcontractors and suppliers have been made from previous payments received under the contract, and timely payments will be made from the proceeds of the payment covered by the certification, in accordance with their subcontract agreements and the requirements of chapter 39, title 31, U.S.C.; and

—The application does not include any amounts which the prime contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of their subcontract.

6. *Required Notices to Contractors.* This section summarizes notices which agencies are required to provide to contractors.

a. *Notice of interest penalty.* When an agency pays a late payment interest penalty, the payment must be accompanied by a notice of the amount of the interest penalty included in the payment, the rate used by the agency to compute the penalty, and the number of days used by the agency to compute the penalty. The contract and invoice numbers should also be included in the notice to assist the contractor in reconciling the payment.

b. *Notice of defective invoice.* When an agency determines that an invoice is not a proper invoice suitable for payment (using criteria in section 5.b.) the agency must return the invoice to the contractor as soon as practicable, but not later than seven days (three days for meat or meat food products and five days for perishable agricultural commodities, dairy products, and edible fats and oils) after receipt, specifying the reasons why the invoice is not a proper invoice.

7. *Late Payment Interest Penalties.*

a. *Calculation.* Agencies will use the following procedures in calculating interest due on late payments:

(1) Interest will be calculated at the interest rate applicable on the day after the due date (the date the agency incurred the obligation to pay an interest penalty).

(2) Interest will be computed from the day after the due date through the payment date.

(3) Adjustments will be made for errors in calculating interest.

(4) When an interest penalty that is owed is not paid, interest will accrue on the unpaid amount until paid, except as described in paragraph (5) below. Interest penalties remaining unpaid for any 30-day period will be added to the principal, and interest penalties, thereafter, will accrue monthly on the total of principal and previously accrued interest.

(5) Interest penalties under the Prompt Payment Act will not continue to accrue:

—after the filing of a claim for such penalties under the Contract Disputes Act of 1978; or

—for more than one year.

(6) When an agency takes a discount after the discount date and does not repay it before the payment due date, the interest payment will be calculated on the amount of the discount taken, for the period beginning the day after the specified discount date through the payment date.

(7) When an agency fails to make notification of a defective invoice within seven days (three days for meat and meat food products, and five days for perishable agricultural commodities, dairy products, edible fats or oils, and food products prepared from edible fats or oils), the number of days allowed for payment of the corrected, proper invoice will be reduced by the number of days between the seventh day (third day for meat and meat food products, and fifth day for perishable agricultural commodities, dairy products, edible fats or oils, and food products prepared from edible fats or oils) and the day notification was transmitted to the contractor. Calculation of interest penalties, if any, will be based on an adjusted due date reflecting the reduced number of days allowable for payment.

(8) Interest penalties of less than one dollar need not be paid.

(9) When an agency cannot complete transmission of payment to a contractor by electronic funds transfer because of incorrect or incomplete account information provided by the contractor, the agency is exempted from payment of interest penalties for the period between the date of attempted transmission and the date on which the contractor supplies correct information to the agency, provided that the contractor has been given notice of the defective account information within seven days after the agency is notified of the defective information.

(10) The applicable interest rate may be determined by calling the Finance and Funding Branch, Department of the Treasury, telephone number 202/566–5551.

(11) Interest calculations are to be based on a 360 day year.

b. *Payment.* Agencies will meet the following requirements in paying interest penalties:

(1) Interest may be paid only after acceptance has occurred;

(2) Late payment interest penalties shall be paid without regard to whether the contractor has requested payment of such penalty;

(3) The temporary unavailability of funds to make a timely payment due for property or services does not relieve an agency from the obligation to pay these interest penalties or the additional penalties required under section 8;

(4) Each payment for which a late payment interest penalty is required to be paid shall be accompanied by a notice stating the amount of the interest penalty included in the payment, the rate by which the penalty was computed, and the number of days used in calculating the penalty (the contract number and any invoice number assigned by the contractor should also be included in the notice to assist the contractor in reconciling the payment); and

(5) Agencies shall pay any late payment interest penalties (including any additional penalties required under section 8) under this circular out of amounts made available to carry out the program for which the penalty is incurred. The Prompt Payment Act does not authorize the appropriation of additional amounts to pay penalties.

c. *Penalties Not Due.* Interest penalties are not required:

(1) When payment is delayed because of a disagreement between a Federal agency and a contractor over the amount of the payment or other issues concerning compliance with the terms of a contract (claims concerning disputes, and any interest that may be payable with respect to the period while the dispute is being settled will be resolved in accordance with the provisions in the Contract Disputes Act of 1978, 41 U.S.C. 601 *et seq.*, except for interest payments required under 31 U.S.C. 3902 and (h)(2)); or

(2) When payments are made solely for financing purposes or in advance, except for interest payments required under 31 U.S.C. 3902 (h)(1) and (h)(2); or

(3) For a period when amounts are withheld temporarily in accordance with the contract.

8. *Additional penalties.*

a. A contractor shall be entitled to an additional penalty payment when the contractor:

(1) Is owed a late payment interest penalty by an agency;

(2) Receives a payment after the payment due date which does not include the interest penalty also due to the contractor;

(3) Is not paid the interest penalty by the agency within 10 days after the date on which such payment is made; and

(4) Makes a written request, not later than 40 days after the date on which such payment is made, that the agency pay such an additional penalty. The contractor request must specifically assert that late payment interest is due under a specific invoice and request payment of all overdue late payment interest penalty and such additional penalty as may be required. Attached to the contractor's request shall be a copy of the invoice on which late payment interest was due but unpaid and a certification that payment for the principal has been received, and the date of receipt. No additional data are required. To be valid the request must be postmarked by the 40th day after payment was made. If there is no postmark, the request will be valid if it is received and annotated with date of receipt by the agency by the 40th day. If the agency fails to annotate the request, the request will be valid if the date of mailing is placed on the request by the contractor by the 40th day.

b. The additional penalty shall be equal to one hundred (100) percent of the original late payment interest penalty beginning January 22, 1990.

c. The additional penalty shall not be greater than $2,500 for two years from January 22, 1990. After that time the additional penalty shall not be greater than $5,000. Regardless of the amount of the late payment interest penalty, the additional penalty paid shall not be less than $25. When the late payment interest penalty ceases to accrue at the end of one year as described in subparagraph 7.a(5), the additional penalty shall continue to accrue and be calculated as described in paragraph 7.a(4). For the purpose of determining the maximum and minimum penalty, the test shall be the interest due on each separate payment made for each separate contract. The penalty shall not be based on individual invoices unless the invoices are paid by separate payment. Where payments are consolidated for disbursing purposes, the penalty determination shall be made separately for each contract therein.

d. The additional penalty does not apply to the payment of utility bills because late payment penalties for these bills are determined through the rate-setting process.

9. *Interest Penalties Due Farm Producers.* In the case of a payment to which producers on a farm are entitled under the terms of an agreement entered into under the Agricultural Act of 1949 (7 U.S.C. 1421 *et seq.*):

a. An interest penalty shall be paid to the producers if the payment has not been made by the required payment or loan closing date. The interest penalty shall be paid:

(1) On the amount of payment or loan due;

(2) For the period beginning on the first day beginning after the required payment or loan closing date and ending on the date the amount is paid or loaned; and

(3) Out of funds available under section 8 of the Act of June 29, 1948 (15 U.S.C. 714f).

b. Payments to farm producers under such agreements shall be made as close as possible to the required payment or loan closing date, which is:

(1) For a purchase agreement, the 30th day after delivery of the warehouse receipt for the commodity subject to the purchase agreement;

(2) For a loan agreement, the 30th day beginning after the date of receipt of an application with all requisite documentation and signatures, unless the applicant requests that the disbursement be deferred;

(3) For refund of amounts received greater than the amount required to repay a commodity loan, the first business day after the Commodity Credit Corporation receives payment for such loan;

(4) For land diversion payments (other than advance payments), the 30th day beginning after the date of completion of the production adjustment contract by the producer;

(5) For an advance land diversion payment, 30 days after the date the Commodity Credit Corporation executes the contract with the producer;

(6) For a deficiency payment (other than advance payments) based upon a 12-month or 5-month period, 91 days after the end of such period; or

(7) For an advance deficiency payment, 30 days after the date the Commodity Credit Corporation executes the contract with the producer.

c. Provisions relating to the Contract Disputes Act of 1978 (41 U.S.C. 601 *et seq.*) in section 7.a.5. and section 13 do not apply.

10. *Interest Penalties Under Construction Contracts.*

a. In construction contracts agencies will pay interest on:

(1) A progress payment request (including a monthly percentage-of-completion progress payment or milestone payments for completed phases, increments, or segments of any project) that is approved as payable by the agency pursuant to section b, below, and remains unpaid for:

—A period of more than 14 days after receipt of the payment request by the designated billing office or

—A longer period, specified in the solicitation, if required to afford the Government a practicable opportunity to adequately inspect the work and to determine the adequacy of the contractor's performance under the contract.

(2) Any amounts that the agency has retained pursuant to a prime contract clause providing for retaining a percentage of progress payments otherwise due to a contractor and that are approved for release to the contractor, if such retained amounts are not paid to the contractor by a date specified in the contract, or, in the absence of such a specified date, by the 30th day after final acceptance.

(3) Final payments, based on completion and acceptance of all work (including any retained amounts), and payments for partial performances that have been accepted by the agency if such payments are made after the later of:

—The 30th day from the date on which the designated billing office receives a proper invoice; or

—The 30th day after agency acceptance of the completed work or services. Acceptance shall be deemed to have occurred on the effective date of contract settlement on a final invoice where the payment amount is subject to contract settlement actions. For the purpose of computing interest penalties, acceptance shall be deemed to have occurred on the seventh day after work or services are complete in accordance with the terms of the contract.

b. An agency may not approve a request for progress payment under section a(1), above, unless the application includes:

(1) Substantiation of the amounts requested meeting the requirements of section 5.d.; and

(2) Certification by the prime contractor, to the best of the contractor's knowledge and belief, that:

—The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract,

—Payments to subcontractors and suppliers have been made from previous payments received under the contract, and timely payments will be made from the proceeds of the payment covered by the certification, in accordance with their subcontract agreements and the requirements of Chapter 39 title 31 U.S.C., and

—The application does not include any amounts which the prime contractor

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intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of their

requirements of federally assisted programs.

12. *Payment without evidence that*

(3) This circular does not require an interest penalty on a payment that is not made because of a dispute between the

—Because interest was less than $1.00:

possible to the due date without exceeding it);

(4) Elimination of the grace period (section 4.e.);

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intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of their subcontract.

c. The certification by the prime contractor is not to be construed as final acceptance of the subcontractor's performance.

d. The agency shall return any such payment request which is defective to the contractor within seven days after receipt, with a statement identifying the defect(s).

e. A contractor is obligated to pay interest to the Government on unearned amounts in its possession from:

(1) The eighth day after receipt of funds from the agency until the date the contractor notifies the agency that the performance deficiency has been corrected or the date the contractor reduces the amount of any subsequent payment request by an amount equal to the unearned amount in its possession, when the contractor discovers that all or a portion of a payment received from the agency constitutes a payment for the contractor's performance that fails to conform to the specifications, terms, and conditions of its contract with the agency, under 31 U.S.C. 3905(a); or

(2) The eighth day after the receipt of funds from the agency until the date the performance deficiency of a subcontractor is corrected or the date the contractor reduces the amount of any subsequent payment request by an amount equal to the unearned amount in its possession, when the contractor discovers that all or a portion of a payment received from the agency would constitute a payment for the subcontractor's performance that fails to conform to the subcontract agreement and may be withheld, under 31 U.S.C. 3905(e).

f. When a contractor is obligated to pay interest on unearned amounts to the Government under 31 U.S.C. 3905(a)(2) or 3905(e)(6), as described in paragraph e, the interest shall:

(1) Be computed at the rate of average bond equivalent rates of 91-day Treasury bills auctioned at the most recent auction of such bills prior to the date the contractor received the unearned amount;

(2) Be deducted from the next available payment to the contractor; and

(3) Revert to the Treasury.

11. *Grant Recipients.* Recipients of Federal assistance may pay interest penalties if so specified in their contracts with contractors. However, obligations to pay such interest penalties will not be obligations of the United States. Federal funds may not be used for this purpose, nor may interest penalties be used to meet matching requirements of federally assisted programs.

12. *Payment without evidence that supplies have been received.*

a. In limited situations, payment may be made without evidence that supplies have been received. Instead, a contractor certification that supplies have been shipped may be used as basis for authorizing payment. These payment procedures may be employed only when all of the following conditions are present:

(1) Individual orders do not exceed $25,000 (except that heads of executive agencies may permit a higher limit on a case-by-case basis);

(2) Deliveries of supplies are to occur where there is both a geographical separation and a lack of adequate communications facilities between Government receiving and disbursing activities that make it impracticable to make timely payments based on evidence of Federal acceptance;

(3) Title to the supplies will vest in the Government upon delivery to a post office or common carrier for mailing or shipment to destination or upon receipt by the Government if the shipment is by means other than Postal Service or common carrier; and

(4) The contractor agrees to replace, repair, or correct supplies not received at destination, damaged in transit, or not conforming to purchase requirements.

b. Agencies shall promptly inspect and accept supplies acquired under these procedures and shall ensure that receiving reports and payment documents are matched and steps are taken to correct discrepancies.

c. Agencies shall ensure that specific internal controls are in place to assure that supplies paid for are received.

13. *Relationship to other laws.*

a. Relationship to the Contract Disputes Act of 1978 (41 U.S.C. 605):

(1) A claim for an interest penalty (including the additional penalty for nonpayment of interest if the contractor has complied with the requirements of section 8 of this circular) not paid under this circular may be filed under section 6 of the Contract Disputes Act.

(2) An interest penalty under this circular does not continue to accrue after a claim for a penalty is filed under the Contract Disputes Act or for more than one year. This does not prevent an interest penalty from accruing under section 12 of the Contract Disputes Act after a penalty stops accruing under this circular. A penalty accruing under section 12 of the Contract Disputes Act may accrue on an unpaid contract payment and on the unpaid penalty under this circular.

(3) This circular does not require an interest penalty on a payment that is not made because of a dispute between the head of an agency and a contractor over the amount of payment or compliance with the contract. A claim related to such a dispute and interest payable for the period during which the dispute is being resolved is subject to the Contract Disputes Act.

b. Relationship to the Small Business Act (15 U.S.C. 644(k)). This Act has been amended to require that any agency with an Office of Small and Disadvantaged Business Utilization must assist small business concerns to obtain payments, late payment interest penalties, or information due to the concerns.

14. *Reporting Requirements.* The Act requires the Director of OMB to report to Congress by the 120th day after the end of each fiscal year (January 28th), summarizing agency reports and analyzing progress made. In addition, OMB submits the annual prompt payment report to Congress with the President's Budget. Each Federal agency will report annually to the Director of OMB by November 30th the following information for the prior fiscal year:

a. Invoices subject to the Prompt Payment Act and OMB Circular A–125:
(1) Dollar value of invoices,
(2) Number;

b. Invoices paid after due date:
(1) Dollar value of invoices,
(2) Number,
(3) Interest penalties paid:
—Dollar amount
—Number
—Relative frequency
—Frequency distribution,
(4) Additional penalties paid:
—Dollar amount
—Number
—Relative frequency,
(5) Reasons why interest or other late payment penalties were incurred in order of frequency of occurrence
—Delay in paying office's receipt of:
Receiving report
Proper invoice
Purchase order or contract
—Delay or error by paying office in:
Taking discount
Notifying contractor of defective invoice
Computer or other system processing,
(6) Interest and other late payment penalties which were due but not paid (Use interest rate in effect on the date obligation accrues):
—Total:
Interest dollars
Number

—Because interest was less than $1.00:
Interest dollars
Number
—For other reason:
Interest dollars
Number
Specify reasons;

c. Invoices paid 1–15 days after due date, where appropriate:
(1) Dollar Amount,
(2) Number,
(3) Relative frequency;

d. Invoices paid 8 days or more before due date (except where cash discounts taken) subject to a determination by the agency head under subsection 4.1. of circular:
(1) Dollar amount,
(2) Number,
(3) Relative frequency;

e. Invoices paid 8 days or more before due date (except where cash discounts taken) without a determination by the agency head under subsection 4.1. of circular:
(1) Dollar amount,
(2) Number,
(3) Relative frequency;

f. Discounts:
(1) Number available,
(2) Number taken,
(3) Number not taken because not economically justified,
(4) Reasons for failing to take discounts;

g. For each payment center:
(1) Number of payments subject to the Act and the circular,
(2) Number and dollar amount of interest penalties paid;

h. Description of progress made, problems identified, and corrective actions taken in agency vendor payment systems during the fiscal year in implementing the provisions of the Act and OMB Circular A–125 (include a description of agency experience in determining the most appropriate timing for release of payment authorization so that invoices are paid as close as possible to the due date without exceeding it);

i. Updated description of agency quality control system;

j. Address and telephone number where the public may obtain updated list of designated agency contacts within payment centers or finance offices to provide assistance in determining the status of invoices and agency schedule for publishing the list.

In order to minimize the cost of reporting, statistical sampling may be used to derive the information above. Agency reports to OMB must be certified by the agency official with line authority over both procurement and payment processes.

15. *Effective Dates.* Unless otherwise specified, this circular is effective 30 days after final publication.

a. Effective for obligations incurred on or after January 1, 1989, the United States Postal Service (except for reporting requirements) and the Commodity Credit Corporation are explicitly covered by the Act and circular.

b. Effective for payments made under contracts awarded on or after October 1, 1988, payments requiring a late interest penalty must be accompanied by a notice stating the amount of the penalty included in the payment and the rate by which and period for which the penalty was computed.

c. Certain requirements of the Prompt Payment Act Amendments of 1988 are effective for payments under contracts awarded, contracts renewed, and contract options exercised on or after April 1, 1989. The requirements include:
(1) Rules governing the date an invoice is deemed to be received (section 1.n.);
(2) Definition of the payment date as the date an electronic fund transfer is made (section 1.m.);
(3) Clarification of the date from which the interest payment is calculated (section 7a.(1));
(4) Elimination of the grace period (section 4.e.);
(5) Due dates for payments for dairy and other products (section 4.f(3));
(6) Interest penalties on progress payments and retained amounts under construction contracts (section 10);
(7) Review and return of invoices (section 4.b (2), (3), and (4));
(8) Authority to make payments before the due date (section 4.1.);
(9) Calculation of interest owed by contractors (section 10.e.);
(10) Limitations on discount payments (section 4.i.);
(11) Payment provisions relating to construction contracts (section 10);
(12) Assistance to small businesses (section 13.b.); and
(13) Payment due date for poultry and egg products (section 4.f(1)).

d. Agencies are authorized to issue modifications to existing contracts to conform them to the payment procedures specified in Chapter 39, Title 31, U.S.C., this circular, and the implementing provisions of the Federal Acquisition Regulation.

16. *Inquiries.* Inquiries concerning this circular may be directed to the Credit and Cash Management Branch, Financial Management Division, Office of Management and Budget, Washington, DC 20503, telephone number 202–395–3066. Inquiries concerning the applicable interest rate may be directed to the Finance and Funding Branch, Department of the Treasury, telephone number 202–566–5651. Questions concerning delinquent payments should be directed to the agency designated billing office. Questions about disagreements over payment amount or timing should be directed to the contracting officer for resolution. Small business concerns may obtain additional assistance on payment issues by contacting the agency's Office of Small and Disadvantaged Business Utilization.

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Part VI

Environmental Protection Agency

40 CFR Part 761
Polychlorinated Biphenyls; Notification and Manifesting for PCB Waste Activities; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

[OPTS-62059B; FRL 3607-5]

RIN 2070-AB83

Polychlorinated Biphenyls; Notification and Manifesting for PCB Waste Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing amendments to its disposal and storage regulations for polychlorinated biphenyls (PCBs). This document contains (1) notification requirements for certain entities that handle PCB waste, (2) requirements for certain entities to prepare and carry a manifest for purposes of tracking the disposal of PCB waste, and (3) requirements that a commercial storer of PCB waste, (i) obtain approval from the EPA Regional Administrator or from the Director of the Exposure Evaluation Division (Director, EED), Office of Pesticides and Toxic Substances, for a commercial storage facility that is part of a disposal facility for which the Director, EED issued the approval for disposal, (ii) develop closure plans for their facilities, and (iii) demonstrate financial responsibility for closure. Also, this notice amends the PCB recordkeeping requirements.

EFFECTIVE DATE: In accordance with 40 CFR 23.5 (50 FR 7271), this rule shall be promulgated for purposes of judicial review at 1 p.m. Eastern Daylight on January 4, 1990. These amendments shall be effective February 5, 1990.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Rm. E-543B Environmental Protection Agency, 401 M St., SW, Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0557.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule under the authority of section 6(e)(1) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2605(e)(1), which was published in the **Federal Register** of September 26, 1988 (53 FR 37436), to amend its PCB storage and disposal regulations, which are codified in subpart D, 40 CFR part 761. The comment period was extended to end on November 25, 1988. A public hearing was requested and was held on December 13, 1988. Comments on the proposed rule were submitted by 62 entities. All comments were considered in the preparation of the final rule. A detailed analysis of these comments and EPA's response to them, titled "Response to Comments on the Proposed Notification and Manifesting Rule" is in the public record for this rule.

The preamble to the proposed rule included a description of the legal authority for the rule, background of the PCB disposal problems, Congressional concerns, definitions, description of persons affected by the rule, a discussion of the issues involved, and a summary of the economic consequences of the rule (53 FR 37436).

I. Overview of the Rulemaking

EPA regulates the disposal and storage for disposal of PCBs under its TSCA section 6(e)(1) authority, rather than its authority to regulate the management of hazardous waste under Subtitle C of the Resource Conservation and Recovery Act (RCRA), unless the PCB waste also meets the definition of RCRA hazardous waste. EPA has identified several areas where improvements are needed in its TSCA program for PCB waste, and these improvements require the promulgation of additional disposal and storage requirements. EPA has concluded that the most pressing of the needed program improvements are the addition of an effective tracking system for PCB waste and the addition of an approval mechanism for the commercial storers who act as intermediate storers of PCB waste prior to its disposal.

This rule adds to the PCB disposal requirements a tracking system for PCB waste akin to the "cradle-to-grave" tracking system for hazardous wastes which EPA promulgated under RCRA Subtitle C. The rule includes a requirement that certain entities among those who handle (generate, transport, store and/or broker, or dispose) regulated PCB waste must notify EPA of their PCB-waste activities, so that the Agency may obtain basic information about the nature, location, and extent of these activities. The rule further requires that each such entity notifying EPA obtain from the Agency a unique identification number which will identify that entity in the shipping documents (manifests) and other records and reports that constitute the PCB waste tracking system. The rule also describes the manifest system that will be implemented to track the movement of PCB waste from the point of generation to the point of disposal, and it describes the recordkeeping and reporting requirements that complete the tracking system.

This rule also adds to the PCB storage regulations an approval mechanism for the commercial storers of PCB waste. The rule requires, among other things, that all commercial storers of PCB waste prepare closure plans for their facilities, and demonstrate their financial responsibility for the closure of their PCB storage areas. Storers of PCB waste who cannot demonstrate compliance with the rule's financial assurance for closure requirements will be required to cease operations and close their facilities.

II. Authority

This rule is issued pursuant to section 6(e)(1) of TSCA. Section 6(e)(1)(A) gives the Administrator the authority to promulgate rules prescribing the methods for disposal of PCBs. (15 U.S.C. 2605(e)(1)(A)). Furthermore, TSCA section 6(e)(1)(B) provides broad authority for EPA to promulgate rules that would:

> (B) * * * require polychlorinated biphenyls to be marked with clear and adequate warnings, and instructions with respect to their processing, distribution in commerce, use, or disposal or with respect to any combination of such activities. (15 U.S.C. 2605(e)(1)(B))

Consistent with this authority, EPA is implementing a waste tracking system for PCB waste which consists of shipping documents (manifests) and other records and reports under TSCA section 6(e)(1). Tracking requirements are necessary for effective management of PCB disposal by EPA, and the manifests contain warnings and instructions to be followed by others in connection with the processing, transport, and disposal of PCB waste. Therefore, promulgation of the tracking system for PCB waste is clearly authorized by TSCA section 6(e)(1).

EPA also regulates the storage of PCB waste prior to disposal under its TSCA section 6(e)(1) disposal authority for PCBs. The current requirements for PCB storage facilities are codified at 40 CFR 761.65. Therefore, these amendments to the storage regulations in § 761.65 are also promulgated under section 6(e)(1) of TSCA.

III. Discussion of the Rule and Comments Made on the Proposal

A. General Reaction to Proposed Rule

In general, the comments received on the proposed rule supported EPA's handling of the issues. There was strong support for retaining disposal of PCBs under TSCA rather than shifting the program to RCRA, and for adopting a PCB waste tracking system similar to the RCRA notification and manifesting process. Although some comments registered concern that a few States have programs that do not mesh perfectly with the TSCA program, commentors stated that, for the most part, State programs would be aided by this rule in their efforts to track PCB waste beyond their borders. As explained in the proposal, the rule does not preempt State laws and deferred to all more stringent State-imposed requirements. Also, the final rule, as proposed, essentially adopts the same kind of identification numbers used under RCRA and requires use of the uniform manifest, to minimize conflicts with State requirements.

Commentors supported the proposed rule's emphasis on adopting approval requirements for commercial storers, including closure plan and financial responsibility requirements. Commentors also supported the definition of PCB waste generators in a manner that promotes consolidation of PCB waste from individual sites of use to users' storage yards. Also, commentors generally supported EPA's decision to limit the generator notification requirements only to generators who operate their own storage areas, and to use a relinquishment of control criterion to define when a generator must manifest waste. Commentors agreed with the decision to require approvals only for commercial storers, and not for all storage facilities. Coupled with comments that generally approved of the provisions of the proposed rule, were requests and suggestions to improve the regulation by clarifying its coverage and reducing the regulated community's paperwork burdens.

B. Generation of PCB Waste

The proposed rule defined and used the term generator of PCB waste in a manner to maintain as much consistency as possible with the RCRA tracking system for hazardous wastes, which forms the model for much of this rule.

The proposed rule defined "generator of PCB waste" as any person whose act or process produces PCBs that are regulated for disposal under TSCA, or whose act first causes a "PCB" or "PCB Item" to become subject to the subpart D disposal requirements of 40 CFR part 761. See the preamble to the proposed rule (53 FR 37436) for a discussion of which entities could qualify as generators under this definition.

The proposed definition is similar to the RCRA definition of "generator" at 40 CFR 260.10, but it differs from the RCRA definition in one important respect. In the context of the proposed rule, the term "generator of PCB waste" generally referred to the "person" (see 40 CFR 761.3) who creates PCB wastes, and not, as would be the case under RCRA, to the individual sites where particular PCBs or PCB Items were used before they became PCB waste.

Section 761.3 defines "person" to include individuals, government entities, corporations, and other business associations, so the intent of the proposed definition of "generator of PCB waste" generally was to promote the consolidation of all of the PCB waste created by a given "person" under one generator identification, regardless of the number of sites, i.e., each location where that "person" might use, own, or control items of electrical equipment. The only exception is where another regulation expressly calls for a site-specific meaning of the term "generator of PCB waste." In such a case, the site-specific requirement controls. The only site-specific reference to generator in the proposed rule is the requirement that the users, owners, or processors of PCBs or PCB Items who maintain their own § 761.65(b) storage facilities for PCBs must submit unique generator notifications to EPA for each of their PCB storage facilities. In cases where the "generator" owns or operates storage facilities, each site of generator storage is treated as a unique "generator of PCB waste" for purposes of this regulation. As such, PCB waste transported from the storage facilities would be manifested from the storage sites, and the manifests would reference the storage facilities' unique EPA identification numbers. Separate storage areas owned by the same generator on the same property would not require separate identification. The treatment of users' and owners' storage facilities as unique generators in the final rule is discussed further in Unit III.I.2.b. Otherwise, all PCB waste generated by a given individual or company is identified with the one consolidated generator who has a single unique identification number.

EPA received many comments on the definition of "generator of PCB waste." Most commentors approved of the definition. Particularly, they supported the definition to allow consolidation of PCB waste from a user's sites. Clarification is needed, they stated, to spell out the distinction between "use" activities and "waste" activities. There was also concern expressed that the proposal was unclear as to who was the generator when electrical equipment underwent servicing, both in the disposal and repair contexts.

The concept of "use" has not changed with this rule. PCBs and PCB-containing material are not "waste" until they are no longer used for the purpose they were intended for and the decision to dispose of them has been made. When equipment that has failed is shipped offsite for repair, it is still considered to be in use and remains in use while it is being serviced. The question of who is the generator of the PCB waste arises when the decision is made to dispose of, rather than repair the equipment.

To clarify the distinction of who is the generator of the PCB waste in the different servicing contexts, EPA has expanded the definition in the final rule to include a person "whose decision causes a PCB material still under his physical control to become subject to subpart D disposal requirements." Under the definition in the final rule, an owner of the PCB material would be the generator when the owner:

1. Ships electrical equipment off-site to be disposed of or serviced for reclassification, since these activities will produce regulated PCB waste.

2. Causes, that is, the owner drains or hires a service company to drain, on-or off-site, fluids containing PCBs at a concentration of 50 ppm or more to be shipped off-site for disposal, or for processing of equipment or fluid that will reduce its concentration, since regulated PCB waste will result. If a contractor drains the fluid on-site, the manifest would describe the fluid containers as PCB waste. If a contractor drains the fluid off-site, the owner's manifest would describe the equipment containing the fluid as PCB waste.

3. Causes PCB-containing treatment residuals to be generated on-site during servicing or processing for disposal operations conducted on-site by the owner or by a contractor.

In these three cases, the owner is the generator because he either performs the operation that produces the PCB waste himself or hires someone to perform the waste-producing operation, understanding that disposal of PCBs will occur. As a generator, the owner must manifest the PCB Item or equipment. The residuals generated during the processing, however, are generated by the processor. Thus the processor must manifest the PCB-containing residuals or fluids generated by the processing and continue the manifest chain for the equipment, if it is still regulated for disposal after processing.

The owner is not a generator of PCB waste when he ships PCB-containing equipment off-site for servicing, but has not yet made a decision whether to repair the equipment or to dispose of it. Thus, the owner need not manifest the equipment. There is no waste at this point as the equipment is still in use. Typically, the equipment must be

inspected before a decision can be made that the equipment will be disposed of

operate many such facilities, EPA has decided to retain the notification

when service companies are commercial storers, whether storage of PCBs

While comments suggested several alternative quantities and time limits for

The issue of storage between parent-subsidiaries, sibling companies, member

samples being analysed for enforcement cases are still in use, and therefore, not

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inspected before a decision can be made that the equipment will be disposed of or repaired for use. If either the servicing facility or the owner decides that the equipment cannot be serviced, the equipment becomes PCB waste and the servicer or processor becomes the generator of the PCB waste, (both the equipment and any residuals), and must manifest the PCB waste.

One commentor recommended the RCRA policy of allowing the parties involved in a transaction to determine who would be the responsible generator for compliance requirements. EPA is rejecting this policy for PCBs for the sake of uniformity of its PCB regulations. It is simpler for EPA to enforce this rule if it uses a general definition of responsibility for manifesting PCB waste.

A commentor suggested the term "shipment originator" rather than "generator" be used for a firm that commingles PCBs from different sources for shipment. This terminology would allegedly avoid the liability connotation of generator. EPA does not consider it advisable to introduce another definition since the term "generator" accurately describes the commingler. A shipment originator, who combines PCB waste from different sources into a new commingled shipment, is a generator of PCB waste under this rule and must manifest the commingled PCB waste.

Several comments raised the question of the status of laboratories and the samples they use for analysis. This issue will be discussed in Unit III.D.

As previously stated, the commentors supported the definition of generator which would promote the consolidation of waste from a user's different sites. Thus, one utility commented, it would be required to submit only 1 notification instead of 80. However, some large industrial commentors felt that since all facilities with their own storage areas would have to notify, the consolidation definition was meaningless. In that commentor's case, all 165 facilities have storage areas and all facilities would be required to notify EPA. As stated earlier in this unit, consolidation is employed as a tool to make the number of notifying generators manageable; however, tracking the shipment of PCB waste from storage areas is an essential feature of the cradle-to-grave tracking system. Most storage areas that meet the requirements in 40 CFR 761.65 store large quantities of PCBs in an ongoing manner and, therefore, remain in the category of those PCB waste facilities that the rule covers. While there may be limited exceptions where small quantities will be stored at such facilities, or where one company may operate many such facilities, EPA has decided to retain the notification requirement, as proposed, for generators with PCB storage facilities.

One large corporation wanted clarification that its subsidiaries had the option to notify EPA individually, and that not all were required to use the same identification number. This option exists. Any entity that requests it is given its own unique identification number.

Another comment suggested that where several companies occupy the same site, the site should be treated as one generator for purposes of the rule. These generators share a common storage facility, where their PCB waste is commingled, and feel that a single EPA identification number for the site would be environmentally acceptable and would not interfere with the tracking of the PCB waste generated from that site. EPA accepts this site-oriented treatment with the understanding that a site that stores PCB waste generated by unrelated generators is a commercial storage facility. The facility address would be issued an individual identification number in any event, since the EPA Identification Number system would identify the facility on the basis of the facility's address. The financial assurance demonstration for the common storage facility would have to incorporate adequate financial responsibility by all members of the agreement or one designated member to ensure adequate coverage if any of the participants decided to withdraw from the agreement.

C. Commercial Storers of PCB Waste

As was proposed, "Commercial Storer of PCB waste" means the owner or operator of a storage facility which is subject to the storage facility standards of 40 CFR 761.65 (a), (b), and (c) and which engages in storage activities involving PCB waste generated or owned by others. Commercial storers of PCB waste generally perform PCB waste storage services in exchange for a fee or other compensation, but the receipt of compensation is not necessary to qualify a storage facility as a commercial storer of PCB waste. It is sufficient that the facility stores PCB waste generated or owned by others. Commercial storers of PCB waste are required to comply with the § 761.65 facility standards, the storage facility approval requirements of § 761.65(d), the recordkeeping requirements of § 761.180, and the applicable requirements of the tracking system for PCB waste in this rule.

The definition of commercial storers received many comments regarding when service companies are commercial storers, whether storage of PCBs belonging to an affiliated or subsidiary company makes a facility a commercial storage facility, whether there should be a time or quantity cut-off consideration, the status of laboratories and their samples, and the status of natural gas distribution companies that collect PCB-containing liquids from their customers' equipment.

EPA has modified the definition of commercial storer in three ways in the final rule to address these comments. First, in the final rule, the "owned by others" criterion has been dropped in favor of language that limits coverage to PCB waste generated by others and PCB waste that is removed during servicing of others' electrical equipment and brokered for disposal. Second, EPA has added a de minimis quantity standard, so that a facility that stored 500 gallons or less of PCBs at any time would not require approval. Third, the definition in the final rule states that a generator who stores his own waste is not required to seek approval as a commercial storer unless the PCB waste was removed while servicing the equipment owned by others and brokered for disposal. The definition also states that those storage facilities that do not require approval under § 761.65(d) are still subject to the storage requirements of § 761.65(a), (b), and (c), where applicable.

The small quantity exception exempts from the commercial storage approval requirements those entities which acquire small quantities of PCB waste which others may have generated. This specific exception is consistent with EPA's decision to eliminate the "owned by others" language from the definition of commercial storer of PCB waste. These changes address many of the concerns raised by commentors that waste storage that was a small and incidental part of an entity's business would be subject to the burdens of the approval process. For example, comments suggested that the proposed definition would require approvals from companies performing remedial actions at Superfund sites, or from natural gas distribution companies who removed small quantities of condensates from their customers' equipment. These commentors pointed out that including such storage within the scope of the definition of commercial storage would not be consistent with EPA's avowed intention of improving its oversight over the activities of the commercial facilities that are in the business of brokering or storing waste. The final rule reflects EPA's agreement with these comments.

While comments suggested several alternative quantities and time limits for a small quantity/short time cut-off, EPA selected less than 500 gallons as a reasonable benchmark that would distinguish the merely incidental storage of PCB waste from storage that is more characteristic of a larger, commercial activity. Thus, the exception is for any facility whose total PCB waste holdings do not exceed 500 gallons at any time. The 500 gallon cut-off corresponds roughly to the contents of two medium-sized electrical transformers, or ten 55-gallon drums. EPA does not believe that it would be cost-effective to require the smaller, incidental storers to bear the significant costs of preparing storage approval applications. In addition, EPA believes that the resources which EPA will commit to the approval process would be more effectively utilized if focused on the larger commercial operations (*e.g.*, brokers) which were identified as the greatest problems in the oversight investigations by GAO.

Moreover, EPA does not believe that the potential risks associated with this exemption are great relative to the costs of extending the approval process to cover these facilities. Such facilities are nevertheless subject to the requirement to store the PCB waste in proper facilities described in 40 CFR 761.65 and to dispose of a container of PCB waste within 1 year from the date when the first quantity of the PCB waste in the container was removed from service for disposal.

EPA agrees with the comment that a service company is a commercial storer when it drains and stores for disposal a customer's fluid that has been determined to be PCB waste. EPA has expanded the definition of commercial storer in the final rule to clarify that the storage of PCB fluids (greater than 50 ppm) removed for disposal while servicing the equipment of others is an activity that makes one a commercial storer. EPA also agrees with the comment that a service company is not a commercial storer when it buys equipment for resale and subsequently drains the oil from the equipment for disposal. When the buyer drains the oil, the buyer is a generator of PCB waste, and the drained fluid must be stored in an area that meets the requirements in § 761.65 for storage for disposal. Also, service companies that drain customers' fluids for disposal are exempted from commercial storage approval requirements if they qualify for the small quantity exemption, that is, storage of less than 500 gallons of PCB fluid at any time.

The issue of storage between parent-subsidiaries, sibling companies, member companies of public power associations, and companies held by common holding companies has been reviewed. For the purposes of the final rule, storage of one company's PCB waste "by a related company" is not commercial storage. Therefore, storage between "related companies" is exempt in the final rule from "commercial storer" status. "Related companies" include a parent company and its subsidiaries, sibling companies owned by the same parent company, companies owned by a common holding company, and members of electric cooperatives. EPA assumes that a company will be self-protective enough to ensure that a related entity using its facility will have a role in the financial assurance for the storage area. "Related" does not include voluntary membership in the same trade association since there is no financial or managerial relationship between the entities. Common storage among non-related companies is commercial storage, as was discussed in Unit III.B.

Commentors pointed out that, under the proposed rule, natural gas distribution companies would be considered commercial storers requiring approval because they store waste collected from their customers' equipment or waste "owned by others." With the modification of the definition that eliminates the "owned by others" criterion, natural gas distribution companies will, for the most part, no longer be subject to the approval requirements. The fact that the waste is collected or "generated" by the natural gas distribution company and subsequently stored by them no longer makes them a commercial storer of PCB waste under the modified definition of commercial storer in this final rule. As long as the natural gas distribution company is the generator of the PCB waste and does not store PCB waste generated by others it will not be subject to the approval requirements for commercial storers of PCB waste.

D. Laboratories and Samples

Comments requested clarification of the status of laboratories which handle PCB sample material. The proposed rule did not address this issue. A comment suggested that samples should be tracked but treated less rigorously than other PCB wastes, by using a receipt from a laboratory rather than a manifest. Another comment suggested excluding laboratory samples altogether, as is done under RCRA, if certain conditions are met. Another comment urged that this regulation be consistent with EPA's interpretation that PCB samples being analysed for enforcement cases are still in use, and therefore, not a waste.

EPA has considered these suggestions and is adopting an approach similar to RCRA's for handling laboratory samples, i.e., to exclude samples from regulation, until the sample is determined to be of a concentration greater than 50 ppm and its analytical use has ended. Since certain PCB requirements hinge on PCB concentration, testing is required to establish PCB concentration. Consequently, laboratory samples are implicitly authorized for use, as opposed to being under the disposal regulations, and are considered to remain in use until their use for analysis or for an enforcement case has ended. Under the RCRA approach, samples are not regulated as hazardous waste when they are being shipped to a laboratory, if requirements for packaging and accompanying information are met. The RCRA approach exempts temporary storage by collectors and laboratories prior to testing and also after testing for a "specific purpose" use, such as until the conclusion of a court case or enforcement action where further testing of a sample may be necessary. Thus, during this time there would be handling requirements to be met but no manifesting, and the laboratory would be exempt from the § 761.65 storage for disposal requirements for samples until their "use" authority ended. At this time the PCB waste would have to be manifested when shipped off-site for storage or disposal. Also, to prevent commingling of PCB waste generated by servicing activities, EPA will exempt laboratories from "commercial storer" approval requirements only when they are separate facilities, unaffiliated with any entity whose activities involve PCBs including servicing shops, and not when they are laboratory facilities at service operations. EPA will exempt an independent laboratory from "commercial storer" approval when the laboratory stores samples held for disposal in a facility complying with § 761.65(b)(1) (i) through (iv) standards and the laboratory complies with requirements to manifest off-site shipments of accumulated PCB waste. EPA has added § 761.65(i) to the final rule to clarify the status of independent laboratories and the samples of PCBs and PCB items they handle.

E. Transfer Facility

"Transfer facility" was defined in the proposed rule as any transportation related facility, including loading docks, parking areas, storage areas and other

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similar areas where shipments of PCB waste are held during the normal course of transportation. In the final rule, the words "storage area" were removed from the first sentence of the definition since storage areas are specifically dealt with in the third sentence of the definition. There are no further changes. As was proposed, PCB waste storage areas at transfer facilities are required to comply with the storage facility standards of § 761.65, but they are exempt from the approval requirements of § 761.65(d), unless they store the same PCB waste for a period longer than 10 consecutive days. Transport vehicles are not transfer facilities under this definition, unless they are used for the storage of PCB waste, rather than for actual transport activities. If transport vehicles are used for storage they must meet the requirements of § 761.65 (b) or (c)(7).

There were some requests for clarification of the definition of transfer facilities. Railroad facilities and "intermodal facilities," like other transfer facilities, are subject to § 761.65 storage facility standards in areas where they have a segregated area to store PCBs. However, a loading area, an area in which a trucked-in trailer is moved onto a railroad flatcar, an example given in one comment, is not a storage area. The 10-days of consecutive storage limitation is allowed to provide trains, trucks, and other transport vehicles a period in which to unload the PCB waste and hold it until the PCB waste can be loaded onto the next connecting transport vehicle. While the 10-day storage period exempts the transfer facility from storage approval requirements, it has no effect on the 1-year storage until disposal requirement. The 1-year limitation clock on storage prior to disposal continues to run during the period of time the PCB waste is at the transfer facility. Another commentor asked whether transporters with storage facilities must maintain annual documents. Only those transporters who hold PCB waste in storage for more than 10 days would have to maintain annual documents, and they would be required to comply with the recordkeeping requirements of § 761.180(b).

F. Transporter of PCB Waste

In the proposed rule "transporter of PCB waste" was defined to include any person engaged in the off-site transportation of regulated PCB waste by air, rail, highway, or water. Comments indicated concern that this definition could inadvertently include transportation of PCB waste for consolidation purposes by a generator prior to transportation to a commercial storer or disposer. EPA agrees. To avoid this possibility, EPA is changing the definition in the final rule to read "* * * any person engaged in the off-site transportation of regulated PCB waste for purposes other than consolidation by a generator * * *."

Other comments asked whether the owner or operator of a facility with an EPA identification number who also transports PCB waste from that storage facility to an affiliated commercial storer or disposer needs a separate identification number as a transporter. The answer is no. Only an independent transporter requires an identification number since the parent organization has not lost control of the PCB waste when an employee transports the PCB waste in a company vehicle. Also, the PCB waste can be tracked through the parent organization's identification number.

G. PCB Waste

The definition of PCB waste in the proposed rule is "* * * those PCBs and PCB Items that are subject to the disposal requirements of subpart D." Implicit in this definition are the answers to some of the questions asked in comments. PCBs and PCB Items become subject to disposal requirements under subpart D when it has been determined that they no longer serve their intended purpose and are to be disposed. Items unregulated for disposal, such as intact, non-leaking small capacitors and drained PCB-Contaminated equipment are not subject to subpart D disposal requirements and, therefore, are not included in this definition. As discussed in Unit III.D, laboratory samples do not become PCB waste until they are no longer used for analytical or enforcement purposes, and are to be disposed. Disposal of material that results from the cleanup of a spill of PCBs at a concentration of 50 ppm or greater is regulated and included in the definition. Dilution of waste material to bring its PCB concentration down to below 50 ppm to avoid any disposal requirements is prohibited under 40 CFR 761.1(b).

One comment suggested using waste codes to identify PCB waste streams to avoid a multiplicity of State waste codes assigned by States that regulate PCBs under RCRA. Some States plan to share a database and prefer to use a simplified waste code system. EPA accepts this suggestion since it will be helpful to States for tracking PCB waste to disposal. The two PCB waste codes to be used are PCB1 for PCB Articles, tranformers, capacitors, etc., and PCB2 for PCB Containers. Use of these waste codes does not preempt a State's right to use its own waste code system if it prefers. Use of these waste codes is intended to facilitate data exchange among cooperating States.

A commentor suggested that "disposer of PCB waste" be redefined to include the owner or operator of a "mobile technology approved by EPA for disposal of PCB wastes." This change is not necessary because the definition includes any facility, whether it is mobile or stationary, incinerator or alternative technology, approved by EPA for the disposal of PCBs.

H. Tracking System

The tracking system for PCB waste serves several objectives aimed at improving the management and enforcement of the national disposal program for PCBs. First, the notification requirement will provide EPA with basic information on the location of and activities engaged in by many of those persons who handle (generate, store, transport, or dispose of) PCB waste.

Second, the collection of this information will facilitate compliance monitoring and enforcement under TSCA by EPA inspectors. A database of PCB waste handlers will provide EPA with a basis for targeting facilities for site inspections.

Third, the submission of notifications by PCB waste handlers will be a prerequisite to the issuance by EPA of identification numbers to the notifying entities. Upon receipt of notifications, EPA will issue unique identification numbers to all entities required to notify under this rule, unless they have previously been issued numbers by EPA or by State agencies under RCRA hazardous waste authority. The use of the EPA identification numbers will be required in the manifests and the associated reports which together constitute the waste tracking system. When this rule is effective, generators of PCB waste may turn over their PCB waste only to commercial storers, transporters, and disposers of PCB waste who have notified EPA of their PCB waste activities and received EPA identification numbers and any required approvals. Likewise, commercial storers, transporters, and disposers of PCB waste may accept PCB waste only from generators, other commercial storers, transporters, and disposers who have notified EPA of their PCB waste activities and received identification numbers.

Fourth, by implementing the notification and manifesting requirements, EPA will be able to track shipments of PCB waste from the point of generation, through the commercial

storage facilities and other intermediate waste handlers, to the TSCA-permitted disposal units. This tracking device creates clear lines of accountability among PCB waste handlers. While owners and operators of storage and disposal facilities are required under the current PCB regulations to keep some records on their overall disposition of PCB waste, the preparation and retention of manifests among facilities' records will provide more uniform and detailed information on the handling of particular PCB waste shipments as they are moved from generator to ultimate disposal sites.

Fifth, the use of a manifest system will foster the proper handling of PCB waste while it is in transport for disposal. The information on the manifest will augment the marking and placarding requirements for containers and transport vehicles in the existing PCB regulations. The information recorded on the manifest will promote protection of health and the environment by serving a notice function for persons handling PCB waste as well as emergency response personnel.

There was general agreement among commentors that tracking is urgently needed during the peak period of PCB disposal and that tracking is appropriate for Federal regulation. Some comments indicated concern about the duplication of notification and manifesting requirements in States where PCBs are treated as hazardous PCB waste and under whose RCRA requirements generators are regulated and storers have permits. Some States also felt they would be burdened by requests for information on the TSCA rules and that they would be sent notification forms and copies of manifests.

EPA is aware that there may be some overlap in States that regulate PCBs and has attempted to minimize these differences. For example, where a PCB waste handler has been issued an identification number by EPA or a State under the RCRA program, EPA will use the same identification number, after verification, when that PCB waste handler notifies EPA of its PCB activity. Also, EPA is giving explicit instructions as to where notification forms and annual reports must be sent. EPA thinks that these problems are temporary and not very significant in comparison to the problems that the rule solves.

I. Notification

As proposed, certain persons who generate, store commercially, transport, or dispose of regulated PCB waste must notify EPA of such activities and receive an EPA identification number. This notification requirement would apply to brokers of PCB disposal services to the extent that they qualify as transporters, disposers, or as storers of PCB waste subject to the storage facility requirements of 40 CFR 761.65. There was strong support for the proposed notification requirement, the use of previously issued identification numbers, and the temporary use of a generic number until EPA issues a unique identification number. The final rule adopts the proposed notification requirements.

A comment inquired about what database the information received from the notifications will be placed on, who will have access to the database, and how the information will fit into the enforcement scheme. A contractor for EPA has set up the database for the information EPA receives from the notifications. EPA Headquarters, EPA regional offices, and the EPA contractor will have access to the database. Enforcement of this rule will be by the EPA regional offices either alone, or in conjunction with the States.

EPA proposed that the TSCA notification process be linked to manifesting under TSCA, which is another part of this rulemaking. This is similar to the system imposed under RCRA.

1. *Identification number.* To maintain consistency with the RCRA notification procedures already in place, and to avoid subjecting those who may already possess RCRA identification numbers to the burden of being assigned multiple numbers, EPA proposed to use the numbering system adopted under RCRA for this rule.

The RCRA numbering system currently assigns each notifier a 12-digit number. The first 2 characters indicate the State in which the facility is located; the remaining 10 characters are the Dun and Bradstreet Data Universal Numbering (DUN) system numbers. The DUN system provides a comprehensive listing of U.S. businesses. Federal agencies, which are not included in the DUN system, would be assigned their General Services Administration Real Property Number. State and local government installations would also be assigned unique numbers. Where notifications are submitted by mobile disposal facilities, EPA will issue each a unique number that ties it to the business' corporate headquarters or other business location identified in Item III of the notification form.

Upon notification and verification, persons will be issued a unique EPA identification number. As of June 4, 1990, it will be illegal to receive regulated PCB waste from a person who does not have an EPA identification number. Also, on this same date, it will be illegal to deliver any regulated PCB waste to another waste handler who does not have an identification number. Generators of PCB waste who are exempted from notification requirements under § 761.205(c)(1) will be deemed as having received by rule the identification number "40 CFR PART 761." In the event a person notified EPA within the 60-day period provided for notification, and EPA does not issue or confirm an identification number for that person, the person is entitled to use either the number "40 CFR PART 761" or a specific number assigned to that person by EPA or a State under RCRA, until EPA assigns or confirms the use of an identification number under this rule.

EPA received several comments on the identification numbers. One commentor suggested that the definition of "EPA identification number" be changed to mean the number assigned to a facility or "mobile technology." EPA is not making this change, since it is the individual generator, transporter, commercial storer, or disposer that receives an identification number and not a technology. Each mobile facility, i.e., unit, will receive a unique identification number.

Several comments questioned the use of the generic identification "40 CFR PART 761" for generators exempted from acquiring a unique identification number, and suggested leaving a blank, or allowing the use of one company number for all points of origin. EPA disagrees that the generic number serves no purpose. Filling in a number gives evidence that the manifester is aware of the rules and has consciously decided that the company does not require a unique identification number, if it is an exempted generator, or that it has not yet received its identification number, if it is a generator/storer, commercial storer, transporter, or disposer. A company that has a State or federally issued RCRA identification number must report that number, and EPA will confirm the use of that number for TSCA PCB disposal purposes, provided adequate information is submitted to enable EPA to verify the existing number.

A company seeking separate identification numbers for its different sites asked how to get them. The answer is that each site should request its own number, being careful to give that site's address. This answer also applies to a question concerning transformer service companies and salvage companies that do not maintain § 761.65 (b) or (c)(7) storage areas. Any facility that may have PCB waste manifested to it must

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have an EPA number. Therefore, any such facility must notify EPA of its PCB waste activity, to receive an identification number.

The question arose in comments as to which State's manifest form a generator should use when there are conflicting requirements between the State in which the PCB waste was generated and the State to which the PCB waste was being transported. In particular, the Arkansas Department of Pollution Control and Ecology was concerned there might be a problem since Arkansas requires generators, from any State, that ship wastes to Arkansas to use its pre-printed manifests with a State-controlled document number. This requirement poses no problem. Any company shipping PCB waste to a State (the consignment State) that supplies and requires use of its manifest must use that State's manifest. If the consignment State does not require use of its own manifest, and the State in which the PCB waste was generated (the generator State) supplies and requires the use of its own manifest, the company shipping the PCB waste must use the generator State's manifest. If both States require use of their manifests, the manifest of the consignment State must be used. If neither the consignment State nor the generator State requires use of its own manifest, the shipping company should use the universal manifest. These requirements are in § 761.207 (b) through (f) of the final rule. This provision is identical to that used under RCRA for determining the State whose manifest should be used.

2. *Who must file notifications.* This rule requires certain generators and all disposers, transporters, and commercial storers of regulated PCB waste to file a notification form identifying their PCB waste facilities and activities. Each generator, transporter, disposer, and commercial storer of PCB waste who notifies under this rule will receive from EPA a unique identification number identifying each facility involved with the handling of PCB wastes. The only generators who must notify EPA as unique facilities under this rule are generators who store the PCB waste they generate at storage facilities which they own or operate, and which are subject to § 761.65 (b) or (c)(7) storage facility standards.

Generators, commercial storers, transporters, and disposers of PCB waste must check the appropriate box, or boxes on the form identifying their type of PCB waste activity.

a. *Facilities that have notified previously under RCRA.* In instances where facilities have previously been issued RCRA identification numbers, the facility must indicate on the space provided in Item II of the form their RCRA identification numbers. After verification, EPA will use for TSCA purposes the same identification numbers previously issued to facilities by EPA or States under RCRA. However, EPA emphasizes that facilities which have previously notified under RCRA are required to notify EPA again for purposes of identifying under TSCA the location and nature of their PCB waste activities, as well as the identification numbers previously issued to them.

b. *Notification by generators.* This rule adopts an approach which is different from that used under RCRA regarding the notification requirements that apply to generators of PCB waste. EPA has concluded that it would not be efficient to require separate notifications by all persons who generate PCB waste. The universe of PCB waste generators is dominated by many thousands of end users of PCB electrical equipment. While some of these users may possess substantial inventories of PCBs and PCB Items, and therefore routinely generate PCB waste, many of these users possess only a few PCB articles that would potentially be subject to TSCA disposal requirements. The utility to EPA of a database that contained information on the one-time or sporadic generators of PCB waste would be far outweighed by the costs of submitting and processing the information.

Therefore, EPA is requiring a modification of the RCRA approach for generators to focus upon the larger volume users, owners, and processors of PCBs who store PCB waste which they generate at their own § 761.65 storage facilities. These are the generators who may be expected to utilize PCB disposal services on a fairly regular and/or large-scale basis, and for whom it is administratively efficient to require particular information about their PCB waste generation activities. It is appropriate that these generator/storers be a part of EPA's database of regular handlers of PCB waste.

In submitting their notifications to EPA, members of this class of generator/storers will submit a notification form for each of their storage areas that is subject to § 761.65. EPA will issue a unique identification number to each notifying storage facility, and this identification number will correspond to the physical location of the facility. EPA anticipates that this class of generators will consist primarily of utilities and other heavy industrial users of PCB electrical equipment. These users typically operate storage and maintenance yards where PCB waste is likely to be generated or consolidated prior to off-site disposal. Also, members of the transformer service and repair industry are likely to be members of this class, because of the significant volumes of PCB waste which they may generate during the routine servicing, rebuilding, repairing, retrofilling, or salvaging of electrical equipment.

Although there was general support for EPA's universe of reporting entities, comments included various suggestions, such as including a "small quantity generator" exemption; excluding utilities, since they are all presumed to handle PCBs and already have RCRA numbers; requiring notification from any large quantity generator, regardless of whether the facility had a § 761.65(b) storage facility; and exempting permitted disposers from notifying.

EPA disagrees with these comments and has not made the requested changes for the following reasons:

A generator who has a § 761.65 storage area is rarely a "small quantity generator." EPA considers it more likely that generators of significant quantities of PCB waste will have § 761.65 facilities, while sporadic generators of small quantities of PCBs will not.

While utilities may usually handle PCBs and already have RCRA identification numbers (which will be used for PCB purposes after notification to and verification by EPA), EPA has determined that the rule does not impose so large a burden on any entity by requiring it to notify as to warrant making such an exemption.

Similarly, the burden associated with notification does not warrant creating an exemption for permitted disposal facilities.

c. *Generators who need not notify.* Other generators of PCB waste who do not maintain storage areas subject to the § 761.65 storage facility standards are exempt from the requirements to notify EPA and obtain unique identification numbers. These exempt generators will instead use the generic identification number "40 CFR PART 761" on their manifests in lieu of a unique facility identification number.

This exemption operates only as an exemption from the generator notification requirement; it does not exempt these generators from the obligation to prepare manifests to accompany their shipments of PCB wastes. As explained more fully in Unit III.J, this rule requires that all shipments involving PCB waste be fully manifested, if any part of the shipment contains PCBs at levels equal to or exceeding 50 ppm or less than 50 ppm as a result of dilution from greater than 50 ppm PCBs. Any generator initiating such a PCB waste shipment must initiate a manifest under this rule.

3. *Notification process.* EPA proposed a sample notification form and instructions for all those who were required to notify. Members of the public affected by the final rule were encouraged to obtain or make copies of the rule and the sample Notification Form, and to distribute them to the other generators, commercial storers, transporters, and disposers with whom they deal so that all may be in compliance with the requirement to file a notification form within 60 days of the final rule's effective date.

4. *When to notify.* The final rule provides for a 60-day period after the rule's effective date for notifications to be received by EPA.

EPA recognizes that this expedited schedule poses some potential for confusion among the generators desiring to procure PCB disposal services, as they will need to be certain that they are dealing with transporters, commercial storers, and disposers who have in fact complied with the notification requirements. Therefore, to facilitate an orderly notification process, EPA recommended that entities who perceived that they were likely to be affected by these notification requirements notify EPA during the 90-day period immediately after publication of the proposed rule. The sample notification form in the proposed rule was to be used to submit an early notification to EPA. EPA will process these early notifications first on a priority basis. These entitites should have no difficulty in demonstrating to their customers compliance with the requirement to submit a notification no later than 60 days after the final rule's effective date.

EPA believes that it will be able to process most of the notifications within 120 days of the final rule's effective date. However, EPA may not be able to issue all identification numbers within the 120-day period. Accordingly, in the event a person has notified EPA within the 90-day period provided in the proposed rule or the 60-day period provided in the final rule, and EPA has not issued or confirmed an identification number for that person within the 120-day period provided, the person is entitled to use either the number "40 CFR PART 761" or a specific number previously assigned to that person by EPA or a State under RCRA. The person is entitled to use this number only until EPA assigns or confirms the use of an identification number under this rule. Thus, no person who has notified EPA in a timely fashion will be prevented from continuing his PCB waste activities for lack of an identification number. EPA encourages persons to include a date-stamp and return copy and a self-addressed envelope, along with their notifications, to ensure proof of timely notification.

In addition, any non-exempt generator, commercial storer, transporter, or disposer of PCB waste who begins PCB waste activities after the effective date of the final rule is required, prior to handling any PCB waste, to notify EPA and receive an EPA identification number in accordance with this rule. Such new entrants into the regulated community will not be allowed to operate until they receive an identification number. In the case of disposers of PCB waste and commercial storers of PCB waste, new entrants into these businesses are required to obtain both EPA identification numbers and approvals before they commence disposal or storage operations. EPA recommends that applicants for TSCA disposal or storage approvals submit their notification forms during the period of review of their disposal or storage approval applications. EPA emphasizes that in no case will the requirements to notify and obtain identification numbers excuse non-compliance by any entity with the 1-year limit on storage prior to disposal under § 761.65(a).

A commentor asked that a 30-or 60-day grace period be given to a generator to obtain an identification number when he decides to convert to § 761.65(b) storage. EPA is not making this change because EPA is confident that there is sufficient time between the time a generator decides to include a § 761.65(b) storage facility at his site and the time the facility is actually ready to operate for the generator to notify EPA and get an identification number in time to operate the facility.

5. *Where to notify.* There are numerous Federal officials responsible for distinct areas of the PCB disposal program, and some States also regulate PCB disposal under their own regulatory programs. EPA believes that the notification process can work well only if administered centrally. Therefore, notifications by PCB waste handlers must be submitted to EPA Headquarters at the following address: Chief, Chemical Regulation Branch, Office of Toxic Substances (TS–798), Rm. NE–117, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460.

6. *Information required for notification.* The proposed notification form was set out at § 761.205(a)(3) of the proposed rule, with the note that it would not be reprinted in the final rule. However, since some changes were made in the form in response to comments by the Office of Management and Budget (OMB) and others, the form is reprinted here in the preamble to the final rule and may be used to notify EPA of PCB waste handling activities. It does not appear in the codified text.

The proposed form was based on existing EPA Form 8700-12, "Notification of Hazardous Waste Activity." The form was tailored to the requirements specified under this rule for notification under TSCA. However, the general format of the Hazardous Waste Activity form was preserved as far as possible, to facilitate compliance and data entry.

There were some comments on the proposed notification form, and those suggestions which clarified the form have been incorporated into the final rule. However, no one who used the proposed form need notify again. Instructions in § 761.205(a)(4) now specify an area on the form in which to name the owner of the facility. Also, the burden box which estimates the public reporting burden for this collection of information, which did not appear on the form itself, is now on the form. The instructions on the form have been changed in Items III and IV, as suggested, to substitute "mobile facility" for "mobile incinerator," since not only incinerators, but all other approved alternative disposal systems also require notification to EPA. Also, in Item VI.A of the instructions on the form for a generator with an on-site storage facility, the references have been corrected to cite § 761.65 (b) or (c)(7).

An area at the top of the form is labeled "For Official Use Only." This unnumbered section is to be completed by EPA officials. In this space, EPA will enter any comments, the notifier's EPA identification number, an approval code, and the date on which EPA receives the notification form.

Items to be filled out by the respondent are numbered I through VII. The name of the facility and the name of the owner of the facility submitting the notification are to be indicated in Item I, and if the facility has already received an EPA identification number under RCRA, that number is to be supplied in Item II.

Item III requests the mailing address of the respondent, while Item IV asks for the actual location of the installation, since the location (a physical address) may not be the same as the mailing address. In the case of mobile disposal facilities, the respondent is instructed to write "mobile" on the space in Item IV, and to supply on the space in Item III, the mailing address of the facility's

installation contact identified in Item V.

A commentor asked whether separate

storer, transporter, or approved disposer

the facility. A commentor requested that

United States Environmental Protection Agency

Form Approved

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installation contact identified in Item V. A commentor asked whether separate notification would be required for each mobile unit, or one notification for the process. Since notification is to facilitate tracking of PCB waste, not for a technology, each mobile unit must have its own identification number. Each unit must be identified on the form so that each can be assigned a unique number that is related to the parent organization.

Item V, Installation Contact, asks for the name of an individual at the facility who can be contacted by EPA to clarify information on the notification form or provide information in the event of a spill or other emergency. The individual's telephone number should be specified here as well.

Item VI, Type of PCB Waste Activity, asks the respondent to indicate whether the facility to which the notification applies is a generator, commercial storer, transporter, or approved disposer of PCB waste. "Commercial storer of PCB waste" here refers to those storage facilities which store PCB waste generated by others or PCB waste that was removed while servicing the equipment owned by others and brokered for disposal. The term does not apply to the storage sites maintained by the owners or users of PCBs who initially generate PCB waste when they remove PCBs from service. Where transporters and disposers also maintain storage facilities for PCB waste subject to § 761.65(b) or (c)(7), they should check both the commercial storer box and the relevant transporter or disposer box in this section.

The final section of the form, Item VII, Certification, must be signed and dated by the owner, operator, or authorized representative of the installation. An "authorized representative" is a person responsible for the overall operation of the facility. A commentor requested that the certification statement be replaced with the one required under the National Pollutant Discharge Elimination System program, which is based on the certifier's knowledge and belief. EPA has included a stringent certification to ensure that when a corporate manager makes the certification, the manager has personally ensured that the persons upon whom the manager has relied have themselves certified that the information is true. As EPA's system of regulating disposal of PCB waste depends on the accuracy of information submitted on the notification form, EPA finds submission of inaccurate information unacceptable. This certification is similar to that required under RCRA. The proposed certification remains in the final rule.

The revised Notification Form (EPA Form 7710–53) follows:

BILLING CODE 6560-50-M

EPA United States Environmental Protection Agency, Washington, DC 20460

Notification of PCB Activity

Form Approved
OMB No. 2070-0112
Approval expires 12-31-92

No information on this form may be claimed as TSCA CBI.

Return To:

Chemical Regulation Branch
Office of Toxic Substances TS-798
U.S. Environmental Protection Agency
401 M St., SW
Washington, DC 20460

For Official Use Only

TSCA PCB ID Number

I. Name of Facility

Name of Owner of Facility

II. EPA Identification Number *(If already assigned under RCRA)*

III. Facility Mailing Address *(Street or PO Box, City, State, & ZIP Code)*

IV. Location of Facility *(No. & Street, City, State, & ZIP Code)*

V. Installation Contact *(Name and Title)*

Telephone Number *(Area Code and Number)*

VI. Type of PCB Activity *(Mark 'X' in appropriate box. See instructions.)*

- ☐ A. Generator with onsite storage facility
- ☐ B. Storer (Commercial)
- ☐ C. Transporter
- ☐ D. Permitted Disposer

VII. Certification

Under civil and criminal penalties of law for the making or submission of false or fraudulent statements or representations (18 U.S.C. 1001 and 15 U.S.C. 2615), I certify that the information contained in or accompanying this document is true, accurate, and complete. As to the identified section(s) of this document for which I cannot personally verify truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate, and complete.

Signature	Name and Official Title *(Type or print)*	Date Signed

Paperwork Reduction Act Notice

The public reporting burden for this collection of information is estimated to average 1.5 hours per response. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the needed data, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information to the Chief, Information Policy Branch (PM-223), US Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked ATTENTION: Desk Officer for EPA.

EPA Form 7710-53(12-89)

Item-by-Item Instructions

7. *Claims of confidentiality.* TSCA section 14 addresses the confidentiality of business information reported to EPA, facility or vessel to notify the National Response Center of the release of a reportable quantity (RQ) or more of such a provision could lead to manifesting by utilities and large industrial users only and leave

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Item-by-Item Instructions for Completing EPA Form 7710-53

Return completed form to:

Chemical Regulation Branch
Office of Toxic Substances
TS-798
U.S. Environmental Protection Agency
401 M St., SW
Washington, DC 20460

No information on the form may be claimed confidential.

Type or print in black ink all items, except Item VII, "Certification". If you must use additional sheets, indicate clearly the number of the item on the form to which the information on the separate sheet applies. In the area marked "For Official Use Only" enter the name of the owner of the facility in the box provided.

Item I - Name of facility: Enter name of the facility.

Item II - EPA identification number (if already assigned under RCRA): Enter the identification number the facility was assigned under the RCRA hazardous waste notification regulations. If no identification number has been assigned, leave this space blank.

Items III and IV - Facility mailing address and location: Complete Items III and IV. Please note that the address you give in Item IV, "Location of Facility", must be a physical address, not a post office box or route number. If the mailing address and physical location are the same, you may enter "Same" i Item IV. If the facility is a mobile facility, you may enter "mobile" in Item IV, and provide the mailing address for the installation contact in Item III.

Item V - Installation contact: Enter the name, title, and business telephone number of the person who should be contacted regarding information submitted on this form.

Item VI - Type of PCB activity: Mark the appropriate box(es) to show which PCB activities are taking place at this facility.

A. Generator with onsite storage facility: You are a generator with an onsite storage facility under this notification requirement if you are a user, owner, or processor of PCBs or PCB items and you maintain your own storage facilities subject to 40 CFR 761.65(b) or (c)(7) for PCBs. If you are a generator with an onsite storage facility, mark an "X" in this box.

B. Commercial storer: You are a commercial storer if you own or operate a storage facility which is subject to the storage facility standards of 40 CFR 761.65(b) or (c)(7), and which engages in offsite storage activities involving the PCB waste generated by others. Most commercial storers of PCB waste perform waste storage services in exchange for a fee or other compensation, but the receipt of compensation is not necessary for your storage facility to qualify as a commercial storer of PCB wastes under this notification requirement. It is sufficient that your facility stores PCB wastes generated by others. See definition of commercial storer in 40 CFR 761.3. If you are a commercial storer, mark an "X" in this box.

C. Transporter: If you move PCBs by air, rail, highway, or water, then mark an "X" in this box.

D. Permitted disposer: If you currently hold a valid EPA permit to dispose of PCBs in concentrations exceeding 50 ppm in a landfill, through alternative technology or incineration, mark an "X" in this box.

Item VII - Certification: This certification must be signed by the owner, operator, or an authorized representative of the facility. An "authorized representative" is a person responsible for the overall operation of the facility (i.e., a plant manager or superintendent, or a person of equal responsibility). All notifications must include this certification to be complete.

EPA Form 7710-53 (12-89) Reverse

BILLING CODE 6560-50-C

7. *Claims of confidentiality.* TSCA section 14 addresses the confidentiality of business information reported to EPA, or otherwise obtained by EPA, in administering TSCA. (15 U.S.C. 2613(a)). EPA's rules implementing section 14 appear in 40 CFR part 2.

While information submitted in a reporting form may ordinarily be claimed as confidential, EPA has purposely designed the notification form so that its preparation will not require the submission of any data that EPA believes would be confidential business information (CBI) under TSCA. The form merely asks for the most basic of information regarding the name, location, and general description of PCB waste handling activities engaged in by notifying entities. It does not ask for information on quantities processed, technical processes, financial information, or for any other information which, when linked to a company's name, could adversely affect a company's competitive position.

EPA has determined that the following information will not be treated as confidential business information: the name of the facility, other EPA identification numbers issued to the facility, the facility's mailing address, the name of the owner of the facility, the location of the facility, the facility's installation contact, or the type of PCB activities engaged in at the facility. The reasons for this determination are:

a. The information is reasonably available from other sources.

b. If disclosed, it is unlikely to affect adversely the submitter's competitive position.

c. The information is neither commercial nor financial information protected from disclosure under TSCA or the Freedom of Information Act.

This information will be disclosed to the public without further notice to the submitter unless the submitter provides a written justification (submitted with the notification information) which demonstrates extraordinary reasons why the information is entitled to confidential treatment.

EPA received no comments indicating a need for the submission of confidential business information.

8. *Relationship to CERCLA notifications.* In addition, EPA emphasizes that the notification requirements contained in this rule are in no way related to and do not affect the independent notification requirements under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. The rule does not alter the responsibilities of a person in charge of an onshore or offshore facility or vessel to notify the National Response Center of the release of a reportable quantity (RQ) or more of PCBs or any other hazardous substance as defined under CERCLA.

Under CERCLA sections 103(a) and (b), any person in charge of an offshore or onshore facility or vessel is required to report to the National Response Center as soon as he or she has knowledge of any release of a hazardous substance that is equal to or greater than the RQ. However, as stated in a final rule published on April 4, 1985 (50 FR 13461) regarding RQs, disposal of hazardous substances at a disposal facility in accordance with EPA regulations is not subject to the CERCLA notification requirements. Thus, if PCB waste is properly disposed of in a TSCA-approved facility, and this is properly documented through manifests and other records, CERCLA notification is not required. However, spills and accidents which occur during disposal activities, and which result in releases of an RQ or more of PCB waste, must be reported to the National Response Center. Additionally, any PCB releases (as opposed to proper disposal) of an RQ or more from a TSCA storage or disposal facility must be reported under CERCLA.

J. Manifesting

The proposed rule discussed in detail the use of a manifest system by EPA under RCRA, and Congress' concern that the system be used for the disposal of PCBs (53 FR 37445, September 26, 1988).

1. *Uniform Manifest.* EPA proposed to require the use of the Uniform Hazardous Waste Manifest (Uniform Manifest) form by the handlers of PCB waste. The use of the Uniform Manifest for PCB waste shipments will facilitate compliance with both TSCA and RCRA, and it will avoid the confusion and expense that would arise from the requirement of any other document. EPA believes that the Uniform Manifest can be adapted fairly easily to PCB wastes, with only slight interpretive changes, and a slight change in the copy distribution requirements.

The final rule adopts the use of the Uniform Hazardous Waste Manifest as proposed.

2. *Who must originate a manifest.* EPA proposed that all generators of PCB waste at concentrations of 50 ppm or greater manifest their waste, and rejected the use of any "small quantity generator" exclusion. The proposed rule contained no small quantity cutoff provision because so much of the PCB universe consists of small quantities of relatively high concentration PCB waste, such a provision could lead to manifesting by utilities and large industrial users only and leave occasional disposal of high concentration PCB waste untracked.

There was little comment on the lack of distinction in the proposed rule between large and small quantity generators, and the final rule is not different from the proposed rule in this case.

EPA proposed to require manifests for shipments containing regulated PCB waste at the 50 to 499 ppm level, as well as for shipments containing higher concentration PCB waste at the 500 ppm or greater level. EPA solicited comment on the incremental burdens and cost effectiveness of requiring manifests at the 50 ppm level as compared with using 500 ppm as the trigger.

There was only one comment that opposed manifesting at the 50 rather than the 500 ppm level. This commentor felt that the 500 ppm level would significantly reduce the paperwork burden of those utilities which own only equipment containing less than 500 ppm. The commenter also suggested that the 32 States which do not currently require manifests for PCBs would probably follow EPA's lead and also use the 500 ppm level, thus making 500 ppm the level used by the majority.

EPA understands that raising the level for manifesting could ease the burden in some instances, but since the States that now do require manifests at the 50 ppm level would probably continue to do so, doubts that there would be much of an overall advantage. Since no commentors specifically challenged EPA's assertion in the proposed rule that overall, the environmental benefits of manifesting wastes greater than 50 ppm far outweighed the administrative costs, and since all other comments approved of the 50 ppm level for manifesting, there is no reason to change the requirement in the final rule, and the 50 ppm level remains.

Some of those who approved of the 50 ppm level requested some clarifications to make certain that items whose disposal is not regulated by the current regulations would not now require manifesting. Any PCB or PCB item that is not subject to disposal requirements is not subject to manifesting. Examples of these are drained PCB-Contaminated carcasses for salvage, decontaminated PCB Containers and drained PCB-Contaminated containers, and small capacitors; these items do not require manifesting. Shipments of empty waste containers, the concern of another commenter, do not require manifesting if the containers are to be continued to be

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used and are not to be disposed. When the decision is made that they are no longer to be used and are to be disposed, the containers become PCB waste that must be manifested and disposed, unless decontaminated in accordance with procedures set out in § 761.79. As discussed in Unit III.D, PCB samples do not have to be manifested for disposal until the laboratory determines that their use for analytical or enforcement purposes has ended, at which time they become PCB waste stored for disposal.

This rule requires the manifest to be prepared by the generator at that time when the PCB waste is first introduced into commerce in a manner that will cause the waste to leave the generator's control. This latter condition will generally be triggered when the generator turns its PCB waste over to a transporter for delivery to an off-site storage or disposal facility. The condition will also be satisfied when the PCB waste is placed on the generator's own transport vehicle for shipment to a commercial off-site storage or disposal facility, since the PCB waste is then being introduced into commerce in a manner that will cause the generator to lose control of the waste. A manifest need not accompany the shipment via transport vehicle of PCB wastes to a storage or disposal facility owned or operated by the end user of PCBs and PCB Items, because these generators have not yet relinquished control over the PCB waste. This exception applies to both transport via the generator's vehicles and transport by an independent transporter, since, in the latter case, the transporter is presumed to be acting pursuant to the generator's instructions. Apart from the exception for shipments between the end user's own facilities, EPA construes the provision regarding when PCB waste leaves the generator's control strictly, so that the manifest requirements will have the broadest possible scope.

EPA emphasizes that this rule applies only to the Federal manifesting requirements for the transport of PCB wastes that are regulated for disposal under TSCA. No provision or exception contained in this rule is construed to alter or limit the applicability of any requirement in existing DOT regulations pertaining to the transport of hazardous materials, including PCBs.

3. *Information required on the manifest.* The manifest which generators will originate is designed to include only the information necessary to identify accurately the persons handling the PCB waste, and the nature and quantity of the waste. These information requirements consist essentially of the Federal Information Requirements described in the March 20, 1984 regulation which announced the adoption of a Uniform Manifest (49 FR 10497). Use of the manifest does not supersede any other requirements for PCB waste under 40 CFR part 761.

a. *Manifest document number.* The EPA identification number and the manifest document number consists of the generator's EPA 12-digit identification number, plus a unique suffix of up to 5 digits which the generator adds to ensure the uniqueness of the manifest document number for each shipment from each site of generation during a calendar year. The 12-digit identification number consists of the generator's unique identification number issued after notification to EPA, or the 12-digit reference "40 CFR PART 761" for those generators who are not required to notify specifically under this rule.

b. *Page number.* Generators are required to identify on the first page of a manifest the total number of pages in that manifest, i.e., the first page (EPA Form 8700-22) plus the number of continuation sheets, if any. For example, if the manifest consists of only one page, and there is no continuation sheet, then the correct entry would be "Page 1 of 1." If the manifest consists of one front page (Form 8700-22) and one continuation sheet, the correct entry is "Page 1 of 2."

c. *Generator name and address.* The address to be entered here is the mailing address of the generator facility to which the designated storage or disposal facility must return promptly a completed copy of the manifest. The generator enters the mailing address of the location that will administer the returning manifest forms, which could be the company's billing office, corporate headquarters, or the site of generation. While the address entered here need not identify the particular site of generation, the generator's manifest records will be maintained so that unique waste shipments (identified by the unique manifest document number assigned by the generator) can be identified with the actual sites of generation.

d. *Generator's telephone number.* This is the number of a person who can provide information about the shipment in the event of an emergency, such as when a transporter cannot deliver the PCB waste to the designated disposer or commercial storer.

e. *Transporter #1: company name and EPA ID number.* The name and U.S. EPA 12-digit identification number of the initial transporter of the waste is entered.

f. *Transporter #2: company name and EPA ID number.* The name and U.S. EPA 12-digit identification number of the second transporter, if applicable, is entered. Space for additional intermediate transporters is provided on the continuation sheet for entry in the order they are used.

g. *Designated facility name, site address, and U.S. EPA ID number.* The definition of "designated facility" has not been changed in the final rule. The generator enters the name, site address, and EPA 12-digit identification number of the off-site commercial storage or disposal facility which the generator has designated to receive its PCB waste. The site address is necessary to inform the transporter where the shipment must be delivered. The designated facility must always be an approved facility for the disposal of PCBs, or an off-site commercial storage facility with either interim or final approval under § 761.65(d). Ordinarily, transfer facilities and other temporary storage facilities used by transporters for storage of PCB waste during ordinary transport would not be listed here as designated facilities, unless the PCB waste will remain in storage at such a site for greater than 10 days. Likewise, an end user's own storage facility would not ordinarily be listed here as the designated facility, unless the laws of a State or local government require manifests for shipments between the generator's own facilities.

h. *Container number and type.* The generator indicates both the number of containers, and, using the instructions in Table 1 of the form instructions, the type of containers for each shipment.

i. *U.S. DOT description (including: proper shipping name, hazard class, and ID number).* The generator completes this section consistent with DOT's Hazardous Materials Regulations (HMR; 49 CFR parts 171 through 179). However, only those packages containing PCBs that meet the definition of hazardous substance in 49 CFR 171.8 are subject to the HMR. The DOT does not consider PCBs subject to the Uniform Hazardous Waste Manifest (UHWM) as specified in todays rulemaking as a hazardous waste. The DOT regulates as hazardous waste only those materials that are subject to the UHWM as specified in 40 CFR part 262 (see the definition of hazardous waste in 49 CFR 171.8). In accordance with the HMR, the generator has the option of using either of the following descriptions when the PCBs meet the definition of hazardous substance at 40 CFR 171.8: "RQ, Hazardous substance, liquid *or* solid, n.o.s., ORM-E, NA9188 (Polychlorinated biphenyls *or* PCBs)" or "RQ, ORM-E, liquid *or* solid, n.o.s., NA9188, (Polychlorinated biphenyls *or* PCBs)". Section 172.203(c)(2) of 49 CFR allows the Letters "RQ" to be placed at either the beginning or the end of the DOT basic description.

Commentors also pointed out that the shipping description "Polychlorinated biphenyls, 9 (ORM#E), UN2315" is used only for international transportation. According to DOT, this description is occasionally used for transportation solely within the United States when shipments of PCBs are offered for transportation in accordance with either the "International Civil Aviation Organization Technical Instructions For Safe Transport of Dangerous Goods by Air" or the "International Maritime Dangerous Goods Code" (see 49 CFR 171.11 and 171.12). Though this is an acceptable shipping description for transportation by air or water repectively, the use of this description is not to be construed as an exemption from EPA to import or export PCBs. Compliance with the applicable provisions of the HMR, including subpart C of 49 CFR part 172 which deals with shipping paper requirements (e.g., the UHWM), is required for the transportation of hazardous materials.

When packages of PCBs do not meet the DOT definition of hazardous substance in 49 CFR 171.8, i.e., are not regulated by DOT as a hazardous material, the generator must use either of the following phrases in lieu of the DOT description: (1) "polychlorinated biphenyls"; or (2) "PCBs".

The generator also enters here the total quantity and unit of measure (volume or weight) of the shipment. This measurement would be gross weight when the waste container is to be discarded (e.g., a drum containing waste), and net weight when it is not discarded (e.g., bulk shipments by tank truck). The quantity description does not include fractions.

j. *Special handling instructions and additional information—date of removal from service for disposal.* This section is used by the generator for several purposes. For example, ICC Bill of Lading information, placarding and marking information required by EPA or DOT, or emergency response telephone numbers may be included on this space. The PCB waste code number, PCB1 or PCB2, as discussed in Unit III.G, should be entered here. However, the primary purpose of this space in the rule is to record the identification numbers and date of removal from service for disposal for the PCB Articles, PCB Containers, and PCB Article Containers contained in the PCB waste shipment.

The question has arisen whether the date of removal from service for disposal is different from the date the PCB waste is placed into storage for disposal. At the time § 761.65(a) was promulgated, EPA assumed that in the great majority of cases when an item was designated for disposal it went directly into a storage-for-disposal facility and there was no time lag between the date removed from service for disposal and the date it was placed into storage for disposal. Thus, the intent of § 761.65(a) was that PCB waste be disposed of within 1 year from the date it was designated for disposal, i.e., the date taken out of service for disposal.

If this space is not adequate for entering all the relevant dates, the generator must attach a typewritten continuation sheet to the manifest. The continuation sheet lists the PCBs and PCB Items contained in the shipment and their dates of removal from service for disposal.

Recording the date of removal from service for disposal on the manifest generated many comments. The requirement was proposed because the date of removal from service for disposal must be relayed to other handlers of the PCB waste to ensure that disposal takes place within 1 year of storage for disposal. This requirement appeared to be the simplest way to relay dates through middlemen and onto subsequent manifests in the chain of documents leading to a disposal facility. Comments called the requirement duplicative and burdensome, particularly, since the dates then had to be transposed to a facility's annual records. The requirement was also criticized for imposing EPA's enforcement responsibilities on generators and disposers. It was felt to be especially burdensome if each individual item and each item in a container was to be marked, resulting in a significant number of items and numbers being logged several ways.

EPA understands these concerns, but insists that including the dates of removal from service for disposal is essential to the tracking system. However, the system of date recording applies only to distinct PCB Articles, PCB Containers, and PCB Article Containers identified on a manifest, and not to the individual items in a PCB Container or PCB Article Container. The earliest date of removal from service for disposal applies to the entire contents of a container. To respond to claims of duplication, however, although the final rule requires that the dates be transferred to the annual document log, the final rule does not require transposing the dates to the annual report which must be submitted to the Regional Administrator.

The proposed rule did not specify that the date referred to for removal from service on the manifest was the date of removal for disposal, but that is the intended meaning for this date and the date to be used. Several comments indicated concern that the codified language did not include the date of removal from service for disposal as a requirement. The space provided for additional information on the form allows the use of the form for different purposes. The requirement to enter the date of removal from service for disposal appears at § 761.207(a) (1) through (3).

k. *Generator certification.* The generator is required to read, sign, and date the certification statement at the initiation of each PCB waste shipment. To the extent that the form requires a generator of PCB waste to certify to waste minimization efforts, the requirement is satisfied as long as the generator has not increased the volume of waste by any act that contravenes the dilution prohibition of the PCB disposal regulations. Generators whose generation of PCBs qualify as "excluded manufacturing processes" or "recycled PCB processes" could certify as long as they are in compliance with the PCB release restrictions set forth for these processes at § 761.3. Comments on the certification language included a preference for the kind of statement used for the National Pollution Discharge Elimination System. The decision to use the proposed certification language is discussed in Unit III.I.6.

l. *Acknowledgment of acceptance by transporter.* A transporter is required to acknowledge on the manifest the acceptance of the PCB waste shipment by signing the manifest and recording the date of acceptance, as was proposed.

m. *Discrepancy indication space.* The Discrepancy Indication Space is used for recording significant discrepancies, as defined below in Unit III.K.5, between the PCB waste described on the manifest and the PCB waste actually received by the designated PCB storage or disposal facility, as was proposed.

n. *Acknowledgment of acceptance by designated facilities.* The owner or operator of the designated commercial storage or disposal facility is required to acknowledge here the acceptance of the PCB waste shipment by signing the

manifest and recording the date of acceptance, as was proposed.

o. *Optional information required by*

manifest system. As previously indicated, the GAO report on detection of illegal hazardous waste disposal

verification obligation after sending the PCB waste out. Users of independent transporters will have only to make a

discrepancies are variations greater than 10 percent in weight, and for batch

manifest requirements and in no way alter the existing RCRA manifest

or the commercial PCB storage or disposal facility that is designated for

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manifest and recording the date of acceptance, as was proposed.

c. *Optional information required by States.* In addition, the Uniform Manifest form includes optional information spaces to meet the basic information requirements which States have the option of imposing. The optional State information items appear at the upper right portion of the manifest form, and they are shaded and headed by letters (rather than numbers) to set them apart.

4. *Copies of the form.* EPA will not print copies or sets of the manifest form for public use. Generators and others needing copies of the form should first contact their State office to determine if their State has printed copies available. If forms are not available from the State, camera-ready copies of the form for printing purposes can be obtained from the State, or the EPA Regional Office, or EPA Headquarters.

See the discussion in Unit III.I.1 to determine which State's manifest form a generator should use when there are conflicting requirements between the State in which the PCB waste was generated and the State to which the PCB waste is being transported.

5. *Use of the manifest.* The manifest under RCRA consists of at least the number of copies which will provide the generator, each transporter, and the owner or operator of the designated storage or disposal facility with one copy each for their records, and another copy to be returned to the generator. EPA proposed that manifests for PCB waste under TSCA also include sufficient copies for the generator, the initial transporter, each intermediate transporter, the designated commercial storage or disposal facility, and another copy to be returned to the generator by the designated facility. These requirements remain in the final rule.

In addition, the proposed rule would have required that generators of PCB waste prepare one additional copy of the manifest. The generator was to send this additional copy directly to the designated facility by Registered Mail, Return Receipt Requested, immediately after the consignment of the PCB waste to the initial transporter. This advance manifest copy was to have been sent to the designated facility independently of the delivery of the PCB waste. Under the proposed rule, the generator's obligation to send an advance copy of the manifest to the designated facility was to have been a non-delegable obligation which only the generator of PCB waste could perform.

EPA proposed this additional copy requirement on generators as a means of ensuring further the integrity of the manifest system. As previously indicated, the GAO report on detection of illegal hazardous waste disposal activities highlighted several instances in which transporters had forged the designated facility's copy of the manifest and returned it to the generator. The return of the forged copy signified to the generator that the PCB waste had arrived at the designated facility, when in fact, the transporter had dumped the PCB waste or otherwise handled it improperly. The transporter profited by retaining both the shipping fee and the disposal fee, rather than passing the disposal fee on to the designated disposal facility.

The submission of an advance copy of the manifest directly to the designated facility was expected to deter transporters or brokers from acting improperly with respect to the PCB waste. Disposers and commercial storers would have been alerted to expect the delivery of the PCB waste, and generators would have obtained a preliminary verification (the signed Return Receipt) of the disposal arrangements from the designated facility that was independent of the transporter's efforts.

In response to EPA's request for comment on the appropriateness and feasibility of this additional verification requirement, EPA received many more opposing than approving reactions. It was felt that this requirement would not solve the problems that inspired it for a number of reasons including, among others, that PCB waste could arrive before the advance copy of the manifest, that the generator might change his mind and ship the PCB waste to a different designated facility without notifying the original designated facility, that there were sufficient safeguards built in by the 45-day exception reports and final liability by the generator, and that it was unnecessarily burdensome.

EPA partially accepts these arguments and has eliminated the requirement from the final rule; however, the concern still remains for assuring the delivery of PCB waste to the designated facility. Therefore, EPA has substituted in the final rule a requirement that generators who use independent transporters verify receipt of the PCB waste by the designated facility with a telephone call, or other means of verification agreed upon by both parties, after receiving the signed copy of the manifest acknowledging acceptance of the shipment. EPA is requiring those generators to list confirmation calls in the annual document log. Thus, generators who use their own transportation vehicles or those of the designated facility will have no further verification obligation after sending the PCB waste out. Users of independent transporters will have only to make a telephone call, or use other agreed-upon verification, and keep a record of the call or other verification. In this way, the purpose of the advance copy of the manifest will have been served without causing any confusion or much extra effort.

The manifest system for PCB waste now parallels the operation of the manifest under the RCRA tracking system for hazardous waste. The generator signs the manifest certification by hand, and obtains the handwritten signature of the initial transporter (who must have an EPA ID Number) and the date of acceptance on all copies of the manifest. The generator retains a copy of the manifest for his records, and gives the remaining copies of the manifest to the initial transporter.

The transporter then carries the manifest with the PCB waste to the designated facility. If delivery to the designated facility is not possible, the transporter contacts the generator for further instructions, which are entered in the space provided for additional instructions. If intermediate transporters are involved, an additional copy of the manifest is prepared by the generator for each additional transporter that will handle the PCB waste. The initial transporter delivers the entire quantity of PCB waste to the designated subsequent transporter, and obtains the subsequent transporter's signature and the date of delivery on the manifest. A copy of the manifest is retained as a record by the initial transporter, and the remaining copies accompany the PCB waste. The subsequent transporter delivers the entire quantity of PCB waste to the designated storage or disposal facility, or to the next transporter, according to the instructions on the manifest. Until the signature of the designated facility or subsequent transporter is obtained, the PCB waste is considered to be in the custody of the transporter who last signed the manifest.

When the PCB waste is finally delivered to the designated PCB storage or disposal facility, the owner or operator of the designated facility (or his agent) signs and dates each copy of the manifest to certify that the PCB waste covered by the manifest was received at the facility. In addition, the designated facility notes on each copy of the manifest any significant discrepancies between the quantity or type of PCB waste identified on the manifest and the quantity or type of PCB waste received at its facility. For bulk waste, significant discrepancies are variations greater than 10 percent in weight, and for batch waste, they are any variation in piece count, such as a discrepancy of one drum or other article in a truckload. Significant discrepancies in type are obvious differences which are discovered by inspection or analysis, such as when soil or other solids are substituted for liquids, or when PCB waste greater than 500 ppm is substituted for PCB waste below 500 ppm. The designated facility keeps one copy of the manifest for its records, and immediately gives the transporter at least one copy of the signed manifest. Within 30 days after the delivery, the designated facility sends a copy of the signed manifest to the generator at the mailing address indicated on the manifest. This transmission of the signed copy of the manifest to the generator signifies the proper completion of the disposal delivery transaction. As already discussed, whenever a generator uses an independent transporter, the generator confirms the authenticity of the signed copy he receives by contacting the designated facility.

Consistent with RCRA requirements, for shipments of PCB waste within the United States solely by water (bulk shipments only), the generator sends three copies of the manifest, each one dated and signed, to the owner or operator of the designated PCB facility. Copies of the manifest are not required for each transporter.

For shipments of PCB waste by rail within the United States that originate at the site of generation, the generator sends at least three copies of the manifest, dated and signed, to the next non-rail transporter, if any, or the designated facility.

The manifest requirements for shipments by rail or water parallel existing RCRA manifest requirements for these transportation industries. The rail and water transporters were exempted from manifesting under RCRA to avoid confusion and duplication of effort, since both industries have their own complex tracking systems that render additional tracking documentation unnecessary.

The preparation of sufficient copies of the manifest is the responsibility of the generator who initiates the PCB waste shipment. All copies of the manifest supplied by the generator are required to be legible. It is a violation of these requirements to ship PCB waste accompanied by a manifest or continuation sheet for which any copy or part is not legible. These TSCA provisions for manifesting PCB waste vary slightly from the current RCRA manifest requirements and in no way alter the existing RCRA manifest provisions.

K. Recordkeeping and Reporting

While notification and manifesting requirements form the core of the PCB waste tracking system, the tracking function is aided by several recordkeeping and reporting requirements. EPA proposed that PCB waste handlers comply with recordkeeping and reporting requirements which are based largely upon the existing TSCA and RCRA requirements. All recordkeeping and reporting requirements of this rule apply prospectively and do not require revision of past documents.

1. *Retention of manifests as records.* In the proposed rule, EPA solicited comments as to whether the 5-year record retention requirement for § 761.180(a) and § 761.180(b) should be changed to a 3-year recordkeeping requirement. Although there were few comments on the use of manifests as records, in the final rule EPA has changed the 5-year retention period to 3 years for recordkeeping, including manifests. Therefore, the final rule makes retention of manifests a 3-year requirement.

As was proposed, the originator of the manifest (i.e., generator) keeps his copy of each manifest until he receives the signed copy from the designated facility that received the PCB waste. This signed copy is retained as a record for at least 3 years from the date the PCB waste was accepted by the initial transporter who took the PCB waste off-site from the generator. If, however, the generator is subject to the § 761.180(a) annual document log requirement, he will retain his signed copies of manifests for the period required under § 761.180(a). The generator will retain his manifest records at the business location identified for records retention on his manifests. This location is also the site where the generator shall keep his § 761.180(a) annual document log, since the preparation of the annual document log is facilitated by including manifests. A commentor suggested that the company should determine where to maintain its records, and EPA agrees that a generator may choose the site at which he will maintain his records. The regulations require that all records for a facility be maintained in the same central place, since all the records must be available for inspection in the same place.

Likewise, the transporter must keep among his records a copy of the manifest signed by the generator and either the next transporter, if applicable or the commercial PCB storage or disposal facility that is designated for the delivery of the waste. The initial transporter must retain this copy among his records for at least 3 years from the date that he accepted the PCB waste.

The owner or operator of the designated commercial storage or disposal facility likewise must retain at his facility copies of manifests. The manifest copies must be retained for the same periods as required under § 761.180(b) for the facility's annual document logs. These records must be retained at the same location where the facility maintains its annual document logs.

In addition, EPA is requiring, as proposed, that the periods of retention for manifests by all PCB waste handlers be automatically extended during the course of any unresolved enforcement action regarding the regulated activity.

2. *Exception reporting.* Following the RCRA model, this rule requires, as proposed, Exception Reporting by all generators who must manifest their PCB waste. Any time a generator does not receive a copy of the manifest signed by the authorized representative of the designated storage or disposal facility within 35 days of the date the waste was accepted by the initial transporter, the generator is required to contact the transporter and/or the owner or operator of the disposal facility to determine the status of the PCB waste. If the problem is not reconciled within 45 days from the date the PCB waste was accepted by the initial transporter, the generator must file an Exception Report with the EPA Regional Administrator for the Region in which the waste generation site is located. The Exception Report must be filed if the generator has not received within the prescribed period of time a copy of the manifest signed by the authorized representative of the designated facility. The Exception Report includes:

a. A legible copy of the manifest for which the generator does not have confirmation of delivery.

b. A cover letter signed by the authorized representative of the generator explaining the efforts taken to locate the PCB waste and the results of those efforts.

EPA requested comments on whether there should be further tightening of the generator's recordkeeping requirements to ensure that generators do in fact perform their essential oversight role concerning the operation of the manifest system. The February 1986 GAO Report on problems with detection of illegal disposal of hazardous waste found that there had been very few Exception

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Reports filed by generators under

waste to commercial storage and

Second, generators and commercial

estimate accurately the facility's disposal schedule and consequently

records of any intermediate facility involved in the transaction.

Administrator in the Region where its facility is located a letter describing the

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Reports filed by generators under RCRA. The GAO concluded that the infrequency with which Exception Reporting has occurred is due largely to non-compliance by generators with the requirement to match their filed manifest copies with the signed copies they later receive from commercial storers and disposers. The GAO Report found that some generators were collecting both copies of the manifest, but were not keeping the copies in the same file location, or otherwise physically matching the manifest copies. The GAO Report also suggested that the miniscule number of Exception Reports may be attributed to a reluctance on the part of generators to "turn in" the low-bid transporters who haul away their waste.

EPA did not receive many suggestions on ways to improve the proposed requirements to ensure that the manifest system receives the attention from generators that is necessary to keep the system credible. There was a negative reaction to the possibility of requiring a generator to attach the signed designated facility copy to the generator's original copy, and to retain the matched copies in its files for 3 years as proof that the transaction was indeed verified. Although EPA considers this an excellent practice and strongly recommends that the regulated community adopt this approach, EPA has not added this as a requirement under the rule.

3. *One-year Exception Reporting.* Indefinite storage of waste at approved commercial storage facilities is not an acceptable form of PCB waste management. Section 761.65(a) of the TSCA storage rules for PCB waste limits the storage of PCB waste prior to disposal to a period of up to 1 year. Under EPA's existing compliance monitoring policies, the 1-year storage period is allocated between storage at approved disposal facilities and storage prior to receipt at the approved disposal facility. The initial generators of PCB waste (i.e., the PCB user, owner, or processor who first removes PCBs or PCB Items from service for disposal) are presumed to be in compliance with the 1-year limit on storage if they can demonstrate that the storage period prior to delivery to a disposal facility did not exceed 9 months.

EPA proposed an additional tracking device to facilitate its ability to track compliance with the 1-year storage restriction for PCB waste.

First, under the proposed rule, generators would be required to record the dates when their PCBs or PCB Items were removed from service on the manifests that accompany their PCB waste to commercial storage and disposal facilities. The dates when PCBs were removed from service and when placed into storage for disposal are existing record requirements in the § 761.180(a) annual document for such generators. The proposal required that the date of removal from service for disposal for each PCB or PCB Item contained in a waste shipment be recorded on the section of the manifest reserved for "Special Handling Instructions and Additional Information." As discussed in Unit III.J.3.j, the required date is the date the first item was placed in a container, while individual dates are required for separate items such as transformers and large capacitors. If this space is not adequate for entry of all the relevant dates, the generator would be required to attach to the manifest a typewritten continuation sheet containing this information. This information would then accompany the waste until it reaches the designated facility, thereby providing notice to waste handlers of the time by which lawful disposal must occur.

Under the proposed rule, when manifested PCB waste is received by commercial storers of PCB waste, the commercial storer would note the dates of removal from service for disposal in the facility's § 761.180(b)(2)(iii) annual document. At such time as the commercial storer initiates a waste shipment containing the PCBs or PCB Items to another storage or disposal facility, he would prepare a manifest which includes the dates of removal from service for disposal for individual PCB Articles and the first date PCB waste was placed in a PCB Article Container or a PCB Container. In this manner, the PCB waste would ultimately arrive at an approved disposal facility accompanied by the essential information on removal from service for disposal. The disposer of PCB waste would then enter the date of removal from service for disposal for each PCB or PCB Item in the facility's annual document which also requires the recording of the date of disposal.

The proposed rule would have required the submission of One-year Exception Reports under two types of circumstances. First, disposers would submit such Exception Reports when they receive PCBs or PCB Items on a date more than 9 months after their removal from service, as indicated on the manifest cover or continuation sheet, and because of other disposal commitments, the disposer could not dispose of the affected PCBs or PCB Items within 1 year of their removal from service for disposal.

Second, generators and commercial storers of PCB waste who transfer PCBs or PCB Items directly to disposers would file One-year Exception Reports under other circumstances. Such a Report would be submitted when the generator or commercial storer of PCB waste transferred PCBs or PCB Items to a disposer prior to the expiration of 9 months from their date of removal from service for disposal, but had not received a Certificate of Disposal confirming the disposal of the affected PCBs or PCB Items within 13 months of their removal from service for disposal. The proposal specified a 13-month period in this instance out of recognition that disposers are allowed 30 days from the date of disposal to forward their Certificates of Disposal. So, generators or commercial storers may receive confirmation of proper disposal as late as 1 year and 30 days after the date the PCB waste items were removed from service. Also, such an Exception Report would be required when a Certificate of Disposal confirmed a date of disposal for PCBs or PCB Items more than 1 year from their placement into storage for disposal.

EPA requested comments on the requirement to submit "One-year Exception Reports" in the manner proposed. Comments ranged from saying the proposal did not impose a significant burden, to suggestions that EPA placed too much significance on the 1-year storage limitation. Some commentors supported reporting by generators only, and others felt it was not clear when a disposer would be required to report: e.g., when the disposer suspects that he will not be able to dispose within 1 year, or when he reasonably believes he cannot dispose within 1 year, or when he actually has not disposed of the PCB waste within 1 year.

EPA has decided to retain the 1-year reporting requirement, as proposed. Although EPA agrees that ideally it should not be necessary to require this reporting, it is not realistic to expect that there will be adequate resources available to monitor compliance effectively without the reports. Therefore, all the proposed requirements for the 1-year reporting have been retained in the final rule. If the PCB waste was received later than 9 months from the date it was removed from service for disposal and other disposal commitments of the disposer prevented the timely disposal of the PCB waste, a disposer shall initiate a 1-year exception report when he has not actually disposed of the PCB waste within 1 year. A disposer should be able to

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estimate accurately the facility's disposal schedule and consequently plan disposal in a manner that minimizes the facility's physical inability to dispose of PCB waste on time.

4. *Certificates of Disposal.* EPA further proposed and requested comments on a requirement that disposal facilities prepare written Certificates of Disposal. EPA is aware that many disposal facilities are already providing such certificates as a service to their PCB disposal clients. PCB waste generators desire the certificates to rebut any accusation that they have not acted properly with respect to their PCB waste. It must be noted that generators of PCB waste do not extinguish their potential liability for PCB disposal violations by merely entering into contracts with disposers to perform disposal services. However, a document containing the disposal facility's certification that disposal of specific PCB waste has occurred may be relevant in establishing the good faith of the generator's conduct.

As proposed, the Certificate of Disposal would become a uniform feature of the PCB disposal regulations. In addition to specifying the content of a proper Certificate, the proposal made the Certificate of Disposal the final step in the PCB waste tracking system. In particular, the Certificate of Disposal would be returned by the disposal facility one step back to the generator or commercial storer, if he generated the PCB waste, responsible for manifesting the PCB waste shipment to the disposer. While the disposer's return copy of the manifest confirms only the fact of arrival of PCB waste at a disposal facility, the Certificate of Disposal would confirm the fact of disposal itself. Thus, the Certificate of Disposal would be the final element in the tracking loop to ensure that disposal occurs within 1 year from the date that PCBs or PCB Items are stored for disposal. The Certificate of Disposal would be the basis for One-year Exception Reporting by generators and commercial storers, and it would remain as a record of disposal in the record collections of the disposers and the facilities (in some cases the original owner or user, in other cases a broker or storer) that receive them. From the Certificate of Disposal the PCB waste could be tracked back, if need be, to the original owner of the waste. While that original owner would not necessarily be the one to whom the Certificate is returned, tracking could be done through the manifest numbers included on the Certificate, and the records of any intermediate facility involved in the transaction.

The use and content of the Certificate of Disposal generated comments which varied from approval of the use, request for clarification and/or minor changes, to opposition to its use. The approvals indicated the Certificate is a better record of disposal than is the manifest. One comment supported the use of the Certificate but felt it was meaningless unless the effect was to place liability on the disposer, not the generator, if the certificate was untrue or the disposal was not proper. Another supporting comment questioned the requirement to retain the Certificate in the same location as the annual records. Suggestions for improving the Certificate included requiring a commercial storer, who received the Certificate as the generator of the final consolidated shipment, to break down the Certificate into individual certificates that would go back to the original generator(s) with necessary adjustments in timing of exception reports to allow another 30 days. A further suggestion was to allow the Certificate to record only the latest disposal date for items in a shipment, instead of separate dates for all in order to shorten the document.

EPA is retaining the Certificate of Disposal, as proposed. EPA thinks the Certificate of Disposal will perform a valuable function in tracking the disposal of large quantities of PCB waste and in enforcing the disposal regulations, despite imperfections in particular cases where commingling of waste may complicate complete tracking.

5. *Discrepancy reporting.* The proposed rule would also have required that PCB commercial storage and disposal facilities that receive off-site shipments of PCB waste comply with a Discrepancy Reporting requirement. Manifest discrepancies are differences between the quantity or type of PCB waste designated on the manifest and the quantity or type of PCB waste that a designated facility actually receives. These discrepancies were described above in the discussion in Unit III.J.5 of this preamble dealing with the use of the manifest. EPA proposed that, upon the discovery of a significant discrepancy by a designated storage or disposal facility, the owner or operator of the designated facility would attempt to reconcile the discrepancy with the appropriate party (e.g., generator or transporter). If the discrepancy is not resolved within 15 days after receiving the PCB wastes, the owner or operator of the designated facility would immediately submit to the Regional Administrator in the Region where its facility is located a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest at issue. EPA maintains this requirement in the final rule.

EPA received a comment on discrepancy reporting that suggested bulk waste discrepancy reporting should be triggered by 10 percent in weight or volume, not just weight. EPA has rejected this suggestion because it is simpler to weigh a drum than to attempt to measure the contents by volume.

6. *Unmanifested waste reporting.* EPA also proposed to incorporate into this rule another feature of the RCRA tracking system—the Unmanifested Waste Report. The proposed rule would have required a report from the owner or operator of a designated PCB storage or disposal facility whenever the designated facility received from an off-site source any PCB waste that was subject to manifesting requirements but which was not accompanied by the required manifest. The proposed rule would have required the owner or operator to submit a copy of the report to the Regional Administrator within 15 days after receiving the PCB waste. The Unmanifested Waste Report would include the following information:

a. The EPA identification number, name, and address of the designated facility.

b. The date the facility received the PCB waste.

c. The EPA identification number, name, and address of the generator, and transporter, if available.

d. A description of the quantities and types of PCB waste included in the unmanifested shipment.

e. The method of storage or disposal for the PCB wastes.

f. The certification signed by the owner or operator of the designated facility or his authorized representative.

g. A brief explanation of why the PCB waste was unmanifested, if known.

EPA emphasized that the preparation of an Unmanifested Waste Report should not be a frequent event for these facilities, since the proposed regulation would otherwise prohibit the acceptance by any transporter, off-site commercial storer, or disposer, of any unmanifested PCB waste for which these regulations require a manifest to accompany the PCB waste.

A comment questioned the need for such a report, since existing DOT regulations make it unlawful to transport PCBs (any hazardous substance) without the necessary shipping paper or manifest. Another comment objected to allowing a facility

to accept unmanifested waste. Another comment suggested sending the report to

facilities' names, addresses, and EPA identification numbers. The identity of the PCBs and PCB Items transferred

the site of use, or, at one of his storage facilities located off-site from the site of use. The commercial storage facilities

"annual document logs" but does not require submission of an annual report. Records are manifests and certificates

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to accept unmanifested waste. Another comment suggested sending the report to the Regional Administrator where the reporting facility is located, rather than where the disposer is located, since a disposer might not yet have been chosen.

Although it is unlikely that there will be a great quantity of unmanifested PCB waste received at either a storage or disposal facility, § 761.211 of the final rule has been modified to include the options available for the storage or disposal facility that receives such unmanifested PCB waste. A requirement to notify the Regional Administrator in the EPA region where the receiving facility is located has been added so that a Regional Administrator may determine whether the unmanifested PCB waste may be disposed. Otherwise the information required in the unmanifested PCB waste report has not changed from what was proposed, but the unmanifested PCB waste report must be sent both to the Regional Administrator in the region the receiving facility is located and the EPA region in which the PCB waste was generated, if known, within 15 days of receipt of the waste.

Depending on the type of facility that receives the unmanifested PCB waste, the owner or operator of that facility may opt to store or dispose of the PCB waste (unless its disposal is prohibited by the Regional Administrator) or send it back to its point of origin. The owner or operator of the facility should make all possible effort to find out from the transporter where the PCB waste originated and notify the generator that the PCB waste was illegally unmanifested, and have the generator determine whether it should be stored for disposal, disposed, or returned to the generator. The report to the Regional Administrators will include the decisions made on the disposition of the PCB waste.

7. Annual documents and reports. The existing PCB regulations impose annual document requirements on facilities that use and store their own PCBs or PCB Items (40 CFR 761.180(a)) and on disposal and storage facilities (40 CFR 761.180(b)). The user's annual document provides a summary for each calendar year of the total amounts of PCBs that were either in use or designated for disposal, as well as information about where and when PCB waste was shipped. For the storage and disposal facilities, the annual document constitutes a summary of the types and quantities of PCB waste received during the previous calendar year, the sources of the PCB waste, and the dates the PCB waste was received and either disposed of at the facility or transferred to another facility. The current regulations require each facility to have available, by July 1 of each year, the annual document summarizing the previous calendar year's (January through December) PCB activity. The documents are currently retained at the facilities, and thus are only available to EPA during facility inspections.

a. *Proposed amendments to 40 CFR 761.180(a).* EPA proposed several amendments to the annual document requirements in § 761.180(a). These amendments were intended to facilitate the tracking of PCB waste, to foster consistency with the RCRA tracking system for hazardous wastes, and to provide EPA with up-to-date information on the quantities and types of PCBs and PCB Items that are in service, or disposed, or projected for disposal. Significantly, the proposal required that commercial storers and disposers of PCB waste submit copies of their annual documents, by July 15 of each year, to the Regional Administrator in the EPA Region where the facility is located. It was determined that this proposed provision would have a minimal impact on the regulated facilities. These facilities are already required to prepare and retain the documents on-site, and the only additional cost incurred under the proposed rule would be the cost of copying the report and mailing it to the EPA. These minimal costs were judged to be greatly outweighed by the value of the information which EPA would have available each year and cumulatively about the PCB waste universe.

First, the annual document would be required to clearly identify the facility by name, owner, EPA identification number, and address. The owner or operator of multiple facilities could still elect to keep the annual documents for all of his facilities at one facility which he designates. The location of the annual document must be identified at each facility. The owner or operator who elected to maintain all of his annual documents at one facility was reminded that this option does not allow him to aggregate all of his use and storage data in one document; a distinct, written annual document would be prepared and maintained for each distinct facility. Also, where an owner or operator of multiple facilities designated one location for the retention of his annual documents, he would designate the same location identified as the location of his manifest records.

Second, § 761.180(a) was proposed to be amended so that the information required in the document included the EPA identification number, name, and address of each PCB disposal facility and commercial storage facility to which PCB waste was shipped off-site during the year. This information would be supplied for each PCB or PCB Item identified as removed from service for disposal.

Third, the proposed amendments would have also required that users who generated PCB waste and transfered it directly to disposers record the date of disposal for each PCB or PCB Item, as indicated on the Certificate of Disposal returned to them by disposers of PCB waste. These generators would also have kept copies of the Certificates of Disposal among their § 761.180(a) records, as an aid to verifying disposal and tracking violations of the 1-year limitation on storage of PCB wastes.

Also, the annual document would also have included the name and EPA identification number of each transporter used during the calendar year for off-site shipments of PCBs and PCB Items to disposal facilities or commercial storage facilities.

b. *Proposed amendments to 40 CFR 761.180(b).* The existing annual document requirement of § 761.180(b) applies to the owners and operators of storage facilities and approved PCB disposal facilities. The proposed rule would retain the basic information requirements already specified at § 761.180(b) for PCB waste received at each disposal or storage facility. The proposed amendments would require several additional items of information to facilitate the PCB waste tracking function, and would rearrange the information requirements into groupings that would facilitate the tracking of the storage and disposal histories of specific PCBs and PCB Items handled as waste during the calendar year.

First, the annual document would be required to identify clearly the disposal or storage facility by EPA identification number, name, owner, and address. The calendar year covered by the document would also be identified.

Second, in identifying any facility (i.e., generator, commercial storer, or other disposer) from which a PCB or PCB Item was received during the previous calendar year, the facility would be identified by its name, owner, and EPA identification number.

Third, where § 761.180(b) currently requires the owner or operator of a facility to identify any PCBs or PCB Items that were transferred to other storage or disposal facilities, the identification of the other storage or disposal facilities would include the

facilities' names, addresses, and EPA identification numbers. The identity of the PCBs and PCB Items transferred would be clearly stated, along with the dates of the transfers.

Fourth, facilities subject to § 761.180(b) would record for each PCB or PCB Item handled as waste during the calendar year the date of removal from service for disposal as indicated on the manifest cover or continuation sheet that accompanied the PCB waste when it was delivered to the facility. This record entry would enable commercial storage facilities to reenter this important information on their manifests which they prepare when the affected PCBs or PCB Items are later transferred to another storage or disposal facility. Disposal facilities would likewise enter the dates of removal from service for disposal among their § 761.180(b) records. These dates of removal from service for disposal could then be compared with the dates of disposal to determine compliance with the 1-year limit on storage of PCB wastes. These record entries, in addition to the requirement to retain copies of Certificates of Disposal, would provide the basis for the submission of One-year Exception Reports by commercial storers and disposers of PCB wastes.

The proposed amendments to § 761.180 were intended to clarify certain ambiguities in the existing annual document requirements that apply to storage facilities. The existing regulation imposes an annual document requirement at § 761.180(a) on PCB users, who are required to record information on both PCB use and storage at their facilities. Section 761.180(b), however, requires a distinct annual document to be prepared by storage and disposal facilities. Clearly, one annual document should suffice to summarize the PCB waste activities of the PCB users who store their PCBs at their own facilities for disposal. However, the existing regulation is not clear in specifying which types of storage facilities are subject to § 761.180(a), as opposed to § 761.180(b).

The proposed rule would clarify the scope of the annual document requirements by limiting the coverage of § 761.180(b) to disposal facilities and commercial storage facilities. The proposed amendment would codify the distinction between the storage facilities of a PCB user who is a "generator of PCB waste" and commercial storers facilities who store PCB waste generated by others. The user's storage sites would be subject only to § 761.180(a), regardless of whether the user chose to store at or contiguous to the site of use, or, at one of his storage facilities located off-site from the site of use. The commercial storage facilities ("Commercial storers of PCB waste") would be subject to the § 761.180(b) annual document requirements. Examples of the commercial storage facilities are storage facilities owned or operated by disposers, transporters, waste brokers, and electrical equipment service companies that drain PCBs from equipment which others own.

The proposed annual document required to be prepared and maintained by commercial storage and disposal facilities under § 761.180(b) would be a distinct written document which summarizes the facilities' PCB waste activities during the previous calendar year (January to December). The document would be prepared by July 1 of each year, and under the proposed rule, storage and disposal facilities would be required to submit a copy of their annual documents to the Regional Administrator by no later than July 15 of each year. The obligation to submit annual documents would continue until the submission of the annual document for the calendar year during which the facility ceases PCB storage or disposal operations.

Because some data contained in these annual documents might qualify as TSCA CBI, the proposed rule would have required that submitters follow the procedures set forth at 40 CFR 704.7 for asserting CBI claims with respect to their annual documents. Significantly, these procedures would require the submission of a complete copy (for internal use) indicating those parts claimed to be CBI, and a second copy from which any material alleged to be CBI has been deleted.

c. *Response to comments on proposed annual documents.* EPA received many comments on the burdens imposed by the additions to the annual document and the requirement to send a copy of them to the appropriate Regional Administrator, as proposed in § 761.180(b). In response to these comments, EPA has made some changes to the annual document requirements in the final rule. EPA is requiring the same information but minimizing duplication, so that physical records are maintained at a facility along with logs summarizing the PCB waste movement in some detail, and only generalized totals and information are to be submitted as annual reports by commercial storers and disposers.

The final rule requires owners or operators of facilities that are neither a commercial storer or disposer under § 761.180(a) to retain "records" and "annual document logs" but does not require submission of an annual report. Records are manifests and certificates of disposal of the PCB Containers, PCB Articles, and PCB Article Containers shipped for storage and disposal. The written annual document log includes the facility's EPA Identification number, manifest numbers of PCB waste disposed during the year, and a summary of other data. This is the same information that was included in the proposed rule. This collection of information on the year's PCB activities, augmented by other data on quantities of PCBs on hand and disposed during the year, will be retained at the individual facility or the designated facility and available for inspection by EPA.

Section 761.180(b) applies to disposers and commercial storers. Each facility will compile from the annual document log a brief summary of each category of information, and then submit only the brief summary as the annual report. The annual report does not duplicate annual log information, it is a brief summary of that information. If clarification of the brief summary is needed, the information on the document log will be available to EPA inspectors. In response to concerns about preparing a duplicate annual report which did not contain any confidential business information, EPA has decided that the annual report submitted to the Regional Administrator should not contain any confidential business information. Financial information, for example, will not appear in the annual report.

The annual reports received by the Regional Administrator from commercial storers and disposers will enable the Regional Administrator to determine the adequacy of PCB waste storage for disposal and disposal activity in that Region. From these reports EPA will be able to determine how well PCBs are being managed on a nationwide basis, and to prepare census-type data on the quantities of PCBs in commerce for disposal during each calendar year.

L. Approvals for Commercial Storers of PCB Waste

1. *Background.* Prior to this final rule the PCB storage and disposal regulations did not contain any permitting or approval authority for commercial PCB storage facilities. For this reason EPA was the subject of Congressional criticism, particularly as it related to the brokers and other intermediate handlers of PCB waste who engaged in off-site, commercial storage of PCB waste prior to the delivery of the

PCB waste to approved disposal facilities. Also, in the case of the storage areas associated with approved PCB

approval from the Regional Administrator to operate a storage for

manager or a superintendent or a person of equal responsibility) and any other

treatment facilities that have a small amount of waste stored for use in

Many commentors point out that numerous TSCA disposal authorizations already require closure plans and

plan will be an essential condition of approval for those facilities that apply for and receive a storage approval.

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PCB waste to approved disposal facilities. Also, in the case of the storage areas associated with approved PCB disposal facilities, there were no specific approval conditions and closure plans for their commercial storage operations.

Commercial storers of PCB waste have been subject to the storage facility requirements of 40 CFR 761.65 without additional oversight enabling the EPA both to pass on the qualifications of the facility's principals, and impose appropriate facility standards in the facility's conditions of approval. There was no established procedure for EPA to grant or withhold approval to conduct commercial storage operations on the basis of a facility's ability to close properly its commercial PCB storage sites, or to ensure that adequate funds would be available to meet the anticipated closure costs. Since such facilities operated outside of an approval process, the approval revocation and suspension sanctions which may haye operated as deterrents to regulatory and approval violations could not be utilized. Congressional hearings in August of 1988 highlighted these shortcomings in EPA's ability to oversee effectively the activities of the commercial storers of PCB waste and Congress further directed EPA to take the appropriate steps in alleviating these shortcomings.

The proposed rule proposed an approval mechanism for commercial storers to enable EPA to evaluate the qualifications and financial responsibility of those entities who engage in the commercial storage of PCB waste, i.e., PCB waste generated or owned by others. Comments on the proposed approval process were generally favorable towards the use of such a mechanism but asked that EPA limit and clarify some aspects of the process, most notably, the reporting of past violations, the definition of principals and key employees, inquiries into other businesses outside of waste handling, the approval/disapproval process and enforcement procedures, and the types of facilities required to submit applications. In addition, while commentors did not oppose the requirement that a commercial storer of PCB waste prepare an acceptable closure plan and demonstrate the financial resources necessary to close the facility, they did request that EPA make certain clarifications and changes to the proposed language. Today's final rule modifies the proposal in response to substantive comments received on the proposed rule.

2. *Principals and key employees.* The proposed rule stated that to receive approval from the Regional Administrator to operate a storage for disposal facility, the owner must meet the requirements of § 761.65 and submit relevant information bearing upon the qualifications of the facility's principals and key employees to engage in the business of commercial storage of PCB waste. Relevant considerations included not only the technical qualifications of the principals and key employees, but also previous experience in waste handling activities and any past State and Federal environmental violations involving the same business or other businesses with which they were associated.

A number of commentors requested that EPA use more objective definitions of the terms principals and key employees so as to clear up the ambiguity as to whether they applied to those responsible for the facility's operation or management, or to other persons in the parent corporation. In addition, numerous commentors said that the reporting of past violations should be limited in time and scope. Comments indicated that environmental violations should be limited to those that were finally determined by judicial decision or consent order or on which either a civil or criminal fine or criminal penalty had been or is being levied. Commentors also suggested that reporting of past violations should have some time limitation, i.e., 3, 5, or 10 years prior to submitting the application and that EPA limit its inquiries on a business' past environmental violations to those related to PCB waste or hazardous waste transportation, storage, and disposal.

In today's final rule EPA has included in § 761.65(d)(3) language suggested by two commentors that clearly indicates from whom and how far back EPA is seeking information. The language sets clear parameters on how far up the corporate ladder EPA is seeking information. EPA is limiting the scope of those included as principals and key employees to include the owner or operator of the facility, including all general partners of a partnership, any limited partner of a partnership, any stockholder of a corporation, or any participant in any other type of business organization who owns or controls, directly or indirectly, more than 5 percent of such a partnership, corporation or other business organization and all officials with direct management responsibility for the facility. Direct management responsibility includes the person or persons responsible for the overall operations of the facility (i.e., a plant manager or a superintendent or a person of equal responsibility) and any other supervisory employees who are or will be responsible for the operation of the facility. In addition, applicants need only supply the EPA with information on environmental violations that occurred within 5 years of the day the application is submitted. By limiting the scope of inquiry for principals and key employees to those that are affiliated with the overall operation of the facility, and limiting the information required to State and Federal environmental violations associated with waste handling activities that occurred within 5 years of submitting the application, EPA reduces the burden on the regulated community while still receiving the relevant information it needs to assess adequately the qualifications and history of the submitting party prior to granting or denying an approval.

In addition to decreasing the burden for applicants, EPA resources are better utilized by limiting inquiries to those associated with the handling of waste over a specified period of time. There was some concern that EPA would be overtaxing its resources if it attempted to review thoroughly and accurately all the information applicants would have been required to submit under the provisions of the proposed rule. The changes made in response to the comments will focus the scope of inquiry on a more narrow and relevant base of information, making the approval process less burdensome on applicants and EPA. This approach also ensures there will be an adequate number of storage facilities promptly approved to handle the expected increase in PCB waste eluted for disposal over the next few years.

3. *Facilities subject to approval process.* The proposed rule stated that, on the effective date of the final rule, existing storers of PCB waste would have interim approvals for 180 days if the owner or operator had applied for final approval during the 180-day period. The 180-day period of interim approval may be extended until EPA makes a final determination to grant or deny the application. The proposal did not address, however, existing approved disposal operations under TSCA or RCRA that have storage areas. Numerous commentors suggested that EPA not require approval, additional approval, or modification of existing permits for the following types of storage operations: those incidental or ancillary to approved disposal facilities, facilities approved for research and development (R&D) activities, or

treatment facilities that have a small amount of waste stored for use in treatability studies.

EPA agrees that it would be burdensome to require the submission of duplicative information from a storage facility that has an existing RCRA or TSCA disposal approval. However, these facilities and their existing approvals must be evaluated on a case-by-case basis by the Regional Administrator or the Director, EED, if a disposal approval had been issued by the Director, EED, before they are allowed to operate under the auspices of the storage for disposal approval outlined here in today's final rule.

For example, PCB storage areas at RCRA-permitted facilities may be exempt from obtaining a separate TSCA storage approval upon a showing to the Regional Administrator's satisfaction that the existing RCRA closure plan and financial assurance demonstration account for their PCB inventories. The closure plan must meet the spirit of TSCA closure requirements, even if they are not exactly the same as those required under TSCA. However, the technical qualifications and backgrounds of principals and key employees and closure plan as integral parts of the plan must be addressed and deemed acceptable by the Regional Administrator.

In addition, EPA would waive any technical differences between financial responsibility requirements in a RCRA permit and those in the TSCA rule, if the cost estimates clearly take PCB costs into account and the financial demonstration is already approved under RCRA. For example, EPA would accept a RCRA permit with a 10-year pay-in period, rather than the 3-year pay-in period unless the RCRA pay-in period were due to expire in less than 3 years, in which case, the 3-year pay-in period would apply. EPA would also accept the longer pay-in period under RCRA in cases where the RCRA approval did not include financial assurance for PCB inventories and such assurance is now required under this rule.

EPA, with this limited exemption, does not wish to review a RCRA permit for purposes of complying with similar criteria for PCB waste under TSCA. If the RCRA permittee has fulfilled RCRA financial responsibility requirements and those requirements provide for commercial storage of PCBs, no further financial assurance will be required. For this reason EPA strongly encourages the submission of one integrated closure plan and financial demonstration for dual RCRA/TSCA-authorized facilities.

Many commentors point out that numerous TSCA disposal authorizations already require closure plans and financial responsibility as a condition of approval, and that to require an additional separate approval for storage sites ancillary to TSCA-authorized disposal facilities is unnecessary and overly burdensome. EPA agrees and will exempt such facilities if the following conditions exist:

First, the current TSCA PCB disposal authorization's closure and financial responsibility conditions must specifically extend to storage areas ancillary to disposal. Second, the current disposal authorization's closure and financial responsibility conditions must provide for annual adjustments for inflation, and for modification when changes in operations would affect closure costs. Third, the current disposal authorization must contain conditions on closure and financial responsibility that are at least as stringent as those in this final rule. However, EPA will waive, as is the case for existing RCRA facilities, the 3-year PCB closure trust pay-in period when there are existing pay-in provisions already approved for a TSCA-approved facility. Last, the existing disposal authorization must contain an expiration date. Any existing TSCA disposal authorization, for a facility ancillary to a commercial storage facility, that is deficient in any of these four conditions will be called in and modified by EPA within 180 days of the effective date of this final rule, or the owner or operator may exercise the option of submitting a separate application for approval, which includes the information required in § 761.65 (d) through (h) for the storage for disposal facility.

The call-in requirement for disposal approvals will allow EPA to provide equivalent storage closure plan and financial responsibility requirements through one consolidated approval, and avoid the burden of dual approvals. In addition, the requirement that a disposal approval have an expiration date is relevant to the expected date of closure of the storage areas.

4. *Closure plans.* Closure refers to the period in a facility's existence that begins when PCB waste is no longer accepted for storage, and during which the owners or operators of the storage facility are required to remove all PCB waste from the facility and decontaminate their equipment, structures, and land. Under this final rule, facility owners or operators are required to prepare detailed closure plans that identify the steps necessary to bring about final closure. The closure plan will be an essential condition of approval for those facilities that apply for and receive a storage approval. These closure plans must identify in detail the means by which the facility will close in a manner that will eliminate or minimize the post-closure escape of PCBs to the environment.

The preparation of a detailed closure plan is necessary to ensure that owners and operators analyze their future closure responsibilities and bring their present operating practices into line with those responsibilities. Further, a detailed closure plan is essential to accurate cost estimates and adequate financial assurance. EPA's experience with closure plans under RCRA demonstrates that poorly detailed plans have been accompanied by inadequate cost estimates. Thus, acceptable closure plans must be sufficiently detailed to enable a third party to conduct closure in accordance with the plan in the event the owner or operator fails to do so.

The closure plan contents specified in this final rule are derived from the RCRA experience and regulations. The RCRA closure plan standards were first published on January 12, 1981 (46 FR 2851), and amended in regulations issued by EPA and published in the **Federal Register** on May 2, 1986 (51 FR 16422). The 1986 amendments were a response to litigation and several years' experience under the existing subpart G closure standards of 40 CFR parts 264 and 265. The purpose of the 1986 amendments was to clarify the required content of closure plans for RCRA facilities. EPA believes that the revised RCRA closure plan standards are an appropriate framework for the closure plan standards that this final rule requires as part of the TSCA approval process for commercial storers of PCB waste.

The core requirements of acceptable closure plans are specified in § 761.65(e)(1). First, the closure plan must describe with particularity the means by which the PCB storage areas of the facility will be closed in a manner that eliminates the potential for post-closure releases of PCBs which would present unreasonable risks to human health or the environment. This threshold requirement is essentially the performance standard that governs all closure operations. Closure may occur with respect to the entire facility or with respect to distinct storage areas contained in the facility. Where such distinct storage areas are closed, the closure is referred to as partial closure.

Second, the extent of projected PCB storage activities during the facility's active life must be identified. The active

life of a facility would extend until the time when the completion of closure is

storage facility, the closure plan must include a schedule for closure that

reasonable periods where good cause for the delay is shown.

approved facilities make provision for closure funds during the active life of their facilities.

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assurance requirement has intuitive appeal. First, because facilities already must comply with proper closure

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life of a facility would extend until the time when the completion of closure is certified to the Regional Administrator, or to the Director, EED if the commercial storage area is ancillary to a disposal facility approved by the Director, EED, under § 761.65(e)(6).

For each PCB storage area, and the facility overall, the owner or operator must identify the extent of PCB storage that will occur relative to other wastes, and the maximum projected inventory of PCB wastes that will ever be handled at one time. This information is essential, because it bears upon the facility's ability to demonstrate that it in fact has the capacity to store PCB waste in accordance with the § 761.65 storage requirements. Further, the maximum projected inventory of PCB wastes forms the basis for designating a maximum storage capacity for the facility, and for estimating the costs of closure. Financial assurance would be demonstrated in an amount sufficient to close the facility when closure costs would be at a maximum, and that eventuality would usually correspond to the maximum allowed inventory of stored PCB waste.

Third, the facility owner or operator must identify in detail the methods and arrangements that will be used during closure for actually removing PCB waste from the facility, and providing for its transportation off-site to other commercial storage or disposal facilities. The commercial storer of PCB waste that removes PCBs in accordance with his closure plan would then be a generator of PCB waste.

Fourth, the closure plan must identify with particularity the steps that the owner or operator will follow during closure to remove PCB residues presenting unreasonable risks to human health or the environment, if any, from the facility's equipment and structures and from the soil surrounding the facility. Unlike RCRA closure plans, where decontamination goals and sampling methods are to be developed as elements of the closure plan, the commercial storer of PCB waste under TSCA would identify the steps needed, such as cleanup methods, cleanup goals, and sampling methods, to accomplish compliance with the levels specified in the risk-based, nationwide PCB Spills Cleanup Policy, which was published in the Federal Register of April 2, 1987 (52 FR 10688). This description would include any other activities, e.g., ground water monitoring, run-on and run-off control, and facility security, that will be necessary during closure to ensure compliance with the closure performance standard.

In addition, for each § 761.65 (b) and (c)(7) PCB storage area at a commercial storage facility, the closure plan must include a schedule for closure that identifies the total time required to complete closure, and the time required for the various intervening activities entailed by final closure. The closure plan must include a closure cost estimate which bears upon the amount paid each year of the "pay-in" period for funding the trust.

Finally, the final rule includes provisions specifying the criteria and procedures for modifying a facility's closure plan. These provisions describe what action may be initiated by either the facility owner or operator, or the Regional Administrator or the Director, EED if the commercial storage area is ancillary to a disposal facility approved by the Director, EED, when cause exists to believe that changed circumstances will affect the closure plan, the time for closure, or the closure costs. The changed circumstances that would justify a closure plan modification are described at 40 CFR 761.65(e) (4) and (5).

The final rule also includes a closure schedule for when certain closure events must occur and when required notices must be given. Generally, the commencement of closure would be preceded by written notice to the Regional Administrator, or the Director, EED if the commercial storage area is ancillary to a disposal facility approved by the Director, EED, at least 60 days prior to the date when final closure is expected to begin. The date when closure is expected to begin would ordinarily be no later than 30 days after the receipt of the last shipment of PCB waste for storage at the facility. This date may be extended for good cause by the Regional Administrator, or the Director, EED if the commercial storage area is ancillary to a disposal facility approved by the Director, EED.

The timetable in § 761.65(e)(6) requires that all PCB waste that was in commercial storage at the facility be removed in accordance with the closure plan within 90 days of the receipt of the last quantities of PCB waste. All closure activities must be completed within 180 days, and the facility must certify the completion of closure (or partial closure) in a written notice to the Regional Administrator within 60 days of the date that closure is completed. The certification that closure has been completed in accordance with the closure plan must be signed by an independent professional engineer, as well as the facility's owner or operator. The deadlines in § 761.65(e)(6) may be extended by the Regional Administrator, or the Director, EED, if the storage facility is ancillary to a disposal facility approved by the Director, EED, for reasonable periods where good cause for the delay is shown.

EPA solicited and received comments on its proposal to require closure plans as part of its approval criteria for commercial storers of PCB waste. These commentors asked EPA to clarify certain issues such as the appropriateness of using the Spill Cleanup Policy for closure standards and the need for an additional closure plan for approved disposal facilities that have existing closure plans for their storage areas.

Comments addressing the appropriateness of the use of the Spills Cleanup Policy for closure standards will be addressed in the Support Document, "Response to Comments on the Proposed Notification and Manifest Rule, August 1989." The comments centered on historic spills and spills cleaned up prior to the policy. The final rule includes the use of the Spill Cleanup Policy for closure standards as proposed.

5. *Financial assurance of closure.* The final rule includes at § 761.65(f) a procedure for preparing a written estimate of the cost measured in current dollars of closing the PCB storage areas of the facility in accordance with the closure plan. The current closure cost estimate which will be kept at the facility is the closure cost estimate adjusted annually for the effects of inflation and any approved modifications to the closure plan. The closure cost estimate must assume that closure occurs during that time when the closure costs would be most expensive. The cleanup cost estimate must assume closure by a third party not related in any way to the commercial storer, using current market costs for disposal, storage, and decontamination.

The final rule requires that the commercial storers of PCB waste demonstrate financial responsibility for closure by passing specific financial tests or by acquiring specific financial instruments that will make available adequate funds to meet the closure cost estimates. The final rule allows owners or operators to choose from a number of mechanisms, including trust funds, surety bonds, letters of credit, corporate guarantees, insurance policies, and the financial test. EPA justifies the imposition of these requirements based upon the several instances in which facilities that went out of business or were forced to close possessed insufficient resources at the time of closure to provide for an adequate cleanup. If the expenditure of public resources is to be avoided, it is incumbent that owners and operators of

approved facilities make provision for closure funds during the active life of their facilities.

The financial assurance mechanisms in today's final rule for commercial storers of PCB wastes are essentially the same as the mechanisms allowed under RCRA regulations at 40 CFR parts 264 and 265, subpart H. The development of these mechanisms and the specifics of their operation have been discussed in numerous RCRA-related rule documents which EPA has issued and which were published in the Federal Register. The reader is referred to the following Federal Register documents for a detailed discussion of these mechanisms: 45 FR 33260, May 19, 1980; 46 FR 2821, January 12, 1981; 47 FR 15032, April 7, 1982; and 51 FR 16422, May 2, 1986. This preamble only briefly describes the financial mechanisms, with particular attention to any changes from the RCRA mechanisms.

To determine the costs of financial assurance for the purposes of this rule, several assumptions were made. Financial assurance costs would be incurred by facilities that do not currently have financial assurance. These costs are assumed to be equal to the difference between the costs these facilities would have incurred in the baseline of proper closure and the costs they incur in the course of complying with the financial assurance requirements. The magnitude of the financial assurance costs is affected by three variables: the total amount needed to close the site; the time lag between the set-aside of the closure funds and closure; and the difference between the rate at which funds must be borrowed and the rate at which they can be loaned (opportunity cost of capital).

Because financial assurance costs are based on the differenc between the present values of two alternative methods of funding future closure costs, estimates of closure costs are required. For this analysis, costs for closure were based on estimates of costs for a similar facility under RCRA. A typical facility was assumed to have a laboratory, a truck facility, a storage building, and two storage tanks. Costs for closure were estimated as follows:

Laboratory	$10,000
Truck facility (ramps, loading docks, etc.)	15,000
Storage building (500 drum capacity)	100,000
Tanks (two 15 to 20,000 gal. capacity)	20,000
Inspection, soil sampling, etc.	100,000
10 Percent contingency	24,500
Total	269,500

For this analysis, a facility that does not currently have financial assurance is assumed to face baseline costs for closure equal to a constant stream of payments for 23 years, accumulated at the firm's private rate of discount (7 percent), that is just sufficient to pay for these closure costs. That is, each facility is assumed to amortize the closure costs over the expected lifetime of the facility (23 years) in the baseline.

Because not all facilities will necessarily remain solvent throughout the 23 years between the present and the expected time of future closure, the financial assurance requirement is designed to ensure that the funds required for proper closure will be available regardless of the financial health of the facility in the future. Consequently, this analysis assumes that each facility makes a single payment into a fund that accumulates at the government (risk-free) rate of interest (assumed to be 3 percent) until the end of the useful life of the facility. This single payment will be due 3 years from the date of promulgation of the rule. Hence, under the financial assurance requirement modeled in this analysis, instead of making a stream of payments for 23 years that accumulates at 7 percent, facilities make a single lump-sum payment 3 years from the present that accumulates (with certainty) at the lower, risk-free government rate.[1]

Finally, regardless of the discount rate assumption used for deriving present values of these cash flows, the 7 percent and 3 percent rates underlying the cash flow do not change. This causes incremental costs of the one-time payment strategy required under financial assurance relative to the 23-year stream of payments assumed to be made in the baseline to rise as the discount rate rises. This occurs because the present value of the baseline costs fall more rapidly as the discount rate rises than does the present value of the one-time payment within 3 years of the rule's promulgation.

The difference between the present values of these two alternative methods of financial closure costs measures the costs to these firms of the financial assurance requirement. This construction of the costs of a financial assurance requirement has intuitive appeal. First, because facilities already must comply with proper closure procedures, the cost of financial assurance itself must be less than the costs of closure. Second, the construction used here assumes that all facilities assume that they will pay these closure costs in the future. Thus, the baseline consists of facilities that intend to comply with the preexisting rules concerning proper closure. Finally, this definition of the cost of financial assurance captures the incremental cost to industry and to society of funding future closure activities earlier and with greater certainty relative to the baseline funding plans that would be followed by the facilities. Indeed, it is precisely because some facilities may be insolvent 23 years from the present that the expected rate of return is assumed to be 7 percent rather than 3 percent—the financial markets require compensation for the risk of insolvency. But the fact that some facilities may be insolvent in the future means that the future value of all of the facilities' "ear-marked" accounts for closure will be less than the total necessary to properly close all of the facilities. Consequently, funding these costs earlier and with certainty eliminates this possibility.

The incremental cost of financial assurance derived in this way differs depending on the discount rate used to derive the present values of these alternative payment streams.

Discount rate (%)	Baseline cost	One-time cost	Incremental cost
0	$115,998	$149,216	$33,218
3	82,932	136,553	53,621
7	56,850	121,805	64,955
10	44,802	112,108	67,306

As shown above, the incremental cost for financial assurance for a facility is $33,218 (0 percent), $53,621 (3 percent), $64,955 (7 percent), and $67,307 (10 percent). The cost of financial assurance increases as the discount rate rises because the present value of the stream of amortization payments assumed to be made in the baseline falls at a much faster rate than the present value of the payment required under the financial assurance requirement. Although somewhat counterintuitive, the result is correct given that the 3 percent and the 7 percent rates of interest underlying the alternative cash flow scenarios for funding future closure costs remain

[1] Since it is unlikely that firms will be able to obtain insurance for closure, this analysis assumes that financial assurance would be provided by an instrument similar to a trust fund. The present value of closure (at a discout rate of 7 percent) must be paid into a trust fund within 3 years of promulgation of the rule.

constant despite a changing social discount rate assumption.

Several comments were made in

accountant. The financial test is not intended as a test of potential insolvency; rather, it is designed to

directed by the Regional Administrator or the Director, EED. The "corpus" of the trust would consist of the annual

costs. Thus, there is no compelling case for extending the "pay-in" period for the 10 or more years allowed for "pay-in"

closure as guaranteed by the bond, or, deposit the amount of the "penal sum of the bond" into a standby trust fund.

funds up to the face amount to cover closure expenditures. The insurer would reimburse persons who present itemized

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constant despite a changing social discount rate assumption.

Several comments were made in response to the estimated costs of financial assurance as described in the proposed rule. Commentors suggested that EPA had seriously underestimated the costs associated with closure. The Hazardous Waste Treatment Council (HWTC) estimated the cost of closure for a full scale authorized facility to be $3 to $5 million. Another commentor provided data that showed closure costs for a single, middle-sized storage facility to be slightly less than $600,000. Claiming that EPA may have underestimated the cost for closure, commentors argued that the associated trust pay-in period should be extended beyond the 3 years proposed by the EPA. Commentors suggested anywhere from a 5- to 10-year pay-in period to be more consistent with RCRA's 10-year pay-in period.

EPA rejects HWTC's cost estimates because it includes the costs for closure of a disposal facility as well as the storage facility. The cost for closure is not the same as the cost for financial assurance. Accepting this higher cost of closure estimate of $600,000 for a middle-sizes storage facility, EPA agrees that typical facilities' closure costs will probably fall within the $270,000 to $600,000 range. The associated costs of financial assurance for closure costs of $270,000 to $600,000 would be $33,000 to $73,000 (undiscounted) or $65,000 to $144,000 at a discount rate of 7 percent. This is the real cost to the facility, i.e., the cost to obtain financial assurance. The Regulatory Impact Analysis for the proposed rule estimated that a typical facility would spend approximately $33,000 (undiscounted) in complying with the financial assurance requirements. EPA does not agree, however, that the trust pay-in period should be extended beyond 3 years and accordingly retains that timeframe in this final rule. This issue will be discussed further in Unit III.L.5.b.

a. *Financial test.* The financial test consists of criteria that compare the closure cost estimate to specific ratios composed of net worth, net income, total liabilities, current assets and liabilities, net working capital, and current bond issuance ratings. These ratios are specified at 40 CFR 264.143(f)(7)(i). Once the elements are identified in the firm's financial statements, the calculation of the test ratios is straightforward. The demonstration of financial assurance capability is presented in a letter from the firm's chief financial officer, which would be supported by reports from the firm's independent certified public accountant. The financial test is not intended as a test of potential insolvency; rather, it is designed to ensure that those who pass the test will have adequate resources to pay in full the cost of closure. Should the firm in subsequent years fail the test, the firm must exercise one of the alternative forms of financial assurance.

EPA, in today's final rule, is utilizing the same financial test criteria that are currently in effect for hazardous waste facilities under 40 CFR 264.143(f). Also, the demonstration of financial assurance would be satisfied by a letter from the firm's chief financial officer containing wording similar to that specified at 40 CFR 264.151(f). The only variations from the RCRA requirements are language changes intended only to make the provisions conform to TSCA statutory and regulatory authorities. The financial test mechanism will be satisfied when a parent corporation which meets the test's criteria guarantees that it will perform closure or establish a closure trust fund in the event that its subsidiary corporation fails to perform in accordance with its closure plan. In addition to meeting the financial test criteria, the guarantor corporation would submit a written corporate guarantee with the wording specified at 40 CFR 264.151(h), modified only to conform to the TSCA statutory and regulatory authorities.

In cases where a storage facility is jointly owned or operated by two or more unrelated companies, a decision must be made by the parties involved with respect to who will be responsible for the financial assurance of the facility. The chosen party will be responsible for complying with all the provisions of § 761.65 (d) through (h) of this final rule.

b. *Closure trust fund.* Under this mechanism, the owner or operator (or entity designated in a jointly owned facility) of the commercial PCB storage facility would enter into a written trust agreement appointing a trustee to manage a fund established by the owner(s) or operator(s) of the storage facility for the benefit of EPA. The fund would be established to meet the costs of closure, and the trust instrument would set forth the powers and obligations of the trustee with respect to the management and use of the fund. When instructed by the Regional Administrator or the Director, EED if the commercial storage area is ancillary to a disposal facility approved by the Director, EED, the trustee would reimburse the owner(s) or operator(s), or other persons, for expenditures made in closing the facility, in the amounts directed by the Regional Administrator or the Director, EED. The "corpus" of the trust would consist of the annual payments made by the owner(s) or operator(s) to the fund during the "pay-in" period, and these amounts would be invested or otherwise managed by the trustee.

In the final rule, owners or operators of commercial PCB storage facilities may satisfy their financial assurance obligations by establishing a closure trust fund under the conditions described in 40 CFR 264.143(a), utilizing a trust instrument with the wording specified at 40 CFR 264.151(a). This rule modifies the RCRA language to the extent of conforming it to TSCA statutory and regulatory authorities.

In the proposed rule, EPA proposed a pay-in period for commercial storers of PCB waste to be a period not exceeding 3 years. Commentors requested that EPA extend this trust pay-in period to a period anywhere between 5 to 10 years. The reasons for requesting an extended pay-in period were many, including: EPA's underestimation of closure costs; the argument that accelerated pay-in would force the abandonment of some facilities; service companies, which are primarily small businesses, would need at least 5 years for pay-in to build up the necessary funds; and the need for a more equitable and less burdensome approach of retaining an option of pay-in keyed to the planned closure date or a maximum 10-year pay-in, whichever came first.

The proposed pay-in period differs from the maximum 10-year period system used under RCRA because of the difference between the types of storage facilities regulated under RCRA and under this rule. Under RCRA, storage facilities for the management of hazardous wastes can include land disposal units (e.g., landfills or surface impoundments), while under the TSCA PCB rules, PCB storage facilities are locations where PCB Articles and PCB Containers are stored for less than 1 year prior to disposal. RCRA trust funds allow for an extended pay-in period because of a concern for the substantial costs associated with such measures as capping and securing the facility at closure, as well as the continuing costs of conducting long-term ground water monitoring for a closed landfill or surface impoundment. In the case of closing a PCB storage area, however, one need not typically take into account the post-closure care associated with these types of land disposal units. Once the PCB storage facility has been closed according to the standards set forth in this rule, there should be no long-term

costs. Thus, there is no compelling case for extending the "pay-in" period for the 10 or more years allowed for "pay-in" under RCRA, and EPA believes that 3 years represents a sufficient period of time to fund a commercial storage facility's closure trust fund.

EPA agrees it may have underestimated the cost of closure in the Regulatory Impact Analysis for the proposed rule and that closure of a typical facility will likely cost between $300,000 and $600,000. EPA does not agree, however, that these revised amounts warrant extending the pay-in period. EPA is maintaining the 3-year trust pay-in period in this final rule for the above reasons and it is EPA's policy that any company intending to enter, or currently engaged in the business of commercially storing PCB waste, should be sufficiently viable, either through current assets or loans, to cover the cost associated with the 3-year trust pay-in period.

In the case of existing facilities that opt for the use of a closure trust fund, the first payment into that fund must be made within 30 calendar days after the facility has received a notice of conditional approval from EPA. This notice of conditional approval states that the application to commercially store PCBs has been reviewed by EPA but final approval to operate will not be granted until EPA has received notice that the first payment into the trust fund has been made within the 30-day period. EPA will send a notice to the facility after receipt of verification of payment into the trust fund that the facility has been granted final approval. If this payment is not made within this 30-day period final approval will be denied and interim approval to operate will be canceled.

In the case of new facilities that opt for the use of the closure trust fund, EPA will also provide the facility with a notice of conditional approval; final approval will be granted once EPA receives verification that the first payment has been made into the trust fund.

c. *Surety bonds.* This final rule also incorporates two additional RCRA financial assurance mechanisms that allow surety companies to act as guarantors of closure obligations. The first is a surety bond that guarantees the payment of the "penal sum of the bond" into a standby closure trust fund, in the event the owner or operator of the facility fails to perform the guaranteed closure obligations. The second is a surety bond under which the surety company guarantees that upon the owner's or operator's breach of his closure obligations, it will either perform closure as guaranteed by the bond, or, deposit the amount of the "penal sum of the bond" into a standby trust fund.

In this final rule, commercial storers of PCB waste under TSCA, including those with jointly owned facilities, may satisfy their financial assurance obligations by obtaining surety bonds conforming to the requirements of either 40 CFR 264.143(b) (guaranteeing payment into trust funds) or 40 CFR 264.143(c) (guaranteeing performance of closure). The only modifications to the RCRA language are those necessary to cause the requirements and instruments to conform to TSCA statutory and regulatory authorities.

d. *Closure letter of credit.* Consistent with §§ 264.143(d) and 264.151(d) of the RCRA regulations, commercial storers of PCB waste under TSCA may choose to demonstrate financial assurance for closure by obtaining an irrevocable letter of credit from their bank or other financial institution. The irrevocable letter of credit instrument assures that the financial institution that issues it will make available a specific sum of money over a specific time period on behalf of its customer (the facility owner or operator) for the benefit of the party in whose favor the letter is written. The beneficiary can draw on the credit by presenting the sight drafts or other documents specified in the letter. The financial institution would issue the letter in favor of the appropriate Regional Administrator or the Director, EED if the commercial storage area is ancillary to a disposal facility approved by the Director, EED, and the facility owner or operator would establish the account in the amount of the current closure cost estimate. The funds shall be paid into a standby closure trust fund from which closure expenditures will be reimbursed.

Irrevocable letters of credit for closure under TSCA must comply with the requirements specified for these instruments under RCRA, modified only to the extent necessary to conform to TSCA and its implementing regulations.

e. *Closure insurance.* To the extent such insurance is available to cover a PCB storage facility's closure obligations, this final rule allows closure insurance, as described at 40 CFR 264.143(e), as another means of satisfying the financial responsibility obligations under TSCA. This final rule includes only those modifications to the §§ 264.143(e) and 264.151(e) language as are necessary to conform to TSCA statutory and regulatory authorities. As required under RCRA, the face amount of the policy must equal at least the current closure cost estimate, and the policy must guarantee the availability of funds up to the face amount to cover closure expenditures. The insurer would reimburse persons who present itemized bills to the Regional Administrator or the Director, EED, if the commercial storage area is ancillary to a disposal facility approved by the Director, EED, for closure expenditures which are determined by the Regional Administrator or the Director, EED, to be in accordance with the closure plan or otherwise justified.

f. *Combination of mechanisms.* In today's final rule, the owner or operator of a commercial PCB storage facility could meet his financial assurance obligations by establishing more than one mechanism for his facility. The combination would be limited to trust funds, letters of credit, insurance policies, and surety bonds guaranteeing payment into trusts. The combined instruments would meet the financial responsibility requirements of TSCA if the combination of mechanisms provides financial assurance in an amount at least equaling the current closure cost estimate. The Regional Administrator, or the Director, EED, if the commercial storage is ancillary to a disposal facility approved by the Director, EED, shall seek recourse from any or all of the instruments to provide for closure of the facility.

6. *Approval/disapproval process and enforcement procedures.* In today's final rule EPA has narrowed the definition of principals and key employees and limited its review of the history of environmental violations to 5 years. In addition, violation history will be limited to those violations which resulted in either a civil or criminal fine or a criminal penalty, or civil injunctive relief, and which involved storage, disposal, transport, or other waste handling activities. By narrowing the scope of inquiry, EPA can better utilize its resources during its review of the application and focus its attention on the most relevant information.

EPA received comments on the fact that the proposed rule does not speak to the issue of the approval/disapproval process or enforcement procedures relating to the applicants seeking approval of commercial storage facilities.

EPA has developed a guidance document, which is part of the rulemaking record, titled "TSCA Guidance Manual for Review of Commercial PCB Storage Facility Applications," October 1989. The guidance document may be used by both EPA application reviewers and the regulated community. For the EPA application reviewer, it is a useful tool

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to assist in the review of incoming applications in order to ensure completeness. For those in the regulated community who submit applications for approval to EPA, this document serves to explain further what EPA expects in a completed application. The guidance document also addresses the closure plan and financial responsibility requirements that are essential components of the approval process. EPA retains the discretion to approve or disapprove an application for approval for a commercial PCB storage facility based on factors which include but are not limited to, a poor enforcement history, misrepresentation of enforcement history or technical qualifications on the application, inadequate closure plan or financial responsibility documents, and falsification of financial assurance or other application documents. EPA maintains enforcement and compliance data bases that were created for its environmental protection statutes that will be used to verify an applicant's representations regarding compliance history.

After the regional office has received the application and reviewed it for completeness, it will provide the names of the principals and key employees and other information on the applicant to EPA Headquarters. This information will then be published in the **Federal Register** and sent to the EPA regional offices and appropriate State offices for local publication. The public will be given an opportunity to comment on issues like the firm's past environmental enforcement history as well as any relevant information on the principals and key employees of the firm. This public input will supplement EPA's database searches on the applicant's past compliance history.

The regional office will coordinate with Headquarters on the review of applications. Based on the results of this review and any public comments received by EPA, the Regional Administrator, or the Director, EED, if the commercial storage is ancillary to a disposal facility authorized by the Director, EED, will approve or deny the application. EPA will ultimately publish the list of approved PCB commercial storers in the **Federal Register**.

Specific actions which may result in the denial of an applicant's request for approval include criminal activities by the firm, principal or key employee; or civil/judicial administrative actions resulting in either a consent agreement or final order and which involved major violations. EPA could issue a denial, an approval with appropriate conditions or a time limit on the approval in those cases where the violations were not so serious as to warrant automatic denial, or, where prior conduct appears to have been rehabilitated. These criteria for approval or denial are discussed in more detail in the guidance document.

7. States and the Federal Government. EPA received a comment which recommended that States and the Federal Government be exempted from closure cost estimates and financial assurance requirements as they have been under the RCRA permitting requirements of 40 CFR 264.140(c). EPA agrees and has added the exemption in § 761.65(j) of the final rule. EPA recognizes that, because Federal and State government entities are permanent and stable institutions that exist to safeguard health and welfare, they have the requisite financial strength and incentives to cover the costs of closure. EPA believes, therefore, that it is not necessary to impose closure cost estimate and financial assurance requirements on Federal and State entities. This exemption is consistent with the approach adopted under RCRA under 40 CFR 264.140(c). While EPA recognizes that many local governments, like Federal and State governments, are permanent entities and act to secure the well-being of their citizens, EPA is concerned that local governments cannot provide the same guarantee that they will be able to access adequate funds to pay for environmental costs in a timely manner. For that reason, EPA has chosen not to exempt local governments from the closure cost estimate and financial assurance requirements.

IV. Relationship to State Law

Unlike the RCRA program for hazardous wastes, the TSCA section 6(e)(1) disposal program for PCB waste is fundamentally a Federal program, administered by the EPA Regional Administrators and the Director of the Exposure Evaluation Division, Office of Pesticides and Toxic Substances. The enforcement of the Federal program has been delegated to the Regional Administrators, while the authority to issue approvals for PCB disposal processes is currently shared by the Regional Administrators and the Director of the Exposure Evaluation Division. At the same time, the States may concurrently regulate PCB disposal within their jurisdictions, without supplanting or being supplanted by the Federal requirements. As of May 1989, at least 18 States have elected to regulate various aspects of PCB disposal, often pursuant to their authorized RCRA hazardous waste programs.

A major component of this rule is the requirement imposed on certain generators, transporters, commercial storers, and disposers of PCB waste to notify EPA of their PCB waste handling activities and obtain identification numbers to use on their manifests and other records. This TSCA requirement is independent of any requirement under State or local law or under a State-administered RCRA program. Thus, a generator exempt from the notification requirements imposed by this rule may be independently required to obtain and use a unique identification number by a State or local government. Any such State or local requirement is not preempted by these Federal requirements.

Persons subject to this rule and to State-administered RCRA programs will be able to use the same identification number for the manifesting and recordkeeping requirements of both programs. The identification numbers to be used under this rule, as well as those used under State-administered RCRA programs, are the Dun and Bradstreet Data Universal Numbering (DUN) system numbers. Persons subject to notification under this rule who have already been issued an identification number under a State-administered RCRA program are required to supply EPA with the previously issued number in their TSCA notifications. EPA will verify that these numbers are unique and conform to the DUN system, and authorize as far as possible the use for TSCA purposes of previously issued identification numbers. Under this process, regulated persons will benefit from the administrative convenience of using the same number for both State and TSCA purposes. EPA will issue such persons a distinct TSCA identification number only in those cases where a previously issued number does not conform to the DUN system, or is not unique.

This rule also requires PCB waste handlers to comply with manifesting requirements for the regulated PCB waste which they handle. This rule utilizes the RCRA Uniform Manifest to facilitate implementation of this requirement throughout the United States. The Uniform Manifest includes optional information spaces to meet basic information requirements which States have the option of imposing. The optional State information items appear at the upper right portion of the manifest form, and they are shaded and headed by letters (rather than numbers) to set them apart.

As required by Department of Transportation (DOT) regulations issued under section 112 of the Hazardous Materials Transportation Act, 49 U.S.C. 1811(a), States are not permitted to require any information on the space of the Uniform Manifest specified for "special handling instructions and additional information," on the back of the form, or on any continuation sheet, as a condition of transportation.

Since PCB waste generators may obtain pre-printed or camera-ready copies of the Uniform Manifest from State agencies, it should be noted that the instructions which may accompany these manifests do not reflect all the requirements which EPA has included in the final rule. Specifically, the following elements of the PCB waste tracking system under TSCA are not covered on the pre-printed instructions accompanying the Uniform Manifest:

(1) One-Year Exception Reporting and the related requirement to note dates of removal from service for disposal of PCBs, PCB Containers, PCB Articles, and PCB Article Containers on manifests.

(2) Requirements related to Certificates of Disposal for PCB waste.

It is essential that all PCB waste handlers understand fully any deviations from the RCRA tracking requirements that appear in the final rule, since reliance upon pre-printed instructions issued by States with the Uniform Manifest will not excuse their responsibility to comply fully with TSCA requirements for PCB waste.

This rule also imposes new TSCA approval requirements for commercial storers of PCB waste who store PCB waste generated by others at storage facilities subject to the storage facility standards specified at 40 CFR 761.65. The rule requires, among other things, that commercial storers of PCB waste develop closure plans and financial responsibility mechanisms similar to those required of facilities which manage hazardous waste under RCRA. In those States which regulate PCB storage and disposal practices under their State-administered RCRA programs, the new TSCA approval requirements for commercial storers are independent of the State requirements. Thus, the fact that a facility storing PCB waste commercially may have a RCRA permit or RCRA interim status would not excuse the requirement to obtain a Federal approval under TSCA to store PCB waste commercially. Likewise, the fact that such a facility is already covered by a State's RCRA closure plan and financial responsibility requirements would not excuse the new TSCA requirements to develop closure plans and demonstrate financial responsibility for closure. However, the burden of these concurrent State and Federal approval requirements should be mitigated, since in many cases, compliance with the RCRA closure and financial responsibility standards shall be sufficient to establish compliance with the similar TSCA approval standards.

V. Economic Impact

EPA analyzed the economic impacts associated with the notification, manifesting, recordkeeping and reporting, and storage approval requirements in the proposed rulemaking. The Regulatory Impact Analysis for the proposed rule is available for review in the public docket. This unit summarizes the economic impacts of compliance with the provisions of the proposed rule, as presented in the Regulatory Impact Analysis, and discusses changes made in response to comments. A revised Regulatory Impact Analysis, reflecting new data EPA received, was prepared for the final rule and is also in the public docket.

1. Notification. This rule states that storers, transporters, and disposers handling PCBs at concentrations at or above 50 ppm must notify EPA of their PCB activities. EPA estimates that 5,651 facilities will be required to notify EPA at a cost to industry of $290,000.

2. Manifesting. In development of the manifest requirements, EPA consulted with States which regulate PCB disposal and with the operators of TSCA-approved disposal facilities. EPA found that each of the approved disposal facilities required a manifest to accompany any shipment of regulated PCB waste, regardless of PCB concentration. These disposal firms require manifests for the PCB waste they accept as a means of preserving records of firms potentially responsible for contributing toward any remedial actions which might arise at the disposal site under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

Also, among the 18 States that currently require a manifest to accompany PCB waste, all but one require a manifest for PCB waste containing PCBs at the 50 to 500 ppm level. Because current practice is consistent with the 50 ppm trigger for manifesting, there does not appear to be a significant incremental burden to industry associated with the requirement.

3. Submission of annual reports. EPA currently requires that annual reports be maintained by generators, storers, and disposal firms handling PCB wastes. This rule requires commercial storers and disposers handling PCBs at concentrations at or above 50 ppm to submit annual reports to EPA. The estimated number of firms expected to comply with this provision of the rule is 130. EPA did not receive any information with which to revise this estimate. The incremental costs of submitting these reports to EPA is estimated to be minimal. At the suggestion of OMB, EPA is estimating 1 hour for the preparation of the annual report at a cost of $21.94 per report.

4. Storage approvals. EPA is also requiring that all commercial storers of PCB waste obtain EPA approval. To obtain approval, commercial storage firms must, among other things, develop closure plans for their facilities and meet financial assurance requirements.

EPA estimates the cost to industry for the development and submission of the closure plan will be $35,000 for a facility that is not permitted under RCRA and $25,000 for a facility with a RCRA permit.

EPA estimates the costs for financial assurance to be between $33,000 and $73,000 (undiscounted) per typical facility which has not already met the requirements. These costs are costs of financial assurance and not closure costs. The cost of closing a typical facility is estimated to be between $270,000 and $600,000. A typical facility was assumed to have a laboratory, a truck facility, a storage building, and two storage tanks.

5. Total economic impacts. EPA estimates that the total costs to industry associated with this rule, undiscounted, would be between $3.2 million and $5.6 million, of which, between $2.59 million and $4.78 million represents the total cost to industry of complying with the approval requirements for commercial storers of PCB waste. EPA also estimates that the total costs to the U.S. Government would be between $1.95 million and $2.84 million.

VI. Official Rulemaking Record

In accordance with the requirements of section 19(a)(3) of TSCA, EPA established the record of this rulemaking with the proposed rule. This record includes basic information considered by EPA in developing the proposed rule, including appropriate **Federal Register** notices, reports prepared by the General Accounting Office (GAO), testimony from Congressional committee hearings, communications before proposal, and economic analyses of the proposal, and now includes the proposed rule,

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comments on the proposed rule, and other material that has been added since publication of the proposed rule.

Any Confidential Business Information (CBI) that is a part of the record for this rulemaking is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection at the TSCA Public Docket Office, in Room NE-G004, 401 M St., SW., Washington, DC. The following documents for this final rule are in the public record:

(1) Official Rulemaking Record from "Polychlorinated Biphenyls; Notification and Manifesting for PCB Waste Activities," Proposed Rule, Docket No. OPTS–62059, 53 FR 37436, September 26, 1988.

(2) 53 FR 27322, July 19, 1988, USEPA, "Polychlorinated Biphenyls in Electrical Transformers."

(3) 53 FR 45268, November 9, 1988, USEPA, "Polychlorinated Biphenyls; Notification and Manifesting for PCB Waste Activities; Extension of Public Comment Period."

(4) Transcript of Hearings on the Proposed Notification and Manifest Rule held on December 13, 1988, in Washington D.C.

(5) USEPA, EED, CRB, "Response to Comments on the Proposed Notification and Manifesting Rule" (August 1989).

(6) Memo from OMB to Sandy Farmer, IRSD, OPPE, USEPA, Denial of Approval of Proposed ICR, November 18, 1988.

(7) USEPA, OPTS, EED, CRB, "TSCA Guidance Manual for Review of Commercial PCB Storage Facility Applications" (October 1989).

(8) USEPA, OPTS, ETD, "Regulatory Impact Analysis in Support of the Final Notification and Manifesting Rule," (May 1989, revised October 1989).

VII. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, issued February 17, 1981, EPA must judge whether a rule is a "major rule" and therefore, subject to the requirement that a Regulatory Impact Analysis be prepared. EPA has determined that this rule is not a major rule as the term is defined in section 1(b) of the Executive Order because the annual effect of the rule on the economy will be less than $100 million; it will not cause a major increase in costs or prices for any section of the economy or for any geographic region; and it will not result in any significant adverse effects on competition, employment, investment, productivity, or innovation or on the ability of U.S. enterprises to compete with foreign enterprises in domestic or foreign markets.

This rule may in fact result in substantial economic benefits in the long run. The purpose of the rule is to ensure proper disposal of PCB waste. There have been historical cases of improper storage or disposal of PCB waste which have resulted in the creation of Superfund sites. Because the cleanup of these sites is often extremely expensive, this rule has the potential to benefit the economy as well as the environment.

The rule was submitted to the Office of Management and Budget (OMB) prior to publication as required by the Executive Order.

B. Regulatory Flexibility Act

Section 603 of the Regulatory Flexibility Act (5 U.S.C. 603 et seq. Pub. L. 96–354, September 19, 1980), requires EPA to prepare and make available for comment a regulatory flexibility analysis in connection with rulemaking. The initial regulatory flexibility analysis must describe the impact of the proposed rule on small business entities. If, however, a regulation will not have a significant impact on a substantial number of small entities, no such regulatory impact analysis is required.

EPA lacks information about the universe of PCB generators, storers, transporters, and disposers. This lack of information is a major reason for issuing the rule. Because EPA lacks such knowledge about the degree to which this rule would affect small business, it could not determine whether a regulatory flexibility analysis was necessary. Using what data were available, EPA performed a Regulatory Impact Analysis for the proposed rule, which is in the public record. EPA received no comments on the effect the proposed rule would have, if promulgated, on small business entities; therefore, EPA now concludes that the rule will not have a significant impact on a substantial number of small business entities.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* authorizes the Director of OMB to review certain information collection requests by Federal agencies. EPA has determined that the recordkeeping and reporting requirements of this rule constitute a "collection of information" as defined at 44 U.S.C. 3502(4).

EPA submitted the proposed information collection requirements to OMB for approval. OMB did not approve them. OMB's reasons for disapproval and EPA's responses in the final rule follow.

1. The burden box did not appear on the Notification Form (EPA No. 7710–53). This was the only reason for non-approval of the form. The burden box followed the form in the Federal Register. EPA has adjusted the form so that the burden box now is on the form.

2. OMB felt that the requirement to submit annual reports to EPA, instead of just maintaining them for inspection when requested, might not be the least burdensome approach as required by 5 CFR 1320.4(b)(1), and that the exception and discrepancy reports give EPA much more critical information for targeting inspections. OMB also felt that the burden of 1 hour should be attributed to submitting an annual report, rather than the de minimis expenditure EPA attributed to it. EPA has retained submission of the annual reports in the final rule since experience with the requirement to maintain the information at a facility proved conclusively to EPA that submission of the information was what was needed to target inspections for best results with the limited resources available. Further, EPA has found from experience under RCRA that so few exception or discrepancy reports are submitted to EPA that such reports would be inadequate for use in targeting inspections. EPA accepts OMB's suggestion that a small amount of time be added to the reporting burden for submission of the annual report and is adding 1 hour to the reporting burden estimate for submitting an annual report.

In addition, OMB instructed EPA to respond to public comments and consider alternatives to the closure plan and financial responsibility requirements in the proposed rule that might be less burdensome yet still create incentives for proper disposal and/or hold commercial storers responsible for cleanup. In particular, OMB suggested considering requiring storage facilities to disclose their closure plans and financial assurance mechanism plans during contract negotiations with PCB generators. EPA always gives consideration to comments received on a proposed rule, and in response to comments has made some adjustments to the closure plan and financial assurance requirements which are retained in the final rule. Most comments supported the closure plans and financial assurance requirements; none of them suggested that EPA involve itself in contract negotiations between generators and commercial storers or disposers. The closure plan requirements and financial assurance remain in the final rule.

The information collection requirements of this rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, and have been approved under OMB control number 2070–0112.

The public reporting burden for this collection of information is estimated to average 1.5 hours per response for the notification requirements, 3 hours per response for the Exception and Discrepancy Reporting requirements, 1 hour for the annual report, and 325 to 460 hours per response (for only an estimated 75 of the total 5,651 respondents) for the financial assurance and closure requirements. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the needed data, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Chief, Information Policy Branch (PM–223), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked ATTENTION: Desk Officer for EPA.

List of Subjects in 40 CFR Part 761

Environmental protection, Hazardous materials, Labeling, Polychlorinated biphenyls, Reporting and recordkeeping requirements.

Dated: November 29, 1989.

William K. Reilly,

Administrator.

Therefore, 40 CFR chapter I, part 761 is amended as follows:

1. The authority citation for part 761 is revised to read as follows:

PART 761—[AMENDED]

Authority: 15 U.S.C. 2605, 2607, 2611, 2614, and 2616.

2. In § 761.3 by adding and alphabetically inserting definitions for "annual document log," "annual report," "certification," "commercial storer of PCB waste," "designated facility," "disposer of PCB waste," "EPA identification number," "generator of PCB waste," "laboratory," "manifest," "PCB waste(s)," "transfer facility," and "transporter of PCB waste" to read as follows:

§ 761.3 Definitions.

* * * * *

"Annual document log" means the detailed information maintained at the facility on the PCB waste handling at the facility.

* * * * *

"Annual report" means the written document submitted each year by each disposer and commercial storer of PCB waste to the appropriate EPA Regional Administrator. The annual report is a brief summary of the information included in the annual document log.

* * * * *

"Certification" means a written statement regarding a specific fact or representation that contains the following language:

Under civil and criminal penalties of law for the making or submission of false or fraudulent statements or representations (18 U.S.C. 1001 and 15 U.S.C. 2615), I certify that the information contained in or accompanying this document is true, accurate, and complete. As to the identified section(s) of this document for which I cannot personally verify truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate, and complete.

* * * * *

"Commercial storer of PCB waste" means the owner or operator of each facility which is subject to the PCB storage facility standards of § 761.65, and who engages in storage activities involving PCB waste generated by others, or PCB waste that was removed while servicing the equipment owned by others and brokered for disposal. The receipt of a fee or any other form of compensation for storage services is not necessary to qualify as a commercial storer of PCB waste. It is sufficient under this definition that the facility stores PCB waste generated by others or the facility removed the PCB waste while servicing equipment owned by others. A generator who stores only the generator's own waste is subject to the storage requirements of § 761.65, but is not required to seek approval as a commercial storer. If a facility's storage of PCB waste at no time exceeds 500 gallons of PCBs, the owner or operator is not required to seek approval as a commercial storer of PCB waste.

"Designated facility" means the off-site disposer or commercial storer of PCB waste designated on the manifest as the facility that will receive a manifested shipment of PCB waste.

* * * * *

"Disposer of PCB waste," as the term is used in subparts J and K of this part, means any person who owns or operates a facility approved by EPA for the disposal of PCB waste which is regulated for disposal under the requirements of subpart D of this part.

* * * * *

"EPA identification number" means the 12-digit number assigned to a facility by EPA upon notification of PCB waste activity under § 761.205.

* * * * *

"Generator of PCB waste" means any person whose act or process produces PCBs that are regulated for disposal under subpart D of this part, or whose act first causes PCBs or PCB Items to become subject to the disposal requirements of subpart D of this part, or who has physical control over the PCBs when a decision is made that the use of the PCBs has been terminated and therefore is subject to the disposal requirements of subpart D of this part. Unless another provision of this part specifically requires a site-specific meaning, "generator of PCB waste" includes all of the sites of PCB waste generation owned or operated by the person who generates PCB waste.

* * * * *

"Laboratory" means a facility that analyzes samples for PCBs and is unaffiliated with any entity whose activities involve PCBs.

* * * * *

"Manifest" means the shipping document EPA form 8700–22 and any continuation sheet attached to EPA form 8700–22, originated and signed by the generator of PCB waste in accordance with the instructions included with the form and subpart K of this part.

* * * * *

"PCB waste(s)" means those PCBs and PCB Items that are subject to the disposal requirements of subpart D of this part.

* * * * *

"Transfer facility" means any transportation-related facility including loading docks, parking areas, and other similar areas where shipments of PCB waste are held during the normal course of transportation. Transport vehicles are not transfer facilities under this definition, unless they are used for the storage of PCB waste, rather than for actual transport activities. Storage areas for PCB waste at transfer facilities are subject to the storage facility standards of § 761.65, but such storage areas are exempt from the approval requirements of § 761.65(d) and the recordkeeping requirements of § 761.180, unless the same PCB waste is stored there for a period of more than 10 consecutive days between destinations.

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"Transporter of PCB waste" means, for the purposes of subpart K of this part, any person engaged in the transportation of regulated PCB waste by air, rail, highway, or water for purposes other than consolidation by a generator.

* * * * *

3. In § 761.65 by adding paragraphs (d), (e), (f), (g), (h), and (i) and the OMB control number to the end of the section to read as follows:

§ 761.65 Storage for disposal.

* * * * *

(d) *Approval of commercial storers of PCB waste.* (1) All commercial storers of PCB waste shall have interim approval to operate commercial facilities for the storage of PCB waste until [insert date 224 days after date of publication in the Federal Register]. Commercial storers of PCB waste are prohibited from storing any PCB waste at their facilities after [insert date 224 days after date of publication in the Federal Register] unless they have submitted by [insert date 224 days after date of publication in the Federal Register] a complete application for a final storage approval under paragraph (d)(2) of this section. The period of interim approval shall continue until the Regional Administrator (or the Director of the Exposure Evaluation Division (Director, EED) in cases involving commercial storage ancillary to a facility approved for disposal by the Director, EED) makes a final decision on the storage application at which time such interim approval shall terminate.

(2) The Regional Administrator for the region in which the storage facility is located (or the Director, EED, if the commercial storage area is ancillary to a facility approved for disposal by the Director, EED) shall grant written, final approval to engage in the commercial storage of PCB waste upon a determination by the Regional Administrator or the Director, EED, that the criteria in paragraph (d)(2)(i) through (d)(2)(vii) of this section have been met by the applicant:

(i) The applicant, its principals, and its key employees responsible for the establishment or operation of the commercial storage facility are qualified to engage in the business of commercial storage of PCB waste.

(ii) The facility possesses the capacity to handle the quantity of PCB waste which the owner or operator of the facility has estimated will be the maximum quantity of PCB waste that will be handled at any one time at the facility.

(iii) The owner or operator of the facility has certified compliance with the storage facility standards in paragraphs (b) and (c)(7) of this section.

(iv) The owner or operator has developed a written closure plan for the facility that is deemed acceptable by the Regional Administrator (or the Director, EED, if the commercial storage is ancillary to a disposal facility permitted by the Director, EED) under the closure plan standards of paragraph (e) of this section.

(v) The owner or operator has included in the application for final approval a demonstration of financial responsibility for closure that meets the financial responsibility standards of paragraph (g) of this section.

(vi) The operation of the storage facility will not pose an unreasonable risk of injury to health or the environment.

(vii) The environmental compliance history of the applicant, its principals, and its key employees shall be deemed to constitute a sufficient basis for denial of approval whenever in the judgment of the Regional Administrator (or Director, EED) two or more related civil violations or a single environmental criminal conviction evidence a pattern or practice of non compliance that demonstrate the applicant's unwillingness or inability to achieve and maintain its operations in a compliance status.

(3) Applicants for storage approvals shall submit a written application that includes any relevant information bearing upon the qualifications of the facility's principals and key employees to engage in the business of commercial storage of PCB wastes. This information shall include, but is not limited to:

(i) The identification of the owner and the operator of the facility, including all general partners of a partnership, any limited partner of a partnership, any stockholder of a corporation or any participant in any other type of business organization or entity who owns or controls, directly or indirectly, more than 5 percent of each partnership, corporation, or other business organization and all officials of the facility who have direct management responsibility for the facility.

(ii) The identification of the person responsible for the overall operations of the facility (i.e., a plant manager, superintendent, or a person of similar responsibility) and the supervisory employees who are or will be responsible for the operation of the facility.

(iii) Information concerning the technical qualifications and experience of the persons responsible for the overall operation of the facility and the employees responsible for handling PCB waste or other wastes.

(iv) Information concerning any past State or Federal environmental violations involving the same business or another business with which the principals or supervisory employees were affiliated directly that occurred within 5 years preceding the date of submission and which relate directly to violations that resulted in either a civil penalty (irrespective of whether the matter was disposed of by an adjudication or by a without prejudice settlement) or judgment of conviction whether entered after trial or a plea, either of guilt or nolo contendere or civil injunctive relief and involved storage, disposal, transport, or other waste handling activities.

(v) A list of all companies currently owned or operated in the past by the principals or key employees identified in paragraphs (d)(3)(i) and (d)(3)(ii) of this section that are or were directly or indirectly involved with waste handling activities.

(vi) The owner's or operator's estimate of maximum PCB waste quantity to be handled at the facility.

(vii) A written statement certifying compliance with paragraph (b) or (c) of this section and containing a certification as defined in § 761.3.

(viii) A written closure plan for the facility, as described in paragraph (e) of this section.

(ix) The current closure cost estimate for the facility, as described in paragraph (f) of this section.

(x) A demonstration of financial responsibility to close the facility, as described in paragraph (g) of this section.

(4) The written approval issued by the Regional Administrator (or the Director, EED, if the commercial storage area is ancillary to a disposal facility approved by the Director, EED) shall include, but not be limited to, the following:

(i) The determination that the applicant has satisfied the requirements set forth in paragraph (d)(2) of this section, and a brief statement setting forth the basis for the determination.

(ii) Incorporation of the closure plan submitted by the facility owner or operator and approved by the Regional Administrator (or the Director, EED, if the commercial storage area is ancillary to a disposal facility approved by the Director, EED).

(iii) A condition imposing a maximum PCB storage capacity which the facility shall not exceed during its PCB waste storage operations. The maximum storage capacity imposed under this condition shall not be greater than the estimated maximum inventory of PCB waste included in the owner's or operator's application for final approval.

(iv) Such other conditions as deemed necessary by the Regional Administrator (or the Director, EED, if the commercial storage area is ancillary to a disposal facility approved by the Director, EED) to ensure that the operations of the PCB storage facility will not pose an unreasonable risk of injury to health or the environment.

(5) Storage areas at transfer facilities are exempt from the requirement to obtain approval as a commercial storer of PCB waste under this paragraph, unless the same PCB waste is stored at these facilities for a period of time greater than 10 consecutive days between destinations.

(6) Storage areas at RCRA-permitted facilities may be exempt from the separate TSCA storage approval requirements in this paragraph (d) upon a showing to the Regional Administrator's satisfaction that the facility's existing RCRA closure plan is substantially equivalent to this rule's closure plan standards, and that such facility's closure cost estimate and financial assurance demonstration account for maximum PCB waste inventories, and the requirements of paragraph (d)(3)(i) through (d)(3)(v) and (d)(3)(vii) of this section are met. A pay-in period of longer than 3 years after approval of the storage facility pursuant to this rule, will be acceptable to EPA if that pay-in period has already been established for a valid RCRA facility or previously approved TSCA facility.

(7) Storage areas ancillary to TSCA-approved disposal facilities may be exempt from a separate facility approval provided all of the following conditions are met:

(i) The current disposal approval contains an expiration date.

(ii) The current disposal approval's closure and financial responsibility conditions specifically extend to storage areas ancillary to disposal.

(iii) The current disposal approval's closure and financial responsibility conditions provide for annual adjustments for inflation, and for modification when changes in operation would affect closure costs.

(iv) The current disposal approval contains conditions on closure and financial responsibility that are at least as stringent as those in paragraphs (e) and (g) of this section. However, the provision for a 3-year closure trust pay-in period, as specified in paragraph (g)(1)(i) of this section, would be waived in a case in which an approved TSCA facility or RCRA facility that covers PCB storage has a longer pay-in period for the trust.

(v) The current disposal approval satisfies the requirements of paragraph (d)(3)(i) through (d)(3)(v) of this section.

(8) The approval of any existing TSCA-approved disposal facility ancillary to a commercial storage facility that is deficient in any of the conditions of paragraph (d)(7)(i) through (d)(7)(v) of this section shall be called in by the Regional Administrator or the Director, EED, if it was the Director, EED who issued it. The approval shall be modified to meet the requirements of paragraph (d)(7) of this section within 180 days of the effective date of this final rule, or a separate application for approval of the storage facility may be submitted to the Regional Administrator or the Director, EED, in the cases where the Director, EED issued the approval.

(e) *Closure.* (1) A commercial storer of PCB waste shall have a written closure plan that identifies the steps that the owner or operator of the facility shall take to close the PCB waste storage facility in a manner that eliminates the potential for post-closure releases of PCBs which may present an unreasonable risk to human health or the environment. An acceptable closure plan must include, at a minimum, all of the following:

(i) A description of how the PCB storage areas of the facility will be closed in a manner that eliminates the potential for post-closure releases of PCBs into the environment.

(ii) An identification of the maximum extent of storage operations that will be open during the active life of the facility, including an identification of the extent of PCB storage operations at the facility relative to other wastes that will be handled at the facility.

(iii) An estimate of the maximum inventory of PCB wastes that could be handled at one time at the facility over its active life, and a detailed description of the methods or arrangements to be used during closure for removing, transporting, storing, or disposing of the facility's inventory of PCB waste, including an identification of any off-site facilities that will be used.

(iv) A detailed description of the steps needed to remove or decontaminate PCB waste residues and contaminated containment system components, equipment, structures, and soils during closure in accordance with the levels specified in the PCB Spills Cleanup Policy in subpart G of this part, including a description of the methods for sampling and testing of surrounding soils, and the criteria for determining the extent of removal or decontamination.

(v) A detailed description of other activities necessary during the closure period to ensure that any post-closure releases of PCBs will not present unreasonable risks to human health or the environment. This includes activities such as ground-water monitoring, run-on and run-off control, and facility security.

(vi) A schedule for closure of each area of the facility where PCB waste is stored or handled, including the total time required to close each area of PCB waste storage or handling, and the time required for any intervening closure activities.

(vii) An estimate of the expected year of closure of the PCB waste storage areas, if a trust fund is opted for as the financial mechanism.

(2) A written closure plan determined to be acceptable by the Regional Administrator (or the Director, EED, if the commercial storage area is ancillary to a disposal facility approved by the Director, EED) under this section shall become a condition of any approval granted under paragraph (d) of this section.

(3) A separate and new closure plan need not be submitted in cases where a facility is currently covered by a TSCA approval or a RCRA permit, upon a showing to the satisfaction of the Regional Administrator (or the Director, EED, if the commercial storage area is ancillary to a disposal facility approved by the Director, EED) that the existing closure plan is substantially equivalent to closure plans required under paragraphs (d) through (g) of this section, and that the plan adequately accounts for PCB waste inventories.

(4) The commercial storer of PCB waste shall submit a written request to the Regional Administrator (or the Director, EED, if he approved the closure plan) for a modification to its storage approval to amend its closure plan, whenever:

(i) Changes in ownership, operating plans, or facility design affect the existing closure plan.

(ii) There is a change in the expected date of closure, if applicable.

(iii) In conducting closure activities, unexpected events require a modification of the approved closure plan.

(5) The Regional Administrator or the Director, EED, if he approved the closure plan, may modify the existing closure plan under the conditions described in paragraph (e)(4) of this section.

(6) Commercial storers of PCB waste shall comply with the following closure schedule:

(i) The commercial storer shall notify in writing the Regional Administrator or

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the Director, EED if he approved the closure plan, at least 60 days prior to the date on which final closure of its PCB storage facility is expected to begin.

(ii) The date when a commercial storer of PCB waste "expects to begin closure" shall be no later than 30 days after the date on which the storage facility received its final quantities of PCB waste. For good cause shown, the Regional Administrator or the Director, EED if he approved the closure plan, may extend the date for commencement of closure for an additional 30-day period.

(iii) Within 90 days after receiving the final quantity of PCB waste for storage, a commercial storer of PCB waste shall remove all PCB waste in storage at the facility from the facility in accordance with the approved closure plan. For good cause shown, the Regional Administrator or the Director, EED if he approved the closure plan, may approve a reasonable extension to the period for removal of the PCB waste.

(iv) A commercial storer of PCB waste shall complete closure activities in accordance with the approved closure plan and within 180 days after receiving the final quantity of PCB waste for storage at the facility. For good cause shown, the Regional Administrator or Director, EED if he approved the closure plan, may approve a reasonable extension to the closure period.

(7) During the closure period, all contaminated system component equipment, structures, and soils shall be disposed of in accordance with the disposal requirements of subpart D of this part, or, if applicable, decontaminated in accordance with the levels specified in the PCB Spills Cleanup Policy at subpart G of this part. When PCB waste is removed from the storage facility during closure, the owner or operator becomes a generator of PCB waste subject to the generator requirements of subpart J of this part.

(8) Within 60 days of completion of closure of each facility for the storage of PCB waste, the commercial storer of PCB waste shall submit to the Regional Administrator (or Director, EED if he approved the closure plan), by registered mail, a certification that the PCB storage facility has been closed in accordance with the approved closure plan. The certification shall be signed by the owner or operator and by an independent registered professional engineer.

(f) *Closure cost estimate.* (1) A commercial storer of PCB wastes shall have a detailed estimate, in current dollars, of the cost of closing the facility in accordance with its approved closure plan. The closure cost estimate shall be in writing, be certified by the person preparing it (using the certification defined in § 761.3) and comply with all of the following criteria:

(i) The closure cost estimate shall equal the cost of final closure at the point in the PCB storage facility's active life when the extent and manner of PCB storage operations would make closure the most expensive, as indicated by the facility's closure plan.

(ii) The closure cost estimate shall be based on the costs to the owner or operator of hiring a third party to close the facility, and the third party shall not be either a corporate parent or subsidiary of the owner or operator, or member in joint ownership of the facility.

(iii) The owner or operator shall include in the estimate the current market costs for off-site commercial disposal of the facility's maximum estimated inventory of PCB wastes, except that on-site disposal costs may be used if on-site disposal capacity will exist at the facility at all times over the life of the PCB storage facility.

(iv) The closure cost estimate may not incorporate any salvage value that may be realized with the sale of wastes, facility structures or equipment, land, or other assets associated with the facility at the time of closure.

(2) During the active life of the PCB storage facility, the commercial storer of PCB waste shall adjust annually for inflation the closure cost estimate within 60 days prior to the anniversary date of the establishment of the financial instruments used to demonstrate financial responsibility for closure, except that owners or operators who use the financial test or corporate guarantee shall adjust their closure cost estimates for inflation within 30 days after the close of the storer's fiscal year. The adjustment may be made by recalculating the maximum costs of closure in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce in its *Survey of Current Business*. The Implicit Price Deflator for Gross National Product is included in a monthly publication titled *Economic Indicators*, which is available from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. The inflation factor used in the latter method is the result of dividing the latest published annual Deflator by the Deflator for the previous year. The adjustment to the closure cost estimate is then made by multiplying the most recent closure cost estimate by the latest inflation factor.

(3) Where the Regional Administrator (or the Director, EED, if he approved the closure plan) approves a modification to the facility's closure plan, and that modification increases the cost of closure, the owner or operator shall revise the closure cost estimate no later than 30 days after the modification is approved. Any such revision shall also be adjusted for inflation in accordance with paragraph (f)(2) of this section.

(4) The owner or operator of the facility shall keep at the facility during its operating life the most recent closure cost estimate, including any adjustments resulting from inflation or from modifications to the closure plan.

(g) *Financial assurance for closure.* A commercial storer of PCB waste shall establish financial assurance for closure of each PCB storage facility that he owns or operates. In establishing financial assurance for closure, the commercial storer of PCB waste may choose from the following financial assurance mechanisms or any combination of mechanisms:

(1) The "closure trust fund," as specified in § 264.143(a) of this chapter, except for paragraph (a)(3) of § 264.143. For purposes of this paragraph, the following provisions also apply:

(i) Payments into the trust fund shall be made annually by the owner or operator over the remaining operating life of the facility as estimated in the closure plan, or over 3 years, whichever period is shorter. This period of time is hereafter referred to as the "pay-in period." For an existing facility, the first payment must be made within 30 calendar days after EPA has notified the facility of its conditional approval. Interim approval to operate is canceled and the application is denied if EPA does not receive verification that the payment was made in that 30-day period.

(ii) For a new facility, the first payment into the closure trust fund shall be made before EPA grants final approval of the application and before the facility may accept the initial shipment of PCB waste for commercial storage. A receipt from the trustee shall be submitted by the owner or operator to the Regional Administrator (or the Director, EED, if the commercial storage area is ancillary to a disposal facility approved by the Director EED) before this initial delivery of PCB waste. The first payment shall be at least equal to the current closure cost estimate, divided by the number of years in the pay-in period, except as provided in paragraph (g)(7) of this section for multiple mechanisms. Subsequent payments shall be made no later than 30 days after each anniversary date of the first payment. The amount of each subsequent payment shall be determined by subtracting the current value of the trust fund from the current closure cost estimate, and dividing this difference by the number of years remaining in the pay-in period.

(iii) If an owner or operator of a facility existing on the effective date of this paragraph establishes a trust fund to meet the financial assurance requirements of this paragraph, and the value of the trust fund is less than the current closure cost estimate when a final approval is granted for the facility, the amount of the current closure cost estimate still to be paid into the trust fund shall be paid in over the pay-in period as defined in paragraph (g)(1)(i) of this section. Payments shall continue to be made no later than 30 days after each anniversary date of the first payment made into the trust fund. The amount of each payment shall be determined by subtracting the current value of the trust fund from the current closure cost estimate, and dividing this difference by the number of years remaining in the pay-in period.

(iv) The submission of a trust agreement with the wording specified in § 264.151(a)(1) of this chapter, including any reference to hazardous waste management facilities, shall be deemed to be in compliance with the requirement to submit a trust agreement under this subpart.

(2) The "surety bond guaranteeing payment into a closure trust fund," as specified in § 264.143(b) of this chapter, including the use of the surety bond instrument specified at § 264.151(b) of this chapter and the standby trust specified at § 264.143(b)(3) of this chapter. The use of the surety bonds, surety bond instruments, and standby trust agreements specified in § § 264.143(b) and 264.151(b) of this chapter shall be deemed to be in compliance with this subpart.

(3)(i) The "surety bond guaranteeing performance of closure," as specified at § 264.143(c) of this chapter, except for paragraph (c)(5) of § 264.143 of this chapter. The submission and use of the surety bond instrument specified at § 264.151(c) of this chapter and the standby trust specified at § 264.143(c)(3) of this chapter shall be deemed to be in compliance with the requirements under this subpart relating to the use of surety bonds and standby trust funds.

(ii) For the purposes of this paragraph, and under the terms of the bond, the surety shall become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Liability is established by a final administrative determination pursuant to section 16 of TSCA that the owner or operator has failed to perform final closure in accordance with the closure plan and other approval or regulatory requirements when required to do so.

(4)(i) The "closure letter of credit" specified in § 264.143(d) of this chapter, except for paragraph (d)(8). The submission and use of the irrevocable letter of credit instrument specified in § 264.151(d) of this chapter and the standby trust specified in § 264.143(d)(3) of this chapter shall be deemed to be in compliance with the requirements of this subpart relating to the use of letters of credit and standby trust funds.

(ii) For the purposes of this paragraph, the Regional Administrator (or the Director, EED, if the commercial storage area is ancillary to a disposal facility approved by the Director, EED) may draw on the letter of credit following a final administrative determination pursuant to section 16 of TSCA that the owner or operator has failed to perform final closure in accordance with the closure plan and other approval or regulatory requirements when required to do so.

(5) "Closure insurance," as specified in § 264.143(e) of this chapter, utilizing the certificate of insurance for closure specified at § 264.151(e) of this chapter. The use of closure insurance as specified in § 264.143(e) of this chapter and the submission and use of the certificate of insurance specified in § 264.151(e) of this chapter shall be deemed to be in compliance with the requirements of this subpart relating to the use of closure insurance.

(6) The "financial test and corporate guarantee for closure," as described in § 264.143(f) of this chapter, including a letter signed by the owner's or operator's chief financial officer as specified at § 264.151(f) of this chapter and, if applicable, the written corporate guarantee specified at § 264.151(h) of this chapter. The use of the financial test and corporate guarantee specified in § 264.143(f) of this chapter, the submission and use of the letter specified in § 264.151(f) of this chapter, and the submission and use of the written corporate guarantee specified at § 264.151(h) of this chapter shall be deemed to be in compliance with the requirements of this subpart relating to the use of financial tests and corporate guarantees.

(7) The use of multiple financial mechanisms, as specified in § 264.143(g) of this chapter is permitted.

(h) *Release of owner or operator.* Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been completed in accordance with the approved closure plan, the Regional Administrator or the Director, EED, if he approved the closure plan, will notify the owner or operator in writing that the owner or operator is no longer required by this section to maintain financial assurance for final closure of the facility, unless the Regional Administrator or the Director, EED, if he approved the closure plan, has reason to believe that final closure has not been completed in accordance with the approved closure plan. The Regional Administrator or the Director, EED, if he approved the closure plan, shall provide the owner or operator with a detailed written statement stating the reasons why he believed closure was not conducted in accordance with the approved closure plan.

(i) *Laboratories and samples.* (1) A laboratory is conditionally exempt from the notification and approval requirements for a commercial storer under § 761.65 (d) through (h) when it stores samples held for disposal in a facility that complies with the standards in § 761.65(b)(1)(i) through (b)(1)(iv).

(2) A laboratory sample is exempt from the manifesting requirements in § 761.208 when:

(i) The sample is being transported to a laboratory for the purpose of testing.

(ii) The sample is being transported back to the sample collector after testing.

(iii) The sample is being stored by the sample collector before transport to a laboratory for testing.

(iv) The sample is being stored in a laboratory before testing.

(v) The sample is being stored in a laboratory after testing but before it is returned to the sample collector.

(vi) The sample is being stored temporarily in the laboratory after testing for a specific purpose (for example, until conclusion of a court case or enforcement action where further testing of the sample may be necessary).

(3) In order to qualify for the exemption in paragraph (d)(2)(i) and (d)(2)(ii) of this section, a sample collector shipping samples to a laboratory and a laboratory returning samples to a sample collector must:

(i) Comply with applicable U.S. Department of Transportation (DOT) or U.S. Postal Service (USPS) shipping requirements, found respectively in 49 CFR 173.345 and U.S. Postal Regulations 652.2 and 652.3.

(ii) Assure that the following information accompanies the sample:

(A) The sample collector's name, mailing address, and telephone number.

(B) The laboratory's name, mailing address, and telephone number.

(C) The quantity of the sample

paragraph. Annual records (manifests and certificates of disposal) shall be

(D) A unique number identifying each PCB Article Container, a description of

PCBs and PCB Items that were handled as PCB waste at the facility. The written annual document log shall be prepared

(A) For bulk PCB waste (*e.g.*, in a tanker or truck), its weight in kilograms, the first date PCB waste was placed in

5, 1990 and ending December 31, 1990. The annual report shall contain no confidential business information. The

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(B) The laboratory's name, mailing address, and telephone number.
(C) The quantity of the sample.
(D) The date of shipment.
(E) A description of the sample.
(iii) Package the sample so that it does not leak, spill, or vaporize from its packaging.

(4) When the concentration of the PCB sample has been determined, and its use is terminated, the sample must be properly disposed. A laboratory must either manifest the PCB waste to a disposer or commercial storer, as required under § 761.208, retain a copy of each manifest, as required under § 761.209, and follow up on exception reporting, as required under § 761.215 (a) and (b), or return the sample to the sample collector who must then properly dispose of the sample. If the laboratory returns the sample to the sample collector, the laboratory must comply with the shipping requirements set forth in paragraph (i)(3)(i) through (i)(3)(iii) of this section.

(j) *States and the Federal Government.* States and the Federal Government are exempt from the requirements of paragraphs (f) and (g) of this section.

(Approved by the Office of Management and Budget under control number 2070-0112)

Subpart J—General Records and Reports

4. By revising the heading for subpart J to read as set forth above.

5. By revising paragraphs (a) and (b) and adding the OMB control number to the end of § 761.180 to read as follows:

§ 761.180 Records and monitoring.

* * * * *

(a) *PCBs and PCB Items in service or projected for disposal.* Beginning February 5, 1990, each owner or operator of a facility, other than a commercial storer or a disposer of PCB waste, using or storing at any one time at least 45 kilograms (99.4 pounds) of PCBs contained in PCB Container(s), or one or more PCB Transformers, or 50 or more PCB Large High or Low Voltage Capacitors shall develop and maintain at the facility, or a central facility provided they are maintained at that facility, all annual records and the written annual document log of the disposition of PCBs and PCB Items. The written annual document log must be prepared for each facility by July 1 covering the previous calendar year (January through December). The annual document log shall be maintained for at least 3 years after the facility ceases using or storing PCBs and PCB Items in the quantities prescribed in this paragraph. Annual records (manifests and certificates of disposal) shall be maintained for the same period. The annual records and the annual document log shall be available for inspection at the facility where they are maintained by authorized representatives of EPA during normal business hours, and each owner or operator of a facility subject to these requirements shall know the location of these records. All records and annual documents required to be prepared and maintained by this section prior to February 5, 1990 shall continue to be maintained at the facility for the same time as the annual records and the annual document log. The annual document required for 1989 shall cover the period from January 1, 1989 to February 5, 1990.

(1) The annual records shall include the following:
(i) All signed manifests generated by the facility during the calendar year.
(ii) All Certificates of Disposal that have been received by the facility during the calendar year.

(2) The written annual document log shall include the following:
(i) The name, address, and EPA identification number of the facility covered by the annual document log and the calendar year covered by the annual document log.
(ii) The unique manifest number of every manifest generated by the facility during the calendar year, and from each manifest and for unmanifested waste that may be stored at the facility, the following information:
(A) For bulk PCB waste (*e.g.*, in a tanker or truck), its weight in kilograms, the first date it was removed from service for disposal, the date it was placed into transport for off-site storage or disposal, and the date of disposal, if known.
(B) The serial number (if available) or other means of identifying each PCB Article (*e.g.*, transformer or capacitor), the weight in kilograms of the PCB waste in each transformer or capacitor, the date it was removed from service for disposal, the date it was placed in transport for off-site storage or disposal, and the date of disposal, if known.
(C) A unique number identifying each PCB Container, a description of the contents of each PCB Container, such as liquid, soil, cleanup debris, etc., including the total weight of the material in kilograms in each PCB Container, the first date material was placed in each PCB Container for disposal, and the date each PCB Container was placed in transport for off-site storage or disposal, and the date of disposal if known.
(D) A unique number identifying each PCB Article Container, a description of the contents of each PCB Article Container, such as pipes, capacitors, electric motors, pumps, etc., including the total weight in kilograms of the contents of each PCB Article Container, the first date a PCB Article was placed into each PCB Article Container for disposal, the total weight of the PCB Articles in kilograms in each PCB Article Container, and the date the PCB Article Container was placed in transport for off-site storage or disposal, and the date of disposal if known.
(iii) The total number by specific type of PCB Articles and the total weight in kilograms of PCBs in PCB Articles, the total number of PCB Article Containers and total weight in kilograms of the contents of PCB Article Containers, the total number of PCB Containers and the total weight in kilograms of the contents of PCB Containers, and the total weight in kilograms of bulk PCB waste that was placed into storage for disposal or disposed during the calendar year.
(iv) The total number of PCB Transformers and total weight in kilograms of PCBs contained in the transformers remaining in service at the end of the calendar year.
(v) The total number of Large High or Low Voltage PCB Capacitors remaining in service at the end of the calendar year.
(vi) The total weight in kilograms of any PCBs and PCB Items in PCB Containers, including the identification of container contents, remaining in service at the facility at the end of the calendar year.
(vii) For any PCBs or PCB item received from or shipped to another facility owned or operated by the same generator, the information required under paragraph (a)(2)(ii)(A) through (a)(2)(ii)(D) of this section.
(viii) A record of each telephone call, or other means of verification agreed upon by both parties, made to each designated commercial storer or designated disposer to confirm receipt of PCB waste transported by an independent transporter, as required by § 761.208.

(b) *Disposers and commercial storers of PCB waste.* Beginning February 5, 1990, each owner or operator of a facility (including high efficiency boiler operations) used for the commercial storage or disposal of PCBs and PCB Items shall maintain annual records on the disposition of all PCBs and PCB items at the facility and prepare and maintain a written annual document log that includes the information required by paragraphs (b)(2) of this section for

PCBs and PCB Items that were handled as PCB waste at the facility. The written annual document log shall be prepared by July 1 for the previous calendar year (January through December). The written annual document log shall be maintained at each facility for at least 3 years after the facility is no longer used for the storage or disposal of PCBs and PCB Items except that, in the case of chemical waste landfills, the annual document log shall be maintained at least 20 years after the chemical waste landfill is no longer used for the disposal of PCBs and PCB Items. The annual records shall be maintained for the same period. The annual records and written annual document log shall be available at the facility for inspection by authorized representatives of the EPA. All records and annual documents required to be prepared and maintained by this section prior to February 5, 1990 shall continue to be maintained at the facility for the same time as the annual records and the annual document log. The annual document for 1989 shall cover the period from January 1, 1989 to February 5, 1990. From the written annual document log the owner or operator of a facility must prepare the annual report containing the information required by paragraphs (b)(3)(i) through (b)(3)(vi) of this section for PCBs and PCB Items that were handled as PCB waste at the facility during the previous calendar year (January through December). The annual report must be submitted by July 15 of each year for the preceding calendar year. If the facility ceases commercial PCB storage or disposal operations, the owner or operator of the facility shall provide at least 60 days advance written notice to the Regional Administrator for the region in which the facility is located of the date the facility intends to begin closure.

(1) The annual records shall include the following:
(i) All signed manifests generated or received at the facility during the calendar year.
(ii) All Certificates of Disposal that have been generated or received by the facility during the calendar year.

(2) The written annual document log shall include the following:
(i) The name, address, and EPA identification number of the storage or disposal facility covered by the annual document log and the calendar year covered by the annual document log.
(ii) For each manifest generated or received by the facility during the calendar year, the unique manifest number and the name and address of the facility that generated the manifest the following information:
(A) For bulk PCB waste (*e.g.*, in a tanker or truck), its weight in kilograms, the first date PCB waste was placed in the tanker or truck for disposal, the date it was received at the facility, the date it was placed in transport for off-site disposal (if applicable), and the date of disposal, if known.
(B) The serial number or other means of identifying each PCB Article, not in a PCB Container or PCB Article Container, the weight in kilograms of the PCB waste in the PCB Article, the date it was removed from service for disposal, the date it was received at the facility, the date it was placed in transport for off-site disposal (if applicable), and the date of disposal (if known).
(C) The unique number assigned by the generator identifying each PCB Container, a description of the contents of each PCB Container, such as liquid, soil, cleanup debris, etc., including the total weight of the PCB waste in kilograms in each PCB Container, the first date PCB waste was placed in each PCB Container for disposal, the date each PCB Container was placed in transport for off-site storage or disposal (as applicable), and the date the PCB Container was disposed (if known).
(D) The unique number assigned by the generator identifying each PCB Article Container, a description of the contents of each PCB Article Container, such as pipes, capacitors, electric motors, pumps, etc., including the total weight in kilograms of the PCB waste in each PCB Article Container, the first date a PCB Article was placed in each PCB Article Container for disposal, the date each PCB Article Container was placed in transport for off-site storage or disposal (as applicable), and the date the PCB Article Container was disposed (if known).
(E) Disposers of PCB waste shall include the confirmed date of disposal for items in paragraphs (b)(2)(ii)(A) through (b)(2)(ii)(D) of this section.
(iii) For any PCB waste disposed at a facility that generated the PCB waste or any PCB waste that was not manifested to the facility, the information required under paragraph (b)(2)(ii)(A) through (B)(2)(ii)(E) of this section.
(3) The owner or operator of a PCB disposal or commercial storage facility shall submit an annual report, which briefly summarizes the records and annual document log required to be maintained and prepared under paragraphs (b)(1) and (b)(2) of this section, to the Regional Administrator of the EPA region in which the facility is located by July 15 of each year, beginning with July 15, 1991. The first annual report submitted on July 15, 1991, shall be for the period starting February 5, 1990 and ending December 31, 1990. The annual report shall contain no confidential business information. The annual report shall consist of the information listed in paragraphs (b)(3)(i) through (b)(3)(vi) of this section.
(i) The name, address, and EPA identification number of the facility covered by the annual report for the calendar year.
(ii) A list of the numbers of all signed manifests of PCB waste initiated or received by the facility during that year.
(iii) The total weight in kilograms of bulk PCB waste, PCB waste in PCB Transformers, PCB waste in PCB Large High or Low Voltage Capacitors, PCB waste in PCB Article Containers, and PCB waste in PCB Containers in storage at the facility at the beginning of the calendar year, received or generated at the facility, transferred to another facility, or disposed of at the facility during the calendar year. The information must be provided for each of these categories, as appropriate.
(iv) The total number of PCB Transformers, the total number of PCB Large High or Low Voltage Capacitors, the total number of PCB Article Containers, and the total number of PCB Containers in storage at the facility at the beginning of the calendar year, received or generated at the facility, transferred to another facility, or disposed of at the facility during the calendar year. The information must be provided for each of these categories, as appropriate.
(v) The total weight in kilograms of each of the following PCB categories: bulk PCB waste, PCB waste in PCB Transformers, PCB waste in PCB Large High or Low Voltage Capacitors, PCB waste in PCB Article Containers, and PCB waste in PCB Containers remaining in storage for disposal at the facility at the end of the calendar year.
(vi) The total number of PCB Transformers, the total number of PCB Large High or Low Voltage Capacitors, the total number of PCB Article Containers, and the total number of PCB Containers remaining in storage for disposal at the facility at the end of the calendar year.
(vii) The requirement to submit annual reports to the Regional Administrator continues until the submission of the annual report for the calendar year during which the facility ceases PCB storage or disposal operations. Storage operations have not ceased until all PCB waste, including any PCB waste generated during closure, has been removed from the facility.
(4) Whenever a commercial storer of PCB waste accepts PCBs or PCB Items

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at his storage facility and transfers the PCB waste off-site to another facility for storage or disposal, the commercial storer shall record the following information for each shipment:
(i) Identify the PCB waste by the identification number "40 CFR PART 761."
(ii) Offer the PCB waste to

handling activities on or prior to February 5, 1990 shall notify EPA of their PCB waste activities by filing EPA

shall notify EPA of their PCB waste activities under this part by filing EPA

(Approved by the Office of Management and Budget under control number 2070-0112.)

(h) If the transporter is unable to deliver the PCB waste to the designated disposer or commercial storer, the

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at his storage facility and transfers the PCB waste off-site to another facility for storage or disposal, the commercial storer of PCB waste shall initiate a manifest under subpart K of this part for the transfer of PCBs or PCB Items to the next storage or disposal facility.

Note: Any requirements for weights in kilograms of PCBs may be calculated values if the internal volume of PCBs in containers and transformers is known and included in the reports, together with any assumptions on the density of the PCBs contained in the containers or tranformers. If the internal volume of PCBs is not known, a best estimate may be used.

* * * * *

(Approved by the Office of Management and Budget under control numbers 2070-0061 and 2070-0112)

6. By adding a subpart K, consisting of §§ 761.202 through 761.218, to read as follows:

Subpart K—PCB Waste Disposal Records and Reports

Sec.

761.202 EPA identification numbers.
761.205 Notification of PCB waste activity (EPA Form 7710-53).
761.207 The manifest—general requirements.
761.208 Use of the manifest.
761.209 Retention of manifest records.
761.210 Manifest discrepancies.
761.211 Unmanifested waste report.
761.215 Exception reporting.
761.218 Certificate of Disposal.

Subpart K—PCB Waste Disposal Records and Reports

§ 761.202 EPA identification numbers.

(a) *General.* Any generator, commercial storer, transporter, or disposer of PCB waste who is required to have an EPA identification number under this subpart must notify EPA of his/her PCB waste handling activities, using the notification procedures and form described in § 761.205. EPA will confirm the EPA identification number of facilities already assigned one, and will assign an EPA identification number to facilities that do not have one.

(b) *Prohibitions.* After June 4, 1990:

(1) A generator of PCB waste shall not:

(i) Process, store, dispose of, transport, or offer for transportation PCB waste without having received an EPA identification number from the Agency. A generator of PCB waste who is exempted from notification under § 761.205(c)(1) or who notifies EPA in a timely manner under § 761.205(c)(2)(i), but has not yet received a unique identification number, shall be regarded as having received from EPA the identification number "40 CFR PART 761."

(ii) Offer the PCB waste to transporters, disposers, or commercial storers of PCB waste who have not received an EPA identification number.

(2) A transporter of PCB waste shall not:

(i) Transport PCB waste without having received an EPA identification number from EPA.

(ii) Deliver PCB waste to transporters, disposers, or commercial storers of PCB waste that have not received an EPA identification number.

(3) A commercial storer of PCB waste shall not accept any PCB waste for storage without having received an EPA identification number from EPA.

(4) A disposer of PCB waste shall not accept any PCB waste for disposal without having received an EPA identification number from EPA. A disposer of PCB waste who owns more than one disposal facility or mobile treatment unit shall not accept waste unless the disposer has received an EPA identification number for each facility or mobile unit.

(c) *PCB waste handled prior to effective date of this subpart.* Generators (other than generators exempt from notification under § 761.205(c)(1)), commercial storers, transporters, and disposers of PCB waste who are required to have EPA identification numbers under this subpart, and who were engaged in PCB waste handling activities on or prior to February 5, 1990, are not subject to the prohibitions of paragraph (b) of this section if they have applied for an EPA identification number in accordance with the applicable notification procedures of § 761.205. Such persons shall use the EPA identification number "40 CFR PART 761," or a number assigned to the persons by EPA or a State under RCRA, until EPA issues to such persons a specific identification number under § 761.205(a), (b), or (c).

(d) *PCB waste first handled after effective date of this subpart.* Generators (other than generators exempt from notification under § 761.205(c)(1)), commercial storers, transporters, and disposers of PCB waste who are required to have EPA identification numbers under this subpart, and who first engage in PCB waste activities after February 5, 1990, are subject to the prohibitions in paragraph (b) of this section.

§ 761.205 Notification of PCB waste activity (EPA Form 7710-53).

(a)(1) All commercial storers, transporters, and disposers of PCB waste who were engaged in PCB waste handling activities on or prior to February 5, 1990 shall notify EPA of their PCB waste activities by filing EPA Form 7710-53 with EPA by no later than April 4, 1990. Upon receiving the notification form, EPA will assign an EPA identification number to each entity that notifies.

(2) All generators (other than generators exempt from notification under paragraph (c)(1) of this section), commercial storers, transporters, and disposers of PCB waste who first engage in PCB waste handling activities after February 5, 1990, shall notify EPA of their PCB waste activities by filing EPA Form 7710-53 with EPA prior to engaging in PCB waste handling activities.

(3) Any person required to notify EPA under this section shall file with EPA Form 7710-53. Copies of EPA Form 7710-53 are available from the Chemical Regulation Branch (TS-798), Office of Toxic Substances, Environmental Protection Agency, 401 M St. SW, Washington, DC 20460. Descriptive information and instructions for filling in the form are included in paragraphs (a)(4) (i) through (vii) of this section.

(4) All of the following information shall be provided to EPA on Form 7710-53:

(i) The name of the facility, and the name of the owner or operator of the facility.

(ii) EPA identification number, if any, previously issued to the facility.

(iii) The facility's mailing address.

(iv) The location of the facility.

(v) The facility's installation contact and telephone number.

(vi) The type of PCB waste activity engaged in at the facility.

(vii) Signature of the signer of the certification statement, typed or printed name and official title of signer, and date signed.

(viii) EPA has determined that the information in paragraphs (a)(4)(i) through (a)(4)(vii) of this section shall not be treated as confidential business information. This information will be disclosed to the public without further notice to the submitter unless the submitter provides a written justification (submitted with the notification form) which demonstrates extraordinary reasons why the information should be entitled to confidential treatment.

(b) Generators (other than those generators exempt from notification under paragraph (c)(2) of this section), commercial storers, transporters, and disposers of PCB waste who have previously notified EPA or a State of hazardous waste activities under RCRA

shall notify EPA of their PCB waste activities under this part by filing EPA Form 7710-53 with EPA by no later than April 4, 1990. The notification shall include the EPA identification number previously issued by EPA or the State and upon receipt of the notification, EPA shall verify and authorize the use of the previously issued identification number for PCB waste activities.

(c)(1) Generators of PCB waste need not notify EPA and receive unique EPA identification numbers under this section, unless their PCB waste activities are described in paragraph (c)(2) of this section. Generators exempted from notifying EPA under this paragraph shall use the generic identification number "40 CFR PART 761" on the manifests, records, and reports which they shall prepare under this subpart, unless such generators elect to use a unique EPA identification number previously assigned to them under RCRA by EPA or a State.

(2) Generators of PCB waste who use, own, service, or process PCBs or PCB Items shall notify EPA of their PCB waste activities only if they own or operate PCB storage facilities subject to the storage requirements of § 761.65 (b) or (c)(7). Such generators shall notify EPA in the following manner:

(i) Generators storing PCB waste subject to the storage requirements of § 761.65 (b) or (c)(7) shall notify EPA by filing EPA Form 7710-53 with EPA by no later than April 4, 1990.

(ii) Generators who desire to commence storage of PCB waste after February 5, 1990 shall notify EPA and receive an EPA identification number before they may commence storage of PCBs at their facilities established under § 761.65 (b) or (c)(7).

(iii) A separate notification shall be submitted to EPA for each PCB storage facility owned or operated by generators of PCB waste. Upon receiving these notifications, EPA will assign generators unique EPA identification numbers for each storage facility notifying EPA under this section.

(d) Persons required to notify under this section shall file EPA Form 7710-53 with EPA by mailing the form to the following address: Chief, Chemical Regulation Branch (TS-798), Office of Toxic Substances, Environmental Protection Agency, Rm. NE-117, 401 M St., SW, Washington, DC 20460.

(e) The requirements under this section to notify EPA and obtain EPA identification numbers shall in no case excuse compliance by any person subject to the 1-year limit on storage prior to disposal under § 761.65(a).

(Approved by the Office of Management and Budget under control number 2070-0112.)

§ 761.207 The manifest—general requirements.

(a) A generator who relinquishes control over PCB wastes by transporting, or offering for transport by his own vehicle or by a vehicle owned by another person, PCB waste for commercial off-site storage or off-site disposal shall prepare a manifest on EPA Form 8700-22, and if necessary, a continuation sheet. The generator shall specify:

(1) For each bulk load of PCBs, the identity of the PCB waste, the earliest date of removal from service for disposal, and the weight in kilograms of the PCB waste.

(2) For each PCB Article Container or PCB Container, the unique identifying number, type of PCB waste (*e.g.*, soil, debris, small capacitors), earliest date of removal from service for disposal, and weight in kilograms of the PCB waste contained.

(3) For each PCB Article not in a PCB Container or PCB Article Container, the serial number if available, or other identification if there is no serial number, the date of removal from service for disposal, and weight in kilograms of the PCB waste in each PCB Article.

(b) EPA does not maintain supplies of printed copies of Form 8700-22 for public use, although printed copies of the manifest may be available from State offices. Camera-ready copies of the form are available for printing purposes from State offices, EPA Regional Offices, and EPA Headquarters.

(c) If the State to which the shipment is manifested (i.e., consignment State) supplies the manifest and requires its use, then the generator must use that manifest.

(d) If the consignment State does not supply the manifest, but the State in which the generator is located (i.e., generator State) supplies the manifest and requires its use, then the generator must use that State's manifest.

(e) If both the consignment State and the generator State supply manifests and require their use, the generator must use the consignment State's manifest.

(f) If neither the generator State nor the consignment State supplies the manifest, the generator may obtain the manifest from any source.

(g) A generator shall designate on the manifest one off-site commercial storage or disposal facility approved under this part for the commercial storage or disposal of the PCBs and PCB Items described on the manifest.

(h) If the transporter is unable to deliver the PCB waste to the designated disposer or commercial storer, the transporter must contact the generator of the PCB waste for instructions. The generator shall either designate another approved disposer or commercial storer, or instruct the transporter to return the PCB waste back to the generator.

(i) The manifest which accompanies the PCB waste shall consist of at a minimum the number of copies required to provide the generator, the initial transporter, each subsequent transporter, and the owner or operator of the designated commercial storage or disposal facility with one legible copy each for their records, and one additional copy to be returned to the generator by the owner or operator of the first designated commercial storage or disposal facility.

(j) The requirements of this section apply only to PCB wastes as defined in § 761.3. This includes PCB wastes with PCB concentrations below 50 ppm where the PCB concentration below 50 ppm was the result of dilution; these PCB wastes are required, under § 761.1(b), to be managed as if they contained PCB concentrations greater than 50 ppm. An example of such a PCB waste is spill cleanup material containing less than 50 ppm PCBs when the spill involved material containing greater than 50 ppm.

§ 761.208 Use of the manifest.

(a)(1) The generator of PCB waste shall:

(i) Sign the manifest certification by hand.

(ii) Obtain the handwritten signature of the initial transporter and date of acceptance on the manifest.

(iii) Retain one copy among its records in accordance with § 761.209(a).

(iv) Give to the transporter the remaining copies of the manifest that will accompany the shipment of PCB waste.

(2) For bulk shipments of PCB waste within the United States transported solely by water, the generator shall send three copies of the manifest dated and signed in accordance with this section directly to the owner or operator of the designated commercial storage or disposal facility. Copies of the manifest are not required for each transporter.

(3) For rail shipments of PCB waste within the United States which originate at the site of generation, the generator shall send at least three copies of the manifest dated and signed in accordance with this section to:

(i) The next non-rail transporter, if any,

(ii) The designated commercial storage or disposal facility if transported

the generator before leaving the

(i) The designated commercial storage or disposal facility listed on the

(v) Retain at the commercial storage or disposal facility a copy of the

operator signs in accordance with § 761.208(c)(1) or (c)(2).

cannot contact the generator of the PCB waste, he shall notify the Regional

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(ii) The designated commercial storage or disposal facility if transported solely by rail.

(4) When a generator has employed an independent transporter to transport the PCB waste to a commercial storer or disposer, the generator shall confirm by telephone, or by other means of confirmation agreed to by both parties, that the commercial storer or disposer actually received the manifested waste. The generator shall confirm receipt of the waste by close of business the day after he receives the manifest hand-signed by the commercial storer or disposer, in accordance with paragraph (c)(1)(iv) of this section. If the generator has not received the hand-signed manifest within 35 days after the independent transporter accepted the PCB waste, the generator shall telephone, or communicate with by some other agreed-upon means, the disposer or commercial storer to determine whether the PCB waste has actually been received. If the PCB waste has not been received, the generator shall contact the independent transporter to determine the disposition of the PCB waste. If the generator has not received a hand-signed manifest from an EPA-approved facility within 10 days from the date of the telephone call or other agreed upon means of communication, to the independent transporter, the generator shall submit an exception report to the EPA Regional Administrator for the Region in which the generator is located, as specified in § 761.215. The generator shall retain a written record of all telephone or other confirmations to be included in the annual document log, in accordance with § 761.180.

(b)(1) A transporter shall not accept PCB waste from a generator unless it is accompanied by a manifest signed by the generator in accordance with paragraph (a)(1) of this section, except that a manifest is not required if any one of the following conditions exists:

(i) The shipment of PCB waste consists solely of PCB wastes with PCB concentrations below 50 ppm, unless the PCB concentration below 50 ppm was the result of dilution, in which case § 761.1(b) requires that the waste be managed as if it contained PCBs at the concentration prior to dilution.

(ii) The PCB waste is accepted by the transporter for transport only to a storage or disposal facility owned or operated by the generator of the PCB waste.

(2) Before transporting the PCB waste, the transporter shall sign and date the manifest acknowledging acceptance of the PCB waste from the generator. The transporter shall return a signed copy to the generator before leaving the generator's facility.

(3) The transporter shall ensure that the manifest accompanies the PCB waste.

(4) A transporter who delivers PCB waste to another transporter, or to the designated commercial storer or disposer of PCB waste, shall:

(i) Obtain the date of delivery and the handwritten signature of the subsequent transporter of PCB waste, or of the owner or operator of the designated commercial storage or disposal facility on the manifest.

(ii) Retain one copy of the manifest in accordance with § 761.209(b).

(iii) Give the remaining copies of the manifest to the accepting transporter of PCB waste, or to the designated commercial storage or disposal facility.

(5) The requirements of paragraphs (b)(3) and (4) of this section shall not apply to transporters of bulk shipments by water if all of the following conditions are met:

(i) The PCB waste is delivered by water (bulk shipment) to the designated commercial storage or disposal facility.

(ii) A shipping paper containing all the information required on the manifest (excluding EPA identification number, generator certification, and signatures) accompanies the PCB waste.

(iii) The transporter delivering the PCB waste obtains the date of delivery and handwritten signature of the owner or operator of the designated commercial storage or disposal facility on either the manifest or the shipping paper.

(iv) The person delivering the PCB waste to the initial water (bulk shipment) transporter obtains the date of delivery and signature of the water (bulk shipment) transporter on the manifest and forwards it to the designated facility.

(v) A copy of the shipping paper or manifest is retained by each water (bulk shipment) transporter in accordance with § 761.209(b).

(6) For shipments involving rail transportation, the requirements of paragraphs (b)(3) and (b)(4) of this section shall not apply. Instead, the requirements described at § 263.20(f) of this chapter for the rail transportation of hazardous waste apply to such shipments. The rail transporter shall retain one copy of the manifest or rail shipping paper in accordance with § 761.209(b).

(7) The transporter shall deliver the entire quantity of PCB waste accepted from a generator or transporter to either of the following destinations:

(i) The designated commercial storage or disposal facility listed on the manifest.

(ii) The next designated transporter of PCB waste.

(8) If the PCB waste cannot be delivered in accordance with paragraph (b)(7) of this section, the transporter shall contact the generator for further directions and shall revise the manifest and/or return the PCB waste according to the generator's instructions.

(9) No provision of this section shall be construed to affect or limit the applicability of any requirement applicable to transporters of PCB waste under regulations issued by the Department of Transportation (DOT) and set forth at 49 CFR part 171.

(c)(1) If a commercial storage or disposal facility receives an off-site shipment of PCB waste accompanied by a manifest, the owner or operator, or his agent, shall:

(i) Sign and date each copy of the manifest to certify that the PCB waste covered by the manifest was received.

(ii) Note any significant discrepancies in the manifest (as defined in § 761.210(a)(1)) on each copy of the manifest.

(iii) Immediately give the transporter at least one copy of the signed manifest.

(iv) Within 30 days after the delivery, send a copy of the manifest to the generator.

(v) Retain a copy of each manifest among the facility's records in accordance with § 761.209(d).

(2) If a commercial storage or disposal facility receives PCB waste from a rail or water (bulk shipment) transporter accompanied by a shipping paper containing all the information required on the manifest except the EPA identification numbers, generator's certification, and signatures, the owner or operator, or his agent, shall:

(i) Sign and date each copy of the manifest or shipping paper to certify that the PCB waste covered by the manifest or shipping paper was received.

(ii) Note any significant discrepancies in the manifest or shipping paper on each copy of the manifest or shipping paper.

(iii) Immediately give the rail or water transporter at least one copy of the manifest or shipping paper, if applicable.

(iv) Within 30 days after the delivery, send a copy of the signed and dated manifest to the generator; however, if the manifest has not been received within 30 days after delivery, the owner or operator shall send a copy of the shipping paper signed and dated to the generator.

(v) Retain at the commercial storage or disposal facility a copy of the manifest and shipping paper, if signed in lieu of the manifest, in accordance with § 761.209(d).

(3) Whenever an off-site shipment of PCB waste is initiated from a commercial storage or disposal facility, the owner or operator of the commercial storage or disposal facility shall comply with the manifest requirements that apply to generators of PCB waste.

§ 761.209 Retention of manifest records.

(a) A generator of PCB waste shall keep a copy of each manifest signed in accordance with § 761.208(a)(1) until the generator receives a signed copy from the designated commercial storage or disposal facility which received the PCB waste. The copy signed by the commercial storer or disposer shall be retained for at least 3 years from the date the PCB waste was accepted by the initial transporter. A generator subject to annual document requirements under § 761.180 shall retain copies of each manifest for the period required by § 761.180(a).

(b)(1) A transporter of PCB waste shall keep a copy of the manifest signed by the generator, transporter, and the next designated transporter, if applicable, or the owner or operator of the designated commercial storage or disposal facility. This copy shall be retained for a period of at least 3 years from the date the PCB waste was accepted by the initial transporter.

(2) For shipments of PCB waste delivered to the designated commercial storage or disposal facility by water (bulk shipment), each water (bulk shipment) transporter shall retain a copy of the shipping paper described in § 761.208(b)(5)(ii) for a period of at least 3 years from the date the PCB waste was accepted by the initial transporter.

(3) For shipments of PCB waste by rail within the United States:

(i) The initial rail transporter shall keep a copy of the manifest and the shipping paper required to accompany the PCB waste for a period of at least 3 years from the date the PCB waste was accepted by the initial transporter.

(ii) The final rail transporter shall keep a copy of the signed manifest, or the required shipping paper if signed by the designated facility in lieu of the manifest, for a period of at least 3 years from the date the PCB waste was accepted by the initial transporter.

(c) The owner or operator of a PCB commercial storage or disposal facility that receives off-site shipments of PCB waste shall retain at the facility for at least 3 years a copy of each manifest or shipping paper that the owner or operator signs in accordance with § 761.208(c)(1) or (c)(3).

(d) The periods of record retention required by this section shall be extended automatically during the course of any outstanding enforcement action regarding the regulated activity.

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§ 761.210 Manifest discrepancies.

(a) Manifest discrepancies are differences between the quantity or type of PCB waste designated on the manifest or shipping paper and the quantity or type of PCB waste actually delivered to and received by a designated facility.

(1) Significant discrepancies in quantity are:

(i) Variations greater than 10 percent in weight of PCB waste in containers.

(ii) Any variation in piece count, such as a discrepancy of one PCB Transformer or PCB Container or PCB Article Container in a truckload.

(2) Significant discrepancies in type of PCB waste are obvious differences which may be discovered by inspection or waste analysis, such as the substitution of solids for liquids or the substitution of high concentration PCBs (above 500 ppm) with lower concentration materials.

(b) Upon discovering a significant discrepancy, the owner or operator of the designated commercial storage or disposal facility shall attempt to reconcile the discrepancy with the waste generator or transporter. If the discrepancy is not resolved within 15 days after receiving the PCB waste, such owner or operator shall immediately submit to the Regional Administrator for the Region in which the designated facility is located a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue.

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§ 761.211 Unmanifested waste report.

(a) After April 4, 1990, if a PCB commercial storage or disposal facility receives any shipment of PCB waste from an off-site source without an accompanying manifest or shipping paper (where required in place of a manifest), and any part of the shipment consists of any PCB waste regulated for disposal, then the owner or operator of the commercial storage or disposal facility shall attempt to contact the generator, using information supplied by the transporter, to obtain a manifest or to return the PCB waste.

(b) If the owner or operator of the commercial storage or disposal facility cannot contact the generator of the PCB waste, he shall notify the Regional Administrator of the EPA region in which his facility is located of the unmanifested PCB waste so that the Regional Administrator can determine whether further actions are required before the owner or operator may store or dispose of the unmanifested PCB waste.

(c) Within 15 days after receiving the unmanifested PCB waste, the owner or operator shall prepare and submit a report to the Regional Administrator for the Region in which the commercial storage or disposal facility is located and to the Regional Administrator for the Region in which the PCB waste originated, if known. The report may be submitted on EPA Form 8700-13B, or by a written letter designated "Unmanifested Waste Report." The report shall include the following information:

(1) The EPA identification number, name, and address of the PCB commercial storage or disposal facility.

(2) The date the commercial storage or disposal facility received the unmanifested PCB waste.

(3) The EPA identification number, name, and address of the generator and transporter, if available.

(4) A description of the type and quantity of the unmanifested PCB waste received at the facility.

(5) A brief explanation of why the waste was unmanifested, if known.

(6) The disposition made of the unmanifested waste by the commercial storage or disposal facility, including:

(i) If the waste was stored or disposed by that facility, was the generator identified and was a manifest subsequently supplied.

(ii) If the waste was sent back to the generator, why and when.

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§ 761.215 Exception reporting.

(a) A generator of PCB waste, who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated PCB commercial storage or disposal facility within 35 days of the date the waste was accepted by the initial transporter, shall immediately contact the transporter and/or the owner or operator of the designated facility to determine the status of the PCB waste.

(b) A generator of PCB waste shall submit an Exception Report to the Regional Administrator for the Region in which the generator is located if the generator has not received a copy of the manifest with the handwritten signature

of the owner or operator of the designated facility within 45 days of the

PCBs or PCB Items, as indicated on the manifest or continuation sheet; and

a disposal facility accepts by signing the manifest, the owner or operator of the

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of the owner or operator of the designated facility within 45 days of the date the waste was accepted by the initial transporter. The Exception Report shall include the following:

(1) A legible copy of the manifest for which the generator does not have confirmation of delivery.

(2) A cover letter signed by the generator or his authorized representative explaining the efforts taken to locate the PCB waste and the results of those efforts.

(c) A disposer of PCB waste shall submit a One-year Exception Report to the Regional Administrator for the Region in which the disposal facility is located whenever the following occurs:

(1) The disposal facility receives PCBs or PCB Items on a date more than 9 months from the date the PCBs or PCB Items were removed from service for disposal, as indicated on the manifest or continuation sheet; and

(2) Because of contractual commitments or other factors affecting the facility's disposal capacity, the disposer of PCB waste could not dispose of the affected PCBs or PCB Items within 1 year of the date of removal from service for disposal.

(d) A generator or commercial storer of PCB waste who manifests PCBs or PCB Items to a disposer of PCB waste shall submit a One-year Exception Report to the Regional Administrator for the Region in which the generator or commercial storer is located whenever the following occurs:

(1) The generator or commercial storer transferred the PCBs or PCB Items to the disposer of PCB waste on a date more than 9 months from the date of removal from service for disposal of the affected PCBs or PCB Items, as indicated on the manifest or continuation sheet; and

(2) The generator or commercial storer either has not received within 13 months from the date of removal from service for disposal a Certificate of Disposal confirming the disposal of the affected PCBs or PCB Items, or the generator or commercial storer receives a Certificate of Disposal confirming disposal of the affected PCBs or PCB Items on a date more than 1 year after the date of removal from service.

(e) The One-year Exception Report shall include:

(1) A legible copy of any manifest or other written communication relevant to the transfer and disposal of the affected PCBs or PCB Items.

(2) A cover letter signed by the submitter or an authorized representative explaining:

(i) The date(s) when the PCBs or PCB Items were removed from service for disposal.

(ii) The date(s) when the PCBs or PCB Items were received by the submitter of the report, if applicable.

(iii) The date(s) when the affected PCBs or PCB Items were transferred to a designated disposal facility.

(iv) The identity of the transporters, commercial storers, or disposers known to be involved with the transaction.

(v) The reason, if known, for the delay in bringing about the disposal of the affected PCBs or PCB Items within 1 year from the date of removal from service for disposal.

(Approved by the Office of Management and Budget under control number 2070-0112)

§ 761.218 Certificate of disposal.

(a) For each shipment of manifested PCB waste that the owner or operator of a disposal facility accepts by signing the manifest, the owner or operator of the disposal facility shall prepare a Certificate of Disposal for the PCBs and PCB Items disposed of at the facility, which shall include:

(1) The identity of the disposal facility, by name, address, and EPA identification number.

(2) The identity of the PCB waste affected by the Certificate of Disposal including reference to the manifest number for the shipment.

(3) A statement certifying the fact of disposal of the identified PCB waste, including the date(s) of disposal, and identifying the disposal process used.

(4) A certification as defined in § 761.3.

(b) The Certificate of Disposal shall be sent to the generator identified on the manifest which accompanied the shipment of PCB waste within 30 days of the date that disposal of the PCB waste identified on the manifest was completed.

(c) The disposal facility shall keep a copy of each Certificate of Disposal among the records that it retains under § 761.180(b).

(d)(1) Generators of PCB waste shall keep a copy of each Certificate of Disposal that they receive from disposers of PCB waste among the records they retain under § 761.180(a).

(2) Commercial storers of PCB waste shall keep a copy of each Certificate of Disposal that they receive from disposers of PCB waste among the records the retain under § 761.180(b).

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Part VII

National Science Foundation

Academic Research Facilities Modernization Program; Draft Guidelines; Notice

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NATIONAL SCIENCE FOUNDATION

Academic Research Facilities Modernization Program; Draft Guideline

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: As required by the Academic Research Facilities Modernization Act of 1988, (102 Stat. 2873, 42 U.S.C. 1862a–1862d), the National Science Foundation (NSF) is hereby publishing the program solicitation for the Academic Research Facilities Modernization Program. Draft program guidelines were published for comment in the **Federal Register** on April 20, 1989. A summary of the comments received and revised guidelines based on those comments were included in NSF's June 1989 report to Congress, *Modernizing Academic Research Facilities: A Comprehensive Plan* (NSF 89–61). The final program solicitation now being published contains additional information, changes in dates and other minor changes from those earlier guidelines.

DATES: FEBRUARY 15, 1990: Notification of intention to submit a proposal; MARCH 1, 1990: Submission of Phase I proposals; JUNE 15, 1990: Submission of invited Phase II proposals.

ADDRESSES: Copies of the program solicitation (NSF 89–127), which includes required forms, are available from: Forms and Publication Unit, Room 232 National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Requests may also be transmitted electronically via either BITNET or INTERNET; send requests to <pubs@note.nsf.gov>.

FOR FURTHER INFORMATION CONTACT: Altie H. Metcalf, Staff Associate, Research Facilities Office, National Science Foundation, 202–357–9785.

SUPPLEMENTARY INFORMATION: The text (excluding required forms) of the programs solicitation (NSFG 89–127) follows:

Academic Research Facilities Modernization Program Program Solicitation

Background

The Academic Research Facilities Modernization Program was established by the National Science Foundation Authorization Act of 1988 (102 Stat. 2873, 42 U.S.C. 1862a–1862d) to assist in modernizing and revitalizing the nation's research facilities. The Program will be carried out through projects which involve the repair, renovation, or, in exceptional cases, replacement of obsolete science and engineering research facilities at eligible organizations.

Proposals submitted in response to this program solicitation will be competing for FY90 and FY91 funds. The FY90 funds available for this program are approximately $19 million.

Goals

The goals of the Academic Research Facilities Modernization Program are to:

Promote the modernization of science and engineering research laboratories and related facilities at institutions of higher education (including graduate and undergradaute institutions), independent nonprofit research institutions, research museums, and consortia thereof.

Assist those academic institutions (including graduate and undergraduate institutions) that historically have received relatively little Federal research and development funds to improve their academic science and engineering infrastructures and broaden and strengthen the nation's science and engineering base.

Scope

The purpose of the program is to repair or renovate, or, in exceptional cases, replace scientific or engineering research and research training facilities. It is *not* the intent of the program to fund construction or renovation of: (1) New facilities; (2) facilities not devoted to scientific or engineering research; (3) major, highly specialized research facilities, such as research vessels, airplanes, telescopes, supercomputer centers or Federally Funded Research and Development Centers; or (4) facilities used in fields of research not normally funded by NSF, e.g. biomedical research with disease-related goals; nor is it intended to fund: (5) the operation and maintenance of facilities; or (6) non-fixed laboratory equipment or instrumentation.

Definitions

The following definitions apply specifically to the Academic Research Facilities Modernization Program and this program solicitation:

Institution: A separate legal and fiscal entity, whether at the central or system level, main campus level, or branch campus level, which can receive awards and which is separately and consistently identified at that level for federal research and development reporting purposes.

Institutions of Higher Education: Institutions legally authorized and accredited at the college level by a nationally recognized accrediting agency to offer and which are offering at least a two-year program of college-level studies leading toward a degree.

Independent Nonprofit Research Institutions: Independent legal entities, other than institutions of higher education, which are generally recognized as separately incorporated, nonprofit, tax exempt organizations, and which conduct research as one of their primary purposes.

Research Museums: Independent nonprofit science museums, zoological parks, aquaria, natural history museums, etc., which conduct research as one of their primary purposes.

Consortia: Recognized groups consisting exclusively of two or more eligible organizations. For the purposes of evaluation and review, a consortium proposal will be identified with the organization where the facility proposed for renovation is located. This does not preclude a third-party organization from submitting a proposal on behalf of two or more eligible organizations.

Research Facilities: The physical plant in which sponsored or non-sponsored research activities (including research training) take place, including related infrastructure and systems (e.g., HVAC and power systems, toxic waste removal systems), and fixed equipment (e.g., clean rooms, fume hoods). This includes all or parts of buildings in which research activities take place some percentage of the time.

Repair: Fixing existing research facilities or otherwise putting them in a usable, adequate and acceptable condition.

Renovation: The renewing, restoring, upgrading, updating, or modernizing of existing research facilities.

Replacement: Taking the place of an existing research facility which is obsolete, beyond repair or for which renovation is not cost-effective. Replacement includes, but is not limited to: razing an existing research facility and constructing one in its place; and relocating or consolidating existing research facilities.

Research Training: Training of individuals (including advanced undergraduates and graduate students) in research techniques where such activities utilize the same facilities as research activities. Research training does not include introductory science or engineering instruction, whether in a classroom or instructional laboratory.

Minority Institutions: Historically Black colleges and universities defined as "part B institutions" by section 322(2) of the Higher Education Act of 1965 (20 U.S.C. 1061(2)) and other institutions whose enrollments are: (a) More than 50 percent of a combination of any of the following groups: Alaskan Native (Eskimo or Aleut), American Indian, Black, Hispanic, or Native Pacific Islander; or (b) 20 percent or more of any one of the above eligible minorities.

Eligible Organizations

Proposals may be submitted by institutions of higher education, independent nonprofit research institutions, research museums, and consortia thereof.

Eligible Fields of Science

Proposals will be considered for research facilities used for any field of science, mathematics and engineering ordinarily supported by the National Science Foundation, including astronomy, atmospheric sciences, biological and behavioral sciences, chemistry, computer sciences, earth sciences, engineering, information science, materials research, mathematical sciences, oceanography, physics, and social sciences. The research activities being conducted in these facilities need not be supported by NSF or the federal government.

Matching Requirements

Organizations must propose matching or cost-sharing at the level of at least 50% of total eligible project costs. The matching or cost-sharing may be from any private or non-Federal public source and may be in cash or in kind, fairly evaluated (see OMB Circular A–110, Attachment E).

Proposals

Proposals must be either for the repair, renovation, or replacement of one facility (single or multi-disciplinary) or for the repair, renovation, or replacement of facilities within one discipline. Proposals are limited to one per eligible organization per proposal cycle. In addition, an eligible organization may participate in one consortium proposal each proposal cycle.

Although this solicitation is self-contained, general information about NSF's policies and procedures on proposals, declinations, and awards is contained in Grants for Research and Education in Science and Engineering (NSF 83–57, October 1989).

In order to simplify and facilitate proposal preparation and processing and to manage the proposal evaluation process efficiently and effectively, the program is conducted in two phases. This two-phase process requires organizations to submit proposals in the first phase without detailed specifications or construction plans. Based on the evaluation criteria below, the Foundation will select from Phase I those organizations with the most competitive Phase I proposals. Those organizations will be invited to submit more detailed Phase II proposals.

Phase I Proposals

Phase I proposals are directed at describing the current research activities, the research facility problem and the proposed repair, renovation, or replacement project. Phase I proposals should be concise and address the following:

1. *Research Activities.* Describe the type(s) of research and research training being conducted in the research facility. Identify by number and types (e.g., senior personnel, postdocs, graduate students, undergraduate students) the personnel using the facility for research and research training on a regular basis.

2. *Description of the Research Facility and Needs.* Identify and describe the research facility including its nature, location, size, configuration, purpose, age, condition, and date of last renovation, if any. Discuss the adequacy, limitations, and constraints of the facility. Provide an estimate of the percentages of time or space or combination thereof the facility is used for research and research training.

3. *Project Impacts.* Describe how the repair/renovation/replacement will contribute to improving the organization's research and research training capabilities, improving the academic science and engineering infrastructure, and broadening and strengthening the nation's science and engineering base.

4. *Project and Management Plans.* Describe the scope, extent, and nature of the proposed repair/renovation/replacement project. If the project is for replacement, describe why it is necessary and why repair or renovation is inappropriate. Indicate whether this project is included in the institution's overall facilities plan. If not, provide explanation.

5. *Budget and Funding.* Using the budget format provided in this solicitation, indicate the estimated total eligible project costs and the amount NSF is being asked to fund. Explain basis for cost estimate. If more than one facility within one discipline is involved (see Section on "Proposals") provide a separate budget for each and a budget for the total. (No awards will be made in the Phase I part of the proposal process; awards will follow selection of successful Phase II proposals.) Identify the expected sources of matching funds.

(Note: Eligible project costs are those total project costs properly and reasonably allocable to the research facility portion of the project based on the percentage of time or space or combination thereof that the facility is used for research and research training. Eligible project costs may include: A&E services, testing, inspections, relocation, demolition, removal, construction, fixed equipment, contingencies, and related construction management costs. Indirect costs of the proposing organization, instrumentation costs, and operation and maintenance costs are not allowed. Costs incurred prior to the effective date of an award under this program are not eligible project costs.)

Proposal Format

Proposals are limited to five (5) single-spaced (maximum 400 words per page; text on one side only), standard size, typewritten pages, excluding the Cover Page, Supplemental Information Sheet, Budget, and Form 1225 (all of which must be included). No other attachments are permitted.

Where To Submit

Nine (9) copies of the Phase I proposal, one of which bears the original signatures of the Project Director and Authorized Organizational Representative, should be submitted to the following address: Proposal Processing Unit, Room 223, National Science Foundation, 1800 G Street NW., Washington, DC 20550, Attn: Research Facilities/Phase I Proposal.

In addition, one copy of the Phase I proposal should be submitted directly to the Research Facilities Office.

Deadlines and Timing

To facilitate proposal processing, each institution should confirm plans to submit a Phase I proposal by sending a brief notification to NSF's Research Facilities Office indicating the intention to submit a proposal and identifying the science or engineering discipline(s) involved in the proposal project. The notification should be received by February 15, 1990; it may be sent by letter or via Bitnet (rfo@nsf) or Internet (rfo@note.nsf.gov).

Phase I proposals are due March 1, 1990. It is expected that in April 1990 proposers will be notified as to the status of their proposals. Each proposing organization either will be invited to submit a Phase II proposal or its proposal will be declined. (No awards will be made in the Phase I part of the proposal process; awards will follow selection of successful Phase II proposals.)

Phase II Proposals

Only those who submitted a Phase I

project. State the overall schedule for completion of the project. Provide

included). One set of schematic drawings, showing existing conditions

Phase I and Phase II proposals will be evaluated on the basis of merit review. Reviews may include staff reviews, ad

• Equitable distribution of funds among organizations of different sizes and geographic locations;

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Consortium for Scientific Computing

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Phase II Proposals

Only those who submitted a Phase I proposal and are invited to submit a Phase II proposal are eligible to compete in Phase II. In addition to the NSF Cover Page, indicating the NSF proposal number assigned to the Phase I proposal, Supplemental Information Sheet, and the Table of Contents, containing page numbers of the major sections of the proposal, Phase II proposals should include on a separate page a Project Summary of no more than 200 words describing the nature and purpose of the project and the expected impact. Phase II proposals should be self contained, address all of the information required in Phase I (in greater detail, as appropriate), address any points requested in the letter of invitation, and in addition address the following:

1. *Research Activities.* Describe the research activities and projects being conducted in the research facility and sources of support, if any. (The research activities need not be supported by NSF or the federal government.) Identify the senior personnel using the facility for research or research training, and for each provide a brief biographical sketch and list up to five recent publications most relevant to the research being conducted in the research facility.

2. *Description of the Research Facility and Needs.* Describe in detail the adverse impacts the limitations have on the quality of research and research training performed by those who utilize the facility. Indicate the percentage of time or space or combination thereof the facility is used for research and research training and how the percentage was determined. Provide one set of no more than three (3) photographs (8" X 10" glossy) that best illustrate typical current conditions of the facility.

3. *Project Impacts.* Describe how the upgraded facility will contribute to meeting the research needs of the organization, the region, and the nation. Discuss the potential of the improved facility to contribute to the improvement of the quality, distribution and effectiveness of the nation's research and research training capabilities. Indicate how the project will attract researchers and students and contribute to increasing the number of students entering the pipeline leading to advanced degrees in science and engineering and improving the quality of their research training.

4. *Project and Management Plans.* Describe the management organization for the conduct of the project. Identify the project team including brief vitae and relevant experience. Indicate percentages of time to be devoted to the project. State the overall schedule for completion of the project. Provide detailed plans on the proposed repair/renovation/replacement. Explain who will do the work, e.g., in-house personnel or competitive contracting. One set of schematic drawings showing existing conditions as well as work to be done and outline specifications should be provided as an appendix to the Phase II proposal. Indicate whether more advanced drawings and specifications are available.

Provide detailed schedules through project completion. Discuss the relationship to other organizational facility plans and activities, the expected use of experts, plans for continuing current research activities during the renovation phase, and other relevant plans. Also indicate plans and funding for the operation/maintenance of the facility.

Budget and Funding. Provide a detailed budget of total eligible project costs in the budget format provided in this solication. Explain basis for cost estimate. If more than one facility within one discipline is involved (see Section on "Proposals") provide a separate budget for each and a budget for the total. Specify the expected sources and estimated amounts of cost-shared or matching funds (e.g., state appropriations, endowment, debt financing); the plans for obtaining matching; and when cost-sharing or matching will be available.

(Note: Eligible project costs are those total project costs properly and reasonably allocable to the research facility portion of the project based on the percentage of time or space or combination thereof that the facility is used for research and research training. Eligible project costs may include: A&E services, testing, inspections, relocation, demolition, removal, construction, fixed equipment, contingencies, and related construction management costs. Indirect costs of the proposing organization, instrumentation costs, and operation and maintenance costs are not allowed. Costs incurred prior to the effective date of an award under this program are not eligible project costs.)

6. *Previous Federal Awards.* Identify by agency, purpose, date of award, and amount any federal awards received for the repair, renovation, construction, or replacement of academic facilities in the previous five years.

Proposal Format

Proposals are limited to fifteen (15) single-spaced (maximum 400 words per page; text on one side only), standard size, typewritten pages, excluding the Cover Page, Supplemental Information Sheet, Project Summary, Budget, and Form 1225 (all of which must be included). One set of schematic drawings, showing existing conditions as well as work to be done, outline specifications, and one set of no more than three (3) current photographs (8" X 10" glossy) of the facility should be provided as appendices.

Where To Submit

Fourteen (14) copies of the Phase II proposal, one of which bears the original signatures of the Project Director and Authorized Organizational Representative, should be submitted to the following address: Proposal Processing Unit, Room 223, National Science Foundation, 1800 G Street NW., Washington, DC 20550, Attn: Research Facilities/Phase II Proposal.

In addition, one copy of the Phase II proposal should be submitted directly to the Research Facilities Office.

Deadlines and Timing

Phase II proposals are due June 15, 1990.

Review and Selection

For the purposes of competition, review, evaluation, and final rankings, Phase I and Phase II proposals will be separated into three different groups based on the average amount of NSF research and development funds received by the proposing organization in the previous three fiscal years (as determined by NSF).

Group I consists of those organizations that have received an average of $2 million or more;

Group II consists of those organizations that have received an average of less than $2 million but equal to or greater than $400,000;

Group III consists of those organizations that have received an average of less than $400,000 and includes those organizations which have not received R&D funds from NSF or the federal government.

(Attachment 1 indicates the organizations in Groups I and II. Organizations not identified in I or II assume they are in Group III, unless otherwise advised by NSF. Inclusion on the listing does not necessarily mean an organization is eligible under this program; see the section on "Eligible Organizations," above.)

A percentage range of program funds will be targeted for each group. Group I organizations are expected to receive from 45 to 55 percent of available program funds. Group II and Group III organizations are each expected to receive from 20 to 30 percent of available program funds.

Phase I and Phase II proposals will be evaluated on the basis of merit review. Reviews may include staff reviews, ad hoc mail reviews, panel reviews, and site visits. Outside reviewers will be broadly representative of the various types of eligible organizations.

Evaluation Criteria Will Include

1. *Research Merit.* Consideration of the existing research (and research training) activities, whether sponsored or non-sponsored and regardless of funding source, and assessment of the impact the facility renovation repair/replacement project will have on the overall quality and significance of the current and expected research and research training activities carried out in the facility.

2. *Facility Need.* The adequacy and appropriateness of the facility for current and expected research activities and research training, as well as any demonstrated need based on age and condition analysis.

3. *Project Impacts.* The contribution of the project toward:

(a) The future research (including research training) needs of the nation and the research mission of the Foundation;

(b) Meeting national, regional, and organizational research and related training needs;

(c) Improving the organization's academic scientific and engineering infrastructure and broadening the nation's science and engineering base; and

(d) Improving the quality, distribution, or effectiveness of the nation's scientific and engineering research (including research training) capabilities.

4. *Plans and Funding.* Project and management plans and budget and funding, specifically the qualifications and experience of the project director and project team to plan, lead, coordinate, and manage the project. The technical soundness of the proposed plans and approach. The reasonableness and appropriateness of the costs and budget, matching, and organizational and management plans.

The first two criteria are of approximately equal weight. The third and fourth criteria are of lesser weight than the first two. The fourth criterion is of critical importance, and projects must be acceptable in this area in order to be funded.

Additional Considerations

In addition to the four evaluation criteria stated above, NSF must, by law, consider the following factors in making awards under this program:

- Equitable distribution of funds among organizations of different sizes and geographic locations;
- The extent to which an organization has received awards for the repair, renovation, construction, or replacement of academic facilities from any other federal funding source within the 5-year period immediately preceding the application; and,
- A minimum 12% of the funds available under this program must go to minority institutions as defined in this program solicitation.

Awards

It is anticipated that award decisions will be made between September–December 1990.

Awards will be grants or other assistance instruments. NSF award amounts may range from $100,000 to $7 million. Total awards under this program to any eligible organization shall not exceed $7 million during any five year period.

Costs incurred prior to the effective date of an award under this program are not eligible project costs.

NSF awards may be made contingent on the awardee obtaining the required matching or cost-sharing within a specified time period. However, NSF award funds cannot be expended until required matching or cost-sharing commitments have been met. The duration of NSF awards is not expected to exceed three years. Awards and supported projects may be subject to certain federal or other standards, codes, regulations, or requirements. In addition, award conditions may specify special reports, on-site inspections, or other requirements.

Inquiries

Inquiries about the NSF Academic Research Facilities Modernization Program should be addressed to: Research Facilities Office, Room 1240, National Science Foundation, 1800 G Street, NW., Washington, DC 20550, (202) 357–9785,
BITNET: rfo@nsf
INTERNET: rfo@note.nsf.gov

Attachment 1

List of Group I and Group II Organizations

Group I Organizations

Arizona State University
Boston University
Brandeis University
Brown University
California Institute of Technology
Carnegie-Mellon University
Case Western Reserve University
Children's TV Workshop
Colorado State University
Columbia University
Consortium for Scientific Computing
Cornell University
CUNY/City College
Dartmouth College
Drexel University
Duke University
Flordia State University
Georgia Institute of Technology-All Campuses
Harvard University
Indiana University-All Campuses
Iowa State University of Science & Technology
Johns Hopkins University
Joint Oceanographic Institutions, Inc.
Lehigh University
Louisiana State University-All Campuses
Massachusetts Institute of Technology
Mathematical Science Research Institute
Michigan State University
National Academy of Sciences
New York University
North Carolina State University-Raleigh
Northeastern University
Northwestern University
Ohio State University-All Campuses
Oregon State University
Pennsylvania State University-All Campuses
Princeton University
Purdue University-All Campuses
Rensselaer Polytechnic Institute
Rice University
Rutgers State University of New Jersey
SRI International
Stanford University
SUNY-Albany
SUNY-Buffalo
SUNY-Stony Brook
Syracuse University-All Campuses
Texas A&M University-All Campuses
University of Alaska-Fairbanks
University of Arizona
University of California-Berkeley
University of California-Davis
University of California-Irvine
University of California-Los Angeles
University of California-Riverside
University of California-San Diego
University of California-Santa Barbara
University of California-Santa Cruz
University of Chicago
University of Cincinnati-All Campuses
University of Colorado
University of Connecticut
University of Delaware
University of Florida
University of Georgia
University of Hawaii-Manoa
University of Houston
University of Illinois-Chicago
University of Illinois-Urbana
University of Iowa
University of Kansas
University of Kentucky

University of Maryland-College Park
University of Massachusetts-System Office
College of William and Mary
Colorado School of Mines
Columbia University Teachers College
Saint Louis University
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San Jose State University

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University of Tennessee-Knoxville
University of Texas-Austin
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University of Washington
University of Wisconsin-Madison
University of Wyoming
Utah State University
Vanderbilt University
Virginia Polytechnic Inst & State University
Washington State University
Washington University
Woods Hole Oceanographic Institute
Yale University

Group II Organizations

American Association of Physics Teachers
American Mathematical Society
American Statistical Association
American University
Auburn University-All Campuses
Baylor College of Medicine
Boston College
Brigham Young University-All Campuses
California State Univ., Fullerton
California State Univ., Los Angeles
Carnegie Institution of Washington
Catholic University of America
Clarkson University
Clemson University
Cold Spring Harbor Lab
College of William and Mary
Colorado School of Mines
Columbia University Teachers College
Center for Advanced Study Behavioral Science
CUNY-Brooklyn College
CUNY-Hunter College
CUNY-Mount Sinai School of Medicine
CUNY-Queens College
DOSECC, Inc.
Education Development Center
Emory University
Field Museum of Natural History
Franklin Institute-Bartol Research Foundation
George Washington University
Georgetown University
Georgia State University
Howard University
Illinois Institute of Technology
Institute for Cancer Research
Kansas State University of Ag & Applied Science
Kent State University-All Campuses
Marine Biological Lab
Marquette University
Medical University of South Carolina
Meharry Medical College
Miami University-All Campuses (OH)
Michigan Technological University
Missouri Botanical Garden
Montana State University
N E Research Foundation
National Opinion Research Center
National Public Radio
National Bureau of Economic Research, Inc.
National Science Teachers Association
N E Radio Observatory Center
New Mexico Institute of Mining & Technology
New Mexico State University-All Campuses
New York Botanical Garden
Northern Arizona University
Northern Illinois University
Ohio University-All Campuses
Oklahoma State University
Old Dominion University
Oregon Graduate Center
Polytechnic University
Portland State University
Rand Corporation
Rockefeller University
Saint Louis University
San Diego State University
San Jose State University
Scripps Clinic and Research Foundation
South Dakota School of Mines
Southern Illinois University
Southern Methodist University
SUNY-Binghamton
Swarthmore College
Technical Education Research Center
Temple University
Texas Tech University
Tufts University
Tulane University of Louisiana
University of Akron-All Campuses
University of Alabama
University of Alabama-Birmingham
University of Alabama-Huntsville
University of Arkansas-Fayetteville
University of California-San Francisco
University of Denver
University of Idaho
University of Maine-Orono
University of Maryland-Baltimore
University of Medicine & Dentistry of New Jersey
University of Mississippi
University of Missouri-Rolla
University of Nevada-Reno
University of New Hampshire
University of Puerto Rico-Mayaguez
University of South Florida
University of Southern Mississippi
University of Texas-Dallas
University of Texas-Health Science Center Dallas
University of Texas-Health Science Center San Antonio
University of Toledo
University of Tulsa
University of Vermont
University of Wisconsin-Milwaukee
Virginia Commonwealth University
Wayne State University
Wesleyan University
West Virginia University
Worcester Polytechnic Institute
Yeshiva University

William B. Cole, Jr.,
Executive Officer, Research Facilities Office, National Science Foundation.

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H.R. 3259/Pub. L. 101–238
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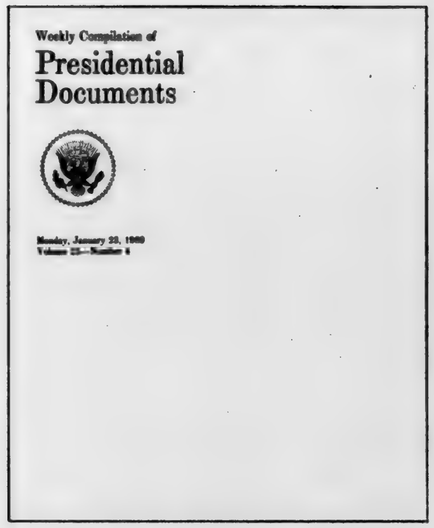

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Rules and Regulations

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Friday, December 22, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Reg. 699]

Navel Oranges Grown in Arizona and Designated Part of California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of California-Arizona navel oranges that may be shipped to domestic markets during the period from December 22 through December 28, 1989. Consistent with program objectives, such action is needed to balance the supplies of fresh navel oranges with the demand for such oranges during the period specified. This action was recommended by the Navel Orange Administrative Committee (Committee), which is responsible for local administration of the navel orange marketing order.

DATES: Regulation 699 (7 CFR part 907) is effective for the period from December 22 through December 28, 1989.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 382–1754.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order 907 [7 CFR part 907], as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the use of volume regulations on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 123 handlers of California-Arizona navel orange subject to regulation under the navel orange marketing order and approximately 4,065 navel orange producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona navel oranges may be classified as small entities.

The California-Arizona navel orange industry is characterized by a large number of growers located over a wide area. The production area is divided into four districts which span Arizona and part of California. The largest proportion of navel orange production is located in District 1, Central California, which represented 85 percent of the total production in 1988–89. District 2 is located in the southern coastal area of California and represented 13 percent of 1988–89 production; District 3 is the desert area of California and Arizona, and it represented approximately 1 percent; and District 4, which represented approximately 1 percent, is northern California. The Committee's estimate of 1989–90 production is 79,800 cars (one car equals 1,000 cartons at 37.5 pounds net weight each), as compared with 70,633 cars during the 1988–89 season.

The three basic outlets for California-Arizona navel oranges are the domestic fresh, export, and processing markets. The domestic (regulated) fresh market is a preferred market for California-Arizona navel oranges. The Committee estimates that about 62 percent of the 1989–90 crop of 79,800 cars will be utilized in fresh domestic channels (49,500 cars), with the remainder being exported fresh (9 percent) or processed (29 percent). This compares with the 1988–89 total of 45,581 cars shipped to fresh domestic markets, about 64 percent of the crop.

Volume regulations issued under the authority of the Act and Marketing Order No. 907 are intended to provide benefits to growers. Growers benefit from increased returns and improved market conditions. Reduced fluctuations in supplies and prices result from regulating shipping levels and contribute to a more stable market. The intent of regulation is to achieve a more even distribution of oranges in the market throughout the marketing season.

Based on the Committee's marketing policy, the crop and market information provided by the Committee, and other information available to the Department, the costs of implementing the regulations are expected to be more than offset by the potential benefits of regulation.

Reporting and recordkeeping requirements under the navel orange marketing order are required by the Committee from handlers of navel oranges. However, handlers in turn may require individual growers to utilize certain reporting and recordkeeping practices to enable handlers to carry out their functions. Costs incurred by handlers in connection with recordkeeping and reporting requirements may be passed on to growers.

Major reasons for the use of volume regulations under this marketing order are to foster market stability and enhance grower revenue. Prices for navel oranges tend to be relatively inelastic at the grower level. Thus, even a small variation in shipments can have a great impact on prices and grower revenue. Under these circumstances, strong arguments can be advanced as to the benefits of regulation to growers, particularly smaller growers.

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At the beginning of each marketing year, the Committee submits a marketing policy to the U.S. Department of Agriculture (Department) which discusses, among other things, the potential use of volume and size regulations for the ensuing season. The Committee, in its 1989–90 season marketing policy, considered the use of volume regulation for the season. This marketing policy is available from the Committee or Ms. Pello. The Department reviewed that policy with respect to administrative requirements and regulatory alternatives in order to determine if the use of volume regulations would be appropriate. A "Notice of Marketing Policy" (notice), which summarized the Committee's marketing policy, was prepared by the Department and published in the October 19, 1989, issue of the **Federal Register** [54 FR 42966]. The purpose of the notice was to allow public comment on the Committee's marketing policy and the impact of any regulations on small business activities.

The notice provided a 30-day period for the receipt of comments from interested persons. That comment period ended on November 20, 1989. Three comments were received. The Department is continuing its analysis of the comments received, and the analysis will be made available to interested persons. That analysis will assist the Department in evaluating recommendations for the issuance of weekly volume regulations.

The Committee met publicly on December 19, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended, with nine members voting in favor, none opposing, and two abstaining, that 600,000 cartons is the quantity of navel oranges deemed advisable to be shipped to fresh domestic markets during the specified week. The marketing information and data provided to the Committee and used in its deliberations was compiled by the Committee's staff or presented by Committee members at the meeting. This information included, but was not limited to, price data for the previous week from Department market news reports and other sources, preceding week's shipments and shipments to date, crop conditions, weather and transportation conditions, and a reevaluation of the prior week's recommendation in view of the above.

The Department reviewed the Committee's recommendation in light of the Committee's projections as set forth in its 1989–90 marketing policy. This recommended amount is 400,000 cartons less than estimated in the tentative shipping schedule adopted by the Committee on November 14, 1989. Of the 600,000 cartons, 570,000 are allotted for District 1, and 30,000 are allotted for District 3. Districts 2 and 4 are not regulated as they do not have a sufficient quantity of fruit available for current shipment.

During the week ending on December 14, 1989, shipments of navel oranges to fresh domestic markets, including Canada, totaled 2,290,000 cartons compared with 2,030,000 cartons shipped during the week ending on December 15, 1988. Export shipments totaled 195,000 cartons compared with 138,000 cartons shipped during the week ending on December 15, 1988. Processing and other uses accounted for 486,000 cartons compared with 470,000 cartons shipped during the week ending on December 15, 1988.

Fresh domestic shipments to date this season total 10,995,000 cartons compared with 8,044,000 cartons shipped by this time last season. Export shipments total 1,385,000 cartons compared with 645,000 cartons shipped by this time last season. Processing and other use shipments total 2,623,000 cartons compared with 1,926,000 cartons shipped by this time last season.

For the week ending on December 14, 1989, regulated shipments of navel oranges to the fresh domestic market were 2,198,000 cartons on an adjusted allotment of 1,986,000 cartons which resulted in net overshipments of 212,000 cartons. Regulated shipments for the current week (December 15 through December 21) are estimated at 2,045,000 cartons on an adjusted allotment of 1,847,000 cartons. Thus, overshipments of 198,000 cartons could be carried over into the week ending on December 28, 1989.

The average f.o.b. shipping point price for the week ending on December 14, 1989, was $7.69 per carton based on a reported sales volume of 1,985,000 cartons compared with last week's average of $7.45 per carton on a reported sales volume of 1,580,000 cartons. The season average f.o.b. shipping point price to date is $8.10 per carton. The average f.o.b. shipping point price for the week ending on December 15, 1988, was $8.58 per carton; the season average f.o.b. shipping point price at this time last season was $9.11 per carton.

The Committee reports that overall demand for navel oranges has fallen sharply this week. Inventories are high and fruit is not moving well. It is also a short selling week due to the Christmas holiday. In addition, harsh weather conditions continue to affect the East Coast and Midwest markets.

The 1988–89 season average fresh equivalent on-tree price for California-Arizona navel oranges was $3.86 per carton, 65 percent of the season average parity equivalent price of $5.98 per carton.

Based upon fresh utilization levels indicated by the Committee and an econometric model developed by the Department, the point estimate of the 1989–90 season average fresh on-tree price would be $4.33 per carton. This is equivalent to 66 percent of the projected season average fresh on-tree parity equivalent price of $6.54 per carton. It is currently estimated that there is less than a one percent probability that the 1989–90 season average fresh on-tree price will exceed the projected season average fresh on-tree parity equivalent price.

Limiting the quantity of navel oranges that may be shipped during the period from December 22 through December 28, 1989, would be consistent with the provisions of the marketing order by tending to establish and maintain, in the interest of producers and consumers, an orderly flow of navel oranges to market.

Based on considerations of supply and market conditions, and the evaluation of alternatives to the implementation of this volume regulation, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities and that this action will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is further found and determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register**. This is because there is insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act.

In addition, market information needed for the formulation of the basis for this action was not available until December 19, 1989, and this action needs to be effective for the regulatory week which begins on December 22, 1989. Further, interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and handlers were apprised of its provisions and effective

time. It is necessary, therefore, in order to effectuate the declared purposes of the Act, to make this regulatory provision effective as specified.

List of Subjects in 7 CFR Part 907

Arizona, California, Marketing agreements and orders, Navel, Oranges.

For the reasons set forth in the preamble, 7 CFR part 907 is amended as follows:

PART 907—[AMENDED]

1. The authority citation for 7 CFR part 907 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 907.999 is added to read as follows:

Note.— This section will not appear in the annual Code of Federal Regulations.

§ 907.999 Navel Orange Regulation 699.

The quantity of navel oranges grown in California and Arizona which may be handled during the period from December 22 through December 28, 1989, is established as follows:

(a) District 1: 570,000 cartons;
(b) District 2: unlimited cartons;
(c) District 3: 30,000 cartons;
(d) District 4: unlimited cartons.

Dated: December 20, 1989.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 89-29909 Filed 12-21-89; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 910

[Lemon Reg. 697]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 697 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 280,000 cartons during the period from December 24 through December 30, 1989. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 697 (7 CFR part 910) is effective for the period from December 24 through December 30, 1989.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 475-3861.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 85 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2,500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

This regulation is issued under Marketing Order No. 910, as amended [7 CFR part 910], regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601–674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee (Committee) and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the California-Arizona lemon marketing policy for 1989–90. The Committee met publicly on December 19, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and, by a 12 to 1 vote, recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that overall demand for lemons is moderate.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Arizona, California, Lemons, Marketing agreements and orders.

For the reasons set forth in the preamble, 7 CFR part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.997 is added to read as follows:

Note.—This section will not appear in the Code of Federal Regulations.

§ 910.997 Lemon Regulation 697.

The quantity of lemons grown in California and Arizona which may be handled during the period from December 24, 1989, through December 30, 1989, is established at 280,000 cartons.

Dated: December 20, 1989.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 89-29908 Filed 12-21-89; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 398

[Docket No. 45995; Amdt. 398-4]

RIN 2105-AB43

Essential Air Service; Reductions

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Final rule; request for comment.

SUMMARY: This final rule prescribes criteria for making essential air service (EAS) subsidy reductions. EAS subsidies are paid to air carriers for providing scheduled air service to certain small communities. Insufficient funds have been appropriated to continue subsidies at all EAS communities that currently receive subsidy-supported air service, and the amount of subsidized service must be reduced accordingly. Pursuant to this final rule, EAS subsidy at points that are relatively close to alternate air service, or that had per-passenger subsidy requirements of $200 or more in 1988, is being eliminated. These reductions will be implemented on January 1, 1990. The criteria adopted in this final rule will also be applied in subsequent fiscal years, if future appropriations do not provide funds sufficient to maintain EAS at Fiscal Year 1990 service levels and Congress provides no statutory direction to the contrary. Public comment is invited on criteria that should be utilized if additional EAS reductions become necessary in the future.

DATE: This final rule becomes effective December 19, 1989.

Comments on criteria to use in future years should further reductions be needed should be received by February 20, 1990.

ADDRESS: Comments should be addressed to the Docket Clerk, Room 4107, Docket No. 45995, Department of Transportation, C-55, 400 Seventh Street SW., Washington, DC 20590; (202) 366-9322. Comments received will be available for public inspection and copying at the above address from 9 a.m. to 5 p.m. EST, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: James R. Dann, Office of the General Counsel, Department of Transportation, Washington, DC 20590, (202) 366-9154.

SUPPLEMENTARY INFORMATION: Congress had temporarily continued EAS funding for subsidized service at FY 1989 levels in FY 1990 with the assumption that DOT, by taking "immediate regulatory action," would make effective some significant subsidy reductions on or about January 1, 1990. This final rule prescribes criteria for making reductions necessary to assure that the EAS program is operated within FY 1990 appropriation ceilings. The final rule is being made effective immediately. Prompt regulatory action is needed to provide sufficient time to implement necessary reductions within the January 1, 1990, time frame. Consistent with the alternative approaches proposed in the Department's December 1988 Notice of Proposed Rulemaking discussed below, these reductions are being achieved by adopting eligibility criteria that (1) eliminate subsidy where the subsidy-per-passenger exceeds $200, and (2) with the exception of certain State capitals, eliminate subsidy based upon the relative isolation of the community. The isolation criteria in this final rule require that an eligible community be 70 highway miles or more from the nearest medium or large hub airport, 55 highway miles or more from the nearest small hub airport, and 45 highway miles or more from the nearest nonhub airport that enplanes 100 passengers or more per day. Alaska, Hawaii, and Pacific points are excluded from subsidy reductions based upon their extreme dependence upon air service and the lack of available alternative means of transportation. Table 1 includes a listing of each subsidized EAS community, and based upon the criteria set out in the rule and DOT calculations, identifies DOT's tentative determination as to whether the community would lose or retain subsidized service for FY 1990.

The issues addressed in this rulemaking were raised by DOT's Notice of Proposed Rulemaking (NPRM) of December 14, 1988 (53 FR 50233), and the final rule combines approaches outlined in Alternatives 1, 3 and 4 of that NPRM. As explained in the NPRM, funding levels provided by the 1989 DOT Appropriations Act (Pub. L. 100-457, enacted September 30, 1988) were not sufficient to maintain EAS subsidized service at FY 1988 levels. Subsequent to publishing the NPRM, Congress enacted a supplemental appropriation that permitted DOT to avoid EAS subsidy reductions in FY 1989. However, the amounts Congress appropriated for EAS in FY 1990 cannot support service levels as high as those of FY 1988 and FY 1989, and the Conference Committee report accompanying the Department's FY 1990 appropriation bill recognized that reductions will have to be made. Comments to the NPRM docket have been analyzed and are discussed below.

The level of EAS program appropriations for future years is uncertain. DOT does not address in this final rule how any future subsidy reductions would be made, except to specify that the criteria established by this rule would remain in place should future year funding limit the EAS program to FY 1990 service levels. Comments are invited, within 60 days, on criteria that should be employed in the event that additional subsidy reductions become necessary in the future. These comments should be sent to the Docket Clerk at the address noted above.

Departmental determinations regarding EAS subsidy-supported service affecting individual carriers and points are published in DOT orders. On or shortly after the effective date of this final rule, DOT will be issuing a "Show Cause" order, tentatively terminating EAS subsidy at points determined in accordance with the reduction criteria set out in § 398.11 below. Copies of this "Show Cause" order will be mailed to civic officials of the affected communities, as well as to interested State agencies and carriers providing service to those communities, inviting all interested persons to "show cause" why the Department's tentative findings should not be finalized. Persons who wish to respond regarding the manner in which the criteria are being applied to a community or carrier should submit their views to the "Show Cause" order docket, at the address listed in the Order. Copies of the "Show Cause" order may be obtained by contacting the Docket Clerk at the address or telephone number listed above.

Description and Background of the EAS Program

In 1978, when the Airline Deregulation Act (ADA) took effect, 746 communities in the United States and its territories were listed on air carrier certificates issued under section 401, Federal Aviation Act. In light of the ADA's provisions allowing air carriers to terminate service without prior Government approval, there was concern that communities that generated low traffic levels would lose all service as carriers withdrew to larger, more lucrative markets. To address this concern, as part of the ADA the Congress added section 419 to the Federal Aviation Act, which ensured that these communities would continue to receive a link to the nation's air transportation system for ten years, with Federal subsidy if needed. DOT is now responsible for administering this subsidy program.

Under the EAS program, DOT determines the minimum level of EAS that each community requires; this

involves specifying frequency of service, total capacity, number of intermediate stops allowed, and hub destination. DOT also provides subsidy to an air carrier, if necessary, to assure that this minimum level of service is provided to the community. The Department authorizes subsidy for an airline to provide EAS only when no carrier is willing or able to provide the required level of service to the community without subsidy support. Most of the eligible communities either have continuously received service by two or more carriers since the pre-ADA period (such that EAS determinations have not been necessary) or received subsidy-free service which meets or exceeds established EAS requirements. Thus, only about 150 communities (including points in Alaska and Rota, Northern Marianas) received service in FY 1989 that was supported by EAS subsidy.

Extension of the EAS Program in Public Law 101-223

The EAS program was scheduled to terminate on October 24, 1988. However, prior to the expiration date, legislation was enacted expanding the EAS program and extending it for ten additional years. See section 202 of the Airport and Airway Safety and Capacity Expansion Act of 1987 (December 30, 1987; Public Law 100-223).

In Public Law 100-223, Congress provided for a continuation of EAS guarantees, termed "Basic EAS". Under Basic EAS, any point was to be provided ten more years of basic service if it was (1) eligible for service under the earlier program, (2) actually receiving service during any part of Fiscal Year 1988, and (3) situated at least 45 miles from the nearest "hub" airport—which the Act defines as an airport enplaning annually at least 0.25% of all enplanements in the United States. Certain other service upgrades were also mandated, such as general employment of aircraft having at least 15 passenger seats, and use of pressurized aircraft if the flight normally flies higher than 6,000 feet above sea level. Further, there was to be no more than one intermediate stop (EAS guidelines have permitted up to two intermediate stops under the previous EAS legislation) between the EAS point and the designated hub airport (or small hub or nonhub, as appropriate).

The 1987 legislation also established two forms of service enhancement, by which communities could receive more service than Basic EAS by agreeing to a subsidy-sharing commitment or by risking loss of basic service if DOT-funded enhanced service failed to meet agreed levels of passenger usage. The 1987 legislation also provided that any other small community not entitled to Basic EAS might agree with DOT on a reasonable service level and receive service as a "new point" on a subidy-sharing basis.

Subsequent appropriation levels, however, have not provided for implementation of the provisions for the enhanced service levels, new points, or even the service upgrades required under Basic EAS, e.g., 15-seat aircraft, etc.

The Department estimated that maintenance of basic EAS alone to the communities receiving subsidized service in FY 1988 would cost $31.6 million in FY 1989. On September 30, 1988, Congress enacted the Department of Transportation and Related Agencies Appropriations Act of 1989 (Pub. L. 100-457), which appropriated only $25 million for payments to air carriers to provide subsidized EAS. Further, language in the Appropriations Act required that, "[n]otwithstanding any other provision of law," the Department make payments of EAS compensation "only to the extent and in the manner provided in appropriations Acts * * *." The legal effect of this language was to limit EAS program obligations to the appropriated amounts for FY 1989; that is, to $25 million rather than $31.6 million or some higher amount. Given that subsidy reductions were legally required, DOT prepared and issued the Notice of Proposed Rulemaking of December 14, 1988, to solicit public views on the manner in which these reductions should be accomplished.

Description of the Notice of Proposed Rulemaking

The NPRM described four different approaches toward making required EAS subsidy reductions. These approaches were:

1. Eliminate subsidy for air service to communities that are close to alternate service airports. (To achieve the required savings, this would have necessitated elimination of subsidies for service affecting 44 communities.)
2. Eliminate subsidy for air service to more than one connecting airport, and to certain communities close to alternate air service. (This would have eliminated subsidies for service affecting 46 communities.)
3. Eliminate subsidy for air service to communities with the highest annual subsidy requirements. (This would have eliminated subsidies for service affecting 33 communities.)
4. Eliminate subsidy for air service to communities that historically have enplaned the fewest passengers. (This would have eliminated subsidies for service affecting 53 communities.)

The NPRM identified the communities that would have lost subsidy-supported air service under each alternative.

In addition, the NPRM detailed the nature and background of the EAS program, and explained the requirement for program reduction. (The supplementary information provided above summarizes this material.) It also proposed that the requisite appropriation constraints would be met first by postponing implementation of those aspects of the 1987 legislation that would have increased subsidy support costs over those incurred under the expired ADA provision; i.e. higher service levels for Basic EAS, enhanced service, and service to new small communities. DOT considered that it would be difficult to justify extending subsidy for service to new points, or establishing increased service, when by doing so current EAS points would be deprived of subsidy support for air service the communities had been receiving. It also proposed not to eliminate subsidy for any Alaskan, Hawaiian, or Pacific points, where air service is often the only practical means of transportation available, and low passenger volumes ordinarily made subsidy-free service unobtainable.

The Department requested comments on the four alternative approaches toward making the necessary reductions, as well as on combinations of these alternatives or other options that might be more appropriate. It also specifically solicited views on whether Alaska, Hawaii, and Pacific points should be categorically excluded from service cuts, and on two alternative approaches that had been tentatively rejected. Those were (1) an across-the-board, percentage reduction in subsidy affecting all subsidized communities, and (2) obligation of EAS subsidy at FY 1988 service levels until FY 1989 funds were exhausted sometime during the summer of 1989. The first of these had been tentatively rejected principally because percentage cuts of approximately 30% would likely have resulted in most servicing air carriers dropping their EAS service entirely; the second, because it would be highly disruptive to all communities and because air carriers would likely thereafter be very reluctant to reinstitute service except at much higher subsidy rates.

Discussion of Comments

The Department received over 500 comments on the NPRM. Among the commenters were various States, cities and counties; United States Senators and Representatives; State Senators and

Representatives; local government officials; State and Federal government

practical means of transportation available.

calculations more representative of true conditions and fairer to the affected

hubs would disrupt well-established traffic patterns and lead to significant

constraints where bus or rail transportation is available.)

exceptionally high subsidy-per-passenger costs or that a combination of

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Representatives; local government officials; State and Federal government agencies; airport authorities; air carriers; trade associations; Chambers of Commerce; businesses; and individuals.

Many of the commenters focused on the adverse impacts that EAS subsidy reductions and attendant service cuts would have on individual communities. Often these commenters asserted that loss of subsidized air service would impair their communities' economic development, jeopardize existing investment, further isolate rural communities from the mainstream of the nation's commerce, or create serious impediments in traveling to and from their businesses, medical facilities, local points of interest, etc. Some commenters also contended that an attempt to save a relatively small amount in subsidy payments could impose costs of many times that amount on an affected community, or even costs on the Federal government in excess of the subsidy amount. Many commenters objected to any subsidy eliminations whatsoever that would directly affect their own community or communities, or they expressed support for the alternative or combination of alternatives that would have the least potential impact on their own community or communities. A common theme, however, found in approximately 50 of the comments and many of the comments made by members of Congress, was to recommend deferral of any Departmental action, and to seek instead either supplemental appropriations or direction from Congress on when and where reductions should be made. Of those who expressed support for a particular alternative, 61 favored alternative 3, 43 favored alternative 4, 37 favored alternative 1, and 33 favored alternative 2. A number of additional points were made, and the most salient of these are discussed below.

Alternative 1. ("Eliminate subsidy for air service to communities that are close to alternative air service.") Several commenters were in favor of this approach, noting that it seemed most consistent with recent Congressional action establishing a new eligibility standard of 45 highway miles or more from the nearest hub airport. Also supporting this approach were several commenters who sought to analogize their situations to those of Alaska, Hawaii, and Pacific points, which had been tentatively excluded from consideration for subsidy reductions in the NPRM, even though passenger volumes were low, on the basis that air service was often the only practical means of transportation available.

Opposing Alternative 1 were a number of commenters from Illinois, who contended that the measure of isolation could be misapplied in their situation. Two Illinois EAS communities are located between small airports, identified as their alternative service airports, and larger hubs that are further away. These commenters doubted that many travelers would drive in the opposite direction to the smaller point in order to utilize air service back to the large hub; they would simply drive in the first place to the larger city, and implicitly that should be the measure of their isolation. This argument is undermined by the fact that those travelers have a choice of alternate service airports that most other EAS points would not have. The nearby smaller airports offer them ready access to the national air transportation system. The fact that there is another, larger hub within reasonable driving distance affords them an additional, perhaps more convenient, option.

Another objection was that adequate public transportation was not available from the community to an alternate service airport. However, as discussed below, bus service is offered at each point at which EAS subsidy is eliminated under this final rule, to and from at least the city where the alternate service airport is located. Moreover, increased demand, generated in part by travelers using the alternate airports, may well lead to public transportation providers offering more direct services to them in the future.

Four commenters suggested that measuring the distance from the city center of an affected EAS community failed to consider the fact that the affected community's airport often served many outlaying areas, and that the highway miles from the farthest of those areas to the alternative service airport were often well in excess of the figures printed in the NPRM. Gauging mileage from a city center does operate to average out the distance from the surrounding area, but just as the distance would be more for some it would be less for others. Also, sometimes persons living some distance from an affected community would be closer to an alternate airport different from the one identified in the NPRM. Finally, the same situation would be true for virtually all communities, so valid relative comparisons can still be made.

However, one adjustment has been made from the mileage tabulations in the NPRM, in order to make the mileage calculations more representative of true conditions and fairer to the affected communities. In the NPRM, the measurements were made from the EAS community's city center to the city center of the community where the alternate service airport was located. The final rule instead measures the distance from the EAS community's city center to the alternate service airport itself, recognizing that this is the more relevant measurement for affected travelers.

A number of commenters also suggested in opposition to Alternative 1 that highway mileage figures from a potentially affected community to an alternate airport were misleading and that actual travel time should be the standard. However, analysis of the comments indicates that too many variables exist to permit an accurate, objective assessment of driving times, including personal driving habits, different routes, and day-to-day traffic and weather conditions. Moreover, few commenters suggested that driving times to the nearest alternate airport would be significantly greater than the highway miles would indicate, and even then the driving time asserted (e.g. "50 minutes to an hour and a quarter") did not seem excessive.

Finally, a few commenters contended that DOT miscalculated the relevant highway mileage. DOT has reviewed its calculations, actually drove simulated trips in some cases, and made changes where necessary. Persons still wishing to respond on this issue should do so in the "Show Cause" proceeding discussed above.

Alternative 2. ("Eliminate subsidy for air service to more than one connecting airport, and to certain communities close to alternate air service.") Several commenters noted that there was no legal entitlement for EAS subsidy to a second hub, and questions were raised as to why one point should receive service to two hubs when another would be vulnerable to losing all service. Others pointed out that subsidy could be eliminated at the second hub without depriving the community of access to the national air transportation system. The Department has as a policy matter eliminated two-hub service guarantees for a number of communities and continues to review all two-hub determinations routinely. In those cases where the Department retains two-hub guarantees for individual points, it does so in recognition of especially strong business, political, or other ties the point has traditionally had with the second hub. Two commenters contended that elimination of subsidy at various second hubs would disrupt well-established traffic patterns and lead to significant route restructuring, one adding that this could lead to increased subsidy costs on the remaining service and also noting that the subsidy-per-passenger costs at the second hubs tend to be low.

Alternative 3. ("Eliminate subsidy for air service to communities with the highest annual subsidy requirements.") Many commenters noted in opposition to this approach that it seemed in direct conflict with what they understood as being the nature and purpose of EAS: to subsidize service to communities with the greatest "need." They asserted that the need for subsidized EAS sometimes expresses itself in relatively high subsidies. However EAS services that have disproportionately high costs relative to their benefits—viewed in terms of per-passenger subsidy costs—simply lack justification for continuation when appropriations are reduced and bus or rail alternatives are available.

Several commenters from Northern states asserted that operating costs tend to be higher in the North, due to the need for hanger rentals, more weather delays, etc. However, geographic location does not appear to be a decisive factor. Subsidy to only five communities is being eliminated solely on the basis of a per passenger subsidy exceeding $200 (not including those eliminated under Public Law 101–45). Of these five, two are in Nebraska, one in Oklahoma, one in Arizona, and one in California, and the two closest to the $200 limitation point where those in Arizona and California.

One commenter argued that subsidy rate figures for individual communities do not accurately reflect the true cost of maintaining subsidized service at a community served as part of a linear route. Subsidy rates do, however, reflect actual expenditures and, when divided by passanger enplanements, do provide a reasonably accurate measure of relative cost efficiencies at each point.

Alternative 4. ("Eliminate subsidy for air service to communities that historically have enplaned the fewest passengers.") In commenting in support of this alternative, some echoed a view referenced above in the Alternative 3 discussion, that communities affected by reductions under Alternative 4 frequently met the true definition of what is "essential" service, being very isolated and without reasonable access otherwise to the air transportation system. (At the same time, however, communities requiring high subsidy costs relative to the passengers enplaned are relatively cost-inefficient, and lack justification for subsidy retention in times of appropriation constraints where bus or rail transportation is available.)

Several commenters noted that sometimes, due to routing patterns, available seats were limited at their sites and so their enplanement figures did not adequately reflect passenger demand. However, it is our experience that fully booked subsidized EAS flights are much more the exception than the rule. Subsidy was required at the point because traffic is below the threshold required for self-supporting air service, and generally carriers can profitably serve a community without subsidy when passengers occupy about 50% of the available seats.

Some commenters expressed the view that temporary conditions, e.g. droughts, industry downturns, etc. created artifically low enplanement figures at various communities. Some also contended that their ridership figures should be soon increasing due to new industries locating in the area, or that ridership trends were moving upwards. Also, several commenters noted that EAS or the present EAS carrier was new to the locality, and expressed confidence that enplanement figures would likely rise as service was publicized and became better established. Others contended that ridership figures would be higher if better equipment were utilized or the schedules were better. However, FY 1988 ridership statistics at the communities vulnerable to loss of subsidy due to high subsidy-per-passenger figures do not seem disproportionately out of line with statistics for prior years. Also, claims to probable higher enplanement figures in the future, or artificially low current figures, were in general too vague and speculative to serve as a basis for retaining subsidy at these points at the expense of other communities with more concrete claims to need and cost-effectiveness. In addition, if ridership figures were significantly increased, the need for subsidy would be less than certain.

Additional Comments. Many commenters suggested that cuts based on a single criterion and using generalized data would tend to produce arbitrary results. Some Suggested combining the alternatives in some fashion, as by reducing first the subsidies for communities vulnerable under more than one of the reduction criteria.

Others suggested new criteria to be employed in making the requisite reductions. Most prominent of the "new criteria" suggestions was cost-effectiveness: A number of commenters noted that some communities had exceptionally high subsidy-per-passenger costs or that a combination of Alternatives 3 and 4 could be employed to highlight those communities further from self-sufficiency. In contrast, three commenters maintained that cuts could be made where the subsidy-per-passenger figures were smallest, since these were closest to self-sufficiency or would involve only a modest fare adjustment that would constitute fair compensation for the convenience of air service to the community. Thirteen communities receive per-passenger subsidies of less than $15, but these tend to serve relatively large numbers of people, be relatively cost-effective, and be relatively close to self-sufficiency. Prospects for self-sufficiency could be substantially reduced if DOT eliminated subsidy at this time. Accordingly, low subsidy-per-passenger rates are not utilized at this time as a criterion for subsidy elimination. However, comments are requested concerning whether subsidy to these communities should be eliminated if appropriation levels require further reductions.

Some commenters preferred a purely case-by-case approach, with DOT using various criteria as merely considerations rather than qualifying factors. However, with 150 communities receiving EAS subsidy, this would be extremely cumbersome administratively, and relatively objective criteria can be established for categorical determinations. Others suggested that pro rata cuts should be made, observing that this approach would force each community to come to grips with its situation and come up with ways of offering concessions or replacement subsidies to the carriers if it desired to maintain service. However, no commenter disputed DOT's expressed concern that such an approach would likely have resulted in most servicing air carriers dropping their service entirely during the year (since carriers would not be fully compensated by subsidy for their costs). Also, few States or local governments were in a position to pledge substitute funding. A pro rata cut approach would have most probably produced substantial disruptions at most points, even if subsequent restarts could be achieved.

Several commenters objected to the exclusion of Alaska, Hawaii, and Pacific points from any subsidy reductions, although Alaska and several of the Pacific points, in relatively compelling fashion, reiterated their dependence on air transportation for delivery of mail, foodstuffs, and other basic necessities. Several others argued that DOD could achieve sufficient savings through

management improvements to eliminate or substantially reduce the need for subsidy reductions. While management guidance on when and where service cuts might be made. The Secretary of Transportation agreed to defer action to convenient, access to that system through another airport. Also, this measure can be fairly applied and easily

If these criteria were fully implemented, the Report indicated that 24 communities would be eliminated alternate air service and/or generate very little traffic. At the five communities that would fall out based transportation. The qualifying criteria established in the rule would remain in effect after FY 1990, if subsequent

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management improvements to eliminate or substantially reduce the need for subsidy reductions. While management improvements have been made or are being introduced, the savings from them do not project out to allow full FY 1989 service levels to be maintained.

A few commenters suggested that some appeals procedure should be established to assure that deserving communities may have their particular cases considered. The NPRM comment process was intended to provide an opportunity for input from the individual communities and other interested parties, however, and no FY 1990 subsidy eliminations have been recommended without careful consideration of the impacts of such cuts on the individual community. Also, all responses to the "Show Cause" order will be carefully considered.

Miscellaneous suggestions were also offered by some commenters. A few commenters suggested that a community should be retained in the program if it was making progress in increasing enplanements or reducing its subsidy need. While this does offer one way of measuring the success of EAS at a community, different factors influence enplanement figures or subsidy payments, especially over shorter terms, and it would be difficult to fashion objective, fair criteria for EAS reductions using such an approach. Another commenter suggested that DOT measure isolation for a "major" hub only, but this overlooks the fact that reasonable access is obtainable to the nation's air transportation system at smaller hubs and even most nonhubs. One commenter suggested that part of the subsidy should be paid directly to the community, and another recommended that DOT lower existing service levels, as by subsidizing air taxis rather than scheduled service. However, both of these approaches would require statutory changes.

Finally, several communities that do not presently have subsidized service objected to the NPRM's proposed exclusion of service to "new points" addressed in the 1987 legislation. However, DOT maintains that it is difficult to justify extending service to a "new point," when that would require discontinuing subsidy at another.

Developments Following Publication of the NPRM; Enactment of Public Law 101-45

As noted above, the Department received many comments urging that any action on subsidy reductions be deferred until Congress had the opportunity to consider supplemental appropriations, and perhaps to provide guidance on when and where service cuts might be made. The Secretary of Transportation agreed to defer action to provide Congress this opportunity.

On June 29, 1989, Congress passed Public Law 101-45, the Dire Emergency Supplemental Appropriations Act of 1989. Among its provisions was a $6.6 million supplemental appropriation for the EAS program, permitting the program to be maintained at FY 1988 levels through the remainder of FY 1989. However, this statute also provided that, after September 30, 1989, "no subsidy shall be paid for any service to or from any essential air service point in the contiguous United States for which the per passenger subsidy exceeds $300." DOT identified six such points and issued Order 89-9-37 on September 22, 1989, eliminating the guarantee of service at these points and terminating the subsidy rates for the carriers serving these communities as of October 1, 1989. The six points are: Beloit/Janesville, Wisconsin; Independence/Parson/Coffeyville, Kansas; Hutchinson, Kansas; Lewiston/Auburn, Maine; Moultrie/Thomasville, Georgia; and Kokomo/Logansport/Peru, Indiana. In addition, the accompanying Conference Report sought the views of the Secretary of Transportation as to whether other means of evaluating services would be more appropriate.

EAS Report to Congress

Consistent with the Conference Report, the Department submitted a *Report to Congress on Subsidized Air Service Under the Essential Air Service Program—Ways to Reduce Annual Subsidy Expenditures*. In this Report, a copy of which has been placed in the docket, the Department stated its view that program costs for some communities exceed benefits and, accordingly, additional new eligibility standards should be imposed. With the NPRM and the docket comments as background, the Department explored a number of criteria and combinations of criteria that could be used to eliminate communities' subsidy eligibility. After thorough analysis, the Department indicated its view that communities' isolation relative to other air service is the single most meaningful measure of their need for air service. The Report recommended that this measure should be utilized as the primary evaluation tool because it is consistent with the overall purpose of EAS—to permit communities that received scheduled air service at the time of deregulation to have access to the national air transportation system. By applying this measure, communities would retain reasonable, if unfortunately less convenient, access to that system through another airport. Also, this measure can be fairly applied and easily understood. The Department also recommended that as a secondary measure, a subsidy-per-passenger cap of $200 be imposed, as this would serve to exclude the least cost-effective services.

The Department also proposed that the isolation and subsidy-per-passenger eligibility standards be applied to EAS communities that currently receive subsidy-free service but that might become subsidy-dependent in the future. Finally, the Department recommended reviewing communities' continued eligibility annually based on updated subsidy, traffic and isolation data.

The Report's recommendation regarding the isolation criteria to be employed was similar to that in Alternative #1 of the NPRM. The Department offered, by example, isolation criteria that would eliminate subsidy for points that were fewer than 75 miles from a large or medium hub, or fewer than 55 miles from a small hub, or fewer than 45 miles from a qualifying nonhub. The Report also recommended that nonhubs be considered as alternate service airports only if they met a "usability" threshold. A nonhub might have only two or three flights a day or, as in the case of Green Bay, for example, more than 30 flights per day to several destinations. While people may be willing to drive 40 miles to Green Bay to enter the air transportation system, they would be far less likely to drive 40 miles to a community with only a few commuter flights a day to one destination.

The Department therefore recommended in its Report that a threshold level of service should be required at an alternate nonhub airport before it can be considered a usable alternative. The Report suggested that nonhubs must enplane an average of 100 passengers per day or 36,500 per year to be considered a usable alternate for the EAS point. With the 15- to 19-seat commuter aircraft that typically serve EAS points and other small nonhubs, normally at least eight or nine departures per day would operate to accommodate 100 passengers. Also, 100 daily enplanements are enough to support service with jet aircraft; and if larger than 15- to 19-seat aircraft are used at the nonhub, its attractiveness as an alternate to the EAS point might be enhanced. In determining whether a nonhub airport would meet the 100 enplanement-per-day threshold, enplanements generated by both certificated and commuter air carriers would be included.

If these criteria were fully implemented, the Report indicated that 24 communities would be eliminated from subsidy support, producing an annual subsidy saving of about $5.5 million. These service and subsidy cuts would be over and above those for the six points that Congress had already eliminated effective October 1, 1989, which will save $1.7 million a year.

Department of Transportation Appropriations Act, FY 1990

The FY 1990 DOT Appropriations Act (Pub. L. 101-164, November 21, 1989), provides $30,735,000 for EAS payments. This figure is less than the Department's estimate for extending basic EAS in FY 1990 at FY 1989 service levels (except at the six points eliminated under Public Law 101-45) of $34.5 million. The legislation also retains the FY 1989 Act language limiting the payment of EAS compensation to the amounts appropriated for it.

In reporting on the legislation, the Appropriations Conference Committee recognized that the amount being appropriated would not support the same level of service provided in FY 1989. The Committee accepted an appropriation figure of $30,735,000, an amount sufficient to implement a reduced program generally along the lines outlined in the Department's report.

Relative Hardships on the Communities Affected

The Department had considered, within its Report to Congress, the relative hardships that would be imposed on the communities affected by its reduction recommendations. All of the communities identified for subsidy elimination receive intercity bus service, and nine receive intercity passenger and freight rail service. Eleven of the communities that received service in FY 1988, and that are proposed for subsidy elimination under this rule, averaged fewer than five enplanements per day. (Brownsville, Texas, and Battle Creek, Michigan, did not receive service in FY 1988.) At three of these communities we would expect that the carriers would continue to provide service even after their subsidy is eliminated because of high traffic levels. New Bedford, Massachusetts, already receives subsidy-free service to Nantucket and Martha's Vineyard, its major markets. Rocky Mount and Winston-Salem, North Carolina, each averages more than 50 enplanements per day, and the carrier would likely continue service without subsidy support. In addition, all these communities are within reasonable ground transportation time of usable alternate air service and/or generate very little traffic. At the five communities that would fall out based on the $200-per-passenger cap without regard to isolation, average daily enplanements are as follows:

Columbus, Nebraska	1.4
Sidney, Nebraska	1.6
Winslow, Arizona	1.8
Blythe, California	2.7
McAlester, Oklahoma	1.8

In summary, it is evident that none of these communities would suffer undue hardship by being eliminated from the program.

Summary of Final Rule

To achieve the subsidy reductions required for FY 1990, this final rule incorporate a combination of the approaches proposed in Alternatives 1, 3 and 4 of the NPRM. The rule is also consistent with the approach contemplated by the Conference Committee Report. In considering both the relative isolation of a community (Alternative 1) and its subsidy-per-passenger (Alternatives 3 and 4), this approach effectively balances the need for air service with the cost of maintaining that service, in such a way as to minimize, to the extent practicable, the adverse impacts inherent in any subsidy reduction approach. (See the discussion above, and the Statement of Regulatory Impacts for further discussion of impacts associated with this rule.) Additionally, this approach will permit the Department to operate its FY 1990 EAS program within the appropriated amounts, which is its legal obligation.

This rule therefore provides for eligibility criteria requiring that a qualifying community not have required a subsidy-per-passenger rate of more than $200.00, and that it be 70 highway miles or more from the nearest medium or large hub airport, 55 highway miles or more from the nearest small hub airport, and 45 highway miles or more from the nearest nonhub airport that enplanes 100 passengers or more per day. An exception to these criteria is made for State capitals located more than 55 highway miles from the nearest medium or large hub airport, 40 miles from the nearest small hub airport, and 30 miles from the nearest qualifying nonhub airport and whose per-passenger subsidy, as of September 30, 1989, did not exceed $15. Also excluded are Alaska, Hawaii, and Pacific points, based upon their extreme dependence upon air service and the lack of available alternative means of transportation. The qualifying criteria established in the rule would remain in effect after FY 1990, if subsequent appropriations limit the program to the same service levels as in FY 1990 (or require lower ones), and Congress provides no statutory director to the contrary. Finally, the rule specifies that, under FY 1990 fiscal constraints, subsidy will not be available for the enhanced service levels, new points, or Basic EAS service upgrades—except for a 2 engine/2 pilot provisions having negligible subsidy cost impacts—authorized under Public Law 100-223.

Statement of Regulatory Impacts

This rulemaking has been evaluated under various regulatory laws and policies as discussed below.

Evaluation of Costs, Benefits, and Impacts—The immediate benefits expected to accrue from this rulemaking relate to an anticipated savings of approximately $3.6 million in FY 1990. Should Congress opt to retain EAS at FY 1990 service levels for FY 1991, FY 1992, etc., savings of approximately $5 million per year can be expected. (Savings for those years would be realized for the full twelve months of the year rather than the nine months' savings being achieved under this rule.) This savings represents the dollar amount of the reductions in EAS subsidies that are being implemented by this rulemaking. From an overall perspective, this savings represents an important effort being made toward reducing the country's budget deficit. Similar efforts are being made to achieve savings through reduced appropriations in other Federal programs.

The cost of the EAS program at each community is reflected in the data set out in Table 1 of this rule. Individual benefits arising from this rule relate to the retention of EAS subsidy at communities that are in greatest need of access to the national air transportation system (as measured by their distance from alternate service airports), but that do not also require substantial subsidy per passenger in order to maintain service. Through this balance of relative need with relative cost-efficiency, the impacts of EAS reductions can be minimized as much as practicable.

Comments to the NPRM did not provide sufficient data that could be employed as the basis for fully quantifying the benefits associated with this rulemaking. Partial quantification of benefits and impacts has been illustrated in Table 1 below, and in a qualitative way they can be summarized as follows: (1) The communities losing service are being limited to those that

have low cost-efficiencies, or have reasonable access to nearby air service, resulting in the least overall

character. Moreover, as noted above, these commenters did not provide us with a methodology or data that could

performing the type of regional feeder service that are subsidized under the EAS program and that are truly

connect with alternate air transporation. Also, the impacts resulting from the rule

Transportation "Regulatory Policies and Procedures" (44 FR 11034; February 28,

(i) Fewer than 70 highway miles from the nearest large or medium hub airport; or

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have low cost-efficiencies, or have reasonable access to nearby air service, resulting in the least overall inconvenience to the traveling public, as compared to greater inconvenience that would have been encountered under the other alternatives considered in this rulemaking; (2) Nearly two-thirds of the communities that are losing subsidized air service enplane fewer than 10 passengers per day; (3) Relatively few communities are projected to lose subsidized air service (20 plus the 6 points previously excluded) when compared to the number of communities losing service under other alternatives considered in this rulemaking for reduction under FY 1989 appropriation restraints (44, 46, 33, and 53); and (4) Subsidy for air service is being eliminated at many communities that are among those having the least chance of attracting self-sufficient air service, in view of the relatively large amounts of subsidy that they require and/or in view of the historically low level of traffic that they have generated. Tangential benefits in this rulemaking include those relating to expansion of alternative transportation business concerns, such as limousine services, air taxi operators, and public transportation providers, which could expand or develop as a result of new passengers seeking alternative travel arrangements.

The anticipated impacts to individual communites in this rulemaking are listed in Table 1. The far right column indicates whether, basd upon DOT calculations, the particular community meets the reduction criteria specified in this rule.

The costs associated with this rule relate mostly to the additional time or expense, or both, involved in traveling to and from an alternate service airport, or by an alternative transportation mode. Business costs in affected areas will likely increase, proportionately to the amount of existing business travel expenses due to mileage costs and delays incurred by having to use and rely on alternative service airports. A means to measure the extent of delays and additional travel expenses that will result is reflected in the column in Table 1 entitled "Miles between EAS community and alternate service airport." DOT received numerous comments from business concerns and individuals who stated that they would be inconvenienced, and suffer increased costs, if EAS subsidy were not retained at their communites. Some of these comments were from communities at which subsidy would be eliminated under this rule. However, these comments tended to be rather general in character. Moreover, as noted above, these commenters did not provide us with a methodology or data that could be generally applied to quantify individual costs, benefits, and impacts to any degree greater than that done for this evaluation.

The NPRM suggested that air carriers could also be affected due to loss of EAS routes, leading in turn to loss of revenues and jobs. EAS air carriers that offered comments did not tend to raise this specific concern, and none offered a methodology or sufficient data to use in quantifying any such impacts. Additional discussion on air carrier impacts is found in the next section.

The NPRM noted that discontinuation of EAS subsidy need not result in discontinuation of air service, as State or local governments might be able to offer sufficient funds to maintain service, air fares might be increased, or carriers might agree to maintain service to affected communities at present or reduced levels. However, most carriers indicated that, without subsidy, they would be unable or unwilling to continue service to an EAS point for which they currently receive subsidy. Nor were comments from the States and local governments encouraging on this point. Carriers are urged to work with individual communities affected by this rule in the hope that acceptable alternative arrangements might be developed.

In summary, DOT has concluded that the benefits to be achieved in this rulemaking (i.e., the cost savings to our national economy together with the continuation of subsidy support at the communities that are in need of access to the national air transportation system, but that do not require substantial support in terms of subsidy per passenger) clearly outweigh the resulting costs associated with loss of subsidy by the relatively few number of communities affected by the final rule.

Regulatory Flexibility Act

The Department certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

There are three types of small entities affected by this rulemaking: Small air carriers, small businesses, and small local governments. Air carriers are businesses, which, to come under the Regulatory Flexibility Act as small business concerns, must be independently owned and operated and not dominant in their field of operation. Given the significant degree of integration of large and small air carriers in the current deregulated environment, there remain few carriers performing the type of regional feeder service that are subsidized under the EAS program and that are truly independent. Through joint marketing and ticketing arrangements and purchases of equity interests, large airlines have substantial amounts of influence over the operations of regional carriers affected by this program. Hence, it is not possible to say that there subsidy reductions will have a significant economic impact upon a substantial number of these small business concerns.

In any event, the impact on most small carriers should not be significant. Of the EAS carriers serving points affected by the reduction criteria contained in this rule, most provide subsidized or nonsubsidized service, or both, in various other markets. Given that these carriers may redeploy their aircraft, or make other financial and operational adjustments, the Department expects that they will continue to remain viable despite the loss of EAS revenues. In fact, some or all of these carriers may be able to make adjustments producing a more efficient overall operation. Another small group of carriers, listed earlier as serving or as being selected for affected EAS points, either failed to initiate or discontinued service during the past year for financial or operational reasons and have not been replaced. Subsidy reductions at this should have little, if any, effect on these carriers. One EAS carrier provides scheduled service at only one point, and subsidy for this service would be discontinued under the criteria of this rule. This carrier, however, had previously filed a notice to terminate service at the point, and its parent maintains an air freight business that will not be affected. DOT expects that loss of EAS subsidy would not have a substantial impact on this firm. Finally, one carrier was impacted by the termination of subsidy at one point by Public Law 101-45, and thereafter discontinued operations; this carrier had applied to serve two points at which subsidy support would be terminated under the criteria contained in this rule. Given its prior shutdown, it is not considered that the termination of EAS revenues at this time would have any measurable impact on this carrier.

The impact on small businesses in communities for which EAS subsidy is being withdrawn should likewise not be significant, as alternative modes of passenger and freight transportation are available. In addition, this rulemaking should not result in termination of all access for small business to scheduled air transportation—it merely increases the surface travel time and distance to

connect with alternate air transporation. Also, the impacts resulting from the rule are anticipated to affect large and small businesses similarly, and create no inherent advantages for either. Finally, this rulemaking should not substantially affect small air charters and air taxis. To the extent that these businesses are affected, the effect should be beneficial and result in increased demand for these types of air service.

A very few small businesses, such as those located at airports serviced by subsidized carriers and engaged in aircraft servicing, may be more directly impacted by this rule. We received no comments from such businesses indicating that they would be unable to continue in business or have their revenues dramatically affected as a result of the issuance of this rule.

Local governments will also be affected by this rulemaking, in that some communities that they serve are being declared no longer eligible for subidized service. This arguably affect local revenues, tax bases, business activity levels, and general community welfare. However, any generalized economic impact is not likely to be significant, largely for the reasons given above regarding small businesses. Also, at most affected points, ridership figures are low, indicating that any generalized economic impact is quite small.

Executive Order 12291, "Federal Regulation"

The rulemaking is not major, in that it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; nor significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Executive Order 12612, "Federalism"

This rulemaking has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it does not have sufficient federalism implications to warrant the preparation of a federalism assessment. The legislation sets forth the rules for the Federal, State, and local government in carrying out the legislation, and this rulmaking merely reflects those roles.

DOT Regulatory Policies

This rulemaking is considered to be significant under Department of Transportation "Regulatory Policies and Procedures" (44 FR 11034; February 26, 1979); in particular, substantial governmental and public interests are involved. This rulemaking therefore includes a final evaluation of the relevant costs, benefits, and impacts, and related issues, which is required by DOT Regulatory Policies and Procedures. As explained in the evaluation, the principal benefits anticipated in this rulemaking are expected to outweigh the costs to individual communities and air carriers that will be affected by the final rule. Further, every effort is being made to minimize the economic impact that this rulemaking will have.

Legal Authority

This rulemaking is issued under the authority of sections 204 and 419 of Public Law 85-726 as amended (49 U.S.C. 1324 and 1387); and Public Law 101-164 (Department of Transportation and Related Agencies Appropriations Act, 1990, November 21, 1989.)

List of Subjects in 14 CFR Part 398

Air transportation, Essential air service.

In accordance with the foregoing, part 398 of title 14, Code of Federal Regulations is amended as follows:

1. The authority citation for part 398 is revised to read as follows:

Authority: Secs. 204 and 419 of Pub. L. 85-726 as amended (49 U.S.C. §§ 1324 and 1387); and Pub. L. 101-164 (Department of Transportation and Related Agencies Appropriations Act, 1990, November 21, 1989).

2. A new § 398.11 is added to read as follows:

§ 398.11 Funding reductions: fiscal year 1990 and subsequent fiscal years.

(a) Because the funds appropriated for FY 1990 are less than the amount required for operations of subsidy-supported essential air service (EAS) as authorized in orders in effect on July 1, 1989, FY 1990 appropriations shall not be available for—

(1) Enhanced EAS, Compensation for Service to Other Small Communities, and Basic EAS service upgrades, as authorized under sections 419 (c), (d), and (k)(1) (C), (D), and (F) of the Federal Aviation Act of 1958, as amended; and

(2) After December 31, 1989, for EAS to otherwise eligible points within the 48 contiguous States and Puerto Rico that, except for State capitals qualifying under paragraph (b), have a rate of subsidy per passenger in excess of $200.00, or are located—

(i) Fewer than 70 highway miles from the nearest large or medium hub airport; or

(ii) Fewer than 55 highway miles from the nearest small hub airport; or

(iii) Fewer than 45 highway miles from the nearest nonhub airport that has enplaned, on certificated or commuter carriers, 100 or more passengers per day, in the most recent calendar year for which the Department has obtained complete data.

(b) Subsidy shall be available in FY 1990 for EAS to otherwise-eligible points that are State capitals, had a rate of subsidy-per-passenger that as calculated by the Department based on the most recent available data did not exceed $15.00 on September 30, 1989, and are located more than—

(1) 55 highway miles from the nearest medium or large hub airport;

(2) 40 highway miles from the nearest small hub airport, and

(3) 30 miles from the nearest nonhub airport that has enplaned 100 or more passengers per day based on the most recently available data.

(c) If, in future fiscal years, appropriations for payments to air carriers remain at or below the amounts estimated as necessary to maintain subsidy-supported EAS at the points receiving such service in fiscal year 1990, and Congress provides no statutory direction to the contrary, the criteria established by this section shall remain in effect.

(d) For purposes of paragraph (a)(2), the rate of subsidy per passenger for FY 1990, except as otherwise noted in Table 1, is calculated by dividing the annual subsidy in effect on June 30, 1989 by the total origin and destination traffic during FY 1989. For fiscal years beginning after September 30, 1990, the rate of subsidy per passenger shall be calculated by dividing the annual subisdy in effect as of July 1 of the prior fiscal year by the total origin and destination traffic during the prior calendar year.

(e) For purposes of paragraph (a)(2),

(1) "Large hub airport" means an airport that annually enplanes 1.0% or more of the total annual enplanements reported by certificated carriers in the United States;

(2) "Medium hub airport" means an airport that enplanes between 0.25% and 0.999% of such total enplanements;

(3) "Small hub airport" means an airport that enplanes between 0.05% and 0.249% of such total enplanements; and

(4) "Nonhub airport" means an airport that enplanes less than 0.05% of such total enplanements.

VOL

TABLE 1

TABLE 1—Continued

TABLE 1

EAS Community [1]	Nearest airport providing unsubsidized alternate service if EAS subsidy is eliminated [2]	Hub Classification of alternate service airport	Miles between EAS community and alternate service airport [3]	Total Origin and Destination Traffic, (FY 1988)	Subsidy Rates in Effect at EAS point (6/30/89)	Subsidy per passenger	Would EAS subsidy be eliminated under this rule?
ALABAMA:							
Anniston [4]	Birmingham, AL	S	62	16,585	(*)	(*)	N
Gadsden	Birmingham, AL	S	60	1,659	$183,137	$110.39	N
ARIZONA:							
Kingman [5]	Las Vegas, NV	L	109	[7] 5,155	263,591	51.13	N
Page	Flagstaff, AZ	N	137	6,575	177,433	20.69	N
Winslow [6]	Flagstaff, AZ	N	61	[7] 1,114	237,047	212.79	Y
ARKANSAS:							
El Dorado/Camden	Texarkana, TX	N	84	[8] 6,861	717,766	194.62	N
Harrison	Springfield, MO	N	88	[8] 3,388	544,432	160.69	N
Hot Springs	Little Rock, AR	S	57	[8] 2,809	507,407	194.48	N
Jonesboro	Memphis, TN	L	71	[8] 1,476	260,273	176.34	N
CALIFORNIA:							
Blythe	Yuma, AZ	N	92	1,677	354,336	211.29	Y
Crescent City	Eureka, CA	N	80	4,202	154,660	36.81	N
Merced	Fresno, CA	S	60	18,197	310,521	17.06	N
COLORADO:							
Alamosa	Pueblo, CO	N	127	17,322	(*)	(*)	N
Cortez	Durango, CO	N	57	9,545	198,210	14.48	N
Lamar	Pueblo, CO	N	114	2,435	244,317	100.34	N
GEORGIA:							
Athens [9]	Atlanta, GA	L	82	30,346	(*)	(*)	N
Moultrie/Thomasville	Tallahassee, FL	S	56	1,372	462,756	337.29	[10] N
ILLINOIS:							
Mt. Vernon [9]	St. Louis, MO	L	93	3,515	307,772	87.58	N
Sterling/Rock Falls	Moline, IL	S	60	1,744	248,011	142.21	N
INDIANA:							
Elkhart	South Bend, IN	S	19	7,769	249,591	32.13	Y
Kokomo	Indianapolis, IN	M	77	1,255	401,175	391.66	[10] N
Terre Haute [11]	Indianapolis, IN	M	N/A	N/A	N/A	N/A	N/A
IOWA:							
Clinton	Moline, IL	S	45	721	203,708	282.54	Y
Ottumwa	Des Moines, IA	S	92	1,576	238,498	151.33	N
KANSAS:							
Dodge City	Wichita, KS	S	156	5,242	244,317	46.61	N
Garden City	Wichita, KS	S	209	9,282	244,317	26.32	N
Goodland	Denver, CO	L	190	1,724	244,317	141.72	N
Great Bend	Wichita, KS	S	116	2,990	244,317	83.38	N
Hays	Wichita, KS	S	175	8,561	244,317	28.54	N
Hutchinson	Wichita, KS	S	53	543	244,317	449.94	[10] N
Parsons/Ind/Coffeyville	Joplin, MO	N	68	416	244,317	584.49	[10] N
Liberal/Guymon	Amarillo, TX	S	162	5,766	244,317	42.37	N
KENTUCKY:							
Owensboro [11]	Evansville, IN	N	N/A	N/A	N/A	N/A	N/A
MAINE:							
Lewiston	Portland, ME	S	39	[12] 816	269,755	330.58	[10] N
Bar Harbor [6]	Bangor, ME	N	52	16,840	(*)	(*)	N
MASSAHUSETTS:							
New Bedford [13]	Providence, RI	S	41	[14] 595	(*)	(*)	Y
MICHIGAN:							
Alpena [15]	Traverse City, MI	N	N/A	N/A	N/A	N/A	N/A
Battle Creek	Kalamazoo, MI	N	20	[16] 13,000	159,060	12.24	Y
Benton Harbor	South Bend, IN	S	35	6,182	249,591	40.37	Y
Iron Mountain	Milwaukee, WI	M	200	8,799	182,799	20.77	N
Ironwood/Ashland	Duluth/Superior, MN	N	103	4,514	182,799	40.50	N
Manistee/Ludington	Grand Rapids, MI	S	120	[17] 4,455	266,414	60.25	N
Menominee/Marinette	Green Bay, WI	N	60	[18] 3,889	403,408	103.73	N
Jackson	Lansing, MI	N	42	773	159,060	205.80	Y
Sault Ste Marie [19]	Traverse City, MI	N	N/A	N/A	N/A	N/A	N/A
MINNESOTA:							
Fairmont	Minneapolis/St. Paul, MN	L	153	2,612	303,427	107.90	N
Mankato	Minneapolis/St. Paul, MN	L	75	2,510	179,600	71.55	N
Worthington	Sioux Falls, SD	S	62	1,778	179,600	101.01	N
MISSISSIPPI:							
Laurel-Hattiesburg [9]	Jackson, MS	S	95	[19] 7,398	(*)	(*)	N
MISSOURI:							
Fort Leonard Wood	Springfield, MO	N	92	9,356	168,963	18.06	N
Kirksville	Kansas City, MO	L	145	6,291	235,637	37.52	N
MONTANA:							
Glasgow	Billings, MT	S	247	3,011	168,229	55.87	N
Glendive	Bismarck, ND	N	192	1,784	131,515	74.55	N
Havre	Great Falls, MT	N	113	1,797	190,495	106.01	N
Lewistown	Great Falls, MT	N	106	984	190,495	193.59	N
Miles City	Billings, MT	S	148	2,295	131,515	57.31	N

TABLE 1—Continued

EAS Community [1]	Nearest airport providing unsubsidized alternate service if EAS subsidy is eliminated [2]	Hub Classification of alternate service airport	Miles between EAS community and alternate service airport [3]	Total Origin and Destination Traffic, (FY 1988)	Subsidy Rates in Effect at EAS point (6/30/89)	Subsidy per passenger	Would EAS subsidy be eliminated under this rule?
Sidney	Minot, ND	N	183	4,720	315,815	66.91	N
West Yellowstone [20]	Bozeman, MT	N	N/A	N/A	N/A	N/A	N/A
Wolf Point	Minot, ND	N	222	2,737	168,229	61.46	N
NEBRASKA:							
Alliance	Denver, CO	L	242	1,444	222,727	154.24	N
Chadron	Rapid City, SD	N	104	1,154	222,727	193.00	N
Columbus	Lincoln, NE	S	77	862	218,079	252.99	Y
Grand Island	Lincoln, NE	S	96	[22] 5,313	457,977	86.20	N
Hastings	Lincoln, NE	S	104	1,821	222,727	122.31	N
Kearney	Lincoln, NE	S	130	5,429	222,727	41.03	N
McCook	Denver, CO	L	259	2,416	222,727	92.19	N
Norfolk	Omaha, NE	S	111	2,562	218,079	85.12	N
North Platte	Omaha, NE	S	282	[21] 3,943	274,222	69.55	N
Scottsbluff	Denver, CO	L	202	[21] 6,076	274,222	45.13	N
Sidney	Denver, CO	L	186	1,029	222,727	216.45	Y
NEVADA:							
Ely	Salt Lake City, UT	L	236	4,430	359,194	81.06	N
NEW HAMPSHIRE:							
Keene [9]	Manchester, NH	N	62	16,458	(*)	(*)	N
Laconia	Manchester, NH	N	52	2,758	249,796	90.57	N
NEW JERSEY:							
Cape May [9]	Atlantic City, NJ	N	45	5,585	(*)	(*)	N
NEW MEXICO:							
Alamogordo	El Paso, TX	M	92	6,144	165,766	26.98	N
Clovis	Lubbock, TX	S	106	6,195	133,651	21.57	N
Gallup [11]	Farmington, NM	N	N/A	N/A	N/A	N/A	N/A
Hobbs	Midland/Odessa, TX	S	98	6,234	85,690	13.75	N
Santa Fe	Albuquerque, NM	M	59	[23] 11,262	132,314	11.75	N
Silver City	El Paso, TX	M	163	4,504	169,390	37.61	N
NEW YORK:							
Massena	Burlington, VT	S	149	5,671	166,289	19.18	N
Ogdensburg	Syracuse, NY	M	127	9,490	166,289	17.52	N
Plattsburgh	Burlington, VT	S	77	25,230	166,289	6.59	N
Saranac Lake/Lake Placid	Burlington, VT	S	101	18,731	166,289	8.88	N
Watertown	Syracuse, NY	M	70	[23] 15,683	166,289	10.47	N
NORTH CAROLINA:							
Rocky Mount/Wilson	Greenville, NC	N	34	32,618	180,492	5.53	Y
Winston-Salem	Greensboro, NC	S	15	33,904	(*)	(*)	Y
NORTH DAKOTA:							
Devils Lake	Grand Forks, ND	N	90	4,134	294,396	71.21	N
Jamestown	Fargo, ND	S	97	7,744	294,396	38.02	N
Williston	Minot, ND	N	130	10,421	315,815	30.31	N
OHIO:							
Mansfield	Columbus, OH	M	83	[24] 2,967	383,527	129.26	Y
OKLAHOMA:							
Enid	Oklahoma City, OK	M	91	[8] 1,534	178,235	116.19	N
McAlester	Tulsa, OK	M	102	[8] 998	228,799	229.26	Y
Ponca City	Wichita, KS	S	88	[8] 3,056	178,235	58.28	N
OREGON:							
Salem	Portland, OR	M	62	3,256	113,705	34.90	Y
PENNSYLVANIA:							
Oil City/Franklin	Youngstown, OH	N	72	21,444	128,504	5.99	N
PUERTO RICO:							
Ponce	San Juan, PR	M	80	9,125	265,056	29.05	N
SOUTH DAKOTA:							
Brookings	Sioux Falls, SD	S	57	4,167	108,938	26.14	N
Huron	Sioux Falls, SD	S	121	6,216	108,938	17.53	N
Mitchell	Sioux Falls, SD	S	68	1,852	108,938	58.82	N
Pierre	Sioux Falls, SD	S	207	[25] 9,425	371,165	39.38	N
Yankton	Sioux Falls, SD	S	96	1,196	218,079	182.04	N
TENNESSEE:							
Clarksville [9]	Nashville, TN	M	66	[26] 1,266	307,772	239.33	Y
TEXAS:							
Brownsville [9]	Harlingen, TX	S	31	(*)	(*)	(*)	Y
Brownwood	Abilene, TX	N	77	[8] 3,772	265,898	75.79	N
Paris	Texarkana, TX	N	95	[8] 1,595	228,799	143.45	N
Temple	Killeen, TX	N	16	[8] 9,089	357,307	39.31	Y
UTAH:							
Cedar City	Las Vegas, NV	L	171	10,435	167,488	16.05	N
Moab	Grand Jct., CO	N	116	1,871	172,930	92.43	N
Vernal	Salt Lake City, UT	L	171	3,934	203,784	51.80	N
VERMONT:							
Montpelier/Barre	Burlington, VT	S	40	1,363	235,371	172.69	Y
Rutland [9]	Burlington, VT	S	71	15,524	(*)	(*)	N

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TABLE 1—Continued

			Miles				

Regulatory Flexibility Act, 5 U.S.C. 601–612, and, thus, is exempt from the provision of the Act

(3) To develop uniform safety standards for consumer products and to minimize conflicting State and local

Dakota, Ohio, South Dakota, Tennessee, and Wisconsin.

(2) Eastern Regional Center, 6 World

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TABLE 1—Continued

EAS Community [1]	Nearest airport providing unsubsidized alternate service if EAS subsidy is eliminated [2]	Hub Classification of alternate service airport	Miles between EAS community and alternate service airport [3]	Total Origin and Destination Traffic, (FY 1988)	Subsidy Rates in Effect at EAS point (6/30/89)	Subsidy per passenger	Would EAS subsidy be eliminated under this rule?
VIRGINIA:							
Danville	Greensboro, NC	S	57	17,345	217,856	12.56	N
Hot Springs	Roanoke, VA	S	95	[31] 2,341	150,017	64.08	N
WASHINGTON:							
Ephrata/Moses Lake	Pasco, WA	N	63	6,620	164,336	24.82	N
WEST VIRGINIA:							
Beckley	Charleston, WV	S	59	21,553	55,123	2.56	N
Clarksburg/Fairmont [32]	Pittsburgh, PA	L	197	3,430	128,830	37.56	N
Elkins	Charleston, WV	S	141	1,808	263,096	145.52	N
Morgantown [33]	Pittsburgh, PA	L	75	7,714	128,830	16.70	N
Princeton/Bluefield	Roanoke, VA	S	95	23,826	55,123	2.31	N
WISCONSIN:							
Beloit/Janesville	Madison, WI	S	47	409	259,000	633.25	[34] N
Manitowoc	Green Bay, WI	N	39	[35] 1,599	393,295	245.96	Y
WYOMING:							
Worland	Billings, MT	S	164	2,543	352,655	138.68	N

[1] Excludes points in Alaska, Hawaii, and the Pacific.
[2] In order to qualify as an alternate service airport, the airport shown must enplane at least 100 passengers per day. Also, the alternate airport shown is the nearest qualifying airport, regardless of its hub classification. In some cases, there may be other, larger airports that are more distant from the EAS community but that are closer to the thresholds under which communities would be found ineligible for further subsidized service.
[3] Mileage shown is shortest highway mileage from city center of the EAS community to the alternate service airport.
[4] Carrier filed notice to terminate service at this point during FY 1989, triggering eligibility for subsidy.
[5] No subsidy rate in effect; therefore, no subsidy-per-passenger calculation can be made.
[6] Community is currently without a air service.
[7] Passengers are for YE 3/31/88, the most recent data available.
[8] Passengers are for YE 3/31/88, the most recent consecutive 12-month period without significant service disruption.
[9] Athens not included in NPRM listing, as it was expected to become subsidy-free during 1989. However, subsidy has been continued.
[10] Subsidy support was discontinued on October 1, 1989, pursuant to Pub. L. 101-45.
[11] EAS definitions were changed or exemptions granted such that current requirements are being met without subsidy support.
[12] Passengers per flight at an assumed 95% completion.
[13] Community is currently without air service to New York City.
[14] New Bedford currently receives subsidy-free service to Nantucket and Martha's Vineyard and generated 40,493 passengers in these markets in FY 1988, an average of 79 passengers per day in each direction.
[15] Point became subsidy-free during 1989.
[16] Reflects passengers projected in carrier's proposal since the community received no service during FY 1988.
[17] No data available for the fourth quarter of 1987 or the first quarter of 1988. Traffic figures reflect the three quarters ended 12/31/88 (3341) increased to reflect a full year.
[18] No data available for the fourth quarter of 1987 or the first quarter of 1988. Traffic figures reflect the three quarters ended 12/31/88 (2917) increased to reflect a full year.
[19] Laurel/Hattiesburg currently receives subsidy-free service to Memphis and generated 19,096 Memphis passengers, 31 per day in each direction.
[20] Grand Island currently receives subsidy-free service to Kansas City, Lincoln and Omaha and generated 31,075 passengers in these markets in FY 1988, an average of 50 passengers per day in each direction.
[21] North Platte and Scottsbluff receive subsidy-free service to Denver and generated 18,451 and 27,947 passengers, 29 and 45 per day in each direction, respectively, in FY 1988.
[22] After a long hiatus in service, Mesa began service in June 1988. Therefore, traffic is based on the two quarters ended 12/31/88 (5631) x 2.
[23] Watertown currently receives subsidy-free service to New York City but did not during FY 1988.
[24] No service provided in the fourth quarter of 1987, therefore, passenger data is for the year ended 12/31/88.
[25] Pierre currently receives subsidy-free service to Minneapolis and generated 19,259 passengers, 31 per day in each direction, in FY 1988.
[26] Prime Air passengers = 837, plus 10% of 4,493 passengers for NW Airlink (NW Airlink Competition during the 4th quarter of 1987 and the first quarter of 1988 presumed to have diverted some of Prime Air's traffic, and NW Airlink no longer serves the point.)
[27] Based on 213 service days. Seasonal service from April through November 30.
[28] Clarksburg and Morgantown receive subsidy-free service to Pittsburgh and generated 37,351 and 37,765 passengers, respectively, 60 per day in each direction at each community, in FY 1988.
[29] No data available for the fourth quarter of 1987 or the first quarter of 1988. Traffic figures reflect the three quarters ended 12/31/88 (1199) x 4/3.

Issued in Washington, DC on: December 19, 1989.

Samuel K. Skinner,

Secretary of Transportation.

[FR Doc. 89-29780 Filed 12-19-89; 2:21 pm]

BILLING CODE 4910-62-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1000

Statement of Organization and Functions

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Consumer Product Safety Commission is amending its statement of organization and functions to reflect the conversion of the Office of Internal Audit to the Office of the Inspector General, the Transfer of the committee management function from the Directorate of Health Sciences to the Secretary of the Commission, and to reflect minor editorial changes made since the changes published December 28, 1988, 53 FR 52407.

DATE: December 22, 1989.

ADDRESS: Consumer Product Safety Commission, Office of the Secretary, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Joseph F. Rosenthal, Office of the General Counsel, Consumer Product Safety Commission, Washington, DC 20207, telephone 301-492-6980.

SUPPLEMENTARY INFORMATION: Since this rule relates solely to internal agency management, pursuant to 5 U.S.C. 553(b), notice and other public procedures are not required and it is effective immediately upon publication in the **Federal Register**. Further, this action is not a rule as defined in the

Regulatory Flexibility Act, 5 U.S.C. 601-612, and, thus, is exempt from the provision of the Act

List of Subjects in 16 CFR Part 1000

Organization and functions (Government agencies).

Dated: December 15, 1989.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Accordingly, chapter II, subchapter A of 16 CFR is amended by revising part 1000 to read as follows:

PART 1000—COMMISSION ORGANIZATION AND FUNCTIONS

Sec.
1000.1 The Commission.
1000.2 Laws administered.
1000.3 Hotline.
1000.4 Commission addresses.
1000.5 Petitions.
1000.6 Commission decision and records.
1000.7 Advisory opinions and interpretations of regulations.
1000.8 Meetings and hearings; public notice.
1000.9 Quorum.
1000.10 The Chairman and Vice Chairman.
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1000.27 Directorate for Compliance and Administrative Litigation.
1000.28 Directorate for Administration.
1000.29 Directorate for Field Operations.

Authority: 5 U.S.C. 552(a).

§ 1000.1 The Commission.

(a) The Consumer Product Safety Commission is an independent regulatory agency which was formed on May 14, 1973, under the provisions of the Consumer Product Safety Act (Pub. L. 92-573, 86 Stat. 1207, as amended (15 U.S.C. 2051, et seq.)). The purposes of the Commission under the CPSA are:

(1) To protect the public against unreasonable risks of injury associated with consumer products;

(2) To assist consumers in evaluating the comparative safety of consumer products;

(3) To develop uniform safety standards for consumer products and to minimize conflicting State and local regulations; and

(4) To promote research and investigation into the causes and prevention of product-related deaths, illnesses, and injuries.

(b) The Commission is composed of five members appointed by the President, by and with the advice and consent of the Senate, for terms of seven years.

§ 1000.2 Laws administered.

The Commission administers five acts:

(a) The Consumer Product Safety Act (Pub. L. 92-573, 86 Stat. 1207, as amended (15 U.S.C. 2051, et seq.)).

(b) The Flammable Fabrics Act (Pub. L. 90-189, 67 Stat. 111, as amended (15 U.S.C. 1191, et seq.)).

(c) The Federal Hazardous Substances Act (Pub. L. 86-613, 74 Stat. 380, as amended (15 U.S.C. 1261, et seq.)).

(d) The Poison Prevention Packaging Act of 1970 (Pub. L. 91-601, 84 Stat. 1670, as amended (15 U.S.C. 1471, et seq.)).

(e) The Refrigerator Safety Act of 1956 (Pub. L. 84-930, 70 Stat. 953, 15 U.S.C. 1211, et seq.)).

§ 1000.3 Hotline.

(a) The Commission operates a toll-free telephone Hotline by which the public can communicate with the Commission. The number for use in all 50 states is 1-800-638-CPSC (1-800-638-2772).

(b) The Commission also operates a toll-free Hotline by which deaf or speech-impaired persons can communicate by teletypewriter with the Commission. The teletypewriter number for use in all states except Maryland is 1-800-638-8270. The teletypewriter number for use in Maryland is 1-800-492-8104.

§ 1000.4 Commission addresses.

(a) The principal offices of the Commission are at 5401 Westbard Avenue, Bethesda, Maryland. All written communications with the Commission should be addressed to the Consumer Product Safety Commission, Washington, DC 20207, unless otherwise specifically directed.

(b) The Commission has 3 Regional Centers which are located at the following addresses and which serve the states indicated:

(1) Central Regional Center, 230 South Dearborn St., room 2944, Chicago, Illinois 60604; Alabama, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Tennessee, and Wisconsin.

(2) Eastern Regional Center, 6 World Trade Center, Vesey Street, room 301, New York, New York 10048; Connecticut, Delaware, District of Columbia, Florida, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Vermont, Virginia, West Virginia, and Virgin Islands.

(3) Western Regional Center, U.S. Customs House, 555 Battery St., room 415, San Francisco, California 94111; Alaska, American Samoa, Arizona, Arkansas, California, Colorado, Guam, Hawaii, Idaho, Louisiana, Montana, Nevada, New Mexico, Oregon, Texas, Utah, Washington, and Wyoming.

§ 1000.5 Petitions.

Any interested person may petition the Commission to issue, amend, or revoke a rule or regulation by submitting a written request to the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

§ 1000.6 Commission decisions and records.

(a) Each decision of the Commission, acting in an official capacity as a collegial body, is recorded in Minutes of Commission meetings or as a separate Record of Commission action. Copies of Minutes or of a Record of Commission action may be obtained upon written request from the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or may be examined in the public reading room at Commission headquarters. Requests should identify the subject matter of the Commission action and the approximate date of the Commission action, if known.

(b) Other records in the custody of the Commission may be requested in writing from the Office of the Secretary pursuant to the Commission's Procedures for Disclosure or Production of Information under the Freedom of Information Act (16 CFR part 1015).

§ 1000.7 Advisory opinions and interpretations of regulations.

(a) *Advisory opinions.* Upon written request, the General Counsel provides written advisory opinions interpreting the acts the Commission administers. Advisory opinions represent the legal opinions of the General Counsel and may be changed or superseded by the Commission. Requests for issuance of advisory opinions should be sent to the General Counsel, Consumer Product Safety Commission, Washington, DC

20207. Requests for copies of particular previously issued advisory opinions or a copy of an index of such opinions

§ 1000.10 The Chairman and Vice Chairman.

(a) The Chairman is the principal

§ 1000.14 Office of the General Counsel.

The Office of the General Counsel provides advice and counsel to the

The Office supervises and administers the dockets of adjudicative proceedings before the Commission. The Office

and managing the execution of those plans. The Executive Director has direct line authority over the following

resolving issues that arise among the directorates and other offices in carrying out hazard program goals.

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20207. Requests for copies of particular previously issued advisory opinions or a copy of an index of such opinions should be submitted to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

(b) *Interpretations of regulations.* Upon written request, the Associate Executive Director for Compliance and Administrative Litigation will issue written interpretations of Commission regulations pertaining to the safety standards and the enforcement of those standards. Interpretations of regulations represent the interpretations of the staff and may be changed or superseded by the Commission. Requests for such interpretations should be sent to the Associate Executive director for Compliance and Administrative Litigation, Consumer Product Safety Commission, Washington, DC 20207. Requests for interpretations of administrative regulations (e.g., Freedom of Information Act regulations) should be sent to the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

§ 1000.8 Meetings and hearings; public notice.

(a) The Commission may meet and exercise all its powers in any place.

(b) Meetings of the Commission are held as ordered by the Commission and, unless otherwise ordered, are held at the principal office of the Commission at 5401 Westbard Avenue, Bethesda, Maryland. Meetings of the Commission for the purpose of jointly conducting the formal business of the agency, including the rendering of official decisions, are generally announced in advance and open to the public, as provided by the Government in the Sunshine Act (5 U.S.C. 552b) and the Commission's Meetings Policy (16 CFR part 1012).

(c) The Commission may conduct any hearing or other inquiry necessary or appropriate to its functions anywhere in the United States. It will publish notice of any proposed hearing in the **Federal Register** and will afford a reasonable opportunity for interested persons to present relevant testimony and data.

(d) Notices of Commission meetings, Commission hearings, and other Commission activities are published in a Public Calendar, as provided in the Commission's Meetings Policy (16 CFR part 1012).

§ 1000.9 Quorum.

Three members of the Commission constitute a quorum for the transaction of business.

§ 1000.10 The Chairman and Vice Chairman.

(a) The Chairman is the principal executive officer of the Commission and, subject to the general policies of the Commission and to such regulatory decisions, findings, and determinations as the Commission is by law authorized to make, he or she exercises all of the executive and administrative functions of the Commission.

(b) The Commission annually elects a Vice Chairman to act in the absence or disability of the Chairman or in case of a vacancy in the Office of the Chairman.

§ 1000.11 Delegation of functions.

Section 27(b)(9) of the Consumer Product Safety Act (15 U.S.C. 2076(b)(9)) authorizes the Commission to delegate any of its functions and powers, other than the power to issue subpoenas, to any officer or employee of the Commission. Delegations are published in the Commission's Directives System.

§ 1000.12 Organizational structure.

The Consumer Product Safety Commission is composed of the principal units listed in this section.

(a) The following units report directly to the Chairman of the Commission:

(1) Office of the General Counsel;
(2) Office of Congressional Relations;
(3) Office of the Secretary;
(4) Office of the Inspector General;
(5) Office of Equal Employment Opportunity and Minority Enterprise;
(6) Office of the Executive Director.

(b) The following units report directly to the Executive Director of the Commission:

(1) Office of Program Management and Budget;
(2) Office of Planning and Evaluation;
(3) Office of Information and Public Affairs;
(4) Directorate for Epidemiology;
(5) Directorate for Economic Analysis;
(6) Directorate for Engineering Sciences;
(7) Directorate for Health Sciences;
(8) Directorate for Compliance and Administrative Litigation;
(9) Directorate for Administration;
(10) Directorate for Field Operations.

§ 1000.13 Directives system.

The Commission maintains a Directives System which contains delegations of authority and descriptions of Commission programs, policies, and procedures. A complete set of directives is available for inspection in the public reading room at Commission headquarters.

§ 1000.14 Office of the General Counsel.

The Office of the General Counsel provides advice and counsel to the Commissioners and organizational components of the Commission on matters of law arising from operations of the Commission. It prepares the Commission's legislative program and comments on relevant legislative proposals originating elsewhere. The Office, in conjunction with the Department of Justice, is responsible for the conduct of all the Federal court litigation to which the Commission is a party. The Office also advises the Commission on administrative litigation matters. The Office provides final legal review of and makes recommendations to the Commission on proposed product safety standards, rules, regulations, petition actions, and substantial hazard actions. It also provides legal review of certain procurement, personnel, and administrative actions and drafts documents for publication in the **Federal Register**.

§ 1000.15 Office of Congressional Relations.

The Office of Congressional Relations is the principal contact with the committees and members of Congress. It performs liaison duites for the Commission, provides information and assistance to Congress on matters of Commission policy, and coordinates testimony and appearances by Commissioners and agency personnel before Congress.

§ 1000.16 Office of the Secretary.

The Office of the Secretary prepares the Commission's agenda, schedules and coordinates Commission business at official meetings, and records, issues, and stores the official records of Commission actions. The Office prepares and publishes the Public Calendar under the Commission's Meetings Policy. The Office exercises joint responsibility with the Office of the General Counsel for the interpretation and application of the Privacy Act, Freedom of Information Act, and the Government in the Sunshine Act, and prepares reports required by these acts. It issues Commission decisions, orders, rules, and other official documents, including **Federal Register** notices, for and on behalf of the Commission and controls the use of the Commission seal. The Secretary of the Commission also serves as the agency's Advisory Committee Management Officer, and is responsible for managing the establishment, procedures, and accomplishments of all advisory committees utilized by the Commission.

The Office supervises and administers the dockets of adjudicative proceedings before the Commission. The Office maintains the records of continuing guaranties of compliance with applicable standards of flammability issued under the Flammable Fabrics Act (FFA) which are filed with the Commission in accordance with provisions of section 8(a) of the FFA (15 U.S.C. 1197(a)). Upon request, the Office of the Secretary provides appropriate forms to persons and firms desiring to execute continuing guaranties under the FFA. The Office also supervises and administers the public reading room.

§ 1000.17 Office of the Inspector General.

The Office of the Inspector General is an independent office established under the provisions of the Inspector General Act of 1978, 5 U.S.C. Appendix, as amended by the Inspector General Act Amendments of 1988. This Office independently, or at the direction of the Chairman, initiates, conducts, supervises, and coordinates audits, operations reviews, and investigations of Commission programs, activities, and operations, to prevent and detect waste, fraud, and abuse. Reporting only to the Chairman, and under his or her general supervision, the Office also makes recommendations to promote economy, efficiency, and effectiveness within the Commission's programs and operations. The Office receives and investigates complaints or information concerning possible violations of law, rules, or regulations, mismanagement, abuse of authority, and waste of funds. It reviews existing and proposed legislation concerning the economy, efficiency, and effectiveness of such legislation on Commission operations.

§ 1000.18 Office of Equal Employment Opportunity and Minority Enterprise.

The Office of Equal Employment Opportunity and Minority Enterprise assures the agency complies with all laws, regulations, rules and internal policies relating to equal employment opportunity. It assures compliance with the Small Business Act as it relates to small and disadvantaged business utilization. The Office also conducts the Upward Mobility Program.

§ 1000.19 Office of the Executive Director.

The Executive Director with the assistance of the Deputy Executive Director, under the broad direction of the Chairman and in accordance with Commission policy, acts as the chief operating manager of the agency, supporting the development of the agency's budget and operating plan before and after Commission approval, and managing the execution of those plans. The Executive Director has direct line authority over the following directorates and offices: Epidemiology, Economic Analysis, Engineering Sciences, Health Sciences, Compliance and Administrative Litigation, Administration, and Field Operations; the Office of Program Management and Budget; the Office of Planning and Evaluation; and the Office of Information and Public Affairs.

§ 1000.20 Office of Program Management and Budget.

(a) The Office of Program Management and Budget is responsible for implementing the Commission's regulatory decisions, overseeing the development of the Commission's budget, program goals and objectives, and hazard program plans. The Office, in consultation with other offices and directorates, prepares, for the Commission's approval, the annual budget requests to Congress and the Office of Management and Budget and the operating plan for each fiscal year. It manages the execution of the Commission's budget. The Office recommends to the Office of the Executive Director actions to enhance effectiveness of the Commission's programs and activities.

(b) The Office of Program Management and Budget is also responsible for managing the hazard-related programs contained in the Commission's operating plan and carries out other tasks assigned by the Executive Director. The Office is responsible for Information Resources Management activities and for international liaison activities relating to consumer safety. Program Managers within the Office provide overall direction to all hazard program projects, including those involving mandatory and voluntary standards, petitions, and emerging hazards. This is especially true where functional responsibility extends across the organizational lines of other Commission offices and directorates. The Program Managers' authority complements the functional authority vested in the Associate Executive Directors and other Office Directors to assure that relevant legal, technical, environmental, economic, and social impacts of projects are comprehensively and objectively presented to the Commission for decision. The Office carries out regular program reviews assessing the progress of individual projects to reach goals established by the Commission. The Office consults with the other staff directorates and offices in developing strategies to meet these goals. It is responsible for resolving issues that arise among the directorates and other offices in carrying out hazard program goals.

§ 1000.21 Office of Planning and Evaluation.

The Office of Planning and Evaluation reports to the Executive Director and is responsible for the Commission's planning and evaluation activities. It develops integrated short and long range plans for achieving the Commission's goals and objectives. The office is responsible for the development and analysis of both major policy and operational issues. Evaluation studies are conducted to determine how well the Commission fulfills it mission. These studies include impact and process evaluations of Commission programs, projects, functions, and activities. Recommendations are made to the Executive Director for changes to improve their efficiency and effectiveness. Management analyses and special studies are also conducted. These cover, but are not limited to, internal controls, organizational performance, structure, and productivity measurement. Recommendations are made to the Executive Director for improving management efficiency and effectiveness.

§ 1000.22 Office of Information and Public Affairs.

The Office of Information and Public Affairs is responsible for the development, implementation, and evaluation of a comprehensive national information and public affairs program designed to promote product safety. This includes responsibility for developing and maintaining relations with a wide range of national groups such as consumer organizations; business groups; trade associations; state and local government entities; labor organizations; medical, legal, scientific and other professional associations; and other Federal health, safety and consumer agencies. The Office also manages the Commission's Hotline, described in § 1000.3 of this chapter. The Office also is responsible for implementing the Commission's media relations program nationwide. The Office serves as the Commission's spokesperson to the national print and broadcast media, develops and disseminates the Commission's news releases, and organizes Commission news conferences.

§ 1000.23 Directorate for Epidemiology.

The Directorate for Epidemiology, which is managed by the Associate Executive Director for Epidemiology, is responsible for injury and human factors

data analysis to identify hazards or hazard patterns. The Directorate collects data on consumer product-

Engineering Sciences, is responsible for developing technical policy and

specifications, and quality control standards for certain consumer

and provides program guidance, advice, and case guidance to field offices and

relations, and training and executive development. The Directorate provides

other Regional Centers, and appropriate Federal, State, and local government

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data analysis to identify hazards or hazard patterns. The Directorate collects data on consumer product-related hazards and potential hazards, determines the frequency, severity, and distribution of the various types of injuries, and investigates their causes. It assesses the effects of product safety standards and programs on consumer injuries and conducts epidemiological and human factors studies and research in the field of consumer product-related injuries. The Directorate provides statistical support for all other Commission organizations, including, but not limited to, standards development, certification programs, and sampling for field inspection programs. It performs risk assessments based on accident data for physical, thermal, and electrical hazards in consumer products. It maintains the National Injury Information Clearinghouse and manages the National Electronic Injury Surveillance System (NEISS).

§ 1000.24 Directorate for Economic Analysis.

The Directorate for Economic Analysis, which is managed by the Associate Executive Director for Economic Analysis, is responsible for providing the Commission with advice and information on economic and environmental matters and on the economic, social and environmental effects of Commission actions. It analyzes the potential effects of CPSC actions on consumers and on industries, including effects on competitive structure and commercial practices. The Directorate acquires, compiles, and maintains economic data on movements and trends in the general economy and on the production, distribution, and sales of consumer products and their components to assist in the analysis of CPSC priorities, policies, actions, and rules. It plans and carries out economic surveys of consumers and industries. It studies the costs of accidents and injuries. It evaluates the economic, societal, and environmental impact of product safety rules and standards. It performs such regulatory analyses and such studies of costs and benefits of CPSC actions as are required by the Consumer Product Safety Act, The National Environmental Policy Act, the Regulatory Flexibility Act and other Acts, and by policies established by the Consumer Product Safety Commission.

§ 1000.25 Directorate for Engineering Sciences.

The Directorate for Engineering Sciences, which is managed by the Associate Executive Director for Engineering Sciences, is responsible for developing technical policy and implementing the Commission's engineering programs. The Directorate provides engineering and physical science support to all of the Commission organizations, activities and programs. The Directorate is responsible for the development and evaluation of product safety standards, and product safety tests and test methods, based on engineering and other physical sciences, to support general agency regulatory activities. The Directorate develops and evaluates performance criteria, design specifications, and quality control standards for certain consumer products. It provides engineering and technical expertise to the Commission, conducts engineering tests and studies of the safety of consumer products, and evaluates industry voluntary standards efforts. It performs and monitors research in engineering and other physical sciences and manages the Commission's engineering laboratory and engineering test facility. The Directorate provides engineering services in support of the Commission's enforcement activities and monitors state laboratory testing contracts. It coordinates engineering research, testing, and evaluation activities with the National Institute of standards and Technology and other federal agencies, private industry, and consumer interest groups. The Directorate conducts statistical analyses for the engineering aspects of standards development, quality control, and sampling for field inspection programs. The Directorate provides technical supervision and direction of all engineering activities including test and analyses conducted in the field. The Directorate analyzes accident data, develops accident scenarios, and recommends options to eliminate unreasonable risks.

§ 1000.26 Directorate for Health Sciences.

The Directorate for Health Sciences, which is managed by the Associate Executive Director for Health Sciences, is responsible for developing science policy and implementing the Commission's Health Sciences program. The Directorate's functional responsibilities include development and evaluation of the scientific content of product safety standards and test methods based on the chemical, biological and medical sciences, and the conduct and evaluation of specific product testing to support general agency regulatory activity. The Directorate also provides scientific and medical expertise to the Commission and its develops and evaluates performance criteria, design specifications, and quality control standards for certain consumer products. It conducts and evaluates scientific tests and test methods, participates in the scientific development of product safety standards, and provides advice on proposed standards. It collects scientific and medical data, reviews and evaluates toxicological, medical, and chemical hazards, and determines exposure, uptake and metabolism, including identification of the toxicological and physiological bases which cause some population segments to be at special risk. It performs risk assessments for chemical hazards, and physical hazards based on medical injury modeling in consumer products. It performs or monitors research, and conducts studies of the safety of or of improving the safety of consumer products. It provides the Commission's primary source of technical expertise for implementation of the Poison Prevention Packaging Act. It provides the Commission's expertise on how chemical products are manufactured and it provides scientific and laboratory support to the Commission's and other laboratories and other chemical or toxicological testing facilities. It provides scientific and medical support to all commission organizations, activities, and programs. The Directorate provides scientific liaison with the National Toxicological Program, the National Cancer Institute, the Environmental Protection Agency, other federal agencies and programs, and organizations concerned with reducing the risks to consumers from exposure to chemical hazards.

§ 1000.27 Directorate for Compliance and Administrative Litigation.

The Directorate for Compliance and Administrative Litigation, which is managed by the Associate Executive Director for Compliance and Administrative Litigation, conducts or supervises the conduct of compliance and administrative enforcement activity under all administered acts, provides advice and guidance to regulated industries on complying with all administered acts and reviews proposed standards and rules with respect to their enforceability. The Directorate's responsibility also includes identifying and acting on safety hazards in consumer products already in distribution, promoting industry compliance with existing safety rules, and conducting litigation before an administrative law judge relative to administrative complaints. It directs the enforcement efforts of the field offices and provides program guidance, advice, and case guidance to field offices and participates in the development of standards before their promulgation to assure enforceability of the final product. It enforces the Consumer Product Safety Act requirement that firms identify and report product defects which could present possible substantial hazards. It reviews consumer complaints, in-depth investigations, and other data to identify those consumer products containing such hazards or which do not comply with existing safety requirements. The Directorate negotiates and subsequently monitors corrective action plans designed to recall defective or non-complying products subject to the reporting requirements of section 15 of the Consumer Product Safety Act and the Federal Hazardous Substances Act, gives public warning to consumers where appropriate, and provides guidelines and directs the field in negotiating and monitoring corrective action plans designed to recall products which fail to comply with specific regulations. It gathers information on generic product hazards which may lead to subsequent initiation of safety standard setting procedures. The Directorate develops surveillance strategies and programs designed to assure compliance with Commission standards and regulations. It originates instructions to field offices and provides subsequent interpretations or guidance for field surveillance and enforcement activities.

§ 1000.28 Directorate for Administration.

The Directorate of Administration, which is managed by the Associate Executive Director for Administration, is responsible for general policy and internal control within his or her functional area of administrative responsibility. The Directorate's functional responsibility includes all general and delegated administrative functions supporting the Commission in the areas of financial management, personnel administration, information processing and telecommunications, procurement, and general administrative support services. The Directorate is responsible for the payment, accounting, and reporting of all expenditures within the Commission and for operating and maintaining the Commission's accounting system and subsidiary Management Information System which allocates staff work time and costs to programs and projects. The Directorate is responsible for all aspects of personnel management for the Commission, including recruitment and placement, position classification, employee and labor-management relations, and training and executive development. The Directorate provides the operational interface with the Food and Drug Administration's Parklawn Computer Center, manages the Commission's Office Automation System and personal computers, and provides ADP operational and programming support for data collection, information retrieval, report generation, and statistical and mathematical requirements of the Commission. The Directorate is responsible for all CPSC contracts and procurement services, and provides general administrative support services including property and space management, physical security, printing and reproduction, records management, transportation, mail, warehousing and library services.

§ 1000.29 Directorate for Field Operations.

(a) The Directorate for Field Operations, which is managed by the Associate Executive Director for Field Operations, has direct line authority over all Commission field operations; develops, issues, approves, or clears proposals and instructions affecting the field activities; and provides a central point within the Commission from which Headquarters officials can obtain field support services. The Directorate provides direction and leadership to the Regional Center Directors and promulgates policies and operational guidelines which form the framework for management of Commission field operations. The Directorate works closely with the other Headquarters functional units, the Regional Centers, and other field offices to assure effective Headquarters-field relationships, proper allocation of resources to support Commission priorities in the field, and effective performance of field tasks. It represents the field and prepares field program documents. It coordinates direct contact procedures between Headquarter's offices and Regional Centers. The Directorate is also responsible for liaison with State, local, and other Federal agencies on product safety programs in the field.

(b) Regional Centers are responsible for carrying out investigative, compliance, and consumer information and public affairs activities within their areas. They encourage voluntary industry compliance with the laws and regulations administered by the Commission, identify product related incidents and investigate selected injuries or deaths associated with consumer products, and implement wide-ranging public information and education programs designed to reduce consumer product injuries. They also provide support and maintain liaison with components of the Commission, other Regional Centers, and appropriate Federal, State, and local government office.

[FR Doc. 89-29725 Filed 12-21-89; 8:45 am]
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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 161 and 250

[Docket No. RM87-5-001; Order No. 497-A]

Inquiry Into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines; Order on Rehearing

Issued December 15, 1989.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; Order on rehearing.

SUMMARY: The Commission issued a final rule in order No. 497 (53 FR 22,139 (June 14, 1988), III FERC Stats. & Regs. ¶ 30,820 on June 1, 1988, adopting standards of conduct and reporting requirements to govern the relationship between interstate pipelines and their gas marketing affiliates.

This order on rehearing denies in part and grants in part rehearing of Order No. 497. This order also amends the rule to extend the reporting requirements in § 250.16 (a), (c), and (d) for an additional year, from December 31, 1989 to December 31, 1990.

EFFECTIVE DATE: With the exception of the Commission's extension of the reporting requirements in Order No. 497, the revisions made to the final rule in this order on rehearing are effective January 22, 1990. In order to prevent a gap in the rule's reporting requirements, the amendments to § 250.16 (a), (c), and (d), which contain the sunset date for the rule's reporting requirements are effective January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Thomas J. Lane, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8530.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the Federal Register, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the

issued the NOI in response to several petitions for rulemaking [2] and several cases that had raised the issue of

The final rule also restricted the availability of discounts to affiliates of pipelines that do not transport under a

In the final rule, however, the Commission determined that the potential for anticompetitive conduct between a pipeline and its affiliate was

and prevent unlawfully discriminatory activity.

The Commission has also concluded

First, the Commission is excluding only from the rule's *reporting requirements* in § 250.16, but not from the standards of conduct, transactions

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The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357–8997. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this order on rehearing will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street NE., Washington, DC 20426.

Before Commissioners: Martin L. Allday, Chairman; Charles A. Trabandt, Elizabeth Anne Moler and Jerry J. Langdon.

Order on Rehearing

Issued December 15, 1989.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is denying in part and granting in part rehearing of Order No. 497 issued in this docket and is clarifying certain provisions of the final rule.

II. Public Reporting Burden

This order on rehearing makes modest revisions in the reporting requirements contained in Order No. 497 which, collectively, do not materially alter the overall reporting burden in the final rule that is already in effect. The order extends these reporting requirements and the sunset provision for an additional year, from December 31, 1989 to December 31, 1990. The Office of Management and Budget approved the reporting requirements in the final rule on August 18, 1988. This approval is effective until December 31, 1989.

III. Background

The Commission issued a final rule in this proceeding on June 1, 1988.[1] The final rule was the result of a lengthy rulemaking proceeding that began with the issuance of a notice of inquiry (NOI) in November 1986.[2] The Commission issued the NOI in response to several petitions for rulemaking [3] and several cases that had raised the issue of potential abuse in the relationship between interstate natural gas pipelines and their marketing or brokering affiliates.[4]

In response to the comments received to the NOI, the Commission issued a notice of proposed rulemaking (NOPR) on June 2, 1987.[5] The NOPR proposed to establish standards of conduct to govern the pipeline-affiliate relationship and reporting requirements to provide data to determine whether anticompetitive practices were occurring. The NOPR also outlined other possible approaches to prevent undue discrimination such as divorcement,[6] divestiture, and organizational separation of the pipeline and its affiliate. Additionally, the NOPR sought comments as to whether only Order No. 436 pipelines should be permitted to have marketing affiliates.

In the final rule the Commission adopted the standards of conduct and reporting requirements outlined in the NOPR, with certain modifications. The Commission also established a tentative sunset date of December 31, 1989 for the rule's reporting requirements. The Commission added that it would examine the need to extend the rule's reporting requirements at the end of this period and would do so if such action was necessary. Other changes were made to reduce the reporting requirements and to eliminate reporting of data that might result in the release of competitively sensitive information.[7]

The final rule also restricted the availability of discounts to affiliates of pipelines that do not transport under a blanket certificate under subpart G of part 284 of the Commission's regulations. Under the final rule, such a pipeline may not charge an affiliate a rate lower than the highest rate it charges in any transaction not involving its marketing affiliate.

The Commission declined in the final rule to require divorcement, divestiture, or organizational separation or to limit marketing affiliates to Order No. 436 pipelines. The Commission, however, stated that it might impose remedies such as divorcement or divestiture on a case-by-case basis where necessary to prevent competitive abuses.

IV. Discussion

The Commission received 44 rehearing requests as well as a number of requests to stay all or portions of the final rule or to waive particular provisions of the rule for individual pipelines.[8]

Many of the arguments made on rehearing are the same as those raised in the comments to the NOI and the NOPR. Pipelines and their affiliates continue to argue that the rule is unnecessary, is overly burdensome and would force the pipeline to release confidential data that would put the affiliated marketer at a competitive disadvantage.[9] Independent marketers and producers argue that the rule did not go far enough to prevent affiliate abuses. They argue that the Commission should have ordered divestiture [10] or at least structural separation of pipelines and their affiliates.[11]

[1] 53 FR 22,139 (June 14, 1988), III FERC Stats. & Regs. ¶ 30,820 (June 1, 1988).

[2] "Notice of Inquiry into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines" on November 14, 1986 [51 FR 41,982 (Nov. 20, 1986), FERC Stats. & Regs. ¶ 35,520]. The Commission received 107 responses to the NOI.

[3] Petitions of Hadson Gas Systems, Inc. in Docket No. RM86–19–000, Minnesota Department of Public Service in Docket No. RM87–1–000, and Shell Gas Trading Company in Docket No. RM87–3–000.

[4] Northern Natural Gas Co., Docket No. RP83–71–001, *et al.*, 30 FERC ¶ 61,040 (1982); Mountain Fuel Resources, Inc., Docket No. RP86–87–001, 36 FERC ¶ 61,150 (1986); ANR Pipeline Co., Docket No. RP86–109–000, 36 FERC ¶ 61,400 (1986); Independent Petroleum Association of Mountain States v. Panhandle Eastern Pipeline Co., Docket No. CP86–584–000, 36 FERC ¶ 61,282 (1986); Southern Natural Gas Co., Docket No. CP86–277–001, *et al.*, 36 FERC ¶ 61,275 (1986); Texas Gas Transmission Corp., Docket No. CP86–349–001, 36 FERC ¶ 61,274 (1986); Arkla Exploration Co., Docket No. CI86–376–000, *et al.*, 37 FERC ¶ 61,011 (1986); Southern Natural Gas Co., Docket No. CI86–371–000, *et al.*, 36 FERC ¶ 61,401 (1986); Tenneco Oil Co., *et al.*, Docket No. CI86–254–000, *et al.*, 36 FERC ¶ 61,369 (1986).

[5] 52 FR 21,378 (June 6, 1987). FERC Stats. & Regs. ¶ 32,443. The Commission also held an Opportunity for Oral Presentation on October 20, 1987, to allow presenters to air their comments more fully.

[6] Under divorcement, a pipeline would be allowed to have a marketing affiliate but could do no business with the affiliate.

[7] The NOPR proposed that a pipeline make publicly available a log of all transportation transactions. The final rule required such a log for affiliate transactions only. The NOPR also proposed to require (1) that the log identify any affiliation of the requestor of transportation with the supplier of the gas and (2) that pipeline transportation personnel maintain a log of contacts. Neither of these proposals was adopted in the final rule. Rather than require the log to identify the supplier and the end user as proposed in the NOPR, the final rule required identification only of the production area and the state where the gas is consumed. The final rule delayed the initial filing date for the information from 30 to 60 days. The NOPR proposed updating non-log information every 30 days while the final rule required such updates as a quarterly basis.

[8] The list of petitioners is contained in the Appendix. The stay and waiver requests are being addressed in a separate order issued contemporaneously with this order.

[9] *See, e.g.*, Interstate Natural Association of America (INGAA), Enron Interstate Pipelines (Enron), Tenneco Gas Pipeline Group (Tenneco).

[10] Access Energy Corp.

[11] *See, e.g.*, Hadson Gas Systems (Hadson), Producer Associations, National Gas Clearinghouse, Inc. The Maryland People's Counsel also argues that the Commission should have allowed marketing affiliates only for Part 284 Subpart G pipelines.

In the final rule, however, the Commission determined that the potential for anticompetitive conduct between a pipeline and its affiliate was sufficient to warrant action. In determining the appropriate action to take, the Commission sought to fashion a rule that would prevent these abuses with the least regulatory infringement necessary. The Commission believes that the course it adopted in the final rule of establishing standards of conduct and reporting requirements has been effective in curbing affiliate abuses without the need for more intrusive measures. To the extent that the Commission addressed the above arguments in the final rule, it will not reiterate its rationale at great length on rehearing. Several arguments, however, do merit additional discussion. The Commission is also clarifying certain provisions of the rule and modifying certain aspects of the rule. Any rehearing requests that may be filed in response to this order on rehearing should be limited to new matters raised by this order.

A. Need for the Rule.

The Commission continues to believe that the potential for affiliate abuse is sufficiently substantial to support the rule as promulgated.

In adhering to its approach adopted in the final rule, the Commission is not persuaded by the pipelines' arguments that the rule is unnecessary. As the Commission noted in the NOPR, the Commission had received complaints of abuses. Comments received in response to the NOI indicated that there were no industry-wide standards as to the type of activities that could lead to affiliate abuse and that undetected anticompetitive activities could be occurring. A substantial portion of pipelines' transportation transactions were and are being conducted on behalf of their marketing affiliate, and pipelines have an economic incentive to favor their affiliates. Thus, the potential for abuse was and is significant enough to warrant Commission action. Also, absent established standards, pipelines would run the risk that their practices with their affiliates might later be found to be unlawful. The standards of conduct provide guidelines for the Commission's Enforcement Task Force in dealing with complaints alleging pipeline-affiliate abuse, and establish a framework in which a pipeline and its affiliate can structure their relationship in a lawful manner. These standards, together with the rule's reporting requirements, give the public and the Commission staff the ability to detect and prevent unlawfully discriminatory activity.

The Commission has also concluded that stronger action, such as divestment, divorcement, or organizational separation is not supported by the record presently before the Commission. Nor does the Commission believe it necessary to require a pipeline to have a blanket certificate under subpart G of part 284 in order to conduct transportation transactions with its affiliate.[12] This conclusion is confirmed by our analysis of the data submitted by pipelines in response to the rule's reporting requirements. The data do not reveal any pattern of affiliate favoritism in areas such as discounts, queue positioning, processing time for transportation requests, take-or-pay, or the disposition of requests. The Commission will continue to monitor the information submitted to determine if stronger generic action is necessary and will continue to act on a case-by-case basis to prevent affiliate abuse where such action is appropriate.[13]

B. Scope of the Rule

1. Entities covered by the rule

In response to many rehearing requests the Commission is revising and clarifying the types of entities and transactions that are covered by the rule.[14]

First, the Commission is excluding only from the rule's *reporting requirements* in § 250.16, but not from the standards of conduct, transactions involving an affiliate that a pipeline conducts pursuant to an individual certificate previously issued under section 7(c) of the Natural Gas Act (NGA).[15] These certificates were issued under subpart A of part 157 of the Commission's regulations pursuant to detailed applications by the pipelines for authorization to provide such service. The applications disclosed the affiliate involvement and all other relevant details of these transactions, and the Commission fully considered these facts before issuing the certificates. These certificates are already subject to whatever reporting requirements the Commission deemed appropriate to prevent discrimination in providing the requested service, and the pipelines have relied on these certificates as issued. Therefore, the Commission believes that to subject these transactions to the additional reporting requirements in the rule would be unnecessarily burdensome. A pipeline, however, continues to be subject to the standards of conduct in the rule regardless of the type of certificate authority it possesses to transport on behalf of an affiliate.

The Commission has authorized marketing affiliate transactions in individual transportation certificates in the past, and will not disturb ongoing transportation conducted pursuant to previously issued certificates of that type. However, as a matter of policy, in the future the Commission will not issue new certificates for individual transportation transactions that involve transportation of gas sold by the pipeline's marketing affiliate unless the pipeline agrees to comply with all of the requirements of this rule, including the reporting requirements.

Second, the Commission is clarifying the types of transactions with a marketing affiliate that make a pipeline subject to the final rule. Section 250.16 of the regulations, as promulgated in the rule, exempts from the rule a pipeline "that does not conduct *any* transactions with its affiliated marketer." In the NOPR and the final rule the Commission explained that it was concerned with possible abuses in providing transportation services. Thus, the standards of conduct in the final rule related to a pipeline's transportation rather than merchant function. Similarly, the reporting requirements contained in the final rule required the filing and

[12] In this regard, the Commission notes that the issue is largely moot in that all of the major interstate pipelines have either accepted or applied for such certificates.

[13] In this regard, the Commission notes its recent order in Docket No. RP88–60–000, *et al.*, *interia alia*, directing Trancontinental Gas Pipe Line Corporation (Transco) to show cause why its recent transactions with its marketing affiliate TEMCO are not in violation of Order No. 497 and why Transco should not be required to divest or divorce itself from TEMCO.

[14] After the final rule went into effect, the Commission adopted Order No. 509, "Interpretation of, and Regulations under, Section 5 of the Outer Continental Shelf Lands Act Governing Transportation of Natural Gas by Interstate Natural Gas Pipelines on the Outer Continental Shelf," Order No. 509, 53 FR 50,925 (Dec. 19, 1988), III FERC Stats. & Regs. ¶ 30,842 (Dec. 8, 1988), *reh'g. denied*, 54 FR 6301 (Feb. 28, 1989), 46 FERC ¶ 61,177 (Feb. 21, 1989). Order No. 509 provides every interstate pipeline that transports gas on or across the Outer Continental Shelf with a blanket certificate authorizing and requiring nondiscriminatory transportation of natural gas on behalf of others. These certificates are issued pursuant to subpart K of part 284, a new subpart promulgated in the final rule. The Commission is amending the regulatory text of Order No. 497 to bring pipelines holding these subpart K certificates within the scope of the rule.

The Commission is also deleting the requirement in the regulatory text that part 157, subpart E pipelines are included in the rule because such a requirement is redundant. Subpart E pipelines already are subject to subpart G of part 284.

[15] 15 U.S.C. 717f (1982).

maintenance of data regarding transportation requests and service. As this type of potential abuse was the focus of the rule, the use of the word

gathering, or processing facilities.[20] In making these sales such entities are acting in the roles that their names imply. Hence, even though such sales

Commission has also granted interstate pipelines blanket certificates to make interruptible sales of gas that is excess to their system supply. Because these

2. First sale status

In the final rule, the Commission retained the "first sale" status of certain sales by pipeline marketing affiliates

an incentive to grant an affiliate preference that the Commission adopted a broad definition of control for purposes of the rule. This definition is

relationship. These standards provide that a pipeline:

(1) must apply a tariff provision relating to transportation in the same

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maintenance of data regarding transportation requests and service. As this type of potential abuse was the focus of the rule, the use of the word "any" in this context is overbroad. Therefore, the Commission is revising this section to exempt from the rule pipelines that do not conduct transportation transactions with an affiliate, rather than any transactions.[16] Simply put, if a pipeline does not transport on behalf of an affiliate, there is no opportunity for it to provide the affiliate a preference in transportation. The Commission intends the term transportation, as used in this rule, to include any transactions which provide for receipt of gas at one point and redelivery of gas to a second point, including exchanges, back-hauls and other transactions in which the gas being transported is owned, brokered or sold by the affiliate.

Third, in response to many rehearing requests, the Commission is clarifying the types of activity that constitute marketing [17] for purposes of the rule. For the purposes of defining the scope of this rule, a marketer generally is one who either: (1) Makes a "first sale" of gas as the term "first sale" is defined in section 2(21) of the NGPA[18] and codified in § 270.203 of the Commission's regulations; or (2) who makes a sale for resale of gas subject to the NGA. There are sellers of gas, however, that the Commission does not intend to include in the scope of this rule: Producers, gatherers or processors, acting in their traditional roles, that sell gas solely from their own production,[19] gathering, or processing facilities.[20] In making these sales such entities are acting in the roles that their names imply. Hence, even though such sales might fit a dictionary definition of the word "marketing" they are not included within the scope of the term "marketing" as it is used in this rule.

That is not to say, however, that these entities can never be considered to be marketers of gas as that term is used in the rule. For example, if a producer sells gas that was produced by another, it is acting as a marketer of that gas, not the producer of the gas. Likewise, a gatherer or processor that sells gas from facilities other than its own is acting as a marketer rather than as a gatherer or processor.

There are also situations in which a pipeline or a local distribution company (LDC) is not acting in its traditional role but as a marketer. Traditionally, pipelines and LDCs purchase and arrange for the transportation of gas for their own system supply and then sell that gas to their customers. It is when a pipeline or LDC acts outside of this role that it can engage in the types of sales for which an independent marketer could compete. In making such sales the affiliated pipeline or LDC is competing for space on the transporting pipeline. For example, when a pipeline or LDC sells gas off-system, it is not providing a traditional service to its service area customers but rather is competing with others in making that sale. As such, it is a marketer of that gas within the scope of the rule.

Similarly, when an intrastate pipeline makes sales under NGPA section 311(b),[21] it is competing with others for that sale as does an LDC that sells gas pursuant to § 284.224 of the Commission's regulations.[22] The Commission has also granted interstate pipelines blanket certificates to make interruptible sales of gas that is excess to their system supply. Because these sales are made in the open market, the pipeline must compete with others to make the sale. This raises the potential that another pipeline affiliated with that pipeline would have an incentive to favor the affiliate in transporting the off system gas sold under the blanket certificate.[23] However, we believe that the reporting requirements and prohibitions against undue discrimination contained in those blanket certificates are sufficient to prevent the potential abuses targeted by this rule. Therefore, we are excluding from the scope of the rule transactions involving interruptible sales of surplus system supply made pursuant to a blanket certificate issued for that purpose. Thus, neither the reporting requirements nor the standards of conduct in this rule will be applied to those transactions.

Therefore, although the term "marketing" as it is used in this rule generally encompasses first sales of gas, it excludes certain first sales that the Commission does not intend to encompass within the rule, and includes other sales in which anticompetitive conduct could occur and that the Commission does wish to encompass in the rule. Although a part of the activities of an affiliated producer, gatherer, processor, interstate or intrastate pipeline, or LDC may fall outside of the scope of the rule, those entities will be considered marketers for purposes of the rule in the illustrative situations discussed above. In summary, the Commission has determined that the following activities will be treated as "marketing" within the scope of the rule: (1) "first sales" of gas, or sales of gas for resale by a seller that is not an interstate pipeline, except when the seller is selling solely its own production or when the seller is selling gas solely from its own processing or gathering facilities; (2) off-system sales by an affiliated intrastate pipeline or sales under NGPA section 311(b); and (3) off-system sales by an affiliated LDC or sales under section 284.224 of the Commission's regulations.

[16] Because the rule is designed to ensure that a marketing affiliate does not receive a preference in the provision of transportation services, the standards of conduct implement that purpose by extending to areas of the pipeline-affiliate relationship that are ancillary to transportation. For example, one standard prohibits a pipeline from providing its affiliate with information the pipeline receives from a non-affiliated shipper. Another standard provides that if a pipeline shares information related to the transportation, sale or marketing of gas with its affiliate, it must also contemporaneously disclose the information to all potential shippers. Yet another requires that the employees of the pipeline and the affiliate function independently of each other to the maximum extent possible. And the data required to be reported encompasses non-transportation aspects of the transportation transaction, such as, for instance, whether the pipeline's affiliate sold the transported gas at a loss.

[17] For purposes of this rule, the term "marketing" and "brokering" are synonymous.

[18] 15 U.S.C. 3301 (1982).

[19] This includes situations in which a producer is selling gas that it owns or is selling gas of other interest owners in the same well and reservoir to the extent that the producer has contractual authority to sell such gas. The Commission has distinguished a producer that sells its own production from a producer that is acting as a marketer. In OXY USA Inc., 44 FERC ¶ 61,439 (1988) *reh'g denied* 46 FERC ¶ 61,258 (1989), the Commission granted OXY an unlimited term blanket certificate to make sales of its own production. In this context OXY was acting in its traditional role as a producer. However, the order limited the term in which OXY could act as a marketer. This limitation on OXY's marketing function was included because OXY is affiliated with an interstate pipeline.

[20] There may be circumstances in which a pipeline or its affiliate may attempt to exercise monopoly power over these types of facilities to deny non-affiliates access to transportation services. The Commission will deal with these situations on an individual basis. *See* Northern Natural Gas Company, 43 FERC ¶ 61,473 (1988); and Northwest Pipeline Corporation, 43 FERC ¶ 61,491 (1988).

[21] As codified at 18 CFR 284.142 (1988). That provision allows intrastate pipelines, without prior Commission approval, to sell gas to an interstate pipeline or local distribution company served by an interstate pipeline.

[22] That provision, in part, allows LDCs to make sales to interstate pipelines and other LDCs served by interstate pipelines.

[23] The Commission has approved this type of certificate in several circumstances. *See* Northern Natural Gas Co., 42 FERC ¶ 61,303 (1988), *reh'g denied* 43 FERC ¶ 61,819 (1988), Transwestern Pipeline Company, 43 FERC ¶ 61,340 (1988) *reh'g granted*, 44 FERC ¶ 61,164 (1988); El Paso Natural Gas Company, 45 FERC ¶ 61,322 (1988), Southern Natural Gas Company, 45 FERC ¶ 61,461 (1988); Natural Gas Pipeline Company, 45 FERC ¶ 61,465 (1988); CNG Transmission Corporation, 45 FERC ¶ 61,468 (1988).

2. First sale status

In the final rule, the Commission retained the "first sale" status of certain sales by pipeline marketing affiliates. Because of this status, affiliate sales of certain NGPA categories of gas are not subject to the Commission's NGA jurisdiction. Without this status, the affiliate would be subject to price regulation under section 4 of the NGA.[24]

The Producer Associations suggest that the Commission act expeditiously on applications filed by the public to remove this "first sales" status on an individual basis. It states that this would give the pipeline an incentive to deal with the public in an equitable manner. While the Commission continues to believe that it can effectively deter affiliate abuse by regulating the pipeline rather than the marketing affiliate it will use its authority to act under ¶ 270.203 to remove an affiliate's first sale status if individual circumstances so warrant.

3. Ten percent presumption of control

In the final rule the Commission stated that "affiliate" when used in relation to any person, means another person which controls, is controlled by, or is under common control with, such person."[25] The Commission stated that the term " 'control' . . . includes, but is not limited to, the possession, directly or indirectly, of the authority to direct or cause the direction of the management or policies of a company." The Commission added that a voting interest of 10 percent or more created a presumption of control, and therefore an affiliate relationship.

Several joint venture pipelines request clarification as to whether they are "affiliates" of their pipeline owners.[26] They argue that although these owners may individually have more than a 10 percent voting interest, no one owner can control the pipeline to the extent that it would give preference to an individual owner's affiliate.

The Commission believes that whenever a pipeline and its marketing or brokering entity share overlapping economic interests the potential arises that the pipeline may grant its affiliate a preference in order to benefit the corporate whole. The greater the degree of such overlapping interests, the greater the potential for abuse. It is because overlapping economic interests create an incentive to grant an affiliate preference that the Commission adopted a broad definition of control for purposes of the rule. This definition is not limited to the ability to directly control the management of a company but also includes situations in which a pipeline, by itself or in conjunction with others, has an economic incentive to favor an affiliate. This situation can arise, for example, in the case of a joint venture pipeline in which the pipeline is owned by several other pipelines. In this situation, a single pipeline owner may not be in a position to favor its affiliate over the affiliates of other pipeline owners. However, the pipeline owners as a group have an incentive to grant preferences to their own affiliates over other shippers. This situation could lead to a practice of granting preferences to these affiliates to the detriment of other shippers.

While any overlapping economic interest gives rise to the possibility that a preference may occur, a 10 percent voting interest raises this potential to a level where close monitoring of the pipeline-affiliate relationship is necessary. Thus, the existence of a 10 percent or more voting interest is a sufficient degree of economic involvement to create a rebuttable presumption that an affiliate relationship exists. Accordingly, the Commission has revised the definition of "control" in ¶ 161.2 to read as follows:

"Control" (including the terms "controlling," "controlled by," and "under common control with") includes, but is not limited to, the possession, directly or indirectly and whether acting alone or in conjunction with others, of the authority to direct or cause the direction of the management or policies of a company. A voting interest of 10 percent or more creates a rebuttable presumption of control.

For voting interests of less than 10 percent or for other shared economic interests, the Commission may examine, on a case-by-case basis, the particular circumstances involved in the relationship between the pipeline and a natural gas marketer to determine whether a sufficient incentive and opportunity exists to favor the marketer. If the Commission concludes that the incentive and ability to engage in anticompetitive conduct exists, it will require the pipeline to conform to the rule's standards of conduct and reporting requirements.[27]

C. Standards of Conduct

The final rule established standards of conduct to govern the pipeline-affiliate relationship. These standards provide that a pipeline:

(1) must apply a tariff provision relating to transportation in the same manner to the same or similarly situated persons if there is discretion in the application of the provision;

(2) must strictly enforce a tariff provision for which there is no discretion in the application of the provision;

(3) may not give its marketing affiliate a preference in scheduling, transportation, storage or curtailment priority;

(4) must process all similar requests for transportation in the same manner and within the same period of time;

(5) may not disclose to an affiliate any information to secure transportation service the pipeline receives from a non-affiliated shipper;

(6) must contemporaneously make available to all potential shippers any information that it gives to an affiliate regarding the transportation of natural gas and gas sales and marketing;

(7) must, to the maximum extent practicable, provide for the independent functioning of operating personnel of the pipeline and the affiliate;

(8) may not condition or tie its agreement to release gas subject to take-or-pay relief to an agreement by the producer (or a customer or end-user) to obtain services from an affiliate of the pipeline or to an offer by the pipeline to provide or expedite transportation service to its affiliate for the released gas; and

(9) must identify, upon request by a potential shipper, any information relating to released gas that is mitigating the pipelines's take-or-pay liability if it has provided this information to its marketing affiliate.

The rule required pipelines to file procedures with the Commission by September 12, 1988, to enable shippers and the Commission to determine how the pipeline is complying with these standards of conduct.

In addition to these standards the Commission is adopting two additional standards. One, if a pipeline offers a transportation discount to an affiliated marketer, it must make a comparable and contemporaneous discount available to all similarly situated non-affiliated shippers. This standard is in addition to the previously adopted restriction (*see* § 284.7(d)(5)(ii)(B)) on selective discounting by pipelines that do not have Part 284 blanket certificate. In Order No. 497, the Commission recognized that selective discounts by pipelines have the potential for giving rise to undue discrimination. To prevent

[24] 15 U.S.C. 717(c) (1982).

[25] The definition of "affiliate" is taken from section 2(27) of the NGPA. 15 U.S.C. 3301 (1982).

[26] See Robin Pipeline Company, Great Lakes Transmission Company, High Island Offshore System, Trailblazer Pipeline Company, Northern Border Pipeline Company. These requests are being addressed in a separate order that is being issued contemporaneously with this order.

[27] *See* Midwest Gas Users Association v. FERC, 833 F.2d 341 (D.C. Cir. 1987).

this discrimination, the Commission restricted the ability of a non-open access pipeline to provide discounts to its affiliate. Upon further consideration

The Commission will not allow a pipeline the discretion to waive tariff provisions for an affiliated marketer

could result in the public disclosure of confidential information that may have inadvertently been disclosed by a non-

information no later than the same day the affiliate receives the information.[32]

Citizens Energy requests that the

include any information given to a marketing affiliate that is not contemporaneously provided to an

discusses it with pipeline X's marketing affiliate. The marketing affiliate then asks pipeline X a specific question

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this discrimination, the Commission restricted the ability of a non-open access pipeline to provide discounts to its affiliate. Upon further consideration, the Commission has determined that the additional standard that it is promulgating in this order is also necessary to prevent affiliate abuse. This new standard applies to section 311 pipelines as well as pipelines that have a part 284 blanket certificate. If a pipeline is required to make the same discount available to other shippers that it offers to its affiliate, the pipeline will not be able to grant its affiliate a preferential discount.

Second, the Commission is establishing a standard that a pipeline must maintain its books and records separately from those of its affiliate.[28]

Pipelines must revise their standards to include these new factors by January 22, 1990. (See § 161.3(j).)

1. Discretionary enforcement of tariff priority (§ 161.3(c))

The Commission is adopting a suggestion of EnTrade to require pipelines to maintain and make available for copying on a daily basis a written log of waivers that the pipeline grants with respect to tariff provisions that provide for such discretionary waivers. In this way the Commission and the public will be able to determine whether a pipeline is granting waivers on a nondiscriminatory basis. This information must also be included in the transportation log that is filed with the Commission and to which the public is to have electronic access. (See new § 250.16(b)(xx)).

2. Strict enforcement of tariff provisions (§ 161.3(b))

Pipelines argue that this standard is unreasonable because minor operational and administrative deviations from a written tariff are an integral part of pipeline operations.[29] Enron argues that this provision should be limited to major tariff provisions and that a blanket waiver should be granted for operational and administrative provisions that may not be identifiable in advance and that are beyond the control of the pipeline. Arkla and Enron Gas Marketing state that pipelines should be able to waive tariff provisions in accordance with Commission precedent, specifically penalty provisions if they are waived in a nondiscriminatory manner.

The Commission will not allow a pipeline the discretion to waive tariff provisions for an affiliated marketer unless the provision itself gives the pipeline discretion to waive the provision. To allow pipelines this ability, even on a nondiscriminatory basis, could require the Commission to examine, on a case-by-case basis, whether the waiver was in fact discriminatory. If a pipeline wishes to waive a provision, it must apply to the Commission to do so. Alternately, a pipeline may file revised tariff sheets proposing to grant the pipeline this discretion. In that case, the Commission and the public will have an opportunity to examine the pipeline's request and the Commission will be able to determine whether such discretion should be allowed.

3. Prohibition on giving a marketing affiliate preference in scheduling, transportation, storage, or curtailment priority (§ 161.3(e))

Shell states that this provision should be clarified so that the prohibition on preferential treatment would not be limited to these four areas. The Commission agrees and is clarifying the regulatory text accordingly. The Commission is also specifically adding a prohibition on granting an affiliate a preference in balancing.

4. Prohibition on disclosure to an affiliate of information to secure transportation received from a non-affiliated shipper (§ 161.3(e))

Shell suggests that this provision should reference "potential" shippers as well as shippers. Shell states that potential shippers should be included because a pipeline could conceivably deny transportation to a potential shipper so that it could disclose information it received in the transportation request to its affiliate. The Commission agrees and is amending the regulation to prevent this possibility.

The Commission is also adopting another suggestion by Shell. Shell states that this standard of conduct should not be limited to information regarding transportation services but should prohibit the disclosure of any information received from a non-affiliate. The Commission sees no reason to allow the pipeline to share any information received from a non-affiliated shipper with its affiliate. Additionally, the Commission notes that under § 161.3(f) a pipeline is required to contemporaneously disclose to all potential shippers any information given to its affiliate relating to natural gas transportation, sales or marketing. This could result in the public disclosure of confidential information that may have inadvertently been disclosed by a non-affiliate to the pipeline and then to the pipeline's affiliate. To prevent this possibility, the Commission is prohibiting a pipeline from sharing any information received from a non-affiliated shipper. (*See* § 161.3(e))

5. Contemporaneous disclosure of transportation and gas sales and marketing information to potential shippers (§ 161.3(f))

At the outset, the Commission has concluded that this standard of conduct applies with respect to any employee or officer that is shared by the pipeline and its marketing affiliate. Thus, any gas sales, marketing or transportation information such an employee may receive in his or her capacity as a pipeline employee will be considered information provided to the affiliate. This information must then be contemporaneously disclosed to all potential shippers. For example, if a pipeline and its parent company decide to embark on a new gas transportation program, and one of the officers of the parent is also an officer of the affiliated marketer, the pipeline has shared the information with the affiliated marketer by virtue of the fact that the officer of the parent company (who is also an officer of the affiliated marketer) knows of it.

i. Contemporaneous Disclosure

Some petitioners ask by what method this information can be made "contemporaneously" available.[30] The Commission does not wish to dictate a particular method by which pipelines can make the information contemporaneously available. The Commission notes, however, that most pipelines have established electronic bulletin boards to comply with Order No. 497 and it finds that this is an acceptable method of contemporaneously providing the information.[31] There are also commercial data distribution firms with which a pipeline may contract to post the information on an electronic bulletin board. Whatever method is used, the Commission considers "contemporaneous" to mean that potential shippers receive the

[28] This is consistent with the Commission's current standard accounting practices. *See* 18 CFR Part 201 (1988).

[29] *See, e.g.*, Enron, INGAA.

[30] *See, e.g.*, United Gas Pipeline Company (United), Enron Gas Marketing.

[31] Of the 48 pipelines that have submitted filings to the Commission regarding standards of conduct, 36 have established electronic bulletin boards to meet this requirement.

information no later than the same day the affiliate receives the information.[32]

Citizens Energy requests that the Commission clarify that this information includes all information relating to capacity. The Commission so clarifies.

ii. Transportation and Gas Sales and Marketing Information

Pipelines and their affiliates object to this provision, arguing that disclosing gas sales and marketing information to potential shippers is not necessary to prevent discrimination in the provision of transportation service and that releasing this information would place the marketing affiliate at a competitive disadvantage.[33]

Pipelines and their affiliates further argue that the term "gas sales and marketing" is not defined and could therefore apply to almost all communications between a pipeline and its affiliate.[34] Tenneco states that it interprets this provision to mean only "general" information as the Commission stated in the preamble to the final rule.

The Commission finds these arguments unpersuasive. As the Commission noted in the final rule, a pipeline may have sales or marketing information that is obtained as a result of its past monopoly power over transportation. To make this information available to its affiliate but not to others could give the affiliate a competitive advantage. Furthermore, if a pipeline and its affiliate's operating personnel are functioning independently, a pipeline's communications with the affiliate should be limited to specific information regarding the affiliate's transportation request or service. There is no need for a pipeline to share transportation, sales or marketing information with its affiliate other than information necessary to process the affiliate's request or to provide the requested transportation service. However, to the extent it does share information other than that necessary to process affiliate requests or to provide the requested service, it must share that information contemporaneously with all other potential shippers.

Shell and Access Energy argue that the standard should be expanded to include any information given to a marketing affiliate that is not contemporaneously provided to an affiliate's competitors. Hadson states that the provision should not be limited to "general" information as stated in the preamble. Otherwise, it argues that an affiliate could ask a series of "specific" questions to obtain information that would then not have to be revealed to others. The Commission believes that a requirement to disclose contemporaneously all information shared with an affiliate would be too broad. It would place an unwarranted burden on the pipeline to make the information available and could chill essential day-to-day business communications between the pipeline and its affiliate. Additionally, it could result in the disclosure of large amounts of extraneous material for which an independent marketer would have no use.

With respect to the information that must be disclosed, the Commission is clarifying that the rule requires contemporaneous disclosure of transportation, *or* gas sales, *or* marketing information. The use of the word "and" ("transportation of natural gas and gas sales and marketing * * *") in the regulatory text of § 161.3(f) could lead to the erroneous conclusion that the information required to be disclosed would have to relate to transportation plus sales plus marketing when the intent of the rule is to require disclosure of information relating to any of those matters. The Commission is revising the regulatory text accordingly.

The standard of conduct applies to all information a pipeline provides to its marketing affiliate concerning transportation or gas sales or marketing. The limited "exception" for information concerning specific transportation requests, discussed in the preamble to the final rule (memo at pp. 44–45), was not intended to swallow the rule. Indeed, if the pipeline's response to a routine transportation request includes general information, it must be contemporaneously disclosed to all potential shippers. Some examples will help illustrate the scope of this standard.

Example 1. Pipeline X intends to build a new line under part 284 of the Commission's regulations. As soon as it reveals that information to its marketing affiliate, pipeline X must contemporaneously reveal the information to all potential shippers because construction concerns natural gas transportation and marketing.

Example 2. Pipeline X discusses its intention to construct the new pipeline with a potential shipper who, in turn, discusses it with pipeline X's marketing affiliate. The marketing affiliate then asks pipeline X a specific question related to the new line. Pipeline X's answer must be contemporaneously disclosed to all potential shippers. Information concerning transportation on a new line would involve new or changed general information, even if it were transmitted to the marketing affiliate in response to a specific question.

Example 3. The new line is certificated and built. Pipeline X's marketing affiliate requests transportation for a customer. Apart from the general reporting requirements of § 250.16 or other applicable rules, pipeline X would not have to disclose the information transmitted to the marketing affiliate to perfect the transportation request or complete the transportation transaction.

iii. Potential Shippers

The rule defined "potential shippers" as "all current transportation and sales customers * * * and all persons who have pending requests for transportation service or for information regarding transportation service." * * * A number of pipelines argue that the definition of "potential shippers" in the rule is too broad in that it could include anyone who makes a casual, nonspecific inquiry regarding transportation service.[35] They suggest that the definition be limited to present or prior shippers,[36] to those who have made requests for service, [37] to parties requesting the data [38] or to shippers reasonably able to make use of the data. [39]

The Commission believes that these suggested definitions would be too restrictive. An individual that requests transportation information from a pipeline is one who may use the pipeline's transportation services in the future and therefore may be the potential object of discrimination. The Commission is unwilling to give pipelines the discretion to determine whether an information request is "casual" or "nonspecific" or whether the shippers could "reasonably" make use of the data. Although contemporaneous disclosure may impose a burden on a pipeline, such disclosure is necessary to prevent marketing affiliates from using

[32] For those pipelines that have not established bulletin boards to contemporaneously provide the information, other acceptable methods of meeting this standard include notifying non-affiliated potential shippers by telephone or facsimile or telex machine. The use of overnight or regular mail is not acceptable.

[33] *See, e.g.*, Tenneco, INGAA, Enron Gas Marketing.

[34] *See, e.g.*, Consolidated Natural Gas Company (CNG), Enron, Enron Gas Marketing.

[35] *See, e.g.*, Panhandle Eastern Pipeline Company and Trunkline Gas Company (Panhandle), Enron, INGAA.

[36] Panhandle.

[37] United, Great Lakes.

[38] Pacific Interstate Transmission Company and Southern California Gas Company (Pacific Interstate), Enron Gas Marketing.

[39] American Gas Association (AGA).

inside information to gain a competitive advantage. The Commission notes, however, that a pipeline can avoid must requirement will allow the public to monitor a pipeline's adherence to this standard and will enable the requirements as a method of ensuring that pipelines were meeting the non-discriminatory provisions of their

is including this list as part of the tariff so that the public will have ready access to the information. Once a pipeline

The Commission is adopting one suggestion made by several petitioners, relating to the log item that requires a

than six months. Natural and others ask what is the starting date for reporting this information. The Commission is

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inside information to gain a competitive advantage. The Commission notes, however, that a pipeline can avoid most of this burden by establishing an electronic bulletin board to post the information as discussed below.

6. Independent Functioning of Operating Employees (§ 161.3(g)).

A number of petitioners argue on rehearing, as they did in response to the NOPR, that the Commission should require complete organizational separation of a pipeline and its marketing affiliate [40] or suggest that, at a minimum, certain personnel such as gas purchasing or accounting personnel should be separated.[41] Access Energy states that pipelines should be prohibited from using the same supply personnel to purchase gas for both the pipeline and the affiliate. Access argues that this practice implies to producers that the pipeline will purchase more higher-priced sales gas if the producer also sells his production to the affiliate. Others request clarification as to the types of employees this provision was meant to include.[42] EnTrade adds that a pipeline should be required to develop a very specific plan setting forth the personnel to be shared and how the opportunity for preferential treatment can be avoided.

The Commission does not believe that it must mandate organizational separation of a pipeline and its marketing affiliate at this time. However, the Commission reiterates that organizational separation of a pipeline and its marketing affiliate "to the maximum extent practicable" is necessary to ensure against affiliate preference and the discriminatory dissemination of information. In resolving complaints with respect to the rule, the Commission will consider the "maximum extent practicable" standard of organizational separation, among other compliance efforts. Operating employees can include officers, directors and managers as well as non-management employees. As a practical matter, the contemporaneous disclosure requirement for information received by a shared employee or officer (discussed above) provides a strong disincentive for a pipeline and its marketing affiliate to share officers or employees. For pipelines that continue to share employees or officers with their marketing affiliates, the contemporaneous disclosure requirement will allow the public to monitor a pipeline's adherence to this standard and will enable the Commission to enforce this requirement.

The Commission will examine on a case-by-case basis whether the pipeline is complying with this standard. In response to EnTrade's suggestion the Commission notes that, in implementing Order No. 497, it already has directed some pipelines to supply additional information as to how this standard is being met. This will enable the Commission to determine the extent to which these personnel have overlapping responsibilities. The Commission will address the issue of whether individual pipelines have satisfactorily complied with this standard by separate orders. If necessary, the Commission will require the pipeline to make organizational changes to separate shared employees. In addition, the requirement to contemporaneously share information that has been provided to an affiliate, as discussed above, should act to encourage pipeline and affiliate operating personnel to function independently.

Hadson and the Producer Association argue that shared employees should be required to sign an affidavit stating that they have read the standards of conduct and understand the penalties for violating those standards. Access Energy states that shared personnel should be required to keep contemporaneous logs of the time spent working for the pipeline and the affiliate. It states that such a requirement will assure that ratepayers are not subsidizing the affiliate.

The Commission is not adopting these suggestions. To require affidavits or logs would impose additional reporting burdens on the pipeline that the Commission does not believe are necessary in light of the safeguards already included in the rule to prevent affiliate abuse. The Commission will examine required reports and may conduct audits to assure that ratepayers are not subsidizing affiliate activities.

7. Tying of Services (§161.3(h))

Williams Natural Gas Company argues that this standard is not necessary for blanket certificate holders because, by the terms of their blanket certificate, they may not discriminate by providing preferential access to transportation. The Commission recognizes that the standards of conduct established in the rule may overlap some of the conditions in a pipeline's part 284 blanket certificate. The Commission, however, promulgated the standards and the reporting requirements as a method of ensuring that pipelines were meeting the non-discriminatory provisions of their blanket certificates.

8. Identification of Released Take-or-Pay Gas (§ 161.3(i))

On rehearing, the Commission has decided to eliminate this standard of conduct. The Commission considers information given to an affiliate regarding gas released by the pipeline to be "gas sales or marketing" information and therefore already included in the standard of conduct requiring contemporaneous disclosure of information provided to an affiliate.[43]

D. Reporting Requirements (§ 250.16)

The final rule also established reporting requirements to enable the Commission and the public to monitor the pipeline-affiliate relationship. These included tariff sheets setting forth: (1) A list of shared operating personnel and facilities; (2) the specific information and format required for a valid transportation request; (3) procedures to address and resolve complaints by shippers and potential shippers; and (4) procedures to inform shippers and potential shippers on the availability and pricing of transportation service, and the pipeline capacity available for transportation. The rule also required pipelines to file a transportation log of requests made by an affiliated marketer or in which an affiliated marketer was involved. Both the tariffs and the log were to be filed in FERC Form No. 592 in electronic form with a paper copy by September 12, 1988.[44] On rehearing, the Commission is requiring pipelines to respond initially within 48 hours and in writing within 30 days to a complaint filed by a shipper or potential shipper. Also, the Commission is revising the regulatory text to separate the tariff and non-tariff reporting requirements to clarify what is to be included in each.[45]

1. Tariff Filings

Columbia states that a list of operating personnel is inappropriate for a tariff filing. The Commission, however, is including this list as part of the tariff so that the public will have ready access to the information. Once a pipeline submits acceptable tariff sheets with this information, it may update this information in its tariff as required in the final rule without being required to pay additional filing fees.

Enron and United argue that the procedures to address and resolve complaints should be limited to written complaints only and should be limited to complaints related to a requested or furnished service. The Commission disagrees. A pipeline should have an informal method of resolving complaints without requiring the shipper to reduce the complaint to writing. Furthermore, complaints regarding a pipeline's handling of transportation requests may not be limited to situations in which the potential shipper has requested or obtained service. For instance, it could involve a request for information prior to making a request for transportation.

2. The Transportation log

The final rule requires a pipeline to make publicly available a log of transportation service requests by affiliated marketers or in which an affiliated marketer is involved. This requirement is different from the log as proposed in the NOPR, which would have required public availability of information on both affiliate and non-affiliate requests and service.

Pipelines argue that virtually every item to be included in the log is either unnecessary to detect instances of anticompetitive conduct or would place their affiliates at a competitive disadvantage by requiring the release of commercially sensitive information.

These objections are essentially the same as those raised in response to the NOPR. The Commission in the final rule modified some of the reporting requirements to protect confidential data.[46] The Commission believes that the reporting requirements promulgated in the final rule are necessary to determine whether anticompetitive conduct is occurring. The Commission realizes that in some instances no single element may show discrimination. However, an examination of different data may show that a pattern of anticompetitive conduct is occurring. For example, a combination of the request date, the requestor's affiliation with the transporter, and the current status and disposition of the request could show whether affiliate requests are being processed sooner or are more readily approved.

The Commission is adopting one suggestion made by several petitioners, relating to the log item that requires a pipeline to report information on the distance between the receipt and delivery point that are farthest apart in the transportation request. The rule requires that this distance be reported in pipeline miles. Several petitioners state that not all pipelines measure distance between individual points.[47]

The purpose of the distance requirement is to determine whether a correlation exists between distance and a pipeline's willingness to transport. The Commission recognizes that the method of measuring distance may vary depending on the type of pipeline system. Nevertheless, the distance between receipt and delivery points is measurable. Therefore, the Commission is deleting the requirement that this distance be reported in pipeline miles and is leaving the method of measuring this distance to the pipeline. So long as the pipeline is consistent in applying its method to each transaction, the measurements will provide a means to compare transactions on each individual system. (See revised § 250.16(b)(2)(ix))

Several petitioners state that some of the information to be included in the log may not be readily ascertainable or available to the pipeline, particularly information relating to whether gas in being sold at a loss,[48] whether gas being transported is subject to take-or-pay relief,[49] the source of the gas [50] and the maximum daily contract volume and total volume of gas to be transported.[51]

The Commission realizes that for each transportation request or service not all the information specified in the log may be available. If a particular item is unavailable that fact should be noted in the log with an explanation of why it is not included. If the information becomes available at a later date, it must be included in the log updates.

Several petitioners request clarification of certain log items.

The log requires a pipeline to file information regarding transportation requests: (1) For which transportation has commenced 30 days or more previously; (2) which have been denied; or (3) which have been pending for more than six months. Natural and others ask what is the starting date for reporting this information. The Commission is clarifying that this requirement applies to transportation service that commenced and requests that were denied after July 14, 1988 (the effective date of the rule) or that were pending for six months or more on July 14, 1988.

Tennece asks whether the "person to be provided transportation service" in § 250.16(b)(6)(iii) is the same as the "shipper". It also asks whether both parties need to be identified where the "shipper" and the "requestor" of the transportation service are different. The Commission clarifies that the shipper is the person to whom the pipeline provides transportation service. In most circumstances the person requesting the service will be the shipper. Where the two are different, however, the pipeline should report both.

The Commission is not adopting a suggestion of United that the log information relating to released take-or-pay gas should not include take-or-pay settlements that were completed or agreed to in principle prior to September 12, 1988. United argues that this is necessary to ensure that the confidentiality of those settlements is maintained. The Commission agrees that the confidentiality or take-or-pay settlements is essential to preserving the settlement process; however, the Commission has already modified the log requirements proposed in the NOPR to prevent disclosure of competitively sensitive information relating to take-or-pay by eliminating the requirement to disclose the source of the gas. Accordingly, a pipeline need only report the producing area in which the source of gas is located, unless the pipeline has given such information to its affiliate, in which case the contemporaneous reporting requirement of the rule applies. Furthermore, information regarding whether gas is subject to take-or-pay relief will enable the Commission and the public to determine if the pipeline, through its affiliate, is giving preference to these types of transactions. The Commission recognizes the importance of a pipeline's mitigating its take-or-pay exposure but not at the cost of allowing it to engage in anticompetitive conduct to do so.

The final rule required that most of the information in the log be filed at the end of the month following the month any changes occur.[52] The regulatory

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[40] *See, e.g.*, Hadson, Maryland People's Counsel.

[41] *See, e.g.*, Entrade Corporation.

[42] *See, e.g.*, Questar Pipeline Company, ANR Pipeline Company and Colorado Interstate Gas Company (ANR/CIG), Entrade.

[43] At Enron's request the Commission is amending the regulatory text to clarify that the log information relating to gas for which take-or-pay relief is granted relates to gas transported by the pipeline. *See* revised § 250.16(b)(2)(xiii).

[44] This deadline was later extended to September 19, 1988, in order to give pipelines sufficient time to incorporate certain technical changes made in the form.

[45] At the request of Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company (Columbia), the Commission is clarifying that the log information is not to be included in the tariff filing.

[46] *See* n. 7 *supra*.

[47] Enron, INGAA, United.

[48] United, Tennece, ANR/CIG, Enron Gas Marketing.

[49] Texas Gas Transmission, Enron.

[50] Enron states that the sources of gas of a shipper may be varied and, on a continuing basis, the particular source of the gas may change.

[51] Enron states that this information may be unavailable for: (1) contracts with evergreen provisions; (2) contracts that provide for the transportation of overrun volumes; (3) most firm contracts; and (4) interruptible service.

[52] Information on discounts in the log [§ 250.16(b)(xix)] must be filed within 15 days of the close of a pipeline's billing period.

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text provided that this report satisfied a pipeline's obligation to report under § 284.13. That section requires a pipeline to maintain and make available for public inspection certain information on transportation requests. On rehearing, the Commission is deleting the statement that a pipeline's obligations under § 284.13 are met by filing the log information. The Commission is making this change because under § 284.13, a pipeline must maintain information on requests by both affiliate and nonaffiliated shippers, while the log information contains information only on affiliated shippers.

Finally, the rule required that a pipeline provide one paper copy of the log data electronically submitted to the Commission. The Commission has found that one paper copy is insufficient to verify the electronic data and for compliance and monitoring purposes. Therefore, the Commission is requiring pipelines to submit three paper copies of the electronically filed log information.

3. Public Access

The final rule requires pipelines to update the log information on a daily basis and to provide the public with 24 hour electronic access to the log information.

Several petitioners ask whether this electronic access refers to the log information that is filed with the Commission or the log as it is updated daily.[53] Others request clarification that information need be made publicly available in the log only after transportation service has begun.[54] The Commission clarifies that this access refers to the log as it is updated but that a pipeline need not provide electronic access to the information for transportation service until the transportation has begun.

United requests clarification that the log only need be updated if there are any changes. In order to assure members of the public that they are receiving the most current information, the Commission is requiring pipelines, on a daily basis, to either update the log or indicate that there have not been any changes in the log.

Pipelines argue that 24 hour access is burdensome and that access should be limited to normal business hours.[55] Enron states that the public can already get the information through the mail or by going to the pipeline's place of business.

The Commission does not believe that electronic access on a 24 hour a day basis is unduly burdensome. Moreover, any burden to the pipeline is outweighed by the need for others to access the data at their convenience rather than the convenience of the pipeline. The purpose of the requirement was to give potential competitors and the public convenient access to up-to-date information in the log. Restricting access as these petitioners suggest would not accomplish that purpose.

United states that a pipeline should be able to charge a fee to recover the costs of maintaining 24 hour access. In contrast, Access Energy argues that the Commission should expressly prohibit pipelines from charging a fee to gain access to the information.

The Commission will allow a pipeline to charge reasonable fees to access the information. Alternatively, a pipeline may contract with a commercial data distribution firm to maintain the data for public access. In that case the normal rates the firm charges will apply to those desiring electronic access.[56] The Commission may evaluate the various electronic bulletin boards as to form, costs and contents, to determine the "reasonableness" of availability and, if necessary, may adopt standards to ensure that compliance is within the spirit of the rule.

E. Civil Penalties.

Many petitioners argue as they did in response to the NOPR that the Commission has no authority to establish civil penalties. The Commission, however, explained its legal rationale for imposing these penalties in the NOPR [57] and reiterated it in the final rule. The parties on rehearing have not raised any issues of fact, law or policy that were not previously considered.

Enron requests the Commission to state that a pipeline is not in violation of the rule because a shipper has not provided it with the information necessary to comply.

The civil penalties provision of the final rule states that penalties may be assessed if the pipeline "knowingly" violates the requirements of the rule. To the extent that a pipeline is unaware that certain information has not been supplied by the shipper, then a penalty would not be appropriate. However, a pipeline that knows or should have known that required information has not been provided may not transport without becoming subject to civil penalties. Resolution of issues such as these, however, depends on the individual facts involved.

F. Selective Discounting

In the final rule the Commission restricted the ability of a pipeline that does not have a blanket certificate under subpart G of part 284 to offer transportation discounts to its affiliates. The rule prohibits a discounted rate to affiliates of these pipelines that is below the highest rate charged to a nonaffiliate.

Arkla states that the restriction impermissibly adds a condition to an already filed rate without a finding that the existing rate is unjust and unreasonable. However, the restriction on discounting does not affect a pipeline's filed rates. The pipeline may still charge a rate within the zone established in its tariff. The rule merely requires that if a discount is given to an affiliate the same discount must be given to nonaffiliates.

ANR/CIG and AGA argue that the discounting restriction was not contained in the NOPR, and therefore no notice and comment was provided as required by the Administrative Procedures Act.[58] In the NOPR, the Commission outlined a wide range of options for addressing potential abuses in the pipeline-affiliate relationship, including measures such as prohibiting a non-open access pipeline from having a marketing affiliate or prohibiting any transactions with an affiliate. These proposed options would have gone significantly further in restricting pipeline affiliate dealings than the restriction on discounting. In light of these options, restricting such a pipeline's ability to discount rates to its affiliate to no less than it is discounting to its non-affiliate is directly within the scope of the NOPR.

Access Energy suggests that pipelines be required to announce their decision on granting transportation discounts by the fifteenth of each month in order to allow independent marketers to determine their transportation rates prior to the time they have to bid on their markets. A pipeline, however, may not be in position to make a determination by this date as to whether it will grant discounts. Since the Commission is adding a new standard that requires a pipeline to make available to similarly situated shippers a discount comparable to the discount it offers to its affiliate, such marketers will be in the same position as to the availability of such discounts.

[53] *See, e.g.*, INGAA

[54] ANR/CIG, INGAA, Transco Energy Corporation.

[55] United, Columbia, and AGA.

[56] The Commission allowed these types of access charges when it required the pipeline to maintain an electronic bulletin board of transportation transactions in Panhandle Eastern Pipe Line Company, Docket No. CP86-232-008, Order No. 275-B, 42 FERC ¶ 61,070 (Jan. 27, 1988).

[57] 52 F.R. at 21,552.

[58] 5 U.S.C. §§ 552 *et seq.* (1982).

G. Affiliate Losses

Independent marketers continue to argue that a pipeline should be prohibited from taking a marketing affiliate loss in lieu of a discounted transportation rate because to the corporate whole a loss by an affiliate is the same as a discount.[59] Alternatively, Access Energy suggests that an affiliate loss should be treated and reported as if it were a discount. It adds that a pipeline should be required to keep contemporaneous records of what gas was dispatched from each receipt point for each market to enable the Commission to determine if a loss has in fact occurred.

In making these arguments the petitioners advance a scenario similar to the following. A pipeline refuses to discount its transportation rates for any shipper. Its marketing affiliate then buys gas for $1.50 per MMBtu, pays $.50 per MMBtu for the nondiscounted transportation rate and sells the transported gas for $1.90 per MMBtu, thereby losing $.10 per MMBtu. Petitioners state that this $.10 loss by the affiliate is the same to the corporate whole as if the pipeline has discounted its transportation rate by $.10. The affiliate has an advantage in providing the service in these circumstances, they argue, because an independent marketer cannot afford to provide the service at a loss while, for the marketing affiliate, this "loss" is no more than a disguised discount available only to the affiliate.

Texaco Gas Marketing raises the potential problem of where a pipeline puts into effect rates that are later found to be excessive and refunds are ordered. It argues that in these circumstances an affiliate is not averse to paying the excessive rates because the payments will go to the same corporate entity. Texaco suggests that, if refunds are later ordered, the refunds not be paid to an affiliate; instead, the amount of the refund should be credited against the rates to be collected prospectively from unaffiliated shippers.

The Commission recognizes that a marketing affiliate may not have a disincentive to engage in transactions in which it may be subject to a loss or to pay whatever rate the pipeline charges for transportation. The Commission in the final rule required pipelines to report whether an affiliate's transactions were being conducted at a loss in order to enable the Commission and potential shippers to monitor this potential for abuse. However, the Commission is not prepared to assume that the hypothetical types of occurrences cited above are occurring on a frequent enough basis to warrant generic action at this time. In fact, the data submitted by the pipelines in the transportation log indicate no circumstance in which an affiliate has sold gas at a loss. However, if the Commission determines that abuses are occurring in these types of transactions, the Commission retains its authority to fashion the appropriate remedy either in individual proceedings or through a rulemaking proceeding.

H. Sunset Date

As the Commission stated in the final rule, it would examine the need to extend the rule's reporting requirements prior to their sunset date of December 31, 1989. The Commission believes that continuation of these requirements will assist the public and Commission staff in monitoring potential abuses. Therefore, the Commission is extending these requirements for an additional year until December 31, 1990. Because the Commission cannot now determine the need to continue the reporting requirements subsequent to December 31, 1990, the Commission will again examine the need to extend the rule's reporting requirements prior to the new sunset date of December 31, 1990.

Producer Associations state that the sunset date appeared to impose a cut-off of that date on the retention of data by the pipeline. It argues that a pipeline could destroy data on the sunset date and therefore hinder on-going investigations and preclude scrutiny of pipeline conduct. To prevent this possibility, the Commission is requiring pipelines to retain the data on non-affiliate transactions until December 31, 1991. Because the log of affiliate transactions is filed with the Commission there is no need for the pipeline to retain that information. (See revised § 250.16(c))

V. Paperwork Reduction

The Office of Management and Budget's (OMB) regulations [60] require that OMB approve certain information collection requirements imposed by agency rule. The information collection provisions in this order on rehearing are being submitted to OMB for its approval.

Interested persons can obtain information on the information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street NE. Washington, DC 20426 (Attention: Michael Miller at (202) 357-8205). Comments on the information collection provisions can be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).

VI. Effective Date

With the exception of the Commission's extension of the reporting requirements in Order No. 497, the revisions made to the final rule in this order on rehearing are effective January 22, 1990. In order to prevent a gap in the rule's reporting requirements, the amendments to § 250.16 (a), (c), and (d), which contain the sunset date for the rule's reporting requirements are effective January 1, 1990.

List of Subjects

18 CFR Part 161

Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 250

Natural gas, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends parts 161 and 250, chapter I, title 18 Code of Federal Regulations as set forth below.

By the Commission. Commissioner Moler dissented with a separate statement attached.

Lois D. Cashell,

Secretary.

PART 161—STANDARDS OF CONDUCT FOR INTERSTATE PIPELINES WITH MARKETING AFFILIATES

1. The authority citation for part 161 continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717-717w (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432 (1982); Department of Energy Organization Act, 42 U.S.C. 7101-7352 (1982); E.O. No. 12009, 3 CFR 1978 Comp., p. 142.

2. Section 161.1 is revised to read as follows:

§ 161.1 Applicability.

This part applies to any interstate natural gas pipeline that transports gas for others pursuant to subpart A of part 157, and subparts B, G, H, or K of part 284 and is affiliated with a natural gas marketing or brokering entity, except a pipeline that does not conduct any

[59] Citizens Energy Corporation and Citizens Gas Supply Corporation (Citizens Energy), Access Energy, EnTrade, Natural Gas Clearinghouse.

[60] 5 CFR 1320-12 (1988).

transportation transactions with its affiliated marketer.

3. In § 161.2, the definition for

nonaffiliated customers in matters relating to part 284 transportation including, but not limited to, scheduling,

(2) Maintain and provide the information specified in paragraph (c) of this section, and

discount requested, offered or provided, the maximum rate or fee, the rate or fee actually charged during the billing period, the shipper, corporate affiliation

pending more than six months, must be filed:

(i) For the items in paragraph (b)(2)(i) through (xviii) of this section, at the end

3. ANR Pipeline Company & Colorado Interstate Gas Company
4. Arkla, Inc.
5. Association of Texas Intrastate Natural

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transportation transactions with its affiliated marketer.

3. In § 161.2, the definition for "control" is revised and two new definitions, for "marketing" and "transportation," are added in alphabetical order to read as follows:

§ 161.2 Definitions.

* * * * *

Control (including the terms "controlling," "controlled by," and "under common control with") includes, but is not limited to, the possession, directly or indirectly and whether acting alone or in conjunction with others, of the authority to direct or cause the direction of the management or policies of a company. A voting interest of 10 percent or more creates a rebuttable presumption of control.

* * * * *

Marketing or "brokering" as used in this part and § 250.16 of this chapter means:

(1) A *first sale* of natural gas as that term is defined in § 270.203 of this chapter, or a sale of natural gas in interstate commerce for resale by a seller that is not an interstate pipeline, except when:

(i) The first seller is selling gas solely from its own production; or

(ii) The first seller is selling gas solely from its own gathering or processing facilities.

(2) An off-system sale by an intrastate natural gas pipeline or a sale under section 311(b) of the Natural Gas Policy Act as codified in § 284.142 of this chapter; or

(3) An off-system sale by a local distribution company or a sale under § 284.224 of this chapter.

"Marketing or Brokering" as used in this part and § 250.16 of this chapter does not include a sale by an interstate natural gas pipeline under a blanket certificate that authorizes the pipeline to make interruptible sales of surplus system supply gas.

"Transportation" as used in this part and § 250.16 of this chapter includes any transactions which provide for receipt of gas at one point and redelivery of gas to a second point, including exchanges, back-hauls and other transactions in which case the gas transported is owned, brokered or sold by the affiliates.

4. In § 161.3, paragraphs (c), (e), (f), and (i) are revised, and new paragraphs (k) and (l) are added to read as follows:

§ 161.3 Standards of conduct.

* * * * *

(c) It may not, through a tariff provision or otherwise, give its marketing affiliate preference over nonaffiliated customers in matters relating to part 284 transportation including, but not limited to, scheduling, balancing, transportation, storage, or curtailment priority.

* * * * *

(e) It may not disclose to its affiliate any information the pipeline receives from a nonaffiliated shipper or potential nonaffiliated shipper.

(f) To the extent it provides to a marketing affiliate information related to transportation of natural gas, or gas sales or gas marketing it must provide that information contemporaneously to all potential shippers, affiliated and nonaffiliated, on its system.

* * * * *

(i) If a pipeline offers a transportation discount to an affiliated marketer, it must make a comparable discount contemporaneously available to all similarly situated nonaffiliated shippers.

* * * * *

(k) A pipeline must maintain its books of account and records (as prescribed under part 201) separately from those of its affiliate.

(l) A pipeline must maintain and make available for copying on a daily basis a written log of waivers that the pipeline grants with respect to tariff provisions that provide for such discretionary waivers.

PART 250—FORMS

5. The authority citation for part 250 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. No. 12009, 3 CFR 1978 Comp., p. 142; Natural Gas Act, 15 U.S.C. 717–717w (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982).

6. In § 250.16, paragraphs (a), (b) introductory text, (b)(1), (b)(2), (b)(6)(ix), (b)(6)(xiii), (b)(6)(xviii) and (b)(6)(xix), are revised, paragraph (b)(6)(xx) is added and paragraphs (c), (d), (e)(2), (g) and (h)(1) are revised to read as follows:

§ 250.16 Format of compliance plan for transportation services and affiliate transactions.

(a) *Who must comply.* An interstate natural gas pipeline that transports natural gas for others pursuant to subparts B, G, H, or K of part 284 and is affiliated, as that term is defined in § 161.2 of this chapter, in any way with a natural gas marketing or brokering entity (except a pipeline that does not conduct any transportation transactions with its affiliated marketer) must:

(1) File the information prescribed in paragraph (b) of this section,

(2) Maintain and provide the information specified in paragraph (c) of this section, and

(3) Maintain all information required under this section from the time the information is received until December 31, 1990.

(b) *What to file.* An interstate pipeline must file the following information:

(1) New or existing tariff provisions containing the following:

(i) A complete list of operating personnel and facilities shared by the interstate natural gas pipeline and the affiliated marketing or brokering company;

(ii) The specific information and format required from a shipper for a valid request for transportation service, including, for transactions in which an affiliated marketer is involved, the items of information in paragraph (b)(2) of this section;

(iii) The procedures used to address and resolve complaints by shippers and potential shippers including a provision that the pipeline will respond initially within 48 hours and in writing within 30 days to such complaints;

(iv) The procedures used by the natural gas pipeline to inform affiliated and nonaffiliated shippers and potential shippers on:

(A) The availability and pricing of transportation service; and

(B) The capacity of the pipeline available for transportation.

(2) FERC Form No. 592, consisting of a log that contains the following information on all requests for transportation service made by affiliated marketers or in which an affiliated marketer is involved for transportation that would be conducted pursuant to subpart B, G, H, or K of part 284:

* * * * *

(6) * * *

(ix) A list of all receipt and delivery points between which the gas is requested to be transported and the distance between the receipt and delivery points that are the furthest apart,

* * * * *

(xiii) Whether any of the gas being transported is subject to take-or-pay relief for the transporting pipeline and, if so, how much,

* * * * *

(xviii) Any complaints by the shipper or end user concerning the requested or furnished service and the disposition of such complaints,

(xix) Whether the transportation is being requested, offered or provided at discounted rates, duration of the discount requested, offered or provided, the maximum rate or fee, the rate or fee actually charged during the billing period, the shipper, corporate affiliation between the shipper and the transporting pipeline, and the quantity of gas scheduled at the discounted rate during the billing period for each delivery point, and

(xx) Whether the pipeline has granted a waiver of a tariff provision in providing the requested service.

(c) *What to maintain.* (1) An interstate pipeline must maintain the information in paragraph (b)(2) of this section for all requests for transportation services made by nonaffiliated shippers or in which a nonaffiliated shipper is involved from the time the information is received until December 31, 1990.

(2) The information required to be maintained by this section will be available from September 12, 1988 until December 31, 1991 to:

(i) The Commission on request, and

(ii) The public under subpart D of part 385 of this chapter.

(3) The information required to be maintained by this section must be maintained on 9-track magnetic tape or computer disk. The format and specifications for maintenance of the information can be obtained at the Federal Energy Regulatory Commission, Division of Public Information, 825 North Capitol Street NE., Washington, DC 20426.

(d) *When to file.* (1) The information in paragraph (b)(1) of this section and entries in the log specified in paragraph (b)(2) of this section relating to transportation requests for which transportation has commenced 30 days or more previously, which have been denied, or which have been pending for more than six months, must be filed initially with the Commission by September 19, 1988, and thereafter as required by paragraphs (d)(2) and (d)(4) until December 31, 1990. This requirement applies to transportation service that commenced or transportation requests that were denied after July 14, 1988, or that were pending for six months or more on July 14, 1988.

(2) The information required in paragraphs (b)(1) must be filed quarterly if any changes occur.

(3) The information in paragraph (b)(2) relating to transportation requests must be updated on a daily basis if any changes occur.

(4) The information in paragraph (b)(2) relating to transportation requests for which transportation has commenced 30 days or more previously, which have been denied, or which have been pending more than six months, must be filed:

(i) For the items in paragraph (b)(2)(i) through (xviii) of this section, at the end of the month following the month any changes occur; and

(ii) For the items in paragraph (b)(2)(xix) of this section, within 15 days of the close of the pipeline's billing period. A report of a discount under this section satisfies a pipeline's obligation to report under § 284.7(d)(5)(iv) of this chapter.

(e) *How to file.* * * *

(2) The magnetic tape or computer disk must be accompanied by three paper printouts of the information submitted on the magnetic tape or computer disk. The format for the paper printout can be obtained at the Federal Energy Regulatory Commission, Division of Public Information, 825 North Capitol Street NE., Washington, DC 20426.

* * * * *

(g) *Public access.* (1) An interstate pipeline must maintain and make available to the public all filings with the Commission under paragraph (b)(1) of this section by providing:

(i) One paper copy at the pipeline's principal place of business during regular business hours and;

(ii) Copies by mail of any item requested within seven calendar days of a written request, for which the pipeline may charge the cost of postage and fifteen cents per page photocopied or per computer printout page provided.

(2) An interstate pipeline must provide 24-hour access, by electronic means, to the data specified in paragraph (b)(2) of this section. Access to the information must be provided once the service has begun. A pipeline must, on a daily basis, either update the information or indicate that no changes have occurred in the log information.

(h) *Penalty for failure to comply.* (1) Any person who transports gas for others pursuant to subparts B, G, H, or K of part 284 of this chapter and who knowingly violates the requirements of § 161.3, § 2450.16, or § 284.13 of this chapter will be subject, pursuant to sections 311(c), 501, and 504(b)(6) of the Natural Gas Policy Act of 1978, to a civil penalty, which the Commission may assess, of not more than $5,000 for any one violation.

* * * * *

Note: This index will not appear in the Code of Federal Regulations.

Appendix

1. Access Energy Corporation
2. American Gas Association
3. ANR Pipeline Company & Colorado Interstate Gas Company
4. Arkla, Inc.
5. Association of Texas Intrastate Natural Gas Pipelines
6. Citizens Energy Corporation and Citizens Gas Supply Corporation
7. Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company
8. Consolidated Natural Gas Company
9. Enron Gas Marketing, Inc.
10. Enron Interstate Pipelines
11. Entrade Corporation
12. Great Lakes Transmission Company
13. Hadson Gas Systems
14. High Island Offshore System
15. Industrial Energy Services Company
16. Interstate Natural Gas Association of America
17. Kentucky West Virginia Gas Company and Equitrans, Inc.
18. Laclede Gas Company (filed out of time)
19. Maryland People's Counsel
20. MidCon Marketing Corporation
21. Minnesota Department of Public Service, Energy Issues Intervention Office
22. National Fuel Supply Corporation
23. Natural Gas Clearinghouse
24. Natural Gas Pipeline Company of America
25. Northern Border Pipeline Company
26. Oxy, USA.
27. Pacific Interstate Transmission Company and Southern California Gas Company
28. Panhandle Eastern Pipeline Company and Trunkline Gas Company
29. Pelican Interstate Gas System
30. Producer Associations
31. Questar Pipeline Company
32. Sea Robin Pipeline Company
33. Shell Offshore, Inc., Shell Western E&P and Shell Gas Trading Company
34. Sonat Marketing Company
35. Stingray Pipeline Company
36. Tenneco Gas Pipeline Group
37. Texaco Gas Marketing, Inc.
38. Texas Eastern Transmission Company
39. Texas Gas Transmission Corporation
40. Trailblazer Pipeline Company
41. Transco Energy Company
42. United Gas Pipeline Company
43. Western Gas Marketing Limited
44. Williams Natural Gas Company

MOLER, Commissioner, *dissenting:*

In my view, this rehearing order unnecessarily extends the marketing affiliates rule. The original objective of the rule was to prevent undue preference on the part of a transporting pipeline on behalf of its unregulated marketing affiliate. The rule now goes beyond what is necessary to achieve that objective. It intrudes too far into the intracorporate affairs of those interstate pipeline companies that have marketing affiliates, or that have affiliates that engage in what the Commission considers to be marketing affiliate-like transactions.

I find the rule particularly troublesome in two respects. First, I would prefer to define a "marketer" in a

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

EFFECTIVE DATE: The effective date for the final rule published November 8, 1989 (54 FR 47024), is December 22, 1989.

Dated: December 15, 1989.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 89-29715 Filed 12-21-89; 8:45 am]

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 812 and 882

accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511). Therefore, the rule is also being amended to include OMB control

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I find the rule particularly troublesome in two respects. First, I would prefer to define a "marketer" in a much more limited, noninclusive way. I would focus on the unregulated marketing affiliate, and corporate transactions and communications that may give that affiliated marketer a preference. To me, an appropriate definition would include any entity (or person) that sells gas produced by others unless that entity is a pipeline or a local distribution company. Instead, under the new definition of "marketing," entities such as affiliated interstate pipelines, intrastate pipelines, and local distribution companies may be considered marketing affiliates. By broadening the types of entities and transactions that are covered by the rule, this order goes well beyond regulating a pipeline's transactions with its unregulated marketing affiliate. It now impinges on the whole range of intracorporate relationships.

My second concern is with the contemporaneous disclosure requirement under § 161.3(f). This order concludes that this standard of conduct applies with respect to *any* employee or officer that is shared by the pipeline and its marketing affiliate. The preamble includes an example of a transaction that would trigger the contemporaneous disclosure requirement:

For example, if a pipeline and its parent company decide to embark on a new gas transportation program, and one of the officers of the parent is also an officer of the affiliated marketer, the pipeline has shared the information with the affiliated marketer by virtue of the fact that the officer of the parent company (who is also an officer of the affiliated marketer) knows of it.[1]

At a minimum, to prevent a violation, senior corporate officers will now have to post on the electronic bulletin board almost any information to which they are privy. As a practical matter, the rule could well require separation of employees.

While I am supportive of the effort to establish reasonable standards of conduct and reporting requirements to reduce the potential for abuse practices, I believe this rule as now designed is overly broad and intrusive. Thus, I dissent.

Elizabeth Anne Moler,

Commissioner.

[FR Doc. 89-29730 Filed 12-21-89; 8:45 am]

BILLING CODE 6717-01-M

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[1] Slip op. at 25.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Parts 570, 577, 578, 840, and 841

[Docket No. R-89-1433; FR-2581-X-05]

RIN 2506-AA98

Supportive Housing Demonstration Program, Final Rule; Announcement of Effective Date and OMB Control Number

AGENCY: Office of the Assistant Secretary for Community Planning and Development, (HUD).

ACTION: Final rule; Announcement of effective date and OMB control number.

SUMMARY: This document announces the effective date for a recently published final rule that implemented amendments to the Supportive Housing Demonstration Program made by the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100-628, approved November 7, 1988). The effective date provision of the published rule affected by this document stated that the rule would become effective upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, and announced that future notice of the rule's effectiveness would be published in the **Federal Register**. However, under section 7(o) of the Department of Housing and Urban Development Act, as amended by section 123 of the Department of Housing and Urban Development Reform Act of 1989, approved December 15, 1989, the rule's effectiveness is no longer dependent on Congressional session days and can become effective at any time after the expiration of thirty calendar days, beginning on the date of the rule's publication. Thirty calendar days have now expired since this rule was published.

In addition, certain sections of the Department's regulation contained information collection requirements and were submitted to the Office of Management and Budget (OMB), in accordance with the Paperwork Reduction Act of 1989 (Pub. L. 96-511). Therefore, the rule is also being amended to include OMB control numbers at the places where current information collection requirements are described.

EFFECTIVE DATE: The effective date for the final rule published November 8, 1989 (54 FR 47024), is December 22, 1989.

FOR FURTHER INFORMATION CONTACT: Grady J. Norris, Assistant General Counsel for Regulations, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 755-7055. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The information collection requirements contained in the regulatory sections listed below were approved by the Office of Management and Budget, under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and assigned the control numbers listed.

List of Subjects in 24 CFR Parts 570, 577, 578, 840, and 841

Reporting and recordkeeping requirements.

Accordingly, parts 577 and 578 of title 24 of the Code of Federal Regulations are amended as follows:

PART 577—TRANSITIONAL HOUSING

1. The authority citation for part 577 continues to read as follows:

Authority: Sec. 426, Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11386); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§§ 577.210 and 577.220 [Amended]

2. Sections 577.210 and 577.220 are amended by revising the OMB control numbers at the end of each section to read as follows:

(Approved by the Office of Management and Budget under OMB Control Number 2506-0112).

PART 578—PERMANENT HOUSING FOR HANDICAPPED HOMELESS PERSONS

3. The authority citation for part 578 continues to read as follows:

Authority: Sec. 426, Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11386); sec. 7(d), Housing and Urban Development Act (42 U.S.C. 3535(d)).

§§ 578.210 and 578.220 [Amended]

4. Sections 578.210 and 578.220 are amended by revising the OMB control numbers at the end of each section to read as follows:

(Approved by the Office of Management and Budget under OMB Control Number 2506-0112).

Dated: December 15, 1989.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 89-29719 Filed 12-21-89; 8:45 am]

BILLING CODE 4210-29-M

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24 CFR Part 511

[Docket No. R-89-1441; FR-2558-X-03]

RIN 2506-AA98

Rental Rehabilitation Grants, Final Rule; Announcement of Effective Date and OMB Control Number

AGENCY: Office of the Assistant Secretary for Community Planning and Development, (HUD).

ACTION: Final rule; Announcement of effective date and OMB control number.

SUMMARY: This document announces the effective date for a recently published final rule that implemented sections 150(b) and 150(f) of the Housing and Community Development Act of 1987 (the 1987 Act). Section 150(b) amended the United States Housing Act of 1937 (the 1937 Act) to make eligible for immediate rental rehabilitation grant assistance, publicly owned real property that will be privately owned upon completion of rehabilitation. Section 150(f) was intended to clarify when nonprofit corporations are considered eligible to own rental rehabilitation grant-assisted projects.

The effective date provision of the published rule affected by this document stated that the rule would become effective upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, and announced that future notice of the rule's effectiveness would be published in the **Federal Register**. However, under section 7(o) of the Department of Housing and Urban Development Act, as amended by section 123 of the Department of Housing and Urban Development Reform Act of 1989, approved December 15, 1989, the rule's effectiveness is no longer dependent on Congressional session days and can become effective at any time after the expiration of thirty calendar days, beginning on the day after the date of the rule's publication. Thirty calendar days have now expired since this rule was published.

In addition, §§ 511.10(g)(3)(i)(A) and 511.10(c)(4) of the rule contained information collection requirements and were submitted to the Office of Management and Budget (OMB), in accordance with the Paperwork Reduction Act of 1989 (Pub. L. 96-511). Therefore, the rule is also being amended to include OMB control numbers at the places where current information collection requirements are described.

EFFECTIVE DATE: The effective date for the final rule published November 15, 1989 (54 FR 47654), is December 22, 1989.

FOR FURTHER INFORMATION CONTACT: Grady J. Norris, Assistant General Counsel for Regulations, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 755-7055. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The information collection requirements contained in the regulatory section listed below were approved by the Office of Management and Budget, under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and assigned the control numbers listed.

List of Subjects in 24 CFR Part 511

Administrative practice and procedure, Grant programs: Housing and community development, Lead poisoning, Low and moderate income housing, Reporting and recordkeeping requirements.

Accordingly, part 511 of title 24 of the Code of Federal Regulations is amended as follows:

PART 511—RENTAL REHABILITATION GRANT PROGRAM

1. The authority citation for part 511 continues to read as follows:

Authority: Sec. 17, United States Housing Act of 1937, (42 U.S.C. 1437o); sec. 7(d), Department of Housing and Urban Development Act, (42 U.S.C. 3535(d)).

§ 511.10 [Amended]

2. Section 511.10 is amended by adding at the end of the section, the following statement:

(Approved by the Office of Management and Budget under OMB Control Number 2506-0110)

Dated: December 18, 1989.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 89-29746 Filed 12-21-89; 8:45 am]

BILLING CODE 4210-29-M

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 812 and 882

[Docket No. R-89-1422; FR-2539-X-04]

RIN 2502-AE62

Section 8 Moderate Rehabilitation Program for Single Room Occupancy Dwellings for Homeless Individuals, Final Rule; Announcement of Effective Date and OMB Control Number

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule; Announcement of effective date.

SUMMARY: This document announces the effective date for a recently published final rule that implemented section 441 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11401), as amended by the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100-628, approved November 7, 1988), which authorized the section 8 Moderate Rehabilitation Assistance Program for Single Room Occupancy (SRO) Dwellings for Homeless Individuals. The effective date provision of the published rule affected by this document stated that the rule would become effective upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, and announced that future notice of the rule's effectiveness would be published in the **Federal Register**. However, under section 7(o) of the Department of Housing and Urban Development Act, as amended by section 123 of the Department of Housing and Urban Development Reform Act of 1989, approved December 15, 1989, the rule's effectiveness is no longer dependent on congressional session days and can become effective at any time after the expiration of thirty calendar days, beginning on the date of the rule's publication. Thirty calendar days have now expired since this rule was published.

In addition, certain sections of the Department's regulation contained information collection requirements and were submitted to the Office of Management and Budget (OMB), in accordance with the Paperwork Reduction Act of 1989 (Pub. L. 96-511). Therefore, the rule is also being amended to include OMB control numbers at the places where current

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information collection requirements are described.

EFFECTIVE DATE: The effective date for the final rule published November 7,

DATES: This final rule is effective January 22, 1990.

FOR FURTHER INFORMATION CONTACT: Jane Roberts, Division of Appeals

Allowance of a grace period is not without precedent. Other governmental entities including the Internal Revenue Service and the IBLA use such a system.

of Management and Budget under 44 U.S.C. 3501-3520 (1982).

List of Subjects in 30 CFR Part 290

DEPARTMENT OF TRANSPORTATION

Coast Guard

Discussion of Comments

We received a total of ten comments concerning the temporary and proposed

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information collection requirements are described.

EFFECTIVE DATE: The effective date for the final rule published November 7, 1989 (54 FR 46828), is December 22, 1989.

FOR FURTHER INFORMATION CONTACT: Grady J. Norris, Assistant General Counsel for Regulations, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 755-7055. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The information collection requirements contained in the regulatory section listed below were approved by the Office of Management and Budget, under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and assigned the control numbers listed.

List of Subjects in 24 CFR Parts 812 and 882

Reporting and recordkeeping requirements.

Dated: December 15, 1989.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 89-29722 Filed 12-21-89; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 290

RIN 1010-AB39

Appeals Procedures

AGENCY: Minerals Management Service, Interior

ACTION: Final rule.

SUMMARY: This final rule establishes the policy of the Minerals Management Service (MMS) relative to the timely filing of appeals under 30 CFR part 290. The final rule requires the filing of an appeal within 30 days after receipt of the order or decision being appealed, but allows for a grace period if the appeal is received within the following 10 days and there is evidence that the notice of appeal was sent prior to the end of the initial 30 days. While it could be argued that the current system has merit, MMS now believes that it is in the public interest to provide a more accommodating system for the timely filing of appeals.

DATES: This final rule is effective January 22, 1990.

FOR FURTHER INFORMATION CONTACT: Jane Roberts, Division of Appeals (MS623), Minerals Management Service, 381 Elden Street, Herndon, Virginia 22070-4817. Telephone: (703) 787-1275 or (FTS) 393-1275.

SUPPLEMENTARY INFORMATION: The regulations at 30 CFR part 290 pertain to the procedures of MMS for the filing of appeals to the Director (or to Assistant Secretary—Indian Affairs when Indian lands are involved). Under the existing rule, the notice of appeal must be filed in the office of the official issuing the order or decision within 30 days from service of the order or decision. The 30-day period is counted from the date on the U.S. Postal Service's return receipt card, which indicates receipt of the order or decision by the Appellant. The MMS has been strict in its evaluation of timeliness, a policy that has been consistently upheld by the Interior Board of Land Appeals (IBLA). If more than 30 days has elapsed between the date on the return receipt card and the date of the receipt by MMS stamped on the notice of appeal, then the appeal was dismissed as untimely.

While it could be argued that the current system has merit, MMS now believes that it is in the public interest to provide a more accommodating system for the timely filing of appeals.

The majority of all appeals concern the collection of royalties due to the Government. The MMS's Royalty Management Program (RMP), is responsible for royalty collection. The appeals process is a forum for the correction of error and clarification of policy in royalty collection. Such issues cannot be brought forward unless appeals are addressed on their merits. A short grace period allows more appeals to be considered on their merits, thereby enhancing the quality of the royalty collection activities without creating an administrative obstacle. On average, 500 appeals are filed in a year. Of those, approximately 9 percent, or 45 appeals are dismissed as untimely under the current rule. A review of past appeals indicates that 75 percent or 34 appeals, would have been timely had this final rule been in effect.

This rule establishes a grace period if an appeal is filed within 10 days of the initial due date and there is evidence that the appeal was transmitted prior to the end of the initial 30-day period. Such evidence could be a postmark or date of receipt by a private delivery service during the 30-day period.

Allowance of a grace period is not without precedent. Other governmental entities including the Internal Revenue Service and the IBLA use such a system. The IBLA, the forum most closely related to the MMS appeal process, allows a grace period in its regulations at 43 CFR 4.401 and 4.411. While the existing MMS system has a long tradition and is clear, unambiguous, and administratively easy, it can lead to the dismissal of a valid appeal due to mail or messenger mischance. Such circumstances should not be determinative of the consideration of the merits of an appeal.

Because this action is a matter of Agency practice and procedure, prior notice and comment are not deemed necessary under the Administrative Procedure Act, 5 U.S.C. 553(b) (1982).

The Department of the Interior (DOI) has determined that this action does not constitute a major Federal action affecting the quality of the human environment, therefore, a detailed statement is not required, under section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C) (1982).

The DOI has determined that the document is not a major rule under Executive Order 12291 because the annual economic effect is less than $100 million. Based on an analysis of appeals filed in 1987, the economic effect of providing a grace period is expected to be less than $100 million or an estimated $1,096,500.00.

The DOI also certifies that the rule will not have a significant economic effect on a substantial number of small entities and because the rule provides easier access to the MMS appeals process, it could have an economic benefit on all-sized entities. Therefore, the rule does not require a regulatory flexibility analysis under the Regulatory Flexibility Act, 5 U.S.C. 601-612 (1982).

The DOI certifies that the rule does not represent a Government action capable of interfering with constitutionally protected property rights. Thus, a Takings Implication Assessment has not been prepared pursuant to Executive Order 12630, Government Action In Interference with Constitutionally Protected Property Rights.

There are no information collection requirements contained in 30 CFR part 290 which require approval by the Office of Management and Budget under 44 U.S.C. 3501-3520 (1982).

List of Subjects in 30 CFR Part 290

Administrative practice and procedure.

Dated: October 25, 1989.

Barry Williamson,

Director, Minerals Management Service.

For the reasons set out in the preamble to this rule, part 290 of title 30 of the Code of Federal Regulations is amended as set forth below.

PART 290—[AMENDED]

1. The authority citation for part 290 is revised to read as follows:

Authority: R.S. 463, 25 U.S.C. 2; R.S. 465, 25 U.S.C. 9; sec. 32, 41 Stat. 450, 30 U.S.C. 189; sec. 5, 44 Stat. 1058, 30 U.S.C. 285; sec. 10, 61 Stat. 915, 30 U.S.C. 359; sec. 5, 6, 67 Stat. 464, 465, 43 U.S.C. 1334, 1335; sec. 24, 84 Stat. 1573, 30 U.S.C. 1023; 30 U.S.C. 1751.

2. Section 290.3 is amended to redesignate paragraph (a) as paragraph (a)(1) and a new paragraph (a)(2) is added to read as follows:

§ 290.3 Appeals to Director.

(a) * * *

(2) No extension of time will be granted for filing the notice of appeal. If the notice is filed after the grace period provided in § 290.5(b) of this title and the delay in filing is not waived, as provided by that section, the notice of appeal will not be considered and the case will be closed.

* * * * *

3. Section 290.5 is revised to redesignate the existing paragraph as paragraph (a) and a new paragraph (b) is added to read as follows:

§ 290.5 Time limitations.

* * * * *

(b) A notice of appeal must be filed within the time provided in § 290.3 of this title. If the notice of appeal is not received in the proper office within that time, the delay in filing will be waived if the notice of appeal is filed not later than 10 days after it was required to be filed and it is determined that the notice of appeal was transmitted to the proper office before the end of the time required for filing in § 290.3(a)(1) of this title. Determinations under this paragraph shall be made by the officer with whom the notice of appeal is required to be filed.

[FR Doc. 89-29791 Filed 12-21-89; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD13 89-06]

Drawbridge Operation Regulations; Lake Washington Ship Canal, Seattle, WA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the City of Seattle (City), the Coast Guard is changing the regulations governing operation of the Montlake Bridge across the Lake Washington Ship Canal, mile 5.4, at Seattle, Washington. This change is being made because peak levels of afternoon vehicular traffic have increased. Surveys conducted by the City and the results of a trial regulation indicate that this action will receive vehicular traffic congestion attributable to openings of the Montlake Bridge and still provide for the reasonable needs of navigation. The change extends the weekday afternoon closed period by one half hour (3:30 p.m. to 6 p.m. instead of the present 4 p.m. to 6 p.m.) and allows openings only on the hour and half hour Monday through Friday, from 12:30 p.m. to 3:30 p.m. and from 6:00 p.m. to 6:30 p.m.

EFFECTIVE DATE: These regulations become effective on December 22, 1989.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Bridge Section, Aids to Navigation and Waterways Management Branch, (Telephone: (206) 442-5864).

SUPPLEMENTARY INFORMATION: On June 8, 1989, the Coast Guard published temporary rules with a request for comments (54 FR 24555) to be effective for 60 days and to be used to evaluate the impacts of the proposed regulation change. Based upon the general acceptance and limited impacts of the temporary rules, the Coast Guard, on October 13, 1989, published proposed rules (54 FR 41991) concerning this amendment. The Commander, Thirteenth Coast Guard District, also published the proposal as a Public Notice dated November 7, 1989. Interested parties were given until December 7, 1989 to submit comments.

Drafting Information

The drafters of this notice are: John E. Mikesell, project officer, and Lieutenant Deborah K. Schram, project attorney.

Discussion of Comments

We received a total of ten comments concerning the temporary and proposed change: five from recreational boaters, four from concerned citizens, and one from a federal government agency. The boaters objected to the change, the concerned citizens were generally in favor of the change, and the governmental agency had no objection to the change. The primary concern of the boaters was the danger of waiting for bridge openings while maneuvering within the Montlake Cut. As the trial period progressed, most boaters either planned their trips to arrive at the scheduled opening time, or waited outside the Montlake Cut until it was time for an opening. Citizen comments were supportive of the change, but two wanted additional restrictions on bridge openings. We have carefully considered the comments and believe that the concerns of safety and inconvenience raised by the boaters have been minimized through experience with the new procedure gained during the trial period, and the additional restrictions in bridge openings requested by the citizens are not warranted at this time. Therefore, in the absence of significant objection to the proposal as published (54 FR 41991) on October 13, 1989, the final rule is unchanged from the proposed rule, except for minor editorial changes to enhance clarity.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that with minimal advance planning vessel operators who routinely require bridge openings should experience little or no delay.

Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will

not have a significant economic impact on a substantial number of small entities.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

No. 8009 which the State of Connecticut issued to Uniroyal Chemical Company, Inc. in Naugatuck, Connecticut. The

at prescribed intervals depending on the type of pollution control equipment.

The State Order exempts any source

The Order requires that Uniroyal have complied with these requirements by December 31, 1987, which is the final

appropriate circuit by February 20, 1990. This action may not be challenged later in proceedings to enforce its

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not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, part 117 of Title 33, Code of Federal Regulations is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-01(g).

2. Section 117.1051 is amended by revising the introductory text of paragraph (d), and paragraph (e) to read as follows:

§ 117.1051 Lake Washington Ship Canal.

* * * * *

(d) The draws of the Ballard Bridge, mile 1.1, Fremont Bridge, mile 2.6, and University Bridge, mile 4.3, shall open on signal, except that:

* * * * *

(e) The draw of the Montlake Bridge, mile 5.2, shall open on signal, except that:

(1) The draw need not open for a period of up to 10 minutes after receiving an opening request, if needed to pass accumulated vehicular traffic. However, the draw shall open without delay, when requested by vessels engaged in towing operations.

(2) For any vessel or watercraft of less than 1,000 gross tons, unless the vessel has in tow a vessel of 1,000 gross tons or over, from Monday through Friday, except Federal Holidays:

(i) The draw need not open from 7 a.m. to 9 a.m. and 3:30 p.m. to 6:30 p.m.

(ii) The draw need open only on the hour and half hour from 12:30 p.m. to 3:30 p.m. and from 6 p.m. to 6:30 p.m.

(3) Between the hours of 11 p.m. and 7 a.m. the draw shall open if at least one hour notice is given by telephone, radiotelephone, or otherwise to the drawtender at the Fremont Bridge.

Dated: December 13, 1989.

R.E. Kramek,

Rear Admiral, U.S. Coast Guard Commander, 13th Coast Guard District.

[FR Doc. 89-29753 Filed 12-21-89; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-1-FRL-3699-5]

Approval and Promulgation of Air Quality Implementation Plans, Connecticut; Reasonably Available Control Technology for Uniroyal Chemical Company, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Connecticut. This revision establishes and requires the use of reasonably available control technology (RACT) to control volatile organic compounds (VOC) emissions from Uniroyal Chemical Company, Inc. in Naugatuck, Connecticut. The intended effect of this action is to approve a source-specific RACT determination made by the State in accordance with commitments made in its Ozone Attainment Plan which was originally approved by EPA on March 21, 1984 (49 FR 10542). This action is being taken in accordance with section 110 of the Clean Air Act.

EFFECTIVE DATE: This action will become effective February 20, 1990, unless notice is received within 30 days that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Comments may be mailed to Louis F. Gitto, Director, Air, Pesticides, and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Room 2313, Boston, MA 02203. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Room 2313, Boston, MA 02203; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and the Air Compliance Unit, Department of Environmental Protection, State Office Building, 165 Capitol Avenue, Hartford, CT 06106.

FOR FURTHER INFORMATION CONTACT: David B. Conroy, (617) 565-3252; FTS 835-3252.

SUPPLEMENTARY INFORMATION: On September 8, 1989, the State of Connecticut submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of State Order No. 8009 which the State of Connecticut issued to Uniroyal Chemical Company, Inc. in Naugatuck, Connecticut. The provisions of the Connecticut Department of Environmental Protection's (DEP's) State Order define and impose RACT on certain processes at Uniroyal as required by subsection 22a-174-20(ee), "Reasonably Available Control Technology for Large Sources," of Connecticut's Regulations for the Abatement of Air Pollution.

Under subsection 22a-174-20(ee), the Connecticut DEP determines and imposes RACT on all stationary sources with the potential to emit one hundred tons per year or more of VOC that are not already subject to RACT under Connecticut's regulations developed pursuant to the control techniques guidelines (CTG) documents. EPA approved this regulation on March 21, 1984 (49 FR 10542) as part of Connecticut's 1982 Ozone Attainment Plan. That approval was granted with the agreement that all source-specific RACT determinations made by the DEP would be submitted to EPA as source-specific SIP revisions.

EPA has reviewed State Order No. 8009 and has determined that the level of control required by this Order represents RACT for the operations at Uniroyal covered by the State Order. Uniroyal is a chemical manufacturing facility located in Naugatuck, Connecticut. As RACT for the processes subject to subsection 22a-174-20(ee), the State Order requires Uniroyal to install air pollution control equipment on any VOC emission source at its Naugatuck facility with maximum potential VOC emissions in excess of forty pounds per day. Each new piece of air pollution control equipment, except surface condensers and surface condenser/secondary control equipment combinations on any process vent, is required to demonstrate a minimum overall VOC reduction of eighty-five percent. Control equipment currently in operation must also meet a minmum overall VOC reduction of eighty-five percent. Surface condensers and surface condenser/secondary control equipment combinations on any process vent are required to demonstrate a minimum overall VOC reduction of ninety-five percent.

All pollution abatement equipment is also subject to an operation and maintenance program that is part of the State Order. This program requires Uniroyal to operate and monitor its control equipment in a prescribed manner. It also requires Uniroyal to perform certain preventive maintenance

at prescribed intervals depending on the type of pollution control equipment.

The State Order exempts any source at Uniroyal's facility which emits less than forty pounds of VOC per day from any RACT requirements. This exemption is consistent with the provisions of subsection 22a-174-20(aa) of Connecticut's regulations which was approved by EPA on October 1, 1984 (49 FR 41028). For purposes of determining which of the facility's sources are exempt from meeting RACT, Uniroyal must aggregate similar or identical VOC emission points. For each source that is exempt from meeting RACT, the DEP has imposed an enforceable daily cap of forty pounds VOC per day. Furthermore, the DEP has imposed daily and annual emission caps on each process equipment group that is used in manufacturing.

Part VIII(A)(4) of the Compliance Timetable incorporated into the Order provides that any new, less restrictive emission limit on an existing process resulting from a process change, or any new emission limit on any new process will be incorporated into Appendix D of the Order. For the new, less restrictive emission limits on existing processes, EPA will have to approve these into the SIP before Uniroyal may use them to comply with federal law. These new limits will be minor adjustments affecting a few processes among Uniroyal's hundreds of emission points.

State Order No. 8009 also requires Uniroyal to implement a fugitive leak detection program. This program will reduce VOC leaks from pumps, valves (process), compressor seals, safety relief valves, pipe connectors (flanges), agitator seals, valves (open-ended), and sampling connections at Uniroyal.

The State Order also imposes requirements on any boiler used to destroy waste VOC. The Connecticut DEP has determined that RACT for any boiler at Uniroyal which burns waste VOC to be the following operational requirements: (1) the boiler must maintain a minimum of fifty percent of the fuel fired as oil, natural gas or derivations of these; (2) the boiler load must be no less than twenty-five percent of maximum design heat input while burning any waste VOC; (3) any waste VOC burned must have an as-fired heat input of not less than 8,000 BTU per pound; (4) any waste VOC to be burned will be fired directly into the flame zone with an air or steam atomization system; and (5) the boiler burning waste VOC must be operated with a functioning system that automatically cuts off the waste VOC feed when specific time-weighted average CO emission limits are exceeded.

The Order requires that Uniroyal have complied with these requirements by December 31, 1987, which is the final compliance date allowed in subsection 22a-174-20(ee) of Connecticut's regulations.

EPA has reviewed State Order No. 8009 and has determined that the level of control required by this Order represents RACT for Uniroyal.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of this Federal Register notice unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by simultaneously publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective on February 20, 1990.

Final Action: EPA is approving Connecticut State Order No. 8009 as a revision to the Connecticut SIP. The provisions of State Order No. 8009 define and impose RACT on Uniroyal to control VOC emissions as required by subsection 22a-174-20(ee) of Connecticut's regulations.

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 20, 1990. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of Connecticut was approved by the Director of the Federal Register on July 1, 1982.

Dated: October 19, 1989.

Paul G. Keough,

Acting Regional Administrator, Region I.

Subpart H, of part 52 chapter I, title 40 of the Code of Federal Regulations is amended as follows:

Subpart H—Connecticut

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.370 is amended by adding paragraph (c)(53) to read as follows:

§ 52.370 Identification of plan.

* * * * *

(c) * * *

(53) Revisions to the State Implementation Plan submitted by the Connecticut Department of Environmental Protection on September 8, 1989.

(i) *Incorporation by reference.* (A) Letter from the Connecticut Department of Environmental Protection dated September 8, 1989 submitting a revision to the Connecticut State Implementation Plan.

(B) State Order No. 8009 and attached Compliance Timetable, Appendix A, Appendix B, and Appendix C for Uniroyal Chemical Company, Inc. in Naugatuck, Connecticut. State Order No. 8009 was effective on September 5, 1989.

(ii) *Additional materials.* (A) Technical Support Document prepared by the Connecticut Department of Environmental Protection providing a complete description of the reasonably available control technology determination imposed on the facility.

[FR Doc. 89-29770 Filed 12-21-89; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 271

[FRL 3699-2]

Idaho; Final and Interim Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of tentative determination on application of Idaho for final and interim authorization, public hearing, and public comment period.

SUMMARY: Idaho has applied for final authorization of its hazardous waste program under the Resource Conservation and Recovery Act (RCRA), including a request for interim authorization for the corrective action provisions of the Hazardous and Solid Waste Amendments of 1984 (HSWA). The U.S. Environmental Protection Agency (EPA) has reviewed Idaho's application and has made the tentative decision, subject to public review and comment, that Idaho's hazardous waste program effective as of July 8, 1988, satisfies all of the requirements necessary to qualify for authorization as requested. Thus, EPA intends to grant final authorization—for RCRA base program as well as for other federal provisions in effect as of July 1, 1987, and for interim authorization of HSWA corrective action provisions Section 3004(u) of HSWA—to the State of Idaho to operate its program subject to the limitations on its authority retained by EPA in accordance with the Hazardous and Solid Waste Amendments of 1984 (HSWA). Idaho's application for authorization is available for public review and comment, and a public hearing will be held to solicit comments on the application if public interest is expressed.

DATES: A public hearing is scheduled for January 24, 1990, at 7:00 p.m., in the Supreme Court Building, Basement Conference Room, 451 West State Street, Boise, Idaho. Idaho will participate in the public hearing held by EPA on this subject. All comments on Idaho's final authorization application must be received by the close of business on January 26, 1990. EPA reserves the right to cancel the public hearing if written interest in holding a hearing is not received by EPA by January 11, 1990. Those wishing to testify at such hearing are asked to submit a written request to EPA by January 11, 1990. To find out whether a public hearing will be held, contact Nina Kocourek, EPA, (206) 442-6502 by January 13, 1990.

ADDRESSES: Copies of Idaho's program application are available 8:00 a.m. to 4:30 p.m., Monday through Friday, at the following addresses for inspection and copying: Idaho Department of Health and Welfare, Hazardous Materials Bureau, 450 West State St., Boise, Idaho 83720, (208) 334-5879; U.S. EPA Headquarters Library, PM 211A, 401 M St. SW., Washington, DC 20460, (202) 382-5926; U.S. EPA, Region 10 Library, 1200 Sixth Ave., Seattle, Washington 98101, (206) 442-1259. Written comments, request for hearing, and request to testify at hearing should be sent to Nina Kocourek, HW-112, Waste Management Branch, U.S. EPA, Region 10, 1200 Sixth Ave., Seattle, Washington 98101, (206) 442-6502.

FOR FURTHER INFORMATION CONTACT: Nina Kocourek, HW-112, Waste Management Branch, U.S. EPA, Region 10, 1200 Sixth Ave., Seattle, Washington 98101, (206) 442-6502.

SUPPLEMENTARY INFORMATION:

A. Background

Section 3006 of Resource Conservation Recovery Act (RCRA), 42 U.S.C. 6926 et seq., allows EPA to authorize State hazardous waste management programs to operate in lieu of the Federal hazardous waste program subject to the authority retained by EPA in accordance with the Hazardous and Solid Waste Amendments of 1984 (HSWA), Pub. L. 98-616. Final authorization is granted by EPA if the Agency finds that the State program (1) is "equivalent" to the Federal program, (2) is "consistent" with the Federal program and other State programs, and (3) provides for adequate enforcement authority (section 3006(b); 42 U.S.C. 6926(b)). States applying for authorization must demonstrate a program equivalent to the Federal program in effect one year prior to the date the application is submitted. Interim authorization is a temporary authorization which a state can request and which is granted if the state requirements are substantially equivalent to the federal program requirement. (Section 3006(g)(2), 42 U.S.C. 6926(g)(2)). All interim authorizations pursuant to section 3006(g)(2) expire on January 1, 1993. Responsibility for that portion of the program reverts to EPA on that date if a state has not received final authorization for those provisions.

EPA plans to codify the State's program in 40 CFR Part 272, Subpart N, in an Immediate Final Rule, if and when a Final Determination to grant authorization is published in the Federal Register.

B. Idaho

Idaho has not previously applied for authorization of any part of the Federal program under RCRA. On July 7, 1988, Idaho submitted its official application for final authorization for those requirements promulgated as of July 7, 1987 under RCRA and HSWA. On November 17, 1989, the state requested interim authorization for the HSWA corrective action provisions of section 3004(u), promulgated as of July 7, 1987. The State incorporated by reference all Regulations in 40 CFR parts 124, 260-266, 268, and 270 that were in effect and codified as of July 1, 1987. No changes were made to the federal RCRA program as of July 1, 1987 and before July 8, 1987. The State is not seeking authorization at this time for any changes made to the Federal program after July 7, 1987.

Prior to its submission, Idaho solicited public comment and held a public hearing on its draft application. EPA has reviewed Idaho's application, and has tentatively determined that the State's program meets all of the requirements necessary to qualify for interim and final authorization as described above. Consequently, EPA intends to grant interim and final authorization to Idaho to operate its program, subject to EPA's retention of authority under sections 3007, 3008, 3013, and 7003 of RCRA, as amended by HSWA.

During EPA's review of Idaho's application a question arose concerning the scope of Idaho's regulatory exclusion for farmers. EPA excludes from virtually all hazardous waste regulation "farmers" who dispose of waste pesticides from their own use, provided that the disposal meets specified standards. See e.g., 40 CFR 264.1(g)(4). Idaho's exclusion specifies that both "farmers" and "ranchers" are exempt. Since EPA has not previously interpreted the term "farmer" in this exclusion, it must address this issue to act on Idaho's application. EPA notes first that the dictionary definitions of "farm" and "ranch" substantially overlap. Also, EPA believes that the usage of the terms varies from region to region, so that agricultural operations that might be called "farms" in the eastern U.S. could be called "ranches" in the West. Further, EPA sees no strong policy reasons for trying to distinguish between these two subcategories of agricultural operations. Accordingly, EPA has tentatively determined to interpret "farmer", as used in EPA's RCRA regulatory exclusion, to include both "farmers" and "ranchers", and to approve this aspect of Idaho's application. EPA solicits comments on these issues.

In accordance with section 3006 of RCRA and 40 CFR 271.20(d), the Agency will hold a public hearing on its tentative decision on January 24, 1990 at 7:00 p.m. in the Supreme Court Building, Basement Conference Room, 451 West State Street, Boise, Idaho. The public may submit written comments on EPA's tentative determination for Idaho's final authorization until January 26, 1990. Copies of Idaho's application are available for inspection and copying at the locations indicated in the "Addresses" section of this notice.

EPA will consider all public comments on its tentative determination received at the hearing and during the public comment period. Issues raised by those comments may be the basis for a decision to deny final authorization to Idaho. EPA expects to make a final decision on whether or not to approve Idaho's program by March 22, 1990 and will give notice of this decision in the Federal Register. The notice will include a summary of the reasons for the final determination and a response to all major comments. Idaho is not seeking authority over any Indian lands; this authority will remain with EPA.

C. Effect of HSWA on Idaho's Authorization

Prior to the Hazardous and Solid Waste Amendments amending RCRA, a State with Authorization would have administered its hazardous waste program entirely in lieu of EPA. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under the amended section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time as they take effect in non-authorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of full or partial permits, until the state is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA applies in authorized States in the interim.

As a result of the HSWA, there will be a dual State/Federal regulatory program in Idaho if RCRA authorization is granted. To the extent the authorized State program is unaffected by the HSWA, the State Program will operate in lieu of the Federal program. To the extent HSWA-related requirements are in effect, EPA will administer and enforce these portions of the HSWA in Idaho until the State receives authorization to do so. Among other things, this will entail the issuance of Federal RCRA permits for those areas in which the State is not yet authorized.

Once the State is authorized to implement a HSWA requirement or prohibition, the State program in that area will operate in lieu of the Federal provision. Until that time the State may assist EPA's implementation of the HSWA under a Cooperative Agreement.

Today's tentative determination includes final authorization for HSWA provisions effective through July 7, 1987, except for corrective action provisions of HSWA effective through July 7, 1987 for which interim authorization is sought. Any State requirement that is more stringent than a Federal HSWA provision will also remain in effect; thus, regulated handlers must comply with any more stringent State requirements.

EPA has published a Federal Register notice that explains in detail the HSWA and its effect on authorized States. That notice was published at 50 CFR 28702-28755, July 15, 1985.

Compliance With Executive Order 12291

The Office of Management and Budget (OMB) has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Idaho's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It dose not impose any new burden on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Lists of Subjects in 40 CFR Part 271

Administrative Practice and Procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of section 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: December 7, 1989.

Robert S. Burd,

Acting Regional Administrator.

[FR Doc. 89-29742 Filed 12-21-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-494; FCC 89-307]

Broadcast Services; Enforcement of Prohibitions Against Broadcast Indecency

AGENCY: Federal Communications Commission.

ACTION: Notice of inquiry.

SUMMARY: The Commission solicits comment regarding the validity of a recent 24-hour Congressional ban on the broadcast of indecent material. This action is taken in response to a remand of the record by the U.S. Court of Appeals for the D.C. Circuit in *Action for Children's Television* v. *FCC*. The Commission sought and was granted the remand in order to develop an evidentiary record regarding the broadcast of indecent material. The instant Notice fulfills the Commission's commitment to the court "to promptly collect data relevant to a judicial determination of the validity of a total ban on broadcast indecency."

DATES: Comments are due by January 19, 1990, and reply comments are due by February 16, 1990.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Marilyn Mohrman-Gillis, Mass Media Bureau, Policy and Rules Division, (202) 632-7792.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Inquiry (Notice) in MM Docket No. 89-494, adopted October 26, 1989, and released November 20, 1989. The full text of this Notice is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Notice of Inquiry

1. In response to a remand of the

a 24-hour basis. If any commenters believe that the Commission should

develop a factual record regarding these qualities of broadcasting, particularly

feasible broadcast technologies that can provide an alternative to the 24-hour

this synopsis is presented in the full text of the Notice and in Appendices B and C.

Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route 1),

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Summary of Notice of Inquiry

1. In response to a remand of the record by the U.S. Court of Appeals for the D.C. Circuit in *Action for Children's Television* v. *FCC*, No. 88–1916 (D.C. Cir. Sept. 13, 1989) (ACT II), the Commission in this Notice, solicits data and comment relevant to the validity of a recent 24-hour ban on the broadcast of indecent material.

Background

2. In the Commission's 1989 appropriations bill, Congress directed the Agency to "promulgate" regulations before January 31, 1989, aimed at enforcing the restrictions on broadcast indecency in Section 1464, 18 U.S.C. 1464, on a 24-hour per day basis. In response, on December 19, 1988, the Commission adopted a new rule prohibiting broadcast indecency and obscenity on a 24-hour basis (53 FR 52425, December 28, 1988). A number of petitioners filed suit challenging the rule in ACT II, and on January 23, 1989, the court stayed the implementation of the rule pending judicial review.

3. Before briefing and oral argument on the merits in ACT II, the Supreme Court declared unconstitutional a ban on the telephone transmission of indecent messages in *Sable Communications of California, Inc.* v. *FCC*, 109 S. Ct. 2829 (1989)(Sable). While the Court did not rule on the applicability of its holding to the broadcast of indecent material, Justice Scalia suggested, in dicta, that indecent broadcasts can be totally banned if "data [can] be found demonstrating the infeasibility of alternate means to provide * * * adequate protection of minors." In order to develop such an evidentiary record regarding broadcast indecency, the Commission obtained a remand of the record in ACT II and now initiates this proceeding.

Definition of Indecency

4. For the purpose of this inquiry, the Commission asks that parties premise their comments on its current definition of broadcast indecency—language or material that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities or organs. Such broadcasts are actionable when there is a reasonable risk that children may be in the audience. This definition has been affirmed by the Supreme Court, has survived vagueness and overbreadth challenges in the DC Circuit, and was impliedly relied upon by Congress in directing the Commission to enforce Section 1464 on a 24-hour basis. If any commenters believe that the Commission should redefine indecency or modify its application of the present definition for the purpose of enforcing a 24-hour ban, they should state their proposed definition and explain why it is preferable to the Commission's current definition.

Protection of Children

5. Congress imposed the 24-hour ban on indecent broadcasts "to protect the American people, especially children * * *." Accordingly, this inquiry focuses on Congress' primary interest in protecting children. The Notice solicits comment on whether a 24-hour ban on broadcast indecency advances the compelling government interests in protecting children from exposure to indecent material (*see*, e.g., Sable, 109 S. Ct. at 2836), and in assisting parents in supervising their children (*see*, e.g., *Ginsberg* v. *New York*, 390 U.S. 629, 639 (1968)).

6. As a preliminary matter, the Notice raises the issue of the appropriate age group to which the government's interest in protecting children should extend. The Commission tentatively concludes that children ages 12 to 17 should be included within the scope of this inquiry, and asks commenters to assume that the term "children" includes all children ages 17 and under in supplying information for the proceeding. Notwithstanding this conclusion, the Commission invites comment on the age group to which the government's interest in protecting children should extend.

7. In developing a record on the validity of a total ban, the Commission seeks comment and data on numerous issues which fall into three general areas of concern: (1) children's access to the broadcast media as well as their actual viewing and listening habits; (2) the feasibility of alternative means of restricting children's access to indecent broadcasts; and (3) the availability of indecent material for adults through non-broadcast means. The *Notice* presents, and requests comment on, data and preliminary findings on some of these issues.

8. *Children's Access/Viewing and Listening Habits.* In *FCC* v. *Pacifica Foundation*, 438 U.S. 726 (1978), the Supreme Court recognized two significant aspects of broadcasting: Its "uniquely pervasive presence in the lives of all Americans," and its unique accessibility to children, even those too young to read. Congress, in enacting the 24-hour ban also expressed concern about the pervasiveness and accessibility of the broadcast media. Therefore, the Commission seeks to develop a factual record regarding these qualities of broadcasting, particularly with respect to whether they support a total ban on indecent broadcasting. The Commission also solicits information on children's listening and viewing habits, particularly with respect to whether there is a reasonable risk that children will be in the broadcast audience at all times of the day or night. The Commission urges parties to consider the impact and relevance of such variables as market size, time of year, and time zone on viewing and listening habits.

10. *Alternatives to 24-Hour Ban.* Secondly, the Commission solicits comment on alternatives to the 24-hour ban on indecency, including: (1) Channeling indecent broadcasts to a time of day when children most likely will not be exposed to them, including reliance on parental supervision to protect children; (2) program rating codes or pre-broadcast warning devices; and (3) feasible technologies that can be used to keep indecent broadcasts from children. This Commission notes that it was unable to locate data on listening habits of children under 12, on viewing habits by age between 1:00 a.m. and 6:00 a.m., and on parental supervision of children's nighttime listening and viewing, and specifically asks for such data. The Commission requests that any parties asserting that time channeling and parental supervision are feasible alternatives to a 24-hour ban submit the evidence on which they rely to support that conclusion.

13. Another possible alternative to the 24-hour ban is the use of a voluntary industry rating code, similar to the Motion Picture Association of America (MPAA) code, for television and radio broadcasts. The ratings could be published in television and radio guides, and announced prior to each program. There is a question, however, as to whether such codes and prior warnings would be effective mechanisms to protect minors from indecent programming, particularly given the existence and use of remote control and scanning devices. The Commission requests comment and data on the effectiveness of ratings and prior warnings as an alternative to the 24-hour ban on indecent broadcasts. The Commission notes that the effectiveness of this alternative is also integrally related to parents' ability and willingness to supervise their children's viewing and listening, and requests parties to consider these factors in commenting on this alternative.

14. Finally, the Commission seeks comment on whether there are any feasible broadcast technologies that can provide an alternative to the 24-hour ban on indecent broadcasts. One type of technology that might be considered is the use of an FM or TV aural subcarrier, such as Television's "Second Audio Program" channel for the broadcast of indecent material. Use of such a technology, which requires decoder devices to gain access to the programming, could restrict children's access to indecent broadcasts, while at the same time make such broadcasts available to adults. The effectiveness of such a technology as an alternative to a 24-hour ban, depends upon whether it could, in fact, restrict minors' access to indecent material, or whether, for example, decoder devices would become standard features on radio and television receivers making such programming easily accessible to minors.

15. *Availability of Non-Broadcast Alternatives for Indecent Material.* Even if the evidence on children's viewing and listening ultimately supports a total ban on broadcast indecency rather than time channeling or other more limited means of regulation, the Commission must also address whether a 24-hour ban impermissibly infringes upon adults' First Amendment rights by permitting them to hear and view only what is acceptable to children. In view of this concern, the Commission requests comment on whether non-broadcast alternatives, including cable with a lock-box capacity, videocassettes, audiocassettes, records, motion pictures, theatres, and nightclubs, provide adults with sufficient access to visual and audio indecency. Do the costs associated with each alternative reduce its practical availability to adults? Are there differences in the types of alternatives available for video versus audio indecency?

Procedural Matters

16. Because the ACT II court will rely on the record in this proceeding in making its decision, the Commission's goal is to develop as complete a record as possible. Accordingly, the Commission asks parties to address all issues thoroughly and, wherever possible, to support their statements with statistical data. The Commission also requests that parties submitting statistical studies or analysis indicate the factual basis for and methodology of such studies in their submissions. Individual reports, articles, and other data referred to in the Notice are available in the docket of this proceeding in order to enable parties to provide comments on this specific material. Data referred to throughout this synopsis is presented in the full text of the Notice and in Appendices B and C.

Comment Information

17. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before January 19, 1990, and reply comments on or before February 16, 1990. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

List of Subjects in 47 CFR Part 73

Radio broadcasting, Television broadcasting.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89–29767 Filed 12–21–89; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

[Docket No. 90927–9273]

RIN 0648–AC79

Northeast Multispecies Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues this final rule to amend the rule implementing the Fishery Management Plan for the Northeast Multispecies Fishery (FMP). This final rule will implement Amendment 3 (Amendment) to the FMP. It will enable the New England Fishery Management Council (Council), its Multispecies Committee, NMFS, and other management agencies to respond in a timely manner to protect large concentrations of juvenile, sublegal, and spawning fish through a Flexible Area Action System. The intended effect of the rule is to: (1) Enhance age-at-entry controls; (2) eliminate the need for emergency actions; and (3) enable management agencies to respond to requests from the fishing industry for timely action.

EFFECTIVE DATE: December 19, 1989.

ADDRESSES: Copies of the Amendment, Environmental Assessment, Regulatory Impact Review (RIR), and other supporting documents are available upon request from Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route 1), Saugus, MA 01906.

FOR FURTHER INFORMATION CONTACT: Jack Terrill, (Resource Policy Analyst), 508–281–9252.

SUPPLEMENTARY INFORMATION: This amendment was prepared by the Council under the provisions of the Magnuson Fishery Conservation and Management Act (Magnuson Act) as amended (16 U.S.C. 1801 *et seq*). A notice of availability was published on August 30, 1989 (54 FR 35908) and the proposed rule on October 2, 1989 (54 FR 40466).

Amendment 3 establishes a Flexible Area Action System (FAAS) that will provide protection for large concentrations of juvenile, sublegal, or spawning multispecies finfish. The Chairman of the Council's Multispecies Committee would initiate a 28-day administrative process if warranted by reports. The FAAS includes industry involvement and initiation by calling attention to a problem, a formal notice of intended action, verification by the Director, Northeast Region, NMFS (Regional Director), the preparation of an impact analysis for each occurrence, and a requirement for public inspection and comment before any action is taken.

Comments and Responses

Written comments were received from the New England Fishery Management Council and the Conservation Law Foundation of New England, Inc.

Comment: The Council provided comment which requested that implementation of the Amendment be done as soon as possible in order to protect concentrations of sublegal yellowtail flounder occurring in Southern New England waters.

Response: Due to the large concentrations of sublegal yellowtail flounder presently occurring in Southern New England and in light of the emergency action taken last year, the Under Secretary for Oceans and Atmosphere, NOAA (Under Secretary), has determined that it is in the best interest of the resource and the public to waive the Administrative Procedure Act delayed effectiveness period for this Amendment.

Comment: The Conservation Law Foundation submitted comments that strongly supported implementation of the amendment. It also suggested three specific changes to the rule in order to make the FAAS more responsive by accelerating the schedule when possible.

Response: One of these comments would have denied the public an adequate opportunity to review the

management measures to protect concentrations of juvenile, sublegal, and spawning multispecies finfish and does

3. 50 CFR part 651 is amended by adding a new § 651.26 to read as follows:

(1) The Regional Director shall prepare a fact finding report which will examine available information from the

for the Committee's consideration. Upon review of all available sources of information, the Committee will

(g) By Day 28, notice will be sent to all vessel owners holding Federal Fisheries Permits for Northeast Multispecies

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Response: One of these comments would have denied the public an adequate opportunity to review the reports required by § 653.28(c)(1) and (d). The other two comments are incorporated into the final regulations and explained by the changes below.

Changes From the Proposed Rule

In response to comments received the following changes are made from the proposed rule.

In § 651.26(b) the sentence "Day 1 is designated when the notice is published in the **Federal Register.**" is changed to "Day 1 is designated when the notice is filed with the Office of the Federal Register."

In § 651.26(e) the phrase "On Day 21" is changed to "By Day 21" and § 651.26(b)(4) is similarly changed.

Classification

The Regional Director determined that this Amendment is necessary for the conservation and management of the Northeast multispecies fishery and that it is consistent with the Magnuson Act and other applicable law.

The Council prepared an environmental assessment (EA) for Amendment 3. Based on this EA, the Assistant Administrator for Fisheries, NOAA, found that there will be no significant impact on the environment as a result of this rule. You may obtain a copy of the assessment and finding of no significant impact from the Council (see **ADDRESSES**).

The Under Secretary for Oceans and Atmosphere, NOAA, has determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination was based on the regulatory impact review which demonstrates positive long-term economic benefits to the fishery under these management measures.

The present high concentrations of juvenile or sublegal yellowtail flounder in the Southern New England/Mid-Atlantic Region will result in high discards with associated high mortality. For this reason, the Under Secretary has found that there is good cause to implement this rule immediately and waive the delayed effectiveness period under section 553(d) of the Administrative Procedure Act.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. As a result, a regulatory flexibility analysis was not prepared. The final rule establishes an administrative procedure for prescribing management measures to protect concentrations of juvenile, sublegal, and spawning multispecies finfish and does not initially impose specific management measures. Any management measure subsequently adopted under this procedure will be analyzed for its impact on small entities.

This rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

The Council determined that this rule will be implemented in a manner that is consistent, to the maximum extent practicable, with the approved coastal zone management programs of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, and North Carolina. This determination has been submitted for review by the responsible state agencies under Section 307 of the Coastal Zone Management Act. All states with the exception of Virginia and Maryland have agreed with the Council's determination. Virginia and Maryland did not comment within the statutory time period, and therefore, consistency is automatically implied.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 651

Fishing, Fisheries, Vessel permits and fees.

Dated: December 18, 1989.

James E. Douglas, Jr.,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 651 is amended as follows:

PART 651—NORTHEAST MULTISPECIES FISHERY

1. The authority citation for 50 CFR part 651 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 651.2 is amended by adding the following definitions in alphabetical order to read as follows:

§ 651.2 Definitions.

* * * * *

Chairman means the Chairman of the Multispecies Finfish Committee of the Council.

* * * * *

Committee means the Multispecies Finfish Committee of the Council.

Council means the New England Fishery Management Council.

* * * * *

3. 50 CFR part 651 is amended by adding a new § 651.26 to read as follows:

§ 651.26 Flexible Area Action System.

(a) The Chairman of the Committee, upon learning of the presence of discard problems associated with large concentrations of juvenile, sublegal, or spawning multispecies finfish, will determine if the situation warrants further investigation and possible action. In making this determination, the Chairman will consider the amount of discard of regulated species, the species targeted, the number and types of vessels operating in the area, the location and size of the area, and the resource condition of the impacted species. If he determines it is necessary, the Chairman will request the Regional Director to initiate a fact finding investigation to verify the situation.

(b) The Chairman will request the Regional Director to publish a notice in the **Federal Register.** The request must include a complete draft of the notice. The Secretary must file the notice within one business day following receipt of the complete request. Day 1 is designated when the notice is filed with the Office of the Federal Register. The notice will inform the public of:

(1) The problem that is occurring and the need for action;

(2) The Regional Director's initiation of fact finding and verification of the problem;

(3) The date (Day 15) the Regional Director's fact finding report, responding to the Chairman's request, will be available for public review;

(4) The date (Day 21) by which a Committee meeting/public hearing will be held and on which the comment period will close;

(5) The potential extent of the area to be affected (defined by common name, latitude/longitude coordinates and/or LORAN coordinates);

(6) The species affected;

(7) The types of gear used;

(8) Other fisheries potentially impacted;

(9) Predominant ports to be impacted;

(10) The expected duration of action;

(11) The types of action which may be taken, limited to the various management measures currently implemented by the FMP;

(12) The Council's initiation of analysis of the impacts; and

(13) The date (Day 15) the Council's impact analysis will be available for public review; and

(14) A request for written comments.

(c) From Day 1 through Day 14 the following activities will take place:

(1) The Regional Director shall prepare a fact finding report which will examine available information from the following sources (in order of priority):

(i) Sea sampling from the NMFS Domestic Sea Sampling Program or from State agency sources;

(ii) Port sampling from the NMFS Statistics Investigation; or

(iii) Any other source of information.

After examining the facts, the Regional Director will provide a technical analysis to determine the magnitude of discard of juvenile and sublegal multispecies finfish and the presence and amount of spawning outside of any area/season restriction. If possible, he will provide technical analyses describing the nature of the impacts on the stock managed under the FMP. The report will specify what type of activities will be required to monitor the area/fishery in question if subsequent action is taken under this section. The report shall also include a statement of NMFS's capabilities for administering, monitoring, and enforcing any of the proposed options.

(2) The Council will prepare an economic impact analysis of the potential management options under consideration.

(d) By Day 15, copies of the reports prepared by the Regional Director and the Council will be made available for public review from the Council at Suntaug Office Park, 5 Broadway (Route 1), Saugus, MA 01906.

(e) By Day 21, provided that it is six days after release of the fact finding report required by paragraphs (c) (1) and (d) of this section, the Committee will hold a meeting/public hearing at which time it will review the Regional Director's fact finding report and the Council's impact analysis. Public comment on the reports, alternatives, and potential impacts will be requested for the Committee's consideration. Upon review of all available sources of information, the Committee will determine what course of action is warranted by the facts and make its recommendation to the Regional Director. The Committee's recommendation will be limited to:

(1) Mesh size restrictions, catch limits, closure of an area to all or certain types of gear or vessels, or other measures less restrictive than the closure but already contained within and implemented by the FMP;

(2) Between three weeks and six months in duration; and

(3) Discrete geographical areas, taking into consideration such factors as manageability of the area, readily identifiable boundaries (natural or otherwise), accessibility of the area, and the area's suitability for monitoring and enforcement activities.

If the Committee recommends that action is not warranted, and the Regional Director concurs, notice will be published in the **Federal Register** stating that no action will be taken and specifying the rationale behind the Committee's decision.

(f) By Day 23 the Regional Director shall: (a) Accept the Committee's recommended management action; or (b) reject the Committee's recommendation. If the Regional Director accepts the Committee's recommendation, the action will be implemented through notice in the **Federal Register** to be filed by Day 28. If the Regional Director rejects the Committee's recommendation, the Regional Director must write to the Committee and explain that the recommended action has been determined not to be consistent with the record established by the fact finding report, impact analysis, and comments received at the public hearing.

(g) By Day 28, notice will be sent to all vessel owners holding Federal Fisheries Permits for Northeast Multispecies Finfish. The Regional Director will also use other appropriate media, including but not limited to mailings to the news media, fishing industry associations and radio broadcasts, to disseminate information on the action to be implemented.

(h) Once implemented, the Regional Director will monitor the affected area to determine if the action is still warranted. If the Regional Director determines that the circumstances under which the action was taken, based on the Regional Director's report, the Council's report and the public comments, are no longer in existence, he will terminate the action by notice in the **Federal Register** and through other appropriate media.

(i) Actions taken under this section will ordinarily become effective upon the date of filing with the **Federal Register.** The Regional Director may determine that facts warrant a delayed effective date.

(j) If the date specified above for completion of an action falls on a Saturday, Sunday, or Federal holiday, it shall be performed by the first day which is not a Saturday, Sunday, or Federal holiday. Failure to complete any action by the specified date shall not vitiate the authority of the Regional Director to implement an accepted recommendation of the Committee; provided, that no meeting/public hearing under paragraph (e) of this section may be held prior to the sixth day after the day by which all reports required by paragraphs (c) (1) and (d) of this section have been made available for public review.

[FR Doc. 89-29741 Filed 12-19-89; 8:55 am]

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Proposed Rules

Federal Register

Vol. 54, No. 245

Subpart C. This subpart sets out the RTC's rules relating to financial interests and outside activities of

substantially and in which the United States is a party or has a direct and substantial interest, if such aiding or

1605.24 Employment of family members by persons other than the RTC.

Subpart D—Receipt of Interest in Insured

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Proposed Rules

Federal Register
Vol. 54, No. 245
Friday, December 22, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

RESOLUTION TRUST CORPORATION

12 CFR Part 1605

RIN 3205-AA00

Employee Responsibilities and Conduct

AGENCY: Resolution Trust Corporation.

ACTION: Proposed rule.

SUMMARY: The Resolution Trust Corporation ("RTC") is issuing for public comment its proposed rules and regulations, 12 CFR part 1605, which prescribe standards of ethical and other conduct for RTC employees, in implementation of the provisions of section 21A(p)(2) of the Federal Home Loan Bank Act, 12 U.S.C. 1421 *et seq.*, as added by section 501 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), Public Law No. 101–73 (103 Stat. 363).

DATE: Comments must be received on or before January 22, 1990.

ADDRESSES: Comments should be addressed to John M. Buckley, Jr., Executive Secretary, Resolution Trust Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand-delivered to Room 6097 at the same address on business days between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Katherine A. Corigliano, Assistant Executive Secretary (Ethics), Office of the Executive Secretary, (202) 898–7272, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: Section 21A(b) of the Federal Home Loan Bank Act, 12 U.S.C. 1421 *et seq.*, as added by section 501 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") (Pub. L. No. 101.73; 103 Stat. 363), established the RTC as an instrumentality of the United States and charged it with the duty, among others, of carrying out a program, under the general oversight of the Oversight Board and through the Federal Deposit Insurance Corporation (the "FDIC"), of managing and resolving all cases involving savings associations the accounts of which were previously insured by the Federal Savings and Loan Insurance Corporation and for which a conservator or receiver was or is appointed during the period beginning on January 1, 1989 and ending on August 8, 1992.

Section 21A(p)(2) of the Federal Home Loan Bank Act, as added by section 501 of FIRREA, directs the RTC, not later than 180 days after the date of enactment of the legislation, to promulgate rules and regulations governing conflicts of interest, ethical responsibilities, and post-employment restrictions applicable to its members, officers, and employees that are no less stringent than those applicable to employees in the FDIC. In implementation of that section, the RTC hereby issues for public comment and proposes the adoption of a new part 1605 of its rules and regulations, to be entitled "Employee Responsibilities and Conduct," which prescribe standards of ethical and other conduct for members, officers, and employees of the RTC which are substantially similar to and are no less stringent than those applicable to employees of the FDIC, but which differ in certain respects simply to reflect the differences in the missions of the two agencies.

As proposed, part 1605 would be comprised of six subparts, as follows:

Subpart A. This subpart sets out the definitions and administrative provisions which control throughout the regulation. Generally, the administrative provisions are the same as in the present standards of conduct regulations of the FDIC. Under these provisions, each employee is responsible for compliance with the regulation; the Ethics Counselor is responsible for the RTC's ethics program; the Executive Secretary of the FDIC is designated as the Ethics Counselor for the RTC; and remedial actions for violations can be appealed to the Chairperson.

A number of new definitions are established, many of which are self-explanatory. Noteworthy changes include the following: The terms "default on a material obligation," "pattern or practice of defalcation," and "substantial loss to the federal deposit insurance funds" reflect the mandate of FIRREA that no person be employed by the RTC who does not meet the minimum competency, experience, integrity, and fitness requirements established by the Oversight Board in subpart G of its proposed regulation, 12 CFR part 1505. The terms "RTC" and "RTC employee" are defined to reflect the role of the FDIC as exclusive manager of the RTC and the status of the RTC as a separate agency of the United States.

Subpart B. This subpart mostly incorporates the provisions of 5 CFR Part 735, the U. S. Office of Government Ethics regulation which establishes government-wide standards of conduct for federal employees. Because 5 CFR 735.101 requires the RTC to incorporate the provisions, they will not be discussed in great detail.

In recognition of the responsibility of the RTC to utilize, to the extent deemed practicable and efficient, the services of private persons in carrying out its functions and activities, § 1605.8, which restricts the acceptance of gifts, entertainment, favors, and loans from persons affected by RTC decisions, has been modified to make it clear that the sources from whom such gratuities may not be accepted include officers, directors, or employees of insured depository institutions in conservatorship as well as trade associations comprised of members who do or seek to do business with the RTC. Section 1605.8(b)(5) references written guidelines applicable to the acceptance of food, refreshments, and accompanying entertainment of nominal value offered in the course of a group function. The guidelines now in effect within the FDIC will be extended to the RTC. Section 1605.14(a) will be amended to reflect the regulatory requirement proposed by the Oversight Board that the RTC adopt polices and procedures which prohibit the employment of persons to serve on behalf of the RTC who: (1) Have been convicted of a felony; (2) have been removed from, or prohibited from participation in the affairs of, any insured depository institution pursuant to any final enforcement action by any appropriate federal banking agency; (3) demonstrated a pattern or practice of defalcation regarding obligations to insured depository institutions; or (4) caused a substantial loss to the federal deposit insurance funds.

Subpart C. This subpart sets out the RTC's rules relating to financial interests and outside activities of employees. As in the FDIC's present regulation, employees generally are prohibited from having financial interests or obligations that conflict or appear to conflict with their RTC duties and responsibilities.

The rules relating to extensions of credit in § 1605.16 have been crafted to reflect the activities of the RTC which differ from those of the FDIC. Section 1605.16 reflects the diversity of activities in which the RTC may engage and the concentration of real estate properties which will comprise its portfolio. As proposed, this section will prohibit investments in any securities issued on behalf of the RTC, investments in any securities of open- or closed-end funds established to acquire insured depository institutions offered for sale by the RTC, and ownership of stock or other interests in limited real estate partnerships, joint ventures, or other firms which, to an employee's knowledge, have been qualified to conduct business with the RTC. Other proposed changes from the FDIC's regulation reflect the RTC's role as conservator of certain institutions and prohibit the purchase of assets of insured depository institutions in conservatorship or the misuse of conservatorship property.

Section 1605.23 prohibits an RTC employee from engaging in any outside employment or activity relating to the real estate business, including, but not limited to, real estate brokerage, management and sales, property insurance, and appraisal services. It further requires that an employee receive the written approval of the appropriate director prior to engaging in outside employment or other activities covered by the regulation.

Subpart D. This subpart sets out RTC rules relating to the filing of required reports by RTC employees. There are no changes from the requirements now established for FDIC employees.

Subpart E. This subpart proposes post-employment limitations on former RTC employees, including special government employees, with respect to participation in matters connected with their former duties and responsibilities while serving with the RTC.

This proposal differs from the FDIC's regulation in that it proposes the adoption of a provisions, § 1605.31, which is a one-year limitation on aiding or advising any other person (except the United States) with regard to a particular matter involving a specific party or parties in which the former employee participated personally and substantially and in which the United States is a party or has a direct and substantial interest, if such aiding or advising is based on information not publicly available.

Subpart F. This subpart prescribes standards of conduct applicable to special government employees of the RTC, including members of the National and Regional Advisory Boards who will be appointed by the Oversight Board but who will become special government employees of the RTC. The subpart includes a section by section analysis of the application of the provisions of title 18 U.S.C., to this category of employees.

List of Subjects in 12 CFR Part 1605

Conflict of interests, Credit, Disclosure requirements, Government employees, Former government employees.

Accordingly, Part 1605 is proposed to be added to chapter XVI of title 12 of the Code of Federal Regulations as follows:

PART 1605—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Subpart A—Purpose, Scope, Definitions, and Administrative Provisions

Sec.
1605.1 Purpose and scope.
1605.2 Definitions.
1605.3 Employee responsibility, counseling, and distribution of regulation.
1605.4 Designation of Ethics Counselor, Alternate Ethics Counselor, and Deputy Ethics Counselors.
1605.5 Sanctions and remedial actions.
1605.6 Review of remedial actions.

Subpart B—Ethical and Other Conduct and Responsibilities of RTC Employees

1605.7 General rules.
1605.8 Gifts, entertainment, favors, and loans.
1605.9 Travel expenses.
1605.10 Use of official information.
1605.11 Lectures, speeches, and manuscripts.
1605.12 Employment by RTC of relatives.
1605.13 Use of property and resources owned or controlled by the RTC.
1605.14 Indebtedness, gambling, and other conduct.

Subpart C—Financial Interests and Obligations; Outside Employment

1605.15 General rules.
1605.16 Extensions of credit.
1605.17 Securities of insured depository institutions.
1605.18 Other investments.
1605.19 Purchase of assets of institutions in conservatorship or receivership.
1605.20 Purchase of RTC property.
1605.21 Purchase of assets of insured depository institutions.
1605.22 Providing goods or services to the RTC.
1605.23 Outside employment and other activity.
1605.24 Employment of family members by persons other than the RTC.

Subpart D—Reports of Interest in Insured Depository Institution Securities, Interest in RTC Decision, and Employment Upon Resignation; Statements of Employment and Financial Interests; Financial Disclosure Reports

1605.25 Report of interest in insured depository institution securities.
1605.26 Report of interest in RTC decision.
1605.27 Report of employment upon resignation.
1605.28 Statement of employment and financial interests.
1605.29 Financial Disclosure Reports under the Ethics in Government Act of 1978.

Subpart E—Limitations on Post Employment Activities of Former Employees, Including Special Government Employees

1605.30 Limitations on representation.
1605.31 Limitations on aiding or advising.
1605.32 Consultation as to propriety of appearance before the RTC.
1605.33 Suspension of appearance privilege.

Subpart F—Ethical and Other Conduct and Responsibilities of Special Government Employees

1605.34 General.
1605.35 Applicability of 18 U.S.C. 203 and 205.
1605.36 Applicability of 18 U.S.C. 207.
1605.37 Applicability of 18 U.S.C. 208.
1605.38 Advice on rules of conduct and conflicts of interest statutes.
1605.39 Use of RTC employment.
1605.40 Use of inside information.
1605.41 Coercion.
1605.42 Gifts, entertainment, favors, and loans.
1605.43 Statements of employment and financial interests.

Authority: 3 CFR 1964–1965 Comp.; 5 CFR 735.104; 5 CFR 2637.10(a); E.O. 12674; 12 U.S.C. 1441a(p)(2);

Subpart A—Purpose, Scope, Definitions, and Administrative Provisions

§ 1605.1 Purpose and scope.

In order to assure the proper performance of RTC business and to maintain public confidence in government, members, officers, and employees of the RTC (hereinafter collectively referred to as "RTC employees") are expected to maintain unusually high standards of honesty, integrity, impartiality, and conduct and to avoid misconduct and conflicts of interest, or the appearance of conflicts of interest. This part establishes the policies and procedures of the RTC with regard to the ethical and other standards of conduct and responsibilities for employees and special government employees. Permissible financial interests, obligations, and outside employment are set forth. This part further sets out the

policies and procedures for employee reporting of financial interests and obligations.

§ 1606.2 Definitions.

For the purposes of this part:

(a) *Affiliate* means any depository institution holding company of which an insured bank or insured savings association is a subsidiary and any other subsidiary of such depository institution holding company.

Any entity which is a subsidiary of an insured bank or insured savings association shall be deemed to be an affiliate of that insured bank or insured savings association.

(b) *Appearance* means an individual's physical presence before the United States in any formal or informal setting or conveyance of material to the United States in connection with a formal proceeding or application. A communication is broader than an appearance and includes, for example, correspondence or telephone calls.

(c) *Appropriate director* means the Executive Director of the RTC and all other persons holding director positions within the RTC including regional directors or regional counsel assigned to the RTC.

(d) *Assisted entity* means: (1) Any insured depository institution which has received financial assistance from the RTC to prevent its failure, (2) any insured depository institution resulting from a merger or consolidation with any insured depository institution described in paragraph (d)(1) of this section, or (3) any parent depository institution holding company of an insured depository institution described in paragraph (d)(1) of this section; *Provided,* that an ongoing financial relationship, including, but not limited to, the repayment of a loan, the servicing of assets, or the existence of stock or warrants, exists between such insured depository institution or depository institution holding company and the RTC.

(e) *Assuming entity* means any insured depository institution or depository institution holding company which has entered into a transaction with the RTC to purchase some or all of the assets and assume some or all of the liabilities of a failed insured depository institution for a period of one year following the closing of such failed insured depository institution.

(f) *Attorney* means any individual employed by the FDIC as an attorney, whether or not assigned to the Legal Division, who is assigned or detailed to perform functions or activities of the RTC. The term does not include outside attorneys engaged in the private practice of law and retained by the RTC.

(g) *Chairperson* means the Chairperson of the Board of Directors of the RTC.

(h) *Conservator* means the RTC when designated to take over the management of the affairs of an insured depository institution.

(i) *Contractor* means any individual who, pursuant to a contract or any other arrangement, performs functions or activities of the RTC, under the direct supervision of an officer or employee of the RTC. The term does not include independent contractors retained by the RTC whose conduct is regulated by 12 CFR part 1606.

(j) *Covered employee* means any employee required to file a statement of employment and financial interests or a Financial Disclosure Report pursuant to §§ 1605.28(a) or 1605.29.

(k) *Default on a material obligation* means any transaction in which an insured depository institution failed to receive the principal and/or interest payments to which it is entitled, and there is a loss to the institution, and with respect to which the insured depository institution has a continuing legal claim for an amount which exceeds $50,000.

(l) *Dependent child* means a son, daughter, stepson, or stepdaughter who either:

(1) Is unmarried, under 21, and living in the employee's household; or

(2) Has received over half of his or her support from the employee in the preceding calendar year.

(m) *FDIC* means the Federal Deposit Insurance Corporation, which serves as exclusive manager of the RTC.

(n) *Honorarium* means a payment, usually for services on which custom or propriety forbids a price to be set.

(o) *Insured depository institution* means any bank or savings association the deposits of which are insured by the Bank Insurance Fund or the Savings Association Insurance Fund.

(p) *Investment* means any interest in securities, real property, limited partnerships, or other assets held for the production of income.

(q) *Member of the employee's immediate household* means a person who is related to the employee by blood, marriage, or adoption and who resides in the same household as the employee.

(r) *Official responsibility* means the direct administrative, supervisory, or decisional authority, whether intermediate or final, exercisable alone or with others, personally or through subordinates, to approve, disapprove, decide, recommend or advise official action, to investigate, or to express staff opinions in dealings with the public.

(s) *Oversight Board* means the oversight board established to oversee and be accountable for the RTC.

(t) *Pattern or practice of defalcation* means there are two or more instances of uncured defaults as to which there are continuing legal claims, resulting in losses to one or more insured depository institutions, which, in the aggregate, exceed $50,000.

(u) *Person* means an individual, insured depository institution, corporation, company, association, partnership, firm, society, or any other organization or institution.

(v) *Reviewing official* means the Deputy Ethics Counselor delegated the authority to receive, review, and retain statements of employment and financial interests filed by covered employees assigned to his or her division, office, or consolidated office.

(w) *RTC* means the Resolution Trust Corporation and includes the National Advisory Board and the Regional Advisory Boards.[1]

(x) *RTC employee* means any individual member of the Board of Directors, officer, or employee, including a liquidation graded employee, of the FDIC assigned to and performing only the responsibilities of the RTC in the FDIC's capacity as the exclusive manager of the RTC, but does not include a special government employee, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, any person employed by the Office of the Comptroller of the Currency or the Office of Thrift Supervision, or any personnel utilized from any executive department or agency.

(y) *Security* means any note, stock, treasury stock, bond, debenture, certificate of interest or participation in any profit-sharing agreement, pre-organization certificate or subscription, investment contract, voting trust certificate, or, in general, any interest or instrument commonly known as a security, but does not include a deposit.

(z) *Senior employee* means any individual member of the Board of Directors of the RTC and any employee named or designated by the Director of the U.S. Office of Government Ethics pursuant to 18 U.S.C. 207(d)(1).

[1] The RTC is an agency of the United States when it is acting as a corporation. When it is acting as a conservator or receiver of an insured depository institution, it is deemed to be an agency of the United States to the same extent as the Federal Deposit Insurance Corporation when it is acting as a conservator or receiver of an insured depository institution.

(aa) *Special government employee* means any employee or contractor, other than an independent contractor, serving the RTC with or without compensation, including the members of the National Advisory Board and the members of the Regional Advisory Boards, for a period estimated not to exceed 130 days during any 365-day period on a full-time or intermittent basis.

(bb) *Subsidiary* means a company the voting stock of which is 50 percent or more owned or controlled by another company.

(cc) *Substantial loss to the federal deposit insurance funds* means a loss of more than $50,000 to the funds for the protection of depositors maintained and administered by the FDIC or the former FSLIC which was occasioned by or is represented by:

(1) A loss to the insurer as a result of the disposition of, or the failure to satisfy, an obligation at its full value;

(2) An outstanding final judgment obtained by the FDIC, the FSLIC, or the RTC against the maker, endorser, or guarantor of a note or other obligation or arising from a legal action on any theory including fraud, negligence, or breach of fiduciary duty; or

(3) An outstanding final judgment obtained in favor of an insured depository institution which is now held by the FDIC, the FSLIC, or the RTC as successor.

§ 1606.3 Employee responsibility, counseling, and distribution of regulation.

(a) Each employee or special government employee of the RTC is responsible for being familiar with and complying with the provisions of this part. The Ethics Counselor and Deputy Ethics Counselors shall be available for counseling and guidance as to the statutes and regulations affecting employee responsibility and conduct, including interpretation of this part.

(b) The Ethics Counselor shall provide a copy of this part to each new employee or special government employee within 30 days of commencement of employment or engagement, and each such employee or special government employee shall complete and file the Certification and Acknowledgment of RTC Standards of Conduct Regulation in accordance with its instructions. The Ethics Counselor shall annually distribute a reminder of the basic provisions of this part to each employee and each special government employee.

(c) An employee who believes that his or her assignment to a matter may result in a conflict of interest or the appearance of a conflict of interest shall report immediately all relevant facts to his or her appropriate director.

§ 1606.4 Designation of Ethics Counselor, Alternate Ethics Counselor, and Deputy Ethics Counselors.

(a) The RTC's ethics program shall be coordinated and managed by the Ethics Counselor. The Executive Secretary of the FDIC shall act as the RTC's Ethics Counselor.

(b) The Assistant Executive Secretary (Ethics) of the FDIC shall act as the RTC's Alternate Ethics Counselor and shall act as Ethics Counselor in the absence of the Ethics Counselor.

(c) The Ethics Counselor shall appoint one or more Deputy Ethics Counselors, to whom the Ethics Counselor may delegate duties and responsibilities under this part. Duties and responsibilities so delegated may not be redelegated.

§ 1606.5 Sanctions and remedial actions.

(a) Any violation of this part by an employee or special government employee may be cause for disciplinary or remedial action, which may be in addition to any penalty prescribed by law.

(b) Disciplinary action may include, but is not limited to, oral or written warning or admonishment, reprimand, suspension, or removal from office, which action shall be taken in accordance with applicable law, executive order, and regulation.

(c) Remedial action, when appropriate, may include, but is not limited to, divestment of conflicting interests, change in assigned duties, or disqualification from a particular assignment or a particular matter.

(d) Unless an employee or special government employee requests review, pursuant to § 1606.6, of an order of remedial action, such order of remedial action, other than disqualification, shall take effect 20 days after receipt of notice thereof, and disqualification shall take effect immediately. Any order of remedial action reviewed and approved pursuant to § 1606.6 shall take effect immediately upon receipt of notice of the determination of the Chairperson or his or her designee.

§ 1606.6 Review of remedial actions.

When remedial action is ordered pursuant to § 1606.5, the affected employee or special government employee may request the Chairperson to review such order. Any request for review shall be made in writing, within 20 days of receipt of notice of the order, and shall contain a statement of reasons for such request. The Chairperson, or his or her designee, will promptly review the matter and will provide written notice of his or her determination, which determination shall be final.

Subpart B—Ethical and Other Conduct and Responsibilities of RTC Employees

§ 1606.7 General rules.

RTC employees are expected to maintain unusually high standards of honesty, integrity, impartiality, and conduct and to avoid misconduct and conflicts of interest, or the appearance of conflicts of interest. No employee shall engage in any action, whether or not specifically prohibited by this part, which might result in, or create the appearance of:

(a) Using public office for private gain;

(b) Giving preferential treatment to any person;

(c) Impeding the RTC's efficiency or economy;

(d) Losing complete independence or impartiality;

(e) Making an RTC decision outside official channels; or

(f) Adversely affecting the public's confidence in the integrity of the RTC.

§ 1606.8 Gifts, entertainment, favors, and loans.

(a) Except as provided in paragraph (b) of this section, no employee may solicit or accept, for himself or herself or for another person, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or other thing of monetary value from a person who:

(1) Has or seeks contractual or other business or financial relationships with the RTC;

(2) Is or may be supervised or regulated by any federal banking agency; [2]

(3) Has interests that may be substantially affected by the performance or nonperformance of the employee's official duties; or

(4) Is an officer, director, or employee of any insured depository institution or of any professional, trade, or business association comprised of members who do or seek to do business with the RTC.

(b) The prohibitions of paragraph (a) of this section do not apply:

(1) To the solicitation or acceptance of anything of monetary value from a friend, parent, spouse, child, or other close relative where it is clear from the

[2] A professional, trade, or business association, a substantial majority of whose members are regulated by any federal banking agency, is itself a prohibited source of gifts, entertainment, favors, and loans for purposes of this section. [*See* Office of Government Ethics, Informal Advisory Opinion No. 87x13, Acceptance of Food and Refreshments by Executive Branch Employees (1987)].

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circumstances that personal or family relationships rather than the business of the persons concerned are the motivating factors;

(2) To the acceptance of unsolicited advertising or promotional material such as pens, pencils, note pads, calendars, and other items of nominal value;

(3) Except as otherwise provided in § 1605.16, to the acceptance of loans from insured depository institutions or other financial institutions on the customary terms and conditions offered to the general public;

(4) To the acceptance of food, refreshments, and accompanying entertainment of nominal value on infrequent occasions in the ordinary course of a conference, meeting, or other function at which an employee is properly in attendance in his or her official capacity; and

(5) To the acceptance of food, refreshments, and accompanying entertainment of nominal value offered in the course of a group function or widely attended gathering of mutual interest to the government and the private sector, such as receptions and informational programs sponsored or hosted by universities, educational associations, the financial services industry, technical and professional associations (including those that have as members firms doing business with the RTC), international organizations, or government entities where it has been determined that attendance is in the interest of the RTC and is related to its mission, in accordance with written guidelines issued by the Ethics Counselor.

(c) Whenever an employee receives a gift or other item of monetary value the acceptance of which is prohibited by paragraph (a) of this section, or whenever a gift or other item of monetary value is received from a source other than a source described in paragraph (a) of this section and is given because of the employee's official position or in conjunction with official duties carried out by the employee, the employee shall notify the Ethics Counselor within ten days of receipt of such gift or item. The gift or item shall be promptly returned to the sender or otherwise disposed of as directed by the Ethics Counselor. The cost of returning such gift or item shall be borne by the RTC. (See 18 U.S.C. 209)

(d) An employee may not solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift from an employee receiving less pay than himself or herself, unless it is a voluntary gift or donation of nominal value made on a special occasion such as marriage, illness, or retirement. (See 5 U.S.C. 7351)

(e) An employee may not request or accept a gift, present, or decoration from a foreign government, except as permitted by law. (See 5 U.S.C. 7342).

§ 1605.9 Travel expenses.

(a) Expenses of travel, lodging, and subsistence incurred by an employee while on official duty shall be paid for or reimbursed by the RTC (in accordance with the FDIC's General Travel Regulations), and an employee shall not accept payment or reimbursement for such expenses from any private source.

(b) On rare occasions where there is no practical alternative to acceptance, an employee may accept travel, lodging, or subsistence from a private source while on official duty. The employee must report the acceptance, value, and circumstances thereof to the appropriate director and the Ethics Counselor within 30 days of such acceptance. When appropriate, the RTC will reimburse the private source for the fair market value of such travel, lodging, or subsistence.

(c) For the purpose of this section, "subsistence" does not include food or refreshments accepted on infrequent occasions in the ordinary course of an official function or a widely attended gathering as permitted by § 1605.8 (b)(4) and (b)(5).

(d) Notwithstanding the provisions of 5 U.S.C. 4111, the RTC may, and an employee may not (without the approval of the appropriate director, who shall have consulted with the Ethics Counselor), accept travel, lodging, or subsistence when the donor is an organization which is exempt from taxation under 26 U.S.C. 501(c)(3), and acceptance does not result in, or create the appearance of, a conflict of interest. The provisions of this section do not, however, prohibit employees who are permanent employees of another executive department or agency, being utilized by the RTC on a reimbursable basis, from accepting travel, lodging, or subsistence from a donor who is exempt from taxation under 26 U.S.C. 501(c)(3) where acceptance would be consistent with the other executive department's or agency's travel policies and regulations.

(e) When an employee is not on official duty and there is no payment or reimbursement by the RTC for expenses of travel, lodging, or subsistence, the employee may accept payment or reimbursement from a private source where acceptance is compatible with the purposes of this part and does not present a conflict of interest or the appearance thereof.

(f) The provisions of this section do not prohibit, or require a report of, the acceptance of travel, lodging, or subsistence provided by family members or personal friends.

§ 1605.10 Use of official information.

(a) Except as permitted in § 1605.11, an employee may not, directly or indirectly, use or allow the use of information which is obtained as a result of his or her RTC employment but which is not available to the general public in order to engage in any financial transaction or to further a private interest.

(b) An employee may not maintain, disclose, or otherwise use personal information in a manner which violates the Privacy Act of 1974, 5 U.S.C. 552a.

(c) An employee may not disclose confidential business information obtained in the course of his or her employment or official duties except as authorized by law. (See 18 U.S.C. 1905)

§ 1605.11 Lectures, speeches, and manuscripts.

(a) No employee shall publish any material or speak before insured depository institutions or public organizations on matters involving the RTC unless the employee receives prior approval, and prior clearance of material to be published, by the Executive Director of the RTC or his or her designee.

(b) An employee shall not use his or her title in connection with any material submitted for publication unless the material contains a statement indicating that the views contained therein are those of the employee as an individual and do not necessarily represent the views of the RTC or unless such use is approved in advance by the Executive Director of the RTC or his or her designee.

(c) An employee shall not use in any teaching, lecturing, speaking, or writing engagement information obtained as a result of his or her RTC employment unless the information is available to the general public or the Executive Director of the RTC or his or her designee gives authorization for such use, upon the determination that the use of the information is in the public interest.

(d) Except as provided in § 1605.8(b)(2), no employee may receive any compensation or other thing of monetary value for any speech, lecture, publication, or similar engagement, the subject matter of which relates specifically to matters involving the RTC or contains information that is not otherwise available to the general public.

(e) No employee may accept an honorarium of more than $2,000 for any appearance, speech, or article in connection with non-RTC related activities. No employee may accept an honorarium in connection with any appearance, speech, or article in connection with RTC-related matters. (See 2 U.S.C. 441i).

(f) No employee who is appointed by the President to a full-time noncareer position in the RTC shall receive any earned income for any outside employment or activity performed during that Presidential appointment. (See E.O. 12565, section 102).

§ 1605.12 Employment by RTC of relatives.

(a) For the purposes of this section:

(1) A "relative" is any person related to an Oversight Board official, an RTC official, a special government employee of the RTC, or any independent contractor to the RTC as parent, stepparent, child, stepchild, brother, sister, stepbrother, stepsister, half-brother, half-sister, spouse, uncle, aunt, first cousin, nephew, niece, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law.

(2) An "official" is any employee who has authority to appoint, employ, promote, or advance employees or to recommend anyone for appointment, employment, promotion, or advancement at the Oversight Board, the RTC, or the FDIC.

(3) A "supervisor" is any employee whose position requires independent judgment to appoint, employ, promote, advance, assign, direct, reward, transfer, suspend, discipline, remove, adjust grievances, or furlough any person or to recommend any such action.

(b) An RTC official may not—

(1) Appoint, employ, promote, or advance any relative to a position at the Oversight Board, the RTC, or the FDIC;

(2) Advocate a relative's appointment, employment, promotion, or advancement at the Oversight Board, the RTC, or the FDIC; or

(3) Appoint, employ, promote, or advance a relative of another Oversight Board, RTC, or FDIC official if the official has advocated the relative's appointment, employment, promotion, or advancement.

(c)(1) No employee may be a supervisor of any relative.

(2) Whenever any employee becomes a supervisor of a relative, the employee shall report in writing that fact to the appropriate director. The appropriate director, in consultation with the Director of the FDIC's Office of Personnel Management, the RTC Personnel Branch Chief and the Ethics Counselor, shall determine whether the relative's position may be removed from the scope of the supervisor's authority, taking into consideration the nature of the supervisor's position, the operational needs of the division, and the potential for conflicts of interest or the appearance thereof. If it is determined that it is not feasible to remove the relative's position from the scope of the supervisor's authority, the appropriate director, the Director of the FDIC's Office of Personnel Management, and the Ethics Counselor shall determine whether the relative may be assigned to another position at the RTC which is outside the scope of the supervisor's authority.

§ 1605.13 Use of property and resources owned or controlled by the RTC.

An employee shall not, directly or indirectly, use or allow the use of any property or resources owned or controlled by the RTC (including, but not limited to, personnel, equipment, leased property, or property which the RTC holds in its capacity as receiver, liquidator, liquidating agent, or conservator of the assets of an insured depository institution) for other than officially approved activities. An employee has a positive duty to protect and conserve property, including equipment, supplies, and other property entrusted or issued to the employee.

§ 1605.14 Indebtedness, gambling, and other conduct.

(a) *Indebtedness.* An employee is expected to meet all just financial obligations, whether imposed by law or contract. For the purpose of this section, a "just financial obligation" is one acknowledged by the employee or reduced to judgment by a court or one imposed by law such as federal, state, or local taxes. An employee who has difficulty in meeting his or her financial obligations may seek counseling with the FDIC's Office of Personnel Management. This section does not require the RTC to determine the validity or amount of any debt which is the subject of dispute between the employee and an alleged creditor. The RTC is prohibited by statute from employing or retaining any employee who engages in a pattern or practice of defalcation to an insured depository institution or causes a substantial loss to the federal deposit insurance funds.

(b) *Gambling.* An employee shall not participate in any gambling activity, including use of gambling devices, lotteries, pools, games for money or property, or numbers tickets, while on property owned or leased by the RTC or the government, or while on duty for the RTC.

(c) *Crimes and dishonesty.* An employee shall not engage in criminal, dishonest, or other conduct prejudicial to the RTC. Any employee who has information indicating that another employee is engaging or has engaged in any criminal conduct or is violating or has violated any of the provisions of this part is encouraged to convey such information to the RTC's Inspector General.

(d) *Discrimination.* An employee shall not discriminate against any other employee or applicant for employment, nor exclude any person from participating in or deny any person the benefits of any program or activity administered by the RTC, on the basis of race, color, religion, national origin, sex, age or handicap.

(e) *Political Activity.* Employees have the right to vote as they may choose and to express their opinions on all political subjects and candidates but are generally forbidden to take an active part in political management or campaigns. Prohibitions concerning political activities may be found in 5 U.S.C. 7321 *et seq.* (the Hatch Act) and 18 U.S.C. 602, 603, and 607.

(f) *Miscellaneous.* Other provisions with which an employee should be familiar include:

(1) The "Code of Ethics for Government Service," which prescribes general standards of conduct (Pub. L. No. 96-303, 94 Stat. 855-856);

(2) Prohibitions relating to bribery, conflicts of interest, and graft (18 U.S.C. 201-209);

(3) Prohibitions against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918);

(4) Prohibitions against the disclosure of classified information (18 U.S.C. 798);

(5) The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352);

(6) Prohibition against the misuse of a government vehicle (31 U.S.C. 1349(b));

(7) Prohibition against the misuse of the franking privilege (*i.e.*, prepaid postage) (18 U.S.C. 1719);

(8) Prohibition against the use of deceit in an examination or personnel action in connection with government employment (18 U.S.C. 1917);

(9) Prohibition against fraud or false statements in a government matter (18 U.S.C. 1001);

(10) Prohibition against mutilating or destroying a public record (18 U.S.C. 2071);

(11) Prohibitions against embezzlement of government money or

property (18 U.S.C. 641); failing to account for public money (18 U.S.C. 643); and embezzlement of the money or

(e) An employee shall disqualify himself or herself from participation in any matter in which he or she has a

the employee's region of official assignment; and

(3) The wholly owned subsidiaries of

credit is retained in accordance with this paragraph, the employee shall be disqualified from participating in any

concurrence of the Ethics Counselor; and

(5) The employee is disqualified from

having an impact on the insured depository institution or affiliate; *Provided*, that the Ethics Counselor, in

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property (18 U.S.C. 641); failing to account for public money (18 U.S.C. 643); and embezzlement of the money or property of another person in the possession of an employee by reason of his or her employment (18 U.S.C. 654);

(12) Prohibition against unauthorized use of documents relating to claims from or by the government (18 U.S.C. 285);

(13) Prohibition against an employee's acting as the agent of a foreign principal registered under the Foreign Agents Registration Act of 1938 (18 U.S.C. 219);

(14) Prohibition against the use of manipulatives or deceptive devices in connection with the purchase or sale of any security (17 CFR 240.10b–5);

(15) Prohibition against lobbying with appropriated funds (18 U.S.C. 1913); and

(16) Prohibition against the employment of an individual convicted of felonious rioting or related offenses (5 U.S.C. 7313).

Subpart C—Financial Interests and Obligations; Outside Employment

§ 1605.15 General rules.

(a) No employee shall have any direct or indirect financial interest or obligation that conflicts or appears to conflict with the employee's RTC duties and responsibilities.

(b) No employee may negotiate or have any arrangement concerning prospective employment with a person whose financial interests may be directly and substantially affected by the employee's performance of his or her RTC duties and responsibilities while the employee is personally and substantially engaged, as part of his or her official duties, in any matter affecting that person. (See 18 U.S.C. 208).

(c) No employee may participate personally and substantially, by decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other action, in any matter in which the employee, the employee's spouse, minor child, partner, or organization in which the employee serves as an officer, director, trustee, partner, or employee, has a financial interest (other than a deposit). (See 18 U.S.C. 208).

(d) No partner of an employee or a special government employee may act as agent or attorney for any person other than the United States before the RTC in a matter in which the employee participates or has participated, personally and substantially, by decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise or which is the subject of the employee's official responsibility. (See 18 U.S.C. 207).

(e) An employee shall disqualify himself or herself from participation in any matter in which he or she has a financial interest by notifying the appropriate director and the Ethics Counselor in writing of such matter and financial interest.

(f) The prohibitions of paragraphs (a), (b), (c), and (e) of this section shall not apply if the employee, other than the Chairperson or the Director(s) (Appointive),[3] receives the prior written determination of the Ethics Counselor, who shall consult with the appropriate director, that the interest is not so substantial as to be deemed likely to affect the integrity of the employee's services to the RTC. (See 18 U.S.C. 208).

§ 1605.16 Extensions of credit.

Unless the credit is extended through the use of a credit card under the same terms and conditions as are offered to the general public and the total line of credit from any one institution does not exceed $10,000:

(a) The Executive Director, a division director, any deputy or assistant thereto, a regional director, a deputy regional director, and any other covered employee of the RTC (or a covered employee of the FDIC while detailed to the RTC) may not, directly or indirectly, accept or become obligated on any extension of credit from any insured depository institution in conservatorship or from an assisted or assuming entity, for so long as such institution remains in conservatorship or for so long as such entity remains an assisted or assuming entity. For employees assigned to a regional or consolidated office, this prohibition is limited to institutions or entities located within the employee's region of official assignment and, for the purposes of this paragraph (a), shall be deemed to include:

(1) The insured depository institution resulting from the failure of an insured depository institution and any of its wholly owned subsidiaries within the employee's region of official assignment if the assuming entity is a depository institution holding company;

(2) The assuming entity, all of its branches, and all of the wholly owned subsidiaries of the failed institution within the employee's region of official assignment if the assuming entity is an insured depository institution located in the employee's region of official assignment; and

(3) The wholly owned subsidiaries of the failed institution, which subsidiaries are located in the employee's region of official assignment if the assuming entity is a depository institution located outside the employee's region of official assignment.

(b) An individual member of the Board of Directors (except the Comptroller of the Currency and the Director of the Office of Thrift Supervision), and any other covered employee assigned to the Washington office, who has participated personally and substantially on behalf of the RTC in any matter involving an assisted or assuming entity, may not, directly or indirectly, accept or become obligated on any extension of credit from such entity for so long as it remains an assisted or assuming entity.

(c) The Executive Director of the RTC, the holder of any position immediately subordinate thereto, a managing agent of an insured depository institution in conservatorship, or any other covered employee of the RTC who participates in the management of an insured depository institution in conservatorship is disqualified from participating in any matter (including any audit, visitation, or investigation) involving, or from otherwise taking any action on behalf of the RTC with regard to, any insured depository institution, financial institution, or person that has, either directly or indirectly, extended credit to such employee. Every other covered employee is disqualified from taking any action on behalf of the RTC with regard to any insured depository institution, financial institution, or other person that has, either directly or indirectly, extended credit to such employee in an amount in excess of $10,000. The appropriate director, in consultation with the Ethics Counselor, may also extend such disqualification to affiliates of such creditors.

(d) If the adoption of this regulation, change in marital status, commencement of employment, reassignment to another division or location, or action affecting the status of the creditor [4] results in an extension of credit prohibited by paragraphs (b) and (c) of this section, such extension of credit may be retained by the employee if it is liquidated under its original terms, without renegotiation. If an otherwise prohibited extension of credit is retained in accordance with this paragraph, the employee shall be disqualified from participating in any decision, examination, audit, or other action having an impact on the creditor and report his or her retention in writing to the appropriate director and Ethics Counselor.

(e)(1) An employee, other than an employee described in paragraph (b) of this section, otherwise required to liquidate a nonconforming extension of credit under its original terms may request permission to renegotiate the loan. An employee described in paragraph (b) of this section otherwise required to liquidate a nonconforming extension of credit under its original terms may request review and concurrence by the Ethics Counselor to renegotiate such a loan. Any such request shall be made, in writing, to the appropriate director and Ethics Counselor, or, in the case of an employee described in paragraph (b) of this section, to the Ethics Counselor, stating:

(i) The purpose of the renegotiation;

(ii) The terms and conditions of the original loan;

(iii) The terms and conditions now available to the general public;

(iv) The terms and conditions now offered the employee;

(v) What action the employee has taken to move the loan to an otherwise nonprohibited creditor; and

(vi) The financial hardship, if any, denial of the request will cause.

(2) No employee may renegotiate a loan from a prohibited creditor without the prior written approval of the appropriate director and the Ethics Counselor, or, in the case of an employee described in paragraph (b)(1) of this section, without the prior review and concurrence by the Ethics Counselor.

(f) Notwithstanding the restrictions of this section, an employee may assume a mortgage loan made by a prohibited creditor under the following circumstances:

(1) The loan is for the employee's personal residence;

(2) The employee is unable to arrange, without undue financial hardship, a loan from a nonprohibited creditor;

(3) The terms of the assumption are no more favorable than those made available to the general public by the same creditor;

(4) The employee receives the prior approval of the appropriate director, who shall have consulted with the Ethics Counselor, or, in the case of an employee described in paragraph (b) of this section, he or she receives the prior concurrence of the Ethics Counselor; and

(5) The employee is disqualified from participating in any decision, examination, audit, or other action having an impact on the creditor.

(g)(1) An extension of credit to an employee's spouse or dependent child shall constitute an extension of credit to the employee unless:

(i) The loan is made to the spouse or dependent child entirely upon his or her own credit and without the employee's being a party to the credit instrument as comaker, endorser, or guarantor;

(ii) The loan is supported by the spouse's or dependent child's own income or means so that neither the creditor nor the spouse nor dependent child will look to the employee, to his or her income, or to his or her property for the payment thereof; and

(iii) The spouse or dependent child has, or in the case of student loans will have, the income, the ability, and the means to meet the loan obligation at maturity.

(2) Even though an extension of credit to a spouse or dependent child is, by virtue of paragraph (g)(1) of this section, not deemed to be an extension of credit to an employee, as a matter of policy the employee will be disqualified from participating in any decision, examination, audit, or other action having an impact on the creditor to the same extent as if the employee were obligated on the extension of credit.

§ 1605.17 Securities of insured depository institutions.

(a) While employed by the RTC, an employee may not purchase, own, or control, directly or indirectly, any securities of an insured depository institution or affiliate thereof, except as permitted in this section.

(b)(1) Except as provided in paragraph (b)(2) of this section, an employee (other than a member of the Board of Directors) may own or control securities of an insured depository institution or affiliate thereof whenever:

(i) Ownership or control was acquired prior to commencement of RTC employment, through a change in marital status, or through circumstances beyond the employee's control, such as inheritance, gift, or merger, acquisition or other change in corporate ownership;

(ii) The employee makes full, written disclosure on the prescribed form to the Ethics Counselor, pursuant to § 1605.25, within 30 days of commencing employment or acquiring the interest; and

(iii) The employee is disqualified from participating in any decision, examination, audit or other action having an impact on the insured depository institution or affiliate; *Provided*, that the Ethics Counselor, in consultation with the appropriate director, may determine that disqualification is not necessary because the employee's interest is too inconsequential to affect the integrity of the employee's services to the RTC.

An employee may own or control additional securities which result from a stock split, stock dividend, or the exercise of preemptive rights arising out of the ownership of such securities.

(2) The Ethics Counselor may require that an employee divest his or her interest in securities whenever disqualification under paragraph (b)(1) of this section might result in a substantial impairment of the employee's ability to perform his or her RTC duties and responsibilities.

(c) An employee may have an indirect interest in securities of an insured depository institution or affiliate thereof which arises through ownership of shares (or other investment units) of publicly held holding companies, mutual funds, or investment trusts but only if:

(1) The assets of the holding company, mutual fund, or investment trust consist primarily of securities of entities other than depository institutions; and

(2) The employee does not own or control 5 percent or more of the shares (or other investment units) of the holding company, mutual fund, or investment trust.

Such an indirect interest in securities of an insured depository institution or affiliate is deemed too inconsequential to affect the integrity of the employee's services to the RTC.

(d)(1) Interests of an employee's spouse or dependent child shall be considered interests of the employee unless:

(i) The interest is solely the financial interest and responsibility of the spouse or dependent child;

(ii) The interest is not in any way, past or present, derived from the income, assets, or other activity of the employee; and

(iii) Any financial or economic benefit from the interest is for the spouse's or dependent child's personal use.

(2) Even though an interest of a spouse or dependent child is, by virtue of paragraph (d)(1) of this section, not deemed to be an interest of an employee, as a matter of policy the employee will be disqualified from participating in any decision, examination, audit, or other action having an impact on that interest to the same extent as if the interest were that of the employee.

[3] The prohibitions of paragraphs (a), (b), (c), and (e) of this section shall not apply to the Chairperson if he or she receives the prior written determination of the President (or the Director(s) (Appointive) if he or she receives the prior written determination of the Chairperson that the interest is not so substantial as to be deemed likely to affect the integrity of the employee's services to the RTC. (See 18 U.S.C. 208).

[4] Such actions include, but are not limited to, mergers, acquisitions, transactions under section 13 of the Federal Deposit Insurance Act (12 U.S.C. 1823) or similar actions beyond the employee's control.

§ 1605.18 Other investments.

(a) While employed by the RTC, an employee may not purchase, own, or

ownership or control of investments otherwise permitted by paragraph (d)(1) of this section whenever disqualification

any property which the RTC manages as conservator of an insured depository institution or which the RTC holds in its

(3) He or she relied upon information regarding the property obtained by the employee in the course of his or her

and proper discharge of the employee's duties and responsibilities to the RTC. Employment or activity which is not

fiduciary, with or without compensation. (See 18 U.S.C. 208).

(g) This section does not preclude an

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§ 1605.18 Other investments.

(a) While employed by the RTC, an employee may not purchase, own, or control, directly or indirectly, any securities which are issued on behalf of the RTC to finance holdings of assets acquired in the resolution or liquidation of insured depository institutions by the RTC or to fund the operations of any bridge bank or other institution organized by the RTC under section 21A(b)(ii)(A) (iv) or (v) of the Federal Home Loan Bank Act, as added by section 501 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

(b) While employed by the RTC, an employee may not purchase securities of, or otherwise invest in, any open- or closed-end fund established to acquire insured depository institutions offered for sale by the RTC.

(c) While employed by the RTC, an employee may not acquire, directly or indirectly, any financial interest which conflicts or appears to conflict with his or her official duties and responsibilities. Such interests may include, but are not limited to, stock or other ownership interests in limited real estate partnerships, joint ventures, or other investments for the production of income which involve firms or institutions which, to the employee's knowledge, have been qualified to conduct business with the RTC.

(d)(1) Except as provided in paragraph (d)(2) of this section, an employee may own or control investments described in paragraph (c) of this section whenever:

(i) Ownership or control was acquired prior to commencement of RTC employment, through a change in marital status, or through circumstances beyond the employee's control, such as inheritance, gift, or merger, acquisition or other change in corporate ownership;

(ii) The employee makes full, written disclosure on the prescribed form to the Ethics Counselor, pursuant to § 1605.26, within 30 days of commencing employment or acquiring the interest; and

(iii) The employee is disqualified from participating in any decision or other action which could have a direct and predictable impact on the employee's financial interest; *Provided,* that the Ethics Counselor, in consultation with the appropriate director and in compliance with rules to be promulgated by the U.S. Office of Government Ethics, may determine that disqualification is not necessary because the employee's interest is too inconsequential to affect the integrity of the employee's services to the RTC.

(2) The Ethics Counselor may require that an employee divest his or her ownership or control of investments otherwise permitted by paragraph (d)(1) of this section whenever disqualification might result in a substantial impairment of the employee's ability to perform his or her RTC duties and responsibilities.

(e)(1) An employee may have an indirect interest in an otherwise prohibited investment which arises through ownership of shares (or other investment units) of a publicly held company, mutual fund, or investment trust which has a broadly diversified portfolio not specializing in any particular industry and which is:

(i) Widely held and is not under the employee's control; or

(ii) A limited partnership interest in a large public partnership (i.e., one which has at least 30 partnership interests) and less than 25% of the gross revenues of the limited partnership derive from business with the RTC.

(2) The employee is disqualified from participating in any decision or other action having a direct and predictable impact on the employee's financial interest; *Provided,* that the Ethics counselor, in consultation with the appropriate director and in compliance with rules to be promulgated by the U.S. Office of Government Ethics, may determine that disqualification is not necessary because the employee's interest is too inconsequential to affect the integrity of the employee's services to the RTC.

(f)(1) Interests of an employee's spouse or dependent child shall be considered interests of the employee unless:

(i) The interest is solely the financial interest and responsibility of the spouse or dependent child;

(ii) The interest is not in any way, past or present, derived from the income, assets, or other activity of the employee; and

(iii) Any financial or economic benefit from the interest is for the spouse's or dependent child's personal use.

(2) Even though an interest of a spouse or dependent child is, by virtue of paragraph (f)(1) of this section, not deemed to be an interest of an employee, as a matter of policy the employee will be disqualified from participating in any decision or other action having an impact on that interest to the same extent as if the interest were that of the employee.

§ 1605.19 Purchase of assets in conservatorship or receivership.

(a) An employee, the employee's spouse or dependent child, or members of the employee's immediate household shall not, directly or indirectly, purchase any property which the RTC manages as conservator of an insured depository institution or which the RTC holds in its capacity as receiver, liquidator, or liquidating agent of the assets of a insured depository institution, regardless of how the property is sold.

(b) An employee who is involved in the disposition of conservatorship or receivership assets shall disqualify himself or herself from participation in the disposition of such assets when the employee becomes aware that any relative, or any organization or partnership with which the employee, the employee's spouse or dependent child is associated, has submitted a bid for purchase of such assets. The employee shall advise his or her immediate supervisor and the Ethics Counselor in writing of the self-disqualification.

(c) An employee shall not, directly or indirectly, use or release to persons outside the RTC confidential information regarding the sale or disposition of assets except as mandated by the employee's official responsibility to liquidate such assets and only as prescribed in guidelines applicable to such sale or disposition.

§ 1605.20 Purchase of RTC property.

(a) An employee, the employee's spouse or dependent child, or members of the employee's immediate household shall not, directly or indirectly, purchase any property which the RTC holds in its corporate capacity unless:

(1) The property has been declared excess property by, and is sold in accordance with standards and procedures prescribed by, the Director of the FDIC's Division of Accounting and Corporate Services; and

(2) The property is sold by means, determined by the Director of the FDIC's Division of Accounting and Corporate Services, which assure that the selling price is the property's fair market value.

(b) In no case shall an employee, the employee's spouse or dependent child, or members of the employee's immediate household directly or indirectly purchase any property from the RTC if:

(1) The employee is employed in the Facilities Management and Operations Section of the FDIC's Division of Accounting and Corporate Services or is directly involved in the disposition of excess property;

(2) The property was last under the control or supervisory responsibility of the employee (except in the case of property sold by sealed bid or at public auction);

(3) He or she relied upon information regarding the property obtained by the employee in the course of his or her employment with the RTC (other than knowledge of the proposed sale of the property), which is not available to the general public; or

(4) The employee is the head of the last known office using the property (except in the case of property sold by sealed bid or at public auction).

§ 1605.21 Purchase of assets of insured depository institutions.

An employee, the employee's spouse or dependent child, or a member of the employee's immediate household shall not, directly or indirectly, purchase an asset (for example, real property, automobiles, trucks, mobile homes, or repossessed goods) of an insured depository institution unless such asset is sold at public auction, is offered to the general public at the same price, or is sold by other means that assure that the selling price is the asset's fair market value. In no event shall an employee, an employee's spouse or dependent child, or a member of the employee's immediate household purchase an asset from any insured depository institution in reliance on information obtained in the course of the employee's performance of his or her official duties or from any other source not available to the general public. Employees have a responsibility to consult with the Ethics Counselor as to the propriety of the proposed purchase.

§ 1605.22 Providing goods or services to the RTC.

An employee, the employee's spouse or dependent child, or members of the employee's immediate household shall not, directly or indirectly, provide any goods or services for compensation to the RTC either in its corporate capacity or in its capacity as conservator, receiver, liquidator, or liquidating agent of the assets of an insured depository institution unless the Executive Director of the RTC determines, in accordance with the provisions of § 1605.23 (d) and (e) and standards and procedures approved by the Board of Directors, that it is in the best interest of the RTC to acquire goods or services from such a person. For the purpose of this section, the term "services" does not include services as required by the employee's position with the RTC.

§ 1605.23 Outside employment and other activity.

(a) An employee shall not engage in employment or other activity outside the scope of his or her RTC employment which is not compatible with the full and proper discharge of the employee's duties and responsibilities to the RTC. Employment or activity which is not compatible with the employee's duties and responsibilities to the RTC includes, but is not limited to, that which results in, or creates an appearance of, a conflict of interest or impairs the employee's physical or mental capacity to perform the duties and responsibilities of his or her position with the RTC. Such employment or activity may involve:

(1) Service, with or without compensation, as an organizer, incorporator, director, officer, trustee, or representative of, or advisor or consultant to, or in any other capacity with, any insured depository institution, including a credit union, except the FDIC Employees' Federal Credit Union;

(2) Service, with or without compensation, in any capacity with an investment advisor, investment company, investment fund, mutual fund, insurance company, stockbroker, underwriter, or any other person engaged in providing financial services; or

(3) Active participation in or conduct of a business dealing with or related to real estate including, but not limited to, real estate brokerage, management and sales, property insurance, and appraisal services.

(b) An employee shall not engage in outside employment or other activity, with or without compensation, with any person or entity doing business with the RTC.

(c) An employee shall not accept any money or anything of monetary value from a private source as compensation for the employee's service to the RTC. (See 18 U.S.C. 209).

(d) An employee shall not, directly or indirectly, receive compensation for representational services rendered by himself or herself or another before an agency of the Federal or District of Columbia Government on matters in which the United States has an interest. (See 18 U.S.C. 203).

(e) Except as provided in paragraph (f) of this section, an employee shall not represent anyone before an agency or court of the Federal or District of Columbia Government, with or without compensation, in matters in which the United States has an interest, other than in the proper discharge of the employee's official duties. (See 18 U.S.C. 205).

(f) An employee must obtain the prior written approval of the Ethics Counselor in order to represent a parent, spouse, child, or person or estate for which he or she serves as a guardian, executor, administrator, trustee, or personal fiduciary, with or without compensation. (See 18 U.S.C. 205).

(g) This section does not preclude an employee from participating in the activities of:

(1) Charitable, religious, professional, social, fraternal, nonprofit educational and recreational, public service, or civic organizations, so long as such participation does not violate § 1605.10 or 18 U.S.C. 203 or 205; or

(2) National or state political parties, if not prohibited by law.

(h) Any employee who engages in, or intends to engage in, outside employment or activity must obtain the prior written approval of the appropriate director, who shall consult with the Ethics Counselor as to whether such employment or activity is compatible with the purposes of this part.

§ 1605.24 Employment of family members by persons other than the RTC.

(a) In order to avoid a conflict of interest or the appearance of a conflict, a covered employee shall report to the appropriate director the employment of the employee's spouse, child, parent, brother, sister, or a member of the employee's immediate household by:

(1) An insured depository institution or its affiliate;

(2) A firm or business with which, to the employee's knowledge, the RTC has a contractual or other business or financial relationship; or

(3) A firm or business which, to the employee's knowledge, is seeking a business or contractual relationship with the RTC.

A covered employee shall report within 30 days of the commencement of employment of the family member.

(b) Generally, a covered employee will not be assigned to any matter involving the family member's employer unless the appropriate director, in consultation with the Ethics Counselor, makes the prior determination that the nature of the family member's employment makes it unlikely that the employee's services to the RTC will be affected by participation in the matter. In making determinations under this section, significant weight shall be given to the policy-making character of the family member's position. Under most circumstances, positions which are clerical or lacking policy-making character would not require disqualification.

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Subpart D—Reports of Interest in Insured Depository Institutions

(1) Assistants to assistants or deputies to the Board of Directors or to individual

(b)(5) of this section not later than February 28.

(f) *Confidentiality of statements.* Statements of employment and financial interests shall be held in confidence.

(a) Financial Disclosure Reports (SF 278) in accordance with the requirements of the Ethics in

(See 18 U.S.C. 207(b)(i) and 5 CFR 2637.202.)

(c) The provisions of paragraphs (a)

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Subpart D—Reports of Interest in Insured Depository Institutions Securities, Interest in RTC Decision, and Employment Upon Resignation; Statements of Employment and Financial Interests; Financial Disclosure Reports

§ 1605.25 Report of interest in insured depository institution securities.

All employees must report, on the prescribed form, direct or indirect ownership of securities of insured depository institutions within 30 days of commencement of employment, within 30 days of acquiring the interest if acquired subsequent to employment in accordance with § 1605.17, or, if the interest was previously acquired, within 30 days of the entity's becoming an insured depository institution.

§ 1605.26 Report of interest in RTC decision.

Except for interests reported in accordance with §§ 1605.17 and 1605.25, an employee with a financial interest (other than a deposit or indebtedness) in an insured depository institution or other entity that may be affected by his or her participation in an RTC decision must report that interest to the Ethics Counselor on a prescribed form. Reports are to be made within 30 days of commencement of employment, within 30 days of acquiring the interest, if acquired subsequent to employment, or, if the interest was previously acquired, within 30 days of the insured depository institution's or other entity's becoming subject to an RTC decision. Reports filed under this section shall be treated as confidential. Information in a report shall be disclosed only as necessary to carry out the purposes of this part or as the chairperson may determine for good cause shown.

§ 1605.27 Report of employment upon resignation.

Each covered employee shall report to the Ethics Counselor on a prescribed form his or her resignation to accept employment in the private sector. Such report shall include pertinent information regarding the prospective employment and shall be made as soon as possible but in no event less than two weeks prior to the effective date of resignation.

§ 1605.28 Statement of employment and financial interests.

(a) *Employees required to file.* Unless they file statements pursuant to § 1605.29, the following employees shall be deemed covered employees for the purpose of filing statements of employment and financial interests pursuant to this section:

(1) Assistants to assistants or deputies to the Board of Directors or to individual Board members (except persons serving in such capacities when the individual Board members or the Board of Directors are acting as employees of the FDIC or unless otherwise subject to the regulations of other federal agencies);

(2) Holder(s) of the position(s) immediately subordinate to the Executive Director of the RTC, or the director of a division or office;

(3) Branch or comparable office heads;

(4) Employees at or above the grade 5 level in job series 1160, 301, and 341;

(5) Employees serving as financial economists in job series 110;

(6) Employees at or above the grade 9 level who evaluate, recommend, purchase or contract for equipment, materials, and services;

(7) Persons employed by the RTC as attorneys;

(8) Internal auditors and investigators at or above the grade 5 level;

(9) Voting members and designees appointed to any RTC standing committee;

(10) The Alternate Ethics Counselor and Deputy Ethics Counselors; and

(11) The holders of any other positions determined by the Ethics Counselor to require the incumbents to report employment and financial interests in order to carry out the purposes of law, executive order, this part, or other RTC regulation; *Provided,* that reporting by holders of such positions below the grade 13 level will be subject to the prior concurrence of the U.S. Office of Government Ethics. Such positions may include, but are not limited to, those the incumbents of which are responsible for making decisions or taking actions with respect to contracting or procurement, administering or monitoring grants or subsidies, regulating or auditing a private or non-federal enterprise, or other activities where the decision or action has an economic impact on any insured depository institution or other enterprise.

(b) *Submission of statements.* (1) Covered employees shall annually file statements of employment and financial interests with information as of December 31. Covered employees who have commenced employment within 90 days of December 31 need not submit another statement for such reporting period.

(2) The Ethics Counselor shall notify covered employees of the obligation to file annual statements and provide a copy of the prescribed reporting form no later than January 30 of each year, with instructions that statements are to be submitted in accordance with paragraph (b)(5) of this section not later than February 28.

(3) Covered employees commencing employment in or reassigned or promoted to positions, the incumbents of which must file statements in accordance with this section, shall file statements within 30 days after commencement of employment, reassignment, or promotion.

(4) Notwithstanding any other provision of this section, the filing of a statement may be required prior to employment in, or reassignment or promotion to, executive level positions and certain other senior positions.

(5) Statements required under this section shall be submitted to the appropriate reviewing official.

(c) *Financial interests of spouse and dependent child.* For the purpose of this section, a financial interest of the covered employee's spouse or dependent child is considered an interest of the covered employee unless:

(1) The interest is solely the financial interest and responsibility of the spouse or the dependent child, and the covered employee has no knowledge of it;

(2) The interest is not in any way, past or present, derived from the income, assets, or activities of the covered employee; and

(3) The covered employee neither derives, nor expects to derive, any financial or economic benefit from the interest.

(d) *Information not known by covered employee.* If any information required to be included on a statement of employment and financial interests, including holdings placed in trust, is not known to a covered employee but is known to another person, the covered employee shall request that other person to submit information on his or her behalf.

(e) *Excepted information.* This section does not require a covered employee to submit on a statement of employment and financial interests any information relating to the covered employee's connection with, or interest in, a professional society, or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization or a similar organization not conducted as a business enterprise. For the purpose of this section, educational and other institutions doing research and development or related work involving grants of money from or contracts with the government are deemed business enterprises and are required to be included in a covered employee's statement of employment and financial interests.

(f) *Confidentiality of statements.* Statements of employment and financial interests shall be held in confidence. Statements shall be received, reviewed, and retained in the office of the reviewing official, who shall be responsible for maintaining the statements in confidence. The secretary of the reviewing official shall have such access as necessary and then only to carry out the purposes of the review. The Ethics Counselor shall not allow access to, or allow information to be disclosed from, a statement except to carry out the purpose of this part. Information in a statement will not otherwise be disclosed except as the Chairperson or the Director of the U.S. Office of Government Ethics may determine for good cause shown.

(g) *Review of statements.* (1) Annual statements submitted under this section will be reviewed by the appropriate reviewing official no later than two months following the filing of the statements.

(2) Whenever a statement or other information indicates a possible conflict between the interest of a covered employee and the performance of his or her service to the RTC:

(i) The reviewing official shall investigate the matter and allow the covered employee a reasonable opportunity, orally and in writing, to explain why he or she does not believe a conflict or appearance of a conflict exists; and

(ii) The Ethics counselor shall attempt to resolve the matter. If the matter cannot be resolved within 60 days, the information concerning the conflict or the appearance of a conflict shall be reported to the Chairperson for resolution.

(h) *Effect on other reporting requirements.* The statements of employment and financial interests required of covered employees are in addition to, and not in substitution for or in derogation of, any similar requirement imposed by law or regulation.

§ 1605.29 Financial Disclosure Reports under the Ethics in Government Act of 1978.

Individual Board members (except the Comptroller of the Currency and the Director of the Office of Thrift Supervision), employees at or above the RTC's Executive Level I, and employees whose positions are excepted from competitive service by reason of being of a confidential or policy-making character (unless otherwise excluded by the U.S. Office of Government Ethics) must file:

(a) Financial Disclosure Reports (SF 278) in accordance with the requirements of the Ethics in Government Act of 1978 and regulations of the U.S. Office of Government Ethics, 5 CFR Part 2634; and

(b) Confidential Reports of Indebtedness reporting all indebtedness to insured depository institutions and any affiliates thereof, not otherwise reportable in accordance wirh the requirements of the Ethics in Government Act of 1978. Such statements shall be filed with the Ethics Counselor on or before May 15 for the preceding calendar year ended December 31.

Subpart E—Limitations on Post Employment Activities of Former Employees, Including Special Government Employees

§ 1605.30 Limitation on Representation.

(a) No former employee or special government employee, after terminating government employment, shall knowingly act as agent or attorney for, or otherwise represent any other person, except the United States, in any formal or informal appearance before, or with the intent to influence, make any oral or written communication on behalf of any other person other than the United States, or an agency thereof:

(1) To the United States;

(2) In connection with any particular government matter involving a specific party; and

(3) In which such employee or special government employee participated personally and substantially as an employee or special government employee through decision, approval, disapproval, recommendation, advice, investigation, or otherwise.

(See 18 U.S.C. 207(a) and 5 CFR 2637.201.)

(b) No former employee or special government employee, within two years after termination of employment with the RTC, shall knowingly act as agent or attorney for, or otherwise represent any other person, except the United States, in any formal or informal appearance before, or with the intent to influence, make any oral or written communication on behalf of any other person other than the United States, or an agency thereof:

(1) To the United States;

(2) In connection with any particular government matter involving a specific party; and

(3) If such matter was actually pending under the employee's responsibility as an officer or employee within a period of one year prior to the termination of such responsibility.

(See 18 U.S.C. 207(b)(i) and 5 CFR 2637.202.)

(c) The provisions of paragraphs (a) and (b) of this section shall not apply to the participation of a former employee or special government employee, other than those persons described in paragraph (e) of this section, in matters of general application, such as rulemaking, proposed legislation or regulations, and the formulation of general policy standards or objectives but shall apply to rulemaking having a specialized effect on a certain party or group of parties.

(See 5 CFR 2637.201.)

(d) No former senior employee, within two years after termination of employment with the RTC, shall knowingly represent or aid, counsel, advise, consult, or assist in representing any other person, except the United States, by personal presence at any formal or informal appearance;

(1) Before the United States;

(2) In connection with any particular government matter involving a specific party; and

(3) In which matter he or she participated personally and substantially while an employee.

(See 18 U.S.C. 207(b)(ii) and 5 CFR 2637.203.)

(e) For a period of one year after termination of employment with the RTC, no former senior employee (other than a special government employee who serves for fewer than sixty (60) days in a calendar year) shall knowingly act as an agent or attorney for, or otherwise represent any other person, except the United States, in any formal or informal appearance before, or with the intent to influence, make any oral or written communication on behalf of any other person other than the United States to the RTC or any of its officers or employees, in connection with any particular government matter, whether or not involving a specific party, which is pending before the RTC, or in which the RTC has a direct and substantial interest.

(See 18 U.S.C. 207(c) and 5 CFR 2637.204.)

§ 1605.31 Limitations on aiding or advising.

(a) For a period of one year after termination of employment with the RTC, no former employee, including a former senior employee, shall knowingly act as agent or attorney for, or otherwise aid or advise any other person (except the United States) concerning any judicial or other proceeding, application, request for a ruling or other

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determination, contract, claim, or other particular matter:

(1) In which, to the former employee's knowledge, the United States is a party or has a direct and substantial interest;

(2) That involves the same specific party or parties; and

(3) In which matter he or she participated personally and substantially while an employee.

(b) For purposes of paragraph (a) of this section, the limitations on aiding and assisting shall only apply to particular matters about which the former employee had access to information which is exempt from disclosure under 5 U.S.C. 552, which information is so designated as exempt by the RTC or the Oversight Board, and which information is the basis for the aid or advice.

§ 1605.32 Consultation as to propriety of appearance before the RTC.

Any former employee who wishes to appear before the RTC on behalf of any person other than the United States, or an agency thereof, at any time after termination of employment with the RTC, may consult the Ethics Counselor as to the propriety of such appearance.

§ 1605.33 Suspension of appearance privilege.

Any former employee or special government employee who knowingly fails to comply with the provisions of this subpart may be prohibited from making an appearance before or an oral or written communication with the RTC or the Oversight Board for such period of time as provided in procedures to be adopted by the RTC and the Oversight Board.

Subpart F—Ethical and Other Conduct and Responsibilities of Special Government Employees

§ 1605.34 General.

(a) Special government employees are those serving the RTC, by performing temporary duties either on a full-time or intermittent basis, with or without compensation, for a period not to exceed 130 days during any period of 365 consecutive days.[6]

(b) The rules of conduct contained in Subparts A, B, C, D, and E of this part shall also apply to special government employees insofar as their employment with the RTC is concerned except in the instances discussed in this Subpart F. However, the prohibition in § 1605.14(e), concerning active participation in political management or campaigns (5 U.S.C. 7321 *et seq.*, the Hatch Act), only applies to special government employees on days that they serve the RTC. Further, the prohibition in § 1605.23, concerning outside employment, shall not apply to members of the National or Regional Advisory Boards.

[6] All members of the National and Regional Advisory Boards are considered to be special government employees for purposes of this part.

§ 1605.35 Applicability of 18 U.S.C. 203 and 205.

(a) The prohibitions in 18 U.S.C. 203 and 205 applicable to special government employees are less stringent than those which affect regular employees. These two sections in general operate to preclude a regular government employee, except in the discharge of his or her official duties, from representing another person before a department, agency, or court, whether with or without compensation, in a matter in which the United States is a party or has a direct and substantial interest. However, the two sections impose only the following major restrictions upon a special government employee:

(1) He or she may not, except in the discharge of his or her official duties, represent anyone else (or receive compensation from another's representation) before a court or government agency in a matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest and in which he or she at any time participated personally and substantially in the course of his or her government employment. What constitutes personal and substantial participation in a matter is discussed in § 1605.37(b).

(2) He or she may not, except in the discharge of his or her official duties, represent anyone else (or receive compensation from another's representation) in a matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest and which is pending before the agency he or she serves. However, this restraint is not applicable if he or she has served the agency no more than 60 days during the past 365 days. He or she is bound by the restraint, if applicable, regardless of whether the matter is one in which he or she has ever participated personally and substantially.

(b) These restrictions prohibit both paid and unpaid representation and apply to a special government employee on the days when he or she does not serve the government as well as on the days when he or she does.

(c) An employee who undertakes service with the RTC and another federal entity, including the Oversight Board, shall inform each of his or her arrangements with the other.

(d) There may be situations where a special government employee has a responsible position with his or her regular employer which requires him or her to participate personally in a matter before the RTC or the Oversight Board. In such a situation, the special government employee should participate in the matter for his or her regular employer only with the knowledge of the appropriate director, after consultation with the Ethics Counselor. However, an independent member of the Oversight Board or a member of the National or Regional Advisory Board may not participate on behalf of his or her regular employer, and must be fully recused from, any contract or other particular matter such employer has before or involving the Oversight Board or the RTC. Thus, employers of persons who also serve as independent members of the Oversight Board or the National or Regional Advisory Boards are not barred from contracting with the RTC or the Oversight Board provided that such members are in full compliance with this paragraph.

(e) Section 205 of title 18, U.S.C., permits a special government employee to represent, with or without compensation, a parent, spouse, child, or another person or an estate he or she serves as a fiduciary, but only if he or she has the approval of the official responsible for appointment to his or her position and the matter involved is neither one in which he or she has participated personally or substantially nor one under his or her official responsibility. What constitutes personal and substantial participation in a matter is discussed in § 1605.37(b). The term "official responsibility" is defined in 18 U.S.C. 202 to mean the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct action in the RTC or the Oversight Board.

§ 1605.36 Applicability of 18 U.S.C. 207.

(a) Section 207 of title 18, U.S.C., applies to individuals who have left government service, including former special government employees. It prevents a former employee or special government employee from representing another person in connection with certain matters (or making oral or written communications, with the intent to influence, to the government or a court) in which he or she participated personally and substantially on behalf

of the government. The matters are those involving a specific party or parties in which the United States is also a party or has a direct and substantial interest. What constitutes personal and substantial participation in a matter is discussed in § 1605.37(b). In addition, section 207 of title 18, U.S.C., prevents a former employee, for a period of two years after his or her responsibility for a matter has ceased, from representing another person (or making oral or written communications with the intent to influence) in such matter before a court, department, or agency if the matter was actually pending within the area of his or her official responsibility at any time in the last year prior to termination of the employee's responsibility.

(b) A special government employee who serves 61 days or more in a given calendar year in a position designated as a senior employee position under the Ethics in Government Act of 1978 may not represent anyone other than the United States before the employee's former agency in any particular matter (whether or not a specific party or parties are involved) and may not make oral or written communications, with intent to influence, to that agency for a period of one year after his or her employment has ceased. For purposes of this restriction, the term "agency" includes both the RTC and the Oversight Board but does not include the Resolution Funding Corporation or the Federal Housing Finance Board.

§ 1605.37 Applicability of 18 U.S.C. 208.

(a) Section 208 of title 18, U.S.C., bears on the activities of government personnel, including special government employees, in the course of their official duties. In general, it prevents an employee or special government employee from participating personally and substantially as a government officer or employee in a particular matter in which, to his or her knowledge, the employee, his or her spouse, minor child, partner, profit or nonprofit organization in which the employee is serving as officer, director, trustee, partner or employee, or any person or organization with whom the employee is negotiating or has any arrangement concerning prospective employment, has a financial interest. Waivers may be granted subject to the provisions of regulations to be issued by the U.S. Office of Government Ethics. Until such regulations are issued and waivers thereunder granted, special government employees are disqualified from participating in any matter in which such a financial interest exists.

(b) For the purposes of 18 U.S.C. 208, the phrase "participates personally and substantially in a particular matter" applies to participation through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter. Accordingly, a special government employee should in general be disqualified from participating as such in a matter of any type the outcome of which will have a direct and predictable effect upon the financial interests covered by section 208 of title 18, U.S.C.

§ 1605.38 Advice on rules of conduct and conflicts of interest statutes.

Any special government employee having any doubt as to the propriety of any conduct failing within the conflicts of interest statutes or regulations should confer with the Ethics Counselor. Assistance in interpreting the conflicts of interest statutes, these regulations, and any other instructions involving conduct and conflicts of interest will also be provided by the Ethics Counselor to any special government employee, prospective government employee, and their appointing officials and supervisors desiring it.

§ 1605.39 Use of RTC employment.

A special government employee shall not use his or her RTC employment for a purpose that is, or gives the appearance of being, motivated by the desire for private gain for himself or herself or another person, particularly one with whom he or she has family, business, or financial ties.

§ 1605.40 Use of inside information.

(a) A special government employee shall not use any inside information obtained as a result of his or her RTC employment for private gain for himself or herself or another person, either by direct action on his or her part or by counsel, recommendation, or suggestion to another person, particularly one with whom he or she has family, business, or financial ties. For the purpose of this section, "inside information" means information obtained under RTC authority which has not become part of the body of public information.

(b) The provisions of § 1605.11 (a) through (d) with regard to employees shall be applicable to special government employees.

§ 1605.41 Coercion.

A special government employee shall not use his or her RTC employment to coerce, or give the appearance of coercing, a person to provide financial benefit to himself or herself or another person, particularly one with whom he or she has family, business, or financial ties.

§ 1605.42 Gifts, entertainment, favors, and loans.

(a) Except as provided in paragraph (b) of this section, a special government employee, while so employed or in connection with his or her employment, shall not receive or solicit from a person having business with the RTC anything of value as a gift, gratuity, loan, entertainment, or favor for himself or herself or another person, particularly one with whom he or she has family, business, or financial ties.

(b) The exemptions of § 1605.8(b) with regard to employees shall be applicable to special government employees.

§ 1605.43 Statements of employment and financial interests.

(a) Except as provided in paragraphs (b) and (c) of this section, each special government employee shall submit a statement of employment and financial interests to the Ethics Counselor which reports:

(1) All other employment; and

(2) The financial interests of the special government employee which the RTC determines are relevant in the light of the duties he or she is to perform.

(b) The Ethics Counselor may waive the requirement in paragraph (a) of this section for the submission of a statement of employment and financial interests in the case of a special government employee who is not a consultant or an expert when the Ethics Counselor finds that the duties of the position held by that special government employee are of a nature and at such a level of responsibility that the submission of the statement by the incumbent is not necessary to protect the integrity of the RTC. For the purpose of this paragraph, "consultant" and "expert" have the meanings given those terms by chapter 304 of the Federal Personnel Manual, but do not include a physician, dentist, or medical specialist whose services are procured to provide care and service to patients. Special government employees who are relieved of the requirement of filing a statement include, but are not limited to: summer personnel, student interns, and individuals paid out of "Imprest Funds" to assist in insured depository institution liquidations.

(c) Special government employees at or above Executive Level I shall file

definition of "disaster." Accordingly, the definition of disaster in § 123.3 would be

loan amount, whichever is less. Applications under this subsection

stated level, are eligible to apply for grant assistance. The amendment would

availability of drought disaster loans for nurseries, the availability of additional

drought (except as to nurseries, see § 123.41(b)), soil erosion, excessive

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(c) Special government employees at or above Executive Level I shall file Financial Disclosure Reports (SF 278) in accordance with the requirements of the Ethics in Government Act of 1978 and regulations of the U.S. Office of Government Ethics, 5 CFR Part 734.

(d) A statement of employment and financial interests required to be filed under this section shall be filed not later than the time of employment of the special government employee. Each special government employee shall keep his or her statement current throughout his or her employment with the RTC by the submission of amended or annual statements as required.

(e) The provisions of § 1605.27 (c) through (h) shall apply to statements filed under this section.

By order of the Board of Directors.

Dated at Washington, DC this 14th day of December, 1989.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 89-29568 Filed 12-21-89; 8:45 am]

BILLING CODE 6714-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 123

RIN 3245-AD97

Disaster—Physical Disaster and Economic Injury Loans

AGENCY: Small Business Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rulemaking would amend the present rules governing physical disaster and economic injury loans in conformity with Public Law 100-590, the Small Business Administration Reauthorization and Amendment Act of 1988 ("Act"), approved November 3, 1988 (102 Stat. 2989). The proposal would also resolve interpretive questions which have arisen since the last revision in 1984 (49 FR 32310).

DATE: Comments are due on or before January 22, 1990.

ADDRESS: Written comments may be sent to Bernard Kulik, Deputy Associate Administrator for Disaster Assistance, Small Business Administration, 1441 L Street, NW., Room 820, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Bernard Kulik, Deputy Associate Administrator for Disaster Assistance, 202-653-6879.

SUPPLEMENTARY INFORMATION: Section 119 of the Act provides a statutory definition of "disaster." Accordingly, the definition of disaster in § 123.3 would be amended to incorporate the statutory definition. The Conference Report for the Act, H. Report 100-1029, 100th Congress, 2nd Session (Oct. 3, 1988), p. 37, states the Conferees' intention that SBA not disqualify events which do not result in physical damage. Such events include the "El Nino" phenomenon, "red tide," food contamination from known or unknown causes, oil spills, or other major industrial accidents. Accordingly, the regulatory definition expands on the statutory definition by including these events.

The Conference Report also states that the Conferees do not intend to reopen loan programs which have been repealed. It is therefore useful to recall these repealed programs, because the new definition is limited by this Congressional intent. These repealed loan programs assisted businesses adversely affected by Federal construction projects, product disasters, Federal regulations, strategic arms limitation, base closings, the energy crisis, and economic dislocations caused by severe natural conditions or other economic dislocations. These provisions were repealed in 1981. Two additional loan programs, covering economic injury resulting from any Federal activities or regulations and drastic currency fluctuations, were repealed in 1986.

Section 120(a) of the Act has made nurseries, which are victims of drought disasters, eligible for economic injury disaster assistance. Therefore, the introduction to the regulations (§ 123.2) would be amended to reflect this change. A definition of "nursery" would be added to § 123.3. A conforming amendment to § 123.41(b) relating to economic injury loans would also be made.

Section 120(b) of the Act made the interest rate for "other concerns, including agricultural cooperatives" unable to obtain "credit elsewhere" the same as that for businesses unable to obtain "credit elsewhere." Section 123.29 of the regulations would be amended to make nonprofit organizations and agricultural cooperatives without "credit elsewhere" eligible for the lower interest rate, currently 4 percent.

Section 121 of the Act permits an addition of up to 20 percent of a disaster loan amount, to pay for protective devices against future recurring disaster damage. An example of such a device is a seawall. New § 123.24(j) of the regulations would permit disaster victims to appy for such additional loan amounts up to the cost of such installation or 20 percent of the original loan amount, whichever is less. Applications under this subsection generally must be made before the disaster loan is fully disbursed. If the original loan amount subsequently is increased, the additional loan amount may also be increased. However, any decrease in the original loan amount would not require a reduction of the additional loan amount. Conforming amendments would be made to § 123.21(e), § 123.24(a), and to § 123.25(a).

Section 122 of the Act instructs SBA not to require collateral for physical disaster loans under $10,000. Section 123.11 of the regulations would so state. The same section would add that SBA shall not require collateral for economic injury loans under $5,000. The section also states that SBA will not aggregate physical and economic injury disaster loans to the same victim for the purpose of determining a need for collateral.

Proposed changes not required by the Act include several minor technical changes due to renumbering of sections in part 120 of this Chapter.

Since 1986, SBA's disaster loan program has been exempted from the requirements of the Real Estate Settlement Procedures Act of 1974 (RESPA) by letter dated April 23, 1986 from the Secretary of the Department of Housing and Urban Development. Accordingly, the references to RESPA would be deleted.

SBA proposes to delete the words "smaller" from § 123.23(c) *Certification by Governor* in order to correct the erroneous reference to "counties or other *smaller* political subdivisions."

In § 123.24(f), dealing with the refinancing portions of physical disaster loans, "substantial damage" would be redefined to mean either 40 percent or more of the market value or replacement cost of the property including the land, or 50 percent or more of the market value or replacement cost of the property not including the land. A disaster victim with damage within any one of these categories may be eligible for a refinancing addition to the disaster loan, if the victim does not have "credit elsewhere" and if the property is to be replaced or repaired.

Proposed § 123.25(e), would eliminate the requirement for disaster victims seeking state grants to obtain first a certificate of ineligibility from SBA. Under the new rule, SBA furnishes the Federal Emergency Management Agency (FEMA) with tables showing minimum income levels for repayment ability in various family situations. FEMA, in turn, has determined that applicants, whose income is below the

stated level, are eligible to apply for grant assistance. The amendment would also eliminate a clause limiting the applicability of this paragraph to losses of personal property, because the State grant program is not restricted to such losses. The amendment would further refer to the statute formerly called the "Disaster Relief Act of 1974" as the Robert T. Stafford Disaster Relief and Emergency Assistance Act. See Section 102 of Public Law 100-707, approved November 23, 1988, 102 Stat. 14689).

Compliance with Executive Orders 12291 and 12612, and the Regulatory Flexibility and Paperwork Reduction Acts

SBA has determined that these proposed regulations do not constitute a major rule for purposes of Executive Order 12291, because they would not have an annual impact on the national economic of $100 million or more. In this regard, we estimate that the failure to require collateral for the smaller loans will affect only $1 million of loans. The reduction in the interest rate for non-profit concerns without credit elsewhere will not exceed $215,000 annually. The new definition of "disaster" may cause SBA to make additional loans of up to $7 million. We expect that SBA will make no more than $4 million in drought disaster loans to nurseries. As to mitigation measures, we estimate a maximum of $30 million in additional loans. The change in the refinancing regulations and the other editorial amendments have no monetary impact. Accordingly, we anticipate that these proposed regulations, if adopted, will have an impact of less than $44 million.

SBA certifies that these proposed regulations have no Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, we certify that these regulations, if adopted, will not impose any additional reporting or recordkeeping requirements.

For the purpose of compliance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, these regulations may have a significant economic impact on a substantial number of small entities. We have indicated above the dollar amounts of the impact of each proposed regulation. The following analysis is provided within the context of the review prescribed by the Regulatory Flexibility Act (5 U.S.C. 603).

1. The new definition of "disaster," the renunciation of collateral for the smaller loans, the reduction of the interest rate for nonprofit entities without "credit elsewhere," the availability of drought disaster loans for nurseries, the availability of additional disaster loan amounts for the mitigation of recurring damage are all mandated by the Act.

2. The legal basis for these rules is section 5(b)(6) of the Small Business Act, 15 U.S.C. 634(b)(6).

3. One objective of these proposed regulations is to implement the Act. Another objective is to make it easier for the public to avail themselves of the new disaster lending authority given to SBA and to clarify existing rules.

4. These new regulations will apply to an unpredictable number of small business and individual disaster loan borrowers. In fiscal year 1988, SBA made 13,463 disaster loans.

5. There are no projected recordkeeping, reporting or new compliance requirements in these proposed regulations.

6. There are no Federal rules which would duplicate, overlap, or conflict with the proposed regulations.

7. There are no significant alternatives to these proposed rules which would minimize any significant economic impact of the proposed rules on small entities.

8. These regulations, if adopted, are not likely to cause an increase in costs for consumers, individual industries, Federal, State or local government agencies, or geographic regions, or have adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S. based businesses to compete with foreign-based businesses in domestic or export markets.

List of Subjects in 13 CFR Part 123

Disaster assistance, Loan programs/business, Small businesses.

Accordingly, 13 CFR part 123 is proposed to be amended as follows:

PART 123—[AMENDED]

1. The authority citation for part 123 continues to read as follows:

Authority: Sections 5(b)(6); 7 (b), (c), (f), Small Business Act, 15 U.S.C. 634(b)(6); 636 (b), (c), (f); Pub. L. 100-590.

2. Section 123.2 *Introduction* is revised to read as follows:

§ 123.2 Introduction

SBA is authorized to make or to guarantee loans as necessary or appropriate to victims of sudden physical disaster, or of economic injury caused by unforeseeable and unintended events resulting from a sudden physical disaster. SBA is not authorized to provide assistance in gradual physical occurrences such as drought (except as to nurseries, see § 123.41(b)), soil erosion, excessive rainfall (without floods), lack of snow or beach pollution. Congress has not reopened programs now repealed which in the past provided, among other things, disaster assistance to businesses adversely affected by Federal government actions or by price or market fluctuations. No economic injury disaster loans are authorized for applicants able to obtain Credit Elsewhere (see definition in § 123.3). No person who has been convicted of a felony during and in connection with a riot or civil disorder shall be permitted, for a period of one year after the date of the conviction, to receive any benefit under any law of the United States providing relief for disaster victims (5 U.S.C. 7313 note).

§ 123.3 [Amended]

3. Section 123.3 *Definitions* is amended by revising the definition of *Disaster* therein to read as follows:

* * * * *

Disaster: This term means a sudden event which causes severe physical damage, including, but not limited to, floods, hurricanes, tornadoes, earthquakes, volcanic eruptions, windstorms, land- or mudslides, tidal waves, fires, explosions, riots or civil disorders and industrial accidents (including oil spills). It also means sudden physical events that cause substantial economic injury, but may not cause physical damage to the victim's property, events such as ocean conditions resulting in a significant displacement, (e.g., by major ocean currents) or closure (e.g., because of toxic algae blooms) of customary fishing waters, and contaminations of food or other products for human consumption from unforeseeable and unintended events beyond the control of the victim.

* * * * *

4. Section 123.3 is further amended by inserting after the definition of *Major Source of Employment* the following new definition:

* * * * *

Nursery: Any commercial establishment deriving at least ninety percent (90%) of its annual receipts (as defined in part 121 of this chapter) from the growing and sale of ornamental trees, shrubs, vines or other horticultural products, including but not limited to flowers, vegetable seedlings and sod.

* * * * *

§ 123.4 [Amended]

5. Section 123.4 *Types of loans* is amended by removing "§§ 122.7, 122.8

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and 122.10" therefrom and inserting "§ 120.3" instead.

§ 123.5 [Amended]

6. Section 123.5 *Financial Institutions* is amended by revising the reference to "§ 120.4" therein to read "§ 120.2–4".

§ 123.11 [Amended]

7. Section 123.11 *Collateral* is amended by removing the last sentence thereof, and inserting instead the following:

* * * * *

* * * SBA shall not require collateral for physical disaster loans (see Subpart B of this part) of ten thousand dollars ($10,000) or less, and generally will not require collateral for economic injury disaster loans (see Subpart C of this part) not exceeding five thousand dollars ($5,000). Where loans under both Subparts B and C are made to one borrower for physical and economic injuries sustained in the same disaster, the loan amounts shall not be aggregated to determine the need for collateral. When SBA requires an applicant to pledge available collateral for a physical disaster loan in excess of ten thousand dollars ($10,000) or for an economic injury disaster loan, the applicant's refusal to pledge such collateral may justify the decline of such loan.

§ 123.21 [Amended]

8. Section 123.21 *Physical disaster loan authority* is amended by inserting in paragraph (e) *Loan purposes* after the first sentence a new sentence to read as follows:

* * * * *

(e) * * * Additional loan amounts may be used to meet minimum standards of safety and decency or building code requirements (see § 123.24(i)) or to protect damaged or destroyed real property from possible future disasters (see § 123.24(j)). * * *

9. Section 123.21 *Physical disaster loan authority*, paragraph (e) *Loan purposes* is further amended by placing a period after the words "original locations" in the last sentence thereof and removing the rest of the sentence therefrom.

§ 123.23 [Amended]

10. Section 123.23 *Declaration procedures* is amended by revising the third sentence of paragraph (c) *Certification by Governor* to read as follows:

* * * * *

(c) * * * The Governor's certification shall further specify the county or counties or other political subdivisions in which the Disaster occurred. * * *

11. Section 123.24 is amended by revising paragraph (a) and (f) thereof and to add a new paragraph (j) at the end thereof to read as follows:

§ 123.24 Conditions affecting all physical disaster loans.

(a) *Amount.* The amount of a loan is limited to the Eligible Physical Loss sustained and funds permitted under paragraphs (f), (g), (h), (i), and (j) of this section. In no event may the total amount of SBA's share outstanding and committed to a borrower, together with its affiliates as defined in part 121 of this chapter, resulting from a single Disaster, exceed $500,000, except as permitted in § 123.28 (Major employer) and limited by § 123.25 (Homeowners). SBA's share of an immediate participation in or guaranty of a loan under this Part may not exceed 90 percent of the sum of the unpaid principal and accrued interest.

* * * * *

(f) *Refinancing.* (1) A part of or all loans secured by recorded liens on property totally destroyed or substantially damaged by the Disaster (as defined in § 123.3) may be refinanced with additional disaster loan proceeds, subject in the case of Homeowners (as defined in § 123.3) to § 123.25(a)(3) and in all other cases to paragraph (a) of this section.

(2) "Property," in the case of Homeowners means real property, and in all other cases, means both real property and machinery and equipment.

(3) "Totally destroyed or substantially damaged" means damage of either.

(i) 40 percent or more of the lesser of market value or replacement cost of the damaged property (including land) at the time of the Disaster, or

(ii) 50 percent or more of such value or replacement cost of the damaged property (excluding the value of the site).

(4) Such refinancing shall be permitted only if the applicant is determined by SBA to be unable to obtain Credit Elsewhere (as defined in § 123.3) and if the totally destroyed or substantially damaged property is to be repaired, rehabilitated or replaced (including by relocation).

(5) The amount refinanced shall not exceed the lesser of the Eligible Physical Loss (as defined in § 123.3), or the balance of such lien, reduced by insurance or otherwise.

* * * * *

(j) *Mitigation.* (1) Subject to paragraph (a) of this section, an applicant for or recipient of a loan under this subpart may, at any time prior to final disbursement thereof, apply for an additional loan amount for the protection from or the mitigation of future recurring damage to the damaged real property from like events, not to exceed the lesser of the cost of such mitigation, or twenty percent (20%) of the basic loan amount to repair or replace damaged real and personal property at the same location, including permissible upgrading pursuant to paragraph (i) of this section, but loan amounts authorized pursuant to this paragraph (j) shall not duplicate amounts authorized pursuant to paragraph (i) of this section.

(2) The basic loan amount shall be determined at the time of the application under this paragraph (j), and shall reflect any decreases or increases in earlier approved loan amounts, but shall not include refinancing pursuant to paragraph (f) of this section. If such basic loan amount is increased after SBA approval of the additional loan amount pursuant to this paragraph (j), the additional loan amount under this paragraph (j) may be increased proportionately if the cost of mitigation exceeds the previously approved additional amount, not to exceed such cost. A like decrease, however, shall not require a proportionate reduction.

(3) SBA shall not accept an application pursuant to this paragraph (j) after the final disbursement of the basic loan amount, unless substantial cause essentially beyond the control of the applicant can be shown for such late application.

(4) Examples of mitigation measures include but are not limited to retaining walls, seawalls, grading and contouring land, relocating utilities and modifying structures.

§ 123.25 [Amended]

12. Section 123.25 *Special conditions—home loans* is amended by replacing the period at the end of paragraph (a)(3) with a semicolon, and further by removing paragraph (a)(4) and inserting instead new paragraphs (a)(4) and (a)(5) as follows:

(a) * * *

(4) $24,000 for mitigation pursuant to § 123.24(j) of this Part;

(5) $244,000 for the total loan within the limitations specified in paragraphs (a)(1) through (a)(4) of this section.

* * * * *

13. Section 123.25 is further amended by revising paragraph (e) *State grants* to read as follows:

* * * * *

(e) *State grants.* Where a state has instituted a grant program under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5178) for victims of Major Disasters, those victims who lack repayment ability shall be immediately referred by the Federal Emergency Management Agency to appropriate State representatives without referral to SBA, in order to expedite assistance to victims. Disaster victims who desire to do so, however, may file an application with SBA in order to obtain a decision on their eligibility for financial assistance from SBA (OMB Approval No. 3245–0017 or 3245–0018).

14. Section 123.25 *Special Conditions—home loans* is further amended by removing paragraph (g) *RESPA* therefrom and renumbering present paragraph (h) as paragraph (g).

§ 123.26 [Amended]

15. Section 123.26 *Special Conditions—business loans* is amended by removing from the second sentence of paragraph (a) *Limits* the reference "§ 121.3–2" and inserting instead "Part 121."

16. Section 123.29 is revised to read as follows:

§ 123.29 Loans to privately owned colleges and nonprofit organizations.

SBA is authorized to make physical disaster loans in the case of loss or damage as a result of a declared Disaster (see § 123.23), to the extent that such loss or damage is not compensated by insurance or otherwise, to a privately owned college or university. SBA may further, in the case of a Major Disaster, waive interest payments on loans to such schools for the first three years of the term of such loans. See also § 123.13. SBA may also make such physical disaster loans to nonprofit organizations, including agricultural cooperatives (see § 123.41(b)(3)). Loans to such schools and such nonprofit organizations able to obtain Credit Elsewhere (as defined in § 123.3) shall be made at the Old Formula Rate. Loans to such concerns unable to obtain Credit Elsewhere shall be made at the same rate as loans to small concerns unable to obtain Credit Elsewhere (see § 123.26(b)).

17. Section 123.40 *Introduction* is amended by revising the first sentence thereof to read as follows:

Loans to which this subpart applies are available only to small business concerns (including small nurseries affected by a drought disaster) and small agricultural cooperatives situated in a Disaster Area (see definition in § 123.3), which have suffered or are likely to suffer substantial economic injury (as defined in § 123.41(a)) as a result of that specific Disaster (see § 123.23). * * *

18. Section 123.41 is amended by revising paragraph (b) to read as follows:

§ 123.41 General Provisions.

* * * * *

(b) *Eligible Applicants.* (1) Loans under this subpart are authorized only for small business concerns (including small nurseries affected by a drought disaster designated by the Secretary of Agriculture) and small agricultural cooperatives (see paragraph (b)(3) of this section), located within the Disaster Area and meeting the size standards of Part 121 of this Chapter as of the time (stated in the relevant declaration or designation) when the economic injury commenced, and which have suffered or are likely to suffer substantial economic (as distinguished from physical) injury directly resulting from a declared Disaster and are unable to obtain Credit Elsewhere (as defined in § 123.3).

(2) Small concerns regardless of their business activity are eligible to apply for these loans, except for multi-level sales distribution plans of the "pyramid" type, media of any description, gambling, illegal activities (see § 120.101–2 of this Chapter), investment, speculative ventures (e.g., mineral exploration), and rental property (see § 120.102 of this Chapter).

(3) Consumer and marketing cooperatives are eligible for loans under this subpart. Other cooperatives are eligible only if small and each of the owners would itself qualify as small under part 121 of this chapter. However, small agricultural cooperatives acting pursuant to the provisions of the Agricultural Marketing Act (12 U.S.C. 1141), and meeting the size standards of part 121 of this Chapter as of the time of the Disaster with respect to which a declaration or designation under section 7(b)(2) of the Act has been issued, are eligible.

(4) Applicants determined by SBA as able to obtain Credit Elsewhere are not eligible for loans under this subpart.

* * * * *

§ 123.41 [Amended]

19. Section 123.41 *General Provisions* is further amended by removing from the provision in paragraph (e) thereof "§ 121.3–2" and inserting "part 121".

(Catalog of Federal Domestic Assistance, Numbers 59002, Economic Injury Disaster Loans, 59008, Physical Disaster Loans)

Dated: August 23, 1989.

Susan Engeleiter,

Administrator.

[FR Doc. 89-29845 Filed 12-21-89; 8:45 am]

BILLING CODE 8025-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3699-4]

Approval and Promulgation of Implementation Plan, State of Texas; Prevention of Significant Deterioration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: The purpose of this Federal Register notice is to propose approval of a revision to the Texas State Implementation Plan (SIP) that contains the Texas Air Control Board (TACB) Regulation VI, Section 116.3(a)(13), for the Prevention of Significant Deterioration (PSD) program. This proposed approval, when finalized, will enable the State of Texas to issue and enforce PSD permits directly in certain areas of the State without final approval by the EPA. Texas Regulation VI, Section 116.3(a)(13), does not apply to the sources located or wanting to locate on Indian lands. Neither is Section 116.3(a)(13) applicable to new major sources or modifications to existing major stationary sources which must include emissions from docked vessels. This PSD SIP revision is proposed for approval under the statutory requirements of Sections 110 and 160–169 of the Clean Air Act as amended August 1977.

Today's notice is published to solicit public comments on the proposed approval of the Texas State PSD regulations. The rationale for this proposed action is contained in this notice and further explained in detail in the *Technical Support Document.*

DATE: Comments must be received on this proposed action on or before January 22, 1990.

ADDRESSES: Written comments should be submitted to the address below: Chief, SIP New Source Section (6T–AN), Air Programs Branch, Air, Pesticides, and Toxics Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202.

Copies of the State's submittal and EPA's *Technical Support Document* along with other information are available for inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least twenty-four hours before the visiting day.

SIP New Source Section, Air Programs Branch, Air, Pesticides, and Toxics

EPA by this notice is acting on both of the October 26, 1987 and September 29,

the proper implementation of the PSD program, and the Act does not require

indeed revealed that the existing TACB permit requirements meet the provisions

Appeal No. 88–8; Remand Order of November 10, 1988); and Columbia Gulf

emissions of vessels as primary emissions in determining PSD

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SIP New Source Section, Air Programs Branch, Air, Pesticides, and Toxics Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone: (214) 655-7214

Texas Air Control Board, Technical Support and Regulation Development, 6330 Highway 290 East, Austin, Texas 78723, Telephone: (512) 451-5711.

FOR FURTHER INFORMATION CONTACT: Mr. J. Behnam, P.E.; SIP New Source Section, Air Programs Branch, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, telephone (214) 655-7214.

SUPPLEMENTARY INFORMATION: On November 10, 1980, the State of Texas requested delegation of the technical and administrative review portion of the Federal PSD program. The PSD partial authority was granted on April 23, 1981, subject to certain conditions. Subsequently, additional authority was granted to the State to conduct compliance inspections and to review compliance test reports for PSD sources on December 28, 1982, and a notice was published in the **Federal Register** of February 9, 1983 (48 FR 6023).

On October 26, 1987, the Governor of Texas submitted a copy of the revision to Texas Air Control Board (TACB) Regulation VI, Control of Air Pollution by Permits for New Construction or Modification, as a SIP revision to the EPA for approval. The revised section of Regulation VI (Section 116.3(a)(13)) incorporated by reference (IBR) the Federal PSD regulations (40 CFR 52.21); however, the TACB excluded Control Technology Review (40 CFR 52.21(j)), Air Quality Models (40 CFR 52.21(1) and Public Participation (40 CFR 52.21(q).

It should be noted that the October 26, 1987, submittal did not include the PM_{10} revisions which were incorporated into the Federal PSD regulations by promulgation of the PM_{10} standards on July 1, 1987, because the State regulations were in the State's process of public participation and approval before the PM_{10} promulgation date. The TACB, in response to the PM_{10} SIP requirements, has further revised Section 116.3(a)(13) to include the PM_{10} revisions in its permit regulations. Since the TACB adopted the Federal regulations by reference, the only revision to satisfy the requirements of the PM_{10} revisions was to replace the November 6, 1986 date [the date that 40 CFP 52.21 was adopted by the State] with August 1, 1987, in Section 116.3(a)(13). This amendment was adopted by the TACB on July 15, 1988, and it was submitted by the Governor on September 29, 1988, for approval. The EPA by this notice is acting on both of the October 26, 1987 and September 29, 1988 submittals, and the final approval of the Texas PSD program will be based on the combined evaluation of these revisions.

Also, on October 26, 1987, the Governor of Texas submitted a revision to the Texas SIP and regulations to meet the requirements of visibility New Source Review for Federal Class I areas (40 CFR 51.307) and the stack height regulations. The TACB stack height regulations, Regulation VI, Section 116.3(a)(14), have been reviewed and approved by the EPA and published under a separate action in the November 22, 1988, **Federal Register** (53 FR 47189).

The State's Regulation VI requires review and control of air pollution from new facility construction and modification and allows the TACB to issue permits for stationary sources subject to this regulation. Section 116.3(a)(13) of the TACB Regulation VI adopts the Federal PSD program (40 CFR 52.21) by IBR; however, the State explicitly excludes several sections of that regulation and other requirements which are necessary for an approvable PSD SIP revision. The reasons for these exclusions are discussed later in this notice. The TACB conducted a complete public participation program pursuant to 40 CFR 51.102 and the final revisions were adopted by the Board on July 17, 1987. The State's revised regulations became effective on August 30, 1987.

The EPA has reviewed and evaluated the TACB's revised Regulation VI, Section 116.3(a)(13), based on the criteria specified in the Federal regulations 40 CFR 52.21, 40 CFR 51.166, and the Clean Air Act amended August 1977. The EPA's review also included other relevant TACB regulations and the State statutes including the Texas Clean Air Act. The results of this evaluation are discussed in the following sections of this notice.

In adopting the Clean Air Act, Congress designated EPA as the agency primarily responsible for interpreting the statutory provisions and overseeing their implementation by the states. The EPA must approve state programs that meet the requirements of 40 CFR 51.166. Conversely, EPA cannot approve programs that do not meet those requirements. However, PSD is by nature a very complex and dynamic program. It would be administratively impracticable to include all statutory interpretations in the EPA regulations and the SIPs of the various states, or to amend the regulations and SIPs every time EPA interprets the statute or regulations or issues guidance regarding the proper implementation of the PSD program, and the Act does not require EPA to do so. Rather, action by the EPA to approve this PSD program as part of the SIP will have the effect of requiring the state to follow EPA's current and future interpretations of the Act's PSD provisions and EPA regulations, as well as EPA's operating policies and guidance (but only to the extent that such policies are intended to guide the implementation of approved state PSD programs). Similarly, EPA approval also will have the effect of negating any interpretations or policies that the state might otherwise follow to the extent they are at variance with EPA's interpretation and applicable policies. Of course, any fundamental changes in the administration of PSD would have to be accomplished through amendments to the regulations in 40 CFR 52.21 and 51.166, and subsequent SIP revisions.

Upon approval of the state's PSD SIP, EPA will continue to oversee implementation of this important program by reviewing and commenting upon draft permits. Specifically, EPA will comment upon any failure to follow the letter of the law, as well as EPA's statutory and regulatory interpretations and applicable guidance. If a final PSD permit still does not reflect consideration of the relevant factors, EPA will deem the permit to be not in conformance with the PSD requirements of the Act and the State's SIP, and will consider appropriate enforcement action under sections 113 and 167 of the Clean Air Act to address the permit deficiency. However, except as to matters which could have been raised in the court of appeals upon promulgation of the PSD regulations or other final action of the EPA, any party which is the target of an enforcement action may seek judicial review of the EPA interpretation or policy in question in defending against the enforcement action. See section 307(b)(2) of the Clean Air Act.

Control Technology Review—The Federal regulations in 40 CFR 51.166(j) require applicants for PSD permits to consider and install the best available control technology (BACT) in construction of new sources or modification of existing major stationary sources. This provision of the Federal PSD regulations has been excluded from the TACB Regulation VI because the TACB claims that the Texas Clean Air Act and the existing State regulations have provisions for application of BACT as stringent as the Federal requirements in reviewing the permit applications. The EPA review of the Texas Clean Air Act and Regulation VI (Sections 116.3(a)(3) through 116.3(a)(5)) have indeed revealed that the existing TACB permit requirements meet the provisions of the Federal PSD regulations specified in 40 CFR 51.166(j)(1) through 51.166(j)(3) with the exception of 40 CFR 51.166(j)(4). Section 40 CFR 51.166(j)(4) concerns permitting of and BACT analysis for phased construction projects. Lack of this provision in the State regulation requires the TACB to issue a new permit for each phase of a facility's phased construction project, or issue a single permit for all phases of a planned construction if a continuous construction program can be maintained without interruption and the entire project can be completed witin a reasonable time frame. Since in either case the applicants will be required to consider and apply the latest state-of-the-art BACT in order to secure PSD permits under the State regulations, exclusion of 40 CFR 51.166(j)(4) does not relax the Federal BACT application to phase construction projects in Texas.

In addition, the TACB adopted the definition of BACT by reference as found in 40 CFR 52.21(b)(12) (40 CFR 51.166(b)(1)). Adoption of this definition combined with the State's BACT regulations (as discussed above) fulfill the basic requirements of 40 CFR 51.166 (and Clean Air Act section 160–169) for the proposed approval of this SIP.

However, as noted above, EPA's approval of the Texas PSD SIP requires the state to follow EPA's statutory interpretations and applicable policies. With respect to BACT, EPA is proposing approval of the PSD SIP with the understanding that Texas will adhere to the following interpretations.

EPA has interpreted the BACT definition in section 169(3) of the Clean Air Act and 40 CFR 52.21(b)(12), which Texas has adopted by reference, as containing two core criteria. First, a PSD applicant must consider the most stringent control technology (and associated emission limitation) that is available in conducting a PSD analysis. Second, if the applicant proposes as BACT a control alternative that is less effective than the most stringent available, it must demonstrate to the State through objective indicators that case-specific energy, environmental, or economic impacts renders that alternative unreasonable or otherwise not achievable. The State must exercise independent judgment in reviewing that demonstration. These statutory interpretations are further amplified in case examples such as Honolulu Resource Recovery Facility (PSD Appeal No. 86-8; Remand Order of June 22, 1987); New Jersey Resource Recovery Facility, Pennsauken County, (PSD Appeal No. 88-8; Remand Order of November 10, 1988); and Columbia Gulf Transmission Company (PSD Appeal No. 88-11; Remand Order of June 21, 1989). In order to implement these statutory interpretations, the EPA has issued further guidance ("Improving New Source Review Implementation", dated December 1, 1987, A Memorandum from J. Craig Potter, Assistant Administrator for Air and Radiation, to the Regional Administrators) calling on states to use a "top-down" approach to BACT analyses. In EPA's judgment, the core BACT requirements can be most efficiently satisfied if the BACT analysis considers first the most stringent—i.e., "top"—control alternative.

In addition, EPA has interpreted [See North County Resource Recovery Associates (PSD Appeal No. 85-2; Remand Order of June 3, 1986)] the "environmental impacts" component of the BACT definition as requiring the permitting authority, in establishing BACT for pollutants that are regulated under the Clean Air Act, to consider the environmental impacts of the various control alternatives on emissions of unregulated pollutants.

In support of the discussion above, the Executive Director of the TACB has submitted a letter, dated September 5, 1989, which commits the TACB to implement the PSD SIP approved program in compliance with all of the EPA's statutory interpretations and operating policies. Specifically, the TACB's letter states that (1) "* * * you may be assured that the position of the agency is, and will continue to be, to implement EPA requirements relative to programs for which we have received State Implementation Plan approval, and to do so as effectively as possible * * *", and (2) "* * * the TACB is committed to the implementation of the EPA decisions regarding PSD program requirements * * *". The EPA has evaluated the content of this letter and has determined that the letter sufficiently commits the TACB to carry out the PSD program in accordance with the Federal requirements as set forth in the Clean Air Act, applicable regulations, and as further clarified in the EPA's statutory and regulatory interpretations, including the proper conduct of BACT analyses. The EPA also interprets this letter as committing the TACB to follow applicable EPA policies such as the "Top-Down" approach. This letter will be incorporated into the SIP upon the final approval action.

2. Vessel Emissions—The EPA's 1980 PSD regulations included the dockside emissions of vessels as primary emissions in determining PSD applicability for a proposed source or modification. *See* 45 FR 52676, 52696, 52736 (August 7, 1980). The EPA subsequently decided to reconsider that decision, and in 1982 issued revised regulations excluding dockside vessel emissions.

See 47 FR 27554 (June 25, 1982). In 1984, the court of appeals vacated that portion of EPA's 1982 actions which excluded dockside vessel emissions for PSD applicability purposes (including the provision "* * * except the activities of any vessel * * *" in 40 CFR 51.166 (b)(6) [formerly designated as 51.24(b)(6)] and remanded the matter to EPA for further action. *NRDC* v. *EPA*, 725 F.2d 761 (D.C. Cir. 1984). The court's disposition had the effect of reinstating the dockside emission provisions of the 1980 regulations pending further rulemaking by EPA. *Id.* at 772. The EPA has not yet acted on the court's remand.

The TACB has declined to accept the EPA comments on the draft Texas SIP that recommended consistency between the State regulations and the court's decision. Instead, the Texas rules incorporate 40 CFR 51.166 (b)(6) as it currently appears in the Code of Federal Regulations. Accordingly, EPA proposes to retain PSD permitting authority over sources and modifications that would be affected by the dockside emissions of vessels. After the final approval of the Texas PSD program, the TACB will have to submit all such affected PSD applications to the EPA for review and issuance of the permits.

3. Air Quality Model—Section 40 CFR 51.166(1) of the Federal PSD regulations requires the applicants to use the EPA approved models for all PSD permitting purposes. The *Guideline on Air Quality Models (Revised 1986)* which contains the EPA approved models is incorporated by reference into the PSD regulations under Section 40 CFR 51.166(1). The TACB has excluded the Federal modeling provisions from its regulations; however, the State added an air quality modeling provision to its regulations under Regulation VI, Section 116.3(a)(13). The text of this language is provided below:

* * * All estimates of ambient concentrations required under this paragraph shall be based on the applicable air quality models and modeling procedures specified in the *EPA Guideline on Air Quality Models*, as amended, or models and modeling procedures currently approved by EPA for use in the state program, and other specific provisions made in the state PSD State Implementation Plan. If the air quality impact model approved by EPA or specified in the guideline is inappropriate, the model may be

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modified or another model substituted on (1) a case-by-case basis, or (2) a generic basis for the state program, where appropriate. Such a change shall be subject to notice and opportunity for public hearing and written approval fo the Administrator of the EPA
* * *

The EPA has reviewed this added language and has determined that the TACB's modeling requirements specified in Regulation VI, Section 116.3(a)(13), are equivalent and consistent with the provisions of 40 CFR 51.166(1).

4. Public Participation—The State has excluded Section 40 CFR 51.166(q), PSD permit public participation, from its Regulation VI. However, the TACB has fulfilled the requirements for public participation by (1) the existing State regulations and (2) imposing additional procedures in the SIP supplement entitled "Revision to the Texas State Implementation Plan for Prevention of Significant Deterioration of Air Quality". Sections 116.10(a) and 116.10(c) of Regulation VI contain provisions that are equivalent to 40 CFR 51.166(q) except for several sections. These excepted sections are: 40 CFR 51.166(q)(1) that requires the reviewing agency to notify the applicants of the completeness or a deficiency in the application within a specified time period; 40 CFR 51.166(q)(2)(ii) that requires the State to include the degree of expected increment consumption (in ug/m^3) from the source or modification in the public notice; and 40 CFR 51.166(q)(2)(iv) that requires the State to send a copy of the public notice to any comprehensive regional land use planning agency and to any other affected agencies or Indian Governing Body. These requirements are covered under the SIP supplement which will become an enforceable part of the Texas PSD SIP when EPA finally approves this program.

5. Jurisdiction over Indian Lands—The Congress of the United States enacted "Ysleta del Sur Pueblo and Alabama and Coushatta Indian Tribes of Texas Restoration Act" on August 18, 1987. This Act established two Federally designated Indian lands in the State of Texas; namely "Title I—Ysleta del Sur Pueblo Restoration" and "Title II—Alabama and Coushatta Indian Tribes of Texas". Section 107(b) of Title I and Section 207(b) of Title II explicitly exclude the State's regulatory jurisdiction from the Federally designated Indian lands. Therefore, the State of Texas can not perform any air quality regulatory activities on these Indian lands. In addition, the State did not request any authority for Indian land nor did it protest the Federal authority when the EPA expressed its intention of retaining this authority in the PSD SIP comment letters to the TACB. Based on this statutory limitation, the EPA retains its authority for air quality regulatory and enforcement activities including issuance of PSD permits for sources located (or wanting to locate) on these Federally designated Indian lands. Questions, inquiries, and any other activities related to air quality planning and enforcement that affect Indian lands directly or indirectly should be referred to the EPA Region 6 Office at the address given in this notice.

6. Other Provisions—The EPA will retain authority for extension of the permits which were issued by the regional office before approval of this SIP. In response to this, the TACB has excluded 40 CFR 52.21(r)(2) from its Regulation VI. In addition, other sections of the Federal PSD regulations such as 40 CFR 52.21(s), 40 CFR 52.21(u), and 40 CFR 52.21(w) which are applicable only to the Federal agency are excluded from incorporation by reference. The plan requirements under 40 CFR 51.166(a) are addressed in the State SIP supplement.

7. New Source Review Visibility—On October 23, 1984 [49 FR 42670], EPA required those States that had not yet done so (including Texas) to submit State Implementation Plan (SIP) revisions for visibility protection by May 6, 1985. The State's plan had to contain a visibility monitoring strategy and visibility new source review (NSR) regulations in compliance with the provisions of 40 CFR 51.305 (visibility monitoring) and 51.307 (visibility NSR). Texas submitted its plan for NSR on December 11, 1985. EPA published a Notice of Delegation of Authority for Visibility NSR under the Federal Prevention of Significant Deterioration (PSD) program on November 4, 1986 (51 FR 40072). The October 28, 1987, submittal, which incorporated by reference the Federal PSD regulation, contained all of the visibility NSR requirements specified in 40 CFR 51.307. Therefore, the EPA is also proposing to approve the TACB's plan for protection of visibility in mandatory Federal Class I areas under the NSR program.

In summary, the TACB has adopted the Federal PSD regulations in 40 CFR 52.21 through incorporation by reference, but the State has excluded several sections of the Federal regulations. However, the State has argued that its existing regulations for new source review and the Texas Clean Air Act have provisions that fulfill the requirements of the excluded sections as effectively as the Federal regulations.

The EPA has reviewed and evaluated the TACB's existing SIP regulations, the PSD SIP submitted by the Governor of Texas, the TACB's commitment letter of September 5, 1989, and the Texas Clean Air Act. The EPA's preliminary determination is that the State's regulations, procedures, incorporation of the Federal PSD regulations, and the PSD commitment letter are adequate for authorizing the TACB to directly review the PSD permit applications, and issue and enforce the PSD permits in certain areas of the State. For the reasons discussed in this notice, the EPA will retain authority for reviewing, issuing, and enforcing the PSD permits on Indian lands and new or modification of major stationary sources which include emissions from docked vessels. Based on this evaluation, the EPA proposes to approve the Texas PSD SIP revision.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under 5 U.S.C. 605(b), I certify that this proposed SIP approval will not have a significant economic impact on a substantial number of small entities (46 FR 8709).

This proposed rulemaking is issued under the authority of sections 110, 160–169, and 301 of the Clean Air Act, 42 U.S.C. 7410, 7470–7479, and 7601.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide and Hydrocarbons.

Dated: October 20, 1989.

Robert E. Layton Jr., P.E.,

Regional Administrator.

[FR Doc. 89–29772 Filed 12–21–89; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 88–06, Notice 6] RIN: 2127–AC43

Federal Motor Vehicle Safety Standards; Side Impact Protection—Light Trucks, Buses, and Multipurpose Passenger Vehicles

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to extend the existing requirements of Federal Motor Vehicle Safety Standard No. 214, *Side Door Strength*, to trucks, buses and multipurpose passenger vehicles with a GVWR of 10,000 pounds or less. The standard, which currently applies to passenger cars only, specifies performance requirements to mitigate occupant injuries in side impacts. The standard requires each side door to resist crush forces that are applied by a piston pressing a steel cylinder against the door's outside surface in a laboratory test. NHTSA believes that the proposed extension would result in about 110 fatalities and 950 fewer serious-to-critical injuries each year.

DATES: Comments must be received on or before February 20, 1990. This proposal if adopted as a final rule would become effective September 1, 1992.

ADDRESS: Comments should refer to the docket and notice numbers set forth above and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. The docket is open on weekdays from 8 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Strombotne, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC (202–366–2264).

SUPPLEMENTARY INFORMATION:

Background

NHTSA's standard for side impact protection is Federal Motor Vehicle Safety Standard No. 214, *Side Door Strength*. The standard specifies performance requirements for each passenger care side door to mitigate occupant injuries in side impacts. The standard seeks to do this by reducing the extent to which the side structure of a care is pushed into the passenger compartment during a side impact. The standard requires each door to resist crush forces that are applied by a piston pressing a steel cylinder against the door's outside surface in a laboratory test. Since the standard became effective on January 1, 1973, car manufacturers have generally chosen to meet the performance requirements of the standard by reinforcing the side doors with metal beams.

NHTSA's analysis of real-world crash data has shown that the strengthening of passenger car side doors with the beams is effective, but primarily in single car side impacts. The agency's November 1982 study, "An Evaluation of Side Structure Improvements in Response to Federal Motor Vehicle Safety Standard No. 214," (DOT HS 806–314) estimated that 480 lives have been saved and 9,500 fewer hospitalizations have occurred per year as a result of the standard. The study also found that while single vehicle side impact occupant fatalities were reduced by 14 percent, the standard had little effect on reducing fatalities in multi-car side impact collisions.

During the past several years, NHTSA has been involved in a number of efforts to upgrade Standard No. 214, both in terms of developing new requirements for passenger cars and extending applicability of the existing requirements to trucks, buses and multipurpose passenger vehicles (MPV's) with a gross vehicle weight rating (GVWR) of 10,000 pounds or less (light trucks, vans and MPV's, or "LTV's").

For passenger cars, on January 27, 1988, NHTSA published in the **Federal Register** (53 FR 2239) a notice of proposed rulemaking (NPRM) to add dynamic test procedures and performance requirements to Standard No. 214. The proposal would require an additional test in which a passenger car must provide protection in a full-scale crash test in which the car (known as the "target" car) is struck in the side by a moving deformable barrier simulating another vehicle. Newly developed instrumented test dummies would be positioned in the target car to measure the potential for injuries to an occupant's thorax and pelvis. The proposal would also require that the doors of the target car remain closed during the side impact, to reduce the number of persons that are ejected from a car through a door.

Also, on August 19, 1988, the agency published in the **Federal Register** (53 FR 31712) an advance notice of proposed rulemaking (ANPRM) concerning requirements for passenger cars intended to reduce the risk of head and neck injuries and ejections, in side impact crashes between vehicles and in other crashes where the side protection of the vehicle is a relevant factor. The ANPRM also sought comments on whether additional requirements should be considered to address side impacts with poles and trees.

NHTSA's efforts to extend side impact requirements to LTV's largely correspond to its efforts for passenger cars. On August 19, 1988, the agency published in the **Federal Register** (53 FR 31716) an ANPRM regarding possible requirements for LTV's in each of the areas where requirements have been established, or are under consideration, for passenger cars. In summary, the ANPRM addressed: (1) extension to LTV's of Standard No. 214's existing requirements, i.e., measuring performance in terms of the ability of each door to resist a piston pressing a rigid steel cylinder inward against the door, (2) developing dynamic test procedures and performance requirements for LTV's, corresponding to those proposed in the January 1988 NPRM for passenger cars, and (3) developing requirements for LTV's intended to reduce the risk of head and neck injuries and ejections, corresponding to those addressed in the August 1988 ANPRM for passenger cars.

Of the various potential side impact requirements for LTV's that were addressed in the ANPRM, NHTSA is the furthest advanced in analyzing the extension of Standard No. 214's existing requirements to these vehicles. The agency has decided to go forward with rulemaking on that issue separately, since addressing all of the potential requirements together could result in unnecessary delays and loss of safety benefits. The discussion of comments which follows focuses on those comments which specifically addressed extending Standard No. 214's existing requirements to light trucks.

Comments on the ANPRM

A number of manufacturers raised concerns about extending the existing requirements of Standard No. 214 to LTV's. General Motors (GM) questioned whether significant benefits would result from such extension. That company stated that while side beams are not used in trucks and MPV's, its tests show that the vehicles have good side impact performance. GM stated that in severe vehicle-to-vehicle tests of several of its vehicles, the integrity of the passenger compartment was not compromised.

Ford stated that the use of a beam in a door structure may not afford optimized occupant injury reduction in side impact collisions with fixed objects, and argued that research needs to be conducted in this area. That company stated that it anticipates that side door beams would be found to be appropriate only for those LTV's that have a seating height in the same range as passenger cars. Ford stated that most LTV's have a seating height higher than passenger cars, and that impacting cars would hit the rocker sill (the lower side structure of a vehicle at floor level) of LTV's, reducing the beneficial effect of the side door beams. That commenter also stated that statistics show side impact involvement to be low for LTV's, and that costs for some vehicles could be large. Ford also suggested that, in developing requirements to address side impacts with poles and trees, the agency should modify the existing Standard No. 214

requirements to include contact with the rocker and floor pan areas.

Chrysler stated that it does not are produced in two or more stages. NTEA stated that its members have

ejections through windows and doors, and side impacts with poles, trees and

installation of an outboard seating position so that no portion of a seat recommended by the manufacturer for

and MPV's with a GVWR of 10,000 pounds or less, the agency is requesting comments on whether a more limited

untreatable and fatal. AIS 3–5 injuries are those which are serious-to-critical.)

As significant as side impacts are to

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requirements to include contact with the rocker and floor pan areas.

Chrysler stated that it does not believe that extending the existing requirements of Standard No. 214 to LTV's would have any meaningful benefits, because of the relative infrequency of serious injuries in these types of crashes, and the inherently higher sill height found in most LTV's. That company stated that the rate of occupants injured in side impacts each year is lower in these "noncomplying" LTV's than in passenger cars, all of which must comply. Chrysler also argued that the high sill height of many LTV's preclude effective placement of side door beams.

Toyota argued that since the side impact fatality rate for light trucks is little more than half of that of passenger cars, it believes that nothing should be proposed for LTV's until the agency resolves what further actions to take for passenger cars. That company also argued that applying the "steel cylinder" test criteria to light trucks would not make the testing repesentative of real-world side-impact crashes. With respect to addressing side impacts with poles and trees, Toyota noted that the current Standard No. 214 requirements specify that force is exerted from the bottom edge of the door window opening to five inches above the bottom edge door, while that company believes it is very rare in real-world crashes for objects to impact only the door. That commenter stated that such objects are in most cases higher than the vehicle and will, if struck, impact the vehicle from its rocker panel near the ground level to the roof.

Nissan argued that since the ground clearances, body structures and crash experiences of LTV's differ markedly from those of passenger cars, it believes that the current Standard No. 214 requirements would not be as effective for LTV's as they are for passenger cars.

Two trade associations, the National Truck Equipment Association (NTEA) and the Recreation Vehicle Industry Association (RVIA), expressed concern about extending the applicability of Standard No. 214 to LTV's in light of potential impacts on their members, which include final stage manufacturers and alterers of certified vehicles. According to NTEA, the truck industry in the 10,000 and under GVWR range is divided into two distinct segments: (1) the pickup trucks and vans produced annually by the major motor vehicle manufacturers in an assembly line process, and (2) the more than 50,000 trucks completed annually by the hundreds of small businesses in the truck body and equipment industry that are produced in two or more stages. NTEA stated that its members have substantial certification obligations for safety standards, which would increase if Standard No. 214 is extended to all LTV's. NTEA also stated that its members are typically small businesses which do not have the technical capacity or financial resources to crash test the countless varieties of custom made vehicles they produce, and urged that the agency not apply Standard No. 214 to trucks in the 10,000 pounds and under GVWR range which are not primarily used for the transportation of passengers.

RVIA, which represents over 650 manufacturers of recreation vehicles and their related suppliers, stated that included in its membership are more than 175 "van conversion" manufacturers, many of whom are small business entities, that customize van-type vehicles. RVIA argued that to require the strengthening of recreation vehicle and other LTV side doors with metal beams would be "regulatory overkill," and that a side door beam requirements is not necessary and would not be cost-beneficial. That commenter stated that these vehicles are stronger and heavier than passenger cars, their door sill height matches better with passenger car bumpers, and their seats are relatively higher so that their occupants are above the point of impact and are much less likely to be struck directly. RVIA also stated that many recreation vehicle manufacturers do not have sufficient financial resources for complex performance tests and other additional requirements for each design variation in vehicles they produce.

The Center for Auto Safety (CFAS) submitted a comment addressing the need for side protection standards that respond to occupant requirements in side impacts with fixed roadside objects. That commenter stated that in conducting tests for side impact standards, performance evaluations using piston-on-door pressure and moving barrier collision measures are inadequate for establishing crash protection for side impacts with rigid, non-yielding roadside fixed objects. CFAS stated that if NHTSA is willing to establish vehicle standards for side impacts with non-deformable objects, it must conduct crash tests with non-deformable objects.

The American Insurance Association submitted a comment in support of the ANPRM. That commenter stated that it was encouraged that NHTSA believes it may be possible to develop effective requirements to address thorax and pelvis protection, head injuries, ejections through windows and doors, and side impacts with poles, trees and other similar fixed objects. The American Insurance Association urged the agency to act swiftly to improve side impact protection for light trucks, vans and MPV's in these areas in addition to the extension of the current requirements of Standard No. 214.

Proposal

After considering the comments on the ANPRM, NHTSA has decided to proposed extending Standard No. 214's existing requirements to trucks, buses and MPV's with a GVWR of 10,000 pounds or less, effective September 1, 1992. The agency has tentatively concluded that the proposed requirements can result in significant safety benefits. As discussed below, NHTSA believes that the proposed requirements would result in about 110 fewer fatalities and 950 fewer serious-to-critical injuries each year. Total costs, including lifetime fuel penalty cost, are estimated at about $37 to $78 per vehicle, or roughly $185 to $391 million annually.

Standard No. 214 requires each door to meet minimum initial, intermediate and peak crush resistance requirements when a specified load is applied to the outer surface of the door in a laboratory test. The load is applied by means of a piston pressing a vertical steel cylinder against the middle of the door. The bottom of the cylinder is five inches above the lowest point of the door; the top of the cylinder extends above the bottom edge of the window opening by at least 0.5 inches. NHTSA believes that manufacturers would comply with the requirements by adding metal beams to the side doors of these vehicles, similar to the side door beams used in passenger cars.

NHTSA recognizes that new applications of current standards must be analyzed to determine the appropriateness of applying them to different vehicle types. One significant difference between passenger cars and many LTV's is that LTV's may have side doors that are not likely to have vehicle occupants sitting near them. The agency proposes to exclude such doors from the standard, since adding side beams to the doors would likely to be of little or no benefit. More specifically, the agency proposes to exclude: (1) any side door located so that no portion of an adjacent outboard designated seating position, with the seat adjusted to any position to which it can be adjusted, falls within the transverse, horizontal projection of the door's opening, and (2) any side door located adjacent to hardware for

installation of an outboard seating position so that no portion of a seat recommended by the manufacturer for installation with that hardware, would when so installed, and adjusted as in (1), fall within the three dimensional area described in (1). (The term "outboard designated seating positon" is defined in 49 CFR Part 571.3.) NHTSA notes that, under the regulatory language proposed by this notice, the criteria for exclusion would apply to passenger cars as well as LTV's. The agency does not believe there is any reason not to apply the proposed criteria for exclusion to passenger cars. However, NHTSA is not aware of any current passenger cars that would be able to take advantage of the proposed criteria for exclusion.

NHTSA requests comments on the appropriateness of the proposed criteria for exclusion. One issue concerns the fact that some rear side doors of vans may not be excluded from the standard's coverage because a small portion of the front of that side door is adjacent to the rear of the front seat. Should such doors be included/excluded from the standard's coverage? Why? If such doors are to be excluded, how should the proposed criteria be modified? Another issue relates to the fact that some rear doors adjacent to aisleways in some vans may not be excluded from the standard's coverage because the seating positions on the other side of the aisleways might not be "outboard designated positions," because those aisle seats could be less than 12 inches from the side of the vehicle. As a general matter, the closer such aisle seats are to the side of the vehicle, the more likely side door beams could be of benefit in a crash. The agency requests comments on whether such doors should be included/excluded from the standard's requirements.

NHTSA also requests comments on whether any other doors, such as detachable doors, should be excluded from the standard's coverage, and why. The agency notes that some MPV's have doors that can easily be taken off and put on by vehicle occupants. These doors may be made of plastic fabrics and metal wire frames. The agency requests any commenters supporting additional exclusions to discuss what specific criteria should be used to define the doors to be excluded, and to address what design changes would be needed to meet the proposed requirements for such doors and whether excluding the doors would create an incentive for manufacturers to increase production of vehicles with the doors.

While NHTSA is proposing to extend Standard No. 214 to all trucks, buses and MPV's with a GVWR of 10,000 pounds or less, the agency is requesting comments on whether a more limited extension would be appropriate, in light of the alleged potential impacts on final stage manufacturers. A further discussion of this issue is provided below.

The basis for the agency's proposal is discussed in the remaining sections of this notice, which present a review of the fatality and injury experience in side impacts involving LTV's, the rationales supporting the proposed requirements, the estimated benefits of the standard, and the potential costs. A more detailed discussion of many of these issues is contained in the agency's Preliminary Regulatory Impact Analysis (PRIA), which has been placed in the docket for this notice.

As indicated above, NHTSA stated in the August 1988 ANPRM that it is also considering developing dynamic test procedures and performance requirements for LTV's, corresponding to those proposed in the January 1988 NPRM for passenger cars. The agency requests comments on whether, and how, the action it takes in that area would affect the commenters' views on this proposal.

The Safety Problem

The number of LTV occupant fatalities has been increasing during the 1980's, primarily due to the greatly increasing number of sales of these vehicles. From 1985 to 1988, annual LTV fatalities increased from 6,736 to 8,355. LTV occupant non-fatal injuries have also been increasing. For example, between 1985 and 1988, the number of such injuries increased from 583,000 to 850,000. Sales of LTV's increased from approximately 4.5 million vehicles in 1985 to 4.9 million vehicles in 1988. With record-breaking sales years in 1985, 1986, 1987 and 1988, and projected sales of 5.0 million vehicles per year into the future, these trends are expected to continue through the mid-1990's.

Side impacts are a significant cause of LTV occupant fatalities, accounting for about 18.5 percent of all LTV occupant fatalities. Between 1985 and 1988, total LTV fatalities in side impacts increased from 1,247 to 1,625, and estimated AIS 3–5 injuries increased from 4,750 to 7,300. LTV fatalities in single-vehicle side impact crashes increased from 546 to 717 between those years, and estimated AIS 3–5 injuries increased from 1240 to 1900. (The abbreviation "AIS" refers to Abbreviated Injury Scale, which is used to rank injuries by level of severity. An AIS 1 injury is a minor one, while an AIS 6 injury is one that is currently untreatable and fatal. AIS 3–5 injuries are those which are serious-to-critical.)

As significant as side impacts are to LTV occupant fatalities, side impacts are an even greater source of passenger car occupant fatalities, accounting for 32 percent of such fatalities. As discussed in the PRIA, data indicate that LTV's are less involved in side impacts than passenger cars and, when they are involved, LTV occupants have fewer injuries than passenger car occupants. One likely reason why LTV occupants have fewer injuries in side impacts is that light truck occupants, in standard size pickups and vans, are seated higher than the point where striking passenger cars impact the vehicle.

NHTSA is concerned about the side impact problem for both passenger cars and LTV's and, as indicated above, is addressing the problem in rulemaking for all of these vehicles. The fact that the side impact problem may be greater for passenger cars than for LTV's does not obviate the seriousness of the problem for LTV's, or the desirability of taking action now to address the problem.

While, as discussed below, the expected benefits of extending Standard No. 214 to LTV's are primarily related to single-vehicle crashes, including side impacts with narrow, rigid objects such as poles and trees, NHTSA recognizes that the requirements in question were not originally tailored to that specific crash mode. The agency notes that this proposal does not preclude the possibility that the agency will later propose additional LTV requirements focusing on side impacts with narrow, rigid objects. Currently, the Federal Highway Administration is conducting 30 mph, broadside crash tests against various breakaway support structures. Since the development of such additional requirements would likely take a considerable period of time, the agency does not wish to delay this rulemaking while it addresses that issue.

Benefits

NHTSA believes that extension of Standard No. 214's existing requirements to LTV's would likely result in significant safety benefits. The purpose of the requirements is to minimize the safety hazard caused by intrusion into the passenger compartment in a side-impact collision. In order to meet the requirements, manufacturers must provide stronger side doors. Manufacturers have met the current standard for passenger cars by introducing a longitudinal beam in the middle of each door, and the agency believes that manufacturers would

comply with the proposed requirements for LTV's in the same manner.

As indicated above, in November

reflected in the above numbers. The report found that the standard reduced occupant ejection through doors by 40 to

NHTSA notes that two injury mechanisms are likely to occur in a typical side impact with a fixed object.

TABLE 2—ESTIMATED COST AND WEIGHT EFFECTS OF SIDE DOOR BEAMS IN LTV'S BASED ON 1992 EVALUATION

[Excludes Fuel Costs and Secondary Weight Costs]

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comply with the proposed requirements for LTV's in the same manner.

As indicated above, in November 1982, NHTSA published an evaluation of the side impact standard for passenger cars. The report concluded that single vehicle side impact occupant fatalities were reduced by 14 percent. For side impacts with fixed objects, the effectiveness was 23 percent. The report concluded that the standard did little to reduce fatalities in multi-car side collisions. The evaluation also found that the risk of occupant hospitalization or fatality in side impacts was reduced by 25 percent in single-vehicle crashes and by eight percent in multi-vehicle crashes.

The evaluation also looked at the effect of the standard on reducing ejections, the benefits of which are reflected in the above numbers. The report found that the standard reduced occupant ejection through doors by 40 to 60 percent in single-vehicle crashes, and by 10 to 50 percent in multi-vehicle crashes. The evaluation concluded that the standard reduced the incidence of doors opening in crashes by 20 to 40 percent in single-vehicle crashes, and by 10 to 30 percent in multi-vehicle crashes.

NHTSA believes that the benefits of Standard No. 214 are primarily attributable to two things: (1) the added side door beam helps to make a pole, tree, guardrail or other fixed object slide by the occupant's position and keeps it from intruding in and hitting the occupant, and (2) the strengthened striker/latch area of the door helps reduce ejections.

NHTSA notes that two injury mechanisms are likely to occur in a typical side impact with a fixed object. First, the occupant strikes the door. This occurs before door intrusion by the fixed object, and added padding is beneficial to reducing the potential for injury at this time. Second, the intruding object may strike the occupant. A side door beam reduces the possibility of this second injury mechanism from occurring.

NHTSA's PRIA estimates that adding side door beams to LTV's would result in about 110 fewer fatalities and 950 fewer AIS 3–5 injuries each year. The breakdown for the estimated benefits, between single vehicle and multi-vehicle crashes and by seating position, is as follows:

TABLE 1—ESTIMATED BENEFITS OF SIDE DOOR BEAMS IN LTV'S

	Single Vehicle Crashes		Multi-Vehicle Crashes	
	Front Seat	2nd Seat	Front Seat	2nd Seat
Fatalities	96 to 112	4	0	0
AIS 3–5 injuries	416 to 504	37	361 to 459	34

The PRIA's estimate of benefits uses projected 1994 injuries and fatalities as a baseline. The range of benefits assumes different sets of assumptions regarding front seat outboard restraint types and usage. The high end of the range is based on an assumption of 23.3 percent belt usage for manual belts in all seating positions—the current level. The results from a second set of restraint use assumptions, 40 percent manual belt use for front seat outboard positions, fell within the range shown. The low end of the range is based upon a set of assumptions that look at the potential long range impacts of having automatic restraints in all light trucks. It assumes 50 percent of light trucks have air bags, with 40 percent manual lap/shoulder belt use, and 50 percent of the light trucks have automatic belts, with 80 percent usage of automatic belts.

In calculating benefits, the PRIA assumes that the effectiveness of side beams for LTV's involved in side-impact crashes is the same as for passenger cars. Since LTV's are not currently equipped with side door beams, it is not possible to do an evaluation of their real-world effectiveness. Since light truck occupants generally sit higher than passenger car occupants, they are presumably less vulnerable in multi-vehicle collisions. In side impacts with poles and trees, however, the objects struck are typically higher than either a passenger car or LTV. The agency believes that the effectiveness of side door beams for LTV's is similar to that of passenger cars because: (1) Many LTV's are exposed to the same traffic environment as cars (and even greater similarity can be expected in the future, as LTV sales continue to rise), (2) Side door beams are most effective in reducing occupant injuries in single-vehicle crashes, when the mass and height of a vehicle have little effect (unless the vehicle is involved in a rollover), and (3) The doors currently used on LTV's are similar to the doors used on passenger cars prior to the issuance of Standard No. 214. In proposing to extend the standard's requirements to doors on LTV's, NHTSA expects safety benefits comparable to passenger cars. The agency invites comments on this point.

NHTSA also believes that installing side beams to LTV's could help reduce ejections in rollover or other non-side-impact crash modes, although it has not attempted to quantify the potential benefits in this area.

Costs

NHTSA does not believe that any current LTV's meet the requirements of Standard No. 214. Under a NHTSA contract, five 1987 LTV's were tested to Standard No. 214's requirements for passenger cars. (See Docket 88-06, Notice 4, Item 7.) The LTV's included a Dodge Dakota, Ford Bronco, Ford F–150, Nissan Pathfinder and Suzuki Samurai. None of the vehicles met the requirements. As discussed above, if Standard No. 214 were extended to LTV's, NHTSA believes that manufacturers would meet the standard's requirements by adding a longitudinal beam in the middle of each door, in the same manner as for passenger cars.

The PRIA provides cost estimates for extending Standard No. 214 to LTV's based upon two reports which give significantly different answers. The first report is the agency's November 1982 evaluation of Standard No. 214. The second is a report "Estimate for Incorporating FMVSS 214 Performance Requirements in Light Trucks and Multipurpose Vehicles," which was prepared for NHTSA by Mobility Systems and Equipment Company, June 1988.

In using the November 1982 evaluation, the PRIA assumed that cost and weight effects for upgrading passenger car doors could be applied to LTV doors of similar size. Under this methodology, the estimated cost and weight effects of adding side door beams to LTV's (excluding added fuel costs and possible secondary weight costs) are as follows:

TABLE 2—ESTIMATED COST AND WEIGHT EFFECTS OF SIDE DOOR BEAMS IN LTV'S BASED ON 1982 EVALUATION

[Excludes Fuel Costs and Secondary Weight Costs]

Vehicle class	1988 sales	Percent	Cost per vehicle	Weight per vehicle (lbs.)
Pick-up trucks	2,640,622	53.4	$20.58	13.0
Vans	1,321,091	26.7	37.75	25.4
4-door others	273,733	5.5	39.16	24.8
2-door others	709,429	14.4	34.34	30.8
Total	4,944,785	100.0	[1] 28.18	[1] 20.3

[1] Average.

The report by Mobility Systems found much lower costs for side door beams. The report provided weight and cost estimates for two vehicles, a 1987 Suzuki Samurai and a 1987 Dodge Dakota. Using the Mobility Systems report as a foundation, and adding cost and weight estimates for pillar reinforcements which were not included in that report, the PRIA provides the following estimates of the cost and weight effects of adding side door beams to LTV's (excluding added fuel costs and secondary weight costs):

TABLE 3.—ESTIMATED COST AND WEIGHT EFFECTS OF SIDE DOOR BEAMS IN LTV'S BASED PRIMARILY ON MOBILITY SYSTEMS REPORT

[Excludes Fuel Costs and Secondary Weight Costs]

Vehicle class	1988 sales	Percent	Cost per Vehicle	Weight per Vehicle (lbs.)
Pick up trucks	2,640,622	53.4	$12.35	12.4
Vans	1,321,091	26.7	20.93	24.7
4-door others	273,733	5.5	21.83	21.8
2-door others	709,429	14.4	19.22	26.6
Total	4,944,785	100.0	[1] 16.15	[1] 18.2

[1] Average.

The PRIA uses the two methodologies as the basis for a range of potential costs. Thus, the average cost per LTV of adding side door beams is estimated to range from $16.15 to $28.18.

In estimating total cost impacts, the lifetime fuel costs of carrying the extra weight of the side door beams must also be considered. Taking fuel costs into account, the PRIA provides the following estimates of total vehicle costs:

TABLE 4.—TOTAL VEHICLE COSTS OF ADDING SIDE DOOR BEAMS (INCLUDES LIFETIME FUEL PENALTY COST—PRESENT VALUE, 10 PERCENT ANNUAL DISCOUNT RATE—WITHOUT SECONDARY WEIGHT)

Vehicle class	Incremental weight per vehicle (lbs.)	Total per vehicle cost
Pickup trucks	12.4–13.0	$26.51 to 35.42
Vans	24.7–26.4	49.12 to 70.16
4-door others	21.8–24.8	46.52 to 67.47
2-door others	26.6–30.9	49.56 to 69.49
Sales weighted avg.	18.2–20.3[1]	36.93 to 51.35

[1] A weight increase of this magnitude would reduce measured fuel economy by about 0.045 to 0.090 mpg, depending on whether acceleration capability is maintained.

Another possible cost relates to secondary weight. Secondary vehicle weight refers to weight increases in other parts of the vehicle which might be made to compensate for the additional "primary" weight, i.e., the weight of the side door beams. For example, these secondary weight increases could include increases in vehicle structure to maintain load-carrying ability. To illustrate the potential impact of secondary weight, the PRIA calculates costs using a theoretical weight factor of 0.7 pounds of secondary weight for each pound of primary weight that is added to the vehicle. The resulting estimates of total vehicle costs are as follows:

TABLE 5.—TOTAL VEHICLE COSTS OF ADDING SIDE DOOR BEAMS (INCLUDES LIFETIME FUEL PENALTY COST—PRESENT VALUE, 10 PERCENT ANNUAL DISCOUNT RATE—WITH SECONDARY WEIGHT)

Vehicle class	Incremental weight per vehicle (lbs.)	Total per vehicle cost
Pickup trucks	21.1–22.1	$42.86 to 52.54
Vans	42.0–48.3	81.86 to 107.59
4-door others	37.1–42.2	75.31 to 100.22
2-door other	45.2–52.4	84.57 to 110.13
Sales weighted avg.	30.9–34.5	60.99 to 78.13

[1] A weight increase of this magnitude would reduce measured fuel economy by approximately 0.07 to 0.13 mpg, depending on whether acceleration capability is maintained.

The above costs may be overstated for vans, since they include the costs of a rear side door for these vehicles. As indicated above, NHTSA is proposing to exclude from the requirements of the standard those LTV side doors which would not likely have anyone sitting near them. The agency does not have an estimate of how many van rear side doors would be excluded from the standard's requirements under the proposal. Assuming that a van's rear side door is excluded from the standard's requirements, the total cost (including added fuel but without secondary weight) of adding side door beams to the van would be $22.62 to $34.75 less than the estimate provi led

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above. The total cost, with secondary weight, would be $38.80 to $55.06 less than the estimate provided above. NHTSA requests comments on how many van rear side doors would be included/excluded under the proposed requirements.

The cost of conducting a Standard No. 214 compliance for passenger cars is about $1,600. NHTSA believes that the same cost would apply to LTV's.

Final Stage Manufacturers

There is a specialized class of small businesses involved in the final stage manufacture of a vehicle manufactured in two or more stages, and/or in the conversion or alteration of new vehicles. Under NHTSA's certification regulations, a final stage manufacturer must certify that the completed vehicle conforms to all applicable safety standards. Additionally, a business that modifies or converts a previously certified new vehicle before its first sale to a consumer is a vehicle alterer under NHTSA's regulations. Alterers are required to certify that the altered vehicle continues to comply with all applicable Federal motor vehicle safety standards. Throughout the rest of this preamble, the term "final stage manufacturers" is used to refer to both final stage manufacturers and alterers.

The Standard No. 214 compliance test is a destructive, whole system test, which could be difficult and/or expensive for many final stage manufacturers to conduct, especially if they had to conduct such testing on many different types of vehicles. However, NHTSA believes that the vast majority of final stage manufacturers would have available means to certify compliance that would not require testing. NHTSA's regulations require the manufacturers of truck or van chassis used by final stage manufacturers to provide information on what limitations must be observed for the completed vehicle to comply with safety standards. The final stage manufacturer can then base its certification on the fact that it stayed within the limits set by the incomplete vehicle manufacturer. Since the truck or van chassis purchased by final stage manufacturers generally have side doors, and the final stage manufacturers generally do not change the side doors or structure supporting the side doors, NHTSA believes that certification with the proposed requirements could be based on the incomplete vehicle manufacturer's certification. NHTSA also notes that if a final stage manufacturer added a rear side door and did not wish to certify compliance for that door, it could avoid having to comply with the standard's requirements by not installing a seat (or hardware for a seat) adjacent to the door.

NHTSA is aware that some final stage manufacturers, including some manufacturers of motor homes, build their own vehicle body structures, which include side doors. These manufacturers are generally larger than most final stage manufacturers, and have greater engineering and testing expertise. The agency does not believe that the proposed requirements would be unduly burdensome to these manufacturers.

NHTSA has tentatively concluded that the proposed requirements would not result in any significant burdens to final stage manufacturers. The agency requests comments on this issue. Depending on the comments, NHTSA may consider extending the standard on more limited basis in a final rule, e.g., limiting application of the standard to vehicles with a GVWR or 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less, and/or excluding certain vehicles such as motor homes. NHTSA requests that any commenters supporting a more limited extension specifically discuss the precise problem faced by final stage manufacturers, i.e., why, and for which vehicles, they are (1) unable to rely on the incomplete vehicle manufacturers' certification and (2) are unable to conduct (or sponsor) the necessary testing or engineering analysis to certify compliance, and how any recommended criteria for limiting the standard's applicability would solve the purported problem.

Leadtime

As discussed above, NHTSA believes that manufacturers could comply with the proposed requirements by adding side door beams to the side doors of LTV's, similar to those used in passenger cars. Since manufacturers have considerable experience in meeting Standard No. 214's requirements for passenger cars, NHTSA believes that a leadtime of two years would be sufficient to design, tool and test the necessary modifications. The agency requests comments on this issue. NHTSA requests that any commenters supporting a leadtime longer than two years address whether such longer leadtime is needed for all vehicles or whether the proposed requirements could be phased in for some vehicles at an earlier time.

Regulatory Impacts

A. Executive Order 12291

NHTSA has examined the impact of this rulemaking action and determined that it is major within the meaning of Executive order 12291, and significant with the meaning of the Department of Transportation's regulatory policies and procedures. The agency has prepared a Preliminary Regulatory Impact Analysis describing the economic and other effects of this rulemaking action. The analysis is available in the docket.

B. Regulatory Flexibility Act

NHTSA has also considered the impacts of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that it would not have a significant economic impact on a substantial number of small entities. Accordingly, the agency has not prepared a preliminary regulatory flexibility analysis.

The primary cost effect of the proposed requirements would be on incomplete vehicle manufacturers, which are not small entities. Although many final stage manufacturers are small businesses, NHTSA estimates that the vast majority of those businesses would not be significantly affected by the proposed requirements. The impacts on small businesses are discussed briefly below and in more detail in the agency's preliminary regulatory impact analysis.

As discussed earlier in this notice, since the truck or van chassis purchased by final stage manufacturer generally have side doors, which are not changed by the final stage manufacturer, certification with the proposed requirements can easily be based on the incomplete vehicle manufacturer's certification. Also, if a final stage manufacturer added a rear side door and did not wish to certify compliance for that door, it could avoid having to comply with the proposed requirements by not installing a seat (or hardware for a seat) adjacent to the door.

A small number of final stage manufacturers build their own vehicle body structures, which include side doors. These manufacturers are generally larger than most final stage manufacturers, and have greater engineering and testing expertise. The agency does not believe that the proposed requirements would have a significant impact on these manufacturers.

Small organizations and governmental units should not be significantly affected since the potential cost impacts associated with this proposed action should only slightly affect the purchase price of new motor vehicles.

C. Environmental Effects

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The addition of side door beams to LTV's would result in increased material usage by manufacturers. There could also be increased material usage associated with possible secondary weight. The added weight associated with the rulemaking could reduce measured fuel economy by 0.045 to 0.13 mpg, depending on whether acceleration capability is maintained and on whether secondary weight is added. Such a reduction in fuel economy would result in a very slight increase in gasoline consumption. After considering the potential impacts of the proposed requirements, the agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

D. Impact on Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed requirements do not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Submission of Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified under receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR part 571 would be amended as follows:

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.214 [Amended]

2. S2 would be revised to read as follows:

S2. *Application.* This standard applies to passenger cars and, effective September 1, 1992, to multipurpose passenger vehicles, trucks and buses with a GVWR of 10,000 pounds or less.

3. S3 would be revised to read as follows:

S3. *Requirements.* (a) Except as provided in paragraph (b) of this section, each vehicle shall be able to meet the requirements of either, at the manufacturer's option, S3.1 or S3.2, when any of its side doors that can be used for occupant egress are tested according to S4.

(b) A vehicle need not meet the requirements of this standard for:

(1) Any side door located so that no portion of an adjacent outboard designated seating position, with the seat adjusted to any position to which it can be adjusted, falls within the transverse, horizontal projection of the door's opening, and

(2) Any side door located adjacent to hardware for installation of an outboard seating position so that no portion of a seat recommended by the manufacturer for installation with that hardware, would when so installed, and adjusted as in (1), fall within the three dimensional area described in (1).

Issued on December 19, 1989.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 89-29771 Filed 12-19-89; 2:00 p.m.]

BILLING CODE 4910-59

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1057 and 1058

[Ex Parte No. MC-41 (Sub-No. 1)]

RIN 3120-AB 59

Identification of Motor Vehicles

AGENCY: Interstate Commerce Commission.

ACTION: Proposed rule; extension of time to file comments.

SUMMARY: By petition filed December 4, 1989, the American Trucking Associations (ATA), Regular Common Carrier Conference (RCCC), the Interstate Truckload Carriers Conference (ITCC), and the National Tank Truck Carriers, Inc., (NTTC) (hereafter "petitioners"), request a 60-day extension of time from December 29, 1989 to February 28, 1990, for filing comments. Petitioners state that extension is necessary to permit their motor carrier members to carefully consider the proposal at the ATA and ITCC Executive Committee meetings on January 29–31, 1990 and the RCCC meetings on February 12–15, 1990, and to prepare a reasoned response. Petitioners have not shown good cause for a 60-day extension. However, preparation of a reasoned response should be possible with a twenty day extension. Accordingly, a 20-day extension will be granted. The proposed rule on elimination of vehicle identification regulations was published on November 29, 1989 (54 FR 49104).

DATE: Comments are due on January 18, 1990.

ADDRESSES: Send comments (an original and 10 copies) referring to Ex Parte No. MC-41 (Sub-No. 1) to: Interstate Commerce Commission, Office of the Secretary, Case Control Branch, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: John W. Fristoe (202) 275-7844 or Roy M. Wilkins (202) 275-7452 (TDD for hearing

DATES: Comments from all interested parties will be accepted until February 7, 1990. Requests for public hearings

July 21, 1989 (54 FR 30577). During the first public comment period, which ended on September 19, 1989, copies of

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FOR FURTHER INFORMATION CONTACT: John W. Fristoe (202) 275–7844 or Roy M. Wilkins (202) 275–7452 (TDD for hearing impaired (202) 275–1721).

Decided: December 18, 1989.

By the Commission, Chairman Gradison.

Noreta R. McGee,

Secretary.

[FR Doc. 89–29731 Filed 12–21–89; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Reopening of Public Comment Period on Proposed Threatened Status for Spiraea virginiana (Virginia Spiraea)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of reopening of public comment period.

SUMMARY: The U.S. Fish and Wildlife Service gives notice that the public comment period on the proposed determination of threatened status for *Spiraea virginiana* is reopened until February 7, 1990.

DATES: Comments from all interested parties will be accepted until February 7, 1990. Requests for public hearings must be received by January 24, 1990.

ADDRESS: Comments and materials regarding this proposed rule should be sent to the Supervisor, Ecological Services Field Office, U.S. Fish and Wildlife Service, Suite 322, 315 S. Allen Street, State College, Pennsylvania 16801. Comments and materials received will be available for public inspection by appointment, during normal business hours, at the above address.

FOR FURTHER INFORMATION CONTACT: Sharon W. Morgan, Fish and Wildlife Biologist (see **ADDRESS** section), 814/234–4090.

SUPPLEMENTARY INFORMATION:

Background

Spiraea virginiana, a shrub belonging to the rose family, is found along scoured sections of high gradient streams in West Virginia, Virginia, Tennessee, North Carolina, and Georgia. Presently 18 populations are know and most of these have less than 50 plants. Human disturbance and competition from both native and introduced woody plants threaten most populations. In addition, field observations suggest problems with reproduction.

The proposed rule was published on July 21, 1989 (54 FR 30577). During the first public comment period, which ended on September 19, 1989, copies of the proposed rule and letters soliciting comments were sent to appropriate State Agencies, county governments, Federal agencies, scientific organizations, and other interested parties. The comment period is reopened to allow for the publication of required newspaper notices.

Author

This notice was prepared by Anne Hecht, U.S. Fish and Wildlife Service, One Gateway Center, Newton Corner, Massachusetts 02158.

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Fish, Marine mammals, Plants (agriculture).

Dated: December 15, 1989.

Ronald E. Lambertson,

Regional Director.

[FR Doc. 89–29728 Filed 12–21–89; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register

Vol. 54, No. 245

Friday, December 22, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 89–208]

Guatemala MOSCAMED Program Environmental Analysis

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared a draft environmental analysis for the Guatemala MOSCAMED Program. We are requesting public comment on the draft environmental analysis, and advising that a public meeting will be held to promote public involvement in the development of the final environmental analysis.

DATES: Consideration will be given only to comments received on or before February 22, 1990. The public meeting will be held on January 22, 1990, in Washington, DC.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Michael T. Werner, Deputy Director, Environmental Analysis and Documentation, BBEP, APHIS, USDA, Room 828, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket 89–206. Comments received may be inspected at USDA, Room 1141, South Building, 14th Street and Indpendence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. The draft environmental analysis may also be reviewed at this address. A copy of the draft environmental analysis may be obtained by writing to Michael T. Werner at the Hyattsville address listed above.

The public meeting will be held in the Jefferson Auditorium, South Building, 14th Street and Independence Avenue SW., Washington, DC, on January 22, 1990, from 9 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Michael T. Werner, Deputy Director, Environmental Analysis and Documentation, BBEP, APHIS, USDA, Room 828, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782 (301) 436–8565.

SUPPLEMENTARY INFORMATION: The Animal and Plant Health Inspection Service (APHIS) has prepared a draft environmental analysis for the Guatemala MOSCAMED (Medfly) Program. This notice requests public comment on the draft environmental analysis, and advises that a public meeting will be held to obtain additional public input on the draft environmental analysis. This process will allow public involvement in the development of the final environmental analysis for the Guatemala MOSCAMED Program.

Background

The Mediterranean fruit fly or Medfly ("Moscamed" in Spanish), *Ceratitis capitata* (Weidemann), is a major pest of agriculture throughout many parts of the world. Originally native to Africa, it now occurs in areas of Africa, the Mediterranean, Europe, Oceania, South America, Central America, and Hawaii. The Medfly has been introduced to the U.S. mainland intermittently since its initial introduction in 1929; however, eradication programs have prevented it from becoming established here. From 1929 to 1986, State and Federal expenditures for eradication programs on the U.S. mainland totaled nearly $258 million.

The Medfly became established in Costa Rica in 1955. By 1977, the Medfly had expanded its range from its original point of introduction to southern Mexico. In 1977, the Governments of the United States, Guatemala, and Mexico initiated a cooperative program known as MOSCAMED to eradicate to Medfly from Mexico and Guatemala and halt its northern spread. Beginning in Mexico in 1979, the MOSCAMED program used a combination of malathion bait spray, sterile Medflies released into the wild populations, and regulatory procedures in its eradication efforts. In 1982, Mexico declared the Medfly eradicated from its territory, and the eradication effort was extended into Guatemala.

Alternatives

The following program alternatives are discussed in the draft environmental analysis: (1) No action, (2) Isthmus of Tehuantepec stable barrier zone (Mexico), and (3) eradication of the Medfly from Guatemala.

Control method alternatives identified and discussed in the draft environmental analysis include: (1) No action, (2) sterile insect technique, (3) chemical control, (4) cultural control, (5) regulatory control, (6) integrated control, (7) biological control, and (8) other miscellaneous controls.

The preferred program alternative, eradication of Medfly from Guatemala, would use proven control technologies in a systems approach, allowing selection in control methodologies which are environmentally sound and appropriate for existing conditions and treatment sites.

Major Issues

Following are some of the major issues discussed in the draft environmental analysis:

(1) Impacts of the alternatives on the biological environment, including target and nontarget species.

(2) Impacts of the alternatives on the physical environment, including soil, water quality, and air quality.

(3) Impacts of the alternatives on the human environment, especially health and safety, culture, and economy. (The draft environmental analysis incorporates by reference a draft economic analysis, also available for public review.)

Public Meeting Procedures

A representative of the Animal and Plant Health Inspection Service will preside at the meeting, where comments will be heard concerning any issue that would be relevant for the final environmental analysis. Interested persons may appear and be heard in person, by attorney, or other representative. The meeting will begin at 9 a.m. and end at 4 p.m., local time; however, the meeting may end earlier if all persons desiring to speak have been heard. Persons who wish to speak should register at the desk located at the meeting entrance. Pre-meeting registration will be conducted at the

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meeting site from 8 a.m. to 9 a.m. on the meeting date. Registered persons will be heard in the order of registration.

0.28 percent when the sunflower seed is adjusted to a 10 percent moisture basis. Based upon a 1989 crop survey, this

DATE: The meeting will take place on Thursday, January 18 from 9 a.m. to 5 p.m.

Forest Service

Divide Creek Unit Coal-Bed Methane

wells on a 320 acre basis. Based on approximately 40 sections included in the unit (on BLM and Forest Service

related to public participation in the environmental review process. First, reviewers of draft environmental impact

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meeting site from 8 a.m. to 9 a.m. on the meeting date. Registered persons will be heard in the order of registration. Unregistered persons who wish to speak will be afforded the opportunity after the registered persons have been heard. Since the time for each speaker may be limited, speakers are encouraged to submit written comments and to summarize these comments at the public meeting.

Preparation of the Final Environmental Analysis

We will consider all comments received from reviewers of the draft environmental analysis for the Guatemala MOSCAMED Program. Following the 60-day comment period, any necessary revision will be made in the analysis, and a final environmental analysis will be prepared. A notice announcing the availability of the final environmental analysis will be published in a subsequent **Federal Register** notice.

Done in Washington, DC, this 14th day of December 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-29774 Filed 12-21-89; 8:45 am]

BILLING CODE 3410-34-M

Federal Grain Inspection Service

Sunflower Seed, Oil Equipment Calibration

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: On December 22, 1989, the Federal Grain Inspection Service (FGIS) will implement an updated calibration for Nuclear Magnetic Resonance instruments used to determine oil content in sunflower seed. This calibration will incorporate data from 5 previous crop years.

FOR FURTHER INFORMATION CONTACT: Paul D. Marsden, Federal Grain Inspection Service, USDA, Room 0628-S, Box 96454, Washington, DC 20090-6454; telephone (202) 475-3428.

SUPPLEMENTARY INFORMATION: An updated sunflower seed oil calibration for Nuclear Magnetic Resonance (NMR) instruments will be implemented on December 22, 1989 at FGIS field offices and official agencies. A technical review of the updated calibration indicates that the effect on the system will be an increase in the reported oil content for official certification by an average of 0.28 percent when the sunflower seed is adjusted to a 10 percent moisture basis. Based upon a 1989 crop survey, this calibration change is determined necessary. This calibration was developed with the assistance of USDA's Agricultural Marketing Service, Statistics Branch.

FGIS implemented a revised quality control program in February 1989 to improve the assurance of accurate measurements of oil in sunflower seed. In addition, the existing calibration was implemented on February 22, 1989, when it was considered that variety and growing conditions had resulted in changes in the chemical structure (degree of saturation) of the oil from the 1988 harvest of sunflower seed. At that time, it was indicated that a complete review of the calibration procedure would be conducted and, if needed, a revised calibration and control process would be implemented.

To assure that sunflower seed oil in future sunflower crops is measured accurately, FGIS will use a 5 year data average to calibrate NMR instruments for measuring oil content in sunflower seed. Future calibration adjustments, if needed, will generally be implemented on or about September 1, prior to the harvest of sunflower seed in the United States. In some instances, calibration adjustments may be necessary after the beginning of harvest, and such adjustments will be made accordingly.

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: December 18, 1989.

D.R. Galliart,

Deputy Administrator.

[FR Doc. 89-29775 Filed 12-21-89; 8:45 am]

BILLING CODE 3410-EN-M

Food and Nutrition Service

Commodity Letter of Credit (CLOC) Program; Meeting Announcement

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: A meeting to discuss proposed modifications to the Commodity Letter of Credit (CLOC) Program is scheduled for Thursday, January 18, 1990. The CLOC Program was initiated in 1981 as a demonstration project to test alternatives to commodity donation in the National School Lunch Program. The meeting will serve as an open forum to solicit recommendations from the general public for modifications to the CLOC Program.

DATE: The meeting will take place on Thursday, January 18 from 9 a.m. to 5 p.m.

ADDRESS: The meeting will be held in the Park Office Center, 3101 Park Center Drive, Alexandria, Virginia 22302 in the fourth floor conference room.

FOR FURTHER INFORMATION CONTACT: John Endahl, Office of Analysis and Evaluation, Food and Nutrition Service, U.S. Department of Agriculture, Alexandria, Virginia 22302, (703) 756-3115.

SUPPLEMENTARY INFORMATION: Section 103 of the Child Nutrition and WIC Reauthorization Act of 1989 (Pub. L. 101-147) authorizes the extension of the Cash/CLOC Program through September 30, 1992. The joint statement issued by the Congress in conjunction with the Act's passage encourages the Secretary to review current CLOC procedures and make modifications to the program that may assist the Department in meeting its mandate to support domestic agricultural markets. The purpose of this meeting is to give the U.S. Department of Agriculture the opportunity to seek the advice of organizations, interest groups and industry representatives as well as the general public prior to modifying current CLOC programs. Topics to be discussed during the meeting include:

(1) The type of products that may be purchased with Commodity Letters of Credit (CLOCs);

(2) The timing of CLOC purchases;

(3) Administrative issues with regard to CLOCs such as allocation of funds and monitoring of "Buy America" provisions;

(4) The effect of the CLOC Program on other USDA Food Donation Programs and the existing commodity distribution network; and

(5) The effect of CLOCs on the Department's ability to respond to national emergencies.

The agenda will be available 15 days prior to the meeting. Requests for the agenda should be sent to John Endahl, 3101 Park Center Drive, room 208, Alexandria, Virginia 22302. Please notify John Endahl of attendance prior to meeting. Comments may be sent to John Endahl before or within one week of the meeting.

Dated: December 19, 1989.

G. Scott Dunn,

Acting Administrator.

[FR Doc. 89-29803 Filed 12-21-89; 8:45 am]

BILLING CODE 3410-30-M

Forest Service

Divide Creek Unit Coal-Bed Methane Development Environmental Impact Statement; White River National Forest, Colorado

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service will prepare an environmental impact statement on a proposal to drill, complete, and produce coal-bed methane gas wells in the Divide Creek Unit in Garfield and Mesa Counties, Colorado.

DATE: Comments concerning the scope of the analysis should be received in writing by February 28, 1990.

ADDRESS: Send written comments to Terry K. Wood, District Ranger, Rifle Ranger District, 0094 County Road 244, Rifle, Colorado 81650.

FOR FURTHER INFORMATION CONTACT: Gary Osier, Forester, Rifle Ranger District, 0094 County Road 244, Rifle, Colorado 81650, phone: (303) 625-2371.

SUPPLEMENTARY INFORMATION: The proponent proposes to drill, complete, and produce 66 coal-bed methane gas wells within the Divide Creek Unit. In 1990 thirty eight gas wells and associated facilities would be developed (6 wells on Bureau of Land Management land-BLM); in 1991 twenty eight gas wells and associated facilities would be developed. There are ten existing coal-bed methane gas wells on Forest Service land. The Divide Creek Unit has been developed under a Federal lease for conventional natural gas since 1938. Known interested publics will be notified in writing or in person. The Forest Service will also make efforts to contact the general public through meetings, etc.

Thus far the following concerns have been identified: Impacts to wetland/riparian habitats, water resources, fish and wildlife, effects on "sensitive lands" from a soil and landform erosion standpoint, impacts on air quality, roads/transportation systems, and cumulative impacts.

The range of possible alternatives which have been identified by the Forest Service are as follows: 1. No Action—Allow no gas activity in the Divide Creek Unit; 2. Staged Development—There are several possibilities of staged development over a period of time; 3. Total Development (Proponent's Proposal)—This alternative assumes 2 wells per section within the Divide Creek Unit and reflects the current state approval granted to the proponent for wells on a 320 acre basis. Based on approximately 40 sections included in the unit (on BLM and Forest Service lands), this would result in up to 80 wells being analyzed including the existing 10 wells.

Based on current knowledge the following permits and/or licenses are required: an approved Application for Permit to Drill—BLM; an approved Surface Use Plan—Forest Service; Sundry Notices—BLM; a water disposal permit—Environmental Protection Agency and the State of Colorado; review and approval—State of Colorado; a Land Use Permit—Garfield and Mesa Counties; and a Road Damage Bond and Permit—Garfield County.

The lead agency is the Forest Service, USDA. The Bureau of Land Management, USDI is a cooperating agency. The Forest Service is also working with the Colorado Division of Wildlife and Garfield and Mesa Counties.

Comments may be sent in writing to Terry K. Wood, District Ranger, Rifle Ranger District, 0094 County Road 244, Rifle, Colorado 81650.

The Draft Environmental Impact Statement is expected to be published for public review in March, 1990. The Final Environmental Impact Statement is expected to be published in May, 1990.

The Forest Service will seek comments on the Draft Environmental Impact Statement for a period of 45 days after publication of the Draft Environmental Impact Statement. The Forest Service will summarize and respond to the comments in the Final Environmental Impact Statement.

The Responsible Official is Thomas A. Hoots, Forest Supervisor, White River National Forest, 900 Grand Ave., P.O. Box 948, Glenwood Springs, Colorado 81602.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the Draft Environmental Impact Statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

Dated: December 13, 1989.

Thomas A. Hoots,

Forest Supervisor.

[FR Doc. 89-29805 Filed 12-21-89; 8:45 am]

BILLING CODE 3410-11-M

Packers and Stockyards Administration

Amendment to Certification of Central Filing System; Oklahoma

The Statewide central filing system of Oklahoma has been previously certified, pursuant to section 1324 of the Food Security Act of 1985, on the basis of information submitted by Hannah D. Atkins, Secretary of State, for specified farm products produced in that State [52 FR 49056, December 29, 1987].

The certification is hereby amended on the basis of information submitted by Hannah D. Atkins, Secretary of State, to include the following products produced in that State:

Ducks
Geese
Ostriches
Emus
Pheasants
Chinchillas
Silage
Sorghum, forage
Vetch
Flaxseed
Sunflower seeds
Safflower seeds
Guar
Millet
Green beans

Peppers
Spinach
Mustard greens
Lettuce
Swiss chard
Turnip greens
Collard greens
Pumpkins
Almonds
Mung beans
Grass roots
Bedding plants
Potted plants & flowers
Bees wax
Pollen

This is issued pursuant to authority delegated by the Secretary of Agriculture.

Authority: Sec. 1324(c)(2), Pub. L. 99-198, 99 Stat. 1535, 7 U.S.C. 1631(c)(2); 7 CFR 2.17(e)(3), 2.56(a)(3), 51 FR 22795.

Dated: December 14, 1989.

Calvin W. Watkins,

Acting Administrator, Packers and Stockyards Administration.

[FR Doc. 89-29773 Filed 12-21-89; 8:45 am]

BILLING CODE 3410-KD-M

DEPARTMENT OF COMMERCE

International Trade Administration

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews: Notice of Completion of Panel Review

AGENCY: United States-Canada Free-Trade Agreement Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Completion of Panel Review of the final results of an administrative review of an antidumping duty order made by the International Trade Administration, Import Administration, respecting Certain Dried Heavy Salted Codfish from Canada. The panel review is terminated by order of the panel, effective December 18, 1989, based upon a motion consented to by all the participants.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, Suite 4012, 14th and Constitution Avenue, Washington, DC 20230, (202) 377-5438.

SUPPLEMENTARY INFORMATION: Under chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") an independent binational panel may be convened to review final determinations in antidumping and countervailing duty cases involving imports from the other country.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212).

A Request for Panel Review of the final results of an administrative review of an antidumping duty order made by the International Trade Administration, Import Administration, respecting Certain Dried Heavy Salted Codfish from Canada was filed on April 26, 1989. A panel was established pursuant to the *Article 1904 Panel Rules* to review whether the final determination conformed with the antidumping duty law of the United States.

On November 27, 1989, the Department of Commerce (the Department) published a notice revoking the antidumping duty ordered on Dried Heavy Salted Codfish from Canada (54 FR 48794). Accordingly, pursuant to Rule 73 of the Rules, the Department and the Complainant jointly filed on December 13, 1989, a Notice of Motion to dismiss the panel review. On December 15, 1989, the panel issued an order dismissing the panel review.

Under Rule 80(a), when all participants consent to an order dismissing panel review, the order becomes effective on the day after the order of the panel is issued. Accordingly, the order dismissing the panel review herein is effective December 18, 1989.

Dated: December 12, 1989.

James R. Holbein,

United States Secretary, FTA Binational Secretariat.

[FR Doc. 89-29756 Filed 12-21-89; 8:45 p.m.]

BILLING CODE 3510-GT-M

International Trade Administration

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Notice of Decision of Panel

AGENCY: United States-Canada Free-Trade Agreement Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Decision of Panel in the panel review of a final determination made by the International Trade Administration, Import Administration respecting Red Raspberries from Canada filed by Clearbrook Packers, Inc. (Clearbrook), Marco Estates Ltd./ Landgrow Packers (Marco), and Mukhtiar & Sons Packers, Ltd. (Mukhtiar).

SUMMARY: The Panel found that: (1) the International Trade Administration (ITA) finding that fresh market raspberries are not such or similar merchandise was supported by substantial evidence on the record and that, because Marco had no home market sales of merchandise covered by the antidumping order, constructed value was the appropriate basis for calculating Marco's foreign market value; and (2) because ITA did not provide an adequate explanation of its reasons for rejecting Mukhtiar's and Clearbrook's home market sales of red raspberries as a basis for calculating foreign market value, the panel was unable to apply the substantial evidence standard to determine the legality of that conclusion.

Copies of the complete decision, including all reasoning, may be obtained from the United States Secretary, FTA Binational Secretariat.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, Suite 4012, 14th and Constitution Avenue, Washington, DC 20230, (202) 377-5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by an independent binational panel. The panel reviews final determinations to determine whether they are consistent with the antidumping duty or countervailing duty law of the country that made the determination.

Under Article 1904 of the United States-Canada Free-Trade Agreement, which came into force on January 1, 1989, the Government of the United States and Government of Canada established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The panel review in this matter was conducted in accordance with these Rules.

On March 15, 1989, a Request for Panel Review of the final determination made by the ITA respecting Red Raspberries from Canada was filed by Clearbrook Packers, Inc., Marco Estates Ltd./Landgrow Packers, and Mukhtiar & Sons Packers, Ltd., pursuant to Article 1904 of the United States-Canada Free-Trade Agreement. A panel was convened in accordance with the Rules and oral arguments were presented on all issues on October 20, 1989. The panel decision is given below. Copies of the complete decision, including all reasoning, may be obtained from the United States Secretary, FTA Binational Secretariat.

Panel Decision

The panel affirmed in part and remanded in part the ITA final determination. The panel affirmed the finding of the ITA that fresh market raspberries sold complainant Marco in the home market were not the same as, or similar to, the bulk-packed red raspberries which were the subject of the antidumping order under review and further affirmed the ITA's use of constructed value as the basis for determining Marco's foreign market value.

The Panel held defective and remanded the ITA's finding that home market sales of Clearbrook and Mukhtiar were not adequate for use as the basis for determining foreign market value. The panel directed ITA to provide within 30 days after the date of the panel decision (by not later than January 16, 1989) its explanations of the reasons why Clearbrook's and Mukhtiar's home market sales do not form an adequate basis for calculating foreign market value.

The panel further ordered that the complainants file with the panel any comments they may have on the results of the remand within 15 days after the filing of the ITA's explanation, and that the ITA respond within 15 days after the filing of complainants' comments.

Dated: December 18, 1989.

James R. Holbein,

United States Secretary, FTA Binational Secretariat.

[FR Doc. 89-29757 Filed 12-21-89; 8:45 am]

BILLING CODE 3510-GT-M

National Institute of Standards and Technology

Visiting Committee on Advanced Technology

AGENCY: National Institute of Standards and Technology, DOC.

ACTION: Notice of Partially Closed Meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the National Institute of Standards and Technology Visiting Committee on Advanced Technology will meet on Thursday, January 11, 1990, from 10:00 a.m. to 11:00 a.m. The Visiting Committee on Advanced Technology is composed of nine members appointed by the Director of the National Institute of Standards and Technology who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The purpose of this meeting is to discuss the Institute's budget and to present the Visiting Committee's 1989 Annual Report to the Department of Commerce, so that the Secretary can forward this report to the Congress by the Congressionally mandated deadline of January 31, 1990. The members of the Committee will discuss their findings as outlined in the report. The discussion on NIST budget scheduled to begin at 10:30 a.m., and to end at 11 a.m., on January 11, 1989, will be closed.

DATE: The meeting will convene January 11, 1990, at 10 a.m. and adjourn at 11:00 a.m. on January 11, 1990.

ADDRESS: The meeting will be held in Conference Room 5858, Department of Commerce, 14th and Constitution, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Dr. Dale E. Hall, Executive Director, Visiting Committee on Advanced Technology, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975-2158.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on September 1, 1989, that portions of the meeting of the Visiting Committee on Advanced Technology which involve examination and discussion of the budget for the Institute may be closed in accordance with section 552(b)(9)(B) of Title 5, United States Code, since the meeting is likely to disclose financial information that may be privileged or confidential.

Dated: December 18, 1989.

Raymond G. Kammer,

Acting Director.

[FR Doc. 89-29752 Filed 12-21-89; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

After the November 1989 meeting of the Pacific Fishery Management Council, amendment and drafting oversight committees were appointed to proceed with developing a limited entry amendment to the Groundfish Fishery Management Plan. The Committees' first public meeting will be held January 11-12, 1990, at the Metro Center, 2000 SW. First Avenue, Room 440, Portland, OR. On January 11 the Committees will begin meeting at 11 a.m., and will draft a statement of problem and need, develop a lsit of alternatives to limited entry, review written public comments, and consider the need for various modifications to current proposals.

For more information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2000 S.W. First Avenue, Portland, OR 97201; telephone: (503) 326-6352.

Dated: December 15, 1989.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-29728 Filed 12-21-89; 8:45 am]

BILLING CODE 3510-22-M

[Docket No. 91045-9245]

Draft Policy Statement on the Weather Service/Private Sector Roles

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice requests public comment on a draft policy statement on the weather service/private sector roles entitled "The National Weather Service (NWS) and Private Weather Industry: A Public-Private Partnership." This statement was jointly prepared by the Office of Privatization of the Office of Management and Budget and the National Oceanic and Atmospheric Administration National Weather Service. This draft policy statement includes general criteria for the respective roles of the NWS and the private sector; specific NWS and private weather industry activities; and an implementation plan ensuring an effective public-private partnership.

DATE: Comments must be received on or before January 22, 1990.

FOR FURTHER INFORMATION CONTACT: Edward M. Gross, Constituent Affairs Officer (NWS), 8060 13th Street, Silver Spring, Maryland 20910, (301) 427-7258.

Dated: December 18, 1989.

Elbert W. Friday, Jr.,

Assistant Administrator for Weather

both industry and the general public with more accurate and timely weather forecasts and weather products. A

- Arrange for the archiving of environmental information for use by interested parties for practical

Weather Service will investigate external claims that this policy is not being followed by NWS employees. In

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite

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Dated: December 18, 1989.

Elbert W. Friday, Jr.,

Assistant Administrator for Weather Services.

Draft Policy Statement on the Weather Service/Private Sector Roles

The National Weather Service and the Private Weather Industry: A Public-Private Partnership

Accurate and timely weather forecast and warning systems are vital to the well-being of the nation's population. Weather forecasting harnesses modern advances in information to increase the productivity of American industry—thereby contributing to economic growth. But to provide American industry with the proper tools to increase productivity, a public-private partnership is needed.

The National Weather Service (NWS) is the single official voice for issuing warnings of severe weather and floods to the general public. In recent years, there has been an increasing appreciation that weather information is more than protection of public safety and is of great importance in the management of business and industrial operations as well. Today's technological and scientific advances have created the opportunity for NWS to increase the accuracy of both warnings of severe weather and general public forecasts. However, in order to satisfy this public safety role, NWS cannot meet and respond to the growing market demands for environmental data, products and services by individual users. A public-private partnership is needed if the requirements of the total user community are to be met. The private meteorologists must be encouraged to play an essential role to meet the needs of the nationwide user community if the requirements of the total user community across the nation are to be met.

Over the past few years, there has been a substantial growth in private meteorological services in the United States. The role of the private sector has increased in data acquisition, dissemination, weather forecasting, computer modeling, and other weather related services. There are over 100 private companies in the United States that prepare and disseminate weather forecasts, data, and products to business and specialized users. Private firms now provide a variety of commercial services, for consumption by business and industry, agriculture, aviation, government, the media and the public.

A cooperative relationship between NWS and the private sector will provide both industry and the general public with more accurate and timely weather forecasts and weather products. A partnership will allow each sector to perform those functions which it can carry out best. The purpose of this policy statement is to define that relationship and the respective roles of NWS and the private sector to ensure that Federal resources are focused on providing essential core functions and avoid unnecessary duplication of services and competition with the private sector. The goal is a partnership which enhances total service to the American public and industry.

General Criteria

The respective roles of NWS and the private sector described below are based on the following criteria:

- The primary mission of the National Weather Service is public safety. As such, the core function of NWS is the formulation and issuance of warnings of severe weather and floods to the general public and emergency managers at all levels of government. In this capacity it is the single "official" voice when issuing warnings for life threatening situations. These services forms an infrastructure on which the private sector can build and grow.
- The private weather industry is ideally suited to put the basic data collected by NWS into a form that can be utilized by weather sensitive or weather interested end users. Specically:

—Real-time meteorological services oriented to specific segments of the population with specialized needs, and

—Analytic, value-added, and advisory services by which clients can gain advantages from the vast store of available empirical and scientific evidence and knowledge to fulfill economic objectives.

- NWS will not compete with the private sector in these services when such a service is currently offered or can be offered by commercial enterprises, unless otherwise directed by applicable law.

The National Weather Service

In order for the National Weather Service to meet its public safety role, it will:

- Collect weather data and information on a national and international basis. This includes surface and upper air data, satellite information and imagery, radar reports, and any other data germane to the analysis and prediction of the earth's atmosphere;
- Arrange for the archiving of environmental information for use by interested parties for practical application or research;
- Organize and support research and development of global and national models of the atmosphere. These models currently are the fundamental basis for all weather forecasting, research and specialized studies;
- Maintain and operate computer facilities for producing global, national or general regional atmospheric models;
- Carry out legal mandates to formulate and issue weather forecasts for the general public, aviation, marine and agricultural interests and emergency managers at all levels of government as well as warnings of severe weather and flood events which adversely affect life and property.

The Private Weather Industry

Based on the general criteria, the private weather industry is encouraged to:

- Provide tailored weather forecasts, detailed weather information, consultation, data, and forecasts for all weather sensitive industries and private organizations;
- Provide value-added products such as weather-related computer hardware and software, observational systems imaging, displays, communications, charts, graphs, maps, images for clients; and
- Provide advisory statements to clients on warnings, including local weather events as snowstorms, etc. (in cases where the clients expect private meteorologists to have significant understanding of their operational needs).

In addition, the private sector should be encouraged to develop data that could be provided to the government on contract.

Implementation

In order to meet its public safety role, NWS cannot meet and respond to specific requests by individual users beyond inquiries concerning NWS products. This is the role of the private sector. Accordingly, requesters shall be advised that it is NWS policy not to provide specialized weather forecasts and products for business and industry, unless otherwise directed by applicable laws, and that such services are available from private sector sources. NWS officials and employees should take all necessary steps to avoid duplication of, or competition with private sector firms that provide or can provide such specialized weather services. The Director of the National Weather Service will investigate external claims that this policy is not being followed by NWS employees. In the event that the Director is involved in the claim to be investigated or if the claimant wishes to appeal the Director's decision on an external claim, it will be investigated by an organizational entity independent from the Weather Service.

An effective partnership requires that the parties understand each other's roles and be sensitive to the constraints and aspirations that govern their respective actions. This policy statement cannot cover all possibilities. Close coordination and cooperation are essential to ensure that the public receives the best possible weather service. Regional and local NWS officials should arrange periodic meetings with private meteorologists to promote an exchange of ideas which will be mutually beneficial and increase understanding between the two groups. The overriding goal of this policy statement is to ensure that the Nation receives the full benefit of weather information to promote safety of life and property and economic prosperity. Effective partnership between NWS and the private meteorological sector is the means to that end.

Opportunity for Comment

The NWS is hereby inviting comments on the draft policy statement on the weather service/private sector roles prior to any final decision to implement. For comments to be considered, they must be forwarded in writing to the following address and be received no later than 30 days after the date of this announcement.

Address comments to: National Weather Service, Gramax Building, 8060 13th Street, Silver Spring, Maryland 20910, Attn: Edward M. Gross, Room 1412.

[FR Doc. 89-29755 Filed 12-21-89; 8:45 am]

BILLING CODE 3510-13-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1990; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This actions adds to Procurement List 1990 commodities to be produced and a service to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: January 22, 1990.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On October 13 and November 3, 1989, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (54 FR 42010 and 46445) of proposed additions to Procurement List 1990, which was published on November 3, 1989 (54 FR 46540).

No comments were received in response to the notice of proposed addition to the Procurement List. However, during the development stage a current contractor for tube type markers claimed that the loss of a category like the markers would be devastating to the industry since they represent between 15 and 25 percent of the industry's Government pen business.

The estimated annual sales for these markers represent less than 1 percent of the total annual sales of any firms which supply the government with these markers. As a result, the addition of these items will not have a severe adverse impact on any of the firms.

After consideration of the material presented to it concerning capability of qualified workshops to produce the commodities and provide the service at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and service listed.

c. The actions will result in authorizing small entities to produce the commodities and provide the service procured by the Government.

Accordingly, the following commodities and service are hereby added to Procurement List 1990:

Commodities

Marker, Tube Type
7520-01-166-0682
7520-01-159-1585
7520-00-460-7598

Service

Commissary Shelf Stocking & Custodial
White Sands Missile Range, New Mexico.

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 89-29795 Filed 12-21-89; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1990; Proposed Additions and Deletion

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to and deletion from procurement list.

SUMMARY: The Committee has received proposals to add to and delete from Procurement List 1990 services to be provided by workshops for the blind and other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: January 22, 1990.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following services to Procurement List 1990, which was published November 3, 1989 (54 FR 46540):

Bus Service, Veterans Administration Medical Center, Outpatient Clinic, Tomah, Wisconsin;

Grounds Maintenance, Portland Air National Guard Base, Portland, Oregon;

Janitorial/Custodial, Bureau of Public Debt, 200 Third Street, Parkersburg, West Virginia;

Mailing of Initial Technical Orders, Robins Air Force Base, Georgia.

Deletion

It is proposed to delete the following service from Procurement List 1990,

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which was published November 3, 1989 (54 FR 46540):

Commissary Shelf Stocking, Naval Station, Roosevelt Roads, Puerto Rico.

E.R. Alley, Jr.,
Deputy Executive Director.

[FR Doc. 89-29796 Filed 12-21-89; 8:45 a.m.]
BILLING CODE 6820-33-M

Procurement List 1990; Establishment; Notice Correction

In FR Doc. 89-25872 appearing at page 46540 in the issue for Friday, November 3, 1989, make the following corrections:

1. On page 46540, second column, under Class 1060, Assembly of Kit Camouflage Support System (IB) should not be listed.

2. On page 46563, second column, the entry under Preservation and Packaging should be followed by an (IB) rather than (SH).

3. On page 46563, third column, the entry under Sponge Rubber Mattress Rehabilitation should be followed by an (IB) rather than (SH).

E.R. Alley, Jr.,
Deputy Executive Director.

[FR Doc. 89-29797 Filed 12-21-89; 8:45 am]
BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

December 7, 1989.

The USAF Scientific Advisory Board Strategic Cross-Matrix Panel will meet on 10 January 1990, from 7:45 a.m. to 5 p.m., at Northrop, Pico Rivera Facility, Los Angeles, CA; on 11 January 1990, from 7:45 a.m. to 12 p.m., Northrop, Palmdale Facility, Palmdale, CA; and on 12 January 1990, from 7 a.m. to 5 p.m. at HQ Strategic Air Command (SAC), Offutt AFB NE.

The purpose of this meeting will be to orient Scientific Advisory Board members on the B-2 Strategic Bomber, and report status of Intelligence and Space Panel investigations. The meetings will involve discussions of classified defense matters listed in Section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4811.

Patsy J. Conner,
Air Force Federal Register, Liaison Officer.

[FR Doc. 89-29790 Filed 12-21-89; 8:45 am]
BILLING CODE 3910-01-M

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Proposed Coal-Fired Power Generating Plant To Be Constructed by Virginia Power Company in Either Cumberland; Greensville, or Mecklenburg County, VA

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: An Environmental Impact Statement will be prepared to evaluate environmental impacts, project alternatives, and other public interest review factors for the proposed coal-fired electrical generating plant.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be answered by: Bob Hume, U.S. Army Engineer District, Norfolk, 803 Front Street, Norfolk, Virginia 23510, Telephone: (804) 441-7657.

SUPPLEMENTARY INFORMATION:

1. Proposed Action

Virginia Power proposes to develop up to 2,400 megawatts of electrical generating capacity through the construction of a coal-fired power plant at one of three sites in Virginia. Each site would require an intake and outfall structure, and at least one site (Cumberland) would also require a make-up water reservoir. These activities require a Corps of Engineers permit pursuant to section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403) and/or section 404 of the Clean Water Act Pub. L. 95-217). Any of these three alternatives would involve a consumptive use of up to 60 cubic feet per second (39 million gallons per day) of cooling water which would come from the James River (for Cumberland County), Roanoke Rapids Reservoir (for Greensville County), or John H. Kerr Reservoir (for Mecklenburg County). Site investigations to determine whether wetlands would be impacted have not been completed.

2. Alternatives

Alternatives which will be investigated include, but will not be limited to, site alternatives, generating alternatives, conservation, and no project.

3. Scoping Process

A Notice of Intent to Prepare an EIS was originally announced in the Federal Register in 1979, and three public scoping meetings were held in each of the affected counties on October 23-25 of that hear. (At that time, a site was being considered in Buckingham County, but was later changed to the adjacent county of Cumberland). Two scoping meetings for State and Federal agencies have been held; one on March 8, 1984 and the other on October 12, 1989. Some of the significant issues identified so far include instream flows, effects on local employment and economy, air quality impacts, and ash/scrubber waste disposal.

4. Public Scoping Meeting

Because of the public scoping meetings held in 1979, no others are proposed. (For purposes of developing an outline for the scope of the Draft EIS, the public input from the 1979 Buckingham County meeting will probably be adequate for adjacent Cumberland County). However, due to the time which has elapsed, copies of this Notice and pertinent maps are being sent to the three county governing bodies and to newspapers having circulation in these areas. Written comments on the scope of the Draft EIS will be accepted from any interested agency, organization, or individual through January 2, 1990.

5. DEIS Availability

It is estimated that the DEIS will be available to the public for review and comment in the summer of 1990.

Kenneth L. Denton,
Alternate Army Liaison Officer with the Federal Register.

[FR Doc. 89-29851 Filed 12-21-89; 8:45 am]
BILLING CODE 3710-EN-M

Intent To Prepare Joint Draft Environmental Impact Statement (EIS)/Environmental Impact Report (EIR); Sunrise-Douglas Property, Sacramento, CA

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare a Draft EIS.

Intent to prepare a joint Draft Environmental Impact Statement (EIS)/Environmental Impact Report (EIR) for the proposed development of a 1,225-acre site ("Sunrise-Douglas Property") located adjacent to, and east of Mather Air Force Base. The property is bounded by Sunrise Boulevard on the west, Douglas Road on the north, Jaeger Road on the east, and Kiefer Boulevard on the south in Sacramento County, California.

SUMMARY: The Sammis Company has applied for a Department of the Army permit pursuant to section 404 of the Clean Water Act to place fill into 47.2 acres of wetlands and other waters subject to DOD jurisdiction. The proposed project site consists primarily of rolling grassland previously used as pasture. Total DOD jurisdiction is 84.9 acres and consists of vernal pools (50.5 acres), seasonal drainages (20.4 acres), and two excavated ponds (5.0 acres). The applicant is proposing construction of residential housing (737.8 acres), industrial office park (64.9 acres), commercial space (38.0 acres), a school (10.2 acres), parks (27.6 acres), landscaping (23.3 acres), and two water detention basins (21.2 acres). The remaining acreage would be used for open space, landscaping, and roads rights-of-way. The open space area would include a 303.5-acre vernal pool preserve (33.2 acres of existing vernal pools and 4.5 acres of existing seasonal drainage). In addition, two detention basins (21.2 acres) would be constructed and designed to function as compensatory seasonal wetland. The applicant proposes to mitigate for lost vernal pool habitat with acre-for-acre (1:1) compensation within the preserve.

Alternatives

The alternatives being considered at this time are:

a. The primarily residential development as proposed by the applicant;

b. Alternate site location;

c. Reduced project onsite (mitigated design); and

d. No action (No-Project Alternative)

Significant Issues

The significant issues which have been identified to date and which will be analyzed in the report are:

a. The need for housing, industrial, and/or commercial space;

b. Impacts to wetlands and ability to create vernal pool habitat;

c. Impacts to rate plant communities;

d. Impacts to wildlife;

e. Surface water and ground hydrology;

f. Impacts on water quality;

g. Impacts on traffic; and

h. Impacts on air quality

Other Environmental Review and Consultation

Environmental review and consultation as required by sections 401 and 404 of the Clean Water Act, as amended (33 U.S.C. 1341 and 1344); the Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*); the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 *et seq.*); the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*); Executive Order 11990 "Protection of Wetlands," 24 May 1977; and other applicable statutes or regulations will be conducted concurrently with the EIR/EIS review process.

The Sacramento District of the U.S. Army Corps of Engineers will issue a 30-day public notice, concurrently with this notice, to initiate the scoping process. The public notice will be sent to all known, interested parties, and will request that the reviewers provide comments on the topical scope, alternatives, and major issues to be covered in the Draft EIR/EIS. We intent to accomplish the scoping process in this manner; however, if it is perceived that this method is not adequate, the need for a public scoping meeting will be considered.

Schedule

It is estimated that the Draft EIR/EIS will be made available to the public in spring 1990.

FOR FURTHER INFORMATION: Questions concerning the proposed action and Draft EIR/EIS should be directed to Mr. Larry Vinzant, Regulatory Section, U.S. Army Corps of Engineers, 650 Capitol Mall, Sacramento, California 95814, Telephone: (916) 551-2261.

Kenneth L. Denton,
Alternate Army Liaison Officer with the Federal Register.

[FR Doc. 89-29850 Filed 12-21-89; 8:45 am]
BILLING CODE 3710-EN-M

DEPARTMENT OF ENERGY

Floodplain and Wetland Involvement Notification for Action Along a Proposed Haul Road to the Cheney Uranium Mill Tailings Disposal Site, Mesa County, CO

AGENCY: U.S. Department of Energy.

ACTION: Notice of floodplain and wetland involvement.

SUMMARY: The Department of Energy proposes to construct a haul road in Mesa County, Colorado, to haul uranium mill tailings. The proposed haul road will be constructed in the right-of-away parallel to U.S. Highway 50 from Whitewater, Colorado, to the Cheney uranium mill tailings disposal site. This action will impact nine acres of salt grass dominated wetlands include a variety of wetland plant species. Floodplains involved include the 100- and 500-year floodplains of Kannah and Indian Creeks. Construction activities would involve the removal of vegetation and the construction of a road in the wetlands and floodplains.

In accordance with Department of Energy regulations for compliance with floodplain/wetland environmental review requirements (10 CFR part 1022), the Department of Energy will prepare a floodplain/wetlands assessment for this activity. Maps and further information are available from the Department of Energy at the address shown below.

DATE: Comments must be received on or before January 15, 1990.

ADDRESS: Send comments to: Mark Matthews, Acting Project Manager, Uranium Mill Tailings Remedial Action Project Office, 5301 Central Avenue NE., Suite 1720, Albuquerque, New Mexico 87108.

Issued in Washington, DC on December 6, 1989.

Roger P. Whitfield,
Associate Director, Office of Environmental Restoration.

[FR Doc. 89-29785 Filed 12-21-89; 8:45 am]
BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CP89-474-000, et al.]

Texas Eastern Transmission Corp. et al.; Intent To Prepare a Comprehensive Draft Environmental Impact Statement for the Proposed Mobile Bay Pipeline Projects, Request for Comments on its Scope, and Public Scoping Meetings

December 19, 1989.

The Commission staff is preparing a comprehensive environmental impact statement (EIS) to address the potential environmental impacts for five offshore pipeline projects and three onshore pipeline projects proposed by a total of eight companies. These projects are proposed to transport natural gas produced from offshore fields in the Mobile Bay area to interconnections with existing natural gas transmission systems.

Introduction

On August 1, 1988, the Federal Energy Regulatory Commission (FERC or Commission) issued a Notice of

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Deadline for 1988–1990 Certification of Mobile Bay Construction Applications in Docket No. CP88–570–000. The Commission indicated in its notice that it had received several applications proposing construction and operation of pipeline facilities to move natural gas from the Mobile Bay area. In order to efficiently process the applications already on file, as well as those to be filed, the Commission established a deadline of December 30, 1988 for the submission of applications or amendments for projects requiring certification no later than the end of 1990. Applications filed or amended after December 30, 1988, were to be considered applications for post-1990 certification. In response to this notice, the FERC received a number of applications for a Certificate of Public Convenience and Necessity for construction of natural gas pipelines and associated facilities. These projects are described below.

The potential environmental impacts for Southern Natural Gas Company's proposal in Docket No. CP89–517–000 and Gateway Pipeline Company's (Gateway) optional certificate proposal in Docket No. CP89–471–000 will be addressed in separate environmental documents. Since Gateway's conventional section 7(c) application filed in Docket No. CP88–393–000 is for the same facilities as its optional certificate proposal, the environmental analysis will not be duplicated in this EIS. If necessary, that analysis will be incorporated into this EIS by reference.

In addition, Florida Gas Transmission Company, Southern Natural Gas Company, and Tennessee Gas Pipeline Company filed joint application in Docket No. CP89–464–000 which indicated a preference for that application over the applications filed separately in Docket Nos. CP87–415–002, CP88–437–000, and CP89–513–000. The non-preferred applications will, therefore, not be addressed at this time. However, discussions of alternatives and conclusions in the comprehensive EIS may include the routes identified in these applications.

A comprehensive EIS was selected as the best means of evaluating the environmental impact of the remainder of the applications because of the commonality of many resource issues and the similarity of routes, and hence, affected jurisdictions, and the potential for cumulative impact from these projects. The inclusion of these projects into a single EIS does not in any way represent a decision or opinion by either the Commission or its staff that these projects are competitive.

Project Descriptions

Each of the projects to be included in the EIS is described briefly as follows:[1]

Texas Eastern Transmission Corporation (Texas Eastern)

[Docket No. CP88–474–000]

Offshore Only

Texas Eastern proposes to construct a 13.0-mile, 24 inch-diameter pipeline from the end of its existing 24-inch-diameter pipeline in Main Pass Block 165 to a termination point at Viosca Knoll Block 203. A 0.3-mile, 16-inch-diameter pipeline extension from the termination point of the proposed 13.0-mile, 24 inch-diameter pipeline to the Block 203 production platform is also proposed. This pipeline extension would transport 70 MMcfd of natural gas to Texas Eastern's Main Pass/Chandeleur offshore pipeline system and then to onshore facilities in Louisiana.

Jubilee Pipeline Company (Jubilee)

[Docket No. CP88–646–000]

Offshore and Onshore

Jubilee proposes to construct an offshore pipeline system to transport 315 MMcfd of gas from various production platforms in the offshore blocks of Mobile Bay and Viosca Knoll, through Alabama Tract 94 to onshore interconnections with the existing Transcontinental Gas Pipe Line Corporation pipeline in Mobile County, Alabama. Proposed facilities consist of: 35.4 miles of 24-inch-diameter pipeline; 10.1 miles of 20-inch-diameter pipeline; 25.9 miles of 16-inch-diameter pipeline; 7.8 miles of 12-inch-diameter pipeline; 2.4 miles of 8-inch-diameter pipeline; a 6,000 horsepower onshore compressor station with separation/dehydration facilities; and metering facilities.

Florida Gas Transmission Company (FGT), Southern Natural Gas Company (Southern) and Tennessee Gas Pipeline Company (Tennessee) [Docket No. CP89–464–000]

Onshore Only

FGT, Southern, and Tennessee have jointly filed an application in which Southern and Tennessee propose to construct a total of approximately 51.9 miles of 36-inch-diameter pipeline and related facilities extending from the tailgates of the proposed Jubilee Compressor Station and dehydration plant and Mobil Oil Exploration and Producing Southeast, Inc.'s (MOEPSI) gas treatment plant and a 0.6-mile, 36-inch-diameter pipeline from the planned Exxon Corporation (Exxon) gas treatment facility, to points on FGT's 24- and 30-inch-diameter mainlines, all in Mobile County, Alabama. In addition, the proposed system would also connect to Shell Offshore, Inc.'s (Shell) planned gas treatment plant; however, no additional pipeline facilities are anticipated or proposed herein to connect to the Shell facility. Metering facilities are to be located at the proposed interconnection with FGT's system and at the tailgates of each of the existing or planned treatment plants; however, Jubilee has proposed to construct the metering facility at its dehydration plant.

The proposed facilities would receive 900 MMcfd of sales gas from the treatment facilities, then redeliver 300 MMcfd through FGT's system to a proposed interconnection with the Tennessee mainline at Carnes, Mississippi. This interconnection would not require any modifications to existing Tennessee systems other than a metering station and associated piping. In addition, Southern proposes to construct 2.6 miles of 24-inch-diameter pipeline, taps, and metering facilities from the proposed interconnection facility at FGT's pipeline to its existing Franklinton Compressor Station in Washington Parish, Louisiana. The proposed pipeline would be used to transport up to 300 MMcfd of gas. No added compression is planned; however, modifications to FGT's Compressor Station 10 in Perry County, Mississippi and Southern's Franklinton Compressor Station would be required.

Texas Eastern Transmission Corporation (Texas Eastern) and ANR Pipeline Company (ANR)

[Docket No. CP89–511–000]

Onshore Only

Texas Eastern and ANR have jointly filed an application to construct, in two phases, approximately 203.7 miles of 30-inch-diameter pipeline extending from the existing and future Mobile Bay gas treatment facilities in Mobile County, Alabama, to Texas Eastern's Kosciusco Compressor Station in Attala County, Mississippi. Up to 11,000 horsepower of compression, as well as metering facilities, would be located at the beginning of the pipeline near Exxon's planned gas treatment plant, and a second 11,000-horsepower compressor station would be located near the midpoint of the 30-inch-diameter pipeline in Wayne County, Mississippi. Metering facilities at Kosciusco Station and at a proposed interconnection facility between the ANR and Texas Eastern mainlines in West Carroll Parish, Louisiana, would also be constructed. The proposed pipeline would receive up to 600 MMcfd from the Mobile Bay gas treatment facilites, then deliver 400 MMcfd to Texas Eastern at its Kosciusco Station and 200 MMcfd to ANR through Texas Eastern's system either at its Rayne lateral in St. Landry Parish, Louisiana, or at the proposed West Carroll interconnection.

Texas Eastern Transmission Corporation (Texas Eastern)

[Docket No. CP89–512–000]

Offshore and onshore

Texas Eastern proposes to construct a pipeline system extending from the existing and future Mobile Bay gas treatment facilities in Mobile County, Alabama, to the applicant's proposed 24-inch-diameter pipeline (see discussion of Docket No. CP88–474–000 above.) The pipeline would be constructed in three main segments: a 55-mile, 24-inch-diameter pipeline extending from the future Exxon gas treatment plant in Mobile County, Alabama, offshore to a production platform in Viosca Knoll Block 203; a 9-mile, 12-inch-diameter pipeline lateral from the proposed 24-mile, 12-inch pipeline lateral from the proposed 24-inch-diameter pipeline in Mobile Block 867 to Mobile Block 821; and an 11.2-mile, 24-inch-diameter loop of the existing 16-inch-diameter 40–B–3 pipeline in Texas Eastern's Main Pass/Chandeleur offshore pipeline system. At the tailgate connection to the future Exxon treatment plant, a compression facility of up to 4,000 horsepower and a metering facility would be constructed to deliver up to 287 MMcfd of gas.

Chandeleur Pipe Line Company (Chandeleur)

[Docket No. CP89–518–000]

Offshore and Onshore

Chandeleur proposes to construct a total of 37.0 miles of 20-inch-diameter offshore pipeline in the following two segments: a 7.4-mile, 20-inch-diameter pipeline extension from the end of Chandeleur's existing 12-inch-diameter pipeline at Mobile Block 861 to the platform in Mobile Block 907; and a 29.6-mile, 20-inch-diameter pipeline extension from the Block 907 termination to the platform in Mobile Block 861. The proposed pipeline would allow Chandeleur to transport 75 MMcfd of gas to an existing mainline interconnect, and from there to onshore facilities. A proposed dehydration plant would be constructed onshore, near the Chevron refinery in Pascagoula, Mississippi.

Transcontinental Gas Pipe Line Corporation (Transco)

[Docket No. CP89–522–000]

Offshore and Onshore

Transco proposes to construct, in three phases, 75.8 miles of 20- and 24-inch-diameter pipeline in the following three segments: an 18-mile, 24-inch-diameter pipeline extending from an onshore connection with Transco's existing 30-inch-diameter pipeline in Mobile County, Alabama, to an offshore junction platform in Mobile Block 109; a 27.1-mile, 20-inch-diameter pipeline extending from the Block 109 junction platform to a junction platform in Viosca Knoll Block 206; and a 30.7-mile, 20-inch-diameter pipeline from the Block 206 junction platform to a junction platform in Main Pass East Addition Block 249. Each of the three proposed junction platforms would contain sweet gas separation and dehydration facilities and would provide connection points for producer-owned gathering lines from their various production platforms. Phases II and III of this project would result in the installation of compression facilities totaling 12,200 horsepower at the southern end of the 24-inch-diameter onshore pipeline for the delivery of 515 MMcfd of sales gas to Transco's existing 30-inch-diameter pipeline.

Transcontinental Gas Pipe Line Corporation (Transco)

[Docket No. CP89–523–000]

Onshore Only

Transco proposes to construct 2.58 miles of 24-inch-diameter pipeline in Mobile County, Alabama from the tailgate of the planned Exxon gas treatment plant to the tailgate of the MOEPSI plant where it would connect with Transco's existing 124-mile, 30-inch-diameter pipeline, which is currently being operated under section 311 of the Natural Gas Policy Act. Transco requests authority to operate this pipeline under Section 7(c) of the Natural Gas Act. An additional 8,500 horsepower of compression would be added to the onshore compressor station proposed in Docket No. CP89–522–000. The existing pipeline would receive 300 MMcfd through metering facilities near the tailgate of the MOEPSI gas treatment plant and would transport the sales gas to Transco's mainline near Butler, Alabama.

Notice of Intent

Notice is hereby given that the FERC staff has determined that approval of the proposed Mobile Bay pipeline projects included in this notice would constitute a major Federal action significantly affecting the quality of the human environment. Therefore, pursuant to § 380.6 (a)(3) of the Commission's Rules of Practice and Procedure, 18 CFR 380.6 (a)(3), an EIS will be prepared. All the projects are being included for the reasons stated in the introduction of this notice.

The FERC will be the lead Federal Agency and will produce an EIS satisfying the requirements of the National Environmental Policy Act.

Outline of Current Environmental Issues

The EIS will address the environmental concerns that have been and will be identified by the FERC staff, intervenors, other Federal and state agencies, and individuals who respond to notices on this project. These issues include, but are not limited to:

Topography and soils
- Erosion control.
- Inpact on crop production and farmland.

Geology and Hydrology
- Impact on existing water flow patterns in streams and wetlands.
- Impact on water table.
- Effects of construction on potable water supplies and surface water quality.

Wetlands and Vegetation
- Effects of construction on wetlands.
- Revegetation and right-of-way management.
- Loss of plant species of special concern.

Fish and Wildlife
- Impact on fisheries.
- Impact on threatened and endangered species.
- Impact on bird rookeries and other specialized habitat.

Land Use, Socioeconomics and Aesthetics
- Impact on homes and population centers.
- Impact on recreation, public lands, and natural areas.
- Appearance of right-of-way.
- Impact on scenic areas.
- Impact on designated Federal, state, and local land use areas (parks, recreation areas, etc.)
- Conflicts with existing or potential land uses.

Cultural Resources

[1] An appendix to this notice includes a figure showing the general location of the proposed facilities, a table listing the proposed facilities, and proposed construction procedures. This appendix is not being printed in the **Federal Register**, but has been mailed to all parties and all agencies and persons on the mailing list for this notice. Copies are also available from the Commission's Public Reference Branch at 825 North Capitol Street, N.E., Room 2200, Washington, DC 20426, telephone (202) 357–8115.

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- Effect on properties listed on or eligible for inclusion on the National Register of Historic Places.

Air Quality
- Effect of compressor station operation on air quality.

Noise
- Effect of compressor station operation on nearby noise-sensitive receptors.

Alternatives
- Sites.
- System designs.
- Route modifications.
- Project consolidation.
- Mitigating measures.

After comments from this notice are received and analyzed, and the various issues have been investigated, the FERC staff will publish a draft EIS (DEIS) entitled "The Mobile Bay Pipeline Projects."

Description of an Alternative Route

The FERC staff has currently identified an alternative route for the proposed Texas Eastern/ANR project (Docket No. CP89-511-000) and certain components of the other onshore routes for the proposed Mobile Bay Pipeline Projects. This alternate route would follow the existing Transco pipeline right-of-way for approximately 124 miles from the vicinity of the MOEPSI gas treatment plant northward to the vicinity of Butler, Alabama in Choctaw County. This alternate route would then follow a new right-of-way for approximately 102 miles to the northwest to Texas Eastern's existing Kosciusco Compressor Station in Attala County, Mississippi.

Cooperating Agencies

The following Federal agencies are requested to indicate whether they wish to be cooperating agencies in the preparation of the DEIS:

Advisory Council on Historic Preservation, Department of Defense:
U.S. Army Corps of Engineers,
Department of the Interior:
Minerals Management Service,
Department of Transportation:
U.S. Coast Guard

These or any other Federal or state agencies desiring cooperating agency status should send a request describing how they would like to be involved to: Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

The request should reference Docket Nos. CP88-474-000, CP88-646-000, CP89-464-000, CP89-511-000, CP89-512-000, CP89-516-000, CP89-522-000 and CP89-523-000 and should be received by February 6, 1990. Additional information, including detailed maps of limited areas of the proposed routes, may be obtained from the FERC project manager identified at the end of this notice.

Cooperating agencies are encouraged to participate in the scoping process and to provide information to the lead agency.

Comment and Scoping Procedures

A copy of this notice has been distributed to Federal, state, and local agencies, public interest groups, libraries, newspapers, parties in this proceeding, and other interested individuals. The distributed copy includes an appendix containing a figure showing the general location of the proposed facilities, a table which summarizes project information, and a description of the proposed construction procedures. In addition, detailed maps of the proposed routes will be provided to administrative officials of each affected county.

Public scoping meetings will be held in January at the following locations:

Date	Time	Location
January 17, 1990.	7:00 p.m.	Holiday Inn North, 850 S. Beltline Hwy., Mobile, Alabama.
January 18, 1990.	7:00 p.m.	Holiday Inn South, Highway 45, Meridian, Mississippi.

Interested groups and individuals are encouraged to attend and present oral comments on the environmental concerns which they believe should be addressed in the DEIS. Persons who would like to make oral presentations at the meeting should contact the FERC project manager identified at the end of this notice to have their names placed on the speakers list. Priority will be given to those persons representing groups. A second speakers list will be available at the public meeting. A transcript of the meeting will be made and comments will be used to help determine the scope of the DEIS.

Written comments are also welcome. Comments should help identify significant issues or concerns related to the proposed action including potential alternatives. All comments on specific environmental issues should contain supporting documentation and a clearly stated rationale.

Written comments must be filed on or before February 6, 1990, and should reference Docket Nos. CP88-474-000, CP88-646-000, CP89-464-000, CP89-511-000, CP89-512-000, CP89-516-000, CP89-522-000 and CP89-523-000. Comments should be addressed to: Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

A copy of the comments should also be sent to the FERC project manager identified below.

The DEIS will be mailed to Federal, state, and local agencies, public interest groups, interested individuals, newspapers, libraries, and parties in this proceeding. Any person may file a motion to intervene on the basis of the staff's DEIS [18 CFR 380.10(a) and 385.214]. A 45-day comment period will be allotted for review and comment on the DEIS. After these comments are reviewed, any significant new issues identified will be investigated, and modifications will be made to the DEIS as appropriate. A final EIS (FEIS) will then be published and distributed by the staff. The FEIS will contain the FERC staff's responses to comments received on the DEIS.

Additional information about the proposal is available from Mr. Philip Veres, Project Manager, Environmental Policy and Project Analysis Branch, Office of Pipeline and Producer Regulation, Room 7312, 825 North Capitol Street NE., Washington, DC 20426, telephone (202) 357-8073 or FTS 357-8073.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29832 Filed 12-21-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-759-002]

Transcontinental Gas Pipe Line Corp; Sale of Natural Gas

December 14, 1989.

Take notice that on November 30, 1989, Transcontinental Gas Pipe Line Corporation (Transco), 2800 Post Oak Blvd., Houston, Texas, 77251, submitted the following information regarding the sale of natural gas to be made to an affiliate under Transco's Rate Schedule IS, pursuant to the authorization granted by order in Docket Nos. CP89-759-000, *et al.*, issued March 24, 1989 (46 FERC ¶ 61,351).

(1) Name of Buyer: Texas Gas Transmission Corporation (Texas Gas).

(2) Location of Buyer: Owensboro, Kentucky.

(3) Affiliation between Transco and Buyer: both Transco and Texas Gas are subsidiaries of Transco Energy Company.

(4) Nature of the Transaction: purchase for system supply.

(5) Term of Sale: December 30, 1989, to March 15, 1990.

(6) Estimated Maximum Daily Quantity: 200,000 MMBtu Estimated Total Quantity: 3 Bcf.

(7) Rates: Maximum: 100% load factor rate plus adjustments; currently $2.04/MMBtu.

Minimum: current average spot price index for Gulf Coast region gas (currently $1.72/MMBtu) plus any upstream pipeline commodity charges incurred to provide the service.

Rate to be Charged During the Billing Period: Maximum rate, provided, however, that it not be more than Texas Eastern Transmission Corporation's Zone A commodity charge nor less than the minimum rate.

Any interested party desiring to make any protest with reference to this sale of natural gas should file with the Federal Energy Regulatory Commission, Washington, DC 20426, within 30 days after issuance of the instant notice by the Commission, pursuant to the order of March 24, 1989. If no protest is filed within that time or the Commission denies the protest, the proposed sale may continue until the underlying contract expires. If a protest is filed, Transco may sell gas for 120 days from the date of commencement of service or until a termination order is issued, whichever is earlier.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29729 Filed 12-21-89; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

High Energy Physics Advisory Panel; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: High Energy Physics Advisory Panel (HEPAP).

Date and Time: Friday, January 12, 1990, 8:30 a.m.-3:00 p.m.

Place: Room 1E-245, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Contact: Dr. Enloe T. Ritter, Executive Secretary, High Energy Physics Advisory Panel, U.S. Department of Energy, ER-221, GTN, Washington, DC 20545; Telephone: (301 353-4829.

Purpose of Panel: To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

Tentative Agenda:

Friday, January 12, 1990

- Presentation and discussion of the report of the HEPAP Subpanel on SSC Physics Research
- Reports on and discussions of topics of general interest in high energy physics
- Public Comment

Public Participation: The meeting is open to the public. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to make oral statements pertaining to agenda items should contact the Executive Secretary at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Minutes: Available for public review and copying at the Public Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on December 19, 1989.

J. Robert Franklin,

Deputy Advisory Committee, Management Officer.

[FR Doc. 89-29787 Filed 12-21-89; 8:45 a.m.]

BILLING CODE 6450-01-M

Office of Fossil Energy

[FE Docket No. 89-79-NG]

Chevron Natural Gas Services, Inc.; Application To Extend Blanket Authorization Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for extension of blanket authorization to import natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on November 13, 1989, of an application filed by Chevron Natural Gas Services, Inc. (CNGS), requesting that the blanket authority previously granted in DOE/ERA Opinion and Order No. 186 (Order 186), issued August 4, 1987 (ERA Docket No. 87-23-NG), be extended for two years beginning on January 11, 1990, the expiration of its current import authorization, through the period ending January 11, 1992. Under the extension requested, CNGS would be authorized to import up to a maximum of 73 Bcf of Canadian natural gas over a two-year period.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.s.t., January 22, 1990.

ADDRESS: Office of Fuels Programs, Office of Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-056, FE-50, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Allyson C. Reilly, Office of Fuels Programs, Office of Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-094, FE-53, 1000 Independence Avenue SW., Washington, DC 20585; (202) 586-9478.

Michael T. Skinker, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, GC-32, 1000 Independence Avenue SW., Washington, DC 20585; (202) 586-6667.

SUPPLEMENTARY INFORMATION: CNGS, a Delaware corporation with its principal place of business in Houston, Texas, is a marketer of natural gas in the United States. CNGS requests authority to continue to import competitively priced natural gas from reliable Canadian producers for sale to purchasers in the United States on a short-term or spot basis. CNGS proposes to import natural gas either for its own account or acting as agent for United States purchasers and/or Canadian suppliers. CNGS intends to use existing facilities for the transportation of the gas. CNGS also would continue to file reports with FE within 30 days after the end of each calendar quarter giving the details of the individual transactions. CNGS' prior quarterly reports filed with FE indicate that approximately 640 MMcf of natural gas was imported under Order 186 through September 30, 1989.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue

of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement will be

understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided,

5, 1990, Contact: Mr. Juan O. Cruz (809) 766-5600.

EIS No. 890350, Draft, COE, WY,

256-5764. Published FR 11-24-89—Incorrect phone number.

Counties, NY and Addison and Chittenden Counties, VT.

preparation of a Supplemental Draft EIS is necessary.

Alternatives: Alternatives to be

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of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement will be competitive and thus in the public interest. Parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The DOE has determined that compliance with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et seq.*, can be accomplished by means of a categorical exclusion. On March 27, 1989, the DOE published in the **Federal Register** (54 FR 12474) a notice of amendments to its guidelines for compliance with NEPA. In that notice, the DOE added to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that the DOE's action is not a major Federal action under NEPA. Unless the DOE receives comments indicating that the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts. If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of CNGS' application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC., December 6, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89-29786 Filed 12-21-89; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3699-7

Environmental Impact Statements; Availability

Responsible Agency

Office of Federal Activities, General Information, (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements Filed December 11, 1989 Through December 15, 1989 Pursuant to 40 CFR 1506.9

EIS No. 890349, Draft, FHW, PR, PR-3 Relocation, PR30 (Humacao South bypass Extension) to PR-15 at Guayama, Funding, PR, Due: February 5, 1990, Contact: Mr. Juan O. Cruz (809) 766-5600.

EIS No. 890350, Draft, COE, WY, Jackson Hole Flood Protection/Levee Maintenance Plan, Operation and Maintenance (O&M), Snake and Gros Ventre Rivers, Funding, Teton County, WY, Due: February 6, 1990, Contact: Wiliam F. MacDonald (509) 522-6625.

EIS No. 890351, Final, BLM, WY, Amoco Carbon Dioxide Projects, Construction and Operation, Plan Approval, Big Horn, Carbon, Fremont, Hot Springs, Lincoln, Natrona, Park, Washakie and Sweetwater Counties, WY, Due: January 29, 1990, Contact: Glen Nebeker (307) 261-7600.

EIS No. 890352, Final, AFS, CA, Doe Ridge Golf Course Development and Operation, Special Use Permit, Inyo National Forest, Mono County, CA, Due: January 22, 1990, Contact: Dean McAlister (619) 934-2505.

EIS No. 890353, Final, SCS, NV, East Walker Watershed Project, Water Management Improvement and Sediment Deposition Reduction, Funding and Implementation, Lyon County, NV, Due: January 22, 1990, Contact: William Goddard (702) 784-5863.

EIS No. 890354, DSuppl, NPS, CA, Lassen Volcanic National Park General Management Plan, Traditional Visitor Use, Manzanita Lake Area, Implementation, Butte, Plumas, Lassen Tehama and Shasta Counties, CA, Due: February 23, 1989, Contact: Gilbert E. Blinn, (916) 595-4444.

Amended Notices

EIS No. 890210, Draft, NPS, FL, Big Cypress National Preserve, General Management Plan, Implementation, Collier, Dade, and Monroe Counties, FL, Due: March 1, 1990, Contact: Fred Fagergren (813) 695-2000. Published FR 08-11-89—Review period extended.

EIS No. 890266, DSuppl, USA, WA, Yakima Firing Center Expansion of Military Training Center, Land Acquisition, Possible Changes in the Force Structure of the 9th Infantry Division, Fort Lewis Military Installation, Yakima and Kittitas Counties, WA, Due: December 27, 1989, Contact: Gary Stedman (206) 967-5337. Published FR—9-29-89—Review period extended.

EIS No. 890330, Draft, UAF, CA, Norton Air Force Base (AFB) Closure, 63rd Military Airlift Wing, Relocation to March AFB, Implementation, San Bernardino County, CA, Due: January 8, 1990, Contact: Patricia Calliott (618) 256-5764. Published FR 11-24-89—Incorrect phone number.

Dated: December 18, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89-29801 Filed 12-21-89; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3698-8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared December 4, 1989 through December 8, 1989 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 7, 1989 (54 FR 15006).

Draft EISs

ERP No. D-AFS-K67009-NV, Rating EO2, South Twin Lodge Mining and Development Proposal, Approval of Plan of Operations, Arc Dome Recommended Wilderness Area, Toiyabe Mountains, Toiyabe National Forest, Nye County, NV.

Summary

EPA expressed environmental objections due to potential project impacts to groundwater and surface water quality and to riparian, wetland, and aquatic habitats. EPA suggested that this document be revised to include additional information, data and analysis of potential water quality and wetland impacts.

ERP No. D-FHW-K40174-CA, Rating LO, West Los Angeles Veloway Project, connecting UCLA Campus with a portion of West Los Angeles, Construction, Los Angeles County, CA.

Summary

EPA has reviewed this document and has no objections to the project as described.

ERP No. D-SFW-B82009-00, Rating EO2, Lake Champlain Sea Lamprey Control Temporary Program, Use of Lampricides and an Assessment of Effects on Certain Fish Populations and Sport Fisheries, Implementation, Clinton, Essex and Washington Counties, NY and Addison and Chittenden Counties, VT.

Summary

EPA suggests that non-chemical methods to control the lamprey population be more fully assessed in the alternatives analyses. EPA also recommends that the U.S. Fish and Wildlife Service review fish stocking programs in Lake Champlain. Finally, potential cumulative and secondary impacts to Lake Champlain are not sufficiently analyzed.

Dated: December 19, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89-29802 Filed 12-21-89; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3697-5]

Designation of the Atchafalaya Ocean Dredged Material Disposal Site (ODMDS) Off Coastal Louisiana; Intent To Prepare a Supplemental Environmental Impact Statement (EIS)

AGENCY: U.S. Environmental Protection Agency (EPA), Region 6.

ACTION: Notice of intent to prepare a supplemental draft EIS on the designation of the Atchafalaya ODMDS off coastal Louisiana.

PURPOSE: In accordance with section 102 of the Marine Protection, Research and Sanctuaries Act of 1972 and 40 CFR 228 (Criteria for the Management of Disposal Sites for Ocean Dumping), EPA will prepare a Supplemental Draft EIS on the designation of the Atchafalaya ODMDS located off coastal Louisiana.

FOR FURTHER INFORMATION CONTACT: Mr. Norm Thomas (6E-F), Chief, Federal Activities Branch, EPA, 1445 Ross Avenue, Dallas, Texas 75202-2733, Telephone: (Commerical) (214) 655-2260 or (FTS) 255-2260.

SUMMARY: The Corps of Engineers (COE), New Orleans District, has responsibility for maintaning the Atchafalaya River Channel to its authorized depth. The COE has requested EPA to designate an ocean disposal site suitable for the disposal of material dredged from the channel. The proposed Supplemental Draft EIS will provide information regarding the environmental impacts from continued use of the Atchafalaya ODMDS. EPA prepared a Draft EIS for the Atchafalaya ODMDS Designation in November 1983. However, in order to correct several deficiencies and utilize more recent information, we have determined that preparation of a Supplemental Draft EIS is necessary.

Alternatives: Alternatives to be considered in the Supplemental Draft EIS include no action, upland disposal, beneficial use options and ocean disposal.

Scoping: A scoping meeting will not be held. Scoping with affected Federal, State and local agencies and with interested parties is being accomplished by correspondence.

Estimated date of release: The Draft EIS should be available in March 1990.

Responsible official: Mr. Robert E. Layton Jr., P.E., Regional Administrator of Region 6.

Dated: December 13, 1989.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 89-29800 Filed 12-21-89; 8:45 a.m.]

BILLING CODE 6560-50-M

[FRL-3699-6]

Open Meeting for Policy Review Board, Gulf of Mexico Program

DATE: January 12, 1990.

PLACE: University of Houston (Clearlake Campus), Houston, Texas

Agenda Items

- Appointments and reappointments of Federal and State Technical Steering Committee subcommittee co-chairs.
- Briefings with key congressional staff involved in coastal legislative proposals.
- Reports from the Technical Steering Committee including a list of proposed demonstration projects for the program.
- Gulf of Mexico Program annual report.
- A report from the Citizens Advisory Committee which includes a resolution that no relaxation of present restrictions and regulations take place as they relate to the offshore and inshore minerals industry and their discharge of brines, mud, and cuttings in the Gulf.

CONTACT: William R. Whitson, Assistant Director for Operations, Gulf of Mexico Program, Building 1103, Room 202, John C. Stennis Space Center, Stennis Space Center, MS 39529, (601) 688-3726.

Al J. Smith, Jr.,

Deputy Director, Water Management Division.

[FR Doc. 89-29799 Filed 12-21-89; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

[GEN Docket No. 89-363; DA 89-1559]

Chicago Metropolitan Area Public Safety Plan

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The FCC is accepting the Chicago Metropolitan Area's (Region 54's) plan for public safety. By accepting this plan, the FCC enables the licensing of the 821–824/866–869 MHz spectrum for public safety to begin in that Region. The Chicago Metropolitan Area is the fourth of the 55 regions in the National Plan to be accepted.

EFFECTIVE DATE: December 13, 1989.

FOR FURTHER INFORMATION CONTACT: Maureen Cesaitis, Private Radio Bureau, Policy and Planning Branch, Washington, DC 20554, (202) 632–6497.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order, adopted December 5, 1989, released December 13, 1989, accepting the Chicago Metropolitan Area's Plan for Public Safety. The full text of this Commission action is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of the Order may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Order

The Acting Chief, Private Radio Bureau and the Chief Engineer have accepted the regional public safety plan for the Chicago Metropolitan Area, Region 54. The Region 54 plan is the fourth public safety plan the Commission has accepted and it represents the culmination of the efforts of the many public safety organizations that participated in its development.

The Bureaus recognized the effort that went into preparing the Region 54 Plan and commended the Planning Committee for its work. They stated that Region 54 presented a challenge in terms of its population along the southern tip of Lake Michigan and its multi-state composition. They noted that Region 54, which includes 43 counties in four different States, designated primary and secondary zones within its borders to account for the disparity between urban and rural areas, and placed much stricter requirements on the primary zones. The Region 54 Plan represents a careful balance of the public safety and special emergency mobile communications needs throughout the area and will result in efficient use of the 800 MHz Public Safety radio spectrum.

In 1987, the Commission established policies and rules for a National Plan for public safety services to ensure that the new six megahertz of public safety spectrum (821–824/866–869 MHz) be used effectively and efficiently for important public safety functions. The Commission established 55 regions and instructed each region to develop a plan for use of the newly allocated spectrum to meet current and future mobile communications requirements of the public safety and special emergency entities operating in the area. After each plan is completed and approved by its regional planning committee, it must be submitted to the Chief, Private Radio Bureau, and the Chief Engineer. After the two Bureau Chiefs have formally accepted a plan, the individual public safety entities can begin applying for licensing in the new 800 MHz spectrum.

The Bureaus noted that the plan had been coordinated with its four adjacent regions, Wisconsin (45), Illinois (13), Indiana (14) and Michigan (21).

The individual public safety entities in Region 54 may now begin applying for licensing in the 821–824/866–869 MHz bands.

Ordering Clauses

It is ordered that the Chicago Metropolitan Area Plan for Public Safety *is accepted.*

List of Subjects in the Public Safety Plan

Public safety, Special emergency, Trunking, Land mobile.

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

[FR Doc. 89-29798 Filed 12-21-89; 8:45 am]

BILLING CODE 6712-01-M

[GEN Docket No. 89-452; DA 89-1589]

Colorado Region Public Safety Plan

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The FCC is accepting the Colorado Areas's (Region 7's) plan for public safety. By accepting this plan, the FCC enables the licensing of the 821–824/866–869 MHz spectrum for public safety to begin.

EFFECTIVE DATE: December 18, 1989.

FOR FURTHER INFORMATION CONTACT: Maureen Cesaitis, Private Radio Bureau, Policy and Planning Branch, Washington, DC 20554, (202) 632–6497.

SUPPLEMENTARY INFORMATION:

1. On August 14, 1989, the Colorado Area (Region 7) submitted its public safety plan to the Commission for review. The plan sets forth the guidelines to be followed in allotting spectrum to meet current and future mobile communications requirements of the public safety and special emergency entities operating in its region.

2. The Region 7 plan was placed on Public Notice for comments on October 3, 1989, 54 FR 41500 (Oct. 10, 1989). The Commission received no comments in this proceeding.

3. We have reviewed the plan submitted for Region 7 and find that it conforms with the National Public Safety Plan. The plan includes all the necessary elements specified in the Report and Order in Gen. Docket No. 87–112, 3 FCC Rcd 905 (1987), and satisfactorily provides for the current and projected mobile communications requirements of the public safety and special emergency entities in Colorado.

4. Accordingly, *it is ordered* that the Public Safety Radio Plan for Region 7 is accepted. Furthermore, licensing of the 821–824/866–869 MHz band in Region 7 may commence immediately.

List of Subjects in the Public Safety Plan

Public safety, Special emergency, Trunking, Land mobile.

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

[FR Doc. 89-29799 Filed 12-21-89; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1803]

Petitions for Reconsideration and Application for Review and Petition for Stay in Rulemaking Proceeding

December 14, 1989.

Petitions for reconsideration, application for review and petition for stay have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street NW., Washington, DC, or may be purchased from the Commission's copy contractor International Transcription Service (202–857–3800). Oppositions to these petitions must be filed January 9, 1990. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of section 73.202(b), Table of Allotments, FM Broadcast Stations. (Del Mar, California)
Number of petitions filed: 1

Subject: Amendment of section 73.202(b), Table of Allotments, FM Broadcast Stations. (San Clemente, California)
Number of petitions filed: 1

Subject: Amendment of section 73.202(b), Table of Allotments, FM Broadcast Stations. (Atlus, Oklahoma) (RM-6420)
Number of petitions filed: 1

Subject: Amendment of section 73.202(b), Table of Allotments, FM Broadcast Stations. (Fairbault, Blooming Prairie, Northfield and New Prague, Minnesota) (MM Docket No. 88–259, RM Nos. 5892, 6292, 6463)
Number of petitions filed: 1

Subject: Tariff F.C.C. No. 15 Competitive Pricing Plans—Holiday Rate Plan. (CC Docket No. 88–471)
Number of petitions filed: 1

Subject: Amendment of Parts 2 and 90 of the Commission's Rules to Provide for Stolen Vehicle Recovery Systems. (Gen. Docket No. 88–566, RM-6362)
Number of petitions filed: 2

Subject: Amendment of section 73.202(b), Table of Allotments, FM Broadcast Stations. (Warren Grove, Tuckerton and Manahawkin, New Jersey) (MM Docket No. 89–17, RM Nos. 6543, 6732, 6733)
Number of petitions filed: 1

Subject: Amendment of section 73.202(b), Table of Allotments, FM Broadcast Stations. (Grove City, Pennsylvania and Hubbard, Ohio) (MM Docket No. 89–21, RM Nos. 6566, 6731)
Number of petitions filed: 1

Subject: Amendment of section 73.202(b), Table of Allotments, FM Broadcast Stations. (Llano and Kerrville, Texas) (MM Docket No. 89–34, RM Nos. 6066, 6335)
Number of petitions filed: 1

Subject: Amendment of section 73.202(b), Table of Allotments, FM Broadcast Stations. (Savannah and Cameron, Missouri) (MM Docket No. 89–36, RM Nos. 6561, 6771)
Number of petitions filed: 1

Application for Review

Subject: Amendment of section 73.606(b), Table of Allotments, FM Broadcast Stations. (Montrose and Scranton, Pennsylvania) (MM Docket No. 87–308, RM 5807)
Number of petitions filed: 1

Petition for Stay

Subject: Flexible Allocation of Frequencies in the Domestic Public Land Mobile Service for Paging and other Services. (CC Docket No. 87–120)
Number of petitions filed: 1

Subject: Amendment of section 73.202(b), Table of Allotments, FM Broadcast Stations. (Faribault, Blooming Prairie, Northfield and New Prague, Minnesota) (MM Docket No. 88–259, RM Nos. 5892, 6292, 6463)
Number of petitions filed: 1

Subject: Amendment of parts 2 and 90 of the Commission's Rules to Provide for Stolen Vehicle Recovery Systems. (Gen. Docket No. 88–566, RM-6362)
Number of petitions filed: 1

Subject: Amendment of section § 73.202(b), Table of Allotments, FM Broadcast Stations. (Grove City, Pennsylvania and Hubbard, Ohio) (MM Docket No. 89–21, RM Nos. 6566, 6731)
Number of petitions filed: 1

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-29765 Filed 12-21-89; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

Agency Forms under Review

December 18, 1989.

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulation on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Frederick J. Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3822)

OMB Desk Officer—Gary Waxman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202–395–7340)

Final approval under OMB delegated authority of the implementation of the following report:

Report title: Report on Terms of Credit Card Plans

Agency form number: FR 2572

OMB Docket number: 7100-0239

Frequency: Semiannual

Reporters: Financial institutions

Annual reporting hours: 350

Estimated average hours per response: 1

Estimated number of respondents: 175

Small businesses are not affected.

General description of report:

The Board is authorized to collect the information contained in this report by Section 5 of the Fair Credit and Charge Card Act of 1988 (pub. Law No. 100–583, 102 Stat. 2960). Further, the Board may compel creditors to provide the information contained on this report pursuant to Section 136 of the Truth in Lending Act. (15 U.S.C. 1646(a)).

This semiannual report will collect credit card price and availability information from a sample of financial institutions. The sample of financial institutions will be comprised of credit card plan information from the largest 175 issuers of bank credit cards. Such issuers include commercial banks as well as thrift organizations (savings and loan associations and savings banks). In addition, the report will include any financial institution that notifies the Federal Reserve Banks that they would like to participate. Financial institutions wishing to file the initial January 31, 1990 report, should contact the Federal Reserve Bank located in their district prior to January 1, 1990. This information will be assimilated into a report and made available to Congress and the public on a semiannual basis.

Board of Governors of the Federal Reserve System, December 18, 1989.

William W. Wiles,

Secretary of the Board

[FR Doc. 89-29747 Filed 12-21-89; 8:45 am]

BILLING CODE 6210-01-M

Citicorp; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 25.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the

Exchange Bankshares Corp. of Kansas; Formation of, Acquisition by, or Merger of Bank Holding Companies;

a bank holding company by acquiring 100 percent of the voting shares of Exchange National Bank and Trust

1. *First American Bancshares, Inc.*, Kansas City, Kansas; to become a bank holding company by acquiring 100

National Institutes of Health, Bethesda, MD.

The meeting will be open to the public

Form—0915–0038—The application is needed for students to apply for HEAL loans. Schools use the application to

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The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the applications have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 5, 1990.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Citicorp*, New York, New York; to engage *de novo* in acting as principal, agent, or broker for insurance that is directly related to an extension of credit by the bank holding company or any of its subsidiaries and limited to assuring the repayment of the outstanding balance due on the extension of credit in the event of the involuntary unemployment of the debtor pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 100 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Synovus Financial Corp.*, Columbus, Georgia; to engage *de novo* through its subsidiary, Universal Bank, Columbus, Georgia, in making, acquiring, and servicing credit card loans, and accepting deposits pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 18, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-29746 Filed 12-21-89; 8:45 am]

BILLING CODE 6210-01-M

Exchange Bankshares Corp. of Kansas; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 10, 1990.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Exchange Bankshares Corporation of Kansas*, Atchison, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of Exchange National Bank and Trust Company of Atchison, Kansas, and thereby indirectly acquire Fort National Bank, Easton, Kansas.

In connection with this application, Applicant also proposes to acquire Bankers Exchange Life Insurance Company, Atchison, Kansas, and thereby engage as principal, agent, or broker for credit insurance directly related to extensions of credit by its subsidiary bank and limited to ensuring the repayment of the outstanding balance due on the extensions of credit pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 18, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-29749 Filed 12-21-89; 8:45 a.m.]

BILLING CODE 6210-01-M

First American Bancshares, Inc.; Formations of, Acquisitions by, or Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become bank holding companies or to acquire a bank or bank holding company. The factors that are considered in acting on these applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the applications have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the application or to the offices of the Board of Governors. Any comment on an application or to the offices of the Board of governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding these applications must be received not later than January 5, 1990.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First American Bancshares, Inc.*, Kansas City, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of First American Bank, N.A., Lenexa, Kansas, a *de novo* bank, and to merge with Kansas Bancorporation, Inc., Kansas City, Kansas, and thereby indirectly acquire Home State Bank, Kansas City, Kansas; and Wyandotte Ban Corporation, Kansas City, Kansas, and The Edwardsville Bank, Edwardsville, Kansas, and The Wyandotte Bank, Kansas City, Kansas.

2. *Greeley Bancshares, Inc.*, Greeley, Kansas; to become a bank holding company by acquiring at least 80 percent of the voting shares of Bank of Greeley, Greeley, Kansas.

Board of Governors of the Federal Reserve System, December 18, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-29750 Filed 12-21-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Meeting of the National Deafness and Other Communication Disorders Advisory Board

Pursuant to Pub. L. 92-463, notice is hereby given of the third meeting of the National Deafness and Other Communication Disorders Advisory Board on January 22, 1990. The meeting will take place from 9 a.m. to 4:30 p.m. in Building 31C, Conference Room 9 at the National Institutes of Health, Bethesda, MD.

The meeting will be open to the public and will include reports from Advisory Board subcommittees and a report from the Acting Director of the National Institute on Deafness and Other Communication Disorders (NIDCD). Attendance by the public will be limited to space available.

The Acting Executive Officer, Geoffrey Grant, NIDCD, Building 31, Room 1A03, Bethesda, Maryland 20892, (301) 402-0495, will furnish the meeting agenda, rosters of board members, and substantive program information upon request.

Date: December 15, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-29730 Filed 12-21-89; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following requests have been submitted to OMB since the list was last published on December 8, 1989.

(Call PHS Reports Clearance Officer on 202-245-2100 for copies of package)

1. Health Education Assistance Loan (HEAL) Program—Loan Application Form—0915-0038—The application is needed for students to apply for HEAL loans. Schools use the application to determine a student's eligibility and maximum approvable amount of each loan. Lenders use the application to determine student eligibility and the amount of the installment or disbursement to be given the borrower. Respondents: Individuals or households, businesses or other for profit, non-profit institutions.

	No. of respondents	No. of hours per response	No. of responses per respondent
Reporting:			
Applicant	29,000	32 min	1
School	400	32 min	73
Lenders	42	30 min	690

Estimated Annual Burden..... 45,434 hours

2. The National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners—0915-0126—Data identifying incompetent, unprofessional, and unethical physicians and health practitioners will be shared with licensing boards, professional societies, and selected health care providers. These data will be used to maintain and improve health care and will be obtained from insurers, licensure boards, peer review committees, hospitals and other providers. Respondents: Individuals or households, State or local government, business or other for profit, Federal agencies or employees, non-profit institutions, small business or organizations.

	No. of respondents	No. of hours per response	No. of responses per respondent
Correction of Errors and Omissions—Sec. 60.6(a)	500	15 min	1-4
Revisions to Report Actions—Sec. 60.6(b)	2,625	15 min	1-4
Reporting Medical Malpractice Payments—Sec. 60.7(b)	1,800	30 min	20-30
Licensure Actions by Boards of Medical Examiners—Sec. 60.8(b)	125	30 min	25-40
Adverse Actions on Clinical Privileges—Sec. 60.9(a)(3)	5,000	30 min	1-2
Reporting by Boards to the National Data Base—Sec. 60.9(b)	125	5 min	50-80
Hearings for Health Care Entities Found in Non-compliance—Sec. 60.9(c)	10	480 min	1
Recordkeeping:			
Hospital Requests for Information on Applicants—Sec. 60.10(a)(1)	7,200	5 min	15-20
Hospital Requests for Information on Current Staff—Sec. 6010(a)(2)	6,000	106 min	4-7
Disclosure to Hospitals—Sec. 60.11(a)(1)	50	5 min	1
Disclosure to Individuals—Sec. 60.11(a)(2)	128,000	15 min	1
Disclosure to Licensure Boards—Sec. 60.11(a)(3)	125	5 min	948
Disclosure to Non-hospital Entities for Hiring Purposes—Sec. 60.11(a)(4)	19,000	5 min	4
Disclosure to Attorneys and Others—Sec. 60.11(a)(5)	1,000	15 min	4-5
Disclosure to Health Care Entities for Peer Review—Sec. 60.11(a)(6)	2,500	15 min	1
Disclosure of Aggregate Data to Researchers—Sec. 60.11(a)(7)	100	20 min	1
Procedures for Filing a Dispute—Sec. 60.14(b)	800	80 min	1
Identification and Authorization of Agents	1,440	15 min	1

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Estimated Annual Burden..... 152,339

3. IHS Replication, International Collaborative Study of Oral Health Outcomes (ICS–II)—NEW—IHS will participate in the ICS–II to determine the relative contributions of environmental, delivery system and personal lifestyle factors to the oral health status of Native Americans and to provide policy-makers and researchers information that may be used to improve oral health in the IHS service area. Respondents: Individuals or households.

	No. of respondents	No. of hours per response	No. of responses per respondent
Adult Survey.	600	60 min.	1
School Survey.	333	40 min.	1

Estimated Annual Burden..... 624 hours

4. Additional Standards for Anti-Human Globulin—21 CFR 660 Subpart F—0910–0208—This information collection requirement provides standards for the manufacture of Anti-Human Globulin, a product manufactured from animal sera and used in several critical tests of blood and blood components. There are currently 9 manufacturers of the product and it would be used by several thousand testing laboratories. Respondents: Businesses or other for-profit, Federal agencies or employees, small businesses or organizations; Number of Responses per Respondent: 1; Average Burden per Response: 40 hours; Estimated Annual Burden: 360 hours.

5. A Survey of National Organ Procurement and Tranplantation Network Members and Nonmembers—NEW—HRSA requires an evaluation of the OPTN to comply with Section 375 of the Public Health Service Act and to suggest possible changes to the next contract. A mail survey of the opinions of both OPTN members and nonmembers will be conducted. Respondents: Non-profit institutions, and small businesses or organizations.

	No. of respondents	No. of hours per response	No. of responses per respondent
Members	343	.72 hrs.	1
Nonmembers	50	.25 hrs.	1

Estimated Annual Burden..... 259 hours

OMB Desk Officer: Shannah Koss-McCallum

Written comments and recommendations for the proposed information collections should be sent directly to the OMB Desk Officer designated above at the following address:

OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Dated: December 18, 1989.

James M. Friedman,

Acting Deputy Assistant Secretary for Health (Planning and Evaluation).

[FR Doc. 89–29777 Filed 12–21–89; 8:45 am]

BILLING CODE 4160–17–M

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96–511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the Federal Register on December 1, 1989.

Social Security Administration

(Call Reports Clearance Officer on (301) 965–4149 for copies of package)

1. Application for Benefits Under the Canada-U.S. Social Security Agreement—0960–0371—The information collected on the form SSA–1294 is used by the Social Security Administration to determine an individual's eligibility to Social Security benefits. The affected public consists of people who live in Canada and file for U.S. Social Security benefits.

Number of Respondents: 600.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 150 hours.

2. Record of SSI Inquiry—0960–0140—The information collected on the form SSA–3462 is used by the Social Security Administration to determine an individual's eligibility to supplemental security income payments and to establish a protective filing date, if an application for those payments is later filed. The respondents are persons who inquire about SSI, either for themselves or on behalf of someone else.

Number of Respondents: 571,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 47,583 hours.

OMB Desk Officer: Justin Kopca.

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Dated: December 18, 1989.

Ron Compston,

Social Security Administration, Reports Clearance Officer.

[FR Doc. 89–29758 Filed 12–21–89; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–89–1917; FR–2606–N–51]

Underutilized and Unutilized Federal Buildings and Real Property Determined by HUD To Be Suitable for Use for Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

EFFECTIVE DATE: December 22, 1989.

ADDRESS: For further information, contact James Forsberg, Room 7228, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC (20410; telephone (202) 755–7300; TDD number for the hearing-and speech-impaired (202) 755–5965. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD is publishing this Notice to identify Federal building and real property that HUD has determined are suitable for use for facilities to assist the homeless. The property were identified from information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property.

The Order requires HUD to take certain steps to implement section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C 11411), which sets out a process by which unutilized or underutilized Federal properties may be made available to the homeless. Under section 501(a), HUD is to collect information from Federal landholding agencies about such properties and then to determine, under criteria developed in consultation with the Department of Health and Human Service (HHS) and the Administrator of General Services (GSA), which of those properties are suitable for facilities to assist the homeless. The Order requires HUD to publish, on a weekly basis, a Notice in the **Federal Register** identifying the properties determined as suitable.

The properties identified in this Notice may ultimately be available for use by the homeless, but they are first subject to review by the landholding agencies pursuant to the court's Memorandum of December 14, 1988 and section 501(b) of the McKinney Act. Section 501(b) requires HUD to notify each Federal agency about any property of such agency that has been identified as suitable. Within 30 days from receipt of such notice from HUD, the agency must transmit to HUD: (1) Its intention to declare the property excess to the agency's need or to make the property available on an interim basis for use as facilities to assist the homeless; or (2) a statement of the reasons that the property cannot be declared excess or made available on an interim basis for use as facilities to assist the homeless.

First, if the landholding agency decides that the property cannot be declared excess or made available to the homeless for use on an interim basis the property will not longer be available.

Second, if the landholding agency declares the property excess to the agency's need, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law and the December 12, 1988 Order and December 14, 1988 Memorandum, subject to screening for other Federal use.

Homeless assistance providers interested in any property identified as suitable in this Notice should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, Room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit such written expression of interest within 30 days from the date of this Notice. For complete details concerning the timing and processing of applications, the reader is encouraged to refer to HUD's **Federal Register** Notice on June 23, 1989 (54 FR 26421), as corrected on July 3, 1989 (27975).

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: GSA: James Folliard, Federal Property Resources Services, GSA, 18th and F Street NW., Washington, DC 20405 (202) 535–7067.

Date: December 15, 1989.

Paul Roitman Bardack,

Deputy Assistant Secretary for Program Policy Development and Evaluation.

Suitable Land (by State)

(Number of Properties [ ])

TEXAS

Portion of the Former Ft. Wolters [1]
Parcel 1, Palo Pinto County, Mineral Wells, TX
Landholding Agency: GSA
Location: GSA # 7–GR–TX–548AA (excess)
Comment: 57.785 acres

Suitable Building (by State)

(Number of Properties [ ])

MISSISSIPPI

Yellow Creek Site [28]
Coleman Park Road, Iuka, MS
Landholding Agency: GSA
Location: GSA # 4–Z–MS–522 (excess); Located in a remote area; 15 miles east of Corinth, MS and 9 miles north of Iuka, MS.
Comment: some with utilities; various sizes (pre-eng. metal); possible asbestos

TEXAS

Portion of the Former Fort Wolters [1]
Parker County, Mineral Wells, TX
Landholding Agency: GSA
Location: GSA # 7–GR–TX–548AA (excess)
Comment: one-story wood frame/brick veneer; 2,048 sq ft; utilities unknown; Unsuitable Land (by State)

(Number of Properties [ ])

CALIFORNIA

Nike Site 51, Tract 101E [1]
Milagara Ridge Military Reservation, San Mateo County, CA
Landholding Agency: GSA
Location: GSA # 9–D–CA–723B (excess); Parcel 2; Line of Sight Easement
Reason: Other
Comment: no gov't owned land; easement, missile tracking airspace

TEXAS

Portion of the Former Ft. Wolters [6]
Parcels 2–7; Palo Pinto and Parker Ctys., Mineral Wells, TX
Landholding Agency: GSA
Location: GSA # 7–GR–TX–548AA (excess); 6 parcels
Reason: Floodway

[FR Doc. 89–29724 Filed 12–21–89; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–060–00–5101–YKAK]

Availability of Amoco CO_2 Projects Final Environmental Impact Statement, Wyoming and Montana

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of availability of Amoco CO_2 projects final environmental impact statement, Wyoming and Montana.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Final Environmental Impact Statement (FEIS) for the Amoco CO_2 Projects for public comment. The FEIS, prepared pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA), analyzes the impacts of constructing, operating and abandoning five related projects proposed by Amoco: a new CO_2 source near Fontenelle Reservoir in southwestern Wyoming; transportation of the gas via underground pipeline to four fields, Elk Basin, Little Buffalo Basin, Beaver Creek, and Salt Creek; and injection of the gas for enhanced oil recovery (EOR) purposes. The FEIS also identifies BLM's Preferred Alternative.

DATE: Written comments on the FEIS will be accepted at the Casper District Office until Monday, January 29, 1990.

ADDRESSES: Copies of the FEIS are available from the following BLM offices:

BEST COPY AVAILABLE

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Casper District Office, 1701 East "E" Street, Casper, WY 82601;
Rock Springs District Office, P.O. Box 1869, Rock Springs, WY 82902–1866;
Lander Resource Area Office, P.O. Box 589, Lander, WY 82520;
Rawlins District Office, P.O. Box 670, Rawlins, WY 82301;
Worland District Office, P.O. Box 119, Worland, WY 83401;
Wyoming State Office, P.O. Box 1828, Cheyenne, WY 82003.

FOR FURTHER INFORMATION CONTACT: Glen Nebeker, Bureau of Land Management, Casper District Office, 1701 East "E" Street, Casper, Wyoming 82601, phone (307) 261–7600.

SUPPLEMENTARY INFORMATION: The five proposed projects are located almost entirely within the State of Wyoming, with the exception of a portion of the Elk Basin field which lies in southern Carbon County, Montana.

The proposed five projects covered by the FEIS include:

(1) Development of a natural source of CO_2 located in southwestern Wyoming near Fontenelle Reservoir, which includes drilling ten wells in the Raptor Field, 24 miles of gas-gathering pipelines, and construction of a 150 million standard-cubic-foot-per-day (MMSCFD) gas processing plant; (2) the Elk Basin Project which consists of construction of 178 miles of an 18-inch diameter CO_2 pipeline and construction and operation of a 150 MMSCFD recycle plant located near the Wyoming/Montana border near Powell, Wyoming; (3) the Beaver Creek Project which consists of 44 miles of a 16-inch diameter pipeline to transport the CO_2 from the main trunkline to the proposed 150-MMSCFD recycle plant which is located south of Riverton, Wyoming; (4) the Little Buffalo Basin Project, which consists of construction of a 35-mile, 16-inch diameter pipeline to carry the CO_2 from the main trunkline to a proposed 150-MMSCFD recycle plant which will be located south of Meeteetse, Wyoming; and (5) the Salt Creek Project which consists of construction of 9 miles of a 16-inch pipeline to carry CO_2 to a proposed 150-MMSCFD recycle plant which will be built to process the gas for use in EOR projects.

The FEIS is a complete document and contains an analysis of a new alternative source of CO_2, which was not analyzed in the Draft Environmental Impact Statement (DEIS), as well as corrections to the DEIS and response to letters. A Record of Decision addressing BLM's selected alternative is expected to be released sometime in the Spring of 1990.

Dated: December 13, 1989.

Gerald L. Jessen,
Acting State Director.

[FR Doc. 89-29474 Filed 12-21-89; 8:45 am]
BILLING CODE 4310-22-M

[ID-943-00-4212-13; I-16999]

Order Providing for Opening of Public Land; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Opening order.

SUMMARY: This order opens lands received in a private exchange to the mining and mineral leasing laws, except for oil and gas, which has been reserved by the exchange proponent. The lands were previously opened to surface entry under the public land laws, and continue to be open to such entry subject to valid existing rights, the provisions of existing withdrawals and the requirements of applicable law.

EFFECTIVE DATE: January 19, 1990.

FOR FURTHER INFORMATION CONTACT: William E. Ireland, BLM, Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, (208) 334–1597.

1. In an exchange made under the provisions of Section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, the following described lands have been reconveyed to the United States:

Boise Meridian

T. 7 S., R. 40 E.,
Sec. 34, E½SE¼, SE¼NE¼;
Sec. 35, SW¼NW¼.
T. 8 S., R. 40 E.,
Sec. 3, SE¼NW¼, NE¼SW¼.

The areas described aggregate 240 acres in Caribou County.

2. Subject to valid existing rights, the provisions of existing withdrawals and the requirements of applicable law, the above-described lands shall be at 9:00 a.m. on January 19, 1990, opened to the mining laws and, except for oil and gas, the mineral leasing laws. All valid applications received at or prior to 9:00 a.m. on January 19, 1990, shall be considered simultaneously filed at that time. Those received thereafter shall be considered in the order of filing. Appropriation of the land described in this order under general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by state law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators since Congress has provided for such determinations in local courts.

Dated: December 12, 1989.

William E. Ireland,
Chief, Realty Operations Section.

[FR Doc. 89-29751 Filed 12-21-89; 8:45 am]
BILLING CODE 4310-GG-M

[CA-940-00-5410-ZBJG; CACA 26417]

Conveyance of Mineral Interests in California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of segregation—conveyance of reserved mineral interests.

SUMMARY: The private lands described in this notice will be examined to determine the suitability for conveyance of the reserved mineral interests pursuant to section 209 of the Federal Land Policy and Management Act of October 21, 1976. The mineral interests may be conveyed in whole or in part upon favorable mineral examination.

FOR FURTHER INFORMATION CONTACT: Lavonia Silva, California State Office, BLM, Federal Office Building, 2800 Cottage Way, Room E–2845, Sacramento, California 95825, (916) 978–4820.

Serial Number—CACA 26417

Mount Diablo Meridian

T. 4 S., R. 16 E.,
Sec. 13, SE¼SE¼, SW¼SE¼;
Sec. 24, NE¼NE¼, NW¼NE¼, SE¼NE¼, NE¼SE¼ (fractional);
T. 4 S., R. 17 E.,
Sec. 18, Lots 7 and 8, SE¼SW¼;
Sec. 19, Lots 1 thru 4, Lot 6, E½NW¼, NE¼SW¼.

The area described aggregate 506.32 acres in Mariposa County.

Upon publication of this Notice of Segregation in the **Federal Register** as provided in 43 CFR 2720.1–1(b), the mineral interests owned by the United States in the private lands covered by the application shall be segregated to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate by publication of an opening order in the **Federal Register** specifying the date and time of opening; upon issuance of a potent or other document of conveyance of such mineral interests; or two years from the

date of filing of the application, whichever occurs first.

Dated: December 18, 1989.

Nancy J. Alex,
Chief, Lands Section, Branch of Adjudication and Records.

[FR Doc. 89-29788 Filed 12-21-89; 8:45 am]
BILLING CODE 4310-GG-M

INTERSTATE COMMERCE COMMISSION

Acceptance of Mail Via FAX

AGENCY: Interstate Commerce Commission.

ACTION: Notice.

SUMMARY: Facsimile (FAX) transmissions should be used only for emergency/rush situations or when the Commission requests or requires a filing or other submission on short notice. Unsolicited advertising material will not be accepted. In specified matters relating to docketed proceedings, FAX transmissions will be accepted, but backup written originals with appropriate copies will also be required.

EFFECTIVE DATES: December 22, 1989.

FOR FURTHER INFORMATION CONTACT: Darlene F. Proctor, Office of the Secretary, (202) 275–7999, [TDD for hearing impaired: (202) 275–1721].

SUPPLEMENTARY INFORMATION: The explosive growth of Facsimile (FAX) technology is rapidly changing mail patterns and office-to-office communications. The ICC has experienced both advantages and disadvantages in the use of this technology.

At this time, the Commission's rules require the filing of "an original" and a specified number of copies (see 49 CFR part 1104.3) when submitting pleadings and other documents. The original of correspondence concerning docketed proceedings is also submitted with copies which are used for filing in the Public Docket and for submission to the working office. Still other rules require filings on specified forms which may be carbon-backed and of a certain size and color (for example, BMC–91X, Insurance form).

The Commission may at some future date decide that filings by FAX will be acceptable without backup written "originals." Until then, FAX transmissions should be used only for emergency/rush situations or when the Commission requests or requires a filing or submission on short notice. The originals (and any copies) will continue to be required. Unsolicited advertising material transmitted through the FAX will not be accepted. FAX transmission should not be used as a means of submitting documents relating to matters that are not time sensitive.

Decided: December 8, 1989

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Lamboley, Phillips, and Emmett.

Noreta R. McGee,
Secretary.

[FR Doc. 89-29761 Filed 12-21-89; 8:45 am]
BILLING CODE 7035-01-M

Agricultural Cooperative Notice to the Commission of Intent to Perform Interstate Transportation for Certain Nonmembers

Date: December 19, 1989.

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperative intending to perform nonmember, non-exempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meetings each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, DC 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC.

(1) Tennessee Farmers Cooperative
(2) P.O. Box 3003, LaVergne, TN 37086
(3) P.O. Box 3003, LaVergne, TN 37086
(4) Joe L. Wright, P.O. Box 3003, LaVergne, TN 37086

Noreta R. McGee,
Secretary.

[FR Doc. 89-29760 Filed —89; 8:45 am]
BILLING CODE 7035-01-M

Intent To Engage in Compensated Intercorporate

December 19, 1989.

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office:
Flynn Ready-Mix Concrete Co., East 12th Street Extension, Dubuque, IA 52001.
2. Wholly-owned subsidiaries which will participate in the operations and State(s) of incorporation:
(i) Aggretate Materials Co., Iowa Corporation
(ii) Century Concrete Co., Iowa Corporation

Noreta R. McGee,
Secretary.

[FR Doc. 89-29750 Filed 12-21-89; 8:45 am]
BILLING CODE 7035-01-M

Motor Passenger Carrier or Water Carrier Finance Applications Under 49 U.S.C. 11343–11344

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties of, or acquire control of motor passenger carriers or water carriers pursuant to 49 U.S.C. 11343–11344. The applications are governed by 49 CFR Part 1182, as revised in Pur., Merger & Cont.-Motor Passenger & Water Carriers, 5 I.C.C.2d 786 (1989). The findings for these applications are set forth at 49 CFR 1182.18. Persons wishing to oppose an application must follow the rules under 49 CFR 1182, subpart B. If no one timely opposes the application, this publication automatically will become the final action of the Commission.

MC–F–19552, filed December 14, 1989. Kerrville Bus Company, Inc. and Texas Bus Lines, Inc.—Control—K–T Contract Services, Inc. Applicants' representative: Mike Pavlakis, P.O. Box 646, Carson City, NV 89702. Applicants Kerrville Bus Company, Inc. (Kerrville) (MC–27530), and Texas Bus Lines, Inc. (Texas) (MC–37640), both motor carriers of passengers, seek approval udner 49 U.S.C. 11343 to acquire control, by stock purchase, of K–T Contract Services, Inc. (K–T) (MC–218583), a motor passenger carrier. Kerrville and Texas each will own 50 percent of K–T's stock.

Decided: December 18, 1989.

By the Commission, the Motor Carrier Board.

Noreta R. McGee,
Secretary.

banking statements under 49 CFR 1152.29 must be filed by January 8, 1990.3 Petitions for reconsideration or

lines; and (3) no formal complaint filed

energy impacts, if any, from this abandonment.

(1) Office of the Secretary, Case Control Branch, Interstate Commerce

petition to revoke will not automatically stay the transaction.

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By the Commission, the Motor Carrier Board.

Noreta R. McGee,

Secretary.

[FR Doc. 89-29704 Filed 12-21-89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 332X)]

CSX Transportation, Inc., Abandonment Exemption in Van Buren County, MI

Applicant has filed a notice of exemption under 49 CFR 1152 subpart F—Exempt Abandonments to abandon its 0.62-mile line of railroad between mileposts 15.07 and 15.69, in Hartford, Van Buren County, MI.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employes, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on January 26, 1990 (unless stayed pending reconsideration). Petitions to say that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by January 8, 1990.[3] Petitions for reconsideration or requests for public use conditions under 49 CFR 1152.28 must be filed by January 16, 1990, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by December 29, 1990. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: December 18, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-29763 Filed 12-21-89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-6 (Sub-No. 315X)]

Exemption; Burlington Northern Railroad Co.; Abandonment Exemption in LaSalle County, IL

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 0.41-mile line of railroad between mileposts 97.39 and 97.8, in Streater, LaSalle County, IL.

Applicant has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition is adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on January 21, 1990 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by January 2, 1990.[3] Petitions for reconsideration or requests for public use conditions under 49 CFR 1152.28 must be filed by January 11, 1990, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Sarah J. Whitley, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report with addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by December 27, 1990. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: December 15, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-29660 Filed 12-21-89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-33 (Sub-No. 61X)]

Union Pacific Railroad Co.; Abandonment and Discontinuance of Trackage Rights Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 10903-10904 (1) Union Pacific Railroad Company's discontinuance of trackage rights over a 2.69-mile line of the Southern Pacific Transportation Company; and (2) the Union Pacific Railroad Company's abandonment of the remaining 1.26 miles of the line, in Los Angeles County, CA, subject to standard labor protective conditions and certain conditions related to post-abandonment activities.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on January 23, 1990. Formal expressions of intent to file an offer [1] of financial assistance unde 49 CFR 1152.27(c)(2) must be filed by January 2, 1990, petitions to stay must be filed by January 8, 1990, and petitions for reconsideration must be filed by January 18, 1990.

ADDRESSES: Send pleadings referring to Docket No. AB-33 (Sub-No. 61X), to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Joseph D. Anthofer, 1416 Dodge Street, Omaha, NE 68179.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275-1721.]

Decided: December 15, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Lamboley, Phillips, and Emmett.

Noreta R. McGee,

Secretary.

[FR Doc. 89-29762 Filed 12-21-89; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31568]

Northwest Iowa Gathering Lines, Inc.; Operation Exemption in Osceola County, IA

Northwest Iowa Gathering Lines, Inc. (NIGLI), has filed a notice of exemption for future operation of a 4.7-mile line of railroad it acquired from the Chicago and North Western Transportation Company (CNW) after CNW abandoned the line in Docket No. AB-1 (Sub-No. 223X), Chicago and North Western Transportation Company—Abandonment Exemption—Between Allendorf and Sibley, IA (not printed), served November 18, 1988. The line extends between milepost 252.30, near Allendorf, and milepost 257.0, near Sibley, in Osceola County, IA. NIGLI intends to rail-back the line and operate it in the future when the need arises.

Comments must be filed with the Commission and served on: T. Scott Bannister, Hanson, Bjork & Russell, 1300 Des Moines Building, Des Moines, IA 50309.

The Iowa State Historic Preservation Officer has indicated that no properties listed or eligible for listing in the National Register of Historic Places will be affected by the transaction.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: December 19, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-29693 Filed 12-21-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petition have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 2, 1990.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 2, 1990.

The petitions filed in this case are available for inspection at the Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213.

Signed at Washington, DC, this 11th day of December 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See* Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See* Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

[1] *See* Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C. 2d 164 (1987).

APPENDIX

have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of

Division, Division of Wage Determinations, 200 Constitution

including those noted above, may be found in the Government Printing Office

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APPENDIX

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Ballentine Laboratories, Inc. (Workers)	Boonton, NJ	12/11/89	11/27/89	23,686	Electronic Test Equip.
Boise Cascade (WCIW)	Goldendale, WA	12/11/89	11/29/89	23,687	Lumber & Plywood
Boise Cascade (WCIW)	Yakima, WA	12/11/89	11/29/89	23,688	Lumber & Plywood
Custom Drilling Fluids, Inc. (Company)	Eunice, LA	12/11/89	11/27/89	23,689	Services: Drilling Mud & Chemical used in Drilln Wells
Diebold, Inc. (Workers)	Canton, OH	12/11/89	11/27/89	23,690	Bank Security Products
Dietronic, Inc. (Workers)	Spartanburg, SC	12/11/89	11/28/89	23,691	Men & Women Belts
Elco Dress Co., Inc. (ILGWU)	New Bedford, MA	12/11/89	11/19/89	23,692	Ladies' Dresses
Etonic-Tretorn (Workers)	Auburn, ME	12/11/89	12/1/89	23,693	Casual Sneakers
Evan Picone (ILGWU)	North Bergen, NJ	12/11/89	11/28/89	23,694	Ladies' Sportswear
Evyan Perfumes, Inc. (Workers)	New York, NY	12/11/89	11/25/89	23,695	Perfumes & Colognes
Exide Corp. (UAW)	Logansport, IN	12/11/89	11/30/89	23,696	Lead Acid
Frank Money, Inc. d/b/a West Texas Pipe & Steel (Workers)	Odessa, TX	12/11/89	11/30/89	23,697	Used Oilfield Tubular Goods
Gemoco (Workers)	Houma, LA	12/11/89	11/28/89	23,698	Oilfield Equip.
Home Petroleum Inc. (Workers)	Denver, CO	12/11/89	11/28/89	23,699	Oil & Gas
Home Petroleum Inc. (Workers)	Geary, OK	12/11/89	11/28/89	23,700	Oil & Gas
Home Petroleum Inc. (Workers)	Plaza, ND	12/11/89	11/28/89	23,701	Oil & Gas
Home Petroleum Inc. (Workers)	Rock Springs, WY	12/11/89	11/28/89	23,702	Oil & Gas
Home Petroleum Inc. (Workers)	Houston, TX	12/11/89	11/28/89	23,703	Oil & Gas
Home Petroleum Inc. (Workers)	Gillette, WY	12/11/89	11/28/89	23,704	Oil & Gas
Mercury Marine (Workers)	Stillwater, OK	12/11/89	11/28/89	23,705	Stern Drives & Power Units
Mt. Carmel Fashions (Workers)	Girardville, PA	10/20/89	9/20/89	23,706	Ladies' Blouses
National Semiconductor (Workers)	Tucson AZ	12/11/89	11/28/89	23,707	Integrated Circuits & Hybrid Circuits
Powerex, Inc. (Workers)	Youngwood, PA	12/11/89	11/28/89	23,708	Semiconductors
Powerex, Inc. (Workers)	Auburn, NY	12/11/89	11/28/89	23,709	Semiconductors
Republic Metal Products (Workers)	Hillside, NJ	12/11/89	11/29/89	23,710	Metal Cabinets
Signetics Co. (Workers)	Albuquerque, NM	12/11/89	11/28/89	23,711	Semi-conductor, Circuits, Microprocessors, Etc.
Solray Mfg., Corp (ILGWU)	New York, NY	12/11/89	12/4/89	23,712	Womens' Sweat Tops
TFM Industries, Inc. (Fire Islander) (ACTWU)	Jersey City, NJ	12/11/89	11/26/89	23,713	Ladies' Sportswear
TRU-Stitch (Workers)	Bombay, NY	12/11/89	11/24/89	23,714	Slippers
Wacker Oil, Inc. (Workers)	Midland, TX	12/11/89	12/1/89	23,715	Oil & Gas

[FR Doc. 89-29804 Filed 12-21-89; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-23, 159]

Teleflex Inc., Marine Division, Limerick, PA; Affirmative Determination Regarding Application for Reconsideration

By a letter dated October 2, 1989, Local #644 of the United Auto Workers of America requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers and former workers of Teleflex, Incorporated, Marine Division, Limerick, Pennsylvania. The negative determination was issued on September 6, 1989 and published in the Federal Register on October 3, 1989 (54 FR 40756).

The union questioned the accuracy of the Department's survey and stated that the Limerick facility of Teleflex Inc., has been adversely affected because their domestic competitors import subassemblies and other component parts.

Conclusion

After careful review of the application, I conclude that the claims are of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 8th day of December 1989.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-29781 Filed 12-21-89; 8:45 am]
BILLING CODE 4510-30-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I:

District of Columbia:
DC89-1 (Jan. 6, 1989) ..... p. 77, pp. 82, 84.
Kentucky:
KY89-1 (Jan. 6, 1989) ..... p. 293, p. 294.
KY89-29 (Jan. 6, 1989) ..... p. 370a, pp. 370d, 370m.
Massachusetts:
MA89-1 (Jan. 6, 1989) ..... p. 371, pp. 373-374, and pp. 376-377.
MA89-2 (Jan. 6, 1989) ..... p. 387, pp. 388-391.
MA89-3 (Jan. 6, 1989) ..... p. 401, pp. 402-404.
Maryland:
MD89-1 (Jan. 6, 1989) ..... p. 411, p. 412.
Pennsylvania:
PA89-6 (Jan. 6, 1989) ..... p. 825, pp. 826-827.
Virginia:
VA89-35 (Jan. 6, 1989) ..... p. 1188w, p. 1188x.

Volume II:

Arkansas:
AR89-1 (Jan. 6, 1989) ..... p. 3, p. 4.
AR89-8 (Jan. 6, 1989) ..... p. 20a, p. 20b.
Iowa:
IA89-3 (Jan. 6, 1989) ..... p. 33, pp. 34.
IA89-4 (Jan. 6, 1989) ..... p. 37, p. 38.
IA89-13 (Jan. 6, 1989) ..... p. 67, p. 68.
Illinois:
IL89-8 (Jan. 6, 1989) ..... p. 145, p. 147.
IL89-9 (Jan. 6, 1989) ..... p. 151, pp. 152-154.
Indiana:
IN89-2 (Jan. 6, 1989) ..... p. 257, pp. 261-268, and pp. 271-275.
Ohio:
OH89-2 (Jan. 6, 1989) ..... p. 787, pp. 791, 803, and p. 804.
OH89-29 (Jan. 6, 1989) ..... p. 869, p. 875.
OH89-34 (Jan. 6, 1989) ..... p. 912a, p. 912b.

Volume III:

California:
CA89-2 (Jan. 6, 1989) ..... p. 43, pp. 43-44, and pp. 46-54f.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 15th Day of December 1989.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 89-29848 Filed 12-21-89; 8:45 am]
BILLING CODE 4510-27-M

Mine Safety and Health Administration

[Docket No. M-89-186-C]

Foley Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Foley Coal Co., Route 1, Box 157, Woodbine, Kentucky 40771, has filed a petition to modify the application of 30 CFR 75.313, Methane monitor, to its Mine #1 (I.D. No. 15-16713) located in Knox County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on electric face cutting equipment, continuous mining machines, longwall face equipment and loading machines. The monitor is required to be properly maintained and frequently tested.

2. As an alternate method, petitioner proposes to use hand-held continuous oxygen and methane monitors instead of methane monitors on three-wheel tractors as outlined in the petition. In further support of this request, petitioner states that:

(a) No methane has been detected in the mine.

(b) Each three-wheel tractor would be

initial training, all team members are required to receive at least 40 hours of refresher training annually. This training

2. As an alternate method, petitioner proposes to use metal locking devices, each consisting of a fabricated metal

Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506;

and Historical Organizations, submitted to the Division of General Programs, for projects beginning

applications submitted to the Access and Tools categories in the field of Literature, for projects

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(a) No methane has been detected in the mine.

(b) Each three-wheel tractor would be equipped with a hand-held continuous monitoring methane and oxygen detector and all persons would be trained in the use of the detector;

(c) Prior to allowing the coal loading tractor in the face area, a gas test would be performed to determine the methane concentration in the atmosphere. When the elasped time between trips does not exceed 20 minutes, the air quality would be monitored continuously after each trip. This would provide continuous monitoring of the mine atmosphere for methane to assure the detection of any methane buildup between trips; and

(d) If one percent methane is detected, the operator would manually deenergize the battery tractor immediately. Production would cease and would not resume until the methane level is lower than one percent.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 23, 1990. Copies of the petition are available for inspection at that address.

Dated: December 14, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-29782 Filed: 12-21-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-26-M]

Helca Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Helca Mining Company, P.O. Box 31, Mullan, Idaho 83846 has filed a petition to modify the application of 30 CFR 49.8(b) (training for mine rescue teams) to its Lucky Friday Mine (I.D. No. 10-00088) located in Shoshone County, Idaho. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that upon completion of the initial training, all team members are required to receive at least 40 hours of refresher training annually. This training is required to be given at least 4 hours each month, or for a period of 8 hours every two months.

2. Petitioner states that requiring at least 4 hours of refresher training each month or 8 hours every two months would result in a diminution of safety for the underground personnel because most of the experienced mine rescue personnel would resign.

3. In support of this request, petitioner states that—

(a) Most of the rescue team personnel are veterans; and

(b) Adequacy of training cannot be measured in hours spent in training. Performance and knowledge are the only valid criteria.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 22, 1990. Copies of the petition are available for inspection at that address.

Dated: December 15, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-29783 Filed 12-21-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-177-C]

Oneida Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Oneida Coal Company, Inc., Route 2, Box 72, Sutton, West Virginia 26601 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Mine No. 16 (I.D. No. 46-07757) located in Webster County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a locked padlock be used to secure battery plugs to machine-mounted battery receptacles on permissible, mobile, battery-powered machines.

2. As an alternate method, petitioner proposes to use metal locking devices, each consisting of a fabricated metal bracket and a thumb screw in lieu of padlocks. The metal locking devices would be designed, installed and used to prevent the threaded rings that secure the battery plugs to the battery receptacles from unintentionally loosening. The metal locking devices would be securely attached to battery receptacles to prevent accidental loss of the devices.

3. These locking devices would be easier to maintain than padlocks because there are no keys to be lost and dirt cannot get into the workings as with a padlock.

4. Operators of permissible, mobile, battery-powered machines affected by this modification would be trained in the proper use of the locking device, the hazards of breaking battery-plug connections under load, and the hazards of breaking battery-plug connections in areas of the mine where electric equipment is required to be permissible.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 22, 1990. Copies of the petition are available for inspection at that address.

Dated: December 15, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-29784 Filed 12-21-89; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786-0322.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or (3) information the disclosure of which would significantly frustrate implementation of proposed agency action, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

1. *Date:* January 11, 1990
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 315
   Program: This meeting will review applications submitted to the Access and Tools categories in the fields of World History and Social Sciences, for projects beginning after July 1, 1990.
2. *Date:* January 11–12, 1990
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 415
   Program: This meeting will review applications submitted to the Humanities Projects in Museums and Historical Organizations program, submitted to the Division of General Programs, for projects beginning after July 1, 1990.
3. *Date:* January 12, 1990
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 315
   Program: This meeting will review applications submitted to the Access and Tools categories in the fields of Visual Arts and Architecture, for projects beginning after July 1, 1990.
4. *Date:* January 16, 1990
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 415
   Program: This meeting will review applications submitted to the Humanities Projects in Museums and Historical Organizations, submitted to the Division of General Programs, for projects beginning after July 1, 1990.
5. *Date:* January 18, 1990
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 315
   Program: This meeting will review applications submitted to the Access and Tools categories in the fields of Performing Arts, for projects beginning after July 1, 1990.
6. *Date:* January 19, 1990
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 315
   Program: This meeting will review applications submitted to the Tools category in the field of Linguistics, for projects beginning after July 1, 1990.
7. *Date:* January 22, 1990
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 315
   Program: This meeting will review applications submitted to the Tools and Access categories in the fields of American Studies I, for projects beginning after July 1, 1990.
8. *Date:* January 22–23, 1990
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 415
   Program: This meeting will review applications submitted to the Humanities Projects in Museums and Historical Organizations, submitted to the Division of General Programs, for projects beginning after July 1, 1990.
9. *Date:* January 23, 1990
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 316-2
   Program: This meeting will review applications for Interpretive Research/Humanities, Science and Technology applications for Guided Studies, submitted to the Division of Research Programs, for projects beginning after July 1, 1990.
10. *Date:* January 25, 1990
    Time: 8:30 a.m. to 5:00 p.m.
    Room: 316-2
    Program: This meeting will review Interpretive Research/Projects applications for U.S. and World History, submitted to the Division of Research Programs, for projects beginning after July 1, 1990.
11. *Date:* January 26, 1990
    Time: 8:30 a.m. to 5 p.m.
    Room: 315
    Program: This meeting will review applications submitted to the Access and Tools categories in the field of American Studies II, for projects beginning after July 1, 1990.
12. *Date:* January 29, 1990
    Time: 8:30 a.m. to 5 p.m.
    Room: 315
    Program: This meeting will review applications submitted to the Access and Tools categories in the field of Literature, for projects beginning after July 1, 1990.
13. *Date:* January 29–30, 1990
    Time: 8:30 a.m. to 5 p.m.
    Room: 415
    Program: This meeting will review applications submitted to the Humanities Projects in Museums and Historical Organizations, submitted to the Division of General Programs, for projects beginning after July 1, 1990.
14. *Date:* January 30, 1990
    Time: 8:30 a.m. to 5 p.m.
    Room: 316-2
    Program: This meeting will review applications Interpretive Research/Humanities, Science and Technology, submitted to the Division of Research Programs, for projects beginning after July 1, 1990.
15. *Date:* January 30, 1990
    Time: 9 a.m. to 5 p.m.
    Room: 315
    Program: This meeting will review applications in Elementary and Secondary Education, submitted to the Division of Education Programs, for projects beginning after August 1, 1990.

Catherine Wolhowe,

Advisory Committee, Management Officer (Alternate).

[FR Doc. 89-29789 Filed 12-21-89; 8:45 am]

BILLING CODE 7536-01-M

PENSION BENEFIT GUARANTY CORPORATION

Request for OMB Approval for Information Collection: Reporting and Notification Requirements for Reportable Events

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for OMB reinstatement of previously approved collection.

SUMMARY: The Pension Benefit Guaranty Corporation has requested reinstatement by the Office of Management and Budget of a previously approved collection (OMB control number 1212-0013) for which approval has expired. There is no change in the substance of the information to be collected or in the method of collection. The information collection is prescribed by sections 4043 and 4065 of the Employee Retirement Income Security Act of 1974 and is contained in the PBGC's regulation on Reporting and Notification Requirements for

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Reportable Events, 29 CFR part 2615. This notice advises the public of the PBGC's request for OMB reinstatement of this previously approved collection of information.

ADDRESSES: Written comments (at least three copies) should be addressed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Pension Benefit Guaranty Corporation, 725 17th Street, NW., Room 3208, Washington, DC 20503. Requests for information and copies of the proposed collection of information and supporting documentation, should be addressed to the Communications and Public Affairs Department (Code 36000), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006. The request for reinstatement will be available for public inspection, and copying, at the PBGC Communications and Public Affairs Department in Suite 7100, at the above address, between the hours of 9 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Renae R. Hubbard, Special Counsel, Office of the General Counsel (Code 22500), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006; telephone 202-778-8851 (202-778-8859 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation ("PBGC") is requesting that the Office of Management and Budget reinstate for a three-year period the approval of the collection of information contained in the PBGC's regulation on Reporting and Notification Requirements for Reportable Events, 29 CFR Part 2615.

Section 4043(b) of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. 1301 *et seq.* ("ERISA"), sets forth ten events that pension plan administrators must report to the PBGC after the event occurs. The statute also gives the PBGC authority to add additional reportable events, to waive reporting of any event, and to require that a waived event be reported on the plan's annual report (IRS/DOL/PBGC Form 5500 Series).

Section 4065 of ERISA provides that these reportable events be included in the plan's annual report except to the extent waived by the PBGC. In its regulation on reportable events, the PBGC added three additional events to be reported, modified four of the events to narrow the reporting requirements, waived reporting of six of the events, and waived the requirement that any of the reportable events be included on the plan's annual report.

This information collection was previously approved by OMB control number 1212-0013, and the PBGC is requesting that the previous approval be reinstated. There is no change in the substance or in the method of collection of information.

An event that must be reported to the PBGC occurs only upon the occasion of an infrequent or nonrecurring event and, based on its experience, the PBGC expects to receive 200 reports annually. The public reporting burden for this collection of information is estimated to average one-half hour per report, for a total annual burden of 100 hours.

Issued at Washington, DC this 18 day of December, 1989.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 89-29744 Filed 12-21-89; 8:45 am]

BILLING CODE 7708-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-27534; [SR-ICC-89-4]

Self-Regulatory Organizations; Notice of Filing and Order Temporarily Approving, on an Accelerated Basis, a Proposed Rule Change by the Intermarket Clearing Corporation Relating to Member Net Capital Requirements

December 13, 1989.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] notice is hereby given that on November 29, 1989, the Intermarket Clearing Corporation ("ICC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change [3] that would increase initial and maintenance adjusted net capital requirements imposed by ICC on its members.[4] To reflect these increases, the proposal also would amend ICC's rule regarding restrictions on member distributions. The Commission is publishing this Order to solicit comments on the proposal from interested persons. This Order also temporarily approves the proposal on an accelerated basis until March 1, 1990.

I. Description of the Proposal

As noted above, the proposal would increase ICC's initial and maintenance adjusted net capital requirements.[5] Currently, to become an ICC member, an applicant must have initial adjusted net capital equal to at least $150,000. That level must be maintained by the applicant for the lesser of three months after its admission as a clearing member or twelve months after it commenced doing business subject to Commission or CFTC regulation, after which the member must maintain adjusted net capital equal to at least $100,000. Under the proposal, a member's initial adjusted net capital requirement would be increased to $1 million, and its maintenance adjusted net capital requirement would be increased to $750,000. ICC represents that all of its members currently have adjusted net capital meeting the proposed requirements.

The proposal also would amend ICC's rule regarding restrictions on member distributions. Currently, ICC's rules prohibit a member from effecting a withdrawal or payment to shareholders, partners, or employees if that withdrawal or payment would reduce the member's adjusted net capital below $150,000. The proposal would prohibit a member distribution if the effect of the distribution would reduce the member's net capital below $1 million.

ICC does not believe the proposed rule change would have any material impact on competition. Written comments were not and are not intended to be solicited by ICC with respect to the proposal and none have been received by ICC.

II. ICC's Rationale for the Proposed Rule Change

ICC believes the proposal is consistent with the purposes and requirements of section 17A of the Act.[6] Specifically, ICC believes the proposed net capital increases promote the continued financial integrity of ICC's clearance and settlement system, particularly in light of events

[1] 15 U.S.C. 78s(b)(2) (1982).

[2] 17 CFR 240.19b-4 (1989).

[3] The proposal was originally filed pursuant to section 19(b)(3)(A) of the Act. At the request of Commission staff, ICC refiled the proposal pursuant to section 19(b)(2) of the Act, requesting accelerated approval of the proposal.

[4] ICC's proposed net capital requirements have been approved by the Commodity Futures Trading Commission ("CFTC"). *See* Letter from John C. Lawton, Associate Director, CFTC, to James C. Yong, Assistant Secretary, ICC, dated October 12, 1989. The Commission has approved similar net capital requirement changes for ICC's parent, the Options Clearing Corporation. *See* Securities Exchange Act Release No. 26940 (May 10, 1989), 54 FR 23004.

[5] ICC adjusted net capital requirements are computed in accordance with CFTC Regulation 1.17. *See* 17 CFR 1.17 (1989).

[6] 15 U.S.C. 78q-1 (1982).

surrounding the October 1987 market break ("Market Break"). ICC further believes the proposal brings ICC financial requirements in line with those of other commodity clearing organizations.[7]

III. Discussion

The Commission believes the proposal is consistent with section 17A of the Act and therefore is approving the proposal. Specifically, the Commission believes the proposal is designed to implement post-Market Break recommendations that clearing agencies update their net capital requirements to reflect current market conditions, particularly increased market volatility.[8] The proposal is designed to achieve that goal without inhibiting broad market participant access to ICC services.

In its Market Break Report, the Commission's Division of Market Regulation ("Division") encouraged clearing agencies to consider increasing member net capital requirements. Specifically, the Division noted:

> In light of the failures experienced by a number of clearing member customers during the market break and the apparent increased risk caused by market volatility, clearing agencies should consider strengthening their member net capital standards or instituting additional financial requirements * * * [9]

The Commission believes re-examination and strengthening of clearing agency rules establishing member net capital requirements serve as a further layer of protection against member default.

The Interim Report of the Working Group on Financial Markets ("Working Group Report") made a similar recommendation:[10] The Working Group Report noted clearing agency progress in evaluating the adequacy of member capital and specifically cited clearing agency plans to increase member net capital requirements. The Working Group also encouraged the Commission, clearing agencies, and other self-regulatory organizations to continue to evaluate the adequacy of member capital and find ways to improve existing practices and requirements.[11]

Post-Market Break studies also suggested that clearing agencies analyze negative aspects of increased member net capital requirements. For example, the Division cautioned:

> Although increased capital requirements for clearing members could strengthen clearing member financial positions and decrease default risk, especially during periods of high market volatility, such requirements also would have other effects * * * [I]ncreased clearing agency requirements could decrease the number of broker-dealers eligible for clearing agency membership and increase costs for broker-dealers that cannot maintain membership.[12]

The Commission believes clearing agencies, in adopting increased net capital requirements, should strike a prudent balance between their need to ensure member creditworthiness and their responsibility to provide broad market participant access to clearing services.

The Commission believes the proposal, consistent with post-Market Break recommendations, is designed to update ICC net capital requirements to reflect current market conditions. ICC net capital requirements are designed to ensure that members initially and throughout their membership have sufficient liquid assets to meet their obligations to ICC. ICC has not increased these requirements since it commenced operations in 1985,[13] despite increased market volume, complexity, and volatility. The Commission believes the proposed initial and maintenance net capital requirements are designed to reflect market developments and ensure ICC member creditworthiness in the current market environment. The Commission further notes that the proposed amendment to the rule regarding restrictions on member distributions conforms to proposed initial and maintenance adjusted net capital increases and, therefore, is designed to reflect current market conditions and facilitate effective risk management. Moreover, the fact that all ICC members have adjusted net capital levels meeting the proposed requirements indicates the proposal is not designed to inhibit broad market participant access to ICC services.

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the Act and, in particular, with section 17A. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication in the Federal Register because the proposal will enable ICC to update promptly its net capital requirements to reflect current market conditions. Nevertheless, the Commission is approving the proposed rule change temporarily until March 1, 1990. Temporary approval will enable ICC to implement the proposal and will enable interested persons to comment on the proposal. Although, as noted above,[14] interested persons have had an opportunity to comment on the proposal in connection with the CFTC's consideration of the proposal, the Commission believes an additional opportunity for comment on the proposal may be worthwhile.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written comments should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of the filing (SR-ICC-89-4) and any subsequent amendments also will be available for inspection and copying at ICC's principal office. All submissions should refer to file number SR-ICC-89-4 and should be submitted by January 12, 1990.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR-ICC-89-4) be, and hereby is, approved on a temporary basis until March 1, 1990.

[7] Board of Trade Clearing Corporation members must maintain $1.5-3.5 million in net capital if they are firms and $500,000 in net capital if they are individuals. Chicago Mercantile Exchange clearing members must maintain $1.5 million in net capital. *See* R. Rutz, Clearance, Payment, and Settlement Systems in the Futures, Options, and Stock Markets (February 24, 1989) at 16.

[8] *See* Division of Market Regulation, the October 1987 Market Break (February 1988) ("Market Break Report"), and Interim Report of the Working Group on Financial Markets (May 16, 1988) ("Working Group Report").

[9] *See* Market Break Report, *supra* note 8, at 10-27.

[10] *See* Working Group Report, *supra* note 8, at 15.

[11] *Id.* Other self-regulatory organizations have increased their net capital requirements in response to post-Market Break suggestions. For example, on May 6, 1988, the Commission approved, on an accelerated basis, a New York Stock Exchange ("NYSE") proposal increasing minimum net capital requirements for NYSE specialists. *See* Securities Exchange Act Release No. 25677 (May 6, 1988), 53 FR 17256.

[12] *See* Market Break Report, *supra* note 8, at 10-27. The Working Group also encouraged clearing agencies to analyze the costs and benefits of net capital increases. *See* Working Group Report, *supra* note 8, at 15.

[13] See Securities Exchange Act Release No. 21706 (February 4, 1985), 50 FR 5341.

[14] *See* note 4, *supra.*

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3.

and lack of comparison of a reported transaction. The Exchange believes that the shorter time frames will help to

89-07 and should be submitted by December 13, 1989.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule

IV. Solicitation of Comments

Interested persons are invited to

in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. 17 CFR 200.30-3.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-29739 Filed 12-21-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-27533; File No. SR-MSE-89-7]

Self-Regulatory Organizations; Notice of Proposed Rule Change by Midwest Stock Exchange, Incorporated Relating to Reduced Time Frames for Claiming Certain Reports

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 5, 1989 the Midwest Stock Exchange, Incorporated ("MSE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

MSE has proposed to amend Article XXX, Rule 15 by reducing the time frames within which members may claim certain reports, including reports of erroneous trade comparisons, from 5 days to 3 days.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The amendment to Article XXX, Rule 15 reduces the time from five to three days in which members can make a claim for certain reports. These include claims which involve erroneous comparisons, omission of a report due and lack of comparison of a reported transaction. The Exchange believes that the shorter time frames will help to expedite the trade resolution process without placing excessive burdens upon the members.

The proposed rule change is consistent with Section 6(b) of the Act, as amended, in that it is designed to foster prompt and accurate reporting among persons engaged in the clearing, settling and processing of information relating to transactions in securities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consent, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities & Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to File Number SR-MSE-89-07 and should be submitted by December 13, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: December 12, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-29373 Filed 12-21-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-27544; File No. SR-NASD-89-57]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Proposed Rule Change Relating to NASDAQ/National Market System Issuer Fees

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 5, 1989, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule provides that the issuer of each security designated for inclusion in the NASDAQ/National Market System shall pay an annual participation fee of $2,000 in addition to the annual fee specified at Section B.1. of Part IV of Schedule D to the NASD By-Laws.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule provides that the issuer of each NASDAQ/National Market System security will pay an annual participation fee of $2,000, in addition to the annual fee specified at Section B.1. of Part IV of Schedule D to the NASD By-Laws. The fee will be used to support the continued expansion and technological enhancement of NASD's market surveillance system, StockWatch, and the doubling of Market Surveillance staff during the five-year period FY1988-90. The new fee will also be used to support additional services to NASDAQ/National Market System issuers, increase marketing efforts to heighten investor interest in the NASDAQ Market, and efforts to obtain state registration exemptions for NASDAQ/National Market System securities.

The proposed rule change is consistent with the provisions of section 15A(b)(5) of the Act, which requires that the rules of the Association provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system the Association operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association believes that this rule change does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will: A. by order approve such proposed rule change, or B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD-89-57 and should be submitted by December 13, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: December 18, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-29738 Filed 12-21-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 35-25000]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

December 15, 1989.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by January 8, 1990 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Georgia Power Company (70-7894)

Georgia Power Company ("Georgia"), 333 Piedmont Avenue NE., Atlanta, Georgia, 30308, an electric public-utility subsidiary company of The Southern Company, a registered holding company, has filed a post-effective amendment to its application-declaration with this Commission pursuant to sections 6, 6(b), 7, 9(a), and 10 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 50 and 50(a)(5) thereunder.

By Commission orders dated April 11, 1988 (HCAR No. 24621), July 19, 1988 (HCAR No. 24680), May 8, 1989 (HCAR No. 24882) and November 29, 1989 (HCAR No. 24991) Georgia was authorized, among other things, on or before December 31, 1989, to: (1) Issue and sell short-term notes to banks and commercial paper to dealers in an aggregate principal amount at any one time outstanding of up to $1 billion; (2) issue and sell at competitive bidding up to $600 million of fixed rate, first mortgage bonds ("Bonds") in one or more series; (3) issue and sell up to $125 million of term-loan notes ("Term-Loans"); (4) issue and sell up to an aggregate of $50 million of pollution control revenue bonds ("Revenue Bonds") pursuant to an exception from competitive bidding; and (5) begin negotiating the terms and conditions of up to $250 million aggregate principal amount of variable rate first mortgage bonds ("Variable Bonds"). Jurisdiction was reserved, through December 31, 1989, over: (a) The issuance and sale of first mortgage bonds with a variable rate; (b) the financing of pollution control facilities in an amount of up to $100 million; (c) the issuance and sale at competitive bidding of up to $175 million of preferred stock; (d) the common stock dividend restriction in connection with the issuance of the Bonds and Variable Bonds; and (e) the issuance of an insurance policy guaranteeing payment of the Bonds and Variable Bonds. The aggregate amount of all Bonds, Variable Bonds, Preferred Stock, Revenue Bonds and Term-Loans to be issued and sold was not to exceed $1,050,000,000.

Georgia now seeks authorization, through December 31, 1990, to: (1) Issue

equivalent interest rate of the bank at which the borrowing is made. The notes

DEPARTMENT OF TRANSPORTATION

safety. The Coast Guard Authorization Act of 1989 changed the name of the

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Georgia now seeks authorization, through December 31, 1990, to: (1) Issue and sell short-term notes to banks and commercial paper to dealers in an aggregate principal amount at any one time outstanding of up to $1 billion; (2) issue and sell at competitive bidding up to $450 million of Bonds and/or Variable Bonds in one or more series; (3) issue and sell up to $125 million of Term-Loans; (4) finance pollution control facilities in an amount of up to $100 million; (5) issue and sell at competitive bidding up to $175 million of preferred stock; (6) issue an insurance policy guaranteeing payment of the Bonds and Variable Bonds; and (7) deviate from both the redemption provisions and the dividend limitation provisions of the Commission's 1956 Statement of Policy Regarding First Mortgage Bonds.

Entergy Corporation, et al. (70-7802)

Entergy Corporation ("Entergy"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company, and its electric utility subsidiary company, Louisiana Power & Light Company ("LP&L"), 317 Baronne Street, New Orleans, Louisiana 70112 have filed a post-effective amendment to their application-declaration under sections 6(a), 7, 9(a) and 10 of the Act and Rule 43 thereunder.

On February 3, 1989 (HCAR No. 24813), this Commission authorized LP&L to issue and sell to Entergy, and Entergy to purchase, from time to time through December 31, 1989, up to 18,961,000 additional shares of LP&L's authorized but unissued common stock, without nominal or par value ("Additional Shares"). LP&L anticipates that, by December 31, 1989, none of the Additional Shares will have been sold.

Based upon LP&L's revised estimate of cash requirements and its financing plan, it may be necessary or desirable for LP&L to issue and sell the Additional Shares to Entergy during the period through December 31, 1990. LP&L requests authority, through December 31, 1990, to issue and sell from time to time, and Entergy may purchase, an aggregate of up to 18,961,000 of the Additional Shares for an aggregate cash purchase price not to exceed $125 million. Proceeds from such sales will be used by LP&L for the financing, in part, of the retirement of its first mortgage bonds and/or preferred stock, for its construction program and for other corporate purposes.

Vermont Yankee Nuclear Power Corporation (70-7835)

Vermont Yankee Nuclear Power Corporation ("Vermont Yankee"), Ferry Road, Box 169, Brattleboro, Vermont 01301, a wholly owned subsidiary of New England Electric System and Northeast Utilities, both registered holding companies, has filed an application under section 6(b) of the Act and Rules 50 and 50(a)(5) thereunder.

By prior Commission order, Vermont Yankee was authorized to borrow under a $75 million Eurodollar revolving credit facility, which it now proposes to amend and extend through 1994 (HCAR No. 23858, October 7, 1985). The Amended and Extended Eurodollar Credit Agreement ("Credit Agreement") would have a five-year term ending December 31, 1994. It also provides for up to three one-year extensions of that term. This revolving credit facility would permit borrowings in an aggregate principal amount at any one time outstanding of not more than $75 million. Such borrowings would be evidenced either by promissory notes ("Notes") to a group of major domestic and international banks ("Bank") pursuant to the Credit Agreement with Societe Generale as agent bank ("Agent Bank") for the other Banks or by commercial paper notes ("Commercial Paper") to be sold to Citicorp Securities Markets, Inc., as placement agent, for resale to its customers. The Commercial Paper would be supported by irrevocable letters of credit issued by the Agent Bank which will result in the Commercial Paper having the highest available rating and therefore the lowest commercial paper cost. The Notes and Commercial paper will be secured by a second mortgage on Vermont Yankee's plant.

The letter of credit facility would require a fee of ⅛ of 1% per annum on the average daily outstanding amount of letters of credit. Vermont Yankee will also pay a commitment fee during the term of the Credit Agreement of ¼ of 1% per annum of the unused portion of the total facility and will pay additional fees and expenses.

The revolving credit facility would permit Vermont Yankee to select from time to time interest periods of one, two, three or six months' duration for each revolving credit loan. The interest rate on each revolving credit loan will be either the London Inter-Bank Offering Rate ("LIBOR") for the interest period selected, plus ⅛ of 1%, or the adjusted certificate of deposit rate, plus ⅝ of 1%; in each case the interest rate being established by the arithmetic average of the rates of three representative lending banks.

Based on prevailing rates on November 1, 1989; assuming a one-month LIBOR of 8.75% and borrowing of $75 million, the effective cost of borrowings would be 9.25%; assuming a one-month adjusted certificate of deposit rate of 8.945%, and borrowing of $75 million, the effective cost of borrowings would be 9.57%; assuming a 30-day commercial paper rate of 8.62%, use of the letter of credit facility would have an effective cost of 9.27%.

Additionally, Vermont Yankee requests authority to issue and sell through private placement its first mortgage bonds in principal amounts of up to $25 million. The $25 million of Series G First Mortgage Bonds ("Bonds") would be issued under Vermont Yankee's First Mortgage Indenture, dated as of October 1, 1970, as amended and supplemented. The Bonds will mature January 1, 1995 and will bear interest at the rate of 8.94% per annum, payable semi-annually on January 1 and July 1. There will be no sinking fund; however, Vermont Yankee will have the right to prepay the Bonds at any time at par plus accrued interest and a premium, if applicable, designed to protect the reinvestment yield of the holders.

The purpose of these financings, which replace an existing revolving credit agreement and a recently terminated credit facility, is to meet Vermont Yankee's short term financing requirements for its general corporate expenditures, including fuel costs, spent fuel disposal fees and plant additions.

Vermont Yankee requests an exception from the competitive bidding requirements of Rule 50 for the proposed sale of Commercial Paper, pursuant to paragraph (a)(5).

West Penn Power Company (70-7837)

West Penn Power Company ("WPP"), 800 Cabin Hill Drive, Greensburg, Pennsylvania 15601, a subsidiary of Allegheny Power System, Inc., a registered holding company, has filed an application under sections 6, and 6(b), of the Act and Rule 50(a)(5) thereunder.

WPP proposes to issue and sell short-term notes from time to time to banks and to dealers in commercial paper through December 31, 1991, in an aggregate principal amount not to exceed $134 million. This amount includes any short-term debt still outstanding under the Commission's prior authorization, which was outstanding in the approximate amount of $6.2 million on November 15, 1989 (HCAR No. 24256, December 8, 1988).

Each note payable to a bank will be dated as of the date of the borrowing which it evidences, will mature not more than 270 days after the date of issuance or renewal thereof, and will bear interest at no greater than the then current prime commercial credit or equivalent interest rate of the bank at which the borrowing is made. The notes may or may not have prepayment provisions. WPP and its affiliates have agreed to pay for lines of credit with a group of banks by maintaining compensating balances (no greater than 2.5% of all or a portion of the line of credit) and/or by paying an annual cash fee (no greater than ⅛% of all or the balance of the line of credit.)

The commercial paper will not be prepayable and will have varying maturities, none more than 270 days. The notes will be sold directly to the dealer and/or placement agent at a discount not in excess of the discount rate per annum prevailing at the time of issuance for commercial paper of comparable quality and of the particular maturity. An exception from the competitive bidding requirements of Rule 50 has been requested for the proposed issuance and sale of commercial paper notes.

The proceeds from the borrowings will be used to operate its business as an electric public utility, including the financing of construction and property acquisition.

New England Electric System (70-7723)

New England Electric System ("NEES"), 25 Research Drive, Westborough, Massachusetts 01582, a registered holding company, has filed a declaration pursuant to section 12(b) of the Act and Rule 45 thereunder.

NEES proposes to make, from time-to-time through December 31, 1990, one or more capital contributions to Massachusetts Electric Company ("Mass. Electric") and Narragansett Electric Company ("Narragansett"), both wholly owned subsidiaries of NEES, not to exceed an aggregate amount of $50 million for Mass. Electric and $20 million for Narragansett.

Mass. Electric and Narragansett will apply the funds received from the capital contributions for general corporate purposes including, but not limited to, the cost of, the reimbursement of the treasury for, or the payment of short-term borrowings incurred for, capital additions and improvements to plant and property.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-29736 Filed 12-21-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 89-099]

Navigation Safety Advisory Council; Membership Applications

AGENCY: Coast Guard, DOT.

ACTION: Request for applications.

SUMMARY: The U.S. Coast Guard is seeking applications for appointment to membership on the Navigation Safety Advisory Council (formerly the Rules of the Road Advisory Council). This Council was established under the Inland Navigational Rules Act of 1980 (33 U.S.C. 2073) to advise, consult with, and make recommendations to the Secretary of Transportation on matters relating to the prevention of collisions, rammings, groundings, including but not limited to International/Inland Rules of the Road, Navigation Regulations and Equipment; Routing Measures; Diving Safety; and Aids to Navigation Systems.

DATES: Requests for applications should be received by the Coast Guard no later than January 30, 1990. Applications must be completed and returned to the Coast Guard no later than March 2, 1990.

ADDRESS: Persons interested in applying should write to Commandant (G-NSR-3), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001.

FOR FURTHER INFORMATION CONTACT: Commander Thomas J. Meyers, Executive Director, Navigation Safety Advisory Council, (G-NSR-3), Room 1416, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, (202) 267-0357.

SUPPLEMENTARY INFORMATION: In June 1990, there will be seven vacancies on the 21-member Council. The seven appointments will be made by the Secretary of Transportation. The Coast Guard will accept applications received after the publication of this notice and before March 2, 1990, and thereafter make recommendations to the Secretary. Under the Inland Navigation Rules Act and to assure balanced representation, members shall be chosen, insofar as practical, from the following groups: (1) Recognized experts and leaders in organizations having an active interest in the Rules of the Road and vessel and port safety, (2) representatives of owners and operators of vessels, professional mariners, recreational boaters, and the recreational boating industry, (3) individuals with an interest in maritime law, and (4) Federal and state officials with responsibility for vessel and port safety. The Coast Guard Authorization Act of 1989 changed the name of the Rules of the Road Advisory Council to the Navigation Safety Advisory Council, and extended the Council through September 30, 1995. The Act also broadened the scope by expanding the Council's task to advise the Secretary of Transportation on matters relating to the prevention of collisions, rammings, groundings, including but not limited to International/Inland Rules of the Road, Navigation Regulations and Equipment; Routing Measures; Diving Safety; and Aids to Navigation Systems. The Coast Guard will maintain a balanced representation in the four membership groups with an interest in seeking individuals with background and experience relating to these additional tasks.

The Council will meet not less than twice during each calendar year. Members are entitled to receive per diem in lieu of subsistence, as well as to be reimbursed for travel expenses, in accordance with current regulations. The seven new appointments will expire three years from June 1990.

Dated: December 13, 1989.

R.T. Nelson,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 89-29735 Filed 12-21-89; 8:45 am]

BILLING CODE 4910-14-M

[CGD 89-105]

Commercial Fishing Industry Vessel Advisory Committee; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given of a meeting of the Commercial Fishing Industry Vessel Advisory Committee (CFIVAC). The meeting will be held on January 25-26, 1990 in Room 2230 at Department of Transportation Headquarters, 400 Seventh Street SW., Washington, DC. The meeting is scheduled to begin at 9:00 am and end at 5:00 pm each day. Attendance is open to the public. Topics on the proposed agenda are as follows:

A. Licensing Alternatives

1. Discussion of Subcommittee on Licensing Alternatives Report
2. Development of Recommndations to USCG

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B. Third Party Approach to Regulation Enforcement

C. Crane Certification

1. By OSHA
2. By USCG

D. Tonnage Study

1. Impacts
2. Development of recommendations

FOR FURTHER INFORMATION CONTACT: Mr. Norman W. Lemley, Executive Director, Commercial Fishing Industry Vessel Advisory Committee, U.S. Coast Guard Headquarters (G–MTH), 2100 Second Street SW., Washington, DC 20593–0001, (202) 267–2967.

Dated: December 15, 1989.

M. J. Schiro,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89–29733 Filed 12–21–89; 8:45 am]

BILLING CODE 4910–14–M

[CGD 89–106]

Commercial Fishing Industry Vessel Advisory Committee, Subcommittee on Licensing Alternatives; Subcommittee Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Act (Pub. L. 92–463; 5 U.S.C. App. I), notice is hereby given of a meeting of the Subcommittee on Licensing Alternatives of the Commercial Fishing Industry Vessel Advisory Committee (CFIVAC). The meeting will be held on January 24, 1990 in Room 2230 at Department of Transportation Headquarters, 400 Seventh Street SW., Washington, DC. The meeting is scheduled to begin at 8:00 a.m. and end at 4:00 p.m. Attendance is open to the public. Topics on the proposed agenda are as follows:

A. Discussion of Licensing Alternatives Report

B. Development of Recommendations to the Main Committee

FOR FURTHER INFORMATION CONTACT: Mr. Norman W. Lemley, Executive Director, Commercial Fishing Industry Vessel Advisory Committee, U.S. Coast Guard Headquarters (G–MTH), 2100 Second Street SW., Washington, DC 20593–0001, (202) 267–2967.

Dated: December 15, 1989.

M. J. Schiro,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89–29734 Filed 12–21–89; 8:45 am]

BILLING CODE 4910–14–M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 245
Friday, December 22, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94–409) 5 U.S.C. 552b(e)(3).

BLACKSTONE RIVER VALLEY, NATIONAL HERITAGE CORRIDOR COMMISSION

Meeting

Notice is hereby given in accordance with section 552b of title 5, United States Code, that a meeting of the Blackstone River Valley National Heritage Corridor Commission will be held on Thursday, January 4, 1990.

The Commission was established pursuant to Public Law 99–647. The purpose of the Commission is to assist federal, state and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the resource management plan for those lands and waters within the Corridor.

The meeting will convene at 7 p.m. at the Grafton Municipal Building, 30 Providence Road (Route 122), Grafton, Massachusetts for the following reasons:

1. Report of the Chairman;
2. Report of the Executive Director;
3. Report of the Treasurer;
4. Committee Reports;
5. Report on the Cultural Heritage and Land Management Plan;
6. Discussion of Orientation Program for Ad Hoc Committees on Plan Implementation;
8. Discussion of Policy for Responding to Requests Made to Commission;
9. Discussion of Commission Staffing/ Consulting Needs;
10. Public Comments.

It is anticipated that about twenty people will be able to attend the session in addition to the Commission members.

Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to: James Pepper, Executive Director, Blackstone River Valley National Heritage Corridor Commission, P.O. Box 34, Uxbridge, MA 01569. Telephone (508) 278–9400 or (508) 278–5124.

Further information concerning this meeting may be obtained from James Pepper, Executive Director of the Commission at the address below.

James Pepper,

Executive Director, Blackstone River Valley National Heritage Corridor Commission.

[FR Doc. 89–29911 Filed 12–20–89; 3:07 am]

BILLING CODE 4310–70–M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, December 19, 1989, 9:30 a.m.

PLACE: 999 E Street NW., Washington, D.C.

Due to extraordinary circumstances, and in accordance with 11 CFR 2.7(b), the Commission held a special closed meeting for the purpose of considering the selection of an Inspector General, pursuant to 11 CFR 2.4(b)(1).

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: (202) 376–3155.

Marjorie W. Emmons,

Secretary of the Federal Election Commission.

[FR Doc. 89–29917 Filed 12–20–89; 3:08 pm]

BILLING CODE 6715–01–M

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [54 FR 51971, December 19, 1989].

STATUS: Open meeting.

PLACE: 450 Fifth Street NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Thursday, December 14, 1989.

CHANGE IN THE MEETING: Deletion.

The following item will not be considered at an open meeting to be held on Thursday, December 21, 1989, at 11:00 a.m.:

Consideration of whether to grant Delta Government Options Corp. registration as a clearing agency pursuant to Section 17A of the Securities Exchange Act of 1934. For further information, please contact Richard Konrath at (202) 272–2388 or Gordon K. Fuller at (202) 272–2414.

Please also note that the open meeting on the above date has been rescheduled from 10:00 a.m. to 11:00 a.m.

Commissioner Schapiro, as duty officer, determined that Commission business required the above changes.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Anthony Ain at (202) 272–2400.

Dated: December 19, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–29936 Filed 12–19–89; 4:45 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 54, No. 245

DEPARTMENT OF TRANSPORTATION

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Corrections

Federal Register
Vol. 54, No. 245
Friday, December 22, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 90365-9065]

Proposed Revision of FIPS PUB 151, Posix; Portable Operating System Interface for Computer Environments

Correction

In notice document 89-8814 beginning on page 14829 in the issue of Thursday, April 13, 1989, make the following correction:

On page 14831, in the first column, in the third complete paragraph, in the second line, remove "October 13, 1989" and insert "6 months after publication in the Federal Register".

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

10 CFR Part 170

RIN 3150-AD23

Revision of Fee Schedules: Radioisotope Licenses and Topical Reports

Correction

In proposed rule document 89-28157 beginning on page 49763 in the issue of Friday, December 1, 1989, make the following corrections:

1. On page 49763, in the third column, in the third line, "NCR" should read "NRC".

2. On page 49764, in the first column, under "*Section 170.11 Exemptions*", in the seventh line, insert "the" after "under".

3. On the same page, in the same column, under "*Section 170.11 Exemptions*", in the second paragraph, in the 12th line, "institutions" should read "institution".

4. On the same page, in the second column, under "*Section 170.12 Payment of Fees*", in the second paragraph, in the fourth line, "were" should read "where".

5. On the same page, in the third column, in the last complete paragraph, in the first line, insert "which" after "method".

6. On page 49766, in the first column, under "**VI. REGULATORY ANALYSIS**, in the fourth line, "(32 U.S.C. 9701) should read (31 U.S.C. 9701).

7. On the same page, in the third column, in the fourth complete paragraph, in the fifth line, "533" should read "553".

8. On page 49767, in the third column, under § 170.12(h), in the seventh line, "licenses" should read "licensees".

9. On page 49768, in the second column, in the table of "Schedule of Materials Fees", under entry 1.A., in the fifth line, "ore" should read "more".

10. On the same page, in the same column, in the same table, under entries 1.C. and 1.D., in the sixth and ninth lines after the "colon" add footnote 4.

11. On page 49769, in the third column, in the same table, under entry 3.O., in the fifth line, after the "colon" add footnote 5.

12. On page 49770, in the first column, the entry for 5.A. should read "Licenses specifically authorizing use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies:"

13. On the same page, in the same column, the entry for 5.B. should read "Licenses specifically authorizing use of byproduct material for field flooding tracer studies:"

14. On the same page, in the same column, under entry 7.B., in the 12th line, "devices" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 11, 13, 21, 67, 137, 199

[Docket No. 26020; Amdt. Nos. 11-32, 21-67, 129-19, 137-13, 199-2]

RIN 2120-AD24

Organizational Changes and Delegations of Authority

Correction

In rule document 89-22317 beginning on page 39288 in the issue of Monday, September 25, 1989, make the following corrections:

§ 11.25 [Corrected]

1. On page 39290, in the first column, under § 11.25, in the first line, "11.25(b)(iv)" should read "11.25(b)(2)(iv)".

§ 21.215 [Corrected]

2. On page 39291, in the first column, under § 21.215, in the first line, "Application" should read "Applications".

§ 67.19 [Corrected]

3. On page 39292, in the first column, under § 67.19, in the last line, "Managers" should read "Manager".

§ Appendix A to Part 129 [Corrected]

4. On page 39294, in the first column, under "Appendix A to Part 129", in the second line, "(0)" should read "(b)".

§ 137.77 [Corrected]

5. On the same page, in the third column, under § 137.77, in the first line, the (c) should be removed.

§ 199.27 [Corrected]

6. On page 39296, in the third column, under § 199.27, in the second line, insert quotation marks (") after the word "function".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-ANE-35; Amdt. 39-6411]

Airworthiness Directives; General Electric Company (GE) CF6-6 Series Turbofan Engines

Correction

In rule document 89-28933 beginning on page 51015 in the issue of Tuesday, December 12, 1989, make the following corrections:

§ 39.13 [Corrected]

1. On page 51016, in the third column, in § 39.13, under **General Electric Company:**, in the ninth line, "Step" should read "Stage".

2. On the same page, in the same column, in § 39.13, in the last line, "Table 3" should read "Table 1".

BILLING CODE 1505-01-D

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federal register

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Part II

Department of Agriculture

Agricultural Stabilization and Conservation Service

Commodity Credit Corporation

7 CFR Parts 709, 1403, 1404, and 1408

Debt Settlement Policies and Procedures; Final Rule

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DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Commodity Credit Corporation

7 CFR Parts 709, 1403, 1404, and 1408

RIN 0560-AA38

Debt Settlement Policies and Procedures

AGENCY: Agricultural Stabilization and Conservation Service, Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: A proposed rule was published on June 19, 1989 at 54 FR 25718 with respect to the financial management practices of the Agricultural Stabilization and Conservation Service (ASCS) and the Commodity Credit Corporation (CCC). This final rule adopts, with minor changes, the provisions of the proposed rule. Accordingly, this final rule amends 7 CFR parts 709, 1403 and 1408 which relate to the administration of ASCS and CCC programs in order to set forth the policies and procedures of CCC regarding delinquent debts arising out of domestic transactions and the policies and procedures of CCC and ASCS regarding the assignment of payments. This rule sets forth the policies and procedures CCC will use to settle debts owed to CCC and other agencies of the United States. To the extent practicable, the final rule provides that CCC policies and procedures conform to the general guidelines set forth in the Federal Claims Collection Act, as amended by the Debt Collection Act of 1982 (31 U.S.C. 3711, *et seq.*). To the extent practicable, CCC will also follow the provisions of the Federal Claims Collection Standards (4 CFR parts 101–105) with respect to administrative actions undertaken by CCC to settle claims. In addition, this final rule sets forth the manner in which CCC and ASCS payments may be assigned at 7 CFR part 1404 and delete the current provisions at 7 CFR part 709.

EFFECTIVE DATE: December 31, 1989.

FOR FURTHER INFORMATION CONTACT: Paula Roney, Claims Administration and Contract Procedures Branch, Fiscal Division, ASCS, (202) 447–4061.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed in conformance with Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "not major" because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs and prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This action does not constitute a review as to need, currency, clarity, and effectiveness of these regulations under DR 1512–1. No sunset review date has been set for this regulation because review is ongoing.

This action will not increase the federal paperwork burden for individuals, small businesses, and others and will not have a significant impact on a substantial number of small entities. Therefore this action is exempt from the provision of the Regulatory Flexibility Act and no Regulatory Flexibility Analysis was prepared.

This action will not have a significant impact specifically upon area and community development; therefore, review as established by Executive Order 12372 (July 14, 1982) was not used to assure that units of local government are informed of this action.

The Federal Claims Collection Act of 1966 (the Act), as amended by the Debt Collection Act of 1982 (31 U.S.C. 3711, *et seq.*), and the joint regulations promulgated thereunder by the Comptroller General and the Attorney General (4 CFR Parts 101–105) provide minimum standards for the administrative collection of claims by the United States. The Act also provides that nothing therein shall diminish the existing authority of the head of an agency to settle, compromise, or close claims. The CCC Charter Act, as amended (15 U.S.C. 714, *et seq.*), provides that CCC shall have authority to make final and conclusive settlement and adjustment of any claims by or against it irrespective of the amount at issue. CCC is, therefore, not subject to the provisions of the Federal Claims Collection Act or its implementing regulations. However, it has been CCC policy to follow the Federal Claims Collection Standards (FCCS) to the maximum practicable extent. The FCCS require each federal agency to take aggressive action to collect debts owed it, and to cooperate with other federal agencies in their debt collection activities. Federal agencies are required to promulgate regulations consistent with the standards.

Currently, CCC follows procedures at 7 CFR part 13 for the offset or withholding of amounts approved by ASCS county committees for disbursement to agricultural producers. In all other cases, offset, withholdings, and stop payment policies at 7 CFR part 1408 are applicable. For procedures governing referrals of claims to the Department of Justice or the General Accounting Office the procedures in FCCS (4 CFR parts 101–105) may be followed. The regulations at 7 CFR part 1403 currently govern CCC policies regarding the assessment of late payment charges, referral of delinquent debts to credit reporting agencies, and referral of delinquent debts to IRS for tax refund offset.

This final rule deletes 7 CFR part 1408 which sets forth the setoff, withholding and stop payment policies of CCC and establishes under a single heading at 7 CFR part 1403, CCC policies and procedures governing the administrative collection, discharge, and referral of debts.

This regulation is necessary to protect the financial integrity of many federal agricultural programs by ensuring the Government will be able to collect, or otherwise settle, debts owed it by various individuals, organizations, and corporations.

This rule protects the right of CCC and ASCS to collect delinquent debts when payments have been assigned by allowing offset of any debts owed to CCC or ASCS by an assignor before payment is made to an assignee in accordance with the provisions of agricultural programs administered by county and State ASCS committees. Currently, offset may only be made of those debts entered on the applicable debt record prior to the date an assignment was accepted by CCC or ASCS. This change in policy would deter the circumvention of offset by such practices as the assignment of payments to friends, relatives, partners, or subsidiary corporations, as well as increase the ability of CCC and ASCS to recoup delinquent debts. This change would apply only to those debts owed to CCC and ASCS; the current procedures would continue to apply to requests for offset received from other federal agencies.

Under the final rule, the late payment interest rate CCC uses is a departure from the standard late payment rate prescribed by 31 U.S.C. 3717, which is based on the Treasury Department's current value of funds rate, as well as a change from the rate published in the proposed rule. Currently, the late payment interest rate is set by CCC in a notice published in the **Federal Register**. Such rate has been set at a fixed 13 percent and remained constant in spite of a dramatic fluctuation in interest rates in the past six years. The proposed rule provided that the late payment rate assessed on delinquent debts be based upon the rate CCC pays Treasury for

funds. It was proposed that late payment interest be assessed at a rate three percentage points higher than the CCC borrowing rate in effect on the date the debt became delinquent. In addition, for debts which remained delinquent for ninety (90) days, interest at an additional six percent would have been assessed.

Upon receipt of a comment on the proposed rule which asserted that the proposed late payment interest and additional interest rates were excessively high and would drive farmers deeper into debt, further review was made of CCC's proposed interest rates. Following this review it has been determined that CCC's late payment interest rate should be lowered to equal the rate of interest assessed under the Prompt Payment Act. Also, it was determined that for debts which remain delinquent for ninety (90) days, the additional interest assessed will be reduced from six percentage points to three percentage points above the late payment interest. With these changes, debtors will have an incentive to pay their debts timely without substantially increasing the amount of their debt. Furthermore, since the Prompt Payment Act rate has consistently been higher than CCC's borrowing rate, CCC will still be able to recover its borrowing costs. In addition, by charging debtors the same rate of interest on late payments as CCC pays if its payments are late, the problem of unequal treatment is eliminated.

This final rule also deletes 7 CFR part 709, which sets forth the manner in which ASCS and CCC payments may be assigned, and sets forth at 7 CFR part 1404 the criteria applicable to the assignment of ASCS and CCC program payments.

Three comments were received in response to the proposed rule published in the **Federal Register** on June 19, 1989 (54 FR 25718). One comment requested that the regulations include provisions to implement the requirement of the Agricultural Credit Act of 1987 that each loan program under the jurisdiction of the Secretary of Agriculture participate in state agricultural loan mediation programs. Since the requirement applies only to loan programs, provisions to implement it have been included in a proposed rule published in the **Federal Register** on August 22, 1989 (54 FR 34773) amending 7 CFR part 1405, rather than in the debt settlement policies and procedures. The regulations at 7 CFR part 1405 set forth general provisions applicable to CCC loans, purchases and other operations.

This commenter also felt that § 1403.6, which states that an accountant-certified financial statement may be required before an installment arrangement will be considered, could cause debtors to incur a large expense while attempting debt settlement. After examination of the requirement, it has been determined that CCC would be adequately protected by requiring a financial statement which is attested to as accurate by the preparer, under penalty of perjury, whether debtor-certified or accountant-certified. Therefore, the section has been amended to state only that a certified financial statement will be required.

The same commenter asserted that the proposed late payment interest and additional interest rates were excessively high and would drive farmers deeper into debt. As discussed previously, after further review it was determined that CCC would use a lower rate of applicable interest.

This commenter further requested a reconsideration of the provision of § 1404.3 which states that, "[n]othing contained herein shall be construed to authorize an assignment given to secure the payment of the whole or any part of the purchase price of a farm * * *" This provision was derived from the statutory requirement of 16 U.S.C. 590h(g) that assignments may only be made to finance making a crop, handling or marketing an agricultural commodity, or performing a conservation practice. Since assignments to secure payment of the purchase price of a farm or a fixed commodity rent are not included in the statute, they were specifically excluded from the regulations. However, since the section already provides that payments made in accordance with 7 CFR parts 701 and 1413 may only be assigned to finance making a crop, handling or marketing an agricultural commodity, or performing a conservation practice for the current year, the further exclusion is unnecessary and has been deleted from these regulations.

This commenter also takes exception to the provision of § 1404.6 which provides that all debts due ASCS or CCC may be offset without regard to assignments which may have been filed, as well as § 1404.8 which states that USDA shall not be liable in any suit if payment is not made to the assignee. The provision of § 1404.6 was developed to increase the ability of CCC and ASCS to recoup delinquent debts and to deter the circumvention of offset by such practices as the assignment of payments to friends, relatives, partners, or subsidiary corporations. Taking an assignment of a CCC or ASCS program payment as security for a debt has never been without risk. There has always been the possibility that a payment will not be made, e.g., if a producer fails to comply with contract requirements, as well as the possibility that an assignment will not be recognized because payment is made with commodity certificates which are not subject to assignment. Therefore, it was determined that any heightened risk to lenders is outweighed by the benefit to the government in the increased ability to collect delinquent debts. With respect to the second provision, the language in § 1404.8 was taken directly from 16 U.S.C. 590h(g) which authorizes the assignment of many ASCS and CCC program payments and thus is not subject to change.

Another comment requested that examples be provided of how, when and what interest rates would be applicable to delinquent debts. Under § 1403.9 late payment interest will accrue from the date of delinquency at the rate of interest applicable under the Prompt Payment Act, but, if payment is made within thirty days from the date of delinquency, collection of the late payment interest will be waived. An additional interest rate of three percent per annum will be assessed from the date of delinquency on any portion of the debt which remains unpaid ninety days after the date of delinquency. However, if a statute, regulation, agreement or contract specifies the interest applicable to the debt involved, these regulations shall not apply. As such possibilities are endless, it is not feasible to give examples of all of the variations which are possible. Accordingly, in order not to mislead affected parties, examples are not included in this final rule.

The third commenter submitted a copy of a complaint filed April 18, 1989, in the U.S. District Court for the District of Minnesota as their comments on the proposed regulations. Since the complaint was filed prior to publication of the proposed rule, it was not responsive to the contents of the regulations. Furthermore, since the complaint is being answered as part of the judicial process, it is not appropriate to respond to it here.

List of Subjects

7 CFR Part 709

Assignment of payment.

7 CFR Part 1403

Interest on delinquent debts.

7 CFR Part 1404

Assignment of payment.

7 CFR Part 1408

Setoff, Withholding and stop payment

demand letters shall specify the following:

the extent such costs are attributable to the delinquency. Such costs include, but

"Discharged debt" means any debt, or part thereof, which CCC has determined

(10) CCC's intent, if applicable, under § 1403.18, to refer any delinquent debt to the IRS, no sooner than 60 days from the

and financing agreement which provides CCC a security interest in the assets

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7 CFR Part 1403

Setoff, Withholding and stop payment policies of Commodity Credit Corporation.

Accordingly, title 7 of the Code of Federal Regulations is amended as follows:

PART 709—[REMOVED]

1. 7 CFR part 709 is removed.

2. 7 CFR part 1403 is revised to read as follows:

PART 1403—DEBT SETTLEMENT POLICIES AND PROCEDURES

Sec.

1403.1 Applicability.
1403.2 Administration.
1403.3 Definitions.
1403.4 Demand for payment of debts.
1403.5 Collection by payment in full.
1403.6 Collection by installment payments.
1403.7 Collection by administrative offset.
1403.8 Withholding.
1403.9 Late payment interest and administrative charges.
1403.10 Waiver of late payment interest and administrative charges.
1403.11 Administrative appeal.
1403.12 Additional administrative collection action.
1403.13 Contact with debtor's employing agency.
1403.14 Prior provision of rights with respect to debt.
1403.15 Discharge of debts.
1403.16 Referral of delinquent debts to credit reporting agencies.
1403.17 Referral of debts to Department of Justice.
1403.18 Referral of delinquent debts to IRS for tax refund offset.
1403.19 Reporting of discharged debts to IRS.
1403.20 Referral of debts to private collection agencies.

Authority: 15 U.S.C. 714b and 714c.

§ 1403.1 Applicability.

Except as may otherwise be provided by statute, this part sets forth the manner in which the Commodity Credit Corporation (CCC) will settle and collect debts by and against CCC arising out of domestic transactions.

§ 1403.2 Administration.

The regulations in this part will be administered under the general supervision and direction of the Executive Vice President, CCC and the Administrator, Agricultural Stabilization and Conservation Service (ASCS).

§ 1403.3 Definitions.

The following definitions shall be applicable to this part:

"Administrative charges" means the additional costs of processing delinquent debts against the debtor, to the extent such costs are attributable to the delinquency. Such costs include, but are not limited to, costs incurred in obtaining a credit report, costs of employing commercial firms to locate debtor, costs of employing contractors for collection services, costs of selling collateral or property to satisfy the debt.

"Administrative offset" means deducting money payable or held by the United States Government, or any agency thereof, to satisfy in whole or in part a debt owed the Government, or any agency thereof.

"ASCS" means the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture (USDA).

"Carrier" means a company or person, including but not limited to railroads, motor carriers, ocean carriers or piggyback companies, providing transportation of USDA commodities or other transportation related service for compensation.

"Certified financial statement" means an account of the assets, liabilities, income and expenses of a debtor, executed in accordance with generally accepted accounting principles and attested to as accurate by the preparer, under penalty of perjury.

"CCC" means the Commodity Credit Corporation.

"Claim" means an amount of money or property which has been determined by CCC, after a notice of delinquency and a demand for the payment of the debt has been made by CCC, to be owed to CCC by any person other than a Federal agency.

"Credit reporting agency" means:

(1) A reporting agency as defined at 4 CFR 102.5(a), or

(2) Any entity which has entered into an agreement with USDA concerning the referral of credit information.

"Debt" means any amount owed to CCC or owed by CCC which has not been satisfied through payment or otherwise.

"Debt record" refers to the account, register, balance sheet, file, ledger, data file, or similar record of debts owed to CCC, ASCS, or any other Government Agency with respect to which collection action is being pursued, and which is maintained in an ASCS office.

"Delinquent debt" means: (1) Any debt owed to CCC that has not been paid by the date specified in the applicable statute, regulation, contract, or agreement; or (2) Any debt that has not been paid by the date specified in an initial notification of indebtedness mailed or hand-delivered pursuant to § 1403.4.

"Discharged debt" means any debt, or part thereof, which CCC has determined is uncollectible.

"IRS" means the Internal Revenue Service.

"Late payment interest rate" means the amount of interest charged on delinquent debts and claims. The late payment interest rate shall be determined as of the date a debt becomes delinquent and shall be equal to the rate of interest assessed under the Prompt Payment Act.

"Person" means an individual, partnership, association, corporation, estate or trust, or other business enterprise or other legal entity and, whenever applicable, the Federal Government or a State government, or any agency thereof.

"Salary offset" means the deduction of money from the current pay account of a present or former Government employee payable by the United States Government to, or held by the Government for, such person to satisfy a debt that person owes the Government.

"Settlement" means any final disposition of a debt or claim.

"Shipment" means a carload, truckload, containerload, or other conveyance load of freight shipped from one location in one calendar day by one shipper for delivery. It shall be moved in accordance with the terms of a commercial or ocean bill of lading, or other similar agreement between the carrier and USDA.

"System of records" means a group of any records under the control of CCC or ASCS from which information is retrieved by the name of the individual, organization or other entity or by some identifying number, symbol, or other identification assigned to the individual, organization or other entity.

"Withholding" means the taking of action to temporarily prevent the payment of some or all amounts to a debtor under one or more contracts or programs.

§ 1403.4 Demand for payment of debts.

(a) When a debt is due CCC, an initial written demand for payment of such amount shall be mailed or hand-delivered to the debtor. If the debt is not paid in full by the date specified in the initial demand letter, or if a repayment schedule acceptable to CCC has not been arranged with the debtor, the initial demand shall be followed by two subsequent written demands at approximately 30-day intervals, unless it is determined by CCC that further demands would be futile and the debtor's response does not require rebuttal. The initial or subsequent demand letters shall specify the following:

(1) The basis for and the amount of the debt determined to be due CCC, including the principal, applicable interest, costs and other charges;

(2) CCC's intent to establish an account on a debt record 30 days after the date of the letter, or other applicable period of time, if the debt is not paid within that time;

(3) The applicable late payment interest rate.

(i) If a late payment interest rate is specified in the contract, agreement or program regulation, the debtor shall be informed of that rate and the date from which the late payment interest has been accruing;

(ii) If a late payment interest rate is not specified in the contract, agreement or program regulation, the debtor shall be informed of the applicable late payment interest rate set out in § 1403.9.

(4) CCC's intent to collect the debt 30 days from the date of the initial demand letter, or other applicable period of time, by administrative offset from any CCC or ASCS payments due or to become due to the debtor, and that the claim may be reported to other agencies of the Federal government for offset from any amounts due or to become due to the debtor;

(5) If not previously provided, the debtor's right to request administrative review by an authorized CCC official, and the proper procedure for making such request. If the request relates to the:

(i) Existence or amount of the debt, it must be made within 15 days from the date of the letter;

(ii) Appropriateness of reporting to a credit reporting agency, it must be made within 30 days from the date of the letter; or

(iii) Appropriateness of referral to IRS for tax refund offset, it must be made within 60 days from the date of the letter.

(6) The debtor's right to a full explanation of the debt and to dispute any information in the records of CCC concerning the debt;

(7) That CCC maintains the right to initiate legal action to collect the amount of the debt;

(8) That if any portion of the debt remains unpaid or if a repayment schedule satisfactory to CCC has not been arranged 90 days after the due date, an additional interest rate shall be assessed on the unpaid balance of the debt as prescribed in § 1403.9(e);

(9) CCC's intent, if applicable, under § 1403.16, to report any delinquent debt to a credit reporting agency no sooner than 60 days from the date of the letter;

(10) CCC's intent, if applicable, under § 1403.18, to refer any delinquent debt to the IRS, no sooner than 60 days from the date of the letter, to be considered for offset against any tax refund due or to become due the debtor.

(b) When CCC deems it necessary to protect the Government's interest, written demand may be preceded by other appropriate actions.

§ 1403.5 Collection by payment in full.

Except as CCC may provide in accordance with § 1403.6, CCC shall collect debts owed to the Government, including applicable interest, penalties, and administrative costs, in full, whenever feasible whether the debt is being collected by administrative offset or by another method, including voluntary payment. If a debt is paid in one lump sum after the due date, CCC will impose late payment interest, as provided in § 1403.9, unless such interest is waived as provided in § 1403.10.

§ 1403.6 Collection by installment payments.

(a) Payments in installments may be arranged, at CCC's discretion, if a debtor furnishes satisfactory evidence of inability to pay a claim in full by the specified date. The size and frequency of installment payments shall:

(1) Bear a reasonable relation to the size of the debt and the debtor's ability to pay; and

(2) Normally be of sufficient size and frequency to liquidate the debt in not more than three years.

(b) Except as otherwise determined by CCC, no installment arrangement will be considered unless the debtor submits a certified financial statement which reflects the debtor's assets, liabilities, income, and expenses. The financial statement shall not be required to be submitted sooner than 15 business days following its request by CCC.

(c) All installment payment agreements shall be in writing and may require the payment of interest at the late payment interest rate in effect on the date such agreement is executed. The installment agreement shall specify all the terms of the arrangement and include provision for accelerating the debt in the event the debtor defaults. A confession of judgment provision may be included in the agreement.

(d) CCC may deem a repayment plan to be abrogated if the debtor fails to comply with its terms.

(e) If the debtor's financial statement or other information discloses the ownership of assets which are not encumbered, the debtor may be required to secure the payment of an installment note by executing a security agreement and financing agreement which provides CCC a security interest in the assets until the debt is paid in full.

(f) If the debtor owes more than one debt to CCC, CCC may allow the debtor to designate the manner in which a voluntary installment payment is to be applied. If the debtor does not designate the application of a voluntary installment or partial payment, the payment will be applied to such debts as determined by CCC.

§ 1403.7 Collection by administrative offset.

(a) The provisions of this section shall apply to all debts due CCC except as otherwise provided in this part and part 1404 of this Chapter. This section is not applicable to:

(1) CCC requests for administrative offset against money payable to a debtor from the Civil Service Retirement and Disability Fund and CCC requests for salary offset against a present or former employee of the Federal Government which shall be made in accordance with regulations at part 3 of this title;

(2) CCC requests for administrative offset against a Federal income tax refund payable to a debtor which shall be made in accordance with § 1403.18;

(3) Cases in which CCC must adjust, by increasing or decreasing, a payment which is to be paid under a contract in order to properly make other payments due by CCC; and

(4) Any case in which collection of the type of debt involved by administrative offset is explicitly provided for or prohibited by statute.

(b) Debts due CCC may be collected by administrative offset from amounts payable by CCC when:

(1) The debtor has been provided written notification of the basis and amount of the debt and has been given an opportunity to make payment. Such written notification and opportunity includes notice of the right to pursue an administrative appeal in accordance with Part 780 of this Title or any other applicable appeal procedures, if not previously provided;

(2) The debtor has been provided an opportunity to request to inspect and copy the records of CCC related to the debt;

(3) The debtor has been notified in writing that the debt will be collected by administrative offset if not paid; and

(4) The debt has not been delinquent for more than ten years or legal action to enforce the debt has not been barred by an applicable period of limitation, whichever is later.

(c) Administrative offset shall also be effected against amounts payable by

(f) Failure to take the offset would substantially prejudice CCC's ability to

(l)(1) Debts shall be collected by offset in the following order of priority without

(n) Amounts recovered by offset for CCC and ASCS debts but later found

requirements and the withholding action is considered necessary to protect the

which CCC charges on delinquent debts. The late payment interest rate shall be

(c) Administrative offset shall also be effected against amounts payable by CCC:

(1) When requested or approved by the Department of Justice; or

(2) When a person is indebted under a judgment in favor of CCC.

(d) Debts due CCC from carriers for overcharges shall be offset against amounts due such carriers under freight bills involving shipments if:

(1) The carrier, without reasonable justification, has declined payment of the debt or has failed to pay the debt after being given a reasonable opportunity to make payment; and

(2) The period of limitation prescribed at 49 U.S.C. 11706(f) has not expired.

(e) Debts due CCC from carriers for loss or damage shall be offset against amounts due such carriers under freight bills involving shipments if:

(1) Timely demand for payment was made on the carrier;

(2) The carrier has declined payment of the debt without reasonable justification or has ignored the claim; and

(3) The period of limitation prescribed at 49 U.S.C. 11707(e) has not expired.

(f) Any overcharge or loss or damage debt due CCC on which the applicable period of limitation has run may be offset against any amounts owing by CCC to the carrier which are subject to a defense of limitation.

(g) A payment due any person may be offset when there is a breach of a contract or a violation of CCC program requirements, and offset is considered necessary by CCC to protect the financial interests of the Government.

(h) In the case of any procurement contract with CCC which provides for invoicing at the time of shipment with delivery to be made at designated destination points when:

(1) Payment is made to the contractor prior to receipt of evidence of delivery, and

(2) CCC thereafter determines that the Contractor is indebted to CCC because of losses sustained from shortage, damage to or deterioration of the commodity while in transit and prior to delivery, CCC may offset such indebtedness against amounts due and payable to the Contractor under any other contract with CCC providing the Contractor has not assigned the proceeds of such contract in accordance with part 1404 of this chapter.

(i) CCC may effect administrative offset against a payment to be made to a debtor prior to completion of the procedures required by (b)(1–3) of this section if:

(1) Failure to take the offset would substantially prejudice CCC's ability to collect the debt; and

(2) The time before the payment is to be made does not reasonably permit the completion of those procedures.

(j)(1) Debts due any agency other than CCC shall be offset against amounts payable by CCC to a debtor when an agency of the U.S. Government has submitted a written request for offset which is mailed or hand-delivered to the appropriate ASCS State office, Kansas City Management Office or Kansas City Commodity Office. Such written request must:

(i) Bear the signature of an authorized representative of the requesting agency;

(ii) Include a certification that all requirements of the law and the regulations for collection of the debt and for requesting offset have been complied with;

(iii) State the name, address (including county), and, where legally available, the social security number or employer ID number of the debtor and a brief description of the basis of the debt, including identification of the judgment, if any.

(iv) State the amount of the debt separately as to principal, interest, penalties, and administrative costs. Interest, if any, shall be computed on a daily basis to a date shown in the request. The amount to be offset shall not exceed the principal sum owed by the debtor, plus interest computed in accordance with the request, and any late payment interest, penalties and administrative costs that have been assessed;

(v) Certify that the debtor has not filed for bankruptcy. If the debtor has filed for bankruptcy, a copy of the order of the bankruptcy court relieving the agency from the automatic stay must be included; and

(vi) State the name, address, and telephone number of a contact person within the agency and the address to which payment should be sent.

(2) Unless prohibited by law, the head of an agency, or a designee, may defer or subordinate in whole or in part the right of the agency to recover through offset all or part of any indebtedness to such agency, or may withdraw a request for offset. Notice of such action must be sent to the appropriate ASCS office.

(k)(1) After CCC has complied with the provisions of this part, CCC may request other agencies of the Government to offset amounts payable by them to persons indebted to CCC.

(2) In the case of a request to IRS for a tax refund offset, the provisions at § 1403.18 shall apply.

(l)(1) Debts shall be collected by offset in the following order of priority without regard to the date of the request for such collection:

(i) Debts to CCC.

(ii) Debts to other agencies of USDA as determined by CCC.

(iii) Debts to other government agencies as determined by CCC.

(2) In the case of multiple debts involving the same debtor, CCC may, at its discretion, deviate from the usual order of priority in applying recovered amounts to debts owed other agencies when considered to be in the Government's best interest. Such decision shall be made by CCC based on the facts and circumstances of the particular case.

(m)(1) No amounts payable to a debtor by CCC shall be paid to an assignee until there have been collected any amounts owed by the debtor except as provided in this subsection.

(2) A payment which is assigned in accordance with Part 1404 of this Chapter by execution of Form CCC–36 shall be subject to offset for any debt owed to CCC or ASCS without regard to the date notice of assignment was accepted by CCC or ASCS.

(3) A payment which is assigned in accordance with Part 1404 of this Chapter by execution of Form CCC–252 shall be offset:

(i) Against any debt of the assignor entered on the debt record of the applicable ASCS office prior to the filing of such form with CCC or ASCS, or

(ii) At anytime, regardless of the date of filing of such form with CCC or ASCS, if the debt which is the basis for the offset arises under the same contract under which the payment is earned by the assignor.

(4) Offset shall be made, if the Internal Revenue Service so requests or has served a Notice of Levy, of any amounts for which the assignor is indebted to the United States for taxes, for which a notice of lien was filed in accordance with the provisions of the Internal Revenue Code prior to the date the notice of assignment was accepted by CCC or ASCS. The burden of determining whether a notice of lien has been filed shall be upon the assignee.

(5) With respect to all other Federal agencies, offset shall be made of any amounts due any other Federal agency which are entered on the debt record of the appropriate ASCS office prior to the date the notice of assignment was accepted by CCC or ASCS.

(6) Any amount due and payable to the assignor which remains after deduction of amounts paid to the assignee shall be available for offset.

(n) Amounts recovered by offset for CCC and ASCS debts but later found not to be owed to the Government shall be promptly refunded.

(o) The debtor shall be notified whenever any offset action has been taken.

(p) Offsets made pursuant to this section shall not deprive a debtor of any right he might otherwise have to contest the debt involved in the offset action either by administrative appeal or by legal action.

(q) Any action authorized by the provisions of this section may be taken against amounts payable to a debtor who operates under more than one name, provided there is identical ownership, or CCC determines that the debtor has established an entity for the purpose of avoiding the payment of the claim or debt.

(r) The amount to be offset shall not exceed the actual or estimated amount of the debt, including interest, administrative charges, and penalties, unless the Department of Justice requests that a larger specified amount be offset.

(s) Offset action will not be taken against payments when:

(1) The payment represents loan or purchase proceeds for a commodity which is subject to the rights of the holder of a prior valid enforceable lien. However, any amount that exceeds the amount of the prior lien shall be available for offset.

(2) A debt has been discharged as provided in § 1403.15.

(3) The amount payable to the debtor is used to satisfy a prior lien on property pledged as collateral for a CCC loan or sold to CCC. However, any amount exceeding the amount of the prior lien shall be available for offset.

(4) CCC determines such action will unduly interfere with the administration of a CCC or ASCS program.

(5) The debt has been delinquent for more than ten years or legal action to enforce the debt due CCC is barred by an applicable period of limitation, whichever is later.

§ 1403.8 Withholding.

(a) Withholding of a payment prior to the completion of an applicable offset procedure may be made from amounts payable to a debtor by CCC to ensure that the interests of CCC and the United States will be protected as provided in this section.

(b) A payment may be withheld to protect the interests of CCC or the United States only if CCC determines that:

(1) There has been a serious breach of contract or violation of program requirements and the withholding action is considered necessary to protect the financial interests of CCC;

(2) There is substantial evidence of violations of criminal or civil frauds statutes and criminal prosecution or civil frauds action is of primary importance to program operations of CCC;

(3) Prior experience with the debtor indicates that collection will be difficult if amounts payable to the debtor are not withheld;

(4) There is doubt that the debtor will be financially able to pay a judgment on the claim of CCC;

(5) The facts available to CCC are insufficient to determine the amount to be offset or the proper payee;

(6) A judgment on a claim of CCC has been obtained; or

(7) Such action has been requested by the Department of Justice.

(c) Except for debts due CCC or ASCS, withholding action by CCC on amounts payable to debtors of other Government agencies may not be made unless requested by the Department of Justice.

§ 1403.9 Late payment interest and administrative charges.

(a)(1) The provisions of this section are applicable to all persons whose debt to CCC becomes delinquent after January 1, 1990, unless the debtor and CCC agree otherwise.

(2) Late payment interest provisions of this section shall not apply:

(i) To debts owed by Federal agencies and State and local governments. Interest on debts owed by such entities shall be charged in accordance with applicable statutes or, if none are applicable, at the rate of interest charged by the U.S. Treasury for funds borrowed by CCC on the day the debt became delinquent;

(ii) If an applicable statute, regulation, agreement or contract either prohibits the charging of such interest or specifies the interest or charges applicable to the debt involved;

(iii) If the late payment interest is waived by CCC.

(b) CCC will assess late payment interest on the full amount of delinquent debts. For purposes of this section, the term "full amount of the delinquent debt" means the sum of the principal, accrued regular loan interest or accrued program interest, and any other charges which are otherwise due and owing to CCC on the delinquent debt at the time the late payment interest is assessed, except as provided in paragraphs (a)(2) and (d)(3) of this section.

(c) The late payment interest shall be expressed as an annual rate of interest which CCC charges on delinquent debts. The late payment interest rate shall be equal to the rate of interest assessed under the Prompt Payment Act, determined as of the date specified in paragraphs (d)(1) and (d)(2) of this section.

(d)(1) When a debt results from a statute, regulation, contract or other agreement with specific provisions for late payment interest and payment due date, late payment interest shall accrue on the amount of the debt from the first day the debt became delinquent, unless otherwise provided by statute.

(2) With respect to debts not resulting from a statute, regulation, contract or agreement containing specific provisions for late payment interest and payment due date, late payment interest shall begin to accrue from the date on which notice of the debt is first mailed or hand-delivered to the debtor.

(3) The rate of late payment interest initially assessed will be fixed for the duration of the indebtedness, except when a debtor has defaulted on a repayment agreement and seeks to enter into a new agreement. CCC may then set a new rate of interest which reflects the late payment interest rate in effect at the time the new agreement is executed. All charges which accrued, but which were not collected under the defaulted agreement, shall be added to the principal to be paid under a new repayment agreement.

(4) The late payment interest on delinquent debts will accrue on a daily basis.

(e) Except as specified in paragraph (a)(2) of this section, an additional interest rate of three (3) percent per annum will be assessed on any portion of a debt which remains unpaid ninety (90) days after the date described in paragraphs (d)(1) or (d)(2) of this section, if no repayment schedule satisfactory to CCC has been agreed upon. Such rate will be assessed retroactively from the date of delinquency and applied on a daily basis to all amounts due on the debt including the principal balance of the debt plus regular interest, late payment interest and other charges. Such rate shall continue to accrue until the delinquent debt has been paid.

(f) CCC shall assess as administrative charges the additional costs of processing delinquent debts against the debtor, to the extent such costs are attributable to the delinquency. Such costs include, but are not limited to, costs incurred in obtaining a credit report, costs of employing commercial firms to locate debtor, costs of employing contractors for collection

services, costs of selling collateral or

§ 1403.13 Contact with debtor's employing agency.

(i) Is declared legally insane or incompetent;

(f) Information reported to a credit reporting agency on delinquent debts

(i) The debtor has entered a repayment agreement covering the debt

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services, costs of selling collateral or property to satisfy the debt.

(g) When a debt is paid in partial or installment payments, payments will be applied first to additional interest assessed in accordance with paragraph (e) of this section and administrative charges, second to assessed late payment interest, and third to outstanding principal.

§ 1403.10 Waiver of late payment interest, additional interest and administrative charges.

(a) CCC shall waive the collection of late payment interest and administrative charges on a debt or any portion of a debt which is paid within 30 days after the date on which late payment interest began to accrue.

(b) CCC shall waive the collection of additional interest on debts which are appealed in accordance with 7 CFR Part 780 or other applicable appeal procedures from either the date of the appeal or the date such interest began to accrue, whichever is later, until the date a final administrative determination is issued. Such waiver shall not apply for any delay due to:

(1) The appellant's request for a postponement of the scheduled hearing;

(2) The appellant's request for an additional time following the hearing to present additional information or a written closing statement; or

(3) The appellant's failure to timely present information to the reviewing authority.

(c) Assessment and collection of late payment interest, additional interest and administrative charges under this Part may be waived by CCC in full, or in part, if it is determined that such action is in the best interest of CCC.

§ 1403.11 Administrative appeal.

If the opportunity to appeal the determination has not previously been provided under parts 24 or 780 of this title or any other appeal procedure, a debtor may obtain an administrative review under part 780 of this title of CCC's determination concerning the existence or amount of a debt, if a request is filed with the authority who made the determination within 15 days of the date of CCC's initial demand letter.

§ 1403.12 Additional administrative collection action.

Nothing contained in this part shall preclude the use of any other administrative remedy which may be available to CCC to collect debts owed to the Government.

§ 1403.13 Contact with debtor's employing agency.

When a debtor is employed by the Federal Government or is a member of the military establishment or the Coast Guard, and collection by offset cannot be accomplished in accordance with 5 U.S.C. 5514, CCC may contact the employing agency to arrange for payment of the debt by allotment or otherwise, in accordance with section 206 of Executive Order No. 11222, May 8, 1965, 30 FR 6469.

§ 1403.14 Prior provision of rights with respect to debt.

CCC will not provide an administrative appeal with respect to issues which were subject to administrative review at the debtor's request as provided under another statute or regulation before:

(a) Effecting administrative offset;

(b) Referring the debt to private collection or credit reporting agencies;

(c) Referring the debt to the Office of Personnel Management (OPM) for salary offset against the current pay of a present or former Government employee; or

(d) Referring the debt to IRS for tax refund offset.

§ 1403.15 Discharge of Debts.

(a) Except as required by other applicable regulation or statute, a debt or part thereof owed CCC shall be discharged and the records and accounts on that debt closed in the following situations:

(1) When an obligation or part thereof is discharged in bankruptcy;

(2) When an obligation or part thereof is the subject of a final judgment entered by a court of competent jurisdiction which is adverse to CCC;

(3) When a debt or part thereof is compromised and paid, the amount of such compromise;

(4) When collection of a debt by administrative offset is barred in accordance with § 1403.7(a)(5).

(b) A debt or part thereof owed CCC may be discharged and the records and accounts on that debt closed when the Controller, CCC, has determined that such action is in the best interest of CCC.

(c) A claims official or claims officer may discharge a delinquent debt if such debt arises under the terms of the authority delegated to such official or officer in the following circumstances:

(1) The delinquent debt is owed by an entity which has been liquidated or dissolved and no legal remedy is feasible.

(2) The delinquent debt is owed by an individual who:

(i) Is declared legally insane or incompetent;

(ii) Possessed of no assets or other means of payment; and

(iii) Possessed of no reasonable prospects of being able to pay the debt in the future.

(3) The delinquent debt was incurred by an individual who is deceased, and from whose estate recovery cannot be made.

(d) Debts discharged in accordance with this section may be reported to the Internal Revenue Service pursuant to § 1403.19.

§ 1403.16 Referral of delinquent debts to credit reporting agencies.

(a) This section specifies the procedures that will be followed by CCC and the rights that will be afforded to debtors when CCC reports delinquent debts to credit reporting agencies.

(b) Before disclosing information to a credit reporting agency in accordance with this part, CCC shall review the claim and determine that it is valid and delinquent.

(c) Before a debt may be referred to a credit reporting agency, the debtor must be notified, pursuant to § 1403.4, of CCC's intent to make such a report. Such notification shall include:

(1) CCC's intent to disclose to a credit reporting agency that the debtor is responsible for the debt, and that such disclosure will be made not less than 60 days after notification to such debtor.

(2) The information intended to be disclosed to the credit reporting agency under paragraph (g)(1) of this section.

(3) The debtor's right to enter a repayment agreement on the debt, including, at the discretion of CCC, installment payments, and that if such an agreement is reached, the debt will not be referred to a credit reporting agency.

(4) The debtor's right to review of this action in accordance with paragraph (i) of this section.

(d) The debtor shall be notified, in writing at the debtor's last known address, when CCC has reported any delinquent debt to a credit reporting agency.

(e)(1) CCC shall notify each credit reporting agency to which an original disclosure of delinquent debt information was made of any substantial change in the condition or amount of the claim.

(2) CCC shall promptly verify or correct, as appropriate, information about the debt on request of a credit reporting agency. The records of the debtor shall reflect any correction resulting from such request.

(f) Information reported to a credit reporting agency on delinquent debts shall be derived from the system of records maintained by CCC.

(g) CCC shall limit delinquent debt information disclosed to credit reporting agencies to:

(1) The name, address, taxpayer identification number, and other information necessary to establish the identity of the debtor;

(2) The amount, status, and history of the claim; and

(3) The program under which the claim arose.

(h) Reasonable action shall be taken to locate a debtor for whom CCC does not have a current address before reporting delinquent debt information to a credit reporting agency.

(i)(1) Before disclosing delinquent debt information to a credit reporting agency, CCC shall, upon request of the debtor, provide for a review of the debt in accordance with § 1403.11. This review shall only consider defenses or arguments which were not available or could not have been available at any previous appeal proceeding permitted under § 1403.11.

(2) Upon receipt of a request for review within 30 days from the date of notice to the debtor of intent to refer delinquent debt information to a credit reporting agency, CCC shall suspend its schedule for disclosure to a credit reporting agency until a final decision regarding the appropriateness of disclosure to a credit reporting agency is made.

(3) Upon completion of the review, the reviewing official shall transmit to the debtor a written notification of the decision. If appropriate, the debtor shall be notified of the scheduled date on or after which the debt will be referred to the credit reporting agency. The debtor will also be notified of any changes from the initial notification in the information to be disclosed.

(j)(1) In accordance with guidelines established by the Executive Vice President, CCC, the responsible claims official shall report to credit reporting agencies delinquent debt information specified in paragraph (g) of this section.

(2) The agreements entered into by USDA and credit reporting agencies shall provide the necessary assurances to CCC that the credit reporting agencies to which information will be provided are in compliance with the provisions of all the laws and regulations of the United States relating to providing credit information.

(3) CCC shall not report delinquent debt information to credit reporting agencies when:

(i) The debtor has entered a repayment agreement covering the debt with CCC, and such agreement is still valid; or

(ii) CCC has suspended its schedule for disclosure of delinquent debt information pursuant to paragraph (i)(2) of this section.

(k) Disclosures made under this section shall be in accordance with the requirements of the Privacy Act, as amended (5 U.S.C. 552a).

§ 1403.17 Referral of debts to Department of Justice.

Debts which cannot be collected in accordance with these regulations may be referred to the Department of Justice for collection action.

§ 1403.18 Referral of delinquent debts to IRS or tax refund offset.

CCC may refer legally enforceable delinquent debts to IRS to be offset against tax refunds due to debtors under 26 U.S.C. 6402, in accordance with the provisions of 31 U.S.C. 3720A and Treasury Department regulations.

§ 1403.19 Reporting discharged debts to IRS.

(a) In accordance with IRS regulations, CCC may report to IRS as discharged debts on IRS Form 1099–G only the amounts specified in paragraph (b) of this section.

(b) The following discharged debts may be reported to IRS:

(1) The amount of a debt discharged under a compromise agreement between CCC and the debtor, except for compromises made due to doubt about the Government's ability to prove its case in court for the full amount of the debt.

(2) The amount of a debt discharged by the running of the statutory period of limitation for collecting the debt by administrative offset specified in 31 U.S.C. 3716.

(3) The amount of a debt discharged by CCC in accordance with § 1403.15(b).

§ 1403.20 Referral of debts to private collection agencies.

If CCC's collection efforts have been unsuccessful after 90 days and the delinquent debt remains unpaid, CCC may refer the debt to a private collection agency for collection.

3. The following new part 1404 is added to title 7 of the Code of Federal Regulations:

PART 1404—ASSIGNMENT OF PAYMENTS

Sec.

1404.1 General Statement.
1404.2 Definitions.
1404.3 Payments which may be assigned.
1404.4 Execution of assignment form.
1404.5 Payment assigned not to be discounted.
1404.6 Payment to the assignee.
1404.7 Misrepresentations.
1404.8 Liability of the Secretary or disbursing agents.
1404.9 OMB Control Numbers assigned pursuant to the Paperwork Reduction Act.

Authority: 15 U.S.C. 714b and 714c; 16 U.S.C. 590h(g).

1404.1 General statement.

This part sets forth the manner in which a person may assign a cash payment which is made by the Agricultural Stabilization and Conservation Service (ASCS) or the Commodity Credit Corporation (CCC). Such payments may only be assigned in the manner set forth in this part.

§ 1404.2 Definitions.

(a)(1) *"Assignee"* means any person, including any agency of the Federal Government, to whom an assignment of an ASCS or CCC payment is made in accordance with this part.

(2) *"Assignor"* means any person who is the recipient of a payment from ASCS or CCC who assigns the payment to another person in accordance with this part.

(3) *"Payment"* means a cash payment and excludes

(i) Any payment made in accordance with part 1470 of this title;

(ii) Price support loan or purchase agreement proceeds; and

(iii) Any payments made in accordance with parts 1467, 1488, 1491, 1492, and 1493 of this title.

(b) The terms defined in parts 719, 1413, 1421 and 1427 shall also be applicable to this part.

§ 1404.3 Payments which may be assigned.

(a) Except as otherwise provided in this part or in individual program regulations, contracts and agreements entered into by ASCS or CCC, any payment due a person from ASCS or CCC may be assigned.

(b)(1) A payment which is made to a producer in accordance with 7 CFR parts 701 and 1413 may not be assigned to pay or secure any preexisting indebtedness.

(2) Payments made in accordance with 7 CFR parts 701 and 1413 may be assigned only as security for cash or advances to finance making a crop, handling or marketing an agricultural commodity, or performing a conservation practice, for the current

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crop year. To finance making a crop means

(i) To finance the planting, cultivating, or harvesting of a crop, including the purchase of equipment required therefor and the payment of cash rent for land used therefor, or

(ii) To provide food, clothing, and other necessities required by the producer or persons dependent upon the producer.

§ 1404.4 Execution of assignment form.

(a)(1) The assignment of any ASCS or CCC payment must be made by the execution of Form CCC–36 or Forms CCC–251 and CCC–252. Form CCC–36 is applicable to payments made under programs administered in accordance with 7 CFR parts 701, 704, 1413, 1430, 1468, 1472 and 1475. Such form is also applicable to any other program which is administered by a county ASC committee. Forms CCC–251 and 252 are applicable to all other CCC or ASCS programs and contracts.

(2)(i) To be recognized by ASCS or CCC, Form CCC–36 must be filed in the county ASCS office prior to the time the county committee approves the making of the payment covered by the assignment. To be recognized by ASCS or CCC, Forms CCC–251 and 252 must be filed with the ASCS or CCC office from which the payment will be made prior to the making of the payment.

(ii) Form CCC–36 or Forms CCC–251 and 252 must be signed by both the assignor and the assignee. With respect to Form CCC–36, the assignor's signature must be witnessed by a member of the county ASC committee for the county where the farm is located, or by an employee of the county committee, unless the assignee is a bank whose deposits are insured by the Federal Deposit Insurance Corporation, the Farmers Home Administration, or a production credit association supervised by the Farm Credit Administration, in which case the assignment may be witnessed by a bonded officer of such lending institution.

(3) The assignor and the assignee shall promptly notify the appropriate ASCS or CCC office of any change affecting the assignment.

§ 1404.5 Payment assigned not to be discounted.

(a) With respect to assignments made by execution of Form CCC–36, if interest is charged by the assignee on the amount advanced, the rate of interest must not be in excess of the maximum rate lawfully chargeable under the law of the State where the farm is located.

(b) The payment assigned shall not be discounted by charging the assignor more than the current cash price for any supplies furnished or in any other manner whatsoever. Interest may be deducted by the assignee in advance from any cash advancement.

§ 1404.6 Payment to the assignee.

(a) The assignee shall be paid the smaller of the amount specified on Form CCC–36 or CCC–251 or the amount of the payment earned under the program or contract covered by the assignment. Any indebtedness owed by the assignor to CCC, ASCS, or any other agency of the United States shall be subject to offset.

(b) Any indebtedness owed by the assignor to CCC or ASCS shall be offset from any payment which is owed by CCC or ASCS without regard to the date of filing of a Form CCC–36 with the applicable ASCS or CCC office. Except as provided in paragraph (d) of this section, any indebtedness owed by the assignor to CCC or ASCS shall be offset from any payment which is owed by CCC or ASCS if such indebtedness was entered on the debt record of the applicable ASCS or CCC office prior to the date of the filing of Forms CCC–251 and 252 with the applicable ASCS or CCC office.

(c) Any indebtedness owed by the assignor to any agency of the United States other than CCC or ASCS which was entered on the debt record of the applicable ASCS or CCC office prior to the date of filing of the Form CCC–36 or Forms CCC–251 and 252 with such office shall be offset prior to the making of any payment to the assignee.

(d) Any indebtedness arising under a contract between the assignor and ASCS or CCC which is the subject of the assignment shall be offset from the payment prior to the making of any payment to the assignee under such contract without regard to the date of the filing of Form CCC–36 or Forms CCC–251 and 252 with the appropriate ASCS or CCC office.

§ 1404.7 Misrepresentations.

If ASCS or CCC has reason to believe that any material misrepresentation was made by the assignor or the assignee in executing Forms CCC–36, CCC–251 or CCC–252, ASCS or CCC shall give notice thereof to the assignor and the assignee. If, after investigation and opportunity for the assignor and assignee to be heard, ASCS or CCC finds that any material misrepresentation was in fact made, ASCS or CCC shall notify the assignor and the assignee of such finding, and void such assignment, and insofar as concerns ASCS, CCC or any other agency of the United States, the assignment shall be of no effect.

§ 1404.8 Liability of the Secretary or disbursing agents.

Neither the United States, the CCC, the Secretary nor any disbursing agent shall be liable in any suit if payment is made to the assignor without regard to the existence of any assignment, and nothing contained herein shall be construed to authorize any suit against the United States, the CCC, the Secretary or any disbursing agent if payment is not made to the assignee, or if payment is made to only one of several assignees.

§ 1404.9 OMB Control Numbers assigned pursuant to the Paperwork Reduction Act.

The information collection requirements contained in this part have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. 35 and have been assigned OMB control number 0560–0004.

PART 1408—[REMOVED]

4. 7 CFR part 1408 is removed.

Signed at Washington, DC, on December 15, 1989.

John A. Stevenson,

Acting Administrator, Agricultural Stabilization and Conservation Service, Executive Vice President, Commodity Credit Corporation.

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Part III

Department of Energy

10 CFR Parts 500 et al.

Powerplant and Industrial Fuel Use Act of 1978; Issuance of Final Rules; Notice of Final Rulemaking

DEPARTMENT OF ENERGY

B. Cost Calculation and Fuel Price Computations (Appendix II to part 504)

MFBIs and powerplants without the capability of using an alternate fuel,

requests for exemptions have been received since FUA was amended.

II. Comments

A. General

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DEPARTMENT OF ENERGY

10 CFR Parts 500, 501, 503, 504, 508, and 516

Powerplant and Industrial Fuel Use Act of 1978; Issuance of Final Rules

AGENCY: Department of Energy.

ACTION: Notice of final rulemaking.

SUMMARY: The Office of Fossil Energy (OFE) of the Department of Energy (DOE) is revising its final rules implementing the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act). On January 25, 1989, the Economic Regulatory Administration (ERA) of the DOE published a notice of proposed rulemaking (54 FR 3726) in order to (1) incorporate legislative amendments of certain FUA sections into the regulations; (2) revise and clarify calculations as well as fuel price and inflation indices used in the cost test calculations supporting exemptions based on a lack of alternate fuel at a cost which does not substantially exceed the cost of using imported petroleum; and (3) revise and update the oil/gas use estimates used in determining eligibility for exemptions based on cogeneration.

On January 6, 1989, the functions of the ERA with respect to the Fuel Use Act were transferred to the DOE's Assistant Secretary for Fossil Energy. OFE is issuing this final rule.

DATE: These rules shall become effective December 22, 1989.

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I. Background

On January 25, 1989, the Department of Energy's Economic Regulatory Administration issued a Notice of Proposed Rulemaking (NOPR) (54 FR 3726) to revise rules implementing the Powerplant and Industrial Fuel Use Act of 1978 (FUA) in order to address certain amendments to FUA made on May 21, 1987, by the Powerplant and Industrial Fuel Use Act of 1978, Amendments, Public Law 100-42. On January 6, 1989, the Department of Energy's FUA functions were transferred from ERA to the Office of Fossil Energy (OFE). OFE is issuing this final rule.

The amendments repealed certain sections of the Act and amended other sections. Repealed were section 202, New Major Fuel-Burning Installations; section 302, Existing Major Fuel-Burning Installations, section 401, Authority to Prohibit Use of Natural Gas in Certain Boilers Used for Space Heating; section 402, Prohibition on Use of Natural Gas for Decorative Outdoor Lighting; section 405, Authority to Restrict Increased Use of Petroleum by Existing Powerplants; title 5, System Compliance Options; and section 801, Coal Reserve Disclosure. Section 201 was amended by removing the prohibition against the use of oil or natural gas in new powerplants or industrial facilities, and creating a prohibition against construction or operation of new baseload electric powerplants without the capability to use coal or another alternate fuel as a primary energy source. In addition the Congress added a self-certification procedure for declaring new units to be capable of using alternate fuels.

The original statute was enacted following severe shortages of natural gas in the interstate market in the winter of 1976-1977. At the time, Congress sought to reduce oil imports and to conserve natural gas and oil for uses other than electric utility generation or commercial generation of steam. In order to achieve its purpose, FUA prohibited the use of oil and natural gas in both new major fuel burning installations (MFBI) and new electric powerplants unless an exemption for such use had been granted, and prohibited the construction of new MFBIs and powerplants without the capability of using an alternate fuel.

Domestic energy markets have fundamentally changed since the 1978 enactment of FUA. Phased decontrol of natural gas has resulted in substantial increased availability of natural gas in the interstate market. The use of natural gas has proved to be a cost effective way to expand electric generating capacity while meeting environmental requirements. The result has been a growth in inter-fuel competition and new markets for domestic oil and gas producers.

The amended FUA offered additional flexibility to utilities while preserving the "coal option" for new baseload electric powerplants by repealing of the categorical prohibition against the use of oil or gas contained in section 201 of the original statute, and substituting a requirement that new baseload powerplants be capable of using coal or another alternate fuel as a primary energy source. Utilities which do not wish to construct "alternate fuel capable" units may still petition for exemptions, as provided by the 1978 Act.

Advances in gas combustion turbine technology have made it possible for powerplant owners or operators to install an efficient simple cycle or combined cycle gas unit that could be altered at a later date if a decision were then made to add a gasifier to run the combustion turbine on clean, medium-Btu synthetic gas derived from coal. This type of powerplant is, for purposes of the amended Act, "alternate fuel capable;" that is, the unit itself could be altered at a later date by installing different tubing, nozzles, ducts, vanes, etc., so that it is capable of handling the larger volumes of medium-Btu coal gas.

These new high efficiency powerplants may be the technology of choice for future capacity additions. Such capacity can be added more rapidly and in smaller increments than direct coal-fired capacity, resulting in significant savings to consumers. Subsequently, if economic conditions warrant, a coal gasifier could be added to such plants, either on- or off-site, to produce clean synthetic coal gas that could be used in such combined-cycle powerplants. The May 21, 1987, amendment permits owners or operators of new powerplants to self-certify the alternate fuel capability of their powerplants. Since that time, self-certifications have been submitted for 113 new gas-fired electric powerplants resulting in an increased generating capacity of over 15,000 megawatts. No

requests for exemptions have been received since FUA was amended.

The purpose of the NOPR was threefold. First, the NOPR proposed to implement the May 1987 amendments to FUA. Consistent with the amendments, the NOPR proposed to remove industrial facilities and non-baseload electric powerplants from FUA coverage, leaving only baseload electric powerplants subject to the prohibitions of FUA. The NOPR also discussed the amendment's certification process by which baseload powerplants could comply with the alternate fuel capability requirements of the Act.

Second, the NOPR sought comment on proposed changes to calculations used for cost test exemptions as well as parameters and indices used in the fuel price computation methodology of appendix II to 10 CFR parts 503 and 504. Changes in energy markets and the convergence of the costs of low sulfur residual oil and natural gas caused the parameters and methodologies used in the previous FUA cost test regulations to become outdated. OFE found that current data indicate that a close pricing relationship has developed between imported petroleum and natural gas that did not exist when the initial criteria for the fuel price computations were adopted. For that reason, the OFE will now require an applicant to compare directly the cost of using coal in its planned facility with the cost of using its fuel of choice rather than comparing the cost of using coal with the price of using imported petroleum with a $1.00 added premium.

Third, the NOPR proposed to update the table in § 503.37 showing State-by-State estimates of oil and gas usage for determining the oil and gas savings when applying for a cogeneration exemption. When originally adopted on December 7, 1981 (46 FR 59872), this table contained data based upon 1980 regional oil/gas use. The revised table is based on actual 1987 oil/gas and electricity statistics published by the DOE's Energy Information Administration (EIA) in its "Electric Power Annual 1987" [publication DOE/EIA-0348(87)].

Public comments received by OFE reflected an overwhelming endorsement of the foregoing proposals. Most commenters believed that the changes proposed were consistent with the intent of the FUA amendments. After considering the comments received, OFE is today adopting the foregoing proposals with changes discussed below. OFE believes that these final rules are fully responsive to the comments received.

II. Comments

A. General

Numerous non-substantive changes modifying the regulations to comport with the 1987 FUA amendments and DOE organizational changes were offered in the NOPR. Specific comments were not received from the public with regard to any of these proposed changes. Therefore, the OFE is adopting "housekeeping" changes that include removing all reference to terms that are no longer relevant including "new or existing major fuel burning installations," "installations," "MFBI," "process life," "refinery operations," and "alternate fuels determinations". In addition, references to "intermediate load" and "peakload" powerplants have been removed from the final regulations. Where appropriate, certain sections of the rules have been consolidated or combined to eliminate provisions or requirements that are repetitious or that experience has shown to be unnecessary, and reference to the Economic Regulatory Administration and ERA have been changed to Office of Fossil Energy and OFE.

B. Definitions (part 500)

Capability to use alternate fuel. An important change made by the 1987 FUA amendments was to redefine coal or alternate fuel capability. The definition adopted herein is taken verbatim from the FUA amendment. A powerplant now is considered to be alternate fuel capable if it has the inherent design characteristics to permit the *addition of equipment* (including pollution devices) to render the unit coal or alternate fuel capable, *and* if it is not physically, structurally, or technologically precluded from using coal or another alternate fuel as its primary energy source. This "coal capability" is not to be interpreted to mean that the unit is capable of using coal or another alternate fuel on its initial day of operation.

For explanatory purposes, the following example was presented in the NOPR:

Example: A natural gas-fired, combined-cycle cogeneration facility is considered "coal capable" if the unit is physically, structurally, and technically capable of being modified at a future date to burn an alternate fuel, such as gasified coal.

One commenter proposed, and OFE adopted in its final regulations, an added explanatory sentence to the definition of "coal capability" which states that "(T)he owner or operator of a baseload powerplant need not have adequate space for either a coal gasifier or any facilities for handling coal or related fuels." The intent of this addition is to make it quite clear that the owner or operator of a proposed powerplant need not have adequate on-site space for either a coal gasifier or any facilities for handling coal or related fuels.

C. Administrative Procedures and Sanctions (part 501)

1. General Provisions (subpart A)

The OFE has added a subparagraph (b) (Effective date of orders or rules) to § 501.9 of these final regulations that is extracted from the FUA amendment. The new paragraph provides that an exemption shall not take effect until all State regulatory approvals relating to the construction of the new facility have been obtained.

On a related issue, one commenter wrote that owners and operators of new baseload powerplants need regulatory certainty to obtain financing for self-certified baseload powerplants, and lenders may be unwilling to provide non-recourse financing for gas-fired, baseload electric generating facilities if there is a risk that certification can later be withdrawn. The commenter proposed that DOE add a regulatory provision specifying that self-certification filings are final and irrevocable at a time certain unless the DOE subsequently finds that the applicant knowingly made false or misleading statements in its certification, or unless, at some future date, the facility's inherent design characteristics are subsequently changed so that it becomes incapable of using alternate fuels.

DOE interprets the legislative intent of the certification procedure as offering the applicant certainty and protection while complying with the Act. A certification immediately triggers the applicant's compliance with FUA. The DOE retains the right to collect additional information from the applicant within 60 days of submission, but the certification is effective upon filing. Therefore, the DOE determined that inclusion of the commenter's suggested language was unnecessary.

A commenter proposed that the DOE retain the exclusion from FUA for "commercially unmarketable" energy sources. The commenter offered the example that if sufficient pipeline capacity is not constructed in time, additional volumes of liquefied natural gas (LNG) may someday be needed, at least temporarily, for power generation in New England. Such LNG might well be "commercially unmarketable", in the sense that it could be priced above the level that would prevail in a

marketplace where energy supplies are not artificially constrained.

Consistent with the NOPR, OFE is deleting Appendix II, Option 2.

List of Subjects in 10 CFR parts 501, 502, 503, and 504

marketplace where energy supplies are not artificially constrained.

OFE remains convinced that the amendments to the Act eliminated the need for an exclusion for commercially unmarketable fuels. The amended Act does not prohibit the use of any fuels in new baseload powerplants. In fact, the amendment encourages flexibility in fuel choices on the part of the owner or operator. The amendment requires that the unit have the inherent design characteristics to permit the addition of equipment necessary to render the unit alternate fuel capable, and that the unit not be physically, structurally, or technologically precluded from using coal or another alternate fuel as its primary energy source. Once that requirement is met (or once an exemption from the requirement is obtained), the owner or operator may use any fuel desired in the unit, including a "commercially unmarketable" fuel. Therefore, the final rule removes the exclusion for "commercially unmarketable" fuels, as originally proposed.

The addresses set forth in § 501.11 for filing documents, and the location of the public reading room for reviewing or copying documents, have been changed since publication of the NOPR.

2. Exemptions and Certifications (subpart F)

The FUA amendments provide for a self-certification procedure to meet the alternate fuel capability requirement of the new section 201(a). § 501.61 of these rules adopts, without change, the original proposal that the following information be submitted in addition to the alternate fuel certification signed by a duly authorized representative of the company: (1) a description of the planned facility, including the size of the proposed unit(s) and process used (combined-cycle, simple-cycle, etc.) as well as the fuel(s) to be used; (2) identification of the owner/operator of the facility; and (3) the facility's location. For cogeneration facilities filing self-certifications, the certification is to include the name of the utility that will be purchasing the generated electricity.

D. Cogeneration Oil/Gas Savings (part 503)

The OFE has further refined the numbers presented in the NOPR for the table of estimated oil and gas savings that could be attributed to electricity backed off the grid by cogeneration, § 503.37. The previous table contained 1980 regional data that is no longer accurate. These final regulations use current State-by-State electricity offset rates that have been extracted from documents published by the DOE's Energy Information Administration. The DOE will update the data as necessary and publish notice of these updates in the Federal Register.

E. Cost Calculation and Fuel Price Computations (Appendix II to part 504)

FUA requires that a facility be granted an exemption to use oil or natural gas on the basis of cost when coal or another alternate fuel will not be available at a cost which, "based upon the best practicable estimates, does not substantially exceed the cost, as determined by rule by the Secretary, of using imported petroleum * * * *" [FUA, sections 211(a), 212(a), 311(a), 312(a), providing cost-based exemptions, and Section 103(a)(20), defining "cost"].

With respect to the fuel cost components of the cost calculations, the previous final regulations (46 FR 59672, November 30, 1981) provided equations and future fuel price indices for computing the prices of delivered fuels over the lifetime of a facility. However, those regulations contained only a crude oil price index and an alternate fuel index for coal. Since those regulations did not explicitly include natural gas or distillate oil use, when an applicant proposed to use natural gas or distillate oil, the fuel cost computation for the proposed fuel employed the cost of an equivalent energy use of No. 6 residual fuel oil plus a $1.00 premium. This was adopted originally to avoid biasing the cost comparison between gas and coal by employing an arbitrarily low natural gas price when binding wellhead price ceilings held natural gas prices below the energy-equivalent price of imported petroleum.

Since adoption of those regulations on December 7, 1981, domestic energy prices in general ceased rising and then declined under the impacts of declining world petroleum prices, increasing supplies, steady efficiency improvements in energy use, and deregulation of natural gas prices.

Market and regulatory changes have essentially eliminated the former disparity between the prices of oil and natural gas. As a result, earlier projections of future coal and oil prices used for cost comparisons in applications for exemptions are outdated and in need of revision.

Further, market forces also have essentially eradicated the earlier price gap that represented the undervaluation of natural gas relative to petroleum when natural gas prices were constrained by binding price ceilings at the wellhead. Therefore, OFE is now adopting its proposal that the price of the primary fuel to be used in the new facility, whether natural gas or petroleum, be used directly in the fuel cost computations.

1. Cost Calculation for Exemption Petitions Proposing the Use of Natural Gas

In response to three commenters, DOE is revising the previous paragraph (c) of Appendix II to part 504, Fuel Price Computation—Single Fuel. This calculation included a premium value of $1.00 per barrel of oil equivalent which was added to the price of the fuel to be burned in the new facility. There are two reasons why we adopt this proposal. First, addition of the $1.00 premium is inconsistent with the intent of the FUA amendments which encourage fuel consumers to base their fuel choices on economic and other factors rather than artificially imposed values. Second, as discussed in the NOPR, there is now demonstrated competition between natural gas and residual fuel oil allowing many facilities with dual-capability to switch back and forth between fuels based on very small changes in their relative prices. The capability for substitution between the fuels both in the short- and long-run will prevent unconstrained swings in the price of one fuel relative to the other.

The OFE is adopting its proposal that a petitioner requesting an exemption use the price of the fuel that will actually be used rather than an equivalent energy value of No. 6 residual fuel oil computing fuel price.

2. Fuel Price and Inflation Indices

Commenters generally supported the proposal contained in Appendix II Option 1 of the NOPR that provided a mechanism by which the parameters specified in paragraphs (b)(4) and (c)(4) and in Tables II–1 and II–2 of Appendix II are to be updated annually. These tables were originally used in the cost based exemptions of §§ 503.21 and 503.32 to express fuel prices and construction and operation costs in nominal dollars for the year the powerplant was to be placed in service. In previous regulations Table II–1 contained DOE's crude oil and alternative fuel price and inflation indices; Table II–2 contained rates of fuel price and inflation increases. These tables have now been combined and is now identified as Table II–1. This new table is now merely illustrative of the application of equations II–1 and II–2 that prescribe the method by which petitioners are to compute fuel and inflation indices.

Consistent with the NOPR, OFE is deleting Appendix II, Option 2.

Three commenters suggested that a petitioner, at his own discretion, should be allowed to develop fuel price indices using either the OFE methodology or his own. OFE is adopting this suggestion in Appendix II paragraph (b)(1). However, if the petitioner uses his own price index, the source or derivation of his index must be fully documented and be contained in the evidential summary.

Consistent with the NOPR, the OFE will use DOE's EIA base case, or mid-range, forecast as the basis for computing fuel price and inflation indices.

OFE is revising Appendix II to clarify that fuel price and inflation indices will change yearly with the publication of the EIA's Annual Energy Outlook (AEO). The relevant set of values for a specific petition will be the set in effect at the time the petition is submitted or the set in effect at the time a decision is rendered, whichever is more favorable to the petitioner.

In a related matter, one commenter suggested that the DOE clarify its regulations to provide expressly that the cost comparison for permanent exemptions include the "full cost" of using each fuel considered in the comparison, including the cost of environmental compliance, as well as the cost of any loss in a powerplant's efficiency caused by such measures. The OFE believes that the current cost comparison regulations, specifically §§ 503.6(d) (2) and (3)(ii), do not preclude the accounting of environmental compliance costs or powerplant efficiency losses caused by environmental considerations.

III. Procedural Matters

A. Section 102 of the National Environmental Policy Act (NEPA)

The environmental impact of the Fuel Use Act was addressed in the programmatic Environmental Impact Statement (DOE/EIS–00381) published in April 1979. The previous final rulemaking was published on December 7, 1981 (46 FR 59672), after it was determined that those final regulations did not constitute a major federal action significantly affecting the human environment.

This final rule brings the language of the regulations into line with the amended FUA regarding the fuel price and inflation indices used in the cost calculations for an exemption, and change the fuel pricing formula for proposals to burn natural gas in a powerplant. Since this final rulemaking addresses the applicability of the FUA to only baseload powerplants and updates certain computational parameters and pricing formulae already evaluated in the programmatic EIS, the environmental impact of these regulatory changes fall within the scope of the previous EIS and its implementing rules. These amendments do not constitute a major federal action significantly affecting the quality of the human environment and neither an environmental assessment nor a supplement to the existing EIS is required.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601 (September 19, 1980)) requires the DOE to describe the economic impact that a rule would have on small entities or to certify that the rule would not have a significant economic impact on a substantial number of small entities.

Since these final rules reflect a reduction in the universe affected by the FUA and only change certain parameters already defined, the DOE has determined that this final rule will not negatively affect firms that are "small entities" within the meaning of the Regulatory Flexibility Act. Accordingly, the DOE certifies that this rule is not likely to have a significant impact on a substantial number of small entities within the meaning of that Act.

C. Executive Order 12291

Executive Order 12291 (46 FR 13193, February 19, 1981) requires an agency to prepare a regulatory impact analysis for any proposed major rule. At the time the existing regulations were published, the Office of Management and Budget waived the requirements of sections 3, 4, and 7 of Executive Order 12291 as they pertain to those regulations. Since this final rule reduces the universe affected by FUA and would change only a small portion of the existing regulations, no regulatory impact analysis has been prepared.

Pursuant to section 3(c)(3) of Executive Order 12291, this rule was submitted to the Office of Management and Budget for review at least 10 days prior to publication in the Federal Register.

D. Paperwork Reduction Act of 1980

The information collection requirements contained in 10 CFR parts 500, 501, 503, and 504 of these regulations have received Office of Management and Budget (OMB) approval under control number 1901–0297.

List of Subjects in 10 CFR parts 501, 503, 503, and 504

Business and industry, Electric power plants, Energy conservation, Natural gas, Petroleum, Reporting and recordkeeping requirements.

In consideration of the foregoing, chapter II, title 10 of the Code of Federal Regulations is amended as set forth below.

Issued in Washington, DC on December 15, 1989.

Michael R. McElwrath,

Acting Assistant Secretary, Fossil Energy.

For reasons set out in the preamble, parts 500, 501, 503, 504, 508, and 516 of chapter II, title 10 of the Code of Federal Regulations are amended as follows.

PART 500—DEFINITIONS

1. The authority citation for part 500 is revised to read as follows:

Authority: Department of Energy Organization Act, Pub. L. 95–91, 91 Stat. 565 (42 U.S.C. § 7101 et seq.); Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95–620, 92 Stat. 3289 (42 U.S.C. 8301 et seq.); Energy Security Act, Pub. L. 96–294, 94 Stat. 611 (42 U.S.C. 8701 et seq.); E.O. 1209, 42 FR 46267, September 15, 1977.

§ 500.2 [Amended]

2. Section 500.2 is amended by removing "ERA", "Economic Regulatory Administration" and "Administrator" wherever those terms appear and replacing them with "OFE", "Office of Fossil Energy" and "Assistant Secretary" respectively.

3. By revising the definitions of "action" in § 500.2 to read as follows:

"Action" means a prohibition by rule or order, in accordance with sections 301(b) and (c) of FUA; any order granting or denying an exemption in accordance with sections 211, 212, 311 and 312 of FUA; a modification or rescission of any such order, or rule; an interpretation; a notice of violation; a remedial order; an interpretive ruling; or a rulemaking undertaken by DOE.

4. By revising the definition of "Capability to use alternate fuel" in § 500.2 to read as follows:

"Capability to use alternate fuel", for the purposes of Title II prohibitions relating to construction of new powerplants, means the powerplant to be constructed:

(1) Has sufficient inherent design characteristics to permit the addition of equipment (including all necessary pollution devices) necessary to render such electric powerplant capable of using coal or another alternate fuel as its primary energy source; and

(2) Is not physically, structurally, or technologically precluded from using coal or another alternate fuel as its primary energy source, as determined by rules established in Parts 503 and 504 of these regulations.

11. By removing the definitions of "Intermediate load powerplant" and

(2) An order issued pursuant to section 301(c) of the Act that prohibits an alternate fuel as a primary energy source for the powerplant such as:

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(2) Is not physically, structurally, or technologically precluded from using coal or another alternate fuel as its primary energy source.

Capability to use coal or another alternate fuel shall not be interpreted to require any such powerplant to be immediately able to use coal or another alternate fuel as its primary energy source on its initial day of operation. In addition, the owner or operator of a baseload powerplant need not have adequate on-site space for either a coal gasifier or any facilities for handling coal or related fuels.

5. By adding the definition of "Certification" in § 500.2 to read as follows:

"Certification" means a document, signed by an official of the owner or operator, notarized, and submitted to OFE, which declares that a new powerplant will have the "capability to use alternate fuel" (as defined herein).

6. By revising the definition of "cogeneration facility" in § 500.2 to read as follows:

"Cogeneration facility" means an electric powerplant that produces:

(1) Electric power; and

(2) Any other form of useful energy (such as steam, gas or heat) that is, or will be used, for industrial, commercial, or space heating purposes. In addition, for purposes of this definition, electricity generated by the cogeneration facility must constitute more than five (5) percent and less than ninety (90) percent of the useful energy output of the facility.

Note—Any cogeneration facility selling or exchanging less than fifty percent (50%) of the facility's generated electricity is considered an industrial cogenerator and is exempt from the fuel use prohibitions of FUA.

7. By revising the definition of "combined cycle unit" in § 500.2 to read as follows:

"Combined cycle unit" means an electric power generating unit that consists of a combination of one or more combustion turbine units and one or more steam turbine units with a substantial portion of the required energy input of the steam turbine unit(s) provided by the exhaust gas from the combustion turbine unit(s).

Substantial amounts of supplemental firing for a steam turbine or waste heat boiler to improve thermal efficiency will not affect a unit's classification as a combined cycle unit.

8. By revising the definition of "Costs" in § 500.2 to read as follows:

"Costs" means total costs, both operating and capital, incurred over the estimated remaining useful life of an electric powerplant, discounted to the present, pursuant to rules established in Parts 503 and 504 of these regulations.

9. By revising the definition of "Design Capability" in § 500.2 to read as follows:

"Design capability" defined in section 103(a)(7) of FUA, shall be determined as follows:

(1) *Boiler and associated generator turbines.* The design fuel heat input rate of a steam-electric generating unit (Btu/hr) shall be the product of the generator's nameplate rating, measured in kilowatts, and 3412 (Btu/kWh), divided by the overall boiler-turbine-generator unit design efficiency (decimal); or if the generator's nameplate does not have a rating measured in kilowatts, the product of the generator's kilovolt-amperes nameplate rating, and the power factor nameplate rating; and 3412 (Btu/kWh), divided by the boiler turbine-generator unit's design efficiency (decimal). (The number 3412 converts kilowatt-hours (absolute) into Btu's (mean).)

(2) *Combustion turbine and associated generator.* The design fuel heat input rate of a combustion turbine (Btu/hr) shall be the product of its nameplate rating, measured in kilowatts, and 3412 (Btu/kWh), divided by the combustion turbine-generator unit's design efficiency (decimal), adjusted for peaking service at an ambient temperature of 59 degrees Fahrenheit (15 degrees Celsius) at the unit's elevation. (The number 3412 converts kilowatt-hours (absolute) into Btu's (mean).)

(3) *Combined cycle unit.* The design fuel heat input rate of a combined cycle unit (Btu/hr) shall be the summation of the product of its generator's nameplate rating, measured in kilowatts, and 3412 (Btu/kWh), divided by the overall combustion turbine-generator unit's efficiency (decimal), adjusted for peaking service at an ambient temperature of 59 degrees Fahrenheit (15 degrees Celsius) and at the unit's evaluation, plus the product of the maximum fuel heat input to any supplemental heat recovery steam generator/boiler in gallons or pounds per hour and the fuel's heat content. If the generator's nameplate does not have a rating measured in kilowatts, the product of the generator's kilowatt-amperes nameplate rating and power factor nameplate rating must be substituted for kilowatts. (The number 3412 converts kilowatt-hours (absolute) into Btu's (mean).)

10. By removing the definitions of "Existing major fuel burning installation", "Installation", "Major fuel burning installation", "New major fuel burning installation", and "MFBI" from 500.2.

11. By removing the definitions of "Intermediate load powerplant" and "Peakload powerplant" from 500.2.

12. By revising the definition of "Nonboiler" in 500.2 to read as follows:

"Nonboiler" means any powerplant which is not a boiler and consists of either a combustion turbine unit or combined cycle unit.

13. By revising the definition of "Primary energy source" in 500.2 to read as follows:

"Primary energy source" means the fuel or fuels used by any existing or new electric powerplant except:

(1) Minimum amounts of fuel required for unit ignition, startup, testing, flame stabilization, and control uses. OFE has determined that, unless need for a greater amount is demonstrated, twenty-five (25) percent of the total annual Btu heat input of a unit shall be automatically excluded under this paragraph.

(2) Minimum amounts of fuel required to alleviate or prevent:

(i) Unanticipated equipment outages as defined in § 501.191 of these regulations; and

(ii) Emergencies directly affecting the public health, safety, or welfare that would result from electric power outages as defined in § 501.191 of these regulations.

Note: (1) Any fuel excluded under the provisions of paragraph (1) of this definition is in addition to any fuel authorized to be used in any order granting a fuel mixtures exemption under Parts 503 and 504 of these rules. The exclusion of fuel under paragraph (1), together with the authority for such additive treatment, shall apply to any jurisdictional facility, regardless of whether or not it had received an order granting an exemption as of the date these rules are promulgated.

(2) If an auxiliary unit to an electric powerplant consumes fuel only for the auxiliary functions of unit ignition, startup, testing, flame stabilization, and other control uses, its use of minimum amounts of natural gas or petroleum is not prohibited by FUA. The measurement of such minimum amounts of fuel is discussed in *Associated Electric Cooperative, et al.*, Interpretation 1980–42 [45 FR 82572, Dec. 15, 1980].

14. By revising the definition of "Prohibition Order" in § 500.2 to read as follows:

"Prohibition order" means:

(1) An order issued pursuant to Section 301(b) of the Act that prohibits a powerplant from burning natural gas or petroleum as its primary energy source; or

(2) An order issued pursuant to section 301(c) of the Act that prohibits excessive use of natural gas or petroleum in mixtures burned by a powerplant as its primary energy source.

15. By revising the definition of "Rated capacity" in § 500.2 to read as follows:

"Rated capacity" for the purpose of determining reduction in the rated capacity of an existing powerplant, means design capacity, or, at the election of the facility owner or operator, the actual maximum sustained energy output per unit of time that could be produced, measured in power output, expressed in kilowatts, per unit of time.

16. By revising the definition of "Reconstruction" in § 500.2 to read as follows:

"Reconstruction" means the following:

(1) Except as provided in paragraph (2) of this definition, reconstruction shall be found to have taken place whenever the capital expenditures for refurbishment or modification of an electric powerplant on a cumulative basis for the current calendar year and preceding calendar year, are equal to or greater than fifty (50) percent of the capital costs of an equivalent replacement unit of the same capacity, capable of burning the same fuels.

(2) Notwithstanding paragraph (1) of this definition, reconstruction shall not be found to have taken place whenever:

(i) The capital expenditures for refurbishment or modification of an electric powerplant, on a cumulative basis for the current calendar year and preceding calendar year, are not greater than eighty (80) percent of the capital costs of an equivalent replacement unit of the same capacity, capable of burning the same fuels and the unit, as refurbished or modified, will not have a greater fuel consumption capability than the unit it replaces;

(ii) The unit being refurbished or modified was destroyed, in whole or substantial part, in a plant accident and the unit, as refurbished or modified, will not have a greater fuel consumption capability than the unit it replaces; or

(iii) Refurbishment or modification of the unit is undertaken primarily for the purpose of increasing fuel burning efficiency of the unit, and will not result in:

(A) Increased remaining useful plant life, or

(B) Increased total annual fuel consumption.

17. By removing the definition of "Refinery operation" from § 500.2.

18. By revising the definition of "Site limitation" in § 500.2 to read as follows:

"Site limitation" means a specific physical limitation associated with a particular site that relates to the use of an alternate fuel as a primary energy source for the powerplant such as:

(1) Inaccessibility to alternate fuels;

(2) Lack of transportation facilities for alternate fuels;

(3) Lack of adequate land for facilities for the handling, use and storage of alternate fuels;

(4) Lack of adequate land or facilities for the control or disposal of wastes from such powerplant, including lack of land for pollution control equipment or devices necessary to assure compliance with applicable environmental requirements; and

(5) Lack of an adequate and reliable supply of water, including water for use in compliance with applicable environmental requirements.

PART 501—ADMINISTRATIVE PROCEDURES AND SANCTIONS

Part 501 is amended as follows:

1. The authority citation for Part 501 is revised to read as follows:

Authority: Department of Energy Organization Act, Pub. L. 95–91, 91 Stat. 565 (42 U.S.C. § 7101 et seq.); Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95–620, 92 Stat. 3289 (42 U.S.C. 8301 et seq.); Energy Security Act, Pub. L. 96–294, 94 Stat. 611 (42 U.S.C. 8701 et seq.); E.O. 1209, 42 FR 46267, September 15, 1977.

2. By replacing the terms "ERA" and "Economic Regulatory Administration" where ever they appear with "OFE" and "Office of Fossil Energy" respectively.

3. By removing the reference "and MFBI's" in § 501.2(a).

4. By revising § 501.8 to read as follows:

§ 501.8 Service.

(a) DOE will serve all orders, notices interpretations or other documents that it is required to serve, personally or by mail, unless otherwise provided in these regulations.

(b) DOE will consider service upon a petitioner's duly authorized representative to be service upon the petitioner.

(c) Service by mail is effective upon mailing.

§ 501.7 [Amended]

5. By removing § 501.7(a)(12).

6. By redesignating § 501.7(a)(13) as § 501.7(a)(12).

7. By revising § 501.7(b) as follows:

* * * * *

(b) *Number of documents to be filed.* (1) A petitioner must file an executed original and fourteen (14) copies of all exemption requests submitted to DOE. For certification requests, an original and three (3) copies shall be submitted.

(2) Where the petitioner requests confidential treatment of some or all of the information submitted, an original and eleven (11) copies of the confidential document and three (3) copies of the document with confidential material deleted must be filed.

8. By revising the § 501.9 as follows:

§ 501.9 Effective date of orders or rules.

(a) When OFE issues a rule or order imposing a prohibition or granting an exemption (or permit) under FUA, the rule or order will be effective sixty (60) days after publication in the Federal Register, unless it is stayed, modified, suspended or rescinded.

(b) If the appropriate State regulatory authority has not approved a powerplant for which a petition has been filed, such exemption, to the extent it applies to the prohibition under section 201 of FUA against construction without the capability of using coal or another alternate fuel, shall not take effect until all approvals required by such State regulatory authority which relate to construction have been obtained.

9. By revising § 501.10 to read as follows:

§ 501.10 Order of precedence.

If there is any conflict or inconsistency between the provisions of this Part and any other provisions or parts of this chapter, except for general procedures which are unique to Part 515 of this chapter, the provisions of this part will control respect to procedure.

10. By revising § 501.11 to read as follows:

§ 501.11 Address for filing documents.

Send all petitions, self-certifications and written communications to the following address: Office of Fossil Energy, Office of Fuels Programs, Coal and Electricity Division, Mail Code FE–52, 1000 Independence Avenue, SW., Washington, DC 20585.

11. By revising § 501.12 to read as follows:

§ 501.12 Public files.

DOE will make available at the Freedom of Information reading room, Room 1E190, 1000 Independence Avenue SW., Washington, DC for public inspection and copying any information required by statute and any information that OFE determines should be made available to the public.

12. By revising § 501.14 to read as follows:

§ 501.14 Notice to Environmental Protection Agency.

A copy of any proposed rule or order that imposes a prohibition, order that imposes a prohibition, or a petition for

an exemption or permit, shall be transmitted for comments, if any, to the Administrator and the appropriate consistent with reasonable fuel efficiency in an electing powerplant, if:

§ 501.60 Purpose and scope.

(a) (1) If the owner or operator plans

reciting that the certification has been filed. Publication of this notice does not serve to commence a public comment or order modifying or rescinding a rule or order in the Federal Register.

25. By revising § 501.100 to read as

Subpart A—General Prohibition

4. By revising § 503.1 to read as

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an exemption or permit, shall be transmitted for comments, if any, to the Administrator and the appropriate Regional Administrator of the Environmental Protection Agency (EPA). The Administrator of EPA shall be given the same opportunity to comment and question as is given other interested persons.

13. By revising § 501.31(a) to read as follows:

§ 501.31 Written comments.

(a) *New facilities.* Except as may be provided elsewhere in these regulations, OFE shall provide a period of at least forty-five (45) days, commencing with publication of the Notice of Acceptance of Petition, of in the case of certification exemptions, Notice of Acceptance and availability of Certification, in the Federal Register in accordance with § 501.63(a), for submission of written comments concerning a petition for an exemption. Written comments shall be made in accordance with § 501.7.

* * * * *

14. By revising § 501.33(a) to read as follows:

§ 501.33 Request for a public hearing.

(a) *New facilities.* In the case of a petition for an exemption under Title II of FUA, any interested person may submit a written request that OFE convene a public hearing in accordance with section 701 of FUA no later than forty-five (45) days after publication of either the Notice of Acceptance of a petition, or in the case of a certification exemption, the publication of the Notice of Acceptance of Certification. This time period may be extended at the discretion of OFE.

* * * * *

15. By revising § 501.35(b) to read as follows:

§ 501.35 Public file.

(a) * * *

(b) *Availability.* The public file shall be available for inspection at Room 1E190, 1000 Independence Avenue SW., Washington, DC. Photocopies may be made available, on request. The charge for such copies shall be made in accordance with a written schedule.

16. Section 501.51 is amended by revising the section heading, paragraphs (a), (b) (2), and (3), (d) (2)(ii), and (3) to read as follows:

§ 501.51 Prohibitions by order—electing powerplants.

(a) OFE may prohibit by order the use of petroleum or natural gas as a primary energy source or in amounts in excess of the minimum amount necessary to maintain reliability of operation consistent with reasonable fuel efficiency in an electing powerplant, if:

(1) That facility has not been identified as a member of a category subject to a final rule at the time of the issuance of such order; and

(2) The requirements of § 504.6 have been met.

* * * * *

(b) * * *

(2) Pursuant to section 701 of FUA, prior to the issuance of a final order to an electing powerplant, OFE shall publish a proposed order in the Federal Register together with a statement of the reasons for the order. In the case of a proposed order that would prohibit the use of petroleum or natural gas as a primary energy source, the finding required by former section 301(b)(1) of the Act shall be published with such proposed order.

(3) OFE shall provide a period for the submission of written comments of at least three months after the date of the proposed order. During this period, the recipient of the proposed order and any other interested person must submit any evidence that they have determined at that time to support their respective positions as to each of the findings that OFE is required to make under section 301(b) of the Act. A proposed order recipient may submit additional new evidence at any time prior to the close of the public comment period which follows publication of the Tentative Staff Analysis or prior to the close of the record of any public hearing, whichever occurs later. A request by the proposed order recipient for an extension of the three-month period may be granted at OFE's discretion.

* * * * *

(d) * * *

(2) * * *

(ii) Sufficient information for OFE to make the findings required by section 301(b) of FUA.

(3) If OFE determines to accept the request, OFE shall publish a proposed order in the Federal Register together with a statement of the reasons for the order.

§ 501.56 [Removed and reserved]

17. By removing and reserving § 501.56.

18. The heading for subpart F is revised to read as follows:

Subpart F—Exemptions and Certifications

19. By revising § 501.60(a) (1), (2), and (3) to read as follows:

§ 501.60 Purpose and scope.

(a) (1) If the owner or operator plans to construct a new baseload powerplant and the unit will not be in compliance with the prohibition contained in section 201(a) of FUA, this subpart establishes the procedures for filing a petition requesting a temporary or permanent exemption under, respectively, sections 211 and 212 of FUA.

(2) Self-certification alternative. If the owner or operator plans to construct a new baseload powerplant not in compliance with the prohibitions contained in section 201(a) of FUA, this subpart establishes the procedures for the filing of a self-certification under section 201(d) of FUA.

(3) If the petitioner owns, operates or controls a new powerplant, this subpart provides the procedures for filing a petition requesting extension of a temporary exemption granted under sections 211 or 311 of FUA.

* * * * *

20. By adding a new § 501.61 to read as follows:

§ 501.61 Certification Contents.

(a) A self-certification filed under section 201(d) of FUA should include the following information:

(1) Owner's name and address.

(2) Operator's name and address.

(3) Plant location and address.

(4) Plant configuration (combined cycle, simple cycle, topping cycle, etc.)

(5) Design capacity in megawatts (MW).

(6) Fuel(s) to be used by the new facility.

(7) Name of utility purchasing electricity from the proposed facility and percent of total output to be sold.

(8) Date unit is expected to be placed in service.

(9) Certification by an officer of the company or his designated representative certifying that the proposed facility:

(i) Has sufficient inherent design characteristics to permit the addition of equipment (including all necessary pollution devices) necessary to render such electric powerplant capable of using coal or another alternate fuel as its primary energy source; and

(ii) Is not physically, structurally, or technologically precluded from using coal or another alternate fuel as its primary energy source.

(b) A self-certification filed pursuant to § 501.61(a) shall be effective to establish compliance with the requirement of section 201(a) of FUA as of the date filed.

(c) OFE will publish a notice in the Federal Register within fifteen days reciting that the certification has been filed. Publication of this notice does not serve to commence a public comment period.

(d) OFE will notify the owner or operator within 60 days if supporting documentation is needed to verify the certification.

21. By revising § 501.63(a)(2) to read as follows:

§ 501.63 Notice of the commencement of an administrative proceeding on an exemption petition.

(a) (1) * * *

(2) OFE will notify the appropriate State agency having apparent primary authority to permit or regulate the construction or operation of a powerplant that an exemption proceeding has commenced and will consult with this agency to the maximum extent practicable. Copies of all accepted petitions also will be forwarded to EPA, as provided in § 501.14(a).

* * * * *

22. By revising § 501.65 to read as follows:

§ 501.65 Publication of notice of availability of draft EIS.

A Notice of Availability of any draft EIS will be published in the Federal Register and comments thereon will also be solicited. Interested persons may request a hearing on any draft EIS. Such hearing must be requested within thirty (30) days of publication of the Notice of Availability of the draft EIS.

23. By revising § 501.68(d) to read as follows:

§ 501.68 Decision and Order.

* * * * *

(d) OFE may design any terms and conditions included in any temporary exemption issued or extended under Section 211 of FUA, to ensure, among other things, that upon expiration of the exemption the persons and powerplant covered by the exemption will comply with the applicable prohibitions under FUA. For purposes of the provision, the subsequent grant of a permanent exemption to the subject unit shall be deemed compliance with applicable prohibitions.

24. By revising § 501.103(c) to read as follows:

§ 501.103 OFE decision.

* * * * *

(c) OFE will serve the rule or order granting or denying the request for modification or rescission upon the requester, or, if the action was initiated by OFE, upon the owner or operator of the affected powerplant. OFE will publish a notice of the issuance of a rule or order modifying or rescinding a rule or order in the Federal Register.

25. By revising § 501.190 to read as follows:

§ 501.190 Purpose and scope.

(a) If a person operates a powerplant covered by any of the prohibitions of Titles II, III, or IV of FUA, § 501.191 of this subpart establishes procedures to be followed for the use of minimum amounts of natural gas or petroleum under FUA section 103(a)(15)(B) in order to alleviate or prevent unanticipated equipment outages and emergencies directly affecting the public health, safety, or welfare that would result from electric power outages.

(b) *Explanatory note:* If a person operates a rental boiler as a powerplant covered by any of the prohibitions of Titles II, III, or IV of FUA, he may be able to use the provisions of this subpart for the emergency use of natural gas or petroleum.

26. By revising § 501.191(a) to read as follows:

§ 501.191 Use of natural gas or petroleum for certain unanticipated equipment outages and emergencies defined in section 103(a)(15)(B) of the act.

(a) In the event of the occurrence or imminent occurrence of an emergency, or of the occurrence or imminent occurrence of an unanticipated equipment outage in the unit, an owner or operator of a powerplant is automatically permitted to use minimum amounts of natural gas or petroleum in the unit or in a substitute unit to prevent or alleviate the outage or to prevent or alleviate the emergency if he complies with procedures contained in paragraph (b) of this section.

* * * * *

§ 501.192 [Reserved]

27. By removing and reserving § 501.192.

Part 503 is amended as follows:

PART 503—NEW FACILITIES

1. The authority citation for part 503 is revised to read as follows:

Authority: Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565 (42 U.S.C. § 7101 et seq.); Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95-620, 92 Stat. 3289 (42 U.S.C. 8301 et seq.); Energy Security Act, Pub. L. 96-294, 94 Stat. 611 (42 U.S.C. 8701 et seq.); E.O. 1209, 42 FR 46267, September 15, 1977.

2. By replacing "ERA" and "Economic Regulatory Administration" wherever they appear with "OFE" and "Office of Fossil Energy" respectively.

3. By revising the heading of Subpart A to read as follows:

Subpart A—General Prohibition

4. By revising § 503.1 to read as follows:

§ 503.1 Purpose and scope.

This subpart sets forth the statutory prohibition imposed by the Act upon new powerplants. The prohibition in the subpart applies to all new baseload electric powerplants unless an exemption has been granted by OFE under subparts C and D of this part. Any person who owns, controls, rents, leases or operates a new powerplant that is subject to the prohibition may be subject to sanctions provided by the Act or these regulations.

5. By revising § 503.2 to read as follows:

§ 503.2 Prohibition.

Section 201 of the Act prohibits, unless an exemption has been granted under subpart C or D of this part, any new electric powerplant from being constructed or operated as a baseload powerplant without the capability to use coal or another alternate fuel as a primary energy source.

§ 503.3 [Removed and reserved]

6. By removing and reserving § 503.3.

7. By removing the footnote and revising the definition for "IX_t" in § 503.6(b)(4) and by removing the footnote in (d)(1) and removing the footnote and revising (d)(4) to read as follows:

§ 503.6 Cost calculations for new powerplants.

* * * * *

(b) * * *

(4) * * *

IX_t = Inflation index value for year t (see Appendix II to Part 504 for method of computation).

* * * * *

(d) * * *

(4) The discount rate (k) for analyses is 2.9 percent or that which is computed as specified in Appendix I. The method of computing the inflation index (IX) is shown in Appendix II to Part 504. OFE will modify these specified rates from time to time as required by changed conditions after public notice and an opportunity to comment. However, the relevant set of specified rates for a specific petition for exemption will be the set in effect at the time the petition is submitted or the set in effect at the time a decision is rendered, whichever set is more favorable to the petitioner.

* * * * *

8. By revising § 503.8(a) to read as follows:

§ 503.8 No alternate power supply—general requirement for certain exemptions

* * * * *

21. By revising § 503.31(a) (3) and (5) to read as follows:

§ 503.31 Public hearing.

(a) * * *

(3) Whether there is sufficient capacity of alternate fuel supply, site limitations, environmental requirements, or

§ 503.20 Purpose and scope.

* * * * *

(ii) No alternate power supply exists, as required under § 503.8 of these regulations;

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§ 503.8 No alternate power supply—general requirement for certain exemptions for new powerplants.

(a) *Application.* To qualify for an exemption, except in the case of an exemption for cogeneration units, section 213(c) of the Act requires a demonstration that, despite reasonable good faith efforts, there is no alternative supply of electric power available within a reasonable distance at a reasonable cost without impairing short-run or long-run reliability of service. If a petitioner is unable to demonstrate that there is no alternate supply during the first year of operation, OFE will conclude that the absence of the proposed powerplant will not impair short-term reliability of service, and as a result will not grant the exemption. Such action would not impair long-term reliability of service, since a petition may be submitted for a powerplant that would begin operation in a subsequent year.

* * * * *

9. By revising § 503.9(a) to read as follows:

§ 503.9 Use of mixtures—general requirement for certain permanent exemptions.

(a) *Criteria.* To qualify for a permanent exemption, except in the case of an exemption for fuel mixtures, section 213(a)(1) of the Act requires a demonstration that the use of a mixture of natural gas and petroleum and an alternate fuel for which an exemption under 10 CFR 503.38 (Fuel mixtures) would be available, would not be economically or technically feasible.

* * * * *

10. By revising § 503.10(a) to read as follows:

§ 503.10 Use of fluidized bed combustion not feasible—general requirement for permanent exemptions.

(a) *OFE finding.* Except in the case of an exemption for fuel mixtures, OFE may deny permanent exemptions authorized under section 212 of the Act if OFE finds on a site-specific or generic basis that use of a method of fluidized bed combustion of an alternate fuel is economically and technically feasible.

* * * * *

11. By revising § 503.11(a) to read as follows:

§ 503.11 Alternative sites—general requirement for permanent exemptions for new powerplants.

(a) *Criteria.* To qualify for a permanent exemption due to lack of alternate fuel supply, site limitations, environmental requirements, or inadequate capital, section 212(a) of the Act requires a demonstration that one of these exemptions would be available for any reasonable alternative site for the facility.

* * * * *

12. By revising § 503.13(a) introductory text, (a)(1), and (b) to read as follows:

§ 503.13 Environmental impact analysis.

* * * * *

(a) All petitions for permanent exemptions must contain the following information:

(1) A description of the facility, including site location, and surroundings, alternative site(s), the facility's current proposed operations, its fuel capability, and its pollution abatement systems and equipment (including those systems and equipment necessary for all fuel scenarios considered);

* * * * *

(b) For exemptions for cogeneration, the information enumerated below is to be submitted in lieu of the information required by paragraph (a) of this section. However, submission of the following information merely establishes a rebuttable presumption that the grant or denial of the exemption would have no significant environmental impact. OFE may, in individual cases, during the course of the administrative proceeding, determine that additional environmental information is required. In such cases, the petitioner will be required to submit the information described in paragraph (a) of this section.

* * * * *

13. By revising § 503.14 to read as follows:

§ 503.14 Fuels search.

Prior to submitting a petition for a permanent exemption for lack of alternate fuel supply, site limitations, inadequate capital, or state or local requirements, a petitioner must examine the use of conventional solid coal as a primary energy source at the site under consideration, and at reasonable alternative sites. Where a petitioner believes that its use of such coal would be infeasible, however, and where OFE and the petitioner can reach accord, it may evaluate use of a different alternate fuel in lieu of solid coal. A petitioner of these exemptions must demonstrate for any fuel examined that he would qualify for an exemption.

14. By revising § 503.20(b) to read as follows:

§ 503.20 Purpose and scope.

* * * * *

(b) This subpart establishes the criteria and standards which owners or operators of new powerplants who petition for a temporary exemption must meet to sustain their burden of proof under the Act.

* * * * *

15. By revising § 503.21(a)(4) to read as follows:

§ 503.21 Lack of alternate fuel supply.

(a) * * *

(4) No alternate power supply exists, as required under § 503.8 of these regulations.

* * * * *

§ 503.21 [Amended]

16. By removing § 503.21(c) and by redesignating § 503.21(d) as § 503.21(c).

17. By revising § 503.22(a)(3) to read as follows:

§ 503.22 Site limitation.

(a) * * *

(3) No alternate power supply exists, as required under § 503.8 of these regulations.

* * * * *

18. By revising § 503.23(b)(8) and (d)(1)(ii) to read as follows:

§ 503.23 Inability to comply with applicable environmental requirements.

* * * * *

(b) * * *

(8) No alternate power supply exists, as required under § 503.8 of these regulations.

* * * * *

(d) * * *

(1) * * *

(ii) No alternate power supply exists, as required under § 503.8 of these regulations.

* * * * *

19. By revising § 503.24(a)(3) to read as follows:

§ 503.24 Future use of synthetic fuels.

(a) * * *

(3) No alternate power supply exists, as required under § 503.8 of these regulations.

* * * * *

20. By revising § 503.25(a)(3) to read as follows:

§ 503.25 Public interest.

(a) * * *

(3) No alternate power supply exists, as required under § 503.8 of these regulations.

* * * * *

21. By revising § 503.31(a) (3) and (5) to read as follows:

§ 503.31 Lack of alternate fuel supply for the first 10 years of useful life.

(a) * * *

(3) No alternate power supply exists, as required under § 503.8 of these regulations;

(4) * * *

(5) Alternative sites are not available, as required under § 503.11 of these regulations.

* * * * *

22. By revising § 503.32(a) (3) and (5) to read as follows:

§ 503.32 Lack of alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum.

(a) * * *

(3) No alternate power supply exists, as required under § 503.8 of these regulations.

* * * * *

(5) Alternative sites are not available, as required under § 503.11 of these regulations.

* * * * *

23. By removing § 503.32(c).

24. By revising § 503.33(a) (2) and (4) to read as follows:

§ 503.33 Site limitations.

(a) * * *

(2) No alternate power supply exists, as required under § 503.8 of these regulations;

* * * * *

(4) Alternative sites are not available, as required under § 503.11 of these regulations.

* * * * *

25. By revising § 503.34 (a)(2), (c)(8), and (10), and (d)(1) (ii) and (iii) to read as follows:

§ 503.34 Inability to comply with applicable environmental requirements.

(a) * * *

(2) Reasonable alternative sites, which would permit the use of alternate fuels in compliance with applicable Federal or state environmental requirements, are not available.

* * * * *

(c) * * *

(8) No alternate power supply exists as required under § 503.8 of these regulations;

* * * * *

(10) Alternative sites are not available, as required under § 503.11 of these regulations;

* * * * *

(d) * * *

(1) * * *

(ii) No alternate power supply exists, as required under § 503.8 of these regulations;

(iii) Alternative sites are not available, as required under § 503.11 of these regulations; and

* * * * *

26. By revising § 503.35(a)(2) introductory text, (3), and (5) to read as follows:

§ 503.35 Inability to obtain adequate capital.

(a) * * *

(2) The additional capital cannot be raised:

* * * * *

(3) No alternative power supply exists, as required under § 503.8 of these regulations;

* * * * *

(5) Alternative sites are not available, as required under § 503.11 of these regulations.

* * * * *

27. By revising § 503.36(a) (4) through (6) and by adding (7) as follows:

§ 503.36 State or local requirements.

(a) * * *

(4) The petitioner is not entitled to an exemption for lack of alternate fuel supply, site limitation, environmental requirements, or inability to obtain adequate capital at the site of the proposed powerplant or at any reasonable alternative site for the alternate fuel(s) considered;

(5) At the proposed site and every reasonable alternative site where the petitioner is not entitled to an exemption for lack of alternate fuel supply, site limitation, environmental requirements, or inability to obtain adequate capital, the petitioner nevertheless would be barred at each such proposed or alternate site from burning an alternate fuel by reason of a State or local requirement;

(6) No alternate power supply exists, as required under § 503.8 of these regulations; and

(7) Use of mixtures is not feasible, as required under § 503.9 of these regulations.

* * * * *

28. By revising § 503.37 to read as follows:

§ 503.37 Cogeneration.

The following table may be used to determine eligibility for a permanent exemption based on oil and natural gas savings.

AVERAGE ANNUAL UTILIZATION OF OIL AND NATURAL GAS FOR ELECTRICITY GENERATION BY STATE

[BTU's per KWHR sold]

State name	Oil/gas savings Btu/kWh
Alabama	33
Arizona	802
Arkansas	1,363
California	3,502
Colorado	289
Connecticut	3,924
Delaware	3,478
Washington, DC.	895
Florida	3,177
Georgia	45
Idaho	0
Illinois	250
Indiana	53
Iowa	147
Kansas	666
Kentucky	34
Louisiana	4,189
Maine	2,560
Maryland	895
Massachusetts	5,250
Michigan	256
Minnesota	151
Mississippi	1,519
Missouri	57
Montana	60
Nebraska	139
Nevada	761
New Hampshire	2,695
New Jersey	1,994
New Mexico	1,525
New York	4,219
North Carolina	40
North Dakota	47
Ohio	36
Oklahoma	5,160
Oregon	0
Pennsylvania	771
Rhode Island	1,800
South Caroline	24
South Dakota	36
Tennessee	20
Texas	4,699
Utah	107
Vermont	105
Virginia	460
Washington	3
West Virginia	126
Wisconsin	72
Wyoming	75

Data are based upon 1987 oil, natural gas and electricity statistics published by DOE's Energy Information Administration.

Example: The proposed cogeneration project is to be located in Massachusetts and is to use distillate oil. It will have a capacity of 50 MW, an average annual heat rate of 7600 BTU/KWHR, and be operated at a capacity factor of 90%. The annual fuel consumption is therefore calculated to be 2.998×10^9 Btu/yr. (50,000 KW×7600 BTU/KWHR×.9×8760 HR/YR) The oil and gas backed off the grid would be calculated to be $.3070 \times 10^9$ BTU/YR. (50,000 KW×3250 BTU/KWHR×.9×8760 HR/YR) since the proposed unit would consume more oil that would be "backed off" the grid, the unit would not be eligible for a permanent exemption based on savings of oil and natural gas.

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29. By revising § 503.38(a)(3) to read as follows:

§ 503.38 Permanent exemption for certain fuel mixtures containing natural gas or petroleum.

(a) • • •

(3) No alternate power supply exists, as required under § 503.8 of these regulations.

• • • • •

§ 503.38 [Amended]

30. By removing §§ 503.38 (b) and (d), and redesignating §§ 503.38 (c) and (e) as §§ 503.38 (b) and (c), respectively.

§§ 503.39–503.43 [Reserved]

31. By removing and reserving §§ 503.39 through 503.43.

Part 504 is amended as follows:

PART 504—EXISTING POWERPLANTS

1. The authority citation for part 504 is revised to read as follows:

Authority: Department of Energy Organization Act, Pub. L. 95–91, 91 Stat. 565 (42 U.S.C. § 7101 et seq.); Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95–620, 92 Stat. 3289 (42 U.S.C. 8301 et seq.); Energy Security Act, Pub. L. 96–294, 94 Stat. 611 (42 U.S.C. 8701 et seq.); E.O. 1209, 42 FR 46267, September 15, 1977.

2. By replacing "ERA" and "Economic Regulatory Administration" wherever they appear with "OFP" and "Office of Fuels Programs" respectively.

§ 504.1 [Removed and reserved]

3. By removing subpart A consisting of § 504.1.

Subpart B—[Amended]

4. By removing heading for subpart B.

5. Appendix II to part 504 is revised to read as follows:

Appendix II—Fuel Price Computation

(a) *Introduction.* This appendix provides the equations and parameters needed to specify the price of the delivered fuels to be used in the cost calculations associated with parts 503 and 504 of these regulations. The delivered price of the fuel to be used to calculate delivered fuel expenses must reflect (1) the price of each fuel at the time of the petition, and (2) the effects of future real price increases for each fuel. The delivered price of an alternate fuel used to calculate delivered fuel expenses must reflect the petitioner's delivered price of the alternate fuel and the effects of real increases in the price of that alternate fuel. Paragraphs (b), (c) and (d) below provide the procedure to: (1) Calculate fuel price and inflation indices; (2) account for projected real increases in fuel prices when planning to burn one or more than one fuel; and (3) account for projected real increases in the price of the alternate fuel. Table II–1 of this appendix (See paragraph (b)) contains example fuel price and inflation indices based on the latest data appearing in the Energy Information Administration's (EIA) *Annual Energy Outlook* (AEO).

The fuel price and inflation indices will change yearly with the publication of the *AEO*. Revisions shall become effective after final publication. However, the relevant set of parameters for a specific petition for exemption will be the set in effect at the time the petition is submitted or the set in effect at the time a decision is rendered, whichever is more favorable to the petitioner.

(b) *Computation of Fuel Price and Inflation Indices.*

(1) the Petitioner is responsible for computing the annual fuel price and inflation indices by using Equation II–1 and Equation II–2, respectively. The petitioner may compute the fuel price index specified in Equation II–1 or use his own price index. However, if he uses his own price index, the source or the derivation of the index must be fully documented and be contained in the evidential summary.

$$\text{EQ II–1 is: } PX_i = \frac{P_i}{P_o}$$

where:

PX_i = The fuel price index for each fuel in year i. P_i = Price of fuel in year i.

P_o = Price of fuel in base year.

$$\text{EQ II–2 is: } IX_i = \frac{GX_i}{GX_o}$$

where:

IX_i = The inflation index in year i.

GX_i = The NIPA GNP price deflator for year i.

GX_o = The NIPA GNP price deflator for the base year.

(2) The parameters to be used in EQ II–1 are the Base Case fuel price projections found in EIA's current *AEO*.

(3) When computing annual inflation indices, the petitioner is to use the Base Case National Macroeconomic Indicators (NIPA GNP Price Deflator) contained in EIA's current *AEO*. If necessary, the petitioner must rebase the projection to the same year used for the fuel price projections. For example, in 1989 *AEO* projects the price deflator in 1982 dollars; this must be rebased to the year in which the petition is filed. The methodology used to rebase the inflation indices must follow standard statistical procedures and must be fully documented within the petition. This index will remain frozen at the last year of the *AEO*'s projection for the remainder of the unit'(s) useful life.

(4) Table II–1 is provided as an example of the application of equations II–1 and II–2. This table contains annual fuel price indices for distillate oil, residual oil, natural gas, and coal. It also contains annual inflation indices. These values were computed from information contained in Table A3 and Table A11 of EIA's *AEO, 1989*.

TABLE II–1: PRICE AND INFLATION INDICES FOR USE IN THE COST CALCULATIONS

Year	Distillate (DPX)	Residual (RPX)	Natural gas (GPX)	Coal (CPX)	Inflation (IX)
1988	1.0000	1.0000	1.0000	1.0000	1.0000
1987	0.9810	1.2134	0.9508	0.9231	1.0334
1988	0.9429	0.9407	0.8934	0.8876	1.0658
1989	0.8929	0.9328	0.9057	0.8639	1.1054
1990	0.9905	1.0119	0.9221	0.9112	1.1507
1991	1.0381	1.0751	0.9344	0.9172	1.2204
1992	1.0929	1.1344	1.0205	0.9231	1.2936
1993	1.1595	1.2292	1.1148	0.9349	1.3512
1994	1.2298	1.3241	1.1644	0.9467	1.4214
1995	1.3000	1.4150	1.2705	0.9527	1.4960
1996	1.4000	1.5415	1.4016	0.9586	1.5765
1997	1.4762	1.6403	1.4918	0.9704	1.6585
1998	1.5452	1.7273	1.5615	0.9763	1.7410
1999	1.6143	1.7905	1.6475	0.9882	1.8235
2000	1.6690	1.8340	1.7049	0.9941	1.9025
2001	1.6690	1.8340	1.7049	0.9941	1.9025
2002	1.6690	1.8340	1.7049	0.9941	1.9025
2003	1.6690	1.8340	1.7049	0.9941	1.9025
2004	1.6690	1.8340	1.7049	0.9941	1.9025
2005	1.6690	1.8340	1.7049	0.9941	1.9025
2006	1.6690	1.8340	1.7049	0.9941	1.9025
2007	1.6690	1.8340	1.7049	0.9941	1.9025
2008	1.6690	1.8430	1.7049	0.9941	1.9025

TABLE II–1: PRICE AND INFLATION INDICES FOR USE IN THE COST CALCULATIONS—Continued

Year	Distillate (DPX)	Residual (RPX)	Natural gas (GPX)	Coal (CPX)	Inflation (IX)
2009	1.6690	1.8340	1.7049	0.9941	1.9025
2010	1.6690	1.8340	1.7049	0.9941	1.9025

(C) *Fuel Price Computation.*

(1) The delivered price of the proposed fuel to be burned (FPB_i) must reflect the real escalation rate of the proposed fuel, and must be computed with Equation EQ II–3.

EQ–II–3 is: $FPB_i = MPB\ [PX_i]$

where:

FPB_i = Price of the proposed fuel (distillate oil, residual oil, or natural gas) in year i.

MPB = The current delivered market price of the proposed fuel.

PX_i = The fuel price index value in year i, computed with Equation II–1.

or:

(2) When planning to use more than one fuel in the proposed unit(s), the petitioner must use Equation II–1 and Equation II–3 to calculate the annual fuel price of each fuel to be used. The petitioner then must estimate the proportion of each fuel to be burned annually over the useful life of the unit(s). With these proportions and the respective annual fuel prices for each fuel, the petitioner must compute an annual weighted average fuel price. The methodology used to calculate the weighted average fuel price must follow standard statistical procedures and be fully documented within the petition.

(d) *Fuel Price Computation—Alternate Fuel.* The delivered price of alternate fuel (PFA_i) must reflect the real escalation rate of alternate fuel and must be computed with Equation II–4.

Equation II–4 is:

$PFA_i = APF \times apx_i$

where:

PFA = The price of the alternate fuel in year i.

APF^{-1} = The current market price of the alternate fuel f.o.b. the facility).

APX_i = The alternate fuel price index value for year i, computed with Equation II–1.

In most cases the alternate fuel will be coal. The petitioner must use Equation II–1 (paragraph (b)) to compute the escalation rate (APX_i). If an alternate fuel other than coal is proposed the source or the derivation of the index must be fully documented and be contained in the evidential summary.

PART 508—ELECTRIC UTILITY CONSERVATION [REMOVED]

Part 508 of chapter II, title 10 of the Code of Federal Regulations is removed.

PART 516—PROHIBITIONS ON SALE AND DIRECT INDUSTRIAL USE OF NATURAL GAS FOR OUTDOOR LIGHTING [REMOVED]

Part 516 of chapter II, title 10 of the Code of Federal Regulations is removed.

[FR Doc. 89–29700 Filed 12–21–89; 8:45 am]

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Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Special Flight Authorization for Noise Restricted Aircraft; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

been extended twice since December 31, 1986 (51 FR 47219, December 31, 1986, and 52 FR 47672, December 15, 1987).

operate into countries where noise rules are more advanced, should continue to be provided the most simple means to

possible disruption to our strategic military program could occur. The FAA concurs with this position and will

Federalism Implications

The regulations adopted herein will

Lists of Subjects in 14 CFR Part 91

Air carriers, Aviation safety, Safety, Aircraft, Air traffic control, Airspace

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 26001; Special Federal Aviation Regulation (SFAR) No. 47-3]

Special Flight Authorization for Noise Restricted Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This Special Federal Aviation Regulation (SFAR) provides for limited issuance of special flight authorizations to conduct certain nonrevenue operations that are otherwise prohibited by the noise restrictions found in the general operating rules of the Federal Aviation Regulations (FAR). The current rule expires on December 31, 1989. This rule extends SFAR 47 through December 31, 1991, to allow non-complying Stage 1 aircraft to operate to or within the United States for the purpose of being hushkitted or scrapped to obtain spare parts for U.S. military aircraft.

DATES: Effective date of this amendment is January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Mrs. Laurette Fisher, Policy and Regulatory Division (AEE-300), Office of Environment and Energy, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591, telephone: (202) 267-3561.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to part 91 of the Federal Aviation Regulations (FAR), on or after January 1, 1985, no person may operate a civil subsonic turbojet airplane with a maximum weight of more than 75,000 pounds to or from an airport in the United States unless that airplane has been shown to comply with Stage 2 or Stage 3 noise levels under part 36. This restriction applies to U.S.-registered aircraft that have standard airworthiness certificates and foreign-registered aircraft that would be required to have a U.S. standard airworthiness certificate in order to conduct the operations intended for the airplane were it registered in the United States. SFAR 47 became effective January 1, 1985, (50 FR 7751, February 26, 1985) and permitted certain operations of noise-restricted aircraft without a formal grant of exemption under FAR part 11. The Federal Aviation Administration (FAA) has determined this process to be cost beneficial and time-efficient both to the government and the private sector. SFAR 47 has been extended twice since December 31, 1986 (51 FR 47219, December 31, 1986, and 52 FR 47672, December 15, 1987). The SFAR extensions limited operations to the hushkitting, scrapping, or exporting of Stage 1 aircraft.

This rule amends SFAR 47 to extend the regulation to December 31, 1991, to allow operators to hushkit their Stage 1 non-complying aircraft or scrap them under specific conditions. Exporting non-complying aircraft is no longer allowed.

Paperwork Reduction Act

The reporting requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0518.

Review of Comments

This amendment is based on Notice of Proposed Rulemaking No. 89-22 published in the Federal Register on September 6, 1989 (54 FR 171).

Interested persons have been afforded the opportunity to participate in the development of all aspects of this rulemaking by submitting written comments to the public docket. The period for submitting comments closed September 25, 1989. All comments received have been reviewed and considered in the issuance of this final rule. The provision of SFAR 47 that allows operators to hushkit Stage 1 non-complying aircraft remains valid. The provision of SFAR 47 that allows operators to scrap non-complying aircraft will be retained with the requirement that these aircraft are being scrapped to obtain spare parts for the military, in support of the national defense. The provision of SFAR 47 for exporting aircraft will not be renewed. The reasons for adopting this modification are based on the following recommendations from the commenters.

Eight public comments were received concerning the granting of the special flight authorization for noise-restricted aircraft. All of the commenters supported the extension of SFAR 47 to December 31, 1991. Several commenters indicated a need to provide additional time to install Stage 2 or Stage 3 hushkits on non-complying Stage 1 aircraft. One commenter stated that it expected to continue hushkitting one or two aircraft per month through 1990, and possibly well into 1991.

One commenter stated that "the purpose of SFAR 47 was to simplify and, therefore, encourage noise reduction modifications. Foreign operators driven either by national mandate or a need to operate into countries where noise rules are more advanced, should continue to be provided the most simple means to achieve that end. Complication of the modification process by reliance on a formal grant of exemption could cause delays and therefore additional costs that would only frustrate foreign operators attempts to quiet their airplanes."

Information now available to the FAA through applications for Supplemental Type Certificates indicates that manufacturers are developing Stage 3 hushkits for non-complying Stage 1 aircraft. Airport operators and the public are demanding more Stage 3 aircraft operations at airports, as shown by the number of new orders for Stage 3 aircraft to replace existing Stage 2 aircraft. With the continuing demand for quieter aircraft, the SFAR extension allows operators to convert their non-complying aircraft from Stage 1 to Stage 2 or Stage 3 at their discretion. Therefore, the FAA will continue to allow non-complying aircraft to be brought to the United States for purposes of hushkitting Stage 1 aircraft to Stage 2 or Stage 3.

Four commenters requested that the FAA retain the provision in SFAR 47 which allows operations for scrapping non-complying aircraft for the purpose of supporting the United States Air Force KC-135 JT3D re-engining program. The KC-135 tanker fleet supports U.S. strategic national defense. When KC-135 assets and mission assignments are transferred from the Strategic Air Command to the Air National Guard and Air Force Reserve, the aircraft must be modified with JT3D engines from donor B-707 aircraft. Delays in deliveries of the donor B-707 aircraft to contractors for re-engining efforts could cause a lapse in strategic tanker support because of the non-supportable configuration of the current KC-135 engines. If the exemption for scrapping aircraft is eliminated, the costs of the next JT3D re-engining contract will increase significantly. Without this provision, the contractor would have to (1) request a special exemption for each flight under FAR Part 11 exemption procedures, increasing the administrative costs of both operators and the FAA; or (2) remove the engines outside the United States and ship them into the United States; or (3) "deliver" the airplanes to the Air Force outside the United States, necessitating an Air Force crew to be dispatched to fly the plane as a military aircraft to Davis Monthan Air Force Base, Arizona. In any case, the cost to the government would increase significantly and a possible disruption to our strategic military program could occur. The FAA concurs with this position and will continue to allow the operation of these aircraft to be scrapped for the spare parts needed for U.S. national defense programs.

Only two commenters supported extension of those provisions in SFAR 47 which allow aircraft to be exported. These commenters did not submit any data to support continuing the exportation of non-complying aircraft. During the period of January 1, 1989, to July 20, 1989, the FAA received 32 requests for special flight authorizations and all were for hushkitting purposes only. There were no applications for exporting aircraft. In light of this, and because the commenters did not submit any data to support this provision, the FAA does not concur with continuing the provision for exportation of non-complying aircraft.

Economic/Regulatory Impact Evaluation

This rule will have negligible economic impact. The rule provides an alternative from the exemption process for certain operations, reducing the administrative costs of both operators and the FAA. While the operations are not without some noise impact, they will be insignificant, since the number of operations at any one airport will be limited.

Environmental Analysis

Pursuant to Department of Transportation "Policies and Procedures for Considering Environmental Impacts" (FAA Order 1050.1D), a Finding of No Significant Impact has been prepared and placed in the public docket. The changes proposed in this rule do not significantly affect the quality of the human environment.

Federalism Implications

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of Government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

The rule has minimal economic consequences. Accordingly, for the reasons stated above, the FAA certifies that: (1) The amendment does not involve a major rule under Executive Order 12291; (2) the amendment is not significant nor does it require a Regulatory Evaluation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) the amendment will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. In addition, this rule will have little or no impact on trade opportunities for U.S. firms doing business overseas, or for foreign firms doing business in the United States.

The FAA has determined that public interest in the reduction of aircraft noise and the number of non-complying aircraft require that this rule be made effective in less than 30 days. This rule imposes no additional burden upon operators and provides an alternative from the exemption process which would be necessary if the rule terminated December 31, 1989. Accordingly, good cause exists under 5 U.S.C. 553(d) to make this rule effective in less than 30 days.

List of Subjects in 14 CFR Part 91

Air carriers, Aviation safety, Safety, Aircraft, Air traffic control, Airspace, Air transportation, Airworthiness directives and standards.

The Final Rule

Accordingly, the FAA amends part 91 of the Federal Aviation Regulations (14 CFR part 91) by amending Special Federal Aviation Regulation 47 as follows; effective January 1, 1990:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 State 1180); 42 U.S.C. 100(g) (Revised Pub. L. 97-449, January 12, 1983.)

Special Federal Aviation Regulation 47—[Amended]

2. Paragraph 2(b) is removed.

3. Paragraph 2(c) is redesignated as 2(b) and is revised to read as follows:

SFAR No. 47

* * * * *

2. * * *

(b) Operations deemed necessary by the FAA for scrapping airplanes to obtain spare parts to support U.S. military programs for the national defense.

* * * * *

4. Paragraph 5 is amended by removing the year "1989" and substituting the year "1991" in its place.

Issued at Washington, DC on December 18, 1989.

James B. Busey,

Administrator.

[FR Doc. 89-29779 Filed 12-19-89; 2:02 pm]

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Part V

Pension Benefit Guaranty Corporation

Single-Employer Plan Terminations; Notice

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PENSION BENEFIT GUARANTY CORPORATION

Single-Employer Plan Terminations

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of Issuance of New Termination Forms.

SUMMARY: This notice advises pension practitioners that the Pension Benefit Guaranty Corporation is issuing new forms for standard and distress terminations that reflect the revised rules and procedures for voluntary plan terminations under the Single-Employer Pension Plan Amendments Act of 1986 and the Omnibus Budget Reconciliation Act of 1987. These new forms (Forms 500 and 501 for standard terminations and Forms 600 and 601 for distress terminations) replace the existing termination forms, IRS/PBGC Form 5310 and PBGC Forms 444 and 445, which pre-dated SEPPAA and OBRA '87. The PBGC is issuing these new forms in advance of the final standard and distress termination regulations in response to requests from the public that we do so. Issuance of these new forms will clarify and, in most cases, simplify the voluntary termination process.

EFFECTIVE DATE: The new forms must be used for single-employer plan terminations with respect to which notices of intent to terminate are issued on or after February 1, 1990. These forms may also be used for any termination initiated prior to that date.

FOR FURTHER INFORMATION CONTACT: Pension Benefit Guaranty Corporation, Coverage and Inquiries Branch, IOD, Code 25430, 2020 K Street NW., Washington, DC 20006; or call 202–778–8800 (202–778–8859 for TTY and TDD only.) (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: On April 10, 1988, the PBGC issued (at 51 FR 12491) a "Notice of Interim Procedures" describing the new statutory rules and procedures for voluntary terminations of single-employers plans under the Single-Employer Pension Plan Amendments Act of 1986 ("SEPPAA"). That notice was supplemented by a second notice (53 FR 1904 (January 22, 1988)) advising the public of revisions to the statutory termination rules that were enacted pursuant to the Pension Protection Act ("PPA"), a part of the Omnibus Budget Reconciliation Act of 1987.

The procedural requirements under SEPPAA for voluntary terminations were, to a significant degree, a codification of the PBGC's termination procedures established under its regulations. For this reason, the "Notice of Interim Procedures" advised plan administrators filing for standard terminations (which account for more than 99 percent of all voluntary terminations) to continue using the extant termination forms (IRS/PBGC Form 5310 and PBGC Forms 444 (enrolled actuary certification) and 445 (plan administrator certification) with certain modifications. (Several of these modifications necessitated handwritten changes on those forms.) For distress terminations, the notice generally provided that plan administrators should continue to use Form 5310, but that the required certifications could be submitted in any format. (Pre-SEPPAA, the PBGC did not require the enrolled actuary and plan administrator certifications—Forms 444 and 445—for insufficient plan terminations.)

The PBGC intended to issue new forms for voluntary plan terminations concurrently with issuance of its new termination regulations implementing both the SEPPAA and PPA amendments. Proposed regulations were published for public comment on September 2, 1987 (52 FR 33318). However, completion of the final regulations has been delayed for several reasons. In the meantime, the PBGC has received innumerable requests from pension practitioners to issue the new termination forms. The reasons usually suggested are that it is messy and time-consuming to make changes on printed forms, and that new forms would eliminate the need for plan administrators and actuaries to read both of the **Federal Register** notices, as well as the instructions to the old forms, in order to know how they must fill out the forms.

The PBGC believes that these points are well-taken; the issuance of the new plan termination forms would eliminate much confusion and simplify the termination process, particularly for standard terminations. Therefore, the PBGC is today announcing the issuance of four new plan termination forms: Form 500 (the Standard Termination Notice, including an enrolled actuary certification), Form 501 (the Post-Distribution Certification for Standard Terminations), Form 600 (the Distress Termination Notice of Intent to Terminate (to PBGC)), and Form 601 (the Distress Termination Notice, including an enrolled actuary certification). These forms will replace the Forms 5310 (for PBGC purposes only), 444, and 445 for all single-employer plan terminations with respect to which notices of intent to terminate are issued on or after February 1, 1990. It is emphasized that, with respect to these terminations, PBGC will reject any filings that use the old forms. With respect to those terminations initiated prior to February 1, 1990, for which all of the PBGC filings have not been made as of that date, the PBGC will permit and, indeed, encourages plan professionals to use the new forms.

Since the enactment of SEPPAA (and particularly since publication of the proposed regulations), the question most frequently asked PBGC concerns the time limits for completing the various steps of the termination process. With respect to several actions, the statute requires merely that they be undertaken or completed "as soon as practicable" (see sections 4041 (b)(2)(A), (b)(2)(D) and (c)(2)(A).) In its proposed regulations, PBGC suggested specific time limits in implementation of the "as soon as practicable" standard. While there was not much objection from the public to setting specific time limits, there were a number of comments objecting to those limits proposed by PBGC. PBGC agrees with much of this criticism and will revise the time limits in the final regulations accordingly.

Because the new termination forms were developed for use under the new termination regulations, the time limits for filing or issuing the various notices incident to a plan termination under the new regulations are set forth in the instructions to the forms. Until the final regulations are issued, and in response to the many questions from practitioners concerning PBGC's interpretation of "as soon as practicable", the PBGC hereby advises pension practitioners that the time limits stated in the instructions are to be considered guidelines for complying with the several statutory "as soon as practicable" requirements. In other words, these time limits reflect PBGC's determination of what constitutes reasonable time periods for completing the various steps in the termination process.

The PBGC has distributed copies of the new termination forms and instructions to the pension reporting services. We expect printing of the forms to be completed in early January 1990 and will begin mass distribution at that time. PBGC will mail copies of the forms and instructions to all pension practitioners, associations, etc., who have routinely received mailings of other PBGC issuances, as well as to all practitioners who receive bulk orders of the PBGC's Premium Payment Package. Other persons who are interested in receiving the forms and instructions should call (after January 7, 1990) the number or write to the address given above under the heading "For Further Information Contact". Persons who write in should please specify whether they wish to receive the standard termination forms, the distress termination forms or both. (The PBGC will accept reproductions or other facsimiles of the forms.)

Finally, for any plan with respect to which a distress termination is contemplated, and it is expected that the notices of intent to terminate will be issued on or shortly after February 1, 1990, we recommend that the plan administrator contact PBGC to obtain copies of the forms. This will help ensure that the forms (specifically the Form 600) are received by the plan administrator early enough to be used without needing to defer issuance of the notices of intent to terminate.

Issued at Washington, DC, this 18th day of December 1989.

James B. Lockhart III,

Executive Director.

[FR Doc. 89–29745 Filed 12–21–89; 8:45 am]

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Part VI

Department of Health and Human Services

Public Health Service

Availability of Grants for Adolescent Family Life Demonstration Projects; Notice

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Announcement of Availability of Grants for Adolescent Family Life Demonstration Projects

AGENCY: Office of Adolescent Pregnancy Programs, Office of Population Affairs, PHS, HHS.

ACTION: Notice.

SUMMARY: The Office of Adolescent Pregnancy Programs (OAPP) requests applications for grants under the Adolescent Family Life (AFL) Demonstration Grants Program. These grants are for community-based and community-supported demonstration projects to find effective means of encouraging abstinence from adolescent premarital sexual activity, promoting adoption as an alternative to adolescent parenting, and establishing innovative, comprehensive and integrated approaches to the delivery of services to pregnant adolescents, adolescent parents and their children. Funds are available for approximately 32 projects, which may be located in any State, the District of Columbia, the territories of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, Commonwealth of the Northern Mariana Islands, Republic of Palau, Republic of the Marshall Islands and the Federated States of Micronesia.

ADDRESS: Application kits may be obtained from and applications must be submitted to: Grants Management Office, OPA, Room 736E, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

DATE: To receive consideration grant applications must be received by the Grants Management Officer by March 30, 1990. Applications shall be considered as meeting the deadline if they are either (1) received on or before the deadline date, or (2) postmarked on or before the deadline date and received in time for submission to the review committee. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be accepted as proof of timely mailing. Applications which do not meet the deadline will be considered late applications and will be returned to the applicant.

FOR FURTHER INFORMATION CONTACT: Grants Management Office at 202–245–0146 or Program Office at 202–245–7473. Staff are available to answer questions and provide limited technical assistance in the preparation of grant applications.

SUPPLEMENTARY INFORMATION: Title XX of the Public Health Service Act, 42 U.S.C. 300z, *et seq.*, authorizes the Secretary of Health and Human Services to award grants for demonstration projects to provide services to pregnant and nonpregnant adolescents, adolescent parents and their families. (Catalog of Federal Domestic Assistance Number 13.995) Title XX authorizes grants for two types of demonstration projects: (1) projects which provide "care services" only (*i.e.*, services for the provision of care to pregnant adolescents, adolescent parents and their families); and (2) projects which provide "prevention services" only (*i.e.*, services to prevent adolescent premarital sexual relations).

The Office of Adolescent Pregnancy Programs intends to make available approximately $4 million to support an estimated 32 AFL demonstration projects. Two categories of projects will be supported; (1) traditional demonstration projects with evaluation components as described and limited by the statute; and (2) evaluation-intensive projects specifically designed to produce research quality information bearing on the effectiveness of the demonstration intervention. An applicant may submit a proposal for a local care or local prevention project or for a national multi-site prevention project with at least two sites in different States. The average award for a local prevention project will be $80,000, with a range between $40,000 and $150,000, and between $100,000 and $250,000 for a national multi-site prevention project. The average award for a local care project will be $150,000, with a range between $50,000 and $200,000. In the case of evaluation-intensive proposals, awards may range up to 20 percent higher than the levels indicated above. The award levels for evaluation-intensive projects will include both intervention and evaluation funding, and evaluation activities may account for up to 30 percent of the total award.

Grants may be approved for project periods of up to 3 years. Grantees who receive 3 years of funding may then apply for an additional 2 years of funding through a competitive process.

Competing grant renewal applications will be accepted from current AFL grantees whose grants will end on September 30, 1990 and who will have received fewer than 5 years of funding.

Grants are funded in annual increments (budget periods). Funding for all approved budget periods beyond the first year of a grant is contingent upon the availability of funds, satisfactory progress of the project and adequate stewardship of Federal funds. A grant award may not exceed 70 percent of the total cost of the project for each of the first and second years, and 60 percent for the third year. For those grantees who are then funded for an additional 2 years, the grant award may not exceed 50 percent for the fourth year and 40 percent for the fifth and final year. The non-Federal share of the project costs may be provided in cash expenditures or fairly evaluated in-kind contributions, including plant, equipment and services.

The specific services which may be funded under title XX are listed below under "Care Programs" and "Prevention Programs."

Eligible Applicants

Any public or private nonprofit organization or agency is eligible to apply for a grant. Grants are awarded only to those organizations or agencies which demonstrate the capability of providing the proposed services and which meet the statutory requirements.

Care Programs

Under this announcement, funds are available for local care demonstrations only and not for multi-site national projects. The project site must be identified in the application rather than selected after the grant is awarded.

Under the statute the purpose of care programs is to establish innovative, comprehensive, and integrated approaches to the delivery of care services for pregnant adolescents and adolescent parents under 19 years of age at program entry, with primary emphasis on unmarried adolescents who are 17 years old or younger and for their families. This includes young fathers and their families. The Office encourages the submission of care applications which propose innovative ways of involving families, of promoting adoption as a postive option, and of stressing self-sufficiency skills such as school completion (in mainstream or alternative schools and GED programs) and/or job training and preparation that will assist pregnant adolescents and adolescent parents to become productive independent contributors to family and community life. Applicants should propose sound approaches to strengthening family commitment and addressing the underlying problems that lead adolescents into out-of-wedlock pregnancy as well as offering innovative approaches to presenting adoption as an option for pregnant adolescents. Applicants should base their approaches upon an assessment of existing programs and, where appropriate, upon efforts to establish better coordination, integration and linkages among such existing programs.

Applicants for care programs are required to provide, either directly or by referral, the following 10 core services:

(1) Pregnancy testing and maternity counseling;

(2) Adoption counseling and referral services which present adoption as an option for pregnant adolescents, including referral to licensed adoption agencies in the community if the eligible grant recipient is not a licensed adoption agency;

(3) Primary and preventative health services, including prenatal and postnatal care;

(4) Nutrition information and counseling;

(5) Referral for screening and treatment of venereal disease;

(6) Referral to appropriate pediatric care;

(7) Educational services relating to family life and problems associated with adolescent premarital sexual relations including:

(a) Information about adoption,

(b) Education on the responsibilities of sexuality and parenting,

(c) The development of material to support the role of parents as the providers of sex education, and

(d) Assistance to parents, schools, youth agencies and health providers to educate adolescents and preadolescents concerning self-discipline and responsibility in human sexuality;

(8) Appropriate educational and vocational services;

(9) Mental health services and referral to mental health services and to other appropriate physical health services;

(10) Counseling and referral for family planning services.

Note.— No funds provided under title XX may be used for the provision of family planning services other than counseling and referral services unless appropriate family planning services are not otherwise available in the community.

In addition to the 10 required core services listed above, applicants for care projects may provide any of the following supplemental services:

(1) Referral to licensed residential care or maternity home services;

(2) Child care sufficient to enable the adolescent parent to continue education or to enter into employment;

(3) Consumer education and homemaking;

(4) Counseling for the immediate and extended family members of the eligible person;

(5) Transportation; and

(6) Outreach services to families of adolescents to discourage sexual relations among unemancipated minors.

Within the context of providing the required core plus any supplemental services and developing evaluation strategies, applicants should pay particular attention to the following aspects of title XX:

* Provision of assistance to pregnant adolescents and adolescent parents to enable them to obtain proper care and to become productive contributors to family and community life.

* Continuation of services to clients after the delivery of the baby to enable them to acquire good parenting skills and to ensure that their children are developing normally physically, intellectually and emotionally. This should extend about 2 years after delivery.

* Involvement of the families of pregnant adolescents and adolescent parents, including the father of the baby, and assisting families and adolescents to understand and resolve the societal causes which are associated with adolescent pregnancy.

* The promotion of adoption as an option for pregnant adolescents.

* Provision of support by family members, voluntary associations, religious and charitable organizations and other groups in the private sector in order to help adolescents and their families deal with the complex issues surrounding adolescent pregnancy.

Prevention Programs

Under this announcement, funds are available for both local and multi-site national projects. A multi-site national project must have at least two sites in different States.

The purpose of prevention programs is to find effective means within the context of the family of reaching adolescents, both male and female, before they become sexually active in order to maximize the guidance and support available to adolescents from parents and other family members in promoting abstinence from adolescent premarital sexual relations. OAPP is soliciting applications for grants to provide innovative approaches to family life educational services that clearly and unequivocally promote abstinence for unmarried adolescents. Applicants for prevention programs are not required to provide any specific number of services; a proposal may include any one or more of the following services as appropriate:

(1) Educational services relating to family life and problems associated with adolescent premarital sexual relations including:

(a) Information about adoption,

(b) Education on the responsibilities of sexuality and parenting,

(c) The development of material to support the role of parents as the providers of sex education, and

(d) Assistance to parents, schools, youth agencies and health providers to educate adolescents and preadolescents concerning self-discipline and responsibility in human sexuality;

(2) Appropriate educational and vocational services;

(3) Counseling for the immediate and extended family members of the eligible person;

(4) Transportation;

(5) Outreach services to families of adolescents to discourage sexual relations among unemancipated minors;

(6) Pregnancy testing and maternity counseling;

(7) Nutrition information and counseling; and

(8) Referral for screening and treatment of veneral disease.

The following application requirements contain information collections subject to OMB approval under the Paperwork Reduction Act of 1980 (Pub. L. 96–511). These information collections have been approved by OMB under control number 0937–0189.

Applications requesting support for prevention projects should propose innovative, value-based, family-centered approaches to promoting adolescent abstinence, affirming sexual relations in the context of marriage. Applicants should promote parents as the primary sex educators of their children and emphasize the provision of support by other family members, voluntary associations, religious and charitable organizations and other groups in the private sector in order to help adolescents and their families deal with complex issues of adolescent premarital sexual relations. Prevention applicants are encouraged to propose innovative, value-based approaches which will improve our understanding of effective strategies, as opposed to duplicating approaches which focus merely on improving knowledge, communication and assertiveness skills.

Evaluation

Section 2006(b)(1) of Title XX requires each grantee to expend at least one percent but not more than five percent of the funds received under Title XX on evaluation of the project. In some cases, waivers of the five percent limit on evaluation (see section 2006(b)(1)) may be granted.

As this is a demonstration program, all applications are required to have an evaluation component of high quality consistent with the scope of the proposed project and the funding. All

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project evaluations should monitor program processes to determine whether the program has been carried out as planned, and the program's outcomes. Outcome variables should be consistent with the key purposes of Title XX, including but not limited to family involvement, adoption and adolescent abstinence.

In addition to soliciting applications incorporating such traditional evaluation designs, the office also requests applications for *evaluation-intensive* projects. For applications funded under the evaluation-intensive category, the Office will waive the five percent limit up to a maximum of 30 percent. Applicants who wish to compete under this category must propose a project with a strong evaluation design which, in addition to focusing on outcome variables consistent with the key purposes of Title XX, particularly address questions pertaining to program impact, *i.e.*, is the program effective, for whom is it effective and under what conditions is it effective? The evaluation design may measure any of the following: (1) What effect variations in service delivery have on client outcomes; (2) how service delivery and corresponding client outcomes are influenced by variations in client population characteristics; or (3) the extent to which particular institutional settings, linkages with other provider agencies or other organizational characteristics affect the capacity of a project to provide the services in an effective manner. Emphasis must be placed on measuring variables which are integral to the project's proposed intervention and which are central to the purposes of the AFL program. Proposals must show serious attention to problems of data collection and verification, must demonstrate sample size sufficiency (emphasizing techniques for controlling for attrition) and must utilize a strong research design, using randomized control or matched-comparison groups for measurement where possible. Applications for evaluation-intensive awards will be reviewed with like applications.

Section 2006(b)(2) requires that an organization or an entity independent of the grantee providing services assist the grantee in evaluating the project. Particularly in the case of evaluation-intensive proposals, the OAPP strongly recommends extensive collaboration between the applicant organization and the proposed evaluator in the development of the intervention, development of the research hypothesis(es), identification of the variables to be measured and timetable for initiation of the intervention, baseline measurement, and ongoing evaluation data collection and analysis. Failure to integrate the intervention and evaluation components to the satisfaction of reviewers will result in rejection of the proposal.

Application Requirements

Applications must be submitted on the forms supplied and in the manner prescribed in the application kits provided by the OAPP. Applicants are required to submit an application signed by an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award.

It should be noted that grantees may not teach or promote religion in their AFL project. Each grant project must be accessible to the public generally, not just to those of a particular religious affiliation.

Under section 2011(a) of the Act, AFL projects may not provide abortions or abortion counseling or referral and may not advocate, promote or encourage abortion. Only if both the adolescent and her parents request abortion counseling may a project provide referral for abortion counseling to a pregnant adolescent.

Additional Requirements

Applicants for grants must also meet the following requirements:

(1) *Requirements for Review of an Application by the Governor.* Section 2006(e) of Title XX requires that each applicant shall provide the Governor of the State in which the applicant is located a copy of each application submitted to OAPP for a grant for a demonstration project for services under this Title. The Governor has 60 days from the receipt date in which to provide comments to the applicant.

An applicant may comply with this requirement by submitting a copy of the application to the Governor of the State in which the applicant is located at the same time the application is submitted to OAPP. To inform the Governor's office of the reason for the submission, a copy of this notice should be attached to the application.

(2) *Review Under Executive Order 12372.* Applications under this announcement are subject to the review requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) as implemented by 45 CFR part 100 (Intergovernmental Review of DHHS Programs and Activities) which established a process for consulting with State and local elected officials on proposed Federal financial assistance.

The application kit contains information to guide applicants in fulfilling the above requirements.

Application Consideration and Assessment

Applications which are judged to be late or which do not conform to the requirements of this program announcement will not be accepted for review. Applicants will be so notified, and the applications will be returned. All other applications will be reviewed and assessed according to the following criteria:

(1) The capacity of the proposed applicant organization to provide the rapid and effective use of resources needed to conduct the project, collect data and evaluate it. This includes personnel, time and facilities. (15 points)

(2) The applicant's presentation of an appropriate project methodology, including a clear statement of goals and objectives consistent with Title XX, reasonable methods for achieving the objectives, a reasonable workplan and timetable and a clear statement of results or benefits expected. (20 points)

(3) The applicant's provision for complying with the legislation's requirements to involve families in the delivery of services; in the case of care programs to promote adoption as a positive alternative; and in the case of prevention programs to clearly and unequivocally promote abstinence from adolescent premarital sexual activity, affirming sexuality in the context of marriage. (20 points)

(4) The applicant's documentation of the innovativeness of the program approach and its worth for testing and replication. (15 points)

(5) The applicant's presentation of a detailed evaluation plan, indicating an understanding of program evaluation methods and reflecting a practical, technically sound approach to assessing the project's achievement of program objectives. (20 points)

Note.—Applications will be reviewed in two separate categories according to whether they are standard demonstration proposals with limited evaluations or evaluation-intensive proposals.

(6) The applicant's provision for the requirements set forth in Section 2006(a) of Title XX of the Public Health Service Act. (10 points)

In making grant award decisions, the Deputy Assistant Secretary for Population Affairs will take into account the extent to which grants approved for funding will provide an appropriate distribution of resources throughout the country, the priorities in section 2005(a) and the factors in section 2005(b) of Title XX of the Public Health Service Act and other factors, focusing on:

(1) The nature of the organization applying;

(2) The applicant's capacity to administer funds responsibly;

(3) The incidence of adolescent pregnancy and the availability of services in the geographic area to be served;

(4) The population to be served;

(5) The community commitment to and involvement in planning and implementation of the demonstration project;

(6) The organizational model(s) for delivery of service;

(7) The usefulness for policymakers and service providers of the proposed project and its potential for complementing existing AFL demonstration models;

(8) The applicant's proposed plans to access continued community funding as Federal funds decrease and end; and

(9) The reasonableness of the estimated cost to the government considering the anticipated results.

OAPP does not release information about individual applications during the review process until final funding decisions have been made. When these decisions have been made, applicants will be notified by letter of the outcome of their applications. The official document notifying an applicant that an application has been approved for funding is the Notice of Grant Award, which specifies to the grantee the amount of money awarded, the purpose of the grant, the terms and conditions of the grant award, and the amount of funding to be contributed by the grantee to project costs.

Dated: November 16, 1989.

Nabers Cabaniss,

Deputy Assistant Secretary for Population Affairs.

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Part VII

Federal Financial Institutions Examination Council

Uniform Interagency Community Reinvestment Act Guidelines for Disclosure of Written Evaluations and Revisions to Assessment Rating System; Notice

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Federal Deposit Insurance Corporation:
Janice M. Smith, Director, Office of

Dated: December 18, 1989.
Robert J. Lawrence,

• The institution will be required to provide a copy of its current evaluation

Uniform Format

Because of the need for confidential

• The rating for the institution resulting from the examination.

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FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Uniform Interagency Community Reinvestment Act Guidelines for Disclosure of Written Evaluations and Revisions to Assessment Rating System

AGENCY: Federal Financial Institutions Examination Council.

ACTION: Notice of request for comments.

SUMMARY: The Federal Financial Institutions Examination Council (FFIEC) is proposing certain changes to the current format of the Community Reinvestment Act (CRA) rating system. These changes are in response to the recent amendments to the CRA occasioned by the passage of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA). The FIRREA amendments to the CRA may be summarized as: (1) Requiring disclosure to the public of an institution's CRA rating; (2) requiring that the Federal regulatory agencies provide a written evaluation of an institution's CRA performance utilizing a four-tiered descriptive rating system, in lieu of the existing five-tiered numercial rating system.

This notice represents an effort, via the FFIEC, by the Federal depository institutions regulatory agencies to develop uniform procedures for both the disclosure of CRA rating information and standardization of written evaluation reports using the existing assessment factors developed for judging CRA performance. This request for comments is intended to provide the public with an early opportunity to comment on the interagency proposal.

The FFIEC will consider the comments received in developing final guidelines that will be issued by each of the regulators. Further, these comments will provide useful input prior to the initiation of rulemakings to modify existing regulations governing financial institutions' CRA compliance.

DATE: Comments must be received on or before January 29, 1990.

ADDRESS: All comments should be sent to Robert J. Lawrence, Executive Secretary, Federal Financial Institutions Examination Council, 1776 G Street NW., Suite 701, Washington, DC 20006 or delivered to the same address between the hours of 9:00 a.m. and 5:00 p.m on business days.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board: Glenn E. Loney, Assistant Director, Consumer and Community Affairs (202) 452–3585.

Federal Deposit Insurance Corporation: Janice M. Smith, Director, Office of Consumer Affairs (202) 898–3536.

Office of the Comptroller of the Currency: John H. McDowell, Director, Consumer Activities Division (202) 287–4265.

Office of Thrift Supervision: Jerauld C. Kluckman, Director, Division of Compliance Programs (202) 785–5442.

SUPPLEMENTARY INFORMATION:

Background

Section 1212 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), Public Law No. 101–73, 103 Stat. 183 (1989), amended the Community Reinvestment Act of 1977 (CRA), Title VIII, Public Law No. 95–128, 91 Stat. 1147 (12 U.S.C. 2901 *et seq.*). The new section 807, added by FIRREA, promotes the enforcement of CRA by affording the public an opportunity to learn of an institution's rating, while at the same time making available the findings and conclusions used by the applicable Federal depository institution regulator in reaching its specified rating.

The manner in which the disclosure and written evaluation requirements of section 807 are to be implemented is the subject of the following FFIEC proposal. The FFIEC Consumer Compliance Task Force has thoroughly discussed and reviewed the CRA Subcommittee's proposals to comply with the provisions of FIRREA and has recommended them for adoption by the Council. The proposal discusses the implementation of the disclosure provisions, and provides a detailed breakdown of the revised method of evaluating the existing assessment factors to provide written evaluations as mandated by the amendment.

Request for comments

This notice of request for comments is intended to provide an opportunity to comment on the procedure for disclosure of written evaluations and the revisions of the assessment rating system. The FFIEC and the financial regulators will use the comments received to develop final guidelines. The financial regulators will issue the final guidelines to the institutions they supervise. Further, the financial regulators will use the comments in developing proposals to modify their existing regulations governing CRA activities. The FFIEC requests comments regarding any aspect of the attached proposal.

Dated: December 16, 1989.

Robert J. Lawrence,

Executive Secretary, Federal Financial Institutions Examination Council.

Uniform Interagency Community Reinvestment Act Guidelines for Disclosure of Written Evaluations and Revisions to Assessment Rating System

Disclosure of Written Evaluations

The new section 807 of the Community Reinvestment Act (CRA) requires that the appropriate Federal depository institution regulatory agency shall prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods. Section 807, in addition, requires that these written evaluations have a public and confidential section.

The following proposed procedures detail the manner in which financial institutions will be required to disclose the public portions of their CRA written evaluations.

Recommended Method of Disclosure

Disclosure by the Financial Institution

Under this approach:

- The CRA evaluation will be:
  - —Prepared by the institution's supervisory agency upon completion of CRA examinations commencing on and after July 1, 1990;
  - —Transmitted to the institution at the same time the agency sends the written CRA examination report; a separate document, distinct from the examination report, thereby maintaining the confidentiality of the exam report.
- The institution will make its most current evaluation available to the public within 30 days of its receipt.

An evaluation will be considered "current" until 30 days following the date of receipt of a new evaluation from the institution's supervisory agency.

- The evaluation, at a minimum, will be placed in the institution's CRA public file located at the main office.
- The availability of an institution's evaluation will be set forth in the institution's required CRA public notice, posted in each depository facility, by adding language such as:

> You may obtain our current CRA Performance Evaluation, which was prepared by (*name of agency*), at (*address*).

- Each institution will be required to add this language to its CRA notice and complete the posting of such revised notices in all offices, within 30 days of receipt of the first evaluation.

- The institution will be required to provide a copy of its current evaluation to any person, upon request, and will be authorized to charge a fee not to exceed the cost of reproduction.
- The format and content of the institution's evaluation, as prepared and transmitted to the institution by its supervisory agency, will not be altered in any manner.
- The institution will be encouraged to include its response to the evaluation in its CRA public file.

Rationale and Benefits

This approach will provide convenient access by the public to each institution's evaluation. It will:

- Ensure public access to the evaluation in communities served by the institution.
- Be consistent with other requirements already imposed on financial institutions by current CRA regulations [*e.g.*, maintenance of CRA statements and public file; posting of CRA notice].
- Facilitate comparisons by the public of the CRA statement prepared by the institution with the evaluation prepared by the supervisory agency. Indirectly, it could encourage development of well documented, expanded CRA statements by each institution, as recommended by the *Statement of the Federal Financial Supervisory Agencies Regarding the Community Reinvestment Act. See* 54 FR 13742 (April 5, 1989).
- Help encourage greater attention by the institution's board of directors, management and employees to the institution's CRA performance in all community areas served by local depository offices.

Format and Content of Required Written Evaluation

In addressing the format and content of disclosures, the FFIEC believes two considerations should be emphasized. First, the Agencies should try to achieve consistency in preparing the evaluations. Consistency will facilitate public understanding of evaluations and promote a common understanding of CRA. A common understanding shared by community groups, regulators, and depository institutions regarding CRA will result in reasonable expectations and constructive dialogue with respect to CRA issues.

Second, the language used in preparing the CRA evaluations should be simple and concise. Evaluations should be written in a manner understandable to the public. The use of acronyms, technical banking or regulatory terminology, and unexplained banking concepts is discouraged.

Uniform Format

Because of the need for confidential treatment of the examination report, the CRA evaluation will be prepared as a stand-alone document that may be extracted from the CRA examination report, eliminating information precluded by statute or deemed by the agencies to be confidential.

Content of Evaluation

To facilitate understanding of CRA, it is desirable to preface the evaluation with background information outlining the general purposes of the CRA and explaining the evaluation.

The FFIEC also recommends that the agencies do not include in the evaluation the institution's response to CRA examination findings because the response is considered part of the supervisory function. Evaluations should be based only on the examiners' findings. The regulatory agencies will encourage financial institutions to include their response to the evaluation in their CRA public file.

Evaluation Format

To ensure maximum consistency, the regulators will use a standard format. The evaluation will consist of four distinct sections:

Section I—Cover Page and General Information Page
Section II—Rating Information—Summary of CRA Ratings and the Institution's Specific Rating
Section III—Narrative Discussing Performance Under the Assessment Factors and Supporting Facts
Section IV—Additional Information

Section I—Cover Page and General Information

The cover page will include:

1. The date of the evaluation.
2. The name and address of the institution.
3. The name and address of the supervisory agency.

A standard "General Information" page will address the purpose of both the CRA and the public written evaluation. It will also provide a statement on the basis for the rating.

Section II—Rating Information

This page will contain:

- The four ratings specified in section 807 of the CRA. A brief description of each of the ratings will precede the presentation of the particular institution's rating and will provide a standard for comparison. For example, presentation of a "Needs to Improve" rating will clearly be identified as not being the worst possible rating.
- The rating for the institution resulting from the examination.

Section III—Assessment Factors and Supporting Facts

The performance categories will be listed in order. For each category, the relevant assessment factors, as written in the regulation, will be spelled out followed by a narrative supporting the conclusion under each factor.

Section IV—Additional Information

This section may include any other relevant information that does not appropriately fit in other sections, such as the Metropolitan Statistical Area (MSA) in which the institution is located, the location of branches, and the location of the appropriate HMDA depository.

Appendix A

A sample evaluation is presented below.

Appendix A

Sample Evaluation

Public Disclosure

[Date of Evaluation]
Community Reinvestment Act
Performance Evaluation
Name of Depository Institution
Address
Name of Supervisory Agency
Address

General Information

This document is an evaluation of the Community Reinvestment Act (CRA) performance of [*Name of depository institution*] prepared by [*Name of agency*], the institution's supervisory agency.

The evaluation represents the agency's current assessment and rating of the institution's CRA performance based on an examination completed as of (*the date on the cover*). It does not reflect any CRA-related activities that may have been initiated or discontinued by the institution after that date.

The purpose of the Community Reinvestment Act of 1977 (12 U.S.C. 2901), as amended, is to encourage each financial institution to help meet the credit needs of the communities in which it operates. The Act requires that in connection with its examination of a financial institution, each federal financial supervisory agency shall (1) assess the institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with safe and sound operations of the institution, and (2) take that record of performance into account when deciding whether to approve an application of the institution for a deposit facility.

The Financial Institutions Reform, Recovery and Enforcement Act of 1989, Pub. L. No. 101–73, amended the CRA to require

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the Agencies to make public certain portions of their CRA performance assessments of financial institutions.

Basis for the Rating

The assessment of the institution's record takes into account its financial capacity and size, legal impediments and local economic conditions and demographics, including the competitive environment in which it operates. Assessing the CRA performance is a process that does not rely on absolute standards. Institutions are not required to adopt specific activities, nor to offer specific types or amounts of credit. Each institution has considerable flexibility in determining how it can best help to meet the credit needs of its entire community. In that light, evaluations are based on a review of 12 assessment factors, which are grouped together under 5 performance categories, as detailed in the following section of this evaluation.

Caution: This evaluation is not, nor should it be construed as, an assessment of the financial condition of this institution. The rating assigned to this institution does not represent an analysis, conclusion or opinion of the federal financial supervisory agency concerning the safety and soundness of this financial institution.

Assignment of Rating

Identification of Possible Ratings.

In connection with the assessment of each insured depository institution's CRA performance, a rating is assigned from the following groups:

Outstanding record of meeting community credit needs.

An institution in this group has an outstanding record of, and is a leader in, ascertaining and helping to meet the credit needs of its entire delineated community, including low- and moderate-income neighborhoods, in a manner consistent with its resources and capabilities.

Satisfactory record of meeting community credit needs.

An institution in this group has a satisfactory record of ascertaining and helping to meet the credit needs of its entire delineated community, including low- and moderate-income neighborhoods, in a manner consistent with its resources and capabilities.

Needs to improve record of meeting community credit needs.

An institution in this group needs to improve its overall record of ascertaining and helping to meet the credit needs of its entire delineated community, including low- and moderate-income neighborhoods, in a manner consistent with its resources and capabilities.

Substantial noncompliance in meeting community credit needs.

An institution in this group has a substantially deficient record of ascertaining and helping to meet the credit needs of its entire delineated community, including low- and moderate-income neighborhoods, in a manner consistent with its resources and capabilities.

Institution's Rating:

[Insert Applicable Rating]

Discussion of Institution's Performance

I. Ascertainment of Community Credit Needs

Reasonableness of Delineated Community (Conclusion/Support):

Assessment Factor—Activities conducted by the institution to ascertain the credit needs of its community, including the extent of the institution's efforts to communicate with members of its community regarding the credit services being provided by the institution.

(Conclusion/Support):

Assessment Factor—The extent of participation by the institution's board of directors in formulating the institution's policies and reviewing its performance with respect to the purposes of the Community Reinvestment Act.

(Conclusion/Support):

II. Marketing and Types of Credit Extended

Assessment Factor—The extent of the institution's marketing and special credit-related programs to make members of the community aware of the credit services offered by the institution.

(Conclusion/Support):

Assessment Factor—The institution's origination of residential mortgage loans, housing rehabilitation loans, home improvement loans, and small business or small farm loans within its community, or the purchase or such loans originated in its community.

(Conclusion/Support):

Assessment Factor—The institution's participation in governmentally-insured, guaranteed or subsidized loan programs for housing, small businesses, or small farms.

(Conclusion/Support):

III. Geographic Distribution and Record of Opening and Closing Offices

Assessment Factor—The geographic distribution of the institution's credit extensions, credit applications, and credit denials.

(Conclusion/Support):

Assessment Factor—The institution's record of opening and closing offices and providing services at offices.

(Conclusion/Support):

IV. Discrimination and Other Illegal Credit Practices

Assessment Factor—Any practices intended to discourage applications for types of credit set forth in the institution's CRA Statement(s).

(Conclusion/Support):

Assessment Factor—Evidence of prohibited discriminatory or other illegal credit practices.

(Conclusion/Support):

V. Community Development

Assessment Factor—The institution's participation, including investments, in local community development and redevelopment projects or programs.

(Conclusion/Support):

Assessment Factor—The institution's ability to meet various community credit needs based on its financial condition and size, legal impediments, local economic conditions and other factors.

(Conclusion/Support):

Assessment Factor—Any other factors that, in the regulatory authority's judgment, reasonably bear upon the extent to which an institution is helping to meet the credit needs of its entire community.

(Conclusion/Support):

Proposed Revisions to the Uniform Interagency Community Reinvestment Act Assessment Rating System

Introduction

The revised CRA Rating System provides a comprehensive and uniform method for evaluating the CRA performance of federally regulated financial institutions. It ranks the overall performance of financial institutions in helping to meet community credit needs, including those of low- and moderate-income neighborhoods, using a four-tiered descriptive rating system.

These ratings are:

1. "Outstanding record of meeting community credit needs."
2. "Satisfactory record of meeting community credit needs."
3. "Needs to improve record of meeting community credit needs."
4. "Substantial noncompliance in meeting community credit needs."

The overall performance of an institution is based on its performance in helping to meet various community credit needs. The assessment process uses five "performance categories" which represent a grouping of the twelve assessment factors contained in the regulations which implement the Act.

The assessment of an institution's record in helping to meet community credit needs takes into account a number of factors—the financial capacity and size of the institution, legal impediments, local and regional economic conditions and demographics, and the competitive environment in which the institution operates. All of these factors have a significant bearing on how the institution fulfills its obligation to help meet the credit needs of its community.

A variety of unique, complex factors are reviewed and assessed by examiners to reach conclusions and appropriate recommendations regarding an institution's record of CRA performance. The performance of the institution is primarily related to the financial and managerial capability of the institution to meet the credit needs of the community.

Because of the various factors considered in the assessment of an institution's record of CRA performance, it should be remembered that the guidelines provided are generally descriptive and that all attributes do not apply to *every* institution. Examiners are expected to use their judgment in determining the rating that best describes the institution's performance under CRA.

To maintain a balanced perspective, examiners must carefully consider information provided by both the institution and the community. Assessing the CRA performance of an institution is a process that does not rely on absolute standards. However, compliance with antidiscrimination laws and regulations, including fair lending and fair housing laws, has great significance in reaching the overall conclusion.

In applying the CRA Rating System, consideration is given to the guidance provided by the *Statement of the Federal Financial Supervisory Agencies Regarding the Community Reinvestment Act.* (Joint Statement) *See* 54 FR 13742 (April 5, 1989). The Joint Statement identifies the various types of policies, procedures and programs the agencies believe constitute a financial institution's sound approach to fulfilling their CRA responsibilities.

Pursuant to the Joint Statement, an effective CRA process should include methods to ascertain community credit needs on an ongoing basis through outreach efforts and methods to incorporate those findings into the development of products and services the institution decides to offer to meet identified credit needs. The CRA plan should include marketing and advertising programs for lending products and services that inform and stimulate awareness throughout all segments of the community. The duty to coordinate and monitor the CRA process should be assigned to a senior officer or committee charged with the responsibility to report periodically to the institution's board of directors about CRA efforts, performance, and areas for improvement, where appropriate. An employee training program should be established which addresses policies and procedures of the institution designed to comply with antidiscrimination laws and regulations and help meet community credit needs.

The federal financial regulatory agencies also expect financial institutions to maintain reasonable documentation of the activities conducted to implement the institution's CRA policies, procedures and programs. Finally, the regulators believe it would be especially useful for a financial institution to expand its CRA statement to include a description of the activities the institution has undertaken to meet its responsibilities under CRA. This expansion would enhance the prospects for an informed dialogue about CRA-related issues between the institution and members of the public.

Written Evaluations

The following CRA rating profiles have been developed to assist the regulatory agencies in providing meaningful written evaluations on an institution's CRA performance. By providing a thorough description of what is required for each rating category and assessment factor, the rationale for an institution's ultimate CRA rating may be more readily understood.

CRA Rating Profiles

Outstanding Record of Meeting Community Credit Needs

An institution in this group has an outstanding record of, and is a leader in, ascertaining and helping to meet the credit needs of its entire delineated community, including low- and moderate-income neighborhoods, in a manner consistent with its resources and capabilities. The institution's delineated community meets the purpose of the CRA and does not exclude low- and moderate-income neighborhoods. CRA is an integral component of the institution's planning process and is explicitly reflected in its formal policies, procedures, and training programs. Documentation of CRA-related activities is comprehensive and readily available. The institution employs affirmative outreach efforts to determine community credit needs and addresses them through innovative product development. The board of directors and senior management are highly involved in planning for, implementing, and monitoring their CRA-related performance. The institution is highly involved with a broad spectrum of community organizations and the public sector. The institution aggressively markets special credit services and has, as a result, extended loans which significantly benefit the community. Internal monitoring procedures assure and demonstrate appropriate volume and distribution of credit extensions, applications, and denials to all segments of its delineated community. The institution is in compliance with antidiscrimination laws and regulations, including fair lending and fair housing laws. The institution has played a leadership role in promoting economic revitalization and growth and/or has engaged in other activities to help meet community credit needs. Such institutions have demonstrated the ability to monitor and assess their own performances, and they present no supervisory concern in CRA matters.

Satisfactory Record of Meeting Community Credit Needs

An institution in this group has a satisfactory record of ascertaining and helping to meet the credit needs of its entire delineated community, including low- and moderate-income neighborhoods, in a manner consistent with its resources and capabilities. The institution's delineated community reasonably meets the purpose of the CRA and does not exclude low- and moderate-income neighborhoods. CRA *is* considered, but is not an integral component of the institution's planning process. However, CRA objectives have been integrated into the institution's policies, procedures and programs. Employee training for CRA is adequate, but may need to be expanded. Documentation and monitoring of the institution's CRA-related activities is adequate. The institution determines its community credit needs and normally addresses them through appropriate loan product development. The board of directors and senior management have occasional involvement in the institution's CRA planning, implementation and monitoring process. The institution has a satisfactory level of involvement with most community organizations and the public sector. The institution has marketed credit services which address identified community credit needs and has extended loans which benefit its delineated community. Records reflect a reasonable geographic distribution of credit extensions, applications, and denials to all segments of its delineated community. The institution has played a supportive role in promoting and participating in economic revitalization and growth and/or has demonstrated a willingness to explore other activities which help to meet community credit needs. The institution is in compliance with the substantive provisions of antidiscrimination laws and regulations, including fair lending and fair housing laws. Such institutions do not present a serious supervisory concern in CRA matters. They may, however, benefit from additional encouragement to ascertain and help meet community credit needs, initiate community contacts, or pursue special programs on an ongoing and more aggressive basis.

Needs to Improve Record of Meeting Community Credit Needs

An institution in this group needs to improve its overall record of ascertaining and helping to meet the credit needs of its entire delineated community, including low- and moderate income neighborhoods, in a manner consistent with its resources and capabilities. The institution's delineated community is unreasonable and may exclude some low- and moderate-income neighborhoods. The institution's program for meeting responsibilities under CRA is inadequate; specific, identifiable weaknesses are apparent. The institution does not have a comprehensive CRA training program. The institution does not adequately document or monitor its CRA-related activities. The institution engages in limited affirmative outreach to the community, passively determines credit needs and addresses them primarily with existing standard loan products. The board of directors and senior management are rarely involved in the institution's CRA planning, implementation and monitoring process, if such process exists. The institution has limited, if any, involvement with local community organizations and the public sector. The institution has limited marketing of credit services responsive to community credit needs, and advertisements are not generally reflective of identified community credit needs. The types of credit offered may not accurately reflect the list of available credits in the institution's CRA statement. The geographic distribution of credit extensions, applications, and denials demonstrates a disproportionate lending pattern, adversely impacting low- and moderate-income neighborhoods. The institution has played only a limited role in developing projects to foster economic revitalization and growth, but management may express a willingness to consider participation in other activities which help meet community credit needs if they are presented to the institution. The institution is not in compliance with the substantive provision of antidiscrimination laws and regulations, including fair lending and fair housing laws. Such institutions are of supervisory concern in CRA matters and require strong encouragement to improve the level of performance.

Substantial Noncompliance in Meeting Community Credit Needs

An institution in this group has a substantially deficient record of ascertaining and helping to meet the credit needs of its entire delineated community, including low- and moderate-income neighborhoods, in a manner consistent with its resources and capabilities. The institution's delineated community is unreasonable and excludes

low- and moderate-income neighborhoods. CRA responsibilities are rarely considered within the institution's planning process or its

CRA Statement. The evaluation process includes the following assessment factors:

(A) Activities conducted by the institution

- Are personally involved in activities designed to develop, improve and enhance the local community.

- Are generally involved in the CRA process and activities.
- Exercise policy oversight and conduct

The institution's CRA program is inadequate and may lack goals, objectives and methodology for self-assessment.

Assessment Factor C

CRA is rarely (or, is not) considered in the board of director's planning process.

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low- and moderate-income neighborhoods. CRA responsibilities are rarely considered within the institution's planning process or its policies, procedures, or training programs. The institution does not have a viable program for meeting responsibilities under CRA. The institution does not actively monitor its CRA activities. Little or no documentation exists that demonstrates an adequate level of performance. The institution is not generally aware of existing credit needs and may not have appropriate loan products to address them. The board of directors and senior management are not involved in the institution's CRA planning, implementation and monitoring process. The institution has no meaningful interaction with community organizations and the public sector. The institution does not advertise credit services based upon identified community needs. Some types of credit extended may not be reflected in the list of available credits in the institution's CRA statement. Restrictive credit policies contribute to unjustified disparate lending patterns, adversely impacting low- and moderate-income neighborhoods. The institution has not actively promoted community economic revitalization or growth, and has shown very limited interest in pursuing other activities to address community credit needs. The institution is in substantial noncompliance with antidiscrimination laws and regulations, including fair lending and fair housing laws. Such institutions are of significant supervisory concern in CRA matters and require the strongest supervisory encouragement to be responsive to community credit needs.

Performance Categories Summary

To evaluate an institution's CRA performance, the twelve assessment factors and criteria are grouped into the following performance categories:

I. Ascertainment of Community Credit Needs
II. Marketing and Types of Credit Extended
III. Geographic Distribution and Record of Opening and Closing Offices
IV. Discrimination and Other Illegal Credit Practices
V. Community Development

Performance Categories

Below are *guidelines* for determining the level of a financial institution's performance under each assessment factor as prescribed in the implementing regulations (designated below by the letters (A) through (L)). The various performance categories are generally descriptive, and *all* attributes do not apply to *every* institution.

I. Ascertainment of Community Credit Needs

The institution is evaluated in this category on activities undertaken to delineate its community and its employment of effective techniques for gathering information to identify community credit needs. Examiners evaluate the effectiveness of an institution's review and development of products and services related to identified community credit needs. This category includes an evaluation of the reasonableness of the institution's community delineation and its CRA Statement. The evaluation process includes the following assessment factors:

(A) Activities conducted by the institution to ascertain the credit needs of its community, including the extent of efforts to communicate with members of its community regarding the credit services it is prepared to offer to the community.

(C) The extent of participation by the institution's board of directors in formulating policies and reviewing the institution's performance with respect to the purposes and intent of the Community Reinvestment Act.

Outstanding

Delineated Community

The institution's delineated community meets the purpose of the CRA and does not exclude low- and moderate-income neighborhoods.

Assessment Factor A

The institution has an outstanding record of determining the credit needs of its community, including low- and moderate-income neighborhoods. This may take the form of:

- Ongoing, meaningful contacts with a full range of individuals and groups representing civic, religious, neighborhood, minority, small business, and commercial and residential real estate development;
- Ongoing contact with officials from city, county and state governments and active participation in public programs; and,
- Established, productive relationships with financial intermediaries resulting in public/private partnership activities.

The institution regularly collects and analyzes local demographic data in relation to its lending activities.

The board of directors and senior management maintain a proactive attitude and a high degree of responsiveness in addressing community credit needs through product development, including loans for residential mortgages, housing rehabilitation, home improvement, small businesses and small farms.

Senior management performs systematic and regular reviews of lending services.

The institution offers products well-suited to identified needs, which may include government-insured and publicly-sponsored programs.

The board of directors and senior management demonstrate willingness to explore and offer conventional products with special features to make credit more widely available, within the bounds of safe and sound lending practices.

Assessment Factor C

CRA is a demonstrated and important component of the board of director's planning process.

A formal, written CRA program exists with goals, objectives and methodology for self-assessment.

The board of directors and senior management:

- Are an integral part of the CRA process and activities.
- Exercise active policy oversight and conduct regular reviews of CRA activities and performance.
- Are personally involved in activities designed to develop, improve and enhance the local community.
- Consistently support prudent but innovative underwriting criteria that help address community credit needs and that may not fall within the criteria of the institution's more conventional loan products.
- Provide active support to the CRA training of personnel.
- Have expanded their CRA Statement describing the institution's CRA policies and programs, discussing the results of their self-assessment, and summarizing documentation of the institution's performance.
- Effectively ensure that CRA technical regulatory requirements are consistently met.

Satisfactory

Delineated Community

The institution's delineated community reasonably meets the purpose of the CRA and does not exclude low- and moderate-income neighborhoods.

Assessment Factor A

The institution has a satisfactory record of determining credit needs of its community, including low- and moderate-income neighborhoods. This may take the form of:

- Occasional contacts with a large range of individuals and groups representing civic, religious, neighborhood, minority, small business and commercial and residential real estate development;
- Occasional contact with officials from city, county and state governments and some participation in public programs; and,
- Established contact with financial intermediaries that may be used for public/private partnership opportunities.

The institution periodically reviews published, local demographic data in relation to its lending activities.

The board of directors and senior management satisfactorily respond to local input regarding community credit needs through product development, including loans for residential mortgages, housing rehabilitation, home improvement, small businesses and small farms.

Senior management performs informal reviews of lending services.

The institution offers products reasonably suited to identified needs, which may include government-insured and publicly-sponsored programs.

The institution offers a variety of conventional products, and may explore and offer conventional products with special features to make credit more widely available, within the bounds of safe and sound lending practices.

Assessment Factor C

CRA is considered in the board of director's planning process.

The institution's CRA program, including goals, objectives and methodology for self-assessment, is articulated and generally understood by all levels of the institution, but may be informal.

The board of directors and senior management:

- Are generally involved in the CRA process and activities.
- Exercise policy oversight and conduct occasional reviews of CRA activities and performance.
- Have some involvement in activities designed to develop, improve and enhance the local community.
- Consider prudent but innovative underwriting criteria that help address community credit needs and that may not fall within the criteria of the institution's more conventional loan products.
- Provide adequate support to the CRA training of personnel.
- Have expanded their CRA statement to describe the institution's CRA policies, programs and results; however, the material in the expanded Statement might not be fully descriptive.
- Generally ensure that CRA technical regulatory requirements are consistently met.

Needs to Improve

Delineated Community

The institution's delineated community is unreasonable and may exclude some low- and moderate-income neighborhoods.

The institution's guidelines for defining its community need some revision.

Assessment Factor A

The institution needs to improve its contacts within the community to determine the credit needs of its community, including low- and moderate-income neighborhoods. This is represented by:

- Limited contact with individuals and groups representing civic, religious, neighborhood, minority, small business and commercial and residential real estate development;
- Limited contact with officials from city, county and state governments and marginal effort to participate in public programs; and,
- A lack of productive contact with financial intermediaries that may be used for public/private partnership opportunities.

The institution occasionally considers or analyzes published demographic data in relation to its lending activities.

The board of directors and senior management show limited response to outside input regarding community credit needs through product development, including loans for residential mortgages, housing rehabilitation, home improvement, small business and small farms.

Senior management infrequently reviews its CFR-related activities or its lending services in response to changing credit needs.

Credit products may not be structured or sufficiently varied to address the identified credit needs of certain segments of the community, especially in low- and moderate-income neighborhoods.

The institution is not a significant participant in government-insured and/or publicly-sponsored programs.

Limited efforts have been made to offer a variety of conventional products or explore special features to make sound credit more widely available.

Assessment Factor C

CRA is sometimes considered in the board of director's planning process.

The institution's CRA program is inadequate and may lack goals, objectives and methodology for self-assessment.

The board of directors and senior management:

- Have limited involvement in the CRA process and activities.
- May exercise policy oversight and may conduct infrequent reviews of CRA activities and performance.
- Have limited involvement in activities designed to develop, improve and enhance the local community.
- May be reluctant to consider prudent but innovative underwriting criteria that help address community credit needs and that may not fall within the criteria of the institution's more conventional loan products.
- Provide only limited support to the CRA training of personnel.
- Have not expanded their CRA statement to address its program and the results achieved.
- May be lax in ensuring that CRA technical regulatory requirements are met.

Substantial Noncompliance

Delineated Community

The institution's delineated community is unreasonable and excludes low- and moderate-income neighborhoods.

The institution's guidelines for defining its community require substantial revision.

Assessment Factor A

The institution does not conduct, or has little involvement in, activities that determine credit needs of its community, including low- and moderate-income neighborhoods. This is represented by few, if any, contacts with:

- Representatives of civic, religious, neighborhood, minority, small business and commercial and residential real estate development;
- Officials from city, county and state governments and no effort to participate in public programs; and,
- Financial intermediaries that may be used for public/private partnership opportunities.

The institution is unaware of, or ignores, the existence of demographic data and does not use it to analyze its lending activities.

The board of directors and senior management rarely (or, do not) respond to community credit needs through product development, including loans for residential mortgages, housing rehabilitation, home improvement, small businesses and small farms.

Lending services are rarely (or, are not) reviewed to respond response to changing credit needs.

Customer input and/or information on credit needs is rarely (or, is not) taken into account in product development, especially from customers in low- and moderate-income areas.

There is nominal or no participation in government-insured and/or publicly-sponsored programs.

There is little or no effort made to offer a variety of conventional products or explore special features to make sound credit more widely available.

Assessment Factor C

CRA is rarely (or, is not) considered in the board of director's planning process.

The institution does not have an articulated and implemented program for dealing with its responsibilities under CRA.

The board of directors and senior management:

- Have little, if any, involvement in the CRA process and activities.
- Exercise little, if any, policy oversight with respect to CRA and rarely (or, do not) conduct reviews of CRA activities and performance.
- Have few, if any, involvement in activities designed to develope, improve and enhance the local community;
- Are reluctant to consider prudent but innovative underwriting criteria that help address community credit needs and that may not all within the criteria of the institution's more conventional loan products.
- Provide little, if any, support to CRA training of personnel.
- Have not expanded, and will not consider expansion of, their CRA statement.
- Rarely (or, do not) ensure that CRA technical regulatory requirements are met.

II. Marketing and Types of Credit Extended

The institution is evaluated in this category on its marketing efforts to promote the types of credit it is prepared to offer to its community, product implementation, and overall delivery of credit services relative to the institution's CRA statement. Emphasis is placed on special credit related programs. The evaluation process will consider the following assessment factors:

(B) The extent of the institution's marketing and special credit-related programs to make members of the community aware of the credit services it offers.

(I) The institution's origination of residential mortgage loans, housing rehabilitation loans, home improvement loans, and small business and small farm loans within its community; the purchase of such loans originated in its community; or other indirect activities aimed at helping meet local community housing, small business and small farming needs.

(J) The institution's participation in governmentally-insured, guaranteed, or subsidized loan programs for housing, small businesses or small farms.

Outstanding

Assessment Factor B

The institution has implemented sound marketing and advertising programs that are approved, reviewed and monitored by senior management and the board of directors. The programs inform all segments of the community of general financial products and services offered, including those that have been developed to address identified community credit needs.

Marketing strategies ensure that products and services are responsive to identified community needs. Advertisements are designed to stimulate awareness of credit services throughout the entire community, including low- and moderate-income neighborhoods. This includes use of special

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media aimed at particular segments of the community.

Complete, readily available marketing and advertising records are maintained and internally reviewed for compliance with applicable laws and regulations.

Personnel routinely provide assistance to individuals and groups in understanding and applying for credit.

Assessment Factor I

The institution affirmatively addresses all of the identified community credit needs through the origination and purchase of loans, including those for residential mortgages, housing rehabilitation, home improvement, small businesses and small farms.

Lending levels reflect exceptional responsiveness to the most pressing community credit needs. A substantial majority of loans are within the delineated community. Loan volume, in relation to the institution's resources and the community's credit needs, exceeds normal expectations.

The CRA Statement correctly lists all of the credit products available throughout the institution's community.

Assessment Factor J

When an identified community credit need exists, the institution takes a leadership role in meeting that need and affirmatively participates in governmentally-insured, guaranteed, or subsidized loan programs for housing, small businesses and small farms.

Satisfactory

Assessment Factor B

The institution has implemented adequate marketing and advertising programs that function outside the formal oversight of senior management and the board of directors. The programs are designed to inform all segments of the community of general financial products and services offered and any products that may have been developed to address identified community credit needs.

Although advertisements, including those for credit products, are carried in widely circulated local media, additional advertising in media directed toward low- and moderate-income neighborhoods may be needed in order for the advertising program to be effective throughout the community.

The institution maintains adequate records of its advertising, and these are occasionally reviewed for effectiveness in all segments of the community. The institution may not have established policies and procedures to review proposed marketing campaigns for compliance with applicable laws and regulations. Personnel occasionally provide assistance to individuals and groups in understanding and applying for credit.

Assessment Factor I

The institution addresses the majority of identified community credit needs through the origination and purchase of loans, including those for residential mortgages, housing rehabilitation, home improvement, small businesses and small farms.

Lending levels reflect a general responsiveness to the most pressing community credit needs. A significant volume of loans are within the delineated community. Loan volume is adequate in relation to the institution's resources and the community's credit needs.

The CRA Statement correctly lists the majority of the credit products available throughout the institution's community.

Assessment Factor J

When an identified community credit need exists, the institution generally takes some steps to help meet that need and frequently participates in governmentally-insured, guaranteed, or subsidized loan programs for housing, small businesses and small farms.

Needs to Improve

Assessment Factor B

The institution's marketing and advertising programs have limited oversight by senior management and the board of directors, and may require revision or expansion to inform all segments of the community of general financial products and services offered.

Marketing strategies are primarily designed to promote an image of the institution as a provider of general financial products and services or of only deposit services.

Although advertisements are carried in primary local media, the institution does not advertise in media specifically directed to low- and moderate-income neighborhoods.

The institution maintains limited documentation of advertising, and it is infrequently reviewed for compliance with applicable laws and regulations. Marketing campaigns are infrequently reviewed for their effectiveness in informing all segments of the community.

Personnel make limited effort to assist individuals and groups in understanding and applying for credit.

Assessment Factor I

The institution is marginally involved in addressing identified community credit needs through origination and purchase of loans, including those for residential mortgages, housing rehabilitation, home improvement, small businesses and small farms.

Lending levels reflect marginal responsiveness to the most pressing community credit needs. A significant volume of loans may be outside the delineated community, and/or loan volume may be low in relation to the institution's resources and the community's credit needs.

The CRA Statement may not accurately list certain credit products available and/or may list some credit products which are not available.

Assessment Factor J

When an identified community credit need exists, the institution sometimes becomes involved in helping to meet that need and infrequently participates in governmentally-insured, guaranteed, or subsidized loan programs for housing, small businesses and small farms.

Substantial Noncompliance

Assessment Factor B

The institution's marketing and advertising programs are inadequate as they do not address credit products directed to all segments of the community, including low- and moderate-income neighborhoods, or the institution does not have such programs.

The institution does not maintain sufficient documentation of advertising, and it is rarely (or, is not) reviewed for compliance with applicable laws and regulations.

There is little, if any, effort to assist individuals and groups in understanding and applying for credit.

Assessment Factor I

The institution is minimally involved in addressing identified community credit needs through origination and purchase of loans, including those for residential mortgages, housing rehabilitation, home improvement, small businesses and small farms.

Lending levels reflect little, if any, responsiveness to the most pressing community credit needs. A substantial majority of loans are outside the delineated community, and/or loan volume is excessively low in relation to the institution's resources and the community's credit needs.

The CRA Statement is materially inaccurate with respect to the types of credit the institution is willing to make available throughout its community.

Assessment Factor J

When an identified community credit need exists, the institution rarely (or, does not) become involved in helping to meet that need or in participating in governmentally-insured, guaranteed, or subsidized loan programs for housing, small businesses and small farms.

III. Geographic Distribution and Record of Opening and Closing Offices

The geographic distribution of the institution's loans and the effects of opening or closing any offices are considered in this category. The evaluation process under this category will consider the following assessment factors:

(E) The geographic distribution of the institution's credit extensions, credit applications, and credit denials.

(G) The institution's record of opening and closing offices and providing services at offices.

Outstanding

Assessment Factor E

The institution has a documented analysis demonstrating that the geographic distribution of its credit extensions, applications, and denials reflect equal access to, and penetration of, all segments of its delineated community, including low- and moderate-income neighborhoods.

The institution has formulated procedures to identify the geographic distribution of its loan products. This information is documented and used by the board of directors and senior management in the institution's establishment of loan policies, products and services, and marketing plans.

Assessment Factor G

Offices are readily accessible to all segments of the community. Business hours and services are tailored toward the convenience and needs of the community and are reviewed for their effectiveness on an ongoing basis.

Prior to closing offices, the institution assesses the potential impact on its ability to continue offering an appropriate level of services throughout its community. This assessment includes the institution's taking into consideration information and ideas obtained from consultations with members of the community to minimize the adverse impact of an office closing.

The institution's record of closing offices has not had an adverse impact on its community.

Satisfactory

Assessment Factor E

The institution's analysis of its geographic distribution of credit extensions, applications, and denials demonstrates reasonable access to, and penetration of, all segments of the community, including low- and moderate-income neighborhoods.

The geographic distribution of the institution's loan products may be used by the board of directors and senior management in the establishment of loan policies, products and services, and marketing plans.

Assessment Factor G

Offices are reasonably accessible to all segments of the community.

Periodic review of services and business hours assures accommodation of all segments of the community.

The institution makes an adequate assessment of the potential adverse impact of an office closing on its community. This assessment includes contacts with members of the community for their views on the impact and ways to minimize it.

The institution's record of opening and closing offices has not adversely affected the level of services available in low- and moderate-income neighborhoods.

Needs to Improve

Assessment Factor E

The geographic distribution of the institution's credit extensions, applications, and denials demonstrates a disproportionate pattern with respect to the activity inside its delineated community as compared to the activity outside the delineated community and/or with respect to the distribution of loans, applications and denials within the various segments of its community.

The board of directors and senior management may be unaware of the geographic distribution of their loan products or accord inadequate or no review of lending policies and practices with regard to how they affect lending patterns within the community.

Senior management has not taken adequate corrective action on previously identified unreasonable lending patterns.

Assessment Factor G

Accessibility to the institution's offices is difficult for certain segments of the community.

Business hours may be inconvenient relative to the needs of the community, particularly low- and moderate-income neighborhoods, and they are infrequently reviewed for effectiveness.

The institution's assessment of the potential adverse impact an office closing will have on its community and of methods needed to minimize that impact is inadequate and needs revision or expansion.

The institution's record of opening and closing offices indicates disparate impact upon certain segments of its community, particularly low- and moderate-income neighborhoods, although the result may be unintentional.

Substantial Noncompliance

Assessment Factor E

The institution does not perform an analysis of its distribution of credit extensions, applications, and denials. The geographic distribution does, in fact, indicate unreasonable lending patterns inside and outside its delineated community, particularly in low- and moderate-income neighborhoods.

The board of directors and senior management disregard the geographic distribution of the institution's loan products and have taken limited or no corrective action on previously identified unreasonable lending patterns.

Loan policies and procedures contain restrictions which have or can be expected to have a significant adverse impact on loan availability in low- and moderate-income neighborhoods.

Assessment Factor G

There is limited accessibility to the institution's offices for certain segments of the community, particularly low- and moderate-income neighborhoods.

Business hours are inconsistent with the needs of the community and they are rarely, if ever, reviewed for effectiveness.

The institution rarely, if ever, makes an assessment of the potential impact of its office opening and closing practices on the community.

The institution's record of opening and closing offices suggests a continuing pattern of disparate impact upon certain segments of its community, particularly low- and moderate-income neighborhoods.

IV. Discrimination and Other Illegal Credit Practices

The institution is evaluated in this category on its compliance with antidiscrimination and other related credit laws, including efforts to avoid doing business in particular areas or illegal prescreening. The evaluation process will consider the following assessment factors:

(D) Any practices intended to discourage applications for types of credit set forth in the institution's CRA Statement(s).

(F) Evidence of prohibited discriminatory or other illegal credit practices.

Outstanding

Assessment Factor D

The institution affirmatively solicits credit applications from all segments of its community, with a strong focus on low- and moderate-income neighborhoods.

The board of directors and senior management have developed complete written policies, procedures, and training programs to assure the institution does not illegally discourage or prescreen applicants.

The institution regularly assesses the adequacy of implemented, nondiscriminatory policies, procedures and training programs through internal reviews and management reporting mechanisms.

Assessment Factor F

The institution is in compliance with the antidiscrimination laws and regulations, including: the Equal Credit Opportunity Act, the Fair Housing Act, the Home Mortgage Disclosure Act, and any agency regulations pertaining to nondiscriminatory treatment of credit applicants.

Satisfactory

Assessment Factor D

The institution generally solicits credit applications from all segments of its community, including low- and moderate-income neighborhoods.

The board of directors and senior management have developed adequate policies, procedures and training programs supporting nondiscrimination in lending and credit activities. Minor revisions or expansions may be required.

The institution periodically assesses the adequacy of implemented, nondiscriminatory policies, procedures and training programs through internal reviews and management reporting mechanisms.

Assessment Factor F

The institution is in compliance with the substantive provisions of antidiscrimination laws and regulations, including: the Equal Credit Opportunity Act, the Fair Housing Act, the Home Mortgage Disclosure Act, and any agency regulations pertaining to nondiscriminatory treatment of credit applicants.

Any violations disclosed are nonsubstantive in nature, and corrections are made promptly by senior management.

Needs to Improve

Assessment Factor D

Although the institution accepts credit applications from all segments of its community, available data suggests the possibility of isolated, illegal discouraging or prescreening of applicants.

The institution's policies, procedures and training programs are inadequate and require significant revision or expansion to support nondiscrimination in lending and credit activities.

The review and/or reporting mechanisms developed by the board of directors and senior management need improvement to fully assure that the institution does not illegally discourage or prescreen applicants.

Assessment Factor F

The institution is not in compliance with the substantive provisions of antidiscrimination laws and regulations, including: the Equal Credit Opportunity Act, the Fair Housing Act, the Home Mortgage

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Disclosure Act, and any agency regulations pertaining to nondiscriminatory treatment of credit applicants.

Substantive violations are noted on an isolated basis. Violations may be repeated from previous examinations.

Substantial Noncompliance

Assessment Factor D

Available data indicates that the institution rarely, if ever, considers credit applications from all segments of its community. The volume of applications from low- and moderate-income neighborhoods is very low or nonexistent.

The institution's policies, procedures and programs are either nonexistent or in need of substantial revision to properly support nondiscrimination in lending and credit activities.

The review and/or reporting mechanisms developed by the board of directors and senior management and designed to assess implemented policies, procedures and training programs to support nondiscrimination in lending and credit activities are inadequate and require substantial revision. Or, the institution has not developed any review or reporting mechanisms to assure that the institution does not illegally discourage or prescreen applicants.

Assessment Factor F

The institution is in substantial noncompliance with antidiscrimination laws and regulations, including: The Equal Credit Opportunity Act, the Fair Housing Act, the Home Mortgage Disclosure Act, and any agency regulations pertaining to nondiscriminatory treatment of credit applicants.

The institution has demonstrated a pattern or practice of prohibited discrimination, or has committed a large number of substantive violations of the antidiscrimination laws and regulations. Violations may be repeated from previous examinations.

V. Community Development

An institution is evaluated in this category on its participation in community development and/or other factors relating to meeting local credit needs. The evaluation process will consider the following assessment factors:

(H) The institution's participation, including investments, in local community development and redevelopment projects or programs.

(K) The institution's ability to meet various community credit needs based upon its financial condition and size, and legal impediments, local economic conditions and other factors.

(L) Any other factors that reasonably bear upon the extent to which an institution is helping to meet the credit needs of its entire community.

Outstanding

Assessment Factor H

The institution has maintained, through ongoing efforts, a high level of participation in development and redevelopment programs within its community, often in a leadership role.

Assessment Factor K

The institution has played a leadership role in developing and/or implementing specific projects promoting economic revitalization and growth, consistent with its size, financial capacity, location, and current local economic conditions. Its participation in these projects may have taken, for example, the form of investment, direct loans or loans through intermediaries, financial services, and technical assistance.

The institution has established good working relationships with government and private sector representatives to identify opportunities for the institution's involvement in addressing community development needs.

Assessment Factor L

The institution has engaged in other meaningful activities, not covered under other performance categories, which contribute to the institution's efforts to help meet community credit needs.

Satisfactory

Assessment Factor H

The institution is generally aware of any community development and redevelopment programs within its community, and periodically participates in such programs.

Assessment Factor K

The institution generally supports the development or implementation of specific projects promoting economic revitalization and growth, consistent with its size, financial capacity, location, and current local conditions. Its participation in these projects may have taken, for example, the form of investment, direct loans or loans through intermediaries, financial services, and technical assistance.

The institution has informed government and private sector representatives of its interest in participating in community development projects, and is already involved in some aspects of planning or implementation.

Assessment Factor L

The institution has demonstrated a willingness to explore other activities contributing to its efforts to help meet community credit needs which are not covered in other performance categories.

Needs to Improve

Assessment Factor H

The institution has limited awareness of any community development and redevelopment programs within its community and rarely seeks them out or participates in them.

Assessment Factor K

The institution has played only a limited role in developing projects to foster economic revitalization and growth, and has taken limited action to learn or support the specific features of existing programs.

The institution has rarely contacted government and private sector representatives to discuss community development needs and opportunities.

Assessment Factor L

The institution expresses a willingness to consider participation in other activities designed to meet community credit needs only when specific proposals or requests are brought to its attention.

Substantial Noncompliance

Assessment Factor H

The institution is unaware of, or not interested in, the existence and nature of community development programs within its community. The institution has made little or no effort to participate in these programs.

Assessment Factor K

The institution has played a very small, if any, role in developing or implementing specific projects promoting economic revitalization and growth.

The institution has made little, if any, effort to contact government or private sector representatives to learn about community development needs or the features of existing programs.

Assessment Factor L

Senior management has shown little, if any, interest in pursuing other activities, not covered under other performance categories, which would enhance the institution's effectiveness in helping address community credit needs.

[FR Doc. 89-29776 Filed 12-21-89; 8:45 am]

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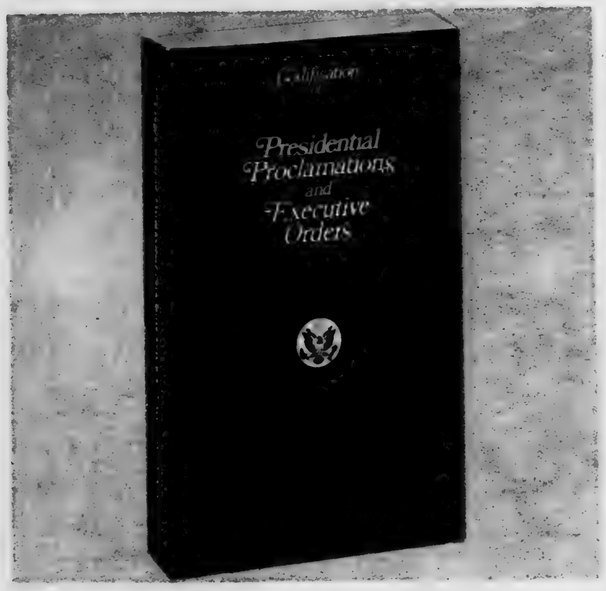

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WHO: The Office of the Federal Register.

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1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

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WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 312

RIN 3064-AA99

Assessment of Fees Upon Entrance to or Exit From the Bank Insurance Fund or the Savings Association Insurance Fund

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Interim rule and request for comments.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is adopting an interim rule that prescribes entrance and exit fees to be paid by insured depository institutions that participate in certain "conversion transactions" authorized by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), Public Law No. 101–73, 103 Stat. 183. Specifically, this rule establishes the fee structure for those conversions that result in the transfer from the Bank Insurance Fund ("BIF") to the Savings Association Insurance Fund ("SAIF"). The entrance and exit fees are being prescribed under an interim rule, with an immediate effective date, in order to permit institutions interested in participating in certain branch sales, bank resolutions, and other permitted "conversion transaction" to evaluate the potential costs of those transactions and to allow those transactions to go forward without further delay; however, the FDIC invites public comment on all aspects of the interim rule.

In addition to soliciting comment on all aspects of the interim rule, the FDIC is inviting interested parties to comment as to whether or not it would be appropriate to allow insured depository institutions participating in conversion transactions wherein branches of a BIF member are simultaneously exchanged for branches of a SAIF member, or vice versa, to calculate the entrance and exit fees against the net loss to one insurance fund and the net gain to the other fund (in other words, whether the deposit base to be used in calculating the entrance and exit fees should be the net amount transferred from one fund to the other). The FDIC also asks interested parties to comment on whether or not it would be appropriate to allow insured depository institutions participating in such conversion transactions to use the net amount transferred from one fund to the other when testing for eligibility under the "insubstantial portion" exception authorized by FIRREA. Under FIRREA, there is a five-year moratorium on conversion transactions, with certain limited exceptions for (1) conversion transactions that affect an insubstantial portion of the total deposits of each participating institution, and (2) certain conversions involving institutions in default or in danger of default. FIRREA provides that a conversion transaction is deemed insubstantial if the aggregate amount of total deposits transferred does not exceed 35 percent. The FDIC is considering whether the "insubstantial portion" test should be applied against the net deposit base transferred.

Changes to the fee structure set forth in the interim rule may be made as a result of the comments received. The FDIC will also decide whether or not the "netting" method of determining the deposit base should be permitted for purposes of calculating the entrance and exit fees and for purposes of applying the "insubstantial portion" exception. A final regulation will be issued following the expiration of the public comment period.

DATES: The interim rule is effective December 28, 1989. Comments must be submitted by February 20, 1990.

ADDRESS: Send comments to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. Comments may be hand-delivered to Room 6097 on business days between 8:30 a.m. and 5:00 p.m. Comments may also be inspected in Room 6097 between 8:30 a.m. and 5:00 p.m. on business days. (FAX number: (202) 347–2773 or 2775.)

FOR FURTHER INFORMATION CONTACT: (For information on legal issues) Alan J. Kaplan, Senior Counsel, Legal Division, (202) 898-3734, or Valerie J. Best, Senior Attorney, Legal Division, (202) 898-3812; (for information on supervisory issues) Garfield Gimber, Examination Specialist, Division of Bank Supervision, (202) 898-6913; (for information on economic issues) John O'Keefe, Financial Economist, Division of Research and Statistics, (202) 898-3945; Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are contained in this interim rule. Consequently, no information has been submitted to the Office of Management and Budget for review.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. No. 96–354, 5 U.S.C. 601 *et seq.*), it is certified that the interim rule would not have a significant impact on a substantial number of small entities.

Introduction

Section 206(a)(7) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") amends section 5 of the Federal Deposit Insurance Act (12 U.S.C. 1815) by adding a new subsection (d) that provides, *inter alia*, that insured depository institutions participating in a conversion transaction must pay entrance and exit fees to the insurance funds being entered or exited. 12 U.S.C. 1815(d)(2)(E). FIRREA requires the FDIC, by regulation, to prescribe procedures for assessing such entrance and exit fees. 12 U.S.C. 1815(d)(2)(F).

A conversion transaction is broadly defined in FIRREA to include a variety of transactions that could result in a transfer of insured deposits from one insurance fund to the other, *i.e.*, from the Bank Insurance Fund ("BIF") to the Savings Association Insurance Fund ("SAIF"), or vice versa, including a charter conversion, a merger, a deposit assumption, and an asset transfer in consideration of assumption of deposit liabilities.[1] 12 U.S.C. 1815(d)(2)(B).

[1] The statute expressly provides that the conversion of a SAIF member savings association to

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FIRREA has established a five-year moratorium on conversion transactions, with certain limited exceptions. The exceptions are (1) conversion transactions that affect an insubstantial portion of the total deposits of each participating institution, and (2) certain conversions involving institutions in default or in danger of default. The FDIC must approve any such excepted conversion.

The first exception is intended to exempt from the moratorium, subject to FDIC approval, branch sales and other transfers of deposits between depository institutions that are members of different insurance funds (SAIF or BIF). The second exception covers conversions that occur as part of an acquisition of an insured depository institution in default or in danger of default. Such conversions may be excepted from the moratorium if the FDIC determines that the estimated financial benefits to the fund the institution is leaving (or the Resolution Trust Corporation ("RTC") if the institution is a savings association) equal or exceed the FDIC's estimate of loss of assessment income to that fund during the years remaining in the moratorium period, and (in the case of a savings association) if the RTC concurs in the FDIC's determination. This exception is intended to permit conversion transactions to occur as a means of resolving savings association (thrift institution) and bank failures, notwithstanding the moratorium, if the requisite findings can be made.

Pursuant to section 206(a)(7) of FIRREA, each insured depository institution participating in a conversion transaction must pay an entrance fee in an amount to be determined by the FDIC. 12 U.S.C. 1815(d)(2)(E)(iii). The entrance fee is to be in the "approximate amount which the [FDIC] calculates as necessary to prevent dilution" of the fund being entered (BIF or SAIF), and is to be paid to the appropriate fund.

The FDIC is also authorized to prescribe exit fees. When a conversion or merger transaction results in the exit of a SAIF member, either the exiting or resulting institution must pay an exit fee to SAIF (or to the Financing Corporation ("FICO") if the Secretary of the Treasury determines that FICO has exhausted all other sources for payment of interest on FICO obligations and orders that such fees be paid to FICO). Similarly, in a transaction involving a BIF member, if the resulting institution is not a BIF member, it must pay an exit fee determined by the FDIC to the BIF. Moreover, for conversion transactions from SAIF to BIF consummated before January 1, 1997, the statute requires that the amount of the exit fee is to be determined jointly by the FDIC and the Secretary of the Treasury. 12 U.S.C. 1815(d)(2)(F)(i)(I). The FDIC has the sole authority to determine the exit fee for conversions consummated subsequent to that time. 12 U.S.C. 1815(d)(2)(F)(i)(II).

On September 22, 1989, the FDIC Board of Directors approved the issuance of an interim rule prescribing the entrance fees to be paid by insured depository institutions that participate in conversion transactions that involve the transfer of deposits from SAIF to BIF. 54 FR 40377 (Oct. 3, 1989). The FDIC issued the interim rule with an immediate effective date, subject to a 60-day comment period, because of the urgent need to expeditiously deal with many failed or failing savings associations, some of which necessarily involve conversion transactions. Moreover, the rule also permitted the completion of numerous pending transactions involving the sale of savings association branches to banks.

Specifically, the interim rule set the entrance fee as the product of the "reserve ratio" of the fund being entered (*e.g.*, BIF) multiplied by the deposit base being transferred from SAIF to BIF insurance. The reserve ratio used would be the most recent publicly available reserve ratio (as of the date of transfer) computed by the FDIC on the basis of its most recent audited year-end financial statements. The deposit base against which the entrance fee is to be charged would be either (1) the total dollar amount of the deposits being transferred from SAIF to BIF (measured as of the date of transfer), in the case of "non-resolution" branch sales involving the assumption of deposit liabilities of a "healthy" operating thrift by an insured bank, or (2) for "resolution" cases (*i.e.*, where the conversion transaction is one which is being arranged by the Resolution Trust Corporation to dispose of or otherwise deal with an insured savings association in default or in danger of default), the dollar amount of those deposits which the FDIC estimates (on a case-by-case basis at the time the "bid" package for the particular thrift institution is prepared) to have a high probability of remaining with the acquiring institution following the acquisition (the so-called "retained deposit base"). Moreover, the interim rule prescribes procedures for payment of the entrance fee.

On September 26, 1989, the FDIC Board of Directors adopted a proposal from the Department of the Treasury prescribing the exit fees required to be paid for conversion transactions resulting in a transfer of deposits from a SAIF member to a BIF member. This action set the exit fee on such conversions at .90 percent (90 "basis points") of the deposit base transferred; the fee is intended to provide sufficient income to offset the interest payments on the obligations of FICO mandated by the Competitive Equality Banking Act of 1987. In most other respects, the proposal, adopted by the FDIC as an interim rule, parallels the interim rule for entrance fees for conversions from SAIF to BIF issued on September 22, 1989, *e.g.*, using the "retained deposit base" concept in RTC-arranged conversion transactions and procedures for payment of the fee. Although the fee schedule for exit fees has been set as discussed above, the language of the interim rule has not yet been finalized. The FDIC expects to publish the interim rule on exit fees from SAIF to BIF as soon as the FDIC and the Secretary of the Treasury have agreed upon the final language.

Entrance and Exit Fees for BIF-to-SAIF Conversion Transactions

Consistent with the approach taken for the assessment of entrance fees for SAIF to BIF conversions, and for the same reasons, *see* 54 FR 43079–80, the FDIC has determined to set similar entrance fee requirements for BIF to SAIF conversions with one exception. The interim rule sets the entrance fee as the product of the "reserve ratio" of the fund being entered (*i.e.*, SAIF), or one basis point (0.0001), whichever is greater, multiplied by the "deposit base" being transferred from BIF to SAIF insurance. The reserve ratio is defined as the ratio of the net worth of the fund to the value of the aggregate estimated insured deposits held in all members of that fund. Unlike the interim rule on SAIF to BIF conversions, this rule also provides that where the reserve ratio is less than one basis point (0.0001), then the fee will be one basis point. It is the FDIC's opinion that to authorize a lower fee would have a dilutive effect on the SAIF.

a bank charter is not considered to be a "conversion transaction" if the bank elects to remain a SAIF member and thereby continues to pay assessments to SAIF. In such situations, no entrance or exit fees would be required unless and until, following expiration of the moratorium, the bank switches from SAIF to BIF insurance. 12 U.S.C. 1815(d)(2)(G). Similarly, notwithstanding the moratorium, the merger of a SAIF member savings association into a BIF member bank is permitted if the bank is a subsidiary of a bank holding company that controls the savings association, provided the Board of Governors of the Federal Reserve System as well as the appropriate Federal banking agency approves the transaction. 12 U.S.C. 1815(d)(3).

However, inasmuch as the SAIF was newly created by the enactment of FIRREA in August 1989, the year-end data is not yet available to calculate the SAIF reserve ratio for 1989; such data should be available by the summer of 1990. Until such time as the reserve ratio becomes publicly available, the FDIC has determined to implement an interim entrance fee of one basis point (0.0001) multiplied by the deposit base being transferred from BIF to SAIF insurance. The FDIC believes that this temporary fee is necessary to enable potential participants in bank resolutions, branch sales, and other permitted conversion transactions to begin evaluating the costs of those transactions. Moreover, because of the increased risk to the SAIF due to the assumption of all or a portion of a BIF member's deposit liabilities, the FDIC believes that until the SAIF reserve ratio is computed and publicly available, this nominal amount (one "basis point") should be adequate to prevent dilution of the SAIF, while not so prohibitive as to discourage permitted conversions.

In almost all other respects, including the procedures necessary for payment of the fee, and determination of the deposit base against which the fee is to be applied, the entrance fee would parallel the interim rule on entrance fees for SAIF to BIF conversions. *See* 54 FR 43079–80. Thus, for "non-resolution" conversion transactions, such as branch sales involving the assumption of deposit liabilities of an operating bank by an insured thrift, the deposit base would be the total dollar amount of the deposits being transferred from BIF to SAIF insurance, measured as of the date of transfer. In "resolution" cases (*i.e.*, where the conversion transaction involves efforts by the FDIC to dispose of or otherwise deal with an insured bank in default or in danger of default), where there is an expectation of deposit "run-off" thereby lessening the dilutive effect of the transaction on SAIF (if total deposits were used as the base), the interim rule permits the use of an estimated "retained deposit base" in determining the entrance fee for such transactions. The dollar amount of the retained deposit base would be estimated by the FDIC on a case-by-case basis at the time the FDIC prepares the "bid package" for the particular transaction, and the initial estimate would be announced to prospective bidders at the time proposals for acquisition are solicited; however, the FDIC may adjust its estimate of the bidding process. The estimated deposit base would be the same for purposes of computing both the entrance and exit fees.

The rationale articulated in the September 22, 1989, interim rule pertaining to the use of the estimated deposit base for entrance fees for SAIF to BIF conversions in "resolution" cases is equally applicable to BIF to SAIF transactions. 54 FR 43079.
That is, because of the particular nature of the transaction and the likelihood of deposit run-off, the potential liability to the SAIF should be dependent upon the proportion of transferred deposits that are expected by the parties who negotiated the transaction to remain in the SAIF institution following the transaction. Similarly, for non-resolution transactions, it is reasonable to use total deposits assumed for purposes of computing fees inasmuch as there is an expectation by the parties that negotiated the transaction that such deposits will remain with the acquiring institution.

Regardless of the type of transaction involved, the transfer of deposits from BIF to SAIF necessarily increases potential SAIF liabilities without a commensurate increase in insurance reserves (*i.e.*, dilutes the entered insurance fund). As required by FIRREA, the FDIC is to determine the approximate amount by which SAIF reserves need to increase to prevent dilution of the insurance fund in conversion transactions. For the reasons explained above, the FDIC believes that the use of the SAIF reserve ratio (once such ratio is calculated and made publicly available) multiplied by the deposit base in determining the entrance fee is a reasonable method to ascertain the attendant risk to the entered fund by the increased liabilities. If, for example, the ratio of insurance reserves to insured deposits were .50 percent, dilution would be prevented by charging a fee equal to .50 percent of transferred deposits.

With regard to exit fees, the FDIC has determined to set the exit fee for BIF to SAIF conversions at one basis point (0.0001) multiplied by the deposit base being transferred. FIRREA authorizes the FDIC to prescribe an exit fee by regulation. It is the opinion of the FDIC that setting a low fee at this time should encourage potential bidders to acquire failing banks, which surely furthers the Congress' intent to expeditiously resolve failed depository institutions. Consequently, the FDIC has determined that the nominal fee should be adequate to buffer against any loss of income. The FDIC anticipates that exit fees will be periodically revisited and may be re-adjusted if circumstances should warrant. Any such adjustments will be prospective only.

In addition, in all other respects, the interim exit fee rule for BIF to SAIF conversion transactions adopted today would track the interim rule on entrance fees also adopted today. For example, FIRREA requires that the entrance fee for any BIF to SAIF conversion transaction be paid into SAIF, and likewise, that the exit fee be paid into BIF. Under the interim rule, the resulting or acquiring institution would be liable for payment of such fees; however, in a two-party transaction, the two institutions may agree to divide the payment and may arrange among themselves who is to pay what share. So long as the entire fee is paid, the FDIC will accept payment from either party; if, however, some or all of the fee is not paid, the FDIC will look to the resulting or acquiring institution for payment. In other words, the FDIC will seek to enforce the obligation of the resulting or acquiring institution to pay the entire amount of the entrance and/or exit fee, leaving that institution to enforce any contractual or other arrangements it may have made with any other participating institution.

All fees, including entrance and exit fees, are due and payable on the resulting or acquiring institution's first regular semiannual assessment date (*i.e.*, the date on which it is required under section 7(c) of the Federal Deposit Insurance Act, 12 U.S.C. 1817(c), to pay its regular semiannual assessment to the FDIC) following the expiration of 30 days from the date the deposits are transferred from BIF to SAIF insurance. (Ordinarily, an institution's semiannual assessments are payable on or before January 31 and July 31 of each year.) However, where the sum of the appropriate entrance and exit fees exceeds $5,000, the interim rule authorizes the resulting or acquiring institution, at its option, and with the consent of the FDIC, to pay the entrance fee and exit fee in equal annual installments over a period of not more than five years, interest-free, with the first installment due on the date described in the preceding sentence. Fees that total $5,000 or less may not be paid over time due to the associated processing costs to the FDIC.

Simultaneous Exchange of Deposits between a BIF Member and a SAIF Member—Calculation of Entrance and Exit Fees

The FDIC invites comment on the following issue: should the FDIC permit insured depository institutions participating in conversion transactions

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wherein branches of a BIF member are simultaneously exchanged for branches of a SAIF member, or vice versa, to calculate the entrance and exit fees against the net loss to one insurance fund and the net gain to the other fund. In other words, should the FDIC allow such insured depository institutions to use the net amount transferred from one fund to the other as the deposit base when calculating the entrance and exit fees. Certain conversion transactions may involve the simultaneous exchange of branches between a BIF member and a SAIF member, or in other words, an interfund "branch swap." Interfund branch swaps would be permissible under the five-year moratorium on conversions only if the transferred deposits affect an insubstantial portion of total deposits of each participating institution. 12 U.S.C. 1815(d)(2)(D). Section 206(d)(2)(D) of FIRREA provides that a deposit assumption of liabilities is deemed insubstantial "to the extent the aggregate amount of the total deposits transferred in such transaction and in all conversion transactions occurring after [August 9, 1989] does not exceed 35 percent" of the lesser of (a) the institution's total deposits on May 1, 1989, plus net interest credited from that date to the date of transfer or (b) total deposits on the date the transfer occurs. If that test is met, the FDIC is considering whether insured depository institutions participating in conversion transactions authorized under FIRREA should be permitted to calculate the applicable entrance and exit fees only on the net loss to one insurance fund and the net gain to the other, *i.e.*, the portion of deposits transferred which is not offset by a corresponding transfer from the other fund. In most cases, the total of transferred deposits going from one fund to the other will not be equal. The FDIC asks interested parties to comment on this issue.

For example, institution A (a BIF member), with a $100 million deposit base wants to sell branches consisting of $3 million in insured deposits to institution B (a SAIF member). In return, as part of the same transaction, institution B, with a $100 million deposit base, wants to sell branches with $5 million in insured deposits to institution A. The total transaction, using the "netting" method, results in a net change of $2 million in transferred deposits: There is a net loss of $2 million to SAIF and a net gain of $2 million to BIF. If netting is permitted, the appropriate fees in this situation would be the SAIF to BIF entrance and exit fees, *i.e.*, the entrance fee to BIF would be 90 basis points multiplied by the transferred deposit base ($2 million), or $16,000; and the exit fee from SAIF would be 80 basis points multiplied by the transferred deposit base ($2 million), or $18,000. On the other hand, if netting is not permitted, an entrance fee payable to SAIF and an exit fee payable to BIF would be charged for the transfer of the $3 million in insured deposits by institution A. Thus, an entrance fee of $300 payable to SAIF ($3 million multiplied by one basis point) and an exit fee of $300 payable to BIF ($3 million multiplied by one basis point) would be charged. In addition, an entrance fee payable to BIF and an exit fee payable to SAIF would be charged for the transfer of the $5 million in insured deposits by institution B. An entrance fee of $40,000 payable to BIF ($5 million multiplied by 80 basis points) and an exit fee of $45,000 payable to SAIF ($5 million multiplied by 90 basis points) would be charged. The total fees due in this example if the netting method is not permitted equals $85,600.

To further illustrate application of the netting method, assume that institution A is a SAIF member and institution B is a BIF member. Using the figures set forth in the example above, there would be a net loss of $2 million to BIF and a resulting net gain of $2 million to SAIF. If netting is permitted, the entrance fee to SAIF would be 1 basis point multiplied by the transferred deposit base ($2 million), or $200; and the exit fee from BIF also would be 1 basis point multiplied by the transferred deposit base ($2 million), or $200.

If the FDIC elects to permit the "netting" method, certain limitations might apply. Insured depository institutions that wish to use "netting" to calculate the appropriate entrance and exit fees on transferred deposits in a branch swap might be prohibited from including any brokered deposits and deposits generated through "money desk operations" in calculating the net change to the insurance funds. This would prevent a participating institution from moving such volatile types of deposits into a branch being swapped, which are likely to leave the institution after the swap, in order to reduce the total cost of the deal. The FDIC might not prohibit transactions that involve the transfer of brokered deposits and funds generated through "money desk operations"; it could merely preclude those funds from being "netted" for purposes of calculating fees. If so, the applicable fees for those transferred deposits that consist of brokered funds would, therefore, be calculated by charging the full fees for each individual movement of deposits between the funds.

Unless and until the FDIC issues a final regulation or otherwise so rules, however, "netting" for purposes of calculating fees will not be permitted.

Simultaneous Exchange of Deposits Between a BIF Member and a SAIF Member—Application of the Insubstantial Portion Exception

The FDIC is also asking for comment on the following issue: should depository institutions be permitted to apply the "netting" method when determining eligibility under the "insubstantial portion" exception to the five-year conversion moratorium.

As stated above, the FDIC may approve conversion transactions during the five-year moratorium if the transaction affects an insubstantial portion of the total deposits of each participating institution. Generally, a transfer of deposits will be deemed to affect an insubstantial portion of total deposits of a participating institution if no more than 35 percent of its relevant deposit base is transferred in any one transaction and, in addition, an aggregate of no more than 35 percent of its deposit base has been transferred in all conversion transactions in which the institution has participated since the date of the enactment of FIRREA. Moreover, section 206(d)(2)(C)(i) of FIRREA provides the FDIC with the authority to determine what constitutes an "insubstantial portion * * * of the total deposits of each depository institution * * *." Consistent with this statutory authority, the FDIC is considering whether to permit "netting" for purposes of applying the "insubstantial portion" exception. Comment on this issue is solicited.

By way of example, suppose institution C, with a $100 million deposit base, gives up more than 35 percent of its deposit base, for example 45 percent ($45 million), to institution D, also having a $100 million deposit base. Institution C would then have $55 million left. Suppose institution D, as part of the same transaction, simultaneously transfers $35 million in deposits (35 percent of its deposit base) to institution C, in addition to sufficient cash or other consideration to make up the difference. If the dollar amount of deposits institution C sells to institution D is netted against the dollar amount of deposits institution C purchases from institution D, institution C would lose only 10 percent of its deposit base. If institution C is permitted to net the dollar amount of the deposits it sells against the dollar amount of deposits it

purchases for purposes of applying the insubstantial test, then it would be within the 35 percent maximum: otherwise, it would exceed it. This method would allow institutions to look to the net effect of the entire transaction.

Again, brokered funds and "money desk operations" would likely be excluded in calculating the total funds transferred under the "insubstantial portion" test if the "netting" method is permitted by the FDIC. Such funds could be transferred to another institution; however, the deposits transferred could not be "netted" for purposes of determining eligibility.

Unless and until the FDIC issues a final regulation or otherwise so rules, however, "netting" will not be permitted for purposes of determining whether a conversion transaction meets the "insubstantial portion" test.

Reason for Interim Rule

The exit and entrance fees for conversion transactions that result in the transfer of deposits from the Bank Insurance Fund to the Savings Association Insurance Fund, involving the same two parties in the transfer, is being prescribed by means of an interim rule in order to permit the completion of pending transactions. As a practical matter, these transactions, which are awaiting or have already received regulatory approval, cannot be completed until any applicable fees called for by the FIRREA have been set. Moreover, further delay in the rule's implementation could jeopardize these transactions. The interim rule will enable those parties involved in the negotiations to evaluate the costs of those transactions with some degree of certainty. Therefore, in order to permit the consummation of these transactions without undue delay, the FDIC has determined to issue this interim rule, subject to a 60-day notice and comment period.

Although this interim rule has an immediate effective date, the FDIC has decided that if, following the public comment period, the final regulation prescribes fees that would be greater than the fees prescribed in this rule, a depository institution that participated in a conversion transaction during the period the interim rule was in effect will not have to pay the higher amount; if the fees prescribed in the final regulation are less than the fees prescribed in the interim rule, the difference will be refunded to the institution or, if the fee is being paid in installments, the amount of each installment will be adjusted accordingly. Thus, depository institutions that participate in transactions in reliance on the interim rule will not suffer any subsequent increase in the fees, nor will they miss out on any subsequent decrease, that results from consideration of public comment on this issue.

For the above-mentioned reasons, the FDIC Board of Directors has determined that the notice and public participation that are ordinarily required by the Administrative Procedure Act (5 U.S.C. 553) before a regulation may take effect would, in this case, be contrary to the public interest and that good cause exists for waiving the customary 30-day delayed effective date. Nevertheless, the Board desires to have the benefit of public comment before adoption of a final rule on this subject, and so invites interested persons to submit comments during a 60-day comment period. In adopting a final regulation, the Board will make such revisions in the interim rule as may be appropriate based on the comments received.

Request for Public Comment

The FDIC desires, and is hereby requesting, comment on all aspects of the interim rule, and on "netting" as described above. In addition, the FDIC invites comment on the following specific issues:

1. Entrance fees are intended to prevent dilution of the insurance fund being entered. The measure of insurance fund adequacy used in this interim rule is the ratio of fund reserves to insured deposits. In practice, however, failing bank resolutions have often had the effect of protecting all depositors, including those with deposits beyond the insured deposit limits (presently $100,000). Some might argue, therefore, that because the FDIC can achieve 100 percent deposit insurance coverage, the appropriate fund adequacy measure should be the ratio of reserves to total deposits. Total deposits include all domestic and foreign deposits regardless of the amount held in the account. Therefore, should the appropriate entrance fee be based on the ratio of reserves to total deposits? Further, is the interim entrance fee (pending calculation and public availability of the SAIF reserve ratio) sufficient to protect against dilution of the SAIF fund? Does the exit fee adequately protect against loss of assessment income?

2. The interim rule uses the concept of an estimated "retained deposit base" against which entrance and exit fees will be charged in connection with FDIC-assisted transactions. The retained deposit base would include only those transferred deposits that are thought likely to remain in the acquiring institution for some period beyond the date of transfer. Is this an appropriate concept to use in setting entrance and exit fees? What other methods could be used to accomplish the same goal?

3. In estimating the retained deposit base, the FDIC is ultimately concerned with the potential increase in FDIC liabilities associated with a conversion transaction. What factors should the FDIC consider in evaluating the likelihood of transferred deposits remaining with the acquiring SAIF member? How might this regulation affect the types of bids submitted by potential acquirers of failed institutions?

4. The entrance fee is to be based on the most recently publicly available reserve-to-insured deposit ratio computed by the FDIC on the basis of its most recent audited year-end financial statements. Thus, for purposes of the interim rule, the reserve ratio will be recomputed only once a year. Should the reserve ratio be computed more frequently for this purpose based on unaudited data or, given the potential fluctuations in the reserve ratio over time, would an annual average reserve ratio be more appropriate?

5. The interim rule places liability for payment of the entrance and exit fees on the resulting or acquiring institution. Is this appropriate, or should the institution being acquired (or whose branches are being acquired) be primarily liable for such fees?

List of Subjects in 12 CFR Part 312

Assessments, Bank deposit insurance, Banks, Banking, Savings and loan associations, Savings associations.

PART 312—ASSESSMENT OF FEES UPON ENTRANCE TO OR EXIT FROM THE BANK INSURANCE FUND OR THE SAVINGS ASSOCIATION INSURANCE FUND

1. The authority citation for part 312 is revised to read as follows:

Authority: Pub. L. No. 101–73, 206(a)(7), 103 Stat. 183, 198–201 (1989) (12 U.S.C. 1815(d)); 12 U.S.C. 1819.

2. Section 312.1 paragraph (c) is revised to read as follows:

§ 312.1 Definitions.

* * * * *

(c) The term "Bank Insurance Fund reserve ratio" and "Savings Association Insurance Fund reserve ratio" shall have the meanings given them in section 7(*l*)(6), (7), of the Federal Deposit Insurance Act, 12 U.S.C. 1817(*l*)(6), (7), respectively.

* * * * *

3. A new § 312.3 is added to read as follows:

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§ 312.5 Savings Association Insurance Fund reserve ratio.

The Savings Association Insurance Fund reserve ratio to be used in computing the entrance fee under this part with respect to any particular conversion transaction shall be the most recent Savings Association Insurance Fund reserve ratio calculated on the basis of the audited financial statements of the Federal Deposit Insurance Corporation and made publicly available prior to the date on which deposit liabilities are transferred from a Bank Insurance Fund member to a Savings Association Insurance Fund member in connection with that conversion transaction.

§ 312.5 [Added and Reserved]

4. Section 312.5 is added and reserved.

5. New §§ 312.6 and 312.7 are added to read as follows:

§ 312.6 Entrance fees assessed in connection with conversion transactions from the Bank Insurance Fund to the Savings Association Insurance Fund.

(a) Each insured depository institution participating in a conversion transaction as a result of which insured deposits are transferred from a Bank Insurance Fund member to a Savings Association Insurance Fund member shall pay an entrance fee to the Savings Association Insurance Fund.

(b) The entrance fee shall be the product derived by multiplying the dollar amount of total deposits transferred from the Bank Insurance Fund member to the Savings Association Insurance Fund member by the Savings Association Insurance Fund reserve ratio, or by .01 percent (0.0001), whichever is greater.

(c)(1) Notwithstanding paragraph (b) of this section, the entrance fee to be assessed against an insured depository institution participating in a conversion transaction occurring in connection with the acquisition of a Bank Insurance Fund member in default or in danger of default shall be the product derived by multiplying the dollar amount of the retained deposit base transferred from the Bank Insurance Fund member to the Savings Association Insurance Fund member by the Savings Association Insurance Fund reserve ratio, or by .01 percent (0.0001), whichever is greater.

(2) As used in this paragraph (c), the term "retained deposit base" generally refers to those deposits which the Federal Deposit Insurance Corporation, in its discretion, estimates to have a high probability of remaining with the acquiring depository institution for a reasonable period of time following the acquisition. The kinds of deposits that constitute the retained deposit base and the estimated dollar amount of the retained deposit base transferred shall be determined on a case-by-case basis by the Federal Deposit Insurance Corporation at the time offers to acquire an insured depository institution (or any part thereof) are solicited. In making this estimate, the Federal Deposit Insurance Corporation will take into account such factors as the number and volume of deposit accounts exceeding the $100,000 insurance limit, whether interest rates paid on the deposits to be transferred significantly exceed the rates then prevailing in the relevant market area, the volume of brokered deposits and public deposits in the institution being acquired, and other relevant factors.

(d) The resulting or acquiring depository institution shall be liable for the payment of the entrance fees required by this section.

(e)(1) The entrance fee required by this section shall be paid on the same day that the resulting or acquiring depository institution is required (pursuant to section 7(c) of the Federal Deposit Insurance Act, 12 U.S.C. 1817(c)) to pay its first semiannual assessment following the date the deposit liabilities are transferred. If, however, the resulting or acquiring depository institution's first semiannual assessment is due within 30 days from the date such deposit liabilities are transferred, then the entrance fee required by this section shall be paid on the same day that the second semiannual assessment following the date the deposit liabilities are transferred is required to be paid.

(2) Notwithstanding paragraph (e)(1) of this section, where the sum of the entrance fee, as calculated under the provisions of this section, and the exit fee, as calculated under § 312.7, exceeds $5,000, a resulting or acquiring depository institution may, at its option, and with the consent of the Federal Deposit Insurance Corporation, pay the entrance and exit fees in equal annual installments, interest-free, over a period of not more than five years. The first such installment shall be paid on the semiannual assessment date described in paragraph (e)(1) of this section.

(f) *Interim entrance fee until initial calculation of Savings Association Insurance Fund reserve ratio.* Notwithstanding paragraphs (b) and (c)(1) of this section, until such time as the Savings Association Insurance Fund reserve ratio is initially calculated and made publicly available, the entrance fee for all conversions from the Bank Insurance Fund to the Savings Association Insurance Fund shall be the product derived by multiplying the dollar amount of total deposits transferred from the Bank Insurance Fund member to the Savings Association Insurance Fund member by .01 percent (0.0001), unless the conversion transaction is occurring in connection with the acquisition of a Bank Insurance Fund member in default or in danger of default, where it shall be the product derived by multiplying the dollar amount of the retained deposit base transferred from the Bank Insurance Fund member to the Savings Association Insurance Fund member (as determined in accordance with paragraph (c)(2) of this section) by 0.01 percent (0.0001).

§ 312.7 Exit fees assessed in connection with conversion transactions from the Bank Insurance Fund to the Savings Association Insurance Fund.

(a) Each insured depository institution participating in a conversion transaction as a result of which insured deposits are transferred from a Bank Insurance Fund member to a Savings Association Insurance Fund member shall pay an exit fee to the Bank Insurance Fund.

(b) The exit fee shall be the product derived by multiplying the dollar amount of total deposits transferred from the Bank Insurance Fund member to the Savings Association Insurance Fund member by .01 percent (0.0001).

(c) Notwithstanding paragraph (b) of this section, the exit fee to be assessed against an insured depository institution participating in a conversion transaction occurring in connection with the acquisition of a Bank Insurance Fund member in default or in danger of default shall be the product derived by multiplying the dollar amount of the retained deposit base transferred from the Bank Insurance Fund member to the Savings Association Insurance Fund member by 0.01 percent (0.0001). As used in this paragraph, the term "retained deposit base" generally refers to those deposits which the Federal Deposit Insurance Corporation, in its discretion, estimates to have a high probability of remaining with the acquiring depository institution for a reasonable period of time following the acquisition. The kinds of deposits that constitute the retained deposit base and the estimated dollar amount of the retained deposit base transferred shall be determined on a case-by-case basis by the Federal Deposit Insurance Corporation at the time offers to acquire an insured depository institution (or any part thereof) are solicited. In making this estimate, the Federal Deposit Insurance Corporation will take into account such factors as the number and volume of deposit accounts exceeding the $100,000 insurance limit, whether interest rates paid on the deposits to be transferred significantly exceed the rates then prevailing in the relevant market area, the volume of brokered deposits and public deposits in the institution being acquired, and other relevant factors.

(d) The resulting or acquiring depository institution shall be liable for the payment of the exit fee required by this section.

(e)(1) The exit fee required by this section shall be paid on the same day that the resulting or acquiring depository institution is required (pursuant to section 7(c) of the Federal Deposit Insurance Act, 12 U.S.C. 1817(c)) to pay its first semiannual assessment following the date the deposit liabilities are transferred. If, however, the resulting or acquiring depository institution's first semiannual assessment is due within 30 days from the date such deposit liabilities are transferred, then the exit fee required by this section shall be paid on the same day that the second semiannual assessment following the date the deposit liabilities are transferred is required to be paid.

(2) Notwithstanding paragraph (e)(1) of this section, where the sum of the exit fee, as calculated under the provisions of this section, and the entrance fee, as calculated under § 312.6, exceeds $5,000, a resulting or acquiring depository institution may, at its option, and with the consent of the Federal Deposit Insurance Corporation, pay the entrance and exit fees in equal annual installments, interest-free, over a period of not more than five years to the Bank Insurance Fund. The first such installment shall be paid on the semiannual assessment date described in paragraph (e)(1) of this section.

By order of the Board of Directors, dated at Washington, DC, this 12th day of December, 1989.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 89-29005 Filed 12-22-89; 8:45 am]

BILLING CODE 6714-01-M

12 CFR Part 338

RIN 3064-AA81

Fair Housing

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Final rule.

SUMMARY: The FDIC is amending its fair housing advertising and fair housing poster requirements for insured State nonmember banks to incorporate the changes made by the Fair Housing Amendments Act of 1988 to the Civil Rights Act of 1968—Title VIII (Fair Housing Act). Those changes involve expanding the coverage of Title VIII to prohibit discriminatory housing practices based on handicap and familial status and prohibiting discrimination in "residential real estate-related transactions," as defined in the law.

EFFECTIVE DATE: December 26, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia A. McCormick, Fair Lending Analyst, Office of Consumer Affairs, (202) 898-3536, or Valerie Jean Best, Senior Attorney, Legal Division, (202) 898-3812, FDIC, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are contained in this Notice. Consequently, no information has been submitted to the Office of Management and Budget for review.

Reason for Adoption Without Prior Notice and Comment

Part 338 of the FDIC rules and regulations is the FDIC's fair housing regulation. It implements section 805 of title VIII of the Civil Rights Act of 1968. The Fair Housing Amendments Act of 1988, effective March 12, 1989, amends title VIII by adding two newly protected classes (handicapped persons and families with children under the age of 18). In addition, the Fair Housing Amendments Act revised title VIII to prohibit discrimination in "residential real estate-related transactions." Title VIII formerly prohibited discrimination in the financing of housing. The FDIC has made technical revisions to its fair housing regulation to incorporate the amendments made by the Fair Housing Amendments Act to title VIII. Because this final rule revises the FDIC fair housing regulation to incorporate only the changes made by the Fair Housing Amendments Act, the FDIC finds that application of the notice and public participation provisions of the Administrative Procedure Act (5 U.S.C. 553) to this action would be unnecessary. The FDIC further finds that good cause exists for dispensing with the 30-day delayed effective date requirement.

Background

Fair Housing Amendments Act of 1988

Prior to the enactment of the Fair Housing Amendments Act of 1988, title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601-3619, ("Fair Housing Act"), prohibited discrimination based on color, religion, sex, or national origin in the sale, rental, and financing of dwellings. The Fair Housing Amendments Act expanded the coverage of title VIII to prohibit discriminatory housing practices based on handicap and familial status. In addition, the Fair Housing Amendments Act revised title VIII to prohibit discrimination in "residential real estate-related transactions". The term "residential real estate-related transactions" refers to the making or purchasing of loans or providing other financial assistance for purchasing, constructing, improving, repairing, or maintaining a dwelling. It also includes the making or purchasing of loans or providing other financial assistance secured by residential real estate. By specifically including loans secured by residential real estate, the Fair Housing Amendments Act expands the types of financing transactions which were previously covered by title VIII. Finally, "residential real estate-related transactions" is defined to include the selling, brokering, or appraising of residential real property thereby expanding title VIII to prohibit any person or entity whose business includes engaging in the selling, brokering, or appraising of residential real property from discriminating against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status or national origin.

FDIC Fair Housing Regulation

The FDIC Fair Housing Regulation, 12 CFR part 338, applies to all FDIC-insured State nonmember banks. Title VIII provides that all agencies (including any Federal agency having regulatory or supervisory authority over financial institutions) shall administer their programs and activities relating to housing and urban development in a manner affirmatively to further the purposes of title VIII, and shall cooperate with the Secretary of Housing and Urban Development to further the purposes of title VIII. Consistent with this requirement, and in order to fully implement the prohibitions contained in title VIII applicable to insured State nonmember banks, the FDIC established part 338. In addition to providing guidance on nondiscriminatory advertising, the FDIC's fair housing regulation includes the text of an equal housing lender poster that must be

publicly displayed by insured State nonmember banks. Display of a fair housing poster is required by

Regulatory Flexibility Analysis

Because no notice of proposed

§ 338.2 Nondiscriminatory advertising.

(a) Any bank which directly or

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publicly displayed by insured State nonmember banks. Display of a fair housing poster is required by Department of Housing and Urban Development regulations, 24 CFR part 110. Section 110.25(b) of title 24 provides that the Assistant Secretary for Equal Opportunity of the Department of Housing and Urban Development may grant a waiver permitting the substitution of a poster prescribed by a Federal financial regulatory agency. Such a waiver has been granted to the FDIC.

Part 338 of the FDIC rules and regulations also carries out the monitoring duties delegated to the FDIC by Regulation B of the Board of Governors of the Federal Reserve System, 12 CFR 202. Regulation B implements the Equal Credit Opportunity Act of 1974. Section 202.13 of Regulation B (12 CFR 202.13) implements a monitoring program, but authorizes an agency charged with administrative enforcement under section 704 of the Equal Credit Opportunity Act to substitute a monitoring program. The FDIC qualifies as such an agency because it is charged with administrative enforcement as to insured State nonmember banks. Part 338 establishes the FDIC's substitute monitoring program. The Fair Housing Poster reflects the prohibitions contained in the Equal Credit Opportunity Act as well as the prohibitions contained in title VIII.

Regulatory Flexibility Analysis

Because no notice of proposed rulemaking is required under section 553 of the Administrative Procedure Act or any other law, the Regulatory Flexibility Act (5 U.S.C. 601–602) does not apply.

List of Subjects in 12 CFR Part 338

Advertising, Banks, Banking, Fair Housing, Federal deposit insurance corporation, Mortgages, Reporting and recordkeeping requirements, Signs and symbols, State nonmember banks.

PART 338—FAIR HOUSING

1. The authority citation for Part 338 is revised to read as follows:

Authority: 12 U.S.C. 1817; 12 U.S.C. 1818; 12 U.S.C. 1819; 12 U.S.C. 1820(b); 42 U.S.C. 3605, 3606, as amended by Pub. L. 100-430, 102 Stat. 1619; 15 U.S.C. 1691 et seq.; 12 CFR Part 202; 24 CFR Part 110.

2. In § 338.1, paragraph (f) is redesignated as paragraph (g) and a new paragraph (f) is added to read as follows:

§ 338.1 Definitions.

* * * * *

(f) The terms "handicap" and "familial status" shall have the meanings given them in the Civil Rights Act of 1968—Title VIII (Fair Housing Act), 42 U.S.C. 3601 et seq.

* * * * *

3. In § 338.2, the introductory text to paragraph (a) is revised to read as follows:

§ 338.2 Nondiscriminatory advertising.

(a) Any bank which directly or through third parties engages in any form of advertising of any loan for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling or any loan secured by a dwelling shall prominently indicate in such advertisement, in a manner appropriate to the advertising medium and format utilized, that the bank makes such loans without regard to race, color, religion, national origin, sex, handicap, or familial status.

* * * * *

4. Section 338.3 is revised to read as follows:

§ 338.3 Equal housing lender poster.

(a) Each bank engaged in extending loans for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling or any loan secured by a dwelling shall conspicuously display an Equal Housing Lender Poster in any public lobby and area within the bank where deposits are received or where such loans are made in a manner clearly visible to the general public entering such areas.

(b) The Equal Housing Lender Poster shall be at least 11 by 14 inches in size and have the following text:

BILLING CODE 6714-01-M

EQUAL HOUSING LENDER

We Do Business in Accordance With Federal Fair Lending Laws

UNDER THE FEDERAL FAIR HOUSING ACT, IT IS ILLEGAL, ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, RELIGION, SEX, HANDICAP, OR FAMILIAL STATUS (HAVING CHILDREN UNDER THE AGE OF 18), TO:

- Deny a loan for the purpose of purchasing, constructing, improving, repairing or maintaining a dwelling, or deny any loan secured by a dwelling; or
- Discriminate in fixing the amount, interest rate, duration, application procedures or other terms or conditions of such a loan, or in appraising property.

IF YOU BELIEVE YOU HAVE BEEN DISCRIMINATED AGAINST, YOU SHOULD SEND A COMPLAINT TO:

Assistant Secretary for Fair Housing and Equal Opportunity
Department of Housing & Urban Development
Washington, DC 20410

For processing under the Federal Fair Housing Act

and to:

Office of Consumer Affairs
Federal Deposit Insurance Corporation
Washington, DC 20429-9990

For processing under FDIC regulations

UNDER THE EQUAL CREDIT OPPORTUNITY ACT, IT IS ILLEGAL TO DISCRIMINATE IN ANY CREDIT TRANSACTION:

- On the basis of race, color, national origin, religion, sex, marital status, or age,
- Because income is from public assistance, or
- Because a right was exercised under the Consumer Credit Protection Act.

IF YOU BELIEVE YOU HAVE BEEN DISCRIMINATED AGAINST, YOU SHOULD SEND A COMPLAINT TO:

Office of Consumer Affairs
Federal Deposit Insurance Corporation
Washington, DC 20429-9990

BILLING CODE 6714-01-C

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(c) The Equal Housing Lender Poster specified in this section was adopted under § 110.25(b) of the United States Department of Housing and Urban Development's rules and regulations as an authorized substitution for the poster required in § 110.25(a) of those rules and regulations.

By order of the Board of Directors.

Dated at Washington, DC, this 12th day of December, 1989.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 89-29904 Filed 12-22-89; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. 25304, Amdt. No. 71-11]

Terminal Control Area (TCA) Classification and TCA Pilot and Navigational Equipment Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Amendment to final rule.

SUMMARY: This editorial amendment amends § 71.401 and removes the section heading of § 71.403 of the Federal Aviation Regulations. This action is necessary for administrative purposes and clarification of these sections.

EFFECTIVE DATE: December 26, 1989.

FOR FURTHER INFORMATION CONTACT: Alton D. Scott, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration Division, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9252.

SUPPLEMENTARY INFORMATION:

History

On October 14, 1988, the FAA published a final rule revising the classification and pilot and equipment requirements for conducting operations in terminal control areas (Terminal Control Area (TCA) Classification and TCA Pilot and Navigational Equipment Requirements; Docket No. 25304, Admt. 61-60, 71-11, 91-205; 53 FR 40316). Specifically, the rule: (1) Established a single-class TCA; (2) required the pilot-in-command of a civil aircraft to hold at least a private pilot certificate, except for a student pilot who has received certain documented training; and (3) eliminated the helicopter exception from the minimum navigational equipment requirement.

The following regulatory change resulted from the aforementioned rule: § 71.401(a) Group I, Terminal Control Areas and § 71.401(b) Group II, Terminal Control Areas were consolidated and redesignated as a single section, § 71.403 Terminal Control Areas. This section heading, § 71.403 Terminal Control Areas, is now being removed for administrative purposes. Also, § 71.401 is being amended.

List of Subjects in 14 CFR Part 71

Aviation safety, Terminal control areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.401 [Amended]

2. Section 71.401 is amended by designating the introductory text as paragraph (a).

§ 71.403 [Amended]

3. Section 71.403 is amended by redesignating the text as paragraph (b) of § 71.401.

§ 71.403 [Removed]

4. The section heading for § 71.403 is removed.

Issued in Washington, DC, on December 18, 1989.

Jerry W. Ball,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-29863 Filed 12-22-89; 8:45 am]

BILLING CODE 9910-13-M

14 CFR Part 91

[Docket No. 18334]

RIN 2120-AA13

Revision of General Operating and Flight Rules; Correction and Technical Amendment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction and technical amendment.

SUMMARY: This correction and technical amendment clarifies the effective date of the amendment made to Part 91, General Operating and Flight Rules, on August 18, 1989 (54 FR 34284). FAA intended that the text of § 91.203(a)(2) would become effective August 18, 1990, and that the text of that paragraph would be duplicated in the current version of § 91.27(a)(2) effective September 18, 1989. This document corrects the effective date of the August 18, 1989 amendment to § 91.203 and establishes the correct text of current § 91.27(a)(2).

EFFECTIVE DATES: 14 CFR 91.203(a)(2) published at 54 FR 34284, August 18, 1989 is effective August 18, 1990. The amendment to 14 CFR 91.27(a)(2) contained in this document is effective September 18, 1989.

FOR FURTHER INFORMATION CONTACT: William T. Cook (202) 267-3840 or Edna French (202) 267-8150, Project Development Branch (AFS-850), Regulations Branch, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington DC 20591.

List of Subjects in 14 CFR Part 91

Air carriers, Aviation safety, Safety, Aircraft, Aircraft pilots, Air traffic control, Liquor, Narcotics, Pilots, Airspace, Air transportation, Cargo, Smoking, Airports, Airworthiness directives and standards.

Accordingly, 14 CFR part 91 is amended as follows:

PART 91—[AMENDED]

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 et seq.; E.O. 11514, 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. Section 91.27(a)(2) is revised to read as follows:

§ 91.27 Civil aircraft: Certifications required.

(a) * * *

(2) An effective U.S. registration certificate issued to its owner or, for operation within the United States, the second duplicate copy (pink) of the Aircraft Registration Application as provided for in § 47.31(b), or a registration certificate issued under the laws of a foreign country.

* * * * *

Issued in Washington, DC on December 19, 1989.

Debbie Swank,

Acting Manager, Program Management Staff.

[FR Doc. 89-29857 Filed 12-22-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 159

[T.D. 90-1]

Bulletin Notice of Liquidation

AGENCY: U.S. Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to eliminate references to Customs Form 4335 which was designed to serve as a bulletin notice of liquidation for entries liquidated as free of duty. That form is now obsolete and is being eliminated. Customs Form 4333 will serve as a bulletin notice of liquidation for all entries regardless of the dutiable status of the merchandise.

EFFECTIVE DATE: December 26, 1989.

FOR FURTHER INFORMATION CONTACT: Ilene Gilbert, Entry Programs Branch, Office of Trade Operations, (202)-535-4406.

SUPPLEMENTARY INFORMATION:

Background

Part 159, Customs Regulations (19 CFR Part 159), provides that Customs Form 4335 shall be used as a bulletin notice of liquidation for free consumption entries liquidated "as entered" and permanent exhibits entries liquidated "Free". In recent years such form has fallen into disuse and Customs Form 4333, generally computer generated, has been utilized as a bulletin notice for all entries. This has been confirmed through a survey of Customs field offices. Therefore, Customs Form 4335 is obsolete and it is being eliminated as are references to it in the Customs Regulations. Customs Form 4333 will continue to be used as the bulletin notice of liquidation for all entries regardless of the dutiable status of the merchandise covered thereby.

Executive Order 12291

These amendments do not constitute a "major rule" as defined in E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Regulatory Flexibility Act

It is certified that the provisions of the Regulatory Flexibility Act (5 U.S.C. *et seq.*), are not applicable to these amendments because the rule will not have a significant economic impact on a substantial number of small entities.

Inapplicability of Public Notice and Delayed Effective Date Requirements

These amendments merely eliminate one of the Customs forms used as a bulletin notice of liquidation and provide that the remaining form shall be utilized for all such notices. They neither impose any additional burdens on, or take away any existing rights or privileges from the public. Therefore, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure are unnecessary, and for the same reasons, pursuant to 5 U.S.C. 553(d)(2), a delayed effective date is not required.

Drafting Information

The principal author of this document was Arnold L. Sarasky, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 159

Customs duties and inspection, Imports, Liquidation of duties.

Amendments to the Regulations

Part 159, Customs Regulations (19 CFR part 159), is amended as set forth below:

PART 159—LIQUIDATION OF DUTIES

1. The authority citation of part 159 continues to read as follows:

Authority: 19 U.S.C. 66, 1500, 1624. Subpart C also issued under 21 U.S.C. 372. Additional authority and statutes interpreted or applied are cited in the text or following the section affected.

2. Section 159.9 as amended by revising paragraphs (a) and (d) to read as follows:

§ 159.9 Notice of liquidation and date of liquidation for formal entries.

(a) *Bulletin notice of liquidation.* Notice of liquidation of formal entries shall be made on a bulletin notice of liquidation, Customs Form 4333.

* * * * *

(d) *Courtesy notice of liquidation.* Customs will endeavor to provide importers or their agents with Customs Form 4333-A, "Courtesy Notice," for all entries scheduled to be liquidated or deemed liquidated by operation of law. This notice shall serve as an informal, courtesy notice and not as a direct, formal and decisive notice of liquidation.

§§ 159.10, 159.11 and 159.12 [Amended]

3. In §§ 159.10(c)(3), 159.11(a) and 159.12(g) remove the word and number "or 4335".

Michael H. Lane,

Acting Commissioner of Customs.

Approved: December 4, 1989.

Salvatore R. Martoche,

Assistant Secretary of the Treasury.

[FR Doc. 89-29806 Filed 12-22-89; 8:45 am]

BILLING CODE 4820-02-M

Internal Revenue Service

26 CFR Part 1

[T.D. 8278]

RIN 1545-AK04

Mortality and Morbidity Tables for Insurance Products for Which There Are No Applicable Commissioners' Standard Tables

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to mortality and morbidity tables for insurance products for which there are no applicable commissioners' standard tables. Changes to the applicable tax law were made by the Tax Reform Act of 1984. The regulations affect insurance companies engaged in the business of issuing life insurance, annuity, or noncancellable accident and health insurance contracts, and provide them with guidance needed to determine the amount of the life insurance reserves with respect to such contracts.

EFFECTIVE DATE: The regulations are effective for taxable years beginning after December 31, 1983, except § 1.807-1(a), items 10b and 13b, which are effective on December 26, 1989.

FOR FURTHER INFORMATION CONTACT: Donald J. Drees, Jr., 202-566-3740 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The document amends the Income Tax Regulations (26 CFR part 1) to provide rules under section 807(d) of the Internal Revenue Code of 1986. Section 807(d), relating to the method of computing life insurance reserves, was added to the Code by section 211(a) of the Tax Reform Act of 1984 (Pub. L. 98-369). On January 2, 1987, the Federal

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Register published temporary regulations (T.D. 8120, 52 FR 39) relating to mortality and morbidity tables for insurance contracts for which there are no applicable commissioners' standard tables when the contracts are issued. The text of those temporary regulations also served as the comment document for a notice of proposed rulemaking ("the proposed regulations"). Written comments were received from the public on the proposed regulations, but no public hearing was requested or held. After consideration of all comments received, the proposed amendments are adopted as revised by this regulation.

Effective Date of Changes

It is desirable to make the more up-to-date tables prescribed in the document immediately available to affected insurance companies. It is therefore found impracticable and contrary to the public interest to issue this Treasury decision subject to the effective date limitations of section 553(d) of title 5, United States Code.

Explanation of Provisions

Section 807(d)(2) provides in part that the amount of the life insurance reserve for any contract must be determined using the prevailing commissioners' standard tables for mortality and morbidity. If there are no commissioners' standard tables applicable to a contract when it is issued, section 807(d)(5)(C) provides that the mortality and morbidity tables to be used to compute the reserves will be determined under regulations. These regulations, therefore, specify mortality and morbidity tables for insurance contracts for which there are no commissioners' standard tables applicable when the contract is issued.

In addition, this document deletes existing regulations §§ 1.807–1 and 1.807–2 because they are applicable only to taxable years beginning after December 31, 1953, and before January 1, 1955.

Public Comments

One comment on the proposed regulations suggested replacing the 1964 Commissioners' Disability Table (1964 CDT) for noncancellable accident and health disability benefit reserves with the 1985 Commissioners' Individual Disability Tables A and the 1985 Commissioners' Individual Disability Tables B (1985 CIDA/CIDB). The 1964 CDT is based on experience of 1930 through 1961 and does not differentiate by some factors which are generally recognized as affecting claim costs (e.g., occupation class, sex and elimination period). The 1985 CIDA/CIDB tables are based on experience of 1970 through 1979. The factors affecting claim costs are contained in the 1985 CIDA/CIDB tables. In addition, the 1985 CIDA/CIDB tables were adopted by the National Association of Insurance Commissioners (NAIC) in December of 1985 as the reserve standards for individual disability policies. The comment did not recommend any change in the tables applicable to group disability policies. The final regulations adopt the use of the 1985 CIDA/CIDB tables for individual disability policies.

The NAIC Proceedings, 1986, Vol. I., page 592, indicates that the 1985 CIDA tables (previously known as the "DST Valuation Tables") may have a wider application because reserves can be distinguished by many more parameters than those using the 1985 CIDB tables (previously known as the "1983c Tables"). However, the CIDB tables may be easier to use by smaller and medium sized insurers where detailed breakdowns of disability business may not be practical.

As a consequence of adopting the use of the 1985 CIDA/CIDB tables, the regulations are further amended by adding a provision to reflect section 807(d)(5)(E) of the Code, which requires that if a taxpayer may use 2 or more tables (or options), then the table (or option) which generally yields the lowest reserves shall be used to compute reserves under section 807(d)(2) for the contract.

Another comment requested clarification of the table to be used for group life insurance disability income benefit contracts. The title of the contract described in item 4 of the list of tables in the proposed regulations would be changed from "Group life insurance (active life reserves); disability income benefits" to "Group life insurance disability income benefits." In addition, separate tables would be prescribed for active life reserves and for disabled life reserves. It was requested that (1) the tables of period 2 disablement rates and the 1930–1950 termination rates of the 1952 Disability Study of the Society of Actuaries be used for the active life reserves and (2) the 1930 to 1950 termination rates of the 1952 Disability Study of the Society of Actuaries be used for the disabled life reserves. The separate identification of tables would merely clarify the portions of the tables which are applicable to active and disabled lives, respectively. The final regulations adopt this change.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required.

Drafting Information

The principal author of these regulations is Donald J. Drees, Jr., of the Office of Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects in 26 CFR 1.801–1 Through 1.832–8

Income taxes, Insurance companies.

Adoption of Amendments to the Regulations

For the reasons set out in the preamble, chapter I, subchapter A, part I of title 26 of the Code of Federal Regulations is amended as follows:

Income Tax Regulations

PART 1—[AMENDED]

Paragraph 1. The authority for part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Section 1.807–1 is also issued under 26 U.S.C. 807(d)(5)(C).

§§ 1.807–1T and 1.807–2 [Removed]

Par. 2. Sections 1.807–1T and 1.807–2 are removed.

Par. 3. Section 1.807–1 is revised to read as follows:

§ 1.807–1 Mortality and Morbidity Tables.

(a) *Tables to be used.* If there are no commissioners' standard tables applicable to an insurance contract when the contract is issued, then the mortality and morbidity tables set forth in this subsection are used to compute reserves under section 807(d)(2) for the contract.

Type of Contract	Table
1. Group term life insurance (active life reserves).	1960 Commissioners' Standard Group Mortality Table.
2. Group life insurance (active life reserves); accidental death benefits.	1959 Accidental Death Benefits Table.
3. Permanent and paid-up group life insurance (active life reserves).	Same table as are applicable to males for ordinary life insurance.
4a. Group life insurance disability income benefits (active life reserves).	The tables of period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 Disability Study of the Society of Actuaries.
4b. Group life insurance disability income benefits (disabled life reserves).	The 1930 to 1950 termination rates of the 1952 Disability Study of the Society of Actuaries.
5. Group life insurance; survivor income benefits insurance.	Same tables as are applicable to group annuities.
6. Group life insurance; extended death benefits for disabled lives.	1970 Intercompany Group life Disability Valuation Table.
7. Group life insurance	1958 Commissions' Extended Term Tables.
8. Supplementary contracts involving life contingencies.	Same tables as are applicable to individual immediate annuities.
9. Noncancellable accident and health insurance (active life reserves); benefits issued before 1964.	Tables used for NAIC annual statement reserves as of December 31, 1963.
10a. Noncancellable accident and health insurance (active life reserves); group disability benefits issued after 1963 and individual disability benefits issued after 1963 and before 1969.	1964 Commissioners' Disability Tables.
10b. Noncancellable accident and health insurance (active life reserves); individual disability benefits issued after 1968.	1985 Commissioners' Individual Disability Table A or Commissioners' Individual Disability Table B.
11. Noncancellable accident and health insurance (active life reserves); accidental death benefits issued after 1963.	1959 Accidental Death Benefits Tables.
12. Noncancellable accident and health insurance (active life reserves); all benefits issued after 1963 other than disability and accidental death.	Tables used for NAIC annual statement reserves.
13a. Noncancellable accident and health insurance (claim reserves); group disability benefits for all years of issue and individual disability benefits for years before 1969.	1964 Commissioners' Disability Tables.
13b. Noncancellable accident and health insurance (claim reserves); individual disability benefits for years after 1968.	1985 Commissioners' Individual Disability Table A or Commissioners' Individual Disability Table B.
14. Noncancellable accident and health insurance (claim reserves); all benefits other than disability for all years of issue.	Tables used for annual statement reserves.

(b) *Adjustments.* An appropriate adjustment may be made to the tables in paragraph (a) of this section to reflect risks (such as substandard risks) incurred under the contract which are not otherwise taken into account.

(c) *Special rule where more than 1 table or option applicable.* If, with respect to any category of risks, there are 2 or more tables (or options under 1 or more tables) in paragraph (a) of this section, the table (and option thereunder) which generally yields the lowest reserves shall be used to compute reserves under section 807(d)(2) for the contract.

(d) *Effective date.* This section is effective for taxable years beginning after December 31, 1983 except that the 1985 Commissioners' Individual Disability Tables A and B shall be treated (for purposes of section 807(d)(5)(B) and for purposes of determining the issue dates of contracts for which they shall be used) as if the tables were new prevailing commissioners' standard tables adopted by the twenty-sixth State on December 26, 1989.

Dated: December 15, 1989.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

Approved:

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 89–29642 Filed 12–22–89; 8:45 am]

BILLING CODE 4830–01–M

26 CFR Part 1

[T.D. 8277]

RIN 1545–AN22

Temporary Regulations Under Section 382 of the Internal Revenue Code of 1986; Limitations on Corporate Net Operating Loss Carryforwards

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: Temporary regulations at §§ 1.382–1T and 1.382–2T were published in the Federal Register on August 11, 1987, 52 FR 29663, to provide guidance regarding what constitutes an "ownership change" under section 382, after which certain corporate attributes, such as net operating loss carryforwards, are limited. This document amends the temporary regulations under section 382 of the Internal Revenue Code (Code) to grant the Service authority to issue revenue rulings (or other guidance in the Internal Revenue Bulletin) to provide additional exceptions under § 1.382–2T(h)(4)(x) to the operation of the option attribution rules at § 1.382–2T(h)(4)(i) to loss corporations. This amendment of the regulations will give the Treasury Department greater flexibility in providing additional exceptions to the attribution rules of § 1.382–2T(h)(4)(i), as circumstances justifying those exceptions are identified.

EFFECTIVE DATE: The temporary regulations are effective as of December 26, 1989.

FOR FURTHER INFORMATION CONTACT: Keith E. Stanley of the Office of Assistant Chief Counsel (Corporate), Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:CORP:1) or telephone 202–566–3367 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 382 was amended by section 621 of the Tax Reform Act of 1986 (Pub. L. 99–514; 100 Stat. 2085). Temporary regulations at §§ 1.382–1T and –2T were published in the Federal Register on August 11, 1987, 52 FR 29663, to provide guidance regarding what constitutes an "ownership change" under section 382, after which certain corporate attributes, such as net operating loss carryforwards, are limited. This document provides temporary regulations amending the temporary regulations at paragraph (h)(4)(x) of § 1.382–2T to grant the Service the authority to issue revenue rulings (or other guidance in the Internal Revenue Bulletin) to provide additional exceptions to the operation of the option attribution rules of § 1.382–2T(h)(4)(i).

Explanation of Provisions

Section 382(g)(1) provides that there is an ownership change if, immediately after any owner shift involving a 5-percent shareholder or any equity structure shift, the percentage of stock of the new loss corporation owned by one or more 5-percent shareholders has increased by more than 50 percentage points over the lowest percentage of stock of the old loss corporation (or any predecessor corporation) owned by such shareholders at any time during the testing period.

Section 318(a)(4) of the Code provides that if any person has an option to acquire stock, such stock shall be considered as owned by such person. Section 382(l)(3)(A)(iv) of the Code generally is to the effect that the attribution rules of section 318(a)(4) will apply (both with respect to options and certain other similar interests) if application of those attribution rules will result in an ownership change. Section 382(l)(3)(A)(iv) provides, however, that regulations may exempt certain interests from those attribution rules.

In keeping with the Code provision, § 1.382–2T(h)(4)(i) of the temporary regulations provides that, solely for the purpose of determining whether there is an ownership change on any testing date, stock of the loss corporation that is subject to an option shall be treated as acquired on any such date, pursuant to an exercise of the option by its owner on that date, if such deemed exercise would result in an ownership change. Section 1.382–2T(h)(4)(v) of the

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temporary regulations provides that an interest that is similar to an option shall be treated as an option and that such an interest includes, but is not limited to, a

chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

Approved: December 4, 1989.

II. Submission of Amendment

By letter dated February 21, 1989 (Administrative Record No. NM–474),

and OSM's continuing oversight of the New Mexico program.

Coal Surface Mining Commission

(b)(10)(B) of SMCRA which requires that surface coal mining operations be conducted so as to prevent, to the extent

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temporary regulations provides that an interest that is similar to an option shall be treated as an option and that such an interest includes, but is not limited to, a warrant, a convertible debt instrument, an instrument other than debt that is convertible into stock, a put, a stock interest subject to risk of forfeiture, and a contract to acquire or sell stock. Section 1.382-2T(h)(4)(iii) of the temporary regulations generally provides that the extent to which an option is contingent or otherwise not currently exercisable shall be disregarded.

The option attribution rules are necessary to prevent the avoidance of the section 382 limitation, under which the use of pre-change losses is limited in the event of an ownership change. In the absence of option attribution rules, a section 382 ownership change could be avoided in an acquisition that would otherwise result in an ownership change by a person who, instead of acquiring stock of the loss corporation, acquires an option to acquire such stock. Certain options, however, are unlikely to be used for the purpose of circumventing the section 382 limitation. Section 1.382-2T(h)(4)(x) of the temporary regulations provides for certain exceptions to the attribution rules of § 1.382-2T(h)(4)(i) for such options that were identified as of the time those regulations were issued.

Notice 88-97, 1988-25 I.R.B. 44, states that the Internal Revenue Service intends to amend the temporary regulations under section 382 of the Code to grant the Service the authority to issue revenue rulings providing additional exceptions under § 1.382-2T(h)(4)(x). Accordingly, this document adds § 1.382-2T(h)(4)(x)(Z) to the temporary regulations, in order to grant the Service the authority to designate in the Internal Revenue Bulletin additional options to be excepted from the option attribution rules of § 1.382-2T(h)(4)(i). This amendment of the regulations will give the Treasury Department greater flexibility in providing additional exceptions to the attribution rules of § 1.382-2T(h)(4)(i), as circumstances justifying those exceptions are identified. Only options or similar interests that are specifically identified in regulations or in the Internal Revenue Bulletin are excepted from option attribution.

Special Analyses

It has been determined that these regulations are not major regulations as defined in Executive Order 12291. Therefore, a Regulatory Impact analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required.

Drafting Information

The principal author of these regulations is Keith E. Stanley, Office of the Assistant Chief Counsel (Corporate), Internal Revenue Service. However, other personnel from the Service and Treasury Department participated in their development.

List of Subjects in 26 CFR 1.381-1—1.385-6

Income taxes, Corporations, Corporate distributions, Corporate adjustments, Reorganizations.

Adoption of Amendments to the Regulations

Accordingly, title 26, chapter 1, part 1 of the Code of Federal Regulations is amended as follows:

PART 1—[AMENDED]

Paragraph 1. The authority for part 1 continues to read, in part:

Authority: 26 U.S.C. 7805, * * * § 1.382-2T also issued under 26 U.S.C. 382(g)(4)(C) * * *, 26 U.S.C. 382(l) * * *, 26 U.S.C. 382(k)(1) * * *, 26 U.S.C. 382(x)(6) * * *, 26 U.S.C. 382(l)(3) * * *, 26 U.S.C. 382(m).

Par. 2. Section 1.382-2T is amended by adding and reserving paragraphs (h)(4)(x)(T)–(Y) and by adding a new paragraph (h)(4)(x)(Z) to read as set forth below:

§ 1.382-2T Definition of ownership change under section 382, as amended by the Tax Reform Act of 1986 (temporary).

* * * * *

(h) * * *

(4) * * *

(x) * * *

(T)–(Y) [Reserved]

(Z) *Options designated in the Internal Revenue Bulletin.* Any option designated by the Internal Revenue Service in the Internal Revenue Bulletin as being excepted from the operation of § 1.382-2T(h)(4)(i).

* * * * *

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Fred T. Goldberg, Jr.,
Commissioner of Internal Revenue.

Approved: December 4, 1989.

Kenneth W. Gideon,
Assistant Secretary of the Treasury.

[FR Doc. 89-29799 Filed 12-22-89; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

New Mexico Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing approval of a proposed amendment to the New Mexico permanent regulatory program (hereinafter referred to as the New Mexico program) approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment is intended to revise the State program to provide additional safeguards for protection of the hydrologic balance.

EFFECTIVE DATE: December 26, 1989.

FOR FURTHER INFORMATION CONTACT: Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue SW., Suite 310, Albuquerque, NM 87102; Telephone (505) 766-1486.

SUPPLEMENTARY INFORMATION:

I. Background on the New Mexico Program.
II. Submission of Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the New Mexico Program

On December 31, 1980, the Secretary of the Interior conditionally approved the New Mexico program. Information regarding the general background on the New Mexico program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the New Mexico program can be found in the December 31, 1980, Federal Register (45 FR 86459). Actions taken subsequent to the approval of the New Mexico program are found at 30 CFR 931.12, 931.13, 931.15, 931.16, and 931.30.

II. Submission of Amendment

By letter dated February 21, 1989 (Administrative Record No. NM-474), New Mexico submitted a proposed amendment to its permanent regulatory program pursuant to SMCRA. New Mexico submitted the proposed amendment at its own initiative. The rule that New Mexico proposed to amend is Coal Surface Mining Commission (CSMC) Rule 80-1-20-41(d)(1) relating to general requirements for protection of the hydrologic balance.

OSM published a notice in the March 14, 1989, Federal Register (54 FR 10562) announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (Administrative Record No. NM-482). The public comment period ended April 13, 1989. The public hearing, scheduled for April 10, 1989, was not held because no one requested an opportunity to testify.

During its review of the amendment, OSM identified concerns relating to a related provision of New Mexico's rules. OSM notified New Mexico of the concerns by telephone conversation on August 14, 1989 (Administrative Record No. NM-535). New Mexico responded in a letter dated August 17, 1989, by submitting a proposed revision to CSMC Rule 80-1-20-42(a)(1) relating to hydrologic balance (Administrative Record No. NM-534). This proposed revision was in addition to that revision previously proposed for CSMC Rule 80-1-20-41(d)(1). OSM published a notice in the September 7, 1989, Federal Register (54 FR 37127) announcing receipt of the proposed amendment to CSMC Rule 80-1-20-42(a)(1) and inviting public comment on the adequacy of the proposed amendment (Administrative Record No. NM-534). The public comment period ended September 22, 1989.

III. Director's Findings

The Director finds in accordance with SMCRA and 30 CFR 732.15 and 732.17, that the amendment submitted by New Mexico on February 21 and August 17, 1989, meets the requirements of SMCRA and 30 CFR Chapter VII as discussed below. The Director is approving the rules, providing that they are fully promulgated in identical form to the ones submitted to and reviewed by OSM and the public.

Although the Director is approving the amendment as submitted, he may also in the future require that New Mexico make further changes to its amended regulations as a result of Federal Regulatory revisions, court decisions, and OSM's continuing oversight of the New Mexico program.

Coal Surface Mining Commission (CSMC) Rule 80-1-20-41(d)(1), Hydrologic Balance: General Requirements

CSMC Rule 80-1-20-41(d)(1) deals with mining and reclamation practices that could constitute the best technology currently available (BTCA) for sedimentation control to be used in preference to the use of sediment ponds or water treatment facilities to control sediment and to prevent or minimize water pollution. The existing CSMC Rule 80-1-20-41(d)(1) requires containment and elimination of surface flow by use of specified alternative sediment control practices and structures. The proposed amendment would require containment or treatment, rather than containment and elimination, of surface flow by use of the alternative sediment control practices and structures; it would also delete reference to the 10-year, 24-hour precipitation event. The corresponding Federal regulations at 30 CFR 701.5, which includes the definition of BTCA, and 30 CFR 816.45, which addresses the requirements of BTCA relating to use of sediment control practices and structures, do not require elimination of surface flows and do not limit sediment control structure design to any particular precipitation event. 30 CFR 816.45(a) requires that sediment control measures be designed, constructed and maintained, using BTCA to prevent, to the extent possible, additional contributions of sediment to streamflow or to runoff outside the permit area, meet applicable effluent limitations, and minimize erosion.

The New Mexico program has, at CSMC Rule 80-1-20-45(a), performance standards identical to the Federal requirements at 30 CFR 816.45(a). Accordingly, any sediment control practices and structures authorized under revised CSMC Rule 80-1-20-41(d)(1) would be subject to the performance standards at CSMC Rule 80-1-20-45(a) and would be consistent with the Federal requirement at 30 CFR 816.45(a). As discussed in more detail below, this is also consistent with policies announced in the November 20, 1986, Federal Register notice (51 FR 41952), which suspended the Federal requirement to pass all surface drainage from the disturbed area through a siltation structure.

Therefore, the Director finds that proposed CSMC Rule 80-1-20-41(d)(1) is no less effective than the Federal regulations at 30 CFR 701.5 and 816.45 and no less stringent than Section 515 (b)(10)(B) of SMCRA which requires that surface coal mining operations be conducted so as to prevent, to the extent possible using BTCA, additional contributions of suspended solids to streamflow, or runoff outside the permit area.

CSMC Rule 80-1-20-42(a)(1), Hydrologic Balance: Water Quality Standards and Effluent Limitations

Existing CSMC Rule 80-1-20-42(a)(1) requires that "[w]ith the exception of surface flow leaving the disturbed area resulting from a precipitation event equal to or larger than a 10-year 24-hour event with respect to which area the operator has complied with the requirements of Section 41, all surface flow that leaves the disturbed area shall be passed through a sedimentation pond or series of sedimentation ponds or other treatment facilities before leaving the permit area." The proposed amendment would delete the phase "resulting from a precipitation event equal to or larger than a 10-year 24-hour event" from the rule. The effect of the proposed change would be that all surface flow that leaves the disturbed area, except surface flow treated under the BTCA requirements of SCMC Rules 80-1-20-41 (as amended in this rulemaking) and 80-1-20-45, would be passed through a sedimentation pond or series of sedimentation ponds or other treatment facilities before leaving the permit area.

The corresponding Federal regulation at 30 CFR 816.46(b)(2) required that all surface drainage from a disturbed area be passed through a siltation structure before leaving the permit area. On November 20, 1986, in response to the Federal District Court decision *In Re: Permanent Surface Mining Regulation Litigation (II), Round III*, 620 F. Supp. 1519 (D.D.C. 1985), OSM suspended this regulation (51 FR 41952). The District Court ruled that in promulgating this regulation, the Secretary of the Interior had failed to articulate, in the preamble to the regulation, adequate rationale for requiring siltation structures in every case. In response to this court decision and the suspension of 30 CFR 816.46(b)(2), OSM determined that the regulatory authority must determine on a case-by-case basis what constitutes PTCA as required by SMCRA and 30 CFR 701.5 (51 FR at 41957). OSM further stated that in cases where siltation structures are determined to be BTCA, the performance standards of 30 CFR 816.46 (b), (c), and (d) will continue to apply. (Id). Lastly, OSM stated that in situations where sediment control measures other than siltation structures

are determined to be BTCA, the performance standards of 30 CFR 816.45 will control (51 FR at 41957–58).

Existing CSMC Rule 80-1-20-42(a)(1) includes a discharge from a point source, effluent limits will continue to apply and a NPDES permit will be required. Therefore, the requirements of SMCRA and the Federal rules will be met by the State.

notice in the Federal Register. This notice places those regulations in effect. The purpose of the Regulated

124.515(b)(3)(ii)(B) will become effective on December 26, 1989.

FOR FURTHER INFORMATION CONTACT:

Insurance Rate Map (FIRM) in effect prior to this determination.

From the date of the second

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are determined to be BTCA, the performance standards of 30 CFR 816.45 will control (51 FR at 41957–58).

New Mexico's definition of BTCA at CSMC Rule 80–1–1–5 states that the Director of the New Mexico Mining and Minerals Division (MMD) shall have the discretion to determine BTCA on a case-by-case as authorized by the New Mexico Surface Mining Act and rules. In addition, CSMC Rule 80–1–20–41(d)(4) states that, if the alternative sediment control practices listed in paragraph (d)(2) of CSMC Rule 80–1–20–41 are not adequate to meet the required performance standards of CSMC Rule 80–1–20–41(d)(1), the operator must, unless issued a waiver by the regulatory authority, comply with the requirements of SCMC Rule 80–1–20–42. The combined action of these two rules would provide the Director of MMD authority to determine on a case-by-case basis what constitutes BTCA as authorized by the New Mexico Surface Mining Act and rules.

Therefore, the Director finds that proposed CSMC Rule 80–1–20–42(a)(1) is no less effective than the Federal regulation at 30 CFR 816–46 and no less stringent than SMCRA.

IV. Summary and Disposition of Comments

OSM did not receive any public comments in response to its March 14, 1989, and September 7, 1989, Federal Register notices, and it did not hold a public hearing because no one requested an opportunity to provide testimony.

Pursuant to section 503 (b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11), OSM solicited comments from various Federal agencies with an actual or potential interest in the New Mexico program.

In accordance with 30 CFR 732.17(h)(11)(ii), the Environmental Protection Agency (EPA) concurred with the proposed amendment on April 5, 1989, and October 6, 1989. On March 22, 1989, it also commented that any mining operation applying for a mining permit should be aware that it might have to comply with the National Pollutant Discharge Elimination System (NPDES) "new source" effluent limitation requirements that EPA promulgated in accordance with Section 306 of the Clean Water Act. It also commented that an environmental review of the "new source" NPDES permit applications would have to be conducted in accordance with the National Environmental Policy Act. Consistent with this requirement, in the Federal Register notice suspending 30 CFR 816.46(b)(2) (51 FR 41952, November 20, 1986), OSM stated that where BTCA includes a discharge from a point source, effluent limits will continue to apply and a NPDES permit will be needed (51 FR 41957). New Mexico's general hydrologic balance rule, CSMC Rule 80–1–20–41(c), is consistent with the preceding notice and the wording of the counterpart Federal regulations at 30 CFR 816.45(a), in that it requires operators to comply with Federal and State water quality statutes, regulations, standards, and effluent limitations. Therefore, New Mexico permit applicants and mine operators are aware of their responsibilities under the NPDES and OSM is not requiring any further action on the part of New Mexico at this time.

V. Director's Decision

Based on the above findings, the Director is approving the proposed amendment submitted by New Mexico on February 21, 1989, and August 17, 1989. The Federal regulations at 30 CFR Part 931 that codify decisions concerning the New Mexico program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

National Environmental Policy Act

The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action, OSM is exempt from the requirement to prepare a regulatory impact analysis, and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 931

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: December 15, 1989.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below.

PART 931—NEW MEXICO

1. The authority citation for part 931 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 931.15 is amended by adding a new paragraph (j) to read as follows:

§ 931.15 Approval of amendments to State regulatory program.

* * * * *

(j) The following amendment is approved effective December 26, 1989: Revision to the New Mexico Surface Coal Mining Commission (CSMC) Rules 80–1–20–41(d)(1) and 80–1–20–42(a)(1), pertaining to protection of the hydrologic balance, submitted on February 21, 1989, and August 17, 1989.

[FR Doc. 89–29646 Filed 12–22–89; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

Ice Navigation Season

AGENCY: Coast Guard, DOT.

ACTION: Notice of effective date.

SUMMARY: The Ice Navigation Season Regulated Navigation Area on the northern portion of the Chesapeake Bay and its tributaries, including the Chesapeake and Delaware Canal, will be placed in effect on December 17, 1989.

The regulations for this Regulated Navigation Area, found in 33 CFR 165.503, state that they are placed in effect and terminated at the direction of the Captain of the Port Baltimore by notice in the Federal Register. This notice places those regulations in effect.

The purpose of the Regulated Navigation Area is to enhance the safety of navigation in the affected waters. It requires operators of certain vessels, during their vessel's transit of the Regulated Navigation Area, to be aware of currently effective Ice Navigation Season Captain of the Port Orders issued by the Captain of the Port Baltimore.

EFFECTIVE DATE: 4:30 p.m., 17 December 1989 until further notice.

FOR FURTHER INFORMATION CONTACT: Lieutenant F. L. Propst, Port Safety Officer, U.S.C.G. Marine Safety Office, Custom House, 40 South Gay Street, Baltimore, Maryland 21202–4022, (301) 962–5105.

J.H. Parent,

Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.

[FR Doc. 89–29620 Filed 12–22–89; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 124

RIN 0905–AB35

Medical Facility Construction and Modernization: Requirements for Provision of Services to Persons Unable To Pay; Office of Management and Budget Approval of Information Collection Requirements

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Final rule; effective date.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that the Office of Management and Budget (OMB) has approved the information collection requirements in §§ 124.509(c), 124.514(c), 124.515(b)(2)(ii) and 124.515(b)(3)(ii)(B) of the "Medical Facility Construction and Modernization: Requirements for Provision of Services to Persons Unable To Pay" final rule as published on December 3, 1987 at 52 FR 46022. The Department is amending the regulation to reflect OMB's approval under OMB Control Number 0915–0077. Upon publication §§ 124.509(c), 124.514(c), 124.515(b)(2)(ii) and 124.515(b)(3)(ii)(B) as amended below will become effective.

EFFECTIVE DATE: 42 CFR 124.509(c), 124.514(c), 124.515(b)(2)(ii) and 124.515(b)(3)(ii)(B) will become effective on December 26, 1989.

FOR FURTHER INFORMATION CONTACT: Richard R. Ashbaugh, Director for Health Facilities, Bureau of Maternal and Child Health and Resources Development, 5600 Fishers Lane, Rm. 11–03, Rockville, MD 20857, (301)–443–6560.

SUPPLEMENTARY INFORMATION: Because this amendment is a technical change merely reflecting OMB's approval of information collection requirements, notice and public comment are unnecessary.

List of Subjects in 42 CFR Part 124

Grant programs—Health, Health facilities, Loan programs—Health, Low income persons, Reporting and recordkeeping requirements.

Accordingly, part 124 of title 42, Code of Federal Regulations is amended as set forth below.

Dated: December 6, 1989.

James E. Larson,

Acting Deputy Assistant Secretary for Information Resources Management.

Subpart F—Reasonable Volume of Uncompensated Services to Persons Unable To Pay

42 CFR part 124 is amended by adding the following parenthetical statement at the end of §§ 124.509, 124.514 and 124.515:

(Approved by the Office of Management and Budget under Control Number 0915–0077)

[FR Doc. 89–29608 Filed 12–22–89; 8:45 am]

BILLING CODE 4160–15–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–6975]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Interim rule.

SUMMARY: This rule list those communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) elevations for new buildings and their contents and for second layer insurance on existing buildings and their contents.

DATES: These modified elevations are currently in effect and amend the Flood Insurance Rate Map (FIRM) in effect prior to this determination.

From the date of the second publication of notice of these changes in a prominent local newspaper, any person has ninety (90) days in which he can request through the community that the Administrator, reconsider the changes. These modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base (100-year) flood elevation determinations are available for inspection at the office of the Chief Executive Officer of the community, listed in the fifth column of the table. Send comments to that address also.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2767.

SUPPLEMENTARY INFORMATION: The numerous changes made in the base (100-year) flood elevations on the FIRM(s) make it administratively infeasible to publish in this notice all of the modified base (100-year) flood elevations contained on the map. However, this rule includes the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection.

Any request for reconsideration must be based on knowledge of changed conditions, or new scientific or technical data.

These modification are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234) and are in accordance with the National Flood Insurance Act of 1968, as amended, (title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR Part 65.4.

For rating purposes, the revised community number is listed and must be used for all new policies and renewals.

These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

These elevations, together with the floodplain management measures required by § 60.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more

stringent in their floodplain managment requirements. The community may at any time, enact stricter requirements on

Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains.

These modified base flood elevations shall be used to calculate the appropriate flood insurance premium

Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated, will not

List of Subjects in 44 CFR Part 65.

Flood insurance, Floodplains.

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stringent in their floodplain managment requirements. The community may at any time, enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities.

The changes in the base (100-year) flood elevations listed below are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and impose no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains.

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

§ 65.4 [Amended]

2. Section 65.4 is amended by adding in alphabetical sequence new entries to the table.

State and County	Location	Dates and Name of Newspaper Where Notice Was Published	Chief Executive Officer of Community	Effective Date of Modification	Community Number
California: San Diego	City of Poway	Dec. 14, 1989 and Dec. 21, 1989, *Poway News-Chieftain.*	Hon. Carl R. Kruse, Mayor, City of Poway, P.O. Box 789, Poway, CA 92064.	Dec. 7, 1989	0607025
Connecticut: Hartford	Town of Bloomfield	Nov. 17, 1989 and Nov. 24, 1989, *The Bloomfield Journal.*	Hon. David Baram, Mayor of the Town of Bloomfield, Hartford County, P.O. Box 343, Bloomfield, CT 06002.	Nov. 10, 1989	090122C
Florida: Dade	Unincorporated areas	Dec. 1, 1989 and Dec. 8, 1989, *Miami Review.*	Hon. Joaquin Avino, County Manager, Dade County, Metro Dade Center, 111 NW 1st Street, Suite 2910, Miami, FL 33128–1971.	Nov. 17, 1989	125099
Georgia: Bryan	City of Richmond Hill	Nov. 15, 1989 and Nov. 22, 1989, *Richmond Hill Area News.*	Hon. Richard R. Davis, Mayor, City of Richmond Hill, P.O. Box 250, Richmond Hill, GA 31324.	Aug. 24, 1989	130018
Ohio: Fairfield	Village of Bremen	Dec. 15, 1989 and Dec. 22, 1989, *Lancaster Eagle Gazette.*	Hon. Ronald E. Nixon, Mayor, Village of Bremen, 132 Mulberry Street, P.O. Box 127, Bremen, OH 43107.	Dec. 5, 1989	390160
Rhode Island: Bristol	Town of Barrington	Dec. 6, 1989 and Dec. 13, 1989, *The Barrington Times.*	Hon. Peter A. DeAngelis, Jr., Acting Town Manager, Town Hall, 283 County Road, Barrington, RI 02806.	Nov. 21, 1989	445392

Issued: December 12, 1989.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 89-29673 Filed 12-22-89; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations will be used in calculating flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

DATES: The effective dates for these modified base flood elevations are indicated on the following table and amend the Flood Insurance Rate Map(s) (FIRM) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed on the following table.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of modified flood elevations for each community listed. These modified elevations have been published in newspaper(s) of local circulation and ninety (90) days have elapsed since that publication. The Administrator has resolved any appeals resulting from this notification.

Numerous changes made in the base (100-year) flood elevations on the FIRMs for each community make it administratively infeasible to publish in this notice all of the changes contained on the maps. However, this rule includes the address of the Chief Executive Officer of the community, where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234) and are in accordance with the National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968, (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR Part 65).

For rating purposes, the revised community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or to remain qualified for participating in the National Flood Insurance Program.

These modified elevations, together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities.

These modified base flood elevations shall be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

The changes in the base flood elevations are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65.

Flood insurance, Floodplains.

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

§ 65.4 [Amended]

2. Section 65.4 is amended by adding in alphabetical sequence new entries to the table.

State and County	Location	Date and Name of Newspaper Where Notice Was Published	Chief Executive Officer of Community	Effective Date of Modification	Community Number
Georgia: DeKalb (Docket No. FEMA-6958).	Unincorporated areas	June 8, 1989 and June 15, 1989, *Decatur-DeKalb News-ERA.*	Honorable Manuel J. Maloof, Chief Executive Officer, Dekalb County, County Courthouse, 556 North McDonough, Decatur, GA 30030.	May 26, 1989	130065
Georgia: Fulton (Docket No. FEMA-6957).	Unincorporated areas	Aug. 24, 1989 and Aug. 31, 1989, *Daily Report.*	Hon. Sam Brownlee, Manager, Fulton County, 207 Administration Building, 165 Central Avenue, SW., Atlanta, GA 30335.	Aug. 10, 1989	135160
Missouri: St. Louis (Docket No. FEMA-6963).	City of Bellefontaine Neighbors.	Aug. 4, 1989 and Aug. 11, 1989, *Suburban Journal.*	Hon. Joseph Barger, Mayor, City of Bellefontaine Neighbors, City Hall, 9641 Bellefontaine Road, Bellefontaine Neighbors, MO 63137.	July 24, 1989	290330
North Carolina: Wake (Docket No. FEMA-6963).	Town of Knightdale	July 27, 1989 and Aug. 3, 1989, *Gold Leaf Farmer.*	Hon. W.A. Wilder, Jr., Mayor, Town of Knightdale, 207 Main Street, P.O. Box 640, Knightdale, NC 27545.	July 17, 1989	370241

Issued: December 12, 1989.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 89-29672 Filed 12-22-89; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing modified base flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevation for each community listed. Proposed base flood elevations or proposed modified base fixed elevations have been published in the Federal Register for each community listed.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Action 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR part 67. An opportunity for the community or individuals to appeal the proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for floodplain management in flood-prone areas in accordance with 44 CFR part 60. Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under the terms of Executive Order 12291, so no regulatory analyses have been proposed. It does not involve any collection of information for purposes of The Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The modified base flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Bear Creek		Bear Creek		Bear Creek	
Approximately 1,000 feet upstream of confluence with Big Creek	+1,000	Approximately 1,000 feet upstream of Interstate Route 10	+1,000	Approximately 1,000 feet upstream of confluence with Big Creek	+1,000
Approximately 1,000 feet upstream of Interstate Route 10	+1,000	Approximately 1,000 feet upstream of Interstate Route 10	+1,000	Approximately 1,000 feet upstream of Interstate Route 10	+1,000
Approximately 1,000 feet upstream of Interstate Route 10	+1,000	Approximately 1,000 feet upstream of Interstate Route 10	+1,000	Approximately 1,000 feet upstream of Interstate Route 10	+1,000

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Bear Creek		Bear Creek	
Approximately 1,000 feet upstream of confluence with Big Creek	+1,000	Approximately 1,000 feet upstream of confluence with Big Creek	+1,000
Approximately 1,000 feet upstream of Interstate Route 10	+1,000	Approximately 1,000 feet upstream of Interstate Route 10	+1,000
Approximately 1,000 feet upstream of Interstate Route 10	+1,000	Approximately 1,000 feet upstream of Interstate Route 10	+1,000

Burnley, et. al., enjoined the implementation of that portion of the Coast Guard's drug testing rules, which requires marine employers to implement

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Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD). Modified
ALASKA	
Anchorage (municipality), Anchorage Borough (FEMA Docket No. 6869)	
Campbell Creek:	
Approximately 600 feet downstream of West Dimond Boulevard	*20
Just downstream of West Dimond Boulevard	*21
Approximately 80 feet upstream of West Dimond Boulevard	*22
Approximately 1,900 feet upstream of West Dimond Boulevard	*26
Approximately 500 feet downstream of C Street	*56
Just downstream of C Street	*57
Approximately 600 feet upstream of C Street	*62
Approximately 200 feet downstream of Old Seward Highway	*105
Approximately 200 feet upstream of Old Seward Highway	*106
Just upstream of International Airport Road	*108
Approximately 300 feet upstream of New Seward Highway	*120
Chester Creek:	
Just downstream of C Street	*28
Approximately 100 feet upstream of A Street	*35
Just downstream of Seward Highway at the intersection of Gambell and Ingra Streets	*47
Maps are available for review at The Public Works Department, 3500 East Tudor Road, Anchorage, Alaska.	
ARIZONA	
Pinal County (unincorporated areas), (FEMA Docket No. 6862)	
Santa Cruz Wash:	
Approximately 12,800 feet downstream of Montgomery Road	*1,299
Approximately 200 feet downstream of Montgomery Road	*1,324
Approximately 400 feet downstream of Candlestick Drive	*1,344
Approximately 450 feet upstream of Bianco Road	*1,358
Approximately 600 feet downstream of Peters Road	*1,366
Just northwest of the intersection of State Route 84 and Montgomery Road	*1
Just south of the intersection of State Route 84 and Candlestick Drive	*1
North Branch Santa Cruz Wash:	
On the upstream side of Trekell Road	*1,300
Approximately 2,800 feet upstream of Trekell Road	*1,300
Maps are available for review at Pinal County Planning and Development Services, Floodplain Division, Administration Building No. 2, Pinal County Complex, Florence, Arizona.	
KENTUCKY	
Louisa (city), Lawrence County (FEMA Docket No. 6864)	
Big Sandy River:	
At confluence of Town Branch	*575
At confluence of Tug and Levisa Forks	*578
Levisa Fork: Within community	*576
Maps available for inspection at the City Hall Building, 216 North Main Cross Street, Louisa, Kentucky.	
MASSACHUSETTS	
Newton (city), Middlesex County (FEMA Docket No. 6858)	
South Meadow Brook:	
Approximately 130 feet downstream of Needham Street	*111
Approximately 300 feet downstream of Winchester Street	*113
Maps available for inspection at the City Hall, Planning Department, 1000 Commonwealth Avenue, Newton, Massachusetts.	
MISSISSIPPI	
Starkville (city), Oktibbeha County (FEMA Docket No. 6864)	
Springer's Branch:	
At mouth	*299
About 330 feet upstream of East White Drive	*328
Sand Creek:	
Just downstream of confluence of Sand Creek Tributary 1	*279
About 400 feet upstream of West Point Road	*286
Sand Creek Tributary 1:	
At confluence with Sand Creek	*279
About 600 feet upstream of Patrick Road	*284
Sand Creek Tributary 2:	
At confluence with Sand Creek Tributary 1	*281
About 1100 feet downstream of West Point Road	*284
Maps available for inspection at the Building Department, City Hall, Lampkin Street, Starkville, Mississippi.	
NORTH CAROLINA	
Thomasville (city), Davidson County, (FEMA Docket No. 6864)	
Hanks Branch:	
About 2,000 feet downstream of Young Street	*716
Just downstream of State Road 109	*745
Just upstream of State Road 109	*748
Hasty Creek:	
About 300 feet downstream of Hasty Hill Road	*747
About 550 feet downstream of Payne Road	*764
Just downstream of Payne Road	*768
Hunts Fork:	
Just downstream of Ball Park Road	*735
Just downstream of Norfolk Southern Railway	*829
Just upstream of Norfolk Southern Railway	*843
Just upstream of Blair Street	*846
North Hamby Creek:	
About 750 feet downstream of State Road 109	*808
Just downstream of Julian Avenue	*827
Just upstream of Julian Avenue	*833
Just upstream of Mason Way	*854
South Hamby Creek:	
Just downstream of Access Road	*774
Just downstream of washed out dam	*793
Just upstream of washed out dam	*796
About 650 feet upstream of High Point, Thomasville and Denton railroad	*817
Maps available for inspection at the Engineering Office, City Hall, 7 West Guilford, Thomasville, North Carolina.	
PENNSYLVANIA	
Bristol (township), Bucks County (FEMA Docket No. 6862)	
Delaware River:	
At upstream corporate limits	*12
Approximately 0.7 mile downstream of the Delaware Memorial Bridge	*12
Maps available for inspection at the Township Building, 2501 Oxford Valley Road, Levittown, Pennsylvania.	
Eldred (Borough), McKean County (FEMA Docket No. 6839)	
Barden Brook:	
Approximately 50 feet upstream of Bennett Street	*1,448
Approximately 140 feet upstream of corporate limits	*1,457
Maps available for inspection at the Borough Building, Three Bennett Street, P.O. Box 94, Eldred, Pennsylvania.	
TENNESSEE	
Kingsport (city), Sullivan County (FEMA Docket No. 6864)	
Holston River:	
About .31 mile downstream of Inter-plant railroad	*1,172
At confluence of North Fork Holston River & South Fork Holston River	*1,178
North Fork Holston River:	
At mouth	*1,178
About .18 mile upstream of U.S. Route 11W	*1,180
South Fork Holston River:	
At mouth	*1,178
Just downstream of Fort Patrick Henry Dam	*1,210
South Fork Holston River Sluice:	
At confluence with South Fork Holston River	*1,178
About .37 mile upstream of Wilcox Drive	*1,182
Reedy Creek:	
Just downstream of Industry Drive	*1,191
Just upstream of Industry Drive	*1,191
Horse Creek:	
About .15 mile downstream of John B. Dennis Bypass	*1,207
About .66 mile upstream of Ridge Road	*1,217
Kendrick Creek:	
About 300 feet downstream of Interstate 181	*1,448
About 400 feet upstream of Interstate 81	*1,461
Maps available for inspection at the City Hall, Planning Department, 225 West Center Street, Kingsport, Tennessee.	
Knoxville (city), Knox County (FEMA Docket No. 6869)	
Love Creek:	
Just downstream of Millertown Pike	*945
About 1,500 feet upstream of Millertown Pike	*956
Just upstream of Shaffe Mine Road	*964
Maps available for inspection at the Knoxville Department of Engineering, Knoxville, Tennessee.	
TEXAS	
Bedford (city), Tarrant County (FEMA Docket No. 6864)	
East Fork Bedford Creek:	
At the confluence with Bedford Creek	*554
Approximately 550 feet upstream of Bedford Forum Drive	*560
Bedford Creek:	
Approximately 520 feet upstream of State Route 121	*553
Downstream side of Bedford Road	*556
Bedford Creek Tributary 1:	
At the confluence with Bedford Creek	*553
Approximately 640 feet upstream of the confluence with Bedford Creek	*554
Maps available for inspection at the Engineering Department, City Hall, 200 Forest Ridge Drive, Bedford, Texas.	
Haltom City (city), Tarrant County (FEMA Docket No. 6864)	
Big Fossil Creek:	
Approximately 200 feet upstream Haltom Road	*556
Approximately 500 feet downstream of corporate limits	*575
Maps available for inspection at the City Hall, 5024 Broadway Avenue, Haltom City, Texas.	
Mesquite (city), Dallas County (FEMA Docket Nos. 6828, 6864, and 6867)	
South Mesquite Creek:	
From approximately 2,525 feet upstream of Pioneer Road	*423
To approximately 400 feet downstream of New Market Road	*436
Approximately 1,850 feet downstream of Peachtree Road	*458
At Gross Road	*480
At U.S. Route 80	*488
Approximately 600 feet upstream of Gus Thomasson Road (most downstream crossing)	*490
West Fork of South Mesquite Creek:	
At confluence with South Mesquite Creek	*490
Approximately 1,000 feet upstream of confluence	*490
Stream 25B:	
At confluence with South Mesquite Creek	*452
Approximately 200 feet downstream of Interstate 20 & 635	*463
Stream 25C:	
Approximately 500 feet upstream of Baker Drive	*505
Approximately 1,400 feet upstream of Baker Drive	*510
Stream 25T:	
Approximately 450 feet upstream of confluence with South Mesquite Creek	*475
Approximately 100 feet downstream of Emerald Drive	*503
North Mesquite Creek:	
Approximately 950 feet upstream of North Frontage Road	*479
Approximately 400 feet downstream of Town East Boulevard	*504
Maps available for inspection at the City Hall, 711 North Galloway, Mesquite, Texas 75149.	
Rosenberg (city), Fort Bend County (FEMA Docket No. 6867)	
Dry Creek:	
At downstream corporate limits	*86
Approximately 1,580 feet downstream of Airport Road	*86
Seaburne Creek:	
At downstream corporate limits	*88
Approximately .7 mile upstream of downstream corporate limits	*96
Brazos River:	
At downstream corporate limits (extended)	*90
Approximately 1.9 miles upstream of upstream corporate limits (extended)	*92
North Branch Dry Creek:	
At upstream side of Laurel Avenue	*90
Approximately 1,100 feet upstream of Laurel Avenue	*98
Maps available for inspection at the Public Works Department, 2110 Fourth Street, Rosenberg, Texas.	
Victoria County (unincorporated areas) (FEMA Docket No. 6869)	
Whispering Creek:	
Approximately 450 feet downstream of the City of Victoria corporate limits	*112
Approximately 0.70 mile upstream of the City of Victoria corporate limits	*116
Maps available for inspection at the Old Courthouse, Room 102, 101 N. Bridge, Victoria, Texas.	
Victoria (city), Victoria County (FEMA Docket No. 6869)	
Whispering Creek:	
At upstream side of U.S. Route 77	*97
Approximately 1,500 feet upstream of corporate limits	*116
Spring Creek:	
At confluence of North Outfall	*79
Approximately 700 feet downstream of State Route 463	*84
North Outfall At confluence with Spring Creek	*79
Maps available for inspection at the City Hall, 105 West Juan Linn, Victoria, Texas.	
WASHINGTON	
Kennewick (city), Benton County (FEMA Docket No. 6869)	
Dvirl Canyon:	
At the intersection of West 7th Avenue and South Vancouver Street	*442
At the intersection of West 7th Avenue and Tacoma Street	*435
At the intersection of South Iona Street and South Hartford Street	*394
At the intersection of South Everett Street and West 11th Avenue	*390
Approximately 100 feet north of the intersection of West 19th Avenue and Washington Street	*376
Approximately 400 feet northeast of the intersection of West 21st Avenue and Washington Street	*372
Maps are available for review at City Hall, 210 West 6th Avenue, Kennewick, Washington.	

Issued: December 12, 1989.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 89-29671 Filed 12-22-89; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 16

[CGD 88-067]

Programs for Chemical Drug and Alcohol Testing of Commercial Vessel Personnel; Suspension of Implementation Date for Random Testing

AGENCY: Coast Guard, DOT.

ACTION: Final rule; suspension of implementation date.

SUMMARY: This final rule suspends until further notice the implementation date for random drug testing by marine employers. The U.S. District Court for the District of Columbia has enjoined the implementation of the regulations providing for the random testing of all crewmembers until the Coast Guard amends the rules to redraw the categories of covered employees. This action is taken in response to an order of the court.

EFFECTIVE DATE: This rule is effective December 21, 1989.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Thomas Murphy, Project Manager, Marine Investigation Division (G-MMI), Office of Marine Safety, Security and Environmental Protection, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593-0001, (202) 267-2215.

SUPPLEMENTARY INFORMATION: On December 18, 1989, the U.S. District Court for the District of Columbia, in the consolidated cases of *Transportation Institute, et al.*, v. *United States Coast Guard, et al.*, and *District 2, MEBA* v. *Burnley, et. al.*, enjoined the implementation of that portion of the Coast Guard's drug testing rules, which requires marine employers to implement random drug testing commencing December 21, 1989. In the opinion, the U.S. District Court for the District of Columbia has approved the concept of random testing, but stated that the safety nexus of certain categories of covered employees was too attenuated to sustain the random testing requirements under the Fourth Amendment. The Court declined to redraw the categories and enjoined the random testing requirements, noting that the Coast Guard remains free to promulgate new, narrower regulations. Section 16.205 of title 46, Code of Federal Regulations, promulgated on November 21, 1988, 53 FR 47084, requires each employer who employs more than 50 employees required to be tested under part 16 to implement random drug testing under 46 CFR 16.230 not later than December 21, 1989.

This final rule amends 46 CFR 16.205(a) to delay implementation of random drug testing by marine employers until further notice.

This amendment to the drug testing rules is needed immediately to delay the compliance date specified in 46 CFR 16.205(a). Under the implementation schedule published in the **Federal Register** on November 21, 1988, marine employers of 50 or more employees would have been required to begin testing on December 21, 1989. For this reason, the Coast Guard has determined that good cause exists for promulgating this final rule without notice and opportunity for comment and for making this rule effective in less than thirty days after publication.

Regulatory Assessment

This final rule merely suspends until further notice one of the compliance dates in the final rule published on November 21, 1988, and does not change the basic regulatory structure in that rule. The economic impact of this extension is so minimal that further evaluation is not necessary.

Regulatory Flexibility Determination

The amendment in this final rule suspends the compliance date only for employers who have 50 or more employees. The compliance dates for smaller entities are not affected. Therefore, the Coast Guard certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

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Paperwork Reduction Act

This final rule does not amend the recordkeeping and reporting requirements of the final rule published on November 21, 1988.

Environmental Assessment

The Coast Guard has considered the environmental impact of this amendment to the rules promulgated on November 21, 1988, and concluded that, under section 2.B.2.1 of Commandant Instruction M16475.1B, it is categorically excluded from further environmental documentation.

Federalism Implications

In accordance with Executive Order 12612, the Coast Guard has determined that the final rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

List of Subjects in 46 CFR Part 16

Alcohol and alcoholic beverages, Drugs, Marine Safety, Navigation (Water), Seamen.

For the reasons set forth in the preamble, title 46, chapter I, of the Code of Federal Regulations is amended as follows:

PART 16—[AMENDED]

1. The Authority citation for part 16 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 7101, 7301, and 7701; 49 CFR 1.46.

2. Section 16.205 is amended by revising paragraph (a) to read as follows:

§ 16.205 Implementation of chemical testing programs.

(a) Each employer who employs more than 50 employees required to be tested under this part shall implement the pre-employment testing program required in § 16.210 not later than July 21, 1989. All other employer testing programs required by this part, except the random testing program which has been suspended until further notice, shall be implemented not later than December 21, 1989.

* * * * *

Dated: December 20, 1989.

M. J. Schiro,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89-29947 Filed 12-21-89; 11:32 am]

BILLING CODE 4910-14-M

Federal Railroad Administration

49 CFR Part 219

[FRA Docket No. RSOR-6, Notice No. 29]

RIN 2130-AA43

Alcohol/Drug Regulations; Postponement of International Application

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Final rule.

SUMMARY: FRA issues a final rule delaying to January 2, 1992, the application of random drug testing requirements to railroad personnel based outside the United States. This delay in implementation is adopted in order to allow negotiation with foreign governments to continue in an orderly and effective fashion.

EFFECTIVE DATE: This final rule is effective December 26, 1989.

ADDRESSES: Any petition for reconsideration should be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel (RCC-30), FRA, Room 8201, 400 7th Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Grady Cothen, Special Counsel (RCC-4), FRA, Washington, DC 20590 (Telephone: (202) 366-0767).

SUPPLEMENTARY INFORMATION: On November 21, 1988, the Federal Railroad Administration published random drug testing requirements. 53 FR 47102. The random testing rule amended § 219.3 of the existing rule to provide that subpart G of the regulation does not apply to any person for whom compliance with that subpart would violate the domestic laws or policies of that country and to provide that the random testing rule (subpart G) would not apply until January 1, 1990, with respect to certain foreign operations. On May 23, 1989, FRA amended the applicability provisions dealing with operations of foreign railroads (54 FR 22284; May 23, 1989) by extending to January 1, 1991, the date on which Subpart G would become effective with respect to any employee whose place of reporting or point of departure for rail transportation services is located outside the United States. (Operations of foreign carriers have been subject to FRA alcohol/drug regulations other than random testing since implementation in 1986. 49 CFR part 219; 50 FR 31508; Aug. 2, 1985. This applicability is not affected by the action discussed here.)

In providing for certain delays in implementation of modal administration requirements with respect to foreign entities, DOT has indicated that discussions with foreign governments would be held in an attempt to resolve any conflict between transportation industry drug testing rules and foreign government laws or policies.

DOT has been conducting active discussions over the last year with representatives of the Government of Canada, and DOT has held a preliminary meeting with representatives of the European Economic Community. DOT chose to focus attention on discussions with Canada, because the rules of the five modal administrations could affect Canadian businesses. Unfortunately, the discussions with Canada have not yet been completed.

However, DOT has made progress in the discussions with Canada and has found that there are a number of important issues on which the parties can agree. The Department continues to believe that, with additional time, it should be possible to reach an approach to the problem of drugs in the transportation industry that will be mutually acceptable. In order to facilitate this process, FRA is postponing application of the random drug testing requirements to foreign-based personnel until January 2, 1992. This schedule will apply to all such foreign operations, whether or not there have been formal notifications of conflicts with local law or policy. The postponement does not affect testing of U.S.-based employees.

Regulatory Procedures

FRA finds that notice and opportunity for comment are not necessary because the affect of the amendment is to provide additional time for compliance. FRA also finds that providing such notice would be contrary to the public interest because of the need to conduct ongoing international negotiations in an atmosphere of comity and cooperation. FRA finds that there is good cause for making this amendment effective less than 30 days from publication, since its effect is to provide additional time for compliance.

This rule has been evaluated in accordance with existing regulatory policies. It is neither a "major" rule under Executive Order 12291 nor a "significant" rule as defined under DOT policies and procedures. The amendment contained in this final rule does not have any significant paperwork, Federalism or economic impact. To the extent any such impact exists, the amendments will lessen regulatory burdens by increasing the

time available to comply with regulations previously issued. Because the amendments do not have any significant economic impact, FRA has not prepared a regulatory evaluation. It is certified that this final rule will not have a significant economic impact on a substantial number of small entities under the provisions of the Regulatory Flexibility Act (5 U.S.C. 60 *et seq.*).

Therefore, in consideration of the foregoing, part 219, title 49, Code of Federal Regulations is amended as follows:

List of Subjects in 49 CFR Part 219

Railroad safety, Control of alcohol and drug use.

PART 219—[AMENDED]

1. The authority citation for part 219 continues to read as follows:

Authority: 45 U.S.C. 431, 437, and 438, as amended; Pub. L. No. 100-342; and 49 CFR 1.49(m).

2. Section 219.3 is amended by revising paragraph (c) to read as follows:

§ 219.3 Application.

* * * * *

(c)(1) Subpart G of this part shall not apply to any person for whom compliance with that subpart would violate the domestic laws or policies of another country.

(2) Subpart G is not effective until January 2, 1992, with respect to any employee whose place of reporting or point of departure ("home terminal") for rail transportation services is located outside the territory of the United States.

Issued in Washington, DC, on December 19, 1989.

Gilbert E. Carmichael,

Federal Railroad Administrator.

[FR Doc. 89-29814 Filed 12-12-89; 8:45 am]

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Proposed Rules

Federal Register
Vol. 54, No. 246
Tuesday, December 26, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150-AD01

Fracture Toughness Requirements For Protection Against Pressurized Thermal Shock Events

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations for light-water nuclear power plants to change the procedure for calculating the amount of radiation embrittlement that a reactor vessel receives. The pressurized thermal shock rule (PTS rule) establishes a screening criterion. This criterion limits the amount of embrittlement of a reactor vessel beltline material beyond which the plant cannot continue to operate without justification based on a plant-specific analysis. The proposed amendment does not change the screening criterion. The PTS rule also prescribes the procedure that must be used for calculating the amount of embrittlement for comparison to the screening criterion. The proposed amendment would update the procedure and make it consistent with the one given in Regulatory Guide 1.99, Revision 2, published in May 1988.

DATE: Comment period expires March 12, 1990. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Deliver comments to: 11555 Rockville Pike, Rockville, Maryland between 7:30 am and 4:15 pm Federal workdays. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Pryor N. Randall, Division of Engineering, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492-3842.

SUPPLEMENTARY INFORMATION:

Background

Pressurized thermal shock events are system transients in a pressurized water reactor (PWR) that can cause severe overcooling followed by immediate repressurization to a high level. The thermal stresses caused by rapid cooling of the reactor vessel inside surface combine with the pressure stresses to increase the potential for fracture if an initiating flaw is present in low toughness material. This material may exist in the reactor vessel beltline, adjacent to the core, where neutron radiation gradually embrittles the material during plant lifetime. The degree of embrittlement depends on the chemical composition of the steel, especially the copper and nickel contents.

The toughness of reactor vessel materials is characterized by a "reference temperature for nil ductility transition" (RT_{NDT}), which can be defined as follows. For many reactors now in operation, toughness of the beltline materials at room temperature is too low to permit full pressurization of the vessel with adequate safety margins. As temperature is raised, toughness increases slowly at first; but at the temperature defined as RT_{NDT}, toughness begins to increase much more rapidly. The transition in toughness from low values to high that takes place above RT_{NDT} occurs over a temperature interval of about 150 °F. Thus at normal operating temperatures, vessel materials are quite tough. RT_{NDT} is determined by destructive tests of material specimens. Radiation embrittlement moves RT_{NDT} to higher temperatures. Correlations based on test results for unirradiated and irradiated specimens have been developed to calculate the shift in RT_{NDT} as a function of neutron fluence for various material compositions. The value of RT_{NDT} at a given time in a vessel's life is used in fracture mechanics calculations to determine whether assumed pre-existing flaws would propagate as cracks when the vessel is stressed.

The Pressurized Thermal Shock (PTS) rule, 10 CFR 50.61, adopted on July 23, 1985 (50 CFR 29937), establishes a screening criterion. This screening criterion establishes a limiting level of embrittlement beyond which operation cannot continue without further plant-specific evaluation. The screening criterion is given in terms of RT_{NDT}, calculated as a function of the copper and nickel contents of the material and the neutron fluence according to the procedure given in the PTS rule, and called RT_{PTS} to distinguish it from other procedures for calculating RT_{NDT}.

The PTS rule requires each PWR licensee to report the results of the calculations of predicted RT_{PTS} values for each beltline material, (including the copper, nickel and fluence values that provided the basis for the calculations) from the time he submits his report to the expiration date of the operating license (EOL). The PTS rule further provides that if RT_{PTS} for the controlling material is predicted to exceed the screening criterion before EOL, the licensee should submit plans and a schedule for flux reduction programs that are reasonably practicable to avoid reaching the screening criterion. Finally, the PTS rule requires licensees of plants that would reach the screening criterion before EOL despite the flux reduction program to submit a plant-specific safety analysis justifying operation beyond the screening criterion. The licensee must submit the analysis at least 3 years before the plant is predicted to reach that limit. Regulatory Guide 1.154, "Format and Content of Plant-Specific Pressurized Thermal Shock Safety Analysis Reports for Pressurized Water Reactors" provides guidance for the preparation of the report and describes acceptance criteria that the NRC staff would use.

In response to the PTS rule, the licensees of operating reactors have submitted the fluence predictions and material composition data and (with 2 or 3 exceptions) these have now been accepted. Of greater importance are the flux reduction programs that have been undertaken by licensees for those plants having high values of RT_{PTS}.

Need for the Proposed Amendment

The primary purpose of the proposed amendment is to change the procedure for calculating RT_{PTS} to reflect recent findings that embrittlement is occurring faster than predicted by the PTS rule for some reactor vessel materials. Although the PTS rule was adopted on July 23, 1985, the procedure for calculating RT_{PTS} was developed in 1981–1982 and not updated because a number of licensees were using the 1982 formulations as the basis for flux reduction programs. Meanwhile, plant surveillance data were being added to the data base and there were extensive new and more accurate correlations made. These culminated in Revision 2 to Regulatory Guide 1.99, "Radiation Embrittlement of Reactor Vessel Materials," published in May 1988. Revision 2 provides the basis for pressure-temperature limit calculations. Peer review of the new correlations was provided by the public comments on Revision 2.

In the regulatory analysis prepared for Revision 2, and repeated in the regulatory analysis for this proposed amendment, the NRC evaluated the impact of amending the PTS rule to be consistent with the Guide. Copper and nickel contents and fluence values for each PWR reactor vessel were taken from the PTS submittals from licensees. When the values of RT_{PTS} were recalculated using these quantities and the procedure developed for Revision 2, the results were higher for approximately half the vessels, including three vessels where the value may be over 60 °F higher than previously thought. This would increase the probability of PTS-induced vessel failure by a factor of at least 30 for those plants.

The NRC believes these changes in the nonconservative direction are greater than can be absorbed by the uncertainties believed to exist and taken into account by the NRC when the RT_{PTS}-based screening limit was set. (A margin of 48 °F is added in the calculation of RT_{PTS} to cover not only the uncertainty in the formula for embrittlement but also the uncertainties in the copper, nickel, and fluence values entered in the formula.) Based on this new information, the probability of reactor vessel failure by fracture during a PTS event is presently higher in some vessels than the probability based on the procedure for calculating RT_{PTS} which is given in the present PTS rule. Moreover, a few of those reactor vessels will reach the screening criterion in the 1990's. Thus, the current PTS rule needs to be amended.

Explanation of the Proposed New Requirements

The proposed amendment changes the procedure for calculating RT_{PTS} and requires all licensees of operating PWR's to resubmit projected values of RT_{PTS} using the new procedure. If the copper and nickel contents and fluence projections are the same as in the previous submittal, they need only be listed. If there are changes in these projections, justification for the changes must be provided. If a licensee has already submitted the information required by paragraph (b)(1) of this proposed amendment, the licensee may simply reference the earlier submittal.

The proposed amendment modified the requirement for fluence projections in the calculation of RT_{PTS} to take into consideration the potential for a request for change in the expiration date for operation of the facility. This applies to requests to change the end of licensed life from 40 calendar years after the date of the construction permit to 40 years after the date of the operating license. It also applies to requests for license renewal and the need to consider projected values of RT_{PTS} at the end of a renewal term.

An additional change is proposed to be made in paragraph (b)(4) with regard to the schedule for submittal of a safety analysis justifying operation beyond the screening criterion. In the present PTS rule, this analysis must be submitted at least 3 years before reaching the screening criterion or by one year after issuance of Commission guidance and acceptance criteria, whichever is later. Regulatory Guide 1.154, which contains the necessary guidance and criteria was issued in January, 1987. Therefore, this alternative schedule was omitted in the proposed amendment. However, because one or two plants might reach the screening criterion in less than 3 years after publication, when RT_{PTS} is recalculated using the amended rule, the submittal will be required at least three years before reaching the screening criterion or by one year after the effective date of the amended rule, whichever is later. The safety implications of this change in the schedule requirement are considered to be acceptably small, because RT_{PTS} increases very slowly near the screening criterion.

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(3) (ii) and (iii). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed rule.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). This rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

Public reporting burden for this collection of information is estimated to average 254 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Records and Reports Management Branch (P-630), U.S. Nuclear Regulatory Commission, Washington, DC 20555; and to the Paperwork Reduction Project (3150-0011), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The NRC staff has prepared a regulatory analysis for this proposed amendment, which describes the factors and alternatives considered by the Commission in deciding to propose this rule.

The regulatory analysis for the proposed amendment also discusses why the screening criterion is not being changed when the procedures for calculating RT_{PTS} are changed. An anticipated public comment is that because the probabilistic fracture mechanics calculations used in establishing the screening criterion made use of the formula for RT_{PTS} given in the PTS rule, the proposed change in the formula must change the calcuated probabilities and, in turn, change the screening criterion. As shown in the regulatory analysis, failure probabilities at the same RT_{PTS} screening criterion for the most critical accident scenarios in three plants, when recalculated using the new embrittlement estimates, were somewhat lower, but the differences were quite dependent on the plant configuration and the scenario chosen. Because of the apparent plant-to-plant differences, it is better to trigger plant-specific analyses with a "trip wire" that is believed to generically bound all plants. Furthermore, as described in the regulatory analysis, the screening criterion was based on a variety of considerations besides the probabilistic analysis.

A copy of the regulatory analysis is available for inspection and copying for a fee at the NRC Public Document

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

assessment must use the calculative procedures given in paragraph (b)(2) of this section. The assessment must

or forging or for weld samples made with the weld wire heat number that matches the critical vessel weld. If these values are not available, the upper

specifications to which the vessel was built may be used. If not available, conservative estimates (mean plus one standard deviation) based on generic

provided. If there is no information available, 0.35 percent copper and 1.0 percent nickel must be assumed.

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A copy of the regulatory analysis is available for inspection and copying for a fee at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC 20555. Single copies of the analysis may be obtained from Pryor N. Randall, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone, (301) 492–3842.

Regulatory Flexibility Act Certification

As required by the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that this proposed rule does not have a significant economic impact on a substantial number of small entities. This rule specifies minimum fracture toughness properties of irradiated pressure vessel materials to ameliorate the effects of PTS events on nuclear facilities licensed under the provision of 10 CFR 50.21(b) and 10 CFR 50.22. The companies that own these facilities do not fall within the scope of the definition of "small entities" as set forth in the Regulatory Flexibility Act or the Small Business Size Standards in regulations issued by the Small Business Administration at 10 CFR part 121.

Backfit Analysis

The NRC has concluded, on the basis of the documented evaluation required by 10 CFR 50.109(a)(4), that the backfit requirements contained in this proposed amendment are necessary to ensure that the facility provides adequate protection to the public health and safety, and, therefore, that a backfit analysis is not required and the cost-benefit standards of 10 CFR 50.109(a)(3) do not apply. The documented evaluation given in the regulatory analysis includes a statement of the objectives of and reasons for the backfits that would be required by the proposed rule and sets forth the basis for the NRC's conclusion that these backfits are not subject to the cost-benefit standards of 10 CFR 50.109(a)(3).

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Fire prevention, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation of part 50 is revised to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended 1244, 1246, (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955 as amended (42 U.S.C. 2131, 2235), sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Section 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50–81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 50.46(a) and (b), and 50.54(c) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.7(a), 50.10(a)-(c), 50.34(a) and (e), 50.44(a)-(c), 50.46(a) and (b), 50.47(b), 50.48(a), (c), (d), and (e), 50.49(a), 50.54(a), (i), (i)(1), (l)-(n), (p), (q), (t), (v), and (y), 50.55(f), 50.55a(a), (c)-(e), (g), and (h), 50.59(c), 50.60(a), 50.62(c), 50.64(b), and 50.80(a) and (b) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201 (i)); and §§ 50.49(d), (h), and (j), 50.54(w),(x),(bb),(cc), and (dd), 50.55(e), 50.59(b), 50.61(b), 50.62(d), 50.70(a), 50.71(a)-(c) and (e), 50.72(a), 50.73(a) and (b), 50.74, 50.78, and 50.90 are issued under sec. 161(o), 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 50.61, paragraph (b) is revised to read as follows:

§ 50.61 Fracture toughness requirements for protection against pressurized thermal shock events.

* * * * *

(b) *Requirements.* (1) For each pressurized water nuclear power reactor for which an operating license has been issued, the licensee shall submit projected values of RT_{PTS} for reactor vessel beltline materials by giving values for the time of submittal, the expiration date of the operating license, the projected expiration date if a change in the operating license has been requested, and the projected expiration date of a renewal term if a request for license renewal has been submitted. The assessment must use the calculative procedures given in paragraph (b)(2) of this section. The assessment must specify the bases for the projection, including the assumptions regarding core loading patterns. The submittal must list the copper and nickel contents, and the fluence values used in the calculation for each beltline material. If these quantities differ from those submitted in response to the original PTS rule and accepted by the NRC, justification must be provided. This assessment must be submitted by (6 months after the effective date of this section), and must be updated whenever there is a significant change in projected values of RT_{PTS}, or upon a request for a change in the expiration date for operation of the facility.

(2) The pressurized thermal shock (PTS) screening criterion is 270 °F for plates, forgings, and axial weld materials, or 300 °F for circumferential weld materials. For the purpose of comparison with this criterion, the value of RT_{PTS} for the reactor vessel must be calculated as follows. The calculation must be made for each weld and plate, or forging, in the reactor vessel beltline.

Equation 1: $RT_{PTS} = I + M + \Delta RT_{PTS}$

(i) "I" means the initial reference temperature (RT_{NDT}) of the unirradiated material measured as defined in the ASME Code, Paragraph NB–2331. Measured values must be used if available; if not, the following generic mean values must be used: 0 °F for welds made with Linde 80 flux, and −56 °F for welds made with Linde 0091, 1092 and 124 and ARCOS B–5 weld fluxes.

(ii) "M" means the margin to be added to cover uncertainties in the values of initial RT_{NDT}, copper and nickel contents, fluence and the calculational procedures. In Equation 1, M is 66 °F for welds and 48 °F for base metal if generic values of I are used, and M is 56 °F for welds and 34 °F for base metal if measured values of I are used.

(iii) ΔRT_{PTS} is the mean value of the adjustment in reference temperature caused by irradiation and should be calculated as follows:

Equation 2: $\Delta RT_{PTS} = (CF)f^{(0.28-0.10\log f)}$

(iv) CF (°F) is the chemistry factor, a function of copper and nickel content. CF is given in Table 1 for welds and in Table 2 for base metal (plates and forgings). Linear interpolation is permitted. In Tables 1 and 2 "Wt-percent copper" and "Wt-percent nickel" are the best-estimate values for the material, which will normally be the mean of the measured values for a plate or forging or for weld samples made with the weld wire heat number that matches the critical vessel weld. If these values are not available, the upper limiting values given in the material specifications to which the vessel was built may be used. If not available, conservative estimates (mean plus one standard deviation) based on generic data may be used if justification is provided. If there is no information available, 0.35 percent copper and 1.0 percent nickel must be assumed.

TABLE 1.—CHEMISTRY FACTOR FOR WELDS, °F

Copper, Wt-percent	Nickel, Wt-percent						
	0	0.20	0.40	0.60	0.80	1.00	1.20
0	20	20	20	20	20	20	20
0.01	20	20	20	20	20	20	20
0.02	21	26	27	27	27	27	27
0.03	22	35	41	41	41	41	41
0.04	24	43	54	54	54	54	54
0.05	26	49	67	68	68	68	68
0.06	29	52	77	82	82	82	82
0.07	32	55	85	95	95	95	95
0.08	36	58	90	105	108	108	108
0.09	40	61	94	115	122	122	122
0.10	44	65	97	122	133	135	135
0.11	48	68	101	130	144	148	148
0.12	52	72	103	135	153	161	161
0.13	56	76	106	139	162	172	176
0.14	61	79	109	142	168	182	188
0.15	66	84	112	146	175	191	200
0.16	70	88	115	149	178	199	211
0.17	75	92	119	151	184	207	221
0.18	79	95	122	154	187	214	230
0.19	83	100	126	157	191	220	238
0.20	88	104	129	160	194	229	245
0.21	92	108	133	164	197	229	252
0.22	97	112	137	167	200	232	257
0.23	101	117	140	169	203	236	263
0.24	105	121	144	173	206	239	268
0.25	110	126	148	176	209	243	272
0.26	113	130	151	180	212	246	276
0.27	119	134	155	184	216	249	280
0.28	122	138	160	187	218	251	284
0.29	126	142	164	191	222	254	287
0.30	131	146	167	194	225	257	290
0.31	136	151	172	196	228	260	293
0.32	140	155	175	202	231	263	296
0.33	144	160	180	205	234	266	299
0.34	149	164	184	209	238	269	302
0.35	153	168	187	212	241	272	305
0.36	158	172	191	216	245	275	308
0.37	162	177	196	220	248	278	311
0.38	166	182	200	223	250	281	314
0.39	171	186	203	227	254	285	317
0.40	175	189	207	231	257	288	320

TABLE 2.—CHEMISTRY FACTOR FOR BASE METAL, °F

Copper, Wt-percent	Nickel, Wt-percent						
	0	0.20	0.40	0.60	0.80	1.00	1.20
0	20	20	20	20	20	20	20
0.01	20	20	20	20	20	20	20
0.02	20	20	20	20	20	20	20
0.03	20	20	20	20	20	20	20
0.04	22	26	26	26	26	26	26
0.05	25	31	31	31	31	31	31
0.06	28	37	37	37	37	37	37
0.07	31	43	44	44	44	44	44
0.08	34	46	51	51	51	51	51
0.09	37	53	58	58	58	58	58
0.10	41	58	65	65	67	67	67
0.11	45	62	72	74	77	77	77
0.12	49	67	79	83	86	86	86
0.13	53	71	85	91	96	96	98
0.14	57	75	91	100	105	106	108
0.15	61	80	99	110	115	117	117
0.16	65	84	104	118	123	125	125
0.17	69	88	110	127	132	135	135
0.18	73	92	115	134	141	144	144
0.19	78	97	120	142	150	154	154

TABLE 2.—CHEMISTRY FACTOR FOR BASE METAL, 'F—Continued

Copper, Wt-percent	Nickel, Wt-percent						
	0	0.20	0.40	0.60	0.80	1.00	1.20
0.20	82	102	125	149	156	164	165
0.21	86	107	129	155	167	172	174
0.22	41	112	134	161	176	181	184
0.23	95	117	138	167	184	190	194
0.24	100	121	143	172	191	198	204
0.25	104	126	148	176	199	208	214
0.26	109	130	151	180	205	216	221
0.27	114	134	155	184	211	225	230
0.28	119	138	160	187	216	233	239
0.29	124	142	164	191	221	241	248
0.30	129	146	167	194	225	249	257
0.31	134	151	172	198	228	255	266
0.32	139	155	175	202	231	260	274
0.33	144	160	180	205	234	264	282
0.34	149	164	184	209	238	268	290
0.35	153	168	187	212	241	272	298
0.36	158	173	191	216	245	275	303
0.37	162	177	196	220	248	278	308
0.38	166	182	200	223	250	281	313
0.39	171	185	203	227	254	285	317
0.40	175	189	207	231	257	288	320

(v) "f" means the best estimate neutron fluence, in units of 10^{19} n/cm² (E greater than 1 MeV), at the clad-base-metal interface on the inside surface of the vessel at the location where the material in question receives the highest fluence for the period of service in question.

(3) For each pressurized water nuclear power reactor for which the value of RT_{PTS} for any material in the beltline is projected to exceed the PTS screening criterion before the expiration date of the operating license, or the projected expiration date if a change in the license has been requested, or the end of a renewal term if a request for license renewal has been submitted, the licensee shall submit by (9 months after the effective date of this section) an analysis and schedule for implementation of such flux reduction programs as are reasonably practicable to avoid exceeding the PTS screening criterion set forth in paragraph (b)(2) of this section. The schedule for implementation of flux reduction measures may take into account the schedule for submittal and anticipated Commission approval of detailed plant-specific analyses, submitted to demonstrate acceptable risk at values of RT_{PTS} above the screening limit due to plant modifications, new information or new analysis techniques.

(4) For each pressurized water nuclear power reactor for which the analysis required by paragraph (b)(3) of this section indicates that no reasonably practicable flux reduction program will prevent the value of RT_{PTS} from exceeding the PTS screening criterion before the expiration date of the operating license, or the projected expiration date if a change in the operating license has been requested, or the end of a renewal term if a request for license renewal has been submitted, the licensee shall submit a safety analysis to determine what, if any, modifications to equipment, systems, and operation are necessary to prevent potential failure of the reactor vessel as a result of postulated PTS events if continued operation beyond the screening criterion is allowed. In the analysis, the licensee may determine reactor vessel materials properties based on available information, research results, and plant surveillance data, and may use probabilistic fracture mechanics techniques. This analysis must be submitted at least 3 years before the value of RT_{PTS} as defined in paragraph (b)(2) of this section is projected to exceed the PTS screening criterion or by one year after the effective date of this amendment, whichever is later.

(5) After consideration of the licensee's analyses (including effects of proposed corrective actions, if any) submitted in accordance with paragraphs (b)(3) and (b)(4) of this section, the Commission may, on a case-by-case basis, approve operation of the facility at values of RT_{PTS} in excess of the PTS screening criterion. The Commission will consider factors significantly affecting the potential for failure of the reactor vessel in reaching a decision.

(6) If the Commission concludes, pursuant to paragraph (b)(5) of this section, that operation of the facility at values of RT_{PTS} in excess of the PTS screening criterion cannot be approved on the basis of the licensee's analyses submitted in accordance with paragraphs (b)(3) and (b)(4) of this section, the licensee shall request and receive Commission approval prior to any operation beyond the criterion. The request must be based upon modifications to equipment, systems, and operation of the facility in addition to those previously proposed in the submitted analyses that would reduce the potential for failure of the reactor vessel due to PTS events, or upon further analyses based upon new information or improved methodology.

Dated at Rockville, MD this 12th day of December, 1989.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 89-29869 Filed 12-22-89; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Summary Notice No. PR-89-12]

Petition for Rulemaking—Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: February 26, 1990.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on December 18, 1989.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Docket No.: 26005

Petitioner: Air Transport Association of America (ATA).

Regulations Affected: 14 CFR 91.75.

Description of Petition: The ATA, on behalf of its member airlines and other similarly situated air carriers, petitions for an amendment to section 91.75(a) of the FAR to permit a pilot deviation from an ATC clearance in response to a traffic alert and collision avoidance system (TCAS) resolution advisory.

Petitioner's Reason for the Request: The petitioner believes that absent such relief, apprehension of the consequences of a violation action will possibly cause the flight crew to delay response or to not respond to a resolution advisory, thus defeating the intended purpose of implementing TCAS.

Docket No.: 26048

Petitioner: National Test Pilot School (NTPS).

Regulations Affected: 14 CFR 21.191.

Description of Petition: The petitioner requests a rulemaking to establish a new experimental purpose which would allow the NTPS to train test pilots and flight test engineer students in ex-military and experimental type aircraft owned, operated or leased by NTPS for use in the NTPS flight test training curriculum.

Petitioner's Reason for the Request: The petitioner believes that the ability to use ex-military and experimental aircraft in their flight test training program will greatly enhance the knowledge and expertise of the graduate test pilots and flight test engineers of the NTPS such that their training can then be comparable to that of the military and foreign test pilot schools which use military and civilian aircraft in their curriculum.

Docket No.: 26044

Petitioner: Aviation Safety Institute (John B. Galipault and Harry A. Langdon).

Regulations Affected: 14 CFR 121.545.

Description of Petition: The petitioner proposes to amend Section 121.545, Manipulation of Controls, to specify the conditions under which a second in command pilot may perform takeoffs and landings under operations in this part. These stipulations include total flight time in the type of aircraft, weather and runway conditions in order to perform takeoffs and landings, and mechanical condition of the aircraft.

[FR Doc. 89-29864 Filed 12-22-89; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

23 CFR Part 658

[FHWA Docket Nos. 87-5 and 89-12]

RIN 2125-AC30

Truck Length and Width Exclusive Devices

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Public comment is requested on what criteria and procedures the Secretary should use to determine if safety or efficiency enhancing devices are to be excluded under sections 411(h) and 416(b) of the Surface Transportation Assistance Act of 1982 (STAA) (Pub. L. 97-424, 96 Stat. 2097) as amended, when measuring the length and width of vehicles for compliance with federally mandated dimensions. The present system does not provide any way for innovators or the States to receive prompt and authoritative guidance about the status of new devices. Therefore, a new approach is proposed.

DATE: Comments on this docket must be received on or before March 26, 1990.

ADDRESS: Submit written, signed comments, to FHWA Docket No. 89-12, Federal Highway Administration, Room 4232, HCC-10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Commenters may, in addition to submitting "hard copies" of their comments, submit a floppy disk (either 1.2Mb or 360Kb density) in a format that is compatible with word processing programs Word Perfect or WordStar. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Max Pieper, Office of Motor Carrier Information Management and Analysis (202-366-4029) or Mr. Charles Medalen, Office of the Chief Counsel (202-366-1354), Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION:

Width Provisions

and the State must continue to allow the use of semitrailers up to this length on the NN.

vehicle width limit of 102 inches to extend to its approximate metric equivalent of 2.6 meters (102.36 inches).

TABLE 1.—SUMMARY OF COMMENTS ON MAR. 13, 1987 NOTICE OF INTERPRETATION FHWA DOCKET NO. 87-5

		Number of

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SUPPLEMENTARY INFORMATION:

Width Provisions

The Federal-Aid Highway Act of 1956 (Pub. L. 84-627, 70 Stat. 374) limited vehicle width to a maximum of 96 inches on Interstate highways and allowed devices to extend beyond this width only if they were allowed by State law or regulation in effect on July 1, 1956. The Federal-Aid Highway Act of 1978 (Pub. L. 94-280, 90 Stat. 425) increased the maximum width to 102 inches for buses on Interstate highways with 12-foot wide lanes.

A June 28, 1979 Notice of Interpretation (NOI) published in the Federal Register at 44 FR 37710 adopted the American Association of State Highway and Transportation Officials' (AASHTO) definition of vehicle width as "the total outside transverse dimension of a vehicle including any load or load-holding devices thereon, but excluding safety devices and tire bulge due to load." In addition to load-induced tire bulge, the only approved safety devices permitted to exceed 96 inches in width were rearview mirrors, turn signal lamps, and hand-holds for cab entry/egress.

In a Notice of Interpretation (NOI) published in the Federal Register at 46 FR 32 on January 2, 1981, the FHWA held that States could exclude additional safety devices from the 96-inch vehicle width limit, provided the overall width did not exceed 102 inches, i.e., the safety devices could extend 3 inches on either side of the vehicle.

The STAA, as amended, extended the 102-inch width to all commercial vehicles, including buses, on the National Network (NN), which consists of the Interstate System and other Federal-aid primary highways designated in 23 CFR part 658, Appendix A. Hawaii was allowed to keep its 108-inch maximum vehicle width limit.

Length Provisions

In addition to this width limit, the STAA established length limits for semitrailers and trailers. The minimum length limit for a semitrailer in a truck tractor-semitrailer combination is 48 feet unless a longer semitrailer was in use in a State on December 1, 1982. In this case, the longer length is grandfathered and the State must continue to allow the use of semitrailers up to this length on the NN.

The length limit established for each semitrailer or trailer in a double or twin-trailer combination is 28 feet (28½ feet for existing semitrailers or trailers which were actually and lawfully operating in a State on December 1, 1982 within a 65-foot overall length limit). Neither the tractor semitrailer nor the tractor twin-trailer combination is subject to overall length limits on the NN.

Pursuant to its authority under section 411(d) of the STAA, the FHWA designated automobile and boat transporters "specialized equipment" and established minimum overall length limits for their operation on the NN. The limits are a 65-foot minimum overall length (75-foot if stinger-steered), plus cargo overhangs of 3 feet to the front and 4 feet to the rear.

There are no Federal laws or regulations regarding the length of buses or straight trucks. Any length limitations on such vehicles are set by the individual States.

The STAA also gave the Secretary of Transportation authority to determine what safety and energy conservation devices, necessary for safe and efficient operation of commercial motor vehicles, would be excluded when measuring vehicle length (section 411(h)) (49 U.S.C. App. 2311(h)) and what safety devices necessary for the safe and efficient operation of motor vehicles would be excluded when measuring vehicle width (section 416(b)) (49 U.S.C. App. 2316(b)). Section 411(h) also provided that no device excluded from length measurement by the Secretary could have, by design or use, the capability to carry cargo.

Current Regulations and Interpretations

A final rule implementing sections 411(h) and 416(b), among other provisions, was published in the Federal Register at 49 FR 23302 on June 5, 1984 and codified at 23 CFR part 658. It reiterated the policy of permitting States to exclude from vehicle width measurements those safety devices that do not extend more than 3 inches from either side. It also provided that farm tractors and similar equipment are exempt from Federal width limitations on the NN, leaving regulation to the individual States, and permitted the vehicle width limit of 102 inches to extend to its approximate metric equivalent of 2.6 meters (102.36 inches). In addition, this rule defined length exclusive devices as all noncargo carrying appurtenances at the front or rear of a commercial motor vehicle semitrailer or trailer whose function is related to the safe and efficient operation of the semitrailer or trailer.

Another NOI, concerning length exclusive devices, was published in the Federal Register at 51 FR 1367 on January 13, 1986. It specifically excluded 6- and 8-inch front locking devices (bolsters) and a 12-inch (in the "up" position) rear lift tailgate from length measurements. The NOI declined to exclude a 7-foot front trailer frame extension from length measurements on grounds that it was load bearing but reiterated that this did not necessarily preclude its use because it could be recognized as a length exclusive device by the States.

The latest NOI, published in the Federal Register at 52 FR 7834 on March 13, 1987 held that lift gates (not over 24 inches from the rear of the trailer in the "up" position), B-train assemblies and about 35 other devices qualified as length or width exclusive devices as defined in 23 CFR 658.5(e) and (g). It also provided that the width of a trailer be measured across the sidemost load carrying structures, support members, and structural fasteners and that the length of a semitrailer be measured from the front vertical plane of the foremost transverse load carrying structure to the rear vertical plane of the rearmost transverse load carrying structure.

The March 13, 1987, NOI also opened a docket (Docket No. 87-5) to which the public could submit technical comments on the interpretations. In case of inaccuracies, the interpretations would be modified. A total of 54 responses were received, from 29 carriers, 10 shippers, 4 States and the District of Columbia, 2 trailer manufacturers, 2 associations (American Trucking Associations—ATA, and Truck Trailer Manufacturers Association—TTMA), 2 State legislators, a truck manufacturer, a port authority, a law firm, and an individual. Table 1 summarizes the comments received, the number and type of commenters, and the FHWA response.

TABLE 1.—SUMMARY OF COMMENTS ON MAR. 13, 1987 NOTICE OF INTERPRETATION FHWA DOCKET NO. 87-5

Comments	Type of commenters	Number of comments	Response
1. Indicated that there was a discrepancy between this NOI and a notice of proposed rulemaking (NPRM) published on February 26, 1987 in FHWA Docket No. MC-127 (52 FR 5892) in regard to how trailers were to be measured and favored the provisions in the NPRM.	Carriers Shippers Law Firm Individual	25 8 1 1	There was no discrepancy because the NPRM concerned the appropriate location of placards and other safety equipment and not vehicle length or width limits.
2. Non-structural rub rails and structural fasteners not to exeed ¾ inches should be exempt from width measurements.	Carriers Shippers Truck Manufacturer Law Firm	27 8 1 1	Non-structural components will be covered in the proposed new approach, but structural components will not be exempted.
3. Non-structural protrusions should be exempt from length measurements	Carriers Shippers Association Legislators	24 8 1 2	This will be covered in the proposed new approach.
4. Manufacturing deviations up to ¾ inches should be exempt from width measurements	Carriers Shippers	27 7	If applied to a structural component, it would increase the width beyond the legal limit.
5. Special reinforcement at rear and side door and kingpin locations should be exempt from length and width measurements.	Carriers Shippers	25 9	Reinforcements are structural and therefore are included in length or width measurements.
6. There should be a grandfather clause to exempt devices on trailers manufactured between 1983 and 1987.	Carriers Shippers Legislators Law Firm	21 6 2 1	This is being considered in this rulemaking.
7. Trailer side-wall bulge due to bulk products should be exempt	Carriers Shippers Trlr. Manufacturer Association	22 6 1 1	Addressed in proposal.
8. Automobile transporter load carrying devices should be exempt when also used as tiedowns.	Carriers	3	No consideration is being given to exempting load carrying devices.
9. Trailers should be measured from load-bearing-wall to load-bearing-wall	Individual	1	How to measure trailers is being considered in this rulemaking.
10. Manufacturing deviations up to ½ inches should be exempt from length measurements	Trailer Manufacturer	1	If applied to a structural component, it would increase the length of the vehicle beyond the legal limit.
11. Steps should be exempt from length measurements	Truck Manufacturer	1	Addressed in proposal.
12. One half inch in overall width should be exempt when measuring trailer width from a point on one side to a point directly across on the opposite side.	Trailer Manufacturer	1	This would increase the width of the vehicle beyond the legal limit.
13. The present exemption, "wall variations from true flat," should be explained	Carrier State	1 1	Addressed in proposal.
14. Questioned the safety of a 5-foot rear aerodynamic device	State	1	No safety problems have been reported.
15. Objected to allowing devices to extend up to 3 inches from the sides of vehicles	State	1	The STAA authorized the Secretary to exclude devices necessary for the safe and efficient operation of motor vehicles from width measurements.
16. Exempt safety devices on sides of trailers should be of hinged or breakaway design	State	1	Devices must be sufficiently sturdy for their intended use.
17. One commenter asked if there was a conflict between the existing 12- and 24-inch lift tailgate.	Port Authority	1	There is no conflict. Lift tailgates may extend up to 24 inches from the rear of the vehicle.
18. One commenter recommended that front couplers for road-and-rail semitrailers not be allowed to exceed the swing radius of the trailer.	Association	1	They may not extend beyond the swing radius of the trailer under the existing interpretation.

Issue

If nothing else, the above table illuminates the problems of enforcement and identifying devices that should be excluded from measurements of vehicle length or width. Contributing to these problems are the vagueness of statutory guidelines and the ingenuity of vehicle innovators seeking to utilize new devices to improve safety or productivity of vehicles covered by the STAA. As a result, the process for determining which devices qualify as length or width exclusive has become a burden both to the industry and the FHWA.

FHWA's interpretations have described devices excluded from length and width measurements in both generic and specific terms. Examples of generic descriptions are aerodynamic devices and electrical connectors. Examples of specific descriptions are resilient bumper blocks, lift gates, handholds,

pintle hooks, ladders, steps, stake pockets, etc. This illustrates the difficulty of trying to make a

presents some risk to highway safety. The proposed approach acknowledges this fact. Further it will neither render

vehicle safety. Are there any other categories that would be useful for determining whether a device should be

significant regulation under the regulatory policies and procedures of the Department of Transportation. This

carryforwards, are limited. In the Rules and Regulations portion of this issue of the Federal Register, the Internal

Special Analyses

It has been determined that these proposed regulations are not major rules

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pintle hooks, ladders, steps, stake pockets, etc. This illustrates the difficulty of trying to make a comprehensive list of devices that are included or excluded in the measurement of a vehicle's length or width. Generic descriptions are not inclusive enough and specific descriptions are too exclusive. Thus, even though four rulemakings and notices of interpretations have identified some 55 devices as length or width exclusive to date, consideration of others is pending with more, no doubt, to follow.

FHWA believes that a simpler approach is needed for administering the STAA provisions allowing certain devices to be excluded when a vehicle is measured for compliance with Federal length and width limits. An approach that reduces the number and the complexity of the decisions should help vehicle manufacturers, carriers, and State enforcement officials.

Proposed Resolution

To address this issue, the FHWA is considering an approach that would exclude from length and width measurement all devices that extend no more than 3 inches beyond the structural components of the vehicle. For semitrailers and trailers, the components to be included in length or width measurements are the structural elements of the floor, walls or top, including stiffeners and fasteners and all load-carrying elements.

For other commercial motor vehicles, the components to be included in the width measurement are less easy to specify. That is particularly true of truck tractors (including the power units of automobile and boat transporters) but also applies to buses and straight trucks. Many of the basic components of a tractor (cab, fenders, bumpers, wind deflectors, mud flaps) vary significantly in shape, placement and size depending on the manufacturer and type of vehicle. One possibility is to define the components to be included in the width measurement as those not specifically excluded by law, regulation, or notice published in the Federal Register. FHWA would prefer a definition closer to common usage or industry standards. We encourage the States and industry to suggest a simple, workable method to measure the width of tractors, straight trucks and buses.

Existing policy assumes that it is necessary to review devices that extend vehicle length and width to ensure highway safety. However, any device extending beyond the 102-inch width or vehicle length dimensions, whether for purposes of safety or efficiency, presents some risk to highway safety. The proposed approach acknowledges this fact. Further it will neither render vehicles less safe nor stifle innovation. Also, it will provide for more uniform interpretation by the States and industry of devices to be included or excluded from length or width measurements.

Previous regulations that excluded from width measurements devices not extending more than 3 inches from the side of a vehicle would be superseded by this proposal. Such regulations would, therefore, be without further force or effect.

We are considering whether a limit should be imposed on devices which, under 23 CFR 658.5(g), may extend more than 3 inches from each side of a vehicle (i.e., rearview mirrors, turn signal lamps, handholds for cab entry and egress, and splash and spray suppressant devices), and if so, what the limit for each device should be.

Referring to table 1, comment numbers 2 [in part), 4, 5, 10, and 12 concern exemptions for minor structural features or tolerances for manufacturing deviations. Comment number 8 concerns load carrying components. Under the proposed approach these structural features or tolerances would not be considered length or width exclusive.

Comment numbers 2 (in part), 3, and 11 concern nonstructural components and, therefore, would be considered length or width exclusive under the proposed approach if they do not extend beyond 3 inches.

Comment numbers 6, 7, and 9 are being addressed in this rulemaking. Responses to the remaining comments are adequately covered in table 1.

Request for Comments

The FHWA solicits comments from all interested persons on this proposal. Specific comments are sought in regard to the following:

1. What are the safety and enforcement implications of (1) requiring that certain categories of vehicle components be included in a length or width measurement; and (2) allowing a blanket exclusion for other devices extending no more than 3 inches beyond the outer dimensions of the components that must be included in length and width measurements?

2. What other alternatives are there for simplifying the present process for determining which devices should be included or excluded when measuring the length or width of a vehicle?

3. The following are possible categories for components of trailers: (1) Structural (needed to support or convey the load), (2) load protection, (3) protection of trailer components, and (4) vehicle safety. Are there any other categories that would be useful for determining whether a device should be included or excluded from a length or width measurement?

4. How would the proposed approach or an approach offered in response to question number 2 impact:

Vehicle manufacturers?
Motor carriers?
Shippers?
Highway operations?

5. Under existing Federal regulations, States must exempt specified devices from the measurement of vehicle length and width. They may exempt safety devices that do not extend more than 3 inches from the side of a vehicle. Does the problem of determining what new devices should be exempted from length and width measurements warrant further preemption of State authority by requiring them to allow a blanket 3-inch exemption?

6. Current regulations provide that the length of a semitrailer and a full trailer is to be measured from the front vertical plane of the foremost transverse load carrying structure to the rear vertical plane of the rearmost transverse load carrying structure. Current regulations also provide that the width of a trailer is measured across the sidemost load carrying structures, support members, and structural fasteners. Should these regulations be clarified and if so, how?

7. There are no regulations on how buses or other commercial vehicles are to be measured. Are they needed? If so, how should they read?

8. Should there be a limit on how far a width exclusive device may extend, if more than 3 inches, from the side of a vehicle (i.e., rearview mirrors, turn signal lamps, hand-holds for cab entry and egress, and splash and spray suppressant devices)? If so, what should the limit be?

9. Are there any devices on trailers manufactured between 1983 and 1987 that would be eliminated by the proposed regulations? If so, what are they? Should they be grandfathered? What should the grandfather date be?

Comments on this advance notice of proposed rulemaking will be available for public inspection both before and after the closing date at the above address. All comments received during the comment period will be considered before further rulemaking action is undertaken.

Regulatory Impact

The FHWA has determined that this document contains neither a major rule under Executive Order 12291 nor a significant regulation under the regulatory policies and procedures of the Department of Transportation. This determination will be reevaluated and a draft regulatory evaluation will be prepared if necessary, based upon the data received in response to this notice.

Based upon the information available to FHWA at this time the action taken in this rulemaking will not have a significant economic impact on a substantial number of small entities.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program).

(Secs. 411 and 416 of Pub. L. 97-424, 96 Stat. 2097, 2150; 23 U.S.C. 315; 49 CFR 1.48)

List of Subjects in 23 CFR Part 658

Grant programs-transportation, Highways and roads, Motor carrier—size and weight.

Issued on: December 15, 1989.

T. D. Larson,
Administrator.

[FR Doc. 89-29913 Filed 12-22-89; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[CC:CO-10-89]

RIN 1545-AH76

Limitations on Corporate Net Operating Loss Carryforwards

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: Temporary regulations at §§ 1.382-1T and 1.382-2T were published in the Federal Register on August 11, 1987, 52 FR 29663, to provide guidance regarding what constitutes an "ownership change" under section 382, after which certain corporate attributes, such as net operating loss carryforwards, are limited. In the Rules and Regulations portion of this issue of the Federal Register, the Internal Revenue Service is amending the temporary regulations under section 382 of the Internal Revenue Code (Code) to grant the Service authority to issue revenue rulings (or other guidance in the Internal Revenue Bulletin) to provide additional exceptions under § 1.382-2T(h)(4)(x) to the operation of the option attribution rules at § 1.382-2T(h)(4)(i) to loss corporations. This amendment of the regulations will give the Treasury Department greater flexibility in providing additional exceptions to the attribution rules of § 1.382-2T(h)(4)(i), as circumstances justifying those exceptions are identified. The text of the temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: Written comments and requests for a public hearing must be mailed by February 26, 1990. The regulations are proposed to be effective on the date the final regulations are published in the Federal Register.

ADDRESS: Send comments or requests for a public hearing to: Internal Revenue Service, Attention: CC:CORP:T:R [CO-10-89], Room 4429, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Keith E. Stanley of the Office of Assistant Chief Counsel (Corporate), Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:CORP:1) or telephone 202-566-3367 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The Rules and Regulations portion of this issue of the Federal Register contains temporary regulations that amend the temporary regulations at § 1.382-2T by adding a new paragraph (h)(4)(x)(Z). The final regulations which are proposed to be based on the temporary regulations would be added to part 1 of Title 26 of the Code of Federal Regulations. As proposed, the final regulations would grant the Service the authority to designate in the Internal Revenue Bulletin additional options that would be excepted from the option attribution rules of § 1.382-2T(h)(4)(i).

For the text of the temporary regulations, see T.D. [8277] published in the Rules and Regulations portion of this issue of the Federal Register. The preamble to the temporary regulations explains the amended regulations.

Special Analyses

It has been determined that these proposed regulations are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be held upon written request by any person who has submitted written comments. If a public hearing is held, notice of time and place will be published in the Federal Register.

Drafting Information

The principal author of these regulations is Keith E. Stanley, Office of the Assistant Chief Counsel (Corporate), Internal Revenue Service. However, other personnel from the Service and Treasury Department participated in their development.

Fred T. Goldberg, Jr.,
Commissioner of Internal Revenue.

[FR Doc. 89-29794 Filed 12-22-89; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

Illinois Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; Public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: On September 6, 1989, the State of Illinois submitted to OSM a

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proposed amendment to its Abandoned Mine Land Reclamation Plan (hereinafter referred to as the Illinois AMLR plan). The proposed amendment allows the Illinois Abandoned Mined Lands Reclamation Council (the Council) to perform non-coal reclamation within prescribed limitations.

This notice sets forth the times and locations that the Illinois AMLR plan and the proposed amendment will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding a public hearing, if one is requested.

DATES: Written comments must be received by 4:00 p.m. on January 25, 1990. If requested, a public hearing on the proposed amendment will be held on January 22, 1990. Requests to present testimony at a hearing must be received on or before 4:00 p.m. on January 10, 1990.

ADDRESSES: Written comments should be mailed or hand delivered to: Mr. James F. Fulton, Director, OSM Springfield Field Office, at the address listed below.

Copies of the Illinois AMLR plan, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendment by contacting OSM's Springfield Field Office.

Office of Surface Mining Reclamation and Enforcement, Springfield Field Office, 600 E. Monroe, Room 20, Springfield, IL 62701, Telephone: (217) 492–4495

Illinois Abandoned Mined Lands Reclamation Council, 928 S. Spring, Springfield, IL 62704, Telephone: (217) 782–0588.

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Director, Springfield Field Office, (217) 492–4495.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior approved the Illinois AMLR plan effective June 1, 1982. Information pertinent to the general background of the Illinois AMLR plan submission, as well as the Secretary's findings and the disposition of comments can be found in the June 1, 1982, **Federal Register** (47 FR 23883 *et seq.*). A subsequent program amendment approved on June 11, 1984 can be found in the June 11, 1984, **Federal Register** (49 FR 24021 *et seq.*).

Information concerning the previously approved plan and the proposed amendments may be obtained from the agency offices listed under **"ADDRESSES."**

The Secretary has adopted regulations that specify the content requirements of a State reclamation plan and the criteria for plan approval (30 CFR part 884). The regulations provide that a State may submit to OSM proposed amendments or revisions to an approved reclamation plan. If the amendments or revisions change the scope or major policies followed by the State in the conduct of its reclamation program, the Deputy Director must follow the procedures set out in 30 CFR 884.14 in approving or disapproving an amendment or revision.

II. Discussion of Proposed Amendment

By letter dated September 6, 1989, the State of Illinois submitted an amendment to its AMLR plan. The proposed amendment consists of the addition of section 2.11 to the Abandoned Mined Lands and Water Reclamation Act (Ill. Rev. Stat. 1987, Ch. 96 1/2, par. 8001.01 *et seq.*, as amended by P.A. 86–175). This new Section provides for the reclamation of non-coal sites involving the protection of the public health and safety. It recognizes that open and abandoned tunnels, shafts, and entryways and abandoned and deteriorating equipment, structures, and facilities resulting from non-coal mining operations constitute a hazard to the public health and safety.

The amendment to the Illinois AMLR plan also proposes certain funding limitations. Expenditures are not to exceed 2 percent of the Council's annual budget and all non-coal expenditures are to be made within the next 5 years.

III. Public Comments Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the amendment is consistent with SMCRA, and no less effective than the Secretary's implementing regulations. If approved by OSM, the amendment will become part of the Illinois AMLR plan.

Written Comments

Written comments should be specific, pertain only to the issue proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the OSM Springfield Field Office will not necessarily be considered or included in the Administrative Record for the final rulemaking.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by 4:00 p.m. on January 10, 1990. The location and time of the hearing will be announced to those persons requesting the hearing. If no one requests an opportunity to testify at a public hearing, none will be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will start on the specified date and time and will continue until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who may wish to do so, will be heard following those who have been scheduled. The hearing will end after all those persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT."** All such meetings will be open to the public, and if possible, notices of meetings will be posted at the locations under **"ADDRESSES"**. A written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 913

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: December 19, 1989.

W. Hord Tipton,

Deputy Director, Operations and Technical Services.

[FR Doc. 89–29805 Filed 12–22–89; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 936

Oklahoma Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening and extension of comment period.

SUMMARY: OSM is announcing receipt of additional explanatory information and revisions pertaining to a previously proposed amendment to the Oklahoma permanent regulatory program (hereinafter, the "Oklahoma program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The additional explanatory information and revisions pertain to general provisions; restrictions on financial interests of State employees; designating lands unsuitable for mining; coal exploration; requirements for permits; revision, renewal, transfer and assignment or sale of permit rights; administrative and judicial review; minimum requirements for permit applications for surface and underground mining; requirements for permits for special categories of mining; small operators assistance program; bonding and insurance requirements; permanent program performance standards for surface and underground mining; prime farmland; coal preparation plants; in situ processing; State inspectors; State enforcement; civil penalties; and blasters certification. The amendment is intended to revise the State program to be consistant with the corresponding Federal standards and to clarify ambiguities.

This notice sets forth the times and locations that the Oklahoma program and proposed amendment to that program are available for public inspection, and the reopened comment period during which interested persons may submit written comments on the proposed amendment.

DATES: Written comments must be received by 4:00 p.m., c.s.t. January 10, 1990.

ADDRESSES: Written comments should be mailed or hand delivered to James H. Moncrief at the address listed below.

Copies of the Oklahoma program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 550, Tulsa, OK 74135, Telephone: (918) 581–7927;

Oklahoma Department of Mines, 4040 North Lincoln, Suite 107, Oklahoma City, OK 73105, Telephone: (405) 521–3859.

FOR FURTHER INFORMATION CONTACT: James H. Moncrief, Director, Tulsa Field Office, (918) 581–7927.

SUPPLEMENTARY INFORMATION:

I. Background on the Oklahoma Program

On January 19, 1981, the Secretary of the Interior conditionally approved the Oklahoma program. General background information on the Oklahoma program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Oklahoma program, can be found in the January 19, 1981, **Federal Register** (46 FR 4910). Subsequent actions concerning the Oklahoma program and program amendments can be found at 30 CFR 936.15 and 936.30.

II. Proposed amendment

Oklahoma initially submitted an amendment to OSM on May 16, 1988, and subsequently revised it on June 8, 1988, November 14, 1988, June 22, 1989, and August 8, 1989 (administrative record Nos. OK–843, OK–847, OK–868, OK–888, and OK–890). OSM announced receipt of the original amendment and the subsequent revisions in the June 28, 1988, January 9, 1989, July 7, 1989, and August 24, 1989, publications of the **Federal Register** (53 FR 24321, 54 FR 633, 54 FR 29583, and 54 FR 35208), and invited public comment on the adequacy of the proposed amendment. The last public comment period ended September 25, 1989.

During its review of the August 8, 1989, revision to the amendment, OSM identified issues relating to part 700, General; part 701, Permanent Regulatory Program; part 705, Restriction on Financial Interest of State Employees; part 761, Areas Designated by Act of Congress; part 762, Criteria for Designating Land Unsuitable; part 764, Process for Designating Areas Unsuitable; part 772, Coal Exploration Operations; part 773, Requirements for Permits and Permit Processing; part 774, Revision, Renewal, Transfer, and Assignment or Sale of Permit Rights; part 775, Administrative and Judicial Review; part 778, Minimum Requirements for Legal and Financial Information; part 779, Minimum Requirements for Environmental Resources; part 780, Minimum Requirements for Reclamation and Operation; part 783, Underground Mining—Minimum Requirements for Environmental Resources; part 784, Underground Mining—Minimum requirements for Reclamation and Operation; part 785, Minimum Requirements for Permits for Special Categories of Mining; part 795, Small Operators Assistance Program; part 800, Bonding and Insurance Requirements; part 810, Permanent Program Performance Standards—General Provisions; parts 816 and 817, Permanent Program Performance Standards—Surface and Underground Mining; part 823, Prime Farmland; part 827, Coal Preparation Plants; part 828, In Situ Processing; part 842, State Inspectors; part 843, State Enforcement; part 845, Civil Penalties; part 846, Individual Civil Penalties; and part 850, Standards for Certification of Blasters.

OSM notified Oklahoma of the issues by letter dated December 11, 1989 (administrative record No. OK–902). Oklahoma responded in a letter dated December 15, 1989, by submitting a revised amendment (administrative record No. OK–903). In this amendment, Oklahoma proposes to revise its rules for items that OSM identified as issues in its December 11, 1989, letter.

III. Public Comment Procedures

OSM is reopening the comment period on the proposed Oklahoma program amendment to provide the public an opportunity to reconsider the adequacy of the amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Oklahoma program.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **"DATES"** or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

List of Subjects in 30 CFR Part 936

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

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Dated: December 15, 1989.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 89-29847 Filed 12-22-89; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 950

Wyoming Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Notice of disapproval of proposed amendment.

SUMMARY: OSM is announcing its decision to disapprove a proposed amendment to the Wyoming permanent regulatory program (hereinafter referred to as the Wyoming program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The amendment would have allowed the retention of highwall remnants as final reclamation features where such features would benefit wildlife and livestock.

EFFECTIVE DATE: December 26, 1989.

FOR FURTHER INFORMATION CONTACT: Jerry R. Ennis, Director, Casper Field Office; (307) 261-5776.

SUPPLEMENTARY INFORMATION:

I. Background on the Wyoming Program.
II. Submission of Proposed Amendment.
III. Director's Findings and Decision.
IV. Summary and Disposition of Comments.

I. Background on the Wyoming Program

The Secretary of the Interior conditionally approved the Wyoming program on November 26, 1980. General background information on the Wyoming program, including the Secretary's findings, disposition of comments and conditions of approval can be found n the November 26, 1980, **Federal Register** (45 FR 78637). subsequent actions concerning Wyoming's program and program amendments can be found at 30 CFR 950.12, 950.15 and 950.16.

II. Submission of Proposed Amendment

By letter dated December 13, 1988 (Administrative Record No. WY-11-1), Wyoming submitted a proposed amendment to its program (specifically, to Chapters I, II, IV and XIII of the Rules and Regulations of the Land Quality Division of the Department of Environmental Quality) to allow retention of bluffs as final reclamation features if they would enhance the postmining land use. OSM published a notice in the January 13, 1989, **Federal Register** (54 FR 13899) announcing receipt of the amendment and inviting public comment on its adequacy. This comment period ended February 13, 1989.

Following a review of the proposed amendment, OSM, by letter dated March 29, 1989 (Administrative Record No. WY-11-11), notified Wyoming of its concerns with certain provisions of the proposed rules and statement of justification. On August 21, 1989, Wyoming submitted a revised amendment package and additional explanatory information (Administrative Record No. WY-11-15). OSM solicited public comment on the resubmission in a September 7, 1989, notice in the **Federal Register** (54 FR 37128). This comment period closed on October 10, 1989.

III. Director's Findings and Decision

As submitted on August 21, 1989, the proposed Wyoming amendment would establish criteria and procedures under which last-cut highwalls or portions thereof could be retained in modified form as bluffs when beneficial to wildlife. The operator would be required to demonstrate, as verified by the State Game and Fish Department, that the bluff would functionally replace wildlife habitat or other environmental values which otherwise would be lost to mining. Bluffs also would be allowed if they would substantially increase wildlife habitat above premining levels or if they would significantly enhance other environmental values.

The State's arguments for approval center on the fact that, in the Northern Great Plains, lack of topographical diversity is a critical factor limiting many wildlife populations, especially raptors. Mining destroys the existing diversity provided by natural features such as incised streambeds and badlands, and, because of their erosionally unstable nature, it is usually both impracticable and undesirable to restore such features in their premining form. Substitute features such as rock piles and artificial raptor nesting platforms have proven to be of limited value in terms of function, aesthetics and permanence. Under these conditions, the State argues, requiring the elimination of all vestiges of highwalls seriously diminishes SMCRA's wildlife protection provisions by limiting the extent to which diverse landforms and the resultant biological diversity can be created or replace.

The Director agrees that, under certain conditions, highwall remnants could restore or enhance premining wildlife habitat and related environmental values. However, after extensive review of the proposal and analysis of the comments received from the public, he cannot agree that these benefits provide a legal basis sufficient to override the statutory requirement to eliminate all highwalls and restore the approximate original contour (AOC). There is no support in SMCRA, its legislative history or the implementing Federal regulations for such an interpretation. (See the response to Comment No. 17, 44 FR 15228, March 13, 1979).

Section 515(b)(3) of SMCRA requires that an operator backfill and grade the mined area to "restore the approximate original contour of the land with all highwalls, spoil piles, and depressions eliminated." Although the Act authorizes several exemptions form the AOC restoration requirement, the language of each exemption also specifies that all highwalls must be eliminated (see paragraphs (b)(3), (c) and (e) of section 515). Where the two requirements are in conflict, i.e., where the premining topography includes sheer cliffs or bluffs, as is common in New Mexico's San Juan Basin, the Secretary previously determined that highwalls could be retained only to the extent that they closely resemble premining features in both form and function (Finding 4(b), 45 FR 86464, December 31, 1980). Except for a narrow exemption for highwalls created prior to the effective date of SMCRA, the courts have repeatedly ruled that the highwall elimination requirement is a fundamental principle of SMCRA (In re Permanent Surface Mining Regulation Litigation, No. 79-1144, D.D.C. 1980, 1984, 1985; *NWF* v. *Hodel*, 839 F. 2d 694 (D.C. Cir. 1988)).

The Director recognizes the potential benefits of the Wyoming proposal and the extensive efforts and sincere intentions of the parties involved in its preparation. However, for the reasons outlined above, he finds that it is less stringent than SMCRA and therefore cannot be approved. This decision shall not be construed as preventing the creation of bluffs when necessary to restore the approximate original contour, provided such bluffs closely resemble premining features in extent and function. Also, as discussed below, Wyoming already has authority under its existing program to accomplish the wildlife enhancement aspects of this proposal (absent the retention of highwalls) since such features would be limited in both extent and frequency of occurrence. All plans for the restoration and enhancement of fish, wildlife and related evironmental values should be developed in consultation with the appropriate State and Federal agencies concerned with wildlife management and, under the State program equivalents to 30 CFR 780.16(c) and 784.16(c), will have to be provided to the U.S. Fish and Wildlife Service for review upon request. By letter dated November 7, 1988, OSM has notified the State of the program changes needed to effect this review process.

The Director also recognizes, as stated in OSM Directive INE-26 ("Approximate Original Contour," Transmittal No. 336, May 26, 1987), that there likely will be some differences between the primining and postmining topography. The reclamation of any minesite must take into consideration and accommodate site-specific characteristics of the surrounding terrain and postmining land uses, with all highwalls eliminated in a manner that blends with the surrounding terrain. While the general surface configuration of the land must resemble that existing prior to mining, premining features, including rock outcrops, need not be restored in precisely the same form and location or to the same extent as they formerly existed. In addition, section 515(b)(3) of SMCRA authorizes variances from approximate original contour in situations involving thin or thick overburden, provided all highwalls are eliminated. Given the thickness of the coal seams found in Wyoming, such variances may be appropriate. Within these constraints, the Director encourages the creation of structural wildlife enhancement features.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, regardless of their status under State law, any changes to the Wyoming program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In his oversight of the Wyoming program, the Director will recognize only the statutes, regulations and other materials approved by OSM, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Wyoming of only such provisions.

IV. Summary and Disposition of Comments

As noted in the portion of this notice entitled "Submission of Proposed Amendment," the Director twice solicited comments from the public on the adequacy of the proposed amendment. No public hearing was held because no one requested an opportunity to testify. Pursuant to 30 CFR 732.17(h)(11)(i), OSM also solicited comments on both versions of the proposal from various Federal agencies with an actual or potential interest in the Wyoming program.

The nature and disposition of all comments received are summarized below:

1. Most commenters, including the U.S. Soil Conservation Service and Bureau of Land Management, expressed support for the proposal, either repeating or amplifying upon the arguments advanced by the State as part of the submission. For the reasons set forth in his findings, the Director cannot concur that these arguments provide a legally sufficient basis for approval.

2. Several commenters urged approval on the basis that the practice could and would be restricted to Wyoming. SMCRA and the Federal regulations do not accord the Director this discretion. All decisions on program submittals must be based on a determination of whether or not the submittal is no less stringent than SMCRA and no less effective than the Federal regulations. Section 101(f) of the Act provides States with some latitude in developing regulations, but this latitude does not include a waiver of statutory requirements such as highwall elimination.

3. The Wyoming Chapter of The Wildlife Society recommended that applications for bluffs be evaluated to the target species and anticipated benefits. The Society also stated that across-the-board highwall retention is not always in the best interest of wildlife and that input on the design, size and final appearance of the highwall should be sought from appropriate regulatory agencies. Since the Director is disapproving the proposed amendment, these recommendations are now moot.

4. The Wyoming Game and Fish Department (WGFD) requested that the amendment be modified to require WGFD approval (not just review) of the bluff habitat design as a precondition to Department of Environmental Quality approval of the bluff application. Since the Director is disapproving the proposed amendment, this comment is now moot. However, he notes that, while the current Federal rules at 30 CFR 780.16 and 784.21 encourage WGFD involvement in the fish and wildlife aspects of permit application preparation and review, they do not require prior WGFD approval.

5. The U.S. Fish and Wildlife Service (FWS) strongly supported the December 13, 1988, proposal since rockpiles, the chief wildlife enhancement alternative have proven unattractive as raptor nest sites; however, it prefers that rockpile construction also be encouraged to provide habitat for small mammals and birds. The FWS also states that bluff features should be permitted only in situations where they would maximize wildlife habitat and are designed to do so. The FWS reiterated this support in its comments on the August 21, 1989, resubmission, stating that the revisions addressed most of its concerns. However, it also encouraged additional emphasis on the creation of ledges, cavities, talus slopes and other microsite features. As noted in the findings, the Director agrees that the proposal offers significant potential wildlife habitat benefits; however, he cannot agree that this alone justifies approval. He remains committed to other structural and nonstructural means of habitat enhancement short of highwall retention.

6. The U.S. Forest Service supported the proposal, but requested that it be modified to specifically require that all proposed bluffs receive prior approval from the Federal land management agency where applicable. Since the Director is disapproving the proposal, this comment is now moot.

7. The Wyoming Wildlife Federation, originally a copetitioner for the State rule changes, reiterated its belief that the proposal is environmentally meritorious, but also stated that the Federation now finds it legally flawed. Specifically, it notes that the proposal:

(a) Does not meet the highwall elimination requirements of SMCRA;

(b) Could initiate destructive competition among States to lower standards not only for highwall elimination but also for other seemingly ironclad provisions of SMCRA;

(c) Should be revised to clarify that bluffs are not appropriate mitigation measures in all cases, e.g., they cannot compensate for the loss of big game winter range; and

(d) Lacks hard data on the likely effect of landform changes on wildlife in general.

As set forth in the findings, the Director is in general agreement with the Federation and he is disapproving the proposal.

8. The Powder River Basin Resource Council, after a cautiously favorable initial response, now opposes highwall retention in all cases except where it is

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necessary for restoration of the approximate original contour. The Council also calls for an independent study of the potential effects of bluff creation on the regional ecology and expresses doubt as to the feasibility of bluff creation in the flat terrain of the Powder River Basin. (Arch Mineral Corporation's Seminoe Mine experimental practice involved retention of a modified highwall remnant, but it is located in the Hanna Basin, a region with far different geology and topography.) Since the Director is disapproving the proposed amendment, this comment is now moot.

9. The Western Organization of Resource Councils (WORC) opposes the proposal as being inconsistent with SMCRA. WORC also objects to the lack of factual data or other supporting evidence for the statements Wyoming includes in its statement of justification. As an alternative to bluff creation, WORC suggests prohibiting mining of the relatively small areas of existing erosional features (chiefly badlands and incised streambeds) which are of exceptional value to wildlife. The organization is not opposed to some flexibility, but the current proposal would allow "too many highwalls to be left with too little regulatory control and too little justification."

In response, the Director notes that his disapproval of the proposed amendment renders this comment largely moot. However, with respect to the suggestion to prohibit mining of the erosional features valuable to wildlife, there is no statutory mandate to do so unless threatened or endangered species are present, the area cannot be reclaimed to applicable program standards, or the area has been designated as unsuitable for mining pursuant to the processes set forth in paragraphs (a) through (d) of section 522 of the Act. Otherwise, section 515(b)(24) of SMCRA requires only that adverse impacts on fish, wildlife and related environmental resources be minimized to the extent possible, using the best technology currently available.

10. The National Wildlife Federation stated that the proposal is flatly inconsistent with SMCRA. It suggested that wildlife habitat enhancement be achieved through other means such as increasing shrub stocking requirements. As set forth in the findings, the Director is disapproving the proposal to the extent that it would allow incomplete elimination of highwalls, and he is encouraging the State to pursue other means of wildlife habitat enhancement.

11. Congressman Morris Udall of Arizona opposed the proposed amendment as a violation of two of SMCRA's basic requirements: Highwall elimination and restoration of approximate original contour. As stated in the findings, the Director agrees and is therefore disapproving the proposal to the extent that it would do so.

12. The following agencies expressed no opposition to approval based on a finding that the proposal did not conflict with any laws or regulations under their jurisdiction:

Mine Safety and Health Administration
U.S. Environmental Protection Agency
U.S. Geological Survey
Wyoming State Historic Preservation Officer.

Dated: December 19, 1989.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 89-29915 Filed 12-22-89; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD14-89-01]

Anchorage Regulations; Apra Harbor, Guam, Mariana Islands

AGENCY: Coast Guard, DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Coast Guard proposes to:

a. Establish a second Apra Harbor special anchorage area northeast of Naval Anchorage B and south of Drydock Point.

b. Redescribe the general anchorage at 33 CFR 110.238(a)(1) to exclude the existing special anchorage area presently found at 33 CFR 110.129a.

c. Update the description of all the general anchorages in 33 CFR 110.238(a) utilizing the World Geodetic System 1984 Datum (WGS 84) in lieu of the Guam 1963 Datum.

DATES: Comments must be received on or before February 26, 1990.

ADDRESSES: Comments should be mailed to USCG Marine Safety Office, 1026 Cabras Hwy., Suite 102, Piti, Guam 96925-5610. The comments and other materials referenced in this notice will be available for inspection and copying at the Marine Safety Office, Guam. Normal office hours are between 7 a.m. and 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand delivered to the Marine Safety Office, Guam.

FOR FURTHER INFORMATION CONTACT: LT Kenneth Parris, telephone (671) 477-5340 or FTS 550-7214.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD14-89-01) and the specific section of the proposal to which the comments apply, and give reasons for each comment.

The regulations may be changed in light of comments received. All comments received before the end of the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid in the rulemaking process.

Drafting Information

The drafters of this regulation are LT Kenneth Parris, project officer and CDR M. J. Williams, Jr., project attorney, Fourteenth Coast Guard District Legal Office, Honolulu, Hawaii.

Discussion of Proposed Regulations

The Marianas Yacht Club has requested that a second Apra Harbor special anchorage area be established. Members of the Marianas Yacht Club are the primary users of the existing Apra Harbor special anchorage area. The additional anchorage area is requested due to the movement of the club from the vicinity of the Mobil Oil Tank Farm on Cabras Island to Drydock Point. The new location is northeast of Naval Anchorage B south of Drydock Point. The exact location is described in the proposed regulation. The proposed special anchorage area will contain 50 mooring buoys. The anchorage area will be marked by 10 private aid to navigation daybeacons maintained by the Marianas Yacht Club. The area presently designated as an Apra Harbor special anchorage area will remain as presently configured. The proposed special anchorage area in the vicinity of Drydock Point will double the number of anchorages where boats less than 65 feet in length may anchor without showing lights or sounding signals. The Marianas Yacht Club has requested that a new special anchorage be established as soon as possible and that the existing special anchorage remain unchanged to benefit the boating public. The existing special anchorage area will now be described in § 110.129a(a). The proposed special anchorage area will be described in § 110.129a(b).

The general anchorage in 33 CFR 110.238(a)(1) will be redescribed to exclude the Apra Harbor Special Anchorage currently described at 33 CFR 110.129a. This change will correct an inconsistency between the designated special anchorage area (33 CFR 110.129a) and the general anchorage (33 CFR 110.238a(1)).

On July 6, 1989, the National Ocean Service issued an updated Apra Harbor Chart 81054 using World Geodetic System 1984 Datum (WGS 84). The anchorage descriptions in 33 CFR 110.238(a) are being revised to reflect the new charting datum.

This regulation is issued pursuant to 33 U.S.C. 471, 2030, 2035, and 2071 as set out in the authority citation for all of Part 110.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be minimal that a full regulatory evaluation is unnecessary. The users of the port of Guam fall into six main categories; Naval Combatants, Deep Draft Commercial Shipping, Commercial Fishing Vessels, Small Passenger Boats, Dive Boats and Pleasure Boats. Since the new special anchorage will not extend into a shipping channel, encompass commercial fishing grounds, diving, tourists, or pleasure boat areas there should be no adverse impact on harbor use. The proposed new special anchorage encompasses an area seldom transited by recreational boaters and never transited by Naval or commercial vessels. The new special anchorage does not encompass any existing naval or general anchorage areas. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 110

Anchorage regulations.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 110 of Title 33, Code of Federal Regulations, as follows:

PART 110—[AMENDED]

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05-1(g). Sec. 110.1a and each section listed in 110.1a is also issued under 33 U.S.C. 1223 and 1231.

2. Section 110.129a is revised to read as follows:

§ 110.129a Apra Harbor, Guam (Datum: WGS 84).

(a) The waters bounded by a line connecting the following points:

Latitude	Longitude
13°27'45.5" N	144°39'34.8" E
13°27'32.0" N	144°39'36.3" E

and thence along the shoreline to the point of beginning.

(b) The waters bounded by a line connecting the following points:

Latitude	Longitude
13°28'53.8" N	144°40'03.8" E
13°27'04.0" N	144°40'04.8" E
13°27'04.0" N	144°40'09.8" E
13°27'10.0" N	144°40'09.8" E
13°27'10.0" N	144°40'23.8" E
13°28'51.0" N	144°40'23.8" E
13°28'51.0" N	144°40'05.0" E

and thence to the point of beginning.

3. Section 110.238(a) is revised to read as follows:

§ 110.238 Apra Harbor, Guam.

(a) The anchorage grounds (Datum: WGS 84). (1) General Anchorage. The waters bounded by a line connecting the following points:

Latitude	Longitude
13°27'32.0" N	144°39'36.8" E
13°27'21.0" N	144°39'22.8" E
13°27'12.5" N	144°39'28.4" E

and thence along the shoreline

13°27'45.5" N	144°39'34.8" E

and thence to the point of beginning.

(2) Explosives Anchorage 701. The water in Naval Anchorage A bounded by the arc of a circle with a radius of 350 yards and located at:

Latitude	Longitude
13°26'54.0" N	144°37'53.5" E

(3) Naval Explosives Anchorage 702. The waters in the General Anchorage bounded by the arc of a circle with a radius of 350 yards and with the center located at:

Latitude	Longitude
13°27'28.8" N	144°38'13.0" E

(4) Naval Anchorage A. The waters bounded by a line connecting the following points:

Latitude	Longitude
13°28'47.3" N	144°37'42.6" E
13°27'02.0" N	144°37'42.8" E
13°27'10.6" N	144°39'00.8" E
13°27'38.6" N	144°39'00.8" E
13°28'38.8" N	144°39'08.8"E
13°28'38.6" N	144°39'08.8" E
13°28'54.3" N	144°39'08.8" E
13°28'54.3" N	144°39'24.2" E
13°28'42.2" N	144°39'24.2" E
13°28'40.4" N	144°39'01.8" E

and thence to the point of beginning.

(5) Naval Anchorage B. The waters bounded by a line connecting the following points:

Latitude	Longitude
13°26'43.7" N	144°39'53.3" E
13°26'53.6" N	144°40'03.8" E
13°26'51.0" N	144°40'05.0" E
13°26'41.0" N	144°39'56.0" E

and thence along the shoreline to the point of beginning.

* * * * *

Dated: December 12, 1989.

W.P. Kouloveky,

Rear Admiral, U.S. Coast Guard Commander, 14th Coast Guard District.

[FR Doc. 89-29754 Filed 12-22-89; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD8-89-13]

Drawbridge Operation Regulations; Gulf Intracoastal Waterway, LA

AGENCY: U.S. Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Louisiana Department of Transportation and Development, the Coast Guard is considering a change to the regulation governing the operation of the swing span bridge on State Route 319 over the Gulf Intracoastal Waterway, mile 134.0, near Cypremort, St. Mary Parish, Louisiana, by permitting the draw to remain closed to navigation from 6:55 to 7:25 a.m. and 3:50 to 4:20 p.m. Presently the draw is permitted to remain closed to navigation from 6:55 to 7:10 a.m. and 3:50 to 4:05 p.m. Monday through Friday, except holidays, from 15 August to 5 June. The draw opens on signal at all other times. This proposal is being made to further aid school bus traffic during the school year, and the increased vehicular traffic to the nearby recreational area at Cypremort Point State Park during the non-school season. This proposed 30-minute closure in the morning and afternoon should accommodate the needs of vehicular traffic and still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before February 9, 1990.

ADDRESS: Comments should be mailed

criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have

FEDERAL EMERGENCY MANAGEMENT AGENCY

buildings and their contents and for the second layer of insurance on existing buildings and their contents. Pursuant to the provisions of 5 U.S.C. 605(b), the

1363 forms the basis for new local ordinaces, which, if adopted by a local community, will govern future construction within the floodplain area.

requirement; or itself it has no economic impact.

List of Subjects in 44 CFR Part 67

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DATE: Comments must be received on or before February 9, 1990.

ADDRESS: Comments should be mailed to Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana 70130-3396. The comments and other materials referenced in this notice will be available for inspection and copying in room 1115 at this address. Normal office hours are between 8:00 a.m. and 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: John Wachter, Bridge Administration Branch, at the address given above, telephone (504) 589-2965.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Eighth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. This proposed regulation may be changed in the light of comments received.

Drafting Information

The drafters of this notice are John Wachter, project officer, and Commander J. A. Unzicker, project attorney.

Discussion of Proposed Regulation

Vertical clearance of the bridge in the closed position is 4 feet above mean high water. Navigation through the bridge consists of all types of recreation traffic including outboard and inboard powered vessels, large and small, and an occasional sailing vessel. Commercial traffic on the waterway includes considerable barge traffic transporting petroleum products, chemicals, cement, shells, manufactured industrial goods, and miscellaneous food products. Vessel operators should be able to easily adjust their speed and arrival time at the bridge to avoid the 30-minute closure periods and thereby avoid any need to stand by the bridge to await an opening.

Federal Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulation policies and procedures (44 FR 11034: February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that the duration of the proposed closures is so minimal that vessels can easily schedule passages to avoid the proposed 30-minute closures. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulation

In consideration of the foregoing, the foregoing, the Coast Guard proposes to amend part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05-1(g).

2. Section 117.451 is revised to read as follows:

§ 117.451 Gulf Intracoastal Waterway

* * * * *

(d) The draw of the SR319 (Louisa) bridge across the Gulf Intracoastal Waterway, mile 134.0 near Cypremort, shall open on signal; except that, the draw need not open from 6:55 to 7:25 a.m. and from 3:50 to 4:20 p.m.

* * * * *

Dated: 1 December 1989.

W. F. Merlin,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 89-29822 Filed 12-22-89; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6977]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed modified base (100-year) flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

DATES: The period for comment will be ninety (90) days following the second publication of the proposed rule in an newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of modified base (100-year) flood elevations for selected locations in the nation, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These elevations, together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed modified elevations will also be used to calculate the appropriate flood insurance premium rates for new

buildings and their contents and for the second layer of insurance on existing buildings and their contents. Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the District, Federal Emergency Management Agency, hereby certifies that the proposed modified flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under Section 1363 forms the basis for new local ordinaces, which, if adopted by a local community, will govern future construction within the floodplain area. The local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribed how high to build in the floodplain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; or itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Foood insurance, Floodplains.

PART 67—[AMENDED]

1. The authority citiation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

The proposed modified base flood elevations for selected locations are:

PROPOSED MODIFIED BASE FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) Existing	Modified
Alabama	City of Demopolis, Marengo County.	Whitfield Canal	About 535 feet downstream of U.S. Highway 80.	None	*148
			About 1650 feet upstream of U.S. Highway 80	None	*157
		Falling Creek	About 4.2 miles upstream of mouth	None	*150
			About 4.7 miles upstream of mouth	None	*154
		Tombigbee River	Just upstream of Demopolis Lock and Dam	*92	*94
			About 1.5 miles upstream of confluence of Whitfield Canal.	*93	*95
Maps available for inspection at the City Hall, Demopolis, Alabama.					
Send comments to The Honorable Austin Caldwell, Mayor, City of Demopolis, City Hall, P.O. Box 580, Demopolis, Alabama 36732.					
Colorado	City of Aurora Adams and Arapahoe Counties.	West Toll Gate Creek	Just upstream of East Mexico Avenue	*5,501	*5,501
			At the confluence with Cherry Creek Spillway Drain.	*5,506	*5,507
			At the confluence with West Toll Gate Tributary.	*5,522	*5,519
			Just upstream of Buckley Road	*5,530	*5,530
		West Toll Gate Tributary	Approximately 500 feet upstream of the confluence with West Toll Gate Creek.	*5,525	*5,520
			At East Iliff Avenue	*5,536	*5,536
		Cherry Creek Spillway Drain	At the confluence with West Toll Gate Creek	*5,508	*5,507
			At East Iliff Avenue	*5,555	*5,555
Maps available for review at the City Engineering Department, 1470 South Havana Street, Aurora, Colorado					
Send comments to The Honorable Paul Tauer, Mayor, City of Aurora, 1470 South Havana Street, Aurora, Colorado 80012.					
Colorado	City and County of Denver.	Cherry Creek	Approximately 500 feet upstream of Centennial Footbridge.	*5,179	*5,180
			Upstream side of Burlington Northern Railroad Bridge, approximately 1,740 feet downstream of Blake Street Bridge.	*5,181	*5,181
		Lakewood Gulch	Approximately 350 feet downstream of Cancosa Court.	*5,195	*5,197
			Upstream side of Cancosa Court	*5,199	*5,199
		Lakewood Gulch Overflow	At mouth, downstream of Associated Railroad Bridge.	*5,195	*5,197
			Approximately 430 feet downstream of Decatur Street.	*5,199	*5,199
		Harvard Gulch	At mouth	None	*5,255
		West Harvard Gulch	At mouth	*5,259	*5,260
			Approximately 430 feet upstream of mouth	*5,264	*5,264
		Sanderson Gulch	At mouth	*5,239	*5,241
			Approximately 390 feet upstream of mouth	*5,244	*5,244
		South Platte River	Approximately 570 feet downstream of Franklin Street Bridge.	None	*5,137
			Downstream side of Franklin Street Bridge	None	*5,141
			Downstream side of westbound exit from Interstate Highway 70 Bridge.	None	*5,149
			Approximately 170 feet upstream of East 38th Street Bridge.	None	*5,152
			Approximately 150 feet upstream of East 31st Street Bridge.	None	*5,157
			Upstream side of Fox Street Viaduct	None	*5,164
			Upstream side of West 20th Street Viaduct	None	*5,170
			Downstream side of westbound Speer Boulevard.	None	*5,163

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) Existing	Modified
			Centerline of northbound Interstate Highway 25 Bridge.	None	*5,191
			Upstream side of West 13th Avenue Bridge	None	*5,196
			Upstream side of eastbound West 6th Avenue Bridge.	None	*5,207
			Upstream side of West Alameda Avenue Bridge.	None	*5,223
			Downstream side of West Mississippi Avenue Bridge.	None	*5,235
			Upstream side of West Florida Avenue Bridge	None	*5,242
			Upstream side of West Evans Avenue Bridge	None	*5,254
			Approximately 1,550 feet downstream of centerline of West Dartmouth Avenue Bridge.	None	*5,263
		South Platte River, West Bank Split Flow (56th Avenue upstream to 47th Avenue).	Just upstream of Franklin Street	None	*5,131
			At East 51st Avenue	None	*5,138
			At Platte River Drive West	None	*5,139
			At Pennsylvania Street	None	*5,145
		South Platte River, West Bank Split Flow (West Jewell Avenue upstream to West Iliff Avenue).	At West Evans Avenue	None	*5,252
			Along Kalamath Street, approximately 250 feet upstream of West Warren Avenue.	None	*5,253
			Approximately 400 feet upstream of West Iliff Avenue.	None	*5,254
		South Platte River, East Bank Split Flow (Lawrence Street upstream to 6th Avenue).	At Lawrence Street	None	*5,191
			At Colfax Avenue	None	*5,192
			At West 14th Avenue	None	*5,193
			At West 12th Avenue	None	*5,196
			Intersection of Wyandot Street and West 8th Avenue.	None	*5,201
		Weir Gulch	Approximately 500 feet downstream of West Alameda Avenue.	*5,325	*5,325
			Approximately 220 feet upstream of West Alameda Avenue.	*5,344	*5,333
			Approximately 120 feet downstream of West Virginia Avenue.	*5,344	*5,340
			Approximately 200 feet downstream of West Custer Place.	*5,354	*5,348
			Approximately 120 feet upstream of South Wolff Street.	*5,357	*5,355
			Approximately 370 feet downstream of Sheridan Boulevard.	*5,361	*5,363
			At Sheridan Boulevard	*5,374	*5,374

Maps are available for review at the Department of Public Works, Wastewater Management Division, City and County of Denver, 3840 York Street, Building G, Denver, Colorado.

Send comments to the Honorable Federico Pena, Mayor, City and County of Denver, 1437 Bannock, Denver, Colorado

Georgia	Unincorporated Areas of Cherokee County.	Little River	About 800 feet upstream of confluence of Rocky Creek.	*695	*58
			About 0.89 mile upstream of confluence of Rocky Creek.	*888	*890
			About 1.16 miles upstream of confluence of Rocky Creek.	*891	*891
		Rocky Creek	About 1,400 feet upstream of mouth	*884	*884
			About 900 feet downstream of Cox Road	*885	*885
			About 1,400 feet upstream of Cox Road	*894	*894

Maps available for inspection at the Cherokee County Planning Commission, 140 North Street, Canton Georgia.

Send comments to The Honorable Gene Hobgood, County Commissioner, Cherokee County, 100 North Street, Canton, Georgia 30114.

Louisiana	Iberia Parish Unincorporated Areas.	Vermilion Bay	South of the Southern-Pacific Railroad, east of State Route 329 and west of State Route 83.	None	*9

Maps available for inspection at the Iberia Parish Government Building, 300 Iberia Street, Suite 400, New Iberia, Louisiana.

Send comments to The Honorable Craig F. Romero President of the Iberia Parish Council, 300 Iberia Street, Suite 400, New Iberia, Louisiana 70560-4587.

Missouri	City of Brentwood, St. Louis County.	Deer Creek	At confluence of Black Creek	*450	*451

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) Existing	Modified
			About 1750 feet upstream of Brentwood Boulevard.	*456	*456
			About 3000 feet upstream of Brentwood Boulevard.	*461	*461
		Black Creek	At confluence with Deer Creek	*450	451
			Just downstream of Swim Club Road	*452	*455
			About 500 feet upstream of Agnes Avenue	*457	*464

Maps available for inspection at the City Planning Office, City Hall, 2348 South Brentwood Boulevard, Brentwood, Missouri.

Send comments to The Honorable Karen Kinz, Mayor, City of Brentwood, City Hall, 2348 South Brentwood Boulevard, Brentwood, Missouri 63144.

Missouri	City of Clayton, St. Louis County.	Black Creek	Just downstream of Clayton Road	*485	*483
			Just upstream of Clayton Road	*488	*488
			About 650 feet upstream of Wenlou Drive	*496	*497

Maps available for inspection at the City Hall, 10 North Bemeston, Clayton, Missouri.

Send comments to The Honorable Hugh Scott, Mayor, City of Clayton, 10 North Bemeston, Clayton, Missouri 63105.

Missouri	City of Kansas City, Clay, Platte, and Jackson Counties.	Little Blue River	About 300 feet downstream of Lees Summit Road.	*764	*773
			Just downstream of Little Blue Road	*797	*787
			Just downstream of Longview Lake Dam	*824	*809
		White Oak Creek	At mouth	*806	*796
			About 0.6 mile upstream of Military Club Road	*806	*796
		Little Cedar Creek	At mouth	*800	*792
			About 950 feet upstream of Rhinehart Road	*800	*792
		Brush Creek	Just downstream of Troost Avenue	*809	*809
			About 300 feet upstream of Troost Avenue	*813	*815
			At Kansas City Public Service	*829	*829
		Indian Creek	Just downstream of 99th Street	*800	*800
			About 550 feet downstream of Wornall Road	*807	*809
			Just upstream of Wornall Road	*813	*817
			About 2500 feet upstream of 103rd Street	*830	*830

Maps available for inspection at the Department of Development Assistance Division, 414 East 12th Street, Kansas City, Missouri.

Send comments to the Honorable Richard L. Berkley, Mayor, City of Kansas City, City Hall, 414 East 12th Street, Kansas City, Missouri 64106.

Missouri	City of Ladue, St. Louis County.	Deer Creek	About 350 feet downstream of Rock Hill Road	*471	*471
			Just downstream of Log Cabin Lane	*483	*487
			Just downstream of Lindberg Boulevard	*517	*516
		Two Mile Creek	At confluence with Deer Creek	*472	*476
			About 3700 feet upstream of Warson Road	*506	*514
		Black Creek	About 800 feet downstream of Wenlou Drive	*490	*489
			About 600 feet upstream of confluence of Country Club Drainage.	*504	*507
		Sebago Drainage	At confluence with Deer Creek	*471	*472
			Just downstream of Old Warson Road	*472	*474
			Just upstream of Old Warson	*482	*480
			About 700 feet upstream of Old Warson Road	*483	*484

Maps available for inspection at the Building Department, 9345 Clayton Road, Ladue, Missouri.

Send comments to the Honorable Edith J. Spink, Mayor, City of Ladue, City Hall, 9345 Clayton Road, Ladue, Missouri 63124.

Missouri	City of Maplewood, St. Louis County.	Deer Creek	About 650 feet downstream of Burlington Northern Railroad.	*432	*434
			About 350 feet downstream of Burlington Northern Railroad.	*433	*436
			At confluence of Black Creek	*448	*451
		Black Creek	Within community	*451	*451
		Hampton Branch	At confluence with Black Creek	*450	*451
			About 1100 feet upstream of confluence of Black Creek.	*458	*452
			Just downstream of West Bruno Avenue	*464	*462
		Claytonia Creek	At confluence with Hampton Branch	*459	*456
			Just downstream of West Bruno Avenue	*464	*460

Maps available for inspection at the City Hall, 7601 Manchester, Maplewood, Missouri.

Send comments to The Honorable Andrew Hummert, Mayor, City of Maplewood, City Hall, 7601 Manchester, Maplewood, Missouri 63143.

Missouri	City of Richmond Heights St. Louis County.	Black Creek	About 3000 feet downstream of Clayton Road	*476	*472
			Just downstream of Clayton Road	*486	*485

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) Existing	Modified

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) Existing	Modified

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Building Department, 1330 South Big Bend, Richmond Heights, Missouri.					
Send comments to The Honorable James Fingers, Mayor, City of Richmond Heights, 1330 South Big Bend, Richmond Heights, Missouri 63117.					
Missouri	City of Rock Hill, St. Louis County.	Deer Creek	About 850 feet downstream of Manchester Road.	*461	*460
			About 1050 feet upstream of Manchester Road.	*464	*466
			Just upstream of McKnight Road	*471	*471
		Sebago Drainage	Just downstream of confluence of Warson Woods Creek.	*483	*483
			At confluence of Warson Woods Creek	*483	*484
Maps available for inspection at the City Hall, 9620 Manchester Road, Rock Hill, Missouri.					
Send comments to The Honorable Jesse Stroup, Mayor, City of Rock Hill, City Hall, 9620 Manchester Road, Rock Hill, Missouri 63119.					
Missouri	City of Webster Groves, St. Louis County.	Just upstream of Big Bend Boulevard.	*443	*445	
			About 1600 feet upstream of confluence of Shady Grove Creek.	*458	*459
			About 2700 feet upstream of confluence of Shady Grove Creek.	*460	*460
		Shady Grove Creek	At confluence with Deer Creek	*454	*455
			Just upstream of Kirham Avenue	*465	*463
			Just downstream of North Rock Hill Road	*505	*505
Maps available for inspection at the Office of Public Works, City Hall, 4E. Blackwood, Webster Groves, Missouri.					
Send comments to The Honorable Glenn Sheffield, Mayor, City of Webster Groves, City Hall, 4E. Blackwood, Webster Groves, Missouri 63119.					
Montana	Carbon County Unincorporated Areas.	Approximately 3,400 feet downstream of Meeteese Foot Bridge.	none	*5630	
			Approximately 300 feet upstream of confluence with West Fork.	None	*5760
			Approximately 950 feet downstream of confluence of Rock Creek Ditch.	None	*5850
			Approximately 250 feet downstream of confluence of Wapel Ditch.		
			Approximately 5,880 feet upstream of Piney Dell Foot Bridge.	None	*6258
Maps available for review at the Carbon County Courthouse Annex, 5 East Ninth Street, Red Lodge, Montana.					
Send comments to The Honorable Mona Nutting, Chairwoman, Carbon County Board of Commissioners, County Courthouse, P.O. Box 879, Red Lodge, Montana 59068.					
North Carolina	Unincorporated Area of Pitt County.	Tar River	About 1.1 miles downstream of confluence of Bear Creek.	None	*10
			About 5.1 miles upstream of confluence of Chicod Creek.	*15	*18
			About 4.1 miles upstream of confluence of Kitten Creek.	None	*39
		Middle Swamp Creek	At mouth	None	*44
			About 2.32 miles upstream of U.S. Route 13	None	*60
		Contentnea Creek	At mouth	None	*20
			At confluence of Little Contentnea Creek	None	*30
		Little Contentnea Creek	At mouth	None	*30
			About 1.0 mile upstream of County Route 1233	None	*68
Maps available for inspection at the Engineering Department, 1717 West 5th Street, Greenville, North Carolina.					
Send comments to The Honorable Eugene James, Chairman, Board of Commissioners, Pitt County, 1717 West 5th Street, Greenville, North Carolina 27834.					
Oklahoma	Oklahoma City, City Canadian, Oklahoma, Cleveland, McClain, Pottawatomie Counties.	Brush Creek of Dry Creek	Approximately 0.44 mile upstream of confluence with Dry Creek of Bluff Creek.	*1,115	*1,114
			Approximately 20 feet downstream of May Avenue.	*1,138	*1,137
		Mustang Creek Tributary 1	Approximately 150 feet upstream of the confluence of Mustang Creek Tributary 1 West Branch.	*1,274	*1,273
			At downstream side of Southwest 59th Street	*1,288	*1,289
Maps available for inspection at the City Hall, 200 North Walker, Oklahoma City, Oklahoma.					
Send comments to The Honorable Ronald J. Norick, Mayor of the City of Oklahoma City, Canadian, Oklahoma, Cleveland, McClain, and Pottawatomie Counties, 200 North Walker, Oklahoma City, Oklahoma 73102.					
Tennessee	City of Red Bank, Hamilton County.	Stringers Branch	Just downstream of Signal Mountain Road	None	*659
			Just downstream of State Route 29 Spur	*660	*660

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			Just upstream of State Route 29 Spur	*663	*667
			About 300 feet upstream of Leewood Avenue	*739	*738
Maps available for inspection at the City Manager Office, 3117 Dayton Boulevard, P.O. Box 15069, Red Bank, Tennessee.					
Send comments to the Honorable Ronnie E. Moore, Mayor, City of Red Bank, 3117 Dayton Boulevard, P.O. Box 15069, Red Bank, Tennessee 37415.					
Texas	Deer Park City, Harris County.	Tributary 1.78 to Willow Springs Bayou (B112-02-00).	Approximately 1,600 feet upstream of Canada Street.	*24	*25
			Approximately .4 mile upstream of Pasadena Boulevard.	*26	*27
		Tucker Bayou	Approximately 1,700 feet downstream of Tidal Road.	*11	*12
			Approximately .5 mile upstream of Tidal Road	*11	*12
		Patrick Bayou	Aproximately 1.5 mile downstream of State Route 225.	*11	*12
Maps available for inspecton at 710 E. St. Augustine, Deer Park, Texas.					
Send comments to The Honorable Jimmy Burke, Mayor of the City of Deer Park, Harris County, P.O. Box 700, Deer Park, Texas 77536.					
Texas	Denton County Unincorporated Areas.	Elm Fork Trinity River	Approximately 3.3 miles upstream of the confluence of Dudley Branch.	None	*454
			Approximately 3.9 miles upstream of the confluence of Dudley Branch.	None	*456
		Denton Creek	Approximately 0.6 mile upstream of downstream corporate limits.	*470	*469
			At County boundary	*472	*471
		Dudley Branch	At the confluence with the Elm Fork Trinity River.	*451	*452
			Approximately 600 feet downstream of the upstream corporate limits.	*474	
		Indian Creek	Approximately 2.2 miles upstream of the confluence with the Elm Fork of the Trinity River.	None	*460
Maps available for inspection at the Courthouse on the Square, 110 West Hickory, Denton, Texas.					
Send comments to The Honorable Vick Burgess, Denton County Judge, 110 West Hickory, Denton, Texas 76201.					
Texas	Fort Bend County Municipal Utility District No. 41.	Red Gully	At the downstream corporate limits	*62	*60
			At upstream corporate	*82	*81
Maps available for inspection at the Fort Bend County Courthouse, Richmond, Texas.					
Send comments to The Honorable Gay Hudson, President of the Board of Directors of the District, c/o Schwarz, Page, & Harding, 1300 Post Oak Boulevard, Suite 1400, Houston, Texas 77056.					
Texas	Fort Bend County Unincorporated Areas.	Red Gully	Approximately 300 feet above confluence with Oyster Creek.	*79	*78
			Approximately 3,400 feet downstream of FM 1464.	*83	*82
Maps available for inspection at the County Engineer's Office, 3403 Avenue F, Rosenburg, Texas.					
Send comments to The Honorable Jodie E. Stavinoha, Fort Bend County Judge, P.O. Box 368, Richmond, Texas 77469.					
Texas	Harris County Unincorporated Areas.	Brays Bayou (D100-00-00)	At the Southern Pacific Railroad	*80	*81
			Approximately 1,100 feet upstream of Addicks Clodine Road	*87	*86
		Tributary 29.16 to Brays Bayou (D132-00-00).	At confluence with Brays Bayou (D100-00-00)	*84	*85
			At Southern Pacific Railroad	*84	*85
		Greens Bayou (P100-00-00)	Approximately 400 feet upstream of Tidwell Road.	*38	*35
			Approximately 70 feet upstream of Millbridge Road.	None	*130
		Stream P155-00-00	At confluence with Greens Bayou (P100-00-00).	None	*79
			Approximately 1.4 miles upstream of confluence with Greens Bayou (P100-00-00).	None	*79
		Stream P156-00-00	At confluence with Greens Bayou (P100-00-00).	None	*82

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

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PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 1.2 miles upstream of confluence with Greens Bayou (P100-00-00).	None	*82
		North Fork Greens Bayou (P145-00-00).	Approximately 650 feet upstream of Ranking Road.	*92	*94
			Approximately 1,900 upstream of Ranking Road.	*93	*94
		Tributary 32.23 to Greens Bayou (P146-00-00).	at the confluence with Greens Bayou (P100-00-00).	*93	*95
			Approximately 1,900 feet upstream of the confluence with Greens Bayou (P100-00-00).	*94	*95
		Tributary 34.60 to Greens Bayou (P148-00-00).	At the confluence with Greens Bayou (P100-00-00).	*101	*103
			Approximately 300 feet upstream of confluence with Greens Bayou (P100-00-00).	*102	*103
		Tributary 26.64 to Greens Bayou (P140-00-00).	At the downstream side of Aldin-Westfield Road.	*82	*86
			Approximately 1,500 feet upstream of Farrell Road.	None	*99
		Halls Bayou (P118-00-00)	Approximately 200 feet upstream of Little York Road.	*62	*61
			At Mosielee Road	*100	*102
		Turkey Creek (A119-00-00)	Approximately 1,350 feet upstream of Beamer Road.	*26	*27
			At the upstream corporate limit	*31	*30
		Halls Road Ditch (A120-00-00).	Approximately 2,200 feet downstream of Kingspoint Road.	*37	*38
		Cypress Creek (K100-00-00)	At the downstream side of House Hahl Road	*148	*149
			Approximately 1.4 miles upstream of the confluence of channel (K159-00-00).	*152	*153
		Channel A (K159-00-00)	At the confluence with Cypress Creek (100-00-00).	None	*150
			Approximately 1,300 feet upstream of Mason Road.	None	*155
		Channel D (K159-01-00)	At the confluence with Channel A (K159-00-00).	None	*153
			Approximately 0.9 mile upstream of the confluence with Channel A (K159-00-00).	None	*165
		Tributary 37.1 to Cypress Creek (K152-00-00).	Approximately 1,300 feet upstream of confluence with Cypress Creek (K100-00-00).	*150	*149
			Approximately 1.2 miles upstream of the confluence with Cypress Creek (K100-00-00).	*155	*154
		Dry Creek (K145-00-00)	Approximately 550 feet upstream of Jarvis Road.	*143	*142
			Approximately 300 feet downstream of Mueschke Road.	*156	*155
		Garners Bayou (P130-00-00)	Approximately 500 feet upstream of confluence of Williams Gully (P130-02-00).	*57	*58
			At downstream side of Old Humble Road	*65	*66
		Tributary 3.19 to Garners Bayou (P130-03-00).	At the confluence with Garners Bayou (P130-00-00).	*61	*62
			Approximately 1,300 feet upstream of the confluence with Garners Bayou (P130-00-00).	*61	*62
		Taylor Gully (G103-80.1)	At Hamblem Road	None	*65
			Approximately 0.5 mile upstream of Rustling Elvis Drive.	None	*72
		Turkey Creek (K111-00-00)	Approximately 0.9 mile upstream of the confluence with Cypress.	*77	*76
			Approximately 1,300 feet upstream of North Vista Road.	*105	*106
		Langham Creek (U100-00-00).	Approximately 1,000 feet downstream of Addicks-Satsuma Road.	*111	*108
			Approximately 1.2 miles upstream of West Little York Road.	*118	*117
		Horsepen Creek (U106-00-00).	At the confluence with Langham Creek (U100-00-00).	None	*107
			Approximately 2.4 miles upstream of State Route 6.	*138	*137
		Tributary 10.08 to Clear Creek (A111-00-00).	At the upstream side of 2nd crossing of Forest Park Cemetery Road.	*12	*11
			Approximately 0.8 mile upstream of Jasmine Road.	*24	*25
		Big Island Slough (B106-00-00).	Approximately 1,400 feet downstream of Southern Pacific Railroad.	None	*16
			Approximately 2,000 feet upstream of Southern Pacific Railroad.	None	*17

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
		East Fork San Jacinto River	Approximately 2,000 feet downstream of the confluence with Orton Gully (just upstream of the Harris-Montgomery County boundary).	None	*74
			Approximately 1.8 miles upstream of the confluence of Orton Gully.	None	*76

Maps available for inspection at 301 Main Street, Houston, Texas.

Send comments to The Honorable Jon Lindsay, Harris County Judge, 1001 Preston Avenue—6th Floor, Houston, Texas 77002.

Texas	Houston, City Harris County.	Turkey Creek (A-119-00-00)	Just upstream of Ryewater Drive	*29	*30
			Approximately 400 feet downstream of Sagedowne Lane.	*31	*30
		Halls Road Ditch (A-120-00-00).	At Hall Road	*36	*35
			Approximately 400 feet downstream of Furque	*40	*41
		Garners Bayou (P-130-00-00).	Just downstream of U.S. Route 59	*75	*76
			Approximately 400 feet upstream of west feeder of U.S. Route 59.	*78	*77
			Approximately .7 mile upstream of Lee Road	*89	*88
		Spring Branch (W140-00-00)	Approximately 150 feet upstream of Long Point Road.	*80	*79
			At Campbell Road	*85	*81
		North Fork Greens Bayou (P145-00-00).	At the confluence with Greens Bayou	*92	*94
			Approximately 2,650 feet upstream of Rankin Road.	*93	*94
		Brays Bayou (D100-00-00)	Approximately 1,200 feet upstream of confluence with Buffalo Bayou.	*13	*12
			Approximately 1.07 mile upstream of Eldridge Road.	None	*83
		Tributary 26.20 to Brays Bayou (D129-00-00).	At confluence with Brays Bayou	*79	*80
			Approximately 1,200 feet upstream of Piping Rock.	None	*85
		Greens Bayou (P100-00-00)	Approximately 800 feet upstream of confluence of Tributary 26.64 to Greens Bayou.	*75	*74
			Approximately 400 feet upstream of Northborough Drive.	*93	*95
		Halls Bayou (P118-00-00)	Approximately 200 feet upstream of F.M. 527	*34	*32
			Approximately .4 mile upstream of Sunnywood Street.	None	*65
		Tributary 19.77 to Brays Bayou.	At confluence with Brays Bayou	*66	*69
			Upstream side of South Gessner Road	*68	*69
		Tributary 20.86 to Brays Bayou.	At confluence with Brays Bayou	*68	*70
			Approximately 100 feet downstream of Beechnut Street.	*69	*70
		Tributary 20.90 to Brays Bayou.	At confluence with Brays Bayou	*68	*70
			Approximately 1,300 feet upstream of Club Creek Drive.	*69	*70
		Tributary 21.95 to Brays Bayou.	At confluence with Brays Bayou	*70	*72
			Approximately 200 feet upstream of Boone Road.	*71	*72
		Tributary 22.89 to Brays Bayou (D124-00-00).	At confluence with Brays Bayou	*72	*74
			Approximately 700 feet upstream of Southern Pacific Railroad.	*73	*74
		Tributary 23.59 to Brays Bayou (D125-00-00).	At confluence with Brays Bayou	*73	*75
		Reinhardt Bayou (P130-05-00).	At the confluence with Garners Bayou (P130-00-00).	*65	*67
			At approximately 100 feet downstream of Southern Pacific Railroad.	*66	*67
		Taylor Gully (G103-80-03.1)	Approximately 400 feet upstream of confluence with White Oak Creek (G103-80-03.2).	*56	*57
			At Hamblen Road	None	*65
		Turkey Creek (K111-00-00)	At F.M. 1960	*63	*76
			At Aldine-Westfield Road	*86	*82
		Langham Creek (U100-00-00).	Approximately 4,400 feet downstream of the confluence with Horsepen Creek (U106-00-00).	*105	*106
			Approximately 1,000 feet downstream of Addicks-Satsuma Road.	*111	*108
		Horsepen Creek (U106-00-00).	At the confluence with Langham Creek (U100-00-00).	*109	*107

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PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) Existing	Modified
			Just upstream of State Route 29 Spur	*663	*667
			About 300 feet upstream of Leawood Avenue	*739	*738

Maps available for inspection at the City Manager Office, 3117 Dayton Boulevard, P.O. Box 15069, Red Bank, Tennessee.

Send comments to the Honorable Ronnie E. Moore, Mayor, City of Red Bank, 3117 Dayton Boulevard, P.O. Box 15069, Red Bank, Tennessee 37415.

			At the upstream corporate limit—300 feet upstream of Addicks Reservoir Boundary.	*110	*107
		Tributary 9.39 to Armand Bayou (B-111-00-00).	Approximately 600 feet upstream of corporate limits.	*20	*19
			Approximately 1.3 miles upstream of corporate limits.	*28	*29
		Tributary 4.51 to Horsepen Bayou.	At confluence with Horsepen Bayou	*19	*18
			Approximately 1.4 miles upstream of confluence with Horsepen Bayou.	*21	*22
		Keegans Bayou (D118-00-00)	At the confluence with Brays Bayou (D100-00-00).	*64	*67
			Approximately 1,600 feet upstream of South Braeswood Boulevard.	*66	*67
		Fondren Diversion Channel (D140-00-00).	At the confluence with Brays Bayou (D100-00-00).	*61	*63
			Approximately 400 feet downstream of McLain Boulevard.	*62	*63
		Tributary 17.42 to Brays Bayou (D133-00-00).	At the confluence with Brays Bayou	*61	*63
			Approximately 400 feet upstream of Birdwood	*62	*63
		Chimney Rock Diversion Channel (D138-00-00).	At the confluence with Brays Bayou	*56	*57
			Approximately 100 feet upstream of Willow Bend Boulevard.	*56	*57
		Willow Waterhole Bayou (D112-00-00).	At the confluence with Brays Bayou	*53	*54
			At the Willowbend Bayou Boulevard (westbound).	*53	*54

Maps available for inspection at the Department of Public Works, 3500 City Hall Annex, Houston, Texas.

Send comments to the Honorable Kathryn J. Whitmire, Mayor of the City of Houston, P.O. Box 1562, Houston, Texas 77251-1562.

Texas	Humble, City, Harris County.	Reinhardt Bayou (P130-05-00).	At the confluence with Garners Bayou (P130-00-00).	*64	*67
			At the downstream of U.S. Route 59	*72	*70
		Garners Bayou (P130-00-00)	At confluence of Reinhardt Bayou (P130-05-00).	*64	*67
			Approximately 200 feet downstream of East Feeder of U.S. Route 59.	*76	*75
		Tributary 0.55 to Tributary 3.19 to Garners Bayou (P130-03-01).	At Atascocita Road	*66	*67
			Approximately 1 mile upstream of Atascocita Road.	None	*81

Maps available for inspection at 114 West Higgins, Humble, Texas.

Send comments to The Honorable James P. Baker, Manager of the City of Humble, Harris County, P.O. Box 1627, Humble, Texas 77338.

Texas	Hunters Creek Village, City, Harris County.	Buffalo Bayou (W100-00-00)	At downstream corporate limits	*59	*53
			Approximately 1,000 feet downstream of San Felipe Road	*63	*60
		Brier Branch (W140-01-00)	At the downstream corporate limits	None	*52
			At the downstream side of Bingle Road	None	*54
		Tributary No. 1 to Buffalo Bayou.	At the confluence with Buffalo Bayou (W100-00-00).	*62	56
			Approximately 700 feet upstream of South Voss Road.	*62	*56

Maps available for inspection at the City Hall, 8333 Katy Freeway, Suite 112, Houston, Texas.

Send comments to The Honorable Cebe Sue Barnett, Mayor of the City of Hunters Creek Village, Harris County, 8333 Katy Freeway, Suite 112, Hunters Creek Village, Texas 77024.

Texas	Pasadena, City, Harris County.	Horsepen Bayou (B104-00-00).	Approximately 1.4 miles above the confluence with Armand Bayou (B100-00-00).	*14	*13

Maps available for inspection at the City Hall, 1211 E. Southmore, Pasadena, Texas.

Send comments to The Honorable John Ray Harrison, Mayor of the City of Pasadena, Harris County, P.O. Box 672, Pasadena, Texas.

Texas	Piney Point Village, City, Harris County.	Buffalo Bayou (W-100-00-00)	Approximately 0.5 mile downstream of San Felipe Road.	*62	*59

Maps available for inspection at the City Hall, 7745 San Felipe, Suite 101, Houston, Texas.

Send comments to The Honorable A. Lee Smith, Mayor of the City of Piney Point Village, Harris County, 7745 San Felipe, Suite 101, Piney Point, Texas 77063-1616.

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) Existing	Modified
Texas	Spring Valley, City, Harris County.	Spring Branch	Approximately 200 feet downstream of Missouri-Kansas-Texas Railroad.	*58	*55
			Approximately .4 mile upstream of Voss Road	*77	*76
		Brier Branch	At upstream side of Bingle Road	*58	*54
			Approximately 300 feet upstream of Missouri Kansas-Texas Railroad.	*58	*57

Maps available for inspection at 1025 Campbell Road, Houston, Texas.

Send comments to The Honorable C. Robert Keeney, Mayor of the City of Spring Valley, Harris County, 1025 Campbell Road, Houston, Texas 77055.

Texas	Webster, City, Harris County.	Tributary 10.08 to Clear Creek (A100-00-00).	At the confluence with Clear Creek	*12	*11
			Approximately 1.1 miles upstream of F.M. 528	*24	*23
		Cow Bayou	Approximately 500 feet upstream of F.M. 528	*11	*12
			Approximately 1,200 feet upstream of F.M. 528	*11	*12
		Clear Creek	At Interstate Route 45 and U.S. Route 75	*12	*11
			At the upstream side of Union Pacific Railroad	*12	*11

Maps available for inspection at 311 Pennsylvania Avenue, Webster, Texas.

Send comments to The Honorable Dennis J. Weggett, Mayor of the City of Webster, Harris County, 311 Pennsylvania Avenue, Webster, Texas 77586.

Wyoming	City of Laramie, Albany County.	Spring Creek	At confluence with Laramie River	*7,139	*7,139
			At Union Pacific Railroad	*7,148	*7,146
			At Ninth Street	*7,167	*7,165
			At Seventeenth Street	*7,185	*7,183
			At U.S. Highway 30 (Grand Avenue)	*7,248	*7,247
			Approximately 6,560 feet upstream of U.S. Highway 30 (Grand Avenue), at east corporate limits.	*7,332	*7,332

Maps are available for review at the City's Engineering Department, 406 Ivinson Street, Laramie, Wyoming.

Send comments to The Honorable R. Bruce Johnson, Mayor, City of Laramie, P.O. Box C, Laramie, Wyoming 82070.

Issued December 12, 1989.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 89-29874 Filed 12-22-89; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 611

[Docket No. 91290-9250]

Fee Schedule for Foreign Fishing

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed Rule.

SUMMARY: NOAA proposes the 1990 fee schedule for foreign vessels fishing in the exclusive economic zone (EEZ). This proposal is to adopt a fee schedule for species currently available for foreign fishing. Fees for these species would be identical to fees charged under schedules implemented in 1988 and 1989. Under these schedules, owners or operators of foreign vessels paid $354 per fishing permit application. The poundage fees in foreign directed fisheries were assessed at 44.4% of the exvessel value of the species taken. No surcharge is proposed for the Fishing Vessel and Gear Damage Compensation Fund. Comments are requested on this fee schedule proposal. This action complies with section 204(b)(10) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), 16 U.S.C. 1801 *et seq.*

DATES: Comments must be received by January 10, 1990.

ADDRESSES: Send comments to the Operations Support and Analysis Division, F/CM1, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910 or telex comments to telex no. 467856 US COM FISH CI. Mark envelopes "Foreign Fees."

Copies of a regulatory impact review (RIR) related to the impact of fees set at the levels proposed are available at this address.

FOR FURTHER INFORMATION CONTACT: Alfred J. Bilik, 301-427-2337.

SUPPLEMENTARY INFORMATION: NOAA proposes a schedule of permit application and poundage fees consistent with section 204(b)(10) of the Magnuson Fishery Conservation and Management Act (Magnuson Act) for fishing in 1990 by foreign vessels in the EEZ. Section 204(b)(10) requires that the fees recover costs of carrying out the purposes of the Magnuson Act which are attributed to foreign fishing. This schedule targets fee collections of about $2.2 million in 1990. No additional amounts are proposed to be collected under provisions of section 204(b)(10)(C). This paragraph requires that any fishing nation found to be harvesting anadromous species at a level that is unacceptable to the Secretary or failing to take sufficient action to benefit the conservation and development of the U.S. fisheries shall pay a higher rate of fees. The fee amounts are chosen for the reasons set forth below. NOAA has consulted with the Coast Guard and the Department of State (DOS) on this proposal. Neither agency has objected to its publication.

Background

Subparagraph 204(b)(10) of the Magnuson Act addresses the requirements for imposing fees on owners or operators of foreign vessels for fishing in the EEZ. These requirements relate to minimum amounts to be collected and have been described in notices of proposed fees for preceding years. (See, for example, 53 FR 44047, November 1, 1988.) Generally stated, the Magnuson Act requires that the Secretary of Commerce (Secretary) seek to recover a portion of the Federal costs for carrying out the purposes of the Matnuson Act (Magnuson Act costs), determined by the ratio of the foreign catch in the EEZ during the prior year to

the total catch in the EEZ and U.S. territorial waters. United States territorial waters are defined to include

mackerel may be available for allocations for foreign fishing. If poundage fees are maintained at the

fees in addition to the poundage fees for fish caught by their vessels. However, as in FY 1988 and in FY 1989, NOAA has

disruption of traditional fishing patterns on target species. The environmental impact of harvesting this very small

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 971 *et seq.*, 22 U.S.C. 1971 *et seq.*, and 16 U.S.C. 1361 *et seq.*

harvested by a nation during the first quarter of the next fiscal year following notification under paragraph (10) (C) of

the total catch in the EEZ and U.S. territorial waters. United States territorial waters are defined to include the U.S. Territorial Sea and marine internal waters.

Until 1988, NMFS compiled data, for determining the total Magnuson Act costs, by surveying all its field units, other NOAA units, and requesting similar cost data from the Coast Guard and the Department of State. The fee-setting process was changed in the 1989 fee schedule because allocations for directed fishing have been steadily educed and now are less than two percent of the allocations for foreign fishing in the early 1980s. One result of these reductions is that virtually all foreign fisheries have been phased out of the EEZ and the fee burden now falls almost exclusively on the foreign Atlantic mackerel fishery. Joint ventures (whereby foreign vessels purchase fish such as mackerel at-sea from U.S. fishermen) are an integral part of foreign fishing operations in this fishery and costs of the foreign directed fishery may influence the ability of foreign owners and operators to purchase mackerel at-sea from U.S. fishermen at its current ex-vessel value. Fees set for directed fishing at prohibitively high levels could adversely affect U.S. fishermen engaged in joint ventures and U.S. opportunities to develop a mackerel fishery, for which markets exists only abroad. NOAA has therefore adopted a process designed to set fees which will recover approximately the amount of money estimated as the Federal portion of the Magnuson Act costs related to foreign fishing, but will mitigate the effects of fees on U.S. fisheries development.

Catch statistics indicate that the foreign catch in the EEZ was 1.1 percent of the total catch taken in the EEZ and U.S. territorial waters in 1988. The most recent estimates of the *total* Federal costs for carrying out the purposes of the Magnuson Act place the costs at under $200 million. Under the formula contained in paragraph (B) of section 204(b)(10), the fee schedule should be designed to recover $2.2 million to satisfy provisions of the Magnuson Act.

As noted earlier, only the Atlantic mackerel fishery is currently available for directed foreign fishing, although a possibility exists that a small directed fishing effort may be approved in the Bering Sea snail fishery. NOAA believes that a fee schedule which reasonably seeks to meet the required fee target without adversely affecting U.S. fishery development objectives in the only remaining foreign fishery is the best schedule. Current forecasts are that at least 24,000 metric tons (mt) of Atlantic mackerel may be available for allocations for foreign fishing. If poundage fees are maintained at the level adopted in the 1988 and 1989 fee schedules, a foreign harvest of the 24,000 mt of Atlantic mackerel at $68.43/mt would result in fee collections of about $1.6 million. Mackerel fishing results in a limited bycatch of other species. NOAA has estimated that a directed fishery for 24,000 mt of Atlantic mackerel may result in a bycatch of about 13 percent of the mackerel caught, or 3,120 mt of other species. Assuming an average fee of $150/mt for the bycatch species, NOAA estimates that an additional $468,000 may be collected for the bycatch of other species in the mackerel fishery. Together, with application fees of $129,000, the total expected fees for 1990 amount to $2.239 million which is sufficiently close to the Magnuson Act fee target of $2.2 million. Therefore, NOAA concludes that maintaining poundage fees at current levels results in a reasonable expectation of $2.2 million in fee collections in 1990, an amount sufficient to meet the Magnuson Act objectives to recover costs and yet still promote development of U.S. fisheries.

The Fee Target

Based on the above, NOAA proposes that the permit application and poundage fees be maintained at their current levels and has initially determined that this fee target will satisfy requirements of section 204(b)(10) of the Magnuson Act.

Provisions of Subparagraph 204(b)(10)(C)

Subparagraph (C) of section 204(b)(10) requires higher fees for nations which meet criteria for such fees related to the taking of anadromous species of U.S. origin and to the conservation and development of U.S. fisheries. The higher fees are determined by assigning costs to foreign fishing as a portion of the total Magnuson Act costs determined by the ratio of the catch taken by foreign vessels in the EEZ to the total catch in the EEZ—that is, by removing the U.S. catch taken in U.S. territorial waters in the denominator of the ratio used in subparagraph (B). The "higher fee" ratio for 1988 is 1.8 percent and increases the costs attributed to foreign fishing to $3.6 million, as compared to $2.2 million under the provisions of subparagraph (B). Using the methods applied in prior years for calculating the incremental amount to be paid by nations meeting the above criteria, NOAA has determined that such nations would pay an incremental amount of 78 percent of their poundage fees in addition to the poundage fees for fish caught by their vessels. However, as in FY 1988 and in FY 1989, NOAA has not found any nation meeting the conditions for paying higher fees. Therefore, no nation will be assessed the higher fees in 1990.

Lastly, NOAA proposes that the surcharge for the Fishing Vessel and Gear Damage Compensation Fund be effectively waived in 1990, at it was in 1988 and in 1989. It also removes poundage fees listed in Table 1. of § 611.22(b)(1) for fisheries in geographic regions in which allocations for foreign fishing are no longer made. This action is taken to avoid an inference that NOAA has recently determined ex-vessel values of those species.

Classification

NOAA prepared a regulatory impact review (RIR) for the 1988 fee schedule which discussed the economic consequences and impacts of that fee schedule and alternatives. Copies of the RIR are available at the above address. Based on that RIR, the Administrator, NOAA, determined that the 1988 fee schedule complied with the requirements of section 2 of E.O. 12291. Since the species fees proposed for 1989 were not changed, NOAA anticipated no new economic impacts. It has reached a similar conclusion for the 1990 schedule.

The General Counsel of the Department of Commerce has certified that the proposed fee schedule will not have significant economic impact upon a substantial number of small domestic entities for purposes of the Regulatory Flexibility Act, (U.S.C. 601 *et seq.*). Because the proposed fee schedule will not have a significant economic impact upon a substantial number of small domestic entities, a regulatory flexibility analysis is not required, and has not been prepared.

NOAA Directive 02-10 published at 45 FR 40312 (July 24, 1980) adopts internal procedures to implement the National Environmental Policy Act (NEPA), as amended, (U.S.C. 4321 *et seq.*). Under those procedures, programmatic functions with no potential for significant environmental impacts are generally excluded from NEPA requirements. The proposed fee schedule has no significant environmental impact on the fishery resources in the EEZ. At most, the fee schedule might affect the harvesting strategy of foreign fishing vessels and result in a different species mix being removed from the environment; however, the proposed schedule meets the criterion that fees should minimize disruption of traditional fishing patterns on target species. The environmental impact of harvesting this very small TALFF is described in the fishery management plan for Squid, Butterfish and Mackerel. Consequently, no further environmental assessment is necessary.

This proposed rule has no information collection provisions covered by the Paperwork Reduction Act, (44 U.S.C. 3501, *et seq.*).

This proposed rule would not directly affect the coastal zone of any state with an approved Coastal Zone Management program. Neither does the proposed rule contain policies with federalism implications sufficient to warrant a federalism assessment under Executive Order 12612.

List of Subjects 50 CFR Part 611

Fish, Fisheries, Foreign Relations, Reporting and recordkeeping requirements.

Dated: December 20, 1989.

James E. Douglas, Jr.,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons above, 50 CFR part 611 is proposed to be amended as follows:

PART 611—[AMENDED]

1. The authority citation for part 611 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 971 *et seq.*, 22 U.S.C. 1971 *et seq.*, and 16 U.S.C. 1361 *et seq.*

§ 611.22 [Amended]

2. Section 611.22(b)(1), (c) and (d) are revised as follows:

* * * * *

(b) *Poundage fees.*—(1) *Rates.* If a nation chooses to accept an allocation, poundage fees must be paid at the rate specified in Table 1, plus the surcharge required by paragraph (d) of this section.

TABLE 1.—SPECIES AND POUNDAGE FEES

[Dollars per metric ton, unless otherwise noted]

Species	Poundage fee
Northwest Atlantic Ocean fisheries:	
1. Butterfish	274.61
2. Hake, red	163.97
3. Hake, silver	174.53
4. Herring, river	61.76
5. Mackerel, Atlantic	68.43
6. Other groundfish	119.00
7. Squid, illex	103.56
8. Squid, Loligo	245.73
Alaska fisheries:	
21. Snails	126.42

(c) *Incremental amount.* An additional incremental amount will be added to the poundage fee Bill for Collection for fish harvested by a nation during the first quarter of the next fiscal year following notification under paragraph (10) (C) of section 204(b) of the Magnuson Act (16 U.S.C. 1824(b)(10)(C). This incremental amount will be added to all subsequent quarterly bills until the quarter specified when the Assistant Administrator notifies that nation that it has taken appropriate corrective action. The incremental amount in 1990 will be 78.0 percent of the total poundage fee in each quarter during which this provision applies.

(d) *Surcharges.* The owner or operator of each foreign vessel who accepts and pays permit application or poundage fees under paragraphs (a) or (b) of this section must also pay a surcharge. The Assistant Administrator may reduce or waive the surcharge if it is determined that the Fishing Vessel and Gear Damage Compensation Fund is capitalized sufficiently. The Assistant Administrator also may increase the surcharge during the year to a maximum level of 20 percent, if needed, to maintain capitalization of the fund. The Assistant Administrator has effectively waived the surcharge on 1990 fees.

* * * * *

[FR Doc. 89-29967 Filed 12-23-89; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register

Vol. 54, No. 246

Tuesday, December 26, 1989

Fisheries Service, 1335 East West Highway, Room 7330, Silver Spring, Maryland 20910; and Director, Southeast Region, National

COMMISSION ON RAILROAD RETIREMENT REFORM

Meeting

The charge for the Federal Register is $1.50 for each issue payable by check or money order to the Superintendent of Documents.

VOL 54 ISS: 246 DE 26 1989 UMI

Notices

Federal Register
Vol. 54, No. 246
Tuesday, December 26, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Feed Grain Donations for the Pine Ridge Sioux Tribe Indian Reservation in South Dakota

Pursuant to the authority set forth in section 407 of the Agricultural Act of 1949, as amended (7 U.S.C. 1427) and Executive Order 11336, I have determined that:

1. The chronic economic distress of the needy members of the Pine Ridge Sioux Tribe Reservation in South Dakota has been materially increased and become acute because of severe and prolonged drought, thereby creating a serious shortage of feed and causing increased economic distress. This reservation is designated for Indian use and is utilized by members of the Pine Ridge Sioux Tribe for grazing purposes.

2. The use of feed grain or products thereof made available by the Commodity Credit Corporation (CCC) for livestock feed for such needy members of the Tribe will not displace or interfere with normal marketing of agricultural commodities.

3. Based on the above determinations, I hereby declare the reservation and grazing lands of the Tribe to be acute distress areas and authorize the donation of feed grain owned by the CCC to livestock owners who are determined by the Bureau of Indian Affairs, United States Department of the Interior, to be needy members of the Tribe utilizing such lands. These donations by the CCC may commence upon December 15 and shall be made available through May 14, 1990, or such other date as may be stated in a notice issued by the USDA.

Signed at Washington, DC on December 15, 1989.

John A. Stevenson,

Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 89-29880 Filed 12-22-89; 8:45 am]

BILLING CODE 3410-05-M

COMMISSION ON CIVIL RIGHTS

Wisconsin Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commisson on Civil Rights, that a meeting of the Wisconsin Advisory Committee to the Commission will convene at 7:00 p.m. and adjourn at 9:00 p.m., on January 17, 1990, at the Concourse Hotel, One West Dayton Street, Director Five Room, Madison, Wisconsin. The purpose of this meeting is to discuss current projects and to plan future activities for FY 1990.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, James L. Baughman, or Farella E. Robinson, Civil Rights Analyst of the Central Regional Division (816) 426-5253, (TDD 816/426-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 19, 1989.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 89-29903 Filed 12-22-89; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Marine Mammals; Withdrawal of Application; Geochemical and Environmental Research Group (P454)

On August 28, 1989, notice was published in the **Federal Register** (54 FR 35525) that an application had been filed by Dr. Bernd Wursig and Dr. Roger Fay, Geochemical and Environmental Research Group for a permit to take right whales by harassment for scientific purposes.

Notice is hereby given that on November 3, 1989, the application was withdrawn and the withdrawal request has been acknowledged and accepted without prejudice by the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following Offices:

Office of Protected Resources, Permit Division, National Marine Fisheries Service, 1335 East West Hwy., Suite 7324, Silver Spring, Maryland 20910;

Director, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, Massachusetts 01930; and Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, Florida 33702.

Dated: December 18, 1989.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 89-29835 Filed 12-22-89; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Permit Modification: Gulf World, Inc. (P160D)

Notice is hereby given that pursuant to the provisions of § 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), Public Display Permit No. 647 issued to Gulf World, Inc., on October 31, 1988, (53 FR 40115) is modified as follows:

Section B.7 is changed to read:

7. The authority to acquire the marine mammals authorized herein shall extend from the date of issuance through December 31, 1990. The terms and conditions of this Permit (Sections B and C) shall remain in effect as long as one of the marine mammals taken hereunder is maintained in captivity under the authority and responsibility of the Permit Holder.

This modification is effective upon publication in the **Federal Register**.

Documents submitted in connection with the above application are available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Highway, Room 7330, Silver Spring, Maryland 20910; and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: December 19, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89-29833 Filed 12-22-89; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Permit Modification; NMFS, Southwest Fisheries Center (P77 #33); Modification No. 1 to Permit No. 680

Notice is hereby given that pursuant to the provisions of § 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), Scientific Research Permit No. 680 issued to NMFS, Southwest Fisheries Center, P.O. Box 271, La Jolla, California 92038-0271 on August 16, 1989 (54 FR 35221) is modified as follows:

The following is added to section A.1:

	Maximum total take
Spotted dolphin (*Stenella attenuata*) coastal form	240
Spinner dolphin (*Stenella longirostris*) Costa Rican form	240

This modification became effective on December 18, 1989.

Documents in connection with the above modification are available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Highway, Room 7324, Silver Spring, Maryland 20910; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: December 18, 1989.

Nancy Foster,

Director Office of Protected Resources and Habitat Programs, National Marine Fisheries Services.

[FR Doc. 89-29834 Filed 12-22-89; 8:45 am]

BILLING CODE 3510-22-M

COMMISSION ON RAILROAD RETIREMENT REFORM

Meeting

ACTION: Meeting.

SUMMARY: The Commission on Railroad Retirement Reform ("the Commission") will hold a meeting on Wednesday, January 10, 1990 in New York City. The Commission was established by Section 2101 of the Omnibus Budget Reconciliation Act of 1987, Public Law 100-203, enacted December 22, 1987.

DATE, TIME, AND PLACE: January 10, 1990, 9:30 a.m.-3:30 p.m., United States Court of International Trade (Ceremonial Courtroom), One Federal Plaza, New York, New York.

AGENDA: The topic of this open meeting is Commuter Railroads.

FOR ADDITIONAL INFORMATION: Contact Maureen Kiser, 202-254-3223, Commission on Railroad Retirement Reform, 1111 18th Street, NW., Washington, DC 20036.

SUPPLEMENTARY INFORMATION: See **Federal Register**, Volume 54 FR, No. 40, Thursday, March 2, 1989, Page 8856.

Kenneth J. Zoll,

Executive Director.

[FR Doc. 89-29841 Filed 12-22-89; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Civilian Health and Medical Program of the Uniformed Services

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of revised rates.

SUMMARY: This notice provides the updated relative weights for the Pediatric-Modified Diagnosis-Related Groups (PM-DRGs) to be used for FY 1990 under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) DRG-based payment system.

EFFECTIVE DATE: The weights contained in this notice are effective for admissions occurring on or after April 1, 1989.

ADDRESS: Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Office of Program Development, Aurora, CO 80045-6900.

For copies of the **Federal Register** containing this notice, contact the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238

The charge for the **Federal Register** is $1.50 for each issue payable by check or money order to the Superintendent of Documents.

FOR FURTHER INFORMATION CONTACT: Stephen E. Isaacson, Office of Program Development, OCHAMPUS, telephone (303) 361-4005.

To obtain copies of this document, see the "**ADDRESS**" section above. Questions regarding payment of specific claims under the CHAMPUS DRG-based payment system should be addressed to the appropriate CHAMPUS contractor

SUPPLEMENTARY INFORMATION: On October 10, 1989, we published a Notice of Revised Rates (54 FR 41467) for use in the CHAMPUS DRG-based payment system during FY 1990. In the notice we stated that we were calculating updated PM-DRG weights and would publish them within the next few weeks. In the meantime we would continue to use the PM-DRG weights which were published on March 22, 1989 (54 FR 11781). We have completed the calculations and this Notice provides the PM-DRG weights.

I. Background

We had sufficient data to calculate actual weights for 21 of the 34 PM-DRGs. For the remaining thirteen (13) PM-DRGs there was insufficient CHAMPUS data to calculate an updated weight. For three of these there was no previous weight, and we will continue to reimburse any claims which group to these PM-DRGs based on the billed charges.

For the remaining ten (10) RM-DRGs, there were previous weights. However, in light of the significant increases in the weights, we believe that the previous weights are unreasonably low, and it would be unfair to hospitals to continue to use them. The previous weights were derived from data provided by the National Association of Children's Hospitals and Related Institutions, and we believe that their relative weights are still reasonable vis-a-vis each other. Therefore, we have increased the ten remaining weights using a factor based on the 21 weights for which we have data. That factor is 1.9 and was calculated by taking the average of the increases for each of the 21 weights (weighted by the number of CHAMPUS admissions for each during the period October 1, 1988, through September 30, 1989.)

II. Retroactive Adjustments

As noted in Section I above, we believe that the previous PM-DRG weights are unreasonably low and that payments based on them were

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inadequate. We have, therefore, directed our contractors to adjust all claims which were reimbursed using the previous PM–DRG weights. The adjustments will be made using the updated weights contained in this Notice. Hospitals which have received payments based on the previous weights will not be required to take any action—the necessary adjustments will be identified by our contractors.

III. Updated Weights and Rates

Table 1 provides the weights to be used under the CHAMPUS DRG-based payment system for the PM–DRGs during FY 1990. Except for DRGs 600 and 601, the arithmetic and geometric mean lengths of stay and the outlier thresholds published on October 10, 1989, are to be used for the PM–DRGs. For DRG 600 the geometric mean length of stay is 1.0, and for DRG 601 is 1.7. There are no short-stay or long-stay outlier thresholds for either DRG 600 or DRG 601, since length of stay outliers are not applicable to either.

The implementing regulations for the CHAMPUS DRG-based payment system are in 32 CFR part 199.

Dated: 19 December 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Note—This table will not appear in the Code of Federal Regulations.

TABLE 1.—CHAMPUS WEIGHTS FOR THE PEDIATRIC-MODIFIED DIAGNOSIS-RELATED GROUPS (PM–DRGs)

[Effective for admissions occurring on or after April 1, 1989.]

PM–DRG Number and description	CHAMPUS weight
600 Neonate, died within one day of birth	0.8230
601 Neonate, transferred <5 days old	0.3263
602 Neonate, birthweight <750G, discharged alive	4.5829
603 Neonate, birthweight <750G, died	*4.3198
604 Neonate, birthweight 750–999G, discharged alive	*11.5406
605 Neonate, birthweight 750–999G, died	*5.5550
606 Neonate, birthweight 1000–1499G, with signif OR proc, discharged alive	*11.1175
607 Neonate, birthweight 1000–1499G, w/o signif OR proc, discharged alive	9.3507
608 Neonate, birthweight 1000–1499G, died	*5.4745
609 Neonate, birthweight 1500–1999G, with signif OR proc, with multiple major problems	*9.0225
610 Neonate, birthweight 1500–1999G, with signif OR proc, w/o multiple major problems	*3.4367
611 Neonate, birthweight 1500–1999G, w/o signif OR proc, with multiple major problems	*4.0283
612 Neonate, birthweight 1500–1999G, w/o signif OR proc, with major problem	4.1964
613 Neonate, birthweight 1500–1999G, w/o signif OR proc, with minor problem	2.6576
614 Neonate, birthweight 1500–1999G, w/o signif OR proc, with other problems	1.5516
615 Neonate, birthweight 2000–2499G, with signif OR proc, with multiple major problems	*7.1921
616 Neonate, birthweight 2000–2499G, with signif OR proc, w/o multiple major problems	*2.2175
617 Neonate, birthweight 2000–2499G, w/o signif OR proc, with multiple major problems	3.6560
618 Neonate, birthweight 2000–2499G, w/o signif OR proc, with major problem	2.3660
619 Neonate, birthweight 2000–2499G, w/o signif OR proc, with minor problem	1.7632
620 Invalid DRG	
621 Neonate, birthweight 2000–2499G, w/o signif OR proc, with other problems	0.4689
622 Neonate, birthweight >2499G, with signif OR proc, with multiple major problems	7.9017
623 Neonate, birthweight >2499G, with signif OR proc, w/o multiple major problems	3.4935
624 Neonate, birthweight >2499G, with minor abdom proc	0.7756
625 No longer valid	
626 Neonate, birthweight >2499G, w/o signif OR proc, with multiple major problems	4.2322
627 Neonate, birthweight >2499G, w/o signif OR proc, with major problem	1.2595
628 Neonate, birthweight >2499G, w/o signif OR proc, with minor problem	0.6562
629 Invalid DRG	
630 Neonate, birthweight >2499G, w/o signif OR proc, with other problems	0.1930
631 BPD and other chronic respiratory diseases arising in perinatal period	3.9010
632 Other respiratory problems after birth	1.0462
633 Multiple, other and unspecified congenital anomalies, with CC	**
634 Multiple, other and unspecified congenital anomalies, w/o CC	**
635 Neonatal aftercare for weight gain	**
636 Neonatal diagnosis, age >28 days	3.2146

* Calculated by multiplying previous weight by 1.9.
** Will be reimbursed based on billed charges.

[FR Doc. 89–29861 Filed 12–22–89; 8:45 am]

BILLING CODE 3810–01–M

Department of the Navy

Privacy Act of 1974; Delete and Amend Record Systems

AGENCY: Department of the Navy, DOD.

ACTION: Notice of deletions and amended systems of records subject to the Privacy Act.

SUMMARY: The Department of the Navy proposes to delete four systems of records and amend three systems of records in its inventory of record systems subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a).

DATES: The proposed deletions will be effective on December 26, 1989. The proposed amendments will be effective without further notice on or before January 25, 1990, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to Mrs. Gwen Aitken, Head, PA/FOIA Branch, Office of the Chief of Naval Operations (OP–09B30), Room 5E521, Department of the Navy, The Pentagon, Washington, DC 20350–2000. Telephone (202) 697–1459, Autovon: 227–1459.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems of records notices inventory subject to the Privacy Act of 1974 have been published in the **Federal Register** as follows:

51 FR 12908 Apr. 16, 1986
51 FR 16086 May 16, 1986 (Compilation, changes follow)
51 FR 19884 Jun 3, 1986
51 FR 30377 Aug 26, 1986
51 FR 30983 Aug 26, 1986
51 FR 45031 Dec 23, 1986
52 FR 2147 Jan 20, 1987
52 FR 2149 Jan 20, 1987
52 FR 8500 Mar 18, 1987
52 FR 15530 Apr 29, 1987
52 FR 22671 Jun 15, 1987
52 FR 45846 Dec 2, 1987
53 FR 17240 May 16, 1988
53 FR 21512 Jun 8, 1988
53 FR 22028 Jun 13, 1988
53 FR 25363 Jul 6, 1988
53 FR 39499 Oct 7, 1988
53 FR 41234 Oct 20, 1988
54 FR 8322 Feb 28, 1989
54 FR 14377 Apr 11, 1989
54 FR 32682 Aug 9, 1989
54 FR 40160 Sep 29, 1989
54 FR 41495 Oct 10, 1989
54 FR 43453 Oct 25, 1989
54 FR 45701 Oct 31, 1989
54 FR 48131 Nov 21, 1989

The specific changes to the record systems being amended are set forth below, followed by the system notices, as amended, published in their entirety. These notices are not within the purview of subsection (r) of the Privacy Act, 5 U.S.C. 552a, which requires the submission of altered systems reports.

Dated: December 19, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N01500–4

SYSTEM NAME:

DODCI Student Record System, (51 FR 18111, May 16, 1986).

REASON:

This system is now under the cognizance of the Department of the Army (see A1021.01NDU; 54 FR 50268, December 5, 1989).

N01500–5

SYSTEM NAME:

DODCI Student/Faculty/Senior Staff Biography System, (51 FR 18111, May 16, 1986).

REASON:

This system is now under the cognizance of the Department of the Army (see A1021.02NDU; 54 FR 50269, December 5, 1989).

N01500–6

SYSTEM NAME:

DODCI Course Evaluation System, (51 FR 18112, May 16, 1986).

REASON:

This system is now under the cognizance of the Department of the Army (see A1021.03NDU; 54 FR 50270, December 5, 1989).

N01500–7

SYSTEM NAME:

DODCI Lecture-Instructor Inventory System, (51 FR 18113, May 16, 1986).

REASON:

This system is no longer needed.

N01070–2

SYSTEM NAME:

Naval Attache Files, (51 FR 18094, May 16, 1986).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete the entire entry and substitute with "Chief of Naval Operations (OP–092L), The Pentagon, Washington, DC 20350–2000."

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete the entire entry and substitute with National Security Act of 1974, as amended; 5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 503 and 6011; 44 U.S.C. 3101; and E.O. 12356; and E.O. 9397.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete the entire entry and substitute with "Chief of Naval Operations (OP–092L), The Pentagon, Washington, DC 20350–2000."

* * * * *

N01070–2

SYSTEM NAME:

Naval Attache Files.

SYSTEM LOCATION:

Chief of Naval Operations (OP–092L), The Pentagon, Washington, DC 20350–2000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. Navy and Marine Corps Officers nominated and/or assigned to duty in the Defense Attache System (DAS).

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains records concerning the service and personal history of officers nominated and/or assigned to duty in the DAS and their dependents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Security Act of 1974, as amended; 5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 503 and 6011; 44 U.S.C. 3101; and E.O. 12356.

PURPOSE(S):

To determine suitability of personnel for security clearances and assignment to the Defense Attache System.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the Department of State to determine suitability of personnel for security clearances and assignment to the Defense Attache System.

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files in folders stored in standard General Services Administration safes.

RETRIEVABILITY:

Retrieved by name of officer.

SAFEGUARDS:

Records are stored in a controlled access area and are accessible only to a very limited number of authorized personnel with proper security clearance and demonstrated need for access.

RETENTION AND DISPOSAL:

Records are opened on individuals when first nominated for attache duty, and retained until six months after completion of attache duty and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Naval Operations (OP–092L), The Pentagon, Washington, DC 20350–2000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Chief of Naval Operations (Code OP–092L), The Pentagon, Washington, DC 20350–2000.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Chief of Naval Operations (OP–092L), The Pentagon, Washington, DC 20350–2000.

The request should contain the full name and address of the subject individual.

CONTESTING RECORD PROCEDURE:

The Department of the Navy rules for accessing records and for contesting contents and appealing initial agency determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Data is gained from the subjects of the file, Naval Military Personnel Command and Headquarters Marine Corps files of subject's fitness reports, Defense Investigative Service/Naval Investigative Service (DIS/NIS) background investigations and other sources who are familiar with the subject.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt under 5 U.S.C. 552a(k)(1), as applicable. An exemption rule for this system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 701, subpart G. For additional information contact the system manager.

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N10140-2

SYSTEM NAME:

Privately-owned Tax-free Vehicle Record Cards, Tax-free Gasoline Record Cards, (51 FR 18207, May 16, 1986).

CHANGES:

* * * * *

SYSTEM LOCATION:

In line two, after "UK", add "Box 60,".

* * * * *

SAFEGUARDS:

In line two, delete the words "Law Center personnel" and replace with "administrative (gasoline records) and security (vehicle records) personnel."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

In line two, delete "(Staff Judge Advocate)" and replace with ", Box 60, FPO New York 09510-5000".

NOTIFICATION PROCEDURE:

Delete the entire entry and substitute with "Individuals seeking to determine whether this system of records contains information about themselves should present a valid military identification card or Department of Defense identification card at the Administrative (gasoline records) or Security (vehicle records) Offices, U.S. Naval Activities, United Kingdom."

* * * * *

N10140-2

SYSTEM NAME:

Privately-Owned Tax-free Vehicle Record Cards, Tax-free Gasoline Record Cards.

SYSTEM LOCATION:

Commander, U.S. Naval Activities, United Kingdom, Box 60, FPO New York 09510-5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Officers, enlisted and civilian component personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Privately-owned tax-free vehicles and owners are entered on typewritten 5 x 8 cards, which are contained in boxes and maintained alphabetically. Gasoline coupon records are maintained on individually completed 5 x 8 cards (3AF Form 43) and filed alphabetically. I.D. windscreen stickers are registered in a log and show the name of the individual and the sticker number allocated.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations.

PURPOSE(S):

To establish strict control over persons entitled to acquire tax-free vehicles; to ensure entitled personnel do not obtain gasoline coupons in excess of their entitlement, and for inspection by officers of Her Majesty's Commissioners of Customs and Excise, United Kingdom, with whom the tax-free vehicle and gasoline program was originally negotiated by the U.S. military authorities. Accredited members of the Naval Investigative Service's Office may have access, upon request.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems of records apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All vehicle and gasoline records are maintained on 5 x 8 cards. I.D. stickers are listed numerically in a register.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are stored in file cabinets in space maintained by administrative (gasoline records) and security (vehicle records) personnel. These cabinets are locked at the end of the day.

RETENTION AND DISPOSAL:

Records are maintained for duration of tour of personnel concerned. Once the vehicle is shipped out of the country or is scrapped, the records are destroyed. Gas coupon records are destroyed upon turn-in of unused coupons by departing personnel.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Naval Activities, United Kingdom, Box 60, FPO New York 09510-5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should present a valid military identification card or Department of Defense indentification card at the Administrative (gasoline records) or Security (vehicle records) Offices, U.S. Naval Activities, United Kingdom.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records should present a valid military identification card or Department of Defense identification card at the Administrative (gasoline records) or Security (vehicle records) Offices, U.S. Naval Activities, United Kingdom.

CONTESTING RECORD PROCEDURE:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Application by member.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

12771-2

SYSTEM NAME:

Employee Relations Including Discipline, Employee Grievances, Complaints, Etc., (51 FR 18217, May 16, 1986).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete lines one and two in their entirety and substitute with "Office of Civilian Personnel Management (OCPM), OCPM Regional Offices and Naval Civilian Personnel Center (NCPC)."

In line three, delete "(NCPC), NCPC Field Divisions, * * *".

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In paragraph two, line three, insert the word "Employment" after the word "Equal".

Add the following paragraph to the end of the entry "Note: Records of identity, diagnosis, prognosis or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, requested, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided herein, be confidential and be disclosed only for the purposes and

under the circumstances expressly authorized in 42 U.S.C. 290dd-3 and 290ee-3. These statutes take precedence over the Privacy Act of 1974 in regard to accessibility of such records except to the individual to whom the record pertains. The Department of the Navy's "Blanket Routine Uses" do not apply to these records."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

In lines one through three, delete "Chief of Naval Operations (OP-14), Department of the Navy, Washington, DC 20350" and substitute with "Office of Civilian Personnel Management, Department of the Navy, 800 North Quincy Street, Arlington, VA 22203-1998".

* * * * *

NOTIFICATION PROCEDURE:

Delete the entire entry and substitute with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commander/Commanding Officer of the activity where assigned; or to the Director, Office of Civilian Personnel Management, Department of the Navy, 800 North Quincy Street, Arlington, VA 22203-1998. For Marine Corps civilian personnel, the Commandant of the Marine Corps (Code M), HQS, U.S. Marine Corps (Arlington Annex), Washington, DC 20380-0001."

* * * * *

N12771-2

SYSTEM NAME:

Employee Relations Including Discipline, Employee Grievances, Complaints, Etc.

SYSTEM LOCATION:

Office of Civilian Personnel Management (OCPM), OCPM Regional Offices and Naval Civilian Personnel Center (NCPC), Navy and Navy Staff Headquarters and Field Activities employing civilians, Commandant of the Marine Corps (Code MPC-30/HQSG), and Marine Corps Field Activities employing civilians. Official mailing addresses are published as an appendix to the Department of the Navy's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy and Marine Corps civilian employees, paid from appropriated funds servicing under career, career-conditional, temporary and excepted service appointments on whom discipline, grievances, and complaints records exist. Discrimination complaints of Navy and Marine Corps civilian employees, paid from appropriated and non-appropriated funds, applicants for employment and former employees in appropriated and non-appropriated positions. Appeals of Navy and Marine Corps civilian employees paid from appropriated funds. Filipino employees appeal case files (Filipinos who are lawfully admitted legal residents). Cases reviewed by Commander in Chief Pacific under Filipino Employment Policy Instructions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information pertaining to discipline, grievances, compliants, and appeals. Management operation record system consisting of manual files maintained by immediate supervisors and high level managers concerning employee performance, capability, informal discipline, attendance leave and tardiness, work assignments, and similar work related employee records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

E.O. 9830, Amending the Civil Service Rules and Providing for Federal Personnel Administration, amended by E.O. 10577; E.O. 12106; E.O. 12107; E.O. 12564 and 9397; 5 U.S.C. 1205, 1206, 1302, 3301, 3302, 7105, 7512, relevant portions of the Civil Service Reform Act, Pub. L. 95-454; 21 U.S.C. 812; Pub. L. 100-71; 42 U.S.C. 2000e-116 et. seq.; Equal Employment Opportunity Act of 1972; Pub. L. 93-259, amendment to the Fair Labor Standards Act, 29 U.S.C. 201, et. seq.; Age Discrimination and Employment Act, 29 U.S.C. 633a; the Rehabilitation Act of 1978 as amended, 29 U.S.C. 791 and 794a.

PURPOSE(S):

To manage civilian employee in the processing, administration, and adjudication of discipline, grievances, complaints, appeals, litigation, and program evaluation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To representatives of the Office of Personnel Management on matters relating to the inspection, survey, audit, or evaluation of Navy and Marine Corps civilian personnel management programs or personnel actions, or such other matters under the jurisdiction of the Office of Personnel Management.

To appeals officers and complaints examiners of the Merit Systems Protection Board and Equal Employment Opportunity Commission for the purpose of conducting hearings in connection with employees appeals from adverse actions and formal discrimination complaints.

To disclose information on any source from which additional information is requested in the course of processing a grievance or appeal to the extent necessary to identify the individual, to inform the source of the purpose(s) of the request, and identify the type of information requested.

To disclose information on any source from which additional information is requested in the course of processing a grievance or appeal to the extent necessary to identify the individual, to inform the source of the purpose(s) of the request, and identify the type of information requested.

To disclose information to a federal agency in response to its request in connection with the hiring or retention of an employee, the issuance of an investigation of an individual, the classifying of jobs, the letting of a contract of the issuance of a license, grant, or other benefit by the requesting agency, to the extent the information is relevant and necessary.

To the National Archives and Records Administration in records management inspection conducted under authority of 5 U.S.C. 2904 and 2906.

To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in the pending judicial or administrative proceeding.

To officials of labor organizations recognized under the Civil Service Reform Act when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of record systems apply to this system.

Note: Records of identity, diagnosis, prognosis or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, requested, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided herein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd-3 and 290ee-3. These statutes take precedence over the Privacy act of 1974 in regard to accessibility of such records except to the individual to whom the record pertains. The Department of the Navy's "Blanket Routine Uses" do not apply to these records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND

part 701; or may be obtained from the system manager.

office of the Fund for the Improvement of Postsecondary Education, Room 3100,

sequences in Carboniferous Strata, (2) identification of geologic and

Trudy A. Thorne, Contract Specialist (208) 526-9519.

Issued in Las Vegas, Nevada on December 11, 1989.

Nick G. Aquilina,

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POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Filed by last name.

SAFEGUARDS:

All records are stored under strict control and are available only to authorized personnel having a need to know.

RETENTION AND DISPOSAL:

Records are retained for two years or destroyed upon separation of the employee, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Civilian Personnel Management, Department of the Navy, 800 North Quincy Street, Arlington, VA 22203–1998. For Marine Corps civilian personnel, the Commandant of the Marine Corps (Code M), HQS, U.S. Marine Corps (Arlington Annex), Washington, DC 20380–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commander/Commanding Officer of the activity assigned or to the Director, Office of Civilian Personnel Management, Department of the Navy, 800 North Quincy Street, Arlington, VA 22203–1998. For Marine Corps civilian personnel, the Commandant of the Marine Corps (Code M), HQS, U.S. Marine Corps (Arlington Annex), Washington, DC 20380–0001.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Commander/Commanding Officer of the activity assigned or to the Director, Office of Civilian Personnel Management, Department of the Navy, 800 North Quincy Street, Arlington, VA 22203–1998. For Marine Corps civilian personnel, the Commandant of the Marine Corps (Code M), HQS, U.S. Marine Corps (Arlington Annex), Washington, DC 20380–0001.

CONTESTING RECORD PROCEDURE:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are puublished in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Supervisors or other appointed officials designated for this purpose.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 89–29882 Filed 12–22–89; 8:45 am]

BILLING CODE 3810–01

DEPARTMENT OF EDUCATION

Meeting of the National Board Subcommittee of the Fund for the Improvement of Postsecondary Education

AGENCY: National Board Subcommittee of the Fund for the Improvement of Postsecondary Eduction.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the proposed agenda of a forthcoming meeting of the National Board Subcommittee of the Fund for the Improvement of Postsecondary Education. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATE: January 26, 1990 beginning at 9:00 a.m. to January 26, 1990 at 5:00 p.m.

ADDRESS: U.S. Department of Education, 400 Maryland Avenue SW, Room 3000, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Charles Karelis, Director, Fund for the Improvement of Postsecondary Education, 7th & D Streets SW, Washington, DC 20202 (202) 732–5750.

SUPPLEMENTARY INFORMATION: The National Board of the Fund for the Improvement of Postsecondary Education is established under section 1001 of the Higher Education Amendments of 1980, Title X (20 U.S.C. 1135a–1). The National Board of the Fund is authorized to recommend to the Director of the Fund and the Secretary of Education priorities for funding and approval or disapproval of grants of a given kind.

The meeting of the National Board Subcommittee will be open to the public. The proposed agenda will include:

—Final recommendations of the National Board Subcommittee's "Report on New Directions", which is to be submitted to the National Board at its March, 1990 meeting.

Records are kept of all Board Subcommittee proceedings, and are available for public inspection at the office of the Fund for the Improvement of Postsecondary Education, Room 3100, Regional Office Building #3, 7th & D Streets SW, Washington, DC 20202 from the hours of 8:00 a.m. to 4:30 p.m.

Leonard L. Haynes, III

Assistant Secretary for Postsecondary Education.

[FR Doc. 89–29916 Filed 12–22–89; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Intent to Negotiate a Grant with State of Alabama/Geological Survey of Alabama

AGENCY: Bartlesville Project Office, DOE.

ACTION: Notice of intent to negotiate a grant with the state of Alabama/geological survey of Alabama (annex II).

SUMMARY: "Characterization of Sandstone Heterogeneity in Carboniferous Reservoirs for Increased Recovery of Oil and Gas From Foreland Basins." The U.S. Department of Energy (DOE), Bartlesville Project Office, through the DOE, Idaho Operations Office, intends to negotiate on a noncompetitive basis, a cost-share grant for approximately $1.6M with the State of Alabama/Geological Survey of Alabama. The DOE cost-share is approximately $0.8M. All technical and scientific aspects will be conducted by a Research Team consisting of the Geological Survey of Alabama (GSA), with the University of Alabama and Mississippi State University as subgrantees. The action is prompted by the consummation of Annex II to the Memorandum of Understanding between the DOE and the State of Alabama, which defines the research proposal and the participants, and specifies cost sharing. The grant will be used for augmenting the National Reservoir Database, characterizing oil and gas sandstone reservoirs heterogeneity, and increasing reservoirs of foreland basins. Specific objectives of this project are, (1) to augment the National Reservoir Database, (2) to increase our understanding of geologic heterogeneities that affect the recoveries of oil and gas from sandstone reservoirs in foreland basins, (3) to identify those resources in the State of Alabama and Mississippi that are producible at moderate cost, and (4) transfer the learned technologies to oil operators through publications and workshops. The major tasks of the effort include: (1) identification of vertical variations, lithofacies changes, and depositional

sequences in Carboniferous Strata, (2) identification of geologic and engineering characterization of Carboniferous sandstone lithofacies, (3) identification of geologic criteria important in recognizing sandstone reservoir heterogeneities, (4) tabulation of geologic and engineering data acquired, (5) development of reservoir exploitation approaches for strategic infill drilling, (6) evaluation of effectiveness of selected ongoing enhanced recovery projects in Carboniferous sandstone units, and (7) utilization of geostatistical models to determine optimal enhanced recovery operations and economic limits. The learned technologies will be transferred to oil operators through publications and workshops. The Research team will make available to this research project the facilities and software required for this project.

The authority and justification for determination of noncompetitive financial assistance (DNCFA) is DOE Financial Assistance Rules 10 CFR part 600.7(b)(2)(i), (B), (C) & (D). The activities proposed in Annex II to the agreement between the U.S. Department of Energy and the State of Alabama are in support of a public purpose and are as directed by the agreement. This activity would be conducted by the State of Alabama/Geological Survey of Alabama using their own resources, however, DOE support of the activity would enhance the public benefits to be derived by improving reservoir characterization and prediction. DOE knows of no other entity which is conducting or planning to conduct such an activity. The applicant is a unit of Government and the activity to be supported is related to performance of governmental functions within the subject jurisdiction, thereby precluding DOE provisions of support to another entity. The State of Alabama/Geological Survey of Alabama and the subgrantees have exclusive domestic capability to perform the activity successfully based on unique equipment, proprietary data, technical expertise or other such unique qualifications. The applicant's activities will be identified, structured and made available to developers, decision-makers, and researchers.

The grant term is for three years at an estimated value of $1,580,000 which will be cost shared equally by DOE and the State of Alabama. Public response may be addressed to the contract specialist stated below.

CONTACT: U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, Idaho 83402, Trudy A. Thorne, Contract Specialist (208) 526–9519.

Dated: December 8, 1989.

J. Roger Gonsales,

Director, Contracts Management Division.

[FR Doc. 89–29885 Filed 12–22–89; 8:45 am]

BILLING CODE 6450–01–M

Award of a Cooperative Agreement, Noncompetitive Financial Assistance

AGENCY: Nevada Operations Office, DOE.

ACTION: Amendment to notice of noncompetitive financial assistance.

SUMMARY: As previously published in the **Federal Register** at 54 FR 30791, July 24, 1989 (FR Doc. 89–1725), DOE, Nevada Operations Office, announced that pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7(b)(2), it intends to award a cooperative agreement on a noncompetitive basis to the University of Nevada-Las Vegas, to facilitate participation in the Yucca Mountain repository program.

The Project Scope as originally published is amended to include at the end the following:

Project Scope

* * * * *

UNLV will perform research in support of DOE development of a computerized Licensing Support System (LSS) based on OCR technology, as agreed to in negotiations with the NRC for licensing of a potential high-level nuclear waste repository at Yucca Mountain. The research will focus on enhancing existing technology in order to create faster, more efficient, and more effective software. UNLV will design, develop, and execute a research program aimed at increasing the efficiency of the LSS. This plan will be drafted in conjunction with DOE and its contractors to ensure that the focus of the research provides optimal benefits to the LSS. Examples of possible areas include reprocessing of text, improving recognition algorithms, intelligent automation of indexing processes, improving retrieval effectiveness, and researching hardware vs. software solutions to document searching.

The revised total estimated cost of this award is $8,681,250 over the five year project period.

FOR FURTHER INFORMATION, CONTACT: U.S. Department of Energy, Nevada Operations Office, ATTN: Carl P. Gertz, P.O. Box 98518, Las Vegas, NV 89193–8518.

Issued in Las Vegas, Nevada on December 11, 1989.

Nick C. Aquilina,

Manager.

[FR Doc. 89–29884 Filed 12–22–89; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

Availability of Draft Copies of the Hydrocarbon Geoscience Research Strategy and the Federal Oil and Gas Research Program Implementation Plan

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of availability of draft copies of the Hydrocarbon Geoscience Research Strategy and the Federal Oil and Gas Research Program Implementation Plan for review and comment.

SUMMARY: On December 29, 1989, DOE will make available upon request draft copies of the Hydrocarbon Geoscience Research Strategy and the Federal Oil and Gas Research Program Implementation Plan, which identifies proposed research activities in these resource areas for the near-, mid-, and long term.

DATE: Comments must be received by the individual indicated below no later than 4:30 p.m. local time, Washington, DC on February 10, 1990.

CONTACT: Copies of or information on the draft strategy and implementation plan may be obtained by writing or calling: Mr. Charles Blackburn, FE–1, Department of Energy, Fossil Energy, 1000 Independence Ave., SW., 4C–064, Washington, DC 20585, (202) 586–7751.

A copy of each will be available for public review at the Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, December 18, 1989.

Michael R. McElwrath,

Acting Assistant Secretary, Fossil Energy.

[FR Doc. 89–29886 Filed 12–22–89; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 89–19–NG]

Wisconsin Power and Light Co.; Order Granting Long-Term and Blanket Authorization to Import Natural Gas from Canada

AGENCY: Office of Fossil Energy, DOE.

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ACTION: Notice of an order granting long-term and blanket authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Wisconsin Power and Light (WPL) long-term and blanket authorization to import natural gas from Canada. The order authorizes WPL to import up to 10,718 McF per day of natural gas from TransCanada PipeLines, Limited, commencing on the date of first delivery and continuing through October 31, 1992. WPL is also granted blanket authorization beginning on the date of first delivery to import from Canada up to 100,000 Mcf of natural gas per day on the short-term, spot-market basis for a two-year period.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC., December 18, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89–29887 Filed 12–22–89; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. QF90–32–001]

Cyprus Silver Bay Power Corp.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

December 18, 1989.

On December 4, 1989, Cyprus Silver Bay Power Corporation (Applicant), of P.O. Box 117, 10 Outer Drive, Silver Bay, Minnesota 55614, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility is located at Silver Bay, in Lake County, Minnesota. The facility consists of two boilers and two steam turbine generators. Thermal energy recovered from the facility is used for slurry heating for the production of taconite pellets and for space heating. The primary energy source of the facility is coal. The maximum net electric power production capacity of the facility is 115 MW.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–29827 Filed 12–22–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP89–2002–001, et al.]

Iowa Public Service Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Iowa Public Service Company

[Docket No. CP89–2002–001]

December 15, 1989.

Take notice that on August 25, 1989, Iowa Public Service Company (IPS), 401 Douglas, P.O. Box 778, Sioux City, Iowa 51102, filed in Docket No. CP89–2002–000 an application requesting the Commission issue IPS a section 7(f) determination for a service area comprised of Union, Clay, Yankton[1] and Lincoln Counties of South Dakota. Take further notice that on December 11, 1989, IPS filed in Docket No. CP89–2002–001 an amendment to its request for a section 7(f) determination of a service area to include, in addition to the above mentioned counties of South Dakota, the area of Sioux City, Iowa, its environs and Woodbury County, Iowa, all as more fully set forth in the application and the amendment which is on file with the Commission and open to public inspection.

IPS also requests that the Commission make a determination that IPS qualifies as a local distribution company (LDC) in the area proposed as a section 7(f) service area.

IPS states that it owns and operates a pipeline which extends from Sioux City, Iowa, across the South Dakota border (Big Sioux River) providing natural gas service at retail to the communities of North Sioux City and McCook Lake in South Dakota. All the gas transported serves both residential and commercial customers and is not for resale. IPS indicates that it has one arrangement to sell gas for resale off the ANR Pipeline Company (ANR) system whereby it purchases gas from ANR for resale to Great River Gas Company.

Comment date: January 5, 1990 in accordance with Standard Paragraph F at the end of the notice.

2. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP90–356–000]

December 12, 1989.

Take notice that on December 11, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP90–356–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Apache Corporation (Apache), a producer, under the blanket certificate issued in Docket No. CP86–435–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern states that pursuant to a transportation agreement dated October 6, 1989, under its Rate Schedule IT–1, it proposes to transport up to 200,000 MMBtu per day equivalent of natural gas for Apache. Northern states that it would transport the gas from multiple receipt points as shown in Appendix "A" of the transportation agreement and would deliver the gas to multiple delivery points also shown in Appendix "A" of the agreement. Northern also states that the proposed service may involve the compression of gas at its Fort Buford Compressor Station for delivery to Northern Border Pipeline Company for the account of Apache.

Northern advises that service under § 284.223(a) commenced October 6, 1989, as reported in Docket No. ST90–241 (filed October 26, 1989). Northern further advises that it would transport 150,000 MMBtu on an average day and 73,000,000 MMBtu annually.

[1] IPS supplemented its application, by letter filed September 18, 1989, stating that the county of Yankton, South Dakota, should be inserted in the Notice of Application dated August 31, 1989, in place of the County of Turner, South Dakota.

Comment date: January 26, 1990 in accordance with Standard Paragraph G at the end of the notice.

3. Transwestern Pipeline Company

[Docket No. CP90–325–000]

December 12, 1989.

Take notice that on December 5, 1989, Transwestern Pipeline Company (Transwestern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP90–325–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 284.223) for authorization to transport gas on behalf of Cibola Corporation (Cibola), a marketer of natural gas, under Transwestern's blanket certificate issued in Docket No. CP88–133–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Transwestern proposes to transport on an interruptible basis up to 50,000 MMBtu of natural gas equivalent per day on behalf of Cibola pursuant to a transportation agreement dated July 26, 1989, between Transwestern and Cibola. Transwestern would receive the gas at existing delivery points in Arizona, Oklahoma, Texas and New Mexico and redeliver equivalent volumes at existing delivery points in Arizona, Texas, Oklahoma and New Mexico.

Transwestern states that the estimated average daily and annual quantities would be 37,500 MMBtu and 18,250,000 MMBtu, respectively. Service under § 284.223(a) commenced on October 12, 1989, as reported in Docket No. ST90–429–000, it is stated.

Comment date: January 26, 1990 in accordance with Standard Paragraph G at the end of the notice.

4. Natural Gas Pipeline Company of America

[Docket No. CP90–358–000]

December 12, 1989.

Take notice that on December 11, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP90–358–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas under its blanket authorization issued in Docket No. CP86–582–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

National proposes to transport natural gas on an interruptible basis for Entrade Corporation (Entrade), a marketer of natural gas, pursuant to a transportation service agreement dated September 15, 1989 (#IGP–2036). Natural proposes to transport on a peak day up to 200,000 MMBtu; on an average day up to 25,000 MMBtu; and on an annual basis 9,125,000 MMBtu of natural gas. Natural states that it may accept additional quantities as overrun gas as permitted by Rate Schedule ITS. Natural states that the receipt points would be located in New Mexico, Texas, Offshore Texas, Oklahoma, Louisiana, Offshore Louisiana, Illinois, Kansas, Wyoming, Iowa and Nebraska. Natural states that the delivery points would be located in Texas, Offshore Texas, Louisiana, and Offshore Louisiana.

It is explained that the proposed service is currently being performed pursuant to the 120–day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Natural commenced such self-implementing service on October 4, 1989, as reported in Docket No. ST90–346–000.

Comment date: January 26, 1990, in accordance with Standard Paragraph G at the end of this notice.

5. Transcontinental Gas Pipe Line Corporation

[Docket No. CP90–327–000]

December 12, 1989.

Take notice that on December 5, 1989, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP90–327–000 a request for authorization to transport gas for Union Pacific Resources Company (Shipper) under the prior notice procedure prescribed in § 157.205 and 284.223 of the Commission's Regulations and Transco's blanket certificate issued in CP88–328–000, all as more fully set forth in the request which is on file with the Commission and available for public inspection.

Transco states that the total volume of gas to be transported for Shipper on a peak day will be 1,418,000 dt; on an average day will be 100,000 dt; and on an annual basis will be 54,750,000 dt.

Transco states it will receive the gas at various existing receipt points in Offshore Texas. Transco will deliver the gas at various existing points in onshore Louisiana and onshore Texas.

Transco states that it will construct no new facilities in order to provide this transportation service. Transco will utilize facilities as reflected in Exhibit A of the transportation agreement. Shipper will be required to construct a ten inch pipeline, meter station and appurtenances from its production sources in High Island Block 178, Offshore Texas, to an existing interconnect with Transco's 24 inch pipeline in High Island Block 178, Offshore Texas, at an approximate cost of $550,000.

Transco states that there is no agency relationship under which a local distribution company or an affiliate or Shipper will receive gas on behalf of Shipper.

Transco states that service for Shipper commenced October 12, 1989, in Docket No. ST90–205, pursuant to the 120–day automatic provisions of § 284.223(a) of the Commission's Regulations.

Comment date: January 26, 1990, in accordance with Standard Paragraph G at the end of this notice.

6. Empire State Pipeline

[Docket Nos. CP90–316–000 and CP90–317–000]

December 12, 1989.

Take notice that on December 4, 1989, Empire State Pipeline (Empire State), 500 Renaissance Center, Detroit, Michigan, 48243 has filed pursuant to Section 3 of the Natural Gas Act (NGA), 15 U.S.C. 717(b); § 153.1 *et seq* through 153.12 *et seq* of Commission's Regulations, 18 CFR 153.1 and 153.12; Executive Order No. 10485, as amended by Executive Order No. 12038; and Delegation Order No. 0204–112 of the Secretary of Energy, an application and a request for a Presidential Permit for authority for the siting, construction, connection, operation and maintenance of pipeline facilities at the international border between the United States and Canada. Such facilities will be used for the importation of natural gas into the United States. The natural gas which will be imported using these facilities will originate in the United States and Canada and will be purchased and shipped through Empire State by local distribution companies, end user and marketers of natural gas (known as shippers), all as more fully set forth in the request on file with the Commission and open for public inspection.

Empire State will construct these interconnection facilities under an agreement with TransCanada Pipelines Limited (TCPL). The pipeline facilities will interconnect with the facilities of TCPL under the Niagara River at the point of the international boundary between the United States and Canada, proximate to Grand Island, New York. The Empire State facilities will consist of 155 miles of 24 inch O.D. pipeline from the international border and will terminate in the vicinity of Syracuse, New York.

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Empire State will transport gas for shippers for consumption in the State of New York. Empire State will not be a seller of gas and, therefore, will not be responsible for the purchase of natural gas. Empire State's shippers will determine the source or sources of natural gas to be transported by Empire State.

Since Empire State is not a purchaser of natural gas, the individual sellers and producers of the gas to be transported by Empire State are not known to Empire State, but will be the subject of separate filings to be submitted to the Department of Energy, Office of Fossil Energy.

Comment date: January 2, 1990, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

7. United Gas Pipe Line Company

[Docket No. CP90-299-000]

December 12, 1989.

Take notice that on December 1, 1989, United Gas Pipe Line Company (United), Post Office Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP90-299-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide an interruptible transportation service for Laser Marketing Company (Laser), a marketer, under the blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7(c) of the Natural Gas Act. All as more fully set forth in the request which is on file with the Commission and open to public inspection.

United states that pursuant to a transportation service agreement dated December 21, 1988, as amended on March 2, 1989, March 31, 1989, and September 23, 1989, it proposes to receive up to 600,000 Mcf per day at specified points located in the states of Louisiana and Mississippi and redeliver the gas at other specified points located in the states of Louisiana and Mississippi. United estimates that the peak day and average day volumes would be 618,000 million Btu and that the annual volumes would be 225,570,000 million Btu. It is indicated that on October 5, 1989, United initiated a 120-day transportation service for Laser under § 284.223(a), as reported in Docket No. ST90-325-000.

United further states that no facilities need by constructed to implement the service. United states that the agreement would continue on a month-to-month basis until terminated. United proposes to charge rates and abide by the terms and conditions of its Rate Schedule ITS.

Comment date: January 26, 1990, in accordance with Standard Paragraph G at the end of this notice.

8. ANR Pipeline Company

[Docket No. CP90-346-000]

December 12, 1989.

Take notice that on December 6, 1989, ANR Pipeline Company (ANR) 500 Renaissance Center, Detroit, Michigan 48243 filed in Docket No. CP89-2132-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Elf Acquitaine Operating, Inc. (Acquitaine), under the authorization issued in Docket No. CP88-532-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

ANR would perform the proposed interruptible transportation service for Acquitaine, pursuant to a transportation agreement dated September 22, 1989. The term of the transportation agreement is for an initial period of 120 days and thereafter until September 30, 1990, and shall continue in effect month-to-month thereafter unless terminated upon 30 days prior written notice. ANR proposes to transport on a peak day up to 50,000 dekatherm; on an average day up to 50,000 dekatherm; and on an annual basis 18,250,000 dekatherm of natural gas for Acquitaine. ANR states that it would receive the gas at ANR's existing points of receipt located in offshore Louisiana gathering area and redeliver the gas for the account of Acquitaine at existing interconnections located in Louisiana. It is alleged that Acquitaine would pay ANR the effective rate contained in ANR's Rate Schedule ITS and the applicable provisions of the General Terms and Conditions of ANR's FERC Gas Tariff, Original Volume No. 1-A. ANR avers that construction of facilities would not be required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self-implementing provision of § 284.223(a)(1) of the Commission's regulations. ANR commenced such self-implementing service on October 3, 1989, as reported in Docket No. ST90-375-000.

Comment date: January 26, 1990, in accordance with Standard Paragraph G at the end of this notice.

9. Transwestern Pipeline Company

[Docket No. CP90-307-000]

December 12, 1989.

Take notice that on December 1, 1989, Transwestern Pipeline Company (Transwestern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP90-307-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Mobil Natural Gas, Inc., (Shipper) under the blanket certificate issued in Docket No. CP88-133-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission.

Transwestern states that it proposes to transport up to 20,000 MMbtu of natural gas for Shipper on a peak day, 15,000 MMBtu on an average day, and 7,300,000 MMBtu annually, under Rate Schedule ITS-1. This service was reported to the Commission in Docket No. ST90-261-000. Transwestern further states that construction of facilities will be required to provide the proposed service.

Comment date: January 26, 1990, in accordance with Standard Paragraph G at the end of this notice.

10. Northern Natural Gas Company

[Docket No. CP90-329-000]

December 12, 1989.

Take notice that on December 5, 1989, Northern Natural Gas Company (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP90-329-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Enron Gas Marketing, Inc. (Shipper) under the blanket certificate issued in Docket No. CP86-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission.

Northern states that it proposes to transport up to 10,000 MMBtu of natural gas for Shipper on a peak day, 7,500 MMBtu on an average day, and 3,650,000 MMbtu annually, under Rate Schedule FT-1. This service was reported to the Commission in Docket No. ST90-436-000. Northern further states that construction of facilities will be required to provide the proposed service.

Comment date: January 26, 1990, in accordance with Standard Paragraph G at the end of this notice.

11. United Gas Pipe Line Company

[Docket No. CP90-344-000]

December 12, 1989.

Take notice that on December 6, 1989, United Gas Pipe Line Company (United) [1] P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP90-344-000 a request pursuant to §§ 157.205 and 284.223 (18 CFR 157.205 and 284.223) of the Commission's Regulations under the Natural Gas Act for authority to provide interruptible transportation service for Citizens Gas Supply Corporation (Citizens), a marketer of natural gas, under United's blanket transportation certificate which was issued by Commission order on January 15, 1988, in Docket No. CP88-6-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United indicates that it will receive the gas from Citizens at various existing interconnections offshore Louisiana and deliver the gas for the account of Citizens at various interconnections in St. Mary and Ouachita Parishs, Louisiana. United will transport the gas pursuant to its Rate Schedule ITS.

United proposes to transport up to 116,547 MMBtu equivalent of gas on a peak and average day and approximately 42,539,655 MMBtu equivalent of gas annually. United indicates that the transportation service commended under the 120-day automatic authorization of § 284.223(a) of the Commission's Regulations on October 2, 1989, pursuant to a transportation agreement dated October 21, 1988, as amended September 18, 1989. United notified the Commission of the commencement of the transportation service on November 17, 1989, in Docket No. ST90-516-000.

Comment date: January 26, 1990, in accordance with Standard Paragraph G at the end of this notice.

12. United Gas Pipe Line Company

[Docket No. CP90-342-000]

December 12, 1989.

Take notice that on December 6, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP90-342-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport gas on behalf of Phoenix Gas Pipeline Company (Phoenix), an intrastate pipeline, under its blanket authorization issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United would perform the proposed interruptible transportation service for Phoenix, pursuant to an interruptible transportation service agreement dated December 6, 1988, as amended on September 19, 1989 (Contract No. TI-21-2010). The transportation agreement is effective for a primary term of one month from the date of first delivery thereunder or such date that the parties mutually agree to terminate the agreement. The agreement shall continue for successive one month terms unless terminated by thirty days written notice by either party. United proposes to transport 103,000 MMBtu of natural gas on a peak and average day; and on an annual basis 37,595,000 MMBtu of natural gas for Phoenix. United proposes to receive the subject gas at existing points of interconnection located in the states of Alabama, Louisiana, Mississippi and Texas. Points of delivery are located in the states of Alabama, Florida, Louisiana, Mississippi and Texas. United avers that no new facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self-implementing provision of § 284.223(a)(1) of the Commission's Regulations. United commenced such self-implementing service on October 2, 1989, as reported in Docket No. ST90-654-000.

Comment date: January 26, 1990, in accordance with Standard Paragraph G at the end of this notice.

13. K N Energy, Inc.

[Docket No. CP90-322-000]

December 12, 1989.

Take notice that on December 5, 1989, K N Energy, Inc. (K N), P.O. Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP90-322-000 a request pursuant to § 157.205(b) of the Commission's Regulations under the Natural Gas Act for authorization to provide interruptible transportation service for Eaton Corporation (Eaton) under its blanket certificate issued in Docket No. CP89-1043-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

K N proposes to transport a maximum daily quantity of 843 Mcf for Eaton and an estimated annual quantity of 307,695 Mcf. N K states that the transportation service commenced October 26, 1989, under the 120-day automatic authorization of § 284.223(a) of the Commission's regulations as reported in Docket No. ST90-496-000.

Comment date: January 26, 1990, in accordance with Standard Paragraph G at the end of this notice.

14. Sea Robin Pipeline Company

[Docket No. CP90-350-000]

December 12, 1989.

Take notice that on December 7, 1989, Sea Robin Pipeline Company (Sea Robin), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP90-350-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide interruptible transportation service for Cornerstone Production Corporation, a producer of natural gas, under Sea Robin's blanket certificate issued in Docket No. CP88-824 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and public inspection.

Sea Robin states that the interruptible gas transportation agreement T1-89-149, dated December 16, 1988, proposes to transport a maximum daily quantity of 103,000 MMBtu equivalent of natural gas for Cornerstone, and that service commenced on October 1, 1989, as reported in Docket No. ST90-935-000, pursuant to § 284.223(a) of the Commission's Regulations.

It is also stated that on an average basis, Sea Robin estimates a volume of 103,000 MMBtu equivalent of natural gas and on an annual basis 37,595,000 MMBtu equivalent of natural gas.

Comment date: January 26, 1990, in accordance with Standard Paragraph G at the end of this notice.

15. El Paso Natural Gas Company

[Docket No. CP90-331-000]

December 13, 1989.

Take notice that on December 6, 1989, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed a request at Docket No. CP90-331-000, pursuant to §157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide interruptible transportation service for Phillips 66 Natural Gas Company (Phillips), a gas marketer, under its blanket certificate issued at Docket No. CP88-433-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request for authorization on file with the Commission and open for public inspection.

[1] United supplemented the request on February 21, 1989 in Docket No. CP89-795-001.

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Pursuant to a transportation agreement dated September 18, 1989, El Paso requests authority to transport up to 1,545 MMBtu of natural gas per day for Phillips. El Paso states that the agreement provides for it to receive the gas at a various existing points of receipt along its system and to redeliver the gas to an existing point of delivery in Andrews County, Texas. Phillips has informed El Paso that it expects to have only 1,236 MMBtu transported on an average day and, based thereon, El Paso estimates that 451,140 MMBtu would be transported annually. El Paso advises that the transportation service commenced on October 6, 1989, as reported at Docket No. ST90–233–000, pursuant to Section 284.223(a) of the Commissions Regulation.

Comment date: January 29, 1990, in accordance with Standard Paragraph G at the end of this notice.

16. El Paso Natural Gas Company

[Docket No. CP90–332–000]

December 13, 1989.

Take notice that on December 6, 1989, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP90–332–000 a request pursuant to 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88–433–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

El Paso proposes to transport gas on an interruptible basis for Texaco Gas Marketing Inc. (Texaco). El Paso explains that service commenced November 1, 1989 under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST90–544–000. El Paso further explains that the peak day quantity would be 2,060 MMBtu, the average daily quantity would be 1,030 MMBtu and that the annual quantity would be 375,950 MMBtu. El Paso explains that it would receive natural gas for the account of Texaco from any point of receipt on El Paso's system for redelivery to an existing delivery point in Maricopa County, Arizona.

Comment date: January 29, 1990, in accordance with Standard Paragraph G at the end of this notice.

17. Williams Natural Gas Company

[Docket No. CP90–348–000]

December 13, 1989.

Take notice that on December 6, 1989, Williams Natural Gas Company (Williams), Post Office Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP90–348–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for Amoco Production Company (Amoco), a producer, under Williams' blanket certificate issued in Docket No. CP86–631–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Williams proposes to transport on an interruptible basis up to 2,000,000 dt equivalent of natural gas on a peak day, 2,000,000 dt equivalent on an average day, and 730,000,000 dt equivalent on an annual basis for Amoco. Williams states that it would perform the transportation service for Amoco under Williams' Rate Schedule ITS. Williams indicates that it would receive the gas at various points in Kansas, Missouri, Oklahoma, Texas and Wyoming for delivery to various points in Kansas, Missouri, Oklahoma, Texas and Wyoming.

It is explained that the service commenced January 27, 1989, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89–2417. Williams explains that it originally filed in Docket No. CP89–973–000 to continue the transportation of gas for Amoco but this application was protested by Oklahoma Natural Gas (ONG). It is stated that ONG cited potential by-pass and Williams agreed to withdraw the application. Williams states that Amoco subsequently submitted a new Exhibit B deleting the offending delivery points and Williams now seeks authorization herein to resume the transportation service for Amoco. Williams indicates that no new facilities would be necessary to provide the subject service.

Comment date: January 29, 1990, in accordance with Standard Paragraph G at the end of this notice.

18. Tennessee Gas Pipeline Company

[Docket No. CP90–351–000]

December 13, 1989.

Take notice that on December 7, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed a request with the Commission in Docket No. CP90–351–000 pursuant to § 284.223 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to transport natural gas for Central Soya Company, Inc. (Central Soya), an end-user, under its blanket certificate issued in Docket No. CP87–115–000 pursuant to Section 7 of the NGA, all as more fully set forth in the request which is open to public inspection.

Tennessee proposes an interruptible transportation service of up to 7,000 dekatherms of natural gas on peak and average days and 840,000 dekatherms annually for Central Soya. Tennessee states that it commenced transporting natural gas for Central Soya on November 2, 1989, under § 284.223(a) of the Regulations, as reported in Docket No. ST90–890. Tennessee also states that it would receive natural gas for Central Soya's account at various existing receipt points on its pipeline system in Louisiana, offshore Louisiana, Texas, and offshore Texas, with ultimate delivery for Central Soya's account at various existing delivery points in Illinois, Indiana, Ohio, and Tennessee.

Comment date: January 29, 1990, in accordance with Standard Paragraph G at the end of this notice.

19. Natural Gas Pipeline Company

[Docket No. CP90–352–000

December 13, 1989.

Take notice that on December 8, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP90–352–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Midcon Marketing Corporation (Midcon), a marketer of natural gas, under Natural's blanket certificate issued in Docket No. CP86–582–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Pursuant to a transportation agreement date March 31, 1989, Natural requests authority to transport up to 10,000 MMBtu of gas per day (plus any additional volumes accepted pursuant to the overrun provisions of its Rate Schedule ITS), on an interruptible basis, for Midcon. Natural states that the agreement provides for it to receive the gas at various existing points of receipt along its system and to redeliver the gas to various existing points of delivery located in Texas, offshore Texas, Louisiana, offshore Louisiana and Illinois. Midcon has informed Natural that it expects to have only 5,000 MMBtu of gas transported on an average day and, based thereon, Natural estimates that 1,825,000 MMBtu of gas would be transported annually. Natural advises that the transportation service commenced on October 23, 1989, as reported in Docket No. ST90–194–000 pursuant to § 284.223 of the Commission's Regulations.

Comment date: January 29, 1990, in accordance with Standard Paragraph G at the end of this notice.

20. Columbia Gulf Transmission Company

[Docket No. CP90–354–000]

December 13,1989.

Take notice that on December 8, 1989, Columbia Gulf Transmission Company (Columbia Gulf), 3805 West Alabama Avenue, Houston, Texas 77027, filed in Docket No. CP90–354–000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport gas on behalf of Texaco Gas Marketing, Inc. (Texaco), a producer of natural gas, under Columbia Gulf's blanket certificate issued in Docket No. CP86–239–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Columbia Gulf proposes to transport on a firm basis up to 25,000 dekatherms (dt) of natural gas equivalent per day on behalf of Texaco pursuant to a transportation agreement dated November 1, 1989, between Columbia Gulf and Texaco. Columbia Gulf would receive the gas at an existing delivery point in Louisiana and redeliver equivalent volumes, less fuel used and unaccounted for line loss, at an existing delivery point in Louisiana.

Columbia Gulf further states that the estimated average daily and annual quantities would be 25,000 dt and 9,125,000 dt respectively. Service under § 284.223(a) commenced on November 1, 1989, as reported in Docket No. ST90–510–000, it is stated.

Comment date: January 29, 1990, in accordance with Standard Paragraph G at the end of this notice

21. Trunkline Gas Company

[Docket No CP90–361–000]

December 13, 1989.

Take notice that on December 11, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP89–1779–000 a request pursuant to § 157.205(b) and 284.223 of the Commission's Regulations under the Natural Gas Act of authorization to transport natural gas on an interruptible basis for NGC Transportation, Inc. (N.G.C.), a shipper and marketer of natural gas, under its blanket certificate issued in Docket No. CP86–586–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Trunkline states that the maximum daily, average daily and annual quantities that it would transport for N.G.C. would be 50,000 dt equivalent of natural gas, 2,000 dt equivalent of natural gas and 730,000 dt equivalent to natural gas, respectively.

Trunkline states that it would transport natural gas for N.G.C. from various receipt points in Illinois, Louisiana, Tennessee, Texas, the Panhandle receipt point in Douglas County, Illinois, offshore Louisiana, and offshore Texas to a delivery point in Beauregard Parish, Louisiana.

Turnkline indicates that in a filing made with the Commission in Docket ST90–504, it reported that transportation service for N.G.C. commenced on October 28, 1989 under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: January 29 1989, in accordance with Standard Paragraph G at the end of this notice.

22. K N Energy, Inc.

[Docket No. CP90–364–000]

December 13, 1989.

Take notice that on December 12, 1989, K N Energy, Inc. (K N), P.O. Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP90–364–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Plains Petroleum Operating Company (Plains) , under K N's blanket certificate issued in Docket No. CP89–1043–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

K N requests authorization to transport, on an interruptible basis up to a maximum of 8,500 Mcf of natural gas per day for Plains from existing receipt points along its Buffalo Wallow pipeline system to various points of interconnection with other pipelines along its Buffalo Wallow pipeline system in Oklahoma and Texas. K N anticipates transporting an annual volume of 3,102,500 Mcf.

K N states that the transportation of natural gas for Plains commenced November 15, 1989, as reported in Docket No. ST90–913–000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to K N in Docket No. CP89–1043–000.

Comment date: January 29, 1990, in accordance with Standard Paragraph G at the end of this notice.

23. Southern Natural Gas Company

[Docket No. CP90–363–000]

December 13, 1989.

Take notice that on December 11, 1989, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP90–363–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Texican Natural Gas Company (Texican), marketer, under the blanket certificate issued in Docket No. CP88–316–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Southern states that pursuant to a service agreement dated October 17, 1989, under its Rate Schedule IT, it proposes to transport up to 25,000 MMBtu per day equivalent of natural gas for Texican. Southern states that it would transport the gas from various receipt points in Texas, Lousiana, offshore Texas, offshore Louisiana, Mississippi and Alabama, and would deliver the gas to a point in Georgia.

Southern advises that service under § 284.223(a) commenced October 18, 1989, as reported in Docket No. ST90–321. Southern further advises that it would transport 10,000 MMBtu on an average day and 3,650,000 MMBtu annually.

Comment date: January 29, 1990, in accordance with Standard Paragraph G at the end of this notice.

24. Transwestern Pipeline Company

[Docket No. CP90–305–000]

December 14, 1989.

Take notice that on December 1, 1990, Transwestern Pipeline Company (Transwestern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP90–305–000, an application pursuant to § 157.205 and 284.223 of the Commission's Regulations for authority to transport natural gas on behalf of Coastal Gas Marketing Company (Coastal), a broker of natural gas, all as more fully set forth in the application on file with the Commission and open to public inspection.

Transwestern states that the transportation service will be provided pursuant to a transportation agreement dated September 27, 1989. Transwestern states that it would receive the gas at

Transwestern's existing points of receipt

Comment date: January 29, 1990, in

set forth in the request which is open to

25. K N Energy, Inc..

[Docket No. CP90–365–000]

perform the transportation service for TMC under United's Rate Schedule ITS. United indicates that it would receive

agreement and the Air Products agreement.

Florida Gas states that no additional

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Transwestern's existing points of receipt in the states of Texas, Oklahoma, New Mexico and Arizona and redeliver the gas at existing interconnections located in the states of Texas, Oklahoma, New Mexico and Arizona.

Transwestern proposes to transport on a peak day up to 400,000 MMBtu, with an estimated average daily quantity of 300,000 MMBtu. On an annual basis, Transwestern could transport up to 146,000,000 MMBtu. Transwestern also states that construction of facilities will not be required to provide the proposed service.

Transwestern states that service for Coastal under § 284.223(a) commenced October 2, 1989, as reported in Docket No. ST90-259-000.

Comment date: January 29, 1990, in accordance with Standard Paragraph G at the end of this notice.

25. Transwestern Pipeline Company

[Docket No. CP-324-000]

December 14, 1989.

Take notice that on December 5, 1989, Transwestern Pipeline Company (Transwestern), filed in Docket No. CP90-324-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Enron Gas Marketing, Inc. (Enron), a marketer of natural gas, under Transwestern's blanket certificate issued in Docket No. CP88-133-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transwestern requests authorization to transport, on an interruptible basis, up to a maximum of 100,000 MMBtu of natural gas per day for Enron from receipt points listed by Transwestern in its Transportation Point Catalog, as amended from time to time, which is on file and available for inspection at the offices of Transwestern in Houston, Texas, to delivery points located in Texas, Oklahoma, New Mexico and Arizona. Transwestern anticipates transporting 75,000 MMBtu of natural gas on an average day and an annual volume of 36,500,000 MMBtu.

Transwestern states that the transportation of natural gas for Enron commenced November 1, 1989, as reported in Docket No. ST90-568-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Transwestern in Docket No. CP88-133-000.

Comment date: January 29, 1990, in accordance with Standard Paragraph G at the end of this notice.

26. United Gas Pipe Line Company

[Docket No. CP90-371-000]

December 14, 1989.

Take notice that on December 12, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. C90-371-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service on behalf of Chevron USA Inc. (Chevron), a producer of natural gas, under United's blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that it would transport a maximum daily quantity of 10,300 MMBtu for Chevron pursuant to an Interruptible Gas Transportation Agreement, dated October 14, 1988, between United and Chevron. United further states that it would receive the natural gas at an existing point of receipt in the state of Louisiana, and would redeliver the natural gas at an existing point of delivery in the state of Louisiana. United indicates that the estimated average day and annual quantities to be transported for Chevron would be 10,300 MMBtu and 3,759,500 MMBtu, respectively.

United states that it commenced the transportation of natural gas for Chevron on October 14, 1989, as reported in Docket No. ST90-553-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations (18 CFR § 284.223(a)).

Comment date: January 29, 1989, in accordance with Standard Paragraph G at the end of this notice.

27. ANR Pipeline Company

[Docket No. CP90-377-000]

December 14, 1989.

Take notice that on December 12, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed a request with the Commission in Docket No. CP90-377-000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to transport natural gas for Catamount Natural Gas, Inc. (Catamount), a natural gas marketer, under the blanket certificate issued in Docket No. CP88-532-000 pursuant to section 7(c) of the NGA, all as more fully set forth in the request which is open to public inspection.

ANR proposes an interruptible transportation service of up to 100,000 dekatherms on peak and average days and 36,500,000 dekatherms annually for Catamount. ANR states that it commenced transporting natural gas for Catamount on October 12, 1989, under § 284.223(a) of the Regulations, as reported in Docket No. ST90-376. ANR states that it would receive natural gas at existing receipt points on its pipeline system in Kansas, Louisiana, offshore Louisiana, Oklahoma, Texas, and offshore Texas and deliver equivalent natural gas volumes for Catamount's account at existing interconnections located in Indiana, Kentucky, Louisiana, Michigan, and Ohio.

Comment date: January 29, 1989, in accordance with Standard Paragraph G at the end of this notice.

28. Southern Natural Gas Company

[Docket No. CP90-308-000]

December 14, 1989.

Take notice that on December 1, 1989, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP90-308-000 an application pursuant to section 7(b) of the Natural Gas Act requesting an order permitting and approving the abandonment of a portion of the contract demand allocated to Alabama Gas Corporation (Alagasco), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern states that it is currently authorized to sell and deliver to Alagasco an aggregate contract demand of 394,441 Mcf per day in accordance with a service agreement between the parties dated September 19, 1969, which service agreement expired by its own terms on November 1, 1989. It is averred that the Commission originally authorized such service by order issued in Docket No. C-296, 3 FPC 822 (1942).

Further, Southern states that pursuant to Alagasco's request, Southern and Alagasco have executed a new service agreement dated September 15, 1989, which provides for an aggregate contract demand for Alagasco of 344,441 Mcf per day. Thus, Southern requests authority to abandon the 50,000 Mcf per day of firm sales service relinquished by Alagasco to be effective November 1, 1989.

Comment date: January 4, 1990, in accordance with Standard Paragraph F at the end of this notice.

29. K N Energy, Inc..

[Docket No. CP90-365-000]

December 14, 1989.

Take notice that on December 12, 1989, K N Energy, Inc. (KN), P.O. Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP90-365-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for Anadarko Trading Company (Anadarko), under the blanket certificate issued in Docket No. CP90-1043-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

K N states that it proposes to transport natural gas for Anadarko from existing receipt points along its Buffalo Wallow pipeline system to various existing points of interconnection with other pipelines along its Buffalo Wallow pipeline system.

K N further states that the maximum daily, average daily and annual quantities that it would transport for Anadarko would be 30,000 Mcf of natural gas, 30,000 Mcf of natural gas and 10,950,000 Mcf of natural gas, respectively.

K N indicates that in Docket No. ST90-914 it reported that transportation service for Anadarko commenced on November 1, 1989 under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: January 29, 1990, in accordance with Standard Paragraph G at the end of this notice.

30. United Gas Pipe Line Company

[Docket No. CP90-372-000]

December 14, 1989

Take notice that on December 12, 1989, United Gas Pipe Line Company (United), Post Office Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP90-372-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for Total Minatome Corporation (TMC), a producer, under United's blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to transport on an interrutible basis up to 103,000 MMBtu of natural gas on a peak day, 103,000 MMBtu on an average day, and 37,595,000 MMBtu on an annual basis for TMC. United states that it would perform the transportation service for TMC under United's Rate Schedule ITS. United indicates that it would receive the gas at various points in Webster Parish, Louisiana for delivery to various points in Texas and Louisiana.

It is explained that the service commenced November 1, 1989, under the automatic authorization provisions of §§ 284.223 of the Commission's Regulations, as reported in Docket No. ST90-894. United indicated that no new facilities would be necessary to provide the subject service.

COMMENT DATE: January 29, 1989, in accordance with Standard Paragraph G at the end of this notice.

31. Florida Gas Transmission Company

[Docket Nos. CP87-560-002 and CP88-242-004]

December 14, 1989.

Take notice that on December 6, 1989, Florida Gas Transmission Company (Florida Gas), P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket Nos. CP87-560-002 and CP88-242-004, a petition to amend the order issued January 17, 1989, in Docket Nos. CP87-560-000 and CP88-242-000 to authorize Florida Gas to transport natural gas for Enron Gas Marketing, Inc. (EGM) and Air Products and Chemicals, Inc. (Air Products), for the remaining term specified in the agreements between Florida Gas and EGM, and between Florida Gas and Air Products, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Florida Gas states that on August 25, 1987, Florida Gas and EGM entered into an agreement (EGM agreement) which provides for the interruptible transportation of up to 250,000 MMBtu equivalent of natural gas per day for EGM for a term of 10 years from the date of initial deliveries and year to year thereafter. Florida Gas further states that on February 8, 1988, as amended April 4, 1988, Florida Gas and Air Products entered into an agreement (Air Products agreement) which provides for the interruptible transportation of up to 35,000 MMBtu equivalent of natural gas per day for Air Products for a term of 5 years from the date of initial deliveries and year to year thereafter.

Florida Gas states that by letter agreements with EGM and with Air Products dated November 1, 1989, EGM and Air Products agreed to request extensions of authorization to continue the transportation service for EGM and Air Products in accordance with Rate Schedule X-31 and X-33 for the remaining term specified in the EGM agreement and the Air Products agreement.

Florida Gas states that no additional points of receipt or delivery are proposed; therefore, Florida Gas is not requesting authorization to construct any new facilities.

Florida Gas indicates that, since the transportation services are fully interruptible and are contingent upon the availability of capacity sufficient to provide the services without detriment or disadvantage to Florida Gas' existing customers, the transportation services proposed herein cannot have an adverse impact on Florida Gas' existing customers.

Comment date: January 4, 1990, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be

unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's

reject or modify those filings, Algonquin would refile to reflect the Commission's

determining the appropriate action to be taken but will not serve to make

Any person desiring to be heard or to protest said filing should file a motion to

which they contend does not constitute the statutorily required notice. They also

(C) The Secretary is directed to cause their order to be published in the

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unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29824 Filed 12-22-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-2-20-001, TM90-6-20-001]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

December 18, 1989.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on December 12, 1989, tendered for filing proposed changes in its FERC Gas Tariff, Second Revised Volume No. 1, as set forth in the revised tariff sheets:

Proposed to be effective December 1, 1989

Substitute Alternate Thirty-seventh Revised Sheet No. 201
Substitute Alternate Thirty-eighth Revised Sheet No. 203
Substitute Alternate Thirty-Fourth Revised Sheet No. 204
Substitute Alternate Thirty-first Revised Sheet No. 205

Proposed to be effective January 1, 1990

Substitute Thirty-eighth Revised Sheet No. 201
Substitute Thirty-ninth Revised Sheet No. 203
Substitute Thirty-fifth Revised Sheet No. 204
Substitute Thirty-second Revised Sheet No. 205
Substitute Eighth Revised Sheet No. 223
Substitute Eighth Revised Sheet No. 224
Substitute Thirteenth Revised Sheet No. 324

Algonquin states that on November 9, 1989, in Docket No. TQ90-2-20-000, Algonquin filed its Quarterly Purchased Gas Adjustment ("PGA") proposed to be effective on December 1, 1989. Algonquin states that its Quarterly PGA was predicated upon the acceptance of the underlying filings in Docket Nos. RP89-199-000, RP90-13-000 and RP86-41-000 and that should the Commission reject or modify those filings, Algonquin would refile to reflect the Commission's actions. The Commission accepted Algonquin's filing in Docket Nos. RP89-199-000 and RP90-13-000 by its Letter Order of November 16, 1989, subject to conditions. Furthermore, the Commission issued an "Order Accepting, Suspending and Rejecting Tariff Sheets" on November 24, 1989 in Docket Nos. RP86-41-005 and RP87-14-006.

Algonquin further maintains that on November 27, 1989 the Commission issued a Letter Order ("November 27 Letter Order") accepting Algonquin's Quarterly PGA subject to conditions. The Commission's acceptance of the Quarterly PGA was subject to the outcome and all orders issued in Docket No. RP86-41-000, and subject to Algonquin filing within fifteen days of the date of the November 27 Letter Order, revised rates consistent with the November 16 Letter Order.

Algonquin states that the listed tariff sheets which are proposed to be effective December 1, 1989, are filed in compliance with the Commission's November 27 Letter Order reflecting the conditions set forth in the Commission's Letter Order of November 16, 1989 and the November 24 Order in Algonquin's Docket Nos. RP86-41-005 and RP87-14-006 compliance filing.

Algonquin states that on December 1, 1989, in Docket No. TM90-6-20-000, Algonquin filed to track the Gas Research Institute's Surcharge for the 1990 calendar year pursuant to Opinion No. 334 and to remove the Surcharge adjustment as required by the Commission's PGA Transition rules, § 154.310. Algonquin states that it made the GRI filing with the condition that should the Commission change any of the underlying filings, Algonquin would refile to reflect such Commission action. Algonquin states that such tariff sheets which are proposed to be effective on January 1, 1990, are tendered to reflect the Commission's actions, *supra* and are proposed to be effective on January 1, 1990.

Algonquin notes that copies of the filing were served upon each of the affected parties and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 26, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29829 Filed 12-22-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TF90-1-24-001, TQ90-3-24-000]

Equitrans, Inc., Proposed Changes in FERC Gas Tariff

December 18, 1989.

Take notice that Equitrans, Inc. (Equitrans) on December 11, 1989, tendered for filing with the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1.

Docket No. TF90-1-24-001, effective November 1, 1989

Substitute Twelfth Revised Sheet No. 10
Substitute Eleventh Revised Sheet No. 14
Substitute Fifth Revised No. 34

Docket No. TQ90-3-24-000, effective November 1, 1989

Second Substitute Twelfth Revised Sheet No. 10
Second Substitute Eleventh Revised Sheet No. 14
Second Substitute Fifth Revised No. 34

Equitrans states that the foregoing tariff sheets are being filed in compliance with the Commission's Letter Order issued on November 15, 1989 in Docket No. TF90-1-24-000. The Order directed Equitrans to refile its tariff sheets to eliminate the standby charges. Also Equitrans is exercising its options to file an out of cycle PGA to recover standby costs under Texas Eastern Transmission Corporation's (TETCO) Rate Schedule CD-1 and firm transportation costs under TETCO's Rate Schedule FT-1.

Equitrans states that a copy of its filing has been served upon its purchasers, interested state commissions, and upon each party on the service list of Docket No. CP88-676-000.

Pursuant to § 154.51 of the Commission's regulations, Equitrans requests that the Commission grant any waivers necessary to permit the tariff sheets contained herein to become effective on November 1, 1990.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before December 26, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any persons wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29830 Filed 12-22-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-51-000]

ARCO Oil & Gas et al. Order Initiating Complaint Proceeding

(Issued December 18, 1989).

Before Commissioners: Martin L. Allday, Chairman; Charles A. Trabandt, Elizabeth Anne Moler, and Jerry J. Langdon.

On September 19, 1989, Transcontinental Gas Pipe Line Corporation (Transco) filed revised tariff sheets in Docket No. RP82-55-046 to supplement its July 6, 1989 compliance filing in Docket No. PR82-55-044. ARCO Oil and Gas Company (ARCO), Texaco Inc. and Texaco Producing Inc. (Texaco), Shell Gas Trading Company and Shell Offshore Inc. (Shell) file protests relating to a provision included on Substitute Ninth Revised Sheet No. 19 of that filing, which states that "[t]he commodity rate(s) above shall be increased by 2.1¢ per dt where applicable, for quantities transported through production and gathering facilities." The Commission accepted Transco's filing, but deferred consideration of ARCO's Texaco's, and Shell's protests as to the applicability of the production and gathering charge.

ARCO, Texaco, and Shell argue that nothing in Transco's filing in Docket No. PR82-55-046 indicated that the charge would apply to all transportation gas delivered at every major receipt point in Transco's production area, or that Transco considered all the major receipt points in its production area to be production or gathering facilities. They argue that the only notice of the applicability of this charge has been on Transco's electronic bulletin board, which they contend does not constitute the statutorily required notice. They also argue that the charge is an access fee or surcharge on Transco's transportation rates and that Transco provides no service for the fee. Accordingly, they urge the Commission to reject the charge or set it for hearing.

Since the separate production and gathering charge was previously approved in Transco's cost of service settlement in Docket No. PR87-7-030,[1] the provision was properly reflected in Transco's compliance filing in Docket No. PR82-55-046. However, the issues raised in the complaint as to the appropriate application of the charge require further examination. Therefore, the Commission is initiating an investigation of the allegations under section 5 of the Natural Gas Act. The protests are being construed as a complaint pursuant to Rule 206 of the Commission's Rules of Practice and Procedure (18 CFR § 385.206 (1989)), and Transco will be provided an opportunity to file an answer to the complaint. In such a proceeding, the parties can provide more information about the circumstances involved so that it can be determined whether the production and gathering charge is being properly applied. In this regard, ARCO, Texaco, and Shell are directed to augment their filings on or before Jnuary 16, 1990 to provide the Commission with more specific information as to the issues raised in their filings.

Any person desiring to be heard with respect to said complaint should file a motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211 (1989). All such motions should be filed on or before February 15, 1990. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to this complaint shall be due on or before February 15, 1990.

The Commission orders:

(A) ARCO, Shell, and Texaco are directed to augment their September 29, 1989 filings on or before January 16, 1990.

(B) Transco is directed to file an answer to the complaint on or before February 15, 1990. Replies should be filed on or before March 2, 1990.

[1] 44 FERC ¶61,111 (1988).

(C) The Secretary is directed to cause their order to be published in the **Federal Register** to provide notice of the complaint proceeding initiated herein.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29826 Filed 12-22-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-45-000, et al.]

Arkla Energy Resources, a Division of Arkla, Inc.; Informal Settlement Conference

December 18, 1989.

Take notice that a settlement conference will be convened in this proceeding on January 16, 1990, at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First St., NE., Washington, DC, 20426, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact J. Carmen Gastilo (202) 357-8410 or John P. Roddy (202) 357-8560.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29831 Filed 12-22-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-470-000, et al.]

Tennessee Gas Pipeline Co.; Technical conference

December 18, 1989.

Based on a review of the filings submitted by the parties to date, the Commission staff is convening a technical conference to explore the positions of the parties concerning certain aspects of the proposal by Tennessee Gas Pipeline Company (Tennessee) to restructure its services and assess a gas inventory charge. More specifically, a technical conference will be convened in this proceeding to clarify (1) the parties' positions regarding access to capacity and allocation of capacity at receipt points on Tennessee's mainline and on interconnecting pipelines; (2) the advantages and disadvantages of the "pooling point" system advocated by

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some parties and how such a system would operate on Tennessee's pipeline; (3) whether the terms, conditions and timing of Tennessee's proposed future release of storage capacity may be more clearly defined; (4) the extent to which Tennessee can structure firm transportation service comparable to its existing firm sales service without its customers obtaining additional contract storage service; and (5) other issues concerning the terms and conditions of transportation service on Tennessee's system. At the conference that staff will attempt to determine the issues on which the parties now agree or on which agreement can be reached. The conference will be held on Tuesday, January 9, 1990 at 10:00 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

All interested persons are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29828 Filed 12-22-89; 8:45 am]

BILLING CODE 6717-01-M

Western Area Power Administration

Pick-Sloan Missouri Basin Program-Western Division; Order Confirming and Approving an Extension of Transmission Service Rates

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice is given of Rate Order No. WAPA-43 by the Deputy Secretary of Energy extending until September 30, 1990, the Rate Schedules P-S WD-T3 and P-S WD-T4 for firm and nonfirm transmission service over the Western Area Power Administration (Western) Pick-Sloan Missouri Basin Program-Western Division (P-SMBP-WD) transmission system.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen A. Fausett, Area Manager, Loveland Area Office, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539, (303) 490-7201.

SUPPLEMENTARY INFORMATION: By Delegation Order No. 0204-108, effective December 14, 1983 (48 FR 55664), as amended May 30, 1986 (51 FR 19744), the Secretary of Energy delegated the authority to develop long-term power and transmission rates to the Administrator of Western; the authority to confirm, approve, and place in effect on an interim basis to the Under Secretary of the Department of Energy; and the authority to confirm, approve, and place in effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC). On September 20, 1989, the Secretary issued notice SEN-10A-89, which has the effect of amending Delegation Order No. 0204-108 by transferring authority to place rates in effect on an interim basis from the Under Secretary of the Department of Energy to the Deputy Secretary by the Department of Energy (Attachment A of this Notice). Existing Department of Energy Procedures for public participation in power and transmission rate adjustments (10 CFR part 903) became effective on September 18, 1985 (50 FR 37835).

Pursuant to Delegation Order No. 0204-108, FERC, in the order issued June 4, 1985, in docket No. EF85-5031-000, confirmed and approved Rate Schedules P-S WD-T3 and P-S WD-T4 for firm and nonfirm transmission service in the P-SMBP-WD administered by Western's Loveland Area Office. The rates were approved for the period from the first day of the first full billing period after January 1, 1985, to the last day of the first full billing period after December 1, 1989.

To allow time for continuation of the ongoing study of cost of service over the transmission system and to control costs associated with rate adjustment procedures, Western proposes to delay the implementation of a new P-SMBP-WD transmission rate until that rate adjustment coincides with other currently proposed rate adjustments. This coordination could reduce Western's, as well as the customer's, travel and administrative costs.

The purpose of Rate Order No. WAPA-43 is to extend the Rate Schedules P-S WD-T3 and P-S WD-T4 until September 30, 1990, to allow for coordination with other studies and rate adjustment processes.

Issued at Washington, DC, December 12, 1989.

W. Henson Moore,

Deputy Secretary.

[Rate Order No. WAPA-43]

Order Confirming and Approving an Extension of the Pick-Sloan Missouri Basin Program-Western Division Firm and Nonfirm Transmission Rates

December 12, 1989.

Pursuant to section 302(a) of the Department of Energy Organization Act, 42 U.S.C. 7101, *et seq.*, the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation (Reclamation), under the Reclamation Act of 1902, 43 U.S.C. 372, *et seq.*, as amended and supplemented by subsequent enactments, and particularly by section 9(c) of the Reclamation Act of 1939, 43 U.S.C. 485h(c), and acts specifically applicable to the Pick-Sloan Missouri Basin program (P-SMBP), were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204-108, effective December 14, 1983 (48 FR 55664), as amended May 30, 1986 (51 FR 19744), the Secretary of Energy delegated the authority to develop long-term power and transmission rates to the Administrator of Western; the authority to confirm, approve, and place in effect on an interim basis to the Under Secretary of the Department of Energy; and the authority to confirm, approve, and place in effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC). On September 20, 1989, the Secretary issued notice SEN-10A-89, which was the effect of amending Delegation Order No. 0204-108 by transferring authority to place rates in effect on an interim basis from the Under Secretary of the Department of Enegy to the Deputy Secretary of the Department of Energy. Existing Department of Energy procedures for public participation in power and transmission rate adjustments (10 CFR Part 903) became effective on September 18, 1985 (50 FR 37835).

Background

Pursuant to Delegation Order No: 0204-108, FERC, in the order issued June 4, 1985, in docket No. EF85-5031-000, confirmed and approved Rate Schedules P-S WD-T3 and P-S WD-T4 for firm and nonfirm transmission service in the P-SMBP-Western Division (P-SMBP-WD) administered by Western's Loveland Area Office. The rates were approved for the period from the first day of the first full billing period after January 1, 1985, to the last day of the first full billing period after December 1, 1989.

Discussion

To allow time for continuation of the ongoing study of cost of service over the transmission system and to control costs associated with rate adjustment procedures, Western proposes to delay the implementation of a new P-SMBP-WD transmission rate until that rate adjustment coincides with other currently proposed rate adjustments. This coordination could reduce Western's, as well as the customer's, travel and administrative costs.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve for a period effective with the first day of the first full billing period after January 1, 1990, an extension until September 30, 1990, of the existing Rate Schedules P-S WD-T3 and P-S WD-T4 for firm and nonfirm transmission service over the P-SMBP-WD transmission system.

Issued at Washington, DC, December 12, 1989

W. Henson Moore,

Deputy Secretary

[Schedule P-S WD-T3, Revised 1/7/85, (Supersedes Schedule P-S WD-T1)]

Schedule of Rates for Firm Transmission Service

Effective

The first day of the first full billing period beginning after January 1, 1985.

Available

In the area served by the Pick-Sloan Missouri Basin Program, Western Division.

Applicable

To firm transmission service customers where power and energy are supplied to the Western Division systems at points of interconnection with other systems and transmitted and delivered, less losses, to points of delivery on the Western Division system specified in the service contract.

Character and Conditions of Service

Transmission service for 3-phase alternating current at 60 hertz, delivered and metered at the voltages and points of delivery specified in the service contract.

Rate

Transmission Service Charge: 1.3 mills per kilowatthour delivered at the point of delivery or $11.40 per kilowatt per year for each kilowatt contracted for at the point of delivery, as specified in the service contract; payable monthly at the rate of 1.3 mills per kilowatthour or $0.95 per kilowatt of effective contract rate of delivery.

Adjustments

For Reactive Power: None. There shall be no entitlement to transfer of reactive kilovoltamperes at delivery points, except when such transfers may be mutually agreed upon by Contractor and Contracting Officer or their Authorized Representatives.

For Losses: Power and energy losses incurred in connection with the transmission and delivery of power and energy under this rate schedule shall be supplied by the customer in accordance with the service contract.

[Schedule P-S WD-T4, (Supersedes Schedule P-S WD-T2)]

Schedule of Rates for Nonfirm Transmission Service

Effective

The first day of the first full billing period beginning after January 1, 1985.

Available

In the area served by Pick-Sloan Missouri Basin Program, Western Division.

Applicable

To nonfirm transmission service customers where power and energy are supplied to the Western Division systems at points of interconnection with other systems and transmitted and delivered subject to the availability of transmission capacity, less losses, to points of delivery on the Western Division Systems specified in the service contract.

Character and Conditions of Service

Transmission service on an intermittent basis for 3-phase alternating current at 60 hertz, delivered and metered at the voltages and points of delivery specified in the service contract.

Rate

Transmission Service Charge: 1.3 mills per kilowatthour delivered at the point of delivery for each kilowatthour scheduled; payable monthly.

Adjustments

For Reactive Power: None. There shall be no entitlement to transfer of reactive kilovoltamperes at delivery points, except when such transfers may be mutually agreed upon by Contractor and Contracting Officer or their Authorized Representatives.

For Losses: Power and energy losses incurred in connection with the transmission and delivery of power and energy under this rate schedule shall be supplied by the customer in accordance with the service contract.

[FR Doc. 89-29888 Filed 12-22-89; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-211024; FRL 3683-5]

Response to Petition to Adopt Rules Setting Standards forGround-water Monitoring Well Construction Materials

AGENCY: Environmental Protection Agency (EPA).

ACTION: Denial of TSCA Section 21 Petition.

SUMMARY: This notice responds to a citizen's petition submitted by Browning-Ferris Industries (BFI) under section 21 of the Toxic Substances Control Act (TSCA) (15 U.S.C. 2620) to delineate technical performance standards for selecting appropriate materials for the construction of ground-water monitoring wells. EPA is denying the petition under section 21 of TSCA because the concerns that BFI raises in connection with PCB disposal facilities are a part of the larger issue of well construction for all monitoring under EPA programs, which is the subject of an extensive review currently being undertaken by EPA's Office of Solid Waste and Emergency Response (OSWER).

ADDRESSES: Copies of the petition and all related information are located in the TSCA Public Docket Office (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Room NE-G004, 401 M St., SW., Washington, DC, 20460. They are available for review and copying from 8 a.m. to 4:00 p.m. Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION:

I. Background

A. TSCA Section 21

Section 21 of TSCA provides that any person may petition the Administrator of EPA to initiate a proceeding for the issuance, amendment, or repeal of, among other things, rules imposing substantive controls on chemical substances or mixtures under section 6 of TSCA. Section 21(b)(3) requires that EPA grant or deny a petition within 90 days of its filing.

If EPA grants a section 21 petition, EPA must promptly commence an appropriate proceeding. If EPA denies

the petition, the reasons for denial must be published in the Federal Register.

Of special concern to BFI is the alleged exclusive reliance by some EPA

what materials are to be used in constructing monitoring wells. There are

information and issue interpretations are denied on the grounds that neither

In accordance with the Commission's Report and Order in General Docket 87-

[Docket No. 89-27]

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the petition, the reasons for denial must be published in the Federal Register.

If EPA denies a petition within 90 days of the filing date, or fails to grant or deny within the 90-day period, the petitioner may commence a civil action in federal district court to compel EPA to initiate the requested action. This suit must be filed within 60 days of the denial, or within 60 days of the expiration of the 90-day period if EPA fails to grant or deny the petition within that period.

B. Summary of Petition

On September 14, 1989, BFI petitioned EPA under section 21 of TSCA and section 7004(a) of the Resource Conservation and Recovery Act (RCRA) to promulgate rules that would delineate technical performance standards for selecting appropriate materials for the construction of ground-water monitoring wells. Because the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Safe Drinking Water Act (SDWA) programs require comparable monitoring, BFI proposes that equivalent rules be established under these statutes as well. Pending promulgation of rules, BFI suggests that EPA make parallel changes in its primary guidance document, the RCRA Ground-Water Monitoring Technical Enforcement Guidance Document (TEGD), to reflect current data and to explain its policy pending new rules. Finally, BFI requests that EPA establish a permanent body to answer questions and resolve disputes regarding appropriate ground-water monitoring well construction materials and disseminate this information to regional and state permit writers. In its petition, BFI renews a request for negotiated rulemaking on this issue which it made by letter dated March 17,1989. That request is still pending.

BFI states that its petition should be granted because the current EPA rules and the TEGD cannot ensure that ground-water monitoring wells are constructed of materials that produce reliable sample data. BFI claims that the existing regulations and guidance are now outmoded because EPA has failed to amend them in accordance with a growing body of scientific data on proper monitoring and well construction techniques. BFI also argues that the absence of predictable standards in the existing rules and guidance allows EPA to reject aspects of a proposed monitoring system while affording regulated entities little basis for challenging these decisions. BFI claims that implementation of the TEGD among EPA's ten regional offices is inconsistent and frequently inflexible.

Of special concern to BFI is the alleged exclusive reliance by some EPA regions on the TEGD's specific recommendations as to use of fluorocarbon resins or stainless steel well casing in certain circumstances, despite the TEGD's status as merely a guidance document. BFI claims that reliance on the TEGD by some regulators is forcing the use of inappropriate well materials and that new data demonstrate that rigid polyvinylchloride (PVC) well materials are less likely to bias samples and are more durable than previously believed by EPA.

II. EPA's Decision

This notice addresses only the TSCA section 21 portion of BFI's petition. BFI's requests with respect to RCRA, CERCLA and SDWA requirements are still under review and will be addressed at a later time. EPA is denying the portion of the petition filed under section 21 of TSCA for the following reasons:

1. OSWER is currently undertaking an extensive review of its existing rules and guidance concerning ground-water monitoring. As part of this review, OSWER is revising chapters 9 and 11 of its "Test methods for Evaluating Solid Waste" (SW-846), addressing ground-water monitoring and quality assurance procedures, to add standards for selecting appropriate materials for the construction of ground-water monitoring wells. These revised standards will update and supersede the TEGD, OSWER's existing regulatory guidance. The revised standards will reflect the current state of scientific knowledge and EPA experience regarding the appropriateness of various well construction materials for different hydrogeologic conditions and chemical monitoring purposes. OSWER expects to complete its revision of SW-846 by the fourth quarter of FY 1990. After completion, OSWER intends to publish chapters 9 and 11 of SW-846 in the Federal Register for public comment. OSWER also intends to propose in a companion rulemaking to incorporate chapters 9 and 11 of SW-846 by reference into the rules governing general ground-water monitoring requirements at hazardous waste sites. EPA will respond to that portion of BFI's petition submitted under RCRA in the context of these rulemakings.

2. The only TSCA rules affected by BFI's section 21 petition are the PCB disposal rules in 40 CFR part 761 issued under authority of TSCA section 6(e). Those rules require ground-water monitoring for certain PCB disposal facilities (§ 761.75) but do not specify what materials are to be used in constructing monitoring wells. There are only 10 commercial landfills authorized under TSCA to receive PCBs, and all are regulated under RCRA, as well. EPA does not anticipate approving any TSCA-only landfills. In reviewing ground-water monitoring proposals in connection with approval of PCB disposal facilities, EPA utilizes the same criteria as it uses for ground-water monitoring of hazardous waste facilities under RCRA, such as SW-846.

3. In light of OSWER's pending revision of SW-846 to include standards for the selection of appropriate ground-water monitoring well construction materials, EPA believes it is neither necessary nor productive for it to develop TSCA rules that would apply only to approval of PCB disposal facilities. Such duplicative EPA effort would do nothing to prevent unreasonable risk of injury to health or the environment since any matters likely to be addressed in rulemaking under TSCA are already being considered by OSWER in its revision of SW-846 and anticipated rulemakings. Indeed, parallel rulemaking under TSCA would undercut EPA's ability to protect the environment against unreasonable risks by diverting scarce resources from other pressing environmental problems to issues already being addressed by OSWER. Even if EPA were to initiate proceedings to amend its PCB rules to include well construction materials standards, such proceedings would quickly be overtaken by OSWER'S efforts. Given that fact, and the relatively minor role (compared to OSWER) of ground-water monitoring under TSCA, EPA believes it is unnecessary to commence proceedings to amend 40 CFR part 761.

4. To prevent inconsistent EPA decisions with respect to well construction materials allowed to be used at TSCA (as opposed to RCRA) permitted landfills, EPA's Office of Toxic Substances (OTS) intends to direct its headquarters and regional personnel to use the performance standards for well construction materials contained in revised SW-846 as guidance. OTS and EPA's other offices with ground-water monitoring responsibilities will also consider incorporating the revised SW-846 into their own ground-water monitoring regulations once SW-846 has been issued in its final form.

5. BFI's requests that EPA (i) issue interim guidance to the regions and states pending completion of its revision of SW-846 and (ii) establish a permanent review panel to disseminate information and issue interpretations are denied on the grounds that neither request falls within the meaning of the phrase "petition the Administrator to initiate a proceeding for the issuance, amendment, or repeal" of a rule, as that phrase is used in section 21.

Additionally, EPA does not believe that granting either request is necessary to protect against unreasonable risks to health or the environment, especially in light of the EPA's expected proposal of its revised SW-846 within the next 12 months.

III. Public Record

A. Supporting Documentation

EPA has established a record for its response to this petition under section 21 of TSCA (docket number OPTS-211024). The public record contains the basic information considered by EPA in reaching this decision.

B. References

(1) Letter from Browning-Ferris Industries to William K. Reilly, Administrator, EPA (September 14, 1989).

(2) Letter from Browning-Ferris Industries to Charles Elkins, Director, Office of Toxic Substances, EPA (September 14, 1989).

(3) Section 21 Petition From Browning-Ferris Industries to the EPA, with attachments (September 14, 1989).

(4) RCRA Ground-Water Monitoring Technical Enforcement Guidance Document (September 1986).

IV. Conclusion

For the above reasons, EPA is denying BFI's petition filed under section 21 of TSCA.

Authority: 15 U.S.C. 2620.

Dated: December 13, 1989.

William K. Reilly,

Administrator.

[FR Doc. 89-29696 Filed 12-22-89; 8:45 am]

Billing Code 6560-50-D

FEDERAL COMMUNICATIONS COMMISSION

[DA 89-1512]

Nebraska Regional Public Safety Plan; Comments Invited

December 18, 1989.

The Commission has received the public safety radio communications plan for the Nebraska area (Region 26).

In accordance with the Commission's Report and Order in General Docket 87-112 implementing the Public Safety National Plan, parties are hereby given thirty days from the date of Federal Register publication of this public notice to file comments and fifteen days to reply to any comments filed. (See Report and Order, General Docket 87-112, 3 FCC Rcd 905 (1987), at paragraph 54.)

In accordance with the Commission's Memorandum Opinion and Order in General Docket 87-112, Region 26 consists of the State of Nebraska. General Docket 87-112, 3 FCC Rcd 2113 (1988).

Comments should be clearly identified as submissions to General Docket 89-606, Nebraska—Region 26, and commenters should send an original and five copies to the Secretary, Federal Communications Commission, Washington, DC 20554.

Questions regarding this public notice may be directed to Maureen Cesaitis, Private Radio Bureau, (202) 632-6497, or Fred Thomas, Office of Engineering and Technology, (202)-653-8112.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-29852 Filed 12-22-89; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the foliowing have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Public Law 89-777 (80 Stat. 1356, 1357) and Federal Maritime Commission General Order 20, as amended (46 CFR 540):

Special Expeditions, Inc., and Wilderness Cruises, Inc., 720 Fifth Avenue, New York, New York 10019, Vessel: SEA LION.

Dated: December 19, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-29816 12-22-89; 8:45 am]

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[Docket No. 89-27]

AMG Services, Inc.; Order of Investigation and Hearing

Oasis Express Line, Javelin Line and Trans Africa Line, have vessel operating common carrier tariffs on file with the Commission. Coast Container Line, Buccaneer Line, and Union Exportadora Lines have non-vessel operating common carrier tariffs on file with the Commission. AMG Services, Inc.[1] is an agent representing the above common carriers. Martyn Merritt is the president of AMG Services, Inc.

In Docket No. 84-38, Ariel Maritime Group, Inc., et al., the Commission found, *inter alia*, that Martyn Merritt, Ariel Maritime Group, Inc., Oasis Express Line, and Javelin Line violated Section 16 Initial Paragraph, Shipping Act, 1916 ("1916 Act"), 46 U.S.C. app. § 815, Initial Paragraph, by obtaining transportation at less than the applicable tariff rates and that Martyn Merritt violated section 18(b)(3) of the 1916 Act, 46 U.S.C. app. § 817(b)(3), by failing to charge rates specified in a tariff on file with the Commission. As a part of its findings, the Commission found that: all the corporate respondents were directed and controlled by Martyn Merritt, the various corporations were used by Martyn Merritt to conceal the violations, and Martyn Merritt was the principal beneficiary of the violations. Martyn Merritt was thus found to have violated the 1916 Act in an individual capacity and civil penalties totalling $335,000 were ordered to be paid by Martyn Merritt and the corporate respondents jointly and severally.[2] Mr. Merritt, Ariel Maritime Group, Inc., Oasis Express Line, Javelin Line and the other respondents in the proceeding were ordered to cease and desist from violating sections 10(a)(1) and 10(b)(1) of Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. §§ 1709(a)(1) and 1709(b)(1).[3]

Nevertheless, it appears that Martyn Merritt, AMG Services, Inc., Oasis Express Line, Javelin Line, Coast Container Line, and Trans Africa Line engaged in at least 3 violations of section 10(a)(1) of the 1984 Act by

[1] Formerly Ariel Maritime Group, Inc. AMG Services Inc. does business as Ariel Maritime Group and Ariel Maritime.

[2] Martyn Merritt and the corporate respondents failed to pay the civil penalties and the Commission and the Department of Justice are attempting to obtain payment through a suit in the United States District Court for the Southern District of New York.

[3] The violations were committed prior to the passage of the 1984 Act. However, the Commission found that it had the authority to order the respondents to cease and desist from future violations of the 1984 Act based upon findings of violations of the 1916 Act.

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obtaining or attempting to obtain transportation for less than the

(3) Whether, in the event Martyn Merritt, AMG Services, Inc., Trans

Commission's Rules of Practice and Procedure, 46 CFR 502.72;

because they are included under the government-wide systems of records

FMC—29 Employee Performance File System Records
FMC—30 Procurement Integrity

agency, to the extent that the information is relevant and necessary to the requesting agency's decision on that

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obtaining or attempting to obtain transportation for less than the applicable tariff rates or charges during the period May 1988 through August 1988. This appears to be the same malpractice which Martyn Merritt, Ariel Maritime Group, Inc., Oasis Express Line and Javelin Line were found to have engaged in in Docket No. 84-38.[4] In addition it appears that Martyn Merritt, AMG Services, Inc., Trans Africa Line, Oasis Express Line, Javelin Line, Coast Container Line, Buccaneer Line, and Union Exportadora Lines have routinely disregarded statutory requirements and engaged in at least 65 violations of section 10(b)(1) of the 1984 Act by charging rates for the transportation of property other than the rates set forth in tariffs on file with the Commission during the period October 1987 through October 1988. This is despite the fact that the Commission found in Docket No. 84-38 that Martyn Merritt and an NVOCC controlled by Martyn Merritt, Interlink Lines, failed to charge rates specified in Interlink Lines' tariff and despite the fact that all the respondents in Docket No. 84-38 were ordered by the Commission to cease and desist from future violations of section 10(b)(1) of the 1984 Act.

Now therefore it is ordered, That pursuant to sections 10, 11, and 13 of the 1984 Act, 46 U.S.C. app. 1709, 1710 and 1712, an investigation is hereby instituted to determine:

(1) Whether Martyn Merritt, AMG Services, Inc., Oasis Express Line, Javelin Line, Coast Container Line, or Trans Africa Line violated section 10(a)(1) of the 1984 Act by obtaining or attempting to obtain ocean transportation of property for less than applicable rates or charges by means of a false classification or any other unjust or unfair device or means during the period from May 1988 through August 1988;

(2) Whether Martyn Merritt, AMG Services, Inc., Trans Africa Line, Oasis Express Line, Javelin Line, Coast Container Line, Buccaneer Line, and Union Exportadora Lines violated section 10(b)(1) of the 1984 Act by charging, demanding, collecting or receiving greater, less or different compensation than the rates and charges specified in the applicable tariff on file with the Commission during the period from October 1987 through October 1988;

(3) Whether, in the event Martyn Merritt, AMG Services, Inc., Trans Africa Line, Oasis Express Line, Javelin Line, Coast Container Line, Buccaneer Line, or Union Exportadora Lines are found to have violated section 10(a)(1) or section 10(b)(1) of the 1984 Act, civil penalties should be assessed and, if so, the amount of such penalties;

(4) Whether, in the event Trans Africa Line, Oasis Express Line, Javelin Line, Coast Container Line, Buccaneer Line, or Union Exportadora Lines are found to have violated section 10(b)(1) of the 1984 Act, their tariffs should be suspended pursuant to section 13 of the Act; and

(5) Whether, in the event, Oasis Express Line, Javelin Line, Trans Africa Line, Coast Container Line, Buccaneer Line, Union Exportadora Lines, AMG Services, Inc. or Martyn Merritt are found to have violated section 10(a)(1) or section 10(b)(1) of the 1984 Act, an appropriate cease and desist order should be issued.

It is further ordered, That a public hearing be held in this proceeding and that this matter be assigned for hearing before an Administrative Law Judge of the Commission's Office of Administrative Law Judges at a date and place to be hereafter determined by the Administrative Law Judge in compliance with Rule 61 of the Commission's Rules of Practice and Procedure, 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Administrative Law Judge only upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matters in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record;

It is further ordered, That Oasis Express Line, Javelin Line, Trans Africa Line, Coast Container Line, Buccaneer Line, Union Exportadora Lines, AMG Services, Inc. and Martyn Merritt are designated Respondents in this proceeding;

It is further ordered, That the Commission's Bureau of Hearing Counsel is designated a party to this proceeding;

It is further ordered, That notice of this Order be published in the **Federal Register**, and a copy be served on parties of record;

It is further ordered, That other persons having an interest in participating in this proceeding may file petitions for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure, 46 CFR 502.72;

It is further ordered, That all further notices, orders, and/or decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be served on parties of record;

It is further ordered, That all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal maritime Commission, Washington, DC 20573, in accordance with Rule 118 of the Commission's Rules of Practice and Procedure, 46 CFR 502.118, and shall be served on parties of record;

It is further ordered, That in accordance with Rule 61 of the Commission's Rules of Practice and Procedure, the initial decision of the Administrative Law Judge shall be issued by December 18, 1990, and the final decision of the Commission shall be issued by April 18, 1991.

Joseph C. Polking,
Secretary.

[FR Doc. 89-29817 Filed 12-22-89; 8:45 am]
BILLING CODE 6730-01-M

[4] In Docket 84-38, the Commission found Martyn Merritt, Ariel Maritime Group, Inc., Oasis Express Line, and Javelin Line violated section 16, Initial Paragraph of the 1916 Act, through the device of obtaining lower rates under connecting carrier agreements when the shipments were not eligible to move under the agreement.

Privacy Act of 1974; Publication of Notice of Systems of Records

AGENCY: Federal Maritime Commission.

ACTION: Notice of Systems of Records.

SUMMARY: This notice meets the requirement of the Privacy Act of 1974 (5 U.S.C. 552a), regarding the publication of an agency's notice of systems of records.

FOR FURTHER INFORMATION CONTACT: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523-5725.

SUPPLEMENTARY INFORMATION: This notice describes the character and gives notice of the systems of records maintained by the Federal Maritime Commission. This agency previously noticed its systems of records by publication in the **Federal Register** at 42 FR 48131, September 22, 1977, as amended by additional systems of records at 44 FR 5941, January 30, 1979; 44 FR 10629, February 22, 1979; 47 FR 13214, March 29, 1982; and 52 FR 10602, April 3, 1987.

Previously notice system FMC-27 has been deleted from this publication because the system is no longer maintained and all records formerly included in the system have been destroyed. To eliminate duplication, a number of other systems were deleted or omitted from the 1987 publication because they are included under the government-wide systems of records notices published by the Office of Personnel Management (OPM) or the Office of Equal Employment Opportunity. These systems are FMC-8, FMC-9, FMC-14, FMC-16, FMC-19 and FMC-28. In order to more accurately reflect the systems of records actually maintained by the Commission, these are being reinstated or added to the list and reference is made to the appropriate government-wide systems notice that applies in each case. Also, FMC-29, Employee Performance File System Records, which was previously covered under FMC-8, is being added to the list as a separate system to more closely conform with OPM's government-wide systems notice.

This notice also includes the addition of certain exemptions under subsections (k) (2) and (5) of the Privacy Act for various systems of records, specifically, FMC-1, FMC-7, FMC-22, FMC-24, FMC-25 and FMC-28. A report on the addition of these exemptions was filed on May 30, 1989. Amendments are also being made to the FMC-25 to reflect the expansion of the role of the Commission's Inspector General necessitated by passage of Public Law 100-504, the Inspector General Act Amendments of 1988.

Finally, this document includes non-substantive, editorial changes to some existing systems; and one new system, FMC-30. This new system, as well as amendments to FMC-25 are concurrently being noticed as proposed changes to be effective in 60 days unless an announcement to the contrary is published by this agency. A new and altered systems report for these two systems was filed on December 19, 1989.

By the Commission.

Joseph C. Polking,
Secretary.

FMC— 1 Personnel Security File
FMC— 2 Non-Attorney Practitioner File
FMC— 7 Licensed Ocean Freight Forwarders File
FMC— 8 Official Personnel Folder
FMC— 9 Training Program Records
FMC—10 Desk Audit File
FMC—14 Medical Examination File
FMC—15 Service Control File
FMC—16 Classification Appeals File
FMC—18 Travel Orders/Vouchers File
FMC—19 Statement of Employment and Financial Interests
FMC—21 Payroll Records
FMC—22 Investigatory Files
FMC—23 Parking Applications
FMC—24 Informal Inquiries and Complaints Files
FMC—25 Inspector General File
FMC—26 Administrative Grievance File
FMC—28 Equal Employment Opportunity Complaints Files
FMC—29 Employee Performance File System Records
FMC—30 Procurement Integrity Certification Files

FMC-1

SYSTEM NAME:

Personnel Security File-FMC.

SYSTEM LOCATION:

Bureau of Investigations, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573-0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Employees of the Federal Maritime Commission. 2. Applicants for employment with the Federal Maritime Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Results of name checks, inquiries, and investigations to determine suitability for employment with the U.S. Government, and to determine whether employment or continued employment of an individual can reasonably be expected to be clearly consistent with national security interests.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 10450

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records in this system of records are used or may be used: 1. By Commission officials to make a determination that the employment of an applicant or retention of employment of a current employee within the Commission is clearly consistent with the interests of national security. 2. To refer, where there is an indication of a violation or potential violation of law, whether civil or criminal or regulatory in nature, information to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto. 3. To request from a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information, data relevant to a Commission decision concerning the hiring or retention of an employee or the issuance of a security clearance. 4. To provide or disclose information to a Federal agency in response to its request in connection with the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on that matter. 5. By a court of law or appropriate administrative board or hearing having review or oversight authority.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are indexed alphabetically by name.

SAFEGUARDS:

Records are maintained in a combination safe in the custody of the personnel security officer and access is limited to the personnel security officer and his duly authorized representatives.

RETENTION AND DISPOSAL:

Return record copies of reports furnished by Office of Personnel Management after information has been reviewed and maintain other FMC records on file until termination of employee from agency. Destroy within 30 days after employee leaves.

SYSTEM MANAGER(S) AND ADDRESS:

Security Officer, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573-0001.

NOTIFICATION PROCEDURE:

All inquiries regarding this system of records should be addressed to: Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573-0001.

RECORD ACCESS PROCEDURE:

Requests for access to a record should be directed to the Secretary listed at the above address. Requests may be in person or by mail and shall meet the requirements set out in § 503.65 of Title 46 of the Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

An individual desiring to amend a record shall direct such request to the Secretary at the above listed address. Such requests shall specify the desired amendments and the reasons therefor, and shall meet the requirements of § 503.66 of title 46 of the Code of Federal Regulations.

RECORD SOURCE CATEGORIES:

Office of Personnel Management report, and reports from other Federal agencies.

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SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt from the provisions of 5 U.S.C. 552a (c)(3) and (d) which otherwise require the Commission to provide the individual named in the records an accounting of disclosures and access to and opportunity to amend the records. All information about individuals that meets the criteria of 5 U.S.C. 552a(k)(5), regarding suitability, eligibility or qualifications for Federal civilian employment or for access to classified information, to the extent that disclosure would reveal the identity of a source who furnished information to the Commission under a promise of confidentiality is exempt from disclosure. Exemption from disclosure is required to honor promises of confidentiality.

FMC-2

SYSTEM NAME:

Non-Attorney Practitioner File-FMC.

SYSTEM LOCATION:

Office of Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons, not attorneys, who apply for and/or are granted permission to practice before the Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Application forms and letters of reference in relation to non-attorney practitioners.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

46 CFR 502.27.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records in this system of records are used or may be used: 1. By personnel of the Secretary's Office to determine whether a non-attorney should be admitted to practice before the Commission. 2. To refer, where there is an indication of a violation or potential violation of law, whether civil or criminal or regulatory in nature, information to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto. 3. To request from a Federal, State or local agency maintaining civil, criminal, or other relevant enforcement information, data relevant to a Commission decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit. 4. To provide or disclose information to a Federal agency in response to its request in connection with the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on that matter.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are indexed alphabetically by name.

SAFEGUARDS:

Records are maintained in file cabinets under the control of personnel in the Secretary's Office.

RETENTION AND DISPOSAL:

Records are maintained in the Office of the Secretary for 10 years after applicant ceases to practice and then are transferred to the Federal Records Center. Records are destroyed 20 years thereafter.

SYSTEM MANAGER(S) AND ADDRESS:

Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001.

NOTIFICATION PROCEDURE:

All inquiries regarding this system of records should be addressed to: Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001.

RECORD ACCESS PROCEDURES:

Request for Access to a record should be directed to the Secretary listed at the above address. Requests may be in person or by mail and shall meet the requirements set out in § 503.65 of Title 46 of the Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

An individual desiring to amend a record shall direct such a request to the Secretary at the above listed address. Such requests shall specify the desired amendments and the reasns therefor, and shall meet the requirements of § 503.66 of Title 46 of the Code of Federal Regulations.

RECORD SOURCE CATEGORIES:

Applicants.

FMC-7

SYSTEM NAME:

Licensed Ocean Freight Forwarders File-FMC.

SYSTEM LOCATION:

Bureau of Domestic Regulation, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records are maintained on sole proprietorships, partnerships and corporate licensees, exlicensees, and applicants for licenses.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains freight forwarder names and addresses, as well as the names and addresses of the stockholders, officers, and directors of individual freight forwarders; descriptions of the relationships the freight forwarder may have with other business entities; credit references; a record of the forwarder's past experience in forwarding; and any financial information and/or criminal convictions pertinent to the licensing of the forwarder.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 553; secs. 3, 8, 10, 11, 13, 15, 17 and 19, Shipping Act of 1984 (46 U.S.C. App. 1702, 1707, 1709, 1710, 1712, 1714, 1716 and 1718).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records in this system of records are used or may be used: 1. By Commission staff for evaluation of applications for licensing. 2. By Commission staff for monitoring the activities of licensees to ensure they are in compliance with Commission regulations. 3. To refer, where there is an indication of a violation or potential violation of law whether civil, criminal or regulatory in nature, information to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rules, regulations, or orders issued pursuant thereto. 4. To request from a Federal, State, or local agency maintaining civil, criminal or other relevant enforcement information, data relevant to a Commission decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit. 5. To provide or disclose information to a Federal agency in response to its request in connection with the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on that matter.

STORAGE:

Records are maintained in file folders and in a personal computer.

RETRIEVABILITY:

Records are indexed by name and license or application number.

SAFEGUARDS:

Records are maintained in an area of restricted accessibility.

RETENTION AND DISPOSAL:

Applicant and licensee files are kept as long as the application and/or license is active. Files for withdrawn and denied applicants, and revoked licenses remain in the Record Location Center for two years after final action and are then transferred to the Federal Records Center. Then, after ten years the files are destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Bureau of Domestic Regulation, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001.

NOTIFICATION PROCEDURE:

All inquiries regarding this system of records should be addressed to: Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001.

RECORD ACCESS PROCEDURES:

Requests for access to a record should be directed to the Secretary listed at the above address. Request may be in person or by mail and shall meet the requirements set out in § 503.65 of Title 46 of the Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

An individual desiring to amend a record shall direct such request to the Secretary at the above listed address. Such requests shall specify the desired amendments and the reasons therefor, and shall meet the requirements of § 503.66 of Title 46 of the Code of Federal Regulations.

RECORD SOURCE CATEGORIES:

1. Information submitted by applicants and licensees. 2. Commission District Offices. 3. General Public (e.g., complaints). 4. Surety companies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt from the provisions of 5 U.S.C. 552a (c)(3) and (d) which otherwise require the Commission to provide the individual named in the records an accounting of disclosures and access to and opportunity to amend the records. All information that meets the criteria of 5 U.S.C. 552a(k)(2) regarding investigatory material compiled for law enforcement purposes is exempt. Exemption is appropriate because disclosure might compromise ongoing investigations, reveal the identity of confidential sources or constitute unwarranted invasions of personal privacy of third parties.

FMC-8

SYSTEM NAME:

Official Personnel Folder-FMC.

SYSTEM LOCATION:

Office of Personel, Federal Maritime Commissin, 1100 L Street NW., Washington, DC 20573–0001.

Note: This system is covered by the Office of Personnel Management's government-wide system notice, OPM/GOVT–1.

FMC-9

SYSTEM NAME:

Training Program Records-FMC.

SYSTEM LOCATION:

Office of Personnel, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001.

Note: This system is covered by the Office of Personnel Management's government-wide system notice, OPM/GOVT–1.

FMC-10

SYSTEM NAME:

Desk Audit File–FMC.

SYSTEM LOCATION:

Office of Personnel, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the Federal Maritime Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Each record consists of the position classification specialist's notes of conversations, evaluation reports, background papers, and/or research material used to support the audit.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101 et seq., 5 U.S.C. 1302 and the regulations issued pursuant thereto.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Information in this system of records is used or may be used: 1. By Commission officials to support decisions on the proper classification of a position. 2. To refer, where there is an indication of a violation or potential violation of law, whether civil, criminal or regulatory in nature, information to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto. 3. To request from a Federal, State or local agency maintaining civil, criminal, or other relevant enforcement information, data relevant to a Commission decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit. 4. To provide or disclose information to a Federal agency in response to its request in connection with the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on that matter. 5. By the Office of Personnel Management in the course of an investigation, or evaluating for statistical or management analysis purposes.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

Records Management Policy and Practice.

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are indexed alphabetically by name.

SAFEGUARDS:

Records are maintained in locked file cabinets.

RETENTION AND DISPOSAL:

Records are maintained as long as the position audited remains essential,

current, and accurate, after which they are shredded.

historical and current status data on employees only for the time they have

SYSTEM MANAGER(S) AND ADDRESS:

Director of Personnel, Federal

subsistence breakdown, cab fares and

person or by mail and shall meet the

ROUTINE USES OF RECORDS MAINTAINED IN

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current, and accurate, after which they are shredded.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Personnel, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001.

NOTIFICATION PROCEDURE:

All inquiries regarding this system of records should be addressed to: Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001.

RECORD ACCESS PROCEDURES:

Requests for access to a record should be directed to the Secretary listed at the above address. Requests may be in person or by mail and shall meet the requirements set out in § 503.65 of Title 46 of the Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

An individual desiring to amend a record shall direct such a request to the Secretary at the above listed address. Such requests shall specify the desired amendments and the reasons therefor, and shall meet the requirements of § 503.66 of Title 46 of the Code of Federal Regulations.

RECORD SOURCE CATEGORIES:

Personnel specialists of the Commission.

FMC–14

SYSTEM NAME:

Medical Examination File—FMC.

SYSTEM LOCATION:

Office of Personnel, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001.

Note: This system is covered by the Office of Personnel Management's government-wide system notice, OPM/GOVT–10.

FMC–15

SYSTEM NAME:

Service Control File–FMC.

SYSTEM LOCATION:

Office of Personnel, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Federal Maritime Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of Service Record Cards (Standard Forms 7 and 7–B), and a Position Identification Strip (Standard Form 7D). This file provides summary information of organizational structure, budgeted positions, and historical and current status data on employees only for the time they have been with the Commission. The service record of each employee who leaves the agency is filed separately and retained for historical reference.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101 et seq., 5 U.S.C. 1302 and the regulations issued pursuant thereto.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The records in this system of records are used or may be used: 1. By appropriate Commission officials for personnel actions such as within grade increases, conversions to career tenure, probationary ratings, terminations of limited assignments, and expiration of authorized absences. 2. By the Office of Personnel Management in the course of an investigation of a particular employee of the Commission, or for management analysis and statistical purposes. 3. To request from a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information, data relevant to a Commission decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, the issuance of a license, grant or other benefit. 4. To provide or disclose information to a Federal agency in response to its request in connection with the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on that matter.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on index cards.

RETRIEVABILITY:

Records are indexed alphabetically by name.

SAFEGUARDS:

Records are maintained in locked file cabinets.

RETENTION AND DISPOSAL:

Records are maintained while the individual is employed by the Commission and are destroyed by shredding three years after separation or transfer of employee.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Personnel, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001.

NOTIFICATION PROCEDURE:

All inquiries regarding this system of records should be addressed to: Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001.

RECORD ACCESS PROCEDURES:

Requests for access to a record should be directed to the Secretary listed at the above address. Requests may be in person or by mail and shall meet the requirements set out in § 503.65 of Title 46 of the Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

An individual desiring to amend a record shall direct such a request to the Secretary at the above listed address. Such requests shall specify the desired amendments and the reasons therefore, and shall meet the requirements of § 503.66 of Title 46 of the Code of Federal Regulations.

RECORD SOURCE CATEGORIES:

Personnel specialists of the Federal Maritime Commission.

FMC–16

SYSTEM NAME:

Classification Appeals File-FMC.

SYSTEM LOCATION:

Office of Personnel, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001.

Note: This system is covered by the Office of Personnel Management's government-wide system notice, OPM/GOVT–9.

FMC–18

SYSTEM NAME:

Travel Orders/Vouchers File-FMC.

SYSTEM LOCATION:

Office of Budget and Financial Management, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Federal Maritime Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

The record consists of the initial travel order for the individual and the subsequent travel voucher prepared from information supplied by the individual which includes hotel bills, subsistence breakdown, cab fares and air fares.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Travel Regulations FPMR 101–7 and Travel Expense Amendments Act of 1975 (5 U.S.C. 5701–5709). 44 U.S.C. 3101. 5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records in this system of records are used or may be used: 1. By the Commission for the authorization of travel performed by personnel of the Commission. 2. By the Commission to prepare travel vouchers for submission to the Federal Home Loan Bank Board and to maintain internal control of travel expenses within this agency. 3. To refer, where there is an indication of a violation or potential violation of law, whether civil or criminal in nature, information to the appropriate agency, whether Federal, State or local, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute or rule, regulation or order issued pursuant thereto.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are indexed by name or bureau.

SAFEGUARDS:

Records are maintained in locked file cabinets and monitored by the Director of the Office of Budget and Financial Management.

RETENTION AND DISPOSAL:

The records are maintained for three years and are then destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Budget and Financial Management, Federal Maritime Commission, 1100 L Street, N.W., Washington, DC 20573–0001.

NOTIFICATION PROCEDURE:

All inquiries regarding this system of records should be addressed to: Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001.

RECORD ACCESS PROCEDURE:

Requests for access to a record should be directed to the Secretary listed at the above address. Requests may be in person or by mail and shall meet the requirements set out in § 503.65 of Title 46 of the Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

An individual desiring to amend a record shall direct such a request to the Secretary at the above listed address. Such requests shall specify the desired amendments and the reasons therefor, and shall meet the requirements of § 503.66 of Title 46 of the Code of Federal Regulations.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains, hotel bills, individual's subsistence record, and Travel Requests (Airline or train).

FMC–19

SYSTEM NAME:

Statement of Employment and Financial Interests-FMC.

SYSTEM LOCATION:

Office of the General Counsel, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573–0001.

Note: This system is covered by the Office of Personnel Management's government-wide systems notices, OPM/GOVT–4 and OPM/GOVT–8.

FMC–21

SYSTEM NAME:

Payroll Records-Federal Maritime Commission.

SYSTEM LOCATION:

Office of Thrift Supervision ("OTS"), U.S. Department of the Treasury; copies held by the FMC. (OTS holds records for the Federal Maritime Commission under contract.)

CATEGORIES OF RECORDS IN THE SYSTEM:

Varied payroll records, including, among other documents: time and attendance cards, payment vouchers, comprehensive listing of employees, health benefits records, requests for deduction, tax forms, W–2 forms, overtime requests, leave data, retirement records. Records are used by FMC and OTS employees to maintain adequate payroll information for FMC employees, and otherwise by the FMC and OTS employees who have a need for the record in the performance of their duties.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. generally.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a "routine use," to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

A record from this system of records may be disclosed as a "routine use":

1. To a Federal, State or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary, to obtain information relevant to an agency decision concerning the hiring or retention of any employee, the issuance of a security clearance, the letting of a contract or the issuance of a license grant or other benefit.

2. To a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision in the matter.

3. To an authorized appeal grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint, or appeal filed by an employee. A record from this system of records may be disclosed to the Office of Personnel Management in accordance with the agency's responsibility for evaluation and oversight of Federal personnel management.

4. To officers and employees of a Federal agency for purposes of audit.

5. To a Member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

6. To officers and employees of the Office of Thrift Supervision in

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connection with administrative services provided to this agency under agreement with OTS.

7. To GAO for audit; to the Internal Revenue Service for investigation; and to private attorneys, pursuant to a power of attorney.

A copy of an employee's Department of the Treasury Form W–2, Wage and Tax Statement, also is disclosed to the state, city, or other local jurisdiction which is authorized to tax the employee's compensation. The record will be provided in accordance with a withholding agreement between the state, city, or other local jurisdiction and the Department of the Treasury pursuant to 5 U.S.C. 5516, 5517, and 5520, or, in the absence thereof, in response to a written request from an appropriate official of the taxing jurisdiction to the Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001. The request must include a copy of the applicable statute or ordinance authorizing the taxation of compensation and should indicate whether the authority of the jurisdiction to tax the employee is based on place of residence, place of employment, or both.

Pursuant to a witholding agreement between a city and the Department of the Treasury (5 U.S.C. 5520), copies of executed city tax withholding certificates shall be furnished the city in response to written request from an appropriate city official to the Secretary at the above address.

In the absence of a withholding agreement, the Social Security Number will be furnished only to a taxing jurisdiction which has furnished this agency with evidence of its independent authority to compel disclosure of the Social Security Number, in accordance with section 7 of the Privacy Act, Pub. L. 93–579.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and microfilm records are stored at the FMC. The Office of Thrift Supervision maintains computerized records.

RETRIEVABILITY:

Social Security Number.

SAFEGUARDS:

Stored in guarded building; released only to authorized personnel.

RETENTION AND DISPOSAL:

Disposition of records shall be in accordance with the OTS Records Maintenance and Disposition System.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Budget and Financial Management, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001.

NOTIFICATION PROCEDURE:

All inquiries regarding this system of records should be addressed to: Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001.

RECORD ACCESS PROCEDURES:

Requests for access to a record should be directed to the Secretary listed at the above address. Requests may be in person or by mail and shall meet the requirements set out in § 503.65 of Title 46 of the Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

An individual desiring to amend a record shall direct such a request to the Secretary at the above listed address. Such requests shall specify the desired amendments and the reasons therefor, and shall meet the requirements of § 503.66 of Title 46 of the Code of Federal Regulations.

RECORD SOURCE CATEGORIES:

The subject individual; the Commission.

FMC–22

SYSTEM NAME:

Investigatory Files-FMC.

SYSTEM LOCATION:

Bureau of Investigations, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records may be maintained on individuals involved in investigations and enforcement actions instituted by the Federal Maritime Commission. These individuals could include employees, owners, officers and directors of steamship companies, ocean freight forwarders, shippers, consignees, brokers and other entities associated with ocean transportation. Included would be individuals alleged to have violated the Shipping Act of 1984; the Intercoastal Shipping Act, 1933; the Shipping Act, 1916; and Public Law 89–777. Also included would be individual applicants routinely investigated in connection with licenses and certificates issued by the FMC pursuant to its statutory authority.

CATEGORIES OF RECORDS IN THE SYSTEM:

Investigative and intelligence data; documented violations; warning letters and information regarding applications for certification and licensing, if appropriate; and reports from investigative/law enforcement agencies.

Includes any information on alleged or proven violations of the statutes or parts thereof over which the FMC has jurisdiction.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Shipping Act of 1984, Intercoastal Shipping Act, 1933 (46 U.S.C. 801 and 843), and Shipping Act, 1916.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. In the event that a system of records maintained by the FMC to carry out its functions indicates a violation or potential violation of law or contract, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation, or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

2. A record from this system of records may be disclosed, as a routine use, to a Federal, State or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an FMC decision concerning the assignment, hiring or retention of an individual, the issuance of a security clearance, or the issuance of a license, grant or other benefit.

3. A record from this system of records may be disclosed, as a routine use, to a Federal, State, local or international agency, in response to its request, in connection with the assignment, hiring or retention of an individual, the issuance of a security clearance, the reporting of an investigation of an individual, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

4. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court magistrate or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.

5. A record in this system or records may be disclosed as a routine use to either House of Congress, or to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of such joint committee.

6. A record in this system of records may be disclosed, as a routine use, to the Department of Justice in connection with determining whether disclosure thereof is required by the Freedom of Information Act (5 U.S.C. 552).

7. A record in this system may be transferred, as a routine use, to the Office of Personnel Management for personnel research purposes; as a data source for management information; for the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained; or for related manpower studies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper form in filing cabinets and in a Lektriever, Series 80. Statistical data taken from record forms are maintained in a personal computer

RETRIEVABILITY:

Information filed by case of subject file. Records pertaining to individuals are accessed by reference to the Bureau of Investigation's name-relationship index system.

SAFEGUARDS:

Records are located in locked metal file cabinets or in metal file cabinets in secured rooms or secured premises with access limited to those whose official duties require access. The Lektriever files are locked with a key and the key is secured in a locked file cabinet. Computer information is safeguarded with an access code. Files are maintained in buildings that have 24 hour security guards.

RETENTION AND DISPOSAL:

(a) Bureau of Investigations-Records are retained for 7 years after case is closed, and then transferred to the Federal Records Center. Records are destroyed 14 years after case is closed. (b) Field Offices-Records are destroyed 7 years after case is closed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Bureau of Investigations, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001.

NOTIFICATION PROCEDURE:

All inquiries regarding this system of records should be addressed to: Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001.

RECORD ACCESS PROCEDURES:

Requests for access to a record should be directed to the Secretary listed at the above address. Requests may be in person or by mail and shall meet the requirements set out in § 503.65 of Title 46 of the Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

An individual desiring to amend a record shall direct such a request to the Secretary at the above listed address. Such requests shall specify the desired amendments and the reasons therefor, and shall meet the requirements of § 503.66 of Title 46 of the Code of Federal Regulations.

RECORD SOURCE CATEGORIES:

Individual shippers, carriers, freight forwarders, those authorized by the individual to furnish information, trade sources, investigative agencies, investigative personnel of the Bureau of Investigations and other sources of information.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt from the provisions of 5 U.S.C. 552a(c)(3) and (d) which otherwise require the Commission to provide the individual named in the records an accounting of disclosures and access and opportunity to amend the records. All information that meets the criteria of 5 U.S.C. 552a(k)(2) regarding investigatory material compiled for law enforcement purposes is exempt. Exemption is appropriate because disclosure might compromise ongoing investigations, reveal the identity of confidential sources or constitute unwarranted invasions of personal privacy of third parties.

Appendix

Los Angeles District, U.S. Customs House Building, 300 S. Ferry Street, Room 2040A, P.O. Box 3184, Terminal Island Station, San Pedro, CA 90731

Miami District, 1001 North America Way, Room 115, Miami, FL 33132

New Orleans District, 600 South Maestri Place, Room 1035, P.O. Box 30550, New Orleans, LA 70190–0550

New York District, 6 World Trade Center, Suite 614, New York, NY 10048–0949

Houston District, 4141 East Beltway 8, Suite 102, Houston, TX 77032

Puerto Rico District, U.S. District Courthouse, Federal Office Building, Room 762, Carlos Chardon Street, Hato Rey, PR 00918–2254.

San Francisco District, 525 Market Street, 35th Floor, Suite 3510, San Francisco, CA 94105

FMC–23

SYSTEM NAME:

Parking Applications-FMC.

SYSTEM LOCATION:

Office of Administrative Services, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and their carpool members desiring agency controlled parking.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names; office locations and telephone numbers; home addresses; make, year, model, and license number of vehicles; carpool usage; handicap and special designation; signatures.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Property Management Regulations §§ 101–20.111 and 101–20.117.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Used by Agency employees responsible for allocation and control of parking spaces, and to assist in creating carpools.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

By applicant name or space assignment.

SAFEGUARDS:

Records are maintained in a file cabinet in a locked room, with 24 hour building security guards.

RETENTION AND DISPOSAL:

Records voided upon update or parking permit cancellation. Files destroyed after second overall reallocation of permits.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Administrative Services, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573–0001.

NOTIFICATION PROCEDURE:

All inquiries regarding this system of records should be addressed to: Secretary, Federal Maritime

Commission, 1100 L Street NW., Washington, DC 20573–0001.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Records are maintained in a file cabinet in a locked room, with 24 hour building security guards.

RETENTION AND DISPOSAL:

Records voided upon update or parking permit cancellation. Files destroyed after second overall reallocation of permits.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Administrative Services, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573–0001.

NOTIFICATION PROCEDURE:

All inquiries regarding this system of records should be addressed to: Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001.

RECORD ACCESS PROCEDURES:

Requests for access to a record should be directed to the Secretary listed at the above address. Requests may be in person or by mail and shall meet the requirements set out in § 503.65 of Title 46 of the Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

An individual desiring to amend a record shall direct such a request to the Secretary at the above listed address. Such requests shall specify the desired amendments and the reasons therefor, and shall meet the requirements of § 503.66 of Title 46 of the Code of Federal Regulations.

RECORD SOURCE CATEGORIES:

The subject individual; the Commission.

FMC–24

SYSTEM NAME:

Personnel Security Files-FMC.

SYSTEM LOCATION:

Office of Administrative Services, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees, former employees, and applicants for employment with the Federal Maritime Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Investigative reports; correspondence; and documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Inspector General Act of 1978, (5

inquiry on behalf of an individual, when the Member of Congress informs the

NOTIFICATION PROCEDURE:

All inquiries regarding this system of

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Commission, 1100 L Street NW., Washington, DC 20573–0001.

RECORD ACCESS PROCEDURES:

Requests for access to a record should be directed to the Secretary listed at the above address. Requests may be in person or by mail and shall meet the requirements set out in § 503.65 of Title 46 of the Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

An individual desiring to amend a record shall direct such a request to the Secretary at the above listed address. Such requests shall specify the desired amendments and the reasons therefor, and shall meet the requirements of § 503.66 of Title 46 of the Code of Federal Regulations.

RECORD SOURCE CATEGORIES:

Individuals to whom the records pertain.

FMC-24

SYSTEM NAME:

Informal Inquiries and Complaints Files-FMC.

SYSTEM LOCATION:

Office of Informal Inquiries and Complaints, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Consumers complaining against business entities regulated by the Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of complaints and correspondence developed in their resolution, complaint tracking logs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 12160, September 26, 1979.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Information in this system of records is used or may be used: 1. To determine whether a complaint can be resolved by staff in various bureaus and offices. 2. To determine whether a complaint can be resolved by a business entity regulated by the Commission. 3. To determine whether the complaint can be resolved by reference to another agency at the Federal, State or local level. 4. To provide information to the Commission on developments or trends in the character of complaints which might suggest policy directions, proposed rules or programs.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are serially numbered and indexed by complainant and defendant.

SAFEGUARDS:

Records are maintained in locked file cabinets.

RETENTION AND DISPOSAL:

Records are maintained by the Federal Maritime Commission for one year, then transferred to the National Records Center. They are destoryed when four years old.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Informal Inquiries and Complaints, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573–0001.

NOTIFICATION PROCEDURE:

All inquiries regarding this system of records should be addressed to: Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001

RECORD ACCESS PROCEDURE:

Requests for access to a record should be directed to the Secretary listed at the above address. Requests may be in person or by mail and shall meet the requirements set out in § 503.65 of Title 46 of the Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

An individual desiring to amend a record shall direct such a request to the Secretary at the above listed address. Such requests shall specify the desired amendments and the reasons therefor, and shall meet the requirements of § 503.66 of Title 46 of the Code of Federal Regulations.

RECORD SOURCE CATEGORIES:

Consumers who have filed complaints.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt from the provisions of 5 U.S.C. 552a (c)(3) and (d) which otherwise require the Commission to provide the individual named in the records an accounting of disclosure and access and opportunity to amend the records. All information that meets the criteria of 5 U.S.C. 552a(k)(2) regarding investigatory material compiled for law enforcement purposes is exempt. Exemption is appropriate because disclosure might compromise ongoing investigations, reveal the identity of confidential sources or constitute unwarranted invasions of personal privacy of third parties.

FMC-25

SYSTEM NAME:

Inspector General File-FMC.

SYSTEM LOCATION:

Office of The Inspector General ("OIG"), Federal Maritime Commission ("FMC"), 1100 L Street, NW., Washington, DC 20573–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and entities who are or have been the subjects of audits and/or investigations conducted by the OIG, including present and former FMC employees; consultants, contractors, and subcontractors and their employees; and other individuals and entities doing business with the FMC.

CATEGORIES OF RECORDS IN THE SYSTEM:

A. *Case Index.* Selected information from each case file indexed by case file number, and case title which may include names of subjects of audits and investigations.

B. *Hard Copy Files*—1. *Investigative Case Files.* Case files developed during investigations of known or alleged fraud, abuse, irregularities, and violations of laws and regulations. Cases relate to agency personnel and programs and operations administered by the agency, including contractors and others having a relationship with the agency. This includes investigative files relating to employee and hotline complaints, and other miscellaneous complaint files. Files consist of investigative reports and related documents, such as correspondence, notes, attachments, and working papers.

a. Files containing information or allegations which are of an investigative nature but do not relate to a specific investigation. They include anonymous or vague allegations not warranting an investigation, matters referred to constituents or other agencies for handling, and support files providing general information which may prove useful in Inspector General investigations.

b. All other investigative case files.

2. *Audit Case Files.* Case files of internal audits of agency programs, operations, and procedures, and of external audits of contractors. Consists of audit reports, correspondence, memoranda, and supporting working papers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Inspector General Act of 1978, (5 U.S.C. App. 3), as amended by Pub. Law 100–504; 44 U.S.C. 3101 et seq.; Commission Order No. 113.

PURPOSE(S):

The records maintained in the system are used by the OIG in furtherance of the responsibilities of the Inspector General, pursuant to the Inspector General Act of 1978, as amended, to conduct and supervise audits and investigations relating to programs and operations of the FMC; to promote economy, efficiency, and effectiveness in the administration of such programs and operations; and to prevent and detect fraud and abuse in such programs and operations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records in the system may be used and disseminated to further the purposes described above. The following routine uses apply to the records maintained in this system:

A. A record may be disclosed to an individual, or to a Federal, State, local, or international agency when necessary to further the ends of a legitimate investigation or audit.

B. A record which indicates either by itself or in combination with other information within the agency's possession, a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation, or order issued pursuant thereto, or which indicates a violation or potential violation of a contract, may be disclosed to the appropriate agency, whether Federal, State, local, or international, charged with the responsibility of investigating or prosecuting such violation, or of enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto, or of enforcing the contract.

C. A record may be disclosed to a Federal, State, local, or international agency, in response to its request, in connection with the assignment, hiring, or retention of an individual, the issuance of a security clearance, the reporting of an investigation of an individual, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

D. A record may be disclosed to a Member of Congress who submits an inquiry on behalf of an individual, when the Member of Congress informs the FMC that the individual to whom the record pertains has authorized the Member of Congress to have access to the record. In such cases, the Member of Congress has no more right to the record than does the individual.

E. A record may be disclosed to the Office of Government Ethics for any purpose consistent with that Office's mission, including the compilation of statistical data.

F. A record may be disclosed to the U.S. Department of Justice in order to obtain that Department's advice regarding an agency's disclosure obligation under the Freedom of Information Act.

G. A record may be disclosed to the Office of Management and Budget in order to obtain that Office's advice regarding an agency's obligations under the Privacy Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The case index is stored on a hard disk on a standalone, lockable, personal computer. The hard copy files are stored in file folders. All records are stored under secured conditions.

RETRIEVABILITY:

Records in the case index are retrieved by case title which may include the name of the subject of an investigation and by case number. Records in the hard copy files are retrieved by case numbers.

SAFEGUARDS:

Direct access is limited to authorized staff of the OIG. Additional access within FMC is limited to authorized officials on a need-to-know basis. All records, when not in a possession of an authorized individual are stored in locked cabinets or a locked, standalone, personal computer in a locked room.

RETENTION AND DISPOSAL:

1. (a) Files containing information or allegations which are of an investigative nature but do not relate to a specific investigation are retained for five years.

(b) Other investigative case files are retained for ten years.

2. Audit case files are retained for eight years after case is closed.

SYSTEM MANAGER(S) AND ADDRESS:

Inspector General, Office of the Inspector General, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001.

NOTIFICATION PROCEDURE:

All inquiries regarding this system of records should be addressed to: Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001. However, see Exemption section below.

RECORD ACCESS PROCEDURES:

Requests for access to a record should be directed to the Secretary listed at the above address. Requests may be in person or by mail and shall meet the requirements set out in § 503.65 of Title 46 of the Code of Federal Regulations. However, see Exemption section below.

CONTESTING RECORD PROCEDURES:

An individual desiring to amend a record shall direct such a request to the Secretary at the above listed address. Such requests shall specify the desired amendments and the reasons therefor, and shall meet the requirements of § 503.66 of Title 46 of the Code of Federal Regulations. However, see Exemption section below.

RECORD SOURCE CATEGORIES:

Agency employees, reports and contracts from other agencies, and internal and external documents.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt from the provisions of 5 U.S.C. 552a(c)(3) and (d) which otherwise require the Commission to provide the individual named in the records an accounting of disclosures and access to and opportunity to amend the records. The scope of the exemption follows:

1. All information that meets the criteria of 5 U.S.C. 552a(k)(2) regarding investigatory material compiled for law enforcement purposes. Exemption is appropriate because disclosure might compromise ongoing investigations, reveal the identity of confidential sources or constitute unwarranted invasions of personal privacy of third parties.

2. All information about individuals that meets the criteria of 5 U.S.C. 552a(k)(5), regarding suitability, eligibility or qualifications for Federal civilian employment or for access to classified information, to the extent that disclosure would reveal the identity of a source who furnished information to the Commission under a promise of confidentiality. Exemption from disclosure is required to honor promises of confidentiality.

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implementing the statute, rules, regulation or order issued pursuant

RECORD SOURCE CATEGORIES:

Information is supplied by the

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SYSTEM NAME:

statute, rule, regulation, or other, where the Federal Maritime Commission becomes aware of a violation or

SAFEGUARDS:

Records stored in lockable file

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FMC-28

SYSTEM NAME:

Administrative Grievance File-FMC.

SYSTEM LOCATION:

Office of Personnel, Federal Maritime Commission, 1100 L Street NW, Washington, DC 20573–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any employee of the Federal Maritime Commission including any former employee for whom a remedy can be provided (subject to the exclusions in 5 CFR 771.206(b)) who has filed a grievance with the agency (alleging that coercion, reprisal, or retaliation has been practiced against him or her).

CATEGORIES OF RECORDS IN THE SYSTEM:

Administrative Grievance Files contain all documents related to a particular grievance, including but not limited to any statements of witnesses, records or copies thereof, the report of the hearing when one is held, statements made by the parties to the grievance, and the decision.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1302, 3301, 3302, 7301, E.O. 9830, 3 CFR 1943–1948 Comp., pp. 606–624; E.O. 11222, 3 CFR 2964–2969 Comp., p. 306., 5 CFR 293.202.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Information in this system of records is used or may be used: 1. By Commission officials designated as grievance examiners for the purpose of adjudication, by the Director of EEO in the event of an investigation when the EEO complaint relates to the grievance, or for information concerning the outcome of the grievance. 2. By the Office of Personnel Management in the course of an investigation of a particular employee of the Commission, for statistical analysis purposes, or for program compliance checks. 3. By the Merit Systems Protection Board if necessitated by an appeal. 4. By the appropriate District Court of the United States to render a decision when the Commission has refused to release a current or former employee's record under the Freedom of Information Act. 5. To refer, where there is an indication of a violation or potential violation of law, whether civil, criminal or regulatory in nature, information to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rules, regulation or order issued pursuant thereto. 6. To request from a Federal, State, or local agency maintaining civil, criminal or other relevant enforcement information, data relevant to a Commission decision concerning the hiring or retention of an employee. 7. To provide or disclose information to a Federal agency in response to its request in connection with the hiring or retention of an employee, to the extent that the information is relevant and necessary to the requesting agency's decision on that matter. 8. By the employee or his/her designated representative in order to gather or provide information necessary to process the grievance.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are indexed alphabetically by name.

SAFEGUARDS:

Records are stored in locked file cabinets.

RETENTION AND DISPOSAL:

The Administrative Grievance File is maintained for three years after the decision is issued and is then shredded.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Personnel, Federal Maritime Commission, 1100 L Street NW, Washington, DC 20573–0001.

NOTIFICATION PROCEDURE:

All inquiries regarding this system of records should be addressed to: Secretary, Federal Maritime Commission, 1100 L Street NW, Washington, DC 20573–0001

RECORD ACCESS PROCEDURES:

Requests for access to a record should be directed to the Secretary, listed at the above address. Requests may be in person or by mail and shall meet the requirements set out in § 503.65 of Title 46 of the Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

An individual desiring to amend a record shall direct such a request to the Secretary at the above listed address. Such requests shall specify the desired amendments and the reasons therefor, and shall meet the requirements of § 503.66 of Title 46 of the Code of Federal Regulations.

RECORD SOURCE CATEGORIES:

Information is supplied by the individual to whom the record pertains and/or by his or her representative, personnel specialists, grievance examiners, and any parties providing information bearing directly on the grievance.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt from the provisions of 5 U.S.C. 552a(c)(3) and (d) which otherwise require the Commission to provide the individual named in the records an accounting of disclosures and access and opportunity to amend the records. (1) All information that meets the criteria of 5 U.S.C. 552a(k)(2) regarding investigatory material compiled for law enforcement purposes is exempt. Exemption is appropriate because disclosure might compromise ongoing investigations, reveal the identity of confidential sources or constitute unwarranted invasions of personal privacy of third parties. (2) All information about individuals that meets the criteria of 5 U.S.C. 552a(k)(5), regarding suitability, eligibility or qualifications for Federal civilian employment or for access to classified information, to the extent that disclosure would reveal the identity of a source who furnished information to the Commission under a promise of confidentiality is exempt. Exemption from disclosure is required to honor promises of confidentiality.

FMC-26

SYSTEM NAME:

Equal Employment Opportunity Complaint Files-FMC.

SYSTEM LOCATION:

Office of Equal Employment Opportunity, Federal Maritime Commission, 1100 L Street NW, Washington, D.C. 20573–0001.

Note: This system of records is covered by the Equal Employment Opportunity Commission's Government-wide systems notice, EEOC/GOVT–1.

FMC–29

SYSTEM NAME:

Employee Performance File System Records-FMC.

SYSTEM LOCATION:

Office of Personnel, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001.

Note: This system of records is covered by the Office of Personnel Management's Government-wide systems notice, OPM/GOVT–2.

FMC-30

SYSTEM NAME:

Procurement Integrity Certification Files-FMC.

SYSTEM LOCATION:

Bureau of Administration, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former officials and employees of the Federal Maritime Commission and relevant outside contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include certifications by affected individuals that they will not engage in activities prohibited by applicable statutes, regulations and contracts. Records include information on individuals, including name and title. This system does not include official personnel files covered by the Office of Personnel Management's systems of records OPM/GOVT–1 through 10.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Office of Federal Procurement Policy Act Amendments of 1988 (Pub. L. 100–679), (41 U.S.C. 423); and the Federal Acquisition Regulations (FAR). Effective December 1, 1989, Section 27 of Pub. L. 100–679 and implementing sections of the FAR were suspended for one (1) year, i.e., until November 30, 1990. See section 507 of the Ethics Reform Act of 1989 (Pub. L. 101–194) and Federal Acquisition Circular 84–54 of December 8, 1989 (54 FR 50718). Records maintained under the "Procurement Integrity Certification Files", however, include certifications made before December 1, 1989, as well as certifications not involving the suspended matter.

PURPOSE(S):

The system is established to maintain records on officials and employees affected by the Office of Federal Procurement Policy Act Amendments of 1988, specifically Section 27 dealing with Procurement Integrity; the non-disclosure provisions of the FAR; and the contract for development of the Commission's Automated Tariff Filing and Information (ATFI) system.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records in this system of records may be used to disclose information to:

1. A Federal, state, local, or foreign agency responsible for investigating, prosecuting, enforcing, or carrying out a statute, rule, regulation, or other, where the Federal Maritime Commission becomes aware of a violation or potential violation of civil or criminal law or regulation.

2. Another Federal agency or a court when the Government is party to a judicial proceeding.

3. A requesting Federal agency in connection with hiring or retaining an employee; issuing a security clearance; reporting an employee investigation; clarifying a job; letting a contract; or issuing a license, grant or other benefit by the requesting agency where the information is relevant and necessary for a decision.

4. The Merit Systems Protection Board officials, including the Office of Special Counsel; the Federal Labor Relations Authority and its General Counsel; or the Equal Employment Opportunity Commission in performing their duties.

5. An appeal, grievance, or formal complaints examiner, equal employment opportunity investigator, arbitrator, exclusive representative, or other official engaged in investigating, or settling a grievance, complaint, or appeal filed by an employee.

6. The Office of Personnel Management (OPM) under the agency's responsibility for evaluating Federal personnel management. When official personnel records in the custody of the FMC are covered in systems of records published by the Office of Personnel Management as Government-wide records, they are considered part of the system. Other official personnel records covered by notices published by the FMC are separate systems of records and may be transferred to OPM under official personnel programs and activities as a routine use.

7. A record may be disclosed to a Member of Congress who submits an inquiry on behalf of an individual, when the Member of Congress informs the FMC that the individual to whom the record pertains has authorized the Member of Congress to have access to the record. In such cases, the Member of Congress has no more right to the record than does the individual.

8. An expert, a consultant, or contractor of the FMC in performing a Federal duty.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Filed at the described location by name.

SAFEGUARDS:

Records stored in lockable file cabinets, lockable desk drawers, and/or secured rooms.

RETENTION AND DISPOSAL:

The period the record is to be retained is pending National Archives and Records Administration approval. No copies of records are kept in this system after the original or any copies are purged. When an employee leaves the agency through transfer or separation, the records are immediately forwarded to the office maintaining the official folder.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Bureau of Administration, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573–0001.

NOTIFICATION PROCEDURE:

All inquiries regarding this system of records should be addressed to: Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001.

RECORD ACCESS PROCEDURES:

Requests for access to a record should be directed to the Secretary, listed at the above address. Requests may be in person or by mail and shall meet the requirements set out in § 503.65 of Title 46 of the code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

An individual desiring to amend a record shall direct such a request to the Secretary at the above listed address. Such requests shall specify the desired amendments and the reasons therefor, and shall meet the requirements of § 503.66 of Title 46 of the Code of Federal Regulations.

RECORD SOURCE CATEGORIES:

Individuals, supervisors, or personnel records.

[FR Doc. 89–29679 Filed 12–22–89; 8:45 am]
BILLING CODE 6730–01–M

Privacy Act of 1974; Proposed New and Altered Systems of Records

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed new and altered systems of records.

SUMMARY: This notice proposes the establishment of a new system of records relating to procurement integrity certifications of certain Commission officials and competing contractors during the conduct of any Federal agency procurement; and amendments

to an existing system of records, the Inspector General File. These systems

subcontractors and their employees; and other individuals and entities doing

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF

order to obtain that Office's advice

amendments and the reasons therefor,

personnel files covered by the Office of

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to an existing system of records, the Inspector General File. These systems contain information necessary to comply with the Office of Federal Procurement Policy Act Amendments of 1988 (Pub. L. 100-679), the Federal Acquisition Regulations (FAR); and the Inspector General Act Amendments of 1988 (Pub. L. 100-504).

DATES: Comments must be submitted on or before January 25, 1990. If no comments are received the proposed systems will become effective on February 26, 1990.

ADDRESSES: Comments may be mailed to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573.

FOR FURTHER INFORMATION CONTACT: Joseph C. Polking, Secretary, (202) 523-5725.

SUPPLEMENTARY INFORMATION: Notice is given that, pursuant to the Privacy Act of 1974, 5 U.S.C. 552a, the Commission proposes to adopt a new system of records (FMC-30), and amendments to an existing system (FMC-25), as follows. Interested parties may participate by filing with the Secretary, Federal Maritime Commission, an original and 15 copies of their views and comments pertaining to the notice. All suggestions for changes in the text should be accompanied by drafts of the language thought necessary to accomplish the desired changes and should be accompanied by supportive statements and arguments. If no comments are received within the prescribed time the proposed changes will become effective within 60 days of publication of this notice, unless an announcement to the contrary is published by the Commission. A new and altered systems report for these two systems was filed on December 19, 1989.

By the Commission.

Joseph C. Polking,

Secretary.

FMC-25

SYSTEM NAME:

Inspector General File-FMC.

SYSTEM LOCATION:

Office of The Inspector General ("OIG"), Federal Maritime Commission ("FMC"), 1100 L Street NW., Washington, DC 20573-0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and entities who are or have been the subjects of audits and/or investigations conducted by the OIG, including present and former FMC employees; consultants, contractors, and subcontractors and their employees; and other individuals and entities doing business with the FMC.

CATEGORIES OF RECORDS IN THE SYSTEM:

A. *Case Index.* Selected information from each case file indexed by case file number, and case title which may include names of subjects of audits and investigations.

B. *Hard Copy Files*—1. *Investigative Case Files.* Case files developed during investigations of known or alleged fraud, abuse, irregularities, and violations of laws and regulations. Cases relate to agency personnel and programs and operations administered by the agency, including contractors and others having a relationship with the agency. This includes investigative files relating to employee and hotline complaints, and other miscellaneous complaint files. Files consist of investigative reports and related documents, such as correspondence, notes, attachments, and working papers.

a. Files containing information or allegations which are of an investigative nature but do not relate to a specific investigation. They include anonymous or vague allegations not warranting an investigation, matters referred to constituents or other agencies for handling, and support files providing general information which may prove useful in Inspector General investigations.

b. All other investigative case files.

2. *Audit Case Files.* Case files of internal audits of agency programs, operations, and procedures, and of external audits of contractors. Consists of audit reports, correspondence, memoranda, and supporting working papers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Inspector General Act of 1978 (5 U.S.C. App. 3), as amended by Pub. L. 100-504; 44 U.S.C. 3101 et seq.; Commission Order No. 113.

PURPOSE(S):

The records maintained in the system are used by the OIG in furtherance of the responsibilities of the Inspector General, pursuant to the Inspector General Act of 1978, as amended, to conduct and supervise audits and investigations relating to programs and operations of the FMC; to promote economy, efficiency, and effectiveness in the administration of such programs and operations; and to prevent and detect fraud and abuse in such programs and operations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records in the system may be used and disseminated to further the purposes described above. The following routine uses apply to the records maintained in this system:

A. A record may be disclosed to an individual, or to a Federal, State, local, or international agency when necessary to further the ends of a legitimate investigation or audit.

B. A record which indicates either by itself or in combination with other information within the agency's possession, a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation, or order issued pursuant thereto, or which indicates a violation or potential violation of a contract, may be disclosed to the appropriate agency, whether Federal, State, local, or international, charged with the responsibility of investigating or prosecuting such violation, or of enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto, or of enforcing the contract.

C. A record may be disclosed to a Federal, State, local or international agency, in response to its request, in connection with the assignment, hiring, or retention of an individual, the issuance of a security clearance, the reporting of an investigation of an individual, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

D. A record may be disclosed to a Member of Congress who submits an inquiry on behalf of an individual, when the Member of Congress informs the FMC that the individual to whom the record pertains has authorized the Member of Congress to have access to the record. In such cases, the Member of Congress has no more right to the record than does the individual.

E. A record may be disclosed to the Office of Government Ethics for any purpose consistent with that Office's mission, including the compilation of statistical data.

F. A record may be disclosed to the U.S. Department of Justice in order to obtain that Department's advice regarding an agency's disclosure obligation under the Freedom of Information Act.

G. A record may be disclosed to the Office of Management and Budget in order to obtain that Office's advice regarding an agency's obligations under the Privacy Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The case index is stored on a hard disk on a standalone, lockable, personal computer. The hard copy files are stored in file folders. All records are stored under secured conditions.

RETRIEVABILITY:

Records in the case index are retrieved by case title which may include the name of the subject of an investigation and by case number. Records in the hard copy files are retrieved by case numbers.

SAFEGUARDS:

Direct access is limited to authorized staff of the OIG. Additional access within FMC is limited to authorized officials on a need-to-know basis. All records, when not in a possession of an authorized individual are stored in locked cabinets or a locked, standalone, personal computer in a locked room.

RETENTION AND DISPOSAL:

1. (a) Files containing information or allegations which are of an investigative nature but do not relate to a specific investigation are retained for five years.

(b) Other investigative case files are retained for ten years

2. Audit case files are retained for eight years after case is closed.

SYSTEM MANAGER(S) AND ADDRESS:

Inspector General, Office of The Inspector General, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573-0001.

NOTIFICATION PROCEDURE:

All inquiries regarding this system of records should be addressed to: Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573-0001. However, see Exemption section below.

RECORD ACCESS PROCEDURE:

Requests for access to a record should be directed to the Secretary listed at the above address. Requests may be in person or by mail and shall meet the requirements set out in § 503.65 of Title 46 of the Code of Federal Regulations. However, see Exemption section below.

CONTESTING RECORD PROCEDURES:

An individual desiring to amend a record shall direct such a request to the Secretary at the above listed address. Such requests shall specify the desired amendments and the reasons therefor, and shall meet the requirements of § 503.66 of Title 46 of the Code of Federal Regulations. However, see Exemption section below.

RECORD SOURCE CATEGORIES:

Agency employees, reports and contracts from other agencies, and internal and external documents.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt from the provisions of 5 U.S.C. 552a (c)(3) and (d) which otherwise require the Commission to provide the individual named in the records an accounting of disclosures and access to and opportunity to amend the records. The scope of the exemption follows:

1. All information that meets the criteria of 5 U.S.C. 552a(k)(2) regarding investigatory material compiled for law enforcement purposes. Exemption is appropriate because disclosure might compromise ongoing investigations, reveal the identity of confidential sources or constitute unwarranted invasions of personal privacy of third parties.

2. All information about individuals that meets the criteria of 5 U.S.C. 522a(k)(5), regarding suitability, eligibility or qualifications for Federal civilian employment or for acess to classified information, to the extent that disclosure would reveal the identity of a source who furnished information to the Commission under a promise of confidentiality. Exemption from disclosure is required to honor promises of confidentiality.

FMC-30

SYSTEM NAME:

Procurement Integrity Certification files-FMC

SYSTEM LOCATION:

Bureau of Administration, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573-0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former officials and employees of the Federal Maritime Commission and relevant outside contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include certifications by affected individuals that they will not engage in activities prohibited by applicable statutes, regulations and contracts. Records include information on individuals, including name and title. This system does not include official personnel files covered by the Office of Personnel Management's systems of records OPM/GOVT-1 through 10.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Office of Federal Procurement Policy Act Amendments of 1988 (Pub. L. 100-679), (41 U.S.C. 423); and the Federal Acquisition Regulations (FAR). Effective December 1, 1989, Section 27 of Pub. L. 100-679 and implementing sections of the FAR were suspended for one (1) year, i.e., until November 30, 1990. See section 507 of the Ethics Reform Act of 1989 (Pub. L. 101-194) and Federal Acquisition Circular 84-54 of December 8, 1989 (54 FR 50716). Records maintained under the "Procurement Integrity Certification Files", however, include certifications made before December 1, 1989, as well as certifications not involving the suspended matter.

PURPOSE(S):

The system is established to maintain records on officials and employees affected by the Office of Federal Procurement Policy Act Amendments of 1988, specifically Section 27 dealing with Procurement Integrity; the non-disclosure provisions of the FAR, and the contract for development of the Commission's Automated Tariff Filing and Information (ATFI) system.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records in this system of records may be used to disclose information to:

1. A Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or carrying out a statute, rule, regulation, or order, where the Federal Maritime Commission becomes aware of a violation or potential violation of civil or criminal law or regulation.

2. Another Federal agency or a court when the Government is party to a judicial proceeding.

3. A requesting Federal agency in connection with hiring or retaining an employee; issuing a security clearance; reporting an employee investigation; clarifying a job; letting a contract; or issuing a license, grant or other benefit by the requesting agency where the information is relevant and necessary for a decision.

4. The Merit Systems Protection Board officials, including the Office of Special Counsel; the Federal Labor Relations Authority and its General Counsel; or the Equal Employment Opportunity Commission in performing their duties.

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5. An appeal, grievance, or formal complaints examiner, equal employment opportunity investigator, arbitrator, exclusive representative, or other official engaged in investigating or settling a grievance, complaint, or appeal filed by an employee.

6. The Office of Personnel Management (OPM) under the agency's responsibility for evaluating Federal personnel management. When official personnel records in the custody of the FMC are covered in systems of records published by the Office of Personnel Management as Government-wide records, they are considered part of that system. Other official personnel records covered by notices published by the FMC are separate systems of records and may be transferred to OPM under official personnel programs and activities as a routine use.

7. A record may be disclosed to a Member of Congress who submits an inquiry on behalf of an individual, when the Member of Congress informs the FMC that the individual to who the record pertains has authorized the Member of Congress to have access to the record. In such cases, the Member of Congress has no more right to the record than does the individual.

8. An expert, a consultant, or contractor of the FMC in performing a Federal duty.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Filed at the described location by name.

SAFEGUARDS:

Records stored in lockable file cabinets, lockable desk drawers, and/or secured rooms.

RETENTION AND DISPOSAL:

The period the record is to be retained is pending National Archives and Records Administration approval. No copies of records are kept in this system after the original or any copies are purged. When an employee leave the agency through transfer or separation, the records are immediately forwarded to the office maintaining the official folder.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Bureau of Administration, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573–0001.

NOTIFICATION PROCEDURE:

All inquiries regarding this system of records should be addressed to: Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001.

RECORD ACCESS PROCEDURES:

Requests for access to a record should be directed to the Secretary, listed at the above address. Requests may be in person or by mail and shall meet the requirements set out in § 503.65 of Title 46 of the Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

An individual desiring to amend a record shall direct such a request to the Secretary at the above listed address. Such requests shall specify the desired amendments and the reasons therefor, and shall meet the requirements of § 503.66 of Title 46 of the Code of Federal Regulations.

RECORD SOURCE CATEGORIES:

Individuals, supervisors, or personnel records.

[FR Doc. 89–29678 Filed 12–22–89; 8:45 am]
BILLING CODE 6730–01

FEDERAL RESERVE SYSTEM

Booke Holdings, Inc., et al; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 17, 1990.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Booke Holdings, Inc., Jewell; to engage *de novo* in any insurance agency activities other than the sale of life insurance or annuities as permitted for a bank holding company with less than $50 million in consolidated assets pursuant to § 225.25(b)(8)(vi) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 19, 1989.

Jennifer J. Johnsson,

Associate Secretary of the Board.

[FR Doc. 89–29643 Filed 12–22–89; 8:45 am]
BILLING CODE 6210–01–M

Central National Bank Corp., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 11, 1990.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 100 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Central National Bank Corporation, Winter Park, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Central National Bank, Winter Park, Florida.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois, 60690:

1. First Mutual Bancorp of Illinois, Inc., Chicago, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of First State Bancrop of Harvey, Harvey, Illinois, and thereby indirectly acquire Mutual Trust & Savings Bank, Harvey, Illinois. Comments on this application must be received by January 9, 1990.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Southern Bancorp, Inc., Tulsa, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of Southern National Bank Tulsa, Oklahoma.

2. Yutan Bancrop, Inc., Yutan, Nebraska; to become a bank holding company by acquiring 92.55 percent of the voting shares of Bank of Yutan, Yutan, Nebraska.

Board of Governors of the Federal Reserve System, December 19, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–29644 Filed 12–22–89; 8:45 am]
BILLING CODE 6210–01–M

William H. Henson; Correction

This Notice corrects a previous **Federal Register** Notice (FR Doc. 89–29245) published at page 51496 of the issue for Friday, December 15, 1989.

Under the Federal Reserve Bank of Kansas City, the entry for William H. Henson is amended to read as follows:

1. **William H. Henson, Maysville, Oklahoma**, to acquire an additional 6.71 percent for a total of 46.70 percent; and Ross McKnight, Throckmorton, Texas, to acquire 30 percent of the voting shares of H. Pat Henson Company, Maysville, Oklahoma, and thereby indirectly acquire Farmers and Merchants Bank, Maysville, Oklahoma.

Comments on this application must be received by January 9, 1990.

Board of Governors of the Federal Reserve System, December 19, 1989.

Jennifer J. Johnsson,

Associate Secretary of the Board.

[FR Doc. 89–29648 Filed 12–22–89; 8:45 am]
BILLING CODE 6210–01–M

James R. Scott; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. § 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 9, 1990.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. James R. Scott, to acquire 13.6 percent of the voting shares of First Interstate BancSystem of Montana, Inc., Billings, Montana, and thereby indirectly acquire First Interstate Bank of Billings, N.A., Billings, Montana; first Interstate Bank of West Billings, Billings, Montana; First Interstate Bank of Billings Heights, Billings, Montana; First Interstate Bank of Colstrip, Colstrip, Montana; First Interstate Bank of Hardin, Hardin, Montana; First Interstate Bank of Miles City, Miles City, Montana; First Interstate Bank of Missoula, N.A., Missoula, Montana; and Security Mortgage Corporation, Billings Montana.

Board of Governors of the Federal Reserve System; December 19, 1989.

Jennifer J. Johnsson,

Associate Secretary of the Board.

[FR Doc. 89–29645 Filed 12–22–89; 8:45 am]
BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee; Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a future meeting of a subcommittee of a public advisory committee of the Food and Drug Administration (FDA) to discuss guidance for bioequivalence studies for conjugated estrogen tablets.

Meeting: The following advisory committee meeting will be announced at a future date:

Subcommittee Meeting of the Fertility and Maternal Health Drugs Advisory Committee

Available bioequivalence guidance documents are listed in FDA's "Approved Drug Products with Therapeutic Equivalence Evaluations." Comments and suggestions concerning these bioequivalence guidance documents are encourged and asked to be sent to the Division of Bioequivalence (HFD–850), Food and Drug Administration, Rm. 17B–06, 5600 Fishers Lane, Rockville, MD 20857. On June 16, 1989, the Division of Bioequivalence in FDA's Center for Drug Evaluation and Research (the Center) released a revised draft document entitled "Guidance for the *in vivo* Bioequivalance Study for Conjugated Estrogens Tablets" for public comment. In the draft guidance, it is recommended that product bioequivalence be established on the basis of comparative blood estrogen concentrations as opposed to urine estrogen concentrations.

Due to the complex and controversial nature of the issues surrounding the determination of bioequivalence of conjugated estrogens, the Center sought written critiques of this proposed bioequivalence study guidance. Fourteen comments have been submitted and are being considered by the Center. Copies of the 14 comments received are available from the Freedom of Information Staff (HFI–35), Food and Drug Administration, Rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857. However, the Center has determined that even after consideration of these comments and after internal discussion, several issues have been raised on which the Center needs to seek guidance from members of the Fertility and Maternal Health Drugs Advisory Committee and other experts. A special

subcommittee of the Fertility and Maternal Health Drugs Advisory Committee and relevant consultants will

Indian Tribe that alcoholic beverages and fermented malt beverages shall be sold within the exterior boundaries of

the statement should also be directed to the above address.

Copies of the draft statement are

and Budget has been consulted with respect to these proceedings.

This action has been analyzed in

meaning and intent of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. The establishment of annual aggregate

(21 U.S.C. 826) and delegated to the Administrator of the Drug Enforcement Administration by § 0.100 of Title 28 of

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subcommittee of the Fertility and Maternal Health Drugs Advisory Committee and relevant consultants will meet early in 1990 and will report its findings to the agency and full committee. The time and place of the subcommittee meeting will be announced in a future issue of the **Federal Register**. Therefore, a final guidance will not be available by the end of 1989 as the Center has previously anticipated.

For further information on this notice contact Jack Gertzog (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455.

Dated: December 19, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–29670 Filed 12–22–89; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

San Juan Pueblo Liquor Ordinance; Certification of Adoption

December 18, 1989.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This Notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary-Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. 1161. I certify that the San Juan Pueblo Liquor Ordinance adopted on August 30, 1989, Relating to the Use and Distribution of Liquor was duly adopted by the San Juan Pueblo Council by Resolution 89–71. The Ordinance provides for the regulation of possession, consumption and importation of alcohol into the area of the Pueblo of San Juan and the surrounding Indian Country under the jurisdiction of the San Juan Reservation.

EFFECTIVE DATE: December 26, 1989.

FOR FURTHER INFORMATION CONTACT: Maria Mendoza, Management Analyst, Branch of Judicial Services, Office of Tribal Government Services, 18 & C Streets, NW., Washington, DC 20240; telephone (202) 343–1400 or FTS 343–1400. Copies of the San Juan Pueblo Tribal Liquor Ordinance, Resolution No. 89–71, can be obtained by contacting the above address.

SUPPLEMENTARY INFORMATION: The San Juan Pueblo Tribal Council declares that it is in the best interest of the San Juan Indian Tribe that alcoholic beverages and fermented malt beverages shall be sold within the exterior boundaries of the San Juan Reservation only by persons licensed as provided in this title. The Tribal Council adopted this Resolution on the 30th day of August, 1989. The introduction, sale and possession of these beverages within the reservation must also be in conformity with the laws of the Sate of New Mexico as a matter of Federal law. This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Walter R. Mills,

Assistant Secretary Indian Affairs.

[FR Doc. 89–29613 Filed 12–20–89; 8:45 am]

BILLING CODE 4310–03–M

National Park Service

Supplement to the General Management Plan for Manzanita Lake Lassen Volanic National Park; Availability of Draft Supplemental Environmental Impact Statement

Summary: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, Public Law 91–190, the National Park Service, Lassen Volanic National Park, has prepared a draft supplemental environmental impact statement, to the 1961 Final Environmental Statement for the General Management Plan, to assess the impacts of reopening the Manzanita Lake area for day use.

The proposed action would amend the 1961 General Management Plan by allowing for retention and adaptive use of the remaining historic structures in the Manzanita Lake area, the reopening of two trails and a picnic area, and the permanent closure of the lower two loops of the Manzanita Lake campground. Alternatives evaluated include (1) conformance with the 1961 General Management Plan by removing the remaining historic structures, keeping the trails and picnic area closed, and reopening the lower two loops of the campground; and (2) retaining the historic structures with no adaptive use, keeping the trails and picnic area closed and not reopening the lower two loops of the campground.

Comments on the draft supplemental environmental statement should be directed to: Superintendent, Lassen Volcanic National Park, P.O. Box 100, Mineral, California 96093–0100, telephone number (916) 595–4444. Comments must be received no later than February 23, 1990. Requests for additional information and/or copies of the statement should also be directed to the above address.

Copies of the draft statement are available for inspection at the park headquarters in Mineral, California, in libraries located in the park vicinity, and at the following address: Western Regional Office, National Park Service, Attn: Division of Planning, Grants and Environmental Quality, P.O. Box 36063, 450 Golden Gate Ave., Room 14033, San Francisco, CA 94102.

Dated: November 21, 1989.

Lewis Albert,

Acting Regional Director, Western Region.

[FR Doc. 89–29615 Filed 12–22–89; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Quotas for Controlled Substances in Schedules I and II

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of established 1990 aggregate production quotas.

SUMMARY: This notice establishes 1990 aggregate production quotas for controlled substances in Schedules I and II of the Controlled Substances Act.

EFFECTIVE DATE: This order is effective December 26, 1989.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for all controlled substances listed in Schedules I and II each year. This responsibility has been delegated to the Administrator of the Drug Enforcement Administration (DEA) by § 0.100 of title 28 of the Code of Federal Regulations.

On Wednesday, September 20, 1989, a notice of the proposed 1990 aggregate production quotas for certain controlled substances in Schedules I and II was published in the **Federal Register** (54 FR 38755). All interested parties were invited to comment on or object to those proposed aggregate production quotas on or before October 20, 1989. No comments and no requests for a hearing were received.

Pursuant to sections 3(c)(3) and 3(e)(2)(C) of Executive Order 12291, the Director of the Office of Management and Budget has been consulted with respect to these proceedings.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this matter does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Administrator hereby certifies that this matter will have no significant impact upon small entities within the meaning and intent of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. The establishment of annual aggregate production quotas for Schedules I and II controlled substances is mandated by international commitments of the United States. Such quotas impact predominantly upon major manufacturers of the affected controlled substances.

Therefore, under the authority vested in the Attorney General by section 306 of the Controlled Substances Act of 1970 (21 U.S.C. 826) and delegated to the Administrator of the Drug Enforcement Administration by § 0.100 of Title 28 of the Code of Federal Regulations, the Administrator of the Drug Enforcement Administration hereby orders that the 1990 aggregate production quotas for Schedules I and II controlled substances, expressed as grams of anhydrous acid or base, be established as follows:

Basic Class and Established 1990 Quotas

Schedule I.	
2,5-Dimethoxyamphetamine	15,300,000
Lysergic Acid Diethylamide	11
3,4-Methylenedioxyamphetamine	7
3,4-Methylenedioxymethamphetamine	12
Tetrahydrocannabinols	13,000
Psilocyn	2
Psilocybin	2
4-Methylaminorex	5
Methaqualone	2
N-Hydroxy-3,4-Methylenedioxyamphetamine	2
N-Ethylamphetamine	5
Schedule II	
Alfentanil	5,000
Amobarbital	596,000
Amphetamine	279,000
Cocaine	600,000
Codeine (for sale)	53,518,000
Codeine (for conversion)	5,083,000
Desoxyephedrine	1,252,000
1,252,000 grams of levodesoxyephedrine for use in a noncontrolled, nonprescription product and 0.0 grams for methamphetamine.	
Dextropropoxyphene	79,955,000
Dihydrocodeine	435,000
Diphenoxylate	882,000
Ecgonine (for conversion)	650,000
Fentanyl	25,900
Hydrocodone	3,026,000
Hydromorphone	223,000
Levorphanol	10,700
Meperidine	10,019,000
Methadone	1,441,000
Methadone Intermediate (4-Cyano-2-dimethylamino-4,4-diphenylbutane)	1,802,000
Methamphetamine (for conversion)	1,206,000
Methylphenidate	2,262,000
Mixed Alkaloids of Opium	7,000
Morphine (for sale)	3,841,000
Morphine (for conversion)	59,243,000
Opium (tinctures, extracts, etc. expressed in terms of USP powdered opium	1,337,000
Oxycodone (for sale)	2,427,000
Oxycodone (for conversion)	5,600
Oxymorphone	2,500
Pentobarbital	11,296,000
Phencyclidine	25
Phenylacetone (for conversion)	664,000
1-Piperidinocyclohexanecarbonitrile (for conversion)	40
Secobarbital	583,000
Sufentanil	400
Thebaine	6,125,000

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DEA will review the above established quotas early in 1990 to take into consideration actual 1989 sales and actual December 31, 1989 inventories as well as other information which might be available to DEA.

Dated: November 30, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89-29809 Filed 12-22-89; 8:45 am]

BILLING CODE 4410-09-M

Office of Juvenile Justice and Delinquency Prevention

Juvenile Justice Statistics and Systems Development Program; Solicitation of Applications

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of changes to the solicitation for applications to conduct the Juvenile Justice Statistics and Systems Development Program.

SUMMARY: Notice of: extension of the deadline for solicitation, section IX. Submission of Applications; errata; and availability of meeting summary.

SUPPLEMENTARY INFORMATION:

(1) *Notice of Extension.* This notice announces a change in section IX of the **Federal Register**, Vol. 52 No. 188, Friday, September 29, 1989. The new deadline for applications is Thursday, February 1, 1990. Applications must be received by mail or hand delivered to the OJJDP by 5:00 p.m. e.s.t. on Thursday, February 1, 1990;

(2) *Meeting of Prospective Applicants,* who had formally expressed an intent to apply, was held on December 4, 1989, to respond to questions concerning the solicitation. For copies of the meeting summary and responses to questions, please contact Marilyn Silver, Research and Program Development Division, (202) 724-5929, OJJDP, 633 Indiana Avenue NW., Washington, DC 20531.

(3) *Notification of Errors:* Section IV. Program Strategy, Systems Development Track, Stage 3, Training and Technical Assistance, paragraph 1, second sentence should read: "Funds for this stage will be provided in the second budget period".

Section VII. Application requirements, paragraph 1, second sentence should read: "Applications must include the information outlined in this section of the solicitation (Section VII) in Part IV., Program Narrative of the application (SF-424)".

FOR FURTHER INFORMATION CONTACT: Barbara Allen-Hagen, Research and Program Development Division, (202) 724-5929, or Douglas Dodge, Acting Director, Special Emphasis Division, (202) 724-5914, OJJDP, 633 Indiana Avenue NW., Washington, DC 20531.

Terrence S. Donahue,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 89-29906 Filed 12-22-89; 8:45 am]

BILLING CODE 4410-18-M

NATIONAL SCIENCE FOUNDATION

Committee Management; Establishment of Mathematical Sciences Postdoctoral Research Fellowship Panel

The Assistant Director for Mathematical and Physical Sciences has determined that the establishment of the Mathematical Sciences Postdoctoral Research Fellowship Panel is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), and other applicable law. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name of Committee: Mathematical Sciences Postdoctoral Research Fellowship Panel.

Purpose: The panel consists of a group of distinguished mathematical scientists which represents the American Mathematical Society, the Society for Industrial and Applied Mathematics, and the Institute of Mathematical Statistics. Its objective is to provide advice concerning the merit of proposals submitted to the National Science Foundation for Mathematical Sciences Postdoctoral Research Fellowships.

Balanced Membership Plan: The panel will be composed of mathematical scientists who have been chosen by their respective professional societies for their accomplishments and perspectives on the field. The members will represent a variety of subdisciplines to ensure appropriate technical evaluation of the proposals. In addition, every effort will be made to ensure the participation of under-represented groups on this panel.

Responsible NSF Official: Dr. Bernard R. McDonald, Deputy Division Director and Head, Office of Special Projects, Division of Mathematical Sciences, National Science Foundation, Room 339, 1800 G Street, NW., Washington, DC 20550, (202) 357-9669.

Waiver: Because of the necessity for this Panel to meet in early January, GSA has waived to 15-day Notice of Establishment requirement. The Meeting Notice is published below.

Dated: December 19, 1989.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89-29811 Filed 12-22-89; 8:45 am]

BILLING CODE 7555-01-M

Meeting of the Mathematical Sciences; Postdoctoral Research Fellowship Panel

The National Science Foundation announces the following meeting:

Name: Mathematical Sciences Postdoctoral Research Fellowship Panel.

Date and Time: January 5, 1990 (8:30 a.m. to 10:00 p.m.) and January 6, 1990 (8:30 a.m. to noon).

Place: American Mathematical Society, 201 Charles Street, Providence, RI 02904.

Type of Meeting: Closed.

Contact Person: Dr. Deborah F. Lockhart, Program Director, Special Projects, Division of Mathematical Sciences, National Science Foundation, Room 339, 1800 G Street, NW., Washington, DC 20550, (202) 357-3453.

Minutes: May be obtained from contact person listed above.

Purpose of Meeting: To evaluate proposals and provide recommendations on those proposals as part of the selection process for the NSF Mathematical Sciences Postdoctoral Research Fellowship program.

Agenda: Discussion and evaluation of and recommendations for proposals for Mathematical Sciences Postdoctoral Research Fellowships.

Reason for Closing: The proposals being reviewed include information of a confidential nature, including technical information and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of the Government in the Sunshine Act.

Dated: December 19, 1989.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89-29810 Filed 12-22-89; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Meeting; Containers and Transportation Panel

Notice is hereby given that a meeting of the Containers and Transportation Panel of the Nuclear Waste Technical Review Board will be held January 18-19, 1990, at the Sheraton Pleasanton, Amador Room, 5115 Hopyard Road, Pleasanton, CA, for the purpose of a technical exchange with Lawrence Livermore National Laboratory personnel to discuss their canister materials program. The agenda will be as follows:

Thursday, January 18, 1990, 8:30 a.m. to 12:00 noon (open to public). During the morning session, the Lawrence Livermore National Laboratory staff will discuss their activities in the area of waste package environment. During the afternoon, a tour of the Lawrence Livermore National Laboratory Facilities will be conducted for NWTRB Board members and staff only. Following the tour, the Panel will meet (closed to public) to discuss information of a personnal nature the disclosure of which would constitute a clearly unwarranted invasion of privacy.

Friday, January 19, 1990, 8:30 a.m. to 4:00 p.m. (open to public). During this meeting, the presentations will cover the canister development program including: strategy for canister material selection, candidate material performance, corrosion properties, and alternative materials and concepts. Following these presentations the Panel will meet (closed to the public) to discuss information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of privacy.

The public is invited to attend the open meetings as indicated above only as observers. The meeting will be transcribed, and procedures to obtain transcripts will be provided at the meeting. To ensure that adequate facilities are provided for public attendance, persons planning to attend the meetings should contact Helen Einersen on (202) 254-4792 by January 16, 1990, 4:30 p.m. (EST).

Further information on these meetings can be obtained from Paula N. Alford, Director of External Affairs, Nuclear Waste Technical Review Board, 1111 18th Street, NW., Suite 801, Washington, DC 20036, (202) 254-4792.

Dated: December 5, 1989.

William W. Cooos,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 89-29825 Filed 12-22-89; 8:45 am]

BILLING CODE 6820-AM-M

PENSION BENEFIT GUARANTY CORPORATION

Exemption from the Bond/Escrow Requirement Relating to the Sale of Assets by an Employer Who Contributes to a Multiemployer Plan; The Orioles, Inc.

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of exemption.

SUMMARY: This notice advises interested persons that the Pension Benefit Guaranty Corporation has granted a request from the Orioles, Inc. for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) of the Employee Retirement Income Security Act of 1974, as amended. A notice of the request for exemption from the requirement was published on September 7, 1989 (54 FR 37175). The effect of this notice is to advise the public of the decision on the exemption request.

ADDRESSES: The request for an exemption and the PBGC response to the request are available for public inspection at the PBGC Communications and Public Affairs Department, Suite 7100, at the above address, between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: J. Ronald Goldstein, Senior Counsel, Office of the General Counsel (22510), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; Telephone 202-778-8850 (202-778-8859 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Background

Section 4204 of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), provides that a bona fide arm's-length sale of assets of a contributing employer to an unrelated party will not be considered a withdrawal if three conditions are met. These conditions, enumerated in section 4204(a)(1)(A)-(C), are that—

(A) The purchaser has an obligation to contribute to the plan with respect to the operations for substantially the same number of contribution base units for which the seller was obligated to contribute;

(B) The purchaser obtains a bond or places an amount in escrow, for a period of five plan years after the sale, in an amount equal to the greater of the seller's average required annual contribution to the plan for the three plan years preceding the year in which the sale occurred or the seller's required annual contribution for the plan year preceding the year in which the sale occurred (the amount of the bond or escrow is doubled if the plan is in reorganization in the year in which the sale occurred); and

(C) The contract of sale provides that if the purchaser withdraws from the plan within the first five plan years beginning after the sale and fails to pay any of its liability to the plan, the seller shall be secondarily liable for the liability it (the seller) would have had but for section 4204.

The bond or escrow described above would be paid to the plan if the purchaser withdraws from the plan or fails to make any required contributions to the plan within the first five plan years beginning after the sale.

Additionally, section 4204(b)(1) provides that if a sale of assets is covered by section 4204, the purchaser assumes by operation of law the contribution record of the seller for the plan year in which the sale occurred and the preceding four plan years.

Section 4204(c) of ERISA authorizes the Pension Benefit Guaranty Corporation ("PBGC") to grant individual or class variances or exemptions from the purchaser's bond/escrow requirement of section 4204(a)(1)(B) when warranted. The legislative history of section 4204 indicates a Congressional intent that the sales rules be administered in a manner that assures protection of the plan with the least practicable intrusion into normal business transactions. The granting of an exemption or variance from the bond/escrow requirement does not constitute a finding by the PBGC that a particular transaction satisfies the other requirements of section 4204(a)(1).

Under the PBGC's regulation on variances for sales of assets (29 CFR part 2643), a request for a variance or waiver of the bond/escrow requirement under any of the tests established in the regulation (§§ 2643.12-2643.14) is to be made to the plan in question. The PBGC will consider waiver requests only when the request is not based on satisfaction of one of the four regulatory tests or when the parties assert that the financial information necessary to show satisfaction of one of the regulatory tests is privileged or confidential financial information within the meaning of section 552(b)(4) of the Freedom of Information Act.

Under § 2643.3 of the regulation, the PBGC shall approve a request for a variance or exemption if it determines that approval of the request is warranted, in that it—

(1) Would more effectively or equitably carry out the purposes of Title IV of the Act; and

(2) Would not significantly increase the risk of financial loss to the plan.

Section 4204(c) of ERISA and § 2643.3(b) of the regulation require the PBGC to publish a notice of the pendency of a request for a variance or exemption in the **Federal Register**, and to provide interested parties with an

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opportunity to comment on the proposed variance or exemption.

The Decision

On September 7, 1989 (51 FR 41713), the PBGC published a notice of pendency of a request pertaining to the sale of the Baltimore Orioles baseball team. No comments were received from the public concerning this request. Specifically, The Orioles, Inc. ("the Buyer"), a corporation formed under the laws of Maryland, sought an exemption from the requirements of section 4204(a)(1)(B) with respect to its purchase of the Baltimore Orioles baseball team from The Baltimore Orioles, Inc. (the "Seller"). The Seller was a participating employer in the Major League Baseball Players Benefit Plan (the "Plan"), which is established and maintained pursuant to a collective bargaining agreement between the 26 professional major league baseball teams and the Major League Baseball Players Association.

The major league clubs have established the Major League's Central Fund (the "Central Fund") pursuant to the "Major League's Agreement in re Major League's Central Fund". Under this Agreement contributions to the Plan for all participating employers are paid by the Office of the Commissioner of Baseball from the Central Fund on behalf of the clubs in satisfaction of their pension liability arising under the Plan's funding agreement. The monies in the Fund are derived directly from All-Star game gate receipts and radio and television rights to certain other events.

In 1988, the major league clubs contributed the sum of $33 million to cover both pension and welfare benefits, approximately $28 million of which was remitted to the Plan. Each major league club is responsible for 1/26th of that amount. In 1988, the Central Fund paid approximately $1 million as pension contributions to the Plan on behalf of the Seller.

Payment of employer contributions is made directly to the Plan from the Central Fund and the revenue of the Fund comes directly from certain gate receipts and radio and television rights. Therefore, a change in team ownership has no direct effect on the Plan's funding and does not create any risk to the plan that there will be difficulty in collecting Plan contributions.

Based on the facts of this case and the representations and statements made in connection with the request for an exemption, the PBGC has determined that an exemption from the bond/escrow requirement is warranted, in that it would more effectively carry out the purposes of title IV of ERISA and would not significantly increase the risk of financial loss to the Plan. Therefore, the PBGC hereby grants the request for an exemption from the bond/escrow requirement.

The granting of an exemption or variance from the bond/escrow requirement of section 4204(a)(1)(B) does not constitute a finding by the PBGC that the transaction satisfies the other requirements of section 4204(a)(1). The determination of whether the transaction satisfies such other requirements is a determination to be made by the plan sponsor.

Issued at Washington, DC., on this 20th day of December 1989.

James B. Lockhart III,

Executive Director.

[FR Doc. 89-29902 Filed 12-22-89; 8:45 am]

BILLING CODE 7708-01-M

PRESIDENTIAL COMMISSION ON CATASTROPHIC NUCLEAR ACCIDENTS

Meeting

The Presidential Commission on Catastrophic Nuclear Accidents, pursuant to its authority under subsection 170(1), of Public Law 100-408, the Price-Anderson Amendments Act of 1988, will hold a meeting on January 11, 1990, from 10:00 a.m.-5:00 p.m., at the Quality Hotel Capitol Hill, 415 New Jersey Ave., NW., Washington, DC 20001, and on January 12 from 9:00 a.m. to 12:00 p.m. at the Commission office, 600 E St., NW., Room 660, Washington, DC 20004. The Commission was created to conduct a comprehensive study of appropriate means of fully compensating victims of a catastrophic nuclear accident and to submit a final report to Congress no later than August 20, 1990.

At the January 11 meeting, Daniel Berger, plaintiff's attorney, will discuss the Three Mile Island Class Action, and Radiation Management Consultant's Dr. Roger Linnemann will provide information on medical monitoring. In addition, Pamela Gilbert will discuss the views of Congress Watch. There may be other speakers. On January 12, the Commission will conduct working sessions.

The public is permitted to attend both meetings, and there will be time during each session for brief statements. Members of the public planning to attend the January 12 meeting at the Commission office will be required to show photo identification to enter the building. Transcripts or minutes of the meeting will be available at the Commission office, 600 E St., NW., Room 660.

For further information, contact Jerome Saltzman at 600 E St., NW., Room 660, Washington, DC 20004, (202) 272-5695. Members of the public planning to attend the Commission meeting should contact Mr. Saltzman at (202) 272-5695 at least two days before the meeting date.

Dated: December 20, 1989.

Jerome Saltzman,

Executive Director, Presidential Commission on Catastrophic Nuclear Accidents.

[FR Doc. 89-29807 Filed 12-22-89; 8:45 am]

BILLING CODE 6820-BP-M

RAILROAD RETIREMENT BOARD

Calendar Year 1990 Contribution Rate Under the Railroad Unemployment Insurance Act

Pursuant to Public Law 100-647, except for commuter railroads, the contribution rate to finance the railroad unemployment insurance program for calendar year 1990 shall be 8.0 percent of an employee's monthly wages calculated on the basis of section 1 (i) of the Act. In calendar year 1990, the monthly compensation base under section 1 (i) is $745. Public commuter railroads will be informed of their individual contributions directly by the Railroad Retirement Board. Such contributions shall be based on the amount of benefits paid by the Board to the employees of each commuter railroad, plus an amount equal to 0.65 percent of the monthly compensation paid for services rendered by each employee in a calendar month up to the monthly compensation base of $745.

Dated: December 12, 1989.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 89-29849 Filed 12-22-89; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-27546; File No. SR-NYSE-89-21]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Listing Fees for Bonds

On October 25, 1989, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to revise its listing fees for bonds in two categories: (1) Outstanding issues and (2) debt American Depository Receipts ("ADRs").

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1989).

The proposed rule change was noticed in Securities Exchange Act Release No. 27442 (November 13, 1989), 54 FR 48174 (November 21, 1989). No comments were received on the proposal.

Under the Exchange's fee program for listing currently outstanding debt of NYSE issuers,[3] the fee for listing outstanding issues is based upon the remaining life of the bond issue, its par value size, and the initial listing fee schedule. The fees for such issues are half of the calculated dollar amount determined from the following table:

[3] *See* File No. SR-NYSE-87-50. This program was effective for an 18 month period ending on July 31, 1989. *See* Securities Exchange Act Release No. 25313 (February 4, 1988), 53 FR 4088.

BOND LISTING FEES

(Rates Per $ Million)

Maturity range	Issue size ($ million par value) [1]			
	Base		Additive	
	$0-$500	$501-$750	$751-$1,000	$1,000+
1-5	$115	$80	$55	$30
6-14	230	160	110	60
15-25	260	180	130	110
26+	290	210	160	130

[1] To determine the initial listing fee, begin with the maturity range and multiply the appropriate fee for the first $0-$500 million ("mm") par value. Remaining par values at each level are charged at the next par value range rate.

Under the proposed program, the Exchange will allow an issuer to total par values and average maturities of outstanding issues where more than one issue is being listed, thereby availing issuers of existing size discounts for larger issues and lower listing rates for shorter maturities.[4] As previously required, to be eligible for this reduced listing fee, the bond issue must have been outstanding at least one year prior to application and must meet standard eligibility requirements. This proposed program will be open to all eligible debt until January 31, 1991. Moreover, the Exchange indicates that the proposed program will be made available to any equity issuer listing on the NYSE for the first time after January 31, 1991 for 18 months from the stock's listing date (provided the bond issue meets standard eligibility requirements).

Furthermore, the Exchange proposes to establish a new fee structure for debt ADRs which is based on a percentage of the total issue. Where ADRs representing the debt of a foreign company or sovereign are listed on the Exchange, listing fees are to be based on the above table after applying the following calculation to determine the ratable par value: 10% of the U.S. dollar value of the worldwide outstanding float for an issue available through a single offering; or 12.5% of the U.S. dollar value of the worldwide outstanding float for an issue that may be added to through future offerings.[5]

[4] For an example of a fee calculation using the proposed program. *See* Securities Exchange Act Release No. 27442 (November 13, 1989), 54 FR 48174.

[5] For an example of the fee calculation for debt ADRs, *See* Securities Exchange Act Release No. 27442 (November 13, 1989), 54 FR 48174.

After careful review, the Commission believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission believes that the proposal is consistent with the Section 6(b)(4) requirement that the rules of an exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.[6] The proposed fee is equitable because it allows issuers to take advantage of economies of scale, thereby providing incentives to list outstanding debt. In addition, the Exchange's proposed program of reduced fees for outstanding unlisted debt and debt ADRs should enable issuers with outstanding bond issues to list such debt on the NYSE at lower costs.

Moreover, the Commission finds that the proposal is consistent with the section 6(b)(5) requirement that the rules of an exchange be designed to "* * * promote just and equitable principles of trade * * * (and) to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest * * *".[7] By lowering the fee payable for listing outstanding debt and debt ADRs, the proposed program enhances the opportunity for debt participation, through listing, in the Exchange's public secondary market for debt. Accordingly, the Commission finds that it is appropriate to approve the proposed rule change.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change is approved for a period ending on January 31, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Dated: December 18, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-29812 Filed 12-22-89; 8:45 am]

BILLING CODE 8010-01-M

[6] 15 U.S.C. 78f(b)(4) (1982).

[7] 15 U.S.C. 78f(b)(5) (1982).

[Release No. 34-27545; File No. SR-DTC-89-15]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the Depository Trust Company Regarding the International Institutional Delivery System

On August 10, 1989, the Depository Trust Company ("DTC") filed a proposed rule change (File No. SR-DTC-89-15) with the Commission under section 19 of the Securities Exchange Act of 1934 ("Act"). The proposed rule change expands participation in DTC's International Institutional Delivery ("IID") system to include non-U.S.

[8] 15 U.S.C. 78s(b)(2) (1982).

[9] 17 CFR 200.30-3(a)(12) (1989).

entities. Notice of the proposal was published in the Federal Register on September 8, 1989.[1] No comments were

Unlike DTC's domestic ID System, the IID System does not provide a mechanism for automated, book-entry

participation in and making more trades eligible for processing in the IID System.

III. Discussion

System will contribute to processing efficiency by enabling current IID System users to have one processing

IV. Conclusion

For the reasons stated above, the

Minven Gold Corporation

Common Stock, Without Par Value

(File No. 7-5641)

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entities. Notice of the proposal was published in the Federal Register on September 8, 1989.[1] No comments were received. This order approves the proposed rule change.

I. Description of the Proposed Rule Change

Under the proposed rule change, DTC will permit participation in the IID System by any combination of parties—both U.S. and non-U.S. Currently, the IID System permits input of trade data only by U.S. broker-dealers. Under the expanded system, DTC may accept trade data for input into IID from a U.S. broker-dealer or from a non-U.S. broker-dealer. The institution involved in the transaction may be a U.S. or non-U.S. entity, such as a foreign money manager. The agent bank/global custodian involved in the transaction likewise may be a U.S. entity or a non-U.S. entity. Under the terms of this proposed rule change, a transaction in IID may occur even where all parties to the transaction are foreign. According to DTC, a recent DTC sample indicated that more than half of foreign trades made by U.S. investment managers are executed with foreign broker-dealers. DTC expects that broker-dealers not registered with the Commission under the Act may wish to participate in the IID System as a result of this expansion of the system's use to foreign entities.[2]

DTC's International Institutional Delivery System began operating on a pilot basis in late 1988.[3] The IID System was approved on a permanent basis in March, 1988.[4] Generally, the IID System provides a centralized, automated method of communication of information about institutional trades among the parties to such trades.[5] Unlike DTC's domestic ID System, the IID System does not provide a mechanism for automated, book-entry settlement of transactions. In IID, DTC accepts trade data from broker-dealers, and generates and distributes confirmations based on that trade data to the broker-dealer, institution, and agent bank/global custodian involved in the transaction. Among the required trade data input is the identity of both the sub-custodians involved in the transactions: the broker-dealer's sub-custodian and the agent bank/global custodian's sub-custodian. Upon receipt of an affirmation from the institution, DTC issues deliver and receive instructions to the broker-dealer and the agent bank/global custodian. In addition, DTC passes along to the agent bank/global custodian payment and settlement instructions where those instructions have been communicated by the institution in the affirmation process.

All of these communications take place over DTC's Participant Terminal System ("PTS") or by dial-in or CCF (computer-to-computer) transmission. The broker-dealer and agent bank/global custodian forward the deliver and receive instructions to their respective foreign sub-custodians over their existing communications networks, outside of DTC. Settlement of an IID trade takes place outside of DTC, presumably between the two sub-custodians.[6]

II. DTC's Rationale for the Proposal

DTC states in its filing that, in order to achieve the goal of greater efficiency and standardization in processing international trades, it is necessary to develop a "critical mass" of participation in the IID System. In order to develop the necessary critical mass, DTC must open the IID System to foreign entities who may be parties to an institutional trade. These entities must be able to input as well as receive data.

DTC believes that proposed rule change is consistent with the Act and the rules and regulations thereunder because the proposed rule change will increase efficiency in processing many trades in foreign securities by expanding participation in and making more trades eligible for processing in the IID System.

III. Discussion

As discussed below, the Commission believes the proposed rule change is consistent with the Act. For the reasons discussed in Securities Exchange Act Release No. 26626,[7] the Commission believes DTC's IID System will promote the prompt and accurate clearance and settlement of securities transaction by enabling earlier and centralized communications about securities settlement among the parties to an international, institutional trade. Fast, efficient communications and same-day turnaround of trade information can contribute to improved clearance and settlement, and thus reduced risks in cross-border trading.

The Commission also believes the IID System is consistent with the Act's requirement to safeguard securities and funds because it has the capacity to expedite customer-side settlement. By enabling earlier and standardized communications, brokers potentially can avoid instances where a trade is prevented from settling on time because of delays in communicating trade details (confirmation) to the institution's money manager and the money manager's response (affirmation) to the institution's agent bank.

If the transaction settles between the two brokers on time but customer-side settlement is delayed by slow communications between the broker and its customer (or the customer and the customer's agent bank), the broker may be forced to finance the transaction until the problem is resolved. The II System, by providing for earlier communication of trade confirmations and affirmations, potentially will reduce the risks that a broker will be forced to finance a transaction because of delayed customer settlement.

The benefits of the IID System currently are available only where the party inputing the data to DTC is a U.S. broker-dealer participating in the IID System. DTC asserts that, without a critical mass of participation in the System, neither DTC nor institutional investors will achieve the goal of greater efficiency and standardization in processing international trades. DTC cites a recent sample indicating that more than half of foreign trades made by U.S. investment managers are executed with foreign broker-dealers. The Commission believes that including international, institutional trades that involve a non-U.S. entity in the IID System will contribute to processing efficiency by enabling current IID System users to have one processing stream for all international, institutional trades. The greater volume also should help make the IID System more cost efficient for DTC to operate.

Moreover, in a world of increasing internationalization of the securities markets, a service such as the IID System will improve cross-border trading for all market participants, both U.S. and non-U.S. Indeed, the Group of Thirty, in its March 1989 report on international clearance and settlement issues, recommended that indirect market participants such as institutional investors should, by 1992, be members of a trade comparison system that achieves positive affirmation of trade details.[8] The Group of Thirty considers the lack of such a system as adding a significant element of risk and inefficiency into the securities processing cycle. The Group of Thirty report did not endorse any specific system for affirmation of institutional trades, and suggested that each market should decide what method would be the best inducement to indirect market participants to participate in such a system. The Commission believes that DTC's IID System offers global securities market participants just such a service on an immediate basis.

DCT has not developed participation standards for the IID System because DTC has no responsibility for the settlement of transactions processed through the IID System. The Commission recognizes that the IID System is only a communications service for those who wish to participate. DTC is not liable in the IID System for securities or money settlement of transactions. For this reason, the Commission believes that DTC need not prepare formal standards for participation in the IID System.

Nonetheless, the Commission recognizes that, in facilitating the confirmation and affirmation of transactions between unregistered foreign broker-dealers and U.S. investors, the IID System may be facilitating activities that require compliance with U.S. broker-dealer registration requirements. For this reason, the IID agreement includes a representation of compliance with U.S. requirements. In addition, the Commission intends to monitor closely the conduct of participating unregistered foreign broker-dealers involving U.S. investors.

IV. Conclusion

For the reasons stated above, the Commission finds that the proposed rule change is consistent with section 17A of the Act and the rules and regulations thereunder in that it promotes the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that DTC's proposed rule change (File No. SR-DTC-89-15) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority. 17 CFR 200.30-3(12) (1989).

Dated: December 18, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-29698 Filed 12-22-89; 8:45 am]

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[1] *See* Securities Exchange Act Release No. 27198 (August 30, 1989), 54 FR 37304.

[2] While use of the IID System to process trades may not be itself constitute activity requiring registration with the Commission as a broker-dealer under Section 15(a) of the Act, foreign broker-dealers effecting transactions with U.S. customers may otherwise engage in activity that does necessitate such registration. *See* Securities Exchange Act Release No. 27017 (July 11, 1989), 54 FR 30013. For this reason, DTC has included in the agreement to be signed by all IID System only to process securities transactions that comply with U.S. securities laws, particularly the broker-dealer registration requirements of Section 15(a) of the Act or the exemptions from registration in Rule 15a-6 of thereunder. The Commission will receive information from DTC regarding use of the IID System that will assist in monitoring for compliance with these requirements.

[3] *See* Securities Exchange Act Release No. 26374 (December 20, 1988), 53 FR 52283, and Securities Exchange Act Release No. 26577 (February 28, 1989), 54 FR 9654.

[4] *See* Securities Exchange Act Release No. 26626 (March 14, 1989), 54 FR 11468.

[5] The IID System was developed form DTC's domestic Institutional Delivery ("ID") System, which provides an automated, centralized mechanism for the communication of trade confirmations and affirmations to the parties to an institutional trade. In additioc to communications, the domestic ID system provides a mechanism for automated, book-entry settlement of these transactions.

[6] A complete description of the IID process may be found in Securities Exchange Act Release Nos. 26374 and 26626. *See* notes 3 and 4. *supra*.

[7] *See* note 4, *supra*.

[8] Group of Thirty, Clearance and Settlement in the World's Securities Markets (March 1989).

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

December 19, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Dreyfus Strategic Municipal Bond Fund, Inc.
Common Stock, $.001 Par Value (File No. 7-5632)

Midway Airlines, Inc.
Series D Pfd Stock, Common Stock, $.01 Par Value (File No. 7-5633)

Van Kampen Merritt Investment Grade Municipal Trust
Shares of Beneficial Interest, Common Stock, $.01 Par Value (File No. 7-5634)

Dow Chemical Company
Contingent Value Rights, No Par Value (File No. 7-5635)

Waxman Industries, Inc.
Common Stock, No Par Value (File No. 7-5636)

Cooper Industries, Inc.
$8.00 Convertible Exch. Pfd Stock, Common Stock, $1.00 Par Value (File No. 7-5637)

CRI Liquidating Reit, Inc.
Common Stock, $.01 Par Value (File No. 7-5638)

CRI Mortgage Association, Inc.
Common Stock, $.01 Par Value (File No. 7-5639)

CMS Enhancements, Inc.
Common Stock, $.01 Par Value (File No. 7-5640)

Minven Gold Corporation
Common Stock, Without Par Value (File No. 7-5641)

Associated Natural Gas Corp.
Common Stock, $.10 Par Value (File No. 7-5642)

Prism Entertainment Corporation
Common Stock, $.01 Par Value (File No. 7-5643)

Superior Industries International, Inc.
Common Stock, $.50 Par Value (File No. 7-5644)

Turkish Investment Fund, Inc.
Common Stock, $.01 Par Value (File No. 7-5645)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 11, 1990, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20548. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-29699 Filed 12-22-89; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

December 19, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Allstate Municipal Income Opportunities Trust
Shares of Beneficial Interest, Common Stock, $0.01 Par Value (File No. 7-5646)

Bearings, Inc.
Common Stock, No Par Value (File No. 7–5647)
Convex Computer Corporation
Common Stock, $.01 Par Value (File No. 7–5648)
Shelby Williams Industries, Inc.
Common Stock, $0.05 Par Value (File No. 7–5649)
Landmark Land Company, Inc.
Common Stock, $0.05 Par Value (File No. 7–5650)
MFS Special Value Trust
Shares of Beneficial Interest, Without Par Value (File No. 7–5651)
NHI Nelson Holdings International, Ltd.
Common Stock, No Par Value (File No. 7–5652)
Nuveen California Performance Plus Municipal Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–5653)
Nuveen New York Performance Plus Municipal Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–5654)
Response Technologies, Inc.
Common Stock, $0.002 Par Value (File No. 7–5655)
ECI Environmental, Inc.
Common Stock, $.01 Par Value (File No. 7–5656)
Healthsouth Rehabilitation Corp.
Common Stock, $.01 Par Value (File No. 7–5657)
Rhone-Poulenc, S.A.
Units (File No. 7–5658)
Arkla Exploration Company
Common Stock, $1 Par Value (File No. 7–5659)
Associated Natural Gas Company
Common Stock, $0.10 Par Value (File No. 7–5660)
Dreyfus Strategic Municipal Bond Fund, Inc.
Common Stock, $.001 Par Value (File No. 7–5661)
Van Kampen Merritt Investment Grade Municipal Trust
Common Shares of Beneficial Interest, Common Stock, $.01 Par Value (File No. 7–5662)
Apple Bancorp, Inc. (Holding Company)
Common Stock, $1 Par Value (File No. 7–5663)
British Steel, Plc
Final Installment American Depositary Receipts (File No. 7–5664)
Waxman Industries, Inc.
Common Stock, $.01 Par Value (File No. 7–5665)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 11, 1990, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–29900 Filed 12–22–89; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–17267; 812–7436]

Integrated Capital Appreciation Fund, Inc., et al.; Application

December 18, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: Integrated Capital Appreciation Fund, Inc., Integrated Cash Fund ("ICF"), Integrated Equity Portfolios ("IEP"), Integrated Income Plus Fund, Inc., Integrated Income Portfolios ("IIP"), Integrated Money Market Securities, Inc., Integrated Tax Free Portfolios ("ITF"), Integrated Resources Series Trust ("IRST"), Integrated Multi Asset Portfolios, Inc. ("IMAP"), Home Investors Government Guaranteed Income Fund, Inc. ("HIGGI") (collectively, "Investment Companies"), Integrated Resources Asset Management Corp. ("IRAM" or "Investment Adviser"), and Broad Inc. ("Acquiror").

RELEVANT 1940 ACT SECTION: Exemption requested under section 6(c) of the 1940 Act from the provisions of section 15(a) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order (i) permitting the implementation, without formal shareholder approval, of new investment advisory agreements between the Investment Companies and IRAM, and new sub-advisory agreements between IRAM and Wellington Management Company ("Wellington") the sub-adviser to HIGGI, one series of ITF, and each series of IRST, as approved by the respective Investment Companies' Boards of Directors or Trustees, (ii) permitting IRAM to receive from each Investment Company, subject to shareholder approval, fees earned under the new agreements from the date on which Acquiror first acquires more than 25% of the outstanding voting securities of IRAM until the date the new investment advisory agreements and new sub-advisory agreements are approved or disapproved by shareholders of the respective Investment Companies ("Interim Period"), which period shall not exceed 120 days, and (iii) to permit the sub-adviser to receive, subject to shareholder approval, fees earned under new sub-advisory agreements implemented during the Interim Period, which period shall not exceed 120 days.

FILING DATES: The application was filed on December 5, 1989 and amended on December 14, 1989.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 12, 1990, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Each of the Investment Companies and IRAM—Integrated Resources Asset Management Corp., 10 Union Square East, Third Floor, New York, NY 10003, Attn: Gary Gardner, Esq.; Acquiror—Broad Inc., 11601 Wilshire Blvd., Los Angeles, CA 90025, Attn: Lorin Fife, Esq.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Staff Attorney, (202) 272–2511 or Max Berueffy, Branch Chief, (202) 272–3016.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commerical copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations

1. Each Investment Company is organized as a Massachusetts business trust or a Maryland corporation and is registered under the 1940 Act as an open-end management investment company. IRST, IEP, IIP, ITF, ICF, and IMAP are "series companies" as defined in Rule 18f-2 under the 1940 Act. Acquiror is a financial services company whose life insurance subsidiaries sell tax-deferred long-term products for the pre-retirement market.

2. IRAM, A Delaware corporation, is registered as an investment adviser under the Investment Advisers Act of 1940, and serves as investment adviser to each Investment Company. Advisory fees paid to IRAM range from 0.50% to 1.00% per annum of average daily net assets of the various series of Investment Companies. Integrated Resources Inc. ("Integrated") owns, directly or indirectly through one or more of its subsidiaries, all of the outstanding capital stock of IRAM.

3. Wellington serves as sub-adviser to HIGGI, each series of IRST, and one series of ITF, providing investment advice and managing the day to day investments of those Funds. Under the sub-advisory agreements, IRAM pays to Wellington sub-advisory fees equal to .250% to .150%, .150% to .100%, and .325% to .020% per annum, respectively, depending on asset size, of the average daily net assets of HIGGI and the applicable series of ITF and IRST.

4. In June 1989, Integrated declared a moratorium on payment of principal and interest on holding company debt and has solicited proposals for purchase of its financial service businesses: IRAM; Integrated Life; Integrated Administrative Services Corporation; Resources Variable Annuity Management Corporation; Integrated Resources Capital Services, Inc.; Integrated Resources Fund Services, Inc.; and Royal Alliance Associates, Inc., (collectively, the "Core Companies"). Following intensive negotiations between Integrated and Acquiror beginning in October 1989, a Stock Purchase Agreement was executed on November 1, 1989. The Stock Purchase Agreement, as originally executed, called for the approval by shareholders of new advisory agreements prior to closing of the sale of the Core Companies ("Acquisition"). Shortly after the execution of the Stock Purchase Agreement, the Commissioner of Insurance of the State of Iowa ("Iowa Commissioner"), who exercises regulatory jurisdiction over one of the Core Companies, required a significant restructuring of certain aspects of the transaction. Specifically, the Iowa Commissioner required a wholly-owned insurance subsidiary of Acquiror to reinsure the policy liabilities of Integrated Life and also threatened to issue an order of rehabilitation with respect to Integrated Life if an agreement was not promptly executed. After intense negotiation, an amendment to the Stock Purchase Agreement was executed on November 13, 1989. The Board of Trustees of each Investment Company was notified within days after execution of the November 13th amendment to the Stock Purchase Agreement. Notification prior to that time would have been premature, since the terms of the transactions had not been finalized and it was uncertain that the transaction would go forward. The November 13 amendment to the Stock Purchase Agreement was subject to significant contingencies which had to be resolved prior to any transaction going forward. A period for resolution of significant contingencies expired on November 27, 1989, at which time Acquiror determined to proceed with the acquisition.

5. Although Applicants intended to obtain shareholder approval prior to closing, the timing requirements imposed by the Iowa Commissioner required an accelerated schedule that does not permit prior solicitation of shareholders. The conditions remaining to consummation of the Stock Purchase Agreement, as amended November 13, 1989 include, among others: (i) Receipt of approvals by insurance regulators in Iowa, Colorado, and California; (ii) receipt of approvals from the National Association of Securities Dealers, Inc.; and (iii) expiration of waiting periods applicable under the Hart-Scott-Rodino Antitrust Improvements Act of 1976. It is anticipated that the Acquisition will be consummated as promptly as possible after all of the conditions to consummation have been fulfilled.

6. Because the Acquisition will result in a change in control of IRAM, the Acquisition may be deemed, within the meaning of section 2(a)(4), to result in an assignment of the existing investment advisory agreements of each of the Investment Companies with IRAM, terminating each investment advisory agreement and sub-advisory agreement pursuant to its terms.

7. At a meeting held on December 1, 1989, the Boards of Trustees of each of the Investment Companies, other than HIGGI, including a majority of the Trustees who are not "interested persons" of the relevant Investment Companies, as defined in section 2(a)(19), met in person and concluded unanimously, with the advice of independent counsel, that it was in the best interests of each Investment Company and its shareholders to file the application as a necessary step in implementing new advisory and sub-advisory agreements during the Interim Period, so as to minimize the disruption in advisory services to each Investment Company. On December 14, 1989, the Board of Trustees of HIGGI, including a majority of the Trustees who are not "interested persons" of HIGGI, met in person and reached the same conclusion unanimously. The Board of Trustees also considered the advisability of entering into new agreements providing for advisory and sub-advisory services following the acquisition. The Applicants state that the Boards of Trustees of the respective Investment Companies, with the advice of independent counsel, have complied with the requirements of section 15(c).

8. As soon as reasonably practicable, but within the Interim Period in any event, the Investment Companies will present for shareholder approval new agreements providing for advisory and sub-advisory services following the Acquisition. It is not possible for the Investment Companies to obtain such shareholder approval in accordance with Section 15(a) of the 1940 Act prior to the anticipated consummation of the Acquisition. As noted above, the Investment Companies had no advance notice of the proposed transactions. Shares of the Investment Companies are beneficially held by more than 148,000 shareholders. Since a "majority of the outstanding voting securities," as defined in the 1940 Act, of each series of each Investment Company will be required to approve the new advisory arrangements, the Applicants believe that substantial time and effort will be necessary to obtain the required votes. Shareholders' meetings require the preparation of proxy materials and subsequent clearance by the staff of the Commission, as well as a solicitation period that is sufficient to obtain the requisite quorum. Although the Investment Companies are preparing these materials as quickly as possible, it will be impossible to hold special meetings of shareholders before the Acquisition, as there will not be an adequate solicitation period to assure a quorum of shareholders at the meetings.

Applicants' Legal Conclusions

9. The Applicants state that the requested order is necessary and appropriate, in the public interest, and consistent with the protection of investors and the purposes fairly

intended by the policy and provisions of the 1940 Act for the reasons set forth below, as discussed more fully in the

quality of services provided to the Investment Companies during the

of that Investment Company, or (b) in the absence of such approval, to the

tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 42603.

Seventh Street SW., Room 4107, Washington, DC 20590.

SUMMARY: Notice is hereby given of the establishment of the Airport Capacity Funding Advisory Committee. The

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intended by the policy and provisions of the 1940 Act for the reasons set forth below, as discussed more fully in the application.

10. The management of Integrated considered and rejected three other ways of dealing with the effect of the proposed Acquisition upon the advisory agreements between IRAM and each of the Investment Companies.

a. First, consummation of the Acquisition might have been conditioned upon the approval of the shareholders of all the Investment Companies. Management rejected this approach because it would have meant a delay of up to two months in consummating the Acquisition, and such a delay would have adversely affected the interests of all parties. The Applicants noted the likelihood, among other things, that protracted uncertainty as to the future of Integrated could cause substantial further defections by the registered representatives of Integrated's broker-dealer subsidiary, Royal Alliance Associates, Inc. ("RAA"). Such defections would adversely affect IRAM.

b. Second, IRAM might have given the appropriate 60 days notice to the Investment Companies, so that the investment advisory agreements would terminate upon the change of control in IRAM. Management rejected this approach because it would have delayed the consummation of the acquisition for at least 60 days. In addition to the adverse consequences of the delay noted above, the Investment Companies would have been required either to reengage IRAM or to find a suitable replacement and to obtain shareholder approval, all within the 60-day period, in order to avoid a potential disruption in investment services.

c. Finally, consummation of the Acquisition could have been made contingent on issuance of the relief requested by the application. However, while Applicants submit that they filed the application as promptly as reasonably possible to permit issuance of the order prior to effectiveness of the Acquisition, the schedule imposed by the Iowa Commissioner, the deteriorating fiscal situation of Integrated, and attendant disruptions to the Core Companies may not permit waiting. Management decided that the interests of the shareholders of each of the Investment Companies and the stockholders of Integrated would best be served if the consummation of the Acquisition were not made contingent upon the receipt of the relief requested by the application.

11. The Applicants state that there will be no diminution in the scope and quality of services provided to the Investment Companies during the Interim Period. The Applicants assert that this arrangement is in keeping with the provisions of Rule 15a–4 (other than the provisions limiting the ability of persons affiliated with the adviser to profit from the assignment transaction) and the purposes of section 15 of the 1940 Act, since the Trustees of the Investment Companies have approved the new advisory agreements prior to their implementation and no fees will be paid unless the agreements are approved by the Investment Company shareholders.

12. The Applicants submit that the circumstances which have given rise to the request for relief are similar to those of other types of assignments that are not reasonably foreseeable. The extremely rapid evolution of the Integrated-Acquiror negotiations did not present an opportunity to secure prior approval of new advisory and sub-advisory agreements by shareholders of the Investment Companies. The Applicants further submit that to deprive IRAM of its customary fees for the Interim Period because the Acquisition may technically result in an assignment of the Investment Companies' existing investment advisory agreements would be a harsh result and an unreasonable penalty to attach to the transaction. The Applicants believe that the requested 120-day Interim Period will facilitate an orderly consideration of the advisory and sub-advisory agreements by the Investment Companies' shareholders. They assert that such an Interim Period is consistent with the provisions of Rule 15a–4 and the purposes of section 15 of the 1940 Act, as well as the corporate governance objectives of the 1940 Act.

Applicants' Conditions

If the requested order is granted, the Applicants agree to the following conditions:

1. The new advisory agreements to be implemented during the Interim Period will have the same terms (except effective dates) and conditions as the existing advisory agreements, and the new sub-advisory agreements will have the same terms (except effective dates) and conditions as the existing sub-advisory agreements.

2. Fees earned by the Investment Adviser and paid by an Investment Company during the Interim Period in accordance with the terms of a new advisory agreement will be maintained in an interest-bearing escrow account, and amounts in the escrow account will be paid (a) to the Investment Adviser only upon approval by the shareholder of that Investment Company, or (b) in the absence of such approval, to the respective Investment Company.

3. Integrated (or an affiliate of Integrated) will pay the costs of preparing and filing this Application and the costs of holding all special meetings of the Investment Companies' shareholders necessitated by the Acquisition, including the cost of proxy solicitations. Additionally, Integrated (or an affiliate of Integrated) will pay the incremental costs necessitated by the Acquisition in connection with meetings of the Investment Companies' shareholders.

4. IRAM will take all appropriate steps so that the scope and quality of advisory and other services provided to the Investment Companies during the Interim Period will be at least equivalent, in the judgment of the respective Boards of Trustees, including a majority of the Trustees who are not "interested persons," to the scope and quality of services previously provided. In the event of any material change in personnel providing services pursuant to the advisory or sub-advisory agreements, IRAM will apprise and consult with the Board of Trustees of the affected Investment Companies in order to assure that they, including a majority of the Trustees who are not "interested persons," are satisfied that the services provided will not be diminished in scope or quality.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–29901 Filed 12–22–89; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q during the Week ended December 15, 1989

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 42603.

Date filed: December 14, 1989.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 11, 1990.

Description: Application of Continental Airlines, Inc., pursuant to sections 401 of the Act and subpart Q of the Regulations requests renewal of its authority to provide foreign scheduled air transportation of persons, property and mail between Houston, Texas, on the one hand and London, England, on the other.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 89–29855 Filed 12–22–89; 8:45 am]

BILLING CODE 4910–62–M

Order Instituting Supplemental Japan Charter Authorization Proceeding (1989/1990)

AGENCY: Department of Transportation.

ACTION: Institution of the Supplemental Japan Charter Authorization Proceeding (1989/1990); Order 89–12–30, Docket 46681.

SUMMARY: Under the terms of an Interim Aviation Agreement dated September 7, 1982, U.S. air carriers can operate 300 one-way charter flights per year between the United States and Japan. The aeronautical authorities of each country allocate the charter flights among their carriers. Under an *ad referendum* Memorandum of Understanding signed by representatives of the United States and Japan on November 6, 1989, U.S. carriers may operate an additional 150 charters during the 1989/1990 charter year. As the Department had already allocated the 300 previously-available charters by Order 89–6–44, it is instituting a supplemental charter proceeding to allocate the newly-available 150 charters for the 1989/1990 charter year. The Department intends to allocate the charters using show-cause procedures. The Department is inviting interesting direct air carriers to file applications to operate the Japan charters at issue.

DATES: Applications (including service proposals and supporting information) and petitions for reconsideration of Order 89–12–30 are due January 9, 1990; answers are due January 16, 1990.

ADDRESS: Applications, supporting information, and petitions for reconsideration should be filed in Docket 46681, addressed to the Documentary Services Division, U.S. Department of Transportation, 400 Seventh Street SW., Room 4107, Washington, DC 20590.

Dated: December 20, 1989.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 89–29914 Filed 12–22–89; 8:45 am]

BILLING CODE 4910–62–M

Federal Aviation Administration

[AC No. 120–27B]

Proposed Advisory Circular on Aircraft Weight and Balance Control

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for comments on Advisory Circular (AC) on aircraft weight and balance control.

SUMMARY: The proposed AC suggests a method for complying with the part 121 weight and balance control system requirements. In addition, the proposed AC can be used by Part 135 operators who elect to have an approved weight and balance program under the Federal Aviation Regulations.

COMMENTS INVITED: Comments are invited on the proposed AC. Commentators must identify file number AC 120–27B.

DATE: Comments must be received on or before January 24, 1990.

ADDRESS: Send all comments and request for copies of the proposed AC to: Federal Aviation Administration, Aircraft Maintenance Division (Attention: AFS–330), 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Howard Vaughn, AFS–330A, at the above address; telephone: (202) 267–3790 (8:30 a.m. to 5:00 p.m. e.s.t.).

SUPPLEMENTARY INFORMATION: The guidance material contained in this AC provides a method for developing weight and balance control systems.

Issued in Washington, DC, on November 27, 1989.

D.C. Beaudette,

Director, Flight Standards Service.

[FR Doc. 89–29860 Filed 12–22–89; 8:45 am]

BILLING CODE 4910–13–M

Airport Capacity Funding Advisory Committee Establishment

AGENCY: Federal Aviation Administration, DOT.

ACTION: Airport Capacity Funding Advisory Committee establishment.

SUMMARY: Notice is hereby given of the establishment of the Airport Capacity Funding Advisory Committee. The Federal Aviation Administration sponsors this Committee which will consist of members appointed by the Secretary, including but not limited to representatives of airport executives, airport operators, and the airlines. The Committee shall review the issues surrounding repeal of the Federal prohibition against locally imposed surcharges on airline passengers by airport operators for the purpose of providing needed airport capacity. The functions of the Committee are solely advisory.

The Secretary has determined that the information and use of the Committee are necessary in the public interest in connection with the performance of duties imposed on FAA by law. Meetings of the Committee will be open to the public except as authorized by section 10(d) of the Federal Advisory Committee Act.

FOR FURTHER INFORMATION CONTACT: The Office of the Associate Administrator for Policy, Planning, and International Aviation (API–1), 800 Independence Avenue, SW., Washington, DC 20591, telephone 202–267–3033.

Issued in Washington, DC, on December 15, 1989.

Michael C. Moffat,

Associate Administrator for Policy, Planning, International Aviation.

[FR Doc. 89–29859 Filed 12–22–89; 8:45 am]

BILLING CODE 4910–13–M

Approval of Noise Compatibility Program; The Birmingham Airport, Birmingham, AL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Birmingham Airport Authority under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On June 1, 1989, the FAA determined that the noise exposure maps submitted by the Birmingham Airport Authority under Part 150 were in compliance with applicable requirements. On November 22, 1989, the Administrator approved The Birmingham Airport noise compatibility program. All of the recommendations of the program were approved. No program

Informal Airspace Meeting

AGENCY: Federal Aviation

Issued in Washington, DC, on December 19, 1989.

Daniel P. Salvano,

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Birmingham Airport noise compatibility program. All of the recommendations of the program were approved. No program elements relating to new or revised flight procedures for noise abatement were proposed by the airport operator.

EFFECTIVE DATE: The effective date of the FAA's approval of The Birmingham Airport noise compatibility program is November 22, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Elton E. Jay, Civil Engineer, Jackson Airports District Office, 120 North Hangar Drive, Suite B, Jackson, Mississippi 39208–2306; telephone no. (601) 965–4628. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for The Birmingham Airport, effective November 22, 1989.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in part 150 and the Act and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implemented specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports District in Jackson, Mississippi.

The Birmingham Airport Authority submitted to the FAA on May 25, 1989, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from June 1985 through May 1989. The Birmingham Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on June 1, 1989. Notice of this determination was published in the *Federal Register* on June 15, 1989.

The Birmingham study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 1992. It was requested that the FAA evaluate and approve this material as a noise compatiblity program as described in section 104(b) of the Act. The FAA began its review of the program on June 1, 1989, and was required by a provision of the Act to approve or disapprove the program within 180 days. Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained seven proposed actions for noise mitigation off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective November 22, 1989.

Outright approval was granted for seven of the specific program elements.

The establishment of an Airport Impact Zone (AIZ) for Tarrant City was approved subject to the City's adopting and implementing the AIZ.

The continued use of aircraft noise abatement takeoff-approach procedures as recommended by the FAA, the Air Transport Association of America, and the National Business Aircraft Association is the only noise abatement measure included and approved in the program.

In addition to the AIZ for Tarrant City, the recommended and approved noise mitigation measures are: (1) Acquisition of noncompatible land within the 75 Ldn contour; (2) acquisition of avigation/noise easements within the 70 Ldn contour after completion of the fee acquisition within the 75 Ldn contour; (3) establishment of an AIZ to assist in assuring compatible land use within the 65 Ldn; (4) revision of the City of Birmingham's building codes to establish building construction guidelines to achieve noise comptatiblity within the AIZ; (5) a redevelopment plan for compatible use or noise impacted property that has and will be acquired within the 75 Ldn contour, which was completed and approved on August 15, 1989; and (6) redevelopment of the noise impacted property with compatible land uses as determined by the redevelopment plan.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on November 22, 1989. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the Birmingham Airport Authority.

Issued in Jackson, Mississippi, December 6, 1989.

Newton L. Taylor,

Manager, Airports District Office.

[FR Doc. 89-29861 Filed 12-22-89; 8:45 am]

BILLING CODE 4910-13-M

Informal Airspace Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of informal airspace meeting.

SUMMARY: This notice announces an informal airspace meeting to discuss the establishment of an Airport Radar Service Area (ARSA) at Harlingen, TX.

DATE: The informal airspace meeting will be held on January 30, 1990.

ADDRESS: The informal airspace meeting location is as follows:

Harlingen, TX, ARSA

Date: January 30, 1990.
Time: 7 p.m.
Location: Harlingen City Hall, 118 East Tyler, Harlingen, TX.

FOR FURTHER INFORMATION CONTACT: David J. Souder, System Management Branch, ASW–530, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0535; telephone: (817) 624–5530.

Issued in Fort Worth, TX, on November 21, 1989.

Richard J. Cibak,

Manager, System Management Branch.

[FR Doc. 89-29862 Filed 12-22-89; 8:45 am]

BILLING CODE 4910-13-M

Traffic Alert and Collision Avoidance System (TCAS) Airborne Equipment, TCAS II

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of technical standard order (TSO) and request for comments.

SUMMARY: The proposed TSO–C119a prescribes the minimum performance standards that traffic alert and collision avoidance (TCAS) airborne equipment, TCAS II, must meet to be identified with the marking "TSO–C119a."

DATE: Comments must identify the TSO file number and be received on or before January 26, 1990.

ADDRESSES: Send all comments on the proposed technical standard order to: Technical Analysis Branch, AIR–120, Aircraft Engineering Division Aircraft Certification Service—File No. TSO–C119a, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Or deliver comments to: Federal Aviation Administration, Room 335, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, Technical Analysis Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–9546.

Comments received on the proposed technical standard order may be examined, before and after the comment closing date, in Room 335, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. All communications received on or before the closing date for comments specified above will be considered by the Director of the Aircraft Certification Service before issuing the final TSO.

Background

The Radio Technical Commission for Aeronautics Special Committee 147 has made modifications1 to improve the safety and effectiveness of the collision avoidance logic for the Traffic Alert and Collision Avoidance System II (TCAS II). These modifications, known as Change 6 to the Minimum Operational Performance Standards (MOPS), eliminate the "Advisory Invalid" indication and reduce the issuance of altitude crossing Resolution Advisories. Other changes guard against maneuvering intruders, correct editorial errors, and generally enhance the performance of the system logic.

The FAA recognized these changes as improving the safety and effectiveness of TCAS II and has incorporated these changes into TSO-C119a.

How To Obtain Copies

A copy of the proposed TSO-C119a may be obtained by contacting "For Further Information Contact." TSO–C119a references Radio Technical Commission for Aeronautics Secretariat (RTCA) Document No. DO–185, Change 1 through 6, for minimum performance standards, RTCA/DO–160B for the environmental standard, and RTCA/DO–178A for the computer software requirements; RTCA documents may be purchased from the Radio Technical Commission for Aeronautics Secretariat, One McPherson Square, Suite 500, 1425 K Street, NW., Washington, DC 20005.

Issued in Washington, DC, on December 19, 1989.

Daniel P. Salvano,

Acting Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 89-29858 Filed 12-22-89; 8:45 am]

BILLING CODE 4910-13-M

Federal Railroad Administration

Petitions for Waivers of Compliance; Canadian Pacific Limited, et al

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received requests for waivers of compliance with certain requirements of its safety standards. The individual petitions are described below, including the parties seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Canadian Pacific Limited and Norfolk Southern Corporation

Waiver Petition Docket Numbers PB–89–6 and SA–89–12

The Canadian Pacific Limited (CP Rail) and the Norfolk Southern Corporation (NS) (on behalf of its operating subsidiaries) jointly request waivers of compliance with certain provisions of the Railroad Safety Appliance Standards (49 CFR part 231), under Docket No. SA–89–12, and the Railroad Power Brakes and Drawbars Regulations (49 CFR part 232), under Docket No. PB–89–6.

CP Rail and NS seek these waivers of compliance to permit the operation of railroad/highway vehicles which are designated as "RoadRailer" units. CP Rail and NS are negotiating an agreement for CP Rail to operate NS RoadRailer equipment between Detroit, Michigan, and Toronto, Ontario, Canada. CP Rail intends to receive the RoadRailer equipment from the NS subsidiary, Triple Crown Services, Inc., at NS's Oakwood Yard in Detroit. CP Rail will operate the equipment from Oakwood Yard via NS trackage to Ecorse Junction, the Union Belt trackage to Delray, the Consolidated Rail Corporation (Conrail) trackage to the Canadian National Railroad/CP Rail's Caso Sub Division, through the Windsor/Detroit tunnel for about one mile and then over CP Rail trackage to Toronto, Canada. The distance traveled in the United States to the Windsor/Detroit Tunnel is approximately eight miles.

The NS is presently operating 1,600 RoadRailer vehicles under a conditional waiver (Docket Numbers SA–87–2 and PB–87–4) issued by FRA on July 28, 1987.

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(See notice of waiver petitions, 52 FR 16328, May 4, 1987, for more detailed discussion.) These vehicles are almost identical to the standard semi-trailer presently used to haul cargo over the highway, the only difference being that they are equipped with a special drawbar, railroad running wheels and a special railroad air brake system. The railroad wheels are mounted on a single axle between the tandem highway wheels of the semi-trailer on the Mark IV RoadRailer. The Mark V RoadRailer is carried on a standard 70-ton freight car truck equipped with a suitable adaptor to accommodate and support the vehicle. The Mark IVs and Mark Vs are indiscriminately operated together in NS trains. The RoadRailer vehicles, by design, cannot be subjected to traditional switching procedures conducted in railroad classification yards. The coupler assembly will only couple to another RoadRailer vehicle or to a specially designed adapter car between the locomotive and a RoadRailer train, and the drawbar height is nonstandard.

The conditional waiver granted to the NS permits noncompliance with all the provisions of the Railroad Safety Appliance Standards (49 CFR part 231). These standards include provisions that provide the number, location and dimensional specifications for the handholds, ladders and sill steps that are required for each railroad freight and passenger car. In addition, the NS waiver permits noncompliance with a provision of the Railroad Power Brakes and Drawbars Regulations (49 CFR 232.2) which regulates height of drawbars. It was for these reasons that the NS applied for relief from these provisions of parts 231 and 232. It is for the same reasons that CP Rail is seeking conditional waivers similar to those that were granted to the NS. One of the conditions of the NS waiver is that the NS is not permitted to interchange the RoadRailer units with any other railroads, except the operating subsidiaries of the NS Corporation (e.g., Norfolk Western Railway and the Southern Railway). CP Rail and NS are petitioning the FRA to have this condition modified so as to allow interchange of the RoadRailer units between CP Rail and NS to provide the service described in the CP Rail petition. CP Rail and NS would agree to all other terms and conditions that presently exist for the operation of the RoadRailer equipment by the NS.

Union Pacific Railroad Company

Waiver Petition Docket Number Docket Number SA–89–11

The Union Pacific Railroad Company and the Missouri Pacific Railroad Company (collectively herein "UP") request a waiver of compliance with certain provisions of the Railroad Safety Appliance Standards (49 CFR part 231) for all its locomotives built after March 31, 1977. The UP seeks a waiver of compliance with those provisions of §231.30(c)(6), "Visibility" which require in part that on locomotives used in switching service that were "built after March 31, 1977, switching steps shall be illuminated * * *" The UP collectively owns all of the locomotives presently not equipped with switching step lights and therefore are not in compliance with the regulation.

The UP proposes to issue a General Notice informing all of its employees of the absence of switching step lights on the noncomplying locomotives. The carrier states that these locomotives have operated approximately 12 years without incident.

Cheney Railroad Company

Waiver Petition Docket Numbers RSGM–89–37 and SA–89–10

The Cheney Railroad Company, Inc. (CHNY) requests a waiver of compliance with certain provisions of the Railroad Safety Appliance Standards (49 CFR part 231) for its one locomotive. The CHNY seeks a waiver of compliance with those provisions of § 231.30, "Locomotives used in switching service," that require that each locomotive used in switching service be equipped with four side switching steps, each of which has a minimum width of twenty-four (24) inches and a minimum depth of twelve (12) inches for locomotives built after March 31, 1977; and for locomotives built prior to April 1, 1977, a minimum width of eighteen (18) inches and the minimum depth of eight (8) inches.

The CHNY also seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for the same locomotive.

The CHNY locomotive is a used 65-ton center cab, industrial switcher type locomotive built by the General Electric Company. Prior to acquisition for operation on the CHNY, this locomotive was owned by an industry and used as an industrial switcher. This type of locomotive has a side switching step and ladder configuration located at each of the four corners which are narrower and of less depth than those required by the Safety Appliance Standards (§ 231.30(c)). The railroad states that the construction of this locomotive does not permit it to be retrofitted with side switching steps different than it currently possesses.

The CHNY is a new railroad which acquired 53 miles of track from CSX Transportation, Inc. (CSXT), on June 16, 1989. The railroad is between Greens and Ivalee, Alabama. The locomotive will be operated at a relatively low speed in a generally rural area. A very light volume of traffic has been handled over this section of railroad over the past several years. The primary traffic which has moved on this line over the last three years has been that of Cheney Lime and Cement Company (Cheney Lime). Both CHNY and Cheney Lime are owned by Alan B. Cheney, and both are headquartered in the same facility in Graystone, Alabama.

Celtran, Inc.

Waiver Petition Docket Number SA– 89–9

On October 24, 1989, the Federal Railroad Administration (FRA) received a petition from Celtran, Inc., a subsidiary of the Hoechst Celanese Corporation, requesting authority to modify 39 of their 6200 series aluminum tank cars by application of side ladders located near the center of the car to provide access to loading or unloading fittings on top of the car, obviating the need to mount the car from the ends and utilize the roof running boards. After due consideration, the FRA took no exception to the modification because the requirements of all the Railroad Safety Appliance Standards were met, and safety was not impeded.

Celtran, Inc. now requests a waiver of compliance with a provision of the Railroad Safety Appliance Standards (49 CFR 231.8) for the same 39 cars, which requires top running board design to be less safe than a center-of-car ladder, especially during winter months. When top running boards are present, workmen walk the length of the car carrying tools, test equipment, sample containers, etc. In the absence of top running boards, workmen will be required to do most of their walking at ground level.

Celtran, Inc. contends that with the application of side-mount ladders and an operating platform with safety railings in accordance with the provisions of 49 CFR 231.21, the cars' safety appliance arrangement will not be jeopardized by removal of the top running boards and end ladders. Celtrain, Inc. seeks this waiver so that it may remove the existing top running boards and end ladders at the same time that the side-mount ladders and platform are installed.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number PB–88–2) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Communications received before February 28, 1990, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m. to 5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Issued in Washington, DC on December 14, 1989.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 89–29823 Filed 12–22–89; 8:45 am]

BILLING CODE 4910–06–M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department Circular—Public Debt Series—No. 35–89]

Treasury Notes of December 31, 1991, Series AH–1991

Washington, December 14, 1989.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $10,000,000,000 of United States securities, designated Treasury Notes of December 31, 1991, Series AH–1991 (CUSIP No. 912827 YH 9), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated January 2, 1990, and will accrue interest from that date, payable on a semiannual basis on June 30, 1990, and each subsequent 6 months on December 31 and June 30 through the date that the principal becomes payable. They will mature December 31, 1991, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2–86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239–1500, prior to 1:00 p.m., Eastern Standard Time, Tuesday, December 19, 1989. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, December 18, 1989, and received no later than Tuesday, January 2, 1990.

3.2 The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customer and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted

in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively

Tuesday, January 2, 1990. Payment in full must accompany tenders submitted by all other investors. Payment must be

pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

2.4. The Notes will be issued only in book-entry form in denominations of $1,000, $5,000, $10,000, $100,000, and

submit tenders only for their own account.

3.5. Tenders for their own account will

tender is not accepted in full, or when the price at the average yield is over par.

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in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.750. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Tuesday, January 2, 1990. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the instutiton to which the tender was submitted, which must be received from institutional investors no later than Thursday, December 28, 1989. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 89-29918 Filed 12-20-89; 3:09 pm]

BILLING CODE 4810-40-M

[Department Circular—Public Debt Series—No. 36-89]

Treasury Notes of December 31, 1993, Series R-1993

Washington, December 14, 1989.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of chapter 31 of title 31, United States Code, invites tenders for approximately $8,000,000,000 of United States securities, designated Treasury Notes of December 31, 1993, Series R-1993 (CUSIP No. 912827 YJ 5), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated January 2, 1990, and will accrue interest from that date, payable on a semiannual basis on June 30, 1990, and each subsequent 6 months on December 31 and June 30 through the date that the principal becomes payable. They will mature December 31, 1993, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2-86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sales Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239-1500, prior to 1:00 p.m., Eastern Standard time, Wednesday, December 20, 1989. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, December 19, 1989, and received no later than Tuesday, January 2, 1990.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for reciept of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central bank and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.250. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section § 3.5. must be made or completed on or before Tuesday, January 2, 1990. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the instutiton to which the tender was submitted, which must be received from institutional investors no later than Thursday, December 28, 1989. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, to the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

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6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 89-29919 Filed 12-20-89; 3:09 pm]

BILLING CODE 4810-40-M

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirements Under OMB Review

AGENCY: United States Information Agency.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the Agency has made such a submission. Revisions have been made to the Youth Exchange Guidelines (IAP-18) because of recent policy changes regarding health/accident insurance and issuance of J 1-visas as well as the signing of IA-1285 Certification Regarding Drug-Free Workplace Requirements, Grantees other Than Individuals; IA-1279 Certification Regarding Debarment, Suspension, and other Responsibility Matters Primary Covered Transactions; and IA-1280 Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions. USIA is requesting approval of the revisions and the extension of an information collection program (OMB 3116-0159), which provides a program of selective assistance through limited grant support to private not-for-profit organizations for the purpose of encouraging increase in level and quality of Youth Exchanges between the United States and other countries to strengthen shared understanding of and commitment to basic democratic value. Respondents will be required to respond only one time.

DATE: Comments must be received by January 5, 1990.

Copies: Copies of the Request for Clearance (SF-83), supporting statement, transmittal letter and other documents submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments on the items listed should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USIA, and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Debbie Knox, United States Information Agency, M/ASP, 301 Fourth Street SW., Washington, DC 20547, telephone (202) 485-7503; and OMB review: Mr. Donald Arbuckle, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, telephone (202) 395-7340.

SUPPLEMENTARY INFORMATION: *Title:* "Guidelines for Proposals Submitted to the USIA Youth Exchange Program."

Form Number: IAP-18.

Abstract: This information collection is a program of selective assistance through limited grant support to private not-for-profit organizations. The purpose is to encourage increase in level and quality of Youth Exchange between the United States and other countries to strengthen shared understanding of and commitment to basic democratic value.

Proposed Frequency of Responses: No. of Respondents—100, Recordkeeping Hours—10, Total Annual Burden—1000.

Dated: December 15, 1989.

Ledra Dildy,

Federal Register Liaison.

[FR Doc. 89-29818 Filed 12-22-89; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF VETERANS AFFAIRS

Geriatrics and Gerontology Advisory Committee; Meeting

The Department of Veterans Affairs gives notice under Pub. L. 92-463 that a meeting of the Geriatrics and Gerontology Advisory Committee (GGAC) will be held January 25-26, 1990 at the Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 in the Omar Bradley Conference Room. The purpose of the Geriatrics and Gerontology Advisory Committee is to advise the Secretary of Veterans Affairs and the Chief Medical Director relative to the care and treatment of the aging veterans, and to evaluate the Geriatric Research, Education and Clinical Centers. The meeting will convene at 8:30 a.m. and adjourn at 5 p.m. on January 25 and will reconvene at 9 a.m. on January 26 and adjourn at 11:30 a.m. The meeting is open to the public up to the seating capacity of the room. For those wishing to attend, contact Jacqueline Holmes, Program Assistant, Office of Assistant Chief Medical Director for Geriatrics and Extended Care (phone 202/233-5983) prior to January 19, 1990.

The purpose of this meeting is to discuss activities of the Office of Geriatrics and Extended Care, and possible legislative proposals to broaden the eligibility of aging veterans for continual quality care.

Dated: December 19, 1989.

By direction of the Secretary.

Sylvia Chavez Long,

Committee Management Officer.

[FR Doc. 89-29676 Filed 12-22-89; 8:45 am]

BILLING CODE 8320-01-M

Veterans Health Services and Research Administration Scientific Review and Evaluation Board for Health Services Research and Development; Meetings

The Department of Veterans Affairs, Veterans Health Services Research Administration, gives notice under Public Law 92-463 that an advisory committee meeting of the Scientific Review and Evaluation Board for Health Services Research and Development will be held at the Vista International Hotel, 1400 M Street, NW., Washington, DC, on January 11-12, 1990. The meetings will convene at 8:30 a.m. on January 11 and 12 and adjourn at 4:30 p.m. on January 11 and at noon on January 12, 1990. The purpose of the meetings will be to review research and development applications concerned with the measurement and evaluation of health care systems and with testing new methods of health care delivery and management. Applications are reviewed for scientific and technical merit and recommendations regarding their funding are prepared for the Assistant Chief Medical Director for Research and Development.

The meeting will be open to the public (to the seating capacity of the room) at the start of the January 11th session for approximately one hour to cover administrative matters and to discuss the general status of the program.

The closed portion of the meetings involves: Discussion, examination, reference to, and oral review of staff and consultant critiques of research protocols, and similar documents. During this portion of the meeting, discussion and recommendations will deal with qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action regarding such research projects. As provided by subsection 10(d) of Public Law 92-463, as amended by Public Law 94-409, closing portions of these meetings is in accordance with 5 U.S.C. 552b(c)(6) and (9)(B).

Due to the limited seating capacity of the room, those who plan to attend the open session should contact Mrs. Carolyn Smith, Program Analyst, Health Services Research and Development Service, 810 Vermont Avenue, NW., Washington, DC, 20420, (phone: 202/233-6935) at least 5 days before the meetings.

Dated: December 19, 1989.

By direction of the Secretary.

Sylvia Chavez Long,

Committee Management Officer.

[FR Doc. 89-29677 Filed 12-22-89; 8:45 am]

BILLING CODE 8320-01-M

Advisory Committee on Environmental Hazards; Meeting

The Department of Veterans Affairs gives notice under Public Law 92-463, section 10(a)(2), that a meeting of the Veterans' Advisory Committee on Environmental Hazards will be held at the Department of Veterans Affairs Central Office, 810 Vermont Avenue, NW., Room 119, Washington, DC 20420 on January 30-31, 1990. The Committee will review scientific and medical literature relating to the issue of whether there exists a significant statistical association between exposure to a herbicide containing dioxin and the subsequent development of soft-tissue sarcomas and other cancers.

The meeting will convene at 9:00 a.m. both days in Room 119. This meeting will be open to the public up to the seating capacity of the room. Because this capacity is limited, it will be necessary for those wishing to attend to contact Ms. Sylvia Arrington, Department of Veterans Affairs Central Office (phone 202/233-2115) prior to January 23, 1990.

Members of the public may direct questions or submit prepared statements for review by the Committee in advance of the meeting, in writing only, to Mr. Frederic L. Conway, Deputy Assistant General Counsel, Room 1078, Department of Veterans Affairs Central Office. Submitted material must be received at least five days prior to the meeting. Such members of the public may be asked to clarify submitted material prior to consideration by the Committee.

Dated: December 6, 1989.

By direction of the Secretary.

Sylvia Chavez Long,

Committee Management Officer.

[FR Doc. 89-29838 Filed 12-22-89; 8:45 am]

BILLING CODE 8320-01-M

Privacy Act of 1974; Amended System of Records

Notice is hereby given that the Department of Veterans Affairs (VA) is amending a system of records entitled "Applicants for Employment under Title 38, USC-VA" (02VA135) which is set forth on page 766 of the **Federal Register** publication, "Privacy Act Issuances," 1987 Copilation, Volume V. The system is being amended by revising the paragraphs for System Location; Categories of Individuals Covered by the System; Categories of Records in the System; Authority for Maintenance of the System; Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses; Policies and Practices for Storing, Retrieving, Accessing, Retaining, and Disposing of Records in the System; System Manager(s) and Address; Notification Procedure; Record Access Procedures; and Record Source Categories.

The purpose of this amendment is to allow the VA to maintain drug testing records under Executive Order 12564 for Title 38 applicants and to ensure that these records are maintained in accordance with the Privacy Act. For this reason the following paragraphs are being revised: Categories of Records in the System; Authority for Maintenance of the System; Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses; and Policies and Practices for Storing, Accessing, Retaining, and Disposing of Records in the System. The Office of Personnel Management has made similar changes to its system of records entitled "Recruiting, Examination, and Placement Records" (OPM/GOVT-5). The OPM Governmentwide system, however, does not cover VA Title 38 applicants. Therefore, we are altering by amendment VA's "Applicants for Employment under Title 38, USC-VA" (02VA135) by adding routine use 8 to "Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses." Such records shall be disclosed only to a very limited number of officials within the Agency, generally only to the VA Medical Review Official (MRO), the administrator of the VA Employee Assistance Program, and any supervisory or management official within VA having authority to take a disciplinary or adverse personnel action against the employee. Additionally, changes will amend the system to make it consistent with other routine use disclosures in other personnel systems of records. Minor editorial changes also are being made.

The amended system will provide effective safeguards to protect these highly sensitive records. Employees who are authorized access to the system are limited to only that information in the file which is needed in the performance of their official duties.

Records in this system are maintained to assure that applicants have proper credentials and licensure of certification and to ensure proper and accurate operation of the VA's drug-free workplace program under Executive Order 12564.

A "Report of Altered System" and an advance copy of the revised system notice have been provided to the Chairman of the House Committee on Government Operations, the Chairman of the Senate Committee on Government Affairs, and the Office of Management and Budget (OMB), as required by the provisions of 5 U.S.C. 552a (r), guidelines issued by (50 FR 52730), December 24, 1985, and Pub. L. 100-503.

Interested persons are invited to submit written comments, suggestions, or objections regarding the routine uses in this system of records to the Secretary, Department of Veterans Affairs (271A), 810 Vermont Avenue, NW., Washington, DC 20420. All relevant material received before January 25, 1990, will be considered. All written comments received will be available for public inspection only in Room 132 of the above address only between the hours of 8:00 a.m. and 4:30

p.m., Monday through Friday (except holidays), until.

If no public comment is received

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system include: (1) Records of persons who

matters before the Federal Service Impasses Panel.

17. To disclose information to a State

Delegated Examining Unit these records are maintained in staffed rooms during working hours. During nonworking

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains

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p.m., Monday through Friday (except holidays), until.

If no public comment is received during the 30-day review period allowed for public comment, or unless otherwise published in the Federal Register by the Department of Veterans Affairs, the routine uses in this system are effective January 25, 1990.

Edward J. Derwinski,
Secretary of Veterans Affairs.

Notice of Amendment to System of Records

The following data elements in the system identified as 02VA135, "Applicants for Employment under Title 38, USC–VA," appearing on page 760 of the Federal Register publication, "Privacy Act Issuances," 1987 Compilation, Volume V, are revised as follows:

02VA135

SYSTEM NAME:

Applicant for Employment under Title 38, USC VA.

SYSTEM LOCATION:

VA health care facilities to which the applicant applied (address locations are listed in VA Appendix at the end of this document), except that, for physician, dentist, pharmacist, licensed physical therapist, and occupational therapist applicants, records may also be retained by the VA Delegated Examining Unit, 1201 Broad Rock Road, Richmond, Virginia 23224–0283. For Canteen Management Training Program applicants, records will be retained only at the Veterans Canteen Service (133A1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Records resulting from drug testing may be retained by the VA (e.g., by the VA Medical Review Official) and/or by a contractor laboratory.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for appointments under authority of 38 U.S.C. Chapter 73 are covered by this system. This includes candidates such as physicians, dentists, podiatrists, optometrists, nurses, nurse anesthetists, physician assistants, expanded-function dental auxiliaries, pharmacists, certified respiratory therapy technicians, registered respiratory therapists, licensed physical therapists, occupational therapists, and licensed practical or vocational nurses. Applicants for appointment under 38 U.S.C. Chapter 78 in the Veterans Canteen Service are also covered.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system include: (1) Records of persons who have applied for Federal employment relating to their education and training, licensure, registration or certification by State licensing boards and/or national certifying bodies, including any finding of facts, evidence and any other related documents, relating to a disciplinary action; prior and/or current clinical privileges; employment history, appraisals of past performance; medical records; convictions of offenses against the law; appraisals of potential; honors, awards or fellowships; military service; veteran preference; birthplace; birth date; social security number; and home address. (2) Records resulting from the testing of the applicant for use of illegal drugs under Executive Order 12564. Such records may be retained by the VA (e.g., by the VA Medical Review Official) or by a contractor laboratory. This includes records of negative results, confirmed or unconfirmed positive test results, and lists of who have been tested, who failed to report for testing, and related documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 12564; Urgent Relief for the Homeless Supplemental Appropriations Act of 1987, Pub. L. No. 100–71, Section 503, 101 Stat. 468 (1987); and Title 38, United States Code, Chapter 3, Section 210(c)(1); Chapter 73, Section 4108 and Chapter 75, Section 4202.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Except for Routine Use 6, no other Routine Use for this system of records applies to records included in Item (2) in the Categories of Records in the System section of this notice. Drug test results may not be released under any other routine use.

* * * * *

6. Disclosures may be made to National Archives and Records Administration (NARA) and General Services Administration (GSA) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

* * * * *

8. To disclose the results of a drug test of a Title 38 applicant pursuant to an order of a court of competent jurisdiction where required by the United States Government to defend against any challenge against any adverse personnel action.

9. To disclose relevant information to the Department of Justice and United States Attorneys in defense or prosecution of litigation involving the United States, and to Federal agencies upon their request in connection with review of administrative tort claims filed under the Federal Tort Claims Act, 28 U.S.C. 2672.

10. To disclose information to officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

11. To disclose information to any source when necessary to obtain information relevant to a conflict-of-interest investigation or determination.

12. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

13. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, either when the Government is a party to a judicial proceeding or in order to comply with the issuance of a subpoena. Information is also made available pursuant to a court order directing production of personnel records.

14. To disclose information to officials of the Merit Systems Protection Board, including the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

15. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discrimination practices, examination of Federal affirmative employment programs, compliance with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978.

16. To disclose information to the Federal Labor Relations Authority (including its General Counsel) when requested in connection with investigation and resolution of allegations of unfair labor practices, in connection with the resolution of exceptions to arbitrator awards when a question of material fact is raised and

matters before the Federal Service Impasses Panel.

17. To disclose information to a State or local government entity which has the legal authority to make decisions concerning the issuance, retention or revocation of licenses, certifications or registrations required to practice a health care profession, when requested in writing by an investigator or supervisory official of the licensing entity for the purpose of making a decision concerning the issuance, retention or revocation of the license, certification or registration of a named health care professional.

POLICIES AND PRACTICES FOR ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

* * * * *

RETRIEVABILITY:

Records are indexed by name or by name within geographic location proference. Drug testing records are retrieved by name or social security number, or name or social security number by geographic location preference.

SAFEGUARDS:

Records are stored in locked file cabinets or locked rooms. Strict control measures are enforced to ensure that access to and disclosure from these records are limited to a "need-to-know basis." In VA Central Office and in the Delegated Examining Unit these records are maintained in staffed rooms during working hours. During nonworking hours, there is limited access to the building with visitor control by security personnel. Drug testing records will be maintained in accordance with the Urgent Relief for the Homeless Supplemental Appropriations Act of 1987, Pub. L. No. 100–71, Section 503, 101 Stat. 468 (1987), as well as any Governmentwide guidance concerning the protection of these records. Employee drug testing records will be maintained and used with the highest regard for employee privacy. Contractor laboratories are subject to the same restrictions as VA employees.

RETENTION AND DISPOSAL:

Records are retained in accordance with records retention standards approved by the Archivist of the United States, the National Archives and Records Administration, and published in VA Records Control Schedules. Records arising in connection with employee drug testing under Executive Order 12564 are generally retained for up to 2 years. Records are destroyed by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Personnel and Labor Relations (05), VA Central Office, 810 Vermont Avenue, NW., Washington DC 20420.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains records on them should contact the local facility to which they applied or the Physician and Dentist Placement Service. Individuals submitting requests should furnish identifying information as required by VA for their records to be located and identified: (1) Full name, (2) date of birth, (3) social security number, (4) name and location of VA facility or Physician and Dentist Placement Service where application was submitted, (5) date of application, and (6) signature.

RECORD ACCESS PROCEDURES:

(See Notification Procedures above.)

CONTESTING RECORD PROCEDURES:

(See Notification Procedures above.)

RECORD SOURCE CATEGORIES:

Records in this system are obtained from VA officials and from individuals and organizations regarding the individual's qualifications, credentials and suitability for employment, including prior employers, education providers, state licensing boards and/or national certifying bodies, law enforcement entities, and health care providers. Drug testing records may be obtained from the Medical Review Official.

[FR Doc. 89–29637 Filed 12–22–89; 8:45 am]
BILLING CODE 8320–01–M

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Sunshine Act Meetings

Federal Register
Vol. 54, No. 246
Tuesday, December 26, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:02 p.m. on Tuesday, December 19, 1989, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following matters:

Administrative enforcement proceedings.

Recommendations regarding the liquidation of a depository institution's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47,461—Various Banks, Knoxville Consolidated Office;

Case No. FL-89-0011—Various FSLIC Resolution Fund Receiverships.

Matters relating to the possible closing of certain insured banks.

Matters relating to the Corporation's corporate activities.

Application of Southeast Bank, National Association, Miami, Florida, a national bank whose deposits are insured by the Bank Insurance Fund, for consent to participate in the conversion of deposits from the Savings Association Insurance Fund to the Bank Insurance Fund.

Personnel matter.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550-17th Street, NW., Washington, DC.

Dated: December 20, 1989.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 89-29096 Filed 12-21-89; 12:59 pm]

BILLING CODE 6714-01-M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:24 p.m. on Friday, December 15, 1989, the Board of Directors of the Resolution Trust Corporation met in closed session to consider certain matters relating to (1) the resolution of a thrift institution and (2) internal corporate matters.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred by Director M. Danny Wall, (Director of the Office of Thrift Supervision), and Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2) (c)(8) and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) (c)(8) and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550-17th Street, NW., Washington, DC.

Dated: December 20, 1989.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 89-29041 Filed 12-20-89; 4:47 pm]

BILLING CODE 6714-01-M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:05 p.m. on Tuesday, December 19, 1989, the Board of Directors of the Resolution Trust Corporation met in closed session to consider certain matters relating to (1) the resolution of a thrift institution and (2) internal corporate matters.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred by Director M. Danny Wall, (Director of the Office of Thrift Supervision), and Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(8) and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(8) and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: December 20, 1989.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 89-29042 Filed 12-20-89; 4:47 p.m.]

BILLING CODE 6714-01-M

Corrections

Federal Register
Vol. 54, No. 246
Tuesday, December 26, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in Thailand

Correction

In notice document 89-28821 appearing on page 50797 in the issue of Monday, December 11, 1989, make the following corrections:

In the second column, in the table, the first entry of the table should read "313.....11,712,810 square meters" and the second entry should read "315.....15,375,452 square meters".

BILLING CODE 1505-01-D

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1990; Additions

Correction

In notice document 89-28688 appearing on page 50633 in the issue of Friday, make the following correction:

In the third column, the first and second entries under "sweatpants" should read "8415-00-268-8178" and "8415-00-268-8179" respectively.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

Revised Redelegations of Authorities Concerning Social Security Coverage for Employees of State/Local Governments and Interstate Instrumentalities

Correction

In notice document 89-27682 beginning on page 48815 in the issue of Monday, November 27, 1989, make the following corrections:

1. On page 48816, in the first column, in the second complete paragraph, in the fourth line, "Redelegations" was mispelled.

2. In the same column, in the paragraph designated as "4" in the third line "interstate" was mispelled.

3. On the same page, in the second column, in the paragraph designated as "6" in the second line, insert the word "for" between "time" and "filings" and in the third line "period" should read "periods".

4. On the same page, in the same column,in paragraph (7)(c) "or" should read "of".

5. On the same page, in the same column, in the paragraph designated as "9" in the third line insert "of" after the word "notices". In the eighth line "earning" should read "earnings".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-040-41-5410-10-ZACD; A 21817, A 21818, A 21820, A 21821, A 21822]

Receipt of Conveyance of Mineral Interest Applications in Coffee County, Arizona

Correction

In notice document 89-28016 beginning on page 49364 in the issue of Thursday, November 30, 1989, make the following corrections:

1. On page 49364, in the second column, under ACTION:, in the third line, "A 28120" should read "A 21820".

2. On the same page, in the third column, in the third line from the bottom, "Wayne W. Klump" should read "Wayne D. Klump".

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

Informal Hearing Procedures for Materials Licensing Adjudications

Correction

In rule document 89-4601 beginning on page 8269 in the issue of Tuesday, February 28, 1989, make the following corrections:

§ 2.1213 [Corrected]

1. On page 8278, in the third column, in § 2.1213, in the ninth line, "offer" should read "order".

§ 2.1235 [Corrected]

2. On page 8279, in the third column, in § 2.1235(a), in the last line, insert "to" before "a witness".

3. On the same page, in the same column, in § 2.1235(b), in the second line, "relief" should read "relied".

§ 2.1251 [Corrected]

4. On page 8280, in the first column, in § 2.1251(b), in the fifth line, "fiding" should read "finding".

BILLING CODE 1505-01-D

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Increase in Level of Permissible Imports of Certain Articles From the European Community

Correction

In notice document 89-29149 appearing on page 51277 in the issue of Wednesday, December 13, 1989, make the following correction:

In the second column, in the first entry in the table, in the second column the figure "26,159,450" should read "26,195,450".

BILLING CODE 1505-01-D

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 18334; Amdt. No. 91-211]
RIN 2120-AA13

Revision of General Operating and Flight Rules

Correction

In the issue of Thursday, October 5, 1989, on page 41211 in the second column, a correction to FR Doc. 89-18775 appeared. In the third column amendatory instruction 5 was inaccurately printed and should be corrected as follows: In the third line, "of 5%" should read "of ± 5%".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

31 CFR Part 103

Amendments to the Bank Secrecy Act Regulations Regarding the International Transportation and Receipt of Monetary Instruments

Correction

In rule document 89-15617 beginning on page 28416 in the issue of Thursday, July 6, 1989, make the following correction:

§ 103.11 [Corrected]

On page 28418, in the second column, in § 103.11, insert "* * * * *" in the space between the section heading and the first line of paragraph (a).

BILLING CODE 1505-01-D

Reader Aids

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LIST OF PUBLIC LAWS

Note: This completes the listing of public laws enacted during the first session of the 101st Congress.

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The list will be resumed when bills are enacted into public law during the second session of the 101st Congress, which convenes on January 23, 1990. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamph'et form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202–275–3030).

H.R. 2494/Pub. L. 101–240

International Development and Finance Act of 1989. (Dec. 19, 1989; 103 Stat. 2492; 33 pages) Price: $1.25

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

Title	Price	Revision Date
140–199	10.00	Jan. 1, 1989
200–1199	21.00	Jan. 1, 1989

Title	Price	Revision Date
29 Parts:		
0–99	17.00	July 1, 1989
101	25.00	July 1, 1988
102–200	11.00	July 1, 1989

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

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Title	Price	Revision Date
1, 2 (2 Reserved)	$10.00	Apr. 1, 1989
3 (1988 Compilation and Parts 100 and 101)	21.00	[1] Jan. 1, 1989
4	15.00	Jan. 1, 1989
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Presidential Documents

Title 3—

The President

Executive Order 12807 of December 22, 1989

Extending the National Commission on Superconductivity

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Omnibus Trade and Competitiveness Act of 1988 (P.L. 100-418, 102 Stat. 1107) and section 301 of title 3 of the United States Code, and to give the National Commission on Superconductivity additional time to complete its report, it is hereby ordered that Section 3-401(5) of Executive Order No. 12661 is amended by deleting the date "February 23, 1989," and inserting in lieu thereof the date "March 31, 1990," and that the first sentence of Section 3-401(7) of the same Executive Order is amended to read "The Commission shall disband no later than May 31, 1990."

George Bush

THE WHITE HOUSE,
December 22, 1989.

[FR Doc. 89-30182
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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 959

[Docket No. FV-90-108]

South Texas Onions; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate under Marketing Order 959 for the 1989–90 fiscal period. Authorization of this budget will allow the South Texas Onion Committee to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: August 1, 1989, through July 31, 1990.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–447–2431.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 143 and Marketing Order No. 959 (7 CFR Part 959), regulating the handling of onions grown in South Texas. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 35 handlers and 75 producers of South Texas onion covered under this marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

The budget of expenses for the 1989–90 fiscal year was prepared by the South Texas Onion Committee (committee), the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of onions. They are familiar with the committee's needs and with the costs for goods, services and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee was derived by dividing anticipated expenses by expected shipments of onions. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses.

The committee met on October 31, 1989, and unanimously recommended a 1989–90 budget of $376,986. Last season's budget was $379,675. Major expense items include promotion and research projects which, at a total of $289,066, account for over 70 percent of the budget. Changes in this year's budgeted expenses include increases in committee staff salaries and research and decreases in committee travel and promotion activities.

The committee also unanimously recommended an assessment rate of $0.055 per 50-pound container, the same rate as last year. This rate, when applied to anticipated shipments of 6,075,000 containers, would yield $334,125 in assessment revenue. This amount, when added to $42,841 form the reserve, would be adequate to cover budgeted expenses. Additional reserve funds could be used to meet any deficit in assessment income.

While this action imposes some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

A proposed rule was published in the Federal Register on November 27, 1989 (54 FR 48752). That document contained a proposal to add § 959.230 to authorize expenses and establish an assessment rate for the committee. That rule provided that interested persons could file comments through December 7, 1989. No comments were received.

It is found that the specified expenses are reasonable and likely to be incurred and that such expenses and the specified assessment rate to cover such expenses will tend to effectuate the declared policy of the Act.

This action should be expedited because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1989–90 fiscal period began in August, and the marketing order requires that the rate of assessment apply to all assessable onions handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the committee at the public meeting. Therefore, it is also found that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register (5 U.S.C. 553).

List of Subjects in 7 CFR Part 959

Marketing agreements and orders, onions, South Texas.

For the reasons set forth in the preamble, 7 CFR part 959 is amended as

DATES: Effective: December 27, 1989. *Comments:* Comments must be

The FDIC is implementing section 914 by means of an interim rule, and insured

that it has been designated as in "troubled condition" for purposes of this

executives officers or directors which occur after a change in the control of a

change in control less than two years before the effective date, is covered by

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For the reasons set forth in the preamble, 7 CFR part 959 is amended as follows:

PART 959—ONIONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR part 959 continues to read as follows:

Authority: Secs. 1–9, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 959.230 is added to read as follows:

Note: This section prescribes the annual expenses and assessment rate and will not be published in the Code of Federal Regulations.

§ 959.230 Expenses and assessment rate.

Expenses of $378,986 by the South Texas Onion Committee are authorized and an assessment rate of $0.055 per 50-pound container or equivalent quantity of regulated onions is established for the fiscal period ending July 31, 1990. Unexpended funds may be carried over as a reserve.

Dated: December 20, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–29995 Filed 12–26–89; 8:45 am]

BILLING CODE 3410–02–M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 303

RIN 3064–AB02

Applications, Requests, Submittals, Delegations of Authority, and Notices of Acquisition of Control

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule implements section 914 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") by adding a new section, § 303.14, to 12 CFR part 303. Section 303.14 requires insured nonmember banks which fall within specified categories to file a notice with the FDIC prior to adding or replacing a member of the board of directors or employing or changing the responsibilities of an individual to a position as a senior executive officer. The FDIC may disapprove any proposed board member or senior executive officer whose service is not considered to be in the best interests of the depositors of the insured nonmember bank or the public.

DATES: Effective: December 27, 1989.

Comments: Comments must be received on or before February 26, 1990.

ADDRESSES: Send comments to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand delivered to Room 6097 on business days between 8:30 a.m. and 5 p.m. Comments may also be inspected in Room 6097 between 8:30 a.m. and 5 p.m. on business days. (FAX number: (202) 347–2773 or 2775.)

FOR FURTHER INFORMATION CONTACT: Karl R. Krichbaum, Chief, Special Situations and Applications Section-Review Section II, Division of Supervision, (202) 898–6758; Roger A. Hood, Assistant General Counsel Legal Division (202) 898–3681; Nancy L. Alper, Senior Attorney, Legal Division (202) 898–3720, FDIC, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Discussion

Background

On August 9, 1989 President Bush signed FIRREA, Public Law No. 101–73, 103 Stat. 183 (1989), into law. FIRREA amended the Federal Deposit Insurance Act ("FDI Act") in a number of ways, among which was the addition of a new section 32 to the FDI Act by section 914 of FIRREA, Public Law No. 101–73, sec. 914, Stat. 183, 484–485 (1989) (to be codified at 12 U.S.C. 1831i). The FDIC is amending part 303 of its regulations ("Applications, Requests, Submittals, Delegations of Authority, and Notices of Acquisition of Control") by adding a new § 303.14 to establish notice and application requirements which would implement the provisions described above.

Section 914 requires specified categories of insured nonmember banks to furnish the FDIC with at least 30 days notice before adding any individual to the board of directors or employing any individual as a senior executive officer. An insured nonmember bank is covered by the notice requirement if the bank: (1) Has been chartered less than two years, (2) has undergone a change in control within the preceding two years, or (3) is not in compliance with the minimum capital requirements applicable to it or is otherwise in a "troubled condition," as determined on the basis of the bank's most recent report of condition or report of examination or inspection. Section 914 also prohibits the bank from adding the individual to the board, or employing the individual as a senior executive officer, if the FDIC issues a notice of disapproval.

The FDIC is implementing section 914 by means of an interim rule, and insured nonmember banks are expected to comply beginning on the date of the rule's publication in the **Federal Register**. Comment is requested for 60 days after publication, however; and, changes, as warranted, will be made in the interim rule; and a final rule will then be adopted.

The FDIC plans to afford the parties involved an opportunity to present views in those instances in which the proposed addition or change is disapproved. Those procedures are being published in the **Federal Register** simultaneously with this rule and will be contained in 12 CFR part 308, subpart L.

Issues

Comment is invited on any of the issues described below, as well as on any other issues related to the regulation:

1. *Definition of senior executive officer.* The term "senior executive officer" is defined to include any individual who exercises significant influence over, or participates in, major policymaking decisions of an insured nonmember bank, without regard to title, salary, or compensation. Certain positions, listed in generic form, are automatically covered. The term "senior executive officer" also includes employees of an entity, such as a consulting firm, hired to perform the functions of positions covered by the regulation.

2. *Definition of troubled condition.* The term "troubled condition" is defined to include all banks assigned a composite rating by the FDIC of 4 or 5 under the Uniform Financial Institutions Rating System. The term also covers banks subject to either a cease and desist order or proceeding involving either the FDIC or the appropriate state banking authority, a capital directive issued by either the appropriate state banking authority or the FDIC, or a proceeding for termination or suspension of deposit insurance initiated by the FDIC (that is, voluntary terminations are not included). Instead of including all insured nonmember banks subject to a written agreement, the FDIC has decided to limit the regulation's coverage to banks under a written agreement issued by the FDIC or the appropriate State banking authority that requires action to improve or maintain the bank's safety and soundness.

The term "troubled condition" also includes a bank that is informed in writing, based on a visitation, examination, or a report of condition

that it has been designated as in "troubled condition" for purposes of this regulation. A memorandum of understanding based on safety and soundness concerns will be considered to fall within this provision.

3. *Prior Notice Requirement.* There are three categories of situations in which insured nonmember banks must file a notice of intent to add a director or employ a senior executive officer. The first category exists when a bank has been chartered for less than two years. The second category exists when a bank or any of its parents has, within the preceding two years, undergone a change in control requiring a notice to be filed under section 7(j) of the FDI Act, 12 U.S.C. 1817(j), or under the FDIC's implementing regulation. (This statutory provision is commonly known as the Change in Bank Control Act; although the provision now covers "insured depository institutions" and not just "insured banks," the title of the provision was not formally changed by FIRREA.) The second category also covers the situation when any of the bank's parents has undergone a transaction subject to section 3 of the Banking Holding Company Act or section 10 of the Home Owners' Loan Act, or to the regulations implementing those statutes. The third category exists when a bank is not in compliance with applicable minimum capital requirements, imposed either by 12 CFR part 325 or other regulatory action of the FDIC or the appropriate state banking authority, or is otherwise in a "troubled condition," as discussed above.

Except for the second condition, the conditions are self-explanatory. Paragraph (a)(2) of section 914 refers to a "change in control" in the generic sense and is not confined to those changes of control subject to the section 7(j) of the FDI Act. The FDIC believes that the use of the term in the generic sense indicates that Congress intended that changes other than those under section 7(j) of the FDI Act should be covered. Support for this position is founded in the fact that, at paragraph (d)(1) of section 214, information to be submitted is specifically that required by section 7(j)(6) of the FDI Act. It is reasonable that Congress would have, correspondingly, referred to that statute here if it had so intended. Further, it is logical that the primary federal supervisor of the bank should be informed if there are changes in the control of a parent which elicit corresponding management changes in the bank which the Federal supervisor regulates. Accordingly, the FDIC has elected to cover changes in senior executives officers or directors which occur after a change in the control of a parent when those changes are pursuant to either section 7(j) of the FDI Act, section 3 of the Bank Holding Company Act, or section 10 of the Home Owners' Loan Act (the Savings and Loan Holding Company Act). The term "parent" of course covers any parent at the time of the change in the insured nonmember bank, whether or not the parent was technically the parent at the time of the change in control. For instance, if a holding company is formed or purchased, and an insured nonmember bank becomes a subsidiary, changes in the insured nonmember bank are covered for the two-year period after the parent's change in control.

An additional issue is whether section 914's notice requirement covering the "employment of any individual as a senior executive officer" includes promotions and lateral transfers to that position. The FDIC believes that it does, and therefore the rule requires a notice whenever there is a "change in responsibilities" of any individual resulting in his or her assumption of a senior executive officer position. With respect to section 914's coverage of the "proposed addition of any individual to the board of directors," the rule covers not only increases in board membership, but also replacements of board members and the filling of vacancies on the board.

The prior notice requirement can be waived upon petition to the appropriate regional director, if delay could harm the bank or the public interest. The regulation notes the specific circumstance in which directors are elected at a shareholders' meeting. Even though prior notice is waived, the information will have to be submitted within 48 hours of the waiver. Thus, all parties who have any reason to believe that a change or addition covered by the statute or the regulation is forthcoming should assemble the information prior to the addition or change.

Since the filing required is by the bank, but the information relates to the individual, the individual must certify to the validity of the information; the individual has the option, with the concurrence of the bank, of forwarding this data to the FDIC under separate cover.

4. *Effective date.* This rule is effective on the day it is published in the **Federal Register.** Thus, every bank chartered or subject to a change in control after the effective date of this rule must comply with the rule's notice requirement for a period of two years. Additionally, a bank that is less than two years old on the effective date, or that underwent a change in control less than two years before the effective date, is covered by the notice requirement until the two year period after that event has elapsed. For example, a bank chartered in March 1989 would remain covered until March 1991, and therefore a notice would have to be filed for any addition to the board or any employment of a senior executive officer effected prior to March 1991. Similarly, a bank that underwent a change in control in March 1989 would be covered by the rule as a result of the change in control until March 1991.

5. *Miscellaneous.* The regulation has been drafted so that all changes in senior executive officers in state-licensed insured branches or foreign banks are covered, but changes in either senior executive officers or board members in the foreign bank parent are not. Although section 914 does not specify the exclusion of these changes in the foreign bank parent, the FDIC believes that the exclusion is reasonable. Comment on this point is specifically invited.

The rule does not cover "advisory directors." The definition for this term is patterned after the one in Federal Reserve Regulation O, 12 CFR 215.2(c).

Adoption Without Notice and Comment and Reason for Immediate Effective Date

The FDIC had determined that there is good cause for adopting this rule immediately upon publication in the **Federal Register** without prior notice and comment or a delayed effective date. Waiting to adopt a regulation until after notice and comment is contrary to the public interest. Section 914 requires the FDIC to review the competence experience, character, and integrity of an individual proposed for a position as a director or senior executive officer of certain insured nonmember banks. This requirement is intended to enhance the safety and soundness of the banking system. For this reason, Congress decided to make the requirement effective immediately upon the signing of FIRREA on August 9, 1989. Without an immediately effective rule, the FDIC cannot perform its statutorily-mandated responsibilities thus creating a risk to the safety and soundness of the banking system. Any increased risk to the banking system is contrary to the public interest.

Regulatory Flexibility Analysis

Because no notice of proposed rulemaking is required under section 553 of the Administrative Procedure Act or any other law, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply. In

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addition, pursuant to the FDIC's statement of policy on the drafting of regulations, it has been determined that a cost-benefit analysis, including a small bank impact statement, is not required.

List of Subjects in 12 CFR Part 303

Administrative practice and procedure, Authority delegations (Government agencies) Bank deposit insurance, Banks, banking, Insured depository institutions, Savings associations.

In consideration of the foregoing, the FDIC hereby amends part 303 of title 12 of the Code of Federal Regulations to add new § 303.14 as follows:

PART 303—APPLICATIONS, REQUESTS, SUBMITTALS, DELEGATIONS OF AUTHORITY, AND NOTICES OF ACQUISITION OF CONTROL

1. The authority citation for part 303 is revised to read as follows:

Authority: 12 U.S.C. 378, 1813, 1815, 1816, 1817(j), 1818, 1819 ["Seventh" and "Tenth"], 1828, 1829; Pub. L. No. 101–73, sec. 914, 103 Stat. 183, 484–485 (1989) (12 U.S.C. 1831i); 15 U.S.C. 1607.

2. Section 303.13 is reserved as follows:

§ 303.13 [Reserved]

3. Section 303.14 is added to read as follows:

§ 303.14 Change in senior executive officer or board of directors.

(a) *Definitions.* For the purposes of this section:

(1) The term "individual" means any natural person, as well as any other entity and/or its employees substituted for such natural person.

(2) The term "insured nonmember bank" means any bank, including any foreign bank having an insured branch the deposits of which are insured in accordance with the provisions of the Federal Deposit Insurance Act, which is not a member of the Federal Reserve System. The term does not include any institution chartered by the Comptroller of the Currency, any branch licensed by the Comptroller of the Currency, any District bank, or any federal savings bank.

(3) The term "senior executive officer" means any individual who exercises significant influence over, or participates in, major policymaking decisions of an insured nonmember bank, without regard to title, salary, or compensation. The term includes, but is not limited to, the following positions: president, chief executive officer, chief managing official (in an insured state branch of a foreign bank), chief operating officer, chief financial officer, chief lending officer, or chief investment officer. The term also includes employees of entities retained by an insured nonmember bank to perform such functions in the insured nonmember bank, when such firm is hired in lieu of directly hiring the individuals.

(4) The term "troubled condition" means any insured nonmember bank that:

(i) Has been assigned a composite rating by the FDIC of 4 or 5 under the Uniform Financial Institutions Rating System, or, in the case of an insured state-licensed branch of a foreign bank ("State branch"), an equivalent rating;

(ii) Is subject to a proceeding initiated by the FDIC for termination or suspension of deposit insurance;

(iii) Is subject to a written agreement which requires action to improve or maintain the safety and soundness of the institution and which is issued by either the FDIC or by the appropriate state banking authority, a cease and desist order issued by either the FDIC or the appropriate state banking authority, a cease and desist order or proceeding initiated by either the FDIC or the appropriate state banking authority, or a capital directive issued by either the FDIC or the appropriate state banking authority; or

(iv) Is informed in writing by the regional director (Division of Supervision) of the region in which the institution is located ("appropriate regional director") or his or her designee, based on a visitation, examination, or report of condition, that it has been designated a "troubled institution" for the purposes of § 303.14.

(b) *Prior Notice Requirement.* An insured nonmember bank shall give the FDIC written notice at least 30 days prior to the effective date of any addition or replacement of a member of the board of directors (or a member of the board of trustees in an insured nonmember bank held in a mutual form of ownership) or the employment or change in responsibilities of any individual to a position as a senior executive officer if:

(1) The bank has been chartered or the insured state branch has been licensed less than two years;

(2) Within the two years preceding the proposed addition or employment:

(i) The insured nonmember bank or any of its parents has undergone a change in control which required a notice under section 7(j) of the Federal Deposit Insurance Act or regulations issued pursuant to that statute; or

(ii) The insured nonmember bank has undergone a transaction subject to section 3 of the Bank Holding Company Act or section 10 of the Home Owners Loan Act or regulations issued pursuant to either of those statutes;

(3) The insured nonmember bank is not in compliance with the minimum capital requirements applicable to it and which are imposed by 12 CFR part 325 or by other regulatory action of the FDIC or the appropriate state banking authority; or

(4) The insured nonmember bank is otherwise in a troubled condition.

In the case of the addition of a member of the board of directors or a change in senior executive officer in a foreign bank having an insured State branch, the notice requirement shall not apply to such additions and changes in the foreign bank parent, but only to changes in senior executive officers in the State branch. The notice requirement also does not apply in the case of an advisory director who is not elected by the shareholders of the bank or any of its parents, who is not authorized to vote on matters before the board of directors, and who provides solely general policy advice to the board of directors.

(c) *Procedures for notice of proposed change in Director or Senior Executive Officer—(1) Filing and acceptance.* Notices shall be filed with the appropriate regional director and shall contain information pertaining to the competence, experience, character, or integrity of the individual with respect to whom the notice is submitted, as prescribed in the designated FDIC form, subject to the authority of the regional director or his or her designee to require additional information. Each individual on whose behalf the notice is filed must attest to the validity of the information filed which pertains to that individual. At the option of the individual, the information may be forwarded to the regional director by the individual; however, in such cases, the insured nonmember bank must file a notice to that effect. The 30-day notice period will begin to run on the date all required information is received by the appropriate regional director. The bank submitting the notice shall be notified of the date on which all such required information is received and the notice is accepted for processing.

(2) *Waiver of prior notice requirement—(i) Procedure for obtaining.* Parties may petition the appropriate regional director for a waiver of the prior notice required under this section. Waiver may be granted if it is found that delay could harm the bank or the public interest. Any waiver shall not affect the authority of the FDIC to issue a notice of disapproval within 30 days of the waiver.

(ii) *Election of directors.* In the case of the election of a new member of the board of directors at a meeting of the shareholders of an insured nonmember bank, such waiver is hereby granted, but a completed notice must be filed with the appropriate regional director within 48 hours of the election.

(3) *Notice of intent not to disapprove.* A proposed director or senior executive officer may begin service before the expiration of the 30-day period if the FDIC notifies the bank and the individual in writing of the FDIC's intention not to disapprove the proposed addition or employment.

(4) *Commencement of service.* A proposed senior executive officer or director may begin service upon the expiration of the 30-day period following acceptance of a complete notice, unless the FDIC issues a notice of disapproval before the end of the 30-day period.

(d) *Notice of disapproval.* The FDIC may disapprove the individual's serving as a director or senior executive officer if it finds that the competence, experience, character, or integrity of the individual with respect to whom a notice under this section is submitted indicates that it would not be in the best interests of the depositors of the bank or in the best interests of the public to permit this individual to be employed by, or associated with, the bank. The notice of disapproval will advise the parties of their rights of appeal.

(e) *Delegations.* The authority to issue notices of disapproval or notices of intent not to disapprove under this section; to grant waivers of the prior notice requirement; to determine the informational adequacy of a notice; to designate an insured nonmember bank as a "troubled institution"; and to determine when the 30-day period begins to run is delegated to the Director of the Division of Supervision, and, where confirmed in writing by the Director, to an Associate Director of the Division of Supervision or the regional director (Division of Supervision) or deputy regional director (Division of Supervision).

By Order of the Board of Directors.

Dated at Washington, DC, this 5th day of December, 1989.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 89–29534 Filed 12–26–89; 8:45 am]

BILLING CODE 6714–01–M

12 CFR Part 308

RIN 3064–AI302

Rules of Practice and Procedure

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Interim rule with request for comments.

SUMMARY: The Federal Deposit Insurance Corporation ("FDIC") is publishing an interim rule with a request for comments to add Subpart L of 12 CFR part 308. This Subpart constitutes an amendment to 12 CFR part 308, Rules of Practice and Procedures, which govern the conduct of administrative proceedings before the FDIC. Subpart L was created in order to set forth the rights that an individual or a state nonmember bank may exercise and procedures which must be followed in responding to a Notice of Disapproval issued by the FDIC pursuant to section 914 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), Pub. L. No. 101–73, 103 Stat. 183 (1989). The FDIC may issue a Notice of Disapproval in response to a Notice filed by an insured state nonmember bank, pursuant to section 914 of FIRREA, notifying the FDIC of its intent to add or replace a member of the board of directors of a state nonmember bank, or employ or change the responsibilities of an individual to a position of senior executive officer of such a bank. The purpose of Subpart L of the FDIC's Rules of Practice and Procedures, 12 CFR part 308, is to provide for the efficient and just handling of Notices of Disapproval which must be filed pursuant to section 914 of FIRREA.

DATES: *Effective:* December 27, 1989.

Comments: Comments must be received on or before February 26, 1990.

ADDRESSES: Comments should be sent to Office of the Executive Secretary, 6th Floor, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429; Attention: Robert Feldman, Deputy Executive Secretary. Comments may be hand delivered to room 6108 on business days between 8:30 a.m. and 5 p.m. Comments will be available for inspection and photocopying at that address between 8:30 a.m. and 5 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Nancy L. Alper, Senior Attorney, Compliance and Enforcement Section, Legal Division, 550 17th Street, NW., Washington, DC 20429, telephone 202/898–3720.

SUPPLEMENTARY INFORMATION: This notice of the interim rule amends 12 CFR part 308, Rules of Practice and Procedures ("part 308"), which governs the FDIC's administrative proceedings, by adding a new subpart, Subpart L. Subpart L provides rules and procedures for notices filed pursuant to section 914 of FIRREA. The FDIC is implementing section 914 by means of an interim rule, and insured nonmember banks are expected to comply beginning on the date of the rule's publication in the **Federal Register**. Comment is requested for 60 days after publication, however, and, changes, as warranted, will be made in the interim rule and a final rule will then be adopted.

I. Discussion

On August 9, 1989 President Bush signed into law the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA"), Public Law No. 101–73, 103 Stat. 183 (1989). FIRREA amended the Federal Deposit Insurance Act ("FDI Act") in a number of ways, one of which was the addition of a new section 32 to the FDI Act, added pursuant to section 914 of FIRREA, Public Law No. 101–73, sec. 914, 103 Stat. 183, 484–485 (1989) (to be codified at 12 U.S.C. 1831i). The FDIC is amending part 308 of its Rules of Practice and Procedures, 12 CFR part 308, by including Subpart L which sets forth the rights that an individual or a state nonmember bank may exercise and procedures which must be followed when the FDIC issues a Notice of Disapproval pursuant to section 914 of FIRREA.

Section 914 requires specified categories of insured nonmember banks to furnish the FDIC with at least 30 days notice before adding any individual to the board of directors or employing any individual as a senior executive officer. An insured nonmember bank is covered by the notice requirement if the bank: (1) Has been chartered less than two years, (2) has undergone a change in control within the preceding two years, or (3) is not in compliance with the minimum capital requirements applicable to it or is otherwise in a "troubled condition," as determined on the basis of the bank's most recent report of condition or report of examination or inspection. Section 914 also prohibits the bank from adding the individual to the board, or employing the individual as a senior executive officer, if the FDIC issues a notice of disapproval.

II. Section-by-Section Summary and Discussion

Section 308.94 sets forth the scope of subpart L. It sets forth under what conditions an institution must file a Notice of Change in Senior Executive

Officer or Director ["Notice of Change in

relevant and material documents and

Insured depository institution, Notice of

bank pursuant to section 32 of the Act,

within fifteen days after the receipt of

other place subject to the jurisdiction of

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Officer or Director ("Notice of Change in Position") and states what change in position would have to occur to trigger a section 32 filing.

Section 308.95 of subpart L sets forth guidelines for when the Board of Directors of the FDIC ("Board") or its designee may issue a Notice of Disapproval of an individual on whose behalf an insured state nonmember bank ("state bank") has filed a Notice of Change in Position pursuant to section 32. Those criteria include, *inter alia*, that the individual's competence, experience, character, or integrity indicate that it would not be in the best interests of the depositors of the state bank to permit the individual to be employed by or associated with the state bank or that it would not be in the best interests of the public to permit the individual to be employed by such a bank.

Section 308.96b of subpart L provides that the Notice of Disapproval must be served upon the state bank and the individual who is a candidate for director or senior executive officer and that the Notice of Disapproval must state the relevant considerations for the disapproval. The Notice of Disapproval must also set forth that the individual or the bank may file an appeal from the Notice of Disapproval within fifteen days from the receipt of the Notice of Disapproval and must specify what additional information must be provided by the petitioner. The appeal must be writing and filed in the appropriate Regional Office. The appeal must set forth the reasons why the FDIC should review its decision and other evidence that was not presented at the time of filing the Notice of Change in Position.

A determination on an appeal must be rendered within thirty days from receipt of the appeal. Where an appeal is denied, § 308.97(c) requires that the individual be notified of the relevant considerations for the denial and be advised that the applicant may request an oral hearing within fifteen days from the receipt of the denial. Should the petitioner not receive a decision denying the appeal within thirty days, then he may file a request for a hearing within fifteen days from the date of expiration of the thirty-day period. The request for a hearing pursuant to § 308.97(a) must set forth the relief desired and the grounds for requesting that relief.

Section 308.98 of subpart L accords an individual the opportunity for an oral hearing. The hearing is conceived as an informal proceeding where, under § 308.98(b)(5), a presiding officer determines whether to allow the presentation of witnesses. Pursuant to § 308.98(b)(4) no discovery is permitted; however, an applicant may introduce relevant and material documents and argument is made on the record. The presiding officer is authorized to take or cause to be taken depositions of unavailable witnesses pursuant to § 308.98(b)(6).

At the request of the applicant or FDIC enforcement staff, under § 308.98(b)(7) the record may remain open for an additional five days following the hearing for additional submissions. Once the record has closed, the presiding officer must make his or her recommendations pursuant to § 308.98(b)(8) to the Board or its designee within fifteen days. The Board of Directors or its designee will issue a decision and order within forty-five days.

III. Regulatory Factors

A. Adoption Without Notice and Comment and Reason for Immediate Effective Date

The FDIC has determined that there is good cause for adopting this rule immediately upon publication in the **Federal Register** without prior notice and comment or a delayed effective date. Waiting to adopt a regulation until after notice and comment is contrary to the public interest. Section 914 of FIRREA requires the FDIC to review the competence, experience, character, and integrity of an individual proposed for a position as a director or senior executive officer of certain insured state nonmember banks. This requirement is intended to enhance the safety and soundness of the banking system. For this reason, Congress decided to make the requirement effective immediately upon the signing of FIRREA on August 9, 1989. Without an immediately effective rule, the FDIC cannot perform its statutorily-mandated responsibilities, thus creating a risk to the safety and soundness of the banking system. Any increased risk to the banking system is contrary to the public interest.

B. Regulatory Flexibility Analysis

Because no notice of proposed rulemaking is required under section 553 of the Administrative Procedure Act or any other law, the Regulatory Flexibility Act (5 U.S.C. 601–612), does not apply. In addition, pursuant to the FDIC's statement of policy on drafting regulations, it has been determined that a cost-benefit analysis, including a small bank impact statement, is not required.

List of Subjects in 12 CFR Part 308

Administrative practice and procedure, Banks, Banking, Bank deposit insurance, Authority delegations (Government agencies), Director, Insured depository institution, Notice of disapproval, Senior executive officer, Savings associations, Troubled condition.

For the reasons set out in the preamble, part 308 of title 12 of the Code of Federal Regulations is amended as follows:

PART 308—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 308 is revised to read as follows:

Authority: 12 U.S.C. 1819, 1972; Pub. L. 101–73, sec. 914, 103 Stat. 183, 484–485 (1989) (12 U.S.C. 1831i); 15 U.S.C. 78w; 5 U.S.C. 504.

2. A new subpart L, consisting of §§ 308.94 through 308.98, is added to read as follows:

Subpart L—Procedures and Standards Applicable to a Notice of Change in Senior Executive Officer or Director Pursuant to Section 32 of the Act

Sec.

308.94 Scope.
308.95 Grounds for disapproval of notice.
308.96 Procedures where notice of disapproval issued pursuant to § 308.14.
308.97 Decision on appeal.
308.98 Hearing.

Subpart L—Procedures and Standards Applicable to a Notice of Change in Senior Executive Officer or Director Pursuant to Section 32 of the Act

§ 308.94 Scope.

The rules and procedures set forth in this subpart shall apply to the notice filed by a state nonmember bank pursuant to section 32 of the Act, 12 U.S.C. 1831i, for the consent of the FDIC to add to or replace an individual on the board of directors, or to employ any individual as a senior executive officer or change the responsibilities of any individual to a position of senior executive officer where the bank:

(a) Has been chartered for less than two years or the insured state branch has been licensed for less than two years;

(b) Has undergone a change in control within the preceding two years; or

(c) Is not in compliance with the minimum capital requirement applicable to it or is otherwise in a troubled condition as determined by the FDIC on the basis of such institution's most recent report of condition or report of examination or inspection.

§ 308.95 Grounds for disapproval of notice.

The Board or its designee may issue a notice of disapproval with respect to a notice submitted by a state nonmember bank pursuant to section 32 of the Act, 12 U.S.C. 1831i, where:

(a) The competence, experience, character, or integrity of the individual with respect to whom such notice is submitted indicates that it would not be in the best interests of the depositors of the state nonmember bank to permit the individual to be employed by or associated with such bank; or

(b) The competence, experience, character, or integrity of the individual with respect to whom such notice is submitted indicates that it would not be in the best interests of the public to permit the individual to be employed by, or associated with, the state nonmember bank.

§ 308.96 Procedures where notice of disapproval issued pursuant to § 303.14.

(a) The Notice of Disapproval shall be served upon the insured state nonmember bank and the candidate for director or senior executive officer. The Notice of Disapproval shall:

(1) Summarize or cite the relevant considerations specified in § 308.95;

(2) Shall inform the individual and the bank that an appeal of the disapproval may be filed within fifteen days of receipt of the Notice of Disapproval; and

(3) Shall specify what additional information, if any, must be contained in the appeal.

(b) The appeal must be filed at the appropriate Regional Office.

(c) The appeal must be in writing and should:

(1) Specify the reasons why the FDIC should review its disapproval; and

(2) Set forth relevant, substantive and material documents that for good cause were not previously set forth in the Notice required to be filed pursuant to section 32 of the Act.

§ 308.97 Decision on appeal.

(a) Within thirty days of receipt of the appeal, the Director, and where confirmed in writing by the Director, an associate director, shall notify the bank and or individual filing the appeal (hereafter "petitioner") of the FDIC's decision on appeal.

(b) If the decision is to approve the notice, the bank and the individual involved shall be so notified.

(c) A denial of the appeal pursuant to section 32 of the Act shall:

(1) Inform the petitioner that a written request for a hearing, stating the relief desired and the grounds therefor, may be filed with the Executive Secretary within fifteen days after the receipt of the denial; and

(2) Summarize or cite the relevant considerations specified in § 308.95.

(d) If a decision is not rendered within thirty days, the petitioner may file a request for a hearing within fifteen days from the date of expiration.

§ 308.98 Hearing.

(a) *Hearing dates.* The Executive Secretary shall order a hearing to be commenced within thirty days after receipt of a request for a hearing filed pursuant to § 308.97. Upon request of the petitioner or the FDIC, the presiding officer or the Executive Secretary may order a later hearing date.

(b) *Hearing procedure.* (1) The hearing shall be held in Washington, DC or at another designated place, before a presiding officer designated by the Executive Secretary.

(2) The provisions of §§ 308.08, 308.10, 308.14 and 308.18 of subpart B of this part shall apply to hearings held pursuant to this section, but except as expressly provided in this subpart L, the balance of subpart B of this part shall not apply to such hearings.

(3) The petitioner may appear at the hearing and shall have the right to introduce relevant and material documents and make an oral presentation. Members of the FDIC enforcement staff may attend the hearing and participate as a party.

(4) There shall be no discovery in proceedings under this subpart L.

(5) At the discretion of the presiding officer, witnesses may be presented within specified time limits, provided that a list of witnesses is furnished to the presiding officer and to all other parties prior to the hearing. Witnesses shall be sworn, unless otherwise directed by the presiding officer. The presiding officer may ask questions of any witness. Each party shall have the opportunity to cross-examine any witness presented by an opposing party. The transcript of the proceedings shall be furnished, upon request and payment of the cost thereof, to the petitioner afforded the hearing.

(6) In the course of or in connection with any hearing under this subsection, the presiding officer shall have the power to administer oaths and affirmations, to take or cause to be taken depositions of unavailable witnesses, and to issue, revoke, quash, or modify subpoenas and subpoenas duces tecum. Where the presentation of witnesses is permitted, the presiding officer may require the attendance of witnesses from any state, territory, or other place subject to the jurisdiction of the United States at any location where the proceeding is being conducted. Witness fees shall be paid in accordance with § 308.16 of subpart B of this part.

(7) Upon the request of the applicant afforded the hearing, or the members of the FDIC enforcement staff, the record shall remain open for five business days following the hearing for the parties to make additional submissions to the record.

(8) The presiding officer shall make recommendations to the Board or its designee, where possible, within fifteen days after the last day for the parties to submit additions to the record.

(9) The presiding officer shall forward his or her recommendation to the Executive Secretary who shall promptly certify the entire record, including the recommendation to the Board or its designee. The Executive Secretary's certification shall close the record.

(c) *Written submissions in lieu of hearing.* The petitioner may in writing waive a hearing and elect to have the matter determined on the basis of written submissions.

(d) *Failure to request or appear at hearing.* Failure to request a hearing shall constitute a waiver of the opportunity for a hearing. Failure to appear at a hearing in person or through an authorized representative shall constitute a waiver of hearing. If a hearing is waived, the order shall be final and unappealable, and shall remain in full force and effect.

(e) *Decision by Board or its designee.* Within forty-five days following the Executive Secretary's certification of the record to the Board or its designee, the Board or its designee shall notify the affected individual whether the denial of the notice will be continued, terminated, or otherwise modified. The notification shall state the basis for any decision of the Board or its designee that is adverse to the petitioner. The Board or its designee shall promptly rescind or modify the denial where the decision is favorable to the petitioner.

By order of the Board of Directors.

Dated at Washington, DC, this 5th day of December, 1989.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 89-29535 Filed 12-26-89; 8:45 am]
BILLING CODE 6714-01-M

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-141-AD; Amdt. 39-6432]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, which currently requires external and internal inspections of the skin at fuselage lap joints and stringer 17 to detect cracks, corrosion, and delamination, and repair, if necessary. This amendment increases the applicability to include additional airplanes, expands the definition of terminating action for one group of airplanes, and revises the terminating action requirements for the skin along stringer 17. This amendment is prompted by the discovery that the improved tearstrap hot bonding process occurred at a later airplane line number than previously determined. Cracks, corrosion, and/or delamination, if not corrected, could result in rapid decompression of the airplane.

EFFECTIVE DATE: January 31, 1990.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Steven C. Fox, Airframe Branch, ANM-120S; telephone (206) 431-1923. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by revising AD 88-22-11, Amendment 39-6059 (53 FR 44156; November 1, 1988), applicable to Boeing Model 737 series airplanes, to increase the applicability to include additional airplanes, expand the definition of terminating action for one group of airplanes, and revise the terminating action requirements for the skin along stringer 17, was published in the Federal Register on August 17, 1989 (54 FR 33938).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The manufacturer commented that the requirements in paragraphs C.3.b.1. and 2., concerning the replacement of blind fasteners with protruding head fasteners, should be clarified to indicate that such fasteners at Stringer 17 are also affected. This would make this requirement consistent with the service bulletin and the rest of the AD. The FAA concurs and this point in the final rule has been clarified accordingly.

The manufacturer also pointed out a typographical error in paragraph H.1.b. where the area for inspection was defined as "1 bay above and 2 bays below." The final rule has been changed to read "2 bays above and 1 bay below." This makes paragraph H.1.b. consistent with other paragraphs of the AD and the service bulletin.

The Air Transport Association (ATA) of America commented on behalf of its members. One member operator stated that paint thickness should not be a consideration in conducting the NDI inspections required by paragraph C. if the fastener outline is clearly visible. The FAA concurs. The final rule has been revised accordingly. This is consistent with similar requirements in previously issued AD's applicable to other airplane models.

The same commenter also requested that blind fasteners be allowed as a modification action with an inspection, if required. The FAA does not concur. Testing of blind fasteners resulted in inspection intervals specified in Boeing Service Bulletin 737-53A1039, Revision 4. The FAA has determined that these fasteners do not provide an adequate fatigue life, and it would be inappropriate to permit their installation in general. However, in certain isolated cases, blind fasteners have been allowed to be installed on the Model 737 airplane fuselage where the skin thickness and geometry permit. It is the FAA's intention to continue to address this issue on a case by case basis through alternate means of compliance procedures.

Since the issuance of the NPRM, Boeing has issued Service Bulletin 737-53-1089, Revision 2, dated August 31, 1989, and Revision 3, dated November 2, 1989. The FAA has reviewed and approved Revision 3. The final rule has been revised to also allow compliance in accordance with Revision 3.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously noted. These changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 55 additional Model 737 series airplanes of the affected design in the worldwide fleet. It is estimated that 12 additional airplanes of U.S. registry will be affected by this amendment, that it will take approximately 2,798 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the amendment on U.S. operators is estimated to be $1,343,040.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by amending Amendment 39-6059 (53 FR 44156; November 1, 1988), AD 88-22-11, as follows:

BOEING: Applies to Model 737 series airplanes, line number 001 through 519, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent rapid decompression of the airplane, accomplish the following:

A. For airplanes line number 001 through 291, prior to the accumulation of 40,000 landings, or within 10 calendar days after November 21, 1988 (the effective date of Amendment 39-6059), whichever occurs later, restrict all flight operations to a maximum cabin pressure differential of 5.07 psi until the inspections required by paragraph B.1., below, are accomplished.

B. 1. For airplanes line number 001 through 291, within the next 1,500 landings after November 21, 1988, or prior to the accumulation of 40,000 landings, whichever occurs later, unless previously accomplished within the last 3,000 landings; and thereafter at intervals not to exceed 4,500 landings or 15 months, whichever occurs first; accomplish the requirements of paragraph C., below, along the skin at all fuselage lap joints between body station (BS) 259 and BS 1016.

2. At the initial interval indicated in Table 1, below, unless previously accomplished within the last 4,000 landings, accomplish the requirements of paragraph C., below, along the skin at stringer (S) 17 between BS 360 and BS 540 and between BS 727 and BS 927.

TABLE 1

Airplane line number	Initial inspection
001 through 291	Within 500 landings after November 21, 1988, or prior to the accumulation of 40,000 landings, whichever occurs later.
292 through 464	Within 500 landings after November 21, 1988, or prior to the accumulation of 60,000 landings, whichever occurs later.
465 through 519	Within 500 landings after the effective date of this amendment, or prior to the accumulation of 60,000 landings, whichever occurs later.

Repeat the inspection at intervals not to exceed 4,500 landings or 15 months, whichever occurs first.

C. For airplanes identified in paragraphs B.1. and B.2., above, remove paint with an approved chemical stripper, or ensure that the fastener head is clearly visible prior to the inspections required by this paragraph:

1. Perform a high frequency eddy current inspection for cracks along the upper rivet line at the lap joints and along both rivet lines at S-17, in accordance with Boeing Service Bulletin 737-53A1039, Revision 4, dated April 14, 1988, or Revision 5, dated May 25, 1989, or Boeing Service Bulletin 737-53-1089, Revision 1, dated October 13, 1988, or Revision 3, dated November 2, 1989, accordingly.

NOTE: No credit will be given for previous inspections accomplished on a painted surface where the fastener head was not clearly visible.

2. Perform a detailed external visual inspection, using adequate lighting for evidence of corrosion or delamination. Inspect for small cracks, bulging skin between fasteners, blistered paint, dished or popped rivet heads, or loose fasteners. If evidence of corrosion or delamination is found, prior to further flight, perform a low frequency eddy current inspection for corrosion to determine material loss, of the entire length of the affected panel, in accordance with Boeing Alert Service Bulletin 737-53A1039, Revision 4, dated April 14, 1988, or Revision 5, dated May 25, 1989, or Boeing Service Bulletin 737-53-1089, Revision 1, dated October 13, 1988, or Revision 3, dated November 2, 1989.

3. Repair cracks, corrosion, and delamination prior to further flight (except as permitted by paragraph C., below), in accordance with Boeing Alert Service Bulletin 737-53A1039, Revision 4, dated April 14, 1988, or Revision 5, dated May 25, 1989, or Boeing Service Bulletin 737-53-1089, Revision 1, dated October 13, 1988, or Revision 3, dated November 2, 1989.

a. All upper row fasteners at the lap joint and both rows of fasteners at S-17 of any skin panel in which cracks are found, must be replaced with standard protruding head solid fasteners, in accordance with the applicable service bulletin, within 3,000 cycles following the repair.

b. Blind fasteners are to be used as an interim repair only, and must be replaced with protruding head solid fasteners within 3,000 cycles following installation.

(1) For airplanes line numbers 001 through 464: Repairs installed with blind fasteners prior to November 21, 1988, must be inspected for loose or missing fasteners within 1,000 cycles after that date; and all upper row fasteners and stringer 17 fasteners in the affected panel must be replaced with standard protruding head solid fasteners within 3,000 cycles after that date.

(2) For airplanes line numbers 465 through 519: Repairs installed with blind fasteners prior to the effective date of this amendment, must be inspected for loose or missing fasteners within 1,000 cycles after the effective date of this amendment; and all upper row fasteners and stringer 17 fasteners in the affected panel must be replaced with standard protruding head solid fasteners within 3,000 cycles after the effective date of this amendment.

c. (1) For airplanes line numbers 001 through 464: Repairs of the skin installed with countersunk fasteners at any fuselage lap joint or along S-17 prior to November 21, 1988, must be inspected and verified as FAA-approved within 1,000 cycles after that date. Repairs determined not to be FAA-approved must be replaced or modified in accordance with an FAA-approved method prior to further flight.

(2) For airplanes line numbers 465 through 519: Repairs of the skin installed with countersunk fasteners at any fuselage lap joint or along S-17 prior to the effective date of this amendment, must be inspected and verified as FAA-approved within 1,000 cycles after the effective date of this amendment. Repairs determined not to be FAA-approved must be replaced or modified in accordance with an FAA-approved method prior to further flight.

D. For airplanes line number 001 through 291, within the next 2,250 landings or within 6 months after November 21, 1988, whichever occurs first, or prior to the accumulation of 40,000 landings, whichever occurs later, unless accomplished within the last 6,750 landings; and thereafter at intervals not to exceed 12,000 landings or 4 years, whichever occurs first; accomplish the inspections described in paragraph F., below. If the inspections required by paragraph C., above, are repeated at intervals not to exceed 2,250 landings or 7½ months, whichever occurs first, then the requirements of paragraph F., below, may be deferred until the accumulation of 7,000 landings or 24 months after November 21, 1988, whichever occurs first.

E. For airplanes line number 292 through 464, within the next 12,000 landings or 4 years after November 21, 1988, whichever occurs first, and for airplanes line number 465 through 519, within the next 12,000 landings or 4 years after the effective date of this amendment, whichever occurs first, or prior to the accumulation of 40,000 landings, whichever occurs later, and thereafter at intervals not to exceed 12,000 landings or 4 years, whichever occurs first, accomplish the inspections described in paragraph F., below.

F. As required by paragraph D. and E., above, perform a detailed internal visual inspection of tearstraps (circumferential portion of the bonded waffle doubler), not mechanically fastened to the skin between BS 360 and BS 1016 two bays above and one bay below the lap joints at S-4 and S-10, and between BS 259 and BS 360 two bays above and one bay below the lap joint at S-4 for delamination and corrosion, in accordance with Boeing Alert Service Bulletin 737-53A1039, Revision 4, dated April 14, 1988, or Revision 5, dated May 25, 1989. Adequate lighting must be used for this inspection. Inspect for bulges in the doubler, white powder or a thin black line at the edges of the doubler, and missing or dished fasterners. Check for disbond by pushing outward on the skin while attempting to insert a feeler gage between the doubler and skin. If inspection areas are obscured by sealant, dirt, etc., these areas must be cleaned. If disbond or corrosion is found, inspect entire skin panel as described above, in addition to one bay of the adjacent skin panel (above and below), and repair prior to further flight, in accordance with Boeing Alert Service Bulletin 737-53A1039, Revision 4, dated April 14, 1988, or Revision 5, dated May 25, 1989, or Boeing Service Bulletin 737-53-1089, Revision 1, dated October 13, 1988, or Revision 3, dated November 2, 1989, as appropriate.

G. If corrosion found as a result of the external inspection does not exceed 10 percent of the skin thickness, reinspect for corrosion in accordance with paragraphs C.2. or I., of this AD, as appropriate, at intervals not to exceed 2,250 cycles or 6 months, whichever occurs first, until a repair is

accomplished. If such corrosion exceeds 10 percent of skin thickness or if cracking is

inspection of the entire length of the affected panel to determine material loss. If cracks are

brakes be inspected for wear, replaced if the wear limit prescribed in the

takeoff (RTO) when worn beyond .50 inch. The FAA has evaluated this information and concurs with the

brake wear limits on spare brakes must be completed prior to modifying the aircraft, and its spare brakes are located

FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial

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accomplished. If such corrosion exceeds 10 percent of skin thickness or if cracking is found, repair prior to further flight, in accordance with Boeing Alert Service Bulletin 737–53A1039, Revision 4, dated April 14, 1988, or Revision 5, dated May 25, 1989, for the skin along the lap joints; or Boeing Service Bulletin 737–53–1069, Revision 1, dated October 13, 1988, or Revision 3, dated November 2, 1989, for the skin along S–17. Following such repair, resume inspections in accordance with paragraphs C.2. or L. of this AD, as appropriate.

H. The accomplishment of the following two subparagraphs constitutes terminating action for the inspections indicated:

1. a. For airplanes line number 001 through 291, accomplishment of the terminating repair at all lap joints between BS 259 and BS 1016, in accordance with Boeing Alert Service Bulletin 737–53A1039, revision 4, dated April 14, 1988, or Revision 5, dated May 25, 1989, constitutes terminating action for paragraphs A., C., and F., as they apply to lap joint areas. This repair includes replacing all upper row fasteners with standard protruding head solid fasteners and assuring the tearstraps are functional 2 bays above and 1 bay below each lap joint, by the use of mechanical fasteners where disbonding of the tearstraps has occurred.

b. For airplanes line number 292 through 519, perform a detailed internal visual inspection of the tearstraps for delamination and corrosion 2 bays above and 1 bay below all lap joints between BS 259 and BS 1016, in accordance with Boeing Alert Service Bulletin 737–53A1039, Revision 4, dated April 14, 1988, or Revision 5, dated May 25, 1989. Repair delamination and corrosion in accordance with the service bulletin using mechanical fasteners, as necessary. In skin panels where delamination is detected, accomplish the lap joint modification in accordance with the service bulletin. This subparagraph constitutes terminating action for paragraph F., above.

2. Accomplishment of the preventative modification as described in Boeing Service Bulletin 737–53–1069, Revision 1, dated October 13, 1988, or Revision 3, dated November 2, 1989, constitutes terminating action for the requirements of paragraphs A., C., and F., as they apply to the skin at S–17. The repair requires using standard protruding head solid fasteners, and assuring that the tearstraps are functional one bay above and below S–17, by the use of mechanical fasteners where disbonding of the tearstraps has occurred, in accordance with the Structural Repair Manual.

I. For aircraft on which the procedures described in paragraph H.1., above, have been accomplished in accordance with part IV, A.2., of Boeing Alert Service Bulletin 737–53A1039, Revision 4, dated April 14, 1988, or part II, B., of Boeing Service Bulletin 737–53A1039, Revision 5, dated May 25, 1989, within 15 months after accomplishment, or within 6 months after the effective date of this AD, whichever occurs later, perform and external visual inspection of the skin for corrosion and delamination at all lap joints in accordance with that service bulletin. If corrosion is found, prior to further flight, perform a low frequency eddy current inspection of the entire length of the affected panel to determine material loss. If cracks are found, prior to further flight, perform a high frequency eddy current inspection of the entire length of the affected skin panel in accordance with the service bulletin. Repair cracks, corrosion, and delamination, prior to further flight (except as permitted by paragraph G., above), in accordance with the service bulletin. Inspections are to continue at intervals not to exceed 15 months.

J. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

K. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment amends Amendment 39–6059, AD 88–22–11.

This amendment becomes effective January 31, 1990.

Issued in Seattle, Washington, on December 14, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–29962 Filed 12–26–89; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 89–NM–108–AD; Amdt. 39–6431]

Airworthiness Directives; McDonnell Douglas Model DC–10–30, –30F, –40, and KC–10A (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to McDonnell Douglas Model DC–10–30, –30F, –40, and KC–10A (Military) series airplanes, which currently requires all landing gear brakes be inspected for wear, replaced if the wear limit prescribed in the existing AD is not met, and also requires modification of short piston sleeve brakes to long piston sleeve brakes. This amendment requires that all long piston sleeve brakes be modified, and that all landing gear brakes be inspected for wear and replaced if the new wear limits prescribed in this amendment are not met. This amendment is prompted by reports of further testing and analysis of the brakes, which revealed that the wear limits specified in the existing AD and the long piston sleeves brakes are inadequate to provide enough piston travel to accomplish a maximum energy rejected takeoff stop. This condition, if not corrected, could result in the loss of landing gear effectiveness.

EFFECTIVE DATE: January 31, 1990.

ADDRESSES: The applicable service information may be obtained from Douglas Aircraft Company, P.O. Box 1771, Long Beach, California, ATTN: Manager, Service Changes, Mail Code 73–30. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Robert T. Razzeto, Aerospace Engineer, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (213) 988–5335.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 88–16–02R1, Amendment 39–6034 (53 FR 37542; September 27, 1988), applicable to Model DC–10–30, –30F, –40, and KC–10A (Military) series airplanes, to require that all long sleeve brakes be modified, and that all landing gear brakes be inspected for wear and replaced if the new wear limits prescribed by this amendment are not met, was published in the **Federal Register** on August 14, 1989 (53 FR 33235).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter requested that proposed paragraph D. be changed to delete the –4R, –6R, and –10R brakes from the applicability. This commenter stated that these part number brakes, which have extra-long piston sleeves, can sustain maximum energy rejected takeoff (RTO) when worn beyond .50 inch. The FAA has evaluated this information and concurs with the commenter. Paragraphs D. and E. have been revised to delete –4R, –6R, and –10R brakes from the applicability.

Another commenter requested that paragraph F., which requires installation of extra-long piston sleeves, be made voluntary. This commenter indicated that this requirement is based purely on economic reasons and should be considered optional. The FAA does not concur. The FAA has determined that the extra-long piston sleeve installation provides assurance that the piston will not unseat from the sleeve, a condition which could result in loss of the landing gear brake's effectiveness.

Several commenters requested that the rule allow increased brake wear limits for reduced energy operations. Operators pointed out that they are being unduly restricted since their route structures do not require maximum energy operations. The FAA does not concur with granting general relief to this limitation, but will consider alternate means of compliance, under the provisions of paragraph H., on a case-by-case basis.

One commenter suggested there is no justification for the proposed additional reduction in allowable brake wear limits. This commenter contended that very little testing has been done on worn Model DC–10–30 brakes, and that testing is premature to the worn brake RTO criteria being developed by the Aerospace Industries of America (AIA) and the FAA. This commenter requested that the proposed rule be delayed until further, more conclusive data on the subject is obtained by AIA and approved by the FAA. The FAA does not concur. The FAA has determined that sufficient data and analysis currently exist to demonstrate that existing brake wear limits (and short piston sleeve brakes) are inadequate to provide enough brake mass to accomplish a maximum energy RTO stop. As explained in the preamble to the NPRM, this condition is considered unsafe since it could result in the loss of the landing gear brake effectiveness. The FAA has determined that revision of the brake wear limits to a more stringent dimension, as required by this AD action, will adequately address the unsafe condition. However, if new information becomes available at a later date that would justify a revision of this action, the FAA may consider further rulemaking at that time.

One commenter requested an increase of the compliance time from 30 to 90 days for paragraphs D. and E. The commenter stated that reduction of brake wear limits on spare brakes must be completed prior to modifying the aircraft, and its spare brakes are located around the world. This commenter indicated that its flight schedules will be disrupted if compliance is required within the proposed 30 days. The FAA does not concur. Previous inquiries to McDonnell Douglas Corporation and Loral have established that the brakes parts supply will support a 30-day compliance time. Further, the FAA considers that the magnitude of the potential problem dictates a 30-day compliance time.

One commenter requested the inspection requirement of paragraph D. be changed to specify a 60-day compliance time for aircraft with the –4R, –6R, or –10R brakes installed in at least 50 per cent of the brake positions. The FAA does not concur. Paragraph D. has been changed to apply to only –4, –6, and –10 brakes, and paragraph F. presently allows 180-day compliance time for installation of the –4R, –6R, or –10R brakes.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed with changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 160 Model DC–10–30, –30F, –40, and KC–10A (Military) series airplanes of the affected design in the worldwide fleet. It is estimated that 128 airplanes of U.S. registry will be affected by this AD, that it will take approximately 19 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The cost of parts for this modification is approximately $6,400 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $916,480.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding Amendment 39–6034 (53 FR 37542; September 27, 1988), AD 88–16–02R1, with the following new airworthiness directive:

McDonnell Douglas: Applies to Model DC–10–30, –30F, –40, and KC–10A (Military) series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent the loss of main landing gear brake effectiveness, accomplish the following:

A. Within 90 days after October 14, 1988 (effective date of Amendment 39–6034), replace all Aircraft Braking Systems (formerly Loral Systems, formerly Goodyear) brakes, part numbers 5000758–2, –3, and –5 with Aircraft Braking Systems brakes, part numbers 5000758–4, –6, and –10. The maximum wear limit is 0.75 inch.

B. Within 90 days after October 14, 1988 (effective date of Amendment 39–6034), inspect the brakes for wear. Any brake that is worn more than 0.75 inch must be replaced, prior to further flight, with one within this limit. These limits must be maintained until the requirements of paragraphs D. and E., or F. and G., below are accomplished.

C. Within 90 days after October 14, 1988 (effective date of Amendment 39–6034), incorporate the 0.75 inch brake wear limit into the FAA-approved maintenance inspection program.

D. Within 30 days after the effective date of this amendment, inspect all Aircraft Braking Systems (formerly Loral Systems, formerly Goodyear) brakes, part numbers 5000758–4, –6, and –10, for wear. Any brake worn more than 0.50 inch must be replaced, prior to further flight, with one within this limit.

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E. Within 90 days after the effective date of

SECURITIES AND EXCHANGE

litigants financially eligible to seek EAJA awards and clarified several

PART 200—ORGANIZATION;

§ 201.22 When the Act applies.

§ 201.26 Standards for awards.

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E. Within 30 days after the effective date of this amendment, incorporate the 0.80 inch brake wear limit into the FAA-approved maintenance inspection program for all Aircraft Braking Systems (formerly Loral Systems, formerly Goodyear) brakes, part numbers 5000750–4, –8, and –10.

F. Within 180 days after the effective date of this amendment, modify and replace all Aircraft Braking Systems (formerly Loral Systems, formerly Goodyear) brakes, part numbers 5000750–4, –8, and –10, or any brake modified in accordance with AD 88–10–02R1, Amendment 39–6034, paragraphs C.2. or D.2., with new extra-long piston sleeves and dust seal boots, and reidentify them as –4R, –8R, and –10R brake assemblies, respectively, in accordance with Douglas Aircraft Company DC–10 Service Bulletin Number 32–218, dated March 17, 1989. For Aircraft Braking Systems (formerly Loral Systems, formerly Goodyear) brakes, part numbers 5000750–4R, –8R, and –10R, the maximum wear limit is 0.90 inch.

G. When the modifications required by paragraph F., above, are accomplished, incorporate the 0.90 inch brake wear limit in the FAA-approved maintenance inspection program.

H. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Moutain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

I. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Douglas Aircraft Company, P. O. Box 1771, Long Beach, California 90801, ATTN: Manager, Service Changes, Mail Code 73–30. These documents may be examined at the FAA, Northwest Moutain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

This amendment supersedes Amendment 39–6034, AD 88–10–02R1.

This amendment becomes effective January 31, 1990.

Issued in Seattle, Washington, on December 14, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–29883 Filed 12–26–89; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200 and 201

[Release Nos. 33–6840; 34–27532; 35–24906; 39–2233; IC–17262; IA–1212]

Equal Access to Justice Act Rules

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of rules.

SUMMARY: The Securities and Exchange Commission is adopting revised procedural rules implementing the Equal Access to Justice Act ("EAJA"), 5 U.S.C. 504, as amended by Public Law No. 99–80 (1985). The Act, in relevant part, provides for the award of attorney fees and other expenses to certain parties who prevail against the federal government in adversary adjudications before agencies. In connection with its implementation of the EAJA, the Commission is also amending its delegation of authority to its Chief Administrative Law Judge.

EFFECTIVE DATE: December 27, 1989.[1]

FOR FURTHER INFORMATION CONTACT: David C. Mahaffey, Assistant General Counsel, or Kerry F. Hemond, Attorney, Office of the General Counsel, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549; (202) 272–2428.

SUPPLEMENTARY INFORMATION: On May 6, 1986, the Administrative Conference of the United States ("ACUS") issued model regulations for federal agency implementation of the EAJA, as amended in 1985 by Public Law No. 99–80 (1985). See 51 FR 16659 (May 6, 1986). The EAJA allows eligible litigants who prevail against the federal government in civil actions and administrative proceedings to recover attorney fees and other expenses, unless the government can show that its position was substantially justified or that special circumstances exist that would make an award unjust. Among other things, the 1985 amendments removed "sunset" provisions from the EAJA as originally enacted in 1980, broadened the class of litigants financially eligible to seek EAJA awards, and clarified several interpretive points.

On March 23, 1989, the Commission published for comment proposed revised rules implementing the EAJA, 17 CFR 201.31 *et seq.*, to conform with the 1985 statute. For the most part, the rules which the Commission now intends to adopt depart from the 1986 Model Rules only where the Commission's existing EAJA rules already differed from the 1981 Model Rules [2] or where the 1986 Model Rule revisions were not applicable to Commission proceedings or were otherwise unnecessary. In addition, the Commission proposed two new provisions not in the Model Rules: first, one that would delegate authority to the Chief Administrative Law Judge to assign EAJA applications to particular administrative law judges; and second, one that would add a sentence to the EAJA rule on settlements making it explicit that settlements may include a waiver of all EAJA fees. The Commission's release proposing the revised rules included a section-by-section analysis, explaining, among other matters, the principal differences between the 1986 Model Rules and the Commission's EAJA rules.

The comment period for the proposed revised rules closed on April 24, 1989. No comment letters were received. Accordingly, the Commission finds it appropriate and in the public interest to adopt the rules as proposed. Moreover, the Commission finds good cause under 5 U.S.C. 553(d)(3) for the action to become effective immediately upon publication in the **Federal Register**, since implementing the rule changes will affect the provisions of the EAJA, as amended. Accordingly, the foregoing action becomes effective immediately upon publication in the **Federal Register**.

List of Subjects

17 CFR Part 200

Administrative practice and procedure, Freedom of Information, Privacy, Securities.

17 CFR Part 201

Administrative practice and procedure, Investigations, Securities.

Text of Amendments

Chapter II, title 17 of the Code of Federal Regulations, is hereby amended as follows:

[1] Although the Commission provided a notice of proposed rule-making and sought public comment on the proposed rule revisions, 54 FR 11881 (March 23, 1989), it regards the proposed revisions as affecting rules of agency practice and therefore not required by 5 U.S.C. 553 to be proposed for public comment. For the same reason, it did not regard the proposed revised rules as subject to the Regulatory Flexibility Act, 5 U.S.C. 603, 604, although the Chairman of the Commission has executed a certification conforming to that Act.

[2] *See* Securities Act Release No. 6388 (Dec. 16, 1981), 47 FR 609 (1982).

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The authority citation for part 200, subpart A, continues to read as follows:

Authority: Secs. 19, 23, 48 Stat. 85, 901, as amended; sec. 20, 49 Stat. 833; sec. 319, 53 Stat. 1173; secs. 38, 211, 54 Stat. 841, 855; sec. 308, 101 Stat. 1254 (15 U.S.C. 77s, 78d–1, 78d–2, 78w, 79t, 77sss, 80a–37, 80b–11), unless otherwise noted.

2. By amending § 200.30–10 by redesignating paragraph (b) as paragraph (c) and adding a new paragraph (b) as follows:

§ 200.30–10 Delegation of authority to Chief Administrative Law Judge.

* * * * *

(b) With respect to proceedings under the Equal Access to Justice Act, 5 U.S.C. 504, to make assignments as provided in § 201.37(b) of this chapter, respecting applications made pursuant to that Act.

* * * * *

PART 201—RULES OF PRACTICE

3. The authority citation for part 201, subpart B, continues to read as follows:

Authority: Sec. 19, Securities Act of 1933, 15 U.S.C. 77r; secs. 23 and 24, Securities Exchange Act of 1934, 15 U.S.C. 78w and 78x; sec. 20, Public Utility Holding Company Act of 1935, 15 U.S.C. 79t; sec. 319, Trust Indenture Act of 1939, 15 U.S.C. 77sss; sec. 38, Investment Company Act of 1940, 15 U.S.C. 80a–37; sec. 211, Investment Advisers Act of 1940, 15 U.S.C. 80b–11; and sec. 203(a)(1), Equal Access to Justice Act, 5 U.S.C. 504(c)(1).

4. By revising § 201.31 to read as follows:

§ 201.31 Purpose of these rules.

The Equal Access to Justice Act, 5 U.S.C. 504 (called "the Act" in this subpart B), provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (called "adversary adjudications") before the Commission. An eligible party may receive an award when it prevails over the Commission, unless the Commission's position was substantially justified or special circumstances make an award unjust. The rules in this subpart describe the parties eligible for awards and the proceedings that are covered. They also explain how to apply for awards, and the procedures and standards that the Commission will use in ruling on those applications.

5. By revising § 201.32 to read as follows:

§ 201.32 When the Act applies.

The Act applies to adversary adjudications described in § 201.33 pending or commenced before the Commission on or after August 5, 1985. It also applies to any adversary adjudication commenced on or after October 1, 1984, and finally disposed of before August 5, 1985, provided that an application for fees and expenses, as described in these rules, has been filed with the Commission within 30 days after August 5, 1985. Proceedings which have been substantially concluded are not deemed pending under these rules although officially pending for purposes such as concluding remedial actions found in Commission orders or private undertakings.

6. By amending § 201.33 by redesignating paragraph (b) as paragraph (c) and adding a new paragraph (b) as follows:

§ 201.33 Proceedings covered.

* * * * *

(b) The fact that the Commission has not identified a type of proceeding as an adversary adjudication shall not preclude the filing of an application by a party who believes the proceeding is covered by the Act; whether the proceeding is covered will then be an issue for resolution in proceedings on the application.

* * * * *

7. By amending § 201.34 by revising paragraph (b) to read as follows:

§ 201.34 Eligibility of applicants.

* * * * *

(b) The types of eligible applicants are as follows:

(1) An individual with a net worth of not more than $2 million;

(2) The sole owner of an unincorporated business who has a net worth of not more than $7 million, including both personal and business interests, and not more than 500 employees;

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with more than 500 employees; and

(5) Any other partnership, corporation, association, unit of local government, or public or private organization with a new worth of not more than $7 million and not more than 500 employees.

* * * * *

8. By amending § 201.35 by revising paragraph (a) to read as follows:

§ 201.35 Standards for awards.

(a) A prevailing applicant may receive an award for fees and expenses incurred in connection with a proceeding or in a significant and discrete substantive portion of the proceeding, unless the position of the Office or Division over which the applicant has prevailed was substantially justified. The position of the Office or Division includes, in addition to the position taken by the Office or Division in the adversary adjudication, the action or failure to act by the Office or Division upon which the adversary adjudication is based. The burden of proof that an award should not be made to an eligible prevailing applicant is on counsel for an Office or Division of the Commission, which must show that its position was reasonable in law and fact.

* * * * *

9. By amending § 201.36 by revising paragraph (b) to read as follows:

§ 201.36 Allowable fees and expenses.

* * * * *

(b) No award of the fee of an attorney or agent under these rules may exceed $75.00 per hour. No award to compensate an expert witness may exceed the reasonable rate at which the Commission pays witnesses with similar expertise. However, an award may also include the reasonable expenses of the attorney, agent or witness as a separate item, if the attorney, agent or witness ordinarily charges clients separately for such expenses.

* * * * *

10. By revising § 201.37 to read as follows:

§ 201.37 Delegations of authority.

(a) The Commission may by order delegate authority to take final action on matters pertaining to the Equal Access to Justice Act in particular cases.

(b) Unless the Commission shall order otherwise, applications for awards of fees and expenses made pursuant to this subject shall be assigned by the Chief Administrative Law Judge to an administrative law judge for determination.

11. By amending § 201.41 by revising paragraph (b) to read as follows:

§ 201.41 Contents of application.

* * * * *

(b) The application shall also include a statement that the applicant's net worth does not exceed $2 million (if an individual) or $7 million (for all other applicants, including their affiliates). However, an applicant may omit this statement if:

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(1) It attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) or, in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section; or

(2) It states that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)).

* * * * *

12. By amending § 201.44 by removing paragraph (c), redesignating paragraph (b) as paragraph (c), and adding a new paragraph (b) to read as follows:

§ 201.44 When an application may be filed.

* * * * *

(b) For purposes of this rule, final disposition means the date on which a decision or order disposing of the merits of the proceeding or any other complete resolution of the proceeding, such as a settlement or voluntary dismissal, becomes final and unappealable, both within the Commission and to the courts.

* * * * *

13. By revising § 201.54 to read as follows:

§ 201.54 Settlement.

The applicant and counsel for the Office or Division of the Commission may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying proceeding or after the underlying proceeding has been concluded, in accordance with the Commission's standard settlement procedure. See 17 CFR 201.8. If a prevailing party and counsel for the Office or Division of the Commission agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement. If a proposed settlement provides that each side shall bear its own expenses, and the settlement is accepted, no application may be filed.

14. By amending § 201.55 by revising paragraph (a) to read as follows:

§ 201.55 Further proceedings.

(a) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or counsel for the Office or Division of the Commission, or on his or her own initiative, the administrative law judge may order further proceedings, such as an informal conference, oral argument, additional written submissions or, as to issues other than substantial justification (such as the applicant's eligibility or substantiation of fees and expenses) an evidentiary hearing. The administrative law judge may order all proceedings that are otherwise available under Rule 8(d) of the Commission's Rules of Practice. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible. Whether or not the Commission's position was substantially justified shall be determined on the basis of the administrative record, as a whole, which is made in the adversary adjudication for which fees and other expenses are sought.

* * * * *

15. By revising § 201.59 to read as follows:

§ 201.59 Payment of award.

An applicant seeking payment of an award shall submit to the Comptroller of the Commission a copy of the Commission's final decision granting the award, accompanied by a sworn statement that the applicant will not seek review of the decision in the United States courts. The Commission will pay the amount awarded to the applicant as authorized by law, unless judicial review of the award has been sought by the applicant.

By the Commission.
Dated: December 12, 1989.

Jonathan G. Katz,
Secretary.

[FR Doc. 89-29037 Filed 12-26-89; 8:45 am]
BILLING CODE 6010-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs Not Subject To Certification; Polysulfated Glycosaminoglycan

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Luitpold Pharmaceuticals, Inc. The NADA provides for the intramuscular use of polysulfated glycosaminoglycan in horses for the treatment of noninfectious degenerative and/or traumatic joint dysfunction and associated lameness of the carpal joint.

EFFECTIVE DATE: December 27, 1989.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV-114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3420.

SUPPLEMENTARY INFORMATION: Luitpold Pharmaceuticals, Inc., Animal Health Division, Shirley, NY 11967, has submitted NADA 140-901 for Adequan® i.m. (polysulfated glycosaminoglycan). The NADA provides for the intramuscular use of polysulfated glycosaminoglycan in horses for the treatment of noninfectious degenerative and/or traumatic joint dysfunction and associated lameness of carpal joint. The application is approved and the regulations are amended by revising 21 CFR 522.1850 to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 522.1850 is revised to read as follows:

§ 522.1850 Polysulfated glycosaminoglycan.

(a) *Specifications.* Each 1-milliliter ampule of sterile aqueous solution contains 250 milligrams of polysulfated glycosaminoglycan; each 5-milliliter ampule or vial contains 500 milligrams.

(b) *Sponsor.* See No. 010797 in § 510.600(c) of this chapter.

(c) *Conditions of use—horses.* (1) *Indications for use.* Polysulfated glycosaminoglycan is for the treatment of noninfectious degenerative and/or traumatic joint dysfunction and associated lameness of the carpal joint in horses.

(2) *Amount.* (i) *Intra-articular use:* 250 milligrams once a week for 5 weeks. The joint area must be shaved, cleaned, and sterilized as in a surgical procedure prior to injection. If the joint reacts with excessive inflammation, after intra-articular treatment, cease therapy.

(ii) *Intramuscular use:* 500 milligrams every 4 days for 28 days. Injection site must be thoroughly cleansed prior to injection.

(3) *Limitations.* Not for use in horses intended for food. Safe use in breeding animals has not been established. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: December 19, 1989.

Gerald B. Guest,
Director, Center for Veterinary Medicine.

[FR Doc. 89-30015 Filed 12-26-89; 8:45 am]
BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 55 and 178

[T.D. ATF-290]

Commerce in Explosives and Commerce in Firearms and Ammunition (89-200F)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Final rule (Treasury decision).

SUMMARY: This final rule amends regulations in 27 CFR parts 55 and 178 to change the authority to issue Federal firearms and explosives licenses and permits from the regional director (compliance) to the Chief, Firearms and Explosives Licensing Center to take advantage of a more efficient technology in processing firearms and explosives materials industry applications. Authority to deny and revoke such licenses and permits will remain with the regional director (compliance).

EFFECTIVE DATE: December 27, 1989.

FOR FURTHER INFORMATION CONTACT: J. Barry Fields, ATF Specialist, Firearms and Explosives Operations Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC 20226; (202) 789-3026.

SUPPLEMENTARY INFORMATION: Since passage of the Gun Control Act of 1968 and the Organized Crime Control Act of 1970, licenses and permits have been issued from Bureau of Alcohol, Tobacco and Firearms (ATF) regional offices. ATF now believes it will be more efficient and less costly to issue licenses and permits from one location. The changes made by this Treasury decision will administratively consolidate this function into one office, the Chief, Firearms and Explosives Licensing Center, thereby allowing ATF to take advantage of technology. The regional offices will continue to provide assistance to the affected public in all matters. The change being made does not affect the authority of the regional director (compliance) to deny or revoke licenses or permits.

Executive Order 12291

It has been determined that this document is not a major regulation as defined in E.O. 12291 and a regulatory impact analysis is not required because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or foreign markets.

Administrative Procedures Act

Because this Treasury decision relates to agency management, is procedural in nature and, among other minor changes, merely transfers the authority to issue firearms and explosives licenses and permits from regional directors (compliance) to the Chief, Firearms and Explosives Licensing Center, notice and public procedure are inapplicable pursuant to (a)(2), (6)(A) and (6)(B), 5 U.S.C. and a delayed effective date is not required pursuant to 5 U.S.C. 553 (a)(2) and (d)(3).

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this final rule, the provisions of the Regulatory Flexibility Act do not apply.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96-511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply because no additional requirement to collect information is proposed. There is no collection of information burden hours associated with this final rule.

Drafting Information

The principal author of this Treasury decision is J. Barry Fields, ATF Specialist, Firearms and Explosives Operations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 55

Administrative practice and procedure, Authority delegation, Customs duties and inspection, Explosives, hazardous materials, Imports, Penalties, Reporting and recordkeeping requirements, Safety, Security measures, Seizures and forfeitures, Transportation, and Warehouses.

27 CFR Part 178

Administrative practice and procedure, Arms and munitions, Authority delegations, Customs duties and inspection, Exports, Imports, Military personnel, Penalties, Reporting requirements, Research, Seizures and forfeitures, and Transportation.

Authority and Issuance

27 CFR part 55—Commerce in Explosives and 27 CFR part 178—Commerce in Firearms and Ammunition, are amended as follows:

PART 55—[AMENDED]

Par. 1. The authority citation for part 55 continues to read as follows:

Authority: 18 U.S.C. 847.

§ 55.11 [Amended]

Par. 2. Section 55.11 is amended by adding the following definition:

* * * * *

Business premises. * * *

Chief, Firearms and Explosives Licensing Center. The AFT official

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responsible for the issuance and renewal of licenses and permits under this part.

Crime punishable by imprisonment for a term * * *

Par. 3. Section 55.23 is revised to read as follows:

§ 55.23 List of explosive materials.

The Director shall compile a list of explosive materials, which shall be published and revised at least annually in the **Federal Register**. The "List of Explosive Materials" (AFT Publication 5400.8) is available at no cost upon request from the ATF Distribution Center, 7943 Angus Court, Springfield, Virginia 22153.

Par. 4. Section 55.54 is amended by revising paragraphs (a) and (b) to read as follows:

§ 55.54 Change of address.

* * * * *

(a) Give notification of the new location of the business or operations to the Chief, Firearms and Explosives Licensing Center at least 10 days before the move; and

(b) Submit the license or permit to the Chief, Firearms and Explosives Licensing Center. The Chief, Firearms and Explosives Licensing Center will issue an amended license or permit, which will contain the new address (and new license or permit number, if any).

§§ 55.46, 55.49, 55.50, 55.55, 55.57, 55.60 [Amended]

Par. 5. The following sections are amended by removing the words "regional director (compliance)" and by replacing them with the words "Chief, Firearms and Explosives Licensing Center": 55.46(a); 55.49(a); 55.49(b); 55.50(a); 55.50(b); 55.55; 55.57; and, 55.60.

Par. 6. Section 55.49(c) is amended by revising the first sentence to read as follows:

§ 55.49 Issuance of license or permit.

* * * * *

(c) The Chief, Firearms and Explosives Licensing Center shall approve or the regional director (compliance) shall deny any application for a license or permit within the 45-day period beginning on the date a properly executed application was received. * * *

§ 55.56 [Amended]

Par. 7. Section 55.56 is amended by removing the words "regional director (compliance) for the region in which the licensee or permittee conducts his business or operations," and by replacing them with "Chief, Firearms and Explosives Licensing Center."

§ 55.59 [Amended]

Par. 8. Section 55.59(b) is amended by removing the words "regional director (compliance) for the region in which the business or operations are conducted," and by replacing them with "Chief, Firearms and Explosives Licensing Center."

§ 55.61 [Amended]

Par. 9. Section 55.61 is amended by removing the words "regional director (compliance) for the region in which his business or operation was located" and by replacing them with "Chief, Firearms and Explosives Licensing Center."

§ 55.76 [Amended]

Par. 10. Section 55.76(b) is amended as follows:

(1) The first sentence is amended by removing the words "he shall approve the application," and by replacing them with "the regional director (compliance) shall cause the application to be approved,"; and (2) by removing the words "he shall issue the license or permit" in the third and last sentences and by replacing them with "the regional director (compliance) shall cause the license or permit to be issued."

55.76 [Amended]

Par. 11. Section 55.76(b) is amended by removing the word "issue" in paragraphs (b)(1) and (b)(2) and by replacing it with the words "cause to be issued."

§ 55.104 [Amended]

Par. 12. Section 55.104(c) is amended as follows: (1) The phrase in the first sentence which reads "regional director (compliance) for the region in which the license or permit was issued" is replaced with "Chief, Firearms and Explosives Licensing Center"; and (2) "regional director (compliance)" in the third sentence is replaced with "Chief, Firearms and Explosives Licensing Center."

Par. 13. Section 55.128 is revised to read as follows:

§ 55.128 Discontinuance of business.

Where an explosive materials business or operations is discontinued and succeeded by a new licensee, the records prescribed by this subpart shall appropriately reflect such facts and shall be delivered to the successor. Where discontinuance of the business or operations is absolute, the records required by this subpart shall be delivered within 30 days following the business or operations discontinuance to any ATF office located in the region in which the business was located, or to the ATF Firearms Out-of-Business Records Center, 3361F 75th Avenue, Landover, Maryland 20785. Where State law or local ordinance requires the delivery of records to other responsible authority, the Chief, Firearms and Explosives Licensing Center may arrange for the delivery of the records required by this subpart to such authority. (See also, § 55.61.)

PART 178—[AMENDED]

Par. 14. The authority citation for part 178 continues to read as follows:

Authority: 18 U.S.C. 926.

§ 178.11 [Amended]

Par. 15. Section 178.11 is amended by adding the following definition:

* * * * *

Business premises. * * *

Chief, Firearms and Explosives Licensing Center. The ATF official responsible for the issuance and renewal of licenses under this part.

Collector. * * *

§§ 178.41, 178.45, 178.47, 178.48, 178.54, 178.60 [Amended]

Par. 16. The following sections are amended by replacing "regional director (compliance)" with "Chief, Firearms and Explosives Licensing Center": 178.41(b); 178.41(c); 178.45; 178.47(a); 178.47(b); 178.48(a); 178.48(b); 178.54; and 178.60.

§ 178.47 [Amended]

Par. 17. Section 178.47(c) is amended by removing the following language: "The regional director (compliance) shall approve or deny an application for license within the 45-day period beginning on the date the properly executed application was received" and by replacing it with "The Chief, Firearms and Explosives Licensing Center shall approve or the regional director (compliance) shall deny an application for a license within the 45-day period beginning on the date the properly executed application was received".

Par. 18. Section 178.47(d) is revised to read as follows:

§ 178.47 Issuance of license.

* * * * *

(d) When the regional director (compliance) or the Chief, Firearms and Explosives Licensing Center fails to act on an application for a license within the 45-day period prescribed by paragraph (c) of this section, the applicant may file an action under section 1361 of title 28, United States Code, to compel ATF to act upon the application.

Par. 19. Section 178.52 is revised to read as follows:

§ 178.52 Change of address.

Licensees may during the term of their current license remove their business or activity to a new location at which they intend regularly to carry on such business or activity, without procuring a new license. However, in every case, notification of the new location of the business or activity must be given not less than 10 days prior to such removal to the Chief, Firearms and Explosives Licensing Center. In each instance, the license must be submitted for endorsement to the Chief, Firearms and Explosives Licensing Center. After endorsement of the license to show the new address and the new license number, if any, the license will be returned to the licensee.

§ 178.53 [Amended]

Par. 20. Section 178.53 is amended by removing the words "Regional director (compliance) for the region in which the licensee conducts his business" and by replacing them with "Chief, Firearms and Explosives Licensing Center."

§ 178.56 [Amended]

Par. 21. Section 178.56(b) is amended be removing the words "Regional director (compliance) for the region in which the business is conducted" and by replacing them with "Chief, Firearms and Explosives Licensing Center."

§ 178.57 [Amended]

Par. 22. Section 178.57 is amended by removing the words "Regional director (compliance) for the region in which his business was located" and by replacing them with "Chief, Firearms and Explosives Licensing Center."

§ 178.95 [Amended]

Par. 23. Section 178.95 is amended by removing the words "regional director (compliance) for the region in which the premises is located" and by replacing them with "Chief, Firearms and Explosives Licensing Center."

Par. 24. Section 178.127 is revised to read as follows:

§ 178.127 Discontinuance of Business.

Where a licensed business is discontinued and succeeded by a new licensee, the records prescribed by this subpart shall appropriately reflect such facts and shall be delivered to the successor. Where discontinuance of the business is absolute, the records shall be delivered within 30 days following the business discontinuance to the ATF Out-of-Business Records Center, 3361F 75th Avenue, Landover, Maryland 20785, or any ATF office in the region in which the business was located; *Provided, however,* Where State law or local ordinance requires the delivery of records to other responsible authority, the Chief, Firearms and Explosives Licensing Center may arrange for the delivery of the records required by this subpart to such authority.

Signed: November 17, 1989.

Stephen E. Higgins,

Director.

Approved: December 7, 1989.

John F. Simpson,

Acting Assistant Secretary (Enforcement).

[FR Doc. 89-29819 Filed 12-26-89; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. S-204]

RIN 1218-AA36

Occupational Safety and Health Standards—Excavations

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule; delay of effective date.

SUMMARY: OSHA's final rule for Excavations, which was published in the **Federal Register** (54 FR 45894) on October 31, 1989, was originally scheduled to become effective on January 2, 1990, 60 days after publication. For reasons set forth below, OSHA is hereby further delaying the effective date of that final rule to provide additional time for employers to come into compliance with the final rule.

DATES: The final rule will become effective on March 5, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Occupational Safety and Health Administration, room N3649, U.S. Department of Labor, Frances Perkins Building, Washington, DC 20210, (202) 523-8148).

SUPPLEMENTARY INFORMATION: On October 31, 1989, OSHA published in the **Federal Register** (54 FR 45894) its final rule for Excavations, 29 CFR part 1926, subpart P. The final rule was scheduled to become effective on January 2, 1990, 60 days after publication. Since the final rule was published, OSHA received a request from Mr. Jay Matricciani, President of the National Utility Contractors Association, for a delay of the effective date of the standard in order to allow time for the development and delivery of training seminars and publications intended to assist employers in complying with the new standard and to assure that competent persons are properly trained. The request was presented at the December 13, 1989, meeting of the Advisory Committee on Construction Safety and Health (ACCSH) and that Committee unanimously recommended that the delay be granted.

After careful consideration of the request and the reasons therefor, OSHA has determined that there is good cause to delay the effective date beyond the original date of January 2, 1990. Accordingly, the requirements of the revised excavation standard, 29 CFR part 1926, subpart P, will become effective March 5, 1990. The existing standard will continue in effect during the delayed implementation period for the revised standard.

This document was prepared under the direction of Gerard F. Scannell, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. It is issued under the authority of sections 4, 6(b), and 8(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Secretary of Labor's Order No. 9-83 (48 FR 35736), and 29 CFR part 1911.

Signed at Washington, DC this 21st day of December 1989.

G.F. Scannell,

Assistant Secretary of Labor.

[FR Doc. 89-29974 Filed 12-26-89; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD8-89-12]

Drawbridge Operation Regulations; Teche Bayou, LA

AGENCY: U.S. Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of St. Mary Parish and the Louisiana Department of Transportation and Development (LDOTD), the Coast Guard is changing the regulations governing the operations of two parish owned and two state owned drawbridges over Teche Bayou, Louisiana. The bridges with new regulations are:

(1) The swing span bridge, mile 27.0, at Baldwin, St. Mary Parish, Louisiana (St. Mary Parish owned).

(2) The swing span bridge, mile 32.5, on LA 324, at Charenton, St. Mary Parish, Louisiana.

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(3) The swing span bridge, mile 37.0, on LA 670, at Adeline, St. Mary Parish, Louisiana.

(4) The swing span bridge, mile 38.9, at Sorrel, St. Mary Parish, Louisiana (St. Mary Parish owned).

The changes for these bridges require that the draws of all four bridges open on at least four hours advance notice at all times. These changes are being made because of infrequent requests to open the draws of the bridges. This action will relieve the bridge owners of the burden of having bridgetenders constantly on duty between the hours of 10 a.m. and 6 p.m. for openings of the draws, while still providing for the reasonable needs of navigation.

EFFECTIVE DATE: This regulation becomes effective on February 12, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. John Wachter, Bridge Administration Branch, Eighth Coast Guard District, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: On 18 September 1989, the Coast Guard published a proposed rule (54 FR 38389) concerning this amendment. The Commander, Eighth Coast Guard District, also published the proposal as a Public Notice dated 29 September 1989. In each notice interested parties were given until 2 November 1989 to submit comments.

Drafting information: The drafters of this regulation are Mr. John Wachter, project officer, and Commander J. A. Unzicker, project attorney.

Discussion of comments: Two letters were received in response to Public Notice No. CGD8–12–89. The Federal Emergency Management Agency and the National Marine Fisheries Service offered no objections to the proposed change.

Federalism implications: This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic assessment and certification: These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034: February 26, 1979).

The economic impact of these regulations is expected to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that the average number of vessels passing these bridges between the hours of 10 a.m. and 6 p.m. as evidenced by the bridge openings from January through December 1988 is well below one opening per day. With some planning by vessel operators that use the waterway, openings on a regulated basis will cause only minimal delay, or no delay, for boaters. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have significant economic impact on a substantial number of small entities.

The advance notice for opening the draws of the St. Mary Parish owned bridges may be given by placing a collect call anytime to St. Mary Parish at Franklin, Louisiana, telephone (318) 828–1960. For an opening of the state owned bridges, call collect at any time to the LDOTD District Office in Lafayette, Louisiana, telephone (318) 233–7404. These collect calls may be made by radiotelephone through a public coast station. The bridge owners recognize that there may be an unusual occasion to open the bridges on less than four hours notice for an emergency, or to operate the bridges on demand for an isolated but temporary surge in waterway traffic, and have committed to doing so if such an event should occur.

List of Subjects in 33 CFR Part 117

Bridges.

Regulation

In consideration of the foregoing, part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. Section 117.501 is amended by removing paragraph (a); by redesignating existing paragraphs (b) through (e) as paragraphs (a) through (d); by redesignating newly redesignated paragraphs (a)(6) through (a)(19) as paragraphs (a)(10) through (a)(23); by adding new paragraphs (a)(6) through (a)(9); and by amending newly redesignated paragraph (d) by removing "paragraphs (a) and (b)" and adding "paragraph (a) of this section" to read as follows:

§ 117.501 Teche Bayou.

(a) * * *

(6) St. Mary Parish bridge, mile 27.0 at Baldwin.

(7) S324 bridge, mile 32.5 at Charenton.

(8) S670 bridge, mile 37.0 at Adeline.

(9) St. Mary Parish bridge, mile 38.9 at Sorrel.

* * * * *

Dated: 1 December 1989.

W.P. Merlin,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 89–29821 Filed 12–26–89; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AD47

Providing Emergency Hospital Care to Community Nursing Home Patients

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: This regulation provides the authority for the Department of Veterans Affairs (VA) to authorize non-VA hospital care to obtain diagnostic services in connection with observation and examination (O&E) of a person to determine eligibility for VA benefits or services and to provide for the authorization for emergent non-VA hospital care for nonservice-connected veterans receiving contract nursing home care at VA expense. This action will permit VA to obtain O&E at non-VA facilities and to authorize non-VA treatment for nonservice-connected veterans in contract nursing homes.

EFFECTIVE DATE: January 20, 1989.

FOR FURTHER INFORMATION CONTACT: Paul C. Tryhus, Chief, Policies and Precedures Division (136F), Medical Administration Service, Veterans Health Services and Research Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2504.

SUPPLEMENTARY INFORMATION: The Veterans' Benefits and Services Act of 1988, Public Law 100–322, expands the authority for VA to authorize contract hospitalization or medical services for the treatment of medical emergencies which pose a serious threat to the life or health of a nonservice-connected veteran receiving contract nursing home care under VA auspices, and expands the authority for providing non-VA hospital care for certain persons. Clinic directors, or their designees, may authorize necessary services at non-VA facilities (on an inpatient or outpatient basis) in order to complete requests from VA Regional Offices for O&E of a person to determine eligibility for VA benefits or services.

VA finds that for good cause, advance publication for public notice and comment is unnecessary and not required by law. These provision are promulgated by Congress, as contained in the Veterans' Benefits and Services Act of 1988, Public Law 100–322. Accordingly, the changes are now published as final regulations.

These final regulations are considered nonmajor under the criteria of Executive Order 12291, Federal Regulation. They will not have an annual effect on the economy of $100 million or more; will result in no significant increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. They will have no adverse effect on competition, employment, investment productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

These final regulations will impose no regulatory, paperwork or administrative burdens on small entities since the change concerns the expansion of contract care authority to provide emergent non-VA hospital care to community nursing home patients and to authorize non-VA hospital care to obtain diagnostic services in connection with O&E of a person to determine eligibility for VA benefits or services.

The Catalog of Federal Domestic Assistance Numbers are 64.009 and 64.001.

List of Subjects in 38 CFR Part 17

Alcoholism, Claims, Dental health, Drug abuse, Foreign relations, Government contracts, Grants programs—health, Health care, Health facilities, Health professions, Medical devices, Medical research, Mental health programs, Nursing home care, Philippines, Veterans.

Approved:

Edward J. Derwinski,

Secretary.

PART 17—[AMENDED]

In 38 Part 17, Medical, § 17.50b is amended by adding paragraphs (a)(10) and (a)(11) to read as follows:

§ 17.50b Use of public or private hospitals for veterans.

(a) * * *

(10) For any disability of a veteran receiving VA contract nursing home care. The veteran is receiving contract nursing home care and requires emergency treatment in non-VA facilities.

(Authority: 38 U.S.C. 603(a))

(11) For completion of evaluation for observation and examination (O&E) purposes, clinic directors or their designees will authorize necessary diagnostidc services at non-VA facilities (on an inpatient or outpatient basis) in order to complete requests from VA Regional Offices for O&E of a person to determine eligibility for VA benefits or services.

* * * * *

[FR Doc. 89–29840 Filed 12–26–89; 8:45 am]

BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 116, 117, 302, and 355

[SW H–FRL–3700–2]

Reportable Quantity Adjustments; Correction

AGENCY: U.S. Environmental Protection Agency [EPA].

ACTION: Final rule; technical corrections.

SUMMARY: On August 14, 1989, the U.S. Environmental Protection Agency (EPA) published a final rule (54 FR 33426) to adjust reportable quantities (RQs) for certain substances designated as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. That final rule included a complete table of CERCLA hazardous substances and RQs, including certain technical corrections. EPA published the corrected table in the August 14, 1989 final rule to make these corrections available to the regulated community and other members of the public as soon as possible. The primary purpose of this notice is to identify the technical corrections that were made in the August 14, 1989 final rule and to explain the reasons for the corrections. This notice also makes further corrections to the table published in the August 14, 1989 final rule; makes conforming changes to RQs published in 40 CFR Part 355; and corrects a statement concerning notification of releases of polychlorinated biphenyls (PCBs) under the Toxic Substances Control Act (TSCA) that was made in the preamble to the August 14, 1989 final rule.

EFFECTIVE DATE: December 27, 1989.

ADDRESSES: The toll-free telephone number of the National Response Center is 1–800/424–8802; in the Washington, DC metropolitan area, the number is 1–202/267–2675.

Docket. Copies of materials relevant to this notice are contained in Room M2427 at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The docket is available for inspection between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, you may make an appointment by calling 1–202/382–3046. The public may copy a maximum of 50 pages from any regulatory docket at no cost. Additional copies cost $.20 per page.

FOR FURTHER INFORMATION CONTACT: Ivette O. Vega, Response Standards and Criteria Branch, Emergency Response Division (OS–210), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, or the RCRA/Superfund Hotline at 1–800/424–9346; in the Washington, DC metropolitan area, 1–202/382–3000.

SUPPLEMENTARY INFORMATION:

Background. Under CERCLA sections 103(a) and (b), persons, in charge of vessels or facilities from which hazardous substances have been released in quantities equal to or greater than their RQs are required to immediately notify the National Response Center of the release. In addition, section 304 of the Superfund Amendments and Reauthorization Act of 1986 (SARA) Title III requires that releases of hazardous substances in quantities greater than or equal to their RQs (or one pound if a reporting trigger is not established by regulation) be reported to State and local authorities.

Section 102(b) of CERCLA sets a statutory RQ of one pound for CERCLA hazardous substances, except those substances for which different RQs have been established pursuant to section 311(b)(4) of the Clean Water Act (CWA). Section 102(a) of CERCLA authorizes the U.S. Environmental Protection Agency (EPA) to adjust all of these RQs by regulation. EPA has adjusted RQs for most CERCLA hazardous substances in final rules published on April 4, 1985 (50 FR 13456), September 29, 1986 (51 FR 34534), May 24, 1989 (54 FR 22524), and August 14, 1989 (54 FR 33418 and 54 FR 33426).

Explanation of Corrections Already Published. In the final rule published on August 14, 1989 (54 FR. 33426), EPA promulgated RQ adjustments for 258 substances designated as hazardous under CERCLA, changed the name of the hazardous substance "Kelthane" to "dicofol" in the list of CERCLA hazardous substances, and removed

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ammonium thiosulfate from the CERCLA list. These changes, which are explained in the preamble to the August 14, 1989 final rule, become effective on October 13, 1989. The changes made amendments to Table 302.4 and Appendix A in 40 CFR part 302, as well as Table 117.3 in 40 CFR part 117. Table 302.4 lists each CERCLA hazardous substance along with its statutory RQ, its final adjusted RQ (if any), its regulatory synonyms, and its Chemical Abstracts Service Registry Number (CASRN). Appendix A to Table 302.4 lists individual CERCLA hazardous substances, sequentially according to their CASRNs. Table 117.3 lists substances originally designated as hazardous under section 311(b)(2)(A) of the CWA (all of which also are CERCLA hazardous substances).

In the same August 14, 1989 final rule, EPA made certain technical revisions of Table 302.4, its Appendix A, and Table 117.3 that also became effective on October 13, 1989. Most of these technical revisions have been made to reflect recent changes to the hazardous waste listing regulations promulgated at 40 CFR part 261 under the Resource Conservation and Recovery Act (RCRA) so as to maintain the consistency of the RQ regulations with the RCRA regulations. Consistency between the lists of RCRA hazardous wastes and the CERCLA RQ regulations is important because, under CERCLA section 101(14)(C), listed RCRA hazardous wastes are also CERCLA hazardous substances. The RCRA regulations were themselves revised on April 22, 1988 (53 FR 13382) to reflect the Chemical Abstracts Service (CAS) Ninth Collective Index nomenclature as used in the CAS Registry Handbook. The other RCRA regulatory changes requiring corresponding changes to the RQ regulations are revisions on January 4, 1985 (50 FR 614) and December 31, 1985 (50 FR 53315) to make desired changes in the scope of EPA's RCRA program, and on August 3, 1987 to correct an error in the description of waste stream KO62 (52 FR 28697).

The remaining technical revisions promulgated in the August 14, 1989 final rule—and identified in this notice—were made to achieve consistency of the RQ regulations with related regulations promulgated under SARA Title III (40 CFR part 355), and the CWA (40 CFR part 116).

The technical revisions published in the August 14, 1989 final rule may be grouped into four categories: (1) Revisions to the names of individual hazardous substances; (2) revisions to the descriptions of hazardous waste streams; (3) deletions of regulatory synonyms; and (4) additions of CASRNs. The specific revisions made in each of these categories are described below and are listed in Tables 1 through 4 at the end of this preamble.

Technical revisions in the first category—those that have been made to the names of individual CERCLA hazardous substances (as opposed to hazardous waste streams) to be consistent with the names used in other regulations—are described in Table 1. These revisions affect the "Hazardous Substance" and "Regulatory Synonyms" columns of Table 302.4, the "Hazardous Substance" column of Appendix A, and the "Material" column of Table 117.3. Some of the "new names" listed in Table 1 replace the "previous names" listed; other new names are additions to the previous names (i.e., new regulatory synonyms). For example, the new name, "acetic acid, lead (2+) salt" replaces the previous name, "acetic acid, lead salt"; however, the new name, "arsenic acid H_3AsO_4" is an addition to the previous name, "arsenic acid" (i.e., "arsenic acid H_3AsO_4" is new regulatory synonym for "arsenic acid."

Revisions to the descriptions of certain hazardous waste streams in the "Hazardous Substance" column of Table 302.4 have been made based on the January 4, 1985, December 31, 1985, and August 3, 1987 RCRA rules mentioned above. The "previous description" and "new description" for each of these waste streams are shown in Table 2.

Certain regulatory synonyms for CERCLA hazardous substances have been deleted from the "Regulatory Synonyms" and "Hazardous Substance" columns of Table 302.4 and the "Hazardous Substance" column of Appendix A to correspond with changes to the RCRA regulations made by the April 22, 1988 rule described above. The "synonym(s) deleted" for each "chemical name" are indicated in Table 3.

Lastly, CASRNs for certain CERCLA hazardous substances have been added to the "CASRN" columns of Table 302.4 and its Appendix A to achieve and maintain consistency with the RCRA, SARA Title III, and CWA regulations described above. The added CASRNs and the hazardous substances to which they apply are shown (along with any existing CASRNs for these substances) in Table 4.

Additional Technical Revisions to Table 302.4. A revision to the description of waste stream F011 (based on the December 31, 1985 RCRA rule mentioned above) was inadvertently omitted from Table 302.4 as published on August 14, 1989. In addition, a revision to the description of waste stream F003 was inadvertently included in Table 302.4 of the August 14, 1989 final rule. The descriptions of waste streams F011 and F003 are corrected by this notice.

Conforming Revisions to 40 CFR Part 355. RQ revisions were made to Table 302.4, Appendix A, and Table 117.3 in the August 14, 1989 RQ adjustment final rule mentioned above, and in a separate RQ adjustment final rule published on the same date (54 FR 33418). However, conforming revisions to the RQs listed in appendices A and B of 40 CFR part 355 also must be made. These appendices, which list extremely hazardous substances (EHSs) and their threshold planning quantities (TPQs) under SARA Title III, also show RQs for EHSs. Twenty-four conforming changes to Appendices A and B are required by the RQ adjustments published on August 14, 1989. In addition, five erroneous RQs in appendices A and B must be corrected. These twenty-nine changes to 40 CFR part 355 are made by this notice, and are presented in Table 5.

Correction of Statement Concerning Notification of PCB Releases Under TSCA. In the preamble to the August 14, 1989 RQ adjustment final rule mentioned above, EPA stated that, "Under TSCA, spills of more than 10 pounds of *PCB-containing material* must be reported to the appropriate EPA Regional Administrator (40 CFR 761.125)" (emphasis in original) (54 FR 33437). Although this is a correct statement of prior requirements, the requirements were changed in a final rule published in the Federal Register on October 19, 1988 (53 FR 40882). Currently, as is stated in the October 19, 1988 final rule, spills of 10 pounds or more by weight of PCBs, not PCB-containing material, must be reported to the appropriate EPA Regional Office (53 FR 40883).

The statement in the preamble to the August 14, 1989 final rule referring to the TSCA reporting requirement for PCB releases was made to support the Agency's determination that a one-pound RQ for PCBs (which was promulgated in the August 14, 1989 final rule) is not duplicative of the TSCA requirement. Although the TSCA reporting requirement has been changed, EPA believes that CERCLA and TSCA reporting of PCB releases is still not duplicative, because, as stated in the preamble to the August 14, 1989 final rule, the explicit Federal cleanup authority for releases of PCBs under CERCLA does not exist under TSCA. Therefore, the correction made in this notice does not affect the RQ adjustment for PCBs promulgated in the August 14, 1989 final rule.

C.

TABLE 1.—NEW NAMES OF INDIVIDUAL HAZARDOUS SUBSTANCES

Previous name[a]	New name
Acetic acid, lead salt	Acetic acid, lead (2+) salt.
Acetic acid, thallium(1) salt	Acetic acid, thallium(1+) salt.
Acetimidic acid, N-[(methyl-carbamoyl)oxy]thio-, methyl ester	Ethanimidothioic acid, N-[[(methylamino)carbonyl] oxy]-, methyl ester.
Aldrin	1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-10-hexachloro-1,4,4a,5,8,8a-hexahydro-, (1alpha,4alpha,4abeta,5alpha,8alpha, 8abeta)-.
Alanine, 3[p-bis(2-chloroethyl)amino]phenyl-, L-	L-Phenylalanine, 4-[bis(2-chloroethyl)amino].
3-(alpha-Acetonylbenzyl)-4-hydroxycoumarin and salts	2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenyl-butyl)-, & salts, when present at concentrations greater than 0.3%.
2-Amino-1-methyl benzene	Benzenamine, 2-methyl-.
4-Amino-1-methyl benzene	Benzenamine, 4-methyl-.
5-(Aminomethyl)-3-isoxazolol	Muscimol.
Arsenic acid	Arsenic acid H_3AsO_4.
Arsenic (III) oxide	Arsenic oxide As_2O_3.
Arsenic (V) oxide	Arsenic oxide As_2O_5.
Aziirino(2'3':3,4)pyrrolo (1,2-a)indole-4,7-dione,8-amino-8-[((aminocarbonyl) oxy) methyl]- 1,1a,2,8,8a,8b-hexahydro-8a-methoxy-5-methyl.	Aziirino(2'3':3,4)pyrrolo[1,2-a]indole-4,7-dione,8-amino-8-[((aminocarbonyl)oxy] methyl)-1,1a,2,8,8a,8b-hexahydro-8a-methoxy-5-methyl-,[1aS-(1aalpha, 8beta,8aalpha,8balpha)]-.
1,2-Benzanthracene, 7,12-dimethyl-	Benz[a]anthracene, 7,12-dimethyl-.
1,2-Benzenedicarboxylic acid anhydride	1,3-Isobenzofurandione.
1,2-Benzenedicarboxylic acid, [bis(2-ethylhexyl)]ester	Diethylhexyl phthalate.
1,2-Benzenedicarboxylic acid,di-n-octyl ester	1,2-Benzenedicarboxylic acid, dioctyl ester.
Benzene, 2,4-diisocyanatomethyl-	Benzene, 1,3-diisocyanatomethyl.
Benzene, dimethyl	Benzene, dimethyl:
m-	m-Xylene.
o-	o-Xylene.
p-	p-Xylene.
Benzene, 1-methyl-2,6-dinitro	Benzene, 1-methyl-1,3-dinitro-.
Benzene, 1,2-methylenedioxy-4-allyl-	1,3-Benzodioxole, 5-(2-propenyl)-.
Benzene, 1,2-methylenedioxy-4-propenyl	1,3-Benzodioxole, 5-(1-propenyl)-.
Benzene, 1,2-methylenedioxy-4-propyl-	1,3-Benzodioxole, 5-propyl-.
Benzene, trichloromethyl	Benzene, (trichloromethyl).
1,2-Benzisothiazolin-3-one, 1,1-dioxide, and salts	1,2-Benzisothiazol-3-(2H)-one, 1,1-dioxide.
Bis(2-chloroisopropyl)ether	Propane, 2,2'-oxybis [2-chloro-.
Bis(2-chloroethoxy)methane	Dichloromethoxy ethane.
Bis(chloromethyl)ether	Dichloromethyl ether.
Bis(dimethylthiocarbamoyl) disulfide	Thioperoxydicarbonic diamide [(H2N)C(S)2S2, tetramethyl-.
Bromide cyanide	Cyanogen bromide (CN)Br.
Butanoic acid, 4-[bis(2-chloroethyl)amino]benzene	Benzenebutanoic acid, 4-[bis(2-chloroethyl)amino]-.
Calcium Cyanide	Calcium Cyanide $Ca(CN)_2$.
Carbamide, N-ethyl-N-nitroso-	Urea, N-ethyl-N-nitroso-.
Carbamide, N-methyl-N-nitroso-	Urea, N-methyl-N-nitroso-.
Carbamoyl chloride, dimethyl-	Carbamic chloride, dimethyl-.
Carbonic acid, dithallium(1) salt	Carbonic acid, dithallium(1+) salt.
Carbonochloridic acid, methyl ester	Methyl chloroformate.
Carbonyl chloride	Carbonic dichloride.
Carbonyl fluoride	Carbonic difluoride.
Chromic acid, calcium salt	Chromic acid H_2CrO_4, calcium salt.
Chlordane, technical	Chlordane, alpha & gamma isomers.
Chlorine cyanide	Cyanogen chloride (CN)Cl.
Cresylic acid	Phenol, methyl-.
Cresol(s)	
m-	m-Cresol.
o-	o-Cresol.
p-	p-Cresol.
Copper cyanide	Copper cyanide CuCN.
Cyanides (soluble cyanide salts), not elsewhere specified	Cyanides (soluble salts and complexes) not otherwise specified.
Cyanogen	Ethanedinitrile.
1,4-Cyclohexadienone	2,5-Cyclohexadiene-1,4-dione.
Decachlorooctahydro-1,3,4-metheno-2H-cyclobuta[c,d]-pentalen-2-one	1,3,4-Metheno-2H-cyclobuta[cd]pentalen-2-one, 1,1a,3,3a,4,5,5,5a,5b,6-decachloroc-tahydro-.
Diaminotoluene	Benzenediamine, ar-methyl-.
1,2:7,8-Dibenzopyrene	Benzo [rst]pentaphene.
S-(2,3Dichloroallyl) diisopropyl-thiocarbamate	Carbamothioic acid, bis(1-methylethyl)-, S-(2,3-dichloro-2-propenyl) ester.
Dichlorobenzene (mixed)	Dichlorobenzene.
Dichlorodiphenyl dichloroethane	Benzene, 1,1'-(2,2-dichloroethylidene)bis[4-chloro.
Dichlorodiphenyl trichloroethane	Benzene, 1,1'-(2,2,2-trichloroethylidene)bis[4-chloro-.
1,2-trans-Dichloroethylene	1,2-Dichloroethylene.
3,5-Dichloro-N-(1,1-dimethyl-2-propynyl)benzamide	Benzamide, 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)-.
1,2-Dichloropropane	Propane, 1,2-dichloro-.
Dichloropropene(s)	Dichloropropene.
2,3-Dichloropropene (isomer)	2,3-Dichloropropene.
1,4-Diethylene dioxide	1,4-Diethylenedioxide.
0,0-Diethyl S-[2-(ethylthio) ethyl] phosphorodithioate	Phosphorodithioic acid, O-)-diethyl S-[2-(ethylthio) ethyl]ester.
1,2-Dihydro-3,6-pyridazinedione	3,6-Pyridazinedione, 1,2-dihydro-.
Dimethylaminoazobenzene	p-Dimethylaminoazobenzene.
Dimethylnitrosamine	Methanamine, N-methyl-N-nitroso-.

TABLE 1.—NEW NAMES OF INDIVIDUAL HAZARDOUS SUBSTANCES—Continued

TABLE 1.—NEW NAMES OF INDIVIDUAL HAZARDOUS SUBSTANCES—Continued

Previous name[a]	New name

TABLE 1.—NEW NAMES OF INDIVIDUAL HAZARDOUS SUBSTANCES—Continued

Previous name*	New name
3,3-Dimethyl-1-(methylthio)-2-butanone, O-[(methylamino) carbonyl] oxime	2-Butanone, 3,3-dimethyl-1-(methylthio)-,O[(methylamino) carbonyl] oxime.
0,0-Dimethyl O-p-nitrophenyl phosphorothioate	Phosphorothioic acid, 0,0-dimethyl O-(4-nitrophenyl) ester.
4,6-Dinitro-o-cyclohexylphenol	2-Cyclohexyl-4,6-dinitrophenol.
2,4-Dithiobiuret	Dithiobiuret.
Dothiopyrophosphoric acid, tetraethyl ester	Thiodiphosphoric acid, tetraethyl ester.
Endrin	Endrin, & metabolites.
2,4-D Esters	2,4-D Ester.
Ethanamine, 1,1-dimethyl-2-phenyl	Benzeneethanamine, alpha,alpha-dimethyl-.
1,2-Ethanediylbiscarbamo-dithioic acid	Carbamodithioic acid, 1,2-ethanediylbis, salts & esters.
Ethane, 1,1,1,2,2,2-hexachloro	Ethane, hexachloro-.
Ethane, 1,1,1-trichloro-2,2-bis(p-methoxyphenyl)-	Benzene, 1,1'-(2,2,2-trichloroethylidene)bis[4-methoxy-.
Ethenamine, N-methyl-N-nitroso-	Vinylamine, N-methyl-N-nitroso.
Ethene, 1,1,2,2-tetrachloro-	Ethene, tetrachloro-.
Ethene, trans-1,2-dichloro-	Ethene, 1,2-dichloro- (E).
2-Ethoxyethanol	Ethanol, 2-ethoxy-.
Ethyl 4,4'-dichlorobenzilate	Chlorobenzilate.
Ethylenebis(dithiocarbamic acid)	Ethylenebisdithiocarbamic acid, salts & esters.
Ethyleneoxide	Ethylene oxide.
Fulminic acid, mercury(II) salt	Fulminic acid, mercury(2+) salt.
gamma-BHC	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1alpha,2alpha, 3beta,4alpha,5alpha,6beta)-
D-Glucopyranose, 2-deoxy-2-(3-methyl-3-nitrosoureido)	Glucopyranose, 2-deoxy-2-(3-methyl-3-nitrosoureido).
Guanidine, N-nitroso-N-methyl-N'-nitro	Guanidine, N-methyl-N'-nitro-N-nitroso-.
1,2,3,4,10,10-Hexachloro-6,7-epoxy-1,4,4a,5,6,7,8,8a-octahydro-endo,exo-1,4:5,8-dimethanonaphthalene.	2,7:3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a, 7,7a-octa-hydro-, (1aalpha, 2beta,2abeta,3alpha,6alpha,6abeta,7beta,7aalpha)-.
1,2,3,4,10,10-Hexachloro-6,7-epoxy-1,4,4a,5,6,7,8,8a-octahydro-endo,exo-1,4:5,8-dimethanonaphthalene.	2,7:3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a, 7,7a-octahydro-,(1aalpha,2beta, 2aalpha, 3beta,-6beta,6aalpha, 7beta,7aalpha)-.
1,2,3,4,10,10-Hexachloro-1,4,4a,5,8,8a-hexahydro- 1,4,5,8-endo,endodimethanonaphthalene.	1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro, (1alpha,4alpha,4abeta,5beta, 8beta,8abeta)-.
Hexachlorohexahydro-endo, endodimethanonaphthalene	Isodrin.
Hydrochloric acid	Hydrogen chloride.
Hydrogen sulfide	Hydrogen sulfide H2S.
Hydroxydimethylarsine oxide	Arsinic acid, dimethyl-.
Isocyanic acid, methyl ester	Methane, isocyanato-
Lasiocarpine	2-Butenoic acid, 2-methyl-, 7[[2,3-dihydroxy-2-(1-methoxyethyl)-3-methyl-1-oxobutoxy]methyl]-2,3,5,7a-tetrahydro-1H-pyrrolizin-1-yl ester, [1S-[1alpha(Z), 7(2S*, 3R*),7aal-pha]]-.
Lead subacetate	Lead, bis(acetato-O-)tetra hydroxytri.
4,7-Methanoindan, 1,2,4,5,6,7,8,8-octachloro- 3a,4,7,7a-tetrahydro-	4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octaochloro-2,3,3a,4,7,7a-hexahydro-.
2-Methylaziridine	Aziridine, 2-methyl-.
Methyl chloroform	Ethane, 1,1,1-trichloro-.
2,2'-Methylenebis(3,4,6-trichlorophenol)	Phenol, 2,2'-methylenebis[3,4,6-trichloro-.
Methyl ethyl ketone	Methyl ethyl ketone (MEK).
N-Methyl-N'-nitro-N-nitroso-guanidine	MNNG.
5,12-Naphthacenedione, (8S-cis)-8-acetyl-10-[3-amino-2,3,6-trideoxy-alpha-L-lyxo-hexopyranosyl)oxy]-7,8,9,10-tetrahydro-6,8,11-trihydroxy-1-methoxy-.	5,12-Naphthacenedione, 8-acetyl-10-[3-amino-2,3,6-trideoxy-alpha-L-lyxo-hexopyranosyl)oxy]-7,8,9,10-tetrahydro-6,8,11-trihydroxy- 1-methoxy-, (8S-cis)-.
2-Naphthylamine, N,N-bis(2-chloroethyl)-	Naphthalenamine, N,N'-bis(2-chloroethyl)-.
Nickel carbonyl	Nickel carbonyl Ni(CO)4, (T-4)-.
Nickel cyanide	Nickel cyanide Ni(CN)2.
Nitrogen(II) oxide	Nitrogen oxide NO.
Nitrogen(IV) oxide	Nitrogen oxide NO2.
2-Nitrophenol	o-Nitrophenol.
N-Nitrosodi-n-propylamine	1-Propanamine, N-nitroso-N-propyl-.
5-Norbornene-2,3-dimethanol, 1,4,5,6,7,7-hexachloro, cyclic sulfite	6,9-Methano-2,4,3-benzo-dioxathiepin, 6,7,8,9,20,20-hexachloro-1,5,5a,6,9,9a-hexahydro-, 3-oxide.
Osmium oxide	Osmium oxide OsO4 (T-4)-.
2H-1,3,2-Oxazaphosphorine,2-[bis(2-chloroethyl)amino] tetrahydro-2-oxide	2H-1,3,2-Oxazaphosphorin, 2-amine, N,N-bis((2-chloroethyl) tetrahydro-, 2-oxide.
Oxirane, 2-(chloromethyl)-	Oxirane, (chloromethyl)-.
Pentachloronitrobenzene	Pentachloronitrobenzene (PCNB).
Phenol,2,4-dinitro-6-methyl-, and salts	Phenol, 2-methyl-4,6-dinitro-.
Phenol,2,4,-dinitro-6(1-methylpropyl)-	Phenol, 2-(1-methylpropyl)-4,6-dinitro.
Phenyl dichloroarsine	Arsonous dichloride, phenyl-.
N-Phenylthiourea	Phenylthiourea.
Phosphoric acid, diethyl p-nitrophenyl ester	Phosphoric acid, diethyl 4-nitrophenyl ester.
Phosphoric acid, lead salt	Phosphoric acid, lead(2+) salt (2:3).
Phosphorodithioic acid, 0,0-diethyl S-methyl ester	Phosphorodithioic acid, O1O-diethyl S-methyl ester.
Phosphorothioic acid, 0,0-diethyl O-(p-nitrophenyl) ester	Phosphorothioic acid, O,O-diethyl O-(4-nitrophenyl) ester.
Phosphorothioic acid, 0,0-dimethyl-O-[p-[(dimethylamino)-sulfonyl]phenyl] ester	Phosphorothioic acid, O,[4-[(dimethylamino) sulfonyl]phenyl]O,O-dimethyl ester.
Potassium cyanide	Potassium cyanide K(CN).
Potassium silver cyanide	Argentate(1-), bis(cyano-C)-, potassium.
1-Propanal, 2,3-epoxy-	Oxiranecarboxyaldehyde.
Propene, 1,3-dichloro-	1-Propene, 1,3-dichloro-.
Pyridine,2-[(2-dimethylamino)ethyl]-2-thenylamino]-	1,2-Ethanediamine, N-N-dimethyl-N'2-pyridinyl-N'1-(2-thienylmethyl)-.
Pyridine, hexahydro-N-nitroso-	Piperidine, 1-nitroso-.
Pyridine, (S)-3-(1-methyl-2-pyrrolidinyl)-, and salts	Pyridine, 3-(1-methyl-2-pyrrolidinyl)-, (S)-.
Pyrophosphoric acid, tetraethyl ester	Diphosphoric acid, tetraethyl ester.
Pyrrole, tetrahydro-N-nitroso-	Pyrrolidine, 1-nitroso-.
2,4-D, salts and esters	Acetic acid (2,4-dichloro-phenoxy)-.
Selenium disulfide	Selenium sulfide.
Selenium disulfide	Selenium sulfide SeS2.

TABLE 1.—NEW NAMES OF INDIVIDUAL HAZARDOUS SUBSTANCES—Continued

Previous name*	New name
Silver cyanide	Silver Cyanide Ag(CN).
Silvex	Silvex (2,4,5-TP).
Sodium cyanide	Sodium cyanide Na(CN).
4,4'-Stilbenediol, alpha, alpha'-diethyl-	Phenol, 4,4'-(1,2-diethyl-1,2-ethanediylidie-, (E).
Streptozotocin	D-Glucose, 2-deoxy-2-[[(methylnitrosoamino)-carbonyl]amino]-.
Strychnidin-10-one, and salts	Strychnidin-10-one.
Sulfuric acid, thallium(1) salt	Sulfuric acid, dithallium(1+) salt.
Tetrachloroethylene	Perchloroethylene.
Tetrachloroethylene	Tetrachlorethene.
Thallium(I) chloride	Thallium chloride T1C1.
Thallium(I) nitrate	Nitric acid, thallium(1+) salt.
Thallium (III) oxide	Thallium oxide T1203.
Thallium (1) selenide	Selenious acid, dithallium(1+) salt.
Thallium (1) selenide	Thallium selenite.
Thioimidodicarbonic diamide	Thioimidodicarbonic diamide [(H2N)C(S)]2NH.
Trichloroethene	Ethene, trichloro-.
2,4,5-Trichlorophenoxyacetic acid	Acetic acid, (2,4,5-trichlorophenoxy).
sym-Trinitrobenzene	1,3,5-Trinitrobenzene.
Uracil, 5-[bis(2-chloroethyl)amino]-	2,4-(1H,3H)-Pyrimidinedione, 5-[bis(2-chloroethyl)amino]-.
Vanadium (V) oxide	Vanadium oxide V205.
Vinyl acetate	Vinyl acetate monomer.
Warfarin	Warfarin, & salts, when present at concentrations greater than 0.3%.
Xylene	Xylene (mixed).
Xylene (mixed)	Xylene (mixed):
m-	m-Benzene, dimethyl.
o-	o-Benzene, dimethyl.
p-	p-Benzene, dimethyl.
Yohimban-16-carboxylic acid, 11,17-dimethoxy-18-[(3,4,5-trimethoxybenzoyl)oxy]-, methyl ester.	Yohimban-16-carboxylic acid, 11,17-dimethoxy-18-[(3,4,5-trimethoxybenzoyl)oxy]-, methyl ester (3beta, 16beta, 17alpha, 18beta, 20 alpha)-.
Zinc cyanide	Zinc cyanide Zn(CN)2.
Zinc phosphide	Zinc phosphide Zn3P2, when present at concentrations greater than 10%.

* These names are currently codified in Table 302.4, its Appendix A, and Table 117.3; the changes and additions to the names made by the August 14, 1989 final rule take effect on October 13, 1989.

TABLE 2.—CHANGES IN DESCRIPTIONS OF WASTE STREAMS

Previous description	New description
F001 The following spent halogenated solvents used in degreasing and sludges from the recovery of these solvents in degreasing operations:	F001 The following spent halogenated solvents used in degreasing; all spent solvent mixtures/blends used in degreasing containing, before use, a total of ten percent or more (by volume) of one or more of the above halogenated solvents or those solvents listed in F002, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.
(a) Tetrachloroethylene	(a) Tetrachloroethylene
(b) Trichloroethylene	(b) Trichloroethylene
(c) Methylene chloride	(c) Methylene chloride
(d) 1,1,1–Trichloroethane	(d) 1,1,1–Trichloroethane
(e) Carbon tetrachloride	(e) Carbon tetrachloride
(f) Chlorinated fluorocarbons	(f) Chlorinated fluorocarbons
F002 The following spent halogenated solvents and the still bottoms from the recovery of these solvents:	F002 The following spent halogenated solvents; all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more of the above halogenated solvents or those listed in F001, F004, or F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.
(a) Tetrachloroethylene	(a) Tetrachloroethylene.
(b) Methylene chloride	(b) Methylene chloride.
(c) Trichloroethylene	(c) Trichloroethylene.
(d) 1,1,1–Trichloroethane	(d) 1,1,1–Trichloroethane.
(e) Chlorobenzene	(e) Chlorobenzene.
(f) 1,2,2-Trichloro-1,2,2-trifluoroethane	(f) 1,2,2-Trichloro-1,2,2-trifluoroethane.
(g) o-Dichlorobenzene	(g) o-Dichlorobenzene.
(h) Trichlorofluoromethane	(h) Trichlorofluoromethane.
	(i) 1,1,2-Trichloroethane.

TABLE 2.—CHANGES IN DESCRIPTIONS OF WASTE STREAMS—Continued

Previous description	New description

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

	Statutory	Final RQ

TABLE 2.—CHANGES IN DESCRIPTIONS OF WASTE STREAMS—Continued

Previous description	New description
F007 Spent cyanide plating bath solutions from electroplating operations (except for precious metals electroplating spent cyanide plating bath solutions)	F007 Spent cyanide plating bath solutions from electroplating operations.
F008 Plating bath sludges from the bottom of plating baths from electroplating operations where cyanides are used in the process (except for precious metals electroplating bath sludges)	F008 Plating bath residues from the bottom of plating baths from electroplating operations where cyanides are used in the process.
F009 Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process (except for precious metals electroplating spent stripping and cleaning bath solutions)	F009 Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process.
F010 Quenching bath sludge from oil baths from metal heat treating operations where cyanides are used in the process (except for precious metals heat treating quenching bath sludges)	F010 Quenching bath residues from oil baths from metal heat treating operations where cyanides are used in the process.
F012 Quenching wastewater treatment sludges from metal heat treating operations where cyanides are used in the process (except for precious metals heat treating quenching wastewater treatment sludges)	F012 Quenching wastewater treatment sludges from metal heat treating operations where cyanides are used in the process.
K062 Spent pickle liquor from steel finishing operations	K062 Spent pickle liquor generated by steel finishing operations of facilities within the iron and steel industry (SIC Codes 331 and 332).

TABLE 3.—REGULATORY SYNONYMS DELETED

Chemical name	Synonym(s) deleted
Acetonitrile	Ethanenitrile.
Acetyl Chloride	Ethanoyl Chloride.
Benz[c]acridine	3,4-Benzacridine.
Carbon disulfide	Carbon bisulfide.
Cyanogen Bromide	Bromine Cyanide.
Formaldehyde	Methylene oxide.
Formic acid	Methanoic acid.
Phosphine	Hydrogen phosphide.
Selenourea	Carbamimidoselenoic acid.
Thiourea	Carbamide, thio.
2,4-D Acid	2;4-Dichlorophenoxyacetic acid, salts and esters.
Epichlorohydrin	1-Chloro-2,3-epoxypropane.
Hydrogen sulfide	Hydrosulfuric acid, Sulfur hydride.
Nickel carbonyl	Nickel tetracarbonyl.
Nickel cyanide	Nickel (II) cyanide.
Selenium disulfide	Sulfur selenide.

TABLE 4.—ADDITIONS TO CASRNs

Chemical name	Existing CASRN	Added CASRN
Mercurous nitrate	10415755	7782867
Uranyl nitrate	10102064	36478769
Zinc ammonium chloride	5262858	14639975
		14639986
F004		
The following spent non-halogenated solvents and the still bottoms from the recovery of these solvents:		
(a) Cresols, Cresylic acid		1319773
(b) Nitrobenzene		98953
F005		
The following spent non-halogenated solvents and the still bottoms from the recovery of these solvents:		
(a) Toluene		108883
(b) Methyl ethyl ketone		78933
(c) Carbon disulfide		75150
(d) Isobutanol		78831
(e) Pyridine		110861

TABLE 4.—ADDITIONS TO CASRNs—Continued

Chemical name	Existing CASRN	Added CASRN

TABLE 5.—REVISIONS TO REPORTABLE QUANTITIES LISTED IN APPENDICES A AND B OF 40 CFR PART 355 [a]

Hazardous substance	Previous RQ (pounds)	New RQ (pounds)
Arsenic pentoxide	5000	1
Arsenous oxide	5000	1
Arsenous trichloride	5000	1
Benzotrichloride	1	10
Calcium arsenate	1000	1
Chloroform	5000	10
Chloromethyl ether	1	10
Chloromethyl methyl ether	1	10
Dichloroethyl ether	1	10
Diepoxybutane	1	10
Dimethyl sulfate	1	100
Dimethylhydrazine	1	10
Epichlorohydrin	1000	100
Ethylene oxide	1	10
Formaldehyde	1000	100
Hexachlorocyclopentadiene	1	10
Hydrogen chloride [b]	1	5000
Methacrylonitrile [b]	1	1000
Mitomycin C	1	10
Nickel carbonyl	1	10
Nicotine sulfate [b]	1	100
Nitrosodimethylamine	1	10
Parathion	1	10
Paris green	100	1
Potassium arsenite	1000	1
Sodium arsenate	1000	1
Sodium arsenite	1000	1
Strychnine, sulfate [b]	1	10
Warfarin sodium [b]	1	100

[a] Five of the RQs being changed in 40 CFR Part 355 were proposed to be further adjusted on August 30, 1989 (54 FR 35986). These proposed RQ adjustments are: hydrogen chloride, 100 pounds; methacrylonitrile, 100 pounds; nickel carbonyl, one pound; nicotine sulfate, 10 pounds; and strychnine sulfate, 100 pounds.

[b] The change in the RQ for this hazardous substance is necessary to correct an error in Appendices A and B 40 CFR Part 355.

Dated: December 19, 1989.

Mary A. Gade,

Acting Assistant Administrator.

For the reasons set forth in this notice, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

1. The authority citation for part 302 is revised to read as follows:

Authority: 42 U.S.C. 9602; 33 U.S.C. 1321 and 1361.

2. Section 302.4 is amended by revising the following entries in Table 302.4 to read as set forth below.

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

Hazardous substance	CASRN	Regulatory synonyms	Statutory RQ	Statutory Code†	Statutory RCRA waste number	Final RQ Category	Final RQ Pounds (Kg)
• • • • • • • •							
F003			1*	4	F003	B	100 (45.4)
The following spent non-halogenated solvents and the still bottoms from the recovery of these solvents:							
(a) Xylene	1330207					C	1000 (454)
(b) Acetone	67641					D	5000 (2270)
(c) Ethyl acetate	141786					D	5000 (2270)
(d) Ethylbenzene	100414					C	1000 (454)
(e) Ethyl ether	60297					B	100 (45.4)
(f) Methyl isobutyl ketone	108101					D	5000 (2270)
(g) n-Butyl alcohol	71363					D	5000 (2270)
(h) Cyclohexanone	108941					D	5000 (2270)
(i) Methanol	67561					D	5000 (2270)
• • • • • • • •							
F011			1*	4	F011	A	10 (4.54)
Spent cyanide solution from salt bath pot cleaning from metal heat treating operations.							
• • • • • • • •							

Authority: 42 U.S.C. 11002 and 11048.

2. Part 355 is amended by revising the following entries in Appendices A and B to read as set forth below.

Appendix A—The List of Extremely Hazardous Substances and Their Threshold Planning Quantities

[Alphabetical Order]

CAS No.	Chemical name	Notes	Reportable quantity* (pounds)	Threshold planning quantity (pounds)
• • • • • • • •				
1303-28-2	Arsenic pentoxide	d	1	100/10,000
1327-53-3	Arsenous oxide	d,h	1	100/10,000
7784-34-1	Arsenous trichloride	d	1	500
• • • • • • • •				
98-07-7	Benzotrichloride	d	10	500
• • • • • • • •				
7778-44-1	Calcium arsenate	d	1	500/10,000
• • • • • • • •				
67-66-3	Chloroform	d,1	10	10,000
542-88-1	Chloromethyl ether	d,h	10	100
107-30-2	Chloromethyl methyl ether	e,d	10	100
• • • • • • • •				
111-44-4	Dichloroethyl ether	d	10	10,000
• • • • • • • •				
1464-53-5	Diepoxybutane	d	10	500
• • • • • • • •				
77-78-1	Dimethyl sulfate	d	100	500
• • • • • • • •				
57-14-7	Dimethylhydrazine	d	10	1,000
• • • • • • • •				
106-89-8	Epichlorohydrin	d,1	100	1,000
• • • • • • • •				
75-21-8	Ethylene oxide	d,1	10	1,000
• • • • • • • •				
50-00-0	Formaldehyde	d,1	100	500
• • • • • • • •				
77-47-4	Hexachlorocyclopentadiene	d,h	10	100
• • • • • • • •				
7647-01-0	Hydrogen chloride (gas only)	e,1	5,000	500
• • • • • • • •				
126-98-7	Methacrylonitrile	h	1,000	500
• • • • • • • •				
50-07-7	Mitomycin C	d	10	500/10,000

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[Alphabetical Order]

CAS No.	Chemical name	Notes	Reportable quantity* (pounds)	Threshold planning quantity (pounds)
13463-39-3	Nickel carbonyl	d	10	1
65-30-5	Nicotine sulfate	e	100	100/10,000
62-75-9	Nitrosodimethylamine	d,h	10	1,000
56-38-2	Parathion	c,d	10	100
12002-03-8	Paris Green	d	1	500/10,000
10124-50-2	Potassium arsenite	d	1	500/10,000
7784-46-5	Sodium arsenite	d	1	500/10,000
60-41-3	Strychnine sulfate	e	10	100/10,000
129-06-6	Warfarin sodium	e,h	100	100/10,000

Appendix B—The List of Extremely Hazardous Substances and Their Threshold Planning Quantities

[CAS Number Order]

CAS No.	Chemical name	Notes	Reportable quantity* (pounds)	Threshold planning quantity (pounds)
50-00-0	Formaldehyde	d,1	100	500
50-07-0	Mitomycin C	d	10	500/10,000
56-38-2	Parathion	c,d	10	100
57-14-7	Dimethylhydrazine	d	10	1,000
60-41-3	Strychnine sulfate	e	10	100/10,000
62-75-9	Nitrosodimethylamine	d,h	10	1,000
65-30-5	Nicotine sulfate	e	100	100/10,000
67-66-3	Chloroform	d,l	10	10,000
75-21-8	Ethylene oxide	d,l	10	1,000
77-47-4	Hexachlorocyclopentadiene	d,h	10	100
77-78-1	Dimethyl sulfate	d	100	500
98-07-7	Benzotrichloride	d	10	500
106-89-8	Epichlorohydrin	d,l	100	1,000
107-30-2	Chloromethyl methyl ether	e,d	10	100
111-44-4	Dichloroethyl ether	d	10	10,000
126-98-7	Methacrylonitrile	h	1,000	500
129-06-6	Warfarin sodium	e,h	100	100/10,000
542-88-1	Chloromethyl ether	d,h	10	100
1303-28-2	Arsenic pentoxide	d	1	100/10,000

[CAS Number Order]—Continued

CAS No.	Chemical name	Notes	Reportable quantity* (pounds)	Threshold planning quantity (pounds)
1327-53-3	Arsenous oxide	d,h	1	100/10,000
1464-53-5	Diepoxybutane	d	10	500
7647-01-0	Hydrogen chloride	e,l	5,000	500
7778-44-1	Calcium arsenate	d	1	500/10,000
7784-34-1	Arsenous trichloride	d	1	500
7784-46-5	Sodium arsenite	d	1	500/10,000
10124-50-2	Potassium arsenite	d	1	500/10,000
12002-03-8	Paris Green	d	1	500/10,000
13463-39-3	Nickel carbonyl	d	10	1

[FR Doc. 89-29976 Filed 12-26-89; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 180

[PP4E3048/R1047; FRL-3664-1]

Pesticide Tolerance for Oxamyl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a tolerance for the combined residues of the insecticide/nematicide oxamyl in or on the raw agricultural commodity non-bell peppers and that the oxamyl tolerance expression be modified to include the oxime metabolite. This regulation to establish a maximum permissible level for residues of the pesticide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

DATE: This regulation becomes effective December 27, 1989.

ADDRESS: Written objections, identified by the document control number, [PP4E3048/R1047], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section (H7505C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716C, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2310.

SUPPLEMENTARY INFORMATION: In the Federal Register of September 1, 1989 (54 FR 36328), EPA issued a proposed rule that gave notice that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition (PP) 4E3048 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project, and the Agricultural Experiment Stations of Arizona, Georgia, Louisiana, North Carolina, and Puerto Rico.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the combined residues of the insecticide/nematicide oxamyl (methyl N',N'-dimethyl-N-[(methylcarbamoyl)oxy]-1-thiooxamimidate) in or on the raw agricultural commodity peppers at 3.0 parts per million (ppm). The petition was later revised to propose a residue level of 5.0 ppm in or on non-bell peppers. Tolerances are currently established at 3.0 ppm in or on bell peppers.

The Agency has determined that the tolerance expression for oxamyl in 40 CFR 180.303 should reflect the sum of the residues of the insecticide oxamyl (methyl N',N'-dimethyl-N-[(methylcarbamoyl)oxy]-1-thiooxamimidate) and its oxime metabolite N',N'-dimethyl-N-hydroxy-1-thiooxamimidate calculated as oxamyl.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities,

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Pesticides and pests, Recording and recordkeeping requirements.

Dated: December 1, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.303, the introductory text is revised by modifying the tolerance expression to include the oxamyl metabolite, and the table is amended by adding and alphabetically inserting the raw agricultural commodity non-bell peppers, to read as follows:

§ 180.303 Oxamyl; tolerances for residues.

(a) Tolerances are established for the sum of the residues of the insecticide oxamyl (methyl N'-N'-dimethyl-N-[(methylcarbamoyl)-oxy]-1-thiooxamimidate) and its oxime metabolite N',N'-dimethyl-N-hydroxy-1-thiooxamimidate calculated as oxamyl in or on the following raw agricultural commodities:

Commodities	Parts per million
• • • • •	
Peppers, non-bell	5.0
• • • • •	

• • • • •

[FR Doc. 89-29891 Filed 12-26-89; 8:45 am]

BILLING CODE 6560-50-D

40 CFR Part 180

[OPP-300204A; FRL-3684-2]

Pome Fruits; Expanded Definition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document amends 40 CFR 180.34(f)(9)(xi) to include mayhaws in the subject pome fruits group. This regulation, which will expand and redefine the definition of pome fruits group, was requested by petition from the Interregional Research Project No. 4.

DATE: This regulation becomes effective December 27, 1989.

ADDRESS: Written objections, identified by the document control number, [OPP-300204A], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section (H7505C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716C, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2310.

SUPPLEMENTARY INFORMATION: In the Federal Register ofSeptember 1, 1989 (54 FR 36329), EPA issued a proposed rule giving notice that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted this request to EPA on behalf of the IR-4 Project.

IR-4 requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose that 40 CFR 180.34(f)(9)(xi) be amended by adding *Crataegus aestivalis* and *C. opaca* (mayhaws) to the subject 'pome fruits group,' thereby expanding its definition. The Agency also recommended in the proposed rule that *Crataegus rufula* (mayhaw) also be included in this grouping.

The amendment was requested in order to clarify and update the relationship between the subject pome fruits group and the specific raw agricultural commodities defined therein. There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the regulation established by amending 40 CFR 180.34(f)(9)(xi) will protect the public health. Therefore, 40 CFR 180.34(f)(9)(xi) is being amended by adding and alphabetically inserting 'mayhaws (*Crataegus aestivalis, C. opaca,* and *C. rufula*)' to the subject pome fruits group as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 1, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 180.34 [Amended]

2. Section 180.34 *Tests on the amount of residue remaining* is amended in paragraph (f)(9)(xi) by adding and alphabetically inserting in the entry "pome fruits group" the raw agricultural commodity 'mayhaws (*Crataegus aestivalis, C. opaca,* and *C. rufula*);".

[FR Doc. 89-29889 Filed 12-26-89; 8:45 am]

BILLING CODE 6560-50-D

40 CFR Part 180, 185 and 186

[PP8F3606, 8F3660, 8H5553, 8H5561/R1052; FRL-3684-1]

Pesticide Tolerances for 2-[1-(Ethoxyimino)Butyl]-5-[2-(Ethylthio)Propyl]-3-Hydroxy-2-Cyclohexene-1-One

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for the combined residues of the herbicide 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one (sethoxydim) and its metabolites containing the 2-cyclohexene-1-one moiety, calculated as parent, in or on the raw agricultural commodities (RACs) citrus fruits at 0.5 part per million (ppm), blueberries at 4.0 ppm, and grapes at 0.2 ppm, the processed food commodity raisins at 1.0 ppm, and the animal feed commodities dried citrus pulp at 1.5 ppm, citrus molasses at 1.5 ppm, raisin waste at 1.0 ppm, and grape pomace (wet and dry) at 6.0 ppm. These regulations were requested by BASF Wyandotte Corp. and establish the maximum permissible level for residues of the herbicide in or on these RACs, animal feed commodities, and the processed food commodity.

DATES: Effective on December 8, 1989.

ADDRESSES: Written objections, identified by the document control number, [PP8F3606, 8F3660, 8H5553, and 8H5561/R1052], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Robert J. Taylor, Product Manager (PM) 21, Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 243, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703-557-1800.

SUPPLEMENTARY INFORMATION: EPA issued notices in the Federal Register that announced that BASF Wyandotte Corp., P.O. Box 181, 100 Cherry Hill Rd., Parsippany, NJ 07054, posposed amending 40 CFR 180.412, 185.2800, 186.2800, and 21 CFR part 561 by establishing tolerances for the combined residues of the herbicide 2-[(1-(ethoxyimino)butyl]-5-[2-ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one and its metabolites containing the 2 cyclohexene-1-one moiety (calculated as the parent) in or on the following RACs, animal feed commodities, and processed feed commodities: pesticide petition (PP) 8F3606 for citrus fruits and blueberries at 0.5 and 4.0 ppm, resepectively, in the Federal Register of March 30, 1988 (53 FR 10286); food additive petition (FAP) 8H5553 for citrus molasses and citrus dry pulp at 1.5 ppm in the Federal Register of March 30, 1988 (53 FR 10286); PP 8F3660 for grapes at 1.0 ppm in the Federal Register of October 12, 1988 (53 FR 39784); and FAP 8H5561 for raisins at 5.0 ppm, dried grape pomace at 30.0 ppm, and raisin waste at 5.0 ppm in the Federal Register of October 12, 1988 (53 FR 39785).

There were no comments or requests for referral to an advisory committee received in response to the notices of filing.

The Agency subsequently issued a recodification document, published in the Federal Register of June 29, 1988 (53 FR 24688) redesignating 21 CFR part 561 as 40 CFR part 186 and assigning the chemical as 40 CFR 186.2800. The petitioner subsequently amended PP 8F3660 and FAP 8H5561 by submitting revisions of Section F proposing the establishment of tolerances for residues of the herbicide 2-[(1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one and its metabolites containing the 2-cyclohexene-1-one moiety, calculated as the parent on the RAC grapes at 0.2 ppm, the processed commodity raisins at 1.0 ppm, the animal feeds raisin waste at 1.0 ppm, and grape pomace (wet and dry) at 6.0 ppm. Because these revisions result in lower tolerances than those previously proposed, there is no potential increase in risk to humans from these revisions; therefore, no period of public comment is needed.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data listed below were considered in support of these tolerances.

1. Several acute toxicology studies placing technical-grade sethoxydim in Toxicity Category III.

2. A subchronic feeding study in dogs fed dosages of 0, 20, and 200 milligrams per kilogram of body weight per day (mg/kg bwt/day) with a no-observed-effect level (NOEL) of 20 mg/kg/day based on liver effects and nonspecific anemia at 200 mg/kg/day.

3. A 1-year feeding study with dogs fed dosages (based on consumption) of 0, 8.86/9.41, and 17.5/19.9, and 110/129 mg/kg/day (males/females) with a NOEL of 8.86/9.41 mg/kg/day (males/females) based on equivocal anemia in males and females at 17.5/19.9 mg/kg/day, respectively.

4. A 2-year chronic feeding/oncogenicity study with mice fed dosages of 0, 6, 18, 54, and 162 mg/kg/day with no oncogenic effects observed under the conditions of the study at dose levels up to and including 162 mg/kg/day (highest dose tested [HDT]) and a systemic NOEL of 18 mg/kg/day based on nonneoplastic liver lesions at 54 mg/kg/day.

5. A 2-year chronic feeding/oncogenicity study with rats fed dosages of 0, 2, 6, and 18 mg/kg/day (HDT) with no oncogenic effects observed under the conditions of the study at dose levels up to and including 18 mg/kg/day (HDT) and a systemic NOEL greater than or equal to 18 mg/kg/day.

6. A developmental toxicity study in rats fed dosages of 0, 40, 100, and 250 mg/kg/day with no teratogenic effects occurring at 250 mg/kg/day (HDT), a maternal NOEL of 40 mg/kg/day based on significantly decreased adrenal weights at 100 mg/kg/day, and a fetotoxic NOEL of 250 mg/kg/day (HDT).

7. A developmental toxicity study in rabbits fed dosages of 0, 40, 160, and 480 mg/kg/day with a maternal toxicity NOEL of 160 mg/kg/day (severe weight loss, an excess number of maternal deaths, abortions, and fetal resorptions occurred at 480 mg/kg/day [HDT]); and a fetotoxicity/teratogenicity NOEL of 160 mg/kg/day (decreased litter sizes, low fetal weight, an increase in fetal resorptions and abortions occurred at 480 mg/kg/day [HDT]). Due to the extreme maternal toxicity of the chemical at the 480 mg/kg/day dose, it was difficult to determine whether the increased resportions and absorptions were due to maternal toxicity or to fetoxicity.

8. Mutagenic studies including a host-mediated assay (mouse) with *S. typhimurium*, negative at 2.5 grams/kg/day of chemical, and recombinant assay and forward mutations in *B. subtilis, E. coli,* and *S. typhimurium* (all negative at concentrations of the chemical up to 100 percent).

The acceptable daily intake (ADI), based on a 1-year feeding study in dogs (NOEL=8.86 mg/kg/bwt/day) and using a hundredfold safety factor is calculated to be 0.09 mg/kg/day. The theoretical maximum residue contribution (TMRC) for published tolerances is 0.023917 mg/kg/day. The current action will contribute 0.001307 mg/kg/day to the TMRC and will utilize 1.5 percent of the ADI. Published tolerances utilize 26.6 percent of the ADI. Other proposed tolerances utilize 7.9 percent of the ADI.

Data lacking are a repeat of a rat primary hepatocyte unscheduled DNA synthesis assay on a hydroxylated plant metabolite of the parent compound. The company has been notified of this deficiency and has agreed to repeat the study.

The pesticide is useful for the purposes for which these tolerances are sought. The nature of the residue is adequately understood for the purpose of establishing the tolerances. Adequate analytical methodology (gas chromatogrpahy using sulfur-specific flame photometric detection) is

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available for enforcement purposes. The method is listed in the *Pesticide Analytical Manual*, Vol. II (PAM II), as Method I. There are currently no actions pending against the registration of this chemical. Any secondary residues occurring in meat, milk, poultry (fat), and poultry (meat) resulting from these uses will be covered by existing tolerances on these commodities. Higher tolerances for poultry (meat byproducts) and eggs are being proposed under PP 8F3640 (peas and beans), published elsewhere in this issue of the Federal Register, to cover residues occurring in these commodities resulting from those uses.

Based on the information cited above, the Agency has determined that the establishment of the tolerances by amending 40 CFR parts 180, 185 and 186 will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR parts 180, 185, and 186

Administrative practice and procedure, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 8, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180-[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. In § 180.412(a), by adding and alphabetically inserting entries for the following raw agricultural commodities, to read as follows:

§180.412 2-[1-(Ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one; tolerances for residues.

(a) * * *

Commodities	Parts per million
* * * * *	
Blueberries	4.0
Citrus fruits	0.5
Grapes	0.2
* * * * *	

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 346.

§185.2800 [Amended]

b. In § 185.2800 *2-[1-(Ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one*, by deleting the period at the end of the section, substituting a comma, and adding the following phrase: "* * * and the commodity raisins at 1.0 part per million."

3. In Part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 346.

b. In § 186.2800, by adding and alphabetically inserting in the list of commodities the following entries, to read as follows:

§ 186.2800 2-[1-(Ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one; tolerances for residues.

* * * * *

Feed	Parts per million
* * * * *	
Citrus molasses	1.5
Dried citrus pulp	1.5
* * * * *	
Grape pomace, wet and dry	6.0
Raisin waste	1.0
* * * * *	

* * * * *

[FR Doc. 89-29800 Filed 12-26-89; 8:45 am]

BILLING CODE 6560-50-D

40 CFR Part 271

[FRL-3700-1]

Massachusetts; Schedule of Compliance for Modification of Hazardous Waste Program

AGENCY: Environmental Protection Agency, Region I.

ACTION: Notice of Massachusetts' Compliance Schedule to Adopt Program Modifications.

SUMMARY: On September 22, 1986, EPA promulgated amendments to the deadlines for State program modifications and published requirements for States to be placed on a compliance schedule to adopt the necessary program modifications. EPA is today publishing a compliance schedule for Massachusetts to modify its program by adopting the Federal program revisions. This extension is provided in accordance with § 271.21(g). As required, Massachusetts previously received a good faith extension, has made progress towards adopting Federal changes, and has submitted a proposed timetable to complete the necessary revisions.

FOR FURTHER INFORMATION CONTACT: Stephanie Goodwin, Massachusetts RCRA Coordinator, EPA Region I, HRR–CAN3, J.F.K. Federal Building, Boston, Massachusetts 02203, (617) 573–5740.

SUPPLEMENTARY INFORMATION:

A. Background

Final authorization to implement the Federal hazardous waste program within the State is granted by EPA if the Agency finds that the State program (1) is "equivalent" to the Federal program (2) is "consistent" with the Federal program and other State programs, and (3) provides for adequate enforcement (Section 3006(b), 42 U.S.C. 6926(b)). EPA regulations for final authorization appear at 40 CFR 271.1—271.25. In order to retain authorization, a State must revise its program to adopt new Federal requirements by the cluster deadlines and procedures specified in 40 CFR 271.21. See 51 FR 33712, September 22, 1986 for a complete discussion of these procedures and deadlines.

B. Massachusetts

Final authorization of the Massachusetts hazardous waste program became effective on February 7, 1985. (See 50 FR 3344, dated January 24, 1985.) Today EPA is publishing a compliance schedule for Massachusetts to obtain authorization for program revisions for the following Federal program requirements. These requirements comprise Non-HSWA Cluster III:

(1) Radioactive Mixed Waste, 51 FR 24504, July 3, 1986.

(2) Liability Coverage, 51 FR 25350, July 11, 1986.

(3) Hazardous Waste Tank Systems, 51 FR 25422 , July 14, 1986.

(4) Correction to Listing of Commercial Chemical Products and Appendix VIII Constituents, 51 FR 28296, August 6, 1986.

(5) Hazardous Waste Tank Systems; Correction, 51 FR 29430, August 15, 1986.

(6) Revised Manual SW–846; Amended Incorporation by Reference, 52 FR 8072, March 16, 1987.

(7) Closure/Post-Closure Care for Interim Status Surface Impoundments, 52 FR 8704, March 19, 1987.

(8) Definition of Solid Waste; Technical Corrections, 52 FR 21306, June 5, 1987.

(9) Amendments to part B Information Requirements for Land Disposal Facilities, 52 FR 23447, June 22, 1987.

It should be noted that while the regulations contained in Non-HSWA Clusters I and II have already been promulgated by the State, authorization application components have not been received. It is anticipated that the authorization application subject to this compliance schedule will cover Non-HSWA Clusters I, II and III inclusively.

The State has agreed to obtain the needed program revisions, presently excluding the State Availability of Information requirements under the Hazardous and Solid Waste Amendments contained in Non-HSWA Cluster I, and to develop an authorization application according to the following schedule:

(1) Submittal of a complete draft application (including Memorandum of Agreement, Program Description, regulations, checklists and the Attorney General's Statement), November 7, 1989.

(2) Submittal of a complete final application, March 1, 1990.

Authority

This notice is issued under the authority of Sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the RCRA of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: December 12, 1989.

Paul G. Keough,

Acting Regional Administrator.

[FR Doc. 89-29977 Filed 12-26-89; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 81-11; Notice 29]

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: This notice responds to petitions for reconsideration of the final rule published on June 29, 1989, permitting an additional standardized replaceable light source known as Type HB2.

EFFECTIVE DATE: January 26, 1990. The lens marking requirements of S5.1.1.29 are further deferred to September 1, 1990.

FOR FURTHER INFORMATION CONTACT: Jere Medlin, Office of Rulemaking, NHTSA (202–366–5276).

SUPPLEMENTARY INFORMATION: On June 29, 1989, NHTSA amended Federal Motor Vehicle Safety Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment* to adopt an additional type of a standardized replaceable light source to be used in replaceable bulk headlamps on motor vehicles (Notice 27, 54 FR 27362). Thereafter, on August 2, 1989, pursuant to a petition for reconsideration by BMW of North America, Inc., NHTSA published a notice delaying the effective date of the lens marking requirements to January 1, 1990, for motorcycle headlamps that had been specified in the June notice (Notice 28, 54 FR 31840).

Petitions for reconsideration of various aspects of the final rule were also filed by Hella, K.G. ("Hella"), American Honda Motor Co., Inc. ("Honda"), GTE Sylvania Miniature Lighting ("Sylvania"), Motorcycle Industry Council ("MIC"), and Koito Manufacturing Co., Ltd. ("Koito").

Discussion of Petitions

Issue of Marking of Motorcycle Headlamps

As noted above, on August 2, 1989, NHTSA amended section S5.1.1.29 to defer the effective date for the marking of motorcycle lenses to January 1, 1990. This section requires the word "motorcycle" to be marked on the headlamp lens if the light source is other than one of Standard No. 108's specified HB Types (*e.g.*, an H–4). In addition to BMW, comments were received from Hella, Honda, MIC, and Koito. Hella requested an extension of the effective date, citing tooling difficulties, as did Koito, which specifically requested a year's grace. In the alternative, Hella requested permission to mark according to SAE J759, and Koito, to mark only those motorcycle headlamps which are of the same size as sealed beam headlamps types A through D. Honda and MIC also requested a delayed effective date, to the beginning of the 1991 model year, arguing that this was the most efficient way for the industry to proceed. Both also asked for a clarification that the requirement did not extent to the marking of replacement lenses intended for use on headlamps on pre-1991 model year motorcycles.

The agency wishes to clarify that the marking requirement applies only to lenses manufactured to replace those on headlamps whose lenses were marked in accordance with S5.1.1.29. The requirement will not apply retroactively to any other motorcycle headlamps lens. Although the primary intent of the marking requirement is to minimize the possibility that a motorcycle headlamp could be used on a passenger car should it contain an H–4 light source, NHTSA notes that no "motorcycle" lens marking would be required were the manufacturer to install the corresponding Type HB2 light source that meets the automotive photometrics of Figure 17 of Standard No. 108.

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Koito's petition that would restrict marking only to motorcycle headlamps that are physically interchangeable with sealed beam headlamps of specified sizes might have been more appropriate before the agency amended Standard No. 108 to specify the integral beam headlamp system. Replaceable bulb and integral beam headlamps that do not have standardized dimensional specifications will be produced. Thus, it is important that motorcycle headlamps that are not equipped with HB Type light sources be distinguishable from these headlamps. Retaining marking requirements unchanged from the final rule will help achieve this goal. Therefore, Koito's petition is denied.

Finally, the agency has considered the arguments for a further extension of the effective date of the lens marking requirement. In view of the necessity to use present stock, and of the industry practice in orderly changes at the beginning of model years, the agency is granting the petitions for a deferred effecitve date, until the beginning of the next model year, and is amending S5.1.1.29 to specify September 1, 1990 as the date on which the lens marking requirement becomes effective.

Issue of Bulb Ratings

Koito commented that the bulb wattage and luminous flux values differ from the H–4 bulb, that they are inappropriate, and that the agency provided no explanation for this. The agency agrees with this comment. The values established related to the test voltage of 13.2V initially proposed for HB2, rather than the 12.8V which was the basis of the second proposal. The agency is correcting S7.6(b) to specify that the maximum power of the HB2 on lower beam shall be 65 watts and 72 watts on the upper beam. The luminous flux of HB2 shall be 910 plus or minus 10% on the lower beam, and 1500 plus or minus 10% on the upper beam.

Issue of Safety of Bulb Substitution

Sylvania petitioned that the rule be deferred, pending a fuller analysis of safety issues involving "substitution for the HB2 of high-wattage H4 motorcycle and off-road vehicle headlamp bulbs not sanctioned for highway use." The crux of petitioner's argument is that the agency originally proposed to differentiate the base of the HB2 from that of the H-4, so as to reduce the risk of illegal substitution of the H-4 with its high glare potential. It argues that the abandonment of that proposal merits reconsideration in the public interest, and, in essence, that the agency return to its former position.

In response to this petition, Volkswagen of America, though not a petitioner for reconsideration, filed a rebuttal which stated that the HB2 light source uses a base similar to the European P43t base, while the high wattage or rally bulb that is similar in design to the H-4 that will be supplied by major manufacturers of the H-4 to the US market is designed with the PU43t base. Because of a projection in the PU43t base, it cannot be installed in lamps designed to use bulbs with the P43t base. Two major suppliers of the H-4 to the American market had previously confirmed to NHTSA that, notwithstanding the lack of a requirement for bulb differentiation, they will supply high wattage or rally H-4 type bulbs with bases that are designed not to fit headlamps that accept the HB2. The agency believes that this undertaking by bulb manufacturers is sufficient to address the concern of Sylvania, and denies its petition.

Effective Date

This rule becomes effective January 26, 1990, with certain marking requirements deferred from January 1, 1990, to September 1, 1990. Since the amendment does not impose any new requirements but relieves a restriction, and provides clarifications, the agency finds for good cause shown that an effective date earlier than 180 days is in the public interest.

Impacts

NHTSA has considered this rule and has determined that it is not major within the meaning of Executive Order 12291 "Federal Regulation", nor significant under Department of Transportation regulatory policies and procedures. Readers are referred to the regulatory evaluation of the original final rule for a discussion of costs and impacts. The impacts of the changes made by this rule are so minimal that the conclusions about costs and other impacts in that evaluation remain valid. The further postponement of the effective date for the lens marking requirements to accord with the beginning of a new model year will reduce the economic impact upon manufacturers of certain types of motorcycle headlamps who, absent such amendment, would have had to institute such a change in the middle of a model year.

NHTSA has analyzed this rule for the purposes of the National Environmental Policy Act. The minor amendments of the rule will have no effect upon the human environment.

The agency has also considered the impacts of this rule in relation to the Regulatory Flexibility Act. I certify that this rule would not have a significant economic impact on a substantial number of small entities. Accordingly, no initial regulatory flexibility analysis has been prepared. Manufacturers of motor vehicles and motor vehicle headlamps, those affected by the rule, are generally not small businesses within the meaning of the Regulatory Flexibility Act. Finally, small organizations and governmental jurisdictions would not be significantly affected since the price of new vehicles, and headlamps will be minimally impacted.

Finally, the agency has considered this rule as it relates to Executive Order 12612 "Federalism." The rule will preempt any State law that differs from the rule, but will not preempt any State law that is identical to the rule, according to the express preemption provision of 15 U.S.C. 1392(d).

List of subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR 571.108 Motor Vehicle Safety Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment*, is amended as follows:

1. The authority citation continues to read:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.10 [Amended]

2. In section S5.1.1.29, the date "January 1, 1990" is revised to read "September 1, 1990".

3. In section S7.6(b), the numbers "66", "75", "1000", and "1650" are removed and the numbers "65", "72", "910", and "1500", respectively, are inserted in their place.

4. In section S7.6(f), the phrase "Type HB1 and HB4" is revised to read "Types HB1, HB2, and HB4".

Issued on December 20, 1989.

Jeffrey R. Miller,

Deputy Administrator.

[FR Doc. 89-29966 Filed 12-26-89; 8:45 am]

BILLING CODE 4910-59-M

Proposed Rules

Federal Register
Vol. 54, No. 247
Wednesday, December 27, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 7 and 23

[Docket No. 89-16]

Lease Financing Transactions

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (the "OCC") is publishing for comment a new regulation on the lease financing transactions of national banks. This action is prompted by an amendment to Revised Statute 5136 (12 U.S.C. 24) by section 108 of the Competitive Equality Banking Act ("CEBA"), Pub. L. 100–86, 101 Stat. 579 (August 10, 1987). The proposed regulation is designed to balance a national bank's interest in exercising its statutory authority with the national interest in a safe and sound national banking system. The regulation will provide uniform and publicly available answers to some commonly asked questions which the OCC has received on lease financing transactions.

The OCC is also proposing to re-issue its current Interpretive Ruling on lease financing transactions, presently codified at 12 CFR 7.3400, as a subpart of this new regulation. The OCC had issued this Interpretive Ruling earlier, recognizing that, incidental to the authority to make loans, national banks were also authorized to enter into lease financing transactions. See 44 FR 22393 (April 13, 1979). Re-issuing the Interpretive Ruling as part of this proposed regulation will consolidate the OCC's substantive lease financing regulations and clarify the two types of lease financing authority available to national banks.

In order to achieve this consolidation, the OCC is proposing a regulation in three subparts. Subpart A applies to all lease financing transactions, whether entered into under the authority of 12 U.S.C. 24(7), as incidental to banking, or under the specific authority of section 108 of CEBA. Subpart B addresses additional requirements applicable only to lease financing transactions entered into under section 108 of CEBA. Subpart C brings the OCC's Interpretive Ruling into this proposed regulation, and addresses additional requirements applicable only to lease financing transactions entered into under the general authority of 12 U.S.C. 24(7).

To bring the provisions of Interpretive Ruling 7.3400 within the framework of this proposed regulation, the OCC is markedly reorganizing it. However, the OCC is proposing only two substantive changes to the Interpretive Ruling: first, to address the re-leasing of property acquired for lease financing transactions; and second, the applicability of 12 U.S.C. 371c–1 to lease financing transactions. Each of these changes is affected through the generally applicable provisions of subpart A.

DATE: Comments must be received by February 26, 1990.

ADDRESSES: Comments should be directed to: Docket No. 89–16, Communications Division, Fifth Floor, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, DC 20219; Attn: Jackie England. Comments will be available for public inspection and photocopying at the same location.

FOR FURTHER INFORMATION CONTACT: Noel A. Cain, Multinational and Regional Bank Analysis (202) 447–1747; William C. Kerr, National Bank Examiner, Supervision Policy/Research Division (202) 447–1164; Richard Shack, Bank Accounting (202) 447–0471; or Ellen C. Starr, Attorney, Legal Advisory Services Division (202) 447–1883.

SUPPLEMENTARY INFORMATION:

Background and Analysis

Section 108 of CEBA, Public Law 100–86, 101 Stat. 579 (August 10, 1987), expanded the activities expressly authorized to national banks by adding the following paragraph to 12 U.S.C. 24: "Tenth: To invest in tangible personal property, including, without limitation, vehicles, manufactured homes, machinery, equipment or furniture, for lease financing transactions on a net lease basis, but such investment may not exceed 10 percent of the assets of the association." The OCC believes that section 108 of CEBA grants new leasing authority to national banks, separate and distinct from that which the OCC had previously interpreted as existing within 12 U.S.C. 24(7). See 12 CFR 7.3400; see also H. Rep. No. 261, 100th Cong., 1st Sess. 140 (1987). Specifically, the Conference Report for CEBA states that "Section 108 provides leasing authority in addition to that already possessed by national banks, and would not limit the existing authority of national banks to engage in leasing transactions that are the functional equivalent of loans and satisfy the residual value and other limitations in the Comptroller's regulations." *Id.*

In addition to stating that the authority conferred in section 108 is not merely a codification of existing authority, the Conference Report provides a partial description of the lease financing transactions envisioned by section 108. See H. Rep. No. 261 at 140. The new authority "would permit national banks to enter into such transactions on a 'net' lease basis, as defined in the regulations of the Comptroller of the Currency (12 CFR 7.3400) up to ten percent of the bank's assets." *Id.* The Conference Report continues that "Section 108 is not intended to allow national banks to engage in the daily or short-term equipment or automobile rental business." *Id.*

In contrast to the Conference Report, section 108 itself places few statutory restrictions or limitations on the new authority it confers. Section 108 is also self-executing, requiring no regulation to implement the authority conferred by the section. Although the OCC recognizes that section 108 was intended to liberalize a national bank's authority to engage in lease financing transactions, the OCC also considers that some guidelines, designed to balance a national bank's interest in exercising its statutory authority with the national interest in maintaining a safe and sound national banking system, may be helpful to the banking community. As a result, the OCC has decided to issue a regulation on lease financing transactions under the authority of section 108.

This regulation will aid the banking community in determining the prudential limits which the OCC feels are appropriate for this activity, and will

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provide uniform and publicly available answers to many of the questions which the OCC has received on section 108's lease financing authority.

In conjunction with the decision to issue a regulation on lease financing transactions under section 108, the OCC has also reviewed its previously issued Interpretive Ruling on lease financing, presently codified at 12 CFR 7.3400 ("Interpretive Ruling 7.3400"). See 12 CFR 7.3400; see also 44 FR 22,386 (1979). The OCC first considered whether there was any practical need to retain the provisions of Interpretive Ruling 7.3400, or whether its interpretation of a national bank's general authority to enter into lease financing transactions had been overtaken by the specific authority provided by section 108.

The present version of Interpretive Ruling 7.3400 was issued by the OCC in response to *M & M Leasing Corporation* v. *Seattle First National Bank*, 563 F.2d 1377 (9th Cir. 1977), cert. denied, 436 U.S. 956 (1978) ("M & M Leasing"). In M & M Leasing, the Ninth Circuit Court of Appeals affirmed an OCC interpretation that 12 U.S.C. 24(7) authorized a national bank to become the owner and lessor of personal property as an "incidental power * * * necessary to carry on the business of banking." *Id.*; see also 12 U.S.C. 24(7). M & M Leasing held, however, that such lease transactions were authorized only "when, in the light of all relevant circumstances, the transactions constitute the loan of money secured by the properties leased." 563 F.2d at 1380.

Interpretive Ruling 7.3400 allows a national bank to make "net, full-payout" leases of personal property. These leases meet the functional equivalency standard articulated by M & M Leasing in that (1) a national bank is generally prohibited from undertaking responsibilities to service or maintain the leased property, and (2) a national bank must expect to recover 75 percent of its cost of the property, plus the cost of financing the property, from rentals and estimated tax benefits. This latter requirement effectively ensures that, in making a lease under the authority of Interpretive Ruling 7.3400, a national bank is looking more to the creditworthiness of the lessee than to the residual market value of the property leased in order to recover its full investment in the leased property.

After reviewing Interpretive Ruling 7.3400, the OCC determined that it does provide national banks a distinct authority to engage in lease financing transactions which has not been overtaken by section 108. Specifically, Interpretive Ruling 7.3400 provides broader authority than that provided by section 108 in at least two areas. First, Interpretive Ruling 7.3400 does not restrict a national bank to the acquisition, for the purpose of lease financing transactions, of tangible personal property. Second, Interpretive Ruling 7.3400 does not impose an aggregate limitation on the volume of a national bank's lease financing transactions. As Interpretive Ruling 7.3400 is broader than section 108 in these two areas, the OCC has decided to retain its interpretation of a national bank's general authority to engage in lease financing transactions.

The OCC next considered whether it was constructive to have both an interpretive ruling and a regulation addressing lease financing transactions; in this regard, the OCC has decided that it is most beneficial to address a national bank's authority to enter into lease financing transactions in one place. Thus, the OCC is proposing to move Interpretive Ruling 7.3400 into part 23.

Although Interpretive Ruling 7.3400 has been substantially reorganized to fit within the framework of proposed part 23, the OCC is proposing only two substantive changes to its interpretation. For the first time, the OCC addresses the re-leasing of personal property acquired pursuant to a lease financing transaction entered into under the general authority of 12 U.S.C. 24(7) by regulation. Additionally, the proposed rule makes the requirements of 12 U.S.C. 371c–1, added to the Federal Reserve Act as part of CEBA, applicable to lease financing transactions between national banks and their affiliates.

To achieve the consolidation intended, the OCC is proposing a three part rule. Subpart A applies to all lease financing transactions, whether entered into under the general authority of 12 U.S.C. 24(7) or the specific authority of Section 108 of CEBA. This subpart (1) notes that there are two lines of authority, each with distinct requirements, under which a national bank may enter into lease financing transactions; (2) defines "net lease basis," a term made applicable to all lease financing transactions, whether entered into under 12 U.S.C. 24 (7) or (10); (3) addresses a national bank's acquisition and retention of personal property, for the purposes of lease financing transactions; (4) requires the segregation of a bank's records on its lease financing transactions; (5) discusses the applicability of statutory lending limits and affiliate restrictions to lease financing transactions; and (6) addresses the Consumer Leasing Act of 1976.

Subpart B addresses additional requirements applicable only to lease financing transactions entered into under section 108 of CEBA. Specifically, this subpart (1) restates the authority conferred by section 108 of CEBA; (2) proposes a minimum lease term; and (3) establishes a transition rule to accommodate lease financing transactions entered into prior to the effective date of a final regulation.

Subpart C addresses additional requirements applicable only to lease financing transactions entered into under the general authority of 12 U.S.C. 24(7). This subpart brings the OCC's previously issued Interpretive Ruling 7.3400 into proposed part 23, and (1) states the authority to enter into lease financing transactions generally conferred by 12 U.S.C. 24(7); (2) restates the maximum estimated residual value applicable to leases which are the functional equivalent of loans; and (3) carries into part 23 the transition rule established by Interpretive Rule 7.3400.

The major points of each subpart of the OCC's proposed lease financing regulation are discussed in the section-by-section analysis.

Discussion

Subpart A: General Provisions

As noted above, the requirements of subpart A will apply to all lease financing transactions, whether entered into under authority of 12 U.S.C. 24(7) or section 108 of CEBA. Subpart A contains the following sections:

23.1 Authority.
23.3 "Net Lease Basis".
23.3 Investment in Personal Property.
23.4 Segregation of Records.
23.5 Application of Lending Limits; Restrictions on Transactions with Affiliates.
23.6 Consumer Leasing Act of 1976.

Section 23.1: Authority

Subsection (a) of proposed § 23.1 notes that there are two distinct lines of authority under which a national bank may enter into lease financing transactions, *i.e.*, either under the specific authority of section 108 of CEBA, at 12 U.S.C. 24(10), or under the general authority of 12 U.S.C. 24(7). This subsection states that in order to enter into a lease financing transaction under the authority of section 108, a national bank must comply with the requirements of subparts A and B. For ease of reference, these lease financing transactions are called "CEBA Leases." In order to enter into a lease financing transaction under the authority of 12 U.S.C. 24(7), a national bank must

comply with the requirements of subparts A and C.

Subsection (b) of proposed § 23.1 requires that a national bank/lessor must expect to realize a return of its full investment in the leased property, plus the estimated cost of financing the property on entering into any lease financing transaction, whether under the general authority of 12 U.S.C. 24(7) or the specific authority of 12 U.S.C. 24(10). The bank's return on its investment may be realized through rentals, estimated tax benefits, and the estimated residual value of leased property at the end of the lease term. The estimate by the lessor of the total cost of financing the property over the term of the lease should reflect, among other factors, the term of the lease, the types of financing available to the lessor, the credit rating of the lessor and/or the lessee (if a factor in the financing) and prevailing rates in the money and capital markets. Where the calculation of the cost of financing according to this formula is not reasonably determinable, a lease may be considered to have met the test for recovering the cost of financing if the bank's yield from the lease is equivalent to what the yield would be on a loan having similar terms and conditions.

Subsection (b) is proposed as a matter of prudential guidance, and reflects a similar requirement which the OCC had already made applicable to leases entered into under Interpretive Ruling 7.3400. See 12 CFR 7.3400(b)(2). Although proposed subsection (b) extends this requirement to CEBA Leases, it is not intended to make lease financing transactions entered into under section 108 of CEBA the equivalent of a "full-payout lease" under Interpretive Ruling 7.3400. Section 108 of CEBA does not require that leases entered into under its authority be "full-payout" leases. Whether a lease is a "full-payout" lease is determined with regard to the maximum allowable estimated residual value of the leased property, which is addressed below at proposed § 23.11.

Section 23.2: "Net Lease Basis"

Section 23.2 defines the term "net lease basis." This definition of "net lease basis" is applicable to all lease financing transactions, whether entered into under the general authority of 12 U.S.C. 24(7) or the specific authority of section 108. Generally, a "net lease" is one in which a national bank does not agree to provide for the servicing of the leased personal property, including any required licenses or registration, insurance, repair or maintenance work, and will not provide or be obligated to provide for substitute property when leased property is being serviced. See 12 CFR 7.3400(b). When developed for Interpretive Ruling 7.3400, this definition was perceived to be consistent with the M & M Leasing requirement that leases entered into under the authority of 12 U.S.C. 24(7) be the functional equivalent of loans.

In specifically authorizing lease financing transactions to national banks, section 108 also uses the term "net lease." As suggested by the language of section 108, and by the accompanying Conference Report, the proposed regulation adopts the definition of "net lease" previously stated at 12 CFR 7.3400(b)(1), making this term equally applicable to lease financing transactions which are specifically authorized by section 108. As a result, subsection (a) of the proposed § 23.2 states that a national bank/lessor will not provide or be obligated to provide for servicing, repair or maintenance of the leased property during the term of the lease. A national bank/lessor may not be obligated to provide a lessee with a substitute for leased property while it is being serviced or repaired, or with additional parts or accessories for the leased property, unless under a separate lease which also meets the conditions of this proposed regulation. A national bank/lessor may not be obligated for the purchase of insurance for the lessee, except where the lessee has failed its obligation under the lease contract to purchase or maintain required insurance. Finally, a national bank/lessor may not be obligated to renew any license or registration for the leased property.

Although subsection (a) 23.2 generally prohibits a national bank/lessor from undertaking any servicing responsibilities for leased personal property, it does recognize that some circumstances may warrant the bank's undertaking some additional responsibilities in order to protect its interest in the property. Therefore, subsection (b) would allow a national bank/lessor to take on responsibilities otherwise prohibited by subsection (a), where the bank believes in good faith that an unexpected change in conditions has occurred which increases the bank's exposure to loss on the lease. Likewise, subsection (c) of proposed § 23.2 makes it clear that a national bank/lessor may include in the lease or in a separate agreement with the lessee provisions designed to protect the bank's financial position in the event of such an unexpected change in conditions. The OCC requests comments on whether subsections (b) and (c) provide a national bank/lessor sufficient flexibility to address a deteriorating lease financing transaction.

Notwithstanding the incoporation of Interpretive Ruling 7.3400's definition of a "net lease" in this proposed rule, the OCC is requesting comments on that definition as a whole. Specifically, having reviewed the definition of a "net lease," the OCC has some concern that it may place unnecessary restrictions on national banks, and may foreclose some activities that are appropriately incidental to lease financing transactions. Thus, the OCC is requesting comments on whether the definition of a "net lease" should be rewritten, to allow a bank to engage in various marketing, finder, or other activities, including insurance-related activities, that are similar to those which have been or may be determined to be incidental to the business of banking.

Section 23.3: Investment in Personal Property

Proposed § 23.3 addresses a national bank's acquisition and retention of personal property, for the purpose of entering into lease financing transactions. This proposed section considers personal property generally, whether tangible or intangible. National bank/lessors should note, however, that the lease financing authority conferred by section 108 of CEBA applies only to tangible personal property. That limitation on CEBA Leases is specifically noted at proposed § 23.7, discussed below.

Subsection (a) of proposed § 23.3 requires that a national bank acquire specific property to be leased only after the bank has entered into a legally binding commitment to lease the property on terms which comply with the proposed regulation. This subsection is intended to prevent a national bank from making speculative acquisitions of personal property, in the hope of subsequently leasing that property.

Subsection (b) of proposed § 23.3 generally addresses property which may be returned to a national bank/lessor by a lessee, whether at the expiration of a lease term or on default of the lessee. According to this subsection, a national bank must either sell the property, or re-lease it to another lessee in conformance with the requirements of proposed Subpart A and either subpart B or C within one year of its return to the bank. A national bank/lessor may retain property for longer than one year if it can establish that exceptional circumstances exist, and an extended retention period is approved by the OCC. Subsection (b) specifically states that property which is to be re-leased

must be marked to the lower of current fair market value or book value for the purpose of determining the maximum

which a national bank normally maintains be segregated.

all personal property leased to any lessee. The aggregate book value of a leased asset must approximate the

OCC intends that the 10 percent volume limitation be applied to the aggregate book value of all tangible personal

residual value of 70 percent on tangible personal property leased under the authority of section 108 of CEBA, a bank

the appropriate level of dependence to be placed on residual value of property leased in any given transaction,

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must be marked to the lower of current fair market value or book value for the purpose of determining the maximum estimated residual value.

Notwithstanding the requirements of proposed subsection (b), the OCC also recognizes that a short term lease, *i.e.*, a bridge or interim lease, may be appropriate in some circumstances. For example, a short term bridge or interim lease may be appropriate at the end of a conforming lease, where the lessee needs additional time to arrange long term financing for its ultimate purchase of the property. Subsection (c) of the proposed § 23.3 authorizes a national bank/lessor to enter into an occasional short term lease financing transaction, but *only* at the conclusion of a lease which originally conformed with the requirements of subpart A and either subpart B or C, or which would have conformed with those provisions except for a default by the lessee. In this instance, the lease need only comply with the requirements of subpart A; the lease will not be subject to the more specific requirements of subpart B or C. This provision is intended to facilitate longer term transactions while maintaining cash flow from the asset. It is not intended to encourage such short term leases.

As Interpretive Ruling 7.3400 did not address re-leasing property returned to the bank, whether at the expiration of a lease or on the lessee's default, the application of subsection (b) of proposed § 23.3 to lease financing transactions entered into under the general authority of 12 U.S.C. 24(7) is one of two substantive changes to the OCC's treatment of such leases. At the specific request of individual national banks, the OCC has previously allowed a short term interim or bridge lease at the conclusion of a lease financing transaction pursuant to Interpretive Ruling 7.3400.

Section 23.4: Segregation of Records

Proposed § 23.4 recognizes that a national bank may enter into some CEBA Leases, complying with subparts A and B of this proposed regulation, and may also enter into some leases under the authority of 12 U.S.C. 24(7), complying with subparts A and C of proposed part 23. For ease of monitoring, § 23.4 requires that, where a national bank enters into both types of lease financing transactions, the records which it maintains on its CEBA Leases must be specifically identified from those maintained on its leases under the authority of 12 U.S.C. 24(7). Section 23.4 does not impose a new record-keeping requirement on national banks, but merely requires that the leasing records which a national bank normally maintains be segregated.

Section 23.5: Application of Lending Limits; Restrictions on Transactions with Affiliates

Proposed § 23.5 provides that lease financing transactions, whether entered into under section 108 of CEBA or 12 U.S.C. 24(7), are subject to the per borrower, or in this case, per lessee, limitations under 12 U.S.C. 84. Additionally, the restrictions on transactions with affiliates stated at 12 U.S.C. 371c and 371c–1 are made applicable to lease financing transactions.

Consistent with the interpretation that 12 U.S.C. 24(7) allows a national bank to enter into lease financing transactions which are the functional equivalent of loans, Interpretive Ruling 7.3400 required that the limitations on loans and extensions of credit prescribed by 12 U.S.C. 84 be applied to any lessee. See 12 CFR 7.3400(g). Paragraph (g) also imposed the restrictions on transactions with affiliates, at 12 U.S.C. 371c, on lease financing transactions. Although the OCC recognizes that lease financing transactions entered into under the statutory authority of Section 108 need not be justified as the functional equivalent of loans, the OCC nonetheless believes that the limitations provided by 12 U.S.C. 84 should apply, in order to limit the bank's risk of exposure to any one or a few lessees, and to encourage a diversity of lessees in a bank's portfolio. The restrictions on transactions between affiliates provided at 12 U.S.C. 371c and 371c–1 will protect a national bank/lessor from potential abuses by an affiliated lessee.

In applying the restrictions at 12 U.S.C. 371c–1 to lease financing transactions entered into under the general authority of 12 U.S.C. 24(7), proposed § 23.5 makes the second substantive change to Interpretive Ruling 7.3400. Section 371c–1 was added to title 12 of the United States Code by CEBA, and generally requires that transactions between a member bank or its subsidiary, and any affiliate of the member bank, be "on terms and under circumstances, including credit standards, that are substantially the same, or at least as favorable to such bank or its subsidiary, as those prevailing at the time for comparable transactions with or involving other nonaffiliated companies." See Pub. L. 100–86, title I, § 102(a), 101 Stat. 564.

The OCC intends that the percentage limitations on loans and extensions of credit, at 12 U.S.C. 84, and on "covered transactions," at 12 U.S.C. 371c, be applied to the aggregate book value of all personal property leased to any lessee. The aggregate book value of a leased asset must approximate the lower of current market value or book value of the property at all times.

Nonrecourse debt may be subtracted from this value to determine the lessee's appropriate lending limit position.

Section 23.6: Consumer Leasing Act of 1976

Section 23.6 of the proposed regulation provides that nothing in proposed part 23 shall be construed to be in conflict with the duties, liabilities, and standards of the Consumer Leasing Act of 1976. This section incorporates a similar statement in Interpretive Ruling 7.3400, and makes it applicable to lease financing transactions entered into under section 108 of CEBA or under the general authority of 12 U.S.C. 24(7).

The Consumer Leasing Act of 1976 applies to leases of personal property by a natural person, for a term in excess of four months and for a total contractual obligation not exceeding $25,000, primarily for personal, family or household purposes. See 15 U.S.C. 1667(1). The Act imposes certain disclosure responsibilities on the lessor, *i.e.*, it requires certain information be provided to the lessee prior to the consummation of the lease, and also addresses statements made in advertisements of consumer leases. *Id.* at 1667a and 1667c. The Act also considers the lessee's liability on termination of the lease, and the lessor's civil liability on failure to comply with the requirements of the Act. *Id.* at 1667b and 1667d.

Subpart B: CEBA Leases

Subpart B, entitled "CEBA Leases," contains additional requirements that a national bank must meet in order to enter into a lease financing transaction under section 108 of CEBA. Specifically, subpart B contains the following sections:

23.7 General Rule
23.8 Lease Term
23.9 Transition Period.

Section 23.7: General Rule

Proposed section § 23.7 generally restates the authority conferred by section 108 of CEBA, but conditions the exercise of that authority on a national bank's complying with the further restrictions of subparts A and B of part 23. Section 23.7 also modifies "assets," as that term is used in section 108, to make clear that the 10 percent volume limitation imposed by statute is computed with reference to a national bank's total consolidated assets. The OCC intends that the 10 percent volume limitation be applied to the aggregate book value of all tangible personal property held for lease financing transactions under section 108. Nonrecourse debt is not to be subtracted in calculating this volume limitation.

Section 23.8: Lease Term

Proposed § 23.8 addresses the Conference Report statement that section 108 of CEBA is not intended to allow national banks to engage in short term leases or personal property. Thus, this section of the proposed regulation requires that lease financing transactions under section 108 have a minimum term of 90 days.

Section 23.9: Transition Period

As section 108 of CEBA is self-executing, some national banks may have entered into lease financing transactions which comply with the few statutory requirements of section 108, but which do not comply with proposed subparts A and B. The OCC proposes that lease financing transactions which were consumed prior to the effective date of a final regulation be administered in accordance with the lease financing terms agreed to by the bank/lessor and lessee. Lease financing transactions which are entered into, or which are renewed or extended by the bank/lessor, on or after the effective date of any final regulation, must be made in compliance with the requirements of subparts A and B.

Maximum Estimated Residual Value

The OCC seriously considered the imposition of a maximum residual value for lease financing transactions under section 108 of CEBA. The OCC has decided not to propose such a limitation by regulation at this time, however. Notwithstanding this decision, the OCC requests comments on the appropriateness of a residual value limitation. The OCC would also be interested in comments from those national banks that have already entered into lease financing transactions under section 108 of CEBA, on any bank-developed policies addressing the appropriate level of reliance on residual value in recovering an investment in property acquired for a lease financing transaction.

The estimated residual value of leased personal property is the estimated value of the property at the end of a lease term. A stated *maximum* residual value effectively requires a bank to expect to recover a certain percentage of its investment through lease payments and estimated tax benefits. For example, if the OCC imposed a maximum estimated residual value of 70 percent on tangible personal property leased under the authority of section 108 of CEBA, a bank entering into such a lease must expect to receive an amount equal to 30 percent of its investment in the leased property, including its cost of financing the property, through lease payments and estimated tax benefits during the lease term.

Section 108 of CEBA does not specifically provide for a maximum estimated residual value. The Conference Report accompanying the Act states that lease financing transactions under section 108 need not be held to the 25 percent maximum estimated residual value of Interpretive Ruling 7.3400, indicating that the authority to engage in lease financing transactions under section 108 is broader than that provided by 12 U.S.C. 24(7). Nonetheless, the OCC has considered whether the imposition of a maximum estimated residual value is necessary or desirable to promote the safety and soundness of these lease financing transactions.

The imposition of a maximum estimated residual value may enhance the safety and soundness of lease financing transactions under section 108 of CEBA, in that it may encourage a national bank/lessor to enter into longer term leases, rather than rely on a series of shorter term leases with various lessees to recover its investment in the leased property. Further, if a lease financing transaction is analogized to a loan, a maximum estimated residual value effectively requires that a lessee make some investment, and thus have some interest, in the property leased.

On the other hand, the imposition of a maximum estimated residual value does not guarantee safe and sound lease financing transactions, and may even reduce national bank competitiveness vis-a-vis other lessors. A stated maximum residual value may reduce flexibility in structuring the terms of a lease financing transaction, and may ultimately limit the types of property that a national bank acquires for lease financing transactions, as well as the number of prospective lessees or customers.

In attempting to balance the legislative history of Section 108 of CEBA, and the concern that a maximum residual value limitation may reduce national bank competitiveness in lease financing transactions, with competing concerns for the safety and soundness of national banks, the OCC has decided not to propose a maximum residual value limitation on CEBA Leases at this time. The OCC believes that it is bank management's responsibility to establish the appropriate level of dependence to be placed on residual value of property leased in any given transaction, ensuring that the residual value does not exceed prudent levels in relation to the realizable value of the leased property. The OCC also believes that, pursuant to its authority to monitor and supervise the activities of national banks generally, it has developed sufficient tools to monitor and supervise lease financing transactions under Section 108 of CEBA, and to take corrective actions where necessary on a case-by-case basis. If it appears in the future that national banks as a whole are not effectively supervising their own leasing activities, or are engaging in imprudent lease financing transactions, the OCC will determine whether to address such practices by regulation.

By not imposing a specific maximum estimated residual value, the OCC is not requiring a national bank/lessor, as a condition of entering into any single CEBA Lease, to expect to recover a certain percentage of its investment in the leased property, plus the estimated cost of financing the property over the term of the lease, from rentals and estimated tax benefits. As stated at proposed § 23.1(b), however, a national bank/lessor should still expect to recover its full investment in the leased property, plus its costs in financing the property, in lease financing transactions under section 108 of CEBA.

Subpart C: Leases Under the Authority of 12 U.S.C. 24(7)

Subpart C, entitled "Leases Under the Authority of 12 U.S.C. 24(7)," contains additional requirements which a national bank must meet in order to enter into a lease financing transaction under the general authority of 12 U.S.C. 24(7). The sections contained in Subpart C include:

23.10 General Rule.
23.11 Maximum Estimated Residual Value.
23.12 Transition Period.

Section 23.10: General Rule

This section repeats the leasing authority which the OCC had previously stated at Interpretive Ruling 7.3400(a), allowing national banks to acquire personal property for the purpose of "net, full-payout" leases which are the functional equivalent of loans.

Section 23.11: Maximum Estimated Residual Value

Proposed § 23.11 retains the requirement of Interpretive Ruling 7.3400 that a lease financing transaction under the authority of 12 U.S.C. 24(7) be a "full-payout" lease. Generally speaking,

a "full-payout" lease is one in which the national bank/lessor recovers a

lessee or any guarantor of the residual value, and not on the residual market

Subpart C—Leases Under the Authority of 12 U.S.C. 24(7)

unexpected change in conditions which threatens its financial position by significantly increasing its exposure to

only be used to facilitate conforming long term lease financing transactions.

new extensions of credit, including leases, to a customer, a national bank must consider all outstanding loans

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a "full-payout" lease is one in which the national bank/lessor recovers a substantial portion of its investment in the personal property leased through rental payments and estimated tax benefits.

The requirement that a lease under the authority of 12 U.S.C. 24(7) be a "full-payout" lease is accomplished by the statement in subsection (a) that the maximum estimated residual value may not be greater than 25 percent of the value of the property acquired for lease. In other words, a national bank/lessor must expect to receive an amount equal to at least 75 percent of the original cost of the leased property, plus the estimated cost of financing the property over the term of the lease, from rentals and estimated tax benefits. Subsection (a) further provides that the estimated residual value relied upon by the bank may exceed 25 percent, where the excess is guaranteed by the manufacturer, the lessee, or a third party which is not an affiliate (as defined at 12 U.S.C. 371c) of the bank, and the bank has determined and can document that the guarantor has resources sufficient to meet the guarantee.

Proposed subsection (b) of § 23.11 provides a limited exception for Federal, state, or local governmental entities, stating that calculations of the estimated residual value on leases of personal property to these entities may be based on reasonably anticipated future transactions or renewals. This subsection recognizes that some Federal, state and local governmental entities are prohibited from entering into a lease with a term of greater than one year. When coupled with a stated maximum residual value, that prohibition may otherwise effectively foreclose lease financing transactions with such entities, by causing them to be prohibitively expensive. For example, the maximum residual value of 25 percent proposed for leases under the authority of 12 U.S.C. 24(7) may be read to require that the bank/lessor recover 75 percent of the value of the leased property from the governmental entity/lessee through rentals and estimated tax benefits within the one year lease term. Proposed subsection (b) of section 23.11 is designed to ensure that national bank/lessors are not effectively foreclosed from leasing personal property to domestic governmental entities.

Subsection (c) of proposed § 23.11 requires that in realizing its full investment in the leased property, plus its cost of financing the property, a national bank/lessor must primarily depend on the creditworthiness of the lessee or any guarantor of the residual value, and not on the residual market value of the leased item. This is a verbatim recitation of the last sentence of Interpretive Ruling 7.3400(b)(2), and ensures that leases under the authority of 12 U.S.C. 24(7) will be the functional equivalent of a loan.

Section 23.12: Transition Period

Proposed § 23.12 is a verbatim recitation of the provisions of Interpretive Ruling 7.3400(h).

Regulatory Flexibility Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601), it is certified that this notice of proposed rulemaking, if adopted as a final rule, will not have a significant impact on a substantial number of small entities.

Executive Order 12291

The OCC has determined that this proposed rule is not classified as a "major rule," and therefore does not require a regulatory impact analysis.

List of Subjects in 12 CFR Parts 7 and 23

National banks, Banking, Leasing, Lease financing transactions.

Authority and Issuance

For the reasons set forth in the Preamble, part 7 of chapter I of title 12 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 7—[AMENDED]

1. Interpretive Ruling 7.3400, codified at 12 CFR 7.3400, is proposed to be removed effective [insert effective date of the final rule].

For the reasons set forth in the Preamble, title 12, chapter I, part 23 of the Code of Federal Regulations is proposed to be added as follows:

2. Part 23 is added to read as follows:

PART 23—LEASE FINANCING TRANSACTIONS

Subpart A—General Provisions

Sec.
- 23.1 Authority.
- 23.2 Net lease basis.
- 23.3 Investment in personal property.
- 23.4 Segregation of records.
- 23.5 Application of lending limits; restrictions on transactions with affiliates.
- 23.6 Consumer Leasing Act of 1976.

Subpart B—CEBA Leases

Sec.
- 23.7 General rule.
- 23.8 Lease term.
- 23.9 Transition period.

Subpart C—Leases Under the Authority of 12 U.S.C. 24(7)

Sec.
- 23.10 General rule.
- 23.11 Maximum estimated residual value.
- 23.12 Transition rule.

Authority: 12 U.S.C. 1; 12 U.S.C. 24 (7) and (10); 93a.

Subpart A—General Provisions

§ 23.1 Authority.

(a) A national bank may engage in lease financing transactions under either of two distinct lines of authority. In order to enter into a lease financing transaction as specifically authorized by 12 U.S.C. 24(10), *i.e.*, a "CEBA Lease," a national bank must comply with Subparts A and B of this part. In order to enter into a lease financing transaction as generally authorized by 12 U.S.C. 24(7), a national bank must comply with subparts A and C of this part.

(b) On entering into a lease financing transaction in compliance with this subpart, a bank must reasonably expect to realize a return of its full investment in the leased property, plus the estimated cost of financing the property over the term of the lease, from:

(1) Rentals;

(2) Estimated tax benefits; and

(3) The estimated residual value of the property at the expiration of the term of the lease.

§ 23.2 Net lease basis.

(a) A *"net lease"* is a lease under which the national bank will *not*, directly or indirectly, provide or be obligated to provide for:

(1) The servicing, repair or maintenance of the leased property during the lease term.

(2) The purchasing of parts and accessories for the leased property; however, improvements and additions to the leased property may be leased to the lessee upon its request in accordance with any applicable requirements for maximum estimated residual value.

(3) The loan of replacement or substitute property while the leased property is being serviced.

(4) The purchasing of insurance for the lessee, except where the lessee has failed in its contractual obligation to purchase or maintain the required insurance.

(5) The renewal of any license or registration for the property unless such action by the bank is necessary to protect its interest as owner or financer of the property.

(b) If, in good faith, a national bank believes that there has been an unexpected change in conditions which threatens its financial position by significantly increasing its exposure to loss, the limitations contained in subsection (a) of this section shall not prevent the bank,

(1) As the owner and lessor under a net lease, from taking reasonable and appropriate action to salvage or protect the value of the property or its interests arising under the lease; or

(2) As the assignee of a lessor's interest in a lease, from becoming the owner and lessor of the leased property pursuant to its contractual right, or from taking any reasonable and appropriate action to salvage or protect the value of the property or its interests arising under the lease.

(c) The limitations contained in subsection (a) of this section do not prohibit a national bank from including any provisions in a lease, or from making any additional agreements, to protect its financial position or investment in the circumstances set forth in subsection (b) of this section.

§ 23.3 Investment in personal property.

(a) A national bank may acquire specific property to be leased only after the bank has entered into a legally binding written commitment to lease the property on terms which comply with the provisions of this subpart and either subpart B or C, below.

(b) At the expiration of the lease (including any renewals or extensions with the same lessee), or in the event of a default on a lease agreement prior to the expiration of the lease term, all of the bank's interest in the property shall either be liquidated or re-leased in conformance with this subpart and either subpart B or C, below, as soon as practicable, but in no event later than one year from the expiration of the lease, or, under exceptional circumstances, such additional time as the Comptroller of the Currency may permit. Property which the bank retains in anticipation of re-leasing must be re-valued at the lower of current fair market value or book value prior to any subsequent lease, for the purpose of determining the applicable maximum estimated residual value.

(c) Notwithstanding the provisions of paragraph (b), above, on the return of leased property at the expiration of a conforming lease term, or on the default of a lessee, a short term bridge or interim lease is permissible if it otherwise conforms with the requirements of this subpart A. Such a short term bridge or interim lease need not comply with the further requirements of subpart B or C, below. Short term bridge or interim leases may only be used to facilitate conforming long term lease financing transactions.

§ 23.4 Segregation of records.

Where a national bank enters into both CEBA Leases and leases under the authority of 12 U.S.C. 24(7), the bank must specifically identify any records it maintains on its CEBA Leases to distinguish them from those records which the bank maintains on its leases under the authority of 12 U.S.C. 24(7).

§ 23.5 Application of lending limits; Restrictions on transactions with affiliates.

Lease financing transactions entered into under this part are subject to the limitations on loans or extensions of credit under 12 U.S.C. 84 and to the restrictions on transactions with affiliates at 12 U.S.C. 371c and 371c-1. The Comptroller of the Currency reserves the right to determine that such leases are also subject to the limitations of any other law, regulation or ruling.

§ 23.6 Consumer Leasing Act of 1976.

Nothing in this part shall be construed to be in conflict with the duties, liabilities and standards imposed by the Consumer Leasing Act of 1976, 15 U.S.C. 1667 *et seq.*

Subpart B—CEBA leases

§ 23.7 General rule.

Pursuant to 12 U.S.C. 24(10), a national bank may (1) invest in tangible personal property including, without limitation, vehicles, manufactured homes, machinery, equipment, or furniture, for lease financing transactions on a net lease basis, or (2) may become the owner and lessor of such tangible personal property by purchasing the property from another lessor in connection with its purchase of the related lease; provided that (a) the requirements of subpart A and this subpart B of part 23 are met, and (b) the aggregate book value of all tangible personal property held for lease does not exceed 10 percent of the consolidated assets of the national bank.

§ 23.8 Lease term.

Lease financing transactions entered into under this subpart must have an initial term of not less than 90 days.

§ 23.9 Transition period.

(a) Lease financing transactions entered into under the authority of 12 U.S.C. 24(10) prior to [enter the effective date of a final rule] may continue to be administered in accordance with the lease financing terms agreed to by the bank/lessor and lessee. With respect to the applicability of § 23.5, when making new extensions of credit, including leases, to a customer, a national bank must consider all outstanding leases regardless of the date on which they were made.

(b) Any lease which was entered into in good faith prior to [insert the effective date of this regulation] which does not satisfy the requirements of subpart A and this subpart of part 23 may be renewed without violation of this Part only if there is a binding agreement in the expiring lease which requires the bank to renew it at the lessee's option, and the bank cannot otherwise reasonably or properly avoid its commitment to do so, and the bank in good faith determines and demonstrates, by full documentation, that renewal of the lease is necessary to avoid significant financial loss and recover its total investment in, plus the cost of financing, the property.

Subpart C—Leases Under the Authority of 12 U.S.C. 24(7)

§ 23.10 General rule.

Pursuant to 12 U.S.C. 24(7), a national bank may (1) become the legal or beneficial owner and lessor of specific personal property or otherwise acquire such property; or (2) become the owner and lessor of personal property by purchasing the property from another lessor in connection with its purchase of the related lease; and (3) incur obligations incidental to its position as the legal or beneficial owner and lessor of the leased property; provided that the lease is a net, full-payout lease representing a noncancelable obligation of the lessee, notwithstanding the possible early termination of that lease, and the requirements of Subpart A and this subpart C of part 23 are met.

§ 23.11 Maximum estimated residual value.

(a) Any unguaranteed portion of the estimated residual value relied upon by the bank to yield a full return under this subpart shall not exceed 25 percent of the original cost of the property to the lessor. The amount of any estimated residual value guaranteed by the manufacturer, the lessee, or a third party, which is not an affiliate (as defined by 12 U.S.C. 371c) of the bank, may exceed 25 percent of the original cost of the property, where the bank has determined, and can provide full, supporting documentation, that the guarantor has the resources to meet the guarantee.

(b) Calculations of estimated residual value on leases of personal property to Federal, state, or local governmental entities may be based on reasonably

anticipated future transactions or renewals.

(c) In all cases, both the estimated residual value relied upon by the bank and the bank's actual investment in the property may not exceed any applicable limitations imposed by law, regulation or ruling.

§ 23.12 Transition rule.

Any lease which was entered into in good faith prior to [insert the effective date of this regulation] which does not satisfy the requirements of subpart A and this subpart of part 23 may be renewed without violation of this Part only if there is a binding agreement in the expiring lease which requires the bank to renew it at the lessee's option, and the bank cannot otherwise reasonably or properly avoid its commitment to do so, and the bank in good faith determines and demonstrates, by full documentation, that renewal of the lease is necessary to avoid significant financial loss and recover its total investment in, plus the cost of financing, the property.

By the Office of the Comptroller of the Currency.

Dated: December 19, 1989.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 89-29911 Filed 12-26-89; 8:45 am]

BILLING CODE 4810-33-M

provide for the operation of child care centers at VA facilities. Under the new law, Veterans Canteen Service (VCS) is improvements and/or equipment to achieve compliance with safety, licensure or certification requirements

health, safety and welfare of children in the provision of such services. The proposed regulations are designed to

§ 17.162 Operation of child care centers at VA facilities.

The Veterans Canteen Service (VCS)

VCS, determines, based on the demand for the care involved, that such operation is in the best interest of VA

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anticipated future transactions or renewals.

(c) In all cases, both the estimated residual value of the property and that portion of the estimated residual value relied upon by the lessor to satisfy the requirements of a full-payout lease must be reasonable in light of the nature of the leased property and all relevant circumstances so that realization of the lessor's full investment plus the cost of financing the property primarily depends on the creditworthiness of the lessee and any guarantor of the residual value, and not on the residual market value of the leased item.

§ 23.12 Transition rule.

This part shall not apply to any leases executed prior to June 12, 1979. With respect to the applicability of § 23.5, when making new extensions of credit, including leases, to a customer, a national bank must consider all outstanding leases regardless of the date on which they were made. Any lease which was entered into in good faith prior to such date which does not satisfy the requirements of this part 23 may be renewed without violation of this Part only if there is a binding agreement in the expiring lease which requires the bank to renew it at the lessee's option, and the bank cannot otherwise reasonably or properly avoid its commitment to do so, and the bank in good faith determines and demonstrates, by full documentation, that renewal of the lease is necessary to avoid significant financial loss and recover its total investment in, plus the cost of financing, the property.

Dated: December 20, 1989.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 89-29936 Filed 12-26-89; 8:45 am]

BILLING CODE 4810-33-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900-AD48

Operation of Child Care Centers at VA Facilities

AGENCY: Department of Veterans Affairs.

ACTION: Proposed regulations.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its medical series of regulations (38 CFR part 17) to carry out provisions of the Veterans' Benefits and Services Act of 1988 which directs the Department to provide for the operation of child care centers at VA facilities. Under the new law, Veterans Canteen Service (VCS) is authorized to provide child care services based on the demand for care and to the extent that the operation of such centers is in the best interest of VA and to the extent that it is practical to do so. The effect of these regulations will be to make child care services available at VA facilities to those eligible under the law to receive such services.

DATES: Comments must be received on or before January 26, 1990. Comments will be available for public inspection until February 5, 1990. It is proposed to make these regulations, if promulgated, effective 30 days after final approval.

ADDRESSES: Interested persons are invited to submit comments, suggestions or objections regarding these proposed regulations to: Secretary of Veterans Affairs (217A), 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, Room 132 of the above address, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays), until February 5, 1990.

FOR FURTHER INFORMATION CONTACT: Brenda L. Jenkins, Acting Director, Office of Child Care Services, Veterans Canteen Services (133H), Department of Veterans Affairs, Veterans Health Services and Research Administration, (202) 376-8149.

SUPPLEMENTARY INFORMATION: The Secretary of Veterans Affairs proposes to amend applicable regulations in 38 CFR part 17 to implement sec. 412 of Public Law 100-322, Veterans' Benefits and Services Act of 1988, which authorizes the Veterans Canteen Service (VCS) to operate child care centers at VA facilities. Current VA policy supports the establishment of local child care centers at its facilities through the leasing of available space for child care services. The existing child care centers at several VA facilities are operating under this lease arrangement and are managed directly by non-VA entities, usually nonprofit employee organizations.

VA's only official association with these centers is established and sustained through a lease agreement for the space provided, as authorized under 38 U.S.C. 5022(a)(1). Under this provision, a VA facility may lease excess space for use as a child care center with a nonprofit or a for-profit organization. Leases to for-profit entities require competitive advertising and rent, based on fair market rental value. However, VA facilities have only limited authority to provide improvements and/or equipment to achieve compliance with safety, licensure or certification requirements under this code. Prior to the enactment of Public Law 100-322, VA lacked authority to directly operate child care centers or furnish such services. VA's authority was limited to leasing space to child care providers, without direct control over the services provided, or the fee charges.

Public Law 100-322 provided VA, through the VCS, specific authority to operate child care centers directly or by contract. Child care services would be provided at VA facilities based on the demand for the care involved, and to the extent that the Secretary determines that such operations are in the best interest of VA and that it is practical to do so. The new law also requires VA to establish reasonable charges for child care centers and requires that the operation of these centers is in compliance with all applicable State and local regulations. The law authorizes VCS to make child care services available to the children of VA employees and to the extent space is available, to the children of other Federal employees and to the children of employees of affiliated schools and authorized VA research corporation created under 38 U.S.C. 4161.

VCS was created under the authority of Public Law 79-636 (38 U.S.C. 4201-4208) for the convenience of veterans in VA medical centers and domiciliaries. VCS has the responsibility to be the sole provider of retail merchandise and services essential to patient comfort and well-being in VA facilities, particularly in hospitals and homes where veterans are hospitalized or domiciled. Under 38 U.S.C. 4208, VCS is authorized to make all necessary contracts or agreements to purchase or sell merchandise, fixtures, equipment, supplies and services without regard to section 5 of title 41 CFR. Also under 38 U.S.C. 4208, VCS is authorized exclusive control over all its activities, including procurement.

Pursuant to the provisions of section 412 of Public Law 100-322, the proposed regulations designate the Director, VCS, to be responsible for the management and coordination of all matters related to the provision of child care services under the authority of this section.

The proposed regulations would apply to all VA initiated and supported child care services except those child care centers at VA facilities in space made available under 38 U.S.C. 5022(a)(1) or 40 U.S.C. 490b. These regulations address the establishment of reasonable charges for child care services and the requirements and standards for the health, safety and welfare of children in the provision of such services. The proposed regulations are designed to carry out the provisions of section 412 of Public Law 100-322 in order that VA facilities may provide child care services that will promote the safety, health and development of the children of their employees.

This amendment to VA regulations is considered nonmajor under the criteria of Executive Order 12291, entitled Federal Regulation. It will not have an annual effect on the economy of $100 million or more; will not result in major increases in costs for the consumer, individual industries, Federal, State or local government agencies, or geographic regions, nor will it have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary hereby certifies that these proposed regulatory admendments will not, if promulgated, have a significant economic impact on a significant number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), these regulatory amendments are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that the demand for child care is greater than the supply of child care providers; therefore, VA will not be in competition with the private sector and would not have any adverse economic impact on or significantly increase costs to consumers, individual industries, Federal, State, and local government agencies, or geographic regions.

The Catalog of Federal Domestic Assistance Program numbers affected by these regulations are 64.009, 64.010, 64.011.

List of Subjects in 38 CFR Part 17

Alcoholism, Claims, Dental health, Drug abuse, Foreign relations, Government contracts, Grants program-health, Health care, Health facilities, Health professions, Incorporation by reference, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Veterans.

Approved:

Edward J. Derwinski,

Secretary.

Title 38 CFR Part 17, Medical, is proposed to be amended by adding § 17.162 and its authority citation to read as follows:

§ 17.162 Operation of child care centers at VA facilities.

The Veterans Canteen Service (VCS) shall provide for the operation of child care centers at Department of Veterans Affairs (VA) facilities in accordance with this section. The provisions of this section apply to all VA initiated and supported child care services except those child care centers at VA facilities in space made available under the authority of 38 U.S.C. 5022(a)(1) or 40 U.S.C. 490b. The provision of child care services under this section shall be governed by the following:

(a) *Definitions.* For the purposes of §§ 17.162a through 17.162i:

The term *"child care services"* shall include a daily program aimed at meeting the reasonable needs of working parents who require child care services on a regularly scheduled basis.

The term *"enrollment"* means the number of children expected to be in attendance for any day or for some period of time during the day.

The term *"parent"* means the legal custodian of the child who may be the child's natural, adopted, foster, step parent or guardian.

The term *"parent advisory committee"* means a committee comprised of and selected by the parents of children receiving care in a child care center operated under this section.

The term *"special services"* may include part-time or hourly child care, infant care, emergency or sick child care, extended hours of care and food services.

The term *"VA facilities"* means any facility or part thereof, either VA-owned or VA-operated, which is under the jurisdiction of the Secretary of Veterans Affairs for the provision of veterans' benefits and services.

The term *"volunteer"* means any person who provides services to, for, or at a child care center with no promise of compensation.

(b) *Eligibility for child care services.* The enrollment priority for child care centers established under this section shall be to children of VA employees. The children of other employees of the Federal government, and the children of employees of affiliated schools and authorized VA research corporations (under 38 U.S.C. 4161), shall be eligible for child care services at VA facilities to the extent that space is available and only to the extent necessary to make it economically feasible to operate the center.

(c) *Establishment of a center.* The Director, VCS, shall establish child care centers at VA facilities under this section to the extent that the Director, VCS, determines, based on the demand for the care involved, that such operation is in the best interest of VA and that it is practicable to do so. The Director, VCS, in making determinations regarding the establishment of child care centers under this section shall consider the following:

(1) *Needs assessment.* A VA facility, which proposes the establishment of a child care center under this section, shall assess the need for child care services based on quantifiable data obtained about the employee population that would be potential users of the services. Such assessment shall be conducted using a VCS-prescribed needs assessment survey instrument and methodology for data collection. Such instrument and methodology shall be designed to elicit data sufficient to enable projection of potential users, form a basis for setting space requirements and provide facts for making other pertinent child care progam decisions.

(2) *VA employee enrollment.* The projected total enrollment of a proposed child care center, based on the needs assessment, shall be the number of children of VA employees, sufficient to ensure that the center is cost effective to operate.

(3) *Space.* A VA facility shall have adequate space available to accommodate the demand for child care by VA employees, to include space that may be converted to meet applicable State and local facility requirements.

(4) *Economic feasibility.* The projected annual charge per child at a proposed child care center must be sufficient to cover the operating expenses of the center, including the expenses of personnel assigned to the center. In planning for the size of a center, the acceptance of non-VA employees' children, in accordance with the limitations set forth in paragraph (b) of this section, will be considered to the extent necessary to make it economically feasible to operate the center.

(d) *Child care facility operations.* (1) VCS may provide child care services under this section directly or by contract. A contract provider maybe a nonprofit or for-profit organization. The Director, VCS, may provide for differential emphasis on the type of care, child development, education programming, age groups or special services based on the demand for such care and also, its economic feasibility at VA facility proposing establishment of a center. VCS shall specify the contract performance requirements for child care

services at VA facilities established under this section.

(ii) Demonstrate by means of an established written protocol, plan or

with establishing and operating the center, and

SUMMARY: USEPA is today proposing to promulgate Federal revisions to the Reasonably Available Control

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Air and Radiation Branch (SAR-26), U.S. Environmental

many urban areas could not comply with that deadline. Thus, Congress

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services at VA facilities established under this section.

(2) In the establishment and operation of any child care center, VA shall furnish to VCS, at no or nominal cost to the center, space in existing VA facilities, and utilities, custodial services, and other services and amenities necessary for the health and safety of the children provided care at the center.

(3) All child care center facilities established under this section shall meet applicable State and local laws, ordinances and regulations specifically relating to health, safety and child care. In addition to any State requirements, child care centers must meet applicable provisions of the 1988 edition of the National Fire Protection Association's (NFPA) Life Safety Code, "Section 1–7 Day Care Centers" (which is incorporated by reference). Incorporation of the 1988 edition of the Life Safety Code was approved by the Director of the Office of the Federal Register on _____. The Code is available for inspection at the Office of the Federal Register, Room 8301, 1100 L Street, NW., Washington, DC. Copies may be obtained from the National Fire Protection Association, Battery March Park, Quincy, MA 02269. If any changes in this Code are also to be incorporated by reference, a notice to that effect will be published in the **Federal Register**.

(e) *Contracts for child care services.* (1) Contracts for operating child care services under this section may be awarded by the Director, VCS or designee, but only to responsible contractors determined by that official to be fully capable of providing the required child care services.

(2) VCS may contract for the operation of a child care center with a nonprofit organization, comprised of VA employees whose children are cared for at the center. A VA employee organization may subcontract to a responsible child care provider for the required services, with the approval of the Director, VCS.

(3) Contracts for providing child care services authorized under this section shall be awarded by the Director, VCS or designee, in accordance with the exclusive procurement authority of 38 U.S.C. 4202(6).

(4) To be eligible for award of a contract under paragraph (e)(3) of this section, a provider of child care services shall:

(i) Demonstrate a commitment to furnishing child care services as evidenced in a statement of goals and procedures, by-laws, or mission statement.

(ii) Demonstrate by means of an established written protocol, plan or procedure, an existing capability to furnish those services which the facility requires.

(iii) Demonstrate, where incapable of furnishing directly all of the specific required services, the manner by which it will assure that those services, which it is not capable of furnishing directly, will be delivered when needed, and will be of satisfactory quality.

(iv) Have evidence, prior to submitting an application to contract under this section, that the provider has satisfactorily furnished child care services for which the provider seeks to contract.

(v) Provide evidence that the proposed child care services will comply with applicable State and local regulations for the operation of a child care center.

(vi) Provide evidence that adequate liability insurance coverage for child care services will be provided.

(5) In making and approving awards under this section, the Director, VCS or designee, shall give preference for the following factors:

(i) Experience in rendering child care services to children of the various required age-groups.

(ii) Evidence of commitment to the purpose of 38 U.S.C. 4209 and to the interest of children generally.

(iii) The degree to which the anticipated quality of the proposed services appears favorable, in relation to the rates of compensation, as contrasted with comparable data from other providers.

(iv) Reliable evidence of competence of the provider's proposed staff and their ability to carry out the requirement for child care services.

(f) *Child care charges.* (1) The Director, VCS, shall establish reasonable charges for child care services in accordance with the provisions of this section. Such charge shall be set for each center at a rate comparable to the rate for like services in the community, to be determined through the use of local market surveys, provided, however, that such charges shall:

(i) In the case of a center operated directly by the VCS or by a nonprofit organization under contract with VCS, be sufficient to cover the center's operating expenses, to include consideration of costs VCS has incurred in establishing the facility,

(ii) In the case of a center operated by a for-profit organization under contract with VCS, take into account the value of space, utilities, custodial services and other amenities which VA has provided under 38 U.S.C. 4209(c)(1), in connection with establishing and operating the center, and

(iii) Take into account the center's projected total enrollment in determining the base rate.

(2) Charges may be reviewed annually by the Director, VCS, to determine the existence of any increase or decrease in comparable community rates based on local market surveys. Such reviews shall provide guidance for revising child care charges.

(g) *Child care personnel.* A child care provider under this section shall meet such staffing standards and such staff qualification, fitness, and suitability standards, as are established by applicable State and local regulations for employees and volunteers. Volunteers performing such duties under this section shall be subject to such fitness and suitability standards as are established by applicable State and local regulations.

(h) *Parental involvement.* Child care centers operating under this section shall provide for the participation (directly or through a parent advisory committee) of parents of children receiving care in the center, in the establishment of policies to govern the operation of the center, and in the oversight of the implementation of such policies.

(i) *Nutritional standards.* All meals and/or snacks planned for child care centers established under this section shall meet the nutritional standards required by applicable State and local regulations. The preparation and service of such meals and snacks (food service), shall comply with the requirements of applicable State and local sanitary codes. Such food service may be provided directly by the child care provider, or by contract. The food service contractor may be the Canteen Service or a private food service establishment.

Authority: 38 U.S.C. 4209.

[FR Doc. 89–29639 Filed 12–26–89; 8:45 am]

BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL 3699–1]

Approval and Promulgation of Implementation Plans

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: USEPA is today proposing to promulgate Federal revisions to the Reasonably Available Control Technology (RACT) rules for volatile organic compounds (VOC) contained in the Illinois State Implementation Plan (SIP) for ozone. These Federal revisions are intended to correct certain noted deficiencies in the existing Illinois RACT rules. USEPA is specifically requesting public comment on whether the resultant implementation plan for Illinois should consist of a mix of Federal and State rules or a comprehensive set of Federal rules. USEPA is proposing to promulgate the rules for the following six counties in the Chicago area: Cook, DuPage, Kane, Lake, McHenry, and Will. A public hearing on the proposed promulgation will be held at the time and place identified in this notice. In addition, USEPA is proposing rulemaking on revisions to the Illinois ozone SIP submitted by the State.

DATES: Comments on the proposed USEPA action must be received by February 15, 1990. A public hearing will be held on January 17, 1990, in the Federal Courtroom, room 2525, U.S. District Court, 219 S. Dearborn Street, Chicago, Illinois, starting at 9 a.m.

ADDRESSES: Written comments on this proposed action should be addressed to: Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604. (Please submit an original and three copies, if possible.)

Docket: Docket No. 5A–89–X, containing the complete documentation supporting the proposed regulations, is located for public inspection and copying at the following addresses. (It is recommended that you telephone Randolph O. Cano at (312) 886–6036 before visiting the Region V office.) A reasonable fee may be charged for copies.

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, Twenty Sixth Floor, Southeast, 230 South Dearborn Street, Chicago, Illinois 60604.

U.S. Environmental Protection Agency, Docket No. 5A–89–X, Air Dockt (LE–131), Room M1500, Waterside Mall, 401 M Street, SW., Washington, DC 20460.

A file on the proposed Federal regulations is available at the following location: Illinois Environmental Protection Agency, Division of Air Pollution Control, 1340 North Ninth Street, Springfield, Illinois 62702.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886–6036.

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I. Background

A. The Clean Air Act

The Clean Air Act, 42 U.S.C. 7401 *et seq.*, requires that USEPA establish National Ambient Air Quality Standards (NAAQS) for pollutants which cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare. 42 U.S.C. 7408, 7409. The Act further requires that each state develop and submit, to USEPA for approval, a State Implementation Plan (SIP), designed to achieve and maintain the NAAQS within that state. 42 U.S.C. 7410(a)(1). USEPA must approve the plan submitted by the state if the plan provides for the attainment and maintenance of air quality standards and otherwise meets the criteria set forth at 42 U.S.C. 7410(a)(2) (A)–(K).

In 1971, USEPA established a NAAQS for ozone (36 FR 8186), which it then revised in 1979 (44 FR 8202). Under the original provisions of the Act, the states were required to develop a SIP which ensured attainment of the ozone NAAQS by the mid to late 1970s. However, Congress recognized that many urban areas could not comply with that deadline. Thus, Congress amended the Act in 1977 by extending the ozone attainment deadline but imposing additional planning burdens (Part D of the Act) on the states to ensure that "nonattainment areas" would ultimately attain the standard by the revised deadline of December 31, 1982, or in some cases December 31, 1987. 42 U.S.C. 7501 *et seq.*

The 1977 amendments require that the states revise their existing SIPs to, among other things:

(1) Provide for the expeditious implementation of reasonably available control measures;

(2) In the interim require reasonable further progress toward attainment; and

(3) Require permits for the construction of new or modified major stationary sources.

42 U.S.C. 7502(b) (2) (3) and (6). If a state sought to extend the compliance deadline to December 31, 1987, then the SIP revision (referred to as the 1982 ozone plan) also had to include, among other things:

(1) A schedule for implementation of a vehicle inspection program; and

(2) An identification of all other measures necessary to provide for attainment. 42 U.S.C. 7502(b)(11).

Section 172(b)(3) specifically states that plans must provide for reasonable further progress towards attainment through the adoption of reasonably available control technology (RACT) regulations.[1] USEPA has established Control Techniques Guidelines (CTGs) to assist the states in determining RACT. The CTGs, which contain information on available air pollution control techniques, their costs, and effectiveness, provide recommendations on what USEPA calls the "presumptive norm" for RACT. USEPA has published three groups of CTGs (Group I, Group II, and Group III). Major sources for which a CTG has not been published are referred to as major non-CTG sources. SIPs setting emission limitations for sources in, for example, Group I of the CTGs are referred to as RACT I rules.

The 1977 amendments also added sanctions for a state's failure to adopt an adequate SIP. First, the amendments ban the construction or modification of all major stationary sources located in a nonattainment area which does not have an approved Part D plan. 42 U.S.C.

[1] USEPA has historically defined RACT as the lowest emission limitation that an emission source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (see "Guidance for Determining Acceptability of SIP Regulations in Non-attainment Areas", December 9, 1976).

7410, 40 CFR 52.24.[2] Second, USEPA and the Secretary of Transportation must not award highway funds under certain

rules, as well as State submittals to address the RACT III and Major non-CTG categories, are addressed in

conformance with section 172(b) and (c) of the Federal Clean Air Act; and

c. Be required to impose and enforce a

Circuit Court seeking to sever Illinois' petition for review from its appeal, and seeking to remand the order and

USEPA is proposing that these Federal RACT rules replace part or all of the federally approved (or federally

7502(b)(2), (3). These rules will provide interim emission reductions while USEPA and the states develop a full

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7410, 40 CFR 52.24.[8] Second, USEPA and the Secretary of Transportation must not award highway funds under certain circumstances.[9] 42 U.S.C. 7506(a).

In the event that the threat of sanctions is not sufficient to induce a state to adopt a timely and approvable SIP, USEPA must assume the state's obligation and promulgate the SIP. 42 U.S.C. 7410(c)(1). According to the Act, the Administrator shall promptly prepare and publish proposed regulations setting forth an implementation plan if:

(1) The state fails to submit a plan which meets the requirements of section 110 (section 110(c)(1)(A)),
(2) The plan submitted by the state is determined by the Administrator to not be in accordance with the requirements of section 110 (section 110(c)(1)(B)), or
(3) The state fails, within 60 days after notification by the Administrator or such longer period as prescribed by the Administrator, to revise the implementation plan as required pursuant to section 110(a)(2)(H) (section 110(c)(1)(C)).

B. History of Illinois' Effort to Adopt a SIP

In 1978, USEPA designated the Illinois counties of Cook, Lake, Kane, DuPage, McHenry, and Will as having failed to attain the ozone NAAQs. 43 FR 8962, 43 FR 45993.[4] This designation as a "nonattainment area" triggered the additional (Part D) planning requirements discussed above.

On February 21, 1980 (45 FR 11472), USEPA approved Illinois' RACT I rules. RACT II rules were submitted to USEPA on January 28, 1983. On July 11, 1985 (50 FR 28224), USEPA proposed to approve a portion and to disapprove a portion of the State's RACT II rules. For those portions that were approvable, USEPA issued its final approval on November 27, 1987 (52 FR 45333). The remaining rules, as well as State submittals to address the RACT III and Major non-CTG categories, are addressed in today's notice.

On June 30, 1982, Illinois submitted a draft ozone SIP which imposed or committed to impose additional controls in the Post-1982 extension counties of Cook, Lake, Kane, DuPage, McHenry, and Will. This submittal included a demonstration that purported to show that the controls would provide for attainment of the ambient ozone standard. On February 3, 1983 (48 FR 5110), USEPA proposed to disapprove the State's plan. In response to USEPA's proposed disapproval, the State submitted numerous corrections to its draft plan. On July 14, 1987 (52 FR 26424), USEPA again proposed to disapprove the Illinois plan. By this time it had become apparent that not all controls required by the Clean Air Act would be adopted and implemented in time to attain the ozone NAAQS in the Chicago area by the December 31, 1987, statutory deadline or even shortly thereafter, and that Illinois' plan for the Chicago area was not adequate to assure attainment of the ozone NAAQS by the same date.

Consistent with its proposed policy for dealing with areas that failed to demonstrate attainment by the end of 1987 (52 FR 45044), USEPA notified the Governor of Illinois on May 26, 1988, pursuant to section 110(a)(2)(H), that the Illinois SIP was "substantially inadequate." USEPA followed up the notice to the Governor with a detailed letter to the Director of the Illinois Environmental Protection Agency's Air Division. That letter identified unfulfilled commitments and specific deficiencies with the State's proposed plan and requested that the state remedy those deficiencies. To date, the state has only remedied one of those deficiencies. USEPA is today proposing to promulgate Federal rules which correct the remaining deficiencies, consistent with USEPA RACT guidance for RACT I, RACT II, RACT III, and Major non-CTG rules.

C. Wisconsin v. Reilly

On April 1, 1987, the State of Wisconsin (plaintiff) filed a complaint in the United States District Court for the Eastern District of Wisconsin. By the six claims in that complaint, the plaintiff sought a judgment that USEPA:

a. Be required to finally approve or disapprove the proposed 1982 revisions to the ozone SIPs for northeastern Illinois and northwestern Indiana;

b. Be required to promulgate revisions to the Illinois and Indiana ozone SIPs in conformance with section 172(b) and (c) of the Federal Clean Air Act; and

c. Be required to impose and enforce a moratorium on the construction or modification of major stationary sources of ozone in the northeastern Illinois and northwestern Indiana ozone nonattainment areas.

On August 14, 1987, the State of Illinois moved to intervene in Wisconsin's suit against USEPA. This motion was granted and intervention permitted on April 5, 1988.

On September 30, 1988, the USEPA Administrator signed notices of final rulemaking disapproving the 1982 ozone SIP revisions for the northeastern Illinois and northwestern Indiana nonattainment areas. The Agency published final disapprovals of the ozone SIP for Illinois on October 17, 1988 (53 FR 40415) and for Indiana on November 18, 1988 (53 FR 46606). On November 19, 1988, Illinois filed a petition for review in the United States Court of Appeals for the Seventh Circuit, seeking review of USEPA's final rulemaking.

On January 18, 1989, the District Court entered an order granting the plaintiff a partial summary judgment requiring that the defendant USEPA promulgate ozone implementation plans for northeastern Illinois and northwestern Indiana within within 14 months of the date of the Court's order. On February 10, 1989, in response to the State of Illinois' motion for clarification of the Court's January 18, 1989 order, the District Court dismissed as moot the plaintiff's claims relating to USEPA's obligation to finally approve or disapprove the proposed 1982 revisions to the ozone SIPs for northeastern Illinois and northwestern Indiana and the plaintiff's claims that USEPA was required to impose and enforce a construction moratorium. On May 8, 1989, the District Court entered final judgment on the counts for which it had ordered USEPA to promulgate ozone implementation plans for northeastern Illinois and northwestern Indiana.

On March 20, 1989, Illinois filed a notice of appeal with the Circuit Court on the District Court's order of January 18, 1989, as clarified on February 10, 1989. On May 25, 1989, Illinois filed a notice of appeal with the Circuit Court on the final judgment of the District Court, entered on May 8, 1989. This appeal was subsequently consolidated with Illinois' earlier petition for review, filed in the same court on November 19, 1988.

On September 25, 1989, Illinois, Wisconsin, and USEPA filed a joint motion to sever and remand with the

[8] USEPA extended a pre-existing ban on the construction of major new stationary sources and major modifications of stationary sources of volatile organic compounds (precursors of ambient ozone) in Cook, Kane, Lake, and DuPage counties upon disapproval of the Illinois Part D ozone plan for those counties on October 17, 1988 (53 FR 40415).

[9] On November 2, 1989 (54 FR 46271), USEPA proposed to limit highway funding in Cook, Lake, Kane, and DuPage counties based on the State's failure to make reasonable efforts in submitting a revised plan.

[4] On May 16, 1983 (48 FR 21947), in response to a request from the State of Illinois, USEPA redesignated Will and McHenry Counties as attaining the ozone NAAQS. In 1983, Illinois requested USEPA to redesignate Kane and DuPage Counties as attaining the ozone NAAQS. USEPA denied the request to redesignate Kane and DuPage Counties on June 12, 1984 (49 FR 24123), and again on August 4, 1988 (54 FR 32079) upon remand from the United States Court of Appeals for the Seventh Circuit in *Illinois State Chamber of Commerce* v. *USEPA*, 775 F.2d 1141 (7th Cir. 1985).

Circuit Court seeking to sever Illinois' petition for review from its appeal, and seeking to remand the order and judgment on appeal back to the District Court. On September 29, 1989, the Circuit Court found it unnecessary to grant the severance, but did grant the requested remand in the case on appeal. On October 19, 1989, he parties filed a settlement agreement and a joint motion to vacate with the District Court. The settlement agreement calls for the use of a more sophisticated air quality model (i.e., a photochemical reactive grid model), allows more time for USEPA to promulgate a FIP using this model, and requires interim emission reductions while the modeling study is being performed. The interim emission reductions consist of Federal promulgation of revised VOC RACT rules for Illinois and, if necessary, Indiana to remedy deficiencies in the States' regulations.

On November 6, 1989, the District Court vacated its prior order and ordered all further proceedings stayed pending performance of the settlement agreement.

D. Summary of Today's Action

Today's proposal addresses the Part D requirement for RACT for the Chicago portion of the Illinois SIP.[5] Today, USEPA is proposing: (a) To adopt Federal RACT rules for inclusion in the Illinois plan,[6] (b) to approve certain pending State RACT rules for inclusion in the Illinois plan, and (c) to disapprove certain State RACT rules. In total, today's notice proposes to establish a comprehensive set of RACT rules applicable to the sources in Cook, DuPage, Kane, Lake, McHenry, and Will Counties in Illinois.

USEPA is proposing that these Federal RACT rules replace part or all of the federally approved (or federally proposed for approval) individual State rules in the SIP. The resultant plan for Illinois would then consist of some federally approved (State) rules and some federally promulgated (Federal) rules. This mixed Federal-State rule approach provides the best model for the State to secure eventually a total federally approved plan by ndicating the corrections Illinois must make to its rules, and is consistent with the District Court's order. As an alternative USEPA is also soliciting public comment on a comprehensive Federal plan (more fully discussed below). Under this alernative approach USEPA would promulgate as Federal rules both new RACT rules unaddressed by the present SIP and ules that are substantially similar to those State rules that have already been federally approved. This combination of Federal rules would then totally supercede the State rules currently in the SIP.

USEPA wishes to note that although only the proposed Federal rules are published in today's notice, the rulemaking docket for today's action contains a comprehensive compilation of all rules (federally approved State rules and new Federal rules) which would be in effect under this proposal. This document will enable the public to better understand how the State and Federal rules fit together, and to comment on the alternative approach for a comprehensive Federal plan.

It should also be noted that while RACT rules are an integral part of a Part D plan, there are other equally important requirements that still need to be addressed in order to provide for attainment. USEPA expects the State to take the lead in adopting for attainment. USEPA expects the State to take the lead in adopting rules necessary to satisfy the remaining requirements of Part D, regardless of USEPA's own efforts to develop an attainment FIP for the Chicago area.

As a first step towards promulgating a complete FIP pursuant to the Court order. USEPA believes that it is appropriate to take rulemaking action now on RACT rules for the greater Chicago area for the following reasons. First, the Clean Air requires that states submit SIPs that implement all reasonably available control measures as expeditiously as practicable and make reasonable further progress toward attainment through the implementation of RACT at a minimum on existing sources for designated nonattainment areas. 42 U.S.C. 7502(b)(2), (3). These rules will provide interim emission reductions while USEPA and the states develop a full attainment demonstration and other necessary control requirements. USEPA has maintained this interpretation of the RACT requirement in these circumstances since 1979 (see 44 FR 20372, April 4, 1979, and 46 FR 7182, January 22, 1981).

Second, traditional stationary source RACT rules are easier to both develop and implement than innovative areawide controls and transportation control measures. They, thus, represent a logical way to achieve reasonable further progress during the period before USEPA can develop a full-scale attainment FIP.

Third USEPA is confident that given the large emission reduction shortfall in the Chicago area, as described in the Federal Register notice of July 11, 1989 (54 FR 29063), all of these requirements plus numerous other areawide and transportation controls (and perhaps tightening of stationary source controls beyond RACT) will be necessary to support any attainment demonstration for the Chicago area.

Finally, Illinois has already completed rulemaking and submitted several RACT rules. It is appropriate for USEPA to act on these rules as SIP revisions and at the same time promulgate Federal measures to enhance the RACT provisions as necessary to meet the statutory and regulatory requirements.

II. Action on State Rules

Illinois has submitted several revisions to its ozone SIP to USEPA in recent years. The revisions have been either prompted by Federal guidance and notices (to correct deficiencies in existing federally approved rules or to provide rules for certain source categories for which no federally approved rule exists), or prompted by industry petitions to the State for alternative emission limitations. A summary of these submittals and USEPA's proposed rulemaking actions is provided below. A more detailed explanation of the State rules and more detailed justification for USEPA's action on them are contained in the Technical Support Documents located in the docket for this rulemaking.[7]

[5] USEPA will address the RACT rules for Indiana, pursuant to the District Court's order, in a future FEDERAL RECISTER notice.

[6] The proposed Federal rules would correct all of the deficiencies previously identified by USEPA in the letter to the Director of the Illinois Environmental Protection Agency's Air Division. It should be noted that pursuant to the settlement agreement, the Illinois Environmental Protection Agency submitted to the Illinois Pollution Control Board on September 29, 1989, revisions to the State rules to correct some of these deficiencies. USEPA has notified the State that if the Board adopts these revisions according to the schedule set forth in the settlement agreement, then USEPA's intent would be to approve these State rules. Assuming USEPA decides to pursue a mixed Federal-State plan, as discussed later in this notice, USEPA maintains this position (despite some differences in the wording between the proposed State and Federal rules) because the substance and effect of the State and Federal rules are the same. (For some of these revisions, final Federal approval would have the effect only of indicating (in a non-binding form) the portions of the State rules that, standing alone, would be theoretically acceptable. The Federal rules, however, would govern in these cases and would represent the federally enforceable plan.)

[7] USEPA's proposed rulemaking actions discussed in this section are described below independent of the two approaches discussed in the following section concerning the form of the ultimate plan (i.e., either a mix of Federal and State rules, or a comprehensive set of Federal rules). If, after reviewing the public comments, USEPA decides to promulgate a comprehensive set of

Continued

A. RACT Deficiencies

In early 1988, USEPA performed a

up to that letter, USEPA notified the Illinois Environmental Protection Agency (Illinois EPA) on June 17, 1988,

(b) Paper coating should cover "saturation" operations.

(c) The definition of transfer efficiency

compliance strategy approved by the State must be submitted to USEPA as a revision to the SIP.

the emission plans for internal offsets must be submitted to USEPA as SIP revisions. For these reasons, USEPA is

year. On July 22, 1988 (53 FR 27712), USEPA proposed to approve the revised rule. As explained in the technical

A. RACT Deficiencies

In early 1988, USEPA performed a national review of SIPs to determine their conformance with the Agency's RACT guidance as contained in the control techniques guidelines (CTGs), CTG-related guidance, and the May 25, 1988, document titled, "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations" (also known as the "Blue Book").[8] (As noted previously, part D of the Clean Air Act requires the implementation of all reasonably available control measures as expeditiously as practicable and all measures, including RACT, as necessary to ensure reasonable further progress and attainment by the required date. 42 U.S.C. 7502(b) (2), (3). Consequently, ozone plans for nonattainment areas must include RACT requirements for sources covered by the CTGs and major non-CTG sources.) In its review of these regulations, USEPA concentrated primarily on the following areas:

- RACT regulation exemptions
- Definition of 100 tons per year (TPY) source
- Clarity of requirements
- Definitions of key terms
- Equipment component leaks
- RACT-level control on non-CTG sources
- Emission limits and emission limit units
- Transfer efficiency
- Compliance periods
- Recordkeeping
- Test methods
- Exemptions
- Variances

On May 26, 1988, USEPA notified the Governor of Illinois, James R. Thompson, that the Illinois Ozone SIP was substantially inadequate to attain and maintain the ozone standard in the Chicago-Gary-Lake County (IL), IL-IN-WI Consolidated Metropolitan Statistical Area (CMSA).[9] As a follow-up to that letter, USEPA notified the Illinois Environmental Protection Agency (Illinois EPA) on June 17, 1988, of specific deficiencies in the State's SIP and requested the State to correct them. The deficiencies cited by USEPA were the following:

1. The source exemption level in the surface coating rule (i.e., 25 tons of VOC emissions per year) is too high (part 215, subpart F, § 215.206).[10] According to USEPA's RACT guidance, the exemption level should be 3 pounds per hour or 15 pounds per day actual emissions before add-on control, or 10 tons per year theoretical potential emissions (design capacity or maximum production) before add-on control.

2. The rules do not specify the units to be used in calculating equivalent surface coating emission limitations (subpart F). The limitations should be expressed as pounds of VOC per gallon of coating (less water and exempt solvents). If "equivalent" add-on controls, transfer efficiency,[11] or cross-line averaging [12] are allowed, then the limitations should also be expressed as pounds of VOC per gallon of solids. Alternatively, the regulation can contain a clearly defined, replicable calculation conversion procedure to determine compliance.

3. The rules do not specify how exempt solvents are to be treated (subpart F). For calculation purposes, any exempt solvent shall be treated as water [as in pounds of VOC per gallon of coating (less water and exempt solvents)].

Note: although the State has submitted a rule revision which corrects this deficiency, the rule cannot be approved for other reasons—see the discussion for Power Driven Fastener Coating under Section B. State Submittals to Address RACT Deficiencies.)

4. Several definitions (subpart A, section 215.104 and part 211, subpart B, section 211.122) are deficient and must be revised:

(a) Fabric coating should cover "saturation" operations as well as strictly coating operations.

(b) Paper coating should cover "saturation" operations.

(c) The definition of transfer efficiency should be based upon coating solids and not total coating.

(d) There is no definition of coating, which should be defined to include "functional" as well as protective or decorative films.

(e) The vinyl coating definition should make clear that organosol and plastisol coatings (which traditionally have contained little or no solvent) cannot be used to bubble emissions from vinyl printing and topcoating.

(f) Refinishing should be defined as the repainting of used equipment.

5. The rules are inadequate with respect to the use of transfer efficiency (subpart F). Either baseline transfer efficiency (TE) and test method must be specified, or TE credit can be allowed only if submitted as a source-specific SIP revision.

6. The rules allow emission limits to be revised without Federal approval by means of an internal emission offset provision (subpart F, section 215.207).[13] Unless and until Illinois has an approved generic "bubble rule", all internal offsets must be submitted as SIP revisions and must comply with USEPA's emissions trading policy (51 FR 43814).

7. The rules do not clearly state the applicable compliance period (subpart F and subpart P). The compliance time frame associated with each emission limit must be stated (e.g., instantaneous or daily). In general, the compliance can be averaged over no longer than a daily basis.

8. The recordkeeping requirements in the coating rule (subpart F) are inadequate and must be made consistent with the timeframes and cutoffs in the State's rules.

9. The test methods in the rules do not reflect the most current methods. The most current test methods are required.

10. The rules do not contain a capture efficiency test method. A capture efficiency test method must be prescribed when developed by USEPA.

11. Inaccessible valves are improperly exempted from all periodic monitoring requirements (subpart R, section 215.447). Inaccessible valves should be subject to at least annual monitoring.

12. The SIP must clearly state that any variance, exemption, or alternative compliance strategy approved by the State must be submitted to USEPA as a revision to the SIP.

13. The rules improperly allow an exemption for any bulk gasoline plant whose annual gasoline throughput is less than 350,000 gallons, as averaged over the preceding 3 calendar years (subpart Y, section 215.581). According to the CTG and model regulation guidance, the acceptable exemption level is 4,000 gallons per day.

Note, subpart P, § 215.402 also suffers from reliance on a 3-year average.

14. The rules exempt oil-fired afterburners from the requirement to operate from November 1 to April 1 (subpart A). USEPA policy only allows seasonal control for natural gas-fired afterburners and use of emulsified asphalt.

15. The solvent metal cleaning rule improperly exempts sources which emit less than 6.7 kg (15 lbs) in any one day and 1.4 kg (3 lbs) in any one hour (subpart E, section 215.181). No such emissions exemption level is acceptable.

16. The paper coating limitation does not apply to equipment used for both printing and paper coating (subpart F, section 204). An exemption from the paper coating limitation would not be acceptable unless the sources were covered by the State's graphic arts regulations, which they are not in Illinois.

B. State Submittals to Address RACT Deficiencies

All but one of the 16 previously cited deficiencies remain uncorrected by the State. In addition, there remain deficiencies in other State rules not finally approved by USEPA. Revised rules submitted by the State which address these deficiencies, along with USEPA's proposed rulemaking action, are discussed below.

(1) *Item 6: Internal Offset Rule (Subpart F, Section 215.207).* On March 28, 1988, Illinois submitted a revised internal offset rule which attempts to correct the deficiencies cited by USEPA in its July 11, 1985, proposed disapproval of the rule. In the revised rule, allowable emissions are now determined on a solids basis and the formula for determining actual and allowable emissions has been corrected. The revised rule still suffers from two problems: (1) The methods or procedures used to determine emissions are contained only in operating permits which have an expiration date (i.e., it cannot be assured that the methods or procedures will continue to be used after the operating permit expires), and (2) the rule does not explicitly state that the emission plans for internal offsets must be submitted to USEPA as SIP revisions. For these reasons, USEPA is proposing to disapprove the revised rule

(2) *Item 13: Clarification of 3-Year Averaging (Subpart A, Section 215.107).* On August 21, 1987, Illinois submitted a revision to the applicability section of its rules which clarified the 3-year averaging criterion used in the rules for graphic arts (subparts H and P) and bulk gasoline plants (subpart Y). Because 3-year averaging is not consistent with USEPA's RACT guidance, this revision, as well as the relevant portions of the rules for graphic arts and bulk gasoline plants, are not acceptable. Consequently, USEPA is proposing to disapprove the revised rule. (As noted later, USEPA is proposing revisions to correct this deficiency in the graphic arts and bulk gasoline plant rules.)

C. Other Submittals

Illinois has also submitted rules covering a number of other source categories for which RACT regulations are required. These submittals do not address the deficiencies in USEPA's SIP call, which are primarily based on rules previously approved by USEPA. USEPA has concluded that some of these rules are approvable and some are not approvable, and is proposing action based on these conclusions. The approvals and disapprovals rules are discussed separately below, along with USEPA's rationale for its proposed rulemaking.

(1) Not Approvable

High Gloss Catalyzed Coatings (Subpart F, Section 215.204(c)). On March 28, 1988, Illinois submitted a revised surface coating rule which relaxes the existing federally approved SIP emission limitations from 2.9 to 3.5 pounds per gallon for "specialty high gloss catalyzed coatings". The rule currently applies to Classic Finishing Company in Chicago. The State has not demonstrated that the revised limit is consistent with RACT. Consequently, USEPA is proposing to disapprove the revised rule.

Marine Propulsion Equipment (Subpart F, Section 215.206(b)). On August 21, 1987, Illinois submitted a revised surface coating rule which deleted the exemption for the exterior of airplanes and marine propulsion equipment in the definition of "miscellaneous metal parts and products". The revised rule also provides an exemption for the Outboard Marine Corporation's (OMC) Waukegan facility so long as its VOC emissions from miscellaneous metal coating operations do not exceed 35 tons per year. On July 22, 1988 (53 FR 27712), USEPA proposed to approve the revised rule. As explained in the technical support document, based on the public comments submitted in response to the proposal and USEPA's RACT guidance for applicability cutoffs (i.e., the 35 tons per year cut-off is not consistent with RACT guidance and no demonstration has been made that there is not a significant difference between the "State-derived" cut-off and USEPA's RACT guidance), USEPA now believes that it cannot accept the revised rule. Consequently, USEPA is reproposing to disapprove the revised rule. (OMC did provide a demonstration which purports that it is infeasible for it to comply with the emission limitations for miscellaneous metal parts and products. Based on this demonstration, USEPA previously proposed to approve the State rule. USEPA will, therefore, consider a revised coating limitation for OMC, if submitted by Illinois, based upon the information previously provided by OMC.)

Diesel-Electric Locomotive Coating (Subpart F, Section 215.204(m)). On July 29, 1988, Illinois submitted a revised surface coating rule which relaxes the emission limitations for "existing diesel-electric locomotive coating lines in Cook County" from the emission limitations in the otherwise applicable miscellaneous metal parts and products rule. The rule currently applies to General Motors Corporation, Electro-Motive Division in Cook County. The State has not demonstrated that the revised limit is consistent with RACT. Consequently, USEPA is proposing to disapprove the revised rule.

Power Driven Fastener Coating (Subpart F, Section 215.204(j)(4)). On March 28, 1988, Illinois submitted a revised surface coating rule which treats exempt solvents the same as water (i.e., emission limits have been changed from pounds VOC per gallon of coating less water, to pounds VOC per gallon less water and exempt solvents) and relaxes the emission limitations for "power driven fastener coatings" from the emission limitations in the otherwise applicable miscellaneous metal parts and products rule. The rule currently applies to Duo-Fast Corporation in Franklin Park. Although the treatment of exempt solvents is acceptable, the State has not demonstrated that the revised limits are consistent with RACT. Consequently, USEPA is proposing to disapprove the revised rule.

Generic Rule (Subparts AA, II, PP, QQ, RR). On July 21, 1988, Illinois submitted a "generic" rule which establishes control requirements for

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Federal rules superceding all of the State rules, then final Federal approval of any State rules would have the effect only of indicating (in a nonbinding form) the portions of the State rules that, standing alone, would be theoretically acceptable. The Federal rules would govern and would represent the federally enforceable plan.

[8] The Blue Book represents additional presumptive clarification of those areas (described in appendix D of USEPA's November 24, 1987, proposed post-1987 ozone and carbon monoxide policy statement) in which existing VOC RACT regulations have not been adopted or implemented on a nationally consistent basis meeting the requirement of RACT. This clarification does not expand or modify existing Federal regulatory requirements, but merely clarifies the existing requirements consistent with USEPA's original intent.

[9] USEPA's identification of the entire CMSA is consistent with the concept of an expanded planning area, as discussed in the proposed post-1987 ozone and carbon monoxide policy statement. The SIP call was issued for this expanded area based on the conclusion that sources (e.g., vehicles) in the entire CMSA (or MSA) contribute to the formation of ozone and carbon monoxide and the area's nonattainment. Consequently, the finding of SIP inadequacy applies to all of the counties in the CMSA (or MSA).

[10] This citation refers to the rule identification in the State statute. Unless noted otherwise, all Illinois VOC rules are contained in part 215 of subchapter C: Emission Standards and Limitations for Stationary Sources, chapter I: Pollution Control Board, subtitle B: Air Pollution, title 35: Environmental Protection of the Illinois statute.

[11] Transfer efficiency is a measure of how efficiently coating solids are applied to the objects being coated in spray coating operations.

[12] Cross-line averaging refers to the averaging of emissions from two or more coating lines to achieve compliance with the emission limitations of a rule.

[13] Internal offsets refers to the practice of reducing emissions below the lower of the current actual or applicable allowable emissions for an emissions unit by an amount sufficient to compensate for an equal (or lesser) increase in emissions above the applicable allowable emissions for another emissions unit.

major sources not currently subject to CTG regulations. The State rule is not

photochemically reactive) compounds. Because the revised definition is

Polyethylene, Polypropylene, and Polystyrene Resins" and the January 9,

provisions are inextricably linked to other provisions that USEPA is

11888), USEPA proposed to approve the petroleum dry cleaning rule.

107 of the Act; Will and McHenry Counties were designated

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major sources not currently subject to CTG regulations. The State rule is not acceptable because the method of determining what constitutes a major non-CTG source is not consistent with USEPA RACT guidance. For example, the State rule applies to sources which emit 100 tons or more per year of VOC if no air pollution control equipment were used. According to the RACT guidance, the emissions levels must be based on the theoretical potential to emit (design capacity or maximum production), not actual emissions, before add-on controls. Consequently, USEPA is proposing to disapprove the revised rule.

Synthesized and non-CTG Pharmaceutical Manufacturing (Subpart A, Section 215.102 and Subpart T). On May 26, 1988, Illinois submitted a rule which establishes control requirements for synthesized and non-CTG pharmaceutical manufacturing. The rule currently applies to Abbott Laboratories in North Chicago and Abbott Park. The rule is not acceptable because the method for determining the vapor pressure of mixtures is sufficiently ambiguous so as to be unenforceable and it allows an interpretation that would include the contribution of water vapor (which is contrary to USEPA's RACT guidance).

In addition, there are other unenforceable provisions within Subpart T. Consequently, USEPA is proposing to disapprove the revised rule.

Printing and Publishing (Subpart H, Section 215.245). On March 3, 1988, Illinois submitted a revised rule for printing and publishing (graphic arts) for the nonattainment counties. The revised rule lowers the exemption level for rotogravure and flexographic printing presses to 100 tons per year when averaged over the preceding 3 calendar years and requires packaging rotogravure printing presses (wishing to comply by installing add-on control equipment) to have a combined capture and control system reduction of at least 65 percent. As noted previously, 3-year averaging is not consistent with USEPA's RACT guidance. In addition, applicability must be based on potential, not actual emissions (in the absence of add-on control equipment). Consequently, USEPA is proposing to disapprove the revised rule.

(2) Approvable

Definition of Volatile Organic Material (Part 211, Subpart B, Section 211.122). On January 8, 1988, Illinois submitted a revised definition for "volatile organic material". The revised definition eliminates the reference to any vapor pressure cutoff and identifies seven additional exempt (non-photochemically reactive) compounds. Because the revised definition is generally consistent with the model definition in the USEPA's RACT guidance, USEPA is proposing to approve the revised definition. Although USEPA is proposing to approve the revised State definition, USEPA is also proposing a comprehensive set of definitions in the General Provisions section of the Federal rule, which include a definition of volatile organic material. The proposed Federal definition is substantially similar to the revised State definition. If both definitions receive final approval, then the Federal rule will represent the applicable federally enforceable rule. This is appropriate because the definitions are inextricably linked to other provisions that USEPA is promulgating.

SOCMI Air Oxidation (Subpart V). On December 22, 1987, Illinois submitted a rule which establishes control requirements, and testing and monitoring provisions, for SOCMI air oxidation processes. The new rule is consistent with the December 1984 CTG document entitled "Control of Volatile Organic Compound Emissions from Air Oxidation Processes in Synthetic Organic Chemical Manufacturing Industry". Consequently, USEPA is proposing to approve the revised rule.

SOCMI Leaks (Subpart Q). On May 12, 1988, Illinois submitted a revised rule for leaks from Synthetic Organic Chemical and Polymer Manufacturing Equipment. Except for certain monitoring provisions, the revised rule is consistent with USEPA's RACT guidance and is, therefore, approvable. Because certain monitoring exemptions in section 215.432 are not appropriate and an alternative monitoring program in section 215.436 is authorized without USEPA approval, USEPA cannot approve these portions of the rule. Consequently, USEPA is proposing to approve the revised SOCMI leak rule, except for sections 215.432 and 215.436 which USEPA is proposing to disapprove.[14]

Polystyrene Plants (Subpart A, Section 215.104 and Subpart BB). On October 2, 1987, Illinois submitted a rule which establishes control requirements, and testing and monitoring provisions, for polystyrene plants. The new rule is consistent with the November 1983 CTG document entitled "Control of Volatile Organic Compound Emissions from Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins" and the January 9, 1986, memorandum entitled "Clarification of CTG RACT Recommendation for High-Density Polyethylene, Polypropylene, and Polystyrene". Consequently, USEPA is proposing to approve the revised rule.

Heatset Web Offset (Subpart P, Section 215.406). On September 28, 1987, Illinois submitted revisions to the emission limitations and compliance schedule for heatset web offset lithographic printing. The applicability criteria, emission limits, and compliance schedule are consistent with the August 1981 draft CTG document entitled "Control of Volatile Organic Compound Emissions from Full-Web Process-Color Heatset Web Offset Lithographic Printing" and other USEPA guidance on RACT for major non-CTG sources in nonattainment areas. Although USEPA is proposing to approve the State rule for heatset web offset printing, USEPA is also proposing a comprehensive Federal rule for graphic arts. The proposed Federal rule will include a heatset web offset regulation substantially similar to the proposed State rule. If both rules receive final approval, then the Federal rule will represent the applicable federally enforceable rule. This is appropriate because the heatset web offset provisions are inextricably linked to other provisions that USEPA is promulgating.

Alternative Emission Limitations (Subpart F, Section 215.205). On March 28, 1988, Illinois submitted a revised rule concerning alternative emission limitations for coating operations. The revision establishes an overall control efficiency requirement of 81 percent, except for can coating operations (where the control requirement remains at 75 percent). This revision is supported by the April 1981 study entitled "Determination of Capture and Destruction Efficiencies of Selected Volatile Organic Compound Control Devises in the State of Illinois" and generally satisfies the conditional approval issue cited by USEPA in its prior conditional approval of Illinois' RACT I regulations (45 FR 11464). Although USEPA is proposing to approve the revised State rule, USEPA is also proposing a comprehensive Federal rule for coating operations. The proposed Federal rules will include a provision for alternative emission limitations similar to the proposed State rule. If both rules receive final approval, then the Federal rule will represent the applicable federally enforceable rule. This is appropriate because the alternative emission limitation provisions are inextricably linked to other provisions that USEPA is promulgating.

In addition to these regulations, USEPA has previously proposed to approve certain Illinois RACT regulations. USEPA continues to classify these rules as approvable and will take action in the form of final rulemaking in the future. These rules are for:

External Floating Roofs (Subpart H, Sections 215.240, 241, 249). On August 21, 1987, Illinois submitted a revised rule which modified the exemption for stationary crude oil storage tanks equipped with an external floating roof from the requirement to use secondary seals. The revised rule limits the exemption to tanks used to store crude oil with a pour point of 50 °F. or higher as determined by ASTM Standard D97-66. This revision is consistent with the December 1978 CTG document entitled "Control of Volatile Organic Emissions from Petroleum Liquid Storage in External Floating Roof Tanks". On July 22, 1988 (53 FR 27712), USEPA proposed to approve the State rule.

Gasoline Tank Trucks and Vapor Collection Systems (Subpart Y, Section 215.584). On August 21, 1987, Illinois submitted revised rules for bulk gasoline plants, bulk gasoline terminals, and gasoline dispensing stations, and added a rule for gasoline delivery vessels. These rules establish requirements for leak prevention from gasoline tank trucks and vapor collection systems. These regulations satisfy USEPA guidance for leak testing and repair of gasoline tank trucks and vapor collection systems. The State has also adopted USEPA-approved test methods for use with these rules. The revised rule for bulk gasoline plants, bulk gasoline terminals, and gasoline dispensing facilities establishes operating and repair requirements for vapor collection systems consistent with the December 1978 CTG document entitled "Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems". On July 22, 1988 (53 FR 27712), USEPA proposed to approve these State rules.

Petroleum Dry Cleaning (Subpart Z, Sections 215.607-613). On June 25, 1987, Illinois submitted a rule which establishes control requirements, testing and monitoring provisions, and compliance dates for large petroleum dry cleaners. The new rule is consistent with the September 1982 CTG document entitled "Control of Volatile Organic Compound Emissions from Large Petroleum Dry Cleaners" and relevant USEPA guidance on test methods and expeditiousness. On April 8, 1988 (53 FR 11688), USEPA proposed to approve the petroleum dry cleaning rule.

III. Proposed Federal Rules

A. Statutory Basis and Geographic Applicability

As discussed above, in 1988 USEPA disapproved Illinois' 1982 part D SIP for ozone. Upon disapproval of the plan, USEPA was required to promulgate a substitute Federal plan, because section 110(c)(1)(B) of the Act states that the Administrator shall promulgate such a Federal plan if "* * * the plan, or any portion thereof, submitted for such State is determined by the Administrator not to be in accordance with the requirements of this section." 42 U.S.C. 7410(c)(1)(B). Under the settlement agreement signed by the parties in *Wisconsin* v. *Reilly*, one of USEPA's interim requirements (prior to promulgating the full plan) is to adopt VOC RACT rules for Illinois in the event that the State fails to adopt and submit to USEPA approvable rules itself. Thus, these RACT rules will be promulgated by USEPA pursuant to its authority under section 110(c)(1)(B) to promulgate a plan that will provide for attainment and maintenance of the ozone NAAQS in northeastern Illinois.

Furthermore, on May 26, 1988, pursuant to section 110(a)(2)(H) of the Act, the USEPA Regional Administrator Valdas V. Adamkus notified Illinois Governor James R. Thompson that the Illinois SIP (including portions of the SIP that USEPA has approved) was substantially inadequate to attain and maintain the ozone standard in the Chicago-Gary-Lake County (IL), IL-IN-WI consolidated metropolitan statistical area (CMSA). USEPA called upon Illinois to revise its SIP to correct this deficiency. Among other things, USEPA instructed the State to correct a number of deficient VOC RACT rules, and to adopt a number of other rules deemed necessary by USEPA. These rules were to be promulgated and submitted to USEPA generally by August 1989. Illinois' failure to complete these actions, and thus to adequately respond to USEPA's instruction to revise the implementation plan, provides further authority for today's proposal. See section 110(c)(1)(C) of the Act, 42 U.S.C. 7410(c)(1)(C) (promulgation of Federal implementation plan where State fails to revise an implementation plan as instructed by USEPA).

Today's proposal applies to six Illinois counties in the greater Chicago area: Cook, DuPage, Kane, Lake, McHenry, and Will. The first four of these counties are currently designated nonattainment for ozone under section 107 of the Act; Will and McHenry Counties were designated nonattainment for ozone following enactment of part D in 1977, but were subsequently redesignated as attainment (see 40 CFR 81.134). The VOC RACT rules proposed by USEPA are necessarily applicable to Cook, DuPage, Kane, and Lake Counties because all part D requirements, including the RACT requirement found in section 172(b)(3), must be met for plans for nonattainment areas. In addition, USEPA believes that the history of ozone designations and planning in the Chicago area and the nature of the ozone problem there necessitate that the federally-adopted RACT rules apply in McHenry and Will Counties as well. (Note, USEPA's proposal to subject all six counties to the same level of control [RACT] through this rulemaking will not necessarily require the State to control emissions beyond RACT in these counties equally as part of its future, revised "attainment" SIP. The State may control these emissions to the extent necessary beyond RACT, provided the revised plan produces progress and attainment in accordance with the requirements of the Clean Air Act.)

USEPA believes that requiring RACT for certain VOC sources in McHenry and Will Counties is important for several reasons. First, Illinois has recognized the contribution of these counties to the ozone nonattainment problem in the Chicago area by including emission sources located in them in the area for which the State constructed its Chicago attainment demonstration in both its 1979 and 1982 part D ozone SIPs. (McHenry and Will Counties also were a part of the area for which the State requested and USEPA approved an extension of the ozone attainment date to December 31, 1987—see 45 FR 11471, February 21, 1980.) In fact, most of the State's current VOC rules apply to these two counties based on the State's decision to group the two counties with the designated nonattainment counties for purposes of Chicago-area ozone attainment planning.

Second, as USEPA has stated on previous occasions subsequent to its redesignation of McHenry and Will Counties as attainment for ozone, that redesignation was based on several incorrect assumptions. At that time, USEPA believed that VOC emissions from stationary sources in these two counties would be reduced significantly even subsequent to the redesignation as a result of Illinois' planned adoption of statewide RACT rules. But USEPA's

[14] On September 25, 1989, Illinois submitted a revision to its SOCMI leak rule. This revision will be addressed by USEPA in a future Federal Register notice.

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reliance on Illinois' commitment to adopt statewide RACT rules proved misplaced, as the State later withdrew this commitment. In addition, at the time it redesignated the two counties, USEPA believed that it could later reinstate the nonattainment designations through a unilateral redesignation. But in *Bethlehem Steel* versus *EPA*, 638 F.2d 944 (1983), the Seventh Circuit Court of Appeals held that USEPA could not unilaterally redesignate an area. Thus, the Agency now believes that it mistakenly redesignated the two counties as attainment for ozone. See 53 FR 52727, 52733, December 29, 1988.

Finally, and perhaps most important, USEPA believes that stationary sources of VOC located in McHenry and Will Counties make a significant contribution to the ozone nonattainment problem in the greater Chicago area, and that the ozone NAAQS cannot reasonbly be attained unless RACT rules are applied in these two counties. The two counties are located in proximity of and upwind of the areas measuring the highest exceedances of the ozone standard in the Chicago area. As the Agency explained in its recent decision to deny Illinois' request to redesignate DuPage and Kane Counties as attainment for ozone, "[i]f adjacent areas [to urbanized areas] have significant ozone precursor sources because of population, growth potential, or significant existing stationary sources, then these 'fringe' areas will also be designated as nonattainment because of their current and/or future contribution to the ozone problem in and near the urbanized areas experiencing the violations." (54 FR 32078, 32079, August 4, 1989) As is discussed more fully in the Technical Support Document, McHenry and Will Counties meet these criteria. It is, therefore, reasonable to apply to those counties the RACT rules being proposed today, even though the counties are still formally designated as attainment for ozone.[15]

The absence of nonattainment designations for McHenry and Will Counties does not remove USEPA's authority to set RACT rules for them under the FIP authority of section 110(c)(1)(B) and (C). For the reasons described above, USEPA believes that such rules are necessary to insure attainment and maintenance in the Chicago area, as required by sections 110 and 172(c). The absence of a nonattainment designation for those counties is irrelevant to whether RACT—level controls are needed for those purposes. See discussion at 52 FR 45044, 45066–45067, November 24, 1987 ("reasonable further progress" requirement stemming from part D, section 172(b)(3), could in substance be applied to all areas under section 110(a)(2)(A) and (B) on the theory that such progress is necessary to ensure timely attainment).

[15] USEPA's decision to apply the RACT rules now in McHenry and Will Counties, but not in Grundy and Kendall Counties (which are also in the Chicago CMSA), does not mean that the application of RACT in the latter two counties might not be appropriate in the future. Rather, the Agency believes that in the first phase of correcting existing ozone SIPs, only those counties in the historical Chicago demonstration area, and that were subject to the 1988 SIP call by USEPA to correct deficiencies in VOC RACT rules, should be subject to the RACT corrections.

B. Overview of Rules

In general, the specific rules that USEPA is proposing are necessary to assure that enforceable rules (required under sections 110(a)(2)(D) and 172(c)) are in place that meet the requirements for RACT (under section 172(b)(2), (3)), and that meet other Clean Air Act requirements.

With respect to enforceability, for example, the Illinois SIP has few explicit recordkeeping requirements, thereby rendering enforcement problematic. The proposed Federal rules would add recordkeeping requirements consistent with underlying compliance requirements. In addition, the Illinois SIP, in many areas, does not clearly specify test methods, fails to include any test method for certain categories of sources, or authorizes the director of the State agency to set the test method. The proposed Federal rules would require use of the most appropriate test method that USEPA has developed.

With respect to RACT requirements, for example, the Illinois SIP exempts from control requirements surface coating operations of a size larger than allowed by USEPA guidance, as specified in the Blue Book. This guidance, which includes a cut-off of 15 pounds per day before add-on control is based both on previus USEPA gudiance and the fact that similar cut-offs are in effect in a number of states, such as Wisconsin. Prior USEPA guidance which supports this cut-off is the April 1978 document entitled "Regulatory Guidance for Control of Volatile Organic Compound Emissions from 15 Categories of Stationary Sources", EPA–905/2–78–001, and a June 25, 1987, memorandum from G.T. Helms, Chief, Control Programs Operations Branch, USEPA entitled "Emission Cut-Off for Control Techniques Guidelines, Volatile Organic Compound Sources".

USEPA is proposing Federal rules under section 110(c) to modify the following stationary source category rules to bring them into conformance with the RACT requirements as interpreted by USEPA guidance:

- Solvent Metal Cleaning;
- Coating Operations, including automobile or light duty truck, can, paper, coil, fabric, vinyl, metal furniture, large appliance, magnet wire, miscellaneous metal parts and products, heavy off-highway vehicle products, wood furniture, and diesel-electric locomotive (General Motors Corporation, Electro-Motive Division);
- Printing and Publishing Operations, including flexographic and rotogravure printing, and heatset web offset lithographic printing;—
- SOCMI Leaks;
- Petroleum Refinery Leaks;
- Pharmaceutical Manufacturing;
- Bulk Gasoline Plants; and
- Major Non–CTG (Generic) Rules, including paint and ink manufacturing, miscellaneous fabricated product manufacturing, miscellaneous formulation manufacturing, miscellaneous organic chemical manufacturing, and other emission sources.

In addition to the Federal rules proposed for these stationary source categories, USEPA is proposing revised General Provisions. This section includes new or revised definitions (e.g., fabric coating, paper coating, transfer efficiency, coating, vinyl coating, and refinishing), revised test methods and procedures, a seasonal exemption only for gas-fired afterburners, a requirement that any alternative emission limitation or variance must be submitted to USEPA for approval, and more specific procedures for determining the vapor pressure of organics.

A summary of these rules is provided below. For the reasons described above, USEPA is proposing to apply the rules to the six Illinois counties in the Chicago area: Cook, DuPage, Kane, Lake, McHenry, and Will.

The proposed Federal rules would correct all of the previously identified deficiencies. It should be noted that pursuant to the settlement agreement, the Illinois Environmental Protection Agency submitted to the Illinois Pollution Control Board on September 29, 1989, revisions to the State that rules to correct some of these deficiencies. USEPA has notified the State that if the Board adopts these revisions according to the schedule set forth in the settlement agreement, then USEPA's intent would be to approve these State rules. Assuming USEPA decides to pursue a mixed Federal-State plan, as discussed below, USEPA maintains this position (despite some differences in the wording between the proposed State and Federal rules) because the substance and effect of the State and Federal rules are the same. The wording differences between the two sets of rules are not significant and are probably necessary given the diferences in structure of the overall Federal and State rules. (For some of these revisions [i.e., those which represent fragments of rules, as indicated in footnote 16], final Federal approval would have the effect only of indicating [in a non-binding form] the portions of the State rules that, standing alone, would be theoretically acceptable. The Federal rules, however, would govern in these cases and would represent the federally enforceable plan.)

The approach proposed by USEPA today consists of new Federal rules which would replace part or all of the individual State rules that have been federally approved or are being federally proposed for approval (in today's notice). These new Federal rules would just correct the RACT deficiencies identified previously. The resultant plan for Illinois would then consist of some federally approved (State) rules and some federally promulgated (Federal) rules. USEPA believes that this approach provides the best model for the State to secure eventually a total federally approved SIP by highlighting the changes Illinois must make to its rules. It does present a possible problem, however, given the interrelationship of the rules, as discussed below. USEPA specifically requests public comment on this approach. To clarify which rules are federally promulgated rules (i.e., FIP rules) and which rules are federally approved State rules (i.e., SIP rules) under this mixed Federal-State plan approach, USEPA has included a document with the complete set of rules in the docket for this rulemaking action. This document contains all of the RACT rules for the Chicago area and indicates which rules are Federal rules and which are State rules.

As an alternative to the mixed Federal-State plan, USEPA also wishes to solicit public comment on a comprehensive Federal plan. Under this alternative approach, USEPA would promulgate the entire set of RACT rules for Chicago such that it would be a stand-alone Federal plan. That is, USEPA would be promulgating revisions which correct the RACT rule deficiencies outlined above *and* promulgating Federal rules substantially similar to the State rules that it has already federally approved or proposed to approve. This comprehensive Federal plan would totally supercede all of the State VOC rules currently in the SIP.

This alternative approach is suggested because of the effect of several changes being proposed by USEPA today, including changes to the definitions, the test methods and procedures, and the exemptions, variances, and alternative means of control portions of the General Provisions section. The General Provisions section applies to each of the individual source category rules. It could, therefore, be argued that changes to the General Provisions section result (indirectly) in changes to the individual source category rules. If USEPA relied on its previous approval of the State rules for the individual source categories (while changing portions of the General Provisions section), then USEPA may be making the original State rules more stringent as a matter of Federal law than Illinois had initially intended. This may conflict with a decision by the U.S. Court of Appeals for the Seventh Circuit.

In *Bethlehem Steel* v. *USEPA*, 638 F. 2d 992 (1983), the Circuit Court ruled that USEPA could not, through its authority to partially approve or disapprove a plan revision, make a plan more stringent than the state had ever intended it to be. The Court did, however, indicate that USEPA could modify the plan through formal rulemaking under section 110(c) rather than through partial SIP approval. USEPA believes that its adherence to the procedural requirements of sections 110(c) and 307(d) of the Clean Air Act in proposing the Federal RACT rule revisions may avoid the procedural issue identified in *Bethlehem* and hence may be consistent with the Court's ruling. Nevertheless, USEPA acknowledges that because the General Provisions section is an integral part of the overall plan, it could be argued that compliance with the *Bethlehem* decision would necessitate formal rulemaking under section 110(c) on the entire plan, not just the deficient portions identified by USEPA. For this reason, USEPA is also requesting public comment on the alternative approach of federally promulgating a complete, comprehensive Federal plan. Public comment is also requested on each of the individual rules that would be contained in the comprehensive plan. The document noted above, which contains the complete set of rules, provides commentors with information on the make-up of a comprehensive Federal plan. Should USEPA promulgate a comprehensive plan, all of the rules in the document would be Federal rules.[16]

[16] Because of these concerns about the interrelationship of portions of the plan, the State of Illinois may wish to avoid this issue in subsequent SIP submittals. Thus, USEPA recommends that for any given source category for which the State wishes to submit a substitute State rule, the State should submit both the relevant requirements of the General Provisions section and a substantially complete rule for the category. USEPA may not be able to approve a rule fragment, even if it is consistent with USEPA policy or the underlying Federal rule, if the rule revision submitted by the State is structurally inconsistent with those portions of the FIP with which it would be integrated. These problems will be reduced if the State submits entire rules for a source category.

The State could obviate the need for a comprehensive Federal plan by indicating its intention that USEPA promulgate only the rules necessary to cure the identified RACT deficiencies, even though such action may render previously approved State rules more stringent as a matter of Federal law than the State had initially intended. The Court in *Bethlehem* was primarily concerned with federalism issues and the adverse effect of USEPA partial approval in altering state rules contrary to state intent. If the State indicates that it intends this result, then federalism issues should not be implicated. In fact, federalism would actually be served by allowing many State promulgated rules to remain in effect under the SIP.

C. Solvent Metal Cleaning

The proposed Federal rule eliminates the exception for solvent metal cleaning operations that emit less than 6.8 kg/day and 1.4 kg/hr. As noted previously, such an exemption is inconsistent with USEPA's RACT guidance. Because elimination of this exemption will subject some new sources to the solvent metal cleaning rule, new compliance schedules will be added which require these newly subject facilities to be in compliance by April 1, 1991. A section on test methods will also be added which specifies the most current USEPA-approved test methods.

D. Coating Operations

The proposed Federal rule would establish a complete rule for the following coating operations: paper coating, fabric coating, can coating, coil coating, miscellaneous metal parts and products coating, automobile and light-duty truck assembly-line coating, vinyl coating, magnet wire coating, metal furniture coating, would furniture coating, large appliance coating, heavy off-highway vehicle products coating, and existing diesel-electric locomotive coating. The proposed rule applies to coating operations (except wood furniture coating) with actual emissions more than 15 pounds per day before add-on control. (Wood furniture coating operations with potential emissions greater than 100 TPY, in the absence of

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add-on control equipment, are subject to the rule.) The rule provides no special exemption (which the State rule does) for equipment used for both printing and paper coating. (The equipment must be subject to either the paper coating or graphics rule.) According to the proposed Federal rule, emissions limitations are expressed in units of VOC per gallon of coating (minus water and exempt solvents) and reflect either instantaneous or daily-weighted averages. In addition, the rule would require that alternative emission limitations (for sources wishing to comply using add-on controls) be expressed as pounds of VOC per gallon of solids. Sources wishing to comply using internal offsets or cross-line averageing would be required to satisfy the requirements of USEPA's emissions trading policy, including the submittal of a site-specific plan revision to USEPA, which is necessary to ensure that the resulting set of limits is equivalent in effect to the otherwise applicable limits. Improved recordkeeping and reporting requirements are included in the proposed Federal rule.

E. Printing and Publishing (Graphic Arts)

The proposed Federal rule would require printing and publishing operations to use instantaneous or daily averaging in calculating emissions, along with the most current test methods. Exemption levels are based on single calendar year emissions, not a 3-year average. Because the revisions will impose new or additional control requirements for some sources, additional time for compliance will be allowed for newly subject sources.

F. SOCMI Leaks

The proposed Federal rule would require synthetic organic chemical and polymer manufacturers to monitor additional equipment components with low accessibility for VOC leaks on an annual basis. The rule would also now require that any alternative leak detection program undergo prior USEPA approval as a plan revision, so USEPA can ensure that the alternative program is indeed equivalent in effect to the otherwise applicable program.

G. Petroleum Refinery Leaks

The proposed Federal rule would require petroleum refineries to monitor "inaccessible" valves (i.e., valves with low accessibility) annually and to monitor certain components more frequently than is required under the State rule.

H. Pharmaceutical Manufacturing

The proposed Federal rule for pharmaceutical manufacturing involves new applicability provisions, as well as revised testing and monitoring, control equipment, and recordkeeping requirements. The rule would apply to sources emitting either: (a) More than both 6.8 kg/day (15 lbs/day) and 2,268 kg/yr (2.5 TPY), or (b) more than 45.4 kg/day (100 lbs/day). Surface condenser controls must now be monitored for outlet temperature, and control equipment other than surface condensers must achieve reductions of at least 90 percent.

I. Bulk Gasoline Plants

The proposed Federal rule would change the throughput exemption for bulk gasoline plants from 350,000 gallons per year and 1,000,000 gallons per year averaged over the preceding 3 calendar years to 4,000 gallons per day on a 30-day rolling average.

J. Major Non-CTG (Generic) Rules

USEPA's interpretation of the stationary source RACT requirements calls for the control of all major (i.e., greater than 100 TPY) facilities. All major sources covered by a CTG are discussed above. To cover all major non-CTG sources, USEPA has developed five generic non-CTG rules based on the State's rules. These five rules would regulate VOC emissions from paint and ink manufacturing processes, miscellaneous fabricated product manufacturing processes, miscellaneous formulation manufacturing processes, miscellaneous organic chemical manufacturing processes, and other emission sources.

Note: USEPA's proposed pharmaceutical manufacturing rules include non-CTG pharmaceutical manufacturing operations and USEPA's proposed coating rules include a non-CTG source category (i.e., wood furniture coating).)

The proposed Federal rule for paint and ink manufacturing operations would apply to plants that have the potential to emit 100 TPY or more of VOC emissions from non-CTG sources, or that produce more than 7,570,820 liters (2,000,000 gallons) per year of paints and inks which contain less than 10 percent by weight of water, and ink formulations not containing as the primary solvents water, Magie oil, or glycol. In addition, storage tanks containing volatile organic liquids with a vapor pressure greater than 10 kilopascals (kPa) would have to be equipped with pressure/vacuum conservation vents, and tanks larger than 946 liters (250 gallons) would have to be submerged filled or bottom filled.

The rule for miscellaneous formulation manufacturing processes generally applies to formulated product manufacturers that are not regulated under any of the other specific source categories. Facilities with the total potential to emit 100 TPY or more of emissions from non-CTG sources would be regulated (small individual sources within a plant of 2.5 TPY or less may remain unregulated in certain situations). A provision for determining compliance based on current USEPA methods has also been added.

The rule for miscellaneous fabricated product manufacturing is similar to the miscellaneous formulation regulation in that it covers sources not regulated under the rules for specific source categories. It would apply to plants with the uncontrolled potential to emit 100 TPY or more of emissions from non-CTG sources. A provision for determining compliance based on current USEPA methods has been added.

The rule for miscellaneous organic chemical manufacturing processes is similar to the two miscellaneous categories discussed above. A provision for determining compliance based on current USEPA methods has been added.

The rule for other emission sources is similar to the rules for the three miscellaneous categories. The rule is intended as a catch-all for any other major non-CTG source which may not be subject to the four generic rules discussed above. Consistent with the State's rule, the proposed Federal rule exempts coke ovens (including by-product recovery plants), fuel combustion sources, bakeries, barge loading facilities, jet engine test cells, nonsynthetic pharmaceutical manufacturing, production of polystyrene foam insulation board (including storage and extrusion of scrap where blowing agent is added to the polystyrene resin at the plant, production of polystyrene foam insulation board (not including storage and extrusion of scrap where blowing agent is added to the polystyrene resin at the plant), and iron and steel production.

A provision for determining compliance based on current USEPA methods is included in the rule.

Finally, USEPA is also proposing specific recordkeeping and reporting requirements which would apply to the three miscellaneous category rules, and the other emission source rule.

K. General Provisions

The General Provisions section in the proposed Federal rule contains requirements and clarifications which affect the other sections of the VOC rule. The main elements of this section in the proposed Federal rule are: Definitions, Test Methods, Determination of Vapor Pressure, Compliance Dates, and Alternative Compliance Determinations. A comprehensive list of definitions is contained in the Federal rule, including definitions which correct the relevant deficiencies in the State rule and which clarify the proposed Federal rule. Test methods and procedures are specified for coatings, inks, and fountain solutions; transfer efficiency test protocols; capture system efficiency test protocols; control device efficiency testing and monitoring; overall efficiency; VOC gas phase source test methods; VOC leak detection methods; bulk gasoline delivery system test protocols; and solvent metal cleaning VOC emissions. Specific procedures for determining vapor pressure have also been added to the proposed Federal rule. Compliance with the proposed rules is required upon promulgation, unless otherwise indicated in the individual source category rules. Any exemptions, variances, or alternatives to the control requirements or test methods are federally effective only if submitted to and approved USEPA as a plan revision.

In addition, the General Provision section contains a seasonal exemption for afterburners. In the proposed Federal rule, an exemption is provided only for natural gas-fired afterburners during the period of November 1 through April 1.

No matter what rules USEPA promulgates or approves, the existing federally-approved SIP regulations for any source will continue to apply, and be fully enforceable, until the date on which the source is required to comply with the new regulations. Further, the existing SIP will continue in force if there is any delay or lapse in the applicability of the new regulations. However, if (but only if) the existing and new regulations conflict, so that a source cannot comply with the existing SIP while moving toward compliance with the new regulations, the source may apply for a site-specific exemption from the existing SIP from the State. All such exemptions granted by the State must be submitted to and approved by USEPA before such exemption from the SIP is in effect.

IV. Summary of Rules

Today's notice proposes action on Illinois rules which have been submitted by the State, and proposes Federal rules to amend all deficiencies not corrected by Illinois. Table 1 provides a summary of the Federal rules being proposed, the State rules being approved, the State rules previously proposed for approval but not promulgated, and the State rules which have been approved and are not changing. The following designations are used in Table 1:

- FED—Proposed Federal Rule.
- PRO—State Rule being proposed for approval.
- PRE—State Rule previously proposed for approval.
- SIP—Existing federally approved State rule which is not changing.

TABLE 1.—SUMMARY OF VOC RULES FOR ILLINOIS

State No.	Rule	Federal No.
Subpart A: General Provisions		52.741(a)
215.103*	Abbreviations and Conversion Factors (FED)	
215.107*	Applicability (FED)	
215.104*	Definitions (FED)	
215.102*	Testing Methods and Procedures Compliance Dates (FED)	
215.106*	Afterburners (FED)	
	Exemptions, Variances and Alternative Means of Control (FED)	
	Vapor Pressure of Volatile Organic Liquids (FED)	
	Vapor Pressure of Organic Material or Solvent (FED)	
	Vapor Pressure of Volatile Organic Material (FED)	
	Subpart B: Organic Emissions from Storage and Loading Operations:	
215.121	Storage Containers (SIP)	
215.122	Loading Operations (SIP)	
215.123	Petroleum Liquid Storage Tanks (SIP)	
215.124	External Floating Roofs (SIP)	
215.125	Compliance Dates and Geographical Areas (PRE)	
215.126	Compliance Plan (PRE)	
	Subpart C: Organic Emissions from Miscellaneous Equipment:	
215.141	Separation Operations (SIP)	
215.142	Pumps and Compressors (SIP)	
215.143	Vapor Blowdown (SIP)	
215.144	Safety Relief Valves (SIP)	
	Subpart E: Solvent Cleaning:	
215.181*	Solvent Cleaning in General (FED)	52.741(d)(1)
215.182	Cold Cleaning (P)	
215.183	Open Top Vapor Degreasing (SIP)	
215.184	Conveyorized Degreasing (SIP)	
215.185	Compliance Schedule (D)	52.741(d)(2)
	Test Methods (FED)	52.741(d)(3)
Subpart F: Coating Operations:		
215.204*	Emission Limitations for Manufacturing Plants (FED)	52.741(e)
215.205*	Alternative Emission Limitations (FED)	
215.206*	Exemptions from Emission Limitations (FED)	
215.209*	Exemption from General Rule on Use of Organic Material (FED)	
215.211*	Compliance Schedule (FED)	
	Recordkeeping and Reporting (FED)	
	Subpart H: Special Limitations for Sources in Major Urbanized Areas Which are Nonattainment for Ozone:	
215.240	Applicability (PRE)	
215.241	External Floating Roofs (PRE)	
215.249	Compliance Dates (PRE)	
	Subpart K: Use of Organic Material:	
215.301	Use of Organic Material (SIP)	
215.302	Alternative Standard (SIP)	
215.303	Fuel Combustion Emission Sources (SIP)	

TABLE 1.—SUMMARY OF VOC RULES FOR ILLINOIS—Continued

State No.	Rule	Federal No.
215.304	Operations with Compliance Program (SIP)	
	Subpart P: Printing and Publishing:	
215.401*	Flexographic and Rotogravure Printing (FED)	52.741(h)
215.403*	Applicability (FED)	
215.405*	Compliance Schedule (FED)	
215.404*	Recordkeeping and Reporting (FED)	
215.406*	Heatset-Web-Offset Lithographic Printing (FED)	
	Subpart Q: Leaks from Synthetic Organic Chemical and Polymer Manufacturing Equipment:	
215.420	Applicability (PRO)	
215.421	General Requirements (PRO)	
215.422	Inspection Program Plan for Leaks (PRO)	
215.423	Inspection Program for Leaks (PRO)	
215.424	Repairing Leaks (PRO)	
215.425	Recordkeeping for Leaks (PRO)	
215.426	Reporting for Leaks (PRO)	
215.427	Alternative Program for Leaks (PRO)	
215.428	Compliance Dates (PRO)	
215.429	Compliance Plan (PRO)	
215.430	General Requirements (PRO)	
215.431	Inspection Program Plan for Leaks (PRO)	52.741(i)(1)
215.432*	Inspection Program for Leaks (FED)	
215.433	Repairing Leaks (PRO)	
215.434	Recordkeeping for Leaks (PRO)	
215.435	Reporting for Leaks (PRO)	52.741(i)(2)
215.436*	Alternative Program for Leaks (FED)	
215.437	Open-Ended Valves (PRO)	
215.438	Compliance Date (PRO)	
	Subpart R: Petroleum Refining and Related Industries: Asphalt Materials:	
215.441	Petroleum Refinery Waste Gas Disposal (SIP)	
215.442	Vacuum Producing Systems (SIP)	
215.443	Wastewater (Oil/Water) Separator (SIP)	
215.444	Process Unit Turnarounds (SIP)	
215.445	Leaks: General Requirements (SIP)	
215.446	Monitoring Program Plan for Leaks (SIP)	52.741(j)(1)
215.447*	Monitoring Program for Leaks (FED)	
215.448	Recordkeeping for Leaks (SIP)	
215.449	Reporting for Leaks (SIP)	52.741(j)(2)
215.450*	Alternative Program for Leaks (FED)	
215.451	Sealing Device Requirements (SIP)	52.741(j)(3)
215.452*	Compliance Schedule for Leaks (FED)	
215.453	Compliance Dates and Geographical Areas (PRE)	
	Subpart S: Rubber and Miscellaneous Plastic Products:	
215.461	Manufacture of Pneumatic Rubber Tires (SIP)	
215.462	Green Tire Spraying Operations (SIP)	
215.463	Alternative Emission Reduction Systems (SIP)	
215.464	Testing and Monitoring (SIP)	
215.465	Compliance Dates and Geographical Area (PRE)	
215.466	Compliance Plan (PRE)	
	Subpart T: Pharmaceutical Manufacturing:	52.741(l)
215.480*	Applicability (FED)	
215.481*	Control of Reactors, Distillation Units, Crystallizers, Centrifuges and Vacuum Dryers (FED)	
215.482*	Control of Air Dryers, Production Equipment Exhaust Systems and Filters (FED)	
215.483*	Materials Storage and Transfer (FED)	
215.484*	In-Process Tanks (FED)	
215.485*	Leaks (FED)	
215.486*	Other Emission Sources (FED)	
215.487*	Testing (FED)	
215.488*	Monitoring and Recordkeeping for Air Pollution Control Equipment (FED)	
215.489*	Compliance Schedule (FED)	
	Subpart V: Air Oxidation Processes:	
215.520	Applicability (PRO)	
215.521	Definitions (PRO)	
215.525	Emission Limitations for Air Oxidation Processes (PRO)	
215.526	Testing and Monitoring (PRO)	
215.527	Compliance Date (PRO)	
	Subpart W: Agriculture:	
215.541	Pesticide Exception (SIP)	
	Subpart X: Construction:	
215.561	Architectural Coatings (SIP)	
215.562	Paving Operations (SIP)	
215.563	Cutback Asphalt (SIP)	
	Subpart Y: Gasoline Distribution:	
215.581*	Bulk Gasoline Plants (FED)	52.741(q)(1)
215.582	Bulk Gasoline Terminals (SIP)	
215.583	Gasoline Dispensing Facilities (SIP)	
215.584	Gasoline Delivery Vessels (PRE)	

TABLE 1.—SUMMARY OF VOC RULES FOR ILLINOIS—Continued

State No.	Rule	Federal No.
	Subpart Z: Dry Cleaners:	
215.601	Perchloroethylene Dry Cleaners (SIP)	
215.602	Exemptions (SIP)	
215.603	Testing and Monitoring (SIP)	
215.604	Compliance Dates and Geographic Areas (PRE)	
215.605	Compliance Plan (PRE)	
215.606	Exception to Compliance Plan (PRE)	
215.607	Standards for Petroleum Solvent Dry Cleaners (PRE)	
215.608	Operating Practices for Petroleum Solvent Dry Cleaners (PRE)	
215.609	Program for Inspection and Repair and Leaks (PRE)	
215.610	Testing and Monitoring (PRE)	
215.611	Exception for Petroleum Solvent Dry Cleaners (PRE)	
215.612	Compliance Dates and Geographical Areas (PRE)	
215.613	Compliance Plan (PRE)	
	Subpart AA: Paint and Ink Manufacturing:	
215.620*	Applicability (FED)	52.741(s)
215.621*	Exemption for Waterbase Material and Heatset-Offset Ink (FED)	
215.623*	Permit Conditions (FED)	
215.624*	Open-top Mills, Tanks, Vats, or Vessels (FED)	
215.625*	Grinding Mills (FED)	
215.626*	Storage Tanks (FED)	
215.628*	Leaks (FED)	
215.630*	Clean Up (FED)	
215.636*	Compliance Schedule (FED)	
	Subpart BB: Polystyrene Plants:	
215.875	Applicability of Subpart BB (PRO)	
215.877	Emissions Limitations at Polystyrene Plants (PRO)	
215.879	Compliance Date (PRO)	
215.881	Compliance Plan (PRO)	
215.883	Special Requirements for Compliance Plan (PRO)	
215.886	Testing and Monitoring (PRO)	
	Subpart PP: Miscellaneous Fabricated Product Manufacturing Processes:	
215.920*	Applicability (FED)	52.741(u)
215.923*	Permit Conditions (FED)	
215.926*	Control Requirements (FED)	
215.927*	Compliance Schedule (FED)	
215.928*	Testing (FED)	
	Subpart QQ: Miscellaneous Formulation Manufacturing Processes:	
215.940*	Applicability (FED)	52.741(v)
215.943*	Permit Conditions (FED)	
215.946*	Control Requirements (FED)	
215.947*	Compliance Schedule (FED)	
215.948*	Testing (FED)	
	Subpart RR: Miscellaneous Organic Chemical Manufacturing Processes:	
215.960*	Applicability (FED)	52.741(w)
215.963*	Permit Conditions (FED)	
215.966*	Control Requirements (FED)	
215.967*	Compliance Schedule (FED)	
215.968*	Testing (FED)	
	Other Emission Sources	52.741(x)
	Applicability (FED)	
	Permit Conditions (FED)	
	Control Requirements (FED)	
	Compliance Schedule (FED)	
	Testing (FED)	
	Recordkeeping and Reporting for Generic Rules	52.741(y)
	Exempt Emission Sources (FED)	
	Subject Emission Sources (FED)	

* Presented for informational purposes only. Federal number is applicable for this rule.

VI. Impacts

A. Environmental Impacts

Implementation of the proposed Federal rules is expected to provide an additional reduction in VOC emissions of about 14,000 tons per year (TPY) beyond the existing State rules. This reduction was calculated assuming general compliance with all existing State rules, including State rules which have not been federally approved (i.e., since these State rules have been in effect and enforceable at the State level for several years, and most of these reductions should have already occurred.) Thus, USEPA believes that the reductions are on the order of 14,000 TPY.

B. Cost Impacts

Implementation of the proposed Federal rules is expected to provide an additional cost of about $25 million annually beyond the existing State rules. This cost was calculated assuming general compliance with all existing State rules, including State rules which have not been federally approved (i.e., since these State rules have been in effect and enforceable at the State level for several years, and most of these costs should have already occurred.) Thus, USEPA believes that the costs are on the order of $25 million annually.

VI. Regulatory Analysis

"Attention: Desk Officer for USEPA."

m ..... meters

"Agency" means the United States Environmental Protection Agency.

finished automobile or light-duty truck ready for sale to vehicle dealers, but not

Clean Air Act Amendments of 1977, (42 U.S.C. 7401 et seq.).

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VI. Regulatory Analysis

A. Administrative Designation and Regulatory Analysis

The Administrator has determined that this proposal does not constitute a major proposed regulation, as defined in section 1(b) of Executive Order 12291. Specifically, costs under the proposed rule will total less than $100 million annually. Accordingly, a Regulatory Impact Analysis (RIA) containing a detailed assessment of the FIP rules for Illinois is not required. Nevertheless, a preliminary evaluation of the potential emission reductions and the costs associated with the proposed Federal rules has been prepared. A copy of this preliminary evaluation has been included in the docket for this rulemaking. The proposed regulation also was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB, and USEPA responses to those comments, have been placed in the public docket for this rulemaking.

B. Impact on Small Entities

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 600 et seq., USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. According to Section 605(b) of the RFA, this requirement may be waived if the Administrator certifies that the regulations will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and governmental entities with jurisdictions over populations of less than 50,000. USEPA has prepared a draft study on the impact on small entities and has included this study in the docket for this rulemaking action.

C. Reporting and Recordkeeping Requirements

The information collection provisions relating to the proposal have been submitted to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. A copy of the Information Collection Request document prepared by USEPA may be obtained from the Information Policy Branch; USEPA, 401 M Street, SW., [PH–223], Washington, DC 20460, or by calling (202) 382–2706. All comments on this issue should be submitted to USEPA at the above Region V address in Chicago, Illinois, but a copy should also be sent to the Office of Information and Regulatory Affairs; Office of Management and Budget; 726 Jackson Place, NW., Washington, DC 20503, marked "Attention: Desk Officer for USEPA." USEPA's final rulemaking notice will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Environmental Protection Agency, Hydrocarbons, Incorporation by Reference, Intergovernmental relations, Nitrogen dioxide, Ozone.

Authority: 42 U.S.C. 7401–7642.

Dated: December 5, 1989.

Basil G. Constantelos,

Acting Regional Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart O—Illinois

Title 40 of the Code of Federal Regulations, chapter I, part 52, subpart O is being proposed to be amended as follows:

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. 40 CFR part 52 is amended by adding a new § 52.741 subpart O to read as follows:

§ 52.741 Control strategy: Ozone Control Measures for Cook, DuPage, Kane, Lake, McHenry and Will Counties.

(a) General Provisions—(1) *Abbreviations and conversion factors.* (i) The following abbreviations are used in § 52.741:

ASTM	American Society of Testing and Materials
bbl	barrels (42 gallons)
Btu	British thermal units
°C	degrees Celsius or centigrade
cm	centimeters
cu in.	cubic inches
°F	degrees Fahrenheit
FIP	Federal implementation plan
ft	feet
ft ²	square feet
g	grams
gpm	gallons per minute
g/mole	grams per mole
gal	gallons
hr	hours
in.	inches
K	degrees Kelvin
kcal	kilograms
kg	kilograms
kg/hr	kilograms per hour
kPa	kilopascals; one thousand newtons per square meter
l	liters
l/sec	liters per second
lbs	pounds
lbs/hr	pounds per hour
lbs/gal	pounds per gallon
LEL	lower explosive limit
m	meters
m ²	square meters
m ³	cubic meters
mg	milligrams
Mg	Megagrams, metric tons or tonnes
ml	milliliters
min	minutes
MJ	megajoules
mm Hg	millimeters of mercury
ppm	parts per million
ppmv	parts per million by volume
psi	pounds per square inch
psia	pounds per square inch absolute
psig	pounds per square inch gauge
RACT	Reasonably Available Control Technology
scf	standard cubic feet
scm	standard cubic meters
sec	seconds
SIP	State implementation plan
sq cm	square centimeters
sq in	square inches
USEPA	United States Environmental Protection Agency
VOC	volatile organic compounds
VOL	volatile organic liquids
VOM	volatile organic materials

(ii) The following conversion factors are used in § 52.741.

English	Metric
1 gal	3.785 l
1,000 gal	3,785 l or 3.785 m ³
1 psia	6.897 kPa (51.71 mm Hg)
2.205 lbs	1 kg
1 bbl	159.0 l
1 cu in.	16.39 ml
1 lb/gal	119,800 mg/l
1 ton	0.907 Mg

(2) *Applicability.* The provisions of § 52.741 shall apply to all sources located in Cook, DuPage, Kane, Lake, McHenry or Will County.

(3) *Definitions.*

"*Accumulator*" means the reservoir of a condensing unit receiving the condensate from a surface condenser.

"*Actual emissions*" means the actual rate of emissions of a pollutant from an emissions unit during a particular time period.

"*Actual heat input*" means the quantity of heat produced by the combustion of fuel using the gross heating value of the fuel.

"*Adhesive*" means any substance or mixture of substances intended to serve as a joining compound.

"*Administrator*" means the Administrator of the USEPA or that person's designee.

"*Afterburner*" means a device in which materials in gaseous effluents are combusted.

"*Agency*" means the United States Environmental Protection Agency.

"*Air contaminant*" means any solid, liquid, or gaseous matter, any odor, or any form of energy, that is capable of being released into the atmosphere from an emission source.

"*Air dried coatings*" means any coating which is not heated above 90 °C (194°F) for the purpose of curing or drying.

"*Air pollution*" means the presence in the atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant, or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property.

"*Air pollution control equipment*" means any equipment or facility of a type intended to eliminate, prevent, reduce or control the emission of specified air contaminants to the atmosphere.

"*Allowable emissions*" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless restricted by federally enforceable limitations on operating rate, hours of operation, or both) and the most stringent of: (A) The applicable standards in 40 CFR parts 60 and 61; (B) the applicable implementation plan; or (C) a federally enforceable permit.

"*Ambient air*" means that portion of the atmosphere, external to buildings, to which the general public has access.

"*Ambient air quality standards*" means those standards designed to protect the public health and welfare codified in 40 CFR part 50 and promulgated from time to time by the USEPA pursuant to authority contained in section 108 of the Clean Air Act, 42 U.S.C. 7401 et seq., as amended from time to time.

"*Applicator*" means a device used in a coating line to apply coating.

"*As applied*" means the exact formulation of a coating as it is applied on or impregnated into a substrate.

"*Asphalt*" means the dark-brown to black cementitious material (solid, semisolid, or liquid in consistency) of which the main constituents are bitumens which occur naturally or as a residue of petroleum refining.

"*Automobile*" means a motor vehicle capable of carrying no more than 12 passengers.

"*Automobile and light-duty truck refinishing*" means the repainting of used automobiles and light-duty trucks.

"*Automobile or light-duty truck manufacturing plant*" means a facility where parts are manufactured or finished for eventual inclusion into a finished automobile or light-duty truck ready for sale to vehicle dealers, but not including customizers, body shops, and other repainters.

"*Baked coatings*" means any coating which is cured or dried in an oven where the oven air temperature exceeds 90 °C (194 °F).

"*Binders*" means organic materials and resins which do not include VOM's.

"*Bituminous coatings*" means black or brownish coating materials which are soluble in carbon disulfide, which consist mainly of hydrocarbons, and which are obtained from natural deposits or as residues from the distillation of crude oils or of low grades of coal.

"*British thermal unit*" means the quantity of heat required to raise one pound of water from 60 °F to 61 °F.

"*Building, structure, facility, or installation*" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control), except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same two-digit code) as described in the "Standard Industrial Classification Manual, 1972", as amended by the 1977 Supplement.

"*Bulk gasoline plant*" means any gasoline storage and distribution facility that receives gasoline from bulk gasoline terminals by delivery vessels and distributes gasoline to gasoline dispensing facilities.

"*Can*" means any cylindrical metal receptacle, with or without a top, cover, spout or handles, into which solid or liquid materials are packaged.

"*Can coating*" means any coating applied on a single walled container that is manufactured from metal sheets thinner than 29 gauge (0.0141 in.).

"*Can coating facility*" means a facility that includes one or more can coating line(s).

"*Can coating line*" means a coating line in which any protective, decorative, or functional coating is applied onto the surface of cans or can components.

"*Can-seam spray*" means a coating sprayed on the exterior and/or interior of a welded, cemented, or soldered seam to protect the exposed metal.

"*Capture system*" means all equipment (including, but not limited to, hoods, ducts, fans, ovens, dryers, etc.) used to contain, collect and transport an air pollutant to a control device.

"*Clean Air Act*" means the Clean Air Act of 1963, as amended, including the Clean Air Act Amendments of 1977, (42 U.S.C. 7401 et seq.).

"*Clear coating*" means coatings that lack color and opacity or are transparent using the undercoat as a reflectant base or undertone color.

"*Clear topcoat*" means the final coating which contains binders, but not opaque pigments, and is specifically formulated to form a transparent or translucent solid protective film.

"*Closed vent system*" means a system that is not open to the atmosphere and is composed of piping, connections, and, if necessary, flow inducing devices that transport gas or vapor from an emission source to a control device.

"*Coating*" means a material applied onto or impregnated into a substrate for protective, decorative, or functional purposes. Such materials include, but are not limited to, paints, varnishes, sealers, adhesives, thinners, diluents, and inks.

"*Coating applicator*" means equipment used to apply a surface coating.

"*Coating line*" means all operations on a line (with or without curing and/or drying) involved in the application of coatings, including coating applicators and heating or drying ovens.

"*Coating plant*" means any building, structure, facility, or installation that contains a coating line.

"*Coil*" means any flat metal sheet or strip that is rolled or wound in concentric rings.

"*Coil coating*" means any coating applied on any flat metal sheet or strip that comes in rolls or coils.

"*Coil coating facility*" means a facility that includes one or more coil coating line(s).

"*Coil coating line*" means a coating line in which any protective, decorative or functional coating is applied onto the surface of flat metal sheets, strips, rolls, or coils for industrial or commercial use.

"*Cold cleaning*" means the process of cleaning and removing soils from surfaces by spraying, brushing, flushing, or immersion while maintaining the organic solvent below its boiling point. Wipe cleaning is not included in this definition.

"*Complete combustion*" means a process in which all carbon contained in a fuel or gas stream is converted to carbon dioxide.

"*Component*" means, with respect to synthetic organic chemical and polymer manufacturing equipment, and petroleum refining and related industries, any piece of equipment which has the potential to leak VOM including, but not limited to, pump seals, compressor seals, seal oil degassing

vents, pipeline valves, pressure relief devices, process drains, and open ended pipes. This definition excludes valves which are not externally regulated, flanges, and equipment in heavy liquid service. For purposes of paragraph (i) of this section, this definition also excludes bleed ports of gear pumps in polymer service.

"Concrete curing compounds" means any coating applied to freshly poured concrete to retard the evaporation of water.

"Condensate" means hydrocarbon liquid separated from its associated gases, which condenses due to changes in the temperature or pressure and remains liquid at standard conditions.

"Continuous process" means, with respect to polystyrene resin, a method of manufacture in which the styrene raw material is delivered on a continuous basis to the reactor in which the styrene is polymerized to polystyrene.

"Control device" means equipment (such as an incinerator or adsorber) used to remove air pollutants from a contaminated air stream before discharge to the ambient air.

"Conveyorized degreasing" means the continuous process of cleaning and removing soils from surfaces utilizing either cold or vaporized solvents.

"Crude oil" means a naturally occurring mixture which consists of hydrocarbons and sulfur, nitrogen, or oxygen derivatives of hydrocarbons and which is a liquid at standard conditions.

"Crude oil gathering" means the transportation of crude oil or condensate after custody transfer between a production facility and a reception point.

"Custody transfer" means the transfer of produced petroleum and/or condensate after processing and/or treating in the producing operations, from storage tanks or automatic transfer facilities to pipelines or any other forms of transportation.

"Daily-weighted average VOM content" means the average VOM content of two or more coatings as applied on a coating line during any day, taking into account the fraction of total coating volume that each coating represents, as calculated with the following equation:

$$VOM_a = \frac{\sum_{i=1}^{n} [V_i C_i]}{V_T}$$

where,

VOM_a = The average VOM content of two or more coatings as applied each day on a coating line in units of kg VOM/1 (lbs VOM/gal) of coating (minus water and any compounds which are specifically exempted from the definition of VOM).

n = The number of different coatings as applied each day on a coating line,

V_i = The volume of each coating (minus water and any compounds which are specifically exempted from the definition of VOM) as applied each day on a coating line in units of 1 (gal).

C_i = The VOM content of each coating as applied each day on a coating line in units of kg VOM/1 (lbs VOM/gal) of coating (minus water and any compounds which are specifically exempted from the definition of VOM), and

V_T = The total volume of all coatings (minus water and any compounds which are specifically exempted from the definition of VOM) as applied each day on a coating line in units of 1 (gal).

"Day" means the consecutive 24 hours beginning at 12:00 a.m. (midnight) local time.

"Degreaser" means any equipment or system used in solvent cleaning.

"Delivery vessel" means any tank truck or trailer equipped with a storage tank that is used for the transport of gasoline to a stationary storage tank at a gasoline dispensing facility, bulk gasoline plant, or bulk gasoline terminal.

"Dip coating" means a method of applying coatings in which the part is submerged in a tank filled with the coating.

"Electrostatic application" means a charging of atomized paint droplets for deposition by electrostatic attraction.

"Electrostatic coating" means a method of applying coatings which uses an electric potential to enhance deposition of the coatings on the part.

"Emission rate" means the total quantity of any air contaminant discharged into the atmosphere over a certain period of time.

"Emission source" means any building, structure, facility, equipment, installation or any combination thereof, at, from, or by reasons which VOM is emitted or discharged into the atmosphere.

"Emissions unit" means any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the Clean Air Act.

"Enamel" means a coating that cures by chemical cross-linking of its base resin. Enamels can be distinguished from lacquers because enamels are not readily resoluble in their original solvent.

"Enclose" means to cover any VOM surface that is exposed to the atmosphere.

"End sealing compound coat" means a compound applied to can ends which functions as a gasket when the end is assembled onto the can.

"Excess air" means air supplied in addition to the theoretical quantity necessary for complete combustion of all fuel and/or combustible waste material.

"Excessive release" means a discharge of more than 295 g (0.65 lbs) of mercaptans and/or hydrogen sulfide into the atmosphere in any 5-minute period.

"Exterior base coating" means a coating applied to the exterior of a can body, end, or flat sheet to provide protection to the metal or to provide background for any lithographic or printing operation.

"Exterior end coating" means a coating applied to the exterior end of a can to provide protection to the metal.

"External-floating roof" means a cover over an open top storage tank consisting of a double deck or pontoon single deck which rests upon and is supported by the volatile organic liquid being contained and is equipped with a closure seal or seals to close the space between the roof edge and tank shell.

"Extreme environmental conditions" means exposure to any or all of the following: ambient weather conditions; temperatures consistently above 95 °C (203 °F); detergents; abrasive and scouring agents; solvents, or corrosive atmospheres.

"Extreme performance coating" means any coating which during intended use is exposed to extreme environmental conditions.

"Fabric coating" means any coating applied on textile fabric. Fabric coating includes the application of coatings by impregnation.

"Fabric coating facility" means a facility that includes one or more fabric coating lines.

"Fabric coating line" means a coating line in which any protective, decorative, or functional coating or reinforcing material is applied on or impregnated into a textile fabric.

"Federally enforceable" means all limitations and conditions which are enforceable by the Administrator including those requirements developed pursuant to 40 CFR parts 60 and 61; requirements within any applicable implementation plan; and any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Subpart I and 40 CFR 51.166.

"Final repair coat" means the repainting of any coating which is damaged during vehicle assembly.

"Firebox" means the chamber or compartment of a boiler or furnace in which materials are burned, but not the combustion chamber or afterburner of an incinerator.

"Fixed-roof tank" means a steel cylindrical shell with a permanently affixed roof.

"Flexographic printing" means the application of words, designs, and pictures to a substrate by means of a roll printing technique in which the pattern to be applied is raised above the printing roll and the image carrier is made of elastomeric materials.

"Flexographic printing line" means a printing line in which each roll printer uses a roll with raised areas for applying an image such as words, designs, or pictures to a substrate. The image carrier on the roll is made of rubber or other elastomeric material.

"Floating roof" means a roof on a stationary tank, reservoir, or other container which moves vertically upon change in volume of the stored material.

"Flow coating" means a method of applying coatings in which the part is carried through a chamber containing numerous nozzles which direct unatomized streams of coatings from many different angles onto the surface of the part.

"Fountain solution" means the solution which is applied to the image plate to maintain hydrophilic properties of the nonimage areas.

"Fuel combustion emission source" means any furnace, boiler, or similar equipment used for the primary purpose of producing heat or power by indirect heat transfer.

"Fuel gas system" means a system for collection of refinery fuel gas including, but not limited to, piping for collecting tail gas from various process units, mixing drums and controls, and distribution piping.

"Furniture coating application line" means the combination of coating application equipment, flash-off area, spray booths, ovens, conveyors, and other equipment operated in a predetermined sequence for purpose of applying coating materials to wood furniture.

"Gas service" means that the component contains process fluid that is in the gaseous state at operating conditions.

"Gasoline" means any fuel sold for use in motor vehicles and motor vehicle engines and commonly or commercially known or sold as gasoline.

"Gasoline dispensing facility" means any site where gasoline is transferred from a stationary storage tank to a motor vehicle gasoline tank used to provide fuel to the engine of that motor vehicle.

"Graphic arts coating facility" means a facility that includes one or more graphic arts coating lines.

"Graphic arts coating line" means any packaging rotogravure printing, publication rotogravure printing, or flexographic printing line, or any paper, fabric, or film coating line operated in conjunction with a printing line.

"Gross heating value" means amount of heat produced when a unit quantity of fuel is burned to carbon dioxide and water vapor, and the water vapor is condensed as described in ASTM D–2015–66, D–900–55, D–1826–64 and D–240–64.

"Gross vehicle weight" means the manufacturer's gross weight rating for the individual vehicle.

"Gross vehicle weight rating" means the value specified by the manufacturer as the maximum design loaded weight of a single vehicle.

"Heatset" means a class of web-offset lithography which requires a heated dryer to solidify the printing inks.

"Heatset-web-offset lithographic printing line" means a lithographic printing line in which a blanket cylinder is used to transfer ink from a plate cylinder to a substrate continuously fed from a roll or an extension process and an oven is used to solidify the printing inks.

"Heavy liquid" means liquid with a true vapor pressure of less than 0.3 kPa (0.04 psi) at 294.3 K (70°F) established in a standard reference text or as determined by ASTM method D–2879; or which has 0.1 Reid Vapor Pressure as determined by ASTM method D–323; or which when distilled requires a temperature of 421.95 K (300°F) or greater to recover 10 percent of the liquid as determined by ASTM method D–86.

"Heavy off-highway vehicle" means heavy construction, mining, farming or material handling equipment; heavy industrial engines; diesel-electric locomotives and associated power generation equipment; and the components of such equipment or engines.

"Heavy off-highway vehicle products" means, for the purpose of paragraph (e) of this section, heavy construction, mining, farming, or material handling equipment; heavy industrial engines; diesel-electric locomotives and associated power generation equipment; and the components of such equipment or engines.

"Heavy off-highway vehicle products coating facility" means a facility that includes one or more heavy off-highway vehicle products coating line(s).

"Heavy off-highway vehicle product coating line" means a coating line in which any protective, decorative, or functional coating is applied onto the surface of heavy off-highway vehicle products.

"High temperature aluminum coating" means a coating that is certified to withstand a temperature of 537.8°C (1000°F) for 24 hours.

"Hot well" means the reservoir of a condensing unit receiving the condensate from a barometric condenser.

"Hour" means a block period of 60 minutes (e.g., 1:00 a.m. to 2:00 a.m.).

"In-process tank" means a container used for mixing, blending, heating, reacting, holding, crystallizing, evaporating or cleaning operations in the manufacture of pharmaceuticals.

"In vacuum service" means, for the purpose of paragraph (i) of this section, equipment which is operating at an internal pressure that is at least 5 kPa (0.73 psia) below ambient pressure.

"Incinerator" means a combustion apparatus in which refuse is burned.

"Indirect heat transfer" means transfer of heat in such a way that the source of heat does not come into direct contact with process materials.

"Ink" means a coating used in printing, impressing, or transferring an image onto a substrate.

"Interior base coating" means a coating applied to the interior of a can body, end, or flat sheet to provide a protective lining between the product and the can.

"Interior body spray coating" means a coating sprayed on the interior of a can body to provide film between the product and the can.

"Internal-floating roof" means a cover or roof in a fixed-roof tank which rests upon and is supported by the volatile organic liquid being contained and is equipped with a closure seal or seals to close the space between the roof edge and tank shell.

"Lacquers" means any clear wood finishes formulated with nitrocellulose or synthetic resins to dry by evaporation without chemical reaction, including clear lacquer sanding sealers.

"Large appliance" means any residential and commercial washers, dryers, ranges, refrigerators, freezers, water heaters, dish washers, trash compactors, air conditioners, and other similar products.

"Large appliance coating" means any coating applied to the component metal parts (including, but not limited to, doors, cases, lids, panels, and interior support parts) of residential and commercial washers, dryers, ranges,

refrigerators, freezers, water heaters, beds, desks, lockers, benches, shelving,

(B) The storage and handling of

(g) Oil and petroleum product additives

packaging products or labels for articles to be sold

"Pharmaceutical" means any compound or mixture, other than food,

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refrigerators, freezers, water heaters, dish washers, trash compactors, air conditioners, and other similar products.

"Large appliance coating facility" means a facility that includes one or more large appliance coating line(s).

"Large appliance coating line" means a coating line in which any protective, decorative, or functional coating is applied onto the surface of large appliances.

"Light-duty truck" means any motor vehicle rated at 3,850 kg gross vehicle weight or less, designed mainly to transport property.

"Light liquid" means VOM in the liquid state which is not defined as heavy liquid.

"Liquid-mounted primary seal" means a seal constructed of an elastomeric coated fabric envelope and mounted onto the floating roof in such a manner that it touches the surface of the stored liquid.

"Liquid service" means that the equipment or component contains process fluid that is in a liquid state at operating conditions.

"Magnet wire coating" means any coating of electrically insulating varnish or enamel applied to conducting wire to be used in electrical machinery.

"Magnet wire coating facility" means a facility that includes one or more magnet coating line(s).

"Magnet wire coating line" means a coating line in which any protective, decorative, or functional coating is applied onto the surface of magnet wire.

"Malfunction" means any sudden and unavoidable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions.

"Manufacturing process" means a method whereby a process emission source or series of process emission sources is used to convert raw materials, feed stocks, subassemblies, or other components into a product, either for sale or for use as a component in a subsequent manufacturing process.

"Metal furniture" means a furniture piece including, but not limited to, tables, chairs, waste baskets, beds, desks, lockers, benches, shelving, file cabinets, lamps, and room dividers.

"Metal furniture coating" means any coating applied to any furniture piece made of metal or any metal part which is or will be assembled with other metal, wood, fabric, plastic or glass parts to form a furniture piece including, but not limited to, tables, chairs, waste baskets, beds, desks, lockers, benches, shelving, file cabinets, lamps, and room dividers. This definition shall not apply to any coating line coating miscellaneous metal parts or products.

"Metal furniture coating facility" means a facility that includes one or more metal furniture coating line(s).

"Metal furniture coating line" means a coating line in which any protective, decorative, or functional coating is applied onto the surface of metal furniture.

"Metallic shoe-type seal" means a primary or secondary seal constructed of metal sheets (shoes) which are joined together to form a ring, springs, or levers which attach the shoes to the floating roof and hold the shoes against the tank wall, and a coated fabric which is suspended from the shoes to the floating roof.

"Miscellaneous fabricated product manufacturing process" means:

(A) A manufacturing process involving one or more of the following applications, including any drying and curing of formulations, and capable of emitting VOM:

(*1*) Adhesives to fabricate or assemble components or products.

(*2*) Asphalt solutions to paper or fiberboard.

(*3*) Asphalt to paper or felt.

(*4*) Coatings or dye to leather.

(*5*) Coatings to plastic.

(*6*) Coatings to rubber or glass.

(*7*) Disinfectant material to manufactured items.

(*8*) Plastic foam scrap or "fluff" from the manufacture of foam containers and packaging material to form resin pallets.

(*9*) Resin solutions to fiber substances.

(*10*) Viscose solutions for food casings.

(B) The storage and handling of formulations associated with the process described above, and the use and handling of organic liquids and other substances for clean-up operations associated with the process described in this definition.

"Miscellaneous formulation manufacturing process" means:

(A) A manufacturing process which compounds one or more of the following and is capable of emitting VOM:

(*1*) Adhesives.

(*2*) Asphalt solutions.

(*3*) Caulks, sealants, or waterproofing agents.

(*4*) Coatings, other than paint and ink.

(*5*) Concrete curing compounds.

(*6*) Dyes.

(*7*) Friction materials and compounds.

(*8*) Resin solutions.

(*9*) Rubber solutions.

(*10*) Viscose solutions.

(*6*) Oil and petroleum product additives.

(*7*) Plasticizers.

(*8*) Resins or polymers.

(*9*) Rubber additives.

(*10*) Sweeteners.

(*11*) Varnishes.

(B) The storage and handling of formulations associated with the process described above and the use and handling of organic liquids and other substances for clean-up operations associated with the process described in this definition.

"Miscellaneous metal parts or products" means any metal part or metal product, even if attached to or combined with a nonmetal part or product, except cans, coils, metal furniture, large appliances, magnet wires, automobiles, ships, and airplane bodies.

"Miscellaneous metal parts and products coating" means any coating applied to any metal part or metal product, even if attached to or combined with a nonmetal part or product, except cans, coils, metal furniture, large appliances, and magnet wires. Prime coat, prime surfacer coat, topcoat, and final repair coat for automobiles and light-duty trucks are not miscellaneous metal parts and products coatings. However, underbody anti-chip (e.g., underbody plastisol) automobile, and light-duty truck coatings are miscellaneous metal parts and products coatings. Also, automobile and light-duty truck refinishing coatings, coatings applied to the exterior of marine vessels, coatings applied to the exterior of airplanes, and the customized topcoating of automobiles and trucks if production is less than 35 vehicles per day are not miscellaneous metal parts and products coatings.

"Miscellaneous metal parts or products coating facility" means: A facility that includes one or more miscellaneous metal parts or products coating lines.

"Miscellaneous metal parts or products coating line" means a coating line in which any protective, decorative, or functional coating is applied onto the surface of miscellaneous metal parts or products.

"Miscellaneous organic chemical manufacturing process" means:

(A) A manufacturing process which produces by chemical reaction, one or more of the following organic compounds or mixtures of organic compounds and which is capable of emitting VOM:

(*1*) Chemicals listed in paragraph (aa) of this section.

(*2*) Chlorinated and sulfonated compounds.

(*3*) Cosmetic, detergent, soap, or surfactant intermediaries or specialties and products.

(*4*) Disinfectants.

(*5*) Food additives.

(B) A combination of hydrocarbons, alcohols, aldehydes, esters, ethers, or ketones having an olefinic or cyclo-olefinic types of unsaturation: 5 percent. This definition does not apply to perchloroethylene or trichloroethylene.

(B) A combination of aromatic compounds with eight or more carbon atoms to the molecule except ethylbenzene: 8 percent.

(C) A combination of ethylbenzene, ketones having branched hydrocarbon structure or toluene: 20 percent.

"Pigmented coatings" means opaque coatings containing binders and colored pigments which are formulated to conceal the wood surface either as an undercoat or topcoat.

"Plant" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control), except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same two-digit code) as described in the "Standard Industrial Classification Manual, 1972", as amended by the 1977 Supplement.

"Plasticizers" means a substance added to a polymer composition to soften and add flexibility to the product.

"Potential emissions" and "potential to emit" mean the quantity of volatile organic material emissions that theoretically could be emitted by a stationary source before add-on controls based on the design capacity or maximum production capacity of the source and 8760 hours per year. The design capacity or maximum production capacity includes use of coating(s) or packaging products or labels for articles to be sold.

"Packaging rotogravure printing line" means a rotogravure printing line in which surface coatings are applied to paper, paperboard, foil, film, or other substrates which are to be used to produce containers, packaging products, or labels for articles.

"Paint manufacturing plant" means a plant that mixes, blends, or compounds enamels, lacquers, sealers, shellacs, stains, varnishes, or pigmented surface coatings.

"Paper coating" means any coating applied on paper, plastic film, or metallic foil to make certain products, including (but not limited to) adhesive tapes and labels, book covers, post cards, office copier paper, drafting paper, or pressure sensitive tapes. Paper coating includes the application of coatings by inpregnation and/or saturation.

"Paper coating facility" means a facility that includes one or more paper coating lines.

"Paper coating line" means a coating line in which any protective, decorative, or functional coating is applied on, saturated into, or inpregnated into paper, plastic film, or metallic foil to make certain products, including (but not limited to) adhesive tapes and labels, book covers, post cards, office copier paper, drafting paper, and pressure sensitive tapes.

"Parts per million (volume)" means a volume/volume ratio which expresses the volumetric concentration of gaseous air contaminent in a million unit volume of gas.

"Person" means any individual, corporation, partnership, association, State, municipality, political subdivision of a State; any agency, department, or instrumentality of the United States; and any officer, agent, or employee thereof.

"Petroleum" means the crude oil removed from the earth and the oils derived from tar sands, shale, and coal.

"Petroleum liquid" means crude oil, condensate or any finished or intermediate product manufactured at a petroleum refinery, but not including Numbers 2 through 6 fuel oils as specified in ASTM D–396–69; gas turbine fuel oils Numbers 2–GT through 4–GT as specified in ASTM D–2880–71; or diesel fuel oils Numbers 2–D and 4–D, as specified in ASTM D–975–68.

"Petroleum refinery" means any facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, or other products through distillation of petroleum, or through the redistillation of petroleum, cracking, or reforming unfinished petroleum derivatives.

"Pharmaceutical" means any compound or mixture, other than food, used in the prevention, diagnosis, alleviation, treatment, or cure of disease in man and animal.

"Photochemically reactive material" means any organic material with an aggregate of more than 20 percent of its total volume composed of the chemical compounds classified below or the composition of which exceeds any of the following individual percentage composition limitations. Whenever any photochemically reactive material or any constituent of any organic material may be classified from its chemical structure into more than one of the following groups of organic materials, it shall be considered as a member of the most reactive group, that is, the group having the least allowable percent of the total organic materials.

(A) A combination of hydrocarbons, alcohols, aldehydes, esters, ethers, or ketones having an olefinic or cyclo-olefinic types of unsaturation: 5 percent. This definition does not apply to perchloroethylene or trichloroethylene.

(B) A combination of aromatic compounds with eight or more carbon atoms to the molecule except ethylbenzene: 8 percent.

(C) A combination of ethylbenzene, ketones having branched hydrocarbon structure or toluene: 20 percent.

"Pigmented coatings" means opaque coatings containing binders and colored pigments which are formulated to conceal the wood surface either as an undercoat or topcoat.

"Plant" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control), except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same two-digit code) as described in the "Standard Industrial Classification Manual, 1972", as amended by the 1977 Supplement.

"Plasticizers" means a substance added to a polymer composition to soften and add flexibility to the product.

"Potential emissions" and "potential to emit" mean the quantity of volatile organic material emissions that theoretically could be emitted by a stationary source before add-on controls based on the design capacity or maximum production capacity of the source and 8760 hours per year. The design capacity or maximum production capacity includes use of coating(s) or

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ink(s) with the highest volatile organic material content.

"Pressure tank" means a tank in which VOL's are stored at a pressure greater than atmospheric pressure.

"Prime coat" means the first of two or more coating applications applied to a metal surface.

"Prime surfacer coat" means a coating used to touch up areas on the surface of automobile and light-duty truck bodies not adequately covered by the prime coat before application of the top coat. The prime surfacer coat is applied between the prime coat and topcoat. An anti-chip coating applied to main body parts (e.g., rocker panels, bottom of doors and fenders, and leading edge of roof) is a prime surfacer coat.

"Primers" means any coatings formulated and applied to substrates to provide a firm bond between the substrate and subsequent coats.

"Printing line" means an operation consisting of a series of one or more roll printers and any associated roll coaters, drying areas, and ovens where in one or more surface coatings are applied, dried, and/or cured.

"Process" means any stationary emission source other than a fuel combustion emission source or an incinerator.

"Production equipment exhaust system" means a system for collecting and directing into the atmosphere emissions of volatile organic material from reactors, centrifuges, and other process emission sources.

"Publication rotogravure printing line" means a rotogravure printing line in which surface coatings are applied to paper which is subsequently formed into books, magazines, catalogues, brochures, directories, newspaper supplements, or other types of printed material.

"Reactor" means a vat, vessel, or other device in which chemical reactions take place.

Reasonably Available Control Technology (RACT)" means the lowest emission limitation that an emission source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.

"Refiner" means any person who owns, leases, operates, controls, or supervises a refinery.

"Refinery" means any plant at which motor vehicle fuel is produced.

"Refinery unit, process unit or unit" means a set of components which are a part of a basic process operation such as distillation, hydrotreating, cracking, or reforming of hydrocarbons.

"Repair coatings" means coatings used to correct imperfections or damage to furniture surface.

"Repaired" means, for the purpose of paragraph (i) of this section, that equipment component has been adjusted, or otherwise altered, to eliminate a leak.

"Roll coater" means an apparatus in which a uniform layer of coating material is applied by means of a roll or rolls across the entire width of a moving substrate which is fed from an unwinding roll.

"Roll printer" means an apparatus in which a surface coating is applied by means of a roll or rolls with only partial coverage across the width of a moving substrate which is fed from an unwinding roll. The partial coverage results in the formation of words, designs, or pictures on the substrate.

"Roll printing" means the application of words, designs, and pictures to a substrate usually by means of a series of hard rubber or metal rolls each with only partial coverage.

"Rotogravure printing" means the application of words, designs, and pictures to a substrate by means of a roll printing technique in which the pattern to be applied is recessed relative to the nonimage area.

"Rotogravure printing line" means a printing line in which each roll printer uses a roll with recessed areas for applying an image to a substrate.

"Safety relief valve" means a valve which is normally closed and which is designed to open in order to relieve excessive pressures within a vessel or pipe.

"Sanding sealers" means any coatings formulated for and applied to bare wood for sanding and to seal the wood for subsequent application of varnish. To be considered a sanding sealer a coating must be clearly labelled as such.

"Sealer" means, for the purpose of paragraph (e)(1)(i)(L) of this section, a coating containing binders which seals the wood prior to application to subsequent coatings.

"Semi-transparent stains" means stains containing dyes or semi-transparent pigments which are formulated to enhance wood grain and change the color of the surface but not to conceal the surface, including, but not limited to, sap stain, toner, non-grain raising stain, pad stain, or spatter stain.

"Set of safety relief valves" means one or more safety relief valves designed to open in order to relieve excessive pressures in the same vessel or pipe.

"Sheet basecoat" means a coating applied to metal when the metal is in sheet form to serve as either the exterior or interior of a can for either two-piece or three-piece cans.

"Side-seam spray coat" means a coating applied to the seam of a three-piece can.

"Single coat" means one coating application applied to a metal surface.

"Solvent" means a liquid substance that is used to dissolve or dilute another substance.

"Solvent cleaning" means the process of cleaning soils from surfaces by cold cleaning, open top vapor degreasing, or conveyorized degreasing.

"Source" means any building, structure, facility, equipment, installation, or any combination thereof, at, from, or by reasons which VOM is emitted or discharged into the atmosphere.

"Specified air contaminant" means any air contaminant as to which this Subtitle contains emission standards or other specific limitations.

"Splash loading" means a method of loading a tank, railroad tank car, tank truck, or trailer by use of other than a submerged loading pipe.

"Standard conditions" means a temperature of 70 °F and a pressure of 14.7 psia.

"Standard cubic foot (scf)" means the volume of one cubic foot of gas at standard conditions.

"Standard Industrial Classification Manual" means the Standard Industrial Classification Manual (1972), Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

"Start-up" means the setting in operation of an emission source for any purpose.

"Stationary emission source"and "Stationary source" mean an emission source which is not self-propelled.

"Storage tank or storage vessel" means any stationary tank, reservoir or container used for the storage of VOL's.

"Submerged-fill pipe" means any discharge pipe or nozzle which meets either of the following conditions:

(A) Where the tank is filled from the top, the end of the discharge pipe or nozzle must be totally submerged when the liquid level is 15 cm (6 in.) from the bottom of the tank.

(B) Where the tank is filled from the side, the discharge pipe or nozzle must be totally submerged when the liquid level is 46 cm (18 in.) from the bottom of the tank.

"Substrate" means the surface onto which a coating is applied or into which a coating is impregnated.

"Surface condenser" means a device which removes a substance from a gas stream by reducing the temperature of the stream, without direct contact between the coolant and the stream.

"Thirty-day rolling average" means any value arithmetically averaged over any consecutive thirty days.

"Three-piece can" means a can which is made from a rectangular sheet and two circular ends.

"Topcoat" means a film of coating material applied in a multiple coat operation other than prime coat, final repair coat, or prime surfacer coat.

"Topcoat operation" means all topcoat spray booths, flash-off areas, and bake ovens at a facility which are used to apply, dry, or cure the final coatings (except final off-line repair) on components of automobile and light-duty truck bodies.

"Transfer efficiency" means the ratio of the amount of coating solids deposited onto a part or product to the total amount of coating solids used.

"True vapor pressure" means the equilibrium partial pressure exerted by a volatile organic liquid as determined in accordance with methods described in American Petroleum Institute Bulletin 2517, "Evaporation Loss From Floating Roof Tanks," second edition, February 1980.

"Two-piece can" means a can which is drawn from a shallow cup and requires only one end to be attached.

"Undercoaters" means any coatings formulated for and applied to substrates to provide a smooth surface for subsequent coats.

"Unregulated safety relief valve" means a safety relief valve which cannot be actuated by a means other than high pressure in the pipe or vessel which it protects.

"Vacuum producing system" means any reciprocating, rotary, or centrifugal blower or compressor or any jet ejector or device that creates suction from a pressure below atmospheric and discharges against a greater pressure.

"Valves not externally regulated" means valves that have no external controls, such as in-line check valves.

"Vapor balance system" means any combination of pipes or hoses which creates a closed system between the vapor spaces of an unloading tank and a receiving tank such that vapors displaced from the receiving tank are transferred to the tank being unloaded.

"Vapor collection system" means all piping, seals, hoses, connections, pressure-vacuum vents, and other possible sources between the gasoline delivery vessel and the vapor processing unit and/or the storage tanks and vapor holder.

"Vapor control system" means any system that limits or prevents release to the atmosphere of organic material in the vapors displaced from a tank during the transfer of gasoline.

"Vapor-mounted primary seal" means a foam-filled primary seal mounted continuously around the circumference of the tank so there is an annular vapor space underneath the seal. The annular vapor space is bound by the bottom of the primary seal, the tank wall, the liquid surface, and the floating roof.

"Vapor recovery system" means a vapor gathering system capable of collecting all hydrocarbon vapors and gases discharged from the storage tank and a vapor disposal system capable of processing such hydrocarbon vapors and gases so as to prevent their emission to the atmosphere.

"Varnishes" means any clear wood finishes formulated with various resins to dry by chemical reaction on exposure to air.

"Vehicle" means a device by which any person or property may be propelled, moved, or drawn upon a highway, excepting a device moved exclusively by human power or used exclusively upon stationary rails or tracks.

"Vinyl coating" means any topcoat or printing ink applied to vinyl coated fabric or vinyl sheets. Vinyl coating does not include organisols and plastisols.

"Vinyl coating facility" means a facility that includes one or more vinyl coating line(s).

"Vinyl coating line" means a coating line in which any protective, decorative or functional coating is applied onto vinyl coated fabric or vinyl sheets.

"Volatile organic liquid" means any substance which is liquid at storage conditions and which contains volatile organic compounds.

"Volatile organic material (VOM) or volatile organic compound (VOC)" means any organic compound which participates in atmospheric photochemical reactions. This includes any organic compound other than the following compounds: methane, ethane, methyl chloroform (1,1,1-trichloroethane), CFC-113 (trichlorotrifluoroethane), methylene chloride (dichloromethane), CFC-11 (trichlorofluoromethane), CFC-12 (dichlorodifluoromethane), CFC-22 (chlorodifluoromethane), FC-23 (trifluoromethane), CFC-114 (dichlorotetrafluoroethane), CFC-115 (chloropentafluoroethane), HCFC-123 (dichlorotrifluoroethane), HFC-134a (tetrafluoroethane), HCFC-141b (dichlorofluoroethane) and HCFC-142b (chlorodifluoroethane). These compounds have been determined to have negligible photochemical reactivity. For purposes of determining compliance with emission limits, VOC will be measured by the approved test methods. Where such a method also inadvertently measures compounds with negligible photochemical reactivity, an owner or operator may exclude these negligibly reactive compounds when determining compliance with an emissions standard.

"Volatile petroleum liquid" means any petroleum liquid with a true vapor pressure that is greater than 1.5 psia (78 mm Hg) at standard conditions.

"Wash coat" means a coating containing binders which seals wood surfaces, prevents undesired staining, and controls penetration.

"Web" means a substrate which is printed in continuous roll-fed presses.

"Wood furniture" means room furnishings including cabinets (kitchen, bath, and vanity), tables, chairs, beds, sofas, shutters, art objects, wood paneling, wood flooring, and any other coated furnishings made of wood, wood composition, or fabricated wood materials.

"Wood furniture coating facility" means a facility that includes one or more wood furniture coating line(s).

"Wood furniture coating line" means a coating line in which any protective, decorative, or functional coating is applied onto wood furniture.

"Woodworking" means the shaping, sawing, grinding, smoothing, polishing, and making into products of any form or shape of wood.

(4) *Testing methods and procedures.*

(i) Coatings, inks and fountain solutions. The following test methods and procedures shall be used to determine compliance of as applied coatings, inks, and fountain solutions with the limitations set forth in Section 52.741.

(A) *Sampling:* Samples collected for analyses shall be one-liter taken into a one-liter container at a location and time such that the sample will be representative of the coating as applied (i.e., the sample shall include any dilution solvent or other VOM added during the manufacturing process). The container must be tightly sealed immediately after the sample is taken. Any solvent or other VOM added after the sample is taken must be measured and accounted for in the calculations in paragraph (a)(4)(i)(C). For multiple package coatings, separate samples of each component shall be obtained. A mixed sample shall not be obtained as it will cure in the container. Sampling procedures shall follow the guidelines presented in:

(*1*) ASTM D3925 standard practice for sampling liquid paints and related pigment coating.

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(*2*) ASTM E300 standard practice for sampling industrial chemicals.

(B) *Analyses:* The applicable analytical methods specified below shall be used to determine the composition of coatings, inks, or fountain solutions as applied.

(*1*) Method 24 of 40 CFR part 60, appendix A, shall be used to determine the VOM content in coatings. If it is demonstrated to the satisfaction of the Agency that plant coating formulation data are equivalent to Method 24 results, formulation data may be used. In the event of any inconsistency between a Method 24 test and a facility's formulation data, the Method 24 test will govern.

(*2*) Method 24A of 40 CFR part 60, appendix A, shall be used to determine the VOM content and density of rotogravure printing inks and related coatings. If it is demonstrated to the satisfaction of the Agency that the plant coating formulation data are equivalent to Method 24A results, formulation data may be used. In the event of any inconsistency between a Method 24A test and a facility's formulation data, the Method 24A test will govern.

(3) The following ASTM methods are the analytical procedures for determining VOM:

(i) ASTM D1475–60: Standard test method for density of paint, varnish, lacquer and related products.

(ii) ASTM D2369–87: Standard test method for volatile content of a coating.

(iii) ASTM D3792–86: Standard test method for water content of water-reducible paints by direct injection into a gas chromatograph.

(iv) ASTM D4017–81: Standard test method for water content in paints and paint materials by the Karl Fischer method.

(v) ASTM D4457–85: Standard test method for determination of dichloromethane and 1,1,1, trichloroethane in paints and coatings by direct injection into a gas chromatograph. (The procedure delineated above can be used to develop protocols for any compounds specifically exempted from the definition of VOM.)

(vi) ASTM D2697–86: Standard test method for volume non-volatile matter in clear or pigmented coatings.

(vii) ASTM 03980: Standard practice for interlaboratory testing of paint and related materials.

(viii) ASTM E180–85: Practice for determining the precision data of ASTM methods for analysis of and testing of industrial chemicals.

(ix) ASTM D2372–85: Standard method of separation of vehicle from solvent-reducible paints.

(4) The Administrator may determine that the analytical methods specified in paragraphs (a)(4)(i)(B) *(1), (2)* and *(3)* are not appropriate to determine compliance and may either specify or allow an alternate test method to be conducted at his discretion.

(C) *Calculations:* Calculations for determining the VOM content, water content and the content of any compounds which are specifically exempted from the definition of VOM of coatings, inks and fountain solutions as applied shall follow the guidance provided in the following documents.

(1) "A Guide for Surface Coating Calculation." EPA–340/1–86–016.

(2) "Procedures for Certifying Quantity of Volatile Organic Compounds Emitted by Paint, Ink and Other Coatings." (revised June 1986). EPA–450/3–84–019.

(3) "A Guide for Graphic Arts Calculations." August 1988. EPA–340/1–88–003.

(ii) Transfer efficiency test protocol. The protocol for determining the transfer efficiency of coating applicators at topcoat coating operations at an automobile assembly facility shall follow the procedure in: "Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations." December 1988. EPA–450/3–88–018.

(iii) Capture system efficiency test protocols.

(A) The protocols for determining the VOM capture system efficiency must conform to the guidance delineated in the following document:

Draft Guideline Document for Measuring Capture Efficiency. USEPA–EMB draft document, June 14, 1989. The final version of this document shall replace the subject draft document when the draft document is finalized.

(B) The owner or operator must obtain written USEPA approval for its protocol for determining capture efficiency for the purpose of demonstrating compliance with the provisions of § 52.741 at least 30 days prior to conducting such test. The protocol shall at a minimum describe the emission source, concentration of compounds which are specifically exempted from the definition of VOM and VOM species, gas flow rates, coating compositions, quality assurance procedures, and production rates, test methods, and calculations.

(iv) Control device efficiency testing and monitoring.

(A) The control device efficiency shall be determined by simultaneously measuring the inlet and outlet gas phase VOM concentrations and gas volumetric flow rates in accordance with the gas phase test methods specified in paragraph (a)(4)(vi).

(B) Any owner or operator that uses an afterburner or carbon adsorber to comply with any paragraph of § 52.741 shall use Agency approved continuous monitoring equipment which is installed, calibrated, maintained, and operated according to vendor specifications at all times the afterburner or carbon adsorber is in use. The continuous monitoring equipment must monitor the following parameters:

(1) Combustion chamber temperature of each afterburner.

(2) Temperature rise across each catalytic afterburner bed.

(3) The VOM concentration of each carbon adsorption bed exhaust.

(v) Overall efficiency.

(A) The overall efficiency of the emission control system shall be determined as the product of each individual capture system efficiency and each control device efficiency or by the liquid/liquid test protocol for each solvent recovery system. In those cases in which the overall efficiency is being determined for an entire line, the capture efficiency used to calculate the product of the capture and control efficiency is the total capture efficiency over the entire line.

(B) For coating lines which are both chosen by the owner or operator to comply with paragraphs (e)(2)(ii), (e)(2)(iii), (e)(2)(iv), (e)(2)(v), or (e)(2)(vi) by the alternative in (e)(2)(i)(B) and meet the criteria allowing them to comply with paragraph (e)(2) instead of paragraph (e)(1), the overall efficiency of the capture system and control device, as determined by the test methods and procedures specified in paragraphs (a)(4)(iii), (iv) and (v)(A), shall be no less than the equivalent overall efficiency which shall be calculated by the following equation:

$$E = ([VOM_a - VOM_t]/VOM_a) \times 100$$

where:

E = Equivalent overall efficiency of the capture system and control device as a percentage.

VOM_a = Actual VOM content of a coating, or the daily-weighted average VOM content of two or more coatings (if more than one coating is used), as applied to the subject coating line as determined by the applicable test methods and procedures specified in paragraph (a)(4)(i) in units of kg VOM/l (lb VOM/gal) of coating solids as applied.

VOM = The VOM emission limit specified in paragraph (e)(2)(i) or (ii) in units of kg VOM/l (lb VOM/gal) of coating solds as applied.

(vi) Volatile organic material gas phase source test methods. The methods in 40 CFR part 60, appendix A, delineated below shall be used to determine control device efficiencies.

(A) 40 CFR part 60, appendix A, Methods 18, 25 or 25A, as appropriate to the conditions at the site, shall be used to determine VOM concentration. Method selection shall be based on consideration of the diversity of organic species present and their total concentration and on consideration of the potential presence of interfering gases. Except as indicated in paragraphs (a)(4)(vi)(A) (*1*) and (*2*) below, the test shall consist of three separate runs, each lasting a minimum of 60 min, unless the Administrator determines that process variables dictates shorter sampling times.

(1) When the method is to be used to determine the efficiency of a fixed-bed carbon adsorption system with a common exhaust stack for all the individual adsorber vessels, the test shall consist of three separate runs, each coinciding with one or more complete sequences through the adsorption cycles of all the individual adsorber vessels.

(2) When the method is to be used to determine the efficiency of a fixed-bed carbon adsorption system with individual exhaust stacks for each adsorber vessel, each adsorber vessel shall be tested individually. The test for each adsorber vessel shall consist of three separate runs. Each run shall coincide with one or more complete adsorption cycles.

(B) 40 CFR part 60, appendix A, Method 1 or 1A shall be used for sample and velocity traverses.

(C) 40 CFR part 60, appendix A, Method 2, 2A, 2C or 2D shall be used for velocity and volumetric flow rates.

(D) 40 CFR part 60, appendix A, Method 3 shall be used for gas analysis.

(E) 40 CFR part 60, appendix A, Method 4 shall be used for stack gas moisture.

(F) 40 CFR part 60, appendix A, Methods 2, 2A, 2C, 2D, 3 and 4 shall be performed, as applicable, at least twice during each test run.

(vii) Leak detection methods for volatile organic material. Owners or operators required by the various subparts of this regulation to carry out a leak detection monitoring program shall comply with the following requirements:

(A) Leak detection monitoring. *(1)* Monitoring shall comply with 40 CFR part 60, appendix A, Method 21.

(2) The detection instrument shall meet the performance criteria of Method 21.

(3) The instrument shall be calibrated before use on each day of its use by the methods specified in Method 21.

(4) Calibration gases shall be:

(i) Zero air (less than 10 ppm of hydrocarbon in air); and

(ii) A mixture of methane or n-hexane and air at a concentration of approximately but less than 10,000 ppm methane or n-hexane.

(5) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Method 21.

(B) When equipment is tested for compliance with no detectable emissions as required, the test shall comply with the following requirements:

(1) The requirements of paragraphs (a)(4)(vii)A*(1)* through (vii)(A)*(5)* above shall apply.

(2) The background level shall be determined as set forth in Method 21.

(C) Leak detection tests shall be performed consistent with:

(1) "APTI Course SI 417 controlling Volatile Organic Compound Emissions from Leaking Process Equipment." EPA–450/2–82–015.

(2) "Portable Instrument User's Manual for Monitoring VOC Sources." EPA–340/1–86–015.

(3) "Protocols for Generating Unit—Specific Emission Estimates for Equipment Leaks of VOC and VHAP." EPA–450/3–88–010.

(4) "Petroleum Refinery Enforcement Manual." EPA–340/1–80–006.

(viii) Bulk gasoline delivery system test protocol. (A) The method for determining the emissions of gasoline from a vapor recovery system are delineated in 40 CFR Part 60, Subpart XX, § 60.503.

(B) Test shall be performed consistent with:

(1) "Inspection Manual for Control of Volatile Organic Emissions from Gasoline Marketing Operations: appendix D." EPA–340/1–80–012.

(2) "Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals: appendix A." EPA–450/2–77–026.

(ix) Solvent metal cleaning volatile organic material emissions. The method for determining VOM emissions shall be performed consistent with "Regulatory Guidance for Control of Volatile Organic Compound Emissions From 15 Categories of Stationary Sources." EPA 905/2–78–001, Section XX.9404, pages 48 and 49.

(5) *Compliance dates.* Compliance with the requirements of all rules is required upon promulgation unless otherwise indicated by compliance dates contained in specific rules. This paragraph shall not operate to provide additional time for compliance under section 113(d) of the Act, 42 U.S.C. 7413(d), for sources subject to compliance upon promulgation.

(6) *Afterburners.* The operation of any natural gas fired afterburner and capture system used to comply with § 52.741 is not required during the period of November 1 of any year to April 1 of the following year provided that the operation of such devices is not required for purposes of occupational safety or health, or for the control of toxic substances, odor nuisances, or other regulated pollutants.

(7) *Exemptions, variances and alternative means of control.* Any exemptions, variances or alternatives to the control requirements, emission limitations, or test methods in the Illinois SIP or FIP can only be allowed if approved by the Administrator as a SIP or FIP revision.

(8) *Vapor pressure of volatile organic liquids.* (i) If the VOL consists of only a single compound, the vapor pressure shall be determined by ASTM Method D–2879–83 (Approved 1983) or the vapor pressure may be obtained from a published source such as: Boublik, T., V. Fried and E. Hala, "The Vapor Pressure of Pure Substances," Elsevier Scientific Publishing Co., New York (1973), Perry's Chemical Engineer's Handbook, McGraw-Hill Book Company (1984), CRC Handbook of Chemistry and Physics, Chemical Rubber Publishing Company (1988–87), Lange's Handbook of Chemistry, John A. Dean, editor, McGraw-Hill Book Company (1985).

(ii) If the VOL is a mixture, the vapor pressure shall be determined by ASTM Method D–2879–83 (approved 1983) or by the following equation:

$$P_{vol} = \sum_{i=1}^{n} P_i X_i$$

where:

P_{vol} = Total vapor pressure of the mixture,

n = Number of components in the mixture,

i = Subscript denoting an individual component,

P_i = Vapor pressure of a component determined in accordance with paragraph (a) of this section

X_i = Mole fraction of the component in the total mixture.

(9) *Vapor pressure of organic material or solvent.* (i) If the organic material or solvent consists of only a single compound, the vapor pressure shall be determined by ASTM Method D–2879–83 (Approved 1983) or the vapor pressure may be obtained from a published source such as: Boublik, T., V. Fried and E. Hala, "The Vapor Pressure of Pure Substances," Elsevier Scientific Publishing Co., New York (1973), Perry's Chemical Engineer's Handbook,

McGraw-Hill Book Company (1984), CRC Handbook of Chemistry and Physics, Chemical Rubber Publishing Company (1986-87), Lange's Handbook of Chemistry, John A. Dean, editor, McGraw-Hill Book Company (1985).

(ii) If the organic material or solvent is in a mixture made up of both organic material compounds and compounds which are not organic material, the vapor pressure shall be determined by the following equation:

$$P_{cm} = \frac{\sum_{i=1}^{n} P_i X_i}{\sum_{i=1}^{n} X_i}$$

where:

P_{cm} = Total vapor pressure of the portion of the mixture which is composed of organic material,
n = Number of organic material components in the mixture
i = Subscript denoting an individual component,
P_i = Vapor pressure of an organic material component determined in accordance with paragraph (a) of this section,
X_i = Mole fraction of the organic material component of the total mixture.

(iii) If the organic material or solvent is in a mixture made up of only organic material compounds, the vapor pressure shall be determined by ASTM Method D-2879-83 (approved 1983) or by the above equation.

(10) *Vapor pressure of volatile organic material.* (i) If the VOM consists of only a single compound, the vapor pressure shall be determined by ASTM Method D-2879-83 (Approved 1983) or the vapor pressure may be obtained from a published source such as: Boublik, T., V. Fried and E. Hala, "The Vapor Pressure of Pure Substances," Elsevier Scientific Publishing Co., New York (1973), Perry's Chemical Engineer's Handbook, McGraw-Hill Book Company (1984), CRC Handbook of Chemistry and Physics, Chemical Rubber Publishing Company (1986-87), Lange's Handbook of Chemistry, John A. Dean, editor, McGraw-Hill Book Company (1985).

(ii) If the VOM is in a mixture made up of both VOM compounds and compounds which are not VOM, the vapor pressure shall be determined by the following equation:

$$P_{vom} = \frac{\sum_{i=1}^{n} P_i X_i}{\sum_{i=1}^{n} X_i}$$

where:

P_{vom} = Total vapor pressure of the portion of the mixture which is composed of VOM,
n = Number of VOM components in the mixture.
i = Subscript denoting an individual component,
P_i = Vapor pressure of a VOM component determined in accordance with paragraph (a) of this section,
X_i = Mole fraction of the VOM component of the total mixture.

(iii) If the VOM is in a mixture made up of only VOM compounds, the vapor pressure shall be determined by ASTM Method D-2879-83 (approved 1983) or by the above equation.

(b) [Reserved]

(c) [Reserved]

(d) *Solvent Cleaning*—(1) *Solvent cleaning in general.* The requirements of subpart E (sections 215.182-215.184) of 35 Ill. Adm. Code 215 shall apply to all cold cleaning, open top vapor degreasing, and conveyerized degreasing operations.

(Note: for Federal purposes, paragraph (d)(1) supercedes subpart E (section 215.181) of 35 Ill. Adm. Code 215.)

(2) *Compliance schedule.* Every owner or operator of an emission source which was previously exempt from the requirements of subpart E (sections 215.182-215.184) of 35 Ill. Adm. Code 215 because of the provisions specified in subpart E (section 215.181) of 35 Ill. Adm. Code 215, shall comply with the requirements of subpart E (section 215.182-215.184) of 35 Ill. Adm. Code 215 on and after April 1, 1991.

(3) *Test methods.* The following test methods shall be used to demonstrate compliance with subpart E (sections 215.182-215.184) of 35 Ill. Adm. Code 215:

(i) Vapor pressures shall be determined by using the procedure specified in paragraph (a)(9).

(ii) Exhaust ventilation rates shall be determined by using the procedures specified in paragraph (a)(4)(vi)(C).

(iii) The performance of control devices shall be determined by using the procedures specified in paragraph (a)(4)(vi).

(e) *Coating operations—(1) Emission limitations for manufacturing plants.* (i) Except as provided in paragraph (e)(3), no owner or operator of a coating line shall apply at any time any coating in which the VOM content exceeds the following emission limitations for the specified coating. The following emission limitations are expressed in units of VOM per volume of coating (minus water any any compounds which are specifically exempted from the definition of VOM) as applied at each coating applicator, except where noted. Compounds which are specifically exempted from the definition of VOM should be treated as water for the purpose of calculating the "less water" part of the coating composition. Compliance with this paragraph must be demonstrated through the applicable coating analysis test methods and procedures specified in paragraph (a)(4)(i) and the recordkeeping and reporting requirements specified in paragraph (e)(6)(ii). As an alternative to compliance with this paragraph, the owner or operator of a coating line may meet the requirements of paragraph (e)[(1)(ii) or paragraph (e)(2). The equation presented in paragraph (e)(1)(iii) shall be used to calculate emission limitations for determining compliance by add-on controls, credits for transfer efficiency, emissions trades and cross-line averaging.

	kg/l	lb/gal
(A) Automobile or Light-Duty Truck Coating:		
(1) Prime coat	0.14	(1.2)
(2) Prime surfacer coat	0.34	(2.8)

(Note: The prime surfacer coat limitation is based upon a transfer efficiency of 30 percent. Transfer efficiency credits can only be allowed if aproved by the Administrator as a SIP or FIP revisions.)

	kg/l	lb/gal
(3) Topcoat	1.51	(15.1)

(Note: The topcoat limitation is in units of kg (lbs) of VOM per 1 (gal) of coating solids deposited. Compliance with the limitation shall be based on the daily-weighted average VOM content from the entire topcoat operation (all topcoat spray booths, flash-off areas and back ovens). Compliance shall be demonstrated in accordance with the topcoat protocol for automobiles and light-duty trucks referenced in paragraph (a)(4)(ii). Paragraph (e)(1)(ii) does not apply to the topcoat limitation.)

	kg/l	lb/gal
(4) Final repair coat	0.58	(4.8)
(B) Can Coating:		
(1) Sheet basecoat and overvarnish	0.34	(2.8)
(2) Exterior basecoat and overvarnish	0.34	(2.8)
(3) Interior body spray coat	0.51	(4.2)
(4) Exterior end coat	0.51	(4.2)
(5) Side seam spray coat	0.66	(5.5)
(6) End sealing compound coat	0.44	(3.7)
(C) Paper coating	0.35	(2.9)

(Note: The paper coating limitation shall not apply to any owner or operator of any paper coating line on which printing is performed if the paper coating line complies with the emissions limitations in paragraph (h)(1): Printing and Publishing.)

	kg/l	lb/gal
(D) Coil Coating	0.31	(2.6)
(E) Fabric Coating	0.35	(2.9)
(F) Vinyl coating	0.45	(3.8)
(G) Metal Furniture Coating	0.36	(3.0)
(H) Large Appliance Coating	0.34	(2.8)

(Note: The limitation shall not apply to the use of quick-drying lacquers for repair of scratches and nicks that occur during assembly, provided that the volume of coating does not exceed 0.95 l (1 quart) in any one rolling eight-hour period.)

	kg/l	lb/gal
(I) Magnet Wire Coating	0.20	(1.7)
(J) Miscellaneous Metal Parts and Products Coating:		
(1) Clear coating	0.52	(4.3)
(2) Air-dried coating	0.42	(3.5)
(3) Extreme performance coating	0.42	(3.5)
(4) All other coatings	0.36	(3.0)
(K) Heavy Off-Highway Vehicle Products Coating:		
(1) Extreme Performance prime coat	0.42	(3.5)
(2) Extreme performance top-coat (air dried)	0.42	(3.5)
(3) Final repair coat (air dried)	0.42	(3.5)
(4) All other coatings are subject to the emission limitations for miscellaneous metal parts and products coatings in paragraph (e)(1)(i)(J) above.		
(L) Wood Furniture Coating:		
(1) Clear topcoat	0.67	(5.6)
(2) Opaque stain	0.56	(4.7)
(3) Pigmented coat	0.60	(5.0)
(4) Repair coat	0.67	(5.6)
(5) Sealer	0.67	(5.6)
(6) Semi-transparent stain	0.79	(6.6)
(7) Wash coat	0.73	(6.1)

(Note: An owner or operator of a wood furniture coating operaton subject to this paragraph shall apply all coatings, with the exception of no more than 37.8 l (10 gal) of coating per day used for touch-up and repair operations, using one or more of the following application systems: airless spray application system, air-assisted airless spray application system, electrostatic spray application system, electrostatic bell or disc application system, heated airless spray application system, roller coat, brush or wipe application system, or dip-and-drain application system.)

(M) General Motors Corporation, Electro-Motive Division in Cook County:

	kg/l	lb/gal
(1) Extreme performance prime coat	0.42	(3.5)
(2) Extreme performance top-coat (air dried)	0.42	(3.5)
(3) Final repair coat (air dried)	0.42	(3.5)
(4) High-temperature aluminum coating	0.72	(6.0)
(5) All other coatings	0.36	(3.0)

(ii) Daily-weighted average limitations.

No owner or operator of a coating line subject to the limitations of paragraph (e)(1)(i) and complying by means of paragraph (e)(1)(ii) shall operate the subject coating line unless the owner or operator has demonstrated compliance with paragraph (e)(1)(ii)(A), (ii)(B), (ii)(C), (ii)(D), (ii)(E) or (ii)(F) (depending upon the source category) through the applicable coating analysis test methods and procedures specified in paragraph (a)(4)(i) and the recordkeeping and reporting requirements specified in paragraph (e)(6)(iii).

(A) No owner or operator of a coating line subject to only one of the limitations from among paragraph (e)(1)(i)(A)*(1)*, (i)(A)*(2)*, (i)(A)*(4)*, (i)(C), (i)(D), (i)(E), (i)(F), (i)(G), (i)(H), or (i)(I) shall apply coating on any such coating line, during any day, whose daily-weighted average VOM content exceeds the emission limitation to which the coatings are subject.

(B) No owner or operator of a miscellaneous metal parts and products coating line subject to the limitations of paragraph (e)(1)(i)[J) shall apply coatings to miscellaneous metal parts or products on the subject coating line unless the requirements in paragraph (e)(1)(ii)(B)*(1)* or *(2)* are met.

(1) For each coating line which applies multiple coatings, all of which are subject to the same numerical emission limitation within paragraph (e)(1)(i)[J) above, during the same day (e.g., all coatings used on the line are subject to 0.42 g/1 [3.5 lbs/gal]), the daily-weighted average VOM content shall not exceed the coating VOM content limit corresponding to the category of coating used, or

(2) For each coating line which applies coatings from more than one of the four coating categories in paragraph (e)(1)(i)[J) above, during the same day, the owner or operator shall submit to and receive approval from the Administrator for a site-specific FIP revision. To receive approval, the requirements of USEPA's Emissions Trading Policy Statement (and related policy) must be satisfied.

(c) No owner or operator of a can coating facility subject to the limitations of paragraph (e)(1)(i)(B) shall operate the subject coating facility using a coating with a VOM content in excess of the limitations specified in paragraph (e)(1)(i)(B) unless all of the following requirements are met:

(1) An alternative daily emission limitation shall be determined according to paragraph (e)(2)(ii)(C)*(2)* below. Actual daily emissions shall never exceed the alternative daily emission limitation and shall be calculated by use of the following equation.

$$E_d = \sum_{i=1}^{n} V_i C_i .$$

where:

E_d = Actual VOM emissions for the day in units of kg/day (lbs/day),
i = Subscript denoting a specific coating applied,
n = Total number of coatings applied in the can coating operation,
V_i = Volume of each coating applied for the day in units of 1/day (gal/day) of coating (minus water and any compounds which are specifically exempted from the definition of VOM), and
C_i = The VOM content of each coating as applied in units of kg VOM/1 (lbs VOM/gal) of coating (minus water and any compounds which are specifically exempted from the definition of VOM).

(2) The alternative daily emission limitation (A_d) shall be determined on a daily basis as follows:

$$A_d = \sum_{i=1}^{n} V_i L_i \frac{(D_i - C_i)}{(D_i - C_i)}$$

where:

A_d = The VOM emissions allowed for the day in units of kg/day (lbs/day),
i = Subscript denoting a specific coating applied,
n = Total number of surface coatings applied in the can coating operation,
C_i = The VOM content of each surface coating as applied in units of kg VOM/l (lbs VOM/gal) of coating (minus water and any compounds which are specifically exempted from the definition of VOM),
D_i = The density of VOM in each coating applied. For the purposes of calculating A_d, the density is 0.862 kg VOM/l VOM (7.36 lbs VOM/gal VOM).

V_i = Volume of each surface coating applied for the day in units of 1 (gal) of coating (minus water and any compounds which are specifically exempted from the definition of VOM).

L_s = The VOM emission limitation for each surface coating applied as specified in paragraph (e)(1)(i)(B) in units of kg VOM/l (lbs VOM/gal) of coating (minus water or any compounds which are specifically exempted from the definition of VOM).

(D) No owner or operator of a heavy off-highway vehicle products coating line subject to the limitations of paragraph (e)(1)(i)(K) shall apply coatings to heavy off-highway vehicle products on the subject coating line unless the requirements of paragraph (e)(1)(ii)(D) *(1)* or *(2)* are met.

(1) For each coating line which applies multiple coatings, all of which are subject to the same numerical emission limitation within paragraph (e)(1)(i)(K) above, during the same day (e.g., all coatings used on the line are subject to 0.42 g/l [3.5 lbs/gal]), the daily-weighted average VOM content shall not exceed the coating VOM content limit corresponding to the category of coating used, or

(2) For each coating line which applies coatings subject to more than one numerical emission limitation in paragraph (e)(1)(i)(K) above, during the same day, the owner or operator shall submit to and receive approval from the Administrator for a site-specific FIP revision. To receive approval, the requirements of USEPA's Emissions Trade Policy Statement (and related policy) must be satisfied.

(E) No owner or operator of a wood furniture coating line subject to the limitations of paragraph (e)(1)(i)(L) shall apply coatings to wood furniture on the subject coating line unless the requirements of paragraph (e)(1)(ii)(E) *(1)* or *(2)*, in addition to the requirements specified in the note to paragraph (e)(1)(i)(L), are met.

(1) For each coating line which applies multiple coatings, all of which are subject to the same numerical emission limitation within paragraph (e)(1)(i)(L) above, during the same day (e.g., all coatings used on the line are subject to 0.67 g/1 [5.6 lbs/gal]), the daily-weighted average VOM content shall not exceed the coating VOM content limit corresponding to the category of coating used, or

(2) For each coating line which applies coatings subject to more than one numerical emission limitation in paragraph (e)(1)(i)(L) above, during the same day, the owner or operator shall submit to and receive approval from the Administrator for a site-specific FIP revision. To receive approval, the requirements of USEPA's Emissions Trading Policy Statement (and related policy) must be satisfied.

(F) No owner or operator of the General Motors Corporation, Electro-Motive Division diesel-electric locomotive coating line in Cook County, subject to the limitations of paragraph (e)(1)(i)(M) shall apply coatings to diesel-electric locomotives on the subject coating line unless the requirements of paragraph (e)(1)(ii)(F) *(1)* or *(2)* are met.

(1) For each coating line which applies multiple coatings, all of which are subject to the same numerical emission limitation within paragraph (e)(1)(i)(M) above, during the same day (e.g., all coatings used on the line are subject to 042 g/1 [3.5 lbs/gal]), the daily-weighted average VOM content shall not exceed the coating VOM content limit corresponding to the category of coating used, or

(2) For each coating line which applies coatings subject to more than one numerical emission limitation in paragraph (e)(1)(i)(M) above, during the same day, the owner or operator shall submit to and receive approval from the Administrator for a site-specific FIP revision. To receive approval, the requirements of USEPA's Emissions Trading Policy Statement (and related policy) must be satisfied.

(iii) Limitations in terms of kg (lbs) of VOM emissions per 1 (gal) of solids as applied at each coating applicator shall be determined by the following equation:

$$S = \frac{C}{1-(C/D)}$$

where:

S = The limitation on VOM emissions in terms of kg VOM/1 (lbs VOM/gal) of solids,

C = The limitation on VOM emissions in terms of kg/1 (lbs/gal) of coating (minus water and any compounds which are specifically excluded from the definition of VOM) specified in paragraph (e)(1)(i).

D = The density of VOM in the coating. For the purposes of calculating S, the density is 0.882 kg VOM/1 VOM (7.36 lbs VOM/gal VOM).

(2) *alternative emission limitations.* Any owner or operator of a coating line subject to paragraph (e)(1) may comply with this paragraph, rather than with paragraph (e)(1), if a capture system and control device are operated at all times and the owner or operator demonstrates compliance with paragraphs (e)(2) (ii), (iii), (iv), (v), or (vii) (depending upon the source category) through the applicable coating analysis and capture system and control device efficiency test methods and procedures specified in paragraph (a)(4) and the recordkeeping and reporting requirements specified in paragraph (e)(6)(iv); and the control device is equipped with the applicable monitoring equipment specified in paragraph (a)(4)(iv) and the monitoring equipment is installed, calibrated, operated and maintained according to vendor specifications at all times the control device is in use. The use of a capture system and control device, which does not demonstrate compliance with paragraphs (e)(2) (ii), (iii), (iv), (v), (vi), or (vii), may only be used as an alternative to compliance with paragraph (e)(1) if approved as a FIP revision.

(i) Alternative add-on control methodologies. (A) The coating line is equipped with a capture system and control device that provides 81 percent reduction in the overall emissions of VOM from the coating line and the control device has a 90 percent efficiency, or

(B) The system used to control VOM from the coating line is demonstrated to have an overall efficiency sufficient to limit VOM emissions to no more than what is allowed under paragraph (e)(1). Use of any control system other than carbon absorption, condensation, or absorption scrubber system can only be allowed if approved by the Administrator as a SIP or FIP revision. Transfer efficiency credits can only be allowed if approved by the Administrator as a SIP or FIP revision. Baseline transfer efficiencies and transfer efficiency test methods must be approved by the Administrator. Such overall efficiency is to be determined as follows:

(1) Obtain the emission limitation from the appropriate paragraph in (e)(1),

(2) Calculate "S" according to the equation in paragraph (e)(1)(iii),

(3) Calculate the overall efficiency required according to paragraph (a)(4)(v). For the purposes of calculating this value, according to the equation in (a)(4)(v)(B), VOM_i is equal to the value of "S" as determined above in (i)(B)(*2*).

(ii) No owner or operator of a coating line subject to only *one* of the emission limitations from among paragraph (e)(1)(i)(A)(*1*), (e)(1)(i)(A)(*2*), (e)(1)(i)(A)(*4*), (e)(1)(i)(C), (e)(1)(i)(D), (e)(1)(i)(E), (e)(1)(i)(F), (e)(1)(i)(G), (e)(1)(i)(H), or (e)(1)(i)(I) and equipped with a capture system and control device shall operate the subject coating line unless the requirements in paragraph (e)(2)(i) (A) or (B) are met. No owner or operator of a coating line subject to paragraph (e)(1)(i)(A)(*3*), and equipped with a capture system and control device shall operate the coating line unless the owner or operator demonstrates compliance with the topcoat limitation in accordance with the topcoat protocol for automobile and light-duty trucks referenced in paragraph (e)(4)(ii).

(iii) No owner or operator of a miscellaneous metal parts and products coating line which applies one or more coatings, all of which are subject to the same numerical emission limitation within paragraph (e)(1)(i)(J), during the same day (e.g., all coatings used on the line are subject to 0.42 kg/l [3.5 lbs/gal]) and are equipped with a capture system and control device shall operate the subject coating line unless the requirements in paragraph (e)(2)(i) (A) or (B) are met.

(iv) No owner or operator of a heavy off-highway vehicle products coating line which applies one or more coatings, all of which are subject to the same numerical emission limitation within paragraph (e)(1)(i)(K), during the same day (e.g., all coatings used on the line are subject to 0.42 kg/l [3.5 lbs/gal]) and are equipped with a capture system and control device shall operate the subject coating line unless the requirements in paragraph (e)(2)(i) (A) or (B) are met.

(v) No owner or operator of the General Motors Corporation, Electro-Motive Division diesel-electric locomotive coating line in Cook County which applies one or more coatings, all of which are subject to the same numerical emission limitation within paragraph (e)(1)(i)(M), during the same day (e.g., all coatings used on the line are subject to 0.42 kg/l [3.5 lbs/gal]) and are equipped with a capture system and control device shall operate the subject coating line unless the requirements in paragraph (e)(2)(i) (A) or (B) are met.

(vi) No owner or operator of a wood furniture coating line which applies one or more coatings, all of which are subject to the same numerical emission limitation within paragraph (e)(1)(i)(L), during the same day (e.g., all coatings used on the line are subject to 0.67 kg/l [5.6 lbs/gal] and are equipped with a capture system and control device shall operate the subject coating line unless the requirements in paragraph (e)(2)(i) (A) or (B) are met. If compliance is achieved by meeting the requirements in paragraph (e)(2)(i)(B), then the provisions in the note to paragraph (e)(1)(i)(L) must also be met.

(vii) No owner or operator of a can coating facility and equipped with a capture system and control device shall operate the subject coating facility unless the requirements in paragraph (e)(2)(vii) (A) or (B) below are met.

(A) An alternative daily emission limitation shall be determined according to paragraph (e)(1)(ii)(C)(*2*). Actual daily emissions shall never exceed the alternative daily emission limitation and shall be calculated by use of the following equation:

$$E_d = \sum_{i=1}^{n} V_i \; C_i \; (1-F_i)$$

where:

E_d = Actual VOM emissions for the day in units of kg/day (lbs/day),

i = Subscript denoting the specific coating applied,

n = Total number of surface coatings as applied in the can coating operation,

V_i = Volume of each coating as applied for the day in units of l/day (gal/day) of coating (minus water and any compounds which are specifically exempted from the definition of VOM),

C_i = The VOM content of each coating as applied in units of kg VOM/l (lbs VOM/gal) of coating (minus water and any compounds which are specifically exempted from the definition of VOM), and

F_i = Fraction, by weight, of VOM emissions from the surface coating reduced or prevented from being emitted to the ambient air. This is the overall efficiency of the capture system and control device.

(B) The coating line is equipped with a capture system and control device that provide 75 percent reduction in the overall emissions of VOM from the coating line and the control device has a 90 percent efficiency.

(3) *Exemptions from emission limitations.* (i) Exemptions for all source categories except wood furniture coating. The limitations of paragraph (e) shall not apply to coating lines within a facility, that otherwise would be subject to the same subparagraph of paragraph (e)(1)(i) (because they belong to the same source category, e.g. can coating), provided that combined actual emissions of VOM from all lines at the facility subject to that subparagraph do not and will not exceed 6.8 kg/day (15 lbs/day) before the application of capture systems and control devices. (For example, can coating lines within a plant would not be subject to the limitations of subparagraph (e)(1)(i)(B) if the combined actual emissions of VOM from the can coating lines do not and will not exceed 6.8 kg/day (15 lbs/day) before the application of capture systems and control devices.) Volatile organic material emissions from heavy off-highway vehicle products coating lines must be combined with VOM emissions from miscellaneous metal parts and products coating lines to determine applicability. Any owner or operator of a coating facility shall comply with the applicable coating analysis test methods and procedures specified in paragraph (a)(4)(i) and the recordkeeping and reporting requirements specified in paragraph (e)(6)(i) if total VOM emissions from the subject coating lines are always less than or equal to 6.8 kg/day (15 lbs/day) before the application of capture systems and control devices and, therefore, are not subject to the limitations of paragraph (e)(1). Once a category of coating lines at a facility is subject to the limitations in paragraph (e)(1), the coating lines are always subject to the limitations in paragraph (e)(1).

(ii) Applicability for wood furniture coating. (A) The limitations of paragraph (e) shall apply to a plant's wood furniture coating lines if the plant contains process emission sources, not regulated by paragraphs (d), (e), (h) (excluding paragraph (h)(5)), or (g)(1), or Subparts B, Q, R, S, V, X, Y (Sections 215.582–215.584), or Z of 35 Ill. Adm. Code 215, which as a group both:

(1) Have the potential to emit 91 Mg (100 tons) or more per calendar year of VOM if no air pollution control equipment were used and

(2) Are not limited to less than 91 Mg (100 tons) of VOM per calendar year if no air pollution control equipment were used, through production or capacity limitations contained in a federally enforceable construction permit or SIP of FIP revisions.

(B) If a plant ceases to fulfill the criteria of paragraph (e)(3)(ii)(A), the limitations of paragraph (e)(1)(i)(L) shall continue to apply to any wood furniture coating line which was ever subject to the limitations of paragraph (e)(1)(i)(L).

(C) For the purposes of paragraph (e)(3)(ii), an emission source shall be considered regulated by a subpart, section, or paragraph if it is subject to the limitations of that subpart, section, or paragraph. An emission source is not considered regulated by a subpart, section, or paragraph if its emissions are below the applicability cutoff level or if the source is covered by an exemption.

(D) Any owner or operator of a wood furniture coating line to which the limitations of paragraph (e) are not applicable due to the criteria in paragraph (e)(3)(ii) shall, upon request by the Administrator, submit records to the Administrator within 30 calendar days from the date of the request that document that the coating line is exempt from the limitations of paragraph (e).

(4) Exemption from general rule on

(1) A declaration that the facility is

showing that total VOM emissions from

respectively. Upon changing the method of compliance with paragraph (e)(1)

each coating line as defined in paragraph (e)(3)

(C) On and after April 1, 1991, the

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(4) Exemption from general rule on use of organic material. No owner or operator of a coating line subject to the limitations of paragraph (e)(1) is required to meet the limitations of subpart K (section 215.301 or 215.302) of 35 Ill. Adm. Code 215, after the date by which the coating line is required to meet paragraph (e)(1).

(5) *Compliance schedule.* Every owner or operator of a coating line (of a type included within paragraph (e)(1)(i)) shall comply with the requirements of paragraph (e)(1), (e)(2) or (e)(3) and paragraph (e)(6) in accordance with the applicable compliance schedule to the extent specified in paragraph (e)(5) (i), (ii), (iii) or (iv) below.

(i) No owner or operator of a coating line which is exempt from the limitations of paragraph (e)(1) because of the criteria in paragraph (e)(3)(i) shall operate said coating line on or after April 1, 1991, unless the owner or operator has complied with, and continues to comply with, paragraph (e)(6)(i). Wood furniture coating lines are not subject to (e)(6)(i).

(ii) No owner or operator of a coating line complying by means of paragraph (e)(1)(i) shall operate said coating line on or after April 1, 1991, unless the owner or operator has complied with, and continues to comply with, paragraphs (e)(1)(i) and (e)(6)(ii).

(iii) No owner or operator of a coating line complying by means of paragraph (e)(1)(ii) shall operate said coating line on or or after April 1, 1991, unless the owner or operator has complied with, and continues to comply with, paragraphs (e)(1)(ii) and (e)(6)(iii).

(iv) No owner or operator of a coating line complying by means of paragraph (e)(2) shall operate said coating line on or after April 1, 1991, unless the owner or operator has complied with, and continues to comply with, paragraphs (e)(2) and (e)(6)(iv).

(6) *Recordkeeping and reporting.* The VOM content of each coating and the efficiency of each capture system and control device shall be determined by the applicable test methods and procedures specified in paragraph (a)(4) to establish the records required under paragraph (e)(6).

(i) Any owner or operator of a coating line which is exempted from the limitations of paragraph (e)(1) because of paragraph (e)(3)(i) shall comply with the following:

(A) By April 1, 1991, the owner or operator of a facility referenced in paragraph (e)(6)(i) shall certify to the Administrator that the facility is exempt under the provisions of paragraph (e)(3)(i). Such certification shall include:

(1) A declaration that the facility is exempt from the limitations of paragraph (e)(1) because of paragraph (e)(3)(i); and

(2) Calculations which demonstrate that the combined VOM emissions from all coating lines at the facility are and will remain 6.8 kg (15 lbs) or less each day before the application of capture systems and control devices. The following equation shall be used to calcualte total VOM emissions:

$$T_e = \sum_{j=1}^{m} \sum_{i=1}^{n} (A_i B_i)_j$$

where:

T_e = Total VOM emissions from coating lines at a facility each day before the application of capture systems and control devices in units of kg/day (lbs/day),

m = Number of coating lines at the facility,

j = Subscript denoting an individual coating line,

n = Number of different coatings as applied each day on each coating line at the facility,

i = Subscript denoting an individual coating,

A_i = Weight of VOM per volume of each coating (minus water and any compounds which are specifically exempted from the definition of VOM) as applied each day on each coating line at the facility in units of kg VOM/1 (lbs VOM/gal), and

B_i = Volume of each coating (minus water and any compounds which are specifically exempted from the definition of VOM) as applied each day on each coating line at the facility in units of 1/day (gal/day). The instrument or method by which the owner or operator accurately measured or calculated the volume of each coating as applied on each coating line each day shall be described in the certification to the Administrator.

(B) On and after April 1, 1991, the owner or operator of a facility referenced in paragraph (e)(6)(i) shall collect and record all of the following information each day for each coating line and maintain the information at the facility for a period of three years:

(1) The name and identification number of each coating as applied on each coating line.

(2) The weight of VOM per volume and the volume of each coating (minus water and any compounds which are specifically exempted from the definition of VOM) as applied each day on each coating line.

(C) On and after April 1, 1991, the owner or operator of a facility exempted from the limitations of paragraph (e)(1) because of paragraph (e)(3)(i) shall notify the Administrator of any record showing that total VOM emissions from the coating facility exceed 6.8 kg (15 lbs) in any day before the application of capture systems and control devices shall be reported by sending a copy of such record to the Administrator within 30 days after the exceedance occurs.

(ii) Any owner or operator of a coating line subject to the limitations of paragraph (e)(1) and complying by means of paragraph (e)(1)(i) shall comply with the following:

(A) By April 1, 1991, or upon start-up of a new coating line, or upon changing the method of compliance from an existing subject coating line from paragraph (e)(1)(ii) or paragraph (e)(2) to paragraph (e)(1)(i); the owner or operator of a subject coating line shall certify to the Administrator that the coating line will be in compliance with paragraph (e)(1)(i) on and after April 1, 1991, or on and after the initial start-up date. Such certification shall include:

(1) The name and identification number of each coating as applied on each coating line.

(2) The weight of VOM per volume of each coating (minus water and any compounds which are specifically exempted from the definition of VOM) as applied each day on each coating line.

(B) On and after April 1, 1991, or on and after the initial start-up date, the owner or operator of a coating line subject to the limitations of paragraph (e)(1) and complying by means of paragraph (e)(1)(i) shall collect and record all of the following information each day for each coating line and maintain the information at the facility for a period of three years:

(1) The name and identification number of each coating as applied on each coating line.

(2) The weight of VOM per volume of each coating (minus water and any compounds which are specifically exempted from the definition of VOM) as applied each day on each coating line.

(C) On and after April 1, 1991, the owner or operator of a subject coating line shall notify the Administrator in the following instances:

(1) Any record showing violation of paragraph (e)(1)(i) shall be reported by sending a copy of such record to the Administrator within 30 days following the occurrence of the violation.

(2) At least 30 calendar days before changing the method of compliance with paragraph (e)(1) from paragraph (e)(1)(i) to paragraph (e)(1)(ii) or paragraph (e)(2), the owner or operator shall comply with all requirements of paragraph (e)(6)(iii)(A) or (iv)(A).

respectively. Upon changing the method of compliance with paragraph (e)(1) from paragraph (e)(1)(i) to paragraph (e)(1)(ii) or paragraph (e)(2), the owner or operator shall comply with all requirements of paragraph (e)(6)(iii) or (iv), respectively.

(iii) Any owner or operator of a coating line subject to the limitations of paragraph (e)(1) and complying by means of paragraph (e)(1)(ii) shall comply with the following:

(A) By April 1, 1991, or upon start-up of a new coating line, or upon changing the method of compliance for an existing subject coating line from paragraph (e)(1)(i); or paragraph (e)(2) to paragraph (e)(1)(ii); the owner or operator of the subject coating line shall certify to the Administrator that the coating line will be in compliance with paragraph (e)(1)(ii) on and after April 1, 1991, or on and after the initial start-up date. Such certification shall include:

(1) The name and identification number of each coating line which will comply by means of paragraph (e)(1)(ii).

(2) The name and identificaton number of each coating as applied on each coating line.

(3) The weight of VOM per volume and the volume of each coating (minus water and any compounds which are specifically exempted from the definition of VOM) as applied each day on each coating line.

(4) The instrument or method by which the owner or operator will accurately measure or calculate the volume of each coating as applied each day on each coating line.

(5) The method by which the owner or operator will create and maintain records each day as required in paragraph (e)(6)(iii)(B).

(6) An example of the format in which the records required in paragraph (e)(6)(iii)(B) will be kept.

(B) On and after April 1, 1991, or on and after the initial start-up date, the owner or operator of a coating line subject to the limitations of paragraph (e)(1) and complying by means of paragraph (e)(1)(ii), shall collect and record all of the following information each day for each coating line and maintain the information at the facility for a period of three years:

(1) The name and identification number of each coating as applied on each coating line.

(2) The weight of VOM per volume and the volume of each coating (minus water and any compounds which are specifically exempted from the definition of VOM) as applied each day on each coating line.

(3) The daily-weighted average VOM content of all coatings as applied on each coating line as defined in paragraph (e)(3).

(C) On and after April 1, 1991, the owner or operator of a subject coating line shall notify the Administrator in the following instances:

(1) Any record showing violation of paragraph (e)(1)(ii) shall be reported by sending a copy of such record to the Administrator within 30 days following the occurrence of the violation.

(2) At least 30 calendar days before changing the method of compliance with paragraph (e) from paragraph (e)(1)(ii) to paragraph (e)(1)(i) or paragraph (e)(2), the owner or operator shall comply with all requirements of paragraph (e)(6)(ii)(A) or (iv)(A), respectively. Upon changing the method of compliance with paragraph (e) from paragraph (e)(1)(ii) to paragraph (e)(1)(i) or paragraph (e)(2), the owner or operator shall comply with all requirements of paragraph (e)(6)(ii) or (iv), respectively.

(iv) Any owner or operator of a coating line subject to the limitations of paragraph (e) (2) and complying by means of paragraph (e)(2)(ii), (iii), (iv), (v), (iv) or (vii) shall comply with the following:

(A) By April 1, 1991, or upon start-up of a new coating line, or upon changing the method of compliance for an existing coating line from paragraph (e) (1) (i) or (ii) to paragraph (e) (2); the owner or operator of the subject coating line shall perform all tests and submit to the Administrator the results of all tests and calculations necessary to demonstrate that the subject coating line will be in compliance with paragraph (e) (2) on and after April 1, 1991, or on and after the initial start-up date.

(B) On and after April 1, 1991, or on and after the initial start-up date, the owner or operator of a coating line subject to the limitations of paragraph (e)(2) and complying by means of paragraph (e) (2) (ii), (iii), (iv), (v), (vi) or (vii) shall collect and record all of the following information each day for each coating line and maintain the information at the facility for a period of three years:

(1) The weight of VOM per volume of coating solids as applied each day on each coating line.

(2) Control device monitoring data.

(3) A log of operating time for the capture system, control device, monitoring equipment and the associated coating line.

(4) A maintenance log for the capture system, control device and monitoring equipment detailing all routine and non-routine maintenance performed including dates and duration of any outages.

(C) On and after April 1, 1991, the owner or operator of a subject coating line shall notify the Administrator in the following instances:

(1) Any record showing violation of paragraph (e)(2) shall be reported by sending a copy of such record to the Administrator within 30 days following the occurrence of the violation.

(2) At least 30 calendar days before changing the method of compliance with paragraph (e) from paragraph (e)(2) to paragraph (e)(1)(i) or paragraph (e)(1)(ii), the owner or operator shall comply with all requirements of paragraph (e)(6)(ii)(A) or (iii)(A), respectively. Upon changing the method of compliance with paragraph (e) from paragraph (e)(2) to paragraph (e)(1)(i) or paragraph (e)(1)(ii), the owner or operator shall comply with all requirements of paragraph (e)(6)(ii) or (iii), respectively.

(f) [Reserved]

(g) [Reserved]

(h) Printing and Publishing—(1) *Flexographic and rotogravure printing.* (i) No owner or operator of a subject flexographic, packaging rotogravure or publication rotogravure printing line shall apply at any time any coating or ink unless the VOM content does not exceed the limitation specified in either paragraph (h)(1)(i)(A) or (B) below. Compliance with this paragraph must be demonstrated through the applicable coating or ink analysis test methods and procedures specified in paragraph (a)(4)(i) and the recordkeeping and reporting requirements specified in paragraph (h)(4)(ii). As an alternative to compliance with paragraph (h)(1)(i), a subject printing line may meet the requirements of paragraph (h)(1)(ii) or (iii) below.

(A) Forty percent VOM by volume of the coating and ink (minus water and any compounds which are specifically exempted from the definition of VOM), or

(B) Twenty-five percent VOM by volume of the volatile content in the coating and ink.

(ii) No owner or operator of a subject flexographic, packaging rotogravure or publication rotogravure printing line shall apply coatings or inks on the subject printing line unless the weighted average, by volume, VOM content of all coatings and inks as applied each day on the subject printing line does not exceed the limitation specified in either paragraph (h)(1)(i)(A) (as determined by paragraph (h)(1)(ii)(A)) or (h)(1)(i)(B) (as determined by paragraph (h)(1)(ii)(B). Compliance with this paragraph must be demonstrated through the applicable coating or ink analysis test methods and

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procedures specified in paragraph

n = The number of different coatings and/or

(2) *Applicability.* (i) The limitations of

(h)(1)(i) shall operate said printing line

printing lines at the facility are and will

operator of a subject printing line shall

procedures specified in paragraph (a)(4)(i) and the recordkeeping and reporting requirements specified in paragraph (h)(4)(iii).

(A) The following equation shall be used to determine if the weighted average VOM content of all coatings and inks as applied each day on the subject printing line exceeds the limitation specified in paragraph (h)(1)(i)(A).

$$VOM_{(i)\,(A)} = \frac{\sum_{i=1}^{n} C_i L_i (V_{si} + V_{VOMi})}{\sum_{i=1}^{n} L_i (V_{si} + V_{VOMi})}$$

where:

$VOM_{(i)\,(A)}$ = The weighted average VOM content in units of percent VOM by volume of all coatings and/or inks (minus water and any compounds which are specifically exempted from the definition of VOM) used each day,

i = Subscript denoting a specific coating or ink as applied,

n = The number of different coatings and/or inks as applied each day on a printing line,

C_i = The VOM content in units of percent VOM by volume of each coating or ink as applied (minus water and any compounds which are specifically exempted from the definition of VOM),

L_i = The liquid volume of each coating or ink as applied in units of 1 (gal),

V_{si} = The volume fraction of solids in each coating or ink as applied, and

V_{VOMi} = The volume fraction of VOM in each coating or ink as applied (minus water and any compounds which are specifically exempted from the definition of VOM).

(B) The following equation shall be used to determine if the weighted average VOM content of all coatings and inks as applied each day on the subject printing line exceeds the limitation specified in paragraph (h)(1)(i)(B).

$$VOM_{(i)\,(B)} = \frac{\sum_{i=1}^{n} C_i L_i V_{VMi}}{\sum_{i=1}^{n} L_i V_{VMi}}$$

where:

$VOM_{(i)(B)}$ = The weighted average VOM content in units of percent VOM by volume of the volatile content of all coatings and/or inks used each day,

i = Subscript denoting a specific coating or ink as applied,

n = The number of different coatings and/or inks as applied each day on each printing line,

C_i = The VOM content in units of percent VOM by volume of the volatile matter in each coating or ink as applied,

L_i = The liquid volume of each coating or ink as applied in units of 1 (gal), and

V_{VMi} = The volume fraction of volatile matter in each coating or ink as applied.

(iii) No owner or operator of a subject flexographic, packaging rotogravure or publication rotogravure printing line equipped with a capture system and control device shall operate the subject printing line unless the owner or operator meets the requirements in paragraph (h)(1)(iii) (A), (B) or (C) and paragraphs (h)(1)(iii) (D), (E) and (F) below.

(A) A carbon adsorption system is used which reduces the captured VOM emissions by at least 90 percent by weight, or

(B) an incineration system is used which reduces the captured VOM emissions by at least 90 percent by weight, or

(C) An alternative VOM emission reduction system is demonstrated to have at least a 90 percent control device efficiency and the alternative emission rreduction system is approved by the Administrator. Use of any alternative VOM emission reduction system can only be allowed if approved by the Administrator as a SIP or FIP revisions, and

(D) The printing line is equipped with a capture system and control device that provides an overall reduction in VOM emissions of at least:

(*1*) 75 percent where a publication rotogravure printing line is employed, or

(*2*) 65 percent where a packaging rotogravure printing line is employed, or

(*3*) 60 percent where a flexographic printing line is employed, and

(E) The control device is equipped with the applicable monitoring equipment specified in paragraph (a)(4)(iv)(B) and the monitoring equipment is installed, calibrated, operated and maintained according to vendor specifications at all times the control device is in use, and

(F) The capture system and control device are operated at all times when the subject printing line is in operation. The owner or operator shall demonstrate compliance with this paragraph by using the applicable capture system and control device test methods and procedures specified in paragraphs (a)(4) (iii) through (vi) and by complying with the recordkeeping and reporting requirements specified in paragraph (h)(4)(iv).

(2) *Applicability.* (i) The limitations of paragraph (h)(1) apply to all flexographic and rotogravure printing lines at a subject facility. All facilities with flexographic and/or rotogravure printing lines are subject facilities unless:

(A) Total potential emissions of VOM from all flexographic and rotogravure printing line(s) at the facility are and will be 90.7 Mg (100 tons) or less per calendar year before the application of capture systems and control devices, or

(B) A federally enforceable construction permit or SIP or FIP revision for all flexographic and rotogravure printing line(s) at a facility requires the owner or operator to limit production or capacity of these printing line(s) to reduce total VOM emissions from all flexographic and rotogravure printing line(s) to 90.7 Mg (100 tons) or less per calendar year before the application of capture systems and control devices.

(ii) Upon achieving compliance with paragraph (h), the emission source is not required to meet subpart K of 35 Ill. Adm. Code 215. Emission sources exempt from paragraph (h) are subject to subpart K. Rotogravure or flexographic equipment used for both roll printing and paper coating are subject to paragraph (h).

(iii) Once subject to the limitations of paragraph (h)(1), a flexographic or rotogravure printing line is always subject to the limitations of paragraph (h)(1).

(iv) Any owner or operator of any flexgraphic or rotogravure printing line that is exempt from the limitations of paragraph (h)(1) because of the criteria in paragraph (h)(2) shall be subject to the recordkeeping and reporting requirements specified in paragraph (h)(4)(i).

(3) *Compliance schedule.* Every owner or operator of a flexographic and/or rotogravure printing line shall comply with the applicable requirements of paragraph (h)(1) and paragraph (h)(4) in accordance with the applicable compliance schedule specified in paragraph (h)(3) (i), (ii), (iii) or (iv) and (v) below.

(i) No owner or operator of a flexographic or rotogravure printing line which is exempt from the limitations of paragraph (h)(1) because the criteria in paragraph (h)(2) shall operate said printing line on or after April 1, 1991, unless the owner or operator has complied with, and continues to comply with, paragraph (h)(4)(i).

(ii) No owner or operator of a flexographic or rotogravure printing line complying by means of paragraph (h)(1)(i) shall operate said printing line on or after April 1, 1991, unless the owner or operator has complied with, and continues to comply with, paragraph (h)(4)(ii).

(iii) No owner or operator of a flexographic or rotogravure printing line complying by means of paragraph (h)(1)(ii) shall operate said printing line on or after April 1, 1991, unless the owner or operator has complied with, and continues to comply with, paragraph (h)(4)(iii).

(iv) No owner or operator of a flexographic or rotogravure printing line complying by means of paragraph (h)(1)(ii) shall operate said printing line on or after April 1, 1991, unless the owner or operator has complied with, and continues to comply with, paragraph (h)(4)(iv).

(v) No owner or operator of a flexographic or rotogravure printing line complying which is subject to the requirements of section 215.401 and section 215.245(b) as a result of the applicability criteria in section 215.245 (a) (all of 35 Ill. Adm. Code 215), shall operate the printing line on or after the date of promulgation unless it complies with the requirements in paragraph (h)(1). No owner or operator of a flexographic or rotogravure printing line which (A) is *not* subject to the requirements of section 215.401 and section 215.245(b) as a result of the applicability criteria contained in section 215.245 (a) (all of 35 Ill. Adm. Code 215) and (B) is subject to paragraph (h)(1), shall operate the printing line on or after April 1, 1991, unless it complies with the requirements in paragraph (h)(1).

(4) Recordkeeping and reporting. The VOM content of each coating and ink and the efficiency of each capture system and control device shall be determined by the applicable test methods and procedures specified in paragraph (a)(4) to establish the records required under paragraph (h)(4).

(i) Any owner or operator of a printing line which is exempted from the limitations of paragraph (h)(1) because of the criteria in paragraph (h)(2) shall comply with the following:

(A) By April 1, 1991, the owner or operator of a facility to which paragraph (h)(4)(i) is applicable shall certify to the Administrator that the facility is exempt under the provisions of paragraph (h)(2). Such certification shall include:

(*1*) A declaration that the facility is exempt from the limitations of the criteria in paragraph (h)(1) because of paragraph (h)(2), and

(*2*) Calculations which demonstrate that total potential emissions of VOM from all flexographic and rotogravure printing lines at the facility are and will be 90.7 Mg (100 tons) or less per calender year before the application of capture systems and control devices. Total potential emissions of VOM for a flexographic or rotogravure printing facility is the sum of potential emissions of VOM from each flexographic and rotogravure printing line at the facility. The following equation shall be used to calculate total potential emissions of VOM per calendar year before the application of capture systems and control devices for each flexographic and rotogravure printing line at the facility:

$E_p = A \times B$

where:

E_p = Total potential emissions of VOM from one flexographic or rotogravure printing line in units of kg/year (lbs/year),

A = Weight of VOM per volume of solids of the coating or ink with the highest VOM content as applied each year on the printing line in units of kg VOM/1 (lbs VOM/gal) of coating or ink solids, and

B = Total volume of solids for all coatings and inks that can potentially be applied each year on the printing line in units of 1/year (gal/year). The instrument and/or method by which the owner or operator accurately measured or calculated the volume of each coating and ink as applied and the amount that can potentially be applied each year on the printing line shall be described in the certification to the Administrator.

(B) On and after April 1, 1991, the owner or operator of facility referenced in paragraph (h)(4)(i) shall collect and record all of the following information each year for each printing line and maintain the information at the facility for a period of three years:

(*1*) The name and identification number of each coating and ink as applied on each printing line.

(*2*) The VOM content and the volume of each coating and ink as applied each year on each printed line.

(C) On and after April 1, 1991, the owner or operator of a facility exempted from the limitations of paragraph (h)(1) because of the criteria in paragraph (h)(2) shall notify the Administrator in the following instance:

(*1*) Any record showing that total potential emissions of VOM from all printing lines exceed 90.7 Mg (100 tons) in any calendar year before the application of capture systems and control devices, shall be reported by sending a copy of such record to the Administrator within 30 days after the exceedence occurs.

(ii) Any owner or operator of a printing line subject to the limitations of paragraph (h)(1) and complying by means of paragraph (h)(1)(i) or (iii) to paragraph (h)(1)(ii); the owner or operator of a subject printing line shall certify to the Administrator that the printing line will be in compliance with paragraph (h)(1)(ii) on and after April 1, 1991, or on the after the initial start-up date. Such certification shall include:

(*1*) The name and identification number of each coating and ink as applied on each printing line.

(*2*) The VOM content of each coating and ink as applied each day on each printing line.

(B) On and after April, 1, 1991, or on and after the initial start-up date, the owner or operator of a printing line subject to the limitations of paragraph (h)(1) and complying by means of paragraph (h)(1)(i) shall collect and record all of the following information each day for each coating line and maintain the information at the facility for a period of three years:

(*1*) The name and identification number of each coating and ink as applied on each printing line.

(*2*) The VOM content of each coating and ink as applied each day on each printing line.

(C) On and after April 1, 1991, the owner or operator of a subject printing line shall notify the Administrator in the following instances:

(*1*) Any record showing violation of paragraph (h)(1)(i) shall be reported by sending a copy of such record to the Administrator within 30 days following the occurrence of the violation.

(*2*) At least 30 calendar days before changing the method of compliance with paragraph (h)(1) from paragraph (h)(1)(i) to paragraph (h)(1) (ii) or (iii), the owner or operator shall comply with all requirements of paragraph (h)(4) (iii)(A) or (iv)(A), respectively. Upon changing the method of compliance with paragraph (h)(1) from paragraph (h)(1)(i) to paragraph (h)(1) (ii) or (iii), the owner or operator shall comply with all requirements of paragraph (h)(4) (iii) or (iv), respectively.

(iii) Any owner or operator of a printing line subject to the limitations of paragraph (h)(1) and complying by means of paragraph (h)(1)(ii) shall comply with the following:

(A) By April 1, 1991, or upon start-up of a new printing line, or upon changing the method of compliance for an existing subject printing line from paragraph (h)(1)(i) or (iii) to paragraph (h)(1)(ii), the owner or operator of the subject printing line shall certify to the Administrator that the printing line will be in compliance with paragraph (h)(1)(ii) on and after April 1, 1991, or on and after the initial start-up date. Such certification shall include:

(*1*) The name and identification number of each printing line which will

(A) By April 1, 1991, or upon start-up of a new printing line, or upon changing

(*1*) Total potential emissions of VOM from all heatset-web-offset lithographic

VOM content of each fountain solution and ink and the efficiency of each

D = The total volume of fountain solution that can potentially be used each year on the

(*ii*) A log of operating time for the control device, monitoring equipment

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(1) The name and identification number of each printing line which will comply by means of paragraph (h)(1)(ii).

(2) The name and identification number of each coating and ink available for use on each printing line.

(3) The VOM content of each coating and ink as applied each day on each printing line.

(4) The instrument or method by which the owner or operator will accurately measure or calculate the volume of each coating and ink as applied each day on each printing line.

(5) The method by which the owner or operator will create and maintain records each day as required in paragraph (h)(4)(iii)(B).

(6) An example of the format in which the records required in paragraph (h)(4)(iii)(B) will be kept.

(B) On and after April 1, 1991, or on and after the initial start-up date, the owner or operator of a printing line subject to the limitations of paragraph (h)(1) and complying by means of paragraph (h)(1)(ii) shall collect and record all of the following information each day for each printing line and maintain the information at the facility for a period of three years:

(1) The name and identification number of each coating and ink as applied on each printing line.

(2) The VOM content and the volume of each coating and ink as applied each day on each printing line.

(3) The daily-weighted average VOM content of all coatings and inks as applied on each printing line.

(C) On and after April 1, 1991, the owner or operator of a subject printing line shall notify the Administrator in the following instances:

(1) Any record showing violation of paragraph (h)(1)(ii) shall be reported by sending a copy of such record to the Administrator within 30 days following the occurence of the violation.

(2) At least 30 calendar days before changing the method of compliance with paragraph (h)(1) from paragraph (h)(1)(ii) to paragraph (h)(1)(i) or (iii), the owner or operator shall comply with all requirements of paragraph (h)(4)(ii)(A) or (iv)(A), respectively. Upon changing the method of compliance with paragraph (h)(1) from paragraph (h)(1)(ii) to paragraph (h)(1)(i) or (iii), the owner or operator shall comply with all requirements of paragraph (h)(4)(ii) or (iv), respectively.

(iv) Any owner or operator of a printing line subject to the limitations of paragraph (h)(1) and complying by means of paragraph (h)(1)(iii) shall comply with the following:

(A) By April 1, 1991, or upon start-up of a new printing line, or upon changing the method of compliance for an existing printing line from paragraph (h)(1)(i) or (ii) to paragraph (h)(1)(iii), the owner or operator of the subject printing line shall perform all tests and submit to the Administrator the results of all tests and calculations necessary to demonstrate that the subject printing line will be in compliance with paragraph (h)(1)(iii) on and after April 1, 1991, or on and after the initial start-up date.

(B) On and after April 1, 1991, or on and after the initial start-up date, the owner or operator of a printing line subject to the limitations of paragraph (h)(1) and complying by means of paragraph (h)(1)(iii) shall collect and record all of the following information each day for each printing line and maintain the information at the facility for a period of three years:

(1) The VOM content of each coating and ink as applied each day on each printing line.

(2) Control device monitoring data.

(3) A log of operating time for the capture system, control device, monitoring equipment and the associated printing line.

(4) A maintenance log for the capture system, control device and monitoring equipment detailing all routine and non-routine maintenance performed including dates and duration of any outages.

(C) On and after April 1, 1991, the owner or operator of a subject printing line shall notify the Administrator in the following instances:

(1) Any record showing violation of paragraph (h)(1)(iii), shall be reported by sending a copy of such record to the Administrator within 30 days following the occurrence of the violation.

(2) At least 30 calendar days before changing the method of compliance with paragraph (h)(1) from paragraph (h)(1)(iii) to paragraph (h)(1) (i) or (ii), the owner or operator shall comply with all requirements of paragraph (h)(4) (ii)(A) or (iii)(A), respectively. Upon changing the method of compliance with paragraph (h)(1) from paragraph (h)(1)(iii) to paragraph (h)(1) (i) or (ii), the owner or operator shall comply with all requirements of paragraph (h)(4) (ii) or (iii), respectively.

(5) *Heatset-web-offset lithographic printing.* (i) Applicability. (A) The limitations of paragraph (h)(5)(ii) below apply to all heatset-web-offset lithographic printing lines at a subject facility. All facilities with heatset-web-offset lithographic printing lines are subject facilities unless:

(1) Total potential emissions of VOM from all heatset-web-offset lithographic printing lines at the facility are and would be 90.7 Mg (100 tons) or less per calendar year in the absence of air pollution control equipment, or

(2) A federally enforceable construction permit or SIP or FIP revision for all heatset-web-offset lithographic printing lines(s) at a facility requires the owner or operator to limit production or capacity of these printing line(s) to reduce total VOM emissions from all heatset-web-offset lithographic printing line(s) to 90.7 Mg (100 tons) per calendar year or less in the absence of air pollution control equipment, and

(B) Any owner or operator of any heatset-web-offset lithographic printing line that is exempt from the limitations in paragraph (h)(5)(ii) because of the criteria in paragraph (h)(5)(i)(A) shall be subject to the recordkeeping and reporting requirements in paragraph (h)(5)(iii)(A).

(ii) Specific provisions. No owner or operator of a subject heatset-web-offset printing line may cause or allow the operation of the subject heatset-web-offset printing line unless the owner or operator meets the requirments in paragraph (h)(5)(ii) (A) or (B) and the requirements in paragraphs (h)(5)(ii) (C) and (D) below.

(A) An incinerator system is installed and operated that reduces 90 percent of the VOM emissions from the dryer exhaust, or

(B) The fountain solution contains no more than 8 percent, by weight, of VOM and a condensation recovery system is installed and operated that removes at least 75 percent of the non-isopropyl alcohol organic materials from the dryer exhaust airstream, and

(C) The control device is equipped with the applicable monitoring equipment specified in paragraph (a)(4)(iv)(B) and the monitoring equipment is installed, calibrated, operated and maintained according to vendor specifications at all times the control device is in use, and

(D) The control device is operated at all times when the subject printing line is in operation. The owner or operator shall demonstrate compliance with paragraph (h)(5) by using the applicable test methods and procedures specified in paragraphs (a)(4) (i), (iv), and (vi) and by complying with the recordkeeping and reporting requirements specified in paragraph (h)(5)(iii) below.

(iii) Recordkeeping and reporting. The

VOM content of each fountain solution and ink and the efficiency of each control device shall be determined by the applicable test methods and procedures specified in paragraph (a)(4) to establish the records required under paragraph (h)(5)(iii).

(A) Any owner or operator of a printing line which is exempted from the limitations of paragraph (h)(5)(ii) because of the criteria in paragraph (h)(5)(i) shall comply with the following:

(1) By April 1, 1991, the owner or operator of a facility to which paragraph (h)(5)(iii)(A) is applicable shall certify to the Administrator that the facility is exempt under the provisions of paragraph (h)(5)(i). Such certification shall include:

(i) A declaration that the facility is exempt from the limitations of paragraph (h)(5)(ii) because of the criteria in paragraph (h)(5)(i), and

(ii) Calculations which demonstrate that total potential emissions of VOM from all heatset-web-offset lithographic printing lines at the facility are and will be 90.7 Mg (100 tons) or less per calendar year before the application of air pollution control equipment. Total potential emissions of VOM for a heatset-web-offset lithographic printing facility is the sum of potential emissions of VOM from each heatset-web-offset lithographic printing line at the facility. The following equation shall be used to calculate total potential emissions of VOM per calendar year in the absence of air pollution control equipment for each heatset-web-offset lithographic printing line at the facility.

$$Ep = (A \times B) + \frac{(C \times D)}{100}$$

where:

Ep = Total potential emissions of VOM form one heatset-web-offset printing line in units of kg/year (lbs/year).

A = Weight of VOM per volume of solids of ink with the highest VOM content as applied each year on the printing line in units of kg VOM/1 (lbs VOM/gal) of solids, and

B = Total volume of solids for all inks that can potentially be applied each year on the printing line in units of 1/year (gal/year). The instrument or method by which the owner or operator accurately measured or calculated the volume of each ink as applied and the amount that can potentially be applied each year on the printing line shall be described in the certification to the Administrator.

C = The weight percent VOM of the fountain solution with the highest VOM content.

D = The total volume of fountain solution that can potentially be used each year on the printing line in units of 1/year (gal/year). The instrument and/or method by which the owner or operator accurately measured or calculated the volume of each fountain solution used and the amount of each fountain solution used and the amount that can potentially be used each year on the printing line shall be described in the certification to the Administrator.

(2) On and after April 1, 1991, the owner or operator of a facility to which paragraph (h)(5)(iii)(A) is applicable shall collect and record all of the following information each year for each printing line and maintain the information at the facility for a period of three years:

(i) The name and identification of each fountain solution and ink as applied on each printing line.

(ii) The VOM content and the volume of each fountain solution and ink as applied each year on each printing line.

(3) On and after April 1, 1991, the owner or operator of a facility exempted from the limitations of paragraph (h)(5)(ii) because of the criteria in paragraph (h)(5)(i) shall notify the Administrator of any record showing that total potential emissions of VOM from all printing lines exceed 90.7 Mg (100 tons) in any calendar year in the absence of air pollution control equipment shall be reported by sending a copy of such record to the Administrator within 30 days after the exceedence occurs.

(B) Any owner or operator of a printing line subject to the limitations of paragraph (h)(5)(ii)(A) shall comply with the following:

(1) By April 1, 1991, or upon start-up of a new printing line, or upon changing the method of compliance for an existing printing line from paragraph (h)(5)(ii)(B) to (ii)(A); the owner or operator of the subject printing line shall perform all tests and submit to the Administrator the results of all tests and calculations necessary to demonstrate that the subject printing line will be in compliance with paragraph (h)(5)(ii)(A) on and after April 1, 1991, or on an after the initial start-up date.

(2) On and after April 1, 1991, or on and after the initial start-up date, the owner or operator of a printing line subject to the limitations of paragraph (h)(5)(ii) and complying by means of paragraph (h)(5)(ii)(A) shall collect and record the following information each day for each printing line and maintain the information at the facility for a period of three years:

(i) Control device monitoring data.

(ii) A log of operating time for the control device, monitoring equipment and the associated printing line.

(iii) A maintenance log for the control device and monitoring equipment detailing all routine and nonroutine maintenance performed including dates and duration of any outages.

(3) On and after April 1, 1991, the owner or operator of a subject printing line shall notify the Administrator in the following instances:

(1) Any record showing violation of paragraph (h)(5)(ii)(A) shall be reported by sending a copy of such record to the Administrator within 30 days following the concurrence of the violation.

(ii) At least 30 calendar days before changing the method of compliance with paragraph (h)(5)(ii) from paragraph (h)(5)(ii)(A) to (ii)(B), the owner or operator shall comply with all requirements of paragraph (h)(5)(iii)(C)(1). Upon changing the method of compliance with paragraph (h)(5)(ii) from paragraph (h)(5)(ii)(A) to (ii)(B), the owner or operator shall comply with all requirements of paragraph (h)(5)(iii)(C).

(C) Any owner or operator of a printing line subject to the limitations of paragraph (h)(5)(ii) and complying by means of paragraph (h)(5)(ii)B) shall comply with the following:

(1) By April 1, 1991, or upon start-up of a new printing line, or upon changing the method of compliance for an existing printing line from paragraph (h)(5)(ii)(A) to (ii)(B); the owner or operator of the subject printing line shall perform all tests and submit to the Administrator the results of all tests and calculations necessary to demonstrate that the subject printing line will be in compliance with paragraph (h)(5)(ii)(B) on and after April 1, 1991, or on and after the initial start-up date.

(2) On and after April 1, 1991, or on and after the initial start-up date, the owner or operator of a printing line subject to the limitations of paragraph (h)(5)(ii) and complying by means of paragraph (h)(5)(ii)(B) shall collect and record the following information each day for each printing line and maintain the information at the facility for a period of three years:

(i) The VOM content of the fountain solution used each day on each printing line.

(ii) A log of operating time for the control device and the associated printing line.

(iii) A maintenance log for the control device and monitoring equipment detailing all routine and non-routine maintenance performed including dates and duration of any outages.

(3) On and after April 1, 1991, the

applicability criteria contained therein, and

(viii) Test immediately after repair any component that was found leaking.

(ii) Storage tank valves and pressure relief devices connected to an operating

exceed the following levels: for each fluid bed dryer: 4.535 kg/year [5.0 tons/

(3) *Control of air dryers, production equipment exhaust systems and filters.*

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(*3*) On and after April 1, 1991, the owner or operator of a subject printing line shall notify the Administrator in the following instances:

(*i*) Any record showing violation of paragraph (h)(5)(ii)(B) shall be reported by sending a copy of such record to the Administrator within 30 days following the occurrence of the violation.

(*ii*) At least 30 calendar days before changing the method of compliance with paragraph (h)(5)(ii) from paragraph (h)(5)(ii)(B) to (h)(5)(ii)(A), the owner or operator shall comply with all requirements of paragraph (h)(5)(iii)(B)(*1*). Upon changing the method of compliance with paragraph (h)(5)(ii) from paragraph (h)(5)(ii)(B) to (h)(5)(ii)(A), the owner or operator shall comply with all requirements of paragraph (h)(5)(iii)(B).

(iv) *Compliance schedule.* Every owner or operator of a heatset-web-offset lithographic printing line shall comply with the applicable requirements of paragraphs (h)(5) (ii) and (iii) in accordance with the applicable compliance schedule specified in paragraph (h)(5)(iv) (A), (B) or (C) and (D) below.

(A) No owner or operator of a heatset-web-offset lithographic printing line which is exempt from the limitations of paragraph (h)(5)(ii) because of the criteria in paragraph (h)(5)(i) shall operate said printing line on or after April 1, 1991, unless the owner or operator has complied with, and continues to comply with, paragraph (h)(5)(iii)(A).

(B) No owner or operator of a heatset-web-offset lithographic printing line complying by means of paragraph (h)(5)(ii)(A) shall operate said printing line on or after April 1, 1991, unless the owner or operator has complied with, and continues to comply with, paragraph (h)(5)(iii)(B).

(C) No owner or operator of a heatset-web-offset lithographic printing line complying by means of paragraph (h)(5)(ii)(B) shall operate said printing line on or after April 1, 1991, unless the owner or operator has complied with, and continues to comply with, paragraph (h)(5)(iii)(C).

(D) No owner or operator of a heatset-web-offset lithographic printing line which is subject to the requirements of section 215.408 of 35 Ill. Adm. Code 215, as a result of the applicability criteria contained therein, shall operate the printing line on or after the date of promulgation unless it complies with the requirements in paragraph (h)(5)(ii). No owner or operator of a heatset-web-offset printing line which:

(*1*) Is *not* subject to the requirements of section 215.408 as a result of the applicability criteria contained therein, and

(*2*) Is subject to paragraph (h)(5)(ii), shall operate the printing line on or after April 1, 1991, unless it complies with the requirements in paragraph (h)(5)(ii).

(i) *Leaks from synthetic organic chemical and polymer manufacturing equipment*—(1) *Inspection Program for Leaks.* The owner or operator of a synthetic organic chemical or polymer manufacturing plant subject to paragraph (i) and subpart Q (sections 215.430, 215.431, 215.433, 215.434, 215.435, and 215.437) of Ill. Adm. Code 215 shall, for the purposes of detecting leaks, conduct a component inspection program using the test methods specified in Method 21, 40 CFR part 60, appendix A (1986), consistent with the following provisions:

(i) Test annually those components operated near extreme temperature or pressure such that they would be unsafe to routinely monitor and those components which would require the elevation of monitoring personnel higher than two meters above permanent worker access structures or surfaces.

(ii) Test quarterly all other pressure relief valves in gas service, pumps in light liquid service, valves in light liquid service and in gas service, and compressors.

(iii) If less than or equal to 2 percent of the valves in light liquid service and in gas service tested pursuant to paragraph (i)(1)(ii) are found not to leak for five consecutive quarters, no leak tests shall be required for three consecutive quarters. Thereafter, leak tests shall resume for the next quarter. If that test shows less than or equal to 2 percent of the valves in light liquid service and in gas service are leaking, then no tests are required for the next three quarters. If more than 2 percent are leaking, then tests are required for the next five quarters.

(iv) Observe visually all pump seals weekly.

(v) Test immediately any pump seal from which liquids are observed dripping.

(vi) Test any relief valve within 24 hours after it has vented to the atmosphere.

(vii) Routine instrument monitoring of valves which are not externally regulated, flanges, and equipment in heavy liquid service, is not required. However, any valve which is not externally regulated, flange or piece of equipment in heavy liquid service that is found to be leaking on the basis of sight, smell or sound shall be repaired as soon as practicable but no later than 30 days after the leak is found.

(viii) Test immediately after repair any component that was found leaking.

(ix) Within one hour of its detection, a weatherproof, readily visible tag, in bright colors such as red or yellow, bearing an identification number and the date on which the leak was detected must be affixed on the leaking component and remain in place until the leaking component is repaired.

(x) The following components are exempt from the monitoring requirements in paragraph (i)(1):

(A) Any component that is in vacuum service, and

(B) Any pressure relief valve that is connected to an operating flare header or vapor recovery device.

(2) *Alternative Program for Leaks.* The Agency shall approve an alternative program of monitoring, recordkeeping, or reporting to that prescribed in paragraph (i) and subpart Q (sections 215.430, 215.431, 215.433, 215.434, 215.435, and 215.437) of Ill. Adm. Code 215, upon a demonstration by the owner or operator of such plant that the alternative program will provide plant personnel and Agency personnel with an equivalent ability to identify and repair leaking components. Any alternative program can only be allowed if approved by the Administrator as a SIP or FIP revision.

(j) *Petroleum refining and related industries: asphalt materials.*—(1) *Monitoring program for leaks.*

(i) The owner or operator of a petroleum refinery subject to subpart R (section 215.445) of Ill. Adm. Code 215 shall, for the purpose of detecting leaks, conduct a component monitoring program consistent with the following provisions:

(A) Test once between March 1 and June 1 of each year, by methods referenced in paragraph (a)(4)(vii), all pump seals, pipeline valves in liquid service and process drains.

(B) Test once each quarter of each calendar year, by methods referenced in paragraph (a)(4)(vii), all pressure relief valves in gaseous service, pipeline valves in gaseous service and compressor seals.

(C) Inaccessible valves may be tested once each calendar year instead of once each quarter of each calendar year.

(D) Observe visually all pump seals weekly.

(E) Test immediately any pump seal from which liquids are observed dripping.

(F) Test any relief valve within 24 hours after it has vented to the atmosphere, and

(G) Test immediately after repair any component that was found leaking.

(ii) Storage tank valves and pressure relief devices connected to an operating flare header or vapor recovery device are exempt from the monitoring requirements in paragraph (j)(1)(i).

(iii) The Agency may require more frequent monitoring than would otherwise be required by paragraph (j)(1)(i) for components which are demonstrated to have a history of leaking.

(2) *Alternative Program for Leaks.* The Agency may approve an alternative program of monitoring, recordkeeping or reporting to that prescribed in paragraph (j)(1) and subpart R (sections 215.446, 215.448, and 215.449) of Ill. Adm. Code 215, upon a demonstration by the owner or operator of a petroleum refinery that the alternative program will provide refinery and Agency personnel with an equivalent ability to identify and repair leaking components. Any alternative program can only be allowed if approved by the Administrator as a SIP or FIP revision.

(3) *Compliance schedule for leaks.* The owner or operator of a petroleum refinery shall adhere to the increments of progress contained in the following schedule:

(i) Submit to the Agency a monitoring program consistent with subpart R (section 215.446) of Ill. Adm. Code 215 prior to June 1, 1990.

(ii) Submit to the Agency the first monitoring report pursuant to Subpart R (Section 215.449) of Ill. Adm. Code 215 prior to July 1, 1990.

(k) [reserved]

(l) *Pharmaceutical manufacturing*—(1) *Applicability.* (i) The rules of paragraph (1), except for paragraphs (1)(4) through (1)(6), apply to all emission sources of VOM, including but not limited to reactors, distillation units, dryers, storage tanks for VOL, equipment for the transfer of VOL, filters, crystallizers, washers, laboratory hoods, coating operations, mixing operations and centrifuges used in manufacturing, including packaging, or pharmaceuticals, and emitting more than 6.8 kg/day (15 lbs/day) and more than 2,268 kg/year (2.5 tons/year) of VOM. If an emission source emits less than 2,268 kg/year (2.5 tons/year), the rules of these paragraphs still apply to the source if emissions from the emission source exceed 45.4 kg/day (100 lbs/day).

(ii) Notwithstanding paragraph (l)(1)(i), fluid-bed driers, tunnel dryers and Accelacotas located in Libertyville Township, Lake County, Illinois shall be exempt from the rules of paragraph (l), except for paragraphs (1)(4) through (1)(6), if emissions of VOM not vented to air pollution control equipment do not exceed the following levels: for each fluid bed dryer: 4,535 kg/year (5.0 tons/year); for each tunnel dryer: 4,535 kg/year (5.0 tons/year); and for each Accelacota: 6,803 kg/year (7.5 tons/year).

(iii) Paragraphs (1)(4) through (1)(6) apply to a plant having one or more emission sources that:

(A) Are used to manufacture pharmaceuticals, and

(B) Emit more than 6.8 kg/day (15 lbs/day) of VOM and more than 2,268 kg/year (2.5 tons/year) of VOM, or, if less than 2,268 kg/year (2.5 tons/year), these paragraphs still apply if emissions from one or more sources exceed 45.4 kg/day (100 lbs/day).

(iv) No person shall violate any condition in a permit when the condition results in exclusion of an emission source from paragraph (1).

(v) Any pharmaceutical manufacturing source that becomes subject to the provisions of paragraph (1) at any time shall remain subject to the provisions of paragraph (1) at all times.

(2) *Control of reactors, distillation units, crystallizers, centrifuges and vacuum dryers.* (i) The owner or operator shall equip all reactors, distillation units, crystallizers, centrifuges and vacuum dryers that are used to manufacture pharmaceuticals with surface condensers or other equivalent air pollution control equipment.

(A) If a surface condenser is used, it shall be operated such that the condenser outlet gas temperature does not exceed:

(*1*) 248.2 K (−13 °F) when condensing VOM of vapor pressure greater than 40.0 kPa (5.8 psi) at 294.3 K (70 °F), or

(*2*) 258.2 K (5 °F) when condensing VOM of vapor pressure greater than 20.0 kPa (2.9 psi) at 294.3 K (70 °F), or

(*3*) 273.2 K (32 °F) when condensing VOM of vapor pressure greater than 10.0 kPa (1.5 psi) at 294.3 K (70 °F), or

(*4*) 283.2 K (50 °F) when condensing VOM of vapor pressure greater than 7.0 kPa (1.0 psi) at 294.3 K (70 °F), or

(*5*) 298.2 K (77 °F) when condensing VOM of vapor pressure greater than 3.45 kPa (0.5 psi) at 294.3 K (70 °F).

(B) If air pollution control equipment other than a surface condenser is used, such equipment shall provide a reduction in the overall emissions of VOM of 90 percent or more.

(ii) The owner or operator shall enclose all centrifuges used to manufacture pharmaceuticals and that have an exposed VOL surface, where the VOM in the VOL has a vapor pressure of 3.45 kPa (0.5 psi) or more at 294.3 K (70 °F).

(3) *Control of air dryers, production equipment exhaust systems and filters.* (i) The owner or operator of an air dryer or production equipment exhaust system used to manufacture pharmaceuticals shall control the emissions of VOM from such emission sources by air pollution control equipment which reduces by 90 percent or more the VOM that would otherwise be emitted into the atmosphere.

(ii) The owner or operator shall enclose all rotary vacuum filters and other filters used to manufacture pharmaceuticals and that have an exposed VOL surface, where the VOM in the VOL has a vapor pressure of 3.45 kPa (0.5 psi) or more at 294 K (70 °F).

(iii) Emissions subject to paragraphs (l)(3) (i) and (ii) shall be controlled at all times.

(4) Material storage and transfer. (i) The owner or operator of a pharmaceutical manufacturing plant shall:

(A) Provide a vapor balance system that is at least 90 percent effective in reducing VOM emissions from truck or railcar deliveries to storage tanks with capacities equal to or greater than 7.57 m^3 (2,000 gal) that store VOL with vapor pressures greater than 28.0 kPa (4.1 psi) at 294.3 K (70 °F), and

(B) Install pressure/vacuum conservation vents set at 0.2 kPa (0.03 psi) on all storage tanks that store VOL with vapor pressures greater than 10 kPa (1.5 psi) at 294.3 K (70 °F).

(ii) The Agency shall approve alternative control devices to those required in paragraph (1)(4)(i) upon a demonstration by the owner or operator that the alternative control device will provide equivalent or greater emission reductions on a daily basis. Any alternative control device can only be allowed if approved by the Administrator as a SIP or FIP revision.

(iii) Control devices used to comply with paragraph (1)(4) (i) or (ii) must be operated at all times.

(5) *In-process tanks.* The owner or operator shall install covers on all in-process tanks used to manufacture pharmaceuticals and containing a VOL at any time. These covers must remain closed, except when production, sampling, maintenance or inspection procedures require operator access.

(6) *Leaks.* The owner or operator of a pharmaceutical manufacturing plant shall repair any component from which a leak of VOL can be observed. The repair shall be completed as soon as practicable but no later than 15 days after the leak is found. If the leaking component cannot be repaired until the process unit is shut down, the leaking

component must then be repaired before the unit is restarted.

(*1*) Parameters listed in paragraph (1)(9)(i)(A) shall be recorded on an

or the delivery vessel is equipped for bottom loading.

(4,000 gal/day) on a thirty-day rolling

results in exclusion of the plant or an

(i) Each pump shall be checked by

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component must then be repaired before the unit is restarted.

(7) *Other emission sources.* The owner or operator of a washer, laboratory hood, capsule coating operation, mixing operation or any other process emission source not subject to paragraphs (1)(2) through (1)(6), and used to manufacture pharmaceuticals shall control the emissions of VOM from such emission sources by:

(i) Air pollution control equipment which reduces by 81 percent or more the VOM that would otherwise be emitted to the atmosphere, or

(ii) A surface condenser which captures all the VOM which would otherwise be emitted to the atmosphere and which meets the requirements of paragraph (1)(2)(i).

(iii) Emissions subject to paragraph (1)(7) shall be controlled at all times.

(8) *Testing.* (i) Upon request by the Agency, the owner or operator of any VOM emission source subject to paragraph (1) or exempt from paragraph (1) by virtue of the provisions of paragraph (l)(1) shall, at his own expense, demonstrate compliance to the Agency by the methods or procedures listed in paragraph (1)(8)(iii) below.

(ii) A person planning to conduct a VOM emissions test to demonstrate compliance with paragraph (1) shall notify the Agency of that intent not less than 30 calendar days before the planned initiation of the test.

(iii) Test procedures to determine operation and maintenance compliance with paragraph (1) are 40 CFR 60, Appendix A, Method 25, 25A, or 25B.

(9) *Monitoring and recordkeeping for air pollution control equipment.* (i) Monitoring. (A) At a minimum, continuous monitors for the following parameters shall be installed on air pollution control equipment subject to paragraph (1):

(*1*) Destruction device combustion temperature.

(*2*) Temperature rise across a catalytic afterburner bed.

(*3*) Breakthrough of VOM on a carbon adsorption unit.

(*4*) Outlet temperature of a refrigerated condenser.

(B) Each monitor shall be equipped with a recording device.

(C) Each monitor shall be calibrated quarterly.

(D) Each monitor shall operate at all times while the associated control equipment is operating.

(ii) *Recordkeeping.* (A) The owner or operator of a pharmaceutical manufacturing facility shall maintain the following records:

(*1*) Parameters listed in paragraph (1)(9)(i)(A) shall be recorded on an hourly basis.

(*2*) For sources subject to paragraph (1)(2), the vapor pressure of VOM being controlled shall be recorded on a daily basis.

(*3*) For sources subject to paragraph (1)(5), a record shall be kept of the days and times on which covers are opened, the duration of opening, and the reason for opening.

(*4*) For each leak subject to paragraph (1)(6), records shall be made of the date and time the leak is detected, the name of the leaking equipment, the date and time the leak is repaired, and the action taken to repair the leak.

(B) Records required under paragraph (1)(9)(ii)(A) shall be maintained by the owner or operator for a minimum of two years after the date on which they are made.

(C) Copies of the records shall be made available to the Agency upon verbal or written request.

(m) [Reserved]

(n) [Reserved]

(o) [Reserved]

(p) [Reserved]

(q) *Gasoline distribution*—(1) *Bulk gasoline plants.* (i) Subject to paragraph (q)(1)(v), no person may cause or allow the transfer of gasoline from a delivery vessel into a stationary storage tank located at a bulk gasoline plant unless:

(A) The delivery vessel and the stationary storage tank are each equipped with a vapor collection system that meets the requirements of paragraph (q)(1)(iv)(D),

(B) Each vapor collection system is operating,

(C) The delivery vessel displays the appropriate sticker pursuant to the requirements of sections 215.584 (b) or (d) of 35 Ill. Adm. Code 215,

(D) The pressure relief valve(s) on the stationary storage tank and the delivery vessel are set to release at no less than 0.7 psi or the highest pressure allowed by state or local fire codes or the guidelines of the National Fire Prevention Association, and

(E) The stationary storage tank is equipped with a submerged loading pipe.

(ii) Subject to paragraph (q)(1)(vi), no person may cause or allow the transfer of gasoline from a stationary storage tank located at a bulk gasoline plant into a delivery vessel unless:

(A) The requirements set forth in paragraphs (q)(1)(i)(A) through (1)(i)(D) are met, and

(B) Equipment is available at the bulk gasoline plant to provide for the submerged filling of the delivery vessel or the delivery vessel is equipped for bottom loading.

(iii) Subject to paragraph (q)(1)(v), each owner of a stationary storage tank located at a bulk gasoline plant shall:

(A) Equip each stationary storage tank with a vapor control system that meets the requirements of paragraph (q)(1)(i) or (1)(ii), whichever is applicable,

(B) Provide instructions to the operator of the bulk gasoline plant describing necessary maintenance operations and procedures for prompt notification of the owner in case of any malfunction of a vapor control system, and

(C) Repair, replace or modify any worn out or malfunctioning component or element of design.

(iv) Subject to paragraph (q)(1)(v), each operator of a bulk gasoline plant shall:

(A) Maintain and operate each vapor control system in accordance with the owner's instructions,

(B) Promptly notify the owner of any scheduled maintenance or malfunction requiring replacement or repair of a major component of a vapor control system, and

(C) Maintain gauges, meters or other specified testing devices in proper working order,

(D) Operate the bulk plant vapor collection system and gasoline loading equipment in a manner that prevents:

(*1*) Gauge pressure from exceeding 45.7 cm (18 in.) of water and vacuum from exceeding 15.2 cm (6 in.) of water, as measured as close as possible to the vapor hose connection, and

(*2*) A reading equal to or greater than 100 percent of the lower explosive limit (LEL measured as propane) when tested in accordance with the procedure described in EPA 450/2–78–051, Appendix B, and

(*3*) Avoidable leaks of liquid during loading or unloading operations.

(E) Provides a pressure tap or equivalent on the bulk plant vapor collection system in order to allow the determination of compliance with paragraph (q)(1)(iv)(D)(*1*), and

(F) Within 15 business days after discovery of the leak by the owner, operator, or the Agency, repair and retest a vapor collection system which exceeds the limits of paragraph (q)(1)(iv)(D) (*1*) or (*2*).

(v) The requirements of paragraphs (q)(1)(i), (1)(iii) and (1)(iv) shall not apply to:

(A) Any stationary storage tank with a capacity of less than 2,177 l (575 gal), or

(B) Any bulk gasoline plant whose daily throughput is less than 15,140 l (4,000 gal/day) on a thirty-day rolling average.

(vi) The requirements of paragraph (q)(1)(ii) shall only apply to bulk gasoline plants:

(A) Whose daily throughput is greater than or equal to 15,140 l (4,000 gal/day) on a thirty-day rolling average, and

(B) That either distribute gasoline to gasoline dispensing facilities subject to the requirements of section 215.583(a)(2) of 35 Ill. Adm. Code 215 or that are located in Cook, DuPage, Kane, Lake, McHenry or Will County.

(vii) Any bulk gasoline plant which is ever subject to paragraphs (q)(1) (i), (ii), (iii) or (iv) shall always be subject to these paragraphs.

(r) [Reserved]

(s) *Paint and Ink Manufacturing—Applicability.* (i) Paragraph (s) shall apply to all paint and ink manufacturing plants which:

(A) Include process emission sources not subject to paragraph (d), (e) (excluding paragraph (e)(1)(i)(L)), (h) (excluding paragraph (h)(5)), or (q)(1), or Subpart (B), (Q), (R), (S), (V), (X), (Y) (Sections 215.582, 215.583, and 215.584), or (Z) of 35 Ill. Adm., Code 215; and which as a group both:

(*1*) Have the potential to emit 91 Mg (100 tons) or more per calendar year VOM if no air pollution control equipment were used, and

(*2*) Are not limited to less than 91 Mg (100 tons) of VOM emissions per calendar year in the absence of air pollution control equipment, through production or capacity limitations contained in a federally enforceable construction permit or a SIP or FIP revision, or

(B) Produce more than 7,570,820 l (2,000,000 gal) per calendar year of paint or ink formulations, which contain less than 10 percent (by weight) water, and ink formulations not containing as the primary solvents water, Magie oil or glycol.

(ii) For the purposes of paragraph (s), uncontrolled VOM emissions are the emissions of VOM which would result if no air pollution control equipment were used.

(2) *Exemption for waterbase material and heatset-offset ink.* The requirements of paragraphs (s)(4) and (s)(5) and paragraph (s)(7)(i) shall not apply to equipment while it is being used to produce either:

(i) Paint or ink formulations which contain 10 percent or more (by weight) water, or

(ii) Inks containing Magie oil and glycol as the primary solvent.

(3) *Permit conditions.* No person shall violate any condition in a federally enforceable permit when the condition results in exclusion of the plant or an emission source from paragraph (s).

(4) *Open-top mills, tanks, vats or vessels.* No person shall operate an open-top mill, tank, vat or vessel with a volume of more than 45 l (12 gal) for the production of paint for ink unless:

(i) The mill, tank, vat or vessel is equipped with a cover which completely covers the mill, tank, vat or vessel opening except for an opening no larger than necessary to allow for safe clearance for a mixer shaft. Such cover shall extend at least 1.27 cm (0.5 in.) beyond the outer rim of the opening or be attached to the rim.

(ii) The cover remains closed except when production, sampling, maintenance or inspection procedures require access.

(iii) The cover is maintained in good condition such that, when in place, it maintains contact with the rim of the opening for at least 90 percent of the circumference of the rim.

(5) *Grinding mills.*

(i) No person shall operate a grinding mill for the production of paint or ink which is not maintained in accordance with the manufacturer's specifications.

(ii) No person shall operate a grinding mill fabricated or modified after the effective date of paragraph (s) which is not equipped with fully enclosed screens.

(iii) The manufacturer's specifications shall be kept on file at the plant by the owner or operator of the grinding mill and be made available to any person upon verbal or written request during business hours.

(6) *Storage tanks.*

(i) The owner or operator shall equip tanks storing VOL with a vapor pressure greater than 10 kPa (1.5 psi) at 20 °C (68 °F) with pressure/vacuum conservation vents set as a minimum at +/−0.2 kPa (0.029 psi). These controls shall be operated at all times. An alternative air pollution control system may be used if it results in a greater emission reduction than these controls. Any alternative control system can only be allowed if approved by the Administrator as a SIP or FIP revision.

(ii) Stationary VOL storage containers with a capacity greater than 946 l (250 gal) shall be equipped with a submerged-fill pipe or bottom fill. These controls shall be operated at all times. An alternative control system can only be allowed if approved by the Administrator as a SIP or FIP revision.

(7) *Leaks.* The owner or operator of a paint or ink manufacturing plant shall, for the purpose of detecting leaks, conduct an equipment monitoring program as set forth below:

(i) Each pump shall be checked by visual inspection each calendar week for indications of leaks, that is, liquids dripping from the pump seal. If there are indications of liquids dripping from the pump seal, the pump shall be repaired as soon as practicable, but no later than 15 calendar days after the leak is detected.

(ii) Any pump, valve, pressure relief valve, sampling connection, open-ended valve and flange or connector containing a fluid which is at least 10 percent VOM by weight which appears to be leaking on the basis of sight, smell or sound shall be repaired as soon as practicable, but no later than 15 calendar days after the leak is detected.

(iii) A weather proof, readily visible tag, in bright colors such as red or yellow, bearing an identification number and the date on which the leak was detected shall be attached to leaking equipment. The tag may be removed upon repair, that is, when the equipment is adjusted or otherwise altered to allow operation without leaking.

(iv) When a leak is detected, the owner or operator shall record the date of detection and repair and the record shall be retained at the plant for at least two years from the date of each detection or each repair attempt. The record shall be made available to any person upon verbal or written request during business hours.

(8) *Clean Up.* (i) No person shall clean paint or ink manufacturing equipment with organic solvent unless the equipment being cleaned is completely covered or enclosed except for an opening no larger than necessary to allow safe clearance for proper operation of the cleaning equipment, considering the method and materials being used.

(ii) No person shall store organic wash solvent in other than closed containers, unless closed containers are demonstrated to be a safety hazard, or dispose of organic wash solvent in a manner such that more than 20 percent by weight is allowed to evaporate into the atmosphere.

(9) *Compliance schedule.* Every owner or operator of an emission source subject to the control requirements of paragraph (s) which is not subject to the requirements of Subpart AA, of 35 Ill. Adm. Code 215 because of the provisions specified in subpart AA (section 215.620) of 35 Ill. Adm. Code 215, shall comply with the requirements of paragraph (s) on and after April 1, 1991.

(10) *Recording keeping and reporting.* (i) Upon request by the administrator, the owner or operator of an emission

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sourch which claims to be exempt from the requirements of paragraph (s) shall submit records to the Administrator within 30 calendar days from the date of the request which document that the emission source is in fact exempt from paragraph (s). These records shall include (but is not limited to) the percent water (by weight) in the paint or ink being produced and the quantity of Magie oil, glycol and other solvents in the ink being produced.

(ii) Every owner or operator of an emission source which is subject to the requirements of paragraph (s) shall maintain all records necessary to demonstrate compliance with those requirements at the facility for three years.

(t) [Reserved]

(u) *Miscellaneous fabricated product manufacturing processes.* (1) *Applicability.* (i) The requirements of paragraph (u) shall apply to a plant's miscellaneous fabricated product manufacturing process emission sources which are not regulated by paragraph (d), (e), (h), or (q)(1), or Subpart (B), (Q), (R), (S), (U), (V), (X), (Y) (Sections 215.582, 215.583, and 215.584), or (Z) of 35 Ill. Adm. Code 215; if the plant is subject to paragraph (u). A plant is subject to paragraph (u) if it contains process emission sources, not regulated by paragraph (d), (e) (excluding paragraph (e)(1)(i)(L), (h) (excluding paragraph (h)(5)), (q)(1), or Subpart (B), (Q), (R), (S), (V), (X), (Y) (sections 215.582, 215.583, 215.584), or (Z) of 35 Ill. Adm. Code 215; which as a group both:

(A) Have the potential to emit 91 Mg (100 tons) or more per calendar year of VOM if no air pollution control equipment were used, and

(B) Are not limited to less than 91 Mg (100 tons) of VOM emissions per calendar year in the absence of air pollution control equipment, through production or capacity limitations contained in a federally enforceable construction permit or a SIP or FIP revision.

(ii) If a plant ceases to fulfill the criteria of paragraph (u)(1)(i), the requirements of paragraph (u) shall continue to apply to a miscellaneous fabricated products manufacturing process emission source which was ever subject to the conrol requirements of paragraph (u)(3).

(iii) No limits under paragraph (u) shall apply to emission sources with emissions of VOM to the atmosphere less than or equal to 0.91 Mg (1.0 ton) per calendar year if the total emissions from such sources not complying with paragraph (u)(3) does not exceed 4.5 Mg (5.0 tons) per calendar year.

(iv) For the purposes of paragraph (u), an emission source shall be considered regulated by a subpart or paragraph if it is subject to the limits of that Subpart or paragraph. An emission source is not considered regulated by a Subpart or paragraph if its emissions are below the applicability cutoff level or if the source is covered by an exemption.

(v) For the purposes of paragraph (u), uncontrolled VOM emissions are the emissions of VOM which would result if no air pollution control equipment were used.

(2) *Permit conditions.* No person shall violate any condition in a permit when the condition results in exclusion of the plant or an emission source from paragraph (u).

(3) *Control requirements.* Every owner or operator of an emission source subject to paragraph (u) shall comply with the requirements of paragraph (u)(3) (i), (ii) or (iii) below:

(i) Emission capture and control techniques which achieve an overall reduction in uncontrolled VOM emissions of at least 81 percent, or

(ii) For coating lines, the daily-weighted average VOM content shall not exceed 0.42 kg VOM/1 (3.5 lbs VOM/gal) of coating as applied (minus water and any compounds which are specifically exempted from the definition of VOM) during any day. Owners and operators complying with this paragraph are not required to comply with section 215.301 of 35 Ill. Adm. Code 215, or

(iii) An alternative control plan which has been approved by the USEPA as a SIP or FIP revision.

(4) *Compliance schedule.* Every owner or operator of an emission source subject to the control requirements of paragraph (u) which is not subject to the requirements of subpart PP of 35 Ill. Adm. Code 215 because of the provisions specified in Subpart PP (section 215.920) of 35 Ill. Adm. Code 215, shall comply with the requirements of paragraph (u) on and after April 1, 1991.

(5) *Testing.* Any owner or operator of a VOM emission source which is subject to paragraph (u) shall demonstrate compliance with paragraph (u)(3) by using the applicable test methods and procedures specified in paragraph (a)(4).

(v) *Miscellaneous formulation manufacturing processes*—(1) *Applicability.* (i) The requirements of paragraph (v) shall apply to a plant's miscellaneous formulation manufacturing process emission sources, which are not regulated by paragraph (d), (e), (h), or (g)(1), or subpart (B), (Q), (R), (S), (U), (V), (X), (Y) (sections 215.582, 215.583, and 215.584), or (Z) of 35 Ill. Adm. Code 215; if the plant is subject to paragraph (v). A plant is subject to paragraph (v) if it contains process emission sources, not regulated by paragraph (d), (e) (excluding paragraph (e)(1)(i)(L), (h) (excluding paragraph (h)(5)), or (q)(1), or subpart (B), (Q), (R), (S), (V), (X), (Y) (sections 215.582, 215.583, and 215.584), or (Z) of 35 Ill. Adm. Code 215; which as a group both:

(A) Have the potential to emit 91 Mg (100 tons) or more per calendar year of VOM if no air pollution control equipment were used, and

(B) Are not limited to less than 91 Mg (100 tons) of VOM emissions per calendar year in the absence of air pollution control equipment, through production or capacity limitations contained in a federally enforceable construction permit or a SIP or FIP revision.

(ii) If a plant ceases to fulfill the criteria of paragraph (v)(1)(i), the requirements of paragraph (v) shall continue to apply to a miscellaneous formulation manufacturing process emission source which was ever subject to the control requirements of paragraph (v)(3).

(iii) No limits under paragraph (v) shall apply to emission sources with emissions of VOM to the atmosphere less than or equal to 2.3 Mg (2.5 tons) per calendar year if the total emissions from such sources not complying with paragraph (v)(3) does not exceed 4.5 Mg (5.0 tons) per calendar year.

(iv) For the purposes of paragraph (v), an emission source shall be considered regulated by a subpart or paragraph if it is subject to the limits of that Subpart or paragraph. An emission source is not considered regulated by a Subpart or paragraph if its emissions are below the applicability cutoff level or if the source is covered by an exemption.

(v) For the purposes of paragraph (v), uncontrolled VOM emissions are the emissions of VOM which would result if no air pollution control equipment were used.

(2) *Permit conditions.* No person shall violate any condition in a permit when the condition results in exclusion of the plant or an emissions source from paragraph (v).

(3) *Control requirements.* Every owner or operator of an emissions source subject to paragraph (v) shall comply with the requirements of paragraph (v)(3) (i) or (ii) below.

(i) Emission capture and control techniques which achieve an overall reduction in uncontrolled VOM emissions of at least 81 percent, or

(ii) An alternative control plan which has been approved by the USEPA as a SIP or FIP revision.

(4) *Compliance schedule.* Every owner or operator of an emission source subject to the control requirements of paragraph (v) which is not subject to the requirements of subpart QQ of 35 Ill. Adm. Code 215 because of the provisions specified in subpart QQ (section 215.940) of 35 Ill. Adm. Code 215, shall comply with the requirements of paragraph (v) on and after April 1, 1991.

(5) *Testing.* Any owner or operator of a VOM emission source which is subject to paragraph (v) shall demonstrate compliance with paragraph (v)(3) by using the applicable test methods and procedures specified in paragraph (a)(4).

(w) *Miscellaneous organic chemical manufacturing processes*—(1) *Applicability.* (i) The requirements of paragraph (w) shall apply to a plant's miscellaneous organic chemical manufacturing process emission sources which are not regulated by paragraph (d), (e), (h), or (g)(1), or subpart (B), (Q), (R), (S), (U), (V), (X), (Y) (sections 215.582, 215.583, and 215.584), or (Z) of 35 Ill. Adm. Code 215; if the plant is subject to paragraph (w). A plant is subject to paragraph (w) if it contains process emission sources, not regulated by paragraph (d), (e) (excluding paragraph (e)(1)(i)(L)), (h) (excluding paragraph (h)(5)), or (g)(1), or subpart (B), (Q), (R), (S), (V), (X), (Y) (sections 215.582, 215.583, and 215.584), or (Z) of 35 Ill. Adm. Code 215; which as a group both:

(A) Have the potential to emit 91 Mg (100 tons) or more per calendar year of VOM if no air pollution control equipment were used, and

(B) Are not limited to less than 91 Mg (100 tons) of VOM emissions per calendar year in the absence of air pollution control equipment, through production or capacity limitations contained in a federally enforceable construction permit or a SIP or FIP revision.

(ii) If a plant ceases to fulfill the criteria of paragraph (w)(1)(i), the requirements of paragraph (w) shall continue to apply to a miscellaneous organic chemical manufacturing process emission source which was ever subject to the control requirements of paragraph (w)(3).

(iii) No limits under paragraph (w) shall apply to emission sources with emissions of VOM to the atmosphere less than or equal to 0.91 Mg (1.0 ton) per calendar year is the total emissions from such sources not complying with paragraph (w)(3) does not exceed 4.5 Mg (5.0 tons) per calendar year.

(iv) For the purposes of paragraph (w), an emission source shall be considered regulated by a subpart or paragraph if it is subject to the limits of that Subpart or paragraph. An emission source is not considered regulated by a Subpart or paragraph if its emissions are below the applicability cutoff level or if the source is covered by an exemption.

(v) For the purposes of paragraph (w), uncontrolled VOM emissions are the emissions of VOM which would result if no air pollution control equipment were used.

(2) *Permit conditions.* No person shall violate any condition in a permit when the condition results in exclusion of the plant or an emission source from paragraph (w).

(3) *Control requirements.* Every owner or operator of an emission source subject to paragraph (w) shall comply with the requirements of paragraph (w)(3) (i) or (ii) below.

(i) Emission capture and control techniques which achieve an overall reduction in uncontrolled VOM emissions of at least 81 percent, or

(ii) An alternative control plan which has approved by the USEPA as a SIP or FIP revision.

(4) *Compliance schedule.* Every owner or operator of an emission source subject to the control requirements of paragraph (w) which is not subject to the requirements of subpart RR of 35 Ill. Adm. Code 215 because of the provisions specified in Subpart RR (section 215.980) of 35 Ill. Adm. Code 215, shall comply with the requirements of paragraph (w) on and after April 1, 1991.

(5) Testing. Any owner or operator of a VOM emission source which is subject to paragraph (w) shall demonstrate compliance with paragraph (w)(3) by using the applicable test methods and procedures specified in paragraph (a)(4).

(X) *Other emission sources*—(1) *Applicability.* (i) The requirements of paragraph (x) shall apply to a plant's VOM emission sources, which are not regulated by paragraph (d), (e), (h), (q)(1), (s), (u), (v), or (w), or subpart (B), (Q), (R), (S), (U), (V), (X), (Y) (sections 215.582, 215.583, and 215.584, or (Z) of 35 Ill. Adm. Code 215; if the plant is subject to paragraph (x). A plant is subject to paragraph (x) if it contains process emission sources, not regulated by paragraph (d), (e) (excluding paragraph (e)(1)(i)(L)), (h) (excluding paragraph (h)(5)), or (q)(1), or Subpart (B), (Q), (R), (S), (V), (X), (Y) (sections 215.582, 215.583, and 215.584), or (Z) or 35 Ill. Adm. 215; which as a group both:

(*1*) Have the potential to emit 91 Mg (100 tons) or more per calendar year of VOM if no air pollution control equipment were used and

(*2*) Are not limited to less than 91 Mg (100 tons) of VOM emissions per calendar year in the absence of air pollution control equipment, through production or capacity limitations contained in a federally enforceable construction permit or a SIP or FIP revision.

(ii) If a plant ceases to fulfill the criteria of paragraph (x)(1)(i), the requirements of paragraph (x) shall continue to apply to an emission source which was ever subject to the control requirements of paragraph (x)(3).

(iii) No limits under paragraph (x) shall apply to emission sources with emissions of VOM to the atmosphere less than or equal to 2.3 Mg (2.5 tons) per calendar year if the total emissions from such sources not complying with paragraph (x)(3) does not exceed 4.5 Mg (5.0 tons) per calendar year.

(iv) For the purposes of paragraph (x), an emission source shall be considered regulated by a subpart or paragraph if it is subject to the limits of that subpart or paragraph. An emission source is not considered regulated by a Subpart or paragraph of its emissions are below the applicability cutoff level or if the source is covered by an exemption.

(v) The control requirements in paragraph (x) shall not apply to coke ovens (including by-product recovery plants), fuel combustion sources, bakeries, barge loading facilities, jet engine test cells, non-synthetic pharmaceutical manufacturing, production of polystyrene foam insulation board (including storage and extrusion of scrap where blowing agent is added to the polystyrene resin at the plant), production of polystyrene foam packaging (*not* including storage and extrusion of scrap where blowing agent is added to the polystyrene resin at the plant), and iron and steel production.

(2) *Permit conditions.* No person shall violate any condition in a permit when the condition results in exclusion of the plant or an emission source from paragraph (x).

(3) *Control requirements.* Every owner or operator of an emission source subject to paragraph (x) shall comply with the requirements of paragraph (x)(3) (i), (ii) or (iii) below.

(i) Emission capture and control equipment which achieve an overall reduction in uncontrolled VOM emissions of at least 81 percent, or

(ii) For coating lines, the daily-weighted average VOM content shall not exceed 0.42 kg VOM/1 (3.5 lbs VOM/gal) of coating (minus water and any compounds which are specifically

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exempted from the definition of VOM) as applied during any day. Owners and operators complying with this paragraph are not required to comply with section 215.301 of 35 Ill. Adm. Code 215, or

(iii) An alternative control plan which has been approved by the USEPA as a SIP or FIP revision.

(4) *Compliance schedule.* Every owner or operator of an emissions source which is subject to paragraph (x) shall comply with the requirements of paragraph (x) on and after April 1, 1991.

(5) *Testing.* Any owner or operator of a VOM emission source which is subject to paragraph (x) shall demonstrate compliance with paragraph (x)(3) by using the applicable test methods and procedures specified in paragraph (a)(4).

(y) *Recordkeeping and reporting for non-CTG sources*—(1) *Exempt emission sources.* Upon request by the Administrator, the owner or operator of an emission source which is exempt from the requirements of paragraphs (u), (v), (w), (x) or (e)(3)(ii) shall submit records to the Administrator within 30 calendar days from the date of the request that document that the emission source is exempt from those requirements.

(2) *Subject emission sources.* (i) Any owner or operator of a VOM emission source which is subject to the requirements of paragraph (u), (v), (w) or (x) and complying by the use of emission capture and control equipment shall comply with the following:

(A) By April 1, 1991, or upon start-up of a new emission source, the owner or operator of the subject VOM emission source shall perform all tests and submit to the Administrator the results of all tests and calculations necessary to demonstrate that the subject emission source will be in compliance on and after April 1, 1991, or on and after the initial start-up date.

(B) On and after April 1, 1991, or on and after the initial start-up date, the owner or operator of a subject VOM emission source shall collect and record all of the following information each day and maintain the information at the facility for a period of three years:

(*1*) Control device monitoring data.

(*2*) A log of operating time for the capture system, control device, monitoring equipment and the associated emission source.

(*3*) A maintenance log for the capture system, control device and monitoring equipment detailing all routine and non-routine maintenance performed including dates and duration of any outages.

(C) On and after April 1, 1991, the owner or operator of a subject VOM emission source shall notify the Administrator in the following instances:

(*1*) Any record showing a violation of the requirements of paragraphs (u), (v), (w), or (x) shall be reported by sending a copy of such record to the Administrator within 30 days following the occurrence of the violation.

(*2*) At least 30 calendar days before changing the method of compliance with paragraph (u) or (x) from the use of capture systems and control devices to the use of complying coatings, the owner or operator shall comply with all requirements of paragraph (y)(2)(i)(A). Upon changing the method of compliance with paragraph (u) or (x) from the use of capture systems and control devices to the use of complying coatings, the owner or operator shall comply with all requirements of paragraph (y)(2)(ii).

(ii) Any owner or operator of a coating line which is subject to the requirements of paragraphs (u) or (x) and complying by means of the daily-weighted average VOM content limitation shall comply with the following:

(A) By April 1, 1991, or upon start-up of a coating line subject to paragraphs (u) or (x); the owner of operator of the subject coating line shall certify to the Administrator that the coating line will be in compliance on and after April 1, 1991, or on and after the initial start-up date. Such certification shall include:

(*1*) The name and identification number of each coating line which will comply by means of the daily-weighted average VOM content limitation.

(*2*) The name and identification number of each coating as applied on each coating line.

(*3*) The weight of VOM per volume and the volume of each coating (minus water and any compounds which are specifically exempted from the definition of VOM) as applied each day on each coating line.

(*4*) The instrument or method by which the owner or operator will accurately measure or calculate the volume of each coating as applied each day on each coating line.

(*5*) The method by which the owner or operator will create and maintain records each day as required in paragraph (y)(2)(ii)(B).

(*6*) An examply of the format in which the records required in paragraph (y)(2)(ii)(B) will be kept.

(B) On and after April 1, 1991, or on and after the initial start-up date, the owner or operator of a subject coating line shall collect and record all of the following information each day for each coating line and maintain the information at the facility for a period of three years:

(*1*) The name and identification number of each coating as applied on each coating line.

(*2*) The weight of VOM per volume and the volume of each coating (minus water and any compounds which are specifically exempted from the definition of VOM) As applied each day on each coating line.

(*3*) The daily-weighted average VOM content of all coatings as applied on each coating line as defined in paragraph (a)(3).

(C) On and after April 1, 1991, the owner or operator of a subject coating line shall notify the Administrator in the following instances:

(*1*) Any record showing violation of the requirements of paragraph (u) or (x) shall be reported by sending a copy of such record to the Administrator within 30 days following the occurrence of the violation.

(*2*) At least 30 calendar days before changing the method of compliance with paragraphs (u) or (x) from the use of complying coatings to the use capture systems and control devices, the owner or operator shall comply with all requirements of paragraph (y)(2)(i)(A). Upon changing the method of compliance with paragraphs (u) or (x) from the use of complying coatings to the use capture systems and control devices, the owner or operator shall comply with all requirements of paragraph (y)(2)(i).

(iii) Any owner or operator of a VOM emission source which is subject to the requirements of paragraphs (u), (v), (w) or (x) and complying by means of an alternative control plan which has been approved by the USEPA as a SIP or FIP revision shall comply with the recordkeeping and reporting requirements specified in the alternative control plan.

(z) [Reserved]

(aa) List of chemicals defining synthetic organic chemical and polymer manufacturing.

OCPDB No.[1]	Chemical
20	Acetal
30	Acetaldehyde
40	Acetaldol
50	Acetamide
65	Acetanilide
70	Acetic Acid
80	Acetic anhydride
90	Acetone
100	Acetone cyanohydrin
110	Acetonitrile
120	Acetophenone
125	Acetyl chloride
130	Acetylene
140	Acrolein
150	Acrylamide
160	Acrylic acid & esters

OCPDB No.[1]	Chemical
170	Acrylonitrile
180	Adipic acid
185	Adiponitrile
190	Alkyl naphthalenes
200	Allyl alcohol
210	Allyl chloride
220	Aminobenzoic acid
230	Aminoethylethanolamine
235	p-aminophenol
240	Amyl acetates
250	Amyl alcohols
260	Amyl amine
270	Amyl chloride
280	Amyl mercaptans
290	Amyl phenol
300	Aniline
310	Aniline hydrochloride
320	Anisidine
330	Anisole
340	Anthranilic acid
350	Anthraquinone
360	Benzaldehyde
370	Benzamide
380	Benzene
390	Benzenedisulfonic acid
400	Benzene-sulfonic acid
410	Benzil
420	Benzilic acid
430	Benzoic acid
440	Benzoin
450	Benzonitrile
460	Benzophenone
480	Benzotrichloride
490	Benzoyl chloride
500	Benzyl chalcohol
510	Benzyl amine
520	Benzyl benzoate
530	Benzyl chloride
540	Benzyl dichloride
550	Biphenyl
560	Bisphenol A
570	Bromobenzene
580	Bromonaphthalene
590	Butadiene
592	1-butene
600	n-butyl acetate
630	n-butyl acrylate
640	n-butyl alcohol
650	s-butyl alcohol
660	t-butyl alcohol
670	n-butylamine
680	s-butylamine
690	t-butylamine
700	p-pert-butyl benzoic acid
750	n-butyraldehyde
760	Butyric acid
770	Butyric anhydride
780	Butyronitrile
785	Caprolactam
790	Carbon disulfide
800	Carbon tetrabromide
810	Carbon tetrachloride
820	Cellulose acetate
840	Chloroacetic acid
850	m-chloroaniline
860	o-chloroaniline
870	p-chloroaniline
880	Chlorobenzaldehyde
890	Chlorobenzene
900	Chlorobenzoic acid
905	Chlorobenzotrichloride
910	Chlorobenzoyl chloride
920	Chlorodifluoroethane
921	Chlorodifluoromethane
930	Chloroform
940	Chloronaphthalene
950	o-chloronitrobenzene
951	p-chloronitrobenzene
960	Chlorophenols
964	Chloroprene
965	Chlorosulfonic acid
970	m-chlorotoluene
980	o-chlorotoluene
990	p-chlorotoluene
992	Chlorotrifluoromethane
1000	m-cresol
1010	o-cresol
1020	p-cresol
1021	Mixed cresols
1030	Cresylic acid
1040	Crontonaldehyde
1050	Crontonic acid
1060	Cumene
1070	Cumene hydroperoxide
1080	Cyanoacetic acid
1090	Cyanogen chloride
1100	Cyanuric acid
1110	Cyanuric chloride
1120	Cyclohexane
1130	Cyclohexanol
1140	Cyclohexanone
1150	Cyclohexene
1160	Cyclohexylamine
1170	Cyclooctadiene
1180	Decanol
1190	Diacetone alcohol
1200	Diaminobenzoic acid
1210	Dichloroaniline
1215	m-dichlorobenzene
1216	o-dichlorobenzene
1220	p-dichlorobenzene
1221	Dichlorodifluoromethane
1240	Dichloroethyl ether 1,2-dichloroethane
1250	Dichlorohydrin
1270	Dichloropropene
1280	Dicyclohexylamine
1290	Diethylamine
1300	Diethylene glycol
1304	Diethylene glycol diethyl ether
1305	Diethylene glycol dimethyl ether
1310	Diethylene glycolmonobutyl ether
1320	Diethylene glycolmonobutyl ether acetate
1330	Diethylene glycolmonoethyl ether
1340	Diethylene glycolmonoethyl ether acetate
1360	Diethylene glycolmonomethyl ether
1420	Diethyl sulfate
1430	Difluorethane
1440	Diisobutylene
1442	Diisodecyl phthalate
1444	Diisooctyl phthalate
1450	Diketene
1460	Dimethyhlamine
1470	N,N-dimethylaniline
1480	N,N-dimethylether
1490	N,N-dimethylformamide
1495	Dimethylhydrazine
1500	Dimethyl sulfate
1510	Dimethyl sulfide
1520	Dimethylsulfoxide
1530	Dimethylterephthalate
1540	3,5-dinitrobenzoic acid
1545	Dinitrophenol
1560	Dioxane
1570	Dioxolane
1580	Diphenylamine
1590	Diphenyl oxide
1600	Diphenyl thiourea
1610	Dipropylene glycol
1620	Dodecene
1630	Dodecylanilina
1640	Dodecylphenol
1650	Epichlorohydrin
1660	Ethanol
1661	Ethanolamines
1670	Ethyl acetate
1680	Ethyl acetoacetate
1690	Ethyl acrylate
1700	Ethylamine
1710	Ethylbenzene
1720	Ethyl bromide
1730	Ethylcellulose
1740	Ethyl chloride
1750	Ethyl chloroacetate
1760	Ethylcyanoacetate
1770	Ethylene
1780	Ethylene carbonate
1790	Ethylene chlorodhydrin
1800	Ethylenediamine
1810	Ethylene dibromide
1830	Ethylene glycol
1840	Ethylene glycol diacetate
1870	Ethylene glycol dimethyl ether
1890	Ethylene glycol monobutyl ether
1900	Ethylene glycol monobutyl ether acetate
1910	Ethylene glycol monoethyl ether
1920	Ethylene glycol monoethyl ether acetate
1930	Ethylene glycol monoethyl ether
1940	Ethylene glycol monomethyl ether acetate
1960	Ethylene glycol monophenyl ether
1970	Ethylene glycol monopropyl ether
1980	Ethylene oxide
1990	Ethyl ether
2000	2-ethylhexanol
2010	Ethyl orthoformate
2020	Ethyl oxalate
2030	Ethyl sodium oxalacetate
2040	Formaldehyde
2050	Formamide
2060	Formic acid
2070	Fumaric acid
2073	Furfural
2090	Glycerol (Synthetic)
2091	Glycerol dichlorohydrin
2100	Glycerol triether
2110	Glycine
2120	Glyoxal
2145	Hexachlorobenzene
2150	Hexachloroethane
2160	Hexadecyl alcohol
2165	Hexamethylenediamine
2170	Hexamethylene glycol
2180	Hexamethylentetramine
2190	Hydrogen cyanide
2200	Hydroquinone
2210	p-hydroxy-benzoic acid
2240	Isoamylene
2250	Isobutanol
2260	Isobutyl acetate
2261	Isobutylene
2270	Isobutyraldehyde
2280	Isobutyric acid
2300	Isodecanol
2320	Isooctyl alcohol
2321	Isopentane
2330	Isophorone
2340	Isophthalic acid
2350	Isoprene
2360	Isopropanol
2370	Isopropyl acetate
2380	Isopropylamine
2390	Isopropyl chloride
2400	Isopropylphenol
2410	Ketene
2414	Linear alkylsulfonate
2417	Linear alkylbenzene
2420	Maleic acid
2430	Maleic anhyride
2440	Malic acid
2450	Mesityl oxide
2455	Metanilic acid
2460	Methacrylic acid
2490	Methallyl chloride
2500	Methanol
2510	Methyl acetate
2520	Methyl acetoacetate
2530	Methylamirle
2540	n-methylaniline
2545	Methyl bromide
2550	Methyl butynol
2560	Methyl chloride
2570	Methyl cyclohexane
2590	Methyl cyclohexanone

OCPDB No.[1]	Chemical
2600	Methyl dichloride
2610	Methyl ethyl ketone
2630	Methyl formate
2640	Methyl isobutyl carbinol
2650	Methyl isobutyl ketone
2660	Methyl isopropenyl ketone
2670	Methyl mercaptan
2680	Methyl methacrylate
2690	Methyl pentynol
2700	Methyl propyl ketone
2710	Methyl styrene
2720	Methyl tert-butyl ether
2730	Methylene chloride
2740	Morpholine
2750	Naphthalene
2760	Naphthenic acid
2770	Naphthol
2780	Naphthylamine
2790	Nitrilotriacetic acid
2800	Nitrobenzene
2810	Nitroethane
2820	Nitrogen tetroxide
2830	Nitromethane
2840	Nitrophenol
2850	Nitropropane
2860	Nitrotoluene
2870	Nitrotoluenesulfonic acid
2880	Nitrourea
2890	Nonene
2900	Nonylphenol
2910	Octadecyl alcohol
2920	Octene
2930	Octyl alcohol
2940	Pentaerythritol
2950	Pentane
2960	Perchloroethylene
2970	Phenetidine
2980	Phenol
2990	Phenolsulfonic acid
3000	Phenylenediamine
3010	Phenylhydrazine
3020	Phosgene
3030	Phosphoric acid
3040	Phosphorus
3050	Phosphorus oxychloride
3060	Phosphorus pentasulfide
3070	Phosphorus trichloride
3080	Phthalic anhydride
3090	Picoline
3100	Polybutylene
3110	Polyethylene
3120	Polyethylene glycol
3130	Polyethylene glycol dimethyl ether
3140	Polyethylene glycol monomethyl ether
3150	Polyethylene polyamines
3160	Polyisobutylene
3170	Polypropylene
3180	Polypropylene glycol
3190	Propargyl alcohol
3200	Propionic acid
3210	Propionitrile
3220	Propyl acetate
3230	Propylene
3240	Propylene glycol
3250	Propylene glycol monomethyl ether
3260	Propylene oxide
3270	Pyridine
3280	Quinoline
3290	Resorcinol
3300	Sebacic acid
3310	Styrene
3320	Styrene butadiene latex
3330	Styrene butadiene rubber
3340	Succinic acid
3350	Sulfolane
3360	Sulfur dioxide
3370	Sulfuric acid
3380	Tall oil
3390	Tall oil fatty acid
3400	Tall oil pitch
3410	Tall oil rosin
3420	Terephthalic acid
3430	Tetrabromoethane
3440	Tetrabromophthalic anhydride
3450	Tetrachloroethane
3460	Tetrachloroethylene
3470	Tetrachlorophthalic anhydride
3480	Tetraethyl lead
3490	Tetrahydrofuran
3500	Tetramethyl lead
3510	Tetramethyl succinonitrile
3520	Tetrapropylene
3530	Thiodiglycol
3540	Toluene
3550	Toluenediamine
3560	Toluene diisocyanate
3570	Toluenesulfonamide
3580	Toluenesulfonic acid
3590	Toluenesulfonyl chloride
3600	Tolyltriazole
3610	Triacetin
3620	Tribromomethane
3630	Tributyl phosphate
3640	Trichloroethane
3650	Trichloroethylene
3660	Trichlorofluoromethane
3670	Trichlorophenol
3680	Trichloropropane
3690	Triethanolamine
3700	Triethylamine
3710	Triethylene glycol
3720	Triethylene glycol dimethyl ether
3730	Triethylene glycol monomethyl ether
3740	Triethyl phosphate
3750	Trimethylamine
3760	Trimethylbenzene
3770	Trimethylolpropane
3780	Trimethylpentanediol
3790	Trimethylpentanediol monoisobutyrate
3800	Trimethylpentene
3810	Trimethyl phosphite
3820	Trinitrobenzene
3830	Trinitrotoluene
3840	Triphenyl phosphate
3850	Tripropylene glycol
3860	Urea
3870	Valeraldehyde
3880	Valeric acid
3890	Vinyl acetate
3900	Vinyl chloride
3910	Vinylidene chloride
3920	Vinyl toluene
3930	Xylenes
3940	Xylenol
3950	Xylidine
3960	Zeolites

moiety in or on peas (dry and succulent) at 40 ppm and beans (dry and succulent) based on equivocal anemia in males at 17.5 mg/kg/day.

and grapes, and certain feed items which are being published elsewhere in

OCPDB No.[1]	Chemical
2620	Methylene chloride
2630	Methylene dianiline
2635	Methylene diphenyl diisocyanate
2640	Methyl ethyl ketone
2644	Methyl formate
2650	Methyl mobutyl carbinol
2660	Methyl isobutyl ketone
2665	Methyl methacrylate
2670	Methyl pentynol
2690	a-methyl styrene
2700	Morpholine
2710	a-napthalene sulfonic acid
2720	B-napthalene sulfonic acid
2730	a-napthol
2740	B-napthol
2750	Neopentanoic acid
2756	o-nitroaniline
2757	p-nitroaniline
2760	o-nitroanisole
2762	p-nitroanisole
2770	Nitrobenzene
2780	Nitrobenzoic acid (o, m & p)
2790	Nitroethane
2791	Nitromethane
2792	Nitrophenol
2795	Nitropropane
2800	Nitrotoluene
2810	Nonene
2820	Nonyl phenol
2830	Octyl phenol
2840	Parsidehyde
2850	Pentaerythritol
2851	n-pentane
2855	l-pentene
2860	Perchloroethylene
2862	Perchloromethylmercaptan
2890	o-phenetidine
2900	p-phenetidine
2910	Phenol
2920	Phenolsulfonic acids
2930	Phenyl anthranilic acid
2940	Phenylenediamine
2960	Phthalic anhydride
2970	Phthalimide
2973	b-picoline
2976	Piperazine
3000	Polybutenes
3010	Polyethylene glycol
3025	Polypropylene glycol
3063	Propionaldehyde
3066	Propionic acid
3070	n-propyl alcohol
3075	Propylamine
3080	Propyl chloride
3090	Propylene
3100	Propylene chlorohydrin
3110	Propylene dichloride
3111	Propylene glycol
3120	Propylene oxide
3130	Pyridine
3140	Quinone
3150	Resurcinol
3160	Resorcylic acid
3170	Salicylic acid
3180	Sodium acetate
3181	Sodium benzoate
3190	Sodium carboxymethylcellulose
3191	Sodium chloroacetate
3200	Sodium formate
3210	Sodium phenate
3220	Sorbic acid
3230	Styrene
3240	Succinic acid
3250	Succinitrile
3251	Sulfanilic acid
3260	Sulfolane
3270	Tannic acid
3280	Terephthalic acid
3290	
& 3291	Tetrachloroethenes
3300	Tetrachlorophthalic anhydride
3310	Tetraethyllead
3320	Tetrahydronaphthalene
3330	Tetrahydrophthalic anhydride
3335	Tetramethyllead
3340	Tetramethylenediamine
3341	Tetramethylethylenediamine
3349	Toluene
3350	Toluene-2,4-diamine
3354	Toluene-2,4-diisocyanate
3355	Toluene diisocyanates (mixture)
3360	Toluene sulfonamide
3370	Toluene sulfonic acids
3380	Toluene sulfonylchloride
3381	Toluidines
3393	Trichlorobenzenes
3395	1,1,1-trichloroethane
3400	1,2,2-trichloroethane
3410	Trichloroethylene
3411	Trichlorofluoromethane
3420	1,2,3-trichloropropene
3430	1,1,2-trichloro-1,2,2-trifluoroethane
3450	Triethylamine
3460	Triethylene glycol
3470	Triethylene glycoldimethyl ether
3480	Trisobutylene
3490	Trimethylamine
3510	Vinyl acetate
3520	Vinyl chloride
3530	Vinylidene chloride
3540	Vinyl toluene
3541	Xylene (mixed)
3560	o-xylene
3570	p-xylene
3580	Xylenol
3590	Xylidine
	1,3-butylene glycol
	Dinitrotoluene
	Methyltertbutyl ether
	Phosgene
	Polyethylene
	Polypropylene
	Polystyrene
	Urea

[1] The OCPDB Numbers are reference indices assigned to the various chemicals in the Organic Chemical Producers Data Base developed by the USEPA.

[FR Doc. 89-29743 Filed 12-26-89; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 180

[PP8F3640/P500; FRL-3684-3]

Pesticide Tolerances for 2-[1-(Ethoxyimino)Butyl]-5-[2-(Ethylthio)Propyl]-3-Hydroxy-2-Cyclohexene-1-One

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to establish tolerances for the combined residues of the herbicide 2-[1-(ethoxyimino)-butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one (sethoxydim) and its metabolites containing the 2-cyclohexene-1-one moiety, calculated as parent, in or on the raw agricultural commodities (RACs) dry beans at 20.0 parts per million (ppm), succulent beans at 5.0 ppm, bean forage at 10.0 ppm, bean hay at 50 ppm, dry peas at 40.0 ppm, succulent peas at 10.0 ppm, pea forage at 20.0 ppm, pea hay at 40.0 ppm, eggs at 2.0 ppm, and poultry meat byproducts at 2.0 ppm. These regulations were requested by BASF Wyandotte Corp. and propose to establish the maximum permissible level for residues of the herbicide in or on these RACs.

DATES: Comments, identified by the document control number, [PP8F3640/P500], must be received on or before January 26, 1990.

ADDRESS: By mail submit comments to: Public Information Branch, Field Operations Division (H-7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as 'Confidential Business Information' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Robert J. Taylor, Product Manager (PM) 25,(H7505C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 245, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703-557-1800.

SUPPLEMENTARY INFORMATION: EPA issued notices, published in the Federal Register of July 20, 1988 (53 FR 27391), which announced that BASF Wyandotte, Corp., Chemical Division, 100 Cherry Hill Rd., Parsippany, NJ 07054, had submitted pesticide petition (PP) 8F3640 proposing to amend 40 CFR 180.412 by establishing a regulation to permit residues of the herbicide 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)-propyl]-3-hydroxy-2-cyclohexene-1-one (sethoxydim) and its metabolites containing the 2-cyclohexene-1-one moiety, calculated as parent, in or on the raw agricultural commodities dry beans at 20.0 ppm, succulent beans at 5.0 ppm, bean forage at 10.0 ppm, bean hay at 50 ppm, dry peas at 40.0 ppm, succulent peas at 10.0 ppm, pea forage at 20.0 ppm, pea hay at 40.0 ppm, eggs at 2.0 ppm, and poultry meat byproducts at 2.0 ppm. These regulations were requested by BASF Wyandotte Corp. and propose to establish the maximum permissible level for residues of the herbicide in or on these RACs.

No comments were received in response to the notices of filing.

The Agency issued a recodification document, published in the Federal Register of June 29, 1988 (53 FR 24668), redesignating 21 CFR part 561 as 40 CFR part 186 and assigning this chemical as 40 CFR 186.2800. During the course of the review, the Agency determined that the commodities (pea forage and hay and bean forage and hay) filed udner FAP 8H5557 were RACs, rather than processed human foods or animal feeds, and should have been filed under PP 8F3640. The petitioner subsequently amended PP 8F3640 by submitting a revised Section F proposing the establishment of tolerances for residues of the herbicide 2-[1-(ethoxyimino)butyl-5-[2-(ethylthio)-propyl]-3-hydroxy-2-cyclohexene-1-one and its metabolites containing the 2-cyclohexene-1-one moiety in or on the following RACs: dry beans at 20.0 ppm, succulent beans at 5.0 ppm, bean forage at 10.0 ppm, bean hay at 50.0 ppm, dry peas at 40.0 ppm, succulent peas at 10.0 ppm, pea forage at 20.0 ppm, pea hay at 40.0 ppm, and proposing to increase the established tolerances for eggs from 0.5 to 2.0 ppm and poultry, meat byproducts from 0.2 to 2.0 ppm. Because there is a potential increase in risk to humans from these revisions, the tolerances of dry beans at 20.0 ppm, bean hay at 50.0 ppm, the increase in tolerance in eggs from 0.5 to 2.0 ppm, and the increased tolerances in poultry, meat byproducts from 0.2 to 2.0 ppm are being proposed for 30 days to allow for public comment.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data listed below were considered in support of these tolerances.

1. Several acute toxicology studies placing technical-grade sethoxydim in Toxicity Category III.

2. A subchronic feeding study in dogs fed dosages of 0, 2, 20, and 200 milligrams per kilogram of body weight per day (mg/kg bwt/day) with a no-observed-effect level (NOEL) of 20 mg/kg/day based on liver effects and nonspecific anemia at 200 mg/kg/day.

3. A 1-year feeding study with dogs fed dosages (based on consumption) of 0, 8.86/9.41, 17.5/19.9, and 110/129 mg/kg/day (males/females) with a NOEL of 8.86/9.41 mg/kg/day (males/females) based on equivocal anemia in males at 17.5 mg/kg/day.

4. A 2-year chronic feeding/oncogenicity study with mice fed dosages of 0, 6, 18, 54, and 162 mg/kg/day with no oncogenic effects observed under the conditions of the study at dose levels up to and including 162 mg/kg/day (highest dose tested [HDT]) and a systemic NOEL of 18 mg/kg/day based on nonneoplastic liver lesions at 54 mg/kg/day.

5. A 2-year chronic feeding/oncogenicity study with rats fed dosages of 0, 2, 6, and 18 mg/kg/day (HDT) with no oncogenic effects observed under the conditions of the study at dose levels up to and including 18 mg/kg/day (HDT) and a systemic NOEL greater than or equal to 18 mg/kg/day.

6. A developmental toxicity study in rats fed dosages of 0, 40, 100, and 250 mg/kg/day with no teratologic effects occurring at 250 mg/kg/day (HDT), a maternal NOEL of 40 mg/kg/day based on significantly decreased adrenal weights at 100 mg/kg/day, and a fetotoxic NOEL of 250 mg/kg/day (HDT).

7. A developmental toxicity study in rabbits fed dosages of 0, 40, 160, and 480 mg/kg/day with a maternal toxicity NOEL of 160 mg/kg/day (severe weight loss, an excess number of maternal deaths, abortions, and fetal resorptions occurred at 480 mg/kg/day [HDT]); and a fetoxicity/teratogenicity NOEL of 160 mg/kg/day (decreased litter sizes, low fetal weight, an increase in fetal resorptions and abortions and a significant increase in fetal malformations occurred at 480 mg/kg/day [HDT]). Owing to the extreme maternal toxicity of the chemical at the 480 mg/kg/day dose, it was difficult to determine whether the increase of resortptions and abortions was due to maternal toxicity or fetotoxicity.

8. Mutagenic studies including a host-mediated assay (mouse with *S. typhimurium*, negative at 2.5 grams/kg/day of chemical and recombinant assay and forward mutations in *B. subtilis*, *E. coli*, and *S. typhimurium* (all negative at concentrations of the chemical up to 100 percent).

The acceptable daily intake (ADI), based on a 1-year feeding study in dogs (NOEL=8.86 mg/kg bwt/day) and using a hundredfold safety factor is calculated to be 0.09 mg/kg/day. The theoretical maximum residue contribution (TMRC) for published tolerances is 0.023917 mg/kg/day. The current action will contribute 0.007135 mg/kg/day to the TMRC and will utilize 7.9 percent of the ADI. Published tolerances utilize 26.6 percent of the ADI. Tolerances for this chemical on citrus fruits, blueberries and grapes, and certain feed items which are being published elsewhere in this issue of the Federal Register (see [PP8F3606, 8F3660, 6H5553, 8H5561/R1052] in the Rules and Regulations section) will use an additional 1.5 percent of the ADI.

Data lacking are a repeat of a rat primary hepatocyte unscheduled DNA synthesis assay on a hydroxylated plant metabolite of the parent compound. The company has been notified of this deficiency and has agreed to repeat the study.

The pesticide is useful for the purposes for which these tolerances are sought. The nature of the residue is adequately understood for the purpose of establishing the tolerances. Adequate analytical methodology (gas chromatography using sulfur-specific flame photometric detection) is available for enforcement purposes. The method is listed in the *Pesticide Analytical Manual* (PAM II) as Method I. There are currently no actions pending against the registration of this chemical. Any secondary residues occurring in meat, milk, poultry (meat), and poultry (fat) will be covered by existing tolerances on these commodities.

Based on the above information considered by the Agency, the tolerances established by amending 40 CFR part 180 would protect the public health. It is proposed, therfore, that the tolerances be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the Federal Register that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 8E3640/P500]. All written comments filed in response to this petition will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-

354, 94 Stat. 1164, 5 U.S.C. 601-612), the

40 CFR Part 180

Highway, Arlington, VA 22202, (703)-

4. A three-generation reproduction study in rats with no reproductive effects at 30 ppm (highest dose tested).

Any person who has registered or submitted an application for registration of a pesticide under the Federal

§ 180.349 Ethyl 3-methyl-4-(methylthio)phenyl (1-methylethyl)phosphoramidate; tolerances

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354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 6, 1989.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.412(a), by revising the entries for eggs and poultry meat byproducts (mbyp) and by adding and alphabetically inserting entries for beans, dry, forage, hay, and succulent and peas, dry, forage, hay, and succulent, to read as follows:

§ 180.412 2-[1-(Ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one; tolerances for residues.

(a) * * *

Commodities	Parts per million
* * * * *	
Beans, dry	20.0
Beans, forage	10.0
Beans, hay	50.0
Beans, succulent	5.0
* * * * *	
Eggs	2.0
* * * * *	
Peas, dry	40.0
Peas, forage	20.0
Peas, hay	40.0
Peas, succulent	10.0
* * * * *	
Poultry, mbyp	2.0
* * * * *	

[FR Doc. 89-29892 Filed 12-26-89; 8:45 am]

BILLING CODE 6560-50-D

40 CFR Part 180

[PP8E3651/P498; FRL-3664-3]

Pesticide Tolerances for Ethyl 3-Methyl-4-(Methylthio)Phenyl (1-Methylethyl) Phosphoramidate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a tolerance be established for the combined residues of the nematicide ethyl 3-methyl-4-(methylthio)phenyl (1-methylethyl) phosphoramidate (also referred to in this document as fenamiphos) and its cholinesterase-inhibiting metabolites in or on the raw agricultural commodities garden beet roots and garden beet tops. The proposed regulation to establish maximum permissible levels for residues of the nematicide in or on the commodities was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

DATE: Comments, identified by the document control number, [PP8E3651/P498], must be received on or before January 26, 1990.

ADDRESS: By mail submit comments to: Public Information Branch , Field Operations Division (H-7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as 'Confidential Business Information' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section (H7505C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716C, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–2310.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition (PP) 8E3651 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR–4 Project, and the Agricultural Experiment Stations of New York and Pennsylvania.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for residues of the nematicide fenamiphos, ethyl 3-methyl-4-(methylthio)phenyl (1-methylethyl) phosphoramidate and its cholinesterase-inhibiting metabolites ethyl 3-methyl-4-(methylsulfinyl)phenyl (1-methylethyl)phosphoramidate and ethyl 3-methyl-4-(methylsulfonyl)phenyl (1-methylethyl) phosphoramidate in or on the raw agricultural commodities garden beet roots at 1.5 parts per million (ppm) and garden beet tops at 1.0 ppm.

The petitioner proposed that this use be limited to the Illinois, Indiana, Michigan, New York, Ohio, and Pennsylvania based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's registration Division at the address given above.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance include:

1. A 2-year dog feeding study with no-observed-effect level (NOEL) for choinesterase inhibition (ChE) at 1 ppm (equivalent to 0.025 milligram (mg)/kilogram (kg)/day) and no systemic effects at 10 ppm (the highest dose tested).

2. A 2-year feeding/oncogenicity study in rats with a NOEL for cholinesterase inhibition at less than 2.0 ppm (equivalent to 0.1 mg/kg/day) and no systemic effects at 10 ppm (equivalent to 0.5 mg/kg/day). The study was negative for oncogenic effects under the conditions of the study at all feeding levels.

3. An 18-month oncogenicity study in mice with feeding levels of 2, 10, and 50 ppm (equivalent to 0.3, 1.5, and 7.5 mg/kg/day) that was negative for oncogenic effects under the conditions of the study at all levels tested.

4. A three-generation reproduction study in rats with no reproductive effects at 30 ppm (highest dose tested).

5. A teratology study in rabbits with developmental and maternal NOEL's at 0.5 mg/kg.

6. A neurotoxicity study in hens with no neurotoxicity damage at 12.5 mg/kg (highest dose tested).

7. In a metabolism study in rats, fenamiphos was metabolized to its sulfoxide and sulfone analogs with 50 percent excreted in the urine within 12 to 15 hours.

8. Genotoxicity studies including an Ames Test (negative), a dominant lethal test in mice (negative), an *in vitro* assay in Chinese hamster ovary cells (negative for nonactivation assay at concentrations up to 130 micrograms/milliliter and for activation assay up to 230 micrograms/milliliter), and gene mutation using *Bacillus subtilis* (negative).

Data currently lacking include a teratology study in a second species. Data requirements for registration of fenamiphos are identified in a Registration Standard for the chemical, which was issued in June of 1987.

The reference dose (RfD, formerly referred to as ADI), based on the 2-year feeding study in dogs with a NOEL for cholinesterase inhibition at 1.0 ppm (0.025 mg/kg/day) and using an uncertainty factor of 100, is calculated to be 0.00025 mg/kg of body weight (bw)/day. The anticipated residue contribution (ARC) from existing tolerances is calculated to be 0.000103 mg/kg bw/day, which is equivalent to 41.2 percent of the RfD. The current action will contribute an additional 0.000033 mg/kg bw/day of residues to the human diet, an additional 13.2 percent.

The nature of the residues is adequately understood, and an adequate analytical method, gas chromatography using a thermionic detector, is available in the Pesticide Analytical Manual, Vol. II (PAM) II, for enforcement purposes. There are currently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency, the tolerance established by amending 40 CFR 180.349 would protect the public health. Garden beets are a minor feed item for cattle, horses, goats, hogs, and sheep. They are not a feed item for poultry. The secondary residues, if any, in meat and milk resulting from the proposed use should be adequately covered by the tolerances established for meat and milk under 40 CFR 180.349(b). Therefore, it is proposed that the tolerances be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the Federal Register that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 8E3651/P498]. All written comments filed in response to this petition will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 1, 1989.

Anne E. Lindsay.

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.349(c) is amended by adding and alphabetically inserting a tolerance for regional registration for the raw agricultural commodities garden beet roots and garden beet tops, to read as follows:

§ 180.349 Ethyl 3-methyl-4-(methylthio)phenyl (1-methylethyl)phosphoramidate; tolerances for residues.

* * * * *

(c) * * *

Commodities	Parts per million
* * * * *	
Beets, garden, roots	1.5
Beets, garden, tops	1.0
* * * * *	

[FR Doc. 89-29883 Filed 12-26-89; 8:45 am]

BILLING CODE 6560-50-D

40 CFR Part 180

[PP9E3736/P497; FRL-3659-5]

Pesticide Tolerance for Paraquat

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a tolerance be established for the residues of the desiccant, defoliant, and herbicide paraquat (1,1'-dimethyl 4,4'-bipyridium ion) in or on the raw agricultural commodity taro (corms). The proposed regulation to establish a maximum permissible level for residues of paraquat in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

DATE: Comments, identified by the document control number, [PP9E3736/P497], must be received on or before January 26, 1990.

ADDRESS: By mail submit comments to: Information Services Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information"(CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly

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by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section (H7505C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716C, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703–557–2310.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition (PP) 9E3736 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR–4 Project, and the Agricultural Experiment Station of Hawaii.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for residues of the pesticide paraquat derived from application of either the bis (methyl sulfate) or the dichloride salt (both calculated as the cation) in or on the raw agricultural commodity taro (corms) at 0.1 part per million (ppm).

The petitioner proposed that this use be limited to the State of Hawaii based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance include:

1. A 90-day dog feeding study with a no-observed-effect level (NOEL) of 20 parts per million (ppm) of paraquat cation (equivalent to 0.5 milligram (mg)/kilogram (kg) body weight (bw)/day), and a lowest effect level (LEL) of 60 ppm (1.5 mg/kg bw/day).

2. A mouse oncogenicity study with no oncogenic effect observed under the conditions of the study at all levels tested (12.5, 37.5, and 100/125 ppm of paraquat ion, equivalent to 1.88, 5.63, and 15/18.8 mg/kg bw/day). (The highest dose tested, 100 ppm, was increased to 125 ppm during the study because no toxic signs occurred at 100 ppm.)

3. Two developmental toxicity studies, rat and mouse, with maternal toxicity NOEL's of 1.0 mg/kg bw/day and developmental toxicity NOEL's of 1.0 and 5.0 mg/kg/ bw/day, respectively.

4. A three-generation rat reproduction study with a reproductive NOEL equal to 150 ppm (highest dose tested, equivalent to 7.5 mg/kg bw/day) and a systemic NOEL of 25 ppm (1.25 mg/kg bw/day).

5. A 1-year dog feeding study with a systemic NOEL of 15 ppm (0.45 mg of paraquat ion/kg bw/day).

6. Sixteen acceptable mutagenicity studies were submitted for paraquat. Paraquat was negative in eight studies (mostly in gene mutation and chromosomal aberration assays); weakly positive in four studies (two gene mutation, one chromosomal aberration assay, and one DNA damage/repair assay); and positive in four studies (all DNA damage/repair assays).

7. A 2-year rat chronic feeding/oncogenicity study in the Wister strain with a systemic NOEL of 100 ppm (equivalent to 5 mg/kg/day) and no oncogenic effects observed under the conditions of the study at all levels tested; levels tested were 0, 6, 30, 100, and 300 ppm paraquat dichloride.

8. A rat chronic feeding/oncogenicity study in the Fischer 344 strain indicated a NOEL for systemic effects slightly below 25 ppm (1.25 mg/kg/ bw/day of paraquat ion). In this study, squamous cell neoplasms of the skin and the subcutaneous areas of the head region of the high-dose (150 ppm) group of male rats were significantly increased over the concurrent control group. The HED Peer Review Committee concluded, however, that the increased incidence of squamous cell neoplasms in the head region of the high-dose group of male rats was not associated with oral exposure but was probably the result of topical exposure to paraquat. Since paraquat is a topical irritant, the neoplasms in the head regions of the rats are believed to have resulted from the chronic topical exposure to paraquat in the powdered diet of the test animals. Exposure to paraquat in the human diet is not expected to elicit topical irritation.

The reference dose (RFD), based on the 1-year dog feeding study (NOEL of 0.45 mg/kg/day) and using an uncertainty factor of 100 is calculated to be 0.0045 mg/kg of body weight (bw)/day. The theoretical maximum residue contribution (TMRC) from existing tolerances is calculated to be 0.001865 mg/day; the current action will increase the TMRC by less than 0.000001 mg/day. Published tolerances utilize 41.4 percent of the RFD; the current action will result in an increase of less than 0.02 percent.

The Agency has concluded that the amount of paraquat added to the diet from the proposed use will not significantly increase dietary exposure. Thus the tolerance established by the proposed rule is considered to pose a negligible increment in risk. Tolerances have previously been established for paraquat in a wider variety of food commodities, including meat, milk, grain, fruits, vegetables, and nuts at levels ranging from 0.01 to 5 ppm. The nature of the residues is adequately understood and an adequate analytical method, spectrophotometry, is available in the *Pesticide Analytical Manual*, Vol. II (PAM-II), for enforcement purposes.

No secondary residues in meat, milk, poultry, or eggs are expected since taro (corms) are not considered a livestock feed commodity. There are currently no actions pending against the continued registration of paraquat.

Based on the above information considered by the Agency, the tolerance established by amending 40 CFR 180.205 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 9E3736/P497]. All written comments filed in response to this petition will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: December 6, 1989.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority:21 U.S.C. 346a and 371.

2. Section 180.205(b) is amended by adding and alphabetically inserting a tolerance for regional registration for the raw agricultural commodity taro (corms), to read as follows:

§ 180.205 Paraquat; tolerances for residues.

* * * * *

(b) * * *

Commodities	Parts per million
* * * * *	
Taro (corms)	0.1
* * * * *	

[FR Doc. 89–29894 Filed 12-26-89; 8:45 am]

BILLING CODE 6560-50-D

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 89–26; Notice 1]

RIN 2127–AD24

Federal Motor Vehicle Safety Standards; Cross-View Mirrors and Other Measures To Prevent Pedestrians From Being Struck by School Buses

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This advance notice announces that NHTSA is considering measures to increase school bus drivers' awareness of children near the buses during loading and unloading operations, as a means of preventing children from being struck by the buses. One such measure would be an amendment to Federal Motor Vehicle Safety Standard No. 111, *Rearview Mirrors*, with respect to convex cross-view mirrors on school buses. In addition, the agency is considering the possibility of requiring school buses to be equipped with other devices such as crossing control arms, sensors, and video monitors. The agency seeks comments and information on the extent to which such measures would increase the safety of school children, as well as information about the costs entailed and any potential negative effects.

This notice comprises one part of NHTSA's comprehensive effort to assess the safety need related to school buses. While the agency has issued several notices related to the protection of school bus passengers, this notice (and a companion notice related to stop arms that will be published in the near future) are intended to improve the safety of children while boarding and leaving school buses.

DATE: Comments on this notice must be received on or before February 12, 1990.

ADDRESS: All comments on this notice should refer to Docket No. 89–26; Notice 1 and be submitted to the following: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (Docket hours 9:30 a.m. to 4 p.m.)

FOR FURTHER INFORMATION CONTACT: Ms. Patti Gardner, Office of Crash Avoidance, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590, (202) 366–5269.

SUPPLEMENTARY INFORMATION:

Background

The Surface Transportation and Uniform Relocation Assistance Act of 1987 (sec. 204(a), Pub. L. 100–17) required the Department of Transportation to contract with the National Academy of Sciences (NAS) to conduct a comprehensive study to determine "the safety measures that are most effective in protecting the safety of school children while boarding, leaving, and riding in school buses."

The NAS issued its report in May 1989. The report's data and recommendations provide the basic context in which to consider the issues discussed in this notice. [Copies of the report, "Improving School Bus Safety," Special Report No. 222, may be obtained by contacting the Transportation Research Board, National Research Council, 2101 Constitution Avenue NW., Washington, DC 20418, (202) 334–3218.]

The first accomplishment of the NAS report was to present a comprehensive review of the existing data on school bus crashes. Although the report confirmed that school buses have an excellent safety record (e.g., the occupant fatality rate per vehicle mile driven is only one-fourth that of passenger cars), it noted that some deaths and injuries do occur, and it suggested that further improvements could be made on the safety of school buses and bus operations. For data on fatal injuries, the report drew on NHTSA's Federal Accident Reporting System (FARS) from the years 1982 through 1986. These data indicate that in an average year approximately 40 children are killed in school bus-related crashes. Of these, 12 are passengers in school buses or vehicles operated as school buses and 37 are student pedestrians struck by school buses or other vehicles. Of the 37 school bus pedestrian fatalities, approximately 26 are killed by school buses or vehicles operating as school buses, and 11 by vehicles that pass a school bus that has stopped to load or unload passengers. NHTSA's further analysis of the FARS data indicates that about half of the bus-caused fatalities—13 on average—occur in the bus loading zones, and the remainder while the bus is elsewhere on its route.

The data thus indicate that children are at a much greater risk of being killed while boarding or leaving a school bus or in the vicinity of the bus stop than while they are riding in a bus. Based on these considerations, the NAS report concluded that "(i)f the cost and effectiveness of the various safety measures are the same, those measures designed to reduce or prevent pedestrian fatalities are better safety investments than measures designed to prevent passenger fatalities" (p. 134).

With respect to non-fatal injuries, the NAS report drew upon a number of data sources, including the National Safety Council. NHTSA's National Accident Sampling System, and data from State accident files. Using these sources, the NAS report estimated that each year there are 950 pedestrians injured in school bus-related crashes of whom about 800 are estimated to be children. Approximately 35 percent are injured as a result of being struck by a school bus; the remainder are struck by other vehicles. Although these numbers are much smaller than the number of bus passenger injuries (estimated by NAS at about 9,500 a year), the proportion of

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serious injuries is higher for pedestrians than for passengers. Twenty percent of pedestrian injuries are categorized as being "incapacitating," defined by the American National Standards Institute (ANSI) as any injury that prevents the injured person from walking, driving or normally continuing activities he or she was capable of performing before the injury occurred.

To address the safety problems revealed by these data, the NAS panel evaluated the potential safety benefit of a number of measures to prevent pedestrian fatalities and injuries. In NAS's view, the best approach to improving safety relies on the efforts of parents and local schools and communities, as well as those of the States, the Federal government and the vehicle manufacturers. In addition to recommendations on mirrors and other equipment to improve driver awareness, which are the subject of this notice, the NAS report recommended a number of changes in bus operating practices: Better driver training, with emphasis on loading zone safety; improved programs to educate children about safe walking to and from the stop, how and where to wait safely for the bus, and how to board and leave the bus safely; and better planning of school bus routes, including programs to develop loading and unloading plans for all vehicles at school locations.

The full scope of the NAS recommendations was addressed in a **Federal Register** notice published by NHTSA on July 13, 1989 (54 FR 29629). As directed by the legislation which authorized the NAS report, NHTSA reviewed the measures identified in the NAS report to determine those which are potentially "most effective" in protecting children "while boarding, leaving, and riding school buses" (204(a)(3), Pub.L. 100–17). Those measures that involve operating practices are being addressed through NHTSA's State and community highway safety grant program (23 U.S.C. 402). The agency issued a notice concerning the use of section 402 funds to improve school bus safety. (54 FR 30497, July 20, 1989). As a result, the agency set aside $4.5 million out of Section 402 highway safety funds in fiscal year 1990 for school bus safety grants to qualifying States.

Of the measures recommended by NAS that relate to changes in the school buses themselves, NHTSA concluded in the July 13 notice that programs to require the installation of additional outside cross-view mirror systems and stop signal arms on school buses are potentially "most effective" in improving school bus safety. This conclusion is the basis for this notice and for a companion notice proposing that stop arms be required on school buses, which will be published shortly. Both notices are issued under the authority conferred on the agency by the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*, the "Vehicle Safety Act") to issue motor vehicle safety standards.

Cross-View Mirrors On School Buses

Federal Motor Vehicle Safety Standard No. 111, *Rearview Mirrors*, (49 CFR 571.111) includes a provision requiring each school bus that is not a forward control vehicle to have an outside cross-view mirror of a specified size and shape (S9.2), "mounted so as to provide the driver a view of the front bumper and the area in front of the bus" (S9.2(b)). The standard also requires each school bus to have outside rear-view mirrors of unit magnification on each side of the bus, to provide the driver a view to the rear along both sides of the bus (S9.1).

The requirements in FMVSS No. 111 establish a minimum level of safety performance for mirrors on school buses. A purchaser of a school bus (e.g., State, public school district, or private school) may, however, purchase additional cross-view mirrors, or mirrors with larger reflective surfaces, to supplement the mirrors required by the standard. Many school districts have purchased such additional mirrors. A number of States have enacted laws requiring more than one cross-view mirror on school buses, consistent with a ruling by the agency that such laws are limited to vehicles procured for the States' own use, and are therefore not preempted under 103(d) of the Vehicle Safety Act.

In Congress, Rep. Dennis Eckart has introduced legislation (H.R. 3107) which would require NHTSA to establish safety standards to "require that school buses be equipped with a system of mirrors which provides the driver with a view of the area under the front of the schoolbus." Testimony from a November 2, 1989, hearing on this bill before the Subcommittee on Transportation and Hazardous Materials of the House Committee on Energy and Commerce will be entered into the rulemaking docket on this notice. As noted in NHTSA's testimony at the hearing, the agency intends to proceed with the rulemaking, even without new legislation.

Any requirements that may be issued under the Vehicle Safety Act on the subject of cross-view mirrors or related equipment will be coordinated with the guidelines issued by NHTSA under the authority of the Highway Safety Act (23 U.S.C. 401–411). The existing guideline, Highway Safety Program Guideline No. 17, *Pupil Transportation Safety* (23 CFR 1204.4), includes guidance for the correct adjustment of cross-view mirrors:

> When a rod, 30 inches long, is placed upright on the ground at any point along a traverse line 1 foot forward of the forward-most point of a school bus, and extending the width of the bus, at least 7½ inches of the length of the rod should be visible to the driver, either by direct view or by means of an indirect visibility system.

The agency intends to consider this approach to mirror performance in the context of this rulemaking, and to make appropriate amendments in Guideline No. 17 to reflect any changes in FMVSS No. 111. As elaborated in the issues section below, the agency requests comments about the adequacy of the mirror adjustment guideline.

Additional information relating to mirrors and related equipment may result from research efforts that NHTSA has begun in response to the NAS report. The report stated that further research would be helpful in determining whether FMVSS No. 111 could be modified or other requirements mandated to improve a driver's awareness of the areas in front of, immediately beside, and behind the school bus. Such additional information would help to optimize the requirements for the number, location, aiming, and other characteristics of cross-view mirrors installed on school buses. When it completes this research, the agency will submit the results to the rulemaking docket for this notice.

Additional Equipment To Prevent Pedestrians From Being Struck By Buses

The NAS study examined several additional measures that might reduce the number of student pedestrians struck by the buses they were boarding or leaving. In particular, the report reviewed the potential effectiveness of such equipment as school bus crossing control arm barriers, audible back-up warning devices, video monitors, and other proximity sensors such as radar or sonar.

A crossing control arm is a device that swings out from the front bumper of a school bus to create an obstacle that student pedestrians must walk around. Control arms now in use typically swing out six to eight feet. They are activated either electronically or by an air vacuum when the door of a school bus is opened to admit or discharge students. By forcing children to walk away from the bumper and around the control arm, the children are more likely to remain in a driver's direct field of vision.

Other devices serve to alert drivers to the presence of children and objects beneath and around school buses when stopped to load or discharge passengers. These devices rely on radar, microwave, ultrasound, or physical contact to detect children who might be struck by a school bus as it begins to move and to sound an alarm warning the driver of the potential hazard. Another sensor device uses two plastic shields which attach to the front bumper of the bus and in front of the rear wheels. Both shields extend to within 6 inches of the ground. If a child or other object is detected, the brakes of the bus are automatically activated. Both the electronic and mechanical sensor systems are equipped with logic circuitry that allows the devices to operate at low speeds (speeds typical of a bus pulling away from a loading zone) but prevents activation at higher speeds when a false positive signal might be a nuisance or even a hazard.

A closed circuit television system could also be installed near the driver to provide information of areas outside his or her normal view, especially to the rear of the bus, where mirrors are least effective. It would consist of a video camera mounted on the rear of the bus connected with cables to a monitor by the driver.

Issues

This notice discusses a range of issues that NHTSA is considering in deciding whether to issue a proposal relating to cross-view mirror systems or other devices to protect pedestrians from being struck by the school bus. The notice also makes a number of requests for information and data. Since this is an ANPRM, no rule will be issued on this subject without a notice of proposed rulemaking (NPRM) and further opportunity to comment.

In commenting on a particular matter or in responding to a particular question, interested persons are requested to provide any relevant factual information to support their conclusions or opinions, including, but not limited to, narrative accounts of crashes, statistical and cost data, and the source of such information. NHTSA would like commenters to respond to questions concerning the following issues:

(a) The safety need for amending the mirror requirements, requiring additional mirrors or mirrors with different characteristics, or requiring additional equipment such as the crossing control arm;

(b) The need to develop performance requirements to better ensure that a driver sees or is otherwise aware of pedestrians in school bus loading zones;

(c) The costs of requiring different types of or additional mirror systems and of requiring other types of equipment; and

(d) The potential impact of new requirements on school bus users currently in compliance with FMVSS 111 and on current State laws that would differ from the proposed Federal requirements.

For ease of reference, the questions are numbered consecutively. The agency requests commenters to give the number of each question they answer.

Safety Need

The critical issue in considering whether to introduce a new safety standard or amend an existing safety standard concerns the safety need. The agency wishes to explore the need to enhance pedestrian safety in school bus loading zones. Although the NAS report contains recommendations, some of which NHTSA has identified as "most effective," these do not necessarily represent judgments by the agency that a sufficient case has been made for the issuance of new requirements under the criteria of the Vehicle Safety Act.

The analysis conducted by the NAS panel, and NHTSA's subsequent analysis, provide a reasonably complete count of fatal injuries in school bus crashes, but only an estimate of non-fatal injuries. As to both types of injury, detailed information about the buses involved, the mirrors and other crash avoidance equipment on them, and circumstances of the crash is often lacking. Supplementary information would therefore be useful, particularly information about non-fatal incidents. Bus drivers, State and local school systems, and private services that transport students to and from school and school-related activities are uniquely qualified to supply NHTSA with first-hand information on their actual in-field experiences with pedestrian crashes in school bus loading zones. Therefore, the agency is seeking comment from school boards, counties, States, pupil transportation services, bus drivers, and others about their experiences in which pedestrians were struck or nearly struck by school buses.

1. What injury and non-injury data exist regarding real-world crashes and near crashes with school buses striking pedestrians in school bus loading zones? What type of bus was involved in the crash? What mirror systems (and other equipment related to pedestrian safety) were on the school bus at the time of the crash? While FMVSS No. 111 requires mirrors to provide a view of the area in front and on the sides of school buses, the agency is aware of the potential for pedestrian crashes behind school buses. Where were the victims located in relation to the bus? In front of the bus? On the driver's side of the bus? The entrance door side? The rear of the bus? While it was backing up? Did the incident occur while the bus was coming to a stop? While it was starting up? While in motion?

2. What were the ages and heights of the victims? Were they standing up or had they fallen or were otherwise low to the ground? Were they stationary, walking, or running? How close to the bus were the children immediately prior to the crash?

3. At the time of the event, what were the driving conditions and weather environment? Did the crash occur on an urban, suburban, or rural road? Did the crash occur on a major thoroughfare or a side street, or in a school yard? Was there rain, snow, fog, or other inclement weather? To what degree did these adverse weather conditions reduce the driver's visibility? What time of day and under what lighting conditions did the crash occur? Was the effectiveness of any of the mirrors or other equipment reduced by weather conditions or other factors?

Based on those data and other information, if the bus had been equipped with more mirrors, mirrors with specifications other than those in Standard No. 111, or other devices which help increase the driver's awareness of pedestrians in school bus loading zones, could they have prevented the school bus from striking the pedestrian?

4. In helping the agency understand such crashes, information about the physiology and experiences of school bus drivers would be very helpful. What information does a driver need regarding pedestrian movement? How large and clear must the image be for the driver to be aware that a child is in danger? How quickly does he or she need to interpret this information? Where are a typical driver's eyes located relative to the seat or seating reference point? While seated, what area must a driver see to prevent the bus from striking pedestrians? What area is directly visible to the driver without the aid of a mirror? What area is only visible with the aid of the mirror required by FMVSS 111? How does this amount and location of visible area differ for short and tall drivers, e.g., a 5th percentile female and a 95th percentile male? What additional areas become visible if additional mirrors are used? What areas do drivers perceive to

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be difficult to see either directly or with a mirror? What field of view obtainable directly and with additional mirror(s) would best assist the driver in preventing a school bus from striking a pedestrian? What limitations on distortion of the pedestrian's image are necessary? What guidelines are currently provided to the driver for aiming mirrors? Would requiring several mirrors obstruct the driver's direct vision, or confuse or distract the driver from normal driving tasks?

5. What requirements do the States or local jurisdictions have to assist a driver to avoid striking pedestrians? What experiences or information led the various States or local jurisdictions to adopt such requirements beyond the minimum Federal requirements specified in FMVSS 111? What has been their effect, if any, on pedestrian safety in school bus loading zones? What has been the experience of companies and school districts that order school buses with additional mirror systems or other safety devices that increase driver awareness of pedestrians? What instructions are given to drivers on the use of cross-view mirrors or related equipment? Under real-world situations, how frequently and in what manner (if at all) does the driver rely on these additional mirror systems and other safety devices?

Requirements Concerning Additional Mirror Systems

If NHTSA were to amend FMVSS No. 111 to increase the required minimum number of mirrors, amend the performance requirements of the mirrors, or otherwise amend the performance requirements to increase a driver's visibility of the area in front of and elsewhere around school buses, the agency would first have to determine that the amendment met the Vehicle Safety Act's criteria: that the requirement "shall be practicable, shall meet the need for motor vehicle safety, and shall be stated in objective terms" (section 103(a)).

NHTSA notes that while its current research project is focusing on mirror systems, it also is considering field of view in general and the other devices mentioned above. NHTSA welcomes comments and data on a number of questions related to the performance characteristics of mirror systems and on other specifications the agency is considering related to pedestrian safety. To formulate objective requirements, the agency requests that, where possible, commenters specify measurements and other criteria in objective terms (e.g., 5th percentile female, x feet in front of the bus). Similarly, any demonstration procedure should be specified in objective terms.

6. Is it desirable and feasible to develop new performance requirements and test procedures for convex cross-view mirrors? If so, what specific test procedures and performance requirements for such mirrors would best enhance safety? The agency notes that several States require two cross-view mirrors, others require three, and others require four such mirrors. The agency requests comments on experiences with requiring more than one cross-view mirror. How many mirrors would be appropriate to ensure that a driver has an adequate view of the area in front of the bus and elsewhere near the school bus to be aware of student pedestrians? When multiple mirrors are required, do drivers typically use each of them? Can there be too many mirrors?

7. What size or surface area for a mirror would be most appropriate in increasing visibility in school bus loading zones? What range of radii of curvature should be permitted to ensure that the field of view would be large enough to see without being unreasonably distorted?

8. The current standard requires the cross-view mirrors to be "approximately spherical." As a result, mirrors with shapes or radii of curvature outside the specified range fail to comply with S9.2(a)(1)–(3) of FMVSS No. 111. Some inventors and users have informed the agency that they believe particular non-complying mirrors. e.g., a mirror which is a section of a torus rather than a section of a sphere or one that is banana-shaped, are equal to or are superior to the currently required mirrors. The agency welcomes comments about such alternative mirror designs, especially evaluations of their actual in-field use. Do these mirrors present an adequate field of view, depth perception, spatial relationship, image size, and clarity? Are there any other problems with their performance? How do such mirrors perform as a supplemental mirror in addition to the mirror required by FMVSS No. 111? Should such a mirror(s) replace or merely supplement the currently required mirror? What intermix of mirror systems would result in the largest and most effective degree of visibility? What changes would be necessary in Standard No. 111 to accommodate these designs? Would the establishment of uniform Federal specifications requiring a specific mirror design hinder future innovations related to mirror designs?

9. Should requirements be proposed to specify mirror location and/or aim? If so, where should the mirrors be located? How does mirror location affect field of view and other visibility characteristics? How should the mirrors be aimed? Does HSPG No. 17's current guideline for mirror aiming adequately assure a driver's visibility of the area in front of the bus? If not, should a different target, different location(s) (e.g., the side of the bus), or an entirely different procedure be adopted? For instance, some jurisdictions specify that the centerline of the mirror must point toward the driver's foot. The agency requests comments on this and other procedures related to the placement and aim of mirror systems.

10. How large must a child's image be for the driver to identify the presence of a child and interpret the image to represent a possible safety threat? What area in front of the bus would have to be visible? How could the current requirement in S9.2(b) be made more objective? Should the standard require areas on the side or the rear of the bus to be visible? Would such additional requirements be feasible?

11. Would requiring additional mirror systems have any adverse impacts on safety? Should there be a maximum limit on the size of mirrors to reduce blind spots blocking the direct field of view? Would a requirement for additional mirrors cause a driver to become overly reliant on the mirrors and neglect direct observations? Would additional mirrors require so much time to survey that traffic hazards might be neglected or students might face other potential risks?

12. NHTSA notes that section S9.2 of the current standard exempts forward control buses from the cross-view mirror requirements. Without cross-view mirrors, some forward control bus configurations may have blind spots relative to pedestrians in front or on the sides of the bus. The agency welcomes comments as to whether forward control buses should be required to meet the existing or potentially revised cross-view mirror requirements. If so, should the specifications for mirrors on forward control buses be different than for those buses which are currently required to have a cross-view mirror?

Requirements Related to Devices Other Than Mirror Systems

13. The crossing control arm is intended to force students to cross further away from the bus's front bumper, thus increasing the likelihood that they would be in the driver's direct field of view. The agency welcomes comments, including designs and drawings, about the characteristics of such control arms from manufacturers, States, school districts, pupil transportation organizations, and other entities that have installed or have otherwise used these items. Have users of such devices found them to be effective? The agency welcomes comments about the real-world results of installing such devices.

14. How should the crossing control arm be activated? Should the device be automatically activated by the opening of the door? With that type of activation, what, if any, problem might occur if a driver leaves the door open while the bus is in motion?

15. The New York City Board of Education informed NHTSA that a crossing control arm might pose a risk to safety, especially in congested urban areas. It stated that this and other devices might cause children and drivers to become overly dependent on them, neglecting first-hand observation. It was also concerned that children might jump over or otherwise misbehave around this device. Have users of control arms experienced any such problems? Have users experienced any mechanical failures with the control arms? Would a control arm be functional in areas of extremely cold weather, where snow or ice buildup might impede their operation?

16. The agency notes that crossing control arms require approximately six to eight additional feet in front of a bus to operate. Would the need for such additional space cause problems in areas where school buses line up to load or discharge children, or in other places involving tight quarters such as where maintenance work is performed on buses?

17. If a crossing control arm were required, the aiming and location requirements of the cross-view mirrors might have to be reassessed. The agency welcomes comments about how requiring use of the crossing control arm would affect the requirements related to cross-view mirrors.

18. Proximity sensors would provide the bus driver an additional source of information about the presence of a child near the bus. The agency welcomes comments from those who have installed such devices or used buses equipped with such devices. Should the sensors be located by the front wheels, front bumper, rear wheels, rear bumper? How sensitive should such sensors be? Should the sensors be connected with audible or visual warning devices, or both? Is such information necessary or would it be redundant? Should the sensors automatically apply the brakes?

19. Pedestrians struck by the back of the bus pose a safety problem distinct from those struck by the front. The agency requests comments about how to avoid pedestrian crashes to the rear of the bus. Such devices as an audible back-up warning device, a television monitor, a wide angle lens, or additional mirrors may be effective in preventing crashes at the rear of the bus. Would the above-mentioned devices prove effective in avoiding such events? What other devices have been used to prevent such incidents? How successful have they been? Would these devices unreasonably distract the driver from directly observing student pedestrians or traffic conditions in the area in front of the bus?

20. What requirements would be necessary to ensure that video monitors accurately and adequately display the area to the rear of the bus? How should requirements regarding distortion be specified?

21. As with the crossing control arm, NHTSA is concerned that requiring sensors or monitors could have negative safety impacts. Would some drivers become overly reliant on them and ignore their first-hand observations or otherwise be less cautious? Would sensors or video monitors result in an "information overload" for drivers who already have to be aware of traffic, look at the mirrors, open the door, and supervise passengers? As a practical result, would some drivers ignore the sensors and monitors? Would the monitor unreasonably distract the driver from viewing the roadway while the vehicle is moving? Similarly, if the sensors activated whenever the bus hit a bump or came in contact with any small object, would a driver ignore or disconnect the device? Would school children view the sensors as being an item of misuse like a fire alarm? How susceptible would the sensors and video monitors be to vandalism? How sensitive are the sensors to climatic conditions such as high temperatures, rain, or snow?

22. Are there any other devices that would increase pedestrian safety around school buses in addition to those discussed in this notice?

Miscellaneous Programs Related to Pedestrian Safety Near School Buses

23. Do behavioral programs, or countermeasures such as crossing guards or monitors enhance or diminish the value of these devices? What are States and/or local school districts doing—

To select school bus routes and stop locations so as to minimize the necessity for children to cross the street on which their bus is operating in order for them to board the bus or in order for them to exit the bus and walk to their home or school?

To permit crossing only if the child is accompanied by a responsible person such as a parent, bus monitor, crossing guard, or older student?

To ensure that school children have proper training in safe street crossing behavior?

To train bus drivers about students boarding or leaving a bus?

To train motorists regarding proper driving behavior around school buses, especially in loading and unloading zones?

Costs of Additional Mirrors and Other Devices

NHTSA has made an initial estimate of the cost of some of the additional devices. The agency notes that the costs related to requiring a device must be considered in relation to the cost of the other devices, since each device is intended to prevent the same type of crash. Requiring four items of equipment, each with the same purpose, would be redundant.

After contacting various manufacturers, NHTSA estimates the aftermarket cost for various devices to be as follows. The agency emphasizes that while these cost estimates are based on supplier aftermarket price quotations, the agency welcomes comments that reflect OEM discounts.

The unit cost for a convex cross-view mirror with a bracket plus installation would range from $52 to $107. For the crossing control arm, an air, or a simple vacuum-operated device would range between $184 and $197, a vacuum-operated device with a diesel engine $376 to $388, and an electrically operated device $307 to $360. Radar warning systems would range between $687 and $1990 and an ultrasonic sensor which activates an audible signal and a flashing warning when a child is detected would cost between $395 and $695. Closed circuit television systems would cost between $895 and $1,260. NHTSA requests comments about these initial cost estimates for these or similar devices and any additional pertinent cost information.

24. For each of the devices mentioned above in this section on cost, what would be the likely cost to final purchasers resulting from its addition to a school bus? For each such device, what maintenance costs, if any, would

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result from its addition? How often do the various items need to be replaced?

25. What intermix of devices would be the least costly, while still adequately protecting student pedestrians from being struck by a school bus?

26. What is the current number and type of new school buses that have been ordered or delivered with additional devices to increase driver awareness? What was the additional cost for such devices? What factors resulted in the decision to add such safety devices despite increased costs?

Impact Assessments

NHTSA has considered costs and other factors associated with this advance notice. The agency has determined that Executive Order 12291 is inapplicable because that Order applies only to notices of proposed rulemakings and final rules. NHTSA has further determined that this advance notice is not a significant rulemaking action under the Department of Transportation's Regulatory Policies and Procedures. Although there is general public and Congressional interest in school bus safety matters, that interest is focused primarily upon the types of school bus safety issues (number of exits, flammability of interior materials, and fuel system integrity) involved in the rulemakings being conducted in the aftermath of the 1988 bus crash and fire in Kentucky.

The agency may determine to propose a rule requiring additional mirrors, upgraded mirror specifications, or additional devices. Before the agency can make a full assessment of the potential benefits of taking such an action, it must complete a full review of the available information on pedestrian crashes in school bus loading zones, including information to be provided in the comments to this notice.

As detailed above, NHTSA has obtained cost estimates for retrofitting devices in the aftermarket. The agency emphasizes that the cost of installing devices on new school buses should decrease if the installation is part of the manufacturer's regular production run for new vehicles. The agency notes that approximately 36,000 new school buses are produced each year.

NHTSA has analyzed this action under the principles and criteria in Executive Order 12812. The agency has determined that this advance notice does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The agency welcomes comment on this issue.

The Regulatory Flexibility Act does not apply to advance notices of proposed rulemakings. If the agency decides to issue a proposed rule, this Act will be addressed.

Comments

NHTSA invites comments from interested persons on the questions presented in this advance notice and on other relevant issues. It is requested but not required that 10 copies be submitted.

Comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

NHTSA will consider all comments received before the close of business on the comment closing date indicated in the "Dates" caption of this advance notice. To the extent possible, the agency will consider comments filed after the closing date. Comments on the advance notice will be available for inspection in the docket. After the closing date, NHTSA will continue to file relevant information in the Docket as this information becomes available, and recommends that interested persons continue to examine the Docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicle.

Authority: (15 U.S.C. 1302, 1401, 1407; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 20, 1989.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 89-29907 Filed 12-26-89; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB36

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for White-necked Crow

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine endangered status for the white-necked crow (*Corvus leucognaphalus*), a bird found in the Dominican Republic and Haiti, and formerly in Puerto Rico and the Virgin Islands. It disappeared in the latter areas because of human hunting and destruction of its natural forest habitat, and is now confronted by the same problems in those places where it does survive. This proposal, if made final, would implement the protection of the Endangered Species Act of 1973, as amended, for this crow. The Service seeks relevant data and comments from the public.

DATES: Comments must be received by February 26, 1990. Public hearing requests must be received by February 12, 1990.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Chief, Office of Scientific Authority, Mail Stop: Room 725, Arlington Square, U.S. Fish and Wildlife Service, Washington, DC 20240. Comments and materials received will be available for public inspection from 8:00 a.m. to 4:00 p.m., Monday through Friday, in Room 750, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Chief, Office of Scientific Authority, at the above address (703-358-1708 or FTS 358-1708).

SUPPLEMENTARY INFORMATION:

Background

The white-necked crow (*Corvus leucognaphalus*) resembles the crows of the mainland United States in physical appearance, but is distinguished by the pure white base of the feathers of the hind neck (Wetmore and Swales 1931). Also, in habits and voice, this species is more like ravens than like other crows. The ordinary call note is a high-pitched *klock* (Wetmore 1916).

This crow originally occurred in the Dominican Republic, Haiti, Puerto Rico, and St. Croix in the U.S. Virgin Islands.

It seems to thrive only where there are extensive growths of natural forest, and to disappear when these growths are cut down (Wetmore 1916). Because of this factor, and human hunting, the crow has been exterminated throughout its range, except in limited parts of the Dominican Republic and Haiti.

On July 25, 1986, the Service received a petition from Mr. Alexander R. Brash, Department of Biology, Rutgers University, requesting that the white-necked crow be added to the U.S. List of Endangered and Threatened wildlife. On October 31, 1980, the Service made a finding that this petition had presented substantial information. On August 4, 1987, and again the following year, the Service made a finding that the requested measure was warranted but precluded by other listing activity. Section 4(b)(3) of the Endangered Species Act, as amended in 1982, requires that, if a warranted but precluded finding is made with respect to a petition, a subsequent finding be made within 12 months as to whether the requested measure is warranted, not warranted, or warranted but precluded. This proposal incorporates the Service's finding that listing of the white-necked crow is warranted.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to the white-necked crow (*Corvus leucognaphalus*) are as follows.

A. *The present or threatened destruction modification, or curtailment of its habitat or range.* Crows are generally thought to be highly adaptable birds that can thrive in large numbers in a variety of habitats, even if extensively disturbed by people. Actually, various island species of crows are restricted to very limited conditions and do not tolerate changes or the close proximity of human activity. Examples are the Hawaiian crow (*Corvus hawaiiensis*) and the Mariana crow (*C. kubaryi*), both of which the Service already classifies as endangered.

The white-necked crow has become progressively rarer and more restricted in distribution as its natural forest habitat has been invaded and modified by people. This bird once occurred on Saint Croix in the U.S. Virgin Islands, but was extirpated there long ago (Raffaele 1983). It survived on much of Puerto Rico until the 19th century, but then declined as most of the island's forests were cleared for agricultural purposes (Brash 1987). By the early 20th century the species was considered to be almost gone from Puerto Rico (Wetmore 1916). The last record for the island was in the Luquillo Mountains in 1963, and the crow is not thought to have completely vanished from Puerto Rico (Raffaele 1983).

The white-necked crow apparently still occurs in the Dominican Republic and Haiti, which share the island of Hispaniola. However, the same process of forest destruction, which eliminated the species from Puerto Rico, now seems to be occurring on Hispaniola. According to Lewis and Coffey (1985), only 6.7 percent of Haiti was still forested in 1978, and all remaining large areas of forest are expected to disappear within 50 years. The forested portion of the Dominican Republic has declined from about 95 percent originally to less than 15 percent, and only about a third of the remaining forest is considered undisturbed (Hartshorn *et al.* 1981). The white-necked crow remained locally common in the Dominican Republic until the early 20th century (Wetmore 1931), but recent surveys there either have had difficulty locating this bird, which is extremely localized in dry forests (Chandler Robbins, Patuxent Research Center, U.S. Fish and Wildlife Service, pers. comm.), or have been unable to find the species at all (Robert Waide, Center For Energy and Environmental Research, San Juan, pers. comm.)

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The white-necked crow is considered to have good-tasting flesh, and was extensively hunted as a game bird on Puerto Rico and Hispaniola. This factor contributed to its decline, especially as clearing of the forests made it accessible to hunters (Wetmore 1916; Wetmore and Swales 1931).

C. *Disease or predation.* Not known to be a factor.

D. *The inadequacy of existing regulatory mechanisms.* The main problem for the species is habitat loss, which is not restricted by regulations.

E. *Other natural or manmade factors affecting its continued existence.* None now known.

The decision to propose endangered status for the white-necked crow was based on an assessment of the best available scientific information, and of past, present, and probable future threats to the species. A decision to take no action would exclude this bird from benefits provided by the endangered Species Act. A decision to propose only threatened status would not adequately reflect the evident rarity and long-term problems confronting the species. Critical habitat is not being proposed, as its designation is not applicable outside of the United States.

Available Conservation Measures

Conservation measures provided to species listed as endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, Commonwealth, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the Commonwealth and requires tht recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. Some actions are initiated prior to listing, conditions permitting. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions that are to be conducted within the United States or on the high seas with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, Section 7(a)(2) requires Federal agencies to ensure that the continued existence of such a species or to destroy or adversely modify its critical habitat. If a proposed Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service. With respect to the white-necked crow, no Federal activities are known that would require conferral or consultation. Such measures may be called for, however, if the species is rediscovered or reintroduced in the Commonwealth of Puerto Rico.

Section 9 of the Act, and implementing regulations found at 50 CFR 17.21, set forth a series of general

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prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and Commonwealth conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance propagation or survival, or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, comments and suggestions concerning any aspect of this proposed rule are hereby solicited from the public, concerned governmental agencies, and other parties. Comments are particularly sought concerning the following:

(1) Biological, commercial, or other relevant data concerning any threat (or lack thereof) to the subject species;

(2) The location of any additional populations of the subject species;

(3) Additional information concerning the distribution of this species; and

(4) Current or planned activities in the involved areas, and their possible effect on the subject species.

Final promulgation of the regulation on the subject species will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal, should be in writing, and should be directed to the party named in the above "ADDRESSES" section.

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** of October 25, 1983 (48 FR 49244).

References Cited

Brash, A.R. 1987. The history of avian extinction and forest conversion on Puerto Rico. Biological Conservation 39:97–111.

Hartshorn, G., G. Antonii, R. Dubois, D. Harcharik, S. Heckadon, H. Newton, C. Quesada, J. Shores, and G. Staples. The Dominican Republic. Country environmental profile. A field study. JRB Associates, McLean, Virginia, 84 pp.

Lewis, L.A., and W.V. Coffey. 1985. The continuing deforestation of Haiti. Ambio 14:158–160.

Raffaele, H.A. 1983. A guide to the birds of Puerto Rico and the Virgin Islands. Fondo Educativo Interamericano, San Juan, 255 pp.

Wetmore, A. 1916. Birds of Puerto Rico. U.S. Dept. Agriculture Bull., Number 326, 140 pp.

Wetmore, A., and B.H. Swales. 1931. The birds of Haiti and the Dominician Republic. U.S. National Museum Bull., Number 155, 483 pp.

Author

The primary author of this proposed rule is Ronald M. Novak, Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, DC. 20240 (703–358–1708 or FTS 358–1708).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1543; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under "BIRDS," to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species							
Common name	Scientific name	Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
BIRDS							
Crow, white-necked	Corvus leucognaphalus	U.S.A. (PR), Dominician Republic, Haiti.	Entire	E	NA	NA	

Dated: November 6, 1989.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 89–29952 Filed 12–26–89; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 228

Public Hearing—Incidental Take of Marine Mammals in Beaufort and Chukchi Seas

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearing on proposed rule to allow an incidental take of marine mammals in the Beaufort and Chukchi Seas.

SUMMARY: The National Marine Fisheries Service is holding an additional public hearing on a proposed rule (54 FR 40703) that would allow the harassment of marine mammals during exploration for oil and gas in the Chukchi and Beaufort Seas for the next 5 years.

DATES: A hearing was held in Barrow, Alaska on November 10, 1989. An additional hearing has been scheduled for Tuesday, January 16, 1989 from 1:30 to 4 p.m. Written comments on the proposed rule are due by January 16, 1989.

ADDRESSES: Written comments on the proposed rule may be mailed to Dr. Nancy Foster, Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910. A copy of the proposed rule may be obtained by writing to this address or from the information contact listed below. The location for the Washington, DC area hearing is the Lobby Conference Room at the above address.

FOR FURTHER INFORMATION CONTACT: Margaret C. Lorenz in Washington, DC at (301) 427–2322. Notify Ms. Lorenz if you wish to testify, and please submit a written copy of your testimony at the hearing.

Dated: December 18, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs.

[FR Doc. 89–29943 Filed 12–26–89; 8:45 am]

BILLING CODE 3510–22–M

50 CFR Part 675

[Docket No. 91185–9285]

Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: NOAA issues this advance notice of proposed rulemaking (NAPR) to make the public aware of a proposal to implement regulations that would prohibit the use of pots in the Gulf of Alaska and Bering Sea and Aleutian Islands area groundfish fisheries conducted in the exclusive economic zone off Alaska other than those that are modified or constructed to minimize the catch of Pacific halibut. This ANPR is in response to a recommendation made by the North Pacific Fishery Management Council (Council) that a rulemaking be proposed that would reduce the incidental catch of Pacific halibut in pots used in the groundfish fishery. By this action, NMFS is soliciting public comments on possible modifications of groundfish pot gear that would effectively reduce the catch of Pacific halibut.

DATE: Comments are invited through February 26, 1990.

ADDRESS: Comments on this ANPR may be sent to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802–1668.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Management Biologist, NMFS), 907–586–7230.

SUPPLEMENTARY INFORMATION:

Background

At its June 20–23, 1989, meeting, the Council requested that NMFS prepare a regulatory amendment that would prohibit the use of pots in the groundfish fisheries that do not reduce the catch of Pacific halibut (halibut) below levels being experienced with pots of contemporary design. The purpose underlying the Council's recommendation is to reduce halibut bycatches by requiring each groundfish pot be modified or constructed in such a way that halibut could not easily enter it. Reduced halibut bycatch would foster the Council's objective to develop management measures that encourage the use of gear that reduces the discard of fish, including prohibited species such as halibut, which are caught as bycatch in groundfish fisheries.

Discussions with management personnel in the Alaska Department of Fish and Game (ADF&C) suggest that merely partitioning the pot opening into smaller openings may accomplish this objective. Narrow openings impede entry by halibut but do not impede entry by groundfish species targeted with pot gear, such as Pacific cod. Partitioning the pot opening might be accomplished by tying strong cords vertically across the vertical plane of a pot opening in such a way that either side of the partitioned opening would be no more than about eight inches. It might also be accomplished by constructing a pot opening that has a width of no more than 8 inches, with no restrictions on the height of the opening.

Data to define the extent of the halibut bycatch problem in groundfish pot fisheries are scarce. However, data are available from crab indexing surveys using pot gear near Kodiak, Island, which were conducted in summer months during 1972–1980 by the ADF&G. This data indicate the potential problem of halibut bycatch in groundfish fisheries using pots. Total numbers of pots checked annually during these years ranged from 895 to 2,390. During these years, a total of 16,079 pots were checked, and 4,158 halibut were caught for an average catch rate of 0.26 halibut/pot.

In contrast, the ADF&G monitored four commercial pot vessels in the Kodiak area during 1987–1988. These vessels used crab pots to fish for Pacific cod. Each pot was modified in various ways to reduce the catch of halibut. Some modifications were accomplished simply by partitioning the pot opening along the vertical plane by tying heavy twine at eight inch intervals, thereby forming openings narrower than the single wide entrance. During these years, ADF&G monitored 667 pot lifts. Forty-five halibut were caught for an average catch rate of 0.07 halibut/pot. Although the catch rate by modified pots is small, the results cannot be compared to those from the king crab index surveys, because the time series and fishing locales are different.

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Nonetheless, information from ADF&G personnel who are familiar with fisheries in the Kodiak area suggests that narrow pot openings significantly reduce halibut bycatch.

Use of pots is not currently common in the groundfish fisheries. The NMFS Enforcement Official database lists 32 vessel owners who have recorded use of pots on their vessel groundfish permit, but few of these vessels have fished groundfish in 1989. Pot catches of groundfish in 1989 total about 100 metric tons of groundfish, most of which was Pacific cod. About 50 pots are used on each vessel. If all vessels were fishing at the same time, 1,600 pots would be employed, and if each pot were lifted one time 112 halibut would be caught, assuming each pot was modified to reduce halibut bycatch and 0.07 halibut/pot was a typical catch rate. For comparison, 416 halibut would be caught, using a higher rate that might occur if unmodified pots were used (e.g., 0.26 halibut/pot observed during the king crab index surveys).

Although not much information exists to quantitatively assess the value of using modified pots to reduce halibut bycatches while not imposing an unreasonable cost to fishermen in terms of labor, manufacturing costs, or fishing time lost in modifying the pots, NMFS would consider ways to enforce such a gear regulation (e.g., prohibit the presence on board a vessel of any pot that did not comply with the regulation). NMFS invites comments from all interested parties on options presented to reduce the catch of halibut in pots used in the groundfish fishery. In addition, comments on any other option for reducing halibut catches by any gear type are welcomed and encouraged

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 20, 1989.

James E. Douglas, Jr.,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 89-29998 Filed 12-26-89; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register

Vol. 54, No. 247

Wednesday, December 27, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Feed Grain Donations for the Lower Brule Sioux Tribe Indian Reservation in South Dakota

Pursuant to the authority set forth in section 407 of the Agricultural Act of 1949, as amended (7 U.S.C. 1427) and Executive Order 11336, I have determined that:

1. The chronic economic distress of the needy members of the Lower Brule Sioux Tribe Reservation in South Dakota has been materially increased and become acute because of severe and prolonged drought, thereby creating a serious shortage of feed and causing increased economic distress. This reservation is designated for Indian use and is utilized by members of the Lower Brule Sioux Tribe for grazing purposes.

2. The use of feed grain or products thereof made available by the Commodity Credit Corporation (CCC) for livestock feed for such needy members of the Tribe will not displace or interfere with normal marketing of agricultural commodities.

3. Based on the above determinations, I hereby declare the reservation and grazing land of the Tribe to be acute distress areas and authorize the donation of feed grain owned by the CCC to livestock owners who are determined by the Bureau of Indian Affairs, United States Department of the Interior, to be needy members of the Tribe utilizing such lands. These donations by the CCC may commence upon December 15 and shall be made available through April 30, 1990, or such other date as may be stated in a notice issued by the USDA.

Signed at Washington, DC, on December 20, 1989.

Keith D. Bjerke,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 89-29992 Filed 12-26-89; 8:45 am]

BILLING CODE 3410-05-M

Farmers Home Administration

Housing Demonstration Program

AGENCY: Farmers Home Administration, FmHA.

ACTION: Notice of Housing Demonstration Program.

SUMMARY: The Farmers Home Administration (FmHA) of the U.S. Department of Agriculture (USDA) will accept, in fiscal year 1990, proposals for a Housing Demonstration program under section 506(b) of title V of the Housing Act of 1949. However, if the proposal is authorized, loan funds may not be available until fiscal year 1991. Under section 506(b), FmHA may provide loans for innovative housing units and systems which do not meet existing published standards, rules, regulations, or policies. The intended effect is to increase to the availability of affordable housing for low-income families, through innovative designs and systsems.

FOR FURTHER INFORMATION CONTACT: Mathias J. Felber, Branch Chief, Special Programs Branch, Single Family Housing Processing Division, Farmers Home Administration, 14th and Independence Avenue, SW, Room 5334, South Building, Washington, DC 20250, telephone 202-382-1474 or Ray McCracken, Senior Loan Officer, Special Programs Branch, Single Family Housing Processing Divison, Farmers Home Administration, 14th and Independence Avenues, SW, Room 5334, South Building, Washington, DC 20250, Telephone 202-382-1486.

SUPPLEMENTARY INFORMATION: Under current standards, regulations, and policies, some low-income rural families lack sufficient incomes to qualify for loans to obtain adequate housing. Section 506(b) of title V of the Housing Act of 1949 authorizes a housing demonstration program that could result in housing that these families can afford. The Congress of the United States made two conditions: (1) That the health and safety of the population of the areas in which the demonstrations are carried out will not be adversley affected, and (2) that the aggregate expenditures for the demonstration may not exceed $10 million in any fiscal year. Proposals authorize in fiscal year 1989 may use most of these monies in fiscal year 1990.

FmHA State Directors are authorized in fiscal year 1990 to continue to accept proposed demonstration concept proposals from nonprofit organizations, profit organizations and individuals as announced in 51 FR 19240 on May 28, 1986.

The State Directors will evaluate the proposals on a first-come first-served basis. An acceptable proposal is to be sent to the National Office for the Assistant Administrator, Housing concurrence before the State Director may approve it. If the proposal is not selected, the State Director will so notify the applicant, in writing, giving specific reasons why the proposal was not selected.

The funds for the demonstration program are Section 502 funds, and are available to housing applicants that may wish to purchase an approved demonstration dwelling. However, there is no guarantee that a market exists for demonstration dwellings and applicants for such a Section 502 RH loan must be eligible for the program in all other respects.

This program activity is listed in the Catalog of Federal Domestic Assisance under No. 10.410. For the reasons set forth in Final Rule related to Notice 7 CFR 3015, subpart V (48 F.R. 29115, June 24, 1983) and FmHA Instruction 1940-J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983) this program/activity is excluded from the scope of Executive Order 12372 which requires the intergovernmental consultation with state and local officials.

All interested parties should make a written request for a proposal package. The request should be made to the State Director in the state in which the proposal will be submitted for evaluation. The government will not reimburse or be liable for any expenses incurred by respondents in the development and submission of applications. Following is a list of State Director and the addresses:

Alabama	State Director, Farmers Home Administration,	Illinois	State Director, Farmers Home Administration, Illini	Missouri	State Director, Farmers Home Administration, 555

Oklahoma	State Director, Farmers Home Administration,	Vermont/N.H.	State Director, Farmers Home Administration, 141	*Contact:*	William C. Golbitz, Executive Director, General Advisory Committee on Arms Control and Disarmament,

Alabama	State Director, Farmers Home Administration, Room 717, Aronov Building, 474 South Court Street, Montgomery, Alabama 36104.
Alaska	State Director, Farmers Home Administration, 634 South Bailey, Suite 103, Palmer, Alaska 99645.
Arizona	State Director, Farmers Home Administration, 201 East Indianola, Suite 275, Phoenix, Arizona 85012.
Arkansas	State Director, Farmers Home Administration, 700 W. Capitol, Post Office Box 2778, Little Rock, Arkansas 72203.
California	State Director, Farmers Home Administration, Suite F, 194 West Main Street, Woodland, California 95695-2915.
Colorado	State Director, Farmers Home Administration, Room E 100, 655 Parfet Street, Lakewood, CO 80215.
Delaware/ Maryland.	State Director, Farmers Home Administration, 2319 South DuPont Highway, Dover, Delaware 19901.
Florida	State Director, Farmers Home Administration, Room 214, Federal Building, 410 S.E. First Avenue, Gainesville, Florida 32602.
Georgia	State Director, Farmers Home Administration, Stephens Federal Building, 355 E. Hancock Street, Athens, Georgia 30610.
Hawaii	State Director, Farmers Home Administration, Room 311, Federal Building, 154 Waianuenue Avenue, Hilo, Hawaii 96720.
Idaho	State Director, Farmers Home Administration, 3232 Elder Street, Boise, Idaho 83705.
Illinois	State Director, Farmers Home Administration, Illini Plaza, Suite 103, 1817 South Neil Street, Champaign, Illinois 61820.
Indiana	State Director, Farmers Home Administration, 5975 Lakeside Blvd., Indianapolis, Indiana 46278.
Iowa	State Director, Farmers Home Administration, Room 873, Federal Building, 210 Walnut Street, Des Moines, Iowa 50309.
Kansas	State Director, Farmers Home Administration, Room 176, Federal Building, 444 South East Quincy Street, Topeka, Kansas 66683.
Kentucky	State Director, Farmers Home Administration, 333 Waller Avenue, Lexington, Kentucky 40504.
Louisiana	State Director, Farmers Home Administration, 3727 Government Street, Alexandria, Louisiana 71302.
Maine	State Director, Farmers Home Administration, USDA Office Building, Orono, Maine 04473.
Mass/Conn./RI	State Director, Farmers Home Administration, 451 West Street, Amherst, Massachusetts 01002.
Michigan	State Director, Farmers Home Administration, Room 209, 1405 South Harrison Road, East Lansing, Michigan 48823.
Minnesota	State Director, Farmers Home Administration, 410 Farm Credit Bldg., 375 Jackson Street, St. Paul, Minnesota 55101.
Mississippi	State Director, Farmers Home Administration, Suite 831, Federal Building, 100 West Capital Street, Jackson, Mississippi 39269.
Missouri	State Director, Farmers Home Administration, 555 Vandiver Drive, Columbia, Missouri 65202.
Montana	State Director, Farmers Home Administration, Room 324, Federal Building, 10 East Babcock Street, Post Office Box 850, Boxeman, Montana 59715.
Nebraska	State Director, Farmers Home Administration, Room 308, Federal Building, 100 Centennial Mall North, Lincoln, Nebraska 68508.
New Jersey	State Director, Farmers Home Administration, 100 High, Suite 100, Mount Holly, New Jersey 08060.
New Mexico	State Director, Farmers Home Administration, Room 3414, Federal Building, 517 Gold Avenue, SW., Albuquerque, New Mexico 87102.
New York	State Director, Farmers Home Administration, Room 871, James M. Hanley Federal Building, 100 S. Clinton Street, Syracuse, New York 13260.
North Carolina	State Director, Farmers Home Administration, Room 525, 310 New Bern Avenue, Raleigh, North Carolina 27601.
North Dakota	State Director, Farmers Home Administration, Room 208, Federal Building, Third and Rosser, Post Office Box 1737, Bismarck, North Dakota 58502.
Ohio	State Director, Farmers Home Administration, Room 507, Federal Building, 200 North High Street, Columbus, Ohio 43215.
Oklahoma	State Director, Farmers Home Administration, Agricultural Center Office Building, Stillwater, Oklahoma 74074.
Oregon	State Director, Farmers Home Administration, Room 1590, Federal Building, 1220 S.W. 3rd Avenue, Portland, Oregon 97204.
Pennsylvania	State Director, Farmers Home Administration, Room 730, Federal Building, Post Office Box 905, Harrisburg, Pennsylvania 17108.
Puerto Rico	State Director, Farmers Home Administration, Room 623, Federico Degetau, Federal Building, Carlos Chardon Street, Hato Rey, Puerto Rico 00918.
South Carolina	State Director, Farmers Home Administration, Strom Thurmond Federal Building, Room 1007, 1835 Assembly Street, Columbia, South Carolina 29201.
South Dakota	State Director, Farmers Home Administration, Room 308, Federal Building, 200 4th Street, SW., Huron, South Dakota 57350.
Tennessee	State Director, Farmers Home Administration, Room 538, Federal Building, 801 Broadway, Nashville, Tennessee 37203.
Texas	State Director, Farmers Home Administration, Suite 102, Federal Building, 101 South Main, Temple, Texas 76501.
Utah/Nevada	State Director, Farmers Home Administration, Room 5438, Wallace F. Bennett, Federal Building, 125 South State Street, Salt Lake City, Utah 84138.
Vermont/N.H.	State Director, Farmers Home Administration, 141 Main Street, Post Office Box 586, Montepelier, Vermont 05602.
Virginia	State Director, Farmers Home Administration, Room 8213, Federal Building, 400 North Eighth Street, Richmond, Virginia 23240.
Washington	State Director, Farmers Home Administration, Room 319, Federal Office Building, Post Office Box 2427, Wenatchee, Washington 98807.
West Virginia	State Director, Farmers Home Administration, 75 High Street, Post Office Box 678, Morgantown, West Virginia 26505.
Wisconsin	State Director, Farmers Home Administration, 1257 Main Street, Stevens Point, Wisconsin 54481.
Wyoming	State Director, Farmers Home Administration, Room 1005, Federal Building, 100 East B. Street, Casper, Wyoming 82602.

Authorities: 42 USC 1480, 7 CFR 2.23, 7 CFR 2.70.

Dated: December 4, 1989.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 89-29991 Filed 12-26-89; 8:45 am]

BILLING CODE 3410-07-M

ARMS CONTROL AND DISARMAMENT AGENCY

The President's General Advisory Committee on Arms Control and Disarmament; Closed Meeting

In accordance with the Federal Advisory Committee Act, as amended, the U.S. Arms Control and Disarmament Agency announces the following Presidential Committee meeting:

Name: General Advisory Committee on Arms Control and Disarmament.

Date: January 10, 1990.

Time: 8:30 a.m.

Place: State Department Building, Washington, DC.

Type of Meeting: Closed.

Contact: William C. Golbitz, Executive Director, General Advisory Committee on Arms Control and Disarmament, room 5927, Washington, DC. 20451. (202) 647-5178.

Purpose of Advisory U.S. Committee: To advise the President, the Secretary of State, and Director of the Arms Control and Disarmament Agency respecting matters affecting arms control, disarmament, and world peace.

Agenda: The Committee will review specific arms control and related treaty issues; an Executive session will be held.

Reason for Closing: The GAC members will be reviewing and discussing matters specifically required by Executive Order to be kept secret in the interest of national defense and foreign policy.

Authority To Close Meeting: The closing of this meeting is in accordance with the determination by the Director of the Arms Control and Disarmament Agency dated November 27, 1989, made pursuant to the provisions of section 10(d) of the Federal Advisory Committee Act as amended.

William J. Montgomery,

Committee Management Officer.

[FR Doc. 89-29912 Filed 12-26-89; 8:45 am]

BILLING CODE 6230-32-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[A-29-89; Order No. 459]

Approval for Manufacture of Radios for Export Foreign-Trade Zone 150, El Paso, Texas

Pursuant to its authority under the Foreign-Trade Zones (FTZ) Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

The request of the WestPort Economic Development Corporation (7/25/89), grantee of FTZ 150, El Paso, Texas, on behalf of Mantor Electronics, Inc., for authority to manufacture automobile radios under zone procedures for export is approved.

This authority is granted subject to all other conditions in Board Order 386 (53 FR 28030, 7/26/88), which authorized establishment of Foreign-Trade Zone 150.

Signed at Washington, DC, this 15th day of December, 1989.

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Foreign-Trade Zones Board.

Eric I. Garfinkel,

Assistant Secretary of Commerce for Import Administration Chairman, Committee of Alternates.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 89-29953 Filed 12-26-89; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-475-401]

Preliminary Results of Antidumping Duty Administrative Review: Certain Valves and Connections, of Brass, for Use in Fire Protection Systems From Italy

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: In response to requests from Rubinetteria A. Giacomini, S.p.A. ("Giacomini"), respondent in the case, and Badger-Powhatan, petitioner in the case, the Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on certain valves and connections, of brass, for use in fire protection systems from Italy. The review covers Giacomini, a manufacturer/exporter of this merchandise to the United States, and the period March 1, 1988 through February 28, 1989.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: December 27, 1989.

FOR FURTHER INFORMATION CONTACT: Mark Wells or Bradford Ward, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 377-3798 or (202) 377-5288, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 29, 1989, the Department published in the **Federal Register** (54 FR 40155) the final results of its second administrative review of the antidumping duty order on certain valves and connections, of brass, for use in fire protection systems from Italy (50 FR 8354). No request for an administrative review for the third period was received. In accordance with § 353.22 of the Commerce Regulations, the Department received requests from both petitioner and respondent to conduct a fourth administrative review. We published in the **Federal Register** a notice of initiation of antidumping duty administrative review on April 28, 1989 (54 FR 18322). The Department is conducting the administrative review in accordance with section 751 of the Tariff Act of 1930, as amended ("the Act").

Scope of Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule ("HTS"), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS sub-heading.

Imports covered by this review are shipments of certain valves and connections, of brass, suitable for use in fire protection systems from Italy which are provided for in the *Tariff Schedules of the United States Annotated* (TSUSA) item numbers 680.1420 and 680.1440. The merchandise is currently classifiable under HTS sub-headings 8481.80.1050 and 8481.80.1070. The HTS sub-headings are provided for convenience and Customs purposes. Our written description of the products subject to this review remains dispositive.

This review covers one manufacturer/exporter of certain valves and connections, of brass, for use in fire protection systems to the United States and the period March 1, 1988 through February 28, 1989.

United States Price

In calculating United States price the Department used purchase price as defined in section 772(b) of the Act. Purchase price was based on the packed, C&F, CIF or delivered price, duty excluded, to unrelated distributors in the United States. Where applicable, we made adjustments for foreign inland freight, ocean freight, marine insurance, brokerage and handling charges, and U.S. inland freight.

Foreign Market Value

Giacomini, the only respondent, did not make any sales to Italian customers during the review period. Consequently, in calculating foreign market value, the Department used either sales to the third country, Canada, or constructed value, as defined in section 773 of the Act.

Third country sales price was based on the packed, FOB price to unrelated distributors in the third country market, Canada. In cases in which there were no Canadian sales of the subject merchandise, we calculated foreign market value based on constructed value.

When third country prices were used, we made deductions, where appropriate, for foreign inland freight. We deducted third country packing costs and added U.S. packing costs.

We made circumstances of sale adjustments for differences in credit terms and commissions pursuant to § 353.56 of the Department's regulations.

Where appropriate, we made further adjustments to the third country price to account for differences in the physical characteristics of the merchandise in accordance with section 353.57 of the Department's regulations.

We calculated constructed value in accordance with section 773(e) of the Act. For material and direct labor costs the Department used the respondent's submitted amounts. For factory overhead the Department increased the submitted amounts to account for factory supervisors' salary expenses. These expenses had been reported as general expenses by Giacomini in its questionnaire response.

General and administrative expenses were adjusted to remove income taxes. The remaining general and administrative expenses were then allocated to each model based on the calculated cost of sales. In adding imputed credit expense to the constructed value, the interest expense as reflected on Giacomini's books was reduced by the portion of expenses which relate to these activities to avoid double-counting.

Indirect selling expenses were included in the submitted amount for general and administrative expenses. Accordingly, these indirect expenses were allocated to each product based on the calculated cost of sales.

We made additions for direct selling expenses, profit and U.S. packing to arrive at a per product constructed value. For general and administrative expenses and profit, the Department used actual amounts because these amounts exceeded the statutory minimum percentages of 10 percent for general and administrative expenses and 8 percent for profit.

Currency Conversion

In accordance with § 353.60 of the Department's regulations, we used the official exchange rates in effect on the appropriate dates for determining foreign market value. All currency conversions were made at the rates certified by the Federal Reserve Bank.

Preliminary Results of the Review

As a result of our review, we preliminarily determine the margin to be:

Manufacturer/Exporter	Time period	Margin (percent)
Rubinetteria A. Giacomini, S.p.A.	03/01/88-02/28/89.	4.01

The Department will issue appraisement instructions directly to the Customs Service upon completion of this administrative review. The following deposit requirements will be effective upon publication of our final results of this administrative review for all shipments of certain valves and connections, of brass, for use in fire protection systems from Italy entered, or withdrawn from warehouse, for consumption on or after that publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for any shipments of this merchandise manufactured or exported by the remaining known manufacturers/exporters not covered in this review will continue to be at the rate published in the final results of the second administrative review for this firm (54 FR 40155, September 29, 1989); (2) the cash deposit rate for Giacomini will be that established in the final results of this administrative review; and (3) the cash deposit rate for any future entries of this merchandise from a new producer and/or exporter, not covered in this review or any other prior review, whose first shipments occurred after February 28, 1989 and who is unrelated to the reviewed firm or any previously reviewed firm, will be the same as the rate established for Giacomini in the final results of this review.

Public Comment

In accordance with § 353.38 of the Departments' regulations, case briefs or any other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than 30 days after the date of publication of this notice in the **Federal Register**, and rebuttal briefs no later than 37 days after the date of publication. In accordance with § 353.38(b) of the Department's regulations, we will hold a public hearing, if requested, to afford interested parties and opportunity to comment on arguments raised in case or rebuttal briefs. Such hearing will be held on February 1, 1990 at 9:30 a.m., at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington DC 20230. Interested parties who wish to participate in the hearing must submit a written request to the Assistant Secretary for Import Administration, room B-099, at the above address within ten days of the publication of this notice. Requests should contain: (1) The party's name, address and the telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In accordance with § 353.38(b) of the Department's regulations, an interested party may make an oral presentation only on arguments included in its briefs.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and § 353.22(c)(5) of the Department's regulations.

Dated: December 18, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-29930 Filed 12-26-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-580-803]

Final Determination of Sales at Less Than Fair Value: Certain Small Business Telephone Systems and Subassemblies Thereof From Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: We determine that certain small business telephone systems and subassemblies thereof (SBTS) from Korea are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to continue to suspend liquidation of all entries of SBTS from Korea as described in the "Continuation of Suspension of Liquidation" section of this notice. The ITC will determine within 45 days of the publication of this notice whether these imports materially injure, or threaten material injury to, the U.S. industry.

EFFECTIVE DATE: December 27, 1989.

FOR FURTHER INFORMATION CONTACT: Contact Nancy Saeed, Brad Hess, Joel Fischl or Tracey Oakes, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-1777, 377-3003, or 377-3174 respectiviey.

SUPPLEMENTARY INFORMATION:

Final Determination

We determine that SBTS from Korea are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a) (the Act). The estimated weight-average dumping margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

On July 26, 1989, the Department issued an affirmative preliminary determination (54 FR 31980, August 3, 1989). The following events have occurred subsequent to publication of the preliminary determination.

Verification of the questionnaire responses of Samsung Electronics Co., Ltd. and Samsung Semiconductor & Telecommunications Co., Ltd., (Samsung) and Goldstar Telecommunications Co., Ltd. (GST) was conducted in Korea from August 21 to September 8, 1989. The exporter's sales price (ESP) verification for Goldstar was conducted in Scottsdale, Arizona on September 25-26, 1989, and in Darien, Connecticut on October 3, 9, and 10, 1989.

Interested parties submitted comments for the record in their case briefs dated November 9, 1989, and in their rebuttal briefs dated November 14, 1989. A public hearing was held on November 16, 1989.

Period of Investigation

The period of investigation (POI) is July 1, 1988, through December 31, 1988.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the *harmonized Tariff Schedule* (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after this date is now classified solely according to the appropriate HTS item number (s). The HTS Item numbers are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive.

The products covered by this investigation are certain small business telephone systems and subassemblies

thereof, currently classifiable under *HTS* item numbers 8517.30.2000, 8517.30.2500, 8517.30.3000, 8517.10.0020, 8517.10.0040, volts, and 48 volts, as well as 90 volt AC ringing capability.

The following merchandise has been

similarity of subassemblies, using the criteria described in the preceding sentences.

the volume of sales of identical or similar merchandise to third countries

administrative ("G&A") in accordance with adjustments noted in our

advertising expenses, postage fees and foreign exchange fees, pursuant to

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thereof, currently classifiable under *HTS* item numbers 8517.30.2000, 8517.30.2500, 8517.30.3000, 8517.10.0020, 8517.10.0040, 8517.10.0050, 8517.10.0070, 8517.10.0080, 8517.90.1000, 8517.90.1500, 8517.90.3000, 8518.30.1000, 8504.40.0004, 8504.40.0008, 8504.40.0010, 8517.81.0010, 8517.81.0020, 8517.90.4000, and 8504.40.0015. Prior to January 1, 1989, such merchandise was classifiable under items 684.5710, 684.5720, 684.5730, 684.5805, 684.5810, 684.5815, 684.5825, 684.5830, 682.6051, and 682.6053 of the *Tariff Schedules of the United States Annotated* (TSUSA).

Certain small business telephone systems and subassemblies thereof are telephone systems, whether complete or incomplete, assembled or unassembled, with intercom or internal calling capability and total non-blocking port capacities of between two and 256 ports, and discrete subassemblies designed for use in such systems. A subassembly is "designed" for use in a small business telephone system if it functions to its full capability only when operated as part of a small business telephone system. These subassemblies are defined as follows:

(1) Telephone sets and consoles, consisting of proprietary, corded telephone sets or consoles. A console has the ability to perform certain functions including: answer all lines in the system; monitor the status of other phone sets; and transfer calls. The term "telephone sets and consoles" is defined to include any combination of two or more of the following items, when imported or shipped in the same container, with or without additional apparatus: housing; hand set; cord (line or hand set); power supply; telephone set circuit cards; console circuit cards.

(2) Control and switching equipment, whether denominated as a key service unit, control unit, or cabinet/switch. "Control and switching equipment" is defined to include the units described in the preceding sentence which consist of one or more circuit cards or modules (including backplane circuit cards) and one or more of the following items, when imported or shipped in the same container as the circuit cards or modules, with or without additional apparatus: connectors to accept circuit cards or modules; building wiring.

(3) Circuit cards and modules, including power supplies. These may be incorporated into control and switching equipment or telephone sets and consoles, or they may be imported or shipped separately. A power supply converts or divides input power of not more than 2400 watts into output power of not more than 1800 watts supplying DC power of approximately 5 volts, 24 volts, and 48 volts, as well as 90 volt AC ringing capability.

The following merchandise has been excluded from this investigation: (1) Nonproprietary industry-standard ("tip/ring") telephone sets and other subassemblies that are not specifically designed for use in a covered system, even though a system may be adapted to use such nonproprietary equipment to provide some system functions; (2) telephone answering machines or facsimile machines integrated with telephone sets; and (3) adjunct software used on external data processing equipment.

We note that a number of ambiguities existed in the scope language previously published in the Notice of Initiation with regard to the definition of subassemblies. Therefore, in our preliminary determination, we clarified the language describing the subassemblies under investigation.

The Department continues to receive numerous inquiries regarding the inclusion of dual use subassemblies within the scope of this investigation. As noted in the preliminary determination notice, the Department defines dual use subassemblies as those subassemblies that function to their full capability when operated as part of a large business telephone system as well as a small business telephone system. Because dual use subassemblies by definition are not subassemblies "designed" for use in small business telephone systems, dual use subassemblies are excluded from the scope of the investigation.

Such or Similar Comparisons

For all respondent companies, pursuant to section 771(16)(C) of the Act, we established four categories of "such or similar" merchandise consisting of: (a) Control and switching equipment; (b) circuit cards and modules; (c) telephone sets and consoles; and (d) complete small business telephone systems ("systems").

Product comparisons were made using criteria which are ranked in order of importance. For control and switching equipment we used the following criteria: (1) Port capacity based on minimum operational configuration; (2) type of central microprocessor; and (3) read-only memory (ROM) size. For circuit cards and modules we considered: (1) Functions; and (2) physical appearance. For telephone sets and consoles we considered: (1) Number of buttons (regardless of function) excluding dialpad; and (2) number of individual visual indicators. For complete telephone systems, we made comparisons on the basis of the similarity of subassemblies, using the criteria described in the preceding sentences.

When there was no identical product in the home or third country market with which to compare a product imported into the United States, the most similar product was compared on the basis of the characteristics described above. We made adjustments for differences in the physical characteristics of the merchandise in accordance with section 773(a)(4)(C) of the Act. Consistent with our normal practice, when adjustments for differences in the merchandise proved to be substantial, we used constructed value (CV). In this case, we determined that an adjustment greater than 20 percent of the cost of manufacturing (COM) of the U.S. model is substantial.

In order to determine whether there were sufficient sales of SBTS in the home market to serve as the basis for calculating foreign market value (FMV), we compared the volume of home market sales within each such or similar category to the volume of third country sales within each respective such or similar category, in accordance with section 773(a)(1) of the Act.

Samsung had no sales of systems in the United States during the POI. We determined that there were sufficient home market sales to unrelated customers for each of the other such or similar categories.

For GST, we determined that the home market was viable as compared to third country sales for the following such or similar categories: control and switching equipment; telephone sets and consoles; and circuit cards and modules. As noted in comment 5 of the Goldstar issues section of this notice, however, we used third country sales for comparisons of circuit cards and modules. We also note that for each of the three such or similar categories with viable home market, we used CV in situations where we could not match U.S. sales to home market or third country sales of similar of identical products. GST had no third country sales of systems and a comparison of home market sales to U.S. sales did not provide an adequate basis to make comparisons. Therefore, we requested that GST report CV data for systems and we have used this data as the basis for FMV.

For circuit cards and modules, we determined that sales to third countries were the most appropriate basis for calculating FMV because the merchandise sold in third countries was the most comparable to merchandise sold in the United States, and because the volume of sales of identical or similar merchandise to third countries constituted a sufficient basis for our comparisons.

Fair Value Comparisons

To determine whether sales of SBTS from Korea to the United States were made at less than fair value, we compared the U.S. price to the FMV, as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

For Samsung, we based the U.S. price on purchase price in accordance with section 772(b) of the Act because all sales were made directly to unrelated parties prior to importation into the United States. For GST, we based the U.S. price on exporter's sales price (ESP), in accordance with section 772(c) of the Act, because in each case the sale to the first unrelated purchaser took place after importation into the United States.

Samsung

We calculated purchase price based on packed, f.o.b. Korean port prices to unrelated customers in the United States. We made deductions, where appropriate, for inland freight, wharfage, container freight station fees, and customs clearance fees. We added rebated duties and uncollected taxes pursuant to section 772(d) (1)(B) and (C) of the Act.

GST

We calculated ESP based on packed, delivered prices in the United States. We made deductions, where appropriate, for brokerage, wharfage, inland freight in Korea, stuffing charges, ocean freight, marine insurance, U.S. customs duty, customs brokerage fees, U.S. inland freight, and inland insurance. In accordance with section 772(e)(2) of the Act, we made additional deductions, where appropriate, for bad debt expenses, installation labor expenses, warranty expenses, expenses for promotional materials, technical service expenses, credit expenses, cooperative advertising, commissions, and indirect selling expenses. We deducted promotional material expenses as indirect selling expenses for sales other than sales to original equipment manufacturers (OEM's), and as direct selling expenses for OEM sales. We treated the portion of the claimed technical services expenses not related to specific sales as indirect selling expenses. We adjusted the reported amounts for installation labor, corporate overhead, and corporate general and administrative ("G&A") in accordance with adjustments noted in our verification reports.

In accordance with section 772 (e)(3) of the Act, we deducted value added resulting from assembly performed on the imported merchandise after its importation. This value added included two parts: the process of assembly (also referred to as "further manufacturing"); and the portion of total profit attributable to further manufacturing (also referred to as "allocated profit"). For purposes of this investigation, we determined that, in addition to the cost of the installation parts and materials, further manufacturing included the proportions of installation labor, installation overhead, corporate overhead, and corporate G&A expenses attributable to the installation parts and materials. The allocated profit included two components: The portion of total profit attributable to further manufacturing; and the profit attributable to the portion of total selling, G&A expenses allocated to further manufacturing as explained above.

In accordance with section 772(d)(1)(B) and (C) of the Act, we made adjustments to the ESP as described in the foreign market value section of this notice. For comparisons to home market and third country sales, we added uncollected import duties to the ESP. For comparisons to home market sales we added uncollected or rebated taxes to the ESP. Although the statute is ambiguous with respect to the treatment of indirect taxes when, as here, home market sales are reported on a tax-exclusive basis, we added uncollected taxes pursuant to section 772(d)(1)(C) of the Act.

Foreign Market Value

In accordance with section 773 of the Act, we calculated FMV for Samsung based on home market sales prices or CV, as appropriate.

For GST, we calculated FMV based on home market sales prices, third country sales prices, and CV, as appropriate, in accordance with section 773 of the Act.

Samsung

For Samsung, we calculated FMV based on packed, delivered prices to unrelated customers in the home market.

We made deductions, where appropriate, for inland insurance, rebates, and discounts. We deducted home market packing costs from the FMV and added U.S. packing costs. We made circumstance of sale adjustments, where appropriate, for differences in credit terms, warranty expenses, advertising expenses, postage fees and foreign exchange fees, pursuant to section 773(a)(4)(B) of the Act. We did not allow a deduction for home market inland freight because it could not be verified. We did not consider the reported home market technical service expense to be a direct selling expense because it was of a promotional nature and could not be tied to specific sales. We also did not allow a portion of the claimed home market warranty expense because it could not be segregated between products under warranty and those not under warranty.

We made a circumstance of sale adjustment to eliminate any difference in VAT between the U.S. and home market. We computed the VAT adjustment based on a U.S. price net of all charges incurred in the United States and net of all movement charges incurred between the Korean port and the United States.

Where appropriate, we made further adjustments to the home market price to account for differences in the physical characteristics of the merchandise, in accordance with § 353.57 of the Department's regulations. For sales to one customer, we used best information available for difference in merchandise adjustments because we were unable to identify and adjust for the reporting of different costs for identical parts used in both the home market and U.S. models. (See the Department's response to Comment 1 of the Samsung issue section of this notice). As best information available, we adjusted the reported difference in merchandise adjustments for the sales to this customer by the weighted average percentage change of the difference in merchandise adjustments applicable to those other sales for which the Department was able to correct different costs reported for identical parts used in both the home market and U.S. models.

GST

When sales in the home market were used, we calculated FMV based on packed, delivered, or ex-works prices to unrelated customers. We deducted home market packing costs from the FMV and added U.S. packing costs. We made deductions, where appropriate, for inland freight, cash discounts, volume rebates, product rebates and exchange rebates. We made circumstance of sale adjustments, where appropriate, for differences in credit terms, and for advertising expenses, and warranty expenses. We also allowed a deduction for home market indirect selling expenses, such as warrant expenses, inventory carrying costs and other

indirect selling expenses. This deduction for indirect selling expenses was capped

773(e) of the Act. The CV includes the cost of materials and fabrication of the

exported merchandise, plus general expenses, profit and packing. We used

from the FMV and added U.S. packing costs.

adjustment was less than or equal to 20 percent of the COM of the U.S. merchandise ("20 percent guideline").

percent guideline, it reported both constructed value and the most similar comparison with a difference in

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indirect selling expenses. This deduction for indirect selling expenses was capped by the amount of indirect selling expenses incurred in the U.S. market, in accordance with § 353.56 (b) of the Department's regulations.

We made a circumstance of sale adjustment to eliminate any difference in VAT between the U.S. and home market. We computed the VAT adjustment based on a U.S. price net of all charges incurred in the United States and net of all movement charges incurred between the Korean port and the United States. We did not use the VAT adjustment reported by GST because it was based on the home market model chosen by GST as the most similar comparison to the U.S. model, rather than on the U.S. model.

Where appropriate, we made further adjustments to the home market price to account for differences in the physical characteristics of the merchandise, in accordance with section 353.57 of the Department's regulations.

We calculated FMV in the third country markets based on packed, delivered, or ex-works prices to unrelated customers. We made deductions, where appropriate, for wharfage, ocean freight, inland freight in the third countries, brokerage, stuffing and marine insurance. We deducted the third country packing costs from the FMV and added U.S. packing costs. We made circumstance of sale adjustments, where appropriate, for credit expenses. We added duty rebates to the third country price. We allowed a deduction for third country commissions and other indirect selling expenses. We capped the amount deducted for indirect selling expenses by the amount of indirect selling expenses incurred on sales in the U.S. market, in accordance with § 353.56 (b) (2) of our regulations.

Where appropriate, we made further adjustments to the third country price to account for differences in the physical characteristics of the merchandise, in accordance with § 353.57 of the Department's regulations.

Constructed Value

For those products sold in the United States for which the difference in merchandise adjustment between the reported home market or third country product and the U.S. product was substantial, as explained previously in the "Such or Similar Comparisons" section of this notice, we calculated FMV based on CV in accordance with section 773(e) of the Act.

Samsung

We calculated the FMV based on CV for Samsung in accordance with section 773(e) of the Act. The CV includes the cost of materials and fabrication of the merchandise exported to the U.S., plus general expenses, profit and packing. In all cases, we used actual amounts for general expenses because these exceeded the statutory minimum amount of ten percent of the cost of materials and fabrication. For profit, we applied the statutory minimum amount of eight percent of the combined cost of materials, fabrication and general expenses, because actual profit amounts were less than this figure. We reduced the reported finance expense to account for the interest portion already included in the imputed credit and finished goods inventory carrying costs. We used the CVs submitted by the respondent, except in those instances when the costs were not appropriately quantified or valued. To develop the ration used to calculate the general and finance expenses for the subject merchandise, we used the general and finance expenses of Samsung as a percentage of the cost of Samsung's sales.

Samsung had used a ration based primarily on the relevant business segment's general and finance expenses instead of total corporate general and finance expenses. In addition, gains and losses on the disposal of fixed assets, write-off of research and development (R&D) amortization expenses, special depreciation, and other losses that were incurred by Samsung but not included in the reported CVs were allocated to the subject products as non-specific operating expenses in the computed general expenses. Dividend income, foreign currency translation/transaction gains or losses, or amortizations thereof, sales discounts, charges earned, rental income, and gains or losses on the disposition of marketable securities included in Samsung's submitted general expense calculations were not identified as specific costs of producing the subject merchandise. Accordingly, these items were not included in the Department's calculation of Samsung's general or finance expenses. We increased Samsung's reported costs of manufacturing (Material, labor and factory overhead) to reflect acutal costs recorded by Samsung for the exported merchandise.

From FMV we deducted home market direct selling expenses and added U.S. direct selling expenses. We deducted home market packing costs and added U.S. packing costs.

GST

We calculated the FMV based on CV for GST in accordance with section 773(e) of the Act,. The CV includes the cost of materials and fabrication for the exported merchandise, plus general expenses, profit and packing. We used actual amounts for general expenses because these exceeded the statutory minimum amount of ten percent of the cost of materials and fabrication. We used actual profit because GST's reported profit exceeded the statutory minimum amount of eight percent of the combined cost of materials, fabrication and general expenses. We reduced the reported finance expenses to account for the interest portion already included in the imputed credit and finished goods inventory carrying costs. The COM values submitted by GST did not include value added tax collected on the completed product. We based our CV calculations on these COM values. To develop the ratio used to calculate the general and finance expenses for the subject merchandise, we used the general and finance expenses of GST as a percentage of the cost of GST's sales. We did not use the general and finance expenses as reported by GST because GST had used a ratio based primarily on its "Keyphone" business segment instead of total corporate general and finance expenses. Foreign currency translation/transaction gains or losses, or amortization thereof, and interest earned on long-term investments in GST's submitted general expense calculations were not identified as specific costs of producing the subject merchandise. Accordingly, these items were not included in our calculation of GST's general or finance expenses.

In accordance with § 353.41(e)(3) of our regulations, we made the following adjustments to data reported by the related importer, Executive Information Systems, Inc. (EIS), which we then used in our calculations of value added in the United States: Installation labor was calculated based on paid labor wages and on payments to outside contractors for installation, as a percentage of corporate sales; corporate overhead was increased to include interest expense based on financial statement interest during the POI; a portion of general and administrative expense was reallocated to further manufacturing cost. We reduced the interest expense to account for the interest portion included in the imputed credit and finished goods inventory carrying costs.

From FMV we deducted home market direct selling expenses. We also deducted home market indirect selling expenses up to the amount of indirect selling expenses incurred in the U.S. market, in accordance with § 353.56(b) of the Department's regulations. We deducted home market packing costs from the FMV and added U.S. packing costs.

Currency Conversion

In accordance with § 353.60 of the Department's regulations, we used the official exchange rates in effect on the appropriate dates for determining FMV.

Verification

Except where noted, we verified all information used in making our final determination in accordance with section 776(b) of the Act. We used standard verification procedures, including examination of relevant accounting records and original source documents of each of the respondents. Our verification results are outlined in the public versions of the verification reports which are on file in the Central Records Unit (room B-099) of the Main Commerce Building.

Interested Party Comments

General Issues

Comment 1

Petitioner disagrees with the adoption of the 20 percent difference in merchandise test that the Department used to determine the reasonableness of comparisons between home market and U.S. products. Petitioner argues againt the application of the 20 percent test because it: (1) Is not the most appropriate method to determine the reasonableness of a comparison; (2) is arbitrary; and (3) allows for manipulation to avoid otherwise proper home market comparisons. Specifically, petitioner states that the differences in production costs between products do not accurately reflect the physical differences between comparison products and the commercial substitutability of different products. Petitioner suggests that the Department should use model matches exceeding 20 percent when the comparison model differs only in the configuration of a particular model.

DOC Position

We disagree with the petitioner. Section 771(16)(C)(iii) of the Act confers upon the Department discretionary authority to identify similar merchandise which may reasonably be compared with the subject merchandise. To identify reasonable comparison products in this case, the Department adopted a two-prong approach which limited product comparisons to those comparisons: (1) Which satisfied all technical requirements as described in the "such or similar merchandise" section of this notice; and (2) for which the difference in merchandise adjustment was less than or equal to 20 percent of the COM of the U.S. merchandise ("20 percent guideline").

We found it necessary to adopt a 20 percent guideline as a second prong of our product comparison analysis in this case in order to minimize the effect of certain distortions created in our calculations caused by making a difference in merchandise adjustment. It is our current practice to use CV when differences in the merchandise prove to be substantial in order to minimize distortions and unfair results that follow from the inclusion in the home market price of that portion of selling, general and administrative (SG&A) expenses and profit attributable to the amount of the difference in merchandise adjustment. *See Certain Internal-Combustion, Industrial Forklift Trucks from Japan*, 53 FR 12552, 12567, (April 15, 1988). Essentially, the goal is to balance the statutory objective of a fair, precise apples-to-apples comparison, *see Smith-Corona Group, SCM Corp.* v. *United States*, 713 F.2d 1568, *cert. denied*, 465 U.S. 1022 (1983), with the need to complete antidumping investigations within the statutory deadlines. Through the application of the 20 percent guideline, the Department sought to limit to an acceptable level the extent to which the overstatement (or understatement) of SG&A expenses and profit distorts the final margin. Thus, the Department found that selection of comparison products using both criteria in the preceding paragraph resulted in reasonable and fair comparisons.

Comment 2

Petitioner argues that model comparisons submitted by GST and Samsung are incorrect because these comparisons are based on difference in merchandise adjustments that were overstated. Petitioner contends that there may have been more similar comparisons that were originally rejected because difference in merchandise adjustments exceeded 20 percent. Petitioner further argues that because Samsung did not consider comparisons with difference in merchandise adjustments greater than 20 percent, the Department does not have the information to ascertain whether the correct model was chosen.

Both Samsung and GST submit that the Department should follow their recommendations for model comparisons because they based their comparisons on the Department's questionnaire instructions. Samsung additionally contends that it did not rely solely on the 20 percent difference in merchandise limit. In cases where it could not find a match within the 20 percent guideline, it reported both constructed value and the most similar comparison with a difference in merchandise adjustment of 35 percent or less.

DOC Position

We based our selections on our own analysis of respondents' proposed model comparisons and on revisions made to the difference in merchandise adjustments. In determining product comparisons we first considered products that had similar technical specifications according to the criteria outlined in our questionnaire. If there were no technically similar models with difference in merchandise adjustments of 20 percent or less, we used CV for FMV.

For GST, we selected a small number of comparisons that differed from those recommended by GST. For Samsung, we also selected more appropriate matches for a few model comparisons based on our analysis of the proposed model comparisons. Although we did not have revised difference in merchandise information for every possible model match, we have determined that respondents followed our questonnaire instructions in choosing the matches and did not simply choose the most favorable comparisons. We also found several cases where the chosen comparisons were the most similar regardless of the revised difference in merchandise calculations. Therefore, we have accepted respondents' model matches except in the few instances where we found a more appropriate match.

Comment 3

Petitioner argues that Samsung and GST made incorrect adjustments for value-added tax ("VAT") in their questonnaire responses. Both respondents pay a 10 percent VAT for SBTS sold in Korea, but do not pay such a tax on exports to the United States. Petitioner contends that 19 U.S.C. 1677a(d)(1)(C) and decisions of the Court of International Trade require that U.S. price be adjusted by the amount of VAT that would have been paid on a product sold at the pre-tax U.S. price in Korea, but only to the extent that VAT is added to or included in the price of SBTS sold in Korea. In addition, petitioner argues that no circumstance of sale adjustment should be made for differences in the VAT amounts for home market and U.S. market price calculations.

Respondents disagree with petitioner, and argue that the Department should

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apply the same methodology employed in its preliminary determination.

DOC Position

In our final determination, we added to U.S. price a tax adjustment calculated by multiplying the Korean VAT rate times the tax-exclusive U.S. price. This is the same amount that would have been paid on a product sold at the pre-tax U.S. price in Korea. Consistent with past practice, we made circumstance of sale adjustments to offset any differences between the VAT in Korea and the imputed VAT on U.S. sales in order to avoid artificially inflating or deflating margins.

In addition, consistent with our past practice, we placed no limitation on the addition to U.S. price based on the incidence of the VAT in Korea. We do not agree that the statute requires a measurement of tax incidences in Korea, and have neither attempted to measure, nor made any assumptions about, the incidence of the VAT in Korea.

Comment 4

Petitioner argues that it has not been able to comment meaningfully on respondents' questionnaire responses because both GST and Samsung refused to disclose in either the public or administrative protective order (APO) versions of their responses the names of their major original equipment manufacturer (OEM) customers or information about their products that might identify those customers. As a result, petitioner submits that the Department cannot rely on respondents' data and must instead base its final determination on the best information available.

DOC Position

We disagree with petitioner. Specifically, we do not agree with petitioner's contention that respondents' submissions should be rejected because of a lack of access to a narrow category of proprietary information, and that the Department should use the best information available for its final determination. During the investigation, the Department informed all parties that respondents would not have to disclose customer names or respondents would not have to disclose customer names or identifiers in the APO and public versions of their submissions. Instead, for the APO versions, they would have to provide complete model numbers when there were no customer indentifiers in the model numbers, and a substitute prefix when there was a coustomer identifier in the model numbers. With regard to the public summaries, the Department determined that respondents should provide substitute model numbers that were consistent with the APO numbers. With the exception of customer or supplier names or identifiers, petitioner's counsel received access to all business proprietary information, including the computer tapes, under the APO issued by the Department. Although petitioner has continued to complain about respondents' APO and public summaries, the Department has found no reason to reconsider the issue. Any objections to the Department's decision not to release the information in question should have been filed with the Court of International Trade within ten days of that decision. 19 U.S.C. 1677f(c)(2).

Comment 5

Petitioner contends that because the responses of both Samsung and GST are generally incomplete and contain errors, the Department cannot rely on the information submitted by respondents in making its final determination. Petitioner suggests that the Department use information in the petition as the best information available.

DOC Position

We disagree with petitioner. Our verifications of both questionnaire responses revealed only minor clerical errors. Given the volume of data sought in antidumping investigations, it is neither uncommon nor unexpected for minor errors or omissions to appear. Moreover, both respondents have been cooperative and forthcoming in providing data as requested. The omissions and errors in this case are not of a type or magnitude that would cause the Department to disregard completely respondents' information and use petitioner's information instead. *See, e.g., Porcelain-on-Steel Cooking Ware from Taiwan*, 51 FR 39625 (October 10, 1986); and *Granite Products from Italy*, 53 FR 27187 (July 19, 1988). However, for certain items of information that we are not satisfied were fully verified, the Department did use the best information available instead of respondents' information.

Samsung Issues

Comment 1

Petitioner contends that the Department should reject Samsung's difference in merchandise adjustment as originally reported because the amount reported was overstated. Petitioner argues that the difference in merchandise adjustment was overstated for the following reasons: (1) Samsung erroneously included costs associated with identical parts; (2) Samsung erroneously included costs on identical parts arising from differences in timing or procurement methods; (3) Samsung erroneously excluded duties related to identical components from the difference in merchandise adjustment; (4) Samsung erroneously reduced the denominator of the difference in merchandise precentage (the ratio of the difference in merchandise adjustment to the total U.S. COM) by the amount of duty paid on identical parts; and (5) Samsung reported material cost for home market models inclusive of duties paid on parts, but reported material costs for U.S. models net of duties paid on parts. Petitioner also argues that the Department cannot use the revised submission because inconsistencies exist between the COM charts and the computer tape. Samsung argues that the difference in merchandise adjustments were calculated correctly and that the components in question with identical part numbers were physically different. With regard to the COM charts, Samsung states that the revised data is the same as previously submitted, but in a different format.

DOC Position

At verification, the Department found that Samsung had incorrectly included costs related to indentical parts in the calculation of the difference in merchandise adjustment. Although we requested that Samsung substantiate the claimed physical differences for various identical part numbers, Samsung was unable to do so for the majority of these part numbers. Based on the limited information provided by Samsung in support of its argument, it appears that there may be some instances where components with indentical part numbers have minimal physical differences. However, there also appears to be instances where the cost differences are due to manufacturing rather than physical differences. Our regulations do not permit an adjustment for manufacturing differences.

To remedy this situation without discarding all data, we requested that Samsung eliminate the identical parts found in the difference in merchandise adjustment for each model match. We reviewed the revised data submitted by Samsung in response to our request. For comparison models for which identical part numbers corresponded to identical parts, the Department was able to utilize original data to delete costs associated with identical parts. Therefore, these corrections did not require utilization of new and unverified data. For those model comparisons, however, for which identical parts were assigned part numbers under a different parts numbering system not allowing indentification of identical parts, the Department used the best information available as explained in the "U.S. price" section of this notice.

The Department rejected Samsung's recalculation of rebated local duties on identical parts and used best information available because the amounts attributable to the duty incurred on the identical parts constituted new and unverified information. Best information, in this instance, was determined to be the amount of rebated local duties for the complete models as provided in Samsung's original response. To calculate the difference in merchandise adjustment percentages, we used the total U.S. COM. We did not use Samsung's revised response for the U.S. COM because Samsung incorrectly reported US COM exclusive of duty on identical parts.

The Department finds that petitioner's assertion that Samsung failed to adjust for duties incurred on material costs for home market and U.S. models is incorrect. To compensate for the duties included in the COM on the home market models, Samsung added rebated local duties to the U.S. COM.

Regarding petitioner's allegation that there are inconsistencies between Samsung's difference in merchandise charts and its computer tape, we have found that the difference is due to packing labor which was correctly adjusted in the computer tape but inadvertently was not deducted from the difference in merchandise charts.

Therefore, we have used Samsung's revised tape except as noted above.

Comment 2

Petitioner argues that the Department should disallow as direct selling expenses amounts for the cost of seminars conducted by Samsung for its home market customers, because the expenses included were of a general promotional nature rather than actual technical services provided for specific customers in connection with specific sales.

Samsung argues that these expenses should be allowed as direct expenses because the seminars addressed specific problems that have been identified with the products under investigation and are not general promotional expenses.

DOC Position

We agree with petitioner that these expenses were of a promotional nature. Although these expenses were incurred for the products under investigation, they cannot be tied to specific sales. Therefore, we have disallowed these expenses as direct selling expenses.

Comment 3

Petitioner argues that the Department should disallow part of the claimed warranty expenses because Samsung could not allocate these expenses between products under warranty and those not under warranty. Furthermore, petitioner contends that several of the items claimed as warranty expenses do not constitute warranty expenses and could not be verified.

Samsung argues that the Department should at a minimum allow the portion of warranty expenses that was verified as a direct expense. For those warranty expenses that could not be isolated to the specific products under warranty, Samsung contends that a portion of the expenses should be allowed because they were reported conservatively and because the Department found no discrepancies in the total expense reported.

DOC Position

We agree with petitioner. Samsung reported warranty expenses associated with the cost of replacement parts and warranty expenses attributable to the "after sales service activity". At verification, the Department found that after sales service activity expenses were service department expenses attributable to products under warranty as well as products not under warranty. Samsung was unable to segregate these expenses. Therefore, we have disallowed these expenses as direct selling expenses. We have, however, allowed as a direct selling expense the cost of replacement parts.

Comment 4

Samsung claims the Department inappropriately adjusted the home market credit, advertising, and technical service expenses in the preliminary determination because the Department believed these expenses were calculated from a VAT-exclusive sales value, but were applied to a VAT-inclusive gross unit price. Samsung states that at verification the Department found that these expenses were appropriately calculated. Therefore, Samsung contends that the Department should use Samsung's calculation of these expenses in its final determination.

DOC Position:

We agree with Samsung. The Department found at verification that these expenses were calculated on a VAT-inclusive sales value. Therefore, we have applied the appropriate expenses to the VAT-inclusive gross unit price.

Comment 5

Petitioner contends that the Department should disallow any adjustment for home market inland freight because the Department was unable to verify Samsung's reported expense. Specifically, in the response, Samsung correctly stated that home market inland freight expenses included only expenses attributable to subject merchandise. At verification, however, the Department found that Samsung had included charges pertaining to non-subject merchandise as well as subject merchandise in the total expense reported for home market inland freight. In addition, Samsung was unable to provide other documentation of actual home market inland freight expenses to support the figures reported in the response.

Samsung claims that the Department should allow most of the foreign inland freight expense claimed in the response because, although the Department was unable to verify the amount of charges reported, it did verify that Samsung incurred some home market inland freight expense. Samsung argues that its inability to provide the necessary data was a result of the structure of its accounting system and the lack of time granted to prepare the response.

DOC Position

The Department agrees with petitioner. In the responses, Samsung claimed that the charges were related to subject merchandise only. During verification, however, we found that the charges included expenses incurred for subject and non-subject merchandise. The worksheets provided demonstrated that Samsung did not follow any verifiable allocation methodology. Furthermore, Samsung could not provide any supportive documentation for the amounts claimed in the response or at verification. Because the Department was unable to verify the amount of home market inland freight charges for the subject merchandise, no deduction for home market inland freight was allowed.

Comment 6

Samsung contends that the Department should exclude sales to one customer from the final determination because those sales constitute third country sales rather than sales to the United States. In support of its argument, Samsung claims that (1) the customer is located in a third country; (2) Samsung bills the customer who then

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pays Samsung directly; and (3) the price of the merchandise sold is established prior to the date at which Samsung knows the destination of the merchandise. Samsung argues that because the destination is unknown at the time the price is determined, Samsung cannot practice price discrimination with respect to the United States.

In the alternative, Samsung asserts that, should the Department find that sales to the customer in question constitute U.S. sales, the Department should not consider such sales for the purpose of determining the deposit rate because during the investigation the contract between the customer and Samsung terminated and all sales under the contract were shipped. Furthermore, Samsung does not intend to sell to the customer in the future.

Petitioner argues that Samsung's sales to the customer in question constitute ordinary purchase price transactions because Samsung shipped the merchandise directly to the United States and no evidence exists that supports Samsung's contention that the destination was unknown at the time the sales were consummated. Petitioner further asserts that Samsung's alternative argument that sales to the customer should not be included in the calculations to determine the deposit rate is without merit.

DOC Position

We agree with petitioner. There is no basis for excluding such sales from this investigation. The merchandise in question was produced by Samsung in Korea and conforms to the product scope of this proceeding. Therefore, the Department has properly included those sales within its investigation of SBTS from Korea.

Samsung's argument that its lack of knowledge of the destination of the merchandise at the time price was determined requires the Department to exclude the sales at issue is incorrect. The argument raised by Samsung more appropriately relates to whether the Department has used the correct transaction as the basis for establishing United States price for these sales—*i.e.*, the price charged by Samsung to its customer in the third country or the price charged by the third country customer to the first unrelated purchaser in the United States. The information reported in Samsung's response as well as the information reviewed at verification indicate that the sales in question constitute purchase price transactions.

In its response, Samsung stated that at the time of contracting with the customer in question, the price schedule was blank and the prices and quantities were established through purchase orders. During verification, we found that the price and quantity were documented on the purchase orders and that the destination was established on the purchase order, bill of lading, and commercial invoice. Samsung also presented documentation of price changes that occurred intermittently throughout the period of the contract, including after the purchase order. Based on the information presented, however, the Department has determined that Samsung knew or had reason to know that the sales were destined for the United States. Therefore, all sales to the customer in question were properly treated as purchase price sales attributable to Samsung.

Samsung's argument that the sales should be excluded from the calculation of the deposit rate due to the termination of the contract also is without merit. Under § 353.42(b) of the Department's regulations, the Department normally examines all sales sold during "a period of 150 days prior to and 30 days after the first day of the month during which the petition was filed" or the investigation initiated. The date of sale for the sales made under the contract fell within the POI. Although there is precedent for excluding certain sales from our analysis in a fair value investigation, the Department generally does so only when certain sales are not representative of a firm's general pricing behavior or when the sales present difficult issues that cannot be resolved within the strict statutory deadlines. In this case, neither factor exists. Therefore, we have not excluded the sales in question from our calculations.

Comment 7

Samsung claims the Department should exclude from the final determination certain telephone set subassemblies, because such subassemblies function as dual use subassemblies, which are excluded from the scope of the investigation. Samsung states that the telephone sets in question function to their full capability in small business telephone systems and that "identical telephone sets also function to their full capability when part of a certain large system manufactured by Samsung."

Petitioner urges the Department to reject Samsung's argument and include the telephone sets in the final determination because: (1) Insufficient technical information exists on the record for the Department to determine whether the telephone sets in question function as dual use; (2) the technical information submitted is unverified; and (3) the alleged large system with which the telephone sets in question purportedly function was not introduced into the market prior to or during the POI.

DOC Position

The Department agrees with petitioner. Upon request of the Department, on November 30, 1989, Samsung submitted technical data in support of its exclusion request. From the information submitted, however, the Department is unable to determine whether the telephone sets qualify as dual use telephone sets. We note that the information provided indicates that the large business telephone system with which the telephone sets purportedly function was not introduced into the market prior to or during the POI. Therefore, because the technical data on the record fails to establish conclusively that the telephone sets in question qualify as dual use sets, the Department has not excluded them from the scope of the investigation. If an order is issued in this case, Samsung may want to consider seeking a scope letter ruling, as described in 19 U.S.C. 1510a(a)(2)(B)(vi).

Comment 8

Petitioner claims that the Department should treat the foreign currency exchange fee incurred on all U.S. sales as a direct expense if the fee is directly attributable to individual sales revenue.

DOC Position

The Department agrees with petitioner. During verfication, the Department found that Samsung's bank charged Samsung a fee, which was documented on the letter of credit settlement statement, for converting from U.S. dollars to Korean won revenue earned on sales to the United States. The Department has determined that this expense constitutes a direct selling expense in that the fee would not have been incurred but for the sales to the United States. Therefore, the Department has adjusted the FMV to reflect this circumstance of sale expense.

Comment 9

Petitioner states that Samsung's reported costs of manufacturing should be adjusted due to differences between reported costs and actual costs, which were discovered during the verification of Samsung's response. Samsung argues that the Department should accept Samsung's reported costs of manufacturing as submitted, and attributes the minor differences between reported and actual costs to rounding and per unit basis differences.

DOC Position

The Department discovered that the reported costs of manufacturing were slightly understated on an aggregate basis for the subject merchandise as a whole when compared to Samsung's actual cost records examined during verification. Accordingly, for purposes of the final determination, Samsung's submitted costs of manufacturing were adjusted to reflect actual costs of manufacturing incurred by Samsung to produce the subject merchandise.

Comment 10

Petitioner argues that Samsung's general expenses should be increased to reflect the corporate-wide general expenses, instead of the division general expenses reported by Samsung. Petitioner notes that Samsung made purchases of materials used in the manufacture of the subject products from the division of the company that Samsung wishes to exclude from the calculation of general expenses. Petitioner alleges that Samsung's failure to include general expenses in the reported costs of components that were obtained from another division of Samsung resulted in the underreporting of costs for the subject merchandise.

Samsung argues that each of Samsung Electronic Corporation's business divisions are managed as an "individual corporation," and as such, no general expenses of the other two sectors that did not produce the subject merchandise should be included in the calculation of general expenses for the subject merchandise.

DOC position

We agree with petitioner. The Department considers general expenses to be those expenses incurred for the operations of the corporation as a whole and that are not related to a specific business segment of a corporation or the manufacture of a particular product. Accordingly, Samsung's use of "business segment general expenses" instead of corporate-wide general expenses resulted in an understatement of Samsung's general expenses allocated to the subject merchandise. Therefore, the Department calculated corporate-wide general expenses as a percentage of corporate cost of goods sold, and multiplied this percentage by each individual product's cost of manufacturing to obtain each product's reported general expense.

Comment 11

Petitioner argues that offsets to Samsung's reported general expenses due to non-operating income/expense items, including gains and losses on foreign currency transactions and sales discounts, should be disallowed.

Samsung maintains that these non-operating items properly belong in reported general expenses.

DOC Position

We agree with petitioner. The Department recognizes gains/losses on foreign currency transactions and sales discounts only if specifically identified by the manufacturer as part of the manufacturing costs incurred to produce the products under investigation. In Samsung's case, these costs were classified as general expenses of the corporation, and not as specific costs incurred exclusively to manufacture the products under investigation. Accordingly, these items were not included in the general expenses calculated for the subject merchandise by the Department.

Comment 12

Petitioner argues that Samsung's reported finance expenses should be recalculated to reflect all corporate finance expenses, instead of the corporate finance expenses allocated to the business segment producing the subject merchandise.

Samsung notes that the financing expenses are reported by Samsung included total corporate financing in the allocation of this expense to each business segment, and as such, should not be adjusted.

DOC position

We agree with petitioner. The Department considers financing expenses to be those costs incurred for the general operations of the corporation. The Department recognizes the fungible nature of a corporation's invested capital resources, including both debt and equity, and does not allocate corporate finance expenses to individual divisions of a corporation on the basis of fixed assets or sales per division, as Samsung had done in its submitted finance expenses. Instead, the Department allocates the interest expense related to the debt portion of the capitalization of the corporation, as appropriate, to the total operations of the consolidated corporation. For Samsung, the Department calculated corporate-wide finance expense as a percentage of corporate cost of goods sold, reduced by a proportional amount for the imputed credit and inventory carrying costs of Samsung.

Comment 13

Petitioner argues that Samsung's reported general expenses should be increased to reflect expense items, such as certain depreciation, a write-off of general research and development expense, and gains and losses on fixed assets, which had been excluded from the reported general expenses by Samsung due to Samsung's classification of these expenses as "extraordinary" in their financial statements.

Samsung cites Korean generally accepted accounting principles (GAAP) as allowing the classification of certain income and expense items as extraordinary items in Korean company income statements, thereby excluding them from calculation of the operating income for the corporation. Samsung maintains that the Department should comply with Korean GAAP and afford the same treatment to these items, thereby excluding these expenses from the reported costs of production.

DOC Position

In general, the Department adheres to GAAP and to an individual firm's recording of costs in accordance with the GAAP of its home country when the Department is assured that foreign GAAP accurately recognizes the actual costs incurred by that company. However, because GAAP was developed primarily as a conceptual framework to reflect profitability of a company and not per unit costs of each product sold, it does not always fully meet the needs of the Department. The Department must look at costs on a very specific, per unit basis. In Samsung's case, the exclusion of a write-off of capitalized general R&D instead of recording the amortization of the R&D, the exclusion of certain depreciation, and the exclusion of gains and losses on disposal of fixed assets, all represent the exclusion of actual costs incurred by Samsung in its manufacturing operations. This exclusion results in an understatement of reported general expenses, which, when allocated to the subject merchandise, results in an understatement of reported per unit costs. The Department therefore included the referenced costs in the general expenses allocated to the subject products in order to capture all costs incurred by Samsung in its manufacturing operations.

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Goldstar Issues

Comment 1

DOC Position

The portion of packing referred to by

DOC Position

We agree with GST that, in this case,

DOC Position

We have based our comparisons on

treating part of the installation expenses (installation labor, corporate overhead,

that Siemens, A.G. owns GST stock. SIS, however, is a customer of EIS, not GST.

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Goldstar Issues

Comment 1

Petitioner argues that GST incorrectly calculated the difference in merchandise adjustments in its response because GST reported different costs for identical components used in the United States and home market model matches. Although GST submitted revised data, petitioner claims that GST's revised data includes unverified revisions to the response, and that the revised COM charts must be verified if the Department is to rely on anything other than the best information available.

GST maintains that the revised COM charts consists of verified data and require no additional calculations or verification.

DOC Position

We are using GST's revised difference in merchandise adjustment charts as the best information available because of the facts that follow. For purposes of the adjustments for physical differences in merchandise, in our questionnaire we asked GST to include costs for parts that are not identical within each model match. However, at verification we noted that GST had included costs for identical as well as non-identical parts in its calculations. We requested that GST exclude the identical parts from its calculations. GST informed us that, due to the way its records are maintained, it would instead replace the costs for parts in the home market model with the costs for the identical U.S. part within each model match. However, in its revised submission, GST replaced the costs for parts in the home market models with costs for U.S. parts that are identical, but that are not from models included in the same model match. We have determined that the revised difference in merchandise data submitted by GST, although presented in a different format than that requested by the Department, is verified information. Therefore, we have used the revised difference in merchandise data as the best information available.

Comment 2

Petitioner notes that according to the Department's report from GST's verification in Korea, company officials indicated that a portion of U.S. packing expenses needed to be verified in the United States. This U.S. portion of U.S. packing is not reported separately in the response and is not treated in either of the Department's reports on verification of sales data in the United States.

DOC Position

The portion of packing referred to by petitioner is included in EIS's warehousing expenses. The only packing performed in the United States, however, involved one product that was replaced in boxes for shipment to a few customers. These packing expenses were too small to be accounted for separately on EIS's books, and comprised a very small portion of EIS's warehousing activity. Because the activity was negligible, we did not note it in our verification report.

Comment 3

GST contends that there are two clerical errors in the computer program used by the Department to calculate the preliminary dumping margin.

DOC Position

We agree with GST. We have corrected the clerical errors in our final determination.

Comment 4

EIS contends that the Department should correct clerical errors regarding corporate overhead, credit expense, and inland freight charges that were noted in the Department's report on verification of EIS sales data in Darien, Connecticut.

DOC Position

We have corrected the clerical errors regarding corporate overhead and credit expense. For the inland freight charges we have used the amount that is set forth in an October 30, 1989 correction to the report on the Darien, Connecticut EIS verification.

Comment 5

Petitioner argues that the Department should use GST's home market sales of circuit cards and modules in its final determination because the home market is viable for that such or similar category. According to petitioner, the Department incorrectly based its preliminary determination on sales to third countries. Moreover, because GST did not provide the home market information needed to determine product matches and to make the appropriate adjustments for differences in merchandise, the Department must resort to the use of the best information available.

GST maintains that the Department's use of third country sales, even when the home market has been determined to be viable, is a reasonable exercise of the Department's discretion under the antidumping law.

DOC Position

We agree with GST that, in this case, the use of third country sales for purposes of our final determination is appropriate. Although the home market was viable for circuit cards and modules under the normal rule set forth in 19 CFR 353.48(a) (5 percent of third country sales), that rule, by its terms, is to be applied in "normal" circumstances. In this case, we determined that the volume of reported home market sales of identical and similar merchandise appeared insufficient to serve as an adequate basis for FMV. Accordingly, we requested that GST report sales to third countries of identical and similar merchandise. We determined that by using third country sales, we could base many more of our comparisons on identical and similar matches than we could by using home market sales. Therefore, we have used third country sales as a more adequate basis for FMV in our final determination.

Comment 6

Petitioner argues that for its final determination analysis the Department should use the U.S. sales to end-users that were not considered for purposes of the preliminary determination.

DOC Position

We agree. We have included the end-user sales for purposes of our final determination. These sales were excluded previously because, although timely filed, information necessary for our analysis was submitted too late in the proceeding to be considered for purposes of our preliminary determination.

Comment 7

Petitioner argues that sales of some GST's control units in the home market that are most similar to control units sold in the United States have not been used for comparison purposes. Petitioner contends that this is because the control unit sold in the home market are sold with circuit cards already "stuffed" inside. Conversely, those sold in the United States are essentially "empty," and their circuit cards are "stuffed" into the control units after the sale to the first unrelated customer. Petitioner contends that simply because marketing practices are different in the two markets, GST should not be permitted to avoid like product comparisons.

GST and EIS submit that control units should be compared in the condition in which they are actually sold to the first unrelated customer.

DOC Position

We have based our comparisons on the configuration of the merchandise as imported into the United States. We note also that adoption of petitioner's position would require us to make difference in merchandise adjustments which in many instances would be greatly in excess of 100 percent.

Comment 8

GST and EIS state that warranty expenses claimed in both the U.S. and home markets should be allowed as direct selling expenses.

DOC Position

We agree. We have verified that the warranty expenses claimed by GST and EIS as direct selling expenses should be treated as such for our final determination.

Comment 9

EIS contends that its claimed installation costs should be deducted form the ESP as selling expenses which are incurred regardless of whether or not value is added by the aggregation of non-GST subassemblies. EIS claims that there is no appreciable value added from the aggregation process itself, because the subassemblies remain unchanged. Furthermore, EIS states that installation occurs after the sale and, therefore, cannot be considered as value added as set forth in 19 U.S.C. 1677a(e)(3). The only value added is due to the non-GST subassemblies, which are aggregated and assembled as part of the installation process, and to profit attributable to such subassemblies. EIS also argues that its claimed adjustment for G&A expenses should not be included in any further manufacturing costs which the Department might deduct from the ESP as value added for purposes of our final determination.

Petitioner argues that, because the price of the installed system sold by EIS to the first unrelated customer includes assembly that occurs after importation, the Department must make an adjustment for all such assembly costs and expenses incurred by EIS. Furthermore, if the Department were to exclude manufacturing or assembly incurred after the sale, related importers could perform much of the manufacturing or assembly after importation without being required to make any adjustment by simply setting a formal date of sale before such further manufacturing or assembly occurs.

DOC Position

As explained in the "United States Price" section of this notice, we are treating part of the installation expenses (installation labor, corporate overhead, corporate G&A and installation overhead) as value added from assembly. Because non-subject merchandise is added to the subject subassemblies, the portion of installation expenses attributable to the addition of the non-subject merchandise cannot reasonably be treated as a circumstance of sale adjustment. It is, rather, part of the value added in conjunction with the non-subject merchandise. Whether this value is added before or after the sale is irrelevant because, for this product, EIS's customers expect the installed system to have the characteristics added by the non-subject merchandise. Therefore, we are deducting that part of the installation expenses attributable to the addition or assembly of the non-GST subassemblies, as well as a proportional amount of the profit or loss related to these installation expenses, as value added.

Comment 10

GST is partially owned by Siemens, A.G. of West Germany. GST, in turn, owns a small interest in EIS in the United States. EIS makes some sales to Siemens Information Systems ("SIS"), a wholly owned subsidiary of Siemens, A.G.

Petitioner contends that EIS's sales to SIS should not have been reported because of the relationship between the several companies involved. Petitioner argues, rather, that GST should have reported sales made by SIS to its first unrelated customer in the United States. According to petitioner, the Department should not rely on GST's data for these sales and instead must calculate the margin for those sales on the basis of the best information available, which would be the highest margin alleged in the petition for each relevant subassembly.

GST argues that it does not sell to SIS in the U.S. market, and that it and SIS are not "related parties."

DOC Position

We disagree with petitioner. We verified that all of GST's sales of the subject merchandise in the U.S. market were made to EIS. Because we determined that GST and EIS are "related parties," we used ESP as the basis for U.S. price and requested information on all of EIS's sales to its customers in the U.S. market. We have determined that SIS has no ownership interest in GST, and that EIS and GST hold no ownership interest in SIS. Petitioner's claim that GST and SIS are related apparently arises from the fact that Siemens, A.G. owns GST stock. SIS, however, is a customer of EIS, not GST. At most, Siemens, A.G.'s ownership in GST may be said to give it a very small minority interest in EIS. The Department does not consider an indirect minority interest to be a sufficient basis for considering the parties to be "related."

Petitioner appears to be arguing that SIS qualifies as an "exporter" within the meaning of the antidumping law, and therefore, that sales to the company may not be used in the Department's calculations. See 19 U.S.C. 1677(13). SIS, however, does not qualify as an "exporter" under the standard set forth in the statute. The statute provides that a U.S. person may be called an "exporter" for purposes of ESP if, *inter alia*, that person is someone by whom or for whose account the merchandise is imported into the United States. 19 U.S.C. 1677(13). SIS is neither the importer nor the person for whose account the merchandise is imported. EIS is the importer, and the Department has determined that EIS is the "exporter" for ESP purposes. Thus, because the sales from EIS to SIS are not "related party" sales, the Department has included those sales in its calculations.

Comment 11

Petitioner claims that GST's revised data include a "new" calculation of fixed overhead that is not tied to verified data. Petitioner claims the calculation cannot be correct because it assumes that the ratio of variable to fixed overhead is exactly the same for all models, and that this cannot be correct because variable overhead costs are, by definition, variable and would never be a constant percentage of total overhead on a model by model basis.

GST claims that the adjustment made to fixed overhead for correction of difference in merchandise data yields a variable overhead amount that varies by model.

DOC Position

We disagree with petitioner. The Department determined that GST's segregation of variable and fixed overhead was based on verified data. The terminology "variable factory overhead" related to the nature of the expenses as they are incurred, not to the method used to absorb expenses for product costing purposes. GST's methodology accounted for a varying amount of factory overhead, model by model, depending on the length of time the model was on the production line. The adjustment made to factory overhead to remove the fixed overhead

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for the difference in merchandise calculations yields a different "absolute" amount of variable overhead which varies by model and which reflects the time spent in production.

Comment 12

Petitioner claims that GST has not reported all of its research and development expenditures. Petitioner further asserts that a "reasonable" share of historical product-specific R&D should have been accumulated and allocated to the product sold during the POI. GST claims that its reported CV figures accurately account for R&D expenses.

DOC Position

We disagree with petitioner. The Department agrees that capturing historic, product-specific R&D is appropriate when design or major modification of a product require significant outlays and when such development costs would be substantial. For technologies in which R&D costs do not form a significant portion of initial project outlays and in which modifications are ongoing, the Department would not look to historic R&D to capture previously recognized expenditures. GST allocated general product line R&D costs incurred during the POI to the manufacturing costs of products under investigation. Additionally, current year amortization of capitalized, project-specific expenditures was included in general and administrative costs for purposes of calculating CV.

Comment 13

Petitioner claims that GST underreported interest expense in its response and that unrelated income and exchange gains should be disallowed.

GST asserts that the reported financing cost reflects the true, company-wide cost of financing related to key-phone products, and that income used to offset the cost, including interest on marketable securities and exchange gains, was properly included.

DOC Position

The Department disallowed income that was not derived exclusively from telephone manufacturing operations as an interest income offset. Thus, exchange gains and losses, and interest earned on long-term investments (which did not result from the manufacture of telephones) were disallowed.

For purposes of calculating interest expense, the Department uses total interest expense for operations of the consolidated corporation. Because the Department's methodology for calculation of CV includes the home-market credit expense, a deduction is made from the interest expense calculated for CV to avoid double counting this amount.

Comment 14

GST claims that the Department should use home market profit for all CV calculations.

DOC Position

For purposes of CV calculations, the Department used profits on home market sales of the same general class or kind of merchandise by the producer under investigation. The profit amount provided in GST's response was appropriately adjusted to reflect the percentage of profit on the basis of cost of sales rather than sales revenue, because this percentage is applied to the cost of manufacturing.

Comment 15

EIS suggests that the Department use the installation labor factor provided at verification rather than figures included in the submitted sales tapes.

DOC Position

We agree. EIS's revised installation labor factor was verified and used for the final determination.

Comment 16

Petitioner asserts that interest incurred by EIS during the POI that was not included as financing costs should be included in G&A for the final determination.

EIS claims that interest expense incurred during the POI related primarily to acquisitions and mergers, and that only 13 percent of those expenses related to the products under investigation. EIS also claims that if interest were included in G&A expenses, double counting would result, because imputed interest expense for inventory carrying costs and accounts receivable were reported to the Department.

DOC Position

The Department recognizes the fungible nature of an entity's borrowings, and therefore, used EIS's corporate-wide interest expense for the POI.

For purposes of calculating interest expense to be included in G&A, the Department uses total interest expense for operations of the corporation. Because the Department's methodology includes U.S. market credit expense and inventory carrying cost, a deduction was made from the interest expense calculated for further manufacturing to avoid double counting the portion related to imputed credit and inventory carrying costs.

Comment 17

Petitioner claims the EIS's general and administrative expense should be added to GST's CV calculation because they are related parties and because EIS's operations include development and manufacture of the subassemblies as well as selling and installation.

DOC Position

For purposes of the final determination, the Department treated a portion of EIS's installation and G&A expenses as "value added", and reduced U.S. price for these amounts to derive the value of the products as imported.

The Department did not include the costs incurred in the United States in CV, because CV is based on the cost of the product in its condition as imported.

Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation, under section 733(d) of the Act, of all entries of SBTS from Korea, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, The U.S. Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amounts by which the FMV of the subject merchandise from Korea exceeds the U.S. price as shown below. This suspension of liquidation will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Manufacturer/Producer/Exporter	Margin percentage
Goldstar Telecommunication Co., Ltd.	15.85
Samsung Electronics Co., Ltd.	13.40
All others	14.30

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. In addition, pursuant to section 735(c)(1) of the Act, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist with respect to any of the products under investigation, the proceeding will be terminated and all security posted as a result of the suspension of liquidation will be refunded or cancelled as to those products. However, if the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on SBTS from Korea, entered, or withdrawn from warehouse, for consumption, on or after the effective date of the suspension of liquidation, equal to the amount by which the FMV exceeds the U.S. price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Dated: December 18, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-29928 Filed 12-26-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-807]

Final Determination of Sales at Less Than Fair Value: Certain Residential Door Locks and Parts Thereof From Taiwan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that certain residential door locks and parts thereof from Taiwan (hereinafter residential door locks) are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to continue to suspend liquidation of all entries of residential door locks from Taiwan, as described in the "Continuation of Suspension of Liquidation" section of this notice. The ITC will determine within 45 days of the publication of this notice whether these imports materially injure, or threaten material injury to, a U.S. industry.

EFFECTIVE DATE: December 27, 1989.

FOR FURTHER INFORMATION CONTACT: Kate Johnson or James Terpstra, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-8830 or 377-4103, respectively.

SUPPLEMENTAL INFORMATION:

Final Determination

We determine that residential door locks from Taiwan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). The estimated margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

On October 2, 1989, the Department issued an affirmative preliminary determination (54 FR 41318, October 6, 1989). Since that time the following events have occurred. Verification of the questionnaire responses of Taiwan Fu Hsing Industrial Co., Ltd. (Fu Hsing), Tong Lung Metal Industry Co., Ltd. (Tong Lung), and Posse Lock Manufacturing Co., Ltd. (Posse) was conducted in Taiwan from October 23, 1989, through November 8, 1989. Interested parties submitted comments for the record in their case briefs dated November 29, 1989, and in their rebuttal briefs dated December 4, 1989. A public hearing was held on December 6, 1989. At the hearing, the Deputy Assistant Secretary for Investigations, Import Administration, gave respondents and petitioner an opportunity to present additional written views regarding the alleged sale of a particular door lock in the home market. These written views were submitted by respondents on December 8, 1989, and by petitioner on December 12, 1989. Additionally, on December 9, 1989, petitioner requested that the Department initiate a formal inquiry as to whether two of the respondents had complied with the certification requirements of section 776(a) of the Act and § 353.31(i)(1) of the Department's regulations (19 CFR 353.31(i)(1) (1989)). Petitioner stated that the request for an inquiry was not directed at respondents' counsel, but rather was directed at respondents Tong Lung and Posse. Given that the Department has already conducted verification, and that this allegation was received only nine days prior to the final determination, it is too late to consider this allegation for purposes of the final determination. Therefore, given the nature of this allegation, we have referred it to the U.S. Department of Justice and the U.S. Customs Service for further review.

Period of Investigation

The period of investigation (POI) is November 1, 1988, through April 30, 1989.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the *Harmonized Tariff Schedule* (HTS) as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after this date will be classified solely according to the appropriate HTS item numbers. The HTS item numbers are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive as to the scope of the product coverage.

The products covered by this investigation include the following three categories of residential door locks: (1) Tubular or cylindrical knob-operated locksets with spring latches or dead latches, whether face-plated or drive-in type, including entry-handled sets; (2) dead locks, whether face-plated or drive-in type; and (3) lever-operated locksets, whether face-plated or drive-in type. All three categories are imported from Taiwan and sold in any of the following forms: fully assembled, partially assembled, unassembled, or parts relating thereto.

Residential door locks are differentiated from other door locks (*i.e.*, those for commercial or other uses) by the size of the face-plate or housing assembly, as follows: (1) Face-plated spring lock/latch, dead latch or dead bolt units have (a) a face-plated size of 1 inch or less (plus a tolerance of + 1/16 inch) in width, regardless of length, or (b) an outside diameter of the latch or dead bolt housing assembly of 7/8 inch or less (plus a tolerance of + 1/16 inch) in outside diameter; and (2) drive-in type spring lock/latch, dead latch or dead bolt units have a housing assembly (including the sleeve retaining device) of 1 inch or less (plus a tolerance of + 1/16 inch) in outside diameter. These door locks are typically used in the construction of new one- and two-family dwellings, apartment buildings, condominiums, and mobile and prefabricated homes and in the replacement or retrofitting of existing locks in these dwellings. The subject merchandise is currently classifiable under HTS item 8301.40.6030. Parts of the subject merchandise are classifiable

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under HTS item 8301.80.0000. The HTS item for parts was inadvertently omitted from the preliminary determination. The scope of this investigation does not cover door locks suitable for use with garage, overhead, or sliding doors.

Such or Similar Comparisons

For all respondent companies, pursuant to section 771(16) of the Act, we established three categories of "such or similar" merchandise consisting of: (a) Tubular and cylindrical locksets; (b) dead locks and dead bolts; and (c) sectional-handled locksets and interconnected locksets.

Product comparisons were made on the basis of the following criteria which are ranked in the order of importance. For tubular and cylindrical locksets we used the following criteria: (1) Type of lock, whether tubular or cylindrical; (2) function of lock, whether entry, privacy or passage; (3) knob-operated or lever-operated locks; (4) knob type; (5) lock finish; and (6) standard latch or drive-in latch. For dead locks and dead bolts we considered: (1) Number of cylinders, whether single or double; (2) lock finish; and (3) standard latch or drive-in latch. For sectional handled locksets and interconnected locksets we considered: (1) Type of lockset, whether sectional handled or interconnected; (2) type of lock, whether tubular or cylindrical; (3) knob-operated or lever-operated lock; (4) knob or handle type; and (5) lockset finish.

Where there were no sales of identical merchandise in the home or third country markets with which to compare merchandise sold in the United States, sales of the most similar merchandise were compared on the basis of the characteristics described above. We made adjustments for differences in the physical characteristics of the merchandise in accordance with section 773(a)(4)(C) of the Act.

In order to determine whether there were sufficient sales of certain residential door locks in the home market to serve as the basis for calculating foreign market value, we compared the volume of home market sales to the volume of third country sales within each such or similar category, in accordance with section 773(a)(1) of the Act. In accordance with § 353.48 of the Department's regulations, where the volume of home market sales was at least five percent of the aggregate volume of third country sales, we used home market sales as the basis for foreign market value. Where the volume of home market sales was less than five percent of the aggregate volume of third country sales, we determined that home market sales did not constitute a viable basis for calculating foreign market value. In these instances, we used third country sales as the basis for foreign market value.

For Tong Lung, we determined that there were sufficient home market sales to unrelated customers to constitute a viable basis for calculating foreign market value for the such or similar category of tubular and cylindrical locksets. For the such or similar categories of dead bolts and dead locks, and sectional-handled and interconnected locksets, we determined that there were insufficient home market sales to constitute a viable basis for calculating foreign market value. We therefore used third country sales of those categories. We determined that for dead bolts and dead locks, sales to Canada and Australia were the most appropriate basis for calculating foreign market value because the merchandise sold in these countries were the most comparable to that sold in the United States and was sold in sufficient quantities. For sectional-handled and interconnected locksets, we determined that sales to Canada were the most appropriate basis for calculating foreign market value because the merchandise sold in Canada was the most comparable to that sold in the United States and was sold in sufficient quantities.

For Fu Hsing, we determined that there were sufficient home market sales to unrelated customers to constitute a viable basis for calculating foreign market value of the such or similar categories to tubular and cylindrical locksets and sectional-handled and interconnected locksets. For the such or similar category of dead bolts and dead locks we determined that there were insufficient home market sales to constitute a viable basis for calculating foreign market value. In these instances, we used third country sales as the basis for foreign market value. We determined that for dead bolts and dead locks, sales to Canada were the most appropriate basis for calculating foreign market value because the merchandise sold in these countries was the most comparable to that sold in the United States and was sold in sufficient quantities. For sectional-handled and interconnected locksets, we determined that sales to Canada were the most appropriate basis for calculating foreign market value because the merchandise sold in Canada was the most comparable to that sold in the United States and was sold in sufficient quantities.

For Posse, we determined that there were sufficient home market sales to unrelated customers to constitute a viable basis for calculating foreign market value for two such or similar categories: tubular and cylindrical locksets, and dead bolts and dead locks. For the such or similar category of sectional-handled and interconnected locksets, we determined that there were insufficient home market sales to constitute a viable basis for calculating foreign market value. We determined that sales to Australia were the most appropriate basis for calculating foreign market value because the merchandise sold to Australia was the most comparable to that sold in the United States and was sold in sufficient quantities.

Fair Value Comparisons

To determine whether sales of residential door locks from Taiwan to the United States were made at less than fair value, we compared the United States price to the foreign market value, as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

In the preliminary determination, we used best information available in accordance with section 776(c) of the Act for all product comparisons that were not made in accordance with the product matching criteria contained in Appendix V of the questionnaire. Pursuant to specific requests from the Department, respondents submitted revised product comparisons on October 2, 1989. Although these product comparisons were submitted too late to be considered for purposes of the preliminary determination, they were examined during verification. Respondents Tong Lung and Posse correctly applied the product matching criteria to all of their similar product comparisions, and accordingly, these comparisons were used for purposes of the final determination. For respondent Fu Hsing, there continue to be several instances where product comparisons were not made in accordance with Appendix V. Throughout the course of the investigation, respondents were given numerous opportunities to comply with the questionnaire instruction. Because Fu Hsing repeatedly failed to comply with the questionnaire instructions, we used best information available for those product comparisons that were not made in accordance with Appendix V. As best information available, we used the highest margin contained in the petition for the such or simimilar category of the mismatched products. See also Comment 2 in the "Interested Party Comments" section of this notice.

Furthermore, Fu Hsing reported exporter's sales price transactions (ESP) during the POI. At verification, the company was unable to provide satisfactory documentary support for the reported total quantity and value of ESP transactions. Because these totals did not verify, we have determined that the reported ESP information is not a reliable basis for the fair value comparisons. Consequently, we used best information available in accordance with section 776(c) of the Act for all ESP transactions. As best information available, we used the average of the highest margins contained in the petition for each such or similar category. See also Comment 19 in the "Interested Party Comments" section of this notice.

To calculate the weighted-average margin listed in the "Suspension of Liquidation" section of this notice for Fu Hsing, we weighted by quantity the margins calculated using Fu Hsing's correctly reported sales information with the margins contained in the petition for the incorrectly reported product comparisons and for ESP transactions.

United States Price

Except as noted above for Fu Hsing, we based the United States price on purchase price, in accordance with section 772(b) of the Act, because all sales were made directly to unrelated parties prior to importation into the United States.

A. Fu Hsing

For Fu Hsing, where U.S. sales were reported with correct product comparisons, we calculated purchase price based on packed f.o.b. and f.o.r. Taiwan port, c.i.f., and c.&.f. prices to unrelated customers in the United States. We made deductions, where appropriate, for discounts, brokerage and handling, foreign inland freight, containerization expenses, ocean freight, marine insurance and harbor maintenance fees, in accordance with section 772(d)(2) of the Act. Fu Hsing reported in its narrative response that harbor maintenance fees were 0.5 percent of gross unit price. Due to time constraints and the number of other adjustments to review, we did not examine this adjustment at verification. However, because the amount reported on the computer tape did not correspond to the narrative response, we recalculated this fee based on the narrative.

We added rebated duties pursuant to section 772(d)(1)(B) of the Act. When foreign market value was based on home market sales, pursuant to section 772(d)(1)(C) of the Act, we added the amount of value-added taxes which would have been collected if the merchandise had not been exported.

We noted that Fu Hsing reported parts in its U.S. computer tape sales list. However, since parts reported were an insignificant portion of the U.S. database, we have not included these parts for purposes of calculating a dumping margin.

B. Tong Lung

For Tong Lung, we calculated purchase price based on packed f.o.b. and f.o.r. Taiwan port, c.i.f., and c.& f. prices to unrelated customers in the United States. We made deductions, where appropriate, for discounts, rebates, brokerage and handling, foreign inland freight, containerization expenses, ocean freight, marine insurance and harbor maintenance fees, in accordance with section 772(d)(2) of the Act. Tong Lung reported in its narrative response that harbor maintenance fees were 0.5 percent of gross unit price. As in the case of Fu Hsing, due to time constraints and the number of other adjustments to review, we did not examine this adjustment at verification. However, because the amount reported on the computer tape did not correspond to the narrative response, we recalculated this fee based on the narrative. Tong Lung reported an adjustment to U.S. price for a "surcharge". However, because no information describing this surcharge was submitted for the record prior to verification, we disallowed the claimed adjustment. See also Comment 12 in the "Interested Party Comments" section of this notice.

We added rebated duties pursuant to section 772(d)(1)(B) of the Act. When foreign market value was based on home market sales, pursuant to section 772(d)(1)(C) of the Act, we added the amount of value-added taxes which would have been collected if the merchandise had not been exported.

C. Posse

For Posse, we calculated purchase price based on packed f.o.b. Taiwan port prices to unrelated customers in the United States. We made deductions, where appropriate, for brokerage and handling, foreign inland freight, harbor maintenance fees, and containerization expenses. Posse reported in its narrative response that harbor maintenance fees were 0.5 percent of gross unit price. At verification, company officials stated that they calculated the amount on the tape based on the actual NT$ amount they paid, converted using the exchange rate in effect on the shipment date. Because this calculation involved exchange rates other than those in effect on the date of sale, we have recalculated this fee based on the narrative.

We added rebated duties pursuant to section 772(d)(1)(B) of the Act. When foreign market value was based on home market sales, pursuant to section 772(d)(1)(C) of the Act, we also added the amount of value-added taxes which would have been collected if the merchandise had not been exported.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value based on home market or third country sales, as appropriate.

A. Fu Hsing

For Fu Hsing, for the such or similar categories of tubular and cylindrical locksets, and sectional-handled and interconnected locksets, we used sales in the home market as the basis for foreign market value. We calculated foreign market value based on the packed, delivered prices to unrelated customers in the home market. We made deductions, where appropriate, for cash discounts, quantity discounts, other discounts, rebates, and inland freight. We deducted home market packing costs and added U.S. packing costs.

We made circumstances of sale adjustments for differences in warranties, credit terms, which included bank charges and transit interest, and a special rebate from China Steel Corporation, pursuant to § 353.56 of the Department's regulations. In the preliminary determination, we treated this special rebate in the same manner we treated duty drawback, as an addition to U.S. price. However, after further consideration of the way this rebate is paid, and review of our treatment of similar claimed adjustments in prior investigations, we have determined that this rebate is more appropriately treated as a circumstance of sale adjustment. *See Light Walled Rectangular Tubing from Taiwan, Final Determination of Sales at Less Than Fair Value,* 54 FR 5532, February 3, 1989 and *Certain Welded Carbon Steel Standard Pipe and Tube from India, Final Determination of Sales at Less Than Fair Value,*, 52 FR 9089, March 17, 1987.

We made an upward adjustment to tax-exclusive home market prices for the value-added tax computed for the United States price.

Where appropriate, we made further adjustments to the home market price to account for differences in the phyisical characteristics of the merchandise, including differences in consumer packaging, in accordance with § 353.57 of the Department's regulations.

For the such or similar category of dead bolts and dead locks, we used sales to third countries as the basis for foreign market value. We calculated

foreign market value based on the packed, f.o.b. prices to unrelated customers in the third countries. We

characteristics of the merchandise, including differences in consumer packaging, in accordance with § 353.57

the adjustment for physical differences in merchandise. By accepting Posse's adjustment for physical differences in

packaging, in accordance with § 353.57 of the Department's regulations.

By means of submissions to the Department and meetings with Department officials, petitioner and

Department in a timely fashion. Specifically, petitioner argues that an explanation of the substantial

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foreign market value based on the packed, f.o.b. prices to unrelated customers in the third countries. We made deductions, where appropriate, for discounts, brokerage and handling, foreign inland freight, ocean freight, marine insurance, harbor maintenance fees and containerization expenses. Fu Hsing reported in its narrative response that harbor maintenance fees were 0.5 percent of gross unit price. As discussed in the United States Price section of this notice, due to time constraints the amount reported on the computer tape did not correspond to the narrative response, we recalculated this fee based on the narrative. We deducted third country packing costs and added U.S. packing costs.

We made circumstances of sale adjustments, where appropriate, for differences in warranties, credit terms, which included bank charges and transit interest, commissions, and a special rebate from the China Steel Corporation. See above discussion of this adjustment.

We added rebated duties pursuant to section 772(d)(1)(B) of the Act.

Where appropriate, we made further adjustments to the third country price to account for differences in the physical characteristics of the merchandise (difmers), including differences in consumer packaging, in accordance with § 353.57 of the Department's regulations.

B. Tong Lung

For the such or similar category of tubular and cylindrical locksets, we used sales in the home market as the basis for foreign market value. We calculated foreign market value based on the packed, delivered prices to unrelated customers in the home market. We made deductions, where appropriate, for inland freight. We deducted home market packing costs and added U.S. packing costs. We made an adjustment for home market indirect selling expenses, which included salesmen's salaries and transportation expenses, to offset the amount of commission paid on U.S. sales, in accordance with § 353.56(b)(1) of the Department's regulations.

We made circumstance of sale adjustments for differences in credit terms, including bank charges and transit interest, and a special rebate from the China Steel Corporation. *See* above discussion of this adjustment for Fu Hsing.

We made an upward adjustment to tax-exclusive home market prices for the value-added tax computed for the United States price.

Where appropriate, we made further adjustments to the home market price to account for differences in the physical characteristics of the merchandise, including differences in consumer packaging, in accordance with § 353.57 of the Department's regulations.

We made circumstance of sale adjustments, where appropriate, for differences in credit terms, including bank charges and transit interest, commissions, and a special rebate from the China Steel Corporation. See above discussion of this adjustment for Fu Hsing.

We added rebated duties pursuant to section 772(d)(1)(B) of the Act.

Tong Lung reported an adjustment to third country price for a "surcharge." However, because no information describing this charge was submitted for the record prior to verification, we disallowed the claimed adjustment. See also Comment 12 in the "Interested Party Comments" section of this notice.

Where appropriate, we made further adjustments to the third country price to account for differences in the physical characteristics of the merchandise, including differences in consumer packaging, in accordance with § 353.57 of the Department's regulations.

C. Posse

For the such or similar categories of tubular and cylindrical locksets, and dead bolts and dead locks, we used sales in the home market as the basis for foreign market value. We calculated foreign market value based on the packed, delivered prices to unrelated customers in the home market. We made deductions, where appropriate, for inland freight. Posse included packing costs and consumer packaging costs in the adjustment for physical differences in merchandise. By accepting Posse's adjustment for physical differences in merchandise, which already accounted for differences in packing costs and consumer packaging costs, we have in effect subtracted home market packing costs and added U.S. packing costs. See also Comment 14 in the "Interested Party Comments" section of this notice.

We made circumstance of sale adjustments for differences in credit terms, including bank charges and transit interest, and a special rebate from the China Steel Corporation. See above discussion of this adjustment for Fu Hsing.

We made an upward adjustment to tax-exclusive home market prices for the value-added tax computed for the United States price.

Where appropriate, we made further adjustments to the home market price to account for differences in the physical characteristics of the merchandise, including differences in consumer packaging, in accordance with § 353.57 of the Department's regulations.

For the such or similar category sectional-handled and interconnected locksets, we used sales to the third country as the basis for foreign market value. We calculated foreign market value based on the packed, f.o.b. Taiwan port prices to unrelated customers in the third country. We made deductions, where appropriate, for foreign inland freight and containerization expenses. Posse included packing costs and consumer packaging costs in the adjustment for physical differences in merchandise. By accepting Posse's adjustment for physical differences in merchandise, which already accounted for differences in packing costs and consumer packaging costs, we have in effect subtracted third country packing costs and added U.S. packing costs. See also Comment 14 in the "Interested Party Comments" section of this notice.

We made circumstance of sale adjustments, where appropriate, for differences in credit terms, which included bank charges and transit interest, and a special rebate from the China Steel Corporation. See above discussion of this adjustment for Fu Hsing.

We added rebated duties to the third country price pursuant to section 772(d)(1)(B) of the Act.

Where appropriate, we made further adjustments to the third country price to account for differences in the physical characteristics of the merchandise, including differences in consumer packaging, in accordance with § 353.57 of the Department's regulations.

Currency Conversion

We used the official exchange rates in effect on the dates of U.S. sales, in accordance with section 773(a)(1) of the Act. All currency conversions were made at the rates certified by the Federal Reserve Bank.

Verification

Except where noted, we verified all information used in making our final determinations in accordance with section 776(b) of the Act. We used standard verification procedures including examination of relevant accounting records and original source documents of the respondents. Our verification results are outlined in the public versions of the verification reports which are on file in the Central Records Unit (room B-099) of the Main Commerce Building.

Interested Party Comments

Comments Relating to All Respondents

Comment 1

Petitioner contends that "function" (*i.e.*, entrance, privacy, or passage) should be the primary criterion for matching U.S. and foreign market products because there is a significant difference in the cost of producing locks with different functions. Petitioner states that the majority of locks sold in the United States are tubular while the majority of locks sold in the home market are cylindrical, and strict adherence to the Department's current criteria thus would require that a large number of U.S. sales transactions be compared with a limited number of home market transactions. Petitioner argues that the resulting comparisons would be unreliable and meaningless.

Respondents argue that there is no significant cost differential in producing locks of different functions. They state that the difference between the cost of producing a passage lock and the cost of producing a privacy lock is quite small. Respondents also argue that the Department cannot change its product matching criteria at this point in the investigation because it would require entirely new product matches for all three respondents. This would be difficult since respondents only reported difference in merchandise adjustment for the matched products.

DOC Position

Petitioner and respondents were afforded the opportunity to present their views on the product matching criteria in the early stages of the investigation. By means of submissions to the Department and meetings with Department officials, petitioner and respondents made their comments known concerning product matches. The Department gave careful consideration to their views and to all other information on the record in establishing the product matching criteria. The product matching criteria contained in Appendix V of the questionnaire are a reasonable and objective basis for establishing the comparability of the products subject to this investigation. See also "DOC Position", Comment 2. No compelling reason exists for altering these criteria, particularly at this stage in the investigation.

Comment 2

Fu Hsing argues that the product matching criteria in Appendix V do not account for the fundamental differences between knob-operated locks and leversets. Fu Hsing argues that a lever is a fundamentally different article from a knob, in terms of method of production, raw material, finishing and appearance. Fu Hsing compared a U.S. knob-operated lock with a home market knob-operated lock, where the Department's matching criteria required comparison of a U.S. knob-operated lock to a home market leverset. Fu Hsing argues that the fact that the Department's methodology yields consistently larger difmers for product comparisons involving leversets demonstrates that the Department's methodology is flawed. Fu Hsing further argues that the Department's methodology yields difmers that are outside the 20 percent range generally considered unacceptable. Furthermore, the quantities of leversets sold in the home market are considerably smaller than the quantities of tubular locksets sold in the U.S. market.

Fu Hsing contends that its reported product matches enabled it to account for differences in knob style which are not covered in Appendix V of the Department's questionnaire. Fu Hsing states that it selected products based on the actual physical differences among the various knob styles and that the Department's methodology fails to account for these differences. Counsel for Fu Hsing, who is also counsel for the other two respondents, claims that since each respondent submitted its own product concordance computer tape and this information was verified the Department should use this information for purposes of the final determination.

Petitioner argues that the Department should reject Fu Hsing's proposed model matches because they are based on new information not presented to the Department in a timely fashion. Specifically, petitioner argues that an explanation of the substantial differences in materials, finishing and production methods that distinguish leversets from knob-operated door locks was not presented to the Department until verification. Therefore, petitioner argues that this new information must be disregarded for purposes of the final determination.

Moreover, petitioner states that if knob-operated locks are not comparable to leversets, as Fu Hsing suggests, then Tong Lung's and Posse's comparisons between leversets and knob-operated locks should similarly be rejected. Petitioner argues that since Tong Lung and Posse sold leversets only in the United States, there would be no home market or third country leversets with which the U.S. products could be compared. Consequently, the Department would have to use best information available to calculate margins on leversets.

DOC Position

The model match criteria in Appendix V establish the following hierarchy for product comparability: (1) Comparison of tubular locks to tubular locks and cylindrical locks to cylindrical locks, (2) comparison of entrance locks to entrance locks, passage locks to passage locks and privacy locks to privacy locks, and (3) comparison of knob-operated locks to knob-operated locks and lever-operated locks to lever-operated locks. Because all leversets are, in fact, tubular locks, Fu Hsing's proposed model matches would effectively elevate the third criterion above the second criterion. This is clearly not in accordance with the instructions in Appendix V. No compelling reason has been presented to alter the instructions in Appendix V at this point in the investigation.

Respondent's contention that the Department's methodology leads to comparisons with unacceptably large difmers is inaccurate; the Department's methodology does not yield unacceptably high difmers. Furthermore, respondent's arguments concerning the relative quantities of leversets and tubular sets sold in each market is irrelevant. The quantity of sales of a given product is not a consideration used in selecting similar merchandise.

Moreover, respondent's argument that the Department's methodology is flawed lacks merit. Similarity in cost of production (*i.e.*, small difmers) does not automatically imply product similarity. The characteristics which most pointedly show product similarity are in

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the operating mechanism. The operation of tubular and cylindrical locks are different and unaffected by whether the handle which operates them is a knob or a lever. See also "DOC Position", Comment 1.

Comment 3

Best Lock, a domestic manufacturer of door locks, argues that the Department should change the scope of the investigation with regard to the distinction between residential and commercial door locks. Best Lock recommends that the Department adopt the distinction between residential and commercial door locks used by the "American National Standards Institute" (ANSI). Under the ANSI standard, grade 3 locks are considered residential and grade 2 locks are considered commercial. The ANSI grades are based on strength tests, load tests, torque tests, and force tests. Absent such a change in the scope, Best Lock requests that the door lock components it imports from Taiwan be explicitly excluded from the scope of the investigation. Best Lock claims that these components are used in the production of commercial grade locks.

DOC Position

As with the product matching criteria, the Department carefully considered the views of petitioner and respondents, as well as other information on the record, in determining the scope of the investigation. No compelling reason exists for altering the scope, particularly at this point in the investigation. Furthermore, Best Lock's arguments were not submitted until November 28, 1989, too late to be considered for purposes of our final determination, and therefore can only be considered in the context of a formal scope clarification request.

Comment 4

Petitioner argues that all three respondents made incorrect product comparisons and that the Department should therefore use best information available for the product comparisons not made in accordance with the instructions in Appendix V of the questionnaire.

Tong Lung claims that its model matches are correct. In each instance where the Department selected model matches different from those proposed by Tong Lung, the Department's match was a medium-duty cylindrical lockset. These locksets are commercial locksets which are outside the scope of this investigation.

Furthermore, each of the three respondents claims that since it has fully answered the department's questionnaire, and given that each response has been verified, it would be unlawful for the Department to use best information available for any element of the final determination, including product matches.

DOC Position

Except for certain of Fu Hsing's product comparisons involving leversets, all of the product matches made by the respondents were in accordance with the matching criteria in Appendix V of the questionnaire. See also the "Fair Value Comparisons" section of this notice for a discussion of the product matches that were not made in accordance with Appendix V.

Comment 5

Petitioner argues that the export sales totals reported by all three respondents are unverified because the Department was unable to trace these totals to the respondents' financial statements. Since the aggregate totals were not traceable to financial records, there is no way to establish whether all export sales were properly reported to the Department. Therefore, the Department should use best information available for the final determination.

Respondents claim that export sales totals reported for the POI cannot be tied *en masse* into the accounting records. They state that the totals reported to the Department are based on the contract date or date of sale. However, under Taiwan's value-added tax law, respondents claim that sales do not appear in the company's books until the goods are delivered. Respondents argue that, because there is a substantial time lag between the contract date and the date the sale is entered into the company's accounting records for export sales, it was impossible to trace total export contracts for a given period to the company's accounting books. Respondents further argue that export sales totals were verified using procedures deemed adequate in past antidumping investigations.

DOC Position

The Department normally requires respondents to reconcile the reported total quantity and value of sales to audited financial statements. In this case, respondents claimed to be unable to do this. After review of respondents' accounting records and the relevant portion of Taiwan's tax regulations, it appeared that such a reconciliation would be extremely difficult. The Department employed a variety of verification procedures to evaluate the completeness of the reported total sales quantities and values. The results of these procedures supported the completeness of the responses. Consequently, we have used this information for purposes of the final determination. See also the public versions of the verification reports which are on file in the Central Records Unit (Room B-099) of the Main Commerce Building.

Comment 6

Petitioner asserts that the Department should deny an adjustment for home market credit expense for all three respondents because they were unable to provide any documentary support for their calculations. Petitioner states that the calculations were based solely on assumptions about when company salesmen collect payments from their customers. Petitioner also notes that payment dates for Tong Lung appear to be incorrect and that Fu Hsing incorrectly used a simple average interest rate.

Tong Lung states that the only discrepancy found at verification was adequately explained and there were no other discrepancies noted. Posse states that the claimed interest rates were conservative. Fu Hsing states that its claimed interest rate was within the range of rates that it actually experienced during the POI.

DOC Position

Respondents reported credit costs based upon an estimated number of days of credit outstanding. At verification, respondents provided no documentary support for this estimated number of days. However, we did verify the reported shipment and payment dates for each respondent. Additionally, based on our review of bank documents presented at verification, the reported interest rates appear to be a conservative estimate of the actual interest costs experienced by respondents during the POI. Therefore, we have used the verified shipment and payment dates and the reported interest rates as BIA to estimate the home market credit expense for purposes of the final determination.

Comments Relating to Specific Companies

Tong Lung

Comment 7

Petitioner argues that the viability of Tong Lung's home market is questionable because the company misreported sales of "EA" series locks. Petitioner contends that by including "EA" series locks, which are not subject to the investigation, in its Section A response, Tong Lung increased the relative size of the home market, thereby causing a distortion of the home market viability test.

Petitioner also questions Tong Lung's statements regarding the sales of "EA" series locks. Petitioner states that it obtained information indicating that Tong Lung sells "E" series locks in the home market that appear to be residential door locks, but does not sell any "EA" series locks. Moreover, petitioner states that the Tong Lung home market price list contained in the petition has prices for "E" series locks and none for "EA" series locks. Petitioner contends that this information further calls into question Tong Lung's statements regarding home market sales of "EA" series locks.

Tong Lung contends that its home market remains viable even if "EA" locks are excluded from the viability calculation. Tong Lung also states that it does not sell non-residential locks other than the "EA" series.

DOC Position

With regard to home market viability, we agree with petitioner that "EA" products were incorrectly included in the Section A home market sales totals. However, excluding the "EA" locks from the aggregate sales data does not change the viability of the home market. With regard to the sale of "EA" series locks, we verified that all home market sales were correctly reported in the Section B and C sales listing.

Comment 8

Petitioner states that the results of Tong Lung's home market viability test are unreliable because the Department did not verify third country sales totals.

Tong Lung states that the Department did, in fact, verify Tong Lung's third country sales as demonstrated in verification exhibits TC-1 and TC-2.

DOC Position

We agree with respondent. As the Tong Lung verification report indicates, aggregate third country sales totals were verified.

Comment 9

Petitioner contends that Tong Lung failed to demonstrate that it made no sales through its two related selling agents, Consolidated Hardware and Cheng Yao, during the period of investigation.

Tong Lung argues that petitioner gives no reason to believe that there were Consolidated Hardware sales during the POI and that the fact a sale was not made would not show in any accounting records. Tong Lung further argues that during the POI it sold directly to former customers of Consolidated Hardware. Tong Lung also states the Posse verification report contains a Tong Lung letter indicating that Tong Lung had ceased selling through Cheng Yao prior to the POI.

DOC Position

We agree with respondent. No sales during the POI through Consolidated Hardware and Cheng Yao were reported and none were found during verification. There is no information on the record to indicate any such sales were made during the POI.

Comment 10

Petitioner argues that the costs reported by Tong Lung for difmers are unreliable because Tong Lung's reported labor costs were considerably different than those of Fu Hsing.

Tong Lung contends that there is no reason to believe two different manufacturers would have the same production costs. Tong Lung further states that a company which relies strongly on outside subcontractors, as it does, will have lower labor costs than one that uses its own workers to produce components.

DOC Position

We agree with respondent. At verification, the Department examined Tong Lung's summary of cost of production worksheets, including the direct labor cost allocation worksheet, and the Direct Labor Subsidiary Ledger. These documents contained information about the total cost of labor for a particular lock, the total quantity of production, and the total labor figure. These documents indicate that the reported labor cost figure was obtained by dividing the total cost of labor for a particular lock by the total quantity of production for this lock. The reported methodology, and the results of verification, suggest that the reported labor costs are reliable.

Comment 11

Petitioner argues that the Department should deny an adjustment for Tong Lung's indirect selling expenses for purposes of the final determination. Petitioner further states that the Department incorrectly reduced Tong Lung's home market prices by an amount representing "indirect selling expenses" in the preliminary determination.

Tong Lung argues that, under Department of Commerce regulations, the indirect selling expenses in the home market will be offset against U.S. commissions, to the amount of the commission paid.

DOC Position

We agree with respondent. Pursuant to § 353.56(b)(1) of the Department's regulations, the Department will normally make a reasonable allowance for indirect selling expenses in one of the markets under consideration if commissions are paid in the other market under consideration.

Comment 12

Petitioner contends that the adjustment for surcharge claimed by Tong Lung should be disallowed in the final determination because Tong Lung was unable to provide any documentation regarding this adjustment at verification.

Tong Lung states that the surcharge adjustment was verified and therefore should be granted.

DOC Position

Because no narrative description of this surcharge was submitted for the record prior to verification, we have disallowed it for purposes of the final determination.

Posse

Comment 13

Petitioner states that Posse misreported export sales because it only reported sales based on sales confirmations. Petitioner contends that by relying on sales confirmations to report sales, Posse may have excluded a large number of sales.

Posse argues that the date of sale is the date when all the material terms of the contract are first established; until the sales confirmation is issued, the material terms of the contract are subject to change. The sales confirmation represents Posse's acceptance of the contract and is, therefore, the appropriate date of sale.

DOC Position

We agree with respondent. At verification, we examined Posse's method of reporting export sales, and observed that Posse's export sales are recorded into the accounting system, and tracked through the accounting system, by Posse's sales confirmation number. We verified that the terms of sale were finalized at the time the sales confirmation was issued and found no discrepancies with respect to Posse's reporting of export sales.

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Comment 14

Petitioner argues that the Department should make separate packing adjustments since packing costs were found to be included in Posse's difference in merchandise adjustment calculations.

DOC Position

We did not make a separate adjustment for differences in packing costs or consumer packing costs for purposes of the final determination because these costs are included in Posse's difmer calculations; a separate adjustment would result in double-counting. See the "Foreign Market Value" section of this notice.

Comment 15

Petitioner argues that the costs reported by Posse for the adjustment for physical differences in merchandise are unreliable because Posse did not include any overtime costs for the first four months of 1989 in its calculation of direct labor costs, even though such costs were included in the last two months of 1989.

Posse argues that no basic exists for imputing a cost for overtime or for believing that any such imputation would have anything more than a negligible effect on the fair value comparisons.

DOC Position

We agree with petitioner that labor costs for Posse were underreported by the amount of overtime not allocated in the first four months of 1989. However, the verification exhibits indicate that overtime is a small portion of overall labor costs. Furthermore, this underreported cost relates to both export and home market sales. Consequently, any underreporting of labor costs that occurred would have a negligible effect on the fair value comparisons. Therefore, we are accepting Posse's labor costs for purposes of the final determination.

Comment 16

Petitioner contends that the Department should disallow the adjustment for inland freight on home market sales for Posse, since officials at Posse were unable to reconcile the difference between actual freight charges and those charges reported to the Department.

Posse contends that petitioner is confused by the language in the verification report. Posse did not base the numbers on the computer tape sales list on particular freight bills, but rather on the carrier's tariff sheet. Posse further argues that it is appropriate for a respondent to base its inland freight adjustment on indirect data when it does not enter inland freight on its books on a sale-by-sale basis.

DOC Position

The verification report indicates that Posse's narrative description of the method for calculating inland freight did not correspond to the actual method used. The narrative description states that that this charge is based on the carriers' actual freight bill per sale. The actual method used to calculate this adjustment was based on the carriers' price list. Because the actual method used corresponded to the amount reported on the computer tape sales list, and because the carriers' price list closely corresponded to the actual freight charge on the sales examined, we have allowed this adjustment for purposes of the final determination.

Comment 17

Posse argues that the Department should allow a circumstance of sale adjustment for indirect selling expenses in the home market because of the unusual relationship between Posse and Cheng Yao. Although Poise owns a percentage of the shares of Cheng Yao, the actual control of Cheng Yao was exercised by a third-party competitor, Tong Lung. The indirect selling expenses incurred by Cheng Yao were a means by which Tong Lung could control Posse's home market channels of trade and divert profits to Tong Lung.

Posse further states that during the period of investigation, while it was selling through Cheng Yao, it also had its own complete sales department; the Cheng Yao sales department was in addition to Posse's own sales department. Thus, the Cheng Yao sales department was an additional layer of cost interposed between Posse and the arm's-length customers in the home market. When Posse ceased selling through Cheng Yao, it was able to eliminate this cost and use its own selling personnel to handle all home market sales. While Posse and Cheng Yao were "related parties," Posse asserts that the relationship was more adversarial than brotherly.

Petitioner argues that the Department should deny an adjustment for the indirect selling expenses of Cheng Yao because such an adjustment would violate established Department procedures. Petitioner states that payments to related parties are considered to be part of the general expenses of the company, not costs directly related to particular sales, as required by § 353.56(a) of the Department's regulations. In this case, petitioner notes that an adjustment is sought for all of the expenses of the related party, not just for specific payments.

DOC Position

We agree with petitioner. The Department makes allowances for differences in circumstances of sale pursuant to section 353.56(a)(1) of the Department's regulations, which stipulates that such allowances be limited to circumstances which bear a direct relationship to the sales compared. Expenses that would have been incurred regardless of the sales under consideration, are not generally considered to be directly related to those sales. The expenses of Cheng Yao would have been incurred regardless of any home market sales. Thus, these indirect selling expenses are not directly related to the sales being compared. Furthermore, the categories of expenses claimed as a circumstance of sale by Posse (*e.g.*, printing, newspapers, repairs and maintenance, and rent) are those associated with running a sales office, which are typically treated as indirect selling expenses. In fact, respondent admits that Cheng Yao is only a sales office. Respondent's arguments regarding the unusual relationship between Posse and Cheng Yao notwithstanding, there is no basis for making a circumstance of sale adjustment for Cheng Yao's indirect selling expenses.

Comment 18

Petitioner contends that Tong Lung exercised "absolute control" over Posse by means of Cheng Yao, the home market distributor of Posse. Petitioner argues that through Cheng Yao, Tong Lung dictated Posse's home market prices, and therefore Posse's home market sales should be treated as sales of Tong Lung.

DOC Position

In its comments, petitioner uses language from the respondents' case brief to describe the relationship between Posse and Tong Lung as one of "master and slave." However, respondents' counsel's characterization of this relationship does not correspond to the factual information on the record.

By urging the Department to view Posse's sales made through Cheng Yao as sales of Tong Lung, petitioner effectively requests tht the Department "collapse" Posse and Tong Lung into a single commercial entity, subject to a single, weighted-average margin. Although not expressly required by the Act, the Department has a long-standing practice of calculating a separate dumping margin for each manufacturer or exporter investigated. Past Department determinations of whether to "collapse" firms for purposes of margin calculations have focused on whether the firms in question operate as separate and distinct entities. See, *e.g.*, *Final Determination of Sales at Less Than Fair Value: Hot Rolled Carbon Steel Plate and Sheet from Brazil*, 49 FR 3102 (January 25, 1984); *Final Determination of Sales at Less Than Fair Value: Brass Sheet and Strip from France*, 52 FR 812, 814 (January 9, 1987); *Final Determination of Sales at Less Than Fair Value: Certain Granite Products from Spain*, 53 FR 24355, 24337 (June 28, 1987); *Final Determination of Sales at Less Than Fair Value: Certain Granite Products from Italy*, 53 FR 27187, 27189 (July 19, 1988); *Final Determination of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany*, 54 FR 18992, 19089 (May 3, 1989).

Central to a Department decision on whether to collapse companies for purposes of applying a single margin is the degree to which each firm in question operates in conjunction with the other relevant firms. Viewing this investigation in the context of the determinations discussed above, it becomes apparent that Posse and Tong Lung operated as separate and distinct entities. A common thread running through all the determinations above is the common ownership, or parent/subsidiary relationship, of the firms in question. In this case, Posse and Tong Lung are not commonly owned, nor do they stand as parent and subsidiary to each other. Instead, Posse and Tong Lung acted together only at a lower level, through their exclusive distributor in the home market, Cheng Yao. Though a blood relationship does exist between Posse and Tong Lung, each is independently owned, and both firms directly compete in both the home and U.S. markets.

Second, none of the factors present in *Granite from Italy* and *Granite from Spain* which led the Department to collapse firms in those cases are present here. There is no evidence on the record to indicate that Posse and Tong Lung operated closely together, were billed jointly, had their day-to-day operations directed by joint owners, or conducted transactions between themselves. While both firms do have similar production facilities, this alone is not enough to lead us to believe that Posse and Tong Lung should be considered as related parties. This fact, and the fact that the firms are neither commonly owned nor in a parent/subsidiary relationship, would hinder shifting of manufacturing priorities from one firm to the other. In any case, these production facilities are separately owned and operated. Though Tong Lung does appear to have controlled Cheng Yao, which set Posse's prices in the home market, Posse and Tong Lung each separately negotiated prices with its U.S. customers. In these areas, the facts in this investigation seem more similar to those in *Hot Rolled Carbon Steel Plate and Sheet from Brazil*, where the Department declined to collapse the firms in question.

Thus, Posse and Tong Lung do not have the close, intertwined relationship which would lead the Department to collapse them for purposes of this investigation.

Fu Hsing

Comment 19

Petitioner asserts that the Department was unable to verify the reported total quantity of Fu Hsing's exporter's sales price (ESP) transactions, and that there were several errors and inconsistencies in Fu Hsing's reporting of ESP transactions. These include: (1) Questions of Fu Shing USA taking title to goods that were reported as purchase price transactions; (2) the discrepancy between the gross unit prices on invoices examined by the Department and the gross unit prices reported by Fu Hsing on its computer tape; (3) the calculation of credit expenses; (4) the conflicting methods for calculating inventory carrying costs of Fu Hsing and Fu Shing USA; (5) the reduction of Fu Shing USA's indirect selling expenses; and (6) the calculation of commissions.

Fu Hsing claims that these ESP totals were in fact verified because the verifiers reviewed sequential invoice files for ESP transactions and found that every sale was properly reported. Fu Hsing states that this method has been used by the Department in the past. Fu Hsing further states that the Department's verifiers compared the reported total sales values to financial records and found almost no discrepancies.

DOC Position

We agree with petitioner. As detailed in the verification report, Fu Hsing's total quantity of ESP transactions could not be verified. Therefore, we have used best information available for ESP transactions pursuant to section 776(c) of the Act. See also "Fair Value Comparisons" section of this notice.

Comment 20

Petitioner states that best information available should be used for Fu Hsing's difmers since the Department was unable to verify that the transactions between Fu Hsing and related companies were at arm's length.

Fu Hsing maintains that there is no evidence on the record to suggest that transactions between related parties were not at arm's-length prices. Therefore, the Department should use the information reported by Fu Hsing.

DOC Position

At verification, Fu Hsing did provide a limited number of invoices from both related and unrelated suppliers in order to demonstrate the arm's-length nature of its related-supplier transactions. Accordingly, we have treated these as arm's-length transactions and accepted Fu Hsing's reported material costs for purposes of the final determination.

Comment 21

Petitioner argues that the costs reported by Fu Hsing for the adjustment for physical differences in merchandise are unreliable because they are not based on actual costs. Petitioner states that Fu Hsing used a "hybrid of actual material purchases and standard material usages" instead of actual material costs.

Fu Hsing argues that the method it used to calculate the reported material cost is reasonable because it is primarily based on actual costs. Fu Hsing further argues that these costs were fully verified and should be used in the final determination.

DOC Position

We agree with respondent. As the verification report indicates, Fu Hsing reported material costs for the difmer based on the product of "average actual material costs" incurred during the POI and the "standard material usage", a factor used by Fu Hsing in its cost accounting system. Thus, it appears that the reported material costs are not actual costs, but rather are based on actual costs. The Department normally requires respondents to report actual, not standard, costs. However, because the standard material usages are part of the company's regular cost accounting system and the actual material purchases were verified, we have used the reported material costs as best information available for purposes of the final determination.

Comment 22

Petitioner states that Fu Hsing's labor costs differ substantially from those of

Tong Lung, which produces virtually identical locks.

Respondent contends that there is no have allowed the rebate adjustment for purposes of the final determination.

Taiwan entered, or withdrawn from warehouse, for consumption, on or after the effective date of the suspension of

(7) Quantification of synapses using immunocytochemistry and electron microscopy.

[C-201-017]

Bricks From Mexico; Final Results of

Final Results of Review and Revocation

As a result of our changed

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Tong Lung, which produces virtually identical locks.

Respondent contends that there is no reason that different companies should have the same labor costs and that differences in products would lead to different labor costs.

DOC Position

We agree with respondent. The verified information on the record concerning the entire labor cost for Fu Hsing provides no evidence that the costs reported by Fu Hsing for the adjustment for physical differences in merchandise are unreliable.

Comment 23

Petitioner claims that the Department should deny an adjustment for home market quantity discounts because Fu Hsing provided contradictory descriptions of its quantity discount policy. Furthermore, petitioner states that the company incorrectly calculated the amount of the discount by using the gross unit price instead of the discounted unit price of the free lock as the value of the discount.

Respondent claims that the reported quantity discounts were fully verified and should be used in the final determination.

DOC Position

We agree with respondent. At verification, the Department examined the method employed by Fu Hsing to calculate quantity discounts. The discounts on the computer tape sales list corresponded with the verification exhibits and no discrepancies were found. Therefore, we have allowed the quantity discount adjustment for purposes of the final determination.

Comment 24

Petitioner argues that the Department should disallow the rebate adjustment for Fu Hsing because it provided various contradictory statements about the availability of rebates and was unable to provide any documentation regarding its rebate policy.

Fu Hsing argues that the reported rebates were fully verified and should be used in the final determination.

DOC Position

We agree with respondent. At verification, the Department examined the method employed by Fu Hsing to calculate rebates. The rebate on the computer tape sales list corresponded with the verification exhibits and no discrepancies were found. Therefore, we have allowed the rebate adjustment for purposes of the final determination.

Continuation of Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of residential door locks, as defined in the "Scope of Investigation" section of this notice, that are entered or withdrawn from warehouse for consumption on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of residential door locks exceeds the United States price as shown below. This suspension of liquidation will remain in effect until further notice. The margins are as follows:

Manufacturer/Producer/Exporter	Weighted-average margin percentage
Fu Hsing	17.59
Tong Lung	1.27
Posee	17.75
All others	8.24

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. In addition, pursuant to section 735(c)(1) of the Act, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist with respect to any of the products under investigation, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled as to those products. However, if the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on residential door locks from Taiwan entered, or withdrawn from warehouse, for consumption, on or after the effective date of the suspension of liquidation, equal to the amount by which the foreign market value exceeds the U.S. price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

December 18, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-29929 Filed 12-26-89; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with subsections 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC.

Docket Number: 89-257. *Applicant:* The Regents of the University of California at San Diego, Department of Neurosciences M008, School of Medicine, La Jolla, CA 92093-0608. *Instrument:* Electron Microscope, Model JEM-2000FX. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument will be used to conduct experiments in the following research projects:

(1) Ultrastructural organization of functional components at nodes of ranvier.

(2) Axoplasmic transport of three proteins.

(3) Ultrastructural correlates of Alzheimer's disease.

(4) Fundamental processes of macromolecular crystallization.

(5) Three-dimensional visualization of the ultrastructure and sites of termination of specific afferent synapses and their identified postsynaptic targets.

(6) Neuroplasticity of the septo-hippocampal circuit.

(7) Quantification of synapses using immunocytochemistry and electron microscopy.

(8) Studies on primary cultures of myocardial cells and myocardium recovering from experimental ischemia.

(9) Ultrastructural investigations of human tumor in normal tissue growing in three-dimensional in vitro gel-supported histoculture.

(10) Ultrastructural studies of physiologically identified synapses in the electrosensory system of gymnotiform fish.

(11) Localization of transmitter-specific receptor sites in the retina.

Application Received by Commissioner of Customs: October 23, 1989.

Docket Number: 89-258. *Applicant:* Department of Veterans Affairs Medical Center, 4801 Linwood Blvd., Kansas City, MO 64128. *Instrument:* Electron Microscope, Model JEM-1200EX/DP/DP. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument will be used to study the ultrastructure of white blood cells, cells derived from blood vessels, tumor cells and kidney tissues. Most specimens studied will be of biological origin, some from experimental animals, some from normal humans and some from patients with pathological disorders. *Application Received by Commissioner of Customs:* October 18, 1989.

Docket Number: 89-259. *Applicant:* Department of the Interior, U.S. Geological Survey, Box 25046, MS 901, Denver, CO 80225. *Instrument:* Microrefractometer Unit. *Manufacturer:* Trelle, West Germany. *Intended Use:* Studies of shock metamorphic effects on quartz and other minerals in the Cretaceous-tertiary boundary claystones. *Application Received by Commissioner of Customs:* October 26, 1989.

Docket Number: 89-260. *Applicant:* Auburn University, Department of Chemistry, Auburn University, AL 36849-5312. *Instrument:* Stopped Flow Kinetics Apparatus, Model SFA-11. *Manufacturer:* Hi-Tech Scientific, United Kingdom. *Intended Use:* The instrument will be used for educational purposes in the Physical Chemistry (CH-508) laboratory. *Application Received by Commissioner of Customs:* October 26, 1989.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89-29931 Filed 12-26-89; 8:45 am]

BILLING CODE 3510-DS-M

[C-201-017]

Bricks From Mexico; Final Results of Changed Circumstances Countervailing Duty Administrative Review and Revocation of Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Final Results of Changed Circumstances Countervailing Duty Administrative Review and Revocation of Countervailing Duty Order.

SUMMARY: On November 9, 1989, the Department of Commerce published the preliminary results of its changed circumstances administrative review and intent to revoke the countervailing duty order on bricks from Mexico. We have now completed that review and determine to revoke the countervailing duty order effective August 24, 1988.

EFFECTIVE DATE: December 27, 1989.

FOR FURTHER INFORMATION CONTACT: Randall Edwards or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On November 9, 1989, the Department of Commerce ("the Department") published in the **Federal Register** (54 FR 47102) the preliminary results of its changed circumstances administrative review and intent to revoke the countervailing duty order on bricks from Mexico (49 FR 19654; May 8, 1984). The Department has now completed that review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by this review are shipments of bricks from Mexico, including unglazed solid bricks and unglazed hollow bricks. Through 1988, such merchandise was classifiable under item numbers 532.1120 and 532.1140 of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under item number 6904.10.00 of the Harmonized Tariff Schedule (HTS). The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results and intent to revoke. We received no comments.

Final Results of Review and Revocation

As a result of our changed circumstances administrative review, we are revoking the countervailing duty order on bricks from Mexico. The effective date of the revocation is August 24, 1988.

Therefore, the Department will instruct the Customs Service to terminate the suspension of liquidation requirement and refund any cash deposits of estimated countervailing duties made on any shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after August 24, 1988.

Further, as a consequence of this revocation, the administrative reviews of calendar years 1987 and 1988, initiated on June 29, 1988 (53 FR 24470) and June 21, 1989 (54 FR 26089), respectively, are terminated. Entries of this merchandise exported on or after January 1, 1988 and entered, or withdrawn from warehouse, for consumption on or before August 23, 1988 are still subject to countervailing duties, and the administrative review initiated on June 19, 1987 (52 FR 23330) (preliminary results of the review published January 4, 1989 (54 FR 166)) will proceed.

This changed circumstances administrative review, revocation and notice are in accordance with sections 751(b) and (c) of the Tariff Act (19 U.S.C. 1675(b) and (c)) and 19 CFR 355.22 and 355.25.

Dated: December 19, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-29954 Filed 12-26-89; 8:45 am]

BILLING CODE 3510-DS-M

[C-201-012]

Carbon Black From Mexico; Final Results of Changed Circumstances Countervailing Duty Administration Review and Revocation of Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Final Results of Changed Circumstances Countervailing Duty Administrative Review and Revocation of Countervailing Duty Order.

SUMMARY: On November 9, 1989, the Department of Commerce published the preliminary results of its changed circumstances administrative review and intent to revoke the countervailing

duty order on carbon black from Mexico. We have now completed that review and determine to revoke the

1988 are still subject to countervailing duties, and the administrative reviews

SUPPLEMENTARY INFORMATION: On March 18, 1985, the Department of

the date of receipt of our letter. We stated that if we received a statement of interest, we would urge USTR to request

review. These changed circumstances include: (1) the Government of Mexico's accession to the GATT; (2) our

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duty order on carbon black from Mexico. We have now completed that review and determine to revoke the countervailing duty order effective August 24, 1988.

EFFECTIVE DATE: December 27, 1989.

FOR FURTHER INFORMATION CONTACT: David Layton or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On November 9, 1989, the Department of Commerce ("the Department") published in the **Federal Register** (54 FR 47103) the preliminary results of its changed circumstances administrative review and intent to revoke the countervailing duty order on carbon black from Mexico (48 FR 29564; June 27, 1983). The Department has now completed that review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by this review are shipments of Mexican carbon black. Through 1988, such merchandise was classifiable under item number 473.0400 of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under HTS item number 2803.00.0010. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results and intent to revoke. We received no comments.

Final Results of Review and Revocation

As a result of our changed circumstances administrative review, we are revoking the countervailing duty order on carbon black from Mexico. The effective date of the revocation is August 14, 1986.

Therefore, the Department will instruct the Customs Service to terminate the suspension of liquidation requirement and refund any cash deposits of estimated countervailing duties made on any shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after August 24, 1986.

Entries of this merchandise exported on or after October 1, 1983 and entered, or withdrawn from warehouse, for consumption on or before August 23, 1986 are still subject to countervailing duties, and the administrative reviews initiated on July 17, 1986 (51 FR 25923) (preliminary results of review published April 27, 1988 (53 FR 15087)) and July 17, 1987 (52 FR 27036) will proceed.

This changed circumstances administrative review, revocation and notice are in accordance with sections 751 (b) and (c) of the Tariff Act (19 U.S.C. 1675 (b) and (c)) and 19 CFR 335.22 and 355.25.

Dated: December 14, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-29955 Filed 12-26-89; 8:45 am]

BILLING CODE 3510-DS-M

INTERNATIONAL TRADE ADMINISTRATION

[C-201-405]

Certain Textile Mill Products From Mexico; Initiation and Preliminary, Results of Changed Circumstances Countervailing Duty Order (in Part)

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Initiation and Preliminary Results of Changed Circumstances Countervailing Duty Administrative Review and Intent to Revoke Countervailing Duty Order (in Part).

SUMMARY: The Department of Commerce has information sufficient to warrant initiation of a changed circumstances administrative review of the countervailing duty order on duty-free imports of certain textile mill products from Mexico. Because the U.S. textile industry is not interested in having the United States Trade Representative (USTR) refer this case to the International Trade Commission (ITC) to conduct a section 332 investigation and, consequently, is not interested in maintaining the countervailing duty order on duty-free textile mill products, we intend to revoke the order with regard to duty-free textile mill products from Mexico. We invite interested parties to comment on these preliminary results and intent to revoke (in part).

EFFECTIVE DATE: August 24, 1988.

FOR FURTHER INFORMATION CONTACT: Jean C. Kemp or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 377-2786.

SUPPLEMENTARY INFORMATION: On March 18, 1985, the Department of Commerce ("the Department") published in the Federal Register (50 FR 10624) a notice of final affirmative countervailing duty determination and countervailing duty order on certain textile mill products from Mexico. At the time the countervailing duty order was issued, Mexico was not entitled to an injury test under U.S. and interntional law. Countervailing duties were imposed upon this merchandise, some of which was duty free, without a determination that these entries were injuring the relevant domestic industry.

On August 24, 1986, Mexico acceded to the General Agreement on Tariffs and Trade ("GATT"). Consistent with our earlier positions in Certain Fasteners from India; Final Results of Administrative Review and Partial Revocation of Countervailing Duty Order (47 FR 44129; October 6, 1982) and Carbon Steel Wire Rod from Trinidad and Tobago; Preliminary Results of Administrative Review and Tentative Determination to Revoke Countervailing Duty Order (50 FR 19561; May 9, 1985), the Department has concluded that it lacks the authority under Article VI of the GATT and section 303(a)(2) of the Tariff Act of 1930, as amended ("the Tariff Act"), to levy countervailing duties on duty-free imports from Mexico entered on or after August 24, 1986 absent a determination regarding injury to the domestic industry.

In order to fulfill our international obligations, we have developed procedures whereby the U.S. International Trade Commission ("ITC") will, at the request of the United States Trade Representative ("USTR"), conduct an investigation pursuant to section 332 of the Tariff Act to assess whether (1) an industry in the United States would be materially injured, or would be threatened with material injury, or (2) the establishment of an industry in the United States would be materially retarded, if the Department were to revoke the outstanding countervailing duty order on duty-free imports of certain textile mill products from Mexico.

On August 1, 1989, we sent letters to all domestic interested parties on the Department's service list informing them of these procedures. In order to determine whether there was any interest in USTR requesting an investigation pursuant to section 332 on duty-free imports of certain textile mill products from Mexico, we requested that interested parties submit a statement of interest within 30 days of the date of receipt of our letter. We stated that if we received a statement of interest, we would urge USTR to request that the ITC conduct an investigation pursuant to section 332. We further stated that, in the absence of a statement of interest, we would initiate procedures to revoke the countervailing duty order with regard to duty-free imports of certain textile mill products from Mexico. We received no response.

Scope of Review

The United States, under the auspices of the Customs Cooperation Council, has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS) as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after this date is not classified solely according to the appropriate HTS item number(s).

Imports covered by this review are duty-free textile mill products from Mexico. This duty-free merchandise was classifiable during 1988 under the following item numbers of the Tariff Schedules of the United States Annotated ("TSUSA"): 319.0300, 319.0700, 338.1000, 355.8100, 358.2510, 358.0690, 358.1400, 360.7900, 360.8400, 364.0500, 364.1800 and 364.2500. This merchandise was classifiable under the same TSUSA item numbers during 1987 and 1988, with the exception of merchandise classifiable under 364.2500 which became classifiable under 364.2505 and 364.2510. Duty-free textile mill products from Mexico subject to the countervailing duty order are currently classifiable under the following item numbers of the Harmonized Tariff Schedule: 3703.10.60, 3918.10.31, 3921.12.11, 3921.13.11, 3921.90.11, 3926.90.56, 3926.90.57, 4010.91.11, 4010.91.15, 4010.99.11, 4010.99.15, 5110.00.00, 5113.00.00, 5208.31.20, 5208.32.10, 5208.41.20, 5208.42.10, 5208.51.20, 5208.52.10, 5209.31.30, 5209.41.30, 5209.51.30, 5309.30.00, 5311.00.60, 5703.90.00, 5805.00.10, 5809.00.00, 5903.10.20, 5903.20.20, 5903.90.20, 5908.91.20, 5908.99.20, 5910.00.10, 5911.40.00, 6302.99.10, 6304.99.10, 6304.99.40, 6307.90.90, 9505.10.25, 9505.10.50, and 9505.90.60.

Initiation, Preliminary Results of Review and Intent to Revoke (in Part)

We have determined that changed circumstances exist sufficient to warrant initiation of a changed circumstances review. These changed circumstances include: (1) the Government of Mexico's accession to the GATT; (2) our international obligations requiring us not to levy countervailing duties on duty-free imports from GATT-member countries in the absence of an affirmative injury determination; and (3) the domestic industry's lack of interest in having USTR refer this case to the ITC to conduct a section 332 investigation and, consequently, its lack of interest in maintaining the countervailing duty order on duty-free imports of certain textile mill products from Mexico. Under these circumstances, we conclude that expedited action is warranted and are combining the notices of initiation and preliminary results of our changed circumstances administrative review.

Thus, we preliminarily determine that there is a reasonable basis to believe that the requirements for revocation based on changed circumstances are met. Accordingly, we intend to revoke the countervailing duty order on duty-free textile mill products from Mexico effective August 24, 1986. The current requirements for the cash deposit of estimated countervailing duties will remain in effect until publication of the final results of this review.

Interested parties may submit written comments on these preliminary results and intent to revoke within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within five days of the date of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first workday following. Rebuttal briefs and rebuttals to written comments, limited to issues in those comments, must be filed not later than 37 days after the date of publication. The Department will publish the final results of review and its decision on revocation, including its analysis of issues raised in any such written comments or at a hearing.

This initiation of review, administrative review, intent to revoke and notice are in accordance with sections 751 (b) and (c) of the Tariff Act (19 U.S.C. 1675 (b) and (c) and 19 CFR 355.22 (h)(1) and (h)(4) and 19 CFR 355.25 (d)(1), (d)(2), and (d)(3).

Dated December 19, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-29956 Filed 12-26-89; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

United States-Canada Free-Trade Agreement, Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews

AGENCY: United States-Canada Free-Trade Agreement Binational Secretariat, United States Section, International Trade Administration, Commerce.

ACTION: Notice of amendments to the rules of procedure for Article 1904 binational panel reviews.

SUMMARY: Under Article 1904 of the United States-Canada Free-Trade Agreement ("Agreement") signed on January 2, 1988, the Government of the United States and the Government of Canada negotiated rules of procedure for Article 1904 binational panels and Article 1904 extraordinary challenge committees. These rules were published in 53 FR 53212 on December 30, 1988. This notice amends those rules.

EFFECTIVE DATE: These Rules Amendments take effect on January 1, 1990, for pending panel reviews, as well as for panel reviews requested on or after that date.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, Suite 4012, 14th and Constitution Avenue NW., Washington, DC 20230, (202) 377-5438.

SUPPLEMENTARY INFORMATION:

Background

Chapter 19 of the U.S.-Canada Free-Trade Agreement ("Agreement") establishes a mechanism for replacing domestic judicial review of determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. Upon request, these panels, acting in place of national courts, expeditiously review final determinations to determine whether they are consistent with the antidumping or countervailing duty law of the country that made the determination. Title IV of the United States-Canada Free-Trade Agreement Implementation Act of 1988, Public Law No. 100-449, 102 Stat. 1851 (1988) amended U.S. law to implement Chapter 19 of the Agreement.

The Rules of Procedure for Article 1904 Binational Panel Reviews are intended to give effect to the provisions of chapter 19 of the Agreement with respect to panel reviews conducted pursuant to Article 1904 of the Agreement. These Rules, which set forth

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the procedures for requesting and conducting panel reviews, became effective January 1, 1988 (53 FR 53212, Dec. 30, 1988). Like the Rules, the Amendments contained in this notice are the result of negotiations between the United States and Canada to carry out Article 1904 of the Agreement.

These Amendments are designed to remove ambiguities found after the existing Rules were put into practice, ease administrative burdens, and make the binational panel process more efficient and less costly. The Amendments include model forms for participants in binational panel reviews to duplicate and complete as appropriate. These Amendments and the attached forms were approved by an exchange of letters at a meeting of the United States-Canada Free Trade Commission on November 30, 1989.

A comprehensive review of the Article 1904 Panel Rules will be undertaken in mid-1990. Interested persons may make comments in writing concerning the rules, as amended, before June 30, 1990, to James R. Holbein, United States Secretary, Binational Secretariat, Suite 4012, 14th and Constitution Avenue NW., Washington, DC 20230, (202) 377-5438.

Preamble

The Parties,

Having regard to Chapter Nineteen of the Free Trade Agreement between the United States of America and Canada;

Acting pursuant to Article 1904.14 of the Agreement;

Amend, in accordance with the Schedule, the Article 1904 Panel Rules which came into force on January 1, 1989, effective January 1, 1990, for pending panel reviews, as well as for panel reviews requested on or after that date.

Dated: December 20, 1989.

Jackie Alston,

Acting United States Secretary, FTA Binational Secretariat.

Amendments to the Article 1904 Panel Rules

1. Rule 10 is revised to read as follows:

10. Each Secretary shall maintain a file for each panel review comprised of either the original or a copy of all documents filed, whether or not filed in accordance with these Rules, in the panel review. The file number assigned to a first Request for Panel Review shall be the Secretariat file number for all documents filed or issued in that panel review. All documents filed shall be stamped by the Secretariat to show the date and time of receipt.

2. Rule 12 is revised to read as follows:

12. Where under these Rules a responsible Secretary is required to cause a notice or other document to be published in the Canada Gazette and the **Federal Register**, the responsible Secretary and the other Secretary shall each cause the document to be published in the publication of the country in which that section of the Secretariat is located.

3. Rule 14 is amended by revising paragraph (1) and adding paragraph (4) to read as follows:

14. (1) Every panelist, assistant to a panelist, court reporter and translator shall, before taking up his duties in a panel review, submit to the responsible Secretary a Disclosure Undertaking, in the form referred to in Schedule A or a Protective Order Application, in the form referred to in Schedule B, as the case may be.

* * * * *

(4) The responsible Secretary shall file with the investigating authority one original and six copies of any Disclosure Undertaking or Protective Order Application referred to in subrule (1).

4. Rule 22 is amended by revising and numbering the existing paragraph as (1) and adding paragraph (2) to read as follows:

22. (1) Subject to subrules 14(3), 41(5), and 48(1), and rules 43, 52, and 55, no document is filed with the Secretariat until one original and eight copies of the document are received by the responsible Secretariat during its normal business hours and within the time period fixed for filing.

(2) Receipt, date and time stamping, or placement in the file of any document by the responsible Secretariat does not waive any time period fixed for filing and does not mean that the document has been properly filed in accordance with these Rules.

5. Rule 23 is amended by revising paragraph (a) to read as follows:

23. * * *

(a) Notices of Intent to Commence Judicial Review shall be served on each Party;

* * * * *

6. Rule 24 is amended by revising paragaph (3) to read as follows:

24. * * *

(3) Where a document is served by an expedited delivery courier or mail service, the date of service set out in the affidavit of service or certificate of service shall be the day on which the document is consigned to the courier service or is mailed.

* * * * *

7. Rule 33 is amended by removing paragraph (1)(b)(ii) and revising paragraph (3) to read as follows:

33. (1) * * *

(b) Where the final determination was made in Canada, serve a Notice of Intent to Commence Judicial Review on both Secretaries and all persons listed on the service list.

* * * * *

(3) Every Notice of Intent to Commence Judicial Review referred to in subrule (1) shall include the following information (model form provided in Schedule C(1)):

(a) The information set out in subrules 58(1)(c) to (f);

(b) The title of the final determination for which judicial review is sought, the investigating authority that issued the final determination, the file number assigned by the investigating authority and the appropriate citation if the final determination was published in the Canada Gazette or the **Federal Register**; and

(c) The date on which the notice of the final determination was received by the other Party if the final determination was not published in the Canada Gazette or the **Federal Register**.

8. Rule 34 is amended by revising paragraph (2) to read as follows:

34. (1) * * *

(2) A request for Panel Review shall contain the following information (model form provided in Schedule C(2)):

(a) The information set out in rule 58(1);

(b) The title of the final determination for which panel review is requested, the investigating authority that issued the final determination, the file number assigned by the investigating authority and the appropriate citation if the final determination was published in the Canada Gazette or the **Federal Register**;

(c) The date on which the notice of the final determination was received by the other Party if the final determination was not published in the Canada Gazette or the **Federal Register**;

(d) Where a Notice of Intent to Commence Judicial Review has been served and the sole reason that the Request for Panel Review is made is to require review of the final determination by a panel, a statement to that effect; and

(e) The service list, as defined in Rule 3.

9. Rule 36 is revised to read as follows:

36. (1) Subject to subrules (3) and 37(1), where a panel is established to review a final determination made under paragraph 41(1)(a) of the Special Import Measures Act that applies with respect to particular goods of the United States and a first Request for Panel Review of a final determination made under paragraph 43(1) of that Act with respect to those goods is filed, on the motion of (a) a participant in the former panel review, (b) an interested person listed in the service list of the latter panel review that certifies that it intends to become a participant in the latter panel review, or (c) the investigating authority in the latter panel review, the final determinations shall be reviewed jointly by one panel if none of the persons listed above objects.

(2) Subject to subrules (3) and 37(2), where a panel is established to review a final determination made under section 705(a) or 735(a) of the Tariff Act of 1930, as amended, that applies with respect to particular goods of Canada and a first Request for Panel Review of a final determination made under section 705(b) or 735(b) of that Act with respect to those goods is filed, on the motion of (a) a participant in the former panel review, (b) an interested person listed in the service list of the latter panel review that certifies that it intends to become a participant in the latter panel review, or (c) the investigating authority in the latter panel review, the final determinations shall be reviewed jointly by one panel if none of the persons listed above objects.

(3) A motion for joint panel review may be filed at any time before, but no later than, 10 days after the first Request for Panel Review of the final determination made under paragraph 43(1) of the Special Import Measures Act or section 705(b) or 735(b) of the Tariff Act of 1930, as amended, is filed. Any objection to the motion for joint panel review must be filed within 10 days thereafter.

10. Rule 39 is amended by revising paragraph (2) to read as follows:

39. * * *

(2) Every Complaint referred to in subrule (1) shall contain the following information (model form provided in Schedule C(3)):

(a) The information set out in rule 58(1);

(b) The precise nature of the Complaint, including the applicable standard of review and the allegations of error of fact or law, including the jurisdiction of the investigating authority; and

(c) Where the final determination was made in Canada, a statement as to whether the complainant

(i) Intends to use English or French in pleadings and oral proceedings before the panel, and

(ii) Requests simultaneous translation of any oral proceedings.

11. Rule 40 is revised to read as follows:

40. Within 45 days after the filing of a first Request for Panel Review of a final determination, the investigating authority and any other person that is entitled to and proposes to participate in the panel review and that has not filed a Complaint in the panel review shall file with the responsible Secretariat a Notice of Appearance containing the following information (model form provided in Schedule C(4)):

(a) The information set out in rule 58(1);

(b) In the case of a Notice of Appearance filed by an investigating authority, admissions, if any, with respect to the allegations set out in the Complaints;

(c) A statement as to whether appearance is made in support of

(i) The investigating authority,

(ii) A complainant, or

(iii) Both the investigating authority and a complainant; and

(d) Where the final determination was made in Canada, a statement as to whether the person filing the Notice of Appearance

(i) Intends to use English or French in pleadings and oral proceedings before the panel, and

(ii) Requests simultaneous translation of any oral proceedings.

12. Rule 41 is amended by revising paragraps (3), (5)(a), and (6) to read as follows:

41. * * *

(3) Within 10 days after the expiration of the time period fixed for filing the Index referred to in subrule (1), each complainant shall, and any other participant may, file with the responsible Secretariat, together with proof of service on the investigating authority and on the other participants, a Designation of Record, designating those items in the Index that the complainant or participant considers relevant to the panel review and requests be filed by the investigating authority.

* * * * *

(5) * * *

(a) Nine copies of the final determination, including reasons for the final determination, if any;

* * *

(6) Where a document containing proprietary information is filed under subrule (5)(b) or rule 43, it shall be filed under seal in accordance with rule 46.

* * * * *

13. Rule 42 is removed and reserved.

14. Rule 48 is amended by revising paragraph (1)(b) to read as follows:

48. * * *

(1) * * *

(b) One original and six copies with the investigating authority.

* * * * *

15. Rule 49 is removed and reserved.

16. In Rule 50, paragraph (2) is removed and reserved.

17. Rule 58 is revised to read as follows:

58. In a panel review of a final determination made in the United States, where, pursuant to rule 55, disclosure of a document is granted to a person,

(a) The panel shall limit disclosure to persons who must have access in order to permit effective representation in the panel review and effective functioning of the panel, and name such persons in the panel order; and

(b) The investigating authority shall issue to that person a Protective Order with respect to that document in accordance with the order of the panel.

18. Rule 58 is amended by revising paragraph (1) to read as follows:

58. (1) Ever pleading filed in a panel review shall contain the following information:

(a) The title of and the Secretariat file number for the panel review, if assigned;

(b) A brief descriptive title of the pleading;

(c) The name of the Party, investigating authority or interested person filing the document;

(d) The name of counsel for the person referred to in paragraph (c);

(e) The service address, as defined in Rule 3; and

(f) The telephone number of the counsel referred to in paragraph (d) or, where the interested person is not represented by counsel, the telephone number of the interested person.

* * * * *

19. Rule 60 is amended by revising paragraphs (1) and (3) to read as follows:

60. (1) Every complainant and every participant that filed a Notice of Appearance in support of a complainant or in support of both a complainant and the investigating authority shall file a brief no later than 60 days after the expiration of the time period fixed for filing the administrative record referred to in subrule 41(5).

* * * * *

(3) A reply brief may be filed by a complainant or by a participant that filed a Notice of Appearance in support of a complainant or in support of both a complainant and the investigating authority, no later than 15 days after the expiration of the time period fixed for the filing of the brief of the investigating

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authority and shall be limited to rebuttal of matters raised in the briefs filed pursuant to subrules (1) or (2).

• • • • •

20. Rule 61 is amended by revising paragraph (2) to read as follows:

61. • • •

(2) Where no brief is filed by any complainant or by any participant in support of any of the complainants within the time periods established pursuant to these rules and where no motion pursuant to rule 20 is pending, the panel may, on its own motion or pursuant to the motion of any participant, issue an order to show cause why the panel review should not be dismissed and if good cause is not shown, the panel shall issue an order dismissing the panel review.

• • • • •

21. Rule 63 is amended by revising paragraphs (1) and (2) to read as follows:

63. (1) A motion shall be made by Notice of Motion in writing (model form provided in Schedule c(5)) unless the circumstances make it unnecessary or impracticable.

(2) Every notice of Motion and affidavit in support thereof, if any, shall be accompanied by a proposed order of the panel (model form provided in Schedule c(6)), and shall be filed with the responsible Secretariat together with proof or service on all participants.

• • • • •

22. The heading immediately preceding Rule 72 is revised to read as follows:

Orders, Decisions, and Termination

• • • • •

23. Rule 73 is amended by revising and numbering the existing paragraphs and adding paragraph (2) to read as follows:

73. (1) Where a Notice of Motion requesting dismissal of a panel review is filed by a participant, the panel may issue an order dismissing the panel review.

(2) Where a Notice of Motion requesting termination of a panel review filed by a participant is consented to by all the participants and an affidavit to that effect is filed, or where all participants file Notices of Motion requesting termination, the panel review is terminated and, if a panel has been appointed, the panelists are discharged.

24. Rule 77 is amended by revising paragraph (5) to read as follows:

77. • • •

(5) A panel may deny a motion referred to in subrule (1) without providing an opportunity to file a response to the motion.

• • • • •

25. Rule 80 is amended by revising and numbering the existing paragraph and adding paragraph (2) to read as follows:

80. (1) Where, pursuant to rule 73, a panel issues an order dismissing the panel review or where the panel review is automatically terminated, the responsible Secretary shall cause to be published in the Canada Gazette and the **Federal Register** a Notice of Completion of Panel Review, effective

(a) Where all the participants consent to the termination, on the day after the day on which the affidavit is filed;

(b) Where an order has been issued and where no request for an extraordinary challenge committee is filed within 30 days after the order is issued, on the 31st day; and

(c) Where an order has been issued and where a request for an extraordinary challenge committee is filed within 30 days after the order is issued, on the day referred to in rule 59 of the Extraordinary Challenge Committee Rules.

(2) Where the panel review is dismissed pursuant to subrule 61(2), the responsible Secretary shall cause to be published in the Canada Gazette and the **Federal Register** a Notice of Completion of Panel Review, effective on the 11th day after expiration of the time period fixed for the filing of briefs referred to in subrule 60(1).

26. Schedule C is added to provide model forms to assist in participating in Article 1904 Binational Panel Review pursuant to the United States-Canada Free-Trade Agreement.

Schedule C—Model forms are provided to be retyped, as necessary, to provide all information requested in each form.

Schedule C (1)

ARTICLE 1904 Binational Panel Review Pursuant to the United States-Canada Free-Trade Agreement

In the matter of:

(Title of final determination)

Notice of Intent To Commence Judicial Review

Pursuant to Article 1904 of the United States-Canada Free-Trade Agreement, notice is hereby served that

(interested person filing notice)

intends to commence judicial review in the

(name of the court)

of the final determination referenced below. The following information is provided pursuant to Rule 33 of the *Article 1904 Panel Rules:*

1. (The name of the interested person filing this notice)
2. (The name of the counsel for the interested person, if any)
3. (The service address, as defined by Rule 3 of the *Article 1904 Panel Rules*, including facsimile number, if any)
4. (The telephone number of the counsel for the interested person or the telephone number of the interested person, if not represented by counsel)
5. (The title of the final determination for which notice of intent to commence judicial review is served)
6. (The investigating authority that issued the final determination)
7. (The file number of the investigating authority)
8. (a) (The citation and date of publication of the final determination in the **Federal Register** or *Canada Gazette*); or

(b) (If the final determination was not published, the date notice of the final determination was received by the other Party)

Date

Signature of Counsel (or interested person, if not represented by counsel)

Schedule C (2)

Article 1904 Binational Panel Review pursuant to the United States-Canada Free-Trade Agreement

In the matter of:

(Title of panel review)
Secretariat file no.

Request for Panel Review

Pursuant to Article 1904 of the United States-Canada Free-Trade Agreement, panel review is hereby requested of the final determination referenced below. The following information is provided pursuant to Rule 34 of the *Article 1904 Panel Rules*:

1. (The name of the Party or the interested person filing this request for panel review)
2. (The name of the counsel for the Party or the interested person, if any)
3. (The service address, as defined by Rule 3 of the *Article 1904 Panel Rules*, including facsimile number, if any)
4. (The telephone number of the counsel for the Party or the telephone number of the interested person, if not represented by counsel)
5. (The title of the final determination for which panel review is requested)
6. (The investigating authority that issued the final determination)
7. (The file number of the investigating authority)
8. (a) (The citation and date of publication of the final determination in the **Federal Register** or *Canada Gazette*); or

(b) (If the final determination was not published, the date notice of the final determination was received by the other Party)

9. Yes ____ No ____ Non-Applicable____
(Where a Notice of Intent to Commence Judicial Review has been served, is the sole reason for requesting review of the final determination to require review by a panel?)
10. The Service List, as defined by Rule 3, is attached.

Date

Signature of Counsel
(or interested person, if not represented by counsel)

Schedule C (3)

Article 1904 Binational Panel Review Pursuant to the United States-Canada Free-Trade Agreement

In the matter of:

(Title of panel review)
Secretariat file no.

Complaint

1. (The name of the interested person filing the complaint)
2. (The name of the counsel for the interested person, if any)
3. (The service address, as defined by Rule 3 of the *Article 1904 Panel Rules*, including facsimile number, if any)
4. (The telephone number of the counsel for the interested person or telephone number of the interested person, if not represented by counsel)
5. The precise nature of the complaint
(Insert language as described in Rule 39)
6. The applicable standard of review
(Insert language as described in Rule 39)
7. Allegations of error of fact or law, including the jurisdiction of the investigating authority
(Insert language as described in Rule 39)
8. For panel reviews of determinations made in canada:
(a) Complainant intends to use the specified language in pleadings and oral proceedings (Specify one). ____ English ____ French
(b) Complainant requests simultaneous translation of oral proceedings (Specify one). ____ Yes ____ No

Date

Signature of Counsel
(or interested person, if not represented by counsel)

Schedule C(4)

Article 1904 Binational Panel Review pursuant to the United States-Canada Free-Trade Agreement

In the matter of:

(Title of Panel Review)
Secretariat file no.

Notice of Appearance

1. (The name of the investigating authority or the intersted person filing this notice of appearance)
2. (The name of the counsel for the investigating authority or the interested person, if any)
3. (The service address, as defined by Rule 3 of the *Article 1904 Panel Rules*, including facsimile number, if any)
4. (The telephone number of the counsel for the investigating authority or the interested person or the telephone number of the interested person, if not represented by counsel)
5. This notice of appearance is made in support of:
____The investigating authority;
____A complainant; or
____Both the investigating authority and a complainant.
6. For panel reviews of determinations made in Canada:
a) I intend to use the specified language in pleadings and oral proceedings (Specify one).
____English ____French
b) I request simultaneous translation of oral proceedings (Specify one).
____Yes ____No

Date

Signature of Counsel
(or interested person, if not represented by counsel)

Schedule C (5)

Article 1904 Binational Panel Review pursuant to the United States-Canada Free-Trade Agreement

In the matter of:

(Title of panel review)
Secretariat file no.

Notice of Motion

(Descriptive title indicating the purpose of the motion)

1. (The name of the investigating authority or the interested person filing this notice of motion)
2. (The name of the counsel for the investigating authority or the interested person, if any)
3. (The service address, as defined by Rule 3 of the *Article 1904 Panel Rules*, including facsimile number, if any)
4. (The telephone number of the counsel for the investigating authority or the interested person or the telephone number of the interested person, if not represented by counsel)
5. Statement of the relief requested
(Insert language as described in Rule 63)
6. Statement of the grounds to be argued, including references and arguments in support of the motion
(Insert language as described in Rule 63)
7. Statement whether other participants consent to the motion
(Insert language as described in Rule 63)
8. Draft order in support of motion attached
(Attach draft order as described in Rule 63 and Schedule C (6)))

Date

Signature of Counsel
(Or interested person, if not represented by counsel)

Schedule C (6)

Article 1904 Binational Panel Review pursuant to the United States-Canada Free-Trade Agreement

In the matter of:

(Title of Panel Review)
Secretariat file no.

Order

Upon consideration of _____ motion for _____, and upon all other papers and proceedings herein, it is hereby ORDERED that the motion is _____

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Date

Panelist name _____ _____

Date

Panelist name _____ _____

Date

Panelist name _____ _____

Date

Panelist name _____ _____

Date

Panelist name

[FR Doc. 89-29957 Filed 12-26-89; 8:45 am]

BILLING CODE 3510-GT-M

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Hearings on Reef Fish Fisheries Management Plan Amendment 2

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearings and request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene public hearings on draft Amendment 2 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico which will restrict the harvest of jewfish. Individuals and organizations may comment in writing to the Council at the address given below if they are unable to attend the hearings.

DATES: Written comments will be accepted until January 19, 1990. The public hearings will begin at 7 p.m., and adjourn at 10 p.m. See **"SUPPLEMENTARY INFORMATION"** for the dates and locations of the hearings.

ADDRESSES: Written comments should be sent to the Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL 33609-2486.

FOR FURTHER INFORMATION CONTACT: Douglas R. Gregory, 813-228-2815.

SUPPLEMENTARY INFORMATION: The hearings are scheduled as follows:

1. Wednesday, January 3, 1990—American Legion Hall, 5610 Junior College Road, Key West, Florida.
2. Wednesday, January 3, 1990—Freeport Community House, 1300 West Second Street, Freeport, Texas.
3. Thursday, January 4, 1990—Lee County Courthouse, Lee Room, 2115 Second Street, Ft. Myers, Florida.
4. Monday, January 8, 1990—Marine Education Center Auditorium, 115 Beach Boulevard, Biloxi, Mississippi.
5. Tuesday, January 9, 1990—Howard Johnson Hotel, 8401 Veterans Boulevard, Metairie, Louisiana.

Dated: December 19, 1989.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-29920 Filed 12-26-89; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals: Issuance of Modification: Sea Life Park, Inc.

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), public display Permit No. 629 issued to Sea Life Park, Inc., is modified in the following manner:

Section A.2 is added:

"2. An unspecified number of false killer whales *Pseudorca crassidens* may be chased, temporarily retained, tagged/marked and then released in the course of collecting the authorized animals."

Section B.2 is deleted and replaced by:

"2. The Holder shall notify the Pacific Islands Coordinator, Southwest Region, Pacific Area Office, Protected Species Branch, 2570 Dole Street, Honolulu, Hawaii 96822 (808/955-8831) at least two weeks in advance of the proposed collection to allow arrangement of observer logistics and notification of enforcement personnel; or at least 24 hours prior to importation so that a NOAA Fisheries representative may meet the shipment should he determine that to be desirable. Collection notification must include anticipated dates/location of collection activities; description/names of vessels or aircraft to be used; name, affiliation, and function of individuals responsible for tagging/marking; and experience and qualifications of all individuals who will be operating under the permit. The collection should not commence until the Pacific Area Office acknowledges the notification and all aspects are clarified to the satisfaction of the Pacific Islands Coordinator."

Section B.6, B.7 and B.8 are added:

"6. You are required to submit a post-collection report indicating the numbers and, to the extent possible, ages and sexes of animals chased, held, tagged/marked and released in the course of collecting the authorized animals."

"7. The tag/mark technique shall be either freeze branding, fin notching, roto tagging or other comparable method acceptable to the Regional Director, Southwest Region. Fin notching or roto tags should be marked/attached in individually identifiable patterns on the dorsal fin of each animal captured and released. The tag/mark pattern for each such animal shall be documented photographically prior to and after marking/tagging."

"8. The Holder is required to submit a report within 24 hours of the death in the event an animal dies or is injured as a result of the authorized activities; and to suspend collection activities and submit a report within 24 hours if a second animal is killed or injured as a result of the authorized activities. A necropsy of the dead animal(s) shall be coordinated with NOAA Fisheries, and the results included in an investigation of the mortality. Permission to reinitiate collection activities will be contingent upon the circumstances of the incident and the results of NOAA Fisheries' evaluation. Authorization to continue collection will be at the discretion of the Assistant Administrator for Fisheries."

Documents pertaining to the application, Permit, and modification are available for review in the following offices:

Director, Office of Protected Resources, Permit Division, National Marine Fisheries Service, 1335 East West Hwy., Suite 7324, Silver Spring, Maryland 20910;

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731-7415; and

Pacific Island Coordinator, Protected Species Branch, Pacific Area Office, National Marine Fisheries Service, 2570 Dole Street, Honolulu, Hawaii 96822.

Dated: December 19, 1989.

Nancy Foster, Ph.D.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 89-29944 Filed 12-26-89; 8:45 am]

BILLING CODE 3510-22-M

Five-year Status Review of Sea Turtles.

AGENCY: National Marine Fisheries Service (NMFS), NOAA

ACTION: Notice and Request for Comment.

SUMMARY: The U.S. Fish and Wildlife Servie (FWS), Department of the Interior, and the NMFS, Department of Commerce, are jointly conducting status reviews of sea turtles species included on the List of Endangered and Threatened Wildlife (50 CFR part 17). The purpose of these reviews is to determine whether any species or populations should be removed from the list or changed in status. To ensure that the reviews are comprehensive, the FWS and NMFS (the Services) are soliciting information and data. Depending upon the results of the reviews, the Services may propose changes to the List.

DATE: Comments, information and data must be received by February 26, 1990.

ADDRESSES: Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Phil Williams, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service (301-427-2322); Charles A. Oravetz, Southeast Regional Office, National Marine Fisheries Service (813-893-3366); or Jack Woody, Region 2, Fish and Wildlife Service (505-766-8062).

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act of 1973 (ESA) is administered jointly by the Departments of the Interior and Commerce. The Department of Commerce in general is responsible for listed marine species and the Department of the Interior for terrestrial and aquatic species. The two Departments share jurisdiction of sea turtles with Interior having responsibility for sea turtles in the terrestrial environment and Commerce having responsibility for sea turtles in the marine environment.

Under section (4)(a) fo the ESA, a species is determined to be endangered of threatened for any of the following factors: (1) Present or threatened destruction, modification, or curtailment of its habitat or range; (2) Overutilization for commercial, recreational, scientific, or educational purposes; (3) Disease or predation; (4) Inadequacy of existing regulatory mechanisms; or (5) Other natural or manmade factors affecting its continued existence. Determinations concerning decisions on listings are made solely on the best scientific and commercial data available after conducting a status review of the species and after taking into account those efforts, if any, being made by any State or foreign Nation, or subdivision thereof, to protect such species (section 4(b) of the ESA).

Purpose of Review

Section 4(c)(2) of the ESA requires the Services to conduct, at least once every five years, a review of the species on the List of Endangered and Threatened Wildlife and to determine on the basis of such review whether any species should be (1) removed from the list; (2) changed in status from an endangered species to a threatened species; or (3) change in status from a threatened species to an endangered species. Each determination must be made in accordance with sections 4(a) and 4(b) of the ESA.

The Services are jointly conducting status reviews for listed sea turtle species. The species that are subject to this review are listed in Table 1. If the reviews indicate that one of the above actions is warranted, the Services will propose rules to take the appropriate action(s).

Biological Information Solicited

To ensure that the reviews are complete and are based on the best available scientific and commercial data concerning the species, the Services are soliciting such data, information and comments concerning the biological status of these species from any interested party. The Services request such data, information and comments be accompanied by the following: (1) The scientific and common names of the species involved; (2) Supporting documentation, such as maps, bibliographic references, or reprints of pertinent publications; (3) The Party's name, address and any association, institution or business that the party represents.

Dated: December 15, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs.

TABLE 1.—LIST OF ENDANGERED AND THREATENED SEA TURTLES

Common name	Scientific name	Historic range	Population	Status	Date listed
Green sea turtle	Chelonia mydas	Circumglobal in tropical and temperate seas and oceans.	Wherever found except populations given below.	T	July 28, 1978.
Green sea turtle	Chelonia mydas	Circumglobal in tropical and temperate seas and oceans.	Breeding colony populations in FL and on the Pacific Coast of Mexico.	E	July 28, 1978.
Hawksbill sea turtle	Eretmochelys imbricata	Tropical seas	Entire	E	June 2, 1970.
Kemp's Ridley sea turtle	Lepidochelys kempii	Tropical, and temperate seas	Entire	E	December 2, 1970.
Leatherback sea turtle	Dermochelys coriacea	Tropical, temperate, and subpolar seas.	Entire	E	June 2, 1970.
Loggerhead sea turtle	Caretta caretta	Circumglobal in tropical and temperate seas and oceans.	Entire	T	July 28, 1978.
Olive Ridley sea turtle	Lepidochelys olivacea	Circumglobal in tropical and temperate seas and oceans.	Wherever found except for populations given below.	T	July 28, 1978.
Olive Ridley sea turtle	Lepidochelys olivacea	Circumglobal in tropical and temperate seas and oceans.	Breeding colony populations on the Pacific Coast of Mexico.	E	July 28, 1978.

[FR Doc. 89-29999 Filed 12-26-89; 8:45 am]

BILLING CODE 3510-22-M

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

As indicated below, the North Pacific Fishery Management Council and other Council advisory groups will meet during January 1990 at the National Marine Fisheries Service (NMFS), Alaska Fisheries Science Center, in Seattle, WA, at the NMFS Montlake Laboratory, in Seattle, WA, and at the Hilton Hotel in Anchorage, AK. The North Pacific Council's Fishery Planning Committee also will hold a public meeting on January 15, 1990, at 10:30 am, at the Hilton Hotel. The Committee will continue working on the inshore/offshore allocation issue, and will discuss limited access for the groundfish and crab fisheries off Alaska.

Other committee and workgroup meetings may be scheduled on short notice during the week of January 14-19. Except as noted below, the meetings are open to the public.

The Council's Gulf of Alaska and Bering Sea/Aleutian Islands (GOA and BSA) Groundfish Fishery Management Plan (FMP) Teams will begin meeting on January 3 at 1:30 p.m., at the Alaska Fisheries Science Center, 7600 Sand Point Way NE., Room 2079, Building 4, Seattle, WA. The Teams will meet in an informal work session to prepare amendments to the Groundfish FMPs,

and to redefine overfishing pursuant to recently-published guidelines.

Patent and Trademark Office

1990, U.S. Customs will start signing the first section of form ITA-370P for

for consumption and withdrawal from warehouse for consumption of cotton and

requirements established in the directive of

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and to redefine overfishing pursuant to recently-published guidelines.

The Council's Plan Amendment Advisory Group will begin meeting on January 4 at 9 a.m., also at the NMFS Alaska Fisheries Science Center, to review proposed amendments to the GOA and BSA Groundfish FMPs. The Group will prepare recommendations for consideration by the North Pacific Council at the Council's January 16–19, 1990, meeting in Anchorage.

The Council's Advisory Panel will begin meeting on Sunday, January 14, 1990, and the Council's Scientific and Statistical Committee will begin meeting on January 15, at the Hilton Hotel. Panel and Committee agendas will be similar to that of the Council's, noted below.

The North Pacific Council will begin meeting on January 16 8:00 am at the Hilton Hotel. Its agenda will include final consideration of limited access alternatives for the longline and pot sablefish fisheries off Alaska, review of the limited access planning schedule for groundfish and crab fisheries, inshore/offshore allocations, and fishery research priorities. In addition, the Council will select proposed amendments to the Groundfish FMPs for analysis before forwarding for public review in April, discuss bycatch planning for 1990–1991, and meet jointly with the International Pacific Halibut Commission to discuss halibut management issues of mutual interest. The Council also will meet in closed session (not open to the public), to discuss personnel matters, ongoing litigation, and international affairs.

On January 26 the Council's newly-formed Pacific Northwest Crab Industry Advisory Group will meet at the NMGS Montlake Laboratory, 2725 East Montlake, Boulevard, Seattle, WA. The Group will begin meeting at 10 a.m., to elect officers, review the State of Alaska's 1990 shellfish proposals, and prepare recommendtions to forward to the Alaska Board of Fisheries.

For more information contact Steve Davis, Deputy Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271–2809.

Dated: December 20, 1989.

David S. Crestin,

Deputy Director Office of Fisheries Conservation and Management National Marine Fisheries Service.

[FR Doc. 89–30000 Filed 12–26–89; 8:45 am]

BILLING CODE 3510-22-M

Patent and Trademark Office

[Docket No. 91293-9293]

Request for Information Regarding Process Patent Amendments Made by the Omnibus Trade and Competitiveness Act of 1988

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Request for information from domestic industries regarding possible adverse effects of the process patent amendments made by the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–417).

DATE: Comments must be received on or before February 9, 1990.

FOR FURTHER INFORMATION CONTACT: Documents and questions should be submitted to H. Dieter Hoinkes, Office of Legislation and International Affairs, Box 4, Patent and Trademark Office, Washington, DC 20231. Telephone at (703) 557–3065.

SUPPLEMENTARY INFORMATION: The Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–417) was enacted on August 23, 1988. Among other things, the Act amended title 35, United States Code, to extend the protection of a process patented in the United States also to products made by that process. As a consequence, whoever without authority imports into the United States, or sells or uses in this country, a product made by a patented process shall be liable as an infringer, if the importation, sale or use occurs during the term of the process patent. (Sections 9002 and 9003 of Pub. L. 100–417). The effective date of that amendment is February 23, 1989.

Section 9007 of the Act requires the Secretary of Commerce to report to the Congress, at the end of each one-year period from the effective date of the above amendments, on the effect of these amendments on those domestic industries that submitted complaints during such period, alleging that their legitimate sources of supply have been adversely affected. Such reports must be sumitted for five successive years.

The first report from the Secretary of Commerce to the Congress will be submitted on February 23, 1990, covering the preceding one-year period. Accordingly, it is requested that domestic industries wishing their complaints reflected in the Secretary's report ensure that any submission on this subject is received by the Department of Commerce not later than February 9, 1990.

Dated: December 19, 1989.

Jeffrey M. Samuels,

Acting Commissioner of Patents and Trademarks.

[FR Doc. 89–29935 Filed 12–26–89; 8:45 am]

BILLING CODE 3510-16-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits and Guaranteed Access Levels for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Trinidad and Tobago

December 15, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits and GAL's for the new agreement year.

EFFECTIVE DATE: January 1, 1990 and April 1, 1990.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–5810. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Governments of the United States and Trinidad and Tobago reached agreement, effected by a Memorandum of Understanding (MOU) dated November 27, 1989, to amend their current bilateral agreement to extend through December 31, 1990. Also, the agreement was amended to include designated consultation levels for cotton and man-made fiber textile products in Categories 331/631, 349/649, 350/650 and 351/651 for the 1990 period.

Further, the governments agreed to establish Guaranteed Access Levels (GALs) for Categories 331/631, 349/649, 350/650 and 351/651 for the prorated period beginning on July 1, 1990 and extending through December 31, 1990.

Beginning on April 1, 1990, for goods to be re-exported from Trinidad and Tobago to the United States during the period July 1, 1990 through December 31, 1990, U.S. Customs will start signing the first section of form ITA–37OP for shipments of U.S. formed and cut parts in Categories 331/631, 349/649, 350/650 and 351/651 that are destined for Trinidad and Tobago and subject to the Guaranteed Access Levels established for these categories. These products, which are assembled in Trinidad and Tobago from parts cut in the United States from fabric formed in the United States, are governed by HTS number 9802.00.8010 or by Chapter 62 Statistical Note 3 of the Harmonized Tariff Schedule.

Interested parties should be aware that shipments of cut parts in Categories 331/631, 349/649, 350/650 and 351/651 must be accompanied by a form ITA–37OP, signed by a U.S. Customs officer, prior to export from the United States for assembly in Trinidad and Tobago in order to qualify for entry under the Guaranteed Access Program.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 53 FR 44937, published on November 7, 1988).

Requirements for participation in the Special Access Program are available in Federal Register notices 52 FR 28588, published on July 31, 1987; 53 FR 21208, published on June 11, 1988; 52 FR 28057, published on July 10, 1987; and 54 FR 50425, published on December 6, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement and the Memorandum of Understanding, but are designed to assist only in the implementation of certain of their provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 15, 1989.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Bilateral Cotton and Man-Made Fiber Textile Agreement, effected by exchange of notes dated October 23, 1986, and the Memorandum of Understanding dated November 27, 1989 between the Governments of the United States and Trinidad and Tobago; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1990, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Trinidad and Tobago and exported during the twelve-month period which begins on January 1, 1990 and extends through December 31, 1990, in excess of the following designated levels:

Category	Twelve-Month Restraint Level
331/631	140,000 dozen pairs.
336/636	85,000 dozen.
338/339	105,000 dozen.
340/640	50,000 dozen of which not more than 25,000 dozen shall be in shirts made from yarn dyed fabric of two or more colors in the warp and/or filling in Categories 340-Y/640-Y.[1]
347/348/647/7648	100,000 dozen.
349/649	105,000 dozen.
350/650	70,000 dozen.
351/651	70,000 dozen.
352/652	100,000 dozen.

[1] In Categories 340-Y/640-Y only HTS numbers 6205.20.2015, 6205.20.2020, 62.05.20.2046, 6205.20.2050 and 6205.20.2060 in Category 340-Y and 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060 in Category 640-Y.

Imports charged to these category limits, except Categories 331/631, 349/649, 350/650 and 351/651, for the period January 1, 1989 through December 31, 1989 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

In accordance with the provisions of the Special Access Program, as set forth in 51 FR 21208 (June 11, 1986), 52 FR 28057 (July 10, 1987) and 54 FR 50425 (December 6, 1989), you are directed to establish guaranteed access levels for peoperly certified cotton and man-made fiber textile products in the following categories which are assembled in Trinidad and Tobago from fabric formed and cut in the United States and exported to the United States from Trinidad and Tobago during the twelve-month period which begins on January 1, 1990 and extends through December 31, 1990:

Category	Guaranteed Access Level (dozen)
336/636	300,000
338/339	225,000
340/640	100,000
347/348/647/648	300,000
352/652	300,000

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification and Export Declarations (Form ITA–37OP) in accordance with the provisions of the certification requirements established in the directive of July 28, 1987 shall be denied entry unless the Government of Trinidad and Tobago authorizes the entry and any charges to the appropriate designated consultation levels. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

Beginning on April 1, 1990, U.S. Customs is directed to start signing the first section of form ITA–37OP for shipments of U.S. formed and cut parts in Categories 331/631, 349/649, 350/650 and 351/651 that are destined for Trinidad and Tobago and re-exported to the United States during the period July 1, 1990 through December 31, 1990 under the Guaranteed Access Levels which will be established for these categories.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo.

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89–29927 Filed 12–26–89; 8:45 am]

BILLING CODE 3510-DR-M

Requirement of Original Visas for Certain Shipments From the People's Republic of China

December 18, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Martin Walsh, Commodity Industry Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–3400.

Background: CITA has learned that despite embargoes in effect on certain categories from the People's Republic of China, shipments are being made and visas are being issued over embargoed limits. Although these visas are valid only for 1990 exports, they have been issued for 1989 exports, in contravention of the provision of the bilateral agreement.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to notify the public that merchandise exported from the People's Republic of China subject to quota and visa requirements, which arrives in the United States without a visa or with a visa issued for a year other than the year in which the shipment was exported, will require an

original visa issued for the actual year of export. In keeping with general U.S. Government policy, visa waivers will

wastes with value including approximately 6,650 tons of scrap metal; and solid wastes with no value

Aberdeen Proving Ground, Maryland 21010–5401.

DEPARTMENT OF EDUCATION

(CFDA No.: 84.128A)

schools, and rehabilitation providers; and (6) close consultation with and participation of individuals with

Issued in Washington, DC, December 20, 1989.

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original visa issued for the actual year of export. In keeping with general U.S. Government policy, visa waivers will not be issued for these shipments.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-29940 Filed 12-26-89; 8:45 am]

BILLING CODE 3510-FM-M

DEPARTMENT OF DEFENSE

Department of the Army

Record of Decision, Disposition of Process Wastes From Johnston Atoll; Chemical Agent Disposal System (JACADS)

AGENCY: Department of the Army, DOD.

ACTION: Availability of Record of Decision (ROD).

SUMMARY: This announces the availability of the Record of Decision regarding the disposition of the process wastes generated by the Johnston Atoll Chemical Agent Disposal System (JACADS). The Department of the Army has prepared this ROD pursuant to regulations of the Council on Environmental Quality (40 CFR Part 1505) and the implementing Army Regulations (AR 200-2). This ROD is based on the Army's Draft Supplemental Environmetnal Impact Statement (DSEIS) for JACADS, all comments thereto, the Final SEIS (FSEIS) and all public and regulatory comments received on the Final SEIS. With this ROD, the Army has selected methods of disposal for the three categories of wastes generated by JACADS: liquid process wastes, solid wastes with value and solid wastes with no value.

SUPPLEMENTARY INFORMATION: In 1983, the Army issued an Environmental Impact Statement (EIS) for the JACADS project. The 1983 Final EIS identified the process (incineration) and location of Johnston Island for the JACADS facility. JACADS will destroy chemical muntions containing nerve agents VX, GB, and the mustard blister agent HD beginning in 1990. The ultimate disposition of the wastes generated by JACADS was not provided in the 1983 EIS, pending further study. In December 1988, the Army issued a Final Supplemental EIS (FSEIS) that addressed the alternatives for final disposition of the JACADS process wastes.

The FSEIS addressed disposal alternatives for three major classes of process wastes generated by JACADS: liquid process wastes including the 6.5 million gallons of brine from the pollution abatement system; solid wastes with value including approximately 6,650 tons of scrap metal; and solid wastes with no value including ash and other incinerator residues. The FSEIS considered each category of waste separately and tiered three or four disposal alternatives to each waste. Disposal alternatives considered and evaluated in the FSEIS were:

—Liquid process wastes;
—Ocean disposal (Army's preferred alternative)
—Dry the liquid, drum, ship to U.S. landfill
—Dry the liquid, drum, store on Johnston Island
—Solid waste with value:
—Sale of scrap metal (Army's preferred alternative)
—Ship to U.S. landfill
—Ocean disposal of scrap metal
—Solid waste with no value
—Shipment of waste to U.S. landfill (Army's preferred alternative)
—Storage of waste on Johnston Island
—On-island use of encapsulated waste
—Ocean disposal of encapsulated waste

Disposal alternatives selected by the Army are as follows:

—Liquid process wastes: Although ocean disposal of the brine was the Army's preferred alternative, with the passage of the Ocean Dumping Ban Act of 1988, which amended the Marine Protection, Research and Sanctuaries Act, the preferred alternative cannot be implemented. Therefore, the Army selected the second alternative—dry the brine, containerize and ship the wastes to a hazardous waste landfill located in the continental United States.
—Solid waste with value: The Army has selected the preferred alternative provided in the Final Supplemental EIS—sale of the scrap metal.
—Solid waste with no value: The Army has also selected the preferred alternative of shipping the non-saleable waste to a hazardous waste landfill located in the continental United States.

With the adoption of these disposal alternatives, the Army can dispose of all process wastes generated by JACADS with minimal environmental harm.

ADDITIONAL INFORMATION: Interested individuals may obtain copies of the ROD by contacting the Program Manager for Chemical Demilitarization, Attn: SAIL-PMI (Ms. Marilyn Tischbin), Aberdeen Proving Ground, Maryland 21010-5401.

Lewis D. Walker,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health) OASA(I,L&E).

[FR Doc. 89-29970 Filed 12-26-89; 8:45 am]

BILLING CODE 3710-08-M

Military Traffic Management Command Directorate of Personal Property Through Government Bill of Lading Program for Household Goods and Unaccompanied Baggage

AGENCY: Military Traffic Management Command.

ACTION: Invitation to comment on change to DOD 4500.34R, Appendix A, Appendix H and Appendix P regarding the exception sheet which is used to record exceptions on conditions of items beging released from nontemporary storage.

SUMMARY: The regulation presently provides that both parties to the exception sheet, the carrier's and storage contractor's representative, sign the exception sheet. Recommended change would require these parties to also date the exception sheet. This will assist the claims offices in determining the validity of the exception sheet.

Therefore, it is proposed to add the following italicized wording as stated below:

(1) Appendix A, Para 54.m:

"m. * * * Both parties will sign *and date* the exception sheet, each retaining a legible copy for their respective files. * * *".

(2) Appendix H, Section C-5, Para g:

"g. * * * Both the carrier's and the storage contractor's respresentative will sign *and date* the exception sheet, each retaining a legible copy for their file * * *".

(3) Appendix P, Part 5, Para 5.5.1.8:

"5.5.1.8 * * * Both parties will sign *and date* the exception sheet, each retaining a legible copy for their respective files * * *".

Date: Submit written comments by 22 Feb 90 to: Headquarters, Military Traffic Management Command, 5611 Columbia Pike, ATTN: MTPP-QO, Falls Church, VA 22041-5050

Kenneth L. Denton,

Alternate Army Liaison Officer With the Federal Register.

[FR Doc. 89-30001 Filed 12-26-89; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

(CFDA No.: 84.128A)

Program of Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals with Severe Handicaps; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1990

Purpose of Program: This program provides support through grants or cooperative agreements to State and other public and nonprofit agencies and organizations to expand or otherwise improve rehabilitation services for individuals with severe handicaps.

Awards under this competition are for one-time start-up costs for projects designed to initiate a system of regional (multi-State) comprehensive head injury rehabilitation and prevention centers.

Deadline for Transmittal of Applications: March 12, 1990.

Applications Available: January 12, 1990.

Estimated Available Funds: $15,000,000.

Estimated Range of Awards: $3,375,000 to $4,125,000.

Estimated Average Size of Awards: $3,750,000.

Estimated Number of Awards: 4.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months. A grant under this competition will include funding for the entire project period. However, disbursement of grant funds will be made throughout the project period on the basis of grantee need and subject to accomplishment of project objectives.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, and 85; and (b) The regulations for this program in 34 CFR parts 369 and 373.

Priority: The Secretary is particularly interested in applications that meet the following invitational priority:

Model centers that demonstrate improved systems of prevention, acute care, and rehabilitation directed at reducing the human and economic consequences of traumatic head or brain injury, with special emphasis on vocational rehabilitation, retraining, and placement. The activities of the centers may emphasize: (1) Prevention; (2) outreach; (3) identification and elimination of barriers to effective rehabilitation services; (4) systemization of care [improving the organization of the spectrum of services required by people with traumatic head or brain injury); (5) follow-up by families, schools, and rehabilitation providers; and (6) close consultation with and participation of individuals with traumatic head or brain injury and their families in the design and conduct of the centers. The Secretary is especially interested in applications from States or regions in the country where the incidence of traumatic head or brain injury is high relative to the national average.

Under 34 CFR 75.105(c)(1), an application that meets this invitational priority does not receive competitive or absolute preference over other applications. However, by statute, all applications must be for projects designed to establish regional comprehensive head injury rehabilitation and prevention centers.

For Applications or Information Contact: Sherrita Gary, Office of Developmental Programs, U.S. Department of Education, 400 Maryland Avenue, SW., room 3332 (Switzer Building), Washington, DC 20202-2650. Telephone: (202) 732-1351.

Program Authority: 29 U.S.C. 777a(a)(1).

Dated: December 14, 1989.

Robert R. Davila,

Assistant Secretary, Office of Special Education and Rehabilitation Services.

[FR Doc. 89-29945 Filed 12-26-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 89-66-NG]

Vector Energy (U.S.A.) Inc.; Order Granting Blanket Authorization To Export Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order granting a blanket authorization to export natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of energy (DOE) gives notice that it has issued an order granting Vector Energy (U.S.A.) Inc. (Vector) blanket authorization to export up to a total of 100 Bcf of natural gas to Canada during a two-year period beginning on the date of first delivery.

A copy of the order is available for inspection and copying at the Office of Fuels Programs Docket Room 3F-056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 20, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89-30004 Filed 12-26-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP90-366-000, et al.]

K N Energy, Inc., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. K N Energy, Inc.

[Docket No. CP90-366-000]

December 15, 1989.

Take notice that on December 12, 1989, K N Energy, Inc. (K N), P.O. Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP90-366-000 a request pursuant to §§ 157.205(b) and 284.223(c) of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for Coleman Powermate, Inc. (Coleman) under K N's blanket certificate issued in Docket No. CP89-1043-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

K N requests authorization to transport a maximum daily quantity of 72 Mcf for Coleman with estimated annual and average daily quantities of 26,280 Mcf and 72 Mcf, respectively.

K N states that transportation service for Coleman commenced November 2, 1989, under the 120-day automatic authorization provision of § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST90-915-000.

Comment date: January 29, 1990, in accordance with Standard Paragraph G at the end of this notice.

2. Transcontinental Gas Pipe Line Corp.

[Docket No. CP88-328-004]

December 15, 1989.

Take notice that on December 5, 1989,[1] Transcontinental Gas Pipe Line

[1] The petition to amend was tendered for filing on December 1, 1989; however, the fee required by § 381.207 of the Commission's Rules (18 CFR 381.207) was not paid until December 5, 1989. Section 381.103 of the Commission's Rules provides that the filing date is the date on which the fee is paid.

Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP88-328-002 and implemented on the Transco system

Service Agreement provides for transportation of overrun volumes upon

8. United Gas Pipe Line Company

[Docket No. CP90-373-000]

the Natural Gas Act (18 CFR 157.205) for authorization to provide a firm

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Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP88-328-004 a petition to amend the order issuing a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act in Docket No. CP88-328-000, to permit the holders of firm transportation capacity rights on Transco's system to assign such rights to third parties, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Transco proposes to implement an interim transportation capacity assignment program on its system pursuant to the provisions of a new section 14 of Transco's Rate Schedule FT. Transco proposes that holders of firm transportation rights have the right to assign on any day all or a portion of their rights to tender gas for transportation under Rate Schedule FT to third parties subject to the following conditions: (a) FT shippers agree to comply with the terms and conditions of Transco's certificate authorization in this proceeding; (b) the reassignment of capacity is limited to existing delivery points of the FT shipper reassigning capacity and does not include any upstream delivery points; (c) FT shippers should agree to be responsible to Transco for compliance with all terms and conditions of the FT service agreement, for paying all costs, for balancing receipts and deliveries of gas, for paying all rates, charges, penalties and fees; (d) designated title requirements; and (e) scheduling of shipments.

Transco's proposal would permit multiple reassignment of capacity, and capacity would be permitted to be repackaged on both a firm and interruptible basis. Under Transco's proposal, all shippers would be required to allocate capacity on a non-discriminatory, first-come, first-serve basis, except that downstream interstate pipelines would be permitted to grant a priority to their historical sales customers in reassigning firm capacity reserved on the Transco system by the downstream interstate pipeline.

Transco proposes that the maximum rate that could be charged for any assigned FT transportation services could not exceed the as-billed rate charged by Transco for such transportation, including commodity surcharges.

Transco requests that the Commission authorize the instant transportation capacity assignment program effective April 1, 1990, extending only until such time as the long-term capacity assignment issue is resolved in Docket No. CP88-328-002 and implemented on the Transco system.

Comment date: January 15, 1990, in accordance with the first subparagaph of Standard Paragraph F at the end of this notice.

3. Natural Gas Pipeline Company of America

[Docket No. CP90-384-000]

December 15, 1989.

Take notice that on December 14, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP90-384-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for PSI, Inc. (PSI), a marketer, under the blanket certificate issued in Docket No. CP86-582-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Natural states that pursuant to a transportation service agreement dated September 25, 1989, under its Rate Schedule ITS, it proposes to transport up to 200,000 MMBtu per day equivalent of natural gas for PSI. Natural states that it would transport the gas (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS) from receipt points located in New Mexico, Texas, offshore Texas, Oklahoma, Louisiana, offshore Louisiana, Illinois, Arkansas, Colorado, Kansas, Iowa and Nebraska, and would deliver the gas to delivery points located in Kansas, Texas, offshore Texas, Illinois, Oklahoma, Colorado, New Mexico, offshore Louisiana, Nebraska, Iowa and Arkansas.

Natural advises that service under § 284.223(a) commenced October 26, 1989, as reported in Docket No. ST90-575 (filed November 22, 1989). Natural further advises that it would transport 50,000 MMBtu on an average day and 18,250,000 MMBtu annually.

Comment date: January 29, 1990, in accordance with Standard Paragraph G at the end of this notice.

4. Great Lakes Gas Transmission Co.

[Docket No. CP90-355-000]

December 15, 1989.

Take notice that on December 8, 1989, Great Lakes Gas Transmission Company (Great Lakes), 2100 Buhl Building, Detroit, Michigan 48226, filed in Docket No. CP90-355-000 an application pursuant to section 7 (b) and (c) of the Natural Gas Act for permission and approval to amend existing certificates and abandon sales service, in order to terminate the existing service agreement under which Great Lakes currently sells gas to ANR Pipeline Company (ANR Pipeline), abandon such service, and provide transportation service for ANR Pipeline for natural gas that ANR Pipeline would purchase directly from TransCanada PipeLines Limited (TransCanada), in a quantity equivalent to that which Great Lakes currently sells to ANR Pipeline, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is averred that under a Service Agreement dated November 2, 1981, (Service Agreement) between Great Lakes and ANR Pipeline, Great Lakes sells up to 19,064 Mcf of natural gas per day (ANR Volumes) to ANR Pipeline, which Great Lakes purchases from TransCanada, under a Gas Purchase Contract dated October 9, 1970, as amended (Gas Purchase Contract). It is alleged that Great Lakes and ANR Pipeline believe that by ANR Pipeline negotiating its pricing arrangements directly with TransCanada, ANR Pipeline is better able to express its concerns relative to its market to TransCanada. Great Lakes contends that during that last four years, it has allowed its resale customers, including ANR Pipeline, to directly negotiate pricing arrangements with TransCanada. Great Lakes avers that its role has become that of a conduit between its resale customers and TransCanada.

It is indicated, that concurrent with this application, Great Lakes and ANR Pipeline would be filing with the Department of Energy, a joint petition to obtain authorization for ANR Pipeline to succeed to Great Lakes interests in existing import authorizations for the ANR Volumes so that ANR Pipeline may purchase directly from TransCanada those volumes that ANR Pipeline is presently authorized to purchase from Great Lakes.

Great Lakes states that to implement the "unbundling" arrangement, Great Lakes, TransCanada, and ANR Pipeline have entered into a Precedent Agreement dated November 21, 1989, which ANR Pipeline would execute with Great Lakes and TransCanada, respectively, upon receipt of all regulatory approval required to implement the arrangement. Great Lakes alleges that at the present time, the Service Agreement provides that additional volumes may be sold to ANR Pipeline (under Rate Schedule AOS-2) by agreement of the parties. Great Lakes contends that the Transportation Service Agreement provides for transportation of overrun volumes upon mutual agreement of the parties. It is stated that the rate that would be in the Transportation Service Agreement, when executed, would be the transportation component of resale rated for Great Lakes' central zone under its existing Rate Schedules CQ and AOS contained in Great Lakes's FERC Gas Tariff, Volumes No. 1, under which Great Lakes currently sells gas to ANR Pipeline. Great Lakes contends that the Transportation Service Agreement provides for a term expiring November 1, 2000. Great Lakes further contends that the Direct Sales Contract has similar pricing provisions to those currently in effect in the Gas Purchase Contract for the ANR Volumes.

Comment date: January 5, 1990 in accordance with Standard Paragraph F at the end of the notice.

5. Northern Natural Gas Co., Division of Enron Corp.

[Docket No. CP90-367-000]

December 15, 1989.

Take notice that on December 12, 1989, Northern Natural Gas Co., Division of Enron Corp., (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP90-367-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to operate four existing town border stations as jurisdictional sales facilities, under Northern's blanket certificate issued in Docket No. CP82-401-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to operate the sales facilities as delivery points to accommodate natural gas deliveries to Northern States Power Company (NSP). Northern states that the deliveries are needed for NSP to serve Anoka County, Minnesota, Faribault, Minnesota, Becker, Minnesota and Marine on St. Croix, Minnesota.

It is stated that the delivery point volumes will be within currently authorized firm entitlements for NSP. It is further stated that the delivery of such volumes to the new delivery points would have no impact on Northern's peak day and annual deliveries.

Comment date: January 29, 1990 in accordance with Standard Paragraph G at the end of the notice.

6. United Gas Pipe Line Company

[Docket No. CP90-373-000]

December 15, 1989.

Take notice that on December 12, 1989, United Gas Pipe Line Company (United), P.O. Box 1478 Houston, Texas 77251-1478, filed in Docket No. CP90-373-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of The Northwestern Mutual Life Insurance Company (Northwestern), a producer of natural gas, under its blanket authorization issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United would perform the proposed interruptible transportation service for Northwestern, pursuant to an interruptible transportation service agreement dated October 16, 1989 (Contract No. TI-21-2381). The transportation agreement is effective for a primary term of five years from the date of first delivery thereunder or such date that the parties mutually agree to terminate the agreement. The agreement shall continue for successive one month terms unless terminated by thirty days written notice by either party. United proposes to transport 12,360 MMBtu of natural gas on a peak and average day; and on an annual basis 4,511,400 MMBtu of natural gas for Northwestern United proposes to receive the subject gas at an existing point located in section 41, T13S, R4E, Vermilion Parish, Louisiana. The point of delivery is located in section 2, T5N, R2E, Rapides Parish, Louisiana. United avers that no new facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self-implementing provision of § 284.223(a)(1) of the Commission's Regulations. United commenced such self-implementing service on November 7, 1989, as reported in Docket No. ST90-895-000.

Comment date: January 29, 1990, in accordance with Standard Paragraph G at the end of this notice.

7. United Gas Pipe Line Co.

[Docket No. CP90-375-000]

December 15, 1989.

Take notice that on December 12, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP90-375-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a firm transportation service for Sun Operating Limited Partnership (Sun), a producer, under the blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

United states that pursuant to a transportation agreement dated October 9, 1989, as amended, under its Rate Schedule FTS, it proposes to transport up to 8,240 MMBtu per day equivalent of natural gas for Sun. United states that it would transport the gas from a receipt point in Smith County, Texas, and would deliver the gas to points located in Santa Rosa County, Florida, and Hinds County, Mississippi.

United advises that service under § 284.223(a) commenced October 9, 1989, as reported in Docket No. ST90-706-000 (filed November 29, 1989). United further advises that it would transport 8,240 MMBtu on an average day and 3,007,600 MMBtu annually.

Comment date: January 29, 1990, in accordance with Standard Paragraph G at the end of this notice.

8. United Gas Pipe Line Company

[Docket No. CP90-376-000]

December 15, 1989.

Take notice that on December 12, 1989, United Gas Pipe Line Company (United), P.O. Box 1478 Houston, Texas 77251-1478, filed in Docket No. CP90-376-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Phibro Distributors Corporation (Phibro), a marketer of natural gas, under its blanket authorization issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United would perform the proposed interruptible transportation service for Phibro, pursuant to an interruptible transportation service agreement dated June 2, 1989, as amended on July 10 and August 22, 1989 (Contract No. TI-21-2190). The transportation agreement is effective for a primary term of one month from the date of first delivery thereunder or such date that the parties mutually agree to terminate the agreement. The agreement shall continue for successive one month terms unless terminated by thirty days written notice by either party. United proposes to transport 309,000 MMBtu of natural

gas on a peak and average day; and on an annual basis 112,785,000 MMBtu of

agreement in accordance with Tennessee's Rate Schedule IT-1.

February 28, 1991. Northern requests pregranted abandonment authorization effective at the end of the contract term

Comment date: February 1, 1990, in accordance with Standard Paragraph G at the end of this notice.

is on file with the Commission and open to public inspection.

Natural proposes to transport, on an

Comment date: February 1, 1990, in accordance with Standard Paragraph G at the end of this notice.

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gas on a peak and average day; and on an annual basis 112,785,000 MMBtu of natural gas for Phibro. United proposes to receive the subject gas at existing points of interconnection located in the states of Louisiana, Offshore Louisiana, Mississippi and Texas. Points of delivery are located in the states of Florida, Lousiana, Mississippi and Texas. United avers that no new facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self-implementing provision of § 284.223(a)(1) of the Commission's Regulations. United commenced such self-implementing service on October 21, 1989, as reported in Docket No. ST90-552-000.

Comment date: January 23, 1990, in accordance with Standard Paragraph G at the end of this notice.

9. Tennessee Gas Pipeline Co.

[Docket No. CP90-379-000]

December 15, 1989.

Take notice that on December 13, 1989, Tennessee Gas Pipeline Company (Tennessee) P.O. Box 2511, Houston, Texas, 77252, filed in Docket No. CP90-379-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Jaywell Energy Corporation (Jaywell) under its blanket authorization issued in Docket No. CP87-115-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee would perform the proposed interruptible transportation service for Jaywell, a marketer of natural gas, pursuant to a gas transportation agreement dated September 22, 1989 as amended September 29, 1989 and October 9, 1989 (TGP Contract No. T-3891). The term of the transportation agreement is from the date of execution and shall remain in full force and effect for a term of one month and month-to-month thereafter; provided, however that either Tennessee or Jaywell may terminate the agreement at any time upon at least 30 days prior written notice to the other party. Tennessee proposes to transport on a peak day up to 11,000 dekatherms; on an average day up to 11,000 dekatherms; and on an annual basis 4,015,000 dekatherms of natural gas for Jaywell. It is stated that Jaywell would pay Tennessee for all natural gas delivered pursuant to the transportation agreement in accordance with Tennessee's Rate Schedule IT-1. Tennessee states that it would transport natural gas for Jaywell from a receipt points located in offshore Loudsiana. Tennessee contends that the ultimate point of delivery is located in Ohio. Tennessee alleges that no jurisdictional or non-jurisdictional facilities would be constructed to provide the proposed transportation service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's regulations. Tennessee commenced such self-implementing service on November 9, 1989, as reported in Docket No. ST90-934-000.

Comment date: January 29, 1990, in accordance with Standard Paragraph G at the end of this notice.

10. Northern Natural Gas Co., Division of Enron Corp.

[Docket No. CP90-252-000]

December 15, 1989.

Take notice that on November 17, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP90-252-000 an application pursuant to section 7(c) of the Natural Gas Act for issuance of a limited-term certificate authorizing the firm sales of natural gas to Cabot Gas Supply Corporation (Cabot), along with pregranted abandonment authorization, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern states that it would implement the firm sale to Cabot of up to 50,000 million Btu of natural gas per day pursuant to the terms of a gas sales agreement dated October 23, 1989. Northern indicates it would deliver the gas to Cabot at any of six specified points located in the state of Texas. It is also indicated that Cabot requires the gas to serve the winter peaking requirements of Energas Company, a local distribution company and existing customer of Cabot.

Northern states that no facilities need be constructed to implement the service. Northern proposes to charge a two-part rate for the service, including a demand charge of $6.302 per million Btu as applied to the maximum daily quantity and a commodity charge of $1.6196 per million Btu for each million Btu delivered. Northern also proposes to provide the service from December 1, 1989, through February 28, 1990, and from December 1, 1990, through February 28, 1991. Northern requests pregranted abandonment authorization effective at the end of the contract term.

Comment date: January 8, 1990, in accordance with Standard Paragraph F at the end of this notice.

11. United Gas Pipe Line Co.

[Docket No. CP90-343-000]

December 18, 1989.

Take notice that on December 6, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP90-343-000, a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act, to transport on an interruptible basis under its blanket certificate Docket No. CP88-6-000, a maximum of 312,090 MMBtu on behalf of AMOCO PRODUCTION COMPANY (AMOCO PRODUCTION), a producer, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that service commenced October 26, 1989, under § 284.223(a) of the Commission Regulations, as reported in Docket No. ST90-00490, and estimates the volumes transported to be 312,090 MMBtu per day on peak day and average day, and 113,912,850 MMBtu on an annual basis.

United also indicates that no new facilities are to be constructed.

Comment date: February 1, 1990, in accordance with Standard Paragraph G at the end of this notice.

12. United Gas Pipe Line Co.

[Docket No. CP90-345-000]

December 18, 1989.

Take notice that on December 6, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP90-345-000, a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act, to transport on an interruptible basis under its blanket certificate Docket No. CP88-6-000, a maximum daily quantity of 25,750 MMBtu on behalf of MIDCON MARKETING CORP., a marketer, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that service commenced October 17, 1989, under § 284.223 (a) of the Commission Regulations, as reported in Docket No. ST90-00405, and estimates the volumes transported to be 25,750 MMBtu per day on peak day and average day, and 9,398,750 MMBtu on an annual basis.

United also indicates that no new facilities are to be constructed.

Comment date: February 1, 1990, in accordance with Standard Paragraph G at the end of this notice.

13. Colorado Interstate Gas Co.

[Docket No. CP90-349-000]

December 18, 1989.

Take notice that on December 7, 1989, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP90-349-000 an application pursuant to section 7(b) of the Natural Gas Act for authority to partially abandon its natural gas sales services to the Town of Keyes, Oklahoma (Keyes) and Nothern Gas of Wyoming (Northern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CIG states that the service agreements reflecting the current service levels for Keyes and Northern expired on September 30, 1989. CIG further states that the requested authority is prompted by the execution of new service agreements that reduces the General Daily Entitlement (GDE) and the Total Annual Entitlement (TAE) for these customers as follows:

Customer	Proposed decrease in GDE	Proposed decrease in TAE
Keys	145	26,000
Northern	250	93,000
Total	395	119,000

CIG advises that the new service agreements were executed on October 1, 1989 and are expected to be in affect through September 30, 1996. Finally, CIG asserts that the requested abandonment would not adversely affect its other customers.

Comment date: January 8, 1990 in accordance with Standard Paragraph F at the end of the notice.

14. Natural Gas Pipeline Company of America

[Docket No. CP90-353-000]

December 18, 1989.

Take notice that on December 8, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP90-353-000 a request pursuant to § 157.205 of the Commission's Regulations (18 CFR 157.205) for authorization to transport natural gas on behalf of Texas Gas Gathering Comapny (TGGC), a gatherer of natural gas, under Natural's blanket certificate issued in Docket No. CP88-582-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Natural proposes to transport, on an interruptible basis, up to 125,000 MMBtu equivalent of natural gas on a peak day (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS), 25,000 MMBtu equivalent on an average day and 9,125,000 on an annual basis for TGGC. It is stated that Natural would receive the gas at an interconnection with TGGC in Harrison County, Texas, and would deliver equivalent volumes at points on Natural's pipeline in Texas, Louisiana, Arkansas, Missouri and Illinois. It is asserted that the transportation would be effected using existing facilities and that no construction of additional facilities would be required. It is explained that the transportation service commenced October 1, 1989, under the self-implementing authorization of § 284.223 of the Commission's Regulations, as reported in Docket No. ST90-971.

Comment date: February 1, 1990, in accordance with Standard Paragraph G at the end of this notice.

15. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP90-368-000]

December 18, 1989.

Take notice that on December 12, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No CP90-368-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to operate two exisiting town border stations as jurisdictional sales facilities, under Northern's blanket certificate issued in Docket No. CP82-401-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to operate the sales facilities as delivery points to accommodate natural gas deliveries to Western Gas Utilities, Inc. (Western). Northern states that the deliveries are needed for Western to serve the communities of Hamburg, and Green Isle, Minnesota.

It is stated that the delivery volumes will be within Western's currently authorized firm entitlements. It is further stated that the delivery of such volumes to the delivery points would have no impact on Northern's peak day and annual deliveries.

Comment date: February 1, 1990, in accordance with Standard Paragraph G at the end of this notice.

16. Northern Natural Gas Company Division of Enron Corp.

[Docket No. CP90-361-000]

December 18, 1989.

Take notice that on December 13, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP90-361-000 a request pursuant to § 157.205 and 284.223 (18 CFR 157.205 and 284.223) of the Commission's Regulations under the Natural Gas Act for authorization to provide transportation service for Enron Gas Marketing, Inc. (Enron) a gas marketer, under Northern's blanket transportation certificate issued in Docket No. CP86-435-000 on December 22, 1986, all as more fully set forth in the application which is on file with the Commisison and open to public inspection.

Northern proposes, pursuant to an agreement dated November 10, 1989, to transport natural gas for Enron from various receipt points in Oklahoma and Kansas, and deliver the gas, for the account of Enron, in Washington and Dakato Counties, Minnesota. Northern states that it proposes to transport up to 5,000 MMBtu of gas on a peak day and approximately 3,750 MMBtu and 1,825,000 MMBtu of gas on an average day and annually, respectively. Northern states that transportation service under § 284.223(a) commenced on November 10, 1989, as reported in Docket No. ST90-866-000 on December 1, 1989.

Comment date: February 1, 1990, in accordance with Standard Paragraph G at the end of this notice.

17. Inland Gas Company, Inc.

[Docket No. CP90-382-000]

December 18, 1989.

Take notice that on December 13, 1989, Inland Gas Company, Inc. (Inland), 336-338 Fourteenth Street, Ashland, Kentucky 41101, filed in Docket No. CP90-382-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on an interruptible basis on behalf of Cobra Oil and Gas Company, Inc. (Cobra) under its blanket certificate issued in Docket No. CP89-779-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Inland states that the maximum daily, average daily and annual quantities that it would transport for Cobra would be 200 MMBtu equivalent of natural gas, 100 MMBtu equivalent of natural gas and 285,000 MMBtu equivalent of natural gas, respectively.

Inland indicates that in a filing made with the Commission in Docket No. ST90-877 it reported that transportation service for Cobra had begun on November 22, 1989 under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: February 1, 1990, in accordance with Standard Paragraph G at the end of this notice.

18. The Inland Gas Company, Inc.

[Docket No. CP90-383-000]

December 18, 1989.

Take notice that on December 13, 1989, The Inland Gas Company, Inc. (Inland), 335-338 Fourteenth Street, Ashland, Kentucky 41101, filed in Docket No. CP90-383-000, a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to provide a transportation service for Blackstar Exploration, Inc. (Blackstar) under Inland's blanket certificate issued in Docket No. CP89-779-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Inland proposes to transport, on an interruptible basis, up to 240 MMBtu of natural gas equivalent per day pursuant to a transportation agreement dated October 24, 1989, between Inland and Blackstar. Inland would receive natural gas at various existing receipt points in Kentucky and redeliver equivalent volumes of gas, less fuel and company used gas, at an existing delivery point in Kentucky.

Inland further states that the estimated average daily and annual quantities would be 200 MMBtu and 73,000 MMBtu, respectively. Service under § 284.223(a) commenced November 6, 1989, as reported in Docket No. ST90-876-000, it is stated.

Comment date: February 1, 1990, in accordance with Standard Paragraph G at the end of this notice.

19. Natural Gas Pipeline Company of America

[Docket No. CP90-386-000]

December 18, 1989.

Take notice that on December 14, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP90-386-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a firm transportation service for Continental Natural Gas, Inc. (Continental), a marketer, under the blanket certificate issued in Docket No. CP86-582-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Natural states that pursuant to a transportation service agreement dated September 28, 1989, under its Rate Schedule FTS, it proposes to transport up to 6,000 MMBtu per day equivalent of natural gas for Continental. Natural states that it would transport the gas (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule FTS) from receipt points located in Texas and Kansas, and would deliver the gas to delivery points located in New Mexico.

Natural advises that service under § 284.223(a) commenced October 15, 1989, as reported in Docket No. ST90-479 (filed November 14, 1989). Natural further advises that it would transport 3,000 MMBtu an an average day and 1,095,000 MMBtu annually.

Comment date: February 1, 1990, in accordance with Standard Paragraph G at the end of this notice.

20. Williams Natural Gas Co.

[Docket No. CP90-382-000]

December 19, 1989.

Take notice that on December 11, 1989, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP90-382-000 a request, as supplemented on December 18, 1989, pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to perform an interruptible transportation service for Amoco Energy Trading Company (Amoco), a producer, under Williams' blanket certificate issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Williams states that pursuant to a transportation service agreement dated October 5, 1988, it proposes to transport up to 2,000,000 dt equivalent of natural gas per day of Amoco. Williams states that it would receive the gas at specified points in Texas, Kansas, Oklahoma, Missouri, Wyoming, and Colorado and redeliver the gas at specified points located in Kansas, Missouri, Oklahoma, and Texas. Williams estimates that the maximum day and average day volumes would be 2,000,000 dt equivalent of natural gas and that the annual volumes would be 730,000,000 dt equivalent of natural gas. It is stated that on December 1, 1988, Williams initiated a 120-day transportation service for Amoco under §284.223(a), as reported in Docket No. ST89-1580-000.

Williams further states that no facilities need constructed to implement the service. Williams indicates that the primary term of the contract expires on January 1, 1993, but that the transaction would continue on a year-to-year basis until terminated by either party on ninety days written notice. Williams proposes to charge rates and abide by the terms and conditions of its Rate Schedule ITS.

Comment date: February 2, 1990, in accordance with Standard Paragraph G at the end of this notice.

21. Transwestern Pipeline Co.

[Docket No. CP90-368-000]

December 19, 1989.

Take notice that on December 14, 1989, Transwestern Pipeline Company (Transwestern), Post Office Box 1188, Houston, Texas 77251-1188, filed a request for authorization at Docket No. CP90-368-000, pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act to provide interruptible transportation service for Texaco TGas Marketing, Inc. (Texaco Gas), a marketer of natural gas, under Transwestern's blanket certificate issued at Docket No. CP86-133-000, all as more fully set forth in the request on file with the Commission and open for public inspection.

Transwestern requests authority to transport up to 750,000 MMBtu of natural gas per day for Texaco Gas from various points of receipt on Transwestern's system to a delivery point in Mohave County, Texas. Transwestern states that the estimated daily and annual quantities would be 562,500 MMBtu and 273,750,000 MMBtu, respectively. Transwestern further states that transportation service under § 284.223(a) commenced on October 6, 1989, as reported at Docket No. ST90-264-000.

Transwestern also states that no new facilities will be constructed to provide the proposed transportation service.

Comment date: February 2, 1990, in accordance with Standard Paragraph G at the end of this notice.

22. Transwestern Pipeline Company

[Docket No. CP90-369-000]

December 19, 1989.

Take notice that on December 14, 1989, Transwestern Pipeline Company (Transwestern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. Cp90-369-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Texaco Gas Marketing Inc. (Texaco), a marketer of natural gas, under Transwestern's blanket certificate issued in Docket No. CP88-133-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Transwestern proposes to transport, on an interruptible basis, up to 750,000 MMBtu per day for Texaco. Transwestern states that construction of facilities would not be required to provide the proposed service.

Transwestern further states that the maximum day, average day, and annual transportation volumes would be approximately 750,000 MMBtu, 562,000 MMBtu and 273,750,000 MMBtu respectively.

Transwestern advises that service under § 284.223(a) commenced November 1, 1989, as reported in Docket No. ST90-899.

Comment date: February 2, 1990, in accordance with Standard Paragraph G at the end of this notice.

23. Panhandle Eastern Pipe Line Co.

[Docket No. CP90-369-000]

December 19, 1989.

Take notice that on December 12, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001 filed in Docket No. CP90-369-000, a request pursuant to sections 7(b) of the Commission's Regulations under the Natural Gas Act, as amended, for authorization to abandon a part of the sales service provided to Union Electric Company (Union Electric), an existing jurisdictional sales customer, all as more fully set forth in the request on file with the Commission and open to public inspection.

Panhandle states that the proposed abandonment will reduce the annualized total contract demand from 32,422,230 Mcf to 27,677,230 Mcf which was converted to firm transportation service effective December 1, 1989, pursuant to § 284.10 of the Commission's Regulations. The resulting firm transportation is being performed in accordance with the terms and conditions of Panhandle's Rate Schedule PT-Firm.

Panhandle also reques's a December 1, 1989 effective date for the abandonment authorization which will coincide with the date of the conversion.

Pursuant to 18 CFR 284.10(d)(2) the exercise of the customer's option to convert constitutes consent to the proposed abandonment.

Comment date: January 9, 1990, in accordance with Standard Paragraph F at the end of this notice.

24. Natural Gas Pipeline Company of America

[Docket No. CP90-370-000]

December 19, 1989.

Take notice that on December 12, 1989, Natural Gas Pipeline Company of America (Natural), file in Docket No. CP90-370-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act, to transport natural gas under its blanket certificate issued in Docket No. CP86-582-000 on behalf of PSI Inc. (PSI), a marketer, all as more fully set forth in the request on file with the Commission and open to public inspection.

Natural indicates that service commenced October 7, 1989, as reported in Docket No. ST90-385-000 and estimates the volumes transported to be 3,000,000 MMBtu on a peak day, 25,000 MMBtu on an average day and 9,125,000 MMBtu annually. Natural also states that consistent with its Rate Schedule, PSI may request and Natural may agree to accept additional quantities as overun gas.

Natural avers that there will be no new facilities constructed to perform the service.

Comment date: February 2, 1990, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street N.E., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing aprotest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-29933 Filed 12-26-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. OR 89-2-000 et al.]

Oil Pipelines; Quality Bank; Order With Respect to Petition for Declaratory Order and Appeal of Oil Pipeline Board Order

In the matter of: Before Commissioners: Martin L. Allday, Chairman; Charles A. Trabandt, Elizabeth Anne Moler and Jerry J. Langdon.

	Docket Nos.
Trans Alaska Pipeline	OR89-3-000

withdaw oil that is inferior to the oil that they ship through the pipeline. A quality bank makes monetary adjustments that

III. The Current Situation

A. Before the APUC

intrastate quality bank monetary adjustments [16] and that the presently used methodology continues to be just quality bank adjustment to coincide with the interstate suspension.[80] Petro Star adds that vacating the suspension

Tesoro asserts that if the Commission dismisses the TAPS Carriers' Petition for Declaratory Order, then the Commission will

	Docket Nos.
Trans Alaska Pipeline System.	OR89-2-000
Amerada Hess Pipeline Corporation.	IS89-7-000, 001
ARCO Pipe Line Company.	IS89-8-000, 001
BP Pipelines (Alaska), Inc.	IS89-9-000, 001
Exxon Pipeline Company.	IS89-10-000, 001
Mobil Alaska Pipeline Company.	IS89-11,-000, 001
Phillips Alaska Pipeline Corporation.	IS89-12-000, 001
Unocal Pipeline Company.	IS89-13-000, 001

Issued December 19, 1989.

This order deals with two matters before the Commission with respect to the Trans Alaska Pipeline System's (TAPS) quality banks. The first is the TAPS owners' [1] May 26, 1989 petition for declaratory order.[2] The second is the TAPS owners' appeal of the June 30, 1989 order of the Oil Pipeline Board, which suspended TAPS' quality bank rate increase for one-day and set for hearing the lawfulness of the filing.[3]

I. Public Notice and Interventions in Docket No. OR89-2-000

Public notice of the TAPS owners' petition for declaratory order was issued on June 8, 1989, with motions to intervene due on or before June 29, 1989. Timely motions to intervene were filed by the parties listed in the Appendix to this order. Pursuant to Rule 214 any timely filed motions to intervene are granted unless an answer in opposition is received within 15 days of the date such motion is filed. Any timely filed motions or notices not listed in the Appendix are also granted in accordance with the conditions of Rule 214. Phillips 66 Company's unopposed motion to intervene out-of-time is granted.

II. Quality Banks and TAPS

In general, quality banks are needed when different shippers put oil of uneven quality into a pipeline. This is so because commingling of different quality oils means that some shippers withdraw oil that is of better quality than the oil they put into the pipeline, while others withdaw oil that is inferior to the oil that they ship through the pipeline. A quality bank makes monetary adjustments that neutralize the effect that these quality differentials would otherwise have on the shippers.[4]

TAPS runs 800 miles from Prudhoe Bay on the North Slope of Alaska to the port of Valdez on the South Central Coast of Alaska. TAPS has three quality banks. The first makes monetary adjustments for the different quality of oil produced on the North Slope of Alaska and delivered to TAPS at its entrance at Pump Station No. 1 at Prudhoe Bay. The second is about 470 miles downstream near Fairbanks where MAPCO Petroleum Inc. (MAPCO) and Petro Star Inc. (Petro Star) take delivery of oil, refine most of it, and reinject the remainder into TAPS for delivery at Valdez. This quality bank makes monetary adjustments for the difference in quality between the lower quality reinjected oil and the oil in the TAPS common stream. The third quality bank makes monetary adjustments for the difference in value of oil in the common TAPS stream and the oil delivered to the particular recipient at Valdez.

On October 31, 1984, the Commission approved a contested settlement as just and reasonable and supported by the record in which it approved the TAPS quality banks and adopted a settlement methodology for measuring the quality bank monetary adjustments.[5] The settlement was supported by the TAPS owners and by MAPCO but was opposed by Tesoro Alaska Petroleum Company (Tesoro).[6]

The controversy centered on the quality bank that makes monetary adjustments with respect to MAPCO's reinjected oil.[7]

The Alaska Public Utilities Commission (APUC) also approved the aforementioned settlement. Hence, at present, the intrastate and interstate charges for the quality bank adjustments are computed using the same methodology.

III. The Current Situation

A. Before the APUC

The dispute about the appropriate quality bank methodology revived before the APUC when Tesoro protested the TAPS owners' December 1, 1988 filing on the ground that the proposed quality bank adjustment did not account for (1) the additional of natural gas liquids to the virgin crude oil,[8] (2) the injection into the stream of refined petroleum products,[9] and (3) the possible injection of non-petroleum substances.[10] On February 27, 1989, the APUC construed Tesoro's protest as a formal complaint and ordered an investigation into "whether the current quality bank methodology fairly and adequately compensates shippers for the differing quality of the oil they tender and the oil they receive." [11] In addition, while the APUC stated that "it seems that this proceeding should be heard concurrently by both [it and the FERC] rather than first before one and then before the other, * * * this is a matter for the parties to decide," and it "will immediately proceed with this Docket regardless of whether a complaint is now filed with the FERC."[12] The APUC noted its belief that any concurrent hearing "should be held in Alaska due to the intense local interest." [13]

B. Before the FERC

1. The Petition for Declaratory Order

On May 26, 1989, the TAPS owners filed with the Commission a petition for a declaratory order. They request the Commission to launch an investigation under section 13(2) of the Interstate Commerce Act [14] into the lawfulness of the quality bank provisions of their tariffs and to hold hearings jointly with the APUC. In addition, they request an order declaring that Section 13(4) of the Act requires uniform interstate and intrastate quality bank monetary adjustments [15] and that the presently used methodology continues to be just and reasonable.[16] The intervenors either support or do not oppose the holding of concurrent hearings. Union Oil of California d/b/a Unocal also requests the Commission to institute an investigation into the TAPS quality bank provisions. Tesoro, supported by Petro Star, but opposed by the TAPS owners and MAPCO, asks the Commission to dismiss the petition for declaratory order in light of the June 30, 1989 suspension order's setting quality bank issues for hearing. (see *Infra.*)

2. The Appeal of the June 30, 1989 Order

On June 30, 1989, the Oil Pipeline Board suspended for one-day and set for hearing the TAPS owners' proposed increase to its quality bank adjustment.[17] The Board took this action because of a protest filed by Conoco, Inc. and Oxy USA, Inc. (Conoco).[18] Conoco asserted that (1) the proposed increases were not properly calculated under the settlement methodology and (2) the TAPS carriers permit low quality but high gravity natural gas liquids to be injected into the TAPS stream.

On July 19, 1989, the TAPS owners appealed the Board's decision to the Commission. The TAPS owners state that they have no objection to an investigation of the methodology to be used to determine the quality adjustments. They do object, however, to the suspension as inappropriate because the filing was required by and in compliance with a method approved by the Commission. Moreover, they argue that any change in methodology should be made prospectively only.[19]

Both Petro Star and Conoco oppose the TAPS owners' appeal. They assert that the natural gas liquids matter justifies the suspension and point out that the APUC suspended the intrastate quality bank adjustment to coincide with the interstate suspension.[20] Petro Star adds that vacating the suspension here will destroy the opportunity for consistent federal and state solutions to the natural gas liquids problems. Conoco adds that factual disputes remain about whether the adjustments were properly calculated.

On August 2, 1989, the TAPS owners filed a motion in the suspension order dockets in which they request the Commission to order joint hearings with the APUC in the event hearings are deemed necessary. This motion is not opposed by the various intervenors. On October 6, 1989, the TAPS owners asked the Commission to expedite both proceedings, to consolidate them, and to grant their requests for joint hearings.

IV. Discussion

The Commission will begin with the TAPS owners' appeal of the Oil Pipeline Board's suspension order because resolution of the appeal is pertinent to the treatment of the petition for declaratory order. The Commission shall grant in part and deny in part the TAPS owners' appeal. First, the Commission will not overturn the Oil Pipeline Board's suspension of the filing or its imposition of a refund obligation as pertains to the issue of whether the quality bank adjustment was properly calculated. Whether the TAPS owners are in compliance with the settlement methodology should be addressed at the hearing. Second, because the TAPS owners have not proposed to change the existing methodology, any change in methodology should be effected prospectively.[21] Last, the Commission grants the TAPS owners' request that the hearing be held jointly with the APUC. The TAPS evidentiary hearings in the past have been held concurrently and the Commission believes that this is the most efficient way to proceed. Hence, the Commission will permit joint hearings for the concurrent taking of evidence.[22]

The Commission grants the TAPS owners' petition for declaratory order to the extent that it seeks an investigation into the lawfulness of their quality bank under section 13(2) of the Act. The APUC proceeding covers issues not included within the scope of the Oil Pipeline Board's suspension order. Hence, the TAPS owners' petition is not moot as argued by Tesoro. On this point, the Commission agrees with MAPCO, which stated:

> Tesoro asserts that if the Commission dismisses the TAPS Carriers' Petition for Declaratory Order, then the Commission will avoid duplicative investigations, implying that all the issues in Docket No. OR89-2-000 would be addressed in Docket Nos. IS89-7-000 through IS89-13-000. Simply stated, this is not true. The only recent issue that would still be investigated is the Quality Bank as it relates to [natural gas liquids]. The two GVEA Connection issues, making appropriate Quality Bank adjustments for the return oil and investigation of the thus far completely unsubstantiated allegation that foreign substances are being injected into TAPS, have not been raised in any requests for investigations filed with the Commission in Docket Nos. IS89-7-000 through IS89-13-000. Thus, if the Commission grants Tesoro's Motion to Dismiss, the two GVEA Connection TAPS Quality Bank issues would no longer be before the Commission.[23]

The Commission grants the TAPS owners' motion to consolidate the FERC proceedings and to hold concurrent evidentiary hearings with the APUC on the issues covered by the petition for declaratory order in addition to these covered by the suspension order.

The Commission denies the TAPS owners' petition for declaratory order without prejudice with respect to their requests that the Commission find that the Act requires uniform intrastate and interstate quality bank monetary adjustments and that the presently used methodology is just and reasonable. Both requests are premature.

V. The Concurrent Evidentiary Hearings

The Commission has consolidated the proceedings before it and has ordered joint hearings with the APUC for the taking of evidence. The Commission believes that the procedures adopted for past TAPS proceedings should apply to the instant proceedings except that the current proceedings may be held in Alaska and that, unlike before, the Alaska presiding officer shall make and announce rulings.[24] The Commission administrative law judge and the APUC presiding officer will fully control assembling the record and ruling on the admissibility of evidence for the record of that officer's commission. Participation in concurrent evidentiary proceedings will in no way preclude either commission from causing to be presented evidence with respect to matters in issue in the case before it.

The presiding officer designated by the APUC shall be the official to make all rulings with respect to scheduling witnesses and hearing dates and to

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[1] The TAPS owners or carriers are: Amerada Hess Pipeline Corporation, ARCO Pipe Line Company, BP Pipelines (Alaska Inc., Exxon Pipeline Company, Mobil Alaska Pipeline Company, Phillips Alaska Pipeline Corporation, and Unocal Pipeline Company.

[2] Docket No. OR89-2-000.

[3] Amerada Hess Pipeline Corp., *et al.*, 47 FERC ¶ 62,336 (1989), Docket Nos. IS89-7-000 through IS89-13-000.

[4] In general, higher gravity crude oil is worth more than lower gravity crude oil because higher gravity crude oil produces refined products that are worth more than those produced by lower gravity crude oil. The gravity of the oil is measured in degrees API (American Petroleum Institute).

[5] Trans Alaska Pipeline System, 29 FERC ¶ 61,123 (1984).

[6] Tesoro receives oil at Valdez and refines that oil into products for sale in Alaska.

[7] MAPCO's reinjected oil is of a lower gravity and quality than the oil it joins in the TAPS common stream.

[8] Natural gas liquids have a high gravity but are of low value. Hence, it is alleged that those injecting the natural gas liquids are spiking the TAPS stream to increase their quality bank receipts when the stream's value has been diminished.

[9] Tesoro alleges that MAPCO's and Petro Star's reinjected oil is actually refined oil rather than crude oil.

[10] Tesoro referred to foreign substances, such as refinery waste water, sludge, or spent chemicals used in the refinery process.

[11] Order No. 1, *slip op.* at 18.

[12] *Id.* at 19, 20.

[13] *Id.* at 20 n. 17.

[14] 49 U.S.C. 13(2) (1976). All references to the Interstate Commerce Act unless otherwise stated are to the Act prior to its recondification. The recodification does not apply to the function and authority transferred to FERC. See section 4(c), Pub. 95-473, 92 Stat. 1337, 1470 (1978).

[15] In brief, section 13(4) of the Act prohibits a carrier from discriminating against interstate shippers or burdening interstate commence via the use of low intrastate rates.

[16] The various responses and counter responses will not be discussed in greater detail in light of the Commission's action *infra*.

[17] Amerada Hess Pipeline Corp., *et al.*, 47 FERC ¶ 62,335 (1989). The increase is from 1.50 cents per tenth of a degree of API gravity to 2.57 cents.

[18] Conoco produces oil on the North Slope of Alaska at Milne Point. The Milne Point oil is of low gravity and hence Conoco makes payments to the quality bank.

[19] The TAPS owners also note that they are mere stakeholders for adjustments among shippers, that suspension will require the owners to hold the money in escrow rather than refund it (or take other action such as indemnity agreements), and that this will produce uncertainty with respect to any refunds actually distributed.

[20] Order No. 9, issued July 20, 1989.

[21] *Cf. e.g. Sea Robin Pipeline Co.* v. *FERC*, 795 F.2d 1982 (D.C. Cir. 1986).

[22] See *infra* for more details.

[23] Opposition by MAPCO to Motion to Dismiss at 4 (footnote omitted).

[24] *See* Trans Alaska Pipeline System, 2 FERC ¶ 61,001 at p. 61,139 (1978).

announce all other rulings where there is no disagreement on the ruling between the presiding officers of the

(E) The Secretary shall cause prompt publication of this order in the Federal

available a document in question and answer format to clarify the

SUPPLEMENTARY INFORMATION: On October 31, 1989, EPA released a

FEDERAL RESERVE SYSTEM

Alegmene Bank Nederland N.V., et al.;

pursuant to § 225.25(b)(3) of the Board's Regulation Y.

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announce all other rulings where there is no disagreement on the ruling between the presiding officers of the respective commissions. However, this procedure is without prejudice to the right of a presiding officer of the FERC to announce a divergent ruling, whether respecting the admissibility of evidence or any other matter. In the event of divergent rulings, each commission's separate record will be clearly identified and defined, and the rulings of the presiding officers of each commission will be considered the ruling for his or her commission. If in any proceeding, the ruling of one presiding officer has the effect of admitting any voluminous exhibit or testimony which is excluded by the ruling of another presiding officer, the taking of such evidence will, whenever possible, be deferred until after the completion of all proceedings which can be conducted under concurrent rulings. When such testimony is taken, the transcript of such evidence will be made available to the other commission, if requested.

In conducting such concurrent hearings, it is hoped that the presiding officers designated by each commission would cooperate in order to minimize divergent rulings and to expedite completion of the hearing records. However, a presiding officer of one commission should refrain from communicating with a presiding officer of the other commission on matters of substance outside of the record in the proceedings. The separate decisions of the respective presiding officers of each commission will, of course, be reached independently on the separate record of that commission and without consultation on substantive matters with an official of the other commission.

The Commission orders:

(A) The TAPS owners' May 26, 1989 petition for declaratory order and appeal of the June 30, 1989 order of the Oil Pipeline Board are granted in part and denied in part as set forth in the body of this order.

(B) An investigation under section 13(2) of the Act is instituted in Docket No. OR89-2-000 into the lawfulness of the present methodology for computing quality bank adjustments.

(C) The proceedings in Docket Nos. OR89-2-000 and IS89-7-000 through IS89-13-000 are consolidated as discussed in the body of the order.

(D) The proceedings in Docket Nos. OR89-2-000 and IS89-7-000 through IS89-13-000 shall be held concurrently with hearings before the APUC as discussed in the body of the order.

(E) The Secretary shall cause prompt publication of this order in the **Federal Register**.

By the Commission.

Lois D. Cashell,

Secretary.

Appendix

MAPCO Alaska Petroleum, Inc.
Petro Star Inc.
Tesoro Alaska Petroleum Company
Amoco Production Company
State of Alaska
Exxon Company, U.S.A., a division of Exxon Corporation
Phillips 66 Company (late)
Conoco Inc. and OXY USA, Inc. (protest also)

[FR Doc. 89-29832 Filed 12-26-89; 8:45 am]
BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-34007; FRL 3687-4]

Pesticide Reregistration Data Call-In Supplemental Question and Answer Document; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Pesticide Reregistration Notice.

SUMMARY: EPA is announcing the availability of a document to clarify the Data Call-In Notice issued on October 6, 1989 under the authority of section 3(c)(2)(B) of FIFRA for certain product labeling. This document also contains information on time extensions for registrants.

DATE: Deadline for requests is January 6, 1990.

ADDRESSES To receive a copy of the Question and Answer Document, send a self-addressed, stamped envelop to the following address Document Processing Desk (Label Q&A), Office of Pesticide Programs (H7504C), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Donna Garner, Office of Pesticide Programs, U.S. Environmental Protection Agency, (1-703-557-7406)

SUPPLEMENTARY INFORMATION: This notice is a clarification of the Data Call-In (DCI) Notice issued under the authority of section 3(c)(2)(B) of FIFRA on October 6, 1989 for labeling for products containing chemicals on reregistration lists A and B (published in the **Federal Register** on 2/22/89 and 5/25/89, respectively). Since issuance of the DCI, a number of registrants have raised questions and concerns about the notice and the information required. In response, the Agency is making available a document in question and answer format to clarify the requirements. This document, entitled "Question and Answer Document to Supplement the Data Call-In (DCI) for Product Labels Issued for Lists A and B," is available at the location given under **ADDRESSES.** The document has also been sent to trade associations representing large numbers of pesticide registrants for distribution to their members.

In clarifying the DCI Notice, EPA is granting an automatic 30-day time extension, until February 6, 1990, for submission of the required labeling documentation if both of the following conditions are met:

1. The registrant is required under the DCI Notice to submit labels for 300 or more products; and

2. The registrant is a small business as defined in FIFRA sec. 4(i)(4)(C)(iii). [A small business registrant is one that has 150 or fewer employees and an average annual gross revenue from chemicals not exceeding $40 million during the 3-year period prior to reregistration.]

Date: December 15, 1989.

Edwin F. Tinsworth,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 89-29805 Filed 12-26-89; 8:45 am]
BILLING CODE 6560-50-D

[FRL-3700-3]

Superfund Response Action Contractor Indemnification

AGENCY: Environmental Protection Agency.

ACTION: Extension of comment period.

SUMMARY: On October 31, 1989, the Environmental Protection Agency (EPA) issued a proposed guidance document to implement section 119 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9619). Today, the Agency is extending the comment period on the proposed guidance document. Comments will now be accepted until February 2, 1990.

DATE: Comments must be submitted on or before February 2, 1990.

ADDRESSES: An original and two copies of comments must be sent to Tom Gillis, U.S. Environmental Protection Agency, OS-510, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Tom Gillis, 202-475-6771.

SUPPLEMENTARY INFORMATION: On October 31, 1989, EPA released a proposed policy and request for comment concerning indemnification of Superfund response action contractors [54 FR 46012, October 31, 1989]. Since that time, EPA has received several comments requesting an extension of the January 2, 1990, deadline for comments. In light of these requests and the complexity of the proposed policy, EPA is extending the deadline one month to ensure a reasonable opportunity for public comment. Therefore, comments will be accepted on or before February 2, 1990.

Mary A. Gade,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 89-29978 Filed 12-26-89; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[DA 89-1647]

Advisory Committee on Advanced Television Service Implementation Subcommittee Meeting

December 21, 1989.

A meeting of the Implementation Subcommittee of the Advisory Committee on Advanced Television Service will be held on: January 23, 1990, 10:00 a.m., Commission Meeting Room (Room 856), 1919 M Street, NW., Washington, DC.

The agenda for the meeting will consist of:

1. Introduction
2. Minutes of Last Meeting
3. Report of Working Party 1 Policy and Regulation
4. Report of Working Party 2 Transition Scenarios
5. General Discussion
6. Other Business
7. Date and Location of Next Meeting
8. Adjournment

All interested persons are invited to attend. Those interested also may submit written statements at the meeting. Oral statements and discussion will be permitted under the direction of the Implementation Subcommittee Chairman.

Any question regarding this meeting should be directed to Dr. James J. Tietjen at (609) 734-2237 or David R. Siddall at (202) 632-7792.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-30006 Filed 12-26-89; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

Algemene Bank Nederland N.V., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 12, 1990.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Algemene Bank Nederland N.V.*, Amsterdam, The Netherlands; A.B.N.—Stichting, Amsterdam, The Netherlands; ABN/LaSalle North America, Inc., Chicago, Illinois; and LaSalle National Corporation, Chicago, Illinois; to engage *de novo* through their subsidiary, LaSalle National Trust, N.A., Chicago, Illinois, in trust company activities pursuant to § 225.25(b)(3) of the Board's Regulation Y.

2. *First Colonial Bankshares Corporation*, Chicago, Illinois; to engage *de novo* through its subsidiary, First Colonial Mortgage Corporation, Rosemont, Illinois, in servicing mortgage loans previously originated and sold to investors pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 20, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-29940 Filed 12-26-89; 8:45 am]
BILLING CODE 6210-01-M

Avantor Financial Corporation; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the

reasons a written presentation would not suffice in lieu of a hearing,

has applied to acquire indirectly Cash Flow, Inc., and thereby engage in

insurance, mortgage redemption and mortgage accident and health insurance

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair

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reasons a written presentation would not suffice in lieu of a hearing, indentifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 22, 1990.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 100 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Avantor Financial Corporation,* Norfolk, Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of Sovran Financial Corporation, Norfolk, Virginia, and The Citizens and Southern Corporation, Atlanta, Georgia. Upon acquisition of these bank holding companies, Applicant will acquire the following banks: Sovran Bank, N.A., Richmond, Virginia; Sovran Bank/Maryland; Sovran Bank/DC National, Washington, DC; Sovran Bank/Delaware, Dover, Delaware; Sovran Bank/Central South, Nashville, Tennessee; Sovran Bank/Eastern, Oakridge, Tennessee; Sovran Bank/Greenville, Greenville, Tennessee; Sovran Bank/Hickman County, Centerville, Tennessee; Sovran Bank/Chattanooga, Chattanooga, Tennessee; Sovran Bank/Memphis, Memphis, Tennessee; Sovran Bank/Tri-Cities, Johnson City, Tennessee; Sovran Bank/Union City, Union City, Tennessee; and Sovran Bank/Kentucky, Hopkinsville, Kentucky; The Citizens and Southern National Bank, Savannah, Georgia; The Citizens and Southern National Bank of South Carolina, Charleston, South Carolina; The Citizens and Southern National Bank of Florida, Fort Lauderdale, Florida; Citizens and Southern Trust Company (Georgia), N.A., Atlanta, Georgia; Citizens and Southern Trust Company (Florida), N.A. Ft. Lauderdale, Florida; Citizens and Southern Trust Company (South Carolina), N.A., Columbia, South Carolina; The Ocean State Bank, Neptune Beach, Florida; and Marine Bank of Monroe County, Marathon, Florida.

In connection with this application, Sovran Financial Corporation has applied to acquire 16.6 percent of the voting shares of The Citizens and Southern Corporation, Atlanta, Georgia, and The Citizens and Southern Corporation has applied to acquire 16.6 percent of the voting shares of Sovran Financial Corporation. Applicant also has applied to acquire indirectly Cash Flow, Inc., and thereby engage in providing electronic funds transfer services pursuant to § 225.25(b)(7); Sovran Capital Management Corporation, and thereby engage in investment management and advisory services to institutional investors pursuant to § 225.25(b)(4); Sovran Credit Corporation, and thereby engage in consumer lending activities; making, acquiring, and servicing for its own account, or the account of others, loans secured primarily by second mortgages on real property, and acts as agent in the sale of credit life insurance and accident and health insurance in connection with such loans; makes direct consumer installment loans, purchases consumer installment sales finance contracts, and extends direct loans to dealers for the financing of inventory and working capital purposes pursuant to §§ 225.25(b)(1), (b)(4), and (b)(8)(i); Sovran Equity Mortgage Corporation, and thereby engage in making acquiring and servicing for its own account, or the account of others, loans secured primarily by second mortgages on real property, and acts as agent in the sale of credit life insurance and accident and health insurance in connection with such loans pursuant to §§ 225.25 (b)(1) and (b)(8)(i); Sovran Insurance Agency, Inc. and thereby engage in the sale of life, property and casualty insurance related to the extension of credit or mortgage loan servicing pursuant to § 225.25(b)(8)(iv); Sovran Insurance Inc. and thereby engage in general insurance agency and brokerage activities pursuant to § 225.25(b)(8)(iv); Sovran Investment Corporation and thereby engage in providing investment banking, securities brokerage, and investment and financial advice pursuant to §225.25 (b)(4), (b)(15), and (b)(16); Sovran Leasing Corporation and thereby engage in commencial financing, in making, acquiring, and servicing, for its own account or the account of others, loans and leases of real and personal property, and in arranging, financing, structuring and analyzing equipment leasing pursuant to §§ 225.25 (b)(1) and (b)(5); Sovran Life Insurance Company and thereby engage in underwriting, as reinsurer, credit life and credit disability insurance directly related to extensions of credit, including credit cards, by affiliated parties pursuant to § 225.25(b)(1); Sovran Mortgage Corporation and thereby engage in making, acquiring, or servicing, for its own account or the account of others, loans secured by mortgages on real property, and act as agent for the sale of credit life insurance, accident and health insurance, mortgage redemption and mortgage accident and health insurance directly related to such extensions of credit pursuant to §§ 225.25 (b)(1) and (b)(8)(i); Sovran Realty Services Corporation and thereby engage in originating, brokering, and selling commercial mortgage loans primarily for properties located in the middle region of Tennessee pursuant to § 225.25(b)(1); Suburban Service Corporation and thereby engage in the installation of the provision of support services to automated teller machines and the management of electronic funds transfers switches pursuant to § 225.25(b)(7); Tennessee Valley Life Insurance Company and thereby engage in reinsuring credit life, accident and health insurance directly related to extensions of credit by affiliated banks pursuant to § 225.25(b)(8)(i); VNB Capital Corporation and thereby engage in making or acquiring new loans or other extensions of credit, involving construction financing and mortgage lending on residential, multifamily and commercial real estate pursuant to § 225.25(b)(1); Citizens and Southern Mortgage Corporation and thereby engage in making, acquiring, or servicing, for its own account of others, loans or other extensions of credit secured primarily by first mortgages on real peoperty pursuant to § 225.25(b)(1); C&S Capital Corporation and thereby engage in commercial equipment leasing pursuant to § 225.25(b)(5); The Citizens and Southern Life Insurance Company and thereby engage in underwriting credit life insurance, accident and health insurance directly related to extensions of credit by affiliated parties pursuant to § 225.25(b)(8) (i) and (vii); Citizens and Southern Investment Advisors, Inc. and thereby engage in performing portfolio management services to affiliated and nonaffiliated parties and commodities trading advising pursuant to § 225.25(b)(4); C&S Financial Services, Inc. and thereby engage in equipment leasing activities pursuant to § 225.25(b)(5); Florida Interchange Group, Inc. and thereby engage in providing electronic funds transfer services pursuant to § 225.25(b)(7); and Georgia Interchange Network, Inc. and thereby engage in providing electronic funds transfer services pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 19, 1989.

Jennifer J. Johnson,

Associated Secretary of the Board.

[FR Doc. 89-29949 Filed 12-26-89; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 10, 1990.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *John A. Kaneb,* Chelsea, Massachusetts; to acquire an additional 8.67 percent of the voting shares of Neworld Bancorp, Inc., Boston, Massachusetts, for a total of 19.88 percent, and thereby indirectly acquire Neworld Bank for Savings, Boston, Massachusetts.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Earl G. Kendrick, Jr.,* Alexandria, Virginia; to acquire 49 percent of the voting shares of Woodforest Bancshares, Inc., Houston, Texas, and thereby indirectly acquire Woodforest National Bank, Houston, Texas.

Board of Governors of the Federal Reserve System, December 20, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-29960 Filed 12-3-89; 8:45 am]

BILLING CODE 6210-01-M

SBC Financial Corporation, et. al.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) of (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) of (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 17, 1990.

A. Federal Reserve Bank of St. Louis (Randall C. Summer, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *SBC Financial Corporation,* Como, Mississippi; to acquire New South Capital Corporation, Batesville, Mississippi, and thereby indirectly acquire New South Bank for Savings, F.S.B., Batesville, Mississippi, and thereby operate a savings and loan association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 20, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-29951 Filed 12-26-89; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

[Docket No. C-3264]

Nutritone, Inc., d/b/a Body By Design, et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a Massachusetts corporation from making any representations concerning the efficacy of electric muscle stimulation ("EMS") treatment programs and products, unless respondents possess reliable scientific evidence to substantiate the representations. Respondents are required to retain, for at least five years, records supporting any future advertising and also required to post a copy of the order on the premises.

DATE: Complaint and Order issued July 24, 1989.[1]

FOR FURTHER INFORMATION CONTACT: Sara Greenberg, Boston Regional Office, Federal Trade Commission, 10 Causeway St., Room 1184, Boston, Ma. 02222-1073. (617) 565-7240.

SUPPLEMENTARY INFORMATION: On Thursday, May 18, 1989, there was published in the **Federal Register**, 54 FR 21435, a proposed consent agreement with analysis In the Matter of Nutritone, Inc., d/b/a Body By Design, et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Donald S. Clark,

Secretary.

[FR Doc. 89-29979 Filed 12-26-89; 8:45 am]

BILLING CODE 6750-01-M

[Docket No. 9170]

New England Motor Rate Bureau, Inc.; Prohibited Trade Practices and Affirmative Corrections Actions

AGENCY: Federal Trade Commission.

ACTION: Final Order.

SUMMARY: This Final Order requires, among other things, the respondent to halt its collective ratemaking activities

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC. 20580.

in certain states and to cancel, within six months, all tariffs it has filed in certain states.

transportation of property or other related services, goods, or equipment.

3. Providing information to any carrier

shall require NEMRB to cancel and withdraw tariff filings, powers of attorney, or rate and tariff service

DEPARTMENT OF HEALTH AND HUMAN SERVICES

loan portfolio to facilitate the sale of these loans as authorized under Public Law 100-607 enacted November 4, 1988.

comments which would result in a contrary determination.

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in certain states and to cancel, within six months, all tariffs it has filed in certain states.

DATES: Complaint issued October 24, 1983. Final Order issued August 18, 1989.[1]

FOR FURTHER INFORMATION CONTACT: Micheal E. Antalica, FTC/S–2308, Washington, DC 20580. (202) 326–2682.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Commissioners: Janet D. Steiger, Chairman, Terry Calvani, Mary L. Azcuenaga, Andrew J. Strenio, Jr., Margot E. Machol.

Final Order

This matter has been heard by the Commission upon the appeal of respondent New England Motor Rate Bureau, Inc. ("NEMRB") from the initial decision and upon briefs and oral argument in support of and in opposition to the appeal. For the reasons stated in the accompanying opinion, the Commission has determined to deny the respondent's appeal. Accordingly,

It is ordered. That the initial decision of the Administrative Law Judge be adopted as Findings of Fact and Conclusions of Law except to the extent inconsistent with the accompanying opinion. Other Findings of Fact and Conclusions of Law of the Commission are contained in the accompanying opinion.

I

It is further ordered. That NEMRB, its successors and assigns, and its officers, agents, representatives, directors and employees directly or through any corporation, subsidiary, division or other device shall forthwith cease and desist from:

1. Entering into, adhering to, or maintaining, directly or indirectly, any contract, agreement, understanding, plan, program, combination or conspiracy to fix, stabilize, raise, maintain or otherwise interfere or tamper with the rates charged by carriers that compete for the intrastate transportation of property or related services, goods or equipment within any of the states in which NEMRB operates.

2. Knowingly preparing, developing, disseminating, or filing a proposed or existing tariff provision that contains collective rates for the intrastate transportation of property or other related services, goods, or equipment.

3. Providing information to any carrier about rate changes ordered by any other carrier employing the publishing services of the respondent prior to the time at which such rate change becomes a matter of public record.

4. Inviting, coordinating, or providing a forum for (including by publication of an informational bulletin) any discussion or agreement between or among competing carriers concerning intrastate rates charged or proposed to be charged by carriers for the intrastate transportation of property or related services, goods or equipment.

5. Suggesting, urging, encouraging, persuading, or influencing in any way members to charge, file, or adhere to any existing or proposed tariff provision that affects rates, or otherwise to charge or refrain from charging any particular price for any services rendered or goods or equipment provided.

6. Agreeing with any carrier to institute automatic changes to rates on file for that carrier.

Provided, however, that except as to the states of New Hampshire and Massachusetts, nothing in this order shall prohibit NEMRB from jointly setting or adhering to rates charged for intrastate transportation of property in any state where such joint activity is engaged in pursuant to a policy, clearly articulated and affirmatively expressed by the state legislature, to displace competition with respect to those prices *and* where such joint activity is actively supervised by a state regulatory body.

II

It is further ordered That NEMRB shall, within six (6) months after service upon it of this order:

1. Take such action as may be necessary to effectuate cancellation and withdrawal of all tariffs and any supplements thereto on file with any state or commonwealth that it was involved in preparing, developing, or filing that establish rates for transportation of property or related services, goods or equipment by common carriers within such state or commonwealth.

2. Terminate all previously executed powers of attorney and rate and tariff service agreements, between it and any carrier utilizing its services, authorizing the publication and/or filing of intrastate collective rates within any state or commonwealth.

Provided, however, that except as to the states of New Hampshire and Massachusetts, nothing in this order shall require NEMRB to cancel and withdraw tariff filings, powers of attorney, or rate and tariff service agreements in any state where joint setting of rates charged for intrastate transportation of property is engaged in pursuant to a policy, clearly articulated and affirmatively expressed by the state legislature, to displace competition with respect to those prices *and* where such joint activity is actively supervised by a state regulatory body.

III

It is further ordered That NEMRB shall within thirty (30) days after service upon it of this Order, mail or delivery a copy of this Order, under covere of the letter attached hereto as "Appendix," to each current member, and for a period of three (3) years from the date of service of this Order, to each new member within ten (10) days after the member's acceptance by NEMRB.

IV

It is further ordered That NEMRB notify the Commission at least thirty (30) days prior to any proposed change in the respondent, such as a dissolution, assignment or sale resulting in the emergence of a successor corporation, or any other proposed change in the corporation which may affect compliance obligations arising out of the Order.

V

It is further ordered That NEMRB shall file a written report within six (6) months of the date of service of this Order, and annually on the anniversary date of the original report for each of the five years thereafter, and at such other times as the Commission may require by written notice to respondent, setting forth in detail the manner and form in which it has complied with this Order.

By the Commission, Commissioner Azcuenaga concurring in part and dissenting in part, and Commission Machol not participating.[2]

Donald S. Clark,
Secretary.

[FR Doc. 89–29960 Filed 12–26–89; 8:45 am]
BILLING CODE 6750–01–M

[1] Copies of the Complaint, Initial Decision, Opinion of the Commission, Statements, etc. are available from the Comission's Public Reference Branch, H–130, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

[2] Prior to leaving the Commission, former Chairman Oliver registered his vote in the affirmative for the Final Order and the Opinion of the Commission in this matter. Chairman Steiger therefore did not register a vote in this matter.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Office of the Assistant Secretary for Health; Privacy Act of 1974; Addition of Routine Use to an Existing System of Records

AGENCY: Public Health Service, HHS.

ACTION: Notice of addition of new routine use to an existing system of records.

SUMMARY: The Public Health Service (PHS) is publishing notice of our intent to add a new routine use for the disclosure of information from the following Privacy Act system of records: 09–15–0044, "Health Education Assistance Loan Program (HEAL), Loan Control Master File, HHS/HRSA/BHPr."

DATE: PHS invites public comments on the new routine use on or before January 28, 1990. This routine use will become effective without further notice 30 days after the date of publication unless we receive comments which would result in a contrary determination.

ADDRESS: Please address comments to the HRSA Privacy Act Coordinator, Department of Health and Human Services, Parklawn Building, room 14A–20, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–3780. This is not a toll-free number.

FOR FURTHER INFORMATION CONTACT: Chief, HEAL Branch/Division of Student Assistance, BHPr/HRSA, room 8–48, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–1173. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: HRSA maintains system of records 09–15–0044, "Health Education Assistance Loan Program (HEAL), Loan Control Master File, HHS/HRSA/BHPr", to (1) identify students participating in the HEAL Program; (2) determine eligibility of loan applicants and to compute insurance premiums for Federal insurance; (3) monitor the loan status of HEAL recipients, which includes the collection of overdue debts owed under the HEAL Program; and (4) compile and generate managerial and statistical reports.

HRSA is proposing to add a new routine use to permit disclosures of the complete loan file of individuals who have defaulted on their HEAL loans to qualified potential and actual purchasers of defaulted HEAL loan accounts. The purpose of the disclosure is to allow potential loan purchasers to assess the value of the HEAL defaulted loan portfolio to facilitate the sale of these loans as authorized under Public Law 100–607 enacted November 4, 1988, and to allow actual loan purchasers to collect the defaulted HEAL loans.

This routine use is compatible with the purpose for which the records were collected.

Dated: December 18, 1989.

Wilfred J. Forbush,
Deputy Assistant Secretary for Health Operations and Director, Office of Management.

09–15–0044

SYSTEM NAME:

Health Education Assistance Loan Program (HEAL) Loan Control Master File, HHS/HRSA/BHPr.

A new routine use, number 15, is added as follows:

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

* * * * *

15. HRSA may disclose the complete loan file of defaulted HEAL recipients to potential purchasers of HEAL loans to enable them to value and price the loans, and to actual purchasers to enable them to collect the defaulted loans. The purpose of this disclosure will be to facilitate the sale and collection of defaulted HEAL loans. Potential purchasers are required to maintain Privacy Act safeguards with respect to the records.

* * * * *

[FR Doc. 89–29961 Filed 12–26–89; 8:45 am]
BILLING CODE 4160–15–M

National Institututes of Health

Privacy Act of 1974; New System of Records

AGENCY: Public Health Service, HHS.

ACTION: Notification of a new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act, the Public Health Service (PHS) is publishing a notice of a new system of records, "United States Renal Data System (USRDS), HHS/NIH/NIDDK." We are also proposing routine uses for this new system.

DATES: PHS invities interested parties to submit comments on the proposed routine uses on or before January 28, 1990. PHS has sent a report of a New System to the Congress and to the Office of Management and Budget (OMB) on December 13, 1989. The routine uses will be effective 30 days after the date of publication unless PHS receives comments which would result in a contrary determination.

ADDRESS: Please submit comments to: Privacy Act Officer, National Institutes of Health, Room 2B03, Building 31, 9000 Rockville Pike, Bethesda Maryland 20892 (301) 496–2832.

Comments received will be available for inspection at this same address from 8:30 a.m. to 4 p.m., Monday through Friday

FOR FURTHER INFORMATION CONTACT: Epidemiology Program Director, Division of Kidney, Urologic and Hematologic Diseases, National Institute of Diabetes and Digestive and Kidney Diseases, 5333 Westbard Avenue, Westwood Building, Room 621, Bethesda, Maryland 20892 (301) 496 7571.

(The numbers listed above are not toll free).

SUPPLEMENTARY INFORMATION: The National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK) proposes to establish a new system of records consisting of health and medical record data, fiscal information and other demographic characteristics of patients and health care providers. The majority of data provided to the system of records will come from the end stage renal disease program of the Health Care Financing Administration (HCFA). Additional data will come from other HCFA Medicare patient records, the National Death Index, and other sources of non-Medicare ESRD patient records such as the NIH Continuous Ambulatory Peritoneal Dialysis (CAPD) Registry, United Network for Organ Sharing (UNOS) transplant patients, Veteran's Administration, and the Indian Health Service, etc. This comprehensive renal disease system of records is inteded to (1) provide the biostatistical, data management and analytical expertise necessary to characterize th total renal patient population, and describe the distribution of patients by sociodemographic variables across treatment modalities; (2) report on the incidence, prevalence, and mortality rates of renal disease by primary diagnosis; (3) develope and analyze aggregate data on the effect of various modalities of treatment by disease and patient group categories; (4) identify problems and opportunities for more focused investigations of renal research issues currently unaddressed by the consolidated data system; and (5) share data with other Public Health Service (PHS) agencies and HCFA for their use in research analysis and program administration.

Patients' Social Security and HCFA beneficiary identification numbers will

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be provided to the System. However, NIDDK will not use records in this system to make any determination concerning rights, benefits, or privileges of the individuals.

The records in this system wil be maintained in a secure manner compatible with their content and use. Access will be given only to authorized contractor staff whose official duties require access for purposes of carrying out the contract. Computerized records will be maintained in accordance with Part 6, "ADP System Security," of the HHS Information Resource Management Manual and Chapter 45–13, "Safeguarding Records Contained in System of Records" of the HHS General Administrative Manual.

The first routine use proposed for this system allows disclosure to the Department of Justice or a court in the event of litigation. The second routine use, permitting disclosure to a congressional office, is proposed to allow subject individuals to obtain assistance from their representatives in Congress, should they so desire. The third routine use in proposed to allow contractors to accomplish logistical work related to the projects. The fourth routine use is for the conduct of research.

This system notice is written in the present, rather than the future tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after it becomes effective.

Dated: December 15, 1989.

Wilford J. Forbush,

Deputy Assistant Secretary for Health Operations and Director, Office of Management and Budget.

09–25–0160

SYSTEM NAME:

United States Renal Data System (USRDS), HHS/NIH/NIDDK.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Records are located at contractor operated coordinating center. Write to the System manager at address below for address of current location.

U.S. Renal Data System, Coordinating Center (CC), 2100 M Street, NW, Suite 400, Washington, D.C. 20037.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons with end-stage renal disease (ESRD), providers of ESRD services.

CATEGORIES OF RECORDS IN THE SYSTEM:

Health and medical record data; fiscal information; patient names, social security number, Health Care Financing Administration (HCFA) beneficiary ID, patient demographic, epidemiologic and survival characteristics; physician provider characteristics; facility provider characteristics.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 USC 241a, 289c, as last amended by Pub. L. 100–607, November 4, 1988 under the Health Omnibus Programs Extension of 1988.

PURPOSE(S):

(1) To design and implement a consolidated renal disease system that will provide the biostatistical, data management and analytical expertise necessary to characterize the total renal patient population and describe the distribution of patients by sociodemographic variables across treatment modalities.

(2) To report on the incidence, prevalence, and mortality rates of renal disease by primary diagnosis.

(3) To identify the modalities of treatment best suited to individual patients. To compare the various treatment alternatives to examine the prevention and progression of renal disease by morbidity, mortality, and quality of life criteria.

(4) To identify problems and opportunities for more focused investigations of renal research issues currently unaddressed by the consolidated data system.

(5) To share data with other PHS agencies and HCFA for their use in research analysis and program administration.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure from the record of an individual may be made to:

(1) The Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her official capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

(2) A Congressional office from the record of an individual in response to a written inquiry from the Congressional office made at the written request of the individual.

(3) To the HHS contractor for the purpose of collating, analyzing, aggregating or otherwise refining or processing records in this system for developing, modifying and/or manipulating ADP software. Data would also be disclosed to contractors incidental to consultation, programming, operation, user assistance, or maintenance for an ADP or telecommunications systems containing or supporting records in the system. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

(4) A record may be disclosed for a research purpose, when the Department:

(A) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained;

(B) Has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;

(C) Has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except—(a) in emergency circumstances affecting the health or safety of any individual, (b) for use in another research project, under these same conditions, and with written authorization of the Department, (c) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (d) when required by law;

(D) Has secured a written statement attesting to the recipients understanding of, and willingness to abide by these provisions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic medium; selected hard copy backup.

RETRIEVABILITY:

Information will be retrieved by patient identification number such as social security number and HCFA beneficiary ID. Individual patient data provided only as noted above. Statistical data provided as noted above and to the general public as part of periodic published reports.

SAFEGUARDS:

A variety of safeguards are implemented for the various sets of records in this system according to the sensitivity of the records:

Authorized users: Regular access is limited to National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), HCFA and contract personnel who have a need for the data in performance of their duties as determined by the system manager.

Physical security: Records are stored in areas where access is restricted to areas where data are maintained and processed; data tapes and hard copy data are stored in locked files in secured areas; terminal access controlled by user ID and keywords; offsite data backups in two locations—a remote area of the same building and a separate building; and fire protection secured by Halon fire extinguisher system and fire alarm system present in the computer room.

Procedural safeguards: Contractors who maintain records in this system are instructed to make no further disclosure of the records except as authorized by the system manager and permitted by the Privacy Act. Privacy Act requirements are specifically included in contracts and in agreements with grantees or collaborators participating in research activities supported by this system. HHS project directors, contract officers, and project officers oversee compliance with these requirements.

Implementation Guidelines: DHHS Chapter 45–13 and supplementary Chapter PHS.hf: 45–13 of the General Administrative Manual, and Part 6, "ADP System Security" in the HHS Information Resource Management Manual.

RETENTION AND DISPOSAL:

Records will be retained according to Section 3000–G–3(b) of the NIH Record Control Schedule which allows the principal investigator or the project leader to determine that the record is no longer useful for research purposes.

SYSTEM MANAGER AND ADDRESS:

Epidemiology Program Director, DKUHD, National Institute of Diabetes and Digestive and Kidney Diseases, Division of Kidney, Urologic and Hematologic Diseases, 5333 Westbard Avenue, Westwood Building, Room 621, Bethesda, Maryland 20892.

NOTIFICATION PROCEDURES:

To determine if a record exists, write to the System Manager at the address noted above. Provide notarized signature as proof of identity. The request should include as much of the following information as possible: (a) Full name; (b) title of project individual participated in; and (c) approximate dates of participation.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requestors should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURES:

Contact the System Manager at the address specified under Notification Procedures above and reasonably identify the record, specify the information being contested, and state the corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Information contained in this system is from the Health Care Financing Administration—Medicare and ESRD patient program records, Veterans Administration ESRD patient records, the Census, NIH Continuous Ambulatory Peritoneal Dialysis (CAPD) Registry, Indian Health Service ESRD patient records, United Network of Organ Sharing (UNOS) transplant patient records and the National Death Index.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 89–29900 Filed 12–26–89; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT 744123

Applicant: Memphis Zoo, Memphis, TN.

The applicant requests a permit to import one male and one female captive born black lemur from Metro Toronto Zoo, Toronto, Canada, for enhancement of propagation of the species and display.

PRT 744878

Applicant: Institute for Wildlife Studies, Arcata, CA.

The applicant requests a permit to collect eggs from bald eagle (*Haliaeetus leucocephalus*) nests on Santa Catalina Island, California, replace such eggs with artificial eggs, transport the eggs to an artificial incubation facility, hatch out the eggs and release the resulting chicks on Santa Catalina Island. Applicant will attach leg bands markers and telemetry transmitters and will draw blood for pesticide and lead analysis. If artificial incubation of collected eggs is unsuccessful, applicant will capture two chicks in northern California for release on Santa Catalina Island. Addled eggs and eggshells will be salvaged for analysis. Any eagles found dead will be salvaged and any injured bird will be placed in approved facility. All activities are to be conducted as part of the ongoing Santa Catalina Island bald eagle reintroduction program.

PRT 744503

Applicant: Jeff C. Neal, Tulsa, OK.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive-herd maintained by Mr. Herman Kock, Deelfontein, Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT 807512

Applicant: Howard Shellhammer, Department of Biological Sciences, San Jose State University, San Jose, CA.

The applicant requests a permit to live trap, ear tag, and release of salt marsh harvest mice (*Reithrodontomys raviventris*) in the marshes of San Francisco Bay and associated bays for the purpose of scientific research.

PRT 745025

Applicant: San Diego Zoo, San Diego, CA.

The applicant requests a permit to import two wild caught male Fiji crested iguana's (*Brachylophus vitiensis*) from the Fiji Islands, for the purpose of captive propagation.

PRT 745027

Applicant: San Diego Zoo, San Diego, CA.

The applicant requests a permit to import two wild caught male Fiji crested iguana's (*Brachylophus vitiensis*) from the Fiji Islands, for the purpose of captive propagation.

PRT 744127

Applicant: Dallas Zoo, Dallas, TX.

The applicant requests a permit to import one male and one female captive born black lemur from Metro Toronto Zoo, Toronto, Canada, for enhancement of propagation of the species and display.

PRT 744877

Applicant: Institute for Wildlife Studies, Arcata, CA.

The applicant requests a permit to collect eggs from bald eagle (*Haliaeetus leucocephalus*) nests on Santa Catalina Island, California, replace such eggs with artificial eggs, transport the eggs to an artificial incubation facility, hatch out the eggs and release the resulting chicks on Santa Catalina Island. Applicant will attach leg bands markers and telemetry transmitters and will draw blood for pesticide and lead analysis. If artificial incubation of collected eggs is unsuccessful, applicant will capture two chicks in northern California for release on Santa Catalina Island. Addled eggs and eggshells will be salvaged for analysis. Any eagles found dead will be salvaged and any injured bird will be placed in approved facility. All activities are to be conducted as part of the ongoing Santa Catalina Island bald eagle reintroduction program.

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The applicant requests a permit to import two wild caught male Fiji crested iguana's (*Brachylophus vitiensis*) from the Fiji Islands, for the purpose of captive propagation.

NORTH DAKOTA

Cass County

Control Project, Colorado. The primary purpose of the Unit is to reduce the

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

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PRT 745027

Applicant: San Diego Zoo, San Diego, CA.

The applicant requests a permit to import two captive-hatched female Fiji crested iguana's (*Brachylophus vitiensis*) from the Taronga Zoo, Sydney, Australia, for the purpose of captive propagation.

PRT 744441

Applicant: Leroy R. McClenaghan, San Diego, CA.

The applicant requests a permit to trap, weigh, measure, ear-tag, blood sample and release wild specimens of Stephans' kangaroo rat (*Dipodomys stephansii*) at several sites in Riverside County, California, to determine where the species occurs and approximately how many exists, whether the population is expanding and the genetic variability of several groups within the population, for the purpose of scientific research. The information will be used to develop a habitat conservation plan.

PRT 744404

Applicant: Bio-Research Institute, Grand Terrace, CA.

The applicant requests a permit to trap, weigh, measure and release wild Stephans' kangaroo rats (*Dipodomys stephansii*) at several sites in Riverside County, California, to determine where the species occurs at certain sites and if so, how many, for the purpose of scientific research. The information will be used to develop a habitat conservation plan and by the Service.

PRT 745324

Applicant: U.S. Fish and Wildlife Service, Puerto Rico Research Station, Palmer, Puerto Rico.

The applicant requests a permit to export blood samples and formalin-fixed tissue samples taken from captive-held Puerto Rican Amazon's (*Amazona vittata*) for the purpose of DNA fingerprinting analysis.

PRT 745033

Applicant: Scientific Research & Consulting Service, Dr. Stephen B. Ruth, Marina, CA.

The applicant requests a permit to take (i.e. capture by drift fencing & can trapping, use of nets for larval sampling, captive-raise three larvae from any new locality for identification purposes and return to capture site) the Santa Cruz long-toad salamander (*Ambystoma macrodactylum croceum*) in various locations through-out South Santa Cruz County and North Monterey County, California, for the purpose of enhancement of propagation or survival of the species. If an outbreak of parasitic infection occurs, take and sacrifice 25 Santa Cruz long-toad salamanders for scientific research purposes.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 432, 4401 N. Fairfax Dr., Arlington, VA 22203, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 3507, Arlington, Virginia 22203–3507.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Date: December 21, 1989.

Karen Willson,

Acting Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 89–30005 Filed 12–26–89; 8:45 am]

BILLING CODE 4310–55–M

United States Fish and Wildlife Service

Klamath Fishery Management Council Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Klamath Fishery Management Council, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss et seq.). The meeting is open to the public.

DATES: The Klamath Fishery Management Council will meet from 9:00 a.m. to 4:00 p.m. Thursday, January 4, 1990; from 9:00 a.m. to 4:00 p.m. on Friday, January 5, 1990; and from 8:00 a.m. to 12:00 Noon on Saturday, January 6, 1990.

Place: The meeting will be held at the Southwest Fisheries Center, 8604 La Jolla Shores Drive, La Jolla, California.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, P.O. Box 1006 (1030 South Main), Yreka, California 96097–1006, telephone (916) 842–5763.

SUPPLEMENTARY INFORMATION: For background information on the Task Force, please refer to the notice of their initial meeting that appeared in the Federal Register on July 6, 1987 (52 FR 25639).

The Council will continue development of the long-range plan and policy for the management of in-river and ocean harvesting affecting an adromous fish stocks of the Klamath River basin. This task is expected to require the entire scheduled meeting time, except for a public comment period during the afternoon of January 5th.

Dated: December 12, 1989.

Marvin L. Plenart,

Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 89–29958 Filed 12–26–89; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 16, 1989. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by January 11, 1990.

Carol D. Shull,

Chief of Registration, National Register.

FLORIDA

Alachua County

Melrose Historic District, Roughly bounded by Seminole Ridge Rd., Grove St., South St., Quail St., and Melrose Bay, Melrose, 89002305

Yonge, P.K., Laboratory School, Old, SW. 13th St. on University of Florida campus, Gainesville, 89002302

GEORGIA

Hall County

Head's Mill, Whitehall Rd., E of jct. with US 23, Lula vicinity, 89002301

IOWA

Franklin County

Reeve Electric Association Plant, RR 1, SW of Hampton, Hampton vicinity, 89002307

MASSACHUSETTS

Middlesex County

Saint John's Episcopal Church, Maynard Rd. and Church St., Framingham, 89002300

MICHIGAN

Branch County

Fisk, Abram C., House, 867 E. Chicago Rd., Coldwater, 89002309

NORTH DAKOTA

Cass County

Watts Free Library (Philanthropically Established Libraries in North Dakota MPS), 101 3rd St. N., Leonard, 89002304

Richland County

Leach Public Library (Philanthropically Established Libraries in North Dakota MPS), 417 Second Ave. N., Wahpeton, 89002303

WASHINGTON

King County

Redelsheimer—Ostrander House, 200 40th Ave. E., Seattle, 89002298

Kitsap County

Old-Man-House Site (45KP2), Old Man House State Park, Suquamish vicinity, 89002299

The fifteen-day comment period has been waived for the following property:

SOUTH CAROLINA

Richland County

Greyhound Bus Depot, Columbia MRA, 1200 Blanding St., Columbia 83005363

Proposed moves are being considered for the following properties:

CONNECTICUT

Hartford County

Gillette, Francis, House, 511 Bloomfield Ave., Bloomfield 82004361

FLORIDA

Lake County

Mote—Morris House, 1021 N. Main St., Leesburg 74000647

NORTH CAROLINA

Dare County

Cape Hatteras Light Station, SE of Buxton off NC 12 in Cape Hatteras National Seashore, Buxton vicinity 78000286

[Fr Doc. 89–29946 Filed 12–26–89; 8:45 am]

BILLING CODE 4310–70–M

Bureau of Reclamation

Paradox Valley Unit, Colorado River Basin Salinity Control Project, Colorado

AGENCY: Bureau of Reclamation (Reclamation).

ACTION: Notice of intent to prepare a draft supplement to the final environmental statement (INT–FES 79–14).

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as amended, the Bureau of Reclamation intends to prepare a draft supplement to the Final Environmental Statement (DSES) (FES 79–14) for the Paradox Valley Unit (Unit), Colorado River Basin Salinity Control Project, Colorado. The primary purpose of the Unit is to reduce the amount of salt entering the Colorado River drainage.

FOR FURTHER INFORMATION CONTACT: Mr. Stan Powers, U.S. Bureau of Reclamation, 835 Second Avenue, Durango, Colorado 81301, telephone: (303) 385–6500.

Additional Information: The draft supplement will cover changes in the plans for the Unit resulting from investigations and tests conducted after the FES was prepared in 1979. Additional testing indicates that the goal of preventing 180,000 tons of salt from entering the Dolores River annually can be achieved with a reduced brine pumpage rate of 1.5 cubic feet per second (ft^3/s) instead of the rate of 5.0 ft^3/s presented in the FES. As a result of the reduced pumpage rate, the brine disposal method proposed in the FES was reevaluated. Injection of the brine in deep wells now appears to be more feasible than the evaporation plan recommended in the FES. The deep-well injection alternative consists of two injection wells, two surface injection facilities, a brine treatment facility, connecting pipelines, access roads, and powerlines.

No formal scoping meetings are planned for the draft supplement since informal scoping has been taking place since 1981 through public meetings, newsletters, news releases, and state and Federal government agency coordination.

In April 1986, a draft Environmental Assessment on the Deep Well Injection Testing Program for the Unit was distributed to the public for review and comment. After resulting comments were incorporated, a Finding of No Significant Impact was signed in July 1986. Since then, a public meeting was held in the Unit area, several news articles and newsletter have been released, and information on the proposed changes were provided to the general public.

Interested public entities and individuals may obtain information on the proposed changes to the Unit plans and provide input to the draft supplement to the FES by contacting Mr. Stan Powers at the address above. The draft supplement is expected to be completed and available for review and comment in the fall of 1990.

Dated: December 19, 1989.

Joe A. Hall,

Deputy Commissioner.

[FR Doc. 89–29965 Filed 12–26–89; 8:45 am]

BILLING CODE 4310–09–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Public Information Collection Requirements Submitted to OMB for Review

The Agency for International Development (A.I.D.) submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry no later than ten days after publication. Comments may also be addressed to, and copies of the submissions obtained from the Reports Management Officer, John H. Elgin, (703) 875–1608, IRM/PE, Room 1100B, SA–14, Washington, DC 20523.

Date Submitted: December 19, 1989.

Submitting Agency: Agency for International Development.

OMB Number: 0412–0518.

Type of Submission: Renewal.

Title: Matching Grant Schedule.

Purpose: Foreign Assistance legislation encourages A.I.D. to channel significant portions of economic development aid to developing countries through private voluntary agencies (PVOs). Through a competitive selection process, applications for funding of PVOs' international development programs on a cost-shared basis are considered each year. The Matching Grant Schedule invites interested PVOs to apply and provides the schedule for applications for the next selection cycle. Guidelines which state the selection criteria and format for grant applications are attached to the invitation.

Reviewer: Donald Arbuckle (202) 395–7340, Office of Management and Budget, Room 3201, New Executive Office Building, Washington, DC 20503.

Dated: November 16,1989.

Wayne H. Van Vechten,

Planning and Evaluation Division.

[FR Doc. 89–30002 Filed 12–26–89; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF JUSTICE

Information Collections Under Review

December 18, 1989.

The Office of Management and Budget (OMB) has been sent the following

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collection of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information: (1) the title of the form/collection; (2) the agency form number, if any, and the applicable component of the Department sponsoring the collection; (3) how often the form must be filled out or the information is collected; (4) who will be asked or required to respond, as well as a brief abstract; (5) an estimate of the total number of respondents and the amount of time estimated for an average respondent to respond; (6) an estimate of the total public burden (in hours) associated with the collection; and, (7) an indication as to whether Section 3504(h) of Public Law 96-511 applies. Comments and/or suggestions regarding the item(s) contained in this notice, especially those regarding the estimated public burden and the associated response time, should be directed to the OMB reviewer, Mr. Edward H. Clarke, on (202) 395-7340 and to the Department of Justice's Clearance Officer, Mr. Larry E. Miesse, on (202) 633-4312. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Larry E. Miesse, DOJ Clearance Oficer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

Reinstatement of a Previously Approved Collection for Which Approval Has Expired

(1) National Needs Assessment Survey.
(2) No form number. National Institute of Justice, Office of Justice Programs.
(3) Every three years.
(4) State or local governments. The National Needs Assessment Survey is the vehicle by which the National Institute of Justice collects generalizable information on the needs of, and the problems of criminal justice practitioners, thus enabling NIJ to meet its Congressional mandate to conduct research on current and future problems of State and local criminal justice agencies.
(5) 211 estimated respondents at .417 hours each.
(6) 880 estimated annual burden hours.
(7) Not applicable under 3504(h).

(1) Request to enforce affidavit of financial support and intent to petition for custody for public law 97-359 Amerasian.
(2) I-363. Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. This form is used to determine whether an affidavit of financial support and intent to petition for legal custody, form I-361, requires enforcement.
(5) 50 estimated annual responses at .5 hours per response.
(6) 25 estimated annual public burden hours.
(7) Not applicable under 3504(h).

(1) Affidavit of financial support and intent to petition for legal custody for public law 97-359 Amerasian.
(2) I-361. Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. Used in support of INS Form I-360 to assure financial support for Public Law 97-359 Amerasian.
(5) 100 estimated annual respondents at .5 hours per response.
(6) 50 estimated annual public burden hours.
(7) Not applicable under 3504(h).

(1) Petition to classify public law 97-359 Amerasian as the child, son, or daughter of a U.S. Citizen.
(2) I-360. Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. Data is used by the INS to determine immigrant eligibility of Public Law 97-359 Amerasians and sponsorship eligibility of petitioner.
(5) 100 estimated annual respondents at 1 hour per response.
(6) 100 estimated annual burden hours.
(7) Not applicable under 3504(h).

Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection

(1) Application for permit to export controlled substances.
(2) DEA-161. Drug Enforcement Administration.
(3) On occasion.
(4) Businesses or other for-profit. 21 CFR 1312.22 requires individuals who export controlled substances in Schedules I & II to obtain a permit from the Drug Enforcement Administration. Information is used to issue export permits and exercise control over exportation of controlled substances as well as to compile data for submission to the United Nations for treaty requirements.
(5) 67 respondents, reporting approximately 13 times each year for 871 estimated annual responses at .247 hours per response.
(6) 215 estimated annual burden hours.
(7) Not applicable under 3504(h)

(1) DEA/USMS/USSS drugs of abuse chain of custody form.
(2) No form number. Drug Enforcement Administration.
(3) On occasion.
(4) Individuals or households. Information is needed to document and control the chain of custody for drug testing an individual selected for a job vacancy prior to actual employment under E.O. 12564, in order to maintain a drug-free Federal workplace.
(5) 1,200 estimated annual respondents at .083 hours per response.
(6) 100 estimated annual public burden hours.
(7) Not applicable under 3504(h).

(1) Application for waiver of the foreign residence requirement of section 212(e) of the immigration and nationality act, as amended.
(2) I-612. Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. Certain aliens admitted into the United States as exchange visitors are subject to the foreign residence requirements of Section 212(e) of the Immigration and Nationality Act. This form provides for a waiver of the foreign residence requirement in certain instances.
(5) 1,300 estimated annual responses at .332 hours per response.
(6) 432 estimated annual burden hours.
(7) Not applicable under 3504(h).

(1) Application for a new naturalization or citizenship paper.
(2) N-565. Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. Form is used by a person who has been issued a declaration of intention, naturalization, citizenship, or repatriation certificate which has been changed after issuance by marriage or court order, to voluntarily apply for a new certificate reflecting the name change.
(5) 16,000 estimated annual responses at .25 hours per response.
(6) 4,000 estimated annual burden hours.
(7) Not applicable under 3504(h).

(1) Request for determination that prospective immigrant is an investor.

(2) I-526. Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. Form is used to determine if a prospective immigrant is an investor where he will be the principal manager and employ persons who are United States citizens or lawful permanent residents.
(5) 29 estimated annual responses at .5 hours per response.
(6) 15 estimated annual burden hours.
(7) Not applicable under 3504(h).

(1) Request for information selective service files.
(2) N-422. Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. Form is used to obtain information from Selective Service to determine eligibility for naturalization.
(5) 2,000 estimated annual responses at .166 hours per response.
(6) 332 estimated annual burden hours.
(7) Not applicable under 3504(h).

(1) Passenger list—crew list.
(2) I-418. Immigration and Naturalization Service.
(3) On occasion.
(4) Businesses or other for-profit. Form is prescribed by the Attorney General for the INS (Section 231, Immigration and Nationality Act) for use by masters, owners or agents of vessels to list alien and citizen passengers arriving or departing, as well as a record of resident aliens and citizens leaving permanently for a foreign country.
(5) 95,000 estimated annual responses at one hour per response.
(6) 95,000 estimated annual burden hours.
(7) Not applicable under 3504(h).

(1) Request for cancellation of public charge bond.
(2) I-356. Immigration and Naturalization Service.
(3) On occasion.
(4) Individual or household. Information is used to determine if a bond posted on behalf of an alien in the United States should be cancelled.
(5) 2,000 estimated annual responses at .25 hours per response.
(6) 500 estimated annual burden hours.
(7) Not applicable under 3504(h).

(1) Application for Removal.
(2) I-243. Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. Information is used to determine eligibility of an applicant under Section 250 of the Immigration and Nationality Act which provides that an alien in the United States who has fallen into distress or needs public aid may apply for removal from the United States.
(5) 22 estimated annual responses at .166 hour per response.
(6) 4 estimated annual burden hours.
(7) Not applicable under 3504(h).

(1) Application for Advance Permission to enter as nonimmigrant.
(2) I-192. Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. Form is used by aliens seeking a waiver of inadmissibility for entry into the United States as a nonimmigrant under section 212(d)(3) of the Immigration and Nationality Act.
(5) 5,000 estimated annual responses at .25 hour per response.
(6) 1,250 estimated annual burden hours.
(7) Not applicable under 3504(h).

(1) Application by Lawful Permanent Resident for new alien registration card.
(2) I-90. Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. Form is used to determine eligibility of any lawful permanent resident wishing to obtain an alien registration card because no card has yet been issued or the original issued card has been lost, stolen, mutilated, or the information on the original must be updated or corrected.
(5) 200,000 estimated annual responses at .5 hour per response.
(6) 100,000 estimated annual burden hours.
(7) Not applicable under 3504(h).

(1) Request for Verification of Naturalization.
(2) N-25. Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. Form is used to obtain information from the records of a clerk of the court which may be needed by a person applying for benefits under various provisions of the Immigration and Nationality Act.
(5) 1,000 estimated annual responses at .25 hour per response.
(6) 250 estimated annual burden hours.
(7) Not applicable under 3504(h).

(1) Petition to classify nonimmigrant as temporary worker or trainee.
(2) I-129B. Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. The form is used by the INS to determine the merit and ability of the petitioner (employer/trainee) and that the nonimmigrant temporary worker/trainee is as defined in the law and regulations (8 CFR 214).
(5) 70,000 estimated annual responses at one hour per response.
(6) 70,000 estimated annual burden hours.
(7) Not applicable under 3504(h).

(1) Application by Refugee for waiver of grounds of excludability.
(2) I-602. Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. Form is used by the INS to determine the eligibility for waivers and to report to the Congress the reason for granting such waivers.
(5) 2,500 estimated annual responses at .25 hour per response.
(6) 625 estimated annual burden hours.
(7) Not applicable under 3504(h).

Larry E. Miesse,
Department Clearance Officer, U.S. Department of Justice.

[FR Doc. 89-30003 Filed 12-26-89; 8:45 am]
BILLING CODE 4410-18-M

Office of Justice Programs

Bureau of Justice Assistance; State Reimbursement Program for Incarcerated Mariel-Cubans

AGENCY: Bureau of Justice Assistance, Office of Justice Programs, Justice.

ACTION: Notice of issuance of solicitation for applications to reimburse States for expenses incurred by the incarceration of Mariel Cubans.

SUMMARY: The Bureau of Justice Assistance (BJA) is administering a program to reimburse states for expenses incurred by the incarceration of certain Mariel Cubans in State facilities.

ADDRESS: Bureau of Justice Assistance, 633 Indiana Avenue, NW., Washington, DC 20531

FOR FURTHER INFORMATION CONTACT: Louise Lucas, (202) 724-8374. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: The Bureau of Justice Assistance (BJA) is publishing a notice of issuance of solicitation to implement a State Reimbursement Program for Incarcerated Mariel Cubans. The Department of Justice Appropriations Act, 1990 (Title II of Pub. Law 101-162; H.R. 2991-15) allocates up to $5 million for the purpose of making grants to States for their expenses by reason of

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Mariel Cubans having to be incarcerated in State facilities for terms requiring incarceration for the full period October 1, 1989, through September 30, 1990, following their conviction of a felony committed after having been paroled into the United States by the Attorney General.

I. General Provisions

Statutory authority: The statutory authority is the Department of Justice Appropriations Act, 1990, Title II of Public Law 101-162 (H.R. 2991-15).

Submission date: The submission date for State applications is no later than February 1, 1990.

Eligible applicants: All States are eligible to apply for and receive grants. *State* means any State of the United States and includes the District of Columbia and the Commonwealth of Puerto Rico.

Participating States: It is expected that the 36 States that participated last year may participate again this year, specifically, Arkansas, Arizona, California, Colorado, Connecticut, District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Jersey, New Mexico, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, West Virginia and Wisconsin. There is the possibility of a few additional States participating.

II. Allocations and Use of Funds

Fund availability: The Act provides a total of $5 million for the purpose of making grants to States. The total amount of funds awarded will be on the basis that the certified number of incarcerated persons in a State bears to the total certified number of such incarcerated persons. The amount of reimbursement per prisoner, per annum, shall not exceed $12,000.

Fund use: The intent of the public law is to reimburse the States for partial expenses incurred by reason of Mariel Cubans having to be incarcerated in State facilities. A budget or expenditure plan is not required as the award will be solely for reimbursement. No match funds are required.

III. Application Content

(a) All State applicants *must* submit Standard Form 424 (Application for Federal Assistance), and a certified listing of incarcerated Mariel Cuban prisoners. BJA requests that inmates previously verified be separated from newly submitted inmates. For those previously verified, there is no need to resubmit items 13 & 14 below. The certified listing will include information in the following sequence:

(1) Name (last name first)
(2) AKA (also known as)
(3) Alien Identification Number (*e.g.*, A24456789)
(4) Inmate Number
(5) Date of Birth
(6) Incarceration Date
(7) Probable earliest release date
(8) Description of Conviction Offense (the violated Criminal Offense Code No. alone is not acceptable)
(9) Conviction date
(10) Last known address
(11) State facility housing the prisoner
(12) State facility address
(13) I-247 Form—Immigration Detainer Notice (If INS has filed a Detainer on this prisoner, submit a copy)
(14) Fingerprint card

Submission of Mariel Cuban data in an alternative format *must* be approved by the BJA prior to submission of an application. Please contact Louise Lucas, BJA, 202/724-8374.

(b) The certified listing must be signed by the Governor or his or her authorized representatives.

(c) The period of incarceration for reimbursement purposes is October 1, 1989 to September 30, 1990. The computation of funds will be based on an aggregate total of certified prisoners incarcerated for a 12-month period (e.g., if two prisoners are incarcerated for six months during the period, the State will be reimbursed the full amount for one year).

(d) The Act is specific in that the prisoner must have been paroled into the United States by the Attorney General. This occurred during the 1980 influx of Mariel Cubans. This means those Cubans who Entered Without Inspection (EWI), earlier arrivals (pre-boatlift), and/or later arrivals (post-boatlift), cannot be included and, thus, no expenses will be reimbursed.

(e) State law will prevail when a determination is required as to what constitutes a State facility and/or a State prisoner.

IV. Review of State Applications

State applications must be submitted in the form and at the time prescribed.

(a) The application and certified listing will be reviewed by BJA and a cross-check verification of prisoners will be made by the Immigration and Naturalization Service of the U.S. Department of Justice. This review will be accomplished no later than April 1, 1990, and grants will be immediately made to States.

(b) Compliance with Executive Order 12372, "Intergovernmental Review of Federal Programs." This program is covered by Executive Order 12372 and Department of Justice implementing regulations 28 CFR part 30. At the same time applications are submitted to BJA, States must submit grant applications to the State's Single Point of Contact, if there is a Single Point of Contact, and if this program has been selected for coverage by the State process. State processes have 60 days starting from the application deadline to comment on applications. Applicants should contact their state "Single Point of Contact" as soon as possible to alert them to the prospective application and receive instructions regarding the process.

(c) The BJA will notify the applicant in writing of the specific reasons for the disapproval of the application amendment, in whole or in part.

V. Civil Rights Assurances

The applicant State must specifically assure that it will comply, and that subgrantees and contractors will comply, with all applicable Federal non-discrimination laws and regulations, including the following:

(a) Title VI of the Civil Rights Act of 1964;
(b) Section 809(c) of Justice Assistance Act of 1984;
(c) Section 504 of the Rehabilitation Act of 1973, as amended;
(d) Title IX of the Education Amendments of 1972;
(e) The Age Discrimination Act of 1975; and,
(f) The Department of Justice Non-Discrimination Regulations, 28 CFR part 42, subparts C, D, E, and G.

Any application for $500,000 or more shall be accompanied by a copy of the current Equal Employment Opportunity Program of the corrections department in accordance with the provisions of 28 CFR 42.301 *et seq.* State applicants that previously applied for and received funding under this initiative, and had an Office of Justice Programs' approval of their Equal Employment Opportunity Program, need only submit a statistical update of the previously approved program.

Charles P. Smith,
Director, Bureau of Justice Assistance.
[FR Doc. 89-29934 Filed 12-26-89; 8:45 am]
BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New Collection

Bureau of Labor Statistics

Pilot survey of occupational employment and wages

BLS-2877

Form #	Affected public	Respondents	Frequency	Average time per response
073-0	Businesses or other for-profit; Small businesses or organizations.	1,200	Single-time	1 hour and 34 min.
073-1	Businesses or other for-profit; Small businesses or organizations.	784	Single-time	30 min.
073-2	Businesses or other for-profit; Small businesses or organizations.	286	Single-time	30 min.
073-3	Businesses or other for-profit; Small businesses or organizations.	858	Single-time	30 min.
073-7	Businesses or other for-profit; Small businesses or organizations.	1,626	Single-time	30 min.

3,652 total hours

The current OES survey is a Federal/State sample survey of employment by occupation in non-farm establishments. The proposed OES pilot survey will produce data on current occupational wages in addition to employment. This pilot survey is designed to test collection procedures and feasibility and to measure data quality.

Extension

Employment Standards Administration

Overpayment Recovery Questionnaire

1215-0144; OWCP 20

On occasion

Individuals or households

6,500 respondents; 6,500 total hours; 1 hr. per response; 1 form

To determine whether or not an individual is able to pay a claim for recovery of an overpayment. Consideration must be given to the individual's present and potential income, possible concealment or improper transfer of assets, and assets of the individual which may be available in enforced collection procedures.

Signed at Washington, DC, this 21st day of December 1989.

Paul E. Larson,
Departmental Clearance Officer.
[FR Doc. 89-29866 Filed 12-26-89; 8:45 am]
BILLING CODE 4510-24-M

Employment and Training Administration

Job Training Partnership Act: Native American Programs' Advisory Committee; Notice of First Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, and section 401(h)(1) of the Job Training Partnership Act, as amended (29 U.S.C. 1671(h)(1)), notice is hereby given of the first meeting of the Job Training Partnership Act Native American Programs' Advisory Committee. The meeting will be chaired by Mr. Eddie L. Tullis, who has been selected as chairperson of the Committee. Mr. Tullis is the Chairman and Chief Executive Officer of the Poarch Band Tribal Council.

Time and Date: The meeting will begin at 9:00 a.m. on January 17, 1990, and continue until close of business that day; and will reconvene at 9:00 a.m. on January 18, 1990, and adjourn at 12:00 p.m. that day. The final hour of the meeting on January 18 will be reserved for participation and presentations by members of the public.

Place: Rooms S-4215 A, B, and C, Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC.

Status: The meeting will be open to the public.

Matters To Be Considered: The agenda will focus on broad policy concerns including targeting of resources, program linkage and coordination, literacy attainment, long-

term economic self-sufficiency of participants, and performance standards

are available for inspection at that address.

January 26, 1990. Copies of the petition are available for inspection at that

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected

Committee Act and H.R. 1385 as amended.

—Financial Report

Reason for Closing: The proposals being reviewed include information of a

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term economic self-sufficiency of participants, and performance standards objectives.

Contact Person for More Information: Paul A. Mayrand, Director, Office of Special Targeted Programs, Employment and Training Administration, United States Department of Labor, Room N-4614, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: 202-535-0500 (this is not a toll-free number).

Signed at Washington, DC, this 20th day of December, 1989.

Roberts T. Jones,

Assistant Secretary of Labor.

[FR Doc. 89-29987 Filed 12-26-89; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-89-24-M]

Becker Minerals, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Becker Minerals, Inc., P.O. Drawer 848, Cheraw, South Carolina 29520 has filed a petition to modify the application of 30 CFR 56.14102 (brakes for rail equipment) to its Marlboro Mine (I.D. No. 38-00120) located in Marlboro County, South Carolina. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that braking systems on railroad cars and locomotives be maintained in functional condition.

2. In lieu of installing a braking system on railroad cars which are used to cross three secondary roads, petitioner proposes that:

(a) Railroad-type signals with crossing arms would be used at one crossing;

(b) A full-time flagman would be used at the other two crossing; and

(c) A 10 mile per hour speed limit would be posted at each crossing.

3. In support of this request, petitioner states that there has never been any accident using this procedure.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 28, 1990. Copies of the petition are available for inspection at that address.

Dated: 18 December 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-29988 Filed 12-26-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-178-C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1100-1(f)(2) (type and quality of firefighting equipment) to its Humphrey No. 7 Mine (I.D. No. 46-01453) located in Monongalia County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a fire hose installed for use in underground coal mines have a bursting pressure at least 4 times the water pressure.

2. As an alternate method, petitioner proposes the following procedures.

(a) All firefighting nozzles would be modified to prevent shutoff; farthest closure would be a fog pattern. This modification would eliminate shock loads which could be imposed on the hose by nozzle closure;

(b) Delivery pressure would be maintained less than 600 pounds per square inch (psi);

(c) The fire hose utilized would be at least one and one-half inch in diameter;

(d) All fire hose to be deployed as firefighting equipment would be mildew resistant and contain a single polyester jacket with a manufacturers minimum specified burst strength of 750 psi; and

(e) The fire hose would only be used for emergency firefighting purposes;

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 28, 1990. Copies of the petition are available for inspection at that address.

Dated: 18 December 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-29989 Filed 12-26-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-175-C]

Gordon Coal Co., Petition for Modification of Application of Mandatory Safety Standard

Gordon Coal Company, HC 73, Box 415, Barbourville, Kentucky 40906 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Mine No. 7 (I.D. No. 15-14124) located in Knox County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on electric face cutting equipment, continuous mining machines, longwall face equipment and loading machines. The monitor is required to be properly maintained and frequently tested.

2. As an alternate method, petitioner proposes to use handheld continuous oxygen and methane monitors instead of methane monitors on three-wheel tractors as outlined in the petition. In further support of this request, petitioner states that:

(a) No methane has been detected in the mine.

(b) Each three-wheel tractor would be equipped with a hand-held continuous monitoring methane and oxygen detector and all persons would be trained in the use of the detector;

(c) Prior to allowing the coal loading tractor in the face area, a gas test would be performed to determine the methane concentration in the atmosphere. When the elapsed time between trips does not exceed 20 minutes, the air quality would be monitored continuously after each trip. This would provide continuous monitoring of the mine atmosphere for methane to assure the detection of any methane buildup between trips; and

(d) If one percent methane is detected, the operator would manually deenergize the battery tractor immediately. Production would cease and would not resume until the methane level is lower than one percent.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 28, 1990. Copies of the petition are available for inspection at that address.

Dated: 18 December 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-29990 Filed 12-26-89; 8:45 am]

BILLING CODE 4510-43-M

MARTIN LUTHER KING, JR., FEDERAL HOLIDAY COMMISSION

Meeting

AGENCY: The Martin Luther King, Jr., Federal Holiday Commission.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463 as amended, the Martin Luther King, Jr., Federal Holiday Commission announces a forthcoming meeting of the Commission.

DATE: January 8, 1990, 12 Noon to 3:00 p.m.

ADDRESS: The Supreme Court, West Conference Room, One First Street, NE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Madelina Y. Lawson, the Martin Luther King, Jr., Federal Holiday Commission, Washington, DC 20410 (202) 755-1005.

Type of Meeting: Open.

Agenda

Monday, January 8

12:00

—Swearing in of new Commission Members/lunch

—Review of Commission activities for 1990

12:30

—Adoption of Minutes of Previous Meeting.

—Review of Commission activities for 1990

—Discussion of responsibilities of Commission under Federal Advisory Committee Act and H.R. 1385 as amended.

—Financial Report

—Reports from subcommittees of the Commission

3:00 p.m.—Adjourn

Madeline Y. Lawson,

Acting Deputy Executive Director.

[FR Doc. 89-30046 Filed 12-22-89; 9:15 am]

BILLING CODE 4210-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Council on the Humanities; Renewal

The charter of the National Council on the Humanities, a statutory advisory committee of the National Endowment for the Humanities established by law at 20 U.S.C. 957, is being renewed for an additional two years. The continuation of the National Council on the Humanities is required by law.

Dated: December 19, 1989.

Catherine Wolbowe,

Advisory Committee, Management Officer (Alternate).

[FR Doc. 89-29975 Filed 12-26-89; 8:45 am]

BILLING CODE 7536-01-M

NATIONAL SCIENCE FOUNDATION

Meeting

The National Science Foundation announces the following meeting:

Name: Instructional Materials Development Panel Meeting.

Date and Time: January 12-13, 1990, from 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, 1800 G. St. NW., Washington, DC 20550. Rooms 642, 536, and 643.

Type of Meeting: Closed Meeting.

Contact Person: Alice J. Moses, Gerhard Salinger, Tom Berger, Frank Sutman or Mary Kohlerman, National Science Foundation, 1800 G. St. NW., Washington, DC 20550. Instructional Materials Development, Room 635-A, Phone (202) 357-7066.

Summary of Minutes: May be obtained from the Contact persons at the above address.

Purpose of Meeting: To attend Instructional Materials Development Panel and provide advice and recommendations concerning K-12 Math, Science and Technology education.

Agenda: To review and evaluate Instructional Materials Development proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a propriety confidential including nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Dated: December 21, 1989.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89-30010 Filed 12-27-89; 8:45 am]

BILLING CODE 7555-01-M

Materials Research Advisory Committee

The National Science Foundation announces the following meeting:

Name: Materials Research Advisory Committee (MRAC)

Place: Room 1243, National Science Foundation, 1800 G Street, NW; Washington, DC 20550

Date: Thursday and Friday, January 11 & 12, 1990

Time:

8:00 a.m.-5:00 p.m., Thursday

9:00 a.m.-3:00 p.m., Friday

Type of Meeting: Part Open (Thursday a.m.) Part Closed (Thursday p.m., Friday)

Contact Person: Dr. A.I. Schindler, Division Director, Division of Materials Research, Room 408, National Science Foundation, Washington, D.C., 20550 Telephone: (202) 357-9794

Committee Reports: May be obtained from the Contact Person, Dr. A.I. Schindler, at the above stated address.

Purpose of Committee: To carry out Committee of Visitors review of the Materials Research Laboratories, Materials Research Groups, National Facilities, and Instrumentation for Materials Research Programs.

Agenda: Thursday Morning, January 11, 1990 (open)

8:00 a.m.—Welcome and Introductions

8:15 a.m.—Division Overview

9:00 a.m.—Staff Briefing on Programs:

- Materials Research Laboratories
- Materials Research Groups
- National Facilities
- Instrumentation for Materials Research

Thursday Afternoon, January 11, 1990 (closed)

12:00 noon—Lunch

1:00 p.m.—COV Review of the Materials Research Laboratories, Materials Research Groups, National Facilities and Instrumentation for Materials Research Programs, including examination of proposals, reviewer comments, and other privileged materials.

5:00 p.m.—Adjourn

Friday, January 12, 1990 (closed)

9:00 a.m.—Continuation of COV Review

3:00 p.m.—Adjourn

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Reason for Closing: The oversight committee's review of proposal actions will include privileged intellectual property and personal information that could harm individuals if it were disclosed and predecisional intra-agency records not available by law. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act would improperly be disclosed.

Dated: December 20, 1989.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89-29959 Filed 12-26-89; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40-8543]

Ferret Exploration Co. of Nebraska, Inc.; Final Finding of No Significant Impact Regarding the Issuance of a Source Material License to Ferret Exploration Company of Nebraska, Inc., Crow Butte Commercial Operation Located in Dawes County, Nebraska

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of final finding of no significant impact.

1. Proposed Action

The proposed administrative action is to issue a commercial Source and Byproduct Material License. This license would allow in-situ leach uranium recovery at the Crow Butte Operation located in Dawes County, Nebraska.

2. Reasons for Final Finding of No Significant Impact

An environmental assessment was prepared by the staff at the U.S. Nuclear Regulatory Commission (NRC) and issued by the Commission's Uranium Recovery Field Office, Region IV. The environmental assessment performed by the Commission's staff evaluated potential impacts onsite and offsite due to radiological releases that may occur during the course of the operation. Documents used in preparing the assessment included operational data from the Crow Butte Research and Development in-situ leach operation and the licensee's application dated October 7, 1987, as revised. Based on the review of the operational data and the application materials, the Commission has determined that no significant impact will result from the proposed action, and therefore, an Environmental Impact Statement is not warranted.

A draft finding of no significant impact was published in the **Federal Register** on December 1, 1988. Several editorial comments were received, as well as a comment regarding disposal of radiological wastes generated at the site. Since that time, Ferret has formulated a contract for long-term disposal of contaminated wastes at an appropriately licensed site. Due to this, there is no longer a waste disposal concern.

The following statements support the final finding of no significant impact and summarize the conclusions resulting from the environmental assessment.

A. The ground-water monitoring program proposed by Ferret Exploration Company of Nebraska, Inc., is sufficient to monitor the operations and will provide a warning system that will minimize any impact on ground water. Furthermore, aquifer testing indicates that the production zone is adequately confined, thereby assuring hydrologic control of mining solutions.

B. Radiological effluents from the proposed operation of the well field and processing plant will be within regulatory limits and will be continuously monitored.

C. The environmental monitoring program is comprehensive and will detect any radiological releases resulting from the operation.

D. Radioactive wastes will be minimal and will be disposed of at an approved site in accordance with applicable Federal and State regulations.

E. Ground water, based upon previous testing, can be restored to baseline concentrations or applicable class of use standards.

In accordance with 10 CFR part 51.33(a), the Director of the Uranium Recovery Field Office made the determination to issue a final finding of no significant impact and concurrent with this final finding, issue Source Material License SUA-1534.

This finding, together with the environmental assessment setting forth the basis for the findings, is available for public inspection and copying at the Commission's Uranium Recovery Field Office at 730 Simms Street, Golden, Colorado, and at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC.

Dated at Denver, Colorado, this 11th day of December, 1989.

For the Nuclear Regulatory Commission.

Ramon E. Hall,

Director.

[FR Doc. 89-29971 Filed 12-26-89; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Regulatory Policies and Practices; Postponed

The ACRS Subcommittee meeting on Regulatory Policies and Practices scheduled for January 10, 1990 has been postponed to March 22, 1990, room P-110, 7920 Norfolk Avenue, Bethesda, MD. The notice of this meeting was previously published in the **Federal Register** on Tuesday, December 19, 1989 (54 FR 51960).

Dated: December 19, 1989.

Raymond F. Finlay,

Executive Director.

[FR Doc. 89-29972 Filed 12-26-89; 8:45 am]

BILLING CODE 7590-01-M

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from December 4, 1989 through December 14, 1989. The last biweekly notice was published on December 13, 1989 (54 FR 51251).

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 26, 1990, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to

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(*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: October 19, 1989

Description of amendment request: This amendments would add a footnote to Tables 2.2.1-1 and 3.3.2-2 for the adjustment of the main steam line radiation monitors trip setpoints to compensate for the increased background radiation levels while the hydrogen water chemistry system is in service. Table 2.2.1-1 addresses reactor protection system instrumentation setpoints. Table 3.3.2-2 addresses isolation actuation instrumentation septoints. The use of the hydrogen water chemistry system during power operation will tend to mitigate intergranular stress corrosion cracking of the Brunswick Steam Electric Plant, Units 1 and 2, (Brunswick) stainless steel piping. The addition of hydrogen will increase the radioactivity of the radioactive steam in the main steam lines.

Basis for proposed no significant hazard consideration determination: The Commission has provided standards for determining whether a no significant hazard consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided an analysis in support of the no significant hazards consideration as follows:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The only accident scenario which takes credit for the MSLRM high radiation scram and isolation setpoints is the Control Rod Drop Accident (CRDA)as described in the Brunswick FSAR Chapter 15. Specifically, the Main Steam Isolation Valves (MSIVs) are assumed to receive an automatic closure signal at 0.5 seconds after detection of high radiation in the main steam lines and to be fully closed at 5 seconds from the receipt of the closure signal. The MSLRMs are provided to detect a gross failure of the fuel cladding. When high radiation is detected, a trip is initiated to reduce the continued failure of fuel cladding. At the same time, the MSIVs are closed to limit the release of fission products. The trip setting is high enough above background radiation levels to prevent spurious trips yet low enough to promptly detect gross failures in the fuel cladding.

NEDO-10527, "General Electric Rod Drop Accident Analysis For Large Boiling Water Reactors," dated July 1972, concluded that the consequences of the CRDA are most severe under Hot Standby conditions. Furthermore, the consequences of the CRDA are increasingly less severe above 10 percent power due to a faster Doppler response and a lower rodworth. Finally and most importantly, this report concluded that above 20% of Rated Thermal Power the consequences of the CRDA are minimal. Therefore, the proposed change specifies when the HWC system can be operated and identifies restrictions associated with changing the MSLRM setpoints. First, the HWC system cannot be placed in service until reactor power reaches 20% of Rated Thermal Power. This restriction is based on the Control Rod Drop Accident which is only of concern at power level below 20% of Rated Thermal Power. After reaching 20% of Rated Thermal Power the MSLRM setpoint can be increased since no other FSAR Chapter 15 accident scenarios take credit for the operation of the MSLRM scram and isolation setpoints. Within 24 hours after decreasing below 20% of Rated Thermal Power or after the HWC system has been shutoff, the background level and associated setpoint shall be returned to the normal full power values. If a power reduction event occurs so that the reactor power is below 20% of Rated Thermal Power for longer than 24 hours without the required setpoint change, control rod motion shall be suspended (except for scram or other emergency action) until the necessary adjustments are made.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not affect the design of any safety related systems and as such does not affect the performance of any safety related functions. The proposed amendment allows the operation of a new system, that is the HWC system. This system has been extensively analyzed by EPRI, approved for use by the NRC, and in operation at a number of facilities.

The design and installation of the permanent hydrogen water chemistry facility at Brunswick was review by the NRC during a site visit on August 23 and 24, 1988. As a result of this review, the Staff concluded that the hydrogen and oxygen supply facilities, hydrogen and oxgen injection systems, instrumentation and controls, and safety considerations meet the recommendations of EPRI NP 5283-SR A - September 1987. This conclusion is documented in a memorandum from Frank J. Witt, Chemical Engineer, Chemist Engineering Branch to Conrad E. McCracken, Chief, Chemical Engineering Branch, dated September 6, 1988.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

The proposed amendment includes specific requirements regarding the operation of the HWC system:

- Operation of the HWC system is only permitted above 20% of Rated Thermal Power.
- When the HWC system is in operation, the MSLRM setpoints can be adjusted upward to account for the increase in the background main steam line radiation levels.
- Within 24 hours after decreasing reactor power to below 20% of Rated Thermal Power, the setpoints must be adjusted to their pre-HWC system operation levels.
- If the power level fails below 20% for longer than 24 hours without the setpoint change, control rod motion is suspended (except for scrams or other emergency situation) until the setpoint adjustment is made.

These requirements will assure that the HWC system is operated safely and with sufficient margin such that spurious MSL isolations are precluded while maintaining the ability to detect any gross failures in the fuel cladding.

As discussed in Item 1, A CRDA is the only accident which takes credit for the MSL isolation trip function. However, above 20% of Rated Thermal Power, the consequences of the CRDA are minimal. Therefore, the change has no significant affect on the margins of safety for this accident scenario.

The increase in background radiation levels has been analyzed and it has been determined that neither plant personnel nor the health and safety of the public are at risk with operating with the HWC system.

Based on the above, it is concluded that the proposed amendment does not involve a significant reduction in a margin of safety.

The licensee has concluded that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards consideration.

The NRC staff has made a preliminary review of the licensee's no significant hazards consideration determination. The licensee determined that there would be no significant increase in the consequences of a control rod drop accident and that there would no significant affect on the margin of safety while the hydrogen water chemistry system is in operation above 20% of rated thermal power. In addition, the licensee analyzed the increase in radiological background levels and concluded that neither plant personnel nor the health and safety of the public are at risk when operating the hydrogen water chemistry system. Thus, there will be no significant reduction in the margin of safety. The staff agrees that the licensee met the three standards. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Elinor G. Adensam

Commonwealth Edison Company, Docket No. 50-454 and 50-455, Byron Station, Units 1 and 2, Ogle County, Illinois

Date of application for amendment: November 17, 1989

Description of amendment request: This amendment would change the heatup and cooldown curves, the power operated relief valve (PORV) Low Temperature Overpressure Protection (LTOP) Setpoints, and their bases.

Basis for proposed no significant hazards consideration determination: The staff has evaluated this proposed amendment and determined that it involves no significant hazards consideration. According to 10 CFR 50.92, a proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated; or
2. Create the possibility of a new or different kind of accident from any accident previously evaluated; or
3. Involve a significant reduction in a margin of safety.

The probability of an occurrence or the consequence of an accident, or malfunction of equipment important to safety, as previously evaluated in the FSAR, has not increased because the revised heatup, cooldown, and Low-Temperature Overpressurization (LTOP) setpoint curves are more conservative than the current curves. In addition, these curves have been revised per Regulatory Guide (RG) 1.99 Revision 2 and thus meet the NRC standards of methodology for calculating heatup and cooldown curves. By maintaining the revised heatup and cooldown limits during operation, due to the increased conservation of the limits, the probability or consequence of an accident or malfunction of equipment important to safety is not increased. In addition, none of the transients described in the FSAR will result in pressures or temperatures exceeding the limits of the revised heatup and cooldown curves. The Power Operated Relief Valve (PORV) LTOP setpoint enable temperatures remain the same while the Unit 2 LTOP lift setpoints have been revised to become more restrictive than the previous LTOP setpoints. Thus, the PORV cold overpressurization protection system provides protection per Technical Specification 3.4.9.3, Modes 4, 5, and 6. Additionally, the PORVs and safety valves provide overpressurization protection during power operation. Finally, the heatup and cooldown curves are not an initiating event for any accident. Therefore, the probability of an occurrence or the consequence of an accident, or malfunction of equipment important to safety as previously evaluated in the FSAR has not increased because the heatup, cooldown, and LTOP setpoint curves are more conservative than the current curves.

The possibility of a new or different kind of accident from any previously evaluated is not created because operation within the limits of the revised heatup, cooldown, and LTOP setpoint curves provide additional conservatism in operation compared to the present curves. The curves have been reviewed in accordance with RG 1.99 Revision 2 to ensure that the heatup, cooldown, and LTOP setpoint limits are conservative. The heatup and cooldown curve change does not result in any modification. Operating with new limits does not introduce any new variables. Operating with the revised curves has no effect on the creation of the possibility for an accident or malfunction of a different type of accident or malfunction than any previously evaluated in the FSAR. Operation will be maintained within the pressure and temperature limits based on minimum reference nil-ductibility temperatures and reactor vessel materials during heatup and cooldown, thus, ensuring reactor vessel structural integrity.

The proposed Technical Specification change does not involve a significant reduction in the margin of safety since the revised heatup, cooldown, and LTOP setpoint curves are more conservative than the present curves and are based on the RG 1.99 Revision 2 methodology which maintains or increases the margin of safety for operations. Since the revised heatup, cooldown, and LTOP setpoint limits are more conservative than the present curves, they ensure that reactor vessel structural integrity will be maintained based on minimum reference nil-ductility temperatures and reactor vessel materials.

Therefore, based upon the above analysis, the staff concludes that the proposed amendment to the Technical Specification does not involve a significant hazards consideration.

Local Public Document Room location: Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61103.

Attorney to licensee: Michael Miller, Esquire, Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: John W. Craig

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: November 30, 1989

Description of amendment request: The proposed amendment would delete Technical Specification (TS) 3.3.A.2.e., the action statement for the Boron Injection Tank (BIT) flow path heat tracing, since the BIT has been removed and high concentration boric acid requiring heat tracing is no longer used in this flow path.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety. In accordance with 10 CFR 50.92, Consolidated Edison Company of New York, Inc. has reviewed the proposed deletion of TS

3.3.A.2. and has concluded that it does not involve a significant hazards

Florida Power and Light Company, Docket No. 50-335, St. Lucie Plant, Unit

by the ASME Code Section III, Appendix G recommendations. The RT_{NDT} values for the

because the fracture toughness requirements of 10 CFR [Part] 50 Appendix G are satisfied

The licensee provided the following discussion regarding the above three

The changes being proposed do not relate to or modify the safety margins defined in and maintained by the Technical

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3.3.A.2. and has concluded that it does not involve a significant hazards consideration because the deletion would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The safety injection pumps are required to deliver borated water from the Refueling Water Storage Tank (RWST) to the reactor coolant system during various accident scenarios.

The heat tracing on the BIT flow path was previously required to prevent solidification of the minimum 20,000 ppm boric acid solution in the lines from the BIT to the suction of the safety injection pumps. The requirement for the BIT was previously removed by License Amendment No. 104 which deleted the LCO and surveillance requirements associated with the BIT. With the subsequent physical removal of the BIT, there is now only a 2000 ppm boric acid solution in the lines from the RWST to the suction of the safety injection pumps. This lower concentration does not require heat tracing to prevent solidification.

Therefore, there is no adverse effect on the safety injection pumps by the removal of the suction line heat tracing.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

Deletion of the BIT flow path heat tracing does not change or affect the safety function of the safety injection system. Therefore, there is no potential for a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in a margin of safety.

Since there is no technical need to heat trace a line containing 2000 ppm boric acid solution, deletion of the heat tracing does not involve a reduction in a margin of safety.

The staff agrees with the licensee's analysis. The staff also notes that TS 3.3.A.2.e. should have been deleted during the processing of License Amendment No. 104 but was not due to an administrative error. The proposed amendment would correct this error. The proposed change meets Example (i) of the Commission's Examples of Amendments that Are Considered Not Likely to Involve Significant Hazards Considerations (51 FR 7751, dated March 6, 1986). For the above reasons the staff proposes that this proposed change will not involve a significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003

NRC Project Director: Robert A. Capra

Florida Power and Light Company, Docket No. 50-335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of amendment request: December 5, 1989

Description of amendment request: The purpose of the amendment is to incorporate revised pressure/temperature (P-T) limits and the results of a revised low temperature overpressure protection (LTOP) analysis into the Technical Specifications for St. Lucie Unit 1. The current St. Lucie Unit 1 Technical Specifications for P-T/LTOP are applicable to 10 effective full power years (EFPY). Accordingly, the St. Lucie Unit 1 Technical Specifications require revision prior to the plant reaching 10 EFPY.

The proposed P-T limits, which are based upon fluence predictions at 15 EFPY, and revised limiting conditions for operations ensure that all reactor coolant system (RCS) components will be able to withstand the effects of cyclic loads due to system temperature and pressure changes without their functions or performance being impaired. These cyclic loads are introduced by normal load transients, reactor trips, and startup and shutdown operations. Overpressure protection provided by the Overpressure Mitigation System ensures RCS overpressurization below certain temperatures would be prevented, thus maintaining reactor coolant pressure boundary integrity.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee provided the following discussion regarding the above three criteria.

Criterion 1

Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The pressure-temperature (P-T) limit curves in the Technical Specifications are conservatively generated in accordance with the fracture toughness requirements of 10 CFR [Part] 50 Appendix G as supplemented by the ASME Code Section III, Appendix G recommendations. The RT_{NDT} values for the revised curves are based on Regulatory Guide 1.99, Revision 02 shift prediction and attenuation formula. Analyses of reactor vessel material irradiation surveillance specimens are used to verify the validity of the fluence predictions and the P-T limit curves. Use of the revised curves in conjunction with the surveillance specimen program ensures that the reactor coolant pressure boundary will behave in a non-brittle manner and that the possibility of rapidly propagating fracture is minimized.

In conjunction with revising the P-T limit curves, a low temperature overpressure protection (LTOP) analysis has been performed to confirm that the current Overpressure Mitigation System (OMS) setpoints for the power-operated relief valves (PORVs) will provide the appropriate overpressure protection at the low Reactor Coolant System (RCS) temperatures. The LTOP analysis also revised the current values of the limiting temperatures for the PORV setpoints' applicability, heatup and cooldown rates, and disabling of non-essential components, based upon the revised P-T limits.

To ensure compliance with the P-T limit curves, overpressure protection is provided to keep the RCS pressure below the P-T limits for any given temperature after the initiation of assumed pressure transients (energy-addition and mass-addition transients) while operating below the enable temperatures that were determined in accordance with Standard Review Plan 5.2.2, Revision 02.

The revised P-T curves and applicable OMS temperatures do not represent a significant change in the configuration or operation of the plant. The results of the LTOP analysis show that the limiting pressures for given temperatures are not exceeded for the assumed transients and that reactor vessel integrity is maintained. Thus, the proposed amendment does not involve an increase in the probability or consequences of accidents previously evaluated.

Criterion 2

Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The evaluation performed has resulted in revised P-T limits based on the fracture toughness requirements of 10 CFR [Part] 50 Appendix G, and in revised OMS temperatures based on standard energy and mass addition transients. Since there is no significant change in the configuration or operation of the facility as a result of the proposed amendment, the use of revised P-T limits and the OMS setpoints do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3

Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The proposed amendment does not involve a significant reduction in a margin of safety, because the fracture toughness requirements of 10 CFR [Part] 50 Appendix G are satisfied and conservative operating restrictions are applied for the purpose of low temperature overpressure protection.

In conclusion, based on the analysis performed, we have determined that the amendment request does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the probability of a new and different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety; and therefore does not involve a significant hazards consideration.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the NRC staff proposes to determine that the proposed changes to the TS involve no significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment requests: November 17, 1989

Description of amendment requests: These amendments would make administrative changes to the St. Lucie Unit 1 and Unit 2 Technical Specifications and achieve consistency throughout the Technical Specifications by removing outdated material, making minor text changes, correcting errors and implementing the line item improvements recommended by Generic Letter 89-14, "Removal of the 3.25 Limit on Extending Surveillance Intervals."

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee provided the following discussion regarding the above three criterion:

Criterion 1

Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The NRC [s]taff has concluded that the deletion of the 3.25 limit is acceptable and previously evaluated the proposed change in Generic Letter 89-14, "Line-Item Improvements in Technical Specifications - Removal of the 3.25 Limit on Extending Surveillance Intervals". Based on the NRC review, this alternative to the current requirement of Specification 4.0.2 will remove an unnecessary restriction on extending surveillance requirements and will result in a benefit to safety when plant conditions are not conducive to the safe conduct of surveillance requirements. The removal of the 3.25 limit will provide greater flexibility in the use of the provision for extending surveillance intervals, reduce the administrative burden associated with its use, and have a positive effect on safety. Therefore, the proposed amendment will not involve a significant increase in the probability or consequences of [an] accident previously evaluated.

The administrative changes do not affect assumptions contained in plant safety analyses, nor do they affect Technical Specifications that preserve safety analysis assumptions. Therefore, the proposed changes do not affect the probability or consequences of accidents previously analyzed.

Criterion 2

Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The NRC has previously evaluated the acceptability of this change on a generic basis in Generic Letter 89-14 and concluded that it will have a positive effect on safety.

A new or different kind of accident is not created since Technical Specification Limiting Conditions for Operation (LCO) and ACTION statement requirements remain unchanged.

The administrative changes being proposed by FPL will not lead to material procedure changes or to physical modifications [of the] St. Lucie Plant. Therefore, the proposed changes do not create the possibility of a new or different kind of accident.

Criterion 3

Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The use of the allowance to extend surveillance intervals by 25 percent can also result in a significant safety benefit for surveillances that are performed on a routine basis during plant operation. This safety benefit is incurred when a surveillance interval is extended at a time that conditions are not suitable for performing the surveillance.

The changes being proposed do not relate to or modify the safety margins defined in and maintained by the Technical Specifications. Therefore, the proposed changes would not involve any reduction in a margin of safety.

Based on the above, we have determined that the amendment request does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the probability of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety; and therefore, does not involve a significant hazards consideration.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the NRC staff proposes to determine that the proposed changes to the TS involve no significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: November 21, 1989

Description of amendment request: The proposed amendments would revise Technical Specifications 3/4.4.1.4.2, "Cold Shutdown-Loops Not Filled," and 3/4.9.1, "Boron Concentration," to allow for periodic chemical addition via the chemical mixing tank. The current specifications require that the reactor makeup water storage tank be isolated from the chemical and volume control system by four locked closed valves in Mode 5 with the Reactor Coolant System loops not filled and in Mode 6. The proposed amendments would allow two of those valves to be opened periodically under administrative control so that chemical additions may be made in those modes of operation.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed

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amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or differnet kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

In regard to the proposed amendments, the licensee has determined the following:

1. This chemical addition procedure does not increase the probability of an accident previously evaluated in the FSAR. No new performance requirements or alignments are being imposed on the CVCS or RMWS such that any design criteria will be exceeded. The recommended chemistry guidelines will continue to be adhered to, precluding the creation of an adverse chemical environment which may prematurely affect component performance. This dilution flow path, although administratively precluded in Modes 5b and 6, was previously considered for Modes 3, 4, 5 and 6 in Chapter 15 of the FSAR. The classification of the boron dilution event continues to be an ANS condition II incident, one of moderate frequency. Other boron dilution flow paths will continue to be precluded by the technical specifications.

The consequences of an accident previously evaluated in the FSAR are not increased due to this chemical addition procedure. The results presented in the FSAR for the Modes 3, 4, and 5a dilution events remain valid. Boron dilution as a result of chemical addition in Modes 5b and 6 will not create more severe dose consequences.

2. This chemical addition does not create the possibility of an accident which is different than any already evaluated in the FSAR. Boron dilution configurations in Modes 5b and 6 have been previously considered and evaluated in the FSAR. The conclusion was to keep the flow paths isolated so that no dilution flow was possible. In order to support the chemical addition procedure, an alternative approach, which utilized specific analyses that are bounding for the injection path configuration, was used. The results indicate that the required operator action time is available given the expected dilution flow rates. Therefore, the Modes 5b and 6 boron dilution analyses meet the Plant Vogtle licensing basis acceptance criteria for this event. Other boron dilution flow paths will continue to be precluded by the technical specifications.

3. The margin of safety in the plant licensing basis for boron dilution is defined as operator action time between the high flux at shutdown alarm and loss of shutdown margin (criticality). The high flux at shutdown alarm setpoint defined in Technical Specification Table 4.3-1, Note 9, is 2.3 times background. For Mode 5b, the operator action acceptance criteria as defined in SRP Section 15.4.6 is fifteen minutes and for Mode 6, SRP Section 15.4.6 defines the acceptance criteria as thirty minutes. The analysis criteria is designed to provide sufficient time for the operator to mitigate the event and prevent the complete loss of shutdown margin. Prevention of the loss of shutdown margin ensures that all ANS Condition II criteria are met. Therefore, the margin of safety is not reduced.

The Commission's staff has reviewed the licensee's determination and concurs with its findings.

Accordingly, the Commission proposes to determine that the proposed change involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Attorney for licensee: Mr. Arthur H. Domby, Troutman, Sanders, Lockerman and Ashmore, Candler Building, Suite 1400, 127 Peachtree Street, NE., Atlanta, Georgia 30043.

NRC Project Director: David B. Matthews

GPU Nuclear Corporation, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: December 4, 1989

Description of amendment request: This amendment would revise Technical Specification (TS) 3.7A to clarify operability requirements for batteries B and C and, in addition specify switchgear control power requirements associated with each battery. The bases for Section 3.7 has also been clarified with respect to the 125 VDC System.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a) GPU Nuclear has determined that operation of the Oyster Creek Nuclear Generating Station in accordance with the proposed technical specifications does not involve a significant hazard. The change does not:

(1) Involve an increase in the probability or consequences of an accident previously evaluated. The proposed change provides guidance with respect to the requirements applicable to the station batteries. There are no changes to plant configuration, availability of safety systems, the manner in which safety systems are initiated or plant operation. As a result, an increase in the probability or consequences of an accident previously evaluated is not involved.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change does not alter the plant configuration, nor does it change the availability of safety systems or the manner in which they respond to initiating events. As such, the possibility of a new or different kind of accident from any previously evaluated is not created.

(3) Involve a significant reduction in a margin of safety. The operability requirements of the existing Technical Specifications are not altered by the proposed change. In addition, safety systems availability, initiation and response are not altered. Therefore, the margin of safety is not reduced.

The staff has reviewed the proposed amendment and agrees with the licensee's determination that it does not involve a significant hazards consideration.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753

Attorney for licensee: Ernest L. Blake, Jr., Esquire. Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: November 17, 1989

Description of amendment request: The amendment would modify Technical Specification (TS) 4.0.2 to remove the provision that limits the combined time interval for three consecutive surveillances to less than 3.25 times the specified interval. Guidance regarding this proposed TS change was provided to all power reactor licensees and applicants by Generic Letter 89-14 dated August 21, 1989. The proposed change would maintain the present maximum allowance of 25 percent for extending surveillances intervals. The November 17, 1989 submittal also proposes modifying the bases for TS 4.0.2.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided an analysis that addressed the above three standards in the amendment application.

The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because the 3.25 surveillance interval extension criteria of Technical Specification 4.0.2 was not considered in the plant accident analysis (SAR Chapter 15).

The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated because the surveillance interval will still be constrained by the 25 percent interval extension criteria of Technical Specification 4.0.2.

The proposed amendment does not involve a significant reduction in the margin of safety because deletion of the requirement "any three consecutive intervals must not exceed 3.25 times the interval" will not significantly effect equipment reliability. This exemption will allow all surveillance intervals to be constrained by the maximum allowable extension of 25 percent of the specified surveillance interval which will maintain safe operation when used during plant operation. Normal scheduling would still be at the specified surveillance interval.

Based upon the above considerations, the proposed change does not result in a significant increase in the probability or the consequences of any accident previously evaluated, does not create the possibility of a new or different kind of accident than previously evaluated and does not result in a reduction in the margin of safety. Therefore, GSU proposes that no significant hazards considerations are involved with approval of the proposed change.

The NRC staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Attorney for licensee: Troy B. Conner, Jr., Esq., Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Frederick J. Hebdon

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: November 17, 1989

Description of amendment request: The amendment would remove certain cycle-specific parameter limits from the Technical Specifications (TSs) and relocate these limits into a Core Operating Limits Report (COLR) in accordance with guidance provided in Generic Letter 88-16 dated October 4, 1988. Three separate actions are required to modify the TSs: (1) the addition of the definition of a named formal report that includes the values of cycle-specific parameter limits that have been established using an NRC-approved methodology and consistent with all applicable limits of the safety analysis; (2) the addition of an administrative reporting requirement to submit the formal report on cycle-specific parameter limits to the Commission for information; and (3) the modification of individual TSs to note that cycle-specific parameters shall be maintained within the limits provided in the defined formal report.

The proposed amendment would revise TSs 2.2.1, 3/4.2.1, 3/4.2.2, 3/4.2.3, 3/4.2.4, 3.3.1, and 3.3.6 to replace the values of cycle-specific parameter limits with a reference to the COLR which would contain the values of these limits. The COLR has been added to the Definitions section of the TSs indicating that it is the document that contains the cycle-specific parameter limits for the current operating cycle. Furthermore, the definition notes that the cycle-specific core operating limits shall be determined for each reload cycle in accordance with Specifications 6.9.3.1, 6.9.3.2, 6.9.3.3, and 6.9.3.4. These TSs require the core operating limits be determined for each reload cycle in accordance with the NRC-approved methodology and consistent with the applicable limits of the safety analysis. The provisions of the proposed TSs state that the COLR and any mid-cycle revisions shall be provided to the NRC upon issuance. TS Section 5.3, Design Features - Fuel Assemblies would also be modified to delete details of fuel and control rod designs which may change with the loading of new, approved designs or different enrichments. This information would be included in the Supplemental Reload Licensing Report and will be referenced in the COLR. The applicable Bases sections of the TSs would also be revised to reflect the above changes.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided an analysis that addressed the above three standards in the amendment application.

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The abnormal operational transients analyzed in the RBS Updated Safety Analysis Report will remain bounding. There will be no change in the operation of the facility as a result of this amendment. No safety-related equipment or function is altered. The proposed amendment removes cycle-specific parameter limits from the Technical Specifications and references their inclusion in the CORE OPERATING LIMITS REPORT (COLR). NRC approved analytical methodology will continue to be used as the basis for the results that will now be reported in the COLR.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. As stated above, no safety-related equipment, safety function, or plant operations will be altered as a result of this amendment. The requested change does not create any new accident mode. The proposed amendment is in accordance with the guidance provided in Generic Letter 88-16 for licensees requesting removal of the values of cycle-specific parameters from Technical Specifications. The establishment of these limits in accordance with an NRC-approved methodology and the incorporation of these limits into the COLR will ensure that proper steps have been taken to maintain the values of these limits. Furthermore, the submittal of the COLR to the Commission will allow the Staff to continue to trend the values of these limits without the need for prior Staff approval of these limits and without introduction of an unreviewed safety question.

3. The proposed amendment does not alter the requirement that the plant be operated within the limits for cycle-specific parameters nor the required remedial actions that must be taken if these limits are not met. While it is recognized that such limits are essential to plant safety, the values of such limits can be determined in accordance with NRC-approved methods without affecting nuclear safety. The removal of the values of these limits from the RBS Technical Specifications is coincident with their incorporation into the COLR that is submitted to the NRC. Hence, appropriate measures exist to control the values of these limits. Therefore, the proposed changes are administrative in nature and do not impact the operation of the facility in a manner that involves a reduction in the margin of safety. Indeed, as stated in Generic Letter 88-16, the proposed amendment is responsive to industry and NRC efforts on improvements in Technical Specifications, and will result in a resource savings for the licensee and the NRC by eliminating the majority of license amendment requests for changes in values of cycle-specific parameters in Technical Specifications.

Based upon the above considerations, the proposed change does not result in a significant increase in the probability or the consequences of any accident previously evaluated, does not create the possibility of a new or different kind of accident than previously evaluated and does not result in a reduction in the margin of safety. Therefore, GSU concludes that no significant hazards considerations are involved with approval of the proposed change.

The staff has reviewed the licensee's no significant hazards consideration

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determination. Based on the review and the above discussions, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Attorney for licensee: Troy B. Conner, Jr., Esq., Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Frederick J. Hebdon

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: January 27, 1984 and June 30, 1987, as superseded September 1, 1989

Description of amendment request: By letter dated January 27, 1984, Iowa Electric Light and Power Company (the licensee) proposed amendments to the Duane Arnold Energy Center (DAEC) Technical Specifications, as requested in NRC Generic Letter 83-36. These changes addressed several requirements set forth in NUREG-0737, "Clarification of TMI Action Plan Requirements." The staff's proposed no significant hazards consideration determination for the requested changes was published on March 22, 1984 (49 FR 10736). All TMI Action Plan Items addressed in the licensee's January 27, 1984 submittal were the subjects of subsequent license amendments, except for Item III.D.3.4 - Control Room Habitability Requirements.

By letter dated June 30, 1987, superseded by letter dated September 1, 1989, the licensee proposed a revised amendment to address TMI Action Plan Item III.D.3.4. Specifically, the proposed revision will: (1) reflect the nomenclature found in more recent plant surveillance test procedures, (2) change the definition for the control room ventilation flow rate, (3) revise the halogenated hydrocarbon removal rate of the charcoal adsorber banks in the control room, and (4) provide a requirement that, upon a high radiation signal, the control room standby filter unit will automatically switch to the isolation mode and maintain the control room at a positive pressure greater than or equal to 1/10-inch water gage.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards (10 CFR 50.92 (c)) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new of different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has reviewed this proposed request for Technical Specification change and has determined the following:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed amendment would revise Limiting Conditions for Operation (LCOs) and surveillance requirements for the air treatment system of the DAEC main control room. The incorporation of the guidance of Generic Letter 83-36, "NUREG-0737 Technical Specifications," into the licensee's Technical Specifications ensures that, during a design basis accident, control room personnel may gain access to and occupy the control room for a 30-day post-accident period without receiving radiation exposures in excess of 5 rem (whole body). In addition, incorporation of the generic guidance ensures continued compliance with General Design Criteria (GDC) 19 of Appendix A to 10 CFR Part 50 and Item III.D.3.4 of NUREG-0737.

The amendment involves no changes in plant hardware or operation. Rather, it clarifies the LCOs applicable to the standby filter units and in-corporates new surveillance requirements.

2. The proposed amendment does not create a possibility of a new or different kind of accident. No changes are being made to the existing systems, setpoints, frequency of tests, or plant design. The proposed changes do, however, follow NRC guidance to assure continued operability of the standby filter units in the plant's main control room ventilation system by performance of appropriate surveillance tests.

3. The proposed amendment does not involve a significant reduction in a margin of safety. The proposed changes will have no effect on margins of safety and will ensure that, during a design basis accident, control room occupants will be adequately protected from radiological hazards.

The staff has reviewed the licensee's proposed no significant hazards consideration determination and finds it acceptable.

Therefore, the staff proposes to determine that the requested changes do not involve a significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Attorney for licensee: Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036.

NRC Project Director: John N. Hannon.

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of amendment request: November 28, 1989

Description of amendment request: The proposed change to the Technical Specifications (TS) Section 3.6.J.1 would lower the minimum condensate demineralizer capacity from 30 pounds to 5 pounds (as chloride ion). The licensee also proposed deleting requirements relating to regenerated demineralizer resin in TS Sections 3/4.6.J.1 and 3/4.6.J.2 since resin is not regenerated any longer.

Basis for proposed no significant hazards consideration determination: The licensee has reviewed the proposed changes in accordance with 10 CFR 50.92 and has concluded, and the NRC agrees, that they do not involve a significant hazards consideration in that the changes do not:

1. Involve a significant increase in the probability or consequences of any accident previously evaluated. Changing the minimum resin capacity of the condensate demineralizers from 30 to 5 pounds as chloride ion does not compromise the quality of the reactor water because Plant Operating Procedures are in place which provide for increased monitoring, plant shutdown, and scram as conductivity levels rise and limits are exceeded. Procedures require a controlled plant shutdown at greater than or equal to 5 umho conductivity in the condensate pump discharge and a scram at greater than or equal to 15 umho. The procedures, which are not being changed, along with 5-pound minimum capacity will continue to ensure enough time is available for a controlled plant shutdown before the quality of reactor water is degraded to a point where damaging effects on core internals and fuel would occur. Therefore there is no adverse effect to the consequences of the design basis accidents.

Removal of the regeneration requirements has no impact on any conductivity transient since Millstone Unit 1 no longer regenerates resin, but rather replaces spent resin with new resin.

2. Create the possibility of a new different kind of accident. There is no change in plant design or operating procedures proposed by the subject changes. The modification of Technical Specification requirements does not change the probability of any conductivity transient. Additionally, there are no new failure modes introduced by the change. Therefore, there can be no impact on plant response to the point where a different accident is created.

3. Involve a significant reduction in the margin of safety. The changes have no adverse impact on the consequences of an accident or on any of the protective boundaries. Therefore, there is no reduction in any margin safety.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Northern States Power Company, Docket Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant Units 1 and 2, Goodhue, Minnesota

Date of application for amendment: November 17, 1989

Description of amendment request: The proposed amendment would revise Technical Specifications 3.1.F, and 3.10 of Appendix A of that license to replace the values of cycle-specific parameter limits with a reference to the Core Operating Limits Report, which contains the values of those limits. In addition, the Core Operating Limits Report has been included in the Definitions Section of the Technical Specifications (TS) to note that it is the unit-specific document that provides core operating limits for the current operating reload cycle. Furthermore, the definition notes that the values of these cycle-specific parameter limits are to be determined in accordance with TS 6.7.a.6. This TS requires that the Core Operating Limits be determined for each reload cycle in accordance with the referenced NRC-approved methodology for these limits and consistent with the applicable limits of the safety analysis. Finally, this report and any mid-cycle revisions shall be provided to the NRC upon issuance. Generic Letter 88-16, dated October 4, 1988, from the NRC provided guidance to licensees on requests for removal of the values of cycle-specific parameter limits from TS. The licensee's proposed amendment is in response to this Generic Letter (GL).

Basis for proposed no significant hazards consideration determination: The staff has evaluated this proposed amendment and determined that it involves no significant hazards consideration. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated; or
2. Create the possibility of a new or different kind of accident from any accident previously evaluated; or
3. Involve a significant reduction in a margin of safety.

The proposed revision to the TS is in accordance with the guidance provided in GL 88-16 for licensees requesting removal of the values of cycle-specific parameter limits from the TS. The establishment of these limits in accordance with an NRC-approved methodology and the incorporation of these limits into the Core Operating Limits Report will ensure that proper steps have been taken to establish the values of these limits. Furthermore, the submittal of the Core Operating Limits Report will allow the staff to continue to trend the values of these limits without the need for prior staff approval of these limits and without introduction of an unreviewed safety question. The revised TS with the removal of the values of cycle-specific parameter limits and that addition of the referenced report for these limits does not create the possibility of a new or different kind of accident from those previously evaluated. They also do not involve a significant reduction in the margin of safety since the change does not alter the methods used to establish these limits.

Consequently, the proposed change on the removal of the values of cycle-specific limits do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Because the values of cycle-specific parameter limits will continue to be determined in accordance with an NRC-approved methodology and consistent with the applicable limits of the safety analysis, these changes are administrative in nature and do not impact the operation of the facility in a manner that involves significant hazards consideration.

The proposed amendment does not alter the requirement that the plant be operated within the limits for cycle-specific parameters nor the required remedial actions that must be taken when these limits are not met. While it is recognized that such requirements are essential to plant safety, the values of limits can be determined in accordance with NRC-approved methods without affecting nuclear safety. With the removal of the values of these limits from the TS, they have been incorporated into the Core Operating Limits Report that is submitted to the Commission. Hence, appropriate measures exist to control the values of these limits. These changes are administrative in nature and do not impact the operation of the facility in a manner that involves significant hazards consideration.

Based on the preceding assessment, the staff believes this proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Minnesota Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401

Attorney for Licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N. Street, NW., Washington, DC 20037

NRC Project Director: John O. Thoma, Acting

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: December 1, 1989

Description of amendment request: The proposed amendment to the Technical Specification is for clarification in Table 3-4, Item 1, "Minimum Frequencies for Sampling Test", by adding Operating Mode numbers for each of the operating modes. This change is administrative in nature.

Presently, for the Refueling Shutdown mode where fuel is still in the core, the type of measurement and analysis required is to determine the boron concentration and chloride in the water surrounding the fuel elements in the core. The boron concentration sample is to ensure adequate shutdown margin for all core configurations during the refueling operation, and the chloride sample is to ensure the prevention of chloride stress corrosion cracking. However, when the total core has been off-loaded in the Refueling Shutdown mode, this sampling and analysis are not required since there is no fuel in the core. This proposed amendment, therefore, incorporates that this testing is not required when the core is off-loaded in the Refueling Shutdown mode.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided an analysis that addressed the above

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three standards in the amendment application as follows:

The proposed amendment to the Technical Specifications does not involve a significant hazard consideration because the operation of the Fort Calhoun Station in accordance with this amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. This administrative change clarifies wording in Table 3-4, Item 1, by adding Operating Mode numbers.

2. Create the possibility of a new or different kind of accident from any previously analyzed. It has been determined that a new or different kind of accident will not be possible due to this change. This change is administrative and clarifies Table 3-4, Item 1, thus assuring operation will be as specified in the Technical Specifications.

3. Involve a significant reduction in a margin of safety. The change is administrative, will not eliminate any sampling requirements, and clarifies the requirement to sample during the Refueling Shutdown condition.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Attorney for licensee: LeBoeuf, Lamb, Leiby, and MacRae, 1333 New Hampshire Avenue, NW., Washington, DC 20036

NRC Project Director: Frederick J. Hebdon

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: August 3, 1987

Description of amendment request: The proposed amendments would change the expiration date for the Salem Unit 1 Operating License from September 25, 2008 to August 13, 2016 and for the Salem Unit 2 Operating License from September 25, 2008 to April 18, 2020.

Basis for proposed no significant hazards consideration determination: The currently licensed term for Salem Units 1 and 2 is 40 years commencing with the issuance of the construction permits (September 25, 1968 for both units). Accounting for the time that was required for construction, this represents an effective operating license term of 32 years for Salem Unit 1 and 28 years for Salem Unit 2. The licensee's application requests a 40-year operating license term for Salem Unit 1 and Salem Unit 2.

The licensee's request for extension of the operating license is based primarily on the fact that a 40-year service life was considered during design and construction of the plant. Although this does not mean that some components will not wear out during the plant lifetime, replacement of equipment will be either in-kind or upgraded equipment which meets or exceeds the original equipment specifications. A comprehensive program of in-service inspection and testing has been implemented to identify safety related equipment degradation prior to the occurrence of a failure. Should such a failure occur, the Technical Specifications conservatively define to the operators the requirements for continued plant operation or shutdown.

The licensee has evaluated the neutron fluence effects upon the reactor vessel and has concluded that a 40-year service life will not result in a projected reactor vessel Reference Nil Ductility Transition Temperature (RT_{NDT}) in excess of the NRC's screening criteria of 10 CFR 50.61. Continued evaluation of the service life of the reactor vessel will be accomplished through the analysis of material specimens located within the vessel itself and through maintenance of a comprehensive in-service inspection and testing program.

All safety related electrical equipment required for accident mitigation has been reviewed and analyzed in accordance with NRC instructions to determine environmental qualification requirements and concerns. Those analyses assumed a 40-year operating life of the plants. Any equipment aging concerns have been identified and incorporated into the appropriate equipment maintenance and replacement programs. Further, a program has been implemented to satisfy the requirements of 10 CFR 50.49, Environmental Qualification of Electric Equipment Important to Safety for Nuclear Power Plants.

Local area demographics were reviewed by comparing 1970 census data, utilized during the Salem Units 1 and 2 licensing proceedings, and more recent data from the 1980 census. The results show that a significant reduction occurred in the population residing within the ten-mile Emergency Planning Zone. Also, a comparison of population data which were prepared for the Salem units (1970 census data) and the Hope Creek Station (1980 census data) was made. This comparison indicates that the values given in the Salem FSAR will continue to be conservative through the year 2020.

The licensee has indicated that the Environmental Report (June 1971), Supplemental Environmental Report (November 1971) and the Final Environmental Statement (April 1973) were reviewed with respect to the proposed changes and has determined that the proposed changes will have no effect on the previous conclusions.

The licensee has upgraded the radiation protection programs and has significantly increased their awareness and commitment to the as-low-as-reasonably-achievable (ALARA) concept. This commitment has led to reductions in personnel exposures, the volume of radioactive waste generated and the number of contaminated areas. Based on this commitment and program, occupational exposure during the extended period is not a significant consideration.

The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has analyzed the proposed amendments to determine if a significant hazards consideration exists:

1) The proposed change does not increase the probability or the consequences of an accident previously evaluated. A 40 year service life was assumed in the design and construction of the plant, and no physical, procedural or programmatic modifications are required to support extended operation.

2) The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated. No physical changes in plant equipment or operating procedures are required to support extended operation.

3) The proposed change does not involve a significant reduction in a margin of safety. The various accident analyses described in the FSAR assumed a forty year operating life at a thermal power level of 3411 Mwt. The proposed change does not involve operation beyond a forty year period or an increase in the licensed power level of either Salem Unit No. 1 or 2.

The staff has reviewed the licensee's submittal and significant hazards analysis and concurs with the licensee's determination that the proposed amendments do not involve a significant hazards consideration. Therefore, the staff proposes to determine that the

requested amendments do not involve a significant hazards consideration relative to the requested extension of the Salem Unit Nos. 1 and 2 Operating Licenses.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Conner and Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Dates of amendment request: September 19, 1989, October 19, 1989, and December 11, 1989

Description of amendment request: The proposed Technical Specification changes concern the relocation of several cycle-specific core operating limits for Virgil C. Summer Nuclear Station from the Technical Specifications to the Core Operating Limits Report (COLR). A new definition of the COLR will be added to the Technical Specifications. Additionally, certain individual Technical Specifications will be amended to note that cycle-specific parameter limits are contained in the COLR. A COLR paragraph will be added to the Administrative Controls Section of the Technical Specification which will replace the Peaking Factor Limit Report. The COLR will be required to be submitted to the NRC to allow continued trending of the cycle-specific parameters.

The proposed changes will reference the COLR for specific parameters and will ensure that cycle-specific parameters are maintained with the limits of the COLR. The cycle-specific parameter limits proposed for relocation to the COLR as part of this license amendment request include:

(a) 3.1.1.3 Moderator Temperature Coefficient

(b) 3.1.3.5 Shutdown Rod Insertion Limit

(c) 3.1.3.6 Control Rod Insertion Limit

(d) 3.2.1 Axial Flux Difference

(e) 3.2.2 Heat Flux Hot Channel Factor

(f) 3.2.3 RCS Flow Rate and Nuclear Enthalpy Rise Hot Channel Factor

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Pursuant to 10 CFR 50.91, South Carolina Electric & Gas Company has determined that operation of the facility in accordance with the proposed license amendment request does not involve any significant hazards considerations as defined by NRC regulations in 10 CFR 50.92.

1) The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The removal of cycle-specific core operating limits from the Virgil C. Summer Nuclear Station Technical Specificiations has no influence or impact on the probability or consequences of any accident previously evaluated. The cycle-specific core operation limits, although not in Technical Specifications, will be followed in the operation of the Virgil C. Summer Nuclear Station. The proposed amendment still requires exactly the same actions to be taken or if limits are exceeded as is [sic] required by current Technical Specifications. The cycle specific limits within the COLR will be implemented and controlled per VCSNS programs and procedures. Each accident analysis addressed in the Virigl C. Summer Nuclear Station Final Safety Analysis Report (FSAR) will be examined with respect to changes in cycle-dependent parameters, which are obtained from application of the NRC-approved reload design methodologies, to ensure that the transient evaluation of new reloads are [sic] bounded by previously accepted analyses. This examination, which will be performed per requirements of 10 CFR 50.59, ensures that future reloads will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2) The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

As stated earlier, the removal of the cycle specific variables has no influence or impact, nor does it contribute in any way to the probability or consequences of an accident. No safety-related equipment, safety function, or plant operation will be altered as a result of this proposed change. The cycle specific variables are calculated using the NRC-approved methods and submitted to the NRC to allow the Staff to continue to trend the values of these limits. The Technical Specifications will continue to require operation within the required core operating limits and appropriate actions will be taken when or if limits are exceeded.

Therefore, the proposed amendment does not in any way create the possibility of a new of different kind of accident from any accident previously evaluated.

3) The proposed amendment does not result in a significant reduction in the margin of safety.

The margin of safety is not affected by the removal of cycle-specific core operating limits from the Technical Specifications. The margin of safety presently provided by current Technical Specifications remain [sic] unchanged. Appropriate measures exist to control the values of these cycle-specific limits. The proposed amendment continues to require operation within the core limits as obtained from the NRC-approved reload design methodologies and appropriate actions to be taken when or if limits are violated remain unchanged.

The development of the limits for future reloads will continue to conform to those methods described in NRC-approved documentation. In addition, each future reload will involve a 10 CFR 50.59 safety review to assure that operation of the unit within the cycle specific limits will not involve a significant reduction in a margin of safety.

The licensee has concluded that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards consideration.

The NRC staff has made a preliminary review of the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: Fairfield County Library, Garden and Washington Street, Winnsboro, South Carolina 29180

Attorney for licensee: Randolph R. Mahan, South Carolina Electric & Gas Company, P. O. Box 764, Columbia, South Carolina 29218

NRC Project Director: Elinor G. Adensam

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: November 20, 1989

Description of amendment request: Technical Specification 4.0.2, "Surveillance Requirements," provides the allowable tolerances for extending surveillance intervals beyond those specified in the nominal surveillance requirements. Currently, Specification 4.0.2 requires that each surveillance activity be performed within the specified time interval with: (a) a maximum allowable extension not to exceed 25% of the surveillance interval, and (b) the combined time interval for

any three consecutive surveillance intervals shall not exceed 3.25 times the specified surveillance interval.

analysis. Therefore, based on its review, the staff proposes to determine that the proposed changes do not involve a

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any three consecutive surveillance intervals shall not exceed 3.25 times the specified surveillance interval.

The purpose of the 25-percent extension is to aid in the scheduling of surveillance activities and to permit surveillances to be postponed when plant conditions are not suitable for conducting a surveillance. The 3.25 limit was designed to prohibit routine use of the 25-percent interval extension.

This amendment eliminates restriction (b) based on the NRC staff conclusion that the removal of the 3.25 limit results in a greater benefit to safety than limiting the use of the 25-percent allowance to extend surveillance intervals.

South Carolina Electric & Gas Company (SCE&G) is requesting this revision because it will offer VCSNS more flexibility in using the Specification for extending surveillance intervals and will also reduce the administrative burden associated with its use.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed amendment has been reviewed by SCE&G and determined not to involve a significant hazards consideration for the following reasons:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The change simply removes an unnecessary restriction on surveillance requirements and does not, therefore, affect the consequences of any the previously evaluated accidents. The 25-percent limitation is based on engineering judgement and the recognition that the most probable result of any surveillance is the verification that Surveillance Requirements are being met. This restriction is sufficient to ensure that the reliability associated with the surveillance activities is not significantly degraded beyond that obtained from the nominal surveillance interval. This revision, therefore, does not involve a significant increase in the probability of any previously evaluated accident.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. The revision does not involves a change in plant equipment or the manner in which plant equipment is operated. This change removes an existing undue restriction from the Specifications and does not create any new accident scenarios.

3. The proposed change does not result in a significant reduction in a margin of safety. The proposed change results in a benefit to safety because it will extend surveillance intervals when conditions are not favorable to perform the surveillance activity. Also, any safety risk incurred by allowing the deletion of the 3.25 limit for refueling surveillances is low compared to the risk incurred by having a forced shutdown to perform the surveillances.

With the 3.25 limit eliminated, the reliability ensured through surveillance activities will continue to be ensured through the 25-percent limit on surveillance extensions. This limit, which is based on engineering judgement and the recognition that the most probable result of any performance surveillance is verification that the Surveillance Requirement is being met, ensures that reliability associated with surveillance activities is not significantly degraded beyond that obtained from the specified surveillance interval provided in the Technical Specifications.

For these reasons, the proposed change will not result in a significant reduction in a margin of safety.

The licensee has concluded that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards consideration.

The NRC staff has made a preliminary review of the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180

Attorney for licensee: Randolph R. Mahan, South Carolina Electric and Gas Company, P.O. Box 764, Columbia, South Carolina 29218

NRC Project Director: Elinor G. Adensam

Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: March 7, 1988

Description of amendment request: The proposed amendment would revise the provisions in the Davis-Besse Nuclear Power Station, Unit No. 1, Technical Specifications (TSs), related to the third type A test (the Containment Integrated Leak Rate Test) and the 10-year inservice inspection (ISI) of the plant as presently specified in TS Section 4.0.1.2.a. Specifically, the proposed amendment would delete the requirement that the third ILRT of each set of Type A tests be conducted during the shutdown for the 10-year ISI. Since this requirement is also contained in Section III.D.1(a) of Appendix J to 10 CFR Part 50, the licensee previously filed a request for exemption from this specific requirement in its letter dated November 20, 1987. This exemption request is being treated as a separate but parallel action by the Commission.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92 (c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new of different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee addressed the above standards in the amendment application. In regard to the three standards, the licensee provided the following analysis.

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because uncoupling of the third Type A test and the 10-year ISI does not affect frequencies, types of testing or acceptance criteria from those previously (and currently) analyzed for verification of the operability of the containment vessel and components.

The proposed changes do not create the possibility of a new or different kind of accident than any previously evaluated. Uncoupling the third Type A test and the 10-year ISI does not introduce any new type of accident since the frequencies, types of testing, and acceptance criteria remain unchanged; therefore, operability will be assured consistent with current analyses.

The proposed changes do not involve a significant reduction in a margin of safety. The third Type A test and the 10-year ISI will be performed in accordance with the requirements of 10 CFR 50 except that they will not be performed during a common outage. The uncoupling of the testing does not change previously approved frequencies of testing, manner of testing, or final acceptance criteria. Therefore, the margin of safety is not reduced.

The staff has reviewed and agrees with the licensee's no significant hazards consideration determination

analysis. Therefore, based on its review, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Attorney for licensee: Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment requests: November 14, 1989

Description of amendment requests: The proposed changes would revise Technical Specification (TS) Section 6.4.B by (1) deleting the "buddy system" requirement in order to reduce unnecessary radiation exposure; (2) deleting requirements that are duplicative of the Code of Federal Regulations (6.4.B.1.c, 6.4.B.1.d and 6.4.B.1.h); and (3) reorganizing TS 6.4.B using the format in the Standard Technical Specifications (STS).

Included in TS 6.4.B is a requirement to maintain a "buddy system" for entrance into radiation areas in excess of 1 R/hr. For this requirement, one worker maintains positive control of the locked gate regardless of whether it is opened or closed at the time while the other worker (his "buddy") performs the necessary work. The two individuals are required to maintain continuous communication by visual or verbal means during this period. Due to this requirement, two individuals are subject to radiation exposure, regardless of whether both are required to accomplish the work.

In reviewing the historical record, the licensee can find no technical bases or discussion which justifies or directs the inclusion of the "buddy system" into the Technical Specifications. With respect to the regulatory and radiation protection standards of today, the "buddy system" requirement of TS 6.4.B.1.f is inconsistent with STS and contrary to common ALARA practices. Deletion of TS 6.4.B.1.f will result in a significant reduction in man-rem exposure (approximately 9.6 man-rem per year).

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has reviewed the proposed changes in accordance with the requirements of 10 CFR 50.92 and has determined that the request does not involve a significant hazards consideration in that:

1. No significant increase in the probability or consequences of an accident previously evaluated is created. The change to TS 6.4.B revises the TS format, removes TS requirements that are duplicated in other 10 CFR sections, and deletes the use of the "buddy system" for entering areas with radiation levels in excess of 1 R/hr. Thus, the only significant change to TS 6.4.B is to remove the "buddy system" when accessing certain high radiation areas. This change does not alter the facility, its equipment, or procedures affecting equipment operation and, therefore, has no effect on the probability or consequences of any accident.

2. No possibility of a new or different kind of accident from any accident previously evaluated is created. The TS change only levels in excess of 1 R/hr. As noted before, the proposed changes do not make any change to the facility or plant operation.

3. No significant reduction in a margin of safety is involved. The revised TS provides access control for areas with radiation levels in excess of 1 R/hr by requiring a locked door with the keys under administrative control of the Shift Supervisor on duty and/or the senior station individual assigned responsibility for health physics and radiation protection. The TS also requires the issuance of a Radiation Work Permit for access, except for Health Physics personnel during the performance of their assigned radiation protection duties. These controls comply with the access control alternatives specified in 10 CFR 20.203(c)(2)(iii).

Based on the staff's review of the licensee's evaluation, the staff agrees with the licensee's conclusions as stated above. Therefore, the staff proposes to determine that the proposed amendments do not involve a significant hazard consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Post Office Box 1535, Richmond, Virginia 23213.

NRC Project Director: Herbert N. Berkow

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of amendment request: October 27, 1989

Description of amendment request: The licensee requested an amendment to Technical Specifications Section 3.4.6.1, "Reactor Coolant System, Pressure/Temperature Limits." Specifically, the licensee would remove Figure 3.4.6.1-1, "Minimum Reactor Vessel Metal Temperature Versus Reactor Vessel Pressure (Initial Values)," and would replace Figure 3.4.6.1-2, "Minimum Reactor Vessel Metal Temperature Versus Reactor Vessel Pressure (Operational Values)," with a new Figure 3.4.6.1, "Minimum Reactor Vessel Metal Temperature versus Reactor Vessel Pressure." The narrative in the technical specifications would be revised to refer to only the single figure. Corresponding Bases Section 3/4.4.6, "Pressure/Temperature Limits" would be revised to indicate that the figure is based on Revision 2 of Regulatory Guide 1.99, "Radiation Embrittlement of Reactor Vessel Materials," and that nickel rather than phosphorus is a limiting constituent of the reactor vessel beltline material.

Basis for Proposed No Significant Hazards Consideration Determination: The license declared that the changes to the technical specification and supporting bases resulted from the implementation of Regulatory Guide 1.99, Revision 2, methodologies as directed by the Generic Letter 88-11, "NRC Position on Radiation Embrittlement of Reactor Vessel Materials and its Impact on Plant Operations," dated July 12, 1988. The generic letter directed licensees to complete technical analysis using methods described in the revised regulatory guide to ensure continued compliance with the requirements of Section V of 10 CFR Part 50, Appendix G.

Existing Figure 3.4.6.1-1 is no longer considered applicable since WNP-2 has passed 3 effective full-power years of operation. The existing bases to the technical specifications noted that Figure 3.4.6.1-1 was to be effective for the first three years of operation. Since this figure is removed on the basis that it is no longer applicable to WNP-2, its deletion is not addressed in the following no significant hazards analysis.

The proposed Figure 3.4.6.1 is in compliance with Title 10 of the Code of Federal Regulations, Part 50,

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Appendices G and H, and is submitted to replace the reactor pressure vessel pressure/temperature limit curves represented by existing Technical Specification Figure 3.4.6.1-2. The new figure reflects the End-of-Life (EOL) operational limits for WNP-2's reactor pressure vessel.

The proposed replacement figure has been updated incorporating the requirements of Regulatory Guide 1.99, Revision 2. The new curves on the revised Figure 3.4.6.1 were developed utilizing the revised Regulatory Guide criteria on irradiation damage.

Both the reactor pressure vessel beltline and feedwater nozzle regions were assessed and are reflected in the new curves. Calculations were completed in compliance with SRP 1.70, Section III ASME Code and Summer 1972 Addenda Appendix G and Welding Research Council Bulletin 175. Changes to the text of Specification 3/4.4.6 and the List of Figures have been made to reflect the replacement of Figures 3.4.6.1-1 and 3.4.6.1-2 by the revised figure now numbered 3.4.6.1.

The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The Supply System has evaluated this amendment request per 10 CFR 50.92 and determined that it does not represent a significant hazard because it does not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment reflects shifts in the pressure temperature limit curves to values which are more conservative then those presently in use. The methodology used to derive these values is recognized by the NRC and Industry as providing acceptable margins.

Hence the probability of a previously evaluated accident is not impacted by these changes but remains at an acceptable value. Higher temperature values for corresponding pressures further reduce brittle fracture possibilities. Nor do these changes increase the consequences of an accident in that the pressure temperature shift is well within all equipment operating margins.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

These changes, as described above, are more conservative yet well within any upper bound limit. No new modes of plant operation result from these changes. The only changes will be in operation of the plant within more conservative limits. As such no new or different kind of accident is credible.

(3) Involve a significant reduction in a margin of safety.

As described in 1) above these changes reflect the application of methodologies recognized by the NRC and Industry as providing a sufficient margin of safety. The shift in limits is more conservative than values presently in use but within any upper bound limits. Hence no reduction in a margin of safety is credible with the approval of these changes.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three criteria are satisfied. Therefore the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Richland City Library, Swift and Northgate Streets, Richland, Washington 99352.

Attorneys for licensee: Nicholas S. Reynolds, Esq., Bishop, Cook, Purcell and Reynolds, 1400 L Street, NW., Washington, DC 20005-3502 and G. E. Doupe, Esq., Washington Public Power Supply System, P.O. Box 968, 3000 George Washington Way, Richland, Washington 99352.

NRC Project Director: George W. Knighton.

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of amendment request: October 27, 1989

Description of amendment request: The licensee has requested that Technical Specification 4.02 be revised to remove the requirement that "...each Surveillance Requirement shall be performed within the specified time interval with the combined time interval for any 3 consecutive surveillance intervals shall not exceed 3.25 times the specified interval." The basis for this requirement would be deleted from the corresponding Bases section of the technical specifications. The technical specification would retain the provision for a maximum allowable extension of 25 percent for a surveillance interval.

Basis for Proposed No Significant Hazards Consideration Determination: Specification 4.0.2 of the Technical Specifications permits surveillance intervals to be extended up to 25 percent of the specified interval to facilitate the scheduling of surveillance activities. Specification 4.0.2 also currently limits extending the surveillances such that the combined time interval for any three consecutive surveillance intervals shall not exceed 3.25 times the specified surveillance interval. The intent of the 3.25 limit, as expressed in the existing basis, was to preclude routine use of the provision for extending a surveillance interval by 25 percent.

The licensee declared that in Generic Letter 89-14, "Removal of the 3.25 Limit on Extending Surveillance Intervals," dated August 21, 1989, the NRC staff recognized that the 3.25 limit could arbitrarily require a plant to perform a surveillance test under conditions unsuitable for performing the test or could cause a plant shutdown. The staff noted that the risk to the 3.25 limit is "low in contrast to the alternative of a forced shutdown." Concern over these two potential actions, performance of surveillances under less than optimum conditions and forced shutdowns based on maintaining the 3.25 limit, justify the proposed amendment, according to the licensee.

The licensee submitted the proposed change in accordance with the generic letter and has contended that approval of the amendment request would enhance plant safety and decrease the administrative burden of ensuring compliance to the present 3.25 limit.

The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The Supply System has evaluated this amendment request per 10 CFR 50.92 and has determined that it does not represent a significant hazard because it does not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because any slight enhancement in the reliability of the equipment that might be realized by adhering to the 3.25 limitation is thought to be significantly offset by the forced need to perform the surveillance recognizing that the 25 percent limit remains in place. The use of the allowance to extend surveillance intervals by 25 percent and not observe the 3.25 limit will result in a decreased probability of an evaluated accident over the plant lifetime because surveillance intervals will be extended at times when conditions are not suitable for performing the surveillance. Testing at unsuitable times or forced shutdowns offer the potential for a condition that would challenge plant safety systems and unnecessarily burden plant personnel. Because a vast majority of surveillances demonstrate that systems or components are in fact operable, this amendment enhances plant safety and does not adversely impact the consequences of an accident.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. Because this amendment addresses only the scheduling of surveillance activities and involves no alteration of plant design or operating procedures there is no possibility of creating a new type of accident.

(3) Create a significant reduction in a margin of safety because the more important 25 percent limit is being retained. ...This change to the requirements of Specification 4.0.2 will remove an unnecessary restriction on extending surveillance requirements and will result in a benefit to safety when plant conditions are not conducive to the conduct of surveillance requirements. The removal of the 3.25 limit will provide greater flexibility in the use of the provision for extending surveillance intervals, reduce the administrative burden associated with its use, and have a positive effect on safety....

The NRC staff has reviewed the licensee's analysis and based on that review, it appears that the three criteria are satisfied. Therefore the staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Richland City Library, Swift and Northgate Streets, Richland, Washington 99352.

Attorneys for licensees: Nicholas S. Reynolds, Esq., Bishop, Cook, Purcell and Reynolds, 1400 L Street, NW., Washington, DC 20005-3502 and G. E. Doupe, Esq., Washington Public Power Supply System, P.O. Box 968, 3000 George Washington Way, Richland, Washington 99352.

NRC Project Director: George W. Knighton.

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Maintowoc County, Wisconsin

Date of application for amendment: August 3, 1989, amended October 3, 1989

Brief description of amendment request: The proposed amendments would revise provisions of the Technical Specifications (TS) relating to the permissible heatup and cooldown curves. The heatup and cooldown limitation curves have been revised to be applicable through 16.1 effective full power years. Further, the technical specifications have been simplified by taking the most limiting set of curves derived for either Unit 1 or Unit 2 and making that set applicable to both units. The proposed changes are necessary to provide an acceptable operating range of pressures and temperatures to protect the reactor vessels against non-ductile failure. These curves need to be revised periodically to account for changes in reactor vessel materials characteristics due to neutron embrittlement. Specifically, the proposed amendments would replace TS figures 15.3.1-1 and 15.3.1-2 with revised heatup and cooldown curves applicable to both units. Technical Specification figures 15.3.1-3 and 15.3.1-4, applicable to Unit 2 only, would be deleted. Technical Specification references to these figures in TSs 15.3.1.B.1, 15.3.1.B.4, 15.3.1.F.3, and 15.3.15.A.1 would be changed to reflect the use of only one set of heatup and cooldown limit curves for both units. The Basis section for TS 15.3.1.B would also be changed both to reflect the use of only one set of heatup and cooldown curves and to reflect revised methodology for how these curves are calculated. Finally, the Basis section for TS 15.3.1.F would be revised to correct a reference from 10 CFR Part 50, Appendix G, Section IV.A.2.c to Section IV.A.3.

Date of individual notice in **Federal Register:** December 5, 1989 (54 FR 50296)

Expiration date of individual notice: January 4, 1990

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: May 23, 1989 as supplemented on August 21, 1989

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Brief description of amendment: This amendment deletes Technical Specifications, Section 3.6.4, 4.6.H and Table 4.6.2, which includes limiting conditions for Operation (LCO) and Surveillance requirements for visual inspections of high energy piping outside of the primary containment while the unit is operating. The visual inspections and LCOs were interim requirements until modifications, described in Revison No. 34 to the Pilgrim Final Safety Analysis Report, were completed. The amendment also deletes the Basis Section for 3.6.H and 3.6.H.

Date of issuance: December 4, 1989
Effective date: December 4, 1989 and shall be implemented within 30 days.
Amendment No.: 126
Facility Operating License No. DPR-35: Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** July 10, 1989 (51 FR 25767). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 4, 1989.
No significant hazards consideration comments received: No
Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: September 11, 1989
Brief description of amendment: This amendment revises Technical Specification Section 3/4.9, "Auxiliary Electrical System," by adding Sections 3.9.A.7 and 4.9.A.4. These sections include limiting conditions of operation and surveillance requirements reflecting the installation of Electrical Protection Assemblies to the Reactor Protection System power supplies at the Pilgrim Nuclear Power Station. The bases for Section 3/4.9 are also revised to reflect the proposed changes.
Date of issuance: December 4, 1989
Effective date: December 4, 1989
Amendment No.: 127
Facility Operating License No. DPR-35: Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** November 1, 1989 (54 FR 46140). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 4, 1989.
No significant hazards consideration comments received: No
Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: March 30, 1989, as supplemented April 25, 1989, and May 16, 1989.
Brief description of amendment: The amendment changes two Technical Specifications associated with refueling operations. The first is TS 3/4.9.1, Boron Concentration. Currently, Table 4.9-1 provides a valve arrangement intended to prevent a boron dilution event while in Mode 6. The specified valve arrangement does not allow the Refueling Water Storage Tank (RWST) to be refilled while in Mode 6. The change allows an alternate valve arrangement permitting makeup to the RWST. Also, the following administrative changes to TS 3/4.9.1 and 3/4.9.2 makes them easier to use and avoid possible operator confusion.
(1) In the first change, the table related to administrative controls on valves to prevent dilution during refueling, Table 4.9-1 is moved from the surveillance TS, referenced in the Limiting Condition for Operation (LCO) section and renumbered as Table 3.9-1 to prevent confusion in the LCO section. Table 3.9-1 is reformatted. The reformatting includes a new title and a descriptively expanded "Valve Position During Refueling" column.
(2) The second change in TS 3/4.9.2 clarifies that both action requirements must be fulfilled with two inoperable Source Range Neutron Flux Monitors.
Date of issuance: December 7, 1989
Effective date: December 7, 1989
Amendment No. 16
Facility Operating License No. NPF-63. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** May 17, 1989 (54 FR 21299). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 7, 1989.
No significant hazards consideration comments received: No
Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Commonwealth Edison Company, Docket No. STN 50-454, Byron Station, Unit 1, Ogle County, Illinois

Date of application for amendment: October 13, 1989
Brief description of amendment: The amendment modifies the Technical Specifications to allow a one-time extension of the interval for performance of the visual inspection of inaccessible snubbers.
Date of issuance: December 12, 1989
Effective date: December 12, 1989
Amendment No.: 35
Facility Operating License No. NPF-37. The amendment revised the Technical Specification.
Date of initial notice in **Federal Register:** November 1, 1989 (54 FR 46144). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 12, 1989.
No significant hazards consideration comments received: No.
Local Public Document Room location: Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61101.

Commonwealth Edison Company, Docket No. 50-374, LaSalle County Station, Unit No. 2, LaSalle County, Illinois

Date of application for amendment: December 2, 1988 and supplemented January 11, 1989 and May 17, 1989.
Brief description of amendment: This amendment modified TS Table 3.8.3.2-1 to reflect new locations of breakers for the RHR shutdown cooling suction isolation valve, delete manufacturer part number references, and correct typographical errors.
Date of issuance: October 25, 1989
Effective date: October 25, 1989
Amendment No.: 52
Facility Operating License No. NPF-18. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** February 22, 1989 (54 FR 7628). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 25, 1989
No significant hazards consideration comments received: No
Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61346

Commonwealth Edison Company, Docket No. 50-374, LaSalle County Station, Unit No. 2, LaSalle County, Illinois

Date of application for amendment: September 7, 1988, and augmented May 25, 1989, and August 29, 1989
Brief description of amendment: The amendment revised the TS by deleting the specifications added by Amendment 30 to allow installation and use of the Fine Motion Control Rod Drive (FMCRD) during Unit 2, Cycle 2. The test for which the FMCRD was installed has been completed and the FMCRD was removed during the Unit 2 refueling outage that concluded in February 1989. The information contained in the May 25 and August 29, 1989 CECo letters was clarifying in nature and did not affect the staff's previous proposed no significant hazards consideration determination.
Date of issuance: November 28, 1989
Effective date: November 28, 1989
Amendment No.: 53
Facility Operating License No. NPF-18. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** December 30, 1988 (53 FR 53091). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 28, 1989
No significant hazards consideration comments received: No
Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Duke Power Company, Docket Nos. 50-269, 50-270 and 50-287, Oconee Nuclear Station, Units 1, 2 and 3, Oconee County, South Carolina

Date of application for amendments: July 14, 1989
Brief description of amendments: The amendments revised Technical Specification 4.8.2 to delete requirements to leak rate test the main steam stop valves during each refueling outage.
Date of issuance: December 13, 1989
Effective date: December 13, 1989
Amendment Nos.: 179, 179, 176
Facility Operating License Nos. DPR-38, DPR-47 and DPR-55. Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** August 9, 1989 (54 FR 32790). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 13, 1989
No significant hazards consideration comments received: No.
Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

Duquesne Light Company, Docket No. 50-412, Beaver Valley Power Station, Unit No. 2, Shippingport, Pennsylvania

Date of application for amendment: May 4, 1989
Brief description of amendment: The amendment revises the reactor trip system overtemperature delta T and overpower delta T response times listed in Table 3.3-2 of the Technical Specifications from 4.0 seconds to 5.5 seconds.
Date of issuance: December 6, 1989
Effective date: December 6, 1989
Amendment No. 24
Facility Operating License No. NPF-73. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** June 14, 1989 (54 FR 25374). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 6, 1989
No significant hazards consideration comments received: No
Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Florida Power and Light Company, et al., Docket No. 50-335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of application for amendment: October 2, 1989
Brief description of amendment: The amendment changes Technical Specifications Table 4.4-5 and Bases 3/4.4.9 to revise the reactor vessel material surveillance capsule removal schedule. The revised capsule removal schedule is consistent with the recommendations of ASTM E 185-82 as required by Appendix H to 10 CFR Part 50.
Date of Issuance: December 6, 1989
Effective Date: December 6, 1989
Amendment No.: 100
Facility Operating License No. NPF-16: Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** November 1, 1989 (54 FR 46148). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 6, 1989.
No significant hazards consideration comments received: No.
Local Public Document Room location: Indian River Junior College Library, 3209 Virgina Avenue, Ft. Pierce, Florida.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of application for amendments: October 20, 1989
Brief description of amendments: The amendments (1) add a definition of End-of-Cycle Recirculation Pump Trip (EOC-RPT) system response time to the Unit 2 Technical Specifications (TS) as well as increase the response time acceptance criteria; and (2) add the EOC-RPT system response time acceptance criteria to the Unit 1 TS with a note defining EOC-RPT system response time.
Date of issuance: December 4, 1989
Effective date: December 4, 1989
Amendment Nos.: 167, 103
Facility Operating License Nos. DPR-57 and NPF-5. Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** November 1, 1989 (54 FR 46148). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 4, 1989
No significant hazards consideration comments received: No.
Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

National Aeronautics and Space Administration, Docket No. 50-30, Plum Brook Reactor

Date of application for amendment: February 27, 1989 and June 22, 1989
Brief description of amendment: The amendment changes portions of the licensee's organizational structure to reflect changes at the Lewis Research Center.
Date of issuance: November 30, 1989
Effective date: November 30, 1989
Amendment No.: 8
Facility License No. TR-3: Amendment changed the Technical Specifications.
Date of initial notice in **Federal Register:** September 20, 1989 (54 FR 38765). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 30, 1989.
No significant hazards consideration comments received: No
Local Public Document Room Location: N/A

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of application for amendment: March 16, 1989
Brief description of amendment: This amendment revises the Technical Specifications to correct an error in Table 3.3.4 "Primary Containment Isolation Valve Lines Entering Free Space of the Containment." The change clarifies that the containment spray isolation valves do not receive automatice initiation signals to open on reactor low-low water level and high drywell pressure.
Date of issuance: December 1, 1989
Effective date: December 1, 1989
Amendment No.: 112

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Facility Operating License No. DPR-63: Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: April 19, 1989 (54 FR 15831). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 1, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit No. 2, Scriba, New York

Date of application for amendment: December 15, 1988

Brief description of amendment: This amendment revises the Technical Specifications to increase the test interval for the performance of Channel Functional Tests on the Reactor Protection System Electrical Protection System Electrical Protection Assemblies. By this revision, a Channel Functional Test will be performed each time the plant is in cold shutdown for a period of more than 24 hours, unless it has been performed within the previous 6 months.

Date of issuance: November 29, 1989

Effective date: November 29, 1989

Amendment No.: 11

Facility Operating License No. NPF-69: Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: April 5, 1989 (54 FR 13767). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 29, 1989.

Significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit No. 2, Scriba, New York

Date of application for amendment: January 13, 1989

Brief description of amendment: This amendment revises Technical Specifications Section 3/4.4.1, Recirculation System and the associated Bases, to differentiate the terms recirculation loop drive flow and jet pump flow as used in the Technical Specifications and to change two surveillance requirements for demonstrating jet-pump operability. This amendment will also incorporate final values for Reactor Coolant System flow parameters as determined from startup tests.

Date of issuance: November 30, 1989

Effective date: November 30, 1989

Amendment No.: 12

Facility Operating License No. NPF-69: Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: May 17, 1989 (54 FR 21312). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 30, 1989.

Significant hazards consideration comments received: No.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Units 1 and 2, San Luis Obispo County, California

Date of application for amendments: September 25, and October 16, 1989 (Reference LAR 89-13).

Brief description of amendments: The amendments revised Technical Specifications Section 6, "Administrative Controls," to change (1) the reporting relationship of the Onsite Safety Review Group, (2) the membership and reporting relationship of the General Office Nuclear Plant Review and Audit Committee, and (3) references to President were changed to Vice President, Nuclear Power Generation.

Date of issuance: December 4, 1989.

Effective date: December 4, 1989.

Amendment Nos.: 47 and 46

Facility Operating License Nos. DPR-80 and DPR-82: Amendments changed the Technical Specifications.

Date of initial notice in Federal Register: November 1, 1989 (54 FR 46152). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 4, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

NRC Project Director: George W. Knighton

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of application for amendment: August 3, 1989

Brief description of amendment: The amendment revised the Technical Specifications to ensure that the design level of counting certainty is maintained at all times for the Source Range Monitors.

Date of issuance: December 13, 1989

Effective date: December 13, 1989

Amendment No. 34

Facility Operating License No. NPF-39. This amendment revised the Technical Specifications.

Date of initial notice in Federal Register: October 4, 1989 (54 FR 40932). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 13, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Philadelphia Electric Company, Docket No. 50-353, Limerick Generating Station, Unit 2, Montgomery County, Pennsylvania

Date of application for amendment: October 10, 1989

Brief description of amendment: The amendment revised Surveillance Requirement 4.7.4.b of the Technical Specifications to allow the first visual inspection of each type of snubber to be performed after completing three rather than four months of Power Operation.

Date of issuance: December 1, 1989

Effective date: December 1, 1989

Amendment No. 1

Facility Operating License No. NPF-85. This amendment revised the Technical Specifications.

Date of initial notice in Federal Register: November 1, 1989 (54 FR 46152). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 1, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: July 19, 1989 and supplemental letter dated November 14, 1989.

Brief description of amendments: These amendments changed the Technical Specifications to permit removal of the rod sequence control system, and reduced the rod worth minimizer low power setpoint.

Date of issuance: December 4, 1989

Effective date: December 4, 1989

Amendments Nos.: 151 and 153

Facility Operating License Nos. DPR-44 and DPR-56: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: August 23, 1989 (54 FR 35108). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 4, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (Regional Depository) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: June 14, 1989

Brief description of amendment: The amendment changes Table 3.2-6 to reflect changes to the suppression chamber temperature monitoring instrumentation.

Date of issuance: November 30, 1989

Effective date: November 30, 1989

Amendment No.: 144

Facility Operating License No. DPR-59: Amendment revised the Technical Specification.

Date of initial notice in Federal Register: July 12, 1989 (54 FR 29409). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 30, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: July 14, 1989

Brief description of amendment: The amendment corrects Table 3.2-3, "Instrumentation That Initiates Control Rod Blocks," Note 1 regarding the operability requirements for the Average Power Range Monitor System rod blocks during startup.

Date of issuance: November 30, 1989

Effective date: November 30, 1989

Amendment No.: 146

Facility Operating License No. DPR-59: Amendment revised the Technical Specification.

Date of initial notice in Federal Register: October 4, 1989 (54 FR 40933). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 30, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

Public Service Company of Colorado, Docket No. 50-267, Fort St. Vrain Nuclear Generating Station, Platteville, Colorado

Date of amendment request: September 14 as revised October 13, 1989

Brief description of amendment: Provides necessary TS changes to allow the use of unfueled elements during reactor defueling.

Date of issuance: December 1, 1989

Effective date: December 1, 1989

Amendment No.: 74

Facility Operating License No. DPR-34. Amendment revised the Technical Specifications/license.

Date of initial notice in Federal Register: October 18, 1989 (54 FR 42880). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 1, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Greeley Public Library, City Complex Building, Greeley, Colorado

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: March 23, 1989 and supplemental letters dated April 14, 1989, August 25, 1989 and September 22, 1989

Brief description of amendments: Table 3.8-1, Containment Penetration Conductor Overcurrent Protective Devices is deleted from Salem Unit 2 Technical Specifications and controls for maintaining the list and surveillance requirements are added to Salem Unit 1 and 2 Technical Specifications.

Date of issuance: December 4, 1989

Effective date: As of date of issuance and should be implemented within 60 days of the date of issuance for Unit 2 and before startup from the ninth refueling outage for Unit 1.

Amendment Nos. 105 and 82

Facility Operating License Nos. DPR-70 and DPR-75. These amendments revised the Technical Specifications.

Date of initial notice in Federal Register: May 31, 1989 (54 FR 23323). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 4, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of application for amendments: December 22, 1987 and modified October 19, 1989.

Brief description of amendments: These amendments revise TS 4.0.3, TS 4.0.4 and the bases sections for TS 3.0

and TS 4.0. These changes reflect the guidance promulgated by Generic Letter

McLendon Library, Raymond, Mississippi 39154

Register notice providing opportunity for public comment or has used local media

made a determination based on that assessment, it is so indicated.

Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the

the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention:

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and TS 4.0. These changes reflect the guidance promulgated by Generic Letter 87-09.

Date of issuance: December 7, 1989
Effective date: December 7, 1989
Amendment Nos.: 81 and 70
Facility Operating License Nos. NPF-10 and NPF-15: Amendments changed the Technical Specifications.

Date of initial notice in Federal Register: March 9, 1988 (53 FR 7603). The October 29, 1989 letter provided supplemental information and did not change the initial determination of no significant hazards consideration. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 7, 1989

No significant hazards consideration comments received: No.

Local Public Document Room location: General Library, University of California, P.O. Box 19557, Irvine, California 92713.

System Energy Resources, Inc., et al., Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: August 15, 1989 as supplemented by letters dated August 22, September 22, September 27 (2 letters), October 25, October 27, October 30, November 21, and November 30, 1989. The licensee submittals of August 22, September 22, September 27 (2 letters), October 25, October 27, October 30, November 21, and November 30, 1989 contained only minor corrections to the original submittal. It was, therefore determined unnecessary to renotice the application.

Brief description of amendment: The amendment changes the operating license to reflect the transfer of authority to control and operate Grand Gulf Nuclear Station, Unit 1 from System Energy Resources, Inc. to Entergy Operations, Inc.

Date of issuance: December 14, 1989
Effective date: December 14, 1989
Amendment No. 65
Facility Operating License No. NPF-29. This amendment revises the Operating License, Technical Specifications, and Environmental Protection Plan

Date of initial notice in Federal Register: September 6, 1989 (54 FR 37063). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 14, 1989. Antitrust comments were received and are addressed in the Commission's related Safety Evaluation.

No significant hazards consideration comments received: No

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: October 16, 1989

Brief description of amendment: This amendment revises the Technical Specifications to reduce the frequency of fire watches, when required, from continuous to not less than once per hour in the cable vault or switchgear room.

Date of issuance: December 8, 1989
Effective date: December 8, 1989
Amendment No. 117
Facility Operating License No. DPR-28. Amendment revised the Technical Specifications and/or License.

Date of initial notice in Federal Register: November 7, 1989 (54 FR 46785). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 8, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing. For exigent circumstances, the Commission has either issued a Federal Register notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By January 26, 1990, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene.

Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room for the particular facility involved.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Commonwealth Edison Company, Docket No. 50-254, Quad Cities Nuclear Power Station, Unit 1, Rock Island County, Illinois

Date of application for amendment: November 16, 1989

Brief description of amendment: The amendment revised the Technical Specifications to delete all reference to reactor head spray or control rod drive return lines for containment isolation and containment penetration leakage testing as these were removed by modifications to the plant.

Date of issuance: December 4, 1989
Effective date: December 4, 1989
Amendment No.: 123
Facility Operating License No. DPR-29. Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No. The Commission's related evaluation of the amendment and final determination of no significant hazards consideration are contained in a Safety Evaluation dated December 4, 1989.

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Attorney for licensee: Michael Miller, Esq., Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Arizona Public Service Company, et al, Docket Nos. STN 50-529 and STN 50-530, Palo Verde Nuclear Generating Station, Units 2 and 3, Maricopa County, Arizona

Date of application for amendments: October 25, 1989

Brief description of amendments: The Amendments revised Surveillance Requirement 4.5.2.h of Technical Specification 3/4.5.2, "Emergency Core Cooling Systems," by specifying minimum flow requirements during simultaneous hot leg and cold leg injection. In addition, a maximum allowable pump flowrate was specified to ensure pump protection. Corresponding editorial changes were made to Bases 3/4.5.2, as well as correction of minor typographical errors.

Date of issuance: October 20, 1989

Effective date: October 20, 1989

Amendment Nos.: 29 and 19

Facility Operating License Nos. NPF-51 and NPF-74: Amendments changed the Technical Specifications.

Public comment requested as to proposed no significant hazards consideration: No. The Commission's related evaluation of the amendments, finding of emergency circumstances, consultation with the State of Arizona, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated October 26, 1989.

Attorney for licensees: Mr. Arthur C. Gehr, Snell & Wilmer, 3100 Valley Center, Phoenix, Arizona 85007.

Local Public Document Room location: Phoenix Public Library, Business and Science Division, 12 East McDowell Road, Phoenix, Arizona 85004.

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of Application for amendment: October 19, 1989

Brief description of amendment: Technical Specification changes to provide one time temporary relief from operability requirements of differential temperature leakage monitors.

Date of Issuance: December 6, 1989

Effective Date: October 20, 1989

Amendment Nos.: 94 and 61

Facility Operating License Nos. NPF-14 and NPF-22: Amendments revised the Technical Specifications

Public comments requested as to proposed no significant hazards consideration: No

The Commission's related evaluation of the amendments, consultation with the Commonwealth of Pennsylvania and final no significant hazards considerations determination are contained in a Safety Evaluation dated December 6, 1989.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge 2300 N Street NW., Washington, DC 20037

Local Public Document Room Location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18071.

NRC Project Director: Walter R. Butler

Dated at Rockville, Maryland, this 20th day of December, 1989.

For the Nuclear Regulatory Commission

Steven A. Varga,

Director, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation

[Doc. 89-29868 Filed 12-26-89; 8:45 am]

BILLING CODE 7590-01-D

[Docket Nos. 030-05980, 030-05981, 030-05982, 030-06335, 030-06444]

Safety Light, Corp. et al.; Appointment of Special Assistant to the Presiding Officer

ASLBP No. 89-590-01-OM, 90-596-01-OM-2; (Byproduct material license No. 37-00030-02 *et al.*)

Before Administrative Judges: Helen F. Hoyt, Chair, Oscar H. Paris, Frederick J. Shon.

December 19, 1989.

Following consultation with the Panel Chairman, pursuant to the provisions of 10 CFR 2.722, the Presiding Officer has appointed Administrative Judge Marshall E. Miller to assist the Presiding Officer in taking evidence and in preparing a suitable record for review.

All correspondence, documents and other materials shall be filed with Judge Miller in accordance with 10 CFR 2.701. His address is: Administrative Judge Marshall E. Miller, 1920 South Creek Blvd., Spruce Creek Fly-In, Daytona Beach, FL 32124.

Dated: December 19, 1989. Bethesda, Maryland

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 89-29073 Filed 12-26-89; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-27542; File No. SR-AMEX-89-17]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving a Proposed Rule Change Relating to Borrowing Requirement for Delivery of Short Sales

I. Introduction

The American Stock Exchange, Inc. ("AMEX" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC") on July 5, 1989, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change that would amend its short sale borrowing policy. The AMEX is proposing to amend this policy to require, with limited exceptions, that members arrange to borrow securities, or obtain other assurances that delivery will be possible, prior to effecting short sales either on a proprietary or agency basis.

Notice of filing of the proposed rule change was provided by the issuance of a Commision release (Securities Exchange Act Release No. 27031, July 13, 1989) and by publication in the **Federal Register** (54 FR 30486, July 20, 1989). No comments were received by the Commission on the proposed rule change.

II. Description of the Proposal

AMEX Rule 784(c) ("Mandatory Closing of Fails") requires members and member organizations to employ "[e]very reasonable means to borrow securities in order to make delivery on open contracts." The Exchange reports that it has periodically advised members to arrange for the borrowing of specific stocks when, for example, an increased short interest or undue concentration in the publicly traded float has been noted and which may result in a lack of liquidity in the borrowing market. However, Rule 784(c) does not explicitly require that arrangements be made to borrow the stock prior to effecting short sale transactions when market conditions for a particular security may warrant such arrangements.

The Exchange proposes to amend its existing stock borrowing policy to require member organizations effecting short sales for both customer and proprietary accounts to either make prior arrangements to borrow the stock or obtain other acceptable assurances that prompt delivery can be made on settlement date. Such assurances would include knowledge that the security is available for borrowing, obtaining conversion privileges or rights exercises, or other similar situations, so long as the security needed for delivery can be exchanged in normal transfer time. The policy will provide an exception for short sales by specialists, market makers and odd-lot dealers in fulfilling their market-making responsibilities. However, arbitrageurs and other participating traders will not be able to rely on this exception.

The Exchange contends that implementation of the new policy is expected to provide increased stability to the market for AMEX stocks subject to significant short selling, by decreasing the number of "fails" (*i.e.*, instances where a short seller fails to effect delivery of the stock). It will also conform AMEX policy to that of the New York Stock Exchange ("NYSE"), which has such a policy in effect, and should therefore eliminate possible confusion as to whether AMEX policy is different from the NYSE's.[3] The Exchange intends to issue the new borrowing policy to its membership in the form of an information circular.[4] The Exchange contends that the proposed policy change is consistent with section 6(b)(5) [5] of the Act in that it is designed to promote fast and equitable principles of trade and protect investors and the public interest.

III. Discussion and Conclusion

The Commission has considered carefully the Exchange's proposed rule change and finds, for the following reasons, that the AMEX proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.

The Commission agrees with the Exchange that imposing a formalized, affirmative borrowing requirement on AMEX members effecting short sales for both customer and proprietary accounts is appropriate for the protection of investors and the maintenance of fair and orderly markets. By restricting "naked" short selling,[6] the requirement should curtail downward speculative selling pressures in stocks traded on the AMEX.

The proposed rule change also should reduce the number of failed trades on the AMEX. This will save brokers for purchasers of AMEX issues the added expense of issuing buy-in notices or other actions to secure delivery of the securities. Additionally, the proposed rule change will help to fulfill public customers' reasonable expectations that securities that they have purchased will be delivered to the broker at settlement. The requirement that members affirmatively determine that the subject security is indeed available for borrowing, conversion privileges, or exercise rights appropriately places the burden on Exchange members to monitor the risks of accounts under their control, whether customer or proprietary accounts. Similarly, it is appropriate for those members that normally rely on the stock loan market without advance borrowing to monitor the liquidity (or illiquidity) of a particular stock in order to comply with the policy's borrowing mandate.

Furthermore, it is appropriate for the Exchange to exempt specialists, market makers and odd-lot dealers from the general borrowing requirement in fulfilling their market-making responsibilities, because their short selling is often undertaken passively pursuant to their market-making operations. In this connection, it is reasonable for the Exchange not to exempt arbitrageurs and other traders from the borrowing requirement because their short selling activities are not passive in nature. Finally, it is also appropriate for the Exchange to continue to obligate member organizations to secure prior borrowing arrangements with respect to securities which have been exempted from the mandatory buy-in rule because the sell side ultimately must cover its short position in such securities.[7]

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with the requirements of the section 6 of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,[8] in that it is designed to promote just and equitable principles of trade, as well as further the interests of investor protection and the public interest in fair and orderly auction markets on national securities exchanges.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[9] that the proposed rule change (SR-AMEX-89-17) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Dated: December 15, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-29938 Filed 12-26-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27543; File No. SR-AMEX-89-06]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Plan for Enforcing and Reporting Minor Disciplinary Rule Violations

I. Introduction

On April 24, 1989, the American Stock Exchange ("AMEX" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to sections 19(b)(1) and (d)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rules 19b-4 and 19d-1(c)(2) thereunder, [2] a proposed rule change to adopt a new fine system for general rule violations (new Rule 590) and amend the Exchange's minor rule violation enforcement and reporting plan ("Plan").[3] Amendments No. 1 and 2, submitted by the Exchange on April 17, 1989 and July 13, 1989, respectively, conform the proposed rule change to the Exchange's internal governance procedures required for Constitutional

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1989).

[3] See NYSE, Interpretation Handbook at 4450, Rule 440C.10/03 ("Deliveries Against Short Sales") (1989).

[4] See letter from Claudia Crowley, Special Counsel, AMEX, to Mary Revell, Branch Chief, Division of Market Regulation, SEC, dated November 22, 1989.

[5] 15 U.S.C. 78f(b)(5) (1982).

[6] A "naked" security position may be defined as an unhedged or uncovered security position that exposes the holder to the entire market risk associated with the position. A short sale becomes a "naked" short sale when the short seller or the short seller's broker fails to borrow and deliver stock to the broker's clearing agent. Brokers may fail to deliver stock to the clearing agent in long sales as well, but such fails are normally for short periods or for relatively small quantities of stock.

[7] The AMEX's mandatory buy-in rule, Rule 784(a), generally requires the broker on the buy side to close an Exchange contract which has not been fulfilled in accordance with its terms in certain circumstances. The mandatory buy-in rule exempts buy side brokers from the buy-in requirement when, for example, upon application, an Exchange Floor Official determines that "unusual circumstances exist whereby securities cannot be borrowed."

[8] 15 U.S.C. 78f(b)(5) (1982).

[9] 15 U.S.C. 78s(b)(2) (1982).

[10] See 17 CFR 200.30-3(a)(12) (1989).

[1] 15 U.S.C. 78s(b)(1), (d)(1) (1982).

[2] 17 CFR 240.19b-4 and 240.19d-1(c)(2) (1989).

[3] See letter from Della McQuade Emmons, Vice President and Secretary, AMEX, to Sharon Lawson, Branch Chief, SEC, Division of Market Regulation, dated March 8, 1989.

changes and remove one substantive violation from the original proposal. [4]

Notice of the proposed rule change was provided by the issuance of a Commission release (Securities Exchange Act Release No. 26852, May 22, 1989), and by publication in the Federal Register (54 FR 22990, May 30, 1989). The Commission received no comments on the proposed rule change.

II. Description of the Proposal

A. Introduction

1. AMEX's Minor Rule Plan

Rule 19d–1(c)(2) under the Act authorizes national securities echanges to adopt minor rule violation plans for the summary discipline and abbreviated reporting of minor rule violations by exchange members and member organizations.[5] In 1985, the Commission approved the Exchange's minor rule violation Plan,[6] which provides for quarterly reporting to the Commission of uncontested Floor decorum,[7] operational and member reporting violations with sanctions not exceeding $2,500.

The Exchange's existing Plan authorizes the Exchange, in lieu of commencing a disciplinary proceeding before a hearing panel, to impose a fine not to exceed $2,500, on any member, member organization, or registered or non-registered employee of a member organization for any violation of an Exchange rule which the AMEX determines to be minor in nature.[8] The AMEX's Plan permits any person to contest the Exchange's imposition of the fine through the submission of a written Answer, at which time the matter will become a "disciplinary proceeding" subject to Article V, section 1(b) of the Exchange's Constitution, and, where applicable, the reporting provisions of paragraph (c)(1) of Rule 19d–1 under the Act.

For covered minor disciplinary rule violations, the Plan relieves the Exchange from the current reporting requirement otherwise imposed by section 19(d)(1) of the Act for "final" disciplinary actions. In accordance with paragraph (c) (2) of Rule 19d–1, the AMEX's existing Plan specifies those uncontested minor rule violations with sanctions not exceeding $2,500 that would not be subject to the current reporting provisions of paragraph (c) (1) of Rule 19d–1, provided the Exchange gives notice of such violations to the Commission on a quarterly basis.

2. New Rule 590

The AMEX proposes to amend its existing Plan by consolidating into new Rule 590 the enforcement and reporting of Floor decorum violations and member operational and reporting violations. The AMEX's amended Plan would encompass two systems: (1) an expanded disciplinary system, which would include general rule violations as well as minor rule violations, and (2) a quarterly reporting system to the Commission for minor rule violations. Furthermore, AMEX proposes to increase to $5,000 the amount that the Exchange is authorized to fine members and member organizations for general rule violations.

In place of the current summary disciplinary procedure contained in Ariticle V, section 1(c) of the Exchange Constitution,[9] which is presently utilized by the Exchange's Enforcement Department to charge members with minor substantive rule violations, new Rule 590 sets forth three separate fine systems: Part 1, for general rule violations; part 2, for Floor decorum violations; and part 3, for reporting violations.[10] The current Floor decorum and reporting violations fine systems will remain substantially the same, continuing to be administered by Market Operations and the various Exchange departments responsible for receiving Exchange reports.

The new general rule violation fine system permits the Exchange's Enforcement Department, after a matter has been referred to it, to impose fines ranging from $500 to $2,500 against individuals and from $1,000 to $5,000 against member firms, depending on the number of similar violations within a rolling 12-month period.[11] As in the Floor decorum and reporting violations fine systems, the member or member organizations may plead guilty and pay the fine or contest the charge and request a hearing before an Exchange Disciplinary Panel.

B. General Rule Violations

As stated above, the AMEX's general rule violation fine system will permit the Exchange's Enforcement Department to impose a fine not to exceed $5,000 on any member, member organization, approved person, or employee of a member or member organization with respect to any enumerated general rule violation. The Exchange proposes to incorporate the following AMEX rule violations into part 1 of the Rule 590 Plan: [12] (1) Short sale rule violations; (2) violations of registered trader stabilization requirements; (3) violations of position limit rules; (4) violations of exercise limit rules; (5) violations of the option exercise rule; (6) failure to submit books and records, to furnish information, or to appear and testify within the time period required by the Exchange; (7) failure to submit audit trail data or accurate audit trail data; (8) violations of certain recordkeeping requirements; and (9) violations of certain reporting rules.[13] The fine schedule under Part 1 of Rule 590 is as follows: (1) First offense, $500 for individuals and $1,000 for member organizations; (2) second offense, $1,000 for individuals and $2,500 for member organizations; and (3) subsequent offenses within a rolling 12-month period, $2,500 for individuals and $5,000 for member organizations.[14]

C. Floor Decorum Violations

The Exchange proposes to incorporate five types of violations of existing Floor decorum and member and member organization operational violations into Part 2 of the Rule 590 Plan. The first is any provision of the Exchange's Floor decorum policy,[15] which generally sets forth specific guidelines concerning the personal appearance and conduct of persons on the trading Floor and generally prohibits any other act or omission which disrupts the orderly conduct of business on the Floor or which causes interference with the personal comfort or safety of other persons on the Floor. The second is the failure of a specialist to be properly represented at the trading post at scheduled times to answer inquiries regarding the status of orders and to resolve equity "DK" notices.[16] Third, the Rule 590 Plan will include the failure of a specialist to respond to inquiries regarding unreported PER/AMOS [17] automated order routing market orders. The last two violations are the failure to submit option trade comparison data to the Exchange by specified deadlines and the failure to be represented in the Exchange's options reconciliation room at scheduled times to resolve rejected option trades. The fine schedule under part 2 of Rule 590 is as follows: (1) $100 for a first offense; (2) $300 for a second offense; and (3) $500 for any subsequent offenses within a rolling 12-month period.[18]

D. Exchange Reporting Violations

The Exchange proposes to incorporate the failure to file accurately the following reports as possible violations of part 3 of the Rule 590 Plan: [19] (1) Examinations Division reports, including net capital, FOCUS reports and self-clearing specialist financial forms; (2) Trading Analysis Division reports, including specialist principal trading and financial reports; and (3) Market Surveillance Reports, including short positions, orders initiated from off-Floor and round lot short sale transactions.[20] The fine schedule under Part 3 of Rule 590 authorizes the Exchange to impose a fine of $50 a day on any member or member organization for the late filing of those reports specified in Rule 590, Part 3(g) that are required to be filed pursuant to Rule 30.

E. Procedural Rights

In any action taken by the Exchange pursuant to part 1, 2 or 3 of new Rule 590, any person against whom a fine is imposed will be served with a written statement (signed by a Floor Governor or Exchange Official) setting forth (1) the act or omission constituting the violation,[21] (2) the fine imposed for the violation, and (3) the date, not less than 20 days after the date of service of the written statement, by which the determination becomes final and the fine becomes due and payable to the Exchange, or by which the determination must be contested.

If the person against whom a fine is imposed pursuant to part 1, 2 or 3 of new Rule 590 pays the assessed fine, the Exchange will deem such payment to be a waiver of both the person's right to a full disciplinary hearing before an Exchange Disciplinary Panel and the right to an appeal to the Exchange's Board of Governors. Alternatively, any person against whom a fine is imposed pursuant to parts 1, 2 or 3 of new Rule 590 may contest the Exchange's determination by notifying the Secretary of the Exchange not later than 20 days after the date of service of the written statement,[22] at which time the matter becomes a formal disciplinary proceeding subject to the provisions of Article V, section 1(b) of the Exchange's Constitution. In any such formal disciplinary proceeding, if the Disciplinary Panel determines that the person charged is guilty of the violation, the Panel has the discretion to impose any one or more of the disciplinary sanctions authorized by the Exchange's Constitution and Rules.

F. Quarterly Reporting

Exchange actions taken pursuant to any covered minor disciplinary rule violation, excluding uncontested Floor decorum violations,[23] will be reported to the Commission on a quarterly basis. Such quarterly reports include (1) the Exchange's internal file number for the case, (2) the Commission's file number, (3) the name of the individual or member organization, (4) the nature of the violation, (5) the specific rule provision violated, if applicable, (6) the date of violation, (7) the fine imposed,[24] (8) an indication of whether the fine is joint and several, (9) the number of times the violation has occurred, and (10) the date of disposition.

III. Discussion and Conclusion

The Commission finds that proposed new Rule 590 and the amendments to the AMEX's Plan are consistent with the

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[4] See letter from Delia McQuade Emmons, Vice President and Secretary, AMEX, to Sharon Lawson, Branch Chief, SEC, Division of Market Regulation, dated April 13, 1989, and letter from J. Bruce Ferguson, Assistant Vice President and Assistant General Counsel, AMEX, to Mary Revell, Branch Chief, SEC, Division of Market Regulation, date July 11, 1989.

[5] See Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984) (order approving amendments to paragraph (c)(2) of Rule 19d–1 under the Act). Pursuant to paragraph (c)(1) of Rule 19d–1, a self-regulatory organization ("SRO") is required to file promptly with the Commission notice of any "final" disciplinary action taken by the SRO. Pursuant to paragraph (c)(2) of Rule 19d–1, any disciplinary action taken by the SRO for violation of an SRO rule that has been designated a minor rule violation pursuant to the plan shall not be considered "final" for purposes of section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding $2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his or her administrative remedies. By deeming unadjudicated, minor violations as not final, the Commission permits the SRO to report violations on a periodic, as opposed to an immediate, basis.

[6] See Securities Exchange Act Release No. 21918 (April 3, 1985), 50 FR 14068 (April 9, 1985) (order approving AMEX minor rule enforcement and reporting plan).

[7] Certain uncontested floor decorum violations included in the Exchange's minor rule infraction fine system already are exempt from Commission reporting under Rule 19d–1(c)(1). See Securities Exchange Act Release No. 17086 (August 22, 1980), 45 FR 57707 (August 28, 1980) (order approving amendments to paragraph (c)(1) of Rule 19d–1 under the Act). When the Commission adopted Rule 19d–1 (c)(2), see *supra* note 5, the Rule 19d–1 (c)(1) floor decorum violation reporting threshold was increased from $500 to $1,000.

[8] Although the AMEX's Board of Governors makes the initial determination of whether an Exchange rule violation is "minor" for purposes of inclusion in new Rule 590, this determination is subject to Commission review pursuant to sections 19 (b) (1) and (d) (1) of the Act and Rules 19b–4 and 19d–1 (c) (2) thereunder.

[9] The proposed rule change amends the Article V, section 1(c) constitutional provision with general language authorizing the AMEX's Board of Governors to adopt rules for purposes of implementing disciplinary fine systems for the resolution of minor rule violations.

[10] Subject to compliance with Rules 19b–4 and 19d–1 under the Act, the Exchange will issue periodically an information circular to its membership listing the Exchange Constitution, general rule provisions, floor decorum policies, minor rule provisions and reporting requirements subject to the Rule 590 Plan.

[11] Any fine imposed in excess of $2,500 will be subject to current rather than quarterly reporting to the SEC, in accordance with Rule 19d–1 under the Act. See also, *supra* note 7.

[12] Amendment No. 2, *supra* note 4, deleted the Exchange's proposal to include in Part 1 of the Rule 590 Plan violations of the prohibition against a member trading as agent and principal in the same security in the same trading session. See AMEX Rules 111(c) and 950(c).

[13] See AMEX Rules 7, 11, 31, 111, 114, 153, 180, 341, 342, 904, 904C, 905, 905C, 906, 906C and 980 and AMEX Constitution, Article V, sections 4(h)-(k). With the exception of AMEX Rules 904, 904C, 905, 905C and 980—all of which relate to options trading—these general rule violations are currently included in the NYSE's minor rule plan. See NYSE Rule 476A.

[14] The 2,500 and $5,000 maximum fines for any violation subsequent to a second offense may be imposed for a first or second offense if warranted under the circumstances in the view of the Exchange's Enforcement Department. AMEX Rule 590, part 1(e). In addition, the Exchange is not required to impose a fine pursuant to Rule 590 for violation of any of the above rules. The Exchange instead may elect to proceed under Article V, Section 1(b) of the Constitution (formal disciplinary proceeding) rather than under Rule 590. See Rule 590, Commentary .01.

[15] The Exchange's Floor decorum policy is published periodically and distributed among the members and member organizations. The Floor decorum violations included in the Exchange's minor rule infraction fine system already are exempt from Commission reporting under Rule 19d–1(c)(1). See *supra* note 7.

[16] A "DK" ("Don't Know") trade is a questioned trade ("QT"), *i.e.*, a trade that results in a discrepancy when the contra sides of a trade attempt to verify at comparison the details of the trade.

[17] The Exchange's Post Execution Reporting ("PER") Service electronically routes market and marketable limit orders in equity securities of up to 2,000 shares to the applicable specialist post. Similarly, the Amex Options Switching System ("AMOS") allows Exchange members to route options market and marketable limit orders of up to 20 contracts directly to the applicable specialist post.

[18] The $300 maximum fine for any violation subsequent to a second offense may be imposed for a first or second offense if warranted under the circumstances in the view of the Floor Governor or Exchange Official. The Floor Governor or Exchange Official also may impose a lesser fine of $50 for a first offense, again if circumstances warrant. AMEX Rule 590, part 2 (f).

[19] The Exchange's proposed rule change rescinds the AMEX Rule 30 fine schedule for the failure to file required reports while retaining the general authorizing language for purposes of implementing the Rule 590 reporting fine systems for this violation.

[20] The complete list of covered reporting obligations are set forth in Rule 590, part 3(g).

[21] In addition, disciplinary matters proceeding under part 1 of Rule 590 must state the rule or rules alleged to have been violated. AMEX Rule 590, part 1(b).

[22] In addition, disciplinary matters proceeding under part 1 of Rule 590 must submit a written response meeting the requirements of an "Answer" as provided in Article V, section 1(b) of the Exchange's Constitution. AMEX Rule 590, part 1(d).

[23] See *supra* note 7.

[24] Any fine in excess of $2,500 imposed for uncontested minor rule violations will be subject to current, rather than quarterly, reporting to the SEC, in accordance with Rule 19d–1(c)(2) under the Act. See also, *supra* note 7.

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requirements of the Act and the rules and regulations thereunder, and in particular, with the requirements of Sections 6(b) (1), (5) and (7) and section 19(d).[35] The proposed rule change establishes a simplified disciplinary system that will enable the Exchange to resolve a broader range of minor rule violations conveniently and quickly. Because the fine systems provide members with a simple, equitable method under which they can plead guilty to a minor rule violation charge and pay an appropriate fine, they enable the Exchange to deal more efficiently with minor rule violations, as well as provide a more meaningful deterrent, thus furthering the purposes of Sections 6(b)(1) and 6(b)(5) of the Act.

In addition, the Commission notes that because violations of the rules that will be subject to the proposed Plan can be adjudicated quickly and objectively, it is reasonable for them to be included in such an abbreviated periodic reporting plan.[36] For example, the determination of whether or not a member has violated the position limits contained in AMEX Rules 904 or 940C is simply a matter of mathematics. As a second example, compliance with Rule 590's part 2(b) off-floor operational deadlines is easily determined. The substantive violations included in AMEX Rule 590 and the minor rule violation reporting Plan are essentially administrative in nature, and, accordingly, efficient and equitable enforcement of the Plan's provisions should not entail the complicated factual and interpretative inquiries associated with more sophisticated Exchange disciplinary actions.

Furthermore, because the proposed Plan provides procedural rights to persons who are fined and permits disciplined persons to contest the Exchange's imposition of the fine and request a full disciplinary proceeding, the proposed Plan is consistent with section 6(b)(7) of the Act, which requires that the rules of an exchange must comply with section 6(d) and generally must provide a fair procedure for disciplining members.[37] The Commission also notes that the AMEX will retain the discretion to bring full disciplinary proceedings for violations of the rules listed in the Rule 590 Plan and should do so when appropriate for the particular violation(s) involved.[38] Finally, the AMEX's decision to publish its heretofore unpublished general and minor rule violation enforcement and reporting Plan in its rule book should assist Exchange members and member organizations in complying with the substantive and procedural provisions of the Plan.

It is therefore ordered, Pursuant to section 19(b)(2) and Rule 19d–1(c)(2) under the Act,[39] that the above mentioned proposed rule change and proposed amendments to the Plan be, and hereby are, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[40]

Dated: December 15, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–29939 Filed 12–26–89; 8:45 am]

BILLING CODE 8010–01–M

[35] 15 U.S.C. 78f(b) (1), (5) and (7) and 78s(d)(1) (1982).

[36] See, e.g., Securities Exchange Act Release No. 12415 [September 17, 1965], 50 FR 38630 [September 23, 1985] (order approving New York Stock Exchange minor disciplinary rule violation plan).

[37] 15 U.S.C. 78f(d) (1982).

[38] Inclusion of a rule in an exchange's minor rule plan should not be interpreted to mean it is an unimportant rule. On the contrary, the Commission recognizes that inclusion of objective rules under a minor rule violation plan not only can reduce reporting burdens of an SRO but also can make its disciplinary system more efficient in prosecuting violations of these rules.

[39] 15 U.S.C. 78s(b)(2) (1982) and 17 CFR 240.19d–1(c)(2) (1989).

[40] See 17 CFR 200.30–3(a)(12) (1989).

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1989).

[3] See Article X, Section 1(c) of the Exchange Constitution.

[4] The fees charged by the Exchange to physical access members are measured largely by the average of the annual rentals payable under *bona fide* leases and are calculated monthly by taking the average of all arms-length leases (*i.e.* a lease in which there exists no relationship between the parties) during the prior six month period. Therefore, if there were 10 new arms-length leases worth $80,000 each over the last six month period, the average of these leases would equal $80,000 and the Electronic Access Membership fee would equal 70% of $80,000 or $56,000. See NYSE Constitution, § 1(b).

[5] The proposed rule change which set the Electronic Access Membership fee for 1990 at $63,642 became immediately effective on November 22, 1989. See Securities Exchange Act No. 27467 (November 22, 1989), 54 FR 49379 (File No. SR–NYSE–89–36).

[6] See n. 4, supra.

[Release No. 34–27552; File No. SR–NYSE–89–37]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Changes in the Method of Calculating Electronic Access Membership Fees

On November 13, 1989, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to institute a new method for calculating electronic access membership fees.[3]

The proposed rule change was noticed in Securities Exchange Act Release No. 27468 (November 22, 1989), 54 FR 49360 (November 30, 1989). No comments were received on the proposal.

The current method of calculation, done annually, bases the electronic access membership fee on 70% of the prior 12 month average (*e.g.*, December–November), including initiation fees and dues, of the physical access membership fees.[4] The proposed fee calculation, done quarterly instead of annually, would be based on 70% of the prior six (instead of 12) month average of the physical access membership fees, but would exclude initiation fees and dues. The Exchange has determined that by utilizing the current method, the 1990 fee would equal $70,736, while the average fee for January–March of 1990 would equal the lesser value of $63,642 under the proposed method of calculation.[5] In addition, the Exchange proposes that each new quarterly rate will be the annual charge to any new or renewing electronic access member approved during that quarter.

The proposed calculation method is designed to adjust the electronic access membership cost to more accurately reflect current market conditions. Costs for alternative forms of access, such as the purchase of equity seats or the fixing of lease rentals, are determined by market conditions in negotiations between purchaser and seller or lessor and lessee. Furthermore, the dues for a physical access membership are largely measured by the average of the annual rentals payable under *bona fide* leases and are thus also affected by current market conditions.[6]

In this regard, the Exchange believes that by instituting a fee calculation method which is based on a six month average, as opposed to a 12 month average, of physical access membership fees, the fee for an electronic access membership will more accurately reflect current market conditions as evidenced by the change in seat prices and annual lease rentals.

After careful review, the Commission has decided to approve the proposed rule change. The Commission finds that the proposed rule change is consistent with section 6(b) of the Act and, in particular, furthers the objectives of the section 6(b)(4) requirement that the

Exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.[7]

It is equitable that the fee for an Electronic Access Membership remain proportionate in value to the alternative costs of access. Current market conditions play a major role in cost allocation of access to the Exchange and any attempt to equate supply and demand in the market will aid in providing an equitable access fee.

In addition, providing an equitable price for an Electronic Access Membership will foster the overall competitiveness of the Exchange, thereby satisfying the section 6(b)(5) requirement that the Exchange remove impediments to and perfect the mechanism of a free and open market.[8] Accordingly, the Commission finds it appropriate to approve the proposed rule change.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[9] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Dated: December 19, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–29962 Filed 12–26–89; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–27554; File No. SR–NYSE–89–16]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Partially Approving Proposed Rule Change Relating to Amendments to the Exchange's Voting Rights Listing Standards and Listing Standards for Non-U.S. Companies as set forth in Sections 313.00 and 103.00 of the Exchange's Listed Company Manual

On July 10, 1989, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Exchange's voting rights listing standards for domestic companies as set forth in Paragraph 313.00 of the New York Stock Exchange Listed Company Manual ("Listed Company Manual") and proposed amendments to Paragraph 103.00,[3] concerning listing standards for non-U.S. companies.[4]

The proposed rule change was noticed in Securities Exchange Act Release No. 27077 (July 28, 1989), 54 FR 32407 (August 7, 1989). No comments were received on the proposed rule change.[5]

The Exchange proposes to modify Paragraph 313.00(A) of the Listed Company Manual to establish Rule 19c–4 ("Rule") under the Act [6] as the foundation of the Exchange's voting rights listing standards, and to include the substantive provisions of Rule 19c–4, without change of language, in a rule of the Exchange.[7] The text of the NYSE's proposed changes to Paragraph 313.00(A) is identical to the text of Rule 19c–4 as adopted by the Commission.

In addition, the Exchange proposes modifications to Paragraph 313.00(B) of the Listed Company Manual to permit the listing of the voting common stock of a company which also has outstanding a non-voting common stock, as well as the listing of non-voting common stock. The proposed new text of Paragraph 313.00(B) provides, however, that certain safeguards must be provided to holders of a listed non-voting common stock. First, non-voting common stock must meet all original listing requirements including compliance with Rule 19c–4. Second, the rights of holders of non-voting common stock must be substantially the same, except for voting rights, as those of holders of the company's voting common stock. Finally, holders of non-voting common stock must receive annual reports and other communications, including proxy materials, that are sent generally to holders of the voting securities of the listed companies.

The Exchange is also proposing to amend Paragraph 103 of the Listed Company Manual which currently permits the NYSE to waive or modify certain interim reporting requirements and corporate governance listing standards, including voting rights and interim reporting requirements, for foreign issuers. Under the proposed amendments, the NYSE would be permitted to grant such waivers if the foreign company's practice is not prohibited by the laws of its home country, rather than the current requirement that the foreign company's procedure must be based on the laws or practices of its home country. The proposal would also permit non-U.S. companies to adopt voting rights structures that are consistent with NYSE requirements for domestic companies. Accordingly, under NYSE rules the voting structure of a non-U.S. company could meet NYSE listing standards if it either complied with the requirements of Rule 19c–4, as set forth in Section 313 of the Listed Company Manual, or was not prohibited by the issuer's home country laws.

Finally, the Exchange also proposes to delete existing Paragraphs 313.00 (B), (C), and (D) of the Listed Company Manual because, according to the Exchange, these provisions are unnecessary or obsolete in light of Rule 19c–4 as the basis of its voting rights policy. These provisions currently prohibit the use of voting trusts or irrevocable proxies to restrict the voting rights of shareholders,[8] allow the Exchange to refuse to list a class of stock, or restrict the creation of a class of stock, which has unusual voting provisions which tend to nullify or restrict voting,[9] and directs that an

[7] 15 U.S.C. 78f (1982).

[8] *Id.*

[9] 15 U.S.C. 78s(b)(2) (1982).

[10] 17 CFR 200.30–3(a)(12) (1989).

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1989).

[3] The NYSE is also proposing to delete Paragraph 308.00 of the Listed Company Manual regarding issuer defensive tactics. The Commission staff is still reviewing this portion of the proposal. Accordingly, this order only discusses and grants approval to those portions of the filing pertaining to Paragraphs 313 and 103 of the Listed Company Manual.

[4] As originally proposed, the NYSE filing indicated several other provisions concerning minimum voting rights for preferred issues would be deleted. The NYSE has indicated that these provisions will not be deleted by the current proposal being considered by the Commission. The NYSE has stated, however, that it will continue to review what role, if any, the NYSE should have with respect to such rights. *See* letter to Richard G. Ketchum, Director, Division of Market Regulation, Commission, from James E. Buck, Secretary, NYSE, dated October 30, 1989.

[5] The Commission, however, received a comment on a similar proposal submitted by the American Stock Exchange, Inc. ("Amex") which would apply equally to the NYSE proposal. *See* letter to Jonathan G. Katz, Secretary, Commission, from Sullivan & Cromwell, submitted in connection with Amex File No. 89–23, dated November 29, 1989, ("Sullivan & Cromwell letter").

[6] On July 7, 1988, the Commission adopted Rule 19c–4, under the Act, regarding shareholder voting rights. The Rule prohibits national securities exchanges and associations from listing or quoting the common stock or other equity securities of a domestic company that has issued a class of securities or taken other corporate action that has the effect of nullifying, restricting or disparately reducing the per share voting rights of holders of an outstanding class of common stock. *See* Securities Exchange Act Release No. 25891 (July 7, 1988), 53 FR 26878.

[7] *See* letter to Richard G. Ketchum, Director, Division of Market Regulation, Commission, from David Domijan, Senior Vice President, New Listing & Corporate Liaison, NYSE, dated December 19, 1989.

[8] Paragraph 313.00 (B) of the Listed Company Manual.

[9] Paragraph 313.00 (C) of the Listed Company Manual.

allocation of voting power should bear a reasonable relationship to the equity

Specifically, the Rule prohibits national securities exchanges and associations

Exchange's view, shareholders who deposited shares with a voting trust

consistent with section 6(b)(5) of the Act, will protect investors and the public interest. In this regard, we believe it is

any particular advantage in the dual trading of its stock and believes that dual listing would fragment the market

Executive Office Building, Washington, DC 20503, Telephone: (202) 395–7340.

Title: SBA Health Benefits Survey.

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allocation of voting power should bear a reasonable relationship to the equity interest of the class of stock.[10]

The changes proposed by the NYSE are the culmination of a five year review by the NYSE of the qualitative listing standards that apply to its listed companies. This review resulted in changes to its listing standards for foreign issuers, amendments to its shareholder approval policies, and a proposal to change its one share, one vote policy. The NYSE has decided to adopt the provisions of Rule 19c–4 as the framework for its voting rights listing standards, along with several other additional provisions regarding non-voting stock.[11]

After careful review the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular the requirements of sections 6(b)(5), 11A, and 14 of the Act. Specifically , as discussed in the release adopting Rule 19c–4,[12] the terms of Rule 19c–4, as expresly adopted in Paragraph 313.00(A), will protect shareholders from being disenfranchised while permitting companies flexibility to use disparate voting rights plans for capital raising purposes. Accordingly, the proposed rule change is directly related to the protection of investors and the public interest pursuant to Section 6(b)(5) of the Act.

The Commission believes that deletion of NYSE's current restrictions on listing non-voting common stock is consistent with Rule 19c–4 and the Act.[13] In this regard, we note that Rule 19c–4 does not treat issuances of non-voting common stock different from issuances of low vote stock. Rather the emphasis of the Rule is on issuances that disenfranchise shareholders. Specifically, the Rule prohibits national securities exchanges and associations from listing or quoting the common stock or other equity securities of a domestic company that has issued a class of securities or taken other corporate action that has the effect of nullifying, restricting or disparately reducing the per share voting rights of existing shareholders. In adopting the Rule, the Commission indicated that the fully disclosed sale of new non-voting stock did not always raise the same shareholder protection concerns as did the issuance of super voting stock, through exchange offers or otherwise, to reduce the per share voting rights of existing shareholders. Accordingly, the Commission has concluded that the NYSE's proposal to eliminate its per se restrictions on listing non-voting stock, in favor of applying the standards of Rule 19c–4 to such issuances, is consistent with the Act.

Furthermore, the Commission believes that the safeguards provided for in proposed Paragraph 313.00(B) for listing non-voting stocks, as discussed above, should ensure that non-voting stockholders, who have made an equity investment in a company, are informed of corporate developments and events and receive substantially the same rights as other holders.[14] The Commission believes that these safeguards, coupled with the protection afforded by Rule 19c–4, will protect adequately holders of a listed non-voting common stock.

For the same reasons, the Commission believes that NYSE's proposed deletion of its current prohibitions on listing stock subject to voting trusts or similar arrangements is permissible under Rule 19c–4 and the Act. The NYSE has stated that its existing restrictions on voting trusts is related to its prohibitions on listing non-voting stock.[15] In the Exchange's view, shareholders who deposited shares with a voting trust were essentially receiving non-voting stock. The Commission agrees with the NYSE's statement that voting trusts are not per se prohibited under Rule 19c–4. Accordingly, consistent with the deletion of the NYSE's non-voting stock listing restrictions, the Commission believes the application of Rule 19c–4 to voting trusts should ensure that shareholders are not disenfranchised by their use.

The Commission also believes that permitting the NYSE to waive certain listing standards for non-U.S. companies when a foreign company's procedure is not prohibited by the laws of its home country, rather than the current requirement that the procedure be based on the laws or practices of the home country, should help to simplify the administration and application of the rule. For example, it may be easier to show that a certain practice is not prohibited by the home country rather than show that it is a 'practice' in that country. This change will not jeopardize the purpose and benefits of the foreign company home waiver. In addition, we note that Rule 103 will continue to require foreign companies to furnish the Exchange with an opinion from independent counsel that the non-complying practice of the issuer is not prohibited by the laws of its home country.[16]

Finally, we believe that the other conforming changes discussed above, are appropriate in light of the NYSE's adoption of Rule 19c–4 as the foundation of its voting rights listing standard. We note that the protection to shareholders provided by these rules will still exist through the application of Rule 19c–4. For example, in applying Rule 19c–4 the NYSE will continue to examine equity investment as currently required under existing Paragraph 313.00(D), which states that an allocation of voting power should have a reasonable relationship to the equity investment. Accordingly, we believe it is permissible for the NYSE to decide that existing Paragraphs 313.00 (C) and (D), concerning voting rights, should be deleted as a result of the adoption of Rule 19c–4.

In summary, the Commission believes that NYSE's adoption of Rule 19c–4 as the basis of its voting rights policies,

[10] Paragraph 313.00 (D) of the Listed Company Manual.

[11] We note that Rule 19c–4, which sets forth a minimum voting rights standard, automatically became a rule of the national securities exchanges and associations, including the NYSE, when adopted by the Commission in July, 1988. At the time of adoption of the Rule, however, the Commission recognized that the markets would be reviewing their existing voting rights policies in light of Rule 19c–4.

[12] *See* note 8, *supra*.

[13] At the time of adoption of Rule 19c–4, the National Association of Securities Dealers ("NASD") had no voting rights listing standards and did not prohibit the listing of non-voting common stock. Since the adoption of Rule 19c–4, the NASD permits the listing on non-voting stock if it is consistent with the Rule. We also note that the Amex has also proposed to delete its current restrictions on listing non-voting stock. *See* File No. SR–Amex–89–23, noticed for comment in Securities Exchange Act Release No. 27414 (November 1, 1989), 54 FR 47000.

[14] As noted above, the Commission recently received a comment on the Amex proposal which applies equally to the NYSE proposal. *See* note 8, *supra*. The Sullivan & Cromwell letter suggests that the language requiring that the rights of holders of non-voting stock "be substantially the same as" the rights accorded holders of voting stock should be replaced with the words "no less favorable than" the rights of voting stock holders. The letter states that this change would permit companies to issue non-voting stock with higher dividends than voting stock. The Commission believes the change is not justified and that the "substantially" language should be retained. In particular, we note that issuances of no-vote stock with greater dividends could, depending on the other facts, involve a violative exchange offer under Rule 19c–4. In addition, the NYSE has indicated that the "substantially" language pertains to rights, other than dividends, such as call for redemptions. Based on this, we do not believe the comment letter justifies a change in language.

[15] *See* letter to Richard G. Ketchum, Director, Division of Market Regulation, Commission, for Linda Mills Simplicio, Vice President, Listed Company Compliance, NYSE, dated October 27, 1989.

[16] In addition, by allowing a foreign company to be listed if it complies with Rule 19c–4, the Exchange actually exceeds the minimum requirements set by Rule 19c–4 because Rule 19c–4, as adopted, only applies to domestic issuers.

consistent with section 6(b)(5) of the Act, will protect investors and the public interest. In this regard, we believe it is consistent with the Act for the NYSE to delete existing parts of their voting rights policy that were designed to provide protection similar to those that Rule 19c–4 currently provides to shareholders. Additionally, permitting the listing of non-voting common stock and stock subject to voting trusts, as long as these issuances comply with Rule 19c–4 and the additional safeguards in NYSE's rules, is reasonable in that the requirements of Rule 19c–4 and the NYSE rules will ensure that shareholders are adequately protected and not disenfranchised by such issuances.

It is Therefore Ordered, Pursuant to section 19(b)(2) of the Act,[17] that the portions of the proposed rule change discussed above are approved.

By the Commission.

Dated: December 20, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–29903 Filed 12–26–89; 8:45 am]

BILLING CODE 8010–01–M

[17] 15 U.S.C. 78s(b)(2) (1982).

[File No. 1–5171]

Issuer Delisting; Notice of Application To Withdraw from Listing and Registration; Super Food Services, Inc., Common Shares, $1.00 Par Value; Preferred Stock Purchase Rights

December 20, 1989.

Super Food Services, Inc. ("Company"), has filed an application with the Securities and Exchange Commission ("Commission") pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2–2(d) promulgated thereunder to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("AMEX").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The Company's common stock recently was listed on the New York Stock Exchange, Inc. ("NYSE"). Trading in the Company's stock on the NYSE commenced on December 14, 1989. In making the decision to withdraw its common stock from listing on the AMEX, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its common stock on the NYSE and the AMEX. The Company does not see any particular advantage in the dual trading of its stock and believes that dual listing would fragment the market for its common stock.

Any interested person may, on or before January 12, 1990, submit by letter to the Secretary of the Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–29904 Filed 12–26–89; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the agency has made such a submission.

DATE: Comments should be submitted on or before January 26, 1990. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: William Cline, Small Business Administration, 1441 L Street, NW., Room 200, Washington, DC 20416, Telephone (202) 653–8538.

OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone: (202) 395–7340.

Title: SBA Health Benefits Survey.

Form Nos.: SBA Temp Form 1704.

Frequency: One time.

Description of Respondents: Small Business Owners.

Annual Responses: 3,920.

Annual Burden Hours: 1,556.

William Cline,

Chief, Administrative Information Branch.

[FR Doc. 89–29921 Filed 12–26–89; 8:45 am]

BILLING CODE 8025–01–M

National Women's Business Council; Public Meeting

The U.S. Small Business Administration's National Women's Business Council will hold a public meeting at 10:30 a.m., on Tuesday, January 23, 1990, at the U.S. Department of Commerce, 15th and Constitution Avenue, NW., Washington, DC 20230, room 1412 to discuss the gathering of data on women's business ownership.

For further information, write or call Lindsey Johnson, Director, Office of Women's Business Ownership, U.S. Small Business Administration, 1441 L Street, NW., room 414, Washington, DC 20416, (202) 653–8000.

Lindsey Johnson,

Director, Office of Women's Business Ownership.

[FR Doc. 89–29925 Filed 12–26–89; 8:45 am]

BILLING CODE 8025–01–M

[License No. 04/04–5251]

First Growth Capital, Inc., Issuance of a Small Business Investment Company License

On July 31, 1989, a notice was published in the Federal Register (Vol. 54, No. 145, Page 31808) stating that an application has been filed by First Growth Capital, Inc., Macon, Georgia, with the Small Business Administration (SBA) pursuant to the Regulations governing small business investment companies (13 CFR 107.102) (1989) for a license as a small business investment company.

Interested parties were given until close of business August 30, 1989, to submit comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(d) of the Small Business Investment Act of 1958, as amended,

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after having considered the application and all other pertinent information, SBA issued License No. 04/04–5251 on [illegible] to First Growth Capital, Inc., with a capitalization of $3,030,400 and will be a source of equity capital and long-term loan funds for qualified small

Name, address, and position	Percentage of ownership

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Sections of the FAR Affected: 14 CFR 61.118.

Description of Relief Sought: To

participant in the international implementation of MLS technology, the FAA will replace the nearly 50-year-old

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after having considered the application and all other pertinent information, SBA issued License No. 04/04-5251 on November 16, 1989, to First Growth Capital, Inc. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.001, Small Business Investment Companies)

Dated: December 20, 1989.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 89-29924 Filed 12-26-89; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 04/04-253]

Florida Capital Ventures, Ltd.; Application for License to Operate as a Small Business Investment Company

An application for a license to operate a limited partnership small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended (Act) (15 U.S.C. 661 *et seq.*) has been filed by Florida Capital Ventures, Ltd. (FCV), First Florida Tower, 26th Floor, 111 Madison Street, Tampa, FL 33602, with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1989).

The officers and directors of the Corporate General Partner/Manager of the Applicant are:

Name, address, and position	Percentage of ownership
Warren L. Miller, 107 South Beverly Ave. Tampa, FL 33609, President/Director of Corporate General Partner	0
Noel E. Urben, Dibble Hill Road, West Cornwall, CT 06796, Director of Corporate General Partner	0
James W. Levin, 65 Presidential Drive Abington, MA, Secretary/Director of Corporate General Partner	0

The proposed owners of the Applicant are:

Name, address and position	Percentage of ownership
Florida Venture Partners, Inc., First Florida Tower, 26th Floor, 111 Madison St., Corporate General Partnership	1
First Venture Partners, Inc., First Florida Tower, 111 Madison St. Tampa, FL 33602, Sole Limited Partner	99.0

First Venture Partners, Inc. is a wholly-owned subsidiary of First Florida Banks, Inc.

The Applicant will begin operations with a capitalization of $3,030,400 and will be a source of equity capital and long-term loan funds for qualified small business concerns. The Applicant intends to conduct its business in the Southeastern United States, although primarily in Florida. Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owner and management, and the probability of successful operations of the applicant under their management including profitability and financial soundness, in accordance with the Act and Regulations.

Notice is hereby given that any person may, no later than 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, DC 20416.

A copy of the Notice will be published in a newspaper of general circulation in Tampa, Florida.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: December 19, 1989.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 89-29922 Filed 12-26-89; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 03/03-5191]

Continental SBIC; Application for License to Operate as a Small Business Investment Company

An application for a license to operate a small business investment company (SBIC) under the provisions of section 301(d) of the Small Business Investment Act of 1958, as amended (Act) (15 U.S.C. 661 *et seq.*) has been filed by Continental SBIC (Applicant), 4141 N. Henderson Road, Suite 8, Arlington, VA 22203 with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1989).

The proposed officers, directors, and owner of the Applicant are as follows:

Name, address, and position	Percentage of ownership
Arthur L. Walters, 4935 N. 30th Street, Arlington, VA 22207, Chairman/President	100
Lily Dhu Walters, 4935 N. 30th Street, Arlington, VA 22207, Secretary/Director	0
Mark W. Walters, 6615 Colchester Rd., Clifton, VA 22024, Vice President/Director	0
Thomas E. Goodfellow, 5262 Maris Ave., Alexandria, VA 22301, Treasurer	0

The Applicant will begin operations with a capitalization of $1,000,000 and will be a source of equity capital and long-term loan funds for qualified small business concerns.

The Applicant intends to conduct its business primarily in the State of Virginia.

As a small business investment company under Section 301(d) of the Act, the Applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Act and will provide assistance solely to small concerns which will contribute to a well balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owner and management, and the probability of successful operations of the applicant under their management including profitability and financial soundness, in accordance with the Act and Regulations.

Notice is hereby given that any person may, no later than 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, DC 20416.

A copy of the Notice will be published in a newspaper of general circulation in the Arlington, Virginia area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: December 19, 1989.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 89-29923 Filed 12-26-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-89-47]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: January 16, 1990.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on December 19, 1989.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 21780.
Petitioner: Civil Air Patrol.
Sections of the FAR Affected: 14 CFR 61.113.
Description of Relief Sought: To extend Exemption No. 4042 that allows petitioner's members holding private pilot certificates to be reimbursed for fuel, oil, and maintenance expenses while serving on official Civil Air Patrol missions.

Docket No.: 28058.
Petitioner: Accelerated Ground Training, Inc.
Sections of the FAR Affected: 14 CFR 61.63(d)(2) and 61.157(d)(2).
Description of Relief Sought: To allow petitioner's trainees to complete the same practical test for the issuance of a type rating to be added to a pilot certificate, regardless of its grade, in an airplane simulator as is done by the trainees of part 121 operating certificate holders.

Docket No.: 25602.
Petitioner: Trans World Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.360.
Description of Relief Sought/Disposition: To allow petitioner to operate six Lockheed L-1011-385-1-15 airplanes for an indefinite period of time with a ground proximity warning system that utilizes the Civil Aviation Authority certification requirements instead of complying with the requirements of Technical Standard Order C92.

Grant, December 14, 1989, Exemption No. 5124

Docket No.: 25686.
Petitioner: Airline Management Services, Inc./Airline Software Inc. Consulting Services.
Sections of the FAR Affected: 14 CFR 121.547.
Description of Relief Sought/Disposition: To allow certain personnel of the petitioners to be admitted to the flight deck without a seat available in the cabin.

Denial, December 8, 1989, Exemption No. 5122

[FR Doc. 89-29965 Filed 12-26-89; 8:45 am]

BILLING CODE 4910-13-M

Precision Approach Landing Systems Policy

AGENCY: Federal Aviation Administration (FAA).

ACTION: Precision Approach Landing Systems Policy.

The FAA is transitioning from the Instrument Landing System (ILS) to the Microwave Landing System (MLS) for precision approach service in the National Airspace System (NAS). As a participant in the international implementation of MLS technology, the FAA will replace the nearly 50-year-old ILS technology in the NAS. Under international agreement, the United States must provide MLS service equivalent to ILS at all United States international runways by January 1, 1998. International ILS precision approach service is protected by international agreement through January 1, 1998, and may be retained optionally through January 1, 2000.

Precision approach guidance systems installed and operated at qualified locations are considered critical components of the NAS. The policy of the FAA is to install and operate MLS as the future primary precision approach guidance system in the NAS. Under some circumstances, alternative precision approach guidance systems (e.g., ILS) may be authorized. FAA may install ILS's to meet critical NAS requirements; replace systems that have exceeded their useful service life; and provide service at locations with critical safety needs; until ILS/MLS parity is reached and MLS transition begins.

MLS implementation shall minimize the need for users to install dual avionics. FAA ILS/MLS transition shall ensure that critical precision approach service is provided as needed, but shall not require user MLS avionic equipage until all Airway Planning Standard Number One (FAA Order 7031.2C) qualified runways are also equipped with MLS. Initially, most new MLS's will be collocated with an ILS. However, some MLS's will be sited at qualified locations that do not currently have precision approach service for purposes of satisfying aeronautical need.

This policy supersedes the FAA MLS transition policy dated May 16, 1987.

FOR FURTHER INFORMATION CONTACT: The Office of Aviation Policy and Plans (APO), 800 Independence Avenue, SW., Washington, DC 20591.

MLS Transition and Implementation

• The priority for implementation of MLS shall be as follows:

1. At locations to meet MLS Evaluation Program objectives,

2. On international runways to provide MLS precision approach service equivalent to ILS and satisfy the United States commitment to the International Civil Aviation Organization (ICAO), and

3. On qualified runways with existing ILS service to attain ILS/MLS parity; to transition to MLS; and to begin ILS decommissioning. These installations shall be prioritized by benefit-to-cost ratio with those locations with the

highest benefit-to-cost ratios installed first.

• The transition policy of the FAA is

maintenance monitoring (RMM) capability, and

2. The FAA agrees to accept such

not rupture when exposed to hydrostatic pressure of 800 psi", and that each air brake hose be labeled with the symbol

compressor service reservoirs be capable of withstanding "an internal

whether they will reliably limit system pressure over the life of the vehicles.

exempted from the notification and remedy requirements of the National

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highest benefit-to-cost ratios installed first.

• The transition policy of the FAA is to install MLS, without decommissioning any ILS, until ILS/MLS parity is reached.

• When ILS/MLS parity is achieved, a fixed termination date and transition plan shall be established by the FAA for the decommissioning of all United States ILS's. The termination date shall be fixed with enough transition time to allow users adequate time to equip their aircraft with MLS avionics.

• In consultation with the Associate Administrator for Aviation Standards, the MLS program manager shall approve MLS locations for purposes of the MLS Economic and Operational Evaluation Program. This program is a series of nine projects to evaluate and demonstrate the operation and economic benefits of nationwide implementation. This evaluation has been recommended by Congress, GAO, and the Inspector General and directed by the Secretary.

ILS Transition and Implementation Policy

• Implementation of "new establish" ILS's should be limited to those locations that have an immediate and critical requirement for precision approach service that cannot be delayed until MLS is deployed; e.g., new runways, capacity enhancement at existing locations, an immediate and critical safety need, and those systems for which supply support can no longer be provided by the depot. These locations shall be approved by the Associate Administrator for Aviation Standards for locations that meet or exceed a benefit-to-cost ratio of 1.0 and by the Administrator for all other locations.

• Implementation of replacement systems shall be limited to those locations and systems that have a net economic benefit for such replacement (considering the time between the availability of the new systems and the likely availability of MLS systems). This shall include emergency replacement systems. These locations shall be approved by the Associate Administrator for Airway Facilities.

FAR Part 171 Systems

• Systems purchased under Part 171 of the Federal Aviation Regulations (14 CFR Part 171) may be transferred to the Federal Government for ownership and maintenance, if the systems meet the following eligibility criteria required for Federal systems:

1. The systems are identical to those in the FAA inventory and have remote maintenance monitoring (RMM) capability, and

2. The FAA agrees to accept such responsibility based upon the availability of technical manpower, repair parts, supplies, the role the facility plays in the NAS, etc.

Airport Improvement Fund (AIP) Systems [1]

• Precision approach systems purchased using AIP Funds (on a 75/25 sharing basis) shall only be eligible for maintenance by the Federal Government under a reimbursable agreement if the following criteria are met:

1. The systems are identical to those in the FAA inventory and have RMM capability, and

2. The FAA agrees to accept such responsibility based upon the availability of technical manpower, repair parts, supplies, the role the facility plays in the NAS, etc., and

3. A reimbursable agreement is completed for the purpose of maintenance through a Memorandum of Agreement prior to the time that the precision approach system is purchased by the sponsor.

Issued in Washington, DC, on December 6, 1989.

James B. Busey,

Administrator.

[FR Doc. 89-29984 Filed 12-26-89; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

[Docket No. IP89-07; Notice 2]

Denial of Petition for Determination of Inconsequential Noncompliance; Lagusa, Inc.

This notice denies the petition by Lagusa, Inc. of Belcamp, Maryland, to be exempted from the notification and remedy requirement of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.106, Federal Motor Vehicle Safety Standard No. 106 *Brake Hoses.* The basis of the petition was that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on August 31, 1989, and an opportunity afforded for comment (54 FR 36091).

Sections S7.3.9 and S7.2.1(a) of Standard No. 106, respectively, require that "an air brake hose assembly shall not rupture when exposed to hydrostatic pressure of 800 psi", and that each air brake hose be labeled with the symbol DOT, constituting a certification by the hose manufacturer that the hose conforms to all applicable motor vehicle safety standards. Lagusa imported approximately 100 European built motorcoaches equipped with air hoses that do not comply with Sections S7.3.9 and S7.2.1(a) of Stardard No. 106.

Lagusa supports its petition for inconsequential noncompliance for the following reasons:

1. Noncompliance with S7.3.9 is inconsequential because the air brake hoses meet, in all respects, the Deutsche Industrie Norm (DIN) standard, a state-of-the-art standard which, for many years, has provided a high level of safety in European motor vehicles.

2. The National Highway Traffic Safety Administration recognizes the Deutsche Industrie Norm as a standardization organization for purposes of certain U.S. Motor Vehicle Safety Standards, and should so recognize the DIN Standard for air brake hoses.

3. In its 13 years of importing these motorcoaches, there has never been an accident or a proven incident relating to failure or nonperformance of air brake hoses. The absence of such accidents or proven incidents is indicative of the safety of these air brake hoses.

4. The maximum air pressure regulated in the motorcoach air system is 120 psi. A situation which would create pressure of 639 psi, the lowest pressure at which any of the hoses burst, is highly unlikely. There are two safety features inherent in the system, a governor on a compressor and a safety valve. When 120 psi is reached, the air is exhausted to the outside, precluding the hose from bursting.

5. In 1974, NHTSA reduced the burst strength value from 900 psi to 800 psi for purposes of the burst strength test set forth at S7.3.9. In explaining the reduction, the NHTSA stated that "the burst strength valve is reduced to 800 psi to accommodate nylon and thermoplastic tubing *while retaining a safety performance level five times that of normal operating conditions.*" (emphasis added)

6. The 800 psi standard, as an across-the board requirement, is unreasonable and fails to take into account different vehicle sizes and their attendant different braking system requirements, and is unrealistically high where, as in this case, there are duel backup controls.

7. Standard No. 121, *Air Brake Systems,* provides at S5.1.2.2 that air compressor service reservoirs be capable of withstanding "an internal hydrostatic pressure of five times the compressor cutout pressure of 500 psi, whichever is greater for 10 minutes." As the pressure in the system is constant, there is an inherent consistency in requiring the reservoir to meet a 500 psi standard and the air brake hoses to meet a 800 psi standard.

8. The universe of Lagusa's noncomplying vehicles is limited to 100 vehicles.

9. Steps have been taken to ensure that all motorcoaches currently imported into the United States fully meet the requirements of Standard No. 106.

10. If the NHTSA finds that noncompliance with S7.3.9 is inconsequential, it must also find noncompliance with the labeling requirements set forth at S7.2.1(a) is inconsequential. That standard merely requires that the hoses be labeled with the DOT symbol to indicate they conform to all applicable Motor Vehicle Safety Standards. Obviously, such labeling is and would be misleading if the hoses conformed to a standard other than the NHTSA's Motor Vehicle Safety Standard.

No comments were received on the petition.

None of the petitioner's arguments have persuaded the agency that the noncompliance is inconsequential. The statement that the brake hoses may comply with a DIN standard is irrelevant when it is not supported with arguments showing that such standard has a test equivalent to the hydrostatic pressure test of Standard No. 106.

With respect to the argument that the maximum air pressure of the coach (120 psi) is far less than the lowest pressure at which the hoses burst (639 psi), and that safety features preclude air pressure exceeding 120 psi, the agency notes that the standard specifies a higher minumum burst strength pressure for air brake hoses (800 psi) to compensate for the possibility of the regulator valve or other safety features failing, and for deterioration of the hose over time.

Further, NHTSA also considers the argument irrelevant that the standard fails to take into account different brake systems in vehicles of different sizes, and that the requirement is unusually high where, as here, there are backup controls. All air brake systems in operation are similar regardless of the size of the vehicle, and all sizes of hoses may be subject to extreme pressure conditions. NHTSA has no information on the backup controls in question, or whether they will reliably limit system pressure over the life of the vehicles.

Petitioner also argued that there is an inherent inconsistency in requiring the air compressor service reservoir to meet a 500 psi standard and the air brake hoses to meet an 800 psi requirement. The agency disagrees that the difference represents an "inconsistency". The difference is attributable to the fact that the reservoirs are metallic and maintain close to a constant strength through their life whereas brake hoses are composed of non-metallic materials that exhibit a much greater deterioration in strength as they age and are exposed to the elements.

The present compliance of buses is irrelevant to the safety issue of the noncompliance of the older buses under consideration. In addition, the question of inconsequentiality does not turn on the size of the noncompliant populations, but on the type of failure involved. The test failure under discussion is a failure to comply with a performance requirement of a Federal standard, and is therfore subject to greater scrutiny than failure to meet a minor labeling requirement of a standard.

Finally, the agency observes that the failure to label the brake hoses with the DOT symbol is not a labeling requirement failure *per se,* but a failure to fulfill the statutory obligation to certify compliance with all applicable Federal motor vehicle safety standards. As such, it is not subject to the notification and remedy provision although other labeling requirements are. The standard specifies the manner in which the statutory obligation is to be met.

For the reasons stated above, it is hereby found that the petitioner has failed to meet its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and its petition is denied.

(15 U.S.C. 1417): delegation of authority at 49 CFR 1.50 and 49 CFR 501.8.

Dated: December 20, 1989.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 89-29988 Filed 12-26-89; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. IP89-06, Notice 2]

Action on Petition for Determination of Inconsequential Noncompliance; Philips Lighting Co.

This notice grants in part and denies in part a petition by Philips Lighting Company of Somerset, NJ, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for a noncompliance with 49 CFR 571.108, Federal Motor Vehicle Safety Standard No. 108, "Lamps, Reflective Devices, and Associated Equipment." The basis of the petition was that the noncompliance is inconsequential as it relats to motor vehicle safety.

Notice of receipt of the petition was published on August 24, 1989, and an opportunity afforded for comment (54 FR 35271).

Standard No. 108 requires that the base of each Type HB3 and HB4 light source be marked by its manufacturer or its importer with its HB Type Designation. In June 1989, Philips stamped approximately 28,800 bulbs with an HB3 designation when the proper Type designation for these bulbs was HB4. Of the 28,800 noncompliant bulbs, Philips Lighting Company recovered 13,800. The company sought exemption primarily for the 15,000 bulbs that were not recovered. However, it also sought exemption for the remaining unused 13,800 bulbs and any unshipped units that were similarly marked with the wrong HB number.

Philips supported its petition for inconsequential noncompliance with the following reasons:

1. The "HB" type is not generally used by vehicle owners to identify the proper headlamp bulb, and no confusion by owners is expected to occur as a result of the wrong HB number marking.

2. The number more likely to be used, *i.e.,* the 9005 designation, is correctly stamped on the base, the bulbs were installed in the correct lens and reflector assemblies, and no safety problems are anticipated.

3. Specific notice of the wrong HB number will be provided to any customer to whom Philips sells to insure that installations are correct.

No comments were received on the petition.

The agency did not find especially persuasive the petitioner's unsubstantiated argument that vehicle owners do not generally use the HB Type to identify the proper headlamp bulb. The argument that the trade number is more likely to be used would be true, of course, if no HB Type marking had been provided, rather than an erroneous one. Petitioner failed to make the most cogent safety argument of all, that the HB3 and HB4 Types are not interchangeable, and, as a consequence, no safety problem is presented by the mislabeling. Although the HB3 has a smaller base but can be

[1] May require new legislation.

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inserted in the HB4 socket (a loose fit), it cannot be connected to the electrical source because its connector does not match the source connector. With respect to the reverse situation, the HB4 bulb cannot be inserted into the HB3 socket because its base is larger than the socket opening. Thus neither bulb can be substituted for the other. For this reason, the agency finds that the noncompliance herein is inconsequential as it relates to motor vehicle safety, and the petition with respect to the 15,000 bulbs that were not recovered is granted.

The remaining unused 13,800 bulbs that it did recover, and the unshipped bulbs that were similarly marked with the wrong HB number, present a different situation. The effect of a grant of a petition for an inconsequentiality determination is to relieve the petitioner of the statutory obligation to notify purchasers and remedy a noncompliance once it has been deemed to exist. In the instant case, the obligation to notify and remedy with respect to these bulbs has been mooted by petitioner's recovery and retention of them; there is no one to notify, or to repurchase from. The agency construes its exemption authority as one applying retrospectively to vehicles and equipment that have left the control of the manufacturer, and not one that applies prospectively to vehicles and equipment still in its possession. The fact that the petitioner has violated the National Traffic and Motor Vehicle Safety Act by its manufacture and sale of nonconforming motor vehicle equipment is not excused by the grant of its petition with respect to the bulbs that it did not recover (although the gravity of that violation is reduced substantially by the grant, and, as a matter of policy, the agency virtually never imposes a civil penalty upon a manufacturer whose inconsequentiality petition has been granted). Future sales by the petitioner of the bulbs in its possession would constitute knowing and willful violations of the Act. Since to grant the petition with respect to these bulbs would be to countenance further violations of the Act, the agency would not take an action having this effect even if it construed its exemption authority to permit it to do so. Therefore, the petition with respect to the bulbs in the possession of the petitioner is denied.

Authority: 15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on: December 20, 1989.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 89-29969 Filed 12-26-89; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review.

Dated: December 20, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2409, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Departmental Offices

OMB Number: 1505-0095.
Form Number: None.
Type of Review: Extension.
Title: Soviet Gold Coin Regulations.
Description: Submissions will provide the U.S. Government with information to be used in administering and enforcing prohibitions against importing Soviet gold coins.
Respondents: Individuals or households, Businesses or other for-profit.
Estimated Number of Respondents: 3.
Estimated Burden Hours Per Response: 1 hour.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 3 hours.
Clearance Officer: Dale A. Morgan, (202) 566-2693, Departmental Offices, room 2409, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 89-29926 Filed 12-26-89; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 247
Wednesday, December 27, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Tuesday, January 23, 1990.
PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Rule enforcement review.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89-30084 Filed 12-22-89; 11:18 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Tuesday, January 23, 1990.
PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Enforcement Matters.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89-30085 Filed 12-22-89; 11:18 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Thursday, January 4, 1990.
PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Enforcement Matters.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89-30086 Filed 12-22-89; 11:18 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, January 23, 1990.
PLACE: 2033 K St., NW., Washington, DC, 5th Floor Hearing Room.
STATUS: Open.
MATTERS TO BE CONSIDERED: Application for contract designation submitted by the New York Mercantile Exchange to trade options on platinum futures.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89-30087 Filed 12-22-89; 11:18 am]

BILLING CODE 6351-01-M

CONSUMER PRODUCT SAFETY COMMISSION

Agenda

TIME AND DATE: Thursday, December 21, 1989, 1:00 p.m., Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.
STATUS: Closed to the Public.
MATTERS TO BE CONSIDERED: Enforcement Matter OS# 4666.

The staff will brief the commission on enforcement matter OS# 4666.

The Commission decided by unanimous vote that agency business required holding this meeting without the usual seven day notice.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.
CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301-492-6800.

Dated: December 21, 1989.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 89-30135 Filed 12-22-89; 1:23 pm]

BILLING CODE 6355-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

Agenda

TIME AND DATE: 9:30 a.m. Wednesday, January 3, 1990.
PLACE: Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.
STATUS: Open.
MATTERS TO BE CONSIDERED:

1. Marine Accident Report: Ramming of Spanish Bulk Carrier URDULIZ by USS DWIGHT D. EISENHOWER, Hampton Roads, Virginia, August 29, 1988.

NEWS MEDIA PLEASE CONTACT BETTY SCOTT (202) 382-6600
FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382-6525.

Dated: December 22, 1989.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 89-30148 Filed 12-22-89; 2:16 pm]

BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of December 25, 1989 and January 1, 8, and 15, 1990.
PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.
STATUS: Open and Closed.
MATTERS TO BE CONSIDERED:

Week of December 25

There are no Commission meetings scheduled for the Week of December 25.

Week of January 1—Tentative

Thursday, January 4

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of January 8—Tentative

Tuesday, January 9

10:00 a.m.
Briefing on Status of Development of Updated Source Term (Public Meeting)

Thursday, January 11

2:00 p.m.
Periodic Briefing by Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of January 15—Tentative

Wednesday, January 17

10:00 a.m.
Briefing on Governors' Certification of Low Level Waste Sites (Public Meeting)

Thursday, January 18

2:00 p.m.
Briefing on Status of Proposed Rule on License Renewal (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

ADDITIONAL INFORMATION: By a vote of 5-0 on December 21, the Commission determined pursuant to U.S.C. 552b(e)

and § 9.107(a) of the Commission's rules that "Classified Safeguards Briefing"

time-reserved basis. Supplementary notice is provided in accordance with the Sunshine

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492-

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and § 9.107(a) of the Commission's rules that "Classified Safeguards Briefing" (Closed—Ex. 1), scheduled for December 22, be held on less than one week's notice to the public. Briefing by Executive Branch (Closed—Ex. 1) scheduled for December 22, postponed.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING)—(301) 492-0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492-1661.

Dated: December 21, 1989.

William M. Hill, Jr.

Office of the Secretary.

[FR Doc. 89-30079 Filed 12-22-89; 11:18 am]

BILLING CODE 7590-01-M

federal register

Wednesday
December 27, 1989

Part II

Department of Transportation

Federal Railroad Administration

49 CFR Parts 217, 219, and 225

Alcohol/Drug Regulations; Miscellaneous Amendments and Republication; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

MRO—Medical Review Officer.
NIDA—National Institute on Drug Abuse, Alcohol, Drug Abuse and

Since issuance of the NPRM in this proceeding, DOT has issued a final rule in its proceeding on the Transportation

of identified drug users than were private employers.

These amendments have been adopted. The entire rule text as amended is

densities, make it much less likely that employee impairment will go undetected

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 217, 219, and 225

[FRA Docket No. RSOR-6, Notice No. 30]

RIN 2130-AA43

Alcohol/Drug Regulations; Miscellaneous Amendments and Republication

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Final rule.

SUMMARY: FRA issues a final rule making amendments to its regulations on Control of Alcohol and Drug Use in Railroad Operations and related provisions of other rules. These amendments are necessary to make improvements in the regulatory program in light of experience and prior public comment, to correct and clarify certain provisions, and to conform the original provisions of the alcohol/drug rule to the amendments issued with the random testing rule in November of 1988.

DATES: This final rule is effective January 26, 1990, except that the revised procedures for collection of specimens for post-accident testing, 49 CFR 219.205, 219.207(d) and appendix C to part 219, are mandatory June 1, 1990. Compliance with all portions of this rule is authorized immediately.

ADDRESSES: Any petition for reconsideration should be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel (RCC-30), FRA, Room 8201, 400 7th Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Walter C. Rockey, Jr., Executive Assistant to the Associate Administrator for Safety (RRS-3), FRA, Washington, DC 20590 (Telephone: (202) 366-0897), Dr. Sam J. Holley, Alcohol & Drug Program Manager (RRS-10), Office of Safety Enforcement, FRA, Washington, DC 20590 (Telephone: (202) 366-0501) or Grady Cothen, Special Counsel (RCC-4), FRA, Washington, DC 20590 (Telephone: (202) 366-0767).

SUPPLEMENTARY INFORMATION: The following abbreviations are used in this notice:

AAR—Association of American Railroads
ASLRA—American Short Line Railroad Association
BAC—Blood alcohol concentration.
DOT Procedures—Transportation Workplace Drug Testing Procedures (49 CFR part 40; 54 FR 49854, Dec. 1, 1989).
MRO—Medical Review Officer.
NIDA—National Institute on Drug Abuse, Alcohol, Drug Abuse and Mental Health Administration (the unit within the Department of Health and Human Services responsible for urine drug testing standards and certification of laboratories for the Federal workplace).
NPRM—The Notice of Proposed Rulemaking in this proceeding.
NTSB—National Transportation Safety Board
RLEA—Railway Labor Executives' Association

On November 21, 1988, FRA published in the Federal Register a final rule (53 FR 47102) making certain amendments to its regulations on control of alcohol and drug use in railroad operations (49 CFR part 219). The amendments added to FRA's existing alcohol/drug regulations the following: (i) Requirements for random testing, (ii) a prohibition on non-medical use of controlled substances at any time (a "drug-free rule"), and (iii) new urine drug testing requirements incorporating the DOT Procedures.

In issuing the random testing rule and associated amendments, FRA indicated that further rulemaking would be required to conform the existing provisions of the alcohol/drug regulations to the new requirements. FRA also indicated that it intended to address a number of issues that had emerged during administration of the existing program, including issues identified through an informal safety inquiry designed to review first-year operations (*see* 52 FR 2116; Jan. 20, 1987). Accordingly, on September 27, 1989, FRA published in the Federal Register a Notice of Proposed Rulemaking (54 FR 39646). On October 3, 1989, FRA published a notice of public hearing on the NPRM (54 FR 40656). The public hearing was convened in Washington, DC on October 17, 1989. Written comments were due by October 27, 1989; and comments received by November 15 were considered in preparing the final rule.

The specific proposals contained in the NPRM are described in the section-by-section analysis that follows. In general, the NPRM sought to clarify, correct or refine certain rule provisions that have been in effect since 1986; to conform prior rule provisions to those contained in the random testing rule and the DOT Procedures; to adjust other rule provisions to reflect the issuance of the drug-free standard; and to address a variety of technical issues regarding body fluid testing that are outside the scope of the DOT Procedures.

Since issuance of the NPRM in this proceeding, DOT has issued a final rule in its proceeding on the Transportation Workplace Drug Testing Procedures, 49 CFR part 40 (the "DOT Procedures") (54 FR 49854; Dec. 1, 1989). FRA has considered the need for editorial and policy consistency with 49 CFR part 40 in preparing this final rule.

In view of the circumstances prompting this issuance, i.e., the need to update and fine-tune existing FRA program requirements, it is important to note that these regulations in some cases reflect the peculiar circumstances of the railroad industry. This rule also reflects FRA's decision to address certain issues by regulation rather than use the program approval process or rely on guidance material. As such, the approach taken to various issues in the final rule may not be applicable to other transportation industries where program implementation particularities differ.

General Summary of Public Comments

Comments were received from most of the major labor organizations through the Railway Labor Executives' Association and individual letter submissions. Both the Association of American Railroads and the American Short Line Railroad Association filed comments on behalf of their members. Five freight railroads, three commuter railroads, Amtrak, the National Transportation Safety Board, and the College of American Pathologists (CAP) also submitted comments, as did a representative of three companies that provide medical review services.

This was the third significant notice of proposed rulemaking issued by FRA in this docket. Accordingly, the NPRM addressed a wide variety of detailed topics rather than broad themes. Comments reflected this same pattern, with most commenters accepting for purposes of the proceeding the basic outlines of the alcohol/drug regulatory program.

In general, rail labor witnesses viewed favorably the proposals dealing with conditions and safeguards for body fluid tests, including notice provisions. Railroad commenters generally objected to the increasing complexity of the regulations, which they believed create problems of administration in the field and unduly expose the railroads to civil penalty liability for violations. They favored continuity, except with respect to those aspects of the existing regulations they found cumbersome or otherwise objectionable. In general, commuter railroads that are public employers were more sympathetic to proposals regarding post-test monitoring

of identified drug users than were private employers.

A number of issues were raised that were beyond the scope of the NPRM. The College of American Pathologists (CAP) asked that implementation of random drug testing be postponed (from January 16, 1990) and that CAP-accredited laboratories be recognized as "certified" for purposes of the regulations. CAP alleged lack of capacity in the laboratories certified by the Department of Health and Human Services/NIDA, but provided no detail. FRA believes that NIDA-certified laboratories have sufficient capacity to handle transportation employee specimens. This issue has been separately addressed by DOT in finalizing the DOT Procedures, and FRA sees no reason to depart from the rationale expressed in that final rule document.

Rail labor representatives indicated that supervisors should be included in mandatory alcohol/drug testing programs "as a matter of fairness and safety." FRA has previously indicated that it will not re-examine the coverage of the rule until all elements are in place and implemented with respect to those employees performing functions already covered.

Labor representatives also renewed their call for a recognized right of "mark-off" when an employee receives a short call but has recently consumed beverage alcohol. FRA has previously indicated that this issue should be handled through cooperative agreements on the properties. Mark-off rights can be provided without the likelihood of abuse (and without encouraging use of alcohol subject to call) only to the extent they are checked by the discipline of peer concern.

As further discussed below, labor representatives also urged that all body fluid testing be controlled by the Federal regulations and that duplicative tests be eliminated.

A group of medical review officers (MROs) sought various changes to regulations dealing with the MRO function. These were generally matters that have subsequently been addressed in the final rule on the DOT Procedures, and FRA finds no basis in the comments to reconsider its own rules on point. Unlike CAP, the MROs urged that random testing begin on schedule.

Section-by-Section Analysis

Editorial Amendments

Editorial, clarifying and conforming amendments were generally not addressed by the comments received (except to the extent noted below). These amendments have been adopted. The entire rule text as amended is republished for the convenience of the regulated industry.

Part 219

Subpart A—General

Section 219.3 Application

Small railroad exclusion:

Proposal rule. The rule as issued in 1985 excludes railroads employing 15 or fewer Hour of Service Act employees from the requirements for pre-employment testing and voluntary referral/co-worker report policies, and from the authority for reasonable cause testing. The 1988 random testing provisions exclude only those railroads that both meet the 15 and under test *and* that operate exclusively on their own lines (except as necessary for purposes of interchange). FRA proposed to conform the general exclusion to the random testing exclusion. Under the NPRM, small railroads could not operate on the tracks of another railroad and still qualify for the exclusion.

Comments. The American Short Line Railroad Association (ASLRA) opposed the amendment as unnecessary for safety and difficult to interpret and apply, but did not propose a more definite formulation. The National Transportation Safety Board (NTSB or "the Board") opposed any exclusion on the ground that hazardous materials or oversized loads could originate on any carrier and that an incident could go unreported. The Railway Labor Executives' Association approved the narrowing of the exclusion, but also favored deleting it altogether.

Final rule. The amendment is adopted as proposed. Legitimate safety concerns are presented where movements originating on small railroads traverse other portions of the national system. FRA intends the phrase "except as necessary for purposes of interchange" to be construed with appropriate emphasis on the adjective "necessary." Where interchange-related trackage rights are used for operating convenience of either carrier, the small railroad should comply with all relevant provisions of part 219.

FRA has previously explained in detail why the exclusion for small railroads is appropriate to limit regulatory burdens and why it is consistent with safety. FRA believes that small railroads should concentrate available resources on basic safety concerns such as track, equipment and proper training of personnel. The close supervision provided to the employees of very small railroads, together with lower operating speeds and traffic densities, make it much less likely that employee impairment will go undetected and cause a serious accident.

Rail carriers and other railroads:

Proposed rule. The NPRM included a proposed definition of "railroad" that was identical to that contained in section 202(e) of the Federal Railroad Safety Act, as amended by the Rail Safety Improvement Act of 1988. No changes were proposed with respect to applicability to non-carriers.

Comments. Commenters noted the possibility that the proposed rule might be construed to reach plant railroads and other non-carriers operating outside the general system of railroad transportation.

Final rule. FRA agrees with commenters that the applicability of the regulation could be altered by adoption of the subject definition. This is particularly true in light of amendments to the Hours of Service Act also contained in the 1988 legislation (Section 16, Pub. L. 100-342, amending 45 U.S.C. 61(b)(1)). Accordingly, FRA has provided an appropriate exclusion from applicability for plant railroads in § 219.3.

Section 219.5 Definitions

"Impact accident":

Proposed rule. FRA proposed to clarify the definition of impact accidents by excluding raking collisions caused by derailment of rolling stock or operation of equipment in violation of clearance limitations.

Comments. Railroads generally opposed the clarification on the ground it would needlessly complicate the rule. One commenter professed not to understand the concept of "raking collision," notwithstanding the use of the term in the accident/incident reporting system for many years.

Final rule. The impact accident criterion was established to focus attention on the operator or controller of moving equipment. In the three and one-half years that the regulation has been in effect, testing events have primarily consisted of head-on, rear-end, or side collisions, striking a bumping post or the collision of equipment during switching operations. This was the intent of the regulatory provision, and it has functioned as intended. The only significant problem was that some railroad supervisors did not realize that an impact accident was required to meet the minimum damage threshold; and FRA has further clarified this matter in this rulemaking.

However, FRA has been asked to make interpretations of the regulations over the years and has attempted to

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keep those interpretations as clear as possible. The interpretation that raking collisions (including derailments that result in an impact, and striking of structures within clearance limitations) did not meet the impact testing requirement has been provided to railroads in response to inquiries and following actual events. The clarification was provided to continue FRA's focus on causal factors directly under the control of those involved, clarify a grey area, and appropriately limit testing events. It is more beneficial to provide this guidance in advance of a testing event, since otherwise specimens may be gathered that cannot be analyzed under this subpart. Accordingly, the clarification that these events do not qualify for testing is an appropriate administrative provision and is adopted as proposed.

"Independent":

Proposed rule. FRA proposed to amend this term as it applies to railroads and medical facilities under common control.

Comment. One commenter impliedly objected to the further clarification of the meaning of "independent" in relation to use of independent medical facilities for post-accident and reasonable cause testing. The commenter had previously obtained an opinion that the current rule does not bar use of the clinic of an affiliated entity where the arrangement did not offend the literal language of the regulation and there was evidently no issue concerning operational control of the facility by the railroad itself. This commenter wished assurance that the amendment would not alter the previously issued opinion. In view of the discussion of use of independent medical facilities elsewhere in this preamble, FRA believes that amendment of the definition at this time would be disruptive and imprudent. *See* discussion of independent medical facilities under post-accident and reasonable cause testing.

"Railroad":

Proposed rule. FRA proposed to define railroad as it is defined in the Rail Safety and Service Improvement Act of 1988.

Comments. As discussed further under § 219.3, above, some commenters were concerned that the new definition would sweep in additional regulated entities.

Final rule. Adopted as proposed. The applicability issue is addressed in § 219.3.

"Railroad property damage":

Proposed rule. The NPRM proposed to clarify the means of calculating damage to railroad property. The clarification of this concept included a provision to the effect that replacement of passenger equipment shall be calculated based on the cost of acquiring a new unit for comparable service.

Comments. Railroad commenters opposed the passenger equipment rule on the ground that much passenger equipment would never be replaced with a new unit. It was suggested that calculation of the cost of an "equivalent unit" would more clearly reflect economic loss. Amtrak suggested that a floor of $50,000 per passenger unit destroyed could be used to avoid serious underestimation of the severity of the accident. NTSB believed antiquated equipment should be a separate category and suggested that "insured value" be employed. On an issue not raised in the NPRM, NTSB recommended inclusion of lading in the property damage estimate.

Final rule. Resolution of the passenger equipment issue is particularly difficult because of the limited markets for various types of passenger equipment and the fact that certain antiquated equipment in excursion service would likely not be replaced at all if destroyed. The possibility thus exists that an accident with considerable physical damage might occur without the monetary threshold being met (e.g., for an impact train accident or major train accident); and such an accident has, indeed, occurred. This concern is mitigated somewhat by the fact that FRA is including passenger train accidents with injuries as a separate category of qualifying events; however, that provision provides latitude for the responding officer to exclude employees from testing. (See discussion under § 219.201, below.)

FRA believes that "new unit" is the appropriate standard for valuing passenger equipment in order to ensure testing where substantial physical damage occurs to passenger equipment. This standard is adopted exclusively for purposes of this subpart and does not affect reporting under 49 CFR part 225. (Railroad supervisors responding to the scene of an accident would have no way of knowing the "insured value" of equipment; and most historic equipment is likely not insured (except with respect to liability) in any event.)

FRA has repeatedly rejected suggestions that the cost of lading be included in computations of property damage for the purpose of post-accident testing. Railroad supervisors will not be able to readily determine cost of lading and may have an economic incentive to understate it. The extent of damage to railroad equipment and structures is, in any event, a much better indicator of the degree of risk posed to persons by the accident than the happenstance of whether a coal car or auto carrier was involved. The NTSB suggestion is, again, not adopted.

Section 219.9 Responsibility for Compliance

Paragraph (a) (penalty liability):

Proposed rule. FRA proposed to revise this paragraph, which deals with liability for civil penalties, in the same manner certain other FRA regulations were amended following enactment of the Rail Safety Improvement Act of 1988. *See* 53 FR 28594, July 28, 1988; 54 FR 33227, Aug. 14, 1989. Certain language from the existing section (the duty of due diligence owed by the railroad to prevent prohibited alcohol/drug use) was to be displaced to a new § 219.105. Other language that had the effect of limiting liability was proposed to be deleted.

Comments. The Railway Labor Executives' Association commented that it believed the proposed language would be difficult to enforce.

Final rule. The revised section is adopted. The language preserves a basic strict liability standard for railroads. The standard continues to be qualified by § 219.105 with respect to the company's responsibility for employee violations of §§ 219.101 and 219.102. To the extent the substantive regulatory provisions call for good faith determinations (§ 219.201(c)), liability attaches only when the particular standard of conduct is offended. The provision retains the language regarding individual liability for willful violations, incorporating the standard set by statute. However, nothing in the subject amendment dilutes the railroads' present responsibility for compliance or liability for civil penalties; indeed, in certain respects responsibility is strengthened. However, FRA has also added appropriate language to subparts C and D that clearly prohibits testing performed under those provisions without observance of the required conditions and safeguards.

Paragraph (b) (joint operations):

Proposed rule. FRA proposed to add a provision governing the responsibilities of railroads in the context of joint operations, particularly with respect to compliance with Subparts C and D of the rule (post-accident and reasonable cause testing). Host railroads would be primarily responsible for determining qualifying events and providing for testing.

Comments. In general, commenters supported or had no position on this issue. However, rail labor

representatives noted that it is often difficult to obtain cooperation of personnel from other railroads in the context of ensuing disciplinary proceedings.

Final rule. The amendment is adopted. FRA has also added language providing that where the host railroad has been involved in a testing event, it shall make necessary witnesses and records available to employees subject to a related investigation on a reasonable basis. FRA does not intend by this provision to require travel of witnesses where a telephone interview or other means would permit development of the facts.

Section 219.11 Consent Required; Implied

Section 219.11 addresses a wide variety of general issues concerning body fluid testing, providing general standards that apply to other subparts of the rule, as appropriate. Experience under the existing rule has indicated the need for various clarifications. In the final rule, the section is redesignated "General conditions for chemical tests" to better reflect its subject matter.

Professional conduct of test procedures. Both existing regulations and the NPRM touched on issues of confidentiality with respect to the testing process. However, specific language of the discrete conduct of the breath or body fluid collection was not included. Labor representatives noted occasional, significant problems with the manner in which chemical tests are handled by railroad supervision; and proposed language addressing "confidentiality" was offered. The general concern expressed was that testing not be done in a manner that is accusatorial or unnecessarily embarrassing to the employee, particularly where it is necessary to use a medical facility where other members of the public may be present.

FRA agrees that discretion and good judgment should be used by employer representatives involved in the conduct of chemical tests. However, the precise issue at stake is not the "confidentiality" of the testing process. Although effort can be made to avoid unnecessary disclosure, it would be virtually impossible to keep the fact that a test was conducted "confidential," and existing regulations deal only with the confidentiality of test *results*.

Section 40.23(d)(1) of the Transportation Workplace Drug Testing Procedures (49 CFR part 40) provides that "Employer collection procedures and training shall clearly emphasize that the collection site person is responsible for . . . carefully ensuring the modesty and privacy of the employee, and is to avoid any conduct or remarks that might be construed as accusatorial or otherwise offensive or inappropriate." FRA believes that it is manifestly reasonable to require similar discretion on the part of supervisors involved in the testing process and encourages railroads to include similar cautions in their training programs for supervisors. However, given the wide variety of issues that could arise related to the discretion with which testing events are being handled and the difficulty of enforcing standards that relate to manner or content of expression, FRA does not believe that a clear regulatory standard could be fashioned for this purpose (or could be enforced equitably, should one be fashioned). The language proposed for this purpose by a commenter is not sufficiently precise to provide guidance or allow for sure enforcement, and the issue is arguably beyond the scope of the NPRM. Accordingly, FRA has not adopted regulatory language on this topic. However, FRA stresses that railroads should include appropriate cautions in their training programs for supervisory personnel.

Paragraph (b)(2) (Medical Treatment):

Proposed rule. FRA proposed to make explicit its policy that necessary medical treatment will be afforded priority over collection of body fluid samples following an injury-producing accident or incident. The provision would also expressly bar use of catherization to obtain a urine sample.

Comments. Commenters supported or had no position on the proposed amendment.

Final rule. Adopted as proposed.

Paragraphs (b) (3), (4) (Flight and Tampering as Refusals):

Proposed rule. FRA proposed to make explicit the judgment that failure to remain available as required after an accident, and donor tampering with a urine specimen, are acts that constitute a refusal to provide the required body fluid sample.

Comment. No objection was made to the clarifications. However, the AAR proposed that a refusal to sign a properly drafted consent form should also constitute a refusal.

Final rule. Paragraphs (b) (3) and (4) are adopted as proposed.

The question of whether a refusal to sign a form of consent required by the collection entity (e.g., a hospital or clinic) constitutes a refusal is a difficult one, since it is not possible to anticipate all forms of consent that may be presented for signature; and the employee will not have counsel present at the time of collection to provide advice. FRA has already provided in paragraph (d) of this section that the employee shall evidence consent to the collection, release of the specimens for analysis, and reporting of results to the railroad's MRO. Violation of that standard would provide a basis for enforcement action by FRA or could be used as further support for a railroad disciplinary action (e.g., for insubordination). However, depending on the circumstances, a 9-month disqualification (as is provided in the post-accident testing and random testing contexts) may not be appropriate. Accordingly, the subject paragraph has not been amended.

Paragraph (d) (Evidence of Consent; Waivers and Releases):

Proposed rule. FRA proposed to broaden and strengthen the requirement that consent to body fluid tests be evidenced, as necessary, by completion of a properly drawn form of consent. The proposal included new language making explicit the policy of the regulations that the employee is not required to waive rights in relation to the employer, and any such waiver is void. Related language in appendix C stated that the employee may not be required to waive rights the employee may have in the employment relationship or to release or hold harmless the medical facility with respect to negligence in the collection.

Comments. Employee representatives supported the language barring any requirement that employees waive rights or release liability. Railroad witnesses noted that restrictions on the content of consent forms could result in some medical facilities declining to conduct the collections. Amtrak suggested that employees be required to complete forms of consent, but that the language making void waivers as between the employer and employee be extended to the employee-collector relationship.

Final rule. The purpose of requiring completion of a consent form is exclusively to facilitate the body fluid collection by assuring the collection entity (other than the employer) that, as between the employee and the collector (or laboratory), there is a valid consent to the procedure. Completion of the consent form should not waive any legitimate rights that the employee may have, including the right to contest the basis of the test and to insist that the collection or analysis be done professionally and with reasonable care.

FRA can clearly provide that waivers of rights otherwise obtaining in the employment relationship are void, and does so in the final rule. There is, however, significant doubt whether FRA

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could void a waiver, release, or undertaking to hold harmless or indemnify which is executed by the employee to the benefit of a non-regulated third party. It can be argued, therefore, that employee rights are adequately protected only if the employee exercises self-help at the collection site by declining to sign excessively broad forms of consent. On the other hand, it is likely that most of the more egregious examples of overbroad consent/waiver documents are void as against public policy under prevailing state law; and all citizens are accustomed to executing hospital admissions documents containing "fine print" as the price of obtaining care. Further, where a medical facility is used for collection, it is not reasonable to assume that the admission documents will be narrowly drawn for the purpose of employment-related body fluid collections; and a certain amount of surpluasge related to consent to necessary medical care can be expected to appear thereon. Increasingly, as well, medical facilities are employing forms of consent that seek to apportion liability for negligence as between professional staff (which may be separately incorporated) and the institution. To the extent a responsible party is available to respond in damages for a negligent collection, this type of commercially reasonable provision should not be thrown up as a bar to body fluid testing under the rule.

FRA believes that, as a practical matter, the employee will be fully protected from possible harm by virtue of the employer's responsibility for selection of the collection entity and the provision of clear standards for acceptable collections. The final rule would make void any attempted waiver of rights the employee may have in the employment relationship. Nevertheless, FRA cannot require that employees sign away their rights against third parties. Accordingly, the final rule provision has been further edited to incorporate the basic standard included in the proposed Appendix C (Paragraph 2.12. note), with stylistic revisions to parallel the Transportation Workplace Drug Testing Procedures (49 CFR 40.25(f)(22)).

Paragraph (g) (Discretion of Railroad, Use of Specimens):

Proposed rule. FRA proposed to adopt general language stating that the rule does not restrict any discretion available to the railroad to conduct other alcohol/drug tests (in lieu of the current § 219.305(e)). FRA also proposed explicit language to the effect that no testing may be performed on urine or blood samples provided under this part.

Comments. Labor organizations urged that FRA should completely occupy the field of body fluid testing, so that the current patchwork of private and Federal programs would be integrated into a single program under FRA regulatory authority. It was urged that better safeguards for testing, and better remediation of problems that may arise in the testing process, could be achieved in this manner.

Final rule. Adopted as proposed. FRA understands the concerns raised by labor representatives regarding the lack of uniformity and lack of central control inherent in the current mixture of Federal and private body fluid testing programs. However, as a general rule FRA does not agree that the existence of separate railroad programs presents a safety issue warranting regulation under the Federal Railroad Safety Act of 1970. Railroad testing that goes beyond the Federal requirements, such as testing in connection with periodic or return-to-duty physical examinations, contributes to prevention of drug abuse by covered employees. For-cause testing programs that allow greater exercise of supervisory discretion to test may raise labor relations for negotiation or adjustment under the Railway Labor Act, but do not implicate Constitutional concerns so long as they are not conducted under color of Federal law. Total occupation of the field by FRA could very well lead to a "lowest common denominator" effect which could actually reduce safety. Despite the undeniable problems that the current mix of public and private action creates, current law also allows for innovation and adaptation to special circumstances. From the point of view of safety, no reason appears why FRA should intervene to restrict railroad discretion.

Section 219.19 Field Manual

This section is administrative in nature and was not the subject of any comment. The amendment has been adopted as proposed. FRA will update the Field Manual as soon as is practicable.

Section 219.23 Notice to Employees

Proposed rule. FRA proposed a new section to require that breath and body fluid testing events under the rule be accompanied by notice of two types of information. First, where the test is conducted under the authority of part 219, notice of this fact must be provided. Second, the employee must be informed of the basis of the test, i.e., whether conducted under the mandatory post-accident testing provisions, for reasonable cause (and, if so, whether for reasonable suspicion of impairment, violation of a specified operating rule, or based on a reasonable suspicion that the employee contributed to the cause or severity of a reportable accident/incident), based on random selection, or as a return-to-service or follow-up test under the new § 219.104.

Comments. Some objection was expressed by railroad representatives on the basis of regulatory burden and possible difficulty in providing forms of notice. This provision had originally been proposed by the rail labor organizations and apparently continues to have their support.

Final rule. Adopted with an amendment. The amendment clarifies the fact that the custody and control form may be used as the form of notice for both purposes, if properly annotated. The Transportation Workplace Drug Testing procedures provide sufficient flexibility to allow the addition of pre-printed check-offs of this information. Alternately, the block for "reason for test" can be hand-annotated with appropriate language (e.g., "FRA reasonable suspicion"). As a third alternative, the railroad may use a separate form of notice.

FRA believes this notice requirement is critical to achieving disciplined and responsible use of Federally-authorized or mandated testing authority. A breath or body fluid test under the rule is a Fourth Amendment search burdened by appropriate conditions and safeguards. Confusion of such search with a privately conceived and administered test may lead to significant adverse consequences, including future problems with respect to obtaining employee cooperation. Experience has taught that railroad supervisors sometimes confuse railroad and Federal testing programs and occasionally act under color of Federal law without observing the required safeguards. Requiring this notice will help to increase supervisor awareness of the sensitivity of the procedure, foster clear decision-making by requiring appropriate focus on the criteria for testing, and will clearly alert employees to the rights and remedies attendant to the test.

Subpart B—Prohibitions

Section 219.101 Alcohol and Drug use Prohibited

Proposed rule. Though not setting forth a regulatory amendment, FRA asked for comment on the current prohibition against an employee going or remaining on duty with a blood alcohol concentration (BAC) of .04% or greater.

Comments. The NTSB, two railroads and the American Short Line Railroad Association supported a "no alcohol" standard. A railroad commenter expressed concern that the current standard implies acceptance of some alcohol use prior to reporting and stated that some employee representatives have even used the .04% standard to oppose the traditional "no alcohol" standard of Rule G before one or more state legislatures. Rail labor representatives opposed reduction of the prohibited alcohol level, noting the possibility of trace alcohol from legitimate medications and other sources. A major western railroad supported retention of the .04% level on the ground no material impairment is shown below .04% and also expressed concern over alcohol in cough medicines and endogenous alcohol associated with non-disqualifying disease (e.g., diabetes). A major commuter railroad opposed adoption of a .00% standard, noting that an employee receiving a short call could not know whether trace alcohol remained in his system. The railroad indicated that it treated levels at or below .02% as not warranting action, while levels of .03% and above have been viewed as indicative of possible impairment. This commenter recommended that the prohibition be set at greater than .02% (i.e., .03%, or .01% below the current level). The College of American Pathologists (CAP) declined to recommend a prohibited level, but did note that for practical purposes a ".00%" standard would not be usable. CAP suggested that .02% would "allow for * * * methodological problems."

Rail labor representatives again asked for a Federally-specified right to "mark-off" without penalty where the employee has used beverage alcohol and receives an unexpectedly "short call". They cited cases where employees sought to mark-off but were told to report notwithstanding the fact that they reported being under the influence of alcohol.

Final rule. The NTSB and most railroad commenters have urged since the beginning of FRA regulatory efforts in 1983 that any detectable level of alcohol be prohibited. It is important to note that the current rule already forbids use of any alcohol on the job and working while impaired (regardless of blood alcohol concentration). A pre-duty abstinence period has not been specified, because of the unpredictability of many railroad assignments; however, railroad rules forbid use of alcohol while "subject to duty;" and those rules continue to be construed to bar reporting to work while having alcohol in the blood that results from voluntary ingestion. Results for reasonable cause breath tests may be used for disciplinary purposes and are deemed "positive" at or above .02%. Other results of scientifically valid body fluid analyses may also be used down to the established cutoff. Importantly, results of post-accident and other testing programs reflect the fact that the great majority of railroad employees are, in fact, abstaining from the use of any alcohol; and in those cases where alcohol is present in employees responsible for accident causation, levels are typically (though not always) well above .04%.

The precise issue presented is the level at which the *per se* prohibition of blood alcohol concentration should be set. Setting a level of .00% is unrealistic with respect to the available detection capability. Even if the detection capability existed, an absolute prohibition could penalize employees who had inadvertently ingested *de minimis* quantities of ethanol in various commonly used preparations. The true choice presented to the agency, therefore, would appear to be whether the proscribed level should be reduced from .04% to .03 or .02%. Nothing in the comments received adds significantly to the record already compiled on this issue in the above-captioned docket.

(It should be noted that the weight of scientific evidence continues to support the view that there is no mechanism for production of detectable levels of ethanol in the human subject. However, other volatiles may sometimes be present in specimens from diabetics; and insufficiently specific testing methodologies could confuse these compounds with ethanol.)

FRA further notes that the Secretary of Transportation is examining this issue in the context of an Advance Notice of Proposed Rulemaking on Alcohol Abuse Prevention (54 FR 46328; Nov. 2, 1989). Thus, in the absence of persuasive reason to make a change at this time, FRA believes that it is wise to leave the current prohibited level in place, without prejudice to the possibility of making a further adjustment at a later date.

For whatever benefit it may have, FRA restates its policy judgment that any use of alcohol is inconsistent with the responsible performance of safety-sensitive duties.

The issue of employee mark-offs is beyond the scope of this proceeding and has been addressed previously by FRA. FRA continues to encourage responsible labor-management agreements and cooperative programs that include limited mark-off rights with active peer prevention and intervention programs.

Section 219.103 Prescribed and Over-The-Counter Drugs

FRA proposed a clarifying amendment regarding prescriptions issued by more than one medical practitioner, which has been adopted as proposed.

A related comment by a major commuter railroad suggested that the determination required by this section be assigned to the MRO or railroad medical director, where the employee is receiving medications from more than one treating physician. FRA agrees that the railroad medical officer has an important role to play (see § 219.103(b)); however it is not clear that the number of treating physicians (as opposed to the number and types of medications) provides an appropriate basis to require railroad medical officer or MRO intervention; and representatives of other railroads have indicated in the past that prompt review of such information is not uniformly available across their rail systems. Evolution of the MRO system may permit later refinement of the rule, following notice and opportunity for comment on this issue.

Section 219.104 Responsive Action

Proposed rule. FRA proposed to add a new section addressing the action a railroad should take in the event of a positive result from a body fluid test conducted under part 219. The section included general removal and return-to-service language derived from § 219.605 (random drug tests) and hearing procedures derived from the current § 219.213 (post-accident testing materials). The NPRM proposed to require both alcohol and drug tests when an employee is returned to service after being evaluated and (as necessary) treated. FRA also inquired whether the Federal rule should specify a minimum period of disqualification for employees testing positive a second time.

Comments. AAR (supported by commenting railroads) viewed the section as unnecessary Federal interference with contractual agreements and railway labor relations. The Association specifically cited the return-to-service provisions of paragraph (c) as being unneeded and unsupported by FRA's rationale.

With respect to the hearing right, AAR noted that many railroads have agreements with their employees under which employees may waive hearing rights in exchange for reinstatement following substance abuse treatment. Other railroads treat initial positive

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results as occasions for medical disqualification of employees; and it was represented that no hearing is necessary in this setting since such disqualificatons are not handled as disciplinary proceedings. One railroad described this procedure as "the law of the shop," and another noted that FRA had not cited abuses of this procedure. One commenting railroad recommended that FRA insert the current language of § 219.605(c)–(e) in lieu of the proposed provisions. Moreover, labor representatives supported the hearing requirements; and the Brotherhood of Locomotive Engineers specifically contended that medical disqualification procedures were being used to deny employees effective post-suspension hearings.

Two railroads believe the proposed paragraph (b) was ambiguous as to the time a hearing would be required. To the extent the provision might be retained, the commenters asked that it be made clear that any hearing right would obtain following removal from service, not before.

Amtrak believed the requirements for follow-up tests should be deleted or should allow on-site screening. Amtrak added that any follow-up testing requirements should be limited to follow-up of those testing positive under part 219 procedures. Several commenters noted the apparent logical inconsistency of requiring that employees be in duty status at the time of return-to-service testing, and one railroad saw the issue as one of compensation (while also expressing concern that this could lead to discipline of an employee who was abstinent but whose system had not yet cleared of drug metabolites). Labor representatives stated that a 5-year follow-up period was too long, believing that this should be left to the discretion of the railroad. New Jersey Transit (NJT), however, supported follow-up testing as an integral and necessary component of any rehabilitation program and advocated its incorporation in the regulations. NJT suggested that follow-up testing should be conducted with greater frequency immediately after return to service and with lesser frequency for an extended period thereafter.

The question of return-to-service and follow-up alcohol testing drew conflicting comments from the industry. The AAR took the position that prior drug use was not a good predictor of possible later problems with alcohol. A railroad medical director providing testimony at the public hearing indicated that the recovering drug abuser may turn to other psychoactive compounds. However, the medical director would make alcohol testing optional, given the difficult technical issues involved. A written statement signed by another medical director opposed follow-up alcohol testing on the ground that trace alcohol levels would prove difficult to interpret.

Railroad commenters also objected to waiting until the MRO verfication of a positive result before removing the employee from covered service. Contrary to logic, the literal language of the rule, and FRA's prior expressions of intent, some railroad commenters continued to contend that immediate removal of an employee on receipt of an unverified laboratory report was already authorized by the rule (citing § 219.707(d)). Implausibly, the railroads asked for confirmation that this was the case.

Union Pacific Railroad responded to FRA's query on disqualification of second offenders by stating that all second offenders must be dismissed.

Another commenter expressed concern that the railroad's medical officer was apparently excluded from decision-making in connection with follow-up.

Final rule. The comments on this section illustrate both the conceptual difficulty of dealing with employer response to detected alcohol and drug use and the resistance that is produced by perceived "Federalization" of that process. In FRA's judgment, the decision to require removal from service of those testing positive in random testing (§ 219.605), a decision that paralleled decisions made by other DOT modal administrations, inevitably required revisiting this issue in the context of other forms of Federal testing for alcohol and drugs.

The first basic issue is whether FRA should mandate removal from service where it is clear that an employee has violated § 219.101 or § 219.102, based on an MRO-declared positive test (e.g., finding alcohol at or above .04% or presence of controlled substances not used with medical authorization). FRA is convinced that the public safety should not be left to depend on voluntary action; and, indeed, compliance with the current § 219.9 (proposed § 219.105) would effectively require this action in any event. Rather than leave the matter unaddressed, FRA believes that basic minimum safeguards should be clearly stated. This is consistent with the decision previously made in the random testing context.

The second issue is whether Federal regulations must or should expressly preserve the right of a prompt and effective hearing incident to the mandated suspension action. This is a mixed issue of Constitutional, administrative, and labor relations law for which there is presently no clear answer. FRA believes that the issue should be viewed in a very practical way with appropriate focus on the subject matter and existing mechanisms for decision making. Certainly the employee's right to discuss with the MRO the positive test result includes important due process protections. As clarified in the recent revision to 49 CFR part 40 (54 FR 49854; Dec. 1, 1989), the MRO will be reviewing the chain-of-custody documentation as well as considering all relevant biomedical factors. Although MRO guidance for the Federal employee testing program bars consideration of claims of innocent ingestion, no such bar is imposed on the discretion of the MRO in the transportation industry context. In many important respects, this opportunity for a medical interview provides the most useful kind of hearing opportunity that could be provided, since the "fact finder" is specially qualified to deal with the subject matter. It is especially valuable because it occurs prior to any adverse action.

With respect to post-removal rights, existing regulations also provide for a retest of the specimen either at the same lab or another certified lab (§ 219.709). Random testing provisions preserve any further due process rights due the employee under the contract (§ 219.605).

Against this background, the railroads strongly contend that further Federal intervention is unnecessary and would only disturb existing dispute resolution procedures that are well-established, clearly understood, and tailored to the context of railway labor relations. Rail labor representatives suggest that attempts to handle employees through medical procedures may have the effect of cutting off procedural rights that would otherwise be available.

FRA agrees that where the positive is treated as a basis for disciplinary action, existing collective bargaining agreements very clearly do provide for prompt review; and the adjustment processes of section 3 of the Railway Labor Act (45 U.S.C. 153) provide an additional measure of protection for the employee. This "disciplinary model" is widely used to determine rights in the employment relationship. Two additional situations must be considered, however.

The use of medical disqualification to remove the employee from service presents a special case. Administration of railroad medical standards has traditionally been entrusted to the discretion of the railroad; and, through agreement or established practice, medical dispute resolution is normally available to resolve any disagreements between the employee's personal physician and the company physician. Railroads have increasingly come to utilize a medical model for dealing with substance abuse problems. This model offers the benefits of confidentiality that is enforced by professional standards and features a positive and helpful approach to treatment of underlying substance abuse disorders—rather than application of measures that may be viewed as punitive. Because the entire course of handling is controlled by a medical officer (with assistance from employee assistance professionals), the potential for arbitrary or uninformed decision-making is greatly reduced. Railroads employing this model are naturally reluctant to have it compromised by automatic resort to adversary proceedings involving line railroad officers, collective bargaining representatives, stenographers, lawyers and arbitrators.

The medical model has some limitations, as well. Application of the model to the consequences of body fluid analysis for alcohol and drugs is less than a perfect fit, since disciplinary or quasi-disciplinary consequences will certainly obtain should the employee experience a relapse into substance abusing behavior. The approach is not well suited to the determination of non-medical facts. Such facts may relate to claimed error or fraud with respect to the collection of the specimen and resolution of claims of innocent ingestion (to the extent such resolution turns on the credibility of the subject employee or a third party).

It is arguable that the limitations of the medical model are more apparent than real. Drug testing procedures have been established to severely limit the possibility of error, and fraud is at worst a very remote possibility, as is any serious claim of innocent ingestion. Railroads using the medical model nevertheless must be on guard not to foreclose appropriate exploration of any such defenses.

To the foregoing discussion of the disciplinary and medical models must be added the model of employment outside the scope of a labor agreement. In the case of a railroad whose employees are not subject to a collective bargaining agreement, there is no provision in existing law for a prompt post-suspension hearing. Although the matter could be taken to the National Railroad Adjustment Board (NRAB), and part 219 would undoubtedly be treated as defining the terms and conditions of employment in that context, the NRAB cannot be expected to provide a prompt hearing in each case. The fact that a very small percentage of employees may not enjoy the same quality of protections already available to the great majority does not, of course, warrant disruption or replacing those available to the great majority; but neither may the minority be ignored.

After consideration of the comments and the background just described, FRA has determined that the proposed language should be retained but modified to more clearly recognize the appropriateness of medical model and non-adversary handling of the great majority of positive cases, while preserving the right of the employee who truly disputes the test result to waive medical handling and claim the hearing right that has historically attended disiplinary charges in the railroad industry. FRA appreciates that this may be inconvenient, and in some cases counterproductive to therapeuatic handling of an employee who needs help and may eventually be persuaded to enter the path toward recovery; but in FRA's view fundamental rights must be recognized nevertheless.

FRA believes that the issues of aftercare and follow-up testing will prove critical to the success of other alcohol and drug measures currently being implemented or which have been implemented in the past three and one-half years. It is clear from accident investigation records that relapses do occur among some employees who are treated for alcohol and drug abuse. It is also clear that follow-up after primary treatment is not uniformly thorough or of sufficient duration at the present time. FRA will endeavor to leave the railroads sufficient latitude to fashion their own aftercare and follow-up testing policies and to tailor requirements to individual cases based on the exercise of professional clinical judgment. However, FRA will insist that the effort be made and will closely review company programs to ascertain their success.

In this rulemaking, FRA proposed to extend aftercare and follow-up testing requirements to those employees found in violation of § 219.101 or § 219.102 based upon a post-accident or reasonable cause test, as well as a random test. Commenters have indicated no reason why FRA should distinguish other detected alcohol/drug use from drug use detected in the course of random testing, and the conforming amendment is thus adopted.

FRA also proposed that return-to-service and follow-up tests (the frequency and duration of which are left to the railroad within a 5-year window) include both alcohol and controlled substance testing, regardless of the impairing compound providing the basis for removal. FRA recognizes the complexity of the issues associated with alcohol testing. FRA also recognizes that alcoholics may be more likely to return to alcohol and marijuana users to marijuana. However, it is clearly the case that chemical dependency (or simple abuse of psychoactive substances) can and very often does manifest itself in misuse of a variety of mind and function-altering compounds. Monitoring use of the primary drug of choice may very well drive the abuser to another drug, if that avenue is left open, while closing off most attractive avenues to abuse may encourage continued recovery.

Nevertheless, it is clear that some railroads will resist what they view as interference by Federal regulations in their follow-up of recovering substance abusers. The measures proposed by FRA do not include clearly defined minimum numbers of tests or specify a minimum duration for follow-up testing. In this context, adding requirements for routine alcohol testing that railroads perceive not to be in their interest may result only in truncated follow-up. Accordingly, alcohol follow-up requirements are deleted, except that a one-time blood or breath alcohol test is required prior to return to service in the case of an employee removed from service for prohibited alcohol use. FRA believes this issue may benefit from the further study now under way in the Secretary's advance notice proceeding and reserves the right to propose additional requirements at a later date.

Comments in this rulemaking indicated continued acceptance of the proposition that second offenders under alcohol/drug rules should be dismissed from employment. There was no showing that a parallel Federal requirement is needed; and none is included in the final rule.

On the issue of physician involvement in follow-up raised by one commenter, FRA notes that the concept of the EAP counselor, as defined in § 219.5, includes medical personnel. Each railroad is free to define its evaluation, treatment and follow-up system to include appropriate involvement by representatives of the health care and allied professions who are necessarily involved. No confidentiality problem is presented by

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medical participation in this process; indeed, such participation would normally be expected.

Section 219.105 (Railroads' Duty To Prevent Violations)

This section is adopted as proposed, except that in recognition of comments regarding the enforceability of the proposed rule the "actual knowledge" standard previously contained in § 219.9 is carried forward in the new section, in lieu of the "willful" standard proposed.

Subpart C—Post-Accident Toxicological Testing

Subpart C mandates blood and urine testing for alcohol and drugs following certain qualifying events, an average of approximately 175 per year. These events fall into the categories of "major train accidents," "impact train accidents," and "employee fatalities in train incidents." Full toxicology provides blood levels of drugs and metabolites detected, as well as urine data. This information is used in accident/incident investigations and also assists in identifying employees who present a risk, while adding to the overall deterrent effect of alcohol/drug countermeasures.

FRA received certain general comments on this subpart that did not specifically relate to proposed changes. Those items are discussed below.

Release of information concerning post-accident toxicology. The Railway Labor Executives' Association urged that FRA and NTSB should not announce the results of chemical tests until after an accident investigation is completed. FRA does withhold information regarding medical use of controlled substances except in those instances where it is clearly necessary to consider that information in relation to accident/incident causation. However, FRA makes available results of post-accident toxicology indicating alcohol use and prohibited drug use in the same manner other factual information is made public. Given the involvement of public and private parties in accident/incident investigations, this information would necessarily enter the public record prior to the publication of an accident/incident report in a significant number of cases, including most of those cases of sufficient public interest to result in wide publication of the information. This is particularly the case in those accidents selected for a full NTSB investigation using the party system.

FRA endeavors to ensure that information concerning toxicological analysis is provided in proper context and without inappropriate implications with respect to its significance. Obviously, FRA cannot dictate the manner in which the information is treated by news media and other third parties. FRA continues to believe that revelation of prohibited alcohol and drug use serves a very important service by keeping before the railroads and railroad employees the serious consequences that result from impairment of safety-sensitive employees. Heightened awareness of this safety risk has undoubtedly contributed to saving lives and preventing injuries over the past few years.

Independent medical facilities. FRA has required that samples for post-accident toxicology be collected at independent medical facilities—i.e., entities off railroad property that are staffed by medical professionals not in the employ or under the control of the railroad. Such entities could include public and private hospitals, clinics, and physicians' offices. This requirement ensures that samples are obtained in a professional manner; this is particularly important in this context because a blood sample must be drawn in each case. It also ensures that employees perceive that the process is fair.

Several railroad commenters strongly urged that the requirement specifying use of independent medical facilities for post-accident testing be modified. (The same issues arise with respect to comments on subpart D—Reasonable Cause Testing, but those issues are separately discussed below.) Amtrak urged deletion of the requirement; Amtrak prefers to use registered nurses employed in company clinics for this purpose, where available. The Union Pacific Railroad urged that the rule allow use of paramedic services under contract to the railroad. In some cases, these collections might also occur on company property. The American Short Line Railroad Association commented to a similar effect, noting the remote locations at which some rail operations are conducted. Another railroad indicated that "railroad affiliated" medical facilities be made available for this purpose.

A number of railroad comments cited difficulties with obtaining the cooperation of medical facilities in the testing process, indicating in effect that failure by FRA to encourage such participation or relax regulatory requirements could result in there being significant gaps in the geographic availability of suitable collection sites. This problem could be exacerbated by more complicated collection procedures.

FRA believes that use of independent medical facilities for post-accident collections has worked reasonably well, given the inherent difficulties involved and the natural reluctance of some health care providers to become entangled in ensuing disputes. However, FRA agrees that the situation must be watched closely and that all options for professionally responsible and forensically sound collections must be explored. In that regard, FRA notes that rapid growth of collection services for occupational drug testing. In many cases medical professionals are being employed as collectors. In other cases, laboratories and medical providers are offering separate collection services at their own facilities. These trends may warrant modification of current requirements. The onset of random testing will give employees the opportunity to witness fair and professional collections at sites other than medical facilities and will likely foster employee acceptance of a wider range of options in the future. Indeed, the Brotherhood of Locomotive Engineers filed comments in this proceeding in support of the Union Pacific proposal for use of contract paramedics in the context of reasonable cause collections. However, the deletion of the independent medical facility requirement under this subpart is not within the scope of the NPRM in this proceeding. FRA will therefore continue to work with railroads and service providers to weigh the need for further action.

Multiple tests. Rail labor representatives noted the frustration and confusion attendant to two or more body fluid collections in the aftermath of qualifying events. The current rule bars reasonable cause urinalysis under subpart D where a subpart C test is conducted. However, railroads have circumvented this limitation by conducting collections under their own managerial prerogative. They have done so largely in order to reduce the time required to receive results and restore employees to service. This is an understandable concern, but it is a concern that the railroads have brought on themselves. Holding out of service employees who are not otherwise subject to discipline is not required by the rule and has not been encouraged by FRA.

FRA has taken two actions that may affect this situation in a way responsive to employee concerns. First, FRA has emphasized reduction of laboratory turn-around time by its contract laboratory. Significant reductions in processing time have been achieved, particularly for crew assignments in which all employees test negative.

Second, in this final rule FRA makes abundantly clear that specimens taken for Federal testing may not be used for other testing that the railroad may wish to undertake. However, it is, of course, not inevitable that railroads will abandon duplicative testing; and the express restriction on subdivision of specimens may actually result in greater inconvenience and delay for employees if they do not.

This issue is also technically beyond the scope of the NPRM. FRA is greatly concerned that the employee-expressed concern is both valid on its own merits and addresses an issue integral to the integrity of the Federal post-accident collection. It is by no means surprising that busy medical facilities should balk at participation in body fluid testing where multiple employees, multiple specimen containers, and multiple chain of custody documents are involved; and the addition of this confusion may significantly affect the quality of both collections. FRA will also monitor this issue closely and may institute further rulemaking at a later date. In the interim, FRA strongly urges railroads to eliminate duplicative body fluid testing following accidents and incidents subject to this subpart.

Section 219.201 Events for Which Testing Is Required

FRA proposed limited amendments to the criteria under which qualifying events are determined.

Paragraph (a)(1)(ii) (Hazardous Material Landing):

Proposed rule. FRA proposed to limit hazardous materials releases giving rise to a requirement for testing to releases of lading from railroad equipment (as distinguished from wayside facilities).

Comments. One railroad supported the limitation because striking a wayside storage facility would likely be a "chance event," while others decried the unnecessary "complication" introduced into the rule by this and other clarifications. The NTSB opposed the change on the ground that improper loading of a freight car could result in non-hazardous lading striking a wayside hazardous materials storage facility.

Final rule. This clarification was proposed because of a relatively minor accident involving damage to a small propane tank along the right-of-way. FRA notes that in order to qualify for testing, a hazardous materials accident must result either in an evacuation or an injury from the hazardous product. On that basis, it would appear that the source of the release should not matter. On the other hand, "hazardous material" is a term defined for purposes of transportation by DOT regulations; and the railroad may not be able to immediately determine the nature of the chemical released from a facility it does not control, thereby subjecting employees to potentially arbitrary decisionmaking. Further, if the accident is sufficiently grave to single it out from among more common minor incidents, then the test will often be required under other criteria (e.g., fatality, $500,000 property damage).

On balance, FRA believes that the proposed clarification should be adopted.

Paragraph (a)(4):

Proposed rule. FRA proposed to add to the specification of major train accidents any passenger train accident involving a reportable injury. (See paragraph (a)(1)(iv) of the proposed rule.)

Comments. This proposal was supported by NTSB, which had included its concept in prior recommendations to FRA. Amtrak opposed the proposal as burdensome and unfair, because (i) it would apply only to passenger operations, (ii) determination of reportable injuries would be difficult, and (iii) it would cause certain impact events to be treated as major train accidents (for which no covered employee may be excused from testing). Amtrak suggested that, if the reqdirement were to be adopted, it should be treated as a non-major event, allowing non-involved employees to be excused. Amtrak would also require that the injured person be a passenger. AAR opposed the provision. Commuter authorities that would be affected did not comment.

Final rule. FRA and the commenters are agreed that a relatively small number of events could be affected by the requirement of testing after passenger train accidents with reportable injuries (4 or 5 per year on Amtrak and perhaps 6 or 7 on the commuter railroads, numbers that would be further reduced by viture of treatment as "non-major" events as further described below). Scenic and excursion operations in the general rail system could also be affected, but events would be rare.

FRA disagrees with the suggestion by a commenter that singling out passenger operations is unfair. While any rail carrier owes to the public a very high standard of care to prevent accidents and casualties, no carrier owes a higher standard than a common carrier of passengers. When accidents occur, it is particularly important to determine the cause and ensure against recurrence. Under present rules, a passenger train accident involving multiple serious injuries might not qualify for testing. This gap must be closed.

Undoubtedly, determination of reportable injuries may be difficult in the aftermath of a passenger train accident. However, the amendment asks no more here than it asks with respect to determination of other facts—only that the railroad representative make reasonable inquiry and a good faith judgment.

FRA agrees with Amtrak that a passenger train accident involving one or more injuries, but not involving a fatality or a large amount of damage to equipment, should be treated as a separate event category allowing the excuse of employees where it can be immediately determined that they were not involved. This is particularly appropriate given the number of covered employees on Amtrak and commuter trains and the fact that any given time several may not be in a position to contribute in any significant way to the cause or severity of the accident (except with respect to the immediate emergency response). Further, a significant proportion of the events that fall within the new criterion involve trains striking foreign objects that have been placed on track. Obviously, where it is clear that the engineer initiated a proper brake application as soon as the object came into view, there would be no reason to test any crew member in that situation; and the final rule provides the necessary latitude to make that judgment. However, FRA notes that the criteria for excuse are narrow.

FRA does not agree that the identity of the injured person should control the testing decision, if the railroad believes in good faith that a reportable injury has occurred and the minimal damage threshold has been met. The point is that a passenger train has been involved in accident; and the extensive precautions taken to prevent such an event have somehow failed.

Paragraph (b) (Exception for "Acts of God"):

Proposed rule. FRA proposed to except, from events otherwise qualified, those accidents resulting entirely from natural causes, such as tornadoes, floods/washouts, earthquakes and other natural disasters.

Comments. NTSB opposed the exception, noting that crew response to an unexpected hazard can sometimes affect the severity of the accident. Two railroads opposed the change, citing the difficulty of making the required determinations and the civil penalty exposure if an error is made. One railroad would make the exclusion permissive at the discretion of the

railroad. Rail labor representatives support the change.

Final rule. FRA proposed the change complicating the compliance structure to the detriment of true safety concerns. One railroad indicated that it would has been the most common source of error in administration of post-accident tests. The proposal drew no comment

case in lesser-magnitude accidents (e.g., where rearend crewmembers can be excused in certain low-speed collision-

railroad later realizes testing should have occurred.

- Accident occurs just prior to the

FRA is also adopting clarifying language with respect the manner in which employees are released.

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railroad. Rail labor representatives support the change.

Final rule. FRA proposed the change because of the patent unfairness associated with testing following the very rare events that do occur that are wholly beyond the control of the employees involved. Such accidents have occurred since issuance of the rule, and FRA agrees that testing should not be required.

FRA also understands the sensitivity of railroad supervisors to the task of making these kinds of determinations on the accident scene. In adopting the proposed exception, FRA therefore notes the fact that the reasonable inquiry/good faith judgment standard applies to determination of this exception (§ 219.201(c)).

FRA agrees that crew response can often affect the severity of an accident. However, the railroad is required to consider this factor in making the required evaluation. If there is any significant possibility that crew response affected severity, the policy of the regulation is to test.

Grade crossing accidents. NTSB also proposed that FRA add to the list of qualifying events any grade crossing accident involving a fatality that occurs at a crossing required to be flagged by crew members. This proposal is beyond the scope of the notice, and NTSB has not supported its suggestion with specific information establishing the need for the change.

Paragraph (c)(1):

Proposed rule. FRA proposed to (i) bar from the determination of qualifying events a railroad representative who is personally involved in the accident/incident, (ii) recognize the participation of railroad management not on the scene of the accident, but require that a decision-maker other than the individual responding to the scene make a memorandum of the decision within 24 hours, (iii) require that monetary estimates of damage made by persons not on the scene be supported by descriptions of actual physical damage, and (iv) allow the host railroad to rely on estimates of passenger equipment damage provided by the passenger operator.

Comments. NTSB supported disqualification of involved management personnel from making decisions with respect to testing.

AAR found "tenuous" FRA's concern that collaboration among officials by phone could result in confusion over responsibility for the decision. Railroad comments opposed the provision as requiring prompt production of a writing within a period already heavy with other demands and as further complicating the compliance structure to the detriment of true safety concerns. One railroad indicated that it would delete the provision or limit the requirement to a specific request by FRA.

Final rule. FRA's proposed amendments were not based on conjecture, but rather hard experience in rule administration. Sharing of responsibility for determination of qualifying events has sometimes led to reflexive decisions to test when the factual predicates were not present. Difficulty has thereafter been experienced in ascertaining who made the relevant decisions. In a notable case where no testing was performed, more than one individual claimed to have made the decision; in other cases, individual responsibility has been virtually impossible to fix.

Both to ensure that railroads clearly delineate responsibility within their organizations and to ensure that FRA is able promptly to investigate any determinations that are questionable, it is crucial to fix actual responsibility for decision-making. The proposed language was proposed for that purpose.

However, FRA recognizes that overbroad regulatory provisions designed to address isolated instances of non-compliance also burden regulated entities in the great majority of cases where compliance is unchallenged. FRA has therefore adopted the suggestion of the railroad commenter that writings be required only where the determination is in question. FRA notes that it remains critical for railroads to make pre-arrangements with respect to the types of consultations that may be required prior to the decision and the responsibility for final decision-making. FRA further notes that attempts to centralize decision-making may not be cited as justification for delays in sample collection. The rule has been written in a manner that can be administered by a responsible railroad supervisor responding to the scene; and further consultations should be of the kind that assist, expedite, and verify that appropriate criteria are being applied, rather than delay the decision whether to test.

Paragraph (c) (2)–(5):

Existing language in this paragraph states that a railroad is not in violation of the subpart if its representative errs in making a good faith judgment based on reasonable inquiry. FRA proposed to state expressly what is clearly the case under current law—i.e., that the reasonable inquiry/good faith standard does not excuse application of incorrect criteria. Ignorance of qualifying criteria has been the most common source of error in administration of post-accident tests. The proposal drew no comment and is adopted. In view of the amendment to § 219.9, the affirmative proposition is also stated, i.e., that an employee may not be tested where the rule does not require it.

FRA proposed to codify its policy that where the railroad has applied the qualifying criteria in good faith after reasonable inquiry, the event is qualifying for all purposes, even if later factfinding results in additional or different information (e.g., if a $600,000 damage estimate is later revised downward to $450,000). FRA also proposed to codify its practice of destroying sample material in any case where it has been submitted in respect of a non-qualifying event. These provisions drew no comment and are adopted as proposed, though the text is divided into two subparagraphs for clarity.

Section 219.203 Responsibility of Railroads and Employees

NTSB commented in response to proposed republication of this section that non-covered employees should not be excluded from testing. This issue is technically beyond the scope of the notice and addresses issues of coverage that have been reserved for consideration following full implementation of the regulatory program with respect to employees subject to the Hours of Service Act.

Paragraph (a)(3) (exclusion of employees from testing):

Proposed rule. FRA proposed to make more emphatic the existing policy of the regulation that employees involved in qualifying events other than major train accidents "shall" be excluded from testing if it can be immediately determined that they played no role in the cause or severity of the accident/incident.

Comments. Railroad commenters opposed the change, fearing exposure to civil penalties if determinations are made incorrectly.

Final rule. FRA has observed a lack of uniformity among the railroads with respect to application of the current exclusion language, with some railroads making effective use of the provision to appropriately limit testing burdens and others appearing not to be aware of the provision. The rule requires exclusion in only one case—where it is abundantly clear on the basis of specific information that is immediately available that the employee played no role. Where this is not the case, the railroad is expected to test. Where it is the case, as is often the case in lesser-magnitude accidents (e.g., where rearend crewmembers can be excused in certain low-speed collision-type events), then the railroad is expected to act accordingly. FRA has both retained the provision and further clarified the duty of the responding officer to consider whether the requisite facts exist. FRA emphasizes that it expects exclusion only in clear cases, and among those clear cases only in those that appear to be so immediately following the accident/incident. The final rule also contains a conforming cross-reference to the new § 219.201(a)(4).

Paragraph (b)(4) (Retention/Recall of Employees):

Proposed rule. FRA proposed to expressly require that employees who may be subject to testing be retained in duty status until the qualifying event determination has been made and to provide that an employee may not be recalled once released by a railroad officer having actual or apparent authority to do so. Additional language would address subsequent testing of an employee who has failed to remain available as required.

Comments. NTSB opposed the bar to recall of employees released from duty status. The Board would condition any release on abstinence until FRA or the Board had concurred in the release. The AAR feared penalties against the railroad should an employee fail to remain available as required. A group of affiliated railroads desired assurance that recall of employees for testing would not be required in the case of a late-manifested injury.

Rail labor representatives generally agreed with the proposed bar to recall, but also agreed that situations may exist where the employees may be released from duty who are clearly implicated in the circumstances of the accident. In those cases, the subject employee could be recalled. Labor representatives also noted that, where an accident/incident response was complete and employees had returned to normal duties, release would customarily not require action by a railroad official, since tie-up procedures may not involve direct contact with supervision.

Final rule. FRA remains greatly troubled by the issue posed by employees who either complete their duty tours or are affirmatively released following an accident/incident, where it is later determined that they should be tested. The following scenarios are possible:

- Railroad fails to make timely determination of qualifying event; employees are released from duty; railroad later realizes testing should have occurred.
- Accident occurs just prior to the time an employee (e.g., train order operator or dispatcher) completes a normal duty tour. Employee leaves the work site without knowing that an accident has just occurred.
- Employee (e.g., likely an operator, dispatcher or signal maintainer) establishes unsafe conditions, goes off duty in the normal manner; accident occurs some hours later.

Although the third example may not qualify for testing in any event because the individual was not "contemporaneously" involved in the accident (§ 219.203(a)(2)), the other two examples present difficult choices and reflect actual cases. The possibility exists that important information could be lost if the employee is not recalled; and, in a rare case, a railroad supervisor seeking to avoid exploration of possible alcohol or drug use might seek to avoid testing by deliberately releasing the individuals.

Incidents have occurred under the current rule where employees have been recalled, only to test positive for beverage alcohol ingested following their release. Although these incidents involving alcohol have uniformly been treated as "negative" for regulatory and disciplinary purposes because the employees' explanation of subsequent use of alcohol was accepted, private off-duty conduct was discovered. On the other hand, similar incidents involving prohibited drugs would present different issues.

FRA believes that this issue must be addressed definitively so that employees and railroads will understand the ground rules. FRA believes that the comment by the labor representative provides the appropriate criterion. Although in an ordinary case no employee should be recalled, an exception should be made where it appears likely at the time the decision is made that the employee is responsible for the cause or severity of the accident/incident. This approach will normally be fair to the employee, since the employee will ordinarily be able to anticipate the possibility of recall and the need for recall is clear; it will ordinarily be fair to the railroad because the railroad is deemed to have effective supervisory control over its workforce and should be expected to follow-up any situation where any lapse occurs. However, to avoid inappropriate use of the recall mechanism, FRA is also providing that the accident/incident must have occurred during the employee's duty tour.

FRA is also adopting clarifying language with respect the manner in which employees are released.

Paragraph 219.203(c):

Proposed rule. FRA proposed to require pre-designation of facilities for post-accident testing in order to facilitate prompt and sound collections.

Comments. As noted elsewhere in this discussion, some railroads believed that sufficient independent medical facilities may not remain available for the specified purpose. The RLEA supported pre-designation.

Final rule. To the extent use of independent medical facilities is required (as will continue to be the case following these amendments), pre-designation is important to provide for prompt and proper collections. This will be especially important if availability is a problem. FRA is aware of cases where valuable time has been wasted seeking the assistance of facilities that do not provide this type of service when other suitable facilities were available in the same area. The provision is adopted as proposed. It should be noted that the requirement of pre-designation does not prohibit use of non-designated facilities as may be required to effect prompt testing (e.g., where an injured employee is transported to another facility for treatment).

Section 219.205 Sample Collection and Handling/Appendix C

Proposed rule. FRA proposed to revise procedures for blood and urine specimen collection by adopting a new Appendix C. The new procedures generally track those for collection of urine samples under 49 CFR part 40, but provision is made for collection of blood specimens. The process of upgrading the collection procedure involves the following:

- Development of new qualifying event data forms describing the accident/incident and listing the employees tested and the employer representative (Form 6180.73).
- Development of a new individual custody and control form for the blood and urine samples of each employee (Form 6180.74), paralleling documentation utilized under 49 CFR part 40.
- Upgrading of toxicology kit materials to provide assurance to employees that containers are fresh and uncontaminated, to facilitate orderly collection and securing of specimens and the shipping kit, and to protect against loss of biological fluids during shipment.
- Provision of new instructions for collection and shipment of specimens.

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A proposed regulatory amendment emphasized shipment by the medical facility, where reasonably possible, and for inspection and copying by FRA, if necessary. FRA will process samples upon receipt of the toxicology kit with consultant to verify that the substance was, in fact, legitimately administered or prescribed. Further, approaching the

since samples have not been required for collateral purposes. Since there was no comment, the amendment is adopted

Comments. FRA received no comment on the proposed changes.

Final rule. The amendments are

allowing employees to perform non-essential intervening service suggests a lack of urgency and sincerity on the part

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A proposed regulatory amendment emphasized shipment by the medical facility, where reasonably possible, and documentation of any necessary handling of the sealed specimen container by railroad representatives.

Comments. Commenters generally approved the revised collection procedures in Appendix E. A United Transportation Union officer wrote to urge that toxicology kit materials be upgraded in the manner contemplated by FRA and that the presence of any preservatives in containers be explained. The UTU officer was also concerned that specimen containers not be reused. (They are not presently and would not be in the future.) Railroad commenters believed that the proposed revision to paragraph (d), providing for shipment by the medical facility "whenever possible," would place the burden for action on health care providers who have little incentive to provide for prompt shipment and who are not subject to FRA jurisdiction. Railroads also objected to the requirement that handling of the sealed toxicology kit be separately documented. Addressing language that FRA had not proposed to change, the railroads objected to the existing requirement that samples be transported to the "nearest" point of shipment, stating that in many cases this would not be the fastest or most efficient approach (e.g., because the nearest express service office was closed at the time).

Final rule. The procedures for specimen collection are adopted with minor changes reflecting the pattern set by amendments recently made to 49 CFR part 40. The final rule clarifies the respective obligations of the railroad and medical facility with respect to prompt shipment of the kit, providing a more flexible framework for action while still encouraging direct transfer from the medical facility to an express courier where significant delay will not ensue. Documentation of the railroad's handling of the kit is retained, since this is a matter of some sensitivity with respect to employee confidence in the system and is likely to be put at issue at a later time. The format of the documentation is left to the railroad (normally a one-paragraph writing stating that the supervisor accepted the kit from a designated person at the facility and had it in his/her personal possession and control until delivery to the express company on the same date, at a specified location, would suffice). It is intended that the documentation remain with the railroad for purposes of a subsequent disciplinary proceeding and for inspection and copying by FRA, if necessary. FRA will process samples upon receipt of the toxicology kit with the individual box security seal intact containing separately sealed specimens and chain-of-custody documentation executed by the collection site.

Section 219.211 Analysis and Follow-Up

Paragraph (a) (Analysis by Designated Laboratory):

FRA has clarified the scope of analysis of post-accident specimens. Testing is normally conducted for alcohol and designated controlled substances. Additional analysis for impairing compounds may be conducted as required for the particular accident investigation (e.g., where an employee reports use of a drug that may account for substandard performance, or where analysis for carbon monoxide exposure may be required following a fatal accident).

Paragraph (b), (c) (railroad MRO review of results):

Proposed rule. Paragraph (b) of the proposed rule provided that FRA would report test results to the employee and the employer's MRO. This provision is derived from § 219.711(c), which was scheduled to become effective on January 16, 1990. Through paragraph (c), FRA proposed to require that the railroad's MRO review the test result for employment-related purposes and also to require that information concerning claimed medical use be communicated back to FRA on a confidential basis.

Comments. Railroads opposed review by the railroad MRO as burdensome and particularly objected to the requirement that a report of the review be submitted to FRA. One railroad objected to FRA's reporting the laboratory result directly to the employee, since it was believed the employee might be given an opportunity to procure a back-dated prescription.

Final rule. FRA believes that its attempted explanation of the purpose of review by the railroad's MRO was not successful and that commenting railroads misunderstood the purpose of this proposal. At the time FRA authorizes its laboratory to report a positive result to the railroad MRO and the employee, that result will already have been analyzed with respect to the significance of any legitimate drug use the employee has claimed on Form 6180.74. As has been the practice in the past, the laboratory report will identify whether the analytes detected (and their concentrations) are consistent with the claimed use at therapeutic doses. However, in most cases it would not be possible for FRA's medical review consultant to verify that the substance was, in fact, legitimately administered or prescribed. Further, approaching the issue in that manner would delay reporting of all results for that accident. Therefore, the railroad's MRO will be asked to verify that the employee used the drug under medical authorization (consistent with § 219.103) and to report the results of that review to FRA. The MRO would also report any subsequent claim of medical use and the results of that review. In the great majority of cases where there is no claim of medical use that could explain the presence of the compounds detected, no review or report would be required. The laboratory report will be used to identify those few instances where the railroad MRO is asked to respond; and the MRO will also need to be on guard to report to FRA any extraordinary case where subsequently offered explanations render an analytically positive result "negative." In the past, FRA has worked with railroad medical officers on issues of this kind. They have been most cooperative, and employee rights have been protected. The final rule merely formalizes this process and has been revised to clearly limit the number of occasions that would require a report back to FRA.

Paragraph (d) (FRA Handling of Medical Information):

This provision merely codifies FRA practice and did not elicit comment.

Paragraph (e) (Employee Response):

FRA proposed to clarify the means by which an employee may respond to FRA with respect to significance of detected alcohol/drug use in the context of an accident investigation. The only comment received was from a railroad that wished to receive a copy of the employee's letter. The provision is adopted as proposed. FRA can provide the railroad with a copy of the letter to the extent it requires specific consideration in the accident investigation or the railroad requests it.

Paragraph (h) (Sample Retention):

FRA proposed to reduce the retention time for negative samples from six months to three months and to increase the retention time for positive samples from six months to two years. Apparently believing that this requirement would burden laboratories at large, CAP objected to the retention time of two years for positives. Obviously, FRA compensates its contract laboratory for long-term storage of specimens. The provision is adopted as proposed.

Language relating to use of samples in litigation was to be deleted, since it has been misunderstood in the past and

since samples have not been required for collateral purposes. Since there was no comment, the amendment is adopted as proposed.

Paragraph (i) (Retest):

FRA proposed to codify and clarify its practice of allowing retests. The language drew no comment and is adopted substantially as proposed.

Section 219.213 Unlawful Refusals; Consequences

FRA proposed to amend paragraph (a) by adding language that would incorporate the return-to-service restrictions of § 219.104. This language is adopted with revisions to reflect amendments to the language incorporated in § 219.104.

Subpart D—Authorization to Test for Cause

This subpart authorizes a railroad to conduct a breath alcohol test, urine test, or both, where an employee (i) is reasonably suspected of being impaired, (ii) has been involved in a reportable accident/incident and a supervisory employee has a reasonable suspicion that the employee's acts or omissions contributed to the occurrence or severity, or (iii) the employee has been directly involved in one of several enumerated rule violations. Most major railroads have adopted reasonable cause testing programs, either under part 219 or pursuant to management authority.

The purpose of current subpart D tests is exclusively to determine compliance with § 219.101, particularly with respect to on-the-job use or impairment of alcohol or drugs. Since urinalysis for drugs cannot determine current impairment, the rule sets out a urine impairment presumption and blood test option intended to work tandem to provide adequate information without requiring blood testing of employees who have not used drugs. The proposed rule (and the final rule as adopted) would extend the purpose of urinalysis for drugs under Subpart D to include determining presence of controlled substances in violation of § 219.102 (i.e., not used under the limited exception of § 219.103).

Section 219.301 Testing for Reasonable Cause

Paragraph (b)(3) (Rule Violations):

Proposed rule. FRA proposed to clarify and amend the listing of rule violations that would give rise to the right to test. The amendments related to construction of flagging requirements, alignment of switches, and entering a crossover before both switches are aligned.

Comments. FRA received no comment on the proposed changes.

Final rule. The amendments are adopted as proposed. In addition FRA has added the clarifying phrase "as required" after "failure to secure a hand brake or failure to secure sufficient hand brakes."

Paragraph (f) (Time Limitation on Sample Collection):

Proposed rule. FRA proposed to amend the current 8-hour limitation on urine sample collection/breath testing in the following respects:

- Testing would be required to be conducted promptly following the observations or events upon which testing is based. For instance, employees could not be allowed to perform intervening service not necessary to protect life and property and then be required to be tested.
- Testing could be conducted up to 8 hours from the time a responsible supervisor receives notice.
- Recall to duty for testing of any employee released from duty would be barred.

Comments. A group of railroads asked that testing be allowed for 8 hours after the supervisor arrives on scene.

Most railroad commenters generally supported the 8-hours-from-notice concept. A western railroad noted that the 8-hour limitation furthers more timely and probative test results.

Although the rail labor organizations supported the current 8-hour limitation, they indicated that they would have no major difficulty with the proposed revision of the 8-hour concept and affirmatively supported the "no recall" provision. They also asked for clarifying language with respect to normal release procedures.

The AAR indicated that the rule should be satisfied if the employee has arrived at the collection site within the 8-hour limitation. A major eastern railroad would allow recall of employees where clear responsibility of the employee for the accident/incident is determined.

Final rule. The amendments are adopted as proposed, with clarifying further amendments. The intent of the regulations is to require prompt completion of the test procedures. FRA believes that it should be possible for tests to be conducted within 8 hours of notice to the railroad official, and most commenters appear to agree. FRA believes it is particularly critical that a pattern of prompt action be set with respect to alcohol analysis. In view of other decisions made with respect to this subpart (discussed below), time is a somewhat less critical factor with respect to drug urinalysis; however, allowing employees to perform non-essential intervening service suggests a lack of urgency and sincerity on the part of the railroad with respect to rules compliance.

FRA has therefore retained the requirement of prompt testing and the 8-hour-from-notice language. FRA has further clarified the rule to provide that, in the case of urinalysis, the 8-hour period is satisfied if arrangements have been made as promptly as feasible and the employee has been brought into the collection site (with collector present) within that time. FRA agrees that railroads cannot always control the immediate availability of collection personnel for these tests, which are by their nature unexpected.

Recall of employees for testing would be barred. This is necessary to avoid abuses, including testing long after an injury-producing event where the injury is not manifested until some hours later.

Other conforming changes are made to this section in light of the decision to discontinue urine alcohol analysis. This decision is discussed under § 219.307, below.

Section 219.303 Breath Test Procedures and Safeguards

FRA proposed to amend this rule to set out safeguards for optional blood alcohol tests. No specific comments were received, and the language is adopted substantially as proposed. The requirement that blood samples be drawn at independent medical facilities is retained in this context, since medical personnel will be required and the procedure is not as extensively regulated as that for urine collection under Subpart H. FRA has also clarified paragraph (a)(2) with respect to verification of breath instrument calibration using a breath alcohol simulator. (The current language appears to require calibration of the device when only verification of correct calibration is needed.)

Section 219.305 Urine Test Procedure and Safeguards

This section is being amended to bring it into conformity with standards for other urine drug testing included in FRA and other DOT modal administration regulations. The standards are drawn from the Department of Health and Human Services Guidelines for Federal Workplace Drug Testing Programs ("DHHS Guidelines") and have been adapted for transportation industry use (subpart H of part 219 and 49 CFR part 40).

The principal question faced by FRA in this rulemaking has been whether to

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retain the current structure of reasonable cause urinalysis, which endeavors to determine impairment. In aid of this objective, the current rule includes an impairment presumption from a positive urine test, an optional blood test (in which case the presumption does not operate), notice of the presumption and a requirement that collection be conducted at an independent medical facility (where blood can be drawn). By contrast, FRA random testing provisions and anti-drug programs adopted by other DOT modal administrations entail testing for drug presence (at the cutoff), no blood test option, no attendant presumptions, and collection at any suitable site, on or off the railroad property.

Proposed rule. The proposed rule text included collection at an independent medical facility and retention of the blood test option, and the urine presumption was retained in the language of § 219.309. However, the NPRM preamble squarely placed these issues before commenters and preserved FRA's latitude to alter the existing provisions as warranted by comments received.

Comments. Labor representatives generally supported retention of the existing rule provisions. Blood testing was cited as a check on the quality of drug urinalysis, and it was indicated that the result of the blood test does have an impact on the sanctions imposed. It was noted that the impairment presumption should not be retained if the blood test option is deleted.

Railroad commenters generally supported deletion of the blood test option, impairment presumption and independent medical facility requirement. They indicated that impairment is not the relevant issue in view of the adoption of § 219.102 and in view of the policies of most railroads, which often handle cases (at least initially) under medical standards. Blood testing is therefore wasteful and misleading.

A major western railroad stated that a blood test option is indicated where blood alcohol is in question (e.g., where urine alcohol testing has been undertaken and that an impairment presumption would be useful in that context); but the railroad indicated that the both the blood option and presumption should be discarded in the context of urine drug testing. This railroad would allow collection on property by licensed paramedics employed by a contract collection service. Interestingly, the Brotherhood of Locomotive Engineers filed comments in support of allowing "independent professionals" to collect specimens on property in lieu of collection at independent medical facilities. It was suggested that this latitude be provided on a test or approval basis.

Several rail commenters stated that the blood test option "sends the wrong message" by suggesting that drug urinalysis is not reliable.

A commuter railroad also supported dropping the blood option and presumption, indicating concern over arbitrator reaction to the common case where the urine test is positive (indicating past use), but the blood test is negative (indicating no presence in the blood at or above the detection limit or cutoff at time of collection). This railroad also believed that competent collections could be performed on the railroad's property.

Several railroads indicated that the requirement for use of independent medical facilities actually reduces the competence of the collection in some cases, because medical facilities necessarily give first priority to patient care. In some cases, medical facilities have not been cooperative. In-house medical departments were cited as available resources for competent collection, as were contract collection services.

Commenters also cited the lack of uniformity and precision attending analysis of blood for controlled substances, as well as the significant cost involved.

Amtrak would add the further latitude of on-site screening to the suggested changes.

Final rule. FRA recognizes that drug testing policy and the sophistication of service providers have now progressed far beyond the stage reflected by regulations first drafted for proposal in 1984. Implementation of lab certification under the DHHS Guidelines, the wide acceptance of the legitimacy of a drug-free policy for safety-sensitive employees in transportation, the growing use of the medical model to control re-entry of drug abusers into the workforce, and better employee understanding of the principles of drug testing have all created a significantly different context within which to regulate.

At the same time, experience has been gained under the existing rule. FRA agrees that laboratories have been less responsive with respect to blood analysis for controlled substances than with respect to urinalysis. Achieving sufficiently sensitive, reliable and precise blood analysis at reasonable cost is difficult. FRA has established good control of mandatory post-accident blood analysis and has found the resulting data useful in the accident investigation context. However, thorough regulation of blood analysis for controlled substances, involving multiple laboratories under private contract to railroads, would not presently be practical. Yet negative blood test results from these laboratories currently may give rise to inappropriate conclusions in some cases; and positive results inevitably present issues of interpretation, the resolution of which may obscure rather than guide needed remedial action. More fundamentally, focus on current impairment from acute effects may be particularly inappropriate in the case of stimulants such as cocaine, since the after- or withdrawal-effects of these drugs may be most damaging to fitness. Thus, absence of blood levels of parent drug may be very misleading.

FRA agrees that the retention of the blood test option would continue to be misunderstood by some employees and arbitrators. Although never conceived as a quality control check on urine testing, the blood option has been understood as such by many employees. This has led to clear distortions, as in the case of major railroads that have acceded to employee requests that blood tests be optional in connection with administration of their required random testing programs. In some cases, blood tests have been conducted under Subpart D even though they will have no impact whatsoever on the action taken and exclusively because of the rule requirements.

On the issue of independent medical facilities two major points should be noted. First, to the extent a blood test is not required, the need for resort to medical personnel is eliminated. Second, Subpart H and 49 CFR part 40 now contain important protections for the employee that were not previously available. Requirements with respect to security of the site and integrity of collection materials, protection of the specimen and shipping container with tamperproof seals, improved chain of custody procedures, and specification of collector qualifications (including a bar on use of co-workers and supervisors) all contribute importantly to the ends sought to be achieved by the independent medical facility requirement.

FRA is also mindful that the combination of the blood option and independent medical facility requirements have tended to drive railroads away from use of part 219 as the structure and authority for testing. FRA agrees with employee representatives that it is desirable for as much testing of covered employees as possible to be conducted under the FRA rule and wishes to avoid unnecessary strictures that could work against that approach.

Accordingly, FRA is amending this section and § 219.309 to provide for collection and analysis of urine specimens in the same manner provided for random tests. The employee option for a blood test is deleted. Collection may occur at any location qualifying under 49 CFR part 40. The urine impairment presumption will be stricken, so that no implication can be drawn from the MRO-declared positive result other than prohibited presence of a controlled substance. Employees should take note that this should have the indirect effect of encouraging railroads to handle initial positive tests under procedures that emphasize abatement or treatment, rather than incident-related discipline. Arbitrators should note that a urine drug test, by itself, does not support an inference of impairment or influence at the time of collection within the meaning of traditional Rule G formulations (although it will normally be *prima facie* evidence of prohibited use).

As so amended, the reasonable cause drug testing provisions remain an important means of detecting and deterring drug use that can impair performance. Where behaviors are observed that clearly indicate lack of fitness (as in a reasonable suspicion test), the urine test may provide the remaining factual element needed to explain the observed behavior (whether resulting from acute or after-effects of drug use) and to prevent a recurrence. Although tests conducted following an accident, injury or rule violation may have less value with respect to specific explanation of the circumstances, the triggering events still represent important occasions to inquire into fitness; and the primary objectives of detection and deterrence will still be served. These objectives will be achieved with equal consideration for employee rights, without resort to physically invasive blood testing, and with greater efficiency.

Section 219.307 Standards for Urine Alcohol Assays (Proposed)

The text of the current § 219.307 is deleted consistent with the adoption of the more stringent DOT Procedures. The following discussion pertains to urine alcohol testing regulations contained in the NPRM.

When the reasonable cause testing provisions were adopted in 1985, they included authority for urine alcohol analysis, in addition to breath alcohol analysis. It was believed at that time that railroads would primarily use breath analysis for alcohol, and the rule established a bias in favor of breath testing where alcohol use was specifically suspected. Urine alcohol analysis was conceived as a supplementary tool to be employed as appropriate where the source of impairment was not evident and urine drug analysis was therefore contemplated. FRA's Field Manual included guidance providing for voiding of the bladder, use of the first sample for drug testing, observance of a waiting period, and collection of a second sample for alcohol analysis. It was indicated that through use of the second sample and application of a conversion factor (a divisor of 1.3 or 1.5), a reasonable estimate of blood alcohol concentration in the interval between the first and second voids could be obtained.

In actual experience, most railroads have been reluctant to employ the breath testing technology which they so urgently sought. Drug urine testing has become widespread, but few railroads have employed urine alcohol analysis. In the meantime, increasing emphasis has been put on laboratory certification as a mark of reliability in body fluid testing, but accrediting groups have not focused attention on urine alcohol analysis or formally certified laboratories for this purpose.

Proposed rule. Against this background, FRA proposed to upgrade the safeguards for urine alcohol testing by making certain guidance mandatory and by addressing the issue of collection procedures, laboratory analysis and specimen security in greater detail. In general, the proposed rule sought to achieve a level a quality control of the testing process that would roughly parallel that for drug urinalysis. Analysis of urine for alcohol would have remained optional—a tool that the railroads could use, as appropriate to the circumstances.

Comments. The AAR said that the proposed requirements were "so complex and burdensome, the railroads will either use breath analysis or rely in tradional Rule G enforcement." One railroad thought that urine alcohol screening should not be required and expressed concern with the probative value of the results in light of alcohol present due to medical conditions and therapies. A railroad that has used urine alcohol analysis under existing guidance believes that the procedure can be employed to provide information useful to the medical officer, but would prefer use of blood specimens for this purpose (citing the Supreme Court's characterization of blood testing as relatively unintrusive in *Skinner* v. *Railway Labor Executives' Association*, 109 S. Ct. 1402 (March 21, 1989)).

The College of American Pathologists (CAP), in comments principally stressing the importance of allowing use of CAP-accredited laboratories, attacked the two-sample procedure on several grounds. CAP believed that the initial void might be incomplete, that the nominal waiting period of 20 minutes would often be exceeded, and that any conversion factor would be "too controversial." CAP stated that "[i]t is well known in the forensic community that a urine alcohol cannot be converted with reliability to a BAC" and that most states have abandoned urine alcohol analysis for law enforcement purposes. CAP therefore advocated deletion of the second sample provision, though it appeared CAP laboratories would like to have any business should it be retained. CAP also recommended retention of the blood alcohol test option, should alcohol urinalysis be required.

A major commuter railroad believed the two-specimen alcohol method was not practical, since the employee fearing detection could claim an inability to provide a specimen for an extended time and then seek to bargain for use of a blood sample in lieu of urine. (By then, of course, the blood level might be very low.) The commenter would retain the two-sample authority but add a right to demand a blood sample (which the commenter already does in suspected Rule G cases).

CAP also indicated that urine alcohol screening should be done by enzyme oxidation, stating that there is no accepted immunological method. CAP disagreed with the two-column requirement where both screening and confirmation are by gas chromatography, indicating that replicate analyses on the same column should be sufficient.

Final rule. FRA believes the comments generally missed the mark because they were aiming at collateral targets. Through their association, the large railroads deplored the complexity of urine alcohol testing as presented by FRA, but did not suggest effective alternatives or seriously contend that any element of the safeguards is unnecessary. CAP found fault with the two sample collection procedure based on factors that are clearly pertinent, but that either were taken into consideration in design of the approach or that would be weighed by a railroad in determining whether to use the tool in a particular setting. CAP's reliance on

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the "controversial" nature of applying the conversion factor, and the categorical statement that it is well known that urine alcohol cannot be converted with validity to BAC, were unsupported by citation to the literature, much of which FRA has reviewed. Most of the negative literature pertains to post mortem urines and analysis of single samples taken from live subjects. Though it is true that most states emphasize use of blood or breath samples as the best evidence of blood alcohol concentration for purposes of criminal law enforcement, other states continue to use urine (as an alternate or optional fluid) and have had success in the criminal arena, where the quantum of proof is quite high. FRA's recent review of statutes and case law indicated no adverse decisional law.

The specific comments aside, FRA recognizes that there is presently no "market" for solutions to the problem of detecting alcohol use by transportation employees through use of an appropriate variety of specimens. In the absence of significant interest in utilizing discretionary urine alcohol testing authority, regulatory decision-making will not be aided by vigorous and well-focused debate. There are other reasons to draw back from this issue at the present time:

- Railroads clearly need to re-evaluate the degree to which breath analysis technology is being utilized. Breath testing is the simplest and most effective approach to alcohol detection; and, supported by optional blood analysis, it is clearly accompanied by excellent safeguards. Maintaining urine alcohol testing authority at the present time may draw interest and attention away from this, more promising detection methodology.
- Urine alcohol analysis as currently conducted to determine current BAC, and as proposed, places significant emphasis on a somewhat complicated collection scenario and on proper analysis at the laboratory. Significant effort is required to ensure that both phases of this activity are handled correctly. Laboratory certification standards are not currently available.
- The Office of the Secretary of Transportation is currently conducting an advance notice proceeding on alcohol abuse prevention that includes consideration of chemical testing technologies. It appears unwise to expend considerable effort in adopting and implementing complex and apparently unwanted testing authorities when that proceeding may produce conclusions indicating contrary policy directions.

Clearly railroads cannot be authorized to test urine for alcohol without appropriate safeguards and program experience has indicated the importance of maintaining uniform standards in all areas of regulation. Accordingly, in light of the foregoing, FRA is deleting the authority to test urine for alcohol from the reasonable cause testing provisions. This is without prejudice to revisiting this issue in the future should the safety need appear.

Section 219.309 Presumption of Impairment; Notice

Paragraph (a) (Presumption of Impairment):

This paragraph created a presumption that a positive urine drug test supported a conclusion that the employee was impaired at the time of collection, unless the employee had provided a blood sample. Commenters generally recognized that the presumption and the blood test option should meet a common fate. For the reasons discussed above, FRA is deleting the blood test option and the presumption.

Paragraph (b) (Notice):

The current paragraph (b) has required that a notice relating to the presumption be published to employees. That notice included a statement regarding what action the company would take under its policy with respect to a simple urine drug positive; and it was proposed that this be reworded to recognize the new applicability of § 219.102 (which became effective October 2, 1989). FRA believes that employees subject to reasonable cause testing under the FRA rule should have the same type of notice required to be provided for random testing under § 219.601(d). FRA has therefore preserved the notice requirement but has revised the regulatory language to allow flexibility in the manner notice is provided and to delete discussion of the presumption.

Subpart E—Identification of Troubled Employees

Proposed rule. FRA proposed only editorial amendments to this subpart, but did ask for comment as to whether return-to-service and follow-up testing should be required following a co-worker report that leads to a determination that the employee has violated the Federal prohibitions or a company rule (§ 219.405).

Comments. Two railroads supported mandatory follow-up testing in the case of a co-worker report, while another appeared to oppose any regulatory requirement.

One comment (beyond the scope of the notice) appeared to oppose any form of voluntary referral requirement.

Final rule. FRA believes that the right of a railroad to provide for return-to-service and follow-up testing in the co-worker report context should be preserved. Although pre-conditions should not be established that would discourage voluntary referrals (including referrals by other workers), the co-worker report or "bypass" provision involves a situation where the employee is clearly not fit on the job and the co-worker feels compelled to take action to avoid further safety risk to everyone concerned. This provision, which already allows the railroad to condition withholding of discipline on participation in aftercare for up to two years, is now revised to apply the same basic standards included in § 219.104 (see § 219.405 (d)(4) and (f) of the final rule), but allowing the railroad flexibility to address specific situations.

Subpart F—Pre-employment Drug Screens

Section 219.501 Pre-Employment Drug Screens

Paragraph (a) (when required):

Proposed rule. FRA proposed to require that current employees transferring from non-covered to covered service receive a drug test, in addition to the current requirement for final applicants for employment.

Comments. One commenter pointed out that transfer tests should be required only once, since many employees exercise seniority back and forth among covered and non-covered positions. Another commenter indicated that employees who were tested as new hires should not be required to be tested on transfer. A third suggested that a one-time test be required for employees moving from train to engine service. Finally the ASLRA would except Class II and III carriers from the transfer test requirement, indicating that many employees of smaller railroads perform a wide variety of duties.

Final rule. The proposed language is adopted with an amendment recognizing that transfer tests need occur only once, even if the employee moves back and forth among occupations with some frequency. FRA agrees that it may be useful to conduct a test on transfer from one type of covered service to another; but that issue is beyond the scope of the current notice. FRA believes that reliance on a prior pre-hire test under company policy is not appropriate where the employee is transferring to covered service for the first time.

Paragraph (c) (Drug Testing Standards):

This paragraph requires that pre-employment drug testing be performed under the standards set forth in Subpart H (incorporating 49 CFR part 40) and is adopted as proposed.

Paragraph (d) (Alcohol Testing Standards):

Paragraph (d) of the existing rule text is deleted as unnecessary in light of the adoption of Subpart H and the DOT Procedures.

Proposed rule. Current regulations allow railroads to test urine samples for alcohol in the pre-employment context, but do not require that they do so. FRA proposed to require that certain standards be met if a railroad elects to test for alcohol.

Comments. CAP contended that a DHHS/NIDA-certified laboratory cannot perform an alcohol test on the same urine sample used for drugs. (CAP confuses the latitude of a DHHS-NIDA-certified lab under the Federal employee testing program and its latitude with respect to dealing with other customers. No conflict would arise between the standards outlined in 49 CFR part 40 and part 219 so long as the DHHS-NIDA-certified lab handled the original specimen container properly and used a separate aliquot for alcohol analysis (as would be required technically in any case).)

The only railroad commenters, AAR and Amtrak, both objected to the proposed .10% urine alcohol cutoff. AAR objected "as a matter of principle" and Amtrak because it believed applicants would typically have advance notice that alcohol testing was to be conducted and could therefore abstain (although such notice is not required). Neither commenter explored in any detail how they would avoid inappropriately arbitrary hiring decisions where unwary applicants may have consumed small quantities of alcohol socially some hours prior to the pre-employment physical exam (which alcohol might be present in the urine, though not at detectable levels in the blood). FRA believes that this lack of forethought is indicative of the need either to tighten the current requirements or abandon pre-employment alcohol testing using urine until a broader and more enlightened consensus has developed.

In view of the decisions discussed above with respect to other forms of urine alcohol testing, FRA believes the wisest course is to set this matter aside as well, for the time being and ending completion of the Secretary's advance notice proceeding. Accordingly, the present language of paragraph (c) regarding testing for alcohol is deleted and the proposed changes to paragraph (d) are not adopted.

As proposed, the balance of the subpart is revised to conform to subpart H (incorporating the DOT Procedures) and to bar employment of an applicant who is using a controlled substance without medical authorization.

Subpart G—Random Drug Testing Program

FRA had proposed to make one clarifying amendment to this subpart and to move various provisions elsewhere in the part.

Section 219.601 Railroad Random Testing Programs

Proposed rule. FRA proposed to amend paragraph (b)(6), which states that an employee is subject to random testing only while on duty, to read as follows:

> An employee shall be subject to testing only while on duty *in covered service (including any duty tour during which the employee is assigned to perform functions that normally involve covered service, whether or not covered service is, in fact, performed during that particular duty tour.)* [Emphasis added to show amendatory language.]

FRA explained that the amendment was intended to address the issue of mixed service employees, who may work in covered positions part of the time. The concept was to provide for testing of these employees only when they were assigned to positions involving covered service. It has been noted that the proposed language would also have the effect of making it impossible to call an employee to duty exclusively for the purpose of conducting a random test.

Comments. The AAR objected to the language to the extent it was intended to provide FRA leverage with respect to disputes with railroads over coverage of the Hours of Service Act.

Amtrak believed that the language did not accomplish its intended result and that it created the potential for manipulation of those employees who will be tested in the context of random testing programs that select assignments rather than individuals. It may not be known prior to the beginning of a duty tour whether certain employees will perform covered service during that tour. An entire roster of employees may be subject to performing covered service, but only a few may actually do so on the day in question. Resolution of the issue must allow pre-planning. Amtrak suggested that the issue of mixed service employees be resolved explicitly either by providing that employees in positions that normally "may" involve covered service shall be subject to testing whenever they are on duty in the position or to specify that employees performing jobs only a very small portion of which represent covered service shall not be subject to testing. Amtrak indicated it was most important that the railroad program be clear and unambiguous. Amtrak also indicated that it would like to retain the ability to call employees exclusively for testing, if necessary.

A major commuter railroad vigorously opposed the proposed language, noting that it had already constructed its random testing program under different assumptions and that the actual performance of covered service among some crafts is not predictable.

Another railroad agreed with the need to address the mixed service issue, but not with the language proposed.

A labor representative saw a possible conflict between § 219.601(b)(4) and § 219.603(b) (refusals). The concern was expressed that an employee who "lays off on call" will be viewed as having refused the random test. (The employee could not be deemed to have refused a test, since he would not have been notified of the test at that point.)

Final rule. The fundamental problem presented by the proposal and comments is when an employee is a "covered employee." From a conceptual point of view, employees who work day after day in train or engine service or as dispatchers, train order or block operators, or signal maintainers, present little problem. They know they are "covered employees" while on duty and they know they will be judged as such with respect to relevant off-duty conduct (i.e., compliance with § 219.102). The positions that they occupy can be used as a basis for random selection, with the assurance that someone whose assigned functions include covered service will be occupying the position when the time arrives to notify the incumbent for testing.

Employees who sometimes perform covered service, but do not do so every day, present a more difficult problem. As pointed out by commenters, it often is not known until the day in question (indeed, perhaps not until well into the duty tour) whether a mixed service employee will perform covered service. If such service is performed, it may be relatively *de minimis* in nature or quite substantial; and the position in question is often not separately identified for any administrative purpose.

The most prevalent type of mixed service is maintenance of motive power. For example, electricians may be required to work on cab signal apparatus, which is critical to

maintaining train separation in high-density corridors; however, on certain

precipitous, arbitrary action. It is intended that railroad random testing

reviewed) and are technically beyond the scope of the present notice. FRA has

sufficiently wide "window" to test the ability of the employee to abstain.

(The DOT Procedures now provide

procedures are employed to ensure that results are not misdirected) and may begin the process of contacting the

Delivery of the positive test result to the employee. The existing paragraph (c) requires that the employee be provided

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maintaining train separation in high-density corridors; however, on certain days no units may require such attention or other employees may draw the assignment. Depending on the existing labor agreements, large numbers of motive power employees may be subject to being assigned to move locomotives within the servicing area. (Movement of locomotives "inside" is "hostling" service that is specifically included within the coverage of the Hours of Service Act.) However, only a relative few employees may actually move locomotives on a given day; and this may be unforeseeable as to the individual.

Lacking the jurisdiction to issue substantive regulations in this area, FRA has nevertheless sought to foster a uniform pattern of coverage under the Hours of Service Act through its interpretations and field compliance activities. Although the lines defining major covered functions are quite clear, issues of interpretation exist at the edges; and these issues are becoming more significant as rigid craft lines and "scope rules" of collective bargaining agreements erode. Railroads do not agree among themselves in this area, with some railroads seeking to sweep in large numbers of mixed service employees and others viewing expanded Hours of Service Act coverage as a sort of medieval plague, notwithstanding the fact that the subject employees generally work 8-hour shifts.

From the point of view of safety, which is the primary factor driving decisions on this issue, employees who perform mixed service should obviously be observing the prohibition against non-medical drug use; and to the extent they perform substantial covered service they should anticipate the possibility that they will be tested. At the same time, employees who work only a few days in covered service do not necessarily warrant the same level of effort per capita as those who work the entire year in such service. As commenters correctly point out, it is not necessarily possible to resolve this issue by having mixed service employees subject to testing only when they will perform covered service, since this will often not be known ahead of time and the logistics will not be feasible.

FRA believes that regulations on this point should provide adequate latitude for railroads to address the wide variety of situations that they confront within reasonable strictures. The regulations already require that covered employees receive prior notice that they will be subject to testing; and this notice requirement provides one check against precipitous, arbitrary action. It is intended that railroad random testing programs address means of selection, including the data bases from which the selections will be made. In reviewing these programs, FRA is considering whether this issue has been appropriately addressed.

FRA also believes that narrow definitional arguments should not obscure the right of railroads to conduct testing of employees who customarily perform covered service and who have been called to duty in the normal manner. Accordingly, FRA agrees that the addition of the phrase "in covered service" to the subject provision would be inappropriate.

Accordingly, the final rule has been clarified to read as follows:

(6) An employee shall be subject to testing only while on duty. Only employees who perform covered service for the railroad shall be subject to testing under this part. In the case of employees who during some duty tours perform covered service and during others do not, the railroad program shall specify the extent to which, and the circumstances under which they shall be subject to testing. To the extent practical within the limitations of thi spart and in the context of the railroad's operations, the railroad program shall provide that employees shall be subject to the possibility of random testing on any day they actually perform covered service.

Railroads that have already filed their random testing programs will have 30 days from the effective date of these amendments to submit any clarifying or corrective amendments that may be required.

Additional proposed editorial changes to subpart G are adopted, including movement of certain provisions to subparts B and H.

Subpart H—Procedures and Safeguards for Urine Drug Testing

FRA adopted subpart H and incorporated by reference 49 CFR part 40 at the time of final rule publication on November 21, 1988 (53 FR 47102). FRA had previously proposed use of the DHHS Guidelines and DHHS-certified laboratories in the random testing NPRM published on May 10, 1988 (53 FR 16640). The NPRM in the present rulemaking included only very minor editorial and clarifying changes to subpart H.

Notwithstanding prior opportunities to address the salient issues, some commenters in this proceeding sought to reopen such basic issues as use of DHHS-certified laboratories and on-site screening. These types of comments were not timely submitted (or are repetitive of comments previously reviewed) and are technically beyond the scope of the present notice. FRA has noted those comments, but finds no basis whatsoever to reopen decisions on those issues made months ago.

Section 219.701 Standards for Urine Drug Testing

FRA has included an appropriate reference to subpart B return-to-service and follow-up tests in this section.

Section 219.703 Collection

Paragraph (b) of this section has been revised to reference, rather than repeat verbatim, the criteria for collection site persons.

Paragraph (d) has been added to specify the conditions under which subsequent testing will be required when an employee fails to provide a specimen. This amendment is necessary in light of the recent amendment to 49 CFR 40.25 (the DOT Procedures). That amendment addresses the problem of the employee who either is unable to provide a specimen or claims such inability. The DOT Procedures now provide that, in the case of for-cause testing, the employee will be required to remain until the specimen is provided (up to 8 hours). However, in the case of other tests (e.g., random tests) the employer may elect to excuse the employee and conduct another collection at a later time. This may be necessary in the rail mode if the collection was commenced near the end of the allowed hours of service. These amendments to part 40 were necessary to provide clear and uniform guidance to transportation employers with respect to the problem of employees who fail to promptly provide samples.

The part 219 amendment completes the regulatory requirements by providing that any subsequent collection must be conducted either immediately upon completion of the required statutory rest (8 or 10 hours) or on an unannounced basis within the next 30 days. The reason for this requirement is to ensure that the test is meaningful as a means of detecting and deterring drug use. Completing the collection immediately after the statutory rest reduces the chance that any drug metabolities will have cleared the employee's system, but will not always be feasible. If the employee is rescheduled for a second collection attempt several days in advance, the employee who is using drugs may be able to abstain from drugs for the brief period prior to the collection; thus, any subsequent collection would have to be on an unannounced basis within a sufficiently wide "window" to test the ability of the employee to abstain.

(The DOT Procedures now provide that where the employee has been given an extended period to provide a sample, or has been unable to provide a sample on a second occasion, the MRO will determine, after a medical evaluation, whether there is a legitimate medical reason for the inability or whether there has been a refusal.)

Section 219.707 Review by MRO

Paragraphs (a)-(c) (MRO Review of Positive Test Results):

FRA has added a sentence to paragraph (a) emphasizing that medical use of controlled substances is a legitimate explanation for a laboratory positive only to the extent use was consistent with § 219.103. This concept has been included in paragraph (c) of this section, but is added to paragraph (a) to ensure proper focus in the MRO review function.

Railroad commenters in this proceeding and the Department's proceeding on the interim final rule issuing Transportation Workplace Drug Testing Procedures were concerned that the MRO review process defined in this section and 49 CFR part 40 would lead to lengthy delays in removing from service employees who have used controlled substances in violation of the regulations. This situation was seen as a hazard to safety and as potentially creating employer liability for actions of the drug-abusing employee during the interval between the initial laboratory report and removal of the employee from service. Most railroad commenters believed that employees testing positive should be placed on medical or administrative leave pending completion of the review; and some indicated that they would be willing to accept language providing for lost wages in the rare case when the result would be reported as negative.

FRA is not willing to short-circuit the process of MRO review in a way that could lead to precipitous decision-making or stigmatize the employee who is legitimately using a controlled substance to address a medical condition. However, FRA very much agrees that unnecessary or inordinate delays should not be tolerated. The following sources of delays have been identified and are discussed in relation to regulatory changes and self-help measures that can be taken to limit or avoid those delays:

Reporting of the laboratory result to the MRO. The MRO may receive initial reports of test results by telecommunications media (so long as procedures are employed to ensure that results are not misdirected) and may begin the process of contacting the employee for an explanation. At the option of the employer, the laboratory could at the same time dispatch the hard copy final report by overnight express and simultaneously transmit same by facsimile.

MRO contact with the employee. The final custody and control form provides information the MRO may use to contact the employee. If the MRO (or approved MRO staff) is unable to reach the employee after reasonable effort, the recent amendment to the DOT Procedures (49 CFR 40.33(c)) permits the MRO to contact a designated employer representative for the sole purpose of getting in contact with the employee. The employee representative should be a key management official with authority to require the employee to contact the MRO and who is required to keep the nature of contact confidential. If, after making all reasonable efforts the management official is unable to contact the employee, the employee may be placed in temporary medically — unqualified status or on medical leave.

Intervention through the employer (on a confidential basis) is necessary to avoid deliberate evasion of MRO contact by the employee who knows the test result will ultimately be positive.

FRA notes one further problem that may arise under this scenario. The MRO, upon discussing a claimed therapeutic positive with an employee, may require documentation of medical use; and it may take several days for the employee to arrange to have this information delivered. The rule does not contemplate that the employee would be held out of service during this interval. As a practical matter, an employee is unlikely to make a claim that cannot be verified as promised; and the employee will know that any fraud will be discovered with likely withholding of any earnings accrued under false pretence. Once having contacted the employee, the MRO should have adequate leverage to handle the matter on a reasonable basis. In the case where the employee plausibly claims medical use and promises documentation, the employee should be given the benefit of the doubt. Where the employee makes claims that are not credible, the MRO can follow up by immediately contacting the physician or institution claimed to have administered or prescribed the medication and can reasonably insist that the employee assist in obtaining release of the information. Absent immediate cooperation, the MRO can report the result as positive.

Delivery of the positive test result to the employee. The existing paragraph (c) requires that the employee be provided a copy of the MRO-reviewed positive test result (which will consist of a legible copy of the custody and control form properly completed, including MRO verification) within 48 hours of delivery to the designated railroad officer or immediately upon the railroad's first taking adverse action, whichever first occurs. This language was included because of regrettable failures by some railroads to promptly make available results of reasonable cause test results under existing provisions. However, in the preamble to the NPRM in this proceeding (54 FR 39646, 39656; Sept. 27, 1989) FRA requested comment on retention or amendment of the requirement in light of the practical difficulties that it presents with respect to effecting physical delivery over the territory of a large railroad. FRA has considered the comments received that urge revision of this provision and has amended paragraph (c) to require only that the verified laboratory result be provided to the employee or dispatched, by U.S. mail or suitable means providing prompt delivery, not later than 24 hours following any adverse action. MROs can meet this requirement by mailing the test result to the employee at the same time it is provided to the management official or when a notice of medical disqualification is issued. It should be noted that, where an employer elects to use a "split sample" procedure under the DOT Procedures, the employee would have 72 hours from actual notice of the positive to request a retest on the second portion of the specimen. Merely depositing the notice in the mail does not provide such notice until receipt.

Paragraph (d) (Negative Test Results):

FRA proposed no change to this paragraph, but has noted in reviewing random testing programs that an issue addressed in this paragraph should be clarified. The purpose of the paragraph is to ensure that there is no indirect disclosure of the fact of medical use of drugs by virtue of the manner in which negative tests are reported. However, the paragraph appears literally to require that all negative test results be individually reported to a designated railroad officer. Although responsible railroad officers will obviously need to know aggregate statistics with respect to tests completed as negative, there may be no need to provide for individualized reporting. In many cases, railroads will administer their random testing programs through their medical

departments; and neither positive nor negative test results will be provided to management on an individual basis except under the conditions specified in the DOT Procedures. Those railroad commenters troubled by the length and would be the receiving entity and could safeguard the information from inappropriate disclosure of data

FRA has evaluated these proposed regulations in accordance with its procedures for insuring full

PART 219—[AMENDED]

1. The authority citation for part 219

219.605 Positive test results; procedures.

Subpart H—Procedures and Safeguards for Urine Drug Testing

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departments; and neither positive nor negative test results will be provided to management on an individual basis (since employees testing positive will be medically disqualified without statement of the underlying reason). FRA does not wish to disturb this election by the railroad and in the final rule removes any possible implication that wider dissemination of test results is required.

FRA also proposed to remove from this paragraph language concerning the MOR's responsibility of confidentiality and to place it in instead in § 219.711(b). This editorial change is adopted, and the substantive issues associated with this language are discussed below under that section.

Section 219.709 Retest

Paragraph (d) is reworded to incorporate 49 CFR 40.29(i) by reference, rather than using different words to express the same concept.

Section 219.711 Confidentiality of Test Results

Paragraph (b) (Medical Information):

Proposed rule. The proposed paragraph consisted of language moved from § 219.707, with a clarification. It provided that an MRO may not disclose medically approved drug use or administration information obtained under this part to non-medical railroad personnel. It was also stated that nothing in this part bars use of such information in the context of an established medical qualifications program "insofar as it may indicate an underlying physical disorder that requires evaluation under the company's existing medical standards." Preamble language explained that this provision was not intended to authorize removal of an employee from service on medical grounds prior to review of a positive test result. 54 FR 39646, 39657; Sept. 27, 1989.

Comments. Ignoring FRA's prior public statements and preamble language, certain railroad commenters invited FRA to affirm that the regulatory language would permit removal of an employee from service on medical grounds after receipt of a laboratory report indicating presence of a controlled substance, but before completion of the MRO review process.

Final rule. FRA has further clarified the text of the rule to state expressly that the legitimate uses that a railroad medical department may make of medical information obtained during the testing process does not include removing the employee from service through medical disqualification prior to completion of the MRO review process, except under the conditions specified in the DOT Procedures. Those railroad commenters troubled by the length and complexity of the regulations should take note of the reason for this additional language.

Section 219.713 Reports; FRA Access to Records

This section was previously § 219.607 and is adopted as proposed.

Appendix A (Schedule of civil penalties) is revised to reflect the amendments made by this final rule.

Part 217

FRA proposed changes to the annual reporting requirements to conform the pre-existing requirements to those adopted in connection with the random testing program. FRA received one detailed comment objecting to the requirement of § 217.13(d)(6) that information on follow-up of employees testing positive in random tests be provided. This language is the same as proposed in May of 1988 and adopted in November of 1988, though the paragraph would be redesignated as (6) rather than (5). The recent comment indicated that providing this information would be an "administrative nightmare," but did not provide any alternative structure. FRA believes that, in the day of PC-based computer data bases, management of the required information is feasible; and the need for meaningful information is significant. Accordingly, these requirements will be continued as previously adopted; and FRA will monitor experience under the requirements to ensure that the information received is usable in the administration and evaluation of random drug testing programs.

Paragraph (d)(7) of § 217.13 is added to conform part 217 to § 40.33(g) of the DOT Procedures (requiring reporting of cases where tests are declared negative based on scientific insufficiency).

Part 225

FRA proposed to clarify in the regulatory text that alcohol/drug data will be provided for incidents (injuries) not involving damage to railroad equipment. This information is already provided under the accident/incident reporting system. No comment was received, and the clarification is adopted as proposed.

FRA also requested comment on the apparent tension between the confidentiality requirements of Subpart H and the railroads' obligations to provide case-specific data with respect to possible alcohol/drug involvement in accident/incidents. A commenting railroad saw no conflict, since FRA would be the receiving entity and could safeguard the information from inappropriate disclosure of data associated with an individual. (Accident/incident reports do not include employee names or other unique identifiers, though information on actions or fitness of those filling particular positions may be provided.) FRA agrees that any disclosure of information in a way that could harm an individual is speculative and continues to believe that development of good information concerning the involvement of alcohol and drugs in accident/incidents is important to safety. Accordingly, FRA will continue to require this information and will review and, as necessary, reinforce its internal review procedures protecting against inappropriate release of this information on a case-specific basis. However, FRA is also clarifying that the railroad should not report information concerning analytical positives that are deemed negative in MRO review or (in the case of railroad-administered testing) that are otherwise determined to have resulted from legitimate use. This information is particularly sensitive; and FRA or NTSB can separately request it in the very rare case where it is necessary to an accident investigation.

Regulatory Impact

This final rule has been evaluated in accordance with existing regulatory policies. It is not a "major" rule under Executive Order 12291, but it is deemed a "significant" rule as defined under DOT policies and procedures. FRA has considered the regulatory costs and benefits associated with the rule and has determined that the costs of the revisions are not significant. Therefore, no further regulatory evaluation is warranted. Benefits of the proosed rule would include increased efficiency of program administration and improved safety. Comments on ther NPRM did not directly address cost/benefit issues.

The regulations issued herein would not have substantial effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

It is certified that the amendments will not have a significant economic impact on a substantial number of small entities under the provisions of the Regulatory Flexibility Act (5 U.S.C. 60 et seq.).

FRA has evaluated these proposed regulations in accordance with its procedures for insuring full consideration of the environmental impacts of FRA actions as required by the National Environmental Policy Act (45 U.S.C. 4321 et seq.), other environmental statutes, Executive Orders and DOT order 5610.1c. These proposed regulations meet the criteria that establish this as a non-major action for environmental purposes.

Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96-511) applies to this final rule because it changes several currently approved collections of information and initiates several new information collection requirements. FRA has received no specific paperwork-related comments in response to the NPRM.

FRA is requesting OMB approval of the revised information collection requirements. FRA solicits comments on the accuracy of the estimates, the practical utility of the information, and alternative methods that might be less burdensome to obtain this information. Persons desiring to comment on this topic should submit their views in writing to Gloria D. Swanson, Federal Railroad Administration, 400 Seventh Street, SW., Washington, DC 20590, and to Ed Clark, Regulatory Policy Branch (OMB No. 2130-526), Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Washington, DC 20530. Copies of any such comments should also be submitted to the docket of this rulemaking at the address provided above.

A Federal Register notice will be published when Paperwork Reduction Act approval is obtained.

Therefore, in consideration of the foregoing, parts 217, 219, and 225, title 49, Code of Federal Regulations are amended as follows:

List of Subjects

49 CFR Part 217

Railroad safety, Railroad operating rules, Reporting and recordkeeping requirements.

49 CFR Part 219

Railroad safety, Control of alcohol and drug use, Reporting and recordkeeping requirements.

49 CFR Part 225

Railroad safety, Accident/Incident reporting, Reporting and recordkeeping requirements.

PART 219—[AMENDED]

1. The authority citation for part 219 continues to read as follows:

Authority: 45 U.S.C. 431, 437, and 438, as amended; Pub. L. 100-342; and 49 CFR 1.49(m).

2. Part 219 is revised to read as follows:

PART 219—CONTROL OF ALCOHOL AND DRUG USE

Subpart A—General

Sec.
219.1 Purpose and scope.
219.3 Application.
219.5 Definitions.
219.7 Waivers.
219.9 Responsibility for compliance.
219.11 General conditions for chemical tests.
219.13 Preemptive effect.
219.15 Alcohol concentrations in blood and breath.
219.17 Construction.
219.19 Field Manual.
219.21 Information collection.
219.23 Notice to employees.

Subpart B—Prohibitions

219.101 Alcohol and drug use prohibited.
219.102 Prohibition on abuse of controlled substances.
219.103 Prescribed and over-the-counter drugs.
219.104 Responsive action.
219.105 Railroad's duty to prevent violations.

Subpart C—Post-Accident Toxicological Testing

219.201 Events for which testing is required.
219.203 Responsibilities of railroads and employees.
219.205 Sample collection and handling.
219.207 Fatality.
219.209 Reports of tests and refusals.
219.211 Analysis and follow-up.
219.213 Unlawful refusals; consequences.

Subpart D—Authorization to Test for Cause

219.301 Testing for reasonable cause.
219.303 Breath test procedures and safeguards.
219.305 Urine test procedures and safeguards.
219.307 [Reserved]
219.309 Employee notice.

Subpart E—Identification of Troubled Employees

219.401 Requirement for policies.
219.403 Voluntary referral policy.
219.405 Co-worker report policy.
219.407 Alternate policies.

Subpart F—Pre-Employment Drug Screens

219.501 Pre-employment drug screens.
219.503 Notification; records.
219.505 Refusals; consequences of positive.

Subpart G—Random Drug Testing Program

219.601 Railroad random testing programs.
219.603 Participation in testing; refusals.
219.605 Positive test results; procedures.

Subpart H—Procedures and Safeguards for Urine Drug Testing

219.701 Standards for urine drug testing.
219.703 Collection.
219.705 Drugs tested.
219.707 Review by MRO.
219.709 Retest.
219.711 Confidentiality of test results.
219.713 Reports; FRA access to records.

Appendix A—Schedule of Civil Penalties

Appendix B—Designation of Laboratory for Post-Accident Toxicological Testing

Appendix C—Post-Accident Testing Sample Collection

Authority: 45 U.S.C. 431, 437, and 438, as amended; Pub. L. 100-342; and 49 CFR 1.49(m).

Subpart A—General

§ 219.1 Purpose and scope.

(a) The purpose of this part is to prevent accidents and casualties in railroad operations that result from impairment of employees by alcohol or drugs.

(b) This part prescribes minimum Federal safety standards for control of alcohol and drug use. This part does not restrict a railroad from adopting and enforcing additional or more stringent requirements not inconsistent with this part.

§ 219.3 Application.

(a) Except as provided in paragraph (b), this part applies to—

(1) Railroads that operate rolling equipment on standard gage track which is part of the general railroad system of transportation; and

(2) Railroads that provide commuter or other short-haul rail passenger service in a metropolitan or suburban area (as described by section 202(e) of the Federal Railroad Safety Act of 1970, as amended).

(b) (1) This part does not apply to a railroad that operates only on track inside an installation which is not part of the general railroad system of transportation.

(2) Subparts D, E, F and G do not apply to a railroad that employs not more than 15 employees covered by the Hours of Service Act (45 U.S.C. 61-64b) and that does not operate on tracks of another railroad (or otherwise engage in joint operations with another railroad) except as necessary for purposes of interchange.

(c) (1) Subpart G of this part shall not apply to any person for whom compliance with that subpart would violate the domestic laws or policies of another country.

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(2) Subpart G is not effective until January 2, 1992, with respect to any employee whose place of reporting of point of departure ("home terminal") for rail transportation services is located outside the territory of the United States.

§ 219.5 Definitions.

As used in this part—

Alcohol means ethyl alcohol (ethanol). References to use or possession of alcohol include use or possession of any beverage, mixture or preparation containing ethyl alcohol.

Class I, "Class II," and *"Class III"* have the meaning assigned by regulations of the Interstate Commerce Commission (49 CFR Part 1201; General Instructions 1–1), as those regulations may be revised and applied by order of the Commission (including modifications in class thresholds based revenue deflator adjustments).

Controlled substance has the meaning assigned by 21 U.S.C. 802 and includes all substances listed on Schedules I through V as they may be revised from time to time (21 CFR parts 1301–1316).

Covered employee means a person who has been assigned to perform service subject to the Hours of Service Act (45 U.S.C. 61–64b) during a duty tour, whether or not the person has performed or is currently performing such service, and any person who performs such service. (An employee is not "covered" within the meaning of this part exclusively by reason of being an employee for purposes of section 2(a)(3) of the Hours of Service Act, as amended (45 U.S.C. 62(a)(3)).)

Covered service means service for a railroad that is subject to the Hours of Service Act (45 U.S.C. 61–64b), but does not include any period the employee is relieved of all responsibilities and is free to come and go without restriction.

Co-worker means another employee of the railroad, including a working supervisor directly associated with a yard or train crew, such as a conductor or yard foreman, but not including any other railroad supervisor, special agent or officer.

Drug means any substance (other than alcohol) that has known mind or function-altering effects on a human subject, specifically including any psychoactive substance and including, but not limited to, controlled substances.

EAP Counselor means a person or persons qualified by experience, education, or training to counsel persons affected by substance abuse problems and to evaluate their progress in recovering from or controlling such problems. An "EAP counselor" may be a qualified full-time salaried employee of the railroad, a qualified practitioner who contracts with the railroad on a fee-for-service or other basis, or a qualified physician designated by the railroad to perform functions in connection with alcohol or drug abuse evaluation or counseling. As used in these rules, an EAP Counselor owes a duty to the railroad to make an honest and fully informed evaluation of the condition and progress of the employee.

Field Manual refers to the document described in § 219.19 of this subpart.

FRA means the Federal Railroad Administration, U.S. Department of Transportation.

FRA representative means the Associate Administrator for Safety, FRA, the Associate Administrator's delegate (including a qualified State inspector acting under part 212 of this chapter), the Chief Counsel, FRA, or the Chief Counsel's delegate.

Hazardous material means a commodity designated as a hazardous material by part 172 of this title.

Impact accident means a train accident (i.e., a rail equipment accident involving damage in excess of the current reporting threshold, $5,700 in 1989 and 1990) consisting of a head-on collision, a rear-end collision, a side collision (including a collision at a railroad crossing at grade), a switching collision, or impact with a deliberately-placed obstruction such as a bumping post. The following are not impact accidents:

(1) An accident in which the derailment of equipment causes an impact with other rail equipment;

(2) Impact of rail equipment with obstructions such as fallen trees, rock or snow slides, livestock, etc.; and

(3) Raking collisions caused by derailment of rolling stock or operation of equipment in violation of clearance limitations.

"Independent" means not under the ownership or control of the railroad and not operated or staffed by a salaried officer or employee of the railroad. The fact that the railroad pays for services rendered by a medical facility or laboratory, selects that entity for performing tests under this part, or has a standing contractual relationship with that entity to perform tests under this part or perform other medical examinations or tests of railroad employees does not, by itself, remove the facility from this definition.

Medical facility means a hospital, clinic, physician's office, or laboratory where toxicological samples can be collected according to recognized professional standards.

Medical practitioner means a physician or dentist licensed or otherwise authorized to practice by the state.

Medical Review Officer or *MRO* refers to a licensed physician designated by the railroad who is responsible for receiving laboratory results generated by the railroad's drug testing program (including testing mandated or authorized by this part), who has knowledge of substance abuse disorders, and who has appropriate medical training to interpret and evaluate an individual's positive test result (as reported by the laboratory) together with his or her medical history and any other relevant biomedical information.

NTSB means the National Transportation Safety Board.

Passenger train means a train transporting persons (other than employees, contractors or persons riding equipment to observe or monitor railroad operations) in intercity passenger service, commuter or other short-haul service, or for excursion or recreational purposes.

Possess means to have on one's person or in one's personal effects or under one's control. However, the concept of possession as used in this part does not include control by virtue of presence in the employee's personal residence or other similar location off of railroad property.

Railroad means all forms of non-highway ground transportation that run on rails or electro-magnetic guideways, including:

(1) Commuter or other short-haul rail passenger service in a metropolitan or suburban area, as well as any commuter rail service which was operated by Consolidated Rail Corporation as of January 1, 1979, and

(2) High speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads.

Such term does not include rapid transit operations within an urban area that are not connected to the general railroad system of transportation.

Railroad property damage or *damage to railroad property* refers to damage to railroad property, including railroad on-track equipment, signals, track, track structures (including bridges and tunnels), or roadbed, including labor costs and all other costs for repair or replacement in kind. Estimated cost for replacement of railroad property shall be calculated as described in the FRA Guide for Preparing Accident/Incident Reports. (See 49 CFR 225.21.) However, replacement of passenger equipment shall be calculated based on the cost of acquiring a new unit for comparable service.

Reportable injury means an injury reportable under part 225 of this title.

Reporting threshold means the amount specified in § 225.19(c) of this title, as adjusted from time to time in accordance with appendix A to part 225 of this title (i.e., $5,700 in 1989 and 1990).

Supervisory employee means an officer, special agent, or other employee of the railroad who is not a co-worker and who is responsible for supervising or monitoring the conduct or performance of one or more employees.

Train, except as context requires, means a locomotive, or more than one locomotive coupled, with or without cars. (A locomotive is a self-propelled unit of equipment which can be used in train service.)

Train accident means a passenger, freight, or work train accident described in § 225.19(c) of this title (a "rail equipment accident" involving damage in excess of the current reporting threshold, $5,700 in 1989 and 1990), including an accident involving a switching movement.

Train incident means an event involving the movement of railroad on-track equipment that results in a casualty but in which railroad property damage does not exceed the reporting threshold.

§ 219.7 Waivers.

(a) A person subject to a requirement of this part may petition the Federal Railroad Administration for a waiver of compliance with such requirement.

(b) Each petition for waiver under this section must be filed in a manner and contain the information required by part 211 of this chapter.

(c) If the Administrator finds that waiver of compliance is in the public interest and is consistent with railroad safety, the Administrator may grant the waiver subject to any necessary conditions.

§ 219.9 Responsibility for compliance.

(a) Any person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $250 and not more than $10,000 per violation, except that: Penalties may be assessed against individuals only for willful violations; where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury, or has caused death or injury, a penalty not to exceed $20,000 per violation may be assessed; and the standard of liability for a railroad will vary depending upon the requirement involved. *See*, e.g., § 219.105, which shall be construed to qualify the responsibility of a railroad for the unauthorized conduct of an employee that violates § 219.101 or § 219.102 (while imposing a duty of due diligence to prevent such conduct). Each day a violation continues shall constitute a separate offense. See Appendix A to this part for a statement of agency civil penalty policy.

(b)(1) In the case of joint operations, primary responsibility for compliance with this part with respect to determination of events qualifying for breath or body fluid testing under subparts C and D or this part shall rest with the host railroad, and all affected employees shall be responsive to direction from the host railroad consistent with this part. However, nothing in this paragraph shall restrict the ability of the railroads to provide for an appropriate assignment of responsibility for compliance with this part as among those railroads through a joint operating agreement or other binding contract. FRA reserves the right to bring an enforcement action for noncompliance with applicable portions of this part against the host railroad, the employing railroad, or both.

(2) Where an employee of one railroad is required to participate in breath or body fluid testing under subpart C or D and is subsequently subject to adverse action alleged to have arisen out of the required test (or alleged refusal thereof), necessary witnesses and documents available to the other railroad shall be made available to the employee on a reasonable basis.

§ 219.11 General conditions for chemical tests.

(a) Any employee who performs covered service for a railroad shall be deemed to have consented to testing as required in subparts B, C, D, and G of this part; and consent is implied by performance of such service.

(b) (1) Each such employee shall participate in such testing, as required under the conditions set forth in this part by a representative of the railroad.

(2) In any case where an employee has sustained a personal injury and is subject to alcohol or drug testing under this part, necessary medical treatment shall be accorded priority over provision of the breath or body fluid sample. No employee who is unable to urinate normally (based on the judgment of a medical professional that catheterization would be required) as a result of a personal injury or resulting medical treatment shall be required to provide a urine sample.

(3) Failure to remain available following an accident or casualty as required by company rules (i.e., being absent without leave) shall be considered a refusal to participate in testing, without regard to any subsequent provision of samples.

(4) Tampering with a sample in order to prevent a valid test (e.g., through substitution, dilution or adulteration) constitutes a refusal to provide a sample.

(c) A covered employee who is required to be tested under subpart C or D and who is taken to a medical facility for observation or treatment after an accident or incident shall be deemed to have consented to the release to FRA of the following:

(1) The remaining portion of any body fluid sample taken by the treating facility within 12 hours of the accident or incident that is not required for medical purposes, together with any normal medical facility record(s) pertaining to the taking of such sample;

(2) The results of any laboratory tests for alcohol or any drug conducted by or for the treating facility on such sample; and

(3) The identity, dosage, and time of administration of any drugs administered by the treating facility prior to the time samples were taken by the treating facility or prior to the time samples were taken in compliance with this part.

(d) An employee required to participate in body fluid testing under subpart C (post-accident toxicological testing) or testing subject to subpart H shall, if requested by the representative of the railroad or the medical facility (including under subpart H of this part, a non-medical contract collector), evidence consent to taking of samples, their release for toxicological analysis under pertinent provisions of this part, and release of the test results to the railroad's Medical Review Officer by promptly executing a consent form, if required by the medical facility. The employee is not required to execute any document or clause waiving rights that the employee would otherwise have against the employer, and any such waiver is void. The employee may not be required to waive liability with respect to negligence on the part of any person participating in the collection, handling or analysis of the specimen or to indemnify any person for the negligence of others. Any consent provided consistent with this section shall be construed to extend only to those actions specified herein.

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(e) Nothing in this part shall be construed to authorize the use of physical coercion or any other deprivation of liberty in order to compel breath or body fluid testing.

(f) Any railroad employee who performs service for a railroad shall be deemed to have consented to removal of body fluid and/or tissue samples necessary for toxicological analysis from the remains of such employee, if such employee dies within 12 hours of an accident or incident described in subpart C as a result of such event. This consent is specifically required of employees not in covered service, as well as employees in covered service.

(g) Nothing in this subpart restricts any discretion available to the railroad to request or require that an employee cooperate in additional body fluid testing. However, no such testing may be performed on urine or blood samples provided under this part. For purposes of this paragraph, all urine from a void constitutes a single sample.

§ 219.13 Preemptive effect.

(a) Under section 205 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 434), issuance of these regulations preempts any State law, rule, regulation, order or standard covering the same subject matter, except a provision directed at a local hazard that is consistent with this part and that does not impose an undue burden on interstate commerce.

(b) FRA does not intend by issuance of these regulations to preempt provisions of State criminal law that impose sanctions for reckless conduct that leads to actual loss of life, injury or damage to property, whether such provisions apply specifically to railroad employees or generally to the public at large.

§ 219.15 Alcohol concentrations in blood and breath.

(a) In this part, blood alcohol concentration (BAC) is expressed as a "percentage" weight to volume. For example, a BAC of ".04 percent" means that there is .04 gram (four hundredths of one gram) of alcohol in 100 milliliters of whole blood. This is the same quantity as "40 milligrams percent" (40 milligrams in 100 milliliters).

(b) For the purpose of determining blood alcohol concentration through an analysis of the breath, the amount of alcohol in one part of blood shall be presumed to equal the amount of alcohol in 2100 parts of an expired breath sample (by volume).

§ 219.17 Construction.

Nothing in this part—

(a) Restricts the power of FRA to conduct investigations under section 208 of the Federal Railroad Safety Act of 1970, as amended; or

(b) Creates a private right of action on the part of any person for enforcement of the provisions of this part or for damages resulting from noncompliance with this part.

§ 219.19 Field Manual.

(a) Recommended practice standards for breath testing under subpart D of this part, and related materials designed to assist the railroads in establishing programs for control of alcohol and drug use are contained in the FRA Alcohol and Drug Field Manual, which is revised from time to time by the Office of Safety, FRA.

(b) The Field Manual may be inspected at the Office of the Associate Administrator for Safety, FRA, 400 Seventh Street, SW., Washington, DC 20590. The Field Manual may be purchased at the National Technical Information Service, Order Department, 5285 Port Royal Road, Springfield, Virginia 22161.

§ 219.21 Information collection.

(a) The information collection requirements of this part have been reviewed by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB control number 2130–0528.

(b) The information collection requirements are found in the following sections:

Section 219.7.
Section 219.23.
Section 219.104.
Section 219.201.
Section 219.203.
Section 219.205.
Section 219.207.
Section 219.209.
Section 219.211.
Section 219.213.
Section 219.303.
Section 219.307.
Section 219.309.
Section 219.401.
Section 219.403.
Section 219.405.
Section 219.407.
Section 219.501.
Section 219.503.
Section 219.601.
Section 219.605.
Section 219.701.
Section 219.703.
Section 219.705.
Section 219.707.
Section 219.709.
Section 219.711.
Section 219.713.

§ 219.23 Notice of employees.

(a) Whenever a breath or body fluid test is required of an employee under this part, the railroad shall provide clear and unequivocal written notice to the employee that the test is being required under Federal Railroad Administration regulations. Clear annotation of the drug testing custody and control form ("Reason for test") with the letters "FRA" prior to providing a copy to the employee satisfies the requirement of this paragraph. Rather than providing written notice for each individual test, a company that requires breath and/or body fluid tests only under the authority of this part for a clearly delineated portion of its employees may satisfy this requirement by publishing this fact in a manner that provides effective notice to each employee.

(b) Whenever a breath or body fluid test is required of an employee under this part, the railroad shall provide clear, unequivocal written notice of the basis or bases upon which the test is required (e.g., reasonable suspicion, violation of a specified operating/safety rule enumerated in subpart D, random selection, follow-up, etc.). Annotation of the urine custody and control form with the specific basis of the test (prior to providing a copy to the employee) satisfies the requirement of this paragraph.

(c) Use of approved forms for mandatory post-accident toxicological testing under subpart C of this part provides the notifications required under this section with respect to such tests. Use of those forms for any other test is prohibited.

Subpart B—Prohibitions

§ 219.101 Alcohol and drug use prohibited.

(a) *Prohibitions.* Except as provided in § 219.103—

(1) No employee may use or possess alcohol or any controlled substance while assigned by a railroad to perform covered service;

(2) No employee may report for covered service, or go or remain on duty in covered service while—

(i) Under the influence of or impaired by alcohol;

(ii) Having .04 percent or more alcohol in the blood; or

(iii) Under the influence of or impaired by any controlled substance.

(b) *Controlled substance.* "Controlled substance" is defined by § 219.5 of this part. Controlled substances are grouped as follows: Marijuana, narcotics (such as heroin and codeine), stimulants (such as cocaine and amphetamines),

depressants (such as barbiturates and minor tranquilizers), and hallucinogens (such as the drugs known as PCP and LSD). Controlled substances include illicit drugs (Schedule I), drugs that are required to be distributed only by a medical practitioner's prescription or other authorization (Schedules II through IV, and some drugs on Schedule V), and certain preparations for which distribution is through documented over the counter sales (Schedule V only).

(c) *Railroad rules.* Nothing in this section restricts a railroad form imposing an absolute prohibition on the presence of alcohol or any drug in the body fluids of persons in its employ, whether in furtherance of the purpose of this part or for other purposes.

(d) *Construction.* This section shall not be construed to prohibit the presence of an unopened container of an alcoholic beverage in a private motor vehicle that is not subject to use in the business of the railroad; nor shall it be construed to restrict a railroad from prohibiting such presence under its own rules.

§ 219.102 Prohibition on abuse of controlled substances.

On and after October 2, 1989, no employee who performs covered service may use a controlled substance at any time, whether on duty or off duty, except as permitted by § 219.103 of this subpart.

§ 219.103 Prescribed and over-the-counter drugs.

(a) This subpart does not prohibit the use of a controlled substance (on Schedule II through V of the controlled substance list) prescribed or authorized by a medical practitioner, or possession incident to such use, if—

(1) The treating medical practitioner or a physician designated by the railroad has made a good faith judgment, with notice of the employee's assigned duties and on the basis of the available medical history, that use of the substance by the employee at the prescribed or authorized dosage level is consistent with the safe performance of the employee's duties;

(2) The substance is used at the dosage prescribed or authorized; and

(3) In the event the employee is being treated by more than one medical practitioner, at least one treating medical practitioner has been informed of all medications authorized or prescribed and has determined that use of the medications is consistent with the safe performance of the employee's duties (and the employee has observed any restrictions imposed with respect to use of the medications in combination).

(b) This subpart does not restrict any discretion available to the railroad to require that employees notify the railroad of therapeutic drug use or obtain prior approval for such use.

§ 219.104 Responsive action.

(a) *Removal from covered service.* If the railroad determines that there is reason to believe that an employee has violated § 219.101 or 219.102 as evidenced by a positive test result reported by the railroad's Medical Review Officer for a test conducted under this subpart, subpart C, subpart D or subpart G of this part (or on the basis of a positive breath alcohol test for which the employee has not exercised the blood test option), the railroad shall immediately remove the employee from covered service.

(b) *Notice.* Prior to or upon withdrawing the employee from covered service under this section, the railroad shall provide notice of the reason for this action.

(c) *Hearing procedures.* (1) If the employee denies that the test result is valid evidence of alcohol or drug use prohibited by this subpart, the employee may demand and shall be provided an opportunity for a prompt post-suspension hearing before a presiding officer other than the charging official. This hearing may be consolidated with any disciplinary hearing arising from the same accident or incident (or conduct directly related thereto), but the presiding officer shall make separate findings as to compliance with §§ 219.101 and 219.102 of this part.

(2) The hearing shall be convened within the period specified in the applicable collective bargaining agreement. In the absence of an agreement provision, the employee may demand that the hearing be convened within 10 calendar days of the suspension or, in the case of an employee who is unavailable due to injury, illness, or other sufficient cause, within 10 days of the date the employee becomes available for hearing.

(3) A post-suspension proceeding conforming to the requirements of an applicable collective bargaining agreement, together with the provisions for adjustment of disputes under section 3 of the Railway Labor Act, shall be deemed to satisfy the procedural requirements of this paragraph.

(4) Nothing in this part shall be deemed to abridge any additional procedural rights or remedies not inconsistent with this part that are available to the employee under a collective bargaining agreement, the Railway Labor Act, or (with respect to employment at will) at common law with respect to the removal or other adverse action taken as a consequence of a positive test result in a test authorized or required by this part.

(5) Nothing in this part shall restrict the discretion of the railroad to treat an employee's denial of prohibited alcohol or drug use as a waiver of any privilege the employee would otherwise enjoy to have such prohibited alcohol or drug use treated as a non-disciplinary matter or to have discipline held in abeyance.

(d) *Return to covered service.* An employee who has been determined to have violated § 219.101 or § 219.102 of this part as a result of a positive test result described in paragraph (a) shall not be returned to covered service unless the employee has—

(1) Been evaluated by an EAP counselor to determine if the employee is affected by a psychological or physical dependence on alcohol or one or more controlled substances or by another identifiable and treatable mental or physical disorder involving abuse of alcohol or drugs as a primary manifestation;

(2) Successfully completed any program of counseling or treatment determined to be necessary by the EAP counselor prior to return to covered service; and

(3) Presented a urine sample for testing under subpart H of this part that tested negative for controlled substances assayed (in the case of an employee who had tested positive for a controlled substance) or has tested negative for alcohol under paragraph (e) of this section (in the case of an employee who had tested positive for alcohol).

An employee returned to service under the above-stated conditions shall continue in any program of counseling or treatment deemed necessary by the EAP counselor and, in the case of an employee who had tested positive for a controlled substance, shall be subject to a reasonable program of followup drug testing without prior notice for a period of not more than 60 months following return to service. Such tests shall be performed consistent with the requirements of subpart H of this part.

(e) *Return-to-service tests for alcohol.* Return-to-service alcohol tests required by paragraph (d) of this section shall consist of—

(1) Analysis of a breath specimen for alcohol under safeguards consistent with those specified for reasonable cause breath testing under subpart C of this part; or

(2) Analysis of a blood specimen for alcohol in the same manner as prescribed in § 219.303(c) of this part.

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§ 219.105 Railroad's duty to prevent violations.

(a) A railroad may not, with actual knowledge, permit an employee to go or remain on duty in covered service in violation of the prohibitions of § 219.101 or § 219.102. As used in this section, the knowledge imputed to the railroad shall be limited to that of a railroad management employee (such as a supervisor deemed an "officer," whether or not such person is a corporate officer) or a supervisory employee in the offending employee's chain of command.

(b) A railroad must exercise due diligence to assure compliance with § 219.101 and § 219.102 by each covered employee.

Subpart C—Post-Accident Toxicological Testing

§ 219.201 Events for which testing is required.

(a) *List of events.* Except as provided in paragraph (b) of this section, post-accident toxicological tests shall be conducted after any event that involves one or more of the circumstances described in paragraphs (a) (1) through (4) of this section:

(1) *Major train accident.* Any train accident (i.e., a rail equipment accident involving damage in excess of the current reporting threshold, $5,700 in 1989 and 1990) that involves one or more of the following:

(i) A fatality;

(ii) Release of hazardous material lading from railroad equipment accompanied by—

(A) An evacuation; or

(B) A reportable injury resulting from the hazardous material release (*e.g.*, from fire, explosion, inhalation, or skin contact with the material); or

(iii) Damage to railroad property of $500,000 or more.

(2) *Impact accident.* An impact accident (i.e., a rail equipment accident defined as an "impact accident" in § 219.5 of this part that involves damage in excess of the current reporting threshold, $5,700 in 1989 and 1990) resulting in—

(i) A reportable injury; or

(ii) Damage to railroad property of $50,000 or more.

(3) *Fatal train incident.* Any train incident that involves a fatality to any on-duty railroad employee.

(4) *Passenger train accident.* Reportable injury to any person in a train accident (i.e., a rail equipment accident involving damage in excess of the current reporting threshold, $5,700 in 1989 and 1990) involving a passenger train.

(b) *Exceptions.* No test shall be required in the case of a collision between railroad rolling stock and a motor vehicle or other highway conveyance at a rail/highway grade crossing. No test shall be required in the case of an accident/incident the cause and severity of which are wholly attributable to a natural cause (e.g., flood, tornado or other natural disaster), as determined on the basis of objective and documented facts by the railroad representative responding to the scene.

(c) *Good faith determinations.* (1)(i) The railroad representative responding to the scene of the accident/incident shall determine whether the accident/incident falls within the requirements of paragraph (a) of this section or is within the exception described in paragraph (b) of this section. It is the duty of the railroad representative to make reasonable inquiry into the facts as necessary to make such determinations. In making such inquiry, the railroad representative shall consider the need to obtain samples as soon as practical in order to determine the presence or absence of impairing substances reasonably contemporaneous with the accident/incident. The railroad representative satisfies the requirement of this section if, after making reasonable inquiry, the representative exercises good faith judgement in making the required determinations.

(ii) The railroad representative making the determinations required by this section shall not be a person directly involved in the accident/incident. This section does not prohibit consultation between the responding railroad representative and higher level railroad officials; however, the responding railroad representative shall make the factual determinations required by this section.

(iii) Upon specific request made to the railroad by the Associate Administrator for Safety, FRA (or the Associate Administrator's delegate), the railroad shall provide a report describing any decision by a person other than the responding railroad representative with respect to whether an accident/incident qualifies for testing. This report shall be affirmed by the decision maker and shall be provided to FRA within 72 hours of the request. The report shall include the facts reported by the responding railroad representative, the basis upon which the testing decision was made, and the person making the decision.

(iv) Any estimates of railroad property damage made by persons not the scene shall be based on descriptions of specific physicial damage provided by the on-scene railroad representative.

(v) In the case of an accident involving passenger equipment, a host railroad may rely upon the the damage estimates provided by the passenger railroad (whether present on scene or not) in making the decision whether testing is required, subject to the same requirement that visible physical damage be specifically described.

(2) A railroad shall not require an employee to provide blood or urine specimens under the authority or procedures of this subject unless the railroad has made the determinations required by this section, based upon reasonable inquiry and good faith judgment. A railroad does not act in excess of its authority under this subpart if its representative has made such reasonable inquiry and exercised such good faith judgment, but it is later determined, after investigation, that one or more of the conditions thought to have required testing were not, in fact, present. However, this section does not excuse the railroad for any error arising from a mistake of law (e.g., application of testing criteria other than those contained in these regulations).

(3) A railroad is not in violation of this subpart if its representative has made such reasonable inquiry and exercised such good faith judgment but nevertheless errs in determining that post-accident testing is not required.

(4) An accident/incident with respect to which the railroad has made reasonable inquiry and exercised good faith judgment in determining the facts necessary to apply the criteria contained in paragraph (a) of this section is deemed a qualifying event for purposes of sample analysis, reporting, and other purposes.

(5) In the event samples are collected following an event determined by FRA not to be a qualifying event within the meaning of this paragraph, FRA directs its designated laboratory to destroy any sample material submitted and to refrain from disclosing to any person the results of any analysis conducted.

§ 219.203 Responsibilities of railroads and employees.

(a) *Employees tested.* (1) Following each accident and incident described in § 219.201, the railroad (or railroads) shall take all practicable steps to assure that all covered employees of the railroad directly involved in the accident or incident provide blood and urine samples for toxicological testing by FRA. Such employees shall cooperate in the provision of samples as described in this subpart and Appendix C.

(2) Such employees shall specifically include each and every operating

employee assigned as a crew member of any train involved in the accident or incident. In any case where an operator, dispatcher, signal maintainer or other covered employee is directly and contemporaneously involved in the circumstances of the accident/incident, those employees shall also be required to provide samples.

(3) An employee shall be excluded from testing under the following circumstances: In any case of an accident/incident for which testing is mandated only under § 219.201(a)(2) of this subpart [an "impact accident"], § 219.201(a)(3) ["fatal train incident"], or § 219.2012[a)(4) [a "passenger train accident with injury"] if the railroad representative can immediately determine, on the basis of specific information, that the employee had no role in the cause(s) or severity of the accident/incident. The railroad representative shall consider any such information immediately available at the time the qualifying event determination is made under § 219.201 of this subpart.

(4) The following provisions govern accidents/incidents involving non-covered employees:

(i) Surviving non-covered employees are not subject to testing under this subpart.

(ii) Testing of the remains of non-covered employees who are fatally injured in train accidents and incidents is required.

(b) *Timely sample collection.* (1) The railroad shall make every reasonable effort to assure that samples are provided as soon as possible after the accident or incident.

(2) This paragraph shall not be construed to inhibit the employees required to be tested from performing, in the immediate aftermath of the accident or incident, any duties that may be necessary for the preservation of life or property. However, where practical, the railroad shall utilize other employees to perform such duties.

(3) In the case of a passenger train which is in proper condition to continue to the next station or its destination after an accident or incident, the railroad shall consider the safety and convenience of passengers in determining whether the crew is immediately available for testing. A relief crew shall be called to relieve the train crew as soon as possible.

(4) Covered employees who may be subject to testing under this subpart shall be retained in duty status for the period necessary to make the determinations required by § 219.201 and this section and (as appropriate) to complete the sample collection procedure. An employee may not be recalled for testing under this subpart if that employee has been released from duty under the normal procedures of the railroad, except that an employee shall be immediately recalled for testing if—

(i) The railroad's preliminary investigation (contemporaneous with the determination required by § 219.201 of this subpart) indicates a clear probability that the employee played a major role in the cause or severity of the accident; and

(ii) The accident/incident actually occurred during the employee's duty tour.

An employee who has been transported to receive medical care is not released from duty for purposes of this section. Nothing in this section prohibits the subsequent testing of an employee who has failed to remain available for testing as required [i.e., who is absent without leave]; but subsequent testing does not excuse such refusal by the employee timely to provide the required specimens.

(c) *Place of sample collection.* (1) Employees shall be transported to an independent medical facility where the samples shall be obtained. The railroad shall pre-designate for such testing one or more such facilities in reasonable proximity to any location where the railroad conducts operations. Designation shall be made on the basis of the willingness of the facility to conduct sample collection and the ability of the facility to complete sample collection promptly, professionally, and in accordance with pertinent requirements of this part. In all cases blood shall be drawn only by a qualified medical professional or by a qualified technician subject to the supervision of a qualified medical professional

(2) In the case of an injured employee, the railroad shall request the treating medical facility to obtain the samples.

(d) *Obtaining cooperation of facility.* (1) In seeking the cooperation of a medical facility in obtaining a sample under this subpart, the railroad shall, as necessary, make specific reference to the requirements of this subpart.

(2) If an injured employee is unconscious or otherwise unable to evidence consent to the procedure and the treating medical facility declines to obtain a blood sample after having been acquainted with the requirements of this subpart, the railroad shall immediately notify FRA by toll free telephone (800–424–0201), stating the employee's name, the medical facility, its location, the name of the appropriate decisional authority at the medical facility, and the telephone number at which that person can be reached. FRA will then take appropriate measures to assist in obtaining the required sample.

(e) *Discretion of physician.* Nothing in this subpart shall be construed to limit the discretion of a physician to determine whether drawing a blood sample is consistent with the health of an injured employee or an employee afflicted by any other condition that may preclude drawing the specified quantity of blood.

§ 219.205 Sample collection and handling.

(a) *General.* Samples shall be obtained, marked, preserved, handled, and made available to FRA consistent with the requirements of this section and the technical specifications set forth in Appendix C to this part.

(b) *Information requirements.* In order to process samples, analyze the significance of laboratory findings, and notify the railroads and employees of test results, it is necessary to obtain basic information concerning the accident/incident and any treatment administered after the accident/incident. Accordingly, the railroad representative shall complete the information required by FRA Form 6180.73 (revised) for shipping with the samples. Each employee subject to testing shall cooperate in completion of the required information on FRA Form 6180.74 (revised) for inclusion in the shipping kit and processing of the samples. The railroad representative shall request an appropriate representative of the medical facility to complete the remaining portion of the information on each Form 6180.74 (revised). One Form 6180.73 (revised) shall be forwarded in the shipping kit with each group of samples. One Form 6180.74 (revised) shall be forwarded in the shipping kit for each employee who provides samples.

(c) *Shipping kit.* (1) FRA and the laboratory designated in Appendix B to this part make available for purchase a limited number of standard shipping kits for the purpose of routine handling of toxicological samples under this subpart. Whenever possible, samples shall be placed in the shipping kit prepared for shipment according to the instructions provided in the kit and Appendix C. Specifications for kits are contained in the Field Manual.

(2) Kits may be ordered directly from the laboratory designated in appendix B to this part.

(3) FRA maintains a limited number of kits at its field offices. A Class III railroad may utilize kits in FRA possession, rather than maintaining such kits on its property.

(d) *Shipment.* Samples shall be shipped as soon as possible by pre-paid air express or air freight (or other means

Federal Railroad Safety Act of 1970 (45 U.S.C. 437) (but not the agent of the Secretary for purposes of the Federal

MRO and the railroad shall treat the test results and any information concerning medical use or administration of drugs

associated documents to the National Transportation Safety Board.)

other rule violations prior to the receipt to toxicological analysis.

(3) This provision does not authorize

discretion on the part of the railroad to impose additional sanctions for the same or related conduct.

(e) An employee may respond in

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(d) *Shipment.* Samples shall be shipped as soon as possible by pre-paid air express or air freight (or other means adequate to ensure delivery within twenty-four (24) hours from time of shipment) to the laboratory designated in Appendix B to this part. Where express courier pickup is available, the railroad shall request the medical facility to transfer the sealed toxicology kit directly to the express courier for transportation. If courier pickup is not available at the medical facility where the samples are collected or for any other reason prompt transfer by the medical facility cannot be assured, the railroad shall promptly transport the sealed shipping kit holding the samples to the most expeditious point of shipment via air express, air freight or equivalent means. The railroad shall maintain and document secure chain of custody of the kit from release by the medical facility to delivery for transportation, as described in appendix C.

§ 219.207 Fatality.

(a) In the case of an employee fatality in an accident or incident described in § 219.201, body fluid and/or tissue samples shall be obtained from the remains of the employee for toxicological testing. To ensure that samples are timely collected, the railroad shall immediately notify the appropriate local authority (such as a coroner or medical examiner) of the fatality and the requirements of this subpart, making available the shipping kit and requesting the local authority to assist in obtaining the necessary body fluid or tissue samples. The railroad shall also seek the assistance of the custodian of the remains, if a person other than the local authority.

(b) If the local authority or custodian of the remains declines to cooperate in obtaining the necessary samples, the railroad shall immediately notify FRA by toll free telephone (800–424–0201) providing the following information:

(1) Date and location of the accident or incident;

(2) Railroad;

(3) Name of the deceased;

(4) Name and telephone number of custodian of the remains; and

(5) Name and telephone number of local authority contacted.

(c) A coroner, medical examiner, pathologist, Aviation Medical Examiner, or other qualified professional is authorized to remove the required body fluid and/or tissue samples from the remains on request of the railroad or FRA pursuant to this part; and, in so acting, such person is the delegate of the Administrator under section 208 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 437) (but not the agent of the Secretary for purposes of the Federal Tort Claims Act). Such qualified professional may rely upon the representations of the railroad or FRA representative with respect to the occurrence of the event requiring that toxicological tests be conducted and the coverage of the deceased employee under these rules.

(d) Appendix C to this part specifies body fluid and/or tissue samples required for toxicological analysis in the case of a fatality.

§ 219.209 Reports of tests and refusals.

(a)(1) A railroad that has experienced one or more events for which samples were obtained shall provide prompt telephonic notification summarizing such events. Notification shall be provided to the Office of Safety, FRA, at (202) 366–0501 (8:30 a.m. to 5:00 p.m. e.s.t. or e.d.t.) during the Federal work week.

(2) Each telephonic report shall contain:

(i) Name of railroad;

(ii) Name, title and telephone number of person making the report;

(iii) Time, date and location of the accident/incident;

(iv) Brief summary of the circumstances of the accident/incident, including basis for testing; and

(v) Number, names and occupations of employees tested.

(b) If the railroad is unable, as a result of non-cooperation of an employee or for any other reason, to obtain a sample and cause it to be provided to FRA as required by this subpart, the railroad shall make a concise narrative report of the reason for such failure and, if appropriate, any action taken in response to the cause of such failure. This report shall be appended to the report of the accident/incident required to be submitted under part 225 of this subchapter.

§ 219.211 Analysis and follow-up.

(a) The laboratory designated in Appendix B to this part undertakes prompt analysis of samples provided under this subpart, consistent with the need to develop all relevant information and produce a complete report. Samples are analyzed for alcohol and controlled substances specified by FRA. Samples may be analyzed for other impairing substances specified by FRA as necessary to the particular accident investigation.

(b) Results of post-accident toxicological testing under this subpart are reported to the railroad's Medical Review Officer and the employee. The MRO and the railroad shall treat the test results and any information concerning medical use or administration of drugs provided under this subpart in the same confidential manner as if subject to subpart H of this part, except where publicly disclosed by FRA or the National Transportation Safety Board.

(c) With respect to a surviving employee, a test reported as positive for alcohol or a controlled substance by the designated laboratory shall be reviewed by the railroad's Medical Review Officer with respect to any claim of use or administration of medications (consistent with § 219.103 of this part) that could account for the laboratory findings. The Medical Review Officer shall promptly report the results of each review to the Associate Administrator for Safety, FRA, Washington, DC 20590. Such report shall be in writing and shall reference the employing railroad, accident/incident date, and location; and the envelope shall be marked "ADMINISTRATIVELY CONFIDENTIAL: ATTENTION ALCOHOL/DRUG PROGRAM MANAGER." The report shall state whether the MRO reported the test result to the employing railroad as positive or negative and the basis of any determination that analytes detected by the laboratory derived from authorized use (including a statement of the compound prescribed, dosage/frequency, and any restrictions imposed by the authorized medical practitioner). Unless specifically requested by FRA in writing, the Medical Review Officer shall not disclose to FRA the underlying physical condition for which any medication was authorized or administered. Neither the Federal Railroad Administration nor the National Transportation Safety Board shall be bound by the railroad Medical Review Officer's determination, but that determination will be considered by FRA in relation to the accident/incident investigation and with respect to any enforcement action under consideration.

(d) To the extent permitted by law, FRA treats test results indicating medical use of controlled substances consistent with § 219.103 (and other information concerning medically authorized drug use or administration provided incident to such testing) as administratively confidential and withholds public disclosure, except where it is necessary to consider this information in an accident investigation in relation to determination of probable cause. (However, as further provided in this section, FRA may provide any result of testing under this subpart and

associated documents to the National Transportation Safety Board.)

(e) An employee may respond in writing to the results of the test prior to the preparation of any final investigation report concerning the accident or incident. An employee wishing to respond shall do so by letter addressed to the Alcohol/Drug Program Manager, Office of Safety, FRA, 400 Seventh Street, SW, Washington, DC 20590 within 45 days of receipt of the test results. Any such submission shall refer to the accident date, railroad and location, shall state the position occupied by the employee on the date of the accident/incident, and shall identify any information contained therein that the employee requests be withheld from public disclosure on grounds of personal privacy (but the decision whether to honor such request shall be made by the FRA on the basis of controlling law). Results of the toxicological analysis and any response from the employee are also promptly made available to the National Transportation Safety Board on request.

(f)(1) The toxicology report may contain a statement of pharmacological significance to assist FRA and other parties in understanding the data reported. No such statement may be construed as a finding of probable cause in the accident or incident.

(2) The toxicology report is a part of the report of the accident/incident and therefore subject to the limitation of section 4 of the Accident Reports Act [45 U.S.C. 41) (prohibiting use of the report for any purpose in any action for damages).

(g)(1) It is in the public interest to ensure that any railroad disciplinary actions that may result from accidents and incidents for which testing is required under this subpart are disposed of on the basis of the most complete and reliable information available so that responsive action will be appropriate. Therefore, during the interval between an accident or incident and the date that the railroad receives notification of the results of the toxicological analysis, any provision of collective bargaining agreements establishing maximum periods for charging employees with rule violations, or for holding an investigation, shall not be deemed to run as to any offense involving the accident or incident (*i.e.*, such periods shall be tolled).

(2) This provision shall not be construed to excuse the railroad from any obligation to timely charge an employee (or provide other actual notice) where the railroad obtains sufficient information relating to alcohol or drug use, impairment or possession or other rule violations prior to the receipt to toxicological analysis.

(3) This provision does not authorize holding any employee out of service pending receipt of toxicological analysis; nor does it restrict a railroad from taking such action in an appropriate case.

(h) Except as provided in § 219.201 (with respect to non-qualifying events), each sample provided under this subpart is retained for not less than three months following the date of the accident or incident (two years from the date of the accident or incident in the case of a sample testing positive for alcohol or a controlled substance) and may be made available to the National Transportation Safety Board (on request).

(i) An employee (donor) may, within 60 days of the date of the toxicology report, request that the employee's blood and/or urine sample be retested by the designated laboratory or by another laboratory certified by the Department of Health and Human Services under that Department's Guidelines for Federal Workplace Drug Testing Programs that has available an appropriate, validated assay for the fluid and compound declared positive. Since some analytes may deteriorate during storage, detected levels of the compound shall, as technically appropriate, be reported and considered corroborative of the original test result. Any request for a retest shall be in writing, specify the railroad, accident date and location, be signed by the employee/donor, be addressed to the Associate Administrator for Safety, FRA, Washington, DC 20590, and be designated "ADMINISTRATIVELY CONFIDENTIAL: ATTENTION ALCOHOL/DRUG PROGRAM MANAGER." The expense of any employee-requested retest at a laboratory other than the laboratory designated under this subpart shall be borne by the employee.

§ 219.213 Unlawful refusals; consequences.

(a) *Disqualification.* (1) An employee who refuses to cooperate in providing a blood or urine sample following an accident or incident specified in this subpart shall be withdrawn from covered service and shall be deemed disqualified for covered service for a period of nine (9) months.

(2) The disqualification required by this paragraph shall apply with respect to employment in covered service by any railroad with notice of such disqualification.

(3) The requirement of disqualification for nine (9) months does not limit any discretion on the part of the railroad to impose additional sanctions for the same or related conduct.

(4) Upon the expiration of the 9-month period described in this section, a railroad may permit the employee to return to covered service only under the same conditions specified in § 219.104 of this part, provided that return-to-service tests shall be conducted for both alcohol and designated controlled substances; and the employee shall be subject to follow-up drug tests as provided by that section.

(b) *Procedures.* (1) Prior to or upon withdrawing the employee from covered service under this section, the railroad shall provide notice of the reason for this action and an opportunity for hearing before a presiding officer other than the charging official. This hearing may be consolidated with any other disciplinary hearing arising from the same accident or incident (or conduct directly related thereto), but the presiding officer shall make separate findings as to the disqualification required by this section.

(2) The hearing shall be convened within the period specified in the applicable collective bargaining agreement. In the absence of an agreement provision, the employee may demand that the hearing be convened within 10 calendar days of the suspension or, in the case of an employee who is unavailable due to injury, illness, or other sufficient cause, within 10 days of the date the charged employee becomes available for hearing.

(3) A post-suspension proceeding conforming to the requirements of an applicable collective bargaining agreement, together with the provisions for adjustment of disputes under section 3 of the Railway Labor Act, shall be deemed to satisfy the procedural requirements of this paragraph.

(c) *Subject of hearing.* The hearing required by this section shall determine whether the employee refused to submit to testing, having been requested to submit, under authority of this subpart, by a representative of the railroad. In determining whether a disqualification is required, the hearing official shall, as appropriate, also consider the following:

(1) Whether the railroad made a good faith determination, based on reasonable inquiry, that the accident or incident was within the mandatory testing requirements of this subpart; and

(2) In a case where a blood test was refused on the ground it would be inconsistent with the employee's health, whether such refusal was made in good faith and based on medical advice.

Subpart D—Authorization To Test for Cause

(C) Moving across a railroad crossing at grade without authorization; or

(D) Passing an absolute restrictive

require urine testing must have received at least three (3) hours of training in the signs of drug intoxication consistent

to commence collection of the urine specimen within that period.

(g) *Construction.* Nothing in this

disciplinary process and the result is positive, the employee shall be given the prompt opportunity to provide a blood

(vi) Test results shall be reported to the Medical Review Officer who shall review and act upon the results in the

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Subpart D—Authorization To Test for Cause

§ 219.301 Testing for reasonable cause.

(a) *Authorization.* A railroad may, under the conditions specified in this subpart, require any covered employee, as a condition of employment in covered service, to cooperate in breath or urine testing, or both, to determine compliance with §§ 219.101 and 219.102 of this part or a railroad rule implementing the requirements of §§ 219.101 and 219.102. This authority is limited to testing after observations or events that occur during duty hours (including any period of overtime or emergency service). The provisions of this subpart apply only when, and to the extent that, the test in question is conducted in reliance upon the authority conferred by this section. Section 219.23 prescribes the notice to an employee that is required when an employee is required to provide a breath or body fluid sample under this part. A railroad may not require an employee to be tested under the authority of this subpart unless reasonable cause, as defined in this section, exists with respect to that employee.

(b) *Reasonable cause for breath tests.* The following circumstances constitute reasonable cause for the administration of breath alcohol tests under this section:

(1) *Reasonable suspicion.* A supervisory employee of the railroad has a reasonable suspicion that the employee is currently under the influence of or impaired by alcohol, or alcohol in combination with a controlled substance, based upon specific, personal observations that the supervisory employee can articulate concerning the appearance, behavior, speech or body odors of the employee;

(2) *Accident/incident.* The employee has been involved in an accident or incident reportable under part 225 of this title, and a supervisory employee of the railroad has a reasonable suspicion that the employee's acts or omissions contributed to the occurrence or severity of the accident or incident; or

(3) *Rule violation.* The employee has been directly involved in one of the following operating rule violations or errors:

(i) Noncompliance with a train order, track warrant, timetable, signal indication, special instruction or other direction with respect to movement of a train that involves—

(A) Occupancy of a block or other segment of track to which entry was not authorized;

(B) Failure to clear a track to permit opposing or following movement to pass;

(C) Moving across a railroad crossing at grade without authorization; or

(D) Passing an absolute restrictive signal or passing a restrictive signal without stopping (if required);

(ii) Failure to protect a train as required by a rule consistent with § 218.37 of this title (including failure to protect a train that is fouling an adjacent track, where required by the railroad's rules);

(iii) Operation of a train at a speed that exceeds the maximum authorized speed by at least ten (10) miles per hour or by fifty percent (50%) of such maximum authorized speed, whichever is less;

(iv) Alignment of a switch in violation of a railroad rule, failure to align a switch as required for movement, operation of a switch under a train, or unauthorized running through a switch;

(v) Failure to apply or stop short of derail as required;

(vi) Failure to secure a hand brake or failure to secure sufficient hand brakes, as required;

(vii) Entering a crossover before both switches are lined for movement; or

(viii) In the case of a person performing a dispatching function or block operator function, issuance of a train order or establishment of a route that fails to provide proper protection for a train.

(c) *Reasonable cause for urine test.* (1) *Accident/incident and rule violation.* Except as provided in paragraph (c)(2) of this section, each of the conditions set forth in paragraphs (b)(2) ("accident/incident") and (b)(3) ("rule violation") of this section as constituting reasonable cause for breath alcohol testing also constitutes reasonable cause with respect to urine drug testing.

(2) *Reasonable suspicion.* Reasonable cause also exists where a supervisory employee of the railroad has a reasonable suspicion that the employee is currently under the influence of or impaired by a controlled substance, or a controlled substance in combination with alcohol, based upon specific, personal observations that the supervisory employee can articulate concerning the appearance, behavior, speech, or body odors of the employee, subject to the following limitations:

(i) An employee may be required to submit to urine testing for reasonable suspicion only if the determination is made by at least two supervisory employees; and

(ii) If the determination to require urine testing is based upon a suspicion that the employee is under the influence of or impaired by a controlled substance, at least one supervisory employee responsible for the decision to require urine testing must have received at least three (3) hours of training in the signs of drug intoxication consistent with a program of instruction on file with FRA under part 217 of this title. Such program shall, at a minimum, provide information concerning the acute behavior and apparent physiological effects of the major drug groups on the controlled substances list (narcotics, depressants, stimulants, hallucinogens, and marijuana).

(d) [Reserved]

(e) *Limitation for Subpart C events.* The compulsory urine testing authority conferred by this section does not apply with respect to any event subject to post-accident toxicological testing as required by § 219.201 of this part. However, use of compulsory breath test authority is authorized in any case where breath test results can be obtained in a timely manner at the scene of the accident and conduct of such tests does not materially impede the collection of samples under subpart C.

(f) *Prompt sample collection; time limitation.* (1) Testing under this subpart may only be conducted promptly following the observations or events upon which the testing decision is based, consistent with the need to protect life and property.

(2) No employee shall be required to participate in breath alcohol or urine drug testing under this subsection after the expiration of an 8-hour period from——

(i) The time of the observations or other events described in this section; or

(ii) In the case of an accident/incident, the time a responsible railroad supervisor receives notice of the event providing reasonable cause for conduct of the test.

(3) An employee may not be tested under this subpart if that employee has been released from duty under the normal procedures of the railroad. An employee who has been transported to receive medical care is not released from duty for purposes of this section. Nothing in this section prohibits the subsequent testing of an employee who has failed to remain available for testing as required (i.e., who is absent without leave).

(4) As used in this section a "responsible raiload supervisor" means any responsible line supervisor (e.g., a trainmaster or road foreman to be tested.

(5) In the case of a urine drug test, the 8-hour requirement is satisfied if the employee has been delivered to the collection site (where the collector is present) and the request has been made to commence collection of the urine specimen within that period.

(g) *Construction.* Nothing in this subpart requires a railroad to undertake breath testing as a requisite to any disciplinary action or restricts the discretion of a railroad to proceed based solely on evidence of behavior, personal observations, or other evidence customarily relied upon in such investigations or hearings.

§ 219.303 Breath test procedures and safeguards.

(a) Except as provided in paragraph (d), the following conditions apply to breath testing authorized by this subpart.

(1) Testing devices shall be selected from among those listed on the Conforming Products List of Evidential Breath Measurement Devices amended and published in the **Federal Register** from time to time by the National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

(2) Each device shall be properly maintained and shall be calibrated or verified as to correct calibration by use of a breath alcohol simulator (calibrating unit) listed on the NHTSA Conforming Products List of Calibrating Units for Breath Alcohol Testers (as amended and published) with sufficient frequency to ensure the accuracy of the device (within plus or minus .01 percent), but not less frequently than provided in the manufacturer's instructions.

(3) Tests shall be conducted by a trained and qualified operator. The operator shall have received training on the operational principles of the particular instrument employed and practical experience in the operation of the device and use of the breath alcohol calibrating unit. A copy of the training program shall be filed with FRA in conjunction with the filing required by § 217.11 of this title.

(4) Tests shall be conducted in accordance with procedures specified by the manufacturer of the testing device, consistent with sound technical judgment, and shall include appropriate restrictions on ambient air temperature.

(5) If an initial test is positive, the employee shall be tested again after the expiration of a period of not less than 15 minutes, in order to confirm that the test has properly measured the alcohol content of deep lung air.

(b) Because of the inherent limitations of the instrumentation, any indicated breath test result of less than .02 percent shall be deemed a negative test.

(c)(1) In any case where a breath test is intended for use in the railroad disciplinary process and the result is positive, the employee shall be given the prompt opportunity to provide a blood sample at an independent medical facility for analysis by a competent independent laboratory. The railroad shall provide the required transportation to facilitate the blood test.

(2) A blood test under this section shall conform to the following standards:

(i) The specimen shall be collected in a medically acceptable manner by a qualified medical professional or technician using a non-ethanol swab and shall be deposited into a single-use sterile vacuum tube containing at least one percent sodium fluoride (and an anticoagulant).

(ii) While the specimen remains in full view of the employee, the specimen shall be clearly labeled with the employee's name and/or a unique identifying number and shall be sealed with a tamperproof seal.

(iii) The sample shall be handled in accordance with chain of custody procedures from the point of collection through analysis and secure storage at the laboratory.

(iv) The sample shall be screened for alcohol only by a method reliable at a detection limit of not higher than .02 percent. Any presumptive positive shall be confirmed by gas chromatography with a suitable internal standard. The screening run shall include at least 10% quality control samples. The confirmation run shall include ethanol standards (including an ethanol standard certified against or traceable to a primary standard), at least one blank specimen, other appropriate volatiles (e.g., isopropanol), and at least one control purchased commercially or provided through an external quality control program. Results declared positive on confirmation shall be consistent with pre-established criteria for retention time of internal and external standards. Blood alcohol concentration shall be reported only at values of .02 percent or greater within the linear portion of the standard curve. Unconfirmed presumptive positive results and values below .02 percent shall be reported as negative. Any quantitations to the third digit shall be rounded downward to two digits (i.e., .238% to .23%).

(v) The remaining portion of any specimen testing positive shall be retained in secure frozen storage for at least one year, and the employee shall have the right to request a retest of the specimen at a competent independent laboratory within 60 days of the date of the laboratory report.

(vi) Test results shall be reported to the Medical Review Officer who shall review and act upon the results in the same manner provided for drug urine testing in subpart H of this part, except that fully quantitated results shall be made available to the employer representative.

(3) If the blood test under this section is reported as negative, the breath test shall be deemed negative for all purposes.

(d)(1) Under the circumstances set forth in § 219.301, a railroad may require an employee to participate in a breath alcohol screening test solely for the purpose of determining whether the conduct of a test meeting the criteria of paragraph (a) is indicated. If the screening test is negative within the meaning of paragraph (b), the employee shall not be required to submit to further breath testing under this subpart. If the screening test is positive, no consequence shall attach except that the employee may be removed from covered service for the period necessary to conduct a breath test meeting the criteria of paragraph (a) of this section or a urine test meeting the requirements of §§ 219.305 and 219.307 of this subpart (consistent with § 219.301(d) of this subpart).

(2) Except as provided in paragraph (d)(2)(iii) of this section, the conduct of a screening test under paragraph (d)(1) of this section does not excuse full compliance with paragraph (a) of this section with respect to any breath test procedure which is then undertaken. If a screening test is positive, the following procedures govern:

(i) An initial breath test shall be conducted meeting the criteria of paragraph (a) of this section.

(ii) If that test is positive, a second breath test shall be conducted meeting the criteria of paragraph (a) of this section.

(iii) The second test meeting the criteria of section (a) of this section must be conducted at least 15 minutes after the positive screening test conducted under paragraph (d)(1) of this section. However, since a waiting period of 15 minutes is sufficient to permit the disposition of any alcohol in the mouth, the requirement of paragraph (a)(5) of this section that there be a period of at least 15 minutes between the two tests meeting the criteria of paragraph (a) of this section does not apply.

§ 219.305 Urine test procedures and safeguards.

The conduct of urine drug testing under this subpart is governed by subpart H of this part and (to the extent

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not inconsistent with this part) part 40 of Subtitle A of this title.

the effect, of anticipating the imminent and probable detection of a rule

(1) The policy may provide that the rule of confidentiality is waived if—

accordance with its existing policies and procedures.

(2) The employee must elect to waive

(1) The railroad shall return the employee to service within 5 days after completion of the evaluation.

being employed in covered service. This requirement shall apply to final applicants for employment and to

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not inconsistent with this part) part 40 of Subtitle A of this title.

§ 219.307 [Reserved]

§ 219.309 Employee notice.

A railroad utilizing the reasonable cause testing authority provided by this part shall provide prior effective notice to covered employees of the circumstances under which they will be subject to testing, shall describe the consequences of a determination that the employee has violated § 219.101, § 219.102, or any applicable railroad rule, and shall inform the employee of the employee's rights under subpart E of this part. This notice may be combined with the notice required by § 219.601 of this part.

Subpart E—Identification of Troubled Employees

§ 219.401 Requirement for policies.

(a) The purpose of this subpart is to prevent the use of alcohol and drugs in connection with covered service.

(b) Each railroad shall adopt, publish and implement—

(1) A policy designed to encourage and facilitate the identification of those covered employees who abuse alcohol or drugs as a part of a treatable condition and to ensure that such employees are provided the opportunity to obtain counseling or treatment before those problems manifest themselves in detected violations of this part (hereafter "voluntary referral policy"); and

(2) A policy designed to foster employee participation in preventing violations of this subpart and encourage co-worker participation in the direct enforcement of this part (hereafter "co-worker report policy").

(c) A railroad may comply with this subpart by adopting, publishing and implementing policies meeting the specific requirements of §§ 219.403 and 219.405 of this subpart or by complying with § 219.407.

(d) If a railroad complies with this part by adopting, publishing and implementing policies consistent with §§ 219.403 and 219.405, the railroad shall make such policies, and publications announcing such policies, available for inspection and copying by FRA.

(e) Nothing in this subpart shall be construed to—

(1) Require payment of compensation for any period an employee is out of service under a voluntary referral or co-worker report policy;

(2) Require a railroad to adhere to a voluntary referral or co-worker report policy in a case where the referral or report is made for the purpose, or with the effect, of anticipating the imminent and probable detection of a rule violation by a supervising employee; or

(3) Limit the discretion of a railroad to dismiss or otherwise discipline an employee for specific rule violations or criminal offenses, except as specifically provided by this subpart.

§ 219.403 Voluntary referral policy.

(a) *Scope.* This section prescribes minimum standards for voluntary referral policies. Nothing in this section restricts a railroad from adopting, publishing and implementing a voluntary referral policy that affords more favorable conditions to employees troubled by alcohol or drug abuse problems, consistent with the railroad's responsibility to prevent violations of § 219.101 and § 219.102.

(b) *Required provisions.* A voluntary referral policy shall include the following provisions:

(1) A covered employee who is affected by an alcohol or drug use problem may maintain an employment relationship with the railroad if, before the employee is charged with conduct deemed by the railroad sufficient to warrant dismissal, the employee seeks assistance through the railroad for the employee's alcohol or drug use problem or is referred for such assistance by another employee or by a representative of the employee's collective bargaining unit. The railroad shall specify whether, and under what circumstances, its policy provides for the acceptance of referrals from other sources, including (at the option of the railroad) supervisory employees.

(2) Except as may be provided under paragraph (c) of this part, the railroad treats the referral and subsequent handling, including counseling and treatment, as confidential.

(3) The railroad will, to the extent necessary for treatment and rehabilitation, grant the employee a leave of absence from the railroad for the period necessary to complete primary treatment and establish control over the employee's alcohol or drug problem. The policy must allow a leave of absence of not less than 45 days, if necessary for the purpose of meeting initial treatment needs.

(4) Except as may be provided under paragraph (c)(2) of this section, the employee will be returned to service on the recommendation of the EAP Counselor. Approval to return to service may not be unreasonably withheld.

(c) *Optional provisions.* A voluntary referral policy may include any of the following provisions, at the option of the railroad:

(1) The policy may provide that the rule of confidentiality is waived if—

(i) The employee at any time refuses to cooperate in a recommended course of counseling or treatment and/or;

(ii) The employee is later determined, after investigation, to have been involved in an alcohol or drug-related disciplinary offense growing out of subsequent conduct.

(2) The policy may require successful completion of a return-to-service medical examination as a further condition on reinstatement in covered service.

(3) The policy may provide that it does not apply to an employee who has previously been assisted by the railroad under a policy or program substantially consistent with this section or who has previously elected to waive investigation under § 219.405 of this section (co-worker report policy).

(4) The policy may provide that, in order to invoke its benefits, the employee must report to the contact designated by the railroad either:

(i) During non-duty hours (*i.e.*, at a time when the employee is off duty) or

(ii) While unimpaired and otherwise in compliance with the railroad's alcohol and drug rules consistent with this subpart.

§ 219.405 Co-worker report policy.

(a) *Scope.* This section prescribes minimum standards for co-worker report policies. Nothing in this section restricts a railroad from adopting, publishing and implementing a policy that affords more favorable conditions to employees troubled by alcohol or drug abuse problems, consistent with the railroad's responsibility to prevent violations of §§ 219.101 and 219.102.

(b) *Employment relationship.* A co-worker report policy shall provide that a covered employee may maintain an employment relationship with the railroad following an alleged first offense under these rules or the railroad's alcohol and drug rules, subject to the conditions and procedures contained in this section.

(c) *General conditions and procedures.* (1) The alleged violation must come to the attention of the railroad as a result of a report by a co-worker that the employee was apparently unsafe to work with or was, or appeared to be, in violation of this part or the railroad's alcohol and drug rules.

(2) If the railroad representative determines that the employee is in violation, the railroad may immediately remove the employee from service in accordance with its existing policies and procedures.

(3) The employee must elect to waive investigation on the rule charge and must contact the EAP Counselor within a reasonable period specified by the policy.

(4) The EAP Counselor must schedule necessary interviews with the employee and complete an evaluation within 10 calendar days of the date on which the employee contacts the counselor with a request for evaluation under the policy, unless it becomes necessary to refer the employee for further evaluation. In each case, all necessary evaluations must be completed within 20 days of the date on which the employee contacts the counselor.

(d) *When treatment is required.* If the EAP Counselor determines that the employee is affected by psychological or chemical dependence on alcohol or a drug or by another identifiable and treatable mental or physical disorder involving the abuse of alcohol or drugs as a primary manifestation, the following conditions and procedures shall apply:

(1) The railroad must, to the extent necessary for treatment and rehabilitation, grant the employee a leave of absence from the railroad for the period necessary to complete primary treatment and establish control over the employee's alcohol or drug problem. The policy must allow a leave of absence of not less than 45 days, if necessary for the purpose of meeting initial treatment needs.

(2) The employee must agree to undertake and successfully complete a course of treatment deemed acceptable by the EAP Counselor.

(3) The railroad must promptly return the employee to service, on recommendation of the EAP Counselor, when the employee has established control over the substance abuse problem. Return to service may also be conditioned on successful completion of a return-to-service medical examination. Approval to return to service may not be unreasonably withheld.

(4) Following return to service, the employee, as a further condition on withholding of discipline, may, as necessary, be required to participate in a reasonable program of follow-up treatment for a period not to exceed 60 months from the date the employee was originally withdrawn from service.

(e) *When treatment is not required.* If the EAP Counselor determines that the employee is not affected by an identifiable and treatable mental or physical disorder—

(1) The railroad shall return the employee to service within 5 days after completion of the evaluation.

(2) During or following the out-of-service period, the railroad may require the employee to participate in a program of education and training concerning the effects of alcohol and drugs on occupational or transportation safety.

(f) *Follow-up tests.* A railroad may conduct return-to-service and/or follow-up tests (as described in § 219.104 of this part) of an employee who waives investigation and is determined to be ready to return to service under this section.

§ 219.407 Alternate policies.

(a) In lieu of a policy under § 219.403 (voluntary referral) or § 219.405 (co-worker report), or both, a railroad may adopt, publish and implement, with respect to a particular class or craft of covered employees, an alternate policy or policies having as their purpose the prevention of alcohol or drug use in railroad operations, if such policy or policies has the written concurrence of the recognized representatives of such employees.

(b) The concurrence of recognized employee representatives in an alternate policy may be evidenced by a collective bargaining agreement or any other document describing the class or craft of employees to which the alternate policy applies. The agreement or other document must make express reference to this part and to the intention of the railroad and employee representatives that the alternate policy shall apply in lieu of the policy required by § 219.403, § 219.405, or both.

(c) The railroad shall file the agreement or other document described in paragraph (b) with the Associate Administrator for Safety, FRA. If the alternate policy is amended or revoked, the railroad shall file a notice of such amendment or revocation at least 30 days prior to the effective date of such action.

(d) This section does not excuse a railroad from adopting, publishing and implementing the policies required by §§ 219.403 and 219.405 with respect to any group of covered employees not within the coverage of an appropriate alternate policy.

Subpart F—Pre-employment Drug Screens

§ 219.501 Pre-employment drug screens.

(a) Each applicant who is given favorable consideration for a position with a railroad that involves the performance of covered service shall be tested for the presence of drugs prior to being employed in covered service. This requirement shall apply to final applicants for employment and to employees seeking to transfer for the first time from non-covered service to duties involving covered service. The test shall be accomplished through analysis of a urine sample. Whenever feasible, the sample shall be obtained in connection with a pre-employment medical examination.

(b) Prior to collection of the urine sample, the applicant shall be notified that the sample will be tested for the presence of drugs. In the case of an applicant who declines to be tested and withdraws the application for employment, no record shall be maintained of the declination.

(c) The conduct of urine drug testing under this subpart is governed by subpart H of this part and (to the extent not inconsistent with this part) part 40 of subtitle A of this title. As used in subpart H with respect to a test required under this subpart, the term "employee" includes an applicant.

§ 219.503 Notification; records.

The railroad shall provide for medical review of laboratory test results and shall notify the applicant of the results of any test in the same manner as provided for employees in subpart H. Records shall be maintained confidentially and shall be retained in the same manner as required under Subpart H for employee test records, except that such records need not reflect the identity of an applicant whose application for employment in covered service was denied.

§ 219.505 Refusals; consequences of positive.

(a) An applicant who has refused to submit to pre-employment testing under this section shall not be employed in covered service based upon the application and examination with respect to which such refusal was made. This section does not create any right on the part of the applicant to have a subsequent application considered; nor does it restrict the discretion of the railroad to entertain a subsequent application for employment from the same person.

(b) An applicant who is using a controlled substance without medical authorization shall not be employed in covered service. This section shall not be construed to bar employment based on a subsequent application if the applicant no longer uses a controlled substance without medical authorization.

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Subpart G—Random Drug Testing Program

§ 219.601 Railroad random testing programs.

(a) *Submission.* Each railroad shall submit for FRA approval a random testing program meeting the requirements of this subpart. A Class I railroad (including the National Railroad Passenger Corporation) or a railroad providing commuter passenger service shall submit such a program not later than October 2, 1989. A Class II railroad shall submit such a program not later than April 2, 1990. A Class III railroad (including a switching and terminal or other railroad not otherwise classified) shall submit such a program not later than July 2, 1990. A railroad commencing operations after the pertinent date specified in this paragraph shall submit such a program not later than 30 days prior to such commencement. The program shall be submitted to the Associate Administrator for Safety, FRA, for review and approval by the Administrator. If, after approval, a railroad desires to amend the random testing program implemented under this subpart, the railroad shall file with FRA a notice of such amendment at least 30 days prior to the intended effective date of such action. A program responsive to the requirements of this section or any amendment to the program shall not be implemented prior to approval.

(b) *Form of programs.* Random testing programs submitted by or on behalf of each railroad under this subpart shall meet the following criteria, and the railroad and its managers, supervisors, officials and other employees and agents shall conform to such criteria in implementing the program:

(1) Selection of covered employees for testing shall be made by a method employing objective, neutral criteria which ensure that every covered employee has a substantially equal statistical chance of being selected within a specified time frame. The method may not permit subjective factors to play a role in selection, *i.e.*, no employee may be selected as the result of the exercise of discretion by the railroad. The selection method shall be capable of verification with respect to the randomness of the selection process, and any records necessary to document random selection shall be retained for not less than 24 months from the date upon which the particular samples were collected.

(2) The program shall select for testing a sufficient number of employees so that, during the first 12 months—

(i) The random testing program is spread reasonably through the 12-month period;

(ii) The last test collection during the year is conducted at an annualized rate of 50 percent; and

(iii) The total number of tests conducted during the 12 months is equal to at least 25 percent of the number of covered employees.

During each subsequent 12-month period the program shall select for testing a sufficient number of employees so that the number of tests conducted will equal at least 50 percent of the number of covered employees. Annualized percentage rates shall be determined by reference to the total number of covered employees employed by the railroad at the beginning of the particular twelve-month period or by an alternate method specified in the plan approved by the Administrator.

(3) Railroad random testing programs shall ensure to the maximum extent practicable that each employee shall perceive the possibility that a random test may be required on any day the employee reports for work.

(4) Notice of an employee's selection shall not be provided until the duty tour in which testing is to be conducted, and then only so far in advance as is reasonably necessary to ensure the employee's presence at the time and place set for testing.

(5) The program shall include testing procedures and safeguards, and procedures for action based on positive test results, consistent with this part.

(6) An employee shall be subject to testing only while on duty. Only employees who perform covered service for the railroad shall be subject to testing under this part. In the case of employees who during some duty tours perform covered service and during others do not, the railroad program shall specify the extent to which, and the circumstances under which they shall be subject to testing. To the extent practical within the limitations of this part and in the context of the railroad's operations, the railroad program shall provide that employees shall be subject to the possibility of random testing on any day they actually perform covered service.

(7) Each time an employee is selected for random testing the employee will be informed that selection was made on a random basis. The program shall provide that the employee will be permitted to retain a copy of a writing to that effect (e.g., a drug testing custody and control form with this information set forth).

(c) *Approval.* The Administrator will notify the railroad in writing whether the program is approved as consistent with the criteria set forth in this part. If the Administrator determines that the program does not conform to those criteria, the Administrator will inform the railroad of any matters preventing approval of the program, with specific explanation as to necessary revisions. The railroad shall resubmit its program with the required revisions within 30 days of such notice. Failure to resubmit the program with the necessary revisions will be considered a failure to implement a program under this subpart.

(d) *Implementation.* (1) No later than 45 days prior to commencement of random testing, the railroad shall publish to each of its covered employees, individually, a written notice that they will be subject to random drug testing under this part. Such notice shall state the date for commencement of the program, shall state that the selection of employees for testing will be on a strictly random basis, shall describe the consequences of a determination that the employee has violated § 219.102 or any applicable railroad rule, and shall inform the employee of the employee's rights under subpart E of this part. A copy of the notice shall be provided to each new covered employee on or before the employee's initial date of service. Since knowledge of Federal law is presumed, nothing in this paragraph creates a defense to a violation of § 219.102 of this part.

(2) Each Class I railroad (including the National Railroad Passenger Corporation) and each railroad providing commuter passenger service shall implement its approved random testing program not later than January 16, 1990. Each Class II railroad shall implement its approved random testing program not later than July 2, 1990. Each Class III railroad (including a switching and terminal or other railroad not otherwise classified) shall implement its approved random testing program not later than November 1, 1990. In the case of a railroad commencing operations after the pertinent date set forth in paragraph (a) of this section for filing of a program, the railroad shall implement its approved random testing program not later than the expiration of 60 days from approval by the Administrator or by the pertinent date set forth in this paragraph, whichever is later.

§ 219.603 Participation in testing; refusals.

(a) *Participation.* A railroad shall, under the conditions specified in this subpart and Subpart H, require a covered employee selected through the random testing program to cooperate in urine testing to determine compliance with § 219.102, and the employee shall provide the required sample and complete the required paperwork and certifications. Compliance by the employee shall be excused only in the case of a documented medical or family emergency.

(b) *Refusals.* (1) An employee who, upon being notified of the requirement to provide a sample under this subpart, refuses to provide a sample shall be withdrawn from covered service and shall be deemed disqualified for a period of nine (9) months. The disqualification required by this paragraph shall apply with respect to employment in covered service by any railroad with notice of such refusal. The requirement of disqualification for nine (9) months does not limit any discretion on the part of the railroad to impose additional sanctions for the same or related conduct.

(2) Upon being withdrawn from service under this section, the employee shall be entitled to the same procedural protections as those set out in § 219.213(b) of this part with respect to refusal of post-accident testing. The purpose of the hearing shall be to determine whether the employee refused to provide a sample, having been notified of the requirement to do so, and whether the employee can establish a basis for being excused under the criteria stated by paragraph (a) of this section.

(c) Upon the expiration of the 9-month period described in this section, a railroad may permit the employee to return to covered service only under the same conditions specified in § 219.104 of this part, provided that return-to-service tests shall be conducted for both alcohol and designated controlled substances; and the employee shall be subject to follow-up drug tests as provided by that section.

§ 219.605 Positive test results; procedures.

(a) Medical review. The result of a test required under this subpart shall be deemed positive only after it has been properly confirmed as required in subpart H of this part and reviewed by a Medical Review Officer (MRO) as provided in subpart H to determine if it is evidence of prohibited drug use under § 219.102.

(b) Procedures for administrative handling by the railroad in the event a sample provided under this subpart is reported as positive by the MRO are set forth in § 219.104 of this part.

Subpart H—Procedures and Safeguards for Urine Drug Testing

§ 219.701 Standards for urine drug testing.

(a) Urine drug testing required or authorized by subparts B, D, F, and G of this part shall be conducted in the manner provided by this subpart and (to the extent not inconsistent with this part) part 40 of subtitle A of this title. Laboratories employed for these purposes must be certified by the Department of Health and Human Services under that Department's Mandatory Guidelines for Federal Workplace Drug Testing Programs.

(b) Each railroad's contract with a laboratory conducting testing subject to this subpart shall provide that the FRA and the railroad shall have the right to unannounced inspection during normal business hours through qualified personnel or designated contractors. Such inspecton rights shall, at minimum, include reasonable accompanied access to all records pertinent to testing under this part, quality control data incident thereto, samples submitted under this part, and equipment and personnel related to analysis of those samples.

(c) Each such contract shall also require that the laboratory comply with all applicable provisions of this part and 49 CFR part 40, including requirements for employee access to specified laboratory records and any applicable conditions imposed upon approvals issued under this subpart or 49 CFR part 40.

§ 219.703 Collection.

(a) Urine samples shall be collected and handled as required in 49 CFR part 40 and this section.

(b) The collection site person (collector) shall meet the requirements of 49 CFR part 40.

(c) A person with management or supervisory responsibility over the employee to be tested, or a co-worker of the employee to be tested, may not serve as a collector. For purposes of this paragraph, "co-worker" means a person with whom the person to be tested is assigned or could be assigned in a crew or other working unit to perform normal transportation duties on the railroad.

(d) If an employee fails to provide a urine specimen within a reasonable time and is to be given a subsequent opportunity to provide a specimen under the conditions described in 49 CFR 40.25, the subsequent collection shall be conducted either—

(1) Immediately upon the expiration of the employee's required off-duty period under the Hours of Service Act (45 U.S.C. 62–64b); or

(2) On an unannounced basis within the next 30 days.

§ 219.705 Drugs tested.

(a) Urine samples shall be analyzed for the presence of controlled substances designated in paragraph (b) of this section and may be analyzed by procedures reasonably incident to analysis of the specimen for controlled substances (e.g., determination of pH or tests for specific gravity, creatinine concentration, or presence of adulterants).

(b) Each sample submitted shall be analyzed for marijuana, cocaine, phencylidine (PCP), opiates (morphine and codeine), and amphetamines (amphetamine and methamphetamine).

(c) As part of the reasonable cause testing program established by subpart D of this part, a railroad may test for additional controlled substances in addition to those specified in this section only with approval granted by FRA and for substances for which the Department of Health and Human Services has established an approved testing protocol and positive threshold.

§ 219.707 Review by MRO.

(a) Test results reported positive by the laboratory as provided in 49 CFR part 40 shall not be deemed positive or disseminated to any person (other than to the employee tested in a medical interview, if conducted) until they are reviewed by a Medical Review Officer (MRO) of the railroad as required by 49 CFR part 40 and this section. For purposes of this part, medical use of controlled substances by a covered employee is a legitimate medical explanation for presence of a controlled substance (i.e., a basis for declaring the result "negative") only to the extent such use was consistent with § 219.103 of this part.

(b) The MRO shall complete review of test results within not more than 10 regular working days of receipt of the laboratory report or they shall be declared negative, unless any portion of the delay shall result from the unwillingness or inability of the employee to appear for an interview or provide documentation of prescription or other authorized use of medications. If the employee is responsible for such delay, the 10-day period may be extended by a period equal to the period attributed to the employee's delay. This paragraph shall not be read to bar reporting of a positive result if the employee, without a reasonable basis, fails to respond to an opportunity to provide supplementary information.

(c) After the MRO has reviewed the pertinent information and the laboratory

and reanalysis of the sample, but the employee shall be reimbursed for such

least 2 years from the date of sample collection all records of each test

APPENDIX A—SCHEDULE OF CIVIL PENALTIES [1]—Continued

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(c) After the MRO has reviewed the pertinent information and the laboratory assessment is verified as indicating presence of controlled substances without medical authorization consistent with § 219.103 of this part (and the review required by paragraph (b) of this section is completed), the MRO shall report the results to a designated railroad officer for action in keeping with the requirements of this part (or take appropriate action under the railroad's medical standards). The employee shall be provided a copy of the approved test results, or such results shall be dispatched by U.S. mail or other suitable means providing prompt delivery, not later than 24 hours following any adverse action.

(d) Test results reported as negative by the laboratory shall also be communicated through the MRO. The MRO shall promptly transmit the negative finding to the employee. If the MRO provides the railroad with negative test results in a nonaggregated manner, all such negative test results, including results involving medical use or administration of controlled substances or insufficiency of laboratory data, shall be transmitted to the designated railroad officer over the MRO's signature in a manner that does not disclose medical use of drugs which is permitted under § 219.103 of this part.

§ 219.709 Retest.

(a) Samples that yield positive results on confirmation shall be retained by the laboratory in properly secured, long-term, frozen storage for at least 365 days, as required by Part 40 of this title. Within this 365-day period, the employee or his representative, the railroad, or the FRA may request that the laboratory retain the sample for an additional period. If, within the 365-day period, the laboratory has not received a proper written request to retain the sample for a further reasonable period specified in the request, the sample may be discarded following the end of the 365-day period.

(b) In the case of a test declared positive by the MRO, the original sample shall be retested if the employee makes a written request to the Medical Review Officer for retesting within 60 days. The employee may specify retesting by the original laboratory or by a second laboratory that is certified by the Department of Health and Human Services as described in 49 CFR part 40. The railroad may require the employee to advance the cost of shipment (if any) and reanalysis of the sample, but the employee shall be reimbursed for such expense if the retest is negative.

(c) If the employee specifies retesting by a second laboratory, the original laboratory shall follow approved chain-of-custody procedures in transferring a portion of the sample.

(d) Any retest of a sample is subject to 49 CFR 40.29(i) (quantitation for retest not subject to cutoff requirement due to deterioration or loss of analytes).

§ 219.711 Confidentiality of test results.

(a) A laboratory reporting results of tests conducted under this subpart shall report those results only to the designated Medical Review Officer of the railroad. The results shall not be disclosed by the laboratory to any other person, except that the laboratory may affirm the test result to the employee to whom the sample was identified. This paragraph shall not be read to bar normal access to analytical data for laboratory accreditation or certification processes.

(b) The MRO may not disclose medically approved drug use or administration information obtained under this part (whether ascertained through testing or reported by the employee or the employee's medical practitioner at the employee's request) to non-medical railroad personnel or any third party; however, nothing in this part bars use of such information by the railroad's medical officer in the context of an established medical qualifications program. This paragraph shall not be construed to permit medical disqualification of an employee based upon a laboratory report indicating presence of a controlled substance prior to completion of the MRO review, nor to limit the discretion of the railroad under § 40.33(c) of this chapter.

(c) No record of tests conducted subject to this subpart or information drawn therefrom shall be used or disseminated by the railroad or within the railroad for any purpose other than providing for compliance with this part (and railroad rules consistent herewith), unless with the voluntary written consent of the employee. Such written consent shall specify the person to whom the information may be provided. Each railroad shall adopt and implement procedures to guard this information against unauthorized disclosure both within and external to the railroad company.

§ 219.713 Reports; FRA access to records.

(a) Each railroad shall retain for at least 2 years from the date of sample collection all records of each test conducted under this subpart that is reported as positive by the Medical Review Officer, including drug testing custody and control forms, laboratory reports, and certification statements. Records of negative tests shall be retained for at least 1 year.

(b) Each railroad shall maintain for at least 5 years summary records of employee alcohol and drug test results conducted under this part (including subpart C) and rehabilitation (including primary treatment, aftercare, and follow-up alcohol/drug testing) for each covered employee.

(c) Records required to be kept shall be made available to FRA as provided by section 208 of the Federal Railroad Safety Act of 1970.

APPENDIX A—SCHEDULE OF CIVIL PENALTIES [1]

Section	Violation	Willful Violation
Subpart A—General		
219.11 General Conditions for Chemical Tests (b)(1), (3), or (4) Employee unlawfully refuses to participate in testing	(—)	$5,000
(b)(2) Failure to give necessary medical treatment priority, or improperly requiring urine sample	$3,000	5,000
219.23 Notice to employees:		
(a) Failure to give notice of FRA test	1,000	4,000
(b) Failure to give notice of basis for FRA test	500	2,000
(c) Use of Subpart C forms for other types of tests	500	1,000
Subpart B—Prohibitions		
219.101 Alcohol and drug use: Employee violates prohibition	(—)	10,000
219.104 Responsive action:		
(a) Failure to remove from service immediately	3,000	5,000
(b) Failure to provide notice	1,000	4,000
(c) Failure to provide prompt post-suspension hearing	2,000	7,000
(d) Unlawful return to service	2,000	7,000
(e) Improper alcohol test	1,000	4,000
219.105 Railroad's duty to prevent violations:		
(a) Permitting employee to go or remain on duty in violation of prohibitions	7,000	10,000
(b) Failure to exercise due diligence to assure compliance with prohibition	2,500	5,000
Subpart C—Post-Accident Testing		
219.201 Events for which testing is required:		
(i) Failure to facilitate conduct of required post-accident toxicological test by making reasonable inquiry and good faith judgments with respect to circumstances of accident/incident; by failing to take all practicable steps to require employee participation; or by otherwise failing to comply with Subpart C such that test cannot be conducted (each employee not tested is a violation)	5,000	7,500
(ii) Required employee to provide samples under authority of Subpart C where one or more testing criteria not present, due either to mistake of law or failure to make reasonable inquiry or exercise good faith judgment	5,000	10,000
(iii) Failure to promptly provide FRA with report describing decision on whether event qualified for testing	1,000	3,000
219.203 Responsibilities of Railroads and Employees:		
(a) Failure to exclude employee from impact of fatal train incident testing where appropriate	2,500	5,000
(b)(1) Delay in obtaining samples account failure to make every reasonable effort	2,500	5,000
(b)(4) Improper release of or failure to recall employee subject to testing, or improper recall to duty	4,000	7,500
(c) Place of sample collection; by whom	2,500	5,000
(d) Failure to notify FRA of an employee injury requiring FRA intervention	2,500	5,000
219.205 Sample collection and handling:		
(a) Failure to observe requirements with respect to sample collection, marking and handling	2,500	5,000
(b) Failure to provide properly prepared information sheets with samples	1,000	2,000
(d) Failure to promptly forward samples	2,500	5,000
219.207 Fatality:		
(a) Failure to contact custodian and request assistance	2,500	5,000
(b) Failure to notify FRA where intervention needed	2,500	5,000
219.209 Reports of tests and refusals:		
(a) Failure to provide telephonic report	1,000	2,000
(b) Failure to provide written report (samples not provided)	1,000	2,000
219.213 Unlawful refusals, consequences:		
(a) Failure to take action against employee who refuses to provide samples, or permitting employee to return without meeting conditions	2,500	5,000
(b), (c) Failure to provide timely notice and proper hearing	2,500	5,000
Subpart D—Authorization to test for cause		
219.301 Testing for reasonable cause:		
(a) Employee required, under authority of this subpart, to submit to testing without reasonable cause	5,000	7,500
(f)(2) Employee required to participate in testing after expiration of 8 hours	2,000	4,000
(f)(4) Employee tested after release from duty	1,500	3,000
219.303 Breath testing procedures and safeguards (incl. optional blood test)	2,000	4,000
219.305 Urine test: failure to comply with Subpart H procedures and safeguards	2,000	4,000
219.309 Employee notice	1,000	4,000
Subpart E—Identification of troubled employees		
219.401 Requirements for policies:		
(i) Failure to adopt or publish or wholesale failure to implement policy required by Subpart E	5,000	7,500
(ii) Failure to implement as to individual employee	2,500	5,000
219.407 Alternate policies: Failure to file agreement or other document or provide timely notice of revocation	1,000	2,000
Subpart F—Pre-Employment Drug Screen		
219.501 Pre-employment drug screens:		
(a) Failure to perform preemployment drug screen prior to employing applicant in covered service	2,500	5,000
(b)(i) Failure to provide prior notice of drug screen	2,000	4,000
(ii) Maintaining record of declination of test	500	1,000
(c) Failure to comply with Subpart H—Procedures and safeguards	2,000	4,000
219.503 Notification records: Failure to notify applicant of test results or to properly maintain or retain records	2,000	4,000
219.505 Refusals; consequences of positive:		
(a) Employing one who has refused test in covered service	2,500	5,000
(b) Employing applicant who has tested positive in covered service	3,000	5,000
Subpart G—Random Drug Testing		
219.601 Programs:		
(a) Failure to submit to FRA on a timely basis a random testing program that satisfies requirements of this subpart and subpart H	5,000	7,500
(b)(1) Required employee to provide sample in reliance on this subpart based on other than random selection	5,000	10,000
(b)(2) through (b)(7) Fail to conform to approved criteria in implementing program	2,000	4,000
(d)(1) Failure to provide timely notice to each employee	1,000	4,000
(d)(2) Failure to implement program on timely basis	5,000	7,500
219.603 Participation in testing; refusals:		
(a) Failure to require a selected employee to cooperate in random testing	2,500	5,000
(b)(1) Failure to take action against employee who refuses to provide sample	2,500	5,000
(b)(2) Failure to provide timely notice and proper hearing	2,500	5,000
(c) Permitting employee to return without meeting conditions	2,500	5,000
219.605 Positive test results:		
(a) Test deemed positive without following Subpart H procedures	2,000	4,000
Subpart H—Procedures and Safeguards For Urine Drug Testing		
219.701 Standards for urine drug testing; use of unidentified lab or absence of required provisions in lab contract	5,000	7,500
219.703 Collection	2,000	4,000
219.705 Drugs tested	2,000	4,000
219.707 Review by MRO	2,000	4,000
219.709 Retest	2,000	4,000
219.711 Confidentiality	3,000	5,000
219.713 Reports; FRA access	500	2,000

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $20,000 for any violation where circumstances warrant. See 49 CFR part 209, Appendix A.

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Appendix B—Designation of Laboratory for Post-Accident Toxicological Testing

The following laboratory is currently designated to conduct post-accident toxicological analysis under subpart C of this part:

CompuChem Laboratories—Western Division, Attention: Clinical Department, 600W North Market Boulevard, Sacramento, California 95834. Telephone No. (916) 023–0840. Outside normal business hours contact (916) 782–3921.

Appendix C—Post-Accident Testing Sample Collection

1.0 General.

This appendix prescribes procedures for collection of samples for mandatory post-accident testing pursuant to subpart C of this part. Collection of blood and urine specimens is required to be conducted at an independent medical facility.

(Surviving Employees)

2.0 Surviving Employees.

This unit 2 provides detailed procedures for collecting post-accident toxicological samples from surviving employees involved in train accidents and train incidents, as required by 49 CFR part 212, subpart C. Subpart C specifies qualifying events and employees required to be tested.

2.1 Collection Procedures; General.

All forms and supplies necessary for collection and transfer of blood and urine specimens for five surviving employees can be found in the FRA post-accident toxicology kit, which is made available to the collection site by the railroad representative. Each kit contains supplies for blood/urine collections from five individuals, including instructions and necessary forms. The railroad is responsible for ensuring that kit materials are fresh, complete and meet FRA requirements.

2.1.1 Responsibility of the Railroad Representative.

In the event of an accident/incident for which testing is required under subpart C, the railroad representative shall, upon arrival at the independent medical facility, promptly make available to the medical facility representative a toxicology kit or kits and shall identify to the medical facility representative the instructions contained in the kit for conduct of the collection. (Each kit contains supplies to collect samples from five employees.) The railroad representative shall request the medical facility representative to review the instructions provided (Exhibit C–1) and, through qualified medical personnel, to provide for collection of the specimens according to the procedure set out.

The railroad representative shall undertake the following additional responsibilities—

- Complete Form 6180.73 (revised) describing the testing event and identifying the employees whose samples are to be deposited in the toxicology kit.
- As necessary to verify the identity of individual employees, affirm the identity of each employee to the medical facility personnel.
- To the extent consistent with the policy of the medical facility and the privacy of the employee, follow the progress of the collection procedure.

Warnings: The railroad representative shall not observe urination or otherwise disturb the privacy of urine donation. The railroad representative shall not handle sample containers.

2.1.2 Employee Responsibility.

An employee who is identified for post-accident toxicological testing shall cooperate in testing as required by the railroad and personnel of the independent medical facility. Such cooperation will normally consist of the following, to be performed as requested:

- Provide a blood sample, which a qualified medical professional or technician will draw using a single-use sterile syringe. The employee should be seated for this procedure.
- Provide, in the privacy of an enclosure, a urine sample into a single-use cup or the specimen bottle. The urine sample shall be presented to the medical facility personnel.
- Monitor the collection to ensure that the blood and urine samples are properly identified and sealed before they leave your sight. Verify the sample and seal by placing your initials on the seal.
- Complete the employee portions of the Blood/Urine Custody and Control Form (FRA Form 6180.74 (revised)) when requested.
- If required by the medical facility, complete a separate consent form for taking of the samples and their release to FRA for analysis under the FRA rule.

Note: The employee may not be required to complete any form that contains any waiver of rights the employee may have in the employment relationship or that releases or holds harmless the medical facility with respect to negligence in the collection.

2.2 The Collection.

Exhibit C–1 contains instructions for collection of samples for post-accident toxicology from surviving employees. These instructions shall be observed for each collection. Instructions shall be contained in each collection kit and shall be provided to medical facility personnel involved in the collection and/or packaging of specimens for shipment.

(Post Mortem Collection)

3.0 Fatality.

This unit 3 provides procedures for collecting post-accident body fluid/tissue samples from the remains of employees killed in train accidents and train incidents, as required by 49 CFR part 219, subpart C. Subpart C specifies qualifying events and employees required to be tested.

3.1 Collection.

In the event of a fatality for which testing is required under Subpart C, the railroad shall promptly make available to the custodian of the remains a copy of Exhibit C–2 to this Appendix and a toxicology kit. The railroad representative shall request the custodian to review the instructions contained in Exhibit C–2 and, through qualified medical personnel, to provide the specimens as indicated.

Exhibit C–1—Instructions for Collection of Blood and Urine Specimens: Mandatory Post-Accident Toxicological Testing

A. Purpose

These instructions are for the use of personnel of medical facilities conducting collection of blood and urine samples from surviving railroad employees following railroad accidents and casualties that qualify for mandatory alcohol/drug testing. The Federal Railroad Administration appreciates the participation of medical facilities in this important public safety program.

B. Prepare for Collection

Railroad employees have consented to provision of samples for analysis by the Federal Railroad Administration as a condition of employment (49 CFR 219.11).

A private, controlled area should be designated for collection of specimens and completion of paperwork.

Only one specimen should be collected at a time, with each employee's blood draw or urine collection having the complete attention of the collector until the specific sample has been labeled, sealed and documented.

Please remember two critical rules for the collections:

All labeling and sealing must be done in the sight of the donor, with the sample never having left the donor's presence until the sample has been labeled, sealed and initialed by the donor.

Continuous custody and control of blood and urine samples must be maintained and documented on the forms provided. In order to do this it is important for the paperwork and the specimens to stay together.

To the extent practical, blood collection should take priority over urine collection. To limit steps in the chain of custody, it is best if a single medical professional or technician handles both collections from a given employee.

You will use a single Post-Accident Testing Blood/Urine Custody and Control Form (FRA Form 6180.74 (revised)), consisting of six Steps to complete the collection for each employee. We will refer to it as the Control Form.

C. Identify the Donor

The employee donor must provide photo identification to each collector, or lacking this, be identified by the railroad representative.

The donor should remove all unnecessary outergarments such as coats or jackets, but may retain valuables, including wallet. Donors should not be asked to disrobe, unless necessary for a separate physical examination required by the attending physician.

D. Draw Blood

Assemble the materials for collecting blood from each employee: two 10 ml grey-stoppered blood tubes, the Control Form and an indelible marker.

Ask the donor to complete STEP 1 on the Control Form.

With the donor seated, draw two (2) 10 ml tubes of blood using standard medical procedures (sterile, single-use syringe into evacuated gray-top tubes provided). CAUTION: Do not use alcohol or an alcohol-based swab to cleanse the venipuncture site.

Once both tubes are filled and the site of venipuncture is protected, immediately—

- Seal and label each tube by placing a numbered blood specimen label from the label set on the Control Form over the top of the tube and securing it down the sides.
- Ask the donor to initial each label. Please check to see that the initials match the employee name and note any discrepancy in the "Remarks" block of the Control Form.
- As collector, sign and date each blood tube label at the place provided.
- Skip to STEP 5 and initiate chain of custody for the blood tubes by filling out the first line of the block to show receipt of the blood samples from the donor.
- Complete STEP 2 on the form.
- Return the blood tubes into the sponge liner of the individual specimen kit. Keep the paperwork and specimens together. If another medical facility representative will be collecting the urine sample from this employee, transfer both the form and the individual box with blood tubes to that person, showing the transfer of the blood tubes on the second line of STEP 5 (the chain of custody block).

E. Collect Urine

The urine collector should assemble at his/her station the materials for collecting urine from each employee: one plastic collection cup (with protective seal intact), one 100 ml polyethylene specimen bottle (with protective seal intact), the Control Form, and an indelible marker. Blood samples already collected must remain in the collector's custody and control during this procedure.

After requiring the employee to wash his/her hands, the collector should escort the employee directly to the urine collection area. To the extent practical, all sources of water in the collection area should be secured and a bluing agent (provided in the toxicology kit) placed in any toilet bowl, tank, or other standing water.

The employee will be provided a private place in which to void. Urination will not be directly observed. If the enclosure contains a source of running water that cannot be secured or any material (soap, etc.) that could be used to adulterate the specimen, the collector should monitor the provision of the sample from outside the enclosure. Any unusual behavior or appearance should be noted in the remarks section of the Control Form or on the back of that form.

The collector should then proceed as follows:

Unwrap the collection cup in the employee's presence and hand it to the employee (or allow the employee to unwrap it).

Ask the employee to void at least 60 ml into the collection cup (at least to the line marked). Leave the private enclosure.

IF THERE IS A PROBLEM WITH URINATION OR SAMPLE QUANTITY, SEE THE "TROUBLE BOX" AT THE BACK OF THESE INSTRUCTIONS

Once the void is complete, the employee should exit the private enclosure and deliver the specimen to the collector. Both the collector and the employee must proceed immediately to the labeling/sealing area, with the specimen never leaving the sight of the employee before being sealed and labeled.

Upon receipt of the specimen, proceed as follows:

- In the full view of the employee, remove the wrapper from the urine specimen bottle.
- As you pour the specimen into the specimen bottle, please inspect for any unusual signs indicating possible adulteration or dilution. Carefully secure the top. Note any unusual signs under "remarks" at STEP 3 of the Control Form.
- Within 4 minutes after the void, measure the temperature of the urine by reading the strip on the bottle. Mark the result at STEP 3 of the Control Form.

IF THERE IS A PROBLEM WITH THE URINE SAMPLE, SEE THE TROUBLE BOX AT THE BACK OF THESE INSTRUCTIONS

- *Before* removing the numbered urine label from the Control Form, ask the employee to enter his/her social security or employee I.D. number on the numbered urine label.
- Remove the numbered urine specimen label from the Control Form, place it over the top of the bottle, and secure it to the sides.
- Ask the donor to initial the label. Please check to see that the initials match the employee name and note any discrepancy in the "Remarks" block of STEP 3.
- As collector, sign and date the urine label.
- Skip to STEP 5 and initiate chain-of-custody by showing receipt of the urine sample from the donor. (If you collected the blood, a check under "urine" will suffice. If someone else collected the blood, first make sure transfer of the blood to you is documented. Then, using the next available line, show "Provide specimen" under purpose, "Donor" under "released by," check under "urine" and place your name, signature and date in the space provided.)
- Complete the remainder of STEP 5 on the Control Form.
- Have the employee complete STEP 6 on the Control Form.
- Place the filled urine bottle in the foam liner of the individual employee box. Keep the paperwork and specimens together. If another medical facility representative will be collecting the blood sample from this employee, transfer both the form and the box to that person, showing the transfer of the urine specimen on the next available line of STEP 5 (the chain of custody block).

F. Seal the Individual Employee Box

The blood and urine specimens have now been collected for this employee. The blood/urine specimens will now be sealed into the individual employee box, while all paperwork will be retained for further completion. After rechecking to see that each specimen is properly labeled and initialled, close the plastic bag to contain any leakage in transportation, and apply the box security seal to the small individual box. As collector, sign and date the box seal.

Before collecting samples from the next employee, complete the next line on the chain-of-custody block showing release of the blood and urine by yourself for the purpose of "Shipment" and receipt by the courier service or railroad representative that will provide transportation of the toxicology kit, together with the date.

G. Complete Treatment Information

Complete STEP 6 of the Control Form.

H. Prepare the Kit for Shipment

Sealed individual employee boxes should be retained in secure storage if there will be a delay in preparation of the shipping kit. The shipping kit shall be prepared and sealed by a medical facility representative as follows:

- Inspect STEP 5 of each Control Form to ensure chain-of-custody is continuous and complete for each fluid (showing specimens released for shipment). Retain the medical facility copy of each Control Form and the Accident Information form for your records.
- Place sealed individual employee boxes in shipping kit. Place all forms in zip-lock bag and seal securely. Place bag with forms and unused supplies in kit, but keep the marker, green tape, and label instruction.
- Close kit around the closure with green tape provided.
- Affix label instruction provided to outside of kit.

I. Ship the Kit

The railroad must arrange to have the kit shipped overnight air express or (if express service is unavailable) by air freight, prepaid, to FRA's designated laboratory. Whenever possible without incurring delay, the medical facility collector should deliver the kit directly into the hands of the express courier or air freight representative.

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Where courier pickup is not immediately available at the medical facility where the samples are taken, the railroad is required to transport the shipping kit for expeditious shipment by air express, air freight or equivalent means.

If railroad is given custody of kit to arrange shipment, please record name of railroad official taking custody on the copy of the Form 6180.73 (revised) ("Accident Information") retained by the collection site.

"TROUBLE BOX"

1. PROBLEM: The employee claims an inability to urinate, either because he/she has recently voided or because of anxiety concerning the collection.

ACTION: The employee may be offered moderate quantities of liquid to assist urination. If the employee continues to claim inability after 4 hours, the urine collection should be discontinued, but the blood samples should be forwarded and all other procedures followed. Please note in area provided for remarks what explanation was provided by the employee.

2. PROBLEM: The employee cannot provide approximately 60 ml. of specimen.

ACTION: The employee would remain at the medical facility until as much as possible of the required amount can be given (up to 4 hours). The employee should be offered moderate quantities of liquids to aid urination. The first bottle should be sealed and securely stored with the blood tubes and Control Form pending shipment and a second bottle should be used for the subsequent void (using a second Control Form with the words "SECOND VOID—FIRST SAMPLE INSUFFICIENT" in the remarks block and labels from that form).

3. PROBLEM: The urine temperature is outside the normal range of 32.5°–37.7 °C / 90.5°–99.8 °F, and is suitable medical explanation cannot be provided by an oral temperature or other means; or

4. PROBLEM: The collector observes conduct clearly and unequivocally indicating an attempt to substitute or adulterate the sample (e.g., substitute urine in plan view, blue dye in specimen presented, etc.) and a collection site supervisor or the railroad representative agrees that the circumstances indicate an attempt to tamper with the sample.

ACTION: Document the problem on the Control Form. If the collection site supervisor or railroad representative concur that the temperature of the specimen, or other clear and unequivocal evidence, indicates a possible attempt to substitute or alter the specimen, another void should be taken under direct observation by a collector of the same gender.

If a collector of the same sex is not available, do NOT proceed with this step.

If a collector of the same gender is available, proceed as follows: A new Control Form must be initiated for the second void. The original suspect specimen should be marked "Void 1" with the indelible marker and the follow-up void should be marked "Void 2," with both voids being sent to the laboratory and the incident clearly detailed on the Control Form.

Exhibit C-3—Instructions for Collection of Post Mortem Toxicology Samples: Employees Killed in a Railroad Accident-Incident

TO THE MEDICAL EXAMINER, CORONER, OR PATHOLOGIST:

In compliance with Federal safety regulations (49 CFR part 219), a railroad representative has requested that you obtain samples for toxicology from the remains of a railroad employee who was killed in a railroad accident or incident. The deceased consented to the taking of such samples, as a matter of Federal law, by performing service on the railroad (49 CFR 219.11(f)).

Your assistance is requested in carrying out this program of testing, which is important to the protection of the public safety and the safety of those who work on the railroads.

Materials:

The railroad will provide you a shipping kit that contains necessary supplies, including a pen that will write directly on all surfaces. If the kit is not immediately available, please proceed using supplies available to you that are suitable for forensic toxicology.

Samples requested, in order of preference:

(1) *Blood*—20 milliliters or more. Preferred sites: intact femoral vein or artery or peripheral vessels (up to 10 ml, as available) and intact heart (20 ml). Deposit blood in gray-stopper tubes individually by site and shake to mix specimen and preservative.

Note.—If uncontaminated blood is not available, bloody fluid or clots from body cavity may be useful for qualitative purposes; but do not label as blood. Please indicate source and identity of sample on label of tube.

(2) *Urine*—as much as 100 milliliters, if available. Deposit into plastic bottle provided.

(3) *Vitreous fluid*—all available, deposited into smallest available tube (e.g., 3 ml) with 1 percent sodium fluoride, or gray-stopper tube (provided). Shake to mix specimen and preservative.

(4) *If available at autopsy, organs*—50 to 100 grams each of two or more of the following in order preference, as available: liver, bile, brain, kidney, spleen, and/or lung. Specimens should be individually deposited into zip-lock bags or other clean, single use containers suitable for forensic toxicology specimens.

(5) *If vitreous or urine is not available,* please provide—

a. *Spinal fluid*—all available, in 8 ml container (if available) with sodium fluoride or in gray-stopper tube; or, if spinal fluid cannot be obtained,

b. *Gastric content*—up to 10 milliliters, as available, into plastic bottle.

Sample collection:

Sampling at time of autopsy is preferred so that percutaneous needle puncturing is not necessary. However, if autopsy will not be conducted or is delayed, please proceed with sampling. Blood samples should be taken by sterile syringe and deposited directly into evacuated tube, if possible, to avoid contamination of sample or dissipation of volatiles (ethyl alcohol).

Note.—If only cavity fluid is available, please open cavity to collect sample. Note condition of cavity.

Please use smallest tubes available to accommodate available quantity of fluid sample (with 1 percent sodium fluoride).

Sample identification, sealing:

As each sample is collected, seal each blood tube and the urine container using the identifier label from the set provided with the Post Accident Testing Blood/Urine Custody and Control Form (FRA Form 6180.74 (revised)). Make sure the unique identification number on the label matches the pre-printed number on the Control Form. Please label other specimens with name and sample set identification number. Secure with tamperproof seal.

Annotate each label with sample description and source (as appropriate) (e.g., blood, femoral vein).

Please provide copy of any written documentation regarding condition of body and/or toxicology sampling procedure that is available at the time samples are shipped.

Handling:

If samples cannot be shipped immediately as provided below, samples other than blood may be immediately frozen. Blood samples should be refrigerated, but not frozen.

All samples and documentation should be secured from unauthorized access pending delivery for transportation.

Information:

If the railroad has not already done so, please place the name of the subject at the top of the Control Form (STEP 1). You are requested to complete STEP 2 of the form, annotating it by writing the word "FATALITY," listing the specimens provided, providing any further information under "Remarks" or at the bottom of the form. If it is necessary to transfer custody of the specimens from the person taking the specimens prior to preparing the kit for shipment, please use the blocks provided in STEP 5 to document transfer of custody.

The railroad representative will provide FRA Form 6180.73 (revised).

Both forms should be placed in the shipping kit when completed; but you may retain the designated medical facility copy of each form for your records.

Packing the shipping kit:

Place urine bottle and blood tubes in sponge liner of individual box, close plastic bag locking feature and apply individual box seal provided. Use additional box for each tissue sample, being careful to identify specimen by tissue and name of deceased. Apply box security seals to individual boxes and sign/initial across seal.

Place all forms in zip-lock bag and seal securely. Place bag in kit.

Seal kit with green tape provided and sign and date across seal with indelible marker provided.

Affix label instruction provided to outside of kit.

If shipping by Federal Express, place strap inside the kit. Secure the top of the shipping kit with green vinyl tape provided.

Otherwise, secure strap around lid after taping.

Shipping the kit:

The railroad should arrange to have the kit shipped overnight air express or (if express service is unavailable) by air freight, prepaid, to FRA's designated laboratory. When possible without incurring delay, deliver the kit directly into the hands of the express courier or air freight representative.

Where courier pickup is not immediately available at the medical facility where the samples are taken, the railroad is required to transport the shipping kit to the nearest point of shipment via air express, air freight or equivalent means.

If railroad is given custody of kit to arrange shipment, please record name of railroad official taking custody.

Other toxicology:

FRA requests that the person taking the samples advise if additional toxicological analysis will be undertaken with respect to the fatality. FRA toxicology reports are available to the coroner or medical examiner on request.

PART 217—[AMENDED]

1. The authority citation for part 217 is revised to read as follows:

Authority: 45 U.S.C. 431, 437 and 438, as amended; Pub. L. 100-342; and 49 CFR 1.49(m).

2. Section 217.13 is amended by revising paragraph (d) to read as follows:

§ 217.13 Annual report.

* * * * *

(d) The number, type and result of each test and inspection related to enforcement of part 219 of this subchapter and the railroad's rule on alcohol and drug use ("Rule G"). This information shall be reported on Form FRA 6180.77, shall be provided separately for employees covered by the Hours of Service Act and other employees subject to the railroad's code of operating rules and operational testing program, and shall include the following:

(1) Total number of observations of individual employees (including observations for which breath, blood or urine tests were included and observations after accidents/incidents and rule violations) and total number of employees charged with violation of Rule G or a similar rule.

(2) Number of breath tests conducted under the authority of § 219.301 of this title and number of such tests that were positive; number of breath tests conducted under railroad authority for specific cause and not relying on § 219.301 and number that were positive.

(3) Number of urine tests conducted under the authority of § 219.301 of this title and number of such tests that were positive; number of urine tests conducted under railroad authority for specific cause and not relying on § 219.301 and number that were positive. For positive tests indicate number for alcohol and for each of the following controlled substance drug groups: marijuana, cocaine, phencyclidine, opiates, amphetamines, and other controlled substances.

(4) Number of employees who refused to cooperate in testing under § 219.301; number of employees who refused to cooperate in testing under railroad authority for specific cause and not relying on § 219.301.

(5) Number of blood tests demanded by employees in connection with such observations and results by substance (alcohol, controlled substance drug group) (separated as to blood tests demanded under subpart D of this part and blood tests conducted under railroad authority).

(6) Number and results of random drug tests conducted under the authority of § 219.601 of this chapter. For positive tests indicate the number for each controlled substance by drug group, and the following information: number and type of disciplinary actions taken, number of employees referred for evaluation, number of employees evaluated as not requiring formal treatment, number of employees evaluated as requiring outpatient treatment, number of employees evaluated as requiring inpatient treatment, number of employees failing to complete abatement or rehabilitation (as determined by clinical of employees who completed abatement or rehabilitation determined after investigation to have been involved in subsequent alcohol/drug disciplinary offenses, and number of follow-up tests and results by drug group (including refusals). Also indicate the number of refusals to cooperate in random testing and provide a summary of any negative test findings based upon scientific insufficiency (without personal identifying information).

(7) Number of test results reported by the laboratory as positive that are declared negative by the Medical Review Officer due to scientific insufficiency, as provided in 49 CFR 40.33.

PART 225—[AMENDED]

1. The authority citation for part 225 continues to read as follows:

Authority: 45 U.S.C. 38, 42, and 43, as amended; 45 U.S.C. 431, 437, and 438, as amended; Pub. L. 100-342; and 49 CFR 1.49(c) and (m).

2. Section 225.17 is amended by revising paragraph (d) to read as follows:

§ 225.17 Doubtful cases; alcohol or drug involvement.

* * * * *

(d) (1) In preparing a Rail Equipment Accident/Incident Report under this part, the railroad shall make such specific inquiry as may be reasonable under the circumstances into the possible involvement of alcohol or drug use or impairment in such accident or incident. If the railroad comes into possession of any information whatsoever, whether or not confirmed, concerning alleged alcohol or drug use or impairment by an employee who was involved in, or arguably could be said to have been involved in, the accident/incident, the railroad shall report such alleged use or impairment as provided in the current FRA Guide for Preparing Accident/Incident Reports. If the railroad is in possession of such information but does not believe that alcohol or drug impairment was the primary or contributing cause of the accident/incident, then the railroad shall include in the narrative statement of such report a brief explanation of the basis of such determination.

(2) For any train accident within the requirement for post-accident testing under § 219.201 of this title, the railroad shall append to the Rail Equipment Accident/Incident Report any report required by § 219.209(b) (pertaining to failure to obtain samples for post-accident toxicological testing).

(3) For any train or non-train incident, the railroad shall provide any available information concerning the possible involvement of alcohol or drug use or impairment in such accident or incident.

(4) In providing information required by this paragraph, a railroad shall not disclose any information concerning use of controlled substances determined by the railroad's Medical Review Officer to have been consistent with 49 CFR 219.103.

Issued in Washington, DC, on December 20, 1989.

Gilbert E. Carmichael,

Federal Railroad Administration.

[FR Doc. 89-29910 Filed 12-21-89; 10:16 am]

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Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 121

Anti-Drug Program for Personnel Engaged in Specified Aviation Activities; Final Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. 25148; Admt. No. 121-210]

RIN 2120-AC33

Anti-Drug Program for Personnel Engaged in Specified Aviation Activities

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; extension of compliance date.

SUMMARY: The FAA announces a delay in the compliance date for drug testing, insofar as those regulations would require testing of persons located outside the territory of the United States. Under this final rule, employees located outside the territory of the United States must become subject to testing no later than January 2, 1992. This extension of compliance date is adopted in order to allow negotiation with foreign governments to continue in an orderly and effective fashion.

EFFECTIVE DATE: This final rule is effective December 27, 1989.

FOR FURTHER INFORMATION CONTACT: Ms. Heidi Mayer, Office of Aviation Medicine, Drug Abatement Branch (AAM-220), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3410.

SUPPLEMENTARY INFORMATION: On November 21, 1988, the FAA, along with other agencies of the Department of Transportation (DOT), adopted regulations requiring preemployment, post-accident, reasonable cause and random drug testing (53 FR 47024). Those individuals required under Federal law or regulation to have periodic medical examinations were also required to undergo a drug test at the same time. (The Federal Railroad Administration rule issued at that time governed only random testing; other forms of drug testing for covered railroad employees were already required by previously issued regulations. 49 CFR part 219; See 50 FR 31508, August 2, 1985.) On April 14, 1989, the FAA amended the drug testing regulation to extend certain compliance dates and make other minor revisions (54 FR 15148).

The drug testing required by the rule applies to employees performing sensitive safety- and security-related functions, including employees located outside the territory of the United States. However, the rules provided that they would not apply in any situation in which application of the rules violated local laws or policies.

At the same time, the FAA stated that the DOT and other elements of the government would enter into discussions with foreign governments to attempt to resolve any conflict between our rules and foreign government laws or policies. The final rule stated that if, as a result of those discussions, we found that amendments to the rule were necessary, action would be taken in a timely manner. Under the current schedule, drug testing of employees located outside the territory of the United States is scheduled to begin by January 1, 1991.

DOT has been conducting active discussions over the last year with representatives of the Canadian government, and has had a preliminary meeting with representatives of the nations of the European Economic Community. The Department has chosen to focus its attention first on discussions with Canada, because the rules of five different modal administrations could affect Canadian businesses. Unfortunately, the discussions with the Canadians have not yet been completed.

However, the Department has made progress in its discussions with the Canadians, and have found that there are a number of important issues on which we agree. The DOT and the FAA continue to believe that, with additional time, it will be possible to develop an approach to the problem of drugs in the transportation industry that will be mutually acceptable.

In order to allow that agreement to be reached in an orderly fashion, the OST has determined that additional time is necessary. An additional delay of approximately one year should enable an acceptable arrangement to be developed on drug deterrence with Canada and other countries. Accordingly, the FAA is postponing the date by which testing programs must commence for persons located outside the territory of the United States.

Availability of Final Rule

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attn: Public Inquiry Center (APA-230), 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Requests must include the amendment number identified in this final rule. Persons interested in being placed on a mailing list for future rulemaking actions should request a copy of Advisory Circular 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Reason for No Notice

The amendment to the anti-drug rule merely extends for one year the compliance date specified in the rule for drug testing persons located outside the territory of the United States. This minor change reflects the commitment made in the preamble to the final rule to "delay the effective date further * * * if such delay is necessary to permit consultation with any foreign governments to be successfully completed" [November 21, 1988; 53 FR 47050]. The FAA does not believe that issuing a notice of proposed rulemaking would result in the receipt of significant comments. Accordingly, the FAA has determined that notice and public comment procedures are unnecessary and contrary to the public interest.

Economic Assessment

In accordance with the requirements of Executive Order 12291, the FAA reviewed the costs and the benefits of the final anti-drug rule issued on November 14, 1988. At that time, the FAA prepared a comprehensive Regulatory Impact Analysis of the final anti-drug rule. The FAA included that analysis in the public docket. The FAA also summarized and analyzed the comments submitted by interested persons on the economic issues in the final rulemaking document published in the Federal Register on November 21, 1988.

This final rule extends the compliance date of covered employees in foreign countries but does not change the basic regulatory structure and requirements promulgated in the final anti-drug rule. The FAA is taking this action to provide additional time to negotiate with foreign governments on implementation of drug testing outside the territory of the United States, and has determined that costs and benefits associated with this extension are minimal. A separate economic analysis for this final rule, therefore, is not warranted.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 requires a Federal agency to review any final rule to assess its impact on small business. The amendment contained in this final rule only extends a compliance date; consequently, the FAA has determined that this amendment to the final rule will not have a significant economic impact, positive or negative, on a substantial number of small entities.

International Trade Impact Statement

This final rule contains an amendment that extends the date by which an employer must ensure that employees outside the United States are in compliance with the final rule issued on November 14, 1988. The amendment provides that Appendix I to part 121 is not effective with respect to any employee located outside the territory of the United States until January 2, 1992. Thus, the FAA has determined that this final rule will not have an impact on trade opportunities for U.S. firms doing business overseas or on foreign firms doing business in the United States.

Paperwork Reduction Act Approval

The recordkeeping and reporting requirements of the final anti-drug rule, issued on November 14, 1988, previously were submitted to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1980. OMB approved those requirements on February 2, 1989. Because this final rule does not amend the recordkeeping and reporting requirements, it is not necessary to amend the prior approval received from OMB.

Federalism Implications

The final rule adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, the FAA has determined that this final rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Conclusion

This final rule extends the compliance date for drug testing of those persons located outside the territory of the United States. This rulemaking action is intended to improve administration of the final anti-drug rule.

Pursuant to the terms of the Regulatory Flexibility Act of 1980, the FAA certifies that the final rule will not have a significant economic impact, positive or negative, on a substantial number of small entities. In addition, the final rule will not result in an annual effect on the economy of $100 million or more and will not result in a significant increase in consumer prices; thus, the final rule is not a major rule pursuant to the criteria of Executive Order 12291. However, because the rule involves issues of substantial interest to the public, the FAA determined that the final rule is significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 2, 1979).

List of Subjects in 14 CFR Part 121

Air carriers, Air transportation, Aircraft, Aircraft pilots, Airmen, Airplanes, Aviation safety, Drug abuse, Drugs, Narcotics, Pilots, Safety, Transportation.

The Amendments

Accordingly, the FAA amends part 121 of the Federal Aviation Regulations (14 CFR part 121) as follows:

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421-1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983).

Appendix I—[Amended]

2. By revising paragraph (B) of section XII of Appendix I to part 121 to read as follows:

* * * * *

B. This appendix shall not be effective with respect to any employee located outside the territory of the United States until January 2, 1992.

Issued in Washington, DC, on December 11, 1989.

James B. Busey,

Administrator.

[FR Doc. 89-30012 Filed 12-26-89; 8:45 am]

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Part IV

Department of Transportation

Coast Guard

46 CFR Part 16

Programs for Chemical Drug and Alcohol Testing of Commercial Vessel Personnel; Delay of Implementation Dates; Final Rule

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DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 16

[CGD 86-067b]

RIN 2115-AC45

Programs for Chemical Drug and Alcohol Testing of Commercial Vessel Personnel; Delay of Implementation Dates

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard announces a delay in the effective date of regulations governing drug testing, insofar as those regulations would require testing of persons for whom a foreign government contends that application of these regulations is not compatible with that country's domestic laws or policies. Under this final rule, employees must become subject to testing no later than January 2, 1992. This delay of implementation is adopted in order to allow negotiation with foreign governments to continue in an orderly and effective fashion.

EFFECTIVE DATE: This rule is effective December 27, 1989.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander T.A. Murphy, Project Manager, Marine Investigation Division (G-MMI), Office of Marine Safety, Security and Environmental Protection, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC, 20593-0001, (202) 267-2215.

SUPPLEMENTARY INFORMATION: On November 21, 1988, the Coast Guard, along with other agencies of the Department of Transportation, adopted regulations requiring pre-employment, post-accident, reasonable cause and random drug testing. Those individuals required under Federal law or regulation to have periodic medical examinations were also required to undergo a drug test at the same time. The drug testing required by the rule applies to some persons located outside of the United States. However, the rules provided that they would not apply outside the United States in any situation in which application of the rules violated foreign local laws or policies.

At the same time, the Coast Guard stated that the Department of Transportation and other elements of the government would enter into discussions with foreign governments to attempt to resolve any conflict between our rules and foreign government laws or policies. We stated that if, as a result of those discussions, we found that amendments to the rule were necessary, we would issue the amendments by December 1, 1989. Under the current schedule, drug testing for foreign persons is scheduled to begin by January 1990. DOT has been conducting active discussions over the last year with representatives of the Canadian Government, and has had a preliminary meeting with representatives of the nations of the European Economic Community. The Department has chosen to focus its attention first on discussions with Canada, because the rules of five different modal administrations could affect Canadian businesses. Unfortunately, the discussions with the Canadians have not yet been completed.

However, the Department has made progress in its discussions with the Canadians, and have found that there are a number of important issues on which we agree. We therefore continue to believe that, with additional time, we will be able to develop an approach to the problem of drugs in the transportation industry that will be mutually acceptable.

In order to allow that agreement to be reached in an orderly fashion, we have determined that additional time is necessary. An additional delay of approximately two years will, we hope, enable us to achieve an acceptable arrangement on drug deterrence with Canada and other countries. Accordingly, we have determined to postpone the date by which testing programs must commence for persons for whom a foreign country contends that such testing would violate that country's domestic laws or policies to January 2, 1992. This schedule will apply to all such persons, whether or not the affected foreign government has formally notified us of conflicts with their laws and policies. Despite efforts to notify foreign governments of the need to notify us of any potential conflict with our rules, we believe that some governments may not have made a determination whether a conflict exists. This could place some carriers in an untenable position during the pendency of the inter-government discussions. Our action here does not postpone testing for any other person, including U.S.-based employees of American subsidiaries of foreign companies.

The change in this final rule will delay the applicability of the regulations where they may conflict with foreign law or policy so that the Department of Transportation and other elements of the government can complete discussions with foreign governments to attempt to resolve any conflict between our rules and foreign government laws or policies. Accordingly, the Coast Guard finds that good cause exists under 5 U.S.C. 553(b) to publish this rule without notice and comment and to make this rule effective less than 30 days after publication in the **Federal Register.**

Regulatory Assessment

This final rule modifies the effective date for compliance with regulations governing drug testing, insofar as those regulations would require testing of persons for whom a foreign government contends that application of these regulations is not compatible with that country's domestic laws or policies. It does not change the basic regulatory structure of that rule. The economic impact of these changes is so minimal that further evaluation is not necessary.

Regulatory Flexibility Determination

The amendment in this final rule pertains only to situations concerning foreign governments. Therefore, the Coast Guard certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This final rule does not amend the recordkeeping and reporting requirements of the final rule published on November 21, 1988.

Environmental Assessment

The Coast Guard has considered the environmental impact of this amendment to the rules promulgated on November 21, 1988, and concluded that, under section 2.B.2.1 of Commandant Instruction M16475.1B, they will have no significant environmental impact and are categorically excluded from further environmental documentation.

Federalism Implications

In accordance with Executive Order 12612, the Coast Guard has determined that this final rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

List of Subjects in 46 CFR Part 16

Seamen, Marine Safety, Navigation (Water), Alcohol and alcoholic beverages, Drugs.

Final Rule

For the reasons set forth in the preamble, title 46, chapter I, of the Code of Federal Regulations is amended as follows:

PART 16—[AMENDED]

1. The authority citation for part 16 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 7101, 7301 and 7701; 49 CFR 1.46.

* * * * *

2. Section 16.207 is amended by revising paragraph (b) to read as follows:

§ 16.207 Conflict with foreign laws.

* * * * *

(b) This part is not effective until January 2, 1992, with respect to any person for whom a foreign government contends that application of this part raises questions of compatibility with that country's domestic laws or policies. On or before December 1, 1991, the Commandant shall issue any necessary amendment resolving the applicability of this part to such person on and after January 2, 1992.

Dated: December 21, 1989.

M.J. Schiro,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89-30011 Filed 12-26-89; 8:45 am]

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Part V

Department of Transportation

Research and Special Programs Administration

49 CFR Part 199

Control of Drug Use in Natural Gas, Liquefied Natural Gas, and Hazardous Liquid Pipeline Operations; Final Rule

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 199

[Docket No. PS-102, Amdt. No. 199-3]

RIN 2137-AB54

Control of Drug Use in Natural Gas, Liquefied Natural Gas, and Hazardous Liquid Pipeline Operations

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Final rule; Modification of implementation date.

SUMMARY: The Research and Special Programs Administration (RSPA) announces a delay in the effective date of regulations governing drug testing, insofar as those regulations would require testing of persons for whom a foreign government contends that application of these regulations is not compatible with that country's domestic laws or policies. Under this final rule, these persons must become subject to testing no later than January 2, 1992. This delay of implementation is adopted in order to allow negotiation with foreign governments to continue in an orderly and effective fashion.

EFFECTIVE DATE: This rule is effective December 27, 1989.

FOR FURTHER INFORMATION CONTACT: Cesar De Leon, Assistant Director for Regulation, Office of Pipeline Safety, Research and Special Programs Administration (DPS-10), 400 7th Street SW., Washington, DC 20590, (202) 366-1640.

SUPPLEMENTARY INFORMATION: On November 21, 1988, RSPA, along with other agencies of the Department of Transportation, adopted regulations requiring pre-employment, post-accident, reasonable cause and random drug testing (53 FR 47084, 49 CFR part 199). The drug testing required by these rules applies to some persons located outside of the United States. However, the rules provided that they would not apply to any person for whom compliance would violate the domestic laws or policies of another country. The rules provided that 49 CFR part 199 would not be effective until January 1, 1990, with respect to any person for whom a foreign government contends that application of the rule raises questions of compatibility with that country's laws or policies.

At the same time, RSPA stated that the Department of Transportation and other elements of the government would enter into discussions with foreign governments to attempt to resolve any conflict between our rules and foreign government laws or policies. We stated that if, as a result of those discussions, we found that an amendment to the rules was necessary, we would issue the amendment by December 1, 1989. On April 13, 1989, RSPA published an amendment to part 199 (54 FR 14922) to provide that the rules would not be effective until January 1, 1991, with respect to such persons. The amendment clarified that RSPA had intended that the rules provide an additional year to initiate testing in order for government-to-government discussions to reach permanent resolution of this issue. DOT has been conducting active discussions over the last year with representatives of the Canadian government, and has had a preliminary meeting with representatives of the nations of the European Economic Community. The Department has chosen to focus its attention first on discussions with Canada, because the rules of five different modal administrations could affect Canadian businesses. Unfortunately, the discussions with the Canadians have not yet been completed. Moreover, since the Department had hoped to be able to use an agreement with Canada as the basis for discussions with other countries, it follows that we have not yet been able to make substantial progress with them.

However, the Department has made progress in its discussions with the Canadians, and has found that there are a number of important issues on which we agree. We therefore continue to believe that, with additional time, we will be able to develop an approach to the problem of drugs in the transportation industry that will be mutually acceptable.

In order to allow that agreement to be reached in an orderly fashion, we have determined that additional time is necessary. An additional delay of 1 year will, we hope, enable us to achieve an acceptable arrangement on drug deterrence with Canada and other countries. Accordingly, we have determined to postpone the date by which testing programs must commence for persons for whom a foreign country contends that such testing would violate that country's domestic laws or policies to January 2, 1992. This schedule will apply to all such persons, whether or not the affected foreign government has formally notified us of conflicts with their laws and policies. Despite efforts to notify foreign governments of the need to notify us of any potential conflict with our rules, we believe that some governments may not have made a determination whether a conflict exists. This could place some employers in an untenable position during the pendency of the inter-government discussions. Our action here does not postpone testing for any other person, including U.S.-based employees of American subsidiaries of foreign companies.

This final rule delays the applicability of the part 199 regulations where they may conflict with foreign law or policy. Accordingly, RSPA finds that good cause exists under 5 U.S.C. 553(b) and 553(d) to publish this final rule without notice and comment, and to make it effective less than 30 days after publication in the **Federal Register**

Regulatory Assessment

This final rule modifies one of the compliance provisions contained in the final rule published on November 21, 1988, as modified on April 13, 1989. It does not change the basic regulatory structure of that rule. The economic impact of these changes is so minimal that further evaluation is not necessary.

Regulatory Flexibility Determination

This final rule modifies the effective date of part 199 only with respect to certain persons for whom a foreign country contends that drug testing would violate that country's laws or policies. Therefore, RSPA certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This final rule does not add to the recordkeeping and reporting burden of the final rule published on November 21, 1988.

Federalism Implications

In accordance with Executive Order 12612, RSPA has determined that this final rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 199

Pipeline safety, Drug testing.

In view of the foregoing, RSPA amends 49 CFR part 199 as follows:

PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 49 App. U.S.C. 1672, 1674a, 1681, 1804, 1808, 2002, and 2040; 49 CFR 1.53.

2. Section 199.1(d) is revised to read as follows:

§ 199.1 Scope and Compliance.

* * * * *

(d) This part is not effective until January 2, 1992, with respect to any person for whom a foreign government contends that application of this part raises questions of compatibility with that country's domestic laws or policies. On or before December 2, 1991, the Administrator will issue any necessary amendment resolving the applicability of this part to such person on and after January 2, 1992.

Issued in Washington, DC, on December 20, 1989.

Travis P. Dungan,

Administrator, Research and Special Programs Administration.

[FR Doc. 89-30014 Filed 12-26-89; 8:45 am]

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Part VI

Department of Transportation

Federal Highway Administration

49 CFR Part 391

Controlled Substances Testing; Compliance Date for Certain Foreign Drivers; Final Rule

DEPARTMENT OF TRANSPORTATION

foreign governments to identify and resolve any conflict between the FHWA

opportunity for comment are not required under the regulatory policies

List of Subjects in 49 CFR Part 391

Controlled substances, Highways and

Federal Regulations, subtitle B, chapter III, part 391 as set forth below:

§ 391.83 Applicability.

* * * * *

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 391

[FHWA Docket No. MC-116]

RIN 2125-AC50

Controlled Substances Testing; Compliance Date for Certain Foreign Drivers

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule; deferred compliance.

SUMMARY: The Federal Highway Administration announces a delay in the compliance date of its regulation governing drug testing, insofar as the regulation would require testing of employees of carriers domiciled and located in a foreign country. Under this final rule, such employees must become subject to testing no later than January 2, 1992. This delay of compliance is adopted in order to allow negotiation with foreign governments to continue in an orderly and effective fashion.

DATES: Effective date December 27, 1989. Compliance with requirement to test foreign-based employees of foreign-domiciled carriers for drug use is deferred until January 2, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas P. Kozlowski, Office of Motor Carrier Standards, (202) 366-2981, or Mr. Thomas P. Holian, Office of Chief Counsel, (202) 366-1350, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: On November 21, 1988, the Federal Highway Administration (FHWA) along with other agencies of the Department of Transportation (DOT) adopted regulations requiring pre-employment/pre-use, periodic, post-accident, reasonable cause, and random drug testing. The drug testing required by the rule applies to some persons domiciled or working outside the United States. However, the rule provided that it would not apply in any situation in which a foreign government contended that application of the rule violated that country's laws or policies.

On September 27, 1989, the FHWA published a correction to its drug testing rule to indicate that January 1, 1991, would be the earliest date for testing of these persons.

The Department of Transportation and other elements of the Government have entered into discussions with foreign governments to identify and resolve any conflict between the FHWA drug testing rule (and that of other modal administrations of the DOT) and foreign government laws or policies. The DOT has been conducting active discussions over the last year with representatives of the Canadian government, and has had a preliminary meeting with representatives of the nations of the European Economic Community. The Department has chosen to focus its attention first on discussions with Canada, because the rules of five different modal administrations could affect Canadian businesses. Unfortunately, the discussions with the Canadians have not yet been completed.

However, the Department has made progress in its discussions with the Canadians, and has found that there are a number of important issues on which we agree. We therefore continue to believe that, with additional time, we will be able to develop an approach to the problem of drugs in the transportation industry that will be mutually acceptable.

In order to allow that agreement to be reached in an orderly fashion, we have determined that additional time is necessary. An additional delay of approximately one year will, we hope, enable us to achieve an acceptable arrangement on drug deterrence with Canada and other countries. Accordingly, we have determined to postpone until January 2, 1992 the date by which testing programs must commence for employees of foreign-domiciled carriers operating out of a base of operations located outside the U.S., whether or not the affected foreign government has formally notified us of conflicts with its laws and policies. Our action here does not postpone testing for any other person, including U.S.-based employees of American subsidiaries of foreign companies.

Regulatory Procedures

The FHWA has determined that this rule modifies a major rule under Executive Order 12291 and a significant regulation under the regulatory policies and procedures of the Department of Transportation. This document is considered significant because of its international impact but is not major in itself. The amendment merely defers implementation of the rule for a narrow class of drivers faced with an unusual situation which should be resolved by discussions among appropriate governments. In addition, for these reasons and because this amendment is being issued to clarify the existing rule, further public comment is considered unnecessary. Further notice and opportunity for comment are not required under the regulatory policies and procedures of the Department of Transportation because it is not anticipated that such action could result in the receipt of useful information. Therefore, the FHWA finds good cause to make the amendment final without notice and opportunity for comment and without a 30-day delay in effective date under the Administrative Procedure Act. Accordingly, this amendment is effective upon publication in the Federal Register.

This rulemaking document amends the FHWA's November 21, 1988, controlled substance testing final rule, as that rule was previously amended in September 27, 1989. The impacts of the provision addressed in today's document have already been considered in the impact documentation prepared for the November 21, 1988, final rule. The changes made to the final rule by this document do not appreciably affect the impact documentation already prepared.

The impact documentation prepared for the November 21, 1988, final rule includes: A Regulatory Impact analysis which is available for inspection in the headquarters office of the FHWA, 400 Seventh Street, SW., Washington, DC; a small entity impact analysis under the Regulatory Flexibility Act; and a Federalism Assessment under Executive Order 12612.

To the extent that any new economic impacts will result from this change, the amendment will lessen regulatory burdens by increasing the time available to comply with existing regulatory requirements. For this reason, a separate economic analysis has not been prepared for this amendment. For the same reason, and under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 391

Controlled substances, Highways and roads, Highway safety, Motor carriers, Motor vehicle safety.

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

Issued on December 20, 1989.

T.D. Larson,
Administrator.

In consideration of the foregoing, the FHWA is amending title 49, Code of Federal Regulations, subtitle B, chapter III, part 391 as set forth below:

PART 391—QUALIFICATIONS OF DRIVERS [AMENDED]

1. Authority citation for part 391 continues to read as follows:

Authority: 49 U.S.C. App. section 2505; 49 U.S.C. 504 and 3102; 49 CFR 1.48.

Subpart H—Controlled Substances Testing [Amended]

2. In § 391.83, paragraph (c) is revised to read as follows:

§ 391.83 Applicability.

* * * * *

(c) This subpart is not applicable until January 2, 1992, with respect to any foreign-based employee of a foreign-domiciled carrier. On or before July 1, 1991, the Administrator shall issue any necessary amendment resolving the applicability of this subpart to such employee on and after January 2, 1992.

* * * * *

[FR Doc. 89-30013 Filed 12-26-89; 8:45 am]
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Part VII

Department of Labor

Mine Safety and Health Administration

30 CFR Part 5

Fee Adjustments for Testing, Evaluation and Approval of Mining Products; Final Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

FOR FURTHER INFORMATION CONTACT: Robert W. Dalzell, Chief, Approval and Certification Center, R.R. 1, Box 251, Industrial Park Road, Triadelphia, West Virginia 26059, (304) 547-2038.

of Acceptance (SNAP) Statement of Test and Evaluation (ST&E) for Lighting Systems at a flat rate fee. All flat rate

FEE SCHEDULE EFFECTIVE JANUARY 1, 1990 (BASED ON FY 1989 DATA)—Continued

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 5

Fee Adjustments for Testing, Evaluation and Approval of Mining Products

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: This notice revises the Mine Safety and Health Administration's (MSHA) user fees for testing, evaluation and approval of certain products manufactured for use in underground mines. These fees are based on fiscal year 1989 data and reflect changes in approval processing operations as well as costs incurred to process approval actions.

DATES: These fee schedules are effective from January 1, 1990, through December 31, 1990. Approval applications postmarked before January 1, 1990, will be chargeable under the fee schedules as published on January 3, 1989.

FOR FURTHER INFORMATION CONTACT: Robert W. Dalzell, Chief, Approval and Certification Center, R.R. 1, Box 251, Triadelphia, West Virginia 26059.

SUPPLEMENTARY INFORMATION: In general, MSHA has computed the revised fees based on the cost to the government to provide testing, evaluation, and approval of products manufactured for use in underground mines. On May 8, 1987 (52 FR 17506), MSHA published a final rule, 30 CFR part 5—Fees for Testing, Evaluation, and Approval of Mining Products, which established the specific procedures for fee calculation, administration, and revisions. This revised fee schedule is established in accordance with the procedures of that rule.

There were two new approval programs introduced during fiscal year 1989—Acceptances for Fiber Optic Cables and Cables Smaller than #14 AWG and Longwall Shearer Approvals. These approvals are subject to hourly rates prescribed under Part 18, Actions 15 and 41, respectively. Also, a new schedule is included reflecting a new approval action—Stamped Notification of Acceptance (SNAP) Statement of Test and Evaluation (ST&E) for Lighting Systems at a flat rate fee. All flat rate approvals require payment at the time of application submittal.

Increased costs associated with processing other SNAP actions and Stamped Revision Acceptance (SRA) actions are reflected in the new schedules. In March 1988, a modified cancellation policy was effected to provide applicants with a mechanism to correct discrepancies within a specified time period. This mechanism reduced the number of cancellations and overall cost to applicants but increased the average time and cost expended for processing.

Statement of Test and Evaluation (ST&E) Extensions and Longwall Area Lighting Extensions (Part 75, Action 17 and Other A&CC Services, Action 42, respectively) have been separated into two fee schedules to reflect the difference in expended time and cost.

Dated: December 19, 1989.

William J. Tattersall,

Assistant Secretary for Mine Safety and Health.

FEE SCHEDULE EFFECTIVE JANUARY 1, 1990 (BASED ON FY 1989 DATA)

30 CFR Part and Agency Tracking Code	Hourly Rate	Flat Rate	Application Fee
Part 7—Product Testing by Third Party			
12 Approval Evaluation—Battery Assemblies	$34		$100
12 Approval Evaluation—Bratice and Ventilation Tubing	40		100
12 Approval Evaluation—Multiple-Shot Blasting Units(d)	37		100
14 Approval Extension—Battery Assemblies	34		100
14 Approval Extension—Bratice and Ventilation Tubing	39		100
14 Approval Extension—Multiple-Shot Blasting Units(d)	37		100
40 Stamped Notification Acceptance Program (SNAP)		206	
Part 15—Explosives			
12 Approval Evaluation(a)	39		100
Permissibility Tests for Explosives:			
Weigh-in		420	
Physical Exam: First Size		295	
Chemical Analysis		1,797	
Air gap—Minimum Product Firing Temperature		418	
Air gap—Room Temperature		320	
Pendulum Friction Test		148	
Detonation Rate		320	
Gallery Test 7		4,917	
Gallery Test 8		3,537	
Toxic Gases (large chamber)		732	
Permissibility Tests for Sheathed Explosives:			
Physical Examination		128	
Chemical Analysis		1,044	
Gallery Test 9		1,944	
Gallery Test 10		1,944	
Gallery Test 11		1,944	
Gallery Test 12		1,944	
Drop Test		648	
Temperature Effects/Detonation		672	
Toxic Gases		560	
14 Approval Extension	39		100
Part 18—Electric Motor Driven Equipment and Accessories			
12 Approval—Machine Evaluation(a)	40		100
Approval—Machine Testing:			
Explosion Test	30		
Surface/Temperature Test	33		
Impact Test	29		
Thermal Shock Test	30		
Product Flame Test	36		
14 Approval Extension—Machine Evaluation(a)	40		100
Approval Extension—Machine Testing			
Explosion Test	30		
Surface/Temperature Test	33		
Impact Test	29		
Thermal Shock Test	30		
Product Flame Test	36		
14 Approval Extension—Instruments (testing included)	35		100
15 Acceptance Evaluation(a)	36		100
Acceptance Testing:			
Explosion Test	30		
Surface/Temperature Test	33		
Impact Test	29		
Thermal Shock Test	30		
Product Flame Test	36		
Cable/Splice Test	37		
Cable Flame Test	37		
Compressibility Test (asbestos substitutes)	36		
16 Certification Evaluation(a)	36		100
Certification Testing:			
Explosion Test	30		
Surface/Temperature Test	33		
Impact Test	29		
Thermal Shock Test	30		
Product Flame Test	36		
17 Acceptance Extension	36		100
18 Certification Extension(a)	34		100
Certification Extension Testing:			
Explosion Test	30		
Surface/Temperature Test	33		
Impact Test	29		
Thermal Shock Test	30		
Product Flame Test	36		
21 Field Modification	40		100
22 Field Approval		74	
26 Permit—Machines(a)	39		100
Permit Testing:			
Explosion Test	30		
Surface/Temperature Test	33		
Impact Test	29		
Thermal Shock Test	30		
Product Flame Test	36		
26 Permit—Instruments (testing included)	25		100
30 Intrinsic Safety Determination (testing included)	41		100
31 Intrinsic Safety Determination Extension (testing included)	39		100
32 Simplified Certification(a)	33		100
Simplified Certification Testing:			
Explosion Test	30		
Surface/Temperature Test	33		
Impact Test	29		
Thermal Shock Test	30		
Product Flame Test	36		
34 Simplified Certification Extension(a)	33		100
Simplified Certification Ext. Testing:			
Explosion Test	30		
Surface/Temperature Test	33		
Impact Test	29		
Thermal Shock Test	30		
Product Flame Test	36		
40 Stamped Notification Acceptance Program (SNAP)		206	
41 Longwall Approval	38		100
42 Longwall Approval Extension	36		100
Part 19—Electric Cap Lamps			
12 Approval (testing included)	36		100
14 Approval Extension (testing included)	36		100
40 Stamped Notification Acceptance Program (SNAP)		206	
Part 20—Electric Mine Lamps			
12 Approval (testing included)	36		100
14 Approval Extension (testing included)	36		100
40 Stamped Notification Acceptance Program (SNAP)		206	
Part 21—Flame Safety Lamps			
12 Aprpoval (testing included)	36		100
14 Approval Extension (testing included)	36		100
40 Stamped Notification Acceptance Program (SNAP)		206	

FEE SCHEDULE EFFECTIVE JANUARY 1, 1990 (BASED ON FY 1989 DATA)—Continued

30 CFR Part and Agency Tracking Code	Hourly Rate	Flat Rate	Application Fee

FEE SCHEDULE EFFECTIVE JANUARY 1, 1990 (BASED ON FY 1989 DATA)—Continued

30 CFR Part and Agency Tracking Code	Hourly Rate	Flat Rate	Application Fee

FEE SCHEDULE EFFECTIVE JANUARY 1, 1990 (BASED ON FY 1989 DATA)—Continued

30 CFR Part and Agency Tracking Code	Hourly Rate	Flat Rate	Application Fee

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FEE SCHEDULE EFFECTIVE JANUARY 1, 1990 (BASED ON FY 1989 DATA)—Continued

30 CFR Part and Agency Tracking Code	Hourly Rate	Flat Rate	Application Fee
Part 22—Portable Methane Detectors			
12 Approval (testing included)	36		100
14 Approval Extension (testing included)	35		100
40 Stamped Notification Acceptance Program (SNAP)		208	
Part 23—Telephones and Signaling Devices			
2 Approval (testing included)	38		100
14 Approval Extension (testing included)	34		100
40 Stamped Notification Acceptance Program (SNAP)		208	
Part 24—Single-Shot Blasting Units			
12 Approval (testing included)	41		100
14 Approval Extension (testing included)	41		100
40 Stamped Notification Acceptance Program (SNAP)		208	
Part 25—Multiple-Shot Blasting Units			
12 Approval (testing included)(d)	41		100
14 Approval Extension (testing included)(d)	41		100
40 Stamped Notification Acceptance Program (SNAP)(d)		208	
Part 26—Lighting Equipment for Illumination			
12 Approval (testing included)	41		100
14 Approval Extension (testing included)	41		100
40 Stamped Notification Acceptance Program (SNAP)		208	
Part 27—Methane Monitoring Systems			
16 Certification (testing included)	41		100
18 Certification Extension (testing included)	34		100
40 Stamped Notification Acceptance Program (SNAP)		208	
Part 28—D.C. Current Fuses			
12 Approval (testing included)	41		100
14 Approval Extension (testing included)	41		100
40 Stamped Notification Acceptance Program (SNAP)		208	
Part 29—Portable Dust Analyzers and Methane Monitors			
12 Approval (testing included)	36		100
14 Approval Extension (testing included)	36		100
40 Stamped Notification Acceptance Program (SNAP)		208	
Part 31—Diesel Mine Locomotives			
12 Approval	36		100
14 Approval Extension	36		100
Part 32—Mobile Diesel-Powered Equipment for Noncoal Mines			
12 Approval	36		100
14 Approval Extension	36		100
16 Certification Evaluation(a)	38		100
Certification Testing:			
Emissions Test	39		
Pre/Post Test Preparation	36		
18 Certification Extension Evaluation(a)	38		100
Emissions Test	39		
Pre/Post Test Preparation	36		
Part 33—Dust Collectors			
12 Approval Evaluation without Cert. of Performance(a)	40		100
Approval Testing:			
Dust Collector Test	43		
14 Approval Extension Evaluation(a)	40		100
Approval Extension Testing:			
Dust Collector Test	43		
16 Certification Evaluation(a)	39		100
Certification Testing:			
Dust Collector Test	43		
18 Certification Extension(a)	39		100
Certification Extension Testing:			
Dust Collector Test	43		
21 Field Modification	40		100
29 Dust Collector Approval with Cert. of Performance	39		100
40 Stamped Notificaeon Acceptance Program (SNAP)		208	
Part 35—Fire-Resistant Hydraulic Fluids			
12 Approval (testing included)	37		100
14 Approval Extension (testing included)	35		100
Part 36—Mobile Diesel-Powered Equipment			
12 Approval	40		100
14 Approval Extension	40		100
16 Certification—Engine Evaluation(a)	36		100
Certificaton—Engine Testing:			
Emissions Test	37		

FEE SCHEDULE EFFECTIVE JANUARY 1, 1990 (BASED ON FY 1989 DATA)—Continued

30 CFR Part and Agency Tracking Code	Hourly Rate	Flat Rate	Application Fee
Explosion Test	38		
Surface Temperature/Safety Controls Test	36		
Pre/Post Test Preparation	36		
18 Certification Extension—Engine Evaluation(a)	37		100
Certification Extension—Engine Testing:			
Emissions Test	37		
Explosion Test	38		
Surface Temperature/Safety Controls Test	36		
Pre/Post Test Preparation	36		
21 Field Modification	36		100
27 Certification—Diesel Components Evaluation(a)	38		100
Certification—Diesel Components Testing:			
Emissions Test	37		
Explosion Test	38		
Water Consumption/Cooling Efficiency Test	38		
Surface Temperature/Safety Controls Test	36		
Pre/Post Test Preparation	36		
28 Certification Extension—Diesel Components Evaluation(a)	39		100
Certification Extension—Diesel Components Testing:			
Emissions Test	37		
Explosion Test	38		
Water Consumption/Cooling Efficiency Test	38		
Surface Temperature/Safety Controls Test	36		
Pre/Post Test Preparation	36		
40 Stamped Notification Acceptance Program (SNAP)		208	
Part 74—Coal Mine Dust Personal Sampler Units			
12 Approval	36		100
Other A&CC Services			
15 Acceptance—Overcurrent Relays (testing included)	37		100
15 Statement of Test and Evaluation (ST&E)		30	
15 Acceptance—Ground Check Monitor/Ground Wire Devices (testing included)	38		100
17 Acceptance Extension—Overcurrent Relays	37		100
17 Acceptance Extension—Interim Criteria	37		100
17 Statement of Test and Evaluation (ST&E) Extension		18	
17 Acceptance Extension—Ground Check Monitor/Gr. Wire Devices	36		100
20 Stamped Revision Acceptance (SRA)(b)		137	
24 Acceptance—Panic Bar	37		100
33 Generic Statement of Test and Evaluation (ST&E)	38		100
37 Acceptance—Interim Criteria(a)	36		100
Interim Criteria Testing:			
Product Flame Test	36		
40 Stamped Notification Acceptance (SNAP)/Gr. Check Monitor and Ground Wire Device		208	
40 Stamped Notification Acceptance (SNAP) ST&E		53	
41 Approval—Longwall Area Lighting	39		100
42 Approval Extension—Longwall Area Lighting	38		100
50 Mine Wide Monitoring System (MWMS) Evaluation		215	
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54 Mine Wide Monitoring System (MWMS) Sensor Classification		115	
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NOTES:
(a) Full approval fee consists of evaluation cost plus applicable test costs.
(b) Fee covers SRA application accompanied by up to 5 documents.
(c) Fee based upon the approval schedule in effect at the time of retest.
(d) Applications for multiple-shot blasting units postmarked after January 22, 1991, must be submitted under 30 CFR Part 7 Third Party Testing. Applicable fees are listed under 30 CFR Part 7 Fees Schedule.

When testing and evaluation are required at locations other than MSHA's premises, the applicant shall reimburse MSHA for traveling, subsistence, and incidental expenses of MSHA's representation in accordance with standardized government travel regulations. This reimbursement is in addition to the fees charged for evaluation and testing.

[FR Doc. 89-29994 Filed 12-26-89; 8:45 am]
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on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 2494/Pub. L. 101-240
International Development and Finance Act of 1989. (Dec. 19, 1989; 103 Stat. 2492; 33 pages) Price: $1.25

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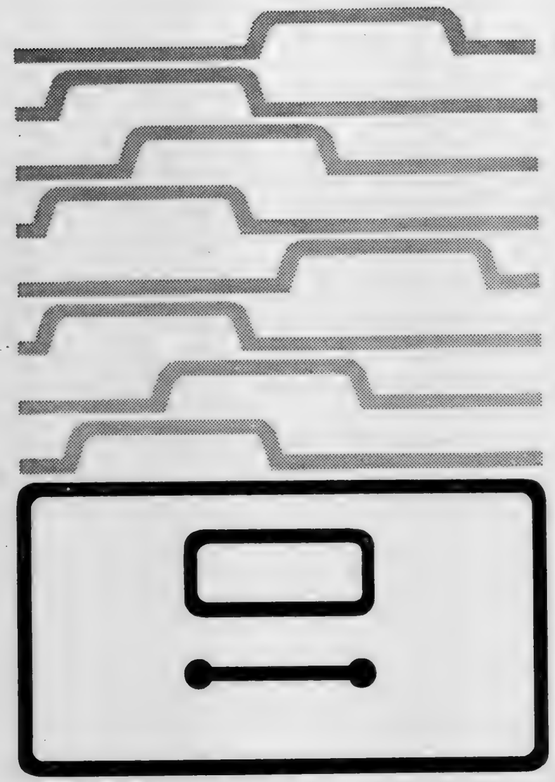

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in the Code of Federal Regulations (CFR)

Revised January 1, 1989

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For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 630

RIN: 3206-AD69 and 3206-AD70

Absence and Leave; Voluntary Leave Transfer and Voluntary Leave Bank Programs

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final rules governing the leave sharing programs authorized by Public Law 100-566—the voluntary leave transfer program and the voluntary leave bank program. These rules set forth procedures under which potential leave recipients may submit applications and establish rules for employing agencies to administer the programs. The voluntary leave bank program operates only in the approved agencies and administrative subunits announced in the Federal Register on July 28, 1989 (54 FR 31398). Both leave sharing programs will terminate on October 31, 1993.

EFFECTIVE DATE: January 29, 1990.

FOR FURTHER INFORMATION CONTACT: For information on the voluntary leave transfer program, Martha Hoehn, (202) 632-5056; for information on the voluntary leave bank program, John P. Cahill, (202) 632-5056.

SUPPLEMENTARY INFORMATION: OPM published interim regulations governing the voluntary leave transfer program in the Federal Register on January 31, 1989 (54 FR 4749), providing that interested persons could file comments through April 3, 1989. Interim regulations governing the voluntary leave bank program and technical amendments to the interim voluntary leave transfer regulations were published in the Federal Register on April 28, 1989 (54 FR 18267), providing that interested persons could file comments through June 27, 1989.

We received comments on the voluntary leave transfer program from 17 agencies and 5 individuals. We received comments on the voluntary leave bank program from 3 agencies, 1 labor organization, and 1 individual. Several commenters addressed issues affecting both leave sharing programs.

Comments on Voluntary Leave Transfer Program

General. All of the comments received supported the establishment of the voluntary leave transfer program in the Federal Government. However, many of the suggested changes in the interim regulations would require a change in the statute and cannot be incorporated in the final regulations. Several agencies requested that OPM provide further guidance on various aspects of program administration. In response to these requests, OPM issued FPM letter 630-33 on October 4, 1989. Agencies should refer to this issuance to assist them in the implementation of the voluntary leave transfer program.

Section 630.902 Definitions

Four agencies requested that the definition of "medical emergency" be revised to specify that a medical emergency must be unforeseen and that the period of absence from duty does not have to be continuous. One agency requested that the definition indicate whether "normal" maternity situations and elective surgery are covered. We believe a "medical emergency" should be involuntary and beyond the control of the leave recipient. We recognize that some leave recipients are able to be at work on a temporary or intermittent basis while being affected by a medical emergency. The current definition does not preclude these employees from participation. In regard to "normal" maternity situations, the authority to determine whether an application to become a leave recipient meets the definition of "medical emergency" is delegated to each agency. However, we believe the intent of the law is to cover only those situations in which a serious medical illness or condition of the mother or newborn exists. We do not believe a normal maternity situation (i.e., without unusual medical complications) should be covered by the definition.

Two agencies suggested that the definition of "family member" be revised. One agency requested that the definition include adopted children, stepchildren, or foster children and their spouses. Another agency suggested that paragraph (e), which covers non-traditional relationships, be revised or eliminated altogether.

The definition of "family member" is derived from the definition of "immediate relative" used for funeral leave purposes. (See 5 CFR 630.803(d).) We recognize that there may be cases in which the traditional concept of a family relationship is not applicable, yet a close relationship to the leave recipient exists that is the equivalent of a family relationship. Examples include foster children and stepchildren. The determination as to whether an individual meets this definition is at the agency's descretion and should be made on a case-by-case basis. We do not believe it is necessary to revise the definition.

Section 630.904 Application To Become a Leave Recipient

One agency and one individual suggested that the term "other appropriate experts" be defined to include chiropractors, Christian Scientist practitioners, and psychologists. One individual suggested that an employee who is a Christian Scientist should not be required to submit a medical certificate from a physician in order to participate in the program. Another agency suggested that agencies have the authority to select physicians, such as agency medical officers or other appropriate experts, to document the medical emergency. We do not believe it is necessary to define "other appropriate experts," as used in § 630.904. Agencies already have the authority to determine the applicability of this term.

Section 630.905 Approval of Application To Become a Leave Recipient

One agency suggested that the words "at least" be deleted from the requirement for 80 hours of unpaid absence. Another agency suggested clarification of the term "available paid leave" for agencies that advance annual leave to employees at the beginning of the leave year under 5 U.S.C. 6302(d).

Another agency suggested that factors leading to the unavailability of paid leave be considered in the review of an agency to solicit annual leave donations from additional employees when one individual employee's donation of

leave donor's performance plan or who has influence over any personnel action affecting the leave donor. Based on the

recommended that leave recipients should be able to use accrued leave (annual leave and sick leave, if

Section 630.906 Limitations on Donation of Annual Leave

One agency asked whether it is

resulting from advanced annual and sick leave. In most cases, the employee has returned to work and is in a leave

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Another agency suggested that factors leading to the unavailability of paid leave be considered in the review of an application to become a leave recipient. Several agencies commented on the 10-day requirement for an agency to make a determination on the approval of an application to become a leave recipient. Agencies suggested that the 10-day requirement be based on the submission of a complete, fully documented application submitted by the employee. One agency suggested that agency review procedures should permit supervisory clearance for applications before referral to the administrative office for a final decision. Finally, one agency suggested that if one employee donates a sufficient amount of annual leave to the leave recipient, so that no more donations are necessary, the agency should not be required to solicit additional donations of annual leave from other employees.

We do not believe it is necessary to delete the words "at least" from the requirement for 80 hours of unpaid absence. Agencies that make available to employees all of the annual leave they will accrue during the leave year, at the beginning of the leave year, must still ensure that the employee has experienced at least 80 hours of unpaid absence in order to be approved as a leave recipient. One option for agencies that advance leave under 5 U.S.C. 6302(d) would be to retract that portion of advanced annual leave which the employee has not used so that the employee can begin his or her period of unpaid absence. (This issue is addressed further in FPM letter 630–33.) Each agency currently has the authority to establish procedures to determine whether an application to become a leave recipient is approved. If an agency wishes to consider why an employee is without available paid leave (such as misuse of leave), it may do so. However, we caution agencies to make sure that any allegation of misuse of leave is fully documented in the employee's personnel file. The 10-day requirement for an agency to make a final determination on an application to become a leave recipient is a statutory requirement. We believe it would be appropriate for an agency to require the receipt of a complete and fully documented application before it applies the 10-day response requirement. However, upon receipt of a complete and fully documented application, agencies must comply within the timeframe required by the statute and regulations, regardless of the internal clearance procedures established by an agency. There is no restriction in the statute or regulations that would require an agency to solicit annual leave donations from additional employees when one individual employee's donation of annual leave meets the needs of the leave recipient. Finally, we are revising paragraph (c) of this section to make it clear that the 80-hour requirement applies to part-time employees and employees with an uncommon tour of duty in the same manner as the corresponding requirement in paragraph (b).

Section 630.906 Transfer of Annual Leave

Three agencies and one individual commented on this section of the interim regulations. Two agencies commented that OPM should establish a limitation on the period of time for which a leave recipient may retroactively substitute transferred annual leave for periods of LWOP or indebtedness resulting from advanced annual and sick leave. OPM cannot establish such a limitation because the statute permits the leave recipient to apply transferred annual leave retroactively to the beginning of the medical emergency, regardless of when it commenced. Agencies should refer to FPM letter 630–33 for further guidance.

One agency suggested revision of paragraphs (f)(1), (f)(2), and (f)(3) to clarify that only one of the requirements specified in these paragraphs needs to be met in order for interagency transfer of annual leave to occur. Another agency suggested that interagency transfer of annual leave should be permitted without regard to whether a sufficient amount of annual leave is donated from within the agency of the leave recipient. We agree that only one of the requirements listed under (f)(1), (f)(2), and (f)(3) needs to be met in order for interagency leave transfer to occur, but do not believe the regulation requires further clarification. Also, because interagency leave transfer creates administrative difficulties in some cases, we do not believe interagency leave transfer is desirable when the leave recipient has already received a sufficient amount of leave to meet his or her needs, unless the donation is made by a family member of the leave recipient.

One agency suggested revision of the term "accrued leave" to "accrued or accumulated leave." We believe this revision is unnecessary and could cause confusion if adopted. Also, it was suggested by an individual that the restriction on the donation of annual leave by a leave donor described in paragraph (d) be expanded to exclude donations of annual leave to any other person who will review or approve the leave donor's performance plan or who has influence over any personnel action affecting the leave donor. Based on the Government's experience under this program to date, we have no reason to believe it is necessary to expand upon the current restriction.

Finally, one agency requested further guidance concerning leave recipients who transfer to another agency. It should be noted that under the voluntary leave transfer program, when a leave recipient experiencing a medical emergency transfers to another agency, the statute and regulations require that the unused donated annual leave transfer with the employee to the new agency for future use. The medical emergency does not terminate simply because of the transfer of the employee. This was not the case under the FY 88 temporary leave transfer program because under that program, the leave recipient's personal emergency was deemed to have terminated upon transfer to another Federal agency. OPM developed Standard Form 1150–A for agency use in this situation. (See FPM letter 630–33.)

Section 630.907 Accrual of Annual and Sick Leave

Fourteen agencies made significant comments and suggestions on this section of the interim regulations. In addition, we have received numerous telephone comments from agencies on the difficulty of administering this part of the program. Unfortunately, OPM does not have the authority to revise this section of the regulations because it reflects a statutory requirement. We have, however, addressed some of the issues raised by agencies in our FPM guidance (FPM letter 630–33). We also plan to incorporate some of the comments received in our report to Congress on the operation of the voluntary leave sharing programs.

Agency recommendations and comments addressed three basic concerns: (1) The purpose of provisions in paragraphs (e)(1) and (e)(2) that require agencies to maintain separate annual and sick leave accounts, which cannot exceed 40 hours each for each leave recipient; (2) the purpose of the separate sick leave account for leave recipients affected by a medical emergency of a family member; and (3) the effect of leave accrual for leave recipients whose medical emergency permits them to work on a part-time or intermittent basis.

Several agencies suggested that the requirements for establishing separate annual and sick leave accounts be eliminated completely. They recommended that leave recipients should be able to use accrued leave (annual leave and sick leave, if appropriate) during the medical emergency, especially when annual leave donations from other employees are not sufficient. One agency indicated that it was not clear whether the leave recipient continues to accrue leave once the separate accounts accumulate to 40 hours. Another agency recommended that (1) the leave recipient should not accrue leave until after the medical emergency terminates, at which time the agency would credit the employee's account with the leave he or she would have accumulated; and (2) the agency should be permitted to credit the employee's annual leave account with unused donated leave. In cases in which the unused donated leave is insufficient, the agency could administratively fund the account.

The law and OPM's regulations provide that a leave recipient will earn annual and sick leave while using transferred leave, but only up to 40 hours of each, which are placed in separate accounts for use after the medical emergency ends. Once the separate leave accounts reach 40 hours, the leave recipient does not accrue any more leave while using transferred leave.

Some employees may be able to return to work on a temporary or part-time basis even though the medical emergency has not yet terminated. If a leave recipient is able to work some of the time, the annual and sick leave earned while the employee is working should be placed in his or her regular annual and sick leave accounts. Because the purpose of the leave transfer program is to allow employees who have exhausted all their earned leave to use leave donated by others, the leave recipient must use up any leave earned while working on a temporary or part-time basis *before* using any additional transferred leave. Agencies should note that any employee whose medical emergency is based on the sickness or disability of a family member cannot use sick leave to care for the family member. He or she need only exhaust any annual leave earned during the period of temporary or part-time work before using additional transferred leave. Even in this situation, however, the law requires agencies to set aside a maximum of 40 hours of sick leave (as well as annual leave) accrued while the leave recipient is using transferred leave. This leave must be placed in separate leave accounts for use after the medical emergency ends.

Section 630.908 Limitations on Donation of Annual Leave

One agency asked whether it is mandatory for agencies to establish written criteria for waiving the limitations on donating annual leave, as described in paragraph (c) of the interim regulations. Two agencies recommended either deleting or defining the term "unusual circumstances" in the same paragraph. The interim regulations require each agency to establish written criteria for waiving these limitations in unusual circumstances. OPM has delegated to each agency the authority to determine when an unusual circumstance exists. Agencies should refer to FPM letter 630–33 for further guidance. Two agencies recommended that the limitations on donation of annual leave described in paragraphs (b)(1) and (b)(2) be removed. OPM does not have the authority to remove these restrictions, since they are statutory requirements.

Section 630.909 Use of Transferred Annual Leave

One agency requested guidance as to whether it is necessary for a leave recipient to exhaust all of his or her sick leave when the medical emergency is that of a family member. Because current regulations do not permit an employee to use sick leave to care for a family member in most situations, the leave recipient does not have to exhaust his or her sick leave before using transferred annual leave. Another agency requested that the regulations specify that transferred annual leave can be used only for purposes related to the medical emergency. We agree that the purpose of the voluntary leave transfer program is to help the leave recipient offset the hardship caused by the medical emergency. Therefore, any leave donated and transferred to a leave recipient should be used only for that purpose. We do not believe, however, that it is necessary to revise the regulations to address this matter because the use of transferred annual leave is subject to supervisory approval, as is the case with annual leave in general. The agency has the responsibility for monitoring the use of leave by a leave recipient to ensure that its use is for an appropriate purpose.

Section 630.910 Termination of Medical Emergency

Five agencies commented that the language in the interim regulations does not include situations covering past medical emergencies. In these situations, transferred annual leave is applied on a retroactive basis to cover periods of LWOP and indebtedness resulting from advanced annual and sick leave. In most cases, the employee has returned to work and is in a leave earning status. In some cases, the actual medical emergency has ended before the employee submits an application to become a leave recipient. In other cases, the medical emergency is ongoing at the time the application to become a leave recipient is submitted to the agency, but has since ended. This may result in the employee's return to work without enough annual leave donated to cover his or her entire period of incapacitation. We are revising the interim regulations to address this situation. Agencies will have discretionary authority to continue the period of time a leave recipient may receive donations of annual leave, even though the medical emergency has ended and the leave recipient has returned to work.

One agency suggested that the interim regulations should specify that a medical emergency shall terminate if the employee is covered by workers' compensation benefits administered by the Office of Workers' Compensation Programs (OWCP), Department of Labor. We do not feel this change is desirable because such a restriction could put some employees with job-related disabilities at a disadvantage with respect to other employees. Further, since workers' compensation payments cover only periods during which an employee has suffered a loss of pay, leave recipients participating in the Voluntary Leave Transfer and Voluntary Leave Bank Programs who use donated annual leave (or annual leave from an agency's leave bank) are not eligible to receive payment from OWCP for periods of time covered by such leave. Three other agencies requested guidance from OPM on how to handle the repurchase of leave for employees who are leave recipients under the voluntary leave transfer program. We believe that if a leave recipient elects to "buy back" annual leave as a result of a claim approved by OWCP, the amount of transferred annual leave bought back by the leave recipient should be restored to the leave donors.

Another agency suggested that the medical emergency should terminate as soon as the condition giving rise to the emergency ends, even if this occurs in the middle of a biweekly pay period. While this would permit the employee immediately to begin using the annual and sick leave set aside in separate leave accounts during the medical emergency, the employee would not *earn* any leave for the balance of that

pay period, since leave accrual is based on service during full biweekly pay periods. Therefore, we believe it is

rate. We note that the leave accrual rate is more relevant to an application to

subpart F also issued under E.O. 11228; Subpart G also issued under 5 U.S.C. 6305; subpart H issued under 5 U.S.C. 6326; subpart

revising paragraph (b)(4), removing the word "and" at the end of paragraph (b)(5), redesignating paragraph (b)(6) as

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pay period, since leave accrual is based on service during full biweekly pay periods. Therefore, we believe it is desirable to consider a medical emergency to be terminated as of the end of a biweekly pay period, as provided in the current regulations.

Section 630.911 Restoration of Transferred Annual Leave

One agency commented on this section of the interim regulations. The agency asked whether paragraphs (c) and (d) were the only situations in which the restoration of leave is not required. To OPM's knowledge, we are aware of one circumstance (in addition to paragraphs (c) and (d)) under which the restoration of annual leave to a leave donor is not necessary. It is possible that a leave donor may have left his or her employing agency subsequent to the donation of annual leave and cannot be located for leave restoration purposes. This possibility is covered by the "administratively feasible" provision found in paragraph (a) of this section.

It was also suggested that in situations in which unused transferred annual leave does not have to be restored to the leave donors (paragraphs (c) and (d)), the agency should be permitted to keep the unused annual leave for use by another approved leave recipient within the agency. The statute does not permit adoption of this suggestion.

Finally, the same agency recommended that the options of an employee to have restored leave recredited to his or her annual leave account or donated to another leave recipient, as described in paragraphs (e)(1), (e)(2), and (e)(3), should be based on when the leave is restored. It was suggested that the option in paragraph (e)(2) be made available to the employee only if the unused annual leave is restored after July 31 of the leave year. Because this is a statutory requirement, OPM cannot adopt this change.

Section 630.913 Records and Reports

One agency recommended that the reporting requirements include other demographic data to assist agencies in estimating the cost of the program. Another agency suggested that the requirements include the costs associated with applications that are disapproved, as well as time spent providing information to employees about the program. The regulations as written do not preclude agencies from maintaining whatever records that are useful in estimating program costs. However, we are revising the interim regulations to include three new informational requirements: (1) The gender of each leave recipient, (2) the number of leave recipients who return to work after the termination of the medical emergency, and (3) the number of leave recipients who retire on disability under the Civil Service Retirement System or the Federal Employees's Retirement System within 6 months after the termination of the medical emergency. OPM's purpose in collecting information about the gender of leave recipients is to increase our knowledge about the needs of the Federal work force for additional time off for the purposes covered by this program.

Miscellaneous comments. Two agencies commented on the issue of appeal rights and grievance procedures for employees under the program. We do not believe it is necessary to address this in the regulations. Employees should follow their agencies' established procedures in this regard.

Another agency recommended that employees who donate annual leave to a leave recipient from a restored account should not be limited by the requirements of § 630.906 (b)(1) and (b)(2). Annual leave in a restored account is considered annual leave for purposes of the program and is subject to the statutory and regulatory limitations on donation. OPM cannot adopt this recommendation.

One agency asked if the donation of annual leave can be considered a charitable contribution for Federal income tax purposes. OPM does not have the authority to determine what constitutes a charitable contribution for Federal income tax purposes. This issue is under the jurisdiction of the Internal Revenue Service, Department of the Treasury.

An agency commented on the administrative procedures necessary for interagency transfer of annual leave under the voluntary leave transfer program. OPM has developed an optional form for agency use in this situation. (See FPM letter 630–33.) An individual suggested that military employees be permitted to participate in the program. Adoption of this suggestion would require legislative action and would be difficult to administer because of the differing purposes of these two leave systems.

Finally, two individuals expressed gratitude for the establishment of the voluntary leave transfer program, which assisted them in their time of need.

Comments on Voluntary Leave Bank Program

One agency recommended that OPM allow employees who are not leave bank members to become leave recipients. The statute specifically requires employees to make the prescribed minimum contribution before submitting an application to become a leave recipient and directs OPM to provide for an open enrollment period during which contribution may be made. Since making the required contribution during an enrollment period is how an employee establishes membership in the leave bank, we do not believe the agency's recommendation is consistent with the statute.

Another agency suggested waiving the minimum contribution requirement for employees who have exhausted annual leave because of "hardship." The interim regulations already include a provision designed to accomplish this purpose. (See 5 CFR 1004(i).) We believe the minimum contribution requirements established by statute are low enough to permit the vast majority of employees a reasonable opportunity to join the leave bank.

A labor organization recommended allowing transfers of leave between leave bank agencies. Such interagency transfer was specifically authorized only for the voluntary leave transfer program. We believe Congress established the voluntary leave bank program to test the desirability of completely separate and self-sustaining leave banks. Permitting leave to be transferred between agencies or leave banks would make it difficult or impossible to evaluate this approach.

The same labor organization also suggested that we reduce the required minimum contribution to the leave bank to 2 hours per leave year. As noted above, the statute specifies the required minimum contributions for the 1989 leave year and authorizes the leave bank boards to decrease (or increase) the required minimum contribution for subsequent leave years. We do not believe it would be appropriate to interfere with the functioning of the statutory scheme.

An individual suggested that the regulations permit a leave contributor to designate a specific leave recipient to receive his or her contribution. Section 630.1004(b) of the regulations already permits a leave contributor to state a preference as to the recipient of his or her contribution. We do not believe it would be appropriate to limit by regulation the leave bank board's discretion to decide whether or not to honor such requests.

The same individual suggested that we require an application to become a leave recipient under § 630.1006(c) to specify the applicant's leave accrual rate. We note that the leave accrual rate is more relevant to an application to contribute annual leave to the leave bank, since the applicant's years of service determine the amount of the required minimum contribution. Although agencies are free to require employees to indicate their leave accrual rates on applications to contribute leave or to become leave recipients, we do not believe OPM should require this practice by regulation since many agencies will want to verify the applicants' leave accrual rates by consulting their own records.

OPM is correcting a minor typographical error in § 630.1004 of the interim regulations. In addition, we are revising §§ 630.1007, 630.1010, and 630.1012 of the interim regulations in subpart J to be consistent with the changes made in §§ 630.905, 630.910, and 630.914 of subpart I of the interim regulations on the voluntary leave transfer program.

Finally, OPM is announcing that the Federal Mediation and Conciliation Service (FMCS) will not be participating in the voluntary leave bank program. FMCS was listed as a participating agency in the notification published in the **Federal Register** on July 28, 1989 [54 FR 31398], but withdrew its request prior to the July 31 deadline for implementation.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal employees and agencies.

List of Subjects in 5 CFR Part 630

Government employees.

U.S. Office of Personnel Management.
Constance Berry Newman,
Director.

Accordingly, OPM is adopting the interim rules amending 5 CFR part 630 published in the **Federal Register** (54 FR 4748, January 31, 1989, and 54 FR 18267, April 28, 1989) as final rules with the following changes:

PART 630—ABSENCE AND LEAVE

1. The authority citation for part 630 continues to read as set forth below:

Authority: 5 U.S.C. 6311; § 630.303 also issued under 5 U.S.C. 6133(a); § 630.501 and subpart F also issued under E.O. 11228; Subpart G also issued under 5 U.S.C. 6305; subpart H issued under 5 U.S.C. 6326; subpart I also issued under 5 U.S.C. 6332 and Pub. L. 100–566; subpart J also issued under 5 U.S.C. 6362 and Pub. L. 100–566.

Subpart I—Voluntary Leave Transfer Program

2. In subpart I, § 630.905(c) is revised; § 630.910(d) is added; § 630.913 is amended by revising paragraph (b)(2), removing the word "and" at the end of paragraph (b)(5), redesignating paragraph (b)(6) as (b)(8), and adding paragraphs (b)(6) and (b)(7) to read as follows:

§ 630.905 Approval of application to become a leave recipient.

* * * * *

(c) In making a determination as to whether a "medical emergency" is likely to result in a substantial loss of income, an agency shall not consider factors other than whether the absence from duty without available paid leave is (or is expected to be) at least 80 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the average number of hours of work in the employee's biweekly scheduled tour of duty).

* * * * *

§ 630.910 Termination of medical emergency.

* * * * *

(d) An agency may deem a medical emergency to continue for the purpose of providing a leave recipient an adequate period of time within which to receive donations of annual leave.

§ 630.913 Records and reports.

* * * * *

(b) * * *

(2) The grade or pay level of each leave recipient and leave donor and the gender of each leave recipient;

* * * * *

(6) The number of leave recipients who returned to work after the termination of the medical emergency;

(7) The number of leave recipients who retired on disability retirement under the Civil Service Retirement System or the Federal Employees' Retirement System within 6 months after the termination of the medical emergency; and

* * * * *

Subpart J—Voluntary Leave Bank Program

3. In subpart J, §§ 630.1004(i) and 630.1007(c) are revised; § 620.1010(c) is added; § 630.1012 is amended by revising paragraph (b)(4), removing the word "and" at the end of paragraph (b)(5), redesignating paragraph (b)(6) as (b)(8), and adding paragraphs (b)(6) and (b)(7) to read as follows:

§ 630.1004 Application to become a leave contributor and leave bank member.

* * * * *

(i) If a leave recipient does not have sufficient available accrued annual leave to his or her credit to make the full minimum contribution required by this section, he or she shall be deemed to have made the minimum contribution.

* * * * *

§ 630.1007 Approval of application to become a leave recipient.

* * * * *

(c) In making a determination as to whether a medical emergency is likely to result in a substantial loss of income, the leave bank board shall not consider factors other than whether the absence from duty without available paid leave is (or is expected to be) at least 80 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the average number of hours of work in the employee's biweekly scheduled tour of duty).

* * * * *

§ 630.1010 Termination of medical emergency.

* * * * *

(c) The leave bank board may deem a medical emergency to continue for the purpose of providing a leave recipient an adequate period of time within which to receive contributions of annual leave.

§ 630.1012 Records and reports.

* * * * *

(b) * * *

(4) The grade or pay level and gender of each leave recipient and the total amount of annual leave he or she actually used;

* * * * *

(6) The number of leave recipients who returned to work after the termination of the medical emergency;

(7) The number of leave recipients who retired on disability retirement under the Civil Service Retirement System or the Federal Employees' Retirement System within 6 months after the termination of the medical emergency; and

* * * * *

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OFFICE OF PERSONNEL MANAGEMENT

OFFICE OF GOVERNMENT ETHICS

5 CFR Parts 735 and 2635

RINs 3209–AA01 (formerly 3206–AA93), 3209–AA04 (formerly 3206–AD90)

Employee Responsibilities and Conduct; New Office of Government Ethics Regulation Preserving Certain Executive Agency Gifts Regulations

AGENCY: Office of Government Ethics and Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Government Ethics (OGE), with concurrence of the Office of Personnel Management (OPM), is issuing a final rule under 5 U.S.C. 7351 and 7353, as amended and enacted, respectively, by the Ethics Reform Act of 1989 (Pub. L. 101–194). The new OGE regulation, 5 CFR 2635.101, preserves existing executive branch agency regulations promulgated under 5 CFR 735.202 (Gifts, entertainment, and favors), including exceptions to the regular gifts restrictions. Section 2635.101 and the agency regulations referred to will remain in effect until superseded by revised overall standards of conduct for the executive branch to be issued by the Office of Government Ethics. In the meantime, no such new or revised executive agency gifts regulations will be permitted.

EFFECTIVE DATE: November 30, 1989.

ADDRESSES: Any comments on this document may be sent to: the Office of Government Ethics, Suite 500, 1201 New York Avenue NW., Washington, DC 20005–3917, Attention: Ms. Wilcox or Mr. Gressman; as well as the Office of General Counsel, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415, Attention: Mr. Rick.

FOR FURTHER INFORMATION CONTACT: Leslie A. Wilcox or William E. Gressman, Office of Government Ethics, telephone (202/FTS) 523–5757; or Stuart D. Rick, Office of the General Counsel, Office of Personnel Management, telephone (202/FTS) 632–5030.

SUPPLEMENTARY INFORMATION:

A. Substantive Discussion

On October 1, 1989, in accordance with its 1988 reauthorization legislation (Pub. L. 100–598), the Office of Government Ethics became a separate agency in the executive branch of the United States government. See 5 U.S.C. appendix IV, § 401. OGE was formerly part of OPM. OGE recently established its own chapter XVI of title 5 of the CFR as assigned by the Office of the Federal Register. Furthermore, with the concurrence of the Office of Personnel Management, OGE also transferred and redesignated to its new 5 CFR chapter certain government ethics regulations from OPM's chapter I of 5 CFR (parts 734, 737 and 738 of 5 CFR have become 5 CFR parts 2634, 2637 and 2638, respectively). See 54 FR 50229–50231 (December 5, 1989).

In this document, the Office of Government Ethics, again with the concurrence of OPM, is issuing a regulation preserving the validity of certain executive branch agency gifts regulations. This is needed as a result of the enactment of the Ethics Reform Act of 1989, Public Law 101–194 (November 30, 1989), a comprehensive revision of various government ethics laws and other provisions.

Among other things, the Ethics Reform Act amended, effective upon enactment, the statute generally prohibiting gifts to official superiors, 5 U.S.C. 7351. The amendments change the penalty for violation from removal to appropriate disciplinary action, and give the Office of Government Ethics authority to issue implementing regulations, including appropriate exceptions for voluntary gifts on special occasions. See section 301 of the Ethics Reform Act. Regulations implementing 5 U.S.C. 7351 for the executive branch in effect prior to the effective date of the amendment are set forth at 5 CFR 735.202(d) of OPM's chapter I of 5 CFR and in the various implementing executive agency gifts regulations, as previously issued under Executive Order 11222. Although E.O. 11222 was revoked by Executive Order 12674, April 12, 1989 (54 FR 15159–15162), the regulations at 5 CFR 735.202, along with the other executive branch government ethics regulations, remain in effect pursuant to the general savings provision in section 502 of E.O. 12674. The new OGE regulation 5 CFR § 2635.101, being issued with the concurrence of OPM, provides for the continuing effectiveness of 5 CFR 735.202(d) and the current executive agency regulations issued pursuant thereto or based thereon.

The Ethics Reform Act also added a new statutory prohibition, 5 U.S.C. 7353, effective upon enactment, against federal employee's solicitation or acceptance of gifts from certain persons involved with their agencies, who are often referred to as "prohibited sources." For the executive branch, section 7353 in effect codifies current regulatory gift constraints applicable to agency employees. The new law generally prohibits gifts from persons seeking official action from, having business with or conducting activities regulated by an officer's or employee's agency, as well as from those with interests that could be substantially affected by the official duties of the officer or employee. The statute (section 303 of the Reform Act) designates OGE as the supervising ethics office for all executive branch officers and employees. As such, OGE is authorized to issue implementing regulations, with reasonable exceptions, for the executive branch. In new regulation 5 CFR § 2635.101, OGE preserves, again with OPM concurrence, the gifts restrictions and exceptions currently contained in 5 CFR 735.202 and the executive agency regulations issued pursuant thereto or based thereon.

Because of the pending issuance by OGE of the new overall standards of conduct regulation, new OGE section 2635.101 further states that executive agencies may not issue or amend their existing gifts regulations issued under 5 CFR 735.202. Section 2635.101 shall remain in effect until superseded by more detailed OGE regulations implementing 5 U.S.C. 7351 and 7353, which will be part of the forthcoming overall standards of conduct regulations for the executive branch. The overall standards regulation, the "Principles of Ethical Conduct" to be codified at 5 CFR part 2635, will be issued by the Government Ethics Office pursuant to its authority under Executive Order 12674, the Ethics in Government Act and the Ethics Reform Act of 1989.

B. Procedural Matters

Administrative Procedure Act

This regulation solely concerns matters of federal agency organization and procedure; thus, it is not subject to the notice and opportunity for public comment requirements of the Administrative Procedure Act, 5 U.S.C. 553. Moreover, Office of Government Ethics and the Office of Personnel Management find that it is in the public interest that this new OGE regulation become effective retroactively to the date of signature of the new gifts provisions into law, November 30, 1989. This is needed in order to avoid any potential for violations by executive branch officers and employees of the two types of gifts constraints discussed above that otherwise would appear to be absolute under the Ethics Reform Act in the absence of a regulation continuing the validity of existing exceptions. OGE and OPM additionally believe that there is good cause to waive the notice and comment requirements because the passage of the new law has not allowed time for the normal development of new regulations and it is important to preserve the existing gifts regulations for the guidance of executive agencies and their officers and employees.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this regulation and because it will not have a significant economic impact on a substantial number of small entities, no Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) analysis is required.

E.O. 12291

The Office of Government Ethics has determined that this is not a major rule as defined under section 1(b) of Executive Order 12291, Federal Regulation Requirements.

Paperwork Reduction Act

This regulation does not impose any additional information collection requirements requiring Office of Management and Budget approval under the Paperwork Reduction Act (44 U.S.C. §§ 3501 *et seq.*) (none are directly contained in the new rule itself).

Regulation Identifier Numbers

The Regulation Identifier Numbers (RIN's) in the heading of this document indicate the old OPM numbers concerning two proposed modifications to part 735 in OPM's chapter I of 5 CFR. See the most recent Unified Agenda of the agencies as published in the Federal Register of October 30, 1989 (54 FR 45432, 45437). The first RIN, old OPM number 3206–AA93, which has been assigned new OGE RIN 3209–AA01 (3209 being OGE's agency code assigned by the Office of Management and Budget), does not directly address this new regulation. Rather, it refers to future non-public reporting regulations to be issued by OGE for the executive branch. See new part 2633 (Reserved) in OGE's recently established chapter XVI of 5 CFR. The second prior OPM RIN, 3206–AD90, now assigned OGE Rin 3209–AA04, refers to the overall standards of conduct regulation for the executive branch, the forthcoming Principles of Ethical Conduct to be issued by OGE under E.O. 12674 and other authorities. As noted above, this regulation, to be codified in the future at 5 CFR part 2635, will supersede the new § 2635.101 of 5 CFR being issued by this document as well as various portions of current 5 CFR part 735.

List of Subjects in 5 CFR Part 2635

Conflict of interests, Government employees.

Approved: December 11, 1989.

F. Gary Davis,

General Counsel, Office of Government Ethics.

Approved: December 14, 1989.

Constance B. Newman,

Director, Office of Personnel Management.

For the reasons set out in the preamble and under authority given to the Office of Government Ethics in 5 U.S.C. 7351 and 7353 (as amended and added, respectively, by the Ethics Reform Act of 1989) as well as its authority in Executive Order 12674 and the Ethics in Government Act, the Office of Government Ethics hereby adds the text of 5 CFR part 2635, previously reserved, and the authority citation for part 2635 to read as follows:

PART 2635—PRINCIPLES OF ETHICAL CONDUCT

Authority: 5 U.S.C. 7351, 7353, appendixes III, IV; E.O. 12674, 54 FR 15159.

§ 2635.101 Continuation of executive agency gifts regulations, including exceptions.

Existing executive branch agency gifts regulations issued pursuant to or based on 5 CFR 735.202, including exceptions to restrictions governing gifts to official superiors and to the gift restrictions regarding prohibited sources imposed by Executive order, shall remain in effect until superseded by further regulations to be issued by the Office of Government Ethics pursuant to 5 U.S.C. 7351 and 7353 (as amended and added, respectively, by the Ethics Reform Act of 1989, Public Law 101–194 (November 30, 1989)), as well as Executive Order 12674 and the Ethics in Government Act. Provided, however, that executive agencies may not issue or amend their existing gifts regulations issued under 5 CFR 735.202 subsequent to November 30, 1989.

[FR Doc. 89–30047 Filed 12–27–89; 8:45 am]

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206–AD79

Federal Employees Health Benefits; Health Insurance Coverage for Certain Temporary Employees

AGENCY: U.S. Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing regulations to implement Title III of the Federal Employees Health Benefits Amendments Act of 1988. The regulations give certain temporary employees, who were previously excluded from enrolling, the opportunity to participate in the Federal Employees Health Benefits (FEHB) Program.

EFFECTIVE DATE: January 29, 1990.

FOR FURTHER INFORMATION CONTACT: Margaret C. Randall, (202) 632–4634.

SUPPLEMENTARY INFORMATION: The Federal Employees Health Benefits Amendments Act of 1988, Public Law 100–654, was enacted on November 14, 1988. Title III of the Act, which provides health insurance coverage for certain temporary employees, was effective March 14, 1989. Under Title III, temporary employees who have completed 1 year of current continuous employment, excluding any break in service of 5 days or less, are eligible to participate in the FEHB Program. Title III of the Act also provides that any temporary employee who enrolls, based on meeting the eligibility criteria in Title III of the Act, must have withheld from his or her pay the full subscription charge. The government will make no contribution to the premium.

On February 23, 1989, OPM published an interim regulation in the Federal Register (54 FR 7755) to amend part 890 so that it would conform with provisions of Title III of the Act and to make a special provision for temporary employees who elect not to enroll and subsequently receive a permanent appointment covered under a retirement system. For purposes of continuing enrollment during retirement, such employees' first opportunity to enroll begins when they receive a permanent appointment which entitles them to participate in a retirement system and also entitles them to receive the government contribution toward their health benefits premium payments.

OPM received comments from one employee organization, one insurance company, and one Government agency. The employee organization expressed confusion over how temporary employees would ever acquire the 1 year of current continuous employment needed to become eligible since, by definition, a temporary appointment cannot exceed 1 year. The law addresses those temporary employees who have worked for more than 1 year.

The assumption would be that their appointments are renewed after 1 year (not an uncommon occurrence). It is not intended to cover those individuals who work for the Government for 1 year or less. The organization also suggested reducing the period of employment needed for eligibility from 1 year to 3 or 6 months. Since the 1 year of current

continuous employment is specified in the law, reducing it to 3 or 6 months is

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

NUCLEAR REGULATORY COMMISSION

Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

Source material, Special nuclear material, Waste treatment and disposal.

5. In § 1.5, paragraph (a) is revised to read as follows:

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continuous employment is specified in the law, reducing it to 3 or 6 months is not an option.

The insurance carrier that submitted comments underwrites six FEHB plans and requested that we emphasize the importance of timely processing of health benefits registrations and reconciliation reports. OPM does not find that this regulation is the appropriate vehicle for addressing the subject ot timeliness. The Federal Personnel Manual issuance system is used periodically to remind agencies of such matters.

The agency commented that offering FEHB coverage to temporary employees is a step in the right direction, but that most of their temporary employees would not be able to afford to pay the full premium. While we sympathize with their concern, the law clearly states that agencies shall not pay the Government contribution toward the premium.

Since publication of the interim regulation, a number of agencies have asked OPM whether a temporary employee who has been eligible to enroll under provisions of the new law is permitted to enroll or to change plans when the employee is converted to a permanent appointment. OPM has determined that, in the interest of fairness and for consistency with the decision regarding first opportunity to enroll for purposes of continuing coverage after retirement, a temporary employee should be permitted to enroll or to change enrollment when the employee changes to a nontemporary appointment. Therefore, a new event covering the circumstances described above has been included in these final regulations.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect Federal employees.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, health Insurance.

U.S. Office of Personnel Management.

Constance B. Newman,

Director.

Accordingly, OPM is adopting as final its interim regulations on 5 CFR part 890 published on February 23, 1989, at 54 FR 7755, with the following change:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; § 890.102 also issued under 5 U.S.C. 1104 and Pub. L. 100-654; § 890.803 also issued under sec. 303 of Pub. L. 99-569, 100 Stat. 3190, sec. 188 of Pub. L. 100-204, 101 Stat. 1331, and sec. 204 of Pub. L. 100-238, 101 Stat. 1744.

2. A new paragraph (bb) is added to § 890.301, to read as follows:

§ 890.301 Opportunities to register to enroll and change enrollment.

* * * * *

(bb) *Change from a temporary appointment to a nontemporary appointment.* A temporary employee who is eligible to enroll according to provisions of 5 U.S.C. 8906a, which require payment of the full premium with no Government contribution, and who subsequently changes to a nontemporary appointment, which entitles the employee to receive the Government contribution toward the premium, may enroll or change to any other plan or option within 31 days after changing to the nontemporary appointment.

[FR Doc. 89-30068 Filed 12-27-89; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Office of Operations

7 CFR Ch. XXVIII

Establishment of Chapter

AGENCY: Office of Operations, U.S. Department of Agriculture.

ACTION: Final rule.

SUMMARY: This rule establishes a new chapter XXVIII in title 7 of CFR to contain the regulations of the new Office of Operations.

EFFECTIVE DATE: December 20, 1989.

FOR FURTHER INFORMATION CONTACT: Bonnie Gray at 447-5008. Accordingly, a new chapter XXVIII, Office of Operations, Department of Agriculture, is established in title 7 of the CFR. Chapter XXVII consists of parts 2810 and 2811 which were published on December 20, 1989 at 54 FR 52013.

Signed at Washington, DC, this 21st day of December, 1989.

Frank Gearde, Jr.,

Director, Office of Operations.

[FR Doc. 89-30094 Filed 12-27-89; 8:45 am]

BILLING CODE 3410-88-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 0, 1, 2, 9, 10, 15, 25, 51, and 95

RIN 3150-AD18

Statement of Organization and General Information; Minor Amendments

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is revising its statement of organization and general information to reflect the reorganizations within the Office of the Executive Director for Operations and the former Office of Administration and Resources Management and the creation of the Office of the Licensing Support System Administrator and the Office of the Inspector General. The revision adds to the description of committees, boards, and panels the Advisory Committee on Nuclear Waste, the Nuclear Safety Research and Review Committee, and the Licensing Support System Advisory Review Panel. This revision is necessary to inform licensees and the public of organizational changes within the NRC.

EFFECTIVE DATE: The rule will become effective December 28, 1989.

FOR FURTHER INFORMATION CONTACT: Donnie H. Grimsley, Director, Division of Freedom of Information and Publications Services, Office of Administration, Washington, DC 20555, Telephone: 301-492-7211.

SUPPLEMENTARY INFORMATION: On January 9, 1989, the Nuclear Regulatory Commission (NRC) announced organizational changes within the Office of the Executive Director for Operations. In the reorganization, the Commission appointed a second Deputy Executive Director for Operations and assigned specific areas of responsibilities to each of these two deputies. There is now a Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations, and Research and a Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support. In a separate organizational change, the Office of Administration and Resources Management was abolished and three offices were established. These three offices are the Office of the Controller, which will report to the Executive Director for Operations, the Office of Administration, and the Office of Information Resources Management, which will report to the Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

On January 11, 1989, the Commission voted to establish an Office of the Licensing Support System (LSS) Administrator which reports to the Commission for policy direction and to the Chairman for day-to-day management supervision.

On April 17, 1989, the Office of the Inspector General was established as a result of Public Law 100-504, "The Inspector General Amendments Act of 1988."

The Commission has also added to its description of committees, panels, and boards information concerning the Advisory Committee on Nuclear Waste, the Nuclear Safety Research and Review Committee, and the Licensing Support System Advisory Review Panel.

Because these are amendments dealing with agency practice and procedure, the notice and comment provisions of the Administrative Procedure Act do not apply pursuant to 5 U.S.C. 553(b)(A). The amendments are effective upon publication in the Federal Register. Good cause exists to dispense with the usual 30-day delay in the effective date, because these amendments are of a minor and administrative nature, dealing with the agency's reorganization.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule contains no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects

10 CFR Part 0

Conflict of interest, Penalty.

10 CFR Part 1

Organization and functions (Government Agencies).

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 9

Freedom of information, Penalty, Privacy, Reporting and recordkeeping requirements, Sunshine Act.

10 CFR Part 10

Administrative practice and procedure, Classified information, Government employees, Security measures.

10 CFR Part 15

Administrative practice and procedure, Debt collection.

10 CFR Part 25

Classified information, Investigations, Penalty, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 51

Administrative practice and procedure, Environmental impact statement, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 95

Classified information, Penalty, Reporting and recordkeeping requirements, Security measures.

For the reason set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 0, 1, 2, 9, 10, 15, 25, 51, and 95.

PART 0—CONDUCT OF EMPLOYEES

1. The authority citation for part 0 continues to read in part as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 0.735-28 [Amended]

2. In § 0.735-28, paragraph (a)(2), remove the words "and Resources Management".

PART 1—STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

3. The authority citation for part 1 continues to read in part as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 1.3 [Amended]

4. In § 1.3, paragraph (c) remove the words "and Resources Management".

5. In § 1.5, paragraph (a) is revised to read as follows:

§ 1.5 Location of principal offices and regional offices.

(a) The principal NRC offices are located in the Washington, DC area. Facilities for the service of process and papers are maintained within the District of Columbia at 2120 L Street NW., and in the State of Maryland at 11555 Rockville Pike, Rockville, Maryland. The mailing address for all NRC Headquarters offices is Washington, DC 20555. The locations of NRC offices in the Washington, DC area are as follows:

(1) Capital Place, 80 F Street NW., Washington, DC.

(2) East West/West Towers Building, 4350 East West Highway, Bethesda, Maryland.

(3) Gelman Building, 2120 L Street NW., Washington, DC.

(4) Maryland National Bank Building, 7735 Georgetown Road, Bethesda, Maryland.

(5) Nicholson Lane/North Building, 5620 Nicholson Lane, Rockville, Maryland.

(6) Nicholson Lane/South Building, 5650 Nicholson Lane, Rockville, Maryland.

(7) One White Flint North Building, 11555 Rockville Pike, Rockville, Maryland.

(8) Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland.

(9) Woodmont Building, 8120 Woodmont Avenue, Bethesda, Maryland.

* * * * * *

6. A new heading entitled Inspector General and a new § 1.12 are added directly after § 1.11 to read as follows:

Inspector General

§ 1.12 Office of the Inspector General.

The Office of the Inspector General—

(a) Develops policies and standards that govern NRC's financial and management audit program;

(b) Plans, directs, and executes the long-range, comprehensive audit program;

(c) Conducts and reports on investigations and inquiries, as necessary, to ascertain and verify the facts with regard to the integrity of all NRC programs and operations;

(d) Investigates possible irregularities or alleged misconduct of NRC employees and contractors;

(e) Refers suspected or alleged criminal violations concerning NRC employees or contractors to the Department of Justice;

(f) Reviews existing and proposed legislation and regulations for their impact on economy and efficiency in the

on important management matters in the direction of the Commission's nuclear safety research program. The committee

participants and to the public as appropriate;

(f) Maintains the integrity and security

§ 1.32 Office of Enforcement.

The Office of Enforcement—

(a) Develops policies and programs for

of all allegations of wrongdoing by other than NRC employees and contractors;

(b) Maintains current awareness of

Nuclear Materials Safety, Safeguards, and Operations Support".

§ 2.202 [Amended]

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(f) Reviews existing and proposed legislation and regulations for their impact on economy and efficiency in the administration of NRC's programs and operations;

(g) Keeps the Commission and the Congress fully and currently informed, by means of semiannual and other reports, about fraud, abuse, and other serious deficiencies in NRC's programs and operations; and

(h) Maintains liaison with audit and inspector general organizations and other law enforcement agencies in regard to all matters relating to the promotion of economy and efficiency and the detection of fraud and abuse in programs and operations.

A new § 1.18 is added to read as follows:

§ 1.18 Advisory Committee on Nuclear Waste.

The Advisory Committee on Nuclear Waste (ACNW) provides advice to the Commission on all aspects of nuclear waste management, as appropriate, within the purview of NRC's regulatory responsibilities. The primary emphasis of the ACNW is disposal but will also include other aspects of nuclear waste management such as handling, processing, transportation, storage, and safeguarding of nuclear wastes including spent fuel, nuclear wastes mixed with other hazardous substances, and uranium mill tailings. In performing its work, the committee examines and reports on specific areas of concern referred to it by the Commission or designated representatives of the Commission, and undertakes studies and activities on its own initiative as appropriate to carry out its responsibilities. The committee interacts with representatives of NRC, other Federal agencies, state and local governments, Indian Tribes, and private organizations, as appropriate, to fulfill its responsibilities.

8. In § 1.19, the introductory paragraph is revised and new paragraphs (c) and (d) are added to read as follows:

§ 1.19 Other committees, boards, and panels.

Under section 161a. of the Atomic Energy Act of 1954, as amended, the Commission may establish advisory bodies to make recommendations to it. Currently, four committees are in existence.

* * * * *

(c) The Nuclear Safety Research Review Committee (NSRRC) was established by the NRC in February 1988 for the purpose of reporting to the Commission through the Director of the Office of Nuclear Regulatory Research on important management matters in the direction of the Commission's nuclear safety research program. The committee activities cover all aspects of nuclear safety research including, but not limited to, accident management, plant aging, human factors and system reliability, earth science, waste disposal and seismic and structural engineering. In performing its activities, the committee evaluates and reports on the conformance of the nuclear safety research program to the NRC philosophy of nuclear regulatory research. The committee conducts specialized studies when requested by the Commission or Director of the Office of Nuclear Regulatory Research. The committee interacts with the Office of Research management staff and selected contractors in private industry, at national laboratories and universities.

(d) The Licensing Support System Advisory Review Panel (LSSARP) was established by the Commission on October 3, 1989, pursuant to 10 CFR 2.1011(e) of the Commission's regulations. The LSSARP provides advice to the Commission on the design, development, and operation of the Licensing Support System (LSS), an electronic information management system for use in the Commission's high-level radioactive waste (HLW) licensing proceeding. Membership consists of those interests that will be affected by the use of the LSS, and selected Federal agencies with expertise in large-scale electronic information systems. The individual representatives of these interests and agencies possess expertise in management information science and in managing records of the Commission's licensing process for the HLW repository.

9. A new § 1.26 is added under the heading Commission Staff to read as follows:

§ 1.26 Office of the Licensing Support System Administrator.

The Office of the Licensing Support System (LSS) Administrator—

(a) Ensures that the LSS meets the requirements of 10 CFR part 2, subpart J, concerning the availability and use of the LSS in the Commission's high-level waste licensing proceedings;

(b) Advises DOE on LSS design, development, and testing;

(c) Approves any necessary redesign of the LSS;

(d) Provides the necessary personnel, materials, and services for operation and maintenance of the LSS;

(e) Provides for the entry of documentary material into the LSS, and provides access to the LSS to LSS participants and to the public as appropriate;

(f) Maintains the integrity and security of the LSS database;

(g) Reviews the timeliness and degree of compliance of LSS participants with the applicable LSS rules, including determining whether DOE is in substantial compliance with the document submission requirements of 10 CFR 2.1003; and

(h) Maintains sufficient oversight of LSS-related activities to not only identify issues, but to ensure that these issues are properly addressed by the right organization(s) and are being resolved on a timely basis.

§ 1.27 [Removed]

10. Section 1.27 is removed.

11. Section 1.31 is revised to read as follows:

§ 1.31 Office of the Executive Director for Operations.

(a) The Executive Director for Operations (EDO) reports for all matters to the Chairman, and is subject to the supervision and direction of the Chairman as provided in Reorganization Plan No. 1 of 1980.

(b) The EDO supervises and coordinates policy development and operational activities in the following line offices: The Office of Nuclear Reactor Regulation, the Office of Nuclear Material Safety and Safeguards, the Office of Nuclear Regulatory Research, and the NRC Regional Offices; and the following staff offices: The Office of Enforcement, the Office of Administration, the Office of Information Resources Management, the Office of the Controller, the Office of Investigations, the Office of Consolidation, the Office for Analysis and Evaluation of Operational Data, the Office of Small and Disadvantaged Business Utilization and Civil Rights, the Office of Personnel, and other organizational units as shall be assigned by the Commission. The EDO is also responsible for implementation of the Commission's policy directives pertaining to these offices.

(c) The EDO exercises powers and functions delegated to the EDO under the Reorganization Plan No. 1 of 1980, this chapter, or otherwise by the Commission or Chairman, as appropriate. The EDO has the authority to perform any function that may be performed by an office director reporting to the EDO.

12. A new § 1.32 is added under the heading Staff Offices to read as follows:

§ 1.32 Office of Enforcement.

The Office of Enforcement—

(a) Develops policies and programs for enforcement of NRC requirements;

(b) Manages major enforcement actions; and

(c) Assesses the effectiveness and uniformity of Regional enforcement actions.

13. Section 1.33 is revised to read as follows:

§ 1.33 Office of Administration.

The Office of Administration—

(a) Develops and implements agency-wide contracting policies and procedures;

(b) Develops policies and procedures and manages the operation and maintenance of NRC offices, facilities, and equipment;

(c) Plans, develops, establishes, and administers policies, standards, and procedures for the overall NRC security program;

(d) Develops and implements policies and procedures for administering the Freedom of Information, Privacy, and Regulatory Flexibility Acts and the LPDR program, and for providing editorial and related publications services; and

(e) Manages the production, printing, and copying of NUREGs and other official NRC publications and maintains NRC liaison with the Joint Committee on Printing.

14. A new § 1.34 is added to read as follows:

§ 1.34 Office of Information Resources Management.

The Office of Information Resources Management—

(a) Manages the centralized information resources of the agency in the areas of computer hardware and software, systems development, telecommunications, and information support services including document control and distribution, central files, records management and services, the Library, and graphics; and

(b) Participates in the review of information resources management policies, practices, and procedures on an NRC-wide basis, and in consultation with cognizant officials, makes recommendations for appropriate improvements.

15. Section 1.36 is added to read as follows:

§ 1.36 Office of Investigations.

The Office of Investigations (OI)—

(a) Conducts investigations of licensees, applicants, their contractors or vendors, including the investigation of all allegations of wrongdoing by other than NRC employees and contractors;

(b) Maintains current awareness of inquiries and inspections by other NRC offices to identify the need for formal investigations;

(c) Makes appropriate referrals to the Department of Justice;

(d) Maintains liaison with other agencies and organizations to ensure the timely exchange of information of mutual interest; and

(e) Issues subpoenas where necessary or appropriate for the conduct of investigations.

16. A new § 1.38 is added to read as follows:

§ 1.38 Office of the Controller.

The Office of the Controller—

(a) Prepares the agency's Five-Year Plan and budget;

(b) Manages all accounting and financial systems management functions including payroll, travel, and license fees;

(c) Provides agency support for employee relocation services and internal control activities; and

(d) Manages the agency's internal control program.

17. A new § 1.40 is added to read as follows:

§ 1.40 Office of Consolidation.

The Office of Consolidation—

(a) Provides overall coordination of planning, budgeting, and execution of tasks required to consolidate the NRC Headquarters staff at White Flint, Rockville, Maryland;

(b) Provides a single focus for management review, decisionmaking, and direction for activities undertaken to accomplish the consolidation of the Headquarters' staff; and

(c) Keeps NRC management and NRC employees as fully informed as possible about aspects of the consolidation, especially those which could affect their individual and collective performance of Agency missions and tasks.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

18. The authority citation for part 2 continues to read in part as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 2.201 [Amended]

19. In § 2.201, in paragraphs (a), (b), and (c), remove the words "Deputy Executive Director for Regional Operations", and add in their place the words "Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support".

§ 2.202 [Amended]

20. In § 2.202, in paragraphs (a) and (f), remove the words "Deputy Executive Director for Regional Operations", and add in their place the words "Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support", and in paragraph (a) remove the words "Office of Administration and Resources Management", and add in their place the words "Office of the Controller".

§ 2.205 [Amended]

21. In § 2.205, in paragraphs (a), (d), (g), and (h), remove the words "Deputy Executive Director for Regional Operations", and add in their place the words "Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support".

§ 2.802 [Amended]

22. In § 2.802, in paragraph (b), remove the words "Rules and Procedures Branch", and add in their place the words "Regulatory Publications Branch", and in paragraphs (b) and (g), remove the words "and Resources Management".

Appendix C [Amended]

23. Appendix C, section V., in paragraphs (E), (F), and (G), remove the words "Deputy Executive Director for Regional Operations" and add in their place the words "Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support"; in section VIII., remove the words "Deputy Executive Director for Regional Operations (DEDRO)" and "DEDRO" and add in their place the words "Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support (DEDS)" and "DEDS", and in Footnote (5) remove the words "Deputy Executive Director for Regional Operations", and add in their place the words "Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support", and also remove the words "Office of Administration and Resources Management", and add in their place the words "Office of the Controller".

PART 9—PUBLIC RECORDS

24. The authority citation for part 9 continues to read in part as follows:

Authority: Secs. 161, 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 9.23 [Amended]

25. In § 9.23, paragraph (b), remove the words "and Resources

§ 10.23 [Amended]

38. In § 10.23, paragraphs (a) and (b), remove the words "and Resources Management", and add in their place the words "Office of the Controller".

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

of products" for which there are no small business manufacturers or producers in the Federal market. This

A survey of small business manufacturers of the affected classes of products was subsequently conducted to

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§ 9.22 [Amended]

25. In § 9.23, paragraph (b), remove the words "and Resources Management."

§ 9.41 [Amended]

26. In § 9.41, paragraph (a)(2), remove the words "and Resources Management".

§ 9.53 [Amended]

27. In § 9.53, paragraphs (a) and (b), remove the words "and Resources Management".

§ 9.54 [Amended]

28. In § 9.54, paragraph (b), remove the words "and Resources Management".

§ 9.60 [Amended]

29. In § 9.60, paragraph (a), remove the words "and Resources Management".

§ 9.65 [Amended]

30. In § 9.65, paragraph (a), remove the words "and Resources Management".

§ 9.66 [Amended]

31. In § 9.66, paragraphs (a)(1), (a)(2), (a)(3), and (c)(2), remove the words "and Resources Management".

§ 9.69 [Amended]

32. In § 9.69, paragraph (a), remove the words "and Resources Management".

PART 10—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO RESTRICTED DATA OR NATIONAL SECURITY INFORMATION OR AN EMPLOYMENT CLEARANCE

33. The authority citation for part 10 continues to read in part as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 10.5 [Amended]

34. In § 10.5, paragraph (b), remove the words "and Resources Management".

§ 10.12 [Amended]

35. In § 10.12, paragraph (a), remove the words "and Resources Management".

§ 10.21 [Amended]

36. In § 10.21, remove the words "and Resources Management".

§ 10.22 [Amended]

37. In § 10.22, in the introductory paragraph and in paragraphs (c), (d), and (e), remove the words "and Resources Management".

§ 10.23 [Amended]

38. In § 10.23, paragraphs (a) and (b), remove the words "and Resources Management".

§ 10.24 [Amended]

39. In § 10.24, paragraphs (a) and (b), remove the words "and Resources Management".

§ 10.27 [Amended]

40. In § 10.27, paragraph (c), remove the words "and Resources Management".

§ 10.28 [Amended]

41. In § 10.28, paragraph (m), remove the words "and Resources Management".

§ 10.29 [Amended]

42. In § 10.29, paragraph (d), remove the words "and Resources Management".

§ 10.30 [Amended]

43. In § 10.30, remove the words "and Resources Management".

§ 10.31 [Amended]

44. In § 10.31, paragraph (a), remove the words "and Resources Management".

§ 10.32 [Amended]

45. In § 10.32, paragraph (b), remove the words "and Resources Management".

§ 10.33 [Amended]

46. In § 10.33, paragraphs (c) and (d) remove the words "and Resources Management".

§ 10.34 [Amended]

47. In § 10.34, paragraph (b), remove the words "and Resources Management".

§ 10.35 [Amended]

48. In § 10.35, paragraph (b), remove the words "and Resources Management".

§ 10.37 [Amended]

49. In § 10.37, remove the words "and Resources Management".

PART 15—DEBT COLLECTION PROCEDURES

50. The authority citation for Part 15 continues to read in part as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 15.3 [Amended]

51. In § 15.3, remove the words "Office of Administration and Resources Management", and add in their place the words "Office of the Controller".

§ 15.35 [Amended]

52. In § 15.35, paragraph (c), remove the words "Office of Administration and Resources Management", and add in their place the words "Office of the Controller".

PART 25—ACCESS AUTHORIZATION FOR LICENSEE PERSONNEL

53. The authority citation for part 25 continues to read in part as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 stat. 1242, as amended (42 U.S.C. 5841).

§ 25.33 [Amended]

54. In § 25.33, paragraph (c), remove the words "and Resources Management".

PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

55. The authority citation for part 51 continues to read in part as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242 (42 U.S.C. 5841).

§ 51.122 [Amended]

56. In § 51.122, remove the words "Office of Administration and Resources Management", and add in their place the words "Office of Information Resources Management".

PART 95—SECURITY FACILITY APPROVAL AND SAFEGUARDING OF NATIONAL SECURITY INFORMATION AND RESTRICTED DATA

57. The authority citation for part 95 continues to read in part as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242 (42 U.S.C. 5841).

§ 95.18 [Amended]

58. In § 95.18, paragraph (a), remove the words "and Resources Management".

§ 95.45 [Amended]

59. In § 95.45, paragraph (a), remove the words "and Resources Management".

Dated at Rockville, Maryland, this 14th day of December, 1989.

For the Nuclear Regulatory Commission.
James M. Taylor,
Executive Director for Operations.
[FR Doc. 89-29807 Filed 12-27-89; 8:45 am]
BILLING CODE 7590-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Waiver of Nonmanufacturer Rule

AGENCY: Small Business Administration.

ACTION: Notice of waiver of nonmanufacturer rule.

SUMMARY: This notice establishes a waiver to the Small Business Administration's (SBA) "nonmanufacturer rule" for several types of construction equipment. These are: backhoes, cranes, road graders, and scrapers. The basis for this waiver to the nonmanufacturer rule is that no small business manufacturer is supplying these products to the Federal government. The effect of this waiver is to allow an otherwise qualified regular dealer to supply the product of any domestic manufacturer on a contract set-aside for small business or awarded through the 8(a) program. This waiver shall remain in effect until such time a small business manufacturer(s) is determined to be in the Federal market. The public may submit comments on this determination.

DATES: This notice is effective December 21, 1989. Comments may be submitted until January 12, 1990.

ADDRESS COMMENTS TO: Robert J. Moffitt, Chairperson, Size Policy Board, U.S. Small Business Administration, 1441 L Street NW., Room 600, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Gary M. Jackson, Director, Size Standards Staff, (202) 652-6373.

SUPPLEMENTARY INFORMATION: Public Law 100-656, enacted on November 15, 1988, incorporated into the Small Business Act the previously existing regulation that recipients of contracts set-aside for small business or 8(a) contracts must provide the product of a small business manufacturer or producer. This requirement is commonly referred to as the "nonmanufacturer rule." The SBA regulations imposing this requirement is found at 13 CFR 121.5(b)(a). (SBA anticipates publishing revised Small Business Size Regulations effective January 1, 1990 which would contain this requirement at 13 CFR 121.906(b) and 121.1106(b).) Section 303(h) of the Act provided for waiver of this requirement by SBA for any "class of products" for which there are no small business manufacturers or producers in the Federal market. This notice waives the nonmanufacturer rule for the following construction equipment classes of products: backhoes; crane, construction; graders, road construction; and scrapers. Also, this notice denies the request for a waiver for drill rigs, forklifts, loaders and manlifts (or aerial work platforms). SBA has found small business manufacturers of these products which supply the Federal government.

SBA's District Office in Los Angeles, California requested a waiver of the nonmanufacturer rule for eight classes of products of construction and industrial equipments. SBA has conducted a study for these classes of products to determine if a small manufacturer(s) has supplied any of these products to the Federal government.

To be considered in the Federal market, a small manufacturer must have been awarded a contract by the Federal government within recent years. A "class of products" is considered to be a particular Product and Service Code (PSC) under the Federal Procurement Data System or an SBA recognize product line within a PSC.

SBA's review of the Federal market evaluated procurement statistics from the U.S. General Services Administration's Federal Procurement Data Center (FPDC) and SBA's Procurement Automated Source System (PASS), a data base of firms interested in Federal procurement.

The FPDC data show contract awards by Product and Services Codes as well as by Standard Industrial Classification (SIC) codes. The PASS data were also reviewed to assess small business manufacturing capability and Federal experience. Other sources of information such as industry trade associations were also reviewed as needed to assist in discovering and evaluating small manufacturers of each class of products.

The affected classes of products are some of the products included within several PSC codes, but do not comprise any one entire PSC. The request for waiver relates to the following classes of products:

PSC Code	Product
3805	Backhoes, Graders, Loaders, Scrapers.
3810	Cranes.
3815	Manlifts (Aerial Work Platform).
3820	Drill Rigs.
3930	Forklifts.

A survey of small business manufacturers of the affected classes of products was subsequently conducted to determine small manufacturers capabilities and participation in the Federal market. Small manufacturers of these types of equipment were identified from SBA's PASS data base. Each identified small business manufacturer was contacted to determine the types and range of products it manufactures.

For manlifts (aerial work platforms), drill rigs, forklifts, and loaders SBA identified small manufacturers that have recently supplied the Federal government. Accordingly, SBA denies the request for a waiver of the nonmanufacturer rule for these classes of products.

SBA's review also found that small manufacturers do not provide to the Federal market the following items: backhoes, cranes, construction; graders, road (construction machinery); and scrapers. Accordingly, SBA decided to grant a waiver for these designated classes of products within PSC codes 3805 and 3810.

The public is invited to submit comments on the basis of this waiver action. If evidence is received that a small manufacturer is in fact in the Federal market, as defined by receiving a Federal contract, SBA will reevaluate its decision to waive the nonmanufacturer rule for that class of products and will take steps to terminate the waiver.

This waiver is being granted under statutory authority for the designated classes of products, prior to the promulgation of final regulatory procedures. Proposed procedures will be published for public comment in the **Federal Register** in early 1990. Although the processing and evaluation of this waiver request are intended to be similar to the proposed procedures, final procedures may differ from those followed for this particular request.

A waiver of the nonmanufacturer rule is established for purposes of allowing an otherwise qualified small business regular dealer to supply the product of any domestic manufacturer on a contract set-aside for small business or awarded through the 8(a) program for the following classes of products:

Backhoes (PSC 3805)
Graders, Road (Construction Machinery) (PSC 3805)
Scrapers. Construction (PSC 3805)
Cranes. Construction (PSC 3810)

BEST COPY AVAILABLE

Dated: December 21, 1989.
Susan S. Engeleiter,
Administrator, U.S. Small Business

categories that were then covered by DOE test procedures: refrigerators and refrigerator-freezers, freezers,

foregoing, the present ranges for central air conditioners (including heat pumps) will remain in effect until the

By direction of the Commission.
Donald S. Clark,
Secretary.

the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

information collection requirements contained in those sections were approved by OMB under the Paperwork

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Dated: December 21, 1989.
Susan S. Engeleiter,
Administrator, U.S. Small Business Administration.
[FR Doc. 89-30018 Filed 12-27-89; 8:45 am]
BILLING CODE 8025-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 305

RIN 3084-AA26

Rules for Using Energy Cost and Consumption Information Used in Labeling and Advertising of Consumer Appliances Under the Energy Policy and Conservation Act; Ranges of Comparability for Central Air Conditioners and Heat Pumps

AGENCY: Federal Trade Commission.
ACTION: Final rule.

SUMMARY: The Federal Trade Commission announces that the present ranges of comparability for central air conditioners and heat pumps will remain in effect until new ranges are published, and amends its Appliance Labeling Rule by updating the national average cost figure for electricity that must be used in the cost calculation formulas that manufacturers must provide on fact sheets or in directories. These cost calculation formulas are for consumers to use to calculate their own heating and cooling costs.

EFFECTIVE DATE: March 28, 1990.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney, Division of Enforcement, Federal Trade Commission, Washington, DC 20580 (202-326-3035).

SUPPLEMENTARY INFORMATION: Section 324 of the Energy Policy and Conservation Act of 1975 (EPCA) [1] requires the Federal Trade Commission to consider labeling rules for the disclosure of estimated annual energy cost or alternative energy consumption information for at least thirteen categories of appliances. Central air conditioners (including heat pumps) are included as one of the categories. The statute also requires the Department of Energy ("DOE") to develop test procedures that measure how much energy the appliances use. In addition, DOE is required to determine the representative average cost a consumer pays for the different types of energy available.

On November 19, 1979, the Commission issued a final Rule covering seven of the thirteen appliance categories that were then covered by DOE test procedures: refrigerators and refrigerator-freezers, freezers, dishwashers, water heaters, clothes washers, room air conditioners and furnaces.[2]

On December 10, 1987 (52 FR 46888), the Federal Trade Commission amended the Appliance Labeling Rule by extending its coverage to central air conditioners and heat pumps. For these products, the Commission adopted a disclosure scheme that consists of labels showing simple energy efficiency and range information, together with a requirement to disclose further efficiency and cost information by means of either fact sheets or a listing in a general directory containing such information.

Section 305.8(b) of the rule requires manufacturers, after filing an initial report, to report annually by specified dates for each product type.[3] These reports, which are to assist the Commission in preparing the ranges of comparability, contain the estimated annual cost or energy efficiency rating for the appliances derived from tests performed pursuant to the DOE test procedures. The reports also contain the model number, the number of tests performed on each model, and the capacity of each. Because the costs for the various types of energy change yearly, and because manufacturers regularly add new models to their lines, improve existing models and drop others, the data base from which the ranges of comparability are calculated is constantly changing. To keep the required information in line with these changes, the Commission is empowered, under § 305.10 of the rule, to publish new ranges (but not more often than annually) if an analysis of the new data indicates that the upper or lower limits of the ranges have changed by more than 15%. Otherwise, the Commission must publish a statement that the prior range or ranges remain in effect for the next year.

The annual reports for central air conditioners (including heat pumps) have been received and analyzed and the Commission has determined that neither the upper nor lower limits of the ranges for this product category have changed by 15% or more since the original publication of the ranges on May 27, 1988.[4] In consideration of the foregoing, the present ranges for central air conditioners (including heat pumps) will remain in effect until the Commission publishes new ranges for these products.

In addition, this Notice provides an updated figure for the annual national average cost of electricity. This figure, along with national average cost figures for natural gas, propane, heating oil and kerosene, is published annually by the Department of Energy for the industry's use in calculating the cost figures required by the Commission's Rule. The cost figure for electricity must be used in the cost calculation formulas that appear in Appendices H and I. These formulas must be provided on fact sheets and in directories so consumers can calculate their own costs of operation for the central air conditioners and heat pumps that they are considering purchasing. The updated figure, which DOE published on December 7, 1988 (53 FR 49349), is 7.70 cents per kilowatt-hour. The formulas (and calculations) in both Appendices have been changed to reflect this.

In consideration of the foregoing, the Commission revises Appendices H(2) and I(2) of its Appliance Labeling Rule by publishing the following cost figures for use in the labeling and advertising of central air conditioners and heat pumps beginning March 28, 1990.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

PART 305—[AMENDED]

Accordingly, 16 CFR Part 305 is revised as follows:

1. The authority citation for Part 305 continues to read as follows:

Authority: Sec. 324 of the Energy Policy and Conservation Act (Pub. L. 94-163) (1975), as amended by the National Energy Conservation Policy Act, (Pub. L. 95-619) (1978), the National Appliance Energy Conservation Act, (Pub. L. 100-12) (1987), and the National Appliance Energy Conservation Amendments of 1988, (Pub. L. 100-357) (1988), 42 U.S.C. 6294; sec. 553 of the Administrative Procedure Act, 5 U.S.C. 553.

Appendices H and I [Amended]

2. In Appendices H and I of part 305, remove the figure "8.04¢" and add, in its place, the figure "7.70¢". In addition, remove the figure "12.08¢" and add, in its place, the figure "11.55¢".

* * * * *

[1] Pub. L. 94-163, 89 Stat. 871 (Dec. 22, 1975).

[2] 44 FR 66466, 16 CFR part 305 (Nov. 19, 1979). The Statement of Basis and Purpose for the final Rule describes the reasons the Commission declined to cover the other categories of covered products. *Id.* at 66467-68.

[3] Reports for central air conditioners (including heat pumps) are due by July 1.

[4] 53 FR 19726.

By direction of the Commission.
Donald S. Clark,
Secretary.
[FR Doc. 89-30060 Filed 12-27-89; 8:45 am]
BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Maduramicin Ammonium; Technical Amendment

AGENCY: Food and Drug Administration, HHS.
ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that amended the animal drug regulations to reflect approval for American Cyanamid's maduramicin ammonium Type A article to make a Type C broiler feed (54 FR 5229; February 2, 1989). The agency failed to correctly state the maximum Type B feed level, whose use did not require approval of a Form FDA-1900 to make a Type C broiler feed, was 545 grams per ton (g/ton). This document corrects that error.

EFFECTIVE DATE: February 2, 1989.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4913.

SUPPLEMENTARY INFORMATION: In the Federal Register of February 2, 1989 (54 FR 5229), FDA published a document amending the animal drug regulations to reflect approval of new animal drug application (NADA) 139-075 filed by American Cyanamid Co. The application provides for use of maduramicin ammonium 1 percent Type A medicated articles to make Type C medicated feed for broiler chickens. In publishing the regulation concerning medicated feed applications (21 CFR 558.4), the maximum Type B entry level was stated as 54.5 g/ton (.006 percent). The correct Type B level is 545 g/ton (.06 percent). This document amends the regulations in 21 CFR 558.4(d) accordingly.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

§ 558.4 [Amended]

2. Section 558.4 *Medicated feed applications* is amended in the Category II table in paragraph (d), in the entry "Maduramicin ammonium", under the heading "Type B maximum (100x)" by removing "54.5 g/ton (.006%)" and inserting in its place "545 g/ton (.06%)".

Dated: December 21, 1989.
Gerald B. Guest,
Director, Center for Veterinary Medicine.
[FR Doc. 89-30063 Filed 12-27-89; 8:45 am]
BILLING CODE 4160-01-M

DEPARTMENT OF EDUCATION

34 CFR Parts 500 and 501

RIN 1885-AA17

Bilingual Education; General Provisions and Basic Programs

AGENCY: Department of Education.
ACTION: Final regulations.

SUMMARY: The Secretary amends 34 CFR parts 500 and 501 to add Office of Management and Budget (OMB) control numbers to certain sections of the regulations. These sections contain information collection requirements approved by OMB. The Secretary takes this action to inform the public that these requirements have been approved.

EFFECTIVE DATE: These regulations are effective December 28, 1989.

FOR FURTHER INFORMATION CONTACT: Mary Mahoney, Office of Bilingual Education and Minority Languages Affairs (OBEMLA), U.S. Department of Education, 400 Maryland Avenue SW., (Switzer Building, Room 5078), Washington DC 20202-6570, Telephone (202) 732-5063.

SUPPLEMENTARY INFORMATION: On October 5, 1988 final regulations incorporating miscellaneous statutory amendments of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 were published as amendments to 34 CFR parts 500 and 501 (53 FR 39218).

The effective date of certain sections of these regulations was delayed until information collection requirements contained in those sections were approved by OMB under the Paperwork Reduction Act of 1980, as amended. OMB has approved the information collection requirements, and these sections of the regulations are now effective.

Waiver of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the publication of OMB control numbers is purely technical and does not establish substantive policy. Therefore, the Secretary has determined, under 5 U.S.C. 553(b)(B), that proposed rulemaking is unnecessary and contrary to the public interest and that a delayed effective date is not required under 5 U.S.C. 553(d)(3).

List of Subjects in 34 CFR Parts 500 and 501

Adult education, Bilingual education, Colleges and universities, Dissemination, Education, Elementary and secondary education, Grant programs-education, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance No. 84.003 Bilingual Education: Basic Programs)

Dated: December 20, 1989.
Lauro F. Cavazos,
Secretary of Education.

The Secretary amends parts 500 and 501 of title 34 of the Code of Federal Regulations as follows:

PART 500—BILINGUAL EDUCATION: GENERAL PROVISIONS

1. The authority citation for part 500 continues to read as follows:

Authority: 20 U.S.C. 3281-3341, unless otherwise noted.

§ 500.51 [Amended]

2. Section 500.51 is amended by adding "(Approved by the Office of Management and Budget under control number 1885-0003)" after the section.

PART 501—BILINGUAL EDUCATION: BASIC PROGRAMS

1. The authority citation for part 501 continues to read as follows:

Authority: 20 U.S.C. 3281-3341, unless otherwise noted.

§§ 501.20, 501.26, 501.40, and 501.42 [Amended]

2. Sections 501.20, 501.26, 501.40, and

Cosmetic Act, propose the establishment of a tolerance for the combined residues (free and bound) of

Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 8, 1989.

as the parent compound, in or on the following raw agricultural commodities:

* * * * *

Decorations Act, 5 U.S.C. 7342, and individual agency gift acceptance statutes.

The General Services Administration

Dated: December 15, 1989.
Richard G. Austin,
Acting Administrator of General Services.
[FR Doc. 89-30062 Filed 12-27-89; 8:45 am]

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§§ 501.20, 501.26, 501.40, and 501.42 [Amended]

2. Sections 501.20, 501.26, 501.40, and 501.42 are amended by adding "(Approved by the Office of Management and Budget under control number 1885–0003)" following each section.

[FR Doc. 89–30039 Filed 12–27–89; 8:45 am]

BILLING CODE 4000–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP9E3708/R1046; FRL–3663–9]

Pesticide Tolerance for Metolachlor

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a tolerance for the combined residues (free and bound) of the herbicide metolachlor and its metabolites in or on the raw agricultural commodity Cubanelle peppers. This regulation to establish a maximum permissible level for residues of the herbicide in or on the commodity was requested in a petition submittted by the Interregional Research Project No. 4 (IR-4).

DATE: This regulation becomes effective December 28, 1989.

ADDRESS: Written objections, identified by the document control number, [PP9E3708/R1046], may be submitted to: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section (H7505C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716C, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703–557–2310.

SUPPLEMENTARY INFORMATION: In the Federal Register of September 1, 1989 (54 FR 36326), EPA issued a proposed rule that gave notice that the Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition (PP) 9E3708 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR–4 Project, and the Agricultural Experiment Station of Puerto Rico.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the combined residues (free and bound) of the herbicide metolachlor [2-chloro-N-(2-ethyl-6-methylphenyl)-N-(2-methoxy-1-methylethyl]acetamide] and its metabolites, determined as the derivatives; 2-[(2-ethyl-6-methylphenyl)amino]-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, each expressed as the parent compound, in or on the raw agricultural commodity Cubanelle peppers at 0.1 part per million (ppm).

The petitioner proposed that this use be limited to Puerto Rico based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 8, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.368, by revising the introductory texts of paragraphs (a), (b), and (c) to specify the regulated combined residue as 'free and bound' and by amending the table in paragraph (c) by adding and alphabetically inserting the raw agricultural commodity Cubanelle peppers, to read as follows:

§ 180.368 Metolachlor; tolerances for residues.

(a) Tolerances are established for the combined residues (free and bound) of the herbicide metolachlor [2-chloro-N-(2-ethyl-6-methylphenyl)-N-(2-methoxy -1-methylethyl]acetamide] and its metabolites, determined as the derivatives, 2-[(2-ethyl-6-methylphenyl)amino]-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, each expressed as the parent compound, in or on the raw agricultural commodities.

* * * * *

(b) Tolerances are established for the combined residues (free and bound) of the herbicide metolachlor [2-chloro-N-(2-ethyl-6-methylphenyl)-N-(2-methoxy-1-methylethyl]acetamide] and its metabolites, determined as the derivatives, 2-[(2-ethyl-6-methylphenyl)amino]-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, each expressed as the parent compound, in or on the following raw agricultural commodities when present therein as a result of the application of metolachlor to growing crops listed in paragraph (a) of this section to read as follows:

* * * * *

(c) Tolerances with regional registration as defined in §180.1(n) are established for the the combined residues (free and bound) of the herbicide metolachlor [2-chloro-N-(2-ethyl-6-methylphenyl)-N-(2-methoxy-1-methylethyl)acetamide] and its metabolites, determined as the derivatives, 2-[(2-ethyl-6-methylphenyl)amino]-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, each expressed as the parent compound, in or on the following raw agricultural commodities:

* * * * *

Commodities	Parts per million
* * * * *	
Peppers, Cubanelle	0.1
* * * * *	

[FR Doc. 89–30129, Filed 12–27–89; 8:45 am]

BILLING CODE 6560–50–D

GENERAL SERVICES ADMINISTRATION

41 CFR Part 301–1

Acceptance of Travel, Subsistence, and Related Expenses From Non-Federal Sources

AGENCY: Federal Supply Service, GSA.

ACTION: Interim rule.

SUMMARY: This interim rule directs agencies and, where appropriate, employees to continue using regulations and procedures in effect prior to November 30, 1989, in accepting travel, subsistence, and related expenses from non-Federal sources, until the General Services Administration issues regulations further implementing 31 U.S.C. 1352, which became law on November 30, 1989.

EFFECTIVE DATE: This rule is effective November 30, 1989.

FOR FURTHER INFORMATION CONTACT: Larry Tucker, Travel Management Division (FBT), Washington, DC 20406, telephone FTS 557–1253 or commerical (703) 557–1253.

SUPPLEMENTARY INFORMATION: Section 302 of the Ethics Reform Act of 1989 amended title 31, United States Code, by adding a new section 1352 "Acceptance of travel and related expenses from non-Federal sources." Section 1352 gives the Administrator of General Services, in consultation with the Director of the Office of Government Ethics, authority to issue implementing regulations. Pending issuance of regulations further implementing 31 U.S.C. 1352, the General Services Administration has determined that agencies and, where appropriate, employees may continue to accept from non-Federal sources travel, subsistence, and related expenses incident to such activities in accordance with statutory authorities as implemented by agency regulations and procedures existing prior to November 30, 1989, including the Foreign Gifts and Decorations Act, 5 U.S.C. 7342, and individual agency gift acceptance statutes.

The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Chapter 301

Government employees, Travel, Travel allowances, Travel and transportation expenses.

For the reasons set out in the preamble, title 41, chapter 301, of the Code of Federal Regulations is amended as set forth below.

PART 301–1—APPLICABILITY AND GENERAL RULES

1. The authority citation for part 301–1 reads as follows:

Authority: 5 U.S.C. 5701–5709; 31 U.S.C. 1352; E.O. 11609, July 22, 1971 (36 FR 13747).

2. Section 301–1.1 is revised to read as follows:

§ 301–1.1 Authority.

This chapter is issued under the authority of 5 U.S.C. 5701–5709 and 31 U.S.C. 1352.

3. Section 301–1.3 is amended by revising paragraph (b) to read as follows:

§ 301–1.3 General rules.

* * * * *

(b) Reimbursable expenses. (1) Travel expenses which will be reimbursed are confined to those expenses essential to the transaction of official business.

(2) Pending issuance of regulations further implementing 31 U.S.C. 1352, employees may continue to accept from non-Federal sources travel, subsistence, and related expenses incident to such activities in accordance with statutory authorities as implemented by agency regulations and procedures existing prior to November 30, 1989, including the Foreign Gifts and Decorations Act, 5 U.S.C. 7342, and individual agency gift acceptance statutes.

* * * * *

Dated: December 12, 1989.

Richard G. Austin,

Acting Administrator of General Services.

[FR Doc. 89–30043 Filed 12–27–89; 8:45 am]

BILLING CODE 6820–24–M

FEDERAL MARITIME COMMISSION

46 CFR Part 572

[Docket No. 89–23]

Agreements by Ocean Common Carriers and Other Persons Subject to Shipping Act of 1984

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: This removes the membership size limitation in the Federal Maritime Commission's exemption of membership changes in certain passenger vessel operator agreements from the notice and waiting period requirements of section 6 of the Shipping Act of 1984 and the Information Form, notice and waiting period requirements of 46 CFR part 572. This will enable such membership changes to become effective upon filing with the Federal Maritime Commission, regardless of the membership size of the involved agreement.

EFFECTIVE DATE: December 28, 1989.

FOR FURTHER INFORMATION CONTACT: Austin L. Schmitt, Director, Bureau of Trade Monitoring, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523–5787.

SUPPLEMENTARY INFORMATION: The Federal Maritime Commission ("Commission") initiated this proceeding by notice published in the Federal Register of November 2, 1989 (54 FR 46273) ("Proposed Rule"). The Proposed Rule was issued concurrently with a separate order that revised 46 CFR 572.309(a)(2)(i) to exempt membership changes in certain passenger vessel operator agreements from certain procedural requirements of the Shipping Act of 1984, 46 U.S.C. app. 1701, *et seq.* ("1984 Act") and the Commission's rules thereunder, 46 CFR part 572. The exemption allows such membership changes to become effective upon filing with the Commission. Petition No. P2–89; Docket No. 89–22, *Cruise Lines International Association—Application for Section 16 Exemption*, Final Rule, 54 FR 46249 (November 2, 1989). This exemption was granted in response to an Application filed by Cruise Lines International Association ("CLIA"), which requested that membership changes in passenger

vessel operator discussion agreements open to all passenger vessels of a class defined in the agreements and

small organizational units or small governmental jurisdictions. The primary economic impact of this rule will be on

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric

March 31, 1990, the end of the fishing year. The closure applies in the EEZ from the Virginia/North Carolina border

cod taken by directed fishing for that species. This action, taken under provisions of the fishery management

fisherman to take the allotted quota in the short time remaining in the fishing season. In addition, this action relieves

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vessel operator discussion agreements open to all passenger vessels of a class defined in the agreements and consisting of 15 or more members, which do not contain ratemaking, pooling or joint service authority, be exempted from the notice and waiting period requirements of section 6 of the 1984 Act, and the Information Form, notice and waiting period requirements of 46 CFR part 572.

The Commission granted the essential exemption requested by CLIA, with some modifications to narrow the exemption's scope to also exclude membership changes in passenger vessel operator agreements containing sailing or space chartering authority and to otherwise improve the exemption's clarity and definiteness.

In granting the exemption requested by CLIA, the Commission also determined to propose an expansion of the exemption's scope to remove the membership size limitation, thus affording uniform treatment of membership changes in all such passenger vessel discussion agreements, regardless of the size of the agreement's membership. The membership size limitation issue was outside the scope of Petition No. P2-89 and could not, therefore, be addressed in that proceeding.

No comments on the Proposed Rule were received. In accordance with section 16 of the 1984 Act, the Commission finds that the exemption granted herein will not substantially impair effective regulation by the Commission, be unjustly discriminatory, result in a substantial reduction in competition, or be detrimental to commerce.

The Commission has determined that this rule is not a "major rule" as defined in Executive Order 12291 dated February 17, 1981, because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effect on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Acting Chairman of the Commission certifies pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, that this rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units or small governmental jurisdictions. The primary economic impact of this rule will be on passenger vessel operating ocean common carriers, which generally are not small entities.

The Paperwork Reduction Act, 44 U.S.C. 3501-3520, does not apply to this Proposed Rule because the amendment to part 572 of title 46, Code of Federal Regulations, does not impose any additional reporting or recordkeeping requirements or change the collection of information from members of the public which require the approval of the Office of Management and Budget.

The Commission has determined that this rule is excepted from the 30-day effective date requirement of 5 U.S.C. 553 because it grants an exemption and relieves a restriction from existing requirements.

List of Subjects in 46 CFR Part 572

Antitrust, Contracts, Maritime carriers, Administrative practice and procedure, Rates and fares.

Therefore, pursuant to 5 U.S.C. 553, and sections 5, 16 and 17 of the Shipping Act of 1984, 46 U.S.C. 1704, 1715, 1716, in order to exempt membership changes in certain passenger vessel discussion agreements from certain requirements of the 1984 Act, and the Commission's implementing regulations thereof, part 572 of title 46 of the Code of Federal Regulations is amended as follows:

PART 572—[AMENDED]

1. The authority citation to part 572 continues to read:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1701-1707, 1709-1710, 1712 and 1714-1717.

2. Section 572.309 is amended by revising paragraph (a)(2)(i) to read as follows:

§ 572.309 Miscellaneous modifications to agreements—exemptions.

(a) * * *

(2) * * *

(i) *Article 3*—Parties to the agreement (limited to conference agreements, and discussion agreements among passenger vessel operating ocean common carriers which are open to all ocean common carriers operating passenger vessels of a class defined in the agreements, which do not contain ratemaking, pooling, joint service, sailing or space chartering authority).

* * * * *

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 89-30136 Filed 12-27-89; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 90637-9166]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Secretary of Commerce (Secretary) closes the commercial fishery for Spanish mackerel from the Atlantic migratory group in the exclusive economic zone (EEZ). The Secretary has determined that the commercial allocation for Atlantic group Spanish mackerel was reached on December 22, 1989. This closure is necessary to protect the overfished Atlantic Spanish mackerel resource.

EFFECTIVE DATE: Closure is effective at 12:01 a.m., local time, December 23, 1989, until 12:00 p.m. (midnight), local time, March 31, 1990.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813-893-3722.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP), as amended, was developed by the South Atlantic and Gulf of Mexico Fishery Management Councils (Councils) under authority of the Magnuson Fishery Conservation and Management Act, and is implemented by regulations at 50 CFR part 642. Regulations effective July 1, 1989 (54 FR 30554, July 21, 1989), implemented catch limits recommended by the Councils for the Atlantic migratory group of Spanish mackerel for the current fishing year (April 1, 1989, through March 31, 1990). As amended by implementation of Amendment 4 to the FMP (54 FR 38526, September 19, 1989), those regulations set the commercial allocation at 3.24 million pounds.

Under § 642.22(a), the Secretary is required to close any segment of the Spanish mackerel commercial fishery when its allocation has been reached, or is projected to be reached, by publishing a notice in the **Federal Register**. The Secretary has determined that the commercial allocation for the Atlantic migratory group of Spanish mackerel of 3.24 million pounds was reached on December 22, 1989. Hence, the commercial fishery for Atlantic group Spanish mackerel is closed effective 12:01 a.m., December 23, 1989, through

March 31, 1990, the end of the fishing year. The closure applies in the EEZ from the Virginia/North Carolina border southward to a line extending directly east from the Dade/Monroe County, FL boundary (25°20.4' N. latitude).

Except for a person on a charter vessel, during the closure, no person aboard a vessel permitted to fish under a commercial allocation may fish for, retain, or have in possession in the EEZ Spanish mackerel from the Atlantic migratory group. A person aboard a charter vessel may continue to fish for Spanish mackerel from the Atlantic migratory group under the bag limit set forth in § 642.28(a)(4), provided the vessel is under charter (i.e., there are more than three persons aboard, including captain and crew) and the vessel has an annual charter vessel permit issued under § 642.4(a)(3).

During the closure, Spanish mackerel from the Atlantic migratory group taken in the EEZ, including those harvested under the bag limit, may not be purchased, bartered, traded, or sold. This prohibition does not apply to trade in Spanish mackerel from the Atlantic migratory group that were harvested, landed, and bartered, traded, or sold prior to the closure and held in cold storage by a dealer or processor.

Other Matters

This action is required by 50 CFR 642.22(a) and complies with E.O. 12291.

Authority: 16 U.S.C. 1801 *et seq.*

List of Subjects in 50 CFR Part 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 22, 1989.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-30163 Filed 12-22-89; 4:03 pm]

BILLING CODE 3510-22-M

50 CFR Part 675

[Docket No. 81131-9019]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of rescinding prohibition on receipt of groundfish.

SUMMARY: NOAA announces the rescission of the prohibition on the receipt of certain groundfish by joint venture processing (JVP) operations in the Bering Sea and Aleutian Islands area. This prohibition applied to Pacific cod taken by directed fishing for that species. This action, taken under provisions of the fishery management plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI), is necessary to assure optimum use of groundfish in that area. It is a conservation and management measure intended to promote fishery objectives of the North Pacific Fishery Management Council (Council).

DATES: Effective December 20, 1989 through December 31, 1989. Comments will be accepted through January 4, 1990.

ADDRESSES: Comments should be mailed to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802, or be delivered to Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Janet E. Smoker (Fishery Management Biologist, NMFS), 907-586-7230.

SUPPLEMENTARY INFORMATION: The FMP is implemented by rules appearing at 50 CFR 611.93 and part 675.

Earlier this year, NOAA announced the prohibition of the receipt by foreign processors of Pacific cod taken by directed fishing for that species (54 FR 6934, February 15, 1989). A later action (54 FR 37112, September 7, 1989) apportioned sufficient amounts of Pacific cod (30,000 mt) to JVP to provide bycatch amounts for additional amounts of pollock, yellowfin sole, and "other flatfish" which were apportioned to JVP by the same action. The prohibition of the receipt by foreign processors of Pacific cod taken by directed fishing for Pacific cod remained in effect.

During the fall joint venture fishery, the bycatch rate of Pacific cod in the yellowfin sole and flatfish fisheries has averaged about 6 percent, half the rate anticipated. To date, only 44,100 mt of the JVP quota for Pacific cod (67,486 mt) has been taken. The amount of the quota remaining is more than sufficient to allow for bycatch in ongoing pollock and flatfish fisheries.

Therefore, foreign processors may receive Pacific cod taken by directed fishing for this species, effective noon, Alaska standard time, December 20 through December 31, 1989.

Classification

This action is taken under the authority of 50 CFR 675.20(b) and complies with Executive Order 12291.

The Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment. Immediate effectiveness of this notice is necessary to allow fisherman to take the allotted quota in the short time remaining in the fishing season. In addition, this action relieves a restriction obviating the need for delayed effectiveness. However, interested persons are invited to submit comments in writing to the address above for 15 days after the effective date of this notice.

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 21, 1989.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-30048 Filed 12-23-89; 11:05 am]

BILLING CODE 3510-22-M

50 CFR Part 675

[Docket No. 90407-9170]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of reapportionment.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that previously specified prohibited species catch (PSC) allowances for *Chionoecetes bairdi* Tanner crab and for Pacific halibut are incorrect and must be redistributed among domestic fisheries. This action is necessary to allow for the full harvest of the groundfish optimum yield (OY) within constraints imposed by PSC limits. This action is intended to carry out the objectives of measures to control the bycatch of prohibited species in the trawl fishery for groundfish.

DATES: Effective December 20, 1989 through December 31, 1989. Comments will be accepted through January 4, 1990.

ADDRESSES: Comments should be mailed to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802, or be delivered to Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Janet E. Smoker (Fishery Management Biologist), NMFS, Alaska Region, P.O. Box 21668, Juneau, Alaska 99802-1668, telephone 907-586-7229.

SUPPLEMENTARY INFORMATION: The Secretary approved Amendment 12A to the Fishery Management Plan for the Groundfish Fishery in the Bering Sea

and Aleutian Islands Area (FMP) under authority of the Magnuson Fishery Conservation and Management Act.

years and projected performance for the 1989 fishing year.

NMFS had projected that the DAP other fishery would use its entire secondary Pacific halibut allowance by the end of

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and Aleutian Islands Area (FMP) under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act) on July 7, 1988. Amendment 12A was implemented by the Secretary with a final rule promulgated August 9, 1989 (54 FR 32642) and effective September 3, 1989 through December 31, 1990.

The purpose of Amendment 12A is to limit incidental catches of the prohibited species Tanner crab, red king crab, and Pacific halibut by the groundfish fisheries in the Bering Sea and Aleutian Islands area. Such incidental catches are referred to as bycatches in fisheries targeting other species. The amendment establishes five prohibited species catch (PSC) limits, each of which are apportioned into PSC allowances among four fisheries: The domestic annual processing (DAP) fisheries for (1) flatfish and (2) other species, and the joint venture processing (JVP) fisheries for (3) flatfish and (4) other species. Each of the 20 PSC allowances prescribed for the 1989 groundfish fisheries were specified in the final rule implementing Amendment 12A (50 CFR 675.21, Table 2, 54 FR 32651, August 9, 1989). Specification of the PSC allowances was based on the anticipated bycatch of prohibited species through the use of a mathematical prediction procedure using statistical information derived from fishery performance in previous years and projected performance for the 1989 fishing year.

Reapportionment

The Regional Director has determined that incomplete harvest information and the prediction procedure based on this information have led to incorrect specification of PSC allowances for *C. bairdi* Tanner crab and for Pacific halibut and, therefore, these allowances must be redistributed to allow for the full harvest of the available groundfish OY. This redistribution of the PSC allowances is based on the best available scientific information concerning the actual groundfish harvest to date and new projections of harvest for the remainder of the fishing year.

As of December 2, the JVP flatfish fishery had taken 415,129 *C. bairdi* crabs, exceeding its allowance of 280,077 by 135,062 crabs in Zone 2, whereas the JVP other fishery had taken only 158,743 crabs, leaving 471,712 crabs in its Zone 2 allowance.

On September 3, reapportionments of Pacific halibut PSC allowances were made effective (54 FR 37113; September 7, 1989). As of December 2, the JVP other fishery had taken 536 mt of Pacific halibut, leaving only 19 mt of its secondary Pacific halibut allowance of 555 mt. As of November 25, the DAP other fishery had taken 2,902 mt of Pacific halibut, leaving 1,179 mt of its total secondary Pacific halibut allowance of 4,081 mt. In September, NMFS had projected that the DAP other fishery would use its entire secondary Pacific halibut allowance by the end of 1989. However, DAP catches of Pacific cod (the target species in the other fishery category that contributes most to Pacific halibut bycatch) have been less than anticipated and NMFS estimates that at least 20,000 mt of DAP Pacific cod will remain uncaught at the end of the year. NMFS projects that at recent catch rates, an additional 960 mt of Pacific halibut will be required as bycatch for anticipated catches in the DAP other fishery from November 26 to the end of the year.

The Regional Director has determined that there is insufficient *C. bairdi* PSC allowance apportioned to the JVP flatfish fisheries and excessive *C. bairdi* PSC allowance apportioned to the JVP other fisheries. He has also determined that there is insufficient Pacific halibut PSC allowance apportioned to the JVP other fishery and excessive Pacific halibut PSC allowance to the DAP other fishery. The proposed adjustment will allow redistribution of uncaught PSC allowances among fisheries and allow fisheries to be prosecuted that otherwise would be closed, thus leaving large amounts of groundfish uncaught.

Therefore, the Secretary is redistributing the uncaught *C. bairdi* and halibut PSC allowances specified in Table 2, 50 CFR 675.21, among fisheries as follows:

REAPPORTIONMENT OF 1989 PROHIBITED SPECIES CATCH (PSC) ALLOWANCES (*C. bairdi* IN NUMBERS OF ANIMALS, HALIBUT IN METRIC TONS)

Type	Target	Area	PSC	Current allowance	Change	New allowance
JVP	Flatfish	Zone 2	*C. bairdi*	280,077	+283,000	563,077
JVP	Other	Zone 2	*C. bairdi*	630,455	−283,000	347,455
JVP	Other	BSA	Halibut	555	+219	774
DAP	Other	BSA (Secondary)	Halibut	4,081	−219	3,862
		BSA (Secondary				

Classification

This action is taken under §§ 675.20 and 675.21 and complies with Executive Order 12291. The Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment. Immediate effectiveness of this notice is necessary to benefit domestic fishermen whose fisheries would otherwise be closed from key fishing areas. Interested persons are invited to submit comments in writing to the address above for 15 days after the effective date of this notice.

List of Subjects in 50 CFR 675

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 21, 1989.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-30049 Filed 12-22-89; 11:08 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 248
Thursday, December 28, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 354

9 CFR Part 97

[Docket 89-201]

Fee Increase for Overtime Services

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations that establish charges for Sunday, holiday, or overtime work performed by inspectors of the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture, at laboratories, border ports, seaports, and airports. The regulations would be amended by: (1) Increasing the hourly rate charged a person, firm or corporation having ownership, custody, or control of plants, plant products, animals, animal byproducts, or other commodities or articles subject to certain inspection, laboratory testing, certification, or quarantine and who requires the services of an APHIS employee on a Sunday or holiday or at any other time outside the employee's regular tour of duty; and (2) increasing the hourly rates charged an owner or operator of an aircraft requesting inspection or quarantine services at an airport outside of the regularly established hours of service. This action is necessary in order to reflect salary increases for Federal employees in accordance with the Federal Pay Comparability Act of 1970 (Pub. L. 91-656), and subsequent appropriation legislation, and to reflect allowable costs associated with the implementation of the Debt Collection Act of 1982.

DATE: Consideration will be given only to comments received on or before January 12, 1990.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket 89-201. Comments received may be inspected at USDA, Room 1141, South Building, 14th and Independence Avenue, SW., between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Paul R. Eggert, Director, Resource Management Support, PPQ, APHIS, USDA, Room 621, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7764; or Louise Rakestraw Lothery, Director, Resource Management Support Staff, VS, APHIS, USDA, Room 740, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782, (301) 436-7517.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR chapter I, subchapter D, and 7 CFR, chapter III (referred to below as "the regulations"), require inspection, laboratory testing, certification, or quarantine of certain animals, animal byproducts, plants, plant products, or other commodities or articles intended for importation into, or exportation from, the United States. When these services must be provided by an APHIS employee on a Sunday or holiday, or at any other time outside the APHIS employee's regular duty hours, the Government charges a fee for the services in accordance with 9 CFR part 97 and 7 CFR part 354.

Each year the fees for these services provided by APHIS employees are reviewed and a cost analysis is performed to determine if such fees are adequate to recover the cost of providing these services. The fees to be charged for these services have been determined by an analysis of data on the current cost of these services; anticipated costs associated with changes in operations of the program; and increases in those costs due to an increase in salaries of Federal employees allocated by Congress under the Federal Pay Comparability Act of 1970 and other increases affecting Federal employees, such as costs for travel and benefits.

Based on the Agency's analysis of the increased costs in providing these services, incurred as a result of a January 1990 pay raise of 3.6 percent for Federal employees, increased costs of the retirement system in 1990, and increased health insurance and travel costs, APHIS proposes to increase the fees relating to such services.

With certain exceptions explained below, the rates would be increased by $2.24 per hour for services performed outside the regular tour of duty on a Sunday and by $1.92 per hour for services performed outside the regular tour of duty on a holiday or any other period. The new rates would be $40.16 and $31.20, respectively.

The hourly rates charged an owner or operator of an aircraft requesting inspection or quarantine services at an airport outside of the regularly established hours of service would be increased as follows: For services performed outside of the regularly established hours of service on a Sunday, the rate would be increased by $1.44 per hour, to $32.60. For services performed outside of the regularly established hours of service on a holiday or any other period, the rate would be increased by $1.20 per hour, to $24.86.

Owners and operators of aircraft will continue to be provided inspection services without reimbursement during regularly established hours of service on a Sunday or holiday. Further, no change is proposed in the $25.00 limit for all private aircraft or private vessel inspection services performed on a Sunday, holiday, or at any time after 5 p.m. or before 8 a.m. on a weekday by the Customs Service, Immigration and Naturalization Service, Public Health Service, and the Department of Agriculture.

Public Comment Period

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that this rulemaking proceeding should be expedited by allowing a 15-day comment period on this proposal. This is a full cost recovery program. In order for all costs associated with this program to be recovered these rates must be in effect by January 14, 1990.

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Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major role." Based on information compiled by the Department, we have determined that this rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and would not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Based on information compiled by the Department, we estimate that APHIS for calendar year 1989 will have provided an average of 12,760 hours per week of services for which charges are assessed. These services were requested by thousands of entities. We do not expect that the number of hours of service for which charges will be imposed will increase significantly in 1990.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects

7 CFR Part 354

Agricultural commodities, Exports, Government employees, Imports, Plants (Agriculture), Quarantine, Transportation.

9 CFR Part 97

Exports, Government employees, Imports, Livestock and livestock products, Poultry and poultry products, Transportation.

Accordingly, 7 CFR part 354 and 9 CFR part 97 would be amended as follows:

TITLE 7—[AMENDED]

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

1. The authority citation for 7 CFR part 354 would continue to read as follows:

Authority: 7 U.S.C. 2260; 49 U.S.C. 1741; 7 CFR 2.17, 2.51 and 371.2(c).

§ 354.1 [Amended]

2. In paragraph (a)(1) introductory text of § 354.1, "$37.92" would be removed and "$40.16" added in its place, and "$29.28" would be removed and "$31.20" added in its place.

3. In paragraph (a)(1)(iii) of § 354.1, "$31.16" would be removed and "$32.60" added in its place, and "$23.66" would be removed and "$24.88" added in its place.

TITLE 9—[AMENDED]

PART 97—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

4. The authority citation for 9 CFR part 97 would continue to read as follows:

Authority: 7 U.S.C. 2260; 49 U.S.C. 1741; 7 CFR 2.17, 2.51 and 371.2(d).

§ 97.1 [Amended]

5. In paragraph (a) introductory text of § 97.1, "$37.92" would be removed and "$40.16" added in its place, and "$29.28" would be removed and "$31.20" added in its place.

6. In paragraph (a)(3) of § 97.1, "$31.16" would be removed and "$32.60" added in its place, and "$23.66" would be removed and "$24.88" added in its place.

Done in Washington, DC, this 22nd day of December 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-30095 Filed 12-27-89; 8:45 am]

BILLING CODE 3410-34-M

Farmers Home Administration

7 CFR Part 1965

Security Servicing for Multiple Family Housing Loans

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its multiple family housing security servicing regulations. This action is being taken to clarify the consolidation section, to change the effective interest rate to be used for new term transfers and reamortizations and to revise the reamortization section to include reamortizations with cost items. This action is necessary to clarify current instructions.

DATES: Comments must be submitted on or before February 26, 1990.

ADDRESS: Submit written comments in duplicate to the Office of the Chief, Directives and Forms Management Branch, FmHA, Room 6348, South Agriculture Building, Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular work hours at the above address.

FOR FURTHER INFORMATION CONTACT: Wanda L. Triplett, Loan Specialist, Multiple Family Housing Servicing and Property Management Division, Farmers Home Administration (FmHA), USDA, Room 5333, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250, telephone (202) 382-1612.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291, and has been determined to be nonmajor because there will not be an annual effect on the economy of $100 million or more; a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or significant adverse effects on competition employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that this action, consisting only of accounting changes, does not constitute a major Federal action significantly affecting the quality of the human environment, and, in accordance with the National Environmental Policy Act of 1969, Public Law 91-190, an Environmental Impact Statement is not required.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). The undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not involve a new or expanded program.

Intergovernmental Consultation

For the reasons set forth in the Final Rule related Notice(s) to 7 CFR part 2015, subpart V, programs 10.415 Rural Rental Housing Loans and 10.427—Rural Rental Assistance Payments are subject to Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Programs Affected

These changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance: 10.405 Farm Labor Housing Loans and Grants 10.415 Rural Rental Housing Loans

List of Subjects in 7 CFR Part 1965

Administrative practice and procedure, Low and moderate income housing—Rental, and Mortgages.

Therefore, as proposed, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1965—REAL PROPERTY

1. The authority citation for part 1965 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.33; 7 CFR 2.70.

Subpart B—Security Servicing for Multiple Housing Loans

2. Section 1965.65 is amended by revising the last sentence of paragraph (f)(2) and the first sentence of paragraph (f)(6)(i) to read as follows:

§ 1965.65 Transfer of real estate security and assumption of loans.

* * * * *

(f) * * *

(2) * * * If the loan account or the reserve account cannot be brought current, or less than the total debt is assumed, the transfer will be closed on new terms and the interest rate charged by FmHA will be the current rate being charged for those loans at the time of loan closing, or the interest rate at the time of approval (the date Form FmHA 1944-51 is approved), whichever is less.

* * * * *

(6) * * *

(i) The interest rate charged for all loans, except LH loans, will be the current rate being charged for those loans at the time of loan closing, or the interest rate at the time of approval (the date Form FmHA 1944-51 is approved), whichever is less. * * *

* * * * *

3. Section 1965.88 is revised to read as follows:

§ 1965.88 Consolidation.

General. Loans and/or loan agreements/resolutions may be consolidated to reduce the administrative burden (recordkeeping, budgeting, etc.), to improve the cost effectiveness and efficiencies of project operations, and/or to effectively utilize the physical facilities common to projects. State Directors may approve the consolidations with the advice of OGC and when the following conditions are met:

(a) *Consolidation of loans.* (1) The loans are being transferred under § 1965.65(f)(6) of this subpart on *new terms* to the transferee.

(2) The promissory notes *and* the loan agreements/resolutions will be consolidated.

(3) The conditions for consolidation of loan agreements/resolutions must be met.

(4) The total indebtedness (principal plus accrued interest, overage and late fees) of all loans being consolidated does not exceed the State Director's approval authority.

(b) *Processing consolidation of loans.* (1) Form FmHA 1944-52, "Multiple Family Housing Promissory Note," will be prepared for the notes or assumption agreements being consolidated according to the FMI. If the District Office does not have possession of the original note or assumption agreement, the District Director will call the Finance Office to request the return of the original form so it is in the District Office before a new Form FmHA 1944-52 is processed. Promissory notes should be prepared on a monthly payment basis, as appropriate.

(2) A new Form FmHA 1944-7, "Interest Credit and Rental Assistance Agreement," will also be prepared and submitted to the Finance Office in accordance with the FMI.

(3) Form FHA.1965-17A, "Multiple Family Housing Consolidation of Projects/Loan Agreements/Resolutions," will be completed to show all of the notes which have been consolidated in the new Form FmHA 1944-52. A copy of the completed Form FmHA 1965-17a will also be sent to the Finance Office. The AMAS M5A screen for all projects should be reviewed and updated, as appropriate, before submitting Form FmHA 1965-17A.

(4) The original and District Office copies of all notes or assumption agreements that are consolidated, will be stamped "consolidated", by the District Office. The original instruments being consolidated will be filed in the borrowers case file. When the consolidated note has been paid in full or otherwise satisfied, it and all other instruments will be handled according to the provisions of § 1951.15 of subpart A of part 1951.

(5) A consolidated loan agreement or resolution using Form FmHA 1944-33A, "Consolidated Loan Agreement RRH Insured Loan to an Individual Operating on a Profit Basis or RRH Loan to an Individual Operating on a Limited Profit Basis," FmHA 1944-34A, "Consolidated RRH Loan Agreement To a Partnership Operating on a Profit Basis, To Limited Partnership Operating on a Profit Basis, To a Partnership Operating on a Limited Profit Basis, To a Limited Partnership Operating on a Limited Profit Basis," or FmHA 1944-35A, "Consolidated Loan Resolution RRH Loan to a Broadly Based Nonprofit Corporation, RRH Loan to a Profit Type Corporation, RRH Loan to Profit Type Corporation Operating on a Limited Profit Basis," as appropriate, will be prepared for RRH loans to reflect current reporting requirements and the authorized initial investment attributable to the owner after the consolidation has occurred. A revised consolidated loan agreement or resolution will be prepared for LH loans containing the requirements of Exhibit C, D, or E of subpart D of part 1944 of this chapter, as appropriate.

(6) Consolidation of notes will only be accomplished with the guidance and assistance of OGC. Under no circumstances will promissory *notes* be consolidated if the security position of FmHA will be adversely affected.

(7) New security instruments which describe the consolidated note will be filed to perfect the FmHA lien position. If the new lien position taken is junior only to the previous lien position securing the loans being consolidated, the previous security instruments may be released with the guidance and assistance of OGC.

(c) *Consolidation of loan agreements/resolutions (project consolidation).* (1) The security for the loans must be on the total project; "project" being defined per subpart C of part 1930 of this chapter.

(2) The State Director may approve

the consolidation of loan agreements/resolutions irrespective of the total indebtedness represented by all loan

circumstances will projects be consolidated if the security position of FmHA will be adversely affected.

NUCLEAR REGULATORY COMMISSION

period for public comment regarding the Agency's Advance Notice of Proposed Rulemaking and the proposed rules for

public hearings in the early spring of 1990 on certain sections of the Agency's

FOR FURTHER INFORMATION CONTACT: Dermot M. Winters, Office of Surface Mining Reclamation and Enforcement

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the consolidation of loan agreements/resolutions irrespective of the total indebtedness represented by all loan agreements/resolutions being consolidated.

(3) The loan agreements being consolidated are for loans made for the same purpose (for example, loans specifically made for senior citizen projects cannot be consolidated with loans for family projects), to the same borrower entity and have the same plan of operation (nonprofit, limited profit or full profit), and are operating under the same type of Interest Credit, if applicable.

(4) The requirements of subpart C of part 1930 of this chapter concerning reporting, accounting and project management will be fulfilled as a single project.

(5) All project accounts being consolidated must be current after the consolidation processes, unless authorized by the National Office.

(6) RA agreements will not be consolidated; each RA agreement will be tracked under a separate RA number through AMAS. The RA can be assigned to eligible tenants in the new "project" per assignment priorities. The waiting list(s) for the projects being consolidated will be combined.

(7) The appropriate restrictive-use language set forth in § 1965.90(b)(2)(i) of this subpart for RRH, RCH or LH loans will be added to those loans not previously subject to restrictive use, with the advice of OGC, to the loan agreement/resolution as a condition of FmHA approval of the project consolidation. The restrictive-use period will begin on the date the consolidation is effective for loans not previously subject to restrictive use provisions.

(d) *Processing loan agreement/resolution consolidations.* (1) Form FmHA 1965–17A will be completed to show all of the notes for the projects being consolidated. The AMAS M5A screen for all projects should be reviewed and updated before submitting Form FmHA 1965–17A.

(2) A consolidated loan agreement or resolution using Form FmHA 1944–33A, 1944–34A, or 1944–35A, as appropriate, will be prepared for RRH loans to reflect current reporting requirements and the authorized initial investment attributable to the owner after the consolidation has occurred. A revised consolidated loan agreement or resolution will be prepared for LH loans containing the requirements of Exhibit C, D, or E of subpart D of part 1944 of this chapter, as appropriate.

(3) Consolidation of projects will only be accomplished with the guidance and assistance of OGC. Under no circumstances will projects be consolidated if the security position of FmHA will be adversely affected.

(4) All of the general requirements of paragraph (c) of this section must be met.

(5) Neither the terms nor the due date of the loan(s) involved are altered, and other security instruments remain unchanged, and are not released.

(6) All of the loan agreements or loan resolutions being consolidated may be secured by one deed of trust or mortgage describing all of the loans for the projects if required by OGC.

4. Section 1965.70 is amended by revising paragraph (d)(5) and by adding paragraphs (b)(3) (viii), (ix) and (x) and (d)(9) to read as follows:

§ 1965.70 Reamortization.

* * * * *

(b) * * *

(3) * * *

(viii) All MFH loans being reamortized must be closed on PASS, except LH loans specified in § 1951.501 (a)(2)(i) of subpart K of this part. All initial and subsequent loans must convert to PASS in connection with the reamortization.

(ix) When recoverable cost items are involved, they are first capitalized by adding them to the principal loan balance outstanding on the oldest loan and then the entire indebtedness (principal plus outstanding interest, overage and late fees) is reamortized.

(x) Audit receivables may not be reamortized.

* * * * *

(d) * * *

(5) The interest rate for the account will be unchanged except when the final due date has been extended. The interest rate charged will be the rate at the time the reamortization request (Form FmHA 1951–33) is approved, or the current interest rate at the closing, whichever is less.

* * * * *

(9) Reamortizations will always be closed the first day of the month. Unpaid interest to the date of closing may be capitalized.

* * * * *

Dated: December 1, 1989.

Neal Sox Johnson,

Administrator, Farmers Home Administration.

[FR Doc. 89-30096 Filed 12-27-89; 8:45 am]

BILLING CODE 3410-07-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 170

RIN 3150 AD23

Revision of Fee Schedules: Radioisotope Licenses and Topical Reports

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule: notice of meeting.

SUMMARY: On December 1, 1989 (54 FR 49763), the NRC published for public comment a proposed rule to amend the fee schedule in 10 CFR 170 of the Commission's regulations. The proposed rule indicated that public meetings would be held in Region I on January 8, 1990 and in Region III on January 11, 1990 to discuss the proposed changes. This document announces a third public meeting to be held in Region IV.

DATE: The meeting will be held on January 17, 1990.

ADDRESSES: The meeting will be held at 1:00 p.m., Arlington Hilton Hotel, 2401 East Lamar Boulevard, Arlington, Texas.

FOR FURTHER INFORMATION CONTACT: Lee Hiller, Deputy Controller, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–7351.

Dated at Rockville, Maryland, this 21st day of December, 1989.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 89-30077 Filed 12-27-89; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 7, 70, and 75

RIN 1219-AA27

Approval Requirements for Diesel-Powered Machines and Approval, Exposure Monitoring, and Safety Requirements for the Use of Diesel-Powered Equipment in Underground Coal Mines; Proposed Rules; Extension of Comment Periods

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rules; extension of comment period.

SUMMARY: The Mine Safety and Health Administration (MSHA) is extending the period for public comment regarding the Agency's Advance Notice of Proposed Rulemaking and the proposed rules for the approval and use of diesel powered equipment in underground coal mines in 30 CFR parts 7, 70, and 75.

DATES: This action extends the comment period for the Advance Notice of Proposed Rulemaking (ANPRM) on the Approval Requirements for Diesel Powered Machines to February 2, 1990. (54 FR 40998, October 4, 1989). This notice also extends the comment period on the proposed rules for Approval, Exposure Monitoring and Safety Requirements for the Use of Diesel Powered Equipment in Underground Coal Mines (30 CFR parts 7, 70, 75) until July 6, 1990 (54 FR 40950, October 4, 1989).

ADDRESS: Send written comments to the Mine Safety and Health Administration, Office of Standards, Regulations and Variances, Room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, (703) 235–1910.

SUPPLEMENTARY INFORMATION: The Mine Safety and Health Administration (MSHA) has received several requests from the mining community to extend the comment period on the proposed diesel rules. These requests were based on the complex nature of the proposed regulations and the interaction of the proposed diesel rules with certain parts of the Agency's air quality proposal published on August 29, 1989 (54 FR 35760). In response to these requests, the Agency has decided to extend the comment period on the ANPRM and the proposed rules.

In regard to the ANPRM, the comment period will be extended until February 2, 1990. This extension should allow commenters time to focus their efforts on the specific questions posed by MSHA in the notice concerning the machine approval requirements. MSHA then plans to proceed with a rulemaking proposal based on the comments received. The Agency anticipates publishing a proposed rule in the spring of 1990. The Agency believes that extending the comment period for the ANPRM for 30 days will allow the machine approval proposed requirements to ultimately be published concurrently with the diesel rules as they become final.

With regard to the extension of the comment period for 30 CFR parts 7, 70 and 75 of the proposed diesel rules, MSHA will extend the comment period until July 6, 1990. This will allow time for public hearings in the early spring of 1990 on certain sections of the Agency's proposed air quality rules. These public hearings will address the issues of exposure monitoring procedures, and the appropriate exposure limit for nitrogen dioxide (NO_2), which are referenced in the diesel proposal for 30 CFR part 70. Because these issues have an impact on the proposed diesel rules, the Agency has deemed it to be in the public interest to allow time for the air quality hearings to address these issues first, before commenters would be required to submit written comments on the diesel proposal.

Therefore, in order to allow all interested parties to adequately prepare comments to these complex and interrelated issues, the Agency believes that these extensions of time are necessary.

Dated: December 22, 1989.

William J. Tattersall,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 89-30119 Filed 12-27-89; 8:45 am]

BILLING CODE 4510-43-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 817

Availability of Petition To Initiate Rulemaking; Surface Coal Mining and Reclamation Operations; Permanent Program Performance Standards; Underground Mining Activities

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Extension of comment period.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the United States Department of the Interior (DOI) is extending the comment period on a notice of availability of a petition to initiate rulemaking to amend OSM's regulations governing blasting operations at surface coal mines.

DATES: The comment period on the notice of availability of a petition to initiate rulemaking is extended until 5 p.m. Eastern time on January 22, 1990.

ADDRESSES: Mail comments on proposal to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131A, 1951 Constitution Avenue, NW., Washington, DC. 20240; or hand-deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131, 1100 L St., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dermot M. Winters, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: 202–343–1928 (Commercial or FTS).

SUPPLEMENTARY INFORMATION: On December 6, 1989 OSM published a notice of availability of a petition to initiate rulemaking to amend OSM's regulations governing blasting operations at surface coal mines. The petitioner suggested that OSM amend its rules by revising 30 CFR 817.62 and 30 CFR 817.67 to provide increased protection from blasting damage outside the permit area than is afforded under the current rules.

OSM has received written requests from the National Wildlife Federation and the National Coal Association to extend the comment period on the petition for rulemaking in order to provide their repsective organizations additional time to prepare comments on what they consider a complex area of OSM's technical regulations. The National Coal Association specifically asked for an extension of 30 days beyond the present January 5 closing date.

Section 201(g) (4) of the Surface Mining Control and Reclamation Act requires that the OSM Director either grant or deny any rulemaking petition within 90 days after it has been filed. In this instance, that decision must be made by January 29, 1990. Consequently, in consideration of the January 29 decision deadline, OSM is extending the comment period until January 22, 1990 and will accept written comments on the notice of availability of the petition to initiate rulemaking until 5 p.m. Eastern time on that date.

Dated: December 21, 1989.

W. Hord Tipton,

Acting Director.

[FR Doc. 89-30090 Filed 12-27-89; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 916

Kansas Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Withdrawal of proposed amendment.

SUMMARY: OSM is announcing the withdrawal of a proposed amendment to the Kansas Permanent Regulatory Program. The proposed amendment

pertains to administrative procedures for public hearings. Kansas is withdrawing this amendment because it

services when made available on that network. This regulation, issued pursuant to the Brooks Act (40 U.S.C.

network for requirements that were previously authorized and awarded under prior FIRMR provisions until the

Federal agencies. This Governmentwide management regulation will have little or no net cost effect on society. This rule

elevations for selected locations in the nation, in accordance with Section 110 of the Flood Disaster Protection Act of

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)

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pertains to administrative procedures for public hearings. Kansas is withdrawing this amendment because it intends to revise it and submit it as another formal amendment at a future date.

DATE: This withdrawal is effective December 28, 1989.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 1103 Grand Avenue, Room 502, Kansas City, Missouri 64106; Telephone (816) 374-6405.

SUPPLEMENTARY INFORMATION: By letter dated November 2, 1989 (Administrative Record No. KS-446), Kansas submitted a proposed amendment to its program pursuant to the Surface Mining Control and Reclamation Act of 1977. The proposed amendment adopted by reference the Kansas Administrative Procedures Act, K.S.A. 77-501 *et seq.* to be used for public hearings concerning the surface mining program in Kansas.

On November 17, 1989 (Administrative Record No. KS-454), OSM announced receipt and solicited public comment on the program amendment (54 FR 47776). On December 11, 1989 (Administrative Record No. KS-455) Kansas notified OSM of its desire to withdraw the proposed amendment. Therefore, the proposed amendment announced in the November 17, 1989, **Federal Register** is withdrawn, and part 916 title 30 of the Code of Federal Regulations is not amended.

List of Subjects in 30 CFR Part 916

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: December 19, 1989.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 89-30091 Filed 12-27-89; 8:45 am]

BILLING CODE 4310-05-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 201-41

Mandatory Federal Telecommunications System 2000 (FTS2000) Network

AGENCY: Information Resources Management Service, GSA.

ACTION: Notice of proposed rulemaking (NPR).

SUMMARY: This proposed rule will provide for the mandatory use of FTS2000 intercity voice, data, and video services when made available on that network. This regulation, issued pursuant to the Brooks Act (40 U.S.C. 759), will require the use of the FTS2000 network by all agencies subject to section 111 of the Federal Property and Administrative Services Act. This regulation will also implement the Congressional intent set forth in section 621 of Public Law 101-136 (November 3, 1989; 103 Stat. 783) which requires that certain Federal agencies must use the FTS2000 network. GSA may grant exceptions to agencies for unique requirements which cannot be satisfied by the FTS2000 network. This regulation will also supersede and cancel FIRMR Interim Rule 1 (July 29, 1988; 53 FR 28638).

ADDRESS: To request a copy or to submit comments on this proposed rule, contact the General Services Administration (KMPR), Project KMP-90-20, Washington, DC 20405.

DATE: Comments are due February 13, 1990.

FOR FURTHER INFORMATION CONTACT: William R. Loy, GSA, Regulations Branch (KMPR), Office of Information Resources Management Policy, telephone (202) or FTS 566-0194.

SUPPLEMENTARY INFORMATION: (1) Section 621 of Public Law 101-136 (November 3, 1989; 103 Stat. 783) requires that Federal agencies subject to section 111 of the Federal Property and Administrative Services Act of 1949, as amended, (40 U.S.C. 759) cannot expend appropriated monies for products or services available on the FTS2000 network unless (1) such product or service is obtained as part of the FTS2000 procurement or (2) GSA grants an exception to the use of the FTS2000 network for a unique agency requirement that cannot be satisfied by the FTS2000 network, and the resultant agency procurement would be cost-effective and would not adversely affect the cost-effectiveness of the FTS2000 network.

(2) Consistent with Public Law 101-136, this proposed rule provides that the use of FTS2000 intercity voice, data, and video services will be mandatory when such product or service is made available on the FTS2000 network. Specific information concerning the scope and availability of FTS2000 network services will be provided in FIRMR Bulletin 60. This policy will apply to all Federal agencies unless excepted by GSA. Agencies may appeal a GSA denial of a request for an exception to OMB under the procedures in 40 U.S.C. 759(e) and § 201-1.102-2(c).

(3) Agencies will not need to seek exceptions to the use of the FTS2000 network for requirements that were previously authorized and awarded under prior FIRMR provisions until the end of the current contract life for those requirements. However, agencies will have to use available FTS2000 network services upon completion of such contracts. Before exercising renewal options for Federal contracts, agencies will have to consider using FTS2000 services that are available at that time and should follow FAR 17.207 regarding exercising options. Planning for transition to the FTS2000 network will have to be accomplished prior to agency contract completion.

(4) This regulation will continue the removal of regulatory exclusions for certain agencies in FIRMR part 201-1.103(c) which were withdrawn by FIRMR Interim Rule 1. This regulation will also supersede FIRMR Interim Rule 1 and cancel the remaining provisions of Interim Rule 1.

(5) In part 201-41, Routine changes and use of the Federal Telecommunications System (FTS), § 201-41.005 will be revised by inserting the new section caption and text consistent with the mandatory FTS2000 network provisions contained in section 621 of Public Law 101-136.

(6) Depending upon regulatory preparation and issuance constraints, the final rule of this proposed rule may be codified in FIRMR part 201-24 under the FIRMR Improvement Project without an additonal NPR being published.

(7) Because of the widespread interest in FTS2000 in the vendor community, GSA will hold a public forum on this proposed rule. This forum is intended primarily as a vehicle for GSA to better understand industry concerns regarding the impact of the rule. GSA will listen to all comments made at the forum and review written comments received both at the forum and in response to this NPR before making a determination on the content of the final FTS2000 rule. The FTS2000 forum will be held on Friday, February 9, 1990, from 9:00 a.m. to 11:00 a.m. in the GSA auditorium at 18th and F Streets, NW., Washington, DC. The Commissioner of GSA's Information Resources Management Service, will chair the forum. Due to the large number of attendees expected, the amount of time individuals have for verbal comments will necessarily be limited.

(8) GSA has determined that this proposed rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. GSA decisions are based on adequate information concerning the need for, and the consequences of, the rule. This rule is written to ensure maximum benefits to Federal agencies. This Governmentwide management regulation will have little or no net cost effect on society. This rule is not expected to have a significant economic impact upon a substantial number of small entities under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601, et seq.).

List of Subjects in 41 CFR Parts 201-1 and 201-41

Federal Telecommunications System, Government procurement, Government property management, Information resources activities, and Telecommunications.

Dated: December 15, 1989.

Francis A. McDonough,

Deputy Commissioner for Federal Information Resources Management.

[FR Doc. 89-30041 Filed 12-27-89; 8:45 am]

BILLING CODE 6820-25-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6975

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations and proposed base flood elevation modifications listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for selected locations in the nation, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These elevations, together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance of existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not prohibit development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E. O. 12127.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
CALIFORNIA	
Calaveras County (unincorporated areas)	
Cosgrove Creek:	
Approximately 1,200 feet downstream of Vista Del Lago Road	*569
Just upstream of Vista Del Lago Road	*594
Just downstream of Gold Creek Bridge and approximately 300 feet east of the Gold Creek levee	*913
At the confluence of Spring Valley Creek	*929
Approximately 1,280 feet upstream of New Hogan Dam Road	*932
San Antonio Creek Tributary:	
Just upstream of Cedar Lane	*1,829
Approximately 1,280 feet upstream of Cedar Lane	*1,843
Approximately 2,560 feet upstream of Cedar Lane	*2,872
Approximately 2,100 feet downstream of Pine Drive	*2,900
Just upstream of Pine Drive	*2,933
Maps are available for review at the Calaveras County Government Center, Building Inspector's Office, 891 Mountain-Ranch Road, San Andreas, California.	
Send comments to The Honorable Tom Troyan, Chairman, Calaveras County Board of Supervisors, County Government Center, 891 Mountain-Ranch Road, San Andreas, California 95249.	
Mariposa County (unincorporated areas)	
Mariposa Creek:	
Approximately 100 feet upstream of Mormon Bar Road	*1754
Approximately 500 feet upstream of Highway 140	*1904
Approximately 50 feet upstream of 17th Street	*1997
Approximately 1,125 feet downstream of Highway 49	*2075
Approximately 300 feet upstream of Highway 49	*2129
Merced River:	
Approximately 200 feet upstream of Foresta Road	*1662
Approximately 700 feet upstream of Pigeon Gulch confluence with Merced River	*1731
Approximately 200 feet upstream of Highway 140	*1640
Approximately 100 feet downstream of Crane Creek confluence with Merced River	*1877
Approximately 200 feet upstream of Section Line 15/16 in Township 3 South and Range 20 East	*2136
Merced River Left Overbank:	
Approximately 300 feet upstream of confluence with Merced River	*1765
Approximately 650 feet upstream of confluence with Merced River	*1791
Approximately 650 feet downstream of Highway 140	*1832
South Fork Merced River:	
Approximately 23.6 miles above river mouth	*4015
Approximately 23.89 miles above river mouth	*4034
Approximately 24.23 miles above river mouth	*4060
Approximately 24.55 miles above river mouth	*4094
Approximately 24.92 miles above river mouth	*4121
Maps are available for review at the Department of Public Works, 4639 Ben Hur Road, Mariposa, California.	
Send comments to The Honorable Gertrude Tabor, Chairperson, Mariposa County Board of Supervisors, P.O. Box 784, Mariposa, California 95338.	
Tuolumne County (unincorporated areas)	
Sullivan Creek:	
Approximately 50 feet downstream of State Highway 108	*1,965
Just upstream of Potato Ranch Road	*2,406
At Paseo de Los Portales Road	*2,413
At Hidden Valley Road	*2,617
Approximately 200 feet upstream of Crestview Drive	*2,658

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps are available for review at the Tuolumne County Planning Department, 25 Green Street, Sonora, California. Send comments to The Honorable Greg Hurt, Chairman, Tuolumne County Board of Supervisors, 25 Green Street, Sonora, California 95370.	
City of Twentynine Palms (San Bernardino County)	
Twentynine Palms Channel:	
Approximately 100 feet upstream of Sullon/Mountain Road	*1,727
Approximately 100 feet downstream of Amboy Road	*1,805
Approximately 80 feet upstream of Joe Davis Drive	*1,878
Approximately 70 feet upstream of Adobe Road	*1,963
Approximately 70 feet upstream of Twentynine Palms Highway	*2,121
Pinto Cove Creek:	
Approximately 1,000 feet downstream of Joe Davis Road	*1,890
Approximately 80 feet upstream of Joe Davis Road	*1,900
Approximately 840 feet downstream of Twentynine Palms Highway	*1,930
Approximately 125 feet upstream of Twentynine Palms Highway	*1,948
Approximately 1,140 feet upstream of Twentynine Palms Highway	*1,981
Pine Springs Wash:	
At confluence with Twentynine Palms Channel	*1,899
Approximately 100 feet downstream of Twentynine Palms Highway	*1,926
Approximately 110 feet upstream of Pinon Drive	*1,937
Approximately 500 feet downstream of Palm Vista Drive	*1,951
Approximately 280 feet upstream of Palm Vista Drive	*1,960
Joshua Mountain Wash:	
Approximately 160 feet upstream of Palm Vista Drive	*1,965
Approximately 1,300 feet upstream of Palm Vista Drive	*1,990
Approximately 340 feet downstream of Foothill Road	*2,020
Approximately 25 feet downstream of Base Line Road	*2,050
Approximately 930 feet upstream of Base Line Road	*2,072
Smoketree Wash:	
Approximately 135 feet downstream of Twentynine Palms Highway	*2,055
Approximately 1,010 feet upstream of Twentynine Palms Highway	*2,072
Approximately 860 feet downstream of National Old Trails Highway	*2,096
Approximately 2,690 feet upstream of National Old Trails Highway	*2,155
Approximately 25 feet downstream of the corporate limits	*2,202
Maps are available for review at City Hall, 6136 Adobe Road, Twentynine Palms, California. Send comments to The Honorable Jeffrey Dunn, Mayor, City of Twentynine Palms, City Hall, 6136 Adobe Road, Twentynine Palms, California 92277.	
GEORGIA	
East Ellijay (city), Gilmer County	
Cartecay River:	
About 950 feet downstream of First Avenue	*1,257
About 850 feet upstream of State Route 5	*1,265
Maps available for inspection at the City Hall, 200 Oak Street, East Ellijay, Georgia. Send comments to The Honorable Mack West, Mayor, City of East Ellijay, City Hall, 200 Oak Street, East Ellijay, Georgia 30539.	
Ellijay (city), Gilmer county	
Coosawattee River:	
About 1,000 feet downstream of State Route 5 Alternate	*1,241
At confluence of Cartecay River	*1,253
Ellijay River:	
At mouth	*1,253
About 1,700 feet upstream of Old Blueridge Road	*1,264
Cartecay River:	
At mouth	*1,253
About 700 feet downstream of First Avenue	*1,257
Maps available for inspection at the City Hall, 105 North Main Street, Ellijay, Georgia. Send comments to The Honorable E. Lloyd Smith, Mayor, City of Ellijay, 105 North Main Street, Ellijay, Georgia 30540.	
Gilmer County (unincorporated areas)	
Ellijay River:	
About 1700 feet upstream of Old Blueridge Road	*1,264
About 1300 feet upstream of confluence of Ross Creek	*1,313
Cartecay River:	
About 850 feet upstream of State Route 5	*1,255
About 1.52 miles upstream of confluence of Owltown Creek	*1,297
Coosawattee River:	
About 1000 feet downstream of State Route 5 Alternate	*1,241
About 2600 feet downstream of U.S. Route 76	*1,246
Maps available for inspection at the County Courthouse, 1 Westside Square, Ellijay, Georgia. Send comments to The Honorable Mack Logan, Chairman, Board of Commissioners, Gilmer County, 1 Westside Square, Ellijay, Georgia 30540.	
Hawkinsville (city), Pulaski County	
Mile Creek:	
At mouth	*225
Just downstream of Camelia Drive	*250
Town Creek:	
At mouth	*226
Just upstream of U.S. Route 341 Bypass	*231
Ocmulgee River:	
At confluence of Mile Creek	*225
About 0.70 mile upstream of Norfolk Southern Railway	*227
Maps available for inspection at the Building Code Inspector's Office, City Hall, Hawkinsville, Georgia. Send comments to The Honorable Lawrence Bennett, Chairman, City Council, City of Hawkinsville, P.O. Box 95, Hawkinsville, Georgia 31036.	
Murray County (unincorporated areas)	
Mill Creek:	
About 2.8 miles downstream of State Route 286	*705
Just downstream of State Route 286	*728
Just upstream of State Route 286	*733
Just downstream of Crandall-Ellijay Road	*786
Holly Creek:	
Just upstream of U.S. Route 411	*711
Just downstream of State Route 256	*782
Maps available for inspection at the County Commissioner's Office, County Courthouse, Chatsworth, Georgia. Send comments to The Honorable Jack Reed, Commissioner, Murray County, P.O. Box 1129, Chatsworth, Georgia 30705.	
Pulaski County (unincorporated areas)	
Mile Creek:	
At mouth	*225
About 800 feet downstream of McCormick Avenue	*253
Town Creek:	
At mouth	*226
Just upstream of U.S. Route 341 Bypass	*231
Ocmulgee River:	
At confluence of Mile Creek	*225
About 0.70 mile upstream of Norfolk Southern Railway	*227
Maps available for inspection at the County Courthouse, Hawkinsville, Georgia. Send comments to The Honorable John Henry Anderson, County Commissioner, Pulaski County, P.O. Box 29, Hawkinsville, Georgia 31036.	
IDAHO	
Bancroft (city), Caribou County	
Portneuf River:	
At the intersection of Center Street and Third Avenue West	*5,419
Maps are available for review at City Hall, 23 South Main Street, Bancroft, Idaho. Send comments to The Honorable Randy Ruger, Mayor, City of Bancroft, City Hall, P.O. Box 39, Bancroft, Idaho 83217.	
Valley County (unincorporated areas)	
North Fork Payette River:	
Approximately 16,350 feet downstream of State Highway 55 Bridge	*4,725
Approximately 3,500 feet downstream of State Highway 55 Bridge	*4,729
Approximately 4,600 feet upstream of State Highway 55 Bridge	*4,732
Approximately 10,400 feet upstream of State Highway 55 Bridge	*4,736
Approximately 10,150 feet downstream of confluence with Williams Creek	*4,901
Approximately 200 feet downstream of confluence with Williams Creek	*4,918
Approximately 5,450 feet upstream of Unnamed Bridge that is 5,050 feet upstream of confluence with Williams Creek	*4,937
Approximately 13,750 feet upstream of Unnamed Bridge that is 3,050 feet upstream of confluence with Williams Creek	*4,980
Maps are available for review at the County Building Official's Office, Courthouse Annex, 106 West Spring Street, Cascade, Idaho. Send comments to The Honorable Howard Koskella, Chairman, Valley County Board of Commissioners, P.O. Box 737, Cascade, Idaho 83611.	
INDIANA	
Allen County (unincorporated areas)	
Willow Creek:	
At mouth	*810
At confluence of Hatch Ditch	*825
Hatch Ditch:	
At mouth	*825
About 600 feet upstream of Shoaff Road	*835
Willow Creek Branch No. 6:	
At mouth	*819
Just downstream of North County Line Road	*845
Willow Creek Branch No. 7:	
At mouth	*825
Just downstream of Lima Road	*836
Ringwalt Ditch:	
At mouth	*810
Just downstream of Abandoned Railroad	*818
Cedar Creek:	
At mouth	*778
Just downstream of North County Line Road	*816
Little Cedar Creek:	
At mouth	*811
Just downstream of County Boundary	*818
Geller Ditch:	
Just downstream of Hand Road	*829
Just downstream of Conrail	*836
Just upstream of Conrail	*848
About 1,400 feet upstream of State Route 3	*849
St. Joseph River:	
About 2,100 feet downstream of confluence of Selego Ditch	*709
About 1.3 miles upstream of Norfolk Southern Railroad	*792
Seagar Ditch:	
At mouth	*806
Just upstream of Washington Center Road	*846
Bernard Ditch:	
At confluence of Sobey Ditch	*834
About 300 feet downstream of U.S. Route 33	*843

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Sobey Ditch:	
At mouth	*834
About 0.8 mile upstream of Fritz Road	*840
Spy Run Creek:	
Just upstream of Washington Center Road	*803
Just upstream of Graham Drive	*828
Brown No. 2:	
At mouth	*814
About 1,600 feet upstream of Chaillant Road	*842
About 1,800 feet upstream of Chaillant Road	*848
Just upstream of Huguenard Road	*881
Waters Ditch:	
At mouth	*787
Just downstream of Coldwater Road	*801
Becketts Run:	
Just upstream of Leo Road	*771
At confluence of Huguenard No. 2	*827
Hetrick Ditch:	
At mouth	*744
About 0.27 mile upstream of State Route 101	*753
Swift Ditch:	
Just downstream of Leo Road	*778
Just downstream of Interstate 69	*788
Schoppman Ditch:	
About 900 feet upstream of St. Joe Road	*755
About 1,000 feet upstream of Brookwood Drive	*763
Selego Ditch:	
At mouth	*709
Just downstream of Selge Drive	*787
Davis Ditch No. 2:	
At mouth	*782
About 550 feet upstream of Maplecrest Road	*795
Kruchenburg Ditch:	
At mouth	*787
About 1,370 feet upstream of St. Joseph Center Road	*792
Tiernon Ditch:	
At mouth	*772
About 0.7 mile upstream of Schwartz Road	*814
Rty Deligrange Ditch:	
At mouth	*811
Just downstream of Auburn Road	*826
Ely Run:	
At mouth	*775
Just downstream of U.S. Route 27	*819
Beightle-Hettelroat Ditch:	
At mouth	*780
Just downstream of Vberg Road	*817
Smith Northrup Drain:	
At mouth	*777
About 1,300 feet upstream of Metsah Trail	*798
Revert Ditch:	
At mouth	*790
Just downstream of Wheelock Road	*800
Mowrer Ditch:	
At mouth	*772
About 700 feet upstream of Center Road	*782
Grice Ditch:	
At mouth	*777
About 1,800 feet upstream of Schwartz Road	*799
Sumale Creek:	
At mouth	*748
At confluence of Koester Ditch	*757
Koester Ditch:	
At mouth	*757
At confluence of Langley Ditch	*772
Langley Ditch:	
At mouth	*772
At confluence of Grice Ditch	*777
Maumee River:	
About 1.0 mile downstream of Scipio Road	*754
Just downstream of U.S. Route 30	*754
Marsh Ditch:	
At mouth	*739
Just upstream of confluence of Hetrick Ditch	*744
Hatley Ditch:	
At mouth	*806
Just upstream of Norfolk Southern Railway	*819
Whitmer Ditch:	
At mouth	*781
Just downstream of Main Street	*806
Just upstream of Main Street	*812
About 850 feet upstream of Main Street	*812
Unnamed Tributary No. 4:	
At mouth	*787
Just downstream of Grabill Road	*813
Black Creek:	
At confluence of Reichelderfer Ditch	*748
Just upstream of Antwerp Road	*780
Reichelderfer Ditch:	
At mouth	*749
About 1,800 feet upstream of Hamm Road	*764
Fairfield Ditch:	
About 400 feet downstream of Lower Huntington Road	*767
Just downstream of Lower Huntington Road	*769
Harber Ditch:	
At mouth	*768
Just downstream of Western Railway	*795
Just upstream of Norfolk and Western Railway	*801
Just upstream of Yoder Road	*811
Dennie Ditch:	
At mouth	*795
Just downstream of Doyle Road	*794
Dannenfelser-Cochoit Ditch:	
About 1,500 feet downstream of Salma Drive	*781
Just downstream of Doyle Road	*788
Bender Ditch:	
At mouth	*759
Just downstream of Tillman Road	*798
Dettmer Ditch:	
At mouth	*795
Just downstream of County Line Road	*809
Snyder Ditch:	
At mouth	*788
Just downstream of Conners Road	*801
Trier Ditch:	
At mouth	*750
Just downstream of Paulding Road	*798
Paul Trier Ditch: Within community	771
St. Marys River:	
Just upstream of Lower Huntington Road	*766
About 4,000 feet downstream of South County Line Road	*776
Houli Ditch:	
Just upstream of Flatrock Road	*818
Just downstream of Emenhiser Road	*831
Trier Branch:	
At mouth	*782
About 0.32 miles upstream of Laymeyer Road	*788
Suter Ditch:	
At mouth	*780
Just upstream of Coverdale Road	*791
Robinson Creek:	
At mouth	*756
At confluence of Brindle Ditch	*791
Brindle Ditch:	
At mouth	*791
Just downstream of Pleasant Center Road	*798
Woods Ditch:	
At mouth	*791
About 2,200 feet downstream of Yoder Road	*811
Abolle Creek:	
About 350 feet downstream of Powell Road	*758
At confluence of Beal Taylor Ditch	*798
Beal Taylor Ditch:	
At mouth	*798
Just downstream of West County Line Road	*826
Bichscoff Ditch:	
At mouth	*767
Just downstream of County Line Road	*788
Big Indian Creek:	
At mouth	*780
Just downstream of County Line Road	*804
Martin Ditch at St. Joseph's River:	
At mouth	*771
About 500 feet upstream of Leo Road	*788
Natural Drain No. 2:	
At mouth	*805
Just downstream of Washington Center Road	*808
Little River:	
At County Boundary	*755
At confluence with Robinson Creek	*756
Durnell Ditch:	
At mouth	*767
Just upstream of Hadley Road	*830
Graham McCulloch Ditch:	
At mouth	*755
Just downstream of old railroad grade	*756
Just upstream of old railroad grade	*762
At confluence with Fleugh Ditch	*767
Fleugh Ditch:	
At mouth	*767
About 750 feet upstream of Kroemer Road	*822
Graham McCulloch Natural Drain No. 7:	
At mouth	*784
About 1,300 feet upstream of Dickie Road	*797
Natural Drain No. 7 Unnamed Tributary:	
At mouth	*773
Just upstream of Dickie Road	*811
Amk Ditch: Within community	*788
St. Marys Flowage: Within community	*788
Doctor Ditch:	
At mouth	*787
About 300 feet downstream of Paulding Road	*776
Doctor Ditch Tributary:	
At mouth	*772
Just downstream of Adams Center Road	*786
Lawrence Branch:	
At mouth	*776
Just downstream of Covington Road	*788
Lowther-Nauhaus Ditch:	
Just upstream of Conrail	*783
Just downstream of State Boulevard	*787
Drain No. 8:	
At mouth	*787
Just upstream of Butler Road	*797
Bultemen Ditch:	
At mouth	*749
About 1,800 feet upstream of Putt Lane	*793
Bultemen Branch:	
At mouth	*777
About 0.34 miles upstream of Stellhorn Road	*781
Bender Ditch:	
Just upstream of Seller Road	*771
Just downstream of Tillman Road	*788
Adams Ditch:	
At mouth	*774
About 1,800 feet upstream of Tillman Road	*803
Schmidt Ditch:	
At mouth	*771
Just downstream of Tillman Road	*784
Schneider Ditch:	
At mouth	*785
About 2,500 feet upstream of Tillman Road	*802
Eighmie Creek:	
Just downstream of Hamilton Road	*764
About 800 feet upstream of Interstate 69	*772
Hilgedi Ditch:	
Just upstream of County Line Road	*786
Just downstream of Yoder Road	*802
Johnson Ditch:	
At mouth	*786
Just downstream of Temple Timbers Road	*800
Brown Ditch:	
At mouth	*753
Just downstream of Whittem Road	*786
Flatrock Creek:	
Just downstream of Hoffman Road	*777
Just downstream of Lortie Road	*784
Adam Scheimmer Saker Drain:	
Just downstream of Flatrock Road	*786
Just downstream of Hoagland Road	*797
Mosheimer Creek:	
At mouth	*786
About 500 feet downstream of Hoagland Road	*800
Huguenard No. 2:	
At confluence with Sekeits Run	*827
Just upstream of Tll Road	*831
Bradbury Ditch:	
At mouth	*776
About .1 mile downstream of Norfolk Western Railway	*776
Just upstream of Norfolk Western Railway	*788
About .2 mile upstream of 13th Street	*788
Edgerton-Carson Ditch:	
At mouth	*743
Just downstream of State Route 101	*747
Maps available for inspection at the Surveyor's Office, City/County Building, Ft. Wayne, Indiana. Send comments to The Honorable Donald Yoder, President, County Commission, Allen County, City/County Building, Room 200, Ft. Wayne, Indiana 46802.	
Grabill (town), Allen County	
Willmer Ditch: Within community	812
Maps available for inspection at the Town Hall, First Street, Grabill, Indiana. Send comments to The Honorable Joan Sauder, Town Board President, Town of Grabill, Box 233, First Street, Grabill, Indiana 46741.	

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Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Monroeville (town), Allen County	
Flatrock Creek:	
About 180 feet upstream of Monroeville Road	*780
Just upstream of confluence of Adam Schlemmer Baker Drain	*781
Adam Schlemmer Baker Drain:	
At mouth	*781
Just downstream of Flatrock Road	*786
Maps available for inspection at the Clerk Treasurer's Office, 282 Summit, Monroeville, Indiana.	
Send comments to The Honorable Don Gerardot, Town Board President, Town of Monroeville, Box 401, Monroeville, Indiana 46773.	
Woodburn (city), Allen County	
Edgerton-Carson Ditch:	
Just upstream of Tile Mill Road	*743
About 1,300 feet upstream of Tile Mill Road	*746
Hadell Ditch:	
Just upstream of Woodburn Road	*751
Just upstream of State Route 101	*759
Maps available for inspection at the Public Works Department, 4417 Bull Rapids Road, Woodburn, Indiana.	
Send comments to The Honorable Herbert H. Roemer, Mayor, City of Woodburn, P.O. Box 75, Woodburn, Indiana 46797.	
IOWA	
Correctionville (city), Woodbury County	
Bacon Creek:	
At mouth	*1,122
About 1,500 feet upstream of Driftwood Street	*1,124
Little Sioux River:	
Just upstream of confluence of Bacon Creek	*1,122
Just downstream of U.S. Highway 20	*1,134
Maps available for inspection at the City Hall, 312 Driftwood, Correctionville, Iowa.	
Send comments to The Honorable Jim Hinkhouse, Mayor, City of Correctionville, City Hall, 312 Driftwood, Correctionville, Iowa 51016.	
KANSAS	
Allen County (unincorporated areas)	
Elm Creek:	
At confluence with Neosho River	*952
About 2.0 miles upstream of State Highway 269	*960
Rest Creek:	
At confluence with Elm Creek	*965
About 4,000 feet upstream of U.S. Highway 54	*966
Neosho River:	
About 3,800 feet downstream of Bridge Street	*934
About 2.0 miles upstream of Missouri Pacific Railroad	*956
Coon Creek:	
At confluence with Neosho River	*954
Just upstream of Kentucky Street	*969
Tributary to Coal Creek:	
Just downstream of Wolf Creek	*939
Just downstream of Atchinson, Topeka and Santa Fe Railway	*949
Just upstream of Atchinson, Topeka and Santa Fe Railway	*957
About 650 feet upstream of Central Street	*961
Cannon Creek:	
Just upstream of North 6th Street	*957
Just upstream of North 10th Street	*959
Maps available for inspection at the County Courthouse, 1 North Washington, Iola, Kansas.	
Send comments to The Honorable Keith Hobart, Chairman, Board of Commissioners, Allen County, County Courthouse, 1 North Washington, Iola, Kansas 66749.	
MINNESOTA	
Lake of the Woods County (unincorporated areas)	
Lake of the Woods:	
Along shoreline, within county	*1064

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the Office of the Zoning Administrator, County Courthouse, Baudette, Minnesota.	
Send comments to The Honorable Stan Cornelius, Chairman, County Board, Lake of the Woods County, County Courthouse, Baudette, Minnesota 56623.	
MISSOURI	
Bollinger County (unincorporated areas)	
Castor River:	
About 1.7 miles downstream of State Highway 51	*376
About 0.9 mile upstream of State Highway 51	*383
Crooked Creek:	
About 0.5 mile downstream of confluence of Hurricane Creek	*409
Just downstream of State Highway 804	*456
Maps available for inspection at the County Courthouse, Marble Hill, Missouri.	
Send comments to The Honorable Charles Hearn, Presiding Commissioner, Bollinger County, County Courthouse, Marble Hill, Missouri 63764.	
Glen Allen (village), Bollinger County	
Crooked Creek:	
About 900 feet upstream of confluence of Little Crooked Creek	*450
About 2,400 feet downstream of State Highway 804	*452
Maps available for inspection at the City Hall, Glen Allen, Missouri.	
Send comments to The Honorable Allen Clarke, Mayor, Village of Glen Allen, City Hall, P.O. Box 124, Glen Allen, Missouri 63751.	
Marble Hill (city), Bollinger County	
Crooked Creek:	
Just upstream of confluence of Opossum Creek	*411
About 1.71 miles upstream of Main Street	*433
Maps available for inspection at the City Hall, Marble Hill, Missouri.	
Send comments to The Honorable Shirley Bess Cooper, Mayor, City of Marble Hill, P.O. Box 6, Marble Hill, Missouri 63764.	
New Madrid County (unincorporated areas)	
Shallow flooding (St. John's Bayou (Main Ditch)):	
At intersection of New Madrid Frontline and Birds Point—New Madrid set back levee	*301
At county boundary	*309
Shallow flooding (Birds Point—New Madrid Set Back Levee Ditch):	
Within community	*301
Shallow flooding (North Cut Ditch):	
At mouth	*303
At county boundary	*308
Shallow flooding (Ditch No. 1):	
About 1.0 miles downstream of U.S. Highway 62	*290
About 3.1 miles upstream of St. Louis Southwestern Railway	*293
Shallow flooding (Dry Run Ditch):	
At New Madrid Frontline Levee	*297
About 0.7 mile upstream of County Highway P	*301
Shallow flooding (Main Ditch No. 1):	
About 1.7 miles downstream of County Highway 626	*293
At county boundary	*300
Shallow flooding (Ash Slough Ditch):	
About 1.7 miles downstream of County Highway 626	*294
At county boundary	*300
Mississippi River:	
At west county boundary	*293
At south county boundary	*314
Birds Point—New Madrid Floodway:	
At intersection of New Madrid Frontline Levee and Birds Point—New Madrid Set Back levee	*304
At county boundary	*309
Shallow Flooding (Lower Main ditch No. 10):	
Within community	*301
Shallow Flooding (Lower Maple Slough Ditch):	
Within community	*301

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Shallow Flooding (Upper Maple Slough Ditch):	
Within community	*301
Shallow Flooding (Main Ditch No. 10):	
At mouth	*301
At county boundary	*302
Shallow Flooding (Ash Slough Ditch (Lateral No. 2)):	
At mouth	*301
At county boundary	*303
Shallow Flooding (Portage Bayou (Main Ditch)):	
About 0.8 mile downstream of Interstate 55	*277
Just downstream of Interstate 55	*278
Shallow Flooding (Portage Open Bay):	
About 1.8 miles downstream of Interstate 55	*277
About 1.2 miles upstream of Interstate 55	*278
Shallow Flooding (Little River):	
Within community	#2
Shallow Flooding (Otter Slough Ditch):	
Within community	#2
Shallow Flooding (Ash Slough Ditch):	
About 1.7 miles downstreams of County Highway 626	#2
At mouth	#2
Shallow Flooding (Portage Open Bay):	
Within community	#2
Shallow Flooding (Ditch No. 5):	
Within community	#2
Shallow Flooding (Portage Bayou (Main Ditch)):	
Just upstream of Interstate 55	#2
About 1.8 miles upstream of County Highway M	#2
Maps available for inspection at the County Courthouse, New Madrid, Missouri.	
Send comments to The Honorable Jan Blankenship, Presiding Commissioner, New Madrid County, County Courthouse, P.O. Box 68, New Madrid, Missouri 63869.	
NEVADA	
Biesquite (city), Clark County	
Pulsipher Wash:	
Approximately 500 feet upstream of confluence with Virgin River	*1,539
Approximately 350 feet upstream of southbound land Interstate 15	*1,803
Approximately 500 feet south of Second Street South and approximately 200 feet east of Pulsipher Wash	#1
Abbott Wash:	
Approximately 400 feet upstream of the confluence with the Virgin River	*1,556
At Mesquite Boulevard	*1,584
Approximately 1,600 feet upstream of Interstate 15	*1,624
Southeast of the intersection of Mesquite Boulevard and unnamed road, approximately 1,100 feet west of First Street South	#1
Approximately 400 feet east of the intersection of Second Street South and Riverside Drive	#1
Town Wash:	
Approximately 1,300 feet upstream of First Street South	*1,577
At irrigation conduit	*1,614
Approximately 1,750 feet upstream of southbound lane of Interstate 15 and entrance ramp	*1,636
Approximately 300 feet south of the intersection of Mesquite Boulevard and Dessert Road	#1
Approximately 800 feet west along Mesquite Boulevard from its crossing of Town Wash	#1
Maps are available for review at City Hall, 11 East Mesquite Boulevard, Mesquite, Nevada.	
Send comments to The Honorable Jimmie Hughes, Mayor, City of Mesquite, P.O. Box 69, Mesquite, Nevada 89024.	
NEW MEXICO	
Luna County (unincorporated areas)	
Mimbres River:	
Approximately 7.2 miles downstream of State Route 377	*4,149
Approximately 2.7 miles upstream of State Route 377	*4,280
Maps available for inspection at the Luna County Courthouse, Deming, New Mexico.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Send comments to The Honorable Juanita Bullington, Manager of Luna County P.O. Drawer 551, Deming, New Mexico 88031.	
NORTH CAROLINA	
Granville County (unincorporated areas)	
Tabbs Creek:	
At county boundary	*286
About 500 feet upstream of Tom Parham Road	*420
Tar River:	
At county boundary	*234
About 1,800 feet upstream of Old Route 75	*360
Jackson Creek:	
At mouth	*361
About 2,400 feet upstream of Old Route 75	*431
Ledge Creek:	
About 0.82 mile upstream of Lake Rogers Dam	*289
Just downstream of Interstate 85	*310
Just upstream of Interstate 85	*318
About 1400 feet upstream of Old Route 75	*412
Knapp of Reeds Creek:	
About 6.0 miles downstream of SR 1120	*263
Just downstream of R.D. Holt Reservoir Dam	*302
Sybil Creek:	
About 2,100 feet downstream of Northside Road	*266
Just downstream of Cash Road	*274
Just upstream of Cash Road	*282
About 1,350 feet upstream of U.S. Route 15	*289
Lake Butner:	
Just upstream of R.D. Holt Reservoir Dam	*360
Just downstream of Roberts Chapel Road	*360
Falls Lake: Along shoreline	*263
Coast Creek:	
About 2.46 miles downstream of Gate No. 2 Road	*272
About 900 feet upstream of Gate No. 2 Road	*354
New Light Creek Tributary:	
About 2,500 feet upstream of SR 1912	*324
About 4,000 feet upstream of SR 1912	*348
Fishing Creek:	
At mouth	*297
Just upstream of confluence of Fishing Creek Tributary 1	*376
Fishing Creek Tributary 1:	
At mouth	*375
About 2,000 feet upstream of mouth	*381
Hachers Run:	
At mouth	*358
About 1,400 feet upstream of U.S. Route 15	*414
Maps available for inspection at the County Planning Office, County Administration Building, 141 Williamsboro Street, Oxford, North Carolina.	
Send comments to The Honorable Harold Blizzard, County Manager, Granville County, P.O. Box 906, Oxford, North Carolina 27565.	
Oxford (city), Granville County	
Fishing Creek Tributary 1:	
About 2,000 feet upstream of mouth	*381
Just upstream of U.S. Route 15	*436
Fishing Creek Tributary 1A:	
At mouth	*413
Just downstream of U.S. Route 15	*435
Just upstream of U.S. Route 15	*446
Hachers Run:	
About 1,100 feet upstream of U.S. Route 15	*413
Just upstream of Lake Devin Road	*491
Coon Creek:	
About 900 feet downstream of Orphanage Road	*364
About 900 feet upstream of confluence of Jordan Creek	*364
Jordan Creek:	
At mouth	*384
Just downstream of Oxford Bypass	*436
Just upstream of Oxford Bypass	*442
Just downstream of SR 1462	*443
Just upstream of SR 1462	*448
Maps available for inspection at the Planning Department, City Hall, Oxford, North Carolina.	
Send comments to The Honorable Allie G. Ellington, Mayor, City of Oxford, City Hall, P.O. Box 1007, Oxford, North Carolina 27565.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Person County (unincorporated areas)	
Marlowes Creek:	
At mouth	*368
About 1,100 feet upstream of Depot Street	*518
Flat River:	
About 2,000 feet downstream of SR 1737	*422
At confluence of North Flat River	*495
North Flat River:	
At mouth	*485
About 800 feet upstream of SR 1142	*605
South Flat River:	
At confluence of North Flat River	*485
About 1,800 feet upstream of SR 1109	*623
Hyco Lake: Along shoreline	*414
Mayo Reservoir: Along shoreline	*445
Maps available for inspection at the County Manager's Office, Courthouse Square, Roxboro, North Carolina.	
Send comments to The Honorable Patricia Hartigan, County Manager, Person County, Courthouse Square, Roxboro, North Carolina 27573.	
Roxboro (city), Person County	
Marlowes Creek:	
About 1.0 mile downstream of U.S. Route 501	*496
Just downstream of U.S. Route 501	*535
Just upstream of Norfolk Southern Railway	*546
Just downstream of Burch Street	*598
Just upstream of Burch Street	*606
About 1,100 feet upstream of Depot Street	*616
Maps available for inspection at the City Hall, Roxboro, North Carolina.	
Send comments to The Honorable Clarence Burch, City Manager, City of Roxboro, City Hall, P.O. Box 128, Roxboro, North Carolina 27573.	
Stem (town), Granville County	
Ledge Creek:	
About 1,100 feet upstream of Old Route 75	*409
About 2,800 feet upstream of Old Route 75	*422
Maps available for inspection at the County Planning Office, County Administration Building, 141 Williamsboro Street, Oxford, North Carolina.	
Send comments to The Honorable Sydney Ingold, Acting Mayor, Town of Stem, P.O. Box 66, Stem, North Carolina 27581.	
PENNSYLVANIA	
Beech Creek (township), Clinton County	
Beech Creek:	
At downstream corporate limits	*608
Approximately 1.7 miles upstream of State Route 364	*691
Maps available for inspection at the Beech Creek Township Building, Beech Creek, Pennsylvania.	
Send comments to The Honorable Gary Packer, Chairman of the Township of Beech Creek Board of Supervisors, Clinton County, R.D. 1, Box 386, Beech Creek, Pennsylvania 16822.	
Burlington (borough), Bradford County	
Sugar Creek:	
At downstream corporate limits	*878
At upstream corporate limits	*980
Maps available for inspection at the Borough Building, Burlington, Pennsylvania.	
Send comments to The Honorable Donald Spears, President of the Burlington Borough Council, Bradford County, P.O. Box 14, Burlington, Pennsylvania 18814.	
Burlington (township), Bradford County	
Sugar Creek:	
At Township Route 552 (Luthers Mills Bridge)	*870
At upstream corporate limits	*980
Maps available for inspection at the Township Building, Burlington, Pennsylvania.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Send comments to The Honorable Duane Wolesiagle, Chairman of the Township of Burlington Board of Supervisors, Bradford County, R.D. 1, Box 1868, Monroeton, Pennsylvania 18832.	
Davidson (township), Sullivan County	
Muncy Creek:	
At downstream corporate limits	*787
Approximately 3,270 feet upstream of T-308 (Peck Road)	*890
Maps available for inspection at the Township Building, Muncy Valley, Pennsylvania.	
Send comments to The Honorable David R. Bobb, Chairman of the Township of Davidson Board of Supervisors, Sullivan County, R.D. 1, Muncy Valley, Pennsylvania 17758.	
Delmar (township), Tioga County	
Marsh Creek:	
Approximately 1,550 feet downstream of Township Route 463	*1,206
At upstream corporate limits	*1,245
East Branch Stony Fork:	
Approximately 90 feet downstream of State Route 3005	*1,329
Approximately 1,450 feet upstream of State Route 3006	*1,422
Maps available for inspection at the Township Building, Stony Fork, Pennsylvania.	
Send comments to The Honorable Arnold Borden, Chairman of the Township of Delmar Board of Supervisors, Tioga County, R.D. 6, Box 70A, Wellsboro, Pennsylvania 16901.	
Elkland (borough), Tioga County	
Cowanesque River:	
Approximately 0.88 mile downstream of State Route 849	*1,125
Approximately 750 feet upstream corporate limits	*1,148
Camp Brook Creek:	
At downstream corporate limits	*1,125
Approximately 0.44 mile upstream of North Buffalo Street	*1,135
Kizer Creek:	
At confluence with Camp Brook Creek	*1,130
Approximately 1,050 feet upstream of Hill Street	*1,186
Maps available for inspection at the Borough Building, Elkland, Pennsylvania.	
Send comments to The Honorable Don Carmen, President of the Elkland Borough Council, Tioga County, 204 Parkhurst Street, Elkland, Pennsylvania 16920.	
Penn (township), Lycoming County	
Muncy Creek:	
At downstream corporate limits	*691
Approximately 280 feet upstream of upstream corporate limits	*788
Maps available for inspection at the Township Building, Hughesville, Pennsylvania.	
Send comments to The Honorable Kenneth M. Stackhouse, Chairman of the Township of Penn, Board of Supervisors, Lycoming County, R.D. 2, Box 280, Hughesville, Pennsylvania 17737.	
Picture Rocks (borough), Lycoming County	
Muncy Creek:	
Approximately 1,950 feet downstream of downstream corporate limits	*932
At upstream corporate limits	*981
Laurel Run:	
At confluence with Muncy Creek	*540
At upstream corporate limits	572
Maps available for inspection at the Borough Hall, Picture Rocks, Pennsylvania.	
Send comments to The Honorable Richard W. Sprout, President of the Picture Rocks Borough Council, Lycoming County, Center Street, Picture Rocks, Pennsylvania 17762.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Otero County (unincorporated areas)	
Arkansas River:	
Approximately 1,000 feet downstream of Colorado Avenue	*4,035
Approximately 1,000 feet upstream of Colorado Avenue	*4,040
Timpas Creek:	
Approximately 1,000 feet downstream of Colorado Avenue	*4,035
Approximately 1,000 feet upstream of Colorado Avenue	*4,040
Maps available for inspection at the Otero County Courthouse, La Junta, Colorado.	
Send comments to The Honorable Ralph Hall, Chairman, Board of Commissioners, Otero County, County Courthouse, La Junta, Colorado 81050.	
La Junta (city), Otero County	
Arkansas River:	
Approximately 1,000 feet downstream of Colorado Avenue	*4,035
Approximately 1,000 feet upstream of Colorado Avenue	*4,040
Timpas Creek:	
Approximately 1,000 feet downstream of Colorado Avenue	*4,035
Approximately 1,000 feet upstream of Colorado Avenue	*4,040
Maps available for inspection at the City Hall, La Junta, Colorado.	
Send comments to The Honorable Jerry Hall, Mayor, City of La Junta, City Hall, La Junta, Colorado 81050.	
Manzanola (town), Otero County	
Arkansas River:	
Approximately 1,000 feet downstream of Colorado Avenue	*4,035
Approximately 1,000 feet upstream of Colorado Avenue	*4,040
Timpas Creek:	
Approximately 1,000 feet downstream of Colorado Avenue	*4,035
Approximately 1,000 feet upstream of Colorado Avenue	*4,040
Maps available for inspection at the Manzanola Town Hall, Manzanola, Colorado.	
Send comments to The Honorable Ralph Hall, Mayor, Town of Manzanola, Manzanola Town Hall, Manzanola, Colorado 81058.	
Rocky Ford (city), Otero County	
Arkansas River:	
Approximately 1,000 feet downstream of Colorado Avenue	*4,035
Approximately 1,000 feet upstream of Colorado Avenue	*4,040
Timpas Creek:	
Approximately 1,000 feet downstream of Colorado Avenue	*4,035
Approximately 1,000 feet upstream of Colorado Avenue	*4,040
Maps available for inspection at the City Hall, Rocky Ford, Colorado.	
Send comments to The Honorable Ralph Hall, Mayor, City of Rocky Ford, City Hall, Rocky Ford, Colorado 81067.	
Swink (town), Otero County	
Arkansas River:	
Approximately 1,000 feet downstream of Colorado Avenue	*4,035
Approximately 1,000 feet upstream of Colorado Avenue	*4,040
Timpas Creek:	
Approximately 1,000 feet downstream of Colorado Avenue	*4,035
Approximately 1,000 feet upstream of Colorado Avenue	*4,040
Maps available for inspection at the Swink Town Hall, Swink, Colorado.	
Send comments to The Honorable Ralph Hall, Mayor, Town of Swink, Swink Town Hall, Swink, Colorado 81077.	
Ouray County (unincorporated areas)	
Uncompahgre River:	
Approximately 1,000 feet downstream of Ouray-Ridgway Road	*6,990
Approximately 1,000 feet upstream of Ouray-Ridgway Road	*7,000
Maps available for inspection at the Ouray County Courthouse, Ouray, Colorado.	
Send comments to The Honorable Ralph Hall, Chairman, Board of Commissioners, Ouray County, County Courthouse, Ouray, Colorado 81427.	
Ouray (city), Ouray County	
Uncompahgre River:	
Approximately 1,000 feet downstream of Ouray-Ridgway Road	*6,990
Approximately 1,000 feet upstream of Ouray-Ridgway Road	*7,000
Maps available for inspection at the City Hall, Ouray, Colorado.	
Send comments to The Honorable Ralph Hall, Mayor, City of Ouray, City Hall, Ouray, Colorado 81427.	
Ridgway (town), Ouray County	
Uncompahgre River:	
Approximately 1,000 feet downstream of Ouray-Ridgway Road	*6,990
Approximately 1,000 feet upstream of Ouray-Ridgway Road	*7,000
Maps available for inspection at the Ridgway Town Hall, Ridgway, Colorado.	
Send comments to The Honorable Ralph Hall, Mayor, Town of Ridgway, Ridgway Town Hall, Ridgway, Colorado 81432.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Pike County (unincorporated areas)	
Bear Creek:	
At confluence with Fountain Creek	*5,900
Approximately 1,000 feet upstream of Bear Creek Road	*5,910
Fountain Creek:	
Approximately 1,000 feet downstream of Colorado Avenue	*4,035
Approximately 1,000 feet upstream of Colorado Avenue	*4,040
Maps available for inspection at the Pike County Courthouse, Pikeview, Colorado.	
Send comments to The Honorable Ralph Hall, Chairman, Board of Commissioners, Pike County, County Courthouse, Pikeview, Colorado 80840.	
Pueblo (city), Pueblo County	
Arkansas River:	
Approximately 1,000 feet downstream of Colorado Avenue	*4,035
Approximately 1,000 feet upstream of Colorado Avenue	*4,040
Fountain Creek:	
Approximately 1,000 feet downstream of Colorado Avenue	*4,035
Approximately 1,000 feet upstream of Colorado Avenue	*4,040
Maps available for inspection at the City Hall, Pueblo, Colorado.	
Send comments to The Honorable Ralph Hall, Mayor, City of Pueblo, City Hall, Pueblo, Colorado 81003.	
Pueblo County (unincorporated areas)	
Arkansas River:	
Approximately 1,000 feet downstream of Colorado Avenue	*4,035
Approximately 1,000 feet upstream of Colorado Avenue	*4,040
Fountain Creek:	
Approximately 1,000 feet downstream of Colorado Avenue	*4,035
Approximately 1,000 feet upstream of Colorado Avenue	*4,040
Maps available for inspection at the Pueblo County Courthouse, Pueblo, Colorado.	
Send comments to The Honorable Ralph Hall, Chairman, Board of Commissioners, Pueblo County, County Courthouse, Pueblo, Colorado 81003.	
Rye (town), Pueblo County	
Arkansas River:	
Approximately 1,000 feet downstream of Colorado Avenue	*4,035
Approximately 1,000 feet upstream of Colorado Avenue	*4,040
Fountain Creek:	
Approximately 1,000 feet downstream of Colorado Avenue	*4,035
Approximately 1,000 feet upstream of Colorado Avenue	*4,040
Maps available for inspection at the Rye Town Hall, Rye, Colorado.	
Send comments to The Honorable Ralph Hall, Mayor, Town of Rye, Rye Town Hall, Rye, Colorado 81069.	
Saguache County (unincorporated areas)	
Rio Grande:	
Approximately 1,000 feet downstream of Colorado Avenue	*4,035
Approximately 1,000 feet upstream of Colorado Avenue	*4,040
Maps available for inspection at the Saguache County Courthouse, Saguache, Colorado.	
Send comments to The Honorable Ralph Hall, Chairman, Board of Commissioners, Saguache County, County Courthouse, Saguache, Colorado 81149.	
Saguache (town), Saguache County	
Rio Grande:	
Approximately 1,000 feet downstream of Colorado Avenue	*4,035
Approximately 1,000 feet upstream of Colorado Avenue	*4,040
Maps available for inspection at the Saguache Town Hall, Saguache, Colorado.	
Send comments to The Honorable Ralph Hall, Mayor, Town of Saguache, Saguache Town Hall, Saguache, Colorado 81149.	

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Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Shade (township), Somerset County	
Dark Shade Creek:	
Approximately 800 feet downstream of S.R. 6448	*2,149
Approximately 120 feet upstream of confluence of Little Dark Shade Creek	*2,154
Little Dark Shade Creek:	
Approximately 0.4 mile downstream of S.R. 160	*2,158
Approximately .36 mile upstream of S.R. 160	*2,193
Laurel Run:	
At the confluence with Dark Shade Creek	*2,154
Approximately 1.3 miles upstream of T-798	*2,391
Maps available for inspection at the Shade Township Building, Route 160, Cairnbrook, Pennsylvania.	
Send comments to The Honorable Edward J. Zeterski, Supervisor of the Township of Shade, Somerset County, P.O. Box 39, Cairnbrook, Pennsylvania 15924.	
South Creek (township), Bradford County	
South Creek:	
At downstream corporate limits at Pennsylvania-New York State Line	*1,084
At a point approximately .7 mile upstream of an abandoned Railroad Crossing	*1,243
Maps available for inspection at the South Creek Township Building, Gillett, Pennsylvania.	
Send comments to The Honorable Stanley Sterling, Chairman of the Township of South Creek Board of Supervisors, Bradford County, R.D. 1, Gillett, Pennsylvania 16925.	
South Philipsburg (borough), Centre County	
Moshannon Creek:	
At downstream corporate limits	*1,429
At upstream corporate limits	*1,430
Maps available for inspection at the Borough Office, South Philipsburg, Pennsylvania.	
Send comments to The Honorable Robert Gilham, President of the Borough of South Philipsburg Council, Centre County, 119 Hemlock Street, Philipsburg, Pennsylvania 16866.	
Troy (township), Bradford County	
Sugar Creek:	
At downstream corporate limits	*945
Approximately 900 feet upstream of T-832 (Barrett Hill Road)	*1,043
Maps available for inspection at the Township Building, East Troy, Pennsylvania.	
Send comments to The Honorable Homer R. Lyon, Chairman of the township of Troy Board of Supervisors, Bradford County, R.D. 1, box 459, Troy, Pennsylvania 16947.	
Wells (township), Bradford County	
Seeley Creek:	
At downstream corporate limits	*1,059
At upstream corporate limits	*1,214
Hammond Creek:	
At confluence of Seeley Creek	*1,084
At upstream corporate limits	*1,150
Maps available for inspection at the Township Building, Gillett, Pennsylvania.	
Send comments to The Honorable Loren Roy, Chairman of the Township of Wells Board of Supervisors, Bradford County, R.D. 1, Gillett, Pennsylvania 16925.	
West Burlington (township), Bradford Country	
Sugar Creek:	
At downstream corporate limits	*890
At upstream corporate limits	*945
Maps available for inspection at the Township Building, West Burlington, Pennsylvania.	
Send comments to The Honorable John Hulslander, Chairman of the Township of West Burlington Board of Supervisors, Bradford County, R.D. 3, Troy, Pennsylvania 16947.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
TEXAS	
Ector County (unincorporated areas)	
Monahans Draw:	
Approximately 1.2 miles downstream of Grandview Road	*2,805
Upstream side of Dixie Boulevard	*2,964
Upstream side of Avenue L	*2,906
Upstream side of Candlewood Street	*2,936
Upstream side of Knox Drive	*2,971
Upstream side of State Route 866	*3,042
Monahans Draw Tributary 1:	
At confluence with Monahans Draw	*2,931
At cypress Road	*2,964
Monahans Draw Tributary 2:	
At the confluence with Monahans Draw	*2,979
Approximately 0.7 mile upstream of Westcliff Drive	*3,015
Far East Channel:	
Approximately 90 feet downstream of confluence of East Side Channel	*2,856
At confluence of Stream FEC-1	*2,885
Approximately 250 feet upstream of Maple Avenue	*2,906
Stream FEC-1:	
At confluence with Far East Channel	*2,888
Approximately 280 feet downstream of University Boulevard	*2,900
East Side Channel:	
Approximately 0.5 mile downstream of Odessa corporate limits	*2,856
At confluence of East Side channel Splitflow	*2,888
Immediately downstream of Custer Street	*2,910
East Side Channel Split Flow:	
At confluence with East Side Channel	*2,888
At divergence from East Side Channel	*2,905
Muskingum Draw:	
At confluence with Monahans Draw	*2,870
At the intersection of Adams Avenue and University Boulevard	*2,911
At the intersection of 52nd Street and Dixie Boulevard	*2,939
Approximately 500 feet upstream of Kentucky Avenue	*2,950
West Side Drainage Channel:	
At confluence with Monahans Draw	*2,896
Approximately 800 feet upstream of West 16th Street	*2,913
Playa No. 1:	*2,998
Playa No. 2:	*3,002
Playa No. 3:	*2,977
Playa No. 4:	*2,960
Playa No. 5:	*2,994
Playa No. 6:	*2,969
Playa No. 7:	*2,960
Playa No. 8:	*2,975
Playa No. 10:	*2,956
Playa No. 11:	*2,845
Playa No. 11B:	*2,845
Playa No. 13:	*2,952
Playa No. 17:	*2,907
Playa No. 18:	*2,873
Playa No. 21:	*2,912
Area above *West 52nd Street near Cressler Lane*	*2,913
Playa No. 25:	*2,933
Playa No. 26:	*2,932
Playa No. 27:	*2,936
Playa Nos. 28 and 29:	*2,937
Playa No. 30:	*2,950
Playa No. 31:	*2,942
Maps available for inspection at the Ector County Courthouse, 3rd and Grant, Odessa, Texas 79760.	
Send comments to The Honorable Jan Fisher, Ector County Judge, Ector County Courthouse, 3rd and Grant, Odessa, Texas 79760.	
Odessa (city), Ector and Midland Counties	
Monahans Draw:	
Approximately 1,770 feet downstream of southern corporate limits	*2,850
Immediately upstream of Interstate Route 20	*2,878
Immediately upstream of U.S. Route 80	*2,896
Immediately upstream of F.M. 1936 and western most corporate limits	*2,939

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Far East Channel:	
Southeast corporate limits	*2,851
Confluence of Stream FEC-1	*2,888
Immediately upstream of West Entrance Road to U.T.P.S.	*2,906
Stream FEC-1:	
At confluence with Far East Channel	*2,888
Approximately 280 feet downstream of University Boulevard	*2,900
Stream FEC-1A:	
Confluence with FEC-1	*2,889
Approximately 0.21 mile upstream of Campus Road	*2,906
East Side Channel:	
Southeast corporate limits	*2,902
At confluence of East Side Channel Split Flow	*2,888
Immediately downstream of Custer Street	*2,910
East Side Channel Split Flow:	
At confluence with East Side Channel	*2,888
At divergence from East Side Channel	*2,905
Muskingum Draw:	
At confluence with Monahans Draw	*2,870
At intersection of Adams Avenue and University Boulevard	*2,911
At intersection of 52nd Street and Dixie Boulevard	*2,939
Approximately 300 feet upstream of Yukon Road	*2,947
West Side Drainage Channel:	
At confluence with Monahans Draw	*2,896
Approximately 800 feet upstream of W. 16th Street	*2,913
Playa No. 11B	*2,945
Playa No. 12	*2,842
Playa No. 14	*2,911
Playa No. 15	*2,905
Playa No. 16	*2,905
Playa No. 17	*2,937
Playa No. 19	*2,957
Playa No. 20	*2,894
Playa No. 24	*2,913
Playa No. 25	*2,933
Playa Nos. 28 and 29	*2,937
Maps available for inspection at the City Hall, 411 West Eighth Street, Odessa, Texas 79760.	
Send comments to The Honorable Don Carter, Mayor of the City of Odessa, Ector and Midland Counties, P.O. Box 4398, Odessa, Texas 79760.	
VERMONT	
Brunswick (town) Essex County	
Connecticut River:	
At downstream corporate limits	*573
At upstream corporate limits	*606
Maps available for inspection at the home of the Chairman of the Board of Selectmen, Roger Case, R.F.D. 2, Box 118, Guildhall, Vermont.	
Send comments to The Honorable Roger Case, Chairman of the Town of Brunswick Board of Selectmen, Essex County, R.F.D. 2, Box 118, Guildhall, Vermont 05905.	
Fairlee (town), Orange County	
Connecticut River:	
At Fairlee-Thetford Town line	*407
At Bradford-Fairlee Town line	*411
Maps available for inspection at the Town Hall, Fairlee, Vermont.	
Send comments to The Honorable Shirley Godfrey, Chairman of the Town of Fairlee Board of Selectmen, Orange County, Town Hall, Box 83, Fairlee, Vermont 05045.	
Lemington (town), Essex County	
Connecticut River:	
At downtown corporate limits	*997
At upstream corporate limits	*1,012
Maps available for inspection at the residence of Charles H. Wiley, R.R. 1, Box 162, Canaan, Vermont.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Send comments to The Honorable Charles H. Wiley, Chairman of the Town of Lemington Planning Commission, Essex County, R.R. 1, Box 162, Canaan, Vermont 05903.	
VIRGINIA	
Charles City County (unincorporated areas)	
Chickahominy River and adjoining estuaries: Entire shoreline within	*8.5
James River and adjoining estuaries: Entire shoreline within community	*8.5
Maps available for inspection at the Planning Department, Courthouse Complex, Charles City, Virginia.	
Send comments to The Honorable Fred A. Darden, Charles City County Administrator, P.O. Box 128, Charles City, Virginia 23030.	
King and Queen County (unincorporated areas)	
Mattaponi River and adjoining estuaries: At State Route 629	*8
York River and adjoining estuaries:	
At confluence of Propotank River	*7
At confluence of Mattaponi River	*8
Propotank River: At confluence with York River	*7
Maps available for inspection at the Zoning Office, King and Queen Courthouse, Virginia.	
Send comments to The Honorable Charles W. Smith, King and Queen County Administrator, King and Queen Courthouse, Virginia 23085.	
Surry County (unincorporated areas)	
James River and adjoining estuaries: Entire shoreline within	*8.5
Maps available for inspection at the Planning and Building Inspection Office, Surry Government Center, Surry, Virginia.	
Send comments to The Honorable Terry D. Lewis, Surry County Administrator, P.O. Box 65, Surry, Virginia 23683.	
WASHINGTON	
Stevens County (unincorporated areas)	
Columbia River:	
At River Mile 722	*1,294
At River Mile 730	*1,303
At River Mile 756	*1,309
At River Mile 761	*1,318
At the U.S.-Canadian International Border	*1,327
Colville River Near Colville:	
Approximately 1,400 feet downstream of Gold Creek Road	*1,537
Approximately 490 feet downstream of the confluence of Mill Creek	*1,541
Approximately 520 feet upstream of Faye Road	*1,547
Approximately 250 feet upstream of Burlington Northern Railroad	*1,551
Approximately 1,300 feet upstream of Mantz Rickey Road	*1,554
Colville River Near Chewelah:	
Approximately 200 feet upstream of Steinmetz Road	*1,631
Approximately 750 feet downstream of Schmidelkoffer Road	*1,634
Approximately 900 feet downstream of Alm Lane Road	*1,637
Approximately 300 feet upstream of the confluence of Chamokh Creek	*1,640
Approximatley 20 feet downstream of the Burlington Northern Railroad	*1,641
Maps are available for review at City Hall, 170 South Oak, Colville, Washington.	
Send comments to The Honorable Dee Thomas McKern, Chairman, Stevens County Board of Commissioners, Courth House, 215 South Oak, Colville, Washington 99104.	
WEST VIRGINIA	
Bruceton Mills (town), Preston County	
Big Sandy Creek:	
Approximately 250 feet downstream of downstream corporate limits	*1,525
At upstream corporate limits	*1,528
Maps available for inspection at the Town Hall, Bruceton Mills, West Virginia.	
Send comments to The Honorable Steve Chidester, Mayor of the Town of Bruceton Mills, Preston County, P.O. Box 1, Bruceton Mills, West Virginia 26525.	
WISCONSIN	
Baldwin (village), St Croix County	
Baldwin Creek:	
About 650 feet downstream of 10th Avenue	*1,114
About 575 feet upstream of Woodville Road	*1,129
Maps available for inspection at the Village Hall, 1090 Tenth Avenue, Baldwin, Wisconsin.	
Send comments to The Honorable Rolland Risch, Village President, Village of Baldwin, Village Hall, 1090 Tenth Avenue, Baldwin, Wisconsin 54002.	
Clark County (unincorporated areas)	
Yellow River:	
About 1.1 miles downstream of Yellow River Road	*1,241
Just downstream of West Spencertown Road	*1,284
South Fork Popple River:	
Just upstream of County Highway D	*1,245
About 0.7 mile upstream of Soo Line Railroad	*1,247
Rock Creek:	
About 1.1 miles upstream of State Highway 73	*1,137
About 2400 feet upstream of Town Road	*1,165
O'Neill Creek:	
About 1.8 miles downstream of confluence of North Branch O'Neill Creek	*1,004
At confluence of North Branch O'Neill Creek	*1,021
South Branch O'Neill Creek:	
At confluence with North Branch O'Neill Creek	*1,022
Just downstream of Chicago and Northwestern	*1,096
Black River:	
Just upstream of State Highway 86	*915
Just downstream of County Line Road	*914
McGregan Creek:	
Just upstream of Town Road	*1,163
Just downstream of Soo Line Railroad	*1,210
South Fork Eau Claire River:	
Just upstream of County Highway M	*1,013
Just downstream of Mead Lake Dam	*1,026
At confluence with Mead Lake	*1,043
Just downstream of County Highway M	*1,056
Mead Lake: Along shoreline	*1,043
Maps available for inspection at the Zoning Office, Room 107, Neillsville, Wisconsin.	
Send comments to The Honorable Robert E. Berglund, Chairman, County Board, Clark County, Zoning Office, Room 107, Neillsville, Wisconsin 54456.	
Osseo (city), Trempealeau County	
Buffalo River:	
About 0.86 mile downstream of U.S. Highway 10	*945
About 1,100 feet upstream of Main Street	*956
South Fork Buffalo River:	
At mouth	*948
Just upstream of Harmony Street Dam	*957
About 1.14 miles upstream of Harmony Street Dam	*961
Unnamed Tributary:	
Just upstream of 5th Street	*951
About 1600 feet upstream of 5th Street	*958
Maps available for inspection at the City Hall, 136 West 8th Street, Osseo, Wisconsin.	
Send comments to The Honorable Larry Hollister, Mayor, City of Osseo, City Hall, P.O. Box 301, 110 West 8th Street, Osseo, Wisconsin 54758.	

The proposed modified base (100-year) flood elevations for selected locations are:

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Arizona	Apache County Unincorporated Areas.	Nutrioso Creek	Approximately 1,655 feet downstream of North Papago Street.	None	*6,929
			Approximately 2,875 feet downstream of North Papago Street.	None	*6,951
			Approximately 1,280 feet upstream of abandoned highway bridge.	None	*6,965
			Approximately 6,080 feet upstream of abandoned highway bridge.	None	*6,990
			Approximately 12,580 feet upstream of abandoned highway bridge.	None	*7,015
Maps are available for review at Apache County Planning and Zoning Department, 75 West Cleveland, St. Johns, Arizona.					
Send comments to The Honorable Arthur N. Lee, Chairman, Apache County Board of Supervisors, 75 West Cleveland, St. Johns, Arizona 85936.					
Arizona	Town of Springerville Apache County.	Nutrioso Creek	Approximately 2,400 feet downstream of North Zuni Street (extended).	None	*6,929

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PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 440 feet downstream of North Zuni Street (extended).	None	*5,934
			North Zuni Street at the corporate limits	None	*5,945

Maps are available for review at the Apache County Planning and Zoning Department, 75 West Cleveland, St. Johns, Arizona.

Send comments to The Honorable Steven West, Mayor, Town of Springerville, P.O. Box 390, 23 South Papago, Springerville, Arizona 85938.

California	Santa Barbara County Unincorporated Areas	San Jose Creek	At the confluence with San Pedro Creek	None	*9
			At Darford Drive Extended	None	*13
			Just upstream of Hollister Avenue	None	*37
			Just upstream of U.S. 101 westbound	None	*54
			Approximately 100 feet upstream of U.S. 101	None	*56
		Street Flow Along Hollister Avenue (Shallow Flooding).	Approximately 120 feet west of Kellogg Avenue.	None	*35
			At the intersection of Pine Avenue and Hollister Avenue.	None	#1
		Rincon Creek	Approximately 150 feet upstream of the coast line.	None	*13
			Just downstream of U.S. 101 South Frontage Road.	None	*16
			Approximately 200 feet upstream of Southern Pacific Railroad.	None	*42
			Approximately 100 feet downstream of Bates Road (County Road 3510).	None	*70
		Carneros Creek	Approximately 100 feet downstream of Los Carneros Road.	*48	*43
			Just upstream of Los Carneros Road	*48	*49
			Approximately 600 feet upstream of Los Carneros Road.	*50	*50
		Tecolotito Creek	Approximately 1,160 feet downstream of U.S. Highway 101.	*24	*24
			Approximately 260 feet downstream of U.S. Highway 101.	*35	*31
			Approximately 550 feet upstream of U.S. Highway 101.	*39	*39
		Buena Vista Creek (East Branch).	At Las Fuentes Drive located upstream of the confluence of Buena Vista Creek (West Branch).	None	*238
			At East Valley Road	*256	*256
		Buena Vista Creek (West Branch).	At Boundary Drive	None	*249
			At East Valley Road	*255	*255

Maps are available for review at the Santa Barbara County Flood Control Department, 123 East Anapamu Street, Santa Barbara, California.

Send comments to The Honorable Tori Miyoshi, Chairperson, Santa Barbara County Board of Commissioners, 105 East Anapamu Street, Santa Barbara, California 93101.

California	Shasta County Unincorporated Areas.	Churn Creek	Approximately 400 feet upstream of Interstate Highway 5.	*632	*632
			Approximately 1,250 feet upstream of Oasis Road.	None	*648
			Approximately 100 feet above confluence with North Tributary Churn Creek.	None	*713
		Clover Creek (Near Sacramento River).	Approximately 525 feet upstream of Airport Road Bridge.	None	*409
			Just upstream of Hole-in-One Drive Bridge	None	*470
			Just downstream of Lyal Lane	None	*490
			Approximately 250 feet upstream of Sylvia Lane.	None	*494
			Approximately 1,750 feet upstream of Freeman Road.	None	*515
		Salt Creek	Approximately 1,250 feet downstream of Mendocino Street.	None	*646
			Approximately 350 feet downstream of Interstate Highway 5.	None	*665
			Approximately 1,875 feet upstream of Deer Creek Avenue.	None	*700
			Approximately 175 feet upstream of Front Street.	None	*761
			Approximately 1,200 feet upstream of Revin Lane.	None	*804
		Tormey Drain	Approximately 100 feet downstream of Shelley Lane.	None	*395
			At Merrill Lane	None	*399
			Just downstream of Davey Way	None	*400
		Newton Creek	At confluence with Churn Creek	None	*635
			Just downstream of Oasis Road	None	*644

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 2,700 feet upstream of Oasis Road.	None	*660
			Approximately 800 feet upstream of Southern Pacific Railroad.	None	*737
			Approximately 50 feet upstream of centerline of Lake Boulevard.	None	*772
		North Tributary Churn Creek	Approximately 50 feet upstream of confluence with Churn Creek.	None	*712
			Approximately 150 feet upstream of Ashby Road.	None	*745
			Approximately 80 feet upstream of Southern Pacific Railroad.	None	*762
			Approximately 220 feet upstream of Twin Lakes Mobile Home Park office.	None	*871
		Buckeye Creek	Just above confluence with Churn Creek	None	*631
			Approximately 60 feet upstream of Oasis Road	None	*656
			Approximately 160 feet upstream of Belt Line Road.	None	*684
			Approximately 20 feet downstream of Southern Pacific Railroad.	None	*701

Maps are available at the Shasta County Water Agency, 1670 Market Street, Suite 240, Redding, California.

Send comments to The Honorable Michael Johnson, Chairman, Shasta County Board of Supervisors, County Courthouse, Room 206, Redding, California 96001.

Connecticut	Waterford, Town, New London County.	Niantic River	Along Old Mill road	*11	*10
			At Summer Rest Road extended	*11	*10
		Niantic Bay	At corporate limits	*11	*14
			At Millstone Nuclear Access Road extended	*11	*16
		Long Island	At Amtrack extended	*11	*16
			South side of Windward Way	*11	*15
		Jordan Cove	South side of Jordan Cove Road	*11	*13
			At Baldwin Drive extended	*11	*10
		Goshen Cove	North side of Great Neck Road	*11	*10
		Alewife Cove	Along Shore Drive	*11	*10
			At Niles Hill Road No. 1 extended	*11	*10

Maps available for inspection at the Town Hall, Rope Ferry Road, Waterford, Connecticut.

Send comments to The Honorable Lawrence J. Bettencourt, First Selectmen for the Town of Waterford, New London County, Town Hall, Rope Ferry Road, Waterford, Connecticut 06385.

Idaho	Canyon County, Unincorporated Areas.	Boise River	Approximately 6,460 feet downstream of Union Pacific Railroad Crossing.	None	*2,336
			Approximately 240 feet downstream of U.S. Highway 64.	*2,355	*2,354
			Just upstream of Plymouth Street Bridge	*2,365	*2,366
			Approximately 2,300 feet upstream of Plymouth Street Bridge.	*2,364	*2,365
		Willow Creek	At confluence with Boise River	None	*2,361
			Just upstream of Sewage Lagoon Bridge	None	*2,386
			At farm bridge 2,000 feet upstream of Sewage Lagoon Bridge.	None	*2,392
			Just downstream of Railroad Bridge	None	*2,420

Maps are available for review at the Canyon County Courthouse, 1115 Albany Street, Caldwell, Idaho.

Send comments to The Honorable Joyce Chase, Chairperson, Canyon County Board of Commissioners, County Courthouse, 1115 Albany Street, Caldwell, Idaho.

Indiana	City of Fort Wayne, Allen County.	Natural Drain No. 7	At mouth	*817	*815
			About 350 feet upstream of Hatfield Road	*820	*820
		Spy Run Creek	At mouth	*758	*758
			Just upstream of Washington Center Road	None	*803
		Brown No. 2	Just upstream of Conrail	*822	*822
			Just downstream of Chalfant Road	*833	*833
		Krammer Ditch	At mouth	None	*766
			Just upstream of Woodbrook Drive	None	*774
		Sumner Drain	At mouth	*762	*764
			Just upstream of Stratton Road	*795	*795
		Becketts Run	At mouth	*765	*767
			Just downstream of Leo Road	None	*771
		Swift Ditch	At mouth	*777	*769
			Just downstream of Leo Road	None	*779
		Schoppman Ditch	Within community	*764	*765
		Fairfield Ditch	At mouth	*763	*763
			Just downstream of Lower Huntington Road	*764	*769
		Harber Ditch	At mouth	None	*769
			Just downstream of Baer Field Thruway	None	*775

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PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
		Junk Ditch	At mouth	*760	*760
			About 1900 feet downstream of Smith Road	*760	*758
		St. Marys River	At mouth	*758	*758
			About 1.9 miles upstream of Lower Huntington Road.	None	*768
		Flaugh Ditch	Just upstream of West Jefferson Boulevard	None	*777
			Just downstream of State Route 14	*792	*793
		Lawrence Branch	At Covington Road	*785	*783
			About 0.48 miles upstream of Wilkie Drive	*790	*788
		Trier Ditch	About 300 feet upstream of Wayne Trace	*769	*769
			About 1150 feet upstream of Tillman Road	None	*771
		Paul Trier Ditch	Within community	None	*771
		Natural Drain No. 2	Just upstream of Washington Center Road	*808	*808
			At confluence of Natural Drain No. 7	*817	*815
		Robinson Creek	About 1200 feet upstream of Smith Road	None	*784
			About 1100 feet downstream of confluence of Woods Ditch.	None	*789
		Pierson Ditch	At mouth	*753	*754
			Just downstream of Lake Avenue	*762	*758
			Just downstream of Lake Avenue	*770	*766
			Just downstream of State Boulevard	*777	*773
		Branch No. 1	At mouth	*772	*769
			Just downstream of State Boulevard	*776	*776
		Lower Neuhaus Ditch	At mouth	*776	*776
			About 550 feet upstream of Westgate	*790	*788
		Drain No. 6	Just downstream of Butler Road	None	*797
			Just downstream of Coliseum Boulevard West	None	*818
		St. Joseph River	At mouth	*758	*758
			About 1600 feet downstream of confluence of Salagy Ditch.	None	*769
		Maumee River	About 1.7 miles upstream of Landin Road	None	*751
			At confluence of St. Marys River	*758	*757
		Unnamed Tributary No. 1	At mouth	*762	*764
			Just downstream of Crescent Avenue	*766	*766
			Just upstream of Crescent Avenue	*773	*773
			About 350 feet upstream of Hampshire Drive	None	*786

Maps available for inspection at the City/County Building, 7th Floor, Ft. Wayne, Indiana.

Send comments to The Honorable Paul Helmke, Mayor, City of Ft. Wayne, City/County Building, Ft. Wayne, Indiana 46802.

Indiana	Town of Huntertown, Allen County.	Willow Creek	About 400 feet upstream of confluence of Willow Creek Branch No. 8.	*820	*819
			Just upstream of Hunter Road	*828	*824
		Willow Creek Branch No. 7	About 500 feet upstream of Conrail	*835	*834
			Just downstream of Lima Road	*838	*836
		Willow Creek Branch No. 8	About 450 feet upstream of mouth	*820	*821
			About 900 feet downstream of Shoaff Road	*823	*822

Maps available for inspection at the Engineering Office, 15617 Lima Road, Huntertown, Indiana.

Send comments to The Honorable David W. Rudolph, Town Board President, Town of Huntertown, 15617 Lima Road, Huntertown, Indiana 46748.

Indiana	City of New Haven, Allen County.	Dannenfelser-Cochoit Ditch	At mouth	*757	*757
			About 1500 feet downstream of Selma Drive	*782	*781
		Trier Ditch	At mouth	*750	*750
			Just downstream of Moeller Road	None	*782
		Maumee River	About 1.4 miles upstream of Bruick Road	*747	*747
			About 2.1 miles upstream of Landin Road	None	*751
		Bender Ditch	At mouth	*761	*759
			Just upstream of Seiler Road	*771	*771

Maps available for inspection at the Clerk Treasurer's Office, 1235 Lincoln Highway, New Haven, Indiana.

Send comments to The Honorable Lynn H. Shaw, Mayor, City of New Haven, 1235 Lincoln Highway, New Haven, Indiana 46774.

Kansas	City of Mulvane, Sedgwick and Sumner County.	Arkansas River	About 5300 feet downstream of County Road	None	*1,207
			Just downstream of Atchison, Topeka, and Santa Fe Railway.	None	*1,216
		Cowskin Creek Cutoff	At mouth	None	*1,218
			Just downstream of low water spillway	*1216	*1,221
		Cowskin Creek	Just upstream of low water spillway	None	*1,223
			About 1,500 feet upstream of Hillside Road	None	*1,227

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Building Inspector's Office, City Hall, 211 North Second Street, Mulvane, Kansas.					
Send comments to The Honorable Gary Williams, Mayor, City of Mulvane, 211 North Second Street, Mulvane, Kansas 67110.					
Missouri	Village of Zalma, Bollinger County.	Castor River	About 350 feet downstream of State Highway 51.	None	*380
			About 0.53 mile upstream of State Highway 51	None	*383
Maps available for inspection at the City Hall, Zalma, Missouri.					
Send comments to The Honorable Herald C. Glasner, Chairman of the Board, Village of Zalma, P.O. Box 82, Zalma, Missouri 63787.					
North Carolina	Village of Alamance, Alamance County.	Big Alamance Creek	About 3,100 feet downstream of State Road 62.	None	*506
			About 2,600 feet upstream of State Road 62	None	*513
Maps available for inspection at the Secretary's Office, Alamance Lutheran Church, Alamance, North Carolina.					
Send comments to The Honorable Fred Hoy, Mayor, Village of Alamance, P.O. Box 96, Alamance, North Carolina 27201.					
North Carolina	City of Creedmoor, Granville County.	Ledge Creek	About 1,700 feet downstream of U.S. Route 15	None	*275
			Just downstream of Lake Rogers Dam	None	*282
			Just upstream of Lake Rogers Dam	None	*288
			About 1.0 mile upstream of Lake Rogers Dam	None	*290
Maps available for inspection at the City Hall, Creedmoor, North Carolina.					
Send comments to the Honorable Hugh Montgomery, City Manager, City of Creedmoor, City Hall, P.O. Box 765, Creedmoor, North Carolina 27522.					
Oregon	City of Lakeview (Lake County).	North Goose Lake Basin	Approximately 2,500 feet downstream of State Highway 88.	*None	*4,732
Maps are available for review at City Hall, City Recorder's Office, 525 North First Street, Lakeview, Oregon.					
Send comments to The Honorable Bob Alger, Mayor, City of Lakeview, City Hall, 525 North First Street, Lakeview, Oregon 97630.					
Washington	City of Everett Snohomish County.	Possession Sound	On the shoreline approximately 4,000 feet south of the mouth of the Snohomish River.	*8	*8
			Directly west of the Port Gardenar Breakwater	None	*9
			Approximately 120 feet north of the intersection of Merril and Ring Creek and Mukilteo Boulevard.	*8	*8
			Approximately 5,000 feet downstream of the Burlington Northern Railroad Bridge over the Snohomish River.	*8	*9
		Snohomish River	At the Interstate Highway 5 bridge over the Snohomish River.	*10	*10
			At U.S. Highway 2 bridge over the Snohomish River.	*12	*13
			Approximately 4,800 feet south, along the Diversion Canal, from its intersection with the Burlington Northern Railroad.	*18	*20
Maps are available for review at City Hall, 3002 Wetmore Avenue, Everett, Washington.					
Send comments to The Honorable William Moore, Mayor, City of Everett, City Hall, 3002 Wetmore Avenue, Everett, Washington 98201.					

Issued: December 12, 1989.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 89-29675 Filed 12-27-89; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[General Docket No. 89-554, FCC 89-329]

World Administrative Radio Conference for Dealing With Frequency Allocations in Certain Parts of the Spectrum, 1992

AGENCY: Federal Communications Commission.

ACTION: Notice of inquiry.

SUMMARY: The Commission seeks public comment regarding its preparations for an International Telecommunication Union (ITU) World Administrative Radio Conference (WARC) for dealing with frequency allocations in certain parts of the spectrum. The conference, which is currently scheduled to be held during the first quarter of 1992, will concern the HF broadcasting, mobile and space communications services. Comments submitted in this proceeding will be part of the record upon which the Commission will rely in making recommendations to the Department of State for United States proposals to the Conference.

DATES: Comments must be filed on or before February 16, 1990; reply comments must be filed on or before March 16, 1990.

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ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: William Torak, Office of Engineering and Technology, (202) 632–7025.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Inquiry in General Docket No. 89–554, FCC 89–329, adopted November 28, 1989 and released December 13, 1989.

The full text of this document is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037. Summary of the Notice of Inquiry:

The 13th ITU Plenipotentiary Conference (Plenipot), which was held in Nice, France, May 23 to June 29, 1989, decided that a WARC should be held in 1992 dealing with frequency allocations in certain parts of the spectrum. The Nice Plenipot agreed that the agenda for WARC–92 will take into account allocation issues contained in the Resolutions and Recommendations relating to frequency allocations that were adopted at three prior ITU conferences: WARC for the Planning of the HF Bands Allocated to the Broadcasting Service, Second Session, 1987 (WARC HFBC–87); WARC for the Mobile Services, 1987 (WARC MOB–87); and WARC on the Use of the Geostationary Satellite Orbit and on the Planning of Space Services Utilizing It, Second Session, 1988 (WARC ORB–88). In addition, the Nice Plenipot agreed that WARC–92 should consider: (a) Articles 55 (Rev.) and 56 (Rev.) of the international Radio Regulations, as amended by WARC MOB–87, regarding on-board maintenance of shipborne radio and electronic equipment, (b) defining certain new space services and allocations to these services in frequency bands above 20 GHz, and (c) Appendix 26 of the international Radio Regulations regarding the Frequency Allotment Plan for the Aeronautical Mobile (OR) Service. The agenda and the exact dates for WARC–92 will be established by the ITU Administrative Council at its Spring, 1990 meeting.

In the Notice, the Commission summarizes briefly the major accomplishments of HFBC–87, MOB–87 and ORB–88 and highlights some of the outstanding allocation issues posed by the three conferences. Comments are invited on the allocation issues dicussed in the Notice and on other allocation issues that are urgent in nature and essential to U.S. interests.

List of Subjects in 47 CFR Part 1

Inquiries, Radio.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89–29853 Filed 12–27–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 22

The Use of Cellular Telephones in Aircraft

AGENCY: Federal Communications Commission.

ACTION: Public notice.

SUMMARY: On September 2, 1988, the Commission issued a Notice of Proposed Rulemaking (53 FR 35851, Sept. 15, 1988) seeking comments on proposed rules prohibiting the use of cellular telephones in aircraft. This Public Notice informs all interested parties of the Commission's receipt of a letter from the Federal Aviation Administration stating their opposition to the use of cellular telephones in aircraft whether the aircraft is on the ground or in the air.

DATES: Comments in response to the FAA letter may be filed on or before January 18, 1990. Reply comments may be filed on or before February 2, 1990.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Dan Abeyta (202) 632–6460.

SUPPLEMENTARY INFORMATION:

Notice To File Comments on FAA Concerns Regarding the Use of Cellular Telephones in Aircraft

Report No. CL–90–67

December 18, 1989

On September 2, 1988, the Commission released a Notice of Proposed Rulemaking, CC Docket 88–411, 3 FCC Rcd 5265 (1988), seeking comments on proposed rules prohibiting the use of cellular telephones in aircraft. Comments were filed October 24, 1988, with reply comments filed November 8, 1988.

On November 30, 1989, the Commission received a letter from Arnold Aquilano, Associate Administrator for Airway Facilities at the Federal Aviation Administration (FAA). Mr. Aquilano states that the FAA is opposed to the use of cellular telephones in aircraft whether the aircraft is on the ground or in the air.

A copy of the FAA letter may be reviewed at the Dockets Public Reference Room, Room 239, 1919 M Street NW., Washington, DC 20554. Interested parties may file comments in response to the FAA letter on or before January 18, 1990. Reply comments may be filed on or before February 2, 1990. An original and 5 copies shall be filed with the Secretary, Federal Communications Commission, 1919 M Street NW., Washington, DC 20554. All comments and replies shall reference the following number: CC Docket No. 88–411 and must be served on the FAA at the following address: Mr. Arnold Aquilano, Associate Administrator for Airway Facilities, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591.

For further information, contact Dan Abeyta at (202) 632–6460.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89–29766 Filed 12–27–89; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 652

RIN 0648–AC19

Atlantic Surf Clam and Ocean Quahog Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of an amendment to a fishery management plan, one minority report, and request for comments.

SUMMARY: NOAA issues this notice that the Mid-Atlantic Fishery Management Council (Council) has submitted Amendment 8 to the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries (FMP) for review by the Secretary of Commerce. Comments are invited from the public on the amendment and associated documents.

DATE: Comments will be accepted until February 20, 1990.

ADDRESSES: Send comments to Richard B. Roe, Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930. Clearly mark the outside of the envelope "Comments on Surf Clam Amendment 8". Copies of the amendment, environmental assessment, and regulatory impact review/initial regulatory flexibility analysis are available upon request from John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, Room 2115, 300 South New Street, Dover, DE 19901–6790.

FOR FURTHER INFORMATION CONTACT: Jack Terrill, Resource Policy Analyst, 508–281–9252.

SUPPLEMENTARY INFORMATION: This amendment was prepared under the provisions of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*). This amendment proposes measures for managing the surf clam and ocean quahog fisheries in the Northwest Atlantic. The measures proposed will: (1) Institute a vessel allocation system in the surf clam and ocean quahog fisheries; (2) remove effort limitations for all surf clam areas; (3) combine the Mid-Atlantic, Nantucket Shoals, and Georges Bank Areas; and (4) revise the surf clam minimum size provision.

One minority report objects to the measures proposed in Amendment 8. A copy of this minority report may be obtained from John C. Bryson at the above address. Proposed regulations for this amendment are scheduled to be filed for publication by January 4, 1990.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 21, 1989.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–30098 Filed 12–22–89; 2:33 pm]

BILLING CODE 3510–22–M

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under the HTS, and evidence of historical trade in these articles, as well as any other information considered relevant. In order to be assured of

where concerns about the program are most prevalent. Except for the changes proposed in this notice, the current set-

(3) Reexamine the entire program in 1991 to assess the effects of the changes made.

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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

National Agricultural Research and Extension Users Advisory Board; Meeting

According to the Federal Advisory Committee Act of October 6, 1972, (Public Law 92-463, 86 Stat. 770-776), the Office of Grants and Program Systems, Cooperative State Research Service, announces the following meeting:

Name: National Agricultural Research and Extension Users Advisory Board, USDA.

Date: February 12-15, 1990.

Time: 8:00 a.m.—5:00 p.m., February 12, 1990, 8:00 a.m.—5:00 p.m., February 13, 1990, 8:00 a.m.—5:00 p.m., February 14, 1990, 8:00 a.m.—12:00 noon, February 15, 1990.

Place: Embassy Suites Hotel, 1250 22nd St., NW., Washington, DC 20037.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: The Board will be preparing a report assessing the President's proposed FY 1991 budget for agricultural science and education agencies.

Contact Person for Agenda and More Information: Marshall Tarkington, Executive Secretary, National Agricultural Research and Extension Users Advisory Board; Room 432-A, Administration Building, U.S. Department of Agriculture, Washington, DC 20250-2200; telephone (202) 447-3684.

Done in Washington, DC, this 14th day of December 1989.

John Patrick Jordan,

Administrator.

[FR Doc. 89-30093 Filed 12-27-89; 8:45 am]

BILLING CODE 3410-22-M

Foreign Agricultural Service

Import Limitations: Review of Coverage of Import Restrictions in the Harmonized Tariff Schedule of the United States

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice of review and request for public comments.

SUMMARY: This notice describes the procedure to be used by the Department of Agriculture in developing recommendations to the President that he proclaim changes to the Harmonized Tariff Schedule of the United States pursuant to section 1211(c) of the Omnibus Trade and Competitiveness Act of 1988 (the Act).

FOR FURTHER INFORMATION CONTACT: Diana Wanamaker, Group Leader, Import Policies and International Organizations Group, Multilateral Trade Policy Affairs Division, Foreign Agriculture Service, Room 5530 South Building, Department of Agriculture, Washington, DC 20250. Telephone inquires should be directed to Bob Spitzer at (202) 447-6064.

SUPPLEMENTARY INFORMATION: Section 22 of the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. 624), provides that the President shall impose fees or quantitative limitations on articles imported into the United States if he finds that such articles are being or are practically certain to be imported under such conditions and in such quantities as to render or tend to render ineffective, or materially interfere with, certain programs or operations undertaken by the Department of Agriculture, with respect to any agricultural commodity, or to reduce substantially the amount of any product processed in the United States from any agricultural commodity or product with respect to which any such programs or operation is being undertaken. Prior to January 1, 1989, such fees and quantitative limitations were set forth in part 3 of the Appendix to the Tariff Schedules of the United States (TSUS). Since that date, as a result of adoption of the Harmonized Tariff Schedule of the United States (HTS), such fees and quantitative limitations have been set forth in subchapter IV of chapter 99 of the HTS.

In addition, prior to January 1, 1989, the President had proclaimed a rate of duty and quantiative limitations applicable to certain imported sugars, syrups, and molasses in confomity with headnote 2 of subpart A of part 10 of schedule 1 of the TSUS ("sugar headnote)". As a result of adoption of the HTS, this provision became Additional U.S. Note 2 to chapter 17 of the HTS.

Section 1211(c) of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418) authorizes the President to proclaim changes in subchapter IV of chapter 99 of the HTS and in addition U.S. Note 2 to chapter 17 of the HTS to conform them to part 3 of the Appendix to the Tariff Schedules of the United States (TSUS) and headnote 2 of subpart A of part 10 of schedule 1 of the TSUS, respectively. Such changes may be proclaimed if the President determines that conversion from the TSUS to the HTS has resulted in articles previously subject to import restrictions proclaimed pursuant to section 22 or covered by such sugar headnote being excluded from such restrictions, or articles previously excluded from the import restrictions proclaimed pursuant to section 22 or not previously covered by such sugar headnote being included within such restrictions. Section 1211(c) further provides that this authority may not be exercised after June 30, 1989.

The Department of Agriculture will conduct a review of public requests that the Secretary of Agriculture recommend to the President the proclamation of changes in the HTS pursuant to section 1211(c). The review will commence on January 22, 1990. This notice solicits submissions for that review. The Administrator of the Foreign Agricultural Service ("Administrator") will appoint an internal USDA task force to review the public requests. On the basis of the task force report, the Administrator may advise the Secretary of Agriculture to recommend that the President proclaim appropriate changes to the HTS.

Written submissions: Interested parties are requested to notify the Administrator in writing of articles which may meet the criteria of section 1211(c). Submissions should provide evidence of the tariff classification, including but not limited to Customs classification opinions and rulings, of the articles in question in the TSUS and under the HTS, and evidence of historical trade in these articles, as well as any other information considered relevant. In order to be assurred of consideration, submissions should be sent to The Administrator, Foreign Agriculture Service, U.S. Department of Agriculture, Washington, DC 20250, no later than close of business, January 19, 1990.

Done at Washington, DC, this 21st day of December, 1989.

R.E. Anderson Jr.,

Administrator, Foreign Agricultural Service.

[FR Doc. 89-30092 Filed 12-27-89; 8:45 am]

BILLING CODE 3410-10-M

Forest Service

Small Business Timber Set-Aside Program

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed policy.

SUMMARY: The Forest Service gives notice of a new proposal to modify administration of the Small Business Timber Sale Set Aside Program. This proposal supersedes the proposed modification published September 25, 1987, at 52 FR 36075 and is made in response to comments received on the 1987 proposal. The new proposal would change the administration of the set-aside program as follows: (1) The amount of timber set aside when the program is initially triggered would be one half the total volume of the small business deficit plus the small business share with the full deficit and share set aside if the trigger remains in effect in subsequent periods; (2) The amount that the small business set-aside share could change at a scheduled recomputation would be limited to 10 percentage points when the market share is 50 percent or less and 10 percent of the share when the share is more than 50 percent. An exception is provided when analysis of individual market areas indicates a greater or lesser change is appropriate; (3) The recomputed share would be implemented without the requirement for at least a 5 point difference before a new share is established; (4) In circumstances where recomputations due to structural change apply, the procedures guiding the agency are strengthened and clarified; and (5) In Region 3, examination of the program is proposed and based on that evaluation the program in Region 3 would be modified if appropriate during the 5 year period following the 1991 scheduled recomputation of small business shares. The proposed changes would apply in Regions 1 through 6 of the Forest Service where concerns about the program are most prevalent. Except for the changes proposed in this notice, the current set-aside policy and procedures would remain in effect. The intended effect of these proposed changes is to reduce the impact of large and rapid changes in the timber supply available to manufacturers of timber products that are dependent on National Forest timber for a significant portion of their raw material supply. The agency invites public comment on this latest proposal.

DATE: Comments on this proposal must reach the agency by February 12, 1990.

ADDRESSES: Those wishing to comment on this proposal should submit their views in writing to F. Dale Robertson, Chief (2400), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090. Public comments received may be inspected during normal business hours in the office of the Director of Timber Management Staff, Room 3207, South Agriculture Building, 14th and Independence Avenue, SW. Parties wishing to view comments are requested to call ahead (447-6693).

FOR FURTHER INFORMATION CONTACT: Milo Larson, Timber Management Staff, (202) 475-3754.

SUPPLEMENTARY INFORMATION: Small Business Administration (SBA) regulations at 13 CFR part 121 and Forest Service policy in Chapter 2436 of the Forest Service Manual set forth current policy and procedures for the administration of the timber sale set-aside program on National Forest System lands. The basic objective of the program is to ensure that small timber businesses have the opportunity to purchase a fair proportion of the sale of timber from the National Forest System.

Background

The Forest Service's current policy and procedure for timber sale set-asides was adopted June 13, 1985 (50 FR 24788). In November of that year as a stipulation in a settlement of a lawsuit contesting the new policy, the Forest Service agreed to republish the policy and request additional comments. The policy, however, remained in effect. In response to the comments received on the June 1985 policy, the Forest Service published a proposed revision to the timber sale set-aside program on September 25, 1987. The major features of that proposal were as follows:

(1) Freeze the small business share in each market area at current levels.

(2) Reduce the threshold volume a firm would have had to have purchased for inclusion in a recomputation for structural change from 10 percent of the timber in a market area to 5 percent.

(3) Reexamine the entire program in 1991 to assess the effects of the changes made.

Public Comment

The Forest Service received about 290 written comments on the September 1987 proposal. These came from individual firms (149), other individuals (19), associations representing interests of large or small business groups (13), the Small Business Administration (1), and other or unidentified interests (4). In addition, the Forest Service received about 20 written or telephone inquiries from members of Congress or their staffs. The House and Senate Small Business Committees held hearings on the proposed change in the program in February and March of 1988. Testimony at both hearings closely followed the written comments submitted in response to the proposal.

Small businesses were stongly opposed to any change in the current program, but were most vehement in opposition to a freeze. In general, large business supported the proposal, but thought it did not go far enough in correcting perceived unfairness in the program. During the Congressional hearings, special examination of the program as it affects communities dependant on National Forest timber in Region 3 was suggested. Large business recommended additional changes, suggesting most strongly that the timber volume set-aside, in the event the program is triggered, be limited to the volume of the small business deficit only and not both the deficit and volume of the small business share as is required by the current policy. (The "small business share" is an amount of timber equal to a historically established percentage of Forest Service timber sold to small business in a market area. "Deficit" is an amount of timber represented by the difference between the amount of timber determined from the small business share established in a market area and the amount of timber small businesses have actually purchased over a series of 6-month analysis periods. "Trigger" occurs when small business is unsuccessful in purchasing its historic share in open market conditions and the accumulated deficit volume becomes 10 percent or more of the share volume.)

1. Freeze Small Business Shares

Comments were sharply split between large and small businesses. Large businesses strongly supported the freeze proposal on the basis that small business shares have tended to increase at successive recomputations and that

this is leading to large business being unfairly disqualified from bidding for all but a token amount of Forest Service

Large business favored the agency's proposed reduction of the threshold for inclusion in structural change to 5

change and of the responsibilities of the officials authorized to invoke the changes.

for a minimum of 6 months and much longer if the deficit persists. Small business argued that set aside of both the deficit and the small business share

the "freeze" rejected in the prior proposal would result. Therefore, it is appropriate to drop the requirement for at least a 5-point difference before a

change determinations are subject to appeal under 36 CFR 217. The signing of the notice by the responsible official is the date beginning the time period

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this is leading to large business being unfairly disqualified from bidding for all but a token amount of Forest Service timber in many market areas. They were especially concerned that large future increases would make it impractical for large businesses to continue operations in some areas. Small businesses were strongly and unanimously opposed to this change arguing that increases in shares are earned by increased participation in the market and the resultant increase in capacity is deserving of the protection that is supposed to be provided by the set-aside program. They felt periodic recomputation of small business shares is essential to maintain a viable small business sector. Large business was equally vehement about the need to limit the continued growth of small business shares.

Analysis of timber purchase and harvest data for the October 1985 through September 1988 time period reveals a mixed picture. While the overall trend of increasing small business purchase and harvest continued, in some market areas the trends indicate a decrease in small business share. Even though large increases in small business shares in certain market areas do appear likely, analysis of the data leads the agency to conclude that it is premature to completely do away with the recomputation policy adopted on June 13, 1985.

In addition, the Conference Report accompanying the Appropriations Act for FY 1989 included language urging the Forest Service not to adopt the changes as proposed. The language urged the agency to consider other alternatives. In light of the comments, review of the data, and congressional direction, the agency is withdrawing the freeze proposal.

2. Structural Change.

Structural change occurs when large or small timber manufacturers change size class, go out of business or are sold causing a different size class. These changes alter the mix of structure of the timber businesses within a market area. The current policy requires a history of timber purchases of 10 percent or more of the timber sold by the Forest Service in a market area by a firm before a change in its status can be considered in a structural change. In the September 1987 proposed revision, the agency proposed to reduce the threshold volume from 10 percent to 5 percent. The agency felt a reduction in the timber purchase history necessary for a firm's inclusion in structural change would increase sensitivity of the program.

Large business favored the agency's proposed reduction of the threshold for inclusion in structural change to 5 percent. Large business felt that the threshold for the application of structural change to firms which purchased 10 percent of total sawlog volume during the prior recomputation period unfairly favored small business because individual small businesses often do not purchase 10 percent of the timber in a market area and would not be included in structural changes. Large business argued that several small businesses could change size class or cease operations and thus have a collective effect that would not be considered in the structural change process. Small businesses opposed the change arguing that it unnecessarily complicates the program, would cause lack of stability in the program, and make it more appealing for large businesses to buy out small firms, ultimately reducing the small business share through structural changes.

The Agency accepts the argument that a reduction in threshold would result in more frequent changes in operation of the program. Further, any change in shares affects every large and small timber business in the market area, a situation which often causes appeal of the decision to invoke the change. Costs are thus incurred by timber businesses in each size classification and by the agency for what are likely to be small changes in shares. Therefore, the new proposal does not contain the earlier proposed reduction of the threshold for inclusion in structural change from a purchase history of 10 percent to 5 percent.

The current policy defines structural change as occurring when businesses change size class or discontinue operations and thus change the established relationship between small and large businesses active in a market area. Several reviewers asked for expansion of its application, and suggested changes in procedures for determining and implementing structural change. Comments from both large and small business suggested clarifying procedures for structural change and especially indicating who is responsible for identification of situations that call for structural change and for initiation of the recomputation. Language in the current policy concerning timing of the steps leading to recomputations for structural and subsequent implementation was also questioned. The agency agrees with these comments and is proposing a clarification of the procedures to be followed in determining and implementing structural change and of the responsibilities of the officials authorized to invoke the changes.

3. Review of the Program in 1991

The 1987 proposal would have directed the agency to restudy the entire set-aside program in 1991 to assess the effects of the freeze and other changes and to determine if additional changes would be required at that time. Large business generally supported the study. Small business opposed the proposal on the basis that the program has been reviewed almost continously with resultant uncertainty. They viewed the proposal as a further attempt to weaken the program in 1991. This latest proposal does not contain a requirement for review of the entire program at a specific time. The agency will rely on its cooperative relationship with the Small Business Administration to ensure that the set-aside program meets the objectives of the Small Business Act. The agency will, however, review the effects of the program on a continuing basis.

New Proposal

Based on consideration of the comments received, analysis of potential alternatives, the available data, an agreement between groups representing some large and small businesses in the west, and the advice from Congress, the Forest Service has concluded that some change in the program is warranted, particularly in the western United States were concern is the greatest. However, based on the public comment and review of the data on trends in market shares, the Forest Service has concluded that there is an insufficient basis for adopting the major changes in the program proposed on September 25, 1987. Therefore, this proposed policy calls for the final policy published on June 13, 1985, to continue to govern the program except that the sections of the Forest Service Manual pertaining to future recomputations, structural change, and set aside of deficit and share volume would be modified. Editorial clarifications and five elements of the program are proposed for change.

1. Amount of Timber Set-Aside.

The previous proposal did not address change in the amount of timber set-aside when the program is triggered. This received considerable comment from large businesses who argued that setting aside both the deficit and the small business share at an initial triggering effectively precludes large businesses from competing for a substantial portion of the timber available in a market area for a minimum of 6 months and much longer if the deficit persists. Small business argued that set aside of both the deficit and the small business share is essential to enable them to purchase the small business share and to eliminate the deficit. They made the argument that allowing a deficit to persist over a protracted period of time is counter to the objectives of the program. The agency accepts portions of both arguments. The deficit is typically smaller than the share in an initial triggering situation. When a set-aside is initially triggered, an open market situation where all firms compete for all timber offered for sale is abruptly and, in many market areas, substantially altered because both the share and the deficit are set aside. Large firms would be precluded from competing for timber sales needed to sustain their operations. Therefore, the agency proposes that in an initial trigger situation only half of the sum of the deficit and the small business share timber volume would be set aside and if the deficit situation is not eliminated through normal operation of market forces, all of the deficit and the small business share would be set aside in the next 6-month period.

2. Amount of Change at Schedule Recomputations

Comments indicated concerns about large and abrupt changes in the small business share that sometimes occur at scheduled recomputations. To respond to those concerns, the agency proposes that the amount that the amount that the small business set-aside could change at a scheduled recomputation would be limited to 10 percentage points when the small business market share is 50 percent or less. When the small business share is more than 50 percent, the amount of share change is limited to percentage points equivalent to 10 percent of the existing share. An exception to the limit on share change would be provided when analysis or individual market areas indicates a greater or lesser change is appropriate.

3. Drop Requirement for Minimum 5 Point Change

The current policy provides for no change in the small business share unless the recomputed share differs from the former share by 5 points or more. Concerns reflected in the comments on the prior proposal indicated a need to limit large changes in shares. As noted above, the new proposal contains a limitation on the maximum amount of share change. With the proposed limitation on large changes and a policy that does not recognize the small changes, something very near to the "freeze" rejected in the prior proposal would result. Therefore, it is appropriate to drop the requirement for at least a 5-point difference before a share change is established.

4. Structural Change

Comments from both small and large businesses indicated concern with unclear language describing procedures for structural change. The agency agrees that guidance affecting both the agency and affected industry is unclear. The existing description of circumstances leading to structural change and of actions needed when those circumstances do occur is confusing. Therefore, additional detail and clarification of procedures for recomputation due to structural change is proposed.

5. Special Examination in Region 3

Comments indicated a need to examine the implications of National Forest timber sale levels on the economic stability of isolated communities and, specifically, the effects of the Small Business set-aside program on the stability of such communities. These comments were specific to communities in the Southwestern part of the country, Region 3 of the Forest Service. In response, the agency proposes that in Region 3, the program be examined and, if appropriate, be modified during the 5-year period following the recomputation scheduled in 1991. The Agency requests comment both on the proposal to make the examination and on aspects of the set-aside program most in need of examination. Comments should include rationale for suggestions provided.

Proposed Policy

The applicable sections of the Forest Service Manual would be modified as follows:

Recomputations

2436.28 Announcement of Recomputations.

The Small Business Administration Regional Representative shall be consulted and requested to review all recomputations as well as any determination of structural change. Following review by the Small Business Administration, the Forest Supervisor shall prepare an environmental analysis and provide appropriate notification. After review and analysis of public comment, the Forest Supervisor shall prepare a Decision Notice which shall be provided to the public under the guidelines of 36 CFR 217.5. Recomputation results and structural change determinations are subject to appeal under 36 CFR 217. The signing of the notice by the responsible official is the date beginning the time period during which appeals may occur.

In the case of a structural change decision, the determination of structural change may not be repealed at the time recomputation results for the structural change are announced. Only the decision establishing the new shares resulting from the recomputation may be appealed at that time.

(Note, the remainder of section 2436.28 is not being changed)

2436.34 Examination of the Program in Region 3.

The Forest Sevice will study the aspects of the program affecting stability of communities dependent on National Forest timber supply and that will otherwise improve operation of the program. Complete the examination expeditiously in order to allow implementation of resultant recommendations during the 5-year period following the 1991 recomputation.

2436.35 Future Share Changes in Regions 1, 2, 3, 4, 5, and 6.

2436.35a Schedule Recomputations.

Recompute small business shares using the weighted average purchase and harvest history for small business firms in each market area. Use data from the time period between the previous recomputation (regular, structural change or unique circumstances) and the date for the regular recomputation. For purposes of share calculation, base harvest history on timber sale statements of account and available records of deliveries by non-manufacturers of sawlog timber purchases from open sales to small or large business firms for processing (FSM 2436.43). Obtain data for this calculation from the annual reports submitted by non-manufacturers for log export control where these records are required. Determine the proportion delivered to large and small business, and the proportions to distribute harvest shown on timber sale statements to the appropriate business size class. Obtain harvest history for small and large manufacturers from timber sale statements of account. Base harvest history for sales purchased by manufacturers on total harvested volume, and not on delivery for processing. Consider volume from tree measurement sales as harvested if it has been paid for.

Use the recomputed results to establish the new small business share.

However, increases or decreases in market shares shall be limited at each recomputation as follows:

EXHIBIT 1.—HANDLING OF CARRYOVER VOLUMES IN RECOMPUTING SHARES—Continued

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the deficit and the share volume subject to the limitation that 20 percent of the offered volume must be in open sales.

inspection procedures and does not increase compliance or administrative costs of small entities.

carryover deficit, if less than .90 drop carryover deficit.

Forest Supervisors may recognize

However, increases or decreases in market shares shall be limited at each recomputation as follows:

1. If the share is 50 percent or less, changes in share would be limited to 10 share percentage points.

2. If the share is more than 50 percent, changes in share would be limited to 10 percent of the current share.

In each market area where the recomputed share would result in a share change of more than either of the limits, the Forest Supervisor and the Small Business Administration representative shall analyze the structure of the timber industry in the market area and determine the applicability of the limits. If the analysis indicates the limit should not apply, the Forest Supervisor shall justify an appropriate small business share and propose it to the Regional Forester for approval (FSM 2436.28). In the analysis supporting a proposal for a share above the limits, the Forest Service shall consider the capacity of the firms active in the market area, the available timber supply, the probable effects on communities where manufacturing plants are located, the effects of timber volume carried over from prior periods, and other factors which the Forest Supervisor deems significant. Surplus or deficit volume carried over from the prior recomputation that would cause the limits to be exceeded shall be sufficient reason for exceeding the limit.

Calculate surplus or deficit volumes to be carried over from the previous period based on small business harvest performance. Exhibit 1 displays how to use harvest performance, calculated as a ratio of harvest to purchase, to adjust carryover volumes.

EXHIBIT 1.—HANDLING OF CARRYOVER VOLUMES IN RECOMPUTING SHARES

Small business weighted average purchase and harvest percent results in:	Small business harvest to purchase ratio of	Effect on share and carryover volume
1. Increase from current share.	A. .90 ratio or more.	Drop surplus carryover. Retain ⅓ deficit carryover.
	B. Less than .90 ratio.	Drop deficit carryover. Retain ⅓ surplus carryover.
2. Decrease from current share.	A. .90 ratio or more.	Drop surplus carryover. Retain ⅓ deficit carryover.

EXHIBIT 1.—HANDLING OF CARRYOVER VOLUMES IN RECOMPUTING SHARES—Continued

Small business weighted average purchase and harvest percent results in:	Small business harvest to purchase ratio of	Effect on share and carryover volume
	B. Less than .90 ratio.	Drop deficit carryover. Retain ⅓ Surplus carryover.

2436.35b Recomputations Due to Structural Change.

Recompute shares following structural change. The procedure is designed to provide small business firms the opportunity to maintain their historical share when a firm changes size, but provides a reasonably rapid adjustment of shares to reflect the actual purchase and harvest patterns which develop. Recompute small business shares 3 years after a structural change occurs. Base the recomputation on the purchase and harvest history for the 3-year period, beginning with the first full 6-month period following the structural change. When a recomputation for a structural change would occur within a year of a scheduled recomputation (before or after), skip the scheduled recomputation. Make the recomputation effective at the beginning of the first 6-month period following the three-year period. In the event two or more structural changes occur in the same 6-month period, there will be one recomputation with respect to all structural changes that occurred in the same half year.

Compute small business shares following structural change in the same manner as a scheduled recomputation. Structural change recomputations shall not be subject to the limitations on the amount of share change applicable to schedule recomputations, but are subject to the lower limit of one half the base share established in 1971 and the upper limit of 80 percentage points. Announce the results in the same manner as a scheduled recomputation (FSM 2436.28) and in accordance with 36 CFR 217.5.

Adjust carryover volumes using the small business harvest to purchase ratio. When the share increases and the ratio is .90 or more drop carryover surplus, if less than .90 retain ⅓ the carryover surplus. When the share decreases and the ratio is .90 or more retain ⅓ the carryover deficit, if less than .90 drop carryover deficit.

Forest Supervisors may recognize structural change on their own or may act upon recommendation of their subordinate staff when conditions for structural change appear to have occurred. Supervisors shall, in consultation with the Small Business Administration, act upon a request for recomputation due to structural change from any manufacturer or interested party within 60 calendar days of the request. The Supervisor shall make a determination which includes a judgment as to whether the definition for structural change was met. The purpose for making the determination is to enable clear and accurate records of the events at the time they occur rather than to reconstruct them at the time recomputation is due, several years later. If structural change did occur, include the date at which the structural change was judged to have taken place, the time period to be included in the purchase and harvest data for the recomputation, and when the recomputation is expected to become effective if a change in shares should result. Document the results of the determination, make documentation available to interested and affected parties, and if structural change did occur, retain as an open file until the recomputed share is in effect. Announce the result of the determination in accordance with FSM 2436.28.

Set-Aside of Deficit and Share Volume

2436.44 Initiating Required Set-Aside Program.

The Forest Supervisor shall initiate a set-aside sale program when the accumulated timber volume deficit to date (in any full 6-month analysis period) equals or exceeds 10 percent of the small business share for the previous 6-month analysis period. In this event, a trigger situation exists. Also initiate a set-aside program at the beginning of a 5-year recomputation period when both of the following take place: (1) Triggering of a set-aside program occurred in the last 6-month analysis for the previous 5-year recomputation period and (2) volume deficits sufficient to trigger set-aside were carried forward from the previous recomputation.

When a set-aside program is triggered, always provide at least 20 percent of the volume in a 6-month period as open sales.

In Regions 1 through 6, in an initial trigger situation, the Forest Supervisor shall set aside timber volume approximately equal to ⅓ of the sum of the deficit and the share volume subject to the limitation that 20 percent of the offered volume must be in open sales. An initial trigger situation is any trigger following a period when no volume is set aside. If at the end of that set-aside period, sufficient deficit remains to cause a trigger situation, set aside both the deficit and the small business share volume except for the 20 percent of the volume that must be offered as open sales. Set aside the deficit and share in each successive 6-month period where a trigger situation exists, subject to the 20 percent open volume limitation. Further, during the last year of a recomputation period, set aside both the deficit and the share in any trigger situation, subject to the limitation that 20 percent of volume be offered as open sales.

In Regions 8, 9 and 10, the Forest Supervisor shall set aside both the share and the deficit each time the program is triggered, subject to the 20 percent in open sale volume limitation.

When a set-aside sale program triggers, individual sale volume makeup may made it impractical to set-aside volume exactly equal to the amount of deficit and share calculated for the analysis period. Select set-aside sales that total as close as practically possible to the calculated amount, but the actual set-aside volume may be more or less than indicated by the calculation.

Impacts

This proposed policy has been reviewed against the objectives and criteria of Executive Order 12291, and it has been determined that these changes in policy will not result in any of the economic or regulatory impacts associated with a major rule. The discretion available to the Secretary is in selecting administrative procedures to facilitate operation of the set-aside program. This proposal will not have an annual effect on the economy of $100 million or more and will not result in a major increase in costs for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, and the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Moreover, this proposed policy would not have significant economic impact on a substantial number of small entities. The proposal would continue to insure that small business timber industry firms have the opportunity to obtain a fair proportion of National Forest timber sales. The proposed policy would require the use of existing reporting and inspection procedures and does not increase compliance or administrative costs of small entities.

This policy is an administrative procedure and in and of itself will have no effect on the quality of the human or natural environment. Therefore, the requirements of the National Environmental Policy Act do not apply.

The agency invites written comment on this proposal. Comments received will be fully considered in development of a final policy. Upon adoption, the final policy will be set forth in forthcoming revisions of the Forest Service Manual Chapter 2436 and Timber Sale Preparation Handbook (FSH 2409.18).

Dated: September 26, 1989.

George M. Leonard,

Associate Chief.

[FR Doc. 89-30134 Filed 12-27-89; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Office of the Secretary

[Docket No. 91154-9254]

Waiver of Federal Information Processing Standards for High-Performance Scientific Processors To Be Acquired by the Department of Commerce

AGENCY: Department of Commerce.

ACTION: Notice of federal information processing standards waiver.

SUMMARY: The Assistant Secretary for Administration has granted a waiver to the requirements of the following specified FIPS as they apply to the Department of Commerce Supercomputer Project. Under this project high-performance scientific processors will be acquired for the National Meteorological Center, the National Institute of Standards and Technology, and the Geophysical Fluid Dynamics Laboratory. The waiver is based on adverse operational and economic impact.

FIPS PUB	
60-2	Input/Output channel interface.
61-1	Channel level power control
63-1	Operational specifications for variable, rotating mass storage
97	Operational specifications for fixed block, rotating mass storage
111	Storage module interfaces
130	Intelligent peripheral interface
131	Small computer system interface

EFFECTIVE DATE: October 11, 1989.

FOR FURTHER INFORMATION CONTACT: Francis J. Balint, (301) 763-8019.

AUTHORITY: Pursuant to section 111(d) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(d)) as amended by the Computer Security Act of 1987, the Secretary of Commerce delegated this waiver authority to the Assistant Secretary for Administration on August 17, 1989.

Dated: December 15, 1989.

Richard E. Shute,

Director, Management and Information Systems.

[FR Doc. 89-30057 Filed 12-27-89; 8:45 am]

BILLING CODE 3510-CW-M

[Docket No. 91289-9289]

Delegation of Authority To Waive Federal Information Processing Standards (FIPS) for Acquisitions by the Department of Commerce

AGENCY: Department of Commerce.

ACTION: Notice of delegation of authority.

SUMMARY: Pursuant to section 111(d) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(d)) as amended by the Computer Security Act of 1987, the Secretary of Commerce has delegated to the Assistant Secretary for Administration the authority to waive FIPS requirements for computers and related telecommunications systems acquired and managed by the Department of Commerce.

EFFECTIVE DATE: August 17, 1989.

FOR FURTHER INFORMATION CONTACT: James E. McNamee, (202) 377-3201.

Dated: December 15, 1989.

Richard E. Shute,

Director, Management and Information Systems.

[FR Doc. 89-30058 Filed 12-27-89; 8:45 am]

BILLING CODE 3510-CW-M

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council will hold a public meeting of its Shrimp Advisory Panel

year exceeds the projected bycatch by at least ten percent.

Service's Southeast Regional Office. From 9:15 a.m. to 9:45 a.m., it will hear public comments on the 1990 Texas

two public Council meetings during January 1990, and also will hold a public meeting of its Shark Subcommittee.

C. The season opening date for whiting joint ventures in 1990.

Public participation in the telephone

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and

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The Gulf of Mexico Fishery Management Council will hold a public meeting of its Shrimp Advisory Panel (AP) on January 16, 1990, at the Doubletree Hotel, 300 Canal Street, New Orleans, LA. The Shrimp AP will begin its meeting at 10 a.m., to review the 1989 Texas closure, and to make recommendations to the Council for the 1990 closure. It also will discuss the definition of overfishing. The meeting will adjourn at 5 p.m.

For more information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL; telephone: (813) 228–2815.

Dated: December 22, 1989.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–30099 Filed 12–27–89; 8:45 am]

BILLING CODE 3510–22–M

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council will hold separate public meetings of its Scientific and Statistical Committee (SSC), and its Swordfish Advisory Panel (AP). The SSC will meet on January 17, 1990, at the Doubletree Hotel, 300 Canal Street, New Orleans, LA. Its meeting will begin at 10 a.m., and will recess at 5 p.m. The SSC meeting will reconvene on January 18 at 8 a.m., and wil adjourn at noon. The Swordfish AP will met on January 11, 1990, at the Gulf of Mexico Council's office (address below). Its meeting will begin at 8:30 a.m., and will adjourn at 5 p.m.

The SSC will review the 1989 Texas shrimp closure and will discuss the definition of overfishing. It also will review draft Amendment #2 to the Reef Fish Fishery Management Plan (FMP), which will restrict harvest of jewfish. In addition, the SSC and the Swordfish AP will review the following proposed management measures for inclusion into draft Amendment #1 of the FMP for Atlantic Swordfish:

1. Acceptable biological catch (ABC) in the initial year (1991) will be 3.83 million pounds dressed weight stockwide.

2. Total allowable catch (TAC) for the U.S. fishery is 1.85 million pounds dressed weight for the initial year (1991).

3. Directed fishing for swordfish is prohibited until TAC for the upcoming year exceeds the projected bycatch by at least ten percent.

4. The use of artifical and/or light sticks on longlines is prohibited until the directed fishery is reopened.

5. The TAC will be allocated entirely to the bycatch fishery in the initial year, using a two-tiered bycatch allocation system. The initial bycatch allocation will be six swordfish per trip. It the vessel carries and pays for an observer, all dead swordfish may be retained if the observer certifies that the fish were a legitimate bycatch of directed tuna fishing.

6. Night-time longlining would be prohibited after the quota (TAC) is reached. This regulation is to apply to both foreign and domestic longline fisheries inside the Exclusive Economic Zone.

7. Imports of swordfish from the same stock will be prohibited after the quota is taken and the U.S. fishery is closed.

8. There will be a recreational fishing allocation of 110 fish, subject to the following restrictions:

a. Sale is prohibited.

b. Minimum size is 150 pounds whole weight (no minimum size and 75 pound minimum size also is being considered).

c. Only rod and reel may be used.

d. A permit or stamp may be issued to track the quota.

9. A control date of August 16, 1989, is established as a benchmark for possible limited entry.

10. Drift entanglement gillnet fishing is prohibited in the swordfish fishery.

For more information contact Douglas R. Gregory, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL; telephone: (813) 228–2815.

Dated: December 22, 1989.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–30100 Filed 12–27–89; 8:45 am]

BILLING CODE 3510–22–M

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council and its Committees will meet January 22–25, 1990, at the Wyndham Hotel, 900 North Shoreline Boulevard, Corpus Christi, TX. Except as noted below, the meetings are open to the public.

The Gulf of Mexico Council will begin its meeting on January 24 at 8:30 a.m., to hear comments on the future direction for the National Marine Fisheries Service's Southeast Regional Office. From 8:15 a.m. to 9:45 a.m., it will hear public comments on the 1989 Texas shrimp closure, and will review committee recommendations.

From 11 a.m. to 11:30 a.m., the Council will hear public comments on Amendment #2 to the Reef Fish Fishery Management Plan (FMP), review committee recommendations, as well as discuss rejected measures of Amendment #1 to the Reef Fish FMP. From 2 p.m. to 2:30 p.m., it will hear public testimony on Amendment #1 to the Swordfish FMP, and review committee recommendations. It also will hear reports from the Habitat Protection, Administrative Policy, and Budget Committees, and will hear the U.S. Fish and Wildlife Director's report.

From 5 p.m., to 5:15 p.m., in a closed session (not open to the public), the Council will review the Personnel Committee's recommendations. The Council will recess after the closed session.

On January 25 at 8:30 a.m., the Council will reconvene, and will hear a status report of the Marine Recreational Fishery Statistics Survey, as well as the Director's Report. It also will hear reports of the Intercouncil Shark and Enforcement Committees. The Council meeting will adjourn at 10:30 a.m.

On January 22 at 12:30 p.m., the Swordfish Management Committee will begin its meeting. Afterwards, from 4 p.m., to 4:30 p.m., in a closed session (not open to the public) the Budget Committee will begin its meeting. From 4:30 p.m., to 5:30 p.m., the Habitat Protection Committee will meet.

On January 23 at 8 a.m., the Administrative Policy Committee will begin its meeting, followed by meetings of the Reef Fish and Shrimp Management Committees, which will adjourn at 5 p.m.

For more information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL 33609; telephone: (813) 228–2815.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–30101 Filed 12–27–89; 8:45 am]

BILLING CODE 3510–22–M

Mid-Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

As indicated below, the Mid-Atlantic Fishery Management Council will hold two public Council meetings during January 1990, and also will hold a public meeting of its Shark Subcommittee.

The Mid-Atlantic Council will meet on January 9, 1990, at the Ramada Inn, 76 Industrial Highway, Essington, PA (telephone: 215–521–9600). The Council will begin its meeting at 10 a.m., to discuss the butterfish fishery.

The Mid-Atlantic Council will hold its scheduled meeting on January 17–18, 1990, at the Holiday Inn, 45 Industrial Highway (Route 291), Essington, PA (telephone: 215–521–2400). It will begin its meeting on January 17 at 8:30 a.m., to discuss shark, billfish, swordfish, and tuna fishery management, the butterfish fishery, and other fishery management and administrative issues. The meeting will recess at approximately 4:15 p.m. On January 18 the Council meeting will reconvene at 8 a.m., and will adjourn during the early afternoon of the same day. The meeting may be lengthened or shortened depending upon progress on the agenda. The Council also may hold a closed session (not open to the public) to discuss employment and/or national security matters.

The Mid-Atlantic Council's Shark Subcommittee will meet on January 16 from 10 a.m., to appoximately 4:30 p.m., also at the Ramada Inn (address above).

For more information contact John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901; telephone: (302) 674–2331.

Dated: December 22, 1989.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–30102 Filed 12–27–89; 8:45 am]

BILLING CODE 3510–22–M

Pacific Fishery Management Council; Public Teleconference

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council will hold a public telephone conference on January 10, 1990, at 9 a.m., PST, at locations listed below. The Council's regularly scheduled January public meeting has been cancelled due to budget limitations. The Council will discuss the following halibut allocation and groundfish management issues:

A. Allocation of Pacific halibut among tribal Indian and non-Indian sport and commercial fisheries, south of British Columbia, for 1990.

B. Sablefish management measures for 1990 for trawl and non-trawl fisheries, and estimated set-aside for treaty Indian fisheries.

C. The season opening date for whiting joint ventures in 1990.

Public participation in the telephone conference will be at one of the following locations:

1. National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service (NMFS), 7600 Sand Point Way, N.E., Seattle, WA

2. NOAA/NMFS, 300 South Ferry Street, Conference Room, Terminal Island, CA

3. Makah Tribal Center, Fisheries Management Office, Neah Bay, WA

4. Peninsula College, Administrative Building, Board Room, Port Angeles, WA

5. Oregon Department of Fish and Wildlife, Marine Science Drive, Building 3, Newport, OR

6. Oregon Department of Fish and Wildlife, 53 Portway Street, Astoria, OR

7. Independent Troll Fishermen of Oregon, 4595 Kingfish Drive, Charleston, OR

8. Seafarers Hall, Marine Way, Crescent City, CA

9. Washington Department of Fisheries, 115 General Administration Building, Olympia, WA

10. Fishermen's Marketing Association, 320 Second Street Eureka, CA

Detailed agencies for the above teleconference will be made available to the public after December 22, 1989. For more information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2000 S.W. First Avenue, Room 420, Portland, OR 97201, telephone: (503) 326–6352.

Dated: December 22, 1989.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–30103 Filed 12–27–89; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in India

December 21, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these items, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6494. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of February 6, 1987, as amended, between the Governments of the United States and India, establish import limits for the 1990 agreement year.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 53 FR 44937, published on November 7, 1988).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 21, 1989.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further amended on July 31, 1986; pursuant to the Bilateral Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement on February 6, 1987, as amended, between the Governments of the United States and India; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1990, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in India and exported during the twelve-month period which begins on

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January 1, 1990 and extends through December 31, 1990, in excess of the following restraint limits:

Category	Twelve-month restraint limit
Levels in group I[1]	
218	7,466,801 square meters.
219	37,578,906 square meters.
313	19,978,395 square meters.
314	4,697,364 square meters.
315	7,899,589 square meters.
335	197,316 dozen.
336/636	495,259 dozen.
338/339/340	1,382,426 dozen.
341	2,981,840 dozen of which not more than 1,789,104 dozen shall be in blouses made from fabrics with two or more colors in the warp and/or filling in Category 341-Y (HTS numbers 6204.22.3060, 6206.30.3010 and 6206.30.3030).
342	452,596 dozen.
347/348	321,157 dozen.
363	24,500,860 numbers.
Group II	
200, 201, 220-229, 237, 239, 300/301, 317, 326, 330-334, 345, 349-352, 359-362, 369-O[2], 369-S[3], 369-O[4], 600-607, 611-635, 638-652, 659, 665-O[5], 666-670 and 831-859, as a group.	114,093,898 square meters equivalent.
Sublevels within group II	
237	105,461 dozen.
300/301	3,102,256 kilograms.
369-D	776,345 kilograms.
369-S	426,787 kilograms.
640	148,958 dozen.
641	881,271 dozen.
642	267,308 dozen.
647/648	376,421 dozen.

[1] In Category 369-D, only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.
[2] In Category 369-S, only HTS number 6307.10.2005.
[3] In Category 369-O, all HTS numbers except 6302.60.0010, 6302.91.0005 and 6302.91.0045 in Category 369-D; 6307.10.2005 in Category 369-S; and rugs exempt from the Bilateral Agreement in HTS numbers 5702.10.9020, 5702.49.1010 and 5702.99.1010.
[4] In Category 665-O, all HTS numbers except rugs exempt from the Bilateral Agreement in HTS numbers 5702.10.9030, 5702.42.2010, 5702.92.0010 and 5703.20.1000.

Imports charged to these category limits for the period January 1, 1989 through December 31, 1989 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established during that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The levels set forth above are subject to adjustment in the future according to the provisions of the current bilateral agreement between the Governments of the United States and India.

The conversion factor for Categories 336/339/340 is 18.2.

The Committee for the Implemenation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-30051 Filed 12-27-89; 8:45 am]

BILLING CODE 3510-DR-M

Establishment of an Imported Limit for Certain Cotton Textile Products Produced or Manufactured in Nepal

December 20, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: December 28, 1989.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

During recent negotiations held between the Governments of the United States and Nepal, agreement was reached, effected by a Memorandum of Understanding dated October 25, 1989, to extend and amend their current bilateral textile agreement through December 31, 1993.

The amended agreement establishes a new specific limit for cotton textile products in Categories 347/348. The Government of the United States has decided to control imports in Categories 347/348 for the first agreement period which began on September 1, 1989 and extends through December 31, 1989.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 54 FR 21269, published on May 17, 1989.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 20, 1989.

Commissioner of the Customs,

Department of the Treasury, Washington, DC 20229

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Memorandum of Understanding dated October 25, 1989; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on December 28, 1989, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Categories 347/348, produced or manufactured in Nepal and exported during the four-month period which began on September 1, 1989 and extends through December 31, 1989, in excess of 150,333 dozen.[1]

Textile products in Categories 347/348 which have been exported to the United States prior to September 1, 1989 shall not be subject to this directive.

Textile products in Categories 347/348 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) of 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The level set forth above is subject to adjustment in the future according to the provisions of the current bilateral agreement between the Governments of the United States and Nepal.

You are directed to charge the following amounts to the limit established in this directive for Categories 347/348. These charges are for goods imported during the period September 1-30, 1989.

Category	Amount to be charged
347	388
348	2,362

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

[1] The limit has not been adjusted to account for any imports exported after August 31, 1989.

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-30054 Filed 12-27-89; 8:45 am]

BILLING CODE 3501-DR-M

Announcement of Import Limits for Certain Cotton Textile Products Produced or Manufactured in Nepal

December 21, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For further information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-5810. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

The Bilateral Cotton Textile Agreement, effected by exchange of notes dated May 30 and June 1, 1988, as amended and extended by a Memorandum of Understanding (MOU) dated October 25, 1989, establishes limits for the 1990 agreement year.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement and the MOU dated October 25, 1989, but are designed to assist only in the implementation of certain of their provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 21, 1989.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Bilateral Cotton Textile Agreement, effected by exchange of notes dated May 30 and June 1, 1988, and a Memorandum of Understanding dated October 25, 1989, between the Governments of the United States and Nepal; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1990, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in the following categories, produced or manufactured in Nepal and exported during the twelve-month period beginning on January 1, 1990 and extending through December 31, 1990, in excess of the following restraint limits:

Category	Twelve-month restraint limit
340	227,246 dozen.
341	757,487 dozen.
342	126,248 dozen.
347/348	478,060 dozen.

Imports charged to these category limits for the periods January 1, 1990 through December 31, 1990 and September 1, 1989 through December 31, 1989 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established for those periods have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future according to the provisions of the current bilateral agreement, as amended and extended, between the Governments of the United States and Nepal.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-30055 Filed 12-27-89; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Singapore

December 21, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 28, 1989.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535-6736. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 237 is being adjusted to cancel a previous reduction for swing applied to Category 639. Instead, Category 645/646 is being reduced by the same quantity.

Pursuant to a recent amendment to the current bilateral agreement between the Governments of the United States and Singapore, all previous adjustments made to the 1989 Group II limit are being cancelled.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 50440, published on December 15, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 21, 1989.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 12, 1988 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports

of certain cotton, wool and man-made fiber textile products, produced or manufactured in Singapore and exported during the period

Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the

vegetable fiber textiles and textile products from Taiwan; and in accordance with the provisions of Executive Order 11651 of March

Category	Twelve-month restraint limit	Category	Twelve-month restraint limit	Category	Conversion factor

of certain cotton, wool and man-made fiber textile products, produced or manufactured in Singapore and exported during the period which began on January 1, 1989 and extends through December 31, 1989.

Effective on December 29, 1989 the directive of December 12, 1988 is being amended further to adjust the current limits for the following categories:

Category,	Adjusted twelve-month limit [1]
Level in group I	
645/646	124,415 dozen.
Group II	
200–229, 237, 300/301, 313–330, 332, 333/633, 336, 345, 349, 350, 351/651, 352/652, 353/354/653/954, 359–869, 400–434, 436, 438, 439, 440–444, 445/446, 447, 448, 459–469, 600–603, 606, 607, 611–630, 632, 636, 642–644, 649, 650, 659–S [2], 659–V [3], 659–O [4] and 665–670, as a group.	38,461,859 square meters equivalent.
Sublevel in Group II	
237	106,404 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1988.

[2] In Category 659–S only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[3] In Category 659–V, only HTS numbers 6110.30.1030, 6110.30.1040, 6110.30.2030, 6110.30.2040, 6110.30.3030, 6110.30.3035, 6110.90.0052, 6110.90.0054, 6201.93.2020, 6202.93.2020, 6211.33.0050 and 6211.43.0060.

[4] In Category 659–O, all HTS numbers except 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 in Category 659–S; and 6110.30.1030, 6110.30.1040, 6110.30.2030, 6110.30.2040, 6110.30.3030, 6110.30.3035, 6110.90.0052, 6110.90.0054, 6201.93.2020, 6202.93.2020, 6211.33.0050 and 6211.43.0060 in Category 659–V.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89–30052 Filed 12–27–89; 8:45 am]

BILLING CODE 3510–DR–M

Announcement of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Taiwan

December 20, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–8791. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

During recent negotiations between the American Institute in Taiwan (AIT) and the Coordination Council for North American Affairs (CCNAA), agreement was reached, effected by a Memorandum of Understanding (MOU) dated December 1, 1989, to establish a new bilateral textile agreement for six one-year periods beginning on January 1, 1990 and extending through December 31, 1995.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 20, 1989.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Memorandum of Understanding dated December 1, 1989, concerning cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products from Taiwan; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1990, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Taiwan and exported during the twelve-month period which begins on January 1, 1990 and extends through December 31, 1990, in excess of the following restraint limits:

Category	Twelve-month restraint limit
Group I	
200–224, 225/317/326, 226, 227, 229, 300/301/607, 313–315, 360–363, 368–L/670–L/870 [1], 369–S [2], 369–O [3], 400–414, 464–469, 600–606, 611, 613/614/615/617, 618, 619/620, 621–624, 625/626/627/628/629, 665, 666, 669–P [4], 669–T [5], 669–O [6], 670–H [7] and 670–O [8], as a group.	531,839,631 square meters equivalent.
Sublevels within Group I	
200	560,429 kilograms.
218	17,344,350 square meters.
219	12,754,806 square meters.
225/317/326	30,786,176 square meters.
226	5,586,708 square meters.
300/301/607	1,500,000 kilograms of which not more than 1,250,000 kilograms each shall be in Categories 300, 301 and 607.
313	60,942,149 square meters.
314	22,719,891 square meters.
315	17,409,072 square meters.
361	1,125,779 numbers.
363	11,612,973 numbers.
369–L/670–L/870	41,000,000 kilograms.
369–S	463,876 kilograms.
604	200,167 kilograms.
611	2,500,000 square meters.
613/614/615/617	15,504,754 square meters.
619/620	6,645,036 square meters.
625/626/627/628/629	14,829,192 square meters.
669–P	269,590 kilograms.
669–T	676,222 kilograms.
670–H	15,700,000 kilograms.

Category	Twelve-month restraint limit
Group II	
237, 239, 330–332, 333/334/335, 336, 338/339, 340–345, 347/348, 349, 350/850, 351, 352/652, 353, 354, 359–C/659–C [9], 359–H/659–H [10], 359–O [11], 431–444, 445/446, 447/448, 459, 630–632, 633/634/635, 636, 638/639, 640, 641–644, 645/646, 647/648, 649, 651, 653, 654, 659–S [12], 659–O [13], 831–844 and 846–858, as a group.	791,383,399 square meters equivalent.
Sublevels within Group II	
237	547,545 dozen.
239	5,000,000 kilograms.
331	467,376 dozen pairs.
333/334/335	240,000 dozen of which not more than 130,000 dozen shall be in Category 335.
336	93,287 dozen.
338/339	695,275 dozen.
340	1,110,000 dozen.
341	325,000 dozen.
342	203,029 dozen.
345	97,473 dozen.
347/348	1,059,533 dozen.
350/850	125,000 dozen.
351	337,772 dozen.
352/652	2,474,982 dozen.
359–C/659–C	1,440,000 kilograms.
359–H/659–H	4,607,852 kilograms.
433	13,935 dozen.
434	9,674 dozen.
435	22,976 dozen.
436	4,573 dozen.
438	25,821 dozen.
440	5,000 dozen.
442	43,347 dozen.
443	39,014 numbers.
444	55,565 numbers.
445/446	139,124 dozen.
447/448	19,042 dozen.
631	4,154,629 dozen pairs.
633/634/635	1,634,440 dozen of which not more than 959,317 dozen shall be in Categories 633/634 and not more than 850,077 dozen shall be in Category 635.
636	350,882 dozen.
638/639	6,592,119 dozen.
640	2,196,291 dozen of which not more than 1,361,080 dozen shall be in Category 640–Y. [14]
641	724,533 dozen of which not more than 253,586 dozen shall be in Category 641–Y. [15]
642	778,357 dozen.
643	464,282 numbers.
644	594,004 numbers.
645/646	4,087,255 dozen.
647/648	5,767,874 dozen.
651	423,590 dozen.
659–S	1,778,232 kilograms.

Category	Twelve-month restraint limit
Group III	
845	844,434 dozen.

[1] Category 870; in Category 369–L, only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015 and 4202.92.6000; in Category 670–L, only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3060 and 4202.92.6020.

[2] In Category 369–S, only HTS number 6307.10.2005.

[3] In Category 369–O, all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015 and 4202.92.6000 in Category 369–L; and 6307.10.2005 in Category 369–S.

[4] In Category 669–P, only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.

[5] In Category 669–T, only HTS numbers 6306.12.0000, 6306.19.0010 and 6306.22.9000.

[6] In Category 669–O, all HTS numbers except 6305.31.0010, 6305.31.0020 and 6305.39.0000 in Category 669–P; and 6306.12.0000, 6306.19.0010 and 6306.22.9000 in Category 669–T.

[7] In Category 670–H, only HTS numbers 4202.22.4030 and 4202.22.8050.

[8] In Category 670–O, all HTS numbers except 4202.22.4030 and 4202.22.8050 in Category 670–H; and 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9020 in Category 670–L.

[9] In Categories 359–C/659–C, only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010 in Category 359–C; and 6103.23.0055, 6103.43.2020, 6103.49.3038, 6104.63.1020, 6104.69.1000, 6104.69.3014, 6114.30.3040, 6114.30.3050, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010 in Category 659–C.

[10] In Categories 359–H/659–H, only HTS numbers 6505.90.1530 and 6505.90.2060 in Category 359–H; and 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5060, 6505.90.6060, 6505.90.7060 and 6505.90.8060 in Category 659–H.

[11] In Category 359–O, all HTS numbers except 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010 in Category 359–C; and 6505.90.1530 and 6505.90.2060 in Category 359–H.

[12] In Category 659–S, only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[13] In Category 659–O, all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.69.1000, 6104.69.3014, 6114.30.3040, 6114.30.3050, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010 in Category 659–C; and 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5060, 6505.90.7060 and 6505.90.8060 in Category 659–H; and 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 in Category 659–S.

[14] In Category 640–Y, only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

[15] In Category 641–Y, only HTS numbers 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025.

Imports charged to these category limits for the period January 1, 1990 through December 31, 1990 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The conversion factors are as follows:

Category	Conversion factor
300/301/607	8.5
333/334/335	39.75
352/652	11.5
359–C/659–C	10.1
359–H/659–H	11.5
369–L/870–L/870	3.8
633/634/635	34.1
638/639	12.5

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89–30050 Filed 12–27–89; 8:45 am]

BILLING CODE 3510–DR–M

Announcement of a Request for Bilateral Textile Consultations With the Government of the Republic of Turkey

December 20, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on categories on which consultations have been requested, call (202) 377–3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On November 29, 1989, under the terms of Article 3 of the MFA, the Government of the United States requested consultations with the Government of the Republic of Turkey regarding cotton and man-made fiber nightwear and gowns in Categories 351/651, produced or manufactured in Turkey.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Government of the Republic of Turkey, the Committee for the Implementation of Textile Agreements may later establish limits for the entry and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in

Categories 351/651, produce or manufactured in Turkey and exported during the twelve-month period which

Market Statement—Pajamas and Other Nightwear—Category 351/651

Import situation and conclusion

U.S. producers' prices for comparable garments.

[FR Doc. 89–30053 Filed 12–27–89; 8:45 am]

recommended that coordinated trading halts and reopenings be adopted by all domestic markets for equity and equity-related products as a means of dealing

were approved by the Securities and Exchange Commission (SEC) for the equity and equity-related markets under the SEC's jurisdiction

and Poor's 500 Stock Price Index (S&P), which is generally comparable to a 250-point decline in the DJIA, or if the NYSE closes for two hours and the futures

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Categories 351/651, produce or manufactured in Turkey and exported during the twelve-month period which began on November 29, 1989 and extends through November 28, 1990 at the level of 125,544 dozen.

A summary market statement concerning these categories follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 351/651, or to comment on domestic production or availability of products included in the categories, is invited to submit 10 copies of such comments or information to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Categories 351/651. Should such a solution be reached in consultations with the Government of the Republic of Turkey, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988).

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements

Turkey
November 1989

Market Statement—Pajamas and Other Nightwear—Category 351/651

Import situation and conclusion

U.S. imports of pajamas and other nightwear (Category 351/651) from Turkey reached 133,725 dozen during the year ending September 1989, more than 5 times the 28,177 dozen imported a year earlier. During the first nine months of 1989, imports of pajamas and other nightwear (Category 351/651) from Turkey reached 120,191 dozen, over 5 times the amount imported in the first nine months of 1988 and more than triple the total amount imported in calendar year 1988. Imports from Turkey were 12,537 dozen in 1987 and 36,660 dozen in 1988.

The sharp and substantial increase in Category 351/651 imports from Turkey is causing disruption in the U.S. market for pajamas and other nightwear.

U.S. production and market share

U.S. production of pajamas and other nightwear declined from 19,244,000 dozen in 1987 to 18,453,000 dozen in 1988, a decline of 4 percent. During the first six months of 1989, production of pajamas and other nightwear dropped to 7,863,000 dozen, 17 percent below the 9,521,000 dozen produced in the same period of 1988. The domestic manufacturers' share of the pajamas and other nightwear market dropped from 78 percent in 1987 to 76 percent in 1988. The domestic manufacturers' share dropped to 73 percent during the first six months of 1989.

U.S. imports and import penetration

U.S. imports of pajamas and other nightwear (Category 351/651) increased eight percent in 1988, increasing from 5,360,000 dozen in 1987 to 5,770,000 dozen in 1988. Imports accelerated in 1989, increasing 20 percent in the first nine months of 1989 over the same period in 1988. The ratio of imports to domestic production increased 3 percentage points in 1988, increasing from 28 percent in 1987 to 31 percent in 1988. The ratio increased another five percentage points in the first half of 1989, reaching 36 percent.

Duty-paid value and U.S. producers' price

Approximately 85 percent of Category 351/651 imports from Turkey during the first nine months of 1989 entered under HTSUSA number 6108.31.0010—women's cotton knit nightdresses and pajamas. These garments entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable garments.

[FR Doc. 89-30053 Filed 12-27-89; 8:45 am]
BILLING CODE 3510-DR-M

COMMODITY FUTURES TRADING COMMISSION

Proposed Amendments Relating to Stock Index Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of Proposed Contract Market Rule Changes.

SUMMARY: The Chicago Board of Trade ("CBT"), Chicago Mercantile Exchange ("CME"), Kansas City Board of Trade ("KCBT"), and New York Futures Exchange ("NYFE") have submitted for those exchanges' stock index futures and option contracts proposed rule amendments relating to modifications to the exchanges' existing circuit breakers, which include price limit and trading halt provisions. The proposals would adopt, for each affected stock index contract, a new interim price decline limit which would remain in effect for one hour after the relevant market is offered at that limit. The proposals also would reduce the current maximum daily price limits, which are applicable to futures price increases and declines. In accordance with section 5a(12) of the Commodity Exchange Act and acting pursuant to the authority delegated by Commodity Futures Trading Commission ("Commission") Regulation 140.96, the Director of the Division of Economic analysis ("Division"), on behalf of the Commission, has determined that the proposals are of major economic significance. On behalf of the Commission, the Division is requesting comment on these proposals.

DATE: Comments must be received on or before January 19, 1990.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the amendments to circuit breaker provisions of the stock index futures and option contracts.

FOR FURTHER INFORMATION: Contact Stephen Sherrod, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, (202) 254-7227.

SUPPLEMENTARY INFORMATION: The Interim Report of the Working Group on Financial Markets dated May 1988

recommended that coordinated trading halts and reopenings be adopted by all domestic markets for equity and equity-related products as a means of dealing with large, rapid market declines that threaten to create panic conditions.[1] In broad outline, the Working Group recommended (1) that stock index futures markets set downward price limits at levels comparable to a 250-point Dow Jones Industrial Average (DJIA) decline below its previous day's closing value, (2) that broad-based stock index options markets establish either comparable price limits or procedures under which all trading in the index options will cease at levels comparable to a 250-point DJIA decline, and (3) that all U.S. markets for equity and equity-related products halt trading for one hour if the DJIA declines 250-points from its previous day's closing level. Under the Working Group's recommendations, after reopening from such a trading halt, similar price limit, halt, and reopening procedures would be used for DJIA declines of 400 points below its previous day's closing level, except that the halt would last two hours instead of one.

In October 1988, the Commission approved price limit and trading halt proposals (*i.e.*, circuit breakers) submitted by the CBT, CME, KCBT, and NYFE ("the Exchanges") in direct response to the recommendations of the Working Group. Coordinated provisions also in direct response to the recommendations of the Working Group were approved by the Securities and Exchange Commission (SEC) for the equity and equity-related markets under the SEC's jurisdiction.

The price limit, halt, and reopening proposals approved by the Commission for the CBT included provisions for intermediate price decline limits at levels generally comparable to a 250-point DJIA decline and for halting futures trading for one hour if there is a 250-point decline in the DJIA relative to the prior day's closing value. Such a 250-point DJIA decline triggers a one-hour trading halt on the New York Stock Exchange ("NYSE"). Further, at a reopening after a trading halt, the CBT's rules provide for an expanded downward price limit at levels comparable to a 400-point DJIA decline and two-hour suspension of trading if there is a 400-point decline in the DJIA. Such a 400-point DJIA decline also triggers a two-hour trading halt on the NYSE. Virtually identical proposals were approved by the Commission for the NYSE stock index futures and option contracts, providing for price limits, halts, and reopenings under the conditions noted above. Similar price limits, halts, and reopenings were approved by the Commission for the CME, except that trading halts go into effect only if the New York Stock Exchange closes for one hour under the above conditions *and* the futures market is limit offered at an intermediate price decline limit of 30 points in the Standard and Poor's 500 Stock Price Index (S&P), which is generally comparable to a 250-point decline in the DJIA, or if the NYSE closes for two hours and the futures market is limit offered at an expanded price decline limit of 50 points in the S&P, which is generally comparable to a 400-point movement in the DJIA. For the KCBT, the Commission approved price limit, halt, and reopening procedures patterned after those of the CME, with the one-hour and two-hour halts being triggered by futures price declines of 30 points in the Value Line Stock Index Average (VLA) and 50 VLA points, respectively, as well as the closing of the NYSE.[2]

On each of the four futures exchanges, the intermediate futures price decline limit is expanded in the event of a one-hour trading halt. The expanded price decline limits on each of the four futures exchanges are at the same levels as the overall daily price limits.

In addition to the circuit breaker provisions noted above, the Commission also has approved for the CME, NYFE, and CBT "initial price decline" limits which are at index levels generally comparable to a 100-point movement in the DJIA.[3] These initial price decline limits apply for thrity minutes from the time the market is limit offered.

The Exchanges have proposed interim price decline limits and new overall daily price limits, in index points for the index underlying each respective futures market, as summarized below:

Exchange	Affected futures market	Existing initial limit	Proposed interim limit	Existing intermediate limit	Proposed (existing) overall daily price limit
CME	S&P 500	12	20	30	30 (50)
CBT	MMI (Maxi)	20	30	50	50 (80)
	CBOE 50	12	20	30	30 (50)
	CBOE 250	12	20	30	30 (50)
KCBT	VLA	NA	20	30	30 (50)
	Mini VLA	NA	20	30	30 (50)
NYFE	NYSE Composite	7	12	18	18 (28)

With the proposed amendments, the Exchanges intend to establish for each affected contract new "interim price decline limits" at leves that are 60 to 66 percent of the existing intermediate price decline limits. For each affected market, the newly proposed interim price decline limits would be in effect for one hour from the time the market is limit offered, unless the limit goes into effect after 1:30 p.m. Chicago time, 2:30 p.m. New York time, in which case the limit shall apply for the remainder of the day. The Exchanges also have proposed to reduce the existing overall daily price limits, which are applicable to both price increases and declines, to the same levels as the existing intermediate price decline limits.

Each of the Exchanges has proposed to make the amendments effective for

[1] On March 14, 1988, the Working Group on Financial Markets was established by Executive Order to provide a coordinating framework for consideration, resolution, recommendation, and action on the complex issues raised by the stock market break in October of 1987. The Working Group was charged with developing effective mechanisms to enhance investor confidence, to protect the quality and fairness of markets for all participants, and to preserve the continued orderliness, integrity, competitiveness, and efficiency of our nation's financial markets.

[2] Although, as noted above, the CBT and NYFE also have intermediate price decline limits generally comparable to a 250-point movement in the DJIA and expanded price decline limits generally comparable to a 400-point movement in the DJIA, trading halts in the CBT and NYFE contracts are triggered only on the basis of declines in the DJIA and the closing of the NYSE, respectively.

[3] The initial price decline limits for the CME and NYFE were approved by the Commission at the same time that the aforementioned circuit breakers were approved. The CBT's initial price decline limit was approved by the Commission after the close of the market on October 13, 1989 and implemented by the CBT on October 16, 1989.

BEST COPY AVAILABLE

newly listed and existing contracts at the time of Commission approval.[4] [5] The current proposals do not affect the

Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the Exchanges' proposed price limit and

Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and

(FOFA) will meet in closed session on January 30, 1990 in the Pentagon, Arlington, Virginia.

Ad Hoc Committee on Post Deployment Software Support will meet on 1–2 Feb 90 from 8:00 a.m. to 5:00 p.m. at the

Defense Communications Agency

Scientific Advisory Group (SAG); Closed Meeting

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newly listed and existing contracts at the time of Commission approval.[4] [5] The current proposals do not affect the existing initial price decline limits of the CME, NYFE, and CBT contracts or the trading halt provisions of the Exchanges' contracts, except that the two-hour trading halts of the CME and the KCBT would be triggered by offers in the futures market at the new daily price limits in combination with a two-hour trading halt at the NYSE.

In support of the proposed new interim price decline limits, the Exchanges generally noted that experience indicates that futures markets may move more quickly than the underlying securities markets. Therefore, according to the CME, circuit breakers that are coordinated only with respect to stock price index levels remain uncoordinated with respect to the speed of movement toward those levels. It was further noted that the additional interim price decline limits will serve to substantially improve the coordination of the futures and securities markets for market moves between the initial price decline limits of the CME, the NYFE, and the CBT and the limits generally comparable to a 250-point movement in the DJIA.

With respect to the proposed overall daily price limits, the CME noted that, since the original proposal for coordinated circuit breakers, there have been discussions with market experts concerning large daily moves in the market. The Exchanges generally concluded that, prior to trading at levels below the levels currently established as the intermediate price decline levels, an overnight "cooling off" period is warranted.

The Commission is requesting comment on the proposed changes to the circuit breaker provisions of the Exchanges.

Copies of each of the proposed amendments to the Exchanges' price limit and trading halt rules will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the Exchanges' proposed price limit and trading halt rules can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

The materials submitted by the CBT, CME, KCBT, and NYFE in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)). Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendments should send comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC, by the specified date.

Issued in Washington, DC, on December 21, 1989.

Steven Manaster,

Director, Division of Economic Analysis.

[FR Doc. 89–30063 Filed 12–27–89; 8:45 am]

BILLING CODE 6351–01–M

[4] In addition to these proposals, the CME also is proposing to modify the S&P 500 opening price limit procedures for the futures contract to provide that the existing 5.00 index point opening limit (above and below the previous day's settlement price) continuously be in effect for the first 10 minutes of trading rather than only during the opening range with an extension under certain circumstances.

[5] With respect to the S&P 500 option, the CME is proposing to require that trading in the option be suspended when the S&P 500 futures contract is limit bid or offered at the proposed 30-point intermediate price limit. The CME also proposes to clarify the language of the existing provisions that require no trading in any S&P 500 option when the S&P 500 futures contract is limit bid or offered at the applicable opening price limit or daily price limit. Under the proposal the applicable price limits would be at 5 points, 12 points, 20 points, and 30 points.

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Review of the B–2

ACTION: Cancellation of meeting.

SUMMARY: The meeting notice for the Defense Science Board Task Force on Review of the B–2 scheduled for January 18, 1990 as published in the **Federal Register** (Vol. 54, No. 194, Page 41495, Tuesday, October 10, 1989, FR Doc. 89–23748) has been cancelled.

Dated: December 22, 1989.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89–30144 Filed 12–27–89; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board Task Force on Strategic Sensors

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Strategic Sensors will meet in closed session on January 4–5 and February 1–2, 1990 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will investigate technologies that are capable of improving strategic surveillance sensor performance.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552(b)(c)(1) (1982), and that accordingly these matters will be closed to the public.

Dated: December 22, 1989.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89–30145 Filed 12–27–89; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board Task Force on Acquisition Streamlining

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Science Board Task Force on Acquisition Streamlining will meet in open session on January 24–25, 1990 at the Airlie House Conference Center, Warrenton, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will focus on establishing the boundaries of the "system" within which it believes process change will be most beneficial.

Persons interested in further information regarding this meeting should call LCDR Stephen Wiley at (202) 695–4157.

Dated: December 22, 1989.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89–30146 Filed 12–27–89; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board Task Force on Follow on Forces Attack (FOFA)

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Follow on Forces Attack (FOFA) will meet in closed session on January 30, 1990 in the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will continue to review, in detail, classified material associated with conventional military capabilities in NATO to include special targeting requirements.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c) (1) (1982), and that accordingly these matters will be closed to the public.

Dated: December 22, 1989.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89–30147 Filed 12–27–89; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

December 19, 1989.

The USAF Scientific Advisory Board Ad Hoc Committee on Space Power Technology will meet on 23–24 Jan 90 from 8:00 a.m. to 5:00 p.m. at the Pentagon, Washington, DC 20330–5430.

The purpose of this meeting will be to review Air Force, DOE, SDIO, DARPA, NASA and related industry IR&D space power technology development efforts and to recommend the direction(s) of Air Force investment in this technology area. This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89–30017 Filed 12–27–89; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Meeting

December 19, 1989.

The USAF Scientific Advisory Board Ad Hoc Committee on Post Deployment Software Support will meet on 1–2 Feb 90 from 8:00 a.m. to 5:00 p.m. at the Pentagon, Washington, DC 20330–5430.

The purpose of this meeting will be to review Air Force post deployment software support capabilities and to recommend potential improvements in such areas as: requirements model(s); software testing process(es); software support environment(s) for highly integrated, highly distributed systems; evaluation metric(s) for software design options; and tailorable requirements baseline(s) for documentation. This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89–30059 Filed 12–27–89; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army, Corps of Engineers

National Water Management During Drought Study

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice, National Water Management During Drought Study.

SUMMARY: The U.S. Army Corps of Engineers is conducting the National Water Management During Drought Study. The study is in response to the drought of 1988. The purpose of the study is to identify opportunities for improving the nation's management of water during drought. The Corps of Engineers will work closely with other Federal and non-Federal agencies and organizations to ensure the study results incorporate views of the entire water resources community.

FOR FURTHER INFORMATION CONTACT: Bill Werick, Study Manager, Institute for Water Resources, Corps of Engineers Water Resources, Corps of Engineers Water Resources Support Center, Fort Belvoir, VA 22060–5586. Telephone (202) 355–3055.

Kenneth L. Denton,

Alternate Army Liaison Officer With the Federal Register.

[FR Doc. 89–30060 Filed 12–27–89; 8:45 am]

BILLING CODE 3710–08–M

Defense Communications Agency

Scientific Advisory Group (SAG); Closed Meeting

The DCA Scientific Advisory Group will hold a closed meeting on January 29–30, 1990 at the Center for Naval Analysis Building, 4401 Ford Avenue, Alexandria, Virginia 22302.

The purpose of the meeting is to address 21st century technology and management planning issues relating to DoD's information systems and DCA's roles and missions.

Any persons desiring information about the Advisory Group may telephone, 202–746–3643, or write Associate Director for Engineering and Technology, Defense Communications Agency, 8th Street and South Courthouse Road, Arlington, Virginia 22204.

This is a closed meeting due to the discussion of classified material which requires protection in the interest of National Defense. (5 U.S.C. 552(c)(1)).

Gordon W. Arbogast,

Colonel, USA, Executive Secretary, Scientific Advisory Group.

[FR Doc. 89–30056 Filed 12–27–89; 8:45 am]

BILLING CODE 3910–05–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before January 29, 1990.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to George P. Sotos, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: George P. Sotos (202) 732–2174.

SUPPLEMENTARY INFORMATION: Section

Title: 1990 National Postsecondary Student Aid Study

Frequency: Triennial

Panhandle's blanket certificate issues in Docket No. CP86–585–000 and section 7 of the Natural Gas Act, all as more full

automatic authorization provisions of § 284.223(a).

Comment date: Febraury 5, 1990, in

between Transco and Northern performed pursuant to authorization received in Docket No. CP79–411, all as

unnecessary for the applicant to appear or be represented at the hearing.

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FOR FURTHER INFORMATION CONTACT: George P. Sotos (202) 732–2174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from George Sotos at the address specified above.

Dated: December 19, 1989.

Carlos Rice,

Director for Office of Information Resources Management.

Office of Special Education and Rehabilitative Services

Type of Review: Revision
Title: Application—Handicapped Infants and Toddlers Program, Under Part H of the Education of the Handicapped Act
Frequency: Annually
Affected Public: State or local governments
Reporting Burden:
Responses: 57 Burden Hours: 855
Recordkeeping Burden:
Recordkeepers: 0 Burden Hours: 0
Abstract: States are required to submit an application for funds authorized under Part H of the Education of the Handicapped Act. Funds will be used by States to plan, develop, and implement the statewide comprehensive system of early intervention services for infants and toddlers with handicaps and their families.

Office of Educational Research and Improvement

Type of Review: Revision
Title: 1990 National Postsecondary Student Aid Study
Frequency: Triennial
Affected Public: Individuals or households: Non-profit institutions; Small businesses or organizations
Reporting Burden:
Responses: 23,375 Burden Hours: 9,740
Recordkeeping Burden:
Recordkeepers: 0 Burden Hours: 0
Abstract: This study will collect data from a sample of students in postsecondary institutions, their parents and their school financial aid records. It will provide a student-based information system for student financial aid. It will assess the distribution and use of financial aid and address important issues in this area.

Office of Postsecondary Education

Type of Review: Revision
Title: Application for Grants Under the School, College, and University Partnerships Program
Frequency: Annually
Affected Public: State or local governments; Non-profit institutions
Reporting Burden:
Responses: 105 Burden Hours: 2100
Recordkeeping Burden:
Recordkeepers: 0 Burden Hours: 0
Abstract: This application form is needed to collect the necessary information for non-competing continuations in FY 1990 and subsequent years and to conduct a competition for new grants in FY 1991.

[FR Doc. 89–30040 Filed 12–27–89; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP90–410–000, et al.]

Panhandle Eastern Pipe Line Company, et al.; Natural Gas Certificate Filings

December 20, 1990.

Take notice that the following filings have been made with the Commission:

1. Panhandle Eastern Pipe Line Co.

[Docket No. CP90–410–000]

Take notice that on December 18, 1989, Panhandle Eastern Pipeline Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP90–410–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas for Manville Sales Corporation (Manville), a shipper and an end-user of natural gas, pursuant to Panhandle's blanket certificate issues in Docket No. CP86–585–000 and section 7 of the Natural Gas Act, all as more full set forth in the request which is on file with the Commission and open for public inspection.

Specifically, Panhandle requests authority to transport up to 3,000 DT per day on a firm basis on behalf of Manville pursuant to a transportation agreement dated November 1, 1989, between Panhandle and Manville. It is stated that the agreement provides for Panhandle to receive gas from a point of receipt located in Haven Pool, Reno County, Kansas. Panhandle would then transport and redeliver subject gas, less fuel used and unaccounted for line loss, to various points in Ohio, it is stated. It is further stated that the estimated annual quantities would be 3,000 Dt and 1,095,000 Dt, respectively. Panhandle states that service under § 274.223(a) commenced on November 1, 1989, as reported in Docket No ST90–564.

Comment date: February 5, 1990, in accordance with Standard Paragraph G at the end of this notice.

2. United Gas Pipe Line Co.

[Docket No. CP90–380–000]

Take notice that on December 13, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP90–380–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service on behalf of Midcon Marketing Corp. (MIDCON), a marketer of natural gas, under its blanket certificate issued in Docket No. CP88–6–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that it proposes to transport natural gas from points of receipt located in Terebonne and Vermillion Parish, Louisiana, and offshore Louisiana, to points of delivery located in St. Mary and Terrebonne Parish, Louisiana, and Hancock County, Mississippi, Alabama and Florida.

United Further states that the maximum daily, average and annual quantities that it would transport for MIDCON would be 30,900 MMBtu equivalent, 30,900 MMBtu equivalent and 11,278,500 MMBtu equivalent of natural gas, respectively.

United indicates that in Docket No. ST90–951, filed with the Commission on December 6, 1989, it reported that transportation service for Seagull began on November 6, 1989, under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: Febraury 5, 1990, in accordance with Standard Paragraph G at the end of this notice.

3. Transcontinental Gas Pipe Line Corp.; Northern Natural Gas Co., Division of Enron Corp.

[Docket No. CP81–75–009]

Take notice that on December 1, 1989, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, and Northern Natural Gas Company, Division of Enron Corp. (Northern), P.O. Box 1188, Houston, Texas 77251, filed in Docket No. CP81–75–009 a petition to amend pursuant to section 7(b) of the Natural Gas Act for permission and approval to partially abandon the service it was authorized to provide by order issued September 30, 1981, in Docket No. CP81–75–000. It stated said service was performed pursuant to an August 28, 1980, Exchange Agreement, all as more fully set forth in the request on file with the Commission and open to public inspection.

Transco and Northern state that they are parties to an Amendment dated November 7, 1989, wherein it has been agreed to amend the abovementioned Exchange Agreement. It is stated that the Amendment would: (a) Partially abandon service by decreasing the firm exchange quantity from 50,000 Mcf per day to 35,000 Mcf per day; (b) add various new sources of Northern's gas from Galveston High Island and west Cameron Areas to the Exchange Agreement, and (c) add the weld or flange connecting Transco's Southwest Louisiana Gathering System to the tailgate of the U–TOS separation plant in Cameron Parish, Louisiana, and any other mutually agreeable points of receipt as additional points of receipt to the Exchange Agreement.

Coment date: January 10, 1990 in accordance with Standard Paragraph F at the end of the notice.

4. Transcontinental Gas Pipe Line Corp.; Northern Natural Gas Co., Division of Enron Corp.

[Docket No. CP90–236–000]

Take notice that on December 1, 1989, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, and Northern Natural Gas Company, Division of Enron Corp. (Northern), P.O. Box 1188, Houston, Texas 77251, filed in Docket No. CP90–236–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation service between Transco and Northern performed pursuant to authorization received in Docket No. CP79–411, all as more fully set forth in the request on file with the Commission and open to public inspection.

Transco and Northern state that they have agreed to terminate and abandon such transportation service effective January 1, 1990. It is also stated that Transco and Northern have alternate arrangements in effect. Transco and Northern have agreed to add the sources of gas and the points of receipt contained in the Transportation Agreement sought to be abandoned herein to an Exchange Agreement authorized in Docket No. CP81–75–000. An application to amend has been filed at Docket No. CP81–75–009.

Comment date: January 10, 1990, in accordance with Standard F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89–30035 Filed 12–27–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. 5185–955–005]

Order on Remand Granting Refund of Filing Fees and Notice of Interpretation of Regulation

Issued December 19, 1989.

Before Commissioners: Martin L. Allday, Chairman; Charles A. Trabandt, Elizabeth Anne Moler and Jerry J. Langdon.

Acadian Gas Pipeline System

[Docket Nos. ST85–956–003
ST85–1572–001
ST86–6–001
ST86–1010–000
ST86–1064–000
ST86–1647–000
ST86–1782–000
ST86–2087–000
ST86–2505–000
ST86–430–000
ST87–568–000
ST87–589–000
ST87–1126–000
ST87–1525–000
ST87–1526–000
ST87–1527–000
ST87–1974–000
ST87–2399–000
ST87–3708–000
ST87–3709–000
ST87–3710–000
ST87–3711–000
ST87–3874–000
ST87–4257–000
ST88–585–000
ST88–1440–000
ST88–1441–000]

Gulf South Pipeline Co.

[Docket Nos. ST88–5599–001
ST88–5761–001

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ST88-5762-001
ST88-5763-001
ST88-5764-001
ST88-5765-001
ST88-5766-001
ST88-5767-001
ST88-5768-001
ST88-5769-001
ST88-5770-001]

On August 3, 1989, the United States Court of Appeals for the Fifth Circuit issued its decision in *Acadian Gas Pipeline System v. FERC*, No. 88-4502 (hereafter *Acadian*), reversing and remanding the Commission's orders issued herein on April 30, 1986 and May 20, 1988, 35 FERC ¶ 61,132; 43 FERC ¶ 61,296. In those orders, the Commission held that Acadian was required by section 284.123(b)(2) of the Commission's regulations to file a petition for rate approval and applicable filing fee for each new transportation service rendered pursuant to section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA), including new services provided under rates previously approved by the Commission. In its decision the Court held that where an intrastate pipeline seeks to provide a new transportation service at an existing, approved rate, it is required only to file an initial report pursuant to § 284.126 of the regulations and applicable filing fee rather than a petition for rate approval and related fee. This order implements the Court's decision.[1]

The Commission's records indicate that Acadian has filed 27 petitions for rate approval since 1985 (Appendix A). Total fees paid amount to $102,800. Under the decision in *Acadian*, it was required to pay only $16,800, representing fees for initial reports. In accordance with the Court's decision, the difference, or $86,000 will be refunded to Acadian.

There is also pending before the Commission an appeal by Gulf South Pipeline Company (Gulf South) in Docket Nos. ST88-5599-001, *et al.* protesting assessment by the Director, OPPR, of filing fees for 11 petitions for rate approval (Appendix B). Total fees paid of $21,890, less the fees due for initial reports of $6,090, results in a refund of filing fees on a case-by-case basis, consistent with this order and the decision in *Acadian*.

To implement the *Acadian* decision, the Commission hereby gives notice of its current interpretation of § 284.123(b)(2) of the regulations. Under this regulation petitions for rate approval and applicable filing fees will be required only in the following situations.

1. When an intrastate pipeline [2] first commences section 311 service;

2. When an intrastate pipeline proposes to increase its exisitng maximum section 311 rate;

3. When an intrastate pipeline proposes to provide section 311 service for which its exisitng maximum rate does not apply; or

4. When an intrastate pipeline must refile every third year to comply with the provisions of settlement agreement or with a Commission order requiring rejustification of its existing maximum section 311 rate.

In order to process filings by intrastate pipelines more efficiently, the Commission is issuing concurrently with this order notice of new docket prefix, designated PR, to be used exclusively for petitions for rate approval filed pursuant to § 284.123(b)(2). This new prefix will be effective as of the date issued.

The Commission orders:

(A) Refunds of filing fees to Acadian and Gulf South in accordance with the terms of this order are hereby approved.

(B) The Secretary shall cause this order to be published in the **Federal Register.**

By the Commission.

Lois D. Cashell,

Secretary.

APPENDIX A—ACADIAN GAS PIPELINE SYSTEM

Docket No.	Date Filed	Fee Paid	Fee Required	Refund
ST85-956	5/13/85	$2,800	$800	$2,000
ST85-1572	8/21/85	2,800	800	2,000
ST86-6	10/1/85	2,800	800	2,000
ST86-1010	2/24/86	3,200	600	2,600
ST86-1084	3/11/86	3,200	600	2,600
ST86-1647	6/4/86	3,200	600	2,600
ST86-1792	6/18/86	3,200	600	2,600
ST86-2087	7/11/86	3,200	600	2,600
ST86-2505	8/29/86	3,200	600	2,600
ST86-430	8/11/87	3,200	600	2,600
ST87-588	11/21/86	3,200	600	2,600
ST87-589	11/21/86	3,200	600	2,600
ST87-1126	1/22/87	3,200	600	2,600
ST87-1525	2/24/87	3,200	600	2,600
ST87-1526	2/24/87	3,200	600	2,600
ST87-1527	2/24/87	3,200	600	2,600
ST87-1974	3/11/87	3,200	600	2,600
ST87-2399	11/13/87	5,500	600	4,900
ST87-3708	5/11/87	4,900	600	4,300
ST87-3709	5/11/87	4,900	600	4,300
ST87-3710	5/11/87	4,900	600	4,300
ST87-3711	5/11/87	4,900	600	4,300
ST87-3674	5/25/87	4,900	600	4,300
ST87-4257	6/16/87	4,900	600	4,300
ST88-565	11/5/87	4,900	600	4,300
ST88-1440	12/28/87	4,900	600	4,300
ST88-1441	12/28/87	4,900	600	4,300
		102,800	16,800	86,000

APPENDIX B—GULF SOUTH PIPELINE COMPANY

Docket No.	Date Filed	Fee Paid	Fee Required	Refund
ST88-5599	9/7/88	$1,990	$1,990	$0
ST88-5761	1/30/89	1,990	410	1,580
ST88-5762	1/30/89	1,990	410	1,580
ST88-5763	1/30/89	1,990	410	1,580
ST89-5764	1/30/89	1,990	410	1,580
ST89-5765	1/30/89	1,990	410	1,580
ST89-5766	1/30/89	1,990	410	1,580
ST89-5767	1/30/89	1,990	410	1,580
ST89-5768	1/30/89	1,990	410	1,580
ST89-5769	1/30/89	1,990	410	1,580
ST89-5770	1/30/89	1,990	410	1,580
		21,890	6,090	15,800

[FR Doc. 89-30036 Filed 12-27-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-57-000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

December 19, 1989.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on December 11, 1989 tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, six (6) copies of the following tariff sheets:

Original Sheet No. 600A
Original Sheet Nos. 668-680
First Revised Sheet No. 584
First Revised Sheet No. 651

Algonquin states that its filing sets forth the terms and conditions pursuant to which Algonquin will make available for use by its customers a computerized electronic communications system (the "TRACTS Service") to facilitate certain transactions with Algonquin. The TRACTS Service terms and conditions are set forth in a proposed new section 38 to the Algonquin FERC Gas Tariff General Terms and Conditions.

Algonquin states that its customers may use the TRACTS Service to request new interruptible transportation service under Rate Schedule AIT-1, amend existing Rate Schedule AIT-1 service agreements, and nominate quantities for delivery by Algonquin pursuant to an existing service agreement under any of Algonquin's sales or transportation rate schedules. The TRACTS Service may also be used to access Algonquin's FERC Order 497 electronic bulletin board, and to receive such other information as Algonquin may from time to time make available through the TRACTS Service. First Revised Sheet No. 584 revises section 4.1 of Algonquin's Rate Schedule AIT-1 to state that a customer under Rate Schedule AIT-1 may use the TRACTS Service to request Rate Schedule AIT-1 interruptible transportation and to amend any effective AIT-1 Service Agreement. First Revised Sheet No. 651 revises Section 30.1 of the Algonquin FERC Gas Tariff General Terms and Conditions to state that a customer may use the TRACTS Service to nominate quantities for delivery by Algonquin pursuant to an effective service agreement.

Algonquin proposes initially to offer the TRACTS Service to its customers on an experimental basis and to retain the right to terminate the TRACTS Service on a nondiscriminatory basis as more clearly set forth in its filing which is available for public inspection at the Commission.

Algonquin is proposing an effective date for the above tariff sheets of January 15, 1990.

Algonquin notes that copies of the filing were served upon Algonquin's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 27, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-30068 Filed 12-27-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-18-001]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

December 19, 1989.

Take notice that ANR Pipeline Company (ANR) on December 11, 1989 tendered for filing as part of its Original Volume No. 1 of its FERC Gas Tariff the following tariff sheets:

Substantive Second Revised Sheet No. 87
Substantive Third Revised Sheet No. 88

ANR states that a Commission Order issued on November 24, 1989 in Docket No. RP90-18-000 ordered ANR to refile tariff sheets to reinstate certain tariff language with respect to the March 31, 1989 sunset date provision of Order No. 500 which ANR deleted from its tariff in response to the United States Court of Appeals remand of Order No. 500.

ANR requested that the Commission accept this filing to become effective as of November 25, 1989. ANR further requested that the following tariff sheets that were originally submitted as part of its October 26, 1989 filing need not be changed to comply with the Commission's November 24, 1989 Order and should not be accepted for filing, effective November 25, 1989:

Volume No. 1

Third Revised Sheet No. 89
Third Revised Sheet No. 90
Second Revised Sheet No. 90A

Any person desiring to protest said filing should file a protest with the Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 385.214). Such protests or motions must be filed by December 27, 1989. Protests will be considered by the Commission in determining appropriate action to be taken but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-30069 Filed 12-27-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-30-020]

Colorado Interstate Gas Co.; Filing

December 19, 1989.

Take notice that on December 13, 1989, Colorado Interstate Gas Company (CIG) filed Substitute Ninth Revised Sheet No. 187 to its FERC Gas Tariff, Original Volume No. 2, to be effective October 1, 1989.

CIG states that this tariff sheet was inadvertently omitted from CIG's compliance filing of November 14, 1989.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such protests shall be file on or before December 28, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on filed with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-30069 Filed 12-27-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-2-4-1]

Granite State Gas Transmission, Inc.; Proposed Change in Rates

December 19, 1989.

Take notice that on December 14, 1989, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021, tendered for filing the revised tariff sheets in its FERC Gas Tariff, First Revised Volume No. 1, listed below containing changes in rates for effectiveness as indicated:

Revised tariff sheets	Proposed effective dates
Substitute Twenty-first Revised Sheet No. 6.	Nov. 1, 1989.
Twenty-Second Revised Sheet No. 6.	Jan. 1, 1990.

According to Granite State, it provides a storage service for Bay State Gas Company under its Rate Schedule GSS with storage capacity provided in a

[1] With respect to the S&P 500 option, the CME is proposing to require that trading in the option be suspended when the S&P 500 futures contract is limit bid or offered at the proposed 20-point intermediate price limit. The CME also proposes to clarify the language of the existing provisions that require no trading in any S&P 500 option when the S&P 500 futures contract is limit bid or offered at the applicable opening price limit or daily price limit. Under the proposal the applicable price limits would be at 5 points, 12 points, 20 points, and 30 points.

[2] Also applies to Hinshaw pipelines and local distribution companies which receive a blanket certificate pursuant to § 284.224 and use a Commission-approved rate under § 284.123(b)(2).

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facility operated by CNG Transmission Corporation (CNG). It is further stated that Granite State's rate Schedule GSS tracks changes made by CNG under its Rate Schedule GSS pursuant to which Granite State obtains storage capacity from CNG.

Granite State further states that, on November 13, 1989, it filed a revised tariff sheet tracking a change in CNG's Rate Schedule GSS which CNG had filed in Docket No. RP85-169-045 for effectiveness on November 1, 1989. According to Granite State, its filing was accepted subject to a condition that it refile to reflect any revisions made by CNG in its Rate Schedule GSS. CNG filed a revision in its Rate Schedule GSS on December 5, 1989 for effectiveness on November 1, 1989 and Granite State states that Substitute Twenty-First Revised Sheet No. 8 tracks the revision made by CNG for effectiveness on November 1, 1989.

According to Granite State, CNG also filed in Docket No. RP90-56 on December 8, 1989, a change in its Rate Schedule GSS for effectiveness on January 1, 1990 to reflect an updating of recovery for costs related to take-or-pay payments to suppliers. Twenty-Second Revised Sheet No. 8 tracks the changes made in CNG's Rate Schedule GSS for effectiveness on January 1, 1990.

According to Granite State, copies of its filing were served upon Bay State Gas Company and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 27, 1989. Protests will be considered by the Commission, in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-30070 Filed 12-27-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-186-000 and RP90-20-000]

Great Lakes Gas Transmission Co.; Informal Settlement Conference

December 19, 1989.

Take notice that a settlement conference will be convened in this proceeding on January 11, 1990, at 10:00 a.m and continue through January 12, 1990 if necessary, at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced dockets.

Any party, as defined by 19 CFR 385.103(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Person wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact J. Carmen Gastilo, (202) 375-8410 or Russell B. Mamone, (202) 357-5744.

Lois D. Cashell,

Secretary.

[FR Doc. 89-30076 Filed 12-27-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP90-17-003 and CP89-1121-006]

Mississippi River Transmission Corp.; Proposed Change in FERC Gas Tariff

December 19, 1989.

Take notice that on December 11, 1989 Mississippi River Transmission Corporation (MRT) tendered for filing the tariff sheets listed below to its FERC Gas Tariff, Original Volume No. 1-A. An effective date of November 24, 1989 is proposed.

First Revised Sheet No. 56
First Revised Sheet No. 57
First Revised Sheet No. 58
First Revised Sheet No. 64

Mississippi states that on November 30, 1989 the Commission issued its "Order Accepting and Rejecting Tariff Sheets Subject to Conditions" in the captioned dockets. The order specified that MRT's October 23, 1989 filing was in compliance with the Commission's September 18, 1989 order in Docket No. CP89-1121-000 with two exceptions. Ordering paragraph (D) required MRT to revise the imbalance penalty provisions set forth on Original Sheet No. 56 such that any scheduling penalty proposed by MRT not contain a penalty rate in excess of MRT's interruptible, transportation rate. Ordering paragraph (E) required MRT to modify Original Sheet No. 64 to provide for unlimited secondary receipt points for service under Rate Schedule FTS. MRT states that the purpose of the instant filing is to comply with the Commission's order in both respects.

MRT requests waiver of the notice provisions of its gas tariff and the Commission's regulations to the extent necessary to allow the tariff changes filed herewith to become effective on the date proposed.

Mississippi states that a copy of the letter with tariff sheets was mailed to each of MRT's jurisdictional customers and to the State Commissions of Arkansas, Illinois and Missouri, and to the parties on the Docket No. CP89-1121 service list.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 27, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-30071 Filed 12-27-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-59-000]

Northwest Pipeline Corp.; Filing

December 19, 1989.

Take notice that on December 15, 1989, Northwest Pipeline Corporation (Northwest) filed its annual compliance report and cost-of-service study.

Northwest states that it is filing a revised facility charge and an amortizing adjustment for the variations between cost-of-service and revenues collected, pursuant to Sections 13 and 14 of Rate Schedule T-1 of its FERC Gas Tariff, First Revised Volume No. 1. Northwest states that the annual period for the instant filing is the twelve months ended September 30, 1989.

Northwest states that a copy of this filing is being served on all of its jurisdictional customers and affected state agencies.

Any person desiring to be heard or to protect said filing should file a motion to intervene or a protect with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure [18 CFR 385.214, 385.211 (1989)]. All such motions or protects should be filed on or before December 28, 1989. Protests will be considered by the Commission in determining the appropriate action fo be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-30072 Filed 12-27-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-11-28-000]

Panhandle Eastern Pipe Line Co.; Compliance Filing

December 19, 1989.

Take notice that on December 11, 1989 Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Second Substitute Original Sheet No. 3-C.16
Second Substitute Original Sheet No. 3-C.17
Second Substitute Original Sheet No. 3-C.18

The effective date of these revised tariff sheets is May 1, 1989.

Panhandle states that on March 31, 1989 Panhandle filed revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1 in the above-referenced proceeding. In that filing, Panhandle proposed to recover from its customers 50 percent of additional take-or-pay settlement, buydown and buyout costs and to absorb the remaining 50 percent of the costs, consistent with the Commission's policy in Order No. 500. By Order issued April 28, 1989 the Commission accepted the tariff sheets, subject to certain conditions.

Panhandle further states that on May 30, 1989 Panhandle filed revised tariff sheets in compliance with the Commission's April 28, 1989 Order. These revised tariff sheets were accepted, subject to conditions, by the Commission's Letter Order issued July 7, 1989.

Panhandle further states that on October 10, 1989, the Commission issued its Order Denying Rehearing and Granting Clarification in Docket Nos. RP89-125-001, *et al.*, Panhandle's filing to flowthrough take-or-pay settlement costs direct billed to Panhandle from its pipeline supplier, Trunkline Gas Company. Likewise on November 27, 1989, the Commission issued its Orders Denying Rehearing and Clarifying Prior Order in Docket Nos. CP88-490-003, *et al.*, and in Docket Nos. CP89-3-003, *et al.* In both of these orders the Commission reaffirmed its decision with respect to the responsibility of Columbia and MichCon, and MGU, respectively, for an allocated share of take-or-pay costs after October 31, 1988, the expiration date of their sales contracts with Panhandle. In its October 10, 1989 Order Denying Rehearing, the Commission stated that:

"Since the costs included in the March 31, 1989 filing are current costs to Panhandle, Panhandle may, if it chooses, file to allocate all the costs, including those which would have been recoverable from Columbia, MichCon and MGU had they remained as customers, to its current customers as of March 31, 1989."

The tariff sheets submitted herewith reflect the allocation of all the costs included in Panhandle's original filing of March 31, 1989, as amended May 30, 1989, as approved April 28, 1989 and July 7, 1989, respectively, to its current customers as of March 31, 1989, pursuant to the Commission's directives as stated above.

Copies of this letter and enclosures are being served on all jurisdictional customers, interested state commissions and all parties to this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before December 27, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person within to become a party must file a motion to intervene. Copies of Panhandle's filing are on file with the commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-30073 Filed 12-27-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-10-28-000]

Panhandle Eastern Pipe Line Co. Compliance Filing

December 19, 1989.

Take notice that on December 11, 1989 Panhandle Pipe Line Company (Panhandle) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

First Substitute Original Sheet No. 3-C.19
First Substitute Original Sheet No. 3-C.20
First Substitute Original Sheet No. 3-C.21

The effective date of these revised tariff sheets is May 1, 1989.

Panhandle states that on March 31, 1989 Panhandle filed revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1 in the above-referenced proceeding. In that filing, Panhandle proposed to recover from its customers, on an as-billed basis, additional take-or-pay settlement, buydown and buyout costs billed to it by its upstream pipeline supplier, Trunkline Gas Company (Trunkline), and to adjust such charges from time to time. By Order issued April 28, 1989 the Commission accepted the tariff sheets, subject to certain conditions and subject to the outcome of Panhandle's proceedings in Docket No. CP88-490-001 and Trunkline's proceedings in Docket No. RP89-129-000.

Panhandle further states that on October 10, 1989, the Commission issued its Order Denying Rehearing and Granting Clarification in Docket Nos. RP89-125-001, *et al.* Likewise on November 27, 1989, the Commission issued its Orders Denying Rehearing and Clarifying Prior Order in Docket Nos. CP88-490-003, *et al.*, and in Docket Nos. CP89-3-003, *et al.* In both of these orders the Commission reaffirmed its decision with respect to the responsibility of Columbia and MichCon, and MGU, respectively, for an allocated share of take-or-pay costs after October 31, 1988, the expiration date of their sales contracts with Panhandle. In its October 10, 1989 Order Denying Rehearing, the Commission stated that:

"Since the costs included in the March 31, 1989 filing are current costs to Panhandle, Panhandle may, if it chooses, file to allocate all the costs, including those which would have been recoverable from Columbia, MichCon and MGU had they remained as customers, to its current customers as of March 31, 1989."

The tariff sheets submitted herewith reflect the allocation of all the costs included in Panhandle's original filing of March 31, 1989, as approved April 28,

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1989, to its current customers as of March 31, 1989, pursuant to the Commission's directives as stated above.

Copies of this letter and enclosures are being served on all jurisdictional customers, interested state commissions and all parties to this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before December 27, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Panhandle's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-30074 Filed 12-27-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-5-43-000]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

December 19, 1989.

Take notice that on December 11, 1989, Williams Natural Gas Company (WNG) tendered for filing the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Effective May 1, 1989

Revised Original Sheet Nos. 6E1 and 6E2.
Second Revised Original Sheet No. 6F

Effective July 1, 1989

Revised First Revised Sheet Nos. 6E1, 6E2 and 6F

WNG states that the purpose of this filing is to reflect the abandonment of certain small volume firm sales service granted by the Commission in Docket Nos. CP89-23-000, *et al.* 48 FERC ¶ 61,057 (1989).

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 27, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-30075 Filed 12-27-89; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

Energy Research Advisory Board; Accelerator Production of Tritium Panel

Notice is hereby given of the following meeting:

Name: Accelerator Production of Tritium Panel of the Energy Research Advisory Board.

Date & Time: January 8, 1990, 8:30 a.m.-5:00 p.m.

Place: Bechtel Group, Inc., 50 Beale Street, Room F, San Francisco, CA 94105, (415) 768-6020.

Contact: Charles Cathey, Department of Energy, Office of Energy Research, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-5444.

Purpose of the Parent Board: To advise the Department of Energy (DOE) on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.

Purpose of the Panel: To evaluate the feasibility, cost, schedule, and environmental issues associated with the potential production of tritium using an accelerator based system.

Tentative Agenda: The agenda items are subject to last minute changes. Visitors planning to attend for a specific topic should confirm the time prior to and during the date of the meeting.

Agenda

- Review activities of the working groups.
- Review first draft of the Panel report.
- Public Comment (10-minute rule).

Public Participation: The meeting is open to the public. Written statements may be filed with the Panel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Charles Cathey at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairman of the Panel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes of the Meeting: Available for public review and copying at the Freedom of Information Public Reading Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 89-30118 Filed 12-27-89; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Cases Filed With the Office of Hearing and Appeals; Week of November 10 Through November 17, 1989

During the Week of November 10 through November 17, 1989, the applications for exception and other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: December 21, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of November 10 through November 17, 1989]

Date	Name and location of Applicant	Case No.	Type of Submission
11/13/89	Harbor Enterprises, Inc. Seward, Alaska	LEE-0003	Exception to the Reporting Requirements.
	If Granted: Harbor Enterprises, Inc. would not be required to file Form EIA-782B, "Reseller/Retailer Monthly Petroleum Products Sales Report."		
11/14/89	Beacon/Ben W. Nachtigall Distributors, Inc. Reedley, California	RR238-4	Request for Modification/Rescission in the Beacon Refund Proceeding.
	If Granted: The December 28, 1987 Decision and Order (Case No. FR238-13) issued to Ben W. Nachtigall Distributors, Inc. would be modified regarding the firm's application for refund submitted in the Beacon Refund Proceeding.		

REFUND APPLICATIONS RECEIVED

[Week of November 10 through November 17, 1989]

11/13/89	Johnson-Bates Drilling Co.	RF320-2
11/13/89	Racetrac Petroleum, Inc.	RF313-314
11/15/89	Clyde R. Evans.	RF300-10696
11/15/89	Consumers Power Company.	RF307-10074
11/10/89 Thru 11/17/89.	Crude Oil Refunds Applications Received.	RF272-78372 thru RF272-78392
11/10/89 Thru 11/17/89.	Atlantic Richfield Refunds Applications Received.	RF304-10581 thru RF304-10588
11/10/89 Thru 11/17/89.	Shell Oil Refunds Applications Received.	RF315-8060 thru RF315-8250

[FR Doc. 89-30117 Filed 12-27-89; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-34006; FRL-3687-3]

Ion Phase 3 Technical Guidance Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) requires that certain registrants seeking reregistration of pesticide products furnish the Agency with reports concerning studies that they deem adequate to support reregistration (Phase 3 response). To assist registrants in the preparation of these reports, and to provide uniformity and consistency in their content and format, the Agency is making available a technical guidance document. Any registrant who believes that he is obligated to provide a Phase 3 response is requested to obtain a copy of the technical guidance document as soon as possible. There is no deadline for receipt of requests.

ADDRESSES: To receive a copy of the Technical Guidance document, send a request to the following address: Document Processing Desk (Phase 3 Alert), Office of Pesticide Programs (H7504C), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Christine Rice, Generic Chemical Support Branch, Special Review and Reregistration Division (H7508C), Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: -Room 728, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, -(1-800-552-8679).

SUPPLEMENTARY INFORMATION: FIFRA sec. 4 establishes an accelerated process for the reregistration of pesticide products. Reregistration will be carried out in five phases. Phase 1, now complete, involved the development and publication of Lists A, B, C, and D of pesticide active ingredients requiring reregistration. Phase 2, to be completed by January 24, 1990, is the initial response by all registrants indicating their desire to be reregistered, enumerating existing studies that fulfill data requirements, and obligating themselves to fill data gaps.

In Phase 3, registrants who seek reregistration but are not eligible for a generic data exemption must determine which of their previously submitted scientific studies are adequate to support reregistration. To do so, they must apply certain criteria of data acceptability, which the Agency has defined. In addition, they must summarize each study, reformat certain studies submitted before January 1, 1982, in accordance with Agency guidance, and identify information on adverse effects. Together, these items must be submitted to the Agency as a Phase 3 response.

Section 4(e)(4) of FIFRA mandates that EPA shall issue guidelines to be followed by registrants in: summarizing studies, reformatting studies, identifying adverse information, and identifying studies that have been submitted previously that may not meet the requirements of section 3 or regulations issued under that section. This notice announces the availability of a guidance document, entitled "FIFRA Accelerated Reregistration—Phase 3 Technical Guidance" (Technical Guidance document) that provides those guidelines for a Phase 3 response. This document is now available to registrants and interested persons.

Phase 3 responses are due to the Agency no later than one year after publication of Lists B, C, and D in the **Federal Register**. The earliest Phase 3 responses are due on May 25, 1990, and the latest on October 24, 1990. Phase 3 responses may be complicated because of the number of pesticide active ingredients involved, the number of studies that must be summarized and reformatted for each active ingredient, and the short time in which to prepare the submission. Moreover, failure to provide a Phase 3 response in a timely manner may lead to cancellation of product registration without a hearing. Thus, registrants are advised to obtain a copy of the Technical Guidance document as soon as possible. An adequate Phase 3 response cannot be submitted without using the Technical Guidance document. -EPA has notified every registrant by mail of the availability of the Technical Guidance document. Because the document is

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lengthy, EPA does not wish to burden registrants unnecessarily if they are not required to respond in Phase 3. At the same time, EPA wants to ensure that every registrant is given adequate notice of the availability of the document.

Any person who wishes to receive a copy of the Technical Guidance document should send a request, containing name and address (and, if a pesticide registrant, his company number), to the address given earlier in this notice.

Date: December 21, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 89-30131, Filed 12-27-89; 8:45am]

BILLING CODE 6560-50-D

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-140126; FRL-3687-5]

General Accounting Office; Access to Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA plans to transfer information submitted under sections 7 and 17 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) to the General Accounting Office (GAO) of the U. S. Congress. Some of the information that will be made available to the GAO has been claimed to be confidential business information (CBI). Information will be transferred to the GAO consistent with requirements of 40 CFR 2.209(b). This action will enable the GAO to fulfill its obligations, and this notice serves to notify affected persons.

DATE: The GAO will be given access to this data no sooner than December 29, 1989.

FOR FURTHER INFORMATION CONTACT: Sherell A. Sterling, Compliance Division (EN-342), Office of Compliance Monitoring, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202) 382-5566.

SUPPLEMENTARY INFORMATION: The House Committee on Government Operations has asked the GAO to review EPA's regulation of antimicrobial product efficacy. In order to characterize the antimicrobial product market and provide perspective on EPA's regulation of these products, the GAO needs access to EPA's pesticide production data, including CBI submitted to EPA under FIFRA.

Under 40 CFR 2.209(b), information that is considered by the submitter to be trade secret or commercial or financial as described by FIFRA section 10(d) may be disclosed to Congress or the Comptroller General when such disclosure is necessary for their review. (In this case, the request is from the GAO on behalf of the Congress.) EPA routinely receives such CBI as part of the data that are submitted by pesticide registrants and others as provided for in FIFRA sections 7 and 17. Congress or the Comptroller General are authorized to receive such data upon written request to EPA as specified in 40 CFR part 2 as referenced in § 2.209.

FIFRA section 10(f) sets a criminal penalty for wrongful disclosure of confidential information, whether such disclosure is made by an officer or employee of the United States.

The GAO recognizes the sensitivity of the CBI it may review in the course of its study. Prior to access, the GAO personnel performing this work will be briefed on EPA's security procedures. These employees will then be given access to information as requested and will be allowed to attend meetings in which such information is discussed. In addition, EPA employees will be authorized to discuss CBI with the designated GAO personnel.

The GAO does not intend to include any such CBI information in its final report to the House Committee. In order to ensure confidentiality, the GAO will ask EPA to review any technical information to be included in the final report to verify that it does not contain CBI.

EPA specifically prohibits disclosure of CBI to any third party in any form without written authorization from EPA, and personnel of the GAO will be asked to sign a nondisclosure agreement.

Dated: December 20, 1989.

Linda J. Fisher,

Assistant Administrator for Pesticides and Toxic Substances.

[FR 89-30133; Filed 12-27-89; 8:45 am]

BILLING CODE 6560-50-D

ENVIRONMENTAL PROTECTION AGENCY

[OPP-34005; FRL 3685-2]

Pesticide Active Ingredients Under Review; Availability of Docket Indices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice lists pesticide active ingredients that will be under review during Fiscal Year 1990 under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), either as draft documents under the Registration Standards process, or as part of the phased reregistration scheme that has superseded the Registration Standards process. This notice also announces the availability of docket indices for pesticide Reregistration Documents under development and pesticide Special Reviews, and provides information on how interested persons may request inclusion on an EPA mailing list to receive such indices.

DATES: Written comments on listed pesticide active ingredients should be submitted on or before February 26, 1990. Persons may request to be included on the mailing list for docket indices at any time.

ADDRESSES: Comments on listed pesticide active ingredients should be identified with the docket number listed with each active ingredient case and should be submitted to the address below. Persons wishing to be included on a mailing list to receive docket indices should also direct their requests to this address: Public Information Branch, Field Operations Division (H-7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

In person, bring comments to: Rm. 246, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of a comment that does not contain CBI must be submitted for inclusion in the public docket. Information not designated "confidential" may be disclosed publicly by EPA without prior notice to the submitter. The public docket will be available for public inspection and copying in Rm. 246 at the address given above, from 8 a.m. ot 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: For information on pesticide active ingredients on List A, contact, by mail:

Lois A. Rossi, Special Review and Reregistration Division (H-7508C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 1116, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557-0592.

For information on public dockets, their availability, and docket indices, contact Deena Vann (703-557-2805) of the Public Information Branch, in Rm. 244 at the above address.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 4(a) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), the EPA must reregister each pesticide product containing an active ingredient first registered before November 1, 1984. This provision replaced and clarified a similar obligation to reregister pesticides established under section 3(g) of FIFRA in 1972.

II. Registration Standards

From 1980 to 1988, the Registration Standards program was EPA's approach to the reassessment and reregistration of pesticides. Under this program the scientific data base underlying each active ingredient was thoroughly reviewed, and essential but missing scientific studies were identified.

The reassessment resulted in a requirement for submission of data needed to allow EPA to evaluate fully the safety of the active ingredient according to contemporery scientific standards. The results of the review were reflected in a Registration Standard, in which EPA stated its regulatory positions regarding the products containing an active ingredient and the rationale for each position, as well as requirements for submission of additional data needed for a complete assessment, and label warnings or other regulatory restrictions needed to protect health and the environment. After the data required under the initial Registration Standard were submitted, the EPA process called for reassessment of the pesticide and issuance of a revised Registration Standard (termed a Second Round Review).

For each Registration Standard developed, EPA established and maintained a public docket. On a quarterly basis, EPA provided to individuals on a mailing list the indices or revised indices for Registration Standard dockets.

Under the new FIFRA, EPA's process for obtaining data and reassessing pesticide active ingredients has been redefined. EPA will no longer issue Registration Standards as a means of identifying data needs for an active ingredient. However, some Registration Standards were issued in draft form for public comment, in accordance with the requirement of 40 CFR 155.34(c), and have not yet been issued as final Registration Standards. These Registration Standards are in varying stages of review within the Agency, and EPA expects to issue them during FY90.

Registration Standards for the following active ingredients will be issued during FY90.

Name	Date of issuance of draft	Case number
Methidathion	9/88	0034
Chlorothalonil	9/88	0097
Butylate	3/89	0071
Warfarin	4/89	0011
Chlorpyrifos	6/89	0100

III. FIFRA-88 Active Ingredients

Under FIFRA sec. 4, the Agency will no longer issue Registration Standards for active ingredients as it has in the past. In order to obtain needed data for reregistration decision making, EPA will issue Data Call-In notices under FIFRA sec. 3(c)(2)(B) to affected registrants, requiring them to furnish the data. When EPA believes that it possesses all data required to evaluate the active ingredient, it will commence the review process required by FIFRA sec. 4(g)(1) leading to a decision on the registrability of the active ingredient. At the conclusion of its review on registrability of an active ingredient, EPA will develop a Reregistration Document. Although the form and content of this document have not been fully defined by the Agency, EPA intends that it will serve a purpose similar to that of a Registration Standard with respect to regulatory decisions on the active ingredient.

Accordingly, EPA will establish and maintain a public docket for each active ingredient as it has done for Registration Standards. The docket will be established at the time the Agency issues a notice in the Federal Register of the initiation of scientific review under FIFRA sec. 4(g)(1). If a docket was previously established for an active ingredient under 40 CFR 155.32(a), EPA will maintain the same docket. (Dockets for Registration Standards were not established before November 1985.)

EPA has determined that it will commence scientific review under FIFRA sec. 4(g)(1) of the pesticide active ingredients enumerated in Unit IV to determine the registrability of the active ingredient, and hopes to make the eligibility determination required by FIFRA sec. 4(g)(2) in FY90.

IV. Chemicals Scheduled for Review During FY90

The case names in this listing correspond to those published in the List A Federal Register notice of February 22, 1989 (54 FR 7740). Readers should refer to the List A notice for further information on the individual active ingredients comprising each case.

Name of active ingredient case	List	Case number
Aliette	A	0646
Amitraz	A	0234
Copper compounds: Group II	A	0649
Copper sulfate	A	0636
Heliothis NPV	A	0151
Methoprene	A	0030
Potassium bromide	A	0342
Sodium (Na) and calcium (Ca) hypochlorites.	A	0029
Sulfur	A	0031
Trimethacarb	A	0112
Warfarin and its sodium (Na) salt	A	0011

V. Availability of Docket Indices

Regulations on Registration Standards and Special Review provide for the establishment of a public docket for Registration Standards under development and Special Review actions, the maintenance of docket indices, and the establishment of a mailing list of persons wishing to receive the docket indices on a regular basis. As it did for Registration Standards, EPA intends to establish and maintain a public docket for each Reregistration Document. Each docket will contain, among other things, materials submitted to EPA by parties outside of government, EPA documents made available to persons outside of government, and memoranda of meetings with persons outside of government concerning pending Special Reviews and Reregistration Documents under development.

EPA also maintains a mailing list for docket indices. The same mailing list will be used for the indices for new dockets for Reregistration Documents under development. Persons on the mailing list will receive automatically the docket indices (or updates to

previous indices) for Reregistration Documents and Special Reviews. These will be distributed periodically, or as

revises it to comply with the recently enacted amendment to the Australian Trade Practices Act, 1974.

Yugoslavia/United States Discussion Agreement Filed

The Federal Maritime Commission

Interested persons should consult this section before communicating with the Commission regarding a pending

Andrew J. Strenio, Jr.
Margot E. Machol

Order Reopening and Setting Aside Order Issued on October 9, 1974

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previous indices) for Reregistration Documents and Special Reviews. These will be distributed periodically, or as required by the regulations. Persons on the mailing list will receive docket indices for all open dockets. Persons will be required to renew their requests for inclusion on the mailing list annually.

Any person wishing to be included on the mailing list should submit his name, affiliation (if any), and mailing address to the address given earlier in this notice. Organizations, groups and companies are requested not to submit multiple requests under different names, but to designate a primary recipient within the organization. This will reduce mailing costs and time in administering the mailing list.

Persons currently on the mailing list for Registration Standard and Special Review indices must resubmit requests for continued inclusion on the mailing list at this time.

Dated: December 21, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 89-30132 Filed 12-27-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Australia/Pacific Coast Rate Agreement et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC, Office of the Federal Maritime Commission, 1100 L Street, NW, Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section after communicating with the Commission regarding a pending agreement.

Agreement No. 202-010012-017

Title: Australia/Pacific Coast Rate Agreement

Parties: Hamburg-Sudamerikanische Dampfschifffahrts-Gesellschaft Eggert & Amsinck (Columbus Line); Associated Container Transportation (Australia) Limited (PACE Line)

Synopsis: The proposed modification restates the basic Agreement and revises it to comply with the recently enacted amendment to the Australian Trade Practices Act, 1974.

Agreement No. 202-010269-014

Title: Australia/Eastern USA Shipping Conference

Parties: Hamburg-Sudamerikanische Dampfschifffahrts-Gesellschaft Eggert & Amsinck (Columbus Line); Associated Container Transportation (Australia) Limited (PACE Line)

Synopsis: The proposed modification restates the basic Agreement and revises it to comply with the recently enacted amendment to the Australian Trade Practices Act, 1974.

Agreement No. 212-011213-014

Title: Spain-Italy/Puerto Rico Island Pool Agreement

Parties: Compania Trasatlantica Espanola, S.A.; Nordana Line AS; Sea-Land Service, Inc.

Synopsis: The proposed amendment would add d'Amico Societa di Navigazione S.P.A. ("d'Amico") to appendices C and D of the Agreement, which pertain to reports on available capacity and capacity utilization among the parties. The amendment would also revise Article 5.E.1 to provide that each member line's minimum, maximum, and basic pool shares for each pool section shall, for all pool periods rather than just the first four as presently specified, be as set forth in appendix B for any given pool period.

Agreement No. 206-011239-002

Title: United States Middle East and Indian Subcontinent Discussion Agreement

Parties: The 8900 Lines; The West Coast/Middle East and West Asia Rate Agreement ("WAME"); American President Lines, Ltd.; A.P. Moller-Maersk Line; National Shipping Company of Saudi Arabia; Sea-Land Service, Inc.; Thames Shipping Ltd.; United Arab Shipping Company (S.A.G.); Waterman Steamship Corp.

Synopsis: The proposed amendment would delete WAME as a member of the Indian Subcontinent Section of the agreement and modify Article 8 to reflect that WAME need not be present for quorum purposes at meetings relating only to the Indian Subcontinent Section.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: December 21, 1989.

[FR Doc. 89-30022 Filed 12-27-89; 8:45 am]

BILLING CODE 6730-01-M

Yugoslavia/United States Discussion Agreement Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203-011264-002

Title: Yugoslavia/United States Discussion Agreement

Parties: Evergreen Marine Corporation (Taiwan) Ltd., Jugolinija (Jugoslavenska Linijska Plovidba), Lykes Bros. Steamship Co., Inc., Nedlloyd Lines, B.V., Sea-Land Service, Inc., Zim Israel Navigation Company, Ltd.

Synopsis: The proposed amendment would add P&O Containers (TFL) Ltd. as a party to the Agreement. The carrier has requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: December 21, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 30034 Filed 12-27-89; 8:45 am]

BILLING CODE 6730-01-M

Notice of Agreement(s) Filed; Georgia Ports Authority

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200224-002

Title: Georgia Ports Authority Terminal Agreement.

Parties: Georgia Ports Authority (Port), Chiquita Brands, Inc.

Synopsis: The Agreement amends the rate schedule of the basic agreement for terminal services at Containerport, Savannah, Georgia, to provide that the charge for keeping Gate 5 open at other than normal hours will be $21.00 per hour, effective January 1, 1990. The charge will escalate on October 1 of each year during the term of the agreement in an amount equal to the corresponding percentage rate increase in the Port's terminal tariff.

By order of the Federal Maritime Commission.

Dated: December 22, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-30137 Filed 12-27-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL TRADE COMMISSION

[Dkt. 9196]

Motor Transport Association of Connecticut, Inc.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Final Order.

SUMMARY: This Final Order dismisses the complaint against the respondent, which represents approximately 585 competing motor carriers and files collective rates for its common carrier members with the state regulatory agency.

DATES: Complaint issued September 18, 1984. Final Order issued August 25, 1989.[1]

FOR FURTHER INFORMATION CONTACT: Michael E. Antalics, FTC/S-2308, Washington, DC 20580. (202) 326-2682.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Commissioners:

Janet D. Steiger, Chairman
Terry Calvani
Mary L. Azcuenaga

[1] Copies of the Complaint, Initial Decision, Opinion of the Commission, Statements, etc. are available from the Commission's Public Reference Branch, H-130, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

Andrew J. Strenio, Jr.
Margot E. Machol

Final Order

This matter having been heard by the Commission on the appeal of complaint counsel from the initial decision and on briefs and oral agruments in support of and in opposition to the appeal, for the reasons stated in the accompanying Opinion, the Commission affirms the decision of the Administrative Law Judge.

Accordingly, *It is ordered That* the complaint be and it hereby is dismissed.

By the Commission, Chairman Steiger and Commissioner Machol not participating.

Donald S. Clark,

Secretary.

[FR Doc. 89-30081 Filed 12-27-89; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. C-2574]

Sharp Electronics Corporation; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Set Aside Order.

SUMMARY: The Federal Trade Commission has set aside a 1974 consent order with Sharp Electronics Corporation, (84 F.T.C. 743), because respondent satisfactorily demonstrated that changes in the law required such action, thus enabling respondent to maintain favorable relations with its full service dealers, and thereby develop and promote an efficient distribution system to compete more effectively with other electronic calculator manufactures; as a result, consumers are likely to benefit.

DATES: Consent order issued October 9, 1974. Set aside order issued August 21, 1989.

FOR FURTHER INFORMATION CONTACT: Joe Eckhaus, FTC/S-2115, Washington, DC 20580. (202) 326-2687.

SUPPLEMENTARY INFORMATION: In the Matter of Sharp Electronics Corporation. The prohibited trade practices and/or corrective actions as set aside at 40 FR 7393, are deleted.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Commissioners:

Janet D. Steiger, Chairman
Terry Calvani
Mary L. Azcuenaga
Andrew J. Strenio, Jr.
Margot E. Machol

Order Reopening and Setting Aside Order Issued on October 9, 1974

On April 25, 1989, Sharp Electronics Corporation ("Sharp") filed a "Request To Reopen The Proceeding And Set Aside The Order" ("Request"), pursuant to sectoin 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and section 2.51 of the Commission's Rules of Practice and Procedure, 16 CFR 2.51. The Request asks the Commission to reopen the proceeding and set aside the order issued by the Commission on October 9, 1974, in Docket No. C-2574, 84 F.T.C. 743. The order prohibits Sharp from restricting in any manner the territories in which, or the customers to whom, its dealers may sell Sharp electronic calculators. In support of its Request, Sharp argues that the order should be set aside to reflect changed conditions of law and fact and "to promote considerations of fairness and the public interest." Request at 6, 9. Sharp's Request was placed on the public record for thirty days, pursuant to § 2.51(c) of the Commission's Rules. No comments were received.

For the reasons discussed below, the Commission has concluded that Sharp has made a satisfactory showing of changed conditions of law that require reopening the proceeding and warrant modifying the order in the manner requested by Sharp. The Commission has therefore determined to reopen the proceeding and set aside the order in its entirety.

I

The Commission issued its complaint in this matter on October 9, 1974. 84 F.T.C. at 743-45. The complaint alleged that Sharp violated Section 5 of the Federal Trade Commission Act, by, among other things, prohibiting its dealers from selling Sharp electronic calculators outside of their "allotted" territories, and imposing restrictions "as to the persons or classes of persons" to whom Sharp dealers may sell such calculators. 84 F.T.C. at 744. Sharp's distribution practices, as alleged in the complaint, "actually hindered, restricted, restrained and prevented competition * * *," and constituted "unfair acts * * * and methods of competition * * *" within the meaning of section 5 of the FTC Act. *Id.*

The Commission's order, entered by consent, prohibits Sharp from imposing any territorial restrictions on its dealers, or defining the class of customers to whom they are permitted to sell Sharp electronic calculators. The order also prohibits Sharp from using any mandatory fixed schedules for the

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division of profit between any selling dealer and a dealer in whose territory the product is serviced that has the effect of restricting the territory in which electronic calculators may be sold. 84 F.T.C. at 746.[1] However, the order explicitly permits Sharp to designate for its dealers geographical areas within which a dealer may agree to devote its best efforts to the sale of electronic calculators, engaged in activities specifically rendered lawful by legislation enacted by Congress, require a dealer to undertake obligations of installation and warranty service, and require its dealers to comply with any voluntary profit passover program made available by Sharp. *Id.* at 746–47.

II

Section 5(b) of the FTC Act, 15 U.S.C. 45(b), provides that the Commission shall reopen an order to consider whether it should be modified if the respondent "makes a satisfactory showing that changed conditions of law or fact" require such modification. A satisfactory showing sufficient to require reopening is made when a request to reopen identified significant changes in circumstances and shows that the changes eliminate the need for the order, bring the order into conflict with current law, or make continued application of it inequitable or harmful to competition. *Louisiana Pacific Corp.*, Docket No. C–2956, Letter to John C. Hart (June 5, 1986), at 4. *See* S. Rep. No. 96–500, 96th Cong., 2d Sess. 9 (1979) (significant changes or changes causing unfair disadvantage); *Phillips Petroleum Co.*, Docket No. C–1088, 78 F.T.C. 1573, 1575 (1971) (no modification for changes reasonably forseeable at time of consent negotiations); *Pay Less Drug Stores Northwest, Inc.*, Docket No. C–3039, Letter to H. B. Hummelt (Jan. 22, 1982) (changed conditions must be unforeseeable, create severe competitive hardship, and eliminate dangers that the order sought to remedy); *see also United States v. Swift & Co.*, 286 U.S. 106, 119 (1932) (modification warranted by "clear showing" of changes that eliminate reasons for order or such that the order causes unanticipated hardship).

The language of section 5(b) plainly anticipates that the burden is on the petitioner to make the requisite satisfactory showing of changed conditions to obtain reopening of the order. The legislative history also makes clear that the petitioner has the burden of showing, other than by conclusory statements, why changed circumstances required that the order should be modified.[2] If the Commission determines that the petitioner has made the necessary showing, the Commission must reopen the order to consider whether modification is required and, if so, the nature and extent of the modification. The Commission is not required to reopen the order, however, if the petitioner fails to meet its burden of making the satisfactory showing required by the statute. The petitioner's burden is not a light one given the public interest in the finality of Commission orders. *See Federated Department Stores, Inc. v. Moitie*, 425 U.S. 394 (1981) (strong public interest considerations support repose and finality.

III

Based on the information provided by Sharp and other available information, the Commission has determined that Sharp has made a satisfactory showing that changes in law require reopening the proceeding and warrant setting aside the order. Having reopened and set aside the order on the basis of change of law, the Commission does not reach the issue whether reopening is also warranted based upon the changes of fact or the public interest considerations asserted by Sharp.

In 1974, when this consent order was issued, all vertical restraints were considered *per se* unlawful, based on *U.S. v. Arnold Schwinn & CO.*, 388 U.S. (1967). Three years after the order was issued, the Supreme Court overruled *Schwinn* in *Continental T.V., Inc. v. GTE Sylvania, Inc.*, 433 U.S. 36 (1977), stating that territorial restrictions and other nonprice vertical restraints are not inherently anticompetitive, and should be analyzed under the rule of reason.[3] The Court said that nonprice vertical restraints had the potential to "promote interbrand competition by allowing the manufacturer to achieve certain efficiencies in the distribution of his products." 433 U.S. at 54. One such efficiency that the Court expresaly recognized was the use of such restraints to permit suppliers "to induce retailers to engage in promotional activities or to provide service and repair facilities necessary to the efficient marketing of their products." *Id* at 55. Subsequent cases have reaffirmed that nonprice vertical restraints, in the absence of further agreement on price or price levels to be charged by distributors, are to be analyzed under the rule of reason. *See Business Electronics Corp. v. Sharp Electronics Corp.*, 108 S. Ct. 1515 (1988); *Monsanto Co.* v. *Spray-Tite Service Corp.*, 465 U.S. 752, 762–63 (1984).

Sharp has identified *Sylvania* as a change in the law of nonprice vertical restraints from a *per se* to a rule of reason analysis. However, this showing alone, without a further showing that the order's prohibitions cannot be justified under current law, would be insufficient to require reopening. This is because the challenged vertical restrictions, although not *per se* unlawful, may nonetheless be unreasonable. If so, the order's prohibitions would be consistent with existing law.

The Commission has previously relied upon *Sylvania* to conclude that only nonprice vertical restraints having "a probable adverse effect on *inter*brand competition" at either the manufacturer or dealer level are unlawful.[4] The Commission has also stated that "[W]hen the exercise of market power in a properly defined relevant market is unlikely, the Commission considers nonprice vertical restraints to be efficiency-enhancing in purpose and effect, and therefore lawful, without further inquiry." [5]

In its Request, Sharp has shown that, under the rule of reason analysis that the Commission applies to nonprice vertical restraints, there is no basis for continuing the order's prohibitions. Competition conditions in the electronic calculator industry today make it unlikely that nonprice vertical restraints could be used to create or enhance market power or facilitate collusion. Today, more than twenty major calculator suppliers compete in the United States, none of which appears to have a controlling share of the market.[6] The structure of the distribution and retailing segments appears to be even more diffuse.. There also appear to be no significant impediments to entry into the market for the supply of electronic calculators. Sharp has shown that, since 1974, at least ten new suppliers have entered the calculator market. Similarly, there is no evidence of impediments to entry into the distribution or retailing of electronic calculators. In general, the market today appears to be competitive. The number of available model types has increased substantially, and retail prices[7] and supplier profit margins have decreased, since the order was issued.[8] Given existing levels of concentration, the absence of significant entry impediments, and the apparent competition in the sale of electronic calculators, it appears unlikely that Sharp's use of nonprice vertical territorial or customer restraints would significantly restrict interbrand competition and reduce output. Therefore, Sharp has made a sufficient showing to justify reopening the order.

As to relief on the merits, the Commission is not aware of any facts or of any public interest considerations that weigh against setting aside the order in this matter.The petitioner has demonstrated that relief is appropriate. Elimination of the order's prohibitions will enable Sharp to maintain and promote an efficient distribution system. Sharp's inability to ban transshiping and to require its dealers to observe territorial restrictions could cause Sharp significant competitive injury by, among other things, lessening the efficiency of Sharp's distribution system and discouraging it from making necessary investments to promote sophsticated products and provide applications support and training to potential customers.[9] Setting aside the order will allow Sharp to compete more effectively with other electronic calculator manufacturers, and consumers are likely to benefit.

IV

Accordingly, *It is ordered* That this matter be reopened and that the Commission's order in Docket No. C–2574, issued on October 9, 1974, be, and it hereby is, set aside, as of the date of service of this order.

By the Commission, Commissioner Strenio did not participate by reason of absence.

Donald S. Clark

Secretary.

[FR Doc. 30082 Filed 12–27–89; 8:45 am]

BILLING CODE 6750–01–M

[1] For a period that expired in 1979, Paragraph 8 of the order prohibited Sharp from establishing mandatory fixed schedules for the division of profit between any selling dealer and a dealer in whose territory the product is serviced, regardless of effects. *Id.*

[2] The Commission may properly decline to reopen an order if a request is "merely conclusory or otherwise fails to set forth specific facts demonstrating in detail the nature of the changed conditions and the reasons why these changed conditions require the requested modification of the order." S. Rep. No. 96–500, 96th Cong., 1st Sess. 9–10 (1979).

[3] *Sylvania* did not change the *per se* rule against resale price maintenance.

[4] TEAC Corp. of America, 104 F.T.C. 634, 635 (1984) (emphasis in original), citing Beltone Electronics Corporation, 100 F.T.C. 68, 208 (1982).

[5] TEAC Corp. of America, 104 F.T.C. 634, 635–36 (1984).

[6] Assuming the United States electronic calculator industry to be a relevant market, Sharp's estimated current share is less than twelve percent; its largest competitor is estimated to have no more than fifteen percent of such a market. Maul Affidavit at ¶ 6.

[7] The prices of Sharp's calculators ranged from $500 to $1,000 in 1972, and from $150 to $300 in 1982 when it became involved in the *Business Electronics* litigation. Business Electronics Corp. v. Sharp Electronics Corp., 780 F.2d 1212,1221 n.2 (5th Cir. 1986), *aff'd*, 108 S. Ct. 1515 (1988).

[8] These changes in the market were acknowledged in Judge Jones' concurring opinion in *Business Electronics* as follows:

Only atavistic devotees of the abacus or slide rule could fail to recall the remarkable history of the electronic calculator market during the last fifteen years. The range of available models, variety of functions that can be performed, and myriad optional enhancements have multiplied rapidly while the average prices have plummeted. The number of competing manufacturers has increased. To maintain their market position and profitability, manufacturers like Sharp have obviously been required to react quickly and imaginatively to changes in the marketplace.

780 F.2d at 1221.

[9] According to Sharp, its competitors are able to prevent free-riders from "disturbing the orderly distribution of their products" by full service dealers through such restraints as prohibiting mail order sales and sales to customers for resale. Request at 11.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Filing of Annual Reports

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that, as required by the Federal Advisory Committee Act, the agency has filed with the Library of Congress the annual reports of those FDA advisory committees that held closed meetings.

ADDRESSES: Copies are available for public examination at the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1751.

FOR FURTHER INFORMATION CONTACT: Richard L. Schmidt, Committee Management Office (HFA–306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2765.

SUPPLEMENTARY INFORMATION: Under section 13 of the Federal Advisory Committee Act (5 U.S.C. App. I) and 21 CFR 14.60(c), FDA has filed with the Library of Congress the annual reports for the following FDA advisory committees that held closed meetings during the period October 1, 1988, through September 30, 1989:

Center for Biologics Evaluation and Research:
- Blood Products Advisory Committee,
- Vaccines and Related Biological Products Advisory Committee.

Center for Drug Evaluation and Research:
- Anesthetic and Life Support Drugs Advisory Committee,
- Arthritis Advisory Committee,
- Dermatologic Drugs Advisory Committee,
- Peripheral and Central Nervous System Drugs Advisory Committee.

Center for Devices and Radiological Health:
- Immunology Devices Panel,
- Neurological Devices Panel,
- Ophthalmic Devices Panel.

Annual reports are available for public inspection at the: (1) Library of Congress, Newspaper and Current Periodical Reading Room, Rm. 1020, Thomas Jefferson Bldg., Second St. and Independence Ave. SE., Washington, DC; (2) Department of Health and Human Services Library, Rm. G–400, 330 Independence Ave. SW., Washington, DC, on weekdays between 9 a.m. and 4:30 p.m.; and (3) Dockets Management Branch (HFA–305), Rm. 4–62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 20, 1989.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–30084 Filed 12–27–89; 8:45 am]

BILLING CODE 4160–01–M

National Institutes of Health

[NIH–NIEHS–ES–90–1]

Availability of Request for Grant Application; Hazardous Materials and Waste Worker Health and Safety Training, National Institute of Environmental Health Sciences

Application Receipt Date: March 16, 1990

As a result of increased authorization and appropriation levels, the NIEHS is soliciting to expand its current program of 11 grants for hazardous materials and waste worker health and safety training. It is anticipated that approximately $10 million per year for two years will be available for non-profit organizations. Target populations include workers and supervisors engaged in:

1. Handling and processing by generators and treaters at active and inactive hazardous waste treatment, storage and disposal facilities;
2. Clean-up, removal, containment or remedial actions at hazardous waste sites;
3. Hazardous materials emergency response;
4. Hazardous waste disposal site risk assessment and investigation, remedial

actions or clean-up by State and local personnel; and

5. Transportation of hazardous

9 a.m. and recess at 5 p.m. in conference room 6.

This subcommittee meeting was

10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications. These

Summaries of the meeting may also be obtained by contacting his office.

Dated: December 19, 1989.

The meeting will be open to the public from 8:30 a.m. to 3:00 p.m. The morning agenda will include a report by the

groups in the National High Blood Pressure Education Program. Attendance by the public will be limited to space available.

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actions or clean-up by State and local personnel; and

5. Transportation of hazardous materials.

It is the intent of NIEHS to fund programs that are targeted to nationwide and regional coverage. Applications will not be considered that cover municipalities or other jurisdictions less than statewide. Grants will be made for up to a two-year period. Grants will be made for direct student and worker-trainer training, technical support of training, and training program evaluation. It is believed that adequate curricula and training materials exist for worker health and safety training that can be adapted with minimal effort. Means of multiplying training are also encouraged to meet the need; thus programs such as train-the-trainer programs are encouraged. Two or more nonprofit organizations may join in a single application and share grant resources in order to maximize worker group coverage, enhance the effectiveness of training, and bring together appropriate academic disciplines and talents.

Letters of intent are requested by February 9, 1990.

Copies of the RFA and instructions for applying may be obtained from: Mr. Denny Dobbin, Program Administrator, Worker Training Grants Program, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709–2233.

Dated: December 21, 1989.

David P. Rall,

Director, National Institute of Environmental Health Sciences.

[FR Doc. 89–30142 Filed 12–27–89; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Amended Notice of Meeting

Notice is hereby given of a change in the meeting January 18, 1990, in Building 31C, Conference Rooms 4 and 6 respectively, at the National Institutes of Health, Bethesda, Maryland of the National Advisory Allergy and Infectious Diseases Council Acquired Immunodeficiency Syndrome Subcommittee, National Institute of Allergy and Infectious Diseases, which was published in the **Federal Register** on December 8 (54 FR 50655).

This subcommittee was to have convened in open session at 10:15 a.m. and continued until recess on January 18, but has been changed to convene at 9 a.m. and recess at 5 p.m. in conference room 6.

This subcommittee meeting was scheduled to be closed to the public from 8:45 a.m. until 10:15 a.m., but has been changed to convene at 5 p.m. until recess on January 18, in conference room 9.

Dated: December 19, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–30028 Filed 12–27–89; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Amended Notice of Meeting

Notice is hereby given of a change in the meeting January 16, 1990, in Building 31C, Conference Room 6, at the National Institutes of Health, Bethesda, Maryland of the AIDS Liaison Subcommittee of the AIDS Research Advisory Committee, National Institute of Allergy and Infectious Diseases, which was published in the **Federal Register** on December 15, 1989 (54 FR 51498).

This committee was to have convened at 10:30 a.m. and continued until adjournment on January 18, but has been changed to convene at 9 a.m. and recess at 5 p.m.

Dated: December 19, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–30029 Filed 12–27–89; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders—Meeting of the Communication Disorders Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Communication Disorders Review Committee of the National Institute on Deafness and Other Communication Disorders, February 22–23, 1990 at the Hyatt Regency of Bethesda, One Metro Center, Bethesda, MD 20814.

This meeting will be open to the public on February 22 from 8:30 a.m. to 9:00 a.m. to discuss program planning, program accomplishments and special reports or other issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

This meeting will be closed to the public on February 22 from 9:00 a.m. to recess and on February 23 from 8:30 a.m. to adjournment in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications. These applications and discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

A summary of meeting, roster of committee members, and other information pertaining to the meeting can be obtained from Dr. Marilyn Semmes, Executive Secretary of the Communication Disorders Review Committee, Federal Building, Room 9C–14, National Institutes of Health, Bethesda, Maryland 20892, Telephone: 301/496–9223

(Catalog of Federal Domestic Assistance Program No. 13.853, Clinical Basis Research; No. 13.854, Biological Basis Research)

Dated: December 15, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–30032 Filed 12–27–89; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Diabetes and Digestive and Kidney Diseases; Meeting, National Digestive Diseases Advisory Board

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Digestive Diseases Advisory Board on February 11–12, 1990. The meeting will begin at 8:30 a.m. February 11 and recess at 5 p.m. It will reconvene at 6:30 p.m. to recess at 10 p.m. and on February 12 will reconvene at 8 a.m. to adjourn at 4 p.m. The meeting, which will be open to the public, will be held at the Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, Virginia 22032. The meeting will include a conference of liver transplantation as well as discussion regarding the Board's activities and continued evaluation of the implementation of the long-range digestive diseases plan. The conference portion of the meeting will enable the Board to develop a position statement on selected issues regarding liver transplantation that will aid the Board in its subsequent recommendations. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

Mr. Raymond M. Kuehne, Executive Director, National Digestive Diseases Advisory Board, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 496–6045, will provide on request an agenda and roster of the members.

Summaries of the meeting may also be obtained by contacting his office.

Dated: December 19, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–30030 Filed 12–27–89; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Environmental Health Sciences; Meeting of Board of Scientific Counselors, Division of Biometry and Risk Assessment

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, DBRA, January 9–10, 1990, in Building 101 Conference Room, South Campus, NIEHS, Research Triangle Park, North Carolina.

This meeting will be open to the public 8:30 a.m. to 5 p.m. on January 9, for the purpose of presenting an overview of the organization and conduct of research in the Epidemiology Branch. Attendance by the public will be limited to space available. In accordance with the provisions set forth in section 552b(c)(6) of title 5 U.S. Code and section 10(d) of Public Law 92–463, the meeting will be closed to the public on January 10, for the evaluation of the Epidemiology Branch, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Executive Secretary, Dr. David Hoel, Director, Division of Biometry and Risk Assessment, NIEHS, Research Triangle Park, NC 27709, telephone (919) 541–3441, FTS 629–3441, will furnish summaries of the meeting, rosters of committee members and substantive program information.

Dated: December 15, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–30031 Filed 12–27–89; 8:45 am]

BILLING CODE 4140–01–M

John E. Fogarty International Center for Advanced Study in the Health Sciences; Meeting of the Fogarty International Center Advisory Board

Pursuant to Public Law 92–463, notice is hereby given of the fourteenth meeting of the Fogarty International Center (FIC) Advisory Board, February 6, 1990, in the Stone House (Building 16), at the National Institutes of Health.

The meeting will be open to the public from 8:30 a.m. to 3:00 p.m. The morning agenda will include a report by the Director of the FIC; a status report on FIC program planning; an update on the FIC Latin American initiative; reports on opportunities for U.S. biomedical science collaborations in relation to the "European Community 1992," Eastern Europe, and Japan; and a presentation on "Genetics of Coronary Heart Disease and Other Common Disorders" by an FIC Scholar-in-Residence from the University of Oslo, Norway.

The afternoon agenda will include a discussion of the draft report of the Advisory Board for its 1989 and 1990 Biennial Report to Congress; and reports on the Advisory Committee to the Director, NIH; and the status of implementation of the study of international collaboration for oral health research.

In accordance with the provisions of secs. 552b(c)(4) and 552(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting will be closed to the public from 3:30 p.m. to adjournment for the review of applications, nominations, Scholars' conferences, and proposed international studies.

Myra Halem, Committee Management Officer, Fogarty International Center, Building 38A, Room 609, National Institutes of Health, Bethesda, Maryland 20892 (301–496–1491), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Coralie Farlee, Assistant Director for Planning and Evaluation, Fogarty International Center (Executive Secretary), Building 38A, Room 609, telephone 301–496–1491, will provide substantive program information.

Dated: December 15, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–30025 Filed 12–27–89; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting

Notice is hereby given of the meeting of the National High Blood Pressure Education Program Coordinating Committee, sponsored by the National Heart, Lung, and Blood Institute on January 26, 1990, from 9 a.m. to 1:30 p.m., at the Bethesda Hyatt Regency Hotel, One Bethesda Metro Center, Wisconsin Avenue, Bethesda, Maryland 20814, (301) 657–1234.

The entire meeting is open to the public. The Coordinating Committee is meeting to define the priorities, activities, and needs of the participating groups in the National High Blood Pressure Education Program. Attendance by the public will be limited to space available.

For the detailed program information, agenda, list of participants, and meeting summary, contact: Dr. Edward J. Roccella, Coordinator, National High Blood Pressure Education Program, Office of Prevention, Education and Control, National Heart, Lung, and Blood Institute, National Institutes of Health, Building 31, Room 4A05, Bethesda, Maryland 20892, (301) 496–0554.

Dated: December 15, 1989.

William F. Raub,

Acting Director, NIH.

[FR Doc. 89–30027 Filed 12–27–89; 8:45 am]

BILLING CODE 4140–01–M

National Center for Nursing Research; Meeting: National Advisory Council for Nursing Research

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Council for Nursing Research, National Center for Nursing Research, February 15–16, 1990, Building 31, Conference Room 6, National Institutes of Health, Bethesda, Maryland 20892.

This meeting will be open to the public on February 15, from 9 a.m. to 2:30 p.m. and on February 16 from approximately 9:30 a.m. to adjuournment. Agenda items to be discussed will include the NCNR Director's Report, NCNR Collaborative Intramural Program, Report on the 1989 NIH Task Force on Nursing Research, and Clinical Trials Panel.

Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting will be closed to the public on February 15 from 2:30 p.m. to recess and on February 16 from 8:30 a.m. to approximately 9:30 a.m. for the completion of the review, discussion, and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Ruth K. Aladj, Executive Secretary, National Advisory Council for Nursing Research, National Insitutes of Health, Building 31, Room 5–B–23,

Bethesda, Maryland 20892, (301) 496–0207, will provide a summary of the

The Committee is interested in the views of organizations comprised of or

toll-free number. Copies of the proposed forms and other available documents

	Number of respondents	×	Frequency of response	×	Hours per Response	=	Burden hours

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Bethesda, Maryland 20892, (301) 496–0207, will provide a summary of the meeting, roster of committee members, and substantive program information upon request.

Dated: December 15, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–30026 Filed 12–27–89; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Advisory Committee on the National Institutes of Health; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the Advisory Committee on the National Institutes of Health (NIH) will meet on January 29, 1990. The meeting is open to the public and will be held in Room 800 of the Humphrey Building, 200 Independence Avenue, SW., Washington, DC, from 3 p.m. to 6 p.m.

The Advisory Committee on the NIH was established to advise and make recommendations to the Secretary of Health and Human Services and the Assistant Secretary for Health on strengthening the position of Director, NIH, in order to prepare the NIH for the challenges of the 1990's and beyond. The Committee will address the following broad questions:

What are the forces that brought NIH to the position it currently enjoys as the leader of the Nation's biomedical research enterprise? Are these forces changing?

What major challenges will the NIH be facing in the 1990's and beyond?

What kind of NIH is needed to meet these challenges?

What type of individual is needed to fill the position of Director, NIH? What is the relative importance of managerial skills, ability to stimulate innovation and work with industry, educational background and training, ability to lead the Nation's biomedical research enterprise, and other factors?

What factors are responsible for diminishing the attractiveness of the position of Director, NIH? and

What changes are needed to strengthen the position of Director, NIH, and to prepare the NIH for the challenges of the 1990's and beyond?

The focus of discussion at the January 29 meeting will be specific options for strengthening the position of Director, NIH.

The Committee is interested in the views of organizations comprised of or representing individuals or groups knowledgeable in the fields of biomedical research, medicine, and research management. Written comments are sought on the broad questions under consideration by the Committee, emphasizing any changes needed to strengthen the position of Director, NIH, and to prepare the NIH for the challenges of the 1990's and beyond. All written comments will be distributed to the Committee prior to the beginning of the meeting. A summary of the public comments will be presented at the beginning of the meeting.

Written comments should be brief and should be forwarded by mail to Dr. Patricia Hoben, Office of the Assistant Secretary for Health, Room 740 G Humphrey Building, 200 Independence Avenue, SW., Washington, DC, 20201, no later than January 22, 1990.

Dated: December 21, 1989.

James O. Mason,

Assistant Secretary for Health and Acting Surgeon General.

[FR Doc. 89–30018 Filed 12–27–89; 8:45 am]

BILLING CODE 4110–80–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–89–2093]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to:

John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: December 20, 1989.

John T. Murphy,

Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Mortgage Banker's Financial Reporting Form

A. Statement of Condition

B. Statement of Income

C. Additional Information

Office: Government National Mortgage Association (GNMA)

Description of the Need for the Information and Its Proposed Use: GNMA monitors the financial conditions of all GNMA securities issuers and servicers by reviewing their financial statements. Form 11750 would standardize the balance sheet and income statement as well as facilitate electronic analysis of the information. All mortgage banking companies issuing or servicing GNMA securities would be required to complete this form.

Form Number: 11750

Respondents: Businesses or Other For-Profit

	Number of respondents	×	Frequency of response	×	Hours per Response	=	Burden hours
Form 11750	700		4		1		2,800

Frequency of Submission: Quarterly

Reporting Burden:

Total Estimated Burden Hours: 2,800

Status: New

Contact: George Anderson, HUD (202) 755–2884, John Allison, OMB, (202) 395–6880

Dated: December 20, 1989.

[FR Doc. 89–30023 Filed 12–27–89; 8:45 am]

BILLING CODE 4210–01–M

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N–89–2063; FR–2709–N–2]

Fair Housing Initiative Program; Competitive Solicitation

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of extension of deadline for submission of applications.

SUMMARY: On November 28, 1989 (54 FR 49030), the Department published in the **Federal Register**, a Notice of Funding Availability for the Fair Housing Initiatives Program; Competitive Solicitation. The notice solicited applications, from eligible State and local fair housing agencies and from public or private organizations formulating or carrying out programs to prevent or eliminate discriminatory housing practices, for funding under the Education and Outreach Initiative of the Fair Housing Initiatives Program (FHIP). The notice stated that applications were due by December 28, 1989. Today's notice extends the application deadline for an indefinite period, pending publication of a further notice giving a due date.

FOR FURTHER INFORMATION CONTACT: Marion F. Connell, Director, Programs Division, Office of Fair Housing and Equal Opportunity, Room 5212, 451 Seventh Street, SW., Washington, DC 20410–2000. Telephone: (202) 755–0455 (V and TDD) (This is not a toll-free number.) Application kits may be requested in writing or by telephone from the person listed above. To ensure a prompt response, it is suggested that requests for application kits be made by telephone. While, at this writing, application kits are not ready for distribution, they may be requested immediately, and will be forwarded as promptly as possible. (Previous FHIP applicants will automatically receive a copy of the kit.)

DATES: The application submission deadline for funding under the November 28, 1989 Notice is extended for an indefinite period, pending publication of a further notice giving a due date.

SUPPLEMENTARY INFORMATION: On February 10, 1989 (54 FR 6492), HUD published a final rule implementing the Fair Housing Initiatives Program (FHIP) authorized under section 561 of the Housing and Community Development Act of 1987 (Pub. L. 100–242, approved February 5, 1988). Under FHIP, HUD provides funding to State and local governments or their agencies, and to other public or private entities formulating or carrying out programs to prevent or eliminate discriminatory housing practices.

An initial Notice of Funding Availability under the revised FHIP program was published on April 25, 1989 (54 FR 17872). A second FY 1989 notice announcing the availability of $1.7 million in additional funding available under FHIP's Education and Outreach Initiative was published November 28, 1989 (54 FR 49030). That notice stated that applications were due by December 28, 1989. Today's notice extends the application deadline for an indefinite period, pending publication of a further notice giving a due date. (The published notice of the new application deadline will afford applicants no less than 30 days to submit timely applications.) The extension announced today will permit eligible applicants to review certain changes recently included in the application package. Applicants are encouraged to retain their application materials for submission following the publication of HUD's future announcement of the application due date, in case any changes in circumstances relevant to the applications are announced at that time.

Dated: December 21, 1989.

Gordon H. Mansfield,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 89–30024 Filed 12–27–89; 8:45 am]

BILLING CODE 4210–28–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA220–00–4320–12]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau of Land Management's (BLM) Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the BLM Clearance Officer and to the Office of Management and Budget, Paperwork Reduction Project (1004–0041), Washington, DC 20503, telephone (202) 395–7340.

Title: Grazing Preference Statement, 43 CFR 4130.1–1.

OMB Approval Number: 1004–0041.

Abstract: This form is used to notify permittees of the status of their grazing preference (qualifications) and to make application for changing the grazing authorization specified in a grazing permit or lease.

Bureau Form Number: 4130–3.

Frequency: Annually.

Description of Respondents: Permittees or lessees authorized to graze livestock on public lands.

Estimated Completion Time: 14 minutes.

Annual Responses: 7,685.

Annual Burden Hours: 1,794.

Bureau Clearance Officer (Alternate): Rick Iovaine 202–653–8853.

Dated: November 22, 1989.

Frank W. Snell,

Acting Assistant Director, Land and Renewable Resources.

[FR Doc. 89–30138 Filed 12–27–89; 8:45 am]

BILLING CODE 4310–84–M

BEST COPY AVAILABLE

[CA–010–00–4333.11]

Meeting of the Bakersfield District Advisory Council

Act of 1972. This notice constitutes a reopening of the comment period of this application due to a change in

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is

SUPPLEMENTARY INFORMATION: On November 27, 1989, the president AL] issued an ID [Order No. 21) terminating the investigation with respect to Man's.

settlement agreement. No petitions for review or agency or public comments were filed.

Copies of the non-confidential version

Act of 1930, as amended. The Commission has determined that a full discussion of the domestic industry and of the indicators that the Commission

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[CA-010-00-4333.11]

Meeting of the Bakersfield District Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting of the Bakersfield District Advisory Council.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92-463) and the Federal Land Policy and Management Act of 1976 (sec. 309), the Bakersfield District Advisory Council will meet in Bakersfield, California.

DATES: January 26-27, 1990.

ADDRESSES: Meeting from 2:00 p.m. to 5:00 p.m. Friday, January 26 in the Kern Council of Governments meeting room, 2nd floor, 1401 19th Street, Suite 200, Bakersfield. Field trip to Carrizo Plain Natural Area leaving from 4301 Rosedale Highway, Bakersfield at 8:00 a.m. Saturday, January 27.

SUPPLEMENTARY INFORMATION: The Bakersfield District Advisory Council is a 10 person council appointed by the Secretary of the Interior to give counsel and advice regarding planning and management of the public lands resources to the District Manager of the Bureau of Land Management Bakersfield District. The Council will meet for a field trip to the Carrizo Plain Natural Area in eastern San Luis Obispo County. The agenda of the Friday afternoon meeting in Bakersfield will include a briefing on the Natural Area by BLM personnel. The meeting is open to the public, and anyone wishing to address the Council about any public land issue is welcome to speak during the public comment period from 4:00 to 5:00 p.m. Written comments may be submitted to the address below.

FOR FURTHER INFORMATION CONTACT: Larry Mercer, Public Affairs Officer, Bureau of Land Management, Bakersfield District Office, 800 Truxtun Avenue, Room 311, Bakersfield, CA 93301; (805) 861-4229.

Dated: December 19, 1989.

Nancy Cotner,

Associate District Manager.

[FR Doc. 89-30061 Filed 12-27-89; 8:45 am]

BILLING CODE 4310-40-M

Fish and Wildlife Service

Reopening of Public Comment Period on Marine Mammal Application

The public is invited to comment on the following application for a marine mammal permit public display permit under the Marine Mammal Protection Act of 1972. This notice constitutes a reopening of the comment period of this application due to a change in circumstances in the application.

Applicant: Marine World-Umino-Nakamichi Fukuoka, Japan, PRT-735558

On March 27, 1989, a notice was published in the **Federal Register** (Vol. 54, No. 57) that an application had been filed with the Fish and Wildlife Service (Service) by Marine World-Umino-Nakamichi, Kaiyo Seitai Kagakukan Col., Ltd., Fukouka, Fukuoka-Pref., 811-03 Japan, for a permit to capture and export five Alaska sea otters for the purpose of public display. The sea otters were to be captured in or near the Prince William Sound, Alaska.

The Marine World-Umino-Nakamichi application was subsequently withdrawn by the Office of Management Authority due to the occurrence of the Exxon Valdez oil spill in the Prince William Sound on March 24, 1989, because the Service was unable to justify any captures of sea otters for public display from the Prince William Sound and affected spill areas until damage to the sea otter population could be assessed.

Subsequent to the oil spill recovery effort, the Service rescued several young orphaned sea otter pups from the affected area which were transferred to the Point Defiance Aquarium in Tacoma, Washington, on September 11, where they received intensive care and monitoring. The first six months of a sea otter's life in the wild with its mother is critical for teaching the young otter how to survive. Since the rescued otter pups were deprived of that essential period in their behavioral development, the Service has determined that these pups affected by the oil spill would not be capable of surviving if returned to their habitat and are therefore deemed nonreleasable.

Because the Marine World-Umino-Nakamichi had initially applied to the Service for a permit to take sea otters from the wild, and the nonreleasable pups are now in need of placement, the five pups (1 male, 4 females) were made available to Marine World-Umino-Nakamichi on the condition that the aquarium receive the necessary authorization under the Marine Mammal Protection Act and the Convention on International Trade in Endangered Species (CITES).

These sea otters will remain subject to the jurisdiction and control of the Fish and Wildlife Service, but would be on permanent loan to the aquarium, subject to all special conditions of the permit and subject to recall by the Service at any time.

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee for Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application or requests for a public hearing on this application should be submitted to the Director, Office of Management Authority, P.O. Box 3507, Arlington, Virginia 22203-3507 within 30 days of the publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents submitted in connection with the above application are available for review during normal business hours (7:45 am to 4:15 pm) at 4401 North Fairfax Drive, Room 432, Arlington, Virginia.

Dated: December 21, 1989.

Karen Willson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 30021 Filed 12-27-89; 8:45 am]

BILLING CODE 4310-55-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-295]

Certain Novelty Teleidoscopes; Commission Decision Not To Review Initial Determination Terminating One Respondent on the Basis of a Consent Order; Issuance of Consent Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) issued by the presiding administrative law judge (ALJ) terminating respondent Man's Trading Co. (Man's) from the above-captioned investigation on the basis of a consent order.

FOR FURTHER INFORMATION CONTACT: George Thompson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1090. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

SUPPLEMENTARY INFORMATION: On November 27, 1989, the president ALJ issued an ID (Order No. 21) terminating the investigation with respect to Man's. The ID granted a joint motion of complainant Homespun Imports, Inc., d/b/a Silver Deer Ltd. and Man's to terminate the investigation with respect to Man's on the basis of a consent order.

No petitions for review of the ID or government agency of public comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission interim rules 210.53(h), 211.20, and 211.21. 19 CFR 210.53(h), 211.20, and 211.21.

By order of the Commission.

Issued: December 19, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-30105 Filed 12-27-89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-296]

Commission Determination Not To Review Initial Determination Granting Terminating Investigation on the Basis of a Settlement Agreement

In the matter of: certain Phenylene Sulfide Polymers and Polymer compounds and products containing same.

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has determined not to review the presiding administrative law judge's (ALJ) initial determination (ID) terminating the above-captioned investigation on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Cynthia P. Johnson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-252-1098.

SUPPLEMENTARY INFORMATION: The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in § 210.53(h) of the Commission's Interim Rules of Practice and Procedure (19 CFR 207.53(h)).

On November 8, 1989, all of the parties in the investigation filed a joint motion to terminate the investigation on the basis of the settlement agreement. On November 24, 1989, the presiding ALJ issued an ID (Order No. 154) terminating the investigation on the basis of the settlement agreement. No petitions for review or agency or public comments were filed.

Copies of the non-confidential version of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: December 21, 1989.

[FR Doc. 89-30122 Filed 12-27-89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-433]

Certain Residential Door Locks and Parts Thereof From Taiwan; Commission Determination To Conduct a Portion of a Hearing In Camera

AGENCY: U.S. International Trade Commission.

ACTION: Closure of a portion of a Commission hearing to the public.

SUMMARY: Upon request of the petitioner in the above-captioned final investigation, the Commission (Commissioner Lodwick and Commissioner Newquist dissenting) has determined to conduct a portion of its hearing scheduled for December 21, 1989, *in camera*. *See* Commission rules 201.13 and 201.35(b)(3) (19 CFR 201.13 and 201.35(b)(3)). The remainder of the hearing will be open to the public.

FOR FURTHER INFORMATION CONTACT: Laurie B. Horvitz, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202)-252-1107. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on (202)-252-1810.

SUPPLEMENTARY INFORMATION: The Commission believes that petitioner has demonstrated circumstances justifying closure of the hearing for the presentation and discussion of certain company-specific business proprietary information that is relevant to the Commission's analysis under the Tariff Act of 1930, as amended. The Commission has determined that a full discussion of the domestic industry and of the indicators that the Commission examines in assessing material injury by reason of subject imports could only take place if at least part of the hearing were held *in camera*. In making this decision, the Commission nevertheless reaffirms its belief that wherever possible its business should be conducted in public.

The hearing will begin with the usual public presentation by petitioner, followed by questioning of petitioner by the Commission. Respondents will then make their public arguments, and be questioned as appropriate by the Commission. Following respondents' public presentation and questioning, an *in camera* session concerning petitioner's BPI will begin. For this, the room will be cleared of all persons except: (1) Those who have been granted access to business proprietary information under a Commission administrative protective order (APO) and are included on the Commission's APO service list in this investigation, (2) personnel of petitioner, if any, representing the company submitting the BPI, and (3) personnel of the Commission, including the court reporter. *See* 19 CFR 201.35(b)(1)(2). In the *in camera* session, respondents may make a presentation, limited to a discussion of petitioner's BPI, to be followed by questions from the Commission as appropriate. Petitioner will than have an opportunity to respond, and may also be questioned by the Commission as appropriate.

Following the *in camera* session, the Commission may determine that it is appropriate to reopen the hearing to the public for concluding statements or for additional public questioning by the Commission. The time for the parties' presentations in the *in camera* session will be taken from their respective overall allotments for the hearing. All those planning to attend the *in camera* portions of the hearing should be prepared to present proper identification.

Authority: The General Counsel has certified, in accordance with the procedures set out in Commission Rule 201.39 (19 CFR 201.39) that, in her opinion, a portion of the Commission's hearing in Certain Residential Dook Locks and Parts Thereof from Taiwan, Inv. No. 731-TA-433 (Final) may be closed to the public to prevent the disclosure of business proprietary information.

By order of the Commission.

Issued: December 20, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-30106 Filed 12-27-89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-297]

Certain Residential Door Locks and Parts Thereof From Taiwan; Commission Determination To Conduct a Portion of a Hearing In Camera

AGENCY: U.S. International Trade Commission.

ACTION: Closure of a portion of a Commission hearing to the public.

SUMMARY: Upon request of the petitioner in the above-captioned final investigation, the Commission (Commissioner Lodwick and Commissioner Newquist dissenting) has determined to conduct a portion of its hearing scheduled for December 21, 1989, *in camera*. *See* Commission rules 201.13 and 201.35(b)(3) (19 CFR 201.13 and 201.35(b)(3)). The remainder of the hearing will be open to the public.

FOR FURTHER INFORMATION CONTACT: Laurie B. Horvitz, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202)-252-1107. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on (202)-252-1810.

SUPPLEMENTARY INFORMATION: The Commission believes that petitioner has demonstrated circumstances justifying closure of the hearing for the presentation and discussion of certain company-specific business proprietary information that is relevant to the Commission's analysis under the Tariff Act of 1930, as amended. The Commission has determined that a full discussion of the domestic industry and of the indicators that the Commission examines in assessing material injury by reason of subject imports could only take place if at least part of the hearing were held *in camera*. In making this decision, the Commission nevertheless reaffirms its belief that wherever possible its business should be conducted in public.

The hearing will begin with the usual public presentation by petitioner, followed by questioning of petitioner by the Commission. Respondents will then make their public arguments, and be questioned as appropriate by the Commission. Following respondents' public presentation and questioning, an *in camera* session concerning petitioner's BPI will begin. For this, the room will be cleared of all persons except: (1) Those who have been granted access to business proprietary information under a Commission administrative protective order (APO) and are included on the Commission's APO service list in this investigation, (2) personnel of petitioner, if any, representing the company submitting the BPI, and (3) personnel of the Commission, including the court reporter. *See* 19 CFR 201.35(b)(1)(2). In the *in camera* session, respondents may make a presentation, limited to a discussion of petitioner's BPI, to be followed by questions from the Commission as appropriate. Petitioner will than have an opportunity to respond, and may also be questioned by the Commission as appropriate.

Following the *in camera* session, the Commission may determine that it is appropriate to reopen the hearing to the public for concluding statements or for additional public questioning by the Commission. The time for the parties' presentations in the *in camera* session will be taken from their respective overall allotments for the hearing. All those planning to attend the *in camera* portions of the hearing should be prepared to present proper identification.

Authority: The General Counsel has certified, in accordance with the procedures set out in Commission Rule 201.39 (19 CFR 201.39) that, in her opinion, a portion of the Commission's hearing in Certain Residential Dook Locks and Parts Thereof from Taiwan, Inv. No. 731-TA-433 (Final) may be closed to the public to prevent the disclosure of business proprietary information.

By order of the Commission.

Issued: December 20, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-30107 Filed 12-27-89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-298]

Certain Residential Door Locks and Parts Thereof From Taiwan; Commission Determination To Conduct a Portion of a Hearing In Camera

AGENCY: U.S. International Trade Commission.

ACTION: Closure of a portion of a Commission hearing to the public.

SUMMARY: Upon request of the petitioner in the above-captioned final investigation, the Commission (Commissioner Lodwick and Commissioner Newquist dissenting) has determined to conduct a portion of its hearing scheduled for December 21, 1989, *in camera*. *See* Commission rules 201.13 and 201.35(b)(3) (19 CFR 201.13 and 201.35(b)(3)). The remainder of the hearing will be open to the public.

FOR FURTHER INFORMATION CONTACT: Laurie B. Horvitz, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202)-252-1107. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on (202)-252-1810.

SUPPLEMENTARY INFORMATION: The Commission believes that petitioner has demonstrated circumstances justifying closure of the hearing for the presentation and discussion of certain company-specific business proprietary information that is relevant to the Commission's analysis under the Tariff Act of 1930, as amended. The Commission has determined that a full discussion of the domestic industry and of the indicators that the Commission examines in assessing material injury by reason of subject imports could only take place if at least part of the hearing were held *in camera*. In making this decision, the Commission nevertheless reaffirms its belief that wherever possible its business should be conducted in public.

The hearing will begin with the usual public presentation by petitioner, followed by questioning of petitioner by the Commission. Respondents will then make their public arguments, and be questioned as appropriate by the Commission. Following respondents' public presentation and questioning, an *in camera* session concerning petitioner's BPI will begin. For this, the room will be cleared of all persons except: (1) Those who have been granted access to business proprietary information under a Commission administrative protective order (APO) and are included on the Commission's APO service list in this investigation, (2) personnel of petitioner, if any, representing the company submitting the BPI, and (3) personnel of the Commission, including the court reporter. *See* 19 CFR 201.35(b)(1)(2). In the *in camera* session, respondents may make a presentation, limited to a discussion of petitioner's BPI, to be followed by questions from the Commission as appropriate. Petitioner will than have an opportunity to respond, and may also be questioned by the Commission as appropriate.

Following the *in camera* session, the Commission may determine that it is appropriate to reopen the hearing to the public for concluding statements or for additional public questioning by the Commission. The time for the parties' presentations in the *in camera* session will be taken from their respective overall allotments for the hearing. All those planning to attend the *in camera* portions of the hearing should be prepared to present proper identification.

Authority: The General Counsel has certified, in accordance with the procedures set out in Commission Rule 201.39 (19 CFR 201.39) that, in her opinion, a portion of the Commission's hearing in Certain Residential Dook Locks and Parts Thereof from Taiwan, Inv. No. 731-TA-433 (Final) may be closed to the public to prevent the disclosure of business proprietary information.

By order of the Commission.

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Issued: December 20, 1989.
Kenneth R. Mason,
Secretary.
[FR Doc. 89-30121 Filed 12-27-89; 8:45 am]
BILLING CODE 7020-02-M

[Investigation No. 731-TA-435 (Final)]

Certain Steel Pails From Mexico

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigation.

EFFECTIVE DATE: December 13, 1989.

FOR FURTHER INFORMATION CONTACT: Brian C. Walters (202-252-1198), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPLEMENTARY INFORMATION: On November 27, 1989, the Commission instituted the subject investigation and established a schedule for its conduct (54 F.R. 50445, December 6, 1989). Subsequently, the Department of Commerce extended the date for its final determination in the investigation from January 22, 1990, until not later than March 23, 1990 (54 FR 50523, December 7, 1989). The Commission, therefore, is revising its schedule in the investigation to conform with Commerce's new schedule.

The Commission's new schedule for the investigation is as follows: requests to appear at the hearing must be filed with the Secretary to the Commission not later than March 14, 1990; the prehearing conference will be held at the U.S. International Trade Commission Building on March 19, 1990; the prehearing staff report will be placed in the nonpublic record on March 12, 1990; the deadline for filing prehearing briefs is March 22, 1990; the hearing will be held at the U.S. International Trade Commission Building on March 27, 1990; the deadline for filing post hearing briefs is April 3, 1990, and the deadline for Parties to file additional written comments on business proprietary information is April 9, 1990.

For further information concerning the investigation see the Commission's notice of investigation cited above and the commission's rules of Practice and procedure, part 207, subparts A and C (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201), as amended.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.
Issued: December 19, 1989.
Kenneth R. Mason,
Secretary.
[FR Doc. 89-30120 Filed 12-27-89; 8:45 am]
BILLING CODE 7020-02-M

Tapered Roller Bearings and Parts Thereof, and Certain Housings Incorporating Tapered Rollers From Romania; Request for Comments Concerning the Institution of a Section 751(b) Review Investigation

AGENCY: United States International Trade Commission.

ACTION: Request for comments regarding the institution of a section 751(b) review investigation concerning the Commission's affirmative determination in investigation No. 731-TA-345 (Final), Tapered Roller Bearings and Parts Thereof, and Certain Housings Incorporating Tapered Rollers from Romania.

SUMMARY: The Commission invites comments from the public on whether changed circumstances exist sufficient to warrant the institution of an investigation pursuant to section 751(b) of the Tariff Act of 1930 (19 U.S.C. 1675(b)) (the act) to review the Commission's affirmative determination in investigation No. 731-TA-345 (Final), regarding tapered roller bearings and parts thereof, and certain housings incorporating tapered rollers (TRBs) from Romania. The purpose of the proposed review investigation is to determine whether an industry in the United States would be materially injured, or would be threatened with material injury, or the establishment of an industry in the United States would be materially retarded, by reason of imports of TRBs from Romania if the antidumping order regarding such merchandise were to be modified or revoked. Tapered roller bearings, parts thereof, and certain housings incorporating tapered rollers are provided for in subheadings 8482.20.00, 8482.91.00, and 8482.99.30, subheading 8483.20.40, and heading 8708, respectively, of the Harmonized Tariff Schedule of the United States.

FOR FURTHER INFORMATION CONTACT: Lisa Zanetti (202-252-1189), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background

On May 8, 1987, the Department of Commerce determined that imports of tapered roller bearings and parts thereof from Romania were being sold in the United States at less than fair value (LTFV) within the meaning of section 731 of the act (19 U.S.C. 1673) (52 FR 17433); and on June 5, 1987, the Commission determined, pursuant to section 735(b)(1) of the act (19 U.S.C. 1673d(b)(1)), that an industry in the United States was materially injured by reason of imports of such LTFV merchandise.

On November 22, 1989, the Commission received a request to review its affirmative determination in investigation No. 731-TA-345 (Final) pursuant to section 751(b) of the act (19 U.S.C. 1675(b)). The request was filed by counsel on behalf of UCF America Inc., Pennsauken, NJ, an importer of TRBs from Romania.

Written Comments Requested: Pursuant to § 207.45(b)(2) of the Commission's Rules of Practice and Procedure (19 CFR 207.45(b)(2)), the Commission requests comments concerning whether the following alleged changed circumstances are sufficient to warrant institution of a review investigation: (1) The Court of International Trade, in ruling that imports from socialist countries were improperly cumulated by the Commission (*Marsuda-Rodgers International* v. *United States*, 13 CIT at ———, op. 89-106, July 26, 1989), has invalidated the determination rendered in the initial investigation involving imports of TRBs from Romania; (2) Romania lost most-favored-nation (MFN) status in July 1988, resulting in a dramatic increase in the tariffs on Romanian TRBs exported to the United States; (3) the performance of the domestic TRB industry has improved markedly since the initial investigation such that continued imposition of antidumping duties against imports of TRBs from Romania is no longer warranted; and (4) assuming *arguendo* that the Timken Company (petitioner in the original investigation) once competed with Romanian TRBs in the low end of the TRB market, this competition no longer exists. Timken now markets TRBs manufactured by its Brazilian subsidiary, Timken do Brasil.

Written Submissions: In accordance with § 201.8 of the Commission's rules (19 CFR 201.8), the signed original and 14 copies of all written submissions must be filed with the Secretary to the Commission, 500 E Street SW, Washington, DC 20436. All comments must be filed no later than 30 days after the date of publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request business confidential treatment under § 201.6 of the Commission's rules (19 CFR 201.6). Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. Each sheet must clearly be marked at the top "Confidential Business Information." The Commission will either accept the submission in confidence or return it. All nonconfidential written submissions will be available for public inspection in the Office of the Secretary.

Copies of the request for review of the injury determination and any other documents in this matter are available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission; telephone 202-252-1000.

By order of the Commission.
Issued: December 18, 1989.
[FR Doc. 89-30104 Filed 12-27-89; 8:45 am]
BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

Finance Docket No. 31387 (Sub-No. 2)

Chicago Rail Link—Operation Exemption—Canadian National Railway Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Pursuant to 49 U.S.C. 10505, the Commission on its own motion exempts from the requirements of 49 U.S.C. 11343, *et seq.*, the operation by Chicago Rail Link of the Railport intermodal facility being leased by Canadian National Railway Company (CN), subject to standard labor conditions. In a related proceeding currently pending before the Commission, Finance Docket No. 31387 (Sub-No. 1), Canadian National Railway Company—Lease from Grand Trunk Western Railroad Company, CN has filed an application under 49 U.S.C. 11343, *et seq.*, for approval to lease the Railport facility from Grand Trunk Western Railroad. A separate decision will be issued in that proceeding.

DATES: This exemption is effective on January 29, 1990. Petitions to stay the effectiveness of the exemption must be filed by January 8, 1990, and petitions for reconsideration must be filed by January 18, 1990.

ADDRESSES: Send pleadings referring to Finance Docket No. 31387 (Sub-No. 2) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Carriers' representative, Charles A. Spitulnik, 888 Sixteenth Street NW., Washington, DC 20006

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245, [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275-1721].

Decided: December 19, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Lamboley, Phillips and Emmett. Vice Chairman Simmons and Commissioner Lamboley would have deferred action on the operation issue pending final action on the lease transaction.

Kathleen M. King,
Acting Secretary.
[FR Doc. 89-30170 Filed 12-27-89; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of a Consent Decree Pursuant to CERCLA

In accordance with Section 122 of the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9622 and Departmental policy, 28, CFR 50.7, notice is hereby given that on December 18, 1989, a proposed consent decree in *United States* v. *Avondale Industries, Inc.*, was lodged with the United States District Court for the Middle District of Louisiana in Civil Action No. 89-957B. The decree resolves claims of the United States against twenty potentially responsible parties under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, in connection with the Dutchtown Superfund Site, located in Dutchtown, Louisiana.

Under this Consent Decree, the settling parties agree to implement the removal action selected for the Dutchtown Site which will include off-site thermal destruction of the oils and sludges present on-site, treatment and discharge of the contaminated water in the pits, treatment of any contaminated soils to below a health-based level, and dismantling and disposal of onsite structures and equipment. The settling parties further agree to pay $409,464.19 to reimburse the United States for a portion of its past response costs incurred at the Dutchtown Site and to pay all future costs incurred by the government in oversight of the response action.

The proposed Decree may be examined at the office of the United States Attorney for the Middle District of Louisiana, 352 Florida Street, Second Floor, Baton Rouge, Louisiana 70801 (contact: John Gaupp (504) 389-0443); at the Region 6, Office of Regional Counsel, Environmental Protection Agency, 1445 Ross Avenue, 12th Floor, Dallas, TX 75202 (contact: D. Bruce Jones (214) 655-2120); and at the Environmental Enforcement Section, Land and Natural Resources Division of the United States Department of Justice, Room 1515, 10th and Pennsylvania Avenue NW., Washington, DC 20530. In requesting copies, please enclose a check in the amount of $4.70 (10 cents per page reproduction charge) payable to the Treasurer of the United States. The Department of Justice will receive written comments relating to the proposed consent decree for a period of thirty (30) days from the date of this notice. Comments should be addressed to Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Avondale Industries, Inc.* (M.D. La.), DOJ Reference No. 90-11-2-428.

Richard B. Stewart,
Assistant Attorney General, Land and Natural Resources Division.
[FR Doc. 89-30140 Filed 12-27-89; 8:45 am]
BILLING CODE 4410-01-M

Lodging of a Consent Decree Pursuant to CERCLA

In accordance with section 122 of the Comprehensive Environmental Response Compensation and Liability

Act ("CERCLA"), 42 U.S.C. 9622 and Departmental policy, 28 CFR 50.7, notice

[AAG/A Order No. 29-89]

Privacy Act of 1974; Computer

the agency will receive electronically from the INS data base the following

Bittner issued her opinion and recommended ruling, findings of fact, conclusions of law and decision. In

Registration. See 46 FR 49937 (October 28, 1983).

In applying for a new registration,

to prescribe Schedules IV and V controlled substances."

On September 19, 1987, Respondent filed an application for DEA registration

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Act ("CERCLA"), 42 U.S.C. 9622 and Departmental policy, 28 CFR 50.7, notice is hereby given that on December 18, 1989, a proposed consent decree in United States v. E.I. du Pont de Nemours and Company, was lodged with the United States District Court for the Southern District of Iowa in Civil Action No. 89-175-D-1. The decree resolves claims of the United States against E.I. du Pont de Nemours ("DuPont") and Lewis and Lynn Todtz under Sections 106 and 107 of CERCLA, 42 U.S.C 9606 and 9607, in connection with the 2.7 acre DuPont Impoundment located within the larger 12 acre Lawrence Todtz Superfund Site in Camanche, Iowa.

Under this Consent Decree, DuPont agrees to implement the remedial action selected by EPA in the ROD, including two contingent operable units if one or more trigger constituents are found in specified concentrations in the groundwater. DuPont also agrees to pay $450,000 to reimburse the United States for a portion of its remaining response costs incurred at the Site. The Todtz's agree to provide DuPont with access for cleanup.

The proposed Decree may be examined at the office of the United States Attorney for the Southern District of Iowa, 115 U.S. Courthouse, East 1st & Walnut Streets, Des Moines, Iowa 50309 (contact: Robert Dopf (504) 309-0443); at the Region 7, Office of Regional Counsel, Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101 (contact: Gerhardt Braeckel (913) 236-2806); and at the Environmental Enforcement Section, Land and Natural Resources Division of the United States Department of Justice, Room 1515, 10th and Pennsylvania Avenue NW., Washington, DC 20530. In requesting copies, please enclose a check in the amount of $50.00 (10 cents per page reproduction charge) payable to the Treasurer of the United States. The Department of Justice will receive written comments relating to the proposed consent decree for a period of thirty (30) days from the date of this notice. Comments should be addressed to Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to United States v. E.I. du Pont de Nemours and Company, Inc. (S.D. Iowa.), DOJ Reference No. 90-11-2-385.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-30141 Filed 12-27-89; 8:45 am]

BILLING CODE 4410-01-M

[AAG/A Order No. 28-89]

Privacy Act of 1974; Computer Matching

This notice is published in the Federal Register in accordance with the requirements of 5 U.S.C. 552a(e)(12). The Immigration and Naturalization Service (INS), Department of Justice (the source agency), is participating in a computer matching program with the District of Columbia and agencies of five States (all designated as recipient agencies). The matching program entitled "Systematic Alien Verification for Entitlements (SAVE)" will permit the agencies to confirm the immigration status of alien applicants for, or recipients of, Federal benefits assistance as required by section 121 of the Immigration and Reform Control Act (IRCA) of 1986 (Pub. L. 99-603). Specifically, the matches will permit the following eligibility determinations:

(1) The District of Columbia Department of Employment Services; the New Jersey Department of Labor; the New York Department of Labor; and the Texas Employment Commission will be able to confirm eligibility status for unemployment compensation.

(2) The California State Department of Health Services will be able to determine eligibility status for the Medicaid Program; and the California State Department of Social Services will be able to determine eligibility status for the Aid to Families with Dependent Children (AFDC) program, and the Food Stamps Program.

(3) The Colorado Department of Social Services will be able to determine the eligibility status for the Medicaid program, the AFDC program, and the Food Stamps Program.

Section 121(c) of IRCA amends section 1137 of the Social Security Act and requires agencies which administer the Federal benefit programs designated within IRCA to use the INS verification system to determine eligibility. Accordingly, through the use of user identification codes and passwords, authorized persons from these agencies may electronically access the data base of an Immigration and Naturalization Service Privacy Act system of records entitled "Alien Status Verification Index, JUSTICE/INS-009." From its automated records system, any aforementioned agency participating in the matching program may enter electronically into the INS data base the alien registration number of the applicant or recipient. This action will initiate a search of the INS data base for a corresponding alien registration number. Where such number is located, the agency will receive electronically from the INS data base the following data upon which to determine eligibility: alien registration number; last name; first name; date of birth; country of birth; social security number (if available); date of entry; immigration status data; and employment eligibility data. In accordance with 5 U.S.C. 552a(p), such agencies will provide the alien applicant or recipient with 30 days notice and an opportunity to contest any adverse finding before final action is taken against that alien because of ineligible immigrant status as established through the computer match.

Matching activity will be effective 30 days after publication in the Federal Register and will continue for a period of 18 months from the effective date unless extended by the Data Integrity Board of the Department of Justice.

The matching agreements and the required report have been provided to the Office of Management and Budget and the Congress in accordance with 5 U.S.C. 552a(o)(2)(A) and (r). Inquiries may be addressed to Patricia E. Neely, Staff Assistant, Facilities and Administrative Services Staff, Justice Management Division, Department of Justice, Room 529, 633 Indiana Avenue NW., Washington, DC 20530.

Dated: December 15, 1989.

Harry H. Flickinger,

Assistant Attorney General for Administration.

[FR Doc. 89-30139 Filed 12-27-89; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 86-62]

David W. Bradway, M.D.; Denial of Application

This proceeding before the Drug Enforcement Administration (DEA) was initiated on July 20, 1988, when the Deputy Assistant Administrator issued an Order to Show Cause proposing to deny David W. Bradway, M.D.'s application for a DEA Certificate of Registration. The Order to Show Cause alleged that the registration of Dr. Bradway (Respondent), of Merchantville, New Jersey, would be inconsistent with the public interest, as set forth in 21 U.S.C. 823(f). Respondent, by letter dated July 25, 1988, requested a hearing on the issues raised by the Order to Show Cause.

The hearing in this matter was held in Washington, DC, on November 1, 1988, before Administrative Law Judge Mary Ellen Bittner. On March 24, 1989, Judge Bittner issued her opinion and recommended ruling, findings of fact, conclusions of law and decision. In compliance with 21 CFR 1316.65(b), copies of the Administrative Law Judge's opinion were served on Respondent and on Government counsel. No exceptions were filed. On May 17, 1989, Judge Bittner transmitted the record of these proceedings to the Administrator. The Administrator has considered this record in its entirety and, pursuant to 21 CFR 1313.67, hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

On November 3, 1980, in the New Jersey Superior Court for Cumberland County, Respondent was convicted of (a) one count of conspiracy: to distribute, possess and possess with intent to distribute, controlled substances; to induce, persuade, aid and contribute to the unlawful use of a narcotic drug; and to knowingly and intentionally keep a residence for the purpose of using controlled dangerous substances; (b) thirty counts of unlawful distribution of controlled substances; (c) four counts of unlawful possession with intent to distribute controlled substances; (d) one count of manslaughter by unlawfully distributing controlled substances in such a grossly negligent and reckless manner as to cause the death of an individual, an Albert Bateman.

These convictions ultimately led to an Order to Show Cause issued by the DEA on November 1, 1981. Judge Francis L. Young was the Administrative Law Judge who presided over the hearing held pursuant to that Order to Show Cause. Judge Young found, *inter alia*, that Respondent issued prescriptions for Demerol and Quaaludes in his own name, and in the names of his friends and relatives. These prescriptions were not issued for a legitimate medical purpose, but were in fact used to obtain drugs for personal use and abuse. Because of Respondent's unlawful actions, a friend attending one of Respondent's "drug parties", died of a drug overdose. Judge Young further found that Dr. Bradway's friends became addicted to Demerol as was Respondent himself. As of the hearing date in January 1983, Judge Young found that there was no reasonable assurance that Respondent was a different person or markedly changed from the time he had committed these crimes. Then Administrator Francis M. Mullen, Jr. concurred with Judge Young's findings and revoked Respondent's Certificate of Registration. See 48 FR 49937 (October 28, 1983).

In applying for a new registration, Respondent now contends that he has demonstrated a clear history of rehabilitation from substances which caused his criminal involvement. With respect to Respondent's new application, Administrative Law Judge Mary Ellen Bittner made the following findings of fact. On January 20, 1984, Respondent appeared before the executive committee of the New Jersey Board of Medical Examiners (Medical Board) in connection with a petition he had filed with reinstatement of his license to practice medicine. The Medical Board introduced an order on March 30, 1984, granting Respondent limited reinstatement of his license to practice medicine in a residency program or a public institution. The Attorney General of New Jersey moved the Medical Board to recall and reverse this order, on grounds that Respondent had not demonstrated that he was no longer addicted to controlled substances. In response, on August 10, 1984, the Medical Board entered a modified order of reinstatement of license with limited privileges. The Medical Board's modified order permitted Respondent to engage in a limited medical practice provided that, among other things, Respondent would submit to a psychiatric evaluation, participate in the impaired physician program, practice only under the direct supervision of another doctor, and submit quarterly reports to the Medical Board on his progress.

During January 1984, Respondent entered the New Jersey Physician's Health Program. While in this program, Respondent participated in a support group of recovered alcohol and drug dependent physicians, underwent random urine drug tests (all of which were negative), and participated in monthly meetings with the director of the program and the staff.

On July 1, 1984, Respondent entered a medical residency program, where he reportedly successfully completed a one-year residency without any signs of abusing drugs.

In 1986, with the approval of the New Jersey Medical Board, Respondent practiced medicine at the New Jersey Memorial Home for Disabled Soldiers under the supervision of the director of the facility. In August 1987, the Medical Board issued an order allowing Respondent to continue to practice medicine under supervision and stated that it had no objection "to the reinstatement of Respondent's privileges to prescribe Schedules IV and V controlled substances."

On September 19, 1987, Respondent filed an application for DEA registration in Schedules IV and V controlled substances. The Medical Board later authorized Respondent to apply for authority to handle Schedule IIIN, and with certain restrictions, Schedule II controlled substances.

In a letter dated April 10, 1989, Respondent requested that his application for registration be amended to include Schedules II and III. Since Respondent's request was made after the hearing, Judge Bittner had no opinion with respect to Respondent's request for Schedule II and III controlled substance privileges.

In September 1987, Respondent obtained part-time employment as a physician at the office of Dr. Lance Gooberman. Respondent worked at the job four nights a week and every other Saturday. Respondent was responsible for seeing patients who presented primary health care problems. Dr. Gooberman hired Respondent at the request of the Director of New Jersey Physicians Health Program. Dr. Gooberman was pleased with Respondent's work and his medical practice; however, Respondent's lack of authority to prescribe controlled substances hindered Respondent's ability to practice. Under the current arrangement, Respondent refers to Dr. Gooberman any patients that he feels will benefit from a controlled substance. If Dr. Gooberman is not available when the need arises, Respondent can send the patient to a hospital emergency room or to Dr. Gooberman's brother, who is a physician and maintains an office in the same building.

Dr. Canavan, Medical Director of the Physicians Health Program, also testified that Respondent has actively and successfully participated in his program since 1984. Dr. Canavan, however, also acknowledged that he was an advocate for Respondent and that his main purpose was to help doctors maintain their rightful place in the medical fraternity. Dr. Canavan was Respondent's principal witness with respect to his claimed rehabilitation and ability to handle controlled substances. During Dr. Canavan's testimony, however, he made the following statements with respect to the conviction of Respondent: "you [Respondent] shared those drugs with some of your partying friends including your friend who unfortunately, at the time you shared your drugs, already had a heavy load on and your added dose may have been sufficient to push him

over the brim"; "as a consequence of that, he became involved in an incident where he shared some of his drugs with a high school classmate who went on to

brother, also a doctor, practices on the same floor. Dr. Gooberman knew of no instance where any emergency had

Columbia. The Administrative Law Judge further found that from August 1982 until August 1984, Respondent

respect to the prescribing of controlled dangerous substances. (5) the commission finds that Respondent's

be revoked upon finding that registrant has committed such acts as would render his registration under section 823

pending applications for renewal of such registration are hereby denied.

This order is effective December 28,

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over the brim"; "as a consequence of that, he became involved in an incident where he shared some of his drugs with a high school classmate who went on to die of a drug overdose." From the Administrator's viewpoint, the doctor designated to supervise Respondent has little appreciation for Respondent's crime. It is difficult to credit his claims of rehabilitation for Respondent.

Judge Bittner recommended that Respondent be granted a DEA registration in Schedules IV and V with certain conditions. The Administrator does not agree. The Administrator does not find Dr. Canavan to be particularly credible and, since Respondent himself did not testify, the record contains little evidence that Respondent has been rehabilitated, especially in a case where a death was directly attributable to Respondent's misuse of his DEA Certificate of Registration.

Respondent points to his long abstention from drug use of nearly ten years, his participation in the New Jersey Physicians Health Program, his relicensure by the Medical Board, and successful medical practice under the supervision of Dr. Gooberman, as additional proof that he is now competent and trustworthy to handle controlled substances. Again, the Administrator does not agree. Although the evidence presented at the hearing does indicate that Respondent has made significant strides in rehabilitating himself, it is also important to note that Respondent not only abused drugs himself, but distributed dangerous drugs to his friends and acquaintances.

It is the position of the DEA that a Certificate of Registration to handle controlled substances is a privilege, not a right, and it should only be granted to doctors who have demonstrated high standards of ethical conduct and who are completely trustworthy in handling dangerous controlled substances which, as can be seen in this case, can have a devastating impact on individuals who abuse them. No psychiatrists testified nor were any psychiatric reports introduced even though such examination was ordered by the Medical Board in 1984. Simply stating that one is drug free does not make that person a responsible doctor, nor does it indicate that that doctor can competently handle controlled substances.

If Respondent were to receive a registration, he would have unlimited access to the very drugs which led to his criminal behavior. No significant need for a registration has been demonstrated. Dr. Gooberman testified that there is usually another doctor in the office and when there is not, his brother, also a doctor, practices on the same floor. Dr. Gooberman knew of no instance where any emergency had arisen that had not been handled adequately.

The Administrator therefore specifically adopts the findings of fact and conclusions of law published by his predecessor, Francis M. Mullen, Jr., in his final order published in the Federal Register on October 28, 1983. The Administrator further finds that for the above-mentioned reasons, Respondent has not shown himself to be sufficiently trustworthy to again possess a DEA Certificate of Registration to handle controlled substances.

Having concluded that there is a lawful basis for the denial of Respondent's application for registration, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that the DEA application for Certificate of Registration submitted by David W. Bradway, M.D. be, and hereby is, denied.

This order is effective December 28, 1989.

Dated: December 20, 1989.

John C. Lawn,

Administrator.

[FR Doc. 89-30123 Filed 12-27-89; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88-69]

Thomas N. Carter, M.D.; Revocation of Registration

On July 20, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued to Thomas N. Carter, M.D. (Respondent) of Washington, DC, an Order to Show Cause proposing to revoke Respondent's DEA Certificate of Registration, AC4855346. The statutory predicate for the proposed action was that Respondent's continued registration was inconsistent with the public interest. Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause. The hearing in this matter was held in Washington, DC on January 5, 1989. Administrative Law Judge Francis L. Young presided. On May 5, 1989, the Administrative Law Judge issued his opinion and recommended that Respondent's registration should be revoked.

Judge Young found that Respondent no longer maintains an office for the practice of medicine at the address for which he is registered in the District of Columbia. The Administrative Law Judge further found that from August 1982 until August 1984, Respondent issued Dilaudid prescriptions to a patient who soon became addicted to them. Some prescriptions were for as many as 100 Dilaudid tablets at a time. The majority of prescriptions were for approximately 60 tablets. The prescriptions were issued once a week although, on occasion, a few prescriptions were issued in the same week.

In late 1983 or early 1984 Respondent acknowledged that he became concerned that this patient might be addicted to Dilaudid. In early 1984, Respondent arranged for the patient to obtain treatment at a pain clinic in Baltimore with the aim of detoxifying the patient. The patient was significantly improved on leaving the treatment center. Shortly after the patient was discharged from the treatment center, he returned to Respondent who again resumed prescribing Dilaudid.

The patient gave Respondent various excuses for requesting frequent Dilaudid prescriptions, attempting to show the need for another prescription shortly after one had been written by Respondent. Often the excuse was that pharmacies were not filling the prescriptions in the full amount of tablets the doctor had prescribed. On one occasion the patient gave the excuse that his prescription, or the pills that he obtained with one, had been stolen from his briefcase in his office. On another occasion, the patient told the doctor that one of the prescriptions that he had obtained from the doctor was destroyed because it got wet while he was washing his dog. It was not until August of 1984 that Respondent finally ceased writing prescriptions for this patient.

The State of Maryland Commission on Medical Discipline, now called the Board of Physician Quality Assurance, summarily suspended Respondent's license to practice medicine in Maryland on or about February 6, 1986. Subsequently, a hearing of approximately two days duration was held before the Commission in April and May 1986. At that hearing, evidence was presented with respect to Respondent's prescribing of Dilaudid, Dexedrine, Percodan and Percocet for five patients. One of those patients was the addict for whom Respondent had been supplying Dilaudid.

After considering all the evidence, the Commission, *inter alia*, found: "(4) the commission finds that the Respondent's cognitive knowledge is deficient with respect to the prescribing of controlled dangerous substances. (5) the commission finds that Respondent's prescribing practices were so deficient in terms of examination, follow-up and control, that certain patients, if they were not already addicted to controlled substances of the type prescribed by Respondent, were caused to continue to maintain their addiction during Respondent's grossly deficient prescribing practices. (6) After listening to the testimony of Respondent and reviewing the other evidence in this case the commission finds that Respondent's prescribing practices were not undertaken in a fraudulent or deceptive manner to cause or continue addiction, but, rather that Respondent exercised a gross lack of judgement in treating patients with chronic pain."

As a result of that hearing, the Commission unanimously suspended Respondent's license to practice medicine in the State of Maryland for a period of three years on June 21, 1988. The commencement of that period was backdated to begin from the day of the order of emergency suspension, i.e., February 6, 1986. The three-year period of suspension was to end in February 1989, provided certain conditions were met. Respondent attended a course at the Medical College of Pennsylvania in Philadelphia in obedience to the Maryland order. However, the record does not demonstrate what, if anything, Respondent learned from that course.

The Commonwealth of Virginia revoked Respondent's license to practice medicine in the State of Virginia by action of the Virginia State Board of Medicine in an order entered on December 30, 1988. Before that order was entered, there was an evidentiary hearing before the Virginia State Board of Medicine on November 20, 1986. Respondent appeared without counsel. He testified in his own behalf and presented letters and medical reports of a former patient. Respondent answered questions posed by members of the Virginia Board and its counsel.

Based on the foregoing findings of fact, the Administrative Law Judge found that it was clearly inconsistent with the public interest for the Respondent to have a DEA registration at any location. He concluded that the record was replete with instances, long continued, of Respondent's poor judgment and lack of appreciation of the dangers of addictive substances. The Administrator agrees with the conclusion of the Administrative Law Judge and adopts his findings of fact and conclusions of law in their entirety. 21 U.S.C. 824(a)(4) allows a registration to be revoked upon finding that registrant has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest.

In determining whether a registrant's continued registration is inconsistent with the public interest, the Administrator considers the following factors listed in 21 U.S.C. 823(f) and referred to in 21 U.S.C. 824(a)(4):

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or state laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

The Administrator is not required to make findings with respect to all of the factors listed above. The Administrator has the discretion to give each factor the weight he deems appropriate, depending upon the facts and circumstances in each case. See *David E. Trawick, D.D.S.*, Docket No. 86-69, 53 FR 5326 (1988); *England Pharmacy*, 52 FR 1674 (1987). In this case, the first and second factors are most relevant.

In view of the Respondent's continued prescribing of Dilaudid for an addicted patient, even after that patient completed therapy in a treatment center, it is obvious Respondent lacked appreciation for the consequences of his handling of controlled substances. The Maryland Commission found other patients' health and safety to have been threatened by Respondent's dangerous and deficient practices. Two State Medical Licensing Boards have considered this evidence and both have suspended Respondent's license to practice medicine in their respective states. The Administrator, too, concludes that it is inconsistent with the public interest for Respondent to be registered to handle controlled substances.

Having concluded, therefore, that there is a lawful basis for the revocation of Respondent's certificate of registration, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that the DEA Certificate of Registration, AC4855346, previously issued to Thomas N. Carter, M.D., be, and it hereby is, revoked. Any pending applications for renewal of such registration are hereby denied.

This order is effective December 28, 1989.

Dated: December 18, 1989.

John C. Lawn,

Administrator.

[FR Doc. 89-30127 Filed 12-27-89; 8:45 am]

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[Docket No. 88-121]

Bradley Harbin,; Denial of Application for Registration

On December 16, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Bradley Harbin, M.D. (Respondent), of Harbin Medical Clinic, 24 Main Street, Stamps, Arkansas, proposing to deny his application for registration as a practitioner, executed on June 20, 1988, on the ground that his registration would be inconsistent with the public interest, as the term is used in 21 U.S.C. 823(f) and 824(a)(4).

Respondent, through counsel, timely filed a request for hearing on the issues raised in the Order to Show Cause and the matter were placed on the docket of Administrative Law Judge Francis L. Young. Following prehearing procedures, a hearing was held in this matter on June 6 and 7, 1989, in Texarkana, Arkansas. The Government presented the testimony of five witnesses and introduced 17 documents. Respondent presented the testimony of eleven witnesses, including himself, and introduced seven documents.

On July 17, 1989, the administrative law judge issued his opinion and recommended ruling, findings of fact, conclusions of law and decision recommending that Respondent's pending application for registration be denied. Neither party filed exceptions thereto.

After careful review of this case in its entirety, the Administrator concludes that Respondent's application for registration should be denied as contrary to the public interest, adopts the administrative law judge's findings of fact, conclusions of law and recommendation as his own, and includes additional findings as they appear below.

The Administrator finds that Respondent has a lengthy history of abusing controlled substances. In 1980, he purchased several vials of cocaine crystals from a pharmacy in Ave, Missouri, by presenting a DEA order form and claiming that the cocaine was

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for use at a medical center where he was then employed. At the time, Respondent did not possess a vald DEA Certificate of Registration authorizing him to handle controlled substances in Missouri, although he was licensed to practice medicine in that state. He was also fired from the clinic after one of the clinic's nurses observed Respondent injecting himself with the remainder of a vial of Numorphan, a Schedule II narcotic controlled substance, while he was working in one of the nearby hospital wards.

That same year, on November 18, 1980, in the District Court for the Fourteenth Judicial District of Oklahoma, Respondent was convicted, after entering a plea of guilty, of one count of grand larceny.

On or about June 10, 1983, the Arkansas State Medical Board suspended Respondent's medical license based upon evidence of hospital and patient records at S. Joseph's Hospital in Hot Springs, Arkansas, where he was a patient. Following a hearing on September 16, 1983, the Board found that, at least for a period of several months prior to the suspension order, Respondent had been abusing cocaine, and that he had been self-administering the drug through intravenous injections. The Board also found that Respondent had been arrested on May 13, 1983, at which time he was in illegal possession of cocaine. In addition, the Board found that Respondent had failed to follow the advice of his treating psychiatrist by refusing to enter a drug rehabilitation program. Consequently, on October 4, 1983, the Board revoked Respondent's medical license. The Board based its action on Dr. Harbin's habitual, or intemperate, or excessive use of narcotics or other habit-forming drugs.

On December 1, 1983, in the United States District Court for the Western District of Arkansas, Respondent was convicted, after entering pleas of guilty, of one count of unlawful possession of cocaine, a Schedule II controlled substance, a misdemeanor offense relating to controlled substances; one count of employing force against law enforcement officers; and one count of unlawful possession of a loaded firearm. Respondent was sentenced to a one year period of probation, was required to submit to random drug screening, and was ordered to refrain from using any drugs unless prescribed by a licensed physician.

Respondent's 1983 convictions and the revocation of his Arkansas state medical license resulted from an incident which occurred on May 13, 1983, in Hot Springs National Park in Hot Springs, Arkansas. At that time, he was employed as a physician at the Libbey Physical Medicine Center on the park grounds.

At approximately 9:00 p.m. on May 13, 1983, Park Rangers were called to the Medical Center they found Respondent and two acquaintances creating a disturbance. The Medical Center was closed at the time. Respondent refused to leave the premises after being ordered to do so by the Park Rangers. He appeared to the Park Rangers to be under the influence of a controlled substance. He was screaming and cursing and was also incoherent in his speech. When Park Ranger Terry Gross and other Rangers approached the lobby of the building, they found Respondent behind a locked door in his office. Respondent began yelling and resisted arrest. Respondent was searched following his arrest and was found to be in possession of substances in test tubes and vials which later were tested and found to contain cocaine. A search of Respondent's office revealed a loaded .44 magnum revolver and five rounds of ammunition. Shortly thereafter, Respondent was brought to the emergency room at St. Joseph's Hospital for observation. At the hospital, Respondent was found to be in possession of a bag of cocaine. During his stay in St. Joseph's Hospital, Respondent continued to abuse cocaine.

On May 16, 1983, while Respondent remained in the hospital, State Investigator Nancy Austin and DEA Special Agent Jim Stepp conducted a search of Respondent's office at Libbey Physical Medical Center and an office he maintained at his home. They seized various controlled substances and some syringes from both locations.

During his Federal probation, Respondent submitted to twenty-nine drug screen tests. On two occasions, December 8, 1983, and March 30, 1984, he tested positive for cocaine use. Respondent admitted to using cocaine prior to the December 8th test, but denied using the drug prior to the March 30th test. Also during his probation, from January 16, 1984, to January 27, 1984, Respondent was enrolled in an inpatient drug treatment program at the Veterans Administration Hospital in North Little Rock, Arkansas. He failed to complete the 30-day inpatient portion of the program, which was to have been followed up by an outpatient program. He left the program just 11 days after he began treatment, failing to complete even half of the treatment.

At the conclusion of his Federal probation in late 1984, Respondent's probation officer submitted a report to the court stating that:

> While this officer is certainly not qualified to render a psychological opinion, it is noted that the probationer has exhibited a rather poor attitude and tends to blame others for his problems. He seems to have difficulty accepting the fact that his difficulties are not the result of other people's actions. It appears if he had a better outlook and had been willing to follow through with the recommended treatment program, his present situation would be much different. As it stands now, it appears that his future outlook is rather dim despite his many years of medical training and obvious capabilities in the medical field.

Respondent was discharged from Federal probation in December 1984.

On January 23, 1984, the Oklahoma State Board of Medical Examiners revoked Respondent's medical license based upon his 1980 conviction for grand larceny and his 1983 Federal convictions arising from the Hot Springs National Park incident. That license has not been reinstated.

On January 20, 1986, the Missouri State Board of Registration for the Healing Arts revoked Respondent's license to practice medicine. The Missouri Board's revocation order relied on the action taken by the Arkansas State Medical Board and the Hot Springs National Park incident. The Missouri Board also noted that Respondent had offered no substantial justification, mitigation, or evidence of rehabilitation. This license also has not been reinstated.

Some time in 1986, Respondent sought the return of his Arkansas state medical license. At that time, a conditional, or probationary, license was issued to him. Pursuant to the issuance of the license, Respondent was ordered to seek therapy in connection with his drug abuse problem.

At the request of the Arkansas State Medical Board, Respondent was seen by Eugene Waterman, M.D. during six to eight psychotherapy sessions between December 24, 1986, and June 15, 1987. Dr. Waterman also performed drug screens on Respondent. The first screen conducted by Dr. Waterman was positive. Respondent admitted to indulging in a controlled substance use prior to the screen. Another screen conducted in May 1987 was also positive. All of the other screens were negative.

At the conclusion of Dr. Waterman's treatment of Respondent, on June 15, 1987, he reported his conclusions to the Arkansas State Medical Board. He stated that:

> I am not sure how to exactly advise you [the Board] in relationship to the decision that you must make. I believe that Mr. Harbin has been off cocaine. Each time that he has given a urine specimen I have gone to the bathroom with him and watched him and the urine specimen has been body temperature, so I believe that he is and has been off of cocaine, but at the same time he does not see problems as really originating within him, but mainly the problems that he has with the people that he chooses to be close to. He then seeks answers not from any internal changes but through either the manipulation of the other person or in ending the relationship. I think that this way of dealing with the world is one which would make addiction more likely. After talking to Dr. Gardner and Dr. Patton I think the best course of action in view of possible problems with alcohol and the benzodiazepene's [sic] is to extend the temporary license.

Dr. Waterman also testified at the DEA hearing. He stated that, in his opinion, Dr. Harbin was not ready for psychotherapy in 1987.

On June 14, 1988, the Arkansas State Medical Board reinstated Respondent's medical license in that state. During the previous year, Respondent was practicing medicine with Robert Patton, M.D. in Lewisville, Arkansas, under a temporary license. He only worked with Dr. Patton for approximately six to eight months, after which time, Dr. Patton ended his business relationship with Respondent. There is no indication in the record as to why Dr. Patton terminated Respondent's employment. Dr. Patton performed drug screens during Respondent's employment. The results of the screens were negative.

From December 1988 to March 1989, Richard Portis, M.D., an official at the hospital in Hope, Arkansas, performed drug screens on Respondent. The screens were performed on the days Respondent was at the hospital for professional meetings, on a more or less regular monthly schedule. The results of those screens were also negative.

After leaving his association with Dr. Patton in Lewisville, Respondent moved to Stamps, Arkansas, where he began a sole practice. In that community, Respondent is valued, well-liked and highly regarded, both personally and professionally.

There is no recent evidence of Respondent's abuse of cocaine. Testimony from persons who have known him during the last several months in Stamps indicates that he has always appeared normal and has been practicing good medicine.

The record also indicates that there is a need for a physician in Stamps, Arkansas. Although there are physicians in nearby areas, one practices part-time and the other is in the process of retiring.

In determining whether an applicant should be issued a DEA registration, entitling him to handle controlled substances, the Administrator must view the relevant facts in light of the public interest. 21 U.S.C. 823(f) enumerates the various factors to be considered in determining whether the issuance of a registration would be consistent with the public interest. They include:

(1) The recommendation of the appropriate State licensing board of professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety. 21 U.S.C. 823(f).

In this case the second, fourth and fifth factors are relevant. Since 1980, Respondent has had an extensive history of abusing controlled substances and was convicted of misdemeanor offenses which resulted from his drug abuse problems. He has also misused his previous DEA registration in that he ordered and obtained controlled substances for his personal abuse, rather than for legitimate medical purposes. He handled controlled substances in a state in which he was not registered by DEA. The facts underlying Respondent's conviction in Hot Springs, Arkansas, illustrate his bizarre and dangerous activities while he was under the influence of controlled substances. While abusing controlled substances, Respondent has been a threat to himself and to others. Such evidence is sufficient to find that Respondent's registration is inconsistent with the public interest.

The evidence of Respondent's attempts at rehabilitation has been minimal at best, and does not persuade the Administrator to alter his conclusion that Respondent's registration would be inconsistent with the public interest. His probation officer was not encouraged by Respondent's efforts. Two of Respondent's urine screens during probation were positive for the presence of cocaine. During the entire period of his probation, Respondent's only attempt at drug treatment and counseling lasted less than two weeks. Respondent's later drug counseling and psychotherapy under the direction of the Arkansas State Medical Board was also seen as unsuccessful by his treating psychiatrist. Respondent's psychiatrist stated that he was not ready for such treatment and was participating in the treatment only because of the Board's order. In addition, urine screens performed by his psychiatrist revealed the presence of controlled substances on two occasions.

Respondent's only other evidence of rehabilitation has been the results of urine screens performed by Drs. Patton and Portis. The results of these screens are not dispositive. Many of the screens were not random in that Respondent knew, or should have known based upon their regularity, when they were going to be performed. Further, some of the tests only covered certain drugs, not always the drugs Respondent had a history of abusing.

Much of Respondent's own testimony at the administrative hearing cannot be construed in his favor. He has failed to fully accept the extent and seriousness of his drug abuse problems. At points in his testimony, he continued to blame his drug problems on others. For example, in explaining his reasons for injecting himself with Numorphan while working in a Missouri hospital ward, Respondent claimed that a nurse had given it to him.

The need for a physician in Respondent's area does not negate the Administrator's responsibility to register only those physicians who can be trusted to handle controlled substances responsibly. At this point, the Administrator is not convinced that Respondent is fully rehabilitated; nor has Respondent proven he can now be trusted to properly handle controlled substances.

On the contrary, Respondent's past abuse of controlled substances, his lack of adequate, concentrated drug therapy, and his denial of the seriousness of his drug problems lead the Administrator to conclude that Respondent cannot now be entrusted with a DEA Certificate of Registration. The Administrator concludes that Respondent's registration would be inconsistent with the public interest.

Consequently, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), the Administrator of the Drug Enforcement Administration (DEA), orders that the pending application for registration executed by Bradley Harbin, M.D., be, and it hereby is, denied.

This order is effective December 28, 1989.

Dated: December 18, 1989.

John C. Lawn,

Administrator.

[FR Doc. 89-30124 Filed 12-27-89; 8:45 am]

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[Docket No. 89-8]

Nick M. Higgins, D.D.S.; Grant of Limited Registration

the Army. After six weeks, he successfully completed the program. As part of his aftercare, Respondent was

Alcoholics Anonymous or Narcotics Anonymous groups, random drug screens and supervision by a certified

report any non-compliance with this program to the same office.

5. Surrender DEA controlled substance registration if its retention is likely to

the protection of society and accept the seriousness of the responsibility which has been entrusted to me. I agree to make all required reports under oath and subject to

entered into in 1987. The Government points out that the administrative law judge does not specifically set a period

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[Docket No. 88-8]

Nick M. Higgins, D.D.S.; Grant of Limited Registration

On January 12, 1989, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Nick M. Higgins, D.D.S. (Respondent), of 13341 San Pedro, San Antonio, Texas 78230, proposing to deny his application, executed on October 10, 1988, for registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that Respondent's registration would be inconsistent with the public interest.

Respondent requested a hearing on the issues raised by the Order to Show Cause and the matter was docketed before Administrative Law Judge Francis L. Young. Following prehearing procedures, a hearing was held on June 8 and 9, 1989, in San Antonio, Texas. On July 21, 1989, the administrative law judge issued his opinion and recommended ruling, findings of fact, conclusions of law and decision. Pursuant to 21 CFR 1316.66, on August 4, 1989, the Government filed exceptions to Judge Young's opinion and recommended decision. On August 31, 1989, the administrative law judge transmitted the record of these proceedings, including the Government's exceptions, to the Administrator. The Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth. Respondent is a dentist who entered the United States Air Force upon finishing dental school. While in the Air Force, Respondent was trained to perform oral surgery. In 1984, he became chief of oral surgery at Goodfellow Air Force Base. During the time Respondent was stationed at Goodfellow Air Force Base, he began to abuse Demerol, or meperidine, a Schedule II narcotic controlled substance. As a result of an investigation conducted at Goodfellow Air Force Base, Respondent was brought to trial on several charges. In December 1986, before the court martial, Respondent plead guilty to the wrongful use of meperidine or Demerol, and the theft of some meperidine owned by the Federal Government. Respondent was convicted as a result of his guilty pleas. The sentence was that he be discharged from the Air Force and that he forfeit all pay and allowances.

In April 1986, prior to the court martial, Respondent enrolled in a drug abuse treatment program conducted by the Army. After six weeks, he successfully completed the program. As part of his aftercare, Respondent was advised to continue participating in Alcoholics Anonymous or Narcotics Anonymous.

On March 17, 1987, Respondent submitted an application for a DEA Certificate of Registration in Schedules II–V. DEA considered Respondent's application in light of his conviction and drug treatment. Ultimately, an agreement was reached between Respondent, his attorney and DEA, regarding the application. The agreement, executed in November 1987, provided that DEA would issue Respondent a registration subject to certain conditions. One of the conditions of registration was that Respondent totally abstain from the use of all controlled substances unless properly prescribed by a physician.

During mid-1987, Respondent began working for a dentist in San Antonio, Texas. On or about March 31, 1988, Respondent broke into the drug storage cabinet at his place of employment, took 24 1cc vials of meperidine (50 mg./cc) and self-administered the entire amount. Respondent promptly told a representative of the Texas State Board of Dental Examiners what he had done. On April 8, 1988, Respondent admitted to a DEA investigator that he had taken the meperidine. As a result, Respondent voluntarily surrendered his DEA Certificate of Registration.

The Texas State Board of Dental Examiners issued a complaint against Respondent in light of his abuse of meperidine on March 31, 1988. On October 27, 1988, the Board issued its final order accepting Respondent's plea of no contest to the charges against him and placing Respondent's dental license on probation for five years subject to certain conditions, including the surrender of his Schedules II and IIN privileges. In addition, Respondent was ordered to remain in, and abide by, all of the mandates set by the Texas Dental Association Peer Assistance Program. As a result of the Board order, at the hearing in this matter, Respondent orally withdrew his request to be registered with DEA in Schedules II and IIN, since he is not authorized by the State of Texas to handle those substances.

The administrative law judge also found that after the March 31, 1988, incident, Respondent admitted himself to an in-patient addiction treatment program. After completion of the in-patient phase of the program, Respondent has continued with out-patient requirements of the program, including active participation in Alcoholics Anonymous or Narcotics Anonymous groups, random drug screens and supervision by a certified drug abuse counselor.

In reviewing the factors listed in 21 U.S.C. 823(f), the administrative law judge noted that the Texas State Board of Dental Examiners found it appropriate for Respondent to be registered in Schedules III, IIIN, IV and V. Judge Young further noted that Respondent had violated state, local and Federal laws by abusing controlled substances, however, these violations should be considered in the context of what Respondent is currently doing and where he is today. The administrative law judge found that Respondent is presently participating in a carefully designed and closely supervised ongoing, active program which appears well-tailored to give strong support and successful assistance in maintaining a continuing drug free recovery. At the time of the hearing, Respondent had been participating in this program for over a year and his drug abuse counselor considers Respondent to be committed to the program.

The administrative law judge concluded that it would not be inconsistent with the public interest for Respondent to have a DEA registration in Schedules III, IIIN, IV and V, if the registration would be subject to certain conditions. First, within 60 days of June 9, 1989, the date of the hearing in this matter, Respondent should undertake in writing to continue in a recovery program for three years from June 9, 1989. This program is to be essentially similar to the recovery program that Respondent is presently participating in pursuant to his agreement with the Texas Dental Association Peer Assistance Program. The Texas program's requirements, as modified so as to be applicable to a DEA registration, would be as follows:

1. Remain abstinent from all alcohol and other mind-altering drugs except on rare occasions where drugs are prescribed by an addictionologist/M.D. or attending psychiatrist/M.D. in charge of the addicted person's treatment.
2. Attend at least three meetings per week of AA or NA and document with AA attendance logs.
3. If an impaired dentist/physician support group meets within a one hour drive from his residence, attend these meetings one time per week and document as an AA or NA meeting on the log. If the support group meetings are more than one hour's drive time from his residence, attend one such meeting a month and document.
4. Obtain a certified drug abuse counselor who agrees to file a quarterly progress report with the DEA San Antonio office and to report any non-compliance with this program to the same office.
5. Surrender DEA controlled substance registration if its retention is likely to interfere with recovery as recommended by the certified drug abuse counselor.
6. Not only is attendance at AA or NA meetings required, but there must be a bona fide effort made to work actively all of the steps of the program within the first year of the period of this agreement as per the supervision of the certified drug abuse counselor.
7. Stay away from people, places, or things leading to a drink or a drug.
8. Submit and pay for surprise random drug screens at intervals established by the certified drug abuse counselor in consultation with the DEA San Antonio office. Copies of the results are to be filed immediately with the DEA San Antonio office by the counselor.
9. Be willing to be grateful for another day of sobriety by one daily act of kindness.
10. When in doubt about his fears or problems, call for help from his sponsor or counselor and be in touch at least once a day with that counselor.

The administrative law judge recommended that the second condition on which a limited DEA registration should be issued to Respondent is that within 60 days of June 9, 1989, Respondent should submit to DEA a written sworn statement executed by a certified drug abuse counselor. This statement would be essentially as follows:

I am a physician with a practice in the field of addiction medicine. I am certified by the American Medical Society on Alcoholism and other Drug Dependencies for American Society of Addiction.

With this letter I am assuming the responsibility of supervision of Dr. Nick M. Higgins' recovery process as well as his compliance with current and future conditions of his receiving his limited DEA registration.

I hereby voluntarily undertake the following duties:

1. To supervise the Recovery and Supervision Program heretofore agreed to by Dr. Nick M. Higgins as a condition of his being issued a limited DEA registration;
2. To administer surprise, random urinalysis to Dr. Nick M. Higgins either at the initiation of the DEA San Antonio office or on my own initiative whenever I deem appropriate;
3. To immediately report any evidence of drug usage or other violation of the Recovery and Supervision Program to the DEA San Antonio office; and
4. To truthfully answer under oath any inquiries which may be made of me by the DEA San Antonio office or its investigators and to file a quarterly report on Dr. Nick M. Higgins' progress with the DEA San Antonio office.

I further agree to make all such reports and documents available to the DEA San Antonio office regardless of any adverse consequences which may be occasioned to Dr. Nick M. Higgins. I understand my role in the protection of society and accept the seriousness of the responsibility which has been entrusted to me. I agree to make all required reports under oath and subject to the penalties imposed by law for perjury.

The administrative law judge recommended that the third and final condition for issuance of a limited DEA registration is that within 60 days of June 9, 1989, Respondent should undertake, in writing, to be subject to certain of the provisions of the DEA Memorandum of Agreement that he entered into in 1987, as follows:

1. Dr. Higgins agrees to abide by all Federal, state and local laws and regulations relating to controlled substances.
2. Dr. Higgins agrees to submit to the DEA San Antonio office a log of all controlled substances which he prescribes, administers or dispenses in his practice. The report should include the date, name of patient, the name and quantity of the controlled substance that is prescribed, administered or dispensed. The log will be submitted on a quarterly basis for two years from the issuance of the DEA Certificate of Registration.
3. Dr. Higgins agrees to submit to the DEA San Antonio office a list of all DEA official order forms that he issues for purchases of Schedule II controlled substances. The log should include the date of the order, the name and quality of the controlled substance ordered, the name of the place where the drug was ordered from, the date of receipt and the quantity received. The report will be submitted on a quarterly basis for two years from the date of issuance of the DEA Certificate of Registration.
4. Dr. Higgins agrees that DEA personnel may enter his office at any time during regular business hours without prior notice to verify compliance with this Memorandum of Agreement. He will permit entry of DEA personnel without an administrative inspection warrant or other means of entry.
5. Dr. Higgins agrees to notify the DEA San Antonio office prior to transferring his DEA Certificate of Registration to another address.

In his opinion, Judge Young recommended that if Respondent adheres to the conditions of registration set out above, Respondent should then be issued a DEA registration in Schedules III, IIIN, IV and V. Judge Young further recommended that should Respondent not submit the statements required by the conditions of registration, Respondent's pending application for registration should be denied in its entirety.

On August 4, 1989, Government counsel filed exceptions to the opinion and recommended ruling of the administrative law judge. The Government first took exception to the administrative law judge's third condition for issuance of a limited registration, whereby Respondent must agree to be subject to certain provisions of the DEA Memorandum of Agreement entered into in 1987. The Government points out that the administrative law judge does not specifically set a period of time that Respondent must be subject to the terms of the agreement. In his opinion, the administrative law judge does recommend that as the first condition for issuance of a limited registration, Respondent must agree to continue in a recovery program for three years from June 9, 1989, essentially similar to the recovery program Respondent is presently participating in pursuant to the agreement with the Texas Dental Association Peer Assistance Program. The Government contends in its exceptions, that Respondent should be subject to the provisions set forth in the 1987 Memorandum of Agreement for a period of three years from June 9, 1989, as well.

Secondly, the Government noted that the administrative law judge recommended that Respondent be required to submit a "list of all DEA official order forms that he issues for purchases of Schedule II controlled substances." The Government contends that since the administrative law judge recommended that Respondent be issued a Certificate of Registration in Schedules III–V, there is no need for Respondent to submit such a list.

Finally, the Government took exception to the fact that the administrative law judge made no recommendation regarding Schedule II privileges, other than that Respondent not be granted registration in that Schedule at the present time. Respondent's substance abuse problem has been with Demerol or meperidine, a Schedule II controlled substance. Testimony at the hearing indicated that Schedule III controlled substances are sufficient for Respondent to effectively perform all of his dental procedures. In addition, the Texas State Board of Dental Examiners presently only permits Respondent to be registered in Schedules III–V; however, testimony at the hearing indicated that respondent could be granted Schedule II privileges by the State of Texas at any time. Accordingly, the Government urged the Administrator to order that even if Respondent's Schedule II privileges are reinstated by the State of Texas, Respondent may not apply for a DEA registration in Schedules II and IIN during the three-year probationary period with DEA.

The Administrator has reviewed the record in its entirety and finds that Respondent has severely abused his privileges as a DEA registrant. The Administrator also finds, however, that Respondent has made and continues to

make a sincere effort to eliminate his addiction. The Administrator concludes

signature that was authentic was not a company official or a worker

Wireline McCullough. Under the original certification, workers at Atlas Wireline

Federal Register on November 9, 1989 (54 FR 47149)

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under

workers independently met the group eligibility requirements of the Trade Act.

Conclusion

serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 19th day of

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make a sincere effort to eliminate his addiction. The Administrator concludes that Respondent should be given an opportunity to change his life and to be a useful member of society. The administrative law judge recommended extensive conditions for Respondent to adhere to if granted a DEA registration. The Government, in its exceptions, suggested a few modifications to the administrative law judge's recommendation. It is the Administrator's understanding that Respondent has submitted the appropriate documentation to DEA regarding these conditions of registration. The Administrator adopts the recommendations of the administrative law judge as modified to include all of the proposals made by Government counsel in her exceptions.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b), hereby orders that Respondent be issued a DEA Certificate of Registration in Schedules III, IIIN, IV and V subject to the above-described conditions until June 9, 1992. The Administrator further orders that Respondent not apply for Schedule II and IIN privileges until June 9, 1992. This order is effective December 28, 1989.

Dated: December 20, 1989.

John C. Lawn,

Administrator.

[FR Doc. 89-30125 Filed 12-27-89; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-23,615]

Andrew T. Johnson Company, Inc., Boston, MA; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 20, 1989 in response to a petition which was filed on November 20, 1989 on behalf of workers and former workers at Andrew T. Johnson Company, Incorporated, Boston, Massachusetts. The workers produce graphics and blueprints for architects.

The Department determined that the petition for Trade Adjustment Assistance for workers at Andrew T. Johnson Company, Incorporated, Boston, Massachusetts (TA-23,615) was not valid because two of the signatures were not authentic and the one worker signature that was authentic was not a company official or a worker representative. Since the petitioning group of workers do not have a valid petition, the Department can not proceed with its investigation to determine whether the workers of Andrew T. Johnson Company, Incorporated, Boston, Massachusetts meet the eligibility requirements for Trade Adjustment Assistance, therefore the investigation has been terminated.

Signed at Washington, DC this 19th day of December 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89-30154 Filed 12-27-89; 8:45 am]

BILLING CODE 4510-30-M

Atlas Wireline Service and Atlas Wireline McCullough; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In the matter of Atlas Wireline Service (formerly Dresser Atlas)
TA-W-20,980 Alice, Texas
TA-W-20,982 Laredo, Texas
TA-W-20,982A all other locations in Texas
TA-W-20,982B all locations in North Dakota
TA-W-20,982C all locations in New Mexico
TA-W-20,982D all locations in Utah
TA-W-20,982E all locations in California
TA-W-20,982F all locations in Oklahoma
TA-W-20,982G all locations in Louisiana
TA-W-20,982H all locations in Mississippi
TA-W-20,982I all locations in Colorado
TA-W-20,982J all locations in Illinois
TA-W-20,982K all locations in Kentucky
TA-W-20,982L all locations in Alaska
Atlas Wireline McCullough (formerly NL Industries)
TA-W-20,981 Alice, Texas
TA-W-20,983 Laredo, Texas
TA-W-20,983A all other locations in Texas
TA-W-20,983B all locations in North Dakota
TA-W-20,983C all locations in New Mexico
TA-W-20,983D all locations in Utah
TA-W-20,983E all locations in California
TA-W-20,983F all locations in Oklahoma
TA-W-20,983G all locations in Louisiana
TA-W-20,983H all locations in Mississippi
TA-W-20,983I all locations in Colorado

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 14, 1988 applicable to all workers of Atlas Wireline Service and Atlas Wireline McCullough both in Alice and Laredo, Texas. The certification was amended on June 6, 1989 and published in the **Federal Register** on June 20, 1989 (54 FR 25917).

The Department, on its own motion, is amending the certification to reflect the proper impact date for workers of Atlas Wireline McCullough. Under the original certification, workers at Atlas Wireline McCullough, Alice, Texas were certified eligible to apply for adjustment assistance with an impact date of October 1, 1985. The amended certification issued on June 6, 1989 incorrectly amended the impact date to January 1, 1988 for workers of Atlas Wireline McCullough, Alice, Texas and to Atlas Wireline McCullough workers in North Dakota, New Mexico, Utah, Oklahoma, California, Louisiana, Mississippi, Colorado and other locations in Texas except Laredo. Accordingly, the impact date for workers at Atlas Wireline McCullough in all locations except Laredo, Texas is amended from January 1, 1988 to October 1, 1985.

The amended notice applicable to TA-W-20,980; TA-W-20,981; TA-W-20,982 and TA-W-20,983 is hereby issued as follows:

All workers of Atlas Wireline Service, formerly Dresser Atlas, in Alice and Laredo, Texas and in all other locations of Texas and in all locations in the States of North Dakota, New Mexico, Utah, California, Oklahoma, Louisiana, Mississippi, Colorado, Illinois, Kentucky and Alaska who became totally or partially separated from employment on or after October 1, 1985 and all workers of Atlas Wireline McCullough (formerly NL Industries) in Alice, Texas and all other locations in Texas except Laredo, Texas and in all locations in the States of North Dakota, New Mexico, Utah, California, Oklahoma, Louisiana, Mississippi and Colorado who became totally or partially separated on or after October 1, 1985 and all workers of Atlas Wireline McCullough in Laredo, Texas who became totally or partially separated from employment on or after January 1, 1988 are eligible to apply for adjustment assistance under Section 222 of the Trade Act of 1974.

Signed at Washington, DC, this 15th day of December 1989.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-30155 Filed 12-27-89; 8:45 am]

BILLING CODE 4510-30-M

Celsius Energy Co.; Negative Determination Regarding Application for Reconsideration

TA-W-23,215 ..... Denver, CO
TA-W-23,285 ..... Salt Lake City, UT

By applications dated November 21 and December 8, 1989, former worker of Celsius Energy Company requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on October 25, 1989 and published in the

Federal Register on November 9, 1989 (54 FR 47149)

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The former workers were engaged in exploration and drilling activities and state that the Department's denial notice is in error by claiming that the workers produce an article. Further, the former workers imply that the Department is inconsistent by certifying workers of other exploration companies and denying the workers at Celsius Energy.

The 1988 amendments to the Trade Act of 1974 contained in the Omnibus Trade and Competitiveness Act (OTCA) extended eligibility for trade adjustment assistance (TAA) to workers of independent firms performing the service of drilling or exploration to unaffiliated firms in the oil and gas industry. However, the investigation findings show that Celsius Energy is a subsidiary of Questar and is engaged in exploration and drilling for crude oil and natural gas for production companies affiliated with Questar.

In order for workers in affiliated firms like Celsius Energy to be certified eligible for adjustment assistance, their separations must be caused by a reduced demand for their services from a parent firm, a firm otherwise related to the subject firm by ownership or control. In any case the reduction in demand for services must originate at a production facility whose workers independently meet the statutory criteria for certification and the reduction must directly relate to the product impacted by imports. These conditions have not been met for workers of Celsius Energy. None of the workers of the producing facilities for which Celsius provides services is currently certified as eligible to apply for adjustment assistance benefits.

If exploration and drilling workers were certified for adjustment assistance in the firms cited on the application, it is because they provided oil and gas drilling and exploration services either to unaffiliated firms in the oil and gas industry like Louisiana Land or were part of an affiliated integrated production unit whose production workers independently met the group eligibility requirements of the Trade Act.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 20th day of December, 1989.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-30156 Filed 12-27-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-23,316]

Litton Panelvision, Pittsburgh, PA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Litton Panelvision, Pittsburgh, Pennsylvania. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-23,316; Litton Panelvision, Pittsburgh, Pennsylvania (December 14, 1989).

Signed at Washington, DC, this 20th day of December 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89-30157 Filed 12-27-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-23,584]

O & K Trojan Industries, Inc., Batavia, NY; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 6, 1989 in response to a worker petition received on November 6, 1989 which was filed by the International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers, and Helpers, Local Lodge 78, on behalf of workers at O & K Trojan Industries, Inc., Batavia, New York.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 19th day of December 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89-30158 Filed 12-27-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-23,356]

Schindler Elevator Corp., Toledo, OH; Affirmative Determination Regarding Application for Reconsideration

By a letter dated December 1, 1989, Local #20 of the Teamsters Union requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers and former workers of Schindler Elevator Corporation, Toledo, Ohio. The negative determination was issued on November 6, 1989 and published in the **Federal Register** on November 28, 1989 (54 FR 48954).

The union claims, among other things, that the company is replacing its OH, EK, 153, 302, 402 and 601 machines in its elevator assemblies with imported machines. These machines are the principal parts of the elevator assemblies. The union also claims that several other components were replaced with imported components.

Conclusion

After careful review of the application, I conclude that the claims are of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 20th day of December 1989.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Serivices, UIS.

[FR Doc. 89-30159 Filed 12-27-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-23, 159]

Teleflex Inc. Marine Division, Limerick, PA; Negative Determination on Reconsideration

On December 8, 1989, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of the Marine Division of

Teleflex, Incorporated, Limerick, Pennsylvania.

Local #844 of the United Auto

Signed at Washington, DC, this 15th day of December 1989.

Stephen A. Wandner,

Deputy Director, Office of Legislation and

Economic Dislocation and Worker Adjustment Assistance Act (EDWAA), directs the Secretary of Labor (Secretary) to deobligate funds from

1989, with all average unemployment rates rounded to the nearest tenth of one percent. The unemployment data were

high unemployment States." These eligible high unemployment States receive amounts equal to their share of

NOOs in the amounts shown in column 8 are being issued to the States and other jurisdictions listed.

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Teleflex, Incorporated, Limerick, Pennsylvania.

Local #844 of the United Auto Workers (UAW) questioned the accuracy of the Department's survey especially with regard to indirect imports—domestic firms importing cables subassemblies and other component parts and selling them to the subject firm's customers.

The Department's denial on the instant petition was based on the fact that the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met. The Department's survey showed that none of the major declining customers of Teleflex purchased imported flexible conduits and cable controls in 1987, 1988, and in the first six months of 1989.

Findings on reconsideration show that the Limerick facility had increased sales and production in 1988 compared to 1987.

Other findings on reconsideration show that to the extent that the subject firm's customers purchased imported components and sub-assemblies from domestic firms, these purchases declined in the first half of 1989 compared to the same period in 1988. Many of these customers commented that their business was down in 1989 compared to 1988. Other findings show that the National Association of Marine Manufacturers stated that the pleasure boat industry experienced a decline in business in 1989 compared to 1988.

Lastly, the component issue was addressed early in the administration of the worker adjustment assistance program. In *United Shoe Workers of America, AFL-CIO* v. *Bedell*, 506 F2d (D.C. Circ. 1974) the court held that imported finished women's shoes were not like or directly competitive with shoe components—shoe counters. Accordingly, increased imports of subassemblies and other component parts cannot be considered in determining import injury to workers producing flexible conduit and cable controls. Imports of components are not like or directly competitive with the finished articles produced at the workers' firm.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance to workers and former workers of the Marine Division of Teleflex, Inc., Limerick, Pennsylvania.

Signed at Washington, DC, this 15th day of December 1989.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-30160 Filed 12-27-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-23,126]

Universal Resources Corp.; Oklahoma City, OK; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Universal Resources Corporation, Oklahoma City, Oklahoma. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-23,126; Universal Resources Corporation, Oklahoma City, Oklahoma (December 1, 1989).

Signed at Washington, DC this 29th day of December 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89-30161 Filed 12-27-89; 8:45 am]

BILLING CODE 4510-30-M

Job Training Partnership Act; Employment and Training Assistance for Dislocated Workers; Reallotment of Title III Funds

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor is publishing for public information the revised amounts of Job Training Partnership Act Title III (Employment and Training Assistance for Dislocated Workers) funds identified by States for reallotment, and the amount to be reallotted to eligible States.

EFFECTIVE DATE: December 28, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Robert N. Colombo, Director, Office of Employment and Training Programs, Employment and Training Administration, Department of Labor, Room N-4469, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: 202-535-0577 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Title III of the Job Training Partnership Act (JTPA of the Act), as amended by the Economic Dislocation and Worker Adjustment Assistance Act (EDWAA), directs the Secretary of Labor (Secretary) to deobligate funds from States identified pursuant to section 303(b) of the Act, and to reallot and reobligate such funds by a Notice of Obligation (NOO) adjustment to current year funds to "eligible States" and "eligible high unemployment States" as set forth in sections 303(a), (b), and (c) of JTPA. 29 U.S.C. 1653. The reallotment process was described in training and Employment Guidance Letter No. 4-88, dated November 25, 1988, Subject: Reallotment and Reallocation of Funds under Title III of the Job Training Partnership Act (JTPA), as Amended. 53 FR 48737 (December 2, 1988).

Amounts reallotted were identified in a **Federal Register** notice, Subject: Job Training Partnership Act; Employment and Training Assistance for Dislocated Workers; Reallotment of Title III Funds. 54 FR 46483 (November 3, 1989). NOO adjustments were issued to adjust the Program Year (PY) 1989 (July 1, 1989—June 30, 1990) formula allotments in accordance with expenditure reports submitted to the Secretary by the States pursuant to Training and Employment Information Notice No. 30-88, dated May 18, 1989, Subject: Job Training Partnership Act (JTPA) Title III Financial Data. Amended reports require revisions to the reallotted amounts, which are contained in this notice.

Pursuant to the provisions of section 303(b) of JTPA and the limitations on carry-over imposed by section 6305(e) of EDWAA, the funds reallotted are an amount equal to the sum of unexpended funds in excess of 30 percent of the PY 1988 formula allotments and all unexpended funds made available by formula for PY 1987. 29 U.S.C. 1653(b); Sec. 6305(e), Pub. L. 100-418 (August 23, 1988), 29 U.S.C. 1653 note. Such reallotted funds are from PY 1989 allotments made available by formula and, as stated above, result in either upward or downward adjustments to PY 1989 allotments.

Unemployment Data

The unemployment data used in the formula for reallotments, relative numbers of unemployed, and relative numbers of excess unemployed were for the July 1988 through June 1989 period. Long-term unemployment data used were for calendar year 1988. The determination of "eligible high unemployment States" for the reallotment of excess unexpended funds was also based on unemployment data for the period July 1988 through June 1989, with all average unemployment rates rounded to the nearest tenth of one percent. The unemployment data were provided by the Bureau of Labor Statistics, based on the Current Population Survey.

The table below is a distribution of the net changes to PY 1989 formula allotments.

Explanation of Table

Column 1: This column shows each State's unemployment rate for the 12 months ending June 1989.

Column 2: This column shows the amount of excess funds (unexpended PY 1988 funds in excess of 30 percent of the State's PY 1988 allotment and/or unexpended PY 1987 formula-allotted funds), which are subject to reallotment. PY 1989 funds in an amount equal to the excess funds identified are being deobligated and distributed as discussed below.

Column 3: this column shows total excess funds distributed among all "eligible States" by applying the regular Title III formula. "Eligible States" are those States that had no excess funds, according to the reports submitted.

Column 4: Eligible States with unemployment rates higher than the national average, which was 5.4 percent for the 12-month period, are "eligible high unemployment States." These eligible high unemployment States receive amounts equal to their share of the excess funds (the amounts shown in column 3) according to the regular Title III formula. This is Step 1 of the reallotment process. These amounts are shown in column 4.

Column 5: The remaining share of available funds ($3,259,551) for eligible States with unemployment rates less than or equal to the national average is distributed among all eligible States, again using the regular Title III allotment formula. This is Step 2 of the reallotment process. These amounts are shown in column 5.

Column 6: Net changes in PY 1989 formula allotment are presented. This column represents the decreases in Title III funds shown in column 2, and the increases in Title III funds shown in columns 4 and 5.

Column 7: This column presents changes based on unamended reports received previously and is identical to column 6 of the November 3, 1989 **Federal Register** notice. 54 FR 46483. NOOs in the amounts shown in column 7 have been issued to the States and other jurisdictions listed.

Column 8: This column represents differences between columns 6 and 7. NOOs in the amounts shown in column 8 are being issued to the States and other jurisdictions listed.

Equitable Procedures

Pursuant to section 303(d) of the Act, Governors of States required to make funds available for reallotment shall prescribe equitable procedures for making funds available from the State and substate grantees. 29 U.S.C. 1653(d).

Distribution of Funds

Funds are being reallotted by the Secretary in accordance with section 303 (a), (b), and (c) of the Act and section 6305(e) of EDWAA, using the factors described in section 302(b) of the Act. 29 U.S.C. 1652(b) and 1653 (a), (b), and (c); Sec. 6305(e), Pub. L. 100-418 (August 23, 1988), 2a U.S.C. 1653 note. Distribution of funds within States and other jurisdictions shall be in accordance with section 302(c) and (d) of the Act (29 U.S.C. 1652(c) and (d)), and the JTPA regulations at 20 CFR 631.12(d), 54 FR 39118, 39140 (September 22, 1989).

Signed at Washington, DC this 21st day of December, 1989.

Roberta T. Jones,

Assistant Secretary of Labor.

BILLING CODE 4510-30-M

U.S. DEPARTMENT OF LABOR - EMPLOYMENT AND TRAINING ADMINISTRATION

Mine Safety and Health Administration [Docket No. M-89-163-C] Dated: December 18, 1989.

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U.S. DEPARTMENT OF LABOR - EMPLOYMENT AND TRAINING ADMINISTRATION
PY 1989 JTPA TITLE III REALLOTMENT TO STATES
22-Dec-89

	COL 1	COL 2	COL 3	COL 4	COL 5	COL 6	COL 7	COL 8
Alabama	7.3	0	327,354	327,354	121,270	448,624	418,489	30,135
Alaska	8.7	0	56,781	56,781	21,035	77,816	72,750	5,066
Arizona	6.0	0	181,070	181,070	67,078	248,148	230,500	17,648
Arkansas	7.5	502,633	0	0	0	(502,633)	(502,633)	0
California	5.2	0	1,070,762	0	396,668	396,668	386,427	10,241
Colorado	6.3	0	225,244	225,244	83,443	308,687	286,884	21,803
Connecticut	3.1	0	57,854	0	21,432	21,432	20,592	840
Delaware	3.1	49,140	0	0	0	(49,140)	(49,140)	0
District of Columbia	5.2	0	24,541	0	9,091	9,091	8,871	220
Florida	5.3	4,412,742	0	0	0	(4,412,742)	(4,412,742)	0
Georgia	5.4	0	290,313	0	107,547	107,547	105,078	2,469
Hawaii	3.2	0	16,178	0	5,993	5,993	5,755	238
Idaho	5.4	0	39,841	0	14,759	14,759	14,424	335
Illinois	6.1	0	738,669	738,669	273,643	1,012,312	939,354	72,958
Indiana	4.7	0	152,256	0	56,404	56,404	54,438	1,966
Iowa	4.1	0	73,456	0	27,212	27,212	26,164	1,048
Kansas	4.6	0	65,166	0	24,141	24,141	23,273	868
Kentucky	7.1	0	298,381	298,381	110,537	408,918	380,972	27,946
Louisiana	10.4	0	623,403	623,403	230,942	854,345	799,345	55,000
Maine	3.7	0	21,646	0	8,019	8,019	7,700	319
Maryland	4.1	0	107,710	0	39,902	39,902	38,334	1,568
Massachusetts	3.5	0	100,868	0	37,367	37,367	35,863	1,504
Michigan	7.0	0	774,998	774,998	287,101	1,062,099	988,777	73,322
Minnesota	4.3	0	105,629	0	39,131	39,131	37,598	1,533
Mississippi	8.9	0	264,871	264,871	98,122	362,993	339,990	23,003
Missouri	5.6	0	260,425	260,425	96,475	356,900	330,081	26,819
Montana	6.3	0	54,938	54,938	20,352	75,290	69,919	5,371
Nebraska	3.2	0	28,343	0	10,500	10,500	10,089	411
Nevada	5.0	0	39,877	0	14,773	14,773	14,359	414
New Hampshire	2.7	0	13,846	0	5,129	5,129	4,920	209
New Jersey	3.8	0	155,079	0	57,450	57,450	55,187	2,263
New Mexico	7.1	0	114,629	114,629	42,465	157,094	146,470	10,624
New York	4.7	394,708	0	0	0	(394,708)	175,763	(570,471)
North Carolina	3.5	0	115,641	0	42,840	42,840	41,131	1,709
North Dakota	4.6	0	19,074	0	7,066	7,066	6,819	247
Ohio	5.6	0	570,366	570,366	211,294	781,660	722,510	59,150
Oklahoma	6.2	0	203,918	203,918	75,542	279,460	259,440	20,020
Oregon	5.5	0	128,228	128,228	47,502	175,730	162,598	13,132
Pennsylvania	4.6	0	356,552	0	132,086	132,086	127,361	4,725
Puerto Rico	14.4	64,584	0	0	0	(64,584)	(64,584)	0
Rhode Island	3.3	0	14,618	0	5,415	5,415	5,193	222
South Carolina	4.3	0	72,612	0	26,899	26,899	25,834	1,065
South Dakota	4.0	0	17,092	0	6,332	6,332	6,088	244
Tennessee	5.7	0	225,698	225,698	83,611	309,309	286,733	22,576
Texas	6.8	3,374,999	0	0	0	(3,374,999)	(3,374,999)	0
Utah	4.5	0	36,743	0	13,611	13,611	13,095	516
Vermont	3.0	0	7,490	0	2,775	2,775	2,661	114
Virginia	3.9	0	117,473	0	43,518	43,518	41,789	1,729
Washington	5.9	0	251,453	251,453	93,152	344,605	319,878	24,727
West Virginia	8.8	0	207,976	207,976	77,045	285,021	265,797	19,224
Wisconsin	4.1	0	138,891	0	51,453	51,453	49,499	1,954
Wyoming	6.4	0	30,853	30,853	11,429	42,282	39,306	2,976
NATIONAL TOTAL	5.4	8,798,806	8,798,806	5,539,255	3,259,551	0	0	0

[FR Doc. 89-30162 Filed 12-27-89; 8:45 am]
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Mine Safety and Health Administration

[Docket No. M-89-25-M]

Bad Creek Constructors; Petition for Modification of Application of Mandatory Safety Standard

Bad Creek Constructors, Highway 130 North, P.O. Box 239, Salem, South Carolina 29676 has filed a petition to modify the application of 30 CFR 56.9300(d) (berms or guardrails) to its Bad Creek Constructors Mine (I.D. No. 38-00605) located in Oconee County, South Carolina. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows: 1. The petition concerns the requirement that berms or guardrails be provided on elevated roadways.

2. As an alternate method, in lieu of providing berms or guardrails on elevated roadways, petitioner proposes the following:

(a) A locked gate would be installed at the entrance to the roadway;

(b) Signs would be installed stating that the speed limit is 10 miles per hour; and that the roadway is not bermed;

(c) Delinators (reflectors) would be installed along the perimeter of the elevated roadway 25 feet apart; and

(d) The road surface would be maintained for proper traction.

3. In support of this request, petitioner states that the elevated roadway is infrequently traveled by service and maintenance vehicles.

4. For these reasons, petitioner requests modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 29, 1990. Copies of the petition are available for inspection at that address.

Dated: December 21, 1989.

Patricia W. Silvey,
Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-30163 Filed 12-27-89; 8:45 am]
BILLING CODE 4510-43-M

[Docket No. M-89-163-C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 77.900 (low- and medium-voltage circuits serving portable or mobile three-phase alternating current equipment; circuit breakers) to its Burning Star No. 2 Mine (I.D. No. 11-00610) and its Burning Star No. 4 Mine (I.D. No. 11-02024) both located in Perry County, Illinois. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows: 1. The petition concerns the requirement that low- and medium-voltage ciruits supplying power to portable or mobile three-phase alternating current equipment be protected by suitable circuit breakers of adequate interrupting capacity which are properly tested and maintained and equipped with devices to provide protection against undervoltage, grounded phase, short circuit, and overcurrent.

2. As alternate method petitioner proposes the following procedures:

(a) The ground-phase protection required by the standard would be provided by dropping out a magnetic motor starter in lieu of tripping a circuit breaker; and

(b) The short-circuit protection would be provided by a circuit breaker. The undervoltage protection would be provided by the magnetic motor starter which has been permitted by MSHA for some time. Overload protection would be provided by the magnetic motor starter and the circuit breaker.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 29, 1990. Copies of the petition are available for inspection at that address.

Dated: December 18, 1989.

Patricia W. Silvey,
Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-30164 Filed 12-27-89; 8:45 am]
BILLING CODE 4510-43-M

[Docket No. M-89-170-C]

Deer Creek Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Deer Creek Mining Company, P.O. Box 97, Nortonville, Kentucky 42442 has filed a petition to modify the application of 30 CFR 75.330 (sealing abandoned sections) to its Deer Creek Mine (I.D. No. 15-12958) located in Webster County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows: 1. The petition concerns the requirement that abandoned areas of the mine be isolated from the active workings of mine with explosion-proof seals or bulkheads.

2. Due to an excessive water buildup and a roof fall, the First West panel of the mine has been abandoned.

3. As an alternate method, petitioner proposes to use water to seal the First West panel.

4. In support of this request petitioner states that—(a) The First West panel was developed parallel to and down the coal dip, and any water buildup would result in total panel flooding with the exception of a limited number of crosscuts in the panel's north submains. This water buildup would act as a natural seal of the panel; and (b) The intake airflow over the roof fall would be monitored for methane prior to each shift.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 29, 1990. Copies of the petition are available for inspection at that address.

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Dated: December 21, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-30165 Filed 12-27-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-185-C]

Skyview Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Skyview Coal Company, R.D. No. 1, Box 526, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.301 (air quality, quantity,and velocity) to its Diamond Slope Mine (I.D. No. 36-07589) located in Schuylkill County, Pennsylvania. The petititon is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows: 1. The petition concerns the requirement that the minimum quantity of air reaching the last open crosscut in any pair or set of developing entries and the last open crosscut in any pair or set of rooms be 9,000 cubic feet a minute, and the minimum quantity of air reaching the intake end of a pillar line be 9,000 cubic feet a minute. The minimum quantity of air reaching each working face is required to be 3,000 cubic feet a minute.

2. Air sample analysis history reveals that harmful quantities of methane are nonexistent in the mine. Ignition, explosion, and mine fire history are nonexistent for the mine. There is no history of harmful quantities of carbon monoxide and other noxious or poisonous gases.

3. Mine dust sampling programs have revealed extremely low concentrations of respirable dust.

4. Requiring extrmeely high velocities in small cross-sectional airways and manways in friable anthracite veins for control purposes, particularly in steeply pitching mines, present a very dangerous flying object hazard to the miners and cause extremely uncomfortable damp and cold conditions in the mine.

5. As an alternate method, petitioner proposes that: (a) The minimum quantity of air reaching each working face be 1,500 cubic feet per mintue; (b) The minimum quantity of air reaching the last open crosscut in any pair or set of developing entries be 5,000 cubic feet per minute; and (c) The minimum quantity of air reaching the intake end of a pillar line be 5,000 cubic feet per minute, or whatever additional quantity of air that may be required in any of these areas to maintain a safe and healthful mine atmosphere.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the office of Standards, Regulations and variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 29, 1990. Copies of the petition are available for inspection at that address.

Dated: December 18, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-30166 Filed 12-27-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-173-C]

Underground Coal, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Underground Coal, Inc., 2103 Cosby Road, P.O. Box 740, Washington, Indiana 47501 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its Apraw Mine (I.D. No. 12-01988) located in Knox County, Indiana. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows: 1. The petition concerns the requirements that battery-charging stations be housed in fireproof structures or areas and air currents used to ventilate structures or areas enclosing electrical installations be coursed directly into the return.

2. In lieu of housing battery-charging stations in fireproof structures or areas, petitioner proposes the following: (a) The charging stations would be attended and inspected every 30 minutes; (b) A carbon-monoxide monitor would be installed and maintained, and would be located in the return airway outby the farthest charging station from the working face; and farthest charging station from the working face; and

(c) Air used to ventilate the stations would be coursed directly into the return with the aid of wing curtains.

3. Petition states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 29, 1990. Copies of the petition are available for inspection at that address.

Dated: December 21, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-30168 Filed 12-27-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-182-C]

Soldier Creek Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Soldier Creek Coal Co., P.O. Box 1, Price, Utah 84501, has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Soldier Canyon Mine (I.D. No. 42-00077) located in Carbon County, Utah. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that entries used as intake and return aircourses be separated from belt haulage entries, and that belt haulage entries not be used to ventilate active working places.

2. As an alternate method, petitioner proposes to use a two-entry system as outlined in the petition for (a) longwall panel gateroad development in which the belt haulage entry would act as a return aircourse and (b) longwall panel retreat mining in which the belt haulage entry could be used in compliance with 30 CFR 75.326 or as an additional intake aircourse for longwall face ventilation.

3. An atmospheric monitoring system utilizing low-level carbon monoxide or other product of combustion monitors would be installed in the panel intake entry and the panel belt entry used as a return aircourse. In addition to early control, the alarm system associated with these monitors would provide early warning of a fire in either the intake or belt entries.

4. In addition to the carbon monoxide monitoring devices installed in the belt haulage entry, approved methane monitors would be iantalled so that the return air is monitored near the mouth of the longwall section near the tailpiece of the belt conveyor, and at or near any secondary belt drive unit installed in the belt haulage entry.

5. The use of the belt entry as an additional intake, coupled with the installation of stoppings separating the belt entry from the primary intake entry, would provide two separate and distinct intake air escapeways to the miners working in the longwall working section.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard, while compliance with the standard will result in a diminution of safety to the miners affected.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 29, 1990. Copies of the petition are available for inspection at that address.

Dated: December 21, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-30167 Filed 12-27-89; 8:45 am]

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Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 89-104; Exemption Application No. D-7902 et al.]

Grant of Individual Exemptions; Ohio Bank & Savings Company Profit Sharing Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Ohio Bank and Savings Company Employees' Profit Sharing Plan and Trust (the Plan) Located in Findlay, Ohio

[Prohibited Transaction Exemption 89-104; Exemption Application No. D-7902]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the purchase by the Plan of certain real property (the Property) located in Findlay, Ohio, which is leased to the Ohio Bank and Savings Company (the Employer), the sponsor of the Plan; (2) the lease of the Property by the Plan to the Employer; and (3) the potential purchase of the Property by the Employer from the Plan pursuant to the terms of such lease; provided that all terms of such transactions are no less favorable to the Plan than those which the Plan could obtain in arm's-length transactions with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on Tuesday, October 31, 1989, at 54 FR 45818.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Capital Guardian Trust Company (Capital Guardian) Located in Los Angeles, CA

[Prohibited Transaction Exemption 89-105; Application No. D-7929]

Exemption

The restrictions of section 406(b)(2) of the Act shall not apply to the cross-trading of securities by Capital Guardian for employee benefit plan accounts (Plans) for which Capital Guardian acts as a fiduciary.

Conditions and Definitions

1. This exemption is subject to the following conditions:

(a) A Plan's participation in the cross-trade program is subject to a written authorization executed in advance by a fiduciary with respect to each such Plan, the fiduciary of which is independent of Capital Guardian;

(b) The authorization referred to in paragraph (a) is terminable at will without penalty to such Plan, upon receipt by Capital Guardian or written notice of termination and;

(c) Before an authorization is made, the authorizing Plan fiduciary must be furnished with any reasonably available information necessary for the authorizing fiduciary to determine whether the authorization should be made, including (but not limited to) a copy of this exemption, an explanation of how the authorization may be terminated, a description of Capital Guardian's cross-trade practices, and any other reasonably available information regarding the matter that the authorizing fiduciary requests;

2. (a) No more than three (3) business days prior to the execution of any cross-trade transaction, Capital Guardian

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must inform an independent fiduciary of each Plan involved in the cross-trade transaction: (i) That Capital Guardian proposes to buy or sell specified securities in a cross-trade transaction if an appropriate opportunity is available; (ii) the current trading price for such securities; and (iii) the total number of shares to be acquired or sold by each such Plan;

(b) Prior to each cross-trade transaction, the transaction must be authorized either orally or in writing by the independent fiduciary of each Plan involved in the cross-trade transaction;

(c) If a cross-trade transaction is authorized orally by an independent fiduciary, Capital Guardian will provide written confirmation of such authorization in a manner reasonably calculated to be received by such independent fiduciary within one (1) business day from the date of such authorization;

(d) The authorization referred to in this paragraph (2) will be effective for a period of three (3) business days; and

(e) No more than ten (10) days after the completion of a cross-trade transaction, the independent fiduciary authorizing the cross-trade transaction must be provided a written confirmation of the transaction and the price at which the transaction was executed;

3. (a) The cross-trade transaction is effected at the closing price for the security on the date of the transaction, and such price is within 10 percent of the closing price of the security on the day before the date on which Capital Guardian receives authorization by the independent Plan fiduciary to engage in the cross-trade transaction;

(b) The securities involved in the cross-trade transaction are those for which there is a generally recognized market; and

(c) The cross-trade transaction is affected only where the trade involves less than 5 percent of the aggregate average daily trading volume of the securities which are the subject of the transactionf or the week immediately preceding the authorization of the transaction;

4. (a) Capital Guardian furnishes the authorizing Plan fiduciary at least once every three months, and not later than 45 days following the period to which it related, a report disclosing: (i) a list of all cross-trade transactions engaged in on behalf of the Plan; and (ii) with respect to each cross-trade transaction, the highest and lowest prices at which the securities involved in the transaction were traded on the date of such transaction; and

(b) The authorizing Plan fiduciary is furnished with a summary of the information required under this paragraph 4(a) at least once per year. The summary must be furnished within 45 days after the end of the period to which it relates, and must contain the following: (i) A description of the total amount of Plan assets involved in cross-trade transactions during the period; (ii) a description of Capital Guardian's cross-trade practices, if such practices have changed materially during the period covered by the summary; (iii) a statement that the Plan fiduciary's authorization of cross-trade transactions may be terminated upon receipt by Capital Guardian of the fiduciary's written notice to that effect; and (iv) a statement that the Plan fiduciary's authorization of the cross-trade transactions will continue in effect unless it is terminated;

5. The cross-trade transaction does not involve assets of any Plan established or maintained by Capital Guardian or any of its affiliates;

6. All Plans which will participate in the cross-trade program will have total assets of at least $25 million;

7. Capital Guardian receives no fee or other compensation (other than its agreed investment management fee) with respect to any cross-trade transaction;

8. Capital Guardian is a discretionary investment manager with respect to Plans participating in the cross-trade program;

9. For purposes of this exemption:

(a) "cross-trade" transaction means a purchase and sale of securities between accounts for which Capital Guardian or an affiliate of Capital Guardian is acting as a trustee or investment manager.

(b) "affiliate" means any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with Capital Guardian;

(c) "Plan account" means an account holding assets of one or more employee benefit plans which are subject to the Act, for which Capital Guardian acts as a fiduciary.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on October 31, 1989 at 54 FR 45820.

FOR FURTHER INFORMATION CONTACT: Ms. B.S. Scott of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

Liberty House Restaurant Corporation Profit Sharing Plan (the Plan) Located i Atlanta, Georgia

[Prohibited Transaction Exemption 89-106; Application No. D-7966]

Exemption

The restrictions of section 406(a), (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the Plan's proposed cash sale (the Sale) of certain improved real property (the Property) located in Atlanta, Georgia to Richard Lewis (the Applicant), a party in interest with respect to the Plan; provided that the cash consideration paid on the date of the Sale by the Applicant to the Plan is the greater of either the appraised fair market value of the Property or the Plan's aggregate cost of acquisition, financing and holding of the Property as of the date of the Sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on November 3, 1989 at 54 FR 46487.

FOR FURTHER INFORMATION CONTACT: Mrs. B.S. Scott of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

Ocmulgee Fields, Inc. Profit Sharing Plan and Trust (the Plan) Located in Macon, Georgia

[Prohibited Transaction Exemption 89-107; Application No. D-7990]

Exemption

The restrictions of section 406(a) and (b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the Plan's proposed cash sale (the Sale) to Ocmulgee Fields, Inc. (the Employer), the Plan's sponsor and, as such, a party in interest with respect to the Plan, of a certain parcel of improved real property located in Macon, Georgia; provided that the terms and conditions of the proposed Sale are at least as favorable to those obtainable by the Plan in an arm's length transaction between unrelated parties.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on November 3, 1989 at 54 FR 46489.

FOR FURTHER INFORMATION CONTACT: Mrs. B.S. Scott of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

Samuel Shapiro & Co., Inc. Profit Sharing Trust (the Plan) Located in Baltimore, Maryland

[Prohibited Transaction Exemption 89-108; Exemption Application No. D-8072]

Exemption

The restrictions of section 46(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale by the Plan of common stock of Samuel Shapiro & Co. (of D.C.), Inc. (the D.C. Company), to Samuel Shapiro & Co., Inc. (the Company), the sponsor of the Plan and a Subchapter S Corporation under the Code, in connection with the proposed merger of the Company and the D.C. Company, provided that the sales price for the stock is not less than the fair market value of the stock on the date of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on October 31, 1989 at 54 FR 45822.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department telephone (202) 523-8883. (This is not a toll-free number.)

Great Southern Printing and Manufacturing Company Profit Sharing Plan and Trust (the Plan) Located in Frederick, MD

[Prohibited Transaction Exemption 89-109; Exemption Application No. D-8003]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale by the Plan of certain improved property (the Property) to Great Southern Printing and Manufacturing Company, for $143,000, provided the amount paid for the Property is not less than its fair market value at the time the transaction is consummated.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on November 3, 1989 at 54 FR 46490.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Bi-County Radiology Medical Group, Inc., Profit Sharing Plan and Trust (the Plan), Located in Yuba City, California

[Prohibited Transaction Exemption 89-110; Exemption Appliction No. D-8113

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale of certain real property by the Plan to Bi-County Radiology Medical Group, Inc., a party in interest with respect to the Plan, provided the Plan receives the greater of $149,000 or the fair market value as determined at the time of the sale by an independent qualified appraiser.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of the proposed exemption published on November 3, 1989 at 54 FR 46491.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Dudley M. Baker, M.D. Profit Sharing Plan and Trust (the Plan) Located in Bennington, Vermont

[Prohibited Transaction Exemption 89-111; Exemption Application No. D-8157]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the loan of $25,000 (the Loan) to Dudley M. Baker, M.D. (Dr. Baker), a party in interest with respect to the Plan, by Dr. Baker's individually directed account in the Plan, provided that the terms and conditions of the Loan are no less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated third party at the time of the making of the Loan.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on October 31, 1989 at 54 FR 45823.

FOR FURTHER INFORMATION CONTACT: Joseph L. Roberts III of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Ed Miller & Sons, Inc. Profit Sharing Plan (the PS Plan) and Ed Miller & Sons, Inc. Money Purchase Pension Plan (the MP Plan; together, the Plans) Located in Omaha, Nebraska

[Prohibited Transaction Exemption 89-112; Exemption Application Nos. D-8160 and D-8161]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed loans of up to 25 percent of the assets of the PS Plan and of the MP Plan to Miller Developments, a party in interest with respect to the Plans, under the terms and conditions described in the notice of proposed exemption, provided such terms and conditions are not less favorable to the Plans than those obtainable in an arm's-length transactoin with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on November 3, 1989, at 54 FR 46492.

Temporary Nature of Exemption: This exemption is effective as to loans entered into within 4 years from the date of granting of this exemption.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Vinings Chemical Company, Inc. Profit Sharing Plan and Trust and Vinings Industries, Inc. Section 401(k) Retirement Savings Plan and Trust (collectively, the Vinings Plans) Located in Atlanta, Georgia

[Prohibited Transaction Exemption 89-113; Exemption Application Nos. D-8201 through D-8203]

Exemption

The restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the cash sale (the Sale) by Vinings Plans of certain securities (the Securities) to Laporte, Inc., a party in interest with respect to the Vinings Plans, provided that the consideration paid for the securities is the greater of (1) the original consideration paid by the Vinings Plans

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for the acquisition of the Securities or (2) the fair market value of the Secretaries on the date of the Sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on November 3, 1989 at 54 FR 46493.

FOR FURTHER INFORMATION CONTACT: Mr. C. E. Beaver of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Hotel Employees and Restaurant Employees International Union Welfare Plan (the Plan) Located in Naperville, Illinois

[Prohibited Transaction Exemption 89-114; Application No. L-7754]

Exemption

The restrictions of section 406(a) of the Act shall not apply to the lease arrangement (the Arrangement) comprising five written agreements executed on July 6, 1988—namely: A Lease of Personal Property, a Computer Security Agreement, an Option To Purchase (covering leased computer equipment), a Software Program License Agreement, and a Software System Support Agreement—between (a) the Plan and (b) Resource Information Management Systems and its wholly owned subsidiary, Winthrop Financial Group, Inc., parties in interest with respect to the Plan, covering computer equipment and software previously leased to the Plan's former administrator, William L. Meyers, Inc., provided the terms of the Arrangement are as favorable to the Plan as those the Plan could obtain in a similar transaction with unrelated parties.

EFFECTIVE DATE: This exemption is effective as of July 6, 1988.

For a more complete statement of the facts and representations supporting the Department's decisions to grant this exemption refer to the notice of proposed exemption.

FOR FURTHER INFORMATION CONTACT: Mrs. Miriam Freund of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 22nd day of December, 1989.

Ivan Strasfeld,

Director of Exemption Determinations Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 89-30150 Filed 12-27-89; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-8061-8062] et al.

Proposed Exemptions; Friedman, Sloan & Ross Profit Sharing Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this Federal Register Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N-5671, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the Federal Register. Such notice shall include a copy of the notice of pendency of the exemption as published in the Federal Register and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Friedman, Sloan & Ross Profit Sharing Plan and Friedman, Sloan & Ross Money Purchase Plan (the Plans) Located in San Francisco, California

[Application Nos. D-8061 and D-8062]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed cash sale of 1500 shares of stock (the Stock) in Blue Chip Cookies, Inc. to Mr. Stanley J. Friedman (Mr. Friedman), a party in interest with respect to the Plans, from Mr. Friedman's separate account in the Plans; provided that the sales price is not less than the fair market value of the Stock as determined by an independent, qualified appraiser at the time of the sale.

Summary of Facts and Representations

1. The Plans are defined contribution plans in a combined trust with approximately $1.5 million in assets as of February 28, 1989. Each of the Plans had 13 participants as of May 31, 1988. The trustee of the Plans is Sumitomo Bank of California, (the Trustee). Freidman, Sloan & Ross, a Professional Corporation (the Employer) is the sponsor of the Plans. Mr. Friedman is more than 10% partner (in both capital and profits) of the Employer.

2. In 1985 the Stock was purchased from the issuer by the Plans at Mr. Friedman's direction to be held in his individually directed account in the Plans. The original acquisition price was $15,000 ($10 per share). The applicant represents that while the Stock has increased in value since the purchase by the Plans, the Plans' continued holding of the Stock is not desirable due to the illiquidity of the Stock and the expense such holding will generate in the administration of the Plans. For these reasons the Trustee has recommended that Mr. Friedman remove the Stock from the Plans. Furthermore, Mr. Friedman is considering withdrawing as a partner in the Employer and taking a distribution from the Plans. If Mr. Friedman receives such distribution, he would roll it over into an Individual Retirement Arrangement (IRA) and begin receiving periodic distributions. The applicant represents that it would be preferable for Mr. Friedman's IRA to consist of stable, low volatility investments that produce a steady return. The Stock, which pays no dividends and is illiquid, does not fit this profile.

3. The Stock was appraised as of September 14, 1988 by Robert Kahn, a qualified and independent Certified Management Consultant and member of the Institute of Management Consultants and of the Retail Research Society (the Kahn Appraisal). The Kahn Appraisal indicates that the appropriate fair market value of the Stock is $37,440 ($24.96 per share). The Kahn Appraisal states that the valuation of the Stock was performed using procedures that conform to the requirements of section 3(18) of the Act and the proposed regulations promulgated thereunder. The Kahn Appraisal also states that the Stock has never been the subject of an effective registration statement under the Securities Act of 1933 and is therefore restricted stock and cannot be readily traded.

4. Mr. Friedman proposes to pay cash to the Plans for the Stock in the amount of the fair market value as of the date of consummation of the transaction, as determined by Mr. Kahn in a signed, written update of the existing appraisal. The Plans will not bear any expenses related to the transaction. The Plans will transfer the shares to Mr. Friedman without any warranties and without entering into any continuing undertakings concerning the Stock.

5. In summary, the applicant represents that the proposed transaction satisfies the requirements of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) The purchase price at which the Stock would be sold by the Plans to Mr. Friedman would be fair market value;

(b) There would be no extention of credit from the Plans to Mr. Friedman in connection with the transaction;

(c) The Stock is restricted stock, is illiquid and pays no dividends;

(d) The Plans would transfer the Shares in question to Mr. Friedman without any warranties and without entering into any continuing undertakings concerning the Stock; and

(e) The transaction affects only Mr. Friedman's accounts in the Plans and Mr. Friedman desires that the transaction be consummated.

FOR FURTHER INFORMATION CONTACT: Kay Madsen of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

University Orthopedics and Sports Medicine, P.C. Profit Sharing Plan and Money Purchase Pension Plan (the Plans) Located in Syracuse, New York

[Application Nos. D-8044 and D-8045]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of sections 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to a loan of money from certain individual accounts in the Plans to U.O.S. Properties, a party in interest with respect to the Plans, provided the terms of the loan are at least as favorable as the Plans could obtain in an arm's-length transaction with an unrelated party.

Summary of Facts and Representations

1. University Orthopedics and Sports Medicine, P.C. (the Employer) is engaged in the practice of orthopedic and sports medicine in the Syracuse, New York, area. David R. Hootnick, M.D. (Hootnick) and Mark R. Harwood, M.D. (Harwood) each own fifty percent of the stock of the Employer. Hootnick and Harwood are also the trustees of the Plans. The Plans are individual account plans which permit each participant to direct the investments of his or her account. The participants are the same in both Plans. The Profit Sharing Plan had 13 participants and total assets of $1,075,920 as of December 31, 1988. On the same date, the Money Purchase Pension Plan had 13 participants and total assets of $377,773.

2. U.O.S. Properties is a general partnership (the Partnership) located in Syracuse, the purpose of which is to acquire, develop, hold and manage real property. The Partnership consists of four equal partners who are employed by the Employer. Two of the partners are Hootnick and Glenn B. Axelrod, M.D. (Axelrod) who are also participants in the Plans.

3. The Plans propose to make a loan of $250,000 to the Partnership from the individual accounts of Hootnick and Axelrod. At the time the loan is entered into, the loan amounts, totaling $250,000, will account for less than 25 percent of the assets in the accounts of Hootnick and Axelrod in each Plan. The proceeds of the loan are to be used by the

Partnership to purchase a condominium unit (the Property). The Property is

5. In summary, the applicant represents that the proposed transaction

of its affiliated companies. Ryan, which is in the business of residential

Lufkin & Jenrette, NVR's financial adviser, which provided expert investment advice with respect to the

If a majority of the Units are sold through the Put Option or on the open market in excess of $7.50 per Unit, the

operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

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Partnership to purchase a condominium unit (the Property). The Property is located in the North Medical Building Condominium in the Town of Clay, New York, near Syracuse. The purchase price of the Property to the Partnership under a purchase agreement dated September 13, 1988, is $387,500.

The loan will be for a period of 15 years and will provide for equal monthly payments of principal and interest. The interest rate on the loan will be at least two percent above the prime rate charged by commercial lenders for loans of this type in the area of the Employer. The interest rate will be adjusted every five years to reflect the current prime rate for the area. The Plans obtained a letter dated October 25, 1989, from the Oneida Savings Bank (the Bank), an unrelated commercial lender located in Cazenovia, New York. The Bank stated that it would consider making a loan based on terms the same as those described in the application.

The loan will provide that the trustees of the Plans will have a perfected secured interest in the Property through a first mortgage on the Property. There will be no other encumbrance on the Property. The loan will be callable by the Plans in the event that the proceeds of the loan are required to pay out cash distributions to the two individuals. In addition, the Partnership will maintain sufficient casualty and fire insurance on the Property to ensure recoupment of the entire principal amount of the loan and the trustees will be designated as loss payees under the insurance to the extent of the amount of the loan.

4. The applicant obtained an appraisal on the Property from David F. Peatfield (Peatfield) and John Pizzari (Pizzari) of the Peatfield Company, Ltd., a real estate appraisal company located in Syracuse. According to the applicant, Peatfield and Pizzari are independent of the Plans, the Employer, Hootnick and Axelrod. The Property consists of a specific condominium unit, Unit 1.B, located on the first floor of the condominium building. Using the cost approach and income approach methods of appraisal, Peatfield and Pizzari estimated that the fair market value of the Property was $434,200 as of May 20, 1989. This value represents approximately 174 percent of the amount of the proposed loan. The applicant represents that the collateral will be maintained at no less than 150 percent of the remaining balance on the loan throughout the duration of the loan. Additional property will be pledged as collateral if such property becomes necessary to maintain the 150 percent value to loan ratio.

5. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act because: (1) An unrelated commercial lender has stated that it would consider making a loan based on the same terms; (2) the loan will be secured by a first mortgage on the Property, the fair market value of which has been established by an independent appraisal; (3) the collateral for the loan will at all times exceed 150 percent of the remaining balance of the loan; and (4) the loan amounts will be only from the individual accounts of Hootnick and Axelrod and will not affect the assets of other participants in the Plans.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Profit Sharing Plan of NVR L.P. and Affiliated Companies (the Plan) Located in Pittsburgh, Pennsylvania

[Application No. D–8079]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of sections 406(a), (b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (1) The September 14, 1989 contribution to the Plan by Ryan Homes, Inc. (Ryan), a party in interest with respect to the Plan, of 480,680 master limited partnership common units (the Units) of NVR L.P. (NVR), provided that the Units were valued at no greater than their fair market value at the time of contribution; (2) the Plan's holding of such Units; and (3) the contribution to and holding by the Plan of an irrevocable put option (the Put Option) which permits the Plan to sell the Units to NVR at a price per Unit of $7.50.

EFFECTIVE DATES: If granted, this proposed exemption will be effective from September 14, 1989 through September 14, 1999.

Summary of Facts and Representations

1. The Plan is a defined contribution plan which had 2,689 active participants as of December 31, 1988. As of September 13, 1989, the Plan held approximately $45 million in assets. The Plan is maintained by Ryan and certain of its affiliated companies. Ryan, which is in the business of residential development, is a wholly owned indirect subsidiary of NVR.

2. NVR is a publicly traded master limited partnership whose Units are listed on the American Stock Exchange (ASE). NVR determined that a $3.6 million contribution to the Plan remained to be made for the 1988 Plan year after a $600,000 contribution had previously been made in cash. On September 14, 1989, Ryan made a contribution to the Plan of 480,680 Units. The closing price for the Units on the ASE on that date was $7.50 per Unit.

3. In addition to the Units, NVR also contributed to the Plan on September 14, 1989, an irrevocable Put Option. The applicants represent that NVR has done so in order to ensure that the contribution of the Units is in the best interests of the Plan participants and their beneficiaries and to protect the Plan participants and beneficiaries with respect to the value of any Units held. The Put Option, which will be exercisable by the Plan's independent fiduciary (see rep. 5, below) will permit the Plan to require NVR to purchase from the Plan all, or any portion of the Units contributed to the Plan. The purchase price of such Units sold pursuant to the Put Option would be $7.50 per Unit, the closing price of the Units on the ASE on the contribution date.

4. The applicants represent that the Investment Management and Trust Division of Pittsburgh National Bank (the Bank) has been appointed the independent fiduciary for the Plan concerning the subject transactions. The Bank is a subsidiary of PNC Financial Corp. (PNC), one of the largest bank holding companies in the United States, with almost $41.7 billion in discretionary assets. The Bank's Trust Division employs over 400 persons and is responsible for managing approximately $5.4 billion in discretionary assets. The Bank represents that neither its Board of Directors nor that of PNC shares any common members with NVR. In addition, NVR's outstanding loans with PNB constitute less than 1% of PNB's loan portfolio and NVR's deposits with PNB are less than 1% of PNB's total customer deposits.

5. The Bank represents that it reviewed the subject transactions and determined, as of September 14, 1989, that the transactions were appropriate for the Plan and in the best interests of the Plan and its participants and beneficiaries. The Bank represents that before it made its determination, it considered a letter from Donaldson, Lufkin & Jenrette, NVR's financial advisor, which provided expert investment advice with respect to the Units. The letter states that the Units are publicly traded on the ASE, and that there is a public market with respect to the Units. Thus, there is a steady volume of trading of the Units and a readily available daily price per Unit. In addition, internal Plan investment personnel reviewed NVR's financial situation. They determined that NVR has performed well financially, and they forecast NVR's continued success over the long term. They further determined that the Units have the potential for appreciation over the long term. It is also their opinion that the Units are comparable, as an investment, with the common stock of similarly situated corporations. The Bank further represents that the Units that were contributed represent approximately 7.3 percent of Plan assets. The addition of the Units adds even more diversification to the Plan's investment portfolio. It is the Bank's opinion that the Units should improve total portfolio risk for the Plan.

6. The Bank represents that it has taken several steps to protect the interests of the Plan and its participants and beneficiaries with respect to the Plan's acquisition of the Units. The Bank represents that it will monitor the value of the Units at least weekly and, if the Bank determines it to be necessary, on a daily basis. The Bank will also monitor NVR's financial statements on a continuing basis. The Bank represents that it will exercise the Put Opton if, in its sole discretion as Plan fiduciary, it determines that it is the Plan's best interests to do so.

7. The Bank as independent fiduciary has also required NVR to fund a separate trust (the Trust), the sole purpose of which is to protect the Plan from any possibility of a market loss with respect to the Units. This Trust is not an employee benefit plan. It is separate from the Plan's trust and will be administered by a trust officer in a Trust Division of the Bank that is separate from the Employee Benefits Department which administers the Plan's trust. The Trust will receive no assets from the Plan's trust, nor will it receive contributions intended for the Plan's trust. The Trust has received its initial funding of $300,000 from NVR's general assets and can receive additional funds from NVR, based on the Bank's constant monitoring of the value of the Units. The Trust will distribute cash to the Plan in the event that the Plan sells Units on the open market for less than $7.50 per Unit, i.e., the Trust will "make up the difference". If a majority of the Units are sold through the Put Option or on the open market in excess of $7.50 per Unit, the Trust will terminate and the corpus will be returned to NVR. The applicants represent that the Trust is not the sole guarantee of payment to the Plan, but is an extra protection. Regardless of the amount of assets in the Trust, NVR will still pay the appropriate amount to the Plan for the Units if the Put Option is exercised.

8. In summary, the applicants represent that the subject transactions satisfy the criteria contained in section 408(a) of the Act because: (1) The contributions of the Units to the Plan was a one-time transaction; (2) the Units contributed represent approximately 7.3% of the Plan's assets; (3) the fair market value of the Units at the time of the contribution was determined by the objective standard of the closing price of the Units on the ASE; (4) the Plan has received an additional safeguard in the form of an irrevocable Put Option which will enable the Plan, upon the independent fiduciary's decision, to sell the Units back to NVR at a price of $7.50 per Unit; (5) the Bank has agreed to serve as the Plan's independent fiduciary in connection with the subject transactions, has reviewed them, and determined as of September 14, 1989 that they are in the best interests of the Plan and its participants and beneficiaries; and (6) the Bank will monitor the performance of the Units to determine, among other things, whether to exercise the Put Option.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemented to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 22nd day of December 1989.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 89–30151 Filed 12–27–89; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL COMMISSION ON ACQUIRED IMMUNE DEFICIENCY SYNDROME

Correction/Addition

This is to amend the **Federal Register** Notice 54 FR, December 19, 1989 issue, page 51959 to include:

AGENCY: National Commission on Acquired Immune Deficiency Syndrome.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463 as amended, the National Commission on Acquired Immune Deficiency Syndrome announces a forthcoming meeting of the Commission.

DATE AND TIME: January 24, 1990, 2:00–5:00 p.m.

PLACE: Optional Site Visits, Southern California.

FOR FURTHER INFORMATION CONTACT: Maureen Byrnes, Executive Director, the National Commission on Acquired

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Immune Deficiency Syndrome, 1730 K Street, NW., Suite 815, Washington, DC 20006 (200/254-5125).

Maureen Byrnes,
Executive Director.

[FR Doc. 89-30152 Filed 12-27-89; 8:45 am]
BILLING CODE 9430-LN-M

NATIONAL COMMUNICATIONS SYSTEM

Meeting; Industry Executive Subcommittee of the National Security Telecommunications Advisory Committee

A meeting of the Industry Executive Subcommittee of the National Security Telecommunications Advisory Committee will be held Wednesday, February 21, 1990. The meeting will be held at the MITRE Corporation, 7525 Colshire Drive, McLean, VA. Registration will begin at 8:30 a.m. and the meeting will start at 9 a.m. The agenda is as follows:

a. Opening remarks.
b. Administrative remarks.
c. Briefings on industry and Government activities.

Due to the requirement to discuss classified information, in conjunction with the issues listed above, the meeting will be closed to the public in the interest of National Defense. Any person desiring information about the meeting may telephone (202) 692-9274 or write the Manager, National Communications System, Washington, DC 20305-2010.

Terrence N. Danner,
Captain, USN Assistant Manager, NCS Joint Secretariat.

[FR Doc. 89-30045 Filed 12-27-89; 8:45 am]
BILLING CODE 3610-05-M

NATIONAL SCIENCE FOUNDATION

Meeting; Advisory Committee for Science and Technology Research Centers

The National Science Foundation announces the following meeting:

Name: Advisory Committee for Science and Technology Research Centers.

Date and Time: January 10, 1990—8:30 a.m. to 5:00 p.m.

Place: University of California/Berkeley Berkeley, California.

Type of Meeting: Closed.

Contact Person: William C. Harris, Director, Office of Science & Technology Centers Development (202) 357-9806, Room 533, National Science Foundation, Washington, DC 20550.

Minutes: May be obtained from the Contact Person at the above address.

Purpose of Meeting: To provide advice and recommendations concerning support for Science and Technology Research Centers

Agenda: Review and evaluation of Science & Technology Research Centers Proposals as part of the selection process of awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Reason for Late Notice: Difficulty in obtaining a suitable meeting date for all members.

Dated: December 22, 1989.

M. Rebecca Winkler,
Committee Management Officer.

[FR Doc. 89-30172 Filed 12-27-89; 8:45 am]
BILLING CODE 7555-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

Public Hearing in New York, New York; Aviation Accident

In connection with the investigation of USAir Airlines, Flight 5050, Boeing 737, Accident, in Flushing, New York, September 20, 1989, the National Transportation Safety Board will convene a public hearing at 9:00 a.m. (eastern standard time), on Tuesday, February 13, 1989, at the New York Penta Hotel, Grand Ballroom on the Mezzanine level, located at 401 Seventh Avenue and 33rd Street, New York, New York 10001. For more information contact Ted Lopatkiewica, Office of Government and Public Affairs, National Transportation Safety Board, 800 Independence Avenue, SW., Washington, DC 20594, telephone (202) 382-6605.

Dated: December 22, 1989.

Bea Hardesty,
Federal Register Liaison Officer.

[FR Doc. 89-30149 Filed 12-27-89; 8:45 am]
BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

NUREG: Issuance, Availability

The Nuclear Regulatory Commission has issued NUREG-1380, "Low Level Radioactive Waste Research Program Plan". NUREG-1380 provides an integrated plan for the low-level waste (LLW) research program to ensure that the research and its products are responsive and timely for use in NRC's LLW regulatory program. The NUREG discusses scientific and technical uncertainties associated with the disposal of LLW, presents programmatic goals and objectives for resolving them, establishes a long-term strategy for conducting the confirmatory and investigative research required by NRC's regulatory staff, and includes schedules and milestones for completing that research. The plan will be updated each Spring to reflect completed tasks, to identify additional regulatory and research needs and changing priorities, and to address or incorporate comments.

This notice does not designate a specific period of time for public review of the plan but comments or suggestions are requested and will be welcome at any time. Comments should be sent to Mel Silberberg, Chief, Waste Management Branch, Office of Nuclear Regulatory Research, Nuclear Regulatory Commission, Washington, DC, 20555.

NUREG-1380 is available for inspection at the Commission's Public Document Room, 2120 L Street NW, Washington, DC. Single copies may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082, telephone (202) 275-2060 or (202) 275-2171. NUREG-1380 may also be purchased from the National Technical Information Service (NTIS). Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Dated at Rockville, Maryland this 22nd day of December, 1989.

For the Nuclear Regulatory Commission.

Mel Silberberg,
Chief, Waste Management Branch, Division of Engineering, RES.

[FR Doc. 89-30078 Filed 12-27-89; 8:45 am]
BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Implementation of the Accelerated Tariff Elimination Provision in the United States-Canada Free-Trade Agreement

AGENCY: Office of the U.S. Trade Representative.

ACTION: Notice of an extension of the filing period for accelerated tariff elimination under the United States-Canada Free-Trade Agreement (FTA) from January 1, 1990 to April 1, 1990.

SUMMARY: Section 201(b) of the United States-Canada Free-Trade Agreement Implementation Act of 1988 grants the President, subject to the consultation and layover requirements of section 103 of that Act, the authority to proclaim such acceleration of U.S. tariffs under the FTA as the United States and Canada may agree to under FTA Article 401(5). This publication gives notice of a change in the 1990 filing period during which persons or entities may request accelerated tariff elimination.

SUPPLEMENTARY INFORMATION: Further information on this subject may be found in the **Federal Register** notice of January 23, 1989, Volume 54, Number 13, at pages 3175 and 3176, as well as the notice of July 17, 1989, Volume 54, Number 135, at pages 29959 through 29971. Inquiries regarding this notice or other aspects of the implementation of accelerated tariff elimination under the FTA should be directed to the Office of North American Affairs, Office of the U.S. Trade Representative, Room 501, 600 17th Street, NW., Washington, DC 20506, telephone (202) 395-5663.

BACKGROUND: The **Federal Register** notice of January 23, 1989 gave notice of the procedure by which interested parties could request accelerated tariff elimination with respect to imports and exports covered by the FTA. That notice established January 1 as the deadline for submitting requests to USTR in 1990 and subsequent years. The filing period for consideration in 1990 is now extended by this notice to April 1, 1990. An additional notice will be issued in the near future specifying further changes in the procedure established in the notice of January 23, 1989.

Charles E. Roh, Jr.,
Assistant United States Trade Representative for North America.

[FR Doc. 89-30033 Filed 12-27-89; 8:45 am]
BILLING CODE 3190-01-M

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Meeting

Notice is hereby given of the meeting of the Prospective Payment Assessment Commission on Tuesday, January 9, 1990 at the Madison Hotel, 15th and M Streets, NW., Washington, DC. The meeting will convene at 8:00 a.m., in Executive Chambers 1, 2, and 3 on the second floor, and is open to the public.

Donald A. Young,
Executive Director.

[FR Doc. 89-29866 Filed 12-27-89; 8:45 am]
BILLING CODE 6820-BW-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IA-1213]

Intention To Cancel Registrations of Certain Investment Advisers

December 19, 1989.

Notice is hereby given that the Securities and Exchange Commission intends to issue an order pursuant to section 203(h) of the Investment Advisers Act of 1940 (the "Act") cancelling the registrations of those investment advisers whose names appear in the attached Appendix.

Section 203(h) provides, in pertinent part, that if the Commission finds that a person registered under section 203, or who has pending an application for registration filed under that section, is no longer in existence or is not engaged in business as an investment adviser, the Commission shall by order cancel the registration of such person.

On October 15, 1985, the Commission announced the adoption of certain revisions to Form ADV, the application for registration as an investment adviser, to make a uniform form for advisers registering with the Commission and the jurisdictions which require such registration. The adoption of the revised Form ADV, along with the accompanying provision set forth in revised Rule 204-1 under the Act, became effective on January 1, 1986. The rule currently requires every investment adviser whose registration was effective or whose application for registration was pending on January 1, 1986, to amend its application for registration by filing a complete revised Form ADV with the Commission on, or prior to, March 31, 1986.[1]

Under cover letter dated December 12, 1985, all registrants were advised of the above mentioned requirement and provided with a copy of the revised Form ADV. On October 8, 1986, notices were sent to each non-responding registrant, stating that the Commission had the authority to cancel the registration of any adviser that it finds is no longer in existence or is no longer engaged in business as an investment adviser. The notice also stated that the registration of any adviser who failed to file a complete revised Form ADV by October 24, 1986, would be cancelled by the Commission.

Pursuant to paragraph (b) of Rule 204-1, an investment adviser must promply file an amendment to its application for registration when its address changes or when certain other information becomes inaccurate in a material manner.[2]

Since the registrants named in the Appendix have not filed a revised Form ADV, as required by Rule 204-1(a) under the Act, and have not filed any amendments to their application for registration, as required by Rule 204-1(b) under the Act, the Commission believes that reasonable grounds exist to support a finding that these registrants are no longer in existence or are not engaged in business as investment advisers.

Notice is further given that any interested person may, not later than January 19, 1990, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, and he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, DC 20549. At any time after said date, the Commission may issue an order cancelling any or all of the registrations named in the Appendix upon the basis of the information stated herein unless an order for a hearing on said cancellation shall be issued upon request or upon the Commission's own motion. Persons who request a hearing or to be advised as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For further information contact: Robert L. Lewis, Financial Analyst, at (202) 272-3015 (Division of Investment Management, Office of Financial Analysis and Inspections).

[1] Investment Advisers Act Release No. 901 (October 15, 1985).

[2] Pursuant to section 204 of the Act and Rule 204-1 thereunder, an investment adviser must also file annual supplements (Form ADV-S) providing the Commission with certain information about their business activities.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

Appendix

Atlanta Regional Office

Martinez, Charles Glennon (801-20689)
Meridian Associates, Inc. (801-22293)

Boston Regional Office

AG Investments & Financing Service Domestic & International, Inc. (801-15596)
Edmund Investor Service (801-15113)

Chicago Regional Office

AMI Financial Corp. (801-20438)
Alexander, Robin Jane (801-24106)
Golden, Charles C. (801-16762)
Haley, Judy Ellen (801-18051)
Mobile Professional Services (801-24915)

Fort Worth Regional Office

Mosser Co. Investment Advisors, Inc. (801-14366)
Staton Investments, Inc. (801-16648)

Los Angeles Regional Office

Monroe Kunkle, Inc. (801-25855)
Participant Services, Ltd. (801-13220)
Silverstein Financial Services, Inc. (801-17767)
Thomas, Michael Edward (801-16441)

New York Regional Office

Curatolo, Anthony J. Financial Planning (801-22466)
Delta Securities Corp. (801-06787)
Offit Fixed Income Associates, Inc. (801-21446)

Philadelphia Regional Office

Cassizzi, Marilyn Anne (801-21631)
Dotts, Atelia Huffman (801-12270)

[FR Doc. 30115 Filed 12-27-89; 8:45 am]
BILLING CODE 8010-01-M

(Release No. 34-27561; File No. SR-CSE-89-5)

Self-Regulatory Organizations; the Cincinnati Stock Exchange; Order Approving Proposed Rule Change Relating to Net Capital Requirements of Designated Dealers

On November 7, 1989, the Cincinnati Stock Exchange ("CSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend the net capital requirements of Designated Dealers.

The proposed rule change was published for comment in Securities Exchange Act Release No. 27458 (November 21, 1989), 54 FR 49376 (November 30, 1989). No comments were received on the proposal.

The Exchange's Rules of the Board of Trustees, Chapter XI, Rule 11.9, currently requires a Designated Dealer [3] to maintain a minimum net capital [4] of $50,000 or the amount required under Rule 15c3-1 of the Act (the net capital rule).[5] The Exchange's proposed amendment would increase this minimum net capital requirement for Designated Dealers to $100,000.

The primary purpose of the net capital rule is to protect customers and creditors of registered broker-dealers from monetary losses and delays that can occur when a registered broker-dealer fails. The rule requires registered broker-dealers to maintain sufficient liquid assets to enable firms that fall below the minimum net capital requirements to liquidate in an orderly fashion without the need for a formal proceeding. In doing so, the rule enhances investor confidence in the financial integrity of securities firms. Similarly, the rule promotes transactions between broker-dealers, lenders, and creditors, on the one hand, and the counterparty broker-dealers on the other, because those entities are more likely to consider a broker-dealer creditworthy if it must comply with a liquidity-based capital adequacy standard. The Exchange states that the proposed increase in its net capital requirement for Designated Dealers is intended to ensure that Designated Dealers have adequate capital and resources to meet their financial obligations during volatile markets and assure that the securities markets function smoothly and efficiently.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5) of the Act.[6] Specifically, the Commission believes that the proposal is consistent with the section 6(b)(5) requirement that the rules of an exchange be designed to promote just and equitable principles of trade. Increasing the minimum capital requirement for Designated Dealers should help to ensure that individuals and firms wishing to act as Designated Dealers on the Exchange will have the amount of capital necessary to perform their market making function. With the increased trading volume and volatility experienced in the securities markets over the past several years, it is important that exchange specialists and market makers maintain sufficient capital to meet increased liquidity demands. The proposed rule change is consistent with this goal by upgrading the minimum capital requirements of Designated Dealers.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Dated: December 21, 1989.

Jonathan G. Katz,
Secretary.

[FR Doc. 89-30106 Filed 12-27-89; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-27548; File No. SR-MSRB-89-13]

Self-Regulatory Organizations; Notice of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating To Arbitration

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on November 16, 1989, the Municipal Securities Rulemaking Board ("Board") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board is filing amendments to rule G-35, the Board's Arbitration Code, to alter and more clearly define the duties and role of the Director of Arbitration and to reconstitute the Board's Arbitration Committee to eliminate its role in reviewing case-specific decisions of the Director of Arbitration and to remove non-Board members.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Board has been conducting a review of rule G-35, the Arbitration Code ("Code"), and its arbitration program. The Board has determined to alter and more clearly define the duties and role of the Director of Arbitration and reconstitute the Board's Arbitration Committee to eliminate its role in reviewing case-specific decisions of the Director of Arbitration and to remove non-Board members. Specifics of the proposed rule change are explained below.

Director of Arbitration

The Board has determined to alter the appointment and role of the Director of Arbitration. The proposed rule change removes the Director of Arbitration's membership in, and reporting responsibilities to, the Arbitration Committee; gives the Board's executive Director responsibility for appointing the Director of Arbitration; and deletes the provisions in the Code that allows for a "Committee designee" to perform certain of the Director of Arbitration's duties. In addition, under the current Code, the Arbitration Committee is authorized to assign certain duties and functions to the Director of Arbitration. Since the Executive Director is responsible for assigning the Director of Arbitration's duties and functions, the Code has been amended to state this clearly.

In the past, the functions of receiving pleadings, serving pleadings on parties and notifying parties as required by the Code had been performed by the Arbitration Administrator and a paralegal on behalf of the Director of Arbitration. These functions now will be performed by the Director of Arbitration and the Arbitration Administrator. Since the Arbitration Administrator also attends hearings, language in the proposed rule change codifies this duty.

Arbitration Committee

The Code currently contains specific provisions for an Arbitration Committee. The Arbitration Committee is comprised of three Board members—one bank dealer representative, one public representative, and one securities firm representative, three non-Board members—also one from each category, and the Director of Arbitration. As noted above, the Board has determined to remove the Director of Arbitration as a member of the Committee.

Since the Board originally had contracted with the NASD to handle its arbitration cases, the Committee was given powers to review specific administrative decisions made by the NASD—such as removing arbitrators from, and reviewing the time and place designated for, an arbitration hearing. The Committee also has the authority to establish and maintain a pool of arbitrators and to deny use of the Board's arbitration facilities.

In January 1985, the Board's staff began administering the pleading stages of its arbitration cases, and by Fall 1986, began administering hearings as well. Today, the NASD no longer administers any part of the Board's program. Thus, since the Board now has direct control over its arbitration program, it believes that there is no longer a need for a codified oversight by the Arbitration Committee of these case-specific, administrative decisions by the Director of Arbitration. It also should be noted that, in the past, some parties have been able to frustrate the Board's arbitration process and to create delays by demanding review of certain situs decisions under these provisions.

From the beginning of the Board's arbitration program, the Board, through the three Board-members on the Arbitration Committee, has retained all policy-making authority, and the Board approves all amendments to the Code. The Board has determined that the Committee's case-specific authority should be deleted from the Code, and that the Committee's non-Board members should be removed, thereby making it no longer necessary to reference the Committee in the Code.

While certain other duties of the Committee remain in the Code (*i.e.*, establish and maintain a pool of arbitrators, and deny use of the forum) these duties historically have been preformed by the Board members of the Arbitration Committee and would continue to be so performed.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will effect any burdens on competition in the municipal securities industry because the proposed rule change will be equally applicable to all participants in the industry.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others.

The Board neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchanges Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 18, 1990.

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1989).

[3] A Designated Dealer is a Proprietary Member of the Exchange who has been approved to perform market functions by entering bids and offers for Designated Issues into the National Securities Trading System. Exchange Rule 11.9(a)(3).

[4] *See* Securities Exchange Act Rule 15c3-1(c)(2), 7 CFR 240.15c3-1(c)(2) (1989).

[5] The net capital rule generally requires a registered broker-dealer to maintain net capital equal to the greater of $25,000 or 6⅔ percent of its aggregate indebtedness. A broker-dealer may elect the alternative method of computing net capital, which requires the broker-dealer to maintain net capital equal to the greater of $100,000 or 2 percent of its aggregate debit items as computed in accordance with the Formula for Determination of Reserve Requirements for Brokers and Dealers contained in Securities Exchange Act Rule 15c3-3. *See* Securities Exchange Act Rule 15c3-3a, 17 CFR 240.15c3-3a.

[6] 15 U.S.C. 78f (1982).

[7] 15 U.S.C. 78s(b)(2), (1982).

[8] 17 CFR 200.30-3(a)(12) (1989).

For the Commission by the Divisions of Market Regulation, pursuant to

A. Self-Regulatory Organization's Statement of the Purpose of, and

these fees is to encourage timely reporting of transactions on trade day,

timing and efficiency of the post trade comparison process, that outweigh any

[Release No. 34-27553; File No. SR-PSE-89-31]

market makers may not both receive a primary appointment to the same

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For the Commission by the Divisions of Market Regulation, pursuant to delegated authority, 200.30–3(a)(12).

Dated: December 19, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-30110 Filed 12-27-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27551; File No. SR-NASD-89-55]

Self-Regulatory Organizations; Notice and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Service Charges for the Automated Confirmation Transaction Service.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on November 29, 1989, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing an amendment to Part IX of Schedule D of the Schedules to the By-Laws, establishing the services charges for the Automated Confirmation Transaction Service ("ACT") applicable to self-clearing broker/dealers.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The ACT Rules for self-clearing firms were approved by the Commission on September 8, 1989,[1] and the Association is filing the proposed rule change to establish a schedule of charges for the ACT system. The fees are designed to recoup the development costs for ACT programming efforts as well as costs associated with computer and other hardware purchases to meet the capacity requirements to run the system. Capacity and traffic projections have been determined by analysis of past traffic patterns and assumptions regarding future usage. The fees also reflect the costs of operating the ACT system, and are similar to the savings that broker-dealers will experience from reduced clearing agency charges.

The first component of the ACT fee is a transaction-related charge of $.25 for each side of the comparisons processed through ACT. This fee replaces a fee charged by the National Securities Clearing Corporation ("NSCC") for its over-the-counter comparison services.

A separate query fee of $.25 per query is proposed because of the processing impact of the query/accept/decline feature of ACT which is substantially greater than that of trade input and comparison, justifying a usage-related query fee. For some firms, the query will be used as the only or primary means of satisfying the ACT reporting obligation, so the following formula will be used in billing for ACT queries to ensure that not more than $.25 is charged for each side input: (1) Each ACT query will incure the $.25 query fee; (2) the first accept or decline processed from a query response will be free; and (3) the second and subsequent accept/decline entries will incure the $.25 comparison charge. Thus the query charge alone will be applied only to those queries which do not result in a comparison or rejection. This pricing structure will ensure that no more than $.25 will be charged for comparisons regardless of whether the ACT participant imputs the trade report data or uses the Browse function to accept or decline the trade.

The ACT charges include a late reporting fee of $.15/side on trade day and a late reporting fee of $.25/side for transactions entered on the second day of the comparison cycle. The purpose of these fees is to encourage timely reporting of transactions on trade day, and to defray the additional system costs arising out of late reporting.

Another component of the ACT fees is a per terminal charge of $50/month. The assumption is that the current population of Trade Acceptance and Reconciliation Service ("TARS") terminals will be authorized for ACT processing, both trade input and query/accept/decline. No separate transaction charge is being proposed for trade reporting at market makers' terminals (i.e., in excess of the $.25/side comparison charge), as last sale trade reporting today is not assessed a fee. The expected back-office use of an ACT terminal for query/accept/decline of outstanding trades will represent a substantial processing burden on the ACT system. A service charge for this essentially dedicated use, together with a query charge, will offset the processing costs incurred.

A monthly computer to computer interface ("CTCI") service charge of $500 is proposed for use of CTCI to report ACT-eligible trades. The fee will be separate and apart from any fees paid for CTCI linkages to other services. The CTCI provides a high-speed, guaranteed-delivery computer interface to ACT. Additionally, CTCI firms will receive end-of-day summary information from the ACT system: for self-clearing firms, this will recap their entire day's activity.

The statutory basis for the proposed rule change is found in Section 15A(b)(5) of the Securities Exchange Act of 1934. Section 15A(b)(5) requires that the rules of the NASD "provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the association operates or controls." The ACT service fees proposed in this filing have been formulated on the basis of the costs associated with developing and operating that service.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not foresee any burden on competition by the proposed rule change not necessary or appropriate in furtherance of purposes of the Act. The proposed fees for the ACT service are similar to the fees assessed by the National Securities Clearing Corporation for comparison services, and the ACT service will provide additional benefits to participants, such as increasing the

[1] *See* Release 34-27229, 54 FR 38434, dated September 8, 1989.

timing and efficiency of the post trade comparison process, that outweigh any potential competitive burden.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by January 18, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 C.F.R. 200.30–3(a)(12).

Dated: December 18, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-30111 Filed 12-27-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27553; File No. SR-PSE-89-31]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to the Disclosure of Financial Arrangements of Market Makers

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 17, 1989, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared primarily by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Subetance of the Proposed Rule Change

The PSE proposes amendments to PSE Rule VI Sections 81 and 82, entitled "Securities Accounts and Orders of Market Makers" and "Financial Arrangements of Market Makers," respectively. The PSE also proposes to add two new sections to Rule VI; Section 90, dealing with joint accounts, and section 91, dealing with market maker orders executed by floor brokers. Specifically, the PSE proposes to amend Section 82 to require that market makers disclose to the Exchange financial arrangements by which they extend credit to other market makers. The Exchange also proposes to create a new section 90, clarifying the regulation of joint accounts, by incorporating language from paragraph (c) and commentaries .02–.13 of section 81. In addition, the PSE proposes to create a new Section 91 regulating the execution by floor brokers of market maker orders.[1] Finally, the PSE proposal clarifies Exchange rules with respect to the concurrent representation of orders by financially affiliated market makers and joint account participants in a trading crowd. Specifically, among other things, the PSE proposes that market makers that have financial arrangements between themselves (*i.e.*, a financing arrangement or a joint account) may not trade concurrently in a trading crowd, either by themselves or via a floor broker, in the same options series. The proposal also provides that market makers may not both receive a primary appointment to the same trading post. The full text of the proposed rule change is available at the PSE or the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis, for the Proposed Rule Change

The purpose of the proposed rule change is to provide for enhanced surveillance of potentially collusive trading activity by PSE members by requiring additional disclosure to the Exchange of financial arrangements between market makers. In particular, as amended, Section 82 would require market makers extending credit to other market makers to disclose such extensions of credit to the Exchange. Currently, only market makers whose transactions are financed are required to disclose the arrangements to the Exchange. Placing the responsibility for disclosure on both the creditor and the debtor is intended to enhance the Exchange's awareness of existing financial arrangements, and its enforcement capabilities with regard to the trading practices of financially affiliated market markers.

The provisions relating to concurrent representation were designed to preclude the potential for domination of trading crowds by affiliated market makers, joint account participants, and orders held for a particular market maker. Exchange policy with regard to the concurrent representation of orders by financially affiliated market makers and joint account participants in a trading crowd has been unclear; the proposed changes were designed by the Options Floor Trading Committee for the purpose of regulating the trading of affiliated market makers and joint account participants without being overly restrictive and detrimental to liquidity.

[1] In conjunction with the creation of section 91, the Exchange proposes to delete Options Floor Procedure Advice B-6 as it is incorporated into section 91.

The proposed Commentary .01 to section 82 would allow market makers

represented by a floor broker shall remain precluded from being

inspection and copying in the Commission's Public Reference Section,

Under the PSE proposal, section 9(c), which is currently entitled "XYZ

proposal is consistent with the section 6(b)(5) requirement that the rules of an

their seats to others, thus protecting the public interest.

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The proposed Commentary .01 to section 82 would allow market makers with financial arrangements to trade concurrently in a trading crowd, in options overlying any security, but not in the same option series. Thus, financially affiliated market makers would be unable to dominate a particular transaction, or trade with each other, and a trading crowd's liquidity would not be compromised. The provision would allow the market makers a certain flexibility, which would be offset by the proposed Commentary .03 to section 82. Commentary .03 provides that affiliated market makers may not receive primary appointments to the same trading posts. While the subject market makers may trade at any trading post at any time, their trading would be somewhat restricted, and floorwide liquidity ensured, by each market maker's obligation to maintain a certain monthly percentage of his contract volume in option classes to which he holds a primary appointment. Commentary .02 extends the same allowances to the concurrent representation of a market maker and orders held by floor brokers on behalf of market makers with whom the market maker has a financial arrangement.

The proposed rule change provides for the removal from Rule VI, section 81, of all references to joint accounts, and the placement of such references in proposed Rule VI, section 90, "Joint Accounts." Currently, as set forth in section 81, Commentary .06(b), joint account participants may not concurrently represent orders in options overlying the same security. In paragraph (f) of proposed section 90, the language has been changed to reflect that joint account participants are prohibited from concurrent representation in the same option series, consistent with the provision for affiliated market makers. As specified in Commentary .05 of the proposed section 90, a market maker may not be primarily assigned to a trading post which constitutes the primary appointment of a market maker with whom he has a joint account.

Language from Options Floor Procedure Advice B-6 has been revised and placed in proposed Rule VI, section 91, "Market Maker Orders Executed by Floor Brokers." The Exchange is currently endeavoring to eliminate the Floor Procedure Advices, placing the substance of these Advices in the appropriate sections of the Rules of the Board of Governors. As set forth in paragraph (a) of proposed Section 91, a market maker and his orders represented by a floor broker shall remain precluded from being represented concurrently in a trading crowd.

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Exchange believes that the proposed rule change is consistent with the requirements of section 6(b)(5) in that it is designed to prevent fraudulent and manipulative acts and practices and promote just and equitable principles of trade.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of the publication of this notice in the **Federal Register** or within such longer period: (1) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned, self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 18, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Dated: December 20, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-30112 Filed 12-27-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27562; (File No. SR-PSE-89-29)]

Self-Regulatory Organizations; the Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Membership Lease Agreements and Lease Procedures

On October 26, 1989, the Pacific Stock Exchange, Inc. ("PSE or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend its membership rules pertaining to revised Membership Lease Agreements.

The proposed rule change was published for comment in Securities Exchange Act Release No. 27429 (November 7, 1989), 54 FR 47631 (November 15, 1989). No comments were received on the proposal.

The Rules of the Board of Governors of the PSE allow members of the Exchange to lease their memberships to individuals or organizations who qualify for and are approved for PSE membership in accordance with terms specified by the Exchange.[3] Rule IX, section 9, sets forth the rights and obligations of Exchange members and of the Exchange itself with respect to the transfer of Exchange memberships. The PSE's proposal will amend section 9(c) and add subsections (d) and (e) to section 9 of Rule IX of the Exchange Rules.

[2] 17 CFR 200.30-3(a)(12) (1989).

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1989).

[3] *See* Constitution of the PSE, Article VII, Sections 1 and 2 and Rules of the Board of Governors of the PSE, Rule IX, section 9.

Under the PSE proposal, section 9(c), which is currently entitled "XYZ Agreements," will be renamed "Membership Lease Agreements." In addition, all existing references to "XYZ Agreements" contained in section 9(c) will be replaced with references to "Membership Lease Agreements."[4]

The Exchange also proposes to add two new subsections to section 9 of Exchange Rule IV. The first new provision is subsection (d) which will require that a member must be in good standing in order to lease a seat to another. If a member is not in good standing due to a disqualification resulting from a suspension, expulsion, or bar,[5] the Exchange cannot allow the member to lease the seat to another because all of the member's rights are revoked through the disqualification. Proposed section 9(d) sets forth the procedures to be followed if a seat is currently leased and the lessor is not in good standing due to a suspension or bar and the lease must be terminated. The lessee must be given a notice of termination that will be effective 30 days from the date of disqualification. Upon termination of the lease, if the lessee owes any rental payments to the lessor, the Exchange may collect these payments from the lessee if the lessor owes the Exchange any money.

The other new provision is section 9(e). This subsection will allow a member firm to replace a nominees as lessee of a seat, should the firm's current nominee cease to be associated with the firm. With the lessor's approval, the new nominee will be able to enter into a new lease with the same terms and conditions as the previous agreement. Upon replacement of a nominee, the member firm will continue to be responsible for all Exchange obligations.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5) of the Act.[6] The Commission believes that the proposal is consistent with the section 6(b)(5) requirement that the rules of an exchange be designed to promote just and equitable principles of trade and to protect investors and the public interest. In this regard, the Commission believes that the modifications to section 9(c), deleting references to "XYZ Agreements" and "backer" and replacing them with the terms "Membership Lease Agreements" and "lessor," are appropriate in that they will serve to simplify and streamline the PSE Rules governing these agreements. Further, the Exchange's revisions to section 9(c) will not affect the rights and obligations conferred upon the members of the Exchange under this subsection, nor will they affect the rights of the Exchange itself under this subsection.[7]

The PSE's new requirement at section 9(d), that members must be in good standing in order to lease their memberships, is consistent with the rules of other exchanges which curently have such a requirement.[8] The Commission believes that imposition of such a requirement in the PSE rules will assist the Exchange in maintaining high standards among its members. In giving members the right to lease seats, the Exchange is conferring upon its members a privilege. By requiring that certain standards be met before this privilege can be conferred, the Exchange is setting and maintaining high standards of conduct from its members. In addition, the Commission believes that by maintaining high standards among its members, the Exchange is increasing the quality of its membership, thereby assisting in the maintenance of a competitive and fair and orderly market.

The Commission further believes that the Exchange's addition of section 9(d), which provides for the termination of a lease if a member is not in good standing due to a suspension, expulsion or bar, will serve as an incentive for members to maintain appropriate standards of conduct. Further, by providing for the termination of a lease if a member is not meeting certain criteria, the Exchange is ensuring that members who fail to remain in good standing will be prevented from leasing their seats to others, thus protecting the public interest.

Finally, the Commission believes that proposed section 9(e), which will allow a member firm to replace a nominee as lessee of a seat, should the firm's current nominee cease to be an employee of that firm, will provide the Exchange with an orderly and efficient means of transferring leases in the event a current lessee becomes disassociated with a member firm.

It is therefore ordered, pursuant to section 19(b)(2) of the Act [9] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Dated December 21, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-30107 Filed 12-27-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27559; File No. SR-PHLX-89-56]

Self-Regulatory Organizations; Notice of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Three Way Orders

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 4, 1989, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX proposes to amend its Rule 1033 by adding a new paragraph (e) relating to the execution of three way orders in foreign currency options. The following is all new text.

Rule 1033—Bids and Offers

(e) When a foreign currency option participant holding a three-way order for foreign currency options determines that the order will be best served by bidding or offering on the basis of a total credit or debit, the participant may, after seeking bids and offers for the three-

[4] The PSE proposal makes two additional revisions to Section 9(c): the structure of the processing fee charged an applicant for conferring his membership privileges on a non-member organization will be changed from the existing fee of 5% of the purchase price paid by the last purchaser of a membership to 5% of the average purchase price of the last three membership sales; and all references to the term "backer" will be replaced with the term "lessor."

[5] A disqualification can result from the action of the SEC, PSE, or any other self-regulatory organization.

[6] 15 U.S.C. 78f (1982)

[7] The Commission also finds that the fee change in section 9(c) is consistent with section 6(b)(4) of the Act in that it will provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members and issuers.

[8] *See e.g.*, New York Stock Exchange ("NYSE") Constitution, Article II, section 2 and NYSE Rule 301 and Chicago Board Options Exchange ("CBOE") Constitution, section 2.2, and CBOE Rules 3.18(b) and 3.19, which both require that a member must be in good standing in order to lease his or her seat to a person approved by the respective exchanges.

[9] 15 U.S.C. 78s(b)(2) (1988).

[10] 17 CFR 200.30-3(a)(12) (1989).

way order, execute the order at a total credit or debit with one other

that the order involves three options components and that the combined size

the proposed rule change that are filed with the Commission, and all written

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant: 2727 Allen Parkway,

4. Cal-Western, investment adviser to Applicant and issuer of the Contracts, assumed all expenses incurred in

Income Fund, Putnam U.S. Government Guaranteed Securities Income Trust, Putnam Vista Basic Value Fund, Putnam

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way order, execute the order at a total credit or debit with one other participant provided that at least one of the individual legs to the order is effected at a price inside the market of the individual series and that the other two legs are effected at prices equal to or better than the quoted market of their respective series. For the purposes of this rule, three-way orders include spread, straddle and combination orders of three individual series in the same foreign currency options where: (i) The order size for each of the three individual series are equal to each other, or (ii) the combined order size of any two series on the same side of the market is either equal to the order size of the third series or differs from the order size of the third series by a ratio which is acceptable for the entry of ratio spread, straddle and combination orders purusant to Rule 1066, Commentary .02.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to provide a means to more readily execute three-way orders in foreign currency options.[1] Over the past year, it has been observed that strategies involving three options components are increasingly utilized on the foreign currency options floor by registered traders establishing hedge positions and by upstairs trading firms. At present, three-way trades must be effected in multiple transactions which makes execution more difficult, time consuming, and risky, as traders may be unable to execute their strategy or may only be able to do so at inferior prices. The proposed rule change only requires that the order involves three options components and that the combined size of any two components be equal in size to the third or differ from the third by a ratio acceptable for the entry of ratio spreads under Exchange rules.[2] The proposal is not limited to a particular spread or straddle strategy or even to strategies that involve hedges or offsets. The proposal is designed to respond to the competitive requirements of the foreign currency options markets.

The PHLX believes the proposed rule change is consistent with the requirements of the Act in that it may be expected to promote the maintenance of fair and orderly markets and, in particular, section 6(b)(5) of the Act which provides in pertinent part that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 18, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: December 21, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-30108 Filed 12-27-89; 8:45 am]

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[1] An example of a three-way order would be a butterfly spread, where an order is entered to buy (or sell) a series of calls and simultaneouly to sell (or buy) half the amount of each of the two call series bracketing it.

[2] Ratio spreads presently are permitted with ratios of up to three to one.

[Rel. No. IC-17274; 811-2016]

Cal-Western Variable Fund C

December 20, 1989

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Cal-Western Variable Fund C ("Applicant").

Relevant 1940 Act Sections: Order requested under section 8(f) of the 1940 Act.

Summary of Application: Applicant seeks an order under section 8(f) of the 1940 Act declaring that it has ceased to be an investment company.

Filing Date: The Application was filed on July 25, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the Application will be granted. Any interested person may request a hearing on this Application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on January 16, 1990. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 2727 Allen Parkway, Houston, Texas 77019.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Nancy M. Rappa (202) 272-2622 or Assistant Director Clifford E. Kirsch (202) 272-2060 (Office of Insurance Products and Legal Compliance).

SUPPLEMENTARY INFORMATION: Following is a summary of the Application; the complete Application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier, which may be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant, formerly a separate investment account of California-Western States Life Insurance Company ("Cal-Western") under California insurance law, is registered as an open-end management investment company under the 1940 Act. Applicant's registration statement, filed on June 8, 1970 in connection with the sale of certain variable annuity contracts ("Contracts") issued by Cal-Western, was declared effective on February 8, 1972.

2. On July 28, 1988, the Board of Directors of Applicant adopted resolutions authorizing and recommending an agreement and plan of reorganization ("the Agreement"). On March 8, 1989, an exemptive order under the Act regarding the Agreement was granted by the Commission (Investment Company Act Release No. 16855). The Agreement was approved by the owners and participants of contracts funded through Cal-Western Separate Account A ("Separate Account A") and Applicant at a combined annual meeting held on April 27, 1989.

3. On April 28, 1989, all of Applicant's portfolio assets were combined with and into Separate Account A. Simultaneously therewith, Cal-Western, on behalf of Separate Account A, sold, assigned, and transferred all of Separate Account A's (combined) portfolio assets to American General Series Portfolio Quality Growth Fund of Portfolio Company, which shares were recorded as assets of the Quality Growth Division of restructured Separate Account A in unit investment trust form. Separate Account A became the sole surviving separate account. As a result of the reorganization, contract owners' and participants' interests in the Quality Growth Division of Separate Account A were equal to their former interests in Applicant.

4. Cal-Western, investment adviser to Applicant and issuer of the Contracts, assumed all expenses incurred in effecting the reorganization.

5. On December 5, 1988, in connection with the reorganization, Cal-Western filed an application with the California Insurance Commissioner for an amendment to its authority to transact business in the State of California. Such application was granted to Cal-Western on April 27, 1989.

6. Following the reorganization, no assets were retained by Applicant. There are no debts or other liabilities that remain outstanding against Applicant. Applicant is not, to its knowledge, a party to any litigation or administrative proceeding. No Contracts have been supported by Applicant since the reorganization. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-30113 Filed 12-27-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17278; 812-7390]

Putnam California Tax Exempt Income Fund, et al., Notice of Application

December 21, 1989

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: Putnam California Tax Exempt Income Fund, Putnam Capital Preservation/Income Trust, Putnam Convertible Income-Restated Growth Trust, Putnam Diversified Income Trust, Putnam Energy-Resources Trust, The George Putnam Fund of Boston, Putnam Global Governmental Income Trust, Putnam GNMA Plus Trust, Putnam Fund for Growth and Income, Putnam Health Sciences Trust, Putnam High Income Government Trust, Putnam High Yield Trust, Putnam High Yield Trust II, Putnam Income Fund, Putnam Information Sciences Trust, Putnam International Equities Fund, Putnam Investors Fund, Putnam New York Tax Exempt Income Fund, Putnam Option Income Trust, Putnam Option Income Trust II, Putnam OTC Emerging Growth Fund, Putnam Pennsylvania Tax Exempt Income Fund, Putnam Tax Exempt Income Fund, Putnam Tax-Free High Income Fund, Putnam U.S. Government Guaranteed Securities Income Trust, Putnam Vista Basic Value Fund, Putnam Voyager Fund (collectively the "Trusts"), Putnam Financial Services, Inc. (the "Distributor"), and the Putnam Management Company, Inc. (the "Manager").

Relevant 1940 Act Section: Order requested under section 6(c) granting exemptions for the provisions of sections 2(a)(32), 2(a)(35, 22(c), 22(d) and Rule 22c-1.

Summary of Application: Applicants seek an order permitting the existing and future Trusts to assess and waive contingent deferred sales charges on certain redemptions of their shares.

Filing Dates: The application was filed on September 14, 1989, and amended on November 20 and December 20, 1989. The Applicants will file an amendment during the notice period, the substance of which is contained in the notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 16, 1990, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, One Post Office Square, Boston, MA 02109.

FOR FURTHER INFORMATION CONTACT: Brion R. Thompson, Special Counsel, (202) 272-3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier, (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. Each of the Trusts is organized as a Massachusetts business trust. Shares of the Trusts are sold with a front-end sales load, the amount of which varies among the Trusts. Some of the Trusts pay a distribution fee to the Distributor

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based on a percentage of its assets pursuant to a distribution plan approved pursuant to Rule 12b–1 under the 1940 Act (a "Plan"), and some of the other Trusts propose to adopt such Plans. The amount of any such fee paid to the Distributor does not exceed an amount equal to 0.25% of the applicable Trust's assets, although certain Plans permit payments to the Distributor up to an amount equal to 0.35% of the applicable Trust's assets. Currently the Trusts do not impose a sales charge on purchases of $4 million or more, including purchases pursuant to any Combined Purchase Privilege, Right of Accumulation, Statement of Intention, or group discount policy. The Distributor pays out of its assets a commission of 0.15% on any such sale to the dealer, subject to the Distributor's right to reclaim the commission from the dealer if the shareholder redeems his or her shares within six months of purchase.

2. The Applicants propose to continue exempting all purchases of $4 million or more from all front-end sales charges. However, the Distributor will pay out of its assets to dealers a commission of 0.50% on any such sales, including purchases pursuant to any Combined Purchase Privilege, Right of Accumulation, Statement of Intention, or group discount policy. Shares sold under this method will be subject to a contingent deferred sales charge of 0.50% if such shares are redeemed within one year of purchase ("CDSC").

3. In addition, the Applicants intend to waive the CDSC on redemptions made for the purpose of paying benefits pursuant to tax-qualified retirement plans. Such payments would include, without limitation, (1) distributions from a Custodial Account under section 403(b)(7) of the Internal Revenue Code of 1986, as amended (the "Code"), or an IRA due to death or disability, or following attainment of age 59½, (2) a return of excess contributions to an IRA or a Code Section 401(k) plan, (3) distributions from other employee benefit plans to pay benefits, and (4) distributions from retirement plans qualified under Code Section 401(a) due to death, disability, or retirement.

4. A CDSC will be imposed if shares purchased pursuant to the method described above ("CDSC Shares") are redeemed prior to one year from the date of purchase. The purpose of the CDSC is to compensate the Distributor for the commission advanced to the dealer. However, no CDSC is imposed to the extent that the CDSC Shares redeemed (i) were purchased more than one year before they are redeemed, (ii) resulted from reinvestment of distributions on CDSC shares, or (iii) were exchanged for shares of another Putnam fund (including a Trust), provided that the shares acquired in such exchange will continue to remain subject to the CDSC as if no exchange had occurred. For purposes of computing holding periods, all investments are deemed to have been made on the last day of the calendar month in which they are made at net asset value per share equal to the net asset value per share at the time of investment.

5. When a shareholder of any Trust transfers CDSC Shares of such Trust to another individual or entity, the transferring shareholder pays no CDSC in respect of the transfer. The transferred shares remain subject, in the hands of the transferee shareholder, to the CDSC. The CDSC is calculated as if the transferee shareholder had acquired the transferred shares in the same manner and at the same time as the transferring shareholder continued to hold such shares. Where the transferring shareholder transfers less than all of his or her CDSC Shares of a Trust, he or she is deemed to have transferred proportionate amounts of all the CDSC Shares of the Turst owned at the time of the transfer, in proportion to the number of CDSC Shares of the Trust owned (i) which are exempt from, or no longer subject to, the CDSC and (ii) which remain subject to the CDSC.

6. When a shareholder of a Trust exchanges CDSC Shares for shares in another Putnam fund (including a Trust), the shareholder will be able to exchange such shares without paying a CDSC. When the shareholder redeems the shares he acquired through the exchange, he will be treated as if no exchange took place for purposes of applying the CDSC. In addition, to the extent permitted by the 1940 Act, the Trusts may impose a nominal administrative charge on all exchanges. This charge is currently $5.00.

Applicants' Legal Analysis

1. The Applicants request an order under section 6(c) of the 1940 Act granting exemption from the provisions of sections 2(a)(32), 2(a)(35), 22(c), and 22(d) and rule 22c–1 to the extent necessary or appropriate to permit the imposition and waiver of a CDSC on the terms described below. In addition, the Applicants request that the exemptive relief referred to above, to the extent a CDSC is employed under the terms and conditions as those described in this application, also extend to shares of any other existing or future open-end investment company registered under the 1940 Act which is within the same group of investment companies as one or more of the trusts, *i.e.*, any such company whose investment adviser is the Manager, or an affiliate of the Manager, or whose principal underwriter is the Distributor, or an affiliate of the Distributor, and who holds itself out to investors as a related company to one or more of the Trusts for purposes of investment and investor services. The Applicants submit that the exemption requested is appropriate in the public interest, and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. The Applicants note that the Commission has proposed the promulgation of Rule 6c–10, which would codify past exemptive orders permitting CDSC arrangements. The Applicants believe that the terms of their proposed CDSC arrangemnets are consistent in all respects with the requirements of proposed Rule 6c–10.

Condition: The Applicants agree to comply with the terms and provisions of proposed Rule 6c–10 under the 1940 Act, as it currently exists and as it may be modified or adopted in the future.

Investment Company Act Release No. 16619 (Nov. 2, 1988), 53 FR 45275 (Nov. 9, 1988).

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–30109 Filed 12–27–89; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–17277; (812–7247)]

Prudential-Bache California Municipal Fund et al.; Application

December 20, 1989

AGENCY: Securities and Exchange Commission (the "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act")

Applicants: Prudential-Bache California Municipal Fund, Prudential-Bache Equity Fund, Inc., Prudential-Bache Equity Income Fund, Prudential-Bache FlexiFund, Prudential-Bache Global Fund, Inc., Prudential-Bache Global Genesis Fund, Inc., Prudential-Bache Global Natural Resources Fund, Inc., Prudential-Bache GNMA Fund, Inc., Prudential-Bache Government Plus Fund, Inc., Prudential-Bache Government Securities Trust, Prudential-Bache Growth Opportunity Fund, Inc., Prudential-Bache High Yield Fund, Inc., Prudential-Bache IncomeVertible (R) Plus Fund, Inc., Prudential-Bache Municipal Bond Fund, Prudential-Bache Municipal Series Fund, Prudential-Bache National Municipals Fund, Inc., Prudential-Bache Option Growth Fund, Inc., Prudential-Bache Research Fund, Inc., Prudential-Bache Structured Maturity Fund, Inc., Prudential-Bache U.S. Government Fund, Prudential-Bache Utility Fund, Inc., and any open-end management investment companies to be established in the future that are part of the same group of investment companies, and (1) whose investment adviser is Prudential Mutual Fund Management, Inc. ("PMF") or Prudential-Bache Securities Inc. ("Prudential-Bache") or an investment adviser that is an affiliated person of PMF or Prudential-Bache as "affiliated person" is defined in section 2(a)(3) of the 1940 Act, (2) whose principal underwriter is Prudential Mutual Fund Distributors, Inc. ("PMFD") or Prudential-Bache or a principal underwriter that is an affiliated person of PMFD or Prudential-Bache as "affiliated person" is defined in section 2(a)(3) of the 1940 Act, and (3) that hold themselves out to investors as being related for purposes of investment and investor services (all of the above being referred to collectively as the "Funds"), Prudential-Bache, PMF, (together, the "Manager"), and PMFD (with Prudential-Bache, the "Distributor") (all of the foregoing being referred to as the "Applicants").

Relevant 1940 Act Section: Order requested under section 6(c) of the 1940 Act for exemptions from Sections 18(f), 18(g), 18(i), 2(a)(32), 2(a)(35), 22(c), and 22(d) of the 1940 Act and Rule 22c–1 thereunder.

Summary of Application: Applicants seek an order (i) to permit the Funds to sell two classes of securities for the purpose of establishing a dual distribution system; and (ii) to permit the Funds to assess a contingent deferred sales load ("CDSL") on certain redemptions of a class of their securities and to waive the CDSL under certain circumstances.

Filing Date: The application was filed on February 17, 1989, and amended on September 5, 1989 and December 15, 1989.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Any interested person may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m., on January 17, 1990, and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service.

Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested.

Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; Applicants, One Seaport Plaza, New York, New York 10292.

FOR FURTHER INFORMATION CONTACT: Bibb L. Strench, Staff Attorney, (202) 272–2856 or Karen L. Skidmore, Branch Chief, (202) 272–3023, Office of Investment Company Regulation.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations

1. Each Fund is an open-end management investment company registered under the 1940 Act. Each Fund has entered into or will enter into an investment advisory or management agreement with the Manager and a distribution agreement with the Distributor under which the Distributor acts as principal underwriter for the Funds.

2. The shares of the Funds, except for Prudential-Bache Structured Maturity Fund, Inc. ("PBSMF") and Prudential-Bache Government Securities Trust-Intermediate Term Series ("PBGST-ITS"), are currently offered to the public at their net asset value per share without the imposition of a sales load at the time of purchase.[1] An investor's proceeds from a redemption of these Funds' shares made within a specified period of time after purchase may be subject to a CDSL which is paid to the Distributor. In addition, the Funds pay the Distributor a distribution fee under distribution plans adopted by the Funds pursuant to Rule 12b–1 under the 1940 Act (the "Rule 12b–1 Plans").

Representations Relating to the Alternative Purchase Plan

3. Applicants propose the establishment of a dual distribution system (the "Alternative Purchase Plan") that will allow each Fund to offer investors the option of purchasing shares either with a front-end sales load together with a Rule 12b–1 Plan (the "Front-End Load Option"), or subject to a CDSL and a Rule 12b–1 Plan (the "Deferred Option").[2] The Front-end sales loads would be at rates competitive in the industry (typically in the 4% to 5% range) and would be subject to reductions for larger purchases and under a right of accumulation and a letter of intent. The loads would be subject to certain other reductions permitted by section 22(d) of the 1940 Act and Rule 22d–1 thereunder and set forth in the registration statement of each of the Funds. The public offering price for the Class B shares would be computed in compliance with Rule 22c–1, section 22(d), and the provisions of proposed Rule 6c–10 under the 1940 Act (Rel. No. IC–16619, Nov. 2, 1988, 53 FR 45275, Nov. 9, 1988), as such rule is currently proposed and as it may be reproposed, adopted or amended. The ongoing distribution fees under the Rule 12b–1 Plans are based upon a percentage of the average daily net asset value of the respective class of shares. The distribution fee applicable to the Class A shares (typically at an annual rate in the .25% to .30% range) would be at a rate lower than the rate which will be charged under the Rule 12b–1 Plans for Class B shares (typically at an annual rate in the 0.5% to 1% range).

4. The Alternative Purchase Plan will be implemented by having each Fund create two classes of shares. "Class A" shares will be sold under the Front-End Load Option and "Class B" shares will be sold under the Deferred Option. The two classes will each represent interests in the same portfolio of investments of a Fund, and will be identical in all respects, except that:

(i) differences exist related solely to the impact of the fees of the respective Rule 12b–1 Plan payments made by each of the Class A shares and Class B shares of a Fund and any incremental expenses subsequently identified that should be properly allocated to one class that shall be approved by the Commission pursuant to an amended order;

(ii) Class B shares will pay higher distribution fees under its Rule 12b–1 Plan than the distribution fees paid by Class A shares under its Rule 12b–1 Plan;

(iii) shareholders of each class will have exclusive voting rights with respect to the Rule 12b–1 Plan applicable to their respective class of shares; and

[1] Shares of the PBSMF are currently offered to the public with a front-end sales load and a Rule 12b–1 distribution fee. Shares of the PBGST-ITS are currently offered to the public without a front-end or a contingent deferred sales load, but with a Rule 12b–1 Plan.

[2] Shares of PBGST-ITS will continue to be sold without the imposition of a CDSL.

(iv) the two classes will have different exchange privileges.

class. The higher ongoing distribution fees paid by Class B shares will cause

Applicants' Legal Conclusion Relating to the Alternative Purchase Plan

how the various factors may influence an investor's choice. Assuming that

distribution fee will be used in whole or in part to defray the expenses of the

shareholders. The Alternative Purchase Plan permits Class B shareholders to

(iv) the two classes will have different exchange privileges.

5. In substance, the two classes of a Fund will be treated as if they were separate funds that share a common securities portfolio. The effect that the allocations of daily income and expenses, changes in realized gains and losses, and unrealized appreciation/depreciation will have on the two classes will depend on the type of fund involved. The application contains a more detailed discussion of the Applicants' proposed methodology for net asset value calculations and expense allocations which are summarized below.

6. The Directors/Trustees of the Funds will receive reports ("Statements") relating to fees charged under the Rule 12b–1 Plans for each class of shares in compliance with Rule 12b–1. In the Statements, only distribution expenditures properly attributable to the sale of each class of shares will be used to justify the distribution fee attributable to such class. The distribution of two classes of shares of the same Fund requires only a relatively modest modification of the Funds' Statements heretofore provided to the Directors/Trustees of the Funds. The Distributor's allocation of indirect expenses will be attributed to the Class A shares and the Class B shares based upon the same cost accounting methodologies (essentially account executive compensation) described in the application as though each class of shares were a separate fund. Account executive compensation is used because indirect distribution expenses being allocated may relate to all investment products and not exclusively to the Funds and because the Distributor believes that account executive compensation is the most meaningful common element relating to all the products which it sells. The principal direct expense will be payments made to sales personnel for selling shares of a particular class and will require no allocation between classes.

However, certain other direct expenses, *e.g.*, financial printing expenses and advertising, properly attributable to a Fund as a whole when only a single class existed, will apply to both classes ("other direct expenses"), and will be allocated to both classes of shares on the basis of the ratio in which the sales of each of the Class A shares and Class B shares bears to the total sales of the particular Fund's shares each year.

7. The net asset value of all outstanding shares of both classes will be computed on a pro rata basis for each outstanding share regardless of class. The higher ongoing distribution fees paid by Class B shares will cause the net investment income attributable to, and the dividends payable on, Class B shares to be lower than that for Class A shares. Because the undistributed net income is a component of net asset value, the net asset value of the Class B shares will be lower than the net asset value of the Class A shares to the extent that a Fund has undistributed net income. However, any dividends paid by a Fund with respect to Class A and Class B shares will be calculated in the same manner, at the same time, on the same day, and will be in the same amount, except for the impact of the differing sales load structures.

8. Account executives or sales personnel selling shares of the Funds will be compensated differently for selling Class A or Class B shares. Because the size of the compensation of an account executive or sales person will vary from case to case depending on breakpoints, performance of the account executive or sales person, length of time client accounts are maintained in the Fund, and other factors, Applicants believe that it is not possible to generalize as to which class will provide the account executive or sales person with the highest level of compensation.

9. The prospectuses of the Funds will describe the services rendered and compensation paid under the Rule 12b–1 Plans and the fees payable by each of the Funds. The prospectuses will disclose all material information concerning the Class A and Class B shares in a manner that would enable an investor to make a comparative analysis of the two classes of shares and facilitate the making of an investment decision as to which class would be the most advantageous to a given investor.

10. Class A shares of a Fund will be exchangeable only for Class A shares of the other Funds and shares of certain money market funds sponsored by the Manager; similarly, Class B shares will be exchangeable only for Class B shares and money market fund shares. Money market fund shares will be exchangeable for either Class A or Class B shares of the Funds; however, if money market fund shares were purchased pursuant to an exchange privilege, they will only be exchangeable for the class of shares involved in the original exchange into the money market fund shares. The applicable exchange privileges will be in compliance with Rule 11a–3 under the 1940 Act.

Applicants' Legal Conclusion Relating to the Alternative Purchase Plan

11. The Alternative Purchase Plan does not create the potential for the abuses relating to complex capital structures and mutuality of risk that section 18 is designed to address. The proposed arrangement will not increase the speculative character of the shares of the Funds since all such shares will participate pro rata in all of a Fund's income and all of a Fund's expenses (with the exception of differing Rule 12b–1 Plan fees). Both classes of shares will be redeemable at all times. No class of shares will have preference or priority over any other class in the Fund in the usual sense, that is, no class will have distribution or liquidation preferences to particular assets and no class will be protected by a reserve or any account.

12. The interests of the two classes of shares with respect to the management and advisory fees do not conflict because such fees are used to compensate the Manager for providing management and advisory services that are common to all investors. The Directors/Trustees of each Fund must analyze the reasonableness of the advisory fee and the distribution fee under the standards defined by section 36(b) of the 1940 Act. Thus, the interests of each class would be adequately protected.

13. The Alternative Purchase Plan may relieve shareholders of a portion of the fixed costs normally associated with open-ended investment companies, since such costs may, potentially, be spread over a great number of shares. In addition, the advisory fees may be lower than they would have been if the Alternative Purchase Plan was not implemented.

14. The proposed allocation of expenses and voting rights relating to the Rule 12b–1 Plans is equitable and would not discriminate against any group of shareholders. Investors purchasing Class B shares would bear the deferred charges, but would also enjoy exclusive shareholder voting rights with respect to matters affecting such Rule 12b–1 Plans.

15. The Alternative Purchase Plan permits the investor to select not only the Fund managed by the Manager which has an investment objective that best suits his or her investment needs, but also the most appropriate distribution method. Applicants believe that the Alternative Purchase Plan will provide a meaningful choice for investors under all foreseeable circumstances. An example illustrates how the various factors may influence an investor's choice. Assuming that Class A shares are available after paying a 4.25% maximum front-end sales charge and subject to a 25 basis point Rule 12b–1 Plan fee, and that Class B shares have a five-year declining CDSL and a 1% Rule 12b–1 Plan fee; further assuming a 9% average annual return before deduction of any Rule 12b–1 Plan fees, the cumulative total returns of Class A and Class B at the conclusion of five years would be 45.64% and 45.93%, respectively. If the amount to be invested immediately or over a defined period of time qualified the investor for a reduced front-end sales charge, then the investor might be better served purchasing Class A shares, as the five-year cumulative total return would be greater. On the other hand, if the investor did not qualify for a reduced front-end sales charge and the investor intends to remain invested in the fund for only a few years, then the investor would likely derive better returns by purchasing Class B shares.

16. The two distinctions between the Alternative Purchase Plan and the dual distribution arrangements approved by the Commission in the Merrill Lynch Funds Order (Rel. No. IC–16535 (August 23, 1988)) is that under the Alternative Purchase Plan, transfer agency fees for both classes are identical versus a higher transfer agency fee for CDSL shares in the Merrill Lynch order; and the presence of an ongoing distribution fee at a lower rate in connection with the Front-End Load Option under the Alternative Purchase Plan, versus no such distribution fee for front-end load shares in the Merrill Lynch Order.

Representations Relating to the Assessment of a CDSL

17. Applicants propose a CDSl on certain redemptions of Class B shares of the Funds and to waive the CDSL on certain redemptions. Investor's proceeds from a redemption of Class B shares made within a specified period of their purchase (the "CDSL Period"), not to exceed six years, will be subject to a CDSL. For example, the CDSL may be five percent on the shares redeemed in the first year of purchase and may be reduced at a rate of one percent per annum until the fifth year, when redemptions of shares thereafter would not be a subject to a CDSL.

18. The Deferred Option is designed to permit the investor to purchase Class B shares without the assessment of a front-end sales load and at the same time permit the Distributor to pay the account executives of securities dealers a commission on the sale of Class B shares. Proceeds from the CDSL and the distribution fee will be used in whole or in part to defray the expenses of the Distributor related to providing distribution-related services to investors choosing the Deferred Option.

19. The CDSL will not be imposed on redemptions of Class B shares that were purchased beyond the applicable CDSL Period or on Class B shares derived from reinvestment of distributions and amounts that represents an increase in the value of the shareholder's account resulting from the capital appreciation above the amount paid for shares purchased during the CDSL period. In determining whether a CDSL is applicable, it will be assumed that a redemption is made first of shares derived from reinvestment of distributions or shares representing capital appreciation, second of shares purchased prior to the CDSL Period, and third of shares purchased during the CDSL Period. The amount of the CDSL to be imposed will be set forth in the Fund's prospectus.

20. The Funds request relief to waive the CDSL:

(1) on redemptions following the death or disability, as defined in section 72(m)(7) of the Internal Revenue Code of 1986, of a shareholder;

(2) in connection with certain distributions from an Individual Retirement Account, a custodial account maintained pursuant to section 403(b)(7) of the Internal Revenue Code of 1986 or a qualified pension or profit-sharing plan;

(3) in whole or in part, in connection with shares sold to certain individuals or groups pursuant to special arrangements, the same as those under which the front-end sales load on Class A shares is reduced or waived pursuant to Rule 22d–1 under the 1940 Act at the time of the issuance of the order requested by this application; and

(4) in connection with the exercise of certain exchange privileges among Class B shares of the Funds and certain money market funds sponsored by the Manager. If the Directors/Trustees of a Fund determine to no longer waive or reduce such CDSL, the disclosure in a Fund's prospectus will be appropriately revised.

Any Class B shares purchased prior to the termination of such waiver or reduction would be able to have the CDSL waived or reduced as provided in a Fund's prospectus at the time of the purchase of such shares.

Applicants' Legal Conclusions Relating to the CDSL

21. The imposition of the proposed CDSL on Class B shares of the Funds is fair and in the best interests of the shareholders. The Alternative Purchase Plan permits Class B shareholders to have the advantage of greater investment dollars working for them from the time of their purchase, than if a sales load were imposed at the time of purchase, as in the case with Class A shares. Waiver of the CDSL in the extraordinary circumstances of death or total disability of the investor and in connection with retirement plans is justified on basic considerations of fairness. The waiver of the CDSL in connection with shares sold to certain individuals or groups pursuant to special arrangements is justified since the Funds generally recognize economies of scale and a reduction of sales related expenses in connection with these programs. Similarly, the waiver of the CDSL in the case of the exercise of certain exchange privileges is justified by the fact that the investor still will be invested in a mutual fund sponsored by the Manager, will be paying a Rule 12b–1 distribution fee on Class B shares (except if the shares are in a money market fund), and will have to pay any applicable CDSL if redemptions are made out of the Funds including the money market funds. Moreover, the waiver of the CDSL under the circumstances contemplated will not adversely affect other Class B shareholders of a Fund. Finally, waiver of the CDSL will not result in the loss of any revenue to a Fund since the proceeds from the CDSL will be paid to the Distributor.

Applicants' Conditions

An order granting the requested exemptions will be subject to the following conditions set forth in the application:

Conditions Relating to the Alternative Purchase Plan

1. The Class A shares and Class B shares will represent interests in the same portfolio of investments of a Fund, and be identical in all respects, except as set forth below. The only differences between Class A shares and Class B shares of the same Fund will relate solely to: (a) the impact of the fees of the respective Rule 12b–1 distribution plan payments made by each of the Class A shares and Class B shares of a Fund and any other incremental expenses subsequently identified that should be properly allocated to one class which shall be approved by the Commission pursuant to an amended order, (b) voting rights on matters which pertain to Rule 12b–1 distribution plans, (c) the different exchange privileges of the Class A shares and Class B shares as

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described in the prospectuses (and as more fully described in the statements

Application will hold a meeting of shareholders within one year of the first

made properly. The reports of the Independent Examiner shall be filed as

shares will be equally divided between the two classes. Over time the actual holdings of the two classes of newly

[Release No. IC–17273; File No. 811–3075]

Voyager Variable Annuity Account D

8A, a registration statement under the 1940 Act on Form N–1 and a registration statement under the Securities Act of

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described in the prospectuses (and as more fully described in the statements of additional information) of the Funds, and (d) the designation of each class of shares of a Fund.

2. The Directors/Trustees of each of the Funds, including a majority of the independent Director/Trustees, will approve the Alternative Purchase Plan and at least a majority of the existing shareholders of each of the Funds will approve the Alternative Purchase Plan by an affirmative vote prior to the implementation of the Alternative Purchase Plan by a particular Fund. The minutes of the meetings of the Directors/Trustees of each of the Funds regarding the deliberations of the Directors/Trustees with respect to the approvals necessary to implement the Alternative Purchase Plan will reflect in detail the reasons for determining that the proposed Alternative Purchase Plan is in the best interests of both Funds and their respective shareholders and such minutes will be available for inspection by the Commission staff.

3. On an ongoing basis, the Directors/Trustees of the Funds, pursuant to their fiduciary responsibilities under the Investment Company Act and otherwise, will monitor each Fund for the existence of any material conflicts between the interests of the two classes of shares. The Directors/Trustees, including a majority of the independent Directors/Trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Manager and the Distributor will be responsible for reporting any potential or existing conflicts to the Directors/Trustees. If a conflict arises, the Manager and the Distributor at their own cost will remedy such conflict up to and including establishing a new registered management investment company.

4. The Rule 12b–1 plans relating to the different classes of each Fund will be approved and reviewed by the Funds' Directors/Trustees in accordance with the requirements and procedures set forth in Rule 12b–1, both as currently adopted and as that rule may be amended in the future. The Rule 12b–1 distribution plan of a Fund which permits the assessment of a Rule 12b–1 fee on the new class shares will be submitted to the shareholders of the new class for approval at the next meeting of shareholders after the initial issuance of such shares. Such meeting is to be held within one year from the date the shares are initially issued. Any other series or investment company relying in the future on the order granted on the Application will hold a meeting of shareholders within one year of the first date that more than one class of shares is issued and outstanding and will submit the Rule 12b–1 distribution plans for each respective class of shares for the separate approval of the Class A and Class B shares at such meeting; provided that the approval of the shareholders shall not be necessary if the existing Rule 12b–1 distribution plan has already been submitted for their approval.

5. The Directors/Trustees of the Funds will receive quarterly and annual Statements complying with paragraph (b)(3)(ii) of Rule 12b–1, as it may be amended from time to time. In the Statements, only distribution expenditures properly attributable to the sale of one class of shares will be used to justify the Rule 12b–1 fee charged to shareholders of such class of shares. Expenditures not related to the sale of a specific class of shares will not be presented to the Directors/Trustees to justify Rule 12b–1 fees charged to shareholders of such class of shares. The Statements, including allocations upon which they are based, will be subject to the review and approval of the independent Directors/Trustees in the exercise of their fiduciary duties under Rule 12b–1.

6. Dividends paid by a Fund with respect to its Class A shares and Class B shares, to the extent any dividends are paid, will be calculated in the same manner at the same time on the same day and will be in the same amount, except that distribution fee payments made under the Rule 12b–1 Plans relating to each respective class of shares will be borne exclusively by that class.

7. The methodology and procedures for calculating the net asset value and dividends/distributions of the two classes and the proper allocation of expenses between the two classes has been reviewed by an expert (the "Independent Examiner"). The Indpendent Examiner has rendered a report to the Applicants, which has been attached as Exhibit G to the Application, that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Independent Examiner, or an appropriate substitute Independent Examiner, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Funds that the calculations and allocations are being made properly. The reports of the Independent Examiner shall be filed as part of the periodic reports filed with the Commission pursuant to sections 30(a) and 30(b)(1) of the Investment Company Act. The work papers of the Independent Examiner with respect to such reports, following request by the Funds which the Funds agree to provide, will be available for inspection by the Commission staff upon the written request for such work papers by a senior member of the Division of Investment Management or a Regional Office of the Commission, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate and Assistant Regional Administrators. The initial report of the Independent Examiner is a "Special Purpose" report on the "Design of a System" and the ongoing reports will be "Special Purpose" reports on the "Design of a System and Certain Compliance Tests" as defined and described in SAS No. 44 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

8. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividend/distributions of the two classes of shares and the proper allocation of expenses between the two classes of shares and this representation has been concurred with by the Independent Examiner in the initial report referred to in condition (7) above and will be concurred with by the Independent Examiner, or an appropriate substitute Independent Examiner, on an ongoing basis at least annually in the ongoing reports referred to in condition (7) above. Applicants agree to take immediate corrective action if the Independent Examiner, or appropriate substitute Independent Examiner, does not so concur in the ongoing reports.

9. The prospectuses of the Funds will include a statement to the effect that an account executive may receive different levels of compensation for selling Class A shares or Class B shares.

10. The Distributor will adopt compliance standards substantially in the form of Exhibit E of the Application, as to when Class A shares and Class B shares may appropriately be sold to particular investors.

11. All purchases of shares of the Funds by the Directors/Trustees made after the issuance of a second class of shares will be equally divided between the two classes. Over time the actual holdings of the two classes of newly purchased shares will differ to a minor degree if a Director/Trustee elects to have dividends reinvested.

12. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the Directors/Trustees of the Funds with respect to the Alternative Purchase Plan will be set forth in guidelines which will be furnished to the Director/Trustees as part of the materials setting forth the duties and responsibilities of the Directors/Trustees.

13. Each of the Funds will clearly disclose the difference in the respective yields of the Class A shares and Class B shares of a Fund in its prospectus, shareholder reports and any advertising materials, including newspaper advertisements. For instance, the supplementary, financial information including the per share table in each Fund's prospectus and the balance sheet in each Fund's prospectus or statement of additional information will be separately presented for the Class A shares and Class B shares. Also, the Funds' prospsectuses and statements of additional information will disclose the different exchange privileges applicable to the different classes of shares. Similarly, the information provided by the Applicants to any newspaper or similar listing of the Funds' net asset values and public offering prices will separately present Class A shares and Class B shares.

14. The Applicants acknowledge that the grant of the exemptive order requested by this Application will not imply Commission approval, authorization or acquiescence in any particular level of payments that the Funds may make pursuant to Rule 12b–1 distribution plans in reliance on the exemptive order.

Condition Relating to the CDSL

15. The Applicants will comply with the provisions of proposed Rule 6c–10 under the Investment Company Act, IC–16619 (Nov. 2, 1988), 53 FR 45275, Nov. 9, 1988, as such Rule is currently proposed and as it may be reproposed, adopted or amended.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-30116 Filed 12-27-89 8:45 am]

BILLING CODE 8010-10-M

[Release No. IC-17272; File No. 811-3075]

Voyager Variable Annuity Account D

December 20, 1989.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 ("the 1940 Act").

Applicant: Voyager Variable Annuity Account D ("VVAD" or "Applicant").

Relevant 1940 Act Sections: Order requested under section 8(f).

Summary of Application: Applicant seeks an order under section 8(f) of the 1940 Act declaring that it has ceased to be an investment company.

Filing Date: The application was filed on December 22, 1988 and amended on July 24, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on January 16, 1990. Request a hearing in writing, giving the nature of your interest, the reason for your request, and the issues you contest. Serve the Applicant, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC. 450 Fifth Street, NW., Washington, DC 20549. Applicant, P.O. Box 388, Dallas, Texas 75221, Attention: Art Hall.

FOR FURTHER INFORMATION CONTACT: Michael V. Wible, Staff Attorney, at (202) 272–2028 or Clifford E. Kirsch, Assistant Director, at (202) 272–2061 (Division of Investment Management, Office of Insurance Products and Legal Compliance).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant is registered under the 1940 Act as a diversified, open-end management company.

2. On July 17, 1980, August 4, 1980, and November 4, 1980, Applicant, a separate account established by Voyager Life Insurance Company ("Voyager"), a Florida life insurance company, filed a notification of registration on Form N–8A, a registration statement under the 1940 Act on Form N–1 and a registration statement under the Securities Act of 1933 on Form N–1 respectively. Both registration statements became effective November 28, 1980. The initial public offering commenced in April, 1981. On February 27, 1984 the Applicant filed a registration statement on Form N–1 registering an indefinite number of units. This registration statement became effective February 28, 1984 and the public offering of these subsequently registered units commenced on the same day.

3. Applicant served as a funding vehicle for qualified and nonqualified group and individual variable annuity contracts issued by Voyager.

4. On December 20, 1985 and January 3, 1986, Applicant's Board of Managers recommended that the annuity contract owners approve various transactions necessary for Great American Reserve Insurance Company ("GARCO"), a Texas life insurance company, to acquire the assets of VVAD from Voyager. Proxy materials regarding the proposed transaction were distributed to Applicant's contract owners and filed with the Commission. At a special meeting of contract owners of VVAD, held on March 12, 1986, the contract owners approved various transactions which were necessary for GARCO's acquisition of the assets of VVAD from Voyager.

5. On May 15, 1986, GARCO purchased the annuity business, including the variable annuity contracts and separate account assets, of Voyager and VVAD ceased to exist as a separate account under the Florida Insurance Code. Contract owners received assumption certificates from GARCO, and GARCO became principally liable to the contract holders for all debts and obligations incurred by Voyager under the annuity contracts. However, Voyager remained contingently liable under the contracts that it had issued, and VVAD and Voyager remained liable under the Securities Act of 1933 with respect to statements made in the registration statements, and amendments thereto, used prior to the transfer of the assets and liabilities of VVAD to GARCO.

6. On September 17, 1985 (supplemented on November 5, 1985 and December 3, 1985), Voyager requested a no action letter from the Commission with respect to the proposed transfer by Voyager of its registered variable annuity separate account to GARCO. Such no action letter was issued on December 11, 1985.

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7. Applicant will amend the application to note that despite the no action assurance that Voyager received, GARCO in August, 1986 registered the separate account under the 1940 Act.

8. The portfolio securities and other assets and liabilities which comprised VVAD remained intact, physically and legally segregated from any other account or business of GARCO. The annuity policies remained unchanged, except for the assumption of liabilities by GARCO, and continued to be funded by the assets of the separate account. The substantive rights of the contracts were not impaired or altered by the transaction. All expenses in connection with the merger were borne by Voyager and GARCO, and neither VVAD nor the contract holders were charged with any of the expenses of this transaction.

9. On April 30, 1986, Applicant had total assets of $3,167,446.13. Applicant has retained no assets, has no debts or other liabilities outstanding, and is not to its knowledge a party to any litigation or administrative proceedings. Applicant had no security holders and is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs. Applicant has ceased to function as a diversified open-end management investment company.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-30114 Filed 12-27-89; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 05/05-0165]

White River Capital Corp.; License Surrender

Notice is hereby given that White River Capital Corporation, 500 Washington Street, Columbus, IN 47202, has surrendered its license to operate as a small business investment company under section 301(c) of the Small Business Investment Act of 1958, as amended (the Act). White River Capital Corporation was licensed by the Small Business Administration on March 31, 1982.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on December 11, 1989 and accordingly, all rights, privileges and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: December 19, 1989

Robert G. Lineberry,

Deputy Associated Administrator for Investment.

[FR Doc. 89-30019 Filed 12-27-89; 8:45 am]

BILLING CODE 8025-01-M

Small Business Investment Company; Maximum Annual Cost of Money to Small Business Concerns

13 CFR 107.302(a) and (b) limit maximum annual Cost of Money (as defined in 13 CFR 107.3) that may be imposed upon a Small Concern in connection with Financing by means of Loans or through the purchase of Debt Securities. The cited regulation incorporates the term "Debenture Rate", which is defined elsewhere in 13 CFR 107.3 in terms that require SBA to publish, from time to time, the rate charged on ten-year debentures sold by Licensees to the public. Notice of this rate will be published upon change in the Debenture Rate.

Accordingly, Licensees are hereby notified that effective the date of publication of this Notice, and until further notice, the Debenture Rate to be used for computation of maximum cost of money pursuant to 13 CFR 107.302 (a) and (b) is 8.60 percent per annum.

13 CFR 107.302 does not supersede or preempt any applicable law imposing an interest ceiling lower than the ceiling imposed by its own terms. Attention is directed to section 308(i) of the Small Business Investment Act, as further amended by section 1 of Public Law 99-226, December 28, 1985 (99 Stat. 1744), to that law's Federal override of State usury ceilings, and to its forfeiture and penalty provisions.

(Catalog of Federal Domestic Assistance Program No. 59.011, small business investment companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 89-30020 Filed 12-27-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

President's Commission on Aviation Security and Terrorism; Closed Meeting

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice of closed meeting of the President's Commission on Aviation Security and Terrorism.

SUMMARY: The Commission will be meeting in closed session to discuss matters relating to national security; Commission organization, personnel, and related matters; matters exempt from mandatory investigations and proceedings; and information whose premature disclosure would likely significantly frustrate agency action.

DATE: Wednesday, January 10, 1990, 12 noon, ET.

ADDRESS: Suite 203, 1825 K Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Harry R. Van Cleve, President's Commission on Aviation Security and Terrorism, 1825 K Street, NW., Suite 519, Washington, DC 20036; telephone (202) 254-3166; FAX (202) 254-3359.

SUPPLEMENTARY INFORMATION: In accordance with section 10 of the Federal Advisory Committee Act, this meeting will be closed to the public because matters will be discussed that come within the following provisions of 5 USC 552b(c): (1) matters required to be kept secret in the interest of national security; (2) internal personnel rules and practices of the Commission; (3) matters exempt from mandatory disclosure by statute, namely section 316, Federal Aviation Act of 1958, as amended; (7) matters related to civil and administrative law enforcement investigations; and (9) information whose premature disclosure would likely lead to significant frustration of actions proposed by DOT or other agencies.

Issued in Washington, DC on December 21, 1989.

Harry R. Van Cleve,

Commission General Counsel.

[FR Doc. 89-30042 Filed 12-27-89; 8:45 am]

BILLING CODE 4910-62-M

[Docket No. 46393]

Application of Discovery Airways, Inc., for a Certificate of Public Convenience and Necessity

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause, (Order 89-12-41).

SUMMARY: The Department of Transportation is proposing to find that Discovery Airways, Inc., is fit, willing, and able to provide certificated operations under section 401(d)(1) of the Federal Aviation Act.

DATES: Persons wishing to file objections should do so no later than January 2, 1990.

ADDRESSES: Objections and answers to objections should be filed in Docket 46393 and addressed to the Documentary Services Division (C-55, Room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Appendix B to the order.

FOR FURTHER INFORMATION CONTACT: Mrs. Barbara P. Dunnigan, Air Carrier Fitness Division (P-56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-2342.

Dated: December 21, 1989.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 89-30066 Filed 12-27-89; 8:45 am]

BILLING CODE 4910-62-M

Coast Guard

[CGD1 89-143]

New York Harbor Traffic Management Advisory Committee; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463;5 USC App. I), notice is hereby given of a meeting of the New York Harbor Traffic Management Advisory Committee to be held on January 24, 1990, in the Conference Room, second floor, U.S. Coast Guard Marine Inspection Office, Battery Park, New York, New York, beginning at 10:00 a.m.

The agenda for this meeting of the New York Harbor Traffic Management Advisory Committee is as follows:

1. Introductions.
2. Update of Navy Homeport Project, Restricted Area in Anchorage Grounds 23-A and 23-B.
3. New Jersey State Police Marine Unit presentation.
4. Update Newark Bay dredging status.
5. Update Kill Van Kull Dredging Project.
6. Topics from the floor.
7. Review of agenda topics and selection of date for next meeting.

The New York Harbor Traffic Management Advisory Committee has been established by Commander, First Coast Guard District to provide information, consultation, and advice with regard to port development, maritime trade, port traffic, and other maritime interests in the harbor. Members of the Committee serve voluntarily without compensation from the Federal Government.

Attendance is open to the interested public. With advance notice to the Chairperson, members of the public may make oral statements at the meeting. Persons wishing to present oral statements should so notify the Executive Director no later than the day before the meeting. Any member of the public may present a written statement to the Committee at any time.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander L. Brooks, USCG, Executive Secretary, NY Harbor Traffic Management Advisory Committee, Port Safety Office, Building 109, Governors Island, New York, NY 10004; or by calling (212) 668-7834.

Dated: December 13, 1989.

R.I. Rybacki,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 89-30171 Filed 12-27-89; 8:45 am]

BILLING CODE 4910-14-M

Federal Highway Administration

Environmental Impact Statement: Tarrant County, TX

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that separate environmental documents will be prepared for a proposed expansion of State Highway 199 in Tarrant County, Texas. Ongoing studies have identified two disparate environmental and design situations, and the original project has been separated accordingly. The project was initially planned to be studied in a single environmental impact statement (EIS) for which a Notice of Intent was published in the March 18, 1987 Federal Register.

FOR FURTHER INFORMATION CONTACT: W.L. Hall, Jr., P.E., District Engineer, Federal Highway Administration, Federal Office Building, Room 826, 300 East Eighth Street, Austin, Texas 78701, Telephone: (512) 482-5988.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Texas State Department of Highways and Public Transportation (SDHPT), intends to perpare two environmental documents for connecting projects on State Highway 199 which were initially to be studied in a single EIS. The original limits were between Spur 344 in Axle and the proposed SH 121 near downtown Fort Worth.

An environmental impact statement will be prepared for the expansion of SH 199 from FM 1886 (Confederate Parkway) in the cities of Lakeside and Fort Worth to the proposed SH 121 (Southwest Freeway) near downtown Fort Worth. The western terminus of the project lies at the eastern end of the FM 1886/SH 199 interchange, and the eastern terminus is at the western end of the proposed SH 121/SH 199 interchange.

This section of SH 199 will be upgraded from four to eight lanes with auxiliary lanes and full control of access. An EIS will be prepared because the proposed project lies primarily within a densely developed urban area. Three alternative routes will be assessed due to concern over potential effects, in particular economic and community cohesion impacts. In addition to construction scenarios, the EIS will address no-build and transportation system management alternatives.

This highway portion connects the cities of lakeside, Lake Worth, Sansom Park, River Oaks, and Fort Worth in northwestern Tarrant County. It provides residents of these cities improved travel to downtown Fort Worth. In 1980, Lakeside had a population of 957; Lake Worth, 4,394; Sansom Park, 3,921; River Oaks, 6,890; and Forth Worth, 385,164. SH 199 also serves as an interregional route between Forth Worth and Lubbock.

The existing facility is inadequate to handle traffic needs. Average annual daily traffic for 1986 ranged from 22,000 to 37,000 vehicles per day.

The analysis of the SH 199 expansion between FM 730 and FM 1886 will be documented in an environmental assessment (EA) and removed from the EIS. The project limits include the FM 730 and FM 1886 interchanges with SH 199. The western limit has been extended from Spur 344 to FM 730.

Within the project area, SH 199 is currently a four-lane divided facility with continuous frontage roads and crossings at-grade. Grade separation structures and ramps will be built to provide full control of access. Lanes will also be added, as needed, to accommodate anticipated traffic.

The western section of SH 199 will be analyzed separately in an EA because the environmental studies in progress have found that impacts will be minimal. Part of the project will be constructed within the existing right of way, and no feasible alternative routes are available. Additionally, the accident

rate on the existing facility has been high—860 accidents occurred during the

locations of public meetings and hearings is standard procedure.

Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Sunshine Act Meetings

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rate on the existing facility has been high—860 accidents occurred during the years 1984–88.

This portion connects the cities of Azle and Lakeside in northwestern Tarrant County. It provides residents of these two cities, Fort Worth, unincorporated Tarrant County, and the adjacent Parker County, improved travel to downtown Fort Worth. In 1980, Azle had a population of 5,822; Lakeside, 957; and Fort Worth, 385,164.

Traffic volumes have increased considerably. The existing facility is inadequate to handle traffic needs safely. Average annual daily traffic for 1988 ranged from 26,000 to 33,000 vehicles per day.

Because it is difficult to predict funding availability, the SDHPT has not yet decided whether to use State or Federal funds to finance construction of these projects.

Both proposed expansions will safely and efficiently provide for the transportation needs of the area. They will alleviate congestion and delays, generally improving access to housing, businesses, employment, schools, and churches. Upgrading these two portions of SH 199 to freeway status is anticipated to be accomplished within the next ten years.

A project concept conference with local officials was held April 7, 1987. Two public meetings were held in 1987—one in Azle, the other in Lake Worth, and public hearings are planned for the future. The provision of adequate notice concerning the times and locations of public meetings and hearings is standard procedure.

To ensure the full range of related issues is addressed, comments and suggestions are invited from all interested parties. Comments and questions should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: December 19, 1989.

W.L. Hall, Jr.,

District Engineer, Austin, Texas.

[FR Doc. 89-30062 Filed 12-27-89; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: December 21, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0095

Form Number: ATF F 1678 (5530.5)

Type of Review: Extension

Title: Formula and Process for Nonbeverage Products

Description: Businesses which use taxpaid alcohol to manufacture nonbeverage products may file a claim for drawback (refund or remittance), if they can substantiate by using ATF F 1678 (5530.5) that the spirits were used in the manufacture of products unfit for beverage purposes. This determination is based on the formula for the product.

Respondents: Businesses or other for-profit, Small businesses or organizations

Estimated Number of Respondents: 625

Estimated Burden Hours Per Response: 30 minutes

Frequency of Response: On occasion

Estimated Total Reporting Burden: 2,500 hours

Clearance Officer: Robert Masarsky (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89-30037 Filed 12-27-89; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

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Thursday, December 28, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Wednesday, January 3, 1990.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: December 26, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-30283 Filed 12-26-89; 3:05 pm]

BILLING CODE 6210-01-M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold a meeting at 1:00 p.m. on Monday, January 8, 1990, and at 8:30 a.m. on Tuesday, January 9, 1990, in Washington, DC. The January 8 meeting, at which the Board will discuss preparations for the rate case filing and possible strategies in collective bargaining negotiations, is closed to the public. (See 54 FR 51459, December 15, 1989). The January 9 meeting is open to the public and will be held in the Benjamin Franklin Room at Postal Service Headquaters, 475 L'Enfant Plaza, SW. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268-4800.

Agenda

Monday Session

January 8—1:00 p.m. (Closed)

1. Preparations for Rate Case Filing. (Comer S. Coppie, Senior Assistant Postmaster General, Finance Group; and Frank R. Heselton, Assistant Postmaster General, Rates and Classification Department)
2. Status report on Preparations for Collective Bargaining. (Joseph J. Mahon, Jr., Assistant Postmaster General, Labor Relations Department)

Tuesday Session

January 9—8:30 a.m. (Open)

Minutes of the Previous Meeting, December 4–5, 1989.

2. Remarks of the Postmaster General.
3. Election of Chairman and Vice Chairman.
4. Annual Report on Sunshine Act Compliance. (David F. Harris, Secretary to the Board)
5. Annual Report of the Postmaster General. (Deborah K. Bowker, Assistant Postmaster General, Communications Department)
6. Wrap-up Briefing on UPU Congress. (Thomas E. Leavey, Assistant Postmaster General, International Postal Affairs Department)
7. Report on Human Resources Group Programs. (David H. Charters, Senior Assistant Postmaster General, Human Resources Group)
8. Annual Report on EEO/Affirmative Action. (Sherry A. Cagnoli, Executive Director, Office of Equal Employment Opportunity)
9. Tentative Agenda for February 5–6, 1990, meeting in Los Angeles, California.

David F. Harris,

Secretary.

[FR Doc. 89-30277 Filed 12-26-89; 2:27 pm]

BILLING CODE 7710-12-M

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Part II

Department of Justice

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention

Proposed Comprehensive Plan for Fiscal Year 1990; Notice

DEPARTMENT OF JUSTICE

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention

Proposed Comprehensive Plan for Fiscal Year 1990; Notice

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, Department of Justice.

ACTION: Notice of proposed comprehensive plan for fiscal year 1990.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is proposing a comprehensive plan for fiscal year 1990 which sets forth the objectives and priorities for the Office. The plan is required by the Juvenile Justice and Delinquency Prevention Act of 1974, as amended. The plan describes the problems and needs of the juvenile justice system and the role of the Federal Government in addressing those problems and needs. The plan also describes the relationship between the Office's activities and the activities of other Federal agencies. Finally, the plan describes the Office's priorities for the use of discretionary funds and the criteria to be used in allocating those funds.

DATES: Comments must be received on or before January 29, 1990.

ADDRESSES: Comments should be addressed to Alfred S. Regnery, Administrator, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Alfred S. Regnery, Administrator, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, DC 20531, (202) 724-5911.

SUPPLEMENTARY INFORMATION: The Juvenile Justice and Delinquency Prevention Act of 1974, as amended, requires the Administrator of the Office of Juvenile Justice and Delinquency Prevention to publish annually a proposed comprehensive plan for juvenile delinquency prevention and for the improvement of the juvenile justice system. The plan must set forth the objectives and priorities for the Office and describe the problems and needs of the juvenile justice system and the role of the Federal Government in addressing those problems and needs. The plan must also describe the relationship between the Office's activities and the activities of other Federal agencies. Finally, the plan must describe the Office's priorities for the use of discretionary funds and the criteria to be used in allocating those funds.

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) was established by the Juvenile Justice and Delinquency Prevention Act of 1974, as amended. The Office is responsible for providing national leadership in addressing juvenile delinquency and improving the juvenile justice system. The OJJDP is to provide direction, coordination, leadership and resources to states and localities in a consistent and comprehensive manner. The mission of the OJJDP is to provide national strategy involving both the discretionary and formula grant resources will advance the goals of the

according to the four primary components of the juvenile justice system: prevention, intervention, the system to efficiently identify, adjudicate, and provide appropriate supervision and services for serious where student leaders are selected, support for the program is obtained from school personnel and parents, and

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DEPARTMENT OF JUSTICE

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention

Proposed Comprehensive Plan for Fiscal Year 1990

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of proposed comprehensive plan for fiscal year 1990.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention is publishing for public comment this Notice of its Proposed Comprehensive Plan for Fiscal Year 1990.

DATES: Comments must be submitted on or before February 12, 1990.

ADDRESS: Comments may be mailed to Terrence S. Donahue, Acting Administrator, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: D. Elen Grigg, (202) 724-7751. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of section 204(b)(5)(A) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, (section 5614(b)(5)(A) of title 42 U.S.C.A.), the Acting Administrator of the Office of Juvenile Justice and Delinquency Prevention is publishing for public comment, a proposed comprehensive plan describing the particular activities which he intends to carry out during Fiscal Year 1990. The comprehensive plan includes activities specified in parts C (section 5651 of title 42 U.S.C.A. et seq.) and D (section 5668 of title 42 U.S.C.A. et seq.) of title II of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended. Taking into consideration comments received during the 45-day period beginning on the date of publication of the proposed comprehensive plan, the Acting Administrator will develop and publish a final plan describing the particular activities which he intends to carry out during Fiscal Year 1990, including those under parts C and D of title II of said Act.

Introduction

The Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, as amended, established the Office of Juvenile Justice and Delinquency Prevention (OJJDP) as the Federal government's primary agency for addressing the issues of juvenile crime and related problems in a systematic and comprehensive manner. The mission of the OJJDP is to provide direction, coordination, leadership and resources to states and localities in implementing the mandates and goals of the JJDP Act, within the appropriations provided for the program annually, and in a manner consistent with the policies and directions established by the President and the Attorney General. In 1984, Congress passed the Missing Children's Assistance Act, making OJJDP also responsible for Federal missing and exploited children programs.

It is the purpose of the OJJDP pursuant to sections 101, 102, 401 and 402 of the JJDP Act to develop and provide information to states and communities on:

- What programs are promising or effective; and
- How public and private agencies can provide more effective services and deploy resources more efficiently.

Goals

The FY 1990 program goals are:

Prevention and Control of Illegal Drug Use Among High Risk Youth—programs are designed to promote the concept of accountability of youth, their families, and communities for eliminating illegal drug use.

Prevention and Control of Serious Juvenile Crime—programs are focused on the development of effective approaches and coordination of services across local system components to concentrate and direct resources to response to serious juvenile crime, youth gangs, family dysfunction and illiteracy.

State Compliance with the Formula Grant Mandates—programs are designed to assist States in achieving compliance with Federal statutory mandates including the deinstitutionalization of status offenders; removal of juveniles from adult jails and lockups; and separation of juveniles from adults during incarceration.

Prevention and Intervention for Missing and Exploited Children—programs are designed to reduce the incidence of crimes against children, particularly abduction and sexual exploitation, and to improve the responses of agencies that are responsible for dealing with these crimes.

Direction

Federal direction, coordination and leadership must be closely linked to States and communities that have the authority, responsibility and resources to solve the problems of juvenile crime and victimization. A comprehensive national strategy involving both the discretionary and formula grant resources will advance the goals of the Act and improve the juvenile justice system.

This fiscal year the direction will be to promote coordination between the discretionary and formula grant program; improve communication and procedures between the Office and other State and local juvenile justice agencies; initiate new methods and procedures for monitoring grants and contracts as well as tracking the use of formula funds; and enhance the knowledge and skills of professionals in the field by providing training, technical assistance, and disseminating information.

Program Principles

In order to accomplish the purpose of the Office, programs will be based on four principles.

1. Research-based program designs that target risk factors

Many factors, including illegal drug use, family break-up, poor family relationships, school failure, illiteracy, gang membership, high crime neighborhoods, and sexual exploitation, place youth at risk of delinquency. Furthermore, the more of these factors youth experience the more vulnerable they are to crime and exploitation. As a result, to be effective, programs must provide a range of services that target multiple risk factors. State and local agencies must coordinate their program efforts and involve *all* components of the juvenile justice system; prevention, intervention, adjudication, and supervision. This is accomplished through:

2. Emphasis on change at the legal, policy, procedural, and practice level

3. System coordination of services and programs

4. Redevelopment of existing resources

FY 1990 Program Planning Activities

The program planning process consisted of an internal review of existing programs as well as external input from a variety of sources: juvenile justice policy makers and practitioners from the State and local levels, OJJDP grantees and contractors, State planning agencies and advisory groups, human service organizations from the public and private sector, and professional associations with interests in juvenile justice and related issues.

The following are brief summaries of each of the proposed programs planned for FY 1990. They are organized according to the four primary components of the juvenile justice system: prevention, intervention, adjudication and supervision.

The specific programs to be funded within each category are planned and subject to change. For each new program, the program goal it addresses is identified. About 50% of the discretionary funds are expected to be devoted to prevention programs. Since the priorities for missing and exploited children are published separately for comment, continuation and new activities for that area are not included in this document.

All the proposed new programs address the program goals of (*) Prevention and Control of Illegal Drug Use Among High Risk Youth or (**) Prevention and Control of Serious Juvenile Crime, as indicated on the following pages.

The discretionary programs identified in this plan respond to the legislative direction provided in parts A, B, C and D of the JJDP Act as amended.

Interested persons are invited to submit written comments up to 45 calendar days from the Federal Register publication date. Address all comments to Mr. Terrence S. Donahue, Acting Administrator, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue NW., Room 742, Washington, DC 20531.

Prevention

These types of activities are directed at encouraging law-abiding conduct and reducing the incidence of criminal activity of all youth under the age of eighteen. Prevention services are focused on assisting youth at risk of delinquency and drug abuse because they lack appropriate ties to family, school, peers and community agencies. Prevention services are provided by a range of public and private agencies including schools, mental health agencies, social service agencies, churches, and private youth-serving organizations. The services address a variety of problems and needs, such as family dysfunction, unemployment, illiteracy, after school care, crisis intervention, and recreation.

Continuation Programs

Serious Habitual Offender Comprehensive Action Program

The purpose of this program is to provide intensive training and technical assistance to selected communities in order to promote specific policies and practices among the primary components of the juvenile justice system. It will improve the capability of the system to efficiently identify, adjudicate, and provide appropriate supervision and services for serious habitual juvenile offenders.

Prevention and Control of Delinquency in Public Housing

The purpose of this program is to establish Boys and Girls Clubs in selected housing projects. This goal will be accomplished by providing training and technical assistance to personnel from both the public housing authority and the sponsoring Boys and Girls Clubs. The program will help local communities provide alternatives to illegal drug use [e.g., recreation, education, and referral services] for at-risk youth in public housing projects.

Proyecto Esperanza/Project Hope

The purposes of this program are to assess family strengthening and crisis intervention programs and to design model programs for Hispanic families.

Law-Related Education (LRE)

The purpose of this program is to provide training and materials to State and local school jurisdictions to encourage and guide them in establishing LRE delinquency prevention programs in the curriculums of grades kindergarten through 12. It assists schools in helping children to understand the law and its role in society.

Emphasis will be placed on training in the area of alternative sanctions and drug abuse prevention.

National School Safety Center

The purpose of this program is to provide information on school safety; identify methods to diminish crime, violence, and illegal drug use in schools and on school campuses; and to develop innovative crime prevention and school discipline programs. It assists schools in implementing a variety of strategies to create a safe environment.

National Youth Gang Suppression and Intervention Project

The purpose of this development program is to promote effective policies and practices for joint responses to juvenile gang activity by law enforcement, adjudication, and corrections agencies. The continuation activities of this program will focus on providing training and technical assistance to support sites implementing the program models.

Super Teams

This is a drug prevention program utilizing peer counseling and professional athletes. It is a program where student leaders are selected, support for the program is obtained from school personnel and parents, and students are trained to combat peer pressure and use techniques to influence other youngsters to refrain from abusing alcohol and drugs.

Targeted Outreach: Gang Intervention/ Prevention Supplement

The goal of this project is to help local Boys Clubs target gang-involved youth by providing alternative or supplemental services to the juvenile court and other youth-serving agencies.

Cities in Schools (Partnership Plan)

The purpose of this program is to develop state and local public/private partnerships designed to establish educational and social programs that provide comprehensive services to youth at risk of becoming involved in delinquency and illegal drug use. It prevents youth from dropping out of school and provides alternative educational services in response to the problems of illiteracy and academic underachievement through intensive special education and remedial education services.

National Congress of Black Churches' Anti-Drug Abuse Program

The purpose of this project is to design and implement a community capacity building and mobilization program. It will assist communities in developing comprehensive strategies to prevent and intervene in illegal drug use among youth.

Cities in Schools (Alternative School Program)

Through a public-private venture involving support from OJJDP and Burger King Corporation, Cities in Schools will replicate the alternative school concept in 10 communities. As part of this project, Burger King has agreed to make scholarship funds and employment and training opportunities available to CIS students who still stay drug free. It prevents youth from dropping out of school and provides alternative educational services in response to the problems of illiteracy and academic underachievement as well as learning disabilities.

Exploring Careers in Criminal Justice and Law Enforcement

The Law Enforcement Exploring Program of the Boy Scouts of America gives young people an opportunity to assess their interest in and potential for a career in the criminal justice system. This apprenticeship-type program in

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which youth provide direct assistance to law enforcement agencies builds mutual understanding among practitioners, teenagers, and the general public, thereby contributing to delinquency prevention and control. Special attention is also give to prevention of illegal drug use.

Causes and Correlates of Delinquency

This program is designed to improve understanding of the development of positive, delinquent, and drug-use behavior patterns in the context of the community, the family, and the individual. It will identify factors that must be considered in classifying youth's risk for involvement in delinquency and in designing effective interventions for all types of youth.

Drug Free School Zones in the District of Columbia

The purpose of this program is to design and demonstrate a process of developing and implementing drug free school zones in five target District of Columbia schools and surrounding communities. It targets both supply and demand side problems.

Public Housing Opportunity Centers

This project involves the use of a systemwide community organization and planning approach to develop a comprehensive stategy for creating drug free public housing.

New Programs

Drug Abuse Prevention Among High School Youth*

A drug abuse prevention program designed to empower high school-aged youth to take an active role in preventing drug and alcohol use and impaired driving by their peers. It would provide support for a demonstration program in approximately five cities.

Dissemination of Information on Drug Abuse Among High Risk Youth*

This program is designed to provide states and communities information and guidance regarding community organization and program development strategies as well as promising program models that relate to the prevention and control of drug use among high risk youth.

Drug Abuse Among Minorities*

This is a program designed to increase understanding of the causes of drug abuse among minority youth and the implications for developing effective prevention programs.

Model Programs for Prevention, Intervention and Treatment of Illegal Drug Use*

This program is designed to implement models for the prevention, intervention, and treatment of illegal drugs and alcohol use among juveniles and evaluate their effectiveness.

Drug Abuse Among Native Americans*

This program is designed to provide information on effective juvenile drug programs to Native American tribes.

Prevention of Adolescent Victimization**

This program is designed to reduce adolescent victimization and utilize youth as crime prevention and community resources. Emphasis will be placed on alternative sanctions and privatization in the materials and services generated by program.

Intervention

These types of activities are initiated by public officials such as police officers, child protective service, mental health, or school personnel with a youth or family in response to apparent neglect or abuse, noncriminal misbehavior, delinquent conduct, medical emergencies and/or family crises. Intervention also encompasses services provided to youth who are diverted out of the juvenile justice process by public officers and who are not under the supervision or the threat of prosecution for failure to accept services that are designed to prevent further entry into the system.

Continuation Programs

Victims and Witnesses in the Juvenile Justice System

The purposes of this program are to document existing approaches used by the juvenile justice system to handle victims and to develop model policies and procedures as well as training curricula to increase victim satisfaction. The continuation activities of this program will focus on providing training assistance to support sites implementing the program models.

Juvenile Justice Prosecution Project

The purpose of this program is to design and implement policy development workshops for chief prosecutors and for juvenile unit chiefs in district attorney offices.

Juvenile Justice Training for State and Local Law Enforcement Personnel

The purpose of this program is to improve decision making by State and local law enforcement personnel by providing them with a better understanding of the juvenile justice system. Particular emphasis is placed on increasing the effectiveness of child abuse investigations and making informed decisions regarding the arrest and disposition of juveniles.

Juvenile Justice Training for Court Personnel

This program provides specialized workshops to help juvenile justice court personnel improve their skills in processing juveniles through the justice system and to help develop programs to meet the needs of juveniles.

New Programs

Dissemination of Information of Juvenile Gang Crime**

This program is designed as a national scope effort for the collection, assessment, and dissemination of research and information on juvenile gang crime, as well as promising/effective approaches to preventing and controlling crime by juvenile gangs.

Models for Juvenile Gang Suppression and Intervention**

This program is designed to implement models for suppressing and intervening with youth gangs and evaluate their effectiveness.

Adjudication

These types of activities focus on the court with jurisdiction over delinquency, neglect and abuse, and noncriminal misbehavior and the related services of intake, detention, and dispositional decision making.

Continuation Programs

National Center for the Prosecution of Child Abuse

The purposes of this program are to provide training, technical assistance, and information to promote more informed and vigorous prosecution of child abuse and to minimize the trauma experienced by children whose cases are handled by the criminal justice system. It will improve the capability of communities to develop swift, effective legal responses to child abuse.

Juvenile Court Training and Technical Assistance

The purpose of this program is to provide juvenile and family court judges and other court-related personnel with training and technical assistance on pertinent case law, disposition and treatment options. It teaches new employees the basic skills needed to perform court-related duties. It also informs judges about the most recent legal, social, and managerial developments in the field so they can improve their court's services to youth. Emphasis will be placed on training in the area of alternative sanctions, drug testing and privatization as well as responding to the problems of illiteracy, unemployability, and family dysfunction.

Court Appointed Special Advocates (CASA)

The purpose of this program is to provide training and technical assistance to local juvenile courts to promote the development and use of adult volunteers as court appointed special advocates for youth under the jurisdiction of the court. These volunteers assist the court in providing appropriate support to youth.

Technical Assistance to the Juvenile Courts

The purpose of this program is to provide technical assistance to the Nation's juvenile courts and court-related agencies. Through individualized technical assistance, the program improves the juvenile court's ability to develop and use information, its use of automated information systems, and its resource allocation. Emphasis will be placed on technical assistance in the area of alternative sanctions.

Restitution Education. Specialized Training and Technical Assistance (RESTTA)

The purpose of this program is to promote restitution as a viable disposition by providing training, technical assistance, and information about restitution to courts and juvenile justice practitioners.

Permanent Families for Abused and Neglected Children: A National Training and Technical Assistance Project

This program works with State Permanency Planning Task Forces to address both the legal and social issues associated with foster care as well as the need for permanent homes for children in foster care; and collaborates with the National CASA program to expand court advocate programs for these youth.

Children in Custody

The purpose of this program is to provide information on the characteristics and population of the Nation's juvenile detention, correctional, and shelter care facilities. Analytical reports—based on the 1984/1985 census, the fielding of the 1986/1987 census, and feasibility and pilot tests relating to a survey of juveniles in custody—will assist the juvenile justice community is assessing existing institutionalization practices as well as the nature and level of services provided to selected populations in secure confinement.

National Juvenile Court Data Archive

The purpose of this program is to collect, process, analyze, and disseminate, through the maintenance of National Juvenile Court Data Archive, available data concerning cases handled by the Nation's juvenile courts. It provides direct assistance to jurisdictions in analyzing their juvenile court data so that they can better manage their case flow and allocate resources more effectively.

Supervision

These types of activities are related to the care and custody of juveniles placed by the court for delinquency, noncriminal misbehavior or neglect and abuse in residential and non-residential programs. Residential programs include detention centers, shelter care facilities, training schools, camps and ranches, group homes and community-based correctional centers. Non-residential supervision includes public and private probation services.

Continuation Programs

Research on Deinstitutionalization of Status Offenders

The purpose of this project is to evaluate the effects of deinstitutionalization on the juvenile justice system, other youth-serving agencies, and on youth involved in status offenses. It will guide community and state programs and legislative activities in providing services to this population.

Technical Assistance to the States

The purpose of this project is to provide assistance to States in developing and implementing comprehensive plans for the use of JJDP formula grant funds, including assistance in achieving compliance with the mandates of the JJDP Act, as amended.

Training and Technical Assistance for Juvenile Detention and Corrections

The purpose of this program is to provide training and technical assistance to managers and administrators of State and local juvenile detention and corrections programs. It assists communities in improving their pre-and-post-adjudicatory services and in achieving and maintaining compliance with the mandates of the JJDP Act. The focus will be on training in the areas of alternative sanctions and drug testing as well as identifying and responding to the problems of illiteracy, learning disabilities and unemployment.

Training and Technical Assistance in Nonprofit Organization Management

The purpose of this project is to train managers and directors of private, not-for-profit, youth-serving agencies in all aspects of organizational leadership and management. It is designed to enhance the effectiveness of the organizations' service delivery and, as a result, strengthen their roles as resources in the juvenile justice system.

Juvenile Justice Clearinghouse/National Criminal Justice Reference Service

The purpose of this dissemination program is to provide information services to the juvenile justice community, as mandated in the JJDP Act of 1974, as amended. The Juvenile Justice Clearinghouse enables all sectors of the juvenile justice field to receive current information on advanced practices and techniques as it becomes available.

Juvenile Justice Resource Center

The purpose of this project is to provide technical assistance and support to the Office of Juvenile Justice and Delinquency Prevention, the National Institute for Juvenile Justice and Delinquency Prevention, OJJDP grantees, and the Coordinating Council on Juvenile Justice and Delinquency Prevention in all research, program development, evaluation, training, and research utilization activities.

State Advisory Group Training and Technical Assistance

This grant would provide training and technical assistance to an organization to conduct an annual conference relating to the activities of the State Advisory Groups (SAGs) and to fulfill the responsibilities as mandated in section 241(f) of the JJDP Act. Emphasis will be placed on training in the area of alternative sanctions.

Insular Area Support

The purpose of this program is to provide supplemental financial support to the Virgin Islands, Guam, American Samoa, the Freely Associated States of the Pacific Islands and the Commonwealth of the Northern Mariana Islands in accordance with section 224 of the JJDP Act, as amended.

Non-Participating State Initiative

The purpose of this program is to make funds available to non-participating States in accordance with section 223(d) of the JJDP Act, as amended.

Privatization of Juvenile Correctional Services**

Drug Screening and Testing**

This program is designed to provide

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participating States in accordance with section 223(d) of the JJDP Act, as amended.

New Programs

Alternative Sanctions**

This program is designed to develop guidelines and implement pilot efforts, and provide related training on intensive, short-term correctional programs for juvenile offenders. Diagnostic and intensive services contained in these programs will focus on the programs of illiteracy, learning disabilities, unemployment and family dysfunction.

Privatization of Juvenile Correctional Services**

This program is designed to demonstrate the feasibility of providing selected juvenile correctional services by private contractors.

Special Education and Rehabilitation Services for Serious Juvenile Offenders**

This program is designed to develop and test prototype programs and practices for providing special education and rehabilitative services to serious juvenile offenders who have been adjudicated as being involved in illegal gang and drug activities.

Drug Screening and Testing**

This program is designed to provide training and technical assistance to juvenile probation and parole personnel on screening juvenile probationers to determine if they are using illegal drugs. It will also provide information on policies and procedures for the use of chemical drug testing with juvenile probationers.

Dated: December 20, 1989.

Terrence S. Donahue,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 89-30036- Filed 12-27-89; 8:45 am]

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federal register

Thursday
December 28, 1989

Part III

Department of Commerce

National Oceanic and Atmospheric Administration

Announcement of the Decision to Consider New Sites for Addition to the National Marine Sanctuary Program Site Evaluation List; Notice

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric

The original SEL, established in 1983 (48 FR 35568, August 4, 1983), consisted of 29 marine sites. These sites were

provisions of § 922.21(e). There has therefore been no opportunity to add sites to the list.

Status of Sites on 1983 Site Evaluation List

North Atlantic

South Atlantic Region

Ten Fathom Ledge-Big Rock

Site Description: The site consists of

Status: Unchanged.

Shoalwater Bay-Chandeleur Sound, Louisiana

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Announcement of the Decision to Consider New Sites for Addition to the National Marine Sanctuary Program Site Evaluation List

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice.

SUMMARY: NOAA has determined that new sites should be considered for addition to its Site Evaluation List (SEL), the list from which sites are selected for evaluation as candidates for designation as national marine sanctuaries.

DATE: Comments on this determination will be considered if received by March 28, 1990.

ADDRESSES: Send comments to Joseph A. Uravitch, Chief, Marine and Estuarine Management Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue, NW., Washington, DC 20235.

FOR FURTHER INFORMATION CONTACT: Debra Malek, 202/673–5126.

SUPPLEMENTARY INFORMATION: Title III of the Marine Protection, Research, and Sanctuaries Act, as amended, 16 U.S.C. 1431 et seq., authorizes the Secretary of Commerce to designate discrete areas of the marine environment as national marine sanctuaries if the designation will fulfill the purposes and policies of title III (set forth in section 301(b) of the Act (16 U.S.C. 1431(b)) and: (1) The area proposed for designation is of special national significance due to its resource or human-use values; (2) existing state and Federal authorities are inadequate to ensure coordinated and comprehensive conservation and management of the area, including resource protection, scientific research, and public education; (3) designation of the area as a national marine sanctuary will facilitate the coordinated and comprehensive conservation and management of the area; and (4) the area is of a size and nature that will permit comprehensive and coordinated conservation and management.

Under National Marine Sanctuary Program regulations (15 CFR part 922), only sites on the SEL may be considered by the Secretary for subsequent review as "Active Candidates" for designation. The original SEL, established in 1983 (48 FR 35566, August 4, 1983), consisted of 29 marine sites. These sites were identified and recommended for inclusion on the SEL by regional resource evaluation teams in accordance with site identification and selection criteria established for the purpose (48 FR 24296, May 31, 1983).

At that time, only sites with high natural resource values were considered for inclusion on the SEL. Later, in 1984, Title III was amended (Pub. L. No. 98–498) to include significant historical qualities as factors to be considered when selecting sanctuary sites. Sites possessing historical resources of special national significance, however, will be added to the SEL by a separate process in accordance with § 922.22 of the National Marine Sanctuary Program regulations.

With respect to sites considered for inclusion on the SEL because of their high natural resource values, the National Marine Sanctuary Program regulations provide for only two methods of adding such sites to the SEL: (1) By initiating a new site identification process following a five-year reevaluation of SEL sites as specified in § 922.21(d) of the regulations; or (2) as specified in § 922.21(e), by adding sites recommended for SEL status after determining that they meet the selection criteria and are highly qualified in accordance with the Program's mission and goals.

Five-Year Reevaluation

A recently completed five-year reevaluation of the sites on the SEL reveals that only four of the 29 sites have had a change in status. One (the Flower Garden Banks) is nearing designation while the other three (Stellwagen Bank, Washington State Nearshore and Western Washington Outer Coast) have become active candidates as the result of an amendment to title III of the Marine Protection, Research, and Sanctuaries Act. This amendment, signed into law on November 7, 1988, also required that studies be made of four areas not presently on the SEL to determine their suitability for designation.

Since the establishment of the SEL in 1983, no sites have been either added to the list or deleted from it. The 25 sites that have had no change in status continue to be as qualified as they were when they were placed on the SEL. There is therefore no reason to delete any of them from the list. Meanwhile, no sites have been recommended to NOAA for addition to the SEL under the provisions of § 922.21(e). There has therefore been no opportunity to add sites to the list.

As a result of its five-year reevaluation of SEL sites, NOAA has decided that new sites should now be considered for addition to the SEL.

Site Addition Procedure

The Marine Sanctuary Program regulations (§ 922.21(d)) state: "If, after a five-year reevaluation, the Secretary determines that new sites should be considered for addition to the SEL, the Secretary shall publish a notice in the **Federal Register** at least 12 months prior to initiating a new site identification process. After a 90 day period is provided for public comment on the Secretary's determination, the Secretary shall reevaluate the prior SEL development process and publish a notice in the **Federal Register** requesting public comment on that process and any proposed modifications, if necessary."

This notice announcing the determination to consider new sites for addition to the SEL begins the procedure. Public Participation is provided for by the 90-day comment period on this determination and by the opportuntity to comment on proposed modifications to the site identification process. Although the new site identification process has yet to be formulated and can not be initiated until 12 months after this date, sites may be recommended for addition to the SEL as specified by § 922.21(e) in the meantime.

Under the provisions of § 922.21(e), "the Secretary will consider recommendations of potential additional sites to the SEL only if such sites are important new discoveries or if substantial new information previously unavailable establishes the national significance of a known site. The Secretary may determine, after an opportunity for public review and comment, whehther such sites meet the selection criteria and are highly qualified in accordance with the Program's mission and goals. Qualified sites will be added to the SEL for further evaluation as National Marine Sanctuaries, consistent with the procedures set forth in these regulations."

Further information about how to recommend sites for addition to the SEL under § 922.21(e) may be obtained from NOAA's Marine and Estuarine Management Division at the address listed at the beginning of this notice.

Status of Sites on 1983 Site Evaluation List

North Atlantic

Mid-Coastal Maine, Maine

Site Description: The site encompasses an area of 430 mi² (1,114 km²) of coastal waters partially under State and partially under Federal jurisdiction. Johns and Muscongus Bays and the estuaries of the Kennebec, Sheepscot, and Damariscotta rivers are located within the site boundaries. Also included within these boundaries are Southport, Sequin, Damariscove, Fishermen's Inner Heron, Outer Heron, White, Squirrel, Georges, and Monhegan Islands.

Status: Unchanged.

Stellwagen Bank

Site Description: The site, encompassing an area of 600.9 mi² (1,556 km²), is centered on Stellwagen Bank, which is in Federal waters, 6.3 miles (10.2 km) north of Cape Cod, Massachusetts.

Status: An amendment to Title III of the Marine Protection, Research, and Sanctuaries Act, signed into law on November 7, 1988, directs the Secretary of Commerce to submit a prospectus on the proposed designation of the site as a national marine sanctuary to the Committee on Merchant Marine and Fisheries of the House of Representatives and to the Committee on Commerce, Science, and Transportation of the Senate no later than September 30, 1990. The site has since become an active candidate.

Nantucket Sound/Shoals and Oceanographer Canyon

Site Description: The site encompasses approximately 1,800 mi² (4,660 km²) and includes Nantucket Sound, Nantucket Shoals, and Oceanographer Canyon. The Nantucket Sound site is in Federal waters between Nantucket Island and Cape Cod, Massachusetts, and its boundaries are contiguous with the Massachusetts Ocean Sanctuaries.

Status: Unchanged.

Virginia/Assateague Island

Site Description: The site encompasses approximately 1,200 mi² (3,100 km²) and includes the estuarine waters and wetlands adjacent to the barrier islands and mainland along the coast of Maryland and Virginia from the north end of Assateague Island southward to Fisherman's Island and the marine waters extending to 10 miles (16 km) from the shore.

Status: Unchanged.

South Atlantic Region

Ten Fathom Ledge-Big Rock

Site Description: The site consists of two areas. The inner-shelf site (Ten Fathom Ledge) is a 135 mi² (350 km²) rectangle with its center located about 17 miles (27 km) south of Cape Lookout, North Carolina. The outer shelf site (Big Rock) is located on the shelf break about 30 miles (580 km) offshore, and is a 30 square mile (93 km²) area.

Status: Unchanged.

Port Royal Sound, South Carolina

Site Description: The site lies entirely within State waters encompassing an area of approximately 55 mi² (140 km²).

Status: Unchanged.

Florida Coral Grounds, Florida

Site Description: The site consists of two areas off the coast of Florida. These two areas are the 4.5 mi² (11.7 km²) "worm" or "bathtub" reef at St. Lucie, Florida, and 82 mi² (238 km²) of the Oculina Reefs located 17 miles (27 km) off the Florida coast in 230 to 330 feet (70 to 100 m) of water.

Status: Unchanged.

Caribbean Region

Cordillera Reefs, Puerto Rico

Site Description: The site encompasses approximately 62 mi² (160 km²) around the Cordillera Islands lying entirely within the waters of the Commonwealth off its northeast coast.

Status: Unchanged.

Southeast St. Thomas, U.S. Virgin Islands

Site Description: The site consists of 12.3 mi² (32 km²) of territorial waters immediately southeast of St. Thomas, Jersey and Cowpet Bays, and the waters surrounding Great and Little St. James, Dog, Buck, and Capella Islands.

Status: Unchanged.

East End, St. Croix, U.S. Virgin Islands

Site Description: The site encompasses an area of approximately 40 mi² (105 km²). Entirely within territorial waters, it extends from the east end of St. Croix to Great Pond Bay on the south coast and includes the waters east of Buck Island and the area of Lang Bank out to a depth of 60 feet.

Status: Unchanged.

Gulf of Mexico Region

Big Bend Seagrass Beds, Florida

Site Description: The site encompasses 100 mi² (259 km²) of seagrass beds in the "big bend" region of Florida's west coast off the northernmost part of the peninsula.

Status: Unchanged.

Shoalwater Bay-Chandeleur Sound, Louisiana

Site Description: The site encompasses approximately 80 mi² (207 km²) of shallow-water seagrass beds located upon a subsiding remnant of abandoned Mississippi River delta in State waters. Adjacent to the east of this site is the Breton National Wildlife Refuge.

Status: Unchanged.

Flower Garden Banks

Site Description: The Flower Garden Banks are located due south of the Texas-Louisiana border at the edge of the continental shelf. The boundaries of the proposed sanctuary encompass an area of 55.2 mi² (41.7 nautical mi² or 143 km² (19.2 nautical mi² or 65.9 km²) at the East Bank and 29.8 mi² (22.5 nautical mi² or 77.17 km²) at the West Bank.

Status: This site was announced as an active candidate in August 1984.

Baffin Bay

Site Description: At high tide, the site encompasses an area approximately 95 mi² (246 km²) entirely within Texas State waters. It incorporates Baffin Bay, Laguan Salada, Cayo del Grullo, and Alazan Bay.

Status: Unchanged.

Eastern Pacific

Washington State Nearshore, Washington

Site Description: The site encompasses approximately 250–275 mi² (650–720 km²) of waters around the San Juan Islands in Puget Sound.

Status: An amendment to Title III of the Marine Protection, Research, and Sanctuaries Act, signed into law on November 7, 1988, directs the Secretary of Commerce to submit a prospectus on the proposed designation of this site as the Northern Puget Sound National Marine Sanctuary to the Committee on Merchant Marine and Fisheries of the House of Representatives and to the Committee on Commerce, Science, and Transportation of the Senate no later than March 31, 1991. The site, now known as Northern Puget Sound, has since become an active candidate.

Western Washington Outer Coast, Washington

Site Description: The site extends from Duntz Rock (north of Tatoosh Island on the northwestern tip of Washington State), 90 miles (145 km) southward along the coast to Point Grenville. The area, encompassing approximately 230 mi² (600 km²), is

wholly within the jurisdiction of Washington State. The inshore boundary would extend to mean high water; the offshore boundary is contiguous with the boundary established for the Washington Islands National Wildlife Refuge, 2 to 3 miles (3.2 to 4.8 km) offshore.

Status: An amendment to Title III of the Marine Protection, Research, and Sanctuaries Act, signed into law on November 7, 1988, directs the Secretary of Commerce to designate this site as a national marine sanctuary no later than June 30, 1990. The site has since become an active candidate.

Heceta-Stonewall Banks of Oregon

Site Description: The site encompasses an area of approximately 400 square miles (1,000 km²) in Federal waters off the coast of Oregon. Its outer boundary lies along the 100-fathom (197 m) depth contours.

Status: Unchanged.

Morro Bay, California

Site Description: Situated south of the city of Morro Bay in San Luis Obispo County, this 2,000 acre embayment lies wholly within California State waters.

Status: Unchanged.

Tanner-Cortes Banks off California

Site Description: The site consists of two neighboring rocky-bottom banks some 112 miles (180 km) west of San Diego, California. The composite area of the two sites is approximately 10 mi² (260 km²).

Status: Unchanged.

Western Pacific Region

Northern Mariana Islands

Site Description: The site, encompassing approximately 700 mi² (1800 km²), includes waters out to 12 miles (20 km) from Uracus, Maug, Asuncion, Pagan, Guguan and Saigan Islands.

Status: Unchanged.

Southern Marianas Islands

Site Description: The site consists of a variety of subunits off the islands of Saipan, Rota, Tinian, and Aguijan Islands and Naftan Rock. All subunit sites extend from the high water line to the 150 foot (46 m) depth contour. The subunit sites are located as follows: Saipan—Tanapag Lagoon, the fringing reefs around Managaha Island, the barrier reef around Point Sabaneta and south to Point Tanke; Tinian—the patch reef just south of the harbor; Rota—the fringing reefs and submarine terrace from West Dock south around Puntan Taipingot to East Dock as well as the southeastern portion of Sosanjaya Bay; Aguijan Islands—the waters surrounding the Aguijan Islands and Naftan Rock.

Status: Unchanged.

Cocos Lagoon, Guam

Site Description: The site includes the Cocos barrier reefs, Cocos Lagoon, three islets (Cocos Island, Babe Island, and a third sandy island), and the coastal region lying between the mouth of Mamaon and Manell Channels. The area of the barrier reefs and lagoon together is 3.9 mi² (10 km²).

Status: Unchanged.

Facpi Point to Fort Santa Angel, Guam

Site Description: The site extends from Facpi Point to Fort Santo Angel on the northern side of Umatac Bay and includes offshore waters to the 60 foot (18.3 m) depth contour. The total area of the site is approximately 2 mi² (5 km²).

Status: Unchanged.

Papalola Point, Ofu Island, American Samoa

Site Description: The site extends from the southernmost tip of Ofu Island eastward to Asagatai Point. It encompasses approximately 3 miles (4.8 km) of shoreline and adjacent fringing reef down to a depth of 150 feet (45 m).

Status: Unchanged.

Great Lakes Region

Cape Vincent (Lake Ontario), New York

Site Description: The site encompasses 450 mi² (1,165 km²) situated in the northeastern corner of Lake Ontario. The area provides the gateway to New York State's Thousand Islands resort district and the St. Lawrence Seaway.

Status: Unchanged.

Western Lake Erie Islands Including Sandusky Bay (Lake Erie), Ohio

Site Description: The site encompasses approximately 440 mi² (1,140 km²) of open Lake Erie waters, Sandusky Bay waters, and wetlands, all under the jurisdiction of the State of Ohio.

Status: Unchanged.

Thunder Bay (Lake Huron), Michigan

Site Description: The site, encompassing Thunder Bay and vicinity (to Middle Island) and extending out to 83° W., has an area of approximately 400 mi² (1,035 km²) and is entirely within Michigan State waters.

Status: Unchanged.

Green Bay (Lake Michigan), Michigan and Wisconsin

Site Description: The site encompasses approximately 1,300 mi² (3,300 km²) of Michigan and Wisconsin waters in Green Bay and part of Lake Michigan.

Status: Unchanged.

Apostle Islands, Wisconsin/Isle Royale, Michigan (Lake Superior), Wisconsin/Michigan

Site Description: The site, composed of two important subunits, encompasses a total of 1,031 mi² (2,670 km²) of Wisconsin and Michigan waters situated in the western half of Lake Superior. One unit of the site, roughly 375 mi² (970 km²), lies adjacent to the Federally owned Apostle Islands National Lakeshore. The boundaries of this park extend one quarter of a mile (0.4 km) into Lake Superior. The second unit consists of 656 mi² (1,700 km²) of Michigan State waters and submerged lands surrounding Isle Royale National Park and extending to the 600 foot (183 m) depth contour. Eastward of Blake Point, the site boundary extends offshore Isle Royale a maximum distance of approximately 11.5 mi (18.5 km).

Status: Unchanged.

Non-SEL Sites Under Consideration

Active Candidates: Norfolk Canyon

Site Description: The site is centered on Norfolk Canyon, some 60 miles (100 km) off the mouth of Chesapeake Bay.

Monterey Bay, California

Site Description: The site consists of the area of coastal waters between Pigeon Point in San Mateo County and Point Sur in Monterey County and, from the mean high-tide line at these points, extending seaward 14.5 nautical miles on a southwesterly heading of 24°.

Status: Norfolk Canyon and Monterey Bay were two of several sites under consideration by NOAA for designation as national marine sanctuaries before the original SEL was developed. These sites were deliberately omitted from inclusion on the SEL because they had previously been selected for further evaluation. NOAA announced the active candidacy of Norfolk Canyon on February 28, 1986, and of Monterey Bay on January 6, 1989.

Study Areas: American Shoal, Florida

Site Description: The site extends west from Looe Key National Marine Sanctuary to the Marquesas Keys. American Shoal itself is located just to the west of Looe Key on the reef. The site, however, encompasses virtually all of the western part of the coral reef that runs parallel to the Florida Keys and would extend for one mile on each side.

Sombrero Key, Florida

Site Description: The site is centered on Sombrero Key, in the Florida Keys.

Alligator Reef, Florida

Site Description: The site extends from the southwest border of the Key Largo National Marine Sanctuary to Alligator Reef, some 15 miles (24 km) to the southwest along the reef structure paralleling the Keys. It would include one mile of water on each side of the main reef.

Santa Monica Bay, California

Site Description: The site consists of the waters enclosed by a boundary extending generally southeast along the shoreline from Point Dume to Point Vincente, then west to the 900-meter bathymetric contour, then generally northwest along this contour to a point due west of Point Dume, then east returning to its beginning at Point Dume.

Status: An amendment to Title III of the Marine Protection, Research, and Sanctuaries Act, signed into law on November 7, 1988, directs the Secretary of Commerce to conduct studies of these four areas to determine whether they conform to the criteria for designation and whether their designation or incorporation into existing national marine sanctuaries would fulfill the purposes and policies of section 303 of the Marine Protection, Research, and Sanctuaries Act.

List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Environmental Protection, Marine resources, Natural resources.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: December 19, 1989.

Virginia K. Tippie,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 89-30066 Filed 12-27-89; 8:45 am]

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Part IV

Office of Management and Budget

Revised Final OMB Sequester Report to the President and Congress for Fiscal Year 1990; Report Transmittal

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OFFICE OF MANAGEMENT AND BUDGET

Revised Final OMB Sequester Report to the President and Congress for Fiscal Year 1990

AGENCY: Office of Management and Budget.

ACTION: Report Transmittal.

SUMMARY: This notice transmits the Revised *Final OMB Sequester Report to the President and Congress for Fiscal Year 1990* as required by the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239) with the provisions of the Balanced Budget and Emergency Deficit Control Act of 1985 (Pub. L. 99–177) as amended by the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (Pub. L. 100–119).

Dated: December 27, 1989.

Richard G. Darman,

Director.

BILLING CODE 3110-01-M

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE DIRECTOR

December 27, 1989

The President
The White House
Washington, DC 20500

Dear Mr. President:

Enclosed please find the *Revised Final OMB Sequester Report to the President and Congress for Fiscal Year 1990*, which has been prepared in accordance with the requirements of Section 11002 of the Omnibus Reconciliation Act of 1989 (P.L. 101–239). A new Presidential sequester order is also required by the Act and has been prepared for issuance today. Upon the issuance of the new order, the order of October 16, 1989 is rescinded by the Act.

The Report contains a table showing the revised sequestration calculations for fiscal year 1990 and an appendix that lists sequestration reductions by agency and budget account. After crediting savings from certain special rule programs, across-the-board reductions in sequesterable budgetary resources of 1.5 percent for defense programs and 1.4 percent for non-defense programs are necessary to achieve the outlay reduction of $5.7 billion required by the Act.

Respectfully yours,

Richard G. Darman
Director

Enclosure

IDENTICAL LETTERS SENT TO HONORABLE DAN QUAYLE, HONORABLE THOMAS S. FOLEY

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REVISED FINAL OMB SEQUESTER REPORT TO THE PRESIDENT AND CONGRESS FOR FISCAL YEAR 1990

December 27, 1989

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE DIRECTOR

The following is the text of a letter transmitting the *Revised Final OMB Sequester Report to the President and Congress for Fiscal Year 1990.*

December 27, 1989

The President
The White House
Washington, DC 20500

Dear Mr. President:

Enclosed please find the *Revised Final OMB Sequester Report to the President and Congress for Fiscal Year 1990*, which has been prepared in accordance with the requirements of Section 11002 of the Omnibus Reconciliation Act of 1989 (P.L. 101–239). A new Presidential sequester order is also required by the Act and has been prepared for issuance today. Upon the issuance of the new order, the order of October 16, 1989 is rescinded by the Act.

The Report contains a table showing the revised sequestration calculations for fiscal year 1990 and an appendix that lists sequestration reductions by agency and budget account. After crediting savings from certain special rule programs, across-the-board reductions in sequesterable budgetary resources of 1.5 percent for defense programs and 1.4 percent for non-defense programs are necessary to achieve the outlay reduction of $5.7 billion required by the Act.

Respectfully yours,

Richard G. Darman
Director

Enclosure

IDENTICAL LETTERS SENT TO HONORABLE DAN QUAYLE, HONORABLE THOMAS S. FOLEY

The revised sequestration calculations shown below, as well as the accompanying Appendix A

APPENDIX A: SEQUESTERABLE BASELINE AND REDUCTIONS BY AGENCY AND BUDGET ACCOUNT

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The revised sequestration calculations shown below, as well as the accompanying Appendix A listing the October 16th sequester baseline and revised sequester amounts, provide the information required under the Reconciliation Act of 1989. The Act also requires that the President's October 16th sequester order be replaced retroactively by a new order based on this report. The new order is to be issued today.

The principal change required under the Act is in the outlay reduction amount to be achieved by a sequester order. The October 16th report showed that $16.1 billion in outlay reductions were necessary to reach the $100 billion deficit target specified under the Balanced Budget Act. Under the Reconciliation Act, this figure is reduced to $5.7 billion, by applying a factor of 130/365 to the original amount. This factor represents the equivalent of a full sequester for 130 days—until February 7, 1990, although the actual (reduced) sequester is to be in effect for the entire fiscal year. The reductions in automatic spending increase programs are also adjusted by this factor. The reductions originally required under the October 16th order for the guaranteed student loan program are to be continued only until December 31, 1989, to achieve a similar proportion of the original sequester. The new outlay savings estimated for the special rule programs are to be credited to the nondefense outlay reductions and are shown in the table below.

The remaining outlay reductions to be achieved by uniform across-the-board sequesters are $2.9 billion for defense programs and $2.8 billion for nondefense. The uniform reduction percentages to be applied to all sequesterable budgetary resources are 1.5% for defense programs and 1.4% for nondefense programs.

Revised Sequestration Calculations for 1990

(Dollar amounts in millions)

	Estimate
Required deficit reduction	5,734
Defense programs: [1]	
Total required outlay reductions	2,867
Estimated outlays associated with across-the-board sequesterable budgetary resources	187,995
Uniform reduction percentage	1.5%
Nondefense programs:	
Total required outlay reductions	2,867
Estimated savings from automatic spending increases:	
Vocational rehabilitation	17
Special milk program	*
Estimated savings from the application of special rules:	
Guaranteed student loan program	10
Foster care and adoption assistance	4
Amount remaining to be obtained from uniform percentage reductions of budgetary resources	2,837
Estimated outlays associated with across-the-board sequesterable budgetary resources [2]	205,166
Uniform reduction percentage	1.4%

* $500 thousand or less.
[1] Function 050, excluding FEMA programs.
[2] Includes $6.3 billion in estimated 1991 outlays for the CCC and $3.4 billion in outlays from offsetting collections that are subject to a 1990 sequester.

APPENDIX A: SEQUESTERABLE BASELINE AND REDUCTIONS BY AGENCY AND BUDGET ACCOUNT

(Fiscal year 1990; in thousands of dollars)

Percentages Used:
Nondefense, 1.4 percent
Defense, 1.5 percent

G-R-H Sequester Amounts
(In thousands of dollars)

G-R-H Sequester Amounts—Continued
(In thousands of dollars)

G-R-H Sequester Amounts—Continued
(In thousands of dollars)

G-R-H Sequester Amounts—Continued
(In thousands of dollars)

G-R-H Sequester Amounts—Continued
(In thousands of dollars)

G-R-H Sequester Amounts—Continued
(In thousands of dollars)

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G-R-H Sequester Amounts

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Legislative Branch		
Senate		
Salaries, officers and employees (01–05–0110–801–A):		
Budget Authority	357,999	5,012
Outlays	342,605	4,796
House of Representatives		
Mileage of Members (01–10–0208–801–A):		
Budget Authority	218	3
Outlays	109	2
Salaries and expenses (01–10–0400–801–A):		
Budget Authority	525,719	7,360
Outlays	495,227	6,933
Congressional use of foreign currency, House of Representative (01–10–0488–801–A):		
401(C) Authority	3,360	47
Outlays	3,360	47
Joint Items		
Capitol Guide Service (01–12–0170–801–A):		
Budget Authority	1,269	18
Outlays	1,142	16
Joint Committee on Printing (01–12–0180–801–A):		
Budget Authority	1,190	17
Outlays	1,090	15
Joint Economic Committee (01–12–0181–801–A):		
Budget Authority	3,466	49
Outlays	3,293	46
Joint Committee on Inaugural Ceremonies of 1989 (01–12–0186–801–A):		
Budget Authority	811	11
Outlays	811	11
Office of the Attending Physician (01–12–0425–801–A):		
Budget Authority	1,469	21
Outlays	1,469	21
Joint Committee on Taxation (01–12–0460–801–A):		
Budget Authority	4,520	63
Outlays	4,068	57
Capitol Police Board (01–12–0474–801–A):		
Budget Authority	55,356	775
Outlays	53,695	752
General expenses, Capitol police (01–12–0476–801–A):		
Budget Authority	1,955	27
Outlays	1,703	24
Statements of appropriations (01–12–0499–801–A):		
Budget Authority	21	0
Official mail costs (01–12–0825–801–A):		
Budget Authority	55,867	782
Outlays	55,867	782
Congressional Budget Office		
Salaries and expenses (01–14–0100–801–A):		
Budget Authority	19,069	267
Outlays	17,180	241
Architect of the Capitol		
Office of the Architect of the Capitol: Salaries (01–15–0100–801–A):		
Budget Authority	6,799	95
Outlays	6,460	90
Contingent expenses (01–15–0102–801–A):		
Budget Authority	104	1
Outlays	104	1
Capitol buildings (01–15–0105–801–A):		
Budget Authority	16,073	225
Outlays	12,070	169

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Capitol grounds (01–15–0108–801–A):		
Budget Authority	3,921	55
Outlays	3,442	48
Senate office buildings (01–15–0123–801–A):		
Budget Authority	25,042	351
Outlays	20,759	291
House office buildings (01–15–0127–801–A):		
Budget Authority	30,044	421
Outlays	24,396	342
Capitol Power Plant (01–15–0133–801–A):		
Budget Authority	25,694	360
401(C) Authority—		
Off. Coll.	253	4
Outlays	18,367	257
Structural and mechanical care, Library buildings and grounds (01–15–0155–801–A):		
Budget Authority	7,797	109
Outlays	6,635	93
Library of Congress		
Salaries and expenses (01–25–0101–503–A):		
Budget Authority	153,941	2,155
401(C) Authority—		
Off. Coll.	5,080	71
Outlays	132,369	1,853
Copyright Office: Salaries and expenses (01–25–0102–376–A):		
Budget Authority	12,136	170
401(C) Authority—		
Off. Coll.	8,144	114
Outlays	19,551	274
Congressional Research Service: Salaries and expenses (01–25–0127–801–A):		
Budget Authority	46,491	651
Outlays	42,028	588
Books for the blind and physically handicapped: Salaries & exp (01–25–0141–503–A):		
Budget Authority	37,810	529
Outlays	15,502	217
National Film Preservation Board: Salaries & expenses (01–25–0143–503–A):		
Budget Authority	259	4
Outlays	259	4
Furniture and furnishings (01–25–0146–503–A):		
Budget Authority	3,503	49
Outlays	1,860	26
Gift and trust fund accounts (01–25–8971–503–A):		
Obligation limitation	328	5
Government Printing Office		
Office of Superintendent of Documents: Salaries and expenses (01–30–0201–808–A):		
Budget Authority	14,240	199
Outlays	9,261	130
Congressional printing and binding (01–30–0203–801–A):		
Budget Authority	74,592	1,044
Outlays	66,387	929
Government Printing Office revolving fund (01–30–4505–808–A):		
Obligation limitation	38,383	537
General Accounting Office		
Salaries and expenses (01–35–0107–801–A):		
Budget Authority	361,059	5,055
Outlays	327,834	4,590
United States Tax Court		
Salaries and expenses (01–40–0100–752–A):		
Budget Authority	30,482	427
Outlays	27,006	378

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Tax Court independent counsel, U.S. Tax Court (01–40–5023–752–A):		
401(C) Authority	10	0
Outlays	10	0
Legislative Branch Boards and Commissions		
Commission on Security & Cooperation in Europe: Salaries & exp (01–45–0110–801–A):		
Budget Authority	771	11
Outlays	698	10
Botanic Garden: Salaries and expenses (01–45–0200–801–A):		
Budget Authority	2,622	37
Outlays	2,386	33
Copyright Royalty Tribunal: Salaries and expenses (01–45–0310–376–A):		
Budget Authority	127	2
Outlays	113	2
Biomedical Ethics: Salaries and expenses (01–45–0400–801–A):		
Budget Authority	250	4
Outlays	180	3
International conferences and contingencies: House, Senate exp (01–45–0500–801–A):		
401(C) Authority	340	5
Outlays	340	5
Commission on Railroad Retirement Reform (01–45–0850–801–A):		
Budget Authority	1,024	14
Outlays	311	4
National Commission on Children (01–45–1050–801–A):		
Budget Authority	820	11
Outlays	718	10
U.S. Bipartisan Commission on Comprehensive Health Care (01–45–1100–801–A):		
Budget Authority	1,073	15
Outlays	902	13
Office of Technology Assessment		
Salaries and expenses (01–50–0700–801–A):		
Budget Authority	18,637	261
Outlays	13,438	188
John C. Stennis Center for Public Service Training and Development		
Payment to John C. Stennis Center (01–60–1200–801–A):		
Budget Authority	7,770	109
Outlays	7,770	109
Total, Legislative Branch:		
Budget Authority	1,912,039	26,769
401(C) Authority	3,710	52
401(C) Authority—		
Off. Coll.	13,457	189
Obligation limitation	38,711	542
Outlays	1,742,775	24,400
The Judiciary		
Supreme Court of the United States		
Salaries and expenses (02–05–0100–752–A):		
Budget Authority	16,539	232
Outlays	11,759	165
Care of the building and grounds (02–05–0103–752–A):		
Budget Authority	2,212	31
Outlays	2,107	29

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
United States Court of Appeals for Federal Circuit		
Salaries and expenses (02–07–0510–752–A):		
Budget Authority	8,621	121
Outlays	8,022	112
United States Court of International Trade		
Salaries and expenses (02–15–0400–752–A):		
Budget Authority	8,307	116
Outlays	8,075	113
Courts of Appeals, District Courts and other Svcs		
Salaries and expenses (02–25–0920–752–A):		
Budget Authority	1,124,791	15,747
Outlays	1,109,401	15,532
Defender services (02–25–0923–752–A):		
Budget Authority	114,195	1,599
Outlays	43,280	606
Fees of jurors and commissioners (02–25–0925–752–A):		
Budget Authority	50,194	703
Outlays	42,517	595
Court security (02–25–0930–752–A):		
Budget Authority	42,917	601
Outlays	21,415	300
Registry administration (02–25–5101–752–A):		
401(C) Authority	21,000	294
Outlays	21,000	294
Administrative Office of the United States Courts		
Salaries and expenses (02–26–0927–752–A):		
Budget Authority	34,935	489
Outlays	31,861	446
Federal Judicial Center		
Salaries and expenses (02–30–0928–752–A):		
Budget Authority	11,628	163
Outlays	9,512	133
Judiciary Retirement Funds		
Payment to Judicial Officers' Retirement Fund (02–35–0941–752–A):		
Budget Authority	1,000	14
Outlays	1,000	14
Judicial Officers' Retirement Fund (02–35–8122–602–A):		
401(C) Authority	4,167	58
Outlays	4,167	58
Total, The Judiciary:		
Budget Authority	1,415,339	19,816
401(C) Authority	25,167	352
Outlays	1,314,116	18,397
Executive Office of the President		
The White House Office		
Salaries and expenses (03–10–0110–802–A):		
Budget Authority	29,047	407
Outlays	26,004	364
Executive Residence at the White House		
Operating expenses (03–20–0210–802–A):		
Budget Authority	5,925	83
401(C) Authority—		
Off. Coll.	1,471	21
Outlays	7,223	101

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Official Residence of the Vice President		
Operating expenses (03–21–0211–802–A):		
Budget Authority	267	4
Outlays	114	2
Special Assistance to the President		
Salaries and expenses (03–22–1454–802–A):		
Budget Authority	2,284	32
Outlays	1,923	27
Council of Economic Advisers		
Salaries and expenses (03–26–1900–802–A):		
Budget Authority	2,898	41
Outlays	2,633	37
Council/Office on Environmental Quality		
Council on Environmental Quality & Off. of Environmental Quali (03–31–1453–802–A):		
Budget Authority	884	12
Outlays	798	11
Office of Policy Development		
Salaries and expenses (03–35–2200–802–A):		
Budget Authority	3,119	44
Outlays	2,872	40
National Security Council		
Salaries and expenses (03–38–2000–802–A):		
Budget Authority	5,290	74
Outlays	4,208	59
National Space Council		
Salaries and expenses (03–39–0020–802–A):		
Budget Authority	188	3
Outlays	131	2
National Critical Materials Council		
Salaries and expenses (03–41–0111–802–A):		
Budget Authority	233	3
Outlays	209	3
Office of Administration		
Salaries and expenses (03–42–0038–802–A):		
Budget Authority	17,488	245
Outlays	13,825	194
Office of Management and Budget		
Office of Federal Procurement Policy: Salaries and expenses (03–45–0201–802–A):		
Budget Authority	2,447	34
Outlays	1,895	27
Salaries and Expenses (03–45–0300–802–A):		
Budget Authority	41,208	577
Outlays	37,837	530
Office of National Drug Control Policy		
Salaries and Expenses (03–47–1457–802–A):		
Budget Authority	3,628	51
Outlays	2,721	38
Office of Science and Technology Policy		
Salaries and expenses (03–49–2600–802–A):		
Budget Authority	1,648	23
Outlays	988	14

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Office of the United States Trade Representative		
Salaries and expenses (03–50–0400–802–A):		
Budget Authority	15,868	222
Outlays	13,806	193
Total, Executive Office of the President:		
Budget Authority	132,431	1,855
401(C) Authority—		
Off. Coll.	1,471	21
Outlays	117,184	1,642
Funds Appropriated to the President		
Unanticipated Needs		
Unanticipated needs (04–05–0037–802–A):		
Budget Authority	1,036	14
Outlays	995	14
Investment in Management Improvement		
Investment in Management Improvement (04–07–0081–802–B):		
Budget Authority	1,036	14
Outlays	777	11
International Security Assistance		
Peacekeeping operations (04–09–1032–152–A):		
Budget Authority	32,830	460
Outlays	22,653	317
Economic support fund (04–09–1037–152–A):		
Budget Authority	3,396,528	47,551
Outlays	1,863,174	26,084
Military assistance (04–09–1080–152–A):		
Budget Authority	485,480	6,797
Outlays	84,720	1,186
International military education and training (04–09–1081–152–A):		
Budget Authority	49,106	687
Outlays	24,553	344
Foreign military sales credit (04–09–1082–152–A):		
Budget Authority	4,426,569	61,972
Direct Loan		
Limitation	424,780	5,947
Outlays	1,853,063	25,943
Multilateral Assistance		
Contribution to the International Development Association (04–12–0073–151–A):		
Budget Authority	1,030,820	14,431
Contribution to the Asian Development Bank (04–12–0076–151–A):		
Budget Authority	157,878	2,210
Contribution to the International Bank for Reconstruction & De (04–12–0077–151–A):		
Budget Authority	51,801	725
Outlays	5,180	73
Contribution to the International Finance Corporation (04–12–0078–151–A):		
Budget Authority	5,068	71
Outlays	5,068	71
Contribution to the African Development Fund (04–12–0079–151–A):		
Budget Authority	108,780	1,523
Contribution to the African Development Bank (04–12–0082–151–A):		
Budget Authority	7,609	107
Outlays	7,609	107
International organizations and programs (04–12–1005–151–A):		
Budget Authority	234,255	3,280
Outlays	175,892	2,460

G-R-H Sequester Amounts—Continued (In thousands of dollars)

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G-R-H Sequester Amounts—Continued (In thousands of dollars)

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G-R-H Sequester Amounts—Continued
(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Agency for International Development		
Operating expenses, Agency for International Development (04-14-1000-151-A):		
Budget Authority	434,057	6,077
Outlays	325,330	4,555
Operating expenses of the AID Office of Inspector General (04-14-1007-151-A):		
Budget Authority	29,579	414
Outlays	22,173	310
American schools and hospitals abroad (04-14-1013-151-A):		
Budget Authority	36,280	508
Outlays	11,603	162
Development fund for Africa (04-14-1014-151-A):		
Budget Authority	569,800	7,977
Outlays	84,900	1,189
Functional development assistance program (04-14-1021-151-A):		
Budget Authority	1,256,845	17,596
Outlays	121,732	1,704
International disaster assistance (04-14-1035-151-A):		
Budget Authority	29,008	406
Outlays	7,252	102
Housing and other credit guaranty programs (04-14-4340-151-A):		
401(C) Authority—		
Off. Coll.	7,035	98
Guaranteed Loan		
Limitation	129,800	1,813
Outlays	7,036	98
Private sector revolving fund (04-14-4341-151-A):		
Budget Authority	8,806	123
Direct Loan		
Limitation	12,432	174
Guaranteed Loan		
Limitation	51,800	725
Trade and Development Program		
Trade and development program (04-16-1001-151-A):		
Budget Authority	25,906	363
Outlays	5,357	75
Peace Corps		
Peace Corps (04-18-0100-151-A):		
Budget Authority	160,013	2,240
Outlays	130,571	1,828
Overseas Private Investment Corporation		
Overseas Private Investment Corporation (04-20-4030-151-A):		
401(C) Authority—		
Off. Coll.	12,504	175
Direct Loan		
Limitation	23,828	334
Guaranteed Loan		
Limitation	181,300	2,538
Outlays	14,416	202
Inter-American Foundation		
Inter-American Foundation (04-22-4031-151-A):		
Budget Authority	17,201	241
401(C) Authority—		
Off. Coll.	13,277	186
Outlays	18,496	259

G-R-H Sequester Amounts—Continued
(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
African Development Foundation		
African Development Foundation (04-24-0700-151-A):		
Budget Authority	8,296	116
Outlays	4,479	63
Military Sales Programs		
Special defense acquisition fund (04-37-4116-155-A):		
Obligation limitation	245,392	3,435
Foreign military sales trust fund (04-37-8242-155-A):		
401(C) Authority—		
Off. Coll.	263,000	3,682
Outlays	263,000	3,682
Special Assistance for Central America		
Central American reconciliation assistance (04-55-1038-152-A):		
Budget Authority	37,548	527
Outlays	37,548	527
Total, Funds Appropriated to the President:		
Budget Authority	12,602,213	176,430
401(C) Authority—		
Off. Coll.	295,816	4,141
Obligation limitation	245,392	3,435
Direct Loan		
Limitation	461,020	6,455
Guaranteed Loan		
Limitation	362,600	5,076
Outlays	5,097,478	71,365
Department of Agriculture		
Office of the Secretary		
Office of the Secretary (05-03-0115-352-A):		
Budget Authority	6,190	87
Outlays	5,841	82
Gifts and bequests (05-03-8203-352-A):		
401(C) Authority	50	1
Outlays	50	1
Departmental Administration		
Rental payments and building operations (05-05-0117-352-A):		
Budget Authority	73,324	1,027
Outlays	63,835	891
Advisory committees (05-05-0118-352-A):		
Budget Authority	1,550	22
Outlays	1,086	15
Departmental administration (05-05-0120-352-A):		
Budget Authority	26,980	377
Outlays	22,404	314
Hazardous Waste Management (05-05-0500-304-A):		
Budget Authority	5,180	73
Outlays	5,095	71
Working capital fund (05-05-4609-352-A):		
Budget Authority	4,877	68
Outlays	3,576	50
Office of Governmental and Public Affairs		
Office of Governmental and Public Affairs (05-06-0130-352-A):		
Budget Authority	9,209	129
Outlays	7,064	99

G-R-H Sequester Amounts—Continued
(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Office of the Inspector General		
Office of the Inspector General (05-08-0900-352-A):		
Budget Authority	52,514	735
Outlays	47,054	659
Office of the General Counsel		
Office of the General Counsel (05-10-2300-352-A):		
Budget Authority	21,672	303
Outlays	19,734	276
Agricultural Research Service		
Agricultural Research Service (05-18-1400-352-A):		
Budget Authority	585,209	8,193
401(C) Authority—		
Off. Coll.	3,200	45
Outlays	471,121	6,596
Buildings and facilities (05-18-1401-352-A):		
Budget Authority	16,598	232
Outlays	2,490	35
Cooperative State Research Service		
Cooperative State Research Service (05-24-1500-352-A):		
Budget Authority	350,271	4,904
401(C) Authority	2,850	40
Outlays	201,264	2,818
Extension Service		
Extension Service (05-27-0502-352-A):		
Budget Authority	974,422	6,242
401(C) Authority—		
Off. Coll.	360	5
Outlays	282,309	3,952
National Agricultural Library		
National Agricultural Library (05-30-0300-352-A):		
Budget Authority	14,818	207
Outlays	11,046	155
National Agricultural Statistics Service		
Salaries and expenses (05-33-1601-352-A):		
Budget Authority	66,056	925
401(C) Authority—		
Off. Coll.	1,200	17
Outlays	58,845	821
Economic Research Service		
Salaries and expenses (05-36-1701-352-A):		
Budget Authority	51,307	718
Outlays	41,498	581
World Agricultural Outlook Board		
World agricultural outlook board (05-50-2100-352-A):		
Budget Authority	1,893	26
Outlays	1,509	21
Foreign Agricultural Service		
Foreign Agricultural Service (05-51-2900-352-A):		
Budget Authority	99,024	1,386
Outlays	59,362	831
Office of International Cooperation & Development		
Scientific activities overseas (05-53-1404-352-A):		
Budget Authority	1,008	14
Outlays	636	9

G-R-H Sequester Amounts—Continued
(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Salaries and expenses (05-53-3200-352-A):		
Budget Authority	5,524	77
Outlays	5,524	77
Foreign Assistance Programs		
Expenses, PL 480, foreign assistance programs, Agriculture (05-57-2274-151-A):		
Budget Authority	984,193	13,779
Obligation limitation	1,535,248	21,493
Direct Loan		
Limitation	819,372	11,471
Outlays	984,193	13,779
Agricultural Stabilization & Conservation Service		
Salaries and expenses (05-60-3300-351-A):		
Budget Authority	395	6
401(C) Authority—		
Off. Coll.	23,591	330
Outlays	23,996	336
Dairy indemnity program (05-60-3314-351-A):		
Budget Authority	5	0
Outlays	5	0
Agricultural conservation program (05-60-3315-302-A):		
Budget Authority	183,305	2,566
Outlays	84,137	1,178
Emergency conservation program (05-60-3316-453-A):		
Budget Authority	5,180	73
Outlays	2,331	33
Colorado river basin salinity control program (05-60-3318-304-A):		
Budget Authority	5,648	70
Outlays	1,864	26
Conservation reserve program (05-60-3319-302-A):		
Budget Authority	1,202,000	16,828
Outlays	918,674	12,861
Water Bank program (05-60-3320-302-A):		
Budget Authority	9,324	131
Outlays	1,212	17
Forestry incentives program (05-60-3336-302-A):		
Budget Authority	12,894	181
Outlays	3,739	52
Federal Crop Insurance Corporation		
Administrative and operating expenses (05-63-2707-351-A):		
Budget Authority	209,401	2,932
Outlays	113,019	1,582
Commodity Credit Corporation		
Temporary Emergency Food Assistance Program (05-66-9635-351-A):		
Budget Authority	171,800	2,405
Outlays	159,523	2,233
Commodity Credit Corporation Fund (05-66-4336-351-A):		
401(C) Authority	12,762,450	178,674
Direct Loan		
Limitation	10,000,000	140,000
Guaranteed Loan		
Limitation	5,666,000	79,772
Outlays	12,762,450	178,674
Rural Electrification Administration		
Salaries and expenses (05-72-3100-271-A):		
Budget Authority	32,534	455
Outlays	29,445	412

G-R-H Sequester Amounts—Continued
(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Reimbursement to the Rural elec. & tel. revolv. fund for int. (05-72-3101-271-A):		
Budget Authority	238,800	3,343
Outlays	238,800	3,343
Purchase of Rural Telephone Bank capital stock (05-72-3102-452-A):		
Budget Authority	29,744	416
Outlays	29,744	416
Rural communication development fund (05-72-4142-452-A):		
Budget Authority	1,499	21
Outlays	1,467	21
Rural electrification and telephone revolving fund (05-72-4230-271-A):		
Budget Authority	563	8
Direct Loan		
Limitation	3,485,193	48,793
Direct Loan Floor	1,869,739	26,176
Outlays	240,215	3,363
Rural telephone bank (05-72-4231-452-A):		
Direct Loan		
Limitation	218,119	3,054
Direct Loan Floor	183,419	2,568
Outlays	-20,485	-287
Farmers Home Administration		
Salaries and expenses (05-75-2001-452-A):		
Budget Authority	432,349	6,053
Outlays	394,453	5,522
Rural housing for domestic farm labor (05-75-2004-604-A):		
Budget Authority	9,855	138
Outlays	99	1
Mutual and self-help housing (05-75-2006-604-A):		
Budget Authority	8,288	116
Outlays	663	9
Very low income housing repair grants (05-75-2064-604-A):		
Budget Authority	12,950	181
Outlays	12,303	172
Rural development grant program (05-75-2065-452-A):		
Budget Authority	6,734	94
Outlays	6,397	90
Rural water and waste disposal grants (05-75-2066-452-A):		
Budget Authority	121,103	1,695
Outlays	4,844	68
Rural community fire protection grants (05-75-2067-452-A):		
Budget Authority	3,202	45
Outlays	1,441	20
Rural housing preservation grants (05-75-2070-604-A):		
Budget Authority	19,829	278
Outlays	1,190	17
Compensation for construction defects (05-75-2071-371-A):		
Budget Authority	518	7
Outlays	518	7
Agricultural Credit Insurance Fund (05-75-4140-351-A):		
Budget Authority	3,108	44
401(C) Authority—		
Off. Coll.	112,901	1,581
Direct Loan		
Limitation	1,625,070	22,751
Guaranteed Loan		
Limitation	2,875,416	40,256
Outlays	1,129,009	15,806

G-R-H Sequester Amounts—Continued
(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Rural Housing Insurance Fund (Appr.) (05-75-4141-371-A):		
Budget Authority	224,359	5,141
401(C) Authority—		
Off. Coll.	23,826	334
Obligation limitation	255,211	3,993
Direct Loan		
Limitation	1,911,410	26,760
Outlays	1,173,342	16,427
Rural Development Insurance Fund (Appr.) (05-75-4155-452-A):		
401(C) Authority—		
Off. Coll.	362	5
Direct Loan		
Limitation	444,009	6,216
Guaranteed Loan		
Limitation	99,145	1,388
Outlays	26,054	365
Self-help housing land development fund (05-75-4222-371-A):		
Direct Loan		
Limitation	518	7
Rural development loan fund (05-75-4233-452-A):		
Budget Authority	12,970	182
Direct Loan		
Limitation	14,504	203
Outlays	1,450	20
Soil Conservation Service		
Conservation operations (05-78-1000-302-A):		
Budget Authority	483,721	6,772
401(C) Authority—		
Off. Coll.	9,053	127
Outlays	454,170	6,358
Resource conservation and development (05-78-1010-302-A):		
Budget Authority	26,095	365
401(C) Authority—		
Off. Coll.	4,600	64
Outlays	24,720	346
Watershed planning (05-78-1068-301-B):		
Budget Authority	8,995	126
401(C) Authority—		
Off. Coll.	213	3
Outlays	7,950	111
River basin surveys and investigations (05-78-1068-301-C):		
Budget Authority	12,530	175
401(C) Authority—		
Off. Coll.	186	2
Outlays	11,945	167
Watershed and flood prevention operations (05-78-1068-301-D):		
Budget Authority	178,027	2,508
401(C) Authority—		
Off. Coll.	11,849	166
Outlays	115,403	1,616
Great plains conservation program (05-78-2288-302-A):		
Budget Authority	21,247	297
401(C) Authority—		
Off. Coll.	41	1
Outlays	9,111	128
Miscellaneous contributed funds (Water resources) (05-78-8210-301-A):		
401(C) Authority	460	6
Outlays	302	4
Miscellaneous contributed funds (Conservation and land mgmt.) (05-78-8210-302-A):		
401(C) Authority	100	1
Outlays	90	1

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G-R-H Sequester Amounts—Continued
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G-R-H Sequester Amounts—Continued
(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Animal and Plant Health Inspection Service		
Salaries and expenses (05-79-1600-352-A):		
Budget Authority	344,010	4,816
401(C) Authority—		
Off. Coll.	17,771	249
Outlays	314,712	4,406
Buildings and facilities (05-79-1601-353-A):		
Budget Authority	2,636	37
Outlays	728	10
Federal Grain Inspection Service		
Salaries and expenses (05-80-2400-352-A):		
Budget Authority	8,437	118
Outlays	7,467	105
Inspection and weighing services (05-80-4050-352-A):		
401(C) Authority—		
Off. Coll.	36,856	516
Outlays	36,856	516
Agricultural Marketing Service		
Marketing services (05-81-2500-352-A):		
Budget Authority	34,690	486
401(C) Authority—		
Off. Coll.	37,278	522
Outlays	54,865	768
Payments to States and possessions (05-81-2501-352-A):		
Budget Authority	976	14
Outlays	156	2
Perishable Agricultural Commodities Act fund (05-81-5070-352-A):		
401(C) Authority	5,500	77
Outlays	4,131	58
Funds for strengthening markets, income, and supply (section 3 (05-81-5209-605-A):		
401(C) Authority	538,946	7,545
Outlays	116,691	1,634
Milk market orders assessment fund (05-81-8412-351-A):		
401(C) Authority—		
Off. Coll.	38,709	542
Outlays	38,709	542
Miscellaneous trust funds (05-81-9072-352-A):		
401(C) Authority	85,979	1,204
Outlays	55,673	779
Office of Transportation		
Office of Transportation (05-82-2900-352-A):		
Budget Authority	2,477	35
Outlays	2,058	29
Food Safety and Inspection Service		
Salaries and expenses (05-83-3700-554-A):		
Budget Authority	421,533	5,901
401(C) Authority—		
Off. Coll.	47,800	669
Outlays	436,487	6,111
Exp. & refunds, insp. & grading (05-83-8137-352-A):		
401(C) Authority	1,150	16
Outlays	966	14
Food and Nutrition Service		
Special milk program ASI (G-R-H) (05-84-3502-605-I):		
Budget Authority—		
ASI	392	140
Outlays	1,125	409

G-R-H Sequester Amounts—Continued
(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Cash and Commodities for selected groups (05-84-3503-605-A):		
Budget Authority	246,316	3,448
Outlays	212,460	2,975
Food stamp program (05-84-3505-605-A):		
Budget Authority	54,089	757
Outlays	20,855	293
Food program administration (05-84-3508-605-A):		
Budget Authority	92,791	1,299
Outlays	85,353	1,195
Supplemental feeding programs (05-84-3510-605-A):		
Budget Authority	3,000	42
Outlays	3,000	42
Child nutrition programs (05-84-3539-605-A):		
Budget Authority	4,135	58
Outlays	4,135	58
Human Nutrition Information Service		
Salaries and Expenses (05-86-3501-352-A):		
Budget Authority	9,159	128
Outlays	5,719	80
Packers and Stockyards Administration		
Packers and Stockyards Administration (05-60-2600-352-A):		
Budget Authority	8,948	130
Outlays	9,271	130
Agricultural Cooperative Service		
Salaries and expenses (05-62-3000-352-A):		
Budget Authority	4,836	68
Outlays	3,106	43
Forest Service		
Construction (05-96-1103-302-A):		
Budget Authority	234,090	3,277
401(C) Authority—		
Off. Coll.	2,835	40
Outlays	96,474	1,351
Forest research (05-96-1104-302-A):		
Budget Authority	143,384	2,007
401(C) Authority—		
Off. Coll.	1,262	18
Outlays	109,799	1,537
State and private forestry (05-96-1105-302-A):		
Budget Authority	89,879	1,258
401(C) Authority—		
Off. Coll.	4,368	61
Outlays	40,312	564
National forest system (05-96-1106-302-A):		
Budget Authority	1,335,811	18,701
Outlays	1,068,849	14,961
Land acquisition (05-96-5004-303-A):		
Budget Authority	86,532	931
Outlays	26,612	378
Range betterment fund (05-96-5207-302-A):		
Budget Authority	4,094	57
Outlays	2,988	42
Acquisition of lands for nat'l forests (05-96-5206-302-A):		
Budget Authority	1,001	14
Outlays	985	6
Acq. of lands to complete land exchanges (05-96-5215-302-A):		
Budget Authority	347	5
Outlays	288	4
Operations and maintenance of quarters (05-96-5215-302-A):		
401(C) Authority	6,852	82
Outlays	1,878	26

G-R-H Sequester Amounts—Continued
(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Cooperative work trust fund (05-96-9028-302-A):		
401(C) Authority	315,117	4,412
Outlays	129,173	1,808
Highway Construction: Mount St. Helens National Monument (05-96-9029-401-A):		
Budget Authority	5,557	78
Outlays	3,134	44
Gifts, donations, bequests for forest and rangeland research (05-96-9034-302-A):		
Budget Authority	30	0
Outlays	30	0
Reforestation trust fund (05-96-9046-302-A):		
401(C) Authority	30,000	420
Outlays	30,009	420
Other appropriations (05-96-9911-302-A):		
Budget Authority	37,368	523
Outlays	27,318	382
Forest Service permanent appropriations (05-96-9921-606-A):		
401(C) Authority	382,916	5,361
Outlays	382,320	5,072
Forest Service permanent appropriations (05-96-9922-302-A):		
401(C) Authority	140,747	1,970
Outlays	49,002	686
Total, Department of Agriculture:		
Budget Authority	9,598,956	134,360
Budget Authority—		
ASI	392	140
401(C) Authority	14,272,117	199,809
401(C) Authority—		
Off. Coll.	378,253	5,297
Obligation limitation	1,820,459	25,486
Direct Loan Limitation	18,518,195	259,255
Direct Loan Floor	2,053,158	28,744
Guaranteed Loan Limitation	8,672,563	121,416
Outlays	23,623,911	331,116
Department of Commerce		
General Administration		
Salaries and expenses (06-05-0120-376-A):		
Budget Authority	41,997	588
Outlays	40,223	563
Grants and loans administration (06-05-0125-452-A):		
Budget Authority	25,716	360
Outlays	22,568	316
Economic development assistance programs (06-05-2050-452-A):		
Budget Authority	188,581	2,640
Guaranteed Loan Limitation	184,250	2,720
Outlays	18,856	264
Bureau of the Census		
Salaries and expenses (06-07-0401-376-A):		
Budget Authority	99,833	1,398
401(C) Authority—		
Off. Coll.	8,000	112
Outlays	98,852	1,956
Periodic censuses and programs (06-07-0459-376-A):		
Budget Authority	590,775	8,131
Outlays	445,454	6,236

G-R-H Sequester Amounts—Continued
(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Economic and Statistical Analysis		
Salaries and expenses (06-08-1500-376-A):		
Budget Authority	34,202	479
401(C) Authority—		
Off. Coll.	395	6
Outlays	30,834	432
International Trade Administration		
Operations and administration (06-25-1250-376-A):		
Budget Authority	174,068	2,437
401(C) Authority—		
Off. Coll.	15,960	223
Outlays	138,565	1,940
Export Administration		
Operations and administration (06-30-0300-376-A):		
Budget Authority	41,704	584
Outlays	29,401	412
Minority Business Development Agency		
Minority business development (06-40-0201-376-A):		
Budget Authority	41,180	577
Outlays	12,909	181
United States Travel and Tourism Administration		
Salaries and expenses (06-44-0700-376-A):		
Budget Authority	14,322	200
401(C) Authority—		
Off. Coll.	1,450	20
Outlays	12,191	171
National Oceanic and Atmospheric Administration		
Operations, research, and facilities (06-48-1450-306-A):		
Budget Authority	1,334,243	18,679
401(C) Authority—		
Off. Coll.	11,434	160
Outlays	928,135	12,998
Coastal energy impact fund (06-48-4315-452-A):		
401(C) Authority—		
Off. Coll.	5,200	73
Outlays	5,200	73
Federal ship financing fund, fishing vessels (06-48-4417-376-A):		
401(C) Authority—		
Off. Coll.	7,300	102
Guaranteed Loan Limitation	480,000	6,720
Outlays	7,300	102
Fishermen's contingency fund (06-48-5120-376-A):		
Budget Authority	744	10
Outlays	709	10
Foreign fishing observer fund (06-48-5122-376-A):		
Budget Authority	1,991	28
Outlays	1,914	27
Fisheries Promotional Fund (06-48-5124-376-A):		
Budget Authority	3,108	44
Outlays	1,712	24
Promote and develop fishery products and research (06-48-5139-376-A):		
401(C) Authority	3,350	47
Outlays	1,843	26
Aviation weather services program (06-48-6165-306-A):		
Budget Authority	29,751	417
Outlays	29,751	417

G-R-H Sequester Amounts—Continued
(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Patent and Trademark Office		
Salaries and expenses (06-51-1006-376-A):		
Budget Authority	113,222	1,585
401(C) Authority—		
Off. Coll.	180,092	2,520
Outlays	161,290	2,258
Technology Administration		
Information products and services (05-53-8546-376-A):		
401(C) Authority	50,000	700
Outlays	-35,114	492
National Institute of Standards and Technology		
Scientific and technical research and services (06-55-0500-376-A):		
Budget Authority	163,596	2,290
Outlays	127,605	1,786
Working capital fund (06-55-4650-376-A):		
Budget Authority	1,563	22
Outlays	782	11
National Telecommunications and Information Admin.		
Salaries and expenses (06-60-0650-376-A):		
Budget Authority	14,164	198
Outlays	11,331	159
Public telecommunications facilities, planning and construction (06-60-0551-503-A):		
Budget Authority	20,724	290
Outlays	2,404	34
Total, Department of Commerce:		
Budget Authority	2,925,474	40,957
401(C) Authority	53,350	747
401(C) Authority—		
Off. Coll.	229,771	3,216
Guaranteed Loan Limitation	674,250	9,440
Outlays	2,160,944	30,256
Department of Defense—Military		
Military Personnel		
Military personnel, Marine Corps (07-05-1105-051-A):		
Budget Authority	5,715,055	85,726
Outlays	5,469,916	82,349
Reserve personnel, Marine Corps (07-05-1108-051-A):		
Budget Authority	316,540	4,748
Outlays	291,217	4,368
Reserve personnel, Navy (07-05-1405-051-A):		
Budget Authority	1,596,123	23,942
Outlays	1,473,221	22,098
Military personnel, Navy (07-05-1453-051-A):		
Budget Authority	19,003,439	285,052
Outlays	18,235,700	273,536
Military personnel, Army (07-05-2010-051-A):		
Budget Authority	24,517,882	367,768
Outlays	23,240,899	348,613
National Guard personnel, Army (07-05-2060-051-A):		
Budget Authority	3,308,429	49,626
Outlays	2,994,760	44,922
Reserve personnel, Army (07-05-2070-051-A):		
Budget Authority	2,220,108	33,302
Outlays	2,031,820	30,476

G-R-H Sequester Amounts—Continued
(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Military personnel, Air Force (07-05-3500-051-A):		
Budget Authority	20,100,130	301,502
Outlays	19,304,184	289,562
Reserve personnel, Air Force (07-05-3700-051-A):		
Budget Authority	657,923	9,869
Outlays	814,154	9,212
National Guard personnel, Air Force (07-05-3850-051-A):		
Budget Authority	1,031,188	15,468
Outlays	977,257	14,659
Operation and Maintenance		
Operation and maintenance, Defense agencies (07-10-0100-051-A):		
Budget Authority	7,911,928	118,679
Outlays	8,535,252	96,029
Court of Military Appeals, Defense (07-10-0104-051-A):		
Budget Authority	3,639	55
Outlays	3,129	47
Drug Interdiction Defense (07-10-0105-051-A):		
Budget Authority	217,580	3,263
Outlays	97,902	1,469
Goodwill Games (07-10-0106-051-A):		
Budget Authority	5,180	78
Outlays	2,296	34
Foreign currency fluctuations, Defense (07-10-0801-051-A):		
Unobligated Balances—		
Defense	414,182	6,212
Humanitarian Assistance (07-10-0813-051-A):		
Budget Authority	10,360	155
Outlays	7,594	114
Operation and maintenance, Marine Corps (07-10-1106-051-A):		
Budget Authority	1,883,771	28,257
Outlays	1,314,872	19,723
Operation and maintenance, Marine Corps Reserve (07-10-1107-051-A):		
Budget Authority	80,334	1,205
Outlays	56,752	836
National Board for the Promotion of Rifle Practice, Army (07-10-1705-051-A):		
Budget Authority	4,460	67
Outlays	3,010	45
Operation and maintenance, Navy (07-10-1804-051-A):		
Budget Authority	25,832,372	387,486
Outlays	18,496,979	277,449
Operation and maintenance, Navy Reserve (07-10-1806-051-A):		
Budget Authority	1,013,872	15,208
Outlays	905,160	9,976
Operation and maintenance, Army (07-10-2020-051-A):		
Budget Authority	23,153,258	347,298
Outlays	18,175,307	272,630
Operation and maintenance, Army National Guard (07-10-2065-051-A):		
Budget Authority	1,869,131	28,037
Outlays	1,307,175	20,868
Operation and maintenance, Army Reserve (07-10-2080-051-A):		
Budget Authority	825,122	12,377
Outlays	594,087	8,911
Operation and maintenance, Air Force (07-10-3400-051-A):		
Budget Authority	22,687,585	340,314
Outlays	17,401,376	261,021

G-R-H Sequester Amounts—Continued
(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Operation and maintenance, Air Force Reserve (07-10-3730-051-A):		
Budget Authority	1,139,000	17,085
Outlays	1,139,000	17,085
Operation and maintenance, Air National Guard (07-10-3840-051-A):		
Budget Authority	1,900,000	28,500
Outlays	1,900,000	28,500
Overseas contingency operations transfer fund (07-10-4930-051-A):		
Budget Authority	1,000,000	15,000
Outlays	1,000,000	15,000
Procurement		
Aircraft procurement, Army (07-05-1109-052-A):		
Budget Authority	1,000,000	15,000
Outlays	1,000,000	15,000
Missile procurement, Army (07-05-1110-052-A):		
Budget Authority	1,000,000	15,000
Outlays	1,000,000	15,000
Procurement of weapons and tracked combat vehicles, Army (07-05-1111-052-A):		
Budget Authority	1,000,000	15,000
Outlays	1,000,000	15,000
Procurement of ammunition, Army (07-05-1112-052-A):		
Budget Authority	1,000,000	15,000
Outlays	1,000,000	15,000
Other procurement, Army (07-05-1113-052-A):		
Budget Authority	1,000,000	15,000
Outlays	1,000,000	15,000
Procurement, Marine Corps (07-05-1151-052-A):		
Budget Authority	1,000,000	15,000
Outlays	1,000,000	15,000
Aircraft procurement, Navy (07-05-1506-052-A):		
Budget Authority	1,000,000	15,000
Outlays	1,000,000	15,000
Weapons procurement, Navy (07-05-1507-052-A):		
Budget Authority	1,000,000	15,000
Outlays	1,000,000	15,000
Procurement of ammunition, Navy and Marine Corps (07-05-1508-052-A):		
Budget Authority	1,000,000	15,000
Outlays	1,000,000	15,000
Shipbuilding and conversion, Navy (07-05-1510-052-A):		
Budget Authority	1,000,000	15,000
Outlays	1,000,000	15,000
Other procurement, Navy (07-05-1611-052-A):		
Budget Authority	1,000,000	15,000
Outlays	1,000,000	15,000
Procurement, Air Force (07-05-3010-052-A):		
Budget Authority	1,000,000	15,000
Outlays	1,000,000	15,000
Missile procurement, Air Force (07-05-3011-052-A):		
Budget Authority	1,000,000	15,000
Outlays	1,000,000	15,000
Other procurement, Air Force (07-05-3012-052-A):		
Budget Authority	1,000,000	15,000
Outlays	1,000,000	15,000
Research, Development, Test and Evaluation		
Research, development, test and evaluation, Army (07-05-1108-054-A):		
Budget Authority	1,000,000	15,000
Outlays	1,000,000	15,000
Research, development, test and evaluation, Navy (07-05-1319-054-A):		
Budget Authority	1,000,000	15,000
Outlays	1,000,000	15,000
Research, development, test and evaluation, Air Force (07-05-3600-054-A):		
Budget Authority	1,000,000	15,000
Outlays	1,000,000	15,000
Research, development, test and evaluation, Defense agencies (07-05-4900-054-A):		
Budget Authority	1,000,000	15,000
Outlays	1,000,000	15,000
Family Housing		
Family housing, Army (07-05-1114-055-A):		
Budget Authority	1,000,000	15,000
Outlays	1,000,000	15,000
Family housing, Navy and Marine Corps (07-05-1507-055-A):		
Budget Authority	1,000,000	15,000
Outlays	1,000,000	15,000
Family housing, Air Force (07-05-3530-055-A):		
Budget Authority	1,000,000	15,000
Outlays	1,000,000	15,000
Family housing, Defense agencies (07-05-4950-055-A):		
Budget Authority	1,000,000	15,000
Outlays	1,000,000	15,000
Military Construction		
Military construction, Army (07-05-1105-053-A):		
Budget Authority	1,000,000	15,000
Outlays	1,000,000	15,000
Military construction, Navy (07-05-1205-053-A):		
Budget Authority	1,000,000	15,000
Outlays	1,000,000	15,000
Military construction, Air Force (07-05-3400-053-A):		
Budget Authority	1,000,000	15,000
Outlays	1,000,000	15,000
Military construction, Defense agencies (07-05-4700-053-A):		
Budget Authority	1,000,000	15,000
Outlays	1,000,000	15,000
Military construction, Army National Guard (07-05-3600-053-A):		
Budget Authority	1,000,000	15,000
Outlays	1,000,000	15,000
Military construction, Air National Guard (07-05-3830-053-A):		
Budget Authority	1,000,000	15,000
Outlays	1,000,000	15,000
Military construction, Army Reserve (07-05-3835-053-A):		
Budget Authority	1,000,000	15,000
Outlays	1,000,000	15,000
Military construction, Naval Reserve (07-05-3837-053-A):		
Budget Authority	1,000,000	15,000
Outlays	1,000,000	15,000
Military construction, Air Force Reserve (07-05-3839-053-A):		
Budget Authority	1,000,000	15,000
Outlays	1,000,000	15,000
North Atlantic Treaty Organization Security Investment Program (07-05-5300-053-A):		
Budget Authority	1,000,000	15,000
Outlays	1,000,000	15,000
Revolving and Management Funds		
Defense business operations fund (07-05-4930-054-A):		
Budget Authority	1,000,000	15,000
Outlays	1,000,000	15,000
Defense working capital fund (07-05-4930-054-A):		
Budget Authority	1,000,000	15,000
Outlays	1,000,000	15,000
Trust Funds		
Military retirement fund (07-05-8098-602-A):		
Budget Authority	1,000,000	15,000
Outlays	1,000,000	15,000
Total, Department of Defense—Military:		
Budget Authority	1,000,000	15,000
Outlays	1,000,000	15,000
Department of Defense—Civil		
Corps of Engineers		
General investigations (07-05-0800-301-A):		
Budget Authority	1,000,000	15,000
Outlays	1,000,000	15,000
Construction, general (07-05-0800-302-A):		
Budget Authority	1,000,000	15,000
Outlays	1,000,000	15,000
Flood control, Mississippi River and tributaries (07-05-0800-303-A):		
Budget Authority	1,000,000	15,000
Outlays	1,000,000	15,000
Operation and maintenance, general (07-05-0800-304-A):		
Budget Authority	1,000,000	15,000
Outlays	1,000,000	15,000
Regulatory program (07-05-0800-306-A):		
Budget Authority	1,000,000	15,000
Outlays	1,000,000	15,000
Flood control and coastal emergencies (07-05-0800-307-A):		
Budget Authority	1,000,000	15,000
Outlays	1,000,000	15,000
General expenses (07-05-0800-308-A):		
Budget Authority	1,000,000	15,000
Outlays	1,000,000	15,000
Coastal wetlands restoration trust fund (07-05-0800-309-A):		
Budget Authority	1,000,000	15,000
Outlays	1,000,000	15,000
Inland waterways trust fund (07-05-0800-310-A):		
Budget Authority	1,000,000	15,000
Outlays	1,000,000	15,000
Harbor maintenance trust fund (07-05-0800-311-A):		
Budget Authority	1,000,000	15,000
Outlays	1,000,000	15,000
Inland waterways users board (07-05-0800-312-A):		
Budget Authority	1,000,000	15,000
Outlays	1,000,000	15,000
Total, Corps of Engineers:		
Budget Authority	1,000,000	15,000
Outlays	1,000,000	15,000
Department of Defense—Military Retirement		
Military retirement fund (07-05-8098-602-A):		
Budget Authority	1,000,000	15,000
Outlays	1,000,000	15,000
Department of Defense—Military Retirement		
Military retirement fund (07-05-8098-602-A):		
Budget Authority	1,000,000	15,000
Outlays	1,000,000	15,000
Department of Defense—Military Retirement		
Military retirement fund (07-05-8098-602-A):		
Budget Authority	1,000,000	15,000
Outlays	1,000,000	15,000

G-R-H Sequester Amounts—Continued
(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Department of Defense—Military Retirement		
Military retirement fund (07-05-8098-602-A):		
Budget Authority	1,000,000	15,000
Outlays	1,000,000	15,000
Department of Defense—Military Retirement		
Military retirement fund (07-05-8098-602-A):		
Budget Authority	1,000,000	15,000
Outlays	1,000,000	15,000
Department of Defense—Military Retirement		
Military retirement fund (07-05-8098-602-A):		
Budget Authority	1,000,000	15,000
Outlays	1,000,000	15,000

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G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Operation and maintenance, Air Force Reserve (07-10-3740-051-A):		
Budget Authority	1,073,096	16,096
Outlays	859,550	12,893
Operation and maintenance, Air National Guard (07-10-3840-051-A):		
Budget Authority	2,045,955	30,689
Outlays	1,673,592	25,104
Procurement		
Procurement, Defense agencies (07-15-0300-051-A):		
Budget Authority	1,253,767	18,806
Unobligated Balances—		
Defense	349,815	5,247
Outlays	392,878	5,893
National Guard and Reserve Equipment (07-15-0350-051-A):		
Budget Authority	1,179,796	17,697
Unobligated Balances—		
Defense	442,388	6,636
Outlays	166,707	2,531
Defense Production Act purchases (07-15-0360-051-A):		
Budget Authority	34,706	521
Unobligated Balances—		
Defense	45,850	688
Chemical agents and munitions destruction, Defense (07-15-0390-051-A):		
Budget Authority	185,962	2,789
Unobligated Balances—		
Defense	31,788	477
Outlays	77,302	1,160
Procurement, Marine Corps (07-15-1109-051-A):		
Budget Authority	1,343,526	20,153
Unobligated Balances—		
Defense	268,802	4,032
Outlays	317,235	4,758
Aircraft procurement, Navy (07-15-1506-051-A):		
Budget Authority	9,738,094	146,071
Unobligated Balances—		
Defense	1,865,544	27,983
Outlays	1,479,464	22,192
Weapons procurement, Navy (07-15-1507-051-A):		
Budget Authority	6,364,117	95,462
Unobligated Balances—		
Defense	2,295,631	34,434
Outlays	909,273	13,639
Shipbuilding and conversion, Navy (07-15-1611-051-A):		
Budget Authority	9,922,238	148,834
Unobligated Balances—		
Defense	9,802,211	147,033
Outlays	1,130,211	16,953
Other procurement, Navy (07-15-1810-051-A):		
Budget Authority	5,020,224	75,303
Unobligated Balances—		
Defense	1,804,590	27,069
Outlays	853,102	12,797
Aircraft procurement, Army (07-15-2031-051-A):		
Budget Authority	2,966,568	44,792
Unobligated Balances—		
Defense	555,536	8,333
Outlays	655,290	9,829
Missile procurement, Army (07-15-2032-051-A):		
Budget Authority	2,695,680	40,435
Unobligated Balances—		
Defense	779,795	11,696
Outlays	278,034	4,171
Procurement of weapons and tracked combat vehicles, Army (07-15-2033-051-A):		
Budget Authority	2,932,246	43,984
Unobligated Balances—		
Defense	1,303,844	19,555
Outlays	211,794	3,177
Procurement of ammunition, Army (07-15-2034-051-A):		
Budget Authority	2,065,570	31,295
Unobligated Balances—		
Defense	168,801	2,532
Outlays	721,430	10,821
Other procurement, Army (07-15-2035-051-A):		
Budget Authority	4,846,357	72,695
Unobligated Balances—		
Defense	1,602,125	24,032
Outlays	548,121	8,222
Aircraft procurement, Air Force (07-15-3010-051-A):		
Budget Authority	16,181,769	242,727
Unobligated Balances—		
Defense	6,053,661	90,805
Outlays	1,778,835	26,683
Missile procurement, Air Force (07-15-3020-051-A):		
Budget Authority	7,476,462	112,147
Unobligated Balances—		
Defense	2,758,717	41,381
Outlays	2,350,001	35,250
Other procurement, Air Force (07-15-3080-051-A):		
Budget Authority	8,483,824	127,257
Unobligated Balances—		
Defense	2,139,693	32,095
Outlays	5,832,310	87,485
Research, Development, Test, and Evaluation		
Research, development, test, and evaluation, Defense agencies (07-20-0400-051-A):		
Budget Authority	8,508,262	127,624
Unobligated Balances—		
Defense	629,063	9,436
Outlays	4,866,431	69,996
Developmental test and evaluation, Defense (07-20-0450-051-A):		
Budget Authority	155,296	2,329
Unobligated Balances—		
Defense	34,398	516
Outlays	40,785	612
Operational test and evaluation, Defense (07-20-0460-051-A):		
Budget Authority	73,706	1,107
Unobligated Balances—		
Defense	20,694	310
Outlays	11,339	170
Research, development, test, and evaluation, Navy (07-20-1319-051-A):		
Budget Authority	9,685,026	145,275
Unobligated Balances—		
Defense	482,879	7,243
Outlays	5,643,187	84,648
Research, development, test, and evaluation, Army (07-20-2040-051-A):		
Budget Authority	5,324,660	79,870
Unobligated Balances—		
Defense	395,274	5,929
Outlays	3,083,058	46,246
Research, development, test, and evaluation, Air Force (07-20-3600-051-A):		
Budget Authority	15,320,436	229,807
Unobligated Balances—		
Defense	1,708,045	25,621
Outlays	9,067,866	136,018
Military Construction		
Military construction, Defense agencies (07-25-0500-051-A):		
Budget Authority	703,996	10,560
Unobligated Balances—		
Defense	356,803	5,352
Outlays	194,126	2,912
Foreign currency fluctuations, construction (07-25-0603-051-A):		
Unobligated Balances—		
Defense	195,814	2,937
North Atlantic Treaty Organization infrastructure (07-25-0804-051-A):		
Budget Authority	509,712	7,646
Unobligated Balances—		
Defense	133,905	2,009
Military construction, Navy (07-25-1205-051-A):		
Budget Authority	1,633,963	24,509
Unobligated Balances—		
Defense	374,393	5,616
Outlays	477,966	7,170
Military construction, Naval Reserve (07-25-1235-051-A):		
Budget Authority	63,062	946
Unobligated Balances—		
Defense	10,927	164
Outlays	11,103	167
Military construction, Army (07-25-2050-051-A):		
Budget Authority	1,186,678	17,800
Unobligated Balances—		
Defense	437,348	6,560
Outlays	519,866	7,795
Military construction, Army National Guard (07-25-2085-051-A):		
Budget Authority	237,406	3,561
Unobligated Balances—		
Defense	44,743	671
Outlays	31,037	466
Military construction, Army Reserve (07-25-2086-051-A):		
Budget Authority	89,071	1,336
Unobligated Balances—		
Defense	21,950	329
Outlays	15,021	225

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Military construction, Air Force (07-25-3300-051-A):		
Budget Authority	1,250,999	18,895
Unobligated Balances—		
Defense	649,519	9,743
Outlays	306,474	4,582
Military construction, Air Force Reserve (07-25-3730-051-A):		
Budget Authority	73,142	1,097
Unobligated Balances—		
Defense	23,702	356
Outlays	10,169	153
Military construction, Air National Guard (07-25-3830-051-A):		
Budget Authority	164,214	2,463
Unobligated Balances—		
Defense	53,309	800
Outlays	17,402	261
Family Housing		
Family housing, Army (07-30-0702-051-A):		
Budget Authority	1,562,557	23,738
Unobligated Balances—		
Defense	129,694	1,891
Outlays	1,045,804	15,687
Family housing, Navy and Marine Corps (07-30-0703-051-A):		
Budget Authority	827,806	12,417
Unobligated Balances—		
Defense	173,699	2,604
Outlays	360,803	5,410
Family housing, Air Force (07-30-0704-051-A):		
Budget Authority	954,857	14,311
Unobligated Balances—		
Defense	166,698	1,998
Outlays	567,353	8,509
Family housing, Defense agencies (07-30-0705-051-A):		
Budget Authority	21,445	322
Unobligated Balances—		
Defense	179	3
Outlays	19,966	304
Revolving and Management Funds		
National Defense Stockpile transaction fund (07-40-4555-051-A):		
Budget Authority	34,706	521
Unobligated Balances—		
Defense	466,673	8,915
Navy stock fund (07-40-4911-051-A):		
Budget Authority	191,249	2,870
Outlays	69,148	947
Air Force stock fund (07-40-4921-051-A):		
Budget Authority	193,628	2,904
Outlays	63,897	668
Defense stock fund (07-40-4991-051-A):		
Budget Authority	25,920	388
Outlays	8,547	128
Army stock fund (07-40-4991-051-A):		
Budget Authority	302,488	4,538
Outlays	99,796	1,497
Allowances		
GRH aggregate spendout rate requirement (07-45-9020-051-A):		
Outlays	-4,045,000	-60,675
Total, Department of Defense—Military:		
Budget Authority	298,937,436	4,484,060
Unobligated Balances—		
Defense	38,114,199	566,714
Outlays	181,910,939	2,728,663
Department of Defense—Civil		
Cemeterial Expenses, Army		
Salaries and expenses (08-05-1805-705-A):		
Budget Authority	13,668	192
Outlays	10,208	143
Corps of Engineers—Civil		
Flood control, Mississippi River and tributaries (08-10-3112-301-A):		
Budget Authority	336,600	4,704
401(C) Authority—		
Off. Coll.	186	3
Outlays	245,475	3,437
General investigations (08-10-3121-301-A):		
Budget Authority	131,066	1,835
Outlays	89,136	1,248
Construction, general (08-10-3122-301-A):		
Budget Authority	980,200	13,723
401(C) Authority—		
Off. Coll.	-250	4
Outlays	382,366	5,403
Operation and maintenance, general (08-10-3123-301-A):		
Budget Authority	1,189,904	16,709
401(C) Authority—		
Off. Coll.	3,500	49
Outlays	970,296	13,585
Operation and maintenance, general (08-10-3125-303-A):		
Budget Authority	20,000	280
Outlays	20,000	280
General expenses (08-10-3134-301-A):		
Budget Authority	138,899	1,933
Outlays	103,040	1,443
Regulatory Program (08-10-3128-301-A):		
Budget Authority	69,427	972
Outlays	66,866	933
Revolving fund (08-10-4902-301-A):		
Budget Authority	10,000	140
Outlays	8,000	112
Inland waterways trust fund (08-10-8861-301-A):		
Budget Authority	119,000	1,666
Outlays	119,000	1,666
Rivers and harbors contributed funds (08-10-8862-301-A):		
Budget Authority	215,559	3,018
Outlays	103,651	1,450
Harbor maintenance trust fund (08-10-8863-301-A):		
Budget Authority	194,000	2,716
Outlays	194,000	2,716
Permanent appropriations (Water resources) (08-10-8921-301-A):		
401(C) Authority	7,000	98
Outlays	48	1
Permanent appropriations (08-10-8921-606-A):		
401(C) Authority	5,000	70
Soldiers' and Airmen's Home		
Operation and maintenance (08-25-8931-705-A):		
Budget Authority	38,730	542
401(C) Authority—		
Off. Coll.	144	2
Outlays	39,874	474
Capital outlay (08-20-8932-705-A):		
Budget Authority	15,354	215
Outlays	5,374	75
Forest & Wildlife Conservation, Mil. Reservations		
Wildlife conservation (08-30-5095-303-A):		
401(C) Authority	2,100	29
Outlays	1,400	20
Total, Department of Defense—Civil:		
Budget Authority	3,218,788	45,077
401(C) Authority	229,650	3,215
401(C) Authority—		
Off. Coll.	4,088	58
Outlays	2,328,729	32,602
Department of Education		
Office of Elementary and Secondary Education		
Indian education (18-10-0101-501-A):		
Budget Authority	74,138	1,038
Outlays	10,738	150
Impact aid (18-10-0102-501-A):		
Budget Authority	759,488	10,633
Outlays	604,356	8,460
Compensatory education for the disadvantaged (18-10-0590-501-A):		
Budget Authority	4,743,986	66,416
Outlays	988,278	7,970
School improvement programs (18-10-1600-501-A):		
Budget Authority	1,260,918	17,653
Outlays	151,310	2,118
Off. of Bilingual Ed. & Minority Languages Affairs		
Bilingual, immigrant, and refugee education (18-15-1205-501-A):		
Budget Authority	204,509	2,863
Outlays	24,540	344
Office of Special Education & Rehabilitative Svcs.		
Education for the handicapped (18-20-0300-501-A):		
Budget Authority	2,067,230	28,931
Outlays	251,471	3,521
Vocational rehabilitation (18-30-8301-606-A):		
Budget Authority	336,466	5,169
Outlays	173,990	2,436
Vocational rehab split for G-R-H: ASI (G-R-H) (18-20-8301-606-A):		
Budget Authority—ASI	60,400	21,560
Outlays	46,800	16,254
Special institutions for the handicapped (18-30-0604-501-C):		
Budget Authority	21,053	295
Outlays	19,790	277

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(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Special institutions for the handicapped (APHB) (18–20–0604–501–D):		
Budget Authority	5,527	77
Outlays	5,527	77
Special institutions for the handicapped (NTID) (18–20–0604–502–B):		
Budget Authority	34,526	483
Outlays	34,526	483
Special institutions for the handicapped (Gallaudet) (18–20–0604–502–C):		
Budget Authority	47,321	662
Outlays	44,543	624
Office of Vocational and Adult Education		
Vocational and adult education (18–30–0400–501–A):		
Budget Authority	1,112,110	15,570
401(C) Authority	7,148	100
Outlays	134,311	1,880
Office of Postsecondary Education		
Student financial assistance (18–40–0200–502–A):		
Budget Authority	6,023,636	84,331
Outlays	1,448,201	20,275
Higher education (18–40–0201–502–A):		
Budget Authority	586,096	8,205
Outlays	86,922	1,217
Guaranteed student loans (18–40–0230–502–A):		
Budget Authority—		
Spec. Rules	42,170	12,482
Outlays	33,736	9,986
College housing and academic facilities loans (18–40–0242–502–A):		
Budget Authority	35,843	502
Direct Loan Limitation	30,707	430
Howard University (18–40–0603–502–A):		
Budget Authority	185,416	2,596
Outlays	176,981	2,478
College housing loans (18–40–4250–502–A):		
401(C) Authority—		
Off. Coll.	650	9
Outlays	650	9
Office of Educational Research and Improvement		
Libraries (18–50–0104–503–A):		
Budget Authority	142,139	1,990
Outlays	50,149	702
Education research and statistics (18–50–1100–503–A):		
Budget Authority	81,015	1,134
Outlays	34,836	488
Departmental Management		
Office for Civil Rights (18–60–0700–751–A):		
Budget Authority	43,301	606
Outlays	35,919	503
Salaries and expenses (Elementary, secondary and vocational ed.) (18–60–0800–501–A):		
Budget Authority	20,689	290
Outlays	17,173	240
Salaries and expenses (Higher education) (18–60–0800–502–A):		
Budget Authority	89,997	1,260
Outlays	74,697	1,046
Salaries and expenses (Research and general education aids) (18–60–0800–503–A):		
Budget Authority	127,152	1,780
Outlays	105,537	1,478

G-R-H Sequester Amounts—Continued
(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Salaries and expenses (Social services) (18–60–0800–506–A):		
Budget Authority	22,383	313
Outlays	18,578	260
Office of the Inspector General (18–80–1400–751–A):		
Budget Authority	19,359	271
Outlays	16,010	224
Total, Department of Education:		
Budget Authority	17,903,218	250,645
Budget Authority—ASI	60,400	21,502
Budget Authority—Spec. Rules	42,170	12,482
401(C) Authority	7,148	100
401(C) Authority—Off. Coll.	650	9
Direct Loan Limitation	30,707	430
Outlays	4,169,840	83,795
Department of Energy		
Atomic Energy Defense Activities		
Atomic energy defense activities (19–10–0220–053–A):		
Budget Authority	9,656,034	144,841
Unobligated Balances—		
Defense	85,000	1,275
Outlays	6,039,441	90,592
Energy Programs		
Geothermal resources development fund (19–20–0206–271–A):		
Budget Authority	75	1
Outlays	75	1
Federal Energy Regulatory Commission (19–20–0212–276–A):		
Budget Authority	116,550	1,632
Outlays	109,207	1,529
Fossil energy research and development (19–20–0213–271–A):		
Budget Authority	394,472	5,523
Outlays	157,789	2,209
Energy conservation (Energy conservation) (19–20–0215–272–A):		
Budget Authority	326,721	4,574
Outlays	3,678	51
Energy information administration (19–20–0216–276–A):		
Budget Authority	65,227	913
Outlays	42,398	594
Economic regulation (19–20–0217–276–A):		
Budget Authority	22,208	311
Outlays	13,990	196
Strategic petroleum reserve (19–20–0218–274–A):		
Budget Authority	179,700	2,516
Outlays	98,834	1,384
Naval petroleum and shale reserves (19–20–0219–271–A):		
Budget Authority	191,757	2,685
Outlays	102,015	1,428
General science and research activities (19–20–0222–251–A):		
Budget Authority	1,114,431	15,602
Outlays	758,928	10,625
Energy supply, R&D activities (19–20–0224–271–A):		
Budget Authority	2,215,466	31,017
Outlays	1,107,733	15,508

G-R-H Sequester Amounts—Continued
(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Uranium supply and enrichment activities (19–20–0226–271–A):		
401(C) Authority—		
Off. Coll.	1,325,900	18,563
Outlays	1,325,900	18,563
SPR petroleum (19–20–0233–274–A):		
Budget Authority	159,157	2,228
401(C) Authority	91,555	1,282
Outlays	203,626	2,864
Emergency preparedness (19–20–0234–274–A):		
Budget Authority	6,394	90
Outlays	5,115	72
Clean Coal Technology (19–20–0235–271–A):		
401(C) Authority	710,000	9,940
Outlays	25,650	359
Isotope production and distribution fund (19–20–4180–271–A):		
Budget Authority	16,243	227
401(C) Authority—		
Off. Coll.	16,452	230
Outlays	16,452	230
Payments to states under Federal Power Act (19–20–5105–806–A):		
401(C) Authority	2,446	34
Nuclear waste disposal fund (19–20–5227–271–A):		
Budget Authority	346,000	4,844
Outlays	173,000	2,422
Power Marketing Administration		
Operation and maintenance, Southeastern Power Administration (19–50–0302–271–A):		
Budget Authority	932	13
Outlays	848	12
Operation and maintenance, Southwestern Power Administration (19–50–0303–271–A):		
Budget Authority	8,196	115
Outlays	4,713	66
Operation and maintenance, Alaska Power Administration (19–50–0304–271–A):		
Budget Authority	763	11
Outlays	366	5
Bonneville Power Administration fund (19–50–4045–271–A):		
401(C) Authority—		
Off. Coll.	45,800	641
Outlays	45,800	641
Colorado river basins power marketing fund, WAPA (19–50–4452–271–A):		
401(C) Authority—		
Off. Coll.	7,668	107
Outlays	7,668	107
Construction, rehabilitation, operation and maintenance, WAPA (19–50–5068–271–A):		
Budget Authority	41,376	579
Outlays	14,234	199
Departmental Administration		
Departmental administration (Energy information, policy, & reg.) (19–60–0228–276–A):		
Budget Authority	205,056	2,871
401(C) Authority—		
Off. Coll.	150,000	2,100
Outlays	273,033	3,822
Office of the Inspector General (19–60–0238–276–A):		
Budget Authority	22,959	321
Outlays	22,959	321
Total, Department of Energy:		
Budget Authority	15,089,715	220,914
401(C) Authority	804,001	11,256
401(C) Authority—Off. Coll.	1,545,820	21,641

G-R-H Sequester Amounts—Continued
(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Unobligated Balances—		
Defense	85,000	1,275
Outlays	10,553,652	153,790
Department of Health and Human Services		
Food and Drug Administration		
Program expenses (09–10–0500–554–A):		
Budget Authority	533,071	7,463
Outlays	426,226	5,967
Buildings and facilities (09–10–0603–554–A):		
Budget Authority	24,812	347
Outlays	2,977	42
Revolving fund for certification and other services (09–10–4309–554–A):		
401(C) Authority—		
Off. Coll.	3,216	45
Outlays	3,216	45
Health Resources and Services		
Health resources and services (health care services) (09–15–0350–551–A):		
Budget Authority	978,575	13,700
401(C) Authority—		
Off. Coll.	365	5
Direct Loan Limitation	494	7
Outlays	599,849	8,258
Health resources and services 2% split (G-R-H) (09–15–0350–551–G):		
Budget Authority—		
Spec. Rules	9,966	6,976
Outlays	8,009	4,206
Health resources and services (education and training) (09–15–0350–553–A):		
Budget Authority	184,730	2,586
Outlays	111,374	1,559
Indian Health		
Tribal Health Administration (09–17–0380–551–A):		
Budget Authority	149,994	2,100
Outlays	125,923	1,763
Tribal and Federal Health Services 2% split (G-R-H) (09–17–0390–551–G):		
Budget Authority—		
Spec. Rules	18,176	12,723
Outlays	14,819	10,373
Indian health facilities 2% split (G-R-H) (09–17–0391–551–G):		
Budget Authority—		
Spec. Rules	1,233	863
Outlays	210	147
Centers for Disease Control		
Disease control (Health care services) (09–20–0943–551–A):		
Budget Authority	892,168	12,490
Outlays	508,535	7,119
Disease control (Health research) (09–20–0943–552–A):		
Budget Authority	123,346	1,727
Outlays	70,307	984
National Institutes of Health		
National Library of Medicine (Health research) (09–25–0807–552–A):		
Budget Authority	26,237	367
Outlays	16,253	228

G-R-H Sequester Amounts—Continued
(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
National Library of Medicine (Education and training) (09–25–0807–553–A):		
Budget Authority	50,257	704
Outlays	31,132	436
John E. Fogarty International Center (09–25–0819–552–A):		
Budget Authority	16,391	229
Outlays	7,533	105
Buildings and facilities (09–25–0836–552–A):		
Budget Authority	39,878	558
Outlays	7,976	112
National Institute on Aging (Health research) (09–25–0843–552–A):		
Budget Authority	221,925	3,107
Outlays	67,627	947
National Institute on Aging (Education and training) (09–25–0843–553–A):		
Budget Authority	8,817	123
Outlays	2,671	37
Nat. Inst. Child Health and Human Development (Health research) (09–25–0844–552–A):		
Budget Authority	423,708	5,932
Outlays	130,305	1,824
Nat. Inst. Child Health and Human Development (Ed. & training) (09–25–0844–553–A):		
Budget Authority	17,197	241
Outlays	1,719	24
Office of the Director (Health research) (09–25–0846–552–A):		
Budget Authority	67,877	950
Outlays	41,360	579
Office of the Director (Education and training) (09–25–0846–553–A):		
Budget Authority	7,050	99
Outlays	4,295	60
Research resources (Health research) (09–25–0848–552–A):		
Budget Authority	368,820	5,163
Outlays	204,665	2,866
Research resources (Education and training) (09–25–0848–553–A):		
Budget Authority	2,362	33
Outlays	141	2
National Cancer Institute (Health research) (09–25–0849–552–A):		
Budget Authority	1,596,191	22,347
Outlays	652,511	9,135
National Cancer Institute (Education and training) (09–25–0849–553–A):		
Budget Authority	34,419	482
Outlays	1,199	17
National Institute of General Medical Sciences (Health research) (09–25–0851–552–A):		
Budget Authority	630,153	8,822
Outlays	252,081	3,529
National Institute of General Medical Sciences (Ed. & training) (09–25–0851–553–A):		
Budget Authority	76,717	1,074
Outlays	30,688	430
National Institute of Environmental Health Sciences (Research) (09–25–0862–552–A):		
Budget Authority	221,892	3,106
Outlays	110,877	1,552
National Institute of Environmental Health Sciences (Ed.&train.) (09–25–0862–553–A):		
Budget Authority	9,713	136
Outlays	4,856	68
National Heart, Lung and Blood Institute (Health research) (09–25–0872–552–A):		
Budget Authority	1,039,894	14,559
Outlays	397,118	5,560

G-R-H Sequester Amounts—Continued
(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
National Heart, Lung and Blood Institute (Education & training) (09–25–0872–553–A):		
Budget Authority	43,621	611
Outlays	1,740	24
National Institute of Dental Research (Health research) (09–25–0873–552–A):		
Budget Authority	129,587	1,814
Outlays	66,052	925
National Institute of Dental Research (Education and training) (09–25–0873–553–A):		
Budget Authority	5,922	83
Outlays	2,999	41
National Inst. of Diabetes, and Digestive and Kidney Diseases (09–25–0884–552–A):		
Budget Authority	557,742	7,808
Outlays	201,807	2,825
National Inst. of Diabetes, and Digestive and Kidney Diseases (09–25–0884–553–A):		
Budget Authority	22,099	309
Outlays	6,695	94
National Institute of Allergy & Infectious Diseases (Research) (09–25–0885–552–A):		
Budget Authority	754,055	10,557
Outlays	217,765	3,049
National Institute of Allergy & Infectious Diseases (Ed.&train.) (09–25–0885–553–A):		
Budget Authority	15,106	211
Outlays	2,284	32
National Institute of Neurological Disorders and Stroke (09–25–0886–552–A):		
Budget Authority	484,570	6,784
Outlays	185,440	2,596
National Institute of Neurological Disorders and Stroke (09–25–0886–553–A):		
Budget Authority	12,802	179
Outlays	3,660	51
National Eye Institute (Health research) (09–25–0887–552–A):		
Budget Authority	233,517	3,269
Outlays	78,437	1,098
National Eye Institute (Education and training) (09–25–0887–553–A):		
Budget Authority	6,234	87
Outlays	596	8
National Ins. of Arthritis and Musculoskeletal and Skin Diseas (09–25–0888–552–A):		
Budget Authority	159,727	2,236
Outlays	58,285	816
National Ins. of Arthritis and Musculoskeletal and Skin Diseas (09–25–0888–553–A):		
Budget Authority	6,007	84
Outlays	2,152	30
National Center for Nursing Research (09–25–0889–552–A):		
Budget Authority	26,233	367
Outlays	8,390	117
National Center for Nursing Research (09–25–0889–553–A):		
Budget Authority	3,954	55
Outlays	1,285	18
NID and Other Communicative Disorders (09–25–0890–552–A):		
Budget Authority	87,200	1,221
Outlays	33,357	467
NID and Other Communicative Disorders (09–25–0890–553–A):		
Budget Authority	2,500	35
Outlays	733	10

G-R-H Sequester Amounts—Continued
(In thousands of dollars)

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(In thousands of dollars)

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G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Alcohol, Drug Abuse, & Mental Health Administration

Account Title	Sequester Base	Sequester Amount
Federal subsidy for St. Elizabeths Hospital (09-30-1300-551-A):		
Budget Authority	24,586	344
Outlays	24,586	344
Alcohol, drug abuse, and mental health (Health care services) (09-30-1361-551-A):		
Budget Authority	1,150,798	16,111
Outlays	739,963	10,359
Alcohol, drug abuse, and mental health (Health research) (09-30-1361-552-A):		
Budget Authority	713,040	9,983
Outlays	626,738	8,774
Alcohol, drug abuse, and mental health (Education and training) (09-30-1361-553-A):		
Budget Authority	46,460	651
Outlays	36,711	514

Office of Assistant Secretary for Health

Account Title	Sequester Base	Sequester Amount
Public health service management (Health care services) (09-37-1101-551-A):		
Budget Authority	45,230	633
Outlays	30,274	424
Public health service management (Health research) (09-37-1101-552-A):		
Budget Authority	26,579	372
Outlays	20,282	284

Health Care Financing Administration

Account Title	Sequester Base	Sequester Amount
Program management (Health care services) (09-38-0511-551-A):		
Budget Authority	86,641	1,213
Outlays	76,638	1,073
Program management (Health research) (09-38-0511-552-A):		
Budget Authority	10,236	143
Outlays	921	13
Health maintenance organization loan and loan guarantee fund (09-38-4420-551-A):		
Obligation limitation	5,000	70
Outlays	-5,000	-70
Federal supplementary medical insurance trust fund (09-38-8004-571-A):		
401(C) Authority	53,440	748
Obligation limitation	1,253,303	17,546
Outlays	1,131,233	15,838
FSMI 2% split (G-R-H) (09-38-8004-571-S):		
401(C) Authority—Spec. Rules	372,000	260,400
Outlays	372,000	260,400
Federal hospital insurance trust fund (09-38-8005-571-A):		
401(C) Authority	201,038	2,815
Obligation limitation	1,294,637	18,125
Outlays	1,075,991	15,064
FHI 2% split (G-R-H) (09-38-8005-571-S):		
401(C) Authority—Spec. Rules	1,140,000	798,000
Outlays	1,140,000	798,000
Federal Catastrophic drug insurance trust fund (09-38-8183-571-S):		
401(C) Authority—Spec. Rules	2,560	1,792
Outlays	2,560	1,792
Federal supplementary medical insurance trust fund, catastro. (09-38-8184-571-A):		
Obligation limitation	129,208	1,809
Outlays	156,647	2,193
Federal supplementary medical insurance trust fund, catastro. (09-38-8184-571-S):		
401(C) Authority—Spec. Rules	12,000	8,400
Outlays	12,000	8,400

Social Security Administration

Account Title	Sequester Base	Sequester Amount
Supplemental security income program (09-60-0406-609-A):		
Budget Authority	821,257	11,498
Outlays	821,257	11,498
Special benefits for disabled coal miners (09-60-0409-601-A):		
Budget Authority	6,943	97
Outlays	6,943	97

Family Support Administration

Account Title	Sequester Base	Sequester Amount
Program administration (09-70-1500-609-A):		
Budget Authority	84,634	1,185
401(C) Authority—Off. Coll.	450	6
Outlays	63,942	895
Family support payment to States (CSE) (09-70-1501-609-B):		
Budget Authority	1,309,000	18,326
Outlays	1,309,000	18,326
Low income home energy assistance (09-70-1502-609-A):		
Budget Authority	1,432,905	20,062
Outlays	1,304,025	18,256
Refugee and Entrant Assistance (09-70-1503-609-A):		
Budget Authority	396,121	5,546
Outlays	257,479	3,605
Community services block grant (09-70-1504-506-A):		
Budget Authority	394,300	5,520
Outlays	272,067	3,809
Work incentives (09-70-1505-504-A):		
Budget Authority	94,732	1,326
Outlays	89,046	1,247
Interim assistance to States for legalization (09-70-1508-506-A):		
401(C) Authority	870,000	12,180
Outlays	217,500	3,045
Payments to states for AFDC work programs (09-70-1509-609-A):		
Budget Authority	257,721	3,608
Outlays	257,721	3,608

Human Development Services

Account Title	Sequester Base	Sequester Amount
Social services block grant (09-80-1634-506-A):		
Budget Authority	2,700,000	37,800
Outlays	2,565,000	35,910
Human development services (09-80-1636-506-A):		
Budget Authority	2,667,229	37,341
Outlays	1,463,980	20,495
Payments to State for foster care and adoption assistance (09-80-1645-506-A):		
Budget Authority—Spec. Rules	5,132	5,132
Outlays	3,663	3,663

Departmental Management

Account Title	Sequester Base	Sequester Amount
General Departmental administration (09-90-0129-609-A):		
Budget Authority	70,202	983
Outlays	49,141	688
Policy research (09-90-0122-609-A):		
Budget Authority	8,139	114
Outlays	3,255	46
Office of the Inspector General (09-90-0128-609-A):		
Budget Authority	51,247	717
Outlays	38,435	538
Office for Civil Rights (09-90-0135-751-A):		
Budget Authority	16,680	234
Outlays	15,179	212
Office of Consumer Affairs (09-90-0137-506-A):		
Budget Authority	1,778	25
Outlays	1,422	20
Total, Department of Health and Human Services:		
Budget Authority	22,713,606	317,987
Budget Authority—Spec. Rules	34,507	25,894
401(C) Authority	1,124,478	15,743
401(C) Authority—Off. Coll.	4,031	56
401(C) Authority—Spec. Rules	1,526,560	1,068,592
Obligation limitation	2,682,148	37,550
Direct Loan Limitation	494	7
Outlays	18,876,650	1,329,556

Health and Human Services Social Security

Social Security

Account Title	Sequester Base	Sequester Amount
Federal old-age and survivors insurance trust fund (16-05-8006-651-A):		
Obligation limitation	1,358,206	19,015
Outlays	1,221,711	17,104
Federal disability insurance trust fund (16-05-8007-651-A):		
Obligation limitation	506,221	7,087
Outlays	415,664	5,819
Total, Health and Human Services Social Security:		
Obligation limitation	1,864,427	26,102
Outlays	1,637,375	22,923

Department of Housing and Urban Development

Housing Programs

Account Title	Sequester Base	Sequester Amount
Housing counseling assistance (25-02-0156-506-A):		
Budget Authority	3,626	51
Subsidized housing programs (Community development) (25-02-0164-451-A):		
Budget Authority	5,180	73
Subsidized housing programs (Housing assistance) (25-02-0164-604-A):		
Budget Authority	7,342,406	102,794
Outlays	88,109	1,234
Congregate services program (25-02-0178-604-A):		
Budget Authority	5,594	78
Transitional and supportive housing demonstration program (25-02-0186-604-A):		
Budget Authority	82,880	1,160
Rental housing assistance fund (25-02-4041-604-A):		
401(C) Authority—Off. Coll.	50,000	700
Outlays	50,000	700

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Nonprofit sponsor assistance (25-02-4042-604-A):		
Direct Loan Limitation	985	14
Federal Housing Administration fund (25-02-4070-371-A):		
Obligation limitation	396,582	5,552
Direct Loan Limitation	107,071	1,499
Guaranteed Loan Limitation	99,456,000	1,392,384
Outlays	396,582	5,552
Housing for the elderly or handicapped fund (25-02-4115-371-A):		
Direct Loan Limitation	497,280	6,962
Interstate land sales (25-02-5270-376-A):		
401(C) Authority	600	8
Outlays	600	8
Manufactured home inspection and monitoring (25-02-5271-376-A):		
401(C) Authority	7,320	102
Outlays	6,337	89

Public and Indian Housing Programs

Account Title	Sequester Base	Sequester Amount
Payments for operation of low income housing projects (25-03-0163-604-A):		
Budget Authority	1,766,906	24,737
Outlays	812,777	11,379

Government National Mortgage Association

Account Title	Sequester Base	Sequester Amount
Guarantees of mortgage-backed securities (25-04-4238-371-A):		
401(C) Authority—Off. Coll.	5,588	78
Guaranteed Loan Limitation	144,000,000	2,016,000
Outlays	5,588	78

Community Planning and Development

Account Title	Sequester Base	Sequester Amount
Community development grants (25-06-0162-451-A):		
Budget Authority	2,745,400	38,436
Guaranteed Loan Limitation	149,000	2,086
Outlays	109,816	1,537
Urban homesteading (25-06-0171-451-A):		
Budget Authority	13,675	191
Outlays	13,675	191
Emergency shelter grants program (25-06-0181-604-A):		
Budget Authority	48,174	674
Outlays	9,635	135
Rental rehabilitation grants (25-06-0182-451-A):		
Budget Authority	155,400	2,176
Rehabilitation loan fund (25-06-4036-451-A):		
401(C) Authority—Off. Coll.	12,700	178
Direct Loan Limitation	85,212	1,193
Outlays	12,700	178

Policy Development and Research

Account Title	Sequester Base	Sequester Amount
Research and technology (25-28-0108-451-A):		
Budget Authority	17,819	249
Outlays	5,340	75

Fair Housing and Equal Opportunity

Account Title	Sequester Base	Sequester Amount
Fair housing activities (25-29-0144-751-A):		
Budget Authority	10,380	145
Outlays	1,865	26

Management and Administration

Account Title	Sequester Base	Sequester Amount
Salaries & expenses, incl. transfer of funds (Community dev.) (25-35-0143-451-A):		
Budget Authority	174,166	2,438
Outlays	133,936	1,875
Salaries & expenses, incl. transfer of funds (Public assist.) (25-35-0143-604-A):		
Budget Authority	157,757	2,209
Outlays	121,353	1,699
Salaries & expenses, incl. transfer of funds (Federal law acts.) (25-35-0143-751-A):		
Budget Authority	15,455	216
Outlays	11,888	166
Total, Department of Housing and Urban Development:		
Budget Authority	12,544,798	175,627
401(C) Authority	7,920	110
401(C) Authority—Off. Coll.	68,288	956
Obligation limitation	396,582	5,552
Direct Loan Limitation	690,558	9,668
Guaranteed Loan Limitation	243,605,000	3,410,470
Outlays	1,780,201	24,922

Department of the Interior

Bureau of Land Management

Account Title	Sequester Base	Sequester Amount
Management of lands and resources (10-04-1109-302-A):		
Budget Authority	525,652	7,359
Outlays	418,784	5,863
Construction and access (10-04-1110-302-A):		
Budget Authority	5,631	79
Outlays	1,406	20
Payments in lieu of taxes (10-04-1114-806-A):		
Budget Authority	108,790	1,523
Outlays	108,618	1,521
Oregon and California grant lands (10-04-1116-302-A):		
Budget Authority	62,348	873
Outlays	46,136	646
Special acquisition of lands and minerals (10-04-1117-302-A):		
401(C) Authority	1,300	18
Service charges, deposits, and forfeitures (10-04-5017-302-A):		
Budget Authority	6,227	87
Outlays	5,474	77
Land acquisition (10-04-5033-302-A):		
Budget Authority	12,734	178
Outlays	6,315	88
Operation and maintenance of quarters (10-04-5048-302-A):		
401(C) Authority	250	4
Outlays	209	3
Range improvements (10-04-5132-302-A):		
Budget Authority	8,393	118
Outlays	5,305	74
Miscellaneous permanent appropriations (10-04-9921-302-A):		
401(C) Authority	7,000	98
Outlays	5,948	83
Miscellaneous permanent appropriations (10-04-9921-806-A):		
401(C) Authority	122,954	1,721
Outlays	122,954	1,721
Miscellaneous trust funds (10-04-9971-302-A):		
Budget Authority	100	1
401(C) Authority	600	8
Outlays	356	5

Minerals Management Service

Account Title	Sequester Base	Sequester Amount
Leasing and royalty management (10-06-1917-302-A):		
Budget Authority	177,324	2,483
Outlays	115,130	1,612
Payments to states from receipts under Mineral Leasing Act (10-06-5003-806-A):		
401(C) Authority	464,195	6,499
Outlays	464,195	6,499

Office of Surface Mining Reclamation & Enforcement

Account Title	Sequester Base	Sequester Amount
Regulation and technology (10-08-1801-302-A):		
Budget Authority	106,450	1,490
Outlays	61,993	868
Abandoned mine reclamation fund (10-08-5015-302-A):		
Budget Authority	200,180	2,800
Outlays	55,397	776

Bureau of Reclamation

Account Title	Sequester Base	Sequester Amount
Loan program (10-10-0667-301-A):		
Budget Authority	34,122	478
Direct Loan Limitation	31,922	447
Outlays	20,985	294
Construction program (10-10-0684-301-A):		
Budget Authority	662,120	9,270
401(C) Authority—Off. Coll.	4,000	56
Outlays	560,161	7,843
Lower Colorado River basin development fund (10-10-4079-301-A):		
401(C) Authority—Off. Coll.	95,456	1,336
Outlays	95,456	1,336
Upper Colorado River basin fund (10-10-4081-301-A):		
401(C) Authority—Off. Coll.	32,375	453
Outlays	32,375	453
Working capital fund (10-10-4524-301-A):		
Budget Authority	8,500	119
Outlays	6,800	95
Emergency fund (10-10-5043-301-A):		
Budget Authority	1,000	14
Outlays	605	8
General investigations (10-10-5060-301-A):		
Budget Authority	11,530	161
401(C) Authority—Off. Coll.	75	1
Outlays	7,500	105
Operation and maintenance (10-10-5064-301-A):		
Budget Authority	212,287	2,972
401(C) Authority—Off. Coll.	10,136	142
Outlays	175,083	2,451
General administrative expenses (10-10-5065-301-A):		
Budget Authority	47,983	672
Outlays	43,185	605
Colorado River Dam Fund, Boulder Canyon Project (10-10-5656-301-A):		
401(C) Authority	48,650	681
Outlays	27,877	390
Reclamation trust funds (10-10-8070-301-A):		
401(C) Authority	54,100	757
Outlays	43,280	606

G-R-H Sequester Amounts—Continued
(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Miscellaneous permanent appropriations (10-10-9922-606-A):		
401(C) Authority	282	4
Outlays	228	3
Geological Survey		
Surveys, investigations and research (10-12-0804-306-A):		
Budget Authority	468,058	6,553
401(C) Authority	250	4
401(C) Authority—		
Off. Coll.	75,405	1,056
Outlays	526,058	7,281
Operation and maintenance of quarters (10-12-5055-306-A):		
401(C) Authority	75	1
Outlays	40	1
Bureau of Mines		
Mines and minerals (10-14-0950-306-A):		
Budget Authority	165,452	2,316
Outlays	105,992	1,483
Helium fund (10-14-4053-306-A):		
401(C) Authority—		
Off. Coll.	3,453	48
Outlays	3,453	48
Fish and Wildlife Service		
Resource management (10-18-1611-303-A):		
Budget Authority	371,703	5,204
401(C) Authority—		
Off. Coll.	5,776	81
Outlays	301,738	4,224
Construction (10-18-1612-303-A):		
Budget Authority	33,007	462
Outlays	6,601	92
Land acquisition (10-18-5020-306-A):		
Budget Authority	77,472	1,065
Outlays	34,790	487
Operations and maintenance of quarters (10-18-5056-303-A):		
401(C) Authority	1,736	24
Outlays	478	7
National wildlife refuge fund (10-18-5091-606-A):		
Budget Authority	6,864	96
401(C) Authority	6,048	85
Outlays	8,811	123
Migratory bird conservation account (10-18-5137-303-A):		
401(C) Authority	30,600	428
Outlays	21,429	300
Sport fish restoration (10-18-8151-606-A):		
401(C) Authority	192,881	2,700
Outlays	57,867	810
Contributed funds (10-18-8215-306-A):		
401(C) Authority	4,165	58
Outlays	1,832	26
Miscellaneous permanent appropriations (10-18-9923-606-A):		
401(C) Authority	129,200	1,809
Outlays	38,760	543
National Park Service		
Operation of the national park system (10-24-1036-303-A):		
Budget Authority	785,916	10,779
401(C) Authority—		
Off. Coll.	2,000	28
Outlays	575,737	8,060

G-R-H Sequester Amounts—Continued
(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
John F. Kennedy Center for the Performing Arts (10-24-1038-303-A):		
Budget Authority	5,379	75
Outlays	4,686	66
Construction (10-24-1039-303-A):		
Budget Authority	164,966	2,309
401(C) Authority—		
Off. Coll.	11,060	154
Outlays	36,673	490
National recreation and preservation (10-24-1042-303-A):		
Budget Authority	15,162	213
Outlays	11,386	159
Illinois & Michigan Canal National Heritage Corridor Commissio (10-24-1043-303-A):		
Budget Authority	259	4
Outlays	129	2
Land acquisition (10-24-5035-303-A):		
Budget Authority	45,262	634
401(C) Authority	30,080	420
Outlays	30,543	428
Operations and maintenance of quarters (10-24-5049-303-A):		
401(C) Authority	8,682	121
Outlays	8,411	90
Historic preservation fund (10-24-5140-303-A):		
Budget Authority	31,598	442
Outlays	16,276	226
Miscellaneous permanent appropriations (10-24-9924-303-A):		
401(C) Authority	953	13
Outlays	136	2
Bureau of Indian Affairs		
Operation of Indian programs (Conservation and land management) (10-76-2100-302-A):		
Budget Authority	152,689	2,126
Outlays	116,035	1,624
Operation of Indian programs (Area and regional development) (10-76-2100-452-A):		
Budget Authority	597,631	8,367
401(C) Authority—		
Off. Coll.	4,000	56
Outlays	511,996	7,168
Operation of Indian programs (Elementary, secondary, & vo. ed.) (10-76-2100-501-A):		
Budget Authority	278,723	3,902
Outlays	236,914	3,317
Construction (10-76-2301-452-A):		
Budget Authority	99,306	1,376
Outlays	22,580	316
Revolving fund for loans (10-76-4409-452-A):		
401(C) Authority—		
Off. Coll.	11,070	155
Direct Loan Limitation	13,000	182
Outlays	24,070	337
Indian loan guaranty and insurance fund (10-76-4410-452-A):		
Budget Authority	3,491	49
Guaranteed Loan Limitation	45,000	630
Outlays	1,955	27
Operations and maintenance of quarters (10-76-5051-452-A):		
401(C) Authority	7,008	98
Outlays	5,008	70

G-R-H Sequester Amounts—Continued
(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Cooperative fund (Papago) (10-76-8366-452-A):		
401(C) Authority	1,232	17
Miscellaneous permanent appropriations (Area and regional dev.) (10-76-9925-452-A):		
401(C) Authority	50,359	705
Outlays	32,104	449
Miscellaneous permanent appropriations (10-76-9925-808-A):		
401(C) Authority	2,000	28
Outlays	1,275	18
Office of Territorial Affairs		
Administration of territories (10-82-0412-808-A):		
Budget Authority	62,272	872
Outlays	31,816	445
Trust Territory of the Pacific Islands (10-82-0414-808-A):		
Budget Authority	29,456	412
Outlays	26,218	367
Compact of free association (10-82-0415-808-A):		
Budget Authority	28,345	397
Outlays	28,345	397
Office of the Secretary		
Salaries and Expenses (10-84-0102-306-A):		
Budget Authority	50,980	714
Outlays	49,333	667
Construction management (10-84-0103-306-A):		
Budget Authority	1,869	26
Outlays	1,884	24
Oil spill emergency fund (10-84-8119-306-A):		
Budget Authority	7,563	106
Outlays	3,782	53
Office of the Solicitor		
Office of the Solicitor (10-86-0107-306-A):		
Budget Authority	25,664	359
Outlays	23,097	323
Office of Inspector General		
Office of Inspector General (10-88-0104-306-A):		
Budget Authority	19,493	273
Outlays	17,544	246
Total, Department of the Interior:		
Budget Authority	5,702,935	79,843
401(C) Authority	1,164,464	16,301
401(C) Authority—		
Off. Coll.	256,546	3,577
Direct Loan Limitation	44,922	629
Guaranteed Loan Limitation	45,000	630
Outlays	5,341,599	74,782
Department of Justice		
General Administration		
Salaries and expenses (11-03-0129-751-A):		
Budget Authority	89,254	1,250
Outlays	79,988	1,120
Office of the Inspector General (11-03-0328-751-A):		
Budget Authority	5,411	182
Outlays	8,432	118
Emergency drug funding (11-88-0331-751-A):		
Budget Authority	73,556	1,030
Outlays	21,016	294

G-R-H Sequester Amounts—Continued
(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
United States Parole Commission		
Salaries and expenses (11-04-1061-751-A):		
Budget Authority	11,321	158
Outlays	9,733	136
Legal Activities		
Salaries and expenses, Foreign Claims Settlement Commission (11-05-0100-153-A):		
Budget Authority	490	7
Outlays	355	5
Salaries and expenses, General legal activities (11-05-0128-752-A):		
Budget Authority	256,201	3,587
Outlays	222,894	3,121
Fees and expenses of witnesses (11-05-0311-752-A):		
Budget Authority	54,082	757
Outlays	37,911	531
Salaries and expenses, Antitrust Division (11-05-0319-752-A):		
Budget Authority	46,834	656
Outlays	36,306	508
Salaries and expenses, United States Attorneys (11-05-0322-752-A):		
Budget Authority	476,351	6,667
Outlays	420,949	5,893
Salaries and expenses, United States Marshals Service (11-05-0324-752-A):		
Budget Authority	218,187	2,985
401(C) Authority—		
Off. Coll.	4,108	56
Outlays	196,263	2,748
Independent counsel (11-05-0327-752-A):		
401(C) Authority	6,000	84
Outlays	6,000	84
Salaries and expenses, Community Relations Service (11-05-0500-752-A):		
Budget Authority	28,991	404
Outlays	24,554	344
Support of United States prisoners (11-05-1020-752-A):		
Budget Authority	114,076	1,597
Outlays	66,446	858
Assets forfeiture fund (11-05-5042-752-A):		
Budget Authority	75,389	1,055
401(C) Authority	237,726	3,328
Outlays	125,247	1,753
United States trustee system fund (11-05-5073-752-A):		
Budget Authority	49,250	689
Outlays	44,300	620
Federal Bureau of Investigation		
Salaries and expenses (11-10-0200-751-A):		
Budget Authority	1,495,782	20,941
401(C) Authority—		
Off. Coll.	24,384	341
Outlays	1,220,980	17,094
Drug Enforcement Administration		
Salaries and expenses (11-12-1100-751-A):		
Budget Authority	555,143	7,772
401(C) Authority—		
Off. Coll.	1,500	21
Outlays	417,857	5,850
Immigration and Naturalization Service		
Salaries and expenses (11-15-1217-751-A):		
Budget Authority	854,257	11,960
401(C) Authority—		
Off. Coll.	3,817	53

G-R-H Sequester Amounts—Continued
(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Outlays	666,898	9,617
Immigration legalization (11-15-5086-751-A):		
401(C) Authority	54,792	767
Outlays	54,792	767
Immigration user fee (11-15-5087-751-A):		
401(C) Authority	105,000	1,470
Outlays	104,909	1,469
Immigration examinations fee (11-15-5088-751-A):		
401(C) Authority	54,000	756
Outlays	54,000	756
Federal Prison System		
Buildings and facilities (11-20-1003-753-A):		
Budget Authority	312,755	4,379
Outlays	28,883	401
National Institute of Corrections (11-20-1004-754-A):		
Budget Authority	9,946	139
Outlays	3,973	56
Salaries and expenses (11-20-1060-753-A):		
Budget Authority	969,190	13,848
401(C) Authority—		
Off. Coll.	12,748	178
Outlays	930,544	13,089
Federal Prison Industries, Incorporated (11-20-4500-753-A):		
Budget Authority	20,720	290
Obligation limitation	2,857	40
Outlays	23,577	330
Office of Justice Programs		
Justice assistance (11-21-0401-754-A):		
Budget Authority	294,924	4,888
Outlays	123,172	1,724
Crime Victims Fund (11-21-5041-754-A):		
401(C) Authority	125,000	1,750
Outlays	62,569	875
Total, Department of Justice:		
Budget Authority	6,873,016	96,024
401(C) Authority	582,521	8,155
401(C) Authority—		
Off. Coll.	46,525	651
Obligation limitation	2,857	40
Outlays	5,016,270	70,228
Department of Labor		
Employment and Training Administration		
Program administration (12-05-0172-504-A):		
Budget Authority	73,575	1,029
Outlays	58,144	814
Training and employment services (12-05-0174-504-A):		
Budget Authority	3,872,575	54,216
Outlays	149,102	2,087
Community service employment for older Americans (12-05-0175-504-A):		
Budget Authority	356,202	4,987
Outlays	65,339	915
State unemployment insurance and employment services (12-05-0178-504-A):		
Budget Authority	23,371	327
Outlays	5,575	78
Federal unemployment benefits and allowances (12-05-0328-504-A):		
Budget Authority	80,000	1,120
Outlays	24,000	336
Federal unemployment benefits and allowances (12-05-0328-503-A):		
Budget Authority	204,000	2,856
Outlays	204,000	2,856

G-R-H Sequester Amounts—Continued
(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Unemployment trust fund (Training and employment) (12-05-8042-504-A):		
Obligation limitation	1,052,764	15,169
Outlays	459,321	6,548
Unemployment trust fund (Unemployment compensation) (12-05-8042-603-A):		
401(C) Authority	129,100	1,807
Obligation limitation	1,795,991	24,394
Outlays	1,985,099	28,111
Labor-Management Services		
Salaries and expenses (12-10-0104-505-A):		
Budget Authority	74,998	1,050
Outlays	63,875	894
Pension Benefit Guaranty Corporation		
Pension Benefit Guaranty Corporation fund (12-15-4204-601-A):		
Obligation limitation	72,468	1,015
Outlays	72,468	1,015
Employment Standards Administration		
Salaries and expenses (12-15-0105-505-A):		
Budget Authority	220,299	3,084
401(C) Authority—		
Off. Coll.	1,500	21
Outlays	190,454	2,666
Black lung disability trust fund (12-15-8144-601-A):		
Budget Authority	58,981	826
Outlays	58,981	826
Special workers' compensation expenses (12-15-9971-601-A):		
Obligation limitation	539	8
Outlays	539	8
Occupational Safety and Health Administration		
Salaries and expenses (12-18-0400-554-A):		
Budget Authority	257,197	3,601
Outlays	229,542	3,214
Mine Safety and Health Administration		
Salaries and expenses (12-18-1200-554-A):		
Budget Authority	169,095	2,367
Outlays	163,296	2,145
Bureau of Labor Statistics		
Salaries and expenses (12-20-0200-505-A):		
Budget Authority	195,219	2,734
401(C) Authority—		
Off. Coll.	1,100	15
Outlays	167,175	2,340
Departmental Management		
Inspector General salaries and expenses (12-25-0106-505-A):		
Budget Authority	41,074	575
Outlays	35,575	502
Salaries and expenses (12-25-0165-505-A):		
Budget Authority	123,076	1,723
Outlays	101,593	1,422
Total, Department of Labor:		
Budget Authority	5,748,369	80,480
401(C) Authority	129,100	1,807
401(C) Authority—		
Off. Coll.	2,600	36
Obligation limitation	2,891,782	40,486
Outlays	3,897,957	54,570

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(In thousands of dollars)

G-R-H Sequester Amounts—Continued
(In thousands of dollars)

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G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Department of State		
Administration of Foreign Affairs		
Salaries and expenses (14–05–0113–153–A):		
Budget Authority	1,856,768	25,905
Outlays	1,468,277	20,528
Protection of foreign missions and officials (14–05–0520–153–A):		
Budget Authority	9,428	132
Outlays	3,809	53
Emergencies in the diplomatic and consular service (14–05–0522–153–A):		
Budget Authority	4,662	65
Direct Loan Limitation	626	9
Outlays	2,727	38
Payment to the American Institute in Taiwan (14–05–0523–153–A):		
Budget Authority	11,282	158
Outlays	8,337	117
Acquisition and maintenance of buildings abroad (14–05–0535–153–A):		
Budget Authority	248,796	3,483
Outlays	45,673	639
Representation allowances (14–05–0545–153–A):		
Budget Authority	4,755	67
Outlays	4,151	58
International Organizations and Conferences		
Contributions for international peacekeeping activities (14–10–1124–153–A):		
Budget Authority	30,044	421
Outlays	30,044	421
International conferences and contingencies (14–10–1125–153–A):		
Budget Authority	6,216	87
Outlays	4,227	59
Contributions to international organizations (14–10–1126–153–A):		
Budget Authority	503,434	7,048
401(C) Authority—		
Off. Coll.	40	1
Outlays	479,302	6,696
International Commissions		
Salaries and expenses, IBWC (14–15–1009–301–A):		
Budget Authority	10,666	149
Outlays	9,636	135
Construction, IBWC (14–15–1078–301–A):		
Budget Authority	3,282	46
Outlays	1,643	23
American sections, international commissions (14–15–1082–301–A):		
Budget Authority	4,490	63
Outlays	3,515	49
International fisheries commissions (14–15–1087–302–A):		
Budget Authority	10,928	153
Outlays	10,928	153
Other		
United States emergency refugee and migration assistance fund (14–25–0040–151–A):		
Budget Authority	51,800	725
Outlays	25,900	363
Anti-terrorism assistance (14–25–0114–152–A)		
Budget Authority	10,194	143
Outlays	8,156	114

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Soviet-East European research and training (14–25–0118–153–A):		
Budget Authority	4,766	67
Outlays	4,766	67
Payment to the Asia Foundation (14–25–0525–154–A):		
Budget Authority	14,193	199
Outlays	14,193	199
International narcotics control (14–25–1022–151–A):		
Budget Authority	104,659	1,465
Outlays	31,382	439
Migration and refugee assistance (14–25–1143–151–A):		
Budget Authority	478,584	6,700
Outlays	335,007	4,690
U.S. bilateral science and technology agreements (14–25–1151–153–A):		
Budget Authority	2,072	29
Outlays	2,072	29
Fisherman's guaranty fund (14–25–5121–376–A):		
Budget Authority	1,787	25
Outlays	1,787	25
International Center, Washington, D.C. (14–25–5151–153–A):		
401(C) Authority	1,284	18
Outlays	1,223	17
Total, Department of State:		
Budget Authority	3,372,798	47,220
401(C) Authority	1,284	18
401(C) Authority—		
Off. Coll.	40	1
Direct Loan Limitation	626	9
Outlays	2,493,755	34,912
Department of Transportation		
Federal Highway Administration		
Access highways to public recreation areas on certain lakes (21–05–0503–401–A):		
Budget Authority	1,337	19
Outlays	267	4
Motor carrier safety (21–05–0552–401–A):		
Budget Authority	28,054	393
Outlays	24,407	342
Railroad-highway crossings demonstration projects (21–05–0557–401–A):		
Budget Authority	2,811	37
Outlays	522	7
Trust fund share of other highway programs (21–05–9009–401–A):		
Budget Authority	5,221	73
Outlays	1,044	15
Baltimore-Washington Parkway (21–05–9014–401–A):		
Budget Authority	13,287	186
Outlays	2,657	37
Highway safety research and development (21–05–9017–401–A):		
Budget Authority	6,299	88
Outlays	1,260	18
Highway-related safety grants (21–05–9019–401–A):		
401(C) Authority	10,000	140
Obligation limitation	9,744	136
Outlays	1,717	24
Motor carrier safety grants (21–05–9048–401–A):		
401(C) Authority	60,000	840
Obligation limitation	62,160	870
Outlays	23,960	335
Federal-aid highways (21–05–8083–401–A):		
401(C) Authority	13,850,959	193,913
Obligation limitation	12,432,000	174,048

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Outlays	2,263,118	31,684
Right-of-way revolving fund (trust revolving fund) (21–05–8402–401–A):		
Direct Loan Limitation	47,850	670
Outlays	47,850	670
Miscellaneous appropriations (21–05–9911–401–A):		
Budget Authority	56,592	792
Outlays	11,319	158
Miscellaneous trust funds—Highway (21–05–9972–401–A):		
Budget Authority	65,395	916
Outlays	13,079	183
National Highway Traffic Safety Administration		
Operations and research (21–10–0650–401–A):		
Budget Authority	70,451	986
Outlays	43,865	614
Trust fund share of operations and research (21–10–8016–401–A):		
Budget Authority	31,904	447
Outlays	19,188	269
State and community highway safety grants (21–10–8020–401–A):		
401(C) Authority	126,000	1,764
Obligation limitation	130,536	1,828
Outlays	53,520	749
Federal Railroad Administration		
Northeast corridor improvement program (21–16–0123–401–A):		
Budget Authority	20,306	284
Outlays	4,081	57
Office of the Administrator (21–16–0700–401–A):		
Budget Authority	21,753	305
Outlays	20,665	289
Railroad safety (21–16–0702–401–A):		
Budget Authority	28,924	405
Outlays	23,124	324
Grants to National Railroad Passenger Corporation (21–16–0704–401–A):		
Budget Authority	605,024	8,470
Outlays	544,522	7,623
Freightline rehabilitation (21–16–0713–401–A):		
Budget Authority	6,216	87
Outlays	3,730	52
Railroad safety research and development (21–16–0745–401–A):		
Budget Authority	9,624	135
Outlays	5,772	81
Commuter rail service (21–16–0747–401–A):		
Budget Authority	4,662	65
Outlays	513	7
Urban Mass Transportation Administration		
Urban mass transportation fund, administrative expenses (21–20–1120–401–A):		
Budget Authority	33,142	464
Outlays	29,828	418
Research, training and human resources (21–20–1121–401–A):		
Budget Authority	10,360	145
Outlays	2,072	29
Interstate transfer grants (21–20–1127–401–A):		
Budget Authority	207,200	2,901
Outlays	4,144	58
Washington metro (21–20–1128–401–A):		
Budget Authority	174,048	2,437
Outlays	41,046	575

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Formula grants (21–20–1129–401–A):		
Budget Authority	1,862,780	29,279
Outlays	544,502	7,823
Discretionary grants (21–20–8191–401–A):		
401(C) Authority	1,300,000	18,200
Obligation limitation	1,181,660	16,534
Outlays	59,050	827
Federal Aviation Administration		
Operations (21–25–1301–402–A):		
Budget Authority	3,053,089	42,743
401(C) Authority—		
Off. Coll.	14,650	205
Outlays	2,841,542	39,982
Headquarters administration (21–25–1302–402–A):		
Budget Authority	38,284	536
Outlays	33,690	472
Aircraft purchase loan guarantee program (21–25–1399–402–A):		
Budget Authority	150	2
Outlays	150	2
Trust fund share of FAA Operations (21–25–8104–402–A):		
Budget Authority	490,649	6,869
Outlays	490,649	6,869
Grants-in-aid for airports (Airport and airway trust fund) (21–25–8105–402–A):		
Budget Authority	104	1
401(C) Authority	1,700,000	23,800
Obligation limitation	1,450,400	20,306
Outlays	217,216	3,041
Facilities and equipment (Airport and airway trust fund) (21–25–8107–403–A):		
Budget Authority	1,434,090	20,077
401(C) Authority—		
Off. Coll.	45,327	635
Outlays	161,176	2,256
Research, engineering & development (Airport & airway trust fn (21–25–8108–402–A):		
Budget Authority	165,584	2,318
401(C) Authority—		
Off. Coll.	500	7
Outlays	101,899	1,426
Coast Guard		
Operating expenses (21–30–0201–403–A):		
Budget Authority	2,029,894	28,418
401(C) Authority—		
Off. Coll.	5,161	73
Outlays	1,702,005	23,828
Acquisition, construction, and improvements (21–30–0240–403–A):		
Budget Authority	398,058	5,585
Outlays	43,795	613
Retired pay (Coast Guard) (21–30–0241–403–A):		
Budget Authority	45,060	631
Outlays	45,060	631
Reserve training (21–30–6242–403–A):		
Budget Authority	60,140	866
Outlays	60,554	848
Research, development, test, and evaluation (21–30–0243–403–A):		
Budget Authority	19,477	273
Outlays	6,645	93
Alteration of bridges (21–30–0244–403–A):		
Budget Authority	14,000	196
Outlays	1,700	24
Coast Guard shore facilities (21–30–0246–403–A):		
Budget Authority	51,862	726
Outlays	5,701	80

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Offshore oil pollution compensation fund (21–30–5167–304–A):		
Obligation limitation	62,160	870
Pollution fund (21–30–5168–304–A):		
401(C) Authority	9,700	90
Outlays	1,780	25
Deepwater port liability fund (21–30–5170–304–A):		
Obligation limitation	51,800	725
Boat safety (21–30–8149–403–A):		
Budget Authority	62,160	870
Obligation limitation	31,080	435
Outlays	42,393	594
Maritime Administration		
Ready reserve force (21–35–1710–403–A):		
Budget Authority	114,740	1,608
Outlays	97,527	1,365
Operations and training (21–35–1750–403–A):		
Budget Authority	66,804	983
Outlays	58,465	819
Federal ship financing fund (21–35–4301–403–A):		
Obligation limitation	3,730	52
Outlays	3,544	50
Saint Lawrence Seaway Development Corporation		
Saint Lawrence Seaway Development Corporation (21–40–4085–403–A):		
401(C) Authority—		
Off. Coll.	1,000	14
Outlays	1,000	14
Operations and maintenance (21–40–8003–403–A):		
Budget Authority	11,536	162
Outlays	11,536	162
Office of the Inspector General		
Salaries and expenses (21–45–0130–407–A):		
Budget Authority	30,155	422
Outlays	26,043	365
Research and Special Programs Administration		
Research and special programs (21–50–0104–407–A):		
Budget Authority	15,370	215
Outlays	10,141	142
Pipeline safety (21–50–5172–407–A):		
Budget Authority	9,645	135
Outlays	9,162	128
Office of the Secretary		
Salaries and expenses (21–55–0102–407–A):		
Budget Authority	56,687	794
Outlays	50,337	705
Transportation planning, research, and development (21–55–0142–407–A):		
Budget Authority	5,813	81
Outlays	2,307	32
Payments to air carriers, DOT (21–55–0150–402–A):		
Budget Authority	32,736	458
Outlays	26,190	367
Working capital fund (21–55–4520–407–A):		
Budget Authority	3,315	46
Outlays	3,315	46
Total, Department of Transportation:		
Budget Authority	11,286,264	158,007
401(C) Authority	17,052,659	238,737
401(C) Authority—		
Off. Coll.	66,658	934
Obligation limitation	15,414,610	215,804

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Direct Loan Limitation	47,850	670
Outlays	9,666,305	135,331
Department of the Treasury		
Salaries and expenses (15–05–0101–803–A):		
Budget Authority	84,857	1,188
401(C) Authority—		
Off. Coll.	5,125	72
Outlays	76,525	1,069
Federal Law Enforcement Training Center		
Salaries and expenses (15–08–0104–751–A):		
Budget Authority	36,005	504
Outlays	32,486	455
Acquisitions, construction, improvements, & related expenses (15–08–0105–751–A):		
Budget Authority	20,720	290
Outlays	8,702	122
Financial Management Service		
Salaries and expenses (15–10–1301–803–A):		
Budget Authority	287,595	4,026
Outlays	244,414	3,422
Payments to the Farm Credit System Financial Asst. Corp. (15–10–1850–351–A):		
Budget Authority	70,763	991
Outlays	70,793	991
Saint Lawrence Seaway toll rebate program (15–10–8865–806–A):		
Budget Authority	11,085	155
Outlays	10,984	169
Bureau of Alcohol, Tobacco and Firearms		
Salaries and expenses (15–13–1000–751–A):		
Budget Authority	250,499	3,507
Outlays	226,167	3,167
United States Customs Service		
Salaries and expenses (15–15–0602–751–A):		
Budget Authority	1,074,599	15,044
401(C) Authority	116,584	1,632
Outlays	1,012,056	14,169
Operation and maintenance, air interdiction program (15–15–0604–751–A):		
Budget Authority	154,835	2,168
Outlays	85,049	1,191
Customs forfeiture fund (15–15–5698–803–A):		
Budget Authority	10,380	145
401(C) Authority	35,000	490
Outlays	45,360	635
Customs services at small airports (15–15–5694–808–A):		
Budget Authority	1,652	23
Outlays	1,652	23
Refunds, transfers and expenses, unclaimed and seized goods (15–15–8789–803–A):		
401(C) Authority	17,403	244
Outlays	17,403	244
Bureau of Engraving and Printing		
Bureau of Engraving and Printing fund (15–29–4502–803–A):		
401(C) Authority—		
Off. Coll.	333,809	4,673
Outlays	333,809	4,673

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Department of Transportation		
Federal Highway Administration		
Access highways to public recreation areas on certain lakes (21–05–0503–401–A):		
Budget Authority	1,337	19
Outlays	267	4
Motor carrier safety (21–05–0552–401–A):		
Budget Authority	28,054	393
Outlays	24,407	342
Railroad-highway crossings demonstration projects (21–05–0557–401–A):		
Budget Authority	2,811	37
Outlays	522	7
Trust fund share of other highway programs (21–05–9009–401–A):		
Budget Authority	5,221	73
Outlays	1,044	15
Baltimore-Washington Parkway (21–05–9014–401–A):		
Budget Authority	13,287	186
Outlays	2,657	37
Highway safety research and development (21–05–9017–401–A):		
Budget Authority	6,299	88
Outlays	1,260	18
Highway-related safety grants (21–05–9019–401–A):		
401(C) Authority	10,000	140
Obligation limitation	9,744	136
Outlays	1,717	24
Motor carrier safety grants (21–05–9048–401–A):		
401(C) Authority	60,000	840
Obligation limitation	62,160	870
Outlays	23,960	335
Federal-aid highways (21–05–8083–401–A):		
401(C) Authority	13,850,959	193,913
Obligation limitation	12,432,000	174,048

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Outlays	2,263,118	31,684
Right-of-way revolving fund (trust revolving fund) (21–05–8402–401–A):		
Direct Loan Limitation	47,850	670
Outlays	47,850	670
Miscellaneous appropriations (21–05–9911–401–A):		
Budget Authority	56,592	792
Outlays	11,319	158
Miscellaneous trust funds—Highway (21–05–9972–401–A):		
Budget Authority	65,395	916
Outlays	13,079	183
National Highway Traffic Safety Administration		
Operations and research (21–10–0650–401–A):		
Budget Authority	70,451	986
Outlays	43,865	614
Trust fund share of operations and research (21–10–8016–401–A):		
Budget Authority	31,904	447
Outlays	19,188	269
State and community highway safety grants (21–10–8020–401–A):		
401(C) Authority	126,000	1,764
Obligation limitation	130,536	1,828
Outlays	53,520	749
Federal Railroad Administration		
Northeast corridor improvement program (21–16–0123–401–A):		
Budget Authority	20,306	284
Outlays	4,081	57
Office of the Administrator (21–16–0700–401–A):		
Budget Authority	21,753	305
Outlays	20,665	289
Railroad safety (21–16–0702–401–A):		
Budget Authority	28,924	405
Outlays	23,124	324
Grants to National Railroad Passenger Corporation (21–16–0704–401–A):		
Budget Authority	605,024	8,470
Outlays	544,522	7,623
Freightline rehabilitation (21–16–0713–401–A):		
Budget Authority	6,216	87
Outlays	3,730	52
Railroad safety research and development (21–16–0745–401–A):		
Budget Authority	9,624	135
Outlays	5,772	81
Commuter rail service (21–16–0747–401–A):		
Budget Authority	4,662	65
Outlays	513	7
Urban Mass Transportation Administration		
Urban mass transportation fund, administrative expenses (21–20–1120–401–A):		
Budget Authority	33,142	464
Outlays	29,828	418
Research, training and human resources (21–20–1121–401–A):		
Budget Authority	10,360	145
Outlays	2,072	29
Interstate transfer grants (21–20–1127–401–A):		
Budget Authority	207,200	2,901
Outlays	4,144	58
Washington metro (21–20–1128–401–A):		
Budget Authority	174,048	2,437
Outlays	41,046	575

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Formula grants (21–20–1129–401–A):		
Budget Authority	1,862,780	29,279
Outlays	544,502	7,823
Discretionary grants (21–20–8191–401–A):		
401(C) Authority	1,300,000	18,200
Obligation limitation	1,181,660	16,534
Outlays	59,050	827
Federal Aviation Administration		
Operations (21–25–1301–402–A):		
Budget Authority	3,053,089	42,743
401(C) Authority—		
Off. Coll.	14,650	205
Outlays	2,841,542	39,982
Headquarters administration (21–25–1302–402–A):		
Budget Authority	38,284	536
Outlays	33,690	472
Aircraft purchase loan guarantee program (21–25–1399–402–A):		
Budget Authority	150	2
Outlays	150	2
Trust fund share of FAA Operations (21–25–8104–402–A):		
Budget Authority	490,649	6,869
Outlays	490,649	6,869
Grants-in-aid for airports (Airport and airway trust fund) (21–25–8105–402–A):		
Budget Authority	104	1
401(C) Authority	1,700,000	23,800
Obligation limitation	1,450,400	20,306
Outlays	217,216	3,041
Facilities and equipment (Airport and airway trust fund) (21–25–8107–403–A):		
Budget Authority	1,434,090	20,077
401(C) Authority—		
Off. Coll.	45,327	635
Outlays	161,176	2,256
Research, engineering & development (Airport & airway trust fn (21–25–8108–402–A):		
Budget Authority	165,584	2,318
401(C) Authority—		
Off. Coll.	500	7
Outlays	101,899	1,426
Coast Guard		
Operating expenses (21–30–0201–403–A):		
Budget Authority	2,029,894	28,418
401(C) Authority—		
Off. Coll.	5,161	73
Outlays	1,702,005	23,828
Acquisition, construction, and improvements (21–30–0240–403–A):		
Budget Authority	398,058	5,585
Outlays	43,795	613
Retired pay (Coast Guard) (21–30–0241–403–A):		
Budget Authority	45,060	631
Outlays	45,060	631
Reserve training (21–30–6242–403–A):		
Budget Authority	60,140	866
Outlays	60,554	848
Research, development, test, and evaluation (21–30–0243–403–A):		
Budget Authority	19,477	273
Outlays	6,645	93
Alteration of bridges (21–30–0244–403–A):		
Budget Authority	14,000	196
Outlays	1,700	24
Coast Guard shore facilities (21–30–0246–403–A):		
Budget Authority	51,862	726
Outlays	5,701	80

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Offshore oil pollution compensation fund (21–30–5167–304–A):		
Obligation limitation	62,160	870
Pollution fund (21–30–5168–304–A):		
401(C) Authority	9,700	90
Outlays	1,780	25
Deepwater port liability fund (21–30–5170–304–A):		
Obligation limitation	51,800	725
Boat safety (21–30–8149–403–A):		
Budget Authority	62,160	870
Obligation limitation	31,080	435
Outlays	42,393	594
Maritime Administration		
Ready reserve force (21–35–1710–403–A):		
Budget Authority	114,740	1,608
Outlays	97,527	1,365
Operations and training (21–35–1750–403–A):		
Budget Authority	66,804	983
Outlays	58,465	819
Federal ship financing fund (21–35–4301–403–A):		
Obligation limitation	3,730	52
Outlays	3,544	50
Saint Lawrence Seaway Development Corporation		
Saint Lawrence Seaway Development Corporation (21–40–4085–403–A):		
401(C) Authority—		
Off. Coll.	1,000	14
Outlays	1,000	14
Operations and maintenance (21–40–8003–403–A):		
Budget Authority	11,536	162
Outlays	11,536	162
Office of the Inspector General		
Salaries and expenses (21–45–0130–407–A):		
Budget Authority	30,155	422
Outlays	26,043	365
Research and Special Programs Administration		
Research and special programs (21–50–0104–407–A):		
Budget Authority	15,370	215
Outlays	10,141	142
Pipeline safety (21–50–5172–407–A):		
Budget Authority	9,645	135
Outlays	9,162	128
Office of the Secretary		
Salaries and expenses (21–55–0102–407–A):		
Budget Authority	56,687	794
Outlays	50,337	705
Transportation planning, research, and development (21–55–0142–407–A):		
Budget Authority	5,813	81
Outlays	2,307	32
Payments to air carriers, DOT (21–55–0150–402–A):		
Budget Authority	32,736	458
Outlays	26,190	367
Working capital fund (21–55–4520–407–A):		
Budget Authority	3,315	46
Outlays	3,315	46
Total, Department of Transportation:		
Budget Authority	11,286,264	158,007
401(C) Authority	17,052,659	238,737
401(C) Authority—		
Off. Coll.	66,658	934
Obligation limitation	15,414,610	215,804

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Direct Loan Limitation	47,850	670
Outlays	9,666,305	135,331
Department of the Treasury		
Salaries and expenses (15–05–0101–803–A):		
Budget Authority	84,857	1,188
401(C) Authority—		
Off. Coll.	5,125	72
Outlays	76,525	1,069
Federal Law Enforcement Training Center		
Salaries and expenses (15–08–0104–751–A):		
Budget Authority	36,005	504
Outlays	32,486	455
Acquisitions, construction, improvements, & related expenses (15–08–0105–751–A):		
Budget Authority	20,720	290
Outlays	8,702	122
Financial Management Service		
Salaries and expenses (15–10–1301–803–A):		
Budget Authority	287,595	4,026
Outlays	244,414	3,422
Payments to the Farm Credit System Financial Asst. Corp. (15–10–1850–351–A):		
Budget Authority	70,763	991
Outlays	70,793	991
Saint Lawrence Seaway toll rebate program (15–10–8865–806–A):		
Budget Authority	11,085	155
Outlays	10,984	169
Bureau of Alcohol, Tobacco and Firearms		
Salaries and expenses (15–13–1000–751–A):		
Budget Authority	250,499	3,507
Outlays	226,167	3,167
United States Customs Service		
Salaries and expenses (15–15–0602–751–A):		
Budget Authority	1,074,599	15,044
401(C) Authority	116,584	1,632
Outlays	1,012,056	14,169
Operation and maintenance, air interdiction program (15–15–0604–751–A):		
Budget Authority	154,835	2,168
Outlays	85,049	1,191
Customs forfeiture fund (15–15–5698–803–A):		
Budget Authority	10,380	145
401(C) Authority	35,000	490
Outlays	45,360	635
Customs services at small airports (15–15–5694–808–A):		
Budget Authority	1,652	23
Outlays	1,652	23
Refunds, transfers and expenses, unclaimed and seized goods (15–15–8789–803–A):		
401(C) Authority	17,403	244
Outlays	17,403	244
Bureau of Engraving and Printing		
Bureau of Engraving and Printing fund (15–29–4502–803–A):		
401(C) Authority—		
Off. Coll.	333,809	4,673
Outlays	333,809	4,673

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G-R-H Sequester Amounts—Continued
(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
United States Mint		
Salaries and expenses (15–25–1616–803–A):		
Budget Authority	48,858	664
401(C) Authority—		
Off. Coll.	109,957	1,539
Outlays	141,866	1,983
Bureau of the Public Debt		
Administering the public debt (15–35–0580–803–A):		
Budget Authority	226,944	3,177
Outlays	183,533	2,569
Internal Revenue Service		
Salaries and expenses (15–45–0911–803–A):		
Budget Authority	90,431	1,266
Outlays	67,630	947
Processing tax returns and executive direction (15–45–0912–803–A):		
Budget Authority	1,807,710	25,308
Outlays	1,482,322	20,752
Examinations and appeals (15–45–0913–803–A):		
Budget Authority	2,009,730	28,136
Outlays	1,828,854	25,604
Investigation, collection, and taxpayer service (15–45–0914–803–A):		
Budget Authority	1,491,887	20,884
Outlays	1,342,518	18,795
Federal tax lien revolving fund (15–45–4413–803–A):		
401(C) Authority—		
Off. Coll.	8,451	118
Outlays	8,451	118
United States Secret Service		
Contribution for annuity benefits (15–55–1407–751–A):		
401(C) Authority	18,000	252
Outlays	18,000	252
Salaries and expenses (15–55–1408–751–A):		
Budget Authority	371,462	5,200
Outlays	315,743	4,420
Total, Department of the Treasury:		
Budget Authority	8,049,820	112,693
401(C) Authority	186,987	2,618
401(C) Authority—		
Off. Coll.	457,340	6,402
Outlays	7,556,117	105,784
Department of Veterans Affairs		
Veterans Benefits Administration		
Readjustment benefits (29–10–0137–702–A):		
Budget Authority	241,926	3,387
Outlays	227,833	3,190
Burial benefits and miscellaneous assistance (29–10–0155–701–A):		
Budget Authority	143,612	2,011
Outlays	138,228	1,935
Direct loan revolving fund (29–10–4024–704–A):		
Direct Loan		
Limitation	1,000	14
Veterans Health Services and Research Administration		
Grants to the Republic of the Philippines (29–20–0144–703–A):		
Budget Authority	518	7
Medical administration and miscellaneous operating expenses (29–20–0152–703–A):		
Budget Authority	49,788	697
Outlays	31,274	438
Medical care (29–20–0160–703–A):		
Budget Authority	843,184	11,805
Outlays	714,663	10,006
Medical care (29–20–0160–703–G):		
Budget Authority—		
Spec. Rules	209,402	146,581
401(C) Authority—		
Spec. Rules	406	284
Outlays	180,194	126,136
Medical and prosthetic research (29–20–0161–703–A):		
Budget Authority	219,096	3,067
Outlays	165,462	2,316
Medical center research organizations (29–20–4026–703–A):		
401(C) Authority—		
Off. Coll.	4,500	63
Outlays	4,500	63
Departmental Administration		
Construction, major projects (29–30–0110–703–A):		
Budget Authority	370,918	5,193
Outlays	6,649	93
Construction, minor projects (29–30–0111–703–A):		
Budget Authority	100,784	1,411
Outlays	42,006	588
General operating expenses (29–30–0151–705–A):		
Budget Authority	827,826	11,590
Outlays	761,599	10,662
Grants for construction of state extended care facilities (29–30–0181–703–A):		
Budget Authority	43,512	609
Grants for the construction of State veterans cemeteries (29–30–0183–705–A):		
Budget Authority	9,324	131
Outlays	942	13
Parking garage revolving fund (29–30–4536–703–A):		
Budget Authority	26,936	377
Total, Department of Veterans Affairs:		
Budget Authority	2,877,424	40,255
Budget Authority—		
Spec. Rules	209,402	146,581
401(C) Authority—		
Off. Coll.	4,500	63
401(C) Authority—		
Spec. Rules	406	284
Direct Loan		
Limitation	1,000	14
Outlays	2,273,372	155,440
Environmental Protection Agency		
Environmental Protection Agency		
Construction grants (20–00–0103–304–A):		
Budget Authority	2,020,000	28,280
Outlays	34,000	476
Research and development (Energy supply) (20–00–0107–271–A):		
Budget Authority	52,061	729
Outlays	18,221	255
Research and development (Pollution control and abatement) (20–00–0107–304–A):		
Budget Authority	157,729	2,206
Outlays	59,937	839
Abatement, control, and compliance (20–00–0108–304–A):		
Budget Authority	745,847	10,442
Outlays	332,493	4,655
Buildings and facilities (20–00–0110–304–A):		
Budget Authority	8,268	116
Outlays	1,445	20
Salaries and expenses (20–00–0200–304–A):		
Budget Authority	847,016	11,858
401(C) Authority—		
Off. Coll.	3,808	53
Outlays	731,989	10,248
Payment to the hazardous substance superfund (20–00–0250–304–A):		
Budget Authority	155,400	2,176
Registration and expedited processing revolving fund (20–00–4310–304–A):		
401(C) Authority—		
Off. Coll.	14,000	196
Outlays	14,000	196
Revolving fund for certification and other services (20–00–4311–304–A):		
401(C) Authority—		
Off. Coll.	1,200	17
Outlays	1,200	17
Hazardous substance superfund (20–00–8145–304–A):		
Budget Authority	1,461,391	20,459
401(C) Authority—		
Off. Coll.	13,200	185
Obligation limitation	197,471	2,765
Outlays	362,555	5,076
Leaking underground storage tank trust fund (20–00–8153–304–A):		
Budget Authority	51,819	725
Obligation limitation	5,199	73
Outlays	7,757	109
Total, Environmental Protection Agency:		
Budget Authority	5,499,551	76,993
401(C) Authority—		
Off. Coll.	32,208	451
Obligation limitation	202,670	2,838
Outlays	1,563,597	21,891
General Services Administration		
Real Property Activities		
Federal buildings fund (23–05–4542–804–A):		
401(C) Authority—		
Off. Coll.	4,900	69
Outlays	4,900	69
Personal Property Activities		
Federal supply service (23–10–0116–804–A):		
Budget Authority	48,962	686
Outlays	31,690	444
Expenses of transportation audit contracts (23–10–5250–804–A):		
401(C) Authority	15,500	217
Outlays	15,214	213
Information Resources Management Service		
Operating expenses, information resources management service (23–15–0900–804–A):		
Budget Authority	33,114	464
Outlays	21,623	303
Federal Property Resources Activities		
Operating expenses, federal property resources service (General) (23–25–0533–804–A):		
Budget Authority	11,220	157
Outlays	7,228	101
Real property relocation (23–25–0535–804–A):		
Budget Authority	4,144	58
Outlays	2,172	30

G-R-H Sequester Amounts—Continued
(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Expenses, disposal of surplus real and related personal proper (23–25–5254–804–A):		
401(C) Authority	3,800	53
Outlays	2,865	40
General Activities		
Allowances and office staff for former Presidents (23–30–0105–802–A):		
Budget Authority	1,071	15
Outlays	937	13
Expenses, presidential transition (23–30–0107–802–A):		
Budget Authority	4,921	69
Outlays	4,921	69
Office of Inspector General (23–30–0108–804–A):		
Budget Authority	25,997	364
Outlays	22,106	309
General management and administration, salaries and expenses (23–30–0110–804–A):		
Budget Authority	125,520	1,757
Outlays	85,819	1,201
Consumer information center fund (23–30–4549–376–A):		
Budget Authority	1,406	20
401(C) Authority—		
Off. Coll.	536	8
Outlays	73	1
Total, General Services Administration:		
Budget Authority	256,375	3,590
401(C) Authority	19,300	270
401(C) Authority—		
Off. Coll.	5,436	77
Outlays	199,546	2,793
National Aeronautics and Space Administration		
National Aeronautics and Space Administration		
Research and program management (Space flight) (26–00–0103–253–A):		
Budget Authority	958,460	13,418
401(C) Authority—		
Off. Coll.	5,000	70
Outlays	827,359	11,583
Research & program management (Space science, applications, etc) (26–00–0103–254–A):		
Budget Authority	624,299	8,740
Outlays	533,151	7,464
Research & program management (Supporting space activities) (26–00–0103–255–A):		
Budget Authority	74,035	1,036
Outlays	63,152	884
Research and program management (Air transportation) (26–00–0103–402–A):		
Budget Authority	344,165	4,818
Outlays	293,917	4,115
Space Flight, Control, and Data Comm. (26–00–0105–250–A):		
401(C) Authority—		
Off. Coll.	8,368	117
Outlays	8,368	117
Space Flight, Control, and Data Comm. (space flight) (26–00–0105–253–A):		
Budget Authority	3,840,400	50,966
Outlays	2,566,482	35,931
Space Flight, Control, and Data Comm. (supporting act.) (26–00–0105–255–A):		
Budget Authority	815,962	11,423
401(C) Authority	47,935	671
Outlays	430,828	6,032
Construction of facilities (Space flight) (26–00–0107–253–A):		
Budget Authority	76,042	1,065
Outlays	4,943	69
Construction of facilities (Space science, applications, etc) (26–00–0107–254–A):		
Budget Authority	11,810	165
Outlays	768	11
Construction of facilities (Supporting space activities) (26–00–0107–255–A):		
Budget Authority	142,761	1,999
Outlays	9,279	130
Construction of facilities (Air transportation) (26–00–0107–402–A):		
Budget Authority	54,390	761
Outlays	3,535	49
Research and development (Space flight) (26–00–0108–253–A):		
Budget Authority	1,630,884	22,829
401(C) Authority—		
Off. Coll.	5,781	81
Outlays	788,499	11,039
Research and development (Space science, applications, etc) (26–00–0108–254–A):		
Budget Authority	2,263,556	31,690
Outlays	1,152,150	16,130
Research and development (Supporting space activities) (26–00–0108–255–A):		
Budget Authority	19,477	273
Outlays	12,522	175
Research and development (Air transportation) (26–00–0108–402–A):		
Budget Authority	450,556	6,308
Outlays	230,189	3,223
Science, Space and Technology Education Trust Fund (26–00–8978–505–A):		
401(C) Authority	1,000	14
Outlays	1,000	14
Total, National Aeronautics and Space Administration:		
Budget Authority	11,106,577	155,491
401(C) Authority	48,935	685
401(C) Authority—		
Off. Coll.	19,149	268
Outlays	6,926,142	96,966
Office of Personnel Management		
Office of Personnel Management		
Salaries and expenses (27–00–0100–805–A):		
Budget Authority	112,254	1,572
Outlays	106,623	1,493
Government payment for annuitants, employees health benefits (27–00–0206–551–A):		
Budget Authority	3,780,169	52,922
Government payment for annuitants, employ. life insur. benefit (27–00–0500–802–A):		
Budget Authority	2,700	38
Outlays	2,100	29
Revolving fund (27–00–4571–805–A):		
401(C) Authority—		
Off. Coll.	1,167	16
Outlays	1,167	16
Civil service retirement and disability fund (27–00–8135–802–A):		
Obligation limitation	69,463	972
Outlays	69,463	972
Employees life insurance fund (27–00–8424–802–A):		
Obligation limitation	772	11
Outlays	772	11
Employees health benefits fund (27–00–8440–551–A):		
Obligation limitation	10,850	149
Outlays	10,850	149
Retired employees health benefits fund (27–00–8445–551–A):		
Obligation limitation	130	2
Outlays	130	2
Total, Office of Personnel Management:		
Budget Authority	3,895,123	54,532
401(C) Authority—		
Off. Coll.	1,167	16
Obligation limitation	81,015	1,134
Outlays	190,905	2,672
Small Business Administration		
Small Business Administration		
Salaries and expenses (28–00–0100–376–A):		
Budget Authority	337,829	4,730
Outlays	304,048	4,257
Disaster loan fund (28–00–4153–453–A):		
Direct Loan		
Limitation	250,000	3,800
Business loan and investment fund (28–00–4154–376–A):		
Budget Authority	84,952	1,189
Direct Loan		
Limitation	84,952	1,189
Guaranteed Loan		
Limitation	3,925,000	54,950
Outlays	33,950	476
Surety bond guarantees revolving fund (28–00–4156–376–A):		
Guaranteed Loan		
Limitation	1,295,000	18,130
Total, Small Business Administration:		
Budget Authority	422,781	5,919
Direct Loan		
Limitation	334,952	4,689
Guaranteed Loan		
Limitation	5,220,000	73,080
Outlays	338,026	4,733
Other Independent Agencies		
ACTION		
Operating expenses (30–01–0103–505–A):		
Budget Authority	176,944	2,477
Outlays	107,228	1,501
Administrative Conference of the United States		
Salaries and expenses (30–05–1700–751–A):		
Budget Authority	1,935	27
Outlays	1,550	22
Advisory Commission on Intergovernmental Relations		
Salaries and expenses (30–15–0100–808–A):		
Budget Authority	1,078	15
Outlays	769	11
Advisory Committee on Federal Pay		
Salaries and expenses (30–20–1800–805–A):		
Budget Authority	212	3
Outlays	204	3

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G-R-H Sequester Amounts—Continued
(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Advisory Council on Historic Preservation		
Salaries and expenses (30–25–2300–303–A):		
Budget Authority	1,848	26
Outlays	1,863	23
American Battle Monuments Commission		
Salaries and expenses (36–30–0100–705–A):		
Budget Authority	15,681	220
Outlays	13,316	186
American Revolution Bicentennial Administration		
American Revolution Bicentennial Administration (30–35–1900–806–A):		
Budget Authority	4,837	69
Outlays	4,937	60
Appalachian Regional Commission		
Appalachian regional development programs (39–40–0200–452–A):		
Budget Authority	159,009	2,169
Outlays	12,016	168
Architectural & Transport Barriers Compliance Brd		
Salaries and expenses (30–45–3200–751–A):		
Budget Authority	1,963	27
Outlays	1,510	21
Arms Control and Disarmament Agency		
Arms control and disarmament activities (29–40–0100–153–A):		
Budget Authority	32,220	454
Outlays	27,376	386
Barry Goldwater Scholarship Foundation		
Barry Goldwater Scholarship and Excellence in Educ. Fou (85–70–8281–880–A):		
401(C) Authority	3,940	56
Outlays	1,307	18
Board for International Broadcasting		
Grants and expenses (30–85–1145–154–A):		
Budget Authority	202,948	2,829
Outlays	200,027	2,800
Israel Relay Station (30–85–1145–154–A):		
Budget Authority	34,186	479
Outlays	34,186	479
Christopher Columbus Quincentennary Jubilee Comm		
Salaries and expenses (31–30–0800–376–A):		
Budget Authority	220	3
Outlays	220	3
Gifts and donations (31–30–9356–376–A):		
401(C) Authority	29	0
Outlays	29	0
Comm for Study of Intl Migration && Coop Econ Devel		
Comm. for the Study of Int. Mig. and Coop. Econ. Dev. S (31–55–1400–153–A):		
Budget Authority	1,283	18
Outlays	869	12

G-R-H Sequester Amounts—Continued
(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Commission of Fine Arts		
Salaries and expenses (31–68–2600–451–A):		
Budget Authority	493	7
Outlays	451	6
National capital arts and cultural affairs (31–68–2602–503–A):		
Budget Authority	5,180	73
Outlays	5,180	73
Commission on Agricultural Workers		
Commission on Agricultural Workers: Salaries and expens (31–65–0057–552–A):		
Budget Authority	519	7
Outlays	467	7
Commission on Civil Rights		
Salaries and expenses (31–75–1900–751–A):		
Budget Authority	5,693	82
Outlays	5,008	70
Comm on the Bicentennial of the U.S. Constitution		
Salaries and expenses (32–15–0054–809–A):		
Budget Authority	7,204	101
Outlays	5,713	80
Committee for Purchase from the Blind and others		
Salaries and expenses (32–45–2080–505–A):		
Budget Authority	895	13
Outlays	805	11
Commodity Futures Trading Commission		
Commodity Futures Trading Commission (22–85–1400–378–A):		
Budget Authority	36,098	505
Outlays	30,750	430
Consumer Product Safety Commission		
Product safety (32–85–0100–554–A):		
Budget Authority	35,861	502
401(C) Authority—		
Off. Coll.	10	0
Outlays	30,474	427
Corporation for Public Broadcasting		
Public broadcasting fund (32–90–0151–503–A):		
401(C) Authority	282,948	3,257
Outlays	282,948	3,257
Court of Veterans Appeals		
Salaries and expenses (32–95–0009–705–A):		
Budget Authority	3,241	45
Outlays	2,754	39
Defense Nuclear Facilities Safety Board		
Salaries and expenses (33–20–0900–053–A):		
Budget Authority	7,866	105
Outlays	7,000	105
Delaware River Basin Commission		
Salaries and expenses (35–30–0100–301–A):		
Budget Authority	214	3
Outlays	200	3
Contribution to Delaware River Basin Commission (33–30–0102–301–A):		
Budget Authority	345	5
Outlays	345	5

G-R-H Sequester Amounts—Continued
(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
District of Columbia		
Federal payment to the District of Columbia (88–48–1700–905–A):		
Budget Authority	445,998	6,244
Outlays	445,998	6,244
Federal payment to the District of Columbia (93–48–1700–906–B):		
Budget Authority	33,193	465
Outlays	33,193	465
Federal payment to the District of Columbia (88–48–1700–906–C):		
Budget Authority	53,945	755
Outlays	53,945	755
Federal payment to the District of Columbia (88–48–1700–906–D):		
Budget Authority	20,720	290
Outlays	20,720	290
Federal payment to the District of Columbia (93–48–1700–906–E):		
Budget Authority	3,419	48
Outlays	3,419	48
Equal Employment Opportunity Commission		
Salaries and expenses (33–70–0100–751–A):		
Budget Authority	187,829	2,630
Outlays	165,286	2,321
Export-Import Bank of the United States		
Export/Import Bank of the United States (33–80–4067–155–A):		
Budget Authority	113,960	1,595
Obligation limitation	21,902	307
Direct Loan Limitation	720,000	10,080
Guaranteed Loan Limitation	10,567,200	147,941
Outlays	57,564	806
Farm Credit Administration		
Revolving fund for administrative expenses (84–18–4181–351–A):		
Obligation limitation	36,377	509
Outlays	36,377	509
Farm Credit Systems Financial Assistance Corp		
Farm credit assistance Fund (34–20–4133–351–A):		
401(C) Authority	635,000	8,890
Outlays	593,080	8,303
Financial assistance corporation trust fund (34–20–8292–351–A):		
401(C) Authority	80,705	1,130
Federal Communications Commission		
Salaries and expenses (34–25–0180–376–A):		
Budget Authority	103,598	1,450
Outlays	97,381	1,363
Federal Election Commission		
Salaries and expenses (34–45–1699–805–A):		
Budget Authority	15,933	223
Outlays	14,484	203
Federal Emergency Management Agency		
Salaries and expenses (Defense-related activities) (34–50–0100–054–A):		
Budget Authority	71,417	1,000
Outlays	64,276	900

G-R-H Sequester Amounts—Continued
(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Salaries and expenses (Disaster relief and insurance) (34–50–0100–453–A):		
Budget Authority	71,301	998
Outlays	64,171	898
Emergency planning and assistance (Defense-related activities) (34–50–0101–054–A):		
Budget Authority	265,479	3,717
Outlays	146,013	2,044
Emergency planning and assistance (Disaster relief & insurance) (34–50–0101–453–A):		
Budget Authority	27,126	380
Outlays	14,919	209
Emergency food and shelter (34–50–0103–805–A):		
Budget Authority	130,786	1,831
Outlays	130,786	1,831
Disaster relief (34–50–0104–453–A):		
Budget Authority	1,251,458	17,521
Outlays	41,440	580
National insurance development fund (34–50–4235–451–A):		
401(C) Authority	220	3
Outlays	220	3
Federal Labor Relations Authority		
Salaries and expenses (34–60–0100–805–A):		
Budget Authority	18,226	255
Outlays	15,190	213
Federal Maritime Commission		
Salaries and expenses (34–65–0100–403–A):		
Budget Authority	14,124	198
Outlays	12,756	179
Federal Mediation and Conciliation Service		
Salaries and expenses (34–70–0100–505–A):		
Budget Authority	26,931	377
Outlays	24,472	343
Federal Mine Safety and Health Review Commission		
Salaries and expenses (34–75–2300–554–A):		
Budget Authority	4,205	59
Outlays	3,901	55
Federal Trade Commission		
Salaries and expenses (34–85–0100–376–A):		
Budget Authority	68,869	964
Outlays	67,491	945
Franklin Delano Roosevelt Memorial Commission		
Salaries and expenses (34–90–0700–806–A):		
Budget Authority	29	0
Outlays	29	0
Harry S Truman Scholarship Foundation		
Harry S Truman memorial scholarship trust fund (35–10–8256–502–A):		
Obligation limitation	3,081	43
Outlays	3,053	43
Institute of American Indian and Alaska Native Iopment		
Salaries and expenses (36–25–2900–502–A):		
Budget Authority	3,205	45
Outlays	3,205	45

G-R-H Sequester Amounts—Continued
(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Institute of Museum Services		
Institute of Museum Services (35–30–0300–503–A):		
Budget Authority	23,074	323
Outlays	5,999	84
Intelligence Community Staff		
Intelligence community staff (35–35–0460–054–A):		
Budget Authority	24,554	368
Outlays	15,953	239
Interagency Council on the Homeless		
Interagency Council on the Homeless (35–40–1300–804–A):		
Budget Authority	1,143	16
Outlays	594	8
International Cultural and Trade Center Commission		
Intl Cultural and Trade Center Commission: Salaries and (35–50–1800–804–A):		
Budget Authority	864	12
Outlays	648	9
International Trade Commission		
Salaries and expenses (35–60–0100–153–A):		
Budget Authority	37,371	523
Outlays	33,360	467
Interstate Commerce Commission		
Salaries and expenses (35–70–0100–401–A):		
Budget Authority	44,833	628
Outlays	40,349	565
Interstate Commission on the Potomac River Basin		
Contribution to Interstate Commission on the Potomac Ri (35–80–0448–304–A):		
Budget Authority	300	4
Outlays	300	4
James Madison Memorial Fellowship Foundation		
James Madison Memorial Fellowship Trust Fund (36–10–8282–502–A):		
Obligation limitation	500	7
Outlays	500	7
Japan-United States Friendship Commission		
Japan-United States friendship trust fund (36–15–8025–154–A):		
Budget Authority	1,473	21
Outlays	1,348	19
Legal Services Corporation		
Payment to the Legal Services Corporation (36–50–0501–752–A):		
Budget Authority	319,883	4,478
Outlays	278,426	3,898
Marine Mammal Commission		
Salaries and expenses (36–70–2200–302–A):		
Budget Authority	998	14
Outlays	816	11

G-R-H Sequester Amounts—Continued
(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Merit Systems Protection Board		
Salaries and expenses (36–60–0100–805–A):		
Budget Authority	21,226	297
Outlays	19,137	268
Office of the Special Counsel (36–60–0101–805–A):		
Budget Authority	5,180	73
Outlays	4,267	60
National Archives and Records Administration		
Operating expenses (37–15–0300–804–A):		
Budget Authority	126,583	1,772
Outlays	98,481	1,379
National archives trust fund (37–15–8438–804–A):		
401(C) Authority—		
Off. Coll.	10,555	148
National Capital Planning Commission		
Salaries and expenses (37–20–2500–451–A):		
Budget Authority	3,079	43
Outlays	2,832	40
National Commission on Libraries and Info. Science		
Salaries and expenses (37–40–2700–503–A):		
Budget Authority	770	11
Outlays	616	9
White House conference on library and information servi (37–40–2701–503–A):		
Budget Authority	1,815	25
Outlays	598	8
National Commission on Migrant Education		
Nat'l Commission on Migrant Education: Salaries and Exp (37–45–0800–501–A):		
Budget Authority	2,046	29
Outlays	163	2
Nat Comm on Responsibilities for Financing PS Ed		
Nat'l Comm. on Responsibilities for Financing P.S. Educ (37–50–0400–502–A):		
Budget Authority	818	11
Outlays	772	11
National Commission to Prevent Infant Mortality		
National Commission to Prevent Infant Mortality (37–90–1500–808–A):		
Budget Authority	675	9
Outlays	544	8
National Council on Disability		
Salaries and expenses (36–05–3500–508–A):		
Budget Authority	1,204	17
Outlays	922	13
National Economic Commission, Salaries && Expenses		
National Economic Commission, Salaries and Expenses (36–20–2100–802–A):		
Budget Authority	728	10
Outlays	728	10

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G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
National Endowment for the Arts		
National Endowment for the Arts: Grants and administ (38-25-0150-503-A):		
Budget Authority	174,480	2,442
Outlays	58,907	818
National Endowment for the Humanities		
National Endowment for the Humanities: Grants and admin (38-30-0200-503-A):		
Budget Authority	158,898	2,220
Outlays	69,737	978
National Labor Relations Board		
Salaries and expenses (38-40-0150-505-A):		
Budget Authority	142,465	1,995
Outlays	133,935	1,875
National Mediation Board		
Salaries and expenses (38-45-0400-505-A):		
Budget Authority	6,729	94
Outlays	5,161	72
National Science Foundation		
Research and related activities (39-50-0100-251-A):		
Budget Authority	1,679,104	23,507
Outlays	836,065	11,706
Science and engineering education activities (39-50-0105-251-A):		
Budget Authority	177,155	2,480
Outlays	26,647	373
U.S. Antarctic program (39-50-0200-251-A):		
Budget Authority	155,718	1,960
Outlays	67,086	939
National Transportation Safety Board		
Salaries and expenses (38-60-0310-407-A):		
Budget Authority	28,361	369
Outlays	24,810	345
Navajo and Hopi Indian Relocation Commission		
Navajo and Hopi Indian Relocation Commission (38-70-1100-606-A):		
Budget Authority	28,318	396
Outlays	17,836	250
Neighborhood Reinvestment Corporation		
Payment to the Neighborhood Reinvestment Corporation (86-75-1300-451-A):		
Budget Authority	20,196	283
Outlays	20,196	283
Nuclear Regulatory Commission		
Salaries and expenses (38-85-0200-276-A):		
Budget Authority	442,199	6,188
Outlays	331,575	4,642
Office of the Inspector General (38-85-0300-276-A):		
Budget Authority	2,900	41
Outlays	2,569	36
Nuclear Waste Technical Review Board		
Nuclear Waste Technical Review Board: Salaries and Expe (38-95-0500-271-A):		
Budget Authority	2,000	28
Outlays	2,000	28
Occupational Safety and Health Review Commission		
Salaries and expenses (39-10-2100-554-A):		
Budget Authority	6,089	85
Outlays	5,598	78
Office of the Nuclear Waste Negotiator		
Office of the Nuclear Waste Negotiator: S and E (39-25-8070-271-A):		
Budget Authority	2,000	28
Outlays	2,000	28
Pennsylvania Avenue Development Corporation		
Salaries and expenses (39-50-0100-451-A):		
Budget Authority	2,465	34
Outlays	1,984	27
Public development (39-50-0102-451-A):		
Budget Authority	3,289	46
Outlays	2,467	35
Land acquisition and development fund (39-50-4084-451-A):		
401(C) Authority—		
Off. Coll.	3,000	42
Outlays	3,000	42
Payment to the Postal Service		
Payment to the Postal Service fund (39-60-1001-372-A):		
Budget Authority	452,188	6,330
Outlays	452,128	6,330
Payment to the Postal Service fund for nonfunded liabil (39-60-1004-372-A):		
Budget Authority	36,842	517
Postal Service (39-60-4020-372-A):		
Obligation limitation	1,097,124	15,360
Outlays	1,075,182	15,053
Railroad Retirement Board		
Railroad social security equivalent benefit account (40-10-8010-601-A):		
Obligation limitation	28,268	397
Outlays	28,383	397
Rail industry Pension Fund (40-10-8011-601-A):		
Obligation limitation	33,937	475
Outlays	33,937	475
Supplemental Annuity Pension Fund (40-10-8012-601-A):		
401(C) Authority	114,906	1,609
Obligation limitation	2,275	32
Outlays	58,587	819
Securities and Exchange Commission		
Salaries and expenses (40-30-0100-376-A):		
Budget Authority	148,161	3,076
Outlays	139,333	1,913
Selective Service System		
Salaries and expenses (95-45-0400-054-A):		
Budget Authority	27,316	410
Outlays	22,412	336
Smithsonian Institution		
Salaries and expenses (40-55-0100-303-A):		
Budget Authority	219,565	3,074
Outlays	194,736	2,726
Construction and improvements, National Zoological Park (40-55-0122-503-A):		
Budget Authority	5,498	77
Outlays	2,473	35
Repair and restoration of buildings (40-55-0132-503-A):		
Budget Authority	21,481	301
Outlays	8,582	120
Construction (40-55-0133-503-A):		
Budget Authority	8,967	126
Outlays	3,567	50
Salaries and expenses, National Gallery of Art (40-55-0200-503-A):		
Budget Authority	39,474	553
Outlays	34,985	490
Repair, restoration and renovation of buildings (40-55-0201-503-A):		
Budget Authority	776	11
Outlays	482	6
Salaries and expenses, Woodrow Wilson International Cen (40-55-0400-503-A):		
Budget Authority	4,401	62
Outlays	2,725	38
Payment to the endowment challenge fund (40-55-0401-503-A):		
Budget Authority	311	4
Outlays	156	2
Endowment challenge fund (40-55-8189-503-A):		
401(C) Authority	270	4
Outlays	270	4
Canal Zone biological area fund (40-55-8199-999-A):		
401(C) Authority	150	2
Outlays	150	2
State Justice Institute		
State Justice Institute (40-65-0052-752-A):		
Budget Authority	11,378	159
Outlays	3,607	50
Susquehanna River Basin Commission		
Salaries and expenses (40-70-0500-301-A):		
Budget Authority	200	3
Outlays	188	3
Contribution to Susquehanna River Basin Commission (40-70-0501-304-A):		
Budget Authority	276	4
Outlays	276	4
Tennessee Valley Authority		
TVA fund (Energy supply) (40-80-4110-271-A):		
401(C) Authority—		
Off. Coll.	73,080	1,029
Outlays	73,500	1,029
TVA fund (Area and regional development) (40-80-4110-462-A):		
Budget Authority	121,000	1,694
Obligation limitation	1,500	21
Outlays	29,767	417
United States Holocaust Memorial Council		
Holocaust Memorial Council (41-05-3300-999-A):		
Budget Authority	2,330	33
Outlays	1,849	26
United States Information Agency		
Salaries and expenses (41-10-0291-154-A):		
Budget Authority	644,127	9,018
Outlays	523,079	7,323

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
East West Center (41-10-0202-154-A):		
Budget Authority	20,720	290
Outlays	20,720	290
Radio construction (41-10-0204-154-A):		
Budget Authority	67,340	943
Outlays	37,859	530
Radio broadcasting to Cuba (41-10-0206-154-A):		
Budget Authority	11,613	163
Outlays	9,056	127
Educational and cultural exchange program (41-10-0208-154-A):		
Budget Authority	155,441	2,176
Outlays	79,276	1,110
National Endowment for Democracy (41-10-0210-154-A):		
Budget Authority	16,360	229
Outlays	7,693	108
United States Institute of Peace		
United States Institute of Peace (41-15-1300-153-A):		
Budget Authority	7,174	100
Outlays	7,174	100
United States Sentencing Commission		
Salaries and expenses (41-30-0038-752-A):		
Budget Authority	5,363	75
Outlays	4,977	70
Total, Other Independent Agencies:		
Budget Authority	9,316,134	130,484
401(C) Authority	1,067,770	14,949
401(C) Authority—		
Off. Coll.	87,065	1,219
Obligation limitation	1,224,359	17,141
Direct Loan Limitation	720,020	10,080
Guaranteed Loan Limitation	10,567,209	147,941
Outlays	7,807,993	109,356
Total Government:		
Budget Authority	472,602,969	6,925,967
Budget Authority—ASI	60,792	21,642
Budget Authority—Spec. Rules	286,079	184,757
401(C) Authority	36,780,561	514,924
401(C) Authority—Off. Coll.	3,519,880	49,279
401(C) Authority—Spec. Rules	1,526,998	1,068,878
Obligation limitation	26,865,012	376,110
Direct Loan Limitation	20,860,344	291,905
Direct Loan Floor	2,053,158	28,744
Guaranteed Loan Limitation	269,146,813	3,768,053
Unobligated Balances—Defense	39,199,189	687,989
Outlays	308,585,076	5,722,867

[FR Doc. 89-30341 Filed 12-27-89; 1:59 pm]
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Part V

The President

New Final Order of December 27, 1989—Emergency Deficit Control Measures for Fiscal Year 1990

Presidential Documents

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Presidential Documents

New Final Order of December 27, 1989

Emergency Deficit Control Measures for Fiscal Year 1990

By the authority vested in me as President by the statutes of the United States of America, including section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99–177), as amended by the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (Public Law 100–119) (hereafter referred to as "the Act"), and section 11002 of the Omnibus Reconciliation Act of 1989 (Public Law 101–239) ("OBRA"), I hereby order that the following actions be taken to implement the sequestrations and reductions determined by the Director of the Office of Management and Budget as set forth in his report dated December 27, 1989, under section 251 of the Act and section 11002 of the OBRA:

(1) Each automatic spending increase that would, but for the provisions of the Act, take effect during fiscal year 1990 is permanently sequestered or reduced as provided in section 252 of the Act and section 11002 of OBRA.

(2) The following are sequestered as provided in section 252 of the Act and section 11002 of OBRA: new budget authority; unobligated balances; new loan guarantee commitments or limitations; new direct loan obligations, commitments, or limitations; spending authority as defined in section 401(c)(2) of the Congressional Budget Act of 1974, as amended; and obligation limitations.

(3) For accounts making payments otherwise required by substantive law, the head of each department or agency is directed to modify the calculation of each such payment to the extent necessary to reduce the estimate of total required payments for the fiscal year by the amount specified by the Director of the Office of Management and Budget in his report of December 27, 1989.

(4) For accounts making commitments for guaranteed loans or obligations for direct loans as authorized by substantive law, the head of each department or agency is directed to reduce the level of such commitments or obligations to the extent necessary to conform to the limitations established by the Act and by OBRA and specified by the Director of the Office of Management and Budget in his report of December 27, 1989.

All reductions and sequestrations shall be made in strict accordance with the specifications of the December 27th report of the Director of the Office of Management and Budget and the requirements of section 252(b) of the Act and section 11002 of OBRA.

This order shall be deemed to have become effective on October 16, 1989, as provided in section 11002 of OBRA.

This order shall be published **Federal Register**.

THE WHITE HOUSE,
December 27, 1989.

[FR Doc. 89-30383
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Part VI

The President

Executive Order 12698—Adjustments of Certain Rates of Pay and Allowances

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Presidential Documents

Executive Order 12698 of December 23, 1989

Adjustments of Certain Rates of Pay and Allowances

By the authority vested in me as President by the Constitution and laws of the United States of America, including section 619 of Public Law 101–136, section 601 of Public Law 101–189, sections 702 and 1101 of Public Law 101–194, and section 11002(a)(3) of Public Law 101–239, it is hereby ordered as follows:

Section 1. *Statutory Pay Systems.* The rates of basic pay or salaries of the following statutory pay systems are set forth on the schedules attached hereto and made a part hereof:

(a) The General Schedule (5 U.S.C. 5332(a)) at Schedules 1–A and 1–B;

(b) The Foreign Service Schedule (22 U.S.C. 3963) at Schedule 2; and

(c) The schedules for the Veterans Health Services and Research Administration of the Department of Veterans Affairs (38 U.S.C. 4107) at Schedules 3–A and 3–B.

Sec. 2. *Senior Executive Service.* Pursuant to section 5382 of title 5, United States Code, the rates of basic pay for members of the Senior Executive Service are set forth on Schedule 4 attached hereto and made a part hereof.

Sec. 3. *Executive Salaries.* The rates of pay or salaries for the following offices and positions are set forth on the schedules attached hereto and made a part hereof:

(a) The Executive Schedule (5 U.S.C. 5312–5318) at Schedules 5–A and 5–B;

(b) The Vice President (3 U.S.C. 104) and Congress (2 U.S.C. 31) at Schedules 6–A and 6–B; and

(c) Justices and judges (28 U.S.C. 5, 44(d), 135, and 252) at Schedules 7–A and 7–B.

Sec. 4. *Uniformed Services.* Pursuant to section 601 of Public Law 101–189, the rates of monthly basic pay (37 U.S.C. 203(a)), the rates of basic allowances for subsistence (37 U.S.C. 402), and the rates of basic allowances for quarters (37 U.S.C. 403(a)) for members of the uniformed services are set forth at Schedules 8–A and 8–B attached hereto and made a part hereof.

Sec. 5. *Effective Dates.* (a) The rates of monthly basic pay and allowances for subsistence and quarters for members of the uniformed services provided for at Schedule 8–A are effective on January 1, 1990. The rates of basic pay or salaries provided for at Schedules 1–A, 2, 3–A, 4, 5–A, 6–A, and 7–A are effective on the first day of the first applicable pay period beginning on or after January 1, 1990.

(b) Pursuant to sections 702 and 1101 of Public Law 101–194 and section 11002(a)(3) of Public Law 101–239, the rates of monthly basic pay and allowances for subsistence and quarters for members of the uniformed services provided for at Schedule 8–B shall supersede the rates provided for at Schedule 8–A on February 1, 1990, and the rates of basic pay or salaries provided for at Schedules 1–B, 3–B, 5–B, 6–B, and 7–B shall supersede the rates of basic pay or salaries provided for at Schedules 1–A, 3–A, 5–A, 6–A, and 7–A, respectively, effective on the first day of the first applicable pay period beginning on or after January 31, 1990.

Sec. 6. Executive Order No. 12668 of January 6, 1989, is superseded.

Sec. 6. Executive Order No. 12668 of January 6, 1989, is superseded.

George Bush

THE WHITE HOUSE,
December 23, 1989.

Billing code 3195-01-M

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SCHEDULE 1-A--GENERAL SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 1990)

	1	2	3	4	5	6	7	8	9	10
GS-1	$10,581	$10,935	$11,286	$11,637	$11,990	$12,197	$12,544	$12,893	$12,910	$13,232
2	11,897	12,180	12,574	12,910	13,053	13,437	13,821	14,205	14,589	14,973
3	12,982	13,415	13,848	14,281	14,714	15,147	15,580	16,013	16,446	16,879
4	14,573	15,059	15,545	16,031	16,517	17,003	17,489	17,975	18,461	18,947
5	16,305	16,849	17,393	17,937	18,481	19,025	19,569	20,113	20,657	21,201
6	18,174	18,780	19,386	19,992	20,598	21,204	21,810	22,416	23,022	23,628
7	20,195	20,868	21,541	22,214	22,887	23,560	24,233	24,906	25,579	26,252
8	22,367	23,113	23,859	24,605	25,351	26,097	26,843	27,589	28,335	29,081
9	24,705	25,529	26,353	27,177	28,001	28,825	29,649	30,473	31,297	32,121
10	27,206	28,113	29,020	29,927	30,834	31,741	32,648	33,555	34,462	35,369
11	29,691	30,887	31,883	32,879	33,875	34,871	35,867	36,863	37,859	38,855
12	35,825	37,019	38,213	39,407	40,601	41,795	42,989	44,183	45,377	46,571
13	42,601	44,021	45,441	46,861	48,281	49,701	51,121	52,541	53,961	55,381
14	50,342	52,020	53,698	55,376	57,054	58,732	60,410	62,088	63,766	65,444
15	59,216	61,190	63,164	65,138	67,112	69,086	71,060	73,034	75,008	76,982
16	69,451	71,766	74,081	76,396	78,190	79,438*	81,708*	83,978*	85,470*	
17	79,762*	82,420*	85,078*	85,470*	85,500*					
18	86,682*									

* The rate of basic pay payable to employees at these rates is limited to the rate for level V of the Executive Schedule, which is $78,200.

SCHEDULE 1-B--GENERAL SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 31, 1990)

	1	2	3	4	5	6	7	8	9	10
GS-1	$10,581	$10,935	$11,286	$11,637	$11,990	$12,197	$12,544	$12,893	$12,910	$13,232
2	11,897	12,180	12,574	12,910	13,053	13,437	13,821	14,205	14,589	14,973
3	12,982	13,415	13,848	14,281	14,714	15,147	15,580	16,013	16,446	16,879
4	14,573	15,059	15,545	16,031	16,517	17,003	17,489	17,975	18,461	18,947
5	16,305	16,849	17,393	17,937	18,481	19,025	19,569	20,113	20,657	21,201
6	18,174	18,780	19,386	19,992	20,598	21,204	21,810	22,416	23,022	23,628
7	20,195	20,868	21,541	22,214	22,887	23,560	24,233	24,906	25,579	26,252
8	22,367	23,113	23,859	24,605	25,351	26,097	26,843	27,589	28,335	29,081
9	24,705	25,529	26,353	27,177	28,001	28,825	29,649	30,473	31,297	32,121
10	27,206	28,113	29,020	29,927	30,834	31,741	32,648	33,555	34,462	35,369
11	29,891	30,887	31,883	32,879	33,875	34,871	35,867	36,863	37,859	38,855
12	35,825	37,019	38,213	39,407	40,601	41,795	42,989	44,183	45,377	46,571
13	42,601	44,021	45,441	46,861	48,281	49,701	51,121	52,541	53,961	55,381
14	50,342	52,020	53,698	55,376	57,054	58,732	60,410	62,088	63,766	65,444
15	59,216	61,190	63,164	65,138	67,112	69,086	71,060	73,034	75,008	76,982
16	69,451	71,766	74,081	76,396	78,190	79,440*	81,710*	83,981*	86,251*	
17	79,762*	82,421*	85,080*	87,739*	90,398*					
18	93,484*									

* The rate of basic pay payable to employees at these rates is limited to the rate for level V of the Executive Schedule, which is $78,200.

SCHEDULE 2--FOREIGN SERVICE SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 1990)

Step	Class 1	Class 2	Class 3	Class 4	Class 5	Class 6	Class 7	Class 8	Class 9
1	$59,216	$47,983	$38,881	$31,505	$25,529	$22,822	$20,402	$18,239	$16,305
2	60,992	49,422	40,047	32,450	26,295	23,507	21,014	18,786	16,794
3	62,822	50,905	41,249	33,424	27,084	24,212	21,644	19,350	17,298
4	64,707	52,432	42,486	34,426	27,896	24,938	22,294	19,930	17,817
5	66,648	54,005	43,761	35,459	28,733	25,686	22,963	20,528	18,351
6	68,648	55,625	45,074	36,523	29,595	26,457	23,652	21,144	18,902
7	70,707	57,294	46,426	37,619	30,483	27,251	24,361	21,778	19,469
8	72,828	59,013	47,819	38,747	31,397	28,068	25,092	22,432	20,053
9	75,013	60,783	49,253	39,910	32,339	28,910	25,845	23,105	20,655
10	76,982	62,607	50,731	41,107	33,310	29,778	26,620	23,798	21,274
11	76,982	64,485	52,253	42,340	34,309	30,671	27,419	24,512	21,913
12	76,982	66,420	53,820	43,610	35,338	31,591	28,241	25,247	22,570
13	76,982	68,412	55,435	44,919	36,398	32,539	29,088	26,004	23,247
14	76,982	70,465	57,098	46,266	37,490	33,515	29,961	26,785	23,944

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SCHEDULE 3-A—VETERANS HEALTH SERVICES AND RESEARCH ADMINISTRATION SCHEDULES DEPARTMENT OF VETERANS AFFAIRS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 1990)

Section 4103 Schedule

	1	2	3	4	5	6	7	8	9
Deputy Chief Medical Director	$93,248**								
Associate Deputy Chief Medical Director	89,314*								
Assistant Chief Medical Director	86,682*								
Medical Director	79,762*	$80,718*	$81,675*	$82,631*	$83,587*	$84,544*	$85,500*		
Director of Nursing Service	79,762*	80,718*	81,675*	82,631*	83,587*	84,544*	85,500*		
Director of Podiatric Service	69,451	71,766	74,081	76,396	78,190	79,438*	81,708*	$83,978*	$85,470*
Director of Chaplain Service	69,451	71,766	74,081	76,396	78,190	79,438*	81,708*	83,978*	85,470*
Director of Pharmacy Service	69,451	71,766	74,081	76,396	78,190	79,438*	81,708*	83,978*	85,470*
Director of Dietetic Service	69,451	71,766	74,081	76,396	78,190	79,438*	81,708*	83,978*	85,470*
Director of Optometric Service	69,451	71,766	74,081	76,396	78,190	79,438*	81,708*	83,978*	85,470*

** The rate of basic pay payable to this employee is limited to the rate for level IV of the Executive Schedule, which is $83,600.

* The rate of basic pay payable to employees at these rates is limited to the rate for level V of the Executive Schedule, which is $78,200.

SCHEDULE 3-A (Continued)

Physician and Dentist Schedule

	1	2	3	4	5	6	7	8	9	10
Director Grade	$69,451	$71,766	$74,081	$76,396	$78,190	$79,438*	$81,708*	$83,978*	$85,470*	
Executive Grade	64,129	66,267	68,405	70,543	72,681	74,819	76,957	78,190	79,635*	$81,731*
Chief Grade	59,216	61,190	63,164	65,138	67,112	69,086	71,060	73,034	75,008	76,982
Senior Grade	50,342	52,020	53,698	55,376	57,054	58,732	60,410	62,088	63,766	65,444
Intermediate Grade	42,601	44,021	45,441	46,861	48,281	49,701	51,121	52,541	53,961	55,381
Full Grade	35,825	37,019	38,213	39,407	40,601	41,795	42,989	44,183	45,377	46,571
Associate Grade	29,891	30,887	31,883	32,879	33,875	34,871	35,867	36,863	37,859	38,855

Clinical Podiatrist and Optometrist Schedule

	1	2	3	4	5	6	7	8	9	10
Chief Grade	$59,216	$61,190	$63,164	$65,138	$67,112	$69,086	$71,060	$73,034	$75,008	$76,982
Senior Grade	50,342	52,020	53,698	55,376	57,054	58,732	60,410	62,088	63,766	65,444
Intermediate Grade	42,601	44,021	45,441	46,861	48,281	49,701	51,121	52,541	53,961	55,381
Full Grade	35,825	37,019	38,213	39,407	40,601	41,795	42,989	44,183	45,377	46,571
Associate Grade	29,891	30,887	31,883	32,879	33,875	34,871	35,867	36,863	37,859	38,855

Nurse Schedule

	1	2	3	4	5	6	7	8	9	10
Director Grade	$59,216	$61,190	$63,164	$65,138	$67,112	$69,086	$71,060	$73,034	$75,008	$76,982
Assistant Director Grade	50,342	52,020	53,698	55,376	57,054	58,732	60,410	62,088	63,766	65,444
Chief Grade	42,601	44,021	45,441	46,861	48,281	49,701	51,121	52,541	53,961	55,381
Senior Grade	35,825	37,019	38,213	39,407	40,601	41,795	42,989	44,183	45,377	46,571
Intermediate Grade	29,891	30,887	31,883	32,879	33,875	34,871	35,867	36,863	37,859	38,855
Full Grade	24,705	25,529	26,353	27,177	28,001	28,825	29,649	30,473	31,297	32,121
Associate Grade	21,259	21,960	22,677	23,386	24,095	24,804	25,513	26,222	26,931	27,640
Junior Grade	18,174	18,780	19,386	19,992	20,598	21,204	21,810	22,416	23,022	23,628

* The rate of basic pay payable to employees at these rates is limited to the rate for level V of the Executive Schedule, which is $78,200.

SCHEDULE 3-B—VETERANS HEALTH SERVICES AND RESEARCH ADMINISTRATION SCHEDULES DEPARTMENT OF VETERANS AFFAIRS

(Effective on the first day of the first applicable pay period beginning on or after January 31, 1990)

Section 4103 Schedule

	1	2	3	4	5	6	7	8	9
Deputy Chief Medical Director	$100,566**								
Associate Deputy Chief Medical Director	96,323*								
Assistant Chief Medical Director	93,484*								
Medical Director	79,762*	$81,535*	$83,307*	$85,080*	$86,853*	$88,625*	$90,398*		
Director of Nursing Service	79,762*	81,535*	83,307*	85,080*	86,853*	88,625*	90,398*		
Director of Podiatric Service	69,451	71,766	74,081	76,396	78,190	79,440*	81,710*	$83,981*	$86,251*
Director of Chaplain Service	69,451	71,766	74,081	76,396	78,190	79,440*	81,710*	83,981*	86,251*
Director of Pharmacy Service	69,451	71,766	74,081	76,396	78,190	79,440*	81,710*	83,981*	86,251*
Director of Dietetic Service	69,451	71,766	74,081	76,396	78,190	79,440*	81,710*	83,981*	86,251*
Director of Optometric Service	69,451	71,766	74,081	76,396	78,190	79,440*	81,710*	83,981*	86,251*

** The rate of basic pay payable to this employee is limited to the rate for level IV of the Executive Schedule, which is $83,600.

* The rate of basic pay payable to employees at these rates is limited to the rate for level V of the Executive Schedule, which is $78,200.

SCHEDULE 3-B (Continued)

Physician and Dentist Schedule

	1	2	3	4	5	6	7	8	9	10
Director Grade	$69,451	$71,766	$74,081	$76,396	$78,190	$79,440*	$81,710*	$83,981*	$86,251*	
Executive Grade	64,129	66,267	68,405	70,543	72,681	74,819	76,957	78,190	79,635*	$81,731*
Chief Grade	59,216	61,190	63,164	65,138	67,112	69,086	71,060	73,034	75,008	76,982
Senior Grade	50,342	52,020	53,698	55,376	57,054	58,732	60,410	62,088	63,766	65,444
Intermediate Grade	42,601	44,021	45,441	46,861	48,281	49,701	51,121	52,541	53,961	55,381
Full Grade	35,825	37,019	38,213	39,407	40,601	41,795	42,989	44,183	45,377	46,571
Associate Grade	29,891	30,887	31,883	32,879	33,875	34,871	35,867	36,863	37,859	38,855

Clinical Podiatrist and Optometrist Schedule

	1	2	3	4	5	6	7	8	9	10
Chief Grade	$59,216	$61,190	$63,164	$65,138	$67,112	$69,086	$71,060	$73,034	$75,008	$76,982
Senior Grade	50,342	52,020	53,698	55,376	57,054	58,732	60,410	62,088	63,766	65,444
Intermediate Grade	42,601	44,021	45,441	46,861	48,281	49,701	51,121	52,541	53,961	55,381
Full Grade	35,825	37,019	38,213	39,407	40,601	41,795	42,989	44,183	45,377	46,571
Associate Grade	29,891	30,887	31,883	32,879	33,875	34,871	35,867	36,863	37,859	38,855

Nurse Schedule

	1	2	3	4	5	6	7	8	9	10
Director Grade	$59,216	$61,190	$63,164	$65,138	$67,112	$69,086	$71,060	$73,034	$75,008	$76,982
Assistant Director Grade	50,342	52,020	53,698	55,376	57,054	58,732	60,410	62,088	63,766	65,444
Chief Grade	42,601	44,021	45,441	46,861	48,281	49,701	51,121	52,541	53,961	55,381
Senior Grade	35,825	37,019	38,213	39,407	40,601	41,795	42,989	44,183	45,377	46,571
Intermediate Grade	29,891	30,887	31,883	32,879	33,875	34,871	35,867	36,863	37,859	38,855
Full Grade	24,705	25,529	26,353	27,177	28,001	28,825	29,649	30,473	31,297	32,121
Associate Grade	21,259	21,968	22,677	23,386	24,095	24,804	25,513	26,222	26,931	27,640
Junior Grade	18,174	18,780	19,386	19,992	20,598	21,204	21,810	22,416	23,022	23,628

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* The rate of basic pay payable to employees at these rates is limited to the rate for level V of the Executive Schedule, which is $78,200.

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SCHEDULE 4--SENIOR EXECUTIVE SERVICE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 1990)

ES-1	$71,200
ES-2	74,400
ES-3	77,600
ES-4	79,200
ES-5	81,400
ES-6	83,600

SCHEDULE 5-A--EXECUTIVE SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 1990)

level I	$99,500
level II	89,500
level III	85,500
level IV	83,600
level V	78,200

SCHEDULE 5-B--EXECUTIVE SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 31, 1990)

level I	$107,300
level II	96,600
level III	89,000
level IV	83,600
level V	78,200

SCHEDULE 6-A--VICE PRESIDENT AND MEMBERS OF CONGRESS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 1990)

Vice President	$115,000
Senators	89,500
Members of the House of Representatives	89,500
Delegates to the House of Representatives	89,500
Resident Commissioner from Puerto Rico	89,500
President pro tempore of the Senate	99,500
Majority leader and minority leader of the Senate	99,500
Majority leader and minority leader of the House of Representatives	99,500
Speaker of the House of Representatives	115,000

SCHEDULE 6-B--VICE PRESIDENT AND MEMBERS OF CONGRESS

(Effective on the first day of the first applicable pay period beginning on or after January 31, 1990)

Vice President	$124,000
Senators	98,400
Members of the House of Representatives	96,600
Delegates to the House of Representatives	96,600
Resident Commissioner from Puerto Rico	96,600
President pro tempore of the Senate	109,500
Majority leader and minority leader of the Senate	109,500
Majority leader and minority leader of the House of Representatives	107,300
Speaker of the House of Representatives	124,000

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SCHEDULE 7-A--JUDICIAL SALARIES

(Effective on the first day of the first applicable pay period beginning on or after January 1, 1990)

Chief Justice of the United States	$115,000
Associate Justices of the Supreme Court	110,000
Circuit Judges	95,000
District Judges	89,500
Judges of the Court of International Trade	89,500
Judges of the United States Claims Court	89,500

SCHEDULE 7-B--JUDICIAL SALARIES

(Effective on the first day of the first applicable pay period beginning on or after January 31, 1990)

Chief Justice of the United States	$124,000
Associate Justices of the Supreme Court	118,600
Circuit Judges	102,500
District Judges	96,600
Judges of the Court of International Trade	96,600
Judges of the United States Claims Court	96,600

SCHEDULE 8-A—PAY AND ALLOWANCES OF THE UNIFORMED SERVICES

(Effective on January 1, 1990)

PART I—MONTHLY BASIC PAY

YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

PAY GRADE	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18	Over 20	Over 22	Over 26
COMMISSIONED OFFICERS														
O-10**	$5916.30	$6124.50	$6124.50	$6124.50	$6124.50	$6359.40	$6359.40	$6711.90*	$6711.90*	$7122.60*	$7122.60*	$7125.00*	$7125.00*	$7558.50*
O-9	5243.40	5380.80	5495.40	5495.40	5495.40	5635.20	5635.20	5869.80	5869.80	6359.40	6359.40	6711.90*	6711.90*	7122.60*
O-8	4749.30	4891.50	5007.60	5007.60	5007.60	5380.80	5380.80	5635.20	5635.20	5869.80	6124.50	6359.40	6516.00	6516.00
O-7	3946.20	4214.40	4214.40	4214.40	4403.40	4403.40	4658.70	4658.70	4891.50	5380.80	5751.00	5751.00	5751.00	5751.00
O-6	2925.00	3213.60	3424.20	3424.20	3424.20	3424.20	3424.20	3424.20	3540.30	4100.10	4309.50	4403.40	4658.70	5052.60
O-5	2339.10	2746.80	2936.70	2936.70	2936.70	2936.70	3025.50	3188.10	3402.00	3656.70	3866.40	3983.40	4122.60	4122.60
O-4	1971.90	2401.20	2561.40	2561.40	2608.80	2724.00	2909.70	3073.20	3213.60	3354.60	3447.30	3447.30	3447.30	3447.30
O-3***	1832.40	2048.70	2190.30	2423.40	2539.20	2630.40	2772.60	2909.70	2981.40	2981.40	2981.40	2981.40	2981.40	2981.40
O-2***	1597.80	1745.10	2096.40	2166.90	2212.20	2212.20	2212.20	2212.20	2212.20	2212.20	2212.20	2212.20	2212.20	2212.20
O-1***	1387.20	1444.20	1745.10	1745.10	1745.10	1745.10	1745.10	1745.10	1745.10	1745.10	1745.10	1745.10	1745.10	1745.10
COMMISSIONED OFFICERS WITH OVER 4 YEARS' ACTIVE DUTY AS AN ENLISTED MEMBER OR WARRANT OFFICER														
O-3	-	-	-	$2423.40	$2539.20	$2630.40	$2772.60	$2909.70	$3025.50	$3025.50	$3025.50	$3025.50	$3025.50	$3025.50
O-2	-	-	-	2166.90	2212.20	2282.10	2401.20	2493.00	2561.40	2561.40	2561.40	2561.40	2561.40	2561.40
O-1	-	-	-	1745.10	1864.20	1932.90	2002.80	2072.70	2166.90	2166.90	2166.90	2166.90	2166.90	2166.90

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* Basic pay is limited to the rate of basic pay for level V of the Executive Schedule, which is $6,516.60 per month.

** While serving as Chairman or Vice Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, or Commandant of the Coast Guard, basic pay for this grade is $8,340.00, regardless of cumulative years of service computed under section 205 of title 37, United States Code.

*** Does not apply to commissioned officers who have been credited with over 4 years' active service as an enlisted member or warrant officer.

SCHEDULE 8-A—PAY AND ALLOWANCES OF THE UNIFORMED SERVICES (PAGE 2)

YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

PAY GRADE	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18	Over 20	Over 22	Over 26
WARRANT OFFICERS														
W-4	$1866.90	$2002.80	$2002.80	$2048.70	$2141.70	$2236.20	$2330.10	$2493.00	$2608.80	$2700.30	$2772.60	$2862.30	$2958.00	$3188.10
W-3	1696.80	1840.50	1840.50	1864.20	1885.80	2023.80	2141.70	2212.20	2282.10	2350.20	2423.40	2517.60	2608.80	2700.30
W-2	1485.90	1607.70	1607.70	1654.80	1745.10	1840.50	1910.40	1980.30	2048.70	2120.70	2190.30	2259.30	2350.20	2350.20
W-1	1238.10	1419.60	1419.60	1538.10	1607.70	1677.00	1745.10	1817.10	1885.80	1956.30	2023.80	2096.40	2096.40	2096.40
ENLISTED MEMBERS														
E-9*	-	-	-	-	-	-	$2171.70	$2220.60	$2271.00	$2322.90	$2374.80	$2421.00	$2540.20	$2796.00
E-8	-	-	-	-	-	$1821.30	1873.20	1922.70	1972.50	2024.70	2071.20	2122.20	2246.70	2496.90
E-7	$1271.40	$1372.50	$1423.50	$1473.30	$1523.40	1572.00	1622.40	1673.80	1748.70	1798.20	1848.30	1872.30	1998.00	2246.70
E-6	1094.10	1192.20	1242.00	1294.80	1343.10	1391.70	1443.00	1517.40	1564.80	1615.50	1640.10	1640.10	1640.10	1640.10
E-5	960.00	1044.90	1095.60	1143.30	1218.30	1268.10	1318.50	1366.80	1391.70	1391.70	1391.70	1391.70	1391.70	1391.70
E-4	895.50	945.60	1001.10	1078.80	1121.40	1121.40	1121.40	1121.40	1121.40	1121.40	1121.40	1121.40	1121.40	1121.40
E-3	843.60	869.80	925.50	962.10	962.10	962.10	962.10	962.10	962.10	962.10	962.10	962.10	962.10	962.10
E-2	811.80	811.80	811.80	811.80	811.80	811.80	811.80	811.80	811.80	811.80	811.80	811.80	811.80	811.80
E-1**	724.20	724.20	724.20	724.20	724.20	724.20	724.20	724.20	724.20	724.20	724.20	724.20	724.20	724.20
E-1***	669.60	-	-	-	-	-	-	-	-	-	-	-	-	-

* While serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy or Coast Guard, Chief Master Sergeant of the Air Force, or Sergeant Major of the Marine Corps, basic pay for this grade is $3,398.70, regardless of cumulative years of service computed under section 205 of title 37, United States Code.

** Applies to personnel who have served 4 months or more on active duty.

*** Applies to personnel who have served less than 4 months on active duty.

SCHEDULE 8-A--PAY AND ALLOWANCES OF THE UNIFORMED SERVICES (PAGE 3)

PART II--BASIC ALLOWANCE FOR QUARTERS RATES

PAY GRADE	Without dependents		With dependents
	Full rate*	Partial rate**	
COMMISSIONED OFFICERS			
O-10	$635.40	$50.70	$781.80
O-9	635.40	50.70	781.80
O-8	635.40	50.70	781.80
O-7	635.40	50.70	781.80
O-6	582.90	39.60	704.40
O-5	561.30	33.00	678.60
O-4	520.20	26.70	598.50
O-3	417.00	22.20	495.30
O-2	330.90	17.70	422.70
O-1	278.40	13.20	377.70
COMMISSIONED OFFICERS WITH OVER 4 YEARS' ACTIVE DUTY AS AN ENLISTED MEMBER OR WARRANT OFFICER			
O-3	$450.00	$22.20	$531.90
O-2	382.80	17.70	480.00
O-1	329.10	13.20	443.40
WARRANT OFFICERS			
W-4	$469.50	$25.20	$529.50
W-3	394.50	20.70	485.40
W-2	350.10	15.90	446.40
W-1	293.40	13.80	386.10
ENLISTED MEMBERS			
E-9	$385.50	$18.60	$508.20
E-8	354.30	15.30	468.30
E-7	302.40	12.00	435.30
E-6	273.60	9.90	402.00
E-5	252.30	8.70	361.50
E-4	219.60	8.10	314.40
E-3	215.70	7.80	292.50
E-2	175.20	7.20	278.40
E-1	155.70	6.90	278.40

* Payment of the full rate of basic allowance for quarters at these rates to members of the uniformed services without dependents is authorized by title 37, United States Code, and Part IV of Executive Order 11157, as amended.

** Payment of the partial rate of basic allowance for quarters at these rates to members of the uniformed services without dependents who, under 37 U.S.C. 403(b) or 403(c), are not entitled to the full rate of basic allowance for quarters, is authorized by 37 U.S.C. 1009(c)(2) and Part IV of Executive Order 11157, as amended.

SCHEDULE 8-A--PAY AND ALLOWANCES OF THE UNIFORMED SERVICES (PAGE 4)

PART III--BASIC ALLOWANCE FOR SUBSISTENCE RATES

Officers (per month)	$123.92

Enlisted Members (per day):

	E-1 (less than 4 months' active duty)	All Other Enlisted
When on leave or authorized to mess separately	$5.46	$5.91
When rations in-kind are not available	6.16	6.67
When assigned to duty under emergency conditions where no messing facilities of the United States are available	8.17	8.84

Part IV--RATE OF MONTHLY CADET OR MIDSHIPMAN PAY

The rate of monthly cadet or midshipman pay authorized by section 203(c)(1) of title 37, United States Code, is $543.90.

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SCHEDULE B-6—PAY AND ALLOWANCES OF THE UNIFORMED SERVICES

Effective on February 1, 1990

PART I—MONTHLY BASIC PAY

YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

PAY GRADE	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18	Over 20	Over 22	Over 26
						COMMISSIONED OFFICERS								
O-10**	$5916.30	$6124.50	$6124.50	$6124.50	$6124.50	$6359.40	$6359.40	$6711.90*	$6711.90*	$7191.90*	$7191.90*	$7673.40*	$7673.40*	$8151.60*
O-9	5243.40	5380.80	5495.40	5495.40	5495.40	5635.20	5635.20	5869.80	5869.80	6359.40	6359.40	6711.90*	6711.90*	7191.99*
O-8	4749.30	4891.50	5007.60	5007.60	5007.60	5380.80	5380.80	5635.20	5635.20	5869.80	6124.50	6359.40	6516.00	6516.00
O-7	3946.20	4214.40	4214.40	4214.40	4403.40	4403.40	4658.70	4658.70	4891.50	5380.80	5751.00	5751.00	5751.00	5751.00
O-6	2925.00	3213.60	3424.20	3424.20	3424.20	3424.20	3424.20	3424.20	3540.30	4100.10	4309.50	4403.40	4658.70	5052.60
O-5	2339.10	2746.80	2936.70	2936.70	2936.70	2936.70	3025.50	3188.10	3402.00	3656.70	3866.40	3983.40	4122.60	4122.60
O-4	1971.90	2401.20	2561.40	2561.40	2608.80	2724.30	2909.70	3073.20	3213.60	3354.60	3447.30	3447.30	3447.30	3447.30
O-3***	1832.40	2048.70	2190.30	2423.40	2539.20	2630.40	2772.60	2909.70	2981.40	2981.40	2981.40	2981.40	2981.40	2981.40
O-2***	1597.80	1745.10	2096.40	2166.90	2212.20	2212.20	2212.20	2212.20	2212.20	2212.20	2212.20	2212.20	2212.20	2212.20
O-1***	1387.20	1444.20	1745.10	1745.10	1745.10	1745.10	1745.10	1745.10	1745.10	1745.10	1745.10	1745.10	1745.10	1745.10
						COMMISSIONED OFFICERS WITH OVER 4 YEARS' ACTIVE DUTY AS AN ENLISTED MEMBER OR WARRANT OFFICER									
O-3	-	-	-	$2423.40	$2539.20	$2630.40	$2772.60	$2909.70	$3025.50	$3025.50	$3025.50	$3025.50	$3025.50	$3025.50
O-2	-	-	-	2166.90	2212.20	2282.10	2401.20	2493.00	2561.40	2561.40	2561.40	2561.40	2561.40	2561.40
O-1	-	-	-	1745.10	1864.20	1932.90	2002.80	2072.70	2166.90	2166.90	2166.90	2166.90	2166.90	2166.90

* Basic pay is limited to the rate of basic pay for level V of the Executive Schedule, which is $6,516.60 per month.

** While serving as Chairman or Vice Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, or Commandant of the Coast Guard, basic pay for this grade is $8,994.60*, regardless of cumulative years of service computed under section 205 of title 37, United States Code.

*** Does not apply to commissioned officers who have been credited with over 4 years' active service as an enlisted member or warrant officer.

SCHEDULE 8-B—PAY AND ALLOWANCES OF THE UNIFORMED SERVICES (PAGE 2)

YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

PAY GRADE	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18	Over 20	Over 22	Over 26
WARRANT OFFICERS														
W-4	$1866.90	$2002.80	$2002.80	$2048.70	$2141.70	$2236.20	$2330.10	$2493.00	$2608.60	$2700.30	$2772.60	$2862.30	$2958.00	$3188.10
W-3	1696.80	1840.50	1840.50	1864.20	1885.80	2023.80	2141.70	2212.20	2282.10	2350.20	2423.40	2517.60	2608.80	2700.30
W-2	1485.90	1607.70	1607.70	1654.80	1745.10	1840.50	1910.40	1980.30	2048.70	2120.70	2190.30	2259.30	2350.20	2350.20
W-1	1238.10	1419.60	1419.60	1538.10	1607.70	1677.00	1745.10	1817.10	1885.80	1956.30	2023.80	2096.40	2096.40	2096.40
ENLISTED MEMBERS														
E-9*	-	-	-	-	-		$2171.70	$2220.60	$2271.00	$2322.90	$2374.80	$2421.00	$2548.20	$2796.00
E-8	-	-	-	-	-	$1821.30	1873.20	1922.70	1972.50	2024.70	2071.20	2122.20	2246.70	2496.90
E-7	$1271.40	$1372.50	$1423.50	$1473.30	$1523.40	1572.00	1622.40	1672.80	1748.70	1798.20	1848.30	1872.30	1998.00	2246.70
E-6	1094.10	1192.20	1242.00	1294.80	1343.10	1391.70	1443.00	1517.40	1564.80	1615.50	1640.10	1640.10	1640.10	1640.10
E-5	960.00	1044.90	1095.60	1143.30	1218.30	1268.10	1318.50	1366.80	1391.70	1391.70	1391.70	1391.70	1391.70	1391.70
E-4	895.50	945.60	1001.10	1078.80	1121.40	1121.40	1121.40	1121.40	1121.40	1121.40	1121.40	1121.40	1121.40	1121.40
E-3	843.60	889.80	925.50	962.10	962.10	962.10	962.10	962.10	962.10	962.10	962.10	962.10	962.10	962.10
E-2	811.80	811.80	811.80	811.80	811.80	811.80	811.80	811.80	811.80	811.80	811.80	811.80	811.80	811.80
E-1**	724.20	724.20	724.20	724.20	724.20	724.20	724.20	724.20	724.20	724.20	724.20	724.20	724.20	724.20
E-1***	669.60	-	-	-	-	-	-	-	-	-	-	-	-	-

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* While serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy or Coast Guard, Chief Master Sergeant of the Air Force, or Sergeant Major of the Marine Corps, basic pay for this grade is $3,398.70, regardless of cumulative years of service computed under section 205 of title 37, United States Code.

** Applies to personnel who have served 4 months or more on active duty.

*** Applies to personnel who have served less than 4 months on active duty.

SCHEDULE 8-B--PAY AND ALLOWANCES OF THE UNIFORMED SERVICES (PAGE 3)

PART II--BASIC ALLOWANCE FOR QUARTERS RATES

PAY GRADE	Without dependents		With dependents
	Full rate*	Partial rate**	
COMMISSIONED OFFICERS			
O-10	$635.40	$50.70	$781.80
O-9	635.40	50.70	781.80
O-8	635.40	50.70	781.80
O-7	635.40	50.70	781.80
O-6	582.90	39.60	704.40
O-5	561.30	33.00	678.60
O-4	520.20	26.70	598.50
O-3	417.00	22.20	495.30
O-2	330.90	17.70	422.70
O-1	278.40	13.20	377.70
COMMISSIONED OFFICERS WITH OVER 4 YEARS' ACTIVE DUTY AS AN ENLISTED MEMBER OR WARRANT OFFICER			
O-3	$450.00	$22.20	$531.90
O-2	382.80	17.70	480.00
O-1	329.10	13.20	443.40
WARRANT OFFICERS			
W-4	$469.50	$25.20	$529.50
W-3	394.50	20.70	485.40
W-2	350.10	15.90	446.40
W-1	293.40	13.80	386.10
ENLISTED MEMBERS			
E-9	$385.50	$18.60	$508.20
E-8	354.30	15.30	468.30
E-7	302.40	12.00	435.30
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* Payment of the full rate of basic allowance for quarters at these rates to members of the uniformed services without dependents is authorized by title 37, United States Code, and Part IV of Executive Order 11157, as amended.

** Payment of the partial rate of basic allowance for quarters at these rates to members of the uniformed services without dependents who, under 37 U.S.C. 403(b) or 403(c), are not entitled to the full rate of basic allowance for quarters, is authorized by 37 U.S.C. 1009(c)(2) and Part IV of Executive Order 11157, as amended.

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Officers (per month)		$123.92
Enlisted Members (per day):		
	E-1 (less than 4 months' active duty)	All Other Enlisted
When on leave or authorized to mess separately	$5.46	$5.91
When rations in-kind are not available	6.16	6.67
When assigned to duty under emergency conditions where no messing facilities of the United States are available	8.17	8.84

Part IV--RATE OF MONTHLY CADET OR MIDSHIPMAN PAY

The rate of monthly cadet or midshipman pay authorized by section 203(c)(1) of title 37, United States Code, is $543.90.

[FR Doc. 89-30309
Filed 12-26-89; 4:21 pm]
Billing code 3195-01-C

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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: January 30, at 9:00 a.m.
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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Parts 305 and 310

Recommendations and Statement of the Administrative Conference Regarding Administrative Practice and Procedure

AGENCY: Administrative Conference of the United States.

ACTION: Recommendations and a statement.

SUMMARY: The Administrative Conference of the United States, at its Fortieth Plenary Session, adopted four recommendations and one statement.

Recommendation 89–7, Federal Regulation of Biotechnology, recommends steps to improve interagency coordination of federal biotechnology regulation. These include enlarging the membership of the Office of Science and Technology Policy's Biotechnology Science Coordinating Committee and opening its proceedings to the public unless they involve confidential information. While the Conference recommends no statutory changes now, it suggests that a survey of biotechnology development and existing regulation be conducted, and that the President and Congress monitor interagency coordination of biotechnology regulation. The Conference also suggests that agencies consider adopting appropriate procedures concerning availability of information and public participation in biotechnology regulatory proceedings.

Recommendation 89–8, Agency Practices and Procedures for the Indexing and Public Availability of Adjudicatory Decisions, calls upon agencies to compile a subject-matter index of their adjudicatory decisions to afford citizens information useful in dealing with the agencies and to assist the development of agency standards and policies on general issues and recurring questions. Indexes, which should be public, may be either universal or selective. The Recommendation advises agencies to include in a selective index all significant adjudicatory decisions of the agency's highest level tribunal, whether or not they are considered precedential. Agencies are advised to consider indexing significant lower level final decisions.

Recommendation 89–9, Processing and Review of Visa Denials, recommends that the Department of State implement a number of changes in its procedures for review of visa applications at United States consulates abroad. Such changes include permitting the assistance of attorneys, increased explanation of the basis for visa denials, and making public advisory opinions of the Visa Office. The Recommendation also asks the State Department, after appropriate study, to develop and submit to Congress a proposed process for administrative review of consular visa actions.

Recommendation 89–10, Improved Use of Medical Personnel in Social Security Disability Determinations, recommends steps that SSA should take to increase the role of medical personnel at the initial decision stage of disability claims, including giving the medical member of the team primary responsibility for developing medical evidence in the record and using medical personnel to resolve conflicts on medical issues. It also recommends that SSA (1) provide medical personnel training on legal and program issues; (2) eliminate the separate reconsideration stage; and (3) encourage its administrative law judges to use independent medical experts to assess the need for additional medical evidence.

In a Statement, Procedures for Resolving Federal Personnel Disputes, the Conference suggests that Congress review the highly complex procedural framework set up by the Civil Service Reform Act. The Conference notes that the existing intricate procedures, consciously designed by Congress, have been perceived by employees and their representatives as providing necessary protection, and the question whether to retain or modify those procedures must be resolved largely through the legislative process. The Statement describes several issues that should be considered in a comprehensive congressional review.

Recommendations and statements of the Administrative Conference are published in full text in the **Federal Register** upon adoption. Complete lists of recommendations and statements, together with the texts of those deemed to be of continuing interest, are published in the Code of Federal Regulations (1 CFR parts 305 and 310).

DATES: These recommendations and statement were adopted December 14–15, 1989, and issued December 27, 1989.

FOR FURTHER INFORMATION CONTACT: Jean R. Conrad, Librarian and Information Officer or Jeffrey S. Lubbers, Research Director (202–254–7065).

SUPPLEMENTARY INFORMATION: The Administrative Conference of the United States was established by the Administrative Conference Act, 5 U.S.C. 571–576. The Conference studies the efficiency, adequacy, and fairness of the administrative procedures used by federal agencies in carrying out administrative programs, and makes recommendations for improvements to the agencies, collectively or individually, and to the President, Congress, and the Judicial Conference of the United States (5 U.S.C. 574(1)).

At its Fortieth Plenary Session, held December 14–15, 1989, the Assembly of the Administrative Conference of the United States adopted four recommendations and one statement, the texts of which are set out below. The texts of recommendations will be transmitted to the affected agencies and, if so directed, to the Congress of the United States. The Administrative Conference of the United States has advisory powers only, and the decision on whether to implement the recommendations must be made by each body to which the various recommendations are directed.

The transcript of the Plenary Session will be available for public inspection at the Conference's offices at Suite 500, 2120 L Street NW., Washington, DC.

List of Subjects in 1 CFR Parts 305 and 310

Administrative practice and procedure.

PART 305—RECOMMENDATIONS OF THE ADMINISTRATIVE CONFERENCE

statement, the Office of Science and Technology Policy (OSTP) attempted to

information and preparing reports concerning issues common to several

including the reasons for closing any meetings.

3. Regulatory Procedures

their adjudicatory decisions available to the public.

The Freedom of Information Act (FOIA)

action would be in a better position to learn of and influence agency policy. Third, a broader application of affirmative disclosure

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PART 305—RECOMMENDATIONS OF THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1. The authority citation for part 305 continues to read as follows:

Authority: 5 U.S.C. 571–576.

2. The table of contents to part 305 of title 1 CFR is amended to add the following new sections:

Sec.
305.89–7 Federal Regulation of Biotechnology (Recommendation No. 89–7).
305.89–8 Agency Practices and Procedures for the Indexing and Public Availability of Adjudicatory Decisions (Recommendation No. 89–8).
305.89–9 Processing and Review of Visa Denials (Recommendation No. 89–9).
305.89–10 Improved Use of Medical Personnal in Social Security Disability Determinations (Recommendation No. 89–10).

PART 310—MISCELLANEOUS STATEMENTS

3. The authority citation for part 310 continues to read as follows:

Authority: 5 U.S.C. 571–576.

4. The table of contents to part 310 of title 1 CFR is amended to add the following new section:

Sec.
310.15 Procedures for Resolving Federal Personnel Disputes.

5. New §§ 305.89–7 through 305.89–10 are added to part 305, to read as follows:

§ 305.89–7 Federal Regulation of Biotechnology (Recommendation 89–7).

New biotechnology techniques promise great benefits in fields such as medicine, agriculture, and manufacturing. However, these new techniques, which involve alteration of the genetic structure of an organism, have raised concerns that some new organisms or products may be dangerous to individuals or detrimental to the environment. This recommendation addresses coordination of federal regulation in this area and the procedures agencies use to regulate biotechnology development, testing and use.

Genetically-engineered organisms are regulated under a variety of statutes enacted to prevent or reduce society's exposure to unsafe or harmful products or substances. The agencies with such statutory authorities currently share responsibilities for regulation of biotechnology in accordance with policy statements issue in 1986 by the agencies and by the Director of the Office of Science and Technology Policy (who serves as the President's Science Adviser).[1] In its policy statement, the Office of Science and Technology Policy (OSTP) attempted to clarify the responsibility of each agency where more than one agency shared jurisdiction to regulate biotechnology areas.

The Conference recommends a continuation of interagency coordination under the auspices of the OSTP. Experience does not currently indicate that new legislation is needed for effective interagency coordination of biotechnology regulation. On the other hand, the Conference believes that both the President and the Congress should monitor closely the coordination process because of the importance of this area to the nation's economic and social well-being.

The Conference also recommends that the President and the Congress, through the OSTP and the Office of Technology Assessment (OTA), survey biotechnology developments and agency regulation of biotechnology under existing statutes to determine whether current law and regulation provide adequate authority to protect public and private interests or whether in particular instances current regulation is unnecessary. The survey should identify whether nonregulation of any particular area reflects an agency decision not to use its authority to regulate or an absence of regulatory authority.

The Conference also urges changes in the coordination role for biotechnology regulation performed by the President's Office of Science and Technology Policy. Most importantly, the Conference urges the President to make the work of the Office's Biotechnology Science Coordinating Committee (BSCC) a high priority. A revitalized BSCC can help agencies coordinate their activities concerning biotechnology development, regulation, funding, and biosafety research. To fulfill this mandate, the Conference believes the BSCC's role should emphasize fact-finding, reporting, and serving as a clearinghouse for information relating to biotechnology.

The Conference recommends that agencies engaged in biotechnology regulation articulate their policies through generic rules and policy statements to the extent possible. Since public acceptance of agency decisions is especially important in this area and because of the novelty and uncertainty of the risks associated with biotechnology, the Conference encourages agencies to adopt appropriate procedures to allow public participation. Agencies are also encouraged to seek ways to make biosafety information available to the public to the maximum extent consistent with protection of the proprietary interests of submitters of confidential business information.

Recommendation

1. Biotechnology Regulatory Structure

(a) Interagency coordination is critically needed to mitigate problems caused by concurrent regulation of biotechnology by two or more agencies. The Office of Science and Technology Policy's Biotechnology Science Coordinating Committee (BSCC) should have primary responsibility for identifying issues, exchanging information and preparing reports concerning issues common to several agencies. Responsibility for establishing uniform government policies should be retained by the Office of Management and Budget working in coordination with the BSCC.

(b) The President and Congress should survey biotechnology developments and agency regulation of biotechnology under existing statutes to consider whether and in what respects current regulation of biotechnology is inadequate or excessive. To facilitate this, the President's Office of Science and Technology Policy (OSTP) and Congress' Office of Technology Assessment (OTA) should, jointly or separately, identify all areas of biotechnology activity and determine the extent to which they are being regulated. OSTP and OTA should assess whether or not additional or diminished regulatory authority is desirable in such areas and furnish their findings and recommendations to the President and Congress.

2. Regulatory Coordination

(a) The President should make coordination of the government's activities relating to biotechnology a high priority. This should include:

(1) Monitoring the effectiveness of interagency coordination;

(2) Directing the Science Adviser to enlarge the membership of the BSCC to include all federal agencies that have substantial responsibilities for biotechnology research, development, or regulatory policy; and

(3) Directing the Science Adviser to invite representatives of other agencies to participate in the BSCC's activities, as appropriate, such as when their regulatory or other official responsibilities may be affected.

(b) The BSCC should have a broad subject-matter mandate, including issues of biotechnology development, regulation, funding, and biosafety research. The Committee's role should emphasize fact-finding, reporting, and serving as a clearinghouse for information relating to biotechnology.

(c) The Science Adviser should establish a policy for the BSCC that will foster opening its proceedings to the public.

(1) Meetings of the BSCC should be open to the public unless they involve confidential information.

(2) Members of the public should be allowed to provide comments to the BSCC either orally or in writing.

(3) The BSCC may invite advice from experts outside the government.

(4) The BSCC should keep minutes or other records of its proceedings, including the reasons for closing any meetings.

3. Regulatory Procedures

(a) Agencies should, where appropriate, seek opportunities to promulgate generic biotechnology rules to address recurring regulatory issues.

(b) Agencies should consider the adoption of rules or policy statements to enunciate the principles or criteria they will include in their risk assessment and management decisions. When adopting policy statements, agencies should follow the public participation procedures set forth in Conference Recommendation 76–5.[2]

(c) Agencies should consider adopting appropriate procedures to allow public participation and other forms of input when making regulatory determinations concerning biotechnology. Such procedures might include:

(1) Giving notice to the public with an invitation to submit comments concerning the determination;

(2) Providing additional notice of pending regulatory actions to persons who live near sites where proposed activities would take place;

(3) Holding informal public hearings to supplement written procedures; or

(4) Utilizing advisory committees under the Federal Advisory Committee Act.[3]

(d) Agencies should seek ways to meet the public's need for biosafety information about substances or organisms produced through biotechnology, without divulging confidential business information.[4] Such steps might include:

(1) Requesting submitters of confidential business information to focus their claims for confidentiality as much as possible;

(2) Requiring submitters of data that include confidential business information to identify those portions that are claimed to be confidential and to substantiate their claims at the time of submission; and

(3) Summarizing or aggregating confidential data in a manner that does not compromise confidentiality.

§ 305.89–8 Agency Practices and Procedures for the Indexing and Public Availability of Adjudicatory Decisions (Recommendation 89–8).

This recommendation examines the obligation of agencies to index and make their adjudicatory decisions available to the public.

The Freedom of Information Act (FOIA) imposes numerous affirmative disclosure obligations on agencies. Under 5 U.S.C. 552(a)(2), each agency, in accordance with published rules, is required to make final adjudicatory decisions and orders [1] available for public inspection and copying unless the materials are promptly published and copies are offered for sale. In addition, each agency shall maintain and make available for public inspection and copying current indexes that provide identifying information for the public as to any matter issued, adopted, or promulgated. FOIA further mandates that each agency shall promptly publish, quarterly or more frequently, and distribute copies of each index unless it determines, by order published in the **Federal Register**, that such publication is unnecessary and impracticable.

Many agencies do, in fact, index and publish or otherwise make available to the public their adjudicatory decisions, as required under FOIA (e.g., the National Labor Relations Board, the Merit Systems Protection Board, the Interstate Commerce Commission, the Securities and Exchange Commission). This recommendation, then, is addressed to those agencies which either entirely fail to index, publish or make their decisions available to the public or fail to do so adequately, whether or not they use adjudicatory precedent to pronounce and develop agency policy.

Debate has surrounded consideration of an appropriate test for determining which types of adjudicatory decisions are included in this affirmative disclosure obligation. The Attorney General initially expressed the opinion that FOIA requires that agencies index only those decisions cited by an agency or relied upon as precedent. This limitation, in the view of the Attorney General, was derived from both the enforcement provision in the statute, which precludes the agency from giving precedential effect to matters not indexed, and the legislative history of the statute, which indicates that the disclosure provision was intended to make available documents having precedential significance. The Attorney General also was influenced by the impracticality of indexing all agency decisions.

Application of the affirmative disclosure requirements, beyond simply precedential decisions, however, offers several advantages. First, if agencies index all significant decisions, and not just those decisions deemed to be precedential, agencies would be less inclined to be restrictive or one-sided in the selection of cases to be accorded precedential effect. Second, private parties affected by agency action would be in a better position to learn of and influence agency policy. Third, a broader application of affirmative disclosure requirements would implement the underlying aim of the FOIA indexing requirements which is to afford citizens the essential information needed to deal effectively and knowledgeably with federal agencies and to guard against the development of secret law. Lastly, a current index of final decisions may assist agencies in developing standards and policies with respect to general issues and recurring questions.

The few cases dealing with the FOIA affirmative disclosure obligations have generally read the precedential test broadly. They require disclosure not only of decisions that an agency considers to be binding but also all decisions that an agency retains for general reference and research. The recommended approach to the indexing and public availability of final decisions focuses less on the binding nature of the precedent and more on the value that decisions can have to inform and assist the public.

Recommendation

1. Indexing of Agency Decisions

Agencies that do not already do so should compile a subject-matter index of their adjudicatory decisions so as to afford citizens information useful in dealing with the agencies and to assist the development of agency standards and policies on general issues and recurring questions.[2]

In meeting FOIA indexing requirements, agencies should ensure that a subject-matter index is made of their decisions and that the index includes all significant decisions, whether or not the decisions are designated as precedential.

2. Level and Scope of Decisions Indexed

The index should cover the adjudicatory decisions of the agency's highest level tribunal. The agency should also consider whether to index significant lower level decisions that have become final. The adjudicatory decisions intended to be covered by this recommendation are those made with an accompanying written opinion or rationale in contested cases after an opportunity for a hearing at some stage of the proceeding.

3. Index Contents

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[1] OSTP, Coordinated Framework for Regulation of Biotechnology; Announcement of Policy and Notice for Public Comment, 51 FR 23302 (1986).

[2] ACUS Recommendation 76–5, Interpretive Rules of General Applicability and Statements of General Policy, 1 CFR 305.76–5 (1980).

[3] See ACUS Recommendation, 82–5, Federal Regulation of Cancer-Causing Chemicals, Part IV, 1 CFR 305.82–5 (1980).

[4] See ACUS Recommendation 82–1, Exemption (b)(4) of the Freedom of Information Act, 1 CFR 305.82–1 (1982).

[1] This subsection also covers agency statements of policy and interpretations, as well as administrative staff manuals and instructions to staff that affect a member of the public. The Conference has already recommended that agency policies that affect the public should be articulated and made known to the public to the greatest extent feasible. ACUS Recommendation 71–3 "Articulation of Agency Policies." See also ACUS Recommendation 70–3, "SEC No-Action Letters Under section 4 of the Securities Act of 1933."

[2] In programs where the agency has established a policy that none of its decisions have precedential effect, the Conference urges that the agency re-examine the feasibility of creating a system that accords certain decisions precedential value to provide guidance about the factors that influence their decisions and to ensure better development of agency policy and standards. See ACUS Recommendation 87–7, "A New Role for the Social Security Appeals Council," 1 CFR 305.87–7. See also ACUS Recommendation 71–5, "Procedures of the Immigration and Naturalization Service in Respect to Change-of-Status Applications."

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Agency indexes should be designed for effective and efficient use. These indexes should contain sufficient information on each indexed decision to identify the major issues decided and the location of the case file. Agencies should adopt one of the following practices in indexing their adjudicatory decisions:

A. *Universal Index.* Index all final decisions; or

B. *Selective Index.* Where the volume of decisions makes a universal index impracticable or uninformative, selectively index final decisions omitting those decisions that are repetitive. The selective index should include all significant decisions. Decisions may be significant because they are deemed by the agency to be precedential or otherwise establish a principle to govern recurring cases with similar facts, develop agency policy and exceptions to the policy in areas where the law is unsettled, deal with important emerging trends, or provide examples of the appropriate resolution of major types of cases not otherwise indexed.

4. Public Notice of the Index

Agency indexes should be fully disclosed and readily available. Appropriate notice of the existence of unpublished decisions should also be given in both the agency's FOIA regulations and the procedural or substantive regulations governing the specific program.

5. Computer Technology

Agencies should explore the use of computer technology in order to promote accessibility and reduce costs of indexing.

§ 305.89-8 Processing and Review of Visa Denials (Recommendation 89-9).

United States consulates around the world complete the processing of some nine million applications for immigrant and nonimmigrant visas each year. Approximately ninety percent are granted; ten percent are denied. Under current practice, the only review of a consular official's denial of a visa may be by a more senior officer in the consulate, or, on points of law, by the Visa Office in the State Department. The Immigration and Nationality Act has been read to preclude administrative review, and the courts, with a few exceptions, have declined to review visa denials.

Immigrant visas are available to persons with close family relationships to U.S. citizens and residents, or with particular abilities or skills that are needed but not otherwise available in the United States. Nonimmigrant visas are available in a long list of classes, ranging from tourists to students to certain types of business personnel to diplomats.

Whatever the visas category or class, there clearly are important interests at stake. These interests are not just those of the applicants themselves, but also of citizens and residents of the United States who are sponsoring the applicant or have some other interest in the applicant's presence in the United States. These interests warrant a close look at whether initial decisions in this important program of mass adjudication should be more fully reviewable than at present.

Federal law and State Department regulations give consular officers substantial discretion in adjudicating visa applications. For example, consular officials exercise absolute discretion in determining whether an applicant may be represented by an attorney or other qualified representative at the visa application interview. Furthermore, although current Department regulations, at 22 CFR 41.121(c), require that a denial of a visa application be reviewed by a more senior officer, the high volume of applications at some posts has resulted in only a random sample of denials being reviewed. Review by a senior official may also be a problem in single-officer posts.

Consular posts send a few hundred cases a year presenting significant legal issues to the Visa Office of the State Department for an advisory opinion that is binding only with respect to legal issues. The applicant typically has no notice of this proceeding. Such review affects the results in only a small number of cases, since most visa denials are based on a factual determination.

Current law has been read by some to limit both administrative and judicial review. Section 104(a) of the INA, 8 U.S.C.1104(a), excepts the Secretary of State from the administration or enforcement of "those powers, duties and functions conferred upon the consular officers relating to the granting or refusal of visas." This language has been considered by some to preclude the establishment of a more formal review mechanism within the State Department. Further, courts have generally limited the extent of available judicial review.

The Conference believes that it is important that there be at least some level of review of consular discretion to deny or grant visas. The availability of such review would not only encourage consistency and care in the initial adjudication, but would serve interests of fairness and legitimacy. On the other hand, a review scheme in this area can be crafted in a fashion that keeps procedure to a minimum, takes account of the extremely high volume of visa applications, and avoids over-judicialization of the process.

The Recommendation reflects a two-pronged approach to administrative review of visa denials, aimed both at improving the review at the consular level and at considering the creation of a level of centralized administrative review. The suggestions directed at the consular offices are intended to encourage quick, consistently applied, and cost-effective review that would resolve many of the issues on which review might be requested. The Recommendation also asks the State Department to study the issues, and develop and submit to Congress a proposed process for administrative review of consular actions. The Conference recognizes that there are currently competing priorities for resources that might be required by implementation of the Recommendation, but believes that these proposals should be implemented as quickly as is feasible under the circumstances.

Recommendation

1. The State Department should adopt a regulation ensuring that applicants may be accompanied by an attorney or other authorized representative during the course of the visa application interview process. To the extent practicable, the State Department should take steps to reply promptly to communications from applicants or authorized representatives and to ensure that facilities are available to enable applicants to meet with their representatives during the application interview process.

2. The State Department should require consular officers to provide brief but explicit written statements of the factual and legal bases and reasons for denying a visa application, except where reasons of national security or potential adverse effects on foreign policy dictate otherwise.

3. The State Department should modify its regulations to allow Visa Office advisory opinions to be made available to applicants and their authorized representatives except where national security or potential adverse effects on foreign policy dictate otherwise.

4. The State Department should either comply with its regulation found at 22 CFR 41.121(c) requiring review within a consulate of each denial of a visa application, or examine alternative systems to review visa denials at consular posts. In such a study, the State Department should keep in mind the goal of ensuring consistency in visa adjudications and consider possible alternatives to address exigencies created by busy consular posts, for example, by reviewing random samples of visa denials, or selecting for review certain types of denials.

5. The State Department should, after appropriate study, develop and submit for Congressional review a proposed process for administrative review of consular visa actions.[1]

§ 305.89-10 Improved Use of Medical Personnel in Social Security Disability Determinations (Recommendation 89-10).

The Social Security Administration annually processes more than 1.5 million requests for Disability Insurance Benefits and Supplemental Security Income requiring a determination whether the claimant is disabled. The Administrative Conference has addressed various aspects of the Social Security Administration's administrative procedures in earlier recommendations.[1] This recommendation focuses more specifically on the appropriate use of medical personnel in making disability determinations.

The Social Security Administration (SSA) uses medical personnel currently in two ways. First, initial and reconsideration determinations are made for SSA by federally funded state agencies that use teams composed of one lay disability examiner and one medical doctor or psychologist.[2] Second, medical sources are used to provide evidence of disability in individual cases and to explain or elaborate upon medical evidence obtained from other sources. Medical sources provide evidence relating to individual claims to state agencies at the initial decision and reconsideration levels, to administrative law judges at the hearing level, and to the Appeals Council. Requests can be made to the claimant's treating physician or to an independent physician who is asked to examine the claimant and report on his or her findings. Doctors are asked by some administrative law judges to explain or elaborate upon existing medical evidence; other administrative law judges and most state agency personnel do not use independent medical doctors for these purposes. Medical personnel are involved in the disability determination process for other federal disability programs as well. Although the extent to which they are used varies from program to program, programs typically concentrate the use of medical personnel at the initial decision stage, as does the Social Security Administration.[3]

There is no doubt that medical personnel can offer valuable assistance in making disability determinations called for by the Social Security Act. Notwithstanding the mixed medical and legal content of the Social Security Act's disability standards, most disability determinations require the resolution of medical issues in one form or another. At the same time, it must be recognized that doctors cannot simply apply their general medical expertise to the work of determining disability under a complex and multi-faceted statutory disability standard. Doctors are accustomed to evaluating a person's limitations in the context of treatment; they are oriented professionally to identify the cause of and resolve limitations, rather than to identify limitations and then measure them against stated requirements for receipt of benefits. These recommendations are intended to help reconcile the needs of the Social Security Administration disability determination process for medical expertise and the ability of the medical profession to meet those needs.

Medical personnel perform three main functions in current practice. First, they assist in developing the medical records on which disability decisions are based. Second, they provide medical evidence for the record, including medical findings and opinions relating to an individual claimant's impairments and explanations of other medical evidence already in the record. Third, they participate in making disability decisions at the initial and reconsideration levels based on the record.

Each of these functions suggests models for using medical decisionmakers in Social Security disability determinations. The first model would increase the responsibility of medical personnel for compiling all relevant medical evidence. Medical personnel would concentrate on evaluating the adequacy of the record and following up with requests for clarification and additional information from treating and consulting medical sources. Medical personnel would also be given specific responsibility for assuring that all medical evidence in the record is clear and understandable to both medical and non-medical decisionmakers. The second model would improve the use of doctors as sources for supplying medical data and opinions on which disability decisions can be based. This model also supports the use of medical personnel to evaluate and resolve certain specified medical issues relevant to a claim if, in a particular case, there are medical issues that can be identified as appropriate for separate decision. The third model would make more effective use of medical personnel in decisionmaking role. This model would concentrate medical resources at the initial decision level, where a doctor would share the responsibility for decisionmaking with a non-medical disability examiner. The doctor member of the team would be given special responsibility for certain tasks, and would undertake a full and independent review of the entire record in each case. The expectation is that through open exchange of information between the two decisionmakers and a reasonable allocation of responsibility based on each member's expertise, most disability determinations will be made by consensus. If conflicts arise on medical issues, separate medical personnel would be given the authority to resolve those conflicts.

The following recommendations would implement the important provisions of each of these models. Implementing these recommendations would require greater expenditures for medical personnel and related support at the state agencies. However, additional costs should be offset by savings resulting from elimination of the reconsideration level and reduced numbers of administrative and federal court appeals.

Recommendation

A. Improvements at the Initial Decision Level

The Social Security Administration (SSA) should enhance the decisionmaking role of medical personnel at the initial decision level. This can be accomplished by improving upon the current practice of using two-member teams—consisting of a medical member who is a licensed physician or psychologist and a non-medical member who is a disability examiner—to determine disability, as follows:

1. *Responsibility for developing medical evidence.* SSA should ensure that the medical member of the team is given primary responsibility for developing the medical evidence [4] in the record.

(a) Staff and resources should be allocated so as to assure that a complete record of all evidence relevant to a disability claim is obtained before an initial decision is made on the claim.

(b) Specially trained support staff, including nurses and non-medical personnel, should be made available to assist the medical member in developing the medical evidence.

(c) The medical member should, whenever possible, be assigned direct responsibility for evaluating the adequacy of reports from physicians and for following up with requests for clarification or additional information from these sources.

2. *Identifying and deciding discrete medical issues.* SSA should develop a list of discrete issues raised by the applicable disability standards that may arise in individual claims and that are appropriate for decision by medical staff. The medical member of the team assigned to a claim should be made responsible for identifying any such discrete issues raised in the claim, developing all evidences relevant to the issue, and reaching a decision on that issue.

3. *Resolving medical conflicts.* SSA should ensure that medical personnel are used to resolve any conflicts on medical issues that arise in the course of team evaluations of disability at the initial decision level.

(a) Senior medical staff should be given the authority to review claims where the team members are unable to agree and to recommend further action, including the development of additional medical evidence, to resolve the conflict.

[1] If it is thought that current law precludes such a State Department study, Congress should authorize the State Department to undertake the study.

[1] See Recommendations 78-2 (ALJ hearing stage), 87-6 (state level determinations), 87-7 (Appeals Council).

[2] For cases involving mental impairments, Social Security regulations provide that either psychologists or psychiatrists may assist in determining disability. Accordingly, references to the terms "medical sources," "physicians," and "doctors" in these recommendations are intended to include psychologists used in those cases.

[3] While the Conference has examined the other federal disability programs and believes that these recommendations hold valuable lessons for the agencies administering those programs, these recommendations are addressed solely to the Social Security Administration.

[4] *"Medical evidence"* includes (1) medical findings and opinions relating to an individual claimant's impairments, (2) other evidence, including subjective symptoms, that is relevant to determining the existence or severity of the claimant's condition, and (3) explanations of other medical evidence already in the record. The recommendations' focus on development of medical evidence is not intended to minimize the importance of the development of other evidence, including vocational evidence.

(b) If the conflict persists, the state agency's medical personnel should

the decision and accorded an opportunity to object and rebut

restructured system for considering complaints, grievances and appeals filed by federal employees in response to

uniformity in federal personnel management; and solidification and expansion of the place of arbitration as

is ripe for fresh consideration by Congress of the problems that gave rise to the CSRA and to the issues that have

fact that the intricate federal personnel scheme consists of numerous interrelated processes and institutions

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(b) If the conflict persists, the state agency's medical personnel should assume primary responsibility for evaluating the record with respect to the medical issues and for making a determination based on that record.

(c) As part of this process, independent medical experts, or panels of experts, should be identified and retained for use as examining and non-examining consultants, as appropriate.

4. *Notice of deficiencies in medical evidence.* SSA should require that claimants be informed specifically of any deficiencies in the medical evidence that could lead to an adverse determination before the initial decision is made.

(a) This notice should be prepared by the medical member of the team, should clearly explain any deficiency in the medical evidence, and should encourage the claimant to provide additional information and explanation, as needed. This notice should also state that the agency will assist claimants in obtaining this information when they are unable to do so on their own due to financial or other constraints.

(b) As part of this process, either the claimant or the medical member should have the authority to initiate a face-to-face interview.

5. *Ensuring quality of evidence.* SSA should take steps to improve the quality of evidence provided by medical sources for disability adjudications.

(a) Guidelines should be established that identify priorities for the use of treating physicians, examining physicians and non-examining physicians, including specialists, for these purposes.

(b) Selection and evaluation of physicians asked to provide medical information should be performed by medical personnel independent from the agency staff responsible for making disability decisions and should be supported by a system for quality control covering both the selection of physicians and the reports submitted.

(c) Physicians asked to provide medical information should be adequately compensated and should be provided with instructions as to applicable agency standards.

(d) Medical personnel should be able, when appropriate, to consult with specialists before ordering examinations or tests.

(e) All contacts with medical sources relating to the determination of disability for a particular claim should be documented routinely in writing and included in the record. SSA should ensure that claimants are provided a copy of any reports prior to issuance of the decision and accorded an opportunity to object and rebut appropriately.

6. *Training and supervision of medical personnel.* SSA should ensure that all medical personnel are trained fully on legal and program issues and work under the supervision of the chief medical officer in the state agency. SSA should also ensure that medical staff act in accordance with the rules established by the Social Security Act and relevant federal court decisions, including the requirement to obtain and give appropriate weight to the opinions of claimants' treating physicians, in performing the functions described in paragraphs 2, 3(b), and 5(a).

B. Reconsideration

7. *Elimination of Reconsideration.* SSA should seek to concentrate the efforts of the disability determination team on a single initial decision process, as outlined in these recommendations. Together with implementations of these recommendations, the separate reconsideration stage should be eliminated.

C. Appeal Level

8. *ALJ use of medical experts.* SSA should encourage its administrative law judges to call on an independent medical expert in appropriate cases to assess the need for any additional medical evidence and to explain or clarify medical evidence in the record.[5] SSA should make clear by regulation that a medical expert's evidence can be presented orally or in writing. The regulations should also provide that claimants are notified of the inclusion of an expert's report in the record and should assure that claimants' rights to object to the inclusion of the report, submit rebuttal evidence, and cross-examine the expert are not abridged. The regulations should also provide that all information and opinions provided by medical experts must be included in the record.

9. New § 310.15 is added to Part 310, to read as follows:

§ 310.15 Procedures for Resolving Federal Personnel Disputes.

In 1978, Congress enacted the most comprehensive revision of the federal civil service laws since the Pendleton Act of 1883. The Civil Service Reform Act (CSRA) of 1978 created new institutions and processes for personnel management, including a substantially restructured system for considering complaints, grievances and appeals filed by federal employees in response to personnel actions.[1] Personnel disputes typically involve such matters as removals from the service, reductions in pay or grade, suspensions, furloughs, promotion and award decisions, and reductions-in-force.

Congress' 1978 revision of the framework for considering employee complaints, grievances and appeals was in part prompted by the confusing, complex and time-consuming nature of the existing procedures. Moreover, the procedures were seen as intimidating to both managers and employees and, therefore, likely to deter managers from taking appropriate personnel action and to discourage employees from pursuing available avenues to vindicate their rights. There was also a perception that the Civil Service Commission was unsympathetic to employee discrimination cases and to unions.

The statutory framework created in 1978, with its new forums for adjudicating employee claims, was no less complex and has continued to produce costs, delays, and confusion, accompanied by substantial resource commitments. Close scrutiny discloses that this complexity was in large part created by the tension inherent in the simultaneous pursuit of three important legislative goals: adequate protection of employees from discrimination;[2]

[5] SSA should also ensure that its ALJs receive appropriate training on medical issues relevant to their decisional responsibilities.

[1] Five institutions share in the administration of the CSRA:

1. Office of Personnel Management (OPM), which is vested with the general authority to execute, administer and enforce the laws and rules governing the civil service except with respect to those functions vested in other agencies;

2. Merit Systems Protection Board (MSPB), which is an independent adjudicatory body charged with hearing and deciding employee appeals from agency personnel actions of various kinds including major performance and disciplinary actions;

3. Office of the Special Counsel (OSC), which is charged with the investigation and prosecution before the MSPB of requests for corrective and disciplinary action when prohibited personnel practices have allegedly occurred;

4. Equal Employment Opportunity Commission (EEOC), which enforces various anti-discrimination statutes as they apply to both public and private employment, including Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Rehabilitation Act; and

5. Federal Labor Relations Authority (FLRA), which is an independent agency charged with hearing and deciding complaints of unfair labor practices and reviewing arbitration awards on matters falling within the scope of negotiated grievance procedures established by collective bargaining agreements.

[2] "Discrimination" refers to discrimination on the basis of race, color, religion, sex, national origin, age, and handicapping condition.

uniformity in federal personnel management; and solidification and expansion of the place of arbitration as a mechanism to resolve federal employee grievances.

As a general principle, procedures for handling federal employee disputes should be as simple and fair as feasible. Fairness must include a concern for the timely, final resolution of claims. At the same time, however desirable procedural simplification may be, federal employees and managers alike should have confidence in the processes for adjudicating personnel disputes. This is especially true when a federal employee contests a personnel action on the grounds of discrimination, since nothing is more basic than the right to be free of invidious discrimination.

To address these matters, the Administrative Conference commissioned a consultant's report.[3] The report describes the historical background to the 1978 reforms, along with the institutional and procedural framework created by the CSRA. It examines the operation of the system and makes specific recommendations for legislative and administrative changes. The Conference's Committee on Governmental Processes has held numerous meetings to consider the report, has provided opportunity for public participation in those meetings and has invited public comment on various procedural changes that might be recommended.

This process has demonstrated the continuing importance of employee and management concerns in addressing the procedural questions that are the subject of the study. The intricate web of processes, consciously designed by Congress in its enactment of the CSRA, resulted in part from substantive policy and value judgments that transcend the domain of administrative procedure. The complex framework has been perceived by employees and their representatives as providing necessary protection against possible arbitrary employer action, particularly in cases where discrimination is alleged. As a result, employees may perceive proposed procedural simplification as a potential threat to substantive rights.

For this reason, whether to retain or modify the present procedures must be resolved largely through the legislative process. The experience of the past decade, as described in the consultant's report, has persuaded the Administrative Conference that the time is ripe for fresh consideration by Congress of the problems that gave rise to the CSRA and to the issues that have developed subsequently. In fact, Congress has started to re-examine selected aspects of the system, including equal employment opportunity. In addition, the EEOC has issued a notice of proposed rulemaking to change substantially the federal sector discrimination complaint process.[4]

This Statement describes certain important issues that we believe should be addressed as part of a comprehensive congressional review of the CSRA processes. These include:

(i) Whether there should be one rather than the present two opportunities for a full scale trial-type proceeding in cases raising claims of discrimination;

(ii) Whether to retain the existing complex structure for administrative adjudication of "mixed" cases, i.e., those in which the employee alleges that unlawful discrimination was the basis for an adverse personnel action;

(iii) Whether the government should have the right to appeal to the courts in cases involving claims of discrimination;

(iv) Whether employees or their unions should be permitted to seek judicial enforcement of arbitral awards; and

(v) Whether the functioning of existing adjudicatory frameworks—grievance systems of individual agencies, agency complaint processes for discrimination cases, the MSPB process and the various negotiated grievance processes—could and should be improved.

These questions cannot and should not be examined in isolation, as any review of the procedures of the CSRA should recognize the integrated nature of the complex processes of the Act. Whether or not congressional re-examination takes place, this Statement also suggests that the Office of Personnel Management and agencies scrutinize and, where appropriate, seek ways to improve the patterns of communication within agencies and to employees regarding the workings of the complaint, grievance and appeal system. The Conference encourages the creative use of alternative means of dispute resolution in resolving employee claims.[5]

A. Need for Comprehensive Overview

In considering the issues posed below, Congress should take into account the fact that the intricate federal personnel scheme consists of numerous interrelated processes and institutions. Accordingly, statutory changes should be enacted only after careful consideration of their potential direct and indirect consequences throughout the system for resolving employee complaints, grievances and appeals.

B. Cases Raising Claims of Discrimination

1. *The Number of Hearings in Mixed Cases.* "Mixed" cases are controversies involving personnel actions appealable to the MSPB, where an employee alleges that unlawful discrimination was a basis for the agency's action. These cases are "mixed" in that they involve issues both of civil service law and employment discrimination. Under present law federal employees, unlike employees in the private sector, on allegations of employment discrimination in such cases, have a right to a full trial-type administrative hearing (at the MSPB) and, if unsuccessful, may obtain a second *de novo* adjudicatory hearing in United States District Court. The question for congressional consideration is whether an employee who has chosen a trial-type administrative hearing in a mixed case, and has then been afforded the opportunity for a full evidentiary hearing on the record on all relevant matters, should be entitled to a judicial trial *de novo* or should be limited to judicial review in a court of appeals on the administrative record under the substantial evidence test—the customary venue and scope of review of formal administrative adjudications.

2. *The Process for Deciding Mixed Cases.* The statutory procedure for mixed cases provides the opportunity for sequential consideration by the MSPB and the EEOC, with the possibility of further proceedings before a Special Panel consisting of one member of the MSPB, one member of the EEOC, and a chairman appointed by the President for a term of six years with the advice and consent of the Senate. Through these provisions, the CSRA embodies Congress' effort to bring to bear both the MSPB's expertise in general issues of personnel law and the EEOC's expertise with discrimination issues. This complex procedure is intended to achieve a balanced use of both agencies' expertise.

In most mixed cases presented to the EEOC, the Commission has accepted the MSPB decision and, where it has not, the MSPB has generally deferred to the Commission's disposition of these cases. During the first ten years of the CSRA, there has been only three Special Panel

[3] William V. Luneburg, The Federal Personnel Complaint, Appeal, and Grievance Systems: A Structural Overview and Proposed Revisions, 78 Ky. L. J. —— (1990).

[4] See "Federal Sector Equal Employment Opportunity" (29 CFR part 1614), 54 Fed. Reg. 45747 (October 31, 1989).

[5] See Recommendation 86-3, Agencies' Use of Alternative Means of Dispute Resolution, 1 CFR 305.86-3.

proceedings, indicating that the two agencies have failed to reach an

resulting FRLA order. There is substantial dispute over the question

administrative judges. These concerns may warrant further study.

Protection Board Appeal Form and the addition of Appendix IV to part 1201—

may appeal to the U.S. Court of Appeals for the Federal Circuit.

closed to make clear how the Board computes presumed mailing dates.

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proceedings, indicating that the two agencies have failed to reach an accommodation in only a very limited number of cases. Even where a Special Panel was unnecessary, however, sequential consideration by the MSPB and the EEOC has required significant time and effort and has at times led to confusion on the part of agencies and claimants. The question for congressional consideration is whether experience confirms the desirability of dual agency participation in mixed cases or whether that experience suggests that consistently fair and more timely results may be achieved through a less complex process.

3. *Government's Right to Appeal.* Under existing law the government may petition for judicial review of certain administrative and arbitral decisions in personnel cases that present significant issues of civil service law. The availability of such review is either uncertain or non-existent when those decisions implicate issues of discrimination law.[6] There is disagreement over the desirability of permitting the government to seek a judicial resolution of legal issues that have been decided adversely to the government at the administrative level.

The question for congressional consideration is whether in the interest of consistency the government should have the right to judicial review (or at least the authority to petition for it) in cases where the Director of OPM determines that an administrative or arbitral decision constitutes an incorrect interpretation of civil service or discrimination law that may have a substantial impact. The primary countervailing considerations are the increased potential for further delay in final resolution of such cases and whether the executive branch should be authorized to seek judicial resolution of disputes between two of its agencies, as would be the case if OPM were permitted to appeal from adverse determinations of the EEOC.

C. Enforcement of Arbitration Awards

Although federal employee grievance arbitration awards are intended to be binding, federal agencies do not always comply with them. Under the CSRA, the only mechanism available to a federal employee seeking to enforce an arbitral award is an unfair labor practice proceeding before the FLRA. Such a proceeding requires filing of a complaint by the Authority's General Counsel and a hearing before the FLRA, followed by judicial review and enforcement of the resulting FRLA order. There is substantial dispute over the question whether an employing agency may raise any defense to an enforcement action other than compliance with the arbitral award.

Questions for congressional consideration include to permit an employee or union to seek direct judicial enforcement of federal sector grievance arbitration awards, where such enforcement should take place, and what issues should be open for litigation in the chosen forum. A central issue is whether permitting such direct enforcement actions would increase or decrease the likelihood of voluntary agency compliance with arbitration awards.

D. Need To Examine Existing Adjudicatory Systems

1. *Agency Administrative Grievance Systems.* Agency administrative systems have taken on increasing importance as the only avenue of redress [7] available to an individual employee in cases not falling within MSPB or EEOC jurisdiction or within the scope of a negotiated grievance procedure. The Office of Personnel Management and other agencies should ensure that these systems in fact provide fair, efficient, and timely resolution of workplace disputes, and further studies of the structure and usage of these systems may be needed.[8] In reviewing these processes, agencies should give careful consideration to alternative means of dispute resolution.

2. *Agency Complaint Processes in Discrimination Cases.* Over the years, criticism has been leveled at the quality and timeliness of agency disposition of discrimination complaints. The EEOC and individual employing agencies should continue to take steps to ensure adequate and expeditious investigation and timely, final resolution of such claims. Experimentation with, and incorporation of, alternative dispute resolution techniques may be useful.

3. *MSPB and Negotiated Grievance Systems.* The MSPB process and the various negotiated grievance processes dispose of large numbers of significant employee claims. Concerns have been expressed regarding certain aspects of their operation, including the familiarity of arbitrators with federal personnel law and the need for increasing the statutory independence of the MSPB's administrative judges. These concerns may warrant further study.

E. Better Communication Within Agencies and to Employees

Multiple avenues for relief present the danger of parallel, duplicate proceedings. Agencies should take steps to ensure that there are consistent patterns of communication among their personnel, labor relations and equal employment opportunity staffs to reduce the likelihood of parallel, duplicative proceedings in personnel actions for which such duplication is not permitted by law.

To use the personnel grievance system effectively, employees must have clear and reliable information about options available to them and the consequence of choosing one route over another. The Office of Personnel Management and other agencies should ensure that there exist readily available and easily understandable written or other materials that inform federal employees of their complaint, grievance and appeal options and the consequences of their choice of one complaint, grievance or appellate route over another.

Dated: December 20, 1989.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 89-30313 Filed 12-28-89; 8:45 am]

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[6] See, e.g., *Moore* v. *Devine*, 780 F.2d 1559 (11th Cir. 1986).

[7] See, e.g., *Harrison* v. *Bowen*, 815 F.2d 1505 (D.C. Cir. 1987).

[8] OPM has recently reviewed the systems established by agencies and has published a study entitled *A Survey of Agency Administrative Grievance Systems* (June 1989).

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

RIN 3124-AA10

Practices and Procedures

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: On July 6, 1989, the U.S. Merit Systems Protection Board published interim rules of practice and procedure in part 1201, with the exception of Appendix I, (54 FR 28632) in plain English so that the Board's requirements and practice could be more readily understood by persons who are not practitioners in personnel administration or the law. The interim rules also implemented the Whistleblower Protection Act of 1989, Public Law 101-12. The interim regulations published under part 1201 on July 6, 1989 are hereby amended as set forth below, including the amended Appendix I to part 1201—Merit Systems Protection Board Appeal Form and the addition of Appendix IV to part 1201—Sample Declaration Under 28 U.S.C. 1746, and these are now the final regulations of the Board in this part.

EFFECTIVE DATE: December 29, 1989.

FOR FURTHER INFORMATION CONTACT: Charles J. Stanislav, (202) 653-8931.

SUPPLEMENTARY INFORMATION: On July 6, 1989, the Board published interim regulations in this part in plain English, to implement the Whistleblower Protection Act of 1989 (Pub. L. 101-12) and to make other specified changes. The public was invited to comment on the interim regulations with respect to the ease of understanding and adherence to legal requirements. The Board has considered the comments received and has adopted many of those suggestions and has determined that certain technical corrections or other clarifying changes should be made also. The interim rules are hereby modified and are published here as the final rules of the Board in part 1201. The Board is republishing the entire rules in this part for clarity and the convenience of the public, parties and practitioners.

Five agencies and four individuals or private firms submitted comments on the interim rules published July 6, 1989. No organizations responded. The respondents offered some suggestions which the Board finds will further improve the rules. Technical corrections required in the rules as published were identified by the Board and by respondents. These include spelling errors or missing words or phrases and are corrected here without discussion or explanation.

The Board adopted suggestions for the following: Changing the designation of "presiding official" to "judge", changing "petition for appeal" to "appeal", allowing for filing and service by facsimile, eliminating the requirement to certify service to the Board as well as to the parties, allowing for filing by the appellant or the appellant's representative, modifying the paper size requirement under appropriate circumstances, clarifying that persons in official duty status are entitled to pay and other benefits, clarifying the section on substitution of parties, clarifying when a person may be excluded from a hearing, allowing for filing supplemental citations where appropriate, requiring that requests for depositions be served on the party's representative but not on the person to be deposed, clarifying the statement required in support of a request for a subpoena, and informing appellants in mixed cases that if they waive the discrimination issue, they may appeal to the U.S. Court of Appeals for the Federal Circuit.

The Board did not adopt suggestions for the following: excluding state holidays in computing timeliness, permitting agencies to request a hearing when the appellant does not request one, making back pay awards payable jointly to the appellant and the representative, revising the definition of "harmful error by changing "would" to "could", eliminating the requirement that the Director of the Office of Personnel Management (OPM) be served (apparently, notwithstanding OPM's right to intervene), requiring that penalties be imposed if a party fails to respond to a request for admissions, listing the types of discovery that may be required of nonparties, making it clear that sanctions apply to both parties, changing the effective date of interim relief and stating the factors that a judge is to consider in determining whether interim relief is appropriate, and revising the Special Panel's rule that requires the use of Express Mail.

The following constitutes a section-by-section analysis and discussion of each substantive change made at this time.

(a) Section 1201.2—is amended by changing the title and the text to state more clearly the Board's original jurisdiction, and a technical correction is made by deleting "Board's" to conform to Public Law 101-12.

(b) Section 1201.3—is amended by changing the title of this section and the title of paragraph (a) to more clearly state the Board's jurisdiction. Also, paragraph (a)(8) is amended to state more clearly the grounds for appeal and to correct the cite to the U.S. Code by changing "5" to "38".

(c) Section 1201.4—paragraph (a) is amended by substituting the term "judge" for "presiding official"; paragraph (c) is amended by eliminating words that are not part of the definition of "motion"; paragraph (f) is amended by substituting "appeal" for "petition for appeal" for accuracy, and "for" is inserted as a technical correction between "request" and "review"; paragraph (g) is amended to use "judge" to conform to the change in paragraph (a) of this section; paragraph (i) is amended by adding facsimile as a method of service; paragraphs (j) and (k) are amended by deleting "Board officials" and "or both"; and paragraph (l) is amended by adding a new second sentence to state that when service is by facsimile, the date of service is the date of the facsimile, and by adding to the last sentence a parenthetical statement to exclude days when the Board is closed to make clear how the Board computes presumed mailing dates.

(d) Section 1201.12—is amended by substituting "judge" for "presiding official" and by making it clear that the Board's regulations may be waived for good cause shown unless the regulation is required by statute.

(e) The heading before § 1201.21 is amended by deleting "Petitions for".

(f) Section 1201.22—is amended by substituting "appeal" or "appeals" for "petition for appeal" or "petitions" in the heading and in paragraphs (a), (b) and (c); paragraph (c) is restated to make it clear that an appeal may be dismissed unless a good reason is shown for the untimely filing, to delete the words "or the Board" as redundant, and to substitute "judge" for "presiding official"; paragraph (d) is amended by adding that appeals may be filed by facsimile and by deleting "normal business hours".

(g) Section 1201.24—is amended by substituting "appeal" for "petitions for appeal" and "judge" for "presiding official"; paragraph (a)(9) is also amended to eliminate the original signature requirement and to allow for signature of the appellant or the representative; paragraph (b) is rewritten to clarify the circumstances for raising a claim or defense not included in the initial appeal; paragraph (c) is amended by deleting unnecessary language; and paragraph (e) is amended to state that if a timely request for a hearing is not made, the right to a hearing is waived.

(h) Section 1201.25—is amended by substituting "an appeal" for "a petition for appeal"; also paragraph (c) is deleted and paragraphs (d)-(f) are renumbered (c)-(e).

(i) Section 1201.26—is amended by substituting "appeal" for "petition for appeal"; paragraph (a) is amended to provide that two copies of both the appeal and all attachments must be filed; paragraph (b) is amended to correct the cite to read § 1201.4(b), to make it clear that, except for the initial appeal, all documents submitted with a pleading—not just the pleading—must be served on the parties, to add facsimile as a method of service, and to delete "service list"; paragraph (c) is amended to allow exceptions, for good cause, to the 8½ by 11 inch paper size requirement.

(j) Section 1201.27—is amended by substituting "appeal" for "petition for appeal" and "judge" for "presiding official" in paragraphs (a), (b) and (c); paragraph (a) is amended by inserting the words "of the" between "representative" and "parties" in the

second sentence as a technical correction; paragraph (b) is amended by

official" and by adding a reference to appendix IV in paragraph (b).

identification of potential witnesses is relevant information that may be

(uu) Section 1201.101—is amended in paragraph (a) by deleting the first word of the third sentence and by deleting the

if the grant of interim relief in the initial decision requires the return of the appellant to his/her place of

for "presiding official"; and by amending the remaining language—formerly paragraph (c)—to make it clear

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second sentence as a technical correction; paragraph (b) is amended by substituting "request" for "petition" in the second sentence.

(k) Section 1201.31—is amended by substituting "judge" for "presiding official" in paragraphs (b) and (c).

(l) Section 1201.32—is amended by adding clarifying language that witnesses can be represented when testifying, but a witness' representative cannot examine the witness at the hearing.

(m) Section 1201.33—is amended by substituting "judge" for "presiding official" and to clarify that since Federal employee witnesses are in a duty status, they are entitled to appropriate pay and benefits including travel and per diem.

(n) Section 1201.34—is amended by substituting "judge" for "presiding official"; by deleting references to the Board" in paragraphs (c), (d), and (e) as redundant; paragraph (c) is also amended to specifically state that an organization or an agency may be a permissive intervenor and to make it clear that the motion to intervene must explain the reason why the requester should be permitted to intervene; paragraph (e) is also amended to clarify that advice or suggestions are given by filing a brief.

(o) Section 1201.35—is amended by clarifying language in paragraph (a) stating the conditions for processing an appeal; paragraph (b) is amended by adding that a motion for substitution must be filed within 90 days except for good cause.

(p) Section 1201.36—is amended by substituting "judge" for "presiding official".

(q) Section 1201.37—is amended by substituting "judge" for "presiding official"; paragraph (a)(2) is restructured for clarity; paragraph (a)(3) is amended by inserting "issuance of" in the second sentence to make clear that a motion for attorney fees should be filed within 25 days of the date of the issuance of the final decision under section 1201.116 of this part; paragraph (b)(2) is rewritten for clarity and to conform with the law; and paragraph (b)(3) is amended by deleting the last sentence as unnecessary.

(r) The heading before § 1201.41 is amended by substituting "Judges" for "Presiding officials".

(s) Section 1201.41—is amended by substituting "judge(s)" for "presiding official(s)", and paragraph (b)(7) is restated to clarify that any person can be excluded from the hearing for good cause.

(t) Section 1201.42—is amended by substituting "judge" for "presiding official" and by adding a reference to appendix IV in paragraph (b).

(u) Section 1201.43—is amended by substituting "judge" for "presiding official".

(v) Section 1201.51—is amended by substituting "judge" for "presiding official", and paragraph (c) is amended for clarification and to add a reference to appendix IV.

(w) Section 1201.52—is amended by substituting "judge" for "presiding official".

(x) Section 1201.53—is amended by substituting "judge" for "presiding official", and paragraph (c) is amended for clarification and to add a reference to appendix IV.

(y) Section 1201.54—is amended by substituting "judge" for "presiding official".

(z) Section 1201.55—is amended by substituting "judge(s)" for "presiding official(s)"; and paragraph (d) is amended by substituting "the Special Counsel's" for "such" for clarity.

(aa) Section 1201.57—is amended by substituting "judge" for "presiding official".

(bb) Section 1201.58—is amended by substituting "judge" for "presiding official" paragraph (b) is amended also by correcting the error in the spelling of "of" thereby deleting "or"; and paragraph (c) is amended by revising the first sentence and adding that the judge will include in the record any supplemental citations received after the record is closed.

(cc) Section 1201.61—is amended by deleting it in its entirety.

(dd) Section 1201.62—is amended by renumbering it § 1201.61, changing the title, deleting paragraph (a), eliminating as unnecessary the paragraph designation "(b)" and in the remainder by substituting "judge" for "presiding official".

(ee) Section 1201.63—is amended by deleting it in its entirety.

(ff) Section 1201.64—is amended by renumbering it § 1201.62 and substituting "judge" for "presiding official" and restating the last sentence for clarity.

(gg) Section 1201.65—is amended by deleting it in its entirety.

(hh) Section 1201.66—is amended by renumbering it § 1201.63, correcting the error in the spelling of "Stipulations" in the heading, and correcting the error in the spelling of "proving" in the text.

(ii) Section 1201.67—is amended by renumbering it § 1201.64 and substituting "judge" for "presiding official" and changing "will" to "may" in the third sentence.

(jj) Section 1201.72—is amended in paragraph (a) by adding that the identification of potential witnesses is relevant information that may be discovered from another person or party if not otherwise provided, for clarity; and by deleting the last sentence in paragraph (c).

(kk) Section 1201.73—is amended by substituting "judge" for "presiding official"; paragraph (a) is amended to clarify that a party's representative or the party, if there is no representative, can be served with a discovery request, to eliminate the requirement that the person to be deposed be served also, and to add "if applicable" after "deposition"; paragraph (c)(2)(ii) is amended to add a reference to appendix IV; and paragraph (d)(5) is amended by deleting the requirement that discovery be completed within 65 days and by deleting the last sentence as unnecessary.

(ll) Section 1201.74—is amended by substituting "judge" for "presiding official"; paragraph (c) is rewritten for clarity.

(mm) Section 1201.75—is amended to provide that depositions may be taken by any method agreed to by the parties and to specify that deponents are subject to penalties for intentional false statements.

(nn) Section 1201.81—is amended by substituting "judge(s)" for "presiding official(s)"; by revising the last sentence of paragraph (b) to clarify the required support for a subpoena request and by renumbering it as paragraph (c); and by renumbering paragraph (d) as (c).

(oo) Section 1201.82—is amended by substituting "judge" for "presiding official".

(pp) Section 1201.83—is amended by deleting the second sentence in paragraph (a) and substituting a new sentence to provide for service of subpoenas by means prescribed by applicable state law.

(qq) Section 1201.85—is amended by substituting "judge" for "presiding official"; and paragraph (a) is amended to add a reference to appendix IV.

(rr) Section 1201.91—is amended by substituting "judge" for "presiding official", and by substituting "ruling" for "decision" in the first sentence.

(ss) Section 1201.92—is amended by substituting "judge" for "presiding official".

(tt) Section 1201.93—is amended by substituting "judge" for "presiding official"; in paragraph (a) by substituting "ruling" for "determination" in the first sentence and by revising the second sentence for clarity; by deleting paragraph (c) as unnecessary; and by renumbering paragraph (d) as (c).

(uu) Section 1201.101—is amended in paragraph (a) by deleting the first word of the third sentence and by deleting the word "other" between "violate" and "rules" for accuracy and clarity; and paragraph (b)(2) is amended by substituting "judge" for "presiding official" and clarifying that a decision-making official means one designated to hear and decide cases rather than one who may participate in the process.

(vv) Section 1201.103—is amended by substituting "judge" for "presiding official" and in paragraph (c)(1) by substituting "the" for "his or her".

(ww) Section 1201.111—is amended by substituting "judge" for "presiding official"; in paragraph (b)(4) by substituting "date" for "making" to clarify when interim relief is to begin; and in paragraph (c) by clarifying that interim relief is to be provided from the date of the initial decision to the date of the final decision, and to clarify that an agency in appropriate circumstances may decline to return the appellant to duty, but in such situations must provide pay and benefits to the appellant as required by Public Law 101–12.

(xx) Section 1201.112—is amended by substituting "judge" for "presiding official".

(yy) Section 1201.113—is amended by substituting "judge" for "presiding official" and by revising paragraph (c) for clarity.

(zz) Section 1201.114—is amended in paragraph (a) by deleting the requirement for an original signature; in paragraph (c) by adding facsimile as a method of filing; in paragraph (d) by deleting all after the third sentence as redundant; in paragraph (e) by adding a reference to appendix IV and by changing "must" to "should" in the last sentence to recognize that documentation is not always available; in paragraph (f) by revising the first sentence for clarity, deleting "for waiver" after "motion" throughout the paragraph, and adding a reference to appendix IV; in paragraphs (g)(1) and (g)(2) by providing that a notice of intervention by either the Director of the Office of Personnel Management or the Special Counsel is timely if filed within 45 days of the date the petition for review is filed; in paragraph (g)(3) by adding "organization or agency" as permissive intervenors; in paragraph (h) by providing for service in accordance with § 1201.28(b)(2); and in paragraph (i) by revising the last sentence for clarity.

(aaa) Section 1201.115—is amended by substituting "judge" for "presiding official"; by amending paragraph (b)(1) to clarify that the initial decision may grant interim relief to the appellant; by revising paragraph (b)(2) to clarify that if the grant of interim relief in the initial decision requires the return of the appellant to his/her place of employment and the agency determines that the return will be unduly disruptive, the agency must notify the appellant and the judge in writing of that determination; by amending paragraph (b)(3) to clarify that back pay is not required for the period preceding the date of the initial decision before the Board's decision becomes final; and by substituting "will" for "may" in paragraph (b)(4).

(bbb) Section 1201.116—is amended by substituting "judge" for "presiding official"; and by amending paragraph (a)(1) to add that the Board can in a single decision deny a petition for review in any case that is reopened or reviewed.

(ccc) Section 1201.117—is amended by substituting "judge" for "presiding official".

(ddd) Section 1201.122—is amended in paragraph (c) by correcting the cite to § 1201.4(b) and by adding facsimile as a method of service.

(eee) Section 1201.123—is amended in paragraph (a)(1) to delete unnecessary language and to make it clear that an agency is to correct a prohibited personnel practice.

(fff) Section 1201.126—is amended in paragraph (b)(1) to substitute "will" for "is to" in the last line for clarity.

(ggg) Section 1201.127—is amended by substituting "will" for "is about to" in the first sentence for accuracy and by substituting "Federal" for "legal" in the first sentence of paragraph (c).

(hhh) Section 1201.129—is amended by substituting "judge" for "presiding official" and by revising paragraph (d) for clarity.

(iii) Section 1201.135—is amended by substituting "judge" for "presiding official".

(jjj) Section 1201.151—is amended by deleting the last sentence of paragraph (b) as redundant.

(kkk) Section 1201.153—is amended by substituting "appeal" for "petition for appeal" and by revising paragraph (a)(1) for clarity.

(lll) Section 1201.154—is amended by substituting "appeal(s)" for "petition(s)" and "judge" for "presiding official"; in paragraph (c) by deleting the cite to § 1201.12 and the words "in his or her discretion"; in paragraph (d) by amending the time limit to 25 days from the date of issuance of the decision; and in paragraph (e) by revising the last sentence for clarity.

(mmm) Section 1201.155—is amended by changing the title and deleting paragraphs (a), (b), and (d) for simplification; by substituting "judge" for "presiding official"; and by amending the remaining language—formerly paragraph (c)—to make it clear that a judge can remand the discrimination issue to the agency and that the remand order will specify the time period within which the agency must complete its consideration of that issue.

(nnn) Section 1201.156—is amended by substituting "appeal" for "petition for appeal" and "judge" for "presiding official".

(ooo) Section 1201.157—is deleted as unnecessary.

(ppp) Section 1201.158—is amended by renumbering it § 1201.157 and by adding at the end a sentence which recognizes an appellant's option to waive the discrimination issue and file an appeal with the United States Court of Appeals for the Federal Circuit.

(qqq) Section 1201.161—is amended by adding "Equal Employment Opportunity" before "Commission" in the title and first sentence; by substituting "judge" for "presiding official"; by amending paragraph (e) to clarify that the reference is to paragraph (c) of this section; and by amending paragraph (f) to clarify that an appellant may file suit in an appropriate United States district court if the Commission concurs in the decision of the Board.

(rrr) Section 1201.162—is amended by correcting paragraphs (a) and (a)(1) to include language which was omitted in the publication of the interim rules.

(sss) Section 1201.165—is amended by renumbering it as § 1201.163; by amending paragraph (b) to substitute "appeal" for "petition for appeal"; by amending paragraph (c)(2) to correct the word "with" to read "within"; by substituting "Commission" for "EEOC" in paragraph (d); and by amending paragraph (d)(3) to correct the cite to read 5 U.S.C. 1204(g) pursuant to Pub.L. 101–12.

(ttt) Section 1201.182—is amended in paragraph (a) by adding the title "Appellate jurisdiction" and correcting the word "appellant" to read "appellate" in the first sentence; in paragraph (c) by correcting the word "how" in the second sentence to read "who"; and by deleting paragraph (d) as unnecessary.

(uuu) Section 1201.183—is amended by adding words to the section heading to make it clear that the procedures apply to petitions for enforcement; by substituting "judge" for "presiding official"; by substituting "alleged noncomplying" party for "alleged not to have complied" for clarity; by revising paragraphs (a)(1) (i) and (ii) to specify what evidence of compliance must

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include; by adding a new paragraph (a)(2) regarding identification of the agency official charged with compliance; by renumbering paragraphs (a)(2)–(6) as (a)(3)–(7) and by making appropriate conforming changes in the references to these paragraphs; by correcting the spelling of "made" in renumbered paragraph (a)(5)(i); by changing the first word to "The" and changing "decisions" to "decision" in renumbered paragraph (a)(5)(ii); and by revising paragraph (b) for clarity.

(www) Appendix I—is amended by substituting the revised and OMB approved MSPB Appeal Form [Optional Form 283] for the previous edition of the form.

(xxx) Appendix II—is amended by adding the facsimile number for each regional office of the Board.

(yyy) Appendix III—is amended by adding Memphis, Tennessee as an approved hearing location under the St. Louis Region.

(zzz) Appendix IV—is added to provide a sample Declaration under 28 U.S.C. 1746.

List of Subjects in 5 CFR Part 1201

Administrative practice and procedure, Civil rights, Government employees.

Accordingly, the Merit Systems Protection Board revises 5 CFR part 1201 as follows:

PART 1201—PRACTICES AND PROCEDURES

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1201.2 Original jurisdiction.
1201.3 Appellate jurisdiction.
1201.4 General definitions.

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1201.13 Appeals by Board employees.

Appeal of Agency Action; Pleadings

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1201.22 Filing an appeal and responses to appeals.
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1201.171 Referral of case to Special Panel.
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1201.181 Authority and explanation.
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Subpart G—Savings Provisions

1201.191 Savings provisions.

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Appendix I to Part 1201—Merit Systems Protection Board Appeal Form

Appendix II to Part 1201—Appropriate Regional Office for Filing Appeals

Appendix III to Part 1201—Approved Hearing Locations by Regional Office

Appendix IV to Part 1201—Sample Declaration Under 28 U.S.C. 1746

Authority: 5 U.S.C. 1204, and 7701 unless otherwise noted.

Subpart A—Jurisdiction and Definitions

§ 1201.1 General.

The Board has two types of jurisdiction, original and appellate.

§ 1201.2 Original jurisdiction.

The Board's original jurisdiction includes the following cases:

(a) Actions brought by the Special Counsel;

(b) Requests, by persons removed from the Senior Executive Service for performance deficiencies, for informal hearings; and

(c) Actions taken against administrative law judges under 5 U.S.C. 7521.

§ 1201.3 Appellate jurisdiction.

(a) *Generally.* The Board has jurisdiction over appeals from agency actions when the appeals are authorized by law, rule, or regulation. These include appeals from the following actions:

(1) Reduction in grade or removal for unacceptable performance (5 CFR part 432; 5 U.S.C. 4303(e));

(2) Removal, reduction in grade or pay, suspension for more than 14 days, or furlough for 30 days or less for cause that will promote the efficiency of the service. (5 CFR part 752, subparts C and D; 5 U.S.C. 7512);

(3) Removal, or suspension for more than 14 days, of a career appointee in the Senior Executive Service (5 CFR part 752, subparts E and F; 5 U.S.C. 7541–7543);

(4) Reduction-in-force action affecting a career appointee in the Senior Executive Service (5 U.S.C. 3595);

(5) Reconsideration decision sustaining a negative determination of competence for a general schedule employee (5 CFR 531.410; 5 U.S.C. 5335(c));

(6) Determinations affecting the rights or interests of an individual or of the United States under the Civil Service Retirement System or the Federal Employees' Retirement System (5 CFR parts 831 and 842; 5 U.S.C. 8347(d)(1)–(2) and 8431 (e)(1));

(7) Disqualification of an employee or applicant because of a suitability determination (5 CFR 731.401);

(8) Termination of employment during probation or the first year of a veterans readjustment appointment when: (i) the employee alleges discrimination because of partisan political reasons or marital status; or (ii) the termination was based on conditions arising before appointment and the employee alleges that the action is procedurally improper (5 CFR 315.806, 38 U.S.C. 2014(b)(1)(D));

(9) Termination of appointment during a managerial or supervisory probationary period when the employee alleges discrimination because of partisan political affiliation or marital status (5 CFR 315.908(b));

(10) Separation, reduction in grade, or furlough for more than 30 days, when the action was effected because of a reduction in force (5 CFR 351.901);

(11) Furlough of a career appointee in the Senior Executive Service (5 CFR 359.805);

(12) Failure to restore a former employee to employment following military service, or following partial or full recovery from a compensable injury (5 CFR 353.401);

(13) Employment of another applicant when the person who wishes to appeal to the Board is entitled to priority employment consideration after a reduction-in-force action, or after partial or full recovery from a compensable injury (5 CFR 302.501, 5 CFR 330.202);

(14) Failure to reinstate a former employee after service under the Foreign Assistance Act of 1961 (5 CFR 352.508);

(15) Failure to re-employ a former employee after movement between executive agencies during an emergency (5 CFR 352.209);

(16) Failure to re-employ a former employee after detail or transfer to an international organization (5 CFR 352.313);

(17) Failure to re-employ a former employee after service under the Indian Self-Determination Act (5 CFR 352.707);

(18) Failure to re-employ a former employee after service under the Taiwan Relations Act (5 CFR 352.807); and

(19) Employment practices administered by the Office of Personnel Management to examine and evaluate the qualifications of applicants for appointment in the competitive service (5 CFR 300.104).

(b) *Appeals involving an allegation that the action was based on appellant's "whistleblowing."* Appeals of actions appealable to the Board under any law, rule, or regulation, in which the appellant alleges that the action was taken because of the appellant's "whistleblowing" [a violation of the prohibited personnel practice described in 5 U.S.C. 2302(b)(8)), are governed by part 1209 of this title. The provisions of subparts B, C, E, F, and G of part 1201 apply to appeals and stay requests governed by part 1209 unless other specific provisions are made in that part.

(c) *Limitations on appellate jurisdiction, collective bargaining agreements, and election of procedures:*

(1) For an employee covered by a collective bargaining agreement under 5 U.S.C. 7121, the negotiated grievance procedures contained in the agreement are the exclusive procedures for resolving any action that could otherwise be appealed to the Board, with the following exceptions:

(i) An appealable action involving discrimination under 5 U.S.C. 2302(b)(1), reduction in grade or removal under 5 U.S.C. 4303, or adverse action under 5 U.S.C. 7512, may be raised under the Board's appellate procedures, or under the negotiated grievance procedures, but not under both;

(ii) Any appealable action that is excluded from the application of the negotiated grievance procedures may be raised only under the Board's appellate procedures.

(2) *Choice of procedure.* When an employee has an option of pursuing an action under the Board's appeal procedures or under negotiated grievance procedures, the Board considers the choice between those procedures to have been made when the employee timely files an appeal with the Board or timely files a written grievance, whichever event occurs first.

(3) *Review of discrimination grievances.* If an employee chooses the negotiated grievance procedure under paragraph (c)(2) of this section and alleges discrimination as described at 5 U.S.C. 2302(b)(1), then the employee, after having obtained a final decision under the negotiated grievance procedure, may ask the Board to review that final decision. The request must be filed with the Clerk of the Board in accordance with § 1201.154.

(d) *Appealability not affected by retirement status or election.* In determining the appealability of an action to the Board under any law, rule, or regulation, neither the status of the appellant under any retirement system established under a Federal statute nor any election made by the appellant under such system may be taken into account.

§ 1201.4 General definitions.

(a) *Judge.* Any person authorized by the Board to hold a hearing or to decide a case without a hearing, including an attorney-examiner, an administrative

judge, an administrative law judge, the Board, or any member of the Board.

(b) *Pleading.* Written submission

as otherwise provided in § 1201.13. The regulations in this subpart apply also to appellate proceedings and stay requests

§ 1201.22 Filing an appeal and responses to appeals.

(a) *Place of filing.* Appeals, and

(4) A statement of the reasons why the appellant believes the agency action is wrong;

attachments with the appropriate Board office.

(b) *Service.*—(1) *Service by the Board.*

not controlled by the applicable provisions of the Federal Rules of Civil Procedure.

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judge, an administrative law judge, the Board, or any member of the Board.

(b) *Pleading.* Written submission setting out claims, allegations, arguments, or evidence. Pleadings include briefs, motions, petitions, attachments, and responses.

(c) *Motion.* A request that a judge take a particular action.

(d) *Appropriate regional office.* The regional office of the Board that has jurisdiction over the area where the appellant's duty station was located when the agency took the action. Appeals of Office of Personnel Management reconsideration decisions concerning retirement benefits, and appeals of adverse suitability determinations under 5 CFR part 731, must be filed with the regional office that has jurisdiction over the area where the appellant lives. Appendix II of these regulations lists the geographic areas over which each of the Board's regional offices has jurisdiction. Appeals, however, may be transferred from one regional office to another.

(e) *Party.* A person, an agency, or an intervenor, who is participating in a Board proceeding. This term applies to the Office of Personnel Management and to the Office of Special Counsel when those organizations are participating in a Board proceeding.

(f) *Appeal.* A request for review of an agency action.

(g) *Petition for review.* A request for review of an initial decision of a judge.

(h) *Day.* Calendar day.

(i) *Service.* The process of furnishing a copy of any pleading to Board officials, other parties, or both, either by mail, by facsimile, or by personal delivery.

(j) *Date of service.* The date on which documents are served on other parties.

(k) *Certificate of Service.* A document certifying that a party has served copies of pleadings on the other parties.

(l) *Date of filing.* A document that is filed with a Board office by personal delivery is considered filed on the date on which the Board office receives it. The date of filing by facsimile is the date of the facsimile. The date of filing by mail is determined by the postmark date; if no legible postmark date appears on the mailing, the submission is presumed to have been mailed five days (excluding days on which the Board is closed for business) before its receipt.

Subpart B—Procedures for Appellate Cases

General

§ 1201.11 Scope and policy.

The regulations in this subpart apply to Board appellate proceedings except as otherwise provided in § 1201.13. The regulations in this subpart apply also to appellate proceedings and stay requests covered by part 1209 unless other specific provisions are made in that part. These regulations also apply to original jurisdiction proceedings of the Board except as otherwise provided in subpart D. It is the Board's policy that these rules will be applied in a manner that expedites the processing of each case, with due regard to the rights of all parties.

§ 1201.12 Revocation, amendment, or waiver of rules.

The Board may revoke, amend, or waive any of these regulations. A judge may, for good cause shown, waive a Board regulation unless a statute requires application of the regulation. The judge must give notice of the waiver to all parties, but is not required to give the parties an opportunity to respond.

§ 1201.13 Appeals by Board employees.

Appeals by Board employees will be filed with the Clerk of the Board and will be assigned to an administrative law judge for adjudication under this subchapter. The Board's policy is to insulate the adjudication of its own employees' appeals from agency involvement as much as possible. Accordingly, the Board will not disturb initial decisions in those cases unless the party shows that there has been harmful procedural irregularity in the proceedings before the administrative law judge or a clear error of law. In addition, the Board, as a matter of policy, will not rule on any interlocutory appeals or motions to disqualify the administrative law judge assigned to those cases until the initial decision has been issued.

Appeal of Agency Action; Pleadings

§ 1201.21 Notice of appeal rights.

When an agency issues a decision notice to an employee on a matter that is appealable to the Board, the agency must provide the employee with the following:

(a) Notice of the time limits for appealing to the Board, the requirements of § 1201.22(c), and the address of the appropriate Board office for filing the appeal;

(b) A copy, or access to a copy, of the Board's regulations;

(c) A copy of the appeal form in Appendix I of this part; and

(d) Notice of any right the employee has to file a grievance.

§ 1201.22 Filing an appeal and responses to appeals.

(a) *Place of filing.* Appeals, and responses to those appeals, must be filed with the appropriate Board regional office. See § 1201.4(d) of this part.

(b) *Time of filing.* An appeal must be filed during the period beginning on the day after the effective date of the action being appealed and ending 20 days after the effective date. An appeal from a final or reconsideration decision that does not set an effective date must be filed within 25 days of the date of the issuance of the decision. (Paragraphs (a)(5), (6), (7), (12), (13), (14), (15), (16), (17), and (18) of § 1201.3 of this part list actions covered by the latter rule.) A response to an appeal must be filed within 20 days of the date of the Board's acknowledgment order.

(c) *Timeliness of appeals.* If a party does not submit an appeal within the time set by statute, regulation, or order of a judge, it will be dismissed as untimely filed unless a good reason for the delay is shown. The judge will provide the party an opportunity to show why the appeal should not be dismissed as untimely.

(d) *Method of filing.* Filing must be made with the appropriate Board office by personal delivery, by facsimile, or by mail.

§ 1201.23 Computation of time.

In computing the number of days allowed for filing a submission, the first day counted is the day after the event from which the time period begins to run. If the date that ordinarily would be the last day for filing falls on a Saturday, Sunday, or Federal holiday, the filing period will include the first workday after that date.

Example: If an employee receives a decision notice that is effective on June 1, the 20-day period for filing an appeal starts to run on June 2. The filing ordinarily would be timely only if it is made by June 21. If June 21 is a Saturday, however, the last day for filing would be Monday, June 23.

§ 1201.24 Content of an appeal; right to hearing.

(a) *Content.* Only an appellant, his or her designated representative, or a party properly substituted under § 1201.35 may file an appeal. Appeals may be in any format, including letter form, but they must contain the following:

(1) The name, address, and telephone number of the appellant, and the name and address of the agency that took the action;

(2) A description of the action the agency took and its effective date;

(3) A request for hearing if the appellant wants one;

(4) A statement of the reasons why the appellant believes the agency action is wrong;

(5) A statement of the action the appellant would like the judge to order;

(6) The name, address, and telephone number of the appellant's representative, if the appellant has a representative;

(7) The notice of the decision to take the action being appealed, along with any relevant documents;

(8) A statement telling whether the appellant or anyone acting on his or her behalf has filed a grievance or a formal discrimination complaint with any agency regarding this matter; and

(9) The signature of the appellant or, if the appellant has a representative, of the representative.

(b) An appellant may raise a claim or defense not included in the appeal at any time before the end of the conference(s) held to define the issues in the case. An appellant may not raise a new claim or defense after that time, except for good cause shown. However, a claim or defense not included in the appeal may be excluded if a party shows that including it would result in undue prejudice.

(c) *Use of Board form.* An appellant may comply with paragraph (a) of this section, and with § 1201.31 of this part, by completing the form in Appendix I of this part.

(d) *Right to hearing.* Under 5 U.S.C. 7701, an appellant has a right to a hearing.

(e) *Timely request.* The appellant must submit any request for a hearing with the appeal, or within any other time period the judge sets for that purpose. If the appellant does not make a timely request for a hearing, the right to a hearing is waived.

§ 1201.25 Content of agency response.

The agency response to an appeal must contain the following:

(a) The name of the appellant and of the agency whose action the appellant is appealing;

(b) A statement identifying the agency action taken against the appellant and stating the reasons for taking the action;

(c) All documents contained in the agency record of the action;

(d) Designation of and signature by the authorized agency representative; and

(e) Any other documents or responses requested by the Board.

§ 1201.26 Number of pleadings, service, and response.

(a) *Number.* The appellant must file two copies of both the appeal and all attachments with the appropriate Board office.

(b) *Service.*—(1) *Service by the Board.* The appropriate office of the Board will mail a copy of the appeal to each party to the proceeding other than the appellant. It will attach to each copy a service list, consisting of a list of the names and addresses of the parties to the proceeding or their designated representatives.

(2) *Service by the parties.* The parties must serve on each other one copy of each pleading, as defined by § 1201.4(b), and all documents submitted with it, except for the initial appeal. They may do so by mail, by facsimile, or by personal delivery to each party and to each representative. A certificate of service stating how and when service was made must accompany each pleading. The parties must notify the appropriate Board office and one another, in writing, of any changes in the names or addresses on the service list.

(c) *Paper size.* Pleadings and 8½ attachments must be filed on 8 1/2 by 11-inch paper, except for good cause shown. This requirement enables the Board to comply with standards established for U.S. courts.

§ 1201.27 Class appeals.

(a) *Appeal.* One or more employees may file an appeal as representatives of a class of employees. The judge will hear the case as a class appeal if he or she finds that a class appeal is the fairest and most efficient way to adjudicate the appeal and that the representative of the parties will adequately protect the interests of all parties. When a class appeal is filed, the time from the filing date until the judge issues his or her decision under paragraph (b) of this section is not counted in computing the time limit for individual members of the potential class to file individual appeals.

(b) *Procedure.* The judge will consider the appellant's request and any opposition to that request, and will issue an order within 30 days after the appeal is filed stating whether the appeal is to be heard as a class appeal. If the judge denies the request, the appellants affected by the decision may file individual appeals within 25 days after the denial. Each individual appellant is responsible for either filing an individual appeal within the original time limit, or keeping informed of the status of a class appeal and, if the class appeal is denied, filing an individual appeal within the additional 25-day period.

(c) *Standards.* In determining whether it is appropriate to treat an appeal as a class action, the judge will be guided but not controlled by the applicable provisions of the Federal Rules of Civil Procedure.

Parties, Representatives, and Witnesses

§ 1201.31 Representatives.

(a) A party to an appeal may be represented in any matter related to the appeal. The parties must designate their representatives, if any, in writing. Any change in representation, and any revocation of a designation of representative, also must be in writing. Notice of the change must be filed and served on the other parties in accordance with § 1201.26 of this part.

(b) A party may choose any representative as long as that person is willing and available to serve. The other party or parties may challenge the designation, however, on the ground that it involves a conflict of interest or a conflict of position. Any party who challenges the designation must do so by filing a motion with the judge within 15 days after the date of service of the notice of designation. The judge will rule on the motion before considering the merits of the appeal. These procedures apply equally to each designation of representative, regardless of whether the representative was the first one designated by a party or a subsequently designated representative. If a representative is disqualified, the judge will give the party whose representative was disqualified a reasonable time to obtain another one.

(c) The judge, on his or her own motion, may disqualify a party's representative on the grounds described in paragraph (b) of this section.

§ 1201.32 Witnesses; right to representation.

Witnesses have the right to be represented when testifying. The representative of a nonparty witness has no right to examine the witness at the hearing or otherwise participate in the development of testimony.

§ 1201.33 Federal witnesses.

Every Federal agency or corporation must make its employees or personnel available to furnish sworn statements or to appear as witnesses at the hearing when ordered by the judge to do so. When providing those statements or appearing at the hearing, Federal employee witnesses will be in official duty status (i.e., entitled to pay and benefits including travel and per diem, where appropriate).

§ 1201.34 Intervenors and amicus curiae.

(a) *Explanation of Intervention.* Intervenors are organizations or persons

who want to participate in a proceeding because they believe the proceeding, or

discretion of the judge, be granted permission to file an amicus curiae brief.

(2) If an appellant is the prevailing party in an appeal and the decision is

Judges

§ 1201.41 Judges.

(16) Determine, in decisions in which the appellant is the prevailing party,

(3) Permit the requesting party to introduce secondary evidence

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who want to participate in a proceeding because they believe the proceeding, or its outcome, may affect their rights or duties. Intervenors as a "matter of right" are those parties who have a statutory right to participate. "Permissive" intervenors are those parties who may be permitted to participate if the proceeding will affect them directly and if intervention is otherwise appropriate under law. A request to intervene may be made by motion filed with the judge.

(b) *Intervenors as a matter of right.* (1) The Director of the Office of Personnel Management may intervene as a matter of right under 5 U.S.C. 7701(d)(1). The motion to intervene must be filed at the earliest practicable time.

(2)(i) Except as provided in paragraph (b)(2)(ii) of this section, the Special Counsel may intervene as a matter of right under 5 U.S.C. 1212(c). The motion to intervene must be filed at the earliest practicable time.

(ii) The Special Counsel may not intervene in an action brought by an individual under 5 U.S.C. 1221, or in an appeal brought by an individual under 5 U.S.C. 7701, without the consent of that individual. The Special Counsel must present evidence that the individual has consented to the intervention at the time the motion to intervene is filed.

(c) *Permissive intervenors.* (1) Any person, organization or agency may, by motion, ask the judge for permission to intervene. The motion must explain the reason why the person, organization or agency should be permitted to intervene.

(2) A motion for permission to intervene will be granted where the requester will be affected directly by the outcome of the proceeding. Any person alleged to have committed a prohibited personnel practice under 5 U.S.C. 2302(b) may request permission to intervene. A judge's denial of a motion for permissive intervention may be appealed to the Board under § 1201.91 of this part.

(d) *Role of intervenors.* Intervenors have the same rights and duties as parties, with the following two exceptions:

(1) Intervenors do not have an independent right to a hearing; and

(2) Permissive intervenors may participate only on the issues affecting them. The judge is responsible for determining the issues on which permissive intervenors may participate.

(e) *Amicus curiae.* An amicus curiae is a person or organization that, although not a party to an appeal, gives advice or suggestions by filing a brief with the judge regarding an appeal. Any person or organization, including those who do not qualify as intervenors, may, in the discretion of the judge, be granted permission to file an amicus curiae brief.

§ 1201.35 Substituting parties.

(a) If an appellant dies or is otherwise unable to pursue the appeal, the processing of the appeal will only be completed upon substitution of a proper party. Substitution will not be permitted where the interests of the appellant have terminated because of the appellant's death or other disability.

(b) The representative or proper party must file a motion for substitution within 90 days after the death or other disabling event, except for good cause shown.

(c) In the absence of a timely substitution of a party, the processing of the appeal may continue if the interests of the proper party will not be prejudiced.

§ 1201.36 Consolidating and joining appeals.

(a) *Explanation.* (1) Consolidation occurs when the appeals of two or more parties are united for consideration because they contain identical or similar issues. For example, individual appeals rising from a single reduction in force might be consolidated.

(2) Joinder occurs when one person has filed two or more appeals and they are united for consideration. For example, a judge might join an appeal challenging a 30-day suspension with a pending appeal challenging a subsequent dismissal if the same appellant filed both appeals.

(b) *Action by judge.* A judge may consolidate or join cases on his or her own motion or on the motion of a party if doing so would:

(1) Expedite processing of the cases; and

(2) Not adversely affect the interests of the parties.

(c) Any objection to a motion for consolidation or joinder must be filed within 10 days of the date of service of the motion.

§ 1201.37 Fees.

(a) *Attorney fees.* Except as provided in paragraphs (a)(1) and (a)(2) of this section, the judge may require the agency to pay reasonable attorney fees if the appellant is the prevailing party and payment is warranted in the interest of justice.

(1) If an appellant is the prevailing party and the decision is based on a finding of discrimination prohibited under 5 U.S.C. 2302(b)(1), the motion for an attorney fee award will be considered under the standards of section 706(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5(k)).

(2) If an appellant is the prevailing party in an appeal and the decision is based on the finding of any prohibited personnel practice under 5 U.S.C. 2302(b), as provided by 5 U.S.C. 1221(g) the agency shall be liable to the appellant for payment of reasonable attorney fees and any other reasonable costs incurred.

(3) Any request for payment of attorney fees must be made by motion. The motion must be filed with the judge within 20 days of the date on which an initial decision becomes final under § 1201.113 of this part or within 25 days of the date of issuance of a final decision under § 1201.116. The appellant must serve a copy of the motion on the agency. The agency may file a pleading responding to that motion within the time limit set by the judge. The motion must state why the appellant believes he or she is entitled to an award under the applicable statutory standard, and must be supported by evidence substantiating the amount of the request. That evidence must include, at a minimum:

(i) Accurate and current time records;

(ii) A copy of the terms of the fee agreement (if any); and

(iii) The attorney's customary billing rate for similar work if the attorney has a billing practice or, in the absence of that practice, other evidence of the prevailing community rate that will establish a market value for the attorney's services. A petition for Board review of the judge's decision on the motion must be filed within 35 days of the date of that decision, and must comply with § 1201.114 of this part.

(b) *Witness fees.*— (1) *Federal employees.* Employees of a Federal agency or corporation testifying in any Board proceeding or making a statement for the record will be in official duty status and will not receive witness fees.

(2) *Other witnesses.* Other witnesses (whether appearing voluntarily or under subpoena) shall be paid the same fee and mileage allowances which are paid subpoenaed witnesses in the courts of the United States.

(3) *Payment of witness fees and travel costs.* The party requesting the presence of a witness must pay that witness' fees. Those fees must be paid or offered to the witness at the time the subpoena is served, or, if the witness appears voluntarily, at the time of appearance. A Federal agency or corporation is not required to pay or offer witness fees in advance.

Judges

§ 1201.41 Judges.

(a) *Exercise of authority.* Judges may exercise authority as provided in paragraphs (b) and (c) of this section on their own motion or on the motion of a party, as appropriate.

(b) *Authority.* Judges will conduct fair and impartial hearings and will take all necessary action to avoid delay in all proceedings. They will have all powers necessary to that end unless those powers are otherwise limited by law. Judges' powers include, but are not limited to, the authority to:

(1) Administer oaths and affirmations;

(2) Issue subpoenas under § 1201.81 of this part;

(3) Rule on offers of proof and receive relevant evidence;

(4) Rule on discovery motions under § 1201.73 of this part;

(5) After notice to the parties, order a hearing on his or her own initiative if the judge determines that a hearing is necessary:

(i) To resolve an important issue of credibility;

(ii) To ensure that the record on significant issues is fully developed; or

(iii) To otherwise ensure a fair and just adjudication of the case;

(6) Convene a hearing as appropriate, regulate the course of the hearing, maintain decorum, and exclude any disruptive persons from the hearing;

(7) Exclude any person from the hearing for good reason;

(8) Rule on all motions, witness and exhibit lists, and proposed findings;

(9) Require the parties to file memoranda of law and to present oral argument with respect to any question of law;

(10) Order the production of evidence and the appearance of witnesses whose testimony would be relevant, material, and nonrepetitious;

(11) Impose sanctions as provided under § 1201.43 of this part;

(12) Hold prehearing conferences for the settlement and simplification of issues;

(13) Require that all persons who can be identified from the record as being clearly and directly affected by a pending retirement-related case be notified of the appeal and of their right to request intervention so that their interests can be considered in the adjudication;

(14) Issue any order that may be necessary to protect a witness or other individual from harassment and provide for enforcement of such order in accordance with subpart F;

(15) Issue initial decisions; and

(16) Determine, in decisions in which the appellant is the prevailing party, whether the granting of interim relief is appropriate.

(c) *Settlement.*—(1) *Settlement discussion.* The judge may initiate attempts to settle the appeal informally at any time. The parties may agree to waive the prohibitions against *ex parte* communications during settlement discussions, and they may agree to any limits on the waiver.

(2) *Agreement.* If the parties agree to settle their dispute, the settlement agreement is the final and binding resolution of the appeal, and the judge will dismiss the appeal with prejudice.

(i) If the parties offer the agreement for inclusion in the record, and if the judge approves the agreement, it will be made a part of the record, and the Board will retain jurisdiction to ensure compliance with the agreement.

(ii) If the agreement is not entered into the record, the Board will not retain jurisdiction to ensure compliance.

§ 1201.42 Disqualifying a judge.

(a) If a judge considers himself or herself disqualified, he or she will withdraw from the case, state on the record the reasons for doing so, and immediately notify the Board of the withdrawal.

(b) A party may file a motion asking the judge to withdraw on the basis of personal bias or other disqualification. This motion must be filed as soon as the party has reason to believe there is a basis for disqualification. The reasons for the request must be set out in an affidavit or sworn statement under 28 U.S.C. 1746. (See Appendix IV.)

(c) If the judge denies the motion, the party requesting withdrawal may request certification of the issue to the Board as an interlocutory appeal under § 1201.91 of this part. Failure to request certification is considered a waiver of the request for withdrawal.

§ 1201.43 Sanctions.

The judge may impose sanctions upon the parties as necessary to serve the ends of justice. This authority covers, but is not limited to, the circumstances set forth in paragraphs (a), (b), and (c) of this section.

(a) *Failure to comply with an order.* When a party fails to comply with an order, the judge may:

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) Prohibit the party failing to comply with the order from introducing evidence concerning the information sought, or from otherwise relying upon testimony related to that information;

(3) Permit the requesting party to introduce secondary evidence concerning the information sought; and

(4) Eliminate from consideration any appropriate part of the pleadings or other submissions of the party that fails to comply with the order.

(b) *Failure to prosecute or defend appeal.* If a party fails to prosecute or defend an appeal, the judge may dismiss the appeal with prejudice or rule in favor of the appellant.

(c) *Failure to make timely filing.* The judge may refuse to consider any motion or other pleading that is not filed in a timely fashion in compliance with this subpart.

Hearings

§ 1201.51 Scheduling the hearing.

(a) The hearing will be scheduled not earlier than 15 days after the date of the hearing notice unless the parties agree to an earlier date. The agency, upon request of the judge, must provide appropriate hearing space.

(b) The judge may change the time, date, or place of the hearing, or suspend, adjourn, or continue the hearing. The change will not require the 15-day notice provided in paragraph (a) of this section.

(c) Either party may file a motion for postponement of the hearing. The motion must be made in writing and must either be accompanied by an affidavit or sworn statement under 28 U.S.C. 1746. (See Appendix IV.) The affidavit or sworn statement must describe the reasons for the request. The judge will grant the request for postponement only upon a showing of good cause.

(d) The Board has established certain approved hearing locations, which are published as a Notice in the **Federal Register**. See Appendix III. Parties, for good cause, may file motions requesting a different hearing location. Rulings on those motions will be based on a showing that a different location will be more advantageous to all parties and to the Board.

§ 1201.52 Public hearings.

Hearings are open to the public. The judge may order a hearing or any part of a hearing closed, however, when doing so would be in the best interests of the appellant, a witness, the public, or any other person affected by the proceeding. Any order closing the hearing will set out the reasons for the judge's decision. Any objections to the order will be made a part of the record.

§ 1201.53 Verbatim record.

(a) *Preparation.* A verbatim record of every hearing, made under the

supervision of the judge, will be kept and will be the sole official record of the proceeding.

(b) *Corrections.* Corrections of the transcript will be ordered by the judge either on motion of a party or on his or her own motion. Motions for corrections must be filed within 10 days after the date of service of the transcript, unless the judge sets a different time. The motion must be accompanied by an affidavit or sworn statement under 28 U.S.C. 1746. (See Appendix IV.) The affidavit or sworn statement must specify the corrections desired and state why they are necessary.

(c) *Motions for extension of time.* Motions for extension of time will be granted only on a showing of good cause. Motions for extension of time must be filed within the time limit for corrections of the transcript, if one has been prepared.

Evidence

§ 1201.55 Burden of proof.

(a) *Burden of proof.* The burden of proof is on the appellant, except when the agency action is based on a preemployment inquiry or a suitability investigation. In those cases, the agency must prove its case by a preponderance of the evidence.

(b) *Affirmative defenses.* The appellant must prove affirmative defenses by substantial evidence.

§ 1201.56 Relevant evidence.

(a) *Relevant evidence.* Relevant evidence is evidence that is necessary to make clear the existence or nonexistence of a matter at issue. Relevant information includes information that appears reasonably calculated to lead to the discovery of admissible evidence.

(b) *Exclusion of relevant evidence.* Relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or undue delay.

(c) *Exclusion of irrelevant evidence.* Irrelevant evidence is not admissible.

§ 1201.57 Witnesses.

(a) *Testimony.* Witnesses will testify under oath or affirmation.

(b) *Exclusion of witnesses.* The judge may exclude witnesses from the hearing room on his or her own motion or on the motion of a party. The judge will not exclude witnesses who are parties to the appeal, or who are employees of a party that is not an individual, and who have been designated as representatives by the party.

§ 1201.58 Official notice.

(a) *Official notice.* The judge may take official notice of any matter that is not subject to reasonable dispute. Official notice may be taken of matters that are either generally known within the United States or are known by the judge because they are capable of verification by reliable, accurate sources.

(b) *Opportunity to object.* Any party may object to the judge's taking official notice of a matter. The objection must be filed within 10 days after the date of service of the order taking official notice.

§ 1201.59 Presumptions.

(a) *Presumptions.* The judge may apply presumptions as appropriate.

(b) *Rebuttable presumptions.* Rebuttable presumptions may be overcome by a preponderance of the evidence.

§ 1201.60 Stipulations.

(a) *Stipulations.* The parties may stipulate to any matter of fact. Stipulations must be in writing or entered into the record.

(b) *Binding effect.* Stipulations are binding on the parties only for the purpose of the proceeding in which they are made.

§ 1201.61 Depositions.

(a) *Depositions.* Depositions may be taken when the judge determines that exceptional circumstances exist and that it would be in the interest of justice. The party requesting the deposition will bear the cost of the deposition.

(b) *Motion.* A party may file a motion to depose a witness. The motion must be filed within 10 days after the date of service of the order granting the motion to depose the witness. The motion must include:

(1) The name and address of the witness;

(2) The reasons why the deposition should be taken;

(3) A showing that the witness will be unable to attend the hearing; and

(4) A showing that the witness has information or knowledge relevant to a matter at issue.

(c) *Objections.* Objections to depositions must be filed within 10 days after the date of service of the order granting the motion to depose the witness.

(d) *Use of deposition.* Depositions may be used at the hearing to the extent permitted by the Federal Rules of Evidence.

§ 1201.62 Discovery.

(a) *Discovery.* The parties may obtain discovery from a nonparty by filing a written motion with the judge, showing the relevance, scope, and

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supervision of the judge, will be kept and will be the sole official record of the proceeding.

(b) *Copies.* Upon request, and upon payment of costs, a copy of a tape recording or transcript (if one is prepared) of the hearing will be made available to the parties. Parties must direct requests for copies of tape recordings or transcripts to the official hearing reporter.

(c) *Exceptions to payment of costs.* Exceptions to the payment requirement may be granted under extenuating circumstances for good cause shown. A motion for an exception must be filed with the judge. The reasons for the request must be set out in an affidavit or sworn statement under 28 U.S.C. 1746. (See Appendix IV.)

(d) *Corrections.* Corrections of the official transcript may be permitted on motion by a party or on the judge's own motion. Motions for corrections must be filed within 10 days after the receipt of a transcript. Corrections of the official transcript will be permitted only when errors of substance are involved and only on approval of the judge.

§ 1201.54 Official record.

Exhibits and the verbatim record of testimony, if a hearing is held, together with all pleadings filed during the appellate proceedings, and all orders and decisions of the judge and the Board, constitute the exclusive and official record of the case.

§ 1201.55 Motions.

(a) *Form.* All motions, except those made during a prehearing conference or a hearing, must be in writing. All motions must include a statement of the reasons supporting them. Written motions must be filed with the judge or the Board, as appropriate, and must be served upon all other parties in accordance with § 1201.26(b)(2) of this part. A party filing a motion for extension of time, a motion for postponement of a hearing, or any other procedural motion must first contact the other party to determine whether there is any objection to the motion, and must state in the motion whether the other party has an objection.

(b) *Objection.* Unless the judge provides otherwise, and unless the motion is one for payment of attorney fees under § 1201.37(a) of this part, any objection to a written motion must be filed within 10 days from the date of service of the motion. Judges, in their discretion, may grant or deny motions for extensions of time to file pleadings without providing any opportunity to respond to the motions.

(c) *Motions for extension of time.* Motions for extension of time will be granted only on a showing of good cause.

(d) *Motions for protective orders.* A motion for an order under 5 U.S.C. 1204(e)(1)(B) to protect a witness or other individual from harassment must be filed as early in the proceeding as practicable. The party seeking a protective order must include a concise statement of reasons justifying the motion, together with any relevant documentary evidence. An agency, other than the Office of Special Counsel, may not request such an order with respect to an investigation by the Special Counsel during the Special Counsel's investigation. An order issued under this paragraph may be enforced in the same manner as provided under subpart F for Board final decisions and orders.

§ 1201.56 Burden and degree of proof; affirmative defenses.

(a) *Burden and degree of proof.*—(1) *Agency:* Under 5 U.S.C. 7701(c)(1), and subject to the exceptions stated in paragraph (b) of this section, the agency action must be sustained if:

(i) It is brought under 5 U.S.C. 4303 or 5 U.S.C. 5335 and is supported by substantial evidence; or

(ii) It is brought under any other provision of law or regulation and is supported by a preponderance of the evidence.

(2) *Appellant:* The appellant has the burden of proof, by a preponderance of the evidence, with respect to:

(i) Issues of jurisdiction;

(ii) The timeliness of the appeal; and

(iii) Affirmative defenses.

In appeals from reconsideration decisions of the Office of Personnel Management involving retirement benefits, if the appellant filed the application, the appellant has the burden of proving, by a preponderance of the evidence, entitlement to the benefits. An appellant who has received an overpayment from the Civil Service Retirement and Disability Fund has the burden of proving, by substantial evidence, eligibility for waiver or adjustment.

(b) *Affirmative defenses of the appellant.* Under 5 U.S.C. 7701(c)(2), the Board is required to overturn the action of the agency, even where the agency has met the evidentiary standard stated in paragraph (a) of this section, if the appellant:

(1) Shows harmful error in the application of the agency's procedures in arriving at its decision;

(2) Shows that the decision was based on any prohibited personnel practice described in 5 U.S.C. 2302(b); or

(3) Shows that the decision was not in accordance with law.

(c) *Definitions.* The following definitions apply to this part:

(1) *Substantial evidence.* The degree of relevant evidence that a reasonable person, considering the record as a whole, might accept as adequate to support a conclusion, even though other reasonable persons might disagree. This is a lower standard of proof than preponderance of the evidence.

(2) *Preponderance of the evidence.* The degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue.

(3) *Harmful error.* Error by the agency in the application of its procedures that is likely to have caused the agency to reach a conclusion different from the one it would have reached in the absence or cure of the error. The burden is upon the appellant to show that the error was harmful, i.e., that it caused substantial harm or prejudice to his or her rights.

§ 1201.57 Order of hearing.

(a) In cases in which the agency has taken an action against an employee, the agency will present its case first.

(b) The appellant will proceed first at hearings convened on the issues of:

(1) Jurisdiction;

(2) Timeliness; or

(3) Office of Personnel Management disallowance of retirement benefits, when the appellant applied for those benefits.

(c) The judge may vary the normal order of presenting evidence.

§ 1201.58 Closing the record.

(a) When there is a hearing, the record ordinarily will close at the conclusion of the hearing. When the judge allows the parties to submit argument, briefs, or documents previously identified for introduction into evidence, however, the record will remain open for as much time as the judge grants for that purpose.

(b) If the appellant waives the right to a hearing, the record will close on the date the judge sets as the final date for the receipt or filing of submissions of the parties.

(c) Once the record closes, no additional evidence or argument will be accepted unless the party submitting it shows that the evidence was not readily available before the record closed. The judge will include in the record, however, any supplemental citations received from the parties or approved

corrections of the transcript, if one has been prepared.

Evidence

§ 1201.61 Exclusion of evidence and testimony.

Any evidence and testimony that is offered in the hearing and excluded by the judge will be described, and that description will be made a part of the record.

§ 1201.62 Producing prior statements.

After an individual has given evidence in a proceeding, any party may request a copy of any prior signed statement made by that individual that is relevant to the evidence given. If the party refuses to furnish the statement, the judge may exclude the evidence given.

§ 1201.63 Stipulations.

The parties may stipulate to any matter of fact. The stipulation will satisfy a party's burden of proving the fact alleged.

§ 1201.64 Official notice.

Official notice is the Board's or judge's recognition of certain facts without requiring evidence to be introduced establishing those facts. The judge, on his or her own motion or on the motion of a party, may take official notice of matters of common knowledge or matters that can be verified. The parties may be given an opportunity to object to the taking of official notice. The taking of official notice of any fact satisfies a party's burden of proving that fact.

Discovery

§ 1201.71 Purpose of discovery.

Proceedings before the Board will be conducted as expeditiously as possible with due regard to the rights of the parties. Discovery is designed to enable a party to obtain relevant information needed to prepare the party's case. These regulations are intended to provide a simple method of discovery. They will be interpreted and applied so as to avoid delay and to facilitate adjudication of the case. Parties are expected to start and complete discovery with a minimum of Board intervention.

§ 1201.72 Explanation and scope of discovery.

(a) *Explanation.* Discovery is the process, apart from the hearing, by which a party may obtain relevant information, including the identification of potential witnesses, from another person or a party, that the other person or party has not otherwise provided. Relevant information includes information that appears reasonably calculated to lead to the discovery of admissible evidence. This information is obtained to assist the parties in preparing and presenting their cases. The Federal Rules of Civil Procedure may be used as a general guide for discovery practices in proceedings before the Board. Those rules, however, are instructive rather than controlling.

(b) *Scope.* Discovery covers any nonprivileged matter that is relevant to the issues involved in the appeal, including the existence, description, nature, custody, condition, and location of documents or other tangible things, and the identity and location of persons with knowledge of relevant facts. Discovery requests that are directed to nonparties and nonparty Federal agencies and employees are limited to information that appears directly material to the issues involved in the appeal.

(c) *Methods.* Parties may use one or more of the methods provided under the Federal Rules of Civil Procedure. These methods include written interrogatories, depositions, requests for production of documents or things for inspection or copying, and requests for admission.

§ 1201.73 Discovery procedures.

(a) *Discovery from a party.* A party seeking discovery from another party must start the process by serving a request for discovery on the representative of the other party or the party if there is no representative. The request for discovery must state the time limit for responding, as prescribed in § 1201.73(d), and must specify the time and place of the taking of the deposition, if applicable.

When a party directs a request for discovery to an officer or employee of a Federal agency that is a party, the agency must make the officer or employee available on official time to respond to the request, and must assist the officer or employee as necessary in providing relevant information that is available to the agency.

(b) *Discovery from a nonparty, including a nonparty Federal agency.* Parties should try to obtain voluntary discovery from nonparties whenever possible. A party seeking discovery from a nonparty Federal agency or employee must start the process by serving a request for discovery on the nonparty Federal agency or employee. A party may begin discovery from other nonparties by serving a request for discovery on the nonparty directly. If the party seeking the information does not make that request, or if it does so but fails to obtain voluntary cooperation, it may obtain discovery from a nonparty by filing a written motion with the judge, showing the relevance, scope, and materiality of the particular information sought. If the party seeks to take a deposition, it should state in the motion the date, time, and place of the proposed deposition. An authorized official of the Board will issue a ruling on the motion, and will serve the ruling on the moving party. That official also will provide that party with a subpoena, if approved, that is directed to the individual or entity from which discovery is sought. The subpoena will specify the manner in which the party may seek compliance with it, and it will specify the time limit for seeking compliance. The party seeking the information is responsible for serving any Board-approved discovery request and subpoena on the individual or entity, or for arranging for their service.

(c) *Responses to discovery requests.* (1) A party, or a Federal agency that is not a party, must answer a discovery request within the time provided under paragraph (d)(2) of this section, either by furnishing to the requesting party the information or testimony requested or agreeing to make deponents available to testify within a reasonable time, or by stating an objection to the particular request and the reasons for the objection.

(2) If a party fails or refuses to respond in full to a discovery request, or if a nonparty fails or refuses to respond in full to a Board-approved discovery order, the requesting party may file a motion to compel discovery. The requesting party must file the motion with the judge, and must serve a copy of the motion on the other party and on any nonparty entity or person from whom the discovery was sought. The motion must be accompanied by:

(i) A copy of the original request and a statement showing that the information sought is relevant and material; and

(ii) A copy of the response to the request (including the objections to discovery) or, where appropriate, a statement that no response has been received, along with an affidavit or sworn statement under 28 U.S.C. 1746 supporting the statement. (See Appendix IV.)

(3) The other party and any other entity or person from whom discovery was sought may respond to the motion to compel discovery within the time limits stated in paragraph (d)(4) of this section.

(d) *Time limits.* (1) Parties who wish to make discovery requests or motions must serve their initial requests or motions within 25 days after the date on

which the judge issues an order to the respondent agency to produce the agency file and response.

person providing information is subject to penalties for intentional false statements.

(b) By registered or certified mail, or

(c) By delivering the subpoena to a responsible person (named in the

§ 1201.92 Criteria for certifying interlocutory appeals.

The judge will certify a ruling for

ask about matters such as what defense they should use or whether their evidence is adequate, and they may not

Board, on the Director of the Office of Personnel Management, and on all parties to the appeal, including named

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which the judge issues an order to the respondent agency to produce the agency file and response.

(2) A party or nonparty must file a response to a discovery request promptly, but not later than 20 days after the date of service of the request or order of the judge. Any discovery requests following the initial request must be served within 10 days of the date of service of the prior response, unless the parties are otherwise directed. Deposition witnesses must give their testimony at the time and place stated in the request for deposition or in the subpoena, unless the parties agree on another time or place.

(3) Any motion to depose a nonparty (along with a request for a subpoena) must be submitted to the judge within the time limits stated in paragraph (d)(1) of this section or as the judge otherwise directs.

(4) Any motion for an order to compel discovery must be filed with the judge within 10 days of the date of service of objections or, if no response is received, within 10 days after the time limit for response has expired. Any pleading in opposition to a motion to compel discovery must be filed with the judge within 10 days of the date of service of the motion.

(5) Discovery must be completed within the time the judge designates.

§ 1201.74 Orders for discovery.

(a) *Motion for an order compelling discovery.* Motions for orders compelling discovery and motions for the appearance of nonparties must be filed with the judge in accordance with § 1201.73(c)(2) and (d)(4).

(b) *Content of order.* Any order issued will include, where appropriate:

(1) A provision that the person to be deposed must be notified of the time and place of the deposition;

(2) Any conditions or limits concerning the conduct or scope of the proceedings or the subject matter that may be necessary to prevent undue delay or to protect a party or other individual or entity from undue expense, embarrassment, or oppression;

(3) Limits on the time for conducting depositions, answering written interrogatories, or producing documentary evidence; and

(4) Other restrictions upon the discovery process that the judge sets.

(c) *Noncompliance.* The judge may impose sanctions under § 1201.43 of this part for failure to comply with an order compelling discovery.

§ 1201.75 Taking depositions.

Depositions may be taken by any method agreed upon by the parties. The person providing information is subject to penalties for intentional false statements.

Subpoenas

§ 1201.81 Requests for subpoenas.

(a) *Request.* Parties who wish to obtain subpoenas that would require the attendance and testimony of witnesses, or subpoenas that would require the production of documents or other evidence under 5 U.S.C. 1204(b)(2)(A), should file their motions for those subpoenas with the judge. Subpoenas are not ordinarily required to obtain the attendance of Federal employees as witnesses.

(b) *Form.* Parties requesting subpoenas must file their requests, in writing, with the judge. Each request must identify specifically the books, papers, or testimony desired.

(c) *Relevance.* The request must be supported by a showing that the evidence sought is relevant and that the scope of the request is reasonable.

(d) *Rulings.* Any judge who does not have the authority to issue subpoenas will refer the request to an official with authority to rule on the request, with a recommendation for decision. The official to whom the request is referred will rule on the request promptly. Judges who have the authority to rule on these requests themselves will do so directly.

§ 1201.82 Motions to quash subpoenas.

Any person to whom a subpoena is directed, or any party, may file a motion to quash or limit the subpoena. The motion must be filed with the judge, and it must include the reasons why compliance with the subpoena should not be required or the reasons why the subpoena's scope should be limited.

§ 1201.83 Serving subpoenas.

(a) Any person who is at least 18 years of age and who is not a party to the appeal may serve a subpoena. The means prescribed by applicable state law are sufficient. The party who requested the subpoena, and to whom the subpoena has been issued, is responsible for serving the subpoena.

(b) A subpoena directed to an individual outside the territorial jurisdiction of any court of the United States may be served in the manner described by the Federal Rules of Civil Procedure for service of a subpoena in a foreign country.

§ 1201.84 Proof of service.

The person who has served the subpoena must certify that he or she did so:

(a) By delivering it to the witness in person,

(b) By registered or certified mail, or

(c) By delivering the subpoena to a responsible person (named in the document certifying the delivery) at the residence or place of business (as appropriate) of the person for whom the subpoena was intended.

The document in which the party makes this certification also must include a statement that the prescribed fees have been paid or offered.

§ 1201.85 Enforcing subpoenas.

(a) If a person who has been served with a Board subpoena fails or refuses to comply with its terms, the party seeking compliance may file a written motion for enforcement with the judge or make an oral motion for enforcement while on the record at a hearing. That party must present the document certifying that the subpoena was served and, except where the witness was required to appear before the judge, must submit an affidavit or sworn statement under 28 U.S.C. 1746 (see Appendix IV) describing the failure or refusal to obey the subpoena. The Board, in accordance with 5 U.S.C. 1204(c), may then ask the appropriate United States district court to enforce the subpoena. If the person who has failed or refused to comply with a Board subpoena is located in a foreign country, the U.S. District Court for the District of Columbia will have jurisdiction to enforce compliance, to the extent that a U.S. court can assert jurisdiction over an individual in the foreign country.

(b) Upon application by the Special Counsel, the Board may seek court enforcement of a subpoena issued by the Special Counsel in the same manner in which it seeks enforcement of Board subpoenas, in accordance with 5 U.S.C. 1212(b)(3).

Interlocutory Appeals

§ 1201.91 Explanation.

An interlocutory appeal is an appeal to the Board of a ruling made by a judge during a proceeding. The judge may permit the appeal if he or she determines that the issue presented in it is of such importance to the proceeding that it requires the Board's immediate attention. Either party may make a motion for certification of an interlocutory appeal. In addition, the judge, on his or her own motion, may certify an interlocutory appeal to the Board. If the appeal is certified, the Board will decide the issue and the judge will act in accordance with the Board's decision.

§ 1201.92 Criteria for certifying interlocutory appeals.

The judge will certify a ruling for review only if the record shows that:

(a) The ruling involves an important question of law or policy about which there is substantial ground for difference of opinion; and

(b) An immediate ruling will materially advance the completion of the proceeding, or the denial of an immediate ruling will cause undue harm to a party or the public.

§ 1201.93 Procedures.

(a) *Motion for certification.* A party seeking the certification of an interlocutory appeal must file a motion for certification within 10 days of the date of the ruling to be appealed. The motion must be filed with the judge, and must state why certification is appropriate and what the Board should do and why. The opposing party may file objections within 10 days of the date of service of the motion, or within any other time period that the judge may designate.

(b) *Certification and review.* The judge will grant or deny a motion for certification within five days after receiving all pleadings or, if no response is filed, within 10 days after receiving the motion. If the judge grants the motion for certification, he or she will refer the record to the Board. If the judge denies the motion, the party that sought certification may raise the matter at issue in a petition for review filed after the initial decision is issued, in accordance with §§ 1201.113 and 1201.114 of this part.

(c) *Stay of hearing.* The judge has the authority to proceed with or to stay the hearing while an interlocutory appeal is pending with the Board. Despite this authority, however, the Board may stay a hearing on its own motion while an interlocutory appeal is pending with it.

Ex Parte Communications

§ 1201.101 Explanation and definitions.

(a) *Explanation.* An ex parte communication is an oral or written communication between a decision-making official of the Board and an interested party to a proceeding, when that communication is made without providing the other parties to the appeal with a chance to participate. Not all ex parte communications are prohibited. Those that involve the merits of the case, or those that violate rules requiring submissions to be in writing, are prohibited. Accordingly, interested parties may ask about such matters as the status of a case, when it will be heard, and methods of submitting evidence to the Board. Parties may not ask about matters such as what defense they should use or whether their evidence is adequate, and they may not make a submission orally if that submission is required to be made in writing.

(b) *Definitions for purposes of this section.*

(1) *Interested party* includes:

(i) Any party or representative of a party involved in a proceeding before the Board; and

(ii) Any other person who might be affected by the outcome of a proceeding before the Board.

(2) *Decision-making official* means any judge, officer or other employee of the Board designated to hear and decide cases.

§ 1201.102 Prohibition on ex parte communications.

Except as otherwise provided in § 1201.41(c)(1) of this part, ex parte communications that concern the merits of any matter before the Board for adjudication, or that otherwise violate rules requiring written submissions, are prohibited from the time the persons involved know that the Board may consider the matter until the time the Board has issued a final decision on the matter.

§ 1201.103 Placing communications in the record; sanctions.

(a) Any communication made in violation of § 1201.102 of this part will be made a part of the record. If the communication was oral, a memorandum stating the substance of the discussion will be placed in the record.

(b) If there has been a violation of § 1201.102 of this part, the judge or the Clerk of the Board, as appropriate, will notify the parties in writing that the regulation has been violated, and will give the parties 10 days to file a response.

(c) The following sanctions are available:

(1) *Parties.* The offending party may be required to show why, in the interest of justice, the claim or motion should not be dismissed, denied, or otherwise adversely affected.

(2) *Board personnel.* Offending Board personnel will be treated in accordance with the Board's standards of conduct.

(3) *Other persons.* The Board may invoke appropriate sanctions against other offending parties.

Final Decisions

§ 1201.111 Initial decision by judge.

(a) The judge will prepare an initial decision after the record closes, and will serve that decision on the Clerk of the Board, on the Director of the Office of Personnel Management, and on all parties to the appeal, including named parties, permissive intervenors, and intervenors of right.

(b) Each initial decision will contain:

(1) Findings of fact and conclusions of law upon all the material issues of fact and law presented on the record;

(2) The reasons or bases for those findings and conclusions;

(3) An order making final disposition of the case, including appropriate relief;

(4) A statement, if the appellant is the prevailing party, as to whether interim relief is provided effective upon the date of the decision, pending the outcome of any petition for review filed by another party under Subpart C of this part;

(5) The date upon which the decision will become final (a date that, for purposes of this section, is 35 days after issuance); and

(6) A statement of any further process available, including, as appropriate, a petition for enforcement under § 1201.182 of this part, a petition for review under § 1201.114, and a petition for judicial review.

(c) *Interim relief.* Under 5 U.S.C. 7701(b)(2), if the appellant is the prevailing party, the initial decision will provide appropriate interim relief to the appellant effective upon the date of the initial decision and remaining in effect until the date of the final order of the Board on any petition for review, unless the judge determines that the granting of interim relief is not appropriate. The agency may decline to return the appellant to his or her place of employment if it determines that the return or presence of the appellant will be unduly disruptive to the work environment. However, pay and benefits must be provided.

§ 1201.112 Jurisdiction of judge.

After issuing the initial decision, the judge will retain jurisdiction over the case only to the extent necessary to correct the transcript, when one is obtained; to rule on motions for exceptions to the requirement that a party seeking a transcript must pay for it; to rule on a request by the appellant for attorney fees; and to process any petition for enforcement filed under subpart F of this part.

§ 1201.113 Finality of decision.

The initial decision of the judge will become final 35 days after issuance. Initial decisions are not precedential.

(a) *Exceptions.* The initial decision will not become final if, within 35 days after issuance of the decision, any party

files a petition for review, or if the Board reopens the case on its own motion.

(b) *Petition for review denied.* If the Board denies a petition for review, the initial decision will become final on the date of the Board's decision.

(c) *Petition for review granted.* If the Board grants a petition for review, the Board will issue a final decision.

(d) *Time limit.* The Board will normally issue a final decision within 90 days after the date it grants a petition for review.

(e) *Extension of time to file.* The Board will grant a motion for extension of time to file a petition for review, a cross petition for review, or a response to a petition for review only in exceptional circumstances. Motions for extensions must be filed with the Board no later than the last day for filing the petition or response.

(f) *Reopening.* The Board may reopen and reconsider a case at any time.

§ 1201.114 Petitions for review; cross petitions for review; responses.

(a) *Petitions for review.* Any party may file a petition for review of the initial decision. The petition must be filed with the Clerk of the Board within 35 days after the date of issuance of the initial decision.

(b) *Cross petitions for review.* Any party may file a cross petition for review. The cross petition must be filed within 25 days after the date of service of the petition for review.

(c) *Responses.* Any party may file a response to a petition for review or a cross petition for review. The response must be filed within 25 days after the date of service of the petition for review or cross petition for review.

(d) *Petitions for review filed by the Director of the Office of Personnel Management.* The Director of the Office of Personnel Management may petition for review a Board decision that is not final with respect to the Office of Personnel Management. The Director must file the petition with the Clerk of the Board within 60 days after the date the initial decision was issued. The Director must file a petition for review if the Director will seek judicial review of the Board's decision in a case in which the Director has intervention as of right.

(e) *Extension of time to file.* The Board will grant a motion for extension of time to file a petition for review, a cross petition for review, or a response to a petition for review only in exceptional circumstances. Motions for extensions must be filed with the Board no later than the last day for filing the petition or response.

§ 1201.115 Contents of petition for review.

(a) The petition for review must state

§ 1201.116 Procedures for review or reopening.

§ 1201.119 Judicial review.

Any employee or applicant for

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files a petition for review, or if the Board reopens the case on its own motion.

(b) *Petition for review denied.* If the Board denies all petitions for review, the initial decision will become final when the Board issues its last decision denying a petition for review.

(c) *Petition for review granted or case reopened.* If the Board grants a petition for review or a cross petition for review, or reopens or dismisses a case, the decision of the Board is final if it disposes of the entire action.

(d) *Extensions.* The Board may extend the 35-day time limit for filing a petition for good cause shown as specified in § 1201.114 of this part.

(e) *Exhaustion.* Administrative remedies are exhausted when a decision becomes final in accordance with this section.

Subpart C—Petitions for Review of Initial Decisions

§ 1201.114 Filing petition and cross petition for review.

(a) *Who may file.* Any party to the proceeding, the Director of the Office of Personnel Management (OPM), or the Special Counsel may file a petition for review. The Director of OPM may request review only if he or she believes that the decision is erroneous and will have a substantial impact on any civil service law, rule, or regulation under OPM's jurisdiction. 5 U.S.C. 7701(e)(2). All submissions to the Board must contain the signature of the party or of the party's designated representative.

(b) *Cross petition for review.* If a party, the Director of OPM, or the Special Counsel files a timely petition for review, any other party, the Director of OPM, or the Special Counsel may file a timely cross petition for review. The Board normally will consider only issues raised in a timely filed petition for review or in a timely filed cross petition for review.

(c) *Place for filing.* A petition for review, cross petition for review, responses to those petitions, and all motions and pleadings associated with them must be filed with the Clerk of the Merit Systems Protection Board, Washington, DC 20419, by personal delivery, by facsimile, or by mail.

(d) *Time for filing.* Any petition for review must be filed within 35 days after the initial decision is issued. A cross petition for review must be filed within 25 days of the date of service of the petition for review. Any response to a petition for review or to a cross petition for review must be filed within 25 days after the date of service of the petition or cross petition.

(e) *Extension of time to file.* The Board will grant a motion for extension of time to file a petition for review, a cross petition, or a response only if the party submitting the motion shows good cause. Motions for extensions must be filed with the Clerk of the Board before the date on which the petition or other pleading is due. The Board, in its discretion, may grant or deny those motions without providing the other parties the opportunity to comment on them. A motion for an extension must be accompanied by an affidavit or sworn statement under 28 U.S.C. 1746. (See Appendix IV.) The affidavit or sworn statement must include a specific and detailed description of the circumstances alleged to constitute good cause, and it should be accompanied by any available documentation or other evidence supporting the matters asserted.

(f) *Late filings.* Any petition for review, cross petition for review, or response that is filed late must be accompanied by a motion that shows good cause for the untimely filing, unless the Board has specifically granted an extension of time under paragraph (e) of this section, or unless a motion for extension is pending before the Board. The motion must be accompanied by an affidavit or sworn statement under 28 U.S.C. 1746. (See Appendix IV.) The affidavit or sworn statement must include:

(1) The reasons for failing to request an extension before the deadline for the submission; and

(2) A specific and detailed description of the circumstances causing the late filing, accompanied by supporting documentation or other evidence.

Any response to the motion may be included in the response to the petition for review, the cross petition for review, or the response to the cross petition for review. The response will not extend the time provided by paragraph (d) of this section to file a cross petition for review or to respond to the petition or cross petition. In the absence of a motion, the Board may, in its discretion, determine on the basis of the existing record whether there was good cause for the untimely filing, or it may provide the party that submitted the document with an opportunity to show why it should not be dismissed or excluded as untimely.

(g) *Intervention.*—(1) *By Director of OPM.* The Director of OPM may intervene in a case before the Board under the standards stated in 5 U.S.C. 7701(d). The notice of intervention is timely if it is filed with the Clerk of the Board within 45 days of the date the petition for review was filed. If the Director requests additional time for filing a brief on intervention, the Board may, in its discretion, grant the request. A party may file a response to the Director's brief within 15 days of the date of service of that brief. The Director must serve the notice of intervention and the brief on all parties.

(2) *By Special Counsel.* (i) Under 5 U.S.C. 1212(c), the Special Counsel may intervene as a matter of right, except as provided in paragraph (g)(2)(ii) of this section. The notice of intervention is timely if it is filed with the Clerk of the Board within 45 days of the date the petition for review was filed. If the Special Counsel requests additional time for filing a brief on intervention, the Board may, in its discretion, grant the request. A party may file a response to the Special Counsel's brief within 15 days of the date of service. The Special Counsel must serve the notice of intervention and the brief on all parties.

(ii) The Special Counsel may not intervene in an action brought by an individual under 5 U.S.C. 1221, or in an appeal brought by an individual under 5 U.S.C. 7701, without the consent of that individual. The Special Counsel must present evidence that the individual has consented to the intervention at the time the motion to intervene is filed.

(3) *Permissive intervenors.* Any person, organization or agency, by motion made in a petition for review, may ask for permission to intervene. The motion must state in detail the reasons why the person, organization or agency should be permitted to intervene. A motion for permission to intervene will be granted if the requester shows that he or she will be affected directly by the outcome of the proceeding. Any person alleged to have committed a prohibited personnel practice under 5 U.S.C. 2302(b) may ask for permission to intervene.

(h) *Service.* A party submitting a pleading must serve a copy of it on each party and on each representative as provided in § 1201.26(b)(2).

(i) *Closing the record.* The record closes on expiration of the period for filing the response to the petition for review, or to the cross petition for review, or to the brief on intervention, if any, or on any other date the Board sets for this purpose. Once the record closes, no additional evidence or argument will be accepted unless the party submitting it shows that the evidence was not readily available before the record closed.

§ 1201.115 Contents of petition for review.

(a) The petition for review must state objections to the initial decision that are supported by references to applicable laws or regulations and by specific references to the record.

(b) (1) If the appellant was the prevailing party in the initial decision, and that decision granted the appellant interim relief, any petition for review or cross petition for review filed by the agency must be accompanied by evidence that the agency has provided the interim relief required, except when the agency has made a determination as described in paragraph (b)(2) of this section.

(2) Under 5 U.S.C. 7701(b)(2), if the initial decision provides interim relief which requires that the appellant be returned to his or her place of employment pending the outcome of any petition for review and the agency determines that the return or presence of the appellant will be unduly disruptive to the work environment, the agency must notify both the appellant and the judge in writing. The agency must also provide evidence of such notification to the Board at the time of filing a petition or cross petition for review. The evidence must show that the agency has provided that the appellant will receive pay, compensation, and all other benefits as terms and conditions of employment during the period a petition for review is pending.

(3) Nothing in paragraphs (b)(1) or (b)(2) of this section shall be construed to require any payment of back pay for the period preceding the date of the judge's initial decision or attorney fees before the decision of the Board becomes final.

(4) Failure of the agency to submit evidence that it has complied with the granting of interim relief in accordance with paragraph (b)(1) of this section, or that it has provided notification that interim relief will not be granted fully in accordance with paragraph (b)(2) of this section, will result in the dismissal of the agency's petition or cross petition for review.

(c) The Board, after providing the other parties with an opportunity to respond, may grant a petition for review when it is established that:

(1) New and material evidence is available that, despite due diligence, was not available when the record closed; or

(2) The decision of the judge is based on an erroneous interpretation of statute or regulation.

§ 1201.116 Procedures for review or reopening.

(a) In any case that is reopened or reviewed, the Board may:

(1) Issue a single decision that denies or grants a petition for review, reopens the appeal, and decides the case;

(2) Hear oral arguments;

(3) Require that briefs be filed;

(4) Remand the appeal so that the judge may take further testimony or evidence or make further findings or conclusions; or

(5) Take any other action necessary for final disposition of the case.

(b) The Board may affirm, reverse, modify, or vacate the decision of the judge, in whole or in part. Where appropriate, the Board will issue a final decision and order a date for compliance with that decision.

§ 1201.117 Board reopening of case and reconsideration of initial decision.

The Board may reopen an appeal and reconsider a decision of a judge on its own motion at any time, regardless of any other provisions of this part.

§ 1201.118 OPM petition for reconsideration.

(a) *Criteria.* Under 5 U.S.C. 7703(d), the Director of the Office of Personnel Management may file a petition for reconsideration of a Board final order if he or she determines:

(1) That the Board erred in interpreting a civil service law, rule, or regulation affecting personnel management, and

(2) That the Board's decision will have a substantial impact on a civil service law, rule, regulation, or policy directive.

(b) *Time limit.* The Director must file the petition for reconsideration within 35 days after the date of service of the Board's final order.

(c) *Briefs.* After the petition is filed, the Board will make the official record relating to the petition for reconsideration available to the Director for review. The Director's brief in support of the petition for reconsideration must be filed within 20 days after the Board makes the record available for review. Any party's opposition to the petition for reconsideration must be filed within 25 days from the date of service of the Director's brief.

(d) *Stays.* If the Director of OPM files a petition for reconsideration, he or she also may ask the Board to stay its final order. An application for a stay, with a supporting memorandum, must be filed at the same time as the petition for reconsideration.

§ 1201.119 Judicial review.

Any employee or applicant for employment who is adversely affected by a final order or decision of the Board under the provisions of 5 U.S.C. 7703 may obtain judicial review in the United States Court of Appeals for the Federal Circuit. As § 1201.175 of this part provides, an appropriate United States district court has jurisdiction over a request for judicial review of cases involving the kinds of discrimination issues described in 5 U.S.C. 7702.

Subpart D—Procedures for Original Jurisdiction Cases

Actions Brought by the Special Counsel

§ 1201.121 Scope of jurisdiction; compliance with subpart B.

(a) *Scope.* The Board has original jurisdiction over actions brought by the Special Counsel and over the Special Counsel's requests for stays of certain personnel actions.

(b) *Compliance with Subpart B.* Except as otherwise expressly provided by this subpart, the Special Counsel will comply with the regulations regarding hearing procedures that are set out in subpart B of this part in connection with all complaints or requests he or she files with the Board.

§ 1201.122 Filing complaints and requests; serving documents on parties.

(a) *Initial filing.* The Special Counsel must file two copies of each complaint or request, together with numbered and tabbed exhibits or attachments, if any, with the Clerk of the Board. In addition, he or she must file with that office, for service by the Board in accordance with paragraph (b) of this section, a sufficient number of copies of complaints or requests, together with numbered and tabbed exhibits and a certified list of parties or their representatives. The list must show the last known address of each party or representative.

(b) *Service by the Board.* The Board will mail copies of complaints and requests to the parties to the proceeding, or their representatives, at their last known addresses. It also will mail them any exhibits or attachments to the complaints and requests, along with copies of the pertinent regulations of the Board.

(c) *Subsequent filings and service.* Each party must serve on every other party one copy of each of its pleadings, as defined by § 1201.4(b). Service may be by mail, by facsimile, or by personal delivery to each party on the service list previously provided by the Board. A certificate of service describing how and when service was made must

accompany each pleading. All parties are responsible for notifying the Board

§ 1201.125 Answer to complaint.

(a) *Filing and default.* A party named

Federal agency administering loans or grants to the State or local agency, to

denied within the 3-day period, it is considered granted by operation of law.

(2) *Extension of stay.* Upon the Special Counsel's request, the Board

Special Counsel, may not request a protective order with respect to an investigation by the Special Counsel during such investigation. An order

procedures established under subpart B will apply to the hearing, unless these regulations expressly provide otherwise. Initial and subsequent pleadings

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accompany each pleading. All parties are responsible for notifying the Board and one another in writing of any changes in the names or addresses on the service list.

§ 1201.123 Contents of complaint.

(a) If the Special Counsel determines that the Board should take any of the actions listed below, he or she must file a written complaint stating with particularity any alleged violations of law or regulation, along with the supporting facts.

(1) Action to require an agency to correct a prohibited personnel practice (or a pattern of prohibited personnel practices) under 5 U.S.C. 1214(b)(4);

(2) Action to discipline an employee under 5 U.S.C. 1215(a);

(3) Action with respect to other matters within the jurisdiction of the Special Counsel under 5 U.S.C. 1216; and

(4) Action to discipline an employee under the Federal Employees Flexible and Compressed Work Schedule Act, 5 U.S.C. 6101.

(b) The Board may order the Special Counsel and the responding party to file briefs, memoranda, or both in any action the Special Counsel brings before the Board.

(c) If the Special Counsel files a corrective action with the Board on behalf of an employee, former employee, or applicant for employment who has sought corrective action from the Board directly under 5 U.S.C. 1214(a)(3), the Special Counsel must provide evidence that the employee, former employee, or applicant has consented to the Special Counsel's seeking corrective action. 5 U.S.C. 1214(a)(4).

§ 1201.124 Rights of employees.

(a) When the Special Counsel files a complaint seeking corrective action under 5 U.S.C. 1214(b)(2)(B), the Board shall provide the individual alleged to have been the subject of the prohibited personnel practice the opportunity to make written comments.

(b) When the Special Counsel files a complaint proposing a disciplinary action against an employee under 5 U.S.C. 1215(a)(1), the employee has the right:

(1) To file an answer, supported by affidavits and documentary evidence;

(2) To be represented;

(3) To a hearing on the record before the Board or an administrative law judge;

(4) To a written Board decision, issued at the earliest practicable date, in which the Board states the reasons for its conclusion; and

(5) To a copy of any final order imposing disciplinary action.

§ 1201.125 Answer to complaint.

(a) *Filing and default.* A party named in a Special Counsel complaint may file an answer with the Clerk of the Board within 35 days of the date of service of the complaint. If a party fails to answer, and does not show good cause for that failure, the failure will constitute waiver of the right to contest the allegations in the complaint. Unanswered allegations are considered admitted and will form the basis of a recommended or final decision as appropriate.

(b) *Content.* An answer must contain a specific denial, admission, or explanation of each fact alleged in the complaint. If the respondent has no knowledge of a fact, he or she must say so. The respondent may include statements of fact and appropriate documentation to support each denial or defense. Allegations that are unanswered or admitted in the answer are considered true and may not be denied later.

§ 1201.126 Final orders of the Board.

(a) In any action seeking correction of a prohibited personnel practice, the Board may order the corrective actions it considers appropriate after providing an opportunity for the Special Counsel, the agency, and the Office of Personnel Management to comment. 5 U.S.C. 1214(b)(4)(A).

(b)(1) Subject to the provisions of paragraph (b)(2) of this section, in any case involving an alleged prohibited personnel practice described in 5 U.S.C. 2302(b)(8), the Board will order such corrective action as the Board considers appropriate if the Special Counsel demonstrates that a disclosure described under 5 U.S.C. 2302(b)(8) was a contributing factor in the personnel action that was taken or will be taken against the individual.

(2) Corrective action under paragraph (b)(1) of this section may not be ordered if the agency demonstrates by clear and convincing evidence that it would have taken the same personnel action in the absence of such disclosure. 5 U.S.C. 1214(b)(4)(B).

(c) In any action to discipline an employee, except as provided in paragraphs (e) and (f) of this section, the Board may order a removal, a reduction in grade, a debarment (not to exceed five years), a suspension, a reprimand, or an assessment of civil penalty not to exceed $1,000. 5 U.S.C. 1215(a)(3).

(d) If a State or local agency fails to remove an employee whose removal is found to be warranted by the Board under 5 U.S.C. 1505, or if it reappoints such an employee within 18 months of a Board's final order finding that removal was warranted, the Board may order the Federal agency administering loans or grants to the State or local agency, to withhold money from the agency. The amount to be withheld will not exceed two years of the offending employee's pay at the rate he or she was being paid at the time of the violation. 5 U.S.C. 1506.

(e) In any action to discipline an employee under the Federal Employees Flexible and Compressed Work Schedule Act, 5 U.S.C. 6101, a final order of the Board may impose disciplinary action consisting of:

(1) Removal from Federal employment for any period of time the Board may prescribe;

(2) Suspension; or

(3) Other discipline that the Board considers appropriate.

(f) In any action in which the Board finds that an employee has violated 5 U.S.C. 7324, the Board will order the employee's removal, unless it finds by unanimous vote that the violation does not warrant removal and imposes instead a penalty of not less than 30 days suspension without pay.

§ 1201.127 Requesting stay of personnel action; protective orders.

Under 5 U.S.C. 1214(b)(1), the Special Counsel may ask a member of the Board to stay any personnel action if he or she determines that there are reasonable grounds to believe that the action was taken or will be taken as a result of a prohibited personnel practice.

(a) *Content of request.* The Special Counsel, or that official's representative, must sign each request, and must include the following information in the request:

(1) The names of the parties;

(2) The agency and officials involved;

(3) The nature of the action to be stayed;

(4) A concise statement of facts justifying the charge that the personnel action was or will be the result of a prohibited personnel practice; and

(5) The laws or regulations that were violated, or that will be violated if the stay is not issued.

(b) *Filing and serving of request.* The request for a stay must be filed and served on all parties in accordance with § 1201.122 of this part.

(c) *Action on the request for stay*—(1) *Initial stay.* Within three days after the filing of a request, excluding Saturdays, Sundays, and Federal holidays, any member of the Board will grant a request for a stay of 45 days under 5 U.S.C. 1214(b)(1)(A) unless the Member determines that, under the facts and circumstances, the requested stay would not be appropriate. Unless the stay is

denied within the 3-day period, it is considered granted by operation of law.

(2) *Extension of stay.* Upon the Special Counsel's request, the Board may extend any stay granted under 5 U.S.C. 1214(b)(1)(A) for whatever time it considers appropriate, but only after providing the Special Counsel and the agency with an opportunity to comment on the request, and only after the Board has concurred in the request of the Special Counsel. At the time he or she files a request for an extension of a stay under 5 U.S.C. 1214(b)(1)(B), the Special Counsel must also file a brief describing the facts and any relevant legal authority that the Board should consider. The agency must respond in accordance with any order of the Board.

(3) *Reports during pendency of a stay.* If the Board grants an extension of the initial stay, the Special Counsel must report to the Board, at intervals specified in the order granting extension of the stay, regarding the status of the case. Such reports will continue to be required until the Special Counsel files a corrective action with the Board or requests termination of the stay, or until the stay expires according to its terms.

(4) *Termination of stay.* The Board may terminate a stay at any time, except it may not terminate a stay:

(i) On its own motion or on the motion of an agency without first providing notice and opportunity for oral or written comments to the Special Counsel and the individual on whose behalf the stay was ordered; or

(ii) On the motion of the Special Counsel without first providing notice and opportunity for oral or written comments to the individual on whose behalf the stay was ordered.

(d) *Additional information.* At any time, the Board or, where appropriate, a member of the Board may require the Special Counsel, the agency, or both to appear and present further information or explanation regarding a request for a stay, to file supplemental briefs or memoranda, or to supply factual information that the Board needs in order to make a decision regarding a stay.

(e) *Protective orders.* The Board, during an investigation by the Special Counsel or during the pendency of any Special Counsel proceeding before the Board, may issue any order that may be necessary to protect a witness or other individual from harassment. The Special Counsel must submit any motion for a protective order to the Clerk of the Board. The motion must include a concise statement of the reasons justifying the request, together with any relevant documentary evidence. An agency, other than the Office of the Special Counsel, may not request a protective order with respect to an investigation by the Special Counsel during such investigation. An order issued under this paragraph may be enforced in the same manner as provided under subpart F for Board final decisions and orders.

§ 1201.128 Administrative appeal; judicial review.

(a) A party in a Special Counsel complaint does not have the right to file an administrative appeal from an order of the Board.

(b) An employee, former employee, or applicant for employment who is adversely affected by an order of the Board resulting from a corrective action brought by the Special Counsel may obtain judicial review of the order of the Board in the United States Court of Appeals for the Federal Circuit. 5 U.S.C. 1214(c).

(c) An employee subject to a final order imposing disciplinary action under 5 U.S.C. 1215 may obtain judicial review of the order of the Board in the United States Court of Appeals for the Federal Circuit. 5 U.S.C. 1215(a)(4).

§ 1201.129 Judge; exceptions and replies to exceptions.

(a) Except for requests for stays under 5 U.S.C. 1214(b)(1), and other matters specifically reserved for hearing by the Board, an action brought by the Special Counsel is heard by an administrative law judge, who will issue a recommended decision to the Board in accordance with 5 U.S.C. 557. Unless directed otherwise, the parties must file all pleadings with the Clerk of the Board.

(b) The parties may file with the Clerk of the Board any exceptions they may have to the recommended decision of the administrative law judge. Those exceptions must be filed within 35 days after the date of service of the recommended decision.

(c) The parties may file replies to exceptions within 25 days after the date of service of the exceptions, as that date is determined by the certificate of service.

(d) No additional evidence will be accepted with a party's exceptions or with a reply to exceptions unless the party submitting it shows that the evidence was not readily available before the administrative law judge closed the record.

Actions Against Administrative Law Judges

§ 1201.131 Procedures.

When an agency proposes an action against an administrative law judge, the procedures established under subpart B will apply to the hearing, unless these regulations expressly provide otherwise. Initial and subsequent pleadings, however, must be filed and served in accordance with § 1201.122 of this subpart.

§ 1201.132 Board jurisdiction.

The jurisdiction of the Board under this section is limited to proposals to take the following actions:

(a) Removal;

(b) Suspension;

(c) Reduction in grade;

(d) Reduction in pay; and

(e) Furlough of 30 days or less.

§ 1201.133 Filing a complaint.

To initiate an action against an administrative law judge, an agency must file a complaint with the Board describing with particularity the facts that support the proposed action.

§ 1201.134 Answer to complaint.

The administrative law judge against whom the complaint is filed may file an answer to the complaint. The answer must comply with the timeliness and other requirements of § 1201.125 of this subpart.

§ 1201.135 Judge; exceptions and replies to exceptions.

(a) Unless it is specifically reserved for hearing by the Board, an action by an employing agency against an administrative law judge will be heard by an administrative law judge, who will issue a recommended decision in accordance with 5 U.S.C. 557. All pleadings in those actions must be filed with the Clerk of the Board.

(b) The parties may file with the Clerk of the Board any exceptions they have to the recommended decision of the administrative law judge. Those exceptions must be filed within 35 days after the date on which the administrative law judge issues the recommended decision.

(c) The parties may file replies to exceptions within 25 days from the date of service of the exceptions.

§ 1201.136 Requirement for finding of good cause.

The Board will authorize the agency to take a disciplinary action, and will specify the penalty to be imposed, only after the Board has made a finding of good cause as required by 5 U.S.C. 7521.

Removal From the Senior Executive Service

§ 1201.141 Right to hearing.

If an agency proposes to remove a career appointee from the Senior

Executive Service under 5 CFR 359.502, and to place that employee in another civil service position, the appointee may

§ 1201.152 Compliance with subpart B procedures.

Unless this subpart expressly

(d) If the appellant has filed a grievance with the agency under its negotiated grievance procedure in

discrimination and the appealable action within 120 days after the issue is raised.

(c) *Discrimination issue remanded to*

(ii) The evidence in the record as a whole does not support the decision involving that provision.

(d) *Transmittal of record.* The Board

part 1613 or 5 CFR part 772 (as in effect prior to January 11, 1979) on an appeal in which issues of prohibited

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Executive Service under 5 CFR 359.502, and to place that employee in another civil service position, the appointee may request an informal hearing before an official appointed by the Board. If the appointee files the request with the Office of the Clerk at least 15 days before the effective date of the proposed removal, the request will be granted.

§ 1201.142 Hearing procedures; referring the record.

The appointee, the appointee's representative, or both may appear and present arguments in an informal hearing before the Board or its designee. A verbatim record of the proceeding will be made. The appointee has no other procedural rights before the Board. The Board will refer a copy of the record to the Special Counsel, the Office of Personnel Management, and the employing agency for whatever action may be appropriate.

§ 1201.143 Appeal.

There is no right under 5 U.S.C. 7703 to appeal the agency's or Board's actions in cases arising under § 1201.141 of this part. The removal action will not be delayed as a result of the hearing.

Subpart E—Procedures for Cases Involving Allegations of Discrimination

§ 1201.151 Scope and policy.

(a) *Scope.* (1) The rules in this subpart implement 5 U.S.C. 7702. They apply to any case in which an employee or applicant for employment alleges that a personnel action appealable to the Board was based, in whole or in part, on prohibited discrimination.

(2) "Prohibited discrimination," as that term is used in this subpart, means discrimination prohibited by:

(i) Section 717 of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e–16(a));

(ii) Section 6(d) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 206(d));

(iii) Section 501 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 791);

(iv) Sections 12 and 15 of the Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. 631, 633a); or

(v) Any rule, regulation, or policy directive prescribed under any provision of law described in paragraphs (a)(2) (i) through (iv) of this section.

(b) *Policy.* The Board's policy is to adjudicate impartially, thoroughly, and fairly all issues raised under this subpart.

§ 1201.152 Compliance with subpart B procedures.

Unless this subpart expressly provides otherwise, all actions involving allegations of prohibited discrimination must comply with the regulations that are included in subpart B of this part.

§ 1201.153 Contents of appeal.

(a) *Contents.* An appeal raising issues of prohibited discrimination must comply with § 1201.24 of this part, with the following exceptions:

(1) The appeal must state that there was discrimination in connection with the matter appealed, and it must state specifically how the agency discriminated against the appellant; and

(2) The appeal must state whether the appellant has filed a formal discrimination complaint or a grievance with any agency. If he or she has done so, the appeal must state the date on which the appellant filed the complaint or grievance, and it must describe any action that the agency took in response to the complaint or grievance.

(b) *Use of form.* Completing the form in Appendix I of these regulations constitutes compliance with paragraph (a) of this section.

§ 1201.154 Time for filing appeal; closing record in cases involving grievance decisions.

Appellants who file appeals raising issues of prohibited discrimination in connection with a matter otherwise appealable to the Board must comply with the following time limits:

(a) Where the appellant has been subject to an action appealable to the Board, he or she may either file a timely complaint of discrimination with the agency or file an appeal with the Board within 20 days after the effective date of the agency action being appealed.

(b) If the appellant has filed a timely formal complaint of discrimination with the agency:

(1) An appeal must be filed within 20 days after the appellant receives the agency resolution or final decision on the discrimination issue; or

(2) If the agency has not resolved the matter or issued a final decision on the formal complaint within 120 days, the appellant may appeal the matter directly to the Board at any time after the expiration of 120 calendar days.

(c) If the appellant files an appeal prematurely under this subpart, the judge will dismiss the appeal without prejudice to its later refiling under § 1201.22 of this part. If holding the appeal for a short time would allow it to become timely, the judge may hold the appeal rather than dismiss it.

(d) If the appellant has filed a grievance with the agency under its negotiated grievance procedure in accordance with 5 U.S.C. 7121, he or she may ask the Board to review the final decision under 5 U.S.C. 7702 within 25 days of the date of issuance of that decision. The appellant must file the request with the Clerk of the Board, Merit Systems Protection Board, Washington, DC 20419. The request for review must contain:

(1) A statement of the grounds on which review is requested;

(2) References to evidence of record or rulings related to the issues before the Board;

(3) Arguments in support of the stated grounds that refer specifically to relevant documents, and that include relevant citations of authority; and

(4) Legible copies of the final grievance or arbitration decision, the agency decision to take the action, and other relevant documents. Those documents may include a transcript or tape recording of the hearing.

(e) The record will close upon expiration of the period for filing the response to the petition for review, or to the brief on intervention, if any, or on any other date the Board sets for this purpose. Once the record closes, no additional evidence or argument will be accepted unless the party submitting it shows that the evidence was not readily available before the record closed.

§ 1201.155 Remand of allegations of discrimination.

If the parties file a written agreement that the discrimination issue should be remanded to the agency for consideration, and if the judge determines that action would be in the interest of justice, the judge may take that action. The remand order will specify a time period within which the agency action must be completed. In no instance will that time period exceed 120 days. While the issue is pending with the agency, the judge will retain jurisdiction over the appeal.

§ 1201.156 Time for processing appeals involving allegations of discrimination.

(a) *Issue raised in appeal.* When an appellant alleges prohibited discrimination in the appeal, the judge will decide both the issue of discrimination and the appealable action within 120 days after the appeal is filed.

(b) *Issue not raised in appeal.* When an appellant has not alleged prohibited discrimination in the appeal, but has raised the issue later in the proceeding, the judge will decide both the issue of discrimination and the appealable action within 120 days after the issue is raised.

(c) *Discrimination issue remanded to agency.* When the judge remands an issue of discrimination to the agency, adjudication will be completed within 120 days after the agency completes its action and returns the case to the Board.

§ 1201.157 Notice of right to judicial review.

Any final decision of the Board under 5 U.S.C. 7702 will notify the appellant of his or her right, within 30 days after receiving the Board's final decision, to petition the Equal Employment Opportunity Commission to consider the Board's decision, or to file a civil action in an appropriate United States district court. If an appellant elects to waive the discrimination issue, an appeal may be filed with the United States Court of Appeals for the Federal Circuit as stated in § 1201.119 of this part.

Review of Board Decision

§ 1201.161 Action by the Equal Employment Opportunity Commission; judicial review.

(a) *Time limit for determination.* In cases in which an appellant petitions the Equal Employment Opportunity Commission (Commission) for consideration of the Board's decision under 5 U.S.C. 7702(b)(2), the Commission will determine, within 30 days after the date of the petition, whether it will consider the decision.

(b) *Judicial review.* The Board's decision will become judicially reviewable on:

(1) The date on which the decision is issued, if the appellant does not file a petition with the Commission under 5 U.S.C. 7702(b)(1); or

(2) The date of the Commission's decision that it will not consider the petition filed under 5 U.S.C. 7702(b)(2).

(c) *Commission processing and time limits.* If the Commission decides to consider the decision of the Board, within 60 days after making its decision it will complete its consideration and either:

(1) Concur in the decision of the Board; or

(2) Issue in writing and forward to the Board for its action under § 1201.162 of this subpart another decision, which differs from the decision of the Board to the extent that the Commission finds that, as a matter of law:

(i) The decision of the Board constitutes an incorrect interpretation of any provision of any law, rule, regulation, or policy directive related to prohibited discrimination; or

(ii) The evidence in the record as a whole does not support the decision involving that provision.

(d) *Transmittal of record.* The Board will transmit a copy of its record to the Commission upon request.

(e) *Development of additional evidence.* When asked by the Commission to do so, the Board or a judge will develop additional evidence necessary to supplement the record. This action will be completed within a period that will permit the Commission to make its decision within the statutory 60-day time limit referred to in paragraph (c) of this section. The Board or the judge may schedule additional proceedings if necessary in order to comply with the Commission's request.

(f) *Commission concurrence in Board decision.* If the Commission concurs in the decision of the Board under 5 U.S.C. 7702(b)(3)(A), the appellant may file suit in an appropriate United States district court.

§ 1201.162 Board action on the Commission decision; judicial review.

(a) *Board decision.* Within 30 days after receipt of a decision of the Commission issued under 1201.161(c)(2), the Board shall consider the decision and:

(1) Concur and adopt in whole the decision of the Commission; or

(2) To the extent that the Board finds that, as a matter of law:

(i) The Commission decision is based on an incorrect interpretation of any provision of any civil service law, rule, regulation, or policy directive, or

(ii) The evidence in the record as a whole does not support the Commission decision involving that provision, it may reaffirm the decision of the Board. In doing so, it may make revisions in the decision that it determines are appropriate.

(b) *Judicial review.* If the Board concurs in or adopts the decision of the Commission under paragraph (a)(1) of this section, the decision of the Board is a judicially reviewable action.

§ 1201.163 Mixed cases governed by Reorganization Plan No. 1 of 1978.

(a) *Definitions.*—(1) *Prohibited discrimination* as used in this section means discrimination prohibited by section 717 of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e–16(c)); section 501 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 791); and sections 12 and 15 of the Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. 631, 633a).

(2) *Initial decision* as used in this section means a decision rendered by a judge of the MSPB pursuant to 29 CFR part 1613 or 5 CFR part 772 (as in effect prior to January 11, 1979) on an appeal in which issues of prohibited discrimination have been raised.

(3) *Preliminary decision as used in this section means:* (i) An initial decision within the meaning of § 1201.163(a)(2) which has not been reopened by a Board member or as to which no petition to reopen was filed by a party within 35 days after issuance of the decision;

(ii) A decision by the Board itself pursuant to 29 CFR part 1613 or 5 CFR part 772, in which issues of prohibited discrimination are addressed, or a decision by the Board denying all petitions to reopen.

(b) *Contents of appeal.* An appeal raising issues of prohibited discrimination shall state there was discrimination in conjunction with the matter appealed and provide specific examples of how the appellant was discriminated against.

(c) *Procedures.* (1) Appeals under 29 CFR part 1613 shall be processed by the Board consistent with the provisions set forth in that part. Such appeals shall be filed in writing with the appropriate Board Regional Office.

(2) Appeals under the provisions of 5 CFR part 772 shall be processed as provided therein, except that under 5 CFR 772.306(b) the discrimination investigation shall be completed and the investigative file and report sent to the Board within 120 days. Except when this time has been extended upon a verified showing of good cause, the Board may impose the sanctions provided in 5 CFR 1201.43 if an agency fails to timely complete and file the result of such an investigation.

(3) An initial decision on an appeal which includes issues of prohibited personnel discrimination shall be rendered by an employee of the Board, pursuant to 29 CFR part 1613 or 5 CFR part 772, on all issues raised in the appeal.

(4) Unless a petition to reopen is filed with the Board or unless a Board member reopens on his/her own motion, within 35 days from issuance of an initial decision, the initial decision shall become the preliminary decision of the Board.

(d) *Review by Commission.*—(1) *Time for filing.* A petition to review the preliminary decision of the Board on issues of prohibited discrimination shall be filed with the Commission within 35 days after the initial decision of the Board becomes the preliminary decision.

(2) *Petition filed.* In the event a petition for review is filed with the Commission, the Board decision shall

become final on all issues, other than issues of prohibited discrimination, on the date the Commission's decision on

for other good cause shown, and may conduct the proceedings in a manner he or she directs. The Chairman may take

Because of the short statutory time limit for processing these cases, the Special Panel ordinarily will not permit

Subpart F—Enforcement of Final Decisions and Orders

§ 1201.181 Authority and explanation.

the Board for enforcement. The Board will entertain a petition for enforcement from an aggrieved employee who is not a party only if the employee seeks and is

(3) The judge may convene a hearing if one is necessary to resolve matters at issue.

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become final on all issues, other than issues of prohibited discrimination, on the date the Commission's decision on these issues becomes final.

(3) *Petition not filed.* If a petition for review is not filed with the Commission, the decision of the Board shall become final on all issues. (5 U.S.C. 1204(g)).

Special Panel

§ 1201.171 Referral of case to Special Panel.

If the Board reaffirms its decision under § 1201.162(a)(2) of this part with or without modification, it will certify the matter immediately to a Special Panel established under 5 U.S.C. 7702(d). Upon certification, the Board, within 5 days (excluding Saturdays, Sundays, and Federal holidays), will transmit the administrative record in the proceeding to the Chairman of the Special Panel and to the Commission. That record will include the following:

(a) The factual record compiled under this section, which will include a transcript of any hearing;

(b) The decisions issued by the Board and the Commission under 5 U.S.C. 7702; and

(c) A transcript of oral arguments made, or legal briefs filed, before the Board or the Commission.

§ 1201.172 Organization of Special Panel; designation ofmembers.

(a) A Special Panel is composed of:

(1) A Chairman, appointed by the President with the advice and consent of the Senate, whose term is six (6) years;

(2) One member of the Board, designated by the Chairman of the Board each time a Panel is convened;

(3) One member of the Commission, designated by the Chairman of the Commission each time a Panel is convened.

(b) *Designation of Special Panel members.*—(1) *Time of designation.* Within 5 days of certification of a case to a Special Panel, the Chairman of Board and the Chairman of the Commission each will designate one member from his or her agency to serve on the Special Panel.

(2) *Manner of designation.* Letters designating the Panel members will be served on the Chairman of the Panel and on the parties to the appeal.

§ 1201.173 Practices and procedures of Special Panel.

(a) *Scope.* The rules in this subpart apply to proceedings before a Special Panel.

(b) *Suspension of rules.* Unless a rule is required by statute, the Chairman of a Special Panel may suspend the rule, in the interest of expediting a decision or for other good cause shown, and may conduct the proceedings in a manner he or she directs. The Chairman may take this action at the request of a party, or on his or her own motion.

(c) *Time limit for proceedings.* In accordance with 5 U.S.C. 7702(d)(2)(A), the Special Panel will issue a decision within 45 days after a matter has been certified to it.

(d) *Administrative assistance to the Special Panel.* (1) The Board and the Commission will provide the Panel with the administrative resources that the Chairman of the Special Panel determines are reasonable and necessary.

(2) Assistance will include, but is not limited to, processing vouchers for pay and travel expenses.

(3) The Board and the Commission are responsible for all administrative costs the Special Panel incurs, and, to the extent practicable, they will divide equally the costs of providing administrative assistance. If the Board and the Commission disagree on the manner in which costs are to be divided, the Chairman of the Special Panel will resolve the disagreement.

(e) *Maintaining the official record.* The Board will maintain the official record of the appeal. It will transmit two copies of each submission that is filed to each member of the Special Panel in an expeditious manner.

(f) *Filing and service of pleadings.* (1) The parties must file the original and six copies of each submission with the Clerk, Merit Systems Protection Board, 1120 Vermont Avenue, NW., Washington, DC 20419. The Office of the Clerk will serve one copy of each submission on the other parties.

(2) A certificate of service specifying how and when service was made must accompany all submissions of the parties.

(3) Service may be made by mail or by personal delivery during the Board's normal business hours (8:30 a.m. to 5:00 p.m.). Because of the short statutory time limit for processing these cases, parties must file their submissions by overnight Express Mail, provided by the U.S. Postal Service, if they file their submissions by mail.

(4) A submission filed by Express Mail is considered to have been filed on the date of the Express Mail Order. A submission that is delivered personally is considered to have been filed on the date the Office of the Clerk of the Board receives it.

(g) *Briefs and responsive pleadings.* If the parties wish to submit written argument, they may file briefs with the Special Panel within 15 days after the date of the Board's certification order. Because of the short statutory time limit for processing these cases, the Special Panel ordinarily will not permit responsive pleadings.

(h) *Oral argument.* The parties have the right to present oral argument. Parties wishing to exercise this right must indicate this desire when they file their briefs or, if no briefs are filed, within 15 days after the date of the Board's certification order. Upon receiving a request for argument, the Chairman of the Special Panel will determine the time and place for argument and the amount of time to be allowed each side, and he or she will provide this information to the parties.

(i) *Postargument submission.* Because of the short statutory time limit for processing these cases, the parties may not file postargument submissions unless the Chairman of the Special Panel permits those submissions.

(j) *Procedural matters.* Any procedural matters not addressed in these regulations will be resolved by written order of the Chairman of the Special Panel.

§ 1201.174 Enforcing the Special Panel decision.

The Board, upon receipt of the decision of the Special Panel, will order the agency concerned to take any action appropriate to carry out the decision of the Panel. The Board's regulations regarding enforcement of a final order of the Board apply to this matter. These regulations are set out in subpart F of this part.

§ 1201.175 Judicial review of cases decided under 5 U.S.C. 7702.

(a) *Place and type of review.* The appropriate United States district court is authorized to conduct all judicial review of cases decided under 5 U.S.C. 7702. Those cases include appeals from actions taken under the following provisions: Section 717(c) of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e-16(c)); section 15(c) of the Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. 633a(c)); and section 15(b) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 216(b)).

(b) *Time for filing request.* Regardless of any other provision of law, requests for judicial review of all cases decided under 5 U.S.C. 7702 must be filed within 30 days after the appellant received notice of the judicially reviewable action.

Subpart F—Enforcement of Final Decisions and Orders

§ 1201.181 Authority and explanation.

(a) Under 5 U.S.C. 1204(a)(2), the Board has the authority to order any Federal agency or employee to comply with decisions and orders issued under its jurisdiction, and the authority to enforce compliance with its orders and decisions. The parties are expected to cooperate fully with each other so that compliance with the Board's orders and decisions can be accomplished promptly and in accordance with the laws, rules, and regulations that apply to individual cases. The Board's decisions and orders will contain a notice of the Board's enforcement authority.

(b) In order to avoid unnecessary petitions under this subpart, the agency must inform the appellant promptly of the actions it takes to comply, and it must tell the appellant when it believes it has completed its compliance. The appellant must provide all necessary information that the agency requests in order to comply, and, if not otherwise notified, he or she should, from time to time, ask the agency about its progress.

§ 1201.182 Petition for enforcement.

(a) *Appellate jurisdiction.* Any party may petition the Board for enforcement of a final decision issued under the Board's appellate jurisdiction. The petition must be filed promptly with the regional office that issued the initial decision; a copy of it must be served on the other party or that party's representative; and it must describe specifically the reasons the petitioning party believes there is noncompliance. The petition also must include the date and results of any communications regarding compliance. Any petition for enforcement that is filed more than 30 days after the date of service of the agency's notice that it has complied must contain a statement and evidence showing good cause for the delay and a request for an extension of time for filing the petition.

(b) *Original jurisdiction.* Any party seeking enforcement of a Board order issued under its original jurisdiction must file a petition for enforcement with the Clerk of the Board and must serve a copy of that petition on the other party or that party's representative. The petition must describe specifically the reasons why the petitioning party believes there is noncompliance.

(c) *Petition by an employee other than a party.* Under 5 U.S.C. 1204(e)(2)(B), any employee who is aggrieved by the failure of any other employee to comply with an order of the Board may petition the Board for enforcement. The Board will entertain a petition for enforcement from an aggrieved employee who is not a party only if the employee seeks and is granted party status as a permissive intervenor under § 1201.34(c) of this part. The employee must file a motion to intervene at the time of filing the petition for enforcement. The petition and motion to intervene must be filed promptly with the regional office that issued the order or, if the order was issued by the Board, with the Clerk of the Board. The petitioner must serve a copy of the petition and motion to intervene on each party or the party's representative. The petition for enforcement must describe specifically why the petitioner believes there is noncompliance and in what way the petitioner is aggrieved by the noncompliance. The motion to intervene will be considered in accordance with § 1201.34(c) of this part.

§ 1201.183 Procedures for processing petitions for enforcement.

(a) *Initial Processing.* (1) When a party has filed a petition for enforcement of a final decision, the alleged noncomplying party must file one of the following within 15 days of the date of service of the petition:

(i) Evidence of compliance, including a narrative explanation of the calculation of back pay and other benefits, and supporting documents;

(ii) Evidence as described in paragraph (a)(1)(i) of this section of the compliance actions that the party has completed, and a statement of the actions that are in process and the actions that remain to be taken, along with a reasonable schedule for full compliance; or

(iii) A statement showing good cause for the failure to comply completely with the decision of the Board.

The party that filed the petition may respond to that submission within 10 days after the date of service of the submission. The parties must serve copies of their pleadings on each other as required under § 1201.26(b)(2) of this part.

(2) If the agency is the alleged noncomplying party, it shall submit the name and address of the agency official charged with complying with the Board's order, even if the agency asserts it has fully complied. In the absence of this information, the Board will presume that the highest ranking appropriate agency official who is not appointed by the President by and with the consent of the Senate is charged with compliance.

(3) The judge may convene a hearing if one is necessary to resolve matters at issue.

(4) If the judge finds that there has been compliance or a good faith effort to take all actions required to be in compliance with the final decision, he or she will state those findings in a decision. That decision will be subject to the procedures for petitions for review by the Board under subpart C of this part, and subject to judicial review under § 1201.119 of this part.

(5) If the judge finds that:

(i) The alleged noncomplying party has not taken, or has not made a good faith effort to take, any action required to be in compliance with the final decision, or

(ii) The party has taken or made a good faith effort to take one or more, but not all, actions required to be in compliance with the final decision; he or she will issue a recommendation containing his or her findings, a statement of the actions required by the party to be in compliance with the final decision, and a recommendation that the Board enforce the final decision.

(6) If a recommendation described under paragraph (a)(5) of this section is issued, the alleged noncomplying party must do one of the following:

(i) If it decides to take the actions required by the recommendation, it must submit to the Clerk of the Board, within 15 days after the issuance of the recommendation, evidence that it has taken those actions.

(ii) If it decides not to take any of the actions required by the recommendation, it must file a brief supporting its nonconcurrence in the recommendation. The brief must be filed with the Clerk of the Board within 30 days after the recommendation is issued and, if it is filed by the agency, it must identify by name, title, and grade the agency official responsible for the failure to take the actions required by the recommendation for compliance.

(iii) If the party decides to take one or more, but not all, actions required by the recommendation, it must submit both evidence of the actions it has taken and, with respect to the actions that it has not taken, a brief supporting its disagreement with the recommendation. The evidence and brief must be filed with the Clerk of the Board within 30 days after issuance of the recommendation and, if it is filed by the agency, it must contain the identifying information required by paragraph (a)(6)(ii) of this section.

(7) The petitioner may file a brief that responds to the submission described in

paragraph (a)(6) of this section, and that asks the Board to review any finding in the recommendation, made under

Civil Service Reform Act shall be applied by the Board in such a way as to affect any administrative proceeding

Appendix I to Part 1201—Merit Systems Protection Board Appeal Form

U.S. MERIT SYSTEMS PROTECTION

information in order to process appeals under its statutory and regulatory authority. Since you appeal is a

6. I certify that all of the statements in this appeal are true, complete, and correct to the best of my knowledge

22. Explain briefly why you think the agency was wrong in taking this action.

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paragraph (a)(6) of this section, and that asks the Board to review any finding in the recommendation, made under paragraph (a)(5)(ii) of this section, that the other party is in partial compliance with the final decision. The petitioner must file this brief with the Clerk of the Board within 20 days of the date of service of the submission described in paragraph (a)(6) of this section.

(b) *Consideration by the Board.* (1) The Board will consider the recommendation, along with the submissions of the parties, promptly. When appropriate, the Board may require the alleged noncomplying party, or that party's representative, to appear before the Board to show why sanctions should not be imposed under 5 U.S.C. 1204(a)(2) and 1204(e)(2)(A). The Board also may require the party or its representative to make this showing in writing, or to make it both personally and in writing.

(2) The Board may hold a hearing on an order to show cause, or it may issue a decision without a hearing.

(3) The Board's final decision on the issues of compliance is subject to judicial review under § 1201.119 of this part.

(c) *Certification to the Comptroller General.* When appropriate, the Board may certify to the Comptroller General of the United States, under 5 U.S.C. 1204(e)(2)(A), that no payment is to be made to a certain Federal employee. This order may apply to any Federal employee, other than a Presidential appointee subject to confirmation by the Senate, who is found to be in noncompliance with the Board's order.

(d) *Effect of Special Counsel's action or failure to act.* Failure by the Special Counsel to file a complaint under 5 U.S.C. 1215(a)(1)(C) and subpart D of this part will not preclude the Board from taking action under this subpart.

Subpart G—Savings Provisions

§ 1201.191 Savings provisions.

(a) *Civil Service Reform Act of 1978 (Pub.L. 95–454).*—(1) *Scope.* All executive orders, rules and regulations relating to the Federal service that were in effect prior to the effective date of the Civil Service Reform Act shall continue in effect and be applied by the Board in its adjudications until modified, terminated, superseded, or repealed by the President, Office of Personnel Management, the Merit Systems Protection Board, the Equal Employment Opportunity Commission, or the Federal Labor Relations Authority, as appropriate.

(2) *Administrative proceedings and appeals therefrom.* No provision of the Civil Service Reform Act shall be applied by the Board in such a way as to affect any administrative proceeding pending at the effective date of such provision. "Pending" is considered to encompass existing agency proceedings, and appeals before the Board or its predecessor agencies, that were subject to judicial review or under judicial review on January 11, 1979, the date on which the Act became effective. An agency proceeding is considered to exist once the employee has received notice of the proposed action.

(3) *Explanation.* Mr. X was advised of agency's intention to remove him for abandonment of position, effective December 29, 1978. Twenty days later Mr. X appealed the agency action to the Merit Systems Protection Board. The Merit Systems Protection Board docketed Mr. X's appeal as an "old system case," i.e., one to which the savings clause applied. The appropriate regional office processed the case, applying the substantive laws, rules and regulations in existence prior to the enactment of the Act. The decision, dated February 28, 1979, informed Mr. X that he is entitled to judicial review if he files a timely notice of appeal in the appropriate United States district court or the United States Court of Claims under the statute of limitations applicable when the adverse action was taken.

(b) *Whistleblower Protection Act of 1989 (Pub.L. 101–12).*—(1) *Scope.* All orders, rules, and regulations issued by the Board and the Special Counsel before the effective date of the Whistleblower Protection Act of 1989 shall continue in effect, according to their terms, until modified, terminated, superseded, or repealed by the Board or the Special Counsel, as appropriate.

(2) *Administrative proceedings and appeals therefrom.* No provision of the Whistleblower Protection Act of 1989 shall be applied by the Board in such a way as to affect any administrative proceeding pending at the effective date of such provision. "Pending" is considered to encompass existing agency proceedings, including personnel actions that were proposed, threatened, or taken before July 9, 1989, the effective date of the Whistleblower Protection Act of 1989, and appeals before the Board or its predecessor agencies that were subject to judicial review on that date. An agency proceeding is considered to exist once the employee has received notice of the proposed action.

Appendix I to Part 1201—Merit Systems Protection Board Appeal Form

U.S. MERIT SYSTEMS PROTECTION BOARD

Appeal Form

Instructions

General: You do not have to use this form to file an appeal with the Board. However, if you do not, your appeal must still comply with the Board's regulations, 5 C.F.R. Part 1201. Your agency's personnel office will give you access to the regulations, and the Board will expect you to be familiar with them. You also should become familiar with the Board's key case law and controlling court decisions as they may affect your case. You may tell the Board if you are raising an affirmative defense (see Part III), and you are responsible for proving each defense you raise.

Where to file an appeal: You must file your appeal with the Board's regional office identified in the decision notice the agency gave you.

When to file an appeal: Your appeal must be filed during the period beginning with the day after the effective date of the action you are appealing and ending on the 20th day after the effective date. You must not file your appeal before the effective date of the action you are appealing. If you are appealing from a decision which does not set an effective date, you must file within 25 days of the date of the decision you are appealing. If your appeal is late, it may be dismissed as untimely. The date of filing is the date your appeal is postmarked or the date of receipt if you personally deliver it to the regional office.

How to file an appeal: You may file your appeal by mail, by facsimile, or by personal delivery. You must submit an original and one copy of both your appeal and all attachments. You may supplement your response to any question on separate sheets of paper, but if you do, please put your name and address at the top of each additional page. All of your submissions must be legible and on 8½" x 11" paper. Your appeal must contain your or your representative's signature in block 6. If it does not, your appeal will be rejected and returned to you. If your representative signs block 6, you must sign block 35 or submit a separate written designation of representative.

Privacy act statement: This form requests personal information which is relevant and necessary to reach a decision in your appeal. The U.S. Merit Systems Protection Board collects this information in order to process appeals under its statutory and regulatory authority. Since you appeal is a voluntary action you are not required to provide any personal information in connection with it. However, failure to supply the U.S. Merit Systems Protection Board with all the information essential to reach a decision in your case could result in the rejection of your appeal.

The Merit Systems Protection Board is authorized under provisions of Executive Order 9397, dated November 22, 1943, to request your Social Security number, but providing your Social Security number is voluntary and failure to provide it will not result in the rejection of your appeal. Your Social Security number will only be used for identification purposes in the processing of your appeal.

You should know that the decisions of the U.S. Merit Systems Protection Board on appeals are final administrative decisions and, as such, are available to the public under the provisions of the Freedom of Information Act. Additionally, it is possible that information contained in your appeal file may be released as required by the Freedom of Information Act. Some information about your appeal will also be used in depersonalized form as a data base for program statistics.

Public reporting burden: The public reporting burden for this collection of information is estimated to vary from 20 minutes to 1 hour, with an average of 30 minutes per response, including time for reviewing the form, searching existing data sources, gathering the data necessary, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden, to the Office of Management Anaylsis, Merit Systems Protection Board, 1120 Vermont Ave., NW, Washington, DC 20419, and to the Office of Management and Budget, Paperwork Reduction Project (3124–0009), Washington, DC 20503.

Part I—Appellant Identification

1. Name (last, first, middle initial)
2. Social Security Number
3. Present address (number and street, city, state, and ZIP code). You must notify the Board of any change of address or telephone number while the appeal is pending with the MSPB.
4. Home phone (include area code)
5. Office phone (include area code)
6. I certify that all of the statements in this appeal are true, complete, and correct to the best of my knowledge and belief.

Signature of appellant or designated representative

Date signed

Part II Appealed Action

7. Briefly describe the agency action you wish to appeal and attach any relevant documents, including the proposal letter, the decision letter, and the relevant SF50 or its equivalent.
8. Name and address of the agency that took the action you are appealing *(including bureau or other divisions, as well as street address, city, state and ZIP code)*
9. Your position title and duty station at the time of the action appealed.
10. Grade at time of the action appealed
11. Salary at the time of the action appealed
    $ per
12. Are you a veteran and/or entitled to the employment rights of a veteran?
    ☐ *Yes*
    ☐ *No*
13. Employment status at the time of the action appealed
    ☐ *Temporary*
    ☐ *Permanent*
    ☐ *Applicant*
    ☐ *Term*
    ☐ *Retired*
    ☐ *Seasonal*
14. If retired, date of retirement *(month, day, year)*
15. Type of service
    ☐ *SES*
    ☐ *Postal Service*
    ☐ *Competitive*
    ☐ *Excepted*
16. Length of government service
17. Length of service with acting agency
18. Were you serving a probationary or trial period at the time of the action appealed?
    ☐ *Yes*
    ☐ *No*
19. Date you received written notice of the proposed action *(month, day, year)*
20. Date you received the final decision notice *(month, day, year) (attach a copy)*
21. Effective day of the action appealed *(month, day, year)*
22. Explain briefly why you think the agency was wrong in taking this action.
23. Do you believe the penalty imposed by the agency was too harsh?
    ☐ *Yes*
    ☐ *No*
24. What action would you like the Board to take on this case (i.e., what remedy are you asking for)?

Part III Appellant's Defenses

25. a) Do you believe the agency committed harmful procedural error(s)?
    ☐ *Yes*
    ☐ *No*
25. b) If so, what is (are) the error(s)?
25. c) Explain how you were harmed by the error(s).
26. a) Do you believe that the action you are appealing violated the law?
    ☐ *Yes*
    ☐ *No*
26. b) If so, what law?
26. c) How was it violated?
27. If you believe this action was taken as a result of your whistleblowing activities, please provide details, including dates and names of persons involved.
28. a) If you believe you were discriminated against by the agency, in connection with the matter appealed, because of either your race, color, religion, sex, national origin, marital status, political affiliation, handicapping condition, or age, indicate so and explain why you believe it to be true. You must indicate, by specific examples, how you were discriminated against.
28. b) Have you filed a formal discrimination complaint with your agency or any other agency concerning the matter which you are seeking to appeal?
    ☐ *Yes (attach a copy)*
    ☐ *No*
28. c) If yes, place filed *(agency, number and street, city, state, and ZIP code)*
28. d) Date filed *(month, day, year)*
28. e) Has a decision been issued?
    ☐ *Yes (attach a copy)*
    ☐ *No*
29. a) Have you, or anyone in your behalf, filed a formal grievance with your agency concerning this matter, under a negotiated grievance procedure provided by a collective bargaining agreement?

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☐ *Yes (attach a copy)*
☐ *No*

29. b) Date filed *(month, day, year)*
30. Retention group and sub-group
37. Service computation date

(Arizona, Colorado, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, South Dakota, Utah, and Wyoming)

Bangor, Maine
Portland, Maine
Manchester, New Hampshire
Portsmouth, New Hampshire
Providence, Rhode Island
San Diego, California

Seattle Region

Seattle, Washington
Spokane, Washington

hearing held in Bettendorf, Iowa, beginning August 9, 1988, which provided the basis for including the two Wisconsin counties in the marketing

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☐ *Yes (attach a copy)*
☐ *No*

29. b) Date filed *(month, day, year)*

29. c) If yes, place filed *(agency, number and street, city, state, and ZIP code)*

29. d) Has a decision been issued?
☐ *Yes (attach a copy)*
☐ *No*

29. e) If yes, date issued *(month, day, year)*

Part IV Hearing

30. You may have a right to a hearing on this appeal. If you do not want a hearing, the Board will make its decision on the basis of the documents you and the agency submit, after providing you and the agency with an opportunity to submit additional documents. If neither box is checked, the Board will presume you do not want a hearing, and none will be scheduled.

Do you want a hearing?
☐ Yes
☐ No

If you choose to have a hearing, the Board will notify you where and when it is to be held.

Part V Designation of Representative

31. You may represent yourself in this appeal, or you may choose someone to represent you. Your representative does not have to be an attorney. You may change your designation of a representative at a later date, if you so desire, but you must notify the Board promptly of any change. Where circumstances require, a separate designation of representative may be submitted after the original filing. Include the information requested in blocks 31 through 35.

"I hereby designate _____ to serve as my representative during the course of this appeal. I understand that my representative is authorized to act on my behalf."

32. Representative's address (number and street, city, state, and ZIP code).

33. Representative's employer

34. Representative's telephone number (include area code).

35. Appellant's signature Date

Part VI Reduction In Force (RIF)

Instructions

Fill out this part only if you are appealing from a Reduction In Force. Your agency's personnel office can furnish you with most of the information requested below.

36. Retention group and sub-group

37. Service computation date

38. a) Has your agency offered you another position rather than separating you?
☐ Yes
☐ No

38. b) Title of position offered

38. c) Grade of position offered

38. d) Salary of position offered
$ per

38. e) Location of position offered

38. f) Did you accept this position?
☐ Yes
☐ No

39. Explain why you think you should not have been affected by the Reduction In Force. (Explanations could include: you were placed in the wrong retention group or sub-group; an error was made in the computation of your service computation date; competitive area was too narrow; improperly reached for separation from competitive level; an exception was made to the regular order of selection; full 30-day notice was not given; you believe you have assignment [bump or retreat] rights; or any other reasons. Please provide as much information as possible regarding each reason.)

Appendix II to Part 1201—Appropriate Regional Office for Filing Appeals

All submissions shall be addressed to the Regional Director, Merit Systems Protection Board, at the addresses listed below, according to geographic region of the employing agency or as required by § 1201.4(d) of this part. Address of Appropriate Regional Office and Area Served:

1. Atlanta Regional Office, Suite 500, 1365 Peachtree Street, NE., Atlanta, Georgia 30309–3199, Facsimile No.: (404) 257–5267 (Alabama, Florida, Georgia, Mississippi, North Carolina, and South Carolina)
2. Boston Regional Office, 10 Causeway Street, Room 1078, Boston, Massachusetts 02222–1042, Facsimile No.: (617) 835–6903 (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont)
3. Chicago Regional Office, 230 South Dearborn Street, 31st Floor, Chicago, Illinois 60604–1669, Facsimile No.: (312) 886–4231 (Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin)
4. Dallas Regional Office, 1100 Commerce Street, Room 6F20, Dallas, Texas 75242–9979, Facsimile No.: (214) 729–6162, (Arkansas, Louisiana, Oklahoma, and Texas)
5. Denver Regional Office, 730 Simms Street, Suite 301, P.O. Box 25025, Facsimile No.: (303) 233–5438, Denver, Colorado 80225–0025, (Arizona, Colorado, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, South Dakota, Utah, and Wyoming)
6. New York Regional Office, 26 Federal Plaza, Room 3137–A, New York, New York 10278–0022, Facsimile No.: (212) 264–1417 (New York, Puerto Rico, Virgin Islands, and the following counties in New Jersey: Bergen, Essex, Hudson, Hunterdon, Morris, Passaic, Somerset, Sussex, Union, and Warren)
7. Philadelphia Regional Office, U.S. Customhouse, Room 501, Second and Chestnut Streets, Philadelphia, Pennsylvania 19106–2904, Facsimile No.: (215) 597–3456, (Delaware, Pennsylvania, Virginia—except cities and counties served by Washington Regional Office, West Virginia, and the following counties in New Jersey: Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Middlesex, Monmouth, Ocean, and Salem)
8. St. Louis Regional Office, 911 Washington Avenue, Room 615, St. Louis, Missouri 63101–1203, Facsimile No.: (314) 279–4294 Kentucky, Missouri, and Tennessee)
9. San Francisco Regional Office, 525 Market Street, Room 2800, San Francisco, California 94105–2708, Facsimile No.: (415) 467–8532 (California)
10. Seattle Regional Office, 915 Second Avenue, Suite 1840, Seattle, Washington 98174–1001, Facsimile No.: (206) 399–6484 (Alaska, Hawaii, Idaho, Oregon, Washington, and Pacific overseas areas)
11. Washington Regional Office, 5203 Leesburg Pike, Suite 1109, Falls Church, Virginia 22041–3473, Facsimile No.: (703) 756–7112 (Washington, DC., Maryland, all overseas areas not otherwise covered, and the following cities and counties in Virginia: Alexandria, Falls Church, Arlington, Fairfax City, Fairfax County, Loudoun, and Prince William)

Appendix III to Part 1201—Approved Hearing Locations by Regional Office

Atlanta Region

Atlanta, Georgia
Augusta, Georgia
Macon, Georgia
Savannah, Georgia
Birmingham, Alabama
Huntsville, Alabama
Montgomery, Alabama
Jacksonville, Florida
Miami, Florida
Orlando, Florida
Pensacola, Florida
Tampa/St. Petersburg, Florida
Jackson, Mississippi
Asheville, North Carolina
Jacksonville, North Carolina
Raleigh, North Carolina
Columbia, South Carolina
Charleston, South Carolina

Boston Region

Boston, Massachusetts
Hartford, Connecticut
New Haven, Connecticut
Bangor, Maine
Portland, Maine
Manchester, New Hampshire
Portsmouth, New Hampshire
Providence, Rhode Island
Burlington, Vermont

Chicago Region

Chicago, Illinois
Davenport, Iowa/Rock Island, Illinois
Indianapolis, Indiana
Detroit, Michigan
Minneapolis/St. Paul, Minnesota
Cleveland, Ohio
Cincinnati, Ohio
Columbus, Ohio
Dayton, Ohio
Milwaukee, Wisconsin

Dallas Region

Dallas, Texas
Corpus Christi, Texas
El Paso, Texas
Houston, Texas
San Antonio, Texas
Temple, Texas
Texarkana, Texas
Little Rock, Arkansas
Alexandria, Louisiana
New Orleans, Louisiana
Oklahoma City, Oklahoma
Tulsa, Oklahoma

Denver Region

Denver, Colorado
Pueblo, Colorado
Phoenix, Arizona
Tucson, Arizona
Wichita, Kansas
Billings, Montana
Great Falls, Montana
Missoula, Montana
Omaha, Nebraska
Las Vegas, Nevada
Reno, Nevada
Albuquerque, New Mexico
Bismarck, North Dakota
Rapid City, South Dakota
Sioux Falls, South Dakota
Salt Lake City, Utah
Casper, Wyoming

New York Region

Albany, New York
New York, New York
Buffalo, New York
Syracuse, New York
Newark, New Jersey

Philadelphia Region

Philadelphia, Pennsylvania
Harrisburg, Pennsylvania
Pittsburgh, Pennsylvania
Wilkes-Barre, Pennsylvania
Trenton, New Jersey
Dover, Delaware
Norfolk, Virginia
Richmond, Virginia
Roanoke, Virginia
Charleston, West Virginia
Morgantown, West Virginia

San Francisco Region

San Francisco, California
Fresno, California
Los Angeles, California
Sacramento, California
San Diego, California

Seattle Region

Seattle, Washington
Spokane, Washington
Richland, Kennewick, and Pasco, Washington
Anchorage, Alaska
Honolulu, Hawaii
Boise, Idaho
Pocatello, Idaho
Medford, Oregon
Portland, Oregon

St. Louis Region

St. Louis, Missouri
Kansas City, Missouri
Springfield, Missouri
Des Moines, Iowa
Lexington, Kentucky
Louisville, Kentucky
Knoxville, Tennessee
Nashville, Tennessee
Memphis, Tennessee

Washington Region

Bailey's Crossroads, Falls Church, Virginia
Washington, DC
Baltimore, Maryland

Appendix IV to Part 1201—Sample Declaration Under 28 U.S.C. 1746

Declaration

I, _____, do hereby declare:

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on

Date

Signature

Dated: December 26, 1989.

Patricia M. Paige,

Acting Clerk of the Board.

[FR Doc. 89-30254 Filed 12-28-89; 8:45 am]

BILLING CODE 7400-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1030

[DA-89-009]

Milk in the Chicago Regional Marketing Area; Order Terminating Certain Provision of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Termination of rule.

SUMMARY: This action removes Crawford and Grant Counties in Wisconsin from the provision that defines the Chicago Regional milk order marketing area. The termination is based on evidence obtained at a public hearing held in Bettendorf, Iowa, beginning August 9, 1988, which provided the basis for including the two Wisconsin counties in the marketing area of the Iowa order. The Iowa order is being amended to include Crawford and Grant counties in the marketing area. Therefore, in order to implement the amendments, it is necessary to remove the two counties from the Chicago Regional marketing area.

EFFECTIVE DATE: January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–4829.

SUPPLEMENTARY INFORMATION: Prior document of this proceeding: Notice of Proposed Termination: Issued April 12, 1989; published April 18, 1989 (54 FR 15413).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action does not affect the regulatory status of milk handlers nor will it have an adverse impact upon dairy farmers who have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under the criteria contained therein.

This order of termination is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and of the order regulating the handling of milk in the Chicago Regional marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on April 18, 1989 (54 FR 15413) concerning a proposed termination of a provision of the order. Interested parties were afforded opportunity to file written data, views, and arguments thereon.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that the following provisions of the order do not tend to effectuate the declared policy of the Act: In § 1030.2(b)(1), the words "Crawford" and "Grant".

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Statement of Consideration

This termination action removes from the Chicago Regional marketing area the counties of Crawford and Grant in the State of Wisconsin. Producers supplying the Iowa market have approved an amended Iowa order that now includes these two counties. Therefore, it is necessary that the counties be removed from the Chicago Regional order marketing area by terminating the names of the two counties from the provision defining the marketing area.

The termination is based upon the evidence obtained at a public hearing held in Bettendorf, Iowa, beginning August 9, 1988, to consider, among other proposals, a proposal by Swiss Valley Farms, Co., to expand the Iowa marketing area by adding several unregulated counties in Illinois, Iowa, and Missouri, and Crawford and Grant Counties in Wisconsin. The two Wisconsin counties now are part of the marketing area for the Chicago Regional marketing area.

The Deputy Assistant Secretary, Marketing and Inspection Services, adopted the proposal with regard to the Wisconsin counties, and that action was approved by dairy farmers under the Iowa order. Therefore, an amended order is being issued concurrently with this termination action so that the same effective date will apply to both actions.

Four comments were received in response to the proposal to terminate the two Wisconsin counties from the provision of the Chicago order that defines "marketing area". Two comments supported the proposed termination, and two were opposed. Swiss Valley Farms, Co., the proponent of the change, and Anderson Erickson Dairy Co., a handler regulated under the Iowa order, supported the termination.

Central Milk Producers Cooperative (CMPC), a federation of cooperatives representing over 13,000 producers for the Chicago order, opposed the termination. Also, the National Farmers Organization (NFO) expressed opposition.

Both opponents of the termination expressed the view that this action is unlawful because, in their view, it constitutes an order amending the Chicago order without having held a hearing on a proposal to do so. CMPC specifically takes issue with the conclusion that continuation of the two counties in the Chicago Regional marketing area would not tend to effectuate the declared policy of the Agricultural Marketing Agreement Act of 1937, as amended (the Act). CMPC contends that there is no basis in the record of the Iowa hearing for this conclusion, and that therefore the proceedings should be terminated.

Notwithstanding the objections of CMPC and NFO, this action to remove the two counties from the Chicago order is both authorized by the Act and an appropriate action in this case. The Department has concluded that it is necessary to include the Wisconsin Counties of Crawford and Grant in the Iowa marketing area in order to effectuate the declared policy of the Act. This termination action removes these two counties from the Chicago order as a means of implementing the decision to expand the Iowa marketing area, which will become effective January 1, 1990.

Therefore, good cause exists for making this order effective January 1, 1990.

List of Subjects in 7 CFR Part 1030

Dairy products, Milk, Milk marketing orders.

It is therefore ordered, That the aforesaid provision in § 1030.2 of the Chicago Regional order is hereby terminated.

PART 1030—MILK IN THE CHICAGO REGIONAL MARKETING AREA

1. The authority citation for 7 CFR part 1030 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1030.2 [Amended]

2. In § 1030.2(b)(1), the words "Crawford" and "Grant" are removed.

Signed at Washington, DC, on: December 22, 1989.

John E. Frydenlund,

Acting Assistant Secretary of Agriculture, Marketing and Inspection Services.

[FR Doc. 89–30242 Filed 12–28–89; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 1079

[Docket No. AO–295–A38; DA–88–111]

Milk in the Iowa Marketing Area; Order Amending Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action expands the marketing area for the Iowa order. The added territory includes some unregulated areas in Iowa, Illinois, and Missouri, and two counties in Wisconsin that currently are part of the Chicago Regional milk order marketing area. Another document issued concurrently with this one terminates the two Wisconsin counties from the marketing area provision of the Chicago order. The amendments were proposed by Swiss Valley Farms, Co., a dairy farmer cooperative.

The amended order also provides a temporary lock-in to the Iowa order for a distributing plant that also meets the pooling requirements of another Federal milk order and which has greater Class I dispositions, both in route sales and transfers to distributing plants, in such other marketing area than it does in the Iowa marketing area. Such a plant would remain regulated under the Iowa order until the third consecutive month that its sales were greater in the other marketing area.

The amendments are based on the record of a public hearing held at Bettendorf, Iowa, August 9–11, 1988. The amendments are necessary to reflect current marketing conditions and to maintain orderly marketing in the Iowa marketing area. Cooperatives representing more than two-thirds of the order's producers favor issuance of the amended order.

EFFECTIVE DATE: January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–4829.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued July 11, 1988; published July 13, 1988 (53 FR 26446).

Notice of Rescheduled Hearing: Issued July 31, 1988; published July 21, 1988 (53 FR 27863).

Recommended Decision: Issued April 12, 1989; published April 18, 1989 (54 FR 15417).

Correction of Recommended Decision: published May 3, 1989 (54 FR 18979).

Proposed Termination: Issued April 12, 1989; published May 12, 1989 (54 FR 15413).

Extension of Time to file Exceptions to the Recommended Decision and Comments on Proposed Termination: Issued May 8, 1989; published May 12, 1988 (54 FR 20605).

Final Decision: Issued November 20, 1989; published November 28, 1989 (54 FR 48900).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the Iowa order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) Findings upon the basis of the hearing record. Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Iowa marketing area.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area; and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held; and

(4) All milk and milk products handled by handlers, as defined in the order as hereby amended, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products.

(b) *Additional findings.* It is necessary in the public interest to make this order amending the order effective not later than January 1, 1990. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the marketing area.

The provisions of this order are known to handlers. The recommended decision of the Administrator was issued April 12, 1989, and the decision of the Deputy Assistant Secretary containing all amendment provisions of this order was issued November 20, 1989. The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the order effective January 1, 1990, and that it would be contrary to the public interest to delay the effective date of this amendment for 30 days after its publication in the **Federal Register**. (Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551–559)

(c) Determinations. It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending the order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order; and

(3) The issuance of the order amending the order is approved or favored by at leat two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing area.

List of Subjects in 7 CFR Part 1079

Dairy products, Milk, Milk marketing orders.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the Iowa marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended, as follows:

PART 1079—[AMENDED]

1. The authority citation for 7 CFR part 1079 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Amend § 1079.2 by revising paragraphs (a) and (b), and adding paragraphs (c) and (d) to read as follows:

§ 1079.2 Iowa marketing area.

* * * * *

(a) The Iowa counties of: Adair, Adams, Allamakee, Appanoose, Audubon, Benton, Black Hawk, Boone, Bremer, Buchanan, Butler, Calhoun, Carroll, Cedar, Cerro Gordo, Chickasaw, Clarke, Clayton, Clinton, Dallas, Davis, Decatur, Delaware, Des Moines, Dubuque, Fayette, Floyd, Franklin, Greene, Grundy, Guthrie, Hamilton, Hancock, Hardin, Henry, Humboldt, Iowa, Jackson, Jasper, Jefferson, Johnson, Jones, Keokuk, Linn, Louisa, Lucas, Madison, Mahaska, Marion, Marshall, Monroe, Muscatine, Pocahontas, Polk, Poweshiek, Ringgold, Scott, Story, Tama, Taylor, Union, Van Buren, Wapello, Warren, Washington, Wayne, Webster, Wright, and the city of Osage in Mitchell County.

(b) The Illinois counties of: Henderson, Henry, Mercer, Rock Island, and the city of East Dubuque in Jo Daviess County, and the townships of Fulton, Ustick, Clyde, Genesee, Mount Pleasant, Union Grove, Garden Plain, Lyndon, Fenton, Newton, Prophetstown, Portland, and Erie in Whiteside County.

(c) The Missouri counties of: Grundy, Harrison, Mercer, Putnam, Schuyler.

(d) The Wisconsin counties of: Crawford and Grant.

3. In § 1079.7, revise paragraph (d) to read as follows:

§ 1079.7 Pool plant.

* * * * *

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A governmental agency plant;

(3) A plant qualified as a pool plant pursuant to paragraph (a) in this section which also meets the pooling requirements of another Federal order and from which during the month a greater quantity of fluid milk products, except filled milk, was disposed of as route disposition, in such other marketing area and to pool plants qualified on the basis of route disposition in such other marketing area than was so disposed of from such plant in the Iowa marketing area as route disposition, or to pool plants qualified on the basis of route disposition, except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater proportion of its fluid milk products disposition, except filled milk, is made in the above described manner in such other marketing area, unless, notwithstanding the provisions of this paragraph, it is regulated by such other order;

(4) A plant qualified as a pool plant pursuant to this section which also meets the pooling requirements of another Federal order and from which during the month a greater quantity of fluid milk products, except filled milk, was disposed of as route disposition in this marketing area, and to pool plants qualified on the basis of route disposition in this marketing area than was so disposed of in such other Federal order marketing area but which plant is,

nevertheless, fully regulated under such other Federal order; and

(5) That portion of a plant that is

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued

manner that allows a producer-handler to service its sales accounts without producing an unneeded surplus and that

producers whose milk is pooled under the Great Basin milk order, opposed the proposed suspension.

Mr. Brown's comments reiterated the

in Salt Lake City, Utah, stated that by definition and because of the large capital outlays required to compete on a larger scale, producer-handlers will

handlers. According to Gossner's comments, in the absence of limits on producer-handler purchases, producer-handlers would be able to build up their

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nevertheless, fully regulated under such other Federal order; and

(5) That portion of a plant that is physically separated from the Grade A portion of such plant, is operated separately, and is not approved by any regulatory agency for the receiving, processing, or packaging of any fluid milk product for Grade A disposition.

4. In § 1079.52, revise paragraph (a)(2)(ii) to read as follows:

§ 1079.52 Plant location adjustments for handlers.

(a) * * *

(2) * * *

(iii) The Illinois counties of Henry, Mercer, Rock Island, and the townships of Fulton, Ustick, Clyde, Genesee, Mount Pleasant, Union Grove, Garden Plain, Lyndon, Fenton, Newton, Prophetstown, Portland, and Erie in Whiteside County.

* * * * *

Signed at Washington, DC, on December 22, 1989.

John E. Frydenlund,

Acting Assistant Secretary of Agriculture, Marketing and Inspection Services.

[FR Doc. 89-30243 Filed 12-28-89; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1139

[DA-89-024]

Milk in the Great Basin Marketing Area; Order Suspending Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action suspends for the period of December 1989 through August 1990 the Great Basin order's limit on the amount of milk that a producer-handler may purchase from pool plants or other order plants without losing its unregulated status. The suspension was requested by a producer-handler under the Great Basin Federal milk order.

An evaluation of data, views, arguments, and other pertinent information available leads to the conclusion that this suspension action is needed to relieve an unwarranted burden on producer-handlers in the market.

EFFECTIVE DATE: December 29, 1989.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/ Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456 (202) 447-7183.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued June 13, 1989; published June 19, 1989 (54 FR 25727).

The Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain producer-handlers and tends to encourage more orderly marketing of milk in the Great Basin marketing area.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 15121 and has been determined to be a "non-major" rule under the criteria contained therein.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and of the order regulating the handling of milk in the Great Basin marketing area. A notice of rulemaking was published in the Federal Register on June 19, 1989 (54 FR 25727) concerning a proposed suspension of certain provisions of the Great Basin Federal milk order. Interested parties were afforded an opportunity to file written data, views, and arguments thereon.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that for the months of December 1989 through August 1990 the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1139.10(b)(1)(ii), the words "in an amount that is not in excess of the larger of 5,000 pounds or 5 percent of such person's Class I disposition during the month."

Statement of Consideration

This action makes inoperative for the months of December 1989 through August 1990 the provisions of the Great Basin milk order that limit the amount of milk that a producer-handler may purchase from pool plants and other order plants. The provisions suspended limit the amount of milk that a producer-handler may buy from pool plants or from other order plants to supplement its own production to 5,000 pounds or 5 percent of its Class I sales, whichever is greater.

The suspension was requested for an indefinite period by Glen E. Brown, owner of Brown Dairy, Inc., a producer-handler located in Coalville, Utah. Mr. Brown asserted that it is virtually impossible to manage a dairy herd in a manner that allows a producer-handler to service its sales accounts without producing an unneeded surplus and that removal of the limit on purchases is the only logical way to provide a producer-handler the means of marketing all of its production. He stated that such a solution would eliminate the need to dump surplus milk onto the market and would foster orderly marketing to the consumer.

Mr. Brown pointed out that a producer-handler has no way of knowing the full extent of his allowable purchases until the current month is completed, thus limiting his ability to purchase the entire 5 percent of his route dispositions that is permitted. Further, he stated, that the limit makes it difficult to provide fluid milk products to groups and facilities with seasonal needs, such as boy scout camps.

The producer-handler stated that the percentage of the milk distributed in the Great Basin market that is handled by producer-handlers has decreased over time, and that there is no indication that producer-handlers in the Great Basin market represent a threat to orderly marketing conditions. Further, he indicated that he knows of no undesirable marketing conditions or any increase in numbers of producer-handlers in markets without limits on the amount of milk that producer-handlers are allowed to purchase.

Mr. Brown asserted that the prices at which the producer-handlers sell milk are not the lowest or highest in the market, and do not adversely affect orderly marketing in the Great Basin marketing area. He stated that paying the order's Class I price for raw milk would not provide producer-handlers any unusual opportunity to upset the market structure, and that prices received by producers whose milk is pooled under the order would not be negatively affected by the proposed suspension.

Finally, Mr. Brown cited the Regulatory Flexibility Act (5 U.S.C. 601-612) to argue that the requested suspension would represent a very positive action on behalf of small entities affected by the provisions of the Great Basin milk order.

In response to the notice of proposed suspension, seven comments were received from interested parties. Comments filed by Glen Brown and by the three other interested persons located in or near the marketing area supported the proposed suspension. Comments filed by three pooled handlers, including the cooperative association that represents approximately 70 percent of the producers whose milk is pooled under the Great Basin milk order, opposed the proposed suspension.

Mr. Brown's comments reiterated the basis of his request for suspension of the purchase limit and included information indicating that the price paid to producer-handlers by manufacturing plant operators is based on a cheese formula price minus 50 cents and hauling deductions. Randal Stoker of Buhl, Idaho, stated that producer-handlers can better serve the fresh fluid milk needs of consumers in some remote areas, and that producer-handlers must bear burdens that other marketing organizations spread among many producers. He identified these burdens as the necessity of constantly balancing supply and demand, being both dairy and business managers, and the responsibility of obtaining large amounts of capital for production, processing and marketing, and maximizing the use of that capital. Mr. Stoker stated that producer-handlers should be allowed to purchase supplemental supplies of milk during the generally short periods of high demand. He pointed out that having to purchase milk from pool handlers at the Class I price (probably with the addition of hauling costs, handling charges and premiums) would serve as an incentive for producer-handlers to limit such purchases since producer-handlers acquire most of their milk at the cost of production, which is generally less than the Class I prices.

Mr. Gerald L. Carlisle of Jerry's Dairy, a producer-handler under the Great Basin order, argued that the current allowable level of purchases is too small to use as an effective management tool, and leaves him unable to supply nearby summer programs with milk products. He pointed out that acts of nature, such as extreme weather conditions, can cause fluctuations of more than 5 percent in milk production. According to Mr. Carlisle, the present limit on purchases creates unstable marketing conditions during peak-production months by causing producer-handlers to lower prices on their Class I sales at such times while the ability to expand purchases would make producer-handlers better able to maintain their fluid milk sales at prices closer to the order's Class I price. Mr. Carlisle stated that suspension of the purchase limit would cause producer-handlers to adjust production closer to market demand, would return the Class I price to pooled producers, and would create no market disruption.

Gordon M. Liddle, president of Winder Dairy, a pooled handler located in Salt Lake City, Utah, stated that by definition and because of the large capital outlays required to compete on a larger scale, producer-handlers will remain a small market force. Mr. Liddle stated that more flexibility in a producer-handler's ability to purchase supplemental milk supplies is needed without incurring the extreme penalty of becoming a pool plant. He complained that the current regulations force producer-handlers to produce excess milk during the months of seasonally low production to avoid participating in the marketwide pool. As a result, he stated, a great deal of excess production must be marketed during the months of flush production, which results either in a reduction in returns on surplus production or lowered prices on fluid use that jeopardize market integrity. According to Mr. Liddle, the proposed suspension would provide for more orderly planning.

K.D.K. Dairy, a proprietary handler pooled under the Great Basin order, expressed opposition to the proposed suspension by quoting relevant paragraphs from the decision justifying the producer-handler exemption from regulation and the current order provisions. The decision stated that producer-handler operations may be exempted from full regulation because fluctuations in their daily and seasonal needs are met through their own farm production, with their surplus production disposed of at their own expense. According to the portion of the decision quoted by K.D.K., the necessity of balancing its own production with the market's Class I needs limits a producer-handler's ability to be a major competitive factor in the market supplied by regulated handlers. A further paragraph quoted from the decision noted that a producer-handler that is able to buy substantial supplemental supplies does not differ significantly from pooled handlers, but contributes none of the proceeds from its Class I sales to the market while other producers bear the cost of carrying the producer-handler's necessary reserve.

Gossner Foods, another pool plant regulated under the Great Basin order, opposed the proposed suspension on the basis that the producer-handler exemption from regulation is intended to cover small family operations selling milk from plant stores directly to consumers. Gossner's comments state that Brown's Dairy actively solicits and gains grocery store accounts previously supplied by pool handlers. These stores must then supplement their fluid milk needs by purchases from regulated handlers. According to Gossner's comments, in the absence of limits on producer-handler purchases, producer-handlers would be able to build up their production to eventually displace the milk purchased from pooled handlers. Gossner concluded that the present order provisions allow producer-handlers adequate flexibility to supplement their production to meet temporary needs.

Comments were filed on behalf of Western Dairymen, Inc. (WDCI), a cooperative association representing approximately 70 percent of the producers pooled under the Great Basin order. WDCI opposed the proposed suspension on the grounds that it is contrary to and would undermine the "orderly marketing" purpose of the Agricultural Marketing Agreement Act of 1937 (the Act), and that the producer-handler exemption from regulation is an exception to the uniform pricing and pooling provisions of the order and should not be broadened beyond its limited purpose.

WDCI's comments argued that the Act authorizes the regulation of handlers by requiring them to pay uniform class prices for milk purchased, and specifically includes producers in their capacity as handlers. The cooperative further stated that the exemption of producer-handlers from full regulation is based on the theory that such a handler is a self-contained production, processing and distribution unit that neither shares its Class I sales with other producers in the market nor counts on other producers to meet any of its needs. WDCI cited a USDA Judicial Officer's decision stating that unlimited purchases by a producer-handler would allow such an entity to rely on the pool to produce enough surplus milk to cover the producer-handler's peak demand while not sharing the benefits of its Class I use with other producers. Consequently, the producer-handler would enjoy the benefits of the regulatory program without sharing any of the burdens of surplus milk.

As indicated by those opposing the suspension, the limit on supplemental milk purchases by producer-handlers is essentially for the purpose of precluding a producer-handler from shifting to pool producers the burden of carrying its own reserve supply. Without any purchase limit a producer-handler could be expected to obtain Class I sales accounts in an amount equal to the volume of milk produced in the seasonally high production months. During seasonally low production months, a producer-handler could supplement its lack of sufficient

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production with purchases from pool sources. Thus, a producer-handler that is permitted to follow this practice could effectively shift the burden of the seasonal reserve associated with its Class I sales to pool producers. Therefore, there continues to be an appropriate basis to continue to protect pool producers from this type of shift in the seasonal burden of reserve supplies associated with Class I sales of producer-handlers.

However, year-round application of the limit tends to impose an unnecessary burden on certain producer-handler operations in the market. Some producer-handler plants are located within close proximity to summer camps and winter recreational facilities that have a short-duration demand for milk in the months of seasonally higher production. The limit on supplemental milk purchases tends to either effectively preclude producer-handlers from serving such accounts or encourage producer-handlers to produce an unnecessary surplus of milk to serve such accounts and thereby retain producer-handler status. In circumstances where producer-handlers are placed in a position of having to refuse to service nearby summer camp accounts, it detracts from obtaining potential marketing efficiency and accommodation to sales accounts through the use of the packaged milk cooler space maintained at the producer-handler's plant. In the circumstance of excess production by producer-handlers to serve such accounts, it tends to detract from overall marketing efficiency by unduly encouraging increased milk production during periods of seasonal surplus and thereby adding to the seasonal variation in the volume of surplus milk to be processed in the market. If, on the other hand, producer-handlers were permitted to purchase pool milk to serve such accounts, pool producers would still tend to receive the benefit of such Class I sales, yet less surplus milk would be put on the market by producer-handlers.

Additionally, removal of the limit during the market's seasonally higher production months would tend to provide an incentive for producer-handlers to shift their production pattern so that it would peak during the market's low-production months of September through November in order to service their year-round sales accounts and retain producer-handler status. To the extent that this results in producer-handlers buying milk from pool sources during the market's high-production months, it would contribute to overall marketing efficiency by narrowing the magnitude of the seasonal variation in reserve milk supplies to be processed in the market.

In light of the foregoing consideration, it is concluded that application of the limit on a producer-handler's purchases of pool milk during December through August, the months of seasonally higher milk production in the market, detracts from the order's basic purpose of encouraging and maintaining orderly and efficient marketing in the Great Basin marketing area. To keep the limit on a producer-handler's purchases during the months of September through November, as herein concluded to be appropriate, the indefinite suspension request should not be adopted. However, to make the limit inoperative for the months of December through August, suspension action is necessary. To best effect an indefinite change to this provision of the order, the issue appropriately should be addressed at a public hearing. Pending such a hearing, the limit should be suspended for the period of December 1989 through August 1990.

It is hereby found and determined that 30 days' notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that unnecessary production of surplus milk by producer-handlers is being encouraged by the limit on purchases of pool milk by producer-handlers and the limit is unduly disrupting the marketing of milk to seasonal recreational sales accounts in the marketing area;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded an opportunity to file written data, views or arguments concerning this suspension.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1139

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, That the aforesaid provisions of § 1139.10 of the Great Basin order are hereby suspended for the months of December 1989 through August 1990, as follows:

PART 1139—MILK IN THE GREAT BASIN MARKETING AREA

1. The authority citation for Part 1139 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1139.10 [Temporarily suspended in part.]

2. In § 1139.10(b)(1)(ii), the words "in an amount that is not in excess of the larger of 5,000 or 5 percent of such person's Class I disposition during the month" are suspended for the months of December 1989 through August 1990.

Signed at Washington, DC on: December 26, 1989.

John E. Frydenlund,

Acting Assistant Secretary of Agriculture, Marketing and Inspection Services.

[FR Doc. 89-30274 Filed 12-28-89; 8:45 am]

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DEPARTMENT OF ENERGY

Office of Fossil Energy

10 CFR Part 590

Administrative Procedures With Respect to the Import and Export of Natural Gas; Technical Amendments

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of publication of technical changes to final administrative procedures rule to reflect transfer of natural gas import and export functions.

SUMMARY: On January 6, 1989, the administration of the natural gas import and export authorization program within the Department of Energy was transferred from the Economic Regulatory Administration to the Office of Fossil Energy. DOE Delegation Order No. 0204–127, specifies the transferred functions (54 FR 11437, March 20, 1989).

The Office of Fossil Energy hereby gives notice of clarification and technical changes to the Administrative Procedures in 10 CFR part 590, which govern the operation of the natural gas import and export program, to reflect this transfer of authority and to correct typographical errors in the original publication.

EFFECTIVE DATE: December 29, 1989.

FOR FURTHER INFORMATION CONTACT:

Stanley C. Vass (Office of Fuels Program), Fossil Energy, U.S. Department of Energy, Forrestal Bldg., room 3F–056, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586–1302;

Michael T. Skinner (Natural Gas & Mineral Leasing), Office of General Counsel, U.S. Department of Energy, Forrestal Bldg., room 6E–042, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586–6667.

List of Subjects in 10 CFR Part 590

Administrative practice and procedure, Exports, Imports, Filing Fees, Natural Gas, Recordkeeping and reporting requirements, Environmental protection.

In consideration of the foregoing, chapter II of title 10, subchapter G, part 590, Code of Federal Regulations, is revised, as set forth below.

Issued in Washington, DC on December 22, 1989.

Denise L. Swink,

Acting Assistant Secretary, Fossil Energy.

Part 590 of subchapter II of title 10, Code of Federal Regulations, is revised to read as follows:

PART 590—ADMINISTRATIVE PROCEDURES WITH RESPECT TO THE IMPORT AND EXPORT OF NATURAL GAS

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Authority: Secs. 301(b), 402(f), and 644, Pub. L. 95–91, 91 Stat. 578, 585, and 599 (42 U.S.C. 7151(b), 7172(f), and 7254), Sec. 3, Act of June 21, 1938, c. 556, 52 Stat. 822 (15 U.S.C. 717b); E.O. 12009 (42 FR 46267, September 15, 1977); DOE Delegation Order Nos. 0204–111 and 0204–127 (49 FR 6684, February 22, 1984; 54 FR 11437, March 20, 1989).

Subpart A—General Provisions

§ 590.100 OMB Control Numbers.

The information collection requirements contained in this part have been approved by the Office of Management and Budget under Control No. 1903–0081.

§ 590.101 Purpose and scope.

The purpose of this Part is to establish the rules and procedures required to be followed by persons to obtain authorizations from DOE to import or export natural gas under the Natural Gas Act and by all other persons interested in participating in a natural gas import or export proceeding before the agency. This Part establishes the procedural rules necessary to implement the authorities vested in the Secretary of Energy by sections 301(b) and 402(f) of the DOE Act, which have been delegated to the Assistant Secretary.

§ 590.102 Definitions.

As used in this part:

(a) *"Assistant Secretary"* means the Assistant Secretary for Fossil Energy or any employee of the DOE who has been delegated final decisional authority.

(b) *"Contested proceeding"* means a proceeding:

(1) Where a protest or a motion to intervene, or a notice of intervention, in opposition to an application or other requested action has been filed, or

(2) Where a party otherwise notifies the Assistant Secretary and the other parties to a proceeding in writing that it opposes an application or other requested action.

(c) *"Decisional employee"* means the Assistant Secretary, presiding officials at conferences, oral presentations or trial-type hearings, and any other employee of the DOE, including consultants and contractors, who are, or may reasonably be expected to be, involved in the decision-making process, including advising the Assistant Secretary on the resolution of issues involved in a proceeding. The term includes those employees of the DOE assisting in the conduct of trial-type hearings by performing functions on behalf of the Assistant Secretary or presiding official.

(d) *"DOE"* means the Department of Energy, of which FE is a part.

(e) *"DOE Act"* means the Department of Energy Organization Act, Pub. L. 95–91, 91 Stat. 565 (42 U.S.C. 7101 et seq.).

(f) *"FE"* means the Office of The Assistant Secretary for Fossil Energy.

(g) *"FERC"* means the Federal Energy Regulatory Commission.

(h) *"Interested person"* means a person, other than a decisional employee, whose interest in a proceeding goes beyond the general interest of the public as a whole and includes applicants, intervenors, competitors of applicants, and other individuals and organizations, including non-profit and public interest organizations, and state, local, and other public officials, with a proprietary, financial or other special interest in the outcome of a proceeding. The term does not include other federal agencies or foreign governments and their representatives, unless the agency, foreign government, or representative of a foreign government is a party to the proceeding.

(i) *"Natural gas"* means natural gas and mixtures of natural gas and synthetic natural gas, regardless of physical form or phase, including liquefied natural gas and gels primarily composed of natural gas.

(j) *"NGA"* means the Natural Gas Act of June 21, 1938, c. 556, 52 Stat. 821 (15 U.S.C. 717 et seq.).

(k) *"Off-the-record communication"* means a written or oral communication not on the record which is relevant to the merits of a proceeding, and about which the parties have not been given reasonable prior notice of the nature and purpose of the communication and an opportunity to be present during such communication or, in the case of a written communication, an opportunity to respond to the communication. It does not include communications concerned solely with procedures which are not relevant to the merits of a proceeding. It also does not include general background discussions about an entire industry or natural gas markets or communications of a general nature

made in the course of developing agency policy for future general application, even though these discussions may

with the time and date of receipt by the Office of Fuels Programs, FE. Documents transmitted to FE must be addressed as

from which the designated period of time begins to run is not included. The period of time begins to run the next day

FE for inclusion in the FE docket in the proceeding.

(c) All documents required to be served under this Part may be served by

require the party to show cause why the party's claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise

applicable. All factual matters shall be supported to the extent practicable by the necessary data or documents. Copies of relevant documents filed or

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made in the course of developing agency policy for future general application, even though these discussions may relate to the merits of a particular proceeding.

(l) "*Party*" means an applicant, any person who has filed a motion for and been granted intervenor status or whose motion to intervene is pending, and any state commission which has intervened by notice pursuant to § 590.303(a).

(m) "*Person*" means any individual, firm, estate, trust, partnership, association, company, joint-venture, corporation, United States local, state and federal governamental unit or instrumentality thereof, charitable, educational or other institution, and others, including any officer, director, owner, employee, or duly authorized representative of any of the foregoing.

(n) "*Presiding official*" means any employee of the DOE who has been designated by the Assistant Secretary to conduct any stage of a proceeding, which may include presiding at a conference, oral presentation, or trial-type hearing, and who has been delegated the auhority of the Assistant Secretary to make rulings and issue orders in the conduct of such proceeding, other than final opinions and orders, orders to show cause, emergency interim orders, or conditional decisions under subpart D and orders on rehearing under subpart E.

(o) "*Proceeding*" means the process and activity, and any part thereof, instituted by FE either in response to an application, petition, motion or other filing under this Part, or on its own initiative, by which FE develops and considers the relevant facts, policy and applicable law concerning the importation or exportation of natural gas and which may lead to the issuance of an order by the Assistant Secretary under subparts D and E.

(p) "*State commission*" means the regulatory body of a state or municipality having jurisdiction to regulate rates and charges for the sale of natural gas to consumers within the state or municipality, or having any regulatory jurisdiction over parties involved in the import or export arrangement.

§ 590.103 General requirements for filing documents with FE.

(a) Any document, including but not limited to an application, amendment of an application, request, petition, motion, answer, comment, protest, complaint, and any exhibit submitted in connection with such documents, shall be filed with FE under this Part. Such document shall be considered officially filed with FE when it has been received and stamped with the time and date of receipt by the Office of Fuels Programs, FE. Documents transmitted to FE must be addressed as provided in § 590.104. All documents and exhibits become part of the record in the official FE docket file and will not be returned. An original and fifteen (15) copies of all applications, filings and submittals shall be provided to FE. No specific format is required. Applicants required to file quarterly reports as a condition to an authorization need only file an original and four (4) copies.

(b) Upon receipt by FE, each application or other initial request for action shall be assigned a docket number. Any petition, motion, answer, request, comment, protest, complaint or other document filed subsequently in a docketed proceeding with FE shall refer to the assigned docket number. All documents shall be signed either by the person upon whose behalf the document is filed or by an authorized representative. Documents signed by an authorized representative shall contain a certified statement that the representative is a duly authorized representative unless the representative has a certified statement already on file in the FE docket of the proceeding. All documents shall also be verified under oath or affirmation by the person filing, or by an officer or authorized representative of the firm having knowledge of the facts alleged. Each document filed with FE shall contain a certification that a copy has been served as required by § 590.107 and indicate the date of service. Service of each document must be made not later than the date of the filing of the document.

(c) A person who files an application shall state whether, to the best knowledge of that person, the same or a related matter is being considered by any other part of the DOE, including the FERC, or any other Federal agency or department and, if so, shall identify the matter and the agency or department.

§ 590.104 Address for filing documents.

All documents filed under this part shall be addressed to: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Docket Room 3F–056, FE–50, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585. All hand delivered documents shall be filed with the Office of Fuels Programs at the above address between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

§ 590.105 Computation of time.

(a) In computing any period of time prescribed or allowed by these regulations, the day of the act or event from which the designated period of time begins to run is not included. The period of time begins to run the next day after the day of the act or event. The last day of the period so computed is included unless it is a Saturday, Sunday, or legal Federal holiday, in which event the period runs until the end of the next day that is neither a Saturday, Sunday, nor a legal Federal holiday, unless otherwise provided by this Part or by the terms of an FE order. Documents received after the regular business hours of 8 a.m. to 4:30 p.m. are deemed filed on the next regular business day.

(b) When a document is required to be filed with FE within a prescribed time, an extension of time to file may be granted for good cause shown.

(c) An order is issued and effective when date stamped by the Office of Fuels Programs, FE, after the order has been signed unless another effective date is specified in the order.

§ 590.106 Dockets.

The FE shall maintain a docket file of each proceeding under this Part, which shall contain the official record upon which all orders provided for in subparts D and E shall be based. The official record in a particular proceeding shall include the official service list, all documents filed under § 590.103, the official transcripts of any procedures held under subpart C, and opinions and orders issued by FE under subparts D and E, and reports of contract amendments under § 590.407. All dockets shall be available for inspection and copying by the public during regular business hours between 8 a.m. and 4:30 p.m. Dockets are located in the Office of Fuels Programs, FE, Docket Room 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

§ 590.107 Service.

(a) An applicant, any other party to a proceeding, or a person filing a protest shall serve a copy of all documents filed with FE upon all parties unless otherwise provided in this part. The copy of a document served upon parties shall be a true copy of the document filed with FE, but does not have to be a copy stamped with the time and date of receipt by FE. The FE shall maintain an official service list for each proceeding which shall be provided upon request.

(b) When the parties are not known, such as during the initial comment period following publication of the notice of application, service requirements under paragraph (a) of this section may be met by serving a copy of all documents on the applicant and on

FE for inclusion in the FE docket in the proceeding.

(c) All documents required to be served under this Part may be served by hand, certified mail, registered mail, or regular mail. It shall be the responsibility of the serving party to ensure that service is effected in a timely manner. Service is deemed complete upon delivery or upon mailing, whichever occurs first.

(d) Service upon a person's duly authorized representatives on the official service list shall constitute service upon that person.

(e) All FE orders, notices, or other FE documents shall be served on the parties by FE either by hand, registered mail, certified mail, or regular mail, except as otherwise provided in this Part.

§ 590.108 Off-the-record communications.

(a) In any contested proceeding under this part:

(1) No interested person shall make an off-the-record communication or knowingly cause an off-the-record communication to be made to any decisional employee.

(2) No decisional employee shall make an off-the-record communication or knowingly cause an off-the-record communication to be made to any interested person.

(3) A decisional employee who receives, makes, or knowingly causes to be made an oral off-the-record communication prohibited by this section shall prepare a memorandum stating the substance of the communication and any responses made to it.

(4) Within forty-eight (48) hours of the off-the-record communication, a copy of all written off-the-record communications or memoranda prepared in compliance with paragraph (a)(3) of this section shall be delivered by the decisional employee to the Assistant Secretary and to the Deputy Assistant Secretary for Fuels Programs. The materials will then be made available for public inspection by placing them in the docket associated with the proceeding.

(5) Requests by a party for an opportunity to rebut, on the record, any facts or contentions in an off-the-record communication may be filed in writing with the Assistant Secretary. The Assistant Secretary shall grant such requests only for good cause.

(6) Upon being notified of an off-the-record communication made by a party in violation of this section, the Assistant Secretary may, to the extent consistent with the interests of justice and the policies of the NGA and the DOE Act, require the party to show cause why the party's claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of the violation.

(b) The prohibitions of paragraph (a) of the section shall apply only to contested proceedings and begin at the time either a protest or a motion to intervene or notice of intervention in opposition to the application or other requested action is filed with FE, or a party otherwise specifically notifies the Assistant Secretary and the other parties in writing of its opposition to the application or other requested action, whichever occurs first.

§ 590.109 FE investigations.

The Assistant Secretary or the Assistant Secretary's delegate may investigate any facts, conditions, practices, or other matters within the scope of this part in order to determine whether any person has violated or is about to violate any provision of the NGA or other statute or any rule, regulation, or order within the Assistant Secretary's jurisdiction. In conducting such investigations, the Assistant Secretary or the Assistant Secretary's delegate may, among other things, subpoena witnesses to testify, subpoena or otherwise require the submission of documents, and order testimony to be taken by deposition.

Subpart B—Applications for Authorization to Import or Export Natural Gas

§ 590.201 General.

(a) Any person seeking information to import or export natural gas into or from the United States, to amend an existing import or export authorization, or seeking any other requested action, shall file an application with the FE under the provisions of this part.

(b) Applications shall be filed at least ninety (90) days in advance of the proposed import or export or other requested action, unless a later date is permitted for good cause shown.

§ 590.202 Contents of applications.

(a) Each application filed under § 590.201 shall contain the exact legal name of the applicant, the names, titles, and mailing addresses of a maximum of two persons for the official service list, a statement describing the action sought from FE, the justification for such action, including why the proposed action is not consistent with the public interest, and the FE docket number, if applicable.

(b) Each application shall include the matters listed below to the extent applicable. All factual matters shall be supported to the extent practicable by the necessary data or documents. Copies of relevant documents filed or intended to be filed with FERC may be submitted to satisfy the requirements of this section. Topics to be addressed or described shall include:

(1) The scope of the project, including the volumes of natural gas involved, expressed in either Mcf or Bcf and their Btu equivalents, the dates of commencement and completion of the proposed import or export, and the facilities to be utilized or constructed;

(2) The source and security of the natural gas supply to be imported or exported, including contract volumes and a description of the gas reserves supporting the project during the term of the requested authorization;

(3) Identification of all the participants in the transaction, including the parent company, if any, and identification of any corporate or other affiliations among the participants;

(4) The terms of the transaction, such as take-or-pay obligations, make-up provisions, and other terms that affect the marketability of the gas;

(5) The provisions of the import arrangement which establish the base price, volume requirements, transportation and other costs, and allow adjustments during the life of the project, and a demonstration as to why the import arrangement is and will remain competitive over the life of the project and is otherwise not consistent with the public interest;

(6) For proposed imports, the need for the natural gas by the applicant or applicant's prospective customers, including a description of the persons who are expected to purchase the natural gas; and for proposed exports, the lack of a national or regional need for the gas; and

(7) The potential environmental impact of the project. To the extent possible, the application shall include a listing and description of any environmental assessments or studies being performed on the proposed gas project. The application shall be updated as the status of any environmental assessments changes.

(c) The application shall also have attached a statement, including a signed opinion of legal counsel, showing that a proposed import or export of natural gas is within the corporate powers of the applicant and a copy of all relevant contracts and purchase agreements.

(d) The Assistant Secretary or the Assistant Secretary's delegate may at any time require the applicant and other parties to make supplemental filings of

additional information necessary to resolve issues raised by the application.

(e) All information and data filed in

of fact, law, or policy raised by the application.

(b) The notice of application shall

compressed equivalent thereof, in a single shipment for scientific, experimental, or other non-utility gas

seeking intervention or requesting that a conference, oral presentation or trial-type hearing be held, shall be deemed to

(f) If an answer in opposition to a motion to intervene is timely filed or if the motion to intervene is not timely

order, unless a later date is permitted by the Assistant Secretary for good cause shown.

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additional information necessary to resolve issues raised by the application.

(e) All information and data filed in support of or against an application will be placed in the official FE docket file of the proceeding and will not be afforded confidential treatment, unless the party shows why the information or data should be exempted from public disclosure and the Assistant Secretary or Assistant Secretary's delegate determines that such information or data shall be afforded confidential treatment. Such determination shall be made in accordance with 10 CFR 1004.11.

§ 590.203 Deficient applications.

If an application is incomplete or otherwise deemed deficient, the Assistant Secretary or the Assistant Secretary's delegate may require the applicant to submit additional information or exhibits to remedy the deficiency. If the applicant does not remedy the deficiency within the time specified by the Assistant Secretary or the Assistant Secretary's delegate, the application may be dismissed without prejudice to refiling at another time.

§590.204 Amendment or withdrawal of applications.

(a) The applicant may amend or supplement the application at any time prior to issuance of the Assistant Secretary's final opinion and order resolving the application, and shall amend or supplement the application whenever there are changes in material facts or conditions upon which the proposal is based.

(b) The Assistant Secretary may for good cause shown by motion of a party or upon the Assistant Secretary's own initiative decline to act on, in whole or in part, an amendment or supplement requested by an applicant under paragraph (a) of this section.

(c) After written notice to FE and service upon the parties of that notice an applicant may withdraw an application. Such withdrawal shall be effective thirty (30) days after notice to FE if the Assistant Secretary does not issue an order to the contrary within that time period.

§ 590.205 Notice of applications.

(a) Upon receipt of an application, the FE shall publish a notice of application in the **Federal Register**. The notice shall summarize the proposal. Except in emergency circumstances, generally the notice shall provide a time limit of not less than thirty (30) days from the notice's date of publication in the **Federal Register** for persons to file protests, comments, or a motion to intervene or notice of intervention, as applicable. The notice may also request comments on specific issues or matters of fact, law, or policy raised by the application.

(b) The notice of application shall advise the parties of their right to request additional procedures, including the opportunity to file written comments and to request that a conference, oral presentation, or trial-type hearing be convened. Failure to request additional procedures at this time shall be deemed a waiver of any right to additional procedures should the Assistant Secretary decide to grant the application and authorize the import or export by issuing a final opinion and order in accordance with 590.316.

(c) Where negotiations between the DOE, including FE, and a foreign government have resulted in a formal policy agreement or statement affecting a particular import or export proceeding, FE shall include in the notice of application a description of the terms or policy positions of that agreement or statement to the extent they apply to the proceeding, and invite comment. A formal policy agreement or statement affecting a particular import or export proceeding that is arrived at after publication of the notice of application shall be placed on the record in that proceeding and the parties given an opportunity to comment thereon.

§ 590.206 Notice of procedures.

In all proceedings where, following a notice of application and the time specified in the notice for the filing of responses thereto, the Assistant Secretary determines to have additional procedures, which may consist of the filing of supplemental written comments, written interrogatories or other discovery procedures, a conference, oral presentation, or trial-type hearing, the Assistant Secretary shall provide the parties with notice of the procedures the Assistant Secretary has determined to follow in the proceeding and advise the parties of their right to request any additional procedures in accordance with the provisions of § 590.310. The notice of procedures may identify and request comments on specific issues of fact, law, or policy relevant to the proceeding and may establish a time limit for requesting additional procedures.

§ 590.207 Filing fees.

A non-refundable filing fee of fifty dollars ($50) shall accompany each application filed under § 590.201. Checks shall be made payable to "Treasury of the United States."

§ 590.208 Small volume exports.

Any person may export up to 100,000 cubic feet of natural gas (14.73 pounds per square inch at 60 degrees Fahrenheit) or the liquefied or compressed equivalent thereof, in a single shipment for scientific, experimental, or other non-utility gas use without prior authorization of the Assistant Secretary.

§ 590.209 Exchanges by displacement.

Any importer of natural gas may enter into an exchange by displacement agreement without the prior authorization of the Assistant Secretary when the net effect of the exchange is no different than under the importer's existing authorization. An exchange by displacement is an arrangement whereby authorized imported volumes are displaced by other gas for purposes of storage or flexibility. The term of the exchange agreement may not exceed five (5) years, the volumes imported may not exceed the importer's existing import authorization, and no actual natural gas may flow across the United States border under the terms of the exchange agreement. Any importer who enters into an exchange agreement pursuant to this section shall file with FE within fifteen (15) days after the start up of the exchange, a written description of the transaction, the exact volume of natural gas to be displaced, the name of the purchaser, and the import authorization under which the exchange is being carried out.

Subpart C—Procedures

§ 590.301 General.

The procedures of this subpart are applicable to proceedings conducted on all applications or other requested actions filed under this Part. The Assistant Secretary may conduct all aspects of the procedures of this Subpart or may designate a presiding official pursuant to § 590.314.

§ 590.302 Motions and answers.

(a) Motions for any procedural or interlocutory ruling shall set forth the ruling or relief requested and state the grounds and the statutory or other authority relied upon. All written motions shall comply with the filing requirements of § 590.103. Motions made during conferences, oral presentations or trial-type hearings may be stated orally upon the record, unless the Assistant Secretary or the presiding official determines otherwise.

(b) Any party may file an answer to any written motion within fifteen (15) days after the motion is filed, unless another period of time is established by the Assistant Secretary or the presiding official. Answers shall be in writing and shall detail each material allegation of the motion being answered. Answers shall state clearly and concisely the facts and legal authorities relied upon.

(c) Any motion, except for motions

seeking intervention or requesting that a conference, oral presentation or trial-type hearing be held, shall be deemed to have been denied, unless the Assistant Secretary or presiding official acts within thirty (30) days after the motion is filed.

§ 590.303 Interventions and answers.

(a) A state commission may intervene in a proceeding under this Part as a matter of right and become a party to the proceeding by filing a notice of intervention no later than the date fixed for filing motions to intervene in the applicable FE notice or order. If the period for filing the notice has expired, a state commission may be permitted to intervene by complying with the filing and other requirements applicable to any other person seeking to become a party to the proceeding as provided in this section.

(b) Any other person who seeks to become a party to a proceeding shall file a motion to intervene, which sets out clearly and concisely the facts upon which the petitioner's claim of interest is based.

(c) A motion to intervene shall state, to the extent known, the position taken by the movant and the factual and legal basis for such positions in order to advise the parties and the Assistant Secretary as to the specific issues of policy, fact, or law to be raised or controverted.

(d) Motions to intervene may be filed at any time following the filing of an application, but no later than the date fixed for filing such motions or notices in the applicable FE notice or order, unless a later date is permitted by the Assistant Secretary for good cause shown and after considering the impact of granting the late motion on the proceeding. Each motion or notice shall list the names, titles, and mailing addresses of a maximum of two persons for the official service list.

(e) Any party may file an answer to a motion to intervene, but such answer shall be made within fifteen (15) days after the motion to intervene was filed, unless a later date is permitted by the Assistant Secretary for good cause shown. Answers shall be in writing. Answers shall detail each material allegation of the motion to intervene being answered and state clearly and concisely the facts and legal authorities relied upon. Failure to answer is deemed a waiver of any objection to the intervention. This paragraph does not prevent the Assistant Secretary from ruling on a motion to intervene and issuing a final opinion and order in accordance with § 590.316 prior to the expiration of the fifteen (15) days in which a party has to answer a motion to intervene.

(f) If an answer in opposition to a motion to intervene is timely filed or if the motion to intervene is not timely filed, then the movant becomes a party only after the motion to intervene is expressly granted.

(g) If no answer in opposition to a motion to intervene is filed within the period of time prescribed in paragraph (e) of this section, the motion to intervene shall be deemed to be granted, unless the Assistant Secretary denies the motion in whole or in part or otherwise limits the intervention prior to the expiration of the time allowed in paragraph (e) for filing an answer to the motion to intervene. Where the motion to intervene is deemed granted, the participation of the intervenor shall be limited to matters affecting asserted rights and interests specifically set forth in the motion to intervene, and the admission of such intervenor to party status shall not be construed as recognition by FE that the intervenor might be aggrieved because of any order issued.

(h) In the event that a motion for late intervention is granted, an intervenor shall accept the record of the proceeding as it was developed prior to the intervention.

§ 590.304 Protests and answers.

(a) Any person objecting to an application filed under 590.201 of this part or to any action taken by FE under this part may file a protest. No particular form is required. The protest shall identify the person filing the protest, the application or action being objected to, and provide a concise statement of the reasons for the protest.

(b) The filing of a protest, without also filing a motion to intervene or a notice of intervention, shall not make the person filing the protest a party to the proceeding.

(c) A protest shall be made part of the official FE docket file in the proceeding and shall be considered as a statement of position of the person filing the protest, but not as establishing the validity of any assertion upon which the decision would be based.

(d) Protests shall be served on the applicant and all parties by the person filing the protest. If the person filing the protest is unable to provide service on any person identified as a party to the proceeding after a good faith effort, then FE shall effect service. However, when the parties are not known, service requirements may be met by serving a copy of the applicant and on FE as provided in § 590.107(b).

(e) Protests may be filed at any time following the filing of an application, but no later than the date fixed for filing protests in the applicable FE notice or order, unless a later date is permitted by the Assistant Secretary for good cause shown.

(f) Any party may file an answer to a protest but such answer must be filed within fifteen (15) days after the protest was filed, unless a later date is permitted by the Assistant Secretary for good cause shown.

§ 590.305 Informal discovery.

The parties to a proceeding may conduct discovery through use of procedures such as written interrogatories or production of documents. In response to a motion by a party, the Assistant Secretary or presiding official may determine the procedures to be utilized for discovery if the parties cannot agree on such procedures.

§ 590.306 Subpoenas.

(a) Subpoenas for the attendance of witnesses at a trial-type hearing or for the production of documentary evidence may be issued upon the initiative of the Assistant Secretary or presiding official, or upon written motion of a party or oral motion of a party during a conference, oral presentation, or trial-type hearing, if the Assistant Secretary or presiding official determines that the evidence sought is relevant and material.

(b) Motions for the issuance of a subpoena shall specify the relevance, materiality, and scope of the testimony or documentary evidence sought, including, as to documentary evidence, specification to the extent possible of the documents sought and the facts to be proven by them, the issues to which they relate, and why the information or evidence was not obtainable through discovery procedures agreed upon by the parties.

(c) If service of a subpoena is made by a United States Marshal or a Deputy United States Marshal, service shall be evidenced by their return. If made by another person, that person shall affirm that service has occurred and file an affidavit to that effect with the original subpoena. A witness who is subpoenaed shall be entitled to witness fees as provided in § 590.315(c).

§ 590.307 Depositions.

(a) Upon motion filed by a party, the Assistant Secretary or presiding official may authorize the taking of testimony of any witness by deposition. Unless otherwise directed in the authorization issued, a witness being deposed may be examined regarding any matter which is relevant to the issues involved in the pending proceeding.

(b) Parties authorized to take a deposition shall provide written notice to the witness and all other parties at

least ten (10) days in advance of the deposition unless such advance notice is waived by mutual agreement of the

presiding official may order either that the matter is admitted or that an amended answer be served.

law, set procedures, and consider other relevant matters where it appears that a conference will materially advance the

§ 590.313 Trial-type hearings.

(a) Any party may file a motion for a

designate a presiding official to conduct any stage of the proceeding, including officiating at a conference, oral

unknown to, or likely to be opposed by, the applicant, solely on the basis of the application and responses to the notice

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least ten (10) days in advance of the deposition unless such advance notice is waived by mutual agreement of the parties.

(c) The requesting motion and notice shall state the name and mailing address of the witness, delineate the subject matters on which the witness is expected to testify, state the reason why the deposition should be taken, indicate the time and place of the deposition, and provide the name and mailing address of the person taking the deposition.

(d) A witness whose testimony is taken by deposition shall be sworn in or shall affirm concerning the matter about which the witness has been called to testify before any questions are asked or testimony given. A witness deposed shall be entitled to witness fees as provided in § 590.315(c).

(e) The moving party shall file the entire deposition with FE after it has been subscribed and certified. No portion of the deposition shall constitute a part of the record in the proceedings unless received in evidence, in whole or in part, by the Assistant Secretary or presiding official.

§ 590.308 Admissions of facts.

(a) At any time prior to the end of a trial-type hearing, or, if there is no trial-type hearing, prior to the issuance of a final opinion and order under § 590.404, any party, the Assistant Secretary, or the presiding official may serve on any party a written request for admission of the truth of any matters at issue in the proceeding that relate to statements or opinions of fact or of the application of law to fact.

(b) A matter shall be considered admitted and conclusively established for the purposes of any proceeding in which a request for admission is served unless, within fifteen (15) days of such time limit established by the Assistant Secretary or presiding official, the party to whom the request is directed answers or objects to the request. Any answer shall specifically admit or deny the matter, or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny, unless the answering party states that, after reasonable inquiry, the answering party has been unable to obtain sufficient information to admit or deny. If an objection is made, the answering party shall state the reasons for the objection.

(c) If the Assistant Secretary or presiding official determines that an answer to a request for admission does not comply with the requirements of this section, the Assistant Secretary or presiding official may order either that the matter is admitted or that an amended answer be served.

(d) A copy of all requests for admission and answers thereto shall be filed with FE in accordance with § 590.103. Copies of any documents referenced in the request shall be served with the request unless they are known to be in the possession of the other parties.

(e) The Assistant Secretary or presiding official may limit the number of requests for admission of facts in order to expedite a proceeding through elimination of duplicative requests.

§ 590.309 Settlements.

The parties may conduct settlement negotiations. If settlement negotiations are conducted during a conference, at the request of one of the parties, the Assistant Secretary or presiding official may order that the discussions be off-the-record with no transcript of such settlement negotiations being prepared for inclusion in the official record of the proceeding. No offer of settlement, comment or discussion by the parties with respect to an offer of settlement shall be subject to discovery or admissible into evidence against any parties who object to its admission.

§ 590.310 Opportunity for additional procedures.

Any party may file a motion requesting additional procedures, including the opportunity to file written comments, request written interrogatives or other discovery procedures, or request that a conference, oral presentation or trial-type hearing be held. The motion shall describe what type of procedure is requested and include the information required by §§ 590.311, 590.312 and 590.313, as appropriate. Failure to request additional procedures within the time specified in the notice of application or in the notice of procedure, if applicable, shall constitute a waiver of that right unless the Assistant Secretary for good cause shown grants additional time for requesting additional procedures. If no time limit is specified in the notice or order, additional procedures may be requested at any time prior to the issuance of a final opinion and order. At any time during a proceeding, the Assistant Secretary or presiding official may on his or her own initiative determine to provide additional procedures.

§ 590.311 Conferences.

(a) Upon motion by a party, a conference of the parties may be convened to adjust or settle the proceedings, set schedules, delineate issues, stipulate certain issues of fact or law, set procedures, and consider other relevant matters where it appears that a conference will materially advance the proceeding. The Assistant Secretary or presiding official may delineate the issues which are to be considered and may place appropriate limitations on the number of intervenors who may participate, if two or more intervenors have substantially like interests.

(b) A motion by a party for a conference shall include a specific showing why a conference will materially advance the proceeding.

(c) Conferences shall be recorded, unless otherwise ordered by the Assistant Secretary or presiding official, and the transcript shall be made a part of the official record of the proceeding and available to the public.

§ 590.312 Oral presentations.

(a) Any party may file a motion requesting an opportunity to make an oral presentation of views, arguments, including arguments of counsel, and data on any aspect of the proceeding. The motion shall identify the substantial question of fact, law or policy at issue and demonstrate that it is material and relevant to the merits of the proceeding. The party may submit material supporting the existence of substantial issues. The Assistant Secretary or presiding official ordinarily will grant a party's motion for an oral presentation, if the Assistant Secretary or presiding official determines that a substantial question of fact, law, or policy is at issue in the proceeding and illumination of that question will be aided materially by such an oral presentation.

(b) The Assistant Secretary or presiding official may require parties making oral presentations to file briefs or other documents prior to the oral presentation. The Assistant Secretary or presiding official also may delineate the issues that are to be considered at the oral presentation and place appropriate limitations on the number of intervenors who may participate if two or more intervenors have substantially like interests.

(c) Oral presentations shall be conducted in an informal manner with the Assistant Secretary or the presiding official and other decisional employees presiding as a panel. The panel may question those parties making an oral presentation. Cross-examination by the parties and other more formal procedures used in trial-type hearings will not be available in oral presentations. The oral presentation may be, but need not be, made by legal counsel.

(d) Oral presentations shall be recorded, and the transcript shall be made part of the official record of the proceeding and available to the public.

§ 590.313 Trial-type hearings.

(a) Any party may file a motion for a trial-type hearing for the purpose of taking evidence on relevant and material issues of fact genuinely in dispute in the proceeding. The motion shall identify the factual issues in dispute and the evidence that will be presented. The party must demonstrate that the issues are genuinely in dispute, relevant and material to the decision and that a trial-type hearing is necessary for a full and true disclosure of the facts. The Assistant Secretary or presiding official shall grant a party's motion for a trial-type hearing, if the Assistant Secretary or presiding official determines that there is a relevant and material factual issue genuinely in dispute and that a trial-type hearing is necessary for a full and true disclosure of the facts.

(b) In trial-type hearings, the parties shall have the right to be represented by counsel, to request discovery, to present the direct and rebuttal testimony of witnesses, to cross-examine witnesses under oath, and to present documentary evidence.

(c) The Assistant Secretary or presiding official upon his or her own initiative or upon the motion of any party may consolidate any proceedings involving common questions of fact in whole or in part for a trial-type hearing. The Assistant Secretary or presiding official may also place appropriate limitations on the number of intervenors who may participate if two or more intervenors have substantially like interests.

(d) The Assistant Secretary or presiding official may make such rulings for trial-type hearings, including delineation of the issues and limitation of cross-examination of a witness, as are necessary to obtain a full and true disclosure of the facts and to limit irrelevant, immaterial, or unduly repetitious evidence.

(e) At trial-type hearings, the Assistant Secretary or presiding official, or any other decisional employee directed by the Assistant Secretary or presiding official, may call witnesses for testimony or presenting exhibits that directly relate to a particular issue of fact to be considered at the hearing. The Assistant Secretary or presiding official, or any other decisional employee directed by the Assistant Secretary or presiding official, may also question witnesses offered by the parties concerning their testimony.

(f) Trial-type hearings shall be recorded, and the transcript shall be made part of the official record of the proceeding and available to the public.

§ 590.314 Presiding officials.

(a) The Assistant Secretary may designate a presiding official to conduct any stage of the proceeding, including officiating at a conference, oral presentation, or trial-type hearing. The presiding official shall have the full authority of the Assistant Secretary during such proceedings.

(b) A presiding official at a conference, oral presentation, or trial-type hearing shall have the authority to regulate the conduct of the proceeding including, but not limited to, determination of the issues to be raised during the course of the conference, oral presentation, or trial-type hearing, administering oaths or affirmations, directing discovery, ruling on objections to the presentation of testimony or exhibits, receiving relevant and material evidence, requiring the advance submission of written testimony and exhibits, ruling on motions, determining the format, directing that briefs be filed with respect to issues raised or to be raised during the course of the conference, oral presentation or trial-type hearing, questioning witnesses, taking reasonable measures to exclude duplicative material, and placing limitations on the number of witnesses to be called by a party.

§ 590.315 Witnesses.

(a) The Assistant Secretary or presiding official may require that the direct testimony of witnesses in trial-type hearings be submitted in advance of the hearing and be under oath, and in written form.

(b) Witnesses who testify in trial-type hearings shall be under oath or affirmation before being allowed to testify.

(c) Witnesses subpoenaed pursuant to § 590.306 shall be paid the same fees and mileage as paid for like services in the District Courts of the United States.

(d) Witnesses subpoenaed pursuant to § 590.506 shall be paid the same fees and mileage as paid for like services in the District Court of the United States.

§ 590.316 Shortened proceedings.

In any proceeding where, in response to a notice of application or notice of procedures, if applicable, no party files a motion requesting additional procedures, including the right to file written comments, or the holding of a conference, oral presentation, or trial-type hearing, or where the Assistant Secretary determines that such requested additional procedures are not required pursuant to §§ 590.310, 590.311, 590.312 and 590.313, the Assistant Secretary may issue a final opinion and order on the basis of the official record, including the application and all other filings. In any proceeding in which the Assistant Secretary intends to deny the application or grant the application with the attachment of material conditions unknown to, or likely to be opposed by, the applicant, solely on the basis of the application and responses to the notice of application or notice of procedures, if applicable, without additional procedures, the Assistant Secretary shall advise the parties in writing generally of the issues of concern to the Assistant Secretary upon which the denial or material conditions would be based and provide them with an opportunity to request additional procedures pursuant to §§ 590.310, 590.311, 590.312 and 590.313.

§ 590.317 Complaints.

(a) Any person may file a complaint objecting to the actions by any other person under any statute, rule, order or authorization applicable to an existing import or export authorization over which FE has jurisdiction. No particular form is required. The complaint must be filed with FE in writing and must contain the name and address of the complainant and the respondent and state the facts forming the basis of the complaint.

(b) A complaint concerning an existing import or export authorization shall be served on all parties to the original import or export authorization proceeding either by the complainant or by FE if the complainant has made a good faith effort but has been unable to effect service.

(c) The Assistant Secretary may issue an order to show cause under § 590.401, or may provide opportunity for additional procedures pursuant to §§ 590.310, 590.311, 590.312, or § 590.313, in order to determine what action should be taken in response to the complaint.

Subpart D—Opinions and Orders

§ 590.401 Orders to show cause.

A proceeding under this Part may commence upon the initiative of the Assistant Secretary or in response to an application by any person requesting FE action against any other person alleged to be in contravention or violation of any authorization, statute, rule, order, or law administered by FE applicable to the import or export of natural gas, or for any other alleged wrong involving importation or exportation of natural gas over which FE has jurisdiction. Any show cause order issued shall identify the matters of interest or the matters complained of that the Assistant Secretary is inquiring about, and shall be deemed to be tentative and for the purpose of framing issues for consideration and decision. The respondent named in the order shall respond orally or in writing, or both, as required by the order. A show cause order is not a final opinion and order.

§ 590.402 Conditional orders.

The Assistant Secretary may issue a conditional order at any time during a

changes to: the parties involved in the import or export arrangement, the terms and conditions of any applicable contracts, the place of entry or exit, the

the issuance of any final opinion and order on rehearing, however, the Assistant Secretary may afford the

discrimination, Minority groups, Penalities, Sex discrimination, Women.

12 CFR Part 205

words "Office of Thrift Supervision" in its place.

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§ 590.402 Conditional orders.

The Assistant Secretary may issue a conditional order at any time during a proceeding prior to issuance of a final opinion and order. The conditional order shall include the basis for not issuing a final opinion and order at that time and a statement of findings and conclusions. The findings and conclusions shall be based solely on the official record of the proceeding.

§ 590.403 Emergency interim orders.

Where consistent with the public interest, the Assistant Secretary may waive further procedures and issue an emergency interim order authorizing the import or export of natural gas. After issuance of the emergency interim order, the proceeding shall be continued until the record is complete, at which time a final opinion and order shall be issued. The Assistant Secretary may attach necessary or appropriate terms and conditions to the emergency interim order to ensure that the authorized action will be consistent with the public interest.

§ 590.404 Final opinions and orders.

The Assistant Secretary shall issue a final opinion and order and attach such conditions thereto as may be required by the public interest after completion and review of the record. The final opinion and order shall be based solely on the official record of the proceeding and include a statement of findings and conclusions, as well as the reasons or basis for them, and the appropriate order, condition, sanction, relief or denial.

§ 590.405 Transferability.

Authorizations by the Assistant Secretary to import or export natural gas shall not be transferable or assignable, unless specifically authorized by the Assistant Secretary.

§ 590.406 Compliance with orders.

Any person required or authorized to take any action by a final opinion and order of the Assistant Secretary shall file with FE, within thirty (30) days after the requirement or authorization becomes effective, a notice, under oath, that such requirement has been complied with or such authorization accepted or otherwise acted upon, unless otherwise specified in the order.

§ 590.407 Reports of changes.

Any person authorized to import or export natural gas has a continuing obligation to give the Assistant Secretary written notification, as soon as practicable, of any prospective or actual changes to the information submitted during the application process upon which the authorization was based, including, but not limited to, changes to: the parties involved in the import or export arrangement, the terms and conditions of any applicable contracts, the place of entry or exit, the transporters, the volumes accepted or offered, or the import or export price. Any notification filed under this section shall contain the FE docket number(s) to which it relates. Compliance with this section does not relieve an importer or exporter from responsibility to file the appropriate application to amend a previous import or export authorization under this part whenever such changes are contrary to or otherwise not permitted by the existing authorization.

Subpart E—Applications for Rehearing

§ 590.501 Filing.

(a) An application for rehearing of a final opinion and order, conditional order, or emergency interim order may be filed by any party aggrieved by the issuance of such opinion and order within thirty (30) days after issuance. The application shall be served on all parties.

(b) The application shall state concisely the alleged errors in the final opinion and order, conditional order, or emergency interim order and must set forth specifically the ground or grounds upon which the application is based. If an order is sought to be vacated, reversed, or modified by reason of matters that have arisen since the issuance of the final opinion and order, conditional order, or emergency interim order, the matters relied upon shall be set forth with specificity in the application. The application shall also comply with the filing requirements of § 590.103.

§ 590.502 Application is not a stay.

The filing of an application for rehearing does not operate as a stay of the Assistant Secretary's order, unless specifically ordered by the Assistant Secretary.

§ 590.503 Opinion and order on rehearing.

Upon application for rehearing, the Assistant Secretary may grant or deny rehearing or may abrogate or modify the final opinion and order, conditional order, or emergency interim order with or without further proceedings.

§ 590.504 Denial by operation of law.

Unless the Assistant Secretary acts upon the application for rehearing within thirty (30) days after it is filed, it is deemed to be denied. Such denial shall constitute final agency action for the purpose of judicial review.

§ 590.505 Answers to applications for rehearing.

No answers to applications for rehearing shall be entertained. Prior to the issuance of any final opinion and order on rehearing, however, the Assistant Secretary may afford the parties an opportunity to file briefs or answers and may order that a conference, oral presentation, or trial-type hearing be held on some or all of the issues presented by an application for rehearing.

[FR Doc. 89-30270 Filed 12-28-89; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL RESERVE SYSTEM

12 CFR Parts 202, 205, 213, and 226

[Regs. B, E, M, and Z; Docket No. R-0682]

Equal Credit Opportunity, Electronic Fund Transfers, Consumer Leasing, and Truth in Lending; Change in Enforcement Agency; Technical Amendment

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Technical amendment.

SUMMARY: The Board is making technical amendments to its regulations to reflect the transfer of enforcement functions from the Federal Home Loan Bank Board to the Office of Thrift Supervision, pursuant to the recent FIRREA legislation.

EFFECTIVE DATE: December 29, 1989.

FOR FURTHER INFORMATION CONTACT: W. Kurt Schumacher, Staff Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551 at (202) 452-2412; for the hearing impaired *only*, contact Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452-3544.

SUPPLEMENTARY INFORMATION: The Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA; Pub. L. No. 101-73, 103 Stat. 183) abolished the Federal Home Loan Bank Board and transferred its enforcement responsibilities to a new agency, the Office of Thrift Supervision.

The following amendments are hereby made to the Board's Regulations B (Equal Credit Opportunity), E (Electronic Fund Transfers), M (Consumer Leasing), and Z (Truth in Lending) to reflect this change in agency structure.

List of Subjects

12 CFR Part 202

Banks, Banking, Civil rights, Consumer protection, Credit, Federal Reserve System, Marital status discrimination, Minority groups, Penalties, Sex discrimination, Women.

12 CFR Part 205

Banks, Banking, Consumer protection, Electronic fund transfers, Federal Reserve System, Penalties.

12 CFR Part 213

Advertising, Consumer leasing, Truth in lending.

12 CFR Part 226

Advertising, Banks, Banking, Consumer protection, Credit, Federal Reserve System, Finance, Penalties, Rate limitations, Truth in lending.

12 CFR Chapter II is amended as follows:

PART 202—EQUAL CREDIT OPPORTUNITY

1. The authority citation for 12 CFR part 202 continues to read as follows:

Authority: 15 U.S.C. 1691-1691f.

§ 202.14 [Amended]

2. Section 202.14(a)(1) is amended by removing the phrase "Federal Home Loan Bank Board" and the parenthetical information that follows, and adding the words "Office of Thrift Supervision" in its place.

Appendix A—[Amended]

3. Appendix A is amended by removing the phrase "Savings Institutions Insured by the FSLIC and Members of the FHLB System," the parenthetical information that follows, and the next full sentence, and adding the following words in place thereof:

Savings institutions insured under the Savings Association Insurance Fund of the FDIC and federally chartered saving banks insured under the Bank Insurance Fund of the FDIC (but not including state-chartered savings banks insured under the Bank Insurance Fund).

The District Director of the Office of Thrift Supervision in the District in which the institution is located.

PART 205—ELECTRONIC FUND TRANSFERS

1. The authority citation for 12 CFR Part 205 continues to read as follows:

Authority: Pub. L. 95-630, 92 Stat. 3730 (15 U.S.C. 1693b).

§ 205.13 [Amended]

2. Section 205.13(a)(1) is amended by removing the phrase "Federal Home Loan Bank Board" and the parenthetical information that follows, and adding the words "Office of Thrift Supervision" in its place.

PART 213—CONSUMER LEASING

1. The authority citation for 12 CFR Part 213 continues to read as follows:

Authority: Sec. 105, Truth in Lending Act, as amended by sec. 605, Pub. L. 92-221, 94 Stat. 170 (15 U.S.C. 1604).

Appendix D—[Amended]

2. Appendix D is amended by removing the phrase "Savings Institutions Insured by the FSLIC and Members of the FHLB System." the parenthetical information that follows, and the next full sentence, and adding the following words in place thereof:

Savings institutions insured under the Savings Association Insurance Fund of the FDIC and federally chartered savings banks insured under the Bank Insurance Fund of the FDIC (but not including state-chartered savings banks insured under the Bank Insurance Fund).

The District Director of the Office of Thrift Supervision in the District in which the institution is located.

PART 226—TRUTH IN LENDING

1. The authority citation for 12 CFR part 226 continues to read as follows:

Authority: Truth in Lending Act, 15 U.S.C. 1604 and sec. 2, Public Law 100-583, 102 Stat. 2960; sec. 1204(c), Competitive Equality Banking Act, Public Law 100-86, 101 Stat. 552.

Appendix I—[Amended]

2. Appendix I is amended by removing the phrase "Savings Institutions Insured by the FSLIC and Members of the FHLB System," the parenthetical information that follows, and the next full sentence, and adding the following words in place thereof:

Savings institutions insured under the Savings Association Insurance Fund of the FDIC and federally chartered savings banks insured under the Bank Insurance Fund of the FDIC (but not including state-chartered savings banks insured under the Bank Insurance Fund).

The District Director of the Office of Thrift Supervision in the District in which the institution is located.

Board of Governors of the Federal Reserve System, December 26, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-30287 Filed 12-28-89; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 303

RIN 3064-AB03

Applications, Requests, Submittals, Delegations of Authority, and Notices of Acquisition of Control

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Interim rule with request for comments.

SUMMARY: The FDIC is establishing interim application and notice procedures governing: (1) Requests by state savings associations to engage directly in activities (other than as agent on behalf of customers) that are not permissible for federally chartered savings associations; (2) the direct conduct (other than agent on behalf of customers) by state savings associations of activities permissible for federal savings associations but in an amount in excess of that permissible for federals; (3) the divestiture of equity investments held by state savings associations that are no longer permissible investments as a result of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"); (4) the divestiture of "junk bonds" by state and federal savings associations; and (5) prior notice of the establishment or acquisition of a subsidiary by a state or federal savings association or the conduct of a new activity by an existing subsidiary of such institutions. Comments will be accepted on the interim rule for 60 days, after which time the FDIC will issue a final rule based upon the comments.

DATE: *Effective:* December 29, 1989. *Comments:* Comments must be received by February 28, 1990.

ADDRESSES: Send comments to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand delivered to Room 6097 on business days between 8:30 a.m. and 5:00 p.m. Comments may also be inspected in Room 6097 between 8:30 a.m. and 5:00 p.m. on business days. [FAX number: (202) 347-2773 or 2775.]

FOR FURTHER INFORMATION CONTACT: Pamela E.F. LeCren, Counsel, (202) 898-3730, Legal Division, FDIC, 550 17th Street, NW., Washington, DC 20429; Daniel E. Austin, Review Examiner, (202) 898-6774, or Garfield Gimber, Examination Specialist, (202) 898-6913, Division of Supervision, FDIC, 550 17th Street, NW., Washington, DC 20429.

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SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this rule has been submitted to the Office of Management and Budget for review pursuant to section 3504(h) of the Paperwork Reduction Act [44 U.S.C. 3501 *et seq.*]. Comments on the collection of information should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Federal Deposit Insurance Corporation, with copies of such comments to be sent to John R. Keiper, Jr., Assistant Executive Secretary, Room 6096, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. The collection of information in this regulation is in §§ 303.13(b), (c), (d), (e), (f), and (g). This information is required by the Federal Deposit Insurance Corporation in order that the FDIC may discharge its responsibilities under section 18(m) and section 28 of the Federal Deposit Insurance Act ("FDI Act"), as added by FIRREA. Pub. L. No. 101–73, sections 221 and 222, respectively, 103 Stat. 183, 266–289, 269–73, (1989). This information will be used to ensure compliance with the requirements of those sections of the FDI Act which (1) provide that savings associations must file notice with the FDIC prior to acquiring or establishing a subsidiary or conducting a new activity through a subsidiary, (2) set certain limits and restrictions on the permissible activities and equity investments of state savings associations, and (3) prohibit savings associations from acquiring or retaining corporate debt securities that are not of investment grade. The information will also be used to aid the FDIC in discharging its responsibilities under section 18(m) to adopt regulations, or issue orders, to prohibit activities which may be a serious threat to the Savings Association Insurance Fund (SAIF) or the Bank Insurance Fund (BIF). The likely respondents to these information collection requirements are savings associations engaging in the activities described above.

The estimated annual reporting burden for the collection of information in the regulation is summarized as follows:

Number of Respondents: 1,100
Number of Responses Per Respondent: 1
Total Annual Responses: 1,100
Hours Per Response: 8
Total Annual Burden Hours: 8,800

Discussion of Interim Rule

Background

On August 9, 1989 President Bush signed FIRREA into law. FIRREA amended the FDI Act in a number of ways, among which was the addition of subsection (m) to section 18 of the FDI Act (12 USC 1828(m)) by § 221 of FIRREA (103 Stat. 266–269) and the addition of § 28 to the FDI Act by § 222 of FIRREA (103 Stat. 269–273).

Section 18(m)(1), as added by FIRREA, provides that (with certain exceptions) *any* insured savings association (state or federal) must notify the FDIC (and the Office of Thrift Supervision ("OTS")) at least 30 days prior to the establishment or acquisition of a subsidiary and at least 30 days prior to electing to conduct any new activity through a subsidiary. The savings association is to include in the notice such information as the FDIC requires by regulation. Section 18(m)(2) sets forth the authority of the OTS with regard to subsidiaries of insured savings associations. It also provides that should the Director of OTS determine that ownership or control of a particular subsidiary by a savings association, or the relationship between a savings association and its subsidiary, either constitutes a serious risk to the safety, soundness or stability of the savings association, is inconsistent with the purposes of the FDI Act, or is inconsistent with sound banking principles, the FDIC may order divestiture of the subsidiary.

Section 18(m)(3) provides that the FDIC may determine by regulation or order that any specific activity of a savings association poses a serious threat to the SAIF and further that the FDIC may prescribe and enforce such regulations (and/or issue such orders) that the FDIC determines are necessary to prevent actions or practices by savings associations that pose a serious threat to SAIF or BIF.

Section 28, as added to the FDI Act by FIRREA, deals, in part, with the activities and equity investments of state chartered savings associations and the investment by state or federal savings associations in "junk bonds." Section 28(a) prohibits a state chartered savings association from engaging as principal on or after January 1, 1990 in any activity of a type that is not permissible for federal savings associations unless the FDIC determines that the activity poses no significant risk to the affected deposit insurance fund *and* the savings association is, and continues to be, in compliance with the fully phased-in capital standards prescribed under section 5(t) of the Home Owners' Loan Act ("HOLA"), as amended by FIRREA (12 U.S.C. 1464(t)).

Section 28(b) deals with the direct activities of state chartered savings associations that are permissible for federal savings associations but which are authorized to state associations in an amount in excess of that which would be permissible for federal associations. The statute allows such activities to be conducted in amounts in excess of that which would be permissible directly for federal savings associations, provided that the FDIC has not determined that doing so poses any significant risk to the affected deposit insurance fund and provided that the savings association is, and continues to be, in compliance with the fully phased-in capital standards prescribed under HOLA.

Section 28(c) concerns equity investments made by state chartered savings associations. Under subsection (c), effective August 9, 1989, a state savings association is prohibited, with a limited exception for service corporations, from directly acquiring, or retaining, any equity investment of a type, or in an amount, that would not be permissible for federal savings associations. A state savings association that acquired a nonconforming equity investment prior to August 9, 1989 is required to divest such investment as soon as can be prudently done, but in any event not later than July 1, 1994. The FDIC may establish restrictions and/or requirements in connection with the divestiture of such investments.

Section 28(d) provides that no savings association (state or federal) may directly or indirectly through a subsidiary acquire or retain any corporate debt security that is not of investment grade (frequently referred to as "junk bonds"). The prohibition does not apply to acquisition or retention of such debt by a qualified affiliate of the savings association. Any savings association, or subsidiary of a savings association, that held debt securities not of investment grade prior to August 9, 1989 is required to divest those securities as quickly as can be prudently done and, in any event, not later than July 1, 1994. The FDIC is authorized to establish restrictions and/or requirements in connection with divestiture.

The FDIC is issuing regulations to implement the statutory provisions discussed above. Since the provisions being implemented relate to savings associations, the FDIC has consulted with the OTS for advice and comments during the draft of the regulation,

especially in the case of the provisions of section 18(m) of the FDI Act (§ 303.13 (f) of the regulation), under which both the FDIC and OTS have substantial responsibility. The FDIC also intends to coordinate with OTS in administering the provisions of section 28 of the FDI Act, especially where divestiture is concerned.

In applying the regulatory provisions, it is crucial that associations keep in mind that more than one filing may be necessary as a result of a single transaction. For instance, a state association which is establishing a subsidiary which is to engage in an activity not authorized to all federal associations will have to file a notice with the FDIC concerning the establishment of the subsidiary (as well as with OTS). The association's investment in the subsidiary must also conform to the requirements for equity investments. It is also possible that the association will have to adhere to various other statutory and regulatory provisions being administered by OTS. Again, the FDIC anticipates cooperation between the FDIC and OTS in such situations.

Description of Interim Rule

1. *Engaging as principal in activities after January 1, 1990 that are not "permissible" for federal savings associations*—[§ 28(a) of FDI Act—§ 303.13(b)].

Section 28(a) of the FDI Act, as added by FIRREA, seeks to, among other things, establish parallel regulations of state and federally chartered savings associations and to prevent state associations from exercising powers which are too risky to insure. (135 Cong. Rec. H2720, H2798, daily ed. June 15, 1989, statement of Rep. Torres and Rep. Kanjorski). To that end, the FDIC has been granted the authority and responsibility to ensure that any power exercised after January 1, 1990 by any state association is no greater than that "permissible" for federally chartered savings associations. Under § 28 other powers conferred by a state may only be exercised if the FDIC determines that the exercise of such power will *not* pose a significant risk to the affected deposit insurance fund and if the association in question is, and continues to be, in compliance with the fully phased-in capital standards prescribed by § 5(t) of HOLA.

Scope of § 303.13(b)

Section 303.13(b) of the interim rule sets forth application procedures which must be followed if a state savings association wishes to request the FDIC's approval to directly engage after January 1, 1990 in an activity in which a federal savings association could not engage. Under the interim rule, a state savings association must apply to the FDIC for approval if the association wishes to continue or initiate any activity directly (other than as agent on behalf of its customers) that is "not expressly authorized for all federal savings associations by statute or regulation issued by the Office of Thrift Supervision." The rule thus uses language to clarify the statute's use of the word "permissible" in order to clearly indicate the standard to which the FDIC will look in order to determine whether or not a particular activity is permissible for federal savings associations. The FDIC has specifically conferred with the OTS prior to adopting this position. Furthermore, the reference to statute or regulation is clearly consistent with FIRREA's legislative history which evidences an intent to include regulations adopted by the primary federal supervisory agency for federal associations. "An activity is not permissible for a Federal savings association for purposes of section 28 if, for example, it is impermissible for a Federal savings association under regulations prescribed by the Chairman of the Office of Savings Associations pursuant to section 5(c) of the Home Owners' Loan Act." (135 Cong. Rec. S6914, daily ed. June 19, 1989, section by section analysis of S. 774).

Under the interim rule, an activity that is not expressly authorized by statute or regulation, but that has been found permissible under a staff interpretation of the statute or regulation, does not qualify as "permissible". An association that wishes to conduct such an activity must file an application under the regulation. By adopting a conservative posture the FDIC will ensure that activities not clearly contemplated under statute or regulation are assessed in light of their potential impact on the insurance fund. Additionally, the reference in the interim rule to activities expressly authorized "for all" federal savings associations has the effect of limiting the universe of activities that will *not* trigger the need for prior approval to those generally available to all federal savings associations. Thus, the fact that federal association "X" is authorized to exercise a particular power (as a result, for example, of having retained a state-granted power when the association converted from a state to a federal charter sometime prior to August 9, 1989 or as a result of an OTS order or resolution granting it permission to so engage in a given set of circumstances) does not mean that state associations in general may exercise that power without the FDIC's approval. Particular OTS orders or resolutions are likely to be based upon facts and circumstances peculiar to the particular applicant. In brief, that power is not permissible for "all" federal associations. Again, this conservative approach allows the FDIC to assess the ability of any particular state association to engage in any activity within the context of the potential impact on the insurance fund.

The statutory prohibition in the rule against engaging "as principal" in activities not authorized to federal associations translates in the interim rule to a requirement for approval if a state savings association wishes to *directly* engage in a nonpermissible activity unless the association is strictly acting as agent on behalf of its customers. This reading of the statute is based upon legislative history. "Subsection (a) does not apply to activities that a savings association engages in strictly as its customer's agent. This is the effect of the subsection's references to engaging in activities as principal." 135 Cong. Rec. S10203, daily ed. Aug. 4, 1989, statement of Sen. Riegle. Although activities in which the association is acting strictly as agent are not subject to prior approval under § 28(a) and this rule, the activities could be restricted under other provisions of law. (Joint Explanatory Statement of the Committee of Conference, p. 403.)

Despite the fact that nonresidential real estate lending is a permissible activity for federal associations, the procedures set forth in § 303.13(b) must also be followed if a state association wishes to make loans secured by nonresidential real property in an amount in excess of that authorized to all federal savings associations. Although § 28(a) generally deals only with activities of a type that are not permissible for federal savings associations, nonresidential real estate lending is specifically identified by the statute as being subject to subsection (a).

Thus, nonresidential real estate lending is dealt with by the statute in the same manner as an activity that is not permissible for a federal savings association. ("Subsection (b) [of section 28 which generally governs the exercise of federally permissible activities in an amount in excess of that permitted to federal associations] does not apply to nonresidential real-estate loans, which are governed by subsection (a) [of section 28]." Joint Explanatory Statement of the Committee of Conference, p. 403.)

Section 28(g) of the FDI Act, as added by FIRREA, provides that subsections (a) and (b) of § 28 shall not be construed

of its analysis regarding the impact of the activity on the applicant's earnings, capital adequacy, and general condition;

in the rule to mean that it is likely that either of the insurance funds administered by the FDIC will suffer a

effective date of the regulation, in an activity of the type which is expressly authorized for federal savings

Commencing activities for the first time—State associations proposing to conduct activities of the sort described

see the discussion below covering definitions.

As indicated previously, section 28

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Section 28(g) of the FDI Act, as added by FIRREA, provides that subsections (a) and (b) of § 28 shall not be construed to require any state association that held an asset prior to August 9, 1989 to divest that asset. In accordance therewith, paragraph (b)(2) of § 303.13 indicates that paragraph (b)(1) of that section shall not be read to require the divestiture of an asset that was held by a state association prior to August 9, 1989, even though the asset (*e.g.*, an office building) is utilized in connection with the conduct of an activity for which the association must obtain the FDIC's approval (*e.g.*, real estate brokerage). Divestiture of the asset is not required pursuant to § 303.13(b)(1), even if approval to continue the activity is denied. Thus, the association could retain a building that had been used for an impermissible activity and convert its use to something else. This does not preclude the FDIC, however, from requiring the divestiture of the asset, in appropriate circumstances, pursuant to authority granted the FDIC by other provisions of the FDI Act or other statute. In fact, an asset acquired prior to August 9, 1989, may be subject to divestiture under section 28(c) of the FDI Act and § 303.13(d) of this rule if it is an equity investment. (135 Cong. Rec. S6914, 6915, daily ed. June 19, 1989, section by section analysis of S. 774).

Content and Filing of Application

Applicants do not need to file a particular form or application under § 303.13(b) but may simply file a letter application. The letter application is to be filed with the regional director for the Division of Supervision for the FDIC regional office in which the savings association's principal office is located. For the purposes of the rule the phrase "principal office" is intended to refer to the office of the headquarters of the savings association.

The rule requires that the following information be set forth in the letter application: (1) A brief description of the activity and the manner in which it is (or will be) conducted; (2) a copy, *if available*, of any feasibility study, management plan, financial projections, business plan, or similar document concerning the conduct of the activity; (3) an estimate of the present or expected dollar volume of the activity; (4) a copy of resolutions by the board of directors or board of trustees of the applicant authorizing the conduct of the activity in question and the submission of the application; (5) the most recent statement of the applicant's assets, liabilities, and capital on both a consolidated and non-consolidated basis; (6) a discussion by management of its analysis regarding the impact of the activity on the applicant's earnings, capital adequacy, and general condition; (7) a statement by the applicant of whether or not it is in compliance with the fully phased-in capital standards prescribed under section 5(t) of HOLA, including a calculation of the relevant capital ratio; and (8) a statement indicating the authority which the savings association is relying upon for the conduct of the activity.

In addition, the rule allows the regional director to request additional information. The FDIC wishes to emphasize that applicants are not generally required to develop feasibility studies or similar information under item (2) but are merely required to submit to the FDIC copies of whatever such information the association prepared or reviewed in connection with its decision to initiate the activities covered by the application. The FDIC reserves the right, however, to determine in the appropriate circumstances, that such a plan should have been developed or that the lack of any such plan constitutes an unsafe or unsound banking practice.

Standard for Processing Applications

Under the statute, the FDIC is precluded from approving the conduct by state savings associations of activities that are not permissible for federally chartered savings associations *unless* two tests are met: (1) The association in question is, and continues to be, in compliance with the fully phased-in capital standards prescribed by section 5(t) of HOLA, and (2) the conduct of the activity will pose no significant risk to the affected deposit insurance fund. Both conditions must be met if an activity is to be approved. In short, section 28(a) does not allow the FDIC to authorize the conduct of the activity absent such compliance. In fact, unless an association is in compliance with the fully phased-in capital standards, the association need not apply to engage in an activity not permissible to a federal savings association. Thus, an association which is not in compliance with the fully phased-in capital standards will have to terminate, and cannot initiate, an activity not allowable to a federal association. Any association that has not terminated an impermissible activity by January 1, 1990 which is not eligible to apply for the FDIC's permission to continue the activity is subject to enforcement action.

The second requirement for allowing the activity is that the FDIC determine that the activity poses no "significant risk" to the fund. This phrase is defined in the rule to mean that it is likely that either of the insurance funds administered by the FDIC will suffer a loss as a result of the conduct of the activity. This definition is discussed at length below, along with the other definitions contained in the rule. Applicants should be aware that an application may be denied even though both the capital and significant risk test have been met, provided that the FDIC has an independent basis under other provisions of the FDI Act, or any other statute, or regulation to condition, restrict, or prohibit the conduct of the activity in question. ("Section 28 does not limit any authority of the FDIC under other provisions of law." 135 Cong. Rec. S6915, daily ed. June 19, 1989, section by section analysis of S. 774.)

Capital standards—For the purposes of applying § 28 of the FDI Act and this rule, the FDIC intends to construe the phrase "fully phased-in capital standards" to refer to those capital requirements that will be generally applicable to all savings associations after any phase-in periods provided by FIRREA, or by regulations adopted by OTS, have expired. Thus, the relevant standards are those that will be applicable after the Director of OTS no longer has authority to make temporary exceptions to the capital standards set forth in section 5(t) of HOLA (January 1, 1991); the requirement that investments in, and extensions of credit to, certain subsidiaries be excluded from the capital of the parent savings association is in full force (July 1, 1994); and the transitional period for including qualifying supervisory goodwill in the calculation of core capital has expired (January 1, 1995). Additionally, since section 5(t)(1)(B) requires the Director of OTS to adopt regulations setting forth capital requirements that are no less stringent than the capital standards applicable to national banks, the relevant capital level for the application of § 303.13 also includes the risk-based capital requirements that will be in effect for national banks as of December 31, 1992. A savings association that is operating under an exemption granted by OTS, or a business plan acceptable to OTS, will not be considered to be in compliance with the fully phased-in capital requirements. (135 Cong. Rec. S6913, daily ed. June 19, 1989).

2. *Engaging in activities authorized to a federal association but to an extent not authorized for federals*—[Section 28(b) of FDI Act, § 303.13(c)].

Activities previously being conducted—Section 303.13(c)(1)(i) of the rule requires those state savings associations that are engaging, as of the effective date of the regulation, in an activity of the type which is expressly authorized for federal savings associations by statute or regulation adopted by OTS, but which are engaging in such activity to a greater extent than is authorized to federal associations to file a notice with the FDIC. The notice must be sent, return receipt requested, to the regional director for the Division of Supervision for the region in which the association's principal office is located. The notice must be received by the regional director no later than 30 days after the effective date of the regulation. The notice must contain the information listed in § 303.13(b)(1) of the rule. In addition, the regional director may request such other information as the director deems appropriate.

A state savings association filing notice pursuant to paragraph (c)(1)(i) may continue the activities described in the notice at the level described unless the FDIC notifies the association to the contrary. No association will be permitted to continue such activities if the association is not in compliance with the fully phased-in capital standards prescribed by section 5(t) of HOLA or the FDIC determines that the conduct of such activities at the level described poses a significant risk to either of the deposit insurance funds. As is the case with activities covered by § 303.13(b) of the rule, a state savings association may not engage in a permissible activity at a level in excess of that permissible for federal associations unless it is in compliance with the fully phased-in capital standards. Such an institution must reduce the activity to a level which conforms to that applicable to a federal association. The FDIC is also not precluded from prohibiting the conduct of the activities at the level described if the activities, or the manner in which they are conducted, is contrary to statute or regulation. (135 Cong. Rec. S6915, daily ed. June 19, 1989, section by section analysis of S. 774).

Paragraph (c)(1)(iii) of the rule indicates that a savings association which held assets on its books prior to August 9, 1989 in connection with the conduct of an activity which gives rise to a notice pursuant to paragraph (c)(1) shall not be requried to divest those assets based upon section 28(b) of the FDI Act. This is so even if the FDIC notifies the association that it may not continue the conduct which has been the subject of a notice. This section of the rule thus tracks the language found in § 303.13(b)(2) and is based upon section 28(g) of FIRREA.

Commencing activities for the first time—State associations proposing to conduct activities of the sort described in paragraph (c)(1)(i) are required under paragraph (c)(2) of the rule to file a notice with the FDIC at least 60 days before initiating the activity. The notice is required to be filed with the regional director for the Division of Supervision for the region in which the association's principal office is located. The same information must be contained in the notice as is required for the notice for activities previously conducted. The regional director may request additional information. Provided that the association is in compliance with the fully phased-in capital standards prescribed by § 5(t) of HOLA and unless the 60-day notice period is extended or the association has been notified to the contrary, the association may begin to conduct the activity 60 days after the notice is received in the regional office (or in less than 60 days if so notified). The 60-day period may be extended by the regional director upon notice to the association if the notice as received is incomplete or the notice raises issues that require additional information or time for analysis. If the regional office extends the 60-day period, the association may begin the conduct of the activities only upon receipt of written notification from the FDIC. No savings association will be permitted to initiate activities at a level that is determined to pose a significant risk to either of the deposit insurance funds administered by the FDIC.

3. *Acquisition or retention of equity investments after August 9, 1989*—[section 28(d) of FDI Act, § 303.13(d)].

Section 303.13(d) of the rule implements the prohibition contained in section 28(c) of the FDI Act on state chartered savings associations' *directly* acquiring or retaining after August 9, 1989 equity investments of the sort not permissible for federal savings associations. ("If the owners of a thrift want to make investments [that a federally chartered thrift cannot make], they must do so with a separately capitalized subsidiary cut off from Federal deposit insurance * * *" 135 Cong. Rec. S3996, daily ed. April 17, 1989, statement of Sen. Riegle.) "Equity investment" is defined in the rule to mean any equity security, any partnership interest, any equity interest in real estate, and any transaction which in substance falls within any of these categories, even though it may be structured as some other form of business transaction. For an in-depth discussion of what constitutes an equity investment for the purposes of this rule see the discussion below covering definitions.

As indicated previously, section 28 requires the FDIC to direct state savings associations to divest any nonconforming *equity investments* held as of August 9, 1989 as quickly as prudently possible. Additionally, section 28(c) may require the divestiture of an *asset* that was held by a state savings association prior to August 9, 1989 if that asset is a nonconforming equity investment. (135 Cong. Rec. S6915, daily ed. June 19, 1989, section by section analysis of S. 774). The latest allowable date for completion of divestiture is July 1, 1994. Under the statute, the FDIC is the final arbiter of when divestiture can be prudently accomplished. (Joint Explanatory Statement of the Committee of Conference, p. 403, 135 Cong. Rec. S4091, daily ed. April 18, 1989, excerpts from Report accompanying S. 774).

As is the case with the sections of the rule described above, paragraph (d)(1) refers to investments that are expressly authorized by statute or regulation adopted by OTS for all federal savings associations. Thus, for example, the fact that one or more federal savings associations have been permitted by order or resolution of the OTS (or its predecessor, the Federal Home Loan Bank Board) to acquire a certain equity investment, or staff of the OTS (or its predecessor) have issued an interpretive opinion indicating that a particular investment is permissible given the facts and circumstances, does not qualify that investment as one expressly authorized by statute or regulation to all federal savings associations.

Under the interim rule, any state chartered savings association that as of August 9, 1989 held one or more equity investments subject to the restrictions of section 28(c) must file a letter application, return receipt requested, with the regional director for the Division of Supervision for the region in which the association's principal office is located not later than 30 days from the effective date of the regulation. The letter must describe the obligor, type, amount, and book and market values of the equity investment(s) held by the savings association which trigger(s) the application; evaluate the anticipated gain or loss from the divestiture of the investment and the impact thereof on the association; enclose a copy of the association's plan to comply with the divestiture requirement as quickly as prudently possible; enclose a copy of the board of directors' (or board of trustees in a mutual association) resolution authorizing the filing of the application; and request the FDIC's permission to

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accomplish divestiture in accordance with the plan set forth in the application. The regional director may request

interim rule, a "service corporation" is a corporation the capital stock of which is available for purchase only by savings

officers (contemplated officers) of the service corporation; a listing of any other shareholders (existing or

that the completion of a partially performed contract does not violate the prohibition of section 28(c), the equity investment must be divested if it is a

that new conditions or restrictions are being imposed by the FDIC. Thus, it is the FDIC's intent that any "approval" of a divestiture plan will be conditioned

still be submitted in satisfaction of § 303.13(f)(1) provided that the filing is supplemented with the necessary information. The regional director may

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accomplish divestiture in accordance with the plan set forth in the application. The regional director may request additional information as deemed appropriate.

It is the FDIC's intent to review each application, along with such additional information as requested, for the purpose of determining whether or not the savings association which filed the application can prudently divest the equity investments in question in a more expeditious fashion than that contemplated under the plan filed with the regional office. In connection therewith, and as recited in the interim rule, the FDIC may impose such conditions and requirements as it deems appropriate (in its sole discretion) with regard to the divestiture, including setting a date for final divestiture in advance of July 1, 1994 or the date contemplated by the association. The FDIC also reserves the right under the interim rule to set conditions and restrictions regarding divestiture at any time during the divestiture period. It was the clear intent of Congress in enacting section 28(c) of the FDI Act to preclude state chartered savings assocations from making nontraditional equity investments which involve unacceptable risks in the future. It is also clear that Congress intended to change the FDIC with the responsibility to see that savings associations which already had such investments rid themselves of those investments as quickly as possible so that those institutions would not suffer losses from those investments. (135 Cong. Rec. S4091, daily ed. April 18, 1989, excerpts from Report accompanying S.774; 135 Cong. Rec. S3996, daily ed. April 17, 1989, statement of Sen. Riegle). It is therefore equally as clear that any approval the FDIC may give of an association's plan to divest nonconforming equity investments cannot be frozen in time. The FDIC must be able to reassess that plan in light of subsequent events and in light of the association's condition on an on-going basis. Any approval will therefore be conditioned upon the continuing validity of any assumptions upon which the plan is based, the continuing vitality of the association in question, and the facts and circumstances existing at the time the approval was granted and during the course of the divestiture period. The FDIC also wishes to make clear that the FDIC intends to consult with OTS regarding the approval of divestiture plans filed with the regional offices.

Service corporation exception—Paragraph (2) of § 303.13(d) concerns the investment by state savings associations in service corporations. (Under the interim rule, a "service corporation" is a corporation the capital stock of which is available for purchase only by savings associations.) Section 28(c) of the FDI Act permits a state savings association to acquire an equity investment in a service corporation without the FDIC's approval if the service corporation is engaged in activities that are permissible for all service corporations owned by federal savings associations, that is, not just some service corporations, and the association's investment in the service corporation does not exceed that permissible for a federal savings association. Equity investments can be made in service corporations with the FDIC's approval even if the above conditions are not met, provided that the FDIC (1) determines that the acquisition does not pose a significant risk of loss to either deposit insurance fund administered by the FDIC, and (2) the association in question is, and continues to be, in compliance with the fully phased-in capital standards prescribed by section 5(t) of HOLA. Similarly to § 303.13 (b) and (c), if an association is not in compliance with the fully phased-in capital standards, that association cannot take advantage of the service corporation exception and need not file an application to do so.

Under § 303.13(d)(2) of the interim rule, a state savings association that wishes to acquire an equity investment in a service corporation that engages in activities in which a service corporation of a federal savings association is not expressly authorized to engage either by statute or a regulation adopted by the OTS must file a letter application with the regional director for the Division of Supervision for the region in which the savings association's principal office is located. Likewise, a state savings association that wishes to make an investment in a service corporation in excess of the amount of an investment which is permissible for federal savings associations to make in a service corporation must file a letter application with the appropriate FDIC regional director. Those associations which held investments such as those described above as of August 9, 1989 and which would like to retain those investments must file an application with the regional director no latter than 30 days after the effective date of the regulation requesting permission to retain the investments.

The letter application must contain the information set forth in § 303.13(b)(1), as it relates both to the service corporation and to the parent savings association; a listing of the officers (contemplated officers) of the service corporation; a listing of any other shareholders (existing or prospective) of the service corporation and their respective holdings; and a list of the locations (expected locations) of all of the offices of the service corporation. The regional director may request other information deemed appropriate.

As stated earlier, approval to acquire or retain the investment in question will not be granted if the association is not in compliance with the fully phased-in capital standards prescribed by section 5(t) of HOLA or if it is determined that the retention or acquisition of such investment would pose a significant risk to either deposit insurance fund administered by the FDIC. The FDIC is not precluded from denying an application based upon some other independent basis, however. If a request to retain an investment is denied, as association will need to divest the investment as quickly as prudently possible, but in any event not later than July 1, 1994. The interim rule, therefore, requires an association whose application to retain an investment has been denied to file a plan of divestiture with the regional director requesting permission to accomplish divestiture in accordance therewith.

Commitments entered into prior to August 9, 1989—It is the FDIC's opinion that state savings associations which, prior to August 9, 1989, entered into commitments to acquire equity investments at some time after August 9, 1989 of the type, or in an amount, which is now prohibited to state associations pursuant to section 28(c) may not proceed with the acquisition. Generally speaking, associations in this circumstance should have a defense to a breach of contract claim on the basis of impossibility of performance (*i.e.*, performance under the contract would be illegal as a result of subsequently enacted legislation). *See Connolly v. Pension Benefit Guaranty Corporation*, 475 U.S. 211 (1986); *Omnia Commercial Co. v. U.S.*, 261 U.S. 502, 511 (1923); *Louisville and Nashville R.R. Co. v. Mottley*, 219 U.S. 467 (1911). In short, the FDIC is adopting the position that, with regard to fully executory contracts, there had been no "acquisition" of an equity investment as of August 9, 1989 which is eligible for retention over the divestiture period. Partially performed contracts will need to be reviewed on the facts in order to determine whether it can be said that an equity investment was acquired before August 9, 1989. Associations should be reminded, however, that, even if it is determined

that the completion of a partially performed contract does not violate the prohibition of section 28(c), the equity investment must be divested if it is a nonconforming investment.

4. *Corporate debt securities not of investment grade*—[Section 28(d) of FDI Act, § 303.13(e)].

Section 303.13(e) of the rule establishes application procedures covering the direct or indirect retention of "junk bonds" by savings associations (State or federal) during the divestiture period provided for by § 28(d) of the FDI Act. (Acquisition or retention of junk bonds by a qualified affiliate of a savings association is not prohibited under the statute.) Under this section of the interim rule, any savings association which, as of August 9, 1989, held corporate debt securities that were not of investment grade when acquired must file an application with the regional director for the Division of Supervision for the region in which the savings association's principal office is located. The application must be filed within 30 days from the effective date of the regulation. The application may take the form of a letter to the regional director and must contain the following: (1) A description of the obligor, type, and amount of each debt security and of its book and market value; (2) the association's plans to comply with the requirements of § 28(d) to divest the securities as quickly as prudently possible, but in no event later than July 1, 1994; (3) a description of the anticipated gain or loss from the sale of the securities and the impact of the sale on the association's capital (including capital ratios before and after the sale); (4) a copy of the resolution of the board of directors (or trustees) authorizing the filing of the submission; and (5) a request for the FDIC's permission to accomplish divestiture in accordance with the submitted plan. The regional director may request such other information as the director deems appropriate.

Upon review of the notice and such additional information as requested by the director, the FDIC may impose such conditions and requirements as it deems appropriate, in its sole discretion, with regard to the divestiture, including requiring divestiture to be accomplished in advance of July 1, 1994 and the date called for in the association's plan of divestiture. The rule also makes clear that the FDIC may impose conditions and restrictions at any time during the divestiture period, *i.e.*, the FDIC is not precluded from notifying the association at some date subsequent to the agency's original review of the association's plan that new conditions or restrictions are being imposed by the FDIC. Thus, it is the FDIC's intent that any "approval" of a divestiture plan will be conditioned upon the continued validity of any assumptions upon which the association's plan is based, the continued vitality of the association in question, and the facts and circumstances which exist at the time of the association's application and during the divestiture period.

5. *Notice of acquisition or establishment of a subsidiary or the conduct of new activities through a subsidiary*—[Section 18(m)(1) of FDI Act, § 303.13(f)].

General—Paragraph (f) of § 303.13 of the interim rule implements the newly enacted statutory requirement that all insured savings associations (State or federal) must give the FDIC at least 30 days prior notice before establishing or acquiring a subsidiary or initiating the conduct of any "new" activity through a subsidiary. The term "subsidiary" does not include an insured depository institution for purposes of the prior notice. Under the rule, a notice is required, subject to certain exceptions identified below, when a savings association establishes a subsidiary after August 9, 1989 or when an existing subsidiary initiates the conduct of an activity "new" to that subsidiary after August 9, 1989. The notice is to be filed, return receipt requested, with the regional director for the Division of Supervision for the region in which the savings association's principal office is located.

The notice is to contain the same information as required under § 303.13(b)(1), plus the following additional information: (i) a description of how the subsidiary will fund the activity, (ii) the amount of the savings associations investment and the form it will take, (iii) the percentage of ownership in the subsidiary, (iv) a list of other owners of the subsidiary, and (v) in the case of the acquisition of a going concern, the terms and conditions of the acquisition including an appraisal, assessment of value or other substantiation of the purchase price plus operating statements for the concern for the previous three years (if applicable). If the filing with OTS under § 18(m)(1) of the FDI Act contains all of the information required under § 303.13(f)(1), a copy of the material filed with OTS may be filed with the FDIC regional office in satisfaction of the notice requirement contained in § 303.13(f)(1). If the filing with OTS does not contain all of the information required by § 303.13(f)(1), the filing may still be submitted in satisfaction of § 303.13(f)(1) provided that the filing is supplemented with the necessary information. The regional director may request additional information as deemed appropriate. If additional information is requested, or if the notice when received is incomplete, the 30-day period will not begin to run until the additional information is received or the incomplete notice is completed.

Catch-up notice as to existing subsidiaries—The rule also requires any insured savings association that had one or more subsidiaries as of August 9, 1989 to file an abbreviated notice to that effect with the regional director for the Division of Supervision for the region in which the savings association's principal office is located. The notice must be filed with the regional director within 30 days after the effective date of the regulation. This requirement will not be burdensome, since the interim rule only requires that the notice contain a minimal amount of information. This provision has been included in the rule in order to supply the FDIC with information regarding the nature of activities being indirectly conducted by insured savings associations. The FDIC is charged with protecting the solvency of the deposit insurance funds and pursuant to § 18(m)(3) of the FDI Act may prohibit the conduct of specific activities, as well as certain acts or practices, if the FDIC determines that said activities may pose a serious threat to either of the funds. In order to properly discharge this responsibility, the FDIC must have complete, accurate, and up to date information regarding savings associations and their activities.

Federal savings banks chartered prior to October 15, 1982—Section 18(m)(5) of the FDI Act provides that the prior notice requirements of paragraph (1) of that section shall not apply to any federal savings bank that was chartered prior to October 15, 1982 as a savings bank under state law nor to any savings association that acquired its principal assets from such an institution. In accordance therewith, § 303.13(f)(2) the interim rule indicates that such savings associations are not subject to the prior notice requirements of § 303.13(f)(1).

6. *Subsequent notice by certain federal savings associations enjoying grandfather rights*—[Section 303.13(g)].

Section 5(i)(4) of HOLA provides that, subject to the FDIC's authority to determine that the conduct of a specific activity or an act or practice is a serious threat to either deposit insurance fund administered by the FDIC, any federal savings bank chartered as such prior to October 15, 1982 may make any

investment, or engage in any activity, not otherwise authorized under section 5 of HOLA, to the degree it was permitted

"Control" is defined in the rule to mean the power to vote, directly or indirectly, 25 per centum or more of any

and any equity interest in real estate (also discussed below). ("Effective as soon as the bill becomes law, subsection

well as any relevant notices that may supersede the same) and the Federal Financial Institutions Examination Council Call Report Instructions on

which may only be purchased by savings associations.

"Subsidiary" as defined in the rule means any corporation, partnership

deputy regional director. The procedures set forth in § 303.6(e) are to be used in the event an applicant wishes to obtain reconsideration of a denial

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investment, or engage in any activity, not otherwise authorized under section 5 of HOLA, to the degree it was permitted to do so as a federal savings bank prior to October 15, 1982. Likewise, subject to the same authority of the FDIC, any federal savings bank organized prior to October 15, 1982 that had previously been a state-chartered mutual savings bank may continue to make any investment, or engage in any activity, not otherwise authorized under section 5 of HOLA, to the degree it was authorized to do so as a state mutual savings bank. Finally, any other federal savings bank that acquires a federal savings bank that falls into either of the above categories will receive the benefit of the same grandfather treatment.

Under the interim rule, any federal savings association that enjoys grandfather rights pursuant to section 5(i)(4) of HOLA must file a notice with the regional director for the Division of Supervision for the region in which the federal savings association's principal office is located. This notice must be filed within 30 days after the effective date of the regulation or within 30 days after the date the association first enjoys grandfather rights, whichever comes first. The notice must briefly describe the activity or investment with regard to which the association enjoys grandfather rights. A notice should be filed even if the association is not actually exercising the additional authority or does not have, at that time, any investment which is greater than that permitted other federal savings associations under section 5 of HOLA. The FDIC is adopting this notice requirement as a means of gathering information so that it can properly discharge its responsibilities under section 18(m)(3) of the FDI Act.

7. *Definitions. "Activity"* is defined, for the purposes of paragraphs (b) and (c) of § 303.13, to include acquiring or retaining any investment other than an equity investment. The definition is taken from § 28(g) of the FDI Act which provides that for the purposes of the activity and magnitude restrictions of section 28(a) and (b), the term "activity" shall include acquiring or retaining any investment. As it is clear based upon FIRREA's legislative history that section 28(c) of the FDI Act, which places a prohibition on acquiring or retaining equity investments other than those that are permissible for federal savings associations, was intended to override paragraphs (a) and (b), the rule makes clear that the reference to "activity" does not encompass the acquisition or retention of an equity investment.

"Control" is defined in the rule to mean the power to vote, directly or indirectly, 25 per centum or more of any class of the voting stock of a company, the ability to control in any manner the election of a majority of a company's directors or trustees, or the ability to exercise a controlling influence over the management and policies of a company. The definition used in the rule is the same as is used in § 337.4 of the FDIC's regulations. 12 CFR 337.4.

"Corporate debt securities not of investment grade" for the purposes of the interim rule refers to any corporate debt security that when acquired was not rated among the four highest rating categories by at least one nationally recognized statistical rating organization. The definition specifically indicates, however, that the phrase should not be read to include any obligation issued or guaranteed by a corporation that may be held by a federal savings association without limitation as to percentage of assets under subparagraphs (D), (E), or (F) of section 5(c)(1) of HOLA. Subparagraph (D) covers investments in the stock or bonds of a Federal home loan bank or in the stock of the Federal National Mortgage Association. Subparagraph (E) refers to investments in mortgages, obligations, or other securities which are or have been sold by the Federal Home Loan Mortgage Corporation pursuant to section 305 or section 306 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454, 1455). Subparagraph (F) refers to investments in obligations, participations, securities, or other instruments issued by, or fully guaranteed as to principal and interest by, the Federal National Mortgage Association, the Student Loan Marketing Association, the Government National Mortgage Association, or any agency of the United States. It also includes securities guaranteed pursuant to section 306(g) of the National Housing Act (12 U.S.C. 1721).

It should be noted that the general supervisory definition of investment quality security as utilized by the FDIC and discussed in the Division of Supervision Manual of Examination Policies (FDIC) includes unrated securities that are of an equivalent quality to securities in the four highest rating categories. The definition as used in this rule which is taken from section 28(d) does not extend to unrated securities, whether or not those unrated securities are of equivalent quality.

"Equity Investment" is defined for the purposes of the rule to mean any equity security (discussed below), any partnership interest (general or limited), and any equity interest in real estate (also discussed below). ("Effective as soon as the bill becomes law, subsection (c) [section 28(c)] prohibits a State savings association from acquiring or retaining any equity investment of a type of [sic] in an amount that is not permissible for a Federal savings association to acquire and retain directly. *The prohibition applies to equity investments in real estate, investments in equity securities, and other equity investment[s].*" 135 Cong. Rec. S10203, daily ed. August 4, 1989, statement of Sen. Riegle. (emphasis added).

The term also includes any transaction which in substance falls within any of these categories, even though it may be structured as some other form of business transaction. Transactions which in substance give rise to an equity investment, as that term is defined in the interim rule, are included within the scope of the definition, based upon clear statements in the legislative history that it was the intent of Congress that "[i]n applying subsection (c) [section 28(c) of the FDI Act] Federal regulators should look to the substance of the investment and not merely to the form. Any transaction that is in substance an equity investment is covered by subsection (c), even if the transaction is nominally a loan or other permissible transaction." Joint Explanatory Statement of the Committee of Conference, p. 403; 135 Cong. Rec. S10203, daily ed. August 4, 1989, statement of Sen. Riegle. (See also 135 Cong. Rec. S6914, daily ed. June 19, 1989, section by section analysis of S. 774; 135 Cong. Rec. S4091, daily ed. April 18, 1989, excerpts from Report accompanying S. 774).

"Equity interest in real estate" as defined in the interim rule refers to any form of direct or indirect ownership of any interest in real property (whether in the form of an equity interest, partnership, joint venture or other form) which is accounted for as an investment in real estate or real estate joint ventures under generally accepted accounting principles. The phrase also includes transactions that have been determined to be investments in real estate ventures for purposes of the Federal Financial Institutions Examination Council instructions for the preparation of reports of condition. For the purposes of applying these two standards the FDIC will generally look to the guidance prepared by the American Institute of Certified Public Accountants (AICPA) in Notices to Practitioners issued in November 1983, November 1984, and February 1986 (as well as any relevant notices that may supersede the same) and the Federal Financial Institutions Examination Council Call Report Instructions on Schedule RC-M—Memoranda Item on Direct and Indirect Investments in Real Estate Ventures. Under these standards certain acquisition, development, and construction loans, as well as loans with high loan to value ratios or equity participation clauses, may be considered to be equity investments.

The following interests in real estate are specifically excluded from the overall definition of equity interest in real estate: (1) Interests in real property primarily used, or intended to be used in the future, by a savings association, its subsidiaries, or its affiliates as offices (or related facilities) for the conduct of its business; (2) an interest in real property acquired in satisfaction of a previously contracted debt or at sales under judgments, etc. provided the property is not intended to be held for investment purposes by is expected to be disposed of in a timely fashion as permitted by applicable law; and (3) interests in real property that are primarily in the nature of charitable contributions to community development.

"Equity security" is defined in the rule to mean any stock, certificate of interest, or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, or voting-trust certificate; any security immediately convertible at the option of the holder without payment of substantial additional consideration into such a security; any security carrying any warrant or right to subscribe to or purchase any such security; and any certificate of interest or participation in, temporary or interim certificate for, or receipt for any of the foregoing. The term "equity security" does not include any of the foregoing, however, if it is acquired through foreclosure or settlement in lieu of foreclosure. The definition in the interim rule is in keeping with the legislative history of the Act which indicates that the prohibitions of § 28(c) are intended to extend to "any type of equity investment including common stock and preferred stock (whether voting or non-voting), options, warrants, and interests in partnerships (whether general or limited)." 135 Cong. Rec. S4091, daily ed. April 18, 1989, excerpts from Report accompanying S. 774.

"Service corporation" as used in the rule means any corporation the stock of which may only be purchased by savings associations.

"Subsidiary" as defined in the rule means any corporation, partnership, business trust, association, joint venture, pool, syndicate or other similar business organization directly or indirectly controlled by a savings association. For the purposes of § 303.13(f), an "insured depository institution" is excluded from the definition of subsidiary.

"Significant risk" to the deposit insurance fund is present under the rule whenever it is likely that either of the deposit insurance funds administered by the FDIC may suffer any loss whatever. Although the statute and the regulation use the term "significant" in conjunction with the word "loss", the test of significant risk is met if there is a likelihood of any loss whatsoever regardless of how small. Therefore, the amount, or the relative or absolute size of the loss that may result from a state savings association engaging in an activity is not probative. What is relevant, rather, is the likelihood that some loss may occur. Joint Explanatory Statement of the Committee of Conference, p. 402–403. Additionally, it is not necessary that the conduct of a certain activity may result in the failure or threatened failure of a savings association before the conduct of such activity is considered to pose a significant risk of loss to either fund. For example, the ownership and operation of a motor hotel or a ski lodge and the related investment(s) in such ventures may be minimal on both an absolute and relative size basis vis-a-vis a particular savings association, however, such activities could still be presumed to present a significant risk to the deposit insurance funds.

"Qualified affiliate" as defined in the rule means, in the case of a stock savings association, an affiliate other than a subsidiary or an insured depository institution; and in the case of a mutual savings association, a subsidiary other than an insured depository institution, so long as all of the savings association's investments in, and extensions of credit to, the subsidiary are deducted from the savings association's capital. This definition conforms to that found in section 28(d) of the FDI Act.

8. *Delegations of authority and reconsideration of denied applications*

Under the rule the authority to act on all applications and notices filed pursuant to § 303.13 is delegated to the Director of the Division of Supervision, and where confirmed in writing, to an Associate Director of the Division of Supervision or regional director or deputy regional director. The procedures set forth in § 303.6(e) are to be used in the event an applicant wishes to obtain reconsideration of a denial.

9. *Adoption of interim rule without opportunity for comment*

The FDIC is amending part 303 of its regulations ("Applications, Requests, Submittals, Delegations of Authority, and Notices of Acquisition of Control") by adding a new § 303.13 that establishes interim notice and application requirements in order to implement the provisions described above. Comments are being requested, however, for 60 days after its publication. Inasmuch as the majority of the provisions of FIRREA implemented by these procedures were effective immediately upon enactment of the statute on August 9, 1989 and the prohibition regarding the conduct of activities impermissible for federal savings associations takes effect January 1, 1990, the Board of directors has determined that there is good cause to dispense with opportunity for public comment with regard to these amendments and to make them immediately effective upon publication in the **Federal Register**. These regulations provide guidance to affected institutions as to the meaning of the statute and the FDIC's opinion as to what is and is not a permissible activity and what investments are permissible for state savings associations in the context of FIRREA. All savings associations have an affirmative obligation to divest themselves of nonconforming equity investments and junk bonds which they now hold. Unless and until the FDIC reviews each individual savings association's plan to comply with that requirement, each savings association can continue to hold those investments and bonds without an objective assessment of the effect of doing so on the institution's safety and soundness. In light of the fact that the number of investments which must be divested (and the volume of junk bonds) could be very large on an industry-wide basis, it is imperative for the FDIC to oversee the divestiture with the broader picture in mind as well. It is therefore in the public interest to have these procedures in place as soon as possible. It is in the best interests of the institutions as well to provide guidance on these matters as soon as possible so that institutions can have some certainty in the conduct of their ongoing operations as well as in their future ventures.

In view of the foregoing, opportunity for public comment is impracticable and there is good cause for the procedures

established hereby to be immediately effective. The FDIC will, however, accept comment for a period of 60 days

(3) "Corporate debt securities not of investment grade" refers to any corporate debt security that when

any warrant or right to subscribe to or purchase any such security; and any certificate of interest or participation in,

The letter application should contain the following information:

(c) Engaging other than as agent on behalf of customers in activities

described in paragraph (c)(1)(i) of this section must file a notice, return receipt

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established hereby to be immediately effective. The FDIC will, however, accept comment for a period of 60 days after the interim rule is published and will republish the rule with whatever changes are appropriate based upon the comments as soon as possible after the close of the comment period.

Regulatory Flexibility Analysis

As the amendment to part 303 is not required to be published for public comment, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

In addition, pursuant to the FDIC's statement of policy on the drafting of regulations, it has been determined that a cost-benefit analysis, including a small bank impact statement, is not required.

List of Subjects in 12 CFR Part 303:

Administrative practice and procedure, authority delegations (Government agencies), Bank deposit insurance, Banks, banking, Insured depository institutions, Savings associations.

In consideration of the foregoing, the FDIC hereby amends part 303 of title 12 of the Code of Federal Regulations to add new § 303.13 as follows:

PART 303—APPLICATIONS, REQUESTS, SUBMITTALS, DELEGATIONS OF AUTHORITY, AND NOTICES OF ACQUISITION OF CONTROL

1. The authority citation for part 303 is revised to read as follows:

Authority: 12 U.S.C. 378, 1813, 1815, 1816, 1817(j), 1818, 1819 ["Seventh" and "Tenth"], 1828, Pub. L. No. 101–73, sec. 221, 103 Stat. 183, 267–268 (1989) (12 U.S.C. 1828(m)); Pub. L. No. 101–73, sec. 222, 103 Stat. 183, 269–273 (1989) (12 U.S.C. 1831e); 15 U.S.C. 1607.

2. Section 303.13 is added to read as follows:

§ 303.13 Applications and notices by savings associations.

(a) Definitions. For the purposes of this section, the following definitions apply:

(1) As used in paragraphs (b) and (c) of this section, the term "activity" includes acquiring or retaining any investment other than an equity investment.

(2) "Control" means the power to vote, directly or indirectly, 25 per centum or more of any class of the voting stock of a company, the ability to control in any manner the election of a majority of a company's directors or trustees, or the ability to exercise a controlling influence over the management and policies of a company.

(3) "Corporate debt securities not of investment grade" refers to any corporate debt security that when acquired was not rated among the four highest rating categories by at least one nationally recognized statistical rating organization. The term shall not include any obligation issued or guaranteed by a corporation that may be held by a federal savings association without limitation as to percentage of assets under subparagraphs (D), (E), or (F) of section 5(c)(1) of the Home Owners' Loan Act (12 U.S.C. 1464(c)(1)).

(4) "Equity investment" means any equity security as defined herein; any partnership interest; any equity interest in real estate as defined herein; and any transaction which in substance falls into any of these categories, even though it may be structured as some other form of business transaction.

(5) "Equity interest in real estate" means any form of direct or indirect ownership of any interest in real property (whether in the form of an equity interest, partnership, joint venture or other form) which is accounted for as an investment in real estate or real estate joint ventures under generally accepted accounting principles or is otherwise determined to be an investment in a real estate venture under Federal Financial Institutions Examination Council instructions for the preparation of reports of condition. The term "equity interest in real estate" shall not include:

(i) An interest in real property that is primarily used or intended to be used for future expansion by a savings association, its subsidiaries, or its affiliates as offices or related facilities for the conduct of its business;

(ii) An interest in real property that is acquired in satisfaction of a debt previously contracted in good faith or acquired in sales under judgments, decrees, or mortgages held by a savings association, provided that the property is not intended to be held for real estate investment purposes but is expected to be disposed of in a timely fashion as permitted by applicable law; and

(iii) Interests in real property that are primarily in the nature of charitable contributions to community development.

(6) "Equity security" means any stock, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, or voting-trust certificate; any security immediately convertible at the option of the holder without payment of substantial additional consideration into such a security; any security carrying any warrant or right to subscribe to or purchase any such security; and any certificate of interest or participation in, temporary or interim certificate for, or receipt for any of the foregoing. The term "equity security" does not include any of the foregoing if it is acquired through foreclosure or settlement in lieu of foreclosure.

(7) "Qualified affiliate" means, in the case of a stock savings association, an affiliate other than a subsidiary or an insured depository institution; and, in the case of a mutual savings association, a subsidiary other than an insured depository institution, so long as all of the savings association's investments in, and extensions of credit to, the subsidiary are deducted from the savings association's capital.

(8) The term "service corporation" means any corporation the capital stock of which is available for purchase only by savings associations.

(9) A "significant risk" is present whenever it is likely that any insurance fund administered by the FDIC may suffer any loss whatever.

(10) "Subsidiary" means any corporation, partnership, business trust, association, joint venture, pool, syndicate or other similar business organization directly or indirectly controlled by a savings association. For the purposes of § 303.13(f), the term does not include an "insured depository institution" as that term is defined in section 3(c)(2) of the Federal Deposit Insurance Act, ("FDI Act," 12 U.S.C. 1813(c)(2)).

(b) Engaging other than as agent on behalf of customers in activities not permissible for federal savings associations.

(1) After January 1, 1990, no state savings association may directly engage, other than as agent on behalf of its customers, in an activity that is not expressly authorized by statute or regulation adopted by the Office of Thrift Supervision ("OTS") for all federal savings associations unless the state savings association obtains the approval of the FDIC. Any state savings association that wishes to obtain approval to initiate or continue such an activity, as well as any state savings association that wishes to make, or already has, nonresidential real property loans in an amount exceeding that described in section 5(c)(2)(B) of the Home Owners' Loan Act ("HOLA") (12 U.S.C. 1464(c)(2)(B)) must file a letter application with the regional director for the Division of Supervision for the region in which the state savings association's principal office is located.

The letter application should contain the following information:

(i) A brief description of the activity and the manner in which it is (or will be) conducted;

(ii) A copy, if available, of any feasibility study, management plan, financial projections, business plan, or similar document concerning the conduct of the activity;

(iii) An estimate of the present or expected dollar volume of the activity;

(iv) Resolutions by the board of directors (or the board of trustees in a mutual association) of the savings association authorizing the conduct of such activity and the filing of this submission;

(v) A current statement of the association's assets, liabilities, and capital on both a consolidated and a non-consolidated basis, respectively;

(vi) A discussion by management of its analysis regarding the impact of the proposed activity on the association's earnings, capital adequacy, and general condition;

(vii) A statement by the savings association of whether or not it is in compliance with the fully phased-in capital standards prescribed under section 5(t) of HOLA (12 U.S.C. 1464(t)), including a calculation of the relevant capital ratio; and

(viii) A statement of the authority the savings association is relying upon for the conduct of the activity in the amount set forth in the letter application.

The regional director may request that the state savings association provide such other information as the director deems appropriate. Approval will not be granted if it is determined by the FDIC that engaging in the activity poses a significant risk to the affected deposit insurance fund. Furthermore, no savings association will be granted approval unless it is in compliance with the fully phased-in capital standards prescribed in section 5(t) of HOLA. Consequently, no application to engage in an activity after January 1, 1990 should be filed if a state association is not in compliance with the fully phased-in capital requirements.

(2) Paragraph (b)(1) of this section shall not be read to require the divestiture by a state savings association of any asset it had on its books prior to August 9, 1989 despite the fact that such asset may be held in connection with the conduct of an activity for which the state savings association must obtain the FDIC's approval under § 303.13(b)(1). A notice describing the activities and those assets is nevertheless required by this section.

(c) Engaging other than as agent on behalf of customers in activities authorized for federal savings associations but to an extent not so authorized.

(1) *Activities conducted as of December 29, 1989.* (i) Any state savings association which as of December 29, 1989 is directly engaging, other than as agent on behalf of its customers, in an activity expressly authorized to all federal savings associations by statute or regulation adoped by OTS in an amount in excess of that permitted to federal savings associations and intends to continue to do so after January 1, 1990, must file a notice, return receipt requested, with the regional director for the Division of Supervision for the region in which the state savings association's principal office is located. The notice must contain the same information that is required to be included in a letter application filed pursuant to § 303.13(b)(1). The regional director may request such other information as the regional director deems appropriate. The notice must be received by the regional director no later than January 29, 1990.

(ii) A state savings association which is, and continues to be, in compliance with the fully phased-in capital standards prescribed under section 5(t) of HOLA and which has filed notice with the FDIC pursuant to paragraph (c)(1)(i) of this section may continue the activities that are the subject of the 30-day notice in the amount set forth in the notice unless the FDIC notifies the state savings association to the contrary. No state savings association will be permitted to continue the activities at the level described in a notice filed pursuant to this section if it is determined that to do so poses a significant risk to the affected deposit insurance fund. A state savings association which is not in compliance with the fully phased-in capital standards as of December 29, 1989 must decrease the level of the activity to that allowed to a federal savings association in order for continuation of the activity to be permissible.

(iii) Paragraph (c)(1) of this section shall not be read to require the divestiture by a state savings association of any asset it had on its books before August 9, 1989. A notice describing those assets is nevertheless required by this section if the assets are held in connection with the conduct of an activity in an amount that triggers notice under § 303.13(c)(1)(i).

(2) *Initiation of activities after December 29, 1989.* Any state savings association that intends to initiate activities of a type and in an amount described in paragraph (c)(1)(i) of this section must file a notice, return receipt requested, with the regional director for the Division of Supervision for the region in which the state savings association's principal office is located at least 60 days prior to the initiation of the level of the activity described in the notice. Unless the FDIC notifies the state savings association to the contrary, a state association that files a 60-day notice may initiate the level of activity as described in its notice 60 days after the FDIC's receipt thereof (or in less than 60 days if so notified), provided that the state association is, and continues to be, in compliance with the fully phased-in capital standards prescribed under section 5(t) of HOLA. Consequently, no application should be filed if a state savings association is not in compliance with the fully phased-in capital standards. The notice must contain the same information required by § 303.13(b)(1). The regional director may request such other information as the regional director deems appropriate.

The 60-day period may be extended upon notice to the state savings association if the notice as received is incomplete or the notice raises issues that require additional information or time for analysis. If the 60-day period is extended, the state savings association may begin the conduct of the activities only upon receipt of written notification to that effect. No state savings association will be permitted to initiate activities subject to this paragraph if it is determined that to do so would pose a significant risk to the affected deposit insurance fund.

(d) *Equity investments.* (1) *General.* No state savings association may directly acquire or retain any equity investment after August 9, 1989 of a type or in an amount that is not expressly authorized by statute or regulation adopted by OTS for all federal savings associations. Any state savings association which, as of August 9, 1989, had one or more such equity investments must file an application, return receipt requested, with the regional director for the Division of Supervision for the region in which the state savings association's principal office is located no later than 30 days from December 29, 1989. The application shall:

(i) Describe the obligor, type, amount and book and market values of the equity investment;

(ii) Set forth the association's plans to comply with the requirements of section 28(c) of the FDI Act to divest the investment as quickly as prudently

possible, but in any event not later than July 1, 1994;

(iii) Describe the anticipated gain or

prescribed by section 5(t) of HOLA. Consequently, no application to acquire or retain an equity investment in such a

the association's capital (including capital ratios before and after the sale);

(4) Include a copy of the resolution by

of this provision. In any case, the regional director may request such additional information as the regional

Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.

necessity for advising savings associations of the requirements of part 303 applicable to them at the earliest

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possible, but in any event not later than July 1, 1994;

(iii) Describe the anticipated gain or loss (anticipated or realized) from the sale of the investment and the impact thereof on the association's capital (including capital ratios before and after their sale);

(iv) Include a copy of a resolution by the board of directors, or board of trustees in the case of a mutual association, authorizing the filing of this submission; and

(v) Request the FDIC's permission to accomplish divestiture in accordance with said plans.

The regional director may request such additional information as the regional director deems appropriate. Upon review of the application and such additional information as requested, and at any time during the divestiture period thereafter, the FDIC may impose such conditions and requirements as it deems appropriate in its sole discretion with regard to the divestiture of the equity investment, including requiring completion of divestiture in advance of July 1, 1994.

(2) *Service corporations.* (i) *General.* Section 303.13(d)(1) notwithstanding, a state savings association may acquire or retain an equity investment in a service corporation, provided that the service corporation's activities are limited solely to those expressly authorized either by statute or by regulation adopted by OTS for all service corporations owned by federal savings associations *and* provided that the investment in such service corporation does not exceed that permissible for a federal savings association pursuant to statute or regulation of OTS. If either of these two conditions does not exist, the state association must file a letter application under paragraph (d)(2)(ii) with the regional director for the Division of Supervision for the region in which the state savings association's principal office is located requesting permission to acquire or retain the equity investment in the service corporation in question.

(ii) *Content and filing of application.* An application requesting permission to retain an equity investment in a service corporation in which a federal association could not invest that was held as of August 9, 1989 must be filed with the regional office no later than January 29, 1990. Approval of the acquisition or retention of an equity investment in a service corporation in which a federal association could not invest will not be granted if the state association is not in compliance with the fully phased-in capital standards prescribed by section 5(t) of HOLA. Consequently, no application to acquire or retain an equity investment in such a service corporation should be filed if a state association is not in compliance with these capital requirements. In addition, approval of the retention or acquisition of such investments will not be granted if the acquisition or retention is determined to pose a significant risk to the affected deposit insurance fund. If an application to retain an investment is denied, the state association must file a divestiture plan with the regional director requesting the FDIC's permission to accomplish divestiture in accordance with said plan.

The letter application required hereby should contain the information required by § 303.13(b)(1), as it relates both to the service corporation and to its parent state savings association. In addition, the application should contain: A listing of the officers (contemplated officers) of the service corporation, a listing of any other shareholders of the service corporation (existing or prospective) and their respective holdings, and a listing of the locations (expected locations) of all of the offices of the service corporation. The regional director may request such other information as the regional director deems appropriate.

(e) *Corporate debt securities not of investment grade.* Notwithstanding anything to the contrary in § 303.13, no state or federal savings association may, directly or through a subsidiary (other than a subsidiary that is a qualified affiliate), acquire or retain after August 9, 1989 any corporate debt security that is not of investment grade. Any state or federal savings association which, as of August 9, 1989, held corporate debt securities not of investment grade must divest those securities as quickly as can prudently be done, but in no event later than July 1, 1994. Any state or federal savings association that must divest corporate debt securities shall file an application with the regional director for the Division of Supervision for the region in which the state or federal savings association's principal office is located not later than 30 days from December 29, 1990. The application shall:

(1) Describe the obligor, type, amount, and book and market values of the corporate debt securities;

(2) Set forth the state or federal association's plans to comply with the requirements of § 28(d) of the FDI Act to divest the securities as quickly as prudently possible, but in any event not later than July 1, 1994;

(3) Describe the gain or loss (anticipated or realized) from the sale of the securities and the impact thereof on the association's capital (including capital ratios before and after the sale);

(4) Include a copy of the resolution by the board of directors, or the board of trustees in the case of a mutual association, authorizing the filing of this submission; and

(5) Request the FDIC's permission to accomplish divestiture in accordance with said plans.

The regional director may request such additional information as the regional director deems appropriate. Upon review of the application and such additional information as requested, and at any time during the divestiture period thereafter, the FDIC may impose such conditions and requirements as it deems appropriate in its sole discretion with regard to the divestiture of the debt securities, including requiring completion of divestiture in advance of July 1, 1994.

(f) *Notice of acquisition or establishment of a subsidiary or the conduct of new activities through a subsidiary.* (1) No insured savings association may establish or acquire a subsidiary, or conduct any new activity through a subsidiary, without providing the regional director for the Division of Supervision for the region in which the insured savings association's principal office is located prior notice of the association's intent to do so. Notice must be sent return receipt requested and be received by the regional director at least 30 days prior to the establishment or acquisition of the subsidiary or the commencement of the new activity. The notice shall contain the same information required to be in a letter application filed pursuant to § 303.13(b)(1) plus the following:

(i) A description of how the activities of the subsidiary will be funded;

(ii) The amount of the insured savings association's investment in the subsidiary and the form of the investment;

(iii) The percentage ownership the insured savings association will have in the subsidiary;

(iv) A listing of the other owners of the subsidiary if any; and

(v) In the case of the acquisition of an existing concern, the terms and conditions of the acquisition including an appraisal, assessment of value, or other substantiation of the purchase price and operating statements for the previous three years (if applicable).

If the insured savings association's filing with the OTS under section 18(m)(1) of the FDI Act contains all of the information required, that filing may be submitted to the FDIC in satisfaction of this provision. In any case, the regional director may request such additional information as the regional director deems appropriate. In all such cases, the 30-day period will not begin to run until the response to the request for additional information is complete.

(2) Any federal savings bank that was chartered prior to October 15, 1982 as a savings bank under state law, and any savings association that acquired its principal assets from such an institution, is not required to file prior notice in accordance with paragraph (f)(1) of this section.

(3) Any insured savings association that had one or more subsidiaries prior to August 9, 1989 must file a notice with the regional director for the Division of Supervision for the region in which the insured savings association's principal office is located within 30 days from December 29, 1989. The notice should set forth the name, location, and type of activity conducted by the subsidiary and the amount of the insured savings association's investment in the subsidiary.

(g) *Notice by federal savings associations conducting grandfathered activities.* Any federal savings association authorized by § 5(i)(4) of HOLA [12 U.S.C. 1464(i)(4)] to make any investment or engage in any activity not otherwise generally authorized to federal savings association by section 5 of HOLA must file a notice with the regional director for the Division of Supervision for the region in which the federal savings association's principal office is located within 30 days after December 29, 1989 or within 30 days after the date the federal savings association is first able to rely upon section 5(i)(4) of HOLA as a result of the acquisition of an association that is covered by such section. The notice should briefly describe the activity or investment.

(h) *Delegations.* The authority to act on applications and notices filed pursuant to § 303.13, and to make any and all determinations called for in regard to the same, is delegated to the Director of the Division of Supervision, and where confirmed in writing by the Director, to an associate director of the Division of Supervision or the regional director (Division of Supervision) or deputy regional director (Division of Supervision).

By Order of the Board of Directors. Dated at Washington, DC this 12th day of December, 1989.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 89-30248 Filed 12-28-89; 8:45 am]

BILLING CODE 6714-01-M

12 CFR Part 303

RIN 3064-AA98

Applications, Requests, Submittals, Delegations of Authority, and Notices of Acquisition of Control

AGENCY: Federal Deposit Insurance Corporation ("FDIC" or "Corporation").

ACTION: Final rule.

SUMMARY: The FDIC is amending its regulation respecting applications, requests, submittals, delegations of authority, and notices of acquisition of control (part 303) to reflect the changes in part 303 necessitated by virtue of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA").

The FDIC is also amending this regulation to clarify and, in some cases, to modify its delegations of authority for acting on a variety of applications (*e.g.*, mergers, insurance fund conversions, branches, relocations, deposit insurance, trust and other banking powers, changes in control, management interlocks, and other applications). These amendments are designed to clarify and define certain provisions of the delegations and to correct certain ambiguities in the delegations that have come to light since the delegations were substantially revised in September 1987 (52 FR 35396). The amendments do not alter any rights or obligations of any person, depository institution, or other applicant.

EFFECTIVE DATE: December 12, 1989.

FOR FURTHER INFORMATION CONTACT: Jesse G. Snyder, Assistant Director, Office of Supervision and Applications, Operations Branch, Division of Supervision (202) 898-6915, or F. Douglas Birdzell, Special Counsel to the Deputy General Counsel, Legal Division (202) 898-3716, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC, 20429.

SUPPLEMENTARY INFORMATION:

Reason for Adoption Without Prior Notice and Comment

I. Immediate adoption of this final rule is necessary in the public interest to conform to the provisions of FIRREA placing savings associations under the FDIC's authority for a number of applications covered under part 303. As the changes in part 303 are essentially dictated by FIRREA, and due to the necessity for advising savings associations of the requirements of part 303 applicable to them at the earliest possible time, so that applications can be processed with minimum delay, the notice and public participation provisions of the Administrative Procedure Act [5 U.S.C. 553] were not followed in connection with this action.

II. Furthermore, the amendments are being published in final form without opportunity for public comment under authority of 5 U.S.C. 553(b)(A) (Administrative Procedure Act), which exempts from required publication for comment interpretive rules, general statements of policy, and rules of agency practice and procedure.

All of the amendments, which constitute nonsubstantive changes to the FDIC's rules of practice and procedure, are being made immediately effective inasmuch as the requirement found in 5 U.S.C. 553(d) that substantive rules be published not less than 30 days prior to their effective date has been dispensed with, the Board having found, for good cause, that making the regulation effective immediately will pose no compliance problem or otherwise adversely affect the public interest, and will serve to expedite the applications process.

Background

On August 9, 1989, FIRREA was signed into law. This statute made massive changes in the body of Federal law regulating financial institutions by abolishing the Federal Home Loan Bank Board (the former savings and loan regulator), and replacing it with the Office of Thrift Supervision ("OTS") under the Department of the Treasury. The Federal Savings and Loan Insurance Corporation ("FSLIC"), the deposit insurance agency formerly under the FHLBB was dismantled, and its functions transferred to the FDIC. Because of this restructuring, the FDIC has assumed a number of responsibilities with respect to savings and loan associations in addition to its traditional role as insurer of bank deposits and regulator of insured state nonmembers banks.

Because of this increased responsibility, part 303 of FDIC's regulations is being substantially revised to reflect the changes brought about by FIRREA.

The principal changes reflect the fact that savings associations now apply to FDIC for insurance under a special fund, the so-called "SAIF" or Savings Association Insurance Fund. The Bank Merger Act, as amended by FIRREA,

now covers mergers between insured savings associations and insured banks.

New provisions are also contained in

The regulation also provides procedures and delegations for permissible insurance fund conversions

which have been brought to our attention since the earlier revision.

Section 303.7 Delegation of Authority to the Director of the Division of Supervision, Associate Directors,

Section 303.7(b) is also amended by adding paragraph (b)(6) to clarify the Board's intention that the delegation of

act on deposit insurance applications by state or privately insured institutions.

"Section 19" applications. Section

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now covers mergers between insured savings associations and insured banks.

New provisions are also contained in the revised regulation to deal with conversions from the Bank Insurance Fund ("BIF"), applicable to banks, and the SAIF fund mentioned above, and vice versa.

The substance of these and other amendments are summarized in greater detail below.

I. FIRREA Amendments

By virtue of FIRREA, the FDIC is given, along with the Office of Thrift Supervision, regulatory authority over savings associations formerly under the supervisory jurisdiction of the Federal Home Loan Bank Board and/or the Federal Savings and Loan Insurance Corporation. That authority requires savings associations to file with the FDIC a number of applications formerly filed with the Federal Home Loan Bank Board, such as applications for deposit insurance, mergers with noninsured institutions, and insurance fund conversions. The amended regulation reflects the changes occasioned by the enactment of FIRREA.

Specifically, pursuant to FIRREA, state and federal savings and loan associations must now apply to the FDIC for insurance. Part 303 is amended to provide for deposit insurance applications to be received from state and federal savings associations, and for such applications to be processed by the FDIC in substantially the same manner as other deposit insurance applications filed with the Corporation.

It is also provided in FIRREA that, in the event that the FDIC denies an application for deposit insurance by a savings association seeking a federal charter, the Director of the Office of Thrift Supervision ("OTS") must be notified with a statement of the reasons for the denial. Section 303.6 reflects this requirement by specifically providing that the FDIC will send a notice of denial and a written statement of the reasons therefor to the Director of the Office of Thrift Supervision.

By virtue of amendments to the Bank Merger Act contained in FIRREA, savings associations are subject to provisions mandating that an application be filed with the FDIC where an FDIC-insured institution intends to merge with a noninsured institution. Previously, only FDIC-insured banks were subject to this application requirement. Section 303.3 is amended to reflect that an FDIC-insured savings association also must file an application with the FDIC when any such institution intends to merge with a noninsured institution.

The regulation also provides procedures and delegations for permissible insurance fund conversions. Normally, fund conversions are prohibited. However, FIRREA provides certain exceptions where the conversion affects an insubstantial portion of the deposits, or where the conversion occurs in connection with the acquisition of an insured institution in default or in danger of default. In such cases, the FDIC must approve the conversion transaction. A parallel delegation of authority to the Director (Supervisor), and the appropriate associate director, regional director, or deputy regional director (Supervision) permit the delegates to act on such applications. Additional changes are (1) rewording of section 19 applications; (2) a delegation to the Director, Division of Supervision, subject to redelegation, to act on applications for exemption from the statutory prohibition against acceptance of brokered deposits by troubled depository institutions, and (3) a delegation of authority to the Director, Division of Supervision, to comment on notices of membership or resumption of business under section 4 of the Act (12 U.S.C. 1814). The enforcement delegations in part 303 contain technical changes, e.g., position titles. They are not, however substantively changed. Amendments to the enforcement provisions of part 303 necessitated by FIRREA will be made at a later time.

The remaining changes are mainly housekeeping in nature. For example, where appropriate, the term "bank" or "banks" has been changed to "depository institution" or "depository institutions." The regulation is also amended to reflect that the factors set out in section 6 of the Federal Deposit Insurance Act (12 U.S.C. 1816), which must be considered in determining whether to approve an application for deposit insurance, and certain other applications have been increased in number from six to seven, adding as an element, risk to the insurance fund.

II. Other Amendments

In 1987, part 303 of the FDIC's regulations was revised to redelegate to the divisions and regions authority to act on applications formerly exercised by the Board of Review. The delegations of authority were revised to make better use of the FDIC's resources by processing applications more efficiently and promptly. As discussed below, in addition to those amendments being made in response to FIRREA, the amendments to the delegations of authority being adopted herein clarify and modify some delegations and eliminate certain other ambiguities which have been brought to our attention since the earlier revision.

Section 303.0 Scope and Definitions

Section 303.0(b) is amended by adding a new paragraph to define and clarify the meaning of the word "protest". The newly added definition of the word "protest" makes it clear that, with certain exceptions, any comment from the public which raises a negative issue relative to the Community Reinvestment Act ("CRA") is to be considered a protest whether or not a hearing is requested and whether or not the comment is labeled a "protest". However, negative CRA comments filed for competitive reasons by other financial institutions, comments which the regional director determines to be frivolous or to have been filed primarily as a means of delaying action on the application, or comments raising issues which have been resolved as between the protester and the applicant will not be regarded as "protests". If a CRA protest is filed, then the authority to act on such applications is not delegated to the regional directors and deputy regional directors; rather, the application is to be forwarded to Washington for action.

Section 303.0(b) is also amended to list certain "standard conditions" that a delegate may include as a routine matter in an order or other document approving an application. These include time limits for completing the transaction which is the subject of the application, requirements that the applicant obtain all necessary regulatory approvals, and retention by the FDIC of the right to withdraw its conditional approval should interim circumstances so warrant. In the case of merger transactions, a waiting period is included as a "standard condition."

Section 303.2 Application by Insured State Nonmember Bank to Establish a Branch or Move its Main Office or Branch

Special procedures for remote service facilities. Section 303.2(c)(1) is amended to clarify that the notice referred to in the fourth sentence is the notice to the appropriate regional director that the applicant intends to establish an additional remote service facility or to relocate an existing facility.

Section 303.6 Applications Procedures

Notice of filing an application. Section 303.6(f) has been revised to provide that an insurance application in connection with the acquisition of an institution either in default, or in danger of default, need not be published.

Section 303.7 Delegation of Authority to the Director of the Division of Supervision, Associate Directors, Regional Directors and Deputy Regional Directors To Act on Certain Applications, Requests, and Notices of Acquisition of Control

Branch and relocation applications. Section 303.7(a)(1), which addresses branch and relocation applications, currently does not expressly include applications of domestic banks to establish foreign branches as applications upon which a delegate may act. Section 303.8(a)(1) is amended to expressly incorporate foreign branches of domestic banks as an additional type of application which may be acted upon by the Director, associate directors, regional directors and deputy regional directors. Although applications for consent to establish foreign branches were intended to be included in the earlier revision, an express reference to them was inadvertently omitted, so it is now being made clear that they are included in the delegations relating to branch applications generally.

Trust and other banking power applications. Section 303.7(a)(2), which discusses applications for consent to exercise trust and other banking powers, currently does not include a provision regarding standard conditions which may be imposed by a delegate in approving applications. Section 303.7(a)(2) is amended by adding a phrase at the end of paragraph (a)(2)(i) to include the "standard conditions" provision. Delegates may thus approve trust and other banking power applications subject to the usual standard conditions.

Merger applications. Section 303.7(b), which provides for delegates to approve applications for merger transactions, is being clarified. Paragraph (b)(1) is amended to clarify that, in conformity with the language of the Bank Merger Act, the delegations of authority apply not only to mergers or consolidations of insured depository institutions where the resulting institution is a state nonmember bank, but also to mergers of an insured depository institution with any uninsured depository institution or other uninsured institution.

Paragraph 303.7(b) is further amended by adding a new paragraph (b)(5). Paragraph (b)(5) makes it clear that the authority to approve a merger application may not be subdelegated to a regional director or deputy regional director where a protest has been filed under CRA. Such cases are to be forwarded to Washington, where the Director or an associate director has authority to take action.

Section 303.7(b) is also amended by adding paragraph (b)(6) to clarify the Board's intention that the delegation of authority criteria relative to market share percentages do not apply when the merging institutions operate in different relevant market areas. When the merging institutions are ones which operate in different market areas, the delegations of authority are exercisable regardless of the market share percentages. This amendment reflects the Board's determination that market share and competitive factor limitations are not necessary when the merger presents no market consequences.

Section 303.7(b) is also amended by adding paragraph (b)(7). Paragraph (b)(7) reflects the Board's intention that delegated authority for mergers may only be exercised upon favorable resolution of the statutory factors contained in section 18(c)(5) of the FDI Act, and that delegated authority for mergers may only be exercised after compliance with the National Environmental Policy Act and the Community Reinvestment Act.

Paragraph (b)(8) reflects the intent of the Board of Directors that a delegate may approve a merger-type application subject to standard conditions.

Deposit insurance applications. Section 303.7(d), which deals with deposit insurance applications, is amended to delete the general reference to the FDIC's policy statement "Applications for Deposit Insurance." The particular requisites to obtaining approval of a deposit insurance application are unchanged; the only change is the reference to the FDIC policy statement. Section 303.7(d) is also amended by adding to paragraph (d)(1)(iii) a parenthetical which directs the reader to refer to the newly added definition of the term "protest".

Section 303.7(d)(2), which states that authority is delegated to the division and regions to approve applications for deposit insurance by operating noninsured or nonfederally insured institutions, is redundant. For purposes of the FDIC's rules and regulations, "noninsured depository institution" means any institution not insured pursuant to the provisions of the FDI Act. Therefore, the phrase "noninsured or nonfederally insured institutions" is amended to read "noninsured depository institutions." Further, § 303.7(d)(2) could be read as excluding applications of state and privately insured institutions from those applications upon which a delegate may act. Section 303.7(d)(2) is therefore amended to clarify that a delegate may act on deposit insurance applications by state or privately insured institutions.

"Section 19" applications. Section 303.7(e) is amended to add paragraph (e)(3) to permit a delegate to impose two conditions for approval of section 19 applications. The two conditions that a delegate may impose are that an employee shall be bonded to the same extent as others in similar positions and, when deemed necessary by the appropriate regional director, that the prior consent of the regional director shall be required for any proposed significant changes in duties and/or responsibilities of the individual occurring within 12 months subsequent to the approval of the application.

Phantom merger applications. Section 303.7(f)(1)(v) is amneded to provide that a delegate may approve phantom bank mergers and corporate reorganizations subject to the applicant fulfilling "standard conditions." A delegate may also impose any other condition to which the applicant has agreed in writing.

Management interlock requests. Section 303.7(f)(1)(vii) currently provides that the delegations of authority apply to requests to establish a management official interlock pursuant to 12 CFR 348.4(b)(3). One exemption is provided by 12 CFR 348.4(b)(3) under which an otherwise prohibited interlocking relationship can be formed. The amendment to § 303.7(f)(1)(vii) broadens the scope of the existing delegation by providing that regional directors and deputy regional directors, where confirmed in writing by the Director, have authority to approve requests pursuant to any of the five exemptions allowed in 348.4(b) and that they only have authority to deny a request pursuant to the exemption embodied in § 348.4(b)(3). Section 303.7f(1)(vii) is further broadened to provide delegations for section 205(8) of the Depository Institutions Management Interlocks Act.

Section 303.7(f)(2) is amended to provide the Director and an associate director, where confirmed in writing by the Director, with the authority to deny requests pursuant to the other exemptions listed in § 348.4(b).

Applications to terminate or modify removal or prohibition orders. Section 303.7(f) is amended by adding a new paragraph (3) delegating authority to approve or deny applications to terminate or modify section 8(e) removal and prohibition orders and to obtain the prior written approval of the FDIC to participate in the conduct of the affairs of a bank by an individual subject to a removal or prohibition order. Under this

new provision, an application to terminate a section 8(e) removal or

Associate General Counsel for Compliance and Enforcement.

Regulatory Flexibility Analysis

Because no notice of proposed

§ 303.0 Scope and definitions.

(a) *Scope.* This part prescribes:

director (Supervision). In the event the title of deputy regional director or

or prohibition issued under section 8(e)(3) of the Act (12 U.S.C. 1818(e)(3)).

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new provision, an application to terminate a section 8(e) removal or prohibition order and an application to obtain the prior written approval of the FDIC is delegated to the Director or associate director. The Director or associate director may approve or deny such an application only in conjunction with the concurrent certification by the Deputy General Counsel for Supervision and Legislation or the Associate General Counsel for Compliance and Enforcement.

Section 303.8 Other Delegations of Authority.

Section 303.8(a), relating to extensions of time, is amended by adding a new paragraph (a)(2). Paragraph (a)(2) clarifies that a delegate may exercise authority to deny a request for an extension of time within which to perform acts or meet conditions required by prior FDIC action on an application only if the delegate had authority to deny the underlying application. Considering that the denial of an extension of time has the same practical effect as a denial of the original application, this clarification precludes the delegate from indirectly denying an application that he or she could not have denied directly.

Section 303.8(e) is revised to expand the delegations of authority to permit delegates to furnish reports to the Board of Governors of the Federal Reserve System or the Comptroller of the Currency on the competitive factors involved in any merger required to be approved by either of those agencies, with the exception of a proposed merger in which the division is of the opinion that the transaction would have a substantially adverse effect on competition. Currently, § 303.8(e) provides that delegates may furnish reports on the competitive factors if the division is of the view that the proposed merger would have no significant effect on competition. The expansion of the delegated authority is viewed by the Board to be desirable in the interests of efficiency and economy.

Section 303.9 Delegation of Authority To Act on Certain Enforcement Matters

Section 303.9 is amended to reflect a reorganization of the FDIC Legal Division by changing: Deputy General Counsel for Regional and Corporate Affairs to Deputy General Counsel for Financial Institutions Operations and Liquidations; Deputy General Counsel for Litigation, Legislation and Regulation to Deputy General Counsel for Supervison and Legislation; and Assistant General Counsel for Compliance and Enforcement to Associate General Counsel for Compliance and Enforcement.

Section 303.9(e)(2) is amended to provide that the certification of an order issued pursuant to section 8(g) of the Act, 12 U.S.C. 1818(g), by the Deputy General Counsel for Supervision and Legislation or the Associate General Counsel for Compliance and Enforcement will also certify that the section 8(g) order is enforceable in a United States District Court pursuant to 12 U.S.C. sections 8(i) and (j).

A new provision is added to 12 CFR 303.9 concerning delegations of authority in investigations undertaken pursuant to section 10(c) of the Act, 12 U.S.C. 1820(c). The new provision appears as § 303.9(i) and delegates authority to the Director of the Division of Supervision or his designee to issue a section 10(c) Order of Investigation in conjunction with the General Counsel or his designee. It should be noted that the Director and the General Counsel or their respective designees must issue the Order concurrently.

Another new provision, 12 CFR 303.9(k), is added. This provision concerns the delegation of authority to the Director or an associate director to accept, deny, or enter into negotiations where a unilateral settlement offer has been made by a depository institution or any institution-affiliated party. This authority can only be exercised upon the concurrent certification by the Deputy General Counsel for Open Bank Regulation and Legislation or the Associate General Counsel for Compliance and Enforcement.

Other revisions to 12 CFR 303.9 involve making all of the section numbers correspond with the above-described changes, and changing the word "petitions" in 12 CFR 303.9(j)(2)(ii) to "applications."

Section 303.10 Applications and Enforcement Matters Where Authority is not Delegated

Section 303.10(b) is amended by deleting the old paragraph (b)(1)(iii) and adding a new paragraph (b)(1)(iii) to clarify that the Board retains authority to act on bank mergers (including phantom mergers and reorganizations) when the application falls within the "probable failure" or "emergency" provisions of section 18(c)(6) of the Act, or when the resulting bank does not meet the minimum capital requirements of part 325.

Section 303.10(b)(2)(i) is amended to add that, regardless of whether an applicant has agreed in writing to comply with any conditions imposed by the FDIC, the standard conditions listed in § 303.7(d)(4) may be imposed.

Regulatory Flexibility Analysis

Because no notice of proposed rulemaking is required under section 553 of the Administrative Procedure Act or any other law, the Regulatory Flexibility Act (5 U.S.C. 601–602) does not apply.

List of Subjects in 12 CFR Part 303

Applications, Bank deposit insurance, Banks/banking, Federal Deposit Insurance Corporation, Savings and loan associations, Savings associations.

For the reasons set out in the preamble and pursuant to the FDIC's authority under Public Law No. 101–73, 103 Stat. 183 (August 9, 1989), title 12, chapter III, subchapter A, part 303 of the Code of Federal Regulations is amended as follows:

PART 303—APPLICATIONS, REQUESTS, SUBMITTALS, DELEGATIONS OF AUTHORITY, AND NOTICES OF ACQUISITION OF CONTROL

1. The table of contents for §§ 303.0 through 303.12 is revised to read as follows:

Sec.

303.0 Scope and definitions.
303.1 Application by nonmember bank, state savings association, and Federal savings association for deposit insurance.
303.2 Application by insured state nonmember bank to establish a branch or move its main office or branch.
303.3 Application for conversion, merger, consolidation, assumption and sale of asset transactions.
303.4 Change in bank control.
303.5 Insurance fund conversions and other applications.
303.6 Application procedures.
303.7 Delegation of authority to the Director of the Division of Supervision and to the associate directors, regional directors and deputy regional directors to act on certain applications, requests, and notices of acquisition of control.
303.8 Other delegations of authority.
303.9 Delegation of authority to act on certain enforcement matters.
303.10 Applications and enforcement matters where authority is not delegated.
303.11 Confirmation, limitations, rescissions and special cases.
303.12 OMB control number assigned pursuant to the Paperwork Reduction Act.

2. The authority citation for part 303 is revised to read as follows:

Authority: Pub. L. No. 101–73, 103 Stat. 183 (August 9, 1989); 12 U.S.C. 378, 1813, 1815, 1816, 1817(j), 1818, 1819 ("Seventh") and "Tenth"), 1828, 1829; 15 U.S.C. 1607.

3. Sections 303.0 through 303.12 are revised as follows:

§ 303.0 Scope and definitions.

(a) *Scope.* This part prescribes:

(1) Where applications, requests, and notices of acquisition of control (hereinafter, collectively, "applications") should be filed;

(2) The contents of the application when the application is to be made by letter; and

(3) The location where forms and instructions may be obtained when the application is to be made on a form. Part 303 also prescribes procedures to be followed by both the FDIC and applicants during the process of consideration of an application. Finally, this part sets forth delegations of authority by the FDIC's Board of Directors to the Director of the Division of Supervision, and to the associate directors of the Division of Supervision and to the regional directors and deputy regional directors to act on certain applications and other matters and the conditions, where applicable, that limit such delegations.

(b) *Definitions.* For purposes of this part 303:

(1) The terms "Corporation", or "FDIC" shall mean the Federal Deposit Insurance Corporation.

(2) The term "division" shall mean the Division of Supervision.

(3) The term "Director" shall mean the Director of the Division of Supervision, or in the event the title of Director becomes obsolete, any official of comparable authority within the division.

(4) The term "associate director" shall mean any associate director of the Division of Supervision, or in the event the title of associate director becomes obsolete, any official of comparable authority within the division.

(5) The term "regional director" shall mean any regional director of the Division of Supervision, or in the event the title "regional director" becomes obsolete, any official of comparable authority within the division.

(6) The term "regional counsel" shall mean a regional counsel (Supervision), or in the event the title of regional counsel becomes obsolete, any official of comparable authority within the Office of the General Counsel. The duties and responsibilities of a regional counsel may be performed by the associate general counsel or a counsel in the Compliance and Enforcement Section of the Office of the General Counsel in the FDIC's Washington, DC office.

(7) The term "deputy regional director" shall mean a deputy regional director (Supervision), or in those FDIC regions where there is no deputy regional director, an assistant regional director (Supervision). In the event the title of deputy regional director or assistant regional director becomes obsolete, the term "deputy regional director" shall then mean any official of comparable authority within the same FDIC region of the division.

(8) The terms "appropriate FDIC region", "appropriate FDIC regional office," "appropriate regional director", "appropriate deputy regional director" and "appropriate regional counsel" shall refer to the FDIC region, the regional director (Supervision), the deputy regional director (Supervision), and the regional counsel (Supervision), respectively, of the FDIC region in which:

(i) The applicant depository institution, the proposed or newly organized nonmember bank or savings association, the insured branch of a foreign bank, the resulting or assuming depository institution, or the bank in which stock is being acquired, as appropriate, is or will be located, or

(ii) A depository institution.

(A) which is the subject of an administrative action; or

(B) with which an individual who is the subject of an administrative action is associated, is located.

(9) The term "the Act" shall mean the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*).

(10) The term "order of correction" shall mean findings of unsafe or unsound practices or condition and an order of correction issued under section 8(a) of the Act (12 U.S.C. 1818(a)).

(11) The term "section 8(a) order" shall mean an order terminating insured status under section 8(a) of the Act (12 U.S.C. 1818(a)).

(12) The term "notice of charges" shall mean a notice of charges and of hearing setting forth the allegations of unsafe or unsound practices and/or violations and fixing the time and place of the hearing issued under section 8(b) of the Act (12 U.S.C. 1818(b)).

(13) The terms "section 8(b) order" and "cease-and-desist order" shall mean a final order to cease and desist issued under section 8(b) of the Act (12 U.S.C. 1818(b)).

(14) The terms "section 8(c) order" and "temporary cease-and-desist order" shall mean a temporary order to cease and desist issued under section 8(c) of the Act (12 U.S.C. 1818(c)).

(15) The term "section 8(e) order" shall mean a final order of removal or prohibition issued under section 8(e) of the Act (12 U.S.C. 1818(e)).

(16) The term "section 8(e)(3) order" and "temporary section 8(e) order" shall mean a temporary order of suspension or prohibition issued under section 8(e)(3) of the Act (12 U.S.C. 1818(e)(3)).

(17) The term "section 8(g) order" shall mean an order of suspension or prohibition issued under section 8(g) of the Act (12 U.S.C. 1818(g)).

(18) The term "remote service facility" shall mean an automated teller machine, cash dispensing machine, point-of-sale terminal, or other remote electronic facility where deposits are received, checks paid, or money lent.

(19) The term "notice of assessment of civil money penalties" shall mean a notice of assessment of civil penalties issued pursuant to section 7(j)(15), 8(i) or 18(j) of the Act (12 U.S.C. 1817(j)(15), 1818(i), or 1828(j)), section 106(b) of the Bank Holding Company Act (12 U.S.C. 1972), or section 910(d) of the International Lending Supervision Act of 1983 (12 U.S.C. 3909).

(20) The term "final order to pay" shall mean an order to forfeit and pay civil money penalties which has become final and which has been issued pursuant to section 7(j)(15), 8(i), or 18(j) of the Act (12 U.S.C. 1817(j)(15), 1818(i), or 1828(j)), section 106(b) of the Bank Holding Company Act (12 U.S.C. 1972), or section 910(d) of the International Lending Supervision Act of 1983 (12 U.S.C. 3909).

(21) The term "book capital" shall mean total equity capital (comprised of perpetual preferred stock, common stock, surplus, undivided profits and capital reserves) plus allowance for loan and lease losses, as those items are defined in the instructions of the Federal Financial Institutions Examination Council ("FFIEC") for the preparation of Consolidated Reports of Condition and Income for insured banks.

(22) The term "adjusted primary capital" shall mean adjusted primary capital as calculated and reflected in the FDIC's Reports of Examination.

(23) The term "total assets" shall mean total assets plus allowance for loan and lease losses as those terms are defined in the instructions of the FFIEC for the preparation of Consolidated Reports of Condition and Income for insured banks.

(24) The term "adjusted part 325 total assets" shall mean adjusted part 325 total assets as calculated as reflected in the FDIC's Reports of Examination.

(25) The term "protest" shall include any comment from the public which raises a negative issue relative to the Community Reinvestment Act, whether or not it is labeled a "protest" and whether or not a hearing is requested; however, the term "protest" shall not include any such comment which the regional director determines to be

frivolous, or to have been filed for competitive reasons by a financial

branch [8] (including a remote service facility) or to move its main office or

giving full particulars of the proposal, including the matters listed in paragraph

agreements or proposed agreements relating thereto, including the charter or

power to vote ten percent or more of a class of voting securities of an insured

acquired is located. Promptly thereafter, the acquiring person(s) shall send a

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frivolous, or to have been filed for competitive reasons by a financial institution, or to have been filed primarily as a means of delaying action on the application, or any comment which raises negative Community Reinvestment Act issues that have been resolved as between the commenter and the applicant.

(28) The term "standard conditions" refers to conditions that any delegate may include as a matter of routine in an order approving an application, whether or not the applicant has agreed to their inclusion. The following conditions, or variations thereof, are "standard conditions":

(i) That the applicant has obtained all necessary and final approvals from the appropriate state authority or other applicable authority;

(ii) That if the transaction does not take effect within a specified time limit, or unless, in the meantime, a request for an extension of time has been approved, the consent granted shall expire at the end of the said time period;

(iii) That until the conditional commitment of the FDIC becomes effective, the FDIC retains the right to alter, suspend or withdraw its commitment should any interim development be deemed to warrant such action; and

(iv) In the case of a "merger transaction" (as defined in § 303.7(b)(1)), including a phantom merger or reorganization, that the proposed transaction not be consummated before the thirtieth calendar day after the date of the order approving the merger.

(27) Any use of the masculine, feminine, or neuter gender shall be read as encompassing all three, if such use would be appropriate.

§ 303.1 Application by nonmember bank, state savings association, and Federal savings association for deposit insurance.

Application for deposit insurance by an existing or proposed nonmember bank,[1] state savings association or Federal savings association should be filed with the appropriate regional director. The relevant application forms and instructions may be obtained from the appropriate FDIC regional office.

§ 303.2 Application by insured state nonmember bank to establish a branch or move its main office or branch.

(a) Application by an insured state nonmember bank (except a District bank) to establish and operate a new branch [2] (including a remote service facility) or to move its main office or branch should be filed with the appropriate regional director. The application shall be mailed or delivered to the regional director on the date on which the notice required in § 303.6(f)(1) is published or not more than 30 days subsequent to the first required publication of notice. The application shall be in letter form and shall contain the following information:

(1) The exact location of the proposed site, including street address (unless one has not been assigned to the location);

(2) Details concerning any involvement in the proposal by an insider (a director, an officer, or a shareholder who directly or indirectly controls 5 or more percent of any class of the applicant's outstanding voting stock, or the associates and interests of any such person) of the bank, including any financial arrangements relating to fees, the acquisition of property, leasing of property, and construction contracts;

(3) The impact of the proposal on the human environment, specifically, information on compliance with local zoning laws and regulations and the effect on traffic patterns;

(4) A statement as to whether or not the site is included in or is eligible for inclusion in the National Register of Historic Places, including evidence that clearance has been obtained from the State Historic Preservation Officer;

(5) Comments on any changes in services to be offered, the community to be served, or any other effect the proposal may have on the applicant's compliance with the Community Reinvestment Act; and

(6) The name and address of and the date of publication in the newspaper in which notice required by § 303.6(f)(1) is published.

In cases in which additional information is necessary for evaluation of the application, the applicant may be required to furnish specific information on an individual basis.

(b) The appropriate regional director may delay processing, including extending the comment period, for good cause.

(c) *Special procedures for remote service facilities.* (1) For the purpose of this section, "establishing" means owning or leasing a remote service facility, either individually or jointly. An establishing bank or a foreign bank with an insured state branch shall file a letter with the appropriate regional director giving full particulars of the proposal, including the matters listed in paragraph (a) of this section, to establish an initial remote service facility and comply with the provisions of § 303.6(f). Once this application has been approved, an establishing bank or a foreign bank with an insured state branch may establish additional remote service facilities or relocate existing facilities without formal application by notifying the appropriate regional director in writing of the intended action and complying with the provisions of § 303.6(f). This notification shall include the matters listed in § 303.2(a) of this part and shall be deemed to be an application for the purposes of §§ 303.6, 303.7, and 303.11. In the case of additional remote service facilities, unless notified otherwise within 15 days of the last publication of notice as required by § 303.6(f) or within 15 days after the regional office's receipt of the notice, whichever is later, or in the case of relocations, unless otherwise notified within 21 days of the last publication of notice as required by § 303.6(f) or within 21 days after the regional office's receipt of the notification, whichever is later, the additional remote service facility or relocation will be considered approved. If it is determined that the proposal warrants further consideration, the regional director will notify the applicant within the 15- or 21-day period that the remote service facility should not be established or relocated until further action is taken by the FDIC.

(2) An establishing bank or foreign bank with an insured state branch having one or more remote service facilities established under preexisting regulations may establish additional remote service facilities or relocate existing remote service facilities without formal application by following the procedures set forth in paragraph (c)(1) of this section.

§ 303.3 Application for conversion, merger, consolidation, assumption and sale of asset transactions.

(a) *Merger, consolidation, asset acquisition or assumption transaction between insured depository institutions.* Application by an insured depository institution for the consent of the Corporation to merge or consolidate with, acquire the assets of, or assume the liability to pay any deposits made in, another insured depository institution—when the resulting or assuming depository institution is to be an insured state nonmember bank (except a District bank or a savings bank supervised by the Director of the Office of Thrift Supervision), together with copies of all agreements or proposed agreements relating thereto, including the charter or articles of incorporation of the resulting or assuming depository institution, should be filed with the appropriate regional director.

(b) *Merger of Insured depository institution with noninsured bank or institution.* Application by an insured depository institution for the consent of the Corporation to merge or consolidate with a noninsured bank or institution, or to convert into a noninsured institution, or to assume liability to pay any deposits made in, or similar liabilities of, any noninsured bank or institution, or to transfer assets to any noninsured bank or institution in consideration of the assumption of liability for any portion of the deposits made in such insured depository institution, together with copies of all agreements or proposed agreements relating thereto, should be filed with the appropriate regional director.

(c) *Conversion with diminution of capital or surplus.* Application for the consent of the Corporation to convert into an insured state nonmember bank (except a District bank), when the conversion will result in the converted bank's having less capital stock or surplus than the converted bank at the time of the shareholders' meeting approving such conversion, together with copies of the charter and/or articles of association of the converted bank, should be filed with the appropriate regional director.

(d) The appropriate application forms and instructions, as well as instructions concerning notice to depositors, may be obtained upon request from the office of said regional director.

§ 303.4 Change in bank control.

(a) *Acquisition of control.*[3] Under the Change in Bank Control Act of 1978, acquisitions by a person [4] or persons acting in concert with the power to vote 25 percent or more of a class of voting securities of an insured depository institution, unless exempted, require prior notice to the Corporation. In addition, a purchase, assignment, transfer, pledge, or other disposition of voting stock through which any person will acquire ownership, control, or the power to vote ten percent or more of a class of voting securities of an insured depository institution will be presumed to be an acquisition by such person of the power to direct that institution's management or policies if:

(1) The institution has issued any class of securities subject to the registration requirements of section 12 of the Securities Exchange Act of 1944 (15 U.S.C. 78*l*); or

(2) Immediately after the transaction, no other person will own a greater proportion of that class of voting securities.

Other transactions resulting in a person's control of less than 25 percent of a class of voting shares of an insured depository institution would not result in control for purposes of the Act. An acquiring person may request an opportunity to contest any presumption established by this paragraph (a) of this section with respect to a proposed transaction. The Corporation will afford the person an opportunity to present views in writing, or, where appropriate, orally before its designated representatives either at informal conference discussions or at informal presentations of evidence.

(b) *Notices.* (1) Notice of a proposed acquisition of control should be filed with the regional director of the FDIC region in which the depository institution in which stock is being acquired is located. The FDIC will not accept a notice unless the information provided is responsive to every item specified in paragraph 6 of the Change in Bank Control Act of 1978 (12 U.S.C. 1817(j)(6)) and every item prescribed in the appropriate FDIC forms. With respect to personal financial statements required by paragraph 6(b) of the Change in Bank Control Act of 1978, an acquiring person may include a current statement of assets and liabilities, as of a date not more than ninety days prior to the date the notice is filed, a brief income summary, and a statement of material changes since the date of the statement. The appropriate regional director, the Director of the Division of Supervision, or the Board of Directors may require additional information with respect to personal financial statements.

(2)(i) Except as otherwise provided in paragraph (b)(2)(ii) or (b)(2)(iii) of this section, within ten days after receiving confirmation that the appropriate FDIC regional office has accepted the notice, the acquiring person(s) shall publish an announcement of such acceptance in the business section of a newspaper having general circulation in the community in which the home office of the depository institution whose stock is sought to be acquired is located. Promptly thereafter, the acquiring person(s) shall send a copy of the newspaper announcement and the publisher's affidavit of publication to the regional director of the FDIC region in which the subject depository institution is located. The newspaper announcement shall contain the name(s) of the proposed acquirer(s), the name of the depository institution whose stock is sought to be acquired, and the date of acceptance by the FDIC of the notice of acquisition of control. The announcement shall also state that any person wishing to comment on the proposed change in control may do so by submitting written comments to the regional director of the FDIC at (give address of the regional office) within twenty days following the required newspaper publication or, if the FDIC has shortened the public comment period pursuant to paragraph (b)(3) of this section, within such shorter period.

(ii) In a community in which there is no daily or weekly community newspaper, the acquiring person(s) may satisfy the publication requirement contained in paragraph (b)(2)(i) of this section by publishing the required newspaper announcement in either a county-wide newspaper (in the county in which the bank's home office is located) or, if there is no county-wide newspaper, in a state-wide newspaper.

(iii) In the case of a notice filed in contemplation of a public tender offer subject to the requirements of the Securities Exchange Act of 1934 (15 U.S.C. 78m and 78n) and the FDIC's regulations governing tender offers (12 CFR 335.501–335.530), the acquiring person(s) shall publish the required newspaper announcement not later than the earliest of:

(A) The commencement of the tender offer under § 335.502 of the FDIC's regulations (12 CFR 335.502);

(B) Other public announcement of the tender offer; or

(C) Thirty-four days after the FDIC's acceptance of the notice of acquisition of control.

(3)(i) In acting upon a proposed change in control, the FDIC shall consider all public comments received within twenty days following the required newspaper publication. At the FDIC's option, comments received after this twenty-day period may be, but need not be, considered.

(ii) If the FDIC determines in writing that the newspaper publication or comment solicitation requirements of this paragraph would seriously threaten the safety or soundness of the depository institution to be acquired, including situations where the FDIC

[1] A nonmember bank is a bank which is not a member of the Federal Reserve System.

[2] The term "branch" includes any "domestic branch" or "foreign branch" as those terms are defined in section 3(o) of the Act, as amended (12 U.S.C. 1813(o)).

[3] Control is defined in section 7(j)(8)(B) of the Act as "the power, directly or indirectly, to direct the management or policies of an insured bank or to vote over 25 percent or more of any class of voting securities of an insured bank." 12 U.S.C. 1817(j)(8)(B).

[4] Person is defined in section 7(j)(8)(A) of the Act as "an individual or a corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity not specifically listed herein." 12 U.S.C. 1817(j)(8)(A).

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must act immediately in order to prevent the probable failure of the bank to be acquired, then the FDIC may:

(A) Waive the publication requirement;

(B) Waive the public comment solicitation requirement; or

(C) Act on the proposed change in control prior to the expiration of the public comment period.

(iii) In other circumstances, for good cause, the FDIC may shorten the public comment period to a period of not less than ten days. Such good cause will exist only if the FDIC determines that circumstances beyond the control of the acquiring person or persons warrant a shorter period.

(4) A notice of acquisition of control that is filed in contemplation of a public tender offer subject to sections 13(d) and 14(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m and 78n) and the FDIC's regulations governing tender offers (12 CFR 335.501–335.530) may be given confidential treatment for up to thirty-four days after the notice is accepted if:

(i) The filing party requests confidential treatment under this rule and represents that a public announcement of the tender offer and the filing of appropriate forms with the FDIC will occur within thirty-four days from the acceptance of the notice; and

(ii) The FDIC determines, in its discretion, that it is in the public interest to grant confidential treatment. In its discretion, the FDIC may grant confidential treatment under other circumstances when consistent with the purposes of the Change in Bank Control Act of 1978.

(5) Nothing in this regulation shall affect any obligation which the acquiring person(s) may have to comply with the federal securities laws or any other laws.

(6)(i) Whenever a notice of a proposed acquisition of control is not filed in accordance with the Change in Bank Control Act of 1978 and these regulations, the acquiring person(s) shall, within ten days of being so directed by the FDIC, publish an announcement of the acquisition of control in the business section of a newspaper having general circulation in the community in which the home office of the depository institution involved is located. In a community in which there is no daily or weekly community newspaper, the required newspaper announcement may be published in a county-wide newspaper (in the county in which the depository institution's home office is located) or, if there is no county-wide newspaper, in a statewide newspaper.

(ii) The newspaper announcement shall contain the name(s) of the acquire(s), the name of the depository institution involved, and the date of the acquisition of the stock. The announcement shall also contain a statement indicating that the FDIC is currently reviewing the acquisition of control. The announcement shall also state that any person wishing to comment on the change in control may do so by submitting written comments to the regional director of the FDIC at (give address of the regional office) within twenty days following the required newspaper publication.

(c) *Exempt transactions.* The following transactions are not subject to the prior notice requirements of the Change in Bank Control Act of 1978:

(1) The acquisition of additional shares of an insured depository institution by a person who continuously since March 9, 1979, held power to vote 25 percent or more of the voting shares of that institution, or by a person who has acquired and maintained control of that institution after complying with the procedures of the Change in Bank Control Act;

(2) The acquisition of additional shares of an insured depository institution by a person who under paragraph (a) of this section would be presumed to have controlled that institution continuously since March 9, 1979, if:

(i) The transaction will not result in that person's direct or indirect ownership or power to vote 25 percent or more of any class of voting securities of the institution; or

(ii) In other cases, the Corporation determines that the person has controlled the institution since March 9, 1979;

(3) The acquisition of shares in satisfaction of a debt previously contracted in good faith or through testate or intestate succession or bona fide gift; *Provided,* The acquirer advises the appropriate regional director within thirty days after the acquisition and provides such of the information specified in paragraph 6 of the Change in Bank Control Act as the regional director requests;

(4) A transaction subject to approval under section 3 of the Bank Holding Company Act, section 18 of the Act or section 10 of the Home Owners' Loan Act;

(5) A transaction described in sections 2(a)(5) or (3)(a)(5)(A) or (B) of the Bank Holding Company Act, (12 U.S.C. 1841(a)(5) or 1842 (a)(5)) by a person there described;

(6) A customary one-time proxy solicitation and receipt of pro-rata stock dividends; and

(7) The acquisition of shares in foreign banks which have an insured branch or branches in the United States; *Provided, however,* That this exemption does not extend to the reports and information required under sections 7(j)(9), (10), and (12) of the Act.

§ 303.5 Insurance fund conversions and other applications.

(a) *Conversion involving transfer of deposits between the Savings Association Insurance Fund ("SAIF") and the Bank Insurance Fund ("BIF").* Application by any depository institutions to participate in a conversion transaction involving the transfer of deposits from the SAIF Fund to the BIF Fund or *vice versa* should be filed with the appropriate regional director. The application shall be in letter form, signed by representatives of each institution participating in the transaction, and shall contain the following information:

(1) A description of the transaction;

(2) A statement of condition of each institution as of the date of application;

(3) A statement of condition of each institution as of May 1, 1989, with a notation as to the amount of net interest credited to total deposits during the period beginning May 1, 1989, and ending on the expected date of transfer;

(4) The amount of deposits involved in the conversion transaction;

(5) A pro forma balance sheet and income statement for each institution upon consummation of the transaction;

(6) A listing of any other conversion in which either institution has participated since August 9, 1989, or any other conversion transaction in process at the time of filing; and

(7) Any other information that the regional director may from time to time require.

(b) Except as otherwise provided by rule or regulation, all applications, requests, and submittals for which no form of application has been prescribed by the Corporation should:

(1) Be in writing;

(2) (i) Be signed by the president, cashier, or managing officer of the depository institution in the case of:

(A) An application by a depository institution whose insured status has been terminated under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) for permission to continue or resume its status as an insured depository institution; or

(B) An application made by an insured depository institution under part 328 of this title; or

(ii) Be signed by the applicant or a duly authorized agent in all other cases;

(3) Contain a statement of the applicant's interest therein, a complete and concise statement of the action requested, and the reasons and facts relied upon as the basis for such requested action; and

(4) (i) Be addressed to the appropriate regional director in the case of an application, request, or notice of acquisition of control from or relating to a particular bank or institution; or

(ii) The Executive Secretary of the Corporation at the Corporation's Washington, DC headquarters in all other cases.

The applicant shall furnish such other pertinent information as may be required by the Corporation. Forms to be executed in conjunction with an application for consent to exercise trust powers may be obtained from the appropriate FDIC regional office.

(c) In addition to the foregoing, an application by a depository institution whose insured status has been terminated under section 6 of the Act for permission to continue or resume its status as an insured depository institution should:

(1) Be accompanied by a certified copy of the resolution of its board of directors; and

(2) Contain a statement that the depository institution's insured status has been terminated (including the date thereof and the basis therefor) and that the insurance of its deposits has not ceased.

(d) Applications under § 347.4 of this chapter to acquire or hold stock or other evidence of ownership in a foreign bank or other financial entity shall be submitted to the appropriate regional director in letter form and, unless otherwise directed by the Corporation, shall contain full information concerning the foreign bank or other financial entity including (unless previously furnished):

(1) The cost, number, class of shares to be acquired, and the proposed carrying value of such shares on the books of the insured state nonmember bank;

(2) A recent balance sheet and income statement of the foreign bank or other financial entity;

(3) A brief description of the foreign bank's or other financial entity's business (including full information concerning any direct or indirect business transacted in the United States);

(4) Lists of directors and principal officers (with address and principal business affiliation of each) and of all shareholders known to the issuing bank holding 10 percent or more of any class of the foreign bank's or other financial entity's stock or other evidence of ownership, and the amount held by each; and

(5) Information concerning the rights and privileges of the various classes of shares outstanding.

§ 303.6 Application procedures.

(a) *Scope of section.* Paragraphs (f) through (n) of this section apply to:

(1) Applications for deposit insurance by proposed new depository institutions or operating non-insured institutions;

(2) Applications by insured state nonmember banks to establish branches, including remote service facilities; [5]

(3) Applications by insured nonmember banks to relocate their main or branch offices, including remote service facilities;

(4) Applications to merge or to consolidate with, acquire the assets of, or assume the liability to pay any deposits made in, a bank or institution, when the resulting or assuming depository institution is to be an insured state nonmember bank, and all other applications to merge or to consolidate with, or to assume liabilities, which require the Corporation's prior approval under the Bank Merger Act (12 U.S.C. 1828(c)); [6] and

(5) Any other applications, requests or submittals which the Board of Directors of the FDIC in its sole discretion deems appropriate.

In the case of applications, requests, or submittals which come within § 303.6(a)(5), the applicant will be notified at the time its application is accepted for filing that the procedures set forth in this section shall be followed in connection therewith.

(b) *Investigations and examinations.* With respect to all applications, requests, or submittals, the Board of Directors, or the Director, the associate director or the appropriate regional director or deputy regional director acting under delegated authority, may require any investigation or examination, or both, to be performed as deemed appropriate. Upon receipt of the report of any investigation or examination and any recommendations based on the report, the Board of Directors, or the Director, the associate director, the regional director, or the deputy regional director acting within the scope of delegated authority, will take any action determined necessary or appropriate under the circumstances.

(c) *Opportunity to present views.* With respect to any application, the Corporation may afford the applicant or other properly interested persons, including government agencies, an opportunity to present views orally or in writing before or to its designated representative or representatives, either at informal conference discussions or at informal presentations of evidence.

(d) *Notice of disposition of applications.* Prompt notice will be given of the grant or denial, in whole or in part, of any written application, petition, or other request of any interested person made in connection with any agency proceeding. In the case of a denial of an application by a federal savings association for deposit insurance, such notice will be sent to the Director of the Office of Thrift Supervision, and will be accompanied by a written statement giving specific reasons for the Corporation's determination with reference to the factors described in paragraphs (1), (2), (3), (4) and (5) of section 6 of the Act (12 U.S.C. 1816). In the case of any other denial, except in affirming a prior denial, or where the same is self-explanatory, such notice will be accompanied by a simple statement of the reasons therefor.

(e) *Opportunity to petition for reconsideration of a denied application, petition, or other request.* (1) Within 15 days of its receipt of notice that its application, petition, or request has been denied, any applicant may petition the FDIC for reconsideration of such application, petition, or request (except an application, petition or request already previously denied upon reconsideration). The petition must be in writing and should:

(i) Specify reasons why the FDIC should reconsider its action; and

(ii) Set forth relevant, substantive information that for good cause was not previously set forth in the application, petition, or request to be reconsidered.

The petition should be filed with the appropriate regional director. If a particular insured depository institution or insured branch of a foreign bank was not the subject of the application.

[5] For purposes of this section, unless the Corporation determines otherwise, an off-premises electronic facility which receives deposits for more than one depository institution is deemed to constitute a branch only of the bank or banks which own or lease the facility.

[6] Except as otherwise provided in paragraph (f)(1) of this section, the provisions of this § 303.6 shall not be applicable to any proposed merger or assumption transaction which the Board of Directors of the Corporation determines must be acted upon immediately to prevent the probable default of one of the institutions involved or must be handled with expeditious action due to an existing emergency condition, as permitted by the Bank Merger Act (12 U.S.C. 1828(C)(6)).

petition, or request on which reconsideration is sought, the petition should be filed with the Executive

communities where the main offices of the banks or institutions involved are located, or if there is no such newspaper

need only publish such notice in the communities in which the insured branch is located and is to be relocated.

to comment upon, or protest the granting of, the application. This notice shall consist of the following statement:

application file will be available for public inspection:

(i) The application with supporting

decide to hold an informal proceeding in accordance with paragraph (h)(3) of this

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petition, or request on which reconsideration is sought, the petition should be filed with the Executive Secretary of the FDIC at the FDIC's Washington, DC headquarter office.

(2) (i) The Director or, where confirmed in writing by the Director, an associate director or the appropriate regional director or deputy regional director, or, in the case of a petition for reconsideration filed with the Executive Secretary, the General Counsel or designee, shall determine whether the petition for reconsideration satisfied paragraphs (e)(1)(i) and (e)(1)(ii) of this section and shall promptly notify the petitioner of such determination.

(ii) If, pursuant to paragraph (e)(2)(i) of this section, a petition for reconsideration is determined not to satisfy paragraphs (e)(1)(i) and (e)(1)(ii) of this section, an applicant may appeal such decision to the Director, and where confirmed in writing by the Director, to an associate director, or, in the case of a petition for reconsideration filed with the Executive Secretary, to the Chairman of the FDIC or his or her designee. An applicant may not submit additional information or evidence with the appeal and the determination by the Director or associate director, or the chairman of the FDIC or his or her designee whether the petition satisfies paragraphs (e)(1)(i) and (e)(1)(ii) of this section is final, and not appealable to the Board of Directors.

(iii) If a petition for reconsideration is determined to satisfy paragraphs (e)(1)(i) and (e)(1)(ii) of this section, then the previously denied application, petition, or request will be reconsidered:

(A) By the Board of Directors if originally denied by the Board of Directors; or

(B) By the Director, or where confirmed in writing by the Director, by an associate director, if originally denied by the Director, associate director, regional director or deputy regional director.

The decisions by the Director or associate director on petitions for reconsideration are final and not appealable to the Board of Directors.

(f) *Notice of filing of application*—(1) *Notice by publication.* (i) In the case of applications in connection with a "merger transaction" (as defined by the Bank Merger Act, 12 U.S.C. 1828(c)(3)), unless the Board of Directors determines it must act immediately in order to prevent the probable failure of one of the depository institutions involved, the applicant must publish notice of the proposed transaction. This notice shall be published in a newspaper of general circulation in the community or communities where the main offices of the banks or institutions involved are located, or if there is no such newspaper in the community, then in the newspaper of general circulation published nearest thereto. Publication shall be made at least once each week on the same day for five consecutive weeks and, when published in a daily newspaper, one additional publication shall be made on the thirtieth day from the date of the first publication. Where the Board of Directors of the Corporation determines that an emergency exists which requires expeditious action, then notice shall be required to be published daily during a period of at least 10 calender days. The published notice shall include the name and main office location of all banks or institutions involved in the transactions and the subject matter of the application. If it is contemplated that the continuing bank will operate the offices of the other depository institution(s) as branches, the following statement shall be added to the notice:

It is contemplated that all of the offices of the above named institutions will continue to be operated (with the exception of [identity and location of each office which will not be operated]).

(ii) In the case of all other applications described in paragraph (a) of this section, on the date the deposit insurance application form or the letter application required in § 303.2 is mailed or delivered to the regional director or not more than 30 days prior to that date, the applicant shall publish notice or begin publication of notice if more than one notice is required, of the proposed transaction. *Provided however,* That no publication shall be required in connection with the granting of insurance to a new depository institution established pursuant to the resolution of a failed institution situation. Publication of notice shall be made at least once each week on the same day for two consecutive weeks for relocation applications and once for other applications described in paragraph (a) of this section and shall be in a newspaper of general circulation in the community or communities referred to below:

(A) *Applications to establish a branch. Domestic Branch:* In the communities in which the home office and the domestic branch to be established are located; *Foreign Branch:* In the community in which the home office is located.

(B) *Applications to relocate an office.* In the communities in which the home office, office to be closed, and office to be opened are located, provided that a foreign bank having an insured branch need only publish such notice in the communities in which the insured branch is located and is to be relocated.

(C) *Applications for deposit insurance.* In the community in which the home bank office is or will be located, provided that a foreign bank making application for an insured branch need only publish such notice in the community in which the insured branch is to be located.

The published notice required by (f)(1) of this section shall include the name of the applicant, the subject matter of the application, and the location or locations at which the applicant proposes to engage in business.

(iii) In all instances, immediately after final publication, the applicant shall advise the appropriate regional director that the publication requirements have been met.

(2) *Notice by posting.* In the case of applications to relocate home offices or branch offices, in addition to the notice by publication described in paragraph (f)(1) of this section, notice of the application shall be posted in the public lobby of the office(s) to be relocated, if such public lobby exists, for at least 21 days beginning with the date of the last published notice required by paragraph (f)(1) of this section.

(3) *Comments.* Anyone who wishes to comment on an application may do so by filing comments in writing with the appropriate regional director at any time before the FDIC has completed processing the application. Processing will be completed, for applications other than home or branch office relocation and remote service facility relocation applications and merger applications, not less than 15 days after the publication of the notice required by paragraph (f)(1) of this section or 15 days after FDIC's receipt of the application, whichever is later; for home or branch office relocation and remote service facility relocation applications, not less than 21 days after the last publication or 21 days after FDIC's receipt of the application, whichever is later; for merger applications, not less than 30 days after the first publication or 30 days after FDIC's receipt of the application, whichever is later. This time period may be extended by the appropriate regional director for good cause. Such regional director shall report the reasons for such action to the Board of Directors.

(4) *Notice of right to comment.* In order to fully apprise the public of its rights under paragraph (f)(3) of this section, the notice described in paragraph (f)(1) of this section shall include a statement describing the right to comment upon, or protest the granting of, the application. This notice shall consist of the following statement:

Any person wishing to comment on this application may file his or her comments in writing with the regional director of the Federal Deposit Insurance Corporation at its regional office (address of the regional office) before processing of the application has been completed. Processing will be completed no earlier than the (relocations—21st, mergers—30th, other applications described in paragraph (a) of this section—15th) day following either the date of the (merger applications—first, all other applications described in paragraph (a)—last) required publication or the date of receipt of the application by the FDIC, whichever is later. The period may be extended by the regional director for good cause. The nonconfidential portion of the application file is available for inspection within one day following the request for such file. It may be inspected in the Corporation's regional office during regular business hours. Photocopies of information in the nonconfidential portion of the application file will be made available upon request. A schedule of charges for such copies can be obtained from the regional office.

(5) *Solicitation of comments by regional director.* Whenever he deems it appropriate, the regional director may solicit comments from any person or institution which, in his opinion, might have an interest in or be affected by the pending application.

(g) *Public access to application file*—(1) *Inspection of application file.* Any person may inspect the nonconfidential portions of an application file. For a period extending until 180 days after final disposition of an application, the nonconfidential portions of the file will be available for inspection in the regional office of the FDIC in which an application has been filed. During this period, the nonconfidential portion of the file will be produced for review not more than one working day after receipt by the regional office of the request (either written or oral) to see the file. Photocopies of the nonconfidential portions of the file will be available, upon request, to any person. A charge for making copies will be made in accordance with the fee schedule contained in § 309.5(b) of this chapter. No charge will be imposed for the search for, and review of, the application file. One hundred and eighty (180) days after the final disposition of an application, the nonconfidential portions of an application file will be made available in accordance with the provisions of § 309.5 of this chapter.

(2) *Nonconfidential portions of application file.* Subject to the provisions of paragraph (g)(3) of this section, the following information in an application file will be available for public inspection:

(i) The application with supporting data and supplementary information.

(ii) Data, comments, and other information submitted by interested persons in favor of, or in opposition to, such application.

(iii) Those portions of the investigation report prepared by the Corporation's field examiner in connection with the application which cover the convenience and needs of the community to be served by the applicant or applicants and either the future earnings prospects or the future prospects of the applicant or applicants.

(iv) A summary assessment of the applicant or applicants, based on their Community Reinvestment Act examination.

(v) Where a hearing has been held pursuant to paragraph (i) of this section, any evidence submitted pursuant to paragraph (j)(3) of this section and the hearing transcript described in paragraph (j)(5) of this section.

(3) *Withholding of confidential information.* No material described in paragraph (g)(2) of this section shall be available if it is determined to be confidential under the provisions of 5 U.S.C. 552. The following information generally is considered confidential:

(i) Personal information, the release of which would constitute a clearly unwarranted invasion of privacy.

(ii) Commercial or financial information, the disclosure of which would result in substantial competitive harm to the submitter.

(iii) Information the disclosure of which could seriously affect the financial condition of any financial institution.

(h) *Proceedings*—(1) *Requests for hearing or other proceeding.* Anyone who has made a formal comment within the period specified in paragraph (f)(3) of this section may request a hearing or an oral presentation at the time of making the formal comment. If a hearing or an oral presentation is requested, the request must be accompanied by a brief statement by the person requesting the hearing or presentation of his or her interest in the application and of the matters which he or she wishes to discuss. If the Corporation determines that a hearing or other form of oral presentation should be allowed, the person making the request will be advised of the date, time, and location of the hearing or oral presentation.

(2) *Form of proceeding.* The Corporation may, at its discretion, decide to hold a hearing on the application in accordance with paragraph (i) of this section; it may decide to hold an informal proceeding in accordance with paragraph (h)(3) of this section; or it may decide not to hold a hearing or an informal proceeding in which case, where there has been a request for an opportunity to be heard pursuant to paragraph (h)(1) of this section, it will so advise the applicant and all persons who requested an opportunity to be heard. A decision as to the form of proceeding to be held will be made not more than 30 days after a request for a hearing or oral presentation has been made pursuant to paragraph (h)(1) of this section.

(3) *Informal proceedings.* If the Corporation decides to hold an informal proceeding, the regional director shall, not less than 10 days prior thereto, notify the applicant and each person who requested a hearing, or oral presentation in accordance with paragraph (h)(1) of this section, of the date, time, and place of the proceeding. The regional director may, if he deems it advisable, notify other persons who have expressed an interest in the application and invite them to attend. The proceeding may assume any form, including a meeting with Corporation representatives, at which the participants will be asked to present their views orally. The regional director shall also have the discretion to hold separate meetings with each of the participants where he deems it desirable.

(i) *Hearings.* Hearings of the kind provided for in this paragraph will not generally be afforded the participants if they have had the opportunity to participate in prior hearings before the appropriate State authority which covered essentially the same issues or if the regional director determines that less formal proceedings would be adequate.

(1) *Notice of hearing*—(i) *Contents.* If the Corporation determines that a hearing on the application is warranted, the regional director shall, not less than 10 days prior thereto, give notice of the scheduling of the hearing, and shall set forth in the notice the subject matter of the application, the significant issues to be presented, and the date, time, and place at which the hearing shall be held.

(ii) *To whom sent.* The above notice shall be sent by registered or certified mail to the applicant and to each person who requested a hearing in accordance with paragraph (h)(1) of this section. The regional director may also notify other persons who have expressed an interest in the application and invite them to participate in the hearing.

(2) *Attendance at hearing.* Each interested person who wishes to attend

the hearing shall notify the regional director accordingly with 5 days after

participant, by the presiding officer, or by any member of the panel. The refusal

transcript or additional statements or materials to all other persons who

relocations where the applicant satisfies the requisites listed in paragraph

to a regional director or deputy regional director where a protest (as that term is

in paragraph (b)(7) of this section and (subject to paragraph (b)(6) of this

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the hearing shall notify the regional director accordingly with 5 days after the date upon which he recieves the above notice. Unless he has already done so, he shall submit a brief written summary of the matters which he wishes to cover at the hearing, together with the number and names of witnesses he wishes to present. The applicant and other interested persons attending the hearing may be represented by counsel.

(3) *Presiding officer.* The presiding officer at the hearing shall be the regional director, his designee, or such other person as may be named by the Board of Directors or the Director. The presiding officer shall have the authority to appoint a panel to assist him.

(j) *Hearing rules*—(1) *Order of presentation.* The following schedule is intended to serve as a general guide to the conduct of the hearing. It is not fixed and may be varied at the discretion of the presiding officer. The presiding officer shall determine the order of opening and closing statements and presentations to be followed by all participants other than the applicant who in each instance shall have the opportunity to speak first.

(i) *Opening statements.* The applicant and each other participant may make opening statements which should concisely state what the participant intends to show.

(ii) *Applicant's presentation.* Following the opening statement(s), the applicant shall present its data and materials orally or in writing.

(iii) *Requester's presentation.* Following the applicant's presentation, each person who requested the hearing shall present his data and materials orally or in writing. Those who requested the hearing may agree, with the approval of the presiding officer, to have one of their number make their presentation.

(iv) *Other interested persons.* Following the evidence of the applicant and the requesters, the presiding officer will recognize other interested persons who may present their views with respect to the application under consideration.

(v) *Summary statement.* After all the above presentations have been concluded, the applicant and each other participant may make a short concise rebuttal.

(2) *Witnesses.* Each participant is responsible for providing his own witnesses, including the payment of all expenses associated with their appearance at the hearing. All witnesses will be present on their own volition, but any person appearing as a witness may be subject to questioning by any participant, by the presiding officer, or by any member of the panel. The refusal of a witness to answer questions may be considered by the Corporation in determining the weight to be accorded the testimony of that witness. Witnesses shall not be sworn.

(3) *Evidence.* The presiding officer shall have the authority to exclude data or materials which he deems to be improper, irrelevant, or repetitive. Formal rules of evidence shall not be applicable to these hearings. Documentary material submitted as evidence must be of a size consistent with ease of handling, transportation, and filing. Three copies of all such documentary material shall be furnished to the regional director, and any participant who specifically requests the same shall be furnished a copy at his own expense. While large exhibits may be used during the hearing, copies of such exhibits must be provided by the person in reduced size for submission as evidence.

(4) *Procedural questions.* The presiding officer, or any designated member of the panel, shall determine all procedural questions not governed by this section. The presiding officer shall have the authority to limit the number of witnesses to be used by any person and to impose reasonable time limitations.

(5) *Transcript.* A transcript of each hearing will be arranged for by the Corporation. The person or persons who requested the hearing will be expected to pay all the expenses of such service, including the furnishing of one copy of the transcript to the regional director. *Provided, however,* That the Corporation may, for good cause, waive this requirement in individual cases. Where a hearing is held at the Corporation's initiative, the Corporation shall bear the expense of such service. Copies of the transcript will be furnished to any interested person requesting the same at that person's expense.

(6) *The hearing record*—(i) *Contents.* The nonconfidential portions of the application, as described in paragraph (c) of this section, shall automatically be a part of the hearing record.

(ii) *Closing the hearing record—additional statements.* Any person who participates in the hearing may request that the hearing record remain open for 10 days following receipt of the transcript by the regional director during which time the person may submit corrected copies of the transcript, or additional written statements or materials which he agreed to furnish at the hearing, to the regional director. Such person shall simultaneously mail or have delivered copies of the corrected transcript or additional statements or materials to all other persons who participated in the hearing.

(k) *Disposition and notice thereof.* (1) The final disposition of any application or other matter under this section need not be determined exclusively by, or be limited to, the information contained in the public file established by paragraph (g) of this section.

(2) The applicant, and any other person who so requests in writing, shall be notified by the Board of Directors of the final disposition of the application or other matter. The Board of Directors shall also provide a statement of the reasons for the final disposition made.[7]

(l) *Computation of time.* Section 308.22 shall govern the computation of any period of time prescribed or allowed by this section.

(m) *Retained authority.* In acting upon any particular application, the Board of Directors may by resolution adopt procedures which differ from this section when it deems it necessary and in the public interest to do so. Such resolution shall be made available for public inspection and copying in the Office of the Executive Secretary of the Corporation in accordance with the requirements of 5 U.S.C. 552(a)(2).

§ 303.7 Delegation of authority to the Director of the Division of Supervision and to the associate directors, regional directors and deputy regional directors to act on certain applications, requests, and notices of acquisition of control.

The Board of Directors of the FDIC has delegated to officials in the Division of Supervision and other employees of the FDIC the authority on behalf of the Board of Directors to act (subject to the provisions of § 303.10 of this part) on the following applications, requests, and notices of acquisition of control.

(a) *Applications for branches (including remote service facilities, courier services, foreign branches of domestic banks), relocations, and for trust and other banking powers*—(1) *Branch and relocation applications.* (i) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to approve applications for consent to establish branch facilities (including remote service facilities, courier services and foreign branches of domestic banks) or relocations where the applicant satisfies the requisites listed in paragraph (a)(1)(iii) of this section and agrees in writing to comply with any condition imposed by the delegate other than those standard conditions listed in § 303.0(b)(28).

(ii) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director:

(A) To deny applications for consent to establish branch facilities (including remote service facilities, courier services and foreign branches of domestic banks) or relocations; and

(B) To approve such applications where the applicant satisfies the requisites listed in paragraph (a)(1)(iii) of this section but does not agree in writing to comply with any condition imposed by the delegate.

(iii) The requisites which must be satisfied before the authority delegated by paragraphs (a)(1)(i) and (a)(1)(ii)(B) of this section to approve applications for consent to establish branch facilities or relocations may be exercised are:

(A) The seven factors set forth in section 6 of the Act (12 U.S.C. 1816) have been considered and favorably resolved (except that this requisite does not apply to applications to establish courier services);

(B) The applicant meets the capital requirements set forth in 12 CFR part 325 and the FDIC's "Statement of Policy on Capital" or agrees in writing to increase capital so as to be in compliance with the requirements of 12 CFR part 325 before or at the consummation of the transaction which is the subject of the application, except that this requisite does not apply to applications to establish courier services, remote service facilities, and relocations of branches or main offices;

(C) Any financial arrangements which have been made in connection with the proposed branch or relocation and which involve the applicant's directors, officers, major shareholders, or their interests, are fair and reasonable in comparison to similar arrangements that could have been made with independent third parties; and

(D) The requirements of the National Historic Preservation Act (16 U.S.C. 470), the National Environmental Policy Act (42 U.S.C. 4321), and the Community Reinvestment Act of 1977 (12 U.S.C. 2901–2905) and its applicable implementing regulation (12 CFR part 345) have been considered and favorably resolved (except that this requisite does not apply to applications to establish foreign branches): *Provided, however,* That the authority to approve an application may not be subdelegated to a regional director or deputy regional director where a protest (as that term is defined in § 308.0(b)(25)) under the Community Reinvestment Act is filed.

(2) *Applications for consent to exercise trust and other banking powers.* (i) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to approve applications for the FDIC's consent to exercise trust or other banking powers where the applicant satisfies the requisites listed in paragraph (a)(2)(iii) of this section and agrees in writing to comply with any other conditions imposed by the delegate other than those standard conditions listed in § 303.0(b)(28).

(ii) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director:

(A) To deny applications for trust or other banking powers; and

(B) To approve such applications where the applicant satisfies the requisites listed in paragraph (a)(2)(iii) of this section but does not agree in writing to comply with any condition required by the delegate other than those standard conditions listed in § 303.0(b)(26).

(iii) The requisites which must be satisfied before the authority delegated by paragraphs (a)(2)(i) and (a)(2)(ii)(B) of this section to approve applications for trust or other banking powers may be exercised are:

(A) The seven factors set forth in section 6 of the Act (12 U.S.C. 1816) have been considered and favorably resolved;

(B) The proposed management of the trust or other banking business is determined capable of satisfactorily handling the anticipated business; and

(C) In regards to trust applications only, the applicant's board of directors has formally adopted Form 114—"Statement of Principles of Trust Department Management".

(b) *Merger transactions.* (1) Except as provided in paragraphs (b)(4) and (b)(5) of this section and in § 303.10(b) of this part, authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, or the appropriate regional director or deputy regional director, to approve any application for permission to merge or consolidate with any other bank or institution or, either directly or indirectly, to acquire the assets of, or assume the liability to pay any deposits made in any other bank, institution, or branch of a foreign bank (hereafter "merger transaction") where the applicant satisfies the requisites listed in paragraph (b)(7) of this section and (subject to paragraph (b)(6) of this section) where:

(i) The resulting institution, upon consummation of the merger transaction, would not have more than 15% of the individual, partnership and corporate deposits held by commercial banks and/or thrift institutions, as may be appropriate, in the relevant market(s); or

(ii) The resulting institution, upon consummation of the merger transaction, would not have more than 25% of the individual, partnership and corporate deposits held by commercial banks and/or thrift institutions, as may be appropriate, in the relevant market(s), and the Attorney General has determined that the proposed merger transaction would not have a significantly adverse effect on competition.

(2) Except as provided in paragraph (b)(4) of this section, authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, to approve applications for merger transactions where the resulting institution, upon consummation of the merger transaction, would not have more than 35% of the individual, partnership and corporate deposits held by commercial banks and/or thrift institutions, as may be appropriate, in the relevant market(s), and the Attorney General has determined that the proposed merger transaction would not have a significantly adverse effect on competition.

(3) In cases where applicable, the delegate will review any reports on the competitive factors involved in the merger transaction that the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Director OTS and the Attorney General may have provided in response to a request for such reports by the FDIC. In the absence of a formal written opinion by the Attorney General, the delegate may also request the FDIC's General Counsel or designee to provide a formal written opinion on the question whether the merger transaction may have a significantly adverse effect on competition. However, the authority delegated under paragraphs (b)(1)(ii) and (b)(2) of this section may not be exercised in the absence of a formal written opinion by the Attorney General where the resulting bank, upon consummation of the merger transaction, would have more than 15% of the individual, partnership, and corporate deposits held by commercial banks and/or thrift institutions, as may

[7] Where final authority to dispose of an application or other matter has been delegated to the Director, an associate director, the regional directors and the deputy regional directors pursuant to § 308.7, the delegate will provide the notice and statement described in this paragraph (k)(2).

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be appropriate, in the relevant market(s).

(4) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, to approve applications for merger transactions where the resulting institution is in default or in danger of default, provided that the resulting entity from such merger transaction would not have more than 35% of the individual, partnership and corporate deposits held by commercial banks and/or thrift institutions, as may be appropriate, in the relevant market(s), and the Attorney General has determined that the proposed merger transaction would not have a significantly adverse effect on competition.

(5) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, to approve applications for merger transactions where the resulting institution is in default or in danger of default, provided that the resulting entity from such merger transaction would not have more than 15% of the individual, partnership and corporate deposits held by commercial banks and/or thrift institutions, as may be appropriate, in the relevant market(s), and the Attorney General has determined that the proposed merger transaction would not have a significantly adverse effect on competition.

(6) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, to approve applications for merger transactions where the resulting institution is in default or in danger of default, provided that the resulting entity from such merger transaction would not have more than 25% of the individual, partnership and corporate deposits held by commercial banks and/or thrift institutions, as may be appropriate, in the relevant market(s), and the Attorney General has determined that the proposed merger transaction would not have a significantly adverse effect on competition.

(7) The requisites which must be satisfied before the authority delegated by paragraphs (b)(1), (b)(2), (b)(4), (b)(5), and (b)(6) of this section may be exercised are:

(i) The applicant meets the capital requirements set forth in 12 CFR part 325 and the FDIC's "Statement of Policy on Capital" or agrees in writing to increase capital so as to be in compliance with the requirements of 12 CFR part 325 before or at the consummation of the transaction which is the subject of the application, except that this requisite does not apply to applications to establish courier services, remote service facilities, and relocations of branches or main offices;

(ii) The requisites which must be satisfied before the authority delegated

conform to the guidelines established in the FDIC's policy statement on

(C) The applicant meets the minimum capital requirements as set forth in part

establishment and operation as a bank have been fully approved by the state

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be appropriate, in the relevant market(s).

(4) The delegations contained in paragraphs (b)(1) and (b)(2) of this section to approve applications for merger transactions do not extend to such applications:

(i) Falling within the scope of the "probable failure" or "emergency" provisions of 12 U.S.C. 1828(c)(6); or

(ii) Where the resulting institution, upon consummation of the merger transaction, does not meet the capital requirements set forth in 12 CFR part 325 and the FDIC's "Statement of Policy on Capital." (If the applicant is a foreign bank, the delegated authority to approve does not extend to instances where, upon consummation of the merger transaction, the foreign bank's insured branch is not in compliance with 12 CFR part 346.)

(5) The authority to approve an application may not be subdelegated to a regional director or deputy regional director where a protest (as that term is defined in § 303.0(b)(25)) under the Community Reinvestment Act is filed.

(6) Where the merging institutions operate in different relevant market areas, then the limitations relative to market share percentages set forth in paragraphs (b)(1) and (b)(2) of this section do not apply.

(7) The requisites which must be satisfied before the authority delegated by paragraphs (b)(1) and (b)(2) of this section to approve applications for merger transactions may be exercised are:

(i) That the statutory factors contained in section 18(c)(5) (12 U.S.C. 1828(c)(5) of the Act have been considered and favorably resolved; and

(ii) Compliance with the National Environmental Policy Act (42 U.S.C. 4321), the Community Reinvestment Act (12 U.S.C. 2901–2905) and the applicable implementing regulation (12 CFR part 345 or any other applicable implementing regulation) have been considered and favorably resolved.

(8) In approving an application for a merger transaction under this section, a delegate may impose any of the standard conditions listed in § 303.0(b)(28), or any other condition to which the applicant has agreed in writing.

(9) Notwithstanding any limitation or condition imposed by this section, the Director, and where confirmed in writing by the Director, an associate director, or the appropriate regional director or deputy regional director is authorized to approve any transaction involving a merger facilitated by the Resolution Trust Corporation under its authority to assist savings associations in default or in danger of default, provided that the resulting entity from the merger is a state-chartered insured non-member bank.

(c) *Notices of acquisition of control.* (1) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to issue a written notice of the FDIC's intent not to disapprove an acquisition of control of an insured depository institution.

(2) The authority delegated by paragraph (c)(1) of this section shall include the power:

(i) To act in situations where information is submitted on acquisitions arising out of testate or intestate succession, bona fide gifts, or foreclosure;

(ii) To extend notice periods;

(iii) To determine the informational adequacy of a notice;

(iv) To determine whether a notice should be filed under section 7(j) of the Act (12 U.S.C. 1817(j)) by a person acquiring less than 25 percent of any class of voting securities of an insured depository institution; and

(v) To waive publication, waive or shorten the public comment period, or act on a proposed acquisition of control prior to the expiration of the public comment period, as provided in 12 CFR 303.4(b)(3).

(3) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, to disapprove an acquisition of control of an insured state depository institution.

(d) *Deposit insurance applications—* (1) *Proposed or newly organized depository institutions.* (i) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, or subject to the limitations set forth in paragraph (d)(1)(iii) of this section, to the appropriate regional director or deputy regional director, to approve applications for deposit insurance by proposed or newly organized depository institutions, where the applicant satisfies the requisites listed in paragraph (d)(1)(ii) of this section, and agrees in writing to comply with any condition imposed by the delegate, other than those listed in paragraph (d)(4) of this section. *Provided however,* That the requisites listed in paragraph (d)(1)(ii) of this section do not apply to any transaction facilitated by the Resolution Trust Corporation under its authority to assist savings associations in default or in danger of default.

(ii) The requisites which must be satisfied before the authority delegated by paragraph (d)(1)(i) of this section to approve applications for deposit insurance by proposed or newly organized depository institutions may be exercised are:

(A) (*1*) As to Federal savings associations, factors (1) through (5) of the seven factors set forth in section 6 of the Act (12 U.S.C. 1816) have each been considered and favorably resolved, and the FDIC has received from the Director of the Office of Thrift Supervision the certificate required under section 5 of the Act (12 U.S.C. 1815);

(*2*) As to all other depository institutions, each of the seven factors set forth in section 6 of the Act (12 U.S.C. 1816) has been considered and favorably resolved; and

(B) The requirements set forth below are met:

(*1*) Equity capital is not less than $1,000,000;

(*2*) Legal fees and other expenses incurred in connection with the proposal are determined to be reasonable;

(*3*) No unresolved "management interlocks," as prohibited by the Depository Institution Management Interlocks Act (12 U.S.C. 3201 et seq.), part 348 of this chapter (12 CFR part 348) or any other applicable implementing regulation, exist;

(*4*) The projected ratio of equity capital and reserves to assets, including projected profits and losses, is at least 10 percent at the end of the third year of operations;

(*5*) Profitable operations are projected at least for the third year of operations;

(*6*) The proposed aggregate direct and indirect investment in fixed assets is determined to be reasonable relative to the applicant's proposed equity capitalization, projected earnings capacity, and other pertinent bases of consideration;

(*7*) Any financial arrangements made or proposed in connection with the proposed depository institution involving the applicant's directors, officers, 5 percent shareholders or their interests are determined to be fair and made on substantially the same terms as those prevailing at the time for comparable transactions with noninsiders and do not involve more than normal risk or present other unfavorable features. The applicant also must have fully disclosed, or agreed to disclose fully, any such arrangement to all of its proposed directors and shareholders prior to the opening of the depository institution;

(*8*) Stock financing arrangements, fidelity coverage and accrual accounting conform to the guidelines established in the FDIC's policy statement on "Applications for Deposit Insurance;" and

(*9*) Compliance with the National Historic Preservation Act (16 U.S.C. 470), the National Environmental Policy Act (42 U.S.C. 4321), and the Community Reinvestment Act of 1977 (12 U.S.C. 2901 through 2905) and the applicable implementing regulation (12 CFR part 345 or any other implementing regulation) is adequate and favorably resolved.

(iii) The authority to approve an application may not be subdelegated to a regional director or deputy regional director where:

(A) A protest (as that term is defined in § 303.0(b)(25)) under the Community Reinvestment Act is filed; or

(B) (*1*) There is direct or indirect financing, by proposed directors and officers and 5 percent or more shareholders, of more than 75 percent of the purchase price of the stock subscribed to by any one shareholder;

(*2*) There is aggregate financing of stock subscriptions in excess of 50 percent of the total capital offered, or

(*3*) Warehoused or trusteed stock exceeds 10 percent of initial capital funds.

(2) *Operating noninsured depository institutions and state or privately insured institutions.* (i) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, or, for applicant institutions with total assets of less than $250,000,000, to the appropriate regional director or deputy regional director, to approve applications for deposit insurance by operating noninsured depository institutions, or state-insured or privately insured institutions where the applicant satisfies the requisites listed in paragraph (d)(2)(ii) of this section and agrees in writing to comply with any condition imposed by the delegate other than those listed in paragraph (d)(4) of this section.

(ii) The requisites which must be satisfied before the authority delegated by paragraph (d)(2)(i) of this section to approve applications for deposit insurance by operating noninsured depository institutions may be exercised are:

(A) The applicant is determined to be eligible for federal deposit insurance for the class of institution to which the applicant belongs in the state (as defined in 12 U.S.C. 1813(a)) in which the applicant is located;

(B) The seven factors set forth in section 6 of the Act (12 U.S.C. 1816) have been considered and favorably resolved;

(C) The applicant meets the minimum capital requirements as set forth in part 325 of this chapter (12 CFR part 325) and the FDIC's "Statement of Policy on Capital" or agrees in writing to increase capital so as to be in compliance with the requirements of 12 CFR part 325 before or at the time deposit insurance becomes effective;

(D) All "management interlocks" as prohibited by Part 348 of this chapter (12 CFR part 348) or any other applicable implementing regulation have been resolved; and

(E) The applicant has no fewer than five directors.

(3) *Banks withdrawing from Federal Reserve System.* Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director and deputy regional director, to approve applications for deposit insurance by state nonmember banks that have withdrawn from membership in the Federal Reserve System where the applicant agrees in writing to comply with any condition imposed by the delegate other than those listed in paragraph (d)(4) of this section and satisfies the following requisites:

(i) The seven factors set forth in section 6 of the Act (12 U.S.C. 1816) have been considered and favorably resolved; and

(ii) The bank has agreed to continue any corrective program imposed by the Board of Governors of the Federal Reserve System or previously agreed to by the bank where the bank is not in material compliance with that corrective program.

(4) *Conditions for exercise of delegated authority.* The conditions which may be imposed by a delegate in approving applications for deposit insurance without affecting the authority granted under paragraphs (d)(1), (d)(2), and (d)(3) of this section are:

(i) The applicant has provided a specific amount and a specific allocation of beginning paid-in capital;

(ii) Any changes in proposed management or proposed ownership to the extent of 5 or more percent of stock, including new acquisitions of or subscriptions to 5 or more percent of stock shall be approved by the FDIC prior to the opening of the depository institution;

(iii) The applicant adopts an accrual accounting system for maintaining the books of the depository institution;

(iv) Where applicable, federal deposit insurance will not become effective until the applicant has been established as a state bank (not a member of the Federal Reserve System), has authority to conduct a banking business, and its establishment and operation as a bank have been fully approved by the state banking authority;

(v) Where applicable, federal deposit insurance will not become effective until the applicant has been established as a state savings association, has authority to conduct a savings association business, and its establishment and operation as a savings association have been fully approved by the appropriate state supervisory authority;

(vi) Where applicable, a registered or proposed bank holding company, or a registered or proposed thrift holding company, has obtained approval of the Board of Governors of the Federal Reserve System to acquire voting stock control of the proposed bank prior to its opening;

(vii) Where applicable, the applicant, has submitted any proposed contracts, leases, or agreements relating to construction or rental of permanent quarters to the appropriate regional director for review and comment;

(viii) Where applicable, full disclosure has been made to all proposed directors and stockholders of the facts concerning the interest of any insider (one who is or stands to be a director, an officer, or an incorporator of an applicant or shareholder who directly or indirectly controls 5 or more percent of any class of the applicant's outstanding voting stock, or the associates and interests of any such person) in any transactions being effected or then contemplated, including the identity of the parties to the transaction and the terms and costs involved;

(ix) The person(s) selected to serve as the principal operating officer(s) shall be acceptable to the regional director;

(x) The applicant has obtained adequate blanket bond coverage;

(xi) That the depository institution obtain an audit of its financial statements by an independent public accountant annually for at least the first three years after deposit insurance is effective, furnish a copy of any reports by the independent auditor (including any management letters) to the appropriate FDIC regional office within 15 days after their receipt by the depository institution and notify the appropriate FDIC regional office within 15 days when a change in its independent auditor occurs; and

(xii) Any standard condition (as defined in § 303.0(b)(28)).

(e) *Applications pursuant to section 19 of the Act.* (1) Authority is delegated to the Director, or where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to

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approve applications made by insured depository institutions pursuant to section 19 of the Act (12 U.S.C. 1829) for participation, directly or indirectly, in any manner in the conduct of the affairs of an insured depository institution by any person who has been convicted or is hereafter convicted of any criminal offense involving dishonesty or a breach of trust; *Provided however,* That authority may not be delegated to the regional director or deputy regional director where the applicant depository institution's primary supervisory authority interposes any objection to such application.

(2) (i) Authority is delegated to the Director, and where confirmed by writing by the Director, to an associate director, to deny applications made by insured depository institutions pursuant to section 19 of the Act.

(ii) The authority delegated under paragraph (e)(2)(i) of this section shall be exercised only upon the concurrent certification by the Deputy General Counsel Supervision and Legislation, or the Associate General Counsel for Compliance and Enforcement that the action taken is not inconsistent with section 19 of the Act.

(iii) An applicant may still request a hearing following a denial of the application under this paragraph in accordance with the provisions of part 308 of this chapter (12 CFR part 308).

(3) The conditions which may be imposed by a delegate in approving applications pursuant to section 19, without affecting the authority granted under paragraph (e)(1) of this section are:

(i) That an employee shall be bonded to the same extent as others in similar positions; and

(ii) That, when deemed necessary, the prior consent of the appropriate regional director shall be required for any proposed significant changes in duties and/or responsibilities of the individual occurring within 12 months subsequent to the approval of the application.

(f) *Other applications and insurance fund conversions.* (1) Authority is delegated to the Director, and where confirmed in writing by the Director, to an assiciate director, or to the appropriate regional director or deputy regional director, to approve or to deny the following applications, requests or petitions:

(i) Applications to establish and operate any new teller's window, drive-in facility, or any like office, as an adjunct to a main office or a branch office (including offices not considered branches under state law);

(ii) Applications to operate temporary banking facilities as a public service for a period not to exceed ninety days during conventions, state and local fairs, college registration periods, and similar occasions, as well as during emergencies;

(iii) Applications to reduce the amount or retire any part of common or preferred capital stock, or retire any part of capital notes or debentures;

(iv) Requests for approval of any deviations from requirements prescribed by prior delegated action (to be acted upon by the delegate who acted previously in the matter);

(v) Except as provided in § 303.10(b)(1)(iii) of this part, applications for "phantom mergers" [8] and other mergers which are corporate reorganizations, *i.e.,* transactions involving institutions controlled by the same holding company or transactions involving institutions and their subsidiaries which would have no effect on competition or otherwise have significance under relevant statutory standards as set forth in 12 U.S.C. 1828(c);

(vi) Applications for deposit insurance filed by proposed state nonmember banks or savings associations which are formed in connection with a phantom merger;

(vii) Requests to establish management official interlocks pursuant to 12 CFR 348.4(b) of this chapter or section 205(8) of the Depository Institutions Management Interlocks Act (except that a regional director or deputy regional director may deny such a request only if the request was made pursuant to 12 CFR 348.4(b)(3)); and

(viii) Applications pursuant to section 29 of the Act (12 U.S.C. 1831) for waiver of the prohibition on the acceptance or renewal of brokered deposits by troubled insured depository institutions.

(2) Authority is delegated to the Director, and where confirmed in writing by the director, to an associate director:

(i) To deny a request to establish a management official interlock pursuant to any provision of either 12 CFR 348.4(b) of this chapter, or section 205(8) of the Depository Institutions Management Interlocks Act; and

(ii) To approve or to deny applications for the acquisition and holding of stock or other evidences of ownership in a foreign bank or other financial entity that results in less than 25 percent ownership interest in such bank or entity.

(3)(i) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, to approve an application made by an applicant pursuant to section 8(j) of the Act 12 U.S.C. 1818(j)) for the termination or modification of a removal or prohibition order, which was issued by the Board after a hearing, on default, or by consent.

(ii) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, to consent to an application pursuant to section 8(j) of the Act (12 U.S.C. 1818(j)) to obtain the prior written approval of the FDIC to participate in the conduct of the affairs of a bank filed by an individual subject to a removal or prohibition order.

(iii) Authority is delegated to the Director, or where confirmed in writing by the Director, to an associate director, to deny an application made by an applicant pursuant to section 8(j) of the Act.

(iv) The authority delegated under paragraphs (f)(3)(i), (f)(3)(ii), and (f)(3)(iii) of this section shall be exercised only upon the concurrent certification by the Deputy General Counsel for Supervision and Legislation, or the Associate General Counsel for Compliance and Enforcement that the action taken is not inconsistent with section 8(j) of the Act.

(4)(i) Authority is delegated to the Director and, where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director to approve or deny conversions involving transfers of deposits between the SAIF and BIF funds; *Provided however,* That where the basis for the conversion is that the transaction affects an insubstantial portion of the deposits of each institution, authority is not delegated to the regional director or deputy regional director where the total deposits transferred to or from either institution, accumulated with all other insurance fund transfers involving that institution since August 9, 1989, exceeds the lesser of 35 percent of total deposits of either institution on May 1, 1989, plus net interest credited to the expected date of transfer, or the amount equal to total deposits of either institution on the expected date of transfer.

(ii) The conditions that may be imposed in approving applications for insurance fund conversions without affecting the authority granted in § 303.7(f)(4) of this section are:

[8] As used in this part 303, the term "phantom merger" applies to any merger or other transaction involving an existing operating institution and a newly chartered institution or corporation which is for the purpose of corporate reorganization and which would have no effect on competition or otherwise have significance under the relevant statutory standards as set forth in 12 U.S.C. 1828(c).

(A) That, upon consummation, the deposits involved in the transaction do not exceed 35%, on a cumulative basis with other deposits transferred between the SAIF and BIF funds, for either of the institutions involved, of the lesser of (*1*) total deposits as of May 1, 1989, plus net interest credited during the period from May 1, 1989, to the date of transfer of the deposits, or (*2*) total deposits of the institution as of the date of transfer of the deposits; and

(B) That applicable entrance and exit fees be paid pursuant to FDIC regulations.

(5) In approving an application, request or petition under any provision of this paragraph, a delegate may impose any of the standard conditions listed in § 303.0(b)(26), or any other condition to which the applicant has agreed in writing.

§ 303.8 Other delegations of authority.

(a) *Extensions of time.* (1) Except as provided in paragraph (a)(2) of this section, authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to approve and to deny requests for extensions of time, not to exceed one year on any one request relating to the same application, within which to perform acts or conditions required by prior FDIC action on depository institution applications.

(2) Notwithstanding the delegations in paragraph (a)(1) of this section, no delegate shall have the authority to deny an extension of time request unless that delegate had authority to deny the original application upon which the extension of time is predicated.

(b) *Disclosure laws and regulations.* (1) Except as provided in paragraph (b)(2) of this section, authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to act on disclosure matters under and pursuant to sections 12, 13, 14, 17 and 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78) or parts 335 and 341 of this chapter (12 CFR parts 335 and 341).

(2) Authority to act on disclosure matters is retained by the Board of Directors when such matters involve:

(i) Exemption from disclosure requirements pursuant to section 12(h) of the Securities Exchange Act of 1934 (15 U.S.C. 781(h));

(ii) Exemption from tender offer requirements pursuant to section 14(d)(8) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(d)(8)); or

(iii) Exemption from registration requirements pursuant to section 17A(c)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78q-1(c)(1)).

(c) *Security devices and procedures and bank service arrangements.* Authority is delegated to the Director and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to administer the provisions of part 326 of this chapter (12 CFR part 326).

(d) *In emergencies.* For the purpose of assuring performance of, and continuity in the management functions and activities of the FDIC, the Board of Directors has delegated, to the extent deemed necessary, authority with respect to the management of the FDIC's affairs, to certain designated offices, such authority to be exercised only in the event of an emergency involving an enemy attack on the continental United States or other warlike occurrence which renders the Board of Directors unable to perform the management functions and activities normally performed by it.

(e) *Competitive factor reports.* Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, or to the regional director or deputy regional director in the appropriate FDIC region in which the applicant depository institution [9] is located, to furnish required reports to the Board of Governors of the Federal Reserve System, or the Comptroller of the Currency on the competitive factors involved in any merger required to be approved by one of those agencies, if the delegate is of the view that the proposed merger would not have a substantially adverse effect on competition.

(f) *Agreements for pledge of assets by foreign banks.* (1) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to enter into pledge agreements with foreign banks and depositories in connection with the pledge of asset requirements pursuant to 12 CFR 346.19. This authority shall also extend to the power to revoke such approval and require the dismissal of the depository.

(2) Authority is delegated to the General Counsel or designee to modify the terms of the model deposit agreement used for such deposit agreements.

(g) *National Historic Preservation Act.* (1) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to enter into memoranda of agreement pursuant to regulations of the Advisory Council of Historic Preservation which implement the National Historic Preservation Act (16 U.S.C. 470).

(2) The Director may limit the delegation of authority to the associate director, the regional director or deputy regional director to applications wherein the applicant has agreed in writing to conditions relating to the National Preservation Act which may be imposed by the FDIC.

(h) *Applications or notices for membership or resumption of business.* Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to provide comments on applications or notices for membership or commencement or resumption of business to the appropriate Federal banking agency pursuant to section 4 of the Act (12 U.S.C. 1814). Such comments, if provided, shall be provided within a reasonable time, not to exceed 30 days from the time such application or notice is received by the delegate. In the event that circumstances preclude comment within 30 days, the delegate shall so notify the appropriate Federal banking agency within 30 days, giving an estimate of when comments may reasonably be expected.

§ 303.9 Delegation of authority to act on certain enforcement matters.

(a) *Actions pursuant to section 8(a) of the Act (12 U.S.C. 1818(a)).* (1) Authority is delegated to the Director, and where confimed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to issue orders of correction when the respondent bank's book capital is less than 3% of total assets; *Provided however,* That authority may not be delegated to the regional director or deputy regional director whenever the respondent bank has issued any mandatory convertible debt or any form of secondary capital (such as limited life preferred stock/subordinated notes and debentures).

(2) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate

[9] As used in paragraph (e) of this section, the term "applicant depository institution" means the institution which is applying for merger approval to the Board of Governors of the Federal Reserve System the Comptroller of the Currency, or the Director of OTS, whichever is appliable.

director, to issue orders of correction when the respondent bank's adjusted

(2) The authority delegated under paragraph (c)(1) of this section shall be

Compliance and Enforcement that the action taken is not inconsistent with

requirements contained in part 325 of this chapter (12 CFR part 325).

(2) The authority delegated under

under paragraphs (j)(1) and (j)(2) of this section.

(3) The authority delegated under

depository institution is closed by a Federal or state authority or merges into another institution

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director, to issue orders of correction when the respondent bank's adjusted primary capital is less than 3% of adjusted part 325 total assets.

(3) The authority delegated under paragraphs (a)(1) and (a)(2) of this section shall be exercised only upon the concurrent certification by the Deputy General Counsel for Supervision and Legislation, or the Associate General Counsel for Compliance and Enforcement, or, in cases where a regional director or deputy regional director issues orders of correction, by the appropriate regional counsel, that the allegations contained in the findings of unsafe or unsound practices or conditions, if proven, constitute a basis for the issuance of an order of correction pursuant to section 8(a) of the Act (12 U.S.C. 1818(a)).

(b) *Actions pursuant to section 8(b) of the Act (12 U.S.C. 1818(b)).* (1) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to issue:

(i) Notices of charges; and

(ii) Cease-and-desist orders (with or without a prior notice of charges) where the respondent bank or individual respondent consents to the issuance of the cease-and-desist order prior to the filing by an administrative law judge or proposed findings of fact, conclusions of law and recommended decision with the Executive Secretary of the FDIC.

(2) The authority delegated under paragraph (b)(1) of this section shall be exercised only the concurrent certification by the Deputy General Counsel for Supervision and Legislation or a person with the equivalent authority, or the Associate General Counsel for Compliance and Enforcement, or person with equivalent authority or, in cases where a regional director or deputy regional director issues the notice of charges or the stipulated cease-and-desist order, by the appropriate regional counsel, that the allegations contained in the notice of charges, if proven, constitute a basis for the issuance of a notice of charges pursuant to section 8(b) of the Act (12 U.S.C. 1818(b)), or that the stipulated cease-and-desist order is authorized under section 8(b) of the Act and is a cease-and-desist order which has become final for purposes of enforcement pursuant to the Act.

(c) *Actions pursuant to section 8(c) of the Act (12 U.S.C. 1818(c)).* (1) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, to issue temporary cease-and-desist orders.

(2) The authority delegated under paragraph (c)(1) of this section shall be exercised only upon the concurrent certification by the Deputy General Counsel for Supervision and Legislation or the Associate General Counsel for Compliance and Enforcement that the action is not inconsistent with section 8(c) of the Act (12 U.S.C. 1818(c)) and the temporary cease-and-desist order is enforceable in a United States District Court.

(d) *Actions pursuant to section 8(e) of the Act (12 U.S.C. 1818(e)).* (1) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, to issue:

(i) Notices of intent to remove an individual from office or to prohibit an individual from office or to prohibit an individual from further participation in the conduct of the affairs of an insured depository institution pursuant to sections 8(e)(1), (2), and (3) of the Act (12 U.S.C. 1818(e)(1), (2), and (3)); and

(ii) Orders of removal, suspension or prohibition from participation in the conduct of the affairs of an insured depository institution where the individual consents to the issuance of such orders prior to the filing by an administrative law judge of proposed findings of fact, conclusions of law and a recommended decision with the Executive Secretary of the FDIC.

(2) The authority delegated under paragraph (d)(1) of the this section shall be exercised only upon the concurrent certification by the Deputy General Counsel for Supervision and Legislation or the Associate General Counsel for Compliance and Enforcement that the allegations contained in the notice of intent, if proven, constitute a basis for the issuance of a notice of intent pursuant to section 8(e) of the Act, or that the stipulated section 8(e) order is not inconsistent with section 8(e) of the Act and is an order which has become final for purposes of enforcement pursuant to the Act.

(e) *Actions pursuant to section 8(g) of the Act (12 U.S.C. 1818(g)).* (1) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, to issue orders of suspension and prohibition to an indicted director, officer or person participating in the conduct of the affairs of an insured depository institution when such director, officer or person consents to the suspension or removal.

(2) The authority delegated under paragraph (e)(1) of this section shall be exercised only upon the concurrent certification by the Deputy General Counsel for Supervision and Legislation, or the Associate General Counsel for Compliance and Enforcement that the action taken is not inconsistent with section 8(g) of the Act (12 U.S.C. 1818(g)) and the order is enforceable in a United States District Court pursuant to sections 8(i) and 8(j) of the Act (12 U.S.C. 1818 (i) and (j)).

(f) *Actions pursuant to section 8(p) of the Act (12 U.S.C. 1818(p)).* (1) Authority is delegated to the Executive Secretary to issue consent orders terminating the insured status of insured depository institutions that have ceased to engage in the business of receiving deposits other than trust funds pursuant to section 8(p) of the Act (12 U.S.C. 1818(p)).

(2) The authority delegated under paragraph (f)(1) of this section shall be exercised only upon the recommendation and concurrence of the Director or associate director and the Deputy General Counsel for Supervision and Legislation, or the Associate General Counsel for Compliance and Enforcement that the action taken is not inconsistent with section 8(p) of the Act.

(g) *Civil money penalities.* (1)(i) Except as provided for in paragraph (g)(2) of this section, authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, to issue notices of assessment of civil money penalties.

(ii) The authority delegated under paragraph (g)(1)((i) of this section shall be exercised only upon the concurrent certification by the Deputy General Counsel for Supervision and Legislation, or the Associate General Counsel for Compliance and Enforcement that the allegations contained in the notice of assessment, if proven, constitute a basis for assessment of civil money penalties.

(2) Authority is delegated to the General Counsel or designee for the levying and enforcement of civil money penalties under section 7(a)(1) of the Act (12 U.S.C. 1817(a)(1)) for the late filing of Reports of Condition and Report of Income, and such other reports as the Board of Directors may require under the authority of that section. In the exercise of the delegated authority, the General Counsel or designee shall consult with the Director or associate director before imposing any penalty.

(h) *Capital directives.* (1) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to issue:

(i) Notices of intent to issue directives; and

(ii) Directives to insured state nonmember banks that fail to maintain capital in accordance with the

requirements contained in part 325 of this chapter (12 CFR part 325).

(2) The authority delegated under paragraph (h)(1) of this section shall be exercised only upon the concurrent certification by the Deputy General Counsel for Supervision and Legislation or the Associate General Counsel for Compliance and Enforcement, or in cases where a regional director or deputy regional director issues the notice of intent to issue a capital directive or directives, by the appropriate regional counsel, that the action taken is not inconsistent with the Act and part 325.

(i) *Investigations pursuant to section 10(c) of the Act (12 U.S.C. 1820(c).* (1) Authority is delegated to the Director of the Division of Supervision or the Director of the Division of Liquidation, and where confirmed in writing by either Director, to an associate director, or to the appropriate regional director or deputy regional director, to issue an order of investigation pursuant to section 10(c) of the Act (12 U.S.C. 1820(c)) and 12 CFR 308.87–308.93.

(2) Authority is delegated to the General Counsel, and where confirmed in writing by the General Counsel, to his designee to issue an order of investigation pursuant to section 10(c) of the Act (12 U.S.C. 1820(c)) and 12 CFR 308.87–308.93.

(3) The authority delegated under paragraph (i)(1) and (i)(2) of this section shall be exercised only upon the concurrent execution of the order of investigation by both the appropriate Director or designee and the General Counsel or designee.

(j) *Truth in Lending Act.* (1) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to deny requests for relief from the requirements for reimbursement under section 608(a)(2) of the Truth in Lending Simplification and Reform Act (15 U.S.C. 1607(e)(2)); *Provided however,* That a regional director or deputy regional director is not authorized to deny any request where the estimated amount of reimbursement is greater than $10,000.

(2) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director;

(i) To grant request for relief from the requirements for reimbursement under section 608(a)(2) of the Truth in Lending Simplification and Reform Act (15 U.S.C. 1670(a)(2)); and

(ii) To act on applications for reconsideration of any action taken under paragraphs (j)(1) and (j)(2) of this section.

(3) The authority delegated under paragraphs (j)(1) and (j)(2) of this section shall be exercised only upon the concurrent certification by the Deputy General Counsel for Supervision and Legislation, or the Associate General Counsel for Compliance and Enforcement, or, in cases where a regional director or deputy regional director denies requests for relief, by the appropriate regional counsel, that the action taken is not inconsistent with the Truth in Lending Simplification and Reform Act.

(k) *Unilateral settlement offers.* (1) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, to accept, deny or enter into negotiations for unilateral settlement offers with insured depository institutions, or with an institution-affiliated party, pertaining to a proceeding under 12 CFR part 308.

(2) The authority delegated under paragraph (k)(1) of this section shall be exercised only upon the concurrent certification by the Deputy General Counsel for Supervision and Legislation or the Associate General Counsel for Compliance and Enforcement that the action taken is not inconsistent with the Act.

(l) *Acceptance of written agreements.* (1) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, to accept or enter into any written agreements with insured depository institutions, or any institution-affiliated party (as defined in section 3(u) of the Act (12 U.S.C. 1813(u)) pertaining to any matter which may be addressed by the FDIC pursuant to sections 8 (a) and (b) of the Act (12 U.S.C. 1818 (a) and (b)).

(2) The authority delegated under paragraph (j)(1) of this section shall be exercised only upon the concurrent certification by the Deputy General Counsel for Supervision and Legislation, or the Associate General Counsel for Compliance and Enforcement that the action taken is not inconsistent with section 8 (a) and (b) of the Act.

(m) *Modifications and terminations of enforcement actions.* (1) *Upon failure or merger of depository institution.* Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to terminate outstanding section 8(a), section 8(b) and section 8(c) orders and to terminate actions which are pending pursuant to sections 8(a), 8(b), and 8(c) of the Act (12 U.S.C. 1818 (a), (b), (c)) when the depository institution is closed by a Federal or state authority or merges into another institution.

(2) *Section 8(a) actions (12 U.S.C. 1818(a)).* (i) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, to modify or terminate orders of correction issued by the Board of Directors pursuant to section 8(a) of the Act (12 U.S.C. 1818(a)) where either the respondent depository institution is in material compliance with the order of correction or for good cause shown.

(ii) In cases where the Board of Directors has issued a notice of intent to terminate insured status pursuant to section 8(a) of the Act (12 U.S.C. 1818(a)), authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, to terminate the actions pending pursuant to that notice of intent to terminate insured status where either the respondent depository institution is in material compliance with the applicable order of correction or for good cause shown.

(3) *Section 8(b) orders issued by the Board of Directors.* Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to terminate outstanding section 8(b) orders issued by the Board of Directors where either material compliance with the section 8(b) order has been achieved by the respondent depository institution or individual respondent or for good cause shown.

(4) *Section 8(g) orders issued by the Board of Directors.* Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, to approve requests for modifications or terminations of section 8(g) orders issued by the Board of Directors.

(5) *Other matters not specifically addressed.* For all other outstanding orders or pending actions not specifically addressed in paragraphs (m)(1), (m)(2), (m)(3) and (m)(4) of this section, the delegations of authority contained in paragraphs (a)(1), (a)(2), (b)(1), (c)(1), (d)(1), (e)(1), (g)(1), (g)(2), (h)(1), (l)(1), (l)(2), and (n) of this section shall be construed to include the authority to modify or terminate any outstanding order, directive or agreement, as may be appropriate, issued pursuant to delegated authority, and to terminate any pending action (including withdrawal of notice of charges) initiated pursuant to delegated authority.

(8) *Certification.* Any modifications or terminations pursuant to paragraphs (m)(1), (m)(2), (m)(3), and (m)(5) of this section shall be exercised only upon the concurrent certification by the Deputy General Counsel for Supervision and Legislation or the Associate General Counsel for Compliance and Enforcement that the action is not inconsistent with section 8(a) of the Act (12 U.S.C. 1818(a)) and is enforceable in a United States District Court pursuant to section 8(i) of the Act (12 U.S.C. 1818(i)).

(n) *Termination of activities.* (1) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, to terminate any activities of any person or institution-affiliated party pursuant to section 8(c) of the Act (12 U.S.C. 1818(c)).

(2) The authority delegated under paragraph (n)(1) of this section shall be exercised only upon the concurrent certification by the Deputy General Counsel for Supervision and Legislation or the Associate General Counsel for Compliance and Enforcement that the action is not inconsistent with section 8(c) of the Act (12 U.S.C. 1818(c)).

(o) *Limitations.* Any limitations or rescissions shall be filed with the Executive Secretary of the

deputy regional director, regional director, associate director or the request or enforcement matter has been delegated.

(p) *Applications and requests.* Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, to approve applications and requests for which the

authority, the Board of Directors has retained the authority to act upon the following enforcement matters:

(6) *Certification.* Any modifications or terminations pursuant to paragraphs (m)(1), (m)(2), (m)(3), (m)(4), and (m)(5) of this section shall be exercised only upon the concurrent certification by the Deputy General Counsel for Supervision and Legislation, or the Associate General Counsel for Compliance and Enforcement, or in cases where a regional director or deputy regional director acts under delegated authority, by the appropriate regional counsel, that the action taken is not consistent with the Act.

(n) *Enforcement of outstanding orders.* After consultation with the Director, or associate director, or the appropriate regional director or deputy regional director, as may be appropriate, the General Counsel or designee is authorized to initiate and prosecute any action to enforce any effective and outstanding order or temporary order issued under 12 U.S.C. 1817, 1818, 1820, 1828(i), 1829, 1972, or 3909(d), or any provision thereof, in the appropriate United States District Court.

§ 303.10 Applications and enforcement matters where authority is not delegated.

(a) *Authority not specifically delegated is retained by the Board of Directors.* (1) Except as otherwise provided in this part, or with respect to matters which generally involve conditions or circumstances requiring prompt action in the field for the better protection of the interests of the FDIC and to achieve flexibility and expedition in its operations and in the exercise of its functions in connection with the FDIC's litigation and liquidation matters and with the payment of claims for insured deposits, the Board of Directors does not delegate its authority and no delegations of final authority are made by the Board of Directors. Any person having a proper and direct concern therein may ascertain the scope of authority of any officer, agent or employee of the FDIC by communicating with the Executive Secretary of the FDIC.

(2) In all cases where authority to act on applications, requests or enforcement matters listed in this part is not delegated to the Director, or to an associate director or a regional director or deputy regional director, the authority to act on such applications, requests, or enforcement matters remains vested in the Board of Directors of the FDIC. In addition, the Board of Directors retains the authority to act on any application, request or enforcement matter upon which any member of the Board of Directors wishes to act even if the authority to act on such application, request or enforcement matter has been delegated.

(b) *Applications and requests.* Without limiting the Board of Directors' authority, the Board of Directors has retained the authority to act upon the following applications and requests:

(1) Except as provided in § 303.7(b)(9) of this part to deny applications for merger transactions, and to approve applications for merger transactions where:

(i) The applicant does not agree in writing to comply with any conditions imposed by the FDIC (other than the standard condition listed in § 303.6(b)(26) which may be imposed without the applicant's written agreement); or

(ii) The resulting bank, upon consummation of the merger transaction, would have more than 35% of the individual, partnership and corporate deposits held by commercial banks and/or thrift institutions, as may be appropriate, in the relevant market(s); or

(iii) Irrespective of the resulting market share, the Attorney General has determined that the proposed merger transaction may have a significantly adverse effect on competition; or

(iv) The application (including an application for phantom bank merger or reorganization) falls within the "probable failure" or "emergency" provisions of section 18(c)(6) of the FDI Act, or the resultant bank does not meet the minimum capital requirements of part 325.

(2) To deny applications for deposit insurance, and to approve applications for deposit insurance where:

(i) The applicant does not agree in writing to comply with any condition imposed by the FDIC (other than the standard conditions listed in §§ 303.6(b)(26), and 303.7(d)(4), which may be imposed without the applicant's written agreement), or

(ii) The applicant depository institution is a United States branch of a foreign bank; and

(3) To consider an application made by an insured depository institution pursuant to section 19 of the Act (12 U.S.C. 1829) for participation, directly or indirectly, in any manner in the conduct of the affairs of an insured depository institution or any person who has been convicted or is hereafter convicted of any criminal offense involving dishonesty or a breach of trust following a hearing held in accordance with the provisions of part 308 of this chapter (12 CFR part 308).

(c) *Enforcement matters.* Without limiting the Board of Directors' authority, the Board of Directors has retained the authority to act upon the following enforcement matters:

(1) To issue:

(i) Orders of correction when the respondent bank's book capital is at or above 3% of total assets and adjusted primary capital is at or above 5% of adjusted part 325 total assets;

(ii) Notices of intent to terminate insured status; and

(iii) Orders terminating insured status, pursuant to section 8(a) of the Act (12 U.S.C. 1818(a));

(2) To issue cease-and-desist orders pursuant to section 8(b) of the Act (12 U.S.C. 1818(b)) when the respondent depository institution or individual does not consent to the issuance of such orders;

(3) To issue:

(i) Temporary orders of suspension and prohibition pursuant to section 8(e) of the Act (12 U.S.C. 1818(e)); and

(ii) Orders of removal, suspension or prohibition from participation in the conduct of the affairs of an insured depository institution pursuant to section 8(e) of the Act (12 U.S.C. 1818(e)) when the individual does not consent to the issuance of such orders;

(4) To issue orders of suspension or prohibition to an indicted director, officer or person participating in the conduct of the affairs of an insured depository institution and orders of removal or prohibition to a convicted director, officer or person participating in the conduct of the affairs of an insured depository institution pursuant to section 8(g) of the Act (12 U.S.C. 1818(g)) when such director, officer or person does not consent to the suspension or removal;

(5) To issue final orders to pay civil money penalties where respondents do not consent to the assessment of civil money penalties and hearings have been held; and

(6) To deny requests for modifications or terminations of orders issued pursuant to section 8(g) of the Act (12 U.S.C. 1818(g)).

§ 303.11 Confirmation, limitations, rescissions and special cases.

(a) *Written confirmation, limitations or subsequent rescission.* (1) The authority delegated in §§ 303.7, 303.8 and 303.9 of this part by the Board of Directors to the associate director, the appropriate regional director or deputy regional director is subject, as to each associate director, regional director and deputy regional director, to written confirmation, limitations, or subsequent rescission of any confirmation, by the Director. Such written confirmation, limitations or rescissions shall be filed with the Executive Secretary of the FDIC at its offices in Washington, DC, and at the office of the regional director or deputy regional director concerned, and shall be available for public inspection by interested parties.

(2) The conditions set forth in this part to which the exercise of delegated authority is subject are procedural in nature only, and shall not be construed as standards or criteria which will be used in determining the merits of a specific application, petition, request or enforcement matter.

(b) *Action under delegated authority not mandated.* (1) The Director may, in writing, rescind the authority of an associate director, regional director or deputy regional director to act on an application, request, notice of acquisition of control or enforcement matter, and may himself act on the same.

(2)(i) An associate director, regional director or deputy regional director may, in writing, recommend that the authority to act on an application, request, notice of acquisition of control or enforcement matter not be exercised by him; in such cases, the authority to act on such application, request, notice of acquisition of control or enforcement matter may be exercised by the Director. The Director may, in writing, recommend that the authority to act on an application, request, notice of acquisition of control or enforcement matter may not be exercised by him; in such cases the Board of Directors will act on the application, request, notice of acquisition of control or enforcement matter.

(ii) A regional counsel may, in writing, recommend that the authority to act on an application made by insured depository institutions pursuant to section 19 of the Act (12 U.S.C. 1829) or an enforcement matter not be exercised by him; in such cases the authority to act in such enforcement matters may be exercised by the Deputy General Counsel for Supervision and Legislation, or the Associate General Counsel for Compliance and Enforcement. The Deputy General Counsel for Supervision and Legislation, or the Associate General Counsel for Compliance and Enforcement may, in writing, recommend that the authority to act on an application pursuant to section 19 of the Act or enforcement matter not be exercised by him; in such cases, the Board of Directors will act on the application or enforcement matter.

(iii) Upon determining not to act upon the application, request, notice of acquisition of control or enforcement matter under delegated authority, the deputy regional director, regional director, associate director or the Director, and/or the regional counsel, or the Associate General Counsel for Compliance and Enforcement, or the Deputy General Counsel for Supervision and Legislation, as the case may be, shall forward the application, request, notice of acquisition of control or enforcement matter, together with his recommendations as to the disposition of such application, request, notice of acquisition of control or enforcement matter to the appropriate authority as determined by the rules set forth in paragraphs (b)(2)(i) and/or (b)(2)(ii) of this section.

(c) *Request for review.* Any aggrieved party or person may request the Board of Directors to review any action taken under authority delegated in §§ 303.7, 303.8 and 303.9 of this part.

§ 303.12 OMB control number assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This section collects and displays the control numbers assigned to information collection requirements of this part by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). The FDIC intends that this section comply with section 3507(f) of the Paperwork Reduction Act (44 U.S.C. 3507(f)), which requires that agencies display a current control number assigned by the Director of the Office of Management and Budget for each agency information collection requirement.

(b) *Display.*

Section of 12 CFR part 303 where identified and described	Current OMB control No.
303.1	3064.0001
303.1	3064.0069
303.2	3064.0070
303.3	3064.0016
303.4(b)	3064.0019

By order of the Board of Directors.

Dated at Washington, DC, this 12th day of December, 1989.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 89-30176 Filed 12-28-89; 8:45 am]

BILLING CODE 6714-01-M

12 CFR Part 335

RIN 3064-AA45

Securities of Nonmember Insured Banks

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The rule amends the Federal Deposit Insurance Corporation's ("FDIC") securities disclosure regulations issued under The Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. 78 et seq.) in order to bring them into substantial similarity with those of the Securities and Exchange Commission ("SEC"). Section 12(i) of the Exchange Act requires that the FDIC issue regulations substantially similar to those of the SEC or publish its reasons for not doing so. The amendment is intended to comply with section 12(i) and to update the regulation. It covers the following: (1) Independent audit requirement, (2) compensation, (3) small transaction exemption, (4) issuer tender offers, (5) comprehensive review of proxy rules, (6) all holders and best price rules for tender offers, (7) shareholder communications, and (8) non-bank companies financial disclosure in merger-type transactions.

DATES: Effective January 29, 1990, except for the requirement that bank financial statements be audited by independent public accountants, which shall become effective for periods ending after December 15, 1990.

FOR FURTHER INFORMATION CONTACT: William F. Sullivan, Senior Financial Analyst, Division of Supervision (202) 898–8903 or Gerald J. Gervino, Senior Attorney, Legal Division (202) 898–3723.

SUPPLEMENTARY INFORMATION:

A. Paperwork Reduction Act

The collections of information contained herein have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)).

The collections of information in this regulation are grouped under the title Securities of Insured Nonmember Banks (OMB No. 3064–0030) and are contained in §§ 335.212, 335.213, 335.221, 335.309a, 335.309b, 335.312, 335.321, 335.331, 335.332, 335.407, 335.408, 335.413, 335.414, 335.512, 335.513, and 335.627. This information is collected from insured nonmember banks that are subject to the securities registration requirements of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78), and from their shareholders. The required information is considered necessary for actual and potential investors making investment decisions concerning the securities issued by the reporting banks.

The estimated annual reporting burden for the collections of information

in this regulation is summarized as follows:

2. Compensation

On September 23, 1983, the SEC

Shareholder Communications Act of 1985 (Pub. L. 99–222, 99 Stat. 1737 (1985)).

54 FR 30076 (July 25, 1989). The comments received and our disposition

solicitation remedies may be confined to court enforcement actions, cumbersome

in this regulation is summarized as follows:

Number of Respondents: 5,058.
Number of Responses Per Respondent: 1.09.
Total Annual Responses: 5,500.
Hours Per Response: 10.49.
Total Annual Burden Hours: 57,629.

B. Background

Section 12(i) of the Exchange Act vests the powers, functions, and duties of the SEC to administer and enforce sections 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the Act with respect to nonmember banks in the FDIC. The same section requires the FDIC to issue regulations substantially similar to regulations issued by the SEC unless the FDIC finds that implementation of such regulations with respect to insured banks is not necessarily appropriate in the public interest, or for protection of investors, and the FDIC publishes the findings in the Federal Register. The rule is intended to satisfy that requirement.

C. Amendments to Part 335

1. Independent Audit Requirement

Since 1964 most banks have generally had the option of using verification statements which express the opinion of a bank's principal accounting officer or internal auditor. On July 19, 1971, the SEC required all corporations reporting to it under the Exchange Act to have their financial statements audited by independent public accountants. SEC Rel. No. 34–9253, 36 FR 13915 (July 28, 1971).

On September 30, 1975, the FDIC reviewed the question of requiring audits of banks' financial statements filed under Part 335.40 FR 47340 (October 8, 1975). At that time, less than half of those banks whose securities were registered filed certified financial statements. Currently, only eight banks reporting under Part 335 do not file certified financial statements.

In order to make reporting requirements for publicly held banks consistent with those requirements for all other publicly held corporations, the FDIC is amending Part 335 of its regulations to eliminate the use of verification statements and to require that bank financial statements be audited by independent public accountants. This requirement is effective for financial statements issued for periods ending after December 15, 1990. The FDIC is amending §§ 335.602 and 335.603 to conform to the SEC rule.

2. Compensation

On September 23, 1983, the SEC adopted an amended and retitled item of Regulation S–K, item 402, providing for uniform disclosure of the compensation paid to certain executive officers and directors. The amendment was intended to simplify the current disclosure requirements, reduce compliance burdens and allow SEC registrants greater flexibility in selecting a presentation format while providing investors and security holders with more comprehensive information concerning executive compensation. SEC Rel. No. 34–20220, 43 FR 44487 (Sept. 29, 1983), corrected 48 FR 46012, (Oct. 11, 1983). The FDIC is amending its regulations in a similar fashion to provide greater flexibility in format and to otherwise conform with newer SEC requirements. A noteworthy change is an increase in the threshold for disclosure of individual compensation of executive officers from $50,000 to $60,000. The FDIC is amending § 335.212 item 7 to accomplish this result. Changes in other aspects of items 6 and 7 relating to directors, officers, and insider transactions, as modified by the SEC on December 13, 1982, SEC Rel. No. 34–19290, 47 FR 55861 (December 13, 1982) are also made except for certain provisions governing disclosure of insider loans for banks which have historically been governed by more specific regulations in Part 335.

3. Small Transaction Exemption

SEC. Rel. No. 34–18853, 47 FR 29652 (July 8, 1982) increased the reporting exemption for small "insider trading" reports from $3,000 to $10,000 in market value for any six-month period. The FDIC is amending § 335.410(h) to conform to the SEC change.

4. Issuer Tender Offers

On July 28, 1983, the SEC amended its issuer tender offer regulation (SEC rule 13(e)(4) to except from its requirements, offers by issuers to purchase shares from their security holders who own a specified number of shares (less than 100) as of a specified date prior to the announcement of the offer. A companion amendment was made to SEC rule 13(e)(3) (the "going private rule"). SEC Rel. No. 34–23789, 48 FR 34253 (July 28, 1983). The FDIC has applied SEC rules 13(e) (3) and (4) to nonmember bank transactions by a statement of policy. 46 FR 25295 (May 5, 1981). Since the time of adoption of this policy, issuer tender offers and going private transactions have become more frequent among nonmember banks. Thus, a specific rule in the FDIC's regulations applying SEC rules 13(e)(3) and 13(e)(4) to nonmember banks is desirable. The FDIC is amending §§ 335.409 and 335.521 to reflect the application of these rules to registered nonmember banks.

5. Comprehensive Review of Proxy Rules

On November 10, 1986 the SEC adopted amendments to its proxy rules in order to bring to the proxy context the benefits of the SEC's existing integrated disclosure system. The amendments provided for simplified disclosure of compensation plans. The amendments also require new registrants to provide disclosure concerning prior changes in accountants and any related disagreements. In addition, certain changes updated the rules to comport with current SEC practice, interpretations and other changes of laws and rules. 51 FR 42048 (November 20, 1986).

The FDIC is adopting technical changes made by the SEC which fit the regulatory scheme of part 335. A major difference is that the FDIC does not repeat many regulations in a separate information statement regulation. Reference to the Securities Act of 1933 filings is eliminated, since banks are exempt from the Securities Act of 1933, 15 U.S.C. 77a *et seq.* (1982) ("Securities Act").

The amendments primarily revise Subpart B of Part 335.

6. All Holders and Best Price Rules in Tender Offers

On July 11, 1986, the SEC adopted amendments to its tender offer rules providing that a bidder's or issuer's tender offer must be open to all holders of the class of securities subject to the tender offer and that any security holder must be paid the highest consideration paid to any other security holder during the tender offer. In addition, the SEC amended existing rules concerning minimum offering periods and withdrawal rights. SEC Rel. No. 34–23421, 51 FR 25873 (July 17, 1986).

The FDIC is adopting the SEC amendments in substantially the form adopted by the SEC except that the issuer tender offer rules are brought into play by the cross referencing regulation in paragraph 4. Sections 335.507, 335.509(a), and 335.510 are amended as set forth below.

7. Shareholder Communications

On November 25, 1986, the SEC adopted its new rule 14b–2 under the Exchange Act and related amendments to rules 14a–1, 14a–13, 14c–1 and 14c–7 in order to implement provisions of the

Shareholder Communications Act of 1985 (Pub. L. 99–222, 99 Stat. 1737 (1985)). New rule 14b–2 governs banks as intermediaries and is administered by the SEC. Rules 14a–1, 14a–13, 14c–1 and 14c–7 would apply to nonbank issuers and are thus subject to our consideration under section 12(i) of the Exchange Act. The rules govern the process by which the registrants communicate with the beneficial owners of their securities that are registered in the name of a bank, its nominee, a broker, or other entity acting as agent, custodian or fiduciary (i.e., held in street name). The FDIC is amending its regulations with respect to those provisions that deal with the bank as issuer. Appropriate amendments are made to §§ 335.203 and 335.214.

8. Companies

SEC Rel. No. 34–23789, discussed in paragraph 4 above, also allows the incorporation by reference of information meeting the requirements of the proxy regulations that has already been filed under the Securities Act.

The FDIC is amending its regulations to allow the incorporation by reference of filings on SEC forms where the person incorporating filings by reference is a holding company or nonbank company filing with the SEC. All filings incorporated by reference must be filed with the FDIC. Section 335.212, items 14 and 15 are amended as set forth below.

9. Supplementary Statistical Disclosure

Pursuant to the SEC's Industry Guide 3, supplemental statistical disclosures of material lending and deposit activities may be relevant and useful to an understanding of the bank's operations. The management's discussion and analysis of financial condition and results of operations sections of the annual report and registration statement (Forms F–2 and F–1, respectively) are expanded to include statistical information similar to that required by Securities Exchange Act Industry Guide 3. Information about yields and costs of various assets and liabilities, maturities and repricing characteristics of various assets and liabilities and risk elements in the lending portfolio are required. SEC Rel. No. 89, 52 FR 18200 (May 8, 1987). The FDIC is amending sections 335.309a and 335.312 to provide for informative disclosures by nonmember banks as appropriate.

D. Comments Received and Resulting Changes

On May 16, 1989 the FDIC solicited comments on proposed amendments to Part 335 of its regulations concerning securities of insured nonmember banks. 54 FR 30976 (July 25, 1989). The comments received and our disposition are set forth below.

One bank commentator felt that the proposal would add significantly to the cost of preparing its annual report to security holders without a significant additional benefit. This commentator is currently reporting under the Exchange Act with uncertified statements and would be required to certify its financial statements under the proposed rule. We feel it is no longer possible to delay a certification requirement for banks, since this requirement has been in effect for bank holding companies filing with the SEC for over 18 years. Thus, the FDIC is adopting its proposed amendment to 12 CFR 335.602 and 335.603 in order to require an independent audit for banks filing under the Exchange Act.

Another comment requested that the FDIC permit the use of 8½×11 inch paper or justify the requirement for a different size. Section 335.360 requires reports to be filed on 8½×13 inch paper, insofar as practicable. The FDIC interprets "insofar as practicable" as allowing for other reasonably sized papers to be filed, and therefore permits the use of 8½×11 inch paper under its current rules.

A commentator from outside the banking industry indicated disapproval of our refusal to adopt changes to the shareholder proposal rule which have been made by the SEC. The commentator expressed fear that industry restructuring, consumer interest in banks, and potential proxy fights might cause a bank to be confronted by a large number of shareholder proposals. We stated in connection with our proposal that our existing rules had not presented any major problems in administering and enforcing the proxy solicitation rules. Thus, we feel that banks need not be subjected to learning a new rule and will retain our existing 12 CFR 335.211.

Two commentators felt that banks filing "routine" proxy material should be excluded, at their option, from filing preliminary proxy material in order to reduce the costs of proxy solicitations. The staff of the FDIC has found that banks filing preliminary proxy material with it almost always occasion staff comments. This circumstance may be caused by the number of transactions requiring disclosure that a bank may enter because of the nature of its business and also by the extent of information available to bank regulatory staff reviewing the preliminary material. We do not feel that proxy review can rest on the hard choices required by after-the-fact enforcement actions. Post solicitation remedies may be confined to court enforcement actions, cumbersome administrative proceedings or instructions admonishing banks to refrain from similar activity in subsequent years. The FDIC does not receive the prohibitive volume of reports that the SEC receives, whose numbers alone preclude analysis of many ordinary filings. The FDIC, unlike the SEC does not impose filing fees which might otherwise be saved if the routine preliminary proxy filings were no longer required. Although cost estimates were requested in our notice of proposed rulemaking, none were received. In the absence of new evidence, we do not believe that preliminary filing of proxy solicitation material represents a material cost to banks. As proposed, the FDIC is not incorporating the above described exclusion into Subpart B of Part 335 of its regulations.

The language of § 335.203 has been amended to eliminate confusion as to whether restatement of the previously required schedule of changes in financial position for years ending before July 15, 1988 is permitted. Section 335.203 does permit that restatement.

The comment was made that the proposal requires disclosures similar to the SEC's Securities Exchange Act Industry Guide 3. The commentator felt that the guide's requirement of daily averages should be liberalized to weekly or month-end averages, where the collection of data on a daily average basis would involve unwarranted or undue burden or expense and the averages are representative of the operations of the registrant. The FDIC has adjusted the language of the final 12 CFR 335.312, Item 7, to accomplish this result.

Other comments favored adoption of the following proposals, which are being adopted: (1) Independent audit requirement; (2) changes in compensation disclosure requirements; (3) an increase in the exemption for small "insider trading" reports; (4) formalization of issuer tender offer regulation; (5) comprehensive proxy rule changes; (6) all holders and best price rules in tender offers; (7) shareholder communications; (8) nonbank disclosure; and (9) areas of supplemental statistical disclosure not discussed above.

E. Miscellaneous

The regulations have been updated to reflect changes in the Call Reports and in other minor technical respects.

The period for reporting changes in a bank's certifying accountant or the resignation of members of the bank's board of directors has been shortened to

five business days after the event to be reported. Section 335.321 of the

(o) as paragraph (u); paragraphs (i) through (n) as paragraphs (o) through (t);

regarding the current request for a list of names, addresses and securities

with another bank, association or other entity that exercises fiduciary powers.

paragraph (b), introductory text as follows:

Note to paragraph (b)(2): To assist the staff, managements of banks are requested to

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five business days after the event to be reported. Section 335.321 of the regulations is amended accordingly. Amendment of the Form F–11A is no longer required if no change in ownership occurs from the previous filing. Section 335.402 is accordingly amended.

F. Certain Factors

1. Alternatives Considered

Section 12(i) of the Act requires the FDIC to issue regulations substantially similar to those of the SEC or publish its reasons for not doing so. The FDIC believes that the reasons for the SEC regulations being adopted are equally applicable to the banking industry.

2. Cost-Benefit Analysis

As noted above, the amendments are required by statute. Therefore, a cost-benefit analysis was not prepared. The FDIC feels that at this time it is not appropriate to utilize a flexible regulatory approach (small bank/large bank) since shareholders and investors in small banks have the need for the same quality information provided to shareholders and investors of large banks.

3. Regulatory Flexibility Act

The FDIC certifies that the regulations do not have a significant economic impact on a substantial number of small banks or other entities. Of the banks affected by the proposal less than 60 banks have individual assets no greater than $25 million.

List of Subjects in 12 CFR Part 335

Accounting, Banks, Banking, Reporting and recordkeeping requirements, Securities.

Chapter III of title 12 of the Code of Federal Regulations is amended as follows:

PART 335—SECURITIES OF NONMEMBER INSURED BANKS

1. The authority citation for part 335 continues to read as follows:

Authority: Sec. 12(i), Securities Exchange Act of 1934, as amended (15 U.S.C. 78l(i)).

§ 335.101 [Amended]

2. Section 335.101 is amended by closing the parenthesis in the last sentence after "3064–0030", placing a period after that parenthesis, and removing the rest of that sentence.

3. Section 335.102 is amended by:

(A) Redesignating paragraphs (dd) through (jj) as paragraphs (mm) through (ss); paragraph (cc) as paragraph (ii); paragraphs (p) through (bb) as paragraphs (v) through (hh); paragraph (o) as paragraph (u); paragraphs (i) through (n) as paragraphs (o) through (t); paragraphs (f) through (h) as paragraphs (j) through (l); paragraph (e) as paragraph (g); paragraphs (b) through (d) as paragraphs (c) through (e);

(B) Revising newly designated paragraphs (u), (ii), and (rr);

(C) Adding new paragraphs (b), (f), (h), (i), (m), (n), (jj), (kk), and (ll); and

(D) Removing and reserving newly designated paragraph (l), as follows:

§ 335.102 Definitions

* * * * *

(b) *Accountants report.* The term "accountant's report," when used in regard to financial statements, means a document in which an independent public or certified public accountant indicates the scope of the audit (or examination) which he has made and sets forth his opinion regarding the financial statements taken as a whole, or an assertion to the effect that an overall opinion cannot be expressed. When an overall opinion cannot be expressed, the reasons therefor shall be stated.

* * * * *

(f) *Audit (or examination).* The term "audit" (or "examination"), when used in regard to financial statements, means an examination of the statements by an accountant in accordance with generally accepted auditing standards for the purpose of expressing an opinion thereon.

* * * * *

(h) *Call Report.* The term "Call Report" means the Consolidated Reports of Condition and Income for insured banks (FFIEC forms 031, 032, 033 and 034).

(i) *Certified.* The term "certified," when used in regard to financial statements, means examined and reported upon with an opinion expressed by an independent public or certified public accountant.

* * * * *

(l) [Reserved]

(m) *Employee benefit plan.* For purposes of §§ 335.203 and 335.214, the term "employee benefit plan" means any purchase, savings, option, bonus, appreciation, profit sharing, thrift, incentive, pension or similar plan solely for employees, directors, trustees or officers, and the term "exempt employee benefit plan securities" means:

(1) Securities of the bank held by an employee benefit plan, as defined in this paragraph (m), where such plan is established by the bank or

(2) if notice regarding the current solicitation has been given pursuant to § 335.214 (a)(1)(ii)(C) or if notice regarding the current request for a list of names, addresses and securities positions of beneficial owners has been given pursuant to § 335.214(b)(3), securities of the bank held by an employee benefit plan, as defined in this paragraph (m), where such plan is established by an affiliate of the bank.

(n) *Entity that exercises fiduciary powers.* The term "entity that exercises fiduicary powers" means any entity that holds securities in nominee name or otherwise on behalf of a beneficial owner but does not include a clearing agency registered pursuant to section 17A of the Act or a broker or a dealer.

* * * * *

(u) *Last fiscal year.* The term "last fiscal year" of the bank means the last fiscal year of the bank ending prior to the date of the meeting for which proxies are to be solicited or an information statement is required to be distributed or, if the solicitation or information statement involves written authorizations or consents in lieu of a meeting, the earliest date they may be used to effect corporate action.

* * * * *

(ii) *Qualified stock option, restricted stock option, and employee stock purchase plan.* The terms "qualified stock option," "restricted stock option," and "employee stock purchase plan" have the meanings given them in sections 422 through 424 of the Internal Revenue Code of 1986, as amended. For the purposes of this regulation, an option which meets all of the conditions of section 424(b) of the Internal Revenue Code of 1986 as amended, other than the date of issuance, shall be deemed to be a "restricted stock option."

(jj) *Record date.* The term "record date" means the date as of which the record holders of securities entitled to vote at a meeting or by written consent or authorization shall be determined.

(kk) *Record holder.* For purposes of §§ 335.203 and 335.214 the term "record holder" means any broker, dealer, voting trustee, bank, association or other entity that exercises fiduciary powers which holds securities of record in nominee name or otherwise or as a participant in a clearing agency registered pursuant to section 17A of the Act.

(ll) *Respondent bank.* For purposes of §§ 335.203 and 335.214, the term "respondent bank" means any bank, association or other entity that exercises fiduciary powers which holds securities on behalf of beneficial owners and deposits such securities for safekeeping with another bank, association or other entity that exercises fiduciary powers.

* * * * *

(rr) *Verified.* The term "verified" when used in regard to financial statements, has the same meaning as "certified."

* * * * *

4. Section 335.201 is amended by revising paragraphs (a) and (b) to read as follows:

§ 335.201 Requirement of statement.

(a) *Proxy statements.* No solicitation of a proxy (See 12 CFR 335.102(gg) and (oo)) with respect to a security of a bank registered under section 12 of the Act shall be made unless each person solicited is concurrently furnished or has previously been furnished with a written proxy statement containing the information required by Form F–5.

(b) *Information statements.* If any bank having such a security outstanding fails to solicit proxies from the holders of any such security in a manner requiring the furnishing of a proxy statement, the bank shall transmit to all holders of record of such security a statement containing the information required by Form F-5A. The "information statement" required by the preceding sentence shall be transmitted:

(1) At least 20 calendar days prior to any annual or other meeting of the holders of such security at which the holders are entitled to vote or,

(2) In the case of corporate action taken with the written authorization or consent of security holders, at least 20 days prior to the earliest date on which the corporate action may be taken.

The "information statement" shall be transmitted to every security holder of the class that is entitled to vote or give an authorization or consent in regard to any matter to be acted upon and from whom a proxy, authorization or consent is not solicited on behalf of the bank pursuant to section 14(a) of the Act: *Provided, however,* that in the case of a class of securities in unregistered or bearer form, such statements need be transmitted only to those security holders whose names are known to the bank.

* * * * *

5. Section 335.203 is amended by:

a. Revising paragraph (a) introductory text, (a)(1) and (a)(7); the note to paragraph (a)(1) remains unchanged;

b. Adding new notes after paragraphs (a)(9) and (b)(2); and the last sentence of paragraph (b) is designated as concluding text;

c. Revising paragraph (a)(11); and

d. Removing the word "Six" and adding in its place the word "Three" in paragraph (b), introductory text as follows:

§ 335.203 Annual report to security holders to accompany statements.

(a) Any statement furnished on behalf of the bank that relates to an annual meeting (or special meeting in lieu of annual meeting) of security holders at which directors are to be elected shall be accompanied or preceded by an annual report to such security holders.

(1) The report shall include, for the bank and its subsidiaries, consolidated balance sheets as of the end of each of the two most recent fiscal years, and statements of income, changes in capital accounts and changes in financial position and/or cash flows for each of the three most recent fiscal years, prepared and audited in substantial compliance with Subpart F of this part. Any financial statement schedules (except schedule VI) or exhibits or separate financial statements which may otherwise be required in filings with the FDIC may be omitted.

* * * * *

(7) The report shall identify each of the bank's directors and officers, and shall indicate the principal occupation or employment of each such person and the name and principal business of any organization by which such person is so employed. See the definition of "officers" at § 335.102(y).

* * * * *

(9) * * *

Note to paragraph (a)(9): Pursuant to the undertaking required by paragraph (a)(9) of this section, a bank shall furnish a copy of its annual report on Form F-2 (§ 355.312) to a beneficial owner of its securities upon receipt of a written request from such person. Each request must set forth a good faith representation that, as of the record date for the solicitation requiring the furnishing of the annual report to security holders pursuant to paragraph (a) of this section, the person making the request was a beneficial owner of securities entitled to vote.

* * * * *

(11) This § 335.203 shall not apply, however, to solicitations made on behalf of the bank before the financial statements are available if solicitation is being made at the time in opposition to the bank and if the bank's statement includes an undertaking in boldface type to furnish such annual report to all persons being solicited at least 20 calendar days before the date of the meeting or, if the solicitation refers to a written consent or authorization in lieu of a meeting, at least 20 calendar days prior to the earliest date on which it may be used to effect corporation action.

* * * * *

(b) * * *

Note to paragraph (b)(2): To assist the staff, managements of banks are requested to indicate in a letter transmitting to the FDIC copies of their annual reports to security holders or in a separate letter at or about the time the annual report is furnished to the FDIC, whether the financial statements in the report reflect a change from the preceding year in any accounting principles or practices or in the method of applying any such principles or practices.

* * * * *

6. Section 335.204 is amended by:

a. Adding Note 1 and Note 2 at the end of paragraph (a);

b. Changing the word "holidays" to "federal holidays" in paragraph (b);

c. Removing the word "Six" and adding in its place the word "Three" in the first sentence of paragraph (c);

d. Redesignating paragraphs (e) through (j) as (f) through (k) and adding a new paragraph (e);

e. Revising newly designated paragraphs (f) through (i).

§ 335.204 Material required to be filed.

(a) * * *

Note 1 to paragraph (a): The filing of revised material does not recommence the ten day time period unless the revised material contains material revisions or material new proposal(s) that constitute a fundamental change in the proxy material.

Note 2 to paragraph (a): The officials responsible for the preparation of the preliminary material should make every effort to verify the accuracy and completeness of the information required by the applicable rules. The preliminary material should be filed with the FDIC at the earliest practicable date.

* * * * *

(e) All preliminary material filed pursuant to paragraph (a) or (b) of this section shall be accompanied by a statement of the date on which definitive copies therefor filed pursuant to paragraph (c) of this section are intended to be released to security holders. All definitive material filed pursuant to paragraph (c) of this section shall be accompanied by a statement of the date on which copies of such material have been released to security holders, or, if not released, the date on which copies thereof are intended to be released. All material filed pursuant to paragraph (d) of this section shall be accompanied by a statement of the date on which copies thereof are intended to be released to the individual who will make the actual solicitation.

(f) All copies of material filed under paragraphs (a) and (b) of this section shall be clearly marked "Preliminary Copies" and shall be for the information of the FDIC only and shall not be considered available for public inspection before definitive material has

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been filed with the FDIC, except that such material may be disclosed to any department or agency of the U.S. Government and to the Congress. The FDIC may make such inquiries or investigation with respect to the material as may be necessary for an adequate review thereof.

(g) Copies of replies to inquiries from security holders requesting further information and copies of communications that do no more than request that forms of proxy theretofore solicited be signed, dated, and returned need not be filed under this section.

(h) Notwithstanding the provisions of § 335.204 (a) and (b), § 335.205(b) and § 335.220(e), copies of soliciting material in the form of speeches, press releases, and radio or television scripts may, but need not, be filed with the FDIC prior to use or publication. Definitive copies, however, shall be filed with or mailed for filing to the FDIC as required by § 335.204(c) not later than the date such material is used or published. The provisions of § 335.204 (a) and (b), § 335.205(b) and § 335.220(e) shall apply, however, to any reprints or reproductions of all or any part of such material.

(i) Where any statement, form of proxy, or other material filed pursuant to this section is revised, two of the copies of such amendment or revised material filed under § 335.204(c) shall be marked to indicate clearly the changes. If the amendment or revision alters the text of the material, the changes in such text shall be indicated by means of underscoring or in some other appropriate manner.

* * * * *

§ 335.206 [Amended]

7. Section 335.206 is amended by changing the word "paragraph" to "section" in the second sentence in paragraph (a).

8. Section 335.207 is amended by revising paragraph (d) to read as follows:

§ 335.207 Requirements as to proxy.

* * * * *

(d) No proxy shall confer authority:

(1) To vote for the election of any person to any office for which a bona fide nominee is not named in the proxy statement;

(2) To vote at any annual meeting other than the next annual meeting (or any adjournment thereof) to be held after the date on which the proxy statement and form of proxy are first sent or given to security holders;

(3) To vote with respect to more than one meeting (and any adjournment thereof) or more than one consent solicitation; or

(4) To consent to or authorize any action other than the action proposed to be taken in the proxy statement or matters referred to in paragraph (c) of this section.

A person shall not be deemed to be a bona fide nominee and he shall not be named as such unless he has consented to being named in the proxy statement and to serve if elected.

* * * * *

9. Section 335.209 is amended by revising paragraph (e) as follows:

§ 335.209 Presentation of information in statement.

* * * * *

(e) All proxy statements shall disclose on the first page thereof the complete mailing address, including zip code, of the principal executive offices of the bank and the approximate date on which the proxy statement and form of proxy are first sent or given to security holders. If action is to be taken by written consent, state the date by which consents are to be submitted if state law requires that such a date be specified or if the person soliciting intends to set a date.

* * * * *

10. Section 335.210 is amended by revising paragrahs (b)(2) and (b)(3) as follows:

§ 335.210 Mailing communications for security holders.

* * * * *

(b) * * *

(2) Any material that is furnished by the security holder shall be mailed with reasonable promptness by the bank after receipt of a tender of the material to be mailed, of envelopes or other containers therefor, of postage or payment for postage. The bank need not, however, mail any such material that relates to any matter to be acted upon at an annual meeting of security holders prior to the earlier of:

(i) A day corresponding to the first date on which the bank's proxy soliciting material was released to security holders in connection with the last annual meeting of security holders, or

(ii) The first day on which solicitation is made on behalf of the bank. With respect to any material that relates to any matter to be acted upon by security holders otherwise than at an annual meeting, the material need not be mailed prior to the first day on which solicitation is made on behalf of the bank management.

(3) The bank shall not be responsible for the proxy statement, form of proxy, or other communication.

* * * * *

11. Section 335.212 is amended by:

a. Revising the first paragraph under General Instructions;

b. Revising paragraph (b)(2) of Item 4, and paragraphs (a) and (d) of Item 5; and removing the Instructions to paragraph (d) of Item 5;

c. Removing paragraph (e) and redesignating paragraph (f) and its instructions as paragraph (e) of Item 5;

d. Redesignating paragraph (g) as paragraph (f) and removing the Instruction to newly designated paragraph (f) of Item 5;

e. Adding instructions 1 through 7 of Item 5 at the end of Item 5;

f. Revising paragraph (e) of Item 6; the note to paragraph (e) of Item 6 remains unchanged;

g. Revising Item 7 in its entirety;

h. Revising the heading, introductory text and paragraphs (a) and (b) of Item 9 and adding Instructions at the end of Item 9; removing Items 10 and 11, and redesignating Items 12 through 22 as Items 10 through 20;

i. Revising newly designated Item 12 and paragraphs (a)–(c) of newly designated Item 13;

j. Revising the Option Disclosure Instruction that follows redesignated Item 20.

§ 335.212 Form for proxy statement (Form F–5).

Form F–5—Proxy Statement

General Instructions

Each proxy statement shall, to the extent applicable, include the information called for under each of the items below. In the preparation of the statement, particular attention should be given to the definitions in § 335.102.

* * * * *

Item 4—Interest of Certain Persons in Matters To Be Acted Upon

* * * * *

(b) * * *

(2) With respect to any person, other than a director or principal officer of the bank acting solely in that capacity, who is a party to an arrangement or understanding pursuant to which a nominee for election as director is proposed to be elected, describe any substantial interest, direct or indirect, by security holdings or otherwise, that he has in any matter to be acted upon at the meeting, and furnish the information

called for by Item 4(b) and (c) of Form F–6.

* * * * *

Item 5—Voting Securities and Principal Holders Thereof

(a) As to each class of voting securities of the bank entitled to be voted at the meeting (or by written consents or authorizations if no meeting is held) state the number of shares outstanding and the number of votes to which each class is entitled.

* * * * *

(d)(1) Furnish the following information, as of the most recent practicable date, substantially in the tabular form indicated, with respect to any person (including any "group" as that term is used in section 13(d)(3) of the Act) who is known to the bank to be the beneficial owner of more than five percent of any class of the bank's voting securities. The address given in column (2) may be a business, mailing or residence address. Show in column (3) the total number of shares beneficially owned and in column (4) the percentage of class so owned. Of the number of shares shown in column (3), indicate by footnote or otherwise the amount known to be shares with respect to which such listed beneficial owner has the right to acquire beneficial ownership as specified in § 335.403(d)(1).

(1)	(2)	(3)	(4)
Title of class	Name and address of beneficial owner	Amount and nature of beneficial ownership	Percent of class

(2) *Security ownership of management.* Furnish the following information, as of the most recent practicable date, in substantially the tabular form indicated, as to each class of equity securities of the bank or any of its parents or subsidiaries other than directors' qualifying shares, beneficially owned by all directors and nominees, naming them, and directors and officers of the bank as a group, without naming them. Show in column (3) the total number of shares beneficially owned and in column (4) the percent of class so owned. Of the number of shares shown in column (3), indicate, by footnote or otherwise, the amount of shares with respect to which such persons have the right to acquire beneficial ownership as specified in § 335.403(d)(1).

(1)	(2)	(3)	(4)
Title of class	Name of beneficial owner	Amount and nature of beneficial ownership	Percent of class

* * * * *

Instructions to Item 5. 1. The percentages are to be calculated on the basis of the amount of outstanding securities, excluding securities held by or for the account of the bank or its subsidiaries, plus securities deemed outstanding pursuant to § 335.403(d)(1). For purposes of paragraph (2), if the percentage of shares beneficially owned by any director or nominee, or by all directors and officers of the bank as a group does not exceed one percent of the class so owned, the bank may, in lieu of furnishing a precise percentage, indicate this fact by means of an asterisk and explanatory footnote or other similar means.

2. For the purpose of this Item, beneficial ownership shall be determined in accordance with § 335.403. Include such additional subcolumns or other appropriate explanation of column (3) necessary to reflect amounts as to which the beneficial owner has (A) sole voting power, (B) shared voting power, (C) sole investment power, or (D) shared investment power.

3. The bank shall be deemed to know the contents of any statements filed with the FDIC pursuant to section 13(d) or 13(g) of the Exchange Act. When applicable, a bank may rely upon information set forth in the statements unless the bank knows or has reason to believe that such information is not complete or accurate or that a statement or amendment should have been filed and was not.

4. For purposes of furnishing information pursuant to paragraph (d)(1), the bank may indicate the source and date of such information.

5. Where more than one beneficial owner is known to be listed for the same securities, appropriate disclosure should be made to avoid confusion. For purposes of paragraph (2), in computing the aggregate number of shares owned by directors and officers of the bank as a group, the same shares shall not be counted more than once.

6. Paragraph (f) of this Item does not require a description of ordinary default provisions contained in the charter, trust indentures or other governing instruments relating to securities of the bank.

7. Where the holder(s) of voting securities reported pursuant to paragraph (1) hold more than five percent of any class of voting securities of the bank pursuant to any voting trust or similar agreement, state the title of such securities, the amount held or to be held pursuant to the trust or agreement (if not clear from the table) and the duration of the agreement. Give the names and addresses of the voting trustees and outline briefly their voting rights and other powers under the trust or agreement.

Item 6—Director and Principal Officers

* * * * *

(e) *Certain business relationships.* Describe any of the following relationships regarding directors or nominees for director that exist, or have existed during the bank's last fiscal year, indicating the identity of the entity with which the bank has such a

relationship, the name of the nominee or director affiliated with such entity and

investment banking firm that has performed services for the bank, other

considered in the aggregate as a single subsidiary, would not constitute a

not been allocated at such time as compensation disclosure is filed:

arrangement included in the Cash Compensation Table for a prior fiscal

(iii) All compensation that would have been paid in cash to the named

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relationship, the name of the nominee or director affiliated with such entity and the nature of such nominee's or director's affiliation, the relationship between such entity and the bank and the amount of the business done between the bank and the entity during the bank's last full fiscal year or proposed to be done during the bank's current fiscal year:

(1) If the nominee or director is, or during the last fiscal year has been a principal officer of, or owns, or during the last fiscal year has owned, of record or beneficially in excess of a ten percent equity interest in, any business or professional entity that has made during the bank's last full fiscal year, or proposes to make during the bank's current fiscal year, payments to the bank or its subsidiaries for property or services in excess of five percent of (i) the bank's consolidated gross revenues for its last full fiscal year, or (ii) the other entity's consolidated gross revenues for its last full fiscal year;

(2) If the nominee or director is, or during the last fiscal year has been, a principal officer of, or owns, or during the last fiscal year has owned, of record or beneficially in excess of a ten percent equity interest in, any business or professional entity to which the bank or its subsidiaries has made during the bank's last full fiscal year, or proposes to make during the bank's current fiscal year, payments for property or services in excess of five percent of (i) the bank's consolidated gross revenues for its last full fiscal year, or (ii) the other entity's consolidated gross revenues for its last full fiscal year;

(3) If the nominee or director is, or during the last fiscal year has been, a principal officer of, or owns, or during the last fiscal year has owned, of record or beneficially in excess of a ten percent equity interest in, any business or professional entity to which the bank or its subsidiaries was indebted at the end of the bank's last full fiscal year in an aggregate amount in excess of five percent of the bank's total consolidated assets at the end of such fiscal year;

(4) If the nominee or director is, or during the last fiscal year has been, a member of, or of counsel to, a law firm that the bank has retained during the last fiscal year or proposes to retain during the current fiscal year; *Provided, however,* that the dollar amount of fees paid to a law firm by the bank need not be disclosed if such amount does not exceed five percent of the law firm's gross revenues for that firm's last full fiscal year;

(5) If the nominee or director is, or during the last fiscal year has been, a partner or principal officer of any investment banking firm that has performed services for the bank, other than as a participating underwriter in a syndicate, during the last fiscal year or that the bank proposes to have perform services during the current year; *Provided, however,* that the dollar amount of compensation received by an investment banking firm need not be disclosed if such amount does not exceed five percent of the investment banking firm's consolidated gross revenues for that firm's last full fiscal year; or

(6) Any other relationships that the bank is aware of between the nominee or director and the bank that are substantially similar in nature and scope to those relationships listed in paragraph (b) (1) through (5).

Instructions to Paragraph (e) of Item 6

1. In order to determine whether payments or indebtedness exceed five percent of the consolidated gross revenues of any entity, other than the bank, it is appropriate to rely on information provided by the nominee or director.

2. In calculating payments for property and services the following may be excluded:

A. Payments where the rates or charges involved in the transaction are determined by competitive bids, or the transaction involves the rendering of services as a common contract carrier, or public utility, at rates or charges fixed in conformity with law or governmental authority;

B. Payments that arise solely from the ownership of securities of the bank and no extra or special benefit not shared on a pro rata basis by all holders of the class of securities is received; or

C. Payments made or received by subsidiaries other than significant subsidiaries as defined in § 335.102(nn), provided that all such subsidiaries making or receiving payments, when considered in the aggregate as a single subsidiary, would not constitute a significant subsidiary as defined in § 335.102(nn).

3. In calculating indebtedness the following may be excluded:

A. Debt securities that have been publicly offered, admitted to trading on a national securities exchange, or quoted on the automated quotation system of a registered securities association;

B. Amounts due for purchases subject to the usual trade terms; or

C. Indebtedness incurred by subsidiaries other than significant subsidiaries as defined in § 335.102(nn), provided that all such subsidiaries incurring indebtedness, when considered in the aggregate as a single subsidiary, would not constitute a significant subsidiary as defined in § 335.102(nn).

4. No information called for by paragraph (b) need be given respecting any director who is no longer a director at the time of filing the registration statement or report containing such disclosure. If such information is being presented in a proxy or information statement, no information need be given respecting any director whose term of office as a director will not continue after the meeting to which the statement relates.

* * * * *

Item 7—Compensation and Other Transactions With Management and Others

Furnish the information called for by this item if action is to be taken with respect to: (i) The election of directors, (ii) any bonus, profit sharing or other compensation plan, contract or arrangement in which any director, nominee for election as a director, or officer of the bank will participate, (iii) any pension or retirement plan in which any such person will participate, or (iv) the granting or extension to any such person of any options, warrants or rights to purchase any securities, other than warrants or rights issued to security holders, as such, on a pro rata basis. However, if the solicitation is made on behalf of persons other than the management, the information required need be furnished only as to nominees for election as directors and as to their associates.

(a)(1) *Cash compensation.* Furnish, in substantially the tabular form specified, all cash compensation paid to the following persons through the latest practicable date for services rendered in all capacities to the bank and its subsidiaries during the bank's last fiscal year:

(i) *Five principal officers.* Each of the bank's five most highly compensated principal officers whose cash compensation required to be disclosed pursuant to this paragraph exceeds $60,000, naming each such person; and

(ii) *All principal officers.* All principal officers as a group, stating the number of persons in the group without naming them.

(2) *Bonuses and deferred compensation.* The Cash Compensation Table also shall include:

(i) All cash bonuses to be paid to the named individuals and group for services rendered in all capacities to the bank and its subsidiaries during the last fiscal year unless such amounts have not been allocated at such time as compensation disclosure is filed;

(ii) All cash bonuses paid during the last fiscal year for services rendered in all capacities to the bank and its subsidiaries in a previous fiscal year, less any amount relating to the same contract, agreement, plan or arrangement included in the Cash Compensation Table for a prior fiscal year and less any amount that would have been so included but for the fact that the individual was not included in the Cash Compensation Table, as a named individual or as a member of the group, for such prior fiscal year; and

(iii) All compensation that would have been paid in cash to the named individuals and group for services rendered in all capacities to the bank and its subsidiaries during the last fiscal year but for the fact that the payment of such compensation was deferred.

CASH COMPENSATION TABLE

(A)	(B)	(C)
Name of individual or number in group	Capacities in which served	Cash compensation

Instructions to paragraph (a) of Item 7

1. *Cash Compensation Table.* (A) The bank may include additional columns in the Cash Compensation Table. For example, the bank may segregate cash bonuses and deferred compensation from cash salaries and fees.

(B) Amounts deferred pursuant to section 401(k) of the Internal Revenue Code are to be included in paragraph (a) for the fiscal year during which they are accrued.

(C) Banks need list in Column (B) of the Cash Compensation Table only those principal capacities served by each of the identified individuals. The cash compensation disclosed, however, must include cash compensation received in *all* capacities.

2. *Persons covered.* (A) Paragraph (a) of this item applies to any individual who was a principal officer of the bank at any time during the last fiscal year. Information need not be disclosed, however, for any portion of the period during which such individual was not a prinicpal officer of the bank, provided a statement to that effect is made. With respect to an individual who becomes for the first time an individual whose compensation is to be reported in the Cash Compensation Table, it is not necessary to report compensation that would have been reported in the Table had the individual been included in prior years.

(B) Banks should be flexible in determining which individuals should be named in the Cash Compensation Table in order to ensure that disclosure is made with respect to key policy making members of management. Consideration should be given to the question of whether an individual's level of executive responsibilities, viewed in conjunction with such individuals' actual level of cash compensation is such that the bank reasonably may conclude that the person is among its five most highly compensated, key policy making principal officers. Under this standard, it may be appropriate, in certain circumstances, to include a principal officer of a subsidiary in the cash Compensation Table.

(C) In certain circumstances, it may be appropriate for a bank not to include in the Cash Compensation Table an individual who is one of the bank's five most highly compensated principal officers. Among the factors that should be considered in determining not to name an individual are: (i) The distribution or accrual of an unusually large amount of cash compensation (such as a bonus or commission) that is not part of a recurring arrangement and is unlikely to continue; and (ii) the payment of amounts of cash compensation relating to overseas assignments that may be attributed predominantly to such assignments.

(b)(1) *Compensation pursuant to plans.* Describe briefly all plans, pursuant to which cash or non-cash compensation was paid or distributed during the last fiscal year, or is proposed to be paid or distributed during the last fiscal year, or is proposed to be paid or distributed in the future, to the named individuals and group specified in paragraph (a) of this item. Information need not be given with respect to any group life, health, hospitalization, medical reimbursement or relocation plans that do not discriminate, in scope, terms or operation, in favor of officers or directors of the bank and that are available generally to all salaried employees. The description of each plan shall include the following, except that the description of any defined benefit or actuarial plans need not include the information specified in paragraphs (b)(1)(vi) and (b)(1)(vii) of this item and the description of any stock option and stock appreciation right plan need not include the information specified in paragraph (b)(1)(vii) of this item;

(i) A summary of how the plan operates and who is covered by the plan;

(ii) The criteria used to determine amounts payable, including any performance formula or measure;

(iii) The time periods over which the measurement of benefits will be determined;

(iv) Payment schedules;

(v) Any recent material amendments to the plan;

(vi) Amounts paid or distributed pursuant to the plan to the named individuals and the group during the last fiscal year less any amount relating to the same plan which previously has been disclosed as accrued pursuant to paragraph (b)(1)(vii) of this item or a predecessor provision; and

(vii) Amounts accrued pursuant to the plan for the accounts of the named individuals and group during the last fiscal year, the distribution or unconditional vesting of which are not subject to future events.

(2) *Pension table.* As to defined benefit and actuarial plans, other than any defined benefit or actuarial plan under which benefits are not determined primarily by final compensation (or average final compensation) and years of service, include, as the payment schedule required by paragraph (b)(1)(vi) of this item, a separate Pension Table showing estimated annual benefits payable upon retirement (including amounts attributable to any defined benefit supplementary or excess pension award plans) to persons in specified compensation and years-of-service classifications. In addition, in furnishing the information required by paragraphs (b)(1)(i)–(v) of this item, include:

(i) The compensation covered by the plan, including the relationship of such

covered compensation to the compensation reported in the Cash Compensation Table;

(ii) The estimated annual benefits payable under the plan to persons in the specified compensation and years-of-service classifications;

(iii) The number of credited years of service under the plan for persons in the specified classifications;

(iv) The basis upon which credited years of service are determined and the extent to which they differ from actual years of service; and

(v) Any offset or deduction for Social Security benefits or benefits under any other defined benefit or actuarial plan.

(c) *Options, warrants or rights.* Furnish the following information with respect to any options, warrants or rights to purchase any securities of the bank or its subsidiaries that were granted to or exercised by any of the persons named in response to paragraph (a) of this item during the last fiscal year, and with respect to any such options, warrants or rights outstanding at the end of the last fiscal year, including the market value of the securities underlying the options, warrants or rights at the end of the last fiscal year if different from the option, warrant or right price:

(1) *Options granted.* Describe briefly any options granted during the last fiscal year, including the date of grant, the number of securities underlying the options granted, the option price, and the expiration date of the options granted;

(2) *Options exercised.* Describe briefly any options exercised during the last fiscal year, including the number of securities underlying the options exercised, the option price, and the expiration date of the options exercised; and

(3) *Options outstanding.* Describe briefly any options outstanding at the end of the last fiscal year, including the number of securities underlying the options outstanding, the option price, and the expiration date of the options outstanding.

(d) *Other arrangements.* Describe any other arrangements pursuant to which any director of the bank was compensated during the bank's last fiscal year or is to be compensated in the current fiscal year.

(e) *Termination of employment and change in control arrangements.* Describe briefly any employment contract, termination of employment, or change in control arrangement that is applicable to the persons named in response to paragraph (a) of this item.

(f) *Report on repricing of options/SARs.* Describe briefly the bank's policy or practice with respect to the repricing of options or stock appreciation rights held by persons named in response to paragraph (a) of this item, including the basis for any such repricing.

(g) *Compensation committee report.* Describe briefly the compensation policies applicable to the bank's executive officers during the last fiscal year. The description shall include the relationship between the bank's executive compensation policies and the bank's performance during the last fiscal year. The description shall address the bank's policies with respect to each of the following, if material:

(1) The bank's general compensation policies;

(2) The bank's specific relationship between corporate performance and compensation during the last fiscal year; and

(3) The bank's specific relationship between corporate performance and any increase or decrease in the compensation of the bank's chief executive officer during the last fiscal year.

(h) *Compensation committee interlocks and insider participation.* Describe briefly any relationships requiring disclosure by any bank that had a compensation committee (or other board committee performing equivalent functions or, in the absence of any such committee, the entire board of directors) of which any executive officer of the bank served as a member of the compensation committee of another bank, one of whose executive officers served on the bank's compensation committee.

(i) *Loans to directors and executive officers.* Describe briefly any loans to any of the persons named in response to paragraph (a) of this item that are required to be disclosed pursuant to § 337.2 of this chapter.

(j) *Performance graph.* Include a line graph comparing the yearly percentage change in the bank's cumulative total shareholder return on its common stock with the cumulative total return of a broad equity market index and either a nationally recognized industry index or a peer group index constructed by the bank, assuming $100 was invested on the last trading day before the bank's fifth preceding fiscal year in the bank's common stock, the index and the peer group. The bank shall use the same broad equity market index and nationally recognized industry index used for the corresponding graph required by Item 201(e) of Regulation S-K (17 CFR 229.201(e)). If the bank uses a peer group index, identify each bank comprising the peer group or the bank that publishes such peer group index, and explain why the bank believes the peer group index is appropriate. If the bank's common stock is not registered pursuant to section 12 of the Act, the bank may use a group of banks with similar assets, geographic location, or lines of business as a peer group. The bank may present as the highest compensation level in the Pension Table required by paragraph (b)(2) of this item the compensation level that would result in the largest annual benefit payable upon retirement.

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covered compensation to the compensation reported in the Cash Compensation Table pursuant to paragraph (a) of this item, and state the current compensation covered by the plan for any individuals named in the Cash Compensation Table whose covered compensation differs substantially (by more than 10 percent) from that set forth in the Cash Compensation Table;

(ii) The estimated credited years of service for each of the individuals named in the cash Compensation Table; and

(iii) A statement as to the basis upon which benefits are computed (*e.g.*, straight life annuity amounts) and whether or not the benefits listed in the Pension Table are subject to any deduction for Social Security or other offset amounts.

EXAMPLE OF PENSION TABLE OF SERVICE—

Remuneration	15	20	25	30	35
125,000	xxx	xxx	xxx	xxx	xxx
150,000	xxx	xxx	xxx	xxx	xxx
175,000	xxx	xxx	xxx	xxx	xxx
200,000	xxx	xxx	xxx	xxx	xxx
225,000	xxx	xxx	xxx	xxx	xxx

(3) *Alternative pension plan disclosure.* In furnishing the information required by paragraphs (b)(1)(i)–(v) of this item with respect to defined benefit or actuarial plans under which benefits are not determined primarily by final compensation (or average final compensation) and years of service, include:

(i) The formula by which benefits are determined; and

(ii) The estimated annual benefits payable upon retirement at normal retirement age for each of the individuals named in the Cash Compensation Table pursuant to paragraph (a) of this item.

(4) *Stock option and stock appreciation right plans.* In addition to providing the information required by paragraphs (b)(1)(i)–(vi) of this item, furnish:

(i) With respect to stock options granted during the last fiscal year: (A) The title and aggregate amount of securities subject to options; (B) the average per share exercise price; and (C) if such option exercise price was less than 100 percent of the market value of the security on the date of grant, such fact and the market price on such date. The title and aggregate amount of such securities subject to options, if any, which are in tandem with stock appreciation rights should be set forth separately.

(ii) With respect to the exercise or realization of options or stock appreciation rights held in tandem with options, state the net value of securities (market value less any exercise price) or cash realized during the last fiscal year.

(iii) With respect to plans pursuant to which stock appreciation rights not in tandem with options were granted during the last fiscal year: (A) the number of rights granted; and (B) the average per share base price thereof.

(iv) With respect to the exercise or realization of stock appreciation rights not in tandem with options, state the net value of the shares (market price) or cash realized during the last fiscal year.

Instructions to paragraph (b) of Item 7

1. *Format.* With the exception of those pension plans disclosed pursuant to paragraph (b)(2), the bank may use either a narrative, tabular or other format or combination of formats provided the information so disclosed is clear and understandable. Disclosure required by paragraph (b)(2), pertaining to certain defined benefit and actuarial plans, is required to be presented in the Pension Table format set forth in that paragraph.

2. *Cash paid pursuant to plans.* The cash compensation paid pursuant to a plan need not be disclosed as amounts paid or distributed pursuant to paragraph (b)(1)(vi) of this item if such compensation was included in the Cash Compensation Table pursuant to paragraph (a) of this item and a statement to that effect is made. Similarly, the cash compensation deferred under a deferred compensation plan need not be disclosed as amounts accrued pursuant to paragraph (b)(1)(vii) of this item if such compensation was included in the Cash Compensation Table and a statement to that effect is made.

3. *Definition of "plan".* The term "plan" includes, but is not limited to the following: any plan, contract, authorization or arrangement, whether or not set forth in any formal documents, pursuant to which the following may be received: cash, stock, restricted stock, phantom stock, stock options, stock appreciation rights, stock options in tandem with stock appreciation rights, warrants, convertible securities, performance units and performance shares. A plan may be applicable to one person.

4. *Pension levels.* Compensation set forth in the Pension Table pursuant to paragraph (b)(2) of this item shall allow for reasonable increases in existing compensation levels; alternatively, banks may present as the highest compensation level in the Pension Table an amount equal to 120 percent of the amount of covered compensation of the most highly compensated individual named in the Cash Compensation Table pursuant to paragraph (a) of this item.

5. *Definition of "normal retirement age".* The term "normal retirement age" means normal retirement age as defined in a pension or similar plan or, if not defined therein, the earliest time at which a participant may retire without any benefit reduction because of age.

(c) *Other compensation.* Describe, stating amounts, any other compensation not covered by paragraph (a) or (b) of this item that was paid or distributed during the last fiscal year to the named individuals and group specified in paragraph (a) of this item unless:

(1) With respect to any named individual, the aggregate amount of such other compensation is the lesser of $25,000 or 10 percent of the compensation reported in the Cash Compensation Table for such person pursuant to paragraph (a) of this item or.

(2) With respect to the group, the aggregate amount of such other compensation is the lesser of $25,000 times the number of persons in the group or 10 percent of the compensation reported in the Cash Compensation Table for the group pursuant to paragraph (a) of this item and a statement to that effect is made.

Instructions to paragraph (c) of Item 7

1. *Scope.* Compensation to be disclosed pursuant to this paragraph may include, among other things: (a) Personal benefits or; (b) securities or property that were paid or distributed other than pursuant to a plan. It does not, in any event, include cash, which is to be disclosed pursuant to either paragraph (a) or (b).

2. *Threshold.* If the amount of other compensation for a named individual or the group exceeds the established thresholds, the entire amount of such other compensation must be disclosed pursuant to this paragraph.

3. *Valuation.* Compensation within paragraph (c) shall be valued on the basis of the bank's and subsidiaries' aggregate incremental cost.

(d) *Compensation of directors*—(1) *Standard arrangements.* Describe any standard arrangement, stating amounts, pursuant to which directors of the bank are compensated for all services as a director, including any additional amounts payable for committee participation or special assignments.

(2) *Other arrangements.* Describe any other arrangements pursuant to which any director of the bank was compensated during the bank's last fiscal year for services as a director, stating the amount paid and the name of the director.

(e) *Termination of employment and change of control arrangement.* Describe any compensatory plan or arrangement, including payments to be received from the bank, with respect to any individual named in the Cash Compensation Table pursuant to paragraph (a) of this item for the latest or then next preceding fiscal year if such a plan or arrangement results or will result from the resignation, retirement or any other termination of such individual's employment with the bank and its subsidiaries or from a change in control of the bank or a change in the individual's responsibilities following a change in control and the amount involved, including all periodic payments or installments, exceeds $60,000.

General Instructions to Paragraphs (a) through (e) of Item 7

1. *Transactions with third parties.* Paragraphs (a)–(e) of Item 7 include transactions between the bank and a third party where the primary purpose of the transaction is to furnish compensation to any named individual or the group specified in paragraph (a) of this item. No information need be given in response to any paragraph of this item as to any transaction if the transaction has been reported in response to another paragraph of Item 7(a).

2. *Exclusions.* No information need be given pursuant to this Item with respect to interest on deferred compensation provided that the rate of interest does not exceed prevailing market interest rates either: (1) At the time the interest is accrued or (2) at the time the plan pursuant to which the compensation is deferred was established. Similarly, dividends awarded on restricted stock need not be disclosed provided that the restricted stock is not of a particular class available only to certain employees on a discriminatory basis.

(f) *Indebtedness of management.* (1) State as to each of the following specified persons ("specified persons"), who was indebted to the bank at any time since the beginning of its last fiscal year:

(i) The largest aggregate amount of indebtedness (in dollar amounts, and as a percentage of total equity capital accounts at the time), including extensions of credit or overdrafts, endorsements and guarantees outstanding at any time during that period;

(ii) The amount thereof outstanding as of the latest practicable date;

(iii) The nature of the indebtedness and of the transaction in which it was incurred; and

(iv) The rate of interest paid or charged:

(A) Each director or principal officer of the bank;

(B) Each nominee for election as a director;

(C) Each security holder who is known to the bank to own of record or beneficially more than five percent of any class of the bank's voting securities ("principal security holder"); and

(D) Each associate of any such director, principal officer, nominee or principal security holder.

Instructions. 1. Include the name of each person whose indebtedness is described and the nature of the relationship by reason of which the information is required to be given.

2. Generally, no information need be given under this item 7(f) unless any of the following are present:

(a) The extension(s) of credit were not made on substantially the same terms, including interest rates, collateral and repayment terms as those prevailing at the time for comparable transactions with other than the specified persons.

(b) The extension(s) of credit were not made in the ordinary course of business.

(c) The extension(s) of credit have involved or presently involve more than a normal risk of collectibility or other unfavorable features including the restructuring of an extension of credit, or a delinquency as to payment of interest or principal.

(d) The aggregate amount of extensions of credit outstanding at any time from the beginning of the last fiscal year to date to a person specified in (A), (B), and (C) of this paragraph (f)(1) together with the person's associates, exceeded 10% of the equity capital accounts of the bank at the time or $5 million, whichever is less.

Note to Instruction 2(d): For purposes of this instruction 2(d) only: (1) The information called for by paragraphs (f)(1)(iii) and (iv) of this item 7 need not be furnished; (2) A principal security holder shall mean each security holder known to the bank to own of record or beneficially more than ten (10) percent of any class of the bank's voting securities; and (3) The name of any associate need not be furnished.

(2) If aggregate extensions of credit to the specified persons as a group exceeded 20 percent of the equity capital accounts of the bank at any time since the beginning of the last fiscal year:

(i) The aggregate amount of such extensions of credit shall be disclosed, and

(ii) A statement shall be included, to the extent applicable, that the bank has had and expects to have in the future, banking transactions in the ordinary course of its business with directors, officers, principal stockholders, and their associates, on substantially the same terms, including interest rates and collateral on loans, as those prevailing at the same time for comparable transactions with others and did not involve more than the normal risk of collectibility or present other unfavorable features.

(3) If any indebtedness required to be described arose under section 16(b) of the Act and had not been discharged by payment, state the amount of any profit realized, that such profit will inure to the benefit of the bank and whether suit will be brought or other steps taken to recover such profit. If in the opinion of counsel a question reasonably exists as to the recoverability of such profit, it will suffice to state all facts necessary to describe the transaction, including the prices and number of shares involved.

(g) *Transactions with management.* Describe briefly any transactions since the beginning of the bank's last fiscal year or any presently proposed transactions, to which the bank was or is to be a party, in which any of the following persons had or is to have a direct or indirect material interest, naming such person and stating his relationship to the bank, the nature of his interest in the transaction and, where practicable, the amount of such interest:

(1) Any director or principal officer of the bank;

(2) Any nominee for election as a director;

(3) Any security holder who is known to the bank to own of record or beneficially more than five percent of any class of the bank's voting securities; and

(4) Any associate of any of the foregoing persons.

Instructions. 1. No information need be given in response to this item 7(g) as to any compensation or other transaction reported in response to item 7(a), (b), (c), (d), (e) or (f), or as to any transaction with respect to which information may be omitted under instruction (b)(1) to item 7(a).

2. No information need be given in answer to this item 7(g) as to any transaction where:

(a) The rates or charges involved in the transaction are determined by

4. The amount of the interest of any specified person shall be computed without regard to the amount of the

(h) *Transactions with pension or similar plans.* Describe briefly any transactions since the beginning of the

upon, identify each class of persons who will be eligible to participate therein, indicate the approximate number of

to past services, the period over which such amount is to be paid and the estimated annual payments necessary to

statement and form of proxy are filed pursuant to paragraph (a) of § 335.204

4. Paragraphs (a)(3) and (b)(2)(ii) do

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(a) The rates or charges involved in the transaction are determined by competitive bids, or the transaction involves the rendering of services as a common or contract carrier, or public utility, at rates or charges fixed in conformity with law or governmental authority;

(b) The transaction involves services as a bank depositary of funds, transfer agent, registrar, trustee under a trust indenture, or similar services;

(c) The amount involved in the transaction or series of similar transactions, including all periodic installments in the case of any lease or other agreement providing for periodic payments or installments, does not exceed $60,000; or

(d) The interest of the specified person arises solely from the ownership of securities of the bank and the specified person receives no extra or special benefit not shared on a pro rata basis by all holders of securities of the class.

3. It should be noted that this item calls for disclosure of indirect, as well as direct, material interests in transactions. A person who has a position or relationship with a firm, corporation, or other entity, which engages in a transaction with the bank or its subsidiaries may have an indirect interest in such transaction by reason of such position or relationship. However, a person shall be deemed not to have a material indirect interest in a transaction within the meaning of this item 7(g) where:

(a) The interest arises only: (i) From such person's position as a director of another corporation or organization (other than a partnership) which is a party to the transaction, or (ii) from the direct or indirect ownership by such person and all other persons specified in subparagraphs (1) through (4) above, in the aggregate, of less than a 10 percent equity interest in another person (other than a partnership) which is a party to the transaction, or (iii) from both such position and ownership;

(b) The interest arises only from such person's position as a limited partner in a partnership in which he and all other persons specified in (1) through (4) above had an interest of less than 10 percent; or

(c) The interest of such person arises solely from the holding of an equity interest (including a limited partnership interest, but excluding a general partnership interest), or a creditor interest in another person which is a party to the transaction with the bank or any of its subsidiaries and the transaction is not material to such other person.

4. The amount of the interest of any specified person shall be computed without regard to the amount of the profit or loss involved in the transaction. Where it is not practicable to state the approximate amount of the interest, the approximate amount involved in the transaction shall be indicated.

5. In describing any transaction involving the purchase or sale of assets by or to the bank or any of its subsidiaries, otherwise than in the ordinary course of business, state the cost of the assets to the purchaser and, if acquired by the seller within two years prior to the transaction, the cost thereof to the seller. Indicate the principle followed in determining the bank's purchase or sale price and the name of the persons making such determination.

6. Include the name of each person whose interest in any transaction is described and the nature of the relationship by reason of which such interest is required to be described. Where it is not practicable to state the approximate amount of the interest, the approximate amount involved in the transactions shall be indicated.

7. Information shall be furnished in answer to this item with respect to transactions not excluded above which involve remuneration from the bank or its subsidiaries, directly or indirectly, to any of the specified persons for services in any capacity unless the interest of such persons arises solely from the ownership individually and in the aggregate of less than 10 percent of any class of equity securities of another corporation furnishing the services to the bank.

8. The foregoing instructions specify certain transactions and interests as to which information may be omitted in answering this item. There may be situations where, although the foregoing instructions do not expressly authorize nondisclosure, the interest of a specified person in the particular transaction or series of transactions is not a material interest. In that case, information regarding such interest and transaction is not required to be disclosed in response to this item. The materiality of any interest or transaction is to be determined on the basis of the significance of the information to investors in light of all of the circumstances of the particular case. The importance of the interest to the person having the interest, the relationship of the parties to the transaction to each other and the amount involved in the transaction are among the factors to be considered in determining the significance of the information to investors.

(h) *Transactions with pension or similar plans.* Describe briefly any transactions since the beginning of the bank's last fiscal year or presently proposed transactions, to which any pension, retirement, savings or similar plan provided by the bank, or any of its parents or subsidiaries was or is to be a party, in which any of the following persons had or is to have a direct or indirect material interest, naming such person and stating his relationship to the bank, the nature of his interest in the transaction and, where practicable, the amount of such interest:

(1) Any director or principal officer of the bank;

(2) Any nominee for election as a director;

(3) Any security holder who is known to the bank to own of record or beneficially more than five (5) percent of the outstanding voting securities of the bank;

(4) Any associate of any of the foregoing persons; and

(5) The bank or any of its subsidiaries.

Instructions. 1. Instructions 2, 3, 4 and 5 to item 7(g) shall apply to this item 7(h).

2. Without limiting the general meaning of the term "transaction" there shall be included in answer to this item 7(h) any compensation received or any loans received or outstanding during the period, or proposed to be received.

3. No information need be given in answer to paragraph (h) with respect to

(a) Payments to the plan, or payments to beneficiaries, under the terms of the plan;

(b) Payment of compensation for services not in excess of five (5) percent of the aggregate compensation received by the specified person during the bank's last fiscal year from the bank; or

(c) Any interest of the bank which arises solely from its general interest in the success of the plan.

(i) *Legal proceedings.* Briefly describe any material legal proceeding to which any director, any nominee for election as a director, principal officer of the bank, any owner of record or beneficially of more than five (5) percent of any class of voting securities of the bank, or any associate of any such director, nominee, officer or security holder is a party adverse to the bank.

* * * * *

Item 9—Compensation Plans

If action is to be taken with respect to any plan pursuant to which cash or noncash compensation may be paid, furnish the following information:

(a) *All Plans.* (1) Describe briefly the material features of the plan being acted upon, identify each class of persons who will be eligible to participate therein, indicate the approximate number of persons in each such class and state the basis of such participation.

(2) State the benefits or amounts which will be received by or allocated to each of the following under the plan being acted upon, if such benefits or amounts are determinable:

(i) Each person (stating name and position) specified in paragraph (a)(1)(i) of Item 7 of this Form F–5; (ii) all current principal officers as a group; (iii) all other current officers and directors who are not principal officers as a group; and (iv) all employees as a group. If such benefits or amount are not determinable, state the benefits or amounts which would have been received by or allocated to each of the following for the last fiscal year if the plan had been in effect, if such benefits or amounts may be determined:

(i) Each person (stating name and position) specified in paragraph (a)(1)(i) of Item 7 of this Form F–5; (ii) all current principal officers as a group; (iii) all other current officers and directors who are not principal officers as a group; and (iv) all employees as a group.

(3) Furnish the information called for by Item 7(b) of this Form F–5 with respect to all compensation plans now in effect or in effect during the last three years except that information called for in paragraphs (b)(1) (vi) and (vii) and (b)(4) of Item 7(b) of this Form F–5 should be furnished with respect to the last three fiscal years for the following: (i) Each person (stating name and position) specified in Item 7(a)(1)(i) of this Form F–5; (ii) all current principal officers as a group; (iii) all other current officers and directors who are not principal officers as a group, if such persons may participate in the plan; and (iv) all employees as a group, if such persons may participate in the plan. The information called for by paragraph (b)(4)(ii) of Item 7 of this Form F–5 need not be provided for all employees as a group. The information required by this paragraph (a)(3) is in lieu of the information otherwise called for by Item 7(b) of this Form F–5.

(4) If the plan to be acted upon can be amended, otherwise than by a vote of security holders, to increase the cost thereof to the bank or to alter the allocation of the benefits as between the groups specified in paragraph (a)(3), state the nature of the amendments which can be so made.

(b) *Specific plans.* (1) With respect to any pension or retirement plan submitted for security holder action, state: (i) The approximate total amount necessary to fund the plan with respect to past services, the period over which such amount is to be paid and the estimated annual payments necessary to pay the total amount over such period; and (ii) the estimated annual payment to be made with respect to current services. In the case of a pension or retirement plan, information called for by paragraph (a)(2) of this Item may be furnished in the format specified by paragraphs (b) (2) and (3) of Item 7 of this Form F–5.

(2) With respect to any specific grant of or any plan containing options, warrants or rights submitted for security holder action, (i) state: (A) The title and amount of securities called for or to be called for by such options, warrants or rights; (B) the prices, expiration dates and other material conditions upon which the options, warrants or rights may be exercised; (C) the consideration received or to be received by the bank or subsidiary for the granting or extension of the options, warrants or rights; (D) the market value of the securities called for or to be called for by the options, warrants or rights as of the latest practicable date; and (E) in the case of options, the federal income tax consequences of the issuance and exercise of such options to the recipient and the bank; and (ii) state separately the amount of such options received or to be received by the following persons if such benefits or amounts are determinable: (A) Each person (stating name and position) specified in paragraph (a)(1)(i) of Item 7 of this Form F–5; (B) all current principal officers as a group; (C) all other current officers and directors who are not principal officers as a group; (D) each nominee for election as a director; (E) each associate of any such directors, principal officers or nominees; (F) each other person who received or is to receive 5 percent of such options, warrants or rights, and (G) all employees as a group.

* * * * *

Instructions to Item 9.

1. The term "plan" as used in this Item means any plan as defined in Instruction 3 of paragraph (b) of item 7 of this Form F–5.

2. If action is to be taken with respect to a material amendment or modification of an existing plan, the item shall be answered with respect to the plan or modified and shall indicate any material as proposed to be amended differences from the existing plan.

3. If the plan to be acted upon is set forth in a written document, three copies thereof shall be filed with the FDIC at the time preliminary copies of the proxy statement and form of proxy are filed pursuant to paragraph (a) of § 335.204.

4. Paragraphs (a)(3) and (b)(2)(ii) do not apply to warrants or rights to be issued to security holders as such on a pro rata basis.

* * * * *

Item 12. Mergers, Consolidations, Acquisitions and Similar Matters

If action is to taken with respect to any transaction involving (i) the merger or consolidation of the bank into or with any other person or of any other person into or with the bank, (ii) the acquisition by the bank or any of its security holders of securities of another person, (iii) the acquisition by the bank of any other going business or of the assets thereof, (iv) the sale or other transfer of all or any substantial part of the assets of the bank, or (v) the liquidation or dissolution of the bank, furnish the following information:

(a) Information about the transaction. Furnish the following information concerning the bank and (unless otherwise indicated) each other person: which is to be merged into the bank or into or with which the bank is to be merged or consolidated; the business or assets of which are to be acquired; which is the issuer of securities to be acquired by the bank in exchange for all or a substantial part of the bank's assets; or which is the issuer of securities to be acquired by the bank or its security holders:

(1) The name, complete mailing address (including ZIP Code) and telephone number (including the area code) of the principal executive offices.

(2) A brief description of the general nature of the business conducted by the other person.

(3) A summary of the material features of the proposed transaction. If the transaction is set forth in a written document, file three copies thereof with the FDIC at the time preliminary copies of the proxy satement and form of proxy are filed pursuant to § 335.204. The summary shall include, where applicable.

(i) A brief summary of the terms of the transaction agreement;

(ii) The reasons for engaging in the transaction;

(iii) An explanation of any material differences in the rights of security holders of the bank as a result of this transaction;

(iv) A brief statement as to the accounting treatment of the transaction;

(v) The federal income tax consequences of the transaction; and

(vi) The information required in the description of securities in a registration

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statement (Form F–1, Item 14) filed under this part, for a security being issued in connection with the transaction if the security holders entitled to vote or give an authorization or consent with regard to the transaction will receive such securities, unless: (i) the issuer of the securities is not a bank and would meet the requirements for use of the SEC's Form S–3 and elects to furnish information in accordance with the provisions of paragraph (b)(1); (ii) capital stock is to be issued and (iii) securities of the same class are registered under section 12 of the Exchange Act and either (a) are listed for trading or admitted to unlisted trading privileges on a national securities exchange; or (b) are securities for which bid and offer quotations are reported in an automated quotations sysem operated by a national securities association.

(4) A brief statement as to dividends in arrears or defaults in principal or interest in respect of any securities of the bank or of such other person and as to the effect of the transaction thereon and such other informationa may be appropriate in the particular case to disclose adequately the nature and effect of the proposed action.

(5) Furnish in comparative columnar form on a historical and (if material) pro-forma basis the selected financial data for the bank referred to below, for

(a) Each of the last five fiscal years of the bank (or for the life of the bank and its predecessors, if less), and

(b) Any additional fiscal years necessary to keep the information from being misleading.

Instructions to paragraph (a)(5).

1. The purpose of the selected financial data shall be to supply in a convenient and readable format selected financial data which highlight certain significant trends in the bank's financial condition and results of operations.

2.The following items shall be included in the table of financial data: net interest income; other operating income; provision for loan and lease losses; income (loss) from continuing operations; income (loss) from continuing operations per common share; total assets; long-term obligations and redeemable preferred stock and cash dividends declared per common share. Banks may include additional items which they believe would enhance an understanding of and would highlight other trends in their financial condition and results of operations.

Briefly describe, or cross-reference to a discussion thereof, factors such as accounting changes, business combinations or dispositions of business operations, that materially affect the comparability of the information reflected in selected financial data. Discussion of, or reference to, any material uncertainties should also be included where such matters might cause the data reflected herein not to be indicative of the bank's future financial condition or results of operations.

3. All references to the bank in the table of selected financial data and in this Item shall mean the bank and its subsidiaries consolidated.

4. If interim period financial statements are included, or are required to be included, banks should consider whether any or all of the selected financial data need to be updated for such interim periods to reflect a material change in the trends indicated; where such updating information is necessary, banks shall provide the information on a comparative basis unless not necessary to an understanding of such updating information.

(6) In comparative columnar form, historical and pro forma per share data of the bank and historical and equivalent pro forma per share data of the other person for the following information items:

(i) Book value per share as of the date selected financial data is presented;

(ii) Cash dividends declared per share for the periods for which selected financial data is presented; and

(iii) Income (loss) per share for the periods for which selected financial data is presented.

Instruction to paragraphs (a)(5) and (a)(6).

For a business combination accounted for as a purchase, the financial information required by paragraphs (a)(5) and (a)(6) shall be presented only for the most recent fiscal year and interim period. For a business combination accounted for as a pooling, the financial information required by paragraphs (a)(5) and (a)(6) (except for information with regard to book value) shall be presented for the most recent three fiscal years and interim period. For a business combination accounted for as a pooling, information with regard to book value shall be presented as of the end of the most recent fiscal year and interim period. Equivalent pro forma per share amounts shall be calculated by multiplying the pro forma income (loss) per share before non-recurring charges or credits directly attributable to the transaction, pro forma book value per share, and the pro forma dividends per share of the bank by the exchange ratio so that the per share amounts are equated to the respective values for one share of the other person.

(7) Pro forma financial information with respects to the transaction, in accordance with § 335.628.

(8) A statement as to whether any federal or state regulatory requirements must be complied with or approval must be obtained in connection with the transaction and if so the status of such compliance or approval.

(9) If a report, opinion or appraisal materially relating to the transaction has been received from an outside party, and such report, opinion or appraisal is referred to in the proxy statement, furnish the same information as would be required by Item 9(b) (1) through (6) of the SEC's Schedule 13E–3 (§ 240.13e–100 of 17 CFR).

(10) A description of any past, present or proposed material contracts, arrangements, understandings, relationships, negotiations for transactions during the periods for which financial statements are presented or incorporated by reference pursuant to this Item between the other person or its affiliates and the bank or its affiliates such as those concerning a merger, consolidation or acquisition; a tender offer or other acquisition of securities; an election of directors; or a sale or other transfer of a material amount of assets.

(11) As to each class of securities of the bank or of the other person which is admitted to trading on a national securities exchange or with respect to which a market otherwise exists, and which will be materially affected by the transaction, state the high and low sale prices (or in the absence of trading in a particular period, the range of the bid and asked prices) as of the date preceding public announcement of the proposed transaction, or if no such public announcement was made, as of the day preceding the day the agreement or resolution with respect to the action was made.

(12) A statement as to whether or not representatives of the principal accountants for the current year and for the most recently completed fiscal year

(i) Are expected to be present at the security holders' meeting;

(ii) will have the opportunity to make a statement if they desire to do so; and

(iii) Are expected to be available to respond to appropriate questions.

(b) *Information about the bank and other persons.* Furnish the information specified below for the bank and for other persons designated in paragraph (a) of this Item, if applicable (hereinafter all references to the bank should be read to include a reference to such other person unless the context otherwise indicates):

(1) Information required by Item 1 of this Form F–5, description of business;

(2) Information required by Item 3 of this Form F–5, description of property;

(3) Information required by Item 3 of Form F–2 [§ 335.312 of this part), legal proceedings;

(4) Information required by Item 5 of Form F–2 [§ 335.312 of this part), market price of and dividends on the bank's common equity and related stockholder matters;

(5) Financial statements meeting the requirements of subpart F of this part (12 CFR 335.601 *et seq.*), including financial information required with respect to transactions other than that as to which action is to be taken as described in this proxy statement;

(6) Item 6 of Form F–2 (§ 335.312 of this part), selected financial data;

(7) Item 8 of Form F–2 (§ 335.312 of this part), financial statements and supplementary data;

(8) Item 7 of Form F–2 (§ 335.312 of this part), management's discussion and analysis of financial condition and results of operations; and

(9) Item 8 of this Form F–5, changes in and disagreements with accountants on accounting and financial disclosure.

(c) If the other person is not subject to the reporting requirements of either section 13(a) or 15(d) of the Exchange Act, furnish:

(1) The financial statements that would have been required to be included in an annual report to security holders pursuant to § 335.203 of this part had the company been required to furnish such a report: *Provided, however,* That the balance sheet for the year preceding the latest full fiscal year and the income statements for the two years preceding the latest full fiscal year need not be audited if they have not previously been audited. In any case, such financial statements need be audited only to the extent practicable.

(2) The quarterly financial and other information that would have been required had the company been required to file Form F–4 (§ 335.331 of this part) for the most recent quarter for which such a report would have been on file at the time the proxy statement is mailed or for a period ending as of a more recent date.

(3) A brief description of the business done by the company which indicates the general nature and scope of the business.

(4) The information required by paragraphs (b)(4) and (6)–(8) of this Item 12 and the information required by Item 8 of this Form F–5.

(5) Schedule VI—Allowance for Possible Loan and Lease Losses.

(d) *Additional method of incorporation by reference.* In lieu of the provision of information about the bank and other persons required in paragraph (b) of this Item, the bank may incorporate by reference into the proxy statement the information required by this Item if it is contained in an annual report sent to security holders pursuant to the requirement of § 335.203 of this part with respect to the same meeting or solicitation of consents or authorizations as that to which the proxy statement relates, provided such information substantially meets the requirements of the appropriate portions of paragraph (b)(3) of this Item.

(e) *Certain nonbank persons.* Where a party to the transaction (other than the bank) is eligible to use SEC Form S–2 or S–3, the bank may comply with this Item by providing the information for the other party that would be required by SEC Schedule 14A (17 CFR 240.14a–101).

Instructions to Item 12. 1. One copy of the definitive proxy statement filed with the FDIC shall include a manually signed copy of the accountant's report. If the financial statements are incorporated by reference, a manually signed copy of the accountant's report shall be filed with the definitive proxy statement.

2. Any or all of the required financial statements and related information which are not material for the exercise of prudent judgment in regard to the matter to be acted upon may be omitted.

3. If the bank or any of its securities or assets is to be acquired by other persons, the information regarding the other persons is required by this Item, other than information required by paragraphs (a) (1)–(3) and (a) (9)–(11) of this Item, need be provided only to the extent that: (1) The bank or its security holders who are entitled to vote or give an authorization or consent with regard to the action will become or remain security holders of the other persons; or (2) such information is otherwise material to an informed voting decision.

4. If the plan being voted on involves only the bank and one or more of its totally held subsidiaries and does not involve a liquidation of the bank or a spin-off, the information required by this Item, other than information required by paragraphs (a) (1)–(4) and (a) (8)–(11) of this Item, may be omitted.

Item 13—Financial Statements

(a) If action is to be taken with respect to any matter specified in items 10, 11, or 12 above, furnish audited financial statements of the bank and its subsidiaries such as would be required in a registration statement filed under this part. In addition, the latest available interim date balance sheet and statement of income for the interim period between the end of the last fiscal year and the interim balance sheet date, and comparable prior period, shall be furnished. All schedules, except schedule VI—Allowance for Possible Loan and Lease Losses may be omitted.

(b) If action is to be taken with respect to any matter specified in item 12, furnish for each person specified therein, other than the bank, financial statements such as would be required in a registration statement filed under this part. In addition, the latest available interim date balance sheet and statement of income for the interim period between the end of the last fiscal year and the interim balance sheet date, and comparable prior period, shall be furnished. However, the following may be omitted: (1) All schedules, except schedule VI—Allowance for Possible Loan and Lease Losses; and

(2) Statements for a subsidiary, all of the stock of which is owned by the bank, that is included in the consolidated statement of the bank and its subsidiaries. Such statements shall be audited, if practicable.

(c) Notwithstanding the provisions of this Item, any or all of the information required by paragraph (a) of this Item, not material for the exercise of prudent judgment in regard to the matter to be acted upon may be omitted. In the usual case the information is deemed material to the exercise of prudent judgment where the matter to be acted upon is the authorization or issuance of a material amount of senior securities, but the information is not deemed material where the matter to be acted upon is the authorization or issuance of common stock, otherwise than in an exchange, merger, consolidation, acquisition or similar transaction, the authorization of preferred stock without present intent to issue or the authorization of preferred stock for issuance for cash in an amount constituting fair value.

* * * * *

Option Disclosure Instruction

The table set forth below is an illustration of the presentation in tabular form of the information required by item 7(b)(4) and instruction 3(c) to item 9(d), which also applies to items 10(d) and 11(c). If only item 7(b)(4) applies and item 9 is inappropriate, information need only be furnished for the period specified in item 7(b)(4), information as to shares sold may be omitted and the reference at the foot of the table to options granted to employees may be

omitted. Other tabular presentations are, of course, acceptable if they include the necessary data. Tabular

certain directors and officers and as to all directors and officers as a group (i) the amount of options granted since the

options granted since that date or prior thereto, (iii) the amount of shares sold during such period of the same class as

"Cede & Co.," nominee for the Depository Trust Company), the bank shall make appropriate inquiry of the

received by the record holder or respondent bank; *Provided, however,* that if the record holder or respondent

13. Section 335.220 is amended by revising paragraph (b)(1)(iii) to read as follows:

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omitted. Other tabular presentations are, of course, acceptable if they include the necessary data. Tabular presentations may not be needed if only a very few options have been granted.

The following tabulation shows as to certain directors and officers and as to all directors and officers as a group (i) the amount of options granted since the beginning of the fifth previous full fiscal year, (ii) the amount of shares acquired since that date through the exercise of options granted since that date or prior thereto, (iii) the amount of shares sold during such period of the same class as those so acquired, and (iv) the amount of shares subject to all unexercised options held as of ____ (Insert date).

Common shares[1]	John Jones	James Smith	Richard Roe	All directors and officers as a group
Granted—19____ to date:				
Number of shares				
Average per share option price	$	$	$	$
Exercise—19____ to date: Number of shares				
Aggregate option price of options exercised	$	$	$	$
Aggregate market value of shares on date options exercised	$	$	$	([2])
Sales—19____ to date: Number of shares				
Unexercised at ____ 19____ Number of shares				
Average per share option price	$	$	$	$

[1] All common share figures have been adjusted in accordance with the terms of the options to reflect the stock split in 19____ and where applicable, to give effect to share dividends.

[2] Sales by directors and officers who exercised options during the period 19____ to date.

Note: In addition, during the period employees were granted options for____ shares at an average option price per share of $____

12. Section 335.214 is added to read as follows:

§ 335.214 Obligation of banks in communicating with beneficial owners.

(a) If the bank knows that securities of any class entitled to vote at a meeting (or by written consents or authorizations if no meeting is held) with respect to which the bank intends to solicit proxies, consents or authorizations are held of record by a broker, dealer, voting trustee, bank, association, or other entity that exercises fiduciary powers in nominee name or otherwise, the bank shall:

(1) By first class mail or other equally prompt means:

(i) Inquire of each such record holder:

(A) Whether other persons are the beneficial owners of such securities and if so, the number of copies of the proxy and other soliciting material necessary to supply such material to such beneficial owners;

(B) In the case of an annual (or special meeting in lieu of the annual) meeting, or written consents in lieu of such meeting, at which directors are to be elected, the number of copies of the annual report to security holders necessary to supply such report to beneficial owners to whom such reports are to be distributed by such record holder or its nominee and not by the bank; and

(C) If the record holder has an obligation under 17 CFR 240.14b–1(c) or 17 CFR 240.14b–2 (e)(2) and (e)(3), whether an agent has been designated to act on its behalf in fulfilling such obligation and, if so, the name and address of such agent; and

(D) Whether it holds the bank's securities on behalf of any respondent bank and, if so, the name and address of each such respondent bank; and

(ii) Indicate to each such record holder:

(A) Whether the bank, pursuant to paragraph (c) of this section, intends to distribute the annual report to security holders to beneficial owners of its securities whose names, addresses and securities positions are disclosed pursuant to 17 CFR 240.14b–1(c) and 17 CFR 240.14b–2 (e)(2) and (e)(3);

(B) The record date; and

(C) At the option of the bank, any employee benefit plan established by an affiliate of the bank that holds securities of the bank that the bank elects to treat as exempt employee benefit plan securities;

(2) Upon receipt of a record holder's or respondent bank's response indicating, pursuant to 17 CFR 240.14b–2(a)(1), the names and addresses of its respondent banks, within one business day after the date such response is received, make an inquiry of and give notification to each such respondent bank in the same manner required by paragraph (a)(1) of this section; *Provided, however,* the inquiry required by paragraphs (a)(1) and (a)(2) of this section shall not cover beneficial owners of exempt employee benefit plan securities;

(3) Make the inquiry required by paragraph (a)(1) of this section at least 20 business days prior to the record date of the meeting of security holders, or (i) if such inquiry is impracticable 20 business days prior to the record date of a special meeting, as many days before the record date of such meeting as is practicable or, (ii) if consents or authorizations are solicited, and such inquiry is impracticable 20 business days before the earliest date on which they may be used to effect corporate action, as many days before that date as is practicable, or (iii) at such later time as the rules of a national securities exchange on which the class of securities in question is listed may permit for good cause shown; *Provided, however,* that if a record holder or respondent bank has informed the bank that a designated office(s) or department(s) is to receive such inquiries, the inquiry shall be made to such designated office(s) or department(s); and

(4) Supply, in a timely manner, each record holder and respondent bank of whom the inquiries required by paragraphs (a)(1) and (a)(2) of this section are made with copies of the proxy, other proxy soliciting material, and/or the annual report to security holders, in such quantities, assembled in such form and at such place(s), as the record holder or respondent bank may reasonably request in order to send such material to each beneficial owner of securities who is to be furnished with such material by the record holder or respondent bank; and

(5) Upon the request of any record holder or respondent bank that is supplied with proxy soliciting material and/or annual reports to security holders pursuant to paragraph (a)(4) of this section, pay its reasonable expenses for completing the mailing of such material to beneficial owners.

Note 1 to paragraph (a): If the bank's list of security holders indicates that some of its securities are registered in the name of a clearing agency registered pursuant to Section 17A of the Act (e.g., "Cede & Co.," nominee for the Depository Trust Company), the bank shall make appropriate inquiry of the clearing agency and thereafter of the participants in such clearing agency who may hold on behalf of a beneficial owner or respondent bank, and shall comply with the above paragraph with respect to any such participant (*see* 17 CFR 240.14a–1(i)).

Note 2 to paragraph (a): The attention of banks is called to the fact that each broker, dealer, bank, association and other entity that exercises fiduciary powers has an obligation pursuant to 17 CFR 240.14b–1(b) and 17 CFR 240.14b–2(b) (except as provided therein with respect to employee benefit plan securities held in nominee name) and, with respect to brokers and dealers, applicable self-regulatory organization requirements to obtain and forward, within the time periods prescribed therein, (a) proxies (or in lieu thereof requests for voting instructions) and proxy soliciting materials to beneficial owners on whose behalf it holds securities, and (b) annual reports to security holders to beneficial owners on whose behalf it holds securities, unless the bank has notified the record holder or respondent bank that it has assumed responsibility to mail such material to beneficial owners whose names, addresses and securities positions are disclosed pursuant to 17 CFR 240.14b–1(c) and 17 CFR 240.14b–2 (e)(2) and (e)(3).

Note 3 to paragraph (a): The attention of banks is called to the fact that banks have an obligation, pursuant to paragraph (d) of this section, to cause proxies (or in lieu thereof requests for voting instructions), proxy soliciting material and annual reports to security holders to be furnished, in a timely manner, to beneficial owners of exempt employee benefit plan securities.

(b) Any bank requesting pursuant to 17 CFR 240.14b–1(c) and 17 CFR 240.14b–2 (e)(2) and (e)(3) a list of names, addresses and securities positions of beneficial owners of its securities who either have consented or have not objected to disclosure of such information shall:

(1) By first class mail or other equally prompt means, inquire of each record holder and each respondent bank identified to the bank pursuant to 17 CFR 240.14b–2(e)(1) whether such record holder or respondent bank holds the bank's securities on behalf of any respondent banks and, if so, the name and address of each such respondent bank;

(2) Request such list to be complied as of a date no earlier than five business days after the date of bank's request is received by the record holder or respondent bank; *Provided, however,* that if the record holder or respondent bank has informed the bank that a designated office(s) or department(s) is to receive such requests, the request shall be made to such designated office(s) or department(s);

(3) Make such request to the following persons that hold the bank's securities on behalf of beneficial owners: all brokers, dealers, banks, associations and other entities that exercise fiduciary powers; *Provided, however,* such request shall not cover beneficial owners of exempt employee benefit plan securities as defined in 17 CFR 240.14a–1(d)(1); and, at the option of the bank, such request may give notice of any employee benefit plan established by an affiliate of the bank that holds securities of the bank that the bank elects to treat as exempt employee benefit plan securities;

(4) Use the information furnished in response to such request exclusively for purposes of corporate communications; and

(5) Upon the request of any record holder or respondent bank to whom such request is made, pay the reasonable expenses, both direct and indirect, of providing beneficial owner information.

Note to paragraph (b): A bank will be deemed to have satisfied its obligations under paragraph (b) of this section by requesting consenting and non-objecting beneficial owner lists from a designated agent acting on behalf of the record holder or respondent bank and paying to that designated agent the reasonable expenses of providing the beneficial owner information.

(c) A bank, at its option, may mail its annual report to security holders to the beneficial owners whose identifying information is provided by record holders and respondent banks, pursuant to 17 CFR 240.14b–1(c) and 17 CFR 240.14b–2 (e)(2) and (e)(3), provided that such bank notifies the record holders and respondent banks, at the time it makes the inquiry required by paragraph (a) of this section, that the bank will mail the annual report to security holders to the beneficial owners so identified.

(d) If a bank solicits proxies, consents or authorizations from record holders and respondent banks who hold securities on behalf of beneficial owners, the bank shall cause proxies (or in lieu thereof requests for voting instructions), proxy soliciting material and annual reports to security holders to be furnished, in a timely manner, to beneficial owners of exempt employee benefit plan securities.

13. Section 335.220 is amended by revising paragraph (b)(1)(iii) to read as follows:

§ 335.220 Special provisions applicable to election contests.

* * * * *

(b) * * *

(1) * * *

(iii) Any committee or group which solicits proxies, any member of the committee or group, and any person whether or not named as a member who, acting alone or with one or more other persons directly or indirectly takes the initiative, or engages, in organizing, directing, or arranging for the financing of any such committee or group.

* * * * *

§ 335.307 [Amended]

14. Section 335.307 is amended by removing the word "remuneration" from paragraph (b)(3) and inserting in its place the word "compensation."

15. Section 335.309a is amended by:

a. Removing the word "six" and adding in its place the word "three" in the first sentence in the second paragraph of "General Instructions";

b. Revising the title in Item 2;

c. Revising Instructions 2, 3, 6, 12 and 13 to Item 2;

d. Removing Instructions 19 and 20 and redesignating Instruction 21 as Instruction 19 under Item 2;

e. Revising Item 5;

f. Revising Item 7;

g. Removing Item 8;

h. Redesignating Item 9 as Item 8 and revising newly designated Item 8;

i. Redesignating Items 10 and 11 as Items 9 and 10 and revising newly designated Item 10;

j. Redesignating Items 12, 13, 14 as Items 11, 12, 13 and revising newly designated Item 13;

k. Removing items 15 and 16 and redesignating Items 17, 18, 19 as 14, 15 and 16; and

l. Amending in newly designated Item 16 the Instructions as to Financial Statements by revising the introductory test, paragraphs A, B, C, E.10 and E.17; as follows:

§ 335.309a Form for registration of securities of a bank under section 12(b) or section 12(g) of the Securities Exchange Act of 1934 (Form F–1).

* * * * *

Item 2—Selected Financial Data; Management's Discussion and Analysis of Financial Condition and Results of Operations, and Other Statistical Disclosure

* * * * *

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Instructions

* * * * *

2. The following items shall be included in the table of financial data: Net interest income; other operating income; provision for loan and lease losses; income (loss) from continuing operations; income (loss) from continuing operations per common share; total assets; long term obligations and redeemable preferred stock and cash dividends declared per common share. Banks may include additional items which they believe would enhance an understanding of and would highlight other trends in their financial condition and results of operations. Briefly describe, or cross reference to a discussion thereof, factors such as accounting changes, business combinations or dispositions of business operations, that materially affect the comparability of the selected financial data. Discuss any material uncertainties which might cause the data not to be indicative of the bank's future financial condition or results of operations.

3. Those banks which provide five-year summary information in accordance with SFAS 89* may combine such information with the selected financial data appearing pursuant to this item.

* * * * *

6. Discuss the bank's financial condition, changes in financial condition and results of operations. The discussion shall provide information as specified in instructions 5 (a), (b) and (c) to this item 2 with respect to liquidity, capital resources, and results of operations, and should also provide such other information which the bank believes to be necessary to an understanding of its financial condition, changes in financial condition and results of operations. Discussions of liquidity and capital resources may be combined whenever the two topics are interrelated. Where in the bank's judgment a discussion of segment information or of other subdivisions of the bank's business would be appropriate to an understanding of such business, the discussion would focus on each relevant, reportable segment or other subdivision of the business and on the bank as a whole.

* * * * *

12. Set forth the same information as is required to be furnished by Instruction 7 to Item 7 of Form F–2 at § 335.312.

13. The bank's discussion and analysis shall be of the financial statement and of other statistical data which the bank believes will enhance a reader's understanding of its financial condition, changes in financial condition, cash flows and results of operations. Generally, the discussion should cover the three-year period covered by the financial statements and should utilize year-to-year comparisons or any other formats which in the bank's judgment enhance a reader's understanding. However, where trend information is relevant, reference to the five-year selected financial data appearing in Item 6 of a Form F–2 may be necessary.

* * * * *

Item 5—Security Ownership of Certain Beneficial Owners and Management

Set forth the same information as is required to be furnished by items 5 (d)(1), (d)(2), and (f) of Form F–5 at § 335.212.

Note: The information required by item 5 (d)(2) of Form F–5 need not be included for any nominee for election as a director.

* * * * *

Item 7—Compensation of Directors and Officers

Set forth the same information as is required to be furnished by item 7 (a), (b), (c) and (d) of Form F–5 at § 335.212.

Item 8—Interest of Management and Others in Certain Transactions

(a) Set forth the same information for the past three years, as is required to be furnished by items 7 (f), (g) and (h) of Form F–5 at § 335.212.

Note: The information required by item 7 (f), (g) and (h) of Form F–5 need not be included for any nominee for election as a director.

* * * * *

Item 10—Number of Equity Security Holders

State in the tabular form indicated below, the approximate number of holders of record of each class of equity securities of the bank as of the end of the last fiscal year.

(1)	(2)
Title of class	Number of record holders

Instructions. 1. Attention is directed to the definitions of the term "equity security" in section 3(a)(11) of the Act and to the definition of the term "held of record" in § 335.102(p)(1).

2. Information need not be given with respect to the number of holders of "restricted stock options", "qualified stock options", or options granted pursuant to a plan qualified as an "employee stock purchase plan", as those terms are defined in sections 422 through 424 of the Internal Revenue Code of 1986, as amended.

* * * * *

Item 13—Securities Being Registered

(a) *Capital stock.* If capital stock is to be registered, state the title of the class and describe such of the matters listed in paragraphs (a) (1) through (5) as are relevant. A complete legal description of the securities need not be given.

(1) Outline briefly: (i) Dividend rights; (ii) terms of conversion; (iii) sinking fund provisions; (iv) redemption provisions; (v) voting rights, including any provisions specifying the vote required by security holders to take action; (vi) any classification of the Board of Directors, and the impact of such classification where cumulative voting is permitted or required; (vii) liquidation rights; (viii) preemption rights; and (ix) liability to further calls or to assessment by the bank and for liabilities of the bank imposed on its stockholders under state statutes (e.g., to laborers, servants or employees of the bank), unless such disclosure would be immaterial because the financial resources of the bank or other factors make it improbable that liability under such state statutes would be imposed; (x) any restriction on alienability of the securities to be registered; and (xi) any provision discriminating against any existing or prospective holder of such securities as a result of such security holder owning a substantial amount of securities.

(2) If the rights of holders of such stock may be modified otherwise than by a vote of a majority or more of the shares outstanding, voting as a class, so state and explain briefly.

(3) If preferred stock is to be registered, describe briefly any restriction on the repurchase or redemption of shares by the bank while there is any arrearage in the payment of dividends or sinking fund installments. If there is no such restriction, so state.

(4) If the rights evidenced by, or amounts payable with respect to, the shares to be registered are, or may be, materially limited or qualified by the rights of any other authorized class of securities, include the information regarding such other securities as will enable investors to understand such limitations or qualifications. No information need be given, however, as to any class of securities all of which will be retired, provided appropriate steps to ensure such retirement will be completed prior to or upon delivery by the bank of the shares.

(5) Describe briefly or cross-reference to a description in another part of the document, any provision of the bank's charter or bylaws that would have an effect of delaying, deferring or preventing change in control of the bank and that would operate only with respect to an extraordinary corporate transaction involving the bank [or any of its subsidiaries], such as a merger, reorganization, tender offer, sale or transfer of substantially all of its assets, or liquidation. Provisions and arrangements required by law or imposed by governmental or judicial authority need not be described or discussed pursuant to this paragraph (a)(5). Provisions or arrangements adopted by the bank to effect, or further, compliance with laws or governmental or judicial mandate are not subject to the immediately preceding sentence where such compliance did not require the specific provisions or arrangements adopted.

(b) *Debt securities.* If debt securities are to be registered, state the title of such securities, the principal amount being offered, and, if a series, the total amount authorized and the total amount outstanding as of the most recent practicable date; and describe the matters listed in paragraphs (b) (1) through (10) as are relevant. A complete legal description of the securities need not be given. For purposes solely of this Item, debt securities that differ from one another only as to the interest rate or maturity shall be regarded as securities of the same class. Outline briefly:

(1) Provisions with respect to maturity, interest, conversion, redemption, amortization, sinking fund, or retirement;

(2) Provisions with respect to the kind and priority of any lien securing the securities, together with a brief identification of the principal properties subject to such lien;

(3) Provisions with respect to the subordination of the rights of holders of the securities to other security holders or creditors of the bank. Where debt securities are designated as subordinated in accordance with Instruction 1 to this Item, set forth the aggregate amount of outstanding indebtedness as of the most recent practicable date that by the terms of such debt securities would be senior to such subordinated debt and describe briefly any limitation on the issuance of such additional senior indebtedness or state that there is no such limitation;

(4) Provisions restricting the declaration of dividends or requiring the maintenance of any asset ratio or the creation or maintenance of reserves;

(5) Provisions restricting the incurrence of additional debt or the issuance of additional securities; in the case of secured debt, whether the securities being registered are to be issued on the basis of unbonded bondable property, the deposit of cash or otherwise; as of the most recent practicable date, the approximate amount of unbonded bondable property available as a basis for the issuance of bonds; provisions permitting the withdrawal of cash deposited as a basis for the issuance of bonds; and provisions permitting the release or substitution of assets securing the issue; *Provided, however,* That provisions permitting the release of assets upon the deposit of equivalent funds or the pledge of equivalent property, the release of property no longer required in the business, obsolete property, or property taken by eminent domain or the application of insurance moneys, and other similar provisions need not be described;

(6) The general type of event that constitutes a default and whether or not any periodic evidence is required to be furnished as to the absence of default or as to compliance with the terms of the indenture;

(7) Provisions relating to modification of the terms of the security or the rights of security holders;

(8) If the rights evidenced by the securities to be registered are, or may be, materially limited or qualified by the rights of any other authorized class of securities, the information regarding such other securities as will enable investors to understand the rights evidenced by the securities to the extent not otherwise disclosed pursuant to this Item; no information need be given, however, as to any class of securities all of which will be retired, provided appropriate steps to ensure such retirement will be completed prior to or upon delivery by the bank;

(9) If debt securities are to be offered at a price such that they will be deemed to be offered at an "original issue discount" as defined in paragraph (a) of section 1273 of the Internal Revenue Code (26 U.S.C. 1273), or if a debt security is sold in a package with another security and the allocation of the offering price between the two securities may have the effect of offering the debt security at such an original issue discount, the tax effects thereof pursuant to sections 1271–1278;

(10) The name of the trustee(s) and the nature of any material relationship with the bank or with any of its affiliates; the percentage of securities of the class necessary to require the trustee to take action; and what indemnification the trustee may require before proceeding to enforce the lien.

(c) *Warrants and rights.* If the securities described are to be offered pursuant to warrants or rights state:

(1) The amount of securities called for by such warrants or rights;

(2) The period during which and the price at which the warrants or rights are exercisable;

(3) The amount of warrants or rights outstanding;

(4) Provisions for changes to or adjustments in the exercise price; and

(5) Any other material terms of such rights or warrants.

(d) *Other securities.* If securities other than capital stock, debt, warrants or rights are to be registered, include a brief description (comparable to that required in paragraphs (a), (b) and (c) of this Item 13) of the rights evidenced thereby.

(e) *Market information for securities other than common equity.* If securities other than common equity are to be registered and there is an established public trading market for the securities, provide market information with respect to the securities comparable to that required by Item 12 of this Form F–1.

Instructions to Item 13. 1. Wherever the title of securities is required to be stated, there shall be given such information as will indicate the type and general character of the securities, including the following:

A. In the case of shares, the par or stated value, if any; the rate of dividends, if fixed, and whether cumulative or non-cumulative; a brief indication of the preference, if any; and if convertible or redeemable, a statement to that effect;

B. In the case of debt, the rate of interest; the date of maturity or, if the issue matures serially, a brief indication of the serial maturities, such as "maturing serially from 1955 to 1960"; if the payment of principal or interest is contingent, an appropriate indication of such contingency; a brief indication of the priority of the issue; and, if convertible or callable, a statement to that effect; or

C. In the case of any other kind of security, appropriate information of comparable character.

2. Where convertible securities or stock purchase warrants are being registered that are subject to redemption or call, the description of the conversion

*SFAS 89—Statement of Financial Accounting Standards No. 89, Financial Reporting and Changing Prices, published by the Financial Accounting Standards Board.

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terms of the securities or material terms of the warrants shall disclose:

A. Whether the right to convert or purchase the securities will be forfeited unless it is exercised before the date specified in a notice of the redemption or call;

B. The expiration or termination date of the warrants;

C. The kinds, frequency and timing of notice of the redemption or call, including the cities or newspapers in which notice will be published (where the securities provide for a class of newspapers or group of cities in which the publication may be made at the discretion of the bank, the bank should describe such provision); and

D. In the case of bearer securities, that investors are responsible for making arrangements to prevent loss of the right to convert or purchase in the event of redemption of call, for example, by reading the newspapers in which the notice of redemption or call may be published.

* * * * *

Item 16 * * *

Instructions as to Financial Statements

These instructions specify the balance sheets and statements of income required to be filed as part of a registration statement on this form. Subpart F governs the certification, form, and content of the balance sheets and statements of income required, including the basis of consolidation, and prescribes the statement of changes in capital accounts, statement of changes in financial position, statement of cash flows, and the schedules to be filed in support thereof.

A. Financial Statements of the Bank

1. *Balance Sheets.* (a) The bank shall file an audited balance sheet as of the close of its latest fiscal year unless such fiscal year has ended within 90 days prior to the date of filing the registration statement, in which case the balance sheet may be as of the close of the preceding fiscal year.

(b) If the latest fiscal year of the bank has ended within 90 days prior to the date of filing the registration statement and the balance sheet required by paragraph (a) is filed as of the end of the preceding fiscal year, there shall be filed as an amendment to the registration statement, within 120 days after the date of filing, an audited balance sheet of the bank as of the end of the latest fiscal year.

2. *Statements of Income.* (a) The bank shall file audited statements of income for each of the three fiscal years preceding the date of the balance sheet required by instruction 1(a).

(b) There shall be filed with each balance sheet filed under instruction 1(b) an audited statement of income of the bank for the fiscal year immediately preceding the date of the balance sheet.

3. *Omission of Banks' Financial Statements in Certain Cases.* Notwithstanding instructions 1 and 2, the individual financial statements of the bank may be omitted if consolidated statements of the bank and one or more of its subsidiaries are filed.

B. Consolidated Statements

4. *Consolidated Balance Sheets.* (a) There shall be filed an audited consolidated balance sheet of the bank and its majority-owned: (i) Bank premises subsidiaries, (ii) subsidiaries doing a foreign banking business, and (iii) significant subsidiaries, as of the close of the latest fiscal year of the bank unless such fiscal year has ended within 90 days prior to the date of filing the registration statement, in which case this balance sheet may be as of the close of the preceding fiscal year.

(b) If the latest fiscal year of the bank has ended within 90 days prior to the date of filing the registration statement, and the balance sheet required by paragraph (a) is filed as of the end of the preceding fiscal year, there shall be filed as an amendment to the registration statement, within 120 days after the date of filing an audited consolidated balance sheet of the bank and such subsidiaries as of the end of the latest fiscal year.

5. *Consolidated Statement of Income.* (a) There shall be filed audited statements of income of the bank and its majority-owned (i) bank premises subsidiaries, (ii) subsidiaries doing a foreign banking business, and (iii) significant subsidiaries, for each of the three fiscal years preceding the date of the consolidated balance sheet required by instruction 4(a).

(b) There shall be filed with each balance sheet filed under instruction 4(b), an audited consolidated statement of income of the bank and such subsidiaries for the fiscal year immediately preceding the date of the balance sheet.

C. Unconsolidated Subsidiaries and Other Persons

6. *Separate Statements of Unconsolidated Subsidiaries and Other Persons.* There shall be filed such other audited financial statements with respect to unconsolidated subsidiaries and other persons as are material to a proper understanding of the financial position and results of operations of the total enterprise. For purposes of this item, "other persons" include 50 percent owned persons and unconsolidated persons in which the bank takes up equity in undistributed earnings.

* * * * *

E. Historical Financial Information

10. *Scope of Part E.* The information required by part E shall be furnished for the seven-year period preceding the period for which statements of income are filed, as to the accounts of each person whose balance sheet is filed. The information is to be given as to all of the accounts specified whether they are presently carried on the books or not. Part E does not call for certification but only for a survey or review of the accounts specified. It should not be detailed beyond a point material to an investor.

* * * * *

17. *Omission of Certain Information.* (a) No information need be furnished as to any subsidiary, whether consolidated or unconsolidated, for the period prior to the date on which the subsidiary became a majority-owned subsidiary of the bank or of a predecessor for which information is required above.

(b) No information need be furnished hereunder as to any one or more unconsolidated subsidiaries for which separate financial statements are filed if all subsidiaries for which the information is so omitted, considered in the aggregate, would not constitute a significant subsidiary.

(c) Only the information specified in instruction 16 need be given as to any predecessor or any subsidiary thereof if immediately prior to the date of succession thereto by a person for which information is required, the predecessor or subsidiary was in insolvency proceedings.

* * * * *

§ 335.310 [Amended]

16. Section 335.310(c) is amended by removing the word "registrant's" from the first sentence and replacing it with the word "bank's".

17. Section 335.312 is amended by:

a. Removing the word "registrant" and replacing it with the word "bank" each time it appears in paragraph D of General Instructions, and removing the word "Six" and adding in its place the word "Three" in the first sentence of paragraph D;

b. Revising the heading of Part I and adding a sentence to the end of Item 1(c) of Part I immediately preceding Item 1(d);

c. Removing the phrase "Items 5 (d), (e) and (g) of Form F–5" and replacing it with "Items 5 (d)(1), (d)(2) and (f) of Form F–5" in Item 4 and replacing "Item 5(e) of Form F–5" with "Item 5(d)(2) of Form F–5" in the note to Item 4;

d. In Part II, revising instructions 2, 3 and 5(a) in Item 6.

e. Amending Item 7 by removing the last sentence from paragraph (c); revising Instruction 7; adding a note to Instruction 7; removing Instruction 8 and redesignating Instructions 9 and 10 as Instructions 8 and 9;

f. Revising Item 8 introductory text and paragraphs (a) through (c);

g. In Part III, revising the title in Items 9 and 10; and

h. Removing the phrase "in § 335.102(ee)" and replacing it with "in § 335.102(nn)" in paragraph (9) of Item 11.

§ 335.312 Form for annual report of bank (Form F–2).

Form F–2—Annual Report Under Section 13 of the Securities Exchange Act of 1934

* * * * *

Part I (See General Instruction F–2)

Item 1—Business

(c) * * *

The term "revenue" includes the total of the amounts reported in items (1), (6) and (7) of the income statement (Format F–8B).

* * * * *

Part II—(See General Instruction F–2)

* * * * *

Item 6—Selected Financial Data

* * * * *

Instructions

* * * * *

2. The following items shall be included in the table of financial data: net interest income; other operating income; provision for loan and lease losses; income (loss) from continuing operations; income (loss) from continuing operations per common share; total assets; long-term obligations and redeemable preferred stock and cash dividends declared per common share. Banks may include additional items which they believe would enhance an understanding of and would highlight other trends in their financial condition and results of operations. Briefly describe, or cross reference to a discussion thereof, factors such as accounting changes, business combinations or dispositions of business operations, that materially affect the comparability of the selected financial data. Discuss any material uncertainties which might cause the data not to be indicative of the bank's future financial condition or results of operations.

3. Those banks which provide five-year summary information in accordance with SFAS 89 may combine such information with the selected financial data appearing pursuant to this item.

* * * * *

5. In addition, (a) if debt securities are registered under section 12 of the Act, the bank shall show in tabular form for each fiscal year the ratio of earnings to fixed charges. If appropriate, the ratio of earnings to fixed charges for such periods shall also be shown on a total enterprise basis in a position of equal prominence with the ratio for the bank or the bank and its consolidated subsidiaries.

* * * * *

Item 7—Management's Discussion and Analysis of Financial Condition and Results of Operations

* * * * *

Instructions

* * * * *

7. Banks should furnish statistical information similar to that required by Securities Exchange Act Industry Guide 3 [Statistical disclosure by bank holding companies] SEC Rel. No. 34–23846, 51 FR 43599 (November 25, 1986), 17 CFR part 241 (1988) ("Guide 3") for each of the last three fiscal years of the bank, except, if the bank had assets of less than $200,000,000 or net worth of $10,000,000 or less as of the end of its latest fiscal year, information may be furnished for each of the last two fiscal years with respect to all items. If a material change in the information presented or the trend evidenced thereby has occurred, it may be appropriate to furnish statistical information for an additional interim period to keep the information from being misleading.

The information should be presented in tabular form and include descriptions of: I. Distribution of Assets, Liabilities, and Stockholder's Equity; Interest Rates and Interest Differentials; II. Investment Portfolio; III. Loan Portfolio; IV. Summary of Loan Loss Experience; V. Deposits; VI. Return on Equity and Assets; and VII. Short-Term Borrowings. Although no specific guidance as to the form and content is provided, relevant data, material to a description of lending and deposit activities, should include information about (a) yields and costs of various assets and liabilities, (b) maturities and repricing characteristics of various assets and liabilities and (c) risk elements, such as nonaccrual and past-due items in the lending portfolio. Generally, statistical information called for by Guide 3 should be based on average daily amounts. However, weekly or month-end averages may be used if compiling daily information is too costly or difficult as long as it is representative of operations. Banks are not required to justify, but are required to disclose, which method of computing averages is selected.

Note to Instruction 7 of Item 7: If any such information is not reasonably available to the bank, the bank may present comparable information. Where information required by Guide 3 is substantially similar to that required by Call Report schedules (i.e.—Guide 3 items II and III, Investment Portfolio and Loan Portfolio, etc.), the Call Report schedule information may be presented instead.

* * * * *

Item 8—Financial Statements and Supplementary Data

These instructions specify the balance sheets and statements of income required to be filed as a part of annual reports on this form. Subpart F governs the certification, form, and content of the balance sheets and statements of income required, including the basis of consolidation, and prescribes the statement of changes in capital accounts, statement of changes in financial position, and/or statement of cash flows and the schedules to be filed in support thereof.

(a) Financial Statements of the Bank. (1) There shall be filed for the bank, in comparative columnar form, audited balance sheets as of the close of the last two fiscal years and audited statements of income for each of the three fiscal years preceding the date of the most recent balance sheet being filed.

(2) Notwithstanding paragraph (1), the individual financial statements of the bank may be omitted if consolidated statements of the bank and one or more of its subsidiaries are filed.

(b) *Consolidated Statements.* There shall be filed for the bank and its majority-owned: (1) Bank premises subsidiaries, (2) subsidiaries doing a foreign banking business, and (3) significant subsidiaries, in comparative columnar form, audited consolidated balance sheets as of the close of the last two fiscal years of the bank and audited consolidated statements of income for three fiscal years.

(c) *Separate Statements of Unconsolidated Subsidiaries and Other Persons.* There shall be filed such other audited financial statements with respect to unconsolidated subsidiaries and other persons as are material to a proper understanding of the financial

position and results of operations of the total enterprise. For purposes of this item, "other persons" include 50 percent owned persons and unconsolidated persons in which the bank takes up equity in undistributed earnings.

* * * * *

Part III—(See General Instruction F (3))

Item 9—Directors and Principal Officers of the Bank

* * * * *

Item 10—Management Compensation and Transactions

* * * * *

§ 335.321 [Amended]

18. Section 335.321 is amended a. by adding the phrase "except for items 10 or 11" at the end of the second sentence of paragraph B of the General Instructions, and inserting the following sentence immediately thereafter: "A report of an event specified in items 10 or 11 is to be filed within 5 business days after the occurence of the event; if the event occurs on a Saturday, Sunday, or holiday on which the FDIC is not open for business, then the 5 business day period shall begin to run on and include the first business day thereafter."; b. by removing the word "registrant" and substituting the word "bank" in the first sentence in paragraph (a) of Item 1; c. by removing the word "verified" and replacing it with the word "audited" wherever it appears in paragraph 2 under Financial Statements of Businesses Acquired, and d. by removing "a" in paragraph 2(a) in the last sentence, under Financial Statements of Businesses Acquired and replacing it with "an".

19. Section 335.331 is amended by a. removing the word "Six" and replacing it with the word "Three" in the first sentence in paragraph E; b. removing the words "verified financial statements" wherever they appear in paragraph (a)(5) of Item 1 and replacing them with the words "audited financial statements"; c. removing the words "registrant's" from the second sentence in paragraph (b)(5) of Item 1 and replacing it with the word "bank's"; and d. revising paragraphs (a)(4) and (c)(3) of Item 1 and adding a note to paragraph (c)(3) of Item 1 as follows:

§ 335.331 Form for quarterly report of a bank (Form F–4).

Form F–4

* * * * *

Item 1—Financial Statements

(a) * * *

* * * * *

(4) The statement of changes in financial position and/or statement of cash flows may be abbreviated, as appropriate.

* * * * *

(c) * * *

(3) Interim statements of cash flows/changes in financial position (See Statement of Financial Accounting Standards No. 95, Statement of Cash Flows) and statements of changes in capital accounts shall be provided for the period between the end of the preceding fiscal year and the end of the most recent fiscal quarter, and for the corresponding period of the preceding fiscal year. Such statements may also be presented for the cumulative twelve-month period ending during the most recent fiscal quarter and for the corresponding preceding period.

Note to paragraph (c)(3): Restatement of prior years' statements of financial position is encouraged but is not required.

* * * * *

§ 335.332 [Amended]

20. Section 335.332 is amended by: a. removing the word "registrant's" from the introductory text and paragraph B of General Instructions and replacing it with the word "bank's"; b. removing the word "registrant" from paragraphs B and C of General Instructions and SIGNATURES and replacing it with the word "bank"; and c. removing the word "Six" from the second sentence of paragraph C of General Instructions and replacing it with the word "Three".

§ 335.359 [Amended]

21. Section 335.359 is amended by removing the word "six" and adding in its place the word "three" in the first sentence of paragraph (a).

§ 335.401 [Amended]

22. Section 335.401 is amended by removing the word "Six" from the last sentence in paragraphs (a) and (c) and replacing it with the word "Three".

§ 335.402 [Amended]

23. Section 335.402 is amended by a. removing the word "Six" from the last sentence of paragraph (a) and the second sentence of paragraph (b), and replacing it with the word "Three"; and b. removing the phrase ", or if there are no changes from the previous filing, a signed statement to that effect under cover of Form F–11A" from the first sentence of paragraph (b).

§ 335.407 [Amended]

24. Section 335.407 is amended by removing the word "Six" from the Note and replacing it with the word "Three".

§ 335.408 [Amended]

25. Section 335.408 is amended by removing the word "Six" from the Note at the end of the section and replacing it with the word "Three".

26. New § 335.409 is added as follows:

§ 335.409 Going private transactions by a bank or its affiliates.

A bank or its affiliates (as defined in 17 CFR 240.13e–3) shall not engage in a Rule 13e–3 transaction (as defined in 17 CFR 240.13e–3) unless it meets the requirements of 17 CFR 240.13e–3, except that all filings shall be made with the FDIC and be titled with the name of the FDIC instead of the Securities and Exchange Commission.

§ 335.410 [Amended]

27. Section 335.410 is amended by changing "$3,000" to "$10,000" in paragraphs (h)(1) and (h)(2).

§ 335.503 [Amended]

28. Section 335.503 is amended by removing the word "six" from paragraph (a)(1) and the first sentence in paragraph (b), and replacing it with the word "three".

29. Section 335.507 is amended by revising the introductory text of paragraph (a) as follows:

§ 335.507 Additional withdrawal rights.

(a) *Rights.* In addition to the provisions of section 14(d)(5) of the Act, any person who has deposited securities pursuant to a tender offer has the right to withdraw any such securities during the following period such offer, request or invitation remains open.

* * * * *

§ 335.509 [Amended]

30. Section 335.509 is amended by removing the word "six" in paragraphs (a)(1) and (b)(1) and replacing it with the word "three".

31. New § 335.509a is added to read as follows:

§ 335.509a Equal treatment of security holders.

(a) No bidder shall make a tender offer unless:

(1) The tender offer is open to all security holders of the class of securities subject to the tender offer; and

(2) The consideration paid to any security holder pursuant to the tender offer is the highest consideration paid to any other security holder during the tender offer.

(b) Paragraph (a)(1) of this section shall not:

(1) Affect dissemination under § 335.505; or

(2) Prohibit a bidder from making a tender offer excluding all security holders in a state where the bidder is prohibited from making the tender offer by administrative or judicial action pursuant to a state statute after a good faith effort by the bidder to comply with such statute.

(c) Paragraph (a)(2) of this section shall not prohibit the offer of more than one type of consideration in a tender offer, provided that:

(1) Security holders are afforded equal rights to elect among each of the types of consideration offered; and

(2) The highest consideration of each type paid to any security holder is paid to any other security holder receiving that type of consideration.

(d) If the offer and sale of securities constituting consideration offered in a tender offer is prohibited by the appropriate authority of a state after a good faith effort by the bidder to register or qualify the offer and sale of such securities in such state:

(1) The bidder may offer security holders in such state an alternative form of consideration; and

(2) Paragraph (c) of this section shall not operate to require the bidder to offer or pay the alternative form of consideration to security holders in any other state.

(e) This section shall not apply to any tender offer with respect to which the FDIC, upon written request or upon its own motion, either unconditionally or on specified terms and conditions, determines that compliance with this section is not necessary or appropriate in the public interest or for the protection of investors.

32. Section 335.510 is amended by revising paragraph (b) as follows:

§ 335.510 Unlawful tender offer practices.

* * * * *

(b) Increase or decrease the percentage of the class of securities being sought or the consideration offered or the dealers' soliciting fee to be given in a tender offer unless such tender offer remains open for at least ten business days from the date that notice of such increase or decrease is first published or sent or given to security holders: *Provided, however,* That, for purposes of this paragraph, the acceptance for payment of an additional amount of securities not to exceed two percent of the class of securities that is the subject of the tender offer shall not be deemed to be an increase. For purposes of this paragraph, the percentage of a class of securities shall be calculated in accordance with section 14(d)(3) of the Act.

* * * * *

§ 335.512 [Amended]

33. Section 335.512 is amended by removing the word "four" from the initial Instruction and replacing it with the word "one".

§ 335.513 [Amended]

34. Section 335.513 is amended by removing the word "Six" from the initial Instruction and replacing it with the word "Three".

35. New § 335.521 is added as follows:

§ 335.521 Tender offers by issuers.

A bank or its affiliates shall not make an "issuer tender offer" unless the offer meets the requirements of 17 CFR 240.13e–4, except that all filings shall be made with the FDIC and be titled with the name of the FDIC instead of the Securities and Exchange Commission.

36. The undesignated centerheading preceding § 335.602 and § 335.602 are revised as follows:

Qualifications and Reports of Accountants

§ 335.602 General rules.

Every accountant's report with respect to financial statements filed under this part shall be dated, shall be signed manually, shall indicate the city and State where issued, and shall identify without detailed enumeration the financial statements covered by the report.

§ 335.603 [Removed and Reserved]

37. Section 335.603 is removed and reserved.

38. Section 385.604 is amended by revising paragraphs (a) (1) and (2) as follows:

(a) * * * (1) The FDIC will not recognize any person as a certified public accontant who is not duly registered and in good standing as such under the laws of the place of his/her residence or principal office. The FDIC will not recognize any person as a public accountant who is not in good standing and entitled to practice as such under the laws of the place of his/her residence or principal office.

(2)(i) The FDIC will not recognize any certified public accountant or public accountant as independent who is not in fact independent. For example, an accountant will be considered not independent with respect to any person or any of its parents, its subsidiaries, or other affiliates (A) in which, during the period of his/her professional engagement to examine the financial statements being reported on or at the date of his report, the firm or a member of the firm had, or was committed to acquire a direct financial interest or any material indirect financial interest or (B) with which during the period of his/her professional engagement to examine the financial statements being reported on, at the date of the report or during the period covered by the financial statements, the firm or a member of the firm was connected as a promoter, underwriter, voting trustee, director, officer, or employee. A firm will be deemed independent in regard to a particular person if a former officer or employee of the person is employed by the firm and the individual has been completely disassociated from the person and its affiliates and does not participate in auditing financial statements of the person or its affiliates covering any period of his/her employment by the person.

(ii) For the purposes of this section, the term "member" means (A) all partners, shareholders, and other principals in the firm, (B) any professional employee involved in providing any professional service to the person, its parents, subsidiaries, or other affiliates, and (C) any professional employee having managerial responsibilities and located in the engagement office or other office of the firm which participates in a significant portion of the audit.

* * * * *

§ 335.610 [Amended]

39. Section 335.610 is amended by revising the first sentence to read as follows: "Financial statements shall be prepared in accordance with the applicable requirements of Formats 9 A, B, C, and D."

40. Section 335.618 is revised as follows:

§ 335.618 Foreign activities.

If assets, revenue, or income (loss) before taxes and securities gains (losses), or net income (loss) associated with foreign activities, exceeded 10 percent of the corresponding amount in the related financial statements, the following disclosures concerning foreign activities shall be furnished in a note to the financial statements. The term "revenue" includes the total of the amounts reported in items (1), (6) and (7) of the income statement, Format F–9B.

(a) Loans. State separately loan categories as prescribed by schedule A column C of Consolidated Report of Condition, Schedule RC–C, FFIEC 031, as applicable. Categories of less than 10 percent of total loans related to foreign activities may be grouped with all other loans.

(b) Balances with banks in foreign countries. State separately balances with foreign branches of other U.S.

banks and with other banks in foreign countries. (See lines 3 (a) and (b) of Scheduled RC–A of the Consolidated

"(4) Those banks adopting SFAS No. 96, Accounting for Income Taxes, should disclose such adoption and provide

§ 335.627 Format F–9 financial statements.

* * * * *

securities: show on the balance sheet parenthetically the aggregate market value at balance sheet date. The

related parties should be provided. The analysis should include the aggregate amount at the beginning of the period,

deposits and interest bearing deposits. The amount of noninterest bearing deposits and interest bearing deposits in

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banks and with other banks in foreign countries. (See lines 3 (a) and (b) of Scheduled RC–A of the Consolidated Report of Condition, FFIEC 031. Also furnish the amount of interest-bearing balances included above.

(c) Deposit liabilities. Furnish deposit information as prescribed in Schedule RC–E, Part II of Consolidated Report of Condition, FFIEC 031. State also the amount of interest-bearing deposits in denominations of $100,000 or more.

(d) Other borrowings. State separately short-term borrowings, other liabilities for borrowed money, and other indebtedness related to foreign activities corresponding to the amounts reported on Schedule RC, FFIEC 031, items 14, 16, 17, 18, and 19.

(e) Income and expense summary. For each period for which an income statement is filed, furnish information as prescribed in part 1, column B and part 2 of the Statement of Income, Schedule RI–D, Part I, FFIEC 031. State in a note the basis of pricing money transfers and the policy governing allocation of income and expenses to foreign activities.

(f) Allowance for possible loan and lease losses. For each period for which a statement of income is filed, furnish in a note a reconciliation of changes in the allowance for possible loan and lease losses applicable to loans related to foreign activities.

(g) If disclosure above is required, state separately in a note for each significant geographic area, and in the aggregate for all other geographic areas not deemed significant, the following:

(1) Total assets (net of valuation allowances;

(2) Total net interest income;

(3) Provisions for loan and lease losses and for allocated transfer risk;

(4) Other net noninterest income (expense) including gains (losses) on securities not held in trading accounts; and

(5) Net income (loss).

Note to paragraph (g): A "significant geographic area" is one whose assets, operating income, or net income exceed 10 percent of the comparable amount as reported in the related financial statements.

§ 335.621 [Amended]

41. Section 335.621(e) is amended by changing "26(b)" to "22(b)".

42. Section 335.622 is amended by adding paragraph (d)(4) and revising paragraph (g)(2)(i) as follows:

§ 336.622 General notes to statement of income.

* * * * *

(d) * * *

"(4) Those banks adopting SFAS No. 96, Accounting for Income Taxes, should disclose such adoption and provide appropriate income tax expense disclosure as therein required, in lieu of paragraph (d)(1) of this section.

* * * * *

(g) * * *

(2) * * *

(i) Disclosure shall be made in a note to financial statements of total interest income, total interest expense, net interest income, provision for loan and lease losses, other income (expense) net, income before extraordinary items and cumulative effect of a change in accounting, net income, and per share data based upon such income for each full quarter within the two most recent fiscal years and any subsequent interim period for which income statements are presented.

* * * * *

§ 335.623 [Amended]

43. Section 335.623(g) is amended by changing the word "Board" in the first sentence to "FDIC".

44. Section 335.625 is revised as follows:

§ 335.625 Statement of changes in financial position, and/or statement of cash flows.

A statement of changes in financial position and/or statement of cash flows, as appropriate, shall be filed with each statement of income filed pursuant to this part.

45. Section 335.626 is amended by revising paragraph (a) as follows:

§ 335.626 Schedules to be filed.

(a) The following schedules shall be filed with each balance sheet filed under this part: Schedule I—Securities; Schedule III—Loans and Lease Financing Receivables; and Schedule IV—Bank Premises and Equipment.

* * * * *

46. Section 335. 627 is amended by:

a. Amending the table of contents at the beginning of the section by removing the entries for D. and E. and replacing them with "D. Schedules (Format F–9D);

b. Removing D. Statement of Changes in Financial Position (Format F–9D);

c. Redesignating E. Schedules as D. Schedules and revising the heading of newly designated D. to read "D. Schedules (Format F–9D)";

d. Revising General Instruction 1;

e. Revising A. Balance Sheet in its entirety;

f. Revising B. Statement of Income in its entirety;

g. Revising Schedules I and III of newly designated D in their entirety.

§ 335.627 Format F–9 financial statements.

* * * * *

General Instructions

1. *Preparation of Financial Statements.*—The formats are intended to serve as guides for preparation of financial statements required to be filed under this part. The formats are recommended presentations, but financial statements may be filed in such form and order as will best indicate their significance and character. Requirements for inclusion of financial statements in certain other guideline forms required by Part 335 are found in the instructions to such forms.

The formats for the statements of changes in financial position and cash flows are not set forth herein. Refer to SFAS No. 95 "Statement of Cash flows", Appendix C for an illustrative example of an acceptable format for banks.

Banks have the option of conforming their financial statement formats to the provisions of Article 9 of Regulation S–X of the SEC (17 CFR 210.9) in lieu of the formats set forth herein. Savings banks are encouraged to utilize Call Report formats for the Balance Sheet, Statement of Income, Statement of Changes in Equity Capital, and appropriate schedules.

* * * * *

A. Balance Sheet

The Balance Sheet shall be prepared in accordance with the instructions for the preparation of the Consolidated Report of Condition (FFIEC 031, 032, 033, 034 as applicable) except to the extent revised or expanded financial data presentation is necessary to meet the disclosure standards of the Securities Exchange Act of 1934, as amended.

Note: Banks subject to this part are required to report on the accrual basis of accounting.

The following captions and added *supplemental* instructions shall be observed in the preparation of the Balance Sheet required under this part.

Assets

1. *Cash and balances due from depository institutions.* (a) State separately (1) interest-bearing balances in other banks and (2) noninterest-bearing balances and cash.

(b) Any withdrawal and usage restrictions (including requirements of the Federal Reserve to maintain certain average reserve balances) or compensating balance requirements should be disclosed.

2. *Securities.* (a) Include securities held for investment only. Disclose the aggregate book value of investment

securities; show on the balance sheet parenthetically the aggregate market value at balance sheet date. The aggregate amounts should include securities pledged, loaned or sold under repurchase agreements and similar arrangements; borrowed securities and securities purchased under resale agreements or similar arrangements should be excluded.

(b) Disclose in a note the carrying value and market value of securities of (1) the U.S. Treasury and other U.S. Government agencies and corporations; (2) states of the U.S. and political subdivisions; and (3) other securities.

3. *Federal funds sold and securities purchased under agreements to resell.* These amounts should be presented gross and not netted against Federal funds purchased and securities sold under agreements to repurchase.

4. *Loans and lease financing receivables.* Disclose separately (1) total loans and lease financing receivables, (2) the related allowance for losses and (3) unearned income.

(a) Disclose on the balance sheet or in a note the amount of total loans in each of the following categories: (1) Commercial, financial and agricultural, (2) Real estate-construction, (3) Real estate-mortgage, (4) Installment loans to individuals, (5) Lease financing receivables, (6) Foreign, (7) Other. (State separately any other loan category regardless of relative size if necessary to reflect any unusual risks or uncertainties such as a substantial portion of total loans which are concentrated in one or a few industries or foreign countries).

(b) A series of categories other than those specified in (a) above may be used to present details of loans if considered a more appropriate presentation.

(c) The amount of foreign loans must be presented if the disclosures specified by § 335.618 are required.

(d) For each period for which an income statement is required, furnish in a note a statement of changes in the allowance for loan and lease losses showing the balances at beginning and end of the period, provision charged to income, recoveries of amounts charged off and losses charged to the allowance.

(e)(1)(i) For each balance sheet date, disclose in a note the aggregate dollar amount of loans (exclusive of loans to any such persons which in the aggregate do not exceed $60,000 during the latest year) made by the bank or any of its subsidiaries to directors, principal-officers, or principal holders of equity securities of the bank or any of its significant subsidiaries, or to any associate of such persons. For the latest fiscal year, an analysis of activity with respect to such aggregate loans to related parties should be provided. The analysis should include the aggregate amount at the beginning of the period, new loans, repayments, and other changes. (Other changes, if significant, should be explained).

(ii) This disclosure need not be furnished when the aggregate amount of such loans at the balance sheet date (or with respect to the latest fiscal year, the maximum amount outstanding during the period) does not exceed 5 percent of equity capital at the balance sheet date.

(2) If a significant portion of the aggregate amount of loans outstanding at the end of the fiscal year disclosed pursuant to (e)(1)(i) above relates to loans which are nonaccrual, past due (over 90 days) or restructured, as those terms are used in the Call Report, so state and disclose the aggregate amount of such loans along with such other information necessary to an understanding of the effects of the transactions of the financial statements.

(3) Notwithstanding the aggregate disclosure called for by (e)(1) above, if any loans were not made in the ordinary course of business during any period for which an income statement is required to be filed, provide an appropriate description of each such loan.

5. *Assets held in trading accounts.* Include securities or any other investments held for trading purposes only.

6. *Premises and fixed assets.*

7. *Other real estate owned.* State in a note (1) the basis at which carried, (2) the aggregate fair market value of all real estate owned other than bank premises with an explanation of the method of determining such fair market value, and (3) for each period for which an income statement is required, a reconciliation of any valuation allowance account, including the balance at the beginning and end of the period, provisions charged to income, and losses charged to the allowance.

8. *Investments in an indebtedness of unconsolidated subsidiaries and associated companies.*

9. *Customers' liability to the bank on acceptances outstanding.*

10. *Intangible assets.*

11. *Other assets.* Disclose separately on the balance sheet or in a note thereto any of the following assets or any other assets the amount of which exceeds 30 percent of equity capital. The remaining assets may be shown as one amount.

(1) Accrued interest.

(2) Net deferred tax charges.

12. *Total assets.*

Liabilities

13. *Deposits.* (a) Disclose separately the amounts of noninterest bearing deposits and interest bearing deposits. The amount of noninterest bearing deposits and interest bearing deposits in foreign banking offices must be presented if the disclosures provided by § 335.618 are required.

(b) State in a note the aggregate amount of (1) time certificates of deposit in denominations of $100,000 or more and (2) other time deposits in denominations of $100,000 or more, in domestic offices and, if § 335.618 applies, foreign offices.

14. *Federal funds purchased and securities sold under agreements to repurchase and other short term borrowings.* (a) Disclose separately on the balance sheet or in a note, amounts payable for (1) federal funds purchased and securities sold under agreements to repurchase; (2) commercial paper, and (3) other short term borrowings. Disclose any unused lines of credit for short-term financing.

(b) If the average balance outstanding during the period for any category was 30 percent or more of equity capital, provide the following information, with respect to each category, in a note:

(1) Weighted average interest rate at balance sheet date.

(2) Maximum amount of borrowings at any month-end during each period for which an end of period balance sheet is required.

(3) Approximate average borrowings outstanding during the period.

(4) Approximate weighted average interest rate for such average borrowings outstanding during the period.

15. *Demand notes issued to the U.S. Treasury.*

16. *Other borrowed money.*—See supplemental instruction to Item 14.

17. *Mortgage indebtedness and obligations under capitalized leases.* (a) Report the amount of mortgages, liens, or other encumbrances on premises and fixed assets and on other real estate owned for which the bank or its consolidated subsidiaries are liable. If the bank is the lessee on capitalized lease property, include the bank's liability for capitalized lease payments. (See the Call Report Glossary entry for "lease accounting" for a discussion of accounting with bank as lessee.)

(b) State in a note material terms and conditions of each obligation, including (but not limited to): (1) The general character of the debt; (2) the rate of interest; (3) the date of maturity or if maturing serially, a brief indication of the serial maturities; (4) if the payment of principal or interest is contingent, an appropriate indication of such contingency; (5) a brief indication of

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priority; and (6) the amount outstanding at the balance sheet date.

18. *Bank's liability or acceptances executed and outstanding.* Report the amount of liability that is represented by drafts and bills of exchange that have been accepted by the reporting bank, or by others for its account, and that are outstanding. See the Call Report Glossary entry for "Bankers Acceptances" for further information.

19. *Notes and debentures subordinated to deposits.* (a) Report the amount of outstanding notes and debentures (including mandatory convertible debt) that are subordinated to the deposits of the consolidated bank (see the Call Report Glossary entry for "Subordinated Notes and Debentures").

(b) State in a note the material terms and conditions of each obligation including, but not limited to: (1) The general character of the debt; (2) the rate of interest; (3) the date of maturity, or if maturing serially, an indication of serial maturities; (4) if the payment of principal or interest is contingent, an appropriate indication of such contingency; (5) a brief indication of priority; (6) the amount outstanding at the balance sheet date; and (7) if convertible, the basis.

20. *Other liabilities.* Disclose separately on the balance sheet or in a note any of the following liabilities or any other items which are individually in excess of 25 percent of the equity capital (except that amounts in excess of 5 percent of equity capital should be disclosed with respect to item (4)). The remaining items may be shown as one amount. (1) Income taxes payable, (2) Deferred income taxes, (3) Indebtedness to affiliates and other persons the investments in which are accounted for by the equity method, (4) Indebtedness to directors, executive officers, and principal holders of equity securities of the bank or any of its significant subsidiaries, (5) Accounts payable and accrued expenses, (6) Commitments and contingent liabilities, minority interest in consolidated subsidiaries.

21. *Total Liabilities.*

22. *Limited-life preferred stock.* (a) Report the amount of any preferred stock that has a stated maturity date that can be redeemed at the option of the holder (excluding those issues of preferred stock that automatically convert into perpetual preferred stock or common stock at a stated date). State on the face of the balance sheet the title of each issue, the carrying amount and redemption amount. (If there is more than one issue, these amounts may be aggregated on the face of the balance sheet and details concerning each issue may be presented in the note required by paragraph (b) below.) Show also the dollar amount of any shares subscribed but unissued, and show the deduction of subscriptions receivable therefrom. If the carrying amount is different from the redemption amount, describe the accounting treatment for such difference in the note required by paragraph (b) below. Also state in this note or on the face of the balance sheet, for each issue, the number of shares authorized and the number of shares issued or outstanding, as appropriate.

(b) State in a separate note captioned "Redeemable Preferred Stock": (1) A general description of each issue, including its redemption features (e.g., sinking fund, at option of holders, out of future earnings) and the rights, if any, of holders in the event of default, including the effect, if any, on junior securities in the event that a required dividend, sinking fund, or other redemption payment(s) is not made; (2) the combined aggregate amount of redemption requirements for all issues each year for the five years following the date of the latest balance sheet; and (3) the changes in each issue for each period for which an income statement is required to be filed.

Equity Capital

23. *Perpetual preferred stock.* Report the amount of preferred stock that does not have a stated maturity date or that cannot be redeemed at the option of the holder (including those issues of preferred stock that automatically convert into common stock at a stated date). State on the face of the balance sheet, or if more than one issue is outstanding, state in a note, the title of each issue and the dollar amount thereof. Show also the dollar amount of any shares subscribed but unissued, and show the deduction of subscriptions receivable therefrom. State on the face of the balance sheet or in a note, for each issue, the number of shares authorized and the number of shares issued or outstanding, as appropriate. Show in a note or separate statement the changes in each class of preferred shares reported herein for each period for which an income statement is required to be filed.

24. *Common stock.* Report the aggregate par or stated value of outstanding common stock. State for each class of shares the title of issue, the number of shares authorized, issued and outstanding, the par value per share and the dollar amount thereof. Show also the dollar amount, if any, of each class of shares subscribed to but unissued, and show the deduction of subscriptions receivable therefrom. Disclose in the statement or in a note the changes in the aggregate par or stated value of outstanding common stock for each period for which an income statement is required.

25. *Surplus.*

26. *Undivided profits and capital reserves.* Report the amounts appropriated and unappropriated; restrictions which limit the payment of dividends; and the amount of undivided profits which represents undistributed earnings of 50 percent or less owned companies.

27. *Cumulative foreign currency translation adjustments.* (Not applicable to banks with domestic offices only).

28. *Total equity capital.*

29. *Total liabilities, limited-life preferred stock, and equity capital.*

B. Statement of Income

The statement of income shall conform generally to the Consolidated Report of Income (FFIEC 031, 032, 033, 034 as applicable) and related instructions thereto, except to the extent revised or expanded financial data presentation is necessary to meet the disclosure standards of the Securities Exchange Act of 1934, as amended.

Note to B: See § 335.601 for general requirements of financial reporting.

The following captions and added supplemental instructions shall be observed in the preparation of the statement of income required under this subpart.

1. *Interest income.* Include commitment and origination fees, late changes and current amortization of premium and accretion of discount on loans which are related to or are an adjustment of the loan interest rate. Disclose separately.

(a) Interest and fee income on loans.

(b) Income from lease financing receivables.

(c) Interest income on balance due from depository institutions.

(d) Interest and dividend income on securities—Disclose separately (1) taxable interest income, (2) nontaxable interest income, and (3) dividends. State in a note interest and dividend income on

(i) U.S. Treasury securities and U.S. Government agency and corporation obligations.

(ii) Securities issued by states and political subdivisions in the U.S.

(iii) Other domestic securities (debt and equity).

(iv) Foreign securities (debt and equity).

(e) Interest income from assets held in trading accounts.

(f) Interest income on federal funds sold and securities purchased under agreements to resell.

(2) *Interest Expense.* Disclose separately:

(a) Interest on deposits.

(i) Interest on time certificates of deposit of $100,000 or more.

(ii) Interest on other deposits.

(b) Expense of federal funds purchased and securities sold under agreements to repurchase.

(c) Interest on demand notes issued to the U.S. Treasury and on other borrowed money.

(d) Interest on mortgage indebtedness and obligations under capitalized leases.

(e) Interest on notes and debentures subordinated to deposits.

(3) *Net interest income.*

(4) *Provision for loan and lease losses.*

(5) *Net interest income after provision for loan and lease losses.*

(6) *Noninterest income.* Disclose separately:

(a) Income from fiduciary activities.

(b) Service charges on deposit accounts.

(c) Trading gains (losses) and fees from foreign exchange transactions.

(d) Other foreign transaction gains (losses).

(e) Gains (losses) and fees from assets held in trading account. Report the net gain or loss from the sale of assets reportable in item 5, "Assets held in trading accounts," other than those trading gains (losses) and fees relating to foreign exchange transactions reported in item 6(c) above.

(f) Other noninterest income. Report all operating income of the bank not required to be reported in item 1(a) through 1(f) and 6(a) through 6(e). State separately the dollar amount of any individual component of this item which exceeds 25 percent of the total.

7. *Gain (losses) on securities not held in trading accounts.* Report the net gain or loss. Disclose in a note the method used to determine the cost of investments sold and the related income taxes.

8. *Noninterest expense.* (a) Salaries and employee benefits.

(b) Expenses of premises and fixed assets.

(c) Other noninterest expense. See item 6(f) for threshold for disclosure of individual components.

(d) Total noninterest expense.

(e) Amortization of goodwill.

(f) Minority interest in income of consolidated subsidiaries.

9. *Income (loss) before income taxes and extraordinary items and other adjustments.*

10. *Applicable income taxes (on item 9). See § 335.622(d).*

11. *Income (loss) before extraordinary items and other adjustments.*

12. *Extraordinary items and other adjustments.*

(a) Extraordinary items and other adjustments, gross of income taxes.

(b) Applicable income taxes (on item 12(a)).

(c) Extraordinary items and other adjustments, net of income taxes.

13. *Net income (loss).* Report the sum of items 11 and 12(c).

14. *Earnings per share data.*

D. Schedules (Format F–9D)

Schedule I—Securities

Exclude assets held in trading accounts.

	Book value (Col. A)	Market value (Col. B)
1. U.S. Treasury securities		
2. U.S. Government agency and corporation obligations:		
a. All holdings of U.S. Government-issued or guaranteed certificates of participation in pools of residential mortgages		
b. All other		
3. Securities issued by states and political subdivisions in the U.S		
4. Other domestic securities (debt and equity):		
a. All holdings of private (i.e., nongovernment-issued or guaranteed) certificates of participation in pools of residential mortgages		
b. All other		
5. Foreign securities (debt and equity)		
6. Total (sum of items 1 through 5) (total of column A must equal call report schedule RC, item 2)		
7. Pledged securities		

* * * * * *

Schedule III—Loans and Lease Financing Receivables

Net of unearned income and before adjustment for allowance for loan and lease losses. Excluding assets held in trading accounts.

	Book value
1. Loans secured by real estate:	
a. Construction and land development	
b. Secured by farmland (including farm residential and other improvements)	
c. Secured by 1–4 family residential properties	
d. Secured by multifamily (5 or more) residential properties	
e. Secured by nonfarm nonresidential properties	
2. Loans to depository institutions:	
a. To commercial banks in the U.S.:	
(1) To U.S. branches and agencies of foreign banks	
(2) To other commercial banks in the U.S	
b. To other depository institutions in the U.S	
b. To other depository institutions in the U.S	
c. To banks in foreign countries:	
(1) To foreign branches of other U.S. banks	
(2) To other banks in foreign countries	
3. Loans to finance agricultural production and other loans to farmers	
4. Commercial and industrial loans:	
a. To U.S. addressees (domicile)	
b. To non-U.S. addressees (domicile)	
5. Acceptance of other banks	
6. Loans to individuals for household, family, and other personal expenditures (includes purchased paper):	
a. Credit cards and related plans	
b. Other	
7. Loans to foreign governments and official institutions (including foreign central banks)	
8. Obligations (other than securities) of states and political subdivision in the U.S.:	
a. Nonrated industrial development obligations	
b. Other obligations (excluding securities)	
9. Other loans:	
a. Loans for purchasing or carrying securities (secured and unsecured)	
b. All other loans	
10. Lease financing receivables (net of unearned income)	
11. Less: Any unearned income on loans reflected in items 1–9 above	
12. Total loans and leases, net of unearned income (sum of items 1 through 10 minus item 11) (must equal call report schedule RC, item 4a)	
Note: Commercial paper included in call report schedule RC–C	

* * * * * *

47. A new § 335.628 "Pro Forma Financial Information" is added to subpart F as follows:

§ 335.628 Pro forma financial information.

I. Presentation Requirements

(a) Pro forma financial information shall be furnished when any of the following conditions exist:

(1) During the most recent fiscal year or subsequent interim period for which a balance sheet is required by § 335.623 a significant business combination

accounted for as a purchase has occurred;

(2) After the date of the most recent

acquisition of a lesser component of an entity constitutes a business are the following:

most recent three fiscal years, the caption may be combined with others. In calculating average net income, loss

fully diluted pro forma per share data based on continuing operations before nonrecurring charges or credits directly

adjustments, including adjustments relating to expenses that will be or have been incurred on behalf of the business

(3) Pro forma condensed statements of income shall be presented using the bank's fiscal year-end. If the most recent

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accounted for as a purchase has occurred;

(2) After the date of the most recent balance sheet filed pursuant to § 335.628, consummation of a significant business combination to be accounted for by either the purchase method or pooling-of-interests method of accounting has occurred or is probable;

(3) The bank is offering its securities to the security holders of a significant business to be acquired or the proceeds from the offered securities will be applied, directly or indirectly, to the purchase of a specific significant business;

(4) The disposition of a significant portion of a business either by sale, abandonment or distribution to shareholders by means of a spin-off, split-up or split-off has occurred or is probable and such disposition is not fully reflected in the bank's financial statements included in the filing; or

(5) Other transactions or events have occurred or are probable for which disclosure of pro forma financial information would be material to investors.

(b) A business combination or disposition of a business shall be considered significant if:

(1) A comparison of the most recent annual financial statements of the business acquired or to be acquired and the bank's most recent annual consolidated financial statements filed at or prior to the date of acquisition indicates that the business would be a significant subsidiary under conditions specified in § 335.103(nn): or

(2) The business to be disposed of meets the conditions of a significant subsidiary in § 335.102(nn).

(c) When consummation of more than one transaction has occurred or is probable during a fiscal year, the tests of significance in paragraph (b) of this section shall be applied to the cumulative effect of those transactions. If the cumulative effect of the transactions is significant, pro forma financial information shall be presented.

(d) For purposes of this section the term "business" should be evaluated in light of the facts abd circumstances involved and whether there is sufficient continuity of the acquired entity's operations prior to and after the transactions so that disclosure of prior financial information is material to an understanding of future operations. A presumption exists that a separate entity, a subsidiary, or a division is a business. However, a lesser component of an entity may also constitute a business. Among the facts and circumstances which should be considered in evaluating whether an acquisition of a lesser component of an entity constitutes a business are the following:

(1) Whether the nature of the revenue-producing activity of the component will remain generally the same as before the transaction; or

(2) Whether any of the following attributes remain with the component after the transaction:

(i) Physical facilities,
(ii) Employee base,
(iii) Market distribution system,
(iv) Sales force,
(v) Customer base,
(vi) Operating rights,
(vii) Production techniques, or
(viii) Trade names.

(e) This section does not apply to transactions between a bank and its totally owned subsidiaries.

II. Preparation Requirements

(a) *Objective.* Pro forma financial information should provide investors with information about the continuing impact of a particular transaction by showing how it might have affected historical financial statements if the transaction had been consummated at an earlier time. Such statement should assist investors in analyzing the future prospects of the bank because they illustrate the possible scope of the change in the bank's historical financial position and results of operations caused by the transactions.

(b) *Form and content.* Pro forma financial information shall consist of a pro forma condensed balance sheet, pro forma condensed statements of income, and accompanying explanatory notes. Where a limited number of pro forma adjustments are required and those adjustments are easily understood, a narrative description of the pro forma effects of the transaction may be furnished in lieu of the statements described herein.

(2) The pro forma financial information shall be accompanied by an introductory paragraph which briefly sets forth a description of (i) the transaction; (ii) the entities involved, and (iii) the periods for which the pro forma information is presented. In addition, an explanation of what the pro forma presentation shows shall be set forth.

(3) The pro forma condensed financial information need only include major captions (*i.e.*, the numbered captions) prescribed by § 335.627 A and B. Where any major balance sheet caption is less than 10 percent of total assets, the caption may be combined with others. When any major income statement caption is less than 15 percent of average net income of the bank for the most recent three fiscal years, the caption may be combined with others. In calculating average net income, loss years should be excluded, unless losses were incurred in each of the most recent three years, in which case the average loss shall be used for purposes of this test. Notwithstanding these tests, *de minimis* amounts need not be shown separately.

(4) Pro forma statements shall ordinarily be in columnar form showing condensed historical statement, pro forma adjustments, and the pro forma results.

(5) The pro forma condensed income statement shall disclose income (loss) from continuing operations before nonrecurring charges or credits directly attributable to the transaction. Material nonrecurring charges or credits and related tax effects which result directly from the transaction and which will be included in the income of the Bank within the 12 months succeeding the transaction shall be disclosed separately. It should b e clearly indicated that such charges or credits were not considered in the pro forma condensed income statement. If the transaction for which pro forma financial information is presented related to the disposition of a business, the pro forma results should give effect to the disposition and be presented under an appropriate caption.

(6) Pro forma adjustments related to the pro forma condensed income statement shall be computed assuming the transaction was consummated at the beginning of the fiscal year presented and shall include adjustment which give effect to events that are (i) directly attributable to the transaction, (ii) expected to have a continuing impact on the bank, and (iii) factually supportable. Pro forma adjustments related to the pro forma condensed balance sheet shall be computed assuming the transaction was consummated at the end of the most recent period for which a balance sheet is requied by § 335.623 and shall include adjustments which give effect to events that are directly attributable to the transaction and factually supportable, regardless of whether they have a continuing impact or are nonrecurring. All adjustments should be referenced to notes which clearly explain the assumption involved.

(7) Historical, primary and fully diluted per share data based on continuing operations (or net income if the bank does not report discontinued operations, extraordinary items, securities gains (losses), or the cumulative effects of accounting changes) for the bank, and primary and fully diluted pro forma per share data based on continuing operations before nonrecurring charges or credits directly attributable to the transaction shall be presented on the face of the pro forma condensed income statement together with the number of shares used to compute such per share data. For transactions involving the issuance of securities, the number of shares used in the calculation of the pro forma per shares outstanding during the period, adjusted to give effect to shares subsequently issued or assumed to be issued had the particular transaction or event taken place at the beginning of the period presented. If a convertible security is being issued in the transaction, consideration should be given to the possible dilution of the pro forma per share data.

(8) If the transaction is structured in such a manner that significantly different results may occur, additional pro forma presentations shall be made which give effect to the range of possible results.

Instructions

1. The historical statement of income used in the pro forma financial information shall not report operations of a segment that has been discontinued, extraordinary items, securities gains (losses), or the cumulative effects of accounting changes. If the historical statement of income includes such items, only the appropriate portion of the statement (and appropriate captions) should be used in preparing pro forma results.

2. For a purchase transaction, pro forma adjustments for the income statement shall include amortization of any intangible asset, depreciation and other adjustments based on the allocated purchase price of net assets acquired. Disclose in a note the effect which the purchase adjustment will have on the reported results of operations for each of the next five years if such adjustments:

(a) Involve a significant write-down of the historical cost of the acquired assets to their fair value at the acquisition date; and

(b) Will have a significant effect on earnings in periods immediately following the acquisition which will be progressively eliminated over a relatively short period.

3. For a disposition transaction, the pro forma financial information shall begin with the historical financial statements of the bank and show the deletion of the business to be divested along with the necessary pro forma adjustments, including adjustments relating to expenses that will be or have been incurred on behalf of the business to be divested, *e.g.*, advertising costs and personnel expenses.

4. When consummation of more than one transaction has occurred or is probable during a fiscal year, the pro forma financial information may be presented on a combined basis; however, in some circumstances, *e.g.*, where some transactions have been consummated and the others are probable, it may be more useful to present the pro forma financial information on a nonaggregated basis, even though some or all of the transactions would not meet the tests of significance individually. For combined presentations, a note should explain the various transactions and disclose the maximum variances in the pro forma financial information which would occur for any of the possible combinations. If the pro forma financial information is presented in a proxy or information statement for purposes of obtaining shareholder approval of one of the transactions, the effects of that transaction must be clearly set forth.

5. Income tax effects, if any, of pro forma adjustments normally should be calculated at the statutory rate in effect during the periods for which pro forma condensed income statements are presented and should be reflected as a separate pro forma adjustment.

(c) Periods to be presented.

(1) A pro forma condensed balance sheet as of the end of the most recent period for which a consolidated balance sheet of the bank is required by § 335.623 shall be filed, unless the transaction is already reflected in such balance sheet.

(2)(i) Pro forma condensed statements of income shall be filed for only the most recent fiscal year and for the period from the end of the most recent fiscal year to the most recent interim date for which a balance sheet is required. A pro forma condensed statement of income may be filed for the corresponding interim period of the preceding fiscal year. A pro forma condensed statement of income shall not be filed when the historical income statement reflects the transaction for the entire period.

(ii) For a business combination accounted for as a pooling of interests, the pro forma income statements (which are in effect a restatement of the historical income statements as if the combination had been consummated) shall be filed for all periods for which historical income statements of the bank are required.

(3) Pro forma condensed statements of income shall be presented using the bank's fiscal year-end. If the most recent fiscal year-end of any other entity involved in the transaction differs from the bank's most recent fiscal year-end by more than 93 days, the other entity's income statement shall be brought up to within 93 days of the bank's most recent fiscal year-end, if practicable. This updating could be accomplished by adding subsequent interim period results to the most recent fiscal year-end information and deducting the comparable preceding year interim period results. Disclosure shall be made of the periods combined and of the sales or revenues and income for any periods which were excluded from or included more than once in the condensed pro forma income statements (*e.g.*, an interim period that is included both as part of the fiscal year and the subsequent interim period).

(4) Whenever unusual events enter into the determination of the results shown for the most recently completed fiscal year, the effect of such unusual events should be disclosed and consideration should be given to presenting a pro forma condensed income statement for the most recent twelve-month period, in addition to those required in paragraph (c)(2)(i) of this section, if the most recent twelve-month period is more representative of normal operations.

III. Presentation of Financial Forecast

(a) A financial forecast may be filed in lieu of the pro forma condensed statements of income required by § 335.628 II(b)(1).

(1) The financial forecast shall cover a period of at least 12 months from the later of (i) the date of the most recent balance sheet included in the filing or (ii) the consummation date or estimated consummation date of the transaction.

(2) The forecasted statement of income shall be presented in the same degree of detail required by § 335.628 II(b)(3) for the pro forma condensed statements of income.

(3) Assumptions particularly relevant to the transaction and effects thereof should be clearly set forth.

(4) Historical condensed financial information of the bank and the business acquired or to be acquired, if any, shall be presented for at least a recent 12 month period in parallel columns with the financial forecast.

(b) Such financial forecast shall be presented in accordance with the

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guidelines established by the American Institute of Certified Public Accountants.

(c) Forecasted earnings-per-share data shall be substituted for pro forma per-share data.

(d) This section does not permit the filing of a financial forecast in lieu of pro forma information required by generally accepted accounting principles.

48. Section 335.701 is amended by adding a note at the end of the section as follows:

§ 335.701 Filing of material with the FDIC.

* * * * *

Note: Official filings made at the FDIC's office in Washington, DC should be addressed as follows:

Attention: Registration and Disclosure Section, Division of Supervision, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

§ 335.702 [Amended]

49. Section 335.702 is amended by removing the words "at the New York, Chicago, and San Francisco Federal Reserve Banks and" from the second sentence.

By Order of the Board of Directors.

Dated at Washington, DC this 5th day of December, 1989.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 89-29531 Filed 12-28-89; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 799

[Docket No. 90932-9232]

Revisions to the Commodity Control List Based on COCOM Review; Chemical and Petroleum Equipment; Transportation Equipment; Electronics and Precision Instruments; Chemicals, Metalloids, Petroleum Products and Related Materials; Corrections

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule; corrections.

SUMMARY: This rule makes several corrections to the Export Administration Regulations (EAR). These corrections address inaccuracies contained in the final rule (FR Doc. 89-23559) published in the **Federal Register** (54 FR 41055-41068) on October 5, 1989. This rule, which neither expands nor limits the provisions of the EAR, affects Export Control Commodity Numbers 1416A, 1502A, 1529A, 1537A and 1585A of Supplement No. 1 to § 799.1 (the Commodity Control List).

EFFECTIVE DATE: This rule is effective December 29, 1989.

FOR FURTHER INFORMATION CONTACT: Kathryn Sullivan, Regulations Branch, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377-4479.

The following corrections are to be made:

1. On page 41057, in the third column, under item 6, in the regulatory text, in the second line of paragraph (f)(3)(ii), "20 rev/min" should read "220 rev/min".

2. On page 41060, in the first column, under item 11, in the regulatory text, in the first line of paragraph (h), "non-contract" should read "non-contact".

3. On page 41060, in the first column, in the regulatory text, under item 11, in the second to last line of paragraph (j), "exceeding I" should read "exceeding 1".

4. On page 41061, in the first column, under item 15, lines eleven and twelve of the amendatory text are corrected to read "By removing the Note immediately following the technical notes;".

5. On page 41063, in the third column, under item 18, the second to last amendatory instruction is revised to read "By redesignating Advisory Note 3, Notes 4 and 5, and (Advisory) Note 6 for the People's Republic of China to read (Advisory) Note 1, Note 2, Note 3, and (Advisory) Note 4 for the People's Republic of China, respectively;".

6. On page 41065, in the first column, under item 22, in the regulatory text, the first and second lines of Technical Note 1 are corrected to read " "Superconductive" materials are materials (i.e., metals, alloys or compounds)".

7. On page 41065, in the first column, under item 22, in the regulatory text, the third line of Technical Note 2 is corrected to read "specific "superconductive" material is the".

8. On page 41065, in the second column, under item 24, the last amendatory instruction in the column is corrected to read "By revising in paragraph (b) the phrase "High speed" to read "Mechanical high speed";".

Dated: December 27, 1989.

Iain S. Baird,

Acting Deputy Assistant Secretary for Export Administration.

[FR Doc. 89-30339 Filed 12-28-89; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

[Regs. No. 4 and 16]

20 CFR Parts 404 and 416

RIN 0960-AC64

Determining Disability and Blindness; Substantial Gainful Activity

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: These final rules raise from $300 to $500 the average monthly earnings guidelines we use to determine whether persons with impairments other than blindness are able to do substantial gainful activity (SGA) for purposes of Social Security disability benefits provided under title II of the Social Security Act (the Act) and Supplemental Security Income (SSI) benefits based on disability provided under title XVI of the Act. They also raise the monthly earnings and monthly hours of work guidelines we use to determine whether a person has performed services for purposes of a trial work period month under title II of the Act.

The amount of average monthly earnings that ordinarily demonstrates SGA has not been increased since January 1, 1980, and the amount that shows the performance of services for a trial work period month has not been raised since January 1, 1979. We are raising these levels now after reassessing the current guidelines during our effort to improve our incentives for disabled persons to return to work and in consideration of recommendations of the Disability Advisory Council. We believe that the increase in the amount of earnings and services which constitute SGA and trial work will provide a more meaningful opportunity for title II beneficiaries to attempt to return to work.

DATES: These rules are effective January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Dave Smith, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965-1758.

SUPPLEMENTARY INFORMATION: These final rules increase the amount of earnings we use as guidelines to assist us in evaluating the work activity of claimants and beneficiaries with impairments other than blindness under title II of the Act and of claimants with impairments other than blindness under

title XVI of the Act. We use evaluation guides, including earnings guidelines, to determine whether an individual has shown the ability to do SGA. Under the previous earnings guidelines in §§ 404.1574 and 416.974, if a person claiming title II or title XVI benefits or receiving title II benefits based on disability had earnings from work activities as an employee that averaged more than $300 a month, we would ordinarily consider that the person had engaged in SGA. If a person had average earnings of less than $190 per month, we would consider that he or she had not engaged in SGA unless there was evidence to the contrary. Under the final rules, the $300 per month limit is raised to $500 per month and the $190 per month limit is raised to $300 per month beginning in calendar years after 1989.

We believe that this increase in the SGA level is a significant improvement to the existing work incentive provisions and is a fiscally responsible change.

In revising these amounts, we considered two proposals from the Disability Advisory Council. The Disability Advisory Council proposed that the SGA level be: (1) Initially adjusted to reflect the growth in average wages since it was last increased; and (2) indexed to average wage growth in future years.

While the final rules do not implement the Disability Advisory Council's proposal to index the SGA level to average wage growth in future years, we are exploring ways to provide for periodic review of our SGA levels. If the Disability Advisory Council's combined proposal to raise the SGA level and adjust it for average wage increases were adopted, it is estimated that the title II program costs over the next 5 years would increase by an additional $400 million over the cost of these final rules. If the proposed SGA level of $500 were indexed to average wage growth, it is estimated that the title II program costs would increase by an additional $230 million over the next 5 years.

These final rules also increase the monthly earnings amounts and the hours of self-employment we use to determine if work activity during a trial work period represents services under the trial work period provisions of title II of the Act. In § 404.1592(b), we define "services" as any activity, even though it is not SGA, which is done by a person in employment or self-employment for pay or profit, or is the kind normally done for pay or profit. We use this guide when reviewing work done by a person receiving Social Security disability benefits under title II of the Act during his or her trial work period.

We are amending § 404.1592(b) to increase the minimum amount of earnings that we consider shows that a person is performing or has performed services during a trial work period from $75 a month to $200 a month, and the number of hours worked in self-employment that we consider to represent services from 15 hours to 40 hours a month. We are increasing both the amount of earnings and hours in self-employment that constitute services for a trial work period month to encourage more title II beneficiaries to attempt to work without losing their benefits. We believe that both of these increases, are more representative of a normal work effort. These figures represent a judgment we have made based on our experience with these types of work efforts.

The Disability Advisory Council also recommended increasing the amount of earnings that counts toward a trial work period from $75 per month to the amount of the SGA level. Although we agree that an increase in the trial work period exempt amount as shown in these final rules is warranted, we have not adopted the Disability Advisory Council's proposal. The legislative history of the trial work period provision indicates that the Congress recognized and intended that the amount that constitutes trial work need not constitute SGA. In 1980, when the trial work period provision was enacted, the report of the House Ways and Means Committee said:

> * * * Your committee intends that any month in which a disabled person works for gain, or does work of a nature generally performed for gain, be counted as a month of trial work. Thus the services rendered in a month need not constitute substantial gainful activity in order for the month to be counted as part of the trial-work effort * * *

We estimate that raising the trial work period exempt amount as recommended by the Disability Advisory Council would increase title II program costs by $90 million over a 5-year period, as more people would be receiving benefit payments. In addition, the administrative costs would increase at the rate of an estimated $75 per beneficiary per year.

The provisions of title XVI concerning the trial work period and the cessation of disability because of the performance of SGA were eliminated as of July 1, 1987, pursuant to section 4 of the Employment Opportunities for Disabled Americans Act, Public Law No. 99-643. We are currently preparing a comprehensive notice of proposed rulemaking covering these and other changes to title XVI made by Public Law No. 99-643. These proposed rules, among other things, will include the deletion of § 416.992 governing the trial work period and § 416.992a governing the reentitlement period which, as of July 1, 1987, are no longer applicable in adjudicating continuing eligibility for SSI based on disability.

These rules were published as a Notice of Proposed Rulemaking in the **Federal Register** on July 25, 1989 (54 FR 30907). We received 243 comments from governmental agencies, special interest organizations, and private citizens.

We have grouped the comments according to the issues raised. Most commenters expressed approval of the proposed regulations, although many of those also believed that further changes ought to be made.

General Statement

A commonly expressed concern of the commenters is that the proposed SGA and trial work period earnings level are not high enough to provide for adequate income for persons with disabilities. The following discussion clarifies the intent of the SGA and trial work period levels and explains our position on work activity and the use of the work incentive provisions currently available to title II beneficiaries.

A successful return to work usually involves a progression of events, beginning with an initial attempt at work and continuing through the time a person can increase work activity to the point of being able to successfully do SGA. From the day a person with a disabling impairment begins work, he or she has almost 4 years of continued support beginning with the 9-month trial work period and progressing through the 36-month extended period of eligibility.

The intent of the trial work period is to provide a beneficiary with the opportunity to test his or her ability to work without loss of Social Security disability benefits or medical insurance. During this time, a person's disability benefits will not be terminated based on his or her work regardless of the type of the work performed, the amount of the earnings, or the number of hours worked. However, because Congress has provided that an individual is only entitled to 9 months of a trial work period, it is necessary to have standards for determining whether in a given month an individual has performed services for trial work period purposes.

At the end of the trial work period, we assess work activity to see if a person has demonstrated the ability to do SGA, which is defined as the performance of work activity for pay or profit that involves doing significant physical or

mental activities. The SGA level is the amount of average monthly earnings that we use as a guideline to assist in determining whether a person has

Comment: Several commenters favored changes in the title II program which would create more of a similarity between the title II program and the title

demonstrates the ability to perform SGA.

Raising the trial work period level to $200 a month would also be very costly.

It should be noted that there are provisions in the title II and title XVI programs that act to enhance the SGA earnings level as the cost of living rises. The SGA earnings guideline amounts

the conferees did not intend that the amount be applied to the nonblind disabled. Notwithstanding the program cost involved in making the SGA level

We believe the increased SGA level we are adopting is fiscally responsible and also provides an added incentive for the disabled to become economically

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mental activities. The SGA level is the amount of average monthly earnings that we use as a guideline to assist in determining whether a person has engaged in substantial gainful activity. This level is only intended to be an indicator of the ability to work. It is not intended to represent the amount of income for a person to live on, nor is it intended as an income supplement to disability benefits. It should also be noted that factors other than earnings are considered in determining if a person has done SGA. We deduct from earnings those expenses for items and services which are related to the person's impairment and which are necessary for the person to work. In addition, we count only the value of earnings which are actually attributable to the person's ability to work. For example, if a person is paid $4 per hour, but due to the quality of work, the time it takes to get the job done, and the supervision required, the employer believes the value of the work is really only $3 per hour, we would use the $3 per hour rate in determining if the SGA level is met.

When a person demonstrates through work at the SGA earnings level that he or she is able to perform SGA, disability benefits are stopped. However, eligibility for Medicare benefits continues for at least 39 months after the end of the trial work period. There is also an extended period of eligibility for disability benefits which continues for 36 months after the end of the trial work period. If a person is unable to continue earning at the SGA level during this period, he or she will begin to get disability benefits again without the necessity of filing a new claim.

When the trial work period, extended period of eligibility and extended Medicare eligibility period (at least 4 years) have ended, there are other protections for people who become unable to continue to work and have to file a new application for disability benefits. If the new period of disability began within 5 years of the end of the prior period of disability, the person does not have to serve another 5-month waiting period in order to receive disability benefits or another 24-month waiting period to become entitled to Medicare benefits again. Both benefits will become effective with the first full month the person is found disabled.

The trial work period and SGA are just two parts of a total package of incentives and support for disabled beneficiaries who want to work. They must be viewed as part of this complete package in order to understand the level of support offered.

Comment: Several commenters favored changes in the title II program which would create more of a similarity between the title II program and the title XVI program, i.e., elimination of the trial work period and the extended period of eligibility and establishment of a one dollar offset of benefits for every two dollars earned. Some commenters believed that the current title II rules have a variety of inequities which create confusion and concern among beneficiaries.

Response: The Secretary does not have the authority to make these suggested changes to the trial work period and extended period of eligibility because they are statutory provisions. Only Congress can eliminate or alter these provisions through legislation. A disability benefit offset provision, which would create title II work incentives similar to those in the title XVI program, is currently under consideration by Congress.

Comment: Many commenters suggested increasing the minimum monthly earnings amount that counts towards the trial work period earnings level to match the SGA level. Other commenters suggested raising the trial work period earnings level to $290 (i.e., about 20 hours of work per week at minimum wage). Another commenter suggested that it be increased, but provided no alternative amount.

Response: As noted previously in this preamble, the legislative history of the trial work period provision makes it clear that Congress did not intend to link the trial work period level to the amount that constitutes SGA. Furthermore, we believe that the trial work period level should also not be associated with the amount that represents a minimum wage. The minimum wage amount is set as a level for employers to base payment for services. It does not represent an ability to work or the complexity of work but rather what the market will bear. The trial work period level is set at a level to indicate that a person is trying to work but has not necessarily regained the ability to perform SGA.

It should be noted that the trial work period level is not a limit on earnings. In fact, during the trial work period a person can have unlimited earnings. It is not until nine trial work period service months have been completed, i.e., nine months of work at earnings over the trial work period level, that the work activity is evaluated to see if it is substantial and gainful. If it is not, a beneficiary continues to receive full benefits until such time as he or she demonstrates the ability to perform SGA.

Raising the trial work period level to $290 a month would also be very costly, estimated at $26 million over a 5-year period. We believe that the increase from $75 to $200 is fiscally responsible. However, we plan to develop a procedure for review and possible adjustment of the trial work period amount.

Comment: Several other letters recommended changes to the trial work period, such as extending it to provide a longer opportunity to test the ability to work or having more than one trial work period in a period of disability.

Response: Making changes such as these would require legislative action. In June 1989, we suggested legislation which would expand the trial work period and give beneficiaries an opportunity to test their ability to work over a sustained period of time by providing that the 9-month trial work period would be exhausted *only* if services were performed in 9 months within a 60-month period. This proposal would also repeal the provision which precludes eligibility for a new trial work period for a disabled worker who became reentitled to disability benefits without having served a waiting period. In addition, we are exploring improvements and alternatives to the trial work period and the extended period of eligibility through the current Research Demonstration Program.

Comment: Most of the commenters recommended adopting some form of indexing of the earnings amounts that we consider to show that a person has performed services during a trial work period or has performed SGA, pegged either to average wage growth or the inflation rate in future years. The concern cited is that an automatic mechanism is needed to increase the trial work period and SGA amounts in response to inflation to avoid future erosion of these monetary levels.

Response: If the new SGA level of $500 were indexed to reflect average wage growth or inflation, it is estimated that the title II program costs would increase by an additional $230 million over the next 5 years.

We believe the responsible approach is to reassess the SGA and trial work period levels periodically rather than to institute automatic annual increases. During these periodic reassessments, we will try to set a level of earnings which will encourage work attempts and provide a valid indicator of ability to work while not discouraging independence from the benefit rolls.

It should be noted that there are provisions in the title II and title XVI programs that act to enhance the SGA earnings level as the cost of living rises. The SGA earnings guideline amounts apply to "countable earnings" in determining whether work is SGA. Countable earnings exclude impairment-related work expenses and earnings that do not reflect the value of a person's actual work, i.e., subsidized earnings. Because impairment-related work expenses and the value of subsidized earnings increase proportionately to inflation, greater portions of a person's total earnings will be excluded in determining countable earnings as these costs rise.

Comment: If the SGA level is not going to be indexed to reflect future inflation, then SGA should not be presumed when a disabled worker's earnings go over the level because of an increase in his or her hourly wage rate.

Response: We believe that an increase in the hourly wage rate is an indication of increased value of the work being performed and demonstrates the ability of a person to sustain work. A pay raise generally is a reflection of an improvement in a person's job performance and is an indication that the person is continuing on the way to self support.

Comment: Many commenters proposed an SGA increase above the proposed SGA amount. Some recommended that the SGA level be raised to the SGA level applicable to the blind, currently $740. Others suggested $580, an amount equal to a 40-hour work week at the Federal minimum wage rate. Another commenter proposed $700. The majority of those favoring a higher increase suggested that we adopt the Disability Advisory Council's proposal to adjust the SGA amount to reflect the growth in average wages since the last increase. If we had adopted the Advisory Council proposal, the SGA level would be increased to $550, effective January 1, 1990.

Response: Section 223(d)(4) of the Act authorizes the Secretary to prescribe the level of earnings for establishing SGA for nonblind disabled individuals. However, the same section of the Act mandates that the SGA earnings level for blind individuals may not be less than the exempt amount for retired individuals under section 203(f)(8). The distinction between the blind and nonblind disabled was consciously made by Congress. The House and Senate conference reports accompanying the Social Security Amendments of 1977 clearly stated that a different SGA amount was being established for blind persons and that the conferees did not intend that the amount be applied to the nonblind disabled. Notwithstanding the program cost involved in making the SGA level for the blind applicable to the nonblind, it should be for Congress to eliminate the distinction in the SGA levels for the blind and the nonblind that it created.

The Disability Advisory Council expressed concern that raising the SGA level to the poverty level would create a disincentive to work among low-wage persons with disabilities. Some members of the Disability Advisory Council also believe that raising SGA to a level which approaches the Federal minimum wage level would have the same effect. We share those concerns because, rather than encouraging disabled beneficiaries' efforts to leave the disability rolls, a higher SGA level could entice some to supplement their benefits with earnings from work activity held just below the SGA level. A higher SGA level could also prompt some of the working disabled to stop work and file an application for benefits. Once they were found disabled, they could return to work and retain their entitlement if they limited their work to keep their earnings below SGA. As indicated earlier in the preamble to these regulations, the SGA level is only intended to be an indicator of ability to work. If we were to further raise the SGA level, there would be less incentive for people to expand work activity and leave the benefit rolls.

Moreover, there are other work incentives in the title II program that enhance the SGA level and provide a measure of security for the disabled who are making an effort to work. The Social Security Disability Amendments of 1980 introduced the extended Medicare eligibility provision which allows Medicare coverage to continue for at least 39 months after the trial work period is completed. The continuation of hospital and medical insurance coverage is more important to many disabled workers than a higher SGA level. Another provision of the 1980 amendments allows a disabled worker to receive cash benefits for months in which earnings do not reach the SGA level during a specified period after the trial work period. In these months, the disabled worker receives both a disability benefit and the earned income without penalty. Finally, under the impairment-related work provision enacted in 1980, a disabled worker can have earnings well above the new SGA level without losing benefits if there are deductible impairment-related work expenses or subsidized earnings present to reduce countable earnings below the SGA level.

We believe the increased SGA level we are adopting is fiscally responsible and also provides an added incentive for the disabled to become economically independent from the title II program.

Comment: Three commenters expressed concern over the impact the increase in the SGA level to $500 will have on the Vocational Rehabilitation (VR) reimbursement program in which reimbursement of State vocational rehabilitation programs is based upon the number of program participants who are successfully rehabilitated.

Response: In the short term, fewer people might fit under the definition of "successful rehabilitation" and reimbursements may drop because, under the new SGA level, we will consider VR successful if the person who received the services works for 9 months at a level of at least $500 per month rather than the $300 level which had been used. However, we believe that the higher SGA level will be a good indicator of whether an individual can perform work activity that involves doing significant physical or mental activities.

Comment: Several commenters suggested that Medicare coverage be protected even after the SGA level is reached.

Response: The present extended Medicare eligibility provision provides for continuing Medicare coverage after a person's earnings reach the SGA level.

This provision permits continued hospital and medical protection for at least 39 months after the trial work period is completed. If the beneficiary has already met the 24-month waiting period for Medicare, coverage continues for the 39 months even if a person is not entitled to disability benefits because of SGA level earnings. For beneficiaries who have not yet met the 24-month waiting period, months during the extended period of eligibility count as Medicare waiting period months even though disability benefits are not paid.

In addition, Congress has recently provided for a Medicare buy-in for individuals under age 65 who continue to be disabled, but are no longer entitled to Medicare coverage solely because their earnings exceed the SGA level. They will be able to purchase Medicare coverage during specified enrollment periods for the same monthly premium as that charged for Medicare's hospital insurance (HI) benefits for uninsured individuals.

The provision allows for coverage under the HI program for months after June 1990.

Comment: One commenter recommended that § 404.1592(b) be

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changed to clarify when we will exclude certain types of paid training from the trial work period.

Response: This issue will be addressed by a proposed regulation which would incorporate Social Security Rulings into the Regulations. It will be published in the Federal Register for public comment prior to any final decision.

Comment: Another commenter recommended that we allow impairment-related work expenses to be deducted during the trial work period when we decide if an individual has completed a service month.

Response: We disagree that impairment-related work expenses should be deducted from earnings during the trial work period because of the purpose of the trial work period which is to provide a period of time in which a person can test his or her ability to work without facing the loss of disability benefits, rather than to test the amount of the person's earnings potential. It should also be noted that after completion of the trial work period, impairment-related work expenses are deducted from those same earnings to determine if work is considered SGA.

Comment: Several commenters expressed concern over the accuracy of the cost estimates of additional increases in the SGA and trial work period levels and of indexing those levels for future increases.

Response: We continue to believe our cost estimates are accurate. They are based on such factors as the increased number of awards and the decreased number of terminations. The figures are based on the review of actual data. Although the estimates are as accurate as possible, they are subject to change due to possible changes in claimant and beneficiary work activity which we cannot anticipate.

Comment: Many commenters expressed their support for the proposed regulations and believed they are fair and reasonable. They believe that the changes being made by this final rule are fiscally responsible and will encourage people with disabilities to attempt to return to work.

Regulatory Procedures

Executive Order 12291

Regulatory Impact Analysis

A. *Introduction*—The Secretary has determined that these regulations require a regulatory impact analysis under Executive Order 12291 because they will result in a major increase in costs for the Federal government. Accordingly, the Department has prepared this Regulatory Impact Analysis to identify the cost impact of these changes and the various alternatives that were explored, and to inform the public of the economic considerations supporting these proposed revisions in accordance with Executive Order 12291.

Executive Order 12291 requires that a regulatory impact analysis be performed on any major rule, i.e., a rule that is likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

B. *Nature of the Program*—Benefits to disabled and blind individuals are provided under title II and title XVI of the Act. Disability is defined under both programs as "* * * inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment * * *"

We use earnings guidelines to evaluate a person's work activity to determine whether the work activity is SGA and therefore whether that person may be considered disabled under the law. While this is only one of the tests used to determine disability, it is an important tool in disability evaluation. We evaluate the work activity of persons claiming or receiving disability benefits under title II of the Act and that of persons claiming benefits because of a disability under title XVI of the Act. These final regulations increase the amounts of those earnings guidelines.

C. *Intended Effect*—We expect that the increases in the amount of earnings and services which constitute SGA and trial work will provide a more meaningful opportunity for title II beneficiaries to return to work. In addition, the increases will permit some disabled persons with earnings in excess of the regulatory limit being changed ($300 a month) but less than the amount in these final rules, to receive benefits.

D. *Projected Costs* ($ in millions)

	Fiscal Year:					
	1990	1991	1992	1993	1994	Total
Program Costs						
Title II	$26	$42	$77	$87	$92	$324
SSI	4	13	17	20	23	77
Medicare	1	5	10	25	35	76
Medicaid	20	30	35	40	45	170
Administrative Costs						
Workyears	80	230	160	60	20	
Costs	9	23	13	5	2	52

The pattern of administrative costs reflects the one-time increase in the SGA amount. As general wage levels continue to rise while the SGA amount remains the same, there will be less incentive for working disabled persons to apply for benefits. As a result, the only large increases in claims and related workloads will occur in the first 2 or 3 years after the change. Workload increases toward the end of the estimating period will be relatively small.

Although the costs are significant, we believe that these changes are necessary improvements in existing work incentives, and that they are fiscally responsible changes.

Paper Work Reduction Act

These final rules impose no additional reporting and recordkeeping requirements subject to Office of Management and Budget clearance.

Regulatory Flexibility Act

We certify that these final rules will not have a significant economic impact on a substantial number of small entities since these rules affect only individuals and States. Therefore, a regulatory flexibility analysis as provided in Public Law 96-354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program No. 13.802, Disability Insurance; No. 13.807, Supplemental Security Income Program.)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-age, Survivors and disability insurance.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental security income.

Dated: December 4, 1989.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: December 18, 1989.

Louis W. Sullivan,

Secretary of Health and Human Services.

Chapter III of title 20 of the Code of Federal Regulations is amended as follows:

PART 404—[AMENDED]

1. The authority citation for Subpart P of Part 404 continues to read as follows:

Authority: Secs. 202, 205(a), (b), and (d) through (h), 216(i), 221(a) and (i), 222(c), 223, 225, and 1102 of the Social Security Act; 42 U.S.C. 402, 405(a), (b), and (d) through (h), 416(i), 421(a) and (i), 422(c), 423, 425, and 1302; sec. 505(a) of Pub. L. 96-265, 94 Stat. 473; secs. 2(d)(2), 5, 6, and 15 of Pub. L. 98-460, 98 Stat. 1797, 1801, 1802, and 1808.

2. Section 404.1574 is amended by revising paragraphs (b)(2)(v), (b)(2)(vi), (b)(3)(v), (b)(3)(vi), (b)(4)(v) and (b)(4)(vi), and by adding paragraphs (b)(2)(vii), (b)(3)(vii) and (b)(4)(vii) to read as follows:

§ 404.1574 Evaluation guides if you are an employee.

* * * * * *

(b) * * *

(2) * * *

(v) Your earnings averaged more than $280 a month in calendar year 1979;

(vi) Your earnings averaged more than $300 a month in calendar years after 1979 and before 1990; or

(vii) Your earnings averaged more than $500 a month in calendar years after 1989.

(3) * * *

(v) Your earnings averaged less than $180 a month in calendar year 1979;

(vi) Your earnings averaged less than $190 a month in calendar years after 1979 and before 1990; or

(vii) Your earnings averaged less than $300 a month in calendar years after 1989.

(4) * * *

(v) Your average earnings are not greater than $280 a month in calendar year 1979;

(vi) Your average earnings are not greater than $300 a month in calendar years after 1979 and before 1990; or

(vii) Your average earnings are not greater than $500 a month in calendar years after 1989.

* * * * * *

3. Section 404.1592 is amended by revising paragraph (b) to read as follows:

§ 404.1592 The trial work period.

* * * * * *

(b) *What we mean by services.* When used in this section, "services" means any activity, even though it is not substantial gainful activity, which is done by a person in employment or self-employment for pay or profit, or is the kind normally done for pay or profit. If you are an employee, we will consider your work to be "services" if in any calendar year after 1989 you earn more than $200 a month ($75 a month is the amount for calendar years 1979 through 1989, and $50 a month is the amount for calendar years before 1979). If you are self-employed, we will consider your activities "services" if in any calendar year after 1989, your net earnings are more than $200 a month ($75 a month is the amount for calendar years 1979 through 1989, and $50 a month is the amount for calendar years before 1979), or you work more than 40 hours a month in the business in any calendar year after 1989 (15 hours a month is the figure for calendar years before 1990). We generally do not consider work to be "services" when it is done without remuneration or merely as therapy or training, or when it is work usually done in a daily routine around the house, or in self-care.

* * * * * *

PART 416—[AMENDED]

1. The authority citation for subpart I of Part 416 continues to read as follows:

Authority: Secs. 1102, 1614(a), 1619, 1631(a) and (d)(1), and 1633 of the Social Security Act; 42 U.S.C. 1302, 1382c(a), 1382h, 1383(a) and (d)(1), and 1383b; secs. 2, 5, 6, and 15 of Pub. L. 98-460, 98 Stat. 1794, 1801, 1802, and 1808.

2. Section 416.974 is amended by revising paragraphs (b)(2)(iv), (b)(2)(v), (b)(2)(vi), (b)(3)(iv), (b)(3)(v), (b)(3)(vi), (b)(4)(v) and (b)(4)(vi), and by adding paragraphs (b)(2)(vii), (b)(3)(vii), and (b)(4)(vii) to read as follows:

§ 416.974 Evaluation guides if you are an employee.

* * * * * *

(b) * * *

(2) * * *

(iv) Your earnings averaged more than $280 a month in calendar year 1979;

(v) Your earnings averaged more than $300 a month in calendar year 1979;

(vi) Your earnings averaged more than $300 a month in calendar years after 1979 and before 1990; or

(vii) Your earnings averaged more than $500 a month in calendar years after 1989.

(3) * * *

(iv) Your earnings averaged less than $170 a month in calendar year 1979;

(v) Your earnings averaged less than $180 a month in calendar year 1979;

(vi) Your earnings averaged less than $190 a month in calendar years after 1979 and before 1990; or

(vii) Your earnings averaged less than $300 a month in calendar years after 1989.

(4) * * *

(v) Your average earnings are not greater than $280 a month in calendar year 1979;

(vi) Your average earnings are not greater than $300 a month in calendar years after 1979 and before 1990; or

(vii) Your average earnings are not greater than $500 a month in calendar years after 1989.

* * * * * *

[FR Doc. 89-30233 Filed 12-28-89; 8:45 am]

BILLING CODE 4190-11-M

20 CFR Part 416

[Regs. No. 16]

RIN 0960-AC75

Supplemental Security Income for the Aged, Blind, and Disabled; Presumptive Disability and Presumptive Blindness; Categories of Impairments—AIDS Extension Date

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: We may pay benefits to a person applying for supplemental security income benefits on the basis of disability or blindness before making a formal determination when available information indicates a high probability that disability exits. These findings of presumptive disability and blindness may be made at the Social Security field offices only for specified impairment categories; at the State agencies, they may be made for any impairment

category. The presumptive disability category for acquired immunodeficiency syndrome (AIDS) was due to expire on

final disability determination is made later when the State agency receives sufficient medical evidence.

The current regulations expressly provide that the AIDS category may be extended by the Secretary, as well as

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

out the bonding requirements of FERSA on a permanent basis. The final rule contained in this document will help to ensure that each fiduciary and each

section 8478(b)(1), the amount of funds handled must be determined by reference to the amount of funds

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category. The presumptive disability category for acquired immunodeficiency syndrome (AIDS) was due to expire on December 31, 1989. We are extending the expiration date of the presumptive disability category for AIDS through December 31, 1991. New treatments for AIDS are now being tested, and additional time is needed to evaluate the efficacy of these treatments.

EFFECTIVE DATE: These final regulations will be effective December 28, 1989 through December 31, 1991, when they will expire, unless extended or revised and promulgated again.

FOR FURTHER INFORMATION CONTACT: William J. Ziegler, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965–1759.

SUPPLEMENTARY INFORMATION:

On February 11, 1985, we published interim regulations in the **Federal Register** (50 FR 5573) adding AIDS, as then defined by the Centers for Disease Control (CDC), to the impairment categories in § 416.934 to permit field offices to find presumptive disability for this disease. Those regulations were scheduled to expire on February 11, 1988.

In final regulations published in the **Federal Register** (53 FR 3739) on February 9, 1988, we extended the expiration date for the AIDS presumptive disability category until December 31, 1989.

Section 1631(a)(4)(B) of the Social Security Act (the Act) provides that a claimant applying for supplemental security income benefits based on disability or blindness may receive up to 3 months' payments prior to the determination of the individual's disability or blindness if he or she is presumptively disabled or blind and otherwise eligible. When a claimant, who is not working, alleges disability due to AIDS, the field office is allowed to make a finding of presumptive disability after a confirming contact has been made to ascertain that this disease with one or more manifestations (described in Appendix 1 of subpart I of 20 CFR part 416) has been diagnosed by a licensed physician. Confirmation of this diagnosis is made by contact with a physician or some other medical or treating source, such as a member of a hospital or clinic staff, who is able to confirm that such a diagnosis has been made. Presumptive disability may be found immediately upon confirmation of the diagnosis of AIDS with manifestation(s) in Appendix 1 and need not be delayed for the receipt of the actual medical reports or records. A final disability determination is made later when the State agency receives sufficient medical evidence.

We are again extending the expiration date in these final regulations. This presumptive disability category for AIDS will not be effective through December 31, 1991. Several treatments are now being tested, and additional time is needed to be able to evaluate the efficacy of these treatments. Because AIDS continues to have severe symptoms and a high mortality rate, we are extending the sunset date for an additional 2-year period.

We have made no revisions in the medical criteria used in determining the manifestations of AIDS for presumptive disability purposes. The criteria are in Appendix 1, subpart I of 20 CFR Part 416. Thus, under these amendments, the Social Security Administration will continue to use the same manifestations of AIDS that it has been using since February 9, 1988.

Because of the dynamic nature of research concerning the diagnosis, evaluation, and treatment of AIDS, we will periodically review and reassess this category. We intend to continue to carefully monitor these regulations to determine whether they will need to be revised and updated to reflect advances in scientific knowledge and treatment of this disease. Therefore, these final regulations will cease to be effective after December 31, 1991, unless extended by the Secretary or revised and promulgated again as a result of the findings from the evaluation period.

Regulatory Procedures

The Department, even when not required by statute, as a matter of policy, generally follows the Administrative Procedure Act notice of proposed rulemaking and public comment procedures specified in 5 U.S.C. 553 in the development of its regulations. The Administrative Procedure Act provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b), good cause exists for waiver of notice of proposed rulemaking and public comment procedures on these regulations because they are unnecessary. These regulations involve only the extension of the expiration date for the AIDS presumptive disability category, and make no changes to the rules for finding presumptive disability or to the medical criteria used for determining the manifestations of AIDS. The current regulations expressly provide that the AIDS category may be extended by the Secretary, as well as revised and promulgated again. Since we are not making any revisions to the current criteria being used for making findings of presumptive disability in the AIDS category, use of public comment procedures is not contemplated by the existing regulations and is unnecessary under the Administrative Procedure Act. If we decide at a later date to make any changes in the AIDS evaluation criteria after review of the results of treatment studies now in progress, we will, of course, propose any such revisions for public comment.

Executive Order 12291

This extension of the expiration date for the AIDS presumptive disability category will have no additional impact on current budget costs since it merely extends existing authority for making presumptive disability findings in AIDS cases.

The Secretary has determined that this is not a major rule under Executive Order 12291 because these regulations do not meet any of the threshold criteria for a major rule. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they only affect disability claimants under title XVI of the Act.

Paperwork Reduction Act

These regulations impose no reporting or recordkeeping requirements necessitating clearance by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program No. 13.807, Supplemental Security Income Program)

List of Subjects in 20 CFR Part 416

Administrative Practice and Procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income (SSI).

Dated: November 30, 1989.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: December 18, 1989.

Louis W. Sullivan,

Secretary of Health and Human Services.

For the reasons set out in the preamble, part 416, subpart I, chapter III of title 20, Code of Federal Regulations, is amended as set forth below.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart I—Determining Disability and Blindness

1. The authority citation for Subpart I continues to read as follows:

Authority: Secs. 1102, 1614(a), 1619, 1631(a) and (d)(1), and 1633 of the Social Security Act; 42 U.S.C. 1302, 1382c(a), 1382h, 1383(a) and (d)(1), and 1383b; secs. 2, 5, 6, and 15 Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808.

2. Section 416.934 is amended by revising paragraph (k) to read as follows:

§ 416.934 Impairments which may warrant a finding of presumptive disability or presumptive blindness.

* * * * *

(k) Allegation of acquired immunodeficiency syndrome (AIDS) with one or more manifestations listed in Appendix 1 of this subpart, as diagnosed by a licensed physician; this category is effective only through December 31, 1991, unless extended by the Secretary or revised and promulgated again.

[FR Doc. 89–30232 Filed 12–28–89; 8:45 am]

BILLING CODE 4190–11–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2582

RIN 1210–AA31

Bonding Under The Federal Employees' Retirement System Act of 1986

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with certain technical changes, an interim rule which applies the temporary bonding regulations under the Employee Retirement Income Security Act of 1974 (ERISA) to the Thrift Savings Fund (Fund) established pursuant to the provisions of the Federal Employees' Retirement System Act of 1986 (FERSA). The interim rule being adopted as final by this document also prescribes the amount of bonds required under FERSA for fiduciaries and other persons who handle funds or other property of the Fund.

This document is being issued because the Secretary of Labor (Secretary) is required by FERSA to prescribe regulations necessary to carry out the bonding requirements of FERSA on a permanent basis. The final rule contained in this document will help to ensure that each fiduciary and each person who handles funds or other property of the Fund will be properly bonded.

EFFECTIVE DATE: This final rule is effective January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Judith Bleich Kahn, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, DC 20210, telephone (202) 523–7901 (FTS 523–7901); or Daniel J. Maguire, Esq., Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, Washington, DC 20210, telephone (202) 523–9596.

SUPPLEMENTARY INFORMATION:

Background

The Federal Employees' Retirement System Act of 1986 (FERSA, Pub. L. 99–335, 100 Stat. 515, 5 U.S.C. 8401 *et seq.*) provides a tax-deferred savings plan ("Thrift Savings Plan") as an option for federal employees, whose contributions may be matched in part by contributions made by employing agencies of the United States Government. Contributions under the Thrift Savings Plan are invested in one or more of three separate investment funds which together comprise the Fund.

In general, the fiduciary responsibility, prohibited transaction, bonding and related rules applicable to the management of the Fund under FERSA are derived from similar rules applicable to private sector employee benefit plans under ERISA.

The bonding requirements applicable to the Fund are set forth in section 8478 of FERSA, which closely parallels section 412 of ERISA. Section 8478(a) of FERSA requires, with certain exceptions, that each fiduciary and each person who handles funds or other property of the Fund shall be bonded as provided in section 8478 against loss by reason of acts of fraud or dishonesty. In this connection, section 8478(b)(1) provides that the Secretary shall prescribe the amount of a bond required under section 8478 at the beginning of each fiscal year. Section 8478(b)(1) further provides that the amount of bond shall not be less than 10 percent of the amount of funds handled, but in no case less than $1,000 nor more than $500,000 except that the Secretary, after due notice and opportunity for a hearing to all interested parties, may prescribe a bond in excess of $500,000. Under section 8478(b)(2), in prescribing the amount of a bond for purposes of section 8478(b)(1), the amount of funds handled must be determined by reference to the amount of funds handled during the preceding fiscal year by the person, group or class to be covered by the bond (or by their predecessor or predecessors, if any), or to the amount of funds handled during the current fiscal year, estimated as provided in regulations prescribed by the Secretary.

Pursuant to section 8478(c), a bond obtained with respect to the Fund must also include the terms and conditions required by the Secretary and must have as surety thereon a corporate surety company approved for federal bonds. Any such bond, whether covering an individual or a group or class, must be in a form or of a type approved by the Secretary.

Section 8478(d) makes it unlawful for any person to whom FERSA's bonding requirements apply to handle, disburse, or otherwise exercise custody or control over Fund property without being bonded as required by section 8478. It is also unlawful under section 8478(d) for any fiduciary, or any other person having authority to direct the performance of functions involving the handling of Fund property, to permit any such function to be performed by any person to whom FERSA's bonding requirements apply if the requirements of section 8478 are not met.

Section 8478(f) of FERSA provides that the Secretary shall prescribe such regulations as may be necessary to carry out the provisions of section 8478, including regulations exempting a person or a class of persons from FERSA's bonding requirements.

Section 113 of the Federal Employees Retirement System Technical Corrections Act of 1986 (FERSTCA, Pub. L. 99–556) authorizes the Secretary of Labor to apply with respect to the Fund, through December 31, 1989, the temporary bonding regulations under section 412 of ERISA.

ERISA section 412 requires generally that plan officials who handle funds or other property of private sector employee benefit plans be bonded. On January 10, 1975, the Department of Labor (Department) published a temporary bonding regulation under ERISA section 412 (29 CFR 2655.1, redesignated as 29 CFR 2550.412–1 on May 12, 1975, at 40 FR 20654). Temporary regulation 29 CFR 2550.412–1 references selected portions of the bonding regulations originally issued under the authority of section 13 of the Welfare and Pension Plans Disclosure Act (WPPDA), which was repealed on

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January 1, 1975, and makes them applicable to plan officials under ERISA.

On June 28, 1985, the Department published a notice of final rulemaking in the **Federal Register** (50 FR 26704) which recodified the ERISA temporary bonding regulations in part 2580 of Subchapter I of Chapter XXV of CFR Title 29 and which amended temporary ERISA regulation 29 CFR 2550.412–1 to make clear that the WPPDA bonding regulations referenced therein are now located in part 2580 of CFR Title 29.

On September 23, 1987, the Department published at 52 FR 35864 an interim rule which applies the temporary bonding regulations under section 412 of ERISA to the bonding provisions of FERSA section 8478.[1] Consistent with section 113 of FERSTCA, the interim rule expressly provides that the ERISA temporary bonding regulations apply to section 8478 of FERSA until the earlier of the date of issuance by the Secretary of permanent regulations under section 8478 of FERSA or December 31, 1989.[2] The interim rule also prescribes the amount of bonds required under section 8478 of FERSA for fiduciaries and other persons who handle funds or other property of the Fund.[3] Interested persons were invited to submit written comments on the interim rule. No comments were received by the Department in response to its invitation for comments.

Discussion of the Final Rule

General

In view of the need for final bonding rules under FERSA and the absence of public comment on the interim rule published on September 23, 1987, the Department has decided to adopt the interim rule as a final rule, with certain technical changes to part 2582 of the CFR which are discussed below.

In the supplementary information accompanying the interim rule, the Department explained that it intended, in construing section 8478, to adhere to the principles contained in the ERISA temporary bonding regulations included in part 2580 of CFR Title 29. In adopting the interim rule as a final rule, the Department intends, for purposes of construing section 8478 of FERSA, to continue to adhere to the principles contained in the ERISA temporary bonding regulations.

The Department also explained in the supplementary information accompanying the interim rule that, for purposes of FERSA section 8478 and the ERISA temporary bonding regulations being applied thereto by the interim rule, any reference to section 13 of the WPPDA in the ERISA temporary bonding regulations shall be deemed to refer to section 8478 of FERSA, and that where the particular phrases set forth in FERSA are not identical to the phrases in the WPPDA, ERISA or the ERISA temporary bonding regulations, under the interim rule the phrases appearing in FERSA shall be substituted therefor. The Department further explained that where the phrases are identical but the meaning is different, under the interim rule the meaning given such phrases by FERSA shall govern. Under the final rule contained in this notice, identical principles of construction will govern the references, definitions, and meanings contained in the provisions of the ERISA temporary bonding regulations which are being applied to section 8478 of FERSA by this final rule.

With regard to the amount of a bond required under section 8478(a) of FERSA, the final rule, like the interim rule, provides that, for each fiscal year of the Fund, the amount of any such bond shall be not less than 10 percent of the amount of funds handled and that in no case shall a bond be less than $1,000 nor more than $500,000, except that the Secretary, after due notice and opportunity for hearing to all interested parties, and other consideration of the record, may prescribe an amount in excess of $500,000. It should be noted that, as with the interim rule, the Secretary will not, pursuant to the final rule, conduct a new rulemaking at the beginning of each fiscal year of the Fund, in order to prescribe the amount of a bond under section 8478. Instead, the final rule automatically establishes the amount of a bond with respect to each successive fiscal year of the Fund, unless the Secretary prescribes a maximum amount for such a bond in excess of $500,000, subject to the procedural requirements for notice and comment contained in section 8478(b)(1) of FERSA and the Administrative Procedure Act, 5 U.S.C. 551 et seq.

Technical Changes

In this notice of final rulemaking, the Department is essentially adopting the interim regulations in permanent form with only minor technical changes. Specifically, the final regulations replace references to the temporary nature of the interim rules with language which indicates that the final rules are being adopted on a permanent basis. Finally, paragraph (c) ("Effective date") of § 2582.8478–3 and paragraph (b) ("Effective date") of § 2582.8478–4 of the final rules have been changed to indicate that the final rules are effective January 1, 1990.

Effective Date

In the supplementary information accompanying the interim rule, the Department explained that the interim rule § 2582.8478–1 would become effective as of April 1, 1987 and remain effective until the earlier of the date of issuance of permanent regulations or December 31, 1989. In that notice the Department also indicated that §2582.8478–2 ("Amount of the Bond") would remain in effect until it was amended or withdrawn. This final rule provides that the above-referenced interim regulations will be adopted on a permanent basis and will become effective January 1, 1990. Thus, the interim regulations will remain effective until the date the final regulations become effective.

The undersigned has determined that good cause exists for waiving the customary requirement for delay in the effective date of a final rule for 30 days following its publication. This determination is based upon a finding by the Department that any delay in the effective date of this rule would deprive the Board of the guidance which is necessary to implement effectively the bonding provisions of section 8478 of FERSA due to the expiration of the Interim Rules (published at 29 CFR 2582.8478–1 and 2582.8478–2) as of January 1, 1990. Such guidance must be provided without delay, because section 8478(d) makes it unlawful for any person to whom FERSA's bonding requirements apply to handle Fund property without being properly bonded, and because it is also unlawful under section 8478(d) for any fiduciary with respect to the Fund to permit any person under his or her direction to handle Fund property without being properly bonded.

Regulatory Flexibility Act Statement

The Department has determined that this final rule would not have a significant economic impact on small entities. The final rule applies only to a single employee benefit plan which limits participation to employees of U.S. Government agencies. To the extent that bonding against loss by reason of acts of fraud or dishonesty is required pursuant to section 8478 of FERSA for fiduciaries with respect to the Fund or persons handling funds or other property of the Fund, very few, if any, "small entities," as defined in 5 U.S.C. 601(6), will be affected by the final rule. This is because the Thrift Savings Plan is sponsored by the U.S. Government and because FERSA's bonding requirements are likely to affect primarily federal employees and an insubstantial number of financial institutions which may provide various services in connection with the Fund.

Paperwork Reduction Act Statement

This final rule is not subject to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501) since it does not contain any new information collection requirement.

Executive Order 12291 Statement

The Department has determined that this rule is not a "major rule" as that term is used in Executive Order 12291 because the rule will not result in: An annual effect on the economy of $100 million; a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets. This action will impose no additional costs on the Thrift Savings Fund.

Statutory Authority

These regulations are adopted pursuant to the authority contained in section 8478 of FERSA (Pub. L. 99–335; 100 Stat. 515; 5 U.S.C. 8478).

List of Subjects in 29 CFR Part 2582

Employee benefit plans, Fiduciary, Federal Employees' Retirement System Act, Pension plan, Government employees, Retirement surety bonds.

Adoption of Amendment of Regulations

For the reasons set out in the preamble, part 2582, Subchapter J of Chapter XXV of Title 29 of the Code of Federal Regulations is amended as set forth below:

SUBCHAPTER J—FIDUCIARY RESPONSIBILITY UNDER THE FEDERAL EMPLOYEES' RETIREMENT SYSTEM ACT OF 1986

PART 2582—RULES AND REGULATIONS FOR FIDUCIARY RESPONSIBILITY

1. The table of contents for part 2582 is revised to read as follows:

Subpart A—Temporary Bonding Rules

Sec.
2582.8478–1 Temporary bonding requirements.
2582.8478–2 Amount of the bond.

Subpart B—Permanent Bonding Requirements

Sec.
2582.8478–3 Permanent bonding requirements.
2582.8478–4 Permanent amount of the bond.

2. The authority citation for part 2582 is revised to read as follows:

Authority: Sec. 101, Pub. L. 99–335, 100 Stat. 515 (5 U.S.C. 8478); sec. 113, Pub. L. 99–556; Secretary's Order 1–87, 52 FR 13139, April 21, 1987.

3. Section 2582.8478–2(b) is revised to read as follows:

§ 2582.8478–2 Amount of the bond.

(b) *Effectiveness.* This section shall remain in effect until it is amended or withdrawn in accordance with section 8478(b)(1) of FERSA, but in no event shall this section remain in effect beyond December 31, 1989.

4. Part 2582 is amended by adding new subpart B, immediately following subpart A, to read as follows:

Subpart B—Permanent Bonding Rules

§ 2582.8478–3 Permanent bonding requirements.

(a) *General.* Any fiduciary with respect to the Thrift Savings Fund (Fund) established under the Federal Employees' Retirement System Act of 1986 (FERSA) or any person who handles funds or other property of the Fund shall be deemed to be in compliance with the bonding requirements of section 8478 of FERSA if he or she is bonded in compliance with the temporary bonding regulations under section 412 of the Employee Retirement Income Security Act of 1974 (ERISA) set forth in part 2580 of Title 29 of the Code of Federal Regulations.

(b) *Application of ERISA temporary bonding rules.* For purposes of this section: (1) Any reference to section 13 of the Welfare and Pension Plans Disclosure Act, as amended (WPPDA), or any section thereof in the ERISA temporary bonding regulations shall be deemed to refer to section 8478 of FERSA or the corresponding subsection thereof; (2) where the particular phrases set forth in FERSA are not identical to the phrases in the WPPDA, ERISA or the ERISA temporary bonding regulations, the phrases appearing in FERSA shall be substituted by operation of law; and (3) where the phrases are identical but the meaning is different, the meaning given such phrases by FERSA shall govern. For example, the phrase "every administrator, officer and employee of any employee welfare benefit plan or of any employee pension benefit plan subject to this Act who handles funds or other property of such plan" which appears in the WPPDA and in the ERISA temporary bonding regulations shall be construed to mean, for purposes of this section "each fiduciary and each person who handles funds or other property of the Thrift Savings Fund," which is the term appearing in section 8478 of FERSA; the terms "employee benefit plan" and "plan" which appear in the ERISA temporary bonding regulations shall be construed to mean, for purposes of this section, "Thrift Savings Fund"; and the term "reporting year of the plan" which appears in the ERISA temporary bonding regulations shall be construed to mean, for purposes of this section, "fiscal year of the Thrift Savings Fund."

(c) *Effective date.* This section is effective January 1, 1990.

§ 2582.8478–4 Permanent amount of the bond.

(a) *General.* Under the authority of section 8478(b)(1) of the Federal Employees' Retirement System Act of 1986 (FERSA), the amount of a bond for each person, group or class to be bonded shall not be less than 10 percent of the amount of funds handled by such person, group or class with respect to any fiscal year of the Fund. In no case shall such bond be less than $1,000 nor more than $500,000. However, the Secretary of Labor reserves the authority under section 8478(b)(1) of FERSA to prescribe an amount in excess of $500,000, after due notice and opportunity for hearing to all interested parties, and other consideration of the record.

(b) *Effective date.* This section shall become effective January 1, 1990, and remain in effect until it is amended or withdrawn in accordance with section 8478(b)(1) of FERSA.

David George Ball,

Assistant Secretary for Pension and Welfare Benefits.

[FR Doc. 89–30314 Filed 12–26–89; 8:45 am]

BILLING CODE 4510–29–M

Mine Safety and Health Administration

30 CFR Part 100

Criteria and Procedures for Proposed Assessment of Civil Penalties

AGENCY: Mine Safety and Health Administration, Labor.

[1] This portion of the interim rule was codified at 29 CFR 2582.8478–1 ("Temporary bonding requirements").

[2] See 29 CFR 2582.8478–1(c), as set forth in the September 23, 1987 **Federal Register** notice.

[3] This portion of the interim rule was codified at 29 CFR 2582.8478–2 ("Amount of the Bond"). Paragraph (c) of § 2582.8478–2, as so codified, provided that "this section shall remain in effect until it is amended or withdrawn in accordance with section 8478(b)(1) of FERSA."

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ACTION: Suspension of final rule provision; interim action.

SUMMARY: On February 17, 1988, the Coal Employment Project and the United Mine Workers of America challenged the Secretary of Labor's authority to assess a $20 single penalty for non-significant-and-substantial (non-s&s) violations which are timely abated (*Coal Employment Project, et al.* v. *Secretary of Labor*). On November 21, 1989, the United States Court of Appeals for the District of Columbia Circuit ordered the Mine Safety and Health Administration (MSHA) to revise its civil penalty regulations and to take immediate interim steps to correct defects in the assessment system. Accordingly, the Court remanded the record to MSHA to revise its regulations, as necessary, to comply with the order on an interim and permanent basis.

In an interim response to the Court's order, MSHA is temporarily suspending one provision in its civil penalty rules and issuing guidance to its field personnel with respect to another provision. This interim suspension action is issued to allow the Agency to take immediate steps to comply with the Court's order and to develop a permanent regulatory solution consistent with the order. During the interim period, MSHA is revising its assessment policies to instruct its field personnel to review non-s&s violations involving high negligence and an excessive history of the same type of violation for possible special assessment. In addition, all violations during the preceding two years that have been paid or finally adjudicated will be included in the history computation under the regular formula assessment.

DATE: The third sentence in 30 CFR 100.3(c) is suspended effective December 29, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, room 631, Ballston Towers No. 3; 4015 Wilson Boulevard, Arlington, Virginia 22203. Phone (703) 235-1910.

SUPPLEMENTARY INFORMATION:

I. Background and Discussion of Suspended Rule

On May 21, 1982, MSHA published revised regulations for processing civil penalties (30 CFR part 100) issued to mine operators for non-compliance with safety and health standards or any other provision of the Federal Mine Safety and Health Act of 1977 (Mine Act). These regulations set forth three methods for calculating penalties:

(1) 30 CFR 100.3—regular assessment;
(2) 30 CFR 100.4—single penalty assessment; and
(3) 30 CFR 100.5—special assessment.

Under the regular assessment procedures, the civil penalty is determined through a formula system, based upon application of the six criteria in sections 105(b) and 110(i) of the Mine Act. These six criteria include, *inter alia*, "the operator's history of previous violations." Under the single penalty assessment, a $20 civil penalty may be proposed for violations which do not significantly and substantially contribute to a mine safety or health hazard (non-s&s) and are timely abated. The special assessment provision sets forth circumstances under which MSHA will "specially assess" violations when the nature or seriousness of the violation warrants such action.

MSHA included the $20 single penalty provision in its penalty regulations to focus Agency and industry resources on serious safety and health problems by reducing the time spent in processing, conferencing and litigating non-s&s violations. Under the regular assessment procedures of § 100.3, single penalty violations which are paid in a timely manner are not included in a mine operator's history of violations for regular assessment purposes.

On February 17, 1988, the Coal Employment Project and the United Mineworkers of America challenged the Secretary's authority to assess a $20 single penalty for non-s&s violations which are timely abated (*Coal Employment Project, et al.* v. *Secretary of Labor*, D.C. Cir. No. 88-1706). On November 21, 1989, the United States Court of Appeals for the District of Columbia Circuit ordered MSHA to revise its civil penalty regulations and to take immediate interim steps to correct defects in the assessment system. In issuing its decision, the Court held that MSHA has very broad discretion in devising a scheme to implement its civil penalty responsibilities. However, the Court found unreasonable: (1) MSHA's failure to specifically take history into account in determining whether a violation qualifies for a $20 single penalty and; (2) its failure to include single penalty violations in the history computation under the regular assessment. Accordingly, the Court remanded the record to MSHA to revise its regulations, as necessary, "to comply with its order." The Court retained jurisdiction of the case to further consider the issues after remand.

In retaining jurisdiction, the Court contemplated that a final solution concerning the single penalty regulation would require some time. The Court, therefore, directed the Agency to, as an interim measure, "instruct its field personnel in assessing single penalties to consider an operator's history of non-significant-and-substantial violations, and to consider an operator's history of past single penalty assessments when imposing regular assessments * * *".

As an interim measure, pursuant to the Court's order, MSHA is immediately taking two actions: (1) Temporarily revising its assessment policies to instruct its field personnel to review non-s&s violations involving high negligence and an excessive history of the same type of violation for possible special assessment under 30 CFR 100.5; and, (2) temporarily suspending the sentence in 30 CFR 100.3(c) which excludes timely paid single penalty assessments from an operator's history of violations for regular assessment purposes. Therefore, during the interim period, MSHA enforcement personnel will review high negligence non-s&s violations when there is an excessive history of the same type of violation at the mine for possible special assessment. Further, all violations that have been paid or finally adjudicated will be included in history under the regular formula assessment.

In light of the specific instruction from the Court that MSHA immediately comply with its order, the Agency is compelled to take the interim action set forth above. Under these circumstances, it would be impracticable to comply with the requirements of notice and comment rulemaking under section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553. In making this finding, the Agency has determined that it must immediately revise its assessment policies so that penalties involving both s&s and non-s&s violations take into account an operator's complete history of violations. The range of options to accomplish the revision is limited, and timely compliance with the Court's order would not permit an opportunity for public comment. This action will ensure the continued legality of all proposed assessments and permit the Agency adequate time to carefully consider its final response to the Court of Appeals ruling. Therefore, under 5 U.S.C. 553(b)(B), the Agency is taking the action in this suspension notice. For good cause based upon these same reasons, and pursuant to 5 U.S.C. 553(d)(3), this action is excepted from the 30-day delayed effective date requirement of the APA. During the interim period, MSHA will develop a civil penalty proposal and request input from the mining community to assist the Agency in the formulation of a permanent regulatory action to comply with the Court's order.

II. Executive Order 12291 and Regulatory Flexibility Act

In accordance with the exemption in section 8(b) of Executive Order 12291, a regulatory impact analysis and review has not been prepared. In accordance with the Regualtory Flexibility Act (5 U.S.C. 601 et seq.), the Agency has also determined that the final rule will not have a significant impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis has not been prepared.

III. Paperwork Reduction Act

The affected sections contain no recordkeeping requirements.

Dated: December 20, 1989.

Roy L. Bernard,
Deputy Assistant Secretary for Mine Safety and Health.

PART 100—CRITERIA AND PROCEDURES FOR PROPOSED ASSESSMENT OF CIVIL PENALTIES

1. The authority citation for part 100 is revised to read as follows:

Authority: 30 U.S.C. 815, 820 and 957.

§ 100.3 [Suspended in part]

2. In § 100.3(c), the third sentence is suspended effective December 29, 1989.

[FR Doc. 89-30276 Filed 12-28-89; 8:45 am]
BILLING CODE 4510-43-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 442, 447, 483, 488, 489, and 498

[BPD-664-F]

RIN 0938-AE33

Medicare and Medicaid Programs; Requirements for Long-Term Care Facilities: Delay in Effective Date of Regulations

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule; delay of effective date.

SUMMARY: This rule changes the effective date of regulations issued in the Federal Register on February 2, 1989 (54 FR 5316), as amended by a rule published on July 14, 1989 (54 FR 29717), that contained new and revised requirements for long-term care facilities (skilled nursing facilities, intermediate care facilities, and effective October 1, 1990, nursing facilities) that participate in the Medicare and Medicaid programs. The effective date of January 1, 1990 is changed to October 1, 1990.

EFFECTIVE DATES: Effective January 1, 1990, the February 2, 1989, regulations are effective October 1, 1990.

FOR FURTHER INFORMATION CONTACT: Samuel W. Kidder (301) 966-4620.

SUPPLEMENTARY INFORMATION:

Background

On February 2, 1989, we published in the **Federal Register** (54 FR 5316) final regulations with a comment period that specified new and revised requirements that long term care facilities (skilled nursing facilities under Medicare, and intermediate care facilities, and, effective October 1, 1990, nursing facilities under Medicaid) must meet in order to receive Federal funds for the care of residents who are Medicare beneficiaries or Medicaid recipients.

Many of the requirements in the February 2 regulations implemented provisions of the Omnibus Budget Reconciliation Act of 1987 (OBRA 87) (Pub. L. 100-203). An effective date of August 1, 1989 was specified for the regulations. The remaining OBRA 87 requirements were to be effective on the October 1, 1990 statutory deadline. However, we determined later that the August 1, 1989 date did not give adequate implementation time, and we amended the August 1, 1989 effective date to January 1, 1990 (54 FR 29717).

On December 19, 1989, the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101-239) was enacted. Section 6901(a) of the Act changes the January 1, 1990 effective date of the nursing home regulations to October 1, 1990.

As a result, we are publishing this final rule to revise the January 1, 1990 effective date for certain provisions in the rule published February 2, 1989 to October 1, 1990.

Regulatory Impact Statement

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for a final rule that meets one of the E.O. criteria for a "major rule"; that is, that will be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs of prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises in domestic or export markets.

In the July 14, 1989 final rule announcing a delay in the effective date from August 1, 1989 to January 1, 1990 for regulations published on February 2, 1989 containing new and revised requirements for long-term care facilities, we included a regulatory impact statement that expressed our belief that the delay would not result in an impact that met the criteria contained in Executive Order 12291 (E.O. 12291) for a major rule. Also, in that statement, following the provisions of the Regulatory flexibility act (U.S.C. 601 through 612), the Secretary certified that the delay in the effective date of the regulations would not have a significant effect on a substantial number of long-term care facilities. Similarly, as required by section 1102(b) of the Act, the Secretary certified the July 14 notice would not have a significant effect on the operations of a substantial number of small rural hospitals.

Since this final rule will only further delay the effective date of the February 2, 1989 regulations, we believe the effect of this notice will be no more consequential than the July 14 notice. For this reason, we believe this notice does not meet any of the criteria of a major rule specified in E.O. 12291. Therefore, a regulatory impact analysis is not required. Similarly, the Secretary certifies that this notice will not have a significant impact on a substantial number or long-term care facilities. Also, the Secretary certifies that this notice will not have a significant effect on the operations of a substantial number of small rural hospitals.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 442

Grant programs—health, Health facilities, Health professions, Health records, Medicaid, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

42 CFR Part 447

Accounting, Administrative practice and procedure, Grant programs—health, Health facilities, Health professions, Medicaid, Reporting and recordkeeping requirements, Rural areas.

42 CFR Part 483

Grant programs—health, Health facilities, Health professions, Health

the mineral leasing laws, to protect the U.S. Forest Service's Austin Administrative Site:

30 and 88-20-13. With this action, this proceeding is terminated.

DATES: Effective February 6, 1990; The

Head of contracting Activity (HCA) and Senior Procurement Executive Authority for On-Site Inspection Agency;

DAC # 88-13, Item IV

A proposed rule was published in the Federal Register on August 11, 1989 (54

Act (5 U.S.C. 601 et seq.) because only a very small number of companies will be affected. An Initial Regulatory

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42 CFR Part 483

Grant programs—health, Health facilities, Health professions, Health records, Medicaid, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

42 CFR Part 488

Health facilities, Survey and certification, Forms and guidelines.

42 CFR Part 489

Health facilities, Medicare.

42 CFR Part 498

Administrative practice and procedure, Appeals, Medicare practitioners, providers and suppliers.

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance; and Program No. 13.774, Medical Assistance Program)

Dated: December 22, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

Approved: December 28, 1989.

Louis W. Sullivan,

Secretary.

[FR Doc. 89-30016 Filed 12-28-89; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order

[NV-930-60-4214-10; N-50015]

Withdrawal of National Forest Land for Austin Administrative Site; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 30 acres of national forest land from mining for a period of 20 years for the U.S. Forest Service to protect the Austin Administrative Site. The land has been and remains open to mineral leasing.

EFFECTIVE DATE: December 29, 1989.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, BLM, Nevada State Office, P.O. Box 12000, Reno, Nevada 89520, 702-328-6326.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described national forest land is hereby withdrawn from location under the United States mining laws (30 U.S.C. Ch. 2), but not from leasing under the mineral leasing laws, to protect the U.S. Forest Service's Austin Administrative Site:

Mount Diablo Meridian

T. 19 N., R. 44 E.,
Sec. 18, lots 3 and 4, that portion west of Forest Road 184. The area described contains 30 acres in Lander County.

2. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Dated: December 21, 1989.

Frank A. Bracken,

Under Secretary of the Interior.

[FR Doc. 89-30230 Filed 12-28-89; 8:45 am]

BILLING CODE 4310-HC-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-613; RM-6483, RM-6712]

Radio Broadcasting Services; Dickson, TN; Benton and Calvert City, KY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 239A to Calvert City, Kentucky, as that community's first local FM service, at the request of Jackson Purchase Communication. This document also substitutes Channel 273C1 for Channel 273C2 at Dickson, Tennessee, and modifies the license of Station WQZQ(FM) at Dickson to specify operation on the higher class co-channel at the request of American Communications, Inc. In addition, in order to accomplish the upgrade at Dickson this action substitutes Channel 256A for Channel 272A at Benton, Kentucky, and modifies the license of Station WCBL-FM at Benton accordingly. [*See* 54 FR 4983, January 31, 1989]. A site restriction at least 12.1 kilometers (7.5 miles) northeast of Calvert City is required for Channel 239A. The coordinates are 37-07-52 and 88-17-38. A site restriction of 14.4 kilometers (9.0 miles) north of Dickson is required for Channel 273C1, at coordinates 36-12-30 and 87-23-20. Channel 256A at Benton can be used at the existing transmitter site of Station WCBL-FM. The coordinates are 36-51-30 and 88-20-13. With this action, this proceeding is terminated.

DATES: Effective February 6, 1990; The window period for filing applications on Channel 239A at Calvert City, Kentucky, will open on February 7, 1990, and close on March 8, 1990.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88-613, adopted December 5, 1989, and released December 20, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Tennessee, by removing Channel 273C2 and adding Channel 273C1 at Dickson; and under Kentucky, by adding Calvert City, Channel 239A, and at Benton by removing Channel 272A and adding Channel 256A.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-30205 Filed 12-28-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Parts 201, 202, 204, 205, 207, 209, 213, 215, 219, 222, 225, 231, 232, 235, 242, 244, 245, 247, 252, 253, and Appendix H

[Defense Acquisition Circular (DAC) 88-13]

Department of Defense, Federal Acquisition Regulation Supplement; Regulatory and Miscellaneous Amendments

AGENCY: Department of Defense (DoD).

ACTION: Final rules.

SUMMARY: Defense Acquisition Circular (DAC) 88-13 amends the DoD FAR Supplement (DFARS) with respect to Determinations and Findings (D&Fs); Head of contracting Activity (HCA) and Senior Procurement Executive Authority for On-Site Inspection Agency; distribution of procurement documents to consignees in Europe; publicizing contract actions; Agency-Head responsibilities (acquisition planning); acquisition plans/justifications and approvals supporting documentation; Intermediate-Range Nuclear Forces (INF) Treaty; small disadvantaged business evaluation preference; Small Business Competitiveness Demonstration Program (Targeted Industry); sanctions for violations of export controls; prohibition of certain contracts with foreign governments or firms for the conduct of Strategic Defense Initiative Research, Development, Test or Evaluation (RDTE); list of excluded items (NATO participating countries); public relations and advertising costs, foreign selling costs; address corrections and clarifications for DTIC; monitoring contractors' costs; Contractor Purchasing System Reviews (CPSRs), reduction of separate reviews; non-Government use of plant equipment; ocean transportation by U.S.-Flag vessels; and editorial corrections.

EFFECTIVE DATE: As specified in individual items I through XIX.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, Defense Acquisition Regulatory Council, ODASD(P)/DARS, OASD (P&L), c/o OUSD(A) (M&RS), Room 3D139, The Pentagon, Washington, DC 20301-3062, telephone (202) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Background

The DoD FAR Supplement is codified in chapter 2, title 48 of the Code of Federal Regulations.

The October 1, 1988, revision of the CFR is the most recent edition of that title. It reflects amendments to the 1986 edition of the DoD FAR Supplement made by Defense Acquisition Circulars 86-1 through 86-16.

B. Public Comments

DAC # 88-13, Item I, II, III, V, VI, IX, X, XII, XIV, XV, XVI, XVII, and XIX

Public comments are not solicited with respect to these revisions since such revisions do not alter the substantive meaning of any coverage in the DFARS having a significant impact on contractors or offerors, or do not have a significant effect beyond agency internal operating procedures.

DAC # 88-13, Item IV

A proposed rule was published in the **Federal Register** on August 11, 1989 (54 FR 33045) and public comments were requested. No comments were received.

DAC # 88-13, Item VII

An interim rule was published in the **Federal Register** on June 6, 1988 (53 FR 20631) and public comments were solicited. Those public comments were considered in the development of this final rule.

DAC # 88-13, Item VIII

An interim rule was published in the **Federal Register** on May 12, 1989 (54 FR 20589) and public comments were solicited. Comments received were considered in the development of this final rule.

DAC # 88-13, Item XI

An interim rule was published in the **Federal Register** on April 21, 1989 (54 FR 16114) and public comments were solicited. Comments received were considered in development of this final rule.

DAC # 88-13, Item XIII

An interim rule was published in the **Federal Register** on December 22, 1988 (53 FR 51557) and public comments were solicited. Comments received were considered in the development of this final rule.

DAC # 88-13, Item XVIII

An interim rule was published in the **Federal Register** on April 21, 1989 (54 FR 16112) and public comments were solicited. Comments received were considered in the development of this final rule.

C. Regulatory Flexibility Act

DAC # 88-13, Items I, II, III, IV, V, VI, IX, X, XII, XIV, XV, XVI, XVII, and XIX

These final rules do not constitute a significant revision within the meaning of Public Law 98-577, and publication for public comment is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected DoD FAR Supplement Subpart will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately. Please cite DAR Case 89-610D in correspondence.

DAC # 88-13, Item VII

This rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) because only a very small number of companies will be affected. An Initial Regulatory Flexibility Analysis has therefore not been performed, but comments were invited from small businesses and other interested parties. No comments were received that addressed the Regulatory Flexibility Act statement.

DAC # 88-13, Item VIII

This final rule will not have a significant economic impact on a substantial number of small entities because the preference was not in effect long enough for entities which were not competitive without the preference to have become dependent on it for business success. An interim rule was published in the **Federal Register** on May 12, 1989 (54 FR 20589) and public comments were solicited.

DAC # 88-13, Item XI

This final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601, et seq., because this coverage can only limit the number of contract awards to foreign governments or firms. An interim rule was published in the **Federal Register** on April 21, 1989 (54 FR 16112). No public comments were received that addressed the Regulatory Flexibility Act Statement published with the interim rule.

DAC #88-13, Item XIII

This final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 et seq., because most contracts awarded to small entities are awarded on a competitive fixed-price basis to which the cost principles do not apply. No comments were received that addressed the Regulatory Flexibility Act Statement.

DAC #88-13, Item XVIII

This final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 et seq., because this rule merely implements the 1904 Cargo Preference Act, and the requirements imposed on small entities are necessary to ensure compliance with the Act. The Cargo Preference Act requires that ocean shipment of covered supplies be shipped on U.S.-Flag vessels, regardless of the size of the contracting entity. A

Regulatory Flexibility Analysis has therefore not been performed. No comments were received that addressed

Item III—Distribution of Procurement Documents to Consignees in Europe (Final Rule)

the small disadvantaged business 10 percent evaluation preference. These revisions are applicable to solicitations

contracts awarded before December 1987, nor does it apply to subcontracts. The related clause at 252.225-7028 is

242.7006(b) is renamed "Annual Audit Plans". The introductory paragraph of 242.7006(b) is designated as paragraph

amended to incorporate the provisions and clauses, if it is in the Government's best interests, provided that the

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Regulatory Flexibility Analysis has therefore not been performed. No comments were received that addressed the Regulatory Flexibility Act Statement.

D. Paperwork Reduction Act

DAC #88–13, Items I through XVII and Item XIX

The Paperwork Reduction Act does not apply because these rules do not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq., and because the items either provide information or are editorial in nature.

DAC #88–13, Item XVIII

A request for approval of a collection requirement of 65,074 hours has been submitted to OMB.

List of Subjects in 48 CFR Parts 201, 202, 204, 205, 207, 209, 213, 215, 219, 222, 225, 231, 232, 235, 242, 244, 245, 247, 252, 253, and Appendix N

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

[Defense Acquisition Circular No. 88–13]

January 30, 1990.

All DoD FAR Supplement and other directive material contained in this Defense Acquisition Circular is effective as specified in individual introductory items, in accordance with DoD FAR Supplement 201.301 (S–70) (4).

Defense Acquisition Circular (DAC) 88–13 amends the DoD Federal Acquisition Regulation Supplement (DFARS) 1988 edition and prescribes procedures to be followed. The following is a summary of the amendments and procedures.

Item I—Determinations and Findings (D&Fs) (Final Rule)

DFARS 201.704 is revised and 225.1004(a) is added to reference typical D&F formats to be used as appropriate. These revisions are effective on or before January 30, 1990.

Item II—Head of Contracting Activity (HCA) and Senior Procurement Executive Authority for On-Site Inspection Agency (Final Rule)

DFARS 202.101 is revised to designate the Director, On-Site Inspection Agency as a head of a contracting activity and senior procurement executive. Appendix N is revised to add that agency to the list of contracting activities. These revisions are effective on or before January 30, 1990.

Item III—Distribution of Procurement Documents to Consignees in Europe (Final Rule)

DFARS 204.202(c)(2) is revised to authorize the Defense Logistics Agency to prescribe alternate procedures for distributing procurement documents to consignees in Defense Subsistence Region, Europe. This revision is effective on or before January 30, 1990.

Item IV—Publicizing Contract Actions (Final Rule)

DFARS 205.101(a)(2), 205.201(S–70), and 213.106(b) are deleted as unnecessary supplementation of FAR 5.101(a)(2) and 5.201(b)(4). These revisions are effective on or before January 30, 1990.

Item V—Agency-Head Responsibilities (Acquisition Planning) (Final Rule)

DFARS 207.103 is revised to require each element of the acquisition plan be addressed and to add agency-head responsibility for ensuring compliance with DoD Directive 4210.15, Hazardous Material Pollution Prevention. These revisions are effective on or before Janaury 30, 1990.

Item VI—Acquisition Plans/ Justifications and Approvals Supporting Documentation (Final Rule)

DFARS 207.105(b)(2) is deleted to eliminate duplicate guidance on information to be included in an acquisition plan. This revision is effective on or before January 30, 1990.

Item VII—Intermediate-Range Nuclear Forces (INF) Treaty (Final Rule)

DFARS 209.103 is revised to clarify the Department's policy regarding firms subject to on-site inspection under the INF treaty and to emphasize that this policy applies to Defense subcontractors as well as prime contractors. The revised coverage also provides further guidance pertaining to denial of consideration for a Defense contract or subcontract award and the applicable procedures. These revisions are effective on or before January 30, 1990. The related clause at 252.209–7001 is revised and shall be effective for solicitations issued on or after January 30, 1990 and resultant contracts. Solicitations issued prior to that date shall not be amended.

Item VIII—Small Disadvantaged Business Evaluation Preference (Final Rule)

DFARS 219.502–3(S–70)(1) and 219.7000(a)(1)(vi) are revised and 219.502–72(b)(6) is added to exempt items purchased for commissary and exchange resale from the application of the small disadvantaged business 10 percent evaluation preference. These revisions are applicable to solicitations issued on or after January 30, 1990 and resultant contracts. Solicitations issued prior to that date shall not be amended.

Item IX—Small Business Competitiveness Demonstration Program (Targeted Industry) (Final Rule)

DFARS 219.1005(S–70) is revised to state the Army Corps of Engineers has responsibility for dredging. This revision is effective on or before January 30, 1990.

Item X—Sanctions for Violations of Export Controls (Final Rule)

Section 225.1003 (a) and (b) are added to reflect the determination authority for exceptions from the restriction on procurement imposed on Toshiba Corporation and Kongsberg Vaapenfabrikk under Section 2443 of Public Law 100–418. These revisions are effective on or before January 30, 1990.

Item XI—Prohibition of Certain Contracts With Foreign Governments or Firms for the Conduct of Strategic Defense Initiative Research, Development, Test or Evaluation (RDTE) (Final Rule)

DFARS 225.7013, Prohibition of Certain Contracts With Foreign Entities for the Conduct of Strategic Defense Initiative RDTE, is revised to implement the National Defense Authorization Act for Fiscal Years 1988 and 1989, Public Law 100–180, at Section 222 and is effective on or before January 30, 1990. The coverage, originally published as an interim rule in DAC 88–6, provides that the Department of Defense funds may not be used for any contract with a foreign government or foreign firm for research, development, test or evaluation in connection with the Strategic Defense Initiative (SDI) Program unless the Secretary of Defense certifies to Congress in writing at any time during the fiscal year that work under the contract cannot be competently performed by a United States firm at a price equal to or less than the price at which it would be performed by the foreign government or firm. The statutory prohibition does not apply to contracts awarded to a foreign government or firm if: (a) the contract is to be performed within the United States; (b) the contract is for research, development, test or evaluation in connection with antitactical ballistic missile systems; or (c) the foreign government or foreign firm agrees to share a substantial portion of the total cost. Further, the law does not apply to

contracts awarded before December 1987, nor does it apply to subcontracts. The related clause at 252.225–7028 is also revised and is effective for solicitations issued on or after January 30, 1990 and resultant contracts. Solicitations issued prior to that date shall not be amended.

An interim rule with request for comments was published in the **Federal Register** on April 21, 1989 (54 FR 16114). This final rule revises the existing DFARS coverage to reflect additional language applicable to the Secretary of Defense's yearly certification to Congress.

Item XII—List of Excluded Items (NATO Participating Countries) (Final Rule)

DFARS 225.7405 is revised to update the list of excluded items for purchase from NATO participating countries and is effective on or before January 30, 1990.

Item XIII—Public Relations and Advertising Costs, Foreign Selling Costs (Final Rule)

Section 826 of the Defense Authorization Act for Fiscal Year 1989 (Pub. L. 100–456) amended Section 2324(f) of Title 10, U.S.C. to add a new paragraph (5) which prescribes that "* * * costs to promote the export of products of the United States defense industry * * *" are allowable to the extent that certain specified conditions are met. DAC #88–3, Item VI, published an interim rule (53 FR 51557, December 22, 1988) to implement the requirements of this statute. Revisions to DFARS 231.205–1, 231.205–38 and 225.7304, as published in the interim rule, are adopted as final without change.

Item XIV—Address Corrections and Clarifications for DTIC (Final Rule)

DFARS 235.010 is revised to reflect use of Standard Form 298, Report Documentation Page, in lieu of DD Form 1473, which is now deleted. Additionally, both 232.502–1 and 235.010 are revised to correct the address for the Defense Technical Information Center. An editorial correction is made to 232.502–1(S–71)(4) to change the file name "CASHIV" to read "CASHV". These revisions are effective on or before January 30, 1990.

Item XV—Monitoring Contractors' Costs (Final Rule)

The Defense Authorization Act for Fiscal Year 1989, Title VIII, Part A, Section 809(d), amends 10 U.S.C. 133(d)(1) mandating coordination of annual audit and oversight plans among DoD components. The title for DFARS 242.7006(b) is renamed "Annual Audit Plans". The introductory paragraph of 242.7006(b) is designated as paragraph (1); the remaining subparagraphs are redesignated. A new paragraph (3) is added to require contracting and audit personnel to submit annual audit and oversight plans to the Cost Monitoring Coordinator. These revisions are effective on or before January 30, 1990.

Item XVI—Contractor Purchasing System Reviews (CPSRs); Reduction of Separate Reviews (Final Rule)

DFARS 244.301 is revised to clarify that Administrative Contracting Officers have responsibility for reviewing contractor purchasing systems and that other organizations should not perform separate reviews. This revision is effective on or before January 30, 1990.

Item XVII—Non-Government Use of Plant Equipment (Final Rule)

DFARS 245.407 states that non-Government use of Industrial Plant Equipment exceeding 25 percent requires prior approval of the Assistant Secretary of the Army, Navy, Air Force, or the Director of the Defense Logistics Agency. DFARS 245.407(a) is revised to state that this approval may be specifically delegated to the Head of a Contracting Agency. The coverage is also revised to state that this authority may not be further redelegated without formal DASD(L) approval. These revisions are effective on or before January 30, 1990.

Item XVIII—Ocean Transportation by U.S.-Flag Vessels (Final Rule)

DAC #88–6 provided revisions to Subpart 247.5 and added a clause and provision in Part 252 to implement the requirements of the Cargo Preference Act of 1904, 10 U.S.C. 2631, which applies to the ocean transportation of cargo owned by or destined for use by the Department of Defense. An interim rule with request for comments was published in the **Federal Register** on April 21, 1989 (54 FR 16112). As a result of public comments, this final rule: (a) clarifies the definition of supplies, (b) requires the solicitation provision, 252.247–7202, in all solicitations exceeding the small purchase threshold in FAR Part 13, (c) makes the clause at 252.247–7203 operative when there is an affirmative response to the representation in 252.247–7202, and (d) adds a new clause, 252.247–7204, to be incorporated in contracts when there is a negative response to the representation. These revisions shall be included in solicitations issued on or after January 30, 1990 and resultant contracts. Existing solicitations may be amended to incorporate the provisions and clauses, if it is in the Government's best interests, provided that the resultant contract is not planned for award until on or after January 30, 1990.

Item XIX—Editorial Corrections (Final Rule)

The following editorial corrections are effective on or before January 30, 1990:

(a) DFARS 205.207(e)(S–70) is revised to change the referenced Note to read "13" instead of "6".

(b) DFARS 215.806(S–70)(7) is revised to change the cite "215.903(d)" to read "FAR 15.903(d)".

(c) DFARS 215.970–2 is revised to conform with the update of DFARS 204.6 in DAC #88–9, Item I. In addition, citations are corrected by adding the DFARS "200" prefix.

(d) DFARS 219.501–70 is revised to change the fiscal years to read "1987–90" instead of "1987–89".

(e) DFARS 219.505–70 is revised to add the DFARS "200" prefix to the DFARS citation.

(f) DFARS 222.101–3 is revised to change the designation in the Reports Control Symbol to read "P&L" instead of "I&L".

(g) DFARS 225.105(S–73) and DFARS 225.7310(b)(4) are revised to change "International Acquisition" to "Foreign Contracting".

(h) DFARS Subpart 225.9 is revised to change the title and to redesignate the section numbers to make the subpart compatible with the FAR.

(i) DFARS 252.215–7003(c) is revised for clarity by removing the words "This clause is" and inserting the words "Paragraphs (d) and (e) of the clause are".

(j) DFARS 252.232–7007(a) is revised by deleting the words "other than".

(k) Updated versions of DD Forms 882, 1155 and 1155c–1 are provided in DFARS part 253.

(l) Appendix N is revised to reflect the correct address and address code for the Virginia Contracting Activity.

Adoption of Amendments

Therefore, the DoD FAR Supplement is amended as set forth below.

1. The authority for 48 CFR parts 201, 202, 204, 205, 207, 209, 213, 215, 219, 222, 225, 231, 232, 242, 244, 245, 247, 252, 253, and Appendix N continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 201—FEDERAL ACQUISITION REGULATIONS SYSTEM

207.105 [Amended]

9. Section 207.105 is amended by removing paragraph (b)(2).

reference "FAR 15.903(d)" in lieu of "215.903(d)".

the words "commissary" and "resale" the words "or exchange".

and "DoD" a comma and the word "the"; by adding in the first sentence of paragraph (c)(1)(iii) between the words

demolition charges, small arms ammunition and components.

Maintenance of idle portions of 22 GOCO

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PART 201—FEDERAL ACQUISITION REGULATIONS SYSTEM

201.704 [Amended]

2. Section 201.704 is amended by adding a sentence to the end of the section to read: "Typical D&F formats are at 206.202(b) (S–70) (ii), 216.102(d) and 225.7310(c)(2)(i)."

PART 202—DEFINITIONS OF WORDS AND TERMS

202.101 [Amended]

3. Section 202.101 is amended by adding at the end of the introductory text, immediately preceding paragraph (a) the words "On-Site Inspection Agency, The Director, On-Site Inspection Agency."; and by adding at the end of paragraph (a) the words "FOR THE ON-SITE INSPECTION AGENCY; Director, On-Site Inspection Agency."

PART 204—ADMINISTRATIVE MATTERS

204.202 [Amended]

4. Section 204.202 is amended by substituting in paragraph (c)(2) in parentheses the words "(A transshipping terminal is not a consignee. The Defense Logistics Agency is authorized to prescribe alternate procedures for distribution of procurement documents to consignees in Defense Subsistence Region, Europe.);" in lieu of the words "(a transshipping terminal is not a consignee);".

PART 205—PUBLICIZING CONTRACT ACTIONS

205.101 [Removed]

5. Section 205.101 is removed.

205.201 [Amended]

6. Section 205.201 is amended by removing paragraph (S–70).

205.207 [Amended]

7. Section 205.207 is amended by substituting at the end of paragraph (e)(S–70) the number "13" in lieu of the number "6".

PART 207—ACQUISITION PLANNING

207.103 [Amended]

8. Section 207.103 is amended by substituting in paragraph (i) in the sentence in parentheses at the end of the Illustrative Acquisition Plan Format the citation "207.105" in lieu of the citation "7.105"; and by adding paragraph (S–70) to read:

(S–70) Ensuring compliance with Department of Defense Directive 4210.15, Hazardous Material Pollution Prevention.

207.105 [Amended]

9. Section 207.105 is amended by removing paragraph (b)(2).

PART 209—CONTRACTOR QUALIFICATIONS

10. The interim rule published on June 6, 1988 (53 FR 20631) is adopted as final with the following changes:

11. Section 209.103 is amended by revising paragraph (S–71) to read as follows:

209.103 Policy.

* * * * *

(S–71) *Acquisitions from Contractors and Subcontractors Subject to On-Site Inspection Under the Intermediate-Range Nuclear Forces (INF) Treaty.* It is DoD policy that firms subject to on-site inspection under the INF Treaty be treated fairly when competing for defense contract or subcontract awards. To ensure fair treatment, a potential contractor subject to on-site inspection shall not be denied consideration for a contract or subcontract award solely or in part because of the acutal or potential presence of Soviet inspectors at the contractor's facility unless this decision is first reviewed by the Senior Acquisition Executive of the procuring Department or Agency and approved by the Under Secretary of Defense for Acquisition. Such denial shall only be made if determined necessary for reasons of national security. A decision to deny consideration for award shall be made as early as possible in the acquisition process, consistent, however, with obtaining full information on which to base a decision, including comment from the potential contractor or subcontractor on the security issues involved. A decision not to consider a firm for award of a contract or subcontract shall be communicated in writing to that firm. Contracting officers shall insert the contract clause at 252.209–7001 in all solicitations and contracts in excess of the dollar limitation identified in FAR 13.000, except those for commercial or commercial-type products (see FAR 11.001).

PART 213—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

213.106 [Removed]

12. Section 213.106 is removed.

PART 215—CONTRACTING BY NEGOTIATION

215.806 [Amended]

13. Section 215.806 is amended by substituting in paragraph (S–70) (7) the reference "FAR 15.903(d)" in lieu of "215.903(d)".

215.970–2 [Amended]

14. Section 215.970–2 is amended by substituting in paragraph (a)(2) the citation "204.671–5(b) Item B1" in lieu of the citation "4.671–5(b)(1)"; by substituting at the end of paragraph (a)(3) the citation "204.671–5(b) Item B2" in lieu of the citation "204.671–5(b)(2)"; by placing a period in paragraph (a)(6) at the close of the parentheses and removing the remainder of the sentence; by substituting at the end of paragraph (a)(7) the citation "204.671–5(b) Item B5A"in lieu of the citation "204.671–5(b)(4)(i)"; by substituting at the end of paragraph (a)(8) the citation "204.671–5(b) Item B12A" in lieu of the citation "204.671–5(b)(8)(i)"; and by substituting at the end of paragraph (a)(9) the citation "204.671–5(b) Item B12B" in lieu of the citation "204.671–5(b)(8)(ii)"

PART 219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

219.501–70 [Amended]

15. Section 219.501–70 is amended by changing at the end of the first sentence the years "1987–89" to read "1987–90".

219.502–3 [Amended]

16. Section 219.502–3 is amended by adding in paragraph (S–70) (1) between the word "construction" and the comma the words "and purchases for commissary or exchange resale".

219.502–72 [Amended]

17. Section 219.502–72 is amended by removing at the end of paragraph (b)(4) the word "or"; by changing the period at the end of paragraph (b)(5) to a semi-colon and adding the word "or"; and by adding paragraph (b)(6) to read:

(b) * * * (6) The acquisition is for purchase of commissary or exchange resale items."

219.505–70 [Amended]

18. Section 219.505–70 is amended by substituting between the word "and" and the word "do" the citation "219.505" in lieu of "19.505".

219.1005 [Amended]

19. Section 219.1005 is amended by revising paragraph (S–70) to read:

(S–70) Dredging (SIC 1629, FPDS V216–Z216). The Army Corps of Engineers has responsibility for dredging.

219.7000 [Amended]

20. Section 219.7000 is amended by adding in paragraph (a)(1)(vi) between

the words "commissary" and "resale" the words "or exchange".

PART 222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

222.101–3 [Amended]

21. Section 222.101–3 is amended by changing the designation "I&L" in the last sentence to read "P&L".

PART 225—FOREIGN ACQUISITION

225.105 [Amended]

22. Section 225.105 is amended by substituting in the last sentence of paragraph (S–73) the words "(Foreign Contracting)" in lieu of the words "(International Acquisition)".

Subpart 225.9—Additional Foreign Acquisition Clauses

23. The title for subpart 225.9 is revised to read as set forth above.

24. Section 225.901 is added to read:

225.901 Omission of Examination of Records Clause.

225.903 [Amended]

25. Section 225.903 is amended by redesignating the section title as 225.901(c); and by redesignating paragraph (b) as 225.901(c)(ii).

225.904 [Redesignated]

26. Section 225.904 is redesignated as 225.901(d).

27. Subpart 225.10 is added to read as follows:

Subpart 225.10—Sanctions for Violations of Export Controls

Sec.
225.1003 Exceptions.
225.1004 Procedures.

Subpart 225.10—Sanctions for Violations of Export Controls

225.1003 Exceptions.

(a) The determination authority designee is the head of the contracting activity.

(b) The determination authority designee is the contracting officer.

225.1004 Procedures.

(a) Use the format at 206.202(b)(S–70)(G)3(ii), 216.102(d), or 225.7310(c)(2)(i).

28. The interim rule published on April 21, 1989 (54 FR 16114) is adopted as final with the following change:

29. Section 225.7013 is amended by changing the title of paragraph (b) to read "Prohibition" in lieu of "Policy"; by adding at the end of the second sentence of paragraph (b) the word "below"; by adding in the third sentence of paragraph (b) between the words "of" and "DoD" a comma and the word "the"; by adding in the first sentence of paragraph (c)(1)(iii) between the words "or" and "firm" the word "foreign"; by adding paragraph (d)(1)(ii); and by substituting in the first sentence of paragraph (d)(2) the reference "FAR Subpart 6.3" in lieu of "FAR 6.3"; to read as follows:

225.7013 Prohibition of certain contracts with foreign entities for the conduct of strategic defense initiative RDTE.

* * * * *

(d) * * *

(i) * * *

(ii) When a BAA or Program Research and Development Announcement (PRDA) is used, or when the determination is otherwise not based on direct competition between foreign and domestic proposals, the determination must not be merely conclusory. The determination must contain a specific explanation of the basis for the determination including a description of the method used to determine the competence of U.S. firms and a description of the cost or price analysis that has been performed to support the determination. Alternately, the determination may contain a finding, including the basis for such finding, that the proposal was submitted solely in response to the terms of a BAA or PRDA, or other solicitation document without any technical guidance from the program office; and a finding, including the basis for such finding, that disclosure of the information in the proposal for the purpose of conducting a competitive procurement would be prohibited.

* * * * *

30. The interim rule published on December 22, 1988 (53 FR 51557) is adopted as final without change.

225.7310 [Amended]

31. Section 225.7310 is amended by substituting at the end of the last sentence of paragraph (b)(4) the words "Foreign Contracting, OASD (P&L) (P)" in lieu of the words "International Acquisition, OASD (P&L) (P) (IA)".

32. Section 225.7405 is amended by substituting in the third sentence of the introductory text the words "be made" in lieu of the word "occur"; and by revising the list, to read as follows:

225.7405 List of excluded items.

* * * * *

Army

L.A.P.

Manufacturing and testing of projectiles (5.56 mm through 8 inch), mines, dispensers, rockets, pyrotechnic devices, grenades, demolition charges, small arms ammunition and components.

Maintenance of idle portions of 22 GOCO facilities.

Air Inflatable Retarders

BSU–49/B, BSU–50/B

Black Powder

Classes 2, 3, 7

Bomb Bodies

MK82, MK83, MK84, MK116–0, BDU–45/B, BDU–50/B

Bomb Practice

BDU–33D/B

Bomblet

MK118

Box, Metal

M2A1, M19A1, M548

Box, Plastic

M621, (25 mm)

Cable Assemblies

M72, M73

Cartridges

50 CAL—M1, M8, M17, M20, M33
5.56mm—M193, M855 (Ball)
7.62mm—M80
20mm—M55A2, M56A4
25mm—M791, M792, M793, MK210, PGU–20, PGU–23, PGU–25, HEI–T, XM910
30mm—M788, M789, PGU–13/B, 14/B, 15/B. (GAU–8)
TANK—MK11–0, MK14–3
IMPULSE—M796 (F/M206)
MISC—MK4–3 Bomb Sig PB, Body Assy. M430
81mm—M301A3, M821, M853, M889
84mm—M136(AT–4)
105mm—M774, M833, M456A2, M490A1, M724A1.
4.2in—M329A2.
120mm—M829, M830, M831, M865.
misc—Signal MK4–3, Grenade, Smoke M76

Cartridge Cases

40mm—M118, M169
76mm—Steel
105mm—M148A1B1, M115B1
5"/38—MK10–1
5"/54—MK79–1

Casings, Burster

81mm—M158
4.2"—M14

Castings & Forgings

Gun Tube & Preforms Forgings (105mm—M2A2, M68A1, M137A1; 120mm—M256; 155mm—M1A2, M185, M199; 165mm—M135; 8"—M201A1)
Breech Ring Forgings (105mm—M2A2, M68A1, M137A1; 120mm—M256; 155mm—M1A2, M199; 8"—M201A1)
Breech Block Forgings (120mm—M256)
Cast Muzzle Brakes (155mm—M185, M199; 8"—M201A1)
Housing Castings (155mm—M199) Base Plate Forgings

Charge, Demo

MK75–0 MK138–1 (Chrg. Assy), 40 lb. Cratering, 151 lb. Cratering, M118 Demo

Periscopes/Vision Blocks

M17, M27, M37, M45, 15 Degree Up-Look, 20 Degree Up-Look, Periscope F/M1 Tank

Signals

MK79–0 (Personal Distress Kit)

Single Channel Ground/Air Radio System

MOD 2 Wing Assembly, BSU–32/B Fin Assembly;
TOMAHAWK Cruise Missile—including
Surgical and Dental Instruments
Surgical Gloves
Tetracycline

archival or secondary distribution purposes, contact the Defense Technica Information Center, Attn: DTIC–FDAC,

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Charge, Demo

MK75–0 MK138–1 (Chrg. Assy), 40 lb. Cratering, 151 lb. Cratering, M118 Demo Block

Chemical

M8A1 Chemical Agent Alarm

Containers, Ammo

CNU–238/E, CNU–319/E, CNU–327/E, CNU–332, CNU–335A/E, CNU–336A/E, ALS, Increment Container F/81mm M205
Charge Tank CTG—MK11–0 (F/76mm), MK14–3 (F/5"/54)

Dispenser

MK7–3 F/ROCKEYE, MK7–4 F/ROCKEYE

FASCAM Mine Components

GATOR Body Assy, GEMSS Body Assy, GATOR Extended Range Tripline Sensor, GEMSS Extended Range Tripline Sensor, FASCAM Battery, ADAM Housing, Timing, & Fuzing Assy, RAAM Safe & Arming Device, GEMSS Safe & Arming Device, GATOR Safe & Arming Device, RAAM Electronic Lens Assy, GEMSS Electronic Lens Assy, GATOR Electronic Lens Assy

Fin Assemblies

60mm Steel, M27 F/60mm, M24 F/81mm, BSU–86/B, MK15–4, MK84

Firing Devices

M142 MP

Flares

LUU–2/B, M206, MJU–2B, MJU–7B, MJU–8B, MJU–10B, MK46–1C, SUU–25 F/A

Fuzes

FMU–130/B, FMU–139/A, FMU–139/B, M201A1, M213, M223, M228, M230, M403, M418, M423, M427, M439, M505A3, M509A2, M549, M550, M567, M577A1, M582A1, M732A1, M734, M739A1, M758, M935, M936, MK1–0, MK54, MK72–17, MK73–13, MK339–1, MK342–1, MK352–2, MK393–0, MK395, MK396, MK403, MK404–0, MK407–1, MK417–0, MK418

Fuze Components

FS–115 F/Fuze Prox M732

Guns & Receivers

M2 Machine Gun (Fixed or Flex), M60/M60D Machine Guns, M240 Machine Gun, 9mm Pistol, 20mm Cannon (M249 (SAW) Squad Auto Weapon)

Grenades

M42E2 (155mm), M46E1 (155mm), M42E2 (8"), M46E1 (8"), M509 (8" MLRS), M77, XM77 Body, Cones (F/M42E2, M46E1, M77) BLU–91B Body Assembly, BLU–92B Body Assembly

Helicopter

LHX (DEM/VAL)

Launchers

M203 (40mm)

Links

M9 (50 CAL), M15A2 (50 CAL), M22, M27 (5.56mm), M13 (7.62mm), M10 (20mm), M14A2 (20mm), M16A2 (40mm)

Periscopes/Vision Blocks

M17, M27, M37, M45, 15 Degree Up-Look, 20 Degree Up-Look, Periscope F/M1 Tank

Plugs

MK11–1, MK12–3

Primers

MK41–0, MK45–1, MK153, MK161, MK28B2

Projectiles

155mm—M483, M483A1, M692, M712, M718, M731, M741
8"—M509A1 ICM, M509, M650
16"/50—MK142

Projectiles/Shell Metal Parts

20mm—MK68, M55A2, M56A4
40mm—Projectile MPTS F/M430, F/M433
60mm—Projectile MPTS F/M720
76mm—Projectile Body
81mm—M374A1
105mm—M456A2 (Spike Assy Spike Cap Assy Cone) M833 (Projectile Assy Core) M774A1
120mm—Projectile Assy Core F/M829
155mm—M107, M549 Motor Body M864, M485A2, M692/M731, M712, M718/M741/M718A1/M741A
8.0in—M106, M650 (AFT & FWD), M509A1
4.2"—Shell F/M328A1, F/M329A2, F/M335A2
5/54—MK48–1, MK61–0, MK64–1, MK82 (AFT & FWD)

Propellants/Explosives (or Equal)

COMP D–2, HPC–2, HPC 13 M200 BIK
LK, 1030 M813 (40mm), 1100 PBX–9501, WC–814, WC–818, WC–844, WC–844T, WC–844 REFER, WC–846, WC–860, WC–872, WC–875, COMP D–2, HMX Bulk, RDX Bulk

Protective Masks Chemical/Biological Protective Masks

M40 Chemical/Biological Protective Filters/Canisters (For Masks) C2 Canister

Radius

AN/VRC–12 RSF Spare Parts

Rangefinder

Laser Rangefinder

Reserve Energizers

MK38–0, MK40–0, MK43–0

Rifle

M16A2

Rockets

M73 (35mm SUB–CAL)

Rocket Motor

MK25–1, Rocket Assist F/M650 (8")

Rocket Motors Tubes

MK66 (HYDRA 70), MK71–1 w/Contact Band (Zuni)

Rocket Fin & Nozzle Assy

MK66–2 (HYDRA 70)

Safe and Arming Devices

M114, S&A F/M739 FZ

Satellite COMM

AN/TSG SAT COMM TERM

Signals

MK79–0 (Personal Distress Kit)

Single Channel Ground/Air Radio System (SINCGARS)

AN/PRC–119, AN/VRC–87, AN/VRC–88, AN/VRC–89, AN/VRC–90, AN/VRC–91, AN/VRC–92, AN/ARC–201

Suspension Lugs

MK3, MK–14–0
TOW MISSILE
TOW NIGHT SIGHT
HAWK
AAWS–M
PATRIOT
PATRIOT MISSILE CANISTERS
CAMOUFLAGE SCREENING SYSTEMS
BA–5598, BA–5567, BA–5590
MX–9644
RADAR WARNING RECEIVER, AN/APR–39A (V)1
INERTIA NAVIGATION SET, AN/ASN–86
NIGHT VISION GOGGLES, AN/PVS–5
AVIATORS NV IMAGING SYSTEM, AN/AVS–6
IMAGE INTENSIFIER ASSY, MX–10160
INDIVIDUAL SERVED WEAPON NIGHT VISION SIGHT, AN/PVS–4
CREW SERVED WEAPON NIGHT VISION SIGHT, AN/TVS–5
DRIVERS VIEWER, AN/VVS–2
NIGHT VISION GOGGLES, MONOCULAR
RADAR SIGNAL DETECTING SET, AN/APR–39A (V)2
ARTILLERY LOCATING RADAR, AN/TPQ–37 (V)4
ROAD WHEELS FOR COMBAT AND COMBAT SUPPORT VEHICLES
ROUGH TERRAIN CONTAINER CRANE
HEMTT (HEAVY EXPANDED MOBILITY TAC. TRUCK)
M939A1 5 TON TRUCKS
M1A1 TANK
TADS/PNVS
HOVER INFRARED SUPPRESSOR SYSTEMS
MAST MOUNTED SIGHT FOR SHIP
AIR TO AIR STINGER
AH–64
AN/TPQ–36
BATTERY, STORAGE, 4HN, 6TN

Navy

Missile and Missile Components:

AIM/RIM–7M SPARROW Missile—Guidance Control Section with Wings and Fins, MK–58 MOD 4 and 5 Rocket Motor, MK–106 Inert Rocket Motor, MK–33, MOD 0 Safe and Arm Device, WEU/3B Warhead (Empty), WAU–17A/B Warhead (Loaded), and Telemetric Data Transmitting Set AN/DKT–38, AN/DKT–37(D), and AN/DKT–61;
AIM 54C PHOENIX Missile—WPU–3/B Propulsion Section (with MK–47 MOD 1 Rocket Motor and FSU–10/A Composite Fuze), DSU–28D/B Target Detecting Device, MD–13 MOD 0 Fuze Triggering Device, WDU–29/B Warhead, MK–60 MOD 2 Fuze Booster;
AIM–9M SIDEWINDER Missile—WGU–4A/B Guidance and Control Section, MK–36 MOD 11 Reduced Smoke Rocket Motor, WDU–17/B Loaded Warhead, DSU–15A/B or B/B Active Optical Target Detector, MK–13 MOD 2 Safe and Arm Device, MK–1 MOD 2 Wing Assembly, BSU–32/B Fin Assembly;
TOMAHAWK Cruise Missile—including Guidance Section, F–107 and F–402 Engine (including spares), Reference Measuring Unit and Computer (including spares), Cruise Missile Radar Altimeter (including spares), MK–106 MOD 0 and EX–111 IRM (MK–111 Rocket Motors (including spares)); Digital Scene Matching Area Correlation (DSMAC), FMU–138/B Fuze, FZU–43/B Air Valve, Capsule Launching System (CLS), AN/SWG–2 (V) and AN/SWG–3 (V) Common Weapon Control System (CWCS)
TRIDENT II, MK–6 Guidance and Components, Inertial Measurement Unit (IMU), IMU Electronics, Electronics Assemblies, Camera Detector Assembly;
Tactical Rocket Motors and Inert Rocket Motors for High Speed Anti-Radiation Missile (HARM);
Standard Missile Two Block II Guidance, Control and Autopilot/Battery Sections and all-up-rounds for Aegis, Terrier and Tartar Class Ships;
Standard Missile II MK–45 MOD 6 Target Detection Device, MK–70 Booster, MK–104 Dual Thrust Rocket Motor, MK–115 Warhead, MK–70 Inert Parts; and Standard Missile Two Block II A Vertical Launch Configuration

Avionics

AN/AYK–14 (V) Computers

Surface Ship and Submarine Systems:

Type 18B/D Periscope System, TR–155, K–33 Transducers, Periscope Tubes, Noise Tested Bearings
MK–45 Mod 1 Gun Mounts; MK–6 Ammunition Hoists; MK–41 Vertical Launch System; Phalanx CIWS MK–15 Block 1 Weapon Systems and Block 1 ORDALT kits
AWS T–134B/SPG Radar (CWI) Transmitter
Ship Propulsion Shafts, Ring Forging for Bull Gears greater than 120 inches in diameter, Anchor Chains

Engines

F404–GE–400D Engines

Guns

MK19 MOD 3 Machine Gun and MK 64 Gun Mounts

Sonobuoys:

AN/SSQ–36, AN/SSQ–53D, AN/SSQ–62B, AN/SSQ–77A, AN/SSQ–103 (Low Cost Sonobuoy)

Standard Missile:

MK–51 MOD 0 Safety Arming Device
MK–76 MOD 0 Safety Arming Device

Air Force

MAC Commercial Airlift

Defense Logistics Agency

Chemical Protective Suits (Army)
Chemical Protective (BUTYL) Gloves
Dress Coats
Helmets PASGT
Meal, Ready-to-Eat (MRE)
Nerve Agent Antidotes
Rabies Immune Globulin
Shirts: Navy Chambray (Work) & Army Dress
Surgical and Dental Instruments
Surgical Gloves
Tetracycline

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

33. The interim rule published on December 22, 1988 (53 FR 51557) is adopted as final without change.

PART 232—CONTRACT FINANCING

232.502–1 [Amended]

34. Section 232.502–1 is amended by changing the last word in the first sentence of paragraph (S–71) (4) to read "CASHV" in lieu of "CASHIV"; and by changing the fourth sentence of paragraph (S–71) (4) to read: "Contractors who are registered with the Defense Technical Information Center (DTIC) may obtain copies of the DoD Cash Flow Computer Model User's Guide (ADA148–247) from the Defense Technical Information Center, Cameron Station, Alexandria, VA 22304–6145."

PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

35. Section 235.010 is amended by revising paragraphs (a) and (b) to read as follows:

235.010 Scientific and technical reports.

(a) Scientific and technical reports record results obtained from and recommendations made on scientific and technical activities relating to a single project, task or contract, or relating to a small group of closely connected efforts within the Department of Defense Research and Development Program. A completed Report Documentation Page (SF 298) is to be included in each copy of a scientific or technical report required by the contract (see FAR Part 53). Whenever a scientific or technical report is required as a product of the Research, Development, Test and Evaluation Effort, the contracting officer will assure that the requirement for a completed SF 298 is clearly stated and that a completed SF 298 is included with each copy of the required scientific and technical report. Further information on the SF 298 can be obtained from the Defense Technical Information Center, Attn: DTIC–HDB, Cameron Station, Alexandria, VA 22304–6145. If the SF 298 is not available, the bibliographic information can be supplied on a separate sheet of paper. Contact DTIC–HDB for further instructions. Scientific and technical reports should be reproduced as economically as practicable, consistent with the reporting needs of the Government. For the submission of reports in other than paper copy for archival or secondary distribution purposes, contact the Defense Technical Information Center, Attn: DTIC–FDAC, Cameron Station, Alexandria, VA 22304–6145.

(b) Organizations eligible to use DTIC services can register in accordance with Defense Logistics Agency Regulation 4185.10, Certification and Registration for Access to DoD Scientific and Technical Information which is available from the Defense Technical Information Center, Cameron Station, Alexandria, VA 22304–6145. Requirements for eligibility can be obtained from the Defense Technical Information Center, ATTN: DTIC–FDRB, Cameron Station, Alexandria, VA 22304–6145.

PART 242—CONTRACT ADMINISTRATION

242.7004 [Amended]

36. Section 242.7004 is amended by adding at the end of paragraph (b)(1) before the semi-colon the words "(see also 242.7006)".

37. Section 242.7006 is amended by changing the title of paragraph (b) to read "Annual Audit Plans" in lieu of "Planning for Reviews"; by designating the undesignated paragraph at the beginning of paragraph (b) as paragraph (b)(1); by redesignating paragraphs (b)(1) through (b)(3) as (b)(1)(i) through (b)(1)(iii) respectively; by designating the undesignated paragraph at the end of paragraph (b) as paragraph (b)(2); and by adding paragraph (b)(3) to read as follows:

242.7006 Procedures.

* * * * *

(b) * * *

(3) Audit organizations, program offices, contracting activities, and any other organizations within DoD with responsibility for reviewing contractor operations for the purpose of monitoring contractor policies, procedures, and practices to control costs, shall submit to the cognizant CMC, an annual schedule of planned and tentative visits, oversight reviews, and audits to be performed at contractor's facilities meeting the criteria in 242.7002. The CMC shall incorporate these reviews in the annual audit plan. Any revisions to scheduled visits or audit plans shall be submitted to the CMC within 30 days of issuance.

PART 244—SUBCONTRACTING POLICIES AND PROCEDURES

38. Section 244.301 is amended by designating the undesignated paragraph

as paragraph (a); and by adding paragraph (b) to read as follows:

247.573–1 Purchase of ocean transportation incidental to a contract for supplies, services, or construction.

paragraph (c)(2) between the word "representative" and the word "or".

252.225.7028 [Amended]

47. Section 252.225–7028 is amended by changing the date of the provision to

to read: "The request for use of other than U.S.-flag vessels because of matters concerning freight charges or

ORGANIZATION" the listing to read: "ON-SITE INSPECTION AGENCY

as paragraph (a); and by adding paragraph (b) to read as follows:

244.301 Objective.

* * * * *

(b) The ACO is responsible for reviewing the contractor's purchasing system. Members of other organizations such as audit organizations or a Program Manager's Office, should not conduct separate reviews of a contractor's purchasing system, but may participate in the review conducted under the authority of the ACO. If a problem appears to exist, these organizations may recommend to the ACO that an additional review be performed. If the ACO agrees, the additional review will be performed as part of an ACO initiated special review (see 244.302(b)(3)).

PART 245—GOVERNMENT PROPERTY

245.407 [Amended]

39. Section 245.407 is amended by adding before the period at the end of the first sentence of paragraph (a) a comma and the words "unless specifically delegated to the Head of a Contracting Activity"; by substituting in the second sentence of paragraph (a) the designation "OASD(P&L)(DASD (Logistics))" in lieu of the designation "DASD(P&L)(PS)"; and by removing in the third sentence of paragraph (a) the words "requiring Departmental level approval".

PART 247—TRANSPORTATION

40. The interim rule published on April 21, 1989 (54 16112) is adopted as final with the following changes:

247.571 [Amended]

41. Section 247.571 is amended by adding a sentence at the end of the definition entitled "Supplies" to read: "An item is readily identifiable for eventual use by the armed services if, for example, the contract documentation contains a reference to a DoD contract number, or a Military Specification, or a military destination."

42. Section 247.573–1 is amended by revising paragraphs (a), (b), (b)(1), and (b)(2); by redesignating the existing paragrah (c) as paragraph (e); by adding paragraphs (c) and (d); and by substituting in the second sentence of paragraph (3) of the redesignated paragraph (e) the word "foreign" in lieu of the word "foreign-flag"; to read as follows:

247.573–1 Purchase of ocean transportation incidental to a contract for supplies, services, or construction.

(a) This subsection applies to those acquisitions where ocean transportation is not the purpose of the contract.

(b) The contracting officer shall obtain assistance from the cognizant transportation activity (see 247.105) in developing the following:

(1) The Government estimate for transportation costs, irrespective of whether freight will be paid directly by the Government;

(2) Appropriate shipping instructions and delivery terms for inclusion in solicitations and contracts that may involve transportation by sea of supplies.

(c) The contracting officer shall ascertain from each offeror whether the supplies will be transported by sea under the resulting contract (see 247.574(a)).

(1) When the successful offeror indicates in the response to the solicitation, that ocean transportation will be used, the contractor must comply with the requirements of the Cargo Preference Act of 1904.

(2) If the successful offeror's response to the solicitation provision is that the offeror does not anticipate that supplies will be transported by sea, there still remains the possibility that during contract performance the contractor will discover that ocean transportation must be used. In that event the terms of the statute still apply to the contractor, requiring the contractor to use U.S.-flag vessels unless certain narrow conditions exist (see 247.572(b) above). The contractor must notify the Government of the changed circumstances, i.e., that it intends to use ocean transportation, and comply with the requirements of the Cargo Preference Act.

(d) When the successful offeror indicates in accordance with the solicitation provision at 252.247–7202, Representation of Extent of Transportation of Supplies by Sea, that supplies will be transported by sea under the resulting contract or subcontract, the contracting officer shall within 30 days of award forward one copy of the first page of the DD Form 350 for that contract to the Chief, Division of National Cargo, U.S. Maritime Administration, 400–7th Street, SW., Washington, DC 20590.

* * * * *

247.573–2 [Amended]

43. Section 247.573–2 is amended by adding in paragraph (c)(2) a comma after the acronym "MSC"; and by changing the comma to a semi-colon in paragraph (c)(2) between the word "representative" and the word "or".

247.574 [Amended]

44. Section 247.574 is amended by changing in the title the word "Clause" to read "Clauses"; by placing in paragraph (a) a period after the reference "FAR Part 13" and removing the remainder of the sentence; by adding within commas in paragraph (b) between and word "contracts" and the word "other" the words "in full text"; by redesignating the existing paragraph (c) as paragraph (d); and by adding paragraph (c) to read: "The contracting officer shall insert the clause at 252.247–7204, Notification of Transportation of Supplies by Sea, in full text, in all contracts for which the offeror made a negative response to the inquiry in the provision at 252.247–7202."

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

45. Section 252.209–7001 is revised to read as follows:

252.209–7001 Acquisitions from subcontractors subject to on-site inspection under the Intermediate-Range Nuclear Forces (INF) Treaty.

As prescribed at 209.103(S–71), insert the following clause:

Acquisitions From Subcontractors Subject to On-Site Inspection Under the Intermediate-Range Nuclear Forces (INF) Treaty (Jan 1990)

(a) The Contractor shall not deny consideration for a subcontract award under this contract to a potential subcontractor subject to on-site inspection under the INF Treaty solely or in part because of the actual or potential presence of Soviet inspectors at the subcontractor's facility unless the decision is approved by the Contracting Officer.

(b) The Contractor shall incorporate this clause, with appropriate changes to identify properly the contracting parties, including this paragraph (b), in all solicitations and contracts in excess of the dollar limitation identified at FAR 13.000, except those for commercial or commercial-type products (see FAR 11.001).

(End of clause)

252.215–7003 [Amended]

46. Section 252.215–7003 is amended by changing the date of the clause to read "(JAN 1990)" in lieu of "(FEB 1989)"; and by substituting at the beginning of the second sentence of paragraph (c) of the clause the words "Paragraphs (d) and (e) of the clause are" in lieu of the words "This clause is".

252.225.7028 [Amended]

47. Section 252.225–7028 is amended by changing the date of the provision to read "(JAN 1990)" in lieu of "(MAR 1989)"; by adding in the second sentence of paragraph (b) of the provisions between the word "of" and the acronym "DoD" a comma and the words "Department of Defense", and placing the acronym "DoD" in parentheses.

252.232–7007 [Amended]

48. Section 252.232–7007 is amended by removing in the second sentence of paragraph (a) of the introductory text the words "other than".

49. Section 252.247–7202 is amended by placing in the introductory text a colon after the word "provision" and removing the remainder of the introductory text; by changing the date of the provision to read "(JAN 1990)" in lieu of "(MAR 1989)"; by revising in the provision the undesignated paragraph following the introductory text; and by adding a second undesignated paragraph following the introductory text; to read as follows:

252.247–7202 Representation of extent of transportation by sea.

* * * * *

_____ The Offeror represents that it does anticipate that supplies, as defined in the clause at 252.247–7203, Transportation of Supplies by Sea, will be transported by sea in the performance of any contract or subcontract resulting from this solicitation.

_____ The Offeror represents that it does not anticipate that supplies, as defined in the clause at 252.247–7203, Transportation of Supplies by Sea, will be transported by sea in the performance of any contract or subcontract resulting from this solicitation. If the Offeror represents that it will not use ocean transportation, the clause at 252.247–7204 will also be inserted in the resulting contract.

* * * * *

50. Section 252.247–7203 is amended by adding in the introductory text at the end of the reference "247.574" the letter "(b)"; by placing in the introductory text a colon after the word "clause" and removing the remainder of the introductory text; by changing the date of the clause to read "(JAN 1990)" in lieu of "(MAR 1989)"; by enclosing in commas in the first sentence of paragraph (a)(6) of the clause the words "except land and interests in land"; by adding at the end of paragraph (a)(6) of the clause a sentence reading: "An item is clearly identifiable for eventual use by the armed services if, for example, the contract documentation contains a reference to a DoD contract number, or a Military Specification, or a military destination."; by changing the first sentence of paragraph (d) of the clause to read: "The request for use of other than U.S.-flag vessels because of matters concerning freight charges or matters concerning vessel availability must be submitted in writing by or through the Prime Contractor to the Contracting Officer at least forty-five (45) days prior to the sailing date for the shipper to meet its delivery schedules."; and by adding in the second sentence of paragraph (d) of the clause a comma between the word "possible" and the word "but".

51. Section 252.247–7204 is added to read as follows:

252.247–7204 Notification of transportation of supplies by sea.

As prescribed in 247.574(c), insert the following clause:

Notification of Transportation of Supplies by SEA (Jan 1990)

(a) The Contractor has indicated by the response to the solicitation provision at 252.247–7202, Representation of Extent of Transportation of Supplies by Sea, that it did not anticipate transporting by sea any supplies, as defined in the clause at 252.247–7203, Transportation of Supplies by Sea, in the performance of this contract. If, however, after the award of this contract, the Contractor should learn that supplies will be transported by sea, the Contractor shall notify the Contracting Officer of the fact that transportation by sea will be used and hereby agrees to comply with all the terms and conditions of the clause at 252.247–7203, entitled "Transportation of Supplies by Sea", contained in this contract.

(b) The Contractor shall include this clause, including this paragraph (b), revised as necessary to reflect the relationship of the contracting parties, in all subcontracts hereunder.

(End of clause)

PART 253—FORMS

52. The list of forms following section 253.204–70 is amended by removing between the listing "253.303–70–DD–1425 DD Form 1425: Specifications and Standards Requisition" and the listing "253.303–70–DD–1484 DD Form 1484: Post-Award Conferenc o Record" the listing "253.303–70–DD–1473 DD Form 1473: Report Documentation Page".

APPENDIX N—ACTIVITY ADDRESS NUMBERS

53. Appendix N is amended by substituting in the listing between "MDA907 and MDA946" following the listing "MDA908 Virginia Contracting Activity" the designation "2X" in lieu of the designation "F3"; by substituting in the address for the same listing "P.O. Box 46563" in lieu of "P.O. Box 46353"; and by adding between the address for the listing "MDA972" and the heading "STRATEGIC DEFENSE INITIATIVE ORGANIZATION" the listing to read: "ON-SITE INSPECTION AGENCY OSIA01 On-Site Inspection Agency, Attn: Acquisition Management, Washington/Dulles International Airport, Washington, DC 20041–0498".

[FR Doc. 89–29807 Filed 12–28–89; 8:45 am]
BILLING CODE 3810–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1801, 1803, 1804, 1808, 1813, 1814, 1815, 1817, 1819, 1832, 1852, 1853, and 1870

[NASA FAR Supplement Directive 89–2]

RIN 2700–AA91

Acquisition Regulation; Miscellaneous Amendments to NASA FAR Supplement

AGENCY: Office of Procurement, Procurement Policy Division, NASA.

ACTION: Final rule.

SUMMARY: This document amends the NASA Federal Acquisition Regulation Supplement (NFS) to reflect a number of miscellaneous changes implementing higher level issuances and other changes dealing with the NASA internal or administrative matters.

EFFECTIVE DATE: December 31, 1989.

FOR FURTHER INFORMATION CONTACT: W. A. Greene, Chief, Regulations Development Branch, Procurement Policy Division (Code HP), Office of Procurement, NASA Headquarters, Washington, DC 20546, Telephone: (202) 453–8923.

SUPPLEMENTARY INFORMATION:

Background

The major changes involve: (1) Utility services; (2) the commercial credit card program; (3) the five-year contract limitation, and (4) payments to the Canadian Commercial Corporation. The NASA FAR Supplement, of which this rule is a part, is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Cite GPO Subscription Stock Number 933–003–00000–1. It is not distributed to the public, either in whole or in part, directly by NASA.

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The

regulations herein are in the exempted category. NASA certifies that this regulation will not have a significant

c. Section 1801.271 is revised to read as follows:

1801.271 NASA procedures for FAR

1801.272 Procurement Information Circulars.

The Procurement Information Circulars

PART 1803—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTING OF INTEREST

(b) *Modifications.* Modifications that:

(1) Obligate or deobligate funds, regardless of dollar amount,

(iv) Cooperative agreements is set forth in the NASA Grant and Cooperative Agreement Handbook,

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regulations herein are in the exempted category. NASA certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The regulation imposes no burdens on the public within the ambit of the Paperwork Reduction Act, as implemented at 5 CFR part 1320.

List of Subjects in 48 CFR Parts 1801, 1803, 1804, 1808, 1813, 1814, 1815, 1817, 1819, 1832, 1852, 1853, and 1870

Government procurement.

S. J. Evans,

Assistant Administrator for Procurement.

1. The authority citation for 48 CFR parts 1801, 1803, 1804, 1808, 1813, 1814, 1815, 1817, 1819, 1832, 1852, 1853, and 1870 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1801—FEDERAL ACQUISITION REGULATIONS SYSTEM

Subpart 1801.2—[Amended]

2. Subpart 1801.2 is amended as set forth below:

a. The table of contents for subpart 1801.2 is revised to read as follows:

Subpart 1801.2—Administration

1801.270 Amendment of regulation.
1801.270–1 Revisions.
1801.270–2 Procurement notices.
1801.270–3 Effective date.
1801.270–4 Numbering.
1801.271 NASA procedures for FAR and NFS changes.
1801.272 Procurement information circulars.
1801.272–1 Responsibility.
1801.272–2 Format and distribution.
1801.272–3 Expiration.

b. Section 1801.270 is revised to read as follows:

1801.270 Amendment of regulation.

This Regulation is amended as needed to set forth policies and procedures intended to reduce contract preparation time, simplify and standardize contract forms, otherwise improve the contracting process, and reflect changes in statutes, Executive orders, the FAR, and other mandatory policies. Acquisition personnel are encouraged to make informal suggestions, based on operating experience, for improving and simplifying this Regulation and the procedures set forth in it. Such comments, including correction of errors, should be directed to the Procurement Policy Division (Code HP) or to a Code HP analyst responsible for the applicable subject matter. Formal recommendations for changes are governed by 1801.271.

c. Section 1801.271 is revised to read as follows:

1801.271 NASA procedures for FAR and NFS changes.

(a) Responsibilities. (1) NASA is represented on the Defense Acquisition Regulatory Council (DARC) by a policy member from the Procurement Policy Division (Code HP) and a legal member from the Office of General Counsel (Code GK). NASA staff members are also assigned to standing and ad hoc DARC committees in their areas of expertise. The DARC policies and procedures for initiating and reviewing FAR changes shall be followed by the assigned individuals. However, any NASA element or individual may suggest a FAR revision.

(2) The Procurement Policy Division (Code HP) is responsible for the receipt and formal processing of changes to the NFS. A Code HP procurement analyst—a subject matter specialist—is assigned to and responsible for ensuring all necessary actions are taken. It is advisable to contact the appropriate Code HP analyst (see the Procurement Information Circular entitled "Headquarters Points of Contact for Policy and Operational Information") to determine if a similar regulatory change is already underway or for further advice as to the simplest means of preparing a formal request.

(b) *Documentation.* (1) Formal requests for changes to the FAR or the NFS must be written and contain, at a minimum:

(i) A concise description of the problem the suggested revision is designed to cure or ameliorate,

(ii) The revision in the form of a marked-up copy of the current FAR or NFS language or the text of any additional language,

(iii) The consequences of making no change and the benefits to be expected from a change, and

(iv) Any other information necessary for understanding the situation, such as relationship between FAR and NFS coverage, legal opinions, coordination with other offices, and existing agreements.

(2) Formal requests for FAR and NFS changes shall be sent to the Assistant Administrator for Procurement (Code HP). Requests from headquarters offices involving the NFS should originate at the division level or higher, while installation requests must be signed at the procurement officer or higher level.

d. Sections 1801.272, 1801.272–1, 1801.272–2 and 1801.272–3 are added to read as follows:

1801.272 Procurement Information Circulars.

The Procurement Information Circular (PIC) shall be used for broad internal dissemination of procurement-related information and directives not suitable for inclusion in the NFS. While material contained in PICs is non-regulatory and will not be published in the Code of Federal Regulations (CFR), it may be mandatory or be of general interest or importance to its recipients. The PIC is also the preferred mechanism for broadly announcing pending regulatory changes; for providing interim guidance regarding forthcoming regulatory changes; for giving advice; and for providing broadly applicable, but short-lived, procedural information to the NASA procurement community.

1801.272–1 Responsibility.

The Procurement Policy Division (Code HP) is responsible for establishing necessary operational guidelines, preparing, coordinating, issuing, and distributing PICs on behalf of Code H or other requesting NASA elements.

1801.272–2 Format and distribution.

PICs shall be as brief as possible; however, pertinent documents may be included as enclosures, provided they are of reasonable length. PICs shall be numbered on a calendar year basis, beginning with number 1, prefixed by the last two digits of the year. Distribution conforms to 1801.104–370(a) and (b).

1801.272–3 Expiration.

PICs are intended to relate to matters of current interest. To ensure periodic review, PICs normally will automatically expire on December 31 of the year of issuance. Code HP will contact the originating office regarding revalidation before the expiration date.

3. Subpart 1801.3 is amended as set forth below:

a. Section 1801.302 which contains only a section heading, is added.

1801.302 Limitation.

1801.302–70 [Amended]

b. Section 1801.302–70, paragraph (a), is amended by removing the words "NASA's procedures for initiating changes to the NASA FAR Supplement" and adding the citation "1801.271."

c. Section 1801.302–70, paragraph (b), is amended by revising the words "Procurement Officer" to read "procurement officer."

PART 1803—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTING OF INTEREST

Subpart 1803.1—[Amended]

4. Section 1803.104–2 is added to read as follows:

1803.104–2 Applicability.

Pursuant to section 507 of the Ethics Reform Act of 1989 (Pub. L. 101–194), the requirements of this section are suspended for the period of December 1, 1989, through November 30, 1990.

PART 1804—ADMINISTRATIVE MATTERS

Subpart 1804.6—[Amended]

5. Subpart 1804.6 is amended as set forth below:

1804.601 [Amended]

a. Section 1804.601 is amended by adding the word "series" after the number "507".

1804.671 [Amended]

b. The title of section 1804.671 is revised to read "Individual Procurement Act Report (NASA Form 507 series)."

c. In section 1804.671, "(NASA Forms 507 and 507A)" are revised to read "NASA Forms 507, 507A, 507B, 507G, and 507M)" and the sentence beginning with "The preparation" and ending with "(FACS) system" is revised to read "The preparation and utilization of the NASA Form 507 series (see 1853.303–507 through 1853.303–507M) are an integral part of the agencywide Financial and Contractual Status (FACS) system."

d. Section 1804.671–1 is revised to read as follows:

1804.671–1 Applicability and coverage.

The following procurement actions are individually reportable and require the completion of one or more of the forms in the 507 series.

(a) *Initial basic procurements.* (1) All contracts, regardless of dollar obligation amount.

(2) All grants, cooperative agreements, and Space Act agreements.

(3) Intragovernmental procurements and purchase orders when the initial obligation is more than $25,000.

(4) All contracts and purchase orders for consulting services.

(5) Purchase orders of $25,000 or less for services within the four designated industry groups identified at FAR 19.1005(a) under the Small Business Competitiveness Demonstration Program. (These actions are not FACS reportable, but are required for EDPS reports.)

(b) *Modifications.* Modifications that:

(1) Obligate or deobligate funds, regardless of dollar amount,

(2) Change the estimated cost and/or fee by more than $25,000,

(3) Extend the completion date, or

(4) Add or change procurement statistics previously reported are reportable.

e. Section 1804.671–4 is revised to read as follows:

1804.671–4 Preparing Individual Procurement Action Reports (NASA Forms 507, 507A, 507B, 507G, and 507M).

Individual Procurement Action Reports shall be prepared and submitted to Headquarters for each procurement action required to be reported (see 1804.671–1). Specifically, for new contract awards, NASA Forms 507, 507A, and 507B are prepared. For new grants, agreements, intragovernmental agreements, and orders against federal supply schedules, NASA Forms 507G and 507B are prepared. For modifications to any of the above procurements, NASA Forms 507M and, if necessary, 507B are prepared. Detailed item instructions for preparing the NASA Forms 507 series are set forth in paragraphs (a) through (sss) below and correspond to the item numbers shown on the forms. Position numbers after each item indicate the maximum number of characters that may be used in reporting the data element. Item numbers 2–7, 9, 15a, 50–61 and 66 are for Acquisition Management Subsystem (AMS) reporting at the installation level only. Reporting of these specific data items to the FACS system is not required.

(a) *Item 1—Contract/grant number (11 positions, including blanks).* (1) Enter the specific contract, grant, cooperative agreement, Space Act agreement, or purchase order number for which the data are reported. The first five digits represent the prefix field, while the last six digits are used to number each contractual instrument serially. If a serial number does not fill out the entire field, leave those digit positions blank instead of using zeros. For utility contract and purchase order numbers, enter an alpha letter in the last position of the serial number, indicating the fiscal year the service was provided.

(2) The method of numbering—

(i) Contracts and purchase orders are set forth in subpart 1804.71 (e.g., NAS9–14000, NAS10–9080, NASW–2080);

(ii) Space Act agreements are set forth in subpart 1804.71 (e.g., NCA1–12500);

(iii) Grants are set forth in the NASA Grant and Cooperative Agreement Handbook, NHB 5800.1, paragraph 306.1 (e.g., NAGW–1, NAG2–306);

(iv) Cooperative agreements is set forth in the NASA Grant and Cooperative Agreement Handbook, NHB 5800.1, paragraph 306.2 (e.g., NCC 2–1); and

(v) Utility contracts and purchase orders are as follows:

Last digit		Last digit	
Alpha letter	Fiscal years ending in	Alpha letter	Fiscal years ending in
Q	1	V	6
R	2	W	7
S	3	X	8
T	4	Y	9
U	5	Z	0

(b) *Item 2—Document suffix (1 position).* If an alpha suffix is used in the contract or purchase order number, enter the assigned suffix (e.g., "F" for facilities contracts). Otherwise, leave this item blank.

(c) *Item 3—Modification prefix (1 position).* If an alpha prefix is used in the modification number of the reported action, enter the assigned prefix. Otherwise, leave this item blank.

(d) *Item 4—Modification number (5 positions).* Enter the serial number assigned to the modification action.

(e) *Item 5—PR number (12 positions).* Enter the number assigned to the Procurement Request document which initiated the reported action.

(f) *Item 6—Closeout PR (1 position).* Enter "Y" if the reported action closes the PR reported in item 5. Otherwise, leave this item blank.

(g) *Item 7—Contractor VID (7 positions).* Enter the contractor's unique Vendor Identification Number (VID) which indicates the contractor's name and business address.

(h) *Item 7a—Contractor name (29 positions, including spaces).* Enter the name of the contractor. (For editing purposes, the first five characters of the contractor's name must be identical to those shown in "NASA Contractor Identification Codes.") For intragovernmental actions, enter the agency name (e.g., US Army, US Navy, US Commerce) and also see the Item 8 instructions immediately below. If the activity is under a single-manager agency, enter the name of the agency.

(i) *Item 7b—Contractor division (20 positions).* Enter the name of the contractor's division if one is named in the contractual instrument. (For editing purposes, the first five characters of the division name must be identical to those shown in "NASA Contractor Identification Codes.") For intragovernmental actions, enter the

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name of the cognizant procuring activity (e.g., Electronic Systems Division).

(j) *Item 7c—Contractor address—city and state.* Enter city and state of contractor's address as stated in the contractual instrument.

(k) *Item 8—Contractor identification code (CIC) number (7 positions).* This code is obtained from the publication "NASA Contractor Identification Codes," issued quarterly by the Headquarters Procurement Management Division (Code HM). It identifies the procurement in terms of the contractor's name, division (if any), address, and the place of performance. A unique code is assigned for each different combination of these items. For combinations not listed in the coding publication, NASA Form 507 preparers should call the Office of Procurement, NASA Headquarters (Code HM), where a code will immediately be assigned and the exact abbreviations, where appropriate, will be specified. The new code will be listed in the next issue of the coding publication.

(l) *Item 9—Place of performance VID (7 positions).* Enter the contractor's unique Vendor Identification Number (VID) which indicates the contractor's place of performance address.

(m) *Items 9a—Place of performance (city—24 positions; state—2 positions).* Enter the location (city and state) of the principal plant or place of business where the items will be produced or supplied from stock or where the service will be performed. (For editing purposes, the first three characters of the city name must be identical to those shown in "NASA Contractor Identification Codes.") For construction contracts, enter the site of construction. If more than one location is involved, enter the principal place of performance. For intragovernmental actions where the place of performance is unknown, enter the address of the cognizant Government agency. Enter the zip code in Item 11.

(n) *Item 10—Procuring installation number (2 positions).* Enter a numeric code identifying the installation responsible for the procurement. The following is a list of installations and their assigned codes:

Code	Installation
04	NASA headquarters.
05	Space station procurement office.
21	Ames research center.
22	Lewis research center.
23	Langley research center.
24	Dryden flight research facility.
51	Goddard space flight center.
53	Wallops flight facility.
54	NASA resident procurement office–JPL.
62	George C. Marshall space flight center.
64	John C. Stennis space center.
72	Lyndon B. Johnson space center.
76	John F. Kennedy space center.

(o) *Item 11—POP zip code (5 positions).* Enter the five digit zip code corresponding to the contractor's place of performance address.

(p) *Item 12—Contract award/modification date (6 positions).* (1) *Contract award.* Enter the year, month, and day (two numerics each) that the contract is signed by the contracting officer.

(2) *Modification date.* Enter the year, month, and day (two numerics each) that the modification is signed by the contracting officer.

(q) *Item 13—Completion date (6 positions).* Enter the year, month, and day (two numerics each), either specified or estimated, when all work on the contract and any modifications is scheduled for completion. This date may or may not change as modifications to the contract are issued.

(r) *Item 14—Procurement placement code (2 positions).* Enter the alpha procurement placement code (PPC) identifying the type of solicitation process used and the extent of competition obtained on the procurement. (See 1804.671–7 for PPC matrix.) The FACS system must be able to provide information on "noncompetitive procurements using competitive procedures," as required by Public Law 98–369; this is accomplished by selecting procurements coded 1 in Item 28 (Number of offers received) and coded 2, 3, or 4 in Item 18 (Extent of competition). These procurements must have one of the following competitive PPC's: AX, AE, AF, BX, BE, BF, FX, FE, FF, GF, KX, KE, QX, RS, RE, UX, TX, TE, XX, XE, or XD.

(s) *Item 15—Kind of action (2 positions).* Enter the numeric code from the following lists that identifies in general terms the kind of procurement and the action taken to initiate it:

Code	Kind of action
New Contracts/Grants/Orders:	
01	New letter contract.
03	New basic contract. New procurements, when the first binding document contains all the agreement's terms and conditions.
05	Intragovernmental. Orders issued to other Federal agencies.
06	Grant.
21	Cooperative agreement or Space Act agreement.
23	Order under Mandatory GSA–FSS. See FAR 8.404.
24	Order under optional (non-mandatory) GSA–FSS. See FAR 8.404–2.
25	Order under indefinite-delivery contract (IDC) (other than reporting center's).
26	Order under BOA (other than reporting center's).
Modifications To Existing Contracts:	
07	New-work modification. Modifications that add a new procurement to existing contracts. New procurement, for the purpose of this report, means a modification action that usually requires the preparation of a Justification for Other than Full and Open Competition (see FAR 6.303).
08	Supplemental agreement. Bilateral, definitized modifications except those covered by code 10 below.
09	Change order. Change orders issued pursuant to the changes clause of the contract.
10	Supplemental agreement definitizing change order.
11	Administrative/incremental funding. This code should be used for administrative changes (such as novation agreements) as well as for incremental funding modifications.
12	Termination for default.
13	Termination for convenience.
14	Definitizing letter contract.
15	Exercising priced option.
16	Order under reporting center's indefinite delivery contract (IDC).
17	Order under reporting center's BOA.

(t) *Item 15a—Center kind of action (2 positions).* Enter the numeric code, if applicable, from the following list that further identifies the kind of action reported in item 15:

Code	Center kind of action
14	Small purchase.
50	Basic ordering agreement (BOA).
52	Indefinite delivery type contract.
53	Basic ordering agreement modification.
54	Task order modification.
60	Blanket purchasing agreement (BPA).
61	Call against BPA.
99	Closing modification.

Leave this item blank if none of the above choices are descriptive of the action being reported. The information provided in this item is used in the generation of Procurement Management Data Reports (PMDR).

(u) *Item 16—Contractor type (2 positions).* Enter the appropriate code from the following:

Code	Contractor
Business:	
01	Section 8(a)—disadvantaged. Awards placed through the Small Business Administration with a minority business firm owned and controlled by socially and economically disadvantaged individuals, in accordance with Section 8(a) of the Small Business Act.
03	Disadvantaged direct. Awards placed directly with a minority business firm owned and controlled by socially and economically disadvantaged individuals.
04	Not disadvantaged. Other large or small businesses that are not considered disadvantaged.
Nonprofit organization:	
05	Educational. An educational institution that is not State, Federal, or local-government-owned.
06	Hospital. A hospital that is not State, Federal, or local-government-owned.
08	Other nonprofit. A nonprofit institution or organization that is a corporation, foundation, trust, or institution not organized for profit, and no part of its net earnings is applied to the profit of any private shareholder or individual.
State/local government:	
09	Educational. A State, Federal, or local-government-owned educational institution. (Privately owned educational institutions shall be coded 05.)
10	Hospital. A State, Federal, or local-government-owned hospital. (Privately owned hospitals shall be coded 06.)
12	Other State/local government. Includes State, Federal, or local-government-owned research organizations.

(v) *Item 17—Award Outside U.S.* Enter "L" for an award to a source outside the U.S. Enter "M" for an award to a source inside the U.S., if the principal place of performance will be outside the U.S. When this item is coded "L" or "M," the PPC code entered in item 14 of the NASA Form 507 must be from the "work outside U.S." category of the PPC matrix.

(w) *Item 18—Extent of competition (1 position).* Enter the appropriate code from the following list (except for non-new-work (within-scope) modifications):

Code	Extent of competition
2	Sealed Bid. Award results from acceptance of a bid in response to a formal invitation for bids or from sealed bidding following an evaluation of technical proposals (two-step sealed bidding). (See FAR part 14.)
3	Competed action—SEB. Competitive offers are solicited from more than one responsible offeror capable of satisfying the Government's requirements wholly or partially; award is based on price, design, or technical competition; and Source Evaluation Board (SEB) procedures are used to evaluate the proposals (see FAR 15.506–2). This code shall also be used if Architect-Engineer Selection Board procedures are used (see FAR 36.603–2).
4	Other competed action. Competitive offers are solicited from more than one responsible offeror capable of satisfying the Government's requirements wholly or partially; award is based on price, design, or technical competition; and Source Evaluation Board procedures are not used to evaluate the proposals.
5	Noncompetitive follow-on to competed action. The procurement is for the continued development or production of a major system or highly specialized equipment, including major components thereof, that is considered available only from the original source, and it is likely that award to any other source would result in (1) substantial duplication of cost to the Government that is not expected to be recovered through competition, or (2) unacceptable delays in fulfilling NASA's requirements (see FAR 6.302–1(b)(2)).
6	Other not competed. Only one offer is solicited and only one offer is received capable of satisfying the Government's requirements wholly or partially; the work involved is not a follow-on procurement reportable under code 5 above. Include awards resulting from unsolicited proposals in this category.

(x) *Item 19—Type of service or product (4 positions).* Enter the code indicating the principal type of effort or end item obtained under the contract. If more than one classification applies to the procurement, enter the one accounting for the largest dollar volume of procurement. Codes have been established to identify research and development (R&D) procurements, service contracts, and supply and equipment contracts. These codes may be found in the FPDS Product and Service Codes manual located in the procurement administrative office at each NASA installation. Information on the most frequently used R&D codes is presented below.

(1) R&D procurement—R&D codes are used for—

(i) All contracts for R&D work, and

(ii) Most, but not all, contracts with educational institutions.

(2) Space R&D (first 3 digits)—If the procurement involves space R&D, use one of the following for the first three digits of the four-position code:

R&D code [1]	Type of R&D procurement
AR1	Aeronautics & space technology.
AR2	Space science & applications.
AR3	Space flight.
AR4	Space operations.
AR6	Space station.
AR7	Commercial programs.
	AR9 Other space.

[1] See subparagraph (aa) (3) of this section.

(3) Space R&D (fourth digit)—If the procurement involves space R&D, use one of the following for the fourth digit of the four position code. The terms in this list are explained in the following subdivisions:

Code	Meaning
1	Basic research.
2	Applied research and exploratory development.
3	Advanced development.
4	Engineering development.
5	Operational systems development.
6	Management and support.

(i) Basic Research—Includes all scientific effort and experimentation directed toward increasing knowledge and understanding in those fields of the physical, engineering, environmental, social, and life sciences related to long-term national needs. It provides fundamental knowledge ultimately required for the solution of social, economic, political, physical, or military problems. It forms a part of the base for subsequent applied research and exploratory and advanced development in the various disciplines, and new or improved functional capabilities.

(ii) Applied Research and exploratory development—Includes all effort directed toward the solution of specific problems, short of major development projects. This type of effort may vary from fairly fundamental applied research to quite sophisticated breadboard hardware, study, programming, and planning efforts. It thus includes investigations and minor development effort. The dominant characteristic of this category of effort is that it be pointed toward specific problem areas with a view toward developing and evaluating the feasibility and practicability of proposed solutions and determining their parameters.

(iii) Advanced development—Includes all effort directed toward projects which have moved into the development of hardware for test. The prime result of this type of effort is proof of design concept and/or prototype.

(iv) Engineering development—Includes those projects in full-scale engineering development for Government use but which have not yet received approval for production or had production funds included in the budget submission for the current or subsequent fiscal year. This area is characterized by major line-item projects.

(v) Operational systems development—Includes those projects still in full-scale engineering development but which have received

approval for production, or production funds have been included in the budget submission for the current or subsequent

the procurement was not synopsized, except enter "U" if the procurement was not synopsized because of urgency

actions under indefinite-delivery contracts shall be reported the same as the initial contract when the following

be used for ADP procurements, unless the solicitation utilized make-or- model specifications. Use of the multiple-

(11) Code L—Other than full and open competition is entered if the action resulted from use of other than full and

manufactured), water, or other utility services and circumstances dictate that only one supplier can furnish the service

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approval for production, or production funds have been included in the budget submission for the current or subsequent fiscal year.

(vi) Management and support—Includes all effort directed toward support of installations or operations required for general research and development. Included would be construction of a general nature unrelated to specific programs, maintenance support of laboratories, operation and maintenance of test ranges, and maintenance and support of test aircraft, equipment, or ships. Costs of laboratory personnel, either in-house or contractor, would be assigned to appropriate projects or program areas above.

(y) *Item 20—Physically complete (1 position).* Enter "Y" (yes) if the contract is physically complete, i.e., after all articles and services called for under the contract, including such related items as reports, spare parts, and exhibits, have been delivered to and accepted by the Government (see FAR 4.804–4). Also enter the date that the contract is physically completed. Otherwise, this field should be left blank.

(z) *Item 21—Labor surplus area award (1 position).* "Y" or "N" to indicate whether the award is to a concern in a labor surplus area (see FAR subpart 20.1).

(aa) *Item 22—FSS/Indefinite-delivery/ BOA contract no. (15 positions).* Enter the Federal Supply Schedule (FSS), indefinite-delivery, or basic ordering agreement (BOA) contract number under which a delivery order has been placed if Item 15 (Kind of Action) is coded 23, 24, 25, or 26.

(bb) *Item 23—Description of contract/ modification (narrative).* Enter a brief description of the end item or services being procured. For modifications, enter a brief description of the purpose.

(cc) *Item 24—CICA applicability (1 position).* (1) Pre-CICA: Code 1 Enter if the contract action is a new contract resulting from a solicitation issued before April 1, 1985, irrespective of the award date. All within-scope modifications to such contracts and new-work modifications resulting from solicitations issued before April 1, 1985, are to be reported by this code.

(2) Post CICA: Code 2 Enter if the contract action is a new contract resulting from a solicitation issued on or after April 1, 1985. All modifications to such contracts are to be reported by this code.

(dd) *Item 25—Proposed procurement synopsized (1 position).* Enter "Y" if the procurement was synopsized prior to award in the Department of Commerce's Commerce Business Daily. Enter "N" if the procurement was not synopsized, except enter "U" if the procurement was not synopsized because of urgency.

(ee) *Item 26—Contract type (2 positions).* Enter the code that identifies the type of contract from the following list:

Code	Contract type
01	Fixed-Price, Firm (FAR 16.202 and 16.207). (Include Firm Fixed-Price, level-of-effort term contracts in this category.)
02	Fixed-Price, Redetermination (FAR 16.205).
03	Fixed-Price with Economic Price Adjustment (FAR 16.203).
04	Fixed-Price Incentive (FAR 16.204).
05	Cost (No Fee) (FAR 16.302).
06	Cost-Sharing (FAR 16.303). (The estimated cost reported shall include only the Government's share.)
07	Cost-Plus-Fixed-Fee (FAR 16.306).
08	Cost-Plus-Incentive-Fee (FAR 16.404–1).
09	Time-and-Materials (FAR 16.601).
10	Labor-Hour (FAR 16.602).
12	Cost-Plus-Award-Fee (FAR 16.404–2).

(2) Combination contract types shall be reported as follows:

(i) Where the contract has one type of incentive arrangement applying to cost performance and another to technical and/or schedule performance, report the contract type assigned to the cost-incentive feature; e.g., a contract providing a cost-plus-incentive-fee arrangement on cost and an award fee arrangement on technical and/or schedule performance will be reported as "Code 08—Cost-Plus-Incentive-Fee."

(ii) Where one or more items of work are priced exclusively under one of the arrangements coded above, with one or more additional items priced exclusively under another such arrangement, report the contract type in accordance with the code assigned to the arrangement under which the predominate dollar amount will be spent.

(ff) *Item 27—No. or offerors solicited (3 positions).* Enter the number of firms to which soliciations were provided.

(gg) *Item 28—Number of offers received (3 positions).* Enter the actual number of offers received in response to the solicitation.

(hh) *Item 29—Solicitation procedures (1 position).* This item pertains to the requirements of FAR subparts 6.1 (Full and Open Competition), 6.2 (Full and Open Competition After Exclusion of Sources), and 6.3 (Other Than Full and Open Competition), with the exception of the statutory authorities for other than full and open competition (subpart 6.3), which are reported in Item 30. Codes "A" through "L" designate the competition alternatives described in FAR part 6. Delivery-order contract actions under indefinite-delivery contracts shall be reported the same as the initial contract when the following criterion, in FAR 6.001(e), is met: They are orders placed under indefinite-delivery contracts that were entered into pursuant to FAR part 6, and either the contract was awarded under subpart 6.1 or 6.2 and all responsible sources were realistically permitted to compete for the requirements contained in the order, or the contract was awarded under subpart 6.3 and the required justification and approval adequately covers the requirements contained in the order.

(1) Code A—Full and open competition sealed bid is entered when the sealed bidding (see FAR 6.401(a)) method of contracting was used.

(2) Code B—Full and open competition—competitive proposal is entered when the FAR part 15, Contracting by Negotiation, procedures were used for a competitive solicitation.

(3) Code C—Full and open competition—combination is entered when any combination of competitive procedures (e.g., two-step sealed bidding) was used (see FAR 6.102(c)).

(4) Code D—Architect-engineer is entered if the action resulted from selection of sources for architect-engineer (A&E) contracts in accordance with Public Law 92–582 and procedures in FAR subpart 36.6 (see FAR 6.102(d)(1)). The selection of a potential A&E contractor is made by an A&E Evaluation Board conducted in accordance with 41 U.S.C. 541 et seq. This selection process is considered a competitive procedure and shall be reported as a competitive award. When award is an A&E contract and was a result of a small business set-aside or labor surplus area set-aside, use code K in lieu of this code.

(5) Code E—NASA Research Announcement/Announcement of Opportunity is entered if the action resulted from competitive selection of basic research proposals as a result of:

(i) A broad agency announcement (NASA Research Announcement or Announcement of Opportunity) that is general in nature identifying areas of research interest, including criteria for selecting proposals, and soliciting the participation of all offerors capable of satisfying the Government's needs and

(ii) A peer or scientific review (see FAR 6.102(d)(2)).

(6) Code F—Multiple-award schedule is entered if the action is an order issued against a multiple-award schedule using the procedures in FAR 8.405–1 (see FAR 6.102(d)(3)). This code shall be used for multiple-award schedule contracts (mandatory or optional). This code may

be used for ADP procurements, unless the solicitation utilized make-or- model specifications. Use of the multiple-award schedule program is considered to be a competitive procedure because competitive procedures were used by GSA to make the basic multiple-award schedule contract awards under 41 U.S.C. 259(b)(3)(A). For reporting purposes, an order issued against a multiple-award schedule shall be reported as a competitive award.

(7) Code G—Alternate source—reduced cost is entered if the action was taken pursuant to FAR 6.202(a)(1), which states that agencies may exclude a particular source from a contract action in order to establish or maintain an alternative source or sources for the supplies or services being acquired if the agency head determines that to do so would increase or maintain competition and likely result in reduced overall costs for the acquisition, or for any anticipated acquisition of such supplies or services.

(8) Code H—Alternate source—mobilization is entered if the action was taken pursuant to FAR 6.202(a)(2), which states that agencies may exclude a particular source from a contract action in order to establish or maintain an alternative source or sources for the supplies or services being acquired if the agency head determines that to do so would be in the interest of national defense in having a facility (or a producer, manufacturer, or other supplier) available for furnishing the supplies or services in case of a national emergency or industrial mobilization.

(9) Code J—Alternate source—engineering/R&D capability is entered if the action was taken pursuant to FAR 6.202(a)(3), which states that agencies may exclude a particular source from a contract action in order to establish or maintain an alternative source or sources for the supplies or services being acquired if the agency head determines that to do so would be in the interest of national defense in establishing or maintaining an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center.

(10) Code K—Set-asides is entered if the action resulted from use of procedures for set-asides pursuant to FAR 6.203. This includes small business set-asides, labor surplus area set-asides, or combinations thereof. This code also includes contract actions under the Small Business Innovation Research (SBIR) Program established under Public Law 97–219.

(11) Code L—Other than full and open competition is entered if the action resulted from use of other than full and open competition pursuant to 10 U.S.C. 2304(c). The conditions or exceptions permitting contracting without providing for full and open competition are prescribed in FAR 6.302. Enter this code for noncompetitive awards made under the authority of section 8(a) of the Small Business Act (see FAR subpart 19.8). This code shall also be used for all ADP procurements where the solicitation utilized make-and-model specifications.

(ii) *Item 30—Authority for other than full and open competition.* When Item 29 is coded "L," this item must be completed. Enter the applicable code from the categories listed below. This item identifies the solicitation process and not the extent of competition obtained.

(1) Code A—Unique source is entered when the contract action is under 10 U.S.C. 2304(c)(1) and the agency's minimum needs can be satisfied only by unique supplies or services available from only one source or only one supplier with unique capabilities (see FAR 6.302–1(b)(1)).

(2) Code B—Follow-on contract is entered when the contract action is under 10 U.S.C. 2304(c)(1) and it is likely that the award of follow-on contracts must be to the original source because award to any other source would result in:

(i) Substantial duplication of cost to the Government that is not expected to be recovered through competition or

(ii) Unacceptable delays in fulfilling the agency's requirements (see FAR 6.302–1(a)(2)(ii)).

(3) Code C—Unsolicited research proposal is entered when the contract action is under 10 U.S.C. 2304(c)(1) as the result of acceptance of an unsolicited research proposal that demonstrates a unique and innovative concept, the substance of which:

(i) Is not otherwise available to the Government and

(ii) Does not resemble the substance of a pending competitive acquisition (see FAR 6.302–1(a)(2)(i)).

(4) Code D—Patent/data rights is entered when the contract action is under 10 U.S.C. 2304(c)(1) because the existence of limited rights in data, patent rights, copyrights, or secret processes; the control of basic raw material; or similar circumstances make the supplies and services available from only one source (see FAR 6.302–1(b)(2)).

(5) Code E—Utilities is entered when:

(i) The contract action is under 10 U.S.C. 2304(c)(1) when acquiring electric power or energy, gas (natural or manufactured), water, or other utility services and circumstances dictate that only one supplier can furnish the service or

(ii) The contemplated contract is for construction of a part of a utility system and the utility company itself is the only source available to work on the system (see FAR 6.302–1(b)(3)).

(6) Code F—Standardization is entered when the contract action is under 10 U.S.C. 2304(c)(1) because the agency head has determined under the agency's standardization program that only specified makes and models of technical equipment and parts will satisfy the agency's needs for additional units or replacement items and only one source is available (see FAR 6.302–1(b)(4)).

(7) Code G—Only one source—other is entered when the contract action is under 10 U.S.C. 2304(c)(1) to a single source and codes "A" through "F" above do not apply (see FAR 6.302–1(b)).

(8) Code H—Urgency is entered when the contract action is under 10 U.S.C. 2304(c)(2) because:

(i) An unusual and compelling urgency precludes full and open competition and

(ii) Delay in award of a contract would result in serious injury, financial or other, to the Government (see FAR 6.302–2(b)).

(9) Code J—Mobilization is entered when the contract action is under 10 U.S.C. 2304(c)(3) to a particular source or sources in order to maintain a facility, producer, manufacturer, or other supplier available for furnishing supplies or services in case of a national emergency or to achieve industrial mobilization (see FAR 6.302–3(b)(1)).

(10) Code K—Essential R&D capabilities is entered when the contract action is under 10 U.S.C. 2304(c)(3) to a particular source or sources in order to establish or maintain an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center (see FAR 6.302–3(b)(2)).

(11) Code L—International agreement is entered when the contract action is under 10 U.S.C. 2304(c)(4) because full and open competition is precluded by (i) the terms of an international agreement or treaty between the United States and a foreign government or international organization or (ii) the written directions of a foreign government reimbursing the agency for the cost of the acquisition of the supplies or services (see FAR 6.302–4).

(12) Code M—Authorized by statute is entered when the contract action is

under 10 U.S.C. 2304(c)(5) because a statute expressly authorizes or requires that the acquisition be made through

(rr) *Item 39—Subcontracting program plan (1 position).* Enter "Y" (yes) or "N" (no) to indicate whether the contract

products. An entry is required regardless of whether the Buy American Act is invoked or not. If none, enter "0".

business contractor receiving the award as represented by the contractor in response to the solicitation.

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under 10 U.S.C. 2304(c)(5) because a statute expressly authorizes or requires that the acquisition be made through another agency or from a specified source (see FAR 6.302–5(a)(2)(i)). This code should be used for noncompetitive 8(a) awards.

(13) Code N—Authorized resale is entered when the contract action is under 10 U.S.C. 2304(c)(5) for a brand-name commercial item for resale through commissaries or other similar facilities (see FAR 6.302–5(a)(2)(ii)).

(14) Code P—National security is entered when the contract action is under 10 U.S.C. 2304(c)(6) because disclosure of the Government's needs would compromise the national security (see FAR 6.302–6).

(15) Code Q—Public interest is entered when the contract action is under 10 U.S.C. 2304(c)(7) because the agency head has determined that full and open competition is not in the public interest in the particular acquisition concerned (see FAR 6.302–7).

(jj) *Item 31—Labor statutes* (1 position). Enter the appropriate code, in accordance with the provisions of the contract, from the following list:

Code	Statutory requirements
N	Not subject to statutory requirements listed below.
1	Subject to Walsh-Healey Act, manufacturer (FAR 22.606–1).
2	Subject to Walsh-Healey Act, regular dealer (FAR 22.606–2).
3	Subject to Service Contract Act (FAR Subpart 22.10).
4	Subject to Davis-Bacon Act (FAR 22.403–1).

(kk) *Item 32—Standard Industrial Classification (SIC) Code (4 positions).* Enter the code identifying the industry category within which the principal (determined by the predominance of dollars awarded) product produced or distributed or services rendered would best fit. Industry categories are published in the Standard Industrial Classification Manual maintained and issued by the Office of Management and Budget (OMB). A listing of the SIC codes, without the detailed lists of products and services falling within each category, can be found at FAR 19.102(g).

(ll) *Item 33) Contract administration delegated* (1 position). Enter "Y" (yes) or "N" (no) to indicate whether any contract administration functions have been delegated to another Government agency (see FAR Subpart 42.2).

(mm) *Item 34—Preference program.* Report the code that represents the preference program used in making the award. Report Code H if no preference program applies or the preference program is not otherwise listed.

(1) Code A—Directed to sheltered workshops. Report this code for an award to a workshop for the blind or a workshop for the other severely handicapped pursuant to FAR subpart 8.7.

(2) Code B—8(a) Program Report this code for actions with the Small Business Administration pursuant to FAR subpart 19.8.

(3) Code C—Combined labor surplus/small business set-aside. Report this code for a combined labor surplus area and small business set-aside award made to a small business concern pursuant to FAR subpart 19.5.

(4) Code D—Small business set-aside. Report this code for a small business set-aside (including Small Business Innovation Research (SBIR)) award made pursuant to FAR subpart 19.5.

(5) Code E—Labor surplus area set-aside. Report this code for a labor surplus area set-aside award made pursuant to FAR subpart 20.2.

(6) Code F—Tie-bid preference. Report this code for all tie-bid preference awards (see FAR 19.202–3) made pusuant to FAR subpart 19.5.

(7) Code H—No preference program. Report this code if the award is not made pursuant to a preference program, or if the preference program is not listed above.

(nn) *Item 35—Advisory/Assistance services contract* (1 position). Enter "Y" (yes) or "N" (no) to indicate whether the contract is for advisory and assistance services (formerly known as consulting services).

(oo) *Item 36—Support services type contract (1 position).* Enter "Y" (yes) or "N" (no) to indicate whether the contract is for support services. Compare the following explanations with the procurement in question in determining how to code this item:

(1) In-house contract support—(i) Provides a service to the installation; (ii) Is performed on or near the installation; (iii) Is continuous in nature: (iv) Is not provided by the prime product development contractor when the work is for the purpose of fulfilling the prime contract;

(v) Is characterized as that support necessary because of the on- or near-site population and activated facilities (housekeeping maintenance and operation function) and the effort necessary to support the research, development, or test efforts the installation performs in-house; and (vi) Excludes—(A) Construction, alteration, and repair; (B) Purchase and incidental services; (C) Prime product development contracts; (D) Operations support contracts; and (E) Tenants.

(2) Operations support contracts. This is work performed on- or near-site because of the location of major operations facilities. (This is the effort associated with carrying out mission operations; it is done on-site because that is where the supported facility is—a launch pad, mission control center, or tracking station.) Tracking operations support contractors are subdivided as on-site (at or near GSFC or JPL) or off-site.

(i) Operations support contractors are restricted to major national operations facilities and the following foreign and domestic tracking network stations: (A) JPL-Mission Control Center (DSN); (B) Goldstone; (C) Mesa Antenna Range; (D) JSC-Mission Control Center (MSF); (E) GSFC-Mission Control Center (STDN); (F) World-Wide Network Tracking Stations; (G) OTDA-Operations Funded Support; (H) KSC-Launch Complex 39 and related support facilities.

(ii) Operations support includes support funded by STS operations at MSFC, KSC, and JSC.

(3) Purchased and/or incidental services.

(i) Purchased services are those obtained by—(A) Delivery orders against Federal Supply Schedules; (B) Purchase orders; (C) Blanket purchase agreements; or (D) Basic ordering agreements not exceeding $25,000 per order.

(ii) Incidental services are—(A) Described in terms of the labor required to perform the services; (B) Procured from vendors that provide similar services to the local community; (C) Those for which the vendor provides all or a substantial amount of the capital investment required to perform the work under the contract; and (D) Rendered under small contracts generally not exceeding four-to-five staff-years per year.

(pp) *Item 37—Cost Accounting Standards clause (1 position).* Enter "Y" (yes) or "N" (no) to indicate whether the contract contains the Cost Accounting Standards clause (see FAR 30.201–4).

(qq) *Item 38—New technology or patent rights clause (1 position).* Enter "Y" (yes) or "N" (no) to indicate whether a new technology or patent rights clause is included in the contract. (See 1827.373.) A "Y" entry for contracts with small businesses, non-profit organizations, and educational institutions will indicate a patent rights clause. A "Y" entry for contracts with large businesses will indicate a new technology clause.

(rr) *Item 39—Subcontracting program plan (1 position).* Enter "Y" (yes) or "N" (no) to indicate whether the contract contains a subcontract plan requiring the contractor to furnish the information prescribed on Standard Forms 294 and 295 (see 1804.674 and FAR 19.702). Enter "W" (waiver) when there are no subcontracting opportunities, for contracts performed entirely outside the United States, and for GSA Federal Supply Schedule contracts containing plans. Use Code "Y" for corporate plans with individual contract goals.

(ss) *Item 40—SBIR award (1 position).* Enter Code "N" (no) if the contract action is not in support of the Small Business Innovation Research (SBIR) Program (Pub. L. 97–219). Enter Code "1" if the contract action is related to a Phase I contract in support of the program. Enter Code "2" if the contract action is related to a Phase II contract in support of the program.

(tt) *Item 41—Woman-owned small business (1 position).* Enter "Y" (yes) or "N" (no) to indicate whether the business concern is a woman-owned small business (see FAR subpart 19.9).

(uu) *Item 42—Contract for foreign government or international organization.* Enter "Y" (yes) if a foreign government or international organization is bearing any part of the cost of the action. Otherwise, enter "N" (no).

(vv) *Item 43—Management reporting requirements (MRR): correlated cost and performance data reporting (1 position).* Enter one of the following codes (see NHB 9501.2):

Code	Reporting required
N	None required.
2	NASA Form 533M only.
3	NASA Forms 533M and 533Q.
4	NASA Forms 533M and 533P.
5	NASA Forms 533P and 533Q.
6	NASA Forms 533M, 533P, and 533Q.

(ww) *Item 44—Management reporting requirements (MRR): property and space hardware reporting (1 position).* Enter one of the following codes (see FAR 45.505–11):

Code	Reporting required
N	None required.
2	NASA Form 1018, without space hardware.
3	NASA Form 1018, with space hardware.

(xx) *Item 45—Trade data (3 blocks).* (1) First block—number of bidders offering foreign item (1 position). Enter one numeric code (0–9) to indicate the number of firms that offered foreign end products. An entry is required regardless of whether the Buy American Act is invoked or not. If none, enter "0". If 9 or more, enter "9".

(2) Second block—Percent difference (2 positions). If the evaluation factor under the Buy American Act is used and results in an award to a firm offering a domestic product, enter the percentage difference between the award price and that of the low firm offering a foreign end product, computed before application of the Buy American Act differential, i.e., the difference divided by the price of the low firm offering a foreign end product. Enter the percentage as a whole number. If the evaluation factor under the Buy American Act is not used, enter "00".

(3) Third block—Country of manufacturer (2 positions). If the product is manufactured, mined, or grown in the United States (the 50 states and the District of Columbia) or the service is performed by a U.S. contractor, enter "US". If the product is manufactured, mined, or grown in a foreign country, enter the code from FIPS PUB 10–3 of that country/area. In the case of a service, if the service is performed by a foreign contractor, enter the code from FIPS PUB 10–3 of that country/area. This publication may be obtained from the Headquarters Office of Procurement, Procurement Management Division (Code HM).

(yy) *Item 46—Demonstration test program (1 position).* Enter "Y" or "N" to indicate whether the award is a new contract awarded to a U.S. business concern as a result of a solicitation issued on or after January 1, 1989, under the Small Business Competitiveness Demonstration Program (see FAR subpart 19.10 and NFS 18–19.10). This item must be completed for awards to large businesses as well as for awards to small businesses.

(zz) *Item 47—Emerging small business (1 position).* Complete this item only if Item 46 is coded "Y." Enter "Y" or "N" to indicate whether the contractor represents that it is an emerging small business concern (see FAR 19.1002 for definition of emerging small business).

(aaa) *Item 48—Emerging small business reserve award (1 position).* Complete this item only if Item 47 is coded "Y." Enter "Y" or "N" to indicate whether the contract award was reserved for emerging small business concerns.

(bbb) *Item 49—Size of small business (1 position).* Complete this item only if Item 46 is coded "Y" and the award is to a small business. Enter the code that corresponds to the range of the number of employees or the range of the average annual gross revenue for the small business contractor receiving the award as represented by the contractor in response to the solicitation.

(ccc) *Item 50—Effective date.* Enter the year, month, and day (two numerics each) of the contract's effective date.

(ddd) *Item 51—Security code (1 position).* Enter "Y" or "N" to indicate whether Defense Industrial Security clearances are required during contract performance.

(eee) *Item 52—Equipment code (1 position).* Enter "Y" or "N" to indicate whether the contract will involve government furnished or contractor acquired property.

(fff) *Item 53—Administrator code (3 positions).* Enter the code which identifies the individual at the contracting installation responsible for administration of the contract.

(ggg) *Item 54—Contracting officer code (3 positions).* Enter the code which identifies the contracting officer assigned to the contract.

(hhh) *Item 55—Negotiator code (3 positions).* Enter the code which identifies the individual responsible for negotiating the contract.

(iii) *Item 56—COTR name (15 positions).* Enter the name of the Contracting Officer's Technical Representative (COTR) for the contract.

(jjj) *Item 57—Organization code (5 positions).* Enter the organization code for the responsible technical organization for which the contract has been awarded.

(kkk) *Item 58—Contract fund code (1 position).* Enter the appropriate code to indicate whether the contract is fully funded, incrementally funded, or unfunded.

(lll) *Item 59—Reason not small business (2 positions).* Enter the appropriate two digit code to identify the reason the contract was not awarded to a small business concern.

(mmm) *Item 60—Center unique.* This field may be used at the discretion of individual centers to collect data not elsewhere reported on the form (e.g., taxpayer identification numbers). Otherwise leave this item blank.

(nnn) *Item 61—Cancellation date (6 positions).* If it is necessary to cancel a previously executed modification, enter the year, month, and day (two numerics each) of such cancellation.

(ooo) *Item 62—Total contract value including options.* Enter the definitized contract value (including maximum potential fee or profit) plus the value of any options (including maximum potential fee or profit) available in the contract. Round entries to the nearest whole dollar.

(ppp) *Item 63—Estimated cost or fixed price (11 positions).* Enter the estimated

supplies. Redelivery of the gas from the city gate to the NASA facility is

FAR 13.000. This authority is the limit for a single purchase, which may include

PART 1815—CONTRACTING BY NEGOTIATION

PART 1819—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

1832.908 Contract clauses.

(a) When a clause at FAR 52.232–25,

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(ppp) *Item 63—Estimated cost or fixed price (11 positions).* Enter the estimated cost or fixed price for all new awards. For modifications, enter only the increase or decrease effected by the respective modification. For cost-reimbursement contracts, enter the estimated cost, exclusive of fee. For fixed-price contracts, enter the total fixed price, including the negotiated profit. For time-and-materials and labor-hour contracts, enter the total estimated contract price, including profit. Round all entries to the nearest whole dollar. Do not report amounts for priced options that have not been exercised in this field.

(qqq) *Item 64—Fee (11 positions).* This item pertains to cost-reimbursement contracts only. For new awards, enter the definitized negotiated fee, broken down into the types of fee indicatd on the form. For modifications, enter only the increase or decrease effected by the respective modification. For incentive contracts, enter the target fee. For award-fee contracts, enter the base fee, the maximum available award fee. Also enter the total of the different types of fees reported. Round entries to the nearest whole dollar.

(rrr) *Item 65—Action obligation.* Enter the dollar amount obligated (increase or decrease) of the reported action. Report obligations for cost and fee separately and enter the total obligations reported. Round entries to the nearest whole dollar.

(sss) *Item 66—Funded through date (6 positions).* For incrementally funded contracts, enter the date through which the contract is funded.

1804.671–5 [Removed]

8. Section 1804.671–5 is removed.

PART 1808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Subpart 1808.3—[Amended]

6. Section 1808.304–573 is added to read as follows:

1808.304–573 Authorization for procurement of wellhead natural gas.

Acquisition of wellhead natural gas and interstate transportation of the natural gas to locally franchised distribution utility companies' receipt points (city gate) is considered the procurement of supplies rather than the procurement of public utility services described in FAR subpart 8.3. Therefore, wellhead natural gas and interstate transportation of such gas should be obtained directly by NASA under applicable authorities and FAR procedures governing the acquisition of supplies. Redelivery of the gas from the city gate to the NASA facility is considered a utility service since it is provided only by the locally franchised utility. GSA is responsible for obtaining an appropriate contract for the redelivery service in accordance with FAR 8.304.

PART 1813—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

7. Subpart 1813.71 is added to read as follows:

Subpart 1813.71—Credit Cards

1813.7101 Scope of subpart.
1813.7102 Applicability.
1813.7103 Limitations.
1813.7104 Cardholders.
1813.7105 Approving officials.
1813.7106 COTR.
1813.7107 Administrative office contact.

Subpart 1813.71—Credit Cards

1813.7101 Scope of subpart.

This subpart authorizes the use of the U.S. Government Credit Card. (See 1870.4 for NASA procedures under the NASA Credit Card System.)

1813.7102 Applicability.

This subpart applies to installations that have elected to participate in the credit card program by issuing a delivery order under the contract for Governmentwide Commercial Credit Card Service awarded by the General Services Administration, Federal Supply Service.

1813.7103 Limitations.

To use the GSA schedule contract, an installation must take the following actions before issuing a delivery order:

(a) Designate cardholders, approving officials, a Contracting Officer's Technical Representative (COTR), an Administrative Office Contact, and a Financial Management Office Contact.

(b) Establish procedures for covering the contractor's administrative fee.

1813.7104 Cardholders.

(a) *Designation.* The Procurement Officer shall determine the number of cardholders to be authorized at the installation and shall designate individual cardholders based on installation nomination procedures. The Procurement Officer shall issue a delegation of authority to each cardholder specifying the authority being delegated and any limitation on the authority.

(b) *Single purchase limits.* The authority delegated to a cardholder shall not exceed the small purchase limit in FAR 13.000. This authority is the limit for a single purchase, which may include multiple items as part of the same transaction.

(c) *Limitation on designations.* Cardholders with authority for purchases above the imprest fund limit in 1813.404(a) shall be warranted contracting officers appointed under subpart 1801.6.

(d) *Training.* Cardholders with purchase authority above the imprest fund limit shall have completed formal training required by 1801.603–2(e)(1)(iii)(A). The Procurement Officer shall assign a contracting officer or other procurement person to provide eight hours of on-the-job orientation and training for other cardholders.

(e) *Review.* The Procurement Officer shall establish a system for periodic review of the credit card transaction process, including a review of a sample of purchases, to ensure that proper purchasing procedures are being followed and that internal controls to avoid fraud, waste, and abuse are effective.

1813.7105 Approving officials.

Unless installation procedures otherwise provide for their designation, the Procurement Officer shall designate approving officials. The approving official should be the cardholder's supervisor or a higher level individual. A cardholder may not be an approving official for purchases made by the cardholder or the cardholder's supervisor.

1813.7106 COTR.

The Procurement Officer shall appoint a COTR and notify GSA of the appointment.

1813.7107 Administrative office contact.

The Procurement Officer shall appoint an installation Administrative Office Contact (who may be the COTR).

PART 1814—SEALED BIDDING

Subpart 1814.2—[Amended]

9. Sections 1814.202 and 1814.202–7 are added to read as follows:

1814.202 General rules for solicitation of bids.

1814.202–7 Facsimile bids.

Before issuance of the solicitation, NASA procurement officers may, by written determination and without power of redelegation, authorize the use of facsimile bids for individual procurements.

PART 1815—CONTRACTING BY NEGOTIATION

10. Section 1815.402 is added to read:

1815.402 General.

Before issuance of the solicitation, NASA procurement officers may, by written determination and without power of redelegation, authorize the use of facsimile proposals for individual procurements.

1815.805–5 [Amended]

11. In section 1815.805–5, paragraph (e), the citation "1815.805–5(a)(1)" is revised to read "1815.805–5(a)."

1815.904 [Removed]

12. Section 1815.904 is removed.

PART 1817—SPECIAL CONTRACTING METHOD

SUBPART 1817.2—[Amended]

13. Section 1817.200 is revised to read as follows:

1817.200 Scope of subpart.

As authorized at FAR 17.200, FAR subpart 17.2 shall apply to all NASA contracts, unless otherwise stated at 1817.204(a).

14. Section 1817.204(a) is revised to read as follows:

1817.204 Contracts.

(a) The 5-year limitation (basic plus option periods) set forth in FAR 17.204(e) shall apply to all NASA contracts regardless of type, except contracts for automatic data processing (ADP) equipment systems and related software development, maintenance, and services; and contracts for telecommunications equipment and services. In addition to these exclusions, the 5-year limitation is not applicable to contracts for which the time needed to design, manufacture, and deliver the end item of hardware is greater than five years. Deviations from the 5-year limitation policy require that:

(1) The extended years can be reasonably priced, and

(2) A persuasive case (other than resources problems) can be made for exceeding five years.

(Example: Some specific program event will occur at or near the end of the total contract period and a competition and potential change of contractor would be unacceptably disruptive or inefficient, or some other programmatic considerations dictate a longer period.)

* * * * *

PART 1819—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 1819.5—[Amended]

15. Section 1819.501 is revised to read as follows:

1819.501 General.

The Small Business Specialist: (a) May make certain set-aside recommendations; (b) Is responsible for reviewing those procurements not set aside; and (c) Is responsible for taking action in accordance with FAR 19.506(b).

1819.505 [Amended]

16. Section 1819.505, paragraph (a), is amended by removing the citation "(see 1819.501(b))".

PART 1832—CONTRACT FINANCING

Subpart 1832.7—[Amended]

17. In section 1832.702–70, a new paragraph (d) is added to read as follows:

1832.702–70 NASA policy

* * * * *

(d) Waiver of any of the conditions set forth in paragraphs (a), (b), and (c) of this section shall be submitted for approval to the installation procurement officer. Concurrence of the installation Comptroller must be obtained on all requests prior to approval by the procurement officer. The procurement officer shall maintain a record of all such approvals during the fiscal year and submit a summary report to the Headquarters Financial Management Division (Code BFC) by October 31. The report will include: contract number, description and type; dollar value; amount of funds initially available; and the reason(s) for the waiver.

18. Subpart 1832.9 is revised to read as follows:

Subpart 1832.9—Prompt Payment

1832.903 Policy.
1832.908 Contract clauses.
1832.970 Payments to Canadian Commercial Corporation.

Subpart 1832.9—Prompt Payment

1832.903 Policy.

As authorized at FAR 32.903, payments for contracts (other than Fixed-Price Architect-Engineer Contracts, Construction Contracts, and contracts for meats, perishables and dairy products) with the Canadian Commercial Corporation (CCC) shall be made earlier than the standard contract payment due dates.

1832.908 Contract clauses.

(a) When a clause at FAR 52.232–25, 52.232–26 or 52.232–27 is used, the clause at FAR 52.232–26 shall be used as authorized by FAR 32.908(d), modified by deleting the words "and contract number" from paragraph (d). The following paragraph shall be inserted in the clause as (b)(4) in lieu of the FAR paragraph at that location:

(4) The Contractor shall submit a Standard Form 3881 to the installation awarding this contract. If a Standard Form 3881 previously submitted to the installation awarding this contract is still valid, resubmittal is not necessary, unless requested by NASA.

(b) When the clause at FAR 52.232–25, Prompt Payment, is used in contracting with the CCC subject to the conditions at 1832.970—

(1) The number "17" shall be used in lieu of "30" in paragraphs (a)(2)(i) and (a)(2)(ii) of the clause; and

(2) The number "17th" shall be inserted in paragraph (b)(2) of the clause.

1832.970 Payments to Canadian Commercial Corporation.

For contracts with the Canadian Commercial Corporation subject to the policy at 1832.903, as authorized by FAR 32.903, the phrase "the 17th day" shall be used in lieu of "the 30th day" only in FAR Subpart 32.9 at FAR 32.905(a)(1), FAR 32.905(a)(2) and FAR 32.906(a).

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

19. Part 1852 is amended as set forth below:

1852.227–70 [Amended]

a. In the clause of section 1852.227–70, paragraph (b)(1)(i), the citation "(43 U.S.C. 2457(a))" is revised to read "(42 U.S.C. 2457(a))".

b. Section 1852.227–84 is revised to read as follows:

1852.227–84 Patent Rights Clauses.

The contracting officer shall insert the following provision as prescribed in 1827.373(f):

Patent Rights Clauses (December 1989)

This solicitation contains the patent rights clauses of FAR 52.227–11 (as modified by the NFS) and NFS 1852.227–70. If the contract resulting from this solicitation is awarded to a small business or nonprofit organization, the clause at NFS 1852.227–70 shall not apply. If the award is to other than a small business or nonprofit organization, the clause at FAR 52.227–11 shall not apply.

(End of Provision)

1852.250–72 [Amended]

c. In section 1852.250–72 introductory

(i) *NASA Form 667, Report on NASA Subcontracts.* NASA Form 667, prescribed at 1804.672, shall be used by

operational information from numerous sources in a user-oriented document.

Acquisition Regulation (FAR), the NASA FAR Supplement (NFS) and these procedures.

2. Definitions

Management Office, and the COTR. Each approving official shall establish, after coordination with the Administrative Office Contact, a budgetary limit for each

contractor in order to notify the contractor that the card has been received. The contractor is capable of providing various

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1852.250–72 [Amended]

c. In section 1852.250–72 introductory text, the citation "1852.403–3(b)" is revised to read "1852.403–370(b)."

PART 1853—FORMS

Subpart 1853.2—[Amended]

20. Section 1853.204–70 is revised to read as follows:

1853.204–70 General (NASA Forms 507, 507A, 507B, 507G, 507M, 533M, 533P, 533Q, 667, 1098, 1356, 1611, and 1612 and DD Form 1593).

(a) *NASA Form 507, Individual Procurement Action Report (New Awards).* NASA Form 507, prescribed at 1804.671–4, shall be used to provide acquisition records and statistics for new awards.

(b) *NASA Form 507A, Individual Procurement Action Report (New Awards) Supplement A.* NASA Form 507A, prescribed at 1804.671–4, shall be used to provide additional data to that provided on the NASA Form 507 for new awards.

(c) *NASA Form 507B, Individual Procurement Action Report Supplement B.* NASA Form 507B, prescribed at 1804.674, shall be used to provide contract cost, fee, and obligation data for new awards and modifications.

(d) *NASA Form 507G, Individual Procurement Action Report (Grants/Orders).* NASA Form 507G, prescribed at 1804.671–4, shall be used to provide acquisition records and statistics for grants, agreements, intragovernmental awards, and orders against Federal Supply Schedule contracts.

(e) *NASA Form 507M, Individual Procurement Action Report (Modifications).* NASA Form 507M, prescribed at 1804.671–4, shall be used to provide acquisition records and statistics for modifications to contracts, grants, agreements, intragovernmental awards, and orders against Federal Supply Schedule contracts.

(f) *NASA Form 533M, Monthly Contractor Financial Management Report.* NASA Form prescribed at 1804.675, shall be used when financial management reporting is required.

(g) *NASA Form 533P, Monthly Contractor Financial Management Performance Analysis Report.* NASA Form 533P, prescribed at 1804.675, shall be used when monthly performance analysis reports are required.

(h) *NASA Form 533Q, Quarterly Contractor Financial Management Report.* NASA Form 533Q, prescribed at 1804.675, shall be used when quarterly cost projection reports are required.

(i) *NASA Form 667, Report on NASA Subcontracts.* NASA Form 667, prescribed at 1804.672, shall be used by contractors to submit information to NASA on each subcontract or subcontract modification over $10,000.

(j) *NASA Form 1098, Checklist for Contract Award File Content.* NASA Form 1098, prescribed at 1804.803–71, shall be used as a guide in compiling contract files and shall accompany contracts and supplemental agreements submitted to Headquarters for approval.

(k) *NASA Form 1356, C.A.S.E. Report on College and University Projects.* NASA Form 1356, prescribed at 1804.7202, shall be used to report information applicable to colleges and universities.

(l) *NASA Form 1611, Contract Completion Statement.* NASA Form 1611, prescribed at 1804.804–2, shall be used for closeout of contract files by an office other than the one administering the contract.

(m) *NASA Form 1612, Contract Closeout Checklist.* NASA Form 1612, prescribed at 1804.804–5, shall be used for contract closeout when the NASA contracting office retains contract administration.

(n) *DOD Form 1593, Contract Administration Completion Record.* DD Form 1593, prescribed at 1804.804–5, shall be used for closeout when the NASA contracting office retains contract administration.

PART 1870—NASA SUPPLEMENTARY REGULATIONS

21. Subpart 1870.4 is added to read as follows:

Subpart 1870.4—NASA Credit Card System

1870.401 Purpose.
1870.402 System content.
1870.403 NASA procedures for the credit card system.
Appendix I to 1870.403 NASA Procedures for using the Governmentwide Commerical Credit Card Service.

Subpart 1870.4 NASA Credit Card System

1870.401 Purpose.

The NASA credit card system provides a means for using credit cards for small purchases.

1870.402 System content.

(a) The regulations governing the use of credit cards are set forth at 1813.7104.

(b) The system contains specific procedures for use by procurement personnel and by the wide range of individuals who participate in the credit card program. These procedures integrate diverse regulatory and operational information from numerous sources in a user-oriented document.

1870.403 NASA procedures for the credit card system.

(a) Credit card procedures are prescribed by Appendix I to this section 1870.403.

(b) NASA may reprint Appendix I as a separate document, provided the following conditions are met:

(1) The issuance date ("cover date") of the procedures shall be the date of the NASA FAR Supplement version from which the text is extracted.

(2) With the exception of availability, distribution and other special prefatory notices, any subsequent modification in the text shall be preceded by a change to the NASA FAR Supplement 1870.403, Appendix I.

(3) The following notice shall be included in the prefatory material of the Handbook:

Important Notice

These procedures are a separately bound, verbatim version of NASA FAR Supplement (NFS) (48 CFR 1870.403) Section 1870.403, Appendix I. Reference to other parts of the Federal Acquisition Regulation (FAR) and the NFS will be required for complete coverage of all procurement aspects. NASA reserves the right to make changes to NFS 1870.403, Appendix I, without issuing a new edition of these procedures. In the event of apparent conflict between these procedures and the NFS, the NFS shall govern.

Appendix I to 1870.403

NASA Procedures for Using the Governmentwide Commercial Credit Card Service

1. Introduction

(a) At the request of the Office of Management and Budget (OMB), the General Services Administration (GSA), Federal Supply Service (FSS) awarded a single schedule contract (Federal Supply Schedule No. OOCC 6150, Industrial Group 615, IG Class 6153) for Governmentwide commercial credit card service to Rocky Mountain BankCard System, Inc. (contractor). The contract is intended to provide, at the request of federal ordering agencies, Governmentwide commercial credit cards and associated services to civilian and military Government employees for the purpose of paying for purchases made for official Government purposes.

(b) These procedures are designed as the NASA supplement to the "Instructions for the Use of the U.S. Government Credit Card" distributed to the cardholder and "Approving Official Instructions for the Use of the U.S. Government Credit Card" distributed to the approving official at the time the card is issued. In the event these procedures conflict with the instructions provided by the contractor, these procedures take precedent. All purchases that will be paid for using the card shall comply with the Federal

Acquisition Regulation (FAR), the NASA FAR Supplement (NFS) and these procedures.

2. Definitions

(a) *Administrative Office Contact.* The Administrative Office Contact is the focal point appointed by the Procurement Officer for coordination of the applications, issuance and destruction of cards, establishment of reports, and administrative training.

(b) *Approving Official.* The approving official is the person who reviews and approves the cardholder's monthly statement of purchases.

(c) *Cardholder.* The cardholder is the individual to whom a card is issued. The card bears this cardholder's name and may only be used by this individual to pay for authorized U.S. Government purchases.

(d) *Contractor.* The contractor is the organization that will maintain all accounts as required by the General Services Administration contract.

(e) *I.M.P.A.C.* I.M.P.A.C., which is printed on all cards furnished by the contractor, stands for "International Merchant Purchase Authorization Card." These initials will also appear on most forms provided by the contractor.

(f) *Oral Procedure.* Oral procedure means a procedure where an order is placed or a purchase is made through an oral agreement which is made in person or by telephone by providing the card for imprint by the vendor or the card number to the vendor. No written purchase order or contract is issued by the Government. The supplies or services are provided by the vendor and payment is made using the I.M.P.A.C.

(g) *Statement of Account.* The Statement of Account is a monthly listing of all payments authorized for purchase and credits made by the cardholder and billed by the merchant.

3. Responsibilities

(a) *Contractor.* The contractor will issue cards to cardholders and send out monthly statements to cardholders, approving officials, and financial management offices. The contractor will pay merchants in a timely manner and will receive reimbursement from the financial management office of each NASA installation.

(b) *Contracting Officer's Technical Representative (COTR).* The COTR appointed by the Procurement Officer will serve as the liaison between the installation and the contractor. The COTR shall oversee the I.M.P.A.C. program and establish installation guidelines. The COTR shall establish authorization codes for controlling purchases. Changes to dollar limitations or authorized merchant codes must be approved by the COTR.

(c) *Cardholder.* Each cardholder is to reconcile his/her monthly statement and forward the reconciled statement to his/her approving official. Detailed instructions are included in paragraph 12 and in the cardholder instructional pamphlet, "Instructions for the Use of the U.S. Government Credit Card," issued by the contractor.

(d) *Approving Official.* The approving official will review the cardholder's monthly statement and serve as liaison with the Administrative Office Contact, the Financial Management Office, and the COTR. Each approving official shall establish, after coordination with the Administrative Office Contact, a budgetary limit for each cardholder's monthly purchases. The approving official will certify the cardholder's monthly statements and ensure that payments are for purchases which are authorized and made in accordance with FAR and NFS. Detailed instructions are included in paragraph 12 and in the approving official's instructional pamphlet, "Approving Official Instructions for Use of the U.S. Government credit card," issued by the contractor. The approving official will also assist the cardholder in resolving disputed payments. The approving official has authority to direct the COTR to instruct the contractor to cancel a card at any time.

(e) *Administrative Office Contact.* The Administrative Office Contact shall establish a budgetary limit for each office that does not exceed the sum of the approving official's cardholders' monthly purchase limits. The Administrative Office Contact, in conjunction with the COTR, shall coordinate, process and monitor resolution of all disputed purchases, credits or billing errors, unless the Procurement Officer designates another individual or office to perform this function.

(f) *Financial Management Office Contact.* The Financial Management Office Contact shall answer the contractor's questions about payment of monthly statements.

4. Use of the I.M.P.A.C.

(a) The I.M.P.A.C. may be used to pay for small purchases made in accordance with part 13 of the FAR and the NFS. It may also be used to pay for orders placed against established requirements contracts or with established sources of supply (see FAR part 8), when authorized by the contract or regulation requiring use of the source. However, installation stocks/inventories must be checked for availability prior to credit card purchase.

(b) The I.M.P.A.C. can be used to pay for supplies or services acquired using oral solicitation procedures. It may also be used to pay for supplies or services that are acquired through a purchase order or an individual order under a requirements contract where the contract specifically allows such payment method. Without exception, the I.M.P.A.C. may only be used to pay for authorized U.S. Government purchases.

(c) Under no circumstances will the I.M.P.A.C. be used for cash advances.

5. Setting Up the I.M.P.A.C. Account

The contractor will provide the Administrative Office Contact with all the necessary application forms (cardholder, approving official, disputes, destruction notice etc.). The Administrative Office Contact will distribute the forms to the selected cardholders and approving officials for completion. Upon completion, the Administrative Office Contact shall process and forward the forms to the contractor. The card will be mailed to the cardholder within ten working days after the application is received by the contractor. When the cardholder receives the card, he/she must immediately return the enclosed notice to the contractor in order to notify the contractor that the card has been received. The contractor is capable of providing various reports to meet management and administrative needs. During the account setup process, the Administrative Office Contact will discuss the various reports available with management personnel and submit requirements to the COTR.

6. Signature Cards

When the account information is submitted to the Administrative Office Contact, a signature card must be completed by each approving official that states the approving official may approve the accuracy of the Statement of Account for payment. The signature card will be forwarded to the appropriate financial management office after completion. An alternate approving official must be designated to avoid statement processing delays and late payment penalties.

7. Dollar Limits Associated With the Card

Use of the credit card by a cardholder is subject to a single purchase limit, a monthly cardholder limit and a monthly office limit. The purpose of these dollar limits is as follows:

(a) *Single Purchase Limit.* The single purchase limit is a limitation on the procurement authority delegated to the cardholder. This limit cannot be exceeded unless a revised delegation of authority is issued by the Procurement Officer raising the limit. A "single purchase" using the card may include multiple items. However, no single purchases may exceed the authorized single purchase limit established for each cardholder. The application for the cardholder will be completed in accordance with the Purchase Limit Matrix in the Federal Supply Schedule contract.

(b) *Monthly Cardholder Limit.* The monthly cardholder limit is a budgetary limit assigned by the approving official. The approving official shall coordinate with the Administrative Office Contact when determining a monthly limit. The total dollar value of purchases when using the card for any single month may not exceed the monthly purchase limit set by the approving official.

(c) *Monthly Office Limit.* The monthly office limit is a budgetary limit established by the Administrative Office Contact and shall not exceed the sum of the approving official's cardholders' monthly purchase limit and should reflect spending history as well as budgetary trends. The total dollar value of purchases using the card shall not exceed the monthly office limit.

8. Administrative Fee

The monthly statement to each cardholder by the contractor will include an administrative fee which is calculated as a fixed percentage of the total dollar value of purchases. Each installation financial management office shall implement procedures to ensure funds to cover the monthly administrative fee are available.

9. Authorized Use of the Card

(a) The unique I.M.P.A.C. VISA card that the cardholder receives has his/her name

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embossed upon it and may be used only by that cardholder. No other person is authorized to use the card. The card was specially designed showing the great seal of the U.S. and "United States of America" imprinted upon it to avoid being mistaken for a personal credit card.

(b) When issuing this card to an employee, authorization codes will be established by the COTR and the Administrative Office Contact and will be incorporated in the card. Under normal circumstances, merchants are required to obtain authorization from the contractor for purchases over $50.00. However, many merchants now use electronic authorization methods allowing them to obtain authorization for all purchases regardless of amount. When authorization is sought for a purchase by the merchant, the the contractor authorization system will electronically check each individual cardholder's single purchase and monthly limits, the monthly office limit, and the type of merchant where the cardholder is making the purchase before authorization for the transaction will be granted.

(c) Use of the card must meet the following conditions:

(1) The total of a single purchase to be paid for using the card may be comprised of multiple items and cannot exceed the authorized single purchase limit. Purchases will be denied if the authorized single purchase limit is exceeded. Payment for purchases may not be split in order to stay within the single purchase limit.

(2) All items purchased over the counter to be paid for using the card must be immediately available. No back-ordering is allowed.

(3) All items purchased by a telephone order that will not be confirmed with a written order and be paid for using the card should generally be delivered by the merchant within the 30-day billing cycle. However, a longer period (up to 120 days for delivery) may be utilized by the installations. If the longer period is elected, installation procedures need to be established for proper reconciliation of the monthly bills, allowing for the carrying forward of items ordered but not received.

(4) All items purchased during one telephone transaction that will not be confirmed by a written order should generally be delivered in a single delivery. If an installation elects to allow partial deliveries, installation procedures must be implemented to ensure proper reconciliation of all such orders.

(5) All accountable personal property items pruchased and paid for using the car must have the input and concurrence of the Supply and Equipment Management Officer; the NASA Equipment Management System (NEMS) must be screened prior to purchase; and, the items purchased must be processed through the installation receiving function so the proper tagging can be done and the required accountability established. (See NHB 4200.1.)

(6) When purchasing items by phone or over the counter, the cardholder should inform the merchant that the purchase is for official U.S. Government purposes and therefore is not subject to state or local tax. The card will be imprinted with "US Govt Tax Exempt" for additional clarification.

(7) Prior to use of the card for an individual purchase, funds must be certified as available by an authorized individual within the installation Financial Management Office.

10. Unauthorized Use of the Card

(a) The card must not be used for the following: (1) Cash advances; (2) Rental or lease of motor vehicles; (3) Rental or lease of land or buildings; (4) Purchase of airline, bus, train, or other travel related tickets; (5) Purchase of meals, drinks, lodging, or other travel or subsistence costs; (6) Purchase of gasoline or oil for Interagency Fleet Management automotive vehicles; (7) Repair of Interagency Fleet Management automotive vehicles; and (8) Purchases of telecommunications and telephone equipment.

(b) Purchases of the following items are specifically governed by the FAR and NFS. Compliance with the applicable regulations is required when purchasing these items. (1) Non-expendable property; (2) Janitorial, yard and maintenance services, other than repair services; (3) Personal clothing or footwear, except emergency situations when required for safety; (4) Printing or copying services; (5) Telephone calls.

11. Acquisition Procedures for Use When Paying With the I.M.P.A.C.

(a) *General.* When making purchases that will be paid for using the I.M.P.A.C., all the applicable acquisition regulations apply. Regardless of whether the open market purchase is made using oral procedures or using a written purchase order or contract, the cardholder must:

(1) Ensure that funds are available and certified to pay for the items being purchased. A funded Purchase Request (PR) shall support each credit card purchase. The PR may be bulk funded.

(2) Reserve small purchases for small business in accordance with Public Law 95-507 (FAR 13.105).

(A) The Law provides that each acquisition of supplies or services which has an anticipated value of $25,000 or less and which is subject to small purchase procedures shall be reserved exclusively for small business concerns. Therefore, when offers are solicited, they should be from small business concerns only, unless the contracting officer (cardholder) makes a written determination that there is no reasonable expectation of obtaining quotations from two or more responsible small business concerns (one, if the purchase does not exceed $1,000) that will be competitive in terms of market price, quality, and delivery. If the purchase is not made from small business, the contracting officer must document the reason for not purchasing from a small business concern.

(B) The requirement for purchasing from small business does not waive the requirement to make purchases from required sources of supply or mandatory Federal Supply Schedules (FAR part 8).

(3) Solicit competition for purchases in accordance with FAR 13.106.

(A) Oral solicitations should be used whenever possible. Written solicitations are mandatory under the FAR when purchasing construction work over $2,000. In addition, written solicitations should be used when purchasing services which are subject to Service Contract Act wage determinations.

(B) The FAR recommends that written solicitations be used when (i) a large number of line items are included in a single proposed acquisition, (ii) obtaining oral quotations is not considered economical or practical, (iii) special specifications are required because items or services cannot be easily explained or (iv) suppliers are located outside the local trade area (there may be instances, however, where it is appropriate to use the cards for purchases outside the local trade area).

(C) Purchases not in excess of $1,000 may be accomplished without securing competition if the contracting officer considers the prices to be reasonable. These purchases are to be distributed equitably among qualified suppliers. If practical, other than the previous supplier should be solicited when placing repeat orders.

(D) A reasonable number of sources must be solicited (at least three) for purchases over $1,000. If practical, two of these sources shall not have been previously solicited. If suppliers furnish standing price quotations or catalog prices on a recurring basis, verifying the quotations or prices for individual purchases is not necessary, but the prices should be periodically confirmed as current. When determining the number of sources to solicit, consider (i) the nature of the item or service to be purchased and whether it is highly competitive, (ii) information from recent purchases of the same or similar item or service, (iii) the urgency of the purchase, (iv) the dollar value of the purchase, and (v) past experience concerning dealers' prices.

(4) Document the record regarding competition and reasonableness of price as required by FAR 13.106(c). FAR 13.100(a)(4) cites two instances when action must be taken to verify price reasonableness of purchases not exceeding $1,000: (1) The contracting officer suspects or has information to indicate the price may not be reasonable or (2) when purchasing an item for which no comparable pricing information is available. The file must contain an explanation of how price reasonableness was determined in those instances.

(5) Purchase only domestic end products, except as provided in FAR subpart 25.1. The Buy American Act requires that only domestic end products be procured unless (A) the products or materials are for use outside the United States; (B) the cost is unreasonable as determined in accordance with FAR 25.105; (C) the agency head determines that domestic preferences would be inconsistent with the public's interest; or (D) the products or materials are not mined, produced, or manufactured in the United States in sufficient commercial quantities or of a satisfactory quality.

(b) *Oral purchase procedures.* (1) Oral procedures may be used to acquire supplies or services that can be described in sufficient detail so that the parties to the agreement have a clear understanding of what is being acquired; and a purchase order or contract is not required by either the supplier or the Government.

(2) When placing a telephone order to be paid using the I.M.P.A.C., the cardholder will:

(A) Notify the vendor that the purchase is tax exempt.

(B) Confirm that the vendor is aware of all required Government terms and conditions.

(C) Confirm that the vendor agrees to charge the credit card when shipment is made so that receipt of the supplies may be certified on the monthly Statement of Account.

(D) Instruct the vendor to include the following information with the shipping documents or packing slip: (i) Cardholder name and mail code; (ii) Building number, room number, street address, city and state; (iii) Cardholder telephone number; (iv) The term: Credit Card; (v) Purchase Request or Purchase Order Number.

(3) This information will alert the receiving offices and the requisitioner that the supplies have been purchased with the credit card.

(4) A log should be used to document or record telephone credit card orders under $1,000 when competitive quotes are not solicited. If competitive quotes are solicited for purchases under $1,000, or if the purchase exceeds $1,000 and therefore requires competition, the record shall be documented. The documentation should be held until the monthly billing statement is received and then attached to the statement when it is submitted to the approving official.

(c) *Purchases requiring the issuance of a written order or contract.* If the I.M.P.A.C. is used to pay for a purchase made by using one of the purchase order or contract forms, the vendor should be provided the necessary information from the card orally, either in person or by telephone, and the statement "Payment to be made by credit card" should be inserted on the form. Do not include specific information from the card on the purchase order. If the vendor requires an order, an authorized installation form may be used. The vendor is given its copy of the purchase order and the contracting officer (cardholder) maintains a copy.

12. Documentation, Reconciliation and Payment Procedures

(a) Any time a purchase is made that will be paid using the card, whether it is done over the counter or by telephone, a document must be retained as proof of purchase. These documents will later be used to verify the purchases shown on the cardholder monthly statement.

(1) When a purchase is made over the counter, the cardholder is to obtain a customer copy of the charge slip, which will become the accountable document (make sure all carbons are destroyed).

(2) When making purchases by phone, the cardholder is to document the transaction on a log, annotate the PR, and attach any shipping documents associated with the order.

(b) The contractor will provide and distribute three monthly statements within five working days after the end of the 30-day billing cycle.

(1) Cardholder—will receive a statement showing all purchases, credits and other data on transactions the cardholder has made in the 30-day billing cycle.

(2) Approving official—will receive a copy of all cardholder statements for which he/she has approving authority and a summary sheet for these statements.

(3) Financial Management Office—will receive a statement providing summary data by cardholder and approving official.

(c) At the end of each monthly billing cycle, the cardholder must reconcile the information on his/her statement. The cardholder must fill in the appropriate accounting classification in the accounting code block, if not the same as the Master Accounting Code, the organization or individual for whom the purchase was made, and a description, if not provided, for each purchase. The cardholder must then sign the statement, attach all supporting documentation and forward it to the approving official or designated alternate. It is important that the cardholder check each purchase on the statement to verify the accuracy. If an item has been returned and a credit voucher received, the cardholder will verify that the credit is reflected on the statement. If purchased items and credits are not on the next monthly statement, the transaction documentation will be retained by the cardholder until the purchase or credit appears on the statement. If the purchase or credit does not appear on the next monthly statement, the cardholder or approving official must notify the Administrative Office Contact to resolve and reconcile the statement.

(d) If for some reason the cardholder does not have documentation of the transaction to send with the statement, he/she must attach an explanation that includes a description of the item, date of purchase, merchant's name and why there is not supporting documentation.

(e) The cardholder must sign the monthly statement and forward it to the approving official within five working days of receipt. If the cardholder cannot review the statement at the time that it is received, the approving official is responsible for reviewing and certifying the cardholder's statement. The approving official will go over the cardholder's statement with the cardholder upon his/her return.

(f) The approving official is responsible for the following: (1) Supplying the appropriate financial management office with the date services provided by the contractor were received and the date services were accepted. The date services were received will be the last day of the monthly billing cycle for the contractor. The date services were accepted will be the date the approving official signs the reverse side of the statement of account. If the approving official takes more than seven calendar days to accept the services, acceptance (for determining payment due date for compliance with prompt payment regulations only) will be deemed to occur seven calendar days after receipt of the services. If any purchased items have not been received or accepted by the time the statement is received, the items should be disputed using the procedures in paragraph 13, in order to prevent payment delays. It is critical that this information be supplied in order to avoid late payment penalties; (2) Certifying and signing monthly cardholder-signed statements and summary statements; (3) Forwarding signed cardholder statements and finance copies of receiving reports and supporting documents to the financial management office for payment; (4) Forwarding monthly summary statements, and the cardholder statements to the appropriate financial management office in time to be received within 15 working days of receipt by the approving official to avoid late payment penalties; (5) Retaining copies of summary statements and fund certification, solicitation and award documentation as supporting documentation on purchases. Records retention and disposition procedures in FAR 4.805 should be followed for documentation of purchases paid for using the credit card.

13. Billing Errors and Disputes

(a) If a cardholder receives a statement that lists a transaction for merchandise that has not been received, or a transaction which includes a sales tax, the cardholder (or the approving official) must notify the Administrative Office Contact and complete the Cardholder Questioned Item form. The contractor will credit the transaction until the dispute is resolved. In addition, a copy of the form must be attached to the cardholder's monthly statement and sent to the appropriate financial management office.

(b) If items purchased with the card are found to be defective, the cardholder has the responsibility to obtain replacement or correction of the item as soon as possible. If the merchant refuses to replace or correct the faulty item, then the purchase of the item will be considered in dispute. Items in dispute are handled in the same manner as billing errors.

14. Contact With the Contractor

The contractor should be contacted only to report a LOST OR STOLEN card. All other questions should be directed to the installation points of contact referenced in these procedures. Telephone numbers are listed in paragraph 15.

15. Lost or Stolen Cards

(a) If the card is lost or stolen, it is important that the cardholder immediately notify Rocky Mountain BankCard System, Inc., at the following numbers:

(1) During business hours, Monday-Friday (8:00 AM-4:30 PM (MST))

(A) Outside Colorado—1-800-525-3717 x3900

(B) In Colorado—1-303-629-5678

(C) Outside Continental U.S.—303-629-5678

(2) After business hours and weekends (MST)

(A) Outside Colorado—1-800-525-5093

(B) In Colorado—1-800-332-9640

(b) The cardholder must also notify the approving official of the lost or stolen card within one workday after discovering the card missing.

(c) The approving official will subit a written report through the Administrative Office Contact to the Contracting Officer's Technical Representative within five workdays.

(d) The report will include: (1) The card number; (2) The cardholder's complete name; (3) The date and location of the loss; (4) If stolen, date reported to police; (5) Date and time the contractor was notified; (6) Any purchase(s) made on the day the card was

ACTION: Final rules.

SUMMARY: The Commission has revised

affect significantly either the quality of the human environment or the conservation of energy resources.

times for particular portions of the licensing application, the composite effect of these adjustments to the

PART 1160—RULES GOVERNING APPLICATIONS FOR OPERATING AUTHORITY

Subpart A—How to Apply for Operating Authority

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stolen, date reported to police; (5) Date and time the contractor was notified; (6) Any purchase(s) made on the day the card was lost/stolen; (7) Any other pertinent information.

(e) A new card will be mailed within two business days of the reported loss or theft. A card that is subsequently found by the cardholder after being reported lost or stolen will be cut in half and given to his/her approving official. The approving official will complete the destruction notice and forward the notice to the Administrative Office Contact.

16. Card Security

It is the cardholder's responsibility to safeguard the credit card and account number at all times. The cardholder must not allow anyone to use his/her card or account number. A violation of this trust will require that the card be withdrawn from the cardholder with the possibility of subsequent disciplinary action.

17. Separation of Cardholder

Upon separation of a cardholder, the cardholder must surrender the card to his/her approving official who will complete the destruction notice and forward the notice to the Administrative Office Contact.

18. Transfer of Cardholder to Another Approving Official

If a cardholder is transferred to another office with a different approving official, the new approving official must determine if the employee will be a cardholder within his/her office. If it is determined that the card should be kept by the cardholder, the master file can be changed by requesting, in writing, that the Administrative Office Contact have the contractor add the cardholder to the new approving official's responsibility and delete him/her from the old file without issuing a new card.

19. Unauthorized Purchases or Careless Use of the I.M.P.A.C.

(a) A cardholder who makes unauthorized purchases or carelessly uses the card may be liable to NASA for the total dollar amount of unauthorized purchases made in connection with the misuse or negligence. Also, the cardholder may be subjected to disciplinary action for unauthorized or careless use.

(b) NASA will be liable for the use of I.M.P.A.C.s by authorized users (cardholders).

[FR Doc. 89-29907 Filed 12-28-89; 8:45 am]
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INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1003, 1160, 1162 and 1168

[Ex Parte No. 55 (Sub-No. 69)]

RIN 3120-AB57

Applications for Operating Authority; Revision of Form OP-1

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Commission has revised significantly the general licensing application form (Form OP-1) and has adopted corresponding revisions in its regulations governing licensing procedures at 49 CFR parts 1160, 1162, and 1168 and the list of forms at 49 CFR part 1003. The revised OP-1 form integrates the information previously required in and supersedes:

(1) Form OP-1 (Revised 12/83) used by applicants for motor and water carrier, property broker, and household goods freight forwarder authority; and

(2) Form OCCA-95 used by applicants for emergency temporary and temporary operating authority.

The form and corresponding licensing regulations also gather necessary information concerning such matters as an applicant's domicile, safety fitness profile, and ownership or control relationships at an initial phase of the licensing process. This will permit a more consistent and unified evaluation of the applicant's fitness to hold operating authority.

Cumulatively, the form and rule revisions adopted here will simplify and unify the temporary and permanent authority licensing processes, minimize the application filing burdens on applicants, and, in turn, create a more efficient application process for the public, as well as the Commission. The notice of proposed rulemaking was published in the **Federal Register** on May 15, 1989 at 54 FR 20879.

EFFECTIVE DATE: The rules and revised application form will become effective April 28, 1990.

FOR FURTHER INFORMATION CONTACT: Suzanne H. O'Malley (202) 275-7292, or Richard B. Felder (202) 275-7691. [TDD for hearing impaired: (202) 275-1721.]

SUPPLEMENTARY INFORMATION: The revised regulations governing the licensing application process are set forth below. Instructions for completing the revised Form OP-1 are set forth at Appendix A. The new form appears at Appendix B.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 275-1721.]

Environmental and Energy Considerations

Adoption of the amended rules and the revised application form will not affect significantly either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

The Commission certifies that the adopted rules will have a significant positive economic impact on a substantial number of small entities. The public comments ratify our preliminary conclusion that the unified and simplified application procedures, as well as the comprehensive accompanying instructions, will reduce significantly the time required to prepare and process licensing requests. Small entities involved in the licensing process—particularly new entrants and individual owner-operators—will benefit directly from the reduced completion and processing time, the elimination of redundant evidentiary requirements, and the overall simplification of pre-licensing procedures. Such entities also will benefit indirectly, but very measurably, from the administrative streamlining of the application process that will permit the Commission to expedite licensing requests.

We, therefore, conclude that the revised application form and corresponding rules will have a significant positive impact on a substantial number of small carrier applicants, as well as upon applicants generally, and will ensure that the Commission's licensing process can be more readily responsive to the service needs of small shipping concerns and consumers. This action will not impose additional reporting, recordkeeping, or compliance requirements upon small entities. Nor will the rules adopted here duplicate, overlap, or conflict with any existing Federal rule.

Paperwork Reduction Analysis

In the notice of proposed rulemaking, 54 FR 20879, 20880 (May 15, 1989), we estimated that an average of 4 burden hours would be required to complete the revised licensing application. This estimate takes into account the time required for reviewing the regulations and accompanying instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collected. None of the comments addresses the accuracy of this burden hour estimate or provides recommendations for reducing the burden hours. Although some of the revisions to the proposed form and accompanying instructions that have been integrated into the final document may incrementally alter the response times for particular portions of the licensing application, the composite effect of these adjustments to the licensing package does not warrant a revision of our prior burden hours estimate for preparing an application.

List of Subjects

49 CFR Part 1003

Brokers, Freight forwarders, Insurance, Maritime carriers, Motor carriers, Securities, Surety bonds.

49 CFR Part 1160

Administrative practice and procedure, Buses, Freight forwarders, Maritime carriers, Motor carriers.

49 CFR Part 1162

Administrative practice and procedure, Maritime carriers, Motor carriers.

49 CFR Part 1168

Administrative practice and procedure, Buses.

Decided: November 29, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Lamboley, Phillips, and Emmett.

Kathleen M. King,
Acting Secretary.

For the reasons set forth in the preamble Title 49, Chapter X, parts 1003, 1160, 1162 and 1168 of the Code of Federal Regulations are amended as follows:

PART 1003—LIST OF FORMS

1. The authority citation for part 1003 continues to read as follows:

Authority: 5 U.S.C. 551(a), 5 U.S.C. 553(1)(c), and 49 U.S.C. 10321.

2. The entry for "OP-1 (Rev. 12/83)" in § 1003.2 is revised to read as follows:

§ 1003.2 Motor and water carrier, broker and household goods freight forwarder forms.

* * * * *

OP-1 (Rev. 12/89).

Interstate Commerce Commission Authority Application.

Cross Reference: 49 CFR parts 1160 and 1162.

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3. The entry for "OCCA-95 (Rev. 8/84)" in § 1003.2 is removed.

4. Part 1160 is revised to read as follows:

PART 1160—RULES GOVERNING APPLICATIONS FOR OPERATING AUTHORITY

Subpart A—How to Apply for Operating Authority

Sec.
1160.1 Applications governed by these rules.
1160.2 Procedures used generally.
1160.3 Starting the application process: Form OP-1.
1160.4 Types of applications.
1160.5 Commission review of the application.
1160.6 Appeals to rejections of the application.
1160.7 Changing the request for authority or filing supplementary evidence after the application is filed.
1160.8 After publication in the ICC Register.
1160.9 Obtaining a copy of the application package.
1160.10 Opposed applications.
1160.11 Filing a reply statement.
1160.12 After all statements are submitted.
1160.13 Applicant withdrawal.
1160.14 Household goods freight forwarder applicants only.
1160.15 Water carrier applicants only.
1160.16 Passenger carrier applicants only.
1160.17 Motor property "fitness" applicants only.
1160.18 Applicability of oath.

Subpart B—How to Oppose Requests for Authority

1160.40 Definitions.
1160.41 Time for filing.
1160.42 Contents of the protest.
1160.43 Protestant qualifications information—all protestants.
1160.44 Factual evidence format for protests in property and passenger fitness applications.
1160.45 Factual evidence format for passenger public interest applications.
1160.46 Protestant's rebuttal—passenger public interest applications only.
1160.47 Factual evidence format for protests in intrastate passenger applications under 49 U.S.C. 10922(c)(2)(A).
1160.48 Protestant's rebuttal—intrastate passenger applications under 49 U.S.C. 10922(c)(2)(A) only.
1160.49 Factual evidence format (except fitness only, passenger public interest, and passenger intrastate applications).

Subpart C—General Rules Governing the Application Process

1160.60 Applicable rules.
1160.61 Contacting another party.
1160.62 Serving copies of pleadings.
1160.63 Replies to motions.
1160.64 Requesting oral hearing.
1160.65 Consolidation of applications.
1160.66 Petition to clarify or interpret formally an operating authority.
1160.67 Withdrawal.

Authority: 49 U.S.C. 10101, 10305, 10321, 10921, 10922, 10923, 10924, 10928, and 11102; 5 U.S.C. 553 and 559; 16 U.S.C. 1458.

Subpart A—How to Apply for Operating Authority

§ 1160.1 Applications governed by these rules.

These rules govern the handling of applications for operating authority of the following type:

(a) Applications for certificates and permits to operate as a motor common or contract carrier of property or passengers.

(b) Applications for permits to operate as a household goods freight forwarder.

(c) Applications for certificates, permits, and exemptions for water carrier transportation of property and passengers.

(d) Applications for licenses to operate as a broker of motor vehicle transportation.

(e) Applications to remove operating restrictions from motor property and passenger carrier authorities.

(f) Applications for certificates under 49 U.S.C. 10922(c)(2)(A) to operate as a motor common carrier of passengers in intrastate commerce on a route over which applicant holds interstate authority as of November 19, 1982.

(g) Applications for certificates under 49 U.S.C. 10922(c)(2)(B) to operate as a motor common carrier of passengers in intrastate commerce on a route over which applicant has been granted or will be granted interstate authority after November 19, 1982.

Note: Applications for emergency temporary and temporary motor and water carrier authority are filed on Form OP-1. Rules governing these applications are set forth at parts 1162 and 1163.

§ 1160.2 Procedures used generally.

(a) *Modified procedure.* The Commission will handle licensing application proceedings using the modified procedure, if possible. The applicant and protestants send statements made under oath (verified statements) to each other and to the ICC. There are no personal appearances or formal hearings.

(b) *Oral hearings.* Oral hearings are used infrequently. Either an applicant or a protestant may request oral hearing at any time during the proceeding, using the procedures set forth at § 1160.64.

Note: Intrastate passenger applications under 49 U.S.C. 10922(c)(2)(A) will be decided on the basis of the written record. There will not be an opportunity for oral hearing.

§ 1160.3 Starting the application process: Form OP-1.

(a) All applicants shall use Form OP-1 (revised 12/89).

(b) Obtain the form at Commission regional and field offices, or call the

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Office of the Secretary at (202) 275–7428. Additional information concerning the application process and required submissions is available from the Office of Public Assistance at (202) 275–7597.

§ 1160.4 Types of applications.

(a) "Fitness only" applications. Certain types of motor property and passenger applications require only the finding that the applicant is fit, willing and able to perform the involved operations and to comply with all applicable statutory and regulatory provisions. These applications can be opposed only on the grounds that applicant is not fit or does not fall into a fitness-only category of service under the Interstate Commerce Act. These applications are:

(1) Motor common carrier of property transportation to serve any community not regularly served by a certificated motor common carrier.

(2) Motor common carrier of property transportation to provide service as a direct substitute for complete abandonment of all rail service in a community.

(3) Motor common carrier transportation for the United States Government of property (except used household goods, hazardous or secret materials, and sensitive weapons and munitions).

(4) Motor common carrier property transportation of shipments weighing 100 pounds or less if transported in a motor vehicle in which no one package exceeds 100 pounds.

(5) Motor common or contract carrier of property transportation of food and other edible products (including edible byproducts but excluding alcoholic beverages and drugs) intended for human consumption, agriculture limestone and other soil conditioners, and agricultural fertilizers, when the transportation is provided with the owner of the motor vehicle in the vehicle (except in emergency situations). After issuance of the authority, such transportation (measured by tonnage) shall not exceed, on an annual basis, the transportation provided by the motor vehicle (measured by tonnage) which is exempt from the Commission's jurisdiction under 49 U.S.C. 10526(a)(6).

(6) Transportation for the United States Government of used household goods that is incidental to a pack-and-crate service on behalf of the Department of Defense.

(7) Motor carrier brokerage of general commodities (except household goods).

(8) Privately-funded motor common carrier of passengers charter transportation.

(9) Privately-funded motor common carrier of passengers special transportation.

(10) Motor common carrier of passengers authority to serve any community not regularly served by a certificated motor common carrier of passengers.

(11) Motor common carrier of passengers authority to provide service as a direct substitute for abandonment or discontinuance of all rail and commercial-air passenger service in a community.

(12) Motor common carrier of passengers transportation to any community where the only interstate motor common carrier of passengers has applied to discontinue the interstate service under 49 U.S.C. 10925(b) or to reduce intrastate service under 49 U.S.C. 10935 to less than one trip per day (excluding Saturdays and Sundays).

(13) Motor contract carrier of passengers transportation.

(b) Motor passenger "public interest" applications. Certain types of applications require the finding that applicant is fit, willing, and able, and, when protested, whether the transportation to be authorized is not consistent with the public interest. In addition to the grounds listed in § 1160.4(a), a protestant may oppose the application on the grounds that a grant of the application will not be consistent with the public interest. These applications are:

(1) Motor common carrier of passengers transportation provided by an applicant receiving governmental financial assistance for the purchase or operation of buses, or by an applicant that is an operator for such a recipient, except to perform a service described in § 1160.4(a) (10), (11) or (12).

(2) Motor common carrier transportation of passengers over regular routes in interstate or foreign commerce, except to perform a service described in § 1160.4(a) (10), (11) or (12).

(3) Motor common carrier transportation of passengers in intrastate commerce under 49 U.S.C. 10922(c)(2)(B) on regular routes over which applicant has been or will be granted authority in interstate commerce after November 19, 1982.

(c) Intrastate motor passenger applications under 49 U.S.C. 10922(c)(2)(A). Applications filed by motor common carriers of passengers that held authority on November 19, 1982, to provide interstate transportation of passengers on a route over which the carrier now proposes to provide regular-route transportation entirely in one State will be granted a certificate to provide the intrastate transportation if the Commission finds that the carrier is fit, willing, and able to provide the intrastate transportation and to comply with Commission rules and regulations, unless the Commission finds, on the basis of evidence presented by a person objecting to the issuance of the certificate, that the transportation to be authorized would directly compete with a commuter bus operation and would have a significant adverse effect on commuter bus service in the area in which the competing service will be performed. The Commission will take final action upon these applications not later than 90 days after the application is filed with the Commission.

Note: Commuter bus service or operation means short-haul, regularly scheduled passenger service provided by motor vehicle in metropolitan and suburban areas, whether within or across the geographical boundaries of a State, and used primarily by passengers using reduced fare, multiple-ride, or commutation tickets during morning and evening peak periods of operations.

(d) Motor property common carrier applications. These applications require a finding that:

(1) The applicant is fit, willing, and able to provide the involved transportation and to comply with all applicable statutory and regulatory provisions; and

(2) The service proposed will serve a useful public purpose, responsive to a public demand or need.

(e) Water common carrier applications. These applications require a finding that:

(1) The applicant is fit, willing, and able to provide the involved transportation and to comply with all applicable statutory and regulatory provisions; and

(2) The transportation to be provided is or will be required by present or future public convenience and necessity.

(f) Motor and water contract carrier, household goods property broker, and household goods freight forwarder applications. These applications require a finding that:

(1) The applicant is fit, willing, and able to provide the involved transportation and to comply with all applicable statutory and regulatory provisions; and

(2) The transportation to be provided will be consistent with the public interest and the national transportation policy of 49 U.S.C. 10101.

§ 1160.5 Commission review of the application.

(a) ICC staff will review the application for correctness, completeness, and for adequacy of the evidence (the *prima facie* case).

(1) Minor errors will be corrected without notification to the applicant.

(2) Materially incomplete applications will be rejected. Applications that are in substantial compliance with these rules may be accepted.

(3) All motor carrier applications will be reviewed for consistency with the Commission's operational safety fitness policy as set forth in Ex Parte No. 55 (Sub-No. 71), "Notice of Policy and Final Rule Governing Submission and Evaluation of Safety Fitness Evidence in Motor Carrier Licensing Proceedings," 5 I.C.C.2d 94 (1988), as modified in Ex Parte No. 55 (Sub-No. 69), "Rules Governing Applications for Operating Authority—Revision of Form OP–1," 6 I.C.C.2d 208 (1989). Applicants with deficient safety ratings from DOT will have their applications rejected in a letter notice and their filing fees returned.

(4) An employee board of the Commission appointed under § 1011.6(k) will review completed applications that are in conformance with the Commission's safety fitness policy. The entire Commission will review motor property applications filed by applicants that hold a "conditional" safety fitness rating from DOT, that do not seek to transport hazardous commodities, and that present evidence responsive to the Commission's safety fitness policy. The employee board, or in the case of conditionally-rated, non-hazardous motor property applicants, the Commission, determines whether there is adequate evidence to warrant publication of the authority applicant seeks in the *ICC Register* as a preliminary grant. If there is not, the application will be rejected in a letter notice to applicant, without prejudice to refiling once deficiencies have been corrected. Applicants that refile their applications may refer to the docket number and fee stamp number assigned to the prior filing and no additional filing fee will be required. An applicant may appeal rejections as provided under § 1160.6.

(b) A summary of the application will be published as a preliminary grant of authority in the *ICC Register* to give notice to the public in case anyone wishes to oppose the application.

(c) If the *ICC Register* publication does not properly describe the authority being sought because of ministerial error, applicant shall inform the Office of Proceedings, Motor Section, as soon as possible. Where notification is received within 10 days of the publication, ministerial errors will be corrected and the notice will be republished. Notifications after 10 days will result in republication only at the Commission's discretion and may result in an application being rejected without prejudice to refiling.

§ 1160.6 Appeals to rejections of the application.

(a) An applicant has the right to appeal rejection of the application. The appeal must be filed at the Commission within 10 days of the date of the letter of rejection.

(b) If the appeal is successful and the filing is found to be proper, the application shall be deemed to have been properly filed as of the decision date of the appeal.

§ 1160.7 Changing the request for authority or filing supplementary evidence after the application is filed.

(a) Once the application is filed, the applicant may supplement evidence only with approval of the Commission.

(b) Amendments to the authority proposed in the application generally are not permitted, but in appropriate instances may be entertained at the discretion of the Commission.

§ 1160.8 After publication in the ICC Register.

(a) Interested persons have 45 days to file protests. *See* subpart B of this part.

(b) If no one opposes the application, the grant published in the *ICC Register* will become effective.

(c) If no one opposes the application for an extension of authority, the grant published in the *ICC Register* will be made effective by issuance of a certificate, permit, or license. If no one opposes an application for initial authority, the grant published in the *ICC Register* will be made effective by a Commission notice outlining compliance requirements that must be met before applicant commences the proposed service.

§ 1160.9 Obtaining a copy of the application package.

After publication, interested persons may request a copy of the application by writing to the Commission-designated contract agent (as identified in the *ICC Register*), Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. The request must be accompanied by a check or money order for $10 made payable to such contract agent or by contacting the contract agent at (202) 289–4357 [TDD for hearing impaired: (202) 275–1721] and arranging billing as acceptable to the agent.

§ 1160.10 Opposed applications.

If the application is opposed, opposing parties are required to send a copy of their protest to the applicant.

§ 1160.11 Filing a reply statement.

(a) If the application is opposed, applicant may file a reply statement. This statement is due at the Commission within 60 days of the *ICC Register* publication (30 days for intrastate passenger applicants under 49 U.S.C. 10922(c)(2)(A)).

(b) The reply statement may not contain new evidence. It shall only rebut or further explain matters previously raised.

Note: In passenger carrier "public interest" applications, if a protestant has raised the "public interest" issue under § 1160.4(b), an applicant may submit any reply evidence to the "public interest" issue. In intrastate passenger applications under 49 U.S.C. 10922(c)(2)(A), if a protestant has raised the issue of the application's effect on commuter bus service operations under § 1160.4(c), an applicant may submit any reply evidence in response to the commuter service issue.

(c) The reply statement need not be notarized or verified. Applicant understands that the oath in the application form applies to all evidence submitted in the application. Separate legal arguments by counsel need not be notarized or verified.

§ 1160.12 After all statements are submitted.

(a) When the proceeding is to be handled under the modified procedure, the next notification to the parties will be the service of the initial decision.

(b) If the proceeding is to be handled by oral hearing, parties will receive a notice to this effect.

§ 1160.13 Applicant withdrawal.

If the applicant wishes to withdraw an application, it shall request dismissal in writing.

§ 1160.14 Household goods freight forwarder applicants only.

An applicant for household goods freight forwarder authority shall submit the following additional information with the application: Applicant shall state whether it is a person engaged principally in the business of manufacturing, buying, or selling articles and commodities, and whether it controls, is controlled by, or is under common control with any such person. If yes, applicant shall describe such persons and advise to what extent such persons use the services of household goods freight forwarders; or if applicant is such a person, whether it performs its own similar operations of assembling,

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consolidating, and shipping in connection with the transportation of such articles or commodities.

§ 1160.15 Water carrier applicants only.

(a) If an applicant seeks approval of dual operations under 49 U.S.C. 10930, it must specify those that would result from a grant of the application and must present evidence to establish that such operations are consistent with the public interest and the national transportation policy as set forth at 49 U.S.C. 10101.

(b) If applicant is a water common carrier seeking a revised certificate covering extension of service over newly opened waterways pursuant to 49 U.S.C. 10922(g)(3)(B), it must furnish the following with its application:

(1) A description of the portion of the waterway project newly opened for navigation, including the U.S. Engineer District, project number, description of project, and date opened for navigation;

(2) A description of the operation performed thus far on the uncompleted portion of the waterway newly opened for navigation, including the date service was extended and points served (*see* § 1166.3); and

(3) A description of operations performed under the present certificate authorizing service on the previously completed portion of the waterway, naming points served, indicating when service was commenced, and if the operation has been continuous.

§ 1160.16 Passenger carrier applicants only.

Applicants for various passenger carrier service categories must submit the following additional information with their applications:

(a) If the application is to serve a "community not regularly served" under § 1160.4(a)(10), describe the location of the community and the interstate or other major highways which serve the community. If known, state the last date of service from other carriers and their identity, and the subsequent dates when service was requested from these carriers.

(b) If the application is for transportation services as a substitute for discontinued rail or commercial air passenger service under § 1160.4(a)(11), give the location of the points sought to be served by cross-referencing each specific community to the particular abandonment proceeding relied upon; certify that rail or commercial air passenger service, or both, was offered at the points for which authority is sought; and certify that all rail and commercial air passenger service has been discontinued and give the effective date of the latest discontinuance. The application must be filed within 180 days after the latest discontinuance becomes effective. The 180-day period begins to run either on the effective date of the certificate of abandonment issued by the appropriate government agency or, in a noncertificate case, on the date of a pronouncement by that agency regarding the abandonment. In situations where applications are filed before the actual abandonment takes place, the applicant must certify that after rail or commercial air passenger services cease on the line to be abandoned, no rail and commercial air passenger service by any carrier will remain. In such situations, the Commission will issue the certificate, but operations may begin only after the applicant files an affidavit certifying that all rail and commercial air passenger service has actually terminated at the granted points.

(c) If the application is for intrastate passenger authority over routes for which interstate operating authority already has been issued, under either 49 U.S.C. 10922(c)(2)(A) (§ 1160.4(c)), or 49 U.S.C. 10922(c)(2)(B) (§ 1160.4(b)(3)), submit a proposed draft of a certificate for issuance upon grant of the authority sought. The draft shall include:

(1) The complete service description contained in each interstate authority for the routes over which applicant seeks to provide intrastate transportation, numbered separately by subnumber; and

(2) The necessary modifications of the interstate authority authorizing the proposed intrastate operations.

The draft certificate shall contain the service descriptions in the interstate authorities in the same format as in each of the authorities which will be superseded upon issuance of the draft certificate. Applicant should submit sufficient information under this paragraph for the Commission to determine readily the precise portions of the existing authorities upon which applicant's proposal is based.

Note: *Combination of authorities.* An intrastate passenger applicant may request intrastate authority in a single application on the basis of more than one underlying interstate authority if the underlying authorities are reasonably related. In applications based on more than one authority, the requests shall be clearly segregated according to each authority. Failure to comply may result in a rejection of the application.

Repeat applications. An interstate authority may be the basis for more than one intrastate application. However, a repeat application should not be filed before the first application has been finally processed by the Commission.

§ 1160.17 Motor property "fitness" applicants only.

Applicants for various categories of motor property "fitness only" authority under 49 U.S.C. 10922(b)(4) must submit the following additional information with their applications:

(a) If the application is to serve a "community not regularly served" under § 1160.4(a)(1), describe the location of the community and the highways which serve the community. If known, state the last known date of service from other carriers and their identity, and the date when service was requested from these carriers.

(b) If the application is for transportation service as a direct substitute for complete abandonment of all rail service to a community under § 1160.4(a)(2), submit:

(1) Docket number, approval date and effective date of the Commission's decision approving the abandonment, or, date of the Commission's recommendation or pronouncement in a noncertificate abandonment.

(2) Description of the location of the points sought to be served, indicating to what portion of the rail line they are adjacent (submit maps where obscure rural points are involved), and cross-referencing each specific community to the pertinent abandonment proceeding relied on.

(3) Certification that rail service was offered at the points for which authority is sought.

(4) Certification that all rail service has been terminated (give date if known), or

(5) If rail service has not yet been terminated, state that fact and submit certification that, after rail service does cease on the line to be abandoned, no rail service by any carrier will remain to the involved community.

(6) When the certification in paragraph (b)(5) of this section is made, and applicant has otherwise established its right to a certificate, the Commission will issue a certificate subject to the filing, when rail service is terminated, of another certification that all service has ceased at the granted points.

(7) *Filing period.* Applications under this subsection must be filed no later than 120 days (plus extensions) after the effective date of the Certificate of Abandonment issued by the Commission, or, in a noncertificate abandonment, 120 days after the issuance of a recommendation or other pronouncement by the Commission regarding the abandonment.

§ 1160.18 Applicability of oath.

Separate verification of statements made under §§ 1160.14–1160.17 is not necessary. The oath in the application form applies to all factual statements.

Subpart B—How To Oppose Requests For Authority

§ 1160.40 Definitions.

A person wishing to oppose a request for permanent authority files a protest. A person filing a valid protest becomes a protestant.

§ 1160.41 Time for filing.

A protest shall be filed (received at the Commission) within 45 days after notice of the application appears in the *ICC Register* (25 days for protests in intrastate passenger applications under 49 U.S.C. 10922(c)(2)(A)). A copy of the protest shall be sent to applicant's representative at the same time. Failure timely to file a protest waives further participation in the proceeding.

§ 1160.42 Contents of the protest.

(a) All information upon which the protestant plans to rely is put into the protest.

(b) A protest must be verified, as follows:

I, _____, verify under penalty of perjury under laws of the United States of America, that the information above is true and correct. Further, I certify that I am qualified and authorized to file this protest. (*See* 18 U.S.C. 1001 and 18 U.S.C. 1621 for penalties.)

(Signature and Date)

(c) A protest not in substantial compliance with these rules may be rejected.

(d) A protestant must file two separate types of evidence: qualifications evidence under the format in § 1160.43 and factual evidence according to the applicable guidelines in § 1160.44, 1160.45, 1160.47, or 1160.49.

§ 1160.43 Protestant qualifications information—all protestants.

Protestant must submit this information in separately numbered paragraphs:

(a) Docket number of application being opposed.

(b) Name and domicile of protestant. Include lead docket number of ICC authority, if any.

(c) Name and address of protestant's representative, if any.

(d) Name and address of witness presenting the evidence, and why qualified to speak for protesting party.

(e) Description of the extent to which the person seeking to protest possesses authority to handle the traffic for which authority is applied, is willing and able to provide service that meets the reasonable needs of the shippers or public involved, and has either performed service within the scope of the application during the 12-month period before the application was filed or has actively in good faith solicited business within the scope of the application during that period; or

(f) Description of any application which the prospective protestant has pending before the Commission which was filed before the applicant's and which covers substantially the same traffic; or

(g) Description of any other legitimate interest not contrary to the transportation policy set forth in 49 U.S.C. 10101(a), or of any right to intervene under a statute. Intervention on this basis is discretionary. A person seeking to qualify under this paragraph must submit a petition requesting leave to intervene which describes in detail the circumstances warranting its participation and how they are consistent with 49 U.S.C. 10101(a). The Commission normally shall permit intervention when the person seeking to intervene shows that a proceeding is novel or of first impression, is of industrywide importance, or has significant economic impact. Anyone may protest an application on the grounds of safety fitness. Notwithstanding other provisions of this paragraph, any petition requesting leave to intervene based on safety fitness will be permitted, and the Commission will consider the protest contained therein.

Note: A motor contract carrier may not protest an application to provide transportation as a motor common carrier.

§ 1160.44 Factual evidence format for protests in property and passenger fitness applications.

Protestant must submit this information in separately numbered paragraphs:

(a) A description of the specific grounds upon which it is alleged that applicant cannot meet the statutory fitness criteria.

(b) Alternatively, evidence that the application does not properly fall within the scope of one of the statutorily described categories.

Note: If the Commission finds that the application does not properly fall within the scope of one of the categories, the application shall be dismissed without prejudice to the filing of an application for authority under other criteria.

(c) Legal argument (optional).
(d) Verification.
(e) Certificate of service.
(f) Request for oral hearing (optional).

§ 1160.45 Factual evidence format for passenger public interest applications.

Protestant must submit this information in separately numbered paragraphs:

(a) Evidence that a grant of the application would not be consistent with the public interest. Four factors are to be considered, to the extent applicable, and given equal weight in determining whether authorization would be consistent with the public interest:

(1) The transportation policy of section 10101(a) of this title.

(2) The value of competition to the traveling and shipping public.

(3) The effect of issuance of the certificate on motor carriers of passenger service to small communities; and

(4) Whether issuance of the certificate would impair the ability of any other motor common carrier of passengers to provide a substantial portion of the regular-route passenger service which such carrier provides over its entire regular-route system. Diversion of revenue or traffic shall not itself be sufficient to support such a finding. The routes and services of affiliates and subsidiaries of protestant shall be considered part of protestant's system for this purpose.

(b) Evidence that applicant cannot meet the statutory fitness criteria.

(c) Legal argument (optional).
(d) Verification.
(e) Certificate of service.
(f) Request for oral hearing (optional).

§ 1160.46 Protestant's rebuttal—passenger public interest applications only.

(a) When a protestant has protested an application on public interest grounds as provided under § 1160.4(b), and an applicant has replied to the public interest arguments under § 1160.11(b), the protestant may file a rebuttal statement within 70 days of the *ICC Register* publication.

(b) The rebuttal statement may not contain new evidence. It shall only rebut or further explain matters previously raised.

(c) The rebuttal statement and separate legal argument by counsel need not be notarized or verified. Protestant understands that the oath in the protest applies to all evidence submitted in the application.

§ 1160.47 Factual evidence format for protests in intrastate passenger applications under 49 U.S.C. 10922(c)(2)(A).

Protestant must submit this information in separately numbered paragraphs:

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(a) Evidence to establish that the intrastate service would directly compete with a commuter bus operation, and that the competition would have a significant adverse effect on commuter bus service in the area in which the competing service will be performed.

(b) A summary, description, or copy of the specific commuter authorities in conflict with that sought in the application, if pertinent.

(c) Information to demonstrate: that the proposed service is directly competitive with a commuter bus service, that the proposed service will adversely affect commuter bus service in a significant manner, and the degree to which all commuter bus services in the area where the competing service would be performed would be adversely affected.

(d) Evidence that applicant is not fit, willing, or able under the statutory fitness criteria.

(e) Legal argument (optional).

§ 1160.48 Protestant's rebuttal—intrastate passenger applications under 49 U.S.C. 10922(c)(2)(A) only.

If the protestant has filed a protest under § 1160.4(c), and applicant has replied to the commuter operations arguments under § 1160.11(b), protestant may file a rebuttal statement at the Commission within 35 days after publication in the *ICC Register*. The rebuttal statement shall contain no new evidence, but shall only rebut or further explain matters previously raised concerning commuter operations. The rebuttal need not be verified.

§ 1160.49 Factual evidence format (except fitness only, passenger public interest, and passenger intrastate applications).

Protestant must submit this information in separately numbered paragraphs:

(a) A summary, description or copy of the specific authorities in conflict with that sought in the application. Protests containing copies of authority or authority abstracts which are more than 5 pages in length may be rejected.

(b) A description of the type and amount of equipment and facilities available to meet the avowed purpose of the application.

(c) A description of present operations that pertain to the application, including a description of the specific services provided to those supporting the application or within the same territory.

(d) Adverse impacts on its business generally and on the public, such as:

(1) Need to close terminals or other facilities;

(2) Number of employees that would be furloughed or dismissed;

(3) Resulting imbalance or inefficiencies caused to its operations;

(4) Effects on fuel efficiency; or

(5) Inability to continue its existing service to the public due to a reduction in total business, or loss of essential services that would not be replaced, or other factors.

(e) Evidence that applicant is not fit, willing, or able to comply with the appropriate statutes or regulations governing its activities.

(f) Legal or other argument (optional).

(g) Verification.

(h) Certificate of service.

(i) Any request for oral hearing.

Subpart C—General Rules Governing the Application Process

§ 1160.60 Applicable rules.

Generally, all application proceedings are governed by the Commission's Rules of Practice at 49 CFR part 1100 *et seq.*, except as designated below.

§ 1160.61 Contacting another party.

When a person wishes to contact a party or serve a pleading or letter on that party, it shall do so through its representative. The phone number and address of applicant's representative shall be listed in the *ICC Register*.

§ 1160.62 Serving copies of pleadings.

(a) An applicant must serve all pleadings and letters on the Commission and all known participants in the proceeding, except that a reply to a motion need only be served on the moving party.

(b) A protestant need serve only the Commission and applicant with pleadings or letters.

§ 1160.63 Replies to motions.

Replies to motions filed under these rules are due within 10 days of the date the motion is filed at the Commission.

§ 1160.64 Requesting oral hearing.

(a) If an applicant or protestant believes that a proceeding should be orally heard, the person may request an oral hearing.

(b) The request shall specifically state the evidence that would be presented, the reason why the evidence is material to determine the merits of the proceeding, why an oral hearing with cross-examination is necessary to bring it out, and what evidence already in the record would be contravened (with specific page reference).

(c) The Commission intends to assign matters for oral hearing only where use of modified procedures would prejudice a party, material issues of decisional fact cannot adequately be resolved without an oral hearing, or assignment of an application for oral hearing is otherwise required by the public interest.

(d) Denial of an oral hearing request will not be made in writing where the denial is made prior to issuance of the initial decision. The request will be deemed denied when the proceeding is handled under the modified procedure.

§ 1160.65 Consolidation of applications.

(a) Applicants may request consolidation of applications. The request shall be made when the applications to be consolidated are filed. Requests for consolidation shall be made in writing to the Office of Proceedings, Motor Section.

(b) Requests to consolidate applications not currently filed shall only be considered to the extent that the applications are filed within 5 days of each other.

(c) Representatives of the consolidating applicants shall indicate their agreement with the consolidating either in the initial request or in their individual submissions. If mutual agreement has been reached in advance, one representative may indicate representatives' assent to the consolidation.

(d) The applications will be published in the *ICC Register* and their consolidation will be indicated. Protestants may file a single protest which will apply to all the proceedings.

§ 1160.66 Petition to clarify or interpret formally an operating authority.

(a) A person seeking to clarify or interpret its operating authority shall file a petition under these rules.

(b) No application form need be used. Petitioner shall file its entire argument with the petition.

(c) Notice of the petition will be published in the *ICC Register*. Petitioner may file a rebuttal to any opposing argument.

§ 1160.67 Withdrawal.

A protestant wishing to withdraw from a proceeding shall inform the Commission and applicant in writing.

PART 1162—TEMPORARY AUTHORITY (TA) AND EMERGENCY TEMPORARY AUTHORITY (ETA) PROCEDURES UNDER 49 U.S.C. 10928

5. The authority citation for part 1162 continues to read as follows:

Authority: 49 U.S.C. 10321; 10928; 5 U.S.C. 559.

6. Section 1162.2, paragraphs (b), (c), (d), and (e)(3) are revised to read as follows:

§ 1162.2 Filing of applications.

* * * * *

(b) *How and where filed.* (1) Applicants for TA or ETA shall file Form OP–1 in accordance with the instructions accompanying that form. The envelope containing the form shall be clearly marked "ETA Application" and/or "TA Application."

(2) The signed original and one copy of each application and all supporting documents shall be filed with the Regional Office which has jurisdiction over applicant's point of domicile, or at such other location as the Commission may designate in special circumstances.

Note: Applicants for TA and/or ETA who have simultaneously filed for corresponding permanent authority on the same Form OP–1 must submit the original and one copy of the form to Commission Headquarters for processing the permanent licensing request and must submit 1 copy of the form to the appropriate Regional Office for processing the temporary authority request.

(3) Where an applicant for TA also has applied or will apply for corresponding ETA, the application shall include the statement: "An underlying ETA seeks ——— days authority" in its application. Applicant should also include the "R" docket number of the ETA, if known.

(c) *Filing fees.* A filing fee as designated at 49 CFR 1002.2 shall accompany each TA and ETA application. Method of payment options are set forth on the fees schedule that accompanies Form OP–1.

Note: TA and ETA applicants who have concurrently filed for corresponding permanent operating authority on the same Form OP–1 must submit the TA and/or ETA filing fee(s) to the Regional Office processing such applications.

(d) *Supporting statements.* Each application shall be accompanied by "Certificate(s) of Support" designed to establish an immediate need for service which cannot be met by existing carriers. Such supporting evidence should follow the format and contain all the information prescribed on the "Certificate of Support" portion of Form OP–1.

(e) * * *

(3) The filing of ETA applications by telegram, telephone, or facsimile (FAX) document shall be acceptable in exigent circumstances. Confirmation shall be made by filing Form OP–1 (with the "Certificate(s) of Support") within 10 working days of the telegram, telephone, or FAX filing.

* * * * *

PART 1168—[REMOVED]

7. Part 1168 is removed.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendix A—Instructions for Completing Application Form OP–1

Please read the instructions before completing the application form. Before mailing the completed application form, see the check list in the instructions. Retain the instructions and a copy of the completed application for future reference.

How the ICC Processes Applications

Permanent and Temporary Authority

- When sufficient evidence is included in a permanent (PA) or temporary authority (TA) application this Commission assigns it a docket number and publishes a summary of the request in the *ICC Register*. [Other sections of these Instructions describe the types of evidence that must be submitted.]
- If no protest (due in 45 days for PA and in 15 days for TA) is filed following *ICC Register* notice, the application is approved. An applicant receiving authority for the first time in a particular service category (*i.e.*, motor property common or contract, motor passenger common or contract, property broker, or household goods freight forwarder) will receive a letter-notice (not the actual authority document) informing it to comply with applicable pre-licensing requirements. A carrier already possessing authority in the same service category as is involved in this application will be forwarded its new authority automatically.
- Most applications are unopposed. However, if there is opposition, you must be served with a copy of the protest(s), and you have the right to reply. If you receive a protest, contact the ICC immediately if you are unsure of the procedures and rules governing opposed applications.

Emergency Temporary Authority

- The ICC does not publish summaries of emergency temporary authority (ETA) filings. Instead, the ICC's regional decisional body reviews the request and notifies you of its decision by telephone, usually within 1 week. No written ICC decision is issued.

General Instructions

- Definitions of important terms used in this application are listed under "Transportation Terms" below.
- You can use this form to apply for motor or water carrier, property broker, and household goods freight forwarder authority. [Check the appropriate box(es) in Part I of the application.]
- You can use this form to request emergency temporary authority (motor carrier applicants only), temporary authority (motor and water carrier applicants), permanent authority (all applicants), or any combination. [Check the appropriate box(es) in Part I.]
- You can file a single application to request more than one type of operating authority.
- This form consists of Parts I through VI. You must complete Parts I and VI of the form. If you seek permanent motor property, water carrier, household goods freight forwarder, or property broker authority, you also must complete Part II; if you seek permanent motor passenger carrier authority, you also must complete Part III; and if you seek temporary or emergency temporary operating authority, you also must complete Parts IV and V. For information about the Part V "Certificate of Support" portion of this application, see the "Supporting Evidence" section of the Instructions.
- Your application must be typed or printed in ink.
- You may continue responses on a separate sheet of paper if needed. Identify each answer by the application form page and item number.
- Certifications—at several points on the application form, you must verify certain information (for example, matters relating to compliance with DOT safety regulations, the absence of Mexican domicile or control, or CZMA compliance for water carrier applicants). You should check the "YES" response only if you can attest to the truth of the preceding statement. As with all portions of the application, these statements are embraced by the "APPLICANT'S OATH" in the form. False certifications are subject to the penalties described in that oath.

Filing Fees

- Filing fees are adjusted annually. Refer to the enclosed schedule for a list of current fees.
- Note to TA and ETA applicants who are simultaneously filing a permanent licensing application: You must submit your applications and payment for the temporary portion(s) of your service requests to the Regional Office processing your TA or ETA application. Commission Headquarters will accept only permanent authority applications and the fees for the permanent portion(s) of the authority requests.

How to Describe Service

- The Commission favors broad service descriptions such as those listed

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in Parts II and III of the application form. You may complete this form by checking the box in Part II or III statutory public interest-type criteria for the various service types involved. Additionally, you may submit the Part V accepted until you submit evidence of an improved safety fitness rating.

- If you are an applicant for motor

(1) $5,000—for loss or damage to property carried on any one motor vehicle; and

registration, fuel tax, and all other State regulations and procedures.

Passenger Carrier Funding Recipients

- Central Region (includes AR, IL, IN, IA, KS, LA, MI, MN, MO, NE, ND, OK, SD, TX, WI, and Canadian Provinces of

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in Parts II and III of the application form. You may complete this form by checking the box in Part II or III describing the service you seek to provide and by completing Parts I and VI of the form.

• If you want authority not defined by one of the service descriptions provided in the application form, you also must complete Part II, Item 1(N) [property carriers] or Part III, Item 9 [passenger carriers]. In describing the alternative service, you must explain briefly why the proposed service description either promotes or at least does not defeat the purposes of the Interstate Commerce Act (*e.g.*, why the service is reasonable and not unduly restrictive). Further information concerning acceptable commodity descriptions is available by contacting the ICC Office of Public Assistance—(202) 275–7597.

• Territorial service descriptions may not be defined in terms smaller than a county.

• If you develop your own service description, you must use the following format to define the proposed operations:

Sample Service Descriptions

"To operate as a common carrier by motor vehicle, in interstate or foreign commerce transporting commodities in bulk, between points in KY, NC, TN, VA, and WV."

"To operate as a contract carrier, by motor vehicle, in interstate or foreign commerce, transporting food and related products, between points in the United States, under continuing contracts with shippers or receivers of food and related products."

Supporting Evidence

• Applicants for emergency temporary authority or temporary authority must submit supporting evidence on the Part V "Certificate of Support" portion of the form to establish that there is or soon will be an immediate transportation need that reasonably cannot be met by existing carrier service. The "Certificate of Support" need not be completed by supporting shippers; others (including applicants themselves) may do so. However, shipper testimony is one of the most direct and cogent means of fulfulling this requirement.

• All other applicants—complete Part II, Item 3 (specified motor property carriers, water carriers, household goods freight forwarders, and household goods property brokers) or Part III, Item 10 (specified motor passenger carriers). The information provided in response to these questions should describe how the proposed service will be consistent with statutory public interest-type criteria for the various service types involved. Additionally, you may submit the Part V "Certificate(s) of Support" if you wish to enhance and expand upon your service request. A particularly direct and cogent means of demonstrating a public interest in the proposed operations is through supporting shipper testimony.

Note: Certain motor property and passenger authorities and non-household goods property broker authority are authorized on the basis of "fitness-only" determinations. Applicants in these categories expresely are excluded from responding to Part II, Item 3, or Part III, Item 10.

• If you want any authority to transport classes A and B explosives, bulk commodities, or household goods, or to provide service in Alaska and/or Hawaii, you must include additional evidence that specifically addresses your fitness, willingness, and ability to provide the service and discusses how the proposed operations will be responsive to a public (common carrier) or shipper (contract carrier) need for service. These issues may be addressed on a separate sheet of paper appended to your application, or in your response to Part II, Item 3. Also, you are strongly encouraged to submit evidence from supporting witnesses on the Part V "Certificate(s) of Support" portion of the form. Supporting evidence from prospective shippers is particularly valuable in establishing the manner in which you will meet the public or shipper needs for these specialized service categories.

• All evidence offered in support of the application should relate specifically to the authority requested (for example, make reference to a need for service involving classes A and B explosives, bulk commodities, household goods, and/or Alaska and/or Hawaii, as relevant).

• You may submit more than one "Certificate of Support."

Safety Fitness Evidence (Motor Carrier Applicants, Including ETA and TA Applicants)

• You must provide evidence of your most current DOT safety rating, or, if unrated, certify your willingness to comply with all applicable DOT safety rules. Complete "Safety Evidence," Part I.

• If you have been assigned an "unsatisfactory" safety fitness rating by DOT, or if you have been assigned a "conditional" safety fitness rating and intend to transport passengers or hazardous materials, do not file for new authority. Your application will not be accepted until you submit evidence of an improved safety fitness rating.

• If you are an applicant for motor property authority, do not seek to transport hazardous commodities, and have been assigned a "conditional" safety fitness rating by DOT, you must provide specific evidence concerning the measures you have taken to bring your operations into full compliance with DOT safety requirements and to correct each deficiency cited in the safety audit upon which your conditional rating was based. You also must submit a copy of your request to DOT seeking a re-audit of your operations. These issues must be addressed on a separate sheet of paper attached to your application. Upon review of this evidence, the Commission may elect to issue the sought authority subject to a typically nonrenewable 1-year term limitation. You will not be permitted to transport "hazardous materials" under your limited term authority.

• If you have not yet received a DOT safety rating, any authority you receive will be subject to a 1-year term limitation. If you are unable to obtain a safety rating within the 1-year term, you may petition to have the authority extended for a second year until the safety rating has been assigned.

• Applicants who have not filed form MCS–150 with the Federal Highway Administration of DOT must do so within 90 days of initiating operations.

Prelicensing Requirements

Insurance

• If you are seeking authority as a motor carrier, broker, or a household goods freight forwarder that provides a pickup or delivery service directly or by using a local delivery service under your control, before your newly approved operations may begin you must have on file with the ICC proof of adequate insurance, as follows:

• Liability insurance for motor carriers and household goods freight forwarders described above—your insurance company must file evidence with the Commission that you maintain appropriate levels of bodily injury and property damage (BI & PD) insurance—filed on ICC Form BMC–91 or BMC–91X. (Refer to "Insurance Information" in Part I.

• Cargo insurance for motor common carriers and household goods freight forwarders described above—your insurance company also must file evidence with the Commission that you maintain minimum levels of cargo insurance—filed on ICC Form BMC–34:

(1) $5,000—for loss or damage to property carried on any one motor vehicle; and

(2) $10,000—for loss of or damage to or aggregate of losses of or damages to property occurring at any one time and place.

• Property brokers—before beginning operations, you must file evidence with the Commission of a broker surety bond (filed on ICC Form BMC–84) or trust fund agreement (filed on ICC Form BMC–85) in the amount of $10,000.

Note: No authority document will be issued until all required insurance forms are on file with the ICC. It is your responsibility to contact your insurance company(ies) and to follow through to guarantee all required filings are received by this Commission. The ICC does not furnish insurance forms to applicants. Insurance companies print the forms and are familiar with the ICC's insurance filing requirements.

For ETA applicants—you must include with your application evidence of insurance (name of insurance company, policy number, and effective date). *See* Part IV (B) of Form OP–1.

Legal Process Agents

• All motor carriers and property brokers—you must designate an agent in each State where you conduct operations (for property brokers, each State where your offices will be located or in which you will write contracts) who will accept legal filings on your behalf (known as process agents)—filed on ICC Form BOC–3.

Tariffs

• Motor common carriers—you must file tariffs with the Commission listing prices for and specifying terms of the services you offer.

Note: Contract carriers must have written contracts with the shippers they serve, but the contracts need not be filed with the Commission.

• ETA applicants—your applications must include tariffs and be filed with the appropriate Commission Regional Office.

• All other motor common carrier applicants—your tariffs are to be filed with the ICC Headquarters office in Washington, DC.

State Notification

• All applicants—before beginning new or expanded interstate operations, you must contact the appropriate regulatory agencies in every State in and through which you will conduct operations to obtain information regarding various State rules applicable to interstate authorities. It is your responsibility to comply with registration, fuel tax, and all other State regulations and procedures.

Passenger Carrier Funding Recipients

• Applicants for passenger carrier authority must specify the nature of governmental financial assistance you receive, if any, by designating in Part III your status, defined as only one of the following:

Public recipient—Any State; any municipality or other political subdivision of a State; any public agency or instrumentality of such entities of one or more States; an Indian tribe; and any corporation, board or other person owned or controlled by such entities or owned by, controlled by, or under common control with such a corporation, board, or person which is receiving or has ever received governmental financial assistance for the purchase or operation of any bus currently in its fleet;

or *Private recipient*—Any applicant, other than a public recipient, that is receiving or has ever received governmental financial assistance in the form of a subsidy for the purchase, lease, or operation of any bus currently in its fleet;

or *Nonrecipient*—Any applicant that is not receiving, nor using equipment acquired with, governmental financial assistance.

Filing the Application and Related Materials

• TA and/or ETA applicants not filing for corresponding permanent authority—you must send the original and one copy of your applications to the ICC Regional Office serving the State in which your business is headquartered.

• TA and/or ETA applicants who simultaneously file for permanent authority—you must send the original and one copy of your application to ICC Headquarters and two copies to the appropriate Regional Office.

• All other applicants—you must send an original and one copy to ICC Headquarters and one copy to the appropriate ICC Regional Office.

Mailing Addresses for Applications

• Headquarters

Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423

• Eastern Region [includes AL, CT, DE, DC, FL, GA, KY, ME, MD, MA, MS, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VT, VA, WV, and Canadian Provinces of NB, NF, NS, PE, and PQ]

Interstate Commerce Commission, 3535 Market Street, Room 16400, Philadelphia, PA 19104

• Central Region [includes AR, IL, IN, IA, KS, LA, MI, MN, MO, NE, ND, OK, SD, TX, WI, and Canadian Provinces of MB and ON]

Interstate Commerce Commission, 219 South Dearborn Street, Room 1304, Chicago, IL 60604

• Western Region [includes AK, AZ, CA, CO, HI, ID, MT, NV, NM, OR, UT, WA, WY, and Canadian Provinces of AB, BC, and SK]

Interstate Commerce Commission, 211 Main Street, Suite 500, San Francisco, CA 94105

• All insurance and process agent filings [except for motor carrier ETA filings] should be addressed to the ICC, Office of the Secretary, Insurance Unit, Washington, DC 20423.

Note: ETA applicants—you must include evidence of insurance and process agent information with your application. *See* Part IV of the application form.

• Tariffs covering operations under temporary and permanent common carrier authority, and any future supplements, should be mailed to the ICC, Bureau of Traffic, Tariff Examining Branch, Washington, DC 20423.

Note: Applicants for ETA motor and water carrier authority—tariffs must accompany the application. Also, include a statement concerning the status of any interstate rate filings or suspensions involving the applicant.

• Intrastate motor passenger applicants—you also must send a description of the proposed service to the State transportation regulatory body of the State(s) in which the operations described in the application will be performed.

Transportation Terms

Applicant—the person or company applying for authority to provide transportation in interstate or foreign commerce or to provide property brokerage service.

Applicant's Representative—the person filing the application. The representative may be the applicant, any officer or authorized employee of the company, or a person licensed to practice before the ICC.

Common Carriage—transportation offered to the general public using prices and services named in tariffs on file at the ICC.

Contract Carriage—transportation performed under written contracts with particular shippers.

Contracts—written agreements between a contract carrier and each shipper with whom the carrier does business, covering a specific time period or series of movements and all

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negotiated terms and charges for services rendered. Unlike tariffs, contracts are not subject to public review and do not have to be filed with the ICC.

Emergency Temporary Authority (ETA)—motor carrier authority lasting a maximum of 120 days to meet an immediate need that cannot be met by existing carriers.

Household Goods Freight Forwarding—the arrangement, assembly, and/or consolidation for transportation of household goods where the actual movement is performed by ICC licensed carriers. Forwarders arrange with the carriers for the actual transportation; they do not do it themselves. Freight forwarders issue bills of lading to shippers and, as common carriers, are responsible for loss of or damage to the goods.

Irregular Route Authority—authority that is not restricted to particular roads or routes.

Permanent Authority—authority with no time limit.

Property Brokerage—the arrangement for transportation of goods where the actual movement is performed by ICC licensed motor carriers. As contrasted with forwarders, brokers assume no responsibility for loss of or damage to the property being transported.

Regular Route Authority—authority to perform service only over named roads.

Restriction Removal—broadening the existing authority of a motor property or passenger carrier, upon request, to eliminate certain or all operating restrictions in its current service description.

Tariffs—public documents filed by common carriers that set out the terms of and prices for service.

Temporary Authority—authority, lasting a maximum of 270 days for motor and 180 days for water operations, to provide service that cannot be performed by existing carriers. If a permanent authority application also is filed, the temporary authority does not expire until the permanent authority is acted on.

Water Carrier Exemption—an action by the Commission exempting from its regulation the transportation of certain commodities by water contract carrier upon a finding that their transportation by water is not actually and substantially competitive with rail or motor transportation, either because of the inherent nature of the involved commodities, their special equipment requirements, or their shipment in bulk.

Additional Assistance

For additional information about obtaining authority, you may seek assistance in each of the following areas from:

Completing the Application

Permanent authority applications: Office of Public Assistance, Interstate Commerce Commission, Washington, DC 20423, (202) 275–7597, [TDD for hearing impaired: (202) 275–1721.]

TA and ETA applications: ICC regional offices processing the request for authority (addresses listed above):

Eastern Region: (215) 596–4040
Central Region: (312) 353–6204
Western Region: (415) 744–6520

Status of Filed Applications

Permanent authority applications—ICC, Office of proceedings, Case Tracking Unit, (202) 275–7022 or 275–7023.

Temporary or *emergency temporary* authority applications— ICC regional office processing application(s). Addresses and telephone numbers listed above.

Levels of Insurance

ICC, Office of Compliance and Consumer Assistance, Insurance Branch, (202) 275–0854.

Status of Insurance Filings

ICC, Office of the Secretary, Insurance Unit, (202) 275–0783.

Tariff Filings

ICC, Public Assistance Unit, Bureau of Traffic, (202) 275–7462.

DOT Safety Rating

Write to Director, Motor Carrier Safety Field Operations, Federal Highway Administration, United States Department of Transportation, Washington, DC 20590, for information concerning a carrier's safety fitness rating or to obtain a safety audit.

Check List

Before mailing your application, check to be sure that you have:

[ ] Completed all necessary sections, including the oath and certificate of service in Part I.
[ ] Enclosed the correct number of copies of the application form and addressed them to the proper places.
[ ] Enclosed the correct fee(s).
[ ] Attached supplemental documents to the form, where applicable.
[ ] Marked the word(s) "APPLICATION," "TA APPLICATION," "ETA APPLICATION," "90 DAY INTRASTATE PASSENGER APPLICATION," and/or "RESTRICTION REMOVAL APPLICATION," as appropriate, on the envelope.
[ ] Placed sufficient postage on the envelope(s).

Appendix B

Approved by OMB
3120–0047
Expires _____

Form OP–1 (Revised 12/89)
Supercedes Form OP–1 (12/83) and Form OCCA–95 (8/84)

INTERSTATE COMMERCE COMMISSION

Authority Application

Mail this form only after you have compared the application with the check list in the instructions.

For Commission Use Only

Docket No. _____
Filed _____
Fee No. _____

Paperwork Burden

It is estimated that an average of 4 burden hours per response are required to complete this collection of information. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments concerning the accuracy of this burden estimate or suggestions for reducing this burden should be directed to the Section of Administrative Services, Interstate Commerce Commission, and to the Office of Management and Budget, Paperwork Reduction Project, (OMB No. 3120–0079), Washington, DC 20503.

Part I—General Information To Be Completed by all Applicants

Applicant _____
(Legal Name)
Doing Business As _____
(Trade Name)
Business Address _____
(Street, Highway, or Rural Route and Box Number)
_____
(City)
_____
(State)
_____
(Zip Code)
_____
(Phone Number)
Mailing Address if Different from Above _____
(Street or P.O. Box)
_____
(City)
_____
(State)
_____
(Zip Code)
_____
(Phone Number)

Form of Business (Check only one):

[ ] Corporation. State of incorporation _____
[ ] Partnership. Identify partners _____
_____
_____
[ ] Sole Proprietorship. Name of individual _____

If you have been issued a U.S. D.O.T. number, provide it here: _____

Do you now hold, or have an application pending for, authority from this Commission? [ ] Yes [ ] No.

If yes, identify the lead docket number or numbers: _____

In this application, do you seek to haul hazardous materials? [ ] Yes [ ] No.

Do you currently transport hazardous materials? [ ] Yes [ ] No.

Applicant seeks to operate as (Check one or more):

[ ] Motor property common carrier
[ ] Motor passenger common carrier
[ ] Motor property contract carrier
[ ] Motor passenger contract carrier
[ ] Property broker
[ ] Water common carrier
[ ] Water contract carrier
[ ] Household goods freight forwarder

Type of Application (Check one or more):

[ ] Permanent authority
[ ] Emergency temporary authority (ETA)
[ ] Temporary authority (TA)
[ ] Restriction removal
[ ] Water carrier exemption

Representative: Person to whom inquiries may be made (applicant or legal representative)

_____
(Name)
(Title, position, or relationship to applicant)
_____
(Street/P.O. Box)
_____
(City)
_____
(State)
_____
(Zip Code)
_____
(Phone Number)

Safety Evidence (Motor carrier applicants, including ETA and TA applicants)

(a) Applicants with DOT safety ratings:

Current DOT safety fitness rating: _____

Note: If your currently have a DOT safety rating other than "satisfactory," consult the "Safety Fitness Evidence" information in the Instructions.

(b) Applicants without DOT safety ratings:

I certify that I have access to and am familiar with all applicable regulations of the U.S. Department of Transportation (DOT) relating to the safe operation of commercial vehicles and the safe transportation of hazardous materials, and I will comply with these regulations.

[ ] Yes. All applicants without DOT safety ratings must so certify by checking "Yes." Unrated carriers may only receive 1-year authority from the Commission. Upon receipt of a "Satisfactory" safety rating during the 1-year term, carriers may petition to have the term limitation removed from their authority.

Insurance Information

Note: This section must be completed by all motor carrier and (where applicable) household goods freight forwarder applicants. The amounts in parentheses represent the minimum amount of bodily injury and property damage insurance you must maintain. *See* the Instructions for further information about other insurance requirements.

Property motor applicants (check one or more):

(1) Will use only vehicles having Gross Vehicle Weight Ratings (GVWR) under 10,000 pounds; and
(a) _____ Will transport commodities other than those listed in (b) below ($300,000), or
(b) _____ Will transport any Class A or B explosives or poison gas or highway quantity controlled radioactive materials ($5,000,000).

(2) Will use vehicles with GVWR of 10,000 pounds or more to transport
(a) _____ Non-hazardous commodities ($750,000).
(b) _____ Hazardous materials other than those described in (c) below ($1,000,000).
(c) _____ Hazardous materials as defined in 49 CFR 1043.2(b)(2) ($5,000,000).

Passenger motor applicants (check one).—Will use vehicles with seating capacities of:

(1) 16 or more _____ ($5,000,000)
(2) Less than 16 only _____ ($1,500,000).

Note: If any vehicle accommodates 16 or more passengers, the larger insurance amount applies.

Control Relationships

(1) Relationship between applicant, any person having an interest in applicant, and/or any other ICC regulated transportation company (for example, percentage stock ownership, loans, voting, or management arrangements). Provide license numbers and, if applicable, U.S. D.O.T. numbers, or involved ICC regulated transportation interests and indicate DOT safety fitness ratings of all commonly controlled motor carriers.

_____
_____
_____
_____

(2) If no common control relationship, check here [ ]. Otherwise, check the appropriate box below.
(a) [ ] The Commission approved the common control relationship in Docket No. MC–F– _____.
(b) [ ] The aggregate gross (interstate) operating revenues of the carriers were not more than $2 million during a period of 12 consecutive months ending not more than 6 months before the date of the agreement of the parties in the transaction creating the control relationship.
(c) [ ] Applicant has filed or is filing concurrently an application for approval of common control or a petition seeking exemption from the requirements of 49 U.S.C. 11343. Provide docket number (if known): _____.

(3) Property broker applicants only—Has applicant or any of its principals been involved previously in the brokerage industry?
[ ] Yes [ ] No
If yes, please describe this experience, and, if licensed by the Commission, indicate docket number(s).

_____
_____

Miscellaneous

(a) I certify that the applicant in this proceeding is not domiciled in Mexico. Moreover, the applicant is not owned by or controlled by persons of that country. [ ] Yes. Applicants must so certify by checking "Yes."
(b) Does the applicant hold a certificate of registration from this Commission as a single-State operator?

Note: This refers to authority issued by the ICC; not intrastate authority issued by a State regulatory body.

[ ] Yes [ ] No
If Yes, identify authority number and State: _____.

Applicant's Oath

Must be completed by all applicants.

I, _____, [name and title of witness) verify under penalty of perjury, under the laws of the United States of America, that all information supplied on this form or relating to this application is true and correct. Further, I certify that I am qualified and authorized to file this application. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to 5 years and fines up to $10,000 for each offense. Additionally, these

misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to $2,000 or imprisonment up to

and commodities in bulk), between points in the United States (except Alaska and Hawaii).

Note: If you have checked Item (G) or (H) above:

Identify community(ies)

commodities in lieu of general commodities, bulk commodities, household goods common carrier

_____
_____
_____
_____

application in the upper right corner of the front page "90-Day Intrastate Passenger Application."

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misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to $2,000 or imprisonment up to 5 years for each offense.

I further certify under penalty of perjury under the laws of the United States, that I have not been convicted, after September 1, 1989, of any Federal or State offense involving the distribution or possession of a controlled substance, or that if I have been so convicted, I am not ineligible to receive Federal Benefits, either by court order or operation of law, pursuant to 21 U.S.C. 853a.

(Signature and Date)

Certificate of Service

Must be completed by all applicants.

I certify that I have delivered a copy of this application, in person or by mail, to the Regional Director of the Commission's Office of Compliance and Consumer Assistance for the Region in which the applicant has its headquarters.

(Signature and Date)

After completing Part I

Applicants for	*Turn to and complete*
Motor property carrier, water carrier, property broker, and household goods freight forwarder authority.	Parts II and VI
Motor passenger carrier authority.	Parts III and VI
Temporary and emergency temporary authority.	Parts IV, V, and VI

Note: The Part V "Certificate of Support" is optional for motor and water carrier permanent authority, broker, and household goods freight forwarder applicants. The "Certificate" must be submitted by applicants for emergency temporary and temporary authority. The certificate in support of these applications need not be completed by a shipper witness. However, a supporting shipper certificate is one of the most direct and cogent means of fulfilling statutory requirements with regard to the public interest. Certain other applicants are strongly encouraged to submit supporting evidence as explained in the "Supporting Evidence" portion of the Instructions.

Part II—Motor Property Carrier, Water Carrier, Property Broker, and Household Goods Freight Forwarder Applications

(1) Check appropriate box(es) for type(s) of authority you seek and provide required information; then turn to part VI.

(A) [ ] Motor common carrier of general commodities (except classes A and B explosives, household goods, and commodities in bulk), between points in the United States (except Alaska and Hawaii).

(B) [ ] Motor contract carrier of general commodities (except classes A and B explosives, household goods, and commodities in bulk), between points in the United States (except Alaska and Hawaii), under continuing contract(s) with commercial shippers or receivers of such commodities.

Note: If you have checked Item B, you also must complete Item 2, below, "Contract Carrier Service."

(C) [ ] Motor contract carrier of household goods, between points in the United States (except Alaska and Hawaii), under continuing contract(s) with commercial shippers of household goods.

If you have checked Item C, complete one or both box(es) below, as applicable:

[ ] Contracting shippers have one or more of the distinct needs delineated in No. MC–1745 (Sub-No. 17), "Interstate Van Lines, Inc., Extension—Household Goods," 5 I.C.C. 2d 168 (1988).

Describe briefly the distinct need(s):

[ ] Contracts provide for assignment of one or more vehicles for the exclusive use of each such shipper in the manner specified in No. MC–1745 (Sub-No. 17), "Interstate Van Lines, Inc., Extension—Household Goods," 5 I.C.C.2d 168 (1988).

(D) [ ] Motor carrier broker of general commodities (except household goods), between points in the United States.

(E) [ ] Motor carrier broker of household goods between points in the United States.

(F) [ ] Freight forwarder of household goods, unaccompanied baggage, or used automobiles, between points in the United States.

(G) [ ] Motor common carrier of property authority to serve any community not regularly served by a certificated motor common carrier of property, transporting general commodities between the specified community(ies), on the one hand, and, on the other, points in the United States.

(H) [ ] Motor common carrier of property authority to provide service as a direct substitute for abandonment of all rail service in a community, transporting general commodities, between the abandoned community(ies), on the one hand, and, on the other, points in the United States.

Note: If you have checked Item (G) or (H) above:

Identify community(ies)

Describe service

(I) [ ] Motor common carrier of property transportation for the U.S. Government of general commodities (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the United States.

(J) [ ] Motor common carrier of property transportation of shipments weighing 100 pounds or less if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the United States.

(K) [ ] Motor common or [ ] motor contract carrier of property transportation of food and other edible products (including edible byproducts but excluding alcoholic beverages and drugs) intended for human consumption, agricultural limestone and other soil conditioners, and agricultural fertilizers, between points in the United States, where the owner is in the vehicle when the transportation is provided (except in emergency situations) and the tonnage transported annually under this authority does not exceed the motor vehicle's tonnage of exempt commodities transported annually.

(L) [ ] Transportation for the U.S. Government of used household goods incidental to a pack-and-crate service on behalf of the Department of Defense, between points in the United States.

(M) [ ] Water common or [ ] water contract carrier authority or [ ] Water carrier exemption.

Describe service: [If application is for water contract authority, indicate how you will meet the statutory requirements for contract carriage. 49 U.S.C. 10102(31).]

Note: If you have checked Item M, you must make the following CZMA Certification:

I certify that I have filed a notice of this application with the appropriate Coastal Zone Management Program agency of each State in which I propose to operate.

[ ] Yes. Applicants must so certify by checking "Yes."

(N) [ ] Other. [If you seek authority that differs from the above options, please describe it in the space below—for example, applications for restriction removal, specified commodities in lieu of general commodities, bulk commodities, household goods common carrier authority, service to limited geographic areas (less than 48-State authority), or service to Alaska or Hawaii.]

(a) If you checked Item N, you must complete this service description.

To operate as a

(type of transportation)

in interstate or foreign commerce, transporting

(commodity or commodities)

between

(territory)

If applicable: Under continuing contract(s) with

(contracting shipper or class of shippers)

Note: You must furnish a map that clearly identifies and depicts any regular route involved in the above service description.

(b) Explain briefly why this proposed service description either promotes or at least does not defeat the purposes of the Interstate Commerce Act (*e.g.*, why the service is reasonable and not unduly restrictive).

Note: This information may be embraced in your response to Item 3, below. If so, you need not provide a separate explanation here.)

(2) Contract carrier service—If you have checked Item B in Part II and seek industrywide general commodities contract carrier authority, or Item N in Part II and seek contract carrier authority to transport specified commodities in lieu of general commodities, you must complete Item 2(a) and/or 2(b).

As a contract carrier, I will: [Complete the box(es) indicating how you will meet the statutory requirement for contract carriage.]

(a) [ ] Furnish the transportation service through the assignment of motor vehicles for a continuing period of time for the exclusive use of each person served; and/or

(b) [ ] Furnish the transportation service designed to meet the distinct need(s) of each contracting shipper or each member of a class of shippers.

Note: To meet distinct needs of contracting shippers you must develop a service designed to meet some distinct need of each shipper or specified class and must define such need with precision.

Describe briefly the distinct need(s):

(3) All applicants for property authority, except those whose service proposals are limited to Items 1 (G) through (L)—describe briefly how the proposed service: (1) Will serve a useful public purpose, responsive to a public demand or need (motor common carrier applicants); (2) will be required by the present or future public convenience and necessity (water common carrier applicants); or (3) is or will be consistent with the public interest and the transportation policy of 49 U.S.C. 10101 (motor and water contract carrier, household goods freight forwarder, and household goods property broker applicants).

Part III—Motor Passenger Applications

Applicant is a: [Check the appropriate box. Refer to the "Passenger Carrier Funding Recipients" section of the Instructions.]

[ ] Public Recipient
[ ] Nonrecipient
[ ] Private Recipient

Type Service Applicant Wishes to Provide

Check appropriate box(es) for type(s) of authority you seek and provide required information; then turn to Part VI.

Note: You must furnish a map clearly identifying each *regular route* involved in your passenger carrier service description(s). Also, you must attach on a separate sheet a narrative description of each regular route. If you seek authority as a passenger contract carrier, proceed to Item 5.

(1) [ ] Charter and special transportation.

Describe territory.

(2) [ ] Service over regular routes in interstate or foreign commerce.

(3) [ ] Service over regular routes in intrastate commerce under 49 U.S.C. 10922(c)(2)(A) on a route over which applicant had authority as of November 19, 1982.

Note: You must attach to your application a copy of the interstate authority or authorities issued on or before November 19, 1982, authorizing the transportation of passengers on the routes over which you seek to obtain intrastate authority. To enable expedited action, you must mark the envelope and the application in the upper right corner of the front page "90-Day Intrastate Passenger Application."

(4) [ ] Service over regular routes in intrastate commerce under 49 U.S.C. 10922(c)(2)(B) on a route over which applicant has been or will be granted authority in interstate commerce after November 19, 1982.

Note: You must attach to your application a copy of the interstate authority or authorities granted after November 19, 1982, authorizing the transportation of passengers on the routes over which you seek to obtain intrastate authority.

If you have not been granted or do not have pending an application for the underlying interstate, regular-route authority over which the intrastate operations are to be performed, you may file a request for such intrastate authority only if you request the underlying interstate, regular-route transportation in the same application. A denial or rejection of the underlying interstate application will require rejection of the request to provide intrastate transportation.

(5) [ ] Service as a contract carrier between points in the United States (except Alaska and Hawaii), under continuing contract(s) with

(Name contracting persons)

As a contract carrier, I will: [Complete the box(es) indicating how you will meet the statutory requirement for contract carriage.]

(a) [ ] Furnish the transportation service through the assignment of motor vehicles for a continuing period of time for the exclusive use of each person served; and/or

(b) [ ] Furnish the transportation service designed to meet the distinct needs of each contracting shipper or each member of a class of shippers. Describe briefly the distinct need(s):

(6) [ ] Service to any community not regularly served by a certificated motor common carrier of passengers.

(7) [ ] Service as a direct substitute for the abandonment or discontinuance of all rail and commercial air passenger service in a community.

If you have checked Item (6) or (7) above:

Identify community(ies).

Describe service.

(8) [ ] Service to any community where the only interstate motor common carrier of passengers has applied under 49 U.S.C. 10925(c) to discontinue such interstate service or has applied under 49 U.S.C. 10935 to reduce intrastate service to less than one trip per day (excluding Saturdays and Sundays).

Note: If you have checked Item (8), you must complete A and B below:

A. Provide a copy of, or appropriate reference to, the existing carrier's application to the ICC for discontinuance or reduction of service.

B. Service to be provided.

(9) [ ] Other. [If you seek authority that is not covered by Items (1)—(8), please describe in the space below (for example, restriction removal).]

Explain briefly why this proposed service description either promotes or at least does not defeat the purposes of the Interstate Commerce Act (*e.g.*, why the service is reasonable and not unduly restrictive).

(Note: This information may be embraced in your response to Item 10, below. If so, you need not provide a separate explanation here.)

(10) [ ] All passenger carrier applicants except those whose service proposals are limited to Item 1 (if privately funded) and Items 5 through 8—describe briefly how the proposed service will be consistent with the public interest.

Part IV—Emergency Temporary Authority and Temporary Authority Applications

Complete this information concerning your proposed temporary operations; ensure that Part V "Certificate of Support" has been completed; then turn to Part VI.

A. To be completed by applicants for emergency temporary and/or temporary authority:

(1) Description of authority requested.

(Note: To the extent feasible, if you also are seeking permanent authority, you should conform the proposed temporary service to that sought in your permanent licensing application.)

To operate as a

(type of transportation)

in interstate or foreign commerce, transporting

(commodity or commodities)

between

(territory)

If applicable: Under continuing contract(s) with

(contracting shipper of class of shippers)

(2) I understand that the filing of this application does not, in itself, constitute authority to operate and that a grant of this authority as requested does not mean that corresponding permanent authority will be granted.

[ ] Yes. Applicants must so certify by checking "Yes."

B. To be completed by applicants for emergency temporary authority:

(1) Enter date the emergency temporary authority is requested to become effective:

(2) Is an automatic extension beyond 30 days requested?

[ ] Yes [ ] No.

Note: ETA applications will not be processed unless they include evidence of insurance (name of insurance company, policy number, and effective date); a list of process agents; and, for common carrier authorities, tariff information as described in the Instructions under "Filing the Application and Related Materials."

Part V—Certificate of Support

(1) Name, title, and address of supporting witness.

Supporting Shipper Witnesses (Complete Items 2, 3, 4, and 5).

(2) Describe the geographic movement (actual or future) of the involved traffic in terms of origin(s) and destination(s); also provide representative traffic volumes and frequency of movements. Is service sought in [ ] Alaska [ ] Hawaii? If so, you must describe service needs involving such State(s).

(3) List actual commodities that may be transported. If the movement of classes A and B explosives, household goods, or commodities in bulk is sought, you must describe service needs involving such commodities (for example, specialized equipment).

(4) Describe any distinct service needs. If supporting an application for contract carriage, you may, alternatively or additionally, describe any equipment dedication requirements.

(5) If supporting an application for emergency temporary authority or temporary authority, please answer the following:

(a) Volume of traffic that will be tendered, frequency of movement, and how transported in the past:

(b) How soon must service be provided and reasons for such a time requirement:

(c) How long will need for service likely continue:

(d) The circumstances that create an immediate need for service:

(e) Consequences if service is not made available:

Supporting Witnesses Other than Shippers (Provide information concerning a need for the proposed service in the space below.)

Supporting Witness' Oath

I, _____, (name and title of witness), verify under penalty of perjury, under the laws of the United States of America, that all information supplied is true and correct. Further, I certify that I am qualified and authorized to file this certificate of support. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to 5 years and fines up to $10,000 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to $2,000 or imprisonment up to 5 years for each offense.

(Signature and Date)

Part VI—Filing Fee Information

[Please refer to enclosed Fee Schedule.]

Permanent Authority Applicants

Indicate amount $ _____ and method of payment:

[ ] Check [ ] Money Order [Payable to the "Secretary, Interstate Commerce Commission"]

[ ] VISA [ ] Master Card

Credit Card No.:

Expiration Date:

Signature:

Date:

ETA and/or TA Applicants

Indicate amount $ _____ and method of payment:

[ ] Check [ ] Money Order [Payable to the "Secretary, Interstate Commerce Commission"]

[ ] VISA [ ] Master Card

Credit Card No.:

Expiration Date:

Signature:

Date:

Insert to Appendix B

Fee Schedule

• An application for motor carrier common or contract carrier; passenger or property authority; property broker authority, motor carrier certificate of registration including a certificate of registration; water carrier operating authority or exemption; or household goods freight forwarder authority	$200
• A fitness only application for motor common or contract owner operator authority to transport food and related products	100
• An application to remove restrictions or broaden unduly narrow authority	250
• An application for motor carrier emergency temporary authority	70
• An application for motor carrier or water carrier temporary authority	100

Note: Separate filing fees must accompany requests for permanent and temporary operating authority, even if embraced in the same application. Filing fees for ETA and TA authority embraced in the same application may be consolidated. (See "Fee Policy" statement on reverse side.)

Fee Policy

• Fees must be payable to the Interstate Commerce Commission by check drawn upon funds deposited in a bank in the United States or money order payable in U.S. currency or by approved credit card.

• Separate fees are required for permanent authority requests, emergency temporary authority requests, or temporary authority requests. If an applicant requests multiple types of permanent authority in one application (for example common, contract, and broker authority), only one fee is required.

• The filing fee for a permanent authority application must be sent with the application to Washington, DC.

• The filing fees for an emergency temporary application and/or temporary application must be sent with the application to the appropriate regional office.

• After an application is accepted the filing fee is not refundable.

• The Commission reserves the right to discontinue processing any application for which a check is returned because of insufficient funds. Such an application will be stayed until the fee is paid in full, in good funds.

[FR Doc. 89-30044 Filed 12-28-89; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 54, No. 249

months of November 1989–January 1990 reduced the shipping standard to 25 percent of receipts for any cooperative

PART 1032—[AMENDED]

The authority citation for 7 CFR part

Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW.,

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Proposed Rules

Federal Register
Vol. 54, No. 249
Friday, December 29, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1032

[DA-90-004]

Milk in the Southern Illinois-Eastern Missouri Marketing Area; Notice of Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This action invites written comments on a proposal to suspend certain provisions of the Southern Illinois-Eastern Missouri Federal milk marketing order for the month of January 1990. The proposed suspension would reduce the shipping standard for pool supply plants. The action was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that operates supply plants and represents producers who supply the market. Mid-Am contends that the action is necessary to reflect a reduced need for shipments of milk from supply plants to distributing plants. Mid-Am indicates that less of its supply plant milk will be needed because of the sale of a distributing plant whose fluid milk accounts have been shifted to distributing plants that are regulated under other Federal orders. In response to this situation, a previous suspension order was issued for the months of November 1989 through January 1990 that reduced the shipping standard for supply plants operated by cooperative associations to 25 percent of milk receipts. Mid-Am contends that, under current marketing conditions, it will not be able to perform at the 25 percent shipping level to pool its supply plant at Cabool, Missouri, without engaging in inefficient and uneconomic movements of milk. Thus, Mid-Am contends that a further suspension is necessary to eliminate unnecessary shipments of milk to pool the milk of dairy farmers who have historically supplied the fluid milk needs of the market.

DATES: Comments are due on or before January 5, 1990.

ADDRESSES: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: John F. Borovics, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-2089.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), the suspension of the following provisions of the order regulating the handling of milk in the Southern Illinois-Eastern Missouri marketing area is being considered for January 1990:

In § 1032.7(b), the words "during December at least 40 percent, and at least 50 percent in all other months, of the total", the words "(including producer milk diverted from such plant pursuant to § 1032.13 but excluding milk diverted to such plant) and handlers described in § 1032.9(c)", the words ", except that the minimum qualifying percentage shall be 25 percent for a plant(s) operated by a cooperative association that delivered producer milk", the words "each of", the words "months of", the words "through August", the word "to", and the words "plants described in paragraph (a) of this section".

For the benefit of the reader, the above suspension in conjunction with a previous suspension that was issued on November 15, 1989 (54 FR 48078) would result in a provision that reads as follows:

Section 1032.7 Pool plant.

* * * * *

(b) A supply plant from which receipts of milk from dairy farmers is transferred to and physically received at plants described in paragraph (a) of this section during the immediately preceding September.

* * * * *

All persons who want to send written data, views or arguments about the proposed suspension should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, by the 7th day after publication of this notice in the Federal Register. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures to make the action effective for January 1990.

The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed action would suspend certain provisions of the order for the month of January 1990. The action would reduce the shipping standard for pool supply plants that transferred milk to distributing plants during September 1989.

The order provides that a supply plant must ship at least 40 percent of its receipts of milk to distributing plants during December, and 50 percent in other months, to be a pool plant under the order. A supply plant that meets the pooling standard during each of the months of September through January is a pool plant during each of the months of February through August. Also, the order provides an alternative shipping standard of 25 percent for a supply plant operated by a cooperative association if at least 75 percent of the cooperative's total milk supply during the preceding months of September through August is received at distributing plants. A previous suspension action for the months of November 1989-January 1990 reduced the shipping standard to 25 percent of receipts for any cooperative association supply plant that delivered producer milk during each of the immediately preceding months of September through August. The proposed action would further reduce the amount of milk that must be shipped from any supply plant to a distributing plant during January 1990 if the supply plant shipped milk during September 1989.

Both the current and previous actions were requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that operates supply plants under the order and represents producers who supply the market. Mid-Am contends the action is necessary because of a reduced need for shipments of milk from supply plants to furnish the fluid milk requirements of distributing plants.

Mid-Am indicates that the reduction of the fluid milk requirements for the market is a result of the recent sale of a distributing plant to another handler that is regulated under the order. Mid-Am has maintained pool plant status under the order for its Cabool, Missouri, supply plant by making shipments to the distributing plant that was sold. The fluid milk accounts of the plant that was sold were shifted to distributing plants that are regulated under other Federal orders and the plant ceased receiving milk on October 19, 1989. As a result, there was a reduction in the amount of supplemental supply plant milk required of Mid-Am to meet the fluid milk needs of the market.

In response to this situation, a suspension order was issued for the months of November 1989-January 1990 that reduced the shipping standard for supply plants operated by cooperative associations to 25 percent of milk receipts. Mid-Am now contends that, under current marketing conditions, it will not be able to perform at the 25 percent shipping level to pool its supply plant at Cabool, Missouri, without engaging in inefficient and uneconomic movements of milk. Thus, Mid-Am contends that a further suspension for January 1990 is necessary to eliminate unnecessary shipments of milk to pool the milk of diary farmers who have historically supplied the fluid milk needs of the market.

List of Subjects in 7 CFR Part 1032

Dairy products, Milk, Milk marketing orders.

PART 1032—[AMENDED]

The authority citation for 7 CFR part 1032 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Signed at Washington, DC, on: December 20, 1989.

Kenneth C. Clayton,
Acting Administrator.

[FR Doc. 89-30244 Filed 12-28-89; 8:45 am]
BILLING CODE 3410-02-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 694]

RIN 1512-AA07

Realignment of the Eastern Boundary of the Alexander Valley Viticultural Area and the Northeastern Boundary of the Northern Sonoma Viticultural Area (89F-120P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF), has received a petition for the revision of the eastern boundary of the Alexander Valley Viticultural area to encompass the planted areas of Gauer Ranch and Chestnut Springs Vineyards. The proposed revised boundary conforms, in part, to the boundary proposed by Group B of the original Alexander Valley petitioners.

ATF is also proposing the revision of the northeastern boundary of the Northern Sonoma viticultural area to coincide with the proposed revision of the northeastern boundary for the Alexander Valley viticultural area.

DATE: Written comments must be received by February 12, 1990.

ADDRESSES: Send written comments to: Chief, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044-0385 (Notice No. 694). Copies of the petition, the proposed regulations, the appropriate maps, and written comments will be available for public inspection during normal business hours at: ATF Reading Room, Disclosure Branch Room 4412, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: David W. Brokaw, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20226, (202) 566-7626.

SUPPLEMENTARY INFORMATION:

Background

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), title 27, CFR defines an American viticultural area as a delimited grape-growing region distinguishable by geographic features, the boundaries of which have been delineated in subpart C of part 9.

Section 4.25a(e)(2), Title 27, CFR, outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include;

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy (or copies) of the appropriate U.S.G.S. map(s) with the proposed boundaries prominently marked.

T.D. ATF-187

T.D. ATF-187, which was published in the Federal Register on October 24, 1984, established the Alexander Valley viticultural area effective November 23, 1984. Two groups had presented petitions for the establishment of an Alexander Valley viticultural area, and a hearing was held on January 24, 1983, concerning establishment of the viticultural area. In the final rule, ATF found that the general area encompassed within the boundaries proposed by the second group, ("Group B"), merited establishment as the Alexander Valley viticultural area. Therefore, the viticultural area

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established by the final rule generally corresponded to the area proposed by Group B. However, their proposed boundaries were modified to exclude several mountainous areas encompassed by the eastern and northwestern boundaries, which ATF found possessed viticultural features which were distinguished by geographical features from the rest of the proposed viticultural area. Specifically, ATF found that the mountainous areas to the east were characterized by soils primarily of the Goulding-Toomes-Guenoc association, while the valley floor was characterized by soils of the Yolo-Cortina-Pleasanton association. ATF noted that virtually all grapes in the Alexander Valley area were grown on the valley floor, adjacent river terraces, and the lower slopes rising out of the valley. The U.S.G.S. 7.5 minute topographic maps consulted by ATF did not depict any vineyards in the mountainous areas. Finally, ATF found no evidence that the name Alexander Valley was locally and/or nationally known as referring to those mountainous areas, or that the historical or current boundaries of Alexander Valley had ever included those areas. Therefore, ATF concluded that the eastern boundaries proposed by Group B encompassed mountain areas which lay outside the actual geographic and viticultural limits of Alexander Valley, and those boundaries were modified accordingly.

Petition

ATF has received a petition for revision of the eastern boundary of Alexander Valley viticultural area to encompass the planted and soon-to-be-planted areas of Gauer Ranch and Chestnut Springs Vineyards. The petition was submitted by Edward H. Gauer of Gauer Ranch and Ellis J. Alden of Chestnut Springs Vineyards.

Mr. Gauer stated that his 6,000-acre ranch includes property on the valley floor and land rising to the northeast into the hills. Mr. Gauer began planting vineyards in Alexander Valley in 1972. Over the next five years he established 251 acres of vineyards on the valley floor and at low elevations in the foothills. Since 1977 an additional 142 acres have been planted on the hillsides, and another 302 acres of potential new vineyard sites have been chosen.

Mr. Alden stated that he purchased his 1,400 acre ranch in the hills east of Geyserville in 1966 and planted his first vineyards in 1968. Thirteen acres of Cabernet grapes are in the ground; a total of 100 acres are planted for the ranch and nearly level expanses of the upland valley on his ranch. Mr. Gauer recently learned that a large part of his property was excluded from the official Alexander Valley viticultural area boundaries which were established in 1984. Both of the petitions originally submitted at the time included all of Mr. Gauer's hillside vineyards, as well as the site which has now been planted to Mr. Alden's vineyards. Evidence at the hearing did not focus on the exclusion of vineyards of higher elevation. Both petitioners were under the erroneous impression that their properties were included in the Alexander Valley viticultural area boundaries. However, the boundaries described in the final petition excluded a portion of Mr. Gauer's vineyards, and totally excluded the property currently owned by Mr. Alden. When T.D. ATF–187 was issued, ATF was unaware that the boundaries would exclude portions of Mr. Gauer's vineyards from the Alexander Valley viticultural area. ATF mistakenly believed that there were no vineyards planted in the mountainous areas to the east of the eastern boundary line. The petition thus requests a revision of the northeastern boundary of the Alexander Valley viticultural area to include the vineyards owned by the petitioners. The proposed boundary revision would add approximately 19,085 acres of territory to Alexander Valley. Of these, 165 acres are currently planted to grapes, and another 460 acres will be planted within the next three to five years.

Northern Sonoma

ATF's proposal to revise the boundary of the Alexander Valley viticultural area affects the boundary of the Northern Sonoma viticultural area.

In the preamble to Notice No. 472 proposing the Northern Sonoma viticultural area, ATF stated its intention to have the proposed boundary coincide generally with the "outer" portions of the boundaries of the proposed Alexander Valley, Dry Creek Valley, Russian River Valley, and Knights Valley viticultural areas. In the preamble to T.D. ATF–204, ATF stated that these four areas all fit perfectly together dividing northern Sonoma County into four large areas with the Northern Sonoma area using all of the outer boundaries of these four areas with the exception of a small area having nearly 300 acres of grapevines and possessing the same geographical features as the rest of the Northern Sonoma area.

Therefore, ATF is proposing to revise the northeastern boundary of the Northern Sonoma viticultural area to coincide with the proposed revised northeastern boundary for the Alexander Valley viticultural area.

Evidence of Name

The petitioners contend that the area within the proposed extension has always been known as being part of Alexander Valley. They submitted evidence that the area was known as Alexander Valley at the time the final boundaries were established in 1984, and has been known as part of Alexander Valley since then.

The petitioners submitted several letters from owners of neighboring vineyards, including one from a member of the Alexander Valley Appellation Committee, which stated that the area in question is locally known as part of Alexander Valley. The letters supported the petitioners' contention that their vineyards had been left out of the Alexander Valley boundaries by mistake.

The petitioners also submitted letters from several wineries stating that they had used grapes from the area in question in wines which were labeled as coming from the Alexander Valley. For example, a letter from Landmark Vineyards stated that they had purchased grapes from the Gauer Ranch, from both the valley floor and hillside locations, over several vintages, and had consistently designated wines made from those grapes as "Alexander Valley," including a vineyard designated "Gauer Ranch" Chardonnay which was produced in 1982, which came entirely from one of the hillside vineyards. A letter from Chateau St. Jean Vineyards and Winery stated that they had purchased several tons of Chardonnay grapes from the Gauer estate during the late 1970s and early 1980s, and had labeled these wines to reflect their Alexander Valley heritage

The petitioners also submitted several newspaper and magazine articles which referred to the Gauer ranch as being located in the Alexander Valley area. The following list contains examples of the articles submitted:

(1) An article entitled "Gauer Ranch Vineyard Designation" (Sonoma County California Visitors Review, 5/8/87), which refers to the "high-elevation vineyards of the Circle G (Gauer Ranch) in Alexander Valley."

(2) An article entitled "Gauer Grapes Say Sayonara California; Hello Japan" (California Visitors Review, 10/23/87), which refers to "the premium, hillside, Alexander Valley vineyards of Gauer Estate Winery."

(3) An article entitled "A winery 'Department Store' for Alexander Valley" (San Francisco Chronicle, 7/20/87), which refers to Mr. Gauer as an "Alexander Valley grape grower."

(4) An article entitled "Ex-Clothes Magnate Buys Wine Complex," (The Press Democrat, 7/11/87), which refers to Mr. Gauer's purchase of "a large wine warehouse and crushing facility near his 6,000-acre ranch in the Alexander Valley."

(5) An article entitled "Valley Grapes Head for Tokyo" (The Healdsburg Tribune, 10/23/87), stating that sixty tons of "grapes from the hillside Alexander Valley Vineyards of Gauer Estate Winery" had been sent to Tokyo.

Finally, the petitioners submitted a map distributed by the Sonoma County Wineries Association, of which over 8,000 copies have been distributed over the past 5 years, which shows the boundaries of the Alexander Valley viticultural area as encompassing the vineyards owned by the petitioners.

Apparently the map was created in early 1984, before the final rule on Alexander Valley was published, and the boundaries on the map are the boundaries proposed by Group B, not the boundaries that were adopted in the final rule. The petitioners contend that the map has been distributed on a nationwide basis, and that it has contributed to a belief on the part of wine consumers that the petitioners' vineyards were within the official boundaries of the Alexander Valley viticultural area.

Thus, the petitioners contend that the evidence establishes that the area under consideration is locally and nationally known as part of Alexander Valley.

Topography

The elevations found within the petitioned area are consistent with elevations inside the currently defined boundaries of Alexander Valley. Elevations in the northeastern corner of the appellation, which are the highest in the Alexander Valley viticultural area, range from 1,600 to 2,400 feet. Within the petitioned area elevations range from 600 to 2,000 feet.

The proposed amended boundary approximates a minor watershed boundary within the larger Russian River watershed. To the southwest of the proposed boundary line (i.e., the foothills currently in Alexander Valley viticultural area and the area proposed to be added to the appellation) surface water drains directly into the Russian River. To the northeast of the line, surface water drains first into Sulphur Creek and its tributaries and from there into the Russian River. This natural boundary proceeds from the top of Black Mountain along a ridge line that bisects Mr. Alden's Ranch.

Climate

The climate of the petitioned area falls within the range of climate found inside the currently approved Alexander Valley appellation. The climate of Alexander Valley contains a certain amount of variation. For example, temperatures increase as one travels from north to south; fog affects only the southern portion of the valley. In general, the climate of Alexander Valley is characterized as a Region III climate according to the system developed by Amerine and Winkler.

No long range temperature studies for either the Gauer Ranch or Chestnut Springs Ranch have been made. However, the petitioners state that years of viticultural experience on the Gauer Ranch indicate that the area has a Region III climate, suitable for the production and consistent ripening of late varieties such as Cabernet Sauvignon, yet not too warm to produce excellent quality Chardonnay, a relatively early variety.

Soils

The petitioners explain that a very general soil survey map of Sonoma County put out by the U.S. Department of Agriculture Forest Service and Soil Conservation Service (May 1972), which categorizes soil groupings into ten types, characterizes the primarily alluvial soils of the valley floor as the Yolo-Cortina-Pleasanton Association. Proceeding northeast into the foothills, the map identifies the next soil grouping as the Goulding-Toomes-Guenoc Association. Farther east and running parallel to this association lies another grouping classified as the Yorkville-Suther Association. The rugged mountainous area beyond is mapped as the Los Gatos-Hennecke-Maymen Association. The current eastern boundary of the appellation runs within the area marked Goulding-Toomes-Guenoc, except for the expanded area in the northeast corner, which is mapped as Yorkville-Suther.

However, the petitioners state that a closer examination of U.S. Department of Agriculture Forest Service and Soil Conservation (May 1972) large scale soil maps of the eastern half of Alexander Valley suggests that the distinctions between the general soil associations of the foothills are not so clear-cut. The close-in foothills, inside the current Alexander Valley viticultural area boundaries, contain significant quantities of many of the same soils as the foothills in the petitioned area.

The eastern foothills officially accepted as part of Alexander Valley show substantial areas of Suther loam, Laughlin loam, Suther-Laughlin loams, Spreckels loam soils, and smaller areas of Sobrante loam, Yorkville clay loam, Pleasantown gravelly loam, Josephine loam, Hennecke gravelly loam, and others including Montara cobbly clay loam, Guenoc gravelly silt loam, Supan silt loam, and Toomes rocky loam. The principal soils in this list are classified as uplands range soils.

The petitioned area shows predominantly Suther loam, Laughlin loam, Suther-Laughlin loams, Yorkville clay loam, and Sobrante loam soils, with smaller areas of Josephine loam, Hennecke gravelly loam, and others. The principal soils, here again, are classified as uplands range soils.

The area outside the proposed amended boundary has large areas of Hennecke gravelly loam, Los Gatos gravelly loam, Stonyford gravelly loam, Josephine loam, Suther-Laughlin loams, Hugo very gravelly loam, and Laughlin loam soils, and smaller areas of Maymen gravelly sandy loam, Hugo-Atwell complex, rock land, and others. The principal soils in this group are mountainous/wilderness type soils.

Thus, the petitioners state that in the eastern foothills of Alexander Valley, like in most parts of Sonoma County, there is a great diversity of soil types. There are, however, unifying themes as well. As described above, the same soils reappear throughout the foothills. East of the proposed amended boundary, where the terrain becomes appreciably more rugged, different soil types appear and become predominant.

Public Participation-Written Comments

ATF requests comments from all interested persons. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except to comments received on or before the closing date.

ATF will not recognize any submitted material as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comments. The name of the person submitting a comment is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing on the proposed regulations should submit his or her request, in writing, to the Director within the 45-day comment period. The Director, however, reserves the right to

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determine, in light of all circumstances, whether a public hearing will be held.

Regulatory Flexibility Act

It is hereby certified that this proposed regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required because the proposal, if promulgated as a final rule, is not expected (1) to have secondary, or incidental effects on a substantial number of small entities; or (2) to impose, or otherwise cause a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Executive Order 12291

It has been determined that this proposed regulation is not a major regulation as defined in E.O. 12291 and a regulatory impact analysis is not required because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographical regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reducton Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96-511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this notice because no requirement to collect information is proposed.

Drafting Information

The principal author of this document is David W. Brokaw, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, Wine.

Authority And Issuance

27 CFR Part 9, American Viticultural Areas, is amended as follows:

PART 9—[AMENDED]

Paragraph 1. The authority citation for Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. Section 9.53 is amended by revising paragraphs (c) (37) through (42), removing paragraphs (c) (43) and (44), and redesignating paragraphs (c) (45) and (46) as (c) (43) and (44) to read as follows:

§ 9.53 Alexander Valley

* * * * *

(c) Boundary * * *

(37) Then northerly along the western lines of Section 4, of T. 9 N, R. 8 W., and Sections 33, 28, 21, 16, and 9 of T. 10 N., R. 8 W.;

(38) Then westerly along the northern lines of Sections 8 and 7, T. 10 N., R. 8 W. and Section 12, T. 10 N., R. 9 W. to the southeastern corner of Section 2, T. 10 N., R. 9 W.;

(39) Then northwesterly in a straight line to the eastern line of Section 3 at 38 degrees 45 minutes latitude, T. 10 N., R. 9 W.;

(40) Then westerly along latitude line 38 degrees 45 minutes to the point lying at 122 degrees 52 minutes 30 seconds longitude;

(41) Then northwesterly in a straight line to the southeast corner of Section 4, T. 11 N., R. 10 W., on the Asti, Quadrangle map;

(42) Then northeasterly in a straight line to the southeast corner of Section 34, T. 12 N., R. 10 W.;

Par. 3. Section 9.70(b) is revised to read as follows:

§ 9.70 Northern Sonoma

* * * * *

(b) *Approved maps.* The approved maps for determining the boundary of the Northern Sonoma viticultural area are the U.S.G.S. Topographical Map of Sonoma County, California, scale 1:100,000, dated 1970, the Asti Quadrangle, California, 7.5 minute series (Topographic) Map, dated 1959, photorevised 1978, and the Jimtown Quadrangle, California-Sonoma County, 7.5 Minute series (Topographic) Map, dated 1955, photorevised 1975.

Par. 4. Section 9.70 is amended by revising paragraphs (c) (10) through (26) and by removing paragraphs (c) (27) and (28) to read as follows:

(c) Boundary * * *

(10) The boundary proceeds northerly along the western lines of Sections 4, of Township 9 North, Range 8 West, and Sections 33, 28, 21, 16, and 9 of Township 10 North, Range 8 West on the Jimtown Quadrangle map.

(11) The boundary proceeds westerly along the northern lines of Sections 8 and 7, Township 10 North, Range 8 West and Section 12, Township 10 North, Range 9 West to the southeastern corner of Section 2, Township 10 North, Range 9 West.

(12) The boundary proceeds northwesterly in a straight line to the eastern line of Section 3 at 38 degrees 45 minutes latitude, Township 10 North, Range 9 West.

(13) The boundary proceeds westerly along latitude line 38 degrees 45 minutes to the point lying at 122 degrees 52 minutes 30 seconds longitude.

(14) The boundary proceeds northwesterly in a straight line to the southeast corner of Section 4, Township 11 North, Range 10 West, on the Asti, Quadrangle map.

(15) The boundary proceeds northeasterly in a straight line to the southeast corner of Section 34, Township 12 North, Range 10 West.

(16) The boundary proceeds north along the east boundary of Section 34, Township 12 North, Range 10 West on the U.S.G.S. Topographical Map of Sonoma County, California, to the Sonoma County-Mendocino County line.

(17) The boundary proceeds along the Sonoma County-Mendocino County line west then south to the southwest corner of Section 34, Township 12 North, Range 11 West.

(18) The boundary proceeds in a straight line east southeasterly to the southeast corner of Section 2, Township 11 North, Range 11 West.

(19) The boundary proceeds in a straight line south southeasterly to the southeast corner of Section 24, Township 11 North, Range 11 West.

(20) The boundary proceeds in a straight line southeasterly across Sections 30, 31, and 32 in Township 11 North, Range 10 West, to the point at 38 degrees 45 minutes North latitude parallel and 123 degrees 00 minutes East longitude in Section 5, Township 10 North, Range 10 West.

(21) The boundary proceeds along this latitude parallel west to the west line of Section 5, Township 10 North, Range 11 West.

(22) The boundary proceeds along the section line south to the southeast corner of Section 18, Township 9 North, Range 11 West.

(23) The boundary proceeds in a straight line southwesterly approximately 5 miles to the peak of Big Oat Mountain, elevation 1404 feet.

(24) The boundary proceeds in a straight line southerly approximately 2 ¾ miles to the peak of Pole Mountain, elevation 2,204 feet.

(25) The boundary proceeds in a straight line southeasterly approximately 4 ¾ miles to the confluence of Austin Creek and the Russian River.

(26) The boundary proceeds along the Russian River northeasterly, then southeasterly to the beginning point.

Signed: December 18, 1989.

Stephen E. Higgins,

Director.

[FR Doc. 89-30240 Filed 12-28-89; 8:45 am]

BILLING CODE 4810-31-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-583, RM-7062]

Radio Broadcasting Services; Van Wert, Ohio, and Monroeville, IN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Atlantic Resources Corporation seeking the reallotment of Channel 255B from Van Wert, Ohio, to Monroeville, Indiana, and the modification of its license for Station WBYR(FM) accordingly. Channel 255B can be allotted to Monroeville in compliance with the Commission's minimum distance separation requirements and can be used at Station WBYR(FM)'s present transmitter site. The coordinates for this allotment are North Latitude 40-57-14 and West Longitude 84-53-07. In accordance with § 1.420 of the Commission's Rules, we will not accept competing expressions of interest in use of the channel at Monroeville or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before February 12, 1990, and reply comments on or before February 27, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Peter A. Rohrbach, Esq., Marissa G. Repp, Esq., Christy J. Dittrick, Esq., Hogan & Hartson, Columbia Square, 555 Thirteenth Street, NW, Washington, DC 20004-1109 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-583, adopted December 5, 1989, and released December 20, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-30209 Filed 12-28-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-579; RM-7065]

Radio Broadcasting Services; Big Rapids and Whitehall, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by West Michigan Radio, Inc., proposing the substitution of FM Channel 272C3 for Channel 272A at Big Rapids, Michigan, and modification of the license for Station WAAQ(FM) to specify the higher class channel. To accommodate the Class C3 channel at Big Rapids, it is necessary to substitute Channel 248A for vacant Channel 272A at Whitehall, Michigan. The coordinates for Channel 272C3, Big Rapids, are 43-43-20 and 85-36-30. The coordinates for Channel 248A, Whitehall, are 43-24-24 and 86-20-42. Canadian concurrence will be requested for both allotments.

DATES: Comments must be filed on or before February 12, 1990, and reply comments on or before February 27, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John F. Garziglia, Pepper & Corazzini, 1776 K Street, NW., Suite 200, Washington, DC 20006 (counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-579, adopted December 5, 1989, and released December 20, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR Section 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-30208 Filed 12-28-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-581, RM-7067]

Radio Broadcasting Services; Zanesville and South Zanesville, OH

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Christian Voice of Central Ohio seeking the

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is

DATES: Comments must be filed on or before February 12, 1990, and reply comments on or before February 27,

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1516 and 1552

percentage of completion should reduce the need for recovering any payment of fee to a contractor, should a downward equitable adjustment be necessary.

the basis of a percentage of costs incurred.

3. Section 1526.307 is amended to

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SUMMARY: The Commission requests comments on a petition by Christian Voice of Central Ohio seeking the substitution of Channel 224B1 for Channel 224A, the reallotment of Channel 224B1 from Zanesville to South Zanesville, Ohio, as the community's first local FM service, and the modification of its license for Station WCVZ(FM) to specify the higher class channel and new community of license. Channel 224B1 can be allotted to South Zanesville in compliance with the Commission's minimum distance separation requirements with a site restriction of 21.1 kilometers (13.1 miles) south to avoid a short-spacing to Station WDJQ, Channel 223B, Alliance, Ohio, and Station WQEL, Channel 224A, Bucyrus, Ohio. The coordinates for the allotment are North Latitude 39–42–53 and West Longitude 82–04–02. Canadian concurrence is required since South Zanesville is located within 320 kilometers of the U.S.-Canadian border. In accordance with Section 1.420 of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 224B1 at South Zanesville or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before February 12, 1990, and reply comments on or before February 27, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Eric S. Kravetz, Esq., Ward & Mendelsohn, P.C., 1100–17th Street, NW., Suite 900, Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–581, adopted December 5, 1989, and released December 20, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–30210 Filed 12–28–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 89–580; RM–6977, RM–7177]

Radio Broadcasting Services; Elkins, WV; Mountain Lake Park, and Westernport, MD

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on mutually exclusive petitions. Marja Broadcasting Corporation, licensee of Station WVHT(FM), Channel 257A, Elkins, West Virginia, proposes the substitution of Channel 255B1 for Channel 257A at Elkins, and the modification of its station's license to specify operation on the higher powered frequency (RM–6977). In order to accomplish the upgrade at Elkins, the proposal requires the substitution of Channel 283A for Channel 255A at Mountain Lake Park, Maryland, and the modification of the construction permit of Station WKHJ(FM) at Mountain Lake Park to specify operation on the new frequency. Ernest F. Santmyire, permittee of Station WWPN(FM), Channel 224A, Westernport, Maryland, proposes the substitution of Channel 283A for Channel 224A at Westernport, and the modification of his construction permit accordingly (RM–7177). The proposed coordinates for Channel 255B1 at Elkins are 38–55–25 and 79–51–33. The coordinates for Channel 283A at Mountain Lake Park are 39–24–37 and 79–17–15. The proposed coordinates for Channel 283A at Westernport are 39–31–22 and 78–58–26.

DATES: Comments must be filed on or before February 12, 1990, and reply comments on or before February 27, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: J. Dominic Monahan, Esq., Dow, Lohnes, & Albertson, 1255 Twenty-Third Street, NW., Suite 500, Washington, DC 20037 (Counsel for Marja Broadcasting Corporation); and Howard M. Liberman, Esq., Jonathan V. Cohen, Esq., Arter & Hadden, 1919 Pennsylvania Avenue, NW., Suite 400, Washington, DC 20006 (Counsel for Ernest F. Santmyire).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–58, adopted December 5, 1989, and released December 20, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–30207 Filed 12–28–89; 8:45 am]

BILLING CODE 6712–01–M

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1516 and 1552

[FRL–3700–6]

Acquisition Regulation Concerning Payment of Fee on Cost-Reimbursement Term Form Contracts

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This document proposes a rule on the payment of fee on cost-reimbursement term form contracts. The intended effect of this action is to change the current procedure of making provisional payments of fee as a percentage of cost incurred, to a method of payment based on the number of direct hours performed in relation to the total level of effort in the contract. This action is necessary to provide for a more equitable procedure for the provisional payment of fee.

DATE: Written comments should be submitted not later than January 29, 1990.

ADDRESS: Comments should be addressed to: Environmental Protection Agency, Procurement and Contracts Management Division (PM–214F), 401 M Street SW., Washington, DC 20460, ATTN: Joe Nemargut.

FOR FURTHER INFORMATION CONTACT: Joe Nemargut at (202) 382–5019 or FTS 382–5019.

SUPPLEMENTARY INFORMATION:

A. Background

Under current Environmental Protection Agency (EPA) procedures, provisional payment of fee (i.e., the fixed fee in a cost-plus-fixed-fee type contract or the base fee in a cost-plus-award-fee contract) is made on the basis of costs incurred. This procedure may result in provisional payments of fee earlier in contract performance than anticipated.

This proposed rule would change provisional payment of fee to a percentage of completion basis on cost-reimbursable term form contracts. Percentage of completion is the ratio of the direct labor hours performed in relation to the direct labor hours set forth in the clause at 48 CFR 1552.212–70, "Level of Effort—Cost-Reimbursement Term Contract."

This clause provides for a possible equitable downward adjustment to the fee, if a contractor provides less than 90 percent of the level of effort specified for any contract period. Provisional payment of fee on the basis of percentage of completion should reduce the need for recovering any payment of fee to a contractor, should a downward equitable adjustment be necessary.

B. Executive Order 12291

OMB Bulletin No. 85–7, dated December 14, 1984, establishes the requirements for Office of Management and Budget (OMB) review of agency procurement regulations. This regulation does not fall within any of the categories cited in the Bulletin requiring OMB review.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this proposed rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501, et seq.

D. Regulatory Flexibility Act

The EPA certifies that this rule will not have a significant economic impact on a substantial number of small entities. The rule merely initiates a more equitable policy for provisional payment of fee more directly to the percentage of work completed.

List of Subjects in 48 CFR 1516 and 1552

Government procurement, Types of contracts, Solicitation provisions, and Contract clauses.

For the reasons set out in the preamble, parts 1516 and 1552 of Title 48, Code of Federal Regulations, are proposed to be amended as follows:

PART 1516—[AMENDED]

1. The authority citation for part 1516 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

2. Subpart 1516.3 is amended to add section 1516.301–70 to read as follows:

1516.301–70 Payment of fee.

(a) The policy of EPA for cost-reimbursement term form contracts is to make provisional payment of fee (i.e., the fixed fee on cost-plus-fixed-fee type contracts or the base fee on cost-plus-award-fee type contracts) on a percentage of work completed basis. Percentage of work completed is the ratio of the direct labor hours performed in relation to the direct labor hours set forth in the contract in clause 1552.212–70, "Level of Effort—Cost Reimbursement Term Contract." Payment of fee will remain subject to withholding provisions, such as 48 CFR 52.216–8, Fixed Fee.

(b) The Contracting Officer shall not make provisional Payment of fee in cost-reimbursement term form contracts on the basis of a percentage of costs incurred.

3. Section 1526.307 is amended to designate the existing paragraph as (a) and to add a paragraph (b) to read as follows:

1516.307 Contract clauses.

* * * * * *

(b) The Contracting Officer shall insert the clause at 1552.216–74, Payment of Fee, in solicitations and contracts where a cost-reimbursement term form contract is contemplated.

PART 1552—[AMENDED]

4. The authority citation for part 2552 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

5. Part 1552 is amended to add section 1552.216–74 to read as follows:

1552.216–74 Payment of fee.

(a) The term "fee" in this clause refers to either fixed fee under a cost-plus-fixed-fee type contract, or the base fee under a cost-plus-award-fee type contract.

(b) The Government will make provisional fee payments on the basis of percentage of work completed. Percentage of work completed is the ratio of direct labor hours performed to the direct labor hours set forth in clause 1552.222–70 "Level of Effort—Cost-Reimbursement Term Contract."

Dated: November 28,1989.

John C. Chamberlin,

Director, Office of Administration.

[FR Doc.89–30130 Filed 12–28–89; 8:45 am]

BILLING CODE 6560–50–M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1003, 1043 and 1064

[Ex Parte No. MC–5 (Sub-No. 10)]

Removal of Regulations Governing Cargo Liability Insurance, Surety Bonds or Other Security Required by Motor Common Carriers of Property and Freight Forwarders

AGENCY: Interstate Commerce Commission.

ACTION: Extension of time to file comments.

SUMMARY: By petition filed December 11, 1989, the Shippers National Freight Claim Council, Inc., (hereafter "petitioner"), requests a 60-day extension of time from December 27,

1989, for filing comments. (See 54 FR 48779; November 27, 1989.) Petitioner states that extension is necessary to

NMFS, NOAA, U.S. Department of Commerce, One Blackburn Drive, Gloucester, MA 01930.

which the public may comment on the proposed rule to revise the U.S. General Standards for Grades of Shrimp (50 CFR,

50 CFR Part 630

[Docket No. 90918–9218]

When the FMP was prepared, voluntary reporting was at a level sufficient to provide reliable size-

approximately 60 dealers are involved in the Atlantic swordfish fishery. The required weigh-out sheets and sales

1989, for filing comments. (See 54 FR 48779; November 27, 1989.) Petitioner states that extension is necessary to permit its members to carefully consider the proposal and forward recommendations to the Council on the position to be taken by the Council. Petitioner has not shown good cause for a 60-day extension. However, preparation of a reasoned response should be possible with a twenty day extension. Accordingly, a 20-day extension will be granted.

DATES: Comments are due on January 16, 1990.

ADDRESS: Send comments (an original and 10 copies) referring to Ex Parte No. MC-5 (Sub-No. 10) to: Interstate Commerce Commission, Office of the Secretary, Case Control Branch, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT:
Alice K. Ramsay (202) 275-0854

Heber P. Hardy (202) 275-7148, [TDD for hearing impaired (202) 275-1721].

Decided: December 21, 1989.
By the Commission, Chairman Gradison.

Kathleen M. King,
Acting Secretary.

[FR Doc. 89-30249 Filed 12-28-89; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 264

[Docket No. 90604-9204]

RIN 0648-AA46

United States Standards for Grades of Frozen Fish Blocks

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of extension of comment period.

SUMMARY: NOAA issues this notice to extend for 30 days the period during which the public may comment on the proposed rule to revise the U.S. Standards for Grades of Frozen Fish Blocks. Copies of the proposed amendment may be obtained from the addresses below.

DATES: Comments on the amendment should be submitted in writing on or before January 29, 1990.

ADDRESSES: All comments on the proposed amendment should be submitted to Thomas J. Moreau, Deputy Director, Technical Services Unit, Inspection Services Division, F/TS45, NMFS, NOAA, U.S. Department of Commerce, One Blackburn Drive, Gloucester, MA 01930.

Copies of the U.S. Standards for Grades, the proposed amendment, and supporting documentation are available from the Standards & Specifications Branch, Technical Services Unit, NMFS, NOAA, U.S Department of Commerce, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Earl C. Johnston, Chief, Standards & Specifications Branch (508-281-9219).

SUPPLEMENTARY INFORMATION: The proposed rule to revise the U.S. Standards for Grades of Frozen Fish Blocks (50 CFR part 264, subpart A) was published in the **Federal Register** on September 21, 1989 (54 FR 38661). The proposed rule was developed with the cooperation of industry and user groups and was examined and evaluated utilizing over 660 sample units. The proposed rule specified a comment period extending through November 6, 1989.

Several interested parties have requested an extension to the comment period so that they may evaluate the proposal more closely and provide comments based on their evaluations. Because NOAA believes additional comments from the affected industry are in the best interest of the public, an additional 30 days for comment are established by this notice. The Secretary of Commerce will consider the public comments in determining whether to modify or approve the proposed rule.

Authority: 7 U.S.C. 1621-1630; Reorganization Plan No. 4 of 1970 (84 Stat. 2090).

Dated: December 22, 1989.

Samuel W. McKeen,
Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 89-30185 Filed 12-28-89; 8:45 am]
BILLING CODE 3510-22-M

50 CFR Part 265

[Docket No. 90805-9205]

RIN 0648-AA47

United States Standards for Grades of Fresh and Frozen Shrimp; Extension of Comment Period

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of extension of comment period.

SUMMARY: NOAA issues this notice to extend for 30 days the period during which the public may comment on the proposed rule to revise the U.S. General Standards for Grades of Shrimp (50 CFR, part 265, subpart A). Copies of the proposed rule may be obtained from the addresses below.

DATES: Comments on the amendment should be submitted in writing on or before January 29, 1990.

ADDRESSES: All comments on the proposed amendment should be submitted to Thomas J. Moreau, Deputy Director, Technical Services Unit, Inspection Services Division, F/TS45, NMFS, NOAA, U.S. Department of Commerce, One Blackburn Drive, Gloucester, MA 01930.

Copies of the U.S. Standards for Grades, the proposed amendment, and supporting documentation are available from the Standards & Specifications Branch, Technical Services Unit, NMFS, NOAA, U.S Department of Commerce, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Earl C. Johnston, Chief, Standards & Specifications Branch (508-281-9219).

SUPPLEMENTARY INFORMATION: The proposed rule to revise the U.S. Standards for Grades of Shrimp (50 CFR part 265, subpart A) was published in the **Federal Register** on September 21, 1989 (54 FR 38885). The proposed rule was developed with the cooperation of industry and user groups. The proposed rule was examined and evaluated utilizing over 660 sample units. The proposed rule published on September 21, 1989 specified a comment period extending through November 6, 1989. Several interested parties have requested an extension to the comment period so that they may evaluate the proposal more closely and provide comments based on their evaluations. Because NOAA believes additional comments from the affected industry are in the best interest of the public, an additional 30 days for comment are established by this notice. The Secretary of Commerce will consider the public comments in determining whether to modify or approve the proposed rule.

Authority: 7 U.S.C. 1621-1630; Reorganization Plan No. 4 of 1970 (84 Stat. 2090).

Dated: December 11, 1989.

James E. Douglas, Jr.,
Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 89-30186 Filed 12-28-89; 8:45 am]
BILLING CODE 3510-22-M

50 CFR Part 630

[Docket No. 90618-9218]

RIN 0648-AC41

Atlantic Swordfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule; regulatory amendment.

SUMMARY: NOAA proposes to amend the regulations implementing the Fishery Management Plan for Atlantic Swordfish (FMP) to require mandatory reporting by all U.S. dealers handling swordfish. Dealers would be required to provide NMFS with weight and price information for U.S.-harvested swordfish and related bycatch species received, and pertinent information on landings. Such information is or can be included on weighout sheets and sales receipts that are used routinely by the industry. Other changes are proposed to (1) clarify the scope of the regulations, (2) modify the requirements and procedures for obtaining a vessel permit, and (3) modify the procedures for submitting the daily fishing records. The intent of the proposed rule is to obtain more timely and accurate data regarding landings, value, and size composition of the catch of swordfish and related bycatch species, thus improving stock assessment and fishery monitoring capabilities; to ensure accountability for information submitted on swordfish fishery permit applications; to ensure timeliness of information submitted on fishing records; and to clarify the regulations.

DATE: Written comments on this proposed rule must be received on or before January 29, 1990.

ADDRESSES: Comments on this proposed rule should be sent to Rodney C. Dalton, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

Comments on the information collection requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Washington, DC 20503, Attention: Desk Officer for NOAA.

FOR FURTHER INFORMATION CONTACT: Rodney C. Dalton, 813-893-3722.

SUPPLEMENTARY INFORMATION: The Atlantic swordfish fishery is managed under the FMP and its implementing regulations at 50 CFR Part 630. The FMP contains a procedure for modifying statistical reporting requirements by regulatory amendment. That procedure, including the holding of public hearings, has been followed.

When the FMP was prepared, voluntary reporting was at a level sufficient to provide reliable size-frequency data. In recent years, voluntary cooperation from fishermen and some dealers has declined, and the geographical range of the pelagic longline fishery has expanded significantly. As a result, there is concern that the size-frequency data received via the voluntary reporting program are not statistically representative of all swordfish landed by the fishery. Mandatory dealer reporting, as proposed by this rule, will result in more accurate data on the size composition, total volume, and value of the catch. These are critical information components for improving stock assessments, monitoring the fishery, and evaluating management strategies.

This proposed rule would require each dealer in the Atlantic swordfish fishery to provide information on swordfish received and on other fish caught incidentally in the swordfish fishery and landed in conjunction with swordfish trips (bycatch). The required information to be reported would include: dates of receipt of swordfish; names and official numbers of the vessels from which swordfish were received; dates and ports of landing of the vessels; total carcass weights, by market category for swordfish and by species for related bycatch species received; prices paid for each market category and species; and individual carcass weights for swordfish. The required data on related bycatch species are necessary to calculate effort directed at swordfish, economic values related to the swordfish fishery, and other parameters necessary to monitor the FMP. Although not required, individual carcass weights of the related bycatch species would also be desired. A report form would be available to report this information, or a dealer could provide copies of appropriate weigh-out sheets and sales receipts to the NMFS Science and Research Director or to a designated fishery port agent.

Information from dealers would supplement, but not duplicate, information provided via fishing vessel logbooks. Dealers' reports would provide individual carcass weights needed to determine size composition and total weights and value of the catch, whereas logbooks provide effort data and numbers of fish caught per set (i.e., catch per unit of effort) and catch locations. Both information components are necessary for stock assessment and monitoring.

The reporting burden associated with the proposed dealer reports should be minimal. NMFS estimates that approximately 60 dealers are involved in the Atlantic swordfish fishery. The required weigh-out sheets and sales receipts are currently produced in the course of routine business practice throughout the industry. Data elements required are restricted to those that are or can be routinely recorded. It is anticipated that most dealers will simply photocopy their existing forms and submit them on a monthly basis to NMFS; however, a NOAA form may also be used. The estimated total annual reporting burden for all dealers combined is 320 hours, and the associated total annual costs are estimated to be $3,104. Federal costs are estimated to be $36,462 annually.

Current regulations require fishermen landing swordfish in Puerto Rico or the Virgin Islands to submit weigh-out sheets to NMFS. Because the proposed dealer reports will provide the same information in a more efficient manner, this rule removes the requirement for weigh-out sheets from fishermen operating in the Caribbean.

Two additional reductions in the present reporting requirements would be made by this rule. The existing requirement that selected owners and operators of permitted vessels advise the Science and Research Director of departure and landing information would be deleted. The on-board observer program for which this information would have been necessary was not implemented. The existing requirement that a permit application include projected information regarding target species, average trip length, and monthly distribution of fishing would be deleted. Empirical data are now available from fishermen's logbooks to replace the projected information from the applications.

The definition of *Center Director* would be replaced by *Science and Research Director* and expanded to include the Science and Research Director, Northeast Fisheries Center (NMFS) for those reports submitted by dealers whose principal place of business is in the Northeast Region of NMFS.

The purpose and scope section of the regulations (§ 630.1(b)) would be modified to express the scope of the regulations in the broadest terms consistent with the FMP. NOAA has determined that the public is better served by a general expression of scope in this section, with the specific scope of each management provision or measure specified for that provision or measure. This approach avoids the possibility of misleading fishermen, dealers, and

processors as to the scope of the regulations in this part.

Revisions to the vessel permit

though it harvested swordfish by other gear.

Revisions to § 630.4 would also

improved data for effective management of the fishery.

The General Counsel of the

estimates or any other aspect of this collection of information, including suggestions for reducing this burden, to

Science and Research Director means the Science and Research Director,

The application must also include a copy of the vessel's U.S. Coast Guard Certificate of Documentation of the

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processors as to the scope of the regulations in this part.

Revisions to the vessel permit requirements (§ 630.4(a)) would clarify that the criteria for determining the need for a permit by a vessel with longline gear aboard applies only to pelagic longline gear. Non-pelagic longline gear does not normally have a significant bycatch of swordfish. The need for a permit for a vessel with non-pelagic longline gear aboard would be determined under the less stringent citeria applicable to other vessels. A definition of *pelagic longline* would also be added.

In addition, the current language of § 630.4(a) leaves room for argument that "operating in the * * * EEZ" is a primary controlling factor in determining whether or not a swordfish or longline fishing vessel must have a permit. Such is not the intention of the FMP. The FMP provides that the Science and Research Director may obtain data necessary for effective management of the fishery. These data are necessary from vessels fishing for or possessing swordfish shoreward of the outer boundary of the EEZ or fishing with pelagic longline gear shoreward of the outer boundary of the EEZ. Therefore, such activities control the need for a permit (with exceptions for rod and reel gear and handline gear around Puerto Rico and the Virgin Islands). No permit is required for a commercial swordfish fishing vessel or a commercial pelagic longline fishing vessel with a bycatch of swordfish that neither fishes in the area shoreward of the outer boundary of the EEZ nor transits such area with swordfish aboard. If issued a permit, an owner or operator of a permitted vessel that has been selected by the Science and Research Director must maintain and submit a daily fishing record to the Science and Research Director regardless of where the vessel fishes for or possesses swordfish.

The present exemptions from the permit requirement for vessels fishing with handline gear around Puerto Rico and the Virgin Islands and for vessels fishing with rod and reel gear in the EEZ would be modified, consistent with the intent of the FMP, to apply to the area shoreward of the outer boundary of the EEZ rather than only to the EEZ. In addition, the exemptions would be clarified so that they apply to vessels with only the specified gear aboard. This clarification is necessary for effective enforcement of the permit requirement. Otherwise, a vessel might claim exemption from the permit requirement merely by carrying hand line or rod and reel gear aboard even though it harvested swordfish by other gear.

Revisions to § 630.4 would also require that an application be submitted only by a vessel's owner, and that a copy of the vessel's U.S. Coast Guard Certificate of Documentation or the State boat registration or license accompany the permit application. This would obviate the possibility of a vessel operator submitting erroneous information for which the vessel owner might be held responsible. Most applications are submitted by owners and all permits are issued to owners. Thus, this would not be a significant departure from current practice. Other changes in the permitting requirements are proposed to remove redundancies, to clarify that a newly permitted vessel may not fish for swordfish until the permit is onboard, and to require that a corporate owner provide the names and addresses of its officer and directors. The catch-all phrase permitting collection of any other information necessary for the issuance or administration of the permit is added to cover the situations where additional information is required in order to identify fully the owner of the vessel.

Changes to the requirements for fishing vessel reports are proposed which would specify the time frame for submission of those reports and clarify that a monthly report is required even if no fishing occurred during the month.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this regulatory amendment is necessary for the conservation and management of the swordfish fishery and that it is consistent with the Magnuson Fishery Conservation and Management Act and other applicable law.

This proposed rule does not change any of the factors considered in the environmental impact statement for the FMP; accordingly this action is categorically excluded from the requirement to prepare an environmental assessment by NOAA Directive 02-10.

The Administrator has initially determined that this proposed rule is not a major rule requiring a regulatory impact analysis under E.O. 12291. As discussed above, compliance costs are minimal, this rule is not expected to increase costs or prices, and there should be no significant adverse effect on employment, investment, productivity, innovation, or foreign or domestic competition. Long-term beneficial effects are expected through improved data for effective management of the fishery.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. The proposed rule would impose a minimal reporting requirement on approximately 60 swordfish dealers; total annual costs to all dealers combined is estimated to be $3,104. The reporting burden has been reduced to the maximum extent possible by allowing dealers to use their normal business forms (i.e., weigh-out sheets and sales receipts), photocopy them, and submit them on a monthly basis to NMFS. Some dealers have been providing this information on a voluntary basis, thus, no additional burden or costs would be imposed on them. Federal costs associated with collecting and analyzing the additional information are estimated to be $36,492.

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act. A request to collect this information has been submitted to the Office of Management and Budget for approval. The final rule implementing the FMP (50 CFR 630) contains two OMB-approved collection-of-information requirements subject to the Paperwork Reduction Act. Permitted vessels must maintain and submit to the Center Director a daily fishing record on special forms requiring, on average, 2.5 minutes per record entry (OMB Control No. 0648–0016). Applicants for a fishing vessel permit issued under 50 CFR 630 must submit a written application to the Regional Director containing specified information and requiring, on average, 0.5 hour for completion (OMB Control No. 0648–0149). Under the new proposed collection-of-information requirement, any seafood dealer receiving U.S. harvested swordfish would be required to report information concerning the weight, value, and vessel of origin of swordfish received and other species received with the swordfish. Such data are routinely recorded by seafood dealers as the fish are off-loaded and weighed. Reporting will be once a month by all dealers purchasing swordfish from U.S. vessels. The public reporting for this collection-of-information is estimated to average 2 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these reporting burden estimates or any other aspect of this collection of information, including suggestions for reducing this burden, to the NMFS at the address above, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: Desk Officer for NOAA).

In the final rule that implemented the FMP (51 FR 20297; June 4, 1986) NOAA concluded that, to the maximum extent practicable, the FMP is consistent with the approved coastal zone management programs of all the affected States. Since this rule, if adopted, does not directly affect the coastal zone in a manner not already fully evaluated in the FMP and the initial consistency determination, a new consistency determination is not required.

This rule does not contain regulatory provisions with federalism implications sufficient to warrant preparation of a federalism assessment under E.O 12612.

List of Subjects in 50 CFR Part 630

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 22, 1989.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 630 is proposed to be amended as follows:

PART 630—ATLANTIC SWORDFISH FISHERY

1. The authority citation for part 630 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 630.1, paragraph (b) is revised to read as follows:

§ 630.1 Purpose and scope.

* * * * *

(b) This part governs conservation and management of swordfish shoreward of the outer boundary of the EEZ in the Atlantic Ocean (including the Gulf of Mexico and the Caribbean Sea).

* * * * *

3. In § 630.2, the definition for *Center Director* is removed and new definitions for *Pelagic longline* and *Science and Research Director* are added in alphabetical order to read as follows:

§ 630.2 Definitions.

* * * * *

Pelagic longline means a type of fishing gear consisting of a length of line suspended horizontally in the water above the bottom from lines attached to surface floats and to which gangions and hooks are attached.

* * * * *

Science and Research Director means the Science and Research Director, Southeast Fisheries Center, NMFS, 75 Virginia Beach Drive, Miami, FL 33149, telephone 305–361–5761, or a designee; except that for a dealer whose principal place of business is in an Atlantic coastal state from Maine through Virginia, *Science and Research Director* means the Science and Research Director, Northeast Fisheries Center, NMFS, Woods Hole, MA 02543, telephone 617–548–5123, or a designee.

* * * * *

4. In § 630.4, paragraphs (a) through (d) are revised; paragraph (e) is removed; paragraphs (f) through (l) are redesignated as paragraphs (e) through (k), respectively; in newly redesignated paragraph (i), the second sentence is removed; and newly redesignated paragraph (k) is revised to read as follows:

§ 630.4 Vessel permits.

(a) *Applicability.*

(1) The owner of a vessel of the United States with pelagic longline gear aboard—

(i) That fishes for or possesses swordfish shoreward of the outer boundary of the EEZ, or

(ii) That takes swordfish as bycatch shoreward of the outer boundary of the EEZ, whether or not retained—must obtain an annual vessel permit.

(2) The owner of any other vessel of the United States that fishes for swordfish or possesses swordfish for sale, trade, or barter shoreward of the outer boundary of the EEZ must obtain an annual vessel permit.

(3) The owner of a vessel fishing shoreward of the outer boundary of the EEZ—

(i) With only rod and reel gear aboard, or

(ii) Around Puerto Rico and the Virgin Islands with only handline gear aboard—is exempt from the requirement to obtain a permit.

(b) *Application.* An application for a fishing vessel permit under this section must be signed by the owner and submitted to the Regional Director. An application form is available from the Regional Director and must contain the following information:

(1) Vessel owner's name, mailing address, and telephone number;

(2) If the vessel owner is a corporation, the officers' and directors' names and mailing addresses;

(3) Vessel's name, official number, home port, net tonnage, length, and type and amount of gear used; and

(4) Any other information which may be necessary for the issuance or administration of the permit.

The application must also include a copy of the vessel's U.S. Coast Guard Certificate of Documentation of the State boat registration or license.

(c) *Issuance.* The Regional Director will issue a permit within 30 days of receipt of the information required in paragraph (b) of this section. An applicant will be promptly notified of any deficiency in the required information. If an applicant fails to correct a deficiency within 30 days of notification, the application will be considered abandoned.

(d) *Duration.* A permit is valid for the fishing year (calendar year) for which it is issued or that portion of the fishing year remaining after it is issued, unless revoked, suspended, or modified under subpart D of 15 CFR part 904.

* * * * *

(k) *Change in application information.* Any change in the application information specified in paragraph (b) of this section must be reported to the Regional Director within 15 days of the change. If the vessel changes ownership, the new owner must apply for a permit. The vessel may not fish for swordfish until the new permit is on board the vessel.

5. In § 630.5, paragraphs (a) and (b) are removed; paragraph (c) is redesignated as paragraph (a); in newly redesignated paragraph (a), the introductory text is revised; and a new paragraph (b) is added to read as follows:

§ 630.5 Recordkeeping and reporting.

(a) *Fishing vessel reports.* An owner or operator of a vessel for which a permit has been issued under § 630.4 and that is selected by the Science and Research Director must ensure that a daily fishing record is maintained on forms available from the Science and Research Director. The forms for each month must be submitted to the Science and Research Director so as to be received not later than the twenty-fifth day of the following month. If no fishing occurred during a month, a report so stating must be submitted in accordance with instructions provided with the forms. If fishing occurred, the following information must be included on the forms:

* * * * *

(b) *Dealer reports.* (1) A dealer who receives U.S.-harvested fish must report to the Science and Research Director each receipt of swordfish. The report for each month must be submitted to the Science and Research Director so as to be received not later than the fourteenth day of the following month. A report

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form is available from the Science and Research Director.

(i) The following information must be

and by species for yellowfin tuna, bigeye tuna, albacore, and other species; and

sheet and/or sales record, by itself or combined with the form available from the Science and Research Director,

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form is available from the Science and Research Director.

(i) The following information must be included in each report:

(A) Name and address of the dealer;

(B) Date of receipt of swordfish;

(C) Name and official number of the vessel from which the swordfish was received;

(D) Date, port, and State of landing of the vessel;

(E) Total carcass weight (pounds) by market category for swordfish, and by species for yellowfin tuna, bigeye tuna, albacore, and other species received with the swordfish;

(F) Price per pound (or total value) paid by market category for swordfish, and by species for yellowfin tuna, bigeye tuna, albacore, and other species; and

(G) Individual carcass weight (pounds) of each swordfish received.

(ii) In addition to the information required to be reported by paragraph (b)(1)(i) of this section, individual carcass weight (pounds) of each yellowfin tuna, bigeye tuna, albacore, and other species received with the swordfish is requested but is not mandatory.

(2) The reporting requirement of paragraph (b)(1)(i) of this section may be satisfied by providing a copy of each appropriate weigh-out sheet and/or sales record, provided such weigh-out sheet and/or sales record, by itself or combined with the form available from the Science and Research Director, includes all of the required information.

(3) In lieu of providing a required report to the Science and Research Director by mail, as specified in paragraph (b)(1) of this section, a dealer may provide a report to a State or Federal fishery port agent designated by the Science and Research Director. Reports so provided must be delivered to such port agent not later than the tenth day of the month following the dealer's receipt of the swordfish.

[FR Doc. 89-30187 Filed 12-28-89; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register

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Friday, December 29, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

December 22, 1989.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Public Law 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Extension

- Animal and Plant Health Inspection Service
  Volunteer Program
  APHIS 360, APHIS 361
  On occasion
  Individuals or households; Non-profit institutions; Small businesses or organizations; 110 responses; 20 hours; not applicable under 3504(h)
  Sophia Y. Lawrence (301) 436-6466
- National Agricultural Statistics Service
  Mink Survey
  None
  Annually
  Farms; 1,027 responses; 171 hours; not applicable under 3504(h)
  Larry Gambrell (202) 447-7737
- Foreign Agricultural Service
  Emergency Relief from Duty Free Imports of Perishable Products
  None
  On occasion
  Farms; Businesses or other for-profit; 7 responses; 126 hours; not applicable under 3504(h)
  Richard K. Petges (202) 382-1336
- Forest Service
  Collection and Analysis of Timber Purchaser's Cost and Sales Data
  None
  Recordkeeping; Annually
  Businesses or other for-profit; Small businesses or organizations; 80 responses; 320 hours; not applicable under 3504(h)
  Jim Pharo (202) 475-3756

New Collection

- Cooperative State Research Service
  Grant Application Kit—Facilities Projects
  CSRS-850, CSRS-851, CSRS-852, CSRS-853, and CSRS-854
  Annually
  Non-profit institutions; 43 responses; 238 hours; not applicable under 3504(h)
  Evelyn J. O'Connor-Miller, (202) 475-5050.

Larry K. Roberson,

Acting Departmental Clearance Officer.

[FR Doc. 89-30241 Filed 12-28-89; 8:45 am]

BILLING CODE 3410-01-M

Federal Grain Inspection Service

Advisory Committee Meeting

Pursuant to the provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92-463), notice is hereby given of the following committee meeting:

Name: Federal Grain Inspection Service Advisory Committee.

Date: January 18, 1990.

Place: Clarion Hotel, 1500 Canal Street, New Orleans, LA 70112.

Time: 8:30 a.m.

Purpose: To provide advice to the Administrator of the Federal Grain Inspection Service with respect to the implementation of the U.S. Grain Standards Act.

The agenda includes (1) role of the Advisory Committee, (2) pending grain quality legislation, (3) how to improve grain standards, (4) aflatoxin testing, (5) financial matters, (6) sunflower seed oil calibration, and (7) other matters.

The meeting will be open to the public. Public participation will be limited to written statements unless otherwise requested by the Committee Chairman. Persons, other than members, who wish to address the Committee or submit written statements before or after the meeting should contact Les Malone, Assistant to the Administrator, FGIS, U.S. Department of Agriculture, P.O. Box 96454, Washington, DC 20090-6454, telephone (202) 382-0216.

Dated: December 22, 1989.

D.R. Galliart,

Acting Administrator.

[FR Doc. 89-30245 Filed 12-28-89; 8:45 am]

BILLING CODE 3410-EN-M

Forest Service

Heavenly Valley Ski Area, Lake Tahoe Basin Management Unit, El Dorado, CA, and Douglas County, NV; Intent To Prepare an Environmental Impact Statement

SUMMARY: The Department of Agriculture, Forest Service, will prepare an environmental Impact Statement for a proposal to revise the Master Development Plan for Heavenly Valley Ski Area. The proposal will be developed in cooperation with the Tahoe Regional Planning Agency, with the counties of El Dorado, California, and Douglas, Nevada, and with the City of South Lake Tahoe. Improvement and expansion of the ski area, over at least the next ten to fifteen years, will be guided by this Master Development Plan.

Written comments and suggestions regarding the scope of the analysis are invited by the agency. Two public meetings are planned for January 16, 1990, at 3 p.m. and at 7 p.m. to receive initial comment. The meetings will be held in the Board Meeting Room of the Tahoe Regional Planning Agency, located at 195 U.S. Highway 50, Round Hill-Zephyr Cove, Nevada. Written

comment is requested by February 5, 1990. Further public participation is planned, but not currently scheduled.

FOR FURTHER INFORMATION CONTACT: Dan Deiss, Director—Project Lightning, Boise National Forest, 1750 Front St., Boise, Idaho 83702, (208) 334-1516.

SUPPLEMENTARY INFORMATION: The Forest Service will prepare an environmental Impact Statement for a proposal to revise the Master Development Plan for Heavenly Valley Ski Area. The proposal will be developed in cooperation with the Tahoe Regional Planning Agency, with the counties of El Dorado, California, and Douglas, Nevada, and with the City of South Lake Tahoe. Improvement and expansion of the ski area, over at least the next ten to fifteen years, will be guided by this Master Development Plan.

The Heavenly Valley Ski Area is located on the Lake Tahoe Basin Management Unit, El Dorado, CA, and Douglas County, NV. The Forest Service has received a proposal from Heavenly Valley Ski Area to improve and expand the ski area. The proposal includes the following:

1. Construction of a new gondola from the Stateline area to the Tamarack Peak area.
2. Construction of a new gondola from the Stateline area to the Monument Peak area.
3. Construction of a new gondola from the Stateline area to the Gunbarrel Peak area.
4. Construction of a new gondola from the Stateline area to the Boulder Peak area.
5. Construction of a new gondola from the Stateline area to the Ski Run Boulevard area.
6. Construction of a new gondola from the Stateline area to the Lake Tahoe Basin Management Unit boundary.
7. Construction of a new gondola from the Stateline area to the Lake Tahoe Basin Management Unit boundary.
8. Construction of a new gondola from the Stateline area to the Lake Tahoe Basin Management Unit boundary.
9. Construction of a new gondola from the Stateline area to the Lake Tahoe Basin Management Unit boundary.
10. Construction of a new gondola from the Stateline area to the Lake Tahoe Basin Management Unit boundary.

planned through collection of Knutsen-Vandenburg (KV) funds. It is anticipated that much of the commercial value of the

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

special-purpose subzones at five motor vehicle components manufacturing plants of Chrysler Corporation [Detroit

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comment is requested by February 5, 1990. Further public participation is planned, but not currently scheduled.

ADDRESS: Send written comments to Jon Hoefer, Planning Staff Officer, Lake Tahoe Basin Management Unit, P.O. Box 731002, South Lake Tahoe, California 95731–7302.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and environmental impact statement should be directed to Jon Hoefer at the address above or at telephone (916) 573–2600.

SUPPLEMENTARY INFORMATION: Development occuring as a result of the revised ski area master plan will extend beyond national forest boundaries. Components of the plan may include, but may not be limited to: modernization, relocation, and addition of ski lifts; modernization and addition of base facilities; expansion of the ski school; expansion of ski trails; expansion of transit systems; expansion of summer use facilities; and expansion of support facilities.

A range of alternatives will be considered, one of which will be no expansion, or the continuation of the existing situation.

The analysis is expected to take at least six months. A draft environmental impact statement should be available for public review by October 1990. The responsible official is the Forest Supervisor of the Lake Tahoe Basin Management Unit.

Dated: December 20, 1989.

Robert E. Harris,

Forest Supervisor.

[FR Doc. 89–30255 Filed 12–28–89; 8:45 am]

BILLING CODE 3410-11-M

Exemption of Lowman—South Fire Recovery Project to Rehabilitate National Forest System Lands and Recover Timber Damaged by the Lowman Complex Fire of 1989, Boise National Forest, ID

AGENCY: Forest Service, USDA.

ACTION: Notification that certain fire recovery projects are exempted from appeals under provisions of 36 CFR part 217.

SUMMARY: This is a notification that decisions to implement certain projects pertaining to recovery from the Lowman Complex fire on the Boise National Forest are exempted from appeal per provisions of 36 CFR part 217.4(a)(11) as published January 23, 1989, at Vol. 54, No. 13, page 3342.

EFFECTIVE DATE: Effective on December 29, 1989.

FOR FURTHER INFORMATION CONTACT: Dan Deiss, Director—Project Lightning, Boise National Forest, 1750 Front St., Boise, ID 83702.

SUPPLEMENTARY INFORMATION: The catastrophic fires of 1989 burned an estimated 67,380 acres of National Forest System Lands on the Boise National Forest. The Lowman Fire Complex burned 47,610 acres in the South Fork Payette and North Fork Boise River drainages. The Lowman-South analysis area includes 11,341 acres of the Lowman Complex fire area in the South Fork Payette River drainage. In July 1989, an interdisciplinary team surveyed much of the burned area, in part to identify emergency and long-term rehabilitation needs. From this survey it was found that in many places, this fire burned hot enough to cause severe damage to vegetation and watershed resources. Other resources damaged include: habitat essential to elk and other major wildlife species; streams providing water for domestic, agricultural and other uses; and recreation structures. Damage to soils is of greatest concern because this damage will affect the length of time necessary to achieve natural revegetation, as well as quantity and quality of water runoff from the area.

The emergency rehabilitation interdisciplinary team concluded that there was risk of flooding and reduced water quality caused by this fire. Natural revegetation will not provide the diversity necessary for habitat of most wildlife species. If left "untreated" these problems will persist for several years. The risk of insect and disease infestations in both the short- and long-term was also noted by the team.

Field surveys of the burned area indicate that many of the predicted consequences of the fire are starting to occur. In many areas, stream courses and riparian vegetation were severely damaged and natural processes may take up to 10 years to stabilize these areas. Damage to vegetation is great enough that a natural return to the prefire conditions of species diversity may take as long as 350 years.

Because of the drought conditions existing during the 1989 fires, trees suffered greater damage and are losing their sawlog value more quickly than anticipated. Inserts that attack both dead and live trees have moved into the project vicinity and treaten both burned and unburned areas. If left untreated, this insect damage will cause loss of much unburned vegetation, further degrading wildlife habitat, recreation opportunities, visual quality and soil and water resources. Further loss of vegetation could increase the possibility for landslides in response to summer storms for the next five to ten years.

In response to this information, an accelerated schedule of planned fire-recovery efforts including salvage of burned timber is necessary to mitigate as much of the fire-caused damage as possible.

Planned Actions

Emergency rehabilitation efforts undertaken in late 1989 were limited to treating only the most severely burned areas to reduce sediment movement and water quality degradation. The emergency rehabilitation team recommended that additional actions for restoration of the entire burned area be analyzed.

The interdisciplinary team conducting the environmental analysis for the planned recovery project has concluded that actions are needed to assist mitigation of fire effects and speed recovery. The Lowman-South Environmental Assessment documents analysis of fire recovery on 11,431 acres of the Lowman Complex. The major recovery projects proposed for this analysis area include salvage of approximately 40 million board feet (MMBF) of fire-killed timber, reforestation of 8800 acres of suitable timberland, vegetation enhancement in visually-sensitive areas, habitat improvement on big-game winter range, and lopping and scattering of timber slash to reduce soil erosion and sedimentation.

The analysis of wildfire recovery needs for the remaining 33,169 acres of the Lowman Fire Complex in the South Fork Payette River will be documented in an Environmental Impact Statement (EIS) due for release in May, 1990.

Due to the length of time it has taken to develop an acceptable restoration and rehabilitation program and to properly evaluate its effects, recovery projects should be implemented as soon as possible. Delay in implementing the activities necessary to restore these damaged lands or remove the salvageable timber will result in unacceptable degradation of the physical and biological condition of National Forest System Lands and a substantial deterioration of the fire-killed timber. To accomplish recovery work so that part of the cost is recovered, fire-killed trees should have commercial sawlog value. Removing these trees will accomplish many of the actions recommended, and a significant portion of the receipts from these sales will provide funding for the other work planned through collection of Knutsen-Vandenburg (KV) funds. It is anticipated that much of the commercial value of the remaining trees will be lost in the next six to twelve months. Delays will also significantly increase the risk of severe forest insect and disease infestation of the already-damaged trees.

To expedite the timber salvage and other recovery projects documented in the Lowman—South Environmental Assessment, I am exempting the projects from review (appeal) under 36 CFR part 217.

The project will be approved for implementation December 29, 1989

Dated: December 22, 1989.

Clair C. Beasley,

Deputy Regional Forester, Administration.

[FR Doc. 89–30256 Filed 12–28–89; 8:45 am]

BILLING CODE 3410-11-M

CIVIL RIGHTS COMMISSION

North Carolina Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the North Carolina Advisory Committee to the Commission will convene at 10:30 a.m. and adjourn at 4:00 p.m. on Friday, January 26, 1990, at the North Raleigh Hilton Hotel, 3415 Old Wake Forest Road, Raleigh, NC 27609. The Committee will conduct a planning session in connection with a project on student tracking and equal education opportunity in public schools. Invited speakers include representatives of the North Carolina Department of Education.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee chairperson Dr. David Broyles or John T. Binkley, Director, Eastern Regional Division at (202) 523–5264, TDD (202) 376–8117. Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Eastern Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 21, 1989.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 89–30257 Filed 12–28–89; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 456]

Resolution and Order Approving the Application of the Greater Detroit Foreign Trade Zone, Inc., for Special-Purpose Subzone Status at Chrysler Auto Components Plants in the Detroit, MI, Area

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Greater Detroit Foreign-Trade Zone, Inc., grantee of FTZ 70, filed with the Foreign-Trade Zones Board (the Board) on August 25, 1987, requesting special-purpose subzone status at five auto components plants of Chrysler Corporation located in Detroit and Trenton, Michigan, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority

Whereas, by an act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Greater Detroit Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 70, has made application (filed August 25, 1987, FTZ Docket 13–87, 52 FR 33459), in due and proper form to the Board for authority to establish special-purpose subzones at five motor vehicle components manufacturing plants of Chrysler Corporation (Detroit Trim Plant, Trenton Chemical Division Plant, McGraw Glass Plant, Mound Road Engine Plant and Detroit Axle Plant) located in the Detroit, Michigan, area, adjacent to the Detroit Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now, therefore, in accordance with the application filed August 25, 1987, the Board hereby authorizes the establishment of subzones at the five Chrysler plants listed above, designated on the records of the Board as Foreign-Trade Subzone Nos. 70N, 70O, 70P, 70Q, and 70R at the locations mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and regulations issued thereunder, and also to the following express conditions and limitations;

Activation of the subzones shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from federal, state, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzones in the performance of their official duties.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzones, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC, this 22nd day of December, 1989, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Eric I. Garfinkel,

Assistant Secretary of Commerce for Import

Antidumping duty proceedings and firms	Periods to be reviewed

cannot serve the specific use involved, and where a significant public benefit will result;

at Washington, DC, this 22nd day of December, 1989, pursuant to Order of the Board.

Foreign-Trade Zones Board.

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Foreign-Trade Zones Board.
Eric I. Garfinkel,
Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates.
Attest: John J. Da Ponte, Jr.
Executive Secretary.
[FR Doc. 89-30193 Filed 12-28-89; 8:45 am]
BILLING CODE 3510-DS-M

[Order No. 456]

Resolution and Order Approving the Application of the Toledo-Lucas County Port Authority for Special-Purpose Subzone Status at Chrysler Auto Components Plants in the Toledo, OH, Area

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Toledo-Lucas County Port Authority, grantee of FTZ 8, filed with the Foreign-Trade Zones Board (the Board) on September 8, 1987, requesting special-purpose subzone status at the Toledo area auto components plants of Chrysler Corporation located in Perrysburg, Sandusky, and Van Wert, Ohio, the Board, finding that the requirements on the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority To Establish Foreign-Trade Subzones at Chrysler Auto Components Plants in the Toledo, OH, Area

Whereas, by an act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Toledo-Lucas County Port Authority, grantee of Foreign-Trade Zone 8, has made application (filed September 8, 1987, FTZ Docket 19–87, 52 FR 37985), in due and proper form to the Board for authority to establish special-purpose subzones at three motor vehicle components manufacturing plants of Chrysler Corporation (Toledo Machining Plant, Sandusky Plastics Plant, and Van Wert-Amplex Plant) located in the Toledo, Ohio, area, adjacent to the Toledo Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, The Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now, Therefore, in accordance with the application filed September 8, 1987, the Board hereby authorizes the establishment of subzones at the three Chrysler plants listed above, designated on the records of the Board as Foreign-Trade Subzone Nos. 8B, 8C, and 8D at the locations mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and regulations issued thereunder, and also to the following express conditions and limitations:

Activation of the subzones shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from federal, state, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzones in the performance of their official duties.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzones, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC, this 22nd day of December, 1989, pursuant to Order of the Board.

Foreign-Trade Zones Board.
Eric I. Garfinkel,
Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates.
Attest:
John J. Da Ponte, Jr., *Executive Secretary.*
[FR Doc. 89-30195 Filed 12-28-89; 8:45 am]
BILLING CODE 3510-DS-M

[Order No. 457]

Resolution and Order Approving the Application of the Greater Dayton Foreign Trade Zone, Inc., for Special-Purpose Subzone Status at a Chrysler Auto Components Plant in Dayton, OH

Proceedings of the Foreign-Trade Zones Board, Washington, DC

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Greater Dayton Foreign-Trade Zone, Inc., grantee of FTZ 100, filed with the Foreign-Trade Zones Board (the Board) on September 28, 1987, requesting special-purpose subzone status for the auto components plant of Chrysler Corporation located in Dayton, Ohio, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority

Whereas, by an act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Greater Dayton Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 100, has made application (filed September 28, 1987, FTZ Docket 16–87, 52 FR 37809), in due and proper form to the Board for authority to establish a special-purpose subzone at the motor vehicle components manufacturing plant of Chrysler Corporation in Dayton, Ohio, within the Dayton Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now, Therefore, in accordance with the application filed September 28, 1987, the Board hereby authorizes the establishment of a subzone at the Chrysler plant in Dayton, designated on the records of the Board as Foreign-Trade Subzone No. 100C at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and regulations issued thereunder, and also to the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from federal, state, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In Witness whereof, the Foreign-Trade Zones has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC, this 22nd day of December, 1989, pursuant to Order of the Board.

Foreign-Trade Zones Board.
Eric I. Garfinkel,
Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates.
Attest: John J. Da Ponte, Jr.,
Executive Secretary.
[FR Doc. 89-30194 Filed 12-28-89; 8:45 am]
BILLING CODE 3510-DS-M

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: December 29, 1989.

FOR FURTHER INFORMATION CONTACT: Richard W. Moreland or Holly A. Kuga, Office of Antidumping Compliance or Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377–2104/2786.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce ("the Department") has received timely requests, in accordance with §§ 353.22(a)(1), (a)(2), (a)(3), and 355.22(a)(1) of the Department's regulations, for administrative reviews of various antidumping and countervailing duty orders and findings.

Initiation of Reviews

In accordance with §§ 353.22(c) and 355.22(c) of the Department's regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews no later than November 30, 1990.

Antidumping duty proceedings and firms	Periods to be reviewed
Japan:	
Titanium Sponge	11/1/88–10/31/89
A-588-020	
Showa Denko K.K.	
Osaka Titanium Co., Ltd.	
Toho Titanium Co., Ltd.	
Nippon Soda Co., Ltd.	
Argentina:	
Carbon Steel Wire Rod	11/1/88–10/31/89
A-357-007	
Acindar Industria Argentina de Aceros	
Oil Country Tubular Goods	01/1/88–12/31/88
C-357-403	

Interested parties must submit applications for administrative protective orders in accordance with §§ 353.34(b) or 355.34(b) of the Department's regulations.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and §§ 353.22(c) and 355.22(c) of the Commerce Department's antidumping and countervailing duty regulations published in the Federal Register on March 28, 1989 (54 FR 12742) and December 27, 1988 (53 FR 52306).

Dated: December 21, 1989.
Joseph A. Spetrini,
Deputy Assistant Secretary for Compliance.
[FR Doc. 89-30197 Filed 12-29-89; 8:45 am]
BILLING CODE 3510-DS-M

[C-201-005]

Litharge, Red Lead and Lead Stabilizers From Mexico—Initiation and Preliminary Results of Changed Circumstances Countervailing Duty Administrative Review and Intent To Revoke Countervailing Duty Order (in Part)

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of initiation and preliminary results of changed circumstances countervailing duty administrative review and intent to revoke countervailing duty order (in part).

SUMMARY: The Department of Commerce has information sufficient to warrant initiation of a changed circumstances administrative review of the countervailing duty order on litharge, red lead and lead stabilizers from Mexico. Because the U.S. industry is not interested in having the United States Trade Representative refer this case to the International Trade

Commission to conduct a section 332 investigation and, consequently, is not

injury, or (2) the establishment of an industry in the United States would be

Initiation, Preliminary Results of Review and Intent to Revoke (in Part)

Dated: December 21, 1989.
Eric I. Garfinkel,

"drafting machines" refers to "track" or "elbow-type" drafting machines used by

Manufacturers/producers/exporters	Margin percent

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Commission to conduct a section 332 investigation and, consequently, is not interested in maintaining the countervailing duty order on duty-free imports of lead stabilizers, we intend to revoke the order with respect to lead stabilizers from Mexico. We invite interested parties to comment on these preliminary results and intent to revoke (in part).

EFFECTIVE DATE: August 24, 1988.

FOR FURTHER INFORMATION CONTACT: Philip Pia or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION: On December 8, 1982, the Department of Commerce ("the Department") published in the **Federal Register** (47 FR 54847) a notice of final affirmative countervailing duty determination and countervailing duty order on litharge, red lead and lead stabilizers from Mexico. At this time the countervailing duty order was issued, Mexico was not entitled to an injury test under U.S. and international law. Countervailing duties were imposed upon this merchandise without a determination that these entries were injuring the relevant domestic industry. Lead stabilizers are the only products covered by that order that have been, and remain, duty free.

On August 24, 1986, Mexico acceded to the General Agreement on Tariffs and Trade ("GATT"). Consistent with our earlier positions in *Certain Fasteners from India; Final Results of Administrative Review and Partial Revocation of Countervailing Duty Order* (47 FR 44129; October 6, 1982) and *Carbon Steel Wire Rod from Trinidad and Tobago; Preliminary Results of Administrative Review and Tentative Determination to Revoke Countervailing Duty Order* (50 FR 19561; May 9, 1985), the Department has concluded that it lacks the authority under Article VI of the GATT and section 303(a)(2) of the Tariff Act of 1930, as amended ("the Tariff Act"), to levy countervailing duties on duty-free imports from Mexico entered on or after August 24, 1986 absent a determination regarding injury to the domestic industry.

In order to fulfill our international obligations, we have developed procedures whereby the U.S. International Trade Commission ("ITC") will, at the request of the United States Trade Representative ("USTR"), conduct an investigation pursuant to section 332 of the Tariff Act to assess whether (1) an industry in the United States would be materially injured, or would be threatened with material injury, or (2) the establishment of an industry in the United States would be materially retarded, if the Department were to revoke the outstanding countervailing duty order with respect to lead stabilizers from Mexico.

On November 3, 1989, we sent letters to all domestic interested parties on the Department's service list informing them of these procedures. In order to determine whether there was any interest in USTR requesting an investigation pursuant to section 332 on lead stabilizers from Mexico, we requested that interested parties submit a statement of interest within 30 days of the date of receipt of our letter. We stated that if we received a statement of interest, we would urge USTR to request that the ITC conduct an investigation pursuant to section 332. We further stated that, in the absence of a statement of interest, we would initiate procedures to revoke the countervailing duty order with respect to lead stabilizers from Mexico. We received no response.

Scope of Review

The United States, under the auspices of the Customs Cooperation Council, has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS) as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after this date is now classified solely according to the appropriate HTS item number(s).

Imports covered by this review are lead stabilizers from Mexico. Through 1988, such merchandise was classifiable under item numbers 419.0400 and 473.9000 of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under the following HTS item numbers: 2824.90.50, 2825.90.50, 2826.19.00, 2826.90.00, 2827.39.50, 2827.49.50, 2827.59.50, 2827.80.50, 2829.90.50, 2830.90.00, 2832.30.50, 2833.29.50, 2834.10.50, 2835.10.00, 2835.29.50, 2836.70.00, 2837.19.00, 2839.90.00, 2840.20.00, 2841.10.00, 2841.20.00, 2841.50.00, 2841.70.50, 2841.90.10, 2841.90.50, 2842.90.00, 2850.00.50, 3206.49.50, 3206.20.00, 3206.30.00, 3207.10.00, 3207.30.00, and 3212.90.00. The HTS item numbers are provide for convenience and Customs purposes. The written description remains dispositive.

Initiation, Preliminary Results of Review and Intent to Revoke (in Part)

We have determined that changed circumstances exist sufficient to warrant initiation of a changed circumstances review. These changed circumstances include: (1) The Government of Mexico's accession to the GATT; (2) our international obligations requiring us not to levy countervailing duties on duty-free imports from GATT-member countries in the absence of an affirmative injury determination; and (3) the domestic industry's lack of interest in having USTR refer this case to the ITC to conduct a section 332 investigation and, consequently, its lack of interest in maintaining the countervailing duty order with respect to lead stabilizers from Mexico. Under these circumstances, we conclude that expedited action is warranted and are combining the notices of initiation and preliminary results of our changed circumstances administrative review.

Thus, we preliminarily determine that there is a reasonable basis to believe that the requirements for revocation based on changed circumstances are met. Accordingly, we intend to revoke the countervailing duty order with respect to lead stabilizers from Mexico effective August 24, 1988. The current requirements for the cash deposit of estimated countervailing duties will remain in effect until publication of the final results of this review.

Interested parties may submit written comments on these preliminary results and intent to revoke within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within five days of the date of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first workday following. Rebuttal briefs and rebuttals to written coments, limited to issues in those comments, must be filed not later than 37 days after the date of publication. The Department will publish the final results of review and its decision on revocation, including its analysis of issues raised in any such written comments or at a hearing.

This initiation of review, administrative review, intent to revoke and notice are in accordance with sections 751(b) and (c) of the Tariff Act (19 U.S.C. 1675(b) and (c)) and 19 CFR 355.22(h)(1) and (h)(4) and 355.25(d)(1), (d)(2) and (d)(3).

Dated: December 21, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-30199 Filed 12-28-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-811]

Antidumping Duty Order: Drafting Machines and Parts Thereof From Japan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: In its investigation, the U.S. Department of Commerce determined that drafting machines and parts thereof from Japan are being sold at less than fair value. In a separate investigation, the U.S. International Trade Commission (ITC) determined that a U.S. industry is materially injured by reason of imports of drafting machines and parts thereof from Japan.

Therefore, based on these findings, all unliquidated entries, or warehouse withdrawals of drafting machines and parts thereof from Japan, made on or after August 25, 1989, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register**, will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made on or after the date of publication of this antidumping duty order in the **Federal Register**.

EFFECTIVE DATE: December 29, 1989.

FOR FURTHER INFORMATION CONTACT: Mark Wells or Bradford Ward, Office of Antidumping Investigations, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-3798, or 377-5288.

SUPPLEMENTARY INFORMATION: The products covered by this investigation include drafting machines and parts thereof from Japan, currently classifiable under the *Harmonized Tariff Schedule* sub-headings 9017.10.00, and 9017.90.00. Prior to January 1, 1989, such merchandise was classified under item 710.8025 of the *Tariff Schedules of the United States Annotated* (TSUSA).

The scope of this investigation includes drafting machines that are finished, unfinished, assembled, or unassembled, and drafting machine kits. For purposes of this investigation, "drafting machines" refers to "track" or "elbow-type" drafting machines used by designers, engineers, architects, layout artists, and others. Drafting machines are devices for aligning scales (or rulers) at a variety of angles anywhere on a drawing surface, generally a drafting board. A protractor head allows angles to be read and set and lines to be drawn. The machine is generally clamped to the board. Both "track" and "elbow-type" drafting machines are classified under HTS 9017.10.00.

Also included within the scope of this investigation are parts of drafting machines classified under HTS 9017.90.00. Parts include, but are not limited to, horizontal and vertical tracks, parts of horizontal and vertical tracks, band and pulley mechanisms, parts of band and pulley mechanisms, protractor heads, and parts of protractor heads, destined for use in drafting machines. Accessories, such as parallel rulers, lamps and scales are not subject to this investigation.

In accordance with section 735(a) of the Act (19 U.S.C. 1673d(a)), on November 1, 1989, the Department made its final determination that drafting machines and parts thereof from Japan are being sold at less than fair value (54 FR 46061, November 8, 1989). On December 22, 1989, in accordance with section 735(d) of the Act, the ITC notified the Department that such imports are materially injuring a U.S. industry.

Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department will direct U.S. Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of drafting machines and parts thereof from Japan. These antidumping duties will be assessed on all unliquidated entries of drafting machines and parts thereof from Japan entered, or withdrawn from warehouse, for consumption on or after August 25, 1989, the date on which the Department published its "Preliminary Determination" notice in the Federal Register (54 FR 35363).

On or after the date of publication in the Federal Register of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below:

Manufacturer/producer/exporter	Margin percentage
Mutoh Industries, Ltd. (Mutoh)	80.87%
All Others	80.87%

This determination constitutes an antidumping duty order with respect to drafting machines and parts thereof from Japan, pursuant to section 736(a) of the Act (19 U.S.C. 1673e(a)). Interested parties may contact the Central Records Unit, Room B-099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This notice is published in accordance with section 736(a) of the Act (19 U.S.C. 1673e(a)) and § 353.21 of the Department's regulations.

Dated: December 20, 1989.

Gary Taverman,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89-30380 Filed 12-28-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-475-804]

Preliminary Results of Antidumping Duty Administrative Review: Spun Acrylic Yarn From Italy

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: In response to requests by the petitioner, the Department of Commerce is conducting an administrative review of the antidumping duty order on spun acrylic yarn from Italy. The review covers five manufacturers/exporters of this merchandise to the United States and the periods April 1, 1987 through March 31, 1988, and April 1, 1988 through March 31, 1989. The preliminary results of this review indicates the existence of dumping margins during these periods.

We used best information available for two firms which failed to respond or provide an adequate response to our requests for information for the two annual review periods. In addition, we used best information available for one respondent whose response to our request for information was determined to be untimely.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: December 29, 1989.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Bradford Ward, Office of Antidumping

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Investigations, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377–4136 or 377–5288, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 8, 1980, the Department of Commerce ("the Department") published in the **Federal Register** (45 FR 23684) an antidumping duty order on spun acrylic yarn from Italy. The petitioner requested in accordance with the regulation then in effect, 19 CFR 353.53a(a) (1988), that we conduct administrative reviews for the 1987–88 and 1988–89 periods. We published notices of initiation of antidumping duty administrative review on May 23, 1988 (53 FR 18325) and on May 24, 1989 (54 FR 22465). The Department is conducting these administrative reviews in accordance with section 751 of the Tariff Act of 1930 ("the Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule ("HTS"), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number.

Imports covered by this review are shipments of worsted spun acrylic plied yarn for machine knitting, excluding four-ply craft yarn and certain brushed yarns. This merchandise is currently classifiable under HTS item 5509.3200. Prior to 1989, such merchandise was classifiable under items 310.5015 and 310.5049 of the Tariff Schedules of the United States Annotated ("TSUSA"). The HTS and TSUSA item numbers are provided for convenience and Customs purposes. The written description of the products subject to this review remains dispositive.

The review covers five manufacturers/exporters of spun acrylic yarn from Italy and the periods April 1, 1987 through March 31, 1988, and April 1, 1988 through March 31, 1989. Only one manufacturer/exporter with shipments during both periods responded adequately and in a timely fashion to our requests for information. Turriddo Torracchi did not respond to our questionnaires and the Department has learned that the company no longer exists. Mister Joe's responses to the Department's questionnaires were inadequate, lacking any information for making sales comparisons. Therefore, the Department used the best information available for these two firms. As best information available for these firms, we used the rate published in the antidumping duty order (45 FR 23684, April 8, 1980). Manifattura Emmepi's response for the period April 1, 1987 through March 31, 1988 was submitted seven months late and determined to be untimely. Consequently, we have also used the rate published in the antidumping duty order as best information available for Manifattura Emmepi for that period. Gruppo Bertrand (a.k.a. Fantasia, Cofisa and Saberfil) reported no shipments during either of the review periods, as did Manfattura Emmepi for the April 1, 1988 through March 31, 1989 period. We are using the rates from the last review in which there were shipments for those companies during these periods.

United States Price

In calculating United States price the Department used purchase price, as defined in section 772 of the Act. Purchase price was based on the packed, CIF or delivered price to unrelated purchasers in the United States. Where applicable, we made adjustments for foreign inland freight, ocean freight, marine insurance, brokerage and handling charges, and U.S. inland freight.

Foreign Market Value

International Fibre Industries, Ltd. (IFI), the only respondent whose response we were able to use, did not make any sales to Italian customers during the review periods.

Consequently, in calculating foreign market value, the Department used either sales to third countries or constructed value, as defined in section 773 of the Act. Third-country sales price was based on the packed FOB or CIF price to unrelated purchasers in third countries. We made adjustments, where appropriate, for foreign inland freight and for differences in credit and physical characteristics of the merchandise. No adjustment was made for packing as IFI reported no differences in packing between markets.

We calculated constructed value as the sum of the cost of materials, fabrication, general expenses and packing, plus profit. The amount added for general expenses was 10 percent of the sum of the materials and fabrication costs because the actual amount of general expenses was less than the statutory minimum of 10 percent. The amount added for profit was 8 percent of the sum of the cost of materials, fabrication and general expenses as actual profit was less than the statutory minimum of 8 percent.

IFI purchases the raw material for spun acrylic yarn and contracts with an unrelated party, Lanificio di Nervesa della Battaglia S.p.A., to process this material into the finished subject merchandise, which IFI itself later imports into the United States and exports to third countries. For purposes of this review, we are treating IFI as a respondent and are using its prices and costs as the basis for establishing foreign market value, in keeping with our practice in past administrative reviews of this antidumping duty order.

Currency Conversion

We used the official exchange rates in effect on the dates of U.S. sales, in accordance with section 773(a)(1) of the Act, as amended by section 615 of the Trade and Tariff Act of 1984. All currency conversions were made at the rates certified by the Federal reserve Bank.

Preliminary Results of the Review

As a result of our review, we preliminarily determine the dumping margins to be:

Manufacturer / exporter	Period	Margin (percent)
Manifattura Emmepi S.p.A.	04/01/87–03/31/88	48.05
	04/01/88	[1] 48.05
Gruppo Bertrand (a.k.a. Fantasia, Cofisa, and Saberfil)	04/01/87–03/31/88	[1] 14.06
	04/01/88–03/31/89	[1] 14.06

Manufacturer / exporter	Period	Margin (percent)
Lanificio di Nervesa della Battaglia S.p.A./Inter-national Fibre Industries, Ltd.	04/01/87–03/31/88	0.01
	04/01/88–03/31/89	0.69
Turriddo Torracchi	04/01/87–03/31/88	48.05
	04/01/88–03/31/89	48.05
Mister Joe, S.p.A.	04/01/87–03/31/88	48.05
	04/01/88–03/31/89	48.05

[1] No shipments reported during the period; margin is from the last review in which there were shipments.

The Department will issue appraisement instructions concerning each manufacturer/exporter directly to the Customs Service upon completion of this administrative review.

Furthermore, the following deposit requirements will be effective upon publication of our final results of this administrative review for all shipments of spun acrylic yarn from Italy entered, or withdrawn from warehouse, for consumption on or after that publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for any shipments of this merchandise manufactured or exported by the remaining known manufacturers/exporters not covered in this review will continue to be at the latest rate applicable for each of those firms (47 FR 5280, February 4, 1982; 48 FR 37682, August 19, 1983; 50 FR 35839, September 4, 1985; and 54 FR 42005, October 13, 1989); (2) the cash deposit rate for the companies included in this notice will be that established in the final results of this administrative review; and (3) the cash deposit rate for any future entries of this merchandise from a new producer and/or exporter, not covered in this or prior administrative reviews, whose first shipments occurred after March 31, 1989 and who is unrelated to any reviewed firm, will be 0.69 percent.

Public Comment

In accordance with § 353.38 of the Department's regulations, case briefs or any other written comments in at least seven copies must be submitted to the Assistant Secretary for Import Administration no later than 30 days after the date of publication of this notice in the **Federal Register**, and rebuttal briefs no later than 37 days after the date of publication. In accordance with § 353.38(b) of the Department's regulations, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case of rebuttal briefs. Such a hearing will be held 44 days after the date of publication, or the first business day thereafter. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In accordance with § 353.38(b) of the Department's regulations, an interested party may make an oral presentation only on arguments included in its briefs.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22(c)(5) (1989).

Dated: December 20, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-30196 Filed 12-28-89; 8:45 am]

BILLING CODE 3510-DS-M

[C-201-001]

Leather Wearing Apparel From Mexico—Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on leather wearing apparel from Mexico. We preliminarily determine the total bounty or grant to be zero or *de minimis* during the period January 1, 1988, through December 31, 1987. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: December 29, 1989.

FOR FURTHER INFORMATION CONTACT: Britt Doughtie or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On October 20, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 38954) the final results of its last administrative review of the countervailing duty order on leather wearing apparel from Mexico (46 FR 21357; April 10, 1981). On April 29, 1987, the Government of Mexico requested that we conduct an administrative review of the order for the period January 1, 1988, through December 31, 1988. On April 8, 1988, two domestic interested parties, Valley Imports & Exports and J. & A. Leathers Inc., requested that we conduct an administrative review of the order for the period January 1, 1987, through December 31, 1987. We initiated the reviews on May 20, 1987 (52 FR 18938), and on April 7, 1988 (53 FR 11540), respectively. The Department has now conducted these administrative reviews in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

The United States, under the auspices of the Customs Cooperation Council, has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

The imports covered in these reviews are shipments of Mexican leather wearing apparel. These products include leather coats and jackets for men, boys, women, girls and infants, and other leather apparel products including leather vests, pants and shorts. Also included are outer leather shells and parts and pieces of leather wearing apparel. During the review periods, such

merchandise was classifiable under item numbers 791.7620, 791.7640, and 791.7660

Only one leather wearing apparel manufacturer used FOMEX pre-export

(A) CEPROFI (Certificates of Fiscal Promotion);

Dated: December 21, 1989.

Eric I. Garfinkel,

minority businesses. To this end, MBDA funds organizations that can coordinate

determine if funding for the project should continue. Continued funding will

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merchandise was classifiable under item numbers 791.7620, 791.7640, and 791.7660 of the Tariff Schedules of the United States Annotated ("TSUSA"). This merchandise is currently classifiable under HTS item numbers 4203.10.4030, 4203.10.4060, and 4203.10.4090. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The reviews cover the period January 1, 1986, through December 31, 1987, and eight programs.

Analysis of Programs

(1) FOMEX

The Fund for the Promotion of Exports of Mexican Manufactured Products ("FOMEX") is a trust of the Mexican Treasury Department, with the National Bank of Foreign Trade acting as trustee for the program. The National Bank of Foreign Trade, through financial institutions, makes FOMEX loans available at preferential rates to Mexican manufacturers and exporters for two purposes: pre-export financing and export financing. We consider both pre-export and export FOMEX loans to confer export bounties or grants since these loans are given only on merchandise destined for export.

We found that the annual interest rate financial institutions charged borrowers for peso-denominated FOMEX pre-export loans outstanding during the 1987 period of review ranged from 70.0 to 98.0 percent. The annual interest rate for the one dollar-denominated FOMEX export loan was 7.5 percent. We consider the benefit from loans to occur when the interest is paid. Interest on FOMEX pre-export loans is paid at maturity, and those that matured during the periods of review were obtained between December 1986 and October 1987. Since interest on FOMEX export loans is pre-paid, we calculated benefits from all FOMEX export loans received during the period of review.

The Banco de Mexico stopped publishing data on nominal and effective commercial lending rates in Mexico after 1984. Therefore, as the basis for our benchmark, we have relied in part on the rates for the years 1981 through 1984, as published in the Banco de Mexico's *Indicatores Economicos y Moneda* (I.E.). We calculated the average difference between the I.E. effective rates and the Costo Porcentural Promedio (CPP) rates, the average cost of short term funds to banks, for the years 1981 through 1984. We added this average difference to the 1987 CPP rates. In this way, we calculated an annual benchmark of 167.05 percent for pre-export peso loans obtained in 1987.

Only one leather wearing apparel manufacturer used FOMEX pre-export and export financing during the periods of review. Since these FOMEX loans were not tied to any one product or to specific shipments, we allocated this firm's FOMEX benefit over the value of its total exports of all merchandise. We then weight-averaged the resulting benefit by this firm's proportion of Mexican exports of the subject merchandise to the United States during 1987. On this basis, we preliminarily determine the benefit from this program to be zero for 1986 and 0.06 percent for 1987.

(2) FOGAIN

The Guarantee and Development Fund for Medium and Small Industries (FOGAIN) is a program that provides long-term loans to all small and medium-size firms in Mexico. The interest rates available under the program vary depending on whether a small- or medium-size business has been granted priority status, and whether a business is located in a zone targeted for industrial growth. Although FOGAIN loans are available to all small- and medium-size firms in Mexico, regardless of the type of industry or location, some firms receive more beneficial rates than others. Therefore, to the extent that this program provides financing at rates below the least beneficial rate available under FOGAIN, we consider it to confer a countervailable domestic bounty or grant.

Six firms had long-term variable-rate FOGAIN loans on which interest payments were due during the periods of review. Because the interest rates are variable, we treated each loan as a series of short-term loans and used as our benchmarks the least beneficial FOGAIN interest rate in effect for each loan payment. To calculate the benefit, we compared the benchmark rate to the interest rate for each FOGAIN loan payment made during the periods of review. We allocated the benefit from each loan over the firm's total sales to all markets. We then weight-averaged the resulting benefits by each firm's proportion of exports of the subject merchandise to the United States during each review period. On this basis, we preliminarily determine the benefit from FOGAIN loans to be 0.31 percent for 1986 and 0.0009 percent for 1987.

(3) Other Programs

We also examined the following programs and preliminarily determine that exporters of leather wearing apparel from Mexico did not use them during the review periods:

(A) CEPROFI (Certificates of Fiscal Promotion);
(B) FONEI (Fund for Industrial Development);
(C) Import duty reductions and exemptions;
(D) NDP preferential discounts;
(E) Article 15 Loans; and
(F) State tax incentives.

Preliminary Results of Review

As a result of our review, we preliminarily determine the total bounty or grant to be 0.31 percent *ad valorem* during the period January 1, 1986 through December 31, 1986, and 0.06 percent *ad valorem* during the period January 1, 1987 through December 31, 1987. The Department considers any rate less than 0.50 percent *ad valorem* to be *de minimis*.

Therefore, the Department intends to instruct the Customs Service to liquidate, without regard to countervailing duties, all shipments of this merchandise exported on or after January 1, 1986 and on or before December 31, 1987. The Department also intends to instruct the Customs Service to waive cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

Parties to the proceeding may request disclosure of the calculation methodolgy and interested parties may request a hearing not later than 10 days after date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e).

Any request for disclosure under an administrative protective order must be made no later than five days after the date of publication.

The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: December 21, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-30198 Filed 12-28-89; 8:45 am]
BILLING CODE 3510-DS-M

Minority Business Development Agency

Business Development Center Applications; El Paso, TX

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for approximately a three-year period, subject to the availability of funds. The cost of performance for the first 12 months is estimated at $184,260 in Federal funds and a minimum of $32,516 in non-Federal contributions for the budget period May 1, 1990 to April 30, 1991. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the El Paso, Texas Standard Metropolitan Statistical Area (SMSA).

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian tribes, and educational institutions.

The MBDC is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms, offer a full range of management and technical assistance, and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

MBDC's shall be required to contribute at least 15% of the total project cost through non-Federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales over $500,000.

The MBDC may continue to operate after the initial competitive year for up to two additional budget periods. Periodic reviews culminating in year-to-year quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as a MBDC's satisfactory performance, the availability of funds and Agency priorities.

CLOSING DATE: The closing date for applications in January 31, 1990. Applicants should mail the completed applications to the office specified in the project announcement. MBDA will accept only those applications (1) which are received by the closing date or (2) which show acceptable evidence of mailing on or before the closing date. Acceptable evidence consists of (1) a legible U.S. Postal Service postmark or (2) a legible mail or courier service receipt dated on or before the closing date. Applications must be post marked on or before January 31, 1990.

ADDRESS: Dallas Regional Office, 1100 Commerce Street, Suite 7B23, Dallas, Texas 75242-0790, (214) 767-8801.

FOR FURTHER INFORMATION CONTACT: Darnecia Tyler, Dallas Regional Office.

SUPPLEMENTARY INFORMATION: Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address. A pre-bid conference will be held in El Paso, Texas, on January 12, 1990, in the Small Business Administration's office located at 10737 Gateway West, Suite 320 at 1:00 p.m.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: December 21, 1989.

Melda Cabrera,

Regional Director, Dallas Regional Office.

BILLING CODE 3510-21-M

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Section B - Project Specifications
(To be completed by the Regional Offices)

PROJECT IDENTIFICATION	
1. Program Number and Title:	11.800 Minority Business Development
2. Project Name:	El Paso MBDC (Geographic Area or SMSA)
3. Project Identification Number:	06-10-90002-01
BUDGET PERIOD DURATION	
1. Budget Period (Check One):	First X Second ___ Third ___
2. Start Date:	May 1, 1990
3. End Date:	April 30, 1991
4. Budget Period Duration (Months):	Twelve
PROJECT COST	
1. Required Federal Funding Level:	$ 184,260
2. Minimum Non-Federal Contribution:	$ 32,516
3. Total Project Cost:	$ 216,776
PROJECT MINIMUM PERFORMANCE GOAL LEVELS	
1. Combined Financial Package and Procurement Minimum Goal Level:	$ 12,454,000
2. Billable SM&TA Minimum Goal Level:	$ 125,000
3. Number of Clients Minimum Goal Level:	125

OTHER PROJECT SPECIFICATIONS

1. Closing Date for Submission of this Application: January 31, 1990

2. Geographic Specification: The Minority Business Development Center shall offer assistance in the geographic area of:
El Paso, Texas (SMSA)

3. Eligibility Criteria: There are no eligibility restrictions for this project. Eligible applicants may include individuals, non-profit organizations, for-profit firms, local and state governments, American Indian tribes and educational institutions.

4. Budget Period: The competitive award period will be for approximately three (3) years consisting of three (3) separate budget periods. Performance evaluations will be conducted, and funding levels will be established for each of three (3) budget periods. The MBDC will receive continued funding, after the initial competitive year, at the discretion of MBDA based upon the availability of funds, the MBDC's performance and Agency priorities.

[FR Doc. 89-30177 Filed 12-28-89; 8:45 am]
BILLING CODE 3510-21-C

Business Development Center Applications: Cincinnati/Dayton, OH

AGENCY: Minority Business Development Agency, Commerce.

ACTION: NOTICE.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for approximately a 3-year period, subject to availability of funds. The cost of performance for the first 12 months is estimated at $184,260 in Federal funds and a minimum of $32,516 in non-federal contributions for the budget period May 1, 1990 to April 30, 1991. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the Cincinnati/Dayton, Ohio geographic service area. The award number of this MBDC will be 05-10-90002-01.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, State and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

MBDCs shall be required to contribute at least 15% of the total project cost through non-federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds and Agency priorities.

CLOSING DATE: The closing date for applications is February 2, 1990. Applications must be postmarked on or before February 2, 1990.

ADDRESS: Chicago Regional Office, Minority Business Development Agency, 55 East Monroe Street, Suite 1440, Chicago, Illinois 60603, 312/353-0182.

FOR FURTHER INFORMATION CONTACT: *David Vega,* Regional Director, *Chicago* Regional Office.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

(11.800 Minority Business Development Catalog of Federal Domestic Assistance)

Dated: December 21, 1989.

David Vega,
Regional Director, Chicago Regional Office.

[FR Doc. 30237 Filed 12-28-89; 8:45 am]
BILLING CODE 3510-21-M

National Institute of Standards and Technology

[Docket No. 91180-9280]

National Voluntary Laboratory Accreditation Program

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Publication of NVLAP directory supplement.

SUMMARY: The National Institute of Standards and Technology (NIST) announces the status of laboratory accreditations as of December 31, 1989. A listing of laboratories accredited and de-accredited in the last six months is available upon request. To obtain a copy, please write to the National Voluntary Accreditation Program (NVLAP), National Institute of Standards and Technology, Building 411, Room A124, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: Nancy M. Trahey, Acting Chief, Laboratory Accreditation Program, National Institute of Standards and Technology, Gaithersburg, MD 20899, (301) 975-4016.

SUPPLEMENTARY INFORMATION: This listing is an addendum to the 1989 NVLAP Directory of Accredited Laboratories (NISTIR 89-4056) published annually pursuant to section 7.6(b) of the National Voluntary Laboratory Accreditation Program (NVLAP) Procedures (Title 15, part 7, of the Code of Federal Regulations).

Directory addenda published in the **Federal Register** on April 26, 1989, June 20, 1989, and July 27, 1989 are superseded with this notice.

Dated: December 21, 1989.

Raymond G. Kammer,
Acting Director.

[FR Doc. 89-30236 Filed 12-28-89; 8:45 am]
BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Extension of Public Comment on Swim-With-the-Dolphin Draft Environmental Impact Statement

AGENCY: National Marine Fisheries Service (NOAA Fisheries), NOAA, Commerce.

ACTION: Notice of an extension of the public comment period on swim-with-the-dolphin draft environmental impact statement.

SUMMARY: NOAA Fisheries has prepared a programmatic environmental impact statement (EIS) in accordance with the National Environmental Policy Act, and has conducted hearings on the use of marine mammals in swim-with-the-dolphin programs (54 FR 46755). These programs allow a member of the public, including any general visitor or customer, to enter the water with a captive marine mammal for recreational swimming, snorkeling or scuba diving activities. NOAA Fisheries is considering the consequences of swim-with-the-dolphin programs and has requested comments on the draft EIS. Provisional authority to conduct these programs on an experimental basis expires on December 31, 1989. NOAA Fisheries has received several requests

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for an extension of the public comment period. Therefore, NOAA Fisheries is extending the public comment period to January 5, 1990. In order to allow time for full consideration of public comment on the final EIS and decision, NOAA Fisheries intends to extend the provisional authority for the four existing programs until April 30, 1990, as stated in the draft EIS.

ADDRESSES: Written comments on the draft EIS may be mailed to Dr. Nancy Foster, Director, Office of Protected Resources and Habitat Programs (F/PR), NOAA Fisheries, 1335 East-West Highway, Silver Spring, Maryland 20910. A copy of the draft EIS may be obtained by writing to this address or from the information contact listed below.

FOR FURTHER INFORMATION CONTACT: Georgia Cranmore in Washington, DC at 301/427-2289.

Dated: December 22, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89-30184 Filed 12-28-89; 8:45 am]

BILLING CODE 3510-22-M

Billing Code 3510-22

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Permits; Foreign Fishing

This document publishes for public review and comment a summary of applications received by the Secretary of State. The applications request permits for foreign vessels to fish in the Exclusive Economic Zone under the Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 et seq.). Send comments on applications to:

NOAA - National Marine Fisheries Service
Office of Fisheries Conservation and Management
1335 East West Highway
Silver Spring, Maryland 20910

or, to the appropriate Regional Fishery Management Council reviewing applications, as listed below:

Douglas G. Marshall, Executive Director
New England Fishery Management Council
5 Broadway (Route 1)
Saugus, MA 01906
617/231-0422

John C. Bryson, Executive Director

For further information contact John D. Kelly or Robert A.

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John C. Bryson, Executive Director
Mid-Atlantic Fishery Management Council
Federal Building, Room 2115
320 South New Street
Dover, DE 19901
302/674-2331

Robert K. Mahood, Executive Director
South Atlantic Fishery Management Council
Southpark Building, Suite 306
1 Southpark Circle
Charleston, SC 29407
803/571-4366

Miguel A. Rolon, Executive Director
Caribbean Fishery Management Council
Banco De Ponce Building, Suite 1108
Hato Rey, PR 00918
809/753-6910

Wayne E. Swingle, Executive Director
Gulf of Mexico Fishery Management Council
Lincoln Center, Suite 881
5401 West Kennedy Blvd.
Tampa, FL 33609
813/228-2815

Lawrence D. Six, Executive Director
Pacific Fishery Management Council
Metro Building, Suite 420
2000 S.W. First Avenue
Portland, OR 97201
503/326-6352

Clarence Pautzke, Executive Director
North Pacific Fishery Management Council
P.O. Box 103136
Anchorage, AK 99510
907/271-2809

Kitty M. Simonds, Executive Director
Western Pacific Fishery Management Council
1164 Bishop Street, Room 1405
Honolulu, HI 96813
808/523-1368

For further information contact John D. Kelly or Robert A. Dickinson (Office of Fisheries Conservation and Management, 301-427-2339).

The Magnuson Act requires the Secretary of State to publish a notice of receipt of applications for foreign fishing permits, summarizing the contents of the applications in the FEDERAL REGISTER. The National Marine Fisheries Service, under the authority granted in a memorandum of understanding with the Department of State, effective November 29, 1983, issues this notice on behalf of the Secretary of State.

Dated: 12/22/89

Richard H. Schaefer
Director of Office of Fisheries
Conservation and Management
National Marine Fisheries Service

Fishery codes and designations of Regional Fishery Management Councils which review applications for individual fisheries are as follows:

Code	Fishery	Regional Fishery Management Council

China (CH)

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Code	Fishery	Regional Fishery Management Council
ABS	Atlantic Billfish and Sharks	New England, Mid-Atlantic, South Atlantic, Gulf of Mexico, Caribbean
BSA	Bering Sea and Aleutian Island Groundfish	North Pacific
GOA	Gulf of Alaska Groundfish	North Pacific
NWA	Northwest Atlantic Ocean	New England, Mid-Atlantic
SNA	Snail (Bering Sea)	North Pacific
WOC	Pacific Coast Groundfish (Washington, Oregon and California)	Pacific
PBS	Pacific Billfishes, Oceanic Sharks, Wahoo, and Mahi-mahi	Western Pacific

Activity codes which specify categories of fishing operations applied for are as follows:

Activity Code

1 . . . . . Catching, processing and other support.

2 . . . . . Processing and other support only.

3 . . . . . Other support only.

4 . . . . . Vessel supporting U.S. vessels [Joint Venture (JV)].

* . . . . . Denotes JV requested in addition to directed fishing.

Joint venture (JV) and directed fishing requests are summerized below, followed by a vessel list indicating requested fisheries and activities.

China (CH)

The Government of the People's Republic of China proposed a JV in the BSA to purchase 25,000 metric tons (mt) of yellowfin sole; 5,000 mt of rock sole; 5,000 mt of Pacific cod, and 10,000 mt of other flatfish. A GOA JV was proposed to purchase 5,000 mt of yellowfin sole. There were nine requests to conduct support and supply activities in the EEZ between foreign vessels involving fish taken seaward of the EEZ or processed in the internal waters of a state, and nine requests to conduct support and supply activities in the EEZ with U.S. vessels.

German Democratic Republic (GC)

The Government of the German Democratic Republic applied to fish in the NWA for 22,000 mt of Atlantic mackerel and proposed to purchase 8,250 mt of JV mackerel.

Iceland (IC)

The Government of Iceland proposed JV's in the BSA to purchase 49,000 mt of Pacific cod; 3,800 mt of yellowfin sole; 3,200 mt of Atka mackerel, and 1,000 mt of pollock. A GOA JV was proposed to purchase 6,000 mt of Pacific cod and 1,000 mt of flatfish.

Japan (JA)

The Government of Japan proposed JV's in the BSA to purchase 114,000 mt of pollock and/or yellowfin sole; 132,000 metric tons

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of other flatfish, and 37,000 mt of Pacific cod. Joint ventures

and 33 requests to conduct support and supply activities in the

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of other flatfish, and 37,000 mt of Pacific cod. Joint ventures were also proposed for unspecified species and quantities in the GOA, and for unspecified quantities of Loligo and Illex squid in the NWA. A WOC JV was proposed to purchase 160,000 mt of Pacific whiting. There were 19 requests to process fish in the EEZ received in the internal waters of a state, 37 requests to conduct support and supply activities in the EEZ between foreign vessels involving fish processed in the internal waters of a state, and 57 requests to conduct support and supply activities in the EEZ with U.S. vessels.

Korea (KS)

The Government of the Republic of Korea proposed JV's in the BSA to purchase 313,400 mt of pollock; 108,000 mt of yellowfin sole; 23,200 mt of other flatfish; 38,700 mt of Pacific cod; 20,700 mt of Atka mackerel, and 7,180 mt of unspecified species. Joint ventures in the GOA were proposed to purchase 11,500 mt of pollock; 1,400 mt of Pacific cod; 500 mt of flatfish; 800 mt of other mackerel and 800 mt of unspecified species. Joint ventures in the WOC were proposed to purchase 13,000 mt of Pacific whiting. There were six requests to process fish in the EEZ taken in the economic zone of another country, 16 requests to process fish in the EEZ taken in waters seaward of the EEZ, 50 requests to conduct support and supply activities in the EEZ between foreign vessels involving fish taken seaward of the EEZ.

and 33 requests to conduct support and supply activities in the EEZ with U.S. vessels.

The Netherlands (NL)

The Government of the Kingdom of the Netherlands applied to fish in the NWA for 21,000 mt of Atlantic mackerel and proposed to purchase 7,000 mt of JV mackerel.

Poland (PL)

The Government of the Polish People's Republic applied to fish in the NWA for 10,500 mt of Atlantic mackerel and proposed to purchase 3,000 mt of JV mackerel and 500 metric tons of U.S. processed mackerel. Joint ventures in the BSA and GOA were proposed to purchase 40,000 mt of pollock and 5,000 mt of yellowfin sole, or, in the event pollock is not available, 45,000 mt of yellowfin sole and/or Pacific cod. A WOC JV was proposed to purchase 50,000 mt of Pacific whiting.

USSR (UR)

The Union of Soviet Socialist Republics proposed a JV in the NWA to purchase 30,000 mt of Atlantic mackerel, a JV in the BSA to purchase 60,000 mt of yellowfin sole and 30,000 mt of Pacific cod, and a JV in the WOC for an unspecified quantity of Pacific whiting.

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VESSEL (VESSEL TYPE)	APPLICATION /PERMIT #	FISHERY-ACTIVITY
GENG HAI (LARGE STERN TRAWLER)	CH-90-0001	GOA-4 BSA-4
HAI FA (CARGO/TRANSPORT VESSEL)	CH-90-0009	GOA-3 BSA-3
HAI FENG 301 (CARGO/TRANSPORT VESSEL)	CH-90-0008	GOA-3 BSA-3
KAI CHUANG (LARGE STERN TRAWLER)	CH-90-0003	GOA-4 BSA-4
KAI TUO (LARGE STERN TRAWLER)	CH-90-0010	GOA-4 BSA-4
YAN YUAN 1 (LARGE STERN TRAWLER)	CH-90-0002	GOA-4 BSA-4
YAN YUAN NO. 2 (FACTORY SHIP)	CH-90-0006	GOA-4 BSA-4
YAN YUAN NO. 3 (LARGE STERN TRAWLER)	CH-90-0011	GOA-4 BSA-4
YUN HAI (FACTORY SHIP)	CH-90-0007	GOA-4 BSA-4
HALGAFELLI (CARGO/TRANSPORT VESSEL)	DA-90-0010	NWA-3
ICE FLOWER (CARGO/TRANSPORT VESSEL)	DA-90-0003	NWA-3
ICE PEARL (CARGO/TRANSPORT VESSEL)	DA-90-0009	NWA-3
ICEPORT (CARGO/TRANSPORT VESSEL)	DA-90-0004	NWA-3
NORDLANDIA (CARGO/TRANSPORT VESSEL)	DA-90-0006	NWA-3
VESTLANDIA (CARGO/TRANSPORT VESSEL)	DA-90-0008	NWA-3
EDUARD CLAUDIUS (LARGE STERN TRAWLER)	GC-90-0059	NWA-1*
EHM WELK (LARGE STERN TRAWLER)	GC-90-0041	NWA-1*
EVERSHAGEN (CARGO/TRANSPORT VESSEL)	GC-90-0027	NWA-3

LUDWIG RENN (LARGE STERN TRAWLER)	GC-90-0054	NWA-1*
REUTERSHAGEN (CARGO/TRANSPORT VESSEL)	GC-90-0056	NWA-3
RUDOLF LEONHARD (LARGE STERN TRAWLER)	GC-90-0048	NWA-1*
WILLI BREDEL (LARGE STERN TRAWLER)	GC-90-0024	NWA-1*
ANDRI I (FACTORY SHIP)	IC-90-0006	BSA-4
BJOERNOEY (FACTORY SHIP)	IC-90-0007	GOA-4 BSA-4
AKASHIA MARU (CARGO/TRANSPORT VESSEL)	JA-90-1156	WOC-3 NWA-3 GOA-3 BSA-3
AKEBONO MARU NO. 3 (MEDIUM STERN TRAWLER)	JA-90-0105	GOA-4 BSA-4
AKEBONO MARU NO. 31 (MEDIUM STERN TRAWLER)	JA-90-0306	WOC-4 GOA-4 BSA-4
AKEBONO MARU NO. 77 (LARGE STERN TRAWLER)	JA-90-0157	WOC-4 GOA-4 BSA-4
AKISHIO MARU (CARGO/TRANSPORT VESSEL)	JA-90-0096	WOC-3 NWA-3 GOA-3 BSA-3
ANYO MARU NO. 1 (MEDIUM STERN TRAWLER)	JA-90-1552	GOA-4 BSA-4
ANYO MARU NO. 15 (SMALL STERN TRAWLER)	JA-90-0104	GOA-4 BSA-4
ANYO MARU NO. 18 (MEDIUM STERN TRAWLER)	JA-90-1175	GOA-4 BSA-4
ANYO MARU NO. 22 (LONGLINE FISHING VESSEL)	JA-90-0622	GOA-4 BSA-4
ARIZONA MARU (CARGO/TRANSPORT VESSEL)	JA-90-0233	SNA-3 GOA-3 BSA-3
ATAGO MARU (CARGO/TRANSPORT VESSEL)	JA-90-0195	WOC-3 NWA-3 GOA-3 BSA-3
BANYO MARU (CARGO/TRANSPORT VESSEL)	JA-90-0099	WOC-2 GOA-2 BSA-2
BIYO MARU (CARGO/TRANSPORT VESSEL)	JA-90-0598	WOC-3 GOA-3 BSA-3
CHIKUBU MARU (LARGE STERN TRAWLER)	JA-90-0336	GOA-4 BSA-4

CHIKUZEN MARU	JA-90-0199	WOC-4 GOA-4 BSA-4

FUJISHIO MARU (CARGO/TRANSPORT VESSEL)	JA-90-0594	GOA-3 BSA-3

CHIKUZEN MARU.....JA-90-0199...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

CHITOSE MARU.....JA-90-0180...WOC-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

CHIYO MARU.....JA-90-0197...GOA-4 BSA-4
(LARGE STERN TRAWLER)

CHOYOH MARU.....JA-90-0574...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

DAIAN MARU NO. 158.....JA-90-0228...GOA-4 BSA-4
(MEDIUM STERN TRAWLER)

DAIAN MARU NO. 188.....JA-90-0553...GOA-4 BSA-4
(MEDIUM STERN TRAWLER)

DAIKAN MARU.....JA-90-0033...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

DAIKICHI MARU NO.1.....JA-90-1198...GOA-4 BSA-4
(SMALL STERN TRAWLER)

DAIKICHI MARU NO.5.....JA-90-0187...GOA-4 BSA-4
(SMALL STERN TRAWLER)

DAIKICHI MARU NO.51.....JA-90-0484...GOA-4 BSA-4
(MEDIUM STERN TRAWLER)

DAIKOH MARU.....JA-90-0021...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

DAISHIN MARU NO. 22.....JA-90-0286...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

DAISHIN MARU NO. 28.....JA-90-0569...BSA-4
(LARGE STERN TRAWLER)

DAISHO MARU.....JA-90-0035...SNA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

DOUGLAS.....JA-90-2028...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

EBISU FONTAINE.....JA-90-0589...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

EIYO MARU (B).....JA-90-0109...WOC-2 GOA-2 BSA-2
(CARGO/TRANSPORT VESSEL)

ENYOH MARU.....JA-90-0086...WOC-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

ETSUYOH MARU.....JA-90-0089...WOC-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

FALCON.....JA-90-0918...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

FUJISHIO MARU.....JA-90-0594...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

FUKUCHO MARU NO. 11.....JA-90-1537...GOA-4 BSA-4
(SMALL STERN TRAWLER)

FUKUHO MARU NO. 78.....JA-90-1548...BSA-4
(SMALL STERN TRAWLER)

FUKUSHIO MARU.....JA-90-1539...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

FUKUYOSHI MARU NO. 38.....JA-90-0304...GOA-4 BSA-4
(MEDIUM STERN TRAWLER)

FUKUYOSHI MARU NO. 58.....JA-90-1536...GOA-4 BSA-4
(SMALL STERN TRAWLER)

HAKKO BOOMERANG.....JA-90-0881...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

HAKKO FONTAINE.....JA-90-0587...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

HAKUYO MARU.....JA-90-0570...WOC-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

HAMANASU MARU.....JA-90-0883...WOC-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

HANAZONO MARU.....JA-90-0147...WOC-3 SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

HEKIFU.....JA-90-0196...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

HIKARI MARU NO. 8.....JA-90-0142...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

HIYO MARU.....JA-90-2025...WOC-2 GOA-2 BSA-2
(CARGO/TRANSPORT VESSEL)

HIYOSHI MARU.....JA-90-0075...WOC-3 SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

HOKKAI MARU (B).....JA-90-0922...WOC-3 SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

HOKUSHIN MARU.....JA-90-0138...SNA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

HONAI MARU.....JA-90-0648...WOC-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

HOZAN MARU.....JA-90-0194...WOC-2 NWA-2 GOA-2 BSA-2
(CARGO/TRANSPORT VESSEL)

ISHIKARI MARU.....JA-90-0595...WOC-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

IZUMO REEFER.....JA-90-0053...WOC-3 SNA-3 NWA-3 GOA-3 BSA-3

KOSHIN MARU NO. 1.....JA-90-0225...GOA-4 BSA-4

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IZUMO REEFER.....JA-90-0053...WOC-3 SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

KAIHO MARU.....JA-90-0236...WOC-2 NWA-2 GOA-2 BSA-2
(CARGO/TRANSPORT VESSEL)

KAIUN MARU NO. 65.....JA-90-2010...GOA-4 BSA-4
(MEDIUM STERN TRAWLER)

KAIYO MARU.....JA-90-0088...WOC-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

KAIYO MARU NO. 115.....JA-90-1153...GOA-4 BSA-4
(MEDIUM STERN TRAWLER)

KAIYO MARU NO. 28.....JA-90-1544...GOA-4 BSA-4
(MEDIUM STERN TRAWLER)

KAMUI MARU.....JA-90-0223...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

KASHIMA REEFER.....JA-90-0054...WOC-3 SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

KASHIWAGI MARU.....JA-90-0019...WOC-3 SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

KASUGA REEFER.....JA-90-0055...WOC-3 SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

KATAH.....JA-90-0148...SNA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

KAZU MARU NO. 8.....JA-90-0143...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

KEIFU MARU.....JA-90-0572...WOC-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

KEIYO MARU.....JA-90-0102...WOC-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

KINYO MARU.....JA-90-0103...WOC-2 GOA-2 BSA-2
(CARGO/TRANSPORT VESSEL)

KISARAGI MARU.....JA-90-0929...WOC-3 SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

KOEI MARU NO. 51.....JA-90-1173...BSA-4
(MEDIUM STERN TRAWLER)

KOEI MARU NO.15.....JA-90-1396...BSA-4
(MEDIUM STERN TRAWLER)

KOHFU MARU.....JA-90-0641...WOC-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

KOMEI MARU..... .....JA-90-0139...SNA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

KOSHIN MARU NO. 1.....JA-90-0225...GOA-4 BSA-4
(MEDIUM STERN TRAWLER)

KOSHIN MARU NO. 21.....JA-90-0525...GOA-4 BSA-4
(MEDIUM STERN TRAWLER)

KOSHIN MARU NO. 3.....JA-90-0192...GOA-4 BSA-4
(MEDIUM STERN TRAWLER)

KOTOKU MARU.....JA-90-1035...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

KOYO MARU.....JA-90-0383...WOC-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

KOYO MARU NO. 3.....JA-90-0343...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

KOYO MARU NO. 8.....JA-90-0224...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

KUROSHIMA MARU.....JA-90-1582...WOC-3 SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

KYOKUSHIN MARU.....JA-90-1161...WOC-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

MABAH.....JA-90-0108...SNA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

MATENA LUMO.....JA-90-0232...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

MIYABI MARU.....JA-90-0237...WOC-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

MIYAJIMA MARU.....JA-90-1540...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

MIYOSHIMA MARU.....JA-90-0025...WOC-3 SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

NICHIYO MARU.....JA-90-1167...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

NOJIMA MARU.....JA-90-1096...WOC-2 SNA-2 NWA-2 GOA-2 BSA-2
(CARGO/TRANSPORT VESSEL)

OHTORI MARU.....JA-90-0342...BSA-4
(LARGE STERN TRAWLER)

OHYO MARU.....JA-90-0158...WOC-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

OREGON MARU.....JA-90-0234...SNA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

ORIENTAL CRANE.....JA-90-0184...WOC-3 SNA-3 GOA-3 BSA-3
(TANKER FUEL/WATER)

ORIENTAL EAGLE.....JA-90-0239...WOC-3 SNA-3 GOA-3 BSA-3

SEKI REX.....JA-90-1148...WOC-3 GOA-3 BSA-3

ORIENTAL EAGLE.....JA-90-0239...WOC-3 SNA-3 GOA-3 BSA-3
(TANKER FUEL/WATER)

ORION.....JA-90-0591...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

ORION.....JA-90-0642...WOC-2 NWA-2 GOA-2 BSA-2
(CARGO/TRANSPORT VESSEL)

OTOWA MARU.....JA-90-1538...WOC-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

PALOMA.....JA-90-0098...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

PHOENIX.....JA-90-0917...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

POHAH.....JA-90-0206...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

REEFER BEAVER.....JA-90-1145...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

REEFER FRESH.....JA-90-2029...WOC-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

RIKUZEN MARU.....JA-90-0340...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

RISHIRI.....JA-90-0027...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

ROKKO.....JA-90-0181...WOC-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

RYUHO MARU NO. 51.....JA-90-1572...BSA-4
(SMALL STERN TRAWLER)

SAGAMI MARU.....JA-90-0146...WOC-2 SNA-2 NWA-2 GOA-2 BSA-2
(CARGO/TRANSPORT VESSEL)

SAKAE MARU.....JA-90-0647...WOC-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SANUKI MARU.....JA-90-0915...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SANWA FONTAINE.....JA-90-0590...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SEAGULL.....JA-90-0034...SNA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SEISHIN MARU.....JA-90-0645...SNA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SEIYOH MARU.....JA-90-0583...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SEKI REX.....JA-90-1148...WOC-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SHIDAKA MARU.....JA-90-0179...WOC-3 SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SHIN SAKURA.....JA-90-0153...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SHINASAHI MARU.....JA-90-0578...WOC-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SHINBUNGO MARU.....JA-90-0047...WOC-2 NWA-2 GOA-2 BSA-2
(CARGO/TRANSPORT VESSEL)

SHINEI MARU NO. 63.....JA-90-1196...BSA-4
(SMALL STERN TRAWLER)

SHINKO MARU NO. 11.....JA-90-0119...GOA-4 BSA-4
(LONGLINE FISHING VESSEL)

SHINMEI MARU.....JA-90-0207...SNA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SHINNICHI MARU NO. 38.....JA-90-0563...GOA-4 BSA-4
(MEDIUM STERN TRAWLER)

SHINSHO MARU.....JA-90-0640...WOC-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SHINTAKARA MARU.....JA-90-0046...WOC-2 NWA-2 GOA-2 BSA-2
(CARGO/TRANSPORT VESSEL)

SHINWA MARU.....JA-90-0137...SNA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SHINYO MARU.....JA-90-0074...WOC-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SHOJU MARU.....JA-90-0134...SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SHOKEN MARU.....JA-90-0930...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SHOUTOKU MARU.....JA-90-0028...WOC-3 SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SHOYO MARU (B).....JA-90-1563...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SHUNYO MARU.....JA-90-0136...WOC-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SHUNYOO MARU NO. 118.....JA-90-0564...GOA-4 BSA-4
(MEDIUM STERN TRAWLER)

SINGAPORE FONTAINE.....JA-90-0586...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

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SKYLARK.....JA-90-0023...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SOUTHERN CROSS.....JA-90-0156...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

STARLING.....JA-90-0024...SNA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SUIYO MARU.....JA-90-0575...WOC-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SUNBIRD.....JA-90-0576...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SUOH.....JA-90-0893...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SURUGA MARU.....JA-90-2014...WOC-3 SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

TAISEI MARU NO. 101.....JA-90-1144...WOC-2 SNA-2 NWA-2 GOA-2 BSA-2
(CARGO/TRANSPORT VESSEL)

TAISEI MARU NO. 15.....JA-90-0205...WOC-2 SNA-2 NWA-2 GOA-2 BSA-2
(CARGO/TRANSPORT VESSEL)

TAISEI MARU NO. 3.....JA-90-0085...WOC-2 SNA-2 NWA-2 GOA-2 BSA-2
(CARGO/TRANSPORT VESSEL)

TAISEI MARU NO. 52.....JA-90-1055...WOC-2 SNA-2 NWA-2 GOA-2 BSA-2
(CARGO/TRANSPORT VESSEL)

TAISEI MARU NO. 87.....JA-90-1053...WOC-2 SNA-2 NWA-2 GOA-2 BSA-2
(CARGO/TRANSPORT VESSEL)

TAISEI MARU NO. 98.....JA-90-1054...WOC-2 SNA-2 NWA-2 GOA-2 BSA-2
(CARGO/TRANSPORT VESSEL)

TAISETSU MARU.....JA-90-0193...WOC-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

TAKACHIHO MARU.....JA-90-0291...NWA-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

TAKUYO MARU.....JA-90-0029...WOC-3 SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

TEISHO MARU NO. 68.....JA-90-1547...BSA-4
(SMALL STERN TRAWLER)

TENYO MARU.....JA-90-0352...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

TENYO MARU NO. 2.....JA-90-0332...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

TENYO MARU NO. 3.....JA-90-0333...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

TENYO MARU NO. 5.....JA-90-0334...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

TOKACHI MARU (B).....JA-90-0359...WOC-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

TOKIWA MARU.....JA-90-0631...WOC-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

TOKUKO MARU.....JA-90-0593...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

TOKURYU MARU.....JA-90-0592...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

TOKYO REEFER.....JA-90-1135...WOC-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

TOMI MARU NO. 51.....JA-90-1197...GOA-4 BSA-4
(SMALL STERN TRAWLER)

TOMI MARU NO. 55.....JA-90-1171...GOA-4 BSA-4
(MEDIUM STERN TRAWLER)

TOMI MARU NO. 58.....JA-90-0643...GOA-4 BSA-4
(MEDIUM STERN TRAWLER)

TOMI MARU NO. 81.....JA-90-1192...GOA-4 BSA-4
(SMALL STERN TRAWLER)

TOMI MARU NO. 82.....JA-90-1193...GOA-4 BSA-4
(SMALL STERN TRAWLER)

TOMI MARU NO. 83.....JA-90-1170...GOA-4 BSA-4
(MEDIUM STERN TRAWLER)

TOMI MARU NO. 86.....JA-90-0222...GOA-4 BSA-4
(MEDIUM STERN TRAWLER)

TOMI MARU NO. 87.....JA-90-0198...GOA-4 BSA-4
(MEDIUM STERN TRAWLER)

TOMI MARU NO. 88.....JA-90-0612...GOA-4 BSA-4
(LONGLINE FISHING VESSEL)

TOMOE MARU.....JA-90-0238...WOC-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

TOSHIN MARU.....JA-90-0056...SNA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

TSUDA MARU.....JA-90-0337...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

WASHINGTON MARU.....JA-90-0227...SNA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

WORLD FONTAINE.....JA-90-0588...WOC-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

YAGISHIRI.....JA-90-0581...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

YAMASAN MARU NO. 102.....JA-90-1185...GOA-4 BSA-4
(SMALL STERN TRAWLER)

YAMATO MARU.....JA-90-0339...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

YASAKA REEFER.....JA-90-0052...WOC-3 SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

YAYOI MARU.....JA-90-0018...WOC-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

YOHTEI MARU.....JA-90-0076...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

YOKO MARU.....JA-90-0087...WOC-3 SNA-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

YOSHI MARU NO. 38.....JA-90-0229...BSA-4
(SMALL STERN TRAWLER)

YURISHIMA MARU.....JA-90-0235...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

ZUIFU.....JA-90-0646...NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

ZUIHOO MARU NO. 28.....JA-90-0565...GOA-4 BSA-4
(MEDIUM STERN TRAWLER)

ZUIHOO MARU NO. 88.....JA-90-0231...GOA-4 BSA-4
(MEDIUM STERN TRAWLER)

ZUIYO MARU NO. 3.....JA-90-0331...GOA-4 BSA-4
(LARGE STERN TRAWLER)

CHEOG YANG HO.....KS-90-0003...GOA-4 BSA-4
(LARGE STERN TRAWLER)

CORAL STAR.....KS-90-0135...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

CRYSTAL DAHLIA.....KS-90-0034...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

DAE JIN NO. 21.....KS-90-0136...GOA-4 BSA-4
(LARGE STERN TRAWLER)

DAE SUNG HO.....KS-90-0051...GOA-4 BSA-4
(LARGE STERN TRAWLER)

DAEJIN NO. 52.....KS-90-0037...GOA-4 BSA-4
(LARGE STERN TRAWLER)

DONG BANG HO.....KS-90-0152...GOA-4 BSA-4
(LARGE STERN TRAWLER)

DONGSAN-HO.....KS-90-0039...GOA-4 BSA-4
(LARGE STERN TRAWLER)

GAE CHEOG HO.....KS-90-0112...GOA-4 BSA-4
(FACTORY SHIP)

GAE CHEOG HO NO. 2.....KS-90-0090...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

GAE YANG HO.....KS-90-0001...GOA-4 BSA-4
(LARGE STERN TRAWLER)

HAN JIN HO.....KS-90-0045...GOA-4 BSA-4
(MEDIUM STERN TRAWLER)

HAN KIL HO.....KS-90-0044...GOA-4 BSA-4
(MEDIUM STERN TRAWLER)

HANIL HO.....KS-90-0107...GOA-4 BSA-4
(MEDIUM STERN TRAWLER)

JOON SUNG HO.....KS-90-0137...GOA-4 BSA-4
(LARGE STERN TRAWLER)

KYUNG YANG HO.....KS-90-0085...GOA-4 BSA-4
(LARGE STERN TRAWLER)

NAM BUG HO.....KS-90-0033...GOA-4 BSA-4
(LARGE STERN TRAWLER)

NO. 1 HAN SUNG.....KS-90-0106...GOA-4 BSA-4
(LARGE STERN TRAWLER)

NO. 101 HYUN IL.....KS-90-0151...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

NO. 103 NAM CHANG.....KS-90-0141...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

NO. 29 TAE BAEK.....KS-90-0091...WOC-4 GOA-4 BSA-4
(FACTORY SHIP)

NO. 3 CHIL BO SAN HO.....KS-90-0074...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

NO. 5 CHIL BO SAN HO.....KS-90-0075...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

NO. 501 DONG SOO.....KS-90-0119...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

NO. 602 TAE WOONG.....KS-90-0105...GOA-4 BSA-4
(MEDIUM STERN TRAWLER)

NO. 7 SANG WON.....KS-90-0041...GOA-4 BSA-4
(MEDIUM STERN TRAWLER)

NO. 70 OYANG HO.....KS-90-0048...GOA-4 BSA-4
(LARGE STERN TRAWLER)

NO. 71 DONG BANG.....KS-90-0121...GOA-4 BSA-4
(LARGE STERN TRAWLER)

TAE WOONG HO.....KS-90-0143...GOA-4 BSA-4

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NO. 71 DONG BANG.....KS-90-0121...GOA-4 BSA-4
(LARGE STERN TRAWLER)

NO. 77 DONG BANG.....KS-90-0118...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

NO. 9 JEONG WOO.....KS-90-0139...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

NO. 99 TAE BAEK.....KS-90-0079...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

OCEAN EXPRESS.....KS-90-0142...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

ODAEYANG NO. 106.....KS-90-0099...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

ORYONG NO. 501.....KS-90-0123...GOA-4 BSA-4
(LARGE STERN TRAWLER)

ORYONG NO. 503.....KS-90-0095...GOA-4 BSA-4
(LARGE STERN TRAWLER)

OYANG HO.....KS-90-0006...GOA-4 BSA-4
(LARGE STERN TRAWLER)

PUNG YANG HO.....KS-90-0004...GOA-4 BSA-4
(LARGE STERN TRAWLER)

REEFER NO. 1.....KS-90-0147...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

REEFER NO. 2.....KS-90-0148...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

REEFER NO. 3.....KS-90-0149...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

REEFER NO. 5.....KS-90-0098...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

REEFER NO. 6.....KS-90-0150...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

SALVIA.....KS-90-0103...GOA-4 BSA-4
(LARGE STERN TRAWLER)

SHIN AN HO.....KS-90-0047...GOA-4 BSA-4
(LARGE STERN TRAWLER)

SHIN YANG HO.....KS-90-0122...GOA-4 BSA-4
(LARGE STERN TRAWLER)

SUNFLOWER NO. 7.....KS-90-0002...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

TAE BAEK HO.....KS-90-0042...GOA-4 BSA-4
(LARGE S"ERN TRAWLER)

TAE WOONG HO.....KS-90-0143...GOA-4 BSA-4
(LARGE STERN TRAWLER)

TAE YANG NO. 12.....KS-90-0081...GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

YUYANG HO.....KS-90-0104...GOA-4 BSA-4
(LARGE STERN TRAWLER)

ALIDA.....NL-90-0006...NWA-1*
(LARGE STERN TRAWLER)

ASTRID.....NL-90-0028...NWA-1*
(LARGE STERN TRAWLER)

CORNELIS VROLIJK FZD SCH 171....NL-90-0041...NWA-1*
(LARGE STERN TRAWLER)

DIRK DIRK.....NL-90-0026...NWA-1*
(LARGE STERN TRAWLER)

FRANZISKA.....NL-90-0043...NWA-1*
(LARGE STERN TRAWLER)

FRIESLAND.....NL-90-0031...NWA-1*
(MEDIUM STERN TRAWLER)

GEERTRUID MARGRETA.....NL-90-0032...NWA-1*
(LARGE STERN TRAWLER)

PRINS BERNHARD.....NL-90-0007...NWA-1*
(LARGE STERN TRAWLER)

TETMAN HETTE.....NL-90-0042...NWA-1*
(LARGE STERN TRAWLER)

ADMIRAL ARCISZEWSKI.....PL-90-0081...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

AKRUX.....PL-90-0121...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

ALTAIR.....PL-90-0115...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

AMAREL.....PL-90-0046...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

ANTARES.....PL-90-0037...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

AQUARIUS.....PL-90-0103...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

AQUILA.....PL-90-0097...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

ARCTURUS.....PL-90-0038...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

KULBIN.....PL-90-0117...NWA-1*
(LARGE STERN TRAWLER)

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ATRIA.....PL-90-0123...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

AWIOR.....PL-90-0060...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

BOGAR.....PL-90-0085...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

BURAN.....PL-90-0033...WOC-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

CASSIOPEIA.....PL-90-0099...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

DALMOR 2.....PL-90-0114...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

DELFIN.....PL-90-0065...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

DENEBOLA.....PL-90-0075...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

GEMINI.....PL-90-0048...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

GRINWAL.....PL-90-0007...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

HAJDUK.....PL-90-0066...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

HALNIAK.....PL-90-0029...WOC-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

HOMAR.....PL-90-0124...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

INDUS.....PL-90-0094...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

KALMAR.....PL-90-0039...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

KANTAR.....PL-90-0118...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

KASZUBY 2.....PL-90-0027...WOC-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

KOCIEWIE.....PL-90-0116...WOC-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

KOLIAS.....PL-90-0050...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

KORWIN.....PL-90-0026...NWA-1*
(LARGE STERN TRAWLER)

KULBIN.....PL-90-0117...NWA-1*
(LARGE STERN TRAWLER)

KUNATKA.....PL-90-0021...NWA-1*
(LARGE STERN TRAWLER)

LANGUSTA.....PL-90-0015...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

LASKARA.....PL-90-0024...NWA-1*
(LARGE STERN TRAWLER)

LEWANTER.....PL-90-0030...WOC-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

M/V KURPIE.....PL-90-0120...WOC-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

MARLIN.....PL-90-0034...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

MAZURY.....PL-90-0098...WOC-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

MORS.....PL-90-0063...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

MUSTEL.....PL-90-0012...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

ORCYN.....PL-90-0077...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

ORLEN.....PL-90-0078...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

OTOL.....PL-90-0011...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

PARMA.....PL-90-0084...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

PERSEUS.....PL-90-0004...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

PODLASIE.....PL-90-0122...WOC-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

POLLUX.....PL-90-0006...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

POWISLE.....PL-90-0119...WOC-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

PROF. BOGUCKI.....PL-90-0107...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

REGULUS.....PL-90-0095...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

REKIN.....PL-90-0080...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

BEREG NADEZDY.....UR-90-0754...WOC-3 BSA-3
(CARGO/TRANSPORT VESSEL)

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REKIN.....PL-90-0080...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

SAGITTA.....PL-90-0040...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

SIRIUS.....PL-90-0062...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

SOLANO.....PL-90-0112...WOC-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

TAZAR.....PL-90-0054...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

TERRAL.....PL-90-0086...WOC-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

TORNADO.....PL-90-0113...WOC-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

TUNEK.....PL-90-0045...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

VEGA.....PL-90-0055...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

WALEN.....PL-90-0009...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

WINETA.....PL-90-0061...WOC-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

WLOCZNIK.....PL-90-0020...WOC-4 GOA-4 BSA-4
(LARGE STERN TRAWLER)

ZONDA.....PL-90-0102...WOC-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

ZULAWY.....PL-90-0041...WOC-3 NWA-3 GOA-3 BSA-3
(CARGO/TRANSPORT VESSEL)

15 SYEZD PROFSOYUZOV.....UR-90-0087...WOC-4 BSA-4
(LARGE STERN TRAWLER)

ALEKSANDR KSENOFONTOV.....UR-90-0862...NWA-4
(LARGE STERN TRAWLER)

ALEXANDR MAKSUTOV.....UR-90-0553...WOC-4 BSA-4
(LARGE STERN TRAWLER)

ALTAYSKIE GORY.....UR-90-0259...WOC-3 BSA-3
(CARGO/TRANSPORT VESSEL)

BAGANOVO.....UR-90-0758...WOC-4 BSA-4
(LARGE STERN TRAWLER)

BEREG MECHTY.....UR-90-0753...WOC-3 BSA-3
(CARGO/TRANSPORT VESSEL)

BEREG NADEZDY.....UR-90-0754...WOC-3 BSA-3
(CARGO/TRANSPORT VESSEL)

DANKO.....UR-90-0001...WOC-4 BSA-4
(LARGE STERN TRAWLER)

DELEGAT.....UR-90-0762...WOC-3 BSA-3
(TANKER FUEL/WATER)

DUBRAVA.....UR-90-0832...WOC-3 BSA-3
(CARGO/TRANSPORT VESSEL)

GERMAN MATERN.....UR-90-0805...WOC-3 BSA-3
(CARGO/TRANSPORT VESSEL)

GNEVNYY.....UR-90-0861...WOC-4 BSA-4
(LARGE STERN TRAWLER)

KAMCHATSKY BEREG.....UR-90-0755...WOC-3 BSA-3
(CARGO/TRANSPORT VESSEL)

KAZALINSK.....UR-90-0171...WOC-4 BSA-4
(LARGE STERN TRAWLER)

KAZATIN.....UR-90-0830...WOC-4 BSA-4
(LARGE STERN TRAWLER)

KHRUSTALNYI BEREG.....UR-90-0732...WOC-3 BSA-3
(CARGO/TRANSPORT VESSEL)

KLYUCHEVSKOY.....UR-90-0082...WOC-4 BSA-4
(LARGE STERN TRAWLER)

KOMMUNARY NIKOLAEVA.....UR-90-0860...WOC-3 BSA-3
(CARGO/TRANSPORT VESSEL)

KONTAIKA.....UR-90-0076...WOC-4 BSA-4
(LARGE STERN TRAWLER)

KORENGA.....UR-90-0215...WOC-4 BSA-4
(LARGE STERN TRAWLER)

KULUNDA.....UR-90-0093...WOC-4 BSA-4
(LARGE STERN TRAWLER)

KUSHKA.....UR-90-0217...WOC-4 BSA-4
(LARGE STERN TRAWLER)

MESKUPAS ADOMAS.....UR-90-0588...NWA-4
(LARGE STERN TRAWLER)

MYS CHASOVOY.....UR-90-0176...BSA-4
(LARGE STERN TRAWLER)

MYS EGOROVA.....UR-90-0097...WOC-4 BSA-4
(LARGE STERN TRAWLER)

MYS GROZNYY.....UR-90-0185...WOC-4 BSA-4
(LARGE STERN TRAWLER)

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MYS LAZAREVA.....UR-90-0013...WOC-4 BSA-4
(LARGE STERN TRAWLER)

NIDA.....UR-90-0865...NWA-4
(LARGE STERN TRAWLER)

OSTROV KARAGINSKIY.....UR-90-0255...WOC-3 BSA-3
(CARGO/TRANSPORT VESSEL)

OSTROV LISYANSKOGO.....UR-90-0254...WOC-3 BSA-3
(CARGO/TRANSPORT VESSEL)

OSTROV SHMIDTA.....UR-90-0256...WOC-3 BSA-3
(CARGO/TRANSPORT VESSEL)

OSTROV SHOKALSKOGO.....UR-90-0257...WOC-3 BSA-3
(CARGO/TRANSPORT VESSEL)

OZYORNYE KLYUCHI.....UR-90-0223...WOC-4 BSA-4
(LARGE STERN TRAWLER)

PENJINSKIY ZALIV.....UR-90-0831...WOC-3 BSA-3
(CARGO/TRANSPORT VESSEL)

PIONER NIKOLAEVA.....UR-90-0854...WOC-4 BSA-4
(LARGE STERN TRAWLER)

POYMA.....UR-90-0201...WOC-4 BSA-4
(LARGE STERN TRAWLER)

PRIOZERSK.....UR-90-0038...WOC-4 BSA-4
(LARGE STERN TRAWLER)

SELIGER.....UR-90-0866...NWA-4
(LARGE STERN TRAWLER)

SHAPOSHNIKOVO.....UR-90-0863...NWA-4
(LARGE STERN TRAWLER)

SOVETSKIYE PROFSOYUZY.....UR-90-0705...WOC-4 BSA-4
(LARGE STERN TRAWLER)

SULAK.....UR-90-0238...WOC-4 BSA-4
(FACTORY SHIP)

SUVALKIYA.....UR-90-0864...NWA-4
(LARGE STERN TRAWLER)

SVETLAJA.....UR-90-0080...WOC-4 BSA-4
(LARGE STERN TRAWLER)

TAEJNYI BEREG.....UR-90-0770...WOC-3 BSA-3
(CARGO/TRANSPORT VESSEL)

TERNEI.....UR-90-0202...WOC-4 BSA-4
(LARGE STERN TRAWLER)

TIGIL.....UR-90-0162...WOC-4 BSA-4
(LARGE STERN TRAWLER)

TRUSKAVETS.....UR-90-0559...WOC-4 BSA-4
(LARGE STERN TRAWLER)

TURKUL.....UR-90-0172...WOC-4 BSA-4
(LARGE STERN TRAWLER)

USSURIISKAIA TAIGA.....UR-90-0782...WOC-3 BSA-3
(CARGO/TRANSPORT VESSEL)

UST-KARSK.....UR-90-0728...WOC-3 BSA-3
(TANKER FUEL/WATER)

VASILII POLECHUK.....UR-90-0804...WOC-3 BSA-3
(CARGO/TRANSPORT VESSEL)

VOSTOCHNYI BEREG.....UR-90-0761...WOC-3 BSA-3
(CARGO/TRANSPORT VESSEL)

YUBILEY OKTIABRIA.....UR-90-0064...WOC-4 BSA-4
(LARGE STERN TRAWLER)

*

[FR Doc. 89-30229 Filed 12-28-89; 8:45 am]
BILLING CODE 3510-22-C

COMMISSION OF FINE ARTS

Meeting

M.P.H.; Association for Vital Records and Health Statistics—

Issued: Washington, DC, on: December 20, 1989.
J. Robert Franklin

Amendment to Supplement No. 3 to FERC Rate Schedule No. 240, Rate Schedules that provide for the allocation

Agreement) between Indianapolis Power & Light Company (IPL) and Hoosier Energy Rural Electric

MW no earlier than January 1, 1995) because of the potential impact the recently filed PGAE Interconnection

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COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Arts' next scheduled meeting is Thursday, 18 January 1990 at 10:00 a.m. at the Commission's offices at 708 Jackson Place, NW., Washington, DC 20006 to discuss various projects affecting the appearance of Washington, DC, including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government. Handicapped persons should call the offices (566–1066) for details concerning access to meetings.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Mr. Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC, 21 December 1989.

Charles H. Atherton,

Secretary.

[FR Doc. 89–30258 Filed 12–28–89; 8:45 am]

BILLING CODE 6330–01–M

DEPARTMENT OF ENERGY

Secretarial Panel for the Evaluation of Epidemiologic Research Activities; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Secretarial Panel for the Evaluation of Epidemiologic Research Activities, DOE.

Date and Time: Wednesday, January 17, 1990, 8:30 a.m.–5:30 p.m., Thursday, January 18, 1990, 8:00 a.m.–4:30 p.m.

Place: The Clarion Hotel, 131 West 6th Street, Cincinnati, Ohio 45202, (513) 352–2110.

Contact: Steven F. Boedigheimer, Executive Director, S.P.E.E.R.A., 1000 Independence Ave., SW., Washington, DC 20585, Telephone: (202) 586–7304.

Purpose: The Panel was established to provide the Secretary with an independent evaluation of the Department of Energy's epidemiology program and the appropriateness, effectiveness, and overall quality of the Department's epidemiologic research activities.

Tentative Agenda:

Wednesday, January 17, 8:30 a.m.–5:30 p.m.

8:30–10:00 a.m. National Center for Health Statistics—Robert Bilgrad, M.P.H.; Association for Vital Records and Health Statistics—George Van Amberg

10:00–10:45 a.m. Invited Testimony and/or Work Session

10:45–11:45 a.m. Occupational Safety and Health Administration; Officials of the Occupational Safety and Health Administration

11:45–1:15 p.m. Lunch

1:15–2:30 p.m. National Institute for Occupational Safety and Health—Dr. Larry Fine, Dr. David Brown, Richard Lemen

2:30–3:45 p.m. National Cancer Institute—Dr. Seymour Jablon

3:45–4:30 p.m. Department of Energy, Richland Operations Office—Michael Lawrence

4:30–5:30 p.m. Invited testimony and/or work session.

Thursday, January 18, 8:00 a.m.–4:30 p.m.

8:00–8:45 a.m. Department of Energy, Management and Administration; Officials of the Office of Budget

8:45–10:00 a.m. District 34, International Association of Machinists—Al O'Connor; International Chemical Workers Union—David Ortlieb, John Webster; Fernald Atomic Trades and Labor Council—David Day

10:00–10:30 a.m. Fernald Residents for Environmental Safety and Health—Lisa Crawford

10:30–11:45 a.m. Public Comment

11:45–1:15 p.m. Lunch

1:15–4:30 p.m. Invited Testimony and Work Session

Public Participation: The meeting is open to the public. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will, in the Chairperson's judgment, facilitate the orderly conduct of business. Any member of the public who wishes to make oral statements pertaining to agenda items should contact the Executive Director at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. It is requested that oral presenters provide 15 copies of their statements at the time of their presentations.

Minutes: Available for public review and copying approximately 30 days following the meeting at the Public Reading Room 1E–190, Forrestal Building, 1000 Independence Ave, SW., Washington, DC. between 9 a.m. and 4 p.m., Monday through Friday except Federal holidays.

Issued: Washington, DC, on: December 20, 1989.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 89–30272 Filed 12–28–89; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER90–62–000, et al.]

Utah Power & Light Company, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

December 19, 1989.

Take notice that the following filings have been made with the Commission:

1. Utah Power & Light Company

[Docket No. ES90–62–000]

Take notice that on November 15, 1989, Utah Power & Light Company (Utah) tendered for filing revised Exhibit A of its November 8, 1989, filing in this docket.

Comment date: January 3, 1990, in accordance with Standard Paragraph E at the end of this notice.

2. Wisconsin Power & Light Company

[Docket No. ER90–101–000]

Take notice that on December 11, 1989, Wisconsin Power & Light Company (WPL) tendered for filing an amendment to the wholesale power agreement dated November 29, 1989, between the Village of Wonewoc and WPL. WPL states that this amendment revises the previous agreement between the two parties which was dated November 25, 1989, and is designated Rate Schedule No. 107 by the Commission.

The purpose of this amendment is to lengthen the notice period required for termination.

WPL requests that an effective date concurrent with the contract effective date be assigned. WPL states that copies of the agreement and the filing have been provided to the Village of Wonewoc and the Wisconsin Public Service Commission.

Comment date: January 3, 1990, in accordance with Standard Paragraph E at the end of this notice.

3. Vermont Electric Power Company, Inc.

[Docket No. ER88–447–000]

Take notice that on December 7, 1989, Vermont Electric Power Company, Inc. (VELCO) tendered for filing an Amendment to Supplement No. 1 to FERC Rate Schedule No. 235 and an Amendment to Supplement No. 3 to FERC Rate Schedule No. 240, Rate Schedules that provide for the allocation of transmission capacity on the VELCO system among Vermont distribution utilities. At the same time, VELCO also filed an Exhibit A to FERC Rate Schedule No. 235 and an Exhibit A to FERC Rate Schedule No. 240. The new Exhibits set forth allocations of transmission capacity as of December 31, 1987.

VELCO proposes that the Amendments become effective on July 1, 1989. VELCO requests a waiver of the Commission's Regulations to allow the filings to become effective as of that date. If the waiver is granted, VELCO states that there will be no adverse effect upon any of VELCO's customers. If the waiver is not granted, VELCO requests that the filings become effective on February 7, 1990, or on such other date as the Commission deems appropriate.

VELCO states that it has served the filing upon the Vermont Public Service Board and upon VELCO's transmission customers: Allied Power and Light Company, Barton Village, Inc., The City of Burlington Electric Department, Central Vermont Public Service Corporation, Citizens Utilities Company, Village of Enosburg Falls Water and Light Department, Franklin Electric Light Company, Green Mountain Power Corporation, Village of Hardwick Electric Department Village of Hyde Park, Inc., Village of Jacksonville, Village of Johnson Electric Light Department, Village of Ludlow Electric Light Department, Village of Lyndonville Electric Department, Village of Northfield Electric Department, Village of Orleans Electric Department, Village of Readsboro Electric Light Department, Rochester Light and Power Company, Village of Stowe Water and Light Department, Village of Swanton, Vermont Department of Public Service, Vermont Electric Cooperative, Vermont Electric Generation and Transmission Cooperative, Inc., Vermont Marble Company, Vermont Public Power Supply Authority, and Washington Electric Cooperative, Inc.

Comment date: January 3, 1990, in accordance with Standard Paragraph E at the end of this notice.

4. Indianapolis Power & Light Company

[Docket No. ER90–71–000]

Take notice that Indianapolis Power & Light Company on December 12, 1989, tendered an amendment to the filing made November 16, 1989 of Modification No. 3 to the Interconnection Agreement dated December 1, 1981, (the 1981 Agreement) between Indianapolis Power & Light Company (IPL) and Hoosier Energy Rural Electric Cooperative, (Hoosier). The 1981 Agreement is designated as Rate Schedule FPC No. 18.

The amended filing corrects an inadvertent error in Section 2.12 of Service Schedule B to Modification No. 3 which covers energy transfer. A waiver of the 60-day notice requirements is requested to make Modification No. 3 effective December 31, 1989.

Copies of the amended filing were mailed to Hoosier Energy Rural Electric Cooperative, Inc. and to the Indiana Utility Regulatory Commission.

Comment date: January 3, 1990, in accordance with Standard Paragraph E at the end of this notice.

5. Public Service Company of Colorado

[Docket No. ER87–577–000]

Take notice that Public Service Company of Colorado,on December 11, 1989, tendered for filing proposed changes in its FERC Electric Service Tariff No. 43. The proposed changes update the term and change the contract price for non-firm power from the "based on a share the savings basis or 115 percent of the supplying party's cost to supply such energy or mutually agreed upon rates" to a negotiated price deemed to "be of mutual benefit to both parties."

The proposed tariff change is the result of a revised Letter Agreement between Public Service Company of Colorado and the City of Colorado Springs. The above mentioned change in tariff coincides with the change made to the letter Agreement.

Copies of the filing were served upon the Public utility's jurisdictional customers, the Public Utilities Commission of the State of Colorado and the State of Colorado's Office of Consumer Counsel.

Comment date: January 3, 1990, in accordance with Standard Paragraph E at the end of this notice.

6. Southern California Edison Company

[Docket No. ER90–105–000]

Take notice that on December 13, 1989, Southern California Edison Company (Edison) tendered for filing, the following Letter Agreement No. 4:

Letter Agreement No. 4 to the Edison-SMUD Power Sale Agreement Between Southern California Edison company (Edison) and Sacramento Municipal Utility District (SmUD).

The Letter Agreement amends the Power Sale Agreement to allow SMUD to terminate the Power Sale Agreement or reduce the purchase amount (by 100 MW no earlier than January 1, 1995) because of the potential impact the recently filed PG&E Interconnection Rate Schedule (FERC Docket No. ER89–475) may have on SMUD utilizing the PG&E transmission service to import power from Edison.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: January 3, 1990, in accordance with Standard Paragraph E at the end of this notice.

7. LUZ Solar Partners VIII, Ltd.

[Docket No. QF88–470–001]

On December 13, 1989, LUZ Solar Partners VIII, Ltd. (Applicant), a California Limited Partnership, c/o LUZ Engineering Corporation, 924 Westwod Boulevard, Suite 1000, Los Angeles, California 90024 submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located approximately 12 miles due east of Kramer Junction, California, 25 miles west-northwest of Barstow, California, and six miles north of California Highway 58, on Harper Lake Road. The facility will consist of a solar collector field, a solar-fired preheater/steam generator, a solar-fired superheater, a solar-fired reheat unit, a natural gas-fired heat transfer fluid heater and a single inlet steam turbine generator. The primary energy source will be solar energy. The net electric power production capacity of the facility will be 80 MW.

The certification for the original application was issued on December 27, 1988 (45 CFR ¶ 62,261). The current recertification is requested due to change in the ownership structure and a change in configuration of the facility. The auxiliary gas-fired boiler, as proposed in the original application, is replaced with a larger heat transfer fluid (HTF) heater. The facility will also include Applicant's undivided one-sixth co-tenancy interest in a 220 KV transmission line connecting the facility to the Southern California Edison Company's transmission system, the purchasing utility. Subsidiaries of Iowa-Illinois Gas and Electric Company, an electric utility and FPL Group, Inc., also an electric utility holding company will have equity interests in the facility.

Comment date: Thirty days from publication in the **Federal Register**, in

accordance with Standard Paragraph E at the end of this notice.

period for comment on the DEIS are accorded the same treatment as oral comments which may be presented at

with the Commission, 825 North Capitol Street, NE., Washington, DC 20426 by December 29, 1989, in accordance with

must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public

El Paso respectfully requested that the Commission grant such waivers of its applicable rules and regulations as may

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission,

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accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-30213 Filed 12-28-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 9401]

Halecrest Co.; Granting Extension of Time To Comment on DEIS and Denying Motion To Delay Public Hearing

December 22, 1989.

On November 24, 1989, notice of availability of the draft environmental impact statement (DEIS) for the proposed Mount Hope Pumped Storage Project No. 9401 was published in the **Federal Register**, with comments on the document due forty-five days later, or January 8, 1990. On December 4, 1989, the Corps of Engineers issued notice of a Joint Public Hearing on the DEIS to be conducted by the Corps and the Commission on January 4, 1990. On December 12, 1989, the Township of Rockaway, an intervenor, filed a request for a forty-five day extension of time to file comments on the DEIS and for a delay of the proposed public hearing.[1]

Upon consideration, notice is hereby given that a thirty day extension of time for all interested persons to file comments on the DEIS is granted. Interested persons may file comments up to and including February 7, 1990.

The request to delay the public hearing is denied. The written comments which may be filed in the extended period for comment on the DEIS are accorded the same treatment as oral comments which may be presented at the public hearing. Accordingly, those persons who are not prepared to present oral comments at the public hearing may still submit comments in writing until the close of the extended period for comment on the DEIS.

Lois D. Cashell,

Secretary.

[FR Doc. 89-30214 Filed 12-28-89; 8:45 am]

BILLING CODE 6717-01-M

[1] Thus far, requests for extensions of time have also been received from Constance Pojanowski, Nancy and Michael Vogelstein, Anthony Staninas, David Mortensen and Friends of Ford-Passeh House, Historical Society of Rockaway.

[Docket No. RP89-223-002]

Black Marlin Pipeline Co.; Proposed Changes in FERC Gas Tariff

December 21, 1989.

Take notice that on December 15, 1989 Black Marlin Pipeline Company (Black Marlin), tendered for filing the following Primary and Alternative Tariff Sheets to its FERC Gas Tariffs to be effective March 1, 1990:

Primary Tariff Sheet

Original Volume No. 1

Substitute 2nd Revised Sheet No. 4

Alternate Tariff Sheet

First Revised Volume No. 1

Substitute 1st Revised Sheet No. 4

Black Marlin states that these tariff sheets are being filed in compliance with the Federal Energy Regulatory Commission's (Commission) orders issued September 29, 1989, October 13, 1989 and November 16, 1989 in the above referenced docket to reflect the effect on rates of a revised amortization period for determining the appropriate annual amortization amount of Black Marlin's excess tax reserve. The Primary Tariff Sheet was submitted as part of Black Marlin's FERC Gas Tariff Original Volume No. 1 to become effective March 1, 1990. In addition, the above-listed Alternative Tariff Sheet to Black Marlin's FERC Gas Tariff First Revised Volume No. 1 were submitted to become effective on March 1, 1990, if Black Marlin accepts an Order No. 500 blanket certificate and its FERC Gas Tariff First Revised Volume No. 1 becomes effective prior to March 1, 1990.

These tariff sheets are being filed to reflect a proposed amortization period for determining the appropriate annual amortization amount of Black Marlin's excess tax reserve of approximately six (6) years.

Black Marlin states that copies of the filing were served upon all of its customers and interested State Commission. Any person desiring to protest said filing should file a protest with the Commission, 825 North Capitol Street, NE., Washington, DC 20426 by December 29, 1989, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-30215 Filed 12-28-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-60-000]

Colorado Interstate Gas Co.; Petition for Waiver

December 21, 1989.

Take notice that on December 15, 1989, Colorado Interstate Gas Company (CIG) petitioned for an extension of time to file the materials required by 18 CFR 154.310(d)(2)(ii)(1989).

CIG states that it will file a new general notice of rate change pursuant to section 4(e) of the Natural Gas Act on or about December 29, 1989, and that, consequently, it will be subject to the requirements of the Order No. 483 regulations. CIG requests that it be permitted to delay the submission of the specified materials until May 31, 1990 to be effective July 1, 1990 (the date that CIG's new rates will become effective assuming a normal five-month suspension period). CIG states that continuation of its unit of sales methodology for determining its commodity cost of gas will have no immediate rate consequences, and no party will be prejudiced if CIG receives a waiver until May 31 to comply with the filing requests of Order No. 483.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure [18 CFR 385.214, 385.211 (1989)]. All such motions or protests should be filed on or before December 29, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-30216 Filed 12-28-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP88-434-003, RP88-185-002]

El Paso Natural Gas Co.; Compliance Tariff Filing

December 21, 1989.

Take notice that on December 14, 1989, El Paso Natural Gas Company ("El Paso") tendered for filing pursuant to Part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations Under the Natural Gas Act and in compliance with Opinion No. 336 and Order Issuing Certificate of Public Convenience and Necessity (hereinafter referred to as "Opinion No. 336") issued November 29, 1989 at Docket Nos. CP88-434-001 and RP88-185-001, certain tariff sheets for inclusion in El Paso's FERC Gas Tariff, First Revised Volume No. 1, Original Volume No. 1-A, Third Revised Volume No. 2 and Original Volume No. 2A.

El Paso states that in compliance with Opinion No. 336, El Paso is submitting the tariff sheets to provide for the implementation of El Paso's Gas Inventory Charge ("GIC") mechanism reflecting El Paso's proposed procedures specifically including deadlines for initial nominations to reflect levels of service, and the procedures for allocation of capacity at constraint points on its mainline system or any portion thereof including the points at which gas is tendered or delivered. Also contained in the filing is an explanation of El Paso's offer to release gas to its customers.

El Paso further states that prior to implementation of the GIC mechanism, El Paso will file additional tariff sheets necessary to make various conforming changes in other portions of its Tariff, innchuding changes to the applicability provisions of the Annual Charge Adjustment Provision, the Gas Research Institute General Research, Development and Demonstation Funding Unit Adjustment Provision and the Throughput Surcharge under the Take-or-Pay Buyout and Buydown Cost Recovery provision, and other conforming changes to existing rate schedules and general terms and conditions, including the termination of Section 19, Purchased Gas Cost Adjustment Provision.

El Paso respectfully requested that the Commission grant such waivers of its applicable rules and regulations as may be necessary to permit the tendered tariff sheets to become effective prior to or coincident with El Paso's implementation of its GIC mechanism.

Copies of the filing were served upon all interstate pipeline system sales customers and shippers of El Paso, all parties of record at Docket Nos. CP88-434-000 and RP88-185-000, and interested state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before December 29, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-30217 Filed 12-28-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-50-002]

Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

December 21, 1989.

Take notice that on December 15, 1989, Florida Gas Transmission Company (FGT) tendered for filing tariff sheets to its FERC Gas Tariff, to be effective January 1, 1990.

FGT states that the tariff sheets are being filed in compliance with the Commission's order dated November 30, 1989 in Docket No. RP89-50-000, *et al.* to reflect new base tariff rates to be effective January 1, 1990.

For purposes of restating the base tariff rates applicable for service under Rate Schedules G, I and T-3, FGT has reflected the weighted average cost of gas included in its most recently approved Quarterly PGA filing effective November 1, 1989 in Docket No. TQ90-1-34-000.

FGT states that copies of the filing have been mailed to each of its customers purchasing gas and receiving transportation services under its F.E.R.C. Gas Tariff, to its affected direct sales customers and to interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such protests should be filed on or before December 29, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-30218 Filed 12-28-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-20-000]

Great Lakes Gas Transmission Co.; Granting Late Interventions

December 21, 1989.

Motions to intervene in the above-captioned docket were due no later than November 8, 1989. Motions to intervene out of time were filed on November 22, 1989, by Peoples Gas Light and Coke Company and North Shore Gas Company, and on November 30, 1989, by Southeastern Michigan Gas Company. No answers in opposition to the motions were filed.

Movants appear to have legitimate interests in this proceeding that are not adequately represented by other parties. Granting the interventions will not cause delay or prejudice other parties. Accordingly, the interventions will be granted.

Pursuant to § 375.302 of the Commission's regulations [18 CFR 375.302 (1989)], the movants are permitted to intervene in this proceeding subject to the Commission's rules and regulations under the Natural Gas Act, 15 U.S.C. 717-717 (W) (1982). Participation of the intervenors shall be limited to matters set forth in their motions to intervene. The admission of the intervenors shall not be construed as recognition by the Commission that the intervenors might be aggrieved by any order entered in this proceeding.

Lois D. Cashell,

Secretary.

[FR Doc. 89-30219 Filed 12-28-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP90-406-000, RP89-37-000, RP89-83-000]

High Island Offshore System, Texas Eastern Transmission Corp.; Order Granting Waiver and Approving Settlement

December 21, 1989.

On November 15, 1989, High Island Offshore System (HIOS) and Texas Eastern Transmission Corporation (Texas Eastern) filed a Stipulation and Agreement (Settlement) in Docket Nos. RP89-37-000 and RP89-83-000. The Settlement resolves all issues in those dockets. Also on November 15, 1989, HIOS and Texas Eastern filed a joint application in Docket No. CP90-406-000 for waiver of the Commission's regulations to the extent necessary to implement the Settlement. Notice of the Settlement was issued on November 20, 1989, with comments due on or before December 1, 1989. No comments were filed.

The Settlement provides for the following:

1. HIOS will file a general rate case under section 4(e) of the Natural Gas Act (NGA) on or before December 31, 1990, to be effective no later than July 1, 1991. HIOS will not file a section 4(e) rate case prior to December 31, 1990, except as provided in paragraph 2 below.

2. HIOS may file a section 4(e) rate case prior to December 31, 1990, if HIOS' annual throughput for any calendar year is less than 80 percent of the throughput for the test period in HIOS' last general rate case. HIOS will not file a section 4(e) rate case prior to December 31, 1990, if HIOS' annual throughput for any calendar year is greater than 80 percent of the throughput for the test period in HIOS' last general rate case.

3. HIOS will not file a section 4(e) rate case prior to December 31, 1990, if HIOS' annual throughput for any calendar year is greater than 80 percent of the throughput for the test period in HIOS' last general rate case.

4. HIOS will not file a section 4(e) rate case prior to December 31, 1990, if HIOS' annual throughput for any calendar year is greater than 80 percent of the throughput for the test period in HIOS' last general rate case.

5. HIOS will not file a section 4(e) rate case prior to December 31, 1990, if HIOS' annual throughput for any calendar year is greater than 80 percent of the throughput for the test period in HIOS' last general rate case.

6. HIOS will not file a section 4(e) rate case prior to December 31, 1990, if HIOS' annual throughput for any calendar year is greater than 80 percent of the throughput for the test period in HIOS' last general rate case.

7. HIOS will not file a section 4(e) rate case prior to December 31, 1990, if HIOS' annual throughput for any calendar year is greater than 80 percent of the throughput for the test period in HIOS' last general rate case.

8. HIOS will not file a section 4(e) rate case prior to December 31, 1990, if HIOS' annual throughput for any calendar year is greater than 80 percent of the throughput for the test period in HIOS' last general rate case.

9. HIOS will not file a section 4(e) rate case prior to December 31, 1990, if HIOS' annual throughput for any calendar year is greater than 80 percent of the throughput for the test period in HIOS' last general rate case.

10. HIOS will not file a section 4(e) rate case prior to December 31, 1990, if HIOS' annual throughput for any calendar year is greater than 80 percent of the throughput for the test period in HIOS' last general rate case.

11. HIOS will not file a section 4(e) rate case prior to December 31, 1990, if HIOS' annual throughput for any calendar year is greater than 80 percent of the throughput for the test period in HIOS' last general rate case.

12. HIOS will not file a section 4(e) rate case prior to December 31, 1990, if HIOS' annual throughput for any calendar year is greater than 80 percent of the throughput for the test period in HIOS' last general rate case.

13. HIOS will not file a section 4(e) rate case prior to December 31, 1990, if HIOS' annual throughput for any calendar year is greater than 80 percent of the throughput for the test period in HIOS' last general rate case.

14. HIOS will not file a section 4(e) rate case prior to December 31, 1990, if HIOS' annual throughput for any calendar year is greater than 80 percent of the throughput for the test period in HIOS' last general rate case.

15. The brokering authorized under the experimental brokering program shall not include brokering of new capacity or capacity

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rate design during the term of the experimental program.

15. The brokering authorized under the experimental brokering program shall not include brokering of new capacity or capacity

months to 72 months for recovery of the $3,098,241 in take-or-pay costs billed to Inland by Tennessee. The Commission noted that since the base rates

M2] 1R1, tendered for filing a revised tariff sheet to Original Volume 1 of its FERC Gas Tariff to be effective December 1, 1989.

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[Docket Nos. CP90-406-000, RP89-37-000, RP89-82-000]

High Island Offshore System, Application and Offer of Settlement

December 21, 1989.

Take notice that on December 15, 1989, High Island Offshore System (HIOS), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP90-406-000 an application pursuant to section 7(c) of the National Gas Act for a certificate of public convenience and necessity authorizing HIOS to provide an experimental capacity brokering program, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The application was filed as part of an offer of settlement in Docket Nos. RP89-37-000 and RP89-82-000.[1]

HIOS' stipulation and agreement which constitutes an offer of settlement provides, in part, that:

> All firm shippers on the HIOS system, including HIOS, will be authorized to broker their firm capacity rights on HIOS on an experimental basis.

In accordance with this provision, HIOS requests that the Commission, in conjunction with its approval of HIOS' offer, issue such certificate authority as may be necessary to enable the firm shippers on HIOS to participate in the experimental capacity brokering program on the terms and conditions set forth in Article IV of the stipulation and agreement (See Appendix hereto). HIOS states that it will not accept the certificate requested herein prior to the Commission's approval of the offer of settlement.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 4, 1990, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for HIOS to appear or be represented at the hearing.

The initial comment period on the offer of settlement will be set to coincide with the notice period for the certificate application provided for above. Initial comments will be due no later than January 4, 1990. Reply comments will be due no later than January 14, 1990.

This notice supercedes the Presiding Judge's notice of December 13, 1989.

Lois D. Cashell,

Secretary.

Appendix

[Docket No. CP90-406-000]

Article IV

Capacity Brokering

HIOS will include a capacity brokering provision in its FERC Gas Tariff, on an experimental basis and for a limited term, upon the terms and conditions set forth below. HIOS has made it clear that a waiver of the biennial rate filing requirement, as set forth on Original Sheet No. 9 of HIOS' FERC Gas Tariff, First Revised Volume No. 1, for a period of one year (i.e., rates to be effective January 1, 1992), is an important consideration in reaching an agreement to include a brokering provision in its Tariff.

Terms and Conditions

1. All firm shippers on the HIOS system, including HIOS, will be authorized to broker their firm capacity rights on HIOS, on an experimental basis.

2. Firm capacity may be resold to anyone, including HIOS.

3. No permanent reassignment of capacity rights on HIOS will be permitted under the brokering provisions. Permanent reassignments of firm capacity prior to expiration of contracts will continue to be handled pursuant to the terms of HIOS' Rate Schedules T and FT and the regulations under Order Nos. 509 and 509-A.

4. To be brokered, a right to transportation must be identified as to the parties to the immediate transaction, receipt and delivery points, the quantity of gas to be transported, and the time period over which the right is to be exercised.

5. Available firm capacity may be brokered or rebrokered for any geographical route and any time period within the contractual rights of the original firm shipper, but in no event beyond the term of the experimental program. (*See* 17 below). The capacity may be sold at a negotiated price at or below the maximum allowed price. (*See* 8 below).

6. Multiple rebrokering will be permitted. Repackaging of brokered capacity will be permitted. Available capacity may be sold as firm or with a recall right, such that, under specified circumstances, the capacity will revert to the seller.

7. Sales of brokered capacity shall be made on a nondiscriminatory basis.

8. The maximum price for brokered capacity shall be the per-unit demand rate charged by HIOS for firm service under HIOS' Rate Schedules T and FT, plus the maximum commodity charge for throughput for such service, or, alternatively, the 100% load factor rate for such service. The minimum price for brokered capacity shall be 0.5 cents per Mcf.

9. HIOS will continue to make available all capacity that is not used by the firm shippers or their assignees, or that has not reverted to HIOS' control as firm capacity, on an interruptible basis, at a rate no greater that the maximum rate for interruptible service under HIOS' Rate Schedule IT.

10. All demand and commodity billings will be made to HIOS' firm contracting party, not ultimate shippers. In addition, all contractual, payment, scheduling and imbalance obligations will remain the direct responsibility of HIOS' firm contracting party.

11. All billings by HIOS' firm contracting party for brokered capacity will be directed, in turn, to the first party to whom capacity is brokered. Said first party will be responsible to HIOS' firm contracting party to satisfy any contractual, payment, scheduling, and imbalance obligations associated with the brokered capacity, irrespective of any rebrokering of the capacity.

12. All brokering transactions will be reported to the Commission by the responsible brokering parties, and not by HIOS in its role as the pipeline whose capacity is being brokered.

13. Apart from periodic reporting of brokering activity, HIOS' pipeline shippers will not be required to make any certificate, tariff, rate, or related filings as a condition of participation in HIOS brokering. The brokering of firm capacity, as authorized under any order approving this Agreement, will not be required, but rather, will be optional to HIOS' firm shippers.

14. Neither HIOS, the Commission Staff nor any party will seek a change in HIOS' current rate design during the term of the experimental program.

15. The brokering authorized under the experimental brokering program shall not include brokering of any capacity on pipeline facilities other than the HIOS system.

16. The experimental brokering program shall be recognized as part of a settlement of the instant dockets and, as such, shall not be deemed precedential for any other interstate pipeline.

17. The term of the experimental program and related tariff provisions will expire at such time as this Agreement terminates pursuant to Article VII, *infra*. In HIOS' next rate filing under section 4(e) of the Natural Gas Act, HIOS may, at its option, submit tariff sheets that provide for continuation of the brokering program.

In connection with the above terms and conditions, HIOS has filed a Petition in Docket No. CP75-104-058 seeking a waiver of the effective rate changes required by the biennial filing condition until January 1, 1992.

[FR Doc. 89-30220 Filed 12-28-89; 8:45 am]

BILLING CODE 6717-01-M

[1] On December 15, 1989, HIOS filed in Docket Nos. RP89-37 and RP89-82 an offer of settlement pursuant to Section 385.602 of the Commission's Regulations within which is contained HIOS' request for authorization to provide the experimental brokering program. The offer of settlement was tendered for filing on December 11, 1989. However, the certificate application fee required by § 381.207 of the regulations was not paid until December 15, 1989. Section 381.103 of the Commission's regulations provides that the filing date is the date on which the appropriate fee is paid.

[Docket No. RP90-29-001]

Inland Gas Co., Inc.; Proposed Changes in FERC Gas Tariff

December 21, 1989.

Take notice that the Inland Gas Company, Inc., (Inland) on December 18, 1989, tendered for filing the following proposed changes to its FERC Gas Tariff, First Revised Volume No. 1 to be effective December 1, 1989:

Primary Tariff Sheet

Substitute Alternate Fifth Revised Sheet No. 10

Inland states that on October 31, 1989, it filed revised tariff sheets to recover additional take-or-pay charges billed to Inland by Tennessee Gas Pipeline Company (Tennessee) amounting to $3,098,241 via an increase in the volumetric surcharge approved by the Federal Energy Regulatory Commission's (Commission) March 31, 1989 Order in Docket No. RP89-65-000. The Fifth Revised Sheet No. 10 reflected a 72 month amortization period and employed the base rates pending before the Commission in the Stipulation and Agreement submitted in Docket No. RP89-65-000. Inland also submitted an Alternate Fifth Revised Sheet No. 10 which reflected the 72 month amortization period noted above but employed the base rates accepted subject to refund pursuant to the February 7, 1989 filing in Docket No. RP89-65-000.

By letter order dated November 30, 1989 in Docket No. RP90-29-000, the Commission denied Inland's request to extend the amortization period from 48 months to 72 months for recovery of the $3,098,241 in take-or-pay costs billed to Inland by Tennessee. The Commission noted that since the base rates contained in Inland's Stipulation and Agreement in Docket No. RP89-65-000 were pending at the time, the Commission would accept and suspend the alternate tariff sheet which reflected Inland's current base rates. Further, the Commission directed Inland to refile Alternate Fifth Revised Sheet No. 10 to reflect a volumetric surcharge based on a 48 month amortization period.

In compliance with the November 30, 1989 letter order, Inland tenders the Substitute Alternate Fifth Revised Sheet No. 10 which reflects both the 48 month amortization period and Inland's current base rates. Pursuant to the November 30, 1989 letter order, this filing is made without prejudice to Inland refiling tariff sheets to reflect its settlement base rates at such time as the Commission approves the pending settlement at Docket Nos. RP89-65-000 and RP90-29-000.

Copies of the filing were served upon Inland's customers and interested state commissions and to each person designated on the official service list compiled by the Commission's Secretary in Docket Nos. RP89-65-000 and RP90-29-000.

Any person desiring to protest said filing, should file a protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before December 29, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-30221 Filed 12-28-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-1-65-002]

Inter-City Minnesota Pipelines Ltd., Inc.; Tariff Filing

December 21, 1989.

Take notice that on December 19, 1989, Inter-City Minnesota Pipelines, Ltd., Inc. ("Inter-City"), 295 Yorkland Boulevard, North York, Ontario, Canada M2J 1R1, tendered for filing a revised tariff sheet to Original Volume 1 of its FERC Gas Tariff to be effective December 1, 1989.

Original Volume No. 1

Substitute Thirty-Sixth Revised Sheet No. 4

This substitute sheet is filed to correct Thirty-Sixth Revised Sheet No. 4 filed in this proceeding on November 21, 1989. Inter-City states that this revised tariff sheet is filed as an out-of-cycle PGA.

Inter-City states that copies of the filing have been mailed to all of its customers and the affected state regulatory commission.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, DC 20426, in accordance Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 29, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-30222 Filed 12-28-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-62-000]

Northwest Pipeline Corp.; Proposed Change in FERC Gas Tariff

December 21, 1989.

Take notice that on December 18, 1989, Northwest Pipeline Corporation ("Northwest") tendered for filing and acceptance the following tariff sheets to be a part of its FERC Gas Tariff.

First Revised Volume No. 1

Fifth Revised Sheet No. 101
First Revised Sheet No. 109
Third Revised Sheet No. 112

Original Volume No. 1-A

First Revised Sheet No. 318-A
Third Revised Sheet No. 401

The purposes of this filing are (1) to revise Northwest's tariff provisions to provide additional receipt point flexibility for Rate Schedule TF-1 customers, (2) to change Northwest's gas day for delivery points located on

Pacific Gas Transmission Company's pipeline, and (3) to make minor changes regarding odorization and title of gas on

protests should be filed on or before December 29, 1989.

Protests will be considered by the

intervenors of the respective dockets, as well as interested state commissions.

Any person desiring to protest said

(approximately $15.9 million) of such payments through a volumetric or commodity surcharge to be applicable to

Confidential Binder B, is in the non-public file with the Commission.

Lois D. Cashell,

North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of

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Pacific Gas Transmission Company's pipeline, and (3) to make minor changes regarding odorization and title of gas on Northwest's system.

A copy of this filing is being mailed to all jurisdictional sales customers and affected state regulatory commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 29, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary

[FR Doc. 89-30223 Filed 12-28-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-1-40-000]

Raton Gas Transmission Co.; Filing of Quarterly Purchased Gas Adjustment

December 21, 1989.

Raton Gas Transmission Company (Raton) on December 15, 1989, tendered for filing proposed changes to its FERC GAS TARIFF, Original Volume No. 1, to implement its quarterly purchased gas adjustment under the provisions of Order Nos. 483 and 483A. The proposed tariff sheets are to be effective January 1, 1990.

Raton states that the revised tariff sheet reflects a Demand Rate decrease of 41¢ to track rate changes filed by Colorado Interstate Gas Company (CIG) to be effective on Janary 1, 1990. The revised tariff sheet also reflects a decrease of 81.65¢ in commodity rate due to separate spot gas purchase contract effective December 1, 1989.

Copies of this filing have been served on Raton's two customers and the New Mexico Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211 (1988). All such motions or protests should be filed on or before December 29, 1989.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-30224 Filed 12-28-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-119-006 and RP89-208-002]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

December 21, 1989

Take notice that on December 14, 1989, Texas Gas Transmission Corporation (Texas Gas) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Docket No. RP89-119; Effective May 1, 1989

Substitute Tenth Revised Sheet No. 12
Substitute Seventh Revised Sheet No. 12A
Substitute First Revised Sheet No. 12B
Substitute First Revised Sheet No. 12C

Docket No. RP89-208; Effective August 1, 1989

Substitute Eleventh Revised Sheet No. 12
Substitute Eighth Revised Sheet No. 12A
Substitute Second Revised Sheet No. 12B
Substitute Second Revised Sheet No. 12C

Texas Gas states that this filing complies with a Commission Order issued December 7, 1989, in Docket No. RP89-119-001 requiring changes in the base and deficiency periods used by Texas Gas in recovering TOP Settlement Costs in Docket No. RP89-119. Texas Gas, by separate filing, is requesting rehearing or clarification of the December 7, 1989, Order to also make it applicable to those TOP Settlement Costs included in Docket No. RP89-208. The tariff sheets filed herein reflect the changed base and deficiency periods as required by the December 7, 1989, Order for costs incurred in Docket No. RP89-119, as well as for costs included in Docket No. RP89-208. Texas Gas requests any necessary waiver of the Commission's regulations as necessary to permit such tariff sheets to become effective as proposed.

Copies of the revised tariff sheets are being mailed to Texas Gas's jurisdictional sales customers and intervenors of the respective dockets, as well as interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before December 29, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-30225 Filed 12-28-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-58-000]

Texas Gas Transmission Corp; Proposed Changes in FERC Gas Tariff

December 21, 1989.

Take notice that on December 14, 1989, Texas Gas Transmission Corporation (Texas Gas) tendered for filing the following revised tariff sheets to its FERC Gas Tariff:

Original Volume No. 1

First Revised Substitute Twenty-second Revised Sheet No. 10
First Revised Substitute Twenty-second Revised Sheet No. 10A
Twelfth Revised Sheet No. 12
Ninth Revised Sheet No. 12A
Third Revised Sheet No. 12B
Third Revised Sheet No. 12C

Original Volume No. 2-A

Third Revised Sheet No. 14

Original Volume No. 3

Fourth Revised Sheet No. 23

Texas Gas states that the proposed tariff sheets are filed in order to implement recovery of a portion of $31.9 million in Take-or-Pay Settlement Payments incurred by Texas Gas pursuant to the procedures established in the Commission's Order No. 500. Specifically under those procedures, Texas Gas is proposing to absorb 25% (approximately $7.9 million) of the Take-or-Pay Settlement Payments, recover 25% (approximately $7.9 million) through a monthly fixed charge applicable to each of its current firm sales customers, and recover the remaining 50% (approximately $15.9 million) of such payments through a volumetric or commodity surcharge to be applicable to all of Texas Gas's throughput, including both sales and transportation volumes.

Texas Gas states that this filing is without prejudice to a similar filing or filings which Texas Gas may make at a later date for the purpose of recovering additional Take-or-Pay Settlement Payments under the Commission's equitable sharing mechanism. Texas Gas also reserves the right to revise the filing as necessary to reflect any modifications made by the Commission or as required by any appellate court.

Texas Gas requests an effective date of January 1, 1990, for the proposed tariff sheets. Texas Gas further states that it has served copies of this filing upon the company's sales and transportation customers and interested state commissions.

Finally, Texas Gas has filed detailed support for the costs included in the filing in a Confidential Binder, for which it has requested privileged treatment, pursuant to the provisions of § 388.112 of the Commission's Regulations. In order to expedite this proceeding and to permit interested parties access to such confidential information, Texas Gas has submitted with the public filing a proposed protective order. Due to the highly confidential and proprietary nature of the information contained in "Confidential Binder B," Texas Gas requests that access to the contents thereof be limited pursuant to the terms of the protective order.

Texas Gas will maintain copies of Confidential Binder B at its Owensboro, Kentucky, offices and in the offices of Andrews & Kurth, in Washington, DC, for review by the appropriate parties, subject to the terms of the protective order.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 29, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing exclusive of Confidential Binder B, are on file with the Commission and are available for public inspection in the Public Reference Room. A copy of this filing, including Confidential Binder B, is in the non-public file with the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 89-30226 Filed 12-28-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-61-000]

Transcontinental Gas Pipe Line Corp.; Tariff Filing

December 21, 1989.

Take notice that on December 19, 1989, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Second Revised Sheet No. 259
First Revised Sheet No. 260
Second Revised Sheet No. 261
First Revised Sheet No. 262
Third Revised Sheet No. 373

The proposed effective date of the revised tariff sheets is January 14, 1990.

Transco states that the purpose of this filing is to revise Transco's FERC Gas Tariff to require under the tariff that shippers notify Transco within six business days for receipts and five business days for deliveries prior to the beginning of each month of its gas requirements for that month. Transco states that the purpose of the proposed change is to modify the procedures in Transco's tariff so that nominations are due at the conclusion of monthly supply negotiations between customers, shippers and suppliers, thereby easing the burden on customers and shippers caused by the current procedure required by the tariff and providing Transco with nominations more accurately reflecting the actual transactions negotiated by customers and shippers.

Transco states that it also proposes a revision of its Form of Service Agreement for use under Transco's Rate Schedule FT, such that the term for notice of termination is left blank. Transco states that thus revision will allow more flexibility for mutual agreement of the length of notice required for termination, in particular with regard to certain agreements resulting from Transco's Settlement, which was approved by the Commission on September 28, 1989.

Transco states that copies of the filing have been served upon its customers, state commissions, and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 823 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before December 29, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-30227 Filed 12-28-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-2-11-000]

United Gas Pipe Line Co.; Filing of Revised Tariff Sheets

December 21, 1989.

Take notice that on December 15, 1989, United Gas Pipe Line Company (United), tendered for filing the following tariff sheets:

Second revised Sheet No. 1

Second Revised Sheet No. 4
Second Revised Sheet No. 4A
Second Revised Sheet No. 4B
First Revised Sheet No. 4C
First Revised Sheet No. 4E
First Revised Sheet No. 4F
First Revised Sheet No. 4G
First Revised Sheet No. 4H
Second Revised Sheet No. 4I

United states that the purpose of this filing is to reflect a decrease in the Gas Research Institute (GRI) Adjustment Charge applicable to sales and transportation deliveries to distributors for resale, to pipelines which are not members of GRI and to ultimate customers.

United states that on October 10, 1989, the Commission issued Opinion No. 334 in Docket No. RP89-187-000. The Opinion provides that, as a member of GRI, United may file under its Gas Research Institute Charge Adjustment Provision to collect, in advance of payment to GRI, 1.30 cents per Mcf (1.26 cents per Dth) on sales and transportation deliveries. This charge will replace the currently effective charge of 1.51 cents per Mcf. All amounts collected under this provision will be remitted to GRI, less any applicable taxes.

United states that the revised tariff sheets are being mailed to its

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jurisdictional customers and to interested state commissions.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or Protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in such accordance with §§ 385.214 and 385.211 of the Commission's regulations. All such petitions or protests should be filed on or before December 29, 1989.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a Motion to Intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-30228 Filed 12-28-89; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Proposed Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the proposed procedures for disbursement of $200,000 (plus accrued interest) which was remitted by Petraco-Valley Oil & Refining Company. The DOE has tentatively determined that funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges.

DATE AND ADDRESS: Comments must be filed in duplicate within 30 days from date of publication of this notice in the **Federal Register** and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should conspicuously display a reference to the Case Number LEF-0002.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order sets forth the procedures which will be used to distribute funds remitted by Petraco-Valley Oil & Petroleum Company (Petraco) to the DOE. The monies remitted by Petraco were in settlement of possible violations of the DOE regulations pertaining to the Crude Oil Entitlements Program, 10 CFR 211.67, and the resale of crude oil, 10 CFR part 212, subpart L.

The DOE has tentatively decided that the distribution of the monies received from Petraco will be governed by the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986). That policy states that all crude oil overcharge funds shall be divided among the states, the Federal government, and injured purchasers of refined products. Under the plan we are proposing, refunds to the states would be distributed in proportion to each state's consumption of petroleum products during the period of price controls. Refunds to eligible purchasers would be based on the number of gallons of petroleum products which they purchased and the extent to which they can demonstrate injury.

Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register** and should be sent to the address set forth at the beginning of this notice. All comments received will be available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: December 15, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

December 15, 1989.

Implementation of Special Refund Procedures

Name of Firm: Petraco-Valley Oil & Refining Company.

Date of Filing: October 27, 1989.

Case Number: LEF-0002.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) of the DOE may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to make refunds in order to remedy the effects of alleged violations of the DOE regulations. 10 CFR 205.281. These procedures are used to refund monies to those injured by actual or alleged violations of the DOE price regulations.

The ERA has filed a Petition for the Implementation of Special Refund Procedures for funds which the DOE has obtained from Petraco-Valley Oil & Refining Company (Petraco). Petraco has remitted to the DOE a total of $200,000, which was deposited in an interest-bearing escrow account maintained at the Department of the Treasury. The funds paid by Petraco were in settlement of enforcement proceedings regarding Petraco's compliance with the Federal petroleum price and allocation regulations applicable to crude oil during the period from July 1, 1979 through January 27, 1981.[1] An additional $100,771 in interest has accrued on these funds as of October 31, 1989. This Proposed Decision and Order sets forth the OHA's plan to distribute these funds.

The procedural regulations of the DOE establish general guidelines by which the Office of Hearings and Appeals may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR part 205, subpart V. The subpart V process may be used in situations where the DOE cannot readily identify the persons who may have been injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive. After reviewing the record in the present case, we have concluded that a subpart V proceeding is an appropriate mechanism for distributing the Petraco remittance. Therefore, we propose to grant the ERA's petition and assume jurisdiction over distribution of the funds.

[1] A Consent Order entered into between Petraco and the DOE required Petraco to refund $700,000 plus interest to the DOE in resolution of disputes concerning Petraco's compliance with the regulations pertaining to the Crude Oil Entitlements Program, 10 CFR 211.67, and the resale of crude oil, 10 CFR part 212, Subpart L. In 1985, however, Petraco filed for bankruptcy. At that time, Petraco had remitted only $200,000 to the DOE. The Proof of Claim filed by the DOE for the balance of the $700,000 plus interest was dismissed by the bankruptcy court on April 8, 1988.

I. Background

On July 28, 1986, the DOE issued a Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986) ("the MSRP"). The MSRP, issued as a result of a court approved Settlement Agreement in *In re:* The Department of Energy Stripper Well Exemption Litigation, M.D.L. No. 378 (D. Kan.), provides that crude oil overcharge funds will be divided among the states, the federal government, and injured purchasers of refined petroleum products. Under the MSRP, up to 20 percent of these crude oil overcharge funds will be reserved initially to satisfy valid claims by injured purchasers of petroleum products. Eighty percent of these funds, and any monies remaining after all valid claims are paid, are to be disbursed equally to the states and federal government for indirect restitution.

The OHA has been applying the MSRP to all subpart V proceedings involving alleged crude oil violations. *See* Order Implementing the MSRP, 51 FR 29689 (August 20, 1986). That Order provided a period of 30 days for the filing of any objections to the application of the MSRP. It also solicited comments concerning the appropriate procedures to follow in processing refund applications in crude oil refund proceedings.

On April 6, 1987, the OHA issued a Notice analyzing the numerous comments which it received in response to the August 1986 Order. 52 FR 11737 (April 10, 1987). The Notice set forth generalized procedures and provided guidance to assist applicants who wish to file refund applications for crude oil monies under the subpart V regulations. All applicants for refunds would be required to document their purchase volumes of petroleum products during the period of crude oil price controls and to prove that they were injured by the alleged overcharges. The Notice indicated that end-users of petroleum products whose businesses are unrelated to the petroleum industry will be presumed to have absorbed the crude oil overcharges and need not submit any further proof of injury to receive a refund. Finally, we stated that refunds would be calculated on the basis of a per gallon refund amount derived by dividing crude oil violation amounts by the total consumption of petroleum products in the United States during the period of price controls. The numerator would include the crude oil overcharge monies that were in the DOE's escrow account at the time of the settlement and a portion of the escrow funds in the M.D.L. 378 escrow at the time of the settlement.

These procedures have been applied by the DOE in numerous cases since the April 1987 Notice. *See, e.g.*, Shell Oil Co., 17 DOE 85,204 (1988) (Shall Oil); Ernest A. Allerkamp, 17 DOE 85,079 (1988) (Allerkamp). They have also been approved by the United States District Court for the District of Kansas. *In Re:* The Department of Energy Stripper Well Exemption Litigation, 671 F. Supp. 1316 (D. Kan. 1987), *aff'd*, 857 F.2d 1461 (Temp. Emer. Ct. App. 1988). Various States had filed a Motion with that court claiming that the OHA violated the Settlement Agreement by employing presumptions of injury for end-users and by improperly calculating the refund amount to be used in those proceedings. In denying the Motion, the court concluded that the Settlement Agreement "does not bar [the] OHA from permitting claimants to employ reasonable presumptions in affirmatively demonstrating injury entitling them to a refund." *Id.*, 671 F. Supp. at 1323. The court also held that the OHA would calculate refunds based on a portion of the M.D.L 378 overcharges. *Id.* at 1323-24.

II. The Proposed Refund Procedures

A. Refund Claims

We now propose to apply the procedures discussed in the April 1987 Notice to the crude oil Subpart V proceeding that is the subject of the present determination. As noted above, $200,00 plus interest is covered by this Proposed Decision. We have decided to reserve initially the full 20 percent of these funds, or $40,000 (plus interest), for direct refunds to applicants in order to ensure that sufficient funds will be available for refunds to injured parties. The amount of the reserve may later be adjusted downward if circumstances warrant.

The process which the OHA will use to evaluate claims for crude oil refund monies will be modeled after the process the OHA has used in subpart V proceedings to evaluate claims based upon alleged overcharges involving refined products. *See* Mountain Fuel Supply Co., 14 DOE 85,475 (1986) (*Mountain Fuel*). Applicants will be required to document their purchase volumes and to prove that they were injured as a result of the alleged violations. Applicants who were end-users or ultimate consumers of petroleum products, whose businesses are unrelated to the petroleum industry and who were not subject to the DOE price regulations, are presumed to have absorbed rather than passed on alleged crude oil overcharges. In order to receive a refund, end-users need not submit any further evidence of injury beyond volumes of product purchased in the distribution scheme in which the overcharges occurred. A. Tarricone Inc., 15 DOE 85,495 at 88,893-96 (1987). Reseller and retailer applicants must submit detailed evidence of injury, and may not rely on the presumptions of injury utilized in refund cases involving refined petroleum products. *Id.* They may, however, use econometric evidence of the type employed in the OHA Report to the District Court in the Stripper Well Litigation, 6 Fed. Energy Guidelines ¶ 90,507 (June 19, 1985). *See* Petroleum Overcharge Distribution and Restitution Act section 3003(b)(2), 15 U.S.C. section 4502(b)(2). Applicants who executed and submitted a valid waiver pursuant to one of the escrows established by the Settlement Agreement have waived their rights to apply for crude oil refunds under subpart V. *See Mid-America Dairymen Inc.* v. *Herrington*, 678 F. 2d 1448 (Temp. Emer. Ct. App. 1989); accord, Boise Cascade Corp., 18 DOE 85,970 (1989).

Refunds to eligible applicants who purchased refined petroleum products will be calculated on the basis of a volumetric refund amount derived by dividing the crude oil refund amounts involved in this determination ($200,000) by the total consumption of petroleum products in the United States during the period of price controls (2,020,997,335,000 gallons). Mountain Fuel, 14 DOE at 88,868. This approach reflects the fact that crude oil overcharges were spread equally throughout the country by the Entitlements Program, 10 CFR 211.67.[2] This yields a volumetric refund amount of $0.00000009896 per gallon.

As we have stated in previous Decisions, a crude oil refund applicant will be required to submit only one application for crude oil overcharge funds. *See, e.g.*, Allerkamp, 17 DOE at 88,176. Any party that has previously submitted a refund application in the crude oil refund proceedings need not file another application. That application will be deemed to be filed in all crude oil proceedings finalized to date. A deadline of June 30, 1988 was

[2] The DOE established the Entitlements Program to equalize access to the benefits of crude oil price controls among all domestic refiners and their downstream customers. To accomplish this goal, refiners were required to make transfer payments among themselves through the purchase and sale of "entitlements." This balancing mechanism had the effect of evenly disbursing overcharges resulting from crude oil miscertifications throughout the domestic refining industry. *See* Amber Refining Inc., 13 DOE 85,217 at 88,504 (1985).

established for all refund applications for the first pool of crude oil funds. The first pool was funded by the crude oil

ENVIRONMENTAL PROTECTION AGENCY

Management Division, MA Superfund Section (HRS-CAN3), John F. Kennedy Building, Boston, MA 02203, (617) 573-

Contact: Catherine Hitchins (512) 653-2321.

EIS No. 890359, Draft, UAF, NH, Pease

Summary

EPA believes that the draft EIS fails to present an adequate impact assessment

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established for all refund applications for the first pool of crude oil funds. The first pool was funded by the crude oil refund proceedings, implemented pursuant to the MSRP, up to and including Shell Oil Co., 17 DOE 85,204 (1988). A deadline of October 31, 1989 was established for applications for refunds from the second pool of crude oil funds. The second pool was funded by those crude oil refund proceedings beginning with World Oil Co., 17 DOE ¶ 85,568, *corrected*, 17 DOE 85,609 (1988), and ending with Texaco Inc., 19 DOE 85,200, corrected 19 DOE ¶ 85,236 (1989). The deadline for filing an application for a refund from the third pool of funds, pursuant to this proceeding, is October 31, 1990. The volumetric refund amount from the third pool of crude oil funds will be increased as additional crude oil violation amounts are received in the future. Applicants may be required to submit additional information to document their refund claims for these future amounts. Notice of any additional amounts available in the future will be published in the **Federal Register**.

B. Payments to the States and Federal Government

Under the terms of the MSRP, we propose that the remaining 80 percent of the alleged crude oil violation amounts subject to this Proposed Decision, or $160,000 (plus interest), be disbursed in equal shares to the states and federal government for indirect restitution. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Settlement Agreement. These funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Settlement Agreement.

Before taking the actions we have proposed in this Decision, we intend to publicize our proposal and solicit comments on it. Comments regarding the tentative distribution process set forth in this Proposed Decision and Order should be filed with the OHA within 30 days of its publication in the **Federal Register**.

It is therefore ordered that: The refund amounts remitted to the Department of Energy by Petraco-Valley Oil & Refining Company pursuant to Consent Order 650X00347 shall be distributed in accordance with the foregoing Decision.

[FR Doc. 89-30273 Filed 12-28-89; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 3700-8]

Announcement of Availability of Landfill Subsidence Information for the Charles George Superfund Site in Tyngsborough, MA

AGENCY: Environmental Protection Agency.

ACTION: Announcement of availability of landfil subsidence information with request for comments.

SUMMARY: The U.S. Environmental Protection Agency (EPA) announces the availability of new information for public review on landfill subsidence and potential impacts of continued subsidence on the synthetic landfill cap presently being constructed at the Charles George Landfill Superfund site in Tyngsboro, MA. This information consists of the following materials:

1. Interim Technical Memorandum Evaluation of Charles George Landfill Settlement (November 1988, Ebasco Services, Inc.); 2. Technical Memorandum Evaluation of Charles George Landfill Subsidence (September 1989, Ebasco Services, Inc.) 3. Memorandum from Jack Hoar, Camp Dresser & McKee, Inc. ("CDM") to Dave Dickerson, EPA (September 7, 1989); 4. Memorandum with attachment from Jack Hoar, CDM, to Dave Dickerson, EPA (November 6, 1989); 5. Letter with attachment from Guy Vaillancourt, E.C. Jordan Co., to David Dickerson, EPA (November 28, 1989); 6. Memorandum from David Dickerson, EPA, to file (December 4, 1989).

This information includes recent landfill survey data, estimates and potential impacts of future subsidence as well as new strength test information relating to the synthetic landfill cap composite. This new information indicates that landfill settlement may continue at this site, but that the composite strength of the synthetic cap materials is sufficient to maintain the cap's integrity given the projected differential (i.e., uneven) settlement at the site.

EPA has concluded, at this time, that the information identified above does not warrant a modification in design of the landfill cap to account for landfill subsidence.

DATE: The public is invited to submit written comments on this new information no later than January 12, 1990.

ADDRESSES: Comments: Written comments must be submitted to: Mr. David Dickerson, U.S. EPA Waste Management Division, MA Superfund Section (HRS-CAN3), John F. Kennedy Building, Boston, MA 02203, (617) 573-5735. The information is availabe for public review as part of the site records at the following two locations: 1) Littlefield Public Library, 252 Middlesex Road, Tyngsboro, MA 02879, (508) 649-7361. Hours: Mon., Tues. & Fri.: 9:00 a.m.–5:00 p.m., Wed. & Th.: 9:00 a.m.–9:00 p.m., and Sat.: 9:00 a.m.–noon. 2) EPA Records Center, 90 Canal St., 1st floor, Boston, MA 02108, (617) 573-5729. Hours: Mon-Fri: 8:30 a.m.–1:00 p.m. and 2:00 p.m.–5:00 p.m.

The new information, the comments submitted by the public, and EPA's response to significant comments will become part of the site Administrative Record.

FOR FURTHER INFORMATION CONTACT: Mr. David Dickerson, at the address and phone number noted above under Comments.

Dated: December 19, 1989.

Stephen F. Ells,

Acting Regional Administrator, Region I.

[FR Doc. 89-30251 Filed 12-28-89; 8:45 am]
BILLING CODE 6560-50-M

[ER-FRL-3700-9]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements Filed December 18, 1989 Through December 22, 1989 Pursuant to 40 CFR 1506.9.

EIS No. 890355, DSuppl, COE, CT, NY, Western Long Island Sound (WLIS III), Dredged Material Disposal Site, Designation, Connecticut and New York, Due: February 12, 1990, Contact: Dr. Thomas J. Fredette (617) 647-8563.

EIS No. 890356, DSuppl, COE, IA, Red Rock Dam and Lake Red Rock Operation and Maintenance Project, Operation and Maintenance Changes, Des Moines River, Marion County, IA, Due: February 12, 1990, Contact: Joe Slater (309) 788-6361.

EIS No. 890357, Draft, AFS, AK, Frosty Bay Timber Sale, Implementation, Frosty Study Area, Tongass National Forest, Wrangell Ranger District, AK, Due: February 27, 1990, Contact: Richard K. Kohrt (907) 874-2323.

EIS No. 890358, Draft, UAF, AZ, Williams Air Force Base (AFB) Auxiliary Airfield Construction and Operation, 82nd Flying Training Wing Station, Implementation, Pinal County, AZ, Due: February 12, 1990, Contact: Catherine Hitchins (512) 653-2321.

EIS No. 890359, Draft, UAF, NH, Pease Air Force Base (AFB) Closure, 509th Air Refueling Squadron, Deactivation of 15 KC-135A Tanker Aircraft and FB-111 Fighter/Bomber Aircraft, Implementation, NH, Due: February 13, 1990, Contact: Dr. Hugh Stirts (402) 294-3684.

EIS No. 890360, Draft, UAF, CA, George Air Force Base Closure, 37th Tactical Fighter Wing, Relocation to Mountain Home AFB, Idaho and Davis Monthan AFB in Arizona, Implementation, San Bernardino County, CA, Due: February 13, 1990, Contact: Captain Wilfred Cassidy (804) 764-4430.

Dated: December 26, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89-30278 Filed 12-28-89; 8:45 am]
BILLING CODE 6560-50-M

[ER-FRL-3701-1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared December 11, 1989 through December 15, 1989 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 7, 1989 (54 FR 15006).

Draft EISs

ERP No. DS-FHW-A41880-NY, Rating EC2, Elmira North-South Arterial Construction, South Section, NY-14/328 to Clements Center Parkway at Pennsylvania Avenue, Funding, City of Elmira and Town of Southport, Chemung County.

Summary

EPA expressed concerns regarding the project's potential to impact wetlands and water quality and requested that the final supplemental EIS provide additional information on these resources, including mitigation measures for potential impacts.

ERP No. D-FHW-C40724-PR, Rating 3, PR-3 Relocation, between the Municipalities of Fajardo and Humacao, Funding, PR.

Summary

EPA believes that the draft EIS fails to present an adequate impact assessment of alternatives. Accordingly, meaningful analysis of the respective proposals is impossible. EPA has requested that FHWA prepare a draft supplemental EIS so that the impacts of the project can be addressed. EPA has concerns about the project's potential to have secondary impacts as well as direct impacts to landfills, wetlands, surface and ground water quality, floodplains, and farmland.

ERP No. D-FHW-E40725-AL, Rating EC2, Finley-East Lake Boulevard Extension, 26th Street North to Carson Road, Funding and 404 Permit, City of Birmingham, Jefferson County, AL.

Summary

EPA's review concluded that there was potential for stream and urban wildlife habitat degradation. Air quality impacts could not be assessed accurately with the information presented in the document.

ERP No. D-FHW-G40125-TX, Rating LO, I-30/I-35W Interchange Improvements, Forest Park Boulevard to Riverside Drive and Hattie Street to Luella Street, Funding, Tarrant County.

Summary

EPA has no objections to the proposed action as described.

ERP No. D-OSM-E01009-TN, Rating EO1, Flat Fork and Mud Creek Watershed Surface Coal Mining Operations, Unsuitable Land Designation, Approval, Morgan County, TN.

Summary

EPA's review concluded that proposed surface mining activities would result in moderate to severe impacts to the unique resources of Frozen Head State Park and Natural Area, under several of the mining scenarios. Accordingly, EPA recommended selection of the no surface-mining alternative.

Final EISs

ERP No. FS-FHW-A41710-NY, Southern Tier Expressway Construction, Corning Area, NY-415 to NY-352, Funding, Steuben County, NY.

Summary

EPA has no objections to the implementation of this project.

Dated: December 25, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89-30279 Filed 12-28-89; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

December 21, 1989.

The Federal Communications Commission has submitted the following information collection requirements to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act, as amended (44 U.S.C. 3501-3520).

Copies of the submissions may be purchased from the Commission's copy contractor. International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. Persons wishing to comment on these information collections should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-3785. Copies of these comments should also be sent to the Commission. For further information contact Jerry Cowden, Federal Communications Commission, (202) 632-7513.

OMB Number: 3060-0150.
Title: EEO Recordkeeping Requirement and Developmental Report Requirement (sections 22.307 and 22.406).
Action: Extension.
Respondents: Businesses (including small businesses).
Frequency of Response: Recordkeeping requirement; semi-annual reporting; annual reporting.
Estimated Annual Burden: 116 responses; 1,200 recordkeepers; 63,348 hours total annual burden; 48.14 hours average burden per respondent or recordkeeper.
Needs and Uses: Public Mobile Radio applicants issued developmental authorizations are required to submit reports pursuant to Section 22.406 of FCC rules. Section 22.307 requires the retention of EEO data. The information is used by the FCC, other licensees of the spectrum, and the public to assure that licensees are operating in accordance with their authorizations and the rules and to enable the FCC to investigate complaints of harmful interference.

OMB Number: 3060-0384.
Title: Annual Auditor's Certification (CC Docket No. 86-111).
Action: Extension.
Respondents: Businesses.
Frequency of Response: Annually.
Estimated Annual Burden: 40 responses; 16,000 hours total annual burden; 400 hours average burden per response.

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Needs and Uses: Tier 1 local exchange carriers and dominant interexchange carriers are required to submit an auditor's attestation annually demonstrating the application of the Commission's cost allocation standards to their particular operations.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 89-30211 Filed 12-28-89; 8:45 am]

BILLING CODE 6712-01-M

Applications; Steele Communication Co., Inc., et al.

1. The Commission has before it the following mutually exclusive applications for 5 new FM stations:

Applicant	City/State	File no.	MM docket no.
A. Steele Communications Company Inc.	Derby Center, VT	BPH-870724MC	89-545
B. Northeast Kingdom Broadcasting, Inc.	Derby Center, VT	BPH-870727MC	
C. Hayley M. Campbell	Derby Center, VT	BPH-870727MH	
D. Memphremagog Media, Inc.	Derby Center, VT	BPH-870727MN	
E. Derby Hometown Broadcasters, Limited Partnership	Derby Center, VT	BPH-870727MP	
Issue Heading	Applicants		
1. Comparative	A-E		
2. Ultimate	A-E		

II.

Applicant	City/State	File no.	MM docket no.
A. Major-Keane Partnership	Key West, Florida	BHP-870615MH	89-540
B. CSJ Investments, Inc.	Key West, Florida	BHP-870615MK	
C. David H. Smith, Maureen L. Smith, James E. Spisiak, Patricia B. Spisiak d/b/a Keys Broadcasting System.	Key West, Florida	BHP-870615MW	
D. Ocean Front Radio Limited Partnership	Key West, Florida	BHP-870615MZ	
E. Conch Communication Corp.	Key West, Florida	BHP-870615NA	
F. South Star Communications, Inc.	Key West, Florida	BHP-870615ND	
G. Key West Broadcasting Company	Key West, Florida	BHP-870615NE	
Issue Heading	Applicants		
1. See Appendix	D		
2. See Appendix	D		
3. See Appendix	D		
4. Environmental Impact	B,E		
5. Air Hazard	G		
6. Comparative	A-G		
7. Ultimate	A-G		

III.

Applicant	City/State	File no.	MM docket no.
A. Hughes-Moore Associates, Inc.	Midway, Kentucky	BPH-870612MC	87-544
B. Herbert Regenstreif	Midway, Kentucky	BPH-870615MI	
C. Midway Communications, Ltd.	Midway, Kentucky	BPH-870615MT	
D. Belhouse & Associates, Inc.	Midway, Kentucky	BPH-870615MV	
Issue Heading	Applicant(s)		
1. Comparative	A, B, C, D		
2. Ultimate	A, B, C, D		

IV.

Applicant	City/State	File no.	MM docket no.
A. Thelma Poff	Ripley, Ohio	BPH-880114MF	89-502
B. James P. Gray	Ripley, Ohio	BPH-880114MW	
Issue Heading	Applicant(s)		
1. Comparative	Both applicants		
2. Ultimate	Both applicants		

V.

Applicant	City/State	File no.	MM docket no.
A. Value Radio Corporation	Lomira, WI	BPH-870617MI	89-539
B. Donald G. Jones d/b/a Michael Dean	Lomira, WI	BPH-870617MJ	
C. Lomira Broadcasting Company	Lomira, WI	BPH-870618MD	
Issue Heading	Applicants		
1. Air Hazard	C		
2. Comparative	A, B, C		
3. Ultimate	A, B, C		

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete test may also be purchased from the Commission's duplicating contactor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistance Chief, Audio Services Division, Mass Media Bureau.

Appendix

Key West, Florida

1. To determine whether Sonrise Management Services, Inc. is an undisclosed party to the application of D. (Ocean Front).

2. To determine whether D's (Ocean Front) organizational structure is a sham.

3. To determine, from the evidence adduced pursuant to issues 1 through 2 above, whether D (Ocean Front) possesses the basic qaulifications to be a licensee of the facilities sought herein.

[FR Doc. 89-30212 Filed 12-28-89; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Solicitation of Comments for Study With Respect to Directors' and Officers' Liability Insurance and Depository Institution Bonds Which Is Mandated by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Solicitation of comments.

SUMMARY: Pursuant to section 220(b)(3) of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA") Public Law 101-73, 103 Stat. 265-66, enacted Aug. 9, 1989, a report will be prepared and transmitted to Congress on or before February 9, 1990. This report will concern directors' and officers' liability insurance and depository institution bonds, and the availability and terms of such insurance for directors and officers of insured depository institutions, together with any appropriate legislative recommendations. The purpose of this notice is to solicit comments, suggestions and any relevant data or statistics from interested parties on the issues to be explored in the study.

DATE: Comments must be received by January 29, 1990.

ADDRESS: Send written comments to the Federal Deposit Insurance Corporation, Legal Division—Room 4018, 550 17th Street, NW., Washington, DC 20429, Attention: M. Lauck Walton.

FOR FURTHER INFORMATION CONTACT: M. Lauck Walton, Counsel, (202) 898-8697.

SUPPLEMENTAL INFORMATION:

Background

The legal liability of bank directors and officers may be established through breach of the common law duties of care or loyalty and through violation of various federal and state statutory and regulatory provisions.

With respect to depository institution bonds, 12 U.S.C. 1828(e) provides that "The [FDIC] may require any insured bank to provide protection and indemnity against burglary, defalcation, and other similar insurable losses. Whenever any insured bank refuses to comply with any such requirement the [FDIC] may contract for such protection and indemnity and add the cost thereof to the assessment otherwise payable by such bank."

Federally chartered savings associations may be required to indemnify their directors and officers. 12 CFR 545.121. Further, 12 CFR 563.19 requires insured savings associations to maintain bond coverage for each director or officer who has "control over or access to cash or securities of such institution."

In addition, federal regulators of depository institutions permit depository institutions to purchase liability insurance to provide protection to their directors and officers for claims arising from certain acts (or failures to act) in their capacity as directors and officers, and to provide reimbursement to the depository institution for indemnifications of directors and officers.

The Mandated Study

As required by section 220(b)(3) of the FIRREA, the study will review the availability of, and need for, directors' and officers' liability insurance and depository institution bonds. The study shall include: consideration of State laws limiting liability for directors and officers; and the effect of contractual provisions which purport to limit insurance coverage when an institution is placed in receivership or conservatorship; or when a claim is made by the Federal Deposit Insurance Corporation or other governmental instrumentality; or when claims are made by one insured against another insured. Comments are requested by the FDIC, the Secretary of the Treasury and the Attorney General, addressing the effect of such limiting language in insurance policies on the ability of depository institutions to attract and retain qualified officers and directors.

Additionally, comments addressing the effect of inclusion or exclusion of such limiting language on the future availability of insurance are requested.

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Responding insurance carriers are encouraged to set forth, in detail, by year, actual premium income, related investment income, and loss experience for (1) directors and officers liability policies covering directors and officers of (a) banks and (b) thrifts and (2) bonds covering (a) banks and (b) thrifts; (A) the dollar amount and percent of all such losses involving failed depository institutions; (B) the dollar amount and percent of all such losses that were paid to the FDIC, FSLIC, or receivers of a failed depository institution; (C) the dollar amount and percent of all such losses that did not involve FDIC or FSLIC in any capacity but did involve claims by one insured against another insured; (D) the dollar amount and percent of all such losses that involved claims first made after the depository institution failed. Concerns about the confidentiality of business information in any response should be resolved by Mr. Walton.

Section 220(b)(3) of FIRREA mandates that, within six months of the date of enactment, the FDIC, together with the Secretary of the Treasury and the Attorney General, "shall report the findings from the study to the Congress." Moreover, section 220(b)(3) requires that the report contain "legislative recommendations, if appropriate."

Dated at Washington, DC this 12th day of December 1989.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 89-30200 Filed 12-28-89; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL HOUSING FINANCE BOARD

[FHFB 89-16]

Prices for Federal Home Loan Bank Services

AGENCY: Federal Housing Finance Board.

ACTION: Notice of Prices for Federal Home Loan Bank Services.

SUMMARY: The Federal Housing Finance Board ("FHFB") is publishing the prices charged by the Federal Home Loan Banks ("FHLBanks") for (1) processing and settlement of items ("negotiable order of withdrawal or NOW"); and (2) demand deposit accounting ("DDA") and other services offered to member and other eligible institutions.

EFFECTIVE DATE: December 29, 1989.

FOR FURTHER INFORMATION CONTACT: Amy R. Maxwell, (202) 906-7865, or William J. Carey, (202) 906-6856, Federal Housing Finance Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: Section 11(e) of the Federal Home Loan Bank Act ("Bank Act") (12 U.S.C. 1431(e)) authorizes the FHLBanks (1) to accept demand deposits from member institutions, (2) to the drawees of payment instruments, (3) to engage in collection and settlement of payment instruments drawn on or issued by members and other eligible institutions, and (4) to engage in such incidental activities as are necessary to the exercise of such authority. Section 11(e)(2)(B) of the Bank Act (12 U.S.C. 1431(e)(2)(B)) requires the FHLBanks to charge fees for services authorized in that section, which fees are "to be determined and regulated by the FHLB consistent with the principles set in section 11A(c) of the Federal Reserve Act." FHLB regulations, at 12 CFR 943.6, currently state that the Director of the Office of District Banks and the Director of the Office of Policy and Economic Research of the former Federal Home Loan Bank Board (or their designees) approve and publish these fees at least annually. These duties are now being handled by the appropriate officers of the FHLB. The fees for 1989 will be published at this time, but compliance for 1989 will be determined in 1990 when data for the entire year is available. The regulations require the FHLBanks to follow four basic pricing principles as follows:

(1) Services must be priced explicitly.

(2) Services must be available to member and nonmember depository institutions on an equal basis.

(3) Over the long run, fees must cover direct and indirect costs and must also cover an imputed cost that includes taxes paid and the return capital that would have been provided if the services had been furnished by a private firm.

(4) Interest on float must be charged at the Federal Funds rate.

In 1980, the former Federal Home Loan Bank Board developed a methodology to determine compliance with these four principles, which is based on discounted cash flows from the NOW and DDA services. Since the FHLBanks had very few assets employed in the provision of these services and only projections of future income from NOW services, the methodology adopted at that time was appropriate. Compliance with the pricing principles focused on a five-year time span to recover all direct and indirect costs of these services.

At the end of 1985, the FHLBanks completed five years of NOW processing services. Both NOW services and DDA type services are mature activities with an asset base and normal income flows. In recognition of this evolution, the former Federal Home Loan Bank Board developed an up-to-date methodology substantially similar to that adopted by the Federal Reserve System to monitor pricing of these services.

The following section summarizes the adopted methodology, which will continue to ensure that FHLBank NOW and DDA services are not priced in a manner that would provide unfair competition to private firms.

Methodology

Two major issues arise in determining appropriate pricing methodology. First, competitor firms must be identified. Second, adjustment must be made for the taxes and return on capital that prices of competitor firms must cover. This adjustment is sometimes referred to as a Private Sector Adjustment Factor ("PSAF").

The methodology was developed based on bank holding companies as competitor firms. Although firms in other industries could be chosen as competitors, commercial banks are generally the most frequent competitors in item processing and related services. Similarly, the Federal Reserve Bank also has chosen bank holding companies as competitors for development of adjustments for taxes and the imputed cost of capital.

Adjustment for Taxes and Return on Capital

In order to compare competitor data to the FHLBanks, several broad assumptions were established as follows:

(A) NOW and DDA services may be combined under the Board's pricing approval methodology.

(B) Compliance with NOW/DDA pricing guidelines is on an individual FHLBank basis.

(C) One set of bank holding company data will be applied to FHLBanks, rather than applying regional competitor data to regional FHLBanks.

(D) FHLBank data, which is required for the NOW/DDA pricing methodology, may be determined on an individual FHLBank basis as follows: (1) NOW/DDA prices; (2) earnings on balances generated from item processing; (3) direct and indirect costs; and (4) assets employed in NOW/DDA services.

Based on the previous assumptions, appropriate bank holding company data and FHLBank data can be incorporated into the pricing methodology.

The pricing methodology is as follows:

(A) FHLBank NOW/DDA costs are adjusted (increased) for the cost of financing the assets (primarily plant and equipment) employed in the provision of NOW/DDA services.

(B) NOW/DDA costs are increased for sales taxes that would have been paid if subject to such tax.

(C) NOW/DDA costs are adjusted for the cost of float at the Federal Funds rate.

(D) Imputed income taxes are applied to pre-tax NOW/DDA income using a five-year average from bank holding company data (20.42% rate).

(E) The after tax rate of return on capital from NOW/DDA services is compared to the after tax return on capital of bank holding companies (13.40% rate).

These adjustment factors ensure that the NOW/DDA services are priced in a competitive manner. Also, the factors are similar to the adjustments made by the Federal Reserve System and represent a conservative approach consistent with the intent of Congress that pricing encourage competition and efficiency in the provision of these services.

In accordance with these principles, the FHFB has reviewed the 1989 prices for FHLBank services which are published herewith. In early 1989, compliance with the pricing principles was tested based upon projected levels of service for each FHLBank. Final compliance and approval for 1989 will be determined in early 1990 when data for the entire year is available. At that time, preliminary compliance tests for 1990 will be performed and the 1990 prices will be published thereafter so that the FHFB's monitoring of the pricing policy is continuous. The services and their prices which are published herewith are divided into two categories: (1) NOW services involved in the processing and settlement of items drawn on or issued by member institutions ("Schedule A"); and (2) services relating to demand deposit accounts and other services maintained by member and other eligible institutions with the FHLBanks ("Schedule B").

The services described in the attached schedules are not identical for any two FHLBanks, as each FHLBank's program is tailored to meet the needs of the member institutions in the FHLBank's district. Furthermore, the volume of services rendered varies significantly among the districts, with the result that the costs of providing the services also vary from district to district. In light of these considerations, the FHFB continues its practice of approving separate district fee structures rather than adopting a uniform pricing scheme. This policy is consistent with the congressional intent that pricing encourage competition.

It is not required that each processing step or transaction performed by a FHLBank be specifically priced. This policy permits the FHLBanks to establish fee schedules that are in line with the marketing practices of providers of correspondent services in each district. The FHFB hereby gives notice of the following fee schedules for Federal Home Loan Bank services:

Schedule A: Item Processing and Settlement Services (1989 NOW Services)

DISTRICT 1.—FEDERAL HOME LOAN BANK OF BOSTON

[Services not provided]

DISTRICT 2.—FEDERAL HOME LOAN BANK OF NEW YORK (1989 NOW SERVICES)

Services	Fee
Standard Intercept (per item)	$.050
Standard Intercept-Delayed Check (per item)	.035
Check Safekeeping (a combined minimum monthly charge of $250 applicable):	
First 50,000 items/month (per item)	.025
50,001 plus items/month (per item)	.010
Check Bulkfiling (a combined minimum monthly charge of $250 applicable):	
First 50,000 items/month (per item)	.030
50,001 plus items/month (per item)	.015
Interdistrict Transportation	.005
Statement Rendering:	
Bulk Filing Items:	
First 10,000 statements/month (per statement)	.02
10,001 plus statements/month (per statement)	.15
Check Safekeeping Items (per statement)	.05
Return Items:	
First 2,000 items/month (per item)	3.50
2,001 plus items/month (per item)	2.00
Discount (Magnetic Tape) (per item)	1.00
Return Items without entry (per item)	5.00
Late Return Premium	1.00
FRB Large Dollar Notification	4.25
Photocopies (per copy)	2.50
Original Item Retrieval (per item)	4.00
Datafax High Dollar Items—Front only (per item	1.50
Datafax High Dollar Items—Both Sides (per item)	2.00
Counter Item Filming (per item)	.035
Counter Item Sorting (per item)	.035
Notices or Advertising Inserts (per insert)	.01
Monthly History Microfiche (per 100,000 items)	8.00
Monthly History Microfiche-Additional Copies (per fiche card)	1.00
Cycle Changes (per cycle)	25.00
Cycle Exception Maintenance (per mo. per account)	.50

DISTRICT 2.—FEDERAL HOME LOAN BANK OF NEW YORK (1989 NOW SERVICES)—Continued

Services	Fee
Data Center Conversions (per conversion)	500.00

DISTRICT 3.—FEDERAL HOME LOAN BANK OF PITTSBURGH (1989 NOW SERVICES)

Services	Fee
NOW Account Processing:	
Items per month	
First 25,000 (per item)	$0.0360
25,001–58,500 (per item)	.0335
58,501–91,500 (per item)	.0310
91,501–125,000 (per item)	.0285
125,001–158,500 (per item)	.0260
158,501–191,500 (per item)	.0235
191,501–350,000 (per item)	.0210
350,001–500,000 (per item)	.0185
500,001 plus (per item)	.0160
NOW Account Backroom Service:	
Truncated.	
Items per month	
0–25,000 (per item)	.0370
25,001–58,500 (per item)	.0355
58,501–91,500 (per item)	.0340
91,501–125,000 (per item)	.0325
125,001–158,500 (per item)	.0310
158,501–191,500 (per item)	.0295
191,501–350,000 (per item)	.0260
350,001–500,000 (per item)	.0255
500,001 plus (per item)	.0230
Non-truncated	
Items per month	
0–25,000 (per item)	.0470
25,001–58,500 (per item)	.0455
58,501–91,500 (per item)	.0440
91,501–125,000 (per item)	.0425
125,001–158,500 (per item)	.0410
158,501–191,500 (per item)	.0395
191,501–350,00 (per item)	.0380
350,001–500,000 (per item)	.0355
500,011 plus (per item)	.0330
Modified Backroom	
Reduce non-truncated prices by (per item)	$.01
Over-the Counter Checks (per item)	.15
Return Call (per item)	.75
Late Return Call (per item)	.66
Items Over $2,500 Returned to FRB (per item)	5.25
Check Copies (per copy)	3.00
Telephone/FAX Check Copy (per copy)	3.75
Check Retrieval (per item)	1.50
Statement Envelopes—Actual Cost	
Small Standardized (per envelope)	.05
Small Customized (per envelope)	.07
Large (per envelope)	.46
Mid-cycle statement rendering:	
Purged Statement (per item—minimum charge of $2.50)	.50
Non-purged Statement (per statement)	2.50

DISTRICT 4.—FEDERAL HOME LOAN BANK OF ATLANTA (1989 NOW SERVICES)

NOW Account Services	Fee
Daily delivery (items per month):	
1st 25,000 (per item)	$0.040
Over 25,000 (per item)	.035
Bulk filing (items per month):	
1st 10,000 (per item)	.045

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DISTRICT 4.—FEDERAL HOME LOAN BANK OF ATLANTA (1989 NOW SERVICES)—Continued

NOW Account Services	Fee
10,000–25,000 (per item)	.045
25,001–50,000 (per item)	.040
50,001–75,000 (per item)	.038
75,001–100,000 (per item)	.035
100,001–150,000 (per item)	.030
Over 150,000 (per item)	.025
Statement matching, (items per month):	
1st 10,000 (per item)	.070
10,000–25,000 (per item)	.065
25,001–50,000 (per item)	.065
50,001–75,000 (per item)	.060
75,001–100,000 (per item)	.060
100,001–150,000 (per item)	.055
Over 150,000 (per item)	.050
Special statements (IRA, savings, etc.) (per statement)	.020
Multiple statement inserts (per statement)	[1] .010
No mail statements (per statement)	.050
Truncation:	
1st 10,000 (per item)	.030
10,000–25,000 (per item)	.028
25,001–50,000 (per item)	.025
50,001–75,000 (per item)	.023
75,001–150,000 (per item)	.020
Over 150,000 (per item)	.015
Statement rendering (in-house processors):	
Finesort (per item)	.015
Cyclesort (per item)	.015
Statement rendering (per statement)	.25
Return items (per item)	3.00

DISTRICT 4.—FEDERAL HOME LOAN BANK OF ATLANTA (1989 NOW SERVICES)—Continued

NOW Account Services	Fee
Large dollar return items (per item)	4.00
Delayed return items (per item)	4.00
Facsimile:	
Large dollar (per item)	1.50
On request (per item)	2.00
Bookkeeping and Acct'l Rts. rejects (per item)	2.50
Over-the-counter items (per item)	.005
Photocopies (per item)	2.00
Without entry items (per item)	[2] 4.50
Finesort (check number)—Special accounts (per item)	.02
Prime rejects (30.25 per item over 2% reject rate)	.25
Special services:	
Disaster recovery service:	
Subscription fee:	
Standard output format (per format)	2,000.00
Specialized output format (minimum additional)	500.00
Monthly availability fee:	
One-year contract (per contract)	300.00
Two years contract (per contract)	250.00
Three years contract (per contract)	200.00
Service activation fee (per activation)	1,500.00
Daily activity fee	[3]

DISTRICT 4.—FEDERAL HOME LOAN BANK OF ATLANTA (1989 NOW SERVICES)—Continued

NOW Account Services	Fee
Custom coding (for mergers, branch acquisitions and sales, etc.) (per hour)	100.00
Special research requests:	
Puff original truncation item from file (per item)	3.00
Research request for 12 or more items ($30 per hour per person plus per item)	1.00
Special bandling (if required by 2 or more account number formats resulting from mergers, conversions, branch acquisitions, etc. charging will begin three months after effective date if still required) (per month)	500.00
Microfilm (per roll)	35.00

[1] One insert free with a charge of one cent for each insert over one per statement.
[2] A Without Entry item is a check which is sent back to the depositing institution to secure proper endorsement or signature.
[3] See current fee schedule.

Notes:
The minimum monthly billing for NOW service options is $200.00.
Prices for all options include data transmission to on-line or in-house processors.
Actual item delivery expense will be charged to the institution as incurred, including postage under "Statement Matching" above.
The price per item for the service options of Daily Delivery, Bulkfiling, Statement Matching and Truncation are stand-alone fees, not incremental fees.

DISTRICT 5.—FEDERAL HOME LOAN BANK OF CINCINNATI (1989 NOW SERVICES)

Service

Item/Month	Daily return	Truncation	Bulkfiling w/ out statement stuffing	Bulkfiling with statement stuffing
1 to 50,000	$0.0350	$0.0350	$0.0375	$0.0575
50,001 to 100,000	.0250	.0250	.0267	.0560
100,001 to 150,000	.0150	.0150	.0175	.0550
150,001 to 200,000	.0090	.0090	.0115	.0450
200,001 and over	.0075	.0075	.0100	.0440

Special services	Fee
Check retrieval or inspection of original item	$1.50
Photocopy	1.00
Advertising insertion (per item)	.02
Postal "on-us":	
a. With FHLB encoding (per item)	.03
b. Without FHLB encoding (per item)	.01
Statement stuffing for truncated statement (per statement)	.01
Additional sorting upon request:	
a. Fine sorting (per item)	.005
b. Cycle sorting (per item)	.005
Large dollar return notification (per item)	2.00
Return items processed by bank:	
First 1,000	2.00
All others	1.00
Qualifications requirements of EFAA (per item)	[1]
Return items processed by NOW user:	
Qualifications requirements of EFAA (per item)	.50
Return item clearing fee [2]:	
Cincinnati and Cleveland operations centers (per item)	.10
Nashville operations center (per item)	.075
Special processing requests	[3]
Multiple service discount (the following percentage off basic service fees)	5.00

[1] No charge.
[2] A higher fee is assessed to users not currently under contract price schedule.
[3] Negotiable.

DISTRICT 6.—FEDERAL HOME LOAN BANK OF INDIANAPOLIS (1989 NOW SERVICES)

Transaction Service

Monthly volume	Safe-keeping		Turn-around (daily or cycled)		Complete	
	Per item	Cost	Per item	Cost	Per item	Cost
0 to 5,000	$0.045	$225	$0.053	$265	$0.077	$385
5,001 to 10,000	.037	185	.048	240	.075	375
10,001 to 15,000	.036	180	.044	220	.073	365
15,001 to 25,000	.031	310	.037	375	.072	720
25,001 to 50,000	.030	750	.033	825	.070	1,750
50,001 to 75,000	.028	650	.030	750	.068	1,625
75,001 to 100,000	.023	575	.027	675	.065	1,625
100,001 to 125,000	.021	525	.024	600	.064	1,600

Ancillary Service	Fee	
	Indiana	Michigan
Settlement only (per month) (plus $3.00/journal entry)	$100.00	$100.00
Over-the-counter items and microfilm (per item)	.035	.035
No MICR/OTC	.50	.50
Photocopies and facsimiles	2.50	2.50
Encoding errors	2.75	2.75
Certified checks	1.00	1.00
Late returns	.50	.50
Invalid returns	.50	.50
Large dollar signature verification	.50	.50
Invalid accounts	.50	.75
Return items—Fax or phone	2.15	2.65
Return items—PC	2.15	2.15
Return items—Mainframe	2.15	1.90
Fine sort numeric sequence	.02	.02

Note: Minimum processing fee of $40.00 per month will apply for total NOW services.

DISTRICT 7.—FEDERAL HOME LOAN BANK OF CHICAGO (1989 NOW SERVICES)

Item Processing

Items per month	Daily returns	24-hour delay	Bulk file	Truncation
0 to 20,000	$.030	$.029	$.029	$.021
20,001 to 50,000	.029	.027	.025	.021
50,001 to 75,000	.028	.026	.027	.020
75,001 to 100,000	.027	.025	.026	.020
100,001 to 200,000	.026	.024	.025	.019
200,001 to 300,000	.025	.023	.024	.018
300,001 to 400,000	.024	.022	.023	.017
400,001 to 500,000	.023	.021	.022	.016
500,001 to 750,000	.022	.020	.021	.015
750,001 to 1,000,000	.021	.019	.020	.014
1,000,001 to 1,500,000	.020	.018	.019	.014
1,500,001 and over	.019	.017	.015	.014

Ancillary Service	Fee
Counter Item Processing (per item)	$0.01
Qualified Return Item Processing	
0–20 items	6.00
21–50 items	5.50
51–75 items	5.00
76–100 items	4.50
101–500 items	4.00
501–1,000 items	3.50
1,001–1,500 items	3.00
1,501–2,000 items	2.50
2,001 or more items	2.00
Statement Preparation	
Regular Checking Statements	.450
Money Market Statements	.200
Savings Account Statements	.200

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Ancillary Service	Fee
Statements Without Checks	.200
Statements With Checks	.215
Statement Stuffing	.010
Microfilm	.035
Microfiche	.035
Photocopies	2.50
Encoding Errors	2.75
Certified Checks	1.00
Late Returns	.50
Invalid Returns	.50
Large Dollar Signature Verification	.50
Invalid Accounts	.50
Return Items—Fax or Phone	2.15
Return Items—PC	2.15
Return Items—Mainframe	2.15
Fine Sort Numeric Sequence	.02

Other services	Fee
Stop payments (per stop)	5.00
Photocopies/microfilm copies (per copy)	2.75
Research (per hour)	30.00
Wire transfer (per transfer)	10.00
Overdraft charges (per item)	20.00
Account reconciliation (per account)	5.00
Account analysis (per account)	5.00
Balance verification (per account)	5.00
Balance certification (per account)	5.00
Balance confirmation (per account)	5.00
Account closing (per account)	5.00
Account opening (per account)	5.00
Account maintenance (per account)	5.00
Account inquiry (per account)	5.00
Account research (per account)	5.00
Account transfer (per account)	5.00
Account adjustment (per account)	5.00
Account statement (per account)	5.00
Account balance (per account)	5.00
Account activity (per account)	5.00
Account history (per account)	5.00
Account summary (per account)	5.00
Account detail (per account)	5.00
Account transaction (per account)	5.00
Account deposit (per account)	5.00
Account withdrawal (per account)	5.00
Account interest (per account)	5.00
Account fee (per account)	5.00
Account charge (per account)	5.00
Account credit (per account)	5.00
Account debit (per account)	5.00
Account balance (per account)	5.00
Account activity (per account)	5.00
Account history (per account)	5.00
Account summary (per account)	5.00
Account detail (per account)	5.00
Account transaction (per account)	5.00
Account deposit (per account)	5.00
Account withdrawal (per account)	5.00
Account interest (per account)	5.00
Account fee (per account)	5.00
Account charge (per account)	5.00
Account credit (per account)	5.00
Account debit (per account)	5.00

Ancillary Service	Fee
Statements Without Checks	.200
Statement Stuffers	.015
Phone Return Requests (addition fee per item)	1.00
Facsimile Return Requests (incoming) (per item)	[1]
Large Dollar Return—telephone notification to Bank of first deposit	5.00
Non-FRB Inclearing Totals (per call)	1.50
Postage/Courier	[2]
Facsimile Equipment	[2]
Photocopies (per item)	2.00
Facsimile of Items ($2,500 or over) (per item)	1.00
Cash Letter Facsimile (per page)	2.00
Sorts (per item)	.010
Monthly Recap (per item)	.0025
Data transmission (per item):	
0–2,500 items ($10 month minimum)	.004
2,501–10,000 items ($10 month minimum)	.004
10,001–12,500 items ($50 month minimum)	.004
12,501–50,000 items ($50 month minimum)	.004
50,001–10,000 items (no minimum)	.003
100,001 or more items (no minimum)	.002
NOW Settlement Only (per month)	$50.00
NOW Minimum Monthly Charge (per month)	250.00

[1] No additional charge.
[2] Actual cost.

District 8.—Federal Home Loan Bank of Des Moines (1989 NOW Services)

Check processing fee schedule

Item processing monthly volume level	Basic fee (truncated)	Daily cycle [1] [3]	Cycle/monthly [4]
1 to 25,000	$0.021	$0.017	$0.020
25,001 to 50,000	.017	.013	.016
50,001 to 75,000	.015	.011	.014
75,001 to 175,000	.013	.009	.012
175,001 to 400,000	.012	.008	.011
400,001 to 750,000	.010	.007	.010
750,001 to 1,100,000	.009	.006	.009
1,100,001 to 1,500,000	.008	.005	.008
1,500,001 to 4,000,000	.006	.004	.007
4,000,001 to 6,500,000 [5]	.0058	.004	.007
6,500,001 to 9,000,000 [5]	.0054	.003	.006
9,000,001 & Over [5]	.0052	.003	.006

Return items

Volume level	Basic service [6]	Telephone request [7]	Forward collection only [8] Unqualified	Qualified [9]	Premium
Kansas City Regional Center					
1–2000	$1.60–2.65	$3.50	$0.60	$0.24	
2001–4000	1.15–1.85		.60	.24	
4001–Over	.90–1.60		.55	.20	
St. Louis Regional Center					
1–2000	$1.50–2.60	$3.50	$0.60	$0.20	
2001–4000	1.00–1.65		.60	.20	
4001–Over	.60–1.60		.50	.20	
Des Moines Regional Center					
1–2000	$1.65–2.65	$3.50	$0.60	$0.25	
2001–4000	1.15–1.90		.60	.25	
4001–Over	.75–1.65		.55	.25	
Minneapolis Regional Center					
1–3000	$1.70–2.70	$3.50	$0.70	$0.29	$0.34
2001–4000	1.20–1.95		.70	.29	.34
4001–Over	.50–1.70		.65	.29	.34
Regulation J Notification $3.00/item at all centers.					

Other services	Fee
Posting file (per item)	$0.0005
Reject Re-entry (per reject)	.04

Other services	Fee
Stop payments (per stop)	5.00
Photocopies/microfilm copies (per copy)	2.75
Counter items with MICR encoding (per item)	.04
Counter items without MICR encoding (per item)	.10
Original item research (per item)	2.75
Certified checks (per item)	.50
Signature verification (per page)	1.00
Facsimile transmission (per transmission)	1.50
Telephone check inquiry (per inquiry)	1.00
Settlement:	
Daily settlement reporting (per month)	25.00
Settlement only (inclearings or returns) (per month)	100.00
Third party settlement (per month)	350.00
Microfiche—monthly reports (per month)	25.00
Microfilm (per item)	.01
Research (per hour)	20.00
Audit (the lesser of $20.00/hour+.50/copy, or per item)	2.75
Special sorting options:	
Account separators (per item with a $175.00 minimum)	.003
Truncated items returned unsorted (per item)	.002
Truncated items returned sorted (per item with a $250.00 minimum)	.012
Sequence number order (per item)	.005
Other miscellaneous fine sorting (per item)	.005

Special services	
Back-up service:	
Set-up charge (one time)	500.00–1,500.00
Monthly maintenance	[1]
File maintenance:	
Mergers/acquisitions (each)	500.00
Multiple R/T numbers (per number per month)	50.00
Parameter file maintenance (per change)	25.00
Multiple sorter pockets (per pocket per month)	300.00
Data service conversion (per conversion)	500.00

[1] 15% surcharge for same day daily return.
[2] Fees for daily and cycle/monthly return are in addition to the basic fee.
[3] Volume levels above 4 million are priced on a decremental basis and are provided in the Des Moines and Minneapolis Regional Centers.
[4] Full service processing. Excludes Large Dollar Notification required under Regulations CC and J.
[5] Return items received for forward collection.
[6] Items must be fully qualified using heat sensitive stripe.
[7] Negotiable plus actual monthly usage.

Note: Minimum charge of $250.00 per month will apply for total NOW Services.

District 9.—Federal Home Loan Bank of Dallas (1989 NOW Services)

Service

Basic Service-items/month	Daily	Truncated
Tier 1: 0 to 50,000	$.0325	$.0275
Tier 2: 50,001 to 100,000	.0300	.0250
Tier 3: 100,001 to 150,000	.0250	.0200
Tier 4: 150,001 to 200,000	.0200	.0150
Tier 5: 200,001 to 500,000	.0150	.0100
Tier 6: 500,001 to 1,000,000	.0100	.0075
Tier 7: 1,000,000 and Over	.0080	.0050

Return Items

Items/month	
Tier 1: 1–500	$1.50
Tier 2: 501–Over	1.00
Return Item	
Qualification (per item)	.25

Other Services	Fee
Commercial Item (each)	$.0200
Courier Items (integration)	.0325
Courier Items (capture/microfilm only)	.0100
Photocopies	.50
Original Check Retrieval (per check)	150
Large Dollar Notification	425
Statement Preparation:	
Statements (each)	.085

Other Services	Fee
Items (each MICR document)	.008

Miscellaneous services	Fee
Late return item transmission—after 2:00 p.m. (per item)	$0.25

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Other Services	Fee
Items (each MICR document)	.008
Inserts	.01
Statement Separators	.01
Facsimile:	
Large Dollar, Full Face, FHLB Standard Amount (per page)	1.00
Large Dollar, Full Face, Less Than FHLB Standard (per page)	2.00
Special Research (per hour)	

District 10.—Federal Home Loan Bank of Topeka (1989 NOW Services)

Service	Fee Per Item
Return Items Per Month	
NOW Processing Fees:	
1 to 50	$3.00
51 to 2,500	1.25
2,501 to 4,000	.95
4,001 to 6,000	.60
6,001 to 8,000	.30
8,001 to 12,000	.25
12,001 & over	.20

Items per month	Truncated	Cycled
1 to 10,000 (per item)	$.020	$.035
10,001 to 25,000 (per item)	.018	.034
25,001 to 50,000 (per item)	.015	.031
50,001 to 100,000 (per item)	.013	.026
100,001 to 250,00 (per item)	.011	.020
250,001 to 500,000 (per item)	.010	.015
501,001 750,000 (per item)	.009	.013
750,001 to 1,000,000 (per item)	.008	.011
1,000,001 & over (per item)	.007	.010

Other services	Fee
Minimum Monthly Processing Fee	$500.00
Settlement—(w/FHLB processing)	(1)
Settlement Only (per month)	100.00
Item Retrieval (Photocopy—per item)	2.00
Mass Photocopy Requests (per hour)	12.00
(per item)	.15
Over-The-Counter Items (Microfilmed and Filed—per item)	.03
Large Item Return Notification (per item over $2500)	3.00
Fed Fee Return Item Reg CC Increase (per item)	.16
NOW Statement Matching:	
Truncated Statement	$.05
Cycled Statement for 1–50 Checks	.15
For each additional check over 50	.01
Per Insert	.01
Postage	(2)
Latex Envelopes	(3)

[1] No charge.
[2] At cost.
[3] Latex envelopes—provided by association.

District 11.—Federal Loan Bank of San Francisco (1989 NOW Services)

Inclearing services	Volume price based on total items per month						
	0 to 250,000	250,001 to 750,000	750,001 to 1,000,000	1,000,001 to 1,500,000	1,500,001 to 2,000,000	2,000,001 to 2,500,000	Over 2.5 million
Basic caputure service (Min. charge $500/mo.):							
Capture/finesort/microfilm	$0.042	$0.037	$0.032	$0.026	$0.024	$0.022	$0.021
Return item processing	2.00	1.75	1.50	1.25	1.25	1.25	1.25
Comprehensive check processing service (Min. charge $750/mo.):							
Capture/file/microfilm/finesort	.042	.037	.032	.026	.024	.022	.021
Statement preparation (truncated)	.15	.14	.13	.13	.13	.13	.13
Statement preparation (standard)	.35	.30	.25	.28	.28	.28	.28
Return item processing	2.00	1.75	1.50	1.25	1.25	1.25	1.25
Over-the-counter items	.045	.045	.045	.045	.045	.045	.045
Statement inserts	.03	.03	.0275	.025	.025	.025	.025

Miscellaneous services	Fee
Late return item transmission—after 2:00 p.m. (per item)	$0.25
Second request on previously reconciled adjustment (per occurrence)	10.00
Truncated item retrieval (pler item)	3.00
Generic envelopes (each)	.025
Microfilm:	
Second copy of film daily (per month)	75.00
Special request copy (per copy)	5.00
Fine sort microfilm:	
One master and one duplicate (per cycle)	10.45
Statement fee (per statement)	.002
Same day microfiche:	
2 copies with hardcopy processed item listing and exceeded dollar report (per month)	75.00
Hardcopy exceeded dollar report only (per month)	65.00
Additional microfiche (per copy)	1.00
Special fine sort (per item)	.04
Photocopies (per copy)	3.00
Non-standard statement inserts (per insert)	.05
MICR line alterations (per item)	.75
DDA account maintenance Fee:	
Regular DDA account (per month)	15.00
Zero balance account (per month)	30.00
Supplementary service fees: Thirty day advance notice is required on all branch sales, branch mergers, branch acquisitions or service bureau changes.	
Custom programming:	
1. Breakout of items by routing transit number and/or branch number (inlcude listing)	2,000.00
2. Breakout and capture of items (Processed items/mocrofilm/commingled with other items for service bureau)	3,000.00
3. Breakout, capture, and seperate tape produced, including above items	4,500.00
4. Selective account programming (maximum 50 accounts) in addition to regular programming requirements	1,500.00
5. Special cycle coding	1,500.00
6. Service bureau conversion	3,000.00
7. One-half of the original programming fee will be assessed in the event of a cancellation notice given less than 7 days in advance of effective date	
Statement handling:	
Set-up fee/branch outsort of items	250.00
Standard statement rendition (close-out statements) (each)	.50
Non-standard statement rendition:	
First 90 days (each)	.75
After 90 days (each)	1.00
Non-standard processing: Outsort and redirect items (per day)	25.00

None: Other services and prices available upon request.

District 12.—Federal Home Loan Bank of Seattle (1989 NOW Services)

Service item	Fee
Base per item fees:	
Truncation service (per item)	$0.025
Non-truncation service (per item)	.030
Combined service	(1)
Cumulative volume credits:	
25,001 to 50,000 items per month (per item)	.0025
50,001 to 75,000 items per month (per item)	.0025
75,001 to 100,000 items per month (per item)	.0025
100,001 to 200,000 items per month (per item)	.0025
200,001 to 400,000 items per month (per item)	.0050
400,001 to 600,000 items per month (per item)	.0050
600,001 or more items per month (per item)	.0025
Large dollar signature verifications (each)	.75
Return item handling:	
NSFs, account closed, etc. (each)	.80
Regulation J, large dollar returns	(2)
FRB Regulation CC handling fee (per item)	.34
Photocopy requests (NOW User) (each)	1.00
Research requests (NOW User) (each)	1.00
Photocopy requests (Non-User) (each)	5.00
Research requests (Non-User) (each)	5.00
Special fine sorts (per item)	.01
Statement services:	
Burst or fold only for statements (per statement) (minimum of $30.00 per month)	.005
With checks inserted (per item)	.02
Without checks (per statement)	.06
Advertising inserts	(3)
Monthly minimum fee for service (per month)	250.00
Miscellaneous and out-of-pocket expenses: Courier, postage, etc	(3)

[1] Per above charge for each service.
[2] No charge.
[3] As required.

Note: Additional discount may be arranged for contractual commitments. Prices may vary in some circumstances. For additional information, contact the Correspondent Services Marketing Department.

Schedule B: Demand Deposit and Other Services (1989 DDA Services)

District 1.—Federal Home Loan Bank of Boston

Service	Fee
Set-up fee:	
Coupon formats (per format)	$50.00
Data center programming (per data center)	75.00

Schedule B: Demand Deposit and Other Services (1989 DDA Services)

DISTRICT 1.—FEDERAL HOME LOAN BANK OF BOSTON

Services	Fee
Account maintenance (per account, per month)	$7.50
Checks and items paid (per item)	.15
Mail deposits (per item)	.20
Federal Reserve settlement (per item) [1]	.60
Internal transfers and zero balance transfers	[2]
Others transfers (per transfer)	.10
Domestic wire transfers:	
In (per wire)	4.50
Out (per wire)	7.00
Telephone advices	[2]
International wire transfers	[3]
Special statements (per statement)	2.50
Stop payments (per item)	9.50
Automated reconcilement:	
Paper issues input (per issue)	.065
Magnetic tape issues input (per issue)	.035
Automated reconcilement service charge (per account, per cutoff)	5.00
Paid only reconcilement, daily advices, monthly reports, audit confirmations, voided items input, zero-balance transfer and fine sort of items	[2]
Look-up and photocopies of checks (per item)	2.50
Truncation (per item)	.01
Depository transfer checks (DTC's) (per item)	.20

[1] Federal Reserve Settlements include ACH, Series E-Bond Redemption, Cash Letter Settlements (Inclearings and Outclearings), Regulation D Reserve Pass-Throughs, Treasury Tax and Loan Settlements.
[2] No Charge.
[3] Fee varies based on current international rates and cable remittance fees.

Notes:
All prices are subject to change.
All collected IDEAL WAY deposits earn immediate interest paid in hard dollars monthly via credit to the member's account at month end. Interest rates are set daily.
Fees for services are paid in hard dollars monthly via a debt to the member's account.
No compensations balance requirements.
No reserve requirements.

DISTRICT 2.—FEDERAL HOME LOAN BANK OF NEW YORK (1989 DDA SERVICES)

DEPOSIT SERVICES

Items deposited	Unencoded	Encoded
First 100,000 items/month	$0.070	$0.050
100,001 to 300,000 items/month	.065	.045
300,001 plus items/month	.060	.040
Early delivery discount (weekdays):		
5:30 p.m. deadline	.015	.010
7:00 p.m. deadline	.005	.005

Service	Fee
Saturday permium (per item)	$0.01
Cash letter deposit (per deposit)	.50
Depository endorsement premium	.005
Return item (per item)	1.50
Return item (unendorsed) (per item)	8.75
Domestic item (unendorsed) (per item)	15.00
Foreign collection (per item)	8.00
Bond collection (minium)	40.00
Return coupons (per return)	6.50
Unendorsed return coupons (per return)	15.00
Security coupon collection (per envelope)	4.50
Photocopies (per copy)	5.00
Savings bond redemption (per transmittal)	3.00
Reject repairs (encoded only per item)	.10
Lockbox service:	
Remittance processing:	
First 50,000 items/month (per item)	.15
50,001 plus items/month (per item)	.10
Check deposit (per check)	.05
Return item (per check)	1.50
Exception item (per item)	.12
Stop file maintenance (per month)	150.00
Deposit notification (per month)	75.00
Envelope return (per day)	15.00
Photocopies (per copy)	5.00

Service	Fee
Set-up fees:	
Coupon formats (per format)	250.00
Data center programming (per data center)	25.00
Daily reports microfiche (per item)	.001
Daily reports microfiche—Additional copies per month (per set)	15.00
Coin and currency service:	
Shipments	[1]
Cash order[2] (per order)	10.00
Cash return (per return)	10.00
Late orders/returns (per order/return)	35.00
Rolled coin (per roll)	.065
Deposits:	
Currency verification (per $1000)	1.00
Coin verification (loose coin) (per bag)	1.00
Coin verification (rolled coin) (per bag)	10.00
DISBURSEMENT SERVICES	
Checks and money orders:	
First 5,000 items/month (per item)	.26
5,001 to 10,000 items/month (per item)	.23
10,001 to 25,000 items/month (per item)	.17
25,001 plus items/month (per item)	.13
Zero reconcilement premiun:	
Issuance reported via magnetic tape (per item)	.03
Issuance reported via paper (per item)	.05
FUNDS TRANSFER	
Wires in (per wire)	4.00
Wires out (per wire)	9.00
Safekeeping services:	
Maintenance:	
Less than 25 securities (per month)	33.00
More than 25 securities (per month)	75.00
Per item charge:	
Physical securities (per month)	6.00
Book entries (per month)	3.50
Purchases and sales (per transaction)	30.00
Maturities (per transaction)	10.00
Coupons, principal and interest payments (per transaction)	7.00
MISCELLANEOUS CORRESPONDENT SERVICES	
Depository transfer checks (per check)	5.00
Single check deposits (per check)	2.00
Savings bond redemption (per transmittal)	3.00
Savings bond sales (per transmittal)	1.50
Federal recurring payments (per transaction)	3.00
Automated clearing house transactions (per transaction)	3.00
Treasury tax and loan accounts (per transaction)	3.00
Electronic daily advice reporting (EDAR) consolidated balance reporting transaction detail	[3]
Settlement only (per service) (per month)	250.00
Paper items (per item)	1.50
Pass-through reserves (per month)	25.00

[1] Price varies by location.
[2] Cash orders must be placed and funded one day prior to delivery.
[3] Fees for special services will be negotiated based on the number of transactions. Fees are subject to change based on Federal Reserve announcements.
Note: A minimum monthly service charge of $300 applies to the Remittance Processing.

DISTRICT 2.—FEDERAL HOME LOAN BANK OF PITTSBURGH (1989 DDA SERVICES)

Services	Fee
Deposit processing service:	
Deposit ticket entery (per entry)	$0.25
Deposit transfer voucher (per entry)	1.75
Mail Deposit Ticket Entry (per entry)	2.25
Deposit item transit:	
Items per month:	
0 to 25,000 (per item)	.0325
25,001 to 58,500 (per item)	.0319
58,501 to 91,500 (per item)	.0314
91,501 to 125,000 (per item)	.0308
125,000 to 158,500 (per item)	.0303
158,501 to 191,500 (per item)	.0297
191,501 and over (per item)	.0292
Deposit item encoding:	
Items per month:	
0 to 25,000 (per item)	.0275
25,001 to 58,500 (per item)	.0270
58,501 to 91,500 (per item)	.0265
91,501 to 125,000 (per item)	.0260
125,001 to 158,500 (per item)	.0255

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DISTRICT 2.—FEDERAL HOME LOAN BANK OF PITTSBURGH (1989 DDA SERVICES)—Continued

Services	Fee
156,501 to 191,500 (per item)	.0250
191,501 and over (per item)	.0245
Deposit item return (per item)	1.50
Deposit item photocopy (per item)	3.00
Deposit pickup (per pickup)	6.25
Return check courier service (per month)	65.00
Check and money order clearing service:	
Clearing item processing (per item)	.11
Clearing item reconciliation copy processing:	
By manual input (per item)	.06
By magnetic tape input (per item)	.03
Clearing item fine sorting for return with bank statements (per item)	.06
Stop-payment order processing (per entry)	9.75
Imprinting checks and money orders	(1)
Standard earnings checks (per item)	.06
Federal Reserve inclearing settlement (per month)	100.00
Electronic wire transfer of funds:	
Outgoing wires:	
Receiving bank on-line (Federal Reserve) (per transfer)	6.00
Receiving bank off-line (Federal Reserve) (per transfer)	8.75
Incoming wires (per transfer)	3.50
ACH debit/credit (per item)	.05
Lockbox service:	
Lockbox item processing (per item)	.31
Deposit item transit (per item)	(2)
Deposit ticket entry (per transfer)	.25
Transportation (per month)	50.00
Account maintenance (per acct./month)	15.00
Account overdraft penalty	(3)
Collection service:	
Foreign items	(4)
Bond coupons:	
West (per envelope)	4.75
East (per envelope)	4.75
COIN AND CURRENCY EASTERN SERVICE	
Requisition:	
Currency (per strap)	.30
Coin (per bag)	1.00
Coin (per box)	2.50
Deposit:	
Currency/food coupons (per $1,000 or part thereof)	1.00
Coin (per bag)	1.75
Transportation:	
Zone 1 (per stop)	19.95
Zone 2 (per stop)	25.50
COIN AND CURRENCY WESTERN SERVICE	
Requisition:	
Currency (per $1,000 or part thereof)	.30
Coin (per box)	1.50
Deposit:	
Currency (per $1,000 or part thereof)	1.00
Coin:	
Unsorted	7.50
Sorted	1.25
Food coupons:	
Unsorted	3.00
Sorted	1.75
Transportation:	
Western Pennsylvania (per stop)	13.35
West Virginia:	
Zone 1 (per stop)	31.00
Zone 2 (per stop)	35.20
SAFEKEEPING AND INVESTMENT	
Trade executed for a member (per transaction)	10.00
Receipt of security:	
Bearer (per transaction)	26.00
Registered (per transaction)	26.00
DTC (per transaction)	10.00
PTC (per transaction)	10.00
Fed book-entry at Chase (per transaction)	6.00
Fed book-entry at Fed (per transaction)	1.00
Delivery of security:	
Bearer (per transaction)	26.00
Registered (per transaction)	26.00
DTC (per transaction)	10.00
PTC (per transaction)	10.00
Fed book-entry at Chase (per transaction)	6.00

DISTRICT 2.—FEDERAL HOME LOAN BANK OF PITTSBURGH (1989 DDA SERVICES)—Continued

Services	Fee
Fed book-entry at Fed (per transaction)	2.25
Redemption of security:	
Bearer (per transaction)	20.00
Registered (per transaction)	30.00
DTC (per transaction)	10.00
PTC (per transaction)	0.00
Fed book-entry at Chase (per transaction)	6.00
Fed book-entry at Fed (per transaction)	0.00
Collection of principal and interest payments on mortgage-back securities:	
registered (per collection, per pool)	15.00
PTC (per collection, per pool)	2.50
Fed book-entry at Chase (per collection, per pool)	2.00
Fed book-entry at Fed (per collection, per pool)	.50
Account maintenance (per month)	10.00
Transfer security from one account to another account/pledge:	
Physical form (per transaction)	5.00
Book entry (per transaction)	5.00
Retail-recp custodial service (per month)	30.00
Issue safekeeping:	
Bearer with coupons (per month, per issue)	4.00
registered (per month, per issue)	3.00
Fed book-entry at Fed (per month, per issue)	1.00
Fed book-entry at Chase (per month, per issue)	1.50
DTC (per month, per issue)	1.75
PTC (per month, per issue	2.00
Money market (per month, per issue)	2.50
GNMA registered (per month, per issue)	4.50
Market value pricing (per month)	50.00
Corporate actions:	
Calls, tenders, conversions (per transaction)	50.00
Stock dividends, stock splits (per transaction)	24.00
Delivered collateral	(5)

[1] Direct cost pass-through from supplier.
[2] Refer to Deposit Processing Service—Deposit Item Transit fees.
[3] Greater of $75 or the interest on the amount of the overdraft calculated at a daily interest rate that is equal to the highest advance rate plus 3%.
[4] Pass-through.
[5] Greater of $4.00 per million per month of outstanding advances, advance commitments, letters or credit, and interest rate swaps, or a monthly $10 flat fee.

DISTRICT 4.—FEDERAL HOME LOAN BANK OF ATLANTA (1989 DDA SERVICES)

Demand deposit service	Fee
Checks paid [1] (per item):	
Monthly Statement:	
Items fineserted into check number order (per item)	$0.12
Items truncated (per item)	.08
Photocopies (demand items/statements/advices) (per item)	2.50
Stop payment (per item)	12.00
Range stop payments (per item returned)	12.00
Without entry [2] items (per item)	4.50
Deposit transfer checks (DTC) (per item)	4.00
Wire transfers:	
Incoming (per item)	(3) 3.00
Outcoming (per item)	(3) 4.00
Phone advice (per wire)	(3) 2.50
Interbank transfer (per transfer)	2.50
Securities and safekeeping:	
Purchases—versus payment	15.00
Purchases—free	25.00
Sales—versus payment	15.00
Sales—free	25.00
Maturities	10.00
Principal and interest posting (including mortgage-backed securities	4.00
Account maintenance (monthly charge per issue based on several issues held)	3.00
Pledge/release transactions	15.00
Retail repurchase monthly maintenance fee	100.00
Account reconciliation service:	
Full reconciliation—magnetic tape ($25.00 min./mo.) (per issue)	.0825
Full reconciliation—paper issue ($25.00 min./mo.):	
Encoded amounts (per issue)	.0475
Unencoded amounts (per issue)	.07
Partial reconciliation ($15.00 min./mo.) (per paid item)	.03
Range reconciliation ($15.00 min./mo.) (per paid item)	.03
DDA paid tape ($15.00/tape plus)	.03
Alternative demand disbursement service (fee checks, stop payments, photocopies and supplies. Earnings and/or pricing based on average dollar amount of issued items and number of days outstanding)	.00-.30
Deposit processing service:	
Unencoded check (per item)	(3) 0.06

DISTRICT 4.—FEDERAL HOME LOAN BANK OF ATLANTA (1989 DDA SERVICES)—Continued

Demand deposit service	Fee
Fed book-entry at Fed (per transaction)	2.25
Redemption of security:	
Bearer (per transaction)	20.00
Registered (per transaction)	30.00
DTC (per transaction)	10.00
PTC (per transaction)	0.00
Fed book-entry at Chase (per transaction)	6.00
Fed book-entry at Fed (per transaction)	0.00
Collection of principal and interest payments on mortgage-back securities:	
registered (per collection, per pool)	15.00
PTC (per collection, per pool)	2.50
Fed book-entry at Chase (per collection, per pool)	2.00
Fed book-entry at Fed (per collection, per pool)	.50
Account maintenance (per month)	10.00
Transfer security from one account to another account/pledge:	
Physical form (per transaction)	5.00
Book entry (per transaction)	5.00
Retail-recp custodial service (per month)	30.00
Issue safekeeping:	
Bearer with coupons (per month, per issue)	4.00
registered (per month, per issue)	3.00
Fed book-entry at Fed (per month, per issue)	1.00
Fed book-entry at Chase (per month, per issue)	1.50
DTC (per month, per issue)	1.75
PTC (per month, per issue	2.00
Money market (per month, per issue)	2.50
GNMA registered (per month, per issue)	4.50
Market value pricing (per month)	50.00
Corporate actions:	
Calls, tenders, conversions (per transaction)	50.00
Stock dividends, stock splits (per transaction)	24.00
Delivered collateral	(5)

OFFICIAL CHECKS

Settlement day option	Per item charge	Earnings incentive [6]
Same day	$0.30	0.00
Next day	.30	0.00
Second day	.30	0.00
Third day	.30	0.00
Fourth day	.30	0.00
Fifth day	.30	0.00
Sixth day	.30	0.00
Seventh day	.30	0.00
Eighth day	.30	0.00
Ninth day	.30	0.00
Tenth day	.30	0.00
Eleventh day	.30	0.00
Twelfth day	.30	0.00
Thirteenth day	.30	0.00
Fourteenth day	.30	0.00
Fifteenth day	.30	0.00
Sixteenth day	.30	0.00
Seventeenth day	.30	0.00
Eighteenth day	.30	0.00
Nineteenth day	.30	0.00
Twentieth day	.30	0.00
Twenty-first day	.30	0.00
Twenty-second day	.30	0.00
Twenty-third day	.30	0.00
Twenty-fourth day	.30	0.00
Twenty-fifth day	.30	0.00
Twenty-sixth day	.30	0.00
Twenty-seventh day	.30	0.00
Twenty-eighth day	.30	0.00
Twenty-ninth day	.30	0.00
Thirtieth day	.30	0.00
Thirty-first day	.30	0.00
Thirty-second day	.30	0.00
Thirty-third day	.30	0.00
Thirty-fourth day	.30	0.00
Thirty-fifth day	.30	0.00
Thirty-sixth day	.30	0.00
Thirty-seventh day	.30	0.00
Thirty-eighth day	.30	0.00
Thirty-ninth day	.30	0.00
Fortieth day	.30	0.00
Forty-first day	.30	0.00
Forty-second day	.30	0.00
Forty-third day	.30	0.00
Forty-fourth day	.30	0.00
Forty-fifth day	.30	0.00
Forty-sixth day	.30	0.00
Forty-seventh day	.30	0.00
Forty-eighth day	.30	0.00
Forty-ninth day	.30	0.00
Fiftieth day	.30	0.00
Fifty-first day	.30	0.00
Fifty-second day	.30	0.00
Fifty-third day	.30	0.00
Fifty-fourth day	.30	0.00
Fifty-fifth day	.30	0.00
Fifty-sixth day	.30	0.00
Fifty-seventh day	.30	0.00
Fifty-eighth day	.30	0.00
Fifty-ninth day	.30	0.00
Sixtieth day	.30	0.00
Sixty-first day	.30	0.00
Sixty-second day	.30	0.00
Sixty-third day	.30	0.00
Sixty-fourth day	.30	0.00
Sixty-fifth day	.30	0.00
Sixty-sixth day	.30	0.00
Sixty-seventh day	.30	0.00
Sixty-eighth day	.30	0.00
Sixty-ninth day	.30	0.00
Seventieth day	.30	0.00
Seventy-first day	.30	0.00
Seventy-second day	.30	0.00
Seventy-third day	.30	0.00
Seventy-fourth day	.30	0.00
Seventy-fifth day	.30	0.00
Seventy-sixth day	.30	0.00
Seventy-seventh day	.30	0.00
Seventy-eighth day	.30	0.00
Seventy-ninth day	.30	0.00
Eightieth day	.30	0.00
Eighty-first day	.30	0.00
Eighty-second day	.30	0.00
Eighty-third day	.30	0.00
Eighty-fourth day	.30	0.00
Eighty-fifth day	.30	0.00
Eighty-sixth day	.30	0.00
Eighty-seventh day	.30	0.00
Eighty-eighth day	.30	0.00
Eighty-ninth day	.30	0.00
Ninetieth day	.30	0.00
Ninety-first day	.30	0.00
Ninety-second day	.30	0.00
Ninety-third day	.30	0.00
Ninety-fourth day	.30	0.00
Ninety-fifth day	.30	0.00
Ninety-sixth day	.30	0.00
Ninety-seventh day	.30	0.00
Ninety-eighth day	.30	0.00
Ninety-ninth day	.30	0.00
One hundredth day	.30	0.00
One hundred and first day	.30	0.00
One hundred and second day	.30	0.00
One hundred and third day	.30	0.00
One hundred and fourth day	.30	0.00
One hundred and fifth day	.30	0.00
One hundred and sixth day	.30	0.00
One hundred and seventh day	.30	0.00
One hundred and eighth day	.30	0.00
One hundred and ninth day	.30	0.00
One hundred and tenth day	.30	0.00
One hundred and eleventh day	.30	0.00
One hundred and twelfth day	.30	0.00
One hundred and thirteenth day	.30	0.00
One hundred and fourteenth day	.30	0.00
One hundred and fifteenth day	.30	0.00
One hundred and sixteenth day	.30	0.00
One hundred and seventeenth day	.30	0.00
One hundred and eighteenth day	.30	0.00
One hundred and nineteenth day	.30	0.00
One hundred and twentieth day	.30	0.00
One hundred and twenty-first day	.30	0.00
One hundred and twenty-second day	.30	0.00
One hundred and twenty-third day	.30	0.00
One hundred and twenty-fourth day	.30	0.00
One hundred and twenty-fifth day	.30	0.00
One hundred and twenty-sixth day	.30	0.00
One hundred and twenty-seventh day	.30	0.00
One hundred and twenty-eighth day	.30	0.00
One hundred and twenty-ninth day	.30	0.00
One hundred and thirtieth day	.30	0.00
One hundred and thirty-first day	.30	0.00
One hundred and thirty-second day	.30	0.00
One hundred and thirty-third day	.30	0.00
One hundred and thirty-fourth day	.30	0.00
One hundred and thirty-fifth day	.30	0.00
One hundred and thirty-sixth day	.30	0.00
One hundred and thirty-seventh day	.30	0.00
One hundred and thirty-eighth day	.30	0.00
One hundred and thirty-ninth day	.30	0.00
One hundred and fortieth day	.30	0.00
One hundred and forty-first day	.30	0.00
One hundred and forty-second day	.30	0.00
One hundred and forty-third day	.30	0.00
One hundred and forty-fourth day	.30	0.00
One hundred and forty-fifth day	.30	0.00
One hundred and forty-sixth day	.30	0.00
One hundred and forty-seventh day	.30	0.00
One hundred and forty-eighth day	.30	0.00
One hundred and forty-ninth day	.30	0.00
One hundred and fiftieth day	.30	0.00
One hundred and fifty-first day	.30	0.00
One hundred and fifty-second day	.30	0.00
One hundred and fifty-third day	.30	0.00
One hundred and fifty-fourth day	.30	0.00
One hundred and fifty-fifth day	.30	0.00
One hundred and fifty-sixth day	.30	0.00
One hundred and fifty-seventh day	.30	0.00
One hundred and fifty-eighth day	.30	0.00
One hundred and fifty-ninth day	.30	0.00
One hundred and sixtieth day	.30	0.00
One hundred and sixty-first day	.30	0.00
One hundred and sixty-second day	.30	0.00
One hundred and sixty-third day	.30	0.00
One hundred and sixty-fourth day	.30	0.00
One hundred and sixty-fifth day	.30	0.00
One hundred and sixty-sixth day	.30	0.00
One hundred and sixty-seventh day	.30	0.00
One hundred and sixty-eighth day	.30	0.00
One hundred and sixty-ninth day	.30	0.00
One hundred and seventieth day	.30	0.00
One hundred and seventy-first day	.30	0.00
One hundred and seventy-second day	.30	0.00
One hundred and seventy-third day	.30	0.00
One hundred and seventy-fourth day	.30	0.00
One hundred and seventy-fifth day	.30	0.00
One hundred and seventy-sixth day	.30	0.00
One hundred and seventy-seventh day	.30	0.00
One hundred and seventy-eighth day	.30	0.00
One hundred and seventy-ninth day	.30	0.00
One hundred and eightieth day	.30	0.00
One hundred and eighty-first day	.30	0.00
One hundred and eighty-second day	.30	0.00
One hundred and eighty-third day	.30	0.00
One hundred and eighty-fourth day	.30	0.00
One hundred and eighty-fifth day	.30	0.00
One hundred and eighty-sixth day	.30	0.00
One hundred and eighty-seventh day	.30	0.00
One hundred and eighty-eighth day	.30	0.00
One hundred and eighty-ninth day	.30	0.00
One hundred and ninetieth day	.30	0.00
One hundred and ninety-first day	.30	0.00
One hundred and ninety-second day	.30	0.00
One hundred and ninety-third day	.30	0.00
One hundred and ninety-fourth day	.30	0.00
One hundred and ninety-fifth day	.30	0.00
One hundred and ninety-sixth day	.30	0.00
One hundred and ninety-seventh day	.30	0.00
One hundred and ninety-eighth day	.30	0.00
One hundred and ninety-ninth day	.30	0.00
Two hundredth day	.30	0.00

DISTRICT 4.—FEDERAL HOME LOAN BANK OF ATLANTA (1989 DDA SERVICES)—Continued

Demand deposit service	Fee
Encoded checks (per item)	[2] .04
Foreign checks (per item)	5.00
Bond coupons (per envelope)	3.50
Deposited checks returned (per entry)	2.00
Automated clearinghouse (ACH) Service:	
Originating—$15.00 per tape plus (per item)	.07
Receiving—$100.00 settlement per months plus (per item)	.05
Settlement only services:	
Automated clearinghouse (ACH) (per month)	100.00
Currency and coin (per month)	100.00
Deposit of items at Fed (per month)	100.00
NOW (per month)	100.00
Multiple settlement services discount:	
1 Service	100.00
2 Services (10%)	180.00
3 Services (15%)	255.00
4 Services (20%)	320.00
Other Settlement Services:	
Treasury tax and loan (TT&L) (per entry)	3.50
Savings bonds (per entry)	3.50
Non-cash collections (per entry)	3.50
Currency and coin service (per order)	3.50
Audit confirmations (per request)	15.00

[1] The checks paid charge includes at no additional charge: monthly account maintenance, internal transfers, and special statement drops.
[2] A Without Entry Item is a check which is sent back to the depositing institution to, secure proper endorsement or obtain a refund for forged endorsement or signature.
[3] Federal Reserve charges are reflected in these prices. Any changes in Federal Reserve prices may result in adjustments to those prices.

Notes:

Overdrafts incur a penalty calculated at 4% over the current short-term variable advance rate, with a minimum charge of $50.00 per occurrence.
Check printing costs are charged directly to the institution.
Special research requests of 12 or more items will be charged at $30 per manhour plus $1 per item.
Magnetic tapes sent to members and not returned to the Bank within 90 days will be billed at $12.00 per tape.

DISTRICT 5.—FEDERAL HOME LOAN BANK OF CINCINNATI (1989 DDA SERVICES)

Demand deposit account services	Per item charge
Paid items	$0.085
Magnetic tape reconciliation	.045
Advice reconciliation	.050
Fine sorting	.01
Check and money order truncation	([1])
Stop payments	6.00
Wire transfer-in	2.00
Wire transfer-in—Telephone confirmation	3.00
Wire transfer-out	5.00
Charges	.15
Credits	.15
Photocopies	1.00
Large dollar return notification	2.00
Settlement agent with Federal Reserve:	
ACH (per active month)	100.00
Treasury tax and loan (per active month)	100.00
Bond activity (per active month)	100.00
Currency and coin (per active month)	100.00
Check deposit activity (per active month)	300.00
Security purchases (per active month)	100.00
Check deposit returns only (per active month)	50.00
NOW activity (per active month)	300.00
Credit card activity (per active month)	100.00

ALTERNATIVE DISBURSEMENT SERVICE

Settlement day option	Per item charge
MONEY ORDERS/DIVIDEND CHECKS	
1-day	$0.09
2-day	0.07
Tuesday weekly	0.13

OFFICIAL CHECKS

Settlement day option	Per item charge	Earnings incentive [4]	
		Under 10,000 checks/month	10,000 plus checks/month
1-day guaranteed	$0.01	1.5 days	2.5 days
1-day variable	0.01	75 percent of float balance	95 percent of float balance.
2-day guaranteed	0.03	0.25 day	0.50 day
2-day variable	0.03	50 percent of float balance	80 percent of float balance.

SPECIAL TRANSFER ACCOUNT

Settlement day option	Per item charge
If checks are needed to transfer member's balances to other demand accounts or to satisfy internal bookkeeping requirements, the following Alternative Disbursement option is provided:	
2-day	$0.10

CHECK DEPOSIT SERVICE

Cincinnati Operations Center	Fee	
	Unencoded	Encoded
Cincinnati City	$0.0250	0
Cincinnati RCPC (Special)	.0250	0
U.S. Treasury	.0250	0
Cincinnati RCPC	.0450	$0.0325
Columbus City/RCPC	.0475	.0350
Louisville City/RCPC	.0475	.0350
Other FRB (1-day)	.0625	.0700
Other FRB (2-day)	.0925	.0800

Discount	Monthly volume range
Volume discounts on all items when total deposited items fall within below listed categories:	
7.5 percent	100,001–200,000.
15.0 percent	200,001 and over.

	Per item charge
Additional services:	
Photocopy (per item)	$1.00
Dishonored item return by bank (per item)	.25
Large dollar return notification (per item)	2.00
Non-cash collection service—minimum:	
Non-cash item (per item)	5.00
Security coupon collection (per envelope)	5.00
Coupon return item (per item)	10.00
Foreign item (per item)	5.00
Food Stamp cash letter (per cash letter)	1.00
Municipal bonds (per item)	5.00
Savings bonds	([5])
Government coupons	([5])
Depository transfer checks (DTC) (per item)	5.00
Cash letter fee (per letter)	([5]).50

CHECK DEPOSIT SERVICE

Cleveland Operations Center	Fee	
	Unencoded	Encoded
Cleveland City/RCPC (Special)	$0.0250	$0.0150
U.S. Treasury	.0250	.0150
Cleveland City	.0425	.0300
Cleveland RCPC	.0475	.0325
Columbus City/RCPC	.0475	.0350
Other FRB	.0800	.0675

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Discount	Monthly volume range
Volume discounts on all items when total deposited items fall within below listed categories:	
7.5 percent	100,000-200,000.
15.0 percent	200,001 and over.

	Per item charge
Additional services:	
Photocopy (per item)	$1.00
Dishonored item return by bank (per item)	.25
Large dollar return notification (per item)	2.00
Non-cash collection service—minimum:	
Non-cash item (per item)	5.00
Security coupon collection (per envelope)	5.00
Coupon return item (per item)	10.00
Foreign item (per item)	5.00
Food Stamp cash letter (per cash letter)	1.00
Municipal bonds (per item)	5.00
Savings bonds	([6])
Government coupons	([7])
Depository transfer checks (DTC) (per item)	5.00
Cash letter fee (per letter)	([8]).50

Check Deposit Service

Nashville Operations Center	Fee	
	Unencoded	Encoded
Nashville City	$0.0375	$0.0250
Nashville RCPC	.0450	.0325
U.S. Treasury	.0275	.0150
Nashville NOW On-Us	.0275	.0150
DDA On-Us	.0275	.0150
Louisville RCPC([9])	.0675	.0650
Other FRB	.0775	.0650

Discount	Monthly volume range
Volume discounts on all items when total deposited items fall within below listed categories:	
7.5 percent	100,001-200,000.
15.0 percent	200,001 and over.

	Per item charge
Additional services:	
Photocopy (per item)	$1.00
Dishonored item return by bank (per item)	.25
Large dollar return notification (per item)	2.00
Non-cash collection service—minimum:	
Non-cash item (per item)	5.00
Security coupon collection (per envelope)	5.00
Coupon return item (per item)	10.00
Foreign item (per item)	5.00
Food Stamp cash letter (per cash letter)	1.00
Municipal bonds (per item)	5.00
Savings bonds	([10])
Government coupons	([11])
Depository transfer checks (DTC) (per item)	5.00
Cash letter fee (per letter)	([12]).50

Currency and coin service	Fee
MEMBERS IN KENTUCKY & OHIO	
Preparation charge:	
Currency for members in northern Ohio (per order)	$10.00
Currency for members in Kentucky and southern Ohio (per order)	9.25
Wrapped coin (per box)	2.00
Deposits of coin and currency:	
Strapped currency (per strapped deposit)	5.00
Currency (per mixed or unfilled straps)	6.00
Coin-loose (same denomination) (per bag)	2.00
Coin-loose (mixed denomination) (per bag)	4.00
Coin-wrapped (same denomination) (per bag)	4.00
Coin-wrapped (mixed denomination) (per bag)	8.00

Currency and coin service	Fee
MEMBERS IN NASHVILLE AND MEMPHIS FEDERAL RESERVE TERRITORIES	
Preparation charge:	
Currency and/or loose coin (per order)	2.00
Wrapped coin for members in the Nashville FRT (per roll)	.0375
Pick-up of currency and coin (per occurrence)	1.00
Safekeeping service	
Receive or deliver (per transaction):	
Book entry	10.00
Physical	35.00
Redemption (per transaction):	
Book Entry	15.00
Physical	30.00
Interest coupons (per transaction)	4.00
Pledges (per transaction):	
Book entry	15.00
Physical	25.00
Account maintenance (per month)	20.00
Safekeeping account maintenance (per month)	25.00
Retail repurchase account maintenance (per month)	15.00
Contemporaneous reserve settlement (per month)	50.00
LOCKBOX SERVICES	
OCR standard item fee	.15
Includes:	
Courier pickup at lockbox.	
Microfilming of check and document.	
Transmission to service bureau.	
Management reports.	
Check deposit fee (encoding and clearing).	
Certain exception handling.	
ADDITIONAL SERVICES	
Lockbox rental	([13])
Photocopies (per copy)	1.00
Hot file update (add or delete) (per update)	.50
Hot file update (magnetic tape) (per tape)	10.00
Courier/postage	([14])
Dishonored item returned by bank (per item)	.25
Reject or unmatched item	([15])
Other desired services	([16])
Large dollar return notification (per item)	2.00

[1] No charge.
[2] The earnings incentive is a monthly interest payment credited directly to the members's demand account. The interest rate is 10 basis points above the average 91-day Treasury Bill rate.
[3] No charge.
[4] No charge.
[5] $.25 per "Cash Letter" when depositing over 100,000 items per month.
[6] No charge.
[7] No charge.
[8] $.25 per "Cash Letter" when depositing over 100,000 items per month.
[9] Louisville RCPC items deposited within a mixed cash letter by 7:00 p.m. Monday-Thursday.
[10] No charge.
[11] No charge.
[12] $.25 per "Cash Letter" when depositing over 100,000 items per month.
[13] Actual cost.
[14] Actual outgoing.
[15] No fee.
[16] Cost basis.

Notes:
IFTS Interest—Members' daily collected funds in excess of their compensating balance automatically IFTS interest.
For transportation charge, please contact the Bank for specific fee relative to the member's area. ATM lit money for Northern Ohio is available at a slightly higher fee.
Members can pay the above DDA service fees explicitly or implicitly through a compensating balance.

District 6.—Federal Home Loan Bank of Indianapolis (1989 DDA Services)

Cash management service	Paid check charge	Advices	
		Paper	Tape
Stop payments (per stop)	$6.00	Photocopies (per copy)	$2.50
Collected balances will earn at cash management service daily posted rate.		Fine sort numeric sequences (per item)	.016

Other services	Michigan	Indiana
Transit item deposit service:		
Pre-encoded—Government PMO's, NOW intercept	$0.019	

Other services	Michigan	Indiana
City items	.027	.027
RCPC items	.027	.027
Other (Outside) Items	.052	.052

Services	Fee
Per year or	250.00
Per statement	1.00

Other services	Michigan	Indiana
City items	.027	.027
RCPC items	.027	.027
Other district items	.056	.060
Unencoded:		
City items	1.00	1.00
RCPC items	1.00	1.00
O. D. items	1.00	1.00
Other fees:		
Photocopies	2.50	2.50
Adjustment on pre-encoded work	2.75	2.75
Return items	1.00	1.25
Bonds and coupons handling fee	4.75	5.25
Settlement only (per month plus $3.00 per journal entry)	100.00	100.00
Cash letter	1.00	.50
Deposit adjustment	.30	.30
Collection items	5.00	5.00
Food Stamp adjustment fee	2.50	
Foreign items (separate cash letter)	.35	.35
Foreign item (mixed cash letter)	.35	.35
Foreign item adjustment fee	1.00	
Lockbox services:		
Truncation deposit items	.029	.029
Untruncated deposit items	.027	.027
Coin and currency Program:		
Metropolitan areas of Indianapolis and Detroit— per delivery by armored truck service	27.50	29.00
Outside metropolitan areas—fees vary depending upon the distances involved (per delivery by armored truck service		45.00
Rolled coin (per roll)	.035	
Returns (per deposit)	3.00	6.00
Order (member uses own courier)		15.00
Wire transfer services:		
In (per transfer) domestic	2.50	
Out (per transfer) domestic	5.00	
International wires	25.00	
Depository transfer checks: (per check)	2.00	
Automated clearinghouse (ACH) service:		
Per tape	7.00	
Per item (originator)	.02	
Settlement only	50.00	
MACHA, INDEX	(1)	
Treasury tax and loan settlement service: Per transaction	2.00	
Charge card transaction: Per transaction	1.50	
Mortgage remittance:		
Untruncated	[2] .270	
Truncated	[2] .290	

[1] The higher of $2.00 or actual costs.
[2] Varies by service level.

District 7.—Federal Home Loan Bank of Chicago (1989 DDA Services)

Monthly volume	Non-truncated accounts	Truncated accounts
A. Demand accounts:		
Items processed:		
0 to 7,500	$0.110	$0.090
7,501 to 10,000	.100	.080
10,001 to 12,500	.090	.070
12,501 to 15,000	.080	.060
15,001 to 25,000	.075	.055
25,001 and over	.070	.050

Services	Fee
Alternative demand disbursement service:	
800 series—next day remittance	(1)
900 series—three day remittance (per item issued)	$0.050
Ancillary services fees:	
Special sorts (per item)	.010
Reconciliation:	
Non-encoded items (per item)	.070
Encoded items (per item)	.020
Magnetic tape items (per item)	.020
Stop payments (per stop placed)	12.00
Photocopies (per item)	3.00
Account maintenance (per account per month)	20.00
Additional statements (per statement)	10.00
Request for money order forms	(1)
Postage/Courier	(1)
Dial-A-Statement:	
Per month or	25.00

Services	Fee
Per year or	250.00
Per statement	1.00
B. Deposit processing:	
Checks deposit drawn on:	
Federal Home Loan Bank of Chicago:	
FHLB intercept customers.	
Postal money orders	0.015
U.S. Treasury check	0.015
City of Chicago financial institutions:	
0–10,000	.030
10,001–25,000	.028
25,001 and over	.026
Non-Federal Reserve Chicago RCPC (clearinghouse items):	
0–10,000	.036
10,001–25,000	.034
25,001 and over	.032
Chicago RCPC financial institutions (Routing Numbers 0711, 0712, 0719, 2711, 2712, 2719):	
0–10,000	.048
10,001–25,000	.046
25,001 and over	.044
Transit items—other Federal Reserve District financial institutions:	
0–10,000	.075
10,001–25,000	.073
25,001 and over	.071
Selected high dollar endpoints	.500
Other services:	
CMS information requests by phone (per call)	1.50
Bank confirmation (each)	5.00
Programming rate (per hour)	40.00
Emergency processing:	
Initial fee	2,000.00
Monthly retainer	250.00
Activation fee	500.00
Per item fee	(1)
Ancillary service fees: Check encoding (per item)	.050
Return items:	
Deposits tickets	(1)
Charge backs (per item)	2.00
Noncash collection items:	
Coupons (per envelope) plus registered mail costs)	6.00
Foreign items (per item plus collection cost	7.50
Food Stamps deposited (per item)	.020
Coin and currency orders (per order/per branch)	3.00
Postage/Courier	(1)

	Encoded items	Non-encoded items
Minneapolis region:		
City and local	$0.0275	$0.0227
Regional RCPC	.0395	.0227
Regional premium	.0525	.0227
County	.0435	.0227
Transit	.0725	.0227
St. Louis region:		
City and local	$.0345	$.027
Regional RCPC	.0375	.027
Regional premium	.0425	.027
County	.0400	.027
Transit	.0745	.027

Services	Fee
C. Money transfers:	
Wire transfers:	
Wire-in	$4.00
Repetitive out	5.00
Wire-out	7.00
In-with call advice	7.00
International surcharge	25.00
ACH originations (per month)	40.00
Customer direct access:	
CDA-in	3.00
CDA-out	3.00
CDA access fee (per month)	50.00
Quick deposit drafts: Quick drafts	6.00

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Services	Fee
D. Safekeeping:	
Receipt or delivery:	
Book entry item	40.00
Physical item	50.00
FMNA/FHLMC P&I Coupon collection	5.00
Collection at Maturity	(*)
Annual maintenance (billed quarterly):	
Par amount under $5 million	200.00
Par amount $5 million or over (per million)	45.00
Monthly reports	(*)
Registration fees	(*)
Transfer to or from pledge status	50.00
Maintenance of collateral for FHLB advances:	
Place note and mortgage in vault:	
Deliver with listing only	2.00
Delivery with listing and computer tape	2.00
Remove note and mortgage from vault	2.00
Annual maintenance charge (per quarter)	4.00

[1] No charge.
[2] Actual cost.
[3] Standard per item fee charged at lowest volume level. Relationship pricing discount not applicable.
[4] Actual cost.
[5] No charge.
[6] Actual cost.

Notes: The FHLBC reimburses a maximum of $50.00 per thousand for the institutions' check printing for alternative demand disbursement service. A copy of the bill for the check order must be received by the FHLBC within 90 days of invoice date in order to receive payment.

District 8.—Federal Home Loan Bank of Des Moines (1989 DDA Services)

DDA Service Activity	Fee
Account Maintenance	$6.00
Account Reconciliation	6.00
Check Printing Costs	(1)
Drafts Paid:	
Truncated	.045
Non-Truncated	.055
Controlled Disbursement	.080
Stop Payments	7.00
Ledger Credits	.30
Ledger Debits	.20
Bankwires In:	
With Phone Advice	3.00
Bankwires Out:	
Without Phone Advice	4.00
With Phone Advice	6.00
Special Cut-off Statements	3.00
Account Reconciliation Tape Issues	.02
Issue Encoding	.045
Pre-encoded Issues	.030
ACH Transactions:	
Fed Charges	(1)
Settlement Charges	.500
Miscellaneous Charges/Special Processing	(1)
Coupons Deposited (per envelope)	3.00
Collections:	
Foreign Checks	3.00
Domestic Checks	3.00
Proof of deposit service	
Entry Fee for all items	.003
Re-enter Rejects	.04
Data Transmission (per transmission)	1.50
Fine Sort "on-us" items	.005
Printed Reports—Standard (per report)	1.00
Plus (per page)	.05
Optional	(*)
Plus (per page)	.05
Minimum monthly billing	40.00
Facsimile Transaction (per transmission)	1.50
Account Transaction Info. (per call)	1.00
Miscellaneous Charges/Special Processing	(*)

Deposit Processing Fee Schedule

	Encoded	Package Sort
Check Clearing Fees:		
a. Des Moines Center:		
Local	$.025	
Regional	.035	
Regional—Premium	.040	
Transit	.0525	
b. Minneapolis Center:		
Local	.020	
Regional	.032	
Regional—Premium	.045	
Country	.036	
Transit	.065	
c. St. Louis Center:		
Local	.027	.018
Regional	.030	.023
Regional—Premium	.035	NA
Country	.0325	.027
Transit	.067	.063

	Fee
Other fees at the Des Moines, Minneapolis, and St. Louis Regional Processing Centers:	
Encoding Fee—St. Louis	$.025
Encoding Fee—Des Moines or Minneapolis	.0225
Return Item Processing:	
Return Items	.75
Large Dollar Notification (Reg. J) (per item)	3.00
Special Handling:	
Subtotal by office	1.50
Individual Entries (per entry)	.50
Telephone Notification Less Than $2,500 (per item)	.60
Balance/Availability Reporting (per month)	30.00
Endpoint Analysis (per day)	20.00
Non-Processable Items (Pre-Encoded) (per item)	.15
Photocopies (per copy)	2.75
Research (per hour)	30.00
Currency/Coin Orders—St. Louis	4.00
Currency/Coin Orders—Des Moines or Minneapolis	2.00
Foreign Currency Deposits (per deposit)	5.00
Foreign Currency Orders (per order)	2.50
Per Cash Deposit (Credit Tickets):	
Standard Packaging	.50
Non-Standard Packaging	10.00
Special Cash Orders/Deposits	(*)
Food Coupons—Des Moines or St. Louis	.02
Food Coupons—Minneapolis	.04
Federal Reserve Bank Settlement Entries (per entry)	.50
Additional Services (St. Louis Center):	
Package Sort:	
Local	.018
Regional	.023
Country	.027
Transit	.063

Deposit Processing Fee Schedule—Kansas City Center

	Less than 20,000	20,001–50,000	50,001–100,000	100,001–200,000	Greater than 200,001
Deposit Item Charges:					
Local Items—1010, 3010, 0000—Select 2865, 3012	$.019	$.019	$.017	$.017	$.017
Country Items 1011, 1012, 1019, 0865, 2865—Select 2815, 2810	.029	.029	.029	.028	.028
Regional Items—Other FRB Select	.057	.055	.055	.052	.047
Transit Items—Other FRB	.079	.075	.069	.067	.063
Special Package Sort of Transit Items Only ($2.00 per package plus)	.085	.085	.085	.079	.079
Encoding Charge	.025	.025	.0225	.0225	.020
Return Items	.075	.075	.075	.065	.065

Other services at Kansas City Regional Center	Fee

Lockbox service	Fee
11. Process Cash Payment (each)	5.00

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Other services at Kansas City Regional Center	Fee
Return Items:	
Special Handling	$1.50
Subtotal by office	.50
Individual Entries (per entry)	.60
Telephone Notification Less Than $2,500 (per item)	3.00
Large Dollar Notification (Reg. J) (per item)	3.00
Collection/Settlement Service:	
Treasury/Municipal Coupons (per envelope)	3.00
Treasury/Municipal Bonds (per bond)	3.00
Other Collections (per item plus actual charges)	3.00
Federal Reserve Settlement Entries (per entry)	.50
Cash Services:	
Currency/Coin orders (per order)	3.00
Special orders (per order plus actual charges)	3.00
Foreign Currency orders (per order)	5.50
Currency/Coin Deposits:	
Standard Packaging (per deposit)	.50
Non-standard Packaging (per deposit)	10.00
Foreign Currency Deposits (per deposit)	5.00
Balance/Availability Reporting (per month)	30.00
Endpoint Analysis (each, over two per year)	30.00
Photocopies/Microfilm copies (per copy)	2.75
Audit (the lesser of: $2.75 per copy) (or $20 per hour plus per copy)	.50
Research (per hour)	20.00

Statement Rendering Service	Fee
Statement Per Month—Non-Truncated:	
First 5,000	.18
Next 5,000	.165
Over 10,000	.15
Statement Per Month—Truncated	.05
Statement Inserts	.005
Other Mailings	.05
Surcharge for One Cycle Per Month (percentage)	10
Fine sort counter items for statement insertion	.005
Sort counter items without MICR	.02
Courier Postage and Envelopes	.(*)
Pre-Sort Only (per item)	[6].02
Pricing to Forward Cycle Items to Data Processor for Statement Handling	
Insertion of Trigger/Separator Tickets:	
Sorting (per item)	.003
Trigger Ticket Expense (per account)	.012
Insertion of Rejects (per reject)	.040
Photocopies of Missing Items (per copy)	2.75
Courier, Postage, and Boxes	(*)
Monthly Fee for Special Handling (per cycle with a minimum fee of $75)	25.00

Lockbox service	Fee
1. Basic Service(*):	
Mortgage	$.12-.25
Consumer	.09-.15
Retail-Commercial	.07-.15
Wholesale-Commercial	.15-.55
Credit Card	.07-.15
Data Capture and Transit	.015-.030
2. Item Preparation Charge; Data Entry (per item)	.05
3. Microfilm Remittances and/or Checks (per item)	.01
4. Credit/Posting Advice (per advice)	.25
5. Photocopies:	
Recurring (per copy)	.05
On Request (per copy)	.25
6. Facsimile Transmissions:	
Recurring (per page)	.85
On Request (per page)	1.50
7. Microfilm Copies (per copy)	2.75
8. Payment Discounts Calculated (per discount)	.25
9. Telephone Inquiry or Notification (per call)	1.00
10. Foreign Item Processing:	
U.S. Dollars (per check)	.75
Foreign Currency (per check)	3.50

Lockbox service	Fee
11. Process Cash Payment (each)	5.00
12. Daily Reporting (monthly charge)	50.00
13. Courier/Postage	(*)
14. Storage (Envelopes and remittance material retained unsorted for 14 days and destroyed)	(*)
15. Minimum Monthly billing (excluding actual charges)	175.00
16. New Account Set-up[15]	50.00-500.00
17. Special Services	[11]

Automated Clearing House ("ACH") Fee Schedule	Fee
ACH Pass-Through	[16]
Receiver Service:	
Tape Pick-up	$1.25
Per Item on Tape:	
Local DB/CR	.01
Out-of-State DB/CR	.01
Prenotes	.01
Addendas	.01
Warehousing	.0025
FRB/ACH Pass-Through	[13]
Reformatted Tape	10.00
FRB/ACH Settlement (per entry)	.50
Origination Service:	
Set-up New Account (one time charge)	50.00
Formatted Tape	10.00
Reformatted Tape	10.00
Per Item on Tape (ACH origination fee plus per item)	.05
Paper Input:	
Monthly Maintenance	20.00
Data Entry Per Item (ACH origination fee plus per item)	.25
Day Cycle Deposit Charge:	
Local DB/CR	.055
Out-of-State DB/CR	.055
Prenotes	.055
Addendas	.055
Night Cycle Deposit Charge Premium:	
Local DB/CR	.07
Out-of-State DB/CR	.07
Prenotes	.07
Addendas	.07
Warehousing Per Item	.025
Originator Volume Discount Monthly:	
5,000 to 20,000	.005
20,000 and over	.01
Return Items	1.00
Transportation Charges	[17]
Special Service/Handling	[17]
Telephone Advice:	
Per Call	2.00
Miscellaneous	[14]
Visa/Mastercard Processing Service	
Monthly Settlement (Merchant Program, Cardholder Program, or both)	55.00
Sales Drafts and Cash Advance Tickets Deposited	.01
Adjustments, Returns, Corrections, Income Distributions (All Entries)	.50

[1] Actual cost. [2] At a quoted rate. [3] Actual cost.
[4] Standard order fee plus actual charges. [5] Actual cost. [6] The Pre-Sort Only fee for the St. Louis Regional Center is .015 per item.
[7] Open envelope; screen per instructions; and verify payee, signature and amount. Record date on check, remittance, envelope or correspondence as requested. Balance checks to remittances and post credits to account specified. A specific fee is negotiated in the ranges shown above depending upon the number and degree of difficulty of task requirements of individual members. Data Capture and Transit includes use of derogatory file as required. Rejects are pulled, balanced, and return per instructions.
[8] Actual cost. [9] Beyond 14 days price negotiated. [10] A one time charge. [11] Price negotiated.
[12] Actual. [13] Negotiated rate. [14] Actual.

NOTES: Refer to the Deposit Processing Fee Schedule for deposited item charges and encoding fees.
Associations that have changed Data Processors and have more than one MICR account number corresponding to one statement account number are subject to additional fees.
Visa/Mastercard Processing Service fees will be charged through the members' account analysis.

DISTRICT 9.—FEDERAL HOME LOAN BANK OF DALLAS (1989 DDA SERVICES)

Demand deposit account service	Fee
Checks/money orders paid:	
Checks cycled (per item)	$.15
Checks truncated (per item)	.13
Reconciliation of check/money order:	
Magnetic tape (per item)	.02
MICR (per item)	.07

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DISTRICT 9.—FEDERAL HOME LOAN BANK OF DALLAS (1989 DDA SERVICES)—Continued

Demand deposit account service	Fee
Fine sort (per item)	.006
Credits/adjustments (per item)	(1)
Wire transfer:	
In	2.00
Out	4.00
Stop payments (per item)	5.00
Exception item return (per item)	2.50
Depository transfer checks (per item)	4.00
Photocopy (per item)	2.50
Account maintenance (for accounts with more than 1,000 transactions per month) (per association)	25.00
Voids	(1)
Credits/adjustments	(1)
Account activity reporting	(2)
Checks/money order forms (above standard check)	(2)
Paid items mailed to association	(2)
Overdrafts (per daily occurrence and interest at special variable advance rate plus 3%)	50.00
Special research (per hour)	12.00

Deposit Processing Fees

	Dallas, Texas (except S.E.), N. Louisiana, New Mexico	New Orleans, S. Louisiana, S. Mississippi	Little Rock, Arkansas, N. Mississippi	VIA Memphis FED	Houston, Southeast Texas
Deposit items:					
Postal money orders, U.S. Treasury Checks (per item)	$.022	$.025	$.025	$.03	$.025
Local items (per item)	.022	.025	.025	.03	.025
RCPC items (per item)	.028	.025	.035	.03	.040
Other fed items (per item)	.065	.060	.0625	.07	.065
Encoding charge (per item)	.025	.025	.020	.025	.025
Returned items (per item)	1.50	1.50	1.50	1.50	1.50
Cash letter fee (per letter)				1.75	
Non-cash collection services:					
Security coupons (per envelope)	2.75	2.50	2.50	2.50	2.75
Food stamps and coupons (per deposit)	1.50	1.50	1.50	1.50	1.50
Foreign items (per item)	6.50	6.50	2.50	2.50	6.50
All others (drafts, etc.) (per item)	2.75	2.50	2.50	2.50	2.75

Coin and Currency Services Fee

Preparation and handling fees [4]:	
Delivery ($5.00 minimum):	
Coin (per roll)	$.10
Currency (per strap)	.50
Contsiner:	
Dallas, Houston, or San Antonio City	.50
All others, Texas, N. Louisiana and New Mexico	.37
Deposit [4] ($5.00 minimum):	
Coin (per bag)	.75
Currency (per strap)	.65
Emergency orders (additional per hour)	75.00
Security charge (per $1,000 delivered or deposited)	.18
Transportation charges (quoted per round trip for delivery, deposit, or both):	
Dallas, El Paso, Houston or San Antonio delivery (per shipment)	15.00
All other in Texas ($12.00 per stop or $22.00 per single) (plus per mile between Federal Reserve city and delivery point)	15
Rock Center deliveries	(5)
Arkansas or Northern Mississippi deliveries	(5)
New Orleans city delivery (one-way) (per shipment)	15.00
All other in Louisiana (per round trip from New Orleans based on Louisiana tariffs)	40.00–75.00
Southern Mississippi	(5)
Registered mail	(6)
Delay of armored carrier (per fifteen (15) minute interval or fraction thereof)	18.00

[1] No charge.
[2] Toll free by telephone.
[3] Actual costs.
[4] Customers in Northern Louisiana should call for quote.
[5] Call FHLBank for price quote.
[6] Actual postage cost.

DISTRICT 10.—FEDERAL HOME LOAN BANK OF TOPEKA (1989 DDA SERVICES)

DDA service	Fee
Demand deposit accounting:	
Full service demand plus accounting (includes automatic branch control reconciliation, reporting of full account activity) (per item)	
Cycle	5.15
Truncated	.12
Demand plus accounting (standard summary statement, must be able to process magnetic tapes) (per item)	
Cycle	.11
Truncated	.08
Large item return notification ($2,500 & over) (per item)	3.00
Wire transfers & reserves:	
Wire transfers	
Incoming (per item)	8.00
Outgoing (per item)	8.00
Pass-through reserves (per month)	25.00
Lockbox processing:	
Items per month	Fee per item
1–50,000	.15
50,001–80,000	.145
80,001–120,000	.14
120,001–160,000	.135
160,001–over	.13
Monthly processing fee	100.00
Photocopy retrieval (per item)	2.00
Exception item review/processing (each)	.07
Safekeeping charges:	
Interest payment fee	
Interest payments other than mortgage-backed principal and interest payments	(1)
Mortgage-backed principal and interest monthly payments (per advice)	2.50
Safekeeping account maintenance fee (per month)	(1)
Segregation and pledge activity fee	
Segregation account maintenance (per association—per month)	(1)
Joint custody, pledges to third party, pledges to the FHLB as collateral for advances, other pledges and segregation (per receipt and release per security)	10.00
Transaction fees	
Federal reserve book-entry eligible securities including treasuries, agencies, FNMA, FHLMC mortgage-backed certificates (per receipt and redemption)	2.50
MBSCC depository eligible GNMA mortgage-backed certificates (per receipt and redemption)	32.00
Physical securities; DTC eligible securities and book-entry New York federal reserve eligible securities (per receipt and redemption)	32.00

Processing Fees:	Kansas City Enc/Unenc	Oklahoma City Enc/Unenc	Topeka Enc/Unenc	Omaha Enc/Unend	Wichita Enc/Unenc	Denver Enc/Unenc
Deposit Processing:						
Local	$.02/.045	$.025/.043	$.02/.038	$.025/.043	$.02/.04	$.015/.033
RCPC	.03/.055	.038/.056	.039/.057	.036/.056	.025/.045	.033/.041
Country	.03/.055	.038/.056	.039/.057	.036/.056	.025/.045	.029/.047
Transit	.075/.10	.067/.085	.067/.085	.067/.08	.075/.095	.067/.085

Returns (per item)	$9.80
Collections (per item plus subsequent handling fees)	9.00
Coin and Currency (per phone call)	2.50
Courier and Armored Car Costs	(7)
Research & Mass Photocopy Requests ($12.00 per hour per item)	.15
Investor Fee Schedule:	
United States government, United States government agencies, mortgage-backed securities and consolidated mortgage obligations (percentage)	1/32 of 1%

[For discounted securities such as United States treasury bills, bankers acceptances, United States government agency discount notes and commercial paper, the following schedule will apply:]

Amount	Maturity	Basis point fee
Less than $500,000	90 days	10
	180 days	7
	360 days	5
$500,000–$1,000,000	90 days	7
	180 days	5
	360 days	3
$1,000,000–$3,000,000	All maturities	3

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[For discounted securities such as United States treasury bills, bankers acceptances, United States government agency discount notes and commercial paper, the following schedule will apply:]

Amount	Maturity	Basis point fee
$3,000,000-$5,000,000	All maturities	2

Service	Basis point fee
Domestic certificates of deposit and eurodollar certificates of deposit	5
Corporate notes	1/32 of 1%
Over-the-counter debt options	1/32 of 1%
Stripe and zero coupon bonds with a maturity of over seven years	3

[1] No charge.
[2] A monthly charge of 1/12 of 1/100 of 1 percent of per balance of the first $200 million of portfolio. A monthly charge of 1/12 of 1/200 of 1 percent on the balance over $200 million. Fee is calculated on the month-end per balance of each account. The fee is charged on the last day of the month.
[3] As charged.
Note: For the Investar Service a minimum fee of $35 will be charged per ticket.

DISTRICT 11.—FEDERAL HOME LOAN BANK OF SAN FRANCISCO (1989 DDA SERVICES)

Services	Fee
Out-Clearing Services	
Deposit Processing Services:	
Depository Service Charges (minimum charge)	$300.00
Deposit Processing:	
5:30 P.M. Deposit Deadline:	
Encoded Items deposited [1]:	
Mixed (per item)	.080
Group Sort (per item)	.125
Encoding Fee (per item)	.02
8:03 P.M. Deposit Deadline:	
Encoded Items Deposited:	
Twelve District (per item)	.05
Out of Region (per item)	.085
Encoding Fee (per item)	.015
10:30 P.M. Deposit Deadline:	
Encoded Items Deposited:	
Twelve District (per item)	.05
Out of Region (per item)	.085
Encoding Fee (per item)	.002
Other Charges:	
Deposit Ticket (per ticket)	1.10
Commercial Deposits (per ticket)	1.10
Returned Items (per item)	1.10
End-Point Deposit Analyses Reports (per month)	30.00
Monthly Account Maintenance (per account)	15.00
Photocopies (per copy)	3.00
Special Research (per hour)	30.00
Returning Bank Services:	
Mixed Cash Letter (each)	2.00
Raw Returns	.55
Notice of Nonpayment for Large Dollar Item	2.00
Large Dollar Item Cash Letter	[3]
Depository Return Processing (per item)	1.10
Collection Services:	
Clean Collection (per item)	7.50
Documentary Collection (per item)	15.00
Savings Bond (per transmittal)	7.50
Coupon Collection (per envelope)	15.00
Foreign Drafts [2]:	
Foreign Collection (per item)	20.00
Canadian Cash Letter (per item)	1.00
Canadian Return Item Notification (per item)	5.00
Returned Items (per item)	7.50
Food Coupons (per item)	.15
Collection Return Handling Fee (per item)	3.00
Coin and Currency Services:	
Furnished ($3.00 per order, plus)	.85
Currency (per $1,000)	.85
Coin (per roll)	.07
Deposited ($1.50 per deposit plus):	
Currency (per $1,000)	.90
Coin (loose, per roll)	.09
Other Charges:	
Late Cash Order (per order)	25.00
Coordination of Transportation (per branch)	12.00

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DISTRICT 11.—FEDERAL HOME LOAN BANK OF SAN FRANCISCO (1989 DDA SERVICES)—Continued

Services	Fee
Basic Account Services	
Monthly Account Maintenance:	
Regular Accounts (per account)	$15.00
Zero Balance Accounts (per account)	30.00
Checks Deposited (per item)	1.10
Items Returned (per item)	1.10
Daily Statements	[1]
Out-of-Cycle	7.00
ACH Debits/Credits (per settlement transaction)	0.25
Wires:	
Incoming (per wire)	7.00
Intra-day notification base charge of $50.00 monthly plus (per wire)	.25
Outgoing (per wire)	10.00
Immediate Advice (per wire)	10.00
Service (per wire)	6.00
Book Transfers (per transaction)	6.00
Passthrough Reserve Services (per month)	100.00
Overdraft Charges (minimum charge)	[1]
Account Reconcilement Services	
Fully Balanced Reconciliation:	
Account Maintenance (per month)	100.00
Checks Paid (per item)	0.13
Checks Paid-Truncated (per item)	0.08
Reconciliation Charge (per item)	0.015
Issue Input Method:	
MICR (per item)	0.115
Tape (per item)	0.055
Direct Transmission ($5.00 per transmission plus per item)	0.045
Partial Reconciliation:	
Account Maintenance (per month)	60.00
Checks Paid (per item)	0.13
Checks Paid-Truncated (per item)	0.08
Issue Input Method:	
MICR (per item)	0.115
Tape (per item)	0.055
Direct Transmission ($5.00 per transmission plus per item)	0.045
Miscellaneous Services:	
Fine Sort (per item)	0.045
Microfilm (per roll)	10.00
Magnetic Tape Output (paid checks) ($25.00 per tape, plus per item)	.02
Data Transmission ($5.00 per transmission, plus per item)	0.025
Stop Payment (per item)	7.50
Range Stops, less than 50 (per consecutive range)	25.00
Range Stops, greater than 50 (per consecutive range)	50.00
Microfiche Reports (per fiche)	9.00
Photocopies (per copy)	3.00
Basic Reconciliation:	
Account Maintenance (per month)	45.00
Checks Paid (per item)	0.115
Checks Paid-Truncated (per item)	0.065
Expanded DDA:	
Account Maintenance (per month)	30.00
Checks Paid (per month)	0.115
Checks paid-Truncated (per item)	0.065
Other Options:	
Special Statements (per statement)	5.00
Off-Cycle (per statement)	7.00
Optional Statement (per statement)	5.00
Special Research (per hour)	30.00
Mortgage Safekeeping Services	
FHLB Collateral:	
Deposits (per loan)	3.00
Withdrawals (per loan)	4.00
Reviews (per loan)	3.50
Custody Fee (monthly)	0.30
Local Agency Collateral:	
Deposits (per loan)	2.25
Withdrawals (per loan)	2.25
Reviews (per loan)	2.50
Custody Fee (monthly)	0.20
State Collateral:	
Deposits (per loan)	2.25
Withdrawals (per loan)	3.25
Reviews (per loan)	2.50
Custody Fee (monthly)	0.20
Other Collateral:	
Deposits (per loan)	2.25
Withdrawals (per loan)	2.25
Reviews (per loan)	2.50
Custody Fee (monthly)	0.15

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DISTRICT 11.—FEDERAL HOME LOAN BANK OF SAN FRANCISCO (1989 DDA SERVICES)—Continued

Services	Fee
Fees:	
Deposits (per loan)	$2.00
Withdrawals (per loan)	2.00
Reviews (per loan)	2.50
Custody Fee (monthly)	0.15
Other Fees:	
Local Agency Report Filing Fee (quarterly)	150.00
Minimum Transaction Fee	50.00
Other	(*)
Securities Safekeeping Services	
Deposits/Withdrawals/Maturities:	
Book Entry (per transaction)	15.00
Definitive (per transaction)	50.00
Pledging of Securities:	
Deposits/Withdrawals/Maturities:	
FHLB Securities	30.00
Local Securities	27.50
State and Repo Securities	25.00
Other Securities:	
Deposits (per transaction)	40.00
Withdrawals (per transaction)	25.00
Custody Fees:	
Book Entry (per month per issue)	1.00
Definitive (per month per issue)	2.50
Registration of Certificates	(*)
Special Handling	(*)
Local Agency Report Filing Fee (per quarter)	150.00
Account Maintenance (per month)	150.00
Lockbox Services	
Remittance Processing:	
Coupons ((per item)	.18
Exception Processing (per item)	.20
Check processing:	
Next Day Availability—8:30 p.m. availability schedule (per check)	.05
Same Day Availability—5:30 p.m. availability schedule (per check)	.065
Return Item Processing:	
Reclear (per item)	1.10
Returned Items (per item)	1.10
Account Maintenance (per month)	15.00
Reporting and Transfer Services	
Automated Balance Reporting (via terminal or PC):	
One-time Set-up fee, per account	25.00
Daily Balance Reporting:	
—(first account per month)	75.00
—(each additional account per month)	25.00
Automated Detail Transaction Reporting:	
One-time Set-up fee, per account	10.00
Daily Balance Reporting:	
—(first account per month)	45.00
—(each additional account per month)	10.00
—(plus per transaction reported)	.20
Voice Balance Reporting:	
Option 1—Includes Detail Daily Balance:	
—(first account per month)	175.00
—(each additional account per month)	100.00
Option 2—Balance Only of Daily Balance—(each account per month)	75.00
Automated Book Transfer Services:	
Monthly Maintenance (per member)	5.00
Automated Book Transfer (per transaction)	4.00
Corrections (per correction)	2.50
Implement Service or Charge Member Set-up (per transfer set-up)	10.00
Optional Services—Automated Book Transfer Report ($2.50 per report plus per field reported)	.10
Remittance Program	
Next Day Remittance (1 day):	
Issue input captured on-line:	
Greater than 40,000 items per month (per item)	.02
Less than 40,000 items per month (per item)	.05
Issue input captured off-line (per item)	.17
MICR copy-amount encoded (per item)	.18
MICR copy-amount not encoded (per item)	.19
Second Day Remitance (2 day):	
Issue input captured on-line (per item)	.10
Issue input captured off-line (per item)	.23
MICR copy-amount encoded (per item)	.24
MICR copy-amount not encoded (per item)	.25
Third Day Remittance (3 day):	
Issue input captured on-line (per item)	.17
Issue input captured off-line (per item)	.28
MICR copy-amount encoded (per item)	.29

DISTRICT 11.—FEDERAL HOME LOAN BANK OF SAN FRANCISCO (1989 DDA SERVICES)—Continued

Services	Fee
MICR copy-amount not encoded (per item)	$.30

[1] A mixed presentment is defined as a cash letter for which 33 percent of the total number of items represents end points other than the four direct send banks. If desired, the nondirect send portion of the group can be presented on a separate cash letter for processing against a more favorably priced deadline (i.e., 8:30).
[*] No charge.
[2] All Canadian items over $500 and all non-Canadian foreign items must be submitted as a foreign collection.
[3] No charge.
[4] Bank's Overnight Cash Needs Rate plus 2% (rate published by Bank's Credit Services Department). Minimum charge of $50.00
[5] At cost.
[6] At cost plus 20 percent.

NOTES: The Mortgage Safekeeping fee schedule provides for completion of the respective transaction within 8 business days of receipt by the Bank of required documentation (up to 1,000 Non-Bank transactions).
Remittance pricing includes reconcilement, stop payments, photocopies, check pricing on-line inquiries, and other unique features of the program.

DISTRICT 12.—FEDERAL HOME LOAN BANK OF SEATTLE (1989 DDA SERVICES)

Services	Fee
Official Checks, Money Orders and Cashier' Checks:	
Monthly account Maintenance (per account)	$15.00
Accounting funding:	
ACH cash concentration service (per transfer)	1.00
Wire transfers:	
One in and one out each day	(*)
Additional incoming wires (per wire)	2.00
Additional outgoing wires (per wire)	3.00
International wires (per wire)	22.50
Customer wires (per wire)	3.00
Inter-bank account transfers	(*)
Paid items:	
CheckOne account (per item)	.11
CheckOne-plus account ($25.00 per tape, plus)(per item)	.11
MasterOne account, mag tape input (per item)	.12
MasterOne account, check copy input (per item)	.14
Substandard MICR item manual posting (per item)	.24
Stop payments:	
Prior to 2:30 p.m. PST deadline (per stop)	7.00
After 2:30 p.m. PST deadline (per stop)	10.00
Photocopy research requests (per item)	1.50
Monthly account reconciliation (per account)	15.00
Microfiche statements (per account)	4.00
Large Dollar verifications:	
$10,000 endorsement verification	(*)
$100,000 signature verification	(*)
Miscellaneous and out of pocket expenses	(*)
Incoming collections (per item)	9.50
Securities safekeeping schedule:	
Monthly account maintenance (per account)	20.00
Monthly custody:	
Book entry (per security)	1.25
Physical securities, including MBSCC (per security)	3.25
Eurodollar (per security per $1,000 of value)	.05
Receipt/delivery/redemption:	
Book entry (per security)	11.50
Physical securities, including MBSCC (per security)	24.00
Eurodollar (per security)	50.00
Account switch:	
Book-entry, between safekeeping accounts (per switch)	11.50
Book entry, between safekeeping and collateral accounts (per switch)	17.00
Physical, including MBSCC securities, between safekeeping accounts (per switch)	24.00
Physical, including MBSCC securities, between and collateral accounts (per switch)	27.00
Eurodollar, between safekeeping accounts (per switch)	45.00
Eurodollar, between safekeeping and collateral accounts (per switch)	50.00
Income collection:	
Principal and interest payments (P&I) (per pool)	6.50
Other income collections (per security)	2.00
Corporate reorganizations (per reorganization)	50.00
Audit verifications (per request)	8.00
Post-deadline requests (per securities)	50.00
Same day turnarounds (per securities)	15.00
Monthly minimum fee (per month)	50.00
Special services (per hour)	25.00
Miscellaneous and out-of-pocket expenses shipping, registration, etc	(*)
Custody services—pledged securities (collateral) services fee schedule:	
Montly account Maintenace (per account)	45.00
Monthly custody:	
Book entry (per security)	2.25
Physical, including MBSCC securities (per security)	3.75
Eurodollar (per security per $1,000 of value)	.075

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DISTRICT 12.—FEDERAL HOME LOAN BANK OF SEATTLE (1989 DDA SERVICES)—Continued

Services	Fee
Receipt/delivery/redemption:	
Book entry (per security)	$17.00
Physical, including MBSCC securities (per security)	27.00
Eurodollar (per security)	55.00
Account switch:	
Book-entry, between collateral and safekeeping accounts (per switch)	17.00
Book-entry, between collateral accounts (per switch)	22.00
Physical, including MBSCC securities, between collateral and safekeeping accounts (per switch)	27.00
Physical, including MBSCC securities between collateral accounts (per switch)	29.00
Eurodollar, between collateral and safekeeping accounts (per switch)	50.00
Eurodollar, between collateral accounts (per switch)	55.00
Income collections:	
Principal and interest payments (P&I) (per roll)	6.50
Other income collections (per security)	2.00
Corporate reorganizations (per reorganization)	50.00
Audit verifications (per request)	8.00
Post-deadline requests (per security)	50.00
Same day turnarounds (per security)	15.00
Monthly minimum (per month)	50.00
Special services (per hour)	25.00
Miscellaneous and out-of-pocket expenses shipping, registration, etc	(1)
Settlement services fee schedule:	
ACH settlement (per entry)	.25
Contemporaneous reserve settlement (per month)	75.00
NOW account settlement (per month)	165.00
Federal reserve settlement (per month)	165.00
Seattle Check Processing Center	
Depository services fee schedule:	
Deposits (per deposit)	.40
Deposited items—unecoded:	
City (per item)	.055
RCPC (per item)	.065
Other federal reserve banks (per item)	.080
FHLB (per item)	.050
U.S. government postal money orders (per item)	.040
Deposited items-encoded:	
City (per item)	.035
RCPC (per item)	.045
Other federal reserve banks (per item)	.070
FHLB (per item)	.035
U.S. government postal money orders (per item)	.025
Food coupons (per item)	.025
Reject items (per item)	.25
Return items (per item)	1.25
Collection items (per item)	6.00
Salt Lake City Check Processing Center	
Depository services fee schedule:	
Deposits (per deposit)	.25
Deposited items—unencoded:	
City (per item)	.05
RCPC (per item)	.05
Other Federal Reserve Banks (per item)	.065
FHLB (per item)	.035
U.S. Government Postal Money Orders (per item)	.035
Deposited items—encoded:	
City (per item)	.03
RCPC (per item)	.03
Other Federal Reserve Banks (per item)	.06
FHLB (per item)	.025
U.S. Government Postal Money Orders (per item)	.020
Reject items (per item)	.25
Return items (per item)	2.00
Collection items (per item)	6.00

[1] No charge.
[2] As required.
[3] As required.
[4] As required.

Note: Prices may vary in some circumstances. For additional information, contact the Correspondent Service Marketing Department.

Dated: December 22, 1989.

By the Federal Housing Finance Board.

Mary K. Bush,

Managing Director.

[FR Doc. 89-30269 Filed 12-28-89; 8:45 am]

BILLING CODE 6725-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-004161-007

Title: San Francisco Port Commission Terminal Agreement

Parties: San Francisco Port Commission (Port); Marine Terminals Corporation

Synopsis: The Agreement extends the term of the basic agreement for five years commencing on January 1, 1990 and continuing through December 31, 1994. The Agreement also provides for increased compensation to the Port.

By Order of the Federal Maritime Commission.

Dated: December 22, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-30173 Filed 12-28-89; 8:45 am]

BILLING CODE 6725-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 212-010320-019

Title: Brazil/U.S. Gulf Ports Agreement

Parties: Companhia de Navegacao Lloyd Brasileiro; Compania Maritima Nacional; American Transport Lines, Inc.; Empresa Lineas Maritimas Argentinas S.A.; A. Bottacchi S.A. de Navegacion C.F.I.I.; Transportacion Maritima Mexicana S.A.

Synopsis: The proposed modification deletes Transportacion Maritima Mexicana S.A., as a party to the Agreement. In addition, the modification extends the special carrying adjustment for Wheels for Automobiles through December 31, 1990.

Agreement No.: 202-011241-001

Title: USA-North Europe Rate Agreement

Parties: A.P. Moller-Maersk Line; Atlantic Container Line BV; Compagnie Generale Maritime (CGM); Gulf Container Line (GCL), BV; Hapag Lloyd AG; Incotrans BV; Nedlloyd Lijnen BV; P&O Containers (TFL) Limited; Sea-Land Service, Inc.

Synopsis: The proposed amendment would delete Liverpool as an alternate port.

Agreement No.: 202-011242-001

Title: North Europe-USA Rate Agreement

Parties: Atlantic Container Line BV; Compagnie Generale Maritime (CGM); Gulf Container Line (GCL), BV; Hapag Lloyd Ag; Incotrans BV; Nedlloyd Lijnen BV; P&O Containers (TFL) Limited; Sea-Land Service, Inc.

Synopsis: The proposed amendment would delete Liverpool as an alternate port.

Agreement No.: 217-011267

Title: Genesis/MARCOMEX Space Charter Agreement

Parties: Genesis Container Line, Ltd.; Maritima Colombia Exporta, Ltda. d/b/a MARCOMEX

Synopsis: The proposed Agreement permits the parties to establish space charter arrangements in the trade between ports in Colombia, South America, including the Island of San Andres, and South Florida ports of the United States.

Agreement No.: 203-011266

Title: New Zealand/United States Interconference and Carrier Discussion Agreement

Parties: Pacific Coast-New Zealand Rate Agreement; New Zealand/U.S. Atlantic & Gulf Shipping Lines Rate Agreement; Associated Container Transportation (Australia) Ltd. (PACE Line); Australia-New Zealand Direct Line; Hamburg-Sudamerikanische Dampfschiffahrts-Gesellschaft; Eggert & Amsinck (Columbus Line); Blue Star Line, Ltd.

Synopsis: The proposed agreement would permit the parties to exchange information and reach non-binding consensus on matters of interest, including rates and service, in the trade from New Zealand and adjacent islands to the United States and all of its possessions and territories.

By Order of the Federal Maritime Commission.

Dated: December 22, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-30174 Filed 12-28-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Community Bank System, Inc., et al.; Applications To Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be

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accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 17, 1990.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President), 33 Liberty Street, New York, New York 10045:

1. Community Bank System, Inc., Dewitt, New York; to engage *de novo* in making commercial loans pursuant to § 225.25(b)(1) of the Board's Regulation Y. Comments on this application must be received by January 11, 1990.

B. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President), 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Star Banc Corporation, Cincinnati, Ohio; to engage *de novo* in making equity investments in limited partnerships designed to promote community welfare through the rehabilitation of housing for low- and moderate-income people pursuant to § 225.25(b)(6) of the Board's Regulation Y. This activity will be conducted in the Cincinnati, Ohio, area.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President), 925 Grand Avenue, Kansas City, Missouri 64198:

1. Hooker National Bancshares, Inc., Hooker, Oklahoma; to engage *de novo* in the sale of general lines of insurance in Hooker, Oklahoma, a town with a population of substantially less than 5,000 pursuant to § 225.25(b)(8)(iii)(A) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 22, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-30190 Filed 12-28-89; 8:45 am]

BILLING CODE 6210-01-M

NCNB Corp., Charlotte, NC Request for Exception From Tying Provisions

NCNB Corporation, Charlotte, North Carolina ("NCNB"), has requested, pursuant to section 106 of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1971 *et seq.*) ("Section 106"), that the Board grant an exception in order to permit NCNB to consolidate its separate credit card operations into one subsidiary bank and continue to offer reduced annual fees and periodic interest rates on credit card accounts to customers who maintain certain deposit account relationships with other NCNB subsidiary banks. Although section 106 permits a bank to fix or to vary the consideration for extending credit or furnishing services on condition that a customer also obtain a traditional banking service (loan, discount, deposit or trust service) from that bank, it prohibits a bank from engaging in these same activities on condition that the customer obtain any additional credit or services from any other subsidiary of the bank's parent bank holding company. The Board may grant, however, an exception that is not contrary to the purposes of this provision.

NCNB, a multi-state bank holding company, currently offers to customers of each subsidiary bank who choose to maintain a specified minimum balance in their deposit accounts the opportunity to qualify for reduced interest rates and fees on credit cards that are issued by the same bank. This optional program is permissible under section 106 because the bank is offering a variation in consideration for extending credit or furnishing a service on condition that the customer also obtain a traditional banking service (a minimum deposit from the same bank.

NCNB is considering the centralization of certain of its credit card activities into a single bank, either one of its existing subsidiary banks or a new special-purpose credit card bank, to serve as the issuer and processor of most of its credit cards. If centralization occurs, the subsidiary bank offering the special reduced-rate credit card program may be different from the subsidiary bank where the customer maintains a deposit account or obtains another banking service. In addition to its current program of special interest rates on credit card balances for customers with minimum bank deposit balances, NCNB anticipates offering other service packages in which advantageous credit card terms would be offered to customers who utilize other NCNB traditional banking services, such as loan services, at any subsidiary bank. Accordingly, the variation in consideration afforded by the bank under the special reduced-rate credit card programs would be conditioned upon a customer obtaining additional banking services from the subsidiary banks of the bank's parent holding company, and would therefore be barred by the literal terms of section 106 without an exemption from the Board.

In support of its request for an exemption, NCNB maintains that the legislative history of section 106 reveals a Congressional intent not to restrict the marketing and pricing of traditional banking services or combinations thereof by either a single bank or affiliate banks in a multi-bank holding company system. Accourding to NCNB, granting its request would not result in an inter-mingling of banking and nonbanking services, and would be pro-competitive by affording customers an option for obtaining credit card services at a lower cost.

Notice of the request is published solely in order to seek the views of interested persons on the issues presented by the request and does not represent a determination by the Board that the request meets or is likely to meet the standards of Section 106.

Any request for a hearing on these issues must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the request for exemption.

The request may be inspected at the offices of the Board of Governors.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary of the Board of Governors of the Federal Reserve System, Washington, DC 20551 not later than January 29, 1990.

Board of Governors of the Federal Reserve System, December 22, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-30191 Filed 12-28-89; 8:45 am]

BILLING CODE 6210-01-M

Citicorp; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 18, 1990.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. Citicorp, New York, New York; to acquire the Merchant Draft Processing Business of FCC National Bank, Wilmington, Delaware, and thereby engage in making, acquiring, and servicing loans such as would be made by a credit card company through its subsidiary, Citicorp Credit Services, Inc., pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 22, 1989.

Jennifer J. Johnson.

Associate Secretary of the Board.

[FR Doc. 89-30189 Filed 12-28-89; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and section 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 11, 1990.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Arthur Temple, Diboll, Texas; to acquire 12.2 percent of the voting shares of Diboll State Bancshares, Inc., Diboll, Texas, and thereby indirectly acquire Diboll State Bank, Diboll, Texas, and thereby indirectly acquire People National Bank, Lufkin, Texas.

2. Arthur, Temple, Diboll, Texas; to acquire 21.36 percent of the voting shares of First Community Financial Corporation, Lufkin, Texas, and thereby indirectly acquire Community State Bank, Lufkin, Texas.

3. Arthur Temple, Diboll, Texas; to acquire 5.13 percent of the voting shares of Pineland Bancshares, Inc., Pineland, Texas, and thereby indirectly acquire Pineland State Bank, Pineland, Texas.

Board of Governors of the Federal Reserve System, December 22, 1989.

Jennifer J. Johnson.

Associate Secretary of the Board.

[FR Doc. 89-30192 Filed 12-28-89; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Consortium of Federal, Academic and Industry Logistics Experts

Meeting Notice: Notice is hereby given that the Consortium of Federal, Academic, and Industry Logistics Experts will meet January 24, 1990, from 10:00 am to 12:00 noon in Crystal Mall Building 4, Room 1129, Arlington, Virginia. Notice is required by the Federal Advisory Committee Act, 5 U.S.C. App. 2, and the implementing regulation, 41 CFR 101-6.

The purpose of the meeting is to provide a forum for discussion of logistics issues. The agenda for this meeting will include a presentation by Mr. Lawrence J. Rizzi, General Services Administration, Office of Acquisition Policy. The subject is the impact of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418 section 5164) which requires Federal activities to use the Metric System of Measurement in all procurements by 1992.

The meeting will be open to the public.

For further information contact Mr. William B. Foote, Assistant Commissioner for Customer Service and Marketing, GSA/FSS, Washington, DC 20406, telephone (703) 557-7970.

Dated: December 15, 1989.

Donald C.J. Gray,

Commissioner, Federal Supply Service, GSA.

[FR Doc. 89-30235 Filed 12-28-89; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Revised Determination of 1990 Contribution and Benefit Bases

AGENCY: Social Security Administration, HHS.

ACTION: Notice.

SUMMARY: The Secretary has determined—

(1) The Social Security contribution and benefit base to be $51,300 for remuneration paid in 1990 and self-employment income earned in taxable years beginning in 1990;

(2) The "old-law" contribution and benefit base to be $38,100 for 1990.

The above determinations are in accordance with the requirements of section 10208 of Public Law 101 239 and supersede those announced in the Federal Register on October 31, 1989 (54 FR 45801).

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Kunkel, Office of the Actuary, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965-3015.

SUPPLEMENTARY INFORMATION:

Section 230(c) of the Social Security Act (the Act) provides a table with the contribution and benefit base for each year 1978, 1979, 1980, and 1981. For years after 1981, section 230(b) of the Act contains a formula for determining the contribution and benefit base.This formula uses the increase (if any) in the average of the total wages as the basis for determining the new contribution and benefit base. The average of the total wages is also used to index other program amounts, such as the earnings required for a quarter of coverage.

Under current regulations, the average of the total wages is calculated from individuals' wages subject to income tax, as reported on W-2 forms filed by employers. Contributions to certain

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qualified cash or deferred arrangements are not subject to income tax (but distributions from such arrangements may be taxable). Such contributions are known as deferred compensation amounts and have been treated as wages subject to Social Security taxes since 1984.

Because the deferred compensation amounts are not subject to income taxes, the data used to calculate the average of the total wages understate wages by such amounts. As a result, the annual adjustments in all the wage-indexed program amounts have not reflected the effects that year-to-year changes in deferred compensation amounts have on the average of the total wages. Section 10208 of Public Law 101–239, enacted December 19, 1989, provides for the inclusion of deferred compensation amounts in the determination of the average of the total wages. This permits the effects of year-to-year changes in deferred compensation amounts on the annual increases in the average of the total wages to be reflected in future adjustments of wage-indexed program amounts. These effects will begin with changes in such program amounts from calendar year 1992 to calendar year 1993.

Section 10208 of Public Law 101–239 also provides a transitional rule for computing the average of the total wages used in the formula for determining the contribution and benefit base and the "old-law" contribution and benefit base. The transitional rule is used to determine the bases for 1990, and will be used to determine the bases for 1991 and 1992.

Under the transitional rule, the contribution and benefit base for 1990 will reflect the effect of an additional increase of 2 percentage points in average wages, over and above the previously determined average-wage increase announced earlier this year. This additional increase results in the newly determined contribution and benefit base of $51,300 for 1990.

The transitional rule for 1991 and 1992 provides a smooth transition to the revised measure of the average of the total wages, which takes account of the deferred compensation amounts.

As a result of section 10208 of Public Law 101–239, both the contribution and benefit base and the "old-law" contribution and benefit base for 1990, as published in the **Federal Register** on October 31, 1989, have been superseded, and are revised as shown below.

Average of the Total Wages Under the Transitional Rule

General

For purposes of determining the 1990 contribution and benefit base and the 1990 "old-law" contribution and benefit base, the new statute provides a deemed average of the total wages for 1988.

Computation

The average of the total wages for 1988 is deemed to be equal to the amount announced in the **Federal Register** on October 31, 1989, plus 2 percent of the average wage amount announced for 1987, as provided by the statute under the transitional rule.

Amount

The average wage amount announced for 1988 in the **Federal Register** on October 31, 1989 (54 FR 45801) was $19,334.04. The average wage amount announced for 1987 in the **Federal Register** on October 31, 1988 (53 FR 43932) was $18,426.51. Two percent of $18,426.51 is $368.53, and the sum of this amount and $19,334.04 is $19,702.57. Therefore, the deemed average wage for 1988 for the purposes described above is $19,702.57.

Contribution and Benefit Base

General

The contribution and benefit base is $51,300 for remuneration paid in 1990 and self-employment income earned in taxable years beginning in 1990.

The contribution and benefit base serves two purposes:

(1) It is the maximum annual amount of earnings on which Social Security taxes are paid.

(2) It is the maximum annual amount used in determining a person's Social Security benefits.

Computation

Section 230(c) of the Act provides a table with the contribution and benefit base for each year 1978, 1979, 1980, and 1981. For years after 1981, section 230(b) of the Act contains a formula for determining the contribution and benefit base. Under the prescribed formula as modified by Public Law 101–239, the contribution and benefit base for 1990 shall be equal to the 1989 base of $48,000 multiplied by the ratio of (1) the deemed average amount, per employee, of total wages for the calendar year 1988 to (2) the average amount of total wages for the calendar year 1987. Section 230(b) further provides that if the amount so determined is not a multiple of $300, it shall be rounded to the nearest multiple of $300.

Average Wages

The average wage for calendar year 1987 was previously determined to be $18,426.51. The deemed average wage for calendar year 1988 has been determined to be $19,702.57 as stated herein.

Amount

The ratio of the deemed average wage for 1988, $19,702.57, compared to that for 1987, $18,426.51, is 1.0692513. Multiplying the 1989 contribution and benefit base of $48,000 by the ratio 1.0692513 produces the amount of $51,324.06, which must then be rounded to $51,300. Accordingly, the contribution and benefit base is determined to be $51,300 for 1990.

"Old-Law" Contribution and Benefit Base

General

The 1990 "old-law" contribution and benefit base is $38,100. This is the base that would have been effective under the Act without the enactment of the 1977 amendments. The base is computed under section 230(b) of the Act as it read prior to the 1977 amendments, and as it has been modified by Public Law 101–239.

The "old-law" contribution and benefit base is used by:

(1) The Railroad Retirement program to determine certain tax liabilities and tier II benefits payable under that program to supplement the tier I payments which correspond to basic Social Security benefits,

(2) The Pension Benefit Guaranty Corporation to determine the maximum amount of pension guaranteed under the Employee Retirement Income Security Act (as stated in section 230(d) of the Act), and

(3) Social Security to determine a "year of coverage" in computing the "special minimum" benefit and in computing benefits for persons who are also eligible to receive pensions based on employment not covered under section 210 of the Act.

Computation

The base is computed using the automatic adjustment formula in section 230(b) of the Act as it read prior to the enactment of the 1977 amendments. Under the formula as modified by Public Law 101–239, the "old-law" contribution and benefit base shall be the "old-law" 1989 base multiplied by the ratio of (1) the deemed average amount, per employee, of total wages for the calendar year of 1988 to (2) the average amount of total wages for the calendar year of 1987. If the amount so determined is not a multiple of $300, it shall be rounded to the nearest multiple of $300.

Average Wages

The average wage for calendar year 1987 was previously determined to be $18,426.51. The deemed average wage for calendar year 1988 has been determined to be $19,702.57 as stated herein.

Amount

The ratio of the deemed average wage for 1988, $19,702.57, compared to that for 1987, $18,426.51, is 1.0692513. Multiplying the 1989 "old-law" contribution and benefit base amount of $35,700 by the ratio of 1.0692513 produces the amount of $38,172.27 which must then be rounded to $38,100. Accordingly, the "old-law" contribution and benefit base is determined to be $38,100 for 1990.

(Catalog of Federal Domestic Assistance Programs Nos. 13.802 Social Security—Disability Insurance; 13.803 Social Security—Retirement Insurance; 13.805 Social Security—Survivor's Insurance.)

Dated: December 22, 1989.

Louis W. Sullivan,

Secretary of Health and Human Services.

[FR Doc. 89-30231 Filed 12-28-89; 8:45 am]

BILLING CODE 4190-11-M

Health Care Financing Administration

[BPD-665-N]

Medicare Program; Legislative Changes Concerning Payment to Hospitals for Federal Fiscal Year 1990

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of legislative changes.

SUMMARY: This notice describes those portions of sections 6001, 6002, 6003(a), (b), and (d), 6004(a) and (b), 6021, 6101, 6110, and 6205(b) of the Omnibus Budget Reconciliation Act of 1989 that affect Federal fiscal year 1990 payments to prospective payment hospitals and hospitals excluded from the prospective payment system and that are self-implementing. The changes required by these sections affect the prospective payment rates, rural referral centers, payments for capital-related costs, periodic interim payments, cancer hospitals, and payments for nursing and allied health education.

EFFECTIVE DATE: December 29, 1989.

FOR FURTHER INFORMATION CONTACT:
John Eppinger, (301) 966-4510—Extension of Sequestration, Capital-Related Payments, and Periodic Interim Payments
Barbara Wynn, (301) 966-4529—All Other Issues

SUPPLEMENTARY INFORMATION:

I. Background

On September 1, 1989, we published a final rule (54 FR 36452) to implement the prospective payment system for Federal fiscal year (FY) 1990. In that rule, we set forth the methods, amounts, and factors for determining the FY 1990 prospective payment rates. We also established, for cost reporting periods beginning during FY 1990, new target rate percentages for determining the rate-for-increase limits for hospitals excluded from the prospective payment system.

Under that final rule, in accordance with sections 1886(d)(3)(A) and 1886(b)(3)(B)(i) of the Social Security Act (the Act), the applicable percentage increase in the average standardized amounts for prospective payment hospitals and the hospital specific rate for sole community hospitals was the percentage increase in the hospital market basket; that is, 5.5 percent. Hospitals excluded from the prospective payment system had their target amounts increased by 5.5 percent also.

In the September 1, 1989 final rule, we also made the following changes:

- For discharges occurring in FY 1990, we reduced the relative weight of each diagnosis-related group (DRG) by 1.22 percent to account for the increase in the case-mix index value between FY 1986 and FY 1988 that resulted from changes in the manner in which cases were classified and assigned to DRGs.
- We revised the regulations to clarify that a cancer hospital that elects payment on a reasonable cost basis continues to be subject to the requirements of the prospective payment system with respect to hospital inpatient services (specifically, the provisions concerning the payment for capital-related costs and the availability of periodic interim payments).
- Section 9302(d)(2) of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-509) had provided that hospitals that were classified as rural referral centers as of October 21, 1986 would continue that status without periodic verification. Because these provisions were due to expire effective for cost reporting periods beginning on or after October 1, 1989, we stated that we would reinstate the triennial reviews for hospitals with rural referral center status to ascertain that they continue to meet the qualifying criteria. Hospitals would be allowed to retain their status only if they have met the criteria for 2 of the last 3 years or if they meet the criteria for the current year.

II. Summary of New Legislation

On December 19, 1989, the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239) was enacted. This notice announces the provisions of sections 6001, 6002, 6003(a), (b), and (d), 6004(a) and (b), 6021, 6110, and 6205(b) of Public Law 101–239 that affect Medicare payments to hospitals in FY 1990 and are self-implementing.

Section 6001 of Public Law 101–239 maintains the 2.092 percent reduction in payments under part A through December 31, 1989, as required under the final sequester order issued by the President on October 16, 1989, pursuant to section 252(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 (generally referred to as the Gramm-Rudman-Hollings Act) (Pub. L. 99–177). Section 11002 of Public Law 101–239 establishes a new government-wide sequestration for the period January 1, 1990, through September 30, 1990. Section 6001 of Public Law 101–239 contains a provision intended to assure that the January 1, 1990, through September 30, 1990, sequestration does not result in an additional reduction for services covered under part A of the Medicare program. We will issue separate instructions on the implementation of this provision shortly.

Section 6002 of Public Law 101–239 amended section 1886(g)(3)(A) of the Act by adding paragraph (v) to provide that payments for capital-related costs of inpatient hospital services of hospitals under the prospective payment system are to be reduced by 15 percent for payments attributable to portions of cost reporting periods or discharges occurring during the period beginning January 1, 1990 and ending September 30, 1990. Sole community hospitals are exempt from this provision under section 1886(g)(3)(B) of the Act.

Section 6003(a) of Public Law 101–239 amended section 1886(b)(3)(B)(i) of the Act to specify that the applicable update factors for discharges occurring on or after January 1, 1990 and before September 1, 1990 are—

- The market basket percentage increase plus 4.22 percent (which is 9.72 percent above FY 1989 rates) for hospitals located in rural areas;
- The market basket percentage increase plus 0.12 percent (which is 5.62 percent above FY 1989 rates) for hospitals located in large urban areas; and
- The market basket percentage increase minus 0.53 percent (which is 4.97 percent above FY 1989 rates) for hospitals located in other urban areas.

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For the purpose of computing payment rates for discharges occurring on or after October 1, 1990, these update factors are deemed to have been in effect for discharges occurring on or after October 1, 1989.

Under the provisions of section 6003(a) of Public Law 101–239, we have recomputed the standardized amounts effective for discharges occurring on or after January 1, 1990; that is, we replaced the update factor applied to the standardized amounts in the September 1, 1989 final rule with the update factors specified in section 6003(a) of Public Law 101–239. As a result of these updates to the standardized amounts, specifically the update for rural hospitals, which is larger than the update for either large urban hospitals, or other urban hospitals, it was necessary to recalculate the budget neutrality factors that are required by section 1886(d)(8)(D) of the Act in applying the special provisions for certain rural hospitals that are deemed urban under section 1886(d)(8)(B) of the Act. Section 1886(d)(8)(D) of the Act specifies that, in recalculating the budget neutrality factors, two payment conditions must be met. First, the FY 1990 standardized amounts are to be adjusted so as to ensure that total aggregate payments under the prospective payment system after implementation of the provisions of sections 1886(d)(8)(B) and 1886(d)(8)(C) of the Act are equal to the aggregate prospective payments that would have been made absent these provisions. That is, the additional payments to those rural hospitals that have been deemed urban must be financed through a reduction in the urban standardized payment amounts. Second, the rural standardized amounts are to be adjusted so that aggregate payments to those rural hospitals that have not been deemed urban are not changed as a result of these provisions.

The following are the budget neutrality factors that were used to establish the standardized amounts effective for discharges occurring on or after October 1, 1989:

Urban: .999400
Rural: .999240

The budget neutrality factors for the standardized amounts effective for discharges occurring on or after January 1, 1990 are as follows:

Urban: .998516
Rural: .999244

Section 1886(d)(5)(A) of the Act requires that, in addition to the basic prospective payment rates, payments must be made for discharges involving day outliers and may be made for discharges involving cost outliers. Section 1886(d)(3)(B) of the Act correspondingly requires that the urban and rural standardized amounts, respectively, be separately reduced by the proportion of estimated total DRG payments attributable to outlier payments for hospitals located in urban areas and those located in rural areas. Because of the revised update amounts set forth in this document, the outlier adjustment factor for rural hospitals must be revised. The outlier adjustment factor applied to the rural standardized amounts in the September 1, 1989 final rule was .978241. The outlier adjustment factor applied to the rural standardized amounts to establish the payment rates effective for discharges occurring on or after January 1, 1990 is .978500. The outlier adjustment factor applied to the urban standardized amounts remains at .943622. There is no change in the outlier thresholds. The revised standardized amounts effective for discharges occurring on or after January 1, 1990 are shown in Tables 1a, 1b, and 1c.

Sole community hospitals are currently paid a blended payment rate that is comprised of a Federal portion (based on 25 percent of the Federal regional rate) and a hospital-specific portion. The hospital-specific portion equals 75 percent of the hospital-specific rate for the cost reporting period. Section 6003(e)(1)(B) of Public Law 101–239 added section 1886(b)(3)(C) of the Act. Clause (ii) of that section specifies the hospital-specific rate for a given cost reporting period is the hospital-specific rate for the preceding 12-month cost reporting period updated by the applicable percentage increase under section 1886(b)(3)(B)(i) of the Act for discharges occurring in the fiscal year in which the cost reporting period begins. Thus, effective for cost reporting periods beginning on or after October 1, 1989, the hospital-specific rate of sole community hospitals will be updated by the percentage increase applicable to the geographic area in which the hospital is located. Under section 6003(a)(2) of Public Law 101–239, that increase is applicable to discharges occurring on or after January 1, 1990. For example, hospitals located in rural areas will receive an update of 9.72 percent effective for discharges occurring on or after January 1, 1990. For those sole community hospitals with cost reporting periods beginning on or after October 1, 1989 and before January 1, 1990, the hospital-specific rate will be updated by 5.5 percent (the market basket percentage increase) for discharges occurring before January 1, 1990 and by the applicable percentage increase for the geographical area for discharges occurring on or after January 1, 1990.

Public Law 101–239 did not change the increase in the target amount for hospitals and units excluded from the prospective payment system. Thus, for excluded hospitals and units, the increase in the target amount that became effective on October 1, 1989 has not been changed. The increase in the target amount continues to be 5.5 percent, which is the market basket percentage increase.

Section 6003(b) of Public Law 101–239 amended section 1886(d)(4)(C) of the Act to ratify the 1.22 percent reduction in the weighting factor for each DRG for discharges occurring in FY 1990 that was provided for in the September 1, 1989 final rule. Section 6003(b) of Public Law 101–239 also provided that future recalibrations for discharges in a fiscal year (beginning with FY 1991) are to be budget neutral. In addition, the Secretary is to include recommendations regarding adjustments to weighting factors in his annual March 1st report to Congress concerning the estimated recommendation for the update factor for the next fiscal year.

Under section 6003(d) of Public Law 101–239, a hospital that was classified as a rural referral center (under section 1886(d)(5)(C) of the Act) as of September 30, 1989 (including a hospital covered under section 9302(d)(2) of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509) will continue to be classified as a rural referral center for cost reporting periods beginning on or after October 1, 1989 and before October 1, 1992.

Section 6004(a) of Public Law 101–239 amended section 1886(d)(1)(8) of the Act to exclude from the prospective payment system a hospital that the Secretary classifies on or before December 31, 1990 as a hospital involved extensively in treatment for or research on cancer (cancer hospital). Also to be excluded from the prospective payment system is a hospital that the Secretary classifies on or before December 31, 1991 as a cancer hospital, and which, on the date of the enactment of this provision, is located in a State operating a demonstration project under section 1814(b) of the Act. Exclusion from the prospective payment system will apply to cost reporting periods beginning on or after October 1, 1989 for hospitals approved as cancer hospitals on or before December 19, 1989 and for cost reporting periods beginning on or after the date of such classification for all subsequently approved hospitals.

A hospital that the Secretary has determined to be a cancer hospital is eligible to receive periodic interim payments under section 1815(e)(2) of the Act effective January 18, 1990 if it meets the criteria for receiving such payments.

Under section 6004(a)(3)(B) of Public Law 101–239, for hospitals classified as cancer hospitals as of December 19, 1989, the reduction for payments of capital-related costs of inpatient services that had been applied to these hospitals as prospective payment hospitals has been eliminated effective for portions of cost reporting periods or discharges occurring on or after October 1, 1990.

For hospitals classified as cancer hospitals after December 19, 1989, the reduction for payment of capital costs is eliminated for cost reporting periods beginning on or after the date of the classification.

Section 6004(b) of Public Law 101–239 amended section 1886(b)(3) of the Act by adding a new subparagraph (E) to provide that, for cost reporting period beginning on or after April 1, 1989, the base year for determining target amounts for cancer hospitals is to be the hospital's cost reporting period beginning during FY 1987 unless the use of FY 1982 and intervening updates creates a higher target amount.

Section 6021 of Public Law 101–239 amended section 1815(e) of the Act by adding a new paragraph (4) concerning payment on a periodic interim basis. Under this new provision, a hospital created by the merger or consolidation of two or more hospitals or hospital campuses is eligible to receive periodic interim payment under section 1815(e)(1)(B) of the Act if—

- At least one of the hospitals or campuses received periodic interim payments under section 1815(e)(1)(B) of the Act before the merger or consolidation; and
- Each of the merging or consolidating hosptials or campuses would be eligible to receive periodic interim payment under section 1815(e)(1)(B)(i) if the hospitals or campuses were treated as independent hospitals.

This amendment applies to payments made for discharges occurring on or after January 18, 1990, for hospitals that meet the criteria for receiving periodic interim payments.

Section 6101 of Public Law 101–239 maintains the 2.092 percent reduction in payment under part B through March 31, 1990, as required under the final sequester order issued by the President on October 16, 1989, pursuant to section 252(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 (generally referred to as the Gramm-Rudman-Hollings Act) (Pub. L. 99–177). We will issue separate instructions with respect to sequestration for the period from April 1, 1990 through September 30, 1990, that are required by section 11002 of Public Law 101–239.

Section 6110 of Public Law 101–239 amended section 1861(v)(1)(S) of the Act to provide that payments for capital-related costs of outpatient services of all hospitals, other than sole community hospitals, are to be reduced by 15 percent for payments attributable to portions of cost reporting periods occurring during FY 1990 (October 1, 1989 through September 30, 1990). This reduction is made before determining the blended payment amount for ambulatory surgical services and for radiology services and other diagnostic procedures performed in an outpatient hospital setting.

Under section 6205(b) of Public Law 101–239, the Secretary is prohibited from recouping or otherwise reducing or adjusting Medicare payments to hospitals before October 1, 1990 for overpayments to hospitals as a result of a determination that costs reported for nursing or allied health education programs were allowable only as routine operating costs and therefore excluded from the medical education payments made outside of the prospective payment system.

The Secretary is required to issue proposed regulations addressing payment of these costs by July 1, 1990. The rule must provide for a comment period of not less than 60 days. The Secretary must consult with the Prospective Payment Assessment Commission and assure that any final rule is not effective before the later of October 1, 1990 or 30 days after publication of the final rule in the **Federal Register.**

Several provisions of Public Law 101–239 are effective on April 1, 1990. These provisions affect—

- Sole community hospitals;
- Disproportionate share hospitals;
- Rural hospitals that are not sole community hospitals, have 100 or fewer beds, and 60 percent or more of their inpatient days or discharges during their cost reporting period that began during FY 1987 are attributable to Medicare patients; and
- The wage index values of hospitals that are located in rural counties that have been deemed to be located in an adjacent urban area.

In addition, there is a provision that expands the authority under section 1886(b)(4) of the Act to grant adjustments to an excluded hospital's or unit's target amount to allow a change in the base year upon which the target amount is based. These provisions will be implemented through a separate rulemaking document.

III. Tables

This section contains the tables referred to in section II of this notice. For purposes of this notice, and to avoid confusion, we have retained the designations of Tables that were first used in the September 1, 1983 initial prospective payment final rule (48 FR 39844). Tables 1a, 1b, and 1c are presented below. The tables are as follows:

Table 1a.—National Adjusted Standardized Amounts, Labor/Nonlabor
Table 1b.—Regional Adjusted Standardized Amounts, Labor/Nonlabor
Table 1c.—Adjusted Standardized Amounts for Puerto Rico, Labor/Nonlabor

TABLE 1a.—NATIONAL ADJUSTED STANDARDIZED AMOUNTS, LABOR/NONLABOR

Large urban		Other urban		Rural	
Labor-related	Nonlabor-related	Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
2,508.17	868.39	2,468.47	874.32	2,433.28	873.92

TABLE 1b.—REGIONAL ADJUSTED STANDARDIZED AMOUNTS, LABOR/NONLABOR

	Large urban		Other urban		Rural	
	Labor-related	Nonlabor-related	Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
New England	2,708.78	937.88	2,665.95	944.08	2,628.14	943.62
Middle Atlantic	2,708.78	937.88	2,665.95	944.08	2,628.14	943.62
South Atlantic	2,508.17	868.39	2,468.47	874.32	2,433.28	873.92
East North Central	2,508.17	868.39	2,468.47	874.32	2,433.28	873.92
East South Central	2,508.17	868.39	2,468.47	874.32	2,433.28	873.92
West North Central	2,508.17	868.39	2,468.47	874.32	2,433.28	873.92
West South Central	2,508.17	868.39	2,468.47	874.32	2,433.28	873.92
Mountain	2,508.17	868.39	2,468.47	874.32	2,433.28	873.92
Pacific	2,708.78	937.88	2,665.95	944.08	2,628.14	943.62

Requirements), and 0915–0115 (Administrative Hearing Reporting Requirements). These requirements will be incorporated into the approval for the HPSL/NSL Administrative Requirements (0915–0047). *Respondents:* Individuals or households, non-profit institutions.

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TABLE 1b.—REGIONAL ADJUSTED STANDARDIZED AMOUNTS, LABOR/NONLABOR

	Large urban		Other urban		Rural	
	Labor-related	Nonlabor-related	Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
1. New England (CT, ME, MA, NH, RI, VT)	2633.87	927.35	2592.17	912.66	2697.21	790.48
2. Middle Atlantic (PA, NJ, NY)	2366.31	880.00	2328.84	866.07	2583.13	755.79
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	2525.91	810.81	2485.92	797.97	2489.28	655.37
4. East North Central (IL, IN, MI, OH, WI)	2654.24	959.31	2622.06	944.13	2500.49	728.39
5. East South Central (AL, KY, MS, TN)	2424.22	734.17	2385.84	722.54	2447.30	611.13
6. West North Central (IA, KS, MN, MO, NE, ND, SD)	2526.61	874.11	2486.61	860.26	2378.68	652.91
7. West South Central (AR, LA, OK, TX)	2512.07	805.32	2472.29	792.56	2291.25	600.45
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	2422.48	863.34	2384.12	849.68	2319.23	695.12
9. Pacific (AK, CA, HI, OR, WA)	2357.18	985.34	2319.86	969.73	2243.70	778.00

TABLE 1c.—ADJUSTED STANDARDIZED AMOUNTS FOR PUERTO RICO, LABOR/NONLABOR

	Large urban		Other urban		Rural	
	Labor-related	Nonlabor-related	Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
Puerto Rico	2227.89	398.58	2192.64	392.26	1626.42	301.07
National	2474.78	829.01				

IV. Regulatory Impact Statement

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact statement for any notice that would be likely to result in one of the following: An annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or, significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a notice such as this will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, States and individuals are not entities, but we consider all hospitals to be small entities. Also, section 1102(b) of the Act requires us to prepare a regulatory impact analysis that conforms to section 604 of the RFA unless the Secretary certifies that this notice will not have a significant impact on the operations of a substantial number of small rural hospitals.

We have determined that this notice, in itself, will not produce any effects that would meet any of the criteria of E.O. 12291 or of the RFA since the amendments to which this notice pertains are already in effect, or will go into effect without the publication of this notice. Implementation of these amendments is not dependent on the publication of this document. Therefore, we have determined that a regulatory impact analysis under E.O. 12291 and a regulatory flexibility analysis under the RFA are not required. For the same reasons, we have determined and the Secretary certifies that this notice will not have a significant impact on a substantial number of small rural hospitals or on any other small entities.

V. Other Required Information

A. Waiver of 30-Day Delay in Effective Date

We normally provide a delay of 30 days in the effective date. However, because the provisions of this notice merely summarize statutory amendments that are self-implementing or that require only the ministerial application of established formulas and data bases, and because the effective dates of the provisions are on or before January 1, 1990, a delayed effective date is unnecessary. Therefore, we find good cause to waive the usual 30-day delay.

B. Paperwork Reduction Act

This notice does not impose paperwork or information collection requirements. Consequently, it need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511).

(Sections 1815(e), 1861(v), and 1886 of the Social Security Act (42 U.S.C. 1395g(e), 1395x(v), and 1395ww) and sections 6001 and 6205(b) of Pub. L. 101–239)

Dated: December 22, 1989.

Louis B. Hayes,

Acting Administrator, Health Care Financing Administration.

Approved: December 26, 1989.

Louis W. Sullivan,

Secretary.

[FR Doc. 89–30317 Filed 12–28–89; 8:45 am]

BILLING CODE 4120–01–M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on December 22, 1989.

(Call PHS Reports Clearance Officer on 202–245–2100 for copies of package)

1. Health Professions Student Loan (HPSL) and Nursing Student Loan (NSL) Administrative Requirements (Regulation and Policy)—0915–0047—This information is needed to document that schools are properly administering the HPSL and NSL programs in accordance with statutory and regulatory requirements. This is an extension of approval for reporting requirements formerly approved under 0915–0046 (Debt Management Report), 0915–0014 (Loan Information Disclosure Requirements), and 0915–0115 (Administrative Hearing Reporting Requirements). These requirements will be incorporated into the approval for the HPSL/NSL Administrative Requirements (0915–0047). *Respondents:* Individuals or households, non-profit institutions.

	No. of respondents	No. of hours per response	No. of responses per respondent
School Disclosure:			
Loan Repayment & Delinquent Accounts:			
57.206(a)(2) & 57.210(b)(1)(x)	320	3 mins.	113
Student Reporting:			
Financial Aid Transcript:			
57.206(a)(3) & 57.306(a)(2)	10,500	15 mins.	1
School Reporting:			
Disability Cancellation:			
57.211(a) & 57.311(a)	100	30 mins.	1
Admin. Hearing Reporting Requirements:			
57.215(a)(2), 57.216.(a)(d), 57.315(a)(1)(ii), 57.316(a)(d)	15	3 hrs.	1
Six Month DMR:			
57.215(a) & 57.315(a)	1,970	3 hrs.	1
Three Month DMR:			
57.215(a) & 57.315(a)	1,120	1 hr.	2
School Recordkeeping:			
Cost of Attendance:		Range:	
57.206(b)(2) & 57.306(b)(2)(ii)	850	18 mins.—NSL 70 mins.—HPSL	1
Death Cancellation:			
57.211(b) & 57.311(b)	178	1 min.	1
HPSL Repayment Records:			
57.215(b)(c)	320	28.75 hrs.	1
NSL Repayment Records:			
57.315(a)(2)(3)	1,360	2.5 hrs.	1
Loan Information Disclosure—Schools:			
57.206(c)	300	5 mins.	82

Estimated Annual Burden: 28,643 Hours.

2. HIV Testing Performance Evaluation Program—NEW—The CDC needs information describing the testing practices and characteristics of laboratories that are performing or plan to perform testing for the Human Immunodeficiency Virus (HIV) that causes AIDS. The information will be used to improve the quality of HIV testing. Respondents will include hospitals, health departments, blood banks, and private laboratories. *Respondents:* Businesses or other for-profit; *Number of Respondents:* 1,600; *Number of Responses per Respondent:* 1; *Average Burden per Response:* 1 hour; *Estimated Annual Burden:* 1,600 Hours.

3. National Nosocomial Infections Surveillance System (NNIS)—0920–0012—The NNIS data system determines the magnitude of various nosocomial infection problems and national trends in the rates of infection and detects nosocomial infection outbreaks that occur when contaminated medical products or devices are distributed nationally. *Respondents:* Businesses or other for-profit; *Number of Respondents:* 146; *Number of Responses per Respondent:* 686; *Average Burden per Response:* .027 hours; *Estimated Annual Burden:* 2,728 Hours.

4. IHS Community Health Representative Activity Reporting Sample—0917–0010—The information collection obtained Indian Health Service (IHS) Community Health Representative (CHR) program data on: service category, health area, setting, patient's age and sex, referred from, referred to, and minutes providing service or in travel. This information is collected during one week per month, reporting to IHS quarterly, and used by CHS project managers and IHS Area Office and Headquarters staff for program planning, allocation of resources, management and evaluation purposes. *Respondents:* State or local governments (tribal); *Number of Respondents:* 1,411; *Number of Responses per Respondent:* 4; *Average Burden per Response:* 1.5 hours; *Estimated Annual Burden:* 8,466 Hours

5. Drug Abuse Warning Network (DAWN)—0930–0078—DAWEN is an epidemiologic surveillance system designed to identify licit and illicit drugs and substances associated with drug abuse morbidity and mortality, to monitor drug abuse trends and patterns, and to provide drug-specific data useful for national and local drug abuse policy planning and for assessment of public health hazards associated with drug abuse. *Respondents:* State or local governments, businesses or other for-profit, non-profit institutions.

	No. of respondents	No. of hours per response	No. of responses per respondent
Hospital Emergency Rooms	639	.19 hrs.	278
Medical Rooms	87	.14 hrs.	123

Estimated Annual Burden: 24,068 Hours.

OMB Desk Officer: Shannah Koss-McCallum.

Written comments and recommendations for the proposed information collections should be sent directly to the OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Dated: December 22, 1989.

James M. Friedman,

Acting Deputy Assistant Secretary for Health

agencies about such properties and then to determine, under criteria developed in consultation with the Department of Health and Human Services (HHS) and

(54 FR 26421), as corrected on July 3, 1989 (54 FR 27975).

For more information regarding

Freemont County
Lander, WY
Landholding Agency: GSA

Mount Diablo Meridian, Nevada
T. 20 S., R. 60 E.,
Sec. 10, SW¼SE¼SE¼NW¼.

public use From December 30, 1989 through January 10, 1990 to protect persons, property, and public lands and

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Dated: December 22, 1989.
James M. Friedman,
Acting Deputy Assistant Secretary for Health (Planning and Evaluation).
[FR Doc. 89-30234 Filed 12-28-89; 8:45 am]
BILLING CODE 4160-17-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-89-1917; FR-2606-N-52]

Notice of Underutilized and Unutilized Federal Buildings and Real Property Determined by HUD To Be Suitable for Use for Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

EFFECTIVE DATE: December 29, 1989.

ADDRESS: For further information, contact James Forsberg, Room 7228, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 755-7300; TDD number for the hearing- and speech-impaired (202) 755-5965. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 Court Order in *National Coalition for the Homeless v. Veterans Administration,* No. 88-2503-OG (D.D.C.), HUD is publishing this Notice to identify Federal buildings and real property that HUD has determined are suitable for use for facilities to assist the homeless. The properties were identified from information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property.

The Order requires HUD to take certain steps to implement section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), which sets out a process by which unutilized or underutilized Federal properties may be made available to the homeless. Under section 501(a), HUD is to collect information from Federal landholding agencies about such properties and then to determine, under criteria developed in consultation with the Department of Health and Human Services (HHS) and the Administrator of General Services (GSA), which of those properties are suitable for facilities to assist the homeless. The Order requires HUD to publish, on a weekly basis, a Notice in the **Federal Register** identifying the properties determined as suitable.

The properties identified in this Notice may ultimately be available for use by the homeless, but they are first subject to review by the landholding agencies pursuant to the court's Memorandum of December 14, 1988 and section 501(b) of the McKinney Act. Section 501(b) requires HUD to notify each Federal agency about any property of such agency that has been identified as suitable. Within 30 days from receipt of such notice from HUD, the agency must transmit to HUD: (1) its intention to declare the property excess to the agency's need or to make the property available on an interim basis for use as facilities to assist the homeless; or (2) a statement of the reasons that the property cannot be declared excess or made available on an interim basis for use as facilities to assist the homeless.

First, if the landholding agency decides that the property cannot be declared excess or made available to the homeless for use on an interim basis the property will no longer be available.

Second, if the landholding agency declares the property excess to the agency's need, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law and the December 12, 1988 Order and December 14, 1988 Memorandum, subject to screening for other Federal use.

Homeless assistance providers interested in any property identified as suitable in this Notice should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, Room 17A-10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit such written expressions of interest within 30 days from the date of this Notice. For complete details concerning the timing and processing of applications, the reader is encouraged to refer to HUD's **Federal Register** Notice on June 23, 1989 (54 FR 26421), as corrected on July 3, 1989 (54 FR 27975).

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: GSA: James Folliard, Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, DC 20405, (202) 535-7067; U.S. Navy: John Carr, Code 20 YAW, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332, (202) 325-0474; Department of Agriculture: Marsha Pruitt, USDA, 14th and Independence Avenue SW., South Bldg., Room 1566, Washington, DC 20250, (202) 477-5225.

Dated: December 21, 1989.
Paul Roitman Bardack,
Deputy Assistant Secretary for Program Policy Development and Evaluation.

Suitable Land (by State)
(Number of Properties [ ])
KENTUCKY
Upper Cumberland River Basin [3]
Bell County
Pineville, KY
Landholding Agency: GSA
Location: Located between Pine and Walnut Streets; GSA # 4-D-KY-586 (excess)
Comment: 0.50 acres in three parcels surrounded by private property
MASSACHUSETTS
Portion Former GSA Depot [1]
Beale and Lincoln Streets
Hingham, MA
Landholding Agency: GSA
Location: GSA # 2-GR-MA-762; adjacent to Lincoln Plaza Shopping Center (excess)
Comment: 1.37 acres; current use road apron
NEW JERSEY
Naval Reserve Center [1]
Trenton & Merselis Avenues
Clifton, NJ
Landholding Agency: NAVY
Location: Passaic County (excess)
Comment: 1.56 acres
Suitable Building (by State)
(Number of Properties [ ])
NEW HAMPSHIRE
East Rumney Road [1]
East Rumney Road
Rumney, NH
Landholding Agency: AGRICULTURE
Location:
Comment: wood frame; no utilities
Unsuitable Land (by State)
(Number of Properties [ ])
WYOMING
Lander National Guard Target Range [1]
Fremont County
Lander, WY
Landholding Agency: GSA
Location: Directly east of Lander; GSA # 7-D-WY-530
Reason:
Within airport runway clear zone
Other environmental
Comment: solid waste disposal landfill
Unsuitable Building (by State)
(Number of Properties [ ])
WASHINGTON
Midway Substation Community [35]
Benton County
Richland, WA
Landholding Agency: GSA
Location: 35 miles NW of Richland; GSA # 9-B-WA-691 (excess)
Reasopn:
Secured area
Contamination
Comment:
Note: McConnell Air Force Base property (GSA 7-D-KS-477-M) listed in the Federal Register on 9/29/89 was mistakenly identified as unsuitable. The property was listed in the Federal Register on 2/7/89 as suitable.

[FR Doc. 89-30126 Filed 12-28-89; 8:45 am]
BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-930-00-4212-11; N-21960]

Termination of Recreation and Public Purposes Classification and Order Providing for Opening of Land; Nevada

December 15, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates Recreation and Public Purposes classification, N-21960 in its entirety. The land will be opened to the public land laws generally, including the mining laws.

EFFECTIVE DATE: Termination is effective with the publication of this document. The land will be open to entry at 10:00 a.m. on January 29, 1990.

FOR FURTHER INFORMATION CONTACT: Mary Clark, BLM Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, NV 89520, 702-328-6330.

SUPPLEMENTARY INFORMATION: Pursuant to Section 7 of the Taylor Grazing Act (48 Stat. 1272) and the authority delegated by Appendix 1 of Bureau of Land Management Manual 1203, dated April 14, 1967, Recreation and Public Purposes Classification N-21960 is hereby terminated in its entirety:

Mount Diablo Meridian, Nevada
T. 20 S., R. 60 E.,
Sec. 10, S½SE¼SE¼NW¼.

The area described contains five (5) acres in Clark County, Nevada.

The classification was made pursuant to the Act of June 14, 1926, as amended, in response to an application from Las Vegas Bible Studies and a lease was subsequently issued. Said lease has since expired and a determination has been made that the classification is no longer appropriate.

At 10:00 a.m. on January 29, 1990, the land will be open to the operation of the public land laws, subject to valid existing rights, existing classifications and withdrawals, pending lawsuits, and requirements of applicable law. All valid applications received prior to or at 10:00 a.m. on January 29, 1990 will be considered as simultaneously filed. All other applications received will be considered in the order of filing.

At 10:00 a.m. on January 29, 1990, the land will also be open to the operation of the mining laws. Appropriation of land under the general mining law prior to the date and time of restoration is unauthorized. Any such attempt appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts. The land remains open to the mineral leasing and material sale laws.

Edward F. Spang,
State Director, Nevada.
[FR Doc. 89-30179 Filed 12-28-89; 8:45 am]
BILLING CODE 4310-HC-M

[CA-056-00-4332-10]

Closure Order for Public Use; California

ACTION: Closure order for public use.

SUMMARY: Notice is hereby given related to the closure of Bureau of Land Management (BLM) administered lands to all public use in accordance with regulations contained in 43 CFR subpart 8364.1. Approximately 2,000 acres located in portions of sections 18, 19, T2S, R2W, Humboldt Meridian, and sections 13, 24, 25, 36, T2S, R3W, Humboldt Meridian, and known as the west slope of the King Range Extension Area will be temporarily closed to all public use From December 20, 1989 through January 10, 1990 to protect persons, property, and public lands and resources. Employees, agents and permittees of the BLM, private landowners or residents who require access through the closed area may be exempt from this closure as determined by the authorized officer.

DATE: This closure order is effective December 20, 1989.

SUPPLEMENTARY INFORMATION: The purpose of this temporary emergency closure order is to protect the public lands and resources affected from disturbance and damage which would result from the anticipated gathering of up to 3,000 people associated with the Rainbow Tribe over a two week period. This sensitive and environmentally fragile coastline, consisting of the Mattole River estuary, pristine tidepools, twenty significant archaeological sites, the Punta Gorda Lighthouse which is listed on the National Register of Historic Places, and populations of the rare and sensitive Layia carnosa plant species would be adversely impacted by the sheer numbers of people concentrated in such a relatively small area. Health and sanitation problems would immediately arise as only one outhouse exists at the semi-developed Mattole Campground and no potable drinking water is available nearby. This could result in pollution of the estuary and negatively affect salmon and steelhead populations and waterfowl that feed in the area. The extensive foot traffic throughout the vegetated dunes and wetland habitat would kill off an estimated 25% of the vegetation due to trampling. Some visitors would be inclined to enter the fenced archaeological shell middens or examine unfenced sites causing disturbance. The pristine tidepools are extemely susceptible to damage caused by trampling which would severely damage these biological marine resources.

These activities would be in violation of Federal regulations pursuant to 43 CFR subpart 8365.1. Violations are punishable by a fine not to exceed $1,000.00 and/or imprisonment not to exceed twelve (12) months.

Maps showing the area closed to public use are posted at the boundaries and are available at the Arcata Resource Area Office, 1125 16th Street, Room 219, Arcata, CA 95521.

Edwin G. Kallas,
Acting District Manager.
[FR Doc. 89-30260 Filed 12-28-89; 8:45 am]
BILLING CODE 4310-40-M

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[CA-068-00-4333-10]

Decision To Designate a Portion of the King Range National Conservation Area, CA, an Area of Critical Environmental Concern

ACTION: Notice of ACEC designation.

SUMMARY: Notice is hereby given related to a 1981 planning decision to designate a portion of the King Range National Conservation Area an Area of Critical Environmental Concern (ACEC) in accordance with PL 94–579 and regulations contained in 43 CFR part 1600. Approximately 7.5 miles of ocean beach strand from the north end of the Mattole River estuary south to Sea Lion Gulch is designated and ACEC because of its outstanding cultural, historic, riparian, botanical, biological and recreation values which require special management action.

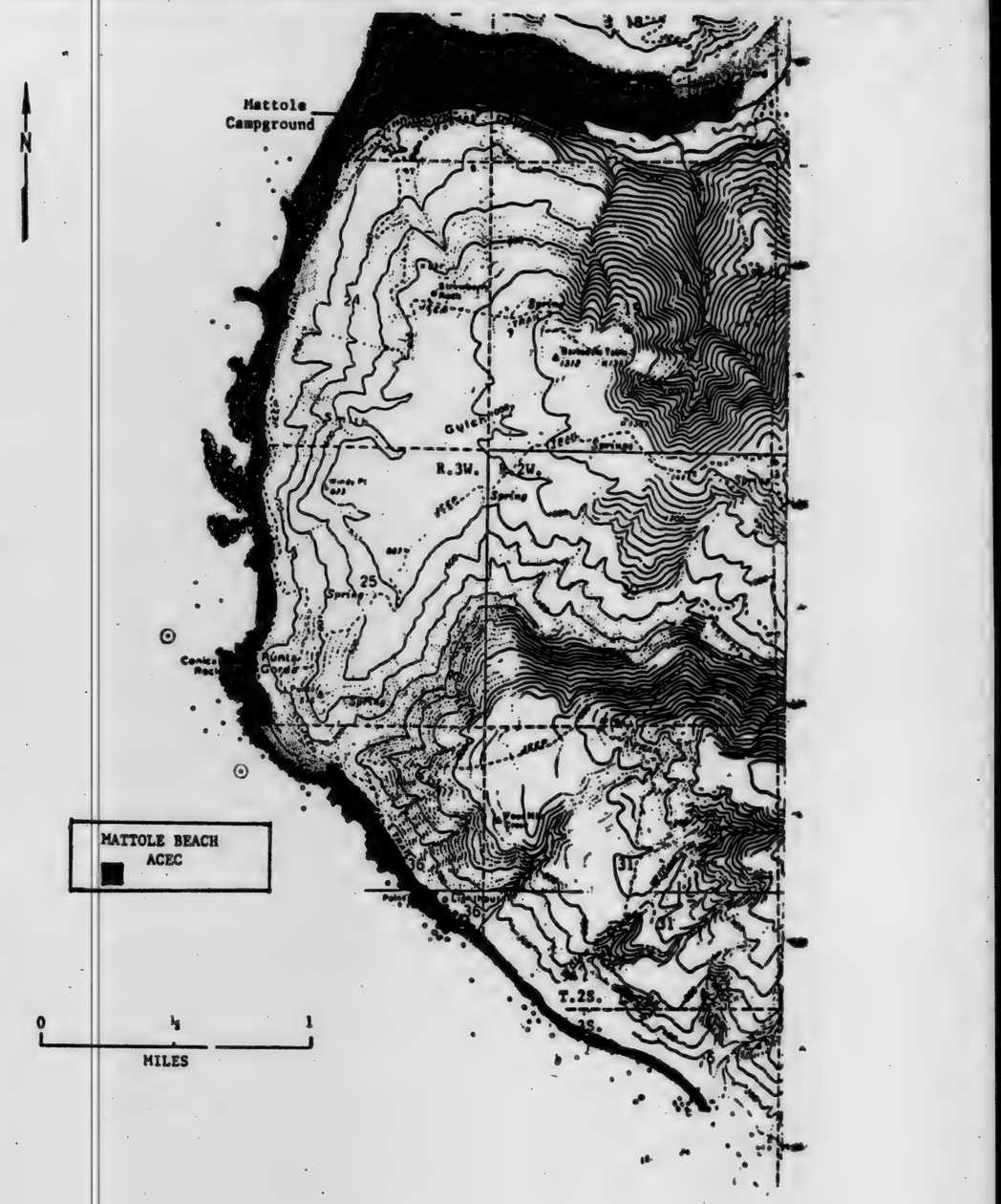
DATE: This action is effective as of January 1, 1990.

SUPPLEMENTARY INFORMATION: During 1980 and 1981 BLM conducted resource inventories covering approximately 2,000 acres of newly acquired land known as the King Range Extension Area. Documentation of the plannng decisions made at that time were deferred until the County's local Coastal Plan was completed. This would help insure that Federal, State and local plans for the area were consistent. Now that the local Coastal Plan is approved, BLM is issuing, by means of this **Federal Register**, official notification to designate the beach strand of an ACEC.

Maps of the "Mattole Beach" ACEC are available at the BLM Arcata Resource Area office and are posted at the local post office as well as the Mattole compground.

John T. Lloyd,
Arcata Area Manager.

BILLING CODE 4310-40-M



[OR931-00-6321-02; GPO-087]

Availability of Draft Record of Decision for Managing Competing

The meeting will be open to the public. Interested persons may submit written statements for the Council's

Dated: December 15, 1989.
Henri R. Bisson,
District Manager.

reservations to the United States and will be subject to existing right-of-ways.

Mark T. Morse,

—Construction of a salmon hatchery.
—Improvement in fish screening facilities at diversions.
—Development of water exchanges and

River Basin, such review to take into account at a minimum the renewal of all of the water supply contracts for the Friant Unit in the following manner:

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[OR931-00-6321-02; GPO-067]

Availability of Draft Record of Decision for Managing Competing Vegetation on Forest Lands in Western Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of draft "Record of Decision" emanating from the Final Environmental Impact Statement, Western Oregon Program, Management of Competing vegetation.

DATES: Due to a delay in printing, written comments on the proposed record of decision will now be accepted through February 16, 1990.

FOR FURTHER INFORMATION CONTACT: Requests for copies as well as written comments should be addressed to: Tom Aufenthie, Project Lead, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Dated: December 19, 1989.

Elaine Zielinski,

Deputy State Director for Lands and Renewable Resources.

[FR Doc. 89-30262 Filed 12-28-89; 8:45 am]

BILLING CODE 4310-33-M

[OR-010-84-6332-02; GPO-069]

Lakeview District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting of the Lakeview District Advisory Council.

SUMMARY: This notice provides the schedule and agenda of a meeting of the Lakeview District Advisory Council.

DATE: Thursday, January 11, 1990, 10:00 a.m. until 3:00 p.m.

ADDRESS: The meeting will be held at the Bly Fire Hall, Highway 140, Bly, Oregon.

FOR FURTHER INFORMATION CONTACT: Renee Snyder, Bureau of Land Management, P.O. Box 151, Lakeview, OR 97630; telephone (503) 947-6110.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include:

1. Opening remarks, introductions
2. Election of chairperson and vice chairperson
3. Review of minutes of last meeting
4. Discussion and recommendation on the adequacy of the Draft Eligibility and Suitability Report for the Upper Klamath Wild and Scenic River Study.
5. Statements from the public, if any
6. Set date and tentative agenda for next meeting.

The meeting will be open to the public. Interested persons may submit written statements for the Council's consideration.

Judy Ellen Nelson,

District Manager.

[FR Doc. 89-30263 Filed 12-28-89; 8:45 am]

BILLING CODE 4310-33-M

[AZ 020-41-5410-10; AZA-24062]

Receipt of Conveyance of Mineral Interest Application; Arizona

AGENCY: Notice of Receipt of Conveyance of Mineral Interest Application AZA-24062.

Notice is hereby given that pursuant to Section 209 of the Act of October 21, 1976, 90 Stat. 2757, Robert O. Barber, Kerry Bjorn Barber, Mary Barber and Brenda Barber Straw have applied for conveyance of the mineral estate described as follows:

Gila and Salt River Meridian Arizona, T. 19 S., R. 14 E., sec. 27, W½NE¼, NW¼, N½SW¼, NW¼SE¼; sec. 28, N½NE¼, NE¼NW¼. Containing 480 acres, more or less.

The mineral interests will be conveyed in whole or in part upon favorable mineral examination.

The purpose is to allow consolidation of surface and subsurface ownership for the lands described above, where there are no known mineral values or in those instances where the reservation of ownership of the mineral interest in the United States interferes with or precludes appropriate non-mineral development of the lands and such development would be a more beneficial use of the lands than its mineral development.

Additional information concerning this application may be obtained from the Area Manager, Phoenix Resource Area, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Upon publication of this notice in the **Federal Register**, the mineral interests described above will be segregated to the extent that they will not be open to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance of such mineral interests, upon final rejection of the application or two years from the date of the filing of the application, September 29, 1989, whichever occurs first.

Dated: December 15, 1989.

Henri R. Bisson,

District Manager.

[FR Doc. 89-30264 Filed 12-28-89; 8:45 am]

BILLING CODE 4310-33-M

[CA-050-43-7122-10-VO49; CA 24024]

Realty Action; Noncompetitive Sale of Public Lands in Siskiyou County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; noncompetitive sale of public lands in Siskiyou County, California.

SUMMARY: The following public land has been found suitable for direct sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 USC 1713), at not less than the estimated fair market value of $22,250. The land will not be offered for sale until at least 60 days after the date of this notice.

Mount Diablo Meridian

T. 41 N., R. 8 W.
Section 8: Lot 1.

Containing 45.40 acres, more or less.

The land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first.

This land is being offered by direct sale to Quentin Tobias. It has been determined that the subject parcel contains no known mineral values; therefore, mineral interests may be conveyed simultaneously. Acceptance of the direct sale offer will qualify the purchaser to make application for conveyance of those mineral interests.

DATES: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Area Manager, Redding Resource Area, 355 Hemsted Drive, Redding, California 96002. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

ADDRESSES: Detailed information concerning this action is available for review at the office listed above.

FOR FURTHER INFORMATION CONTACT: Patricia Cook, Realty Specialist, Redding Resource Area, at the above address.

SUPPLEMENTARY INFORMATION: The patent, when issued, will contain certain

reservations to the United States and will be subject to existing right-of-ways.

Mark T. Morse,

Area Manager.

[FR Doc. 89-30265 Filed 12-28-89; 8:45 am]

BILLING CODE 4310-40-M

Bureau of Reclamation

Intent To Prepare an Environmental Impact Statement (EIS) for the San Joaquin River Basin Resource Management Initiative (Initiative)

AGENCY: Department of the Interior, Bureau of Reclamation.

SUMMARY: The Department of the Interior, Bureau of Reclamation (Reclamation), will prepare an EIS on the Initiative, which is designed to pursue, in conjunction with the State of California, opportunities to improve the water-related environment in the San Joaquin River Basin with particular emphasis on fisheries, wetlands, and water quality. The EIS will take into account the renewal of water contracts in the Friant Unit of the Central Vally Project.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Denny, Project Manager (MP-720), (916) 978-4067 or Mr. Will Tully, Environmental Specialist (MP-750), (916) 978-5131, 2800 Cottage Way, Sacramento, California 95825.

SUPPLEMENTARY INFORMATION: The basic objective of the San Joaquin River Basin Resource Management Initiative is to improve the water-related environment of the San Joaquin River Basin with particular emphasis on fisheries, wetlands, and water quality.

The Initiative will seek the participation of State and local agencies, as well as private water resource organizations. The Initiative will be consistent with the Secretary's responsibilities and obligations under State and Federal law.

The study area for the Initiative will include the entire San Joaquin River and Tulare Lake hydrologic basins of California. Major rivers to be included are the Stanislaus, Tuolumne, Merced, San Joaquin, Kings, Kaweah, Tule, and Kern.

Improvement efforts to be examined will include:

—Increased conjunctive use of groundwater and surface water supplies.
—Rehabilitation of conveyance facilities to conserve surface water.
—Coordination of operation of basin reservoirs.
—Development of offstream storage on wetland habitat.
—Construction of a salmon hatchery.
—Improvement in fish screening facilities at diversions.
—Development of water exchanges and modifications in points of diversion, if feasible, to allow additional releases below Friant Dam and other non-federal dams in the San Joaquin River Basin.

In addition, the Initiative will examine price and conservation aspects of project operations to promote efficient and environmentally sound resource use. The Initiative, and the environmental impact statement (EIS) which will be performed under the Initiative in consultation with appropriate federal agencies, will reflect State primacy over water allocation and the non-discretionary nature of the right under federal reclamation law to long-term renewal of Friant Unit water service contracts at existing quantities. The full scope of the Initiative and EIS will be determined through a NEPA scoping process, but will address aspects of water projects in the San Joaquin Basin, including but not limited to price, conservation, duration of long-term contracts, voluntary transfers to improve economic efficiency, and time, manner, and efficiency of water delivery.

The Initiative will explore these opportunities while continuing the delivery of water supplies from the Friant Unit of the Central Valley Project for municipal and industrial, and agricultural purposes. Reclamation will offer contracts to the water districts with the following provision in Article 14 thereof:

14. (d) Notwithstanding any other provisions of the contract, all provision of this contract are subject to modification by the United States based on compliance with applicable federal environmental laws, including the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA). Future decisions with respet to project operations issues addressed by the San Joaquin River Basin Resource Management Initiative (the "Initiative"), defined for purposes of this contract in subarticle (e), will also be subject to compliance with such laws. The provisions of this contract covering right to long-term renewal and quantity of water (except as otherwise provided by reclamation law) are non-discretionary and not subject to change as a result of compliance with NEPA.

(e) For purposes of this contract, the Initiative will include at a minimum the preparation of an envionmental impact statement and review under the Endangered Species Act of the water-related environment of the San Joaquin River Basin, such review to take into account at a minimum the renewal of all of the water supply contracts for the Friant Unit in the following manner:

(1) The EIS will examine the water related environment of the San Joaquin River Basin with particular emphasis on fisheries, wetlands, and water quality. At a minimum, the EIS will examine the effects on the human environment of continued operation of the Friant Unit considering the following aspects: changes in water price, changes in conservation practices, changes in duration of the long-term contracts (that is, terms exceeding 10 years up to 40 years), voluntary transfers to improve economic efficiency, and changes in project operations such as the time, manner, and efficiency of delivery of the water and the reasonable foreseeable consequences of each of these changes, such as changes in the demand for water for irrigation purposes. Other matters may be examined if determined to be reasonably related as a result of the EISA scoping process. Although the Bureau has no authority to alter the quantity of water that is set forth in Article 3, except as otherwise provided by reclamation law, the EIS will consider this matter as part of its environmental analysis to the extent set forth in this paragraph.

(2) The Department will promptly initiate a consultation process on the Initiative with the Fish and Wildlife Service (FWS) under section 7 of the Endangered Species Act, which will, at a minimum, take into account the renewal of all of the Friant Unit water service contracts and each of the aspects reviewed in the EIS and described in subarticles (e)(1). The Bureau of Reclamation will describe any Initiative issues which go beyond the issues described in the preceding sentence and provide the best available scientific and commercial data regarding the Initiative issues to FWS. The FWS will then issue a biological opinion on whether any action proposed under the Initiative is likely to jeopardize the existence of any endangered or threatened species or is likely to result in the destruction or adverse modification of any designated or proposed criteria habitat of such species.

Scoping for preparation of the draft EIS is expected to begin in January 1990. A draft EIS is scheduled to be released in July 1992, and the final EIS is expected to be available in January 1993. A future notice will be published

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in the Federal Register to more fully detail the scoping process.

Joseph Hunter,

Acting Commissioner, Bureau of Reclamation.

[FR Doc. 89-30160 Filed 12-28-89; 8:45 am]

BILLING CODE 4310-09-M

INTERNATIONAL BOUNDARY AND WATER COMMISSION

Placement of Lane Dividers on The Bridge of the Americas (Cordova Bridge) El Paso, Texas; Finding of No Significant Impact

AGENCY: United States Section, International Boundary and Water Commission, United States and Mexico.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Based on an environmental assessment, the U.S. Section finds that the proposed action to resolve an international concern regarding the structural integrity of the Cordova Bridge by reducing stress on the bridge caused by loaded commercial trucks until rehabilitation work can be done is not a major federal action that would have a significant adverse affect on the quality of the human environment. Therefore, pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Final Regulations (40 CFR parts 1500 through 1508); and the U.S. Section's Operation Procedures for Implementing section 102 of NEPA, published in the Federal Register September 2, 1981 (46 FR 44083); the U.S. Section hereby gives notice that an environmental impact statement will not be prepared for the proposed project.

ADDRESS: Mr. M.R. Ybarra, U.S. section Secretary, International Boundary and Water Commission, United States and Mexico, U.S. Section, 4171 North Mesa Street, C-310, El Paso, Texas 79902. Telephone: 915/534-6698, FTS 570-6698.

SUPPLEMENTARY INFORMATION:

Proposed Action

The action proposed is that the United States Section of the International Boundary and Water Commission (U.S. Section and Commission, respectively) place physical lane dividers at the outermost north and south bound traffic lanes of the Cordova Bridge to separate the flow of passenger vehicle traffic from that of commercial trucks. The proposed action would be taken to resolve an international concern regarding the structural integrity of the Cordova Bridge by reducing stress on the bridge caused by loaded commercial trucks until rehabilitation work can be done.

Alternatives Considered

Six alternatives were considered

The Preferred Alternative is to install a concrete curb delineating the extreme right-hand lanes into each country for commercial traffic. The curb would be 8" across the top, 12" across the bottom and 12" high. The curb would be precast in 10-foot lengths and rigidly attached to the bridge deck by anchors. Signs designating the right-hand lane of the bridge reserved for commercial traffic only would also be placed at strategic locations.

Double Stripe. A painted double stripe was considered as a means of delineating a commercial truck traffic lane. A double solid white stripe signifying no lane change allowed would be painted on the road surface. Signs designating the right-hand lane of the bridge reserved for commercial traffic only would also be placed at strategic locations.

Barrels. Fifty-five gallon drums filled with sand were considered as an alternative to provide lane delineation. These barrels would be a physical barrier placed along the lane divider stripe. Signs designating the right-hand lane of the bridge reserved for commercial traffic only would also be placed at strategic locations.

Precast Concrete Wall. Concrete highway median barriers (Jersey barriers) were considered as a means of physically separating the truck traffic lane from the passenger traffic. Jersey barriers have bases measuring 2'3" tapering to a narrow top 8" wide and are 2'8" tall. They would be rigidly attached along the lane divider stripe separating the right-hand lane from the remaining traffic lanes. Signs designating the right-hand lane of the bridge reserved for commercial traffic only would also be placed at strategic locations.

Painted Lane. Completely painting the right-hand lane was considered to designate commercial traffic use only. Signs designating the right-hand lane of the bridge reserved for commercial traffic only would also be placed at strategic locations.

The No Action Alternative. Under this alternative, no painting of stripes, lanes, nor placement of physical barriers would be done on the Cordova Bridge. No steps would be taken to separate passenger traffic from commercial traffic on the bridge.

Environmental Assessment

The U.S. Section completed the Draft Environmental Assessment for the proposed action on December 14, 1989, and it is currently available for review and comment.

Finding of the Environmental Assessment

The Draft Environmental Assessment finds that the preferred alternative does not constitute a major federal action which would cause a significant local, regional, or national impact on the environment since it:

1. Would effectively reduce dead load weight on the bridge thus slowing the unusually rapid deterioration caused by concentrated loads of commercial trucks on the bridge.
2. Would effectively reduce congestion on the bridge by providing for a clear separation of passenger vehicles from commercial trucks.
3. Would improve air quality at the bridge by reducing traffic congestion and expediting movement of vehicles through inspection facilities.
4. Would provide the least possible lane encroachment into already undersized traffic lanes and thus improve the safety of people traveling on the bridge. This would minimize the danger of impact by errant vehicular operation.
5. Would not present a hazard to pedestrians trying to cross the bridge laterally at unauthorized locations.
6. Would not affect fish and wildlife including endangered and threatened species that might be found in the area.
7. Would not affect cultural resources listed on or determined to be eligible for listing on the National Register of Historic Places.

On the basis of the Draft Environmental Assessment, the U.S. Section has determined that an environmental impact statement is not required for the proposed action to provide a means to efficiently control the vehicular traffic on the Cordova Bridge by separating the flow of automobile traffic from that of commercial trucks.

An environmental impact statement will not be prepared unless additional information which may affect this decision is brought to our attention within thirty (30) days of the date of this Notice.

The Draft Environmental Assessment and Draft Finding of No Significant Impact have been forwarded to the Environmental Protection Agency and various Federal, State, and local agencies and interested parties. A limited number of copies of these documents are available to fill single copy requests at the above address.

Dated: December 15, 1989.

Suzette Zebrowski,

Staff Counsel.

[FR Doc. 89-30178 Filed 12-28-89; 8:45 am]

BILLING CODE 4710-09-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-291]

Certain Insulated Security Chests; Designation of Investigation as More Complicated and Extension of Deadline for Completion of Investigation by One Month

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has designated the above-captioned investigation "More complicated" and has extended the administrative deadlines for issuance of the presiding administrative law judge's (ALJ's) final initial determination (ID) and for completion of the investigation by one month, i.e., until January 8, 1990, and April 9, 1990, respectively.

FOR FURTHER INFORMATION CONTACT: Carol McCue Verratti, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-252-1088. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

AUTHORITY: The authority for this action is contained in section 337(b)(1) of the Tariff Act of 1930 (19 U.S.C. 1337(b)(1)), and in §§ 210.59(a) and 210.53(c) of the Commission's Interim Rules of Practice and Procedure (19 CFR 210.59(a) and 210.53(c)).

SUPPLEMENTARY INFORMATION: On November 28, 1989, the presiding ALJ in this investigation issued an ID (Order No. 11) pursuant to Commission interim rules 210.59(a) and 210.53(c) designating this investigation more complicated. The reasons for designating the investigation more complicated were discovery delays caused in large part by the fact that the one active respondent in the investigation is proceeding without benefit of counsel and is unfamiliar with the Commission's procedural rules. Accordingly, the ALJ was forced to permit the parties to conduct discovery after the close of the evidentiary hearing so that the record would be as complete as possible. This caused the ALJ to be delayed in commencing work on the final ID.

In addition to the delays arising from this investigation, the ALJ's schedule was further complicated by unexpected developments in a concurrent section 337 investigation over which the presiding ALJ in this investigation also presides. In that investigation there were extensive prehearing and discovery motions and the evidentiary hearing concluded approximately two weeks later than originally expected. This also prevented the ALJ from working on the final ID in this investigation.

Although designation of this investigation as a more complicated investigation extends the statutory time period for completion of the investigation from 12 to 18 months, Order No. 11 extended the deadline for issuance of the final ID by only one month. The Commission has, therefore, also extended the administrative deadline for completion of the investigation by one month, *i.e.*, until April 9, 1990.

The ID and all other nonconfidential documents in the record of the investigation are available for public inspection during official office hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202-252-1802.

By order of the Commission.

Issued: December 22, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-30201 Filed 12-28-89; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 290 (Sub-No. 5) (90-1)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Interstate Commerce Commission.

ACTION: Approval of rail cost adjustment factor and decision.

SUMMARY: The Commission has approved the first quarter 1990 rail cost adjustment factor (RCAF) and cost index filed by the Association of American Railroads. The first quarter RCAF (Unadjusted) is 1.088. The first quarter RCAF (Adjusted) is 1.056, a decrease of 0.4 percent from the fourth quarter RCAF (Adjusted) of 1.060. Maximum first quarter 1990 RCAF rate levels may not exceed 99.6 percent of maximum fourth quarter 1989 RCAF rate levels.

DATES: Effective January 1, 1990.

FOR FURTHER INFORMATION CONTACT: William T. Bono (202) 275-7354; Robert C. Hasek (202) 275-0938; TDD for hearing impaired (202) 275-1721.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or telephone (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 275-1721.]

This action will not significantly affect either the quality of the human environment or energy conservation.

Decided: December 22, 1989

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Lamboley, Phillips, and Emmett. Commissioner Lamboley commented with a separate expression.

Kathleen M. King,

Acting Secretary.

[FR Doc. 89-30250 Filed 12-28-89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 335X)]

CSX Transportation, Inc.; Abandonment Exemption in Polk County, FL

Applicant has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon its 1.29-mile line of railroad between mileposts AY-876.71 and AY-878.0, near Agricola, Polk County, FL.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected

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employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on January 28, 1990 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by January 8, 1990.[3] Petitions for reconsideration or requests for public use conditions under 49 CFR 1152.28 must be filed by January 18, 1990, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by January 3, 1990. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275–7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: December 20, 1989.

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See* Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See* Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Kathleen M. King,

Acting Secretary.

[FR Doc. 89–29981 Filed 12–28–89; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

In accordance with Departmental Policy, 28 C.F.R. § 50.7, notice is hereby given that on December 18, 1989, a proposed Consent Decree in *United States* v. *General Refuse Services, Inc., et al.*, Civil Action No. C–3–89–484, was lodged with the United States District Court for the Southern District of Ohio (Western Division). This action, brought under sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9606 and 9607, arose from the existence of a hazardous waste site located north of Troy, Ohio known as the Miami County Incinerator site.

Under the settlement, 120 settling defendants have agreed to perform certain response actions at the site to remediate the North and South Landfills, the ash disposal pit, the ash pile, the liquid disposal area, site groundwater, the former scrubber wastewater lagoon and the Eldean tributary. Details of the remedy are set forth in a Record of Decision (ROD) issued by the Environmental Protection Agency (EPA) on June 30, 1989. Subsequently, EPA modified certain aspects of the ROD. These modifications retain the performance standards contained in the ROD but are more cost effective than the design requirements of the ROD. Details of the modifications are described in a notice published in a local newspaper and made available at the Monroe County Public Library by EPA in compliance with Section 117 (c) and (d) of CERCLA, 42 U.S.C. 9671 (c) and (d).

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *General Refuse Services, Inc., et al.*, Ref. No. 90–11–3–286.

The proposed Decree may be examined at the Offices of the United States Attorney, Civil Division, 200 W. Second Street, Dayton, Ohio 45402; at the United States Environmental Protection Agency (Region V), Office of Regional Counsel, 111 West Jackson Street, 3rd Floor, Chicago, Illinois 60604; and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1647, 9th Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $32.40 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–30286 Filed 12–28–89; 8:45 am]

BILLING CODE 4410–10–M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Department policy, 28 CFR 50.7, and section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), notice is hereby given that on December 12, 1989, a proposed consent decree in *United States* v. *Trans-Tech, Inc.*, Civil Action No. *HAR 89–3392*, was lodged with the United States District Court for the District of Maryland.

The proposed consent decree requires the defendant to reimburse the Hazardous Substance Superfund $373,767.21 in response costs incurred by the Environmental Protection Agency (EPA) to address the release or threat of release of hazardous substances at the Adamstown Groundwater Site in Adamstown, Maryland. The parties to the consent decree are the United States and Trans-Tech, Inc.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Trans-Tech, Inc.*, DOJ Ref. 90–11–3–413.

Copies of the proposed consent decree may be examined at the Office of the United States Attorney, District of Maryland, 8th Floor, U.S. Courthouse, 101 West Lombard Street, Baltimore, MD 21201, and at the Region III office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1647, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice. In requesting a copy please enclose a check in the amount of $1.90 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–30287 Filed 12–28–89; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Proposed Termination of Final Judgments

Notice is hereby given that defendants Union Camp Corporation and Bemis Company, Inc. have filed with the United States District Court for the Eastern District of Virginia separate motions to terminate the final judgments in *United States* v. *Union Camp Corporation and Bemis Company, Inc.*, Civil No. 5005–A; and that the Department of Justice ("Department"), in a stipulation also filed with the Court, has consented to termination of the judgments as to both Union and Bemis, but has reserved the right to withdraw its consent pending receipt of public comments. The complaint in this case (filed on November 4, 1968) alleged that defendants conspired to restrain and monopolize interstate trade and commerce in the manufacture and sale of mesh window paper bags (used principally for packaging potatoes) by asserting patent claims they knew to be invalid and by agreeing (with each other and with Union's licensees) to refuse patent licenses to certain applicants. The complaint also alleged that Union attempted to monopolize such manufacture and sale by improperly controlling entry therein and that Bemis did so by improperly using a patent it obtained by fraud and thus knew to be invalid.

The judgments (entered against defendant Union on February 24, 1969, and against defendant Bemis on July 1, 1969) require, among other things, that until the end of 1986 Union attach a copy of its judgment to any claim of infringement of certain patents, and that Bemis (a) distribute to certain of its personnel copies of its judgment plus instructions for compliance therewith, and (b) impose on certain Bemis personnel a duty to report to management any facts such personnel learn which would invalidate or prevent issuance of any Bemis patent. The judgments also enjoin Union from (a) asserting the validity of certain patents which it believes should not have been issued or should be declared invalid, and (b) consulting or agreeing with current or prospective licenses over whether to grant further licenses under certain patents; and enjoin Bemis from (a) filing or further prosecuting any patent application, or enforcing or threatening to enforce any patent, whenever it learns of facts which would prevent the issuance of or would invalidate the patent, and (b) consulting or agreeing with its licensors or licensees over whether to grant additional patent licenses.

The Department has filed with the Court a memorandum setting forth the reasons why the Department believes that termination of the judgments would serve the public interest. Copies of the complaint and final judgments, defendants' motion papers, the stipulation containing the Government's consent, the Department's memorandum, and all further papers filed with the Court in connection with these motions will be available for inspection at Room 3233, Antitrust Division, Department of Justice, 10th Street and Pennsylvania Avenue NW., Washington, DC 20530 (telephone 202/633–2481), and at the Office of the Clerk of the United States District Court for the Eastern District of Virginia, 200 South Washington Street, Alexandria, Virginia 22314. Copies of any of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the decrees to the Department. Such comments must be received within the sixty (60) day period established by court order, and will be filed with the Court. Comments should be addressed to Robert E. Bloch, Chief, Professions and Intellectual Property Section, Antitrust Division, Department of Justice, Washington, DC 20530 (telephone: 202/724–7425).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89–30288 Filed 12–28–89; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

[Docket No. 86–22]

Marijuana Scheduling Petition; Denial of Petition

This is a final order of the Administrator of the Drug Enforcement Administration (DEA) denying the petition of the National Organization for Reform of Marijuana Laws (NORML) to reschedule the plant material marijuana from Schedule I to Schedule II of the Controlled Substances Act. This order follows a rulemaking on the record as prescribed by the Controlled Substances Act, 21 U.S.C. 801, *et seq.*, and the Administrative Procedures Act, 5 U.S.C. 551, *et seq.* There are seven parties in the rulemaking proceeding. Four parties, NORML, the Alliance for Cannabis Therapeutics (ACT), the Cannabis Corporation of America (CCA), and Carl Eric Olsen, comprised the pro-marijuana parties, those advocating the rescheduling of marijuana from Schedule I to Schedule II. The three remaining parties, who advocated that marijuana remain in Schedule I, were DEA, the National Federation of Parents for a Drug-Free Youth, and the International Association of Chiefs of Police (IACP).

The two issues involved in a determination of whether marijuana should be rescheduled from Schedule I to Schedule II are whether marijuana plant material has a currently accepted medical use in treatment in the United States, or a currently accepted medical use with severe restrictions; and whether there is a lack of accepted safety for use of marijuana plant material under medical supervision. After a thorough review of the record in this matter, the Administrator rejects the recommendation of the administrative law judge to reschedule marijuana into Schedule II and finds that the evidence in the record mandates a finding that the marijuana plant material remain in Schedule I of the Controlled Substances Act.

The pro-marijuana parties advocate the placement of marijuana plant material into Schedule II for medical use in the treatment of a wide variety of ailments, including nausea and vomiting associated with chemotherapy, glaucoma, spasticity in amputees and

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those with multiple sclerosis, epilepsy, poor appetite, addiction to drugs and alcohol, pain, and asthma. The evidence presented by the pro-marijuana parties includes outdated and limited scientific studies; chronicles of individuals, their families and friends who have used marijuana; opinions from over a dozen psychiatrists and physicians; court opinions involving medical necessity as a defense to criminal charges for illegal possession of marijuana; state statutes which made marijuana available for research; newspaper articles; and the opinions of laypersons, including lawyers and associations of lawyers. The Administrator does not find such evidence convincing in light of the lack of reliable, credible, and relevant scientific studies documenting marijuana's medical utility; the opinions of highly respected, credentialed experts that marijuana does not have an accepted medical use; and statements from the American Medical Association, the American Cancer Society, the American Academy of Ophthalmology, the National Multiple Sclerosis Society, and the Federal Food and Drug Administration that marijuana has not been demonstrated as suitable for use as a medicine. Each of these areas will be discussed separately.

The record contains many research studies which have been published in scientific journals and many unpublished studies conducted by individual states. In order to evaluate the validity of any research study many factors must be considered. Certain scientific practices have been generally accepted by the scientific community which are designed to increase the validity of experimental studies. Studies or research projects which do not follow these accepted scientific practices have very limited, if any, credibility. A review of such studies must first examine the degree to which researchers control, or hold constant, all the variables which could affect the results, except the variable being studied. For example, if you wish to evaluate the effectiveness of marijuana on a group of glaucoma patients, you must control any other medication which the patient is taking. Otherwise, it is impossible to conclude that the results are attributable to the marijuana.

The second factor, or aspect of the design of a research project which must be evaluated, is the placebo effect. This is the tendency of research subjects to act and respond in a manner they believe is expected of them. To eliminate this factor, research subjects are usually "blinded," or not informed, of what drug they are receiving. Results of non-blind studies are questionable since they could be attributable, in large part, to psychological reactions of subjects rather than any real effects from the experimental drug. The next factor which must be minimized or eliminated for a research study to be valid is the expectation of the researcher. This is especially true where the effect being measured is subjective and not objective. For example, if the researcher is evaluating if the patient is nauseated, that is very subjective. If the researcher knows which patients are receiving the experimental drug, his perception of the results could be significantly altered.

Other factors to be considered when evaluating the validity of research include the number of subjects in the study, how the subjects are selected for the study, the length of the study, or how many times the experimental drug is administered, and the measurement of results in quantifiable, objective terms. The fewer the subjects in a research study, the less valid the results. If the sample of subjects is not statistically significant, the chances of the same results being duplicated in other individuals is reduced. Subjects for a research study should be randomly selected and representative of the population that is targeted to use the drug. Testing of marijuana in cancer patients for relief of nausea and vomiting should not be limited to those who have previously used marijuana recreationally and request its use in the study. The length of a study is particularly significant when the drug is to be used to treat a chronic condition such as glaucoma or spasticity. Studies based upon acute or one-time administration of the drug must be viewed with caution when the goal is treatment of a chronic condition. The effectiveness of the drug for long-time administration and the existence of side effects resulting from chronic use will not be revealed in acute studies.

In addition to factors related to the design and execution of a research study, there are two other factors which must be reviewed in evaluation of a research study. Research results are always considered tentative or preliminary until they have been replicated or confirmed by another researcher. The research study must be reported in sufficient detail to permit others to repeat it. Finally, publication of a study in a scientific journal, especially a journal which subjects an article to review prior to publication, adds validity to a study. Journal publication subjects a study to review and scrutiny by the scientific community and opens the door to replication of the studies. Unpublished studies are inherently suspect.

While research studies with the limitations mentioned above may provide useful and preliminary data which will be valuable in designing further studies, research studies with substantial limitations are not sufficient to support a determination that a drug has an accepted medical use. Both the published and unpublished research studies submitted by the pro-marijuana parties in this proceeding to support marijuana's medical use suffer from many deficiencies. They are, in essence, preliminary studies. None of these studies has risen to the level of demonstrating that marijuana has an accepted medical use for treatment of any medical condition. The three medical conditions for which the majority of evidence in the record was presented are: (1) Nausea and vomiting associated with chemotherapy, (2) glaucoma, and (3) spasticity associated with amputation or multiple sclerosis. Evidence presented in each area will be discussed separately.

Nausea and Vomiting

Five studies were presented by the pro-marijuana parties to support the medical use of marijuana as an antiemetic. The first study by Sallan, et al., *Antiemetic Effect of Delta-9-Tetrahydrocannabinol in Patients Receiving Cancer Chemotherapy*, 293 New England Journal of Medicine, 795–797(1975), utilized synthetic tetrahydrocannabinol (THC) and not the plant material marijuana. Although delta-9-THC is an active ingredient in the marijuana plant material, marijuana contains over 400 other chemicals. At least 61 of these chemicals are cannabinoids. All these chemicals could have some effect on the human body. Since THC is only one of many active ingredients in marijuana, THC studies are of very limited value in evaluating the therapeutic utility of marijuana. The route of administration, smoking versus oral injection, is a significant difference between use of marijuana and THC. Therefore, the results of the Sallan study are of little or no benefit in evaluating the medical utility of marijuana for treatment of nausea and vomiting associated with chemotherapy.

The second study compared a combination of pure THC and marijuana to placebo cigarettes. This study by Chang, et al., *Delta-9-Tetrahydrocannabinol as an Antiemetic in Cancer Patients Receiving High-Dose Methotrexate*, 91 Annals of Internal Medicine, 819–824 (1979), was

randomized, double-blind, and placebo controlled. The study concluded, "that a combination of oral and smoked THC is a highly effective antiemetic compared to placebo * * *" This study was limited to 15 subjects, some of whom received both marijuana and THC at the same time. The validity of the results of this study is severely limited by its small size and administration of the mixture of the two drugs, THC and marijuana. The study is not helpful in determining the therapeutic utility of marijuana alone in treating nausea and vomiting.

The third study conducted by Dr. Thomas J. Ungerleider, a psychiatrist, involved the administration of marijuana to 16 bone marrow transplant patients suffering from severe nausea and vomiting from radiation therapy. The results of this study are of little value due to the limited number of patients, the subjective nature of the data, and the fact that the results of the study were never published. The conclusion that there was less nausea and vomiting with use of marijuana was based upon the subjects' and researcher's subjective determination. There were no objective measurements, such as number of incidents or frequency of vomiting. During cross-examination, Dr. Ungerleider indicated that the results of the study were not published because there was not enough hard data.

The fourth study compared marijuana to THC as an antiemetic. Levitt, et al,. *Randomized Double Blind Comparison of Delta-9-Tetrahydrocannabinol (THC) and Marijuana As Chemotherapy Antiemetics.* (Meeting Abstract), 3 Proc. Annu. Meet. Am. Soc. Clin. Oncol. 91 (1984). It concluded that THC is superior to marijuana in controlling nausea and vomiting. A specific formulation of synthetic THC has been approved for marketing and is available as a prescription drug for treatment of nausea and vomiting associated with cancer chemotherapy.

The fifth study presented by the pro-marijuana parties is actually a group of programs, collectively labeled "Controlled Substances Therapeutic Research Programs," conducted by six states in the 1970's and 1980's. These programs involved the use of both marijuana cigarettes and synthetic THC capsules. The programs were given Investigational New Drug (IND) approval by the Food and Drug Administration (FDA) and the marijuana and THC were supplied by the Federal Government. The protocols of these programs were very loosely constructed. There were no controls. That is, there were no individuals who did not take the experimental drugs to compare with those who did. The studies were not blind or double-blind. Every research subject knew what drug they were receiving and, in many cases, were permitted to request either marijuana or THC. The studies were not randomized. In most instances, the results were measured by the subject's subjective evaluation of the drug's effectiveness. This is even more of a problem where the drug in question is a psychotropic or mind-altering substance like marijuana, which by its very nature makes some individuals feel "high," and may distort their perception of physical symptoms. There were no objectively measured results. The results were not published in scientific journals and, in some cases, data were lost or not recorded. The number of individuals who actually smoked marijuana in these studies was relatively small. These state studies were born of compassion and frustration. They abandoned traditional scientific methods in favor of dispensing marijuana to as many individuals as possible on the chance that it might help them. Though well-intentioned, these studies have little scientific value.

The research studies presented by the pro-marijuana parties in this proceeding do not support a conclusion that marijuana has a therapeutic use for treatment of nausea and vomiting associated with chemotherapy.

The pro-marijuana parties presented many testimonials from cancer patients, their families, and friends about the use of marijuana to alleviate nausea and vomiting associated with chemotherapy. These stories of individuals who treat themselves with a mind-altering drug, such as marijuana, must be viewed with great skepticism. There is no scientific merit to any of these accounts. In many cases the individuals were taking a variety of other medications and were using anything which might help treat the cancer as well as the nausea. They were using marijuana purchased on the street, and were unaware of the strength of the drug. They were not using the drug under medical supervision. Many of these individuals had been recreational users of marijuana prior to becoming ill. These individuals' desire for the drug to relieve their symptoms, as well as a desire to rationalize their marijuana use, removes any scientific value from their accounts of marijuana use. There is no doubt that these individuals and their loved-ones believed that marijuana was beneficial. The accounts of these individuals' suffering and illnesses are very moving and tragic; they are not, however, reliable scientific evidence, nor do they provide a basis to conclude that marijuana has an accepted medical use as an antiemetic.

There were many physicians and other medical experts who testified in this proceeding. In reviewing the weight to be given to an expert's opinion, the facts relied upon to reach that opinion and the credentials and experience of the expert must be carefully examined. The experts presented by the pro-marijuana parties were unable to provide a strong scientific or factual basis to support their opinions. In addition, many of the experts presented by the pro-marijuana parties did not have any expertise in the area of research in the specific medical area being addressed. The pro-marijuana parties presented the testimony of five psychiatrists to support the use of marijuana as an antiemetic. None of these individuals is an oncologist, nor have they treated cancer patients. Three of the psychiatrists, Drs. Grinspoon, Ungerleider and Zinberg are current or former board members of NORML or ACT. All these physicians indicated that they relied on scientific studies which they had read, their experience with cancer patients, or stories from others, to reach their conclusions. When questioned on cross-examination as to which studies they relied upon, most were unable to list one study. A review of the available literature has already demonstrated the unreliability of the studies that exist. The testimonials upon which these psychiatrists relied are also scientifically suspect. The opinions of these psychiatrists are, therefore, of little value in determining whether marijuana is therapeutically useful as an antiemetic.

Two pharmacologists, Drs. Morgan and Jobe, presented testimony on behalf of the pro-marijuana parties. Dr. Morgan is a professor at the City College of New York. He does not treat patients, nor is he an oncologist. His opinions are based upon a review of scientific studies and stories told to him by others. He has ties to NORML and is in favor of legalizing marijuana. Dr. Jobe is a pharmacologist and psychiatrist. He testified that his knowledge of marijuana's effects as a drug are based upon a review of the literature and stories from individuals undergoing chemotherapy. On cross-examination, Dr. Jobe indicated that this anecdotal information came from approximately four or five individuals. He also indicated that his knowledge of the scientific studies conducted with marijuana was not current. The opinions of Drs. Morgan and Jobe are of little value in determining whether marijuana has a medical use.

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Two general practitioners, Drs. Weil and Kaufman, also provided testimony on behalf of the pro-marijuana parties. Neither are oncologists, nor do they treat cancer patients. Dr. Weil is a wellness counselor at a health spa, and Dr. Kaufman is an officer of a company that audits hospital quality control programs. Dr. Weil has written a number of books on drugs and admitted that he has personally used every mind-altering, illicit drug he has written about. Dr. Kaufman stopped practicing medicine in 1974, and was unable to provide any information on cross-examination regarding the basis for his opinion that marijuana has an accepted medical use. Neither Dr. Weil nor Dr. Kaufman has a credible basis for their opinions regarding marijuana, and, therefore, their testimony will be disregarded.

Four oncologists presented testimony on behalf of the pro-marijuana parties. They were Drs. Goldberg, Silverberg, Bickers, and Stephens. Dr. Goldberg is a board certified oncologist, but practices primarily internal medicine. She only administers chemotherapy to one or two patients a year. In her career, she has administered chemotherapy to no more than ten patients whom she believed to be using marijuana. On cross-examination, she could not recall any studies regarding marijuana. Dr. Goldberg was a member and financial contributor to NORML. Dr. Silverberg has practiced oncology for 20 years. He is a Professor of Clinical Oncology at the University of California at San Francisco, but is not a board certified oncologist. In his testimony, Dr. Silverberg indicated that there was voluminous medical research regarding marijuana's effectiveness in treating nausea and vomiting. On cross-examination, Dr. Silverberg could not identify any studies, and was forced to admit that he had been incorrect and that there were, in fact, very few studies conducted using marijuana as an antiemetic. Although Dr. Silverberg has advised patients to use marijuana to control nausea and vomiting associated with chemotherapy, he has never been involved in any research nor has he documented any of his observations. Dr. Bickers is an oncologist in New Orleans and is a Professor of Medicine at the Louisiana University School of Medicine. Although Dr. Bickers claims that young patients have better control over nausea and vomiting after using marijuana, he has never documented this claim. Dr. Bickers was unable to identify any scientific information which he relied upon in reaching his conclusion regarding marijuana. Dr. Stephens, an oncologist, Professor of Medicine and Director of Clinical Oncology at the University of Kansas, characterized marijuana as a "highly effective, and in some cases, critical drug in the reduction of chemotherapeutically-induced emesis." During cross-examination, Dr. Stephens stated that he was unaware of any scientific studies which had been done with marijuana, and that he had never done research or treated patients with marijuana. He indicated that he received his information about the patient's use of marijuana from the nursing staff or the patient's family. None of these oncologists based their opinions about marijuana on scientific studies or their own research. Most did not base their opinions on their direct observations, but on the opinions of others. In light of lack of scientific basis for these opinions, they will be given little regard.

The agency presented the testimony of nationally recognized experts in oncology. Dr. Ettinger, a Professor of Oncology at Johns Hopkins School of Medicine, is the author of over 100 published articles on cancer treatment. Dr. Ettinger testified:

> There is no indication that marijuana is effective in treating nausea and vomiting resulting from radiation treatment or other causes. No legitimate studies have been conducted which make such conclusions.

He continued by stating that:

> Although extensive research has been conducted using * * * (THC) * * * as antiemetic treatment for cancer chemotherapy patients, very little research has actually been conducted using marijuana * * * for the same purpose. Most of the information concerning marijuana's effectiveness is anecdotal or comes from uncontrolled studies.

Dr. Gralla, a Professor of Medicine at Cornell University Medical College, and an Associate Attending Physician at Sloan-Kettering Memorial Cancer Center, is an oncologist who has spent his entire professional career devoted to cancer research and treatment. Dr. Gralla has conducted extensive research with antiemetic drugs and testified that there are currently many new medicines that control nausea and vomiting associated with chemotherapy more effectively than marijuana. He also stated that most physicians and oncologists have little interest in marijuana because of its negative side effects and other problems associated with its use. In conclusion, Dr. Gralla stated that he and his fellow cancer specialists at Sloan-Kettering do not accept marijuana as being medically useful to treat nausea and vomiting associated with chemotherapy.

Dr. Laszlo, currently Vice President of Research for the American Cancer Society, is an expert who has devoted the majority of his over 30 years in medicine to the treatment of cancer. During his career, he spent eleven years as the Director of Clinical Programs at the Duke University Comprehensive Cancer Center. Dr. Laszlo has authored numerous scientific articles about cancer research and treatment and has written a book titled, *Antiemetics and Cancer Chemotherapy*. In his testimony for this proceeding, Dr. Laszlo stated that he does not advocate the use of marijuana as an antiemetic, in part, because there has not been sufficient testing of marijuana to show that it is a safe and effective drug. He also indicated that because there are other available, highly effective antiemetics, a physician does not need to resort to a crude drug such as marijuana. Dr. Laszlo concluded that marijuana does not have a currently accepted medical use in the United States for treatment of nausea and vomiting resulting from cancer chemotherapy.

The American Cancer Society provided DEA with its policy statements regarding medical use of marijuana. The administrative law judge refused to admit this document into evidence in this proceeding, relegating it to the "public comment" section of the record. The Administrator, however, considers this document to be extremely relevant and, indeed, of substantial importance in this matter. The American Cancer Society has, and continues to, support research with substances which may provide relief to cancer patients, including marijuana. It states, however, that the results of clinical investigations are insufficient to warrant the decontrol of marijuana for medical use. The American Medical Association has expressed a similar opinion.

The Food and Drug Administration has provided DEA with a scientific and medical evaluation of marijuana, as well as testimony from one of its leading pharmacologists. Evaluating marijuana against its criteria for safety and effectiveness, FDA has concluded that there is inadequate scientific evidence to support a finding that marijuana is safe and effective for treating nausea and vomiting experienced by patients undergoing chemotherapy.

The pro-marijuana parties presented cases in which courts did not convict individuals of a crime associated with possession and use of marijuana based upon a legal defense of "medical necessity." These cases have no relevance to this proceeding which relates to marijuana's possible medical use. The courts found only that these individuals, who were seriously ill and believed that marijuana would help them, did not have criminal intent in possessing or using marijuana. The judges and juries in these proceedings were not deciding medical and scientific facts, but legal issues. These decisions do not provide scientific evidence that marijuana has a medical use.

The pro-marijuana parties also presented evidence that 34 states passed laws permitting marijuana's use for medical purposes in those states. These laws provided that marijuana should be available for medical research. The term "research" is essential to a reading of these statutes. These laws made marijuana available for research and, in some states, set up research programs to study marijuana's safety and effectiveness as a medicine. These statutes are read for what they are, encouraging research involving marijuana. They are not an endorsement by state legislatures that marijuana has an accepted medical use in treatment.

The numerous testimonials and opinions of lay persons which were presented in this proceeding by the pro-marijuana parties are not useful in determining whether marijuana has a medical use. While experiences of individuals with medical conditions who use marijuana may provide a basis for research, they cannot be substituted for reliable scientific evidence. For the many reasons stated in the previous discussion of scientific evidence, these statements can be given little weight. Similarly, endorsements by such organizations as the National Association of Attorneys General, that marijuana has a medical use as an antiemetic, are of little persuasive value when compared with statements from the American Cancer Society and the American Medical Association.

Glaucoma

The pro-marijuana parties presented several studies to support their contention that marijuana has a medical use for treatment of glaucoma. In order for a drug to be effective in treating glaucoma it must lower the pressure within the eye for prolonged periods of time and actually preserve sight or visual fields. The studies relied upon by the pro-marijuana parties do not scientifically support a finding that marijuana has a medical use for treatment of glaucoma. Five of the studies presented by the pro-marijuana parties are pure THC studies. As previously noted, THC is only one constituent among hundreds found in marijuana. Therefore, the consequences of an individual ingesting pure THC as compared to smoking marijuana are vastly different. A few of the studies presented do document that heavy doses of marijuana over a short time period reduce eye pressure in most individuals. However, there are no studies which document that marijuana can sustain reduced eye pressure for extended time periods. The acute, or short-term, studies also show various side effects from marijuana use, including lowered blood pressure, rapid heart beat, and heart palpitations. In a 1979 study conducted by Drs. Merritt, Crawford, Alexander, Anduze, and Gelbart, the conclusions included a statement: "It is because of the frequency and severity with which untoward events occurred that marijuana inhalation is not an ideal therapeutic modality for glaucoma patients."

The pro-marijuana parties presented testimonials of individuals who suffer from glaucoma and believe their condition has benefited from the use of marijuana. Most of these individuals used marijuana recreationally prior to discovery of their illness. Chief among the individuals presenting statements was Robert Randall. Mr. Randall is president of ACT, and has been on NORML's Board of Directors since 1976. He has been a strong advocate for medical use of marijuana. Mr. Randall also has glaucoma. Mr. Randall began smoking marijuana as a college student in 1968, long before he was diagnosed in 1972 as having glaucoma. At that time Mr. Randall was treated with standard glaucoma medications. In the mid 1970's Mr. Randall was involved in a preliminary research study conducted by Dr. Robert Hepler. Dr. Hepler conducted some of the first published short-term marijuana studies relating to glaucoma. Dr. Hepler told Mr. Randall that he believed that marijuana in combination with other standard glaucoma medications would be helpful in reducing his eye pressure. In 1975, Mr. Randall was arrested for growing and possessing marijuana. His defense was medical necessity. Subsequently, he began receiving marijuana under an Investigational New Drug (IND) protocol sponsored by his physician. He also continued to receive standard glaucoma medications. Since 1978, Mr. Randall has been treated by Dr. North. Mr. Randall receives marijuana from the Federal Government and continues to take standard glaucoma medications. Two physicians who treated Mr. Randall, including Dr. North, testified that Mr. Randall's eye pressure appears to have been controlled and his vision kept stable for the last several years.

Mr. Randall smokes approximately 8 to 10 marijuana cigarettes a day. Since Mr. Randall continues to take other glaucoma medications, his controlled eye pressure cannot be attributable solely to marijuana use. In fact, Dr. North testified that Mr. Randall needs the standard medications as well as marijuana, and that the marijuana itself is not totally effective in decreasing Mr. Randall's eye pressure. Mr. Randall's experience with marijuana, although utilized under a physician's directions, is not scientific evidence that marijuana has an accepted medical use in treatment of glaucoma. Dr. Merritt, one of Mr. Randall's physicians, responded to the question of why he did not publish the results of Mr. Randall's treatment by saying, "A single isolated incident of one person smoking marijuana is not evidence for other ophthalmologists who may want to use the drug."

Dr. Hepler, the physician who conducted preliminary studies with marijuana and initially advised Mr. Randall to use marijuana with his other medications, now states that there is insufficient scientific evidence to conclude that marijuana is effective in treating glaucoma. The pro-marijuana parties rely primarily on the opinions of two of Mr. Randall's physicians, Drs. North and Merritt, in supporting their contention that marijuana has a medical use in treatment of glaucoma. Dr. North indicated that his conclusion that marijuana has a medical use in treatment of glaucoma is based solely on his observations of Mr. Randall. Dr. Merritt is a board certified ophthalmologist and researcher who has authored many articles on the use of marijuana and cannabinoids to reduce eye pressure. Dr. Merritt based his opinion that marijuana has a medical use in treatment of glaucoma on published scientific studies, treatment of Mr. Randall, and treatment of other glaucoma patients. As previously stated, all the available studies concern high doses of marijuana taken over short periods of time. Even Dr. Merritt admitted that there are no studies to show that marijuana repeatedly lowers eye pressure over long time periods. The maintenance of lowered eye pressure is crucial in treating individuals with glaucoma. On cross-examination, Dr. Merritt was unable to provide either the specific number of individual patients he had observed or any scientific data relating to those patients. Although Dr. Merritt is a well-known ophthalmologist, the basis for his opinion that marijuana has a medical use in the treatment of glaucoma is not scientifically sound.

The agency presented several experts who testified that there is insufficient scientific evidence to support a

scientific evidence. The same psychiatrists and general practitioners who reported marijuana had a medical

testimony of individuals who had used marijuana for those conditions and the testimony of the psychiatrists or general

anecdotal and unreliable evidence. The evidence presented by the pro-marijuana parties in this proceeding

FDA conducted a legislative-type hearing at which it received written and oral testimony. On May 13, 1983, the

Administrator finds that marijuana must remain in Schedule I of the Controlled Substances Act because it has no

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The agency presented several experts who testified that there is insufficient scientific evidence to support a conclusion that marijuana has a medical use in treatment of glaucoma. In addition to Dr. Hepler, they include Dr. George Spaeth, Professor of Ophthalmology, Director of the Glaucoma Service at Will's Eye Hospital in Philadelphia and President of the American Glaucoma Society; and Dr. Keith Green, Professor of Ophthalmology, pharmacologist and researcher who has conducted research with both marijuana and THC. Perhaps the most persuasive evidence concerning the use of marijuana in treating glaucoma is the opinion of the American Academy of Ophthalmology, an organization representing 12,000 physician members and 6,000 other medical professionals who specialize in the treatment of ophthalmology. The Academy has concluded that insufficient data exists to demonstrate the safety and efficacy of using smoked marijuana in the treatment of glaucoma. FDA has also determined that there is insufficient evidence to conclude that marijuana has a medical use in treatment of glaucoma.

Spasticity

In support of their contention that marijuana has a medical use in treatment of spasticity in amputees and those with multiple sclerosis, the pro-marijuana parties presented three studies involving THC, testimonials of individuals with spasticity who use marijuana, medical opinions, and state court decisions on the medical necessity defense. The three studies presented by the pro-marijuana parties were very small studies. All three totalled 17 patients, and used THC, not marijuana, to treat spasticity. There are no studies using marijuana to treat spasticity. These studies do not provide a scientific basis to conclude that marijuana has a medical use in treating spasticity.

Dr. Denis Petro, a board certified neurologist, testified on behalf of the pro-marijuana parties that he believes that marijuana has a currently accepted medical use in treating spasticity. He testified that his opinion is based on the THC studies, experiences and observations of patients, and historical accounts of marijuana use. Dr. Petro knew of no studies in which marijuana was used to treat spasticity. He testified that his information from patients consisted of them telling him how the street marijuana these patients used at home affected their spasticity. He did not conduct any clinical studies or make objective measurements. Dr. Petro's opinion is not based upon any reliable scientific evidence. The same psychiatrists and general practitioners who reported marijuana had a medical use in treating nausea and vomiting and glaucoma also stated that marijuana had a medical use in treating spasticity. None of these physicians based their opinions on reliable scientific evidence.

The agency presented the testimony of national experts in the area of multiple sclerosis and spasticity. Dr. Kenneth Johnson is the Chairman of the Department of Neurology at the University of Maryland School of Medicine and manages the Maryland Center for Multiple Sclerosis (MS). He is the author of over 100 scientific and medical articles on MS. Dr. Johnson has spent most of his medical career researching MS and has diagnosed and treated more than 6,000 patients with the disease. He testified that he is unaware of any legitimate research involving marijuana to treat symptoms of MS. He further stated that, "[t]o conclude that marijuana is therapeutically effective without conducting vigorous testing would be professionally irresponsible." Dr. Donald Silberberg, Chairman of the Department of Neurology at the University of Pennsylvania School of Medicine and Chief of Neurology Service at the Hospital of Pennsylvania, has been actively researching and treating MS for most of his career. He has written over 130 medical articles on MS. He concluded that not only is there no legitimate medical or scientific evidence to support a conclusion that marijuana is effective in treating MS or spasticity, but that long-term treatment of MS patients with marijuana could be worse than the original disease. Dr. Silberberg placed no value on the reports of patients who claimed relief of their symptoms with marijuana because of the sporadic and episodic nature of MS attacks.

The National Multiple Sclerosis Society has concluded that marijuana is not an accepted medical treatment for spasticity. Dr. Stephen Reingold, Assistant Vice President for Research of the National Multiple Sclerosis Society, indicated in his testimony that because there are no well-designed, well-controlled research studies using marijuana to treat spasticity, the society does not endorse or advocate the use of marijuana for such a purpose.

The evidence presented by the pro-marijuana parties regarding use of marijuana to treat various other ailments such as pain, decreased appetite, alcohol and drug addiction, epilepsy, atopic neurodermatitis, scleroderma and asthma was limited to testimony of individuals who had used marijuana for those conditions and the testimony of the psychiatrists or general practice physicians mentioned earlier. There is not a shred of credible scientific evidence to support any of their claims.

With regard to marijuana's safety for use under medical supervision, the Administrator must again rely on the scientific evidence. While the pro-marijuana parties argue that no one has died from marijuana use, and the individuals who use it have testified that they have not experienced adverse effects, there is little or no scientific evidence to support their claims. For example, while Robert Randall claims marijuana smoking has had no adverse effect on his health or respiratory system, he has not had a physical examination or pulmonary function test in over ten years.

In order to be effective, a drug's therapeutic benefits must be balanced against, and outweigh, its negative or adverse effects. This has not been established with marijuana. As the previously discussed evidence has demonstrated, there is as yet no reliable scientific evidence to support marijuana's therapeutic benefit. It is, therefore, impossible to balance the benefit against the negative effects. The negative effects of marijuana use are well-documented in the record. Marijuana smoking, the route of administration advocated by many witnesses presented by the pro-marijuana parties, causes many well-known and scientifically documented side effects. These include decreased blood pressure, rapid heart rate, drowsiness, euphoria, disphoria and impairment of motor function, not to mention various negative effects on the respiratory and pulmonary systems. Therefore, the only conclusion is that marijuana is not safe for use under medical supervision, because its safety has not been established by reliable scientific evidence.

In summary, the Administrator finds that there is insufficient, and in many instances no, reliable, credible, scientific evidence, supported by properly conducted scientific research, to support a conclusion that marijuana has a medical use to treat any ailment or disease. In addition, there is a lack of scientific evidence to support a conclusion that marijuana is safe for use under medical supervision. This agency, and the Government as a whole, would be doing the public a disservice by concluding that this complex psychoactive drug with serious adverse effects has a medical use based upon anecdotal and unreliable evidence. The evidence presented by the pro-marijuana parties in this proceeding consisted of a few published scientific studies involving marijuana and THC, testimony of general practice physicians and psychiatrists, and testimony of individuals who have used marijuana for various medical conditions. The majority of these individuals did not use marijuana under medical supervision and used "street" marijuana. In contrast, recognized, credentialed specialists in the fields of oncology, glaucoma and multiple sclerosis, and organizations involved in medical research in these areas, have concluded that marijuana does not have an accepted medical use in treatment in the United States. The Administrator would be abdicating his responsibility to the public if he concluded that marijuana has a medical use and is safe for use under medical supervision.

The preceding discussion is based upon the Administrator's review of the entire record in this matter. This record contains volumes of documents and testimony. The procedural history of this scheduling has extended for many years. The procedural history and the findings of fact and conclusions of law upon which the Administrator's decision is based are set forth below.

Procedure

This rulemaking proceeding was originally initiated by a petition filed by NORML on May 18, 1972, with the Bureau of Narcotics and Dangerous Drugs (BNDD). This petition requested that marijuana be removed from the Controlled Substances Act, or in the alternative, be moved to Schedule V of the Act. After a series of proceedings, including hearings before BNDD and DEA and remands by the United States Court of Appeals for the District of Columbia Circuit, the matter was again the subject of a DEA hearing. This hearing followed a 1980 remand by the United States Court of Appeals for the District of Columbia Circuit, *NORML v. DEA and HEW*, No. 79-1660 (D.C. Cir. Oct. 16, 1980), in which the Court ordered DEA to refer all matters to the Department of Health and Human Services (HHS) for a scientific and medical evaluation and recommendation for scheduling. The matter was forwarded to HHS by DEA, and the Food and Drug Administration (FDA) published "Proposed Recommendations to the Drug Enforcement Administration Regarding the Scheduling Status of Marijuana and Its Components and Notice of Public Hearing," in the Federal Register, 47 FR 28141 (1982). On September 16, 1982, FDA conducted a legislative-type hearing at which it received written and oral testimony. On May 13, 1983, the Assistant Secretary for Health forwarded his department's scientific and medical findings and scheduling recommendation regarding marijuana plant material to the Administrator of DEA. In this document the Assistant Secretary recommended that marijuana plant material continue to be controlled in Schedule I. On July 2, 1987, the Assistant Secretary for Health submitted a letter to the DEA Deputy Administrator in which he stated that it continued to be the position of the Department of Health and Human Services that marijuana continue to be controlled in Schedule I based upon its lack of accepted medical use in treatment in the United States.

This current proceeding was initiated by publication of a notice of hearing in the Federal Register on June 24, 1986, which advised any individual interested in participating in the proceedings to file a written notice of such intent. Seven organizations or individuals participated in the proceeding. Four prehearing conferences were held in late 1986 and 1987. Direct and rebuttal testimony were filed in written affidavit form. Fourteen days of hearings, for the purpose of cross-examination of witnesses, were held in three cities. All parties were permitted to file proposed findings of fact, conclusions of law and argument with Administrative Law Judge Francis L. Young. The pro-marijuana parties, as petitioners, filed their proposed findings on April 15, 1988. The Government filed its proposed findings on May 16, 1988. The pro-marijuana parties then filed rebuttal on June 3, 1988. The administrative law judge issued his opinion and recommended ruling, findings of fact, conclusions of law and decision on September 6, 1988. Exceptions to the administrative law judge's recommended decision were filed by NORML, ACT, and the Government. By letter dated December 9, 1988, the administrative law judge forwarded the entire record to the Administrator of DEA.

The Administrator has carefully reviewed the entire record in this matter and hereby issues this final order as prescribed by 21 CFR 1316.67. The Administrator does not accept the recommendation of the administrative law judge that marijuana has an accepted medical use in treatment of some medical conditions, that marijuana has accepted safety for use under medical supervision, and that marijuana should be rescheduled into Schedule II of the Controlled Substances Act. The Administrator finds that marijuana must remain in Schedule I of the Controlled Substances Act because it has no accepted medical use in treatment of any condition in the United States and it is not safe for use under medical supervision. The Administrator has reviewed the proposed findings of fact submitted by all parties and those formulated by the administrative law judge. The Administrator adopts the findings of fact submitted by the Government as his own and in their entirety. They are as follows:

Findings of Fact

1. The cannabis plant (*Cannabis sativa L.*) is an annual weed which belongs to the plant family Cannabaceae. This family has only one genus, the genus *Cannabis* which consists of one highly variable species, *sativa*. Many varieties of this species are known to exist.

2. Over 400 different chemicals have been identified in the extracts of the plant *Cannabis sativa*. They belong to 18 chemical classes of organic compounds. There are at least 61 different cannabinoids. The proportions and concentrations of these cannabinoids, including THC, differ from plant to plant depending on growing conditions, age of the plant, and factors surrounding harvest. THC levels found in cannabis may vary from less than 0.2% in some plants to greater than 10% in high quality plants.

3. Cannabis or marijuana cannot be defined chemically, nor can it be easily standardized. No totally reliable classification system based on a single chemical analysis exists. Twenty-one (21) cannabinoids have been clinically evaluated. Most of this testing centered on the psychotropic effects of the compounds, and only eight or nine of the cannabinoids have been tested for therapeutic utility. These studies have only been cursory except for the testing of synthetic THC. Cannabigerol (CBG) cannabinoids show antibacterial activity against gram positive bacteria, and have been shown to effect basic cell metabolism. Cannabinol (CBN) type compounds have exhibited anticonvulsant, anti-inflammatory, immunological, and behavioral effects. CBN has also exhibited possible potentiation of THC effects in man. Cannabidiol (CBD) has exhibited anticonvulsant activity.

4. As well as significant variations in naturally occurring active substances in natural cannabis, there are variations in the active substances based on conditions under which the plant material has been maintained or stored.

THC is labile to air oxidation forming cannabinol (CBN). Cannabidiol (CBD),

8. Currently, there are only four plants used in their natural states for medical

Drug, and Cosmetic Act emphasizes the need to carry out scientifically valid studies as well as the need to control the

17. The California Research Advisory Panel, a California government agency, sponsored the California Cannabis

assessment or satisfaction. The primary reason for marijuana's failure as a treatment was the patients' intolerance

encouraging, further analysis, more data, and more research are needed.

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THC is labile to air oxidation forming cannabinol (CBN). Cannabidiol (CBD), in the presence of oxygen and light and upon heating, is converted to cannabielsoic acids.

5. It is not known how smoking or burning marijuana plant material affects the chemical composition of cannabinoids and their products. A large number of pyrolytic products is produced by burning that have not been identified for most of the constituents in *Cannabis*. Smoking as a dosage form to deliver marijuana to the human body is unsuitable for medical treatment due to: (1) Lack of standardization of the marijuana, (2) lack of knowledge of the amounts of each constituent available, (3) lack of knowledge of the activity of the chemicals while burning, (4) amount of product ingested being dependent on the individual's smoking technique, and (5) possible carcinogenic effect of smoking. There are no drugs which are delivered by smoking which are medically used in the United States.

6. *Cannabis sativa L.* was one of the first plants to be used by man for fiber, food, medicine, and in social and religious rituals. There were approximately 20 traditional medicinal uses of cannabis preparations in the 19th century. These included those recognized in 19th century medicine as well as folkloric use. These uses were based upon tradition and experience rather than scientific proof. Early literature is replete with reports of the inconsistent or contradictory effects of marijuana preparations. The cannabis used for medical purposes in the United States and in Western medicine from the mid-19th to the early 20th century was cannabis extract which was orally administered as tinctures and pills. By 1938, marijuana preparations were seldom used in medical practice, and the American Medical Association stated that, "Cannabis at the present time is slightly used for medicinal purposes * * *" In 1941, marijuana passed out of the *National Formulary* and *The United States Pharmacopeia*.

7. Historically, man used natural plants to treat various ailments. With the advent of science, man began to use plant extracts to determine their effects. These extracts were crude drugs. Fifty years ago *The United States Pharmacopeia* listed many crude drugs. In recent times, scientists discovered that crude extracts owed their activity to chemical compounds and began isolating the chemical compounds from the plants and their extracts. Current technology emphasizes the development of synthetics of natural drugs by using the natural drugs as models.

8. Currently, there are only four plants used in their natural states for medical purposes in the United States. Three others are utilized in crude extract form. These include ipecac and opium extracts, which must meet standards for potency and purity established in *The United States Pharmacopeia* before they can be used for medical purposes. In contrast to variations in cannabinoid content evident in cannabis, naturally occurring opium derivatives remain quantitatively stable and the potency can be chemically standardized.

9. Modern drug research is based on the use of well-defined preparations of pure compounds which, when administered to patients, allow reproducible results. The problems associated with using natural substances as drugs include the inability to regulate the doses of active constituents, and the interaction of the active constituents with other potentially active compounds in the natural substance. The presence of active constituents in most natural drugs may vary based on genetic factors, country of origin and growing conditions. As a result, most natural drugs cannot meet established quality control standards in the United States. Before a drug substance may be used in the practice of medicine, it must have a composition of active ingredients that has been established and accepted as standard. Such standardization, which includes identity, purity, potency, and quality, is specified in either a New Drug Application (NDA) or an official compendium such as *The United States Pharmacopeia* or *National Formulary*.

10. There is no difference in the pharmacological effect between the THC isolated from cannabis and the synthetically produced THC which is now marketed in the United States.

11. In the late 1960's, the Department of Health, Education and Welfare (DHEW) initiated a process to facilitate research with marijuana and THC. The FDA reviewed Investigational New Drug (IND) applications for marijuana and THC, assisted researchers and physicians in preparing IND protocols, and sent out information packets and model protocols.

12. The IND procedure is the process by which drugs are introduced into man and their safety and effectiveness is evaluated over a period of years. The stated objectives of the FDA in regulating the clinical testing of new drugs are to "protect the rights and safety of human subjects of such testing while, at the same time, facilitating the development and marketing of beneficial drug therapies." The Food, Drug, and Cosmetic Act emphasizes the need to carry out scientifically valid studies as well as the need to control the investigational drug supply and obtain informed consent of the subject or patient. The drug used in the study must be able to be traced to the patient, and the investigator must submit annual reports to FDA and report adverse reactions.

13. The protocols for the INDs with marijuana, especially the state protocols and the protocols for individual patients did not describe controlled studies. Controlled studies are necessary as the basis of a New Drug Application (NDA). No NDA for marijuana has been submitted to FDA for approval. Thus, marijuana remains an investigational drug subject to IND requirements. Due to the lack of an approved NDA, marijuana is not available by prescription in the United States.

14. As of January 6, 1987, there were 30 active INDs for marijuana; 82 INDs for marijuana have been discontinued.

15. The National Institute on Drug Abuse (NIDA) has shipped a total of 160,700 marijuana cigarettes for human studies from 1976 to 1986. Fifty-nine thousand (59,000) cigarettes were shipped to eight sponsors for human use outside state-sponsored programs. More than half of those, 30,900 cigarettes, were shipped to one sponsor during that period.

16. Thirty-four states have passed legislation concerning the use of cannabis (marijuana) and THC by physicians. Of these states, at least 24 define this use of marijuana and THC as research. Of these 34 states, only 17 states (New Mexico, Illinois, Louisiana, Washington, Florida, Michigan, Oregon, Colorado, California, Nevada, Ohio, West Virginia, Georgia, Arizona, New York, Vermont and Tennessee) had approved INDs for marijuana or marijuana/THC as of March 1, 1984. Ten state-sponsored programs received marijuana cigarettes from the NIDA during the period 1978 to 1986. During this period 101,700 cigarettes were distributed to those states; California received 38,700 cigarettes, the most of any state. New Mexico received 8,700 cigarettes in the period from 1978 to 1986. In 1986, four state programs received a total of 1,860 cigarettes. In March 1982, a National Conference on the Therapeutic Application of Cannabinoids was held. The report of that conference indicates that "state programs in general had a small volume of participation and a high loss of data." The report also concluded that the designs of the state programs varied widely.

17. The California Research Advisory Panel, a California government agency, sponsored the California Cannabis Therapeutic Research Program. After six years of operation, from 1979 to 1986, the Research Advisory Panel found that only 101 patients received 210 treatments with marijuana cigarettes. Slightly more than one-third of the patients received a second treatment of marijuana cigarettes. Approximately 20 percent of the patients stopped using the cigarettes either because the cigarettes were ineffective, or the side effects were too severe.

18. Approximately 250 individuals received marijuana and/or THC capsules under the New Mexico Controlled Substances Therapeutic Research Program from February 1979 to June 1986 for control of nausea and vomiting associated with cancer chemotherapy. For admission to the program, patients must have experienced nausea and vomiting in previous chemotherapy. An average of four to six individuals a month participated in the program. Approximately 20 New Mexico physicians participated in the state-wide program. There was no randomization in the study; the patients themselves chose to use either marijuana or THC. They were also free to switch from one drug to the other once they began treatment. Under the program, 16 individuals switched from one drug to the other; 13 switched from cigarettes to capsules, the others from capsules to cigarettes. Of the patients selected for evaluation, 94 used THC capsules and 75 used marijuana cigarettes. There was no objective measurement of success or failure. The patients evaluated themselves based upon the degree of nausea and vomiting in previous chemotherapy sessions as compared with the degree of nausea and vomiting when marijuana or THC was used.

19. One hundred-five patients enrolled in the State of Georgia marijuana and THC research study which was designed to evaluate the efficacy and toxicity of marijuana and THC as an antiemetic in cancer patients undergoing chemotherapy treatment. Emory University enrolled 85 patients in their marijuana and THC research study. Thirty-eight patients from the State of Georgia study, and 81 patients from the Emory University study were evaluated. Of the 119 patients evaluated in the combined studies, 44 smoked marijuana; the other 75 used THC capsules. The success rate for use of THC capsules was 76 percent, and the success rate for smoking marijuana was 66.2 percent. Success was measured by patient self-assessment or satisfaction. The primary reason for marijuana's failure as a treatment was the patients' intolerance of the cigarettes, or its failure to improve nausea and vomiting.

20. Of the 165 individuals evaluated in the Michigan Therapeutic Research Project for the years 1980–1982, 83 received only marijuana. Another 31 received marijuana after receiving Toracan (a phenothiazine in the same family as Compazine) during the same trial. The purpose of the trial (Trial A) was to evaluate the efficacy of marijuana to control nausea and vomiting induced by cancer chemotherapeutic agents. Thirty-four (34) of the patients discontinued the study because they did not like smoking marijuana. Twenty-one (21) patients reported the adverse effect of sleepiness/fatigue, 13 reported sore throat, 7 reported headache, and 4 reported being light-headed after smoking marijuana. Of 93 individuals who smoked marijuana at the first patient session, 14 reported no nausea, 31 reported mild nausea, 22 reported moderate nausea, and 19 reported severe nausea. Of the 93 patients who smoked marijuana in the initial session, 63 percent reported they felt "high," and 58 percent reported no increased appetite stimulation.

21. The State of New York Controlled Substances Therapeutic Research Program Report for 1982 indicates that by the end of July 1982, 840 marijuana cigarettes had been distributed to 45 patients under the New York program. These 45 patients had 99 treatment episodes. The treatment of 18 patients was evaluated, and 15 found that they benefited from smoked marijuana in some manner. For the period from November 1981 to May 1986, 199 patients received marijuana cigarettes under the New York program. During that period, 6,044 marijuana cigarettes were distributed. Of the 199 patients who received marijuana, only 90 were evaluated. The evaluations were based solely on patient self-assessments of nausea and vomiting, appetite, physical status, mood, "high" feeling, and a record of the amount of drug taken. The program was also plagued by lack of compliance with reporting procedures. The results of the evaluations indicated that large percentages of the individuals who received chemotherapeutic agents which are known to produce moderate to severe emesis failed to respond to the smoked marijuana. The New York Summary Report concluded that while preliminary results of the "Inhalation Marijuana Research Project" were encouraging, further analysis, more data, and more research are needed.

22. The July 1983 Report of the State of Tennessee program to evaluate marijuana and THC in treatment of nausea and/or vomiting associated with cancer therapy indicates that 43 patients have been enrolled in the program. Of these, 27 were evaluated. The patients enrolled in the program self-evaluated their nausea and vomiting, appetite and food intake, physical state, mood, high, and dosages of the drugs they received. Twenty-one (21) of the 27 patients used marijuana cigarettes. Nineteen (19) of the 21 evaluated the cigarettes as successful, success being defined as partially, moderately or very effective. The major reason for failure of marijuana cigarettes was smoking intolerance.

23. Nausea and vomiting (emesis) are common side effects of cancer chemotherapy. Vomiting is controlled by two distinct areas in the brain, the vomiting center and the chemoreceptor trigger zone (CTZ). Various cancer chemotherapeutic agents can trigger the vomiting center and the CTZ, thus causing nausea and vomiting. The incidence of emesis resulting from cancer chemotherapy often depends upon the type of agent used for the chemotherapy treatment. Chemotherapeutic agents most often associated with emesis also induce emesis of the greatest severity. Cisplatin causes the highest incidence of emesis, whereas methotrexate causes only a moderate incidence of emesis. Other factors not specifically related to chemotherapy can also influence a patient's emesis, such as emotional status, alcohol consumption, age, and past chemotherapy experience.

24. Prior to 1980, little research was conducted regarding antiemetics used to treat nausea and vomiting related to cancer chemotherapy. At that time, the most commonly used antiemetic was Compazine (prochlorperazine). Compazine was largely ineffective in treating emesis caused by most cancer chemotherapy regimens. Since 1980, research with new antiemetics has proliferated. As a result of this additional research, several new and highly effective antiemetics and their combinations are now available including: metoclopramide, thiethylperazine malate, haloperidol, dexamethasone, diphenhydramine, droperidol, fluphenazine hydrochloride, perphenazine, lorazepam, dronabinol (synthetic THC) in sesame oil in a soft gelatin capsule, and nabilone (a synthetic substance chemically and pharmacologically similar to THC).

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25. To properly evaluate the effectiveness of a new antiemetic drug, researchers must perform carefully conducted randomized, double-blind testing of the drug against either a placebo or an established antiemetic, using a statistically significant patient population. Several factors are important when planning or evaluating an antiemetic study; these include: (a) Standardization of the emetic stimulus, (b) accuracy in data collection, with the use of objective parameters, such as the number of emetic episodes and the volume and duration of emesis, (c) standardization of patient population, with an indication of whether or not patients had previously received chemotherapy, and (d) proper selection of route of administration, and drug schedule and dosage, based upon proper trials with the agent. In addition, it is important to determine quantitatively the efficacy of antiemetic agents used singularly, so that results can be compared and further trials, including combination studies, can be planned appropriately.

26. For a new antiemetic drug to be considered effective, it must be as effective or more effective in controlling emesis than the currently-available antiemetics.

27. Relatively few scientific or medical studies have been conducted to evaluate marijuana's effectiveness as an antiemetic. Information concerning marijuana's antiemetic properties is primarily anecdotal. The research that has been conducted with marijuana has been primarily in the form of loose, uncontrolled studies which provide little valuable information as to the drug's effectiveness. Most research with marijuana has been conducted under state protocols. The state sponsored research conducted thus far has not employed carefully controlled double-blind, randomized testing of marijuana, nor has it involved large patient populations. As a result, little reliable information can be gleaned from these types of studies.

28. Based upon the lack of quality testing, marijuana's antiemetic activity is not as established as that of THC or other available antiemetics. There are no double-blind randomized studies which have concluded that marijuana is as effective or more effective than synthetic THC, or any of the other currently available antiemetics. In fact, in 1984, the only controlled, randomized, double-blind, crossover study comparing the antiemetic effectiveness of smoked marijuana to orally ingested synthetic THC involved 20 patients and concluded that orally ingested THC was superior to smoked marijuana.

29. Although THC is usually a constituent present in marijuana, since marijuana also contains at least 60 other active cannabinoids in varying quantities, the results of antiemetic trials using THC cannot be extrapolated in evaluating marijuana's antiemetic properties. For example, cannabidiol, a constituent present in marijuana, can potentiate some effects of THC, while suppressing other effects, including the antiemetic effect.

30. No formal, well-controlled studies have been conducted which compare marijuana's effectiveness as an antiemetic against any of the currently available antiemetics such as metoclopramide, haloperidol, dexamethasone, prochlorperazine, nabilone, lorazepam, or any of the highly effective combinations of available antiemetics.

31. The only studies which have been conducted using marijuana as an antiemetic include the following: (1) The state programs (discussed previously); (2) the study mentioned above which compared smoked marijuana to oral synthetic THC and concluded that THC was more effective; (3) a "compassionate" study conducted by Thomas J. Ungerleider involving 16 bone marrow transplant patients. In that study, the efficacy of the drug was measured only by subjective testing techniques; and (4) a study conducted by Alfred E. Chang which involved 15 patients receiving methotrexate chemotherapy.

32. The purpose of the Chang study was to compare the antiemetic effectiveness of THC to a placebo. Initially in the study, patients randomly received either an oral THC capsule or placebo capsule prior to chemotherapy. Neither the patients nor the researchers were aware of which drug they received. Three separate chemotherapy trials were conducted during the study. Only if the patient vomited during a trial would he or she receive a marijuana cigarette for the remaining doses of that chemotherapy trial. All patients who received marijuana cigarettes were experienced smokers. The study does not indicate how many patients resorted to smoking marijuana during each trial. Since six patients did not vomit at all on the THC, they did not receive marijuana cigarettes. The purpose of the study was not to compare the effectiveness of oral THC to marijuana but, rather, to compare THC's effectiveness against a placebo. Dr. Chang concluded that the combination of oral THC and smoked marijuana is a highly effective antiemetic in patients receiving methotrexate chemotherapy. Although Dr. Chang found that smoked marijuana was more reliable than oral THC in achieving therapeutic blood levels, he also found that it had drawbacks in patient acceptability; patients complained of its adverse taste, which induced nausea and vomiting in some instances. He also surmised that patients who are nonsmokers may not be willing and/or able to smoke marijuana. Based upon these drawbacks, Dr. Chang concluded that "an alternative parenteral drug route needs to be established if THC [or marijuana] is to have wide clinical acceptability." In addition, he determined that additional studies relating to drug tolerance, effectiveness against nausea and vomiting produced by other chemotherapy regimens, and comparisons with conventional antiemetics needed to be conducted.

33. A study conducted by Stephen E. Sallan, M.D., which is cited by both NORML and ACT, involved a double-blind, randomized evaluation of the antiemetic effect of synthetic THC capsules in 16 patients receiving chemotherapy (although 22 patients participated in the study, only 16 received oral THC). There is no indication as to what types of chemotherapeutic agents were administered to the patients during the study. Dr. Sallan concluded that THC had antiemetic effects. In addition, he made some "preliminary observations" comparing the antiemetic effect of smoked marijuana and oral THC capsules, based upon some patients' illicit use of marijuana which was neither qualitatively nor quantitatively controlled. He found that "[f] or most patients, both smoked and oral routes had identical effects." This study was not a scientific comparative study of smoked marijuana and oral THC, but rather a formal comparison between oral synthetic THC and placebo.

34. Even in its limited use, marijuana has not been shown to be very effective in reducing nausea and vomiting when used with chemotherapeutic agents which produce severe emesis.

35. In contrast to marijuana, synthetic oral THC (dronabinol), nabilone, metoclopramide, and other currently available antiemetics have been tested extensively through well-designed, controlled double-blind studies for both safety and efficacy. For example, more than 1,300 patients were tested with synthetic THC before it was made available as a Schedule II drug. Marijuana, on the other hand, has only been tested in 20 patients in a formal comparative study, and roughly less than 500 patients in loosely controlled state studies.

36. Neither marijuana nor oral THC has been demonstrated to be an effective antiemetic for patients receiving radiation therapy. In a THC study conducted at UCLA, Dr. Ungerleider concluded that oral THC was only slightly more effective than Compazine in controlling emesis caused by radiation therapy. No studies evaluating marijuana's effectiveness in this area were introduced during this proceeding.

37. Since the advent of the new, highly effective antiemetics, few cancer chemotherapy patients discontinue treatment as a result of nausea and vomiting.

38. Although the newer antiemetics and their combinations have been shown to be highly effective in treating emesis, even in conjunction with chemotherapy treatments known to produce severe nausea and vomiting in most patients, a small number of patients are refractory to all antiemetic treatment. There is no scientific or medical reason to believe that patients who do not respond well to currently-available antiemetics would respond any better after smoking marijuana. The only method to determine marijuana's effectiveness for that purpose would be to conduct controlled double-blind trials with the drug in that group of patients.

39. There is no scientific or medical support for the hypothesis that marijuana or any of the cannabinoids are effective in treating emesis in children receiving chemotherapy. Again, only controlled trials comparing marijuana to other available antiemetics could support that contention. No such trials have been conducted as of this time.

40. Smoking as a route of administration for antiemetics has not been demonstrated to be more advantageous than intravenous or oral administration. The claimed advantage of self-titration through smoking is only a hypothesis and has not been scientifically proven. In fact, oral administration of antiemetics is highly effective if effective antiemetics are given. Intravenous administration also is highly effective, especially since most chemotherapy agents are intravenously administered as well.

41. Currently available antiemetics are also highly effective in outpatient care. Most patients can receive the newer antiemetics on an outpatient basis. There is no scientific or medical reason to conclude that marijuana is better-suited than currently available antiemetics in the treatment of emesis of outpatients. Carefully conducted clinical trials would be needed to demonstrate otherwise.

42. In addition to not being as effective or more effective than currently-available antiemetics, the use of smoked marijuana in the treatment of emesis in cancer patients has significant drawbacks. As a psychoactive substance, marijuana causes anxiety and panic in inexperienced users. Marijuana smoking also caused nausea and vomiting in some patients, and left an unpleasant residual taste. Because tachycardia and orthostatic hypotension are negative side effects of marijuana smoking, it should not be administered to patients with heart problems such as arteriosclerotic heart disease and angina. Marijuana smoking can also lead to pulmonary problems including bronchitis and emphysema. Marijuana is a crude plant material which contains pathogenic bacteria that could prove harmful to immuno-compromised patients with various cancers or leukemias. The cannabinoids present in marijuana can further suppress the immune functions of individuals whose immune systems are already severely compromised by chemotherapeutic agents. Also, few patients can tolerate marijuana smoking. In fact, in the state programs employing marijuana, significant numbers of patients either switched from smoking to oral THC capsules or withdrew from research because they could not tolerate smoking marijuana. In Dr. Ungerleider's study involving 16 bone marrow transplant patients, three dropped out of the study because they found marijuana smoking to be undesirable, even though at the time of the study, no other antiemetics were available to them. In addition, because of the lack of standardization of the drug and varying smoking techniques, there is a problem with bioavailability and reproducibility of an administered dose of the drug. If the dose is not constant from treatment to treatment, the patient may go unprotected.

43. The combination of currently available antiemetics produce less side effects than do each of the drugs given individually. These combinations produce less side effects than the cannabinoids, including marijuana. There is no scientific or medical evidence which demonstrates that marijuana produces fewer and less severe side effects than the currently-available antiemetics.

44. Patient satisfaction with the combination antiemetic therapy is greater than that seen with marijuana.

45. Interest in research using marijuana to treat emesis in cancer chemotherapy patients has waned as the availability of new, highly-effective antiemetics has increased.

46. Patient interest in using marijuana to treat emesis caused by chemotherapy has also declined in recent years.

47. The oncological community does not consider marijuana to have currently accepted medical use in the United States for the treatment of emesis caused by cancer chemotherapy. In addition, David Ettinger, M.D., Richard Gralla, M.D., and John Laszlo, M.D., each a highly respected oncologist and antiemetic researcher who has treated numerous patients and conducted extensive research with various cannabinoids and highly effective antiemetics, have concluded that based upon their research and knowledge of the field, marijuana does not have a currently accepted medical use in the United States for the treatment of emesis caused by cancer chemotherapy, nor has it been proven safe for use under medical supervision.

48. The American Cancer Society has concluded that insufficient research has been conducted to advocate that marijuana be used as an antiemetic for chemotherapy patients.

49. In its 1984 report, the National Academy of Sciences did not make any conclusions regarding marijuana's accepted medical use in the treatment of emesis in cancer chemotherapy patients. The only conclusion made in the report was that marijuana's antiemetic properties were less established than those of synthetic THC.

50. The American Medical Association has concluded that marijuana does not have a currently accepted medical use in the United States for the treatment of emesis caused by cancer chemotherapy, nor has it been proven to be safe for use under medical supervision.

51. Glaucoma is a term which describes a group of chronic ocular diseases which cause an increase in intraocular pressure that damages the retina and optic nerve and can lead to an eventual loss of vision. The most common form of glaucoma is primary open-angle glaucoma (POAG). This form of glaucoma is caused by an obstruction in the pathways for fluid exit from the eye while fluid inflow continues unabated. As a result, the pressure within the eye (intraocular pressure) increases beyond a level tolerated by the eye and can cause damage to the retina and optic nerve.

52. Persons suffering from glaucoma have intraocular pressures which are higher than their eyes can tolerate. Traditionally, glaucoma was measured

by a statistical measure of intraocular pressure (a norm), meaning that if an individual's pressure was higher than application. Topical application reduces the possibility of systemic adverse effects from a drug since the total

58. There are few published scientific reports or studies which evaluate marijuana's effect on lowering

suffered from postural hypotension (reduction in blood pressure upon standing); 18 suffered from sensory

pressure continue for longer periods of time following administration of either timolol, pilocarpine, or phospholine

glaucoma patients. As noted above, there has been no documentation that marijuana use preserves the visual

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by a statistical measure of intraocular pressure (a norm), meaning that if an individual's pressure was higher than the average, he was thought to have glaucoma; if the pressure was below the norm, he was thought not to have glaucoma. It is now known that this is not the proper method for diagnosing glaucoma. Ninety-five percent of individuals with statistically-elevated intraocular pressure are never afflicted with glaucoma, while one-third of glaucomatose individuals have intraocular pressures in the statistically normal range.

53. Effective treatment for glaucoma involves the use of pharmaceutical agents or surgical procedures that prevent progressive optic nerve damage. If intraocular pressure can be lowered sufficiently, it can usually alter the course of the glaucoma. But, merely reducing intraocular pressure is not necessarily beneficial to the eye, and pressure reduction does not necessarily prevent glaucomatose optic nerve damage. For a treatment to be effective, it must lower intraocular pressure sufficiently to prevent additional damage to the optic nerve and retina, and also not cause unacceptable damage to the eye or to other parts of the body. In addition, it must be able to sustain the lowered pressure and preserve visual function for the patient's lifetime.

54. When new glaucoma treatments are tested for efficacy, they are evaluated for their ability to sufficiently lower intraocular pressure and to maintain visual fields. To properly measure the treatment's effect on both, it must be used in long-term testing. Timolol, a drug currently used to treat glaucoma, has been tested in this manner. Before it was approved for use in treating glaucoma, timolol was rigorously tested in 300 to 400 persons through controlled, double-masked clinical trials. These studies involved treating patients with the drug for a minimum of three months, with a majority of the studies lasting for six months or more, during which time, the patients' visual fields were measured to determine whether there had been any progression of the disease. In addition, other conventional glaucoma medications have proven their efficacy through years of clinical experience. The miotics, epinephrine compounds and carbonic anhydrase inhibitors have been proven effective in lowering intraocular pressure and preserving visual function.

55. The most efficacious way of delivering any drug to the eye is through a topical drop, rather than by systemic application. Topical application reduces the possibility of systemic adverse effects from a drug since the total amount of the drug being delivered to the body is considerably less.

56. In 1971, Robert S. Hepler, M.D. and Ira R. Frank, M.D. published preliminary results of one of the first experiments which measured the effect of smoked marijuana on intraocular pressures of normal, healthy males. The study involved acute administration of smoked marijuana through an ice-cooled water pipe to eleven youthful men who did not suffer from glaucoma. After the one-time administration of the marijuana, nine subjects experienced decreases in intraocular pressure which ranged from 16 percent to 45 percent, one subject experienced a 4 percent increase in intraocular pressure, and one subject experienced no change following smoking. These results were later published in 1974 as part of a larger study in which Thomas J. Ungerleider, M.D. participated, aimed at measuring pupillary constriction, intraocular pressure, tear production, and conjunctival hyperemia (redness and irritation of the eye). The overall study involved 21 healthy subjects who smoked marijuana in an ice-cooled water pipe. Only the 11 subjects described in the earlier publication were tested for changes in intraocular pressures. In addition to the results of changes in intraocular pressures, the authors also noted that smoking marijuana was associated with minor decreases in pupillary size, decrease in tear production, and conjunctival hyperemia. Central visual acuity, refraction, peripheral visual fields, binocular fusion and color vision were not altered by the single-dose administration of the marijuana. In addition, the authors noted that fatigue and sleepiness occurred several hours following the marijuana-induced "high".

57. There are no published scientific reports or studies which demonstrate marijuana's ability to lower intraocular pressures in long-term chronic testing of glaucomatose research subjects. The only long-term study reported was one conducted by Dr. Hepler at U.C.L.A. The study evaluated responses of 19 normal, non-glaucomatose patients for a period of 94 days. The results of the 94-day study were not available at the time Dr. Hepler's paper was published. The only conclusions made were that in the normal research subjects, intraocular pressure showed a prompt drop as soon as the subjects began to smoke, and that there were no indications of cumulative effects upon the intraocular pressure response.

58. There are few published scientific reports or studies which evaluate marijuana's effect on lowering intraocular pressure in glaucomatose individuals. All of the studies involve acute administration of the drug and each involve relatively small numbers of research subjects. In 1976, Drs. Hepler and Petrus reported the results of their study which involved 12 research subjects who suffered from galucoma. Each subject was seen on four occasions. On one occasion, the subjects were given a placebo in a smokable form; on the other occasions, the subjects were either given oral (synthetic) THC or smoked marijuana. Some of the resarch subjects continued their usual courses of medication during the testing. The published study only reported the results of four of the research subjects. Two subjects failed to achieve a reduction in intraocular pressue. Also, the study did not indicate which of the four subjects, if any, had continued their conventional medication during the study. The study did not differentiate between the effectiveness of marijuana or oral THC. The researchers concluded that "patients with proven glaucoma frequently, although not invariably, demonstrate substantial decrease in intraocular pressure following smoking of marijuana or ingestion of THC." In 1976, Drs. Hepler, Frank and Petrus reported on the results of another small study involving 11 galucomatose individuals who were observed after acute administration of marijuana. Of the 11 patients studied, seven demonstrated drops in intraocular pressure averaging 30 percent. The remaining four did not experience any drop in intraocular pressure.

In 1979, Drs. Merritt and Crawford published results of an acute study of the effects of marijuana and placebo on 16 glaucomatose research subjects. They concluded that "inhaled tetrahydrocannabinol (delta-9-tetrahydrocannabinol) lowers blood pressure and intraocular pressure, commensurately with tachycardia [rapid heart rate], in systemic normotensive and hypertensive glaucoma patients." In 1980, Drs. Merritt, Crawford, Alexander, Anduze, and Gelbart reported the results of a study which observed the effect of acute administration of marijuana and placebo to 18 glaucoma patients. They concluded that acute administration of marijuana lowered both intraocular pressure and blood pressure in a heterogenous glaucoma population. They also noted that eight of the patients suffered from anxiety with tachycardia and palpitations; five

suffered from postural hypotension (reduction in blood pressure upon standing); 18 suffered from sensory alterations including hunger, thirst, euphoria, drowsiness and chills; and nine suffered from conjunctival hyperemia and ptosis (drooping upper eyelid). Based on the side effects, the researchers concluded that "it is because of the frequency and severity with which untoward events occurred that marijuana inhalation is not an ideal therapeutic modality for glaucoma patients." A total of no more than 50 glaucomatose individuals have been administered smoked marijuana in a research setting.

Approximately 40 of these individuals received marijuana during limited acute trials of the drug. The progress of the other individuals, who included Robert Randall and other individuals who used marijuana in conjunction with their conventional glaucoma medications, were never published since they only involved anecdotal observations, providing insufficient data to report which would be useful for other ophthalmologists in treating patients with glaucoma.

59. In 1976, Dr. Mario Perez-Reyes reported the results of his preliminary study of acute intravenous administration of various cannabinoids on intraocular pressure. Twelve normal, nonglaucomatose patients were injected with a variety of cannabinoids which are present in marijuana; the cannabinoids were administered individually so that the effects could be evaluated separately. He concluded that several of the cannabinoids had intraocular pressure lowering qualities, including delta-8-tetrahydrocannabinol, which is less psychoactive than THC. THC appears to be the most effective cannabinoid for acutely reducing intraocular pressure, but is also the most psychoactive. Although marijuana, which consists of various cannabinoids, would have a different effect on eye pressure than one of its single constituents, the literature indicates that the effect would either be the same or less.

60. There are no published scientific or medical reports which evaluate marijuana's ability to preserve the visual function of glaucomatose individuals.

61. None of the IND reports or studies submitted in this processing have compared marijuana's effectiveness in lowering intraocular pressure and preserving visual function to any of the currently accepted glaucoma medications. Although not proven through comparative studies, it is accepted that reductions in intraocular pressure continue for longer periods of time following administration of either timolol, pilocarpine, or phospholine iodide, than following administration of smoked marijuana.

62. No evidence was introduced in this proceeding from states which have scientific protocols for researching marijuana's effect in the treatment of glaucoma. In 1986, the California Research Advisory Committee reported the results of its research protocol in this area which covered only the use of THC. Only one individual received marijuana cigarettes for glaucoma. This was after the Research Advisory Panel mailed information about the program to ophthalmologists throughout the State of California. Rhode Island reported that 28 ophthalmologists in that state were contacted to determine if they had any interest in conducting research with marijuana. None of the ophthalmologists contacted responded affirmatively. Those who responded to the inquiry claimed that the drugs which were currently available sufficiently controlled glaucoma.

63. Acute administration of marijuana has demonstrated unacceptable negative side effects in research subjects participating in glaucoma studies. These side effects include orthostatic hypotension, tachycardia, conjunctival hyperemia, euphoria, dysphoria, drowsiness, depersonalization, difficulty in concentrating and thinking, impairment of motor coordination. Since the drop in intraocular pressure after smoking marijuana noted in acute studies lasts for approximately four to five hours, with the maximal fall occurring about one to two hours after administration, to be considered in treating glaucoma, marijuana would have to be administered six to eight times per day for the duration of disease. Such use constitutes chronic administration of the drug. The negative effects of chronic administration of marijuana have not been adequately tested. Yet, specific unacceptable negative effects can be attributed to chronic administration of marijuana. These include: possible brain damage, sore throat, rhinitis, bronchitis and emphysema; suppression of luteinizing hormone secretion in women (which affects the production of progesterone); abnormalities in DNA synthesis, mitosis and growth; carcinogenicity; and genetic mutations.

64. While marijuana plant material and some cannabinoids have been shown to lower intraocular pressure in acutely-treated normal human volunteers and glaucoma patients, it may lower intraocular pressure without preventing visual impairment in glaucoma patients. As noted above, there has been no documentation that marijuana use preserves the visual function of glaucomatose individuals. Because acute studies have shown that marijuana appears to act by lowering intraocular pressure and blood pressure concomitantly, there is some concern that lowering the blood pressure limits the blood supply to the optic nerve. Since the optic nerve relies on a constant supply of blood to function adequately, there is a concern that by reducing its blood supply by lowering systemic blood pressure, visual function will be further impaired in glaucomatose individuals.

65. Based on the lack of documented evidence showing its utility in lowering intraocular pressure in the long-term and maintaining visual function, coupled with the adverse side effects associated with its use, most experts agree that smoked marijuana has not been proven to be a viable drug for the treatment of glaucoma. These medical and scientific experts include: Mario Perez-Reyes, M.D. (a source often cited by NORML and ACT); Robert Hepler, M.D.; Keith Green, Ph.D.; George Spaeth, M.D.; Leo Hollister, M.D.; Reese Jones, M.D.; and Raphael Mechoulam, Ph.D. In addition, in previously published articles, John Merritt, M.D., a witness for ACT, has taken the position that marijuana's use in treating glaucoma is unacceptable because of the frequent and untoward side effects associated with its use. Also, the American Academy of Ophthalmology, an organization which represents more than 12,000 physician members and approximately 6,000 other medical professionals who specialize in the field of ophthalmology, has taken the position that insufficient data exists to demonstrate the safety and efficacy of using smoked marijuana in the treatment of glaucoma. The National Academy of Sciences, another source frequently cited by NORML and ACT, also concluded that smoking marijuana is not suitable for the treatment of glaucoma.

66. Multiple Sclerosis (MS) is the major cause of neurological disability among young and middle-aged adults. It is a life-long disease which attacks the myelin sheath (the coating surrounding the message-carrying nerve fibers in the brain and spinal cord). Once the myelin sheath is destroyed, it is replaced by plaques of hardened tissue known as sclerosis. The plaques can obstruct impulses along the nerve systems which will produce malfunctions in the body parts affected by the damaged nervous system. The symptoms can include one or a combination of the following:

weakness, tingling, numbness, impaired sensation, lack of coordination, disturbances in equilibrium, double

Destree, and X. T. Troung reported the results of a 20-day study in which they administered oral synthetic THC to five

not been proven to have an accepted medical use in the treatment of spasticity, nor has it been proven to be

epilepsy to determine its therapeutic utility.

78. Marijuana has not been proven to

insomnia medications. There also is no support for marijuana's use as an antidepressant drug. Nor is there

few. This is especially true with respect to chronic studies. Field studies in this area are deficient. Most are too small to

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weakness, tingling, numbness, impaired sensation, lack of coordination, disturbances in equilibrium, double vision, loss of vision, involuntary rapid eye movement, slurred speech, tremors, stiffness, spasticity (involuntary and abnormal contractions of muscle or muscle fibers), weakness of limbs, sexual dysfunction, paralysis, and impaired bladder and bowel functions. Spasticity can also result from serious injuries to the spinal cord, not related to MS. The effects of MS are sporadic in most individuals, and the symptoms occur episodically, either triggered by the malfunction of the nerve impulses or by external factors. Because of the variability of symptoms of the disease, MS is difficult to detect and diagnose. There is no known prevention or cure for MS; instead, there are only treatments for the symptoms.

67. There are no published scientific reports or studies which evaluate marijuana's effectiveness in treating spasticity. The only existing information regarding the use of marijuana to treat the effects of MS or spasticity is primarily anecdotal. Anecdotal information is only useful for providing a basis for conducting controlled research with the drug to evaluate its effectiveness. In order to sufficiently verify that a drug is effective for treating MS or spasticity, double-blind, controlled studies must be conducted on large groups of persons.

68. The only studies evaluating the effect of cannabinoids on MS and spasticity employed synthetic THC or cannabidiol. These studies have been uniformly small, and the data presented are insufficient to evaluate the nature and quality of controls used. In 1981, Drs. Denis J. Petro and Carl Ellenberger published the results of a limited acute study using synthetic THC. That study involved the acute administration of oral synthetic THC to nine MS patients. The researchers noted that the spasticity scores of four of the nine patients improved significantly after the administration of the synthetic THC; one patient improved after receiving the placebo; only two of three patients who felt improved actually demonstrated improvement by objective criteria. The EMG index of spasticity (electromyography—a method of measuring reflex responses, neuromuscular function and condition, and extent of nerve lesion) was impractical in five of the nine patients. The researchers concluded that further study should be conducted to determine the effectiveness of THC or one of its derivatives in treating spasticity. In a 1986 abstract, W. C. Hanigan, R. Destree, and X. T. Troung reported the results of a 20-day study in which they administered oral synthetic THC to five spastic patients. They concluded that two patients experienced significant reductions in stretch resistance and reflex activity; and one patient withdrew from the study because of negative emotional side effects. In another abstract, R. Sandyk, P. Conaroe, L. Stern and S. R. Snider, evaluated the effects of cannabidiol (a major non-psychoactive cannabinoid of marijuana) on three patients suffering from Huntington's Disease (a progressive central nervous system disease characterized by muscular twitching of the limbs or facial muscles). The first week they noted mild improvement in choreic movements. Further improvement was noted the second week and remained stable for another two weeks. The only side effects observed were cases of transient, mild hypotension.

69. There are no reported scientific or medical studies which have compared the effectiveness of marijuana, or its derivatives, with conventional treatments for MS and spasticity. There is no indication that marijuana would be more effective or safer than currently available treatments. In addition, conventional drugs may reduce spasticity with fewer side effects than marijuana.

70. No long-term clinical studies employing marijuana, or any of its derivatives, have been conducted with respect to treating MS or spasticity.

71. The long-term safety of using marijuana to treat MS and spasticity has yet to be established. Marijuana's long-term effects on memory and intellect, its pulmonary effects, risks in pregnancy, and tolerance to the drug, are unresolved. Since marijuana may have undesirable side effects at doses necessary to reduce spasticity, the use of marijuana for long-term treatment such as is needed to treat MS and spasticity would be worse than the disease itself.

72. None of the state reports submitted in this proceeding indicate that any state research with marijuana was conducted with respect to spasticity. The National Multiple Sclerosis Society does not advocate the use of marijuana to treat spasticity associated with MS. In addition, the International Federation of Multiple Sclerosis Societies does not recommend marijuana's use in treating spasticity. Also, noted neurologists who specialize in treating and conducting spasticity research, including Drs. Silberberg and Johnson, concluded that marijuana has not been proven to have an accepted medical use in the treatment of spasticity, nor has it been proven to be safe under medical supervision. Dr. Denis Petro, a witness for ACT, concluded in his synthetic THC study that "research needs to cover a larger and better controlled sample before any definitive statement would be possible."

73. Epilepsy involves the progressive recruitment of normal brain neurons into rhythmic and then high frequency bursting. With the overwhelming of inhibitory restraints, the pauses between bursts disappear and are replaced by tonic high frequency firing and the seizure appears. A prominent feature of epilepsy is its episodic nature.

74. There are no studies of the effects of crude marijuana on existing epileptic symptoms in man. Only survey and case report data are available. In 1976, Dennis M. Feenely reported the results of his survey among young epileptics in the Journal of the American Medical Association. In that survey, young epileptics were questioned about their illicit use of marijuana, amphetamine, LSD, barbiturate, cocaine and heroin. Most of the subjects reported that marijuana had no effect on their seizures. In addition, one subject reported that his marijuana use reduced the frequency of seizures, while another subject claimed that marijuana caused him to have seizures. Also, published case reports indicate marijuana's conflicting properties of both reducing and causing seizures. Although case reports and surveys of this type are not highly reliable sources of scientific information, they follow the conflicting pattern suggested in animal studies employing synthetic THC.

75. Smoked marijuana has only been tested on experimental epilepsy in one study. That study evaluated marijuana's effect on seizures in five mongrel dogs. After chronic administration of marijuana smoke, two of the five dogs exhibited grand mal convulsions. In a study involving the administration of marijuana smoke to normal rats, "popcorn convulsions" (involuntary vertical jumping) were observed in 50 percent of the animals after 6 to 9 exposures to the drug.

76. Because of its potential to induce convulsant seizures, marijuana should not be used by epileptics.

77. Cannabidiol (CBD) has also been studied for its anticonvulsant effects in animals. CBD is neither psychoactive nor convulsant. Conclusions drawn from animal testing of this drug suggest that CBD shows promise as an anticonvulsant, and that its use should be clinically investigated in human

epilepsy to determine its therapeutic utility.

78. Marijuana has not been proven to be an effective appetite stimulant, or antianorectic drug. Most studies have involved oral THC rather than marijuana. In a doubleblind study employing smoked marijuana, normal patients using marijuana increased their caloric intake more than those using the placebo, but the variability was too great to draw any conclusions. Studies employing THC have failed to demonstrate an appreciable appetite stimulating or antianorectic effect. State reports of cancer chemotherapy patients receiving either synthetic THC or marijuana have failed to support any claims of marijuana's appetite stimulating properties. Several of the currently available antiemetics have appetite-stimulating properties. With patients undergoing cancer chemotherapy, controlling emesis generally eliminates problems with anorexia or appetite loss. Marijuana has not been compared with currently available antiemetics to evaluate its appetite stimulating properties.

79. There is no scientific or medical indication that marijuana is effective in the treatment of either alcoholism or drug addiction. Recent studies now demonstrate that abuse of marijuana and alcohol are frequently combined. In addition, animal studies present no evidence that marijuana is more effective than currently available treatments for opiate withdrawal.

80. Marijuana has not been demonstrated to be an effective analgesic. Studies have demonstrated that marijuana and THC both increase and decrease pain. In addition, there is no indication that marijuana or synthetic THC are as effective or more effective than currently available analgesics.

81. Marijuana has not been shown to be effective in the treatment of asthma and bronchial spasms. Although smoked marijuana and THC were found to have bronchodilating effects following acute and short-term administration, smoke, even if it provides relief, is not desirable for asthmatics. Also, long-term smoking of marijuana reduces bronchodilation and causes significant airway obstruction.

82. Although marijuana has also been suggested for several other medical problems, there is insufficient scientific data to support its use for these purposes. Although marijuana and some of the cannabinoids have sedative or hypnotic effects, their activity is not constant, nor is there any indication that marijuana is even comparable to currently-available antianxiety and insomnia medications. There also is no support for marijuana's use as an antidepressant drug. Nor is there sufficient indication that marijuana, or its constituents, would be a useful medical alternative in the treatment of hypertension, neoplasms (tumors), infections, or migraine headaches.

83. One of the primary methods for determining whether a particular drug is safe for use under medical supervision is to weigh its actual therapeutic benefit against its negative or unintended side effects. A side effect is a pharmacologic activity other than the desired effect. If the measurable therapeutic benefits of the drug outweigh its negative effects, the drug is generally considered safe for use; if the negative effects outweigh the therapeutic benefits, the drug is not considered safe for its intended use.

84. In evaluating the negative side effects of a drug, several factors are taken into consideration. Generally, initial animal studies are conducted to determine the drug's toxicity. An LD-50 is established (the dose which causes death in 50 percent of the animals tested). Factors other than the LD-50 are also considered in determining safety and toxicity. Additional pharmacological data is also needed, including the drug's bioavailability, metabolic pathways and pharmacokinetics. Acute and chronic testing must be conducted; first in animals, then in humans.

85. Most pharmacological research with cannabis or its constituents has actually been conducted with orally ingested THC, rather than smoked marijuana. Although the pharmacologic effects are presumed to be similar, the studies with oral THC do not provide a complete picture of marijuana's effects. Few of the other cannabinoids have been pharmacologically evaluated. The health consequences from smoking marijuana are likely to be quite different than those of orally ingested THC. Yet most of the chronic animal studies have been conducted with oral or intravenous THC.

86. There is a need for more information about the metabolism of the various marijuana constituents and their biologic effects. This requires many more animal studies. Then the pharmacologic information obtained from the animal studies must be tested in clinical studies involving humans. The pharmacologic testing of cannabinoids in animals thus far has shown that while they do not appear to be highly toxic, they exert some alteration in almost every biological system that has been studied.

87. Well-designed studies on the health effects of marijuana are relatively few. This is especially true with respect to chronic studies. Field studies in this area are deficient. Most are too small to detect unusual or rare consequences which could be of great importance. In addition, only modest research has been conducted using healthy male volunteers; very limited studies have been conducted using females, older individuals, or persons in poor health. The studies using marijuana on healthy male volunteers lead to a biased conclusion that the drug is safe without properly evaluating the populations at risk. To eliminate any such bias and to expand our knowledge of the chronic, long-term effects of marijuana use, sophisticated epidemiological studies of large populations, similar to those conducted for alcohol and tobacco use, must be done. It may take years of extensive research before all of marijuana's deleterious effects become apparent.

88. The acute effects of marijuana use are fairly well established. Marijuana smoking usually causes acute changes in the heart and circulation which are characteristic of stress, including rapid heart rate (tachycardia), orthostatic hypotension, and increased blood concentrations of carboxyhemoglobin (hemoglobin combined with carbon monoxide). Therefore, the drug is not indicated for persons who suffer from cardiovascular problems including angina, congestive heart failure, and arteriosclerosis. In addition, acute marijuana use also causes euphoria; dysphoria; anxiety; confusion; psychosis; drowsiness; convulsions; and impairment of motor coordination, tracking ability and sensory and perceptual functions. Based upon these effects, marijuana should not be used by anxious or depressed, or unrecognized psychotic individuals, and epileptics.

89. Many persons who have smoked marijuana in a research setting could not tolerate its harshness and complained of throat soreness and other problems associated with smoking as a route of administration. In addition, many patients cannot, and will not, smoke a substance like marijuana for therapeutic purposes.

90. Even though inadequate studies have been conducted concerning the effects of long-term chronic use of marijuana, certain detrimental effects on respiratory and pulmonary functions are well-established. Marijuana smoke inhibits pulmonary antibacterial defense systems, possibly making marijuana users more susceptible to bacterial infections of the lung. One chronic smoking experiment tested pulmonary functions of healthy volunteer subjects

before and after 47 to 59 days of daily smoking of approximately five cigarettes per day. The study concluded that very

die each year from invasive aspergillus. Aspergillus was cultured from samples of marijuana from patients who

additive to the aging process. Therefore, chronic marijuana use could result in serious or premature memory disorders,

findings or discussion does the judge acknowledge or mention the Government's experts. Not once does

irrational statements propounded by the pro-marijuana parties. Such statements include the following: "marijuana is far

States." 53 FR 5158, February 22, 1988. These characteristics are:

1. Scientifically determined and

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before and after 47 to 59 days of daily smoking of approximately five cigarettes per day. The study concluded that very heavy smoking for only six to eight weeks caused mild but significant airway obstruction. In addition, a study of heavy hashish (a crude smokable preparation of cannabis resin) users revealed a high incidence of bronchopulmonary consequences, including chronic bronchitis, chronic cough, and mucosal changes of squamous metaplasia (a precancerous change). Chronic smoking can also result in emphysema.

91. Regular and frequent marijuana smoking causes preneoplastic changes in airways similar to those produced by smoking tobacco. Marijuana smoke does not contain nicotine; but like tobacco, it does have an equally complex aerosol of particles in a vapor phase that form a tar mixture. The mixture contains many of the same hydrocarbons contained in tobacco tars which are thought to be associated with cancer causation. Marijuana also contains more tar than tobacco cigarettes. Animal studies using smoked marijuana have documented the growth of precancerous cells after 30 months. Dr. C. Leuchtenberger, a professor at the Swiss Institute for Experimental Cancer Research, noted that exposure of human lung explants to fresh marijuana or tobacco cigarette smoke evoked abnormalities in DNA synthesis, mitosis, and growth with consequent genetic disturbances that may lead to malignant transformation. The abnormalities were more pronounced following exposure to marijuana than to tobacco smoke. These findings were later confirmed in a similar study. Marijuana smoke also contains benzene, a substance associated with leukemia, and 2-aminonapthalene, which causes bladder cancer.

92. Recent evidence also indicates that marijuana can depress an individual's immune function. The immune system's sensitivity to marijuana depends on the cannabinoid compound and varies among immune cell types. In addition to the various cannabinoids, bacteria present in the plant material can further affect the immune function. A number of microbial contaminants have been isolated from marijuana samples, including pathogenic aspergillus, *Klebsiella pneumoniae, Enterbacter agglomerans,* group D streptococcus, *Enterbacter cloace, Bacillus* sp. and salmonella enteritis. The bacteria were found in both licit and illicit supplies of marijuana. At the Memorial Sloan-Kettering Cancer Center, it is estimated that 60 patients die each year from invasive aspergillus. Aspergillus was cultured from samples of marijuana from patients who developed invasive pulmonary and allergic bronchopulmonary aspergillus. The data supports the theory that marijuana smoking during periods of immunosuppression (as during cancer chemotherapy), may lead to infection. Therefore, because of its own immunosuppression properties, and its propensity for causing infections in immunosuppressed individuals, marijuana smoking may be contraindicated in cancer chemotherapy patients.

93. Studies conducted with respect to passive inhalation of heavy marijuana smoke demonstrate that passive inhalation of a substantial amount of sidestream marijuana can produce subjective effects, plasma levels of THC and urinary cannabinoid metabolites, in subjects similar to those found after the smoking of marijuana. The researchers concluded that with sufficient time and high marijuana smoke conditions, it becomes difficult to distinguish between active smoking and passive inhalation.

94. Marijuana has also produced genetic and non-genetic birth defects in many animal species. Pure THC is not thought to produce permanent alterations of genes in cells studied to date, but other components of cannabis smoke can cause such mutations. When animals of one generation were exposed to cannabis smoke during pregnancy, birth defects were found in the third generation, suggesting that a gene change had been transmitted through second generation animals which were only exposed to cannabis smoke prior to birth. Cannabis smoke has been related to the increased numbers of early fetal deaths, decreased fetal weight, and an increased death rate at birth in study animals. Although there have been some cases reported of deformed babies being born to marijuana smoking mothers, no causal links can be made based upon the limited evidence. Further human research is necessary to establish or rule out such effects. Based upon the insufficient and inconclusive research in this area, pregnant women and those with marginal fertility may be at risk in smoking marijuana, even at moderate levels.

95. Chronic marijuana use may also have a toxic effect on the human brain. Preliminary studies indicate that THC changes the way sensory information gets into and is acted on by the hippocampus. Chronic exposure damages and destroys nerve cells and causes other changes which are identical to normal aging and may be additive to the aging process. Therefore, chronic marijuana use could result in serious or premature memory disorders. The results of these studies are now being confirmed.

96. Animal studies and some human studies have found that in males, sperm count and motility are decreased during cannabis use. In female animals, THC suppresses the secretion of luteinizing hormone. Prolonged suppression would eventually lower gonadal steroid levels. Whether these changes have any effect on human sexual function and fertility is not yet known.

97. In addition to the known and suspected health risks associated with marijuana use, there is also evidence to suggest that tolerance to its therapeutic effects also develops.

98. The National Academy of Sciences found that the dose of marijuana necessary to produce a therapeutic benefit is often close to one that produces an unacceptable frequency of toxic side effects.

99. The severity and frequency of negative side effects experienced from marijuana smoking exceed those caused by accepted medications used to treat glaucoma, emesis and Multiple Sclerosis and spasticity.

100. Because of its unacceptable side effects and undetermined therapeutic utility, smoked marijuana is not recommended for the treatment of glaucoma, emesis, Multiple Sclerosis and spasticity, epileptic seizures and convulsions, asthma, appetite loss or anorexia, alcoholism and drug abuse, pain and inflammation, anxiety, insomnia, migraine headaches, hypertension, depression, infections or tumors.

Conclusion

The Administrator finds that the administrative law judge failed to act as an impartial judge in this matter. He appears to have ignored the scientific evidence, ignored the testimony of highly-credible and recognized medical experts and, instead, relied on the testimony of psychiatrists and individuals who used marijuana. The administrative law judge relied heavily on anecdotal accounts of marijuana use by both physicians and seriously ill persons. The administrative law judge's findings of fact ignored any evidence presented by the Government. For example, in his findings regarding marijuana and nausea and vomiting associated with chemotherapy, Judge Young cites many of the physicians presented by the pro-marijuana parties by name as accepting marijuana as "medically useful." Not once in his

findings or discussion does the judge acknowledge or mention the Government's experts. Not once does the judge mention why he chose to find the pro-marijuana parties' evidence more credible. The administrative law judge failed to acknowledge the position of a major organization of physicians, the American Medical Association; and those of organizations whose existence is dedicated to the treatment and study of the diseases at issue such as the American Cancer Society, the National Academy of Ophthalmology and the National Multiple Sclerosis Society. He chose instead to rely on the testimony of a very small number of physicians. Most significantly, the administrative law judge did not follow the standard for "accepted medical use in treatment in the United States," and "accepted safety for use * * * under medical supervision" established by the Administrator in previous scheduling proceedings. The administrative law judge chose, instead, to develop his own standard for both accepted medical use and accepted safety; standards which were specifically rejected by the Administrator in the scheduling of 3,4-methylenedioxymethamphetamine (MDMA).

The administrative law judge did not even apply his own standard consistently. While the administrative law judge found that marijuana had an accepted medical use in treatment of nausea and vomiting associated with chemotherapy; of spasticity associated with multiple sclerosis and amputation; and of pain associated with hyperparathyroidism; he concluded that it did not have accepted medical use in treatment of glaucoma. His rationale was that in applying his standard of accepted medical use, which is that a "significant minority" of physicians accept marijuana as medically useful, there were not enough physicians to establish such a "significant minority" with respect to glaucoma. In contrast, he found that one physician's opinion was sufficient to establish an accepted medical use of marijuana with regard to hyperparathyroidism, because that was a rare disease.

The Administrator rejects the administrative law judge's findings and conclusions. They were erroneous; they were not based upon credible evidence; nor were they based upon evidence in the record as a whole. Therefore, in this case, they carry no weight and do not represent the position of the agency or its Administrator. The inadequacy of Judge Young's analysis of the case is exemplified by his acceptance of, and reliance upon, irresponsible and irrational statements propounded by the pro-marijuana parties. Such statements include the following: "marijuana is far safer than many of the foods we commonly consume. For example, eating ten raw potatoes can result in a toxic response. By comparison, it is physically impossible to eat enough marijuana to induce death." That such a statement would come from the proponents of marijuana is understandable. To give it the weight of an administrative law judge's finding is appalling.

The Administrator has accepted the agency's findings of fact as his own. In order to conclude that these facts support a conclusion that marijuana remain in Schedule I, they must be applied to the criteria set forth in the Controlled Substances Act for substances in Schedule I.

The three criteria are found at 21 U.S.C. 812(b)(1) and are as follows:

(a) The drug or other substance has a high potential for abuse.

(b) The drug or other substance has no currently accepted medical use in treatment in the United States.

(c) There is lack of accepted safety for use of the drug or other substance under medical supervision.

For purposes of this proceeding, the parties stipulated that marijuana has a high potential for abuse. The criteria for substances listed in Schedule II also includes that the drug has a high potential for abuse.

The issue of what "currently accepted medical use in treatment in the United States," and "accepted safety for use * * * under medical supervision" mean, has been the subject of a previous scheduling proceeding involving the drug MDMA. In that proceeding, the Administrator did not adopt Judge Young's recommendation and defined both phrases to mean approved for marketing as safe and effective pursuant to the Food, Drug, and Cosmetic Act. 51 FR 36552, October 8, 1986. The Administrator's decision was reviewed by the United States Court of Appeals for the First Circuit in *Grinspoon* v. *DEA*, 828 F.2d 881 (1987). The Court remanded the matter to the Administrator finding that his standard was too restrictive. The Court did not suggest a standard to be adopted and, instead, stated that "Congress has implicitly delegated to the Administrator the authority to interpret these portions of the CSA* * *" *Grinsoon*, p. 892. The Administrator then published a revised final rule in which he listed several characteristics of a drug or other substance which has an "accepted medical use in treatment in the United States." 53 FR 5156, February 22, 1988. These characteristics are:

1. Scientifically determined and accepted knowledge of its chemistry;
2. The toxicology and pharmacology of the substance in animals;
3. Establishment of its effectiveness in humans through scientifically designed clinical trials;
4. General availability of the substance and information regarding the substance and its use;
5. Recognition of its clinical use in generally accepted pharmacopeia, medical references, journals or textbooks;
6. Specific indications for the treatment of recognized disorders;
7. Recognition of the use of the substance by organizations or associations of physicians; and
8. Recognition and use of the substance by a substantial segment of the medical practitioners in the United States.

These characteristics rely heavily on verifiable scientific data and acceptance by the medical community. These two areas go hand-in-hand, as aptly demonstrated by the record in this proceeding. Most physicians and organizations of physicians rely on scientific data in formulating their opinions regarding the safety and effectiveness of a drug and whether they will provide it for their patients. Many of the experts and organizations who concluded that marijuana did not have an "accepted medical use in treatment in the United States," stated that they reached this conclusion because of the lack of adequate scientific data to support the safety and efficacy of marijuana. The Administrator also notes that the Controlled Substances Act and its legislative history require him to consider scientific evidence in determining the schedule in which a drug should be placed. For example, the Controlled Substances Act at 21 U.S.C. 811(c) lists eight factors to be considered in evaluating the three scheduling criteria. Included among those factors are "scientific evidence of its pharmacological effect, if known" and "the state of current scientific knowledge regarding the drug or other substance." In addition, the Controlled Substances Act requires the Administrator to request a scientific and medical evaluation from the Secretary of Health and Human Services. The Administrator is then bound by the Secretary's recommendation as to scientific and medical matters. 21 U.S.C. 811(b). In this proceeding, the Assistant Secretary for Health has provided the Administrator with an extensive

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scientific and medical evaluation in which it was recommended that marijuana remain in Schedule I because

national acceptance. The Administrator feels that, in light of the potential risks of declaring a drug has an accepted

leveled at the Government and communicated to the public by the pro-marijuana parties, specifically NORML

Dated: December 21, 1989.
John C. Lawn,
Administrator.
[FR Doc. 89-30126 Filed 12-28-89; 8:45 am]

5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage

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scientific and medical evaluation in which it was recommended that marijuana remain in Schedule I because there is insufficient scientific and medical evidence to conclude that marijuana is a safe and effective drug.

It is clear from the evidence presented in this proceeding that marijuana does not have the characteristics of a drug which has an "accepted medical use in treatment in the United States." Because of the complex composition of marijuana, containing over 400 separate constituents (many of which have not been tested) varying from plant to plant, the chemistry, toxicology and pharmacology of marijuana is not established. As discussed previously, the effectiveness of marijuana has not been documented in humans with scientifically-designed clinical trials. While many individuals have used marijuana and claim that it is effective in treating their ailments, these testimonials do not rise to the level of scientific evidence. Marijuana is available from the Federal Government to those researchers who obtain proper licensure. However, the evidence suggests that only small numbers of researchers and physicians have obtained marijuana for this purpose, and that some research programs sponsored by states had trouble getting physicians to participate. The vast majority of physicians do not accept marijuana as having a medical use. Marijuana is not recognized as medicine in generally accepted pharmacopeia, medical references, journals or textbooks. As evidenced by expert physician testimony and the statements of many professional medical and research organizations, marijuana is not accepted by organized medicine or a substantial segment of the physician population. The administrative law judge's conclusion that a "respectable minority" of physicians is all that is necessary to establish accepted medical use in treatment in the United States is preposterous. By placing a substance in Schedule II, the Administrator, and through him, the Federal Government, establishes a national standard for drug use. Using the same criteria as medical malpractice cases to determine a national standard of medical acceptance is untenable. It must be recognized that in every profession, including the medical and scientific community, there are those that deviate from the accepted practices of the profession. These deviations may be the beginning of new revolutionary treatments or they may be rejected as quackery. The opinions of those few physicians and scientists are not sufficient to create a finding of national acceptance. The Administrator feels that, in light of the potential risks of declaring a drug has an accepted medical use in treatment in the United States, he must adhere to the strict standard that was established in the MDMA proceeding. It is clear that the evidence conclusively demonstrates that marijuana does not have an accepted medical use in treatment in the United States or an accepted medical use with severe restrictions.

The Administrator's standard for "accepted safety for use * * * under medical supervision" was also stated in the second MDMA final rule published on February 22, 1988. 53 FR 5156. The tests for determining accepted safety of a drug were stated as follows:

> The first requirement in determining safety of a substance is that the chemistry of the substance must be known and reproducible. The next step is to conduct animal toxicity studies to show that the substance will not produce irreversible harm to organs at proposed human doses. Limited clinical trials may then be initiated, but they must be carefully controlled so that adverse effects can be monitored and studies terminated if necessary * * * safety in humans is evaluated as a risk/benefit ratio for a specific use. 53 FR 5158.

It is clear that marijuana cannot meet the criteria set forth above for safety under medical supervision. The chemistry of marijuana is not known and reproducible. The record supports a finding that marijuana plant material is variable from plant to plant. The quantities of the active constituents, the cannabinoids, vary considerably. In addition, the actions and potential risks of several of the cannabinoids have not been studied. Animal toxicity studies with marijuana show several potential risks or hazards of marijuana use, especially when the marijuana is smoked. These hazards have not been evaluated against the benefit or effectiveness of the drug. This is due, in great part, to the fact that marijuana's effectiveness in treating specific medical conditions has not been established by reliable scientific studies. Since a proper risk/benefit ratio cannot be made, the safety of marijuana for medical use cannot be demonstrated. Such lack of information is the basis for the majority of the medical and scientific community, and the Food and Drug Administration, concluding that marijuana does not have "accepted safety for use * * * under medical supervision." The Administrator, therefore, concludes that marijuana lacks "accepted safety for use * * * under medical supervision."

As a final note, the Administrator expresses his displeasure at the misleading accusations and conclusions leveled at the Government and communicated to the public by the pro-marijuana parties, specifically NORML and ACT. These two organizations have falsely raised the expectations of many seriously ill persons by claiming that marijuana has medical usefulness in treating emesis, glaucoma, spasticity and other illnesses. These statements have probably caused many people with serious diseases to experiment with marijuana to the detriment of their own health, without proper medical supervision, and without knowing about the serious side effects which smoking or ingesting marijuana may cause. These are not the Dark Ages. The Congress, as well as the medical community, has accepted that drugs should not be available to the public unless they are found by scientific studies to be effective and safe. To do otherwise is to jeopardize the American public, and take advantage of desperately ill people who will try anything to alleviate their suffering. The Administrator strongly urges the American public not to experiment with a potentially dangerous, mind-altering drug such as marijuana in an attempt to treat a serious illness or condition. Scientific and medical researchers are working tirelessly to develop treatments and drugs to treat these diseases and conditions. As expressed in the record, treatments for emesis (nausea and vomiting) associated with cancer chemotherapy have advanced significantly in the last ten years. Recent studies have shown an over 90 percent rate of effectiveness for the new antiemetic drugs and therapies. NORML and ACT have attempted to perpetrate a dangerous and cruel hoax on the American public by claiming marijuana has currently accepted medical uses. The Administrator again emphasizes that there is insufficient medical and scientific evidence to support a conclusion that marijuana has an accepted medical use for treatment of any condition, or that it is safe for use, even under medical supervision.

Based upon the evidence in the record and the conclusions discussed previously, the Administrator, under the authority vested in the Attorney General by section 201(a) of the Controlled Substances Act (21 U.S.C. 811(a)) and delegated to the Administrator of the Drug Enforcement Administration by regulations of the Department of Justice, 28 CFR 0.100(b), hereby orders that marijuana remain a Schedule I controlled substance as listed in 21 CFR 1308.11(d)(14).

This order is effective December 29, 1989.

Dated: December 21, 1989.
John C. Lawn,
Administrator.
[FR Doc. 89-30126 Filed 12-28-89; 8:45 am]
BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determinations decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

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NY89-2 (January 6, 1989).....	p. 683 pp. 688, 692 p. 693
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IOWA, IA89-5 (January 6, 1989).	p. 41 pp. 42-43

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ALASKA, AK89-1 (January 6, 1989).	p. 1 p. 2
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OREGON, OR89-1 (January 6, 1989).	p. 307 pp. 308-310, p. 316, pp. 323-324
WASHINGTON, WA89-8 (January 6, 1989).	p. 423 pp. 424-425 p. 425a pp. 46-64f

General Wage Determination Publication

General Wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

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Signed at Washington, DC this 22nd day of December 1989.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 89-30153 Filed 12-28-89; 8:45 am]

BILLING CODE 4510-27-M

Office of the Assistant Secretary for Veterans' Employment and Training

Procedures for Application for Funds: Stewart B. McKinney Homeless Assistance Act, Title VII, Subtitle C, Section 738, Fiscal Year 1990

AGENCY: Office of the Assistant Secretary for Veterans' Employment and Training (OASVET).

ACTION: Notice of availability of funds and of solicitation for grant applications.

SUMMARY: This notice sets forth the procedures for obtaining an application for funds for the operation of a Homeless Veterans' Reintegration Project (HVRP) funded under the Stewart B. McKinney Homeless Assistance Act, title VII, subtitle C, section 738. This solicitation applies to projects administered by the Department of Labor through grants with State and local public agencies.

DATE: The closing date for receipt of a completed application package in response to this notice is February 16, 1990. Applications received after that time will be considered for award only if they are postmarked by the United States Postal Service on or before February 16, 1990.

ADDRESS: A copy of the application package and instructions for completion may be obtained by written request only, including two self-addressed mailing labels, to: U.S. Department of Labor, Office of Procurement Services, Rm. S5220, 200 Constitution Ave., NW., Washington D.C. 20210, Attention: Grant Officer, Reference: SGA 90-01.

FOR FURTHER INFORMATION CONTACT: Ms. Christine Chudd or Ms. Eileen Connors, U.S. Department of Labor, Office of the Assistant Secretary for Veterans' Employment and Training, 200 Constitution Ave., NW., Rm. S1313, Washington, D.C. 20210, telephone (202) 523-9110.

SUPPLEMENTARY INFORMATION: The Office of the Assistant Secretary for Veterans' Employment and Training (OASVET) announces the availability of an application package for its HVRP funds for fiscal year (FY) 1990. Funding for these projects is authorized by the Stewart B. McKinney Homeless Assistance Act, Public Law 100-77, section 738, 101 Stat. 482, 538, (1987), as amended by Public Law 100-628, section 703, 102 Stat. 3224, 3705 (1988), (42 U.S.C. 11447-11450).

The McKinney Act, enacted on July 22, 1987, and amended on November 7, 1988, provides funds to several Federal agencies to administer a variety of programs for homeless persons. Title VII, subtitle C, section 738 of the Act authorizes programs "to expedite the reintegration of homeless veterans into the labor force." There are approximately $1.5 million available in FY 1990 to carry out demonstration HVRPs authorized under Section 738.

Project funding will range from a minimum of $50,000 to a maximum of $250,000. Between 15 and 25 projects will be funded. It is expected that most projects will be in the $100,000 to $150,000 range. Projects will begin no later than September 30, 1990 for a one-year period with an option to renew for an additional year. Funding could begin as early as June 1990.

In keeping with the demonstration nature of the McKinney Act, the program is designed to provide each potential program operator with flexibility in determining the range of employment and training-related activities which best meet the needs of the homeless veteran population in its jurisdiction.

There are three criteria, however, which will be required in each HVRP: (1) An outreach activity staffed by veterans who have experienced homelessness; or, if outreach is deemed not necessary due to the applicant's particular local circumstances, at least one veteran who has experienced homelessness must be employed on staff in a position involving direct client contact; (2) linkages with providers of other services which could benefit homeless veterans, including, where applicable, other recipients of funds under the McKinney Act; and (3) projects must be employment-focused in order to provide the employment and training services needed to reintegrate homeless veterans into the labor force.

This solicitation for grant applications is limited to: (1) the 50 largest U.S. cities and/or (2) jurisdictions which were served through the HVRP in FY 1988 and FY 1989. A list of these jurisdictions follows:

Arizona
- Phoenix
- Tucson

California
- Long Beach
- Los Angeles
- Oakland
- Sacramento
- San Diego*
- San Francisco
- San Jose*

Colorado
- Denver*
- District of Columbia

Florida
- Jacksonville*
- Miami

Georgia
- Atlanta*

Hawaii
- Honolulu

Illinois
- Chicago

Indiana
- Indianapolis

Louisiana
- New Orleans*

Maryland
- Baltimore

Massachusetts
- Boston*

Michigan
- Detroit*

Minnesota
- Minneapolis

Missouri
- Kansas City
- St. Louis*

Nebraska
- Omaha

New Jersey
- Newark

New Mexico
- Albuquerque

New York
- Buffalo
- New York*

North Carolina
- Charlotte

Ohio
- Cincinnati
- Cleveland
- Columbus
- Toledo

Oklahoma
- Oklahoma City
- Tulsa

Oregon
- Portland*

Pennsylvania
- Philadelphia
- Pittsburgh*

Tennessee
- Memphis
- Nashville/Davidson*

Texas
- Austin
- Dallas
- El Paso
- Fort Worth
- Houston
- San Antonio*

Virginia
- Virginia Beach

Washington
- Seattle*
- Olympia*
- Tacoma*

Wisconsin*

*FY 1988/1989 HVRP jurisdictions.

Entities which are eligible to submit applications for serving the jurisdictions listed above are limited to State and local public agencies. "Local public agency" refers to any public agency of a general-purpose political subdivision of a State which has the power to levy taxes and spend funds, as well as general corporate and police powers. (This typically refers to cities and counties).

The application instructions will include a more detailed program description, program guidelines, and approach to implementation. The application package will consist of a standard application form, a narrative description of proposed activities and current services, and a detailed budget.

Criteria for identifying the most promising and effective proposals will be applied, and between 15 and 25 applicants will be identified as potential grantees. Applicants are advised that discussions may be necessary to clarify any inconsistencies in their applications. The evaluation panel scores will serve as the primary basis for selection of applications for potential award. Evaluation by reviewers is advisory only to the Grant Officer.

Signed at Washington, DC, this 21st day of December, 1989.

Thomas E. Collins,

Assistant Secretary for Veterans' Employment and Training.

[FR Doc. 89-30169 Filed 12-28-89; 8:45 am]

BILLING CODE 4510-79-M

THE NEIGHBORHOOD REINVESTMENT CORPORATION

A Program of Technical Services and Limited Financial Assistance for Development of Mutual Housing Associations and Properties

The Neighborhood Reinvestment Corporation announces a program of technical services and limited financial assistance to selected local governments, nonprofit organizations, private sector interests, affordable housing developers and community based leaders who wish to create Mutual Housing Associations with Neighborhood Reinvestment's assistance. This announcement represents an expansion of our existing network of Mutual Housing Associations which are currently in operation or under development in eight cities across the country. Neighborhood Reinvestment also sponsors Neighborhood Housing Services and Apartment Improvement Programs in over 140 cites and over 260 neighborhoods. Successful applicants will receive intensive technical assistance in developing Mutual Housing Associations and sites, as well as targeted financial assistance designed to leverage other resources. Mutual Housing Associations developed through this program will have access to all benefits of membership in the national Neighborworks network.

Mutual Housing Associations are private, nonprofit organizations which own, manage and develop permanently affordable housing on a continuing basis. Residents do not have an equity interest in the property, but enjoy certain benefits similar to home owners, including, among others, the opportunity for long term occupancy. Residents of Mutual Housing and people on the waiting list constitute the majority of the Mutual Housing Board of Directors, the decision making body of the Association. Private sector and government representatives make up the balance of the Board and bring appropriate skills and expertise to the multi-faceted operations of the Association.

Mutual Housing association development are capitalized through a combination of upfront grants and low interest loans which insure permanent affordability for residents. The Association is explicitly committed to using all revenues or resources in excess of operating, maintenance and service costs for the production of additional units. The Mutual Housing Association Board employs a highly competent professional staff and provides sound and responsive property management services to its resident members. Residents participate actively in some home maintenance tasks and enhance and maintain the social fabric of the Association. The Association is committed to contributing to the revitalization of the neighborhoods in which their developments exist, and to preserving the economic, cultural, racial, generational and professional mix of the community.

Mutual Housing offers a housing solution which is affordable, safe, well maintained and resident-directed on a permanent basis. This approach is a logical option for comminities, organizations, groups, or individuals who are exploring solutions for affordable new construction or who are interested in creative alternatives for surplus or foreclosed properties or for existing subsidized rental housing developments whose subsidies are scheduled to expire.

Neighborhood Reinvestment is interested in letters of application which reflect commitments of local leadership and resources to specific site opportunities as well as a commitment to a sound organizational development process. Application letters and supportive material should include:

- A brief outline of community need and demographics
- A brief outline of specific site opportunities citing ownership, available occupancy data, likely resident interest, and potential or actual commitments of resources
- Specific indications of support from local sources and any others who offer resources to the effort.

Neighborhood Reinvestment is prepared to offer assistance and advice to potential applicants and is prepared to be flexible in evaluation of sites and community readiness.

Applications will be acknowledged by a letter or by a request for additional information. Site visits will be scheduled in response to applications of particular interest.

DATES: Letters of Application and supportive material must be received by February 17.

ADDRESS: Four copies of the application should be sent to: Margo Kelly, Deputy Director, Field Operations, Neighborhood Reinvestment Corporation, 80 Boylston Street, Boston, MA 02116.

FOR FURTHER INFORMATION CONTACT: Diane Gordon, (617-565-8447).

Martha A. Diaz-Ortiz,

Assistant Secretary.

[FR Doc. 89-30206 Filed 12-28-89; 8:45 am]

BILLING CODE 7570-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) and Advisory Committee on Nuclear Waste (ACNW); Notice of Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the ACRS full Committee, and of the ACNW, the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published November 30, 1989 (54 FR 49372). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. It is expected that sessions of ACRS full Committee and ACNW meetings designated by an asterisk (*) will be open in whole or in part to the public. ACRS full Committee and ACNW meetings begin at 8:30 a.m. and ACRS Subcommittee meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during ACRS full Committee and ACNW meetings and when ACRS Subcommittee meetings will start will be

published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or

Regulatory Policies and Practices, March 22, 1990, Bethesda, MD. The Subcommittee will review the NRC

Auxiliary and Secondary Systems, Date to be determined, Bethesda, MD. The Subcommittee will discuss the: (1)

*G. *Appointment of ACRS Members (Open/Closed)*—Discuss the status of appointment of new ACRS members.

meeting agenda, and organizational matters, as appropriate.

17th ACNW Meeting, February 21-23, 1990—Agenda to be announced.

conditions and reflect the results of analysis performed.

*Environmental Impacts of the Proposed

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published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the January 1990 ACRS and ACNW full Committee meetings can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone: 301/492-7288, ATTN: Barbara Jo White) between 7:30 a.m. and 4:15 p.m., Eastern Time.

ACRS Subcommittee Meetings

Advanced Pressurized Water Reactors, January 9, 1990, Bethesda, MD. The Subcommittee will continue its review of the Westinghouse Evolutionary Light Water Reactor SP/90 design.

Regulatory Policies and Practices, January 10, 1990, Bethesda, MD has been postponed to March 22, 1990.

Containment Systems, January 10, 1990, Bethesda, MD. The Subcommittee will discuss the NRC staff's document on the Containment Performance Improvement (CPI) Program (all containment types other than the BWR Mark I).

Joint Severe Accidents and Probabilistic Risk Assessment, January 23-24, 1990, Albuquerque, NM. The Subcommittees will continue their review of NUREG-1150, "Severe Accident Risks: An Assessment for Five U.S. Nuclear Power Plants," (Second Draft for Peer Review). Topics tentatively scheduled for discussion at this meeting include: back-end analysis, uncertainties and the expert opinion process.

Structural Engineering, January 24-25, 1990, Albuquerque, NM. The Subcommittee will review structural integrity issues on various containment configurations and Category I structures.

Safety Research Program, February 7, 1990, Bethesda, MD. The Subcommittee will discuss the proposed NRC Safety Research Program and Budget for FY 1991 and other related matters.

Joint Containment Systems and Structural Engineering, February 28, 1990, Bethesda, MD. The Subcommittees will discuss the development of a position or recommendations regarding new containment design criteria for future plants.

Mechanical Components, March 7, 1990, Bethesda, MD. The Subcommittee will review nuclear power plant valve concerns including; (1) status of the MOV program, (2) the status of the check valve program, (3) the status of the diagnostics for check valves (programs on valves import to safety, i.e., butterfly valves), and (5) related valve concerns.

Regulatory Policies and Practices, March 22, 1990, Bethesda, MD. The Subcommittee will review the NRC staff's Draft Rule for license renewal.

Occupational and Environmental Protection Systems, Date to be determined (January/February), Bethesda, MD. The Subcommittee will continue its review of Interim Standard for hot particles.

Systematic Assessment of Experience, Date to be determined (January/February), Bethesda, MD. The Subcommittee will review the proposed power level increase for Indian Point Unit 2.

Decay Heat Removal Systems, Date to be determined (January/February), Bethesda, MD. The Subcommittee will review the NRC staff's proposed resolution of Generic Issue 84, "CE PORVs."

Joint Thermal Hydraulic Phenomena and Core Performance, Date to be determined (January/February), Bethesda, MD. The Subcommittee will continue their review of boiling water reactor core power stability pursuant to the core power oscillation event at LaSalle County Station, Unit 2.

GE Reactor Plants (Nine Mile Point Restart), Date to be determined (January/February), Bethesda, MD—CANCELLED.

Advanced Pressurized Water Reactors, Date to be determined (February), Bethesda, MD. The Subcommittee will discuss the licensing review bases document being developed for Combustion Engineering's Standard Safety Analysis Report-Design Certification (CESSAR-DC).

Thermal Hydraulic Phenomena, Date to be determined (February), Idaho Falls, ID. The Subcommittee will review the details of the modifications made to the RELAP-5 MOD-2 code as specified in the MOD-3 version.

Severe Accidents, Date to be determined (February/March), Bethesda, MD. The Subcommittee will discuss the NRC Severe Accident Research Program (SARP) plan.

Materials and Metallurgy, Date to be determined (February/March), Bethesda, MD. The Subcommittee will review the proposed resolution of Generic Issue 29, "Bolting Degradation or Failure in Nuclear Power Plants."

Decay Heat Removal Systems, Date to be determined (June/July), Bethesda, MD. The Subcommittee will review the proposed resolution of Generic Issue 23, "RCP Seal Failures."

Decay Heat Removal Systems, Date to be determined, Bethesda, MD. The Subcommittee will explore the issue of the use of feed and bleed for decay heat removal in PWRs.

Auxiliary and Secondary Systems, Date to be determined, Bethesda, MD. The Subcommittee will discuss the: (1) criteria being used by utilities to design Chilled Water Systems, (2) regulatory requirements for Chilled Water Systems design, and (3) criteria being used by the NRC staff to review the Chilled Water Systems design.

Reliability Assurance, Date to be determined, Bethesda, MD. The Subcommittee will discuss the status of implementation of the resolution of USI A-46, "Seismic Qualification of Equipment in Operating Plants," and other related matters.

Joint Regulatory Activities and Containment Systems, Date to be determined, Bethesda, MD. The Subcommittees will review the proposed final revision to Appendix J to 10 CFR Part 50, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors."

ACRS Full Committee Meetings

357th ACRS Meeting, January 11-13, 1990, Bethesda, MD. Items are tentatively scheduled.

*A. *NRC Containment Performance Improvement Program (Open)*—Review and report on the proposed NRC containment performance improvement program for light-water reactors. Members of the NRC staff will participate, as appropriate.

*B. *Proposed Final Resolution of Generic Issue B-56, "Diesel Reliability" and Associated Regulatory Guide 1.9, Revision 3 (Open)*—ACRS review and report on the NRC staff's proposed resolution of this generic issue. Members of the NRC staff will participate.

*C. *Meeting with NRC Commissioners (Open)*—Meeting with NRC Commissioners to discuss topics related to ACRS activities, including containment performance criteria for future plants, and activities of NRC regional staffs.

*D. *Meeting with Director of the NRC Office for Analysis and Evaluation of Operational Data (Open)*—Discuss topics of mutual interest, such as the distribution of AEOD resources and use of Augmented Inspection Teams (AITs) vs Incident Investigation Teams (IITs).

*E. *ACRS Subcommittee Activities (Open)*—Hear and discuss reports of designated subcommittee activities, including ACRS Plans and Procedures, such as allocation of resources and procedures for conduct of business.

*F. *Future Activities (Open)*—Discuss anticipated activities of ACRS subcommittees and items proposed for consideration by the full Committee.

*G. *Appointment of ACRS Members (Open/Closed)*—Discuss the status of appointment of new ACRS members.

*H. *Reactor Operating Experience (Open/Closed)*—Briefing and discussion with members of NRC staff of recent reactor incidents and transients that have been evaluated by AEOD. These include: potential interfacing systems LOCA at the Arkansas Nuclear One Unit-2, inoperable HPCI Systems at the Dresden 2 and 3 nuclear units, failure of diesel generator at South Texas Unit 2, and leakage through the RHR suction relief valve at Braidwood Unit 1.

*I. *Interfacing Systems LOCA (Open)*—Briefing and discussion of NRC proposed action plan to deal with the potential for interfacing systems LOCA at nuclear power plants. Members of the NRC staff will participate.

*J. *State of Nuclear Power Program (Open)*—Members will discuss a proposed report to the NRC regarding the state of the nuclear power program in the United States.

*K. *Coherence In The Regulatory Process (Open)*—Discuss proposed ACRS report to the NRC regarding mechanisms to achieve improved coherence in the NRC regulatory process.

*L. *ACRS Report to Congress (Open)*—Discuss the format and content of the ensuing annual ACRS report to the Congress on the NRC Safety Research program and budget.

358th ACRS Meeting, February 8-10, 1990—Agenda to be announced.

359th ACRS Meeting, March 8-10, 1990—Agenda to be announced.

ACNW Full Committee Meetings

18th ACNW Meeting, January 24-26, 1990, Bethesda, MD. Items are tentatively scheduled.

*A. Review of the Technical Position on Seismic Hazards.

*B. Storage of Spent Fuel in NRC-Approved Casks at Power Reactor Sites.

*C. Mr. R. Bangart, Director, DLLWM, will discuss the overall strategy of low-level waste projects and how they fit together to make a coherent program to assure safety.

*D. *American Society for Testing Materials.* The Committee will be briefed on the radioactive waste activities (waste management, disposal, and transport) of the ASTM.

*E. MRS Commission Recommendations—for information.

*F. Briefing on the current schedule for NRC/DOE projects related to the high-level geologic waste repository.

*G. *Committee Activities.* The Committee will discuss anticipated and proposed Committee activities, future meeting agenda, and organizational matters, as appropriate.

17th ACNW Meeting, February 21-23, 1990—Agenda to be announced.

18th ACNW Meeting, March 21-23, 1990—Agenda to be announced.

Dated: December 22, 1989.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 89-30181 Filed 12-28-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-219]

GPU Nuclear Corp. and Jersey Central Power and Light Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR-16 issued to GPU Nuclear Corporation, et. al. (the licensee), for operation of the Oyster Creek Nuclear Generating Station, located in Ocean County, New Jersey.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the Technical Specifications to delete Technical Specification Safety Limit 2.1.E which requires at least two recirculation loops to be fully open except when the reactor vessel head is off and vessel water level is above the main stream nozzle. This proposed amendment would also incorporate this limitation in Technical Specification 3.3.F and that limitation would be revised to require that at least one recirculation loop instead of two be fully open during applicable plant conditions. In addition the proposed change would also require that during power operations if at least four recirculation loops cannot be maintained in service, then hot shutdown or refuel conditions must be reached in 12 hours. Presently the requirement is that the unit be placed in cold shutdown conditions within 24 hours.

The proposed amendment is in accordance with GPU Nuclear Corporation's application dated March 31, 1988, as supplemented November 15, 1988 and August 23, 1989.

The Need for the Proposed Action

The proposed changes to the Technical Specifications are needed so that requirements for recirculation loop operation are consistent with the safety limit and limiting condition for operation definitions in 10 CFR 50.36, are appropriate for different plant conditions and reflect the results of analysis performed.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to Technical Specifications. The proposed revision reclassifies the requirement for unisolated recirculation loops from a safety limit to a Limiting Condition of Operation (LCO). Reducing the requirement from two unisolated loops to one unisolated loop during applicable plant conditions has been analyzed. Hydraulic analysis of the recirculation loops shows adequate hydraulic communication between the annulus and core regions. For this bounding anticipated operational occurrence water level indication is representative of the water level in the core with one unisolated recirculation loop. The primary concern regarding recirculation loop isolation is to maintain adequate hydraulic communication between the annulus and core regions. When conditions permit the reactor to be flooded to a water level above 185 inches Top of Active Fuel (TAF) or when the steam separator and dryer are removed both regions are in hydraulic communication above the core and level readings are indicative of core region level, therefore, there is no need to keep recirculation loops unisolated. The proposed changes to specifications 3.3.F.1 and 3.3.F.2 are editorial and do not change these requirements. The proposed change to specification 3.3.F.3 ensures that the reactor is placed in a condition (i.e., power operation terminated and reactor subcritical) which does not necessitate operation of at least four recirculation loops.

Based on the above, the staff has determined that the proposed Technical Specifications do not alter any initial conditions assumed for the design basis accidents previously evaluated nor do they change operation of safety systems utilized to mitigate them. Therefore, the proposed changes (1) do not involve a significant increase in the probability or consequences of any accident previously evaluated, (2) do not create the possibility of a new or different kind of accident from any accident previously evaluated and (3) do not involve a significant reduction in the margin of safety.

Therefore, the proposed changes do not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative

occupational radiation exposure. Accordingly, the Commission concludes that these proposed actions would result

public inspection in the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW.,

temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the

plume EPZ community of Phippsburg, Maine. The eight deficiencies are enumerated below, along with the status

operator failed to transmit some messages to local Emergency Operations Centers (EOCs) in a timely

representatives, radiological impact assessment, protective action recommendation decisionmaking,

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occupational radiation exposure. Accordingly, the Commission concludes that these proposed actions would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed changes to the Technical Specifications involve the reactor coolant system which is located within the restricted area as defined in 10 CFR Part 20. They do not affect non-radiological plant effluents and have no other environmental impacts. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Prior Hearing in connection with this action was published in the **Federal Register** on May 3, 1988 (53 FR 15756). No request for hearing or petition for leave to intervene was filed following this notice.

Alternatives to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed actions, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and the requirements for recirculation loop operation would not be consistent with the safety limit and limiting condition for operation definitions in 10 CFR 50.36.

Alternative Use of Resources

The action would involve no use of resources not previously considered in the Final Environmental Statement (FES) for the Oyster Creek Nuclear Generating Station.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding No Significant Impact

The staff has determined not to prepare an environmental impact statement for the proposed amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed actions will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated March 31, 1988, as supplemented November 5, 1988 and August 23, 1989 which is available for public inspection in the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and the Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753.

Dated at Rockville, Maryland, this December 21st, 1989.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–4, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89–30238 Filed 12–28–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–309]

Maine Yankee Atomic Power Co.; (Maine Yankee Atomic Power Plant)

Exemption

I.

Maine Yankee Atomic Power Company (the licensee) is the holder of Facility Operating License No. DPR–36 which authorizes operation of the Maine Yankee Atomic Power Plant (the facility) at steady-state reactor power levels not in excess of 2700 megawatts thermal. The license provides, among other things, that the licensee is subject to all rules, regulations, and Orders of the Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect. The facility consists of a pressurized water reactor located at the licensee's site in Wiscasset, Maine.

Section 50.54(q) of 10 CFR part 50 requires a licensee authorized to operate a nuclear power reactor to follow and maintain in effect emergency plans that meet the standards of 10 CFR 50.47(b) and the requirements of Appendix E to 10 CFR part 50. Section IV.F.3 of Appendix E requires that each licensee at each site shall exercise with offsite authorities such that the State and local government emergency plans for each operating reactor site are exercised biennially, with full or partial participation by State and local governments, within the plume exposure pathway emergency planning zone (EPZ).

The NRC may grant exemptions from the requirements of the regulations which, pursuant to 10 CFR 50.12(a), are (1) authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security; and (2) present special circumstances. Section 50.12(a)(2)(v) of 10 CFR Part 50 indicates that special circumstances exist when an exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulations.

II.

By letter dated October 27, 1989, the licensee requested an exemption from the schedule requirements of Section IV.F.3 of Appendix E. The last biennial emergency preparedness exercise was a full-participation exercise conducted at the Marine Yankee Nuclear Power Plant on June 9, 1987. The licensee requested that the upcoming exercise be rescheduled to a time convenient to all affected parties. The licensee also requested to be relieved of the requirement to conduct an onsite emergency preparedness exercise this calendar year.

The licensee stated that it was notified by the Federal Emergency Management Agency (FEMA) that FEMA would not be able to observe the scheduled exercise because of the demands on the agency associated with the recent emergencies in California and South Carolina. The licensee further stated that the scenario was developed for this full-participation exercise to evaluate offsite emergency plans and procedures for the plume and ingestion pathway emergency planning zones (EPZs), and it did not believe it would be appropriate to use this scenario with no offsite participation. Additionally, the licensee stated there was insufficient time in which to prepare a new scenario package for NRC review.

On November 6, 1989, the licensee submitted a letter clarifying its request for an exemption from the full-participation exercise scheduled for November 14 and 15, 1989. The licensee reiterated the reason for the request—that FEMA Region I could not evaluate the offsite aspects of the exercise because of their priorities involving assistance to victims of the recent actual disasters in the United States. Also, the licensee provided additional information to support the exemption regarding the status of corrective actions for the offsite deficiencies resulting from the 1987 exercise.

III.

The last full-participation exercise for the Maine Yankee Nuclear Power Plant, the State of Maine, Lincoln and Sagadahoc Counties, and local communities in the plume EPZ was conducted on June 9, 1987. FEMA identified a total of eight deficiencies as a result of this exercise. Six of the eight deficiencies were assigned to the State of Maine and two were assigned to the

plume EPZ community of Phippsburg, Maine. The eight deficiencies are enumerated below, along with the status of the corrective actions taken, as reported by the licensee in its letter of November 6, 1989.

1. Numerous inadequacies in the alert and notification system has been consistantly identified since 1981.

In cooperation with Maine Emergency Management Agency (MEMA), Maine Yankee has developed a program to enhance the physical means that presently exist to alert the public in the event of an emergency at the plant that necessitated public protective measures. Implementation of the additional stationary sirens planned are ahead of schedule. Presently 18 of 20 planned sirens have been installed. Power has been provided to most of the new sirens so they are capable of local activation. Installation of the remaining radio activation control equipment should be completed before the end of December 1989.

Additionally, Maine Yankee plans to install a few more sirens in strategic locations that will further enhance the existing alerting system. The licensee plans to have all sirens operable by December 1990.

To augment the stationary sirens, the State of Maine has coordinated the distribution of approximately 230 tone alert radios to public buildings, institutions, schools, hospitals, campgrounds, State parks, etc. An approximate equal number of radios should, depending on final projected siren coverage, be distributed to dwellings by December 31, 1990.

2. The State lacked the mechanism to properly analyze and respond to local protective action decisions, including appropriate emergency broadcast station (EBS) messages.

Appropriate changes have been included in final revisions to the State and community emergency response plans. These plans are targeted for issuance by the end of December 1989.

3. Public Emergency Alerting System (PEAS) telephone inoperable in two towns and its operation was sporadic in several others.

The corrective action is complete; community training was completed on October 25, 1989.

4. Preliminary Maine Yankee protective action recommendations were transmitted over the PEAS telephone along with those actually adopted by the State, which caused confusion in the towns.

State procedures have been revised and training completed.

5. PEAS multi-point telephone operator failed to transmit some messages to local Emergency Operations Centers (EOCs) in a timely manner.

State procedures have been revised and training completed.

6. Protective action recommendations not disseminated to the public within 15 minutes.

Prescripted EBS messages have been developed and their dissemination successfully simulated.

7. Several islands within Phippsburg have no means for alerting the residents/tourists.

The number of dwellings on islands in the EPZ requiring tone alert radios has been dramatically reduced because of enhanced coverage of the newly installed stationary sirens. The alerting capability provided by the new sirens, plus the out-migration of the seasonal residents, has deferred the distribution of tone alert radios until the summer of 1990 to coincide with the return of the seasonal residents.

8. Alerting teams not cognizant of procedures for alerting tourists at campgrounds, beaches, etc.

The corrective action for this deficiency is complete. Additional training has been conducted with community emergency response personnel. We understand that the State has distributed tone alert radios to campgrounds, State parks, etc., as necessary.

The State of Maine has been active in participating in drills and exercises to ensure that their emergency plans and procedures can be adequately implemented in the event of an actual emergency. Numerous training activities have also been conducted. The State, counties, and communities in the Maine Yankee Emergency Planning Zone (EPZ) have fully participated in exercises conducted in 1981, 1982, 1985 and 1987. The State also participated in a mini-exercise in 1983 in which FEMA evaluated the State's capabilities that adequately addressed areas of concern from the previous year's exercise.

Since the last full-participation biennial exercise in 1987, the State has successfully participated in a 2-day ingestion pathway exercise during June 1988 Seabrook and also in two 2-day training exercises during 1988 for the Seabrook plant. The State participated in the partial-participation annual exercise for Maine Yankee conducted in September 1988. This exercise involved the participation of the State of Maine Emergency Response Team and the State's offsite monitoring team members, demonstrating command/control, interface with State representatives, radiological impact assessment, protective action recommendation decisionmaking, communications, and information flow. They also participated, to a limited extent, in the April 1989 mini-drill that involved the actuation, staffing, and operation of the onsite emergency response facilities.

Maine Yankee conducted a tabletop training drill on the ingestion pathway responses and activities for key State of Maine officials in August 1989. The State of Maine Emergency Operations Center (EOC) was fully staffed with the Emergency Response Team, and the Joint Media Center exercised its capability during an October 1989 exercise that was evaluated by personnel from the Institute of Nuclear Power Operations. Exercise controllers/evaluators in the State EOC considered that, overall, the State adequately implemented plans and procedures that would be used in an actual emergency.

Emergency preparedness training sessions were conducted for each of the 16 communities and 2 counties in the plume exposure pathway EPZ between September 12 and October 25, 1989. The team, consisting of representatives from Maine Yankee, the Maine Emergency Management Agency (MEMA), the Maine Division of Health Engineering, and Maine Yankee's consultant, reviewed the key aspects of the community's responsibilities during a radiological emergency. The communities exercised their emergency procedures and checklists, verified equipment operability, and updated community status boards and resource information during a tabletop training drill session.

The requested exemption is necessary because the State, the counties, and the local communities within the 10-mile plume exposure pathway emergency planning zone were not available to fully participate in the emergency preparedness exercise conducted on November 14 and 15, 1989, due to the unavailability of the FEMA personnel necessary for the observation and evaluation of the performance of the offsite organizations. FEMA has indicated that it would be available to evaluate an offsite emergency planning exercise for the facility in the second half of 1990. Although no full participation exercise was held in 1989, the licensee did conduct an onsite exercise using a scenario of limited scope with regard to offsite involvement. The State participated in the exercise from their EOC and from the licensee's Emergency Operations Facility (EOF).

Some of the local communities also participated through their communications networks. Preliminary

of the State during the November 1989 exercise as described in Section III above. Thus, the NRC staff finds that

SECURITIES AND EXCHANGE COMMISSION

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and

identifying PORTAL, CEDEL and DTC IID account numbers (or symbols), as well as information regarding an

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Some of the local communities also participated through their communications networks. Preliminary indications demonstrate that this offsite response was satisfactory.

IV.

Based on a consideration of the facts presented in Section III above and as requested by the licensee, the NRC staff finds that the following factors support the granting of the requested exemption.

a. FEMA was not able to observe the scheduled exercise of November 14 and 15, 1989, as a result of the demands on the agency associated with the recent emergencies in California and South Carolina.

b. The State of Maine, the counties, and the local communities declined to participate fully in the exercise as a result of the absence of FEMA.

c. Significant progress has been made by Maine Yankee and the State of Maine in correcting the deficiencies identified in the full-participation exercise of June 9, 1987.

d. The capability of the State of Maine, the counties and the local communities to respond to an emergency has been demonstrated in full-participation exercises in 1981, 1982, 1985, and 1987.

e. The State's capability to respond to an emergency has also been demonstrated in a mini-exercise in 1983, a 2-day ingestion pathway exercise in June 1988, and a partial-participation exercise in September 1988.

f. Additional State of Maine staff training was accomplished during a tabletop training drill in August 1988 and during a drill of the Emergency Response Team in October 1989.

g. Emergency preparedness training sessions were conducted for the 2 counties and 16 communities in the plume exposure pathway EPZ during September and October 1989.

The requested exemption is a temporary one and is necessary because the State, the counties, and the local communities within the 10-mile plume exposure pathway emergency planning zone were not available to fully participate in the emergency preparedness exercise conducted on November 14 and 15, 1989. In addition, FEMA was not able to observe and evaluate the exercise due to extenuating circumstances. The licensee has made a good faith effort to comply with the regulations by assisting the State in the correction of deficiencies identified as a result of the June 9, 1987 exercise, in participating with the State in training exercises and drills in 1988 and 1989 and in efforts to obtain the full participation of the State during the November 1989 exercise as described in Section III above. Thus, the NRC staff finds that special circumstances exist and exemption may be granted pursuant to 10 CFR 50.12(a)(2)(v). Further, the NRC staff believes that the public health and safety will be better served by the conduct of a full participation exercise in calendar year 1990. At that time, the State of Maine, the counties and the local communities will be available to participate and FEMA would be available to observe and evaluate the exercise.

For these reasons, the Commission has thus determined that, pursuant to 10 CFR 50.12(a)(2)(v), the Exemption requested by the licensee's letters of October 27, 1989, and November 6, 1989, is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security.

Accordingly, the Commission hereby approves the following Exemption:

The Maine Yankee Nuclear Power Plant is exempt from the requirements of 10 CFR Part 50, Appendix E, Section IV.F.3, for the conduct of a biennial offsite full-participation emergency preparedness exercise, provided that such an exercise be conducted during calendar year 1990.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant effect on the quality of the human environment (54 FR 50666). A copy of the licensee's requests for Exemption dated October 27, 1989, and November 6, 1989, are available for public inspection at the Commission's Public Document Room, in the Gelman Building, Lower Level, 2120 L Street NW., Washington, DC, and at the Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578. Copies may be obtained upon written request to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—I/II.

This Exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 22nd day of December 1989.

Bruce A. Boger,

Assistant Director Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-30239 Filed 12-28-89; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-27563; File No. SR-ISCC-89-01]

Self-Regulatory Organizations; International Securities Clearing Corporation; Notice of Filing of Proposed Rule Change Regarding a Modification of Rules To Support the PORTAL System [1]

December 21, 1989.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 11, 1989, International Securities Clearing Corporation ("ISCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-ISCC-89-01) as described in Items I, II, and III below, which Items have been prepared by ISCC.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The text of the proposed rule change is attached hereto as Exhibit A. In addition, the current link agreement between ISCC and Centrale de Livraison de Valeurs Mobilieres ("CEDEL") has been amended to permit CEDEL to transmit to ISCC data concerning PORTAL investors' accounts at CEDEL.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ISCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ISCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

[1] "PORTAL" is the common name for a new trading system. Private Offerings, Resale and Trading through Automated Linkages, that is being developed by the National Association of Securities Dealers. For a description of the proposed PORTAL System, see Securities Exchange Act Release No. 27470 (November 24, 1989), 54 FR 49154.

[2] On December 14, 1989, ISCC amended its proposed rule change. The substance of that amendment also is described in Items I, II, and III below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule filing is to allow ISCC to accept data from the National Association of Securities Dealers ("NASD") in connection with its PORTAL System for processing through ISCC's current link with CEDEL and to transmit such data to the Depository Trust Company ("DTC") for inclusion in their International Institutional Delivery System. In this regard, the proposed rule filing also details for members the way in which PORTAL transaction data will be processed by ISCC. These details are set forth in Exhibit A which will be an addendum to ISCC's rules. Specifically they detail: (1) When data will be transmitted to ISCC by the NASD; (2) the procedures ISCC will follow and the reports ISCC will prepare upon receipt of such data; (3) when and how data will be transmitted to CEDEL and DTC; and (4) when CEDEL will report back to ISCC the results of their processing. Finally, the proposed rule change would permit ISCC to amend its agreement with CEDEL to allow CEDEL to transmit to ISCC data regarding PORTAL investors' accounts at CEDEL.

B. Self-Regulatory Organization's Statement on Burden on Competition

ISCC does not believe that the proposed rule will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments have been solicited or received. ISCC will notify the Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and published its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be approved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of ISCC. All submissions should refer to File Number SR-ISCC-89-01 and should be submitted by January 19, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Exhibit A

Amend ISCC's Rule 7 as follows:

Italics. Indicate additions

[Brackets] Indicate deletions

Comparison Operation

* * * * *

Sec. 3 The Corporation may determine, in its discretion, to accept, from self-regulatory organizations, as defined in Securities Exchange Act of 1934, (either directly or through subsidiary or affiliated organizations) trade data on behalf of Members for input to (a) Foreign Financial Institutions in connection with a link established by the Corporation pursuant to Rule 40 and (b) Qualified Securities Depositories.

* * * * *

All new material.

Underlining eliminated.

Addendum D to ISCC Rules

Portal/ISCC Procedures

1. The NASD will create and maintain, daily, both a PORTAL participant masterfile and a PORTAL security masterfile. The purpose of the participant file is to permit the NASD to maintain standing information data in order to reduce the amount of data entry the PORTAL participant must input for each transaction; i.e., name, location, identifying PORTAL, CEDEL and DTC IID account numbers (or symbols), as well as information regarding an institutional investor's Global Custodian, including the name, location and DTC IID account number.

The masterfile for PORTAL securities will list all eligible PORTAL securities by name, PORTAL symbol, ISIN number and CEDEL security number. (This file is used by the NASD to maintain an authorized list of PORTAL-eligible securities so that the transaction input of all participants can be checked by the NASD in order to allow only valid PORTAL security instructions to be input to the system.)

The two masterfiles will be forwarded each business day by the NASD, via it's computer to computer link, to ISCC. ISCC expects to receive these files in one batch at approximately 2:00 p.m. each day the PORTAL marketplace is open for business. ISCC will validate that the data is in the appropriate format (pre-defined by the NASD), that it has appropriate header and trailer records, and the total number of records.

ISCC will then update the PORTAL Participant and Security masterfiles previously received from the NASD prior to processing any PORTAL transaction instructions received from the NASD.

2. The second daily data batch ISCC will receive from the NASD contains the PORTAL transaction instructions for that business day. ISCC expects to receive this file between 4:00 p.m. and 7:00 p.m. on trade date (T).

ISCC will validate that the data is in the appropriate format (pre-defined by the NASD and ISCC), that it has the appropriate header and trailer records, and the total number of records. ISCC will then check that all transaction instructions are for securities that are PORTAL-eligible, according to the PORTAL Security masterfile received from the NASD earlier in the day.

ISCC will then transform the transaction instructions into the appropriate data elements in order to properly reformat the data into CEDEL transaction types and DTC IID instructions, as required.

The reformatting to DTC IID and CEDEL instructions is determined by the data input received from the PORTAL market, and is supplemented by data in the Participant masterfile provided by the NASD earlier in the day. Data is supplemented when the PORTAL transaction record contains defaults to the Participant masterfile, such as for the institution's Global Custodian DTC IID account information, the broker/dealer's symbol or name and location,

and the broker/dealer's CEDEL and/or DTC IID account numbers.

If an instruction is rejected because it contains an invalid (PORTAL non-

business days. At about that time, CEDEL will notify the participant that they will automatically cancel these

6. ISCC will prepare contract sheets for accepted items that are forwarded to CEDEL and/or DTC for processing.

Funding Advisory Committee to be held January 16, 1990, in the MacCracken Room, Federal Aviation Administration, 800 Independence Avenue, SW.,

FOR FURTHER INFORMATION CONTACT: Mr. Gene Hammel, Executive Director, Towing Safety Advisory Committee, U.S. Coast Guard Headquarters (G-MP-

11. Portable Tanks for the Transportation of Bulk Hazardous Materials by Vessel.

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and the broker/dealer's CEDEL and/or DTC IID account numbers.

If an instruction is rejected because it contains an invalid (PORTAL non-eligible) security, or because it is in the incorrect format or carriers invalid data (i.e., an alpha in a numeric field or an invalid character), ISCC will notify the NASD through a machine readable file via the CPU to CPU interface between ISCC and the NASD. This file is forwarded to the NASD at approximately 5:00 a.m.–6:00 a.m. on T + 1. There is no opportunity for the PORTAL participant to correct the transaction(s) for trade date processing. The participant will be notified of a reject via ISCC contract sheets that will be forwarded to the participant via the Global Compass PC system at approximately 5:00 a.m.-6:00 a.m. on T + 1. Participants will be required to enter the transaction(s) in question on T + 1.

3. At approximately 10:00 p.m., on T, ISCC will prepare the file for transmission to CEDEL by adding header/trailer records and Job Control Language to have the file recognized by the CEDEL/GEISCO network. The file is sent by ISCC via the GEISCO telecommunications network, using a dial-up modem in its mainframe, at about 11:00 p.m. on trade date. Upon successful transmission, ISCC will receive a confirmation on the total number of records sent during the connection process to GEISCO.

Included with this file will be data received from ISCC's Global Compass system. Participants will be able to instruct both deliveries/receives against payment, as well as free transactions and cash instructions relative to PORTAL accounts. The data received for PORTAL accounts will be checked by ISCC against the PORTAL Security masterfile for security eligibility, and then will be added to the data file bound for CEDEL.

GEISCO takes this data, reviews and edits it for valid data elements only (alpha/numeric, positional, certain logical and account number edits). If any transactions have been duplicated during the input process by the participant, ISCC, GEISCO and CEDEL will be unable to detect this. CEDEL's normal processing procedure is that deliver and receive instructions must match exactly in order for any one side of the instruction to settle. Therefore, any duplicated input will remain on the participant's report as "an open" item. It is the PORTAL participant's responsibility to identify these items and correct them (i.e., cancel them).

CEDEL will maintain these items on their records for approximately 45 business days. At about that time, CEDEL will notify the participant that they will automatically cancel these items unless otherwise instructed. The participant has the option to maintain the open instruction for another 15 business days. If these items remain unsettled after that time, CEDEL will then cancel them.

4. At approximately 1:30–2:00 a.m. on T + 1, ISCC will receive only the GEISCO/CEDEL rejected items identified during their edit process. All other items are deemed to be accepted by GEISCO for further CEDEL processing. The rejected items will be posted to the ISCC contract sheets that are forwarded to the participants via Global Compass. The NASD will be notified of the rejections via the MRO file forwarded by ISCC at approximately 5:00 a.m. to 6:00 a.m.

5. At approximately 11:00 p.m., on T, ISCC will prepare the DTC IID instructions file, and send it to DTC via its CPU TO CPU link. ISCC also utilizes the PORTAL Participant and Security masterfiles (received from the NASD) to create the IID transaction instructions.

The types of standing instruction data elements that ISCC will extract from the masterfiles are the DTC IID account numbers for all interested parties, i.e., Broker/Dealer, Global Custodian, the agent bank's name and location, and the security identification, description and ISIN number.

6. ISCC expects to receive any rejects from DTC within 2 to 3 hours after transmission of the information, i.e., 1:30 a.m.–2:00 a.m. on T + 1. The rejected items will be posted to the ISCC contract sheets that are forwarded to the participants via Global Compass. The NASD will be notified of the rejections via the MRO file forwarded by ISCC at approximately 5:00 a.m. to 6:00 a.m.

7. At approximately 2:00–3:00 p.m. on T + 1, ISCC expects to receive the results (reports) of CEDEL's processing cycle for that day. Included in this file will be the copy of the day's reports for the agent banks' PORTAL accounts. This file will be transmitted to ISCC via the GEISCO Network.

Each day, PORTAL participants will be able to download their CEDEL reports in print image format via the Global Compass System, using a dial-up modem. Participants will be able to print these reports locally, and they will be retained on the Global Compass System for 3 business days.

A machine readable copy of that file, and of the agent banks' file, will be forwarded daily, at approximately 4:00 p.m., to the NASD via its CPU to CPU link to ISCC.

8. ISCC will prepare contract sheets for accepted items that are forwarded to CEDEL and/or DTC for processing. These contract sheets will be forwarded to the participants via ISCC's PC-based Global Compass system. The PORTAL participants can download their contract file from ISCC's mainframe and print the contracts locally. The contracts are expected to be available to the PORTAL participants between 5:00 a.m. and 6:00 a.m. on T + 1.

All rejected items resulting from ISCC, GEISCO or DTC processing (including any items rejected by ISCC for non-PORTAL security eligibility) will also be posted to the contract sheets, with any information as to the reason of the reject that is available. The participant must enter the rejected transaction(s) as new transactions with the appropriate corrections on T + 1.

A machine readable copy of this file will be forwarded to the NASD via its CPU to CPU link to ISCC at the same time.

9. ISCC will retain copies of all input to ISCC from the Global Compass system, all direct input received from the PORTAL marketplace and copies of the reports received from CEDEL. These copies will be retained in microfiche form.

[FR Doc. 89–30253 Filed 12–28–89; 8:45 am]
BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Airport Capacity Funding Advisory Committee Meeting

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Airport Capacity Funding Advisory Committee Meeting.

SUMMARY: Notice is hereby given of the first meeting of the Airport Capacity Funding Advisory Committee.

DATE: The meeting will be held January 16, 1990, at 1 p.m.

ADDRESS: The meeting will be held at the MacCracken Room, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: The Office of Aviation Policy and Plans (APO), 800 Independence Avenue, SW., Washington, DC 20591, telephone 202–267–3296.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Airport Capacity Funding Advisory Committee to be held January 16, 1990, in the MacCracken Room, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC.

The agenda for this meeting is as follows: A presentation of the Committee's scope and objectives, election of a chairperson, and formulation of the Committee's work program.

Attendance at the January 16 meeting is open to the interested public but limited to space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the Office of Aviation Policy and Plans (APO), 800 Independence Avenue, SW., Washington, DC 20591, telephone 202–267–3296.

Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, DC, on December 22, 1989.

Michael C. Moffet,

Associate Administrator for Policy, Planning, and International Aviation.

[FR Doc. 89–30246 Filed 12–28–89; 8:45 am]
BILLING CODE 4910-13-M

Coast Guard

[CGD 89–107]

Towing Safety Advisory Committee; Meeting of Subcommittees

AGENCY: Coast Guard, DOT.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Act (Pub. L. 92–463; 5 U.S.C. App. I), notice is hereby given of a meeting of all Subcommittees of the Towing Safety Advisory Committee (TSAC). The subcommittee meetings will be held from 1:30 to 4:00 p.m. on Wednesday, February 7, 1990, in the Sundance Room of the Marriott West Loop, 1700 West Loop South, Houston, Texas. The agenda for the meeting follows:

1. Call to Order
2. Discussion of the following topics: (a) Personnel Manning and Licensing, (b) Tug-Barge Construction, Certification and Operations, (c) Port Facilities and Operations, (d) Personnel Safety and Workplace Standards.
3. Presentation of any new items for consideration by the Subcommittees.
4. Adjournment.

Attendance is open to the public. Members of the public may present oral or written statements at the meeting.

FOR FURTHER INFORMATION CONTACT: Mr. Gene Hammel, Executive Director, Towing Safety Advisory Committee, U.S. Coast Guard Headquarters (G–MP–2), 2100 Second St., SW., Washington, DC 20593–0001, (202) 267–1483.

Dated: December 22, 1989.

M. J. Schiro,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89–30230 Filed 12–28–89; 8:45 am]
BILLING CODE 4910-14-M

[CGD 89–109]

National Offshore Safety Advisory Committee; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of Meeting

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Act (Pub. L. 92–463; 5 U.S.C. App. I), notice is hereby given of a meeting of the National Offshore Safety Advisory Committee (NOSAC). The meeting will be held on February 9, 1990, in the Zapata Gulf Marine Corp. Theatre, 31st floor, South Tower, 711 Louisiana St., Houston, Texas. The meeting is scheduled to run from 8:30 a.m. to 5:00 p.m. Attendance is open to the public. The agenda follows:

A. Subcommittee Reports

1. Subchapter W
2. Vessel Tonnage
3. MODU Code Revision
4. Drug Testing

B. Discussion of Coast Guard Issue Briefs

1. New 46 CFR Subchapter W, Lifesaving Equipment for Large Inspected Vessels, including MODUs and OSVs.
2. Implementation of the Emergency Evacuation Plan (EEP) Regulations for Manned Facilities.
3. Revision to 33 CFR Subchapter N, Regulations on Outer Continental Shelf (OCS) Activities.
4. Revision to 46 CFR Subchapter IA, MODU Regulations.
5. Tonnage Study—Use of Vessel Tonnage in U.S. Laws and Regulations.
6. MODU Licensing and Rulemaking.
7. Waiver of Citizenship Requirements for Crewmembers of OSVs Operating from Foreign Ports, and MODUs Opeating Beyond the U.S. Outer Continental Shelf (OCS).
8. OSVs, Including Liftboats.
9. Special Cargo Requirements for Benzene.
10. Air Quality/Marine Vapor Control.
11. Portable Tanks for the Transportation of Bulk Hazardous Materials by Vessel.
12. Drug testing Update.

C. Other Business

With advance notice, and at the discretion of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should notify the Executive Director of NOSAC no later than the day before the meeting. Written statements or materials may be submitted for presentation to the Committee at any time; however, to ensure distribution to each member of the committee, 20 copies of the written materials should be submitted to the Executive Director no later than 25 January 1990.

FOR FURTHER INFORMATION CONTACT: Gene Hammel, Executive Director, National Offshore Safety Committee, U.S. Coast Guard Headquarters (G–MP–2), 2100 Second St., SW., Washington, DC 20593–0001, (202) 267–2280.

December 22, 1989.

M. J. Schiro,

Captian, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89–30202 Filed 12–28–89; 8:45 am]
BILLING CODE 4910-14-M

[CGD 89–108]

Towing Safety Advisory Committee; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Act (Pub. L. 92–463; 5 U.S.C. App. I), notice is hereby given of a meeting of the Towing Safety Advisory Committee (TSAC). The meeting will be held on February 8, 1990, in the Sundance Room of the Marriott West Loop, 1700 West Loop South, Houston, Texas. The meeting is scheduled to run from 8:00 a.m. to 5:00 p.m. Attendance is open to the public. The agenda follows:

A. Sub-committee Reports

1. Personnel Manning and Licensing
2. Tug-Barge Construction, Certification and Operations
3. Port Facilities and Operations
4. Personnel Safety and Workplace Standards

B. Discussion of Coast Guard Issue Briefs

1. Special Area Status for the Gulf of

ACTION: Notice of petition for exemption.

Petitioner currently provides service at National Airport using six special temporary slots allocated by lottery in

211) by a representative designated by the FRA.

The hearing will be a nonadversary hearing. After all initial statements by interested parties have been completed, those persons wishing to make brief statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

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B. Discussion of Coast Guard Issue Briefs

1. Special Area Status for the Gulf of Mexico under Annex V of MARPOL 73/78.
2. 49 CFR Part 40: DOT Drug Testing Procedures.
3. Regulations Implementing Annex V to MARPOL 73/78.
4. Hazardous Materials, Pollution Prevention and Regulation.
5. Air Quality/Marine Vapor Control.
6. Proposed Benzene Standard.
7. Intervals for Required Internal Examination and Hydrostatic Testing of Pressure Vessel Type Cargo Tanks on Barges.
8. Licensing of Pilots; Manning of Vessels—Pilots.
9. Proposed Tankerman Regulations.
10. Brightness of Masthead Lights on Tow Vessels Operating on the ICW.
11. Sidelight Vertical Sector Requirements for Unmanned Barges.
12. Sidelights on Inland Tugs.

C. Other Business Matters

With advance notice, and at the discretion of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should notify the Executive Director of TSAC no later than the day before the meeting. Written statements or materials may be submitted for presentation to the Committee at any time; however, to ensure distribution to each member of the Committee, 20 copies of the written material should be submitted to the Executive Director no later than 25 January 1990.

FOR FURTHER INFORMATION CONTACT: Gene Hammel, Executive Director, Towing Safety Advisory Committee, U.S. Coast Guard Headquarters (G-MP-2), 2100 Second St., SW., Washington, DC 20593-0001, (202) 267-2280.

Dated: December 22, 1989.

M.J. Schiro,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89-30203 Filed 12-28-89; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

[Docket No. 26101; Summary Notice No. PE-89-48]

Summary of Petition for Exemption Received from America West Airlines

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Notice of petition for exemption.

SUMMARY: Pursuant to the FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of a petition by America West Airlines for an exemption from the Federal Aviation Regulations in order to operate four flights at Washington National Airport above the hourly limits for scheduled air carriers specified in the High Density Rule. The purpose of this notice is to improve the public's awareness of this aspect of the FAA's regulatory activities. Neither the publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATE: Comments received on this petition must identify the petition docket number involved and be received on or before January 5, 1990.

ADDRESSES: Send comments on the petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket [AGC-10]. Docket No. 26101, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: David L. Bennett, Office of the Chief Counsel, AGC-230, Federal Aviation Administration, 800 Independence Avenue, SW., Washington DC 20591, (202) 267-3491.

SUPPLEMENTARY INFORMATION: The Petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket [AGC-10], Room 915, FAA Headquarters Building [FOB-10A], Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

Petitioner requested by letter dated December 8, 1989, permission to operate four flights at National Airport, as previously authorized for Braniff Airlines by exemption. Braniff Airlines recently ceased scheduled operations at National Airport and its exemption to operate four flights has been rescinded. The flights require an exemption from Federal Aviation Regulations (FAR) part 93, § 93.123(a), in that they are not conducted under any of the 37 slots per hour permanently allocated for air carrier operations at National Airport.

The FAA is treating the America West letter as a petition for rulemaking under FAR part 11, in order to obtain public comment on the petitioner's request.

Petitioner currently provides service at National Airport using six special temporary slots allocated by lottery in May 1989. These special slots will expire in January 1990, requiring that petitioner cease all such operations unless other authority for operation is obtained.

The FAA notes that Midwest Express Airlines, Inc., has requested by letter that the authorization for four flights formerly granted to Braniff be reallocated by the FAA by lottery, presumably as permanent slots. FAR Subpart S, § 93.225, provides for the allocation of available slots by lottery. The authorization granted to Braniff to operate four flights did not create four permanent slots subject to normal allocation rules. However, comments are invited on the Midwest Express request.

Comments are requested on an expedited basis in order to clarify the petitioner's situation at National Airport at the earliest practical time.

Issued in Washington, DC, on December 22, 1989.

David L. Bennett,

Acting Deputy Assistant Chief Counsel, Regulations and Enforcement Division.

[FR Doc. 89-30247 Filed 12-28-89; 8:45 am]

BILLING CODE 4910-13-M

Federal Railroad Administration

[FRA Docket 87-2, Notice No. 5]

Petition for Extension of Time Metro-North Commuter Railroad Co.; Public Hearing

The Metro-North Railroad Company has petitioned the Federal Railroad Administration (FRA) seeking approval of an extension of time, until December 31, 1992, for the installation of automatic train control systems on trains operating on a connecting line of the Northeast Corridor as set forth by the Federal Railroad Administration's Amended Final Orders published in the **Federal Register** on Wednesday, October 12, 1988 (53 FR 39834).

After examining the carrier's proposal and the available facts, the FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly, a public hearing is hereby set for 10 a.m. on February 15, 1990, in Room 3305, Jacob K. Javits Federal Building at 26 Federal Plaza, in New York, New York.

The hearing will be an informal one and will be conducted in accordance with FRA Rules of Practice (49 CFR part

211) by a representative designated by the FRA.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements by interested parties have been completed, those persons wishing to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC, on December 20, 1989.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 89-30280 Filed 12-28-89; 8:45 am]

BILLING CODE 4910-06-M

[FRA Docket 87-2, Notice No. 6]

Petition for Extension of Time New Jersey Transit; Public Hearing

New Jersey Transit has petitioned the Federal Railroad Administration (FRA) seeking approval of an extension of time, until July 1, 1990, for the installation of automatic train control systems on trains operating on the mainline of the Northeast Corridor as set forth by the Federal Railroad Administration's Amended Final Orders published in the **Federal Register** on Wednesday, October 12, 1988 (53 FR 39834).

After examining the carrier's proposal and the available facts, the FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly, a public hearing is hereby set for 10 a.m. on February 14, 1990, in Room 3305, Jacob K. Javits Federal Building at 26 Federal Plaza, in New York, New York.

The hearing will be an informal one and will be conducted in accordance with FRA Rules of Practice (49 CFR part 211) by a representative designated by the FRA.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements by interested parties have been completed, those persons wishing to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC, on December 20, 1989.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 89-30281 Filed 12-28-89; 8:45 am]

BILLING CODE 4910-06-M

[FRA Docket No. 87-2, Notice No. 7]

Southeastern Pennsylvania Transportation Authority; Public Hearing

The Southeastern Pennsylvania Transportation Authority has petitioned the Federal Railroad Administration (FRA) seeking approval of an extension of time, until July 1, 1990, for the installation of automatic train control systems on trains operating on or within track of the Northeast Corridor as set forth by the Federal Railroad Administration's Amended Final Orders published in the **Federal Register** on Wednesday, October 12, 1988 (53 FR 39834).

After examining the carrier's proposal and the available facts, the FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly, a public hearing is hereby set for 10 a.m. on February 13, 1990, in Room 6306-10, William T. Green Federal Building at Sixth and Arch Streets, Philadelphia, Pennsylvania.

The hearing will be an informal one and will be conducted in accordance with FRA Rules of Practice (49 CFR part 211), by a representative designated by the FRA.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements by interested parties have been completed, those persons wishing to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC, on December 20, 1989.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 89-30282 Filed 12-28-89; 8:45 am]

BILLING CODE 4910-06-M

Urban Mass Transportation Administration

UMTA Sections 3 and 9 Grant Obligations

AGENCY: Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Notice.

SUMMARY: The Department of Transportation and Related Agencies Appropriations Act, 1990, Public Law 101-164, signed into law by President George Bush on November 21, 1989, contained a provision requiring the Urban Mass Transportation Administration to publish an announcement in the **Federal Register** every 30 days of grants obligated pursuant to sections 3 and 9 of the Urban Mass Transportation Act of 1964, as amended. The statute requires that the announcement include the grant number, the grant amount, and the transit property receiving each grant. This notice provides the information as required by statute.

FOR FURTHER INFORMATION CONTACT: Edward R. Fleischman, Director, Office of Capital and Formula Assistance, Department of Transportation, Urban Mass Transportation Administration, Office of Grants Management, 400 Seventh Street SW., Room 9305, Washington, DC 20590, (202) 366-2053.

SUPPLEMENTARY INFORMATION: The Section 3 program was established by the Urban Mass Transportation Act of 1964 to provide capital assistance to eligible recipients in urban areas. Funding for this program is distributed on a discretionary basis. The Section 9 formula program was established by the Surface Transportation Assistance Act of 1982. Funds appropriated to this program are allocated on a formula basis to provide capital and operating assistance in urbanized areas. Pursuant to the statute UMTA reports the following grant information:

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SECTION 3 GRANTS

Transit property	Grant number	Grant amount	Date obligated

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SECTION 3 GRANTS

Transit property	Grant number	Grant amount	Date obligated
Massachusetts Bay Transportation Authority, Boston, MA	MA-03-0160	$27,123,000	11-13-89
Potomac and Rappahenock Transportation Commission, Prince William County, VA	VA-03-0042	1,117,461	11-14-89
Municipality of Metropolitan Seattle, Seattle, WA	WA-03-0064	216,812	11-30-89
Central New York Regional Transportation Authority, Syracuse, NY	NY-03-0251	1,252,250	12-6-89
Regional Transportation District, Denver, CO	CO-03-0043	36,566,250	12-6-89
New Jersey Department of Transportation, Newark, NJ	NJ-03-0062	1,969,999	12-7-89

Section 9 Grants

None.

Issued on December 20, 1989.

Brian W. Clymer,

Administrator.

[FR Doc. 89-30204 Filed 12-28-89; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF THE TREASURY

Fiscal Service

Renegotiation Board Interest Rate Prompt Payment Interest Rate Contracts Disputes Act

Although the Renegotiation Board is no longer in existence, other Federal Agencies are required to use interest rates computed under the criteria established by the Renegotiation Act of 1971 (Pub. L. 92-41). For example, the Contracts Disputes Act of 1978 (Pub. L. 95-563) and the Prompt Payment Act (Pub. L. 97-177) are required to calculate interest due on claims "* * * at a rate established by the Secretary of the Treasury pursuant to Public Law 92-41 (85 Stat. 97) for the Renegotiation Board."

Therefore, notice is hereby given that, pursuant to the above mentioned sections, the Secretary of the Treasury has determined that the rate of interest applicable for the purpose of said sections, for the period beginning January 1, 1990 and ending on June 30, 1990, is 8-½ per centum per annum.

Dated: December 26, 1989.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 89-30275 Filed 12-28-89; 8:45 am]

BILLING CODE 4810-35-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Monet in the '90s: The Series Paintings" (see list [1]) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Museum of Fine Arts in Boston, Massachusetts, beginning on or about February 7, 1990 to on or about April 29, 1990, and at The Art Institute of Chicago, from May 19, 1990 to on or about August 12, 1990, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register**.

Dated: December 19, 1989.

Alberto J. Mora,

General Counsel.

[FR Doc. 89-30188 Filed 12-28-89; 8:45 am]

BILLING CODE 8230-01-M

[1] A copy of this list may be obtained by contacting Mr. R. Wallace Stuart of the Office of the General Counsel of USIA. The telephone number 202/485-7976, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

Corrections

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This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the United Mexican States

Correction

In notice document 89-29293 beginning on page 51446 in the issue of Friday, December 15, 1989, make the following correction:

On page 51447, in the 3rd column, under Category, the 13th and 14th lines should read "[10] 369-D" and "[11] 369-U" respectively.

BILLING CODE 1505-01-D

GENERAL ACCOUNTING OFFICE

4 CFR Part 31

Claims Against the United States; General Procedure

Correction

In rule document 89-29436 beginning on page 51867 in the issue of Tuesday, December 19, 1989, make the following correction:

On page 51867, in the second column, in the fifth and sixth lines, "W.S.C." should read "U.S.C."

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Final Determination That the San Juan Southern Paiute Tribe Exists as an Indian Tribe

Correction

In notice document 89-29260 beginning on page 51502 in the issue of Friday, December 15, 1989, make the following correction:

On page 51505, in the second column, in the eighth line, insert "must be served simultaneously to the petitioner. The petitioner" following "petitioner".

BILLING CODE 1505-01-D

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1221

NASA Seal and Other Devices, and the Congressional Space Medal of Honor

Correction

In rule document 89-18799 appearing on page 32963 in the issue of Friday, August 11, 1989, make the following correction:

§ 1221.113 [Corrected]

In the second column, in amendatory instruction 3, in the first line, "Section 1221.112" should read "Section 1221.113"; and in the section heading that follows "§ 1221.112" should read "§ 1221.113".

BILLING CODE 1505-01-D

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Part II

Department of Energy

Office of Fossil Energy

Electric and Gas Utilities Covered in 1990 by Titles I and III of the Public Utility Regulatory Policies Act of 1978 and Requirements for State Regulatory Authorities To Notify DOE; Notice

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DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

[Docket No. FE-R-79-43B]

Electric and Gas Utilities Covered in 1990 by Titles I and III of the Public Utility Regulatory Policies Act of 1978 and Requirements for State Regulatory Authorities To Notify DOE

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice.

SUMMARY: Sections 102(c) and 301(d) of the Public Utility Regulatory Policies Act of 1978 (PURPA) require the Secretary of Energy to publish a list, before the beginning of each calendar year, identifying each electric utility and gas utility to which Titles I and III of PURPA apply during such calendar year. The 1990 list is published here as two separate tabulations. Appendix A lists the covered utilities by State and Appendix B lists them alphabetically.

Each State regulatory authority is required, pursuant to sections 102(c) and 301(d) of PURPA, to notify the Secretary of Energy of each electric utility and gas utility on the list for which such State regulatory authority has ratemaking authority. In addition, written comments are requested on the accuracy of the list of electric utilities and gas utilities.

DATE: Notifications by State regulatory authorities and written comments must be received by no later than 4:30 p.m. on February 15, 1990.

ADDRESS: Notifications and written comments should be forwarded to: Department of Energy, Office of Coal and Electricity, FE-50, 1000 Independence Avenue, SW., Room 3F-070, Docket No. FE-R-79-43B, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Steven Mintz, Office of Coal and Electricity, Fossil Energy, Department of Energy, 1000 Independence Avenue, SW., Room 3F-070, FE-52, Washington, DC 20585, Telephone 202/586-9506.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to sections 102(c) and 301(d) of PURPA, Pub. L. 95-617, 92 Stat. 3117 *et seq.* (16 U.S.C. 2601 *et seq.*), hereinafter referred to as the "Act," the Department of Energy (DOE) is required to publish a list of utilities to which titles I and III of PURPA apply in 1990.

State regulatory authorities are required by the Act cited above to notify the Secretary of Energy as to their ratemaking authority over the listed utilities. The inclusion or exclusion of any utility on or from the list does not affect the legal obligations of such utility or the responsible authority under the Act.

The term "State regulatory authority" means any State, including the District of Columbia and Puerto Rico, or a political subdivision thereof, and any agency or instrumentality, which has authority to fix, modify, approve or disapprove rates with respect to the sale of electric energy or natual gas by any utility (other than such State agency). In the case of a utility for which the Tennessee Valley Authority (TVA) has ratemaking authority, the term "State regulatory authority" means the TVA.

Title I of PURPA sets forth ratemaking and regulatory policy standards with respect to electric utilities. Section 102(c) of title I requires the Secretary of Energy to publish a list, before the beginning of each calendar year, identifying each electric utility to which Title I applies during such calendar year. An electric utility is defined as any person, State agency, or Federal agency that sells electric energy. An electric utility is covered by Title I for any calendar year if it had total sales of electric energy for purposes other than resale in excess of 500 million kilowatt-hours during any calendar year beginning after December 31, 1975, and before the immediately preceding calendar year. An electric utility is covered in 1990 if it exceeded the threshold in any year from 1976 through 1988.

Title III of PURPA addresses ratemaking and other regulatory policy standards with respect to natural gas utilities. Section 301(d) of title III requires the Secretary of Energy to publish a list, before the beginning of each calendar year, identifying each gas utility to which title III applies during such calendar year. A gas utility is defined as any person, State agency, or Federal agency, engaged in the local distribution of natural gas and the sale of natural gas to any ultimate consumer of natural gas. A gas utility is covered by title III if it had total sales of natural gas for purposes other than resale in excess of 10 billion cubic feet during any calendar year beginning after December 31, 1975, and before the immediately preceding calendar year. A gas utility is covered in 1990 if it exceeded the threshold in any year from 1976 through 1988.

In previous years, this notice also included a list of electric and gas utilities to which titles II and VII of the National Energy Conservation Policy Act (NECPA) applied. Title II, part 1, of NECPA Pub. L. 95-619 State. 3208 *et seq.*, (42 U.S.C. 8211 *et seq.*), addressed residential conservation service (RCS) programs, and Title VII of NECPA, enacted part of the Energy Security Act, Pub. L. 96-294, 94 Stat. 611 *et seq.* (42 U.S.C. 8701 *et seq.*), and amended by Pub. L. 99-412, 100 Stat. 932 *et seq.*, addressed commercial building and multi-family dwelling conservation programs. Section 211(b) contained a requirement, similar to that of PURPA, that the Secretary of Energy publish a list of electric and gas utilities to which titles II and VII apply. Section 228 of NECPA provides for DOE's authority to carry out the RCS program to expire at midnight June 30, 1989. Therefore, DOE will no longer publish the list of utilities covered by the provisions of NECPA.

In compiling the list published today, the DOE revised the 1989 list (53 FR 52956, December 29, 1988) upon the assumption that all entities included on the 1989 list are properly included on the 1990 list unless the DOE has information to the contrary. In doing this, the DOE took into account information included in public documents regarding entities which exceeded the PURPA thresholds for the first time in 1988. The DOE believes that it will become aware of any errors or omissions in the list published today by means of the comment process called for by this Notice. The DOE will, after consideration of any comment and other information available to the DOE, provide written notice of any further additions or deletions to the list.

II. Notification and Comment Procedures

No later than 4:30 p.m. on February 15, 1990, each State regulatory authority must notify the Department of Energy in writing of each utility on the list over which it has ratemaking authority. Five copies of such notification should be submitted to the address indicated in the "ADDRESS" section of this Notice and should be identified on the outside of the envelope and on the document with the designation "Docket No. FE-R-79-43B." Such notification should include:

1. A complete list of electric utilities and gas utilities over which the State regulatory authority has ratemaking authority;
2. Legal citations pertaining to the ratemaking authority of the State regulatory authority; and
3. For any listed utility known to be subject to other ratemaking authorities within the State for portions of its service area, a precise description of the portion to which such notification applies.

All interested persons, including State regulatory authorities, are invited to comment in writing, no later than 4:30 p.m. on February 15, 1990, on any errors or omissions with respect to the list. Five copies of such comments should be sent to the address indicated in the "ADDRESS" section of this Notice and should be identified on the outside of the envelope and on the document with the designation "Docket No. FE-R-79-43B." Written comments should include the commenter's name, address and telephone number.

All notifications and comments received by the DOE will be made available, upon request, for public inspection in the Freedom of Information Reading Room, Room 1E-190, 1000 Independence Avenue, SW., Washington, DC 20585, between the hours of 9:00 a.m. and 4:00 p.m. Monday through Friday.

III. List of Electric Utilities and Gas Utilities

Appendices A and B contain two different tabulations of the utilities that meet PURPA coverage requirements. As stated above, the inclusion or exclusion of any utility on or from the lists does not affect its legal obligations or those of the responsible State regulatory authority under PURPA.

Appendix A contains a list of utilities which are covered by PURPA. These utilities are grouped by State and by the regulatory authority within each State. Also included in this list are utilities which are covered by PURPA but which are not regulated by the State regulatory authority. This tabulation, including explanatory notes, is based on information provided to the DOE by State regulatory authorities in response to the December 29, 1988, **Federal Register** notice (53 FR 52957) requiring each State regulatory authority to notify the DOE of each utility on the list over which it has ratemaking authority, public comments received with respect to that notice, and information subsequently made available to the DOE.

The utilities classified in Appendix A as not regulated by the State regulatory authority in fact may be regulated by local municipal authorities. These municipal authorities would be State agencies as defined by PURPA and thus have responsibilities under PURPA identical to those of the State regulatory authority. Therefore, each such municipality is to notify the DOE of each utility on the list over which it has ratemaking authority.

In Appendix B, the utilities are listed alphabetically, subdivided into electric utilites and gas utilities, and further subdivided by type of ownership:

investor-owned utilities, publicly-owned utilities, and rural cooperatives.

The changes to the 1989 list of electric and gas utilities are as follows:

Modifications:

CHANGE—Energas Company (TX) to Atmos Energy Corporation (TX)

Erroneously Listed in 1989 List:

CP National Corporation (OR)

(Public Utility Regulatory Policies Act of 1978, Pub. L. 95-617, 92 Stat. 3117 *et seq.* (16 U.S.C. 2601 *et seq.*); National Energy Conservation Policy Act, Pub. L. 95-619, 92 Stat. 3206 *et seq.*, as amended by Pub. L. 96-294, 94 Stat. 611 *et seq.*, and Pub. L. 99-412, 100 Stat. 932 *et seq.* (42 U.S.C. 8211 *et seq.*))

Issued in Washington, DC on December 21, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

Appendix A

All gas utilities listed below had natural gas sales, for purposes other than resale, in excess of 10 billion cubic feet in any year from 1976-1988.

All electric utilities listed below had electric energy sales, for purposes other than resale, in excess of 500 million kilowatt-hours in any year from 1976-1988.

State: Alabama

Regulatory Authority: Alabama Public Service Commission.

Gas Utilities

Investor-Owned:
Alabama Gas Corporation
Alabama-Tennessee Natural Gas Company
Mobile Gas Service Corporation
Northwest Alabama Gas Dist.

Electric Utilities

Investor-Owned:
Alabama Power Company

The following covered utilities within the State of Alabama are not regulated by the Alabama Public Service Commission:

Electric Utilities

Investor-Owned:
Decatur Electric Dpeartment
Dothan Electric Department
Florence Electric Department
Huntsville Utilities
Rural Electric Cooperatives:
Joe Wheeler Electric Membership Corporation
Rural Elecric System

State: Alaska

Regulatory Authority: Alaska Public Utilities Commission.

Gas Utilities

Investor-Owned:
Enstar Natural Gas Company

Electric Utilities

Rural Electric Cooperatives:
Chugach Electric Association
Publicly-Owned:
Anchorage Municipal Light & Power Department

State: Arizona

Regulatory Authority: Arizona Corporation Commission.

Gas Utilities

Investor-Owned:
Southern Union Gas Company
Southwest Gas Corporation

Electric Utilities

Investor-Owned:
Arizona Public Service Company
Tucson Electric Power Company
Publicly-Owned:
Trico Electric Cooperative, Inc.
Rural Electric Cooperative:
Duncan Valley Electric Cooperative, Inc.

The following covered utilities within the State of Arizona are not regulated by the Arizona Corporation Commission:

Electric Utilities

Publicly-Owned:
Salt River Project Agricultural Improvement and Power District

State: Arkansas

Regulatory Authority: Arkansas Public Service Commission.

Gas Utilities

Investor-Owned:
Arkansas-Louisiana Gas Company
Arkansas-Oklahoma Gas Corporation
Arkansas Western Gas Company
Associated Natural Gas Company

Electric Utilities

Investor-Owned:
Arkansas Power and Light Company
Empire District Electric Company
Oklahoma Gas And Electric Company
Southwestern Electric Power Company
Rural Electric Cooperative:
First Electric Cooperative Corporation

The following covered utility within the State of Arkansas is not regulated by the Arkansas Public Service Commission:
Publicly-Owned:
North Little Rock Electric Department

State: California

Regulatory Authority: California Public Utilities Commission.

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Gas Utilities

Investor-Owned:
Pacific Gas and Electric Company
San Diego Gas and Electric Company
Southern California Gas Company
Southwest Gas Corporation

Electric Utilities

Investor-Owned:
Pacific Gas and Electric Company
Pacific Power and Light Company
San Diego Gas and Electric Company
Sierra Pacific Power Company
Southern California Edison Company
The following covered utilities within the State of California are not regulated by the California Public Utilities Commission:

Electric Utilities

Publicly-Owned:
Anaheim Public Utilities Department
Burbank Public Service Department
Glendale Public Service Department
Imperial Irrigation District
Los Angeles Department of Water and Power
Modesto Irrigation District
Palo Alto Electric Utility
Pasadena Water and Power Department
Riverside Public Utilities
Sacramento Municipal Utility District
Santa Clara Electric Department
Turlock Irrigation District
Vernon Municipal Light Department

Gas Utilities

Publicly-Owned:
Long Beach Gas Department

State: Colorado

Regulatory Authority: Colorado Public Utilities Commission.

Gas Utilities

Investor-Owned:
Greeley Gas Company
Iowa Electric Light and Power Company
Kansas-Nebraska Natural Gas Company
Peoples Natural Gas Company, Division of Internorth, Inc.
Public Service Company of Colorado
Publicly-Owned:
Colorado Springs Department of Utilities (Jurisdiction only sales to another gas utility)

Electric Utilities

Investor-Owned:
Public Service Company of Colorado
Southern Colorado Power Division of Centel
The following covered utilities within the State of Colorado are not regulated by the Colorado Public Utilities Commission:

Gas Utilities

Publicly-Owned:
Colorado Springs Department of Utilities (except sales to another gas utility)

Electric Utilities

Publicly-Owned:
Colorado Springs Department of Utilities
Rural Electric Cooperatives:
Intermountain Rural Association
Moon Lake Electric Association

State: Connecticut

Regulatory Authority: Connecticut Department of Public Utility Control.

Gas Utilities

Investor-Owned:
Connecticut Light and Power Company
Connecticut Natural Gas Corporation
Southern Connecticut Gas Company

Electric Utilities

Investor-Owned:
Connecticut Light and Power Company
United Illuminating Company
Publicly-Owned:
Groton Public Utilities

State: Delaware

Regulatory Authority: Delaware Public Service Commission

Gas Utilities

Investor-Owned:
Delmarva Power and Light Company

Electric Utilities

Investor-Owned:
Delmarva Power and Light Company

State: District of Columbia

Regulatory Authority: Public Service Commission of the District of Columbia

Gas Utilities

Investor-Owned:
Washington Gas Light Company

Electric Utilities

Investor-Owned:
Potomac Electric Power Company

State: Florida

Regulatory Authority: Florida Public Service Commission.

Gas Utilities

Investor-Owned:
City Gas Company of Florida
Peoples Gas System

Electric Utilities

Investor-Owned:
Florida Power Corporation
Florida Power and Light Company
Gulf Power Company
Tampa Electric Company
Publicly-Owned: The Florida Public Service Commission has rate structure jurisdiction over the following utilities—
Gainesville Regional Utilities
Jacksonville Electric Authority
Lakeland Department of Electric and Water
Ocala Electric Authority
Orlando Utilities Commission
Tallahassee, City of
Rural Electric Cooperative: The Florida Public Service Commission has rate structure jurisdiction over the following utilities—
Clay Electric Cooperative
Lee County Electric Cooperative
Sumter Electric Cooperative, Inc.
Withlacoochee River Electric Cooperative

State: Georgia

Regulatory Authority: Georgia Public Service Commission.

Gas Utilities

Investor-Owned:
Atlanta Gas Light Company

Electric Utilities

Investor-Owned:
Georgia Power Company
Savannah Electric and Power Company
The following utilities within the State of Georgia are not regulated by the Georgia Public Service Commission.

Electric Utilities

Publicly-Owned:
Albany Water, Gas & Light Commission
Dalton Water, Light & Sink
Rural Electric Cooperatives:
Douglas County Electric Membership Corporation
Cobb Electric Membership Corporation
Flint Electric Membership Corporation
Jackson Electric Membership Corporation
North Georgia Electric Membership Corporation
Swanee Electric Membership Corporation
Walton Electric Membership Corporation

State: Hawaii

Regulatory Authority: Hawaii Public Utilities Commission.

Gas Utilities

None.

Electric Utilities

Investor-Owned:
Hawaiian Electric Company, Inc.

State: Idaho

Regulatory Authority: Idaho Public Utilities Commission.

Gas Utilities

Investor-Owned:
Intermountain Gas Company
Washington Water Power Company

Electric Utilities

Investor-Owned:
Idaho Power Company
Pacific Power and Light Company
Utah Power and Light Company
Washington Water Power Company

State: Illinois

Regulatory Authority: Illinois Commerce Commission.

Gas Utilities

Investor-Owned:
Central Illinois Light Company
Central Illinois Public Service Company
Illinois Power Company
Iowa-Illinois Gas and Electric Company
North Shore Gas Company
Northern Illinois Gas Company
Panhandle Eastern Pipeline Company
Peoples Gas, Light and Coke Company

Electric Utilities

Investor-Owned:
Central Illinois Light Company
Central Illinois Public Service Company
Commonwealth Edison Company
Illinois Power Company
Interstate Power Company
Iowa-Illinois Gas and Electric Company
Union Electric Company
The following covered utility within the State of Illinois is not regulated by the Illinois Commerce Commission:

Electric Utilities

Publicly-Owned:
Springfield Water, Light and Power Department

State: Indiana

Regulatory Authority: Indiana Public Service Commission.

Gas Utilities

Investor-Owned:
Indiana Gas Company
Northern Indiana Public Service Company
Southern Indiana Gas and Electric Company
Terre Haute Gas Corporation
Publicly-Owned:
Citizens Gas and Coke Utility

Electric Utilities

Investor-Owned:
Indiana and Michigan Power Company
Indianapolis Power and Light Company
Northern Indiana Public Service Company
Public Service Company of Indiana
Southern Indiana Gas and Electric Company
Publicly-Owned:
Richmond Power and Light

State: Iowa

Regulatory Authority: Iowa Commerce Commission.

Gas Utilities

Investor-Owned:
Interstate Power Company
Iowa Electric Light and Power Company
Iowa-Illinois Gas and Electric Company
Iowa Power and Light Company
Iowa Public Service Company
Iowa Southern Utilities Company
Peoples Natural Gas Company, Division of Internorth, Inc.

Electric Utilities

Investor-Owned:
Interstate Power Company
Iowa Electric Light and Power Company
Iowa-Illinois Gas and Electric Company
Iowa Power and Light Company
Iowa Public Service Company
Iowa Southern Utilities Company
Union Electric Company
Publicly-Owned: The Iowa Commerce Commission has service and safety regulation over the following utilities—
Muscatine Power and Water
Omaha Public Power District

State: Kansas

Regulatory Authority: Kansas State Corporation Commission.

Gas Utilities

Investor-Owned:
Anadarko Production Company
Arkansas-Louisiana Gas Company
Gas Service Company
Greeley Gas Company
Kansas-Nebraska Natural Gas Company
Kansas Power and Light Company
Panhandle Eastern Pipeline Company
Peoples Natural Gas Company, Division of Internorth, Inc.
Union Gas System Inc.

Electric Utilities

Investor-Owned:
Empire District Electric Company
Kansas City Power and Light Company
Kansas Gas and Electric Company
Kansas Power and Electric Company
Southwestern Public Service Company
Western Power Division of Centel
Rural Electric Cooperatives:
Midwest Energy Incorporated
The following covered utility within the State of Kansas is not regulated by the Kansas State Corporation Commission:

Electric Utilities

Publicly-Owned:
Kansas City Board of Public Utilities

State: Kentucky

Regulatory Authority: Kentucky Energy Regulatory Commission.

Gas Utilities

Investor-Owned:
Columbia Gas of Kentucky, Inc.
Louisville Gas and Electric Company
Union Light, Heat and Power Company
Western Kentucky Gas Company

Electric Utilities

Investor-Owned:
Kentucky Power Company
Kentucky Utilities Company
Louisville Gas and Electric Company
Union Light, Heat and Power Company
Rural Electric Cooperatives:
Green River Electric Corporation
Henderson-Union Rural Electric Cooperative Corporation
The following covered utilities within the State of Kentucky are not regulated by the Kentucky Energy Regulatory Commission:
Bowling Green Municipal Utilities
Owensboro Municipal Utilities
Pennyrile Rural Electric Cooperative Corporation
Warren Rural Electric Cooperative Corporation
West Kentucky Rural Electric Cooperative Corporation

State: Louisiana

Regulatory Authority: Louisiana Public Service Commission.

Gas Utilities

Investor-Owned:
Arkansas-Louisiana Gas Company
Entex, Inc.
Gulf States Utilities Company

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Louisiana Gas Service Company
New Orleans Public Service, Inc. (East and West Bank)
Trans Louisiana Gas Company

Electric Utilities

Investor-Owned:
Arkansas Power and Light
Central Louisiana Electric Company
Gulf States Utilities Company
Louisiana Power and Light Company (West Bank)
New Orleans Public Service, Inc. (East Bank)
Southwestern Electric Power Company
Rural Electric Cooperatives:
Dixie Electric Membership Corporation

The following covered utilities within the State of Louisiana are not regulated by the Louisiana Public Service Commission:

Electric Utilities

Publicly-Owned:
Lafayette Utilities System
Rural Electric Cooperatives:
Southwest Louisiana Electric Membership Corporation

State: Maine

Regulatory Authority: Maine Public Utilities Commission.

Gas Utilities

None.

Electric Utilities

Investor-Owned:
Bangor Hydro-Electric Company
Central-Maine Power Company

State: Maryland

Regulatory Authority: Maryland Public Service Commission.

Gas Utilities

Investor-Owned:
Baltimore Gas and Electric Company
Washington Gas Light Company

Electric Utilities

Investor-Owned:
Baltimore Gas and Electric Company
Conowingo Power Company
Delmarva Power and Light Company of Maryland
Potomac Edison Company
Potomac Electric Power Company
Rural Electric Cooperatives:
Southern Maryland Electric Cooperative, Inc.

State: Massachusetts

Regulatory Authority: Massachusetts Department of Public Utilities.

Gas Utilities

Investor-Owned:
Bay State Gas Company
Boston Gas Company
Colonial Gas Energy System
Commonwealth Gas Company
Lowell Gas Company

Electric Utilities

Investor-Owned:
Boston Edison Company
Cambridge Electric Light Company
Commonwealth Electric Company
Eastern Edison Company
Massachusetts Electric Company
Western Massachusetts Electric Company

State: Michigan

Regulatory Authority: Michigan Public Service Commission.

Gas Utilities

Investor-Owned:
Consumers Power Company
Michigan Consolidated Gas Company
Michigan Gas Utilities Company
Michigan Power Company
Southeastern Michigan Gas Company
Wisconsin Public Service Corporation

Electric Utilities

Investor-Owned:
Consumers Power Company
Detroit Edison Company
Indiana and Michigan Electric Company
Lake Superior District Power Company
Michigan Power Company
Upper Peninsula Power Company
Wisconsin Electric Power Company
Wisconsin Public Service Corporation

The following covered utilities within the State of Michigan are not regulated by the Michigan Public Service Commission:

Gas Utilites

Investor-Owned:
Battle Creek Gas Company

Electric Utilities

Publicly-Owned:
Lansing Board of Water and Light

State: Minnesota

Regulatory Authority: Minnesota Public Utility Commission.

Gas Utilities

Investor-Owned:
Interstate Power Company
Iowa Electric Light and Power Company
Minnegasco, Inc.
Northern Minnesota Utilities—Division of UtiliCorp United, Inc.
Northern States Power Company
Peoples Natural Gas Company—Division of UtiliCorp United, Inc.

Electric Utilities

Investor-Owned:
Interstate Power Company
Minnesota Power and Light Company
Northern States Power Company
Otter Tail Power Company
Rural Electric Cooperative:
Dakota Electric Association

The following covered utilities within the State of Minnesota are not regulated by the Minnesota Public Service Commission:

Electric Utilities

Publicly-Owned:
Rochester Department of Public Utilities
Rural Electric Cooperatives:
Anoka Electric Cooperative

State: Mississippi

Regulatory Authority: Mississippi Public Service Commission.

Gas Utilities

Investor-Owned:
Entex, Incl.
Mississippi Valley Gas Company

Electric Utilities

Investor-Owned:
Mississippi Power and Light Company
Mississippi Power Company

The following covered utilities within the State of Mississippi are not regulated by the Mississippi Public Service Commission.

Electric Utilities

Rural Electric Cooperatives:
Alcorn County Electric Power Association
Coast Electric Power Association
4-County Electric Power Association
Singing River Electric Power Association
Southern Pine Electric Power Association
Tombigbee Electric Power Association

State: Missouri

Regulatory Authority: Missouri Public Service Commission.

Gas Utilities

Investor-Owned:
Associated Natural Gas Company
Gas Service Company
Laclede Gas Company Consolidated
Missouri Public Service Company
Peoples Natural Gas Company Division of Inter-North, Inc.

Electric Utilities

Investor-Owned:
Empire District Electric Company
Kansas City Power and Light Company

Missouri Public Service Company
St. Joseph Light and Power Company
Union Electric Company

The following covered utilities within the State of Missouri are not regulated by Missouri Public Service Commission:

Gas Utilities

Investor-Owned:
Cities Service Gas Company
Publicly-Owned:
Springfield City Utilities

Electric Utilities

Publicly-Owned:
Independence Power and Light Department
Springfield City Utilities

State: Montana

Regulatory Authority: Montana Public Service Commission.

Gas Facilities

Investor-Owned:
Montana-Dakota Utilities Company
Montana Power Company

Electric Utilities

Investor-Owned:
Black Hills Power and Light Company
Montana-Dakota Utilities Company
Montana Power Company
Pacific Power and Light Company
Washington Water Power Company

State: Nebraska

Regulatory Authority-Nebraska Public Service Commission.

The Commission does not regulate the rates and service of the gas and electric utilities of the State of Nebraska.

The following covered utilities within the State of Nebraska are not regulated by the Nebraska Public Service Commission.

Electric Utilities

Publicly-Owned:
Lincoln Electric System
Nebraska Public Power District
Omaha Public Power District

Gas Utilities

Investor-Owned:
Gas Service Company
Iowa Electric Light and Power Company
Iowa Public Service Company
KN Energy, Inc.
Minnegasco, Inc.
Northwestern Public Service Company.
Peoples Natural Gas Company Division of Internorth, Inc.

The governing body of each Nebraska municipality exercises ratemaking jurisdiction over gas utility rates, operations and services provided by a gas utility within its city or town limits. These municipal authorities would be State agencies as defined by PURPA, and thus have responsibilities under PURPA identical to those of the State regulatory authority.

Publicly-Owned:
Metropolitan Utilities District of Omaha

State: Nevada

Regulatory Authority: Nevada Public Service Commission.

Gas Utilities

Investor-Owned:
Southwest Gas Corporation

Electric Utilities

Investor-Owned:
Idaho Power Company
Nevada Power Company
Sierra Pacific Power Company

State: New Hampshire

Regulatory Authority: New Hampshire Public Utilities Commission.

Electric Utilities

Investor-Owned:
Public Service Company of New Hampshire
Rural Electric Cooperatives:
New Hampshire Electric Cooperative, Inc.

State: New Jersey

Regulatory Authority: New Jersey Department of Energy Board of Public Utilities.

Gas Utilities

Investor-Owned:
Elizabethtown Gas Company
New Jersey Natural Gas Company
Public Service Electric and Gas Company
South Jersey Gas Company

Electric Utilities

Investor-Owned:
Atlantic City Electric Company
Jersey Central Power and Light Company
Public Service Electric and Gas Company
Rockland Electric Company

State: New Mexico

Regulatory Authority: New Mexico Public Service Commission.

Gas Utilities

Gas Company of New Mexico

Electric Utilities

Investor-Owned:
El Paso Electric Company
Public Service Company of New Mexico
Southwestern Public Service Company
Texas-New Mexico Power Company
Rural Electric Cooperative:
Duncan Valley Electric Cooperative, Inc.
Lea County Electric Cooperative, Inc.

State: New York

Regulatory Authority: New York Public Service Commission.

Gas Utilities

Investor-Owned:
Brooklyn Union Gas Company
Columbia Gas of New York, Inc.
Consolidated Edison Company of New York, Inc.
Long Island Lighting Company
National Fuel Gas Distribution Corporation
New York State Electric and Gas Corporation
Niagara Mohawk Power Corporation
Orange and Rockland Utilities
Rochester Gas and Electric Corporation

Electric Utilities

Investor-Owned:
Central Hudson Gas and Electric Corporation
Consolidated Edison Company of New York
Long Island Lighting Company
New York State Electric and Gas Corporation
Niagara Mohawk Power Corporation
Orange and Rockland Utilities
Rochester Gas and Electric Corporation

The following covered utility within the State of New York is not regulated by the New York Public Service Commission:

Electric Utilities

Publicly-Owned:
Power Authority of New York

State: North Carolina

Regulatory Authority: North Carolina Utilities Commission.

Gas Utilities

Investor-Owned:
North Carolina Natural Gas Corporation
Piedmont Natural Gas Company
Public Service Company, Inc. of North Carolina

Electric Utilities

Investor-Owned:
Carolina Power and Light Company
Duke Power Company
Nantahala Power & Light Company
Virginia Electric and Power Company

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The following covered utilities within the State of North Carolina are not regulated by the North Carolina Utilities Commission:

Electric Utilities

Publicly-Owned:
Fayetteville Public Works Commission
Greenville Utilities Commission
High Point Electric Utility Department
Rocky Mount Public Utilities
Wilson Utilities Department
Rural Electric Cooperatives:
Blue Ridge Electric Membership Corp.
Rutherford Electric Membership Corporation

State: North Dakota

Regulatory Authority: North Dakota Public Service Commission.

Gas Utilities

Investor-Owned:
Montana Dakota Utilities Company
Northern States Power Company

Electric Utilities

Investor-Owned:
Montana Dakota Utilities Company
Northern State Power Company
Otter Tail Power Company

State: Ohio

Regulatory Authority: Ohio Public Utilities Commission.

Gas Utilities

Investor-Owned:
Cincinnati Gas and Electric Company
Columbia Gas of Ohio, Inc.
Dayton Power and Light Company
East Ohio Gas Company
National Gas and Oil Company
West Ohio Gas Company

Electric Utilities

Investor-Owned:
Cincinnati Gas and Electric Company
Cleveland Electric Illuminating Company
Columbus and Southern Ohio Electric Company
Dayton Power and Light Company
Monongahela Power Company
Ohio Edison Company
Ohio Power Company
Toledo Edison Company

The following covered utilities within the State of Ohio are not regulated by the Ohio Public Utilities Commission:

Electric Utilities

Publicly-Owned:
Cleveland Division of Light and Power
Rural Electric Cooperative:
Southern Central Power Company

State: Oklahoma

Regulatory Authority: Oklahoma Corporation Commission

Gas Utilities

Investor-Owned:
Arkansas-Louisiana Gas Company
Arkansas-Oklahoma Gas Corporation
Gas Service Company
Lone Star Gas Company
Oklahoma Natural Gas Company
Southern Union Gas Company
Union Gas System Inc.

Electric Utilities

Investor-Owned:
Empire District Electric Company
Oklahoma Gas and Electric Company
Public Service Company of Oklahoma
Southwestern Public Service Company
Rural Electric Cooperative:
Cotton Electric Cooperative

Gas Utilities

Investor-Owned:
Cities Service Gas Company

State: Oregon

Regulatory Authority: Public Utility Commissioner of Oregon.

Gas Utilities

Investor-Owned:
Cascade Natural Gas Corporation
Northwest Natural Gas Company

Electric Utilities

Investor-Owned:
Idaho Power Company
Pacific Power and Light Company
Portland General Electric Company

The following covered utilities within the State of Oregon are not regulated by the Public Utility Commissioner of Oregon:

Electric Utilities

Publicly-Owned:
Central Lincoln People's Utility District
Clatskanie People's Utility District
Eugene Water and Electric Board
Springfield Utility Board
Rural Electric Cooperatives: Utility
Umatilla Electric Cooperative Association

State: Pennsylvania

Regulatory Authority: Pennsylvania Public Utility Commission.

Gas Utilities

Investor-Owned:
Carnegie Natural Gas Company
Columbia Gas of Pennsylvania, Inc.
Equitable Gas Company
National Fuel Gas Distribution Corporation
North Penn Gas Company
Pennsylvania Gas and Water Company
Peoples Natural Gas Company
Philadelphia Electric Company
T.W. Phillips Gas and Oil Company
UGI Corporation

Electric Utilities

Investor-Owned:
Duquesne Light Company
Metropolitan Edison Company
Pennsylvania Electric Company
Pennsylvania Power Company
Pennsylvania Power and Light Company
Philadelphia Electric Company
UGI—Luzerne Electric Company
West Penn Power Company

The following covered utility within the State of Pennsylvania is not regulated by the Pennsylvania Public Utility Commission:

Gas Utilities

Publicly-Owned:
Philadelphia Gas Works

State: Puerto Rico

Regulatory Authority: Puerto Rico Public Service Commission.

Gas Utilities

None.

Electric Utilities

None.

The following covered utility within Puerto Rico is not regulated by the Puerto Rico Public Service Commission:

Electric Utilities

Publicly-Owned:
Puerto Rico Electric Power Authority

State: Rhode Island

Regulatory Authority: Rhode Island Public Utilities Commission.

Gas Utilities

Investor-Owned:
Providence Gas Company

Electric Utilities

Investor-Owned
Blackstone Valley Electric Company
Narragansett Electric Company

State: South Carolina

Regulatory Authority: South Carolina Public Service Commission.

Gas Utilities

Investor-Owned:
Carolina Pipeline Company
Piedmont Natural Gas Company
South Carolina Electric and Gas Company

Electric Utilities

Investor-Owned:
Carolina Power and Light Company
Duke Power Company
South Carolina Electric and Gas Company

The following covered utilities within the State of South Carolina are not regulated by the South Carolina Public Service Commission:

Electric Utilities

Publicly-Owned:
South Carolina Public Service Authority
Rural Electric Cooperatives:
Berkeley Electric Cooperatives, Inc.
Palmetto Electric Cooperative, Inc.

State: South Dakota

Regulatory Authority: South Dakota Public Utilities Commission.

Gas Utilities

Investor-Owned:
Iowa Public Service Company
Minnegasco, Inc.
Montana-Dakota Utilities Company
Northwestern Public Service Company

Electric Utilities

Investor-Owned:
Black Hills Power and Light Company
Iowa Public Service Company
Montana-Dakota Utilities Company
Northern States Power Company
Northwestern Public Service Company
Otter Tail Power Company

The following covered utility within the State of South Dakota is not regulated by the South Dakota Public Service Commission:

Electric Utilities

Publicly-Owned:
Nebraska Public Power District

State: Tennessee

Regulatory Authority: Tennessee Public Service Commission.

Gas Utilities

Investor-Owned:
Chattanooga Gas Company
Nashville Gas Company

Electric Utilities

Investor-Owned:
Kingsport Power Company

The following covered utilities within the State of Tennessee are not regulated by the Tennessee Public Service Commission:

Electric Utilities

Publicly-Owned:
Bristol Tennessee Electric System
Chattanooga Electric Power Board
Clarksville Department of Electricity
Cleveland Utilities
Greeneville Light and Power System
Jackson Utility Division—Electric Department
Johnson City Power Board
Knoxville Utilities Board
Lenoir City Utilities Board
Memphis Light Gas and Water Division
Murfreesboro Electric Department
Nashville Electric Service
Sevier County Electric System
Rural Electric Cooperatives:
Appalachian Electric Cooperative
Cumberland Electric Membership Corporation
Duck River Electric Membership Cooperative
Gibson County Electric Membership Corporation
Meriwether Lewis Electric Cooperative
Middle Tennessee Electric Membership Corporation
Southwest Tennessee Electric Membership Corporation
Tri-County Electric Membership Corporation
Upper Cumberland Electric Membership Corporation
Volunteer Electric Cooperative

Gas Utilities

Publicly-Owned:
Memphis Light, Gas and Water Division

State: Tennessee

Regulatory Authority: Tennessee Valley Authority.

Gas Utilities

None.

Electric Utilities

Publicly-Owned:
Bowling Green Municipal Utilities
Bristol Tennessee Electric System
Chattanooga Electric Power Board
Clarksville Department of Electricity
Cleveland Utilities
Decatur Electric Department
Florence Electric Department
Greeneville Light and Power System
Huntsville Utilities
Jackson Utility Division—Electric Department
Johnson City Power Board
Knoxville Utilities Board
Lenoir City Utilities Board
Memphis Light, Gas and Water Division
Murfreesboro Electric Department
Nashville Electric Service
Sevier County Electric System
Rural Electric Cooperatives:
Alcorn County Electric Power Association
Appalachian Electric Cooperative
Cumberland Electric Membership Corporation
Duck River Electric Membership Corporation
4-County Electric Power Association
Gibson County Electric Membership Corporation
Joe Wheeler Electric Membership Corporation
Meriwether Lewis Electric Cooperative
Middle Tennessee Electric Membership Corporation
North Georgia Electric Membership Corporation
Pennyrile Rural Electric Cooperative Corporation
Southwest Tennessee Electric Membership Corporation
Tombigbee Electric Power Association
Tri-County Electric Membership Corporation
Upper Cumberland Electric Membership Corporation
Volunteer Electric Cooperative
Warren Rural Electric Cooperative Corporation
West Kentucky Rural Electric Cooperative Corporation

State: Texas

Regulatory Authority: Texas Public Utility Commission.

Gas Utilities

Investor-Owned:
None.

Electric Utilities

Investor-Owned:
Central Power and Light Company
El Paso Electric Company
Gulf States Utilities Company
Houston Lighting and Power Company
Southwestern Electric Power Company
Southwestern Electric Service Company
Southwestern Public Service Company
Texas-New Mexico Power Company
Texas Utilities Electric Company
West Texas Utilities Company
Publicly-Owned:
Lower Colorado River Authority
Rural Electric Cooperatives:
Bluebonnet Electric Cooperative, Inc.
Guadalupe Valley Electric Cooperative, Inc.
Pedernales Electric Cooperative, Inc.
Sam Houston Electric Cooperative, Inc.

The governing body of each Texas municipality exercises exclusive original jurisdiction over electric utility rates,

operations and services provided by an electric utility (whether privately owned

Electric Utilities

Investor-Owned:

Washington Water Power Company

Electric Utilities

Wisconsin Gas Company
Wisconsin Natural Gas Company

Carolina Power & Light Company (SC)
Central Hudson Gas & Electric

Iowa Power & Light Company
Iowa Public Service Company (LA)

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operations and services provided by an electric utility (whether privately owned or publicly owned), within its city or town limits, unless the municipality has surrendered this jurisdiction to the Texas Public Utility Commission. The Commission hears *de novo* appeals from the decision of such municipalities. These municipal authorities would be State agencies as defined by PURPA, and thus have responsibilities under PURPA identical to those of a State regulatory authority.

The municipally owned electric utilities listed below are not under the commission's original ratemaking jurisdiction.

Electric Utilities

Publicly-Owned:
Austin Electric Department
Garland Electric Department
Lubbock Power and Light
San Antonio City Public Service Board

State: Texas

Regulatory Authority: Railroad Commission of Texas.

Gas Utilities

Investor-Owned:
Atmos Energy Corporation
Entex, Inc.
Lone Star Gas Company, a division of ENSERCH Corp.
Southern Union Company

The governing body of each Texas municipality exercises exclusive original ratemaking jurisdiction over gas utility rates, operations, and services provided by a gas utility within its city or town limits subject to appellate review by the Railroad Commission of Texas. These municipal authorities would be State agencies as defined by PURPA and thus have responsibilities under PURPA identical to those of a State regulatory authority.

The following covered utilities within the State of Texas are not regulated by the Railroad Commission of Texas. (The Railroad Commission's appellate authority does not extend to municipally owned gas utilities.)

Gas Utilities

Public-Owned:
City Public Service Board (San Antonio)

State: Utah

Regulatory Authority: Utah Public Service Commission.

Gas Utilities

Investor-Owned:
Mountain Fuel Supply Company

Electric Utilities

Investor-Owned:
Utah Power and Light Company
Rural Electric Cooperatives:
Atmos Energy Corporation
Moon Lake Electric Association

State: Vermont

Regulatory Authority: Vermont Public Service Board.

Gas Utilities

None.

Electric Utilities

Investor-Owned:
Central Vermont Public Service Corporation
Green Mountain Power Corporation
Public Service Company of New Hampshire.

State: Virginia

Regulatory Authority: Virginia State Corporation Commission.

Gas Utilities

Investor-Owned:
Columbia Gas of Virginia, Inc.
Commonwealth Gas Services, Inc.
Northern Virginia Natural Gas
Virginia Natural Gas

Electric Utilities

Investor-Owned:
Appalachian Power Company
Delmarva Power and Light Company
Old Dominion Power Company
Potomac Edison Company
Virginia Electric and Power Company

Rural Electric Cooperatives

Northern Virginia Electric Cooperative
Rappahannock Electric Cooperative

The following covered utility within the State of Virginia is not regulated by the Virginia State Corporation Commission.

Gas Utilities

Publicly-Owned:
City of Richmond, Virginia, Department of Public Utilities

Electric Utilities

Publicly-Owned:
Danville Water, Gas & Electric

State: Washington

Regulatory Authority: Washington Utilities and Transportation Commission.

Gas Utilities

Investor-Owned:
Cascade Natural Gas Corporation
Northwest Natural Gas Company
Washington Natural Gas Company
Washington Water Power Company

Electric Utilities

Investor-Owned:
Pacific Power and Light Company
Puget Sound Power and Light Company
Washington Water Power Company

The following covered utilities within the State of Washington are not regulated by the Washington Utilities and Transportation Commission.

Electric Utilities

Publicly-Owned:
Port Angeles Light and Water Department
Public Utility District No. 1 of Benton County
Public Utility District No. 1 of Chelan County
Public Utility District No. 1 of Clark County
Public Utility District No. 1 of Cowlitz County
Public Utility District No. 1 of Douglas County
Public Utility District No. 1 of Franklin County
Public Utility District No. 1 of Grant County
Public Utility District No. 1 of Grays County
Public Utility District No. 1 of Lewis County
Public Utility District No. 1 of Snohomish County
Richland Energy Service Department
Seattle City Light Department
Tacoma Public Utility—Light Division

State: West Virginia

Regulatory Authority: West Virginia Public Service Commission.

Gas Utilities

Investor-Owned:
Equitable Gas Company
Hope Gas Incorporated
Mountaineer Gas Company

Electric Utilities

Investor-Owned:
Appalachian Power Company
Monongahela Power Company
Potomac Edison Company
Virginia Electric and Power Company
Wheeling Electric Company

State: Wisconsin

Regulatory Authority: Wisconsin Public Service Commission.

Gas Utilities

Investor-Owned:
Madison Gas and Electric Company
Northern States Power Company
Wisconsin Fuel and Light Company

Wisconsin Gas Company
Wisconsin Natural Gas Company
Wisconsin Power and Light Company
Wisconsin Public Service Corporation

Electric Utilities

Investor-Owned:
Madison Gas and Electric Company
Northern States Power Company
Wisconsin Electric Power Company
Wisconsin Power and Light Company
Wisconsin Public Service Corporation

State: Wyoming

Regulatory Authority: Wyoming Public Service Commission.

Gas Utilities

Investor-Owned:
Cheyenne Light, Fuel and Power Company
Kansas-Nebraska Natural Gas Company
Montana-Dakota Utilities Company
Mountain Fuel Supply Company

Electric Utilities

Investor-Owned:
Black Hills Power and Light Company
Montana-Dakota Utilities Company
Pacific Power and Light Company
Utah Power and Light Company
Rural Electric Cooperative:
Tri-County Electric Association, Inc.

Appendix B

Electric Utilities

All utilities listed below had electric energy sales, for purposes other than resale, in excess of 500 million kilowatt hours in any year from 1976–1988. The utilities listed more than once have sales in more than one State, and those States are indicated by abbreviations in parentheses.

Investor-Owned:
Alabama Power Company
Appalachian Power Company (VA)
Appalachian Power Company (WV)
Arizona Public Service Company
Arkansas Power & Light Company (AR)
Arkansas Power & Light Company (LA)
Atlantic City Electric Company
Baltimore Gas & Electric Company
Bangor Hydro-Electric Company
Black Hills Power & Light Company (MT)
Black Hills Power & Light Company (SD)
Black Hills Power & Light Company (WY)
Blackstone Valley Electric Company
Boston Edison Company
Cambridge Electric Light Company
Carolina Power & Light Company (NC)
Carolina Power & Light Company (SC)
Central Hudson Gas & Electric Corporation
Central Illinois Light Company
Central Illinois Public Service Company
Central Louisiana Electric Company
Central Maine Power Company
Central Power & Light Company
Central Vermont Public Service Corporation
Cincinnati Gas & Electric Company
Cleveland Electric Illuminating Company
Columbus and Southern Ohio Electric Company
Commonwealth Edison Company
Commonwealth Electric Company
Connecticut Light & Power Company
Conowingo Power Company
Consolidated Edison Company of New York
Consumer Power Company
Dayton Power & Light Company
Delmarva Power & Light Company (DE)
Delmarva Power & Light Company (VA)
Delmarva Power & Light Company of Maryland
Detroit Edison Company
Duke Power Company (NC)
Duke Power Company (SC)
Duquesne Light Company
Eastern Edison Company
El Paso Electric Company (NM)
El Paso Electric Company (TX)
Empire District Electric Company (AR)
Empire District Electric Company (KS)
Empire District Electric Company (MO)
Empire District Electric Company (OK)
Florida Power Corporation
Florida Power & Light Company
Georgia Power Company
Green Mountain Power Corporation
Gulf Power Company
Gulf States Utilities Company (LA)
Gulf States Utilities Company (TX)
Hawaiian Electric Company Inc.
Houston Lighting and Power Company
Idaho Power Company (ID)
Idaho Power Company (NV)
Idaho Power Company (OR)
Illinois Power Company
Indiana & Michigan Power Company (IN)
Indiana & Michigan Power Company (MI)
Indianapolis Power & Light Company
Interstate Power Company (IA)
Interstate Power Company (IL)
Interstate Power Company (MN)
Iowa Electric Light & Power Company
Iowa-Illinois Gas & Electric Company (IA)
Iowa-Illinois Gas & Electric Company (IL)
Iowa Power & Light Company
Iowa Public Service Company (LA)
Iowa Public Service Company (SD)
Iowa Southern Utilities Company
Jersey Central Power & Light Company
Kansas City Power & Light Company (KS)
Kansas City Power & Light Company (MO)
Kansas Gas & Electric Company
Kansas Power & Light Company
Kentucky Power Company
Kentucky Utilities Company
Kingsport Power Company
Lake Superior District Power Company (MI)
Long Island Lighting Company
Louisiana Power & Light Company
Louisville Gas & Electic Company
Madison Gas & Electric Company
Massachusetts Electric Company
Metropolitan Edison Company
Michigan Power Company
Minnesota Power & Light Company
Mississippi Power Company
Mississippi Power & Light Company
Missouri Public Service Company
Monongahela Power Company (OH)
Monongahela Power Company (WV)
Montana-Dakota Utilities Company (MT)
Montana-Dakota Utilities Company (ND)
Montana-Dakota Utilities Company (SD)
Montana-Dakota Utilities Company (WY)
Montana-Dakota Power Company
Nantahala Power & Light Company
Narragansett Electric Company
Nevada Power Company
New Orleans Public Service Inc.
New York State Electric & Gas Corporation
Niagara Mohawk Power Company
Northern Indiana Public Service Company
Northern States Power Company (MN)
Northern States Power Company (ND)
Northern States Power Company (SD)
Northern States Power Company (WI)
Northwestern Public Service Company
Ohio Edison Company
Ohio Power Company
Oklahoma Gas & Electric Company (AR)
Oklahoma Gas & Electric Company (OK)
Old Dominion Power Company
Orange & Rockland Utilities
Otter Tail Power Company (MN)
Otter Tail Power Company (ND)
Otter Tail Power Company (SD)
Pacific Gas & Electric Company

Pacific Power Light Company (CA)
Pacific Power Light Company (ID)
Pacific Power Light Company (MT)
Union Light, Heat & Power Company
United Illuminating Company
Upper Peninsula Power Company

Florence Electric Department (AL)
Gainesville Regional Utilities (FL)
Garland Electric Department (TX)

Public Utility District No. 1 of Lewis County (WA)
Public Utility District No. 1 of

4-County Electric Power Association (MS)
Gibson County Electric Membership

Warren Rural Electric Cooperative Corporation (KY)
West Kentucky Rural Electric

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Pacific Power Light Company (CA)
Pacific Power Light Company (ID)
Pacific Power Light Company (MT)
Pacific Power Light Company (OR)
Pacific Power Light Company (WA)
Pacific Power Light Company (WY)
Pennsylvania Electric Company
Pennsylvania Power & Light Company
Pennsylvania Power Company
Philadelphia Electric Company
Portland General Electric Company
Potomac Edison Company (MD)
Potomac Edison Company (VA)
Potomac Edison Company (WV)
Potomac Electric Power Company (DC)
Potomac Electric Power Company (MD)
Public Service Company of Colorado
Public Service Company of Indiana
Public Service Company of New Hampshire (NH)
Public Service Company of New Hampshire (VT)
Public Service Company of New Mexico
Public Service Company of Oklahoma
Public Service Electric and Gas Company
Puget Sound Power & Light Company
Rochester Gas & Electric Corporation
Rockland Electric Company
St. Joseph Light & Power Company
San Diego Gas & Electric Company
Savannah Electric & Power Company
Sierra Pacific Power Company (CA)
Sierra Pacific Power Company (NV)
South Carolina Electric & Gas Company
Southern California Edison Company
Southern Colorado Power Division of Centel (CO)
Southern Indiana Gas & Electric Company
Southwestern Electric Power Company (AR)
Southwestern Electric Power Company (LA)
Southwestern Electric Power Company (TX)
Southwestern Electric Service Company
Southwestern Public Service Company (KS)
Southwestern Public Service Company (NM)
Southwestern Public Service Company (OK)
Southwestern Public Service Company (TX)
Tampa Electric Company
Texas-New Mexico Power Company
Texas Utilities Electric Company
Toledo Edison Company
Tucson Electric Power Company
UGI-Luzerne Electric Division
Union Electric Company (LA)
Union Electric Company (IL)
Union Electric Company (MO)
Union Light, Heat & Power Company
United Illuminating Company
Upper Peninsula Power Company
Utah Power & Light Company (ID)
Utah Power & Light Company (UT)
Utah Power & Light Company (WY)
Virginia Electric & Power Company (NC)
Virginia Electric & Power Company (VA)
Virginia Electric & Power Company (WV)
Washington Water Power Company (ID)
Washington Water Power Company (MT)
Washington Water Power Company (WA)
West Penn Power Company
West Texas Utilities Company
Western Massachusetts Electric Company
Western Power Division of Centel (KS)
Wheeling Electric Company
Wisconsin Electric Power Company (MI)
Wisconsin Electric Power Company (WT)
Wisconsin Power & Light Company
Wisconsin Public Service Corporation (MI)
Wisconsin Public Service Corporation (WI)

Publicly-Owned:

Albany Water Gas & Light Commission (GA)
Anaheim Public Utilities Department (CA)
Anchorage Municipal Light & Power Department (AK)
Austin Electric Department (TX)
Bowling Green Municipal Utilities (KY)
Bristol Tennessee Electric System (TN)
Brownsville Public Utility Board (TX)
Burbank Public Service Department (CA)
Central Lincoln People's Utility District (OR)
Chattanooga Electric Power Board (TN)
Clarksville Department of Electricity (TN)
Clatskanie People's Utility District (OR)
Cleveland Division of Light & Power (OH)
Cleveland Utilities (TN)
Colorado Springs Department of Utilities (CO)
Dalton Water Light & Sink (GA)
Danville Water Gas & Electric (VA)
Decatur Electric Department (AL)
Dothan Electric Department (AL)
Eugene Water & Electric Board (OR)
Fayetteville Public Works Commission (NC)
Florence Electric Department (AL)
Gainesville Regional Utilities (FL)
Garland Electric Department (TX)
Glendale Public Service Department (CA)
Greeneville Light & Power System (TN)
Greenville Utilities Commission (NC)
Groton Public Utilities (CT)
High Point Electric Utility Dept. (NC)
Huntsville Utilities (AL)
Imperial Irrigation District (CA)
Independence Power & Light Department (MO)
Jackson Utility Division—Electric Department (TN)
Jacksonville Electric Authority (FL)
Johnson City Power Board (TN)
Kansas City Board of Public Utilities (KS)
Knoxville Utilities Board (TN)
Lafayette Utilities System (LA)
Lakeland Department of Electric and Water (FL)
Lansing Board of Water & Light (MI)
Lenoir City Utilities Board (TN)
Lincoln Electric System (NE)
Los Angeles Department of Water and Power (CA)
Lower Colorado River Authority (TX)
Lubbock Power & Light (TX)
Memphis Light, Gas & Water Division (TN)
Modesto Irrigation District (CA)
Murfreesboro Electric Dept. (TN)
Muscatine Power & Water (IA)
Nashville Electric Service (TN)
Nebraska Public Power District (NE)
Nebraska Public Power District (SD)
North Little Rock Electric Department (AR)
Ocala Electric Authority (FL)
Omaha Public Power District (IA)
Omaha Public Power District (NE)
Orlando Utilities Commission (FL)
Owensboro Municipal Utilities (KY)
Palo Alto Electric Utility (CA)
Pasadena Water & Power Department (CA)
Power Authority of New York (NY)
Port Angeles Light & Water Department (WA)
Public Utility District No. 1 of Benton County (WA)
Public Utility District No. 1 of Chelan County (WA)
Public Utility District No. 1 of Clark County (WA)
Public Utility District No. 1 of Cowlitz County (WA)
Public Utility Discrict No. 1 of Douglas County (WA)
Public Utility District No. 1 of Franklin County (WA)
Public Utility District No. 1 of Grant County (WA)
Public Utility District No. 1 of Grays Harbor County (WA)

Public Utility District No. 1 of Lewis County (WA)
Public Utility District No. 1 of Snohomish County (WA)
Puerto Rico Electric Power Authority
Richland Energy Services Department (WA)
Richmond Power & Light (IN)
Riverside Public Utilities (CA)
Rochester Department of Public Utilities (MN)
Rocky Mount Public Utilities (NC)
Sacramento Municipal Utility District (CA)
Salt River Project Agricultural Improvement and Power District (AZ)
San Antonio City Public Service Board (TX)
Santa Clara Electric Department (CA)
Seattle City Light Department (WA)
Sevier County Electric System (TN)
South Carolina Public Service Authority
Springfield City Utilities (MO)
Springfield Utility Board (OR)
Springfield Water, Lights & Power Department (IL)
Tacoma Public Utilities—Light Division (WA)
Trico Electric Cooperative, Inc. (AZ)
Tallahassee, City of (FL)
Turlock Irrigation District (CA)
Vernon Municipal Light Department (CA)
Wilson Utilities Department (NC)

Rural Electric Cooperatives

Alcorn County Electric Power Association (MS)
Anoka Electric Cooperative (MN)
Appalachian Electric Cooperative (TN)
Berkeley Electric Cooperative (SC)
Bluebonnet Electric Cooperative, Inc., (TX)
Blue Ridge Electric Membership Corporation (NC)
Chugach Electric Cooperative (AK)
Clay Electric Cooperative (FL)
Coast Electric Power Association (MS)
Cobb Electric Membership Corporation (GA)
Cotton Electric Cooperative (OK)
Cumberland Electric Membership Corporation (TN)
Dakota Electric Association (MN)
Douglas County Electric Membership Corporation (GA)
Dixie Electric Membership Corporation (LA)
Duck River Electric Membership Corporation (TN)
Duncan Valley Electric Cooperative, Inc. (AZ, NM)
First Electric Cooperative Corporation (AR)
Flint Electric Membership Corporation (GA)
4-County Electric Power Association (MS)
Gibson County Electric Membership Corporation (TN)
Green River Electric Corporation (KY)
Guadalupe Valley Electric Cooperative, Inc. (TX)
Henderson-Union Rural Electric Cooperative Corporation (KY)
Intermountain Rural Electric (CO)
Jackson Electric Membership Corporation (GA)
Joe Wheeler Electric Membership Corporation (AL)
Lea County Electric Cooperative, Inc. (NM)
Lee County Electric Cooperative (FL)
Meriwether Lewis Electric Cooperative (TN)
Middle Tennessee Electric Membership Corporation (TN)
Midwest Energy Incorporated (KS)
Moon Lake Electric Association (CO)
New Hampshire Electric Cooperative, Inc. (NH)
Northern Virginia Electric Cooperative (VA)
North Georgia Electric Membership Corporation (GA)
Palmetto Electric Cooperative, Inc. (SC)
Pedernales Electric Cooperative Corporation, Inc. (TX)
Pennyrile Rural Electric Cooperative Corporation (KY)
Rappahannock Electric Cooperative (VA)
Rural Electric System (AL)
Rutherford Electric Membership Corporation (NC)
Sam Houston Electric Cooperative, Inc. (TX)
Sawnee Electric Membership Corporation (GA)
Singing River Electric Power Association (MS)
South Central Power Company (OH)
Southern Maryland Electric Cooperative, Inc. (MD)
Southern Pine Electric Power Association (MS)
Southwest Louisiana Electric Membership Corporation (LA)
Southwest Tennessee Electric Membership Corporation (TN)
Sumter Electric Cooperative (FL)
Tombigbee Electric Power Association (MS)
Tri-County Electric Association Inc. (WY)
Tri-County Electric Membership Corporation (TN)
Umatilla Electric Cooperative Association (OR)
Upper Cumberland Electric Membership Corporation (TN)
Volunteer Electric Cooperative (TN)
Walton Electric Membership Corporation (GA)
Warren Rural Electric Cooperative Corporation (KY)
West Kentucky Rural Electric Cooperative Corporation (KY)
Withlacoochee River Electric Cooperative (FL)

Federal Agencies

Bonneville Power Administration (OR)
Tennessee Valley Authority (TN)
Western Area Power Administration (CO)

Gas Utilities

All gas utilities listed below had natural gas sales, for purposes other than resale, in excess of 10 billion cubic feet in any year from 1976–1988. The utilities listed more than once have sales in more than one State and those States are indicated by abbreviations in parentheses.

Investor-Owned:

Alabama Gas Corporation
Alabama-Tennessee Natural Gas Company
Anadarko Production Company
Arkansas-Louisiana Gas Company (AR)
Arkansas-Louisiana Gas Company (KS)
Arkansas-Louisiana Gas Company (LA)
Arkansas-Louisiana Gas Company (OK)
Arkansas-Oklahoma Gas Corporation (AR)
Arkansas-Oklahoma Gas Corporation (OK)
Arkansas Western Gas Company
Associated Natural Gas Company (AR)
Associated Natural Gas Company (MO)
Atlanta Gas Light Company
Atmos Energy Corporation
Baltimore Gas & Electric Company
Battle Creek Gas Company
Bay State Gas Company
Boston Gas Company
Brooklyn Union Gas Company
Carnegie Natural Gas Company
Carolina Pipeline Company
Cascade Natural Gas Corporation (OR)
Cascade Natural Gas Corporation (WA)
Central Illinois Light Company
Central Illinois Public Service Company
Chattanooga Gas Company (TN)
Cheyenne Light, Fuel and Power Company
Cincinnati Gas and Electric Company
Cities Services Gas Company (covered by NECPA only)

City Gas Company of Florida
Colonial Gas Energy System
Columbia Gas of Kentucky, Inc.
Long Island Lighting Company
Louisiana Gas Service Company
Louisville Gas & Electric Company
Pennsylvania Gas & Water Company
Peoples Gas, Light and Coke Company

Public-Owned:

Citizens Gas & Coke Utility (IN)

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Colonial Gas Energy System
Columbia Gas of Kentucky, Inc.
Columbia Gas of New York, Inc.
Columbia Gas of Ohio, Inc.
Columbia Gas of Pennsylvania, Inc.
Columbia Gas of Virginia, Inc.
Commonwealth Gas Company
Commonwealth Gas Service Incorporated
Commonwealth Gas Services, Incorporated
Connecticut Light & Power Company
Connecticut Natural Gas Corporation
Consolidated Edison Company of New York, Inc.
Consumers Power Company
Dayton Power & Light Company
Delmarva Power & Light Company (DE)
East Ohio Gas Company
Elizabethtown Gas Company
Enstar Natural Gas Company
Entex Inc. (LA)
Entex Inc. (MS)
Entex Inc. (TX)
Equitable Gas Company (PA)
Equitable Gas Company (WV)
Gas Company of New Mexico
Gas Service Company (KS)
Gas Service Company (MO)
Gas Service Company (NE)
Gas Service Company (OK)
Greeley Gas Company (CO)
Greeley Gas Company (KS)
Gulf States Utilities Company
Hope Gas, Incorporated
Illinois Power Company
Indiana Gas Company
Intermountain Gas Company
Interstate Power Company (LA)
Interstate Power Company (MN)
Iowa Electric Light & Power Company (CO)
Iowa Electric Light & Power Company (IA)
Iowa Electric Light & Power Company (MN)
Iowa Electric Light & Power Company (NE)
Iowa-Illinois Gas & Electric Company (LA)
Iowa-Illinois Gas & Electric Company (IL)
Iowa Power & Light Company
Iowa Public Service Company (IA)
Iowa Public Service Company (NE)
Iowa Public Service Company (SD)
Iowa Southern Utilities Company
Kansas-Nebraska Natural Gas Company (CO)
Kansas-Nebraska Natural Gas Company (KS)
Kansas-Nebraska Natural Gas Company (WY)
Kansas Power & Light Company
KN Energy, Inc.
Laclede Gas Company Consolidated
Lone Star Gas Company (OK)
Lone Star Gas Company, a division of ENSERCH Corp. (TX)
Long Island Lighting Company
Louisiana Gas Service Company
Louisville Gas & Electric Company
Lowell Gas Company
Madison Gas & Electric Company
Michigan Consolidated Gas Company
Michigan Gas Utilities Company
Michigan Power Company
Minnegasco, Inc. (MN)
Minnegasco, Inc. (NE)
Minnegasco, Inc. (SD)
Mississippi Valley Gas Company
Missouri Public Service Company
Mobile Gas Service Corporation
Montana-Dakota Utilities Company (MN)
Montana-Dakota Utilities Company (MT)
Montana-Dakota Utilities Company (ND)
Montana-Dakota Utilities Company (SD)
Montana-Dakota Utilities Company (WY)
Montana Power Company
Mountaineer Gas Company
Mountain Fuel Supply Company (UT)
Mountain Fuel Supply Company (WY)
Nashville Gas Company
National Fuel Gas Distribution Corporation (NY)
National Fuel Gas Distribution Corporation (PA)
National Gas and Oil Company
New Jersey Natural Gas Company
New Orleans Public Service, Inc.
New York State Electric & Gas Corporation
Niagara Mohawk Power Company
North Carolina Natural Gas Corporation
North Shore Gas Company
Northern Illinois Gas Company
Northern Indiana Public Service Company
Northern Minnesota Utilities—Division of Utilicorp United, Inc.
Northern Natural Gas Company (KS)
Northern Natural Gas Company (NE)
Northern States Power Company (MN)
Northern States Power Company (ND)
Northern States Power Company (WI)
North Penn Gas Company
Northwest Alabama Gas District
Northwest Natural Company (OR)
Northwest Natural Gas Company (WA)
Northwestern Public Service Company (NE)
Northwestern Public Service Company (SD)
Oklahoma Natural Gas Company
Orange & Rockland Utilities
Pacific Gas & Electric Company
Panhandle Eastern Pipeline Company (IL)
Panhandle Eastern Pipeline Company (KS)
Pennsylvania Gas & Water Company
Peoples Gas, Light and Coke Company
Peoples Gas System
Peoples Natural Gas Company
Peoples Natural Gas Company, Division of Internorth, Inc. (IA)
Peoples Natural Gas Company, Division of Internorth, Inc. (IA)
Peoples Natural Gas Company, Division of Internorth, Inc. (KS)
Peoples Natural Gas Company, Division of Internorth, Inc. (MN)
Peoples Natural Gas Company, Division of Internorth, Inc. (MO)
Peoples Natural Gas Company, Division of Internorth, Inc. (NE)
Philadelphia Electric Company
Piedmont Natural Gas Company (NC)
Piedmont Natural Gas Company (SC)
Providence Gas Company
Public Service Company of Colorado
Public Service Company Inc. of North Carolina
Public Service Electric and Gas Company
Rochester Gas & Electric Corporation
San Diego Gas & Electric Company
South Carolina Gas & Electric Company
South Jersey Gas Company
Southeastern Michigan Gas Company
Southern California Gas Company
Southern Connecticut Gas Company
Southern Indiana Gas & Electric Company
Southern Union Company (TX)
Southern Union Gas Company (AZ)
Southern Union Gas Company (OK)
Southwest Gas Corporation (AZ)
Southwest Gas Corporation (CA)
Southwest Gas Corporation (NV)
Terre Haute Gas Corporation
Trans Louisiana Gas Company
T.W. Phillips Gas and Oil Company
UGI Corporation
Union Gas System, Inc. (KS)
Union Gas System, Inc. (OK)
Union Light, Heat & Power Company (KY)
Virginia Natural Gas
Washington Gas Light Company (DC)
Washington Gas Light Company (MD)
Washington Gas Light Company (VA)
Washington Natural Gas Company
Washington Water Power Company (ID)
Washington Water Power Company (WA)
West Ohio Gas Company
Western Kentucky Gas Company
Wisconsin Fuel & Light Company
Wisconsin Gas Company
Wisconsin Natural Gas Company
Wisconsin Power & Light Company
Wisconsin Public Service Corporation (MI)
Wisconsin Public Service Corporation (WI)

Public-Owned:
Citizens Gas & Coke Utility (IN)
City of Richmond, Virginia, Department of Public Utilities (VA)
City Public Services Board (San Antonio) (TX)
Colorado Springs, Department of Utilities (CO)
Long Beach Gas Department (CA)
Memphis Light, Gas & Water Division (TN)
Metropolitan Utilities District of Omaha (NE)
Philadelphia Gas Works (PA)
Springfield City Utilities (MO)

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federal register

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December 29, 1989

Part III

Department of Health and Human Services

Health Care Financing Administration

Medicare Program; Physician Performance Standard Rate of Increase for Federal Fiscal Year 1990; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

only limited success in slowing the rate of increase because both the volume and intensity of physician services have

1992 and 1993, 2.5 percentage points for 1994 and 1995, and 3.0 percentage points in a subsequent year. There is no limit

performance standard rate of increase for FY 1990 is equal to the sum of the following components minus 0.5 percent:

including the following medical and other health services under section 1861(s) of the Act in the physician

for surgical services for FY 1990. For years following FY 1990, sections 1848 (f)(1)(C) and 1848(f)(4) of the Act require

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BPD-663-N]

Medicare Program; Physician Performance Standard Rate of Increase for Federal Fiscal Year 1990

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Announcement of physician performance standard rate of increase.

SUMMARY: This notice announces the Federal fiscal year 1990 performance standard rate of increase for expenditures and volume of physician services under the Medicare Supplementary Medical Insurance (Part B) program as required by section 6102 of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239). The physician performance standard rate of increase for Federal fiscal year 1990 is 9.1 percent.

EFFECTIVE DATE: December 29, 1989.

FOR FURTHER INFORMATION CONTACT: Terrence L. Kay, (301) 966–4494.

SUPPLEMENTARY INFORMATION:

I. Background and Summary of New Legislation

A. Physician Payment Reform

On December 19, 1989, the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239) was enacted. Section 6102 of Pub. L. 101–239 amended Title XVIII of the Social Security Act (the Act) by adding a new section 1848, Payment For Physicians' Services. New section 1848 of the Act provides for a comprehensive package of Medicare physician payment reform that includes the following provisions:

- The current reasonable charge payment mechanism, which uses actual, customary, and prevailing charges, will be replaced by a resource-based relative value fee schedule.
- Performance standard rates of increase for aggregate expenditures of physician services.
- Medicare beneficiaries will be protected from excessive charges for physician services.

Section 1848(f) of the Act requires the Secretary to establish performance standard rates of increase for expenditures and volume of physician services. Congress enacted this new provision to address the problem of unacceptably high annual rates of increase in Medicare expenditures for physician services. Past efforts, such as freezing physician fees, which was in effect from 1984 to 1986, have achieved only limited success in slowing the rate of increase because both the volume and intensity of physician services have increased. The use of performance standard rates of increase is intended to involve physicians in the effort to slow the unacceptably high annual rate of increase in expenditures by having physicians carefully evaluating their services and eliminating those that are inappropriate or ineffective, or both.

Under section 1848 of the Act, the Secretary will recommend to the Congress acceptable performance standard rates of increase for expenditures and volume of physician services each fiscal year. Congress will then establish performance standard rates of increase, or, if Congress does not act after the Secretary's recommendation, the performance rates of increase will be determined through an automatic default mechanism as provided in section 1848(f)(2)(A) of the Act. The performance standard rate of increase for FY 1990 is specified by section 1848(f)(1)(D) of the Act.

The performance standard rates of increase are not limits on expenditures. Payments for services will not be withheld if performance standard rates of increase are exceeded. Rather, the appropriate fee schedule update, as specified in section 1848(d)(3)(A) of the Act, would be adjusted to reflect the success or failure in meeting the performance standard rates of increase. For example, the performance standard rate of increase for FY 1990, as provided in this notice, is 9.1 percent. If in FY 1991, an evaluation of FY 1990 data shows that actual expenditures were to increase by 11.0 percent, this would be 1.9 percentage points more than the announced rate of increase. If the update index increase announced in 1991 for calendar year 1992 is 4.0 percent, then the increase in payment levels in 1992 would be 2.1 percent (4.0 percent minus 1.9 percent). Thus, we would reduce the 1992 update increase by 1.9 percentage points because the actual rate of increase in FY 1990 expenditures compared with FY 1989 expenditures exceeded the performance standard rate of increase by 1.9 percentage points.

Conversely, if the rate of increase in actual expenditures in FY 1990 is 7.5 percent, the update for 1992 would be 5.6 percent; that is, 4.0 percent plus 1.6 percent. Thus, we would increase the update by 1.6 percentage points because the rate of growth in actual expenditures was 1.6 percentage points less than the performance standard rate of increase. Section 1848(d)(3)(B) of the Act limits the amount of downward adjustment in the update to 2.0 percentage points for 1992 and 1993, 2.5 percentage points for 1994 and 1995, and 3.0 percentage points in a subsequent year. There is no limit on increases in the update index amount.

B. Determining the Performance Standard Rate of Increase

Section 1848(f)(1) of the Act sets forth the process for establishing the performance standard rates of increase. As explained above, section 1848(f)(1)(A) of the Act requires that the Secretary recommend to Congress the physician performance standard rates of increase for the following Federal fiscal year by not later than April 15th, beginning with 1990. In making the recommendations, the Secretary is required to confer with organizations that represent physicians and to consider the following factors—

- Inflation;
- Changes in the number and age composition of Medicare enrollees under Part B (excluding risk health maintenance organization (HMO) enrollees);
- Changes in technology,
- Evidence of inappropriate utilization of services;
- Evidence of lack of access to necessary physician services; and
- Other appropriate factors as determined by the Secretary.

Section 1848(f)(1)(B) of the Act requires that the Physician Payment Review Commission (PPRC) review the Secretary's recommendations and make its recommendations to Congress for the physician performance standard rates of increase by May 15th.

Congress expects to set the performance standard rates of increase each year. If Congress does not act, section 1848(f)(2)(A) of the Act specifies a formula for the Secretary to determine the performance standard rates of increase. Section 1848(f)(1)(C) of the Act requires the Secretary to publish in the **Federal Register** on one of the last 15 days of October of each year (beginning with 1990) the performance standard rates of increase for all physician services and for each category of physician services for the Federal fiscal year that began on October 1st of that year. (For example, on one of the last 15 days of October 1990, the physician performance standard rates of increase for FY 1991 must be published.)

Section 1848(f)(1)(C) of the Act also specifies that the physician performance standard rate of increase for FY 1990, as determined under section 1848(f)(1)(D) of the Act, must be published not later than January 1, 1990. Under section 1848(f)(1)(D) of the Act, the physician

performance standard rate of increase for FY 1990 is equal to the sum of the following components minus 0.5 percent:

- The Secretary's estimate of the weighted average percentage increases in reasonable charges for physician services for portions of calendar years 1989 and 1990 contained in FY 1990.
- The Secretary's estimate of the percentage increase or decrease in the average number of Part B enrollees (excluding risk HMO enrollees) from FY 1989 to FY 1990.
- The Secretary's estimate of the average annual percentage growth in volume and intensity of physician services for FY 1985 through FY 1989.
- The Secretary's estimate of the percentage increase or decrease in expenditures for physician services that will result from changes in law or regulations in FY 1990 as compared with expenditures for physician services in FY 1989.

II. Provisions of this Notice

A. Physician Performance Standard Rate of Increase for FY 1990

Under the requirements in section 1848(f)(1)(D) of the Act, we have determined that the performance standard rate of increase for physician services for FY 1990 is 9.1 percent. This determination is based on the sum of the following estimates minus 0.5 percentage points:

- The weighted average percentage increases in reasonable charges for physician services for months of calendar years 1989 and 1990 contained in FY 1990 is 2.3 percent.
- The percentage increase in the average number of Part B enrollees from FY 1989 to FY 1990 (excluding risk HMO enrollees) is 1.7 percent.
- The average annual growth in volume and intensity of physician services for FY 1985 through FY 1989 is 7.3 percent.
- The percentage increase in expenditures for physician services resulting from changes in law or regulations in FY 1990 as compared with FY 1989 is −1.7 percent.

B. Physician Services

Section 1848(f)(5)(A) of the Act defines physician services for purposes of the physician performance standard rates of increase as including other items or services (such as clinical diagnostic laboratory tests and radiology services), as specified by the Secretary, that are commonly performed by a physician or furnished in a physician's office. Section 1861(s) of the Act defines medical and other health services covered under Part B. We are including the following medical and other health services under section 1861(s) of the Act in the physician performance standard rates of increase if processed and paid for by Medicare carriers:

- Physician services.
- Services and supplies furnished incident to physician services.
- Outpatient physical therapy and speech therapy services, and outpatient occupational therapy services.
- Antigens prepared by or under the direct supervision of a physician.
- Services of physician assistants, certified registered nurse anesthetists, certified nurse midwives, psychologists, and social workers.
- Diagnostic x-ray tests, diagnostic laboratory tests, and other diagnostic tests.
- X-ray, radium, and radioactive isotope therapy.
- Surgical dressings, and splints, casts, and other devices used for reduction of fractures and dislocations.

Many diagnostic services, such as diagnostic x-ray and diagnostic laboratory tests, are furnished in outpatient departments of hospitals. Except for medically necessary physician interpretations of the tests, these tests are not paid on a reasonable charge basis or fee schedule basis by carriers, but are paid by intermediaries. Much of the detailed information needed to set performance standard rates of increase is not available for diagnostic services when furnished by a hospital. The data are included in hospital cost reports and are not readily available under current data collection systems. As data systems evolve in response to setting physician performance standard rates of increase, we may consider including diagnostic x-ray, laboratory, and other services furnished in hospital outpatient departments in setting future performance standard rates of increase.

The other items and services for which significant payments are made under Part B are durable medical equipment, ambulance services, and services furnished by ambulatory surgical centers. We did not include these items and services in the performance standard rate of increase because they are not commonly furnished by a physician or performed in a physician's office.

However, we intend in the future to consider more fully whether any of the services furnished under Part B that are not covered in this notice should be included.

C. Surgical Services

We are not publishing a separate performance standard rate of increase for surgical services for FY 1990. For years following FY 1990, sections 1848(f)(1)(C) and 1848(f)(4) of the Act require that we establish separate performance standard rates for surgical services and other categories of physician services as defined by the Secretary. However, sections 1848 (f)(1)(C) and (f)(1)(D) clearly specify that a single rate is to be computed for FY 1990.

III. Calculation of FY 1990 Physician Performance Standard Rate of Increase

Below is an explanation of how we determined the increases for each of the four factors used in determining the performance standard rate of increase for FY 1990.

Factor 1—Weighted Average Percentage Increase in Reasonable Charges for Physician Services for Months of Calendar Years 1989 and 1990 in FY 1990

This factor was calculated as a weighted average of the fee increases that apply to FY 1990; that is, the fee increases that apply to the last 3 months of calendar year 1989 multiplied by 25 percent plus the fee increases that apply to the first 9 months of calendar year 1990 multiplied by 75 percent. Physician services are updated by increases in the Medicare Economic Index (MEI), and laboratory services are updated by increases in the Consumer Price Index for Urban Consumers (CPI–U).

TABLE 1—MEDICARE PAYMENT UPDATES FOR FY 1989 AND 1990

Service	MEI		CPI–U	
	1989	1990	1989	1990
Physician				
Primary Care [1]	3.0	4.2		
Radiology, anesthesiology, and overpriced procedures [2]	1.0	0.0		
Other	1.0	2.0		
Laboratory			4.0	4.7

[1] Primary care services are defined as office visits, emergency room visits, home visits, and nursing home visits. In addition, radiology and anesthesiology services will receive a zero percent update for 1990.

[2] Overpriced procedures are the approximately 250 procedures described in section 1842(b)(14)(C)(i) of the Act.

Physician services make up 94.4 percent of the total expenditures in the definition of physician services used for purposes of the performance standard rate of increase and laboratories services represent 5.6 percent. Within the 94.4 percent attributed to physician services, 15 percent is for primary care services, 42 percent is for radiology, anesthesiology, and overpriced

procedures, and 43 percent is for other services.

In addition to the annual updates and

The corresponding figures for fiscal year 1989 are estimated to be 32.223 million total Part B enrollees and 1.062

Consistent with data contained in the Trustees Report, we estimated this component of the performance standard

IV. Regulatory Impact Statement

Executive Order (E.O.) 12291 requires us to prepare and publish a regulatory

for FY 1990 as set forth at section 1848(f)(1)(D) of the Act, as added by section 6102(a) of Pub. L. 101–239.

V. Other Required Information

A. Waiver of 30-Day Delay in Effective Date

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procedures, and 43 percent is for other services.

In addition to the annual updates and individual weights of the above services, three other elements have a significant effect on the rate of increase in reasonable charges. First, section 6107 of Public Law 101–239 delayed the effective date of the update in the Medicare Economic Index (MEI) from January 1, 1990 to April 1, 1990. This delay has the overall effect of reducing the rate of increase.

Second, the MEI update only applies to prevailing charge levels. The Medicare reasonable charge is defined as the lowest of the actual, customary, or prevailing charge. The MEI limits the amount that prevailing charges may increase from year to year. The increases in actual and customary charges below the prevailing charge are not constrained by the MEI. Historically, they have increased at a rate faster than the prevailing charge. This means that the overall reasonable charge increases have been greater than the MEI increases.

Third, section 1842(h) of the Act provides for "participating physicians." A participating physician agrees to bill Medicare directly for his or her services, to accept Medicare payment as payment in full, and to bill Medicare beneficiaries only for the 20 percent coinsurance amount and any unmet portion of the $75 annual deductible. Section 1842(b)(4)(A)(iv) of the Act provides that nonparticipating physicians are paid five percent less for their services than participating physicians. Physicians are given an opportunity at the end of each calendar year to enroll as a participating physician for the next calendar year. Participation rates have increased each year, and we assume that this trend will continue. The increase in the number of participating physicians and the fact that they are paid at a rate higher than nonparticipating physicians also add to the rate of increase in reasonable charges.

After taking into account all the elements described above, we estimate that the weighted average increase in reasonable charges for physicians' services will be 2.3 percent.

Factor 2—The Percentage Increase in the Average Number of Part B Enrollees From FY 1989 to FY 1990

Average Medicare Part B enrollment in FY 1990 is estimated to be 32.835 million. Decreasing that figure by the estimated enrollment in risk HMOs of 1.159 million, results in an estimate of 31.676 million non-risk HMO Part B enrollees in FY 1990.

The corresponding figures for fiscal year 1989 are estimated to be 32.223 million total Part B enrollees and 1.062 million risk HMO enrollees, which results in an estimate of 31.161 million non-risk HMO Part B enrollees. We estimate that there will be 515,000 more non-risk HMO Part B enrollees in FY 1990 than in FY 1989, which represents a 1.7 percent increase for Part B non-risk HMO enrollees from FY 1989 to FY 1990.

Factor 3—Average Annual Growth in Volume and Intensity of Physician Services for FY 1985 Through FY 1989

Section 1848(f)(1)(D)(iii) of the Act requires the Secretary to estimate the average annual percentage growth in volume and intensity of physician services for FY 1985 through FY 1989. This estimate is to be based upon information contained in the most recent annual report issued by the Board of Trustees of the Supplementary Medical Insurance Trust Fund (Trustees Report).

The percentage increase data on volume and intensity in the Trustees Report is based on historical trends in increases in reasonable charges. However, the performance standard rate of increase under this notice is to be applied against increases in expenditures; that is, incurred benefits. The $75 Part B deductible has remained the same throughout the 1985 through 1989 period. Although both reasonable charges and expenditures have been increasing over this period, the average rate of increase in expenditures is larger than the average rate of increase in reasonable charges for the 5-year period. The reason for this difference is due to the deductible remaining at $75 throughout the period. Thus, benefits tend to increase faster than charges as long as the deductible remains the same as charges increase.

Although we believe it would be consistent with a literal interpretation of section 1848(f)(D)(iii) of the Act, we believe it would be unfair to physicians to base the volume and intensity component on the 5-year growth in reasonable charges since expenditures have been increasing faster due to the constant $75 deductible amount. Because the effect of the deductible has been declining over the 5-year period, we believe the most equitable approach is to take the average annual increase based on charges, which is 6.6 percent, and to adjust it by a factor that would account for the estimated effect of the deductible on expenditure growth in FY 1990 as compared with FY 1989. This equates to 0.7 percent, which when added to 6.6 percent, yields an increase of 7.3 percent.

Consistent with data contained in the Trustees Report, we estimated this component of the performance standard rate of increase using a definition of physician services that includes certain supplies and nonphysician services (primarily durable medical equipment (DME) and ambulance services). We included data for these services because we were required to base the estimate on data contained in the Trustees Report, and it was not feasible to recompute the data from the five-year period to exclude these supplies and nonphysician services. We believe the inclusion of these nonphysician supplies and services in this component has a minimal effect on the estimate because the component measures rates of charge. Since DME and ambulance services constitute only about 10 percent of the total charges used in the Trustees Report, the rate of change for these nonphysician services and supplies would have to be significantly different from the rate of change for physician services to have any measurable impact on this volume and intensity increase factor. We do not believe that the rate of increase for these nonphysician services and supplies differs substantially from the rate of increase for physician service. The volume increases for services performed in independent laboratories were included in the calculation of the physician increases. (We want to emphasize that Factor 3 is the only component of the performance standard rate of increase that was estimated using data that included nonphysician services and supplies.)

Factor 4—Percentage Increase in Expenditures for Physician Services Resulting From Changes in Law or Regulations in FY 1990 as Compared With FY 1989

Pub. L. 101–239 contains many provisions that considered together are estimated to result in a net decrease in expenditures for physician services of $423 million in FY 1990.

(The effect of section 6107 of Pub. L. 101–239, which provides for a 3-month delay in the MEI and a reduction in the MEI update, was considered in the computation of Factor 1 (the increase in reasonable charges for physician services).)

Except for notices and regulations to be prepared under the provisions in Pub. L. 101–239 cited above, we do not expect that any other regulations or notices to be issued in FY 1990 will have any measurable effect on physician expenditures for FY 1990.

The Factor 4 component increase is estimated to be −1.7 percent.

IV. Regulatory Impact Statement

Executive Order (E.O.) 12291 requires us to prepare and publish a regulatory impact analysis for any notice that meets one of the E.O. 12291 criteria for a "major rule"; that is, that will be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a notice will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, States and individuals are not entities, but we consider all physicians to be small entities.

We have determined that this notice, in itself, will not produce any effects that will meet any of the criteria of E.O. 12291 or of the RFA since the provisions to which this notice pertains merely announce the Medicare physician performance standard rates of increase for FY 1990 as set forth at section 1848(f)(1)(D) of the Act, as added by section 6102(a) of Pub. L. 101–239. Furthermore, any effects that result from this notice are the result of the statutory provisions and not this notice. Therefore, we have determined that a regulatory impact analysis under E.O. 12291 and a regulatory flexibility analysis under the RFA are not required. For the same reasons, we have determined and the Secretary certifies that this notice will not have a significant effect on a substantial number of small entities.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a notice may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital which has fewer than 50 beds and is located outside of a Metropolitan Statistical Area.

We are not preparing a rural impact statement since we have determined, and the Secretary certifies, that this notice will not have a significant economic impact on the operations of a substantial number of small rural hospitals.

V. Other Required Information

A. Waiver of 30-Day Delay in Effective Date

We normally provide a delay of 30 days in the effective date for documents such as this. However, the effective date of the provisions of new section 1848(f) of the Act is for services furnished on or after October 1, 1989. In addition, the provisions of this notice conform to the clear direction provided in new section 1848(f) of the Act. For these reasons, a delayed effective date is impractical and unnecessary. Therefore, we find good cause to waive the usual 30-day delay.

B. Paperwork Reduction Act

This notice does not impose paperwork or information collection requirements. Consequently, it need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511).

(Section 1848(f) of the Social Security Act)

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare—Supplementary Insurance Program)

Dated: December 20, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

Approved: December 27, 1989.

Louis W. Sullivan,

Secretary.

[FR Doc. 89–30388 Filed 12–28–89; 9:07 am]

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PARALLEL TABLE OF AUTHORITIES AND RULES

Following Title 50 is an update to Table I—Parallel Table of Authorities and Rules found in the CFR Index and Finding Aids. This table contains authority citations added to or removed from Table I as a result of documents published in the Federal Register since January 1, 1989.

TABLE OF FEDERAL REGISTER ISSUE PAGES AND DATES

A table is included at the end of this publication which identifies the volume number, the inclusive page numbers, and the corresponding Federal Register issue dates for the period covered.

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An INDEX to the daily Federal Register is published monthly and is cumulated for 12 months. A separate volume, the CFR Index and Finding Aids to the entire Code of Federal Regulations, is revised as of January 1 each year.

INQUIRIES AND SUGGESTIONS

LaJuana D. Caldwell was Chief Editor of the LSA. The LSA was prepared under the direction of Richard L. Claypoole, assisted by Maxine L. Hill. INQUIRIES, telephone 202-523-5227.

SUGGESTIONS concerning this and other publications of the Office are welcomed. Please send your suggestions to Martha L. Girard, Acting Director, Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408.

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73.511 (a) revised 3602
73.593 Policy statement 47213
73.606 (b) table amended 49323
(b) table amended 153, 12525, 30896, 33227, 33902, 37683
73.610 (f) added 14964
(f) revised 16368
(f) introductory text revised; (f) table amended; eff. 10-2-89 35340
73.653 Revised 9806
73.658 (c) removed 14961
73.663 (b)(3) revised 9806
73.687 (d) revised; (e), (f), and (h) removed; (g) redesignated as (e) 9807
73.698 Table I removed 9807
73.699 Figure 6, Note 8 amended 9807
73.912 Revised 15196
73.926 (d) revised 15196
73.932 (c) and (d) revised 15196
73.937 Heading corrected 39534
73.962 (a) revised 15196
73.1211 (c)(3) added 20856
73.1650 Revised 39737
73.1690 (b)(2) revised; new (c)(4) and Note added; eff. 10-2-89 35340
73.3523 Added 22598
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73.3524 Added 22598
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73.3525 (a) amended 22599
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73.3555 (a) (1) and (2) revised 51781
(a) (1) and (2) revised 8335
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Note 7 revised 32640
73.3566 Technical correction 29038
73.3568 (a) and (c) amended 22599
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73.3570 Heading, (a), (b), and (d) revised 39737
73.3571 (d)(5) corrected 39534
73.3573 (a)(1) revised 11954
73.3999 Added 52426
73.4272 Removed 9807

74.502 (a) through (d) redesignated as (b) through (e); new (e) amended 10329
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(a) footnote 1 added 30043
74.561 Revised 30043
74.913 (d) revised and Note 4 added 29039
74.1231 (b) revised; eff. 10-2-89 35342
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76.5 (x) Note revised 46619
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76.56 Removed 25716
76.58 Removed 25716
76.60 Revised 25716
76.62 Revised 25716
76.64 Removed 25716
76.66 (c) introductory text and (1) revised; (c)(2) removed 25716
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76.151 Note revised 12919
76.155 (b) introductory text revised; (d) added 12919
76.158 Added 12919
76.159 Revised 12919
76.161 Revised 12920
76.163 Revised 12920
76.213 (c) revised 20856
76.617 Revised 46619
80 (Subpart W) Heading revised 40059
80.153 (a) revised 10008
(c)(2) revised 40058
80.155 Revised 10008
80.157 Revised 46455

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80.159 (c)(2) and (d)(2) revised 40058
80.169 (a) revised 40058
80.179 Added 10008
80.203 (a) revised; (b) through (j) redesignated as (c) through (k); new (b) added 31839
80.207 (a)(1) revised 40058
80.211 (b) introductory text revised 40058
80.213 (a)(2) revised 40058
80.215 (d)(2)(iii) revised 40058
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80.308 Eff. 2-1-89 48650
80.311 Undesignated center heading revised 40058
80.363 Introductory text and (b) revised 40059
80.373 Eff. 2-1-89 48650
(f) table amended 8542
(f) table footnote 3 revised; (f) table footnote 13 added 40059
80.381 Table footnote 1 removed 40059
80.383 (a) table revised 8746
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80.409 (f)(1) revised 40059
80.559 (c) revised; footnote 1 added 40059
80.871 (a) revised 40059
80.911 (d)(5) added 40059
80.956 Eff. 2-1-89 48650
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87.23 (c) table footnote 1 revised 11719
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87.131 Revised 11720
87.137 (a) table footnote 5 revised 11720
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90.207 (c) amended 38681
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LaJuana D. Caldwell was Chief Editor of the LSA. The LSA was prepared under the direction of Richard L. Claypoole, assisted by Maxine L. Hill. INQUIRIES, telephone 202-523-5227.

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5.2 Heading and introductory text revised; eff. 4-6-89 9676
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Table I is in the CFR Index and Finding Aids revised as of January 1, 1989. Removals during 1988 are in the December 1988 LSA (List of CFR Sections Affected).

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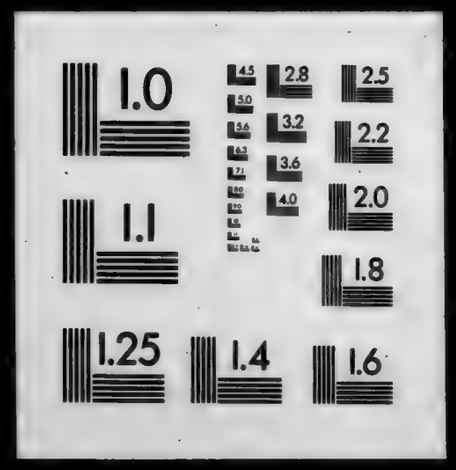

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LaJuana D. Caldwell was Chief Editor of the LSA. The LSA was prepared under the direction of Richard L. Claypoole, assisted by Maxine L. Hill. INQUIRIES, telephone 202-523-5227.

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†Amendments to this volume were promulgated during the period January 1, 1989 through April 1, 1989.

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Following Title 50 is an update to Table I—Parallel Table of Authorities and Rules found in the CFR Index and Finding Aids. This table contains authority citations added to or removed from Table I as a result of documents published in the Federal Register since January 1, 1989.

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A table is included at the end of this publication which identifies the volume number, the inclusive page numbers, and the corresponding Federal Register issue dates for the period covered.

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INQUIRIES AND SUGGESTIONS

LaJuana D. Caldwell was Chief Editor of the LSA. The LSA was prepared under the direction of Richard L. Claypoole, assisted by Maxine L. Hill. INQUIRIES, telephone 202-523-5227.

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769 Supplement No. 15 added 41440
770 Authority citation revised 4005
770.2 Amended 13055, 21937
770.5 Revised 40861
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770.13 (m)(2), (4) (i), (ii), and (iii) amended 13055
770.14 (a)(3)(i) amended 21937
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771.19 (c) revised 27160
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775 Supplement No. 1 amended 24889
776 Authority citation revised 52018
776.4 (c)(1) amended 6644
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776.12 (e)(5) revised 35175
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776.19 Added; interim 8283
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777.8 (b), (d), (f), (g), (h), (i), (j), and (l) amended 13056
777.9 (b) introductory text and (c) amended 13056
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778.6 Removed 23472
778 Supplement No. 1 amended 12594
779.1 Supplement No. 3 amended 41056
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779.3 Revised 40646
779.4 (f)(2)(ii)(C) note amended 21938
(d) (2), (23), and (25) correctly designated 26956
(d)(25) redesignated as new (d)(26); (d) heading and new (25) added 41056
779.8 (b)(3)(ii) amended 21938
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785.1 (a) amended 16360
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788 Supplement No. 1 amended 13055, 13056
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790.1 (h)(3) amended 13057
790.2 (a)(1), (2) (i), (iii), (3) introductory text, (i), (ii), and (iii) amended 13056
791.5 Amended 13057

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